

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 1

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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U.S. District Court
Southern District of Florida (Ft Pierce)
CIVIL DOCKET FOR CASE #: 2:16-cv-14072-RLR

Bryant v. Mascara et al
 Assigned to: Judge Robin L. Rosenberg
 Referred to: Magistrate Judge Bruce E. Reinhart
 Case in other court: USCA, 17-12547-A
 USCA, 18-13902-EE
 19th Judicial Circuit Court, 562016CA000029
 (OC)

Date Filed: 03/09/2016
 Date Terminated: 05/30/2018
 Jury Demand: Defendant
 Nature of Suit: 440 Civil Rights: Other
 Jurisdiction: Federal Question

Cause: 28:1441 Notice of Removal

Plaintiff

Viola Bryant
*as Personal Representative of the Estate of
 Gregory Vaughn Hill, Jr.*

represented by **John Michael Phillips**
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V.

Defendant

Sheriff Ken Mascara
*in his official Capacity as Sheriff of St.
 Lucie County*

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Defendant

Christopher Newman
an individual

represented by **Bruce Wallace Jolly**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregory James Jolly
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Matthew Joseph Wildner
(See above for address)
ATTORNEY TO BE NOTICED

Summer Marie Barranco
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/09/2016	1	NOTICE OF REMOVAL (STATE COURT COMPLAINT) Filing fees \$ 400.00 receipt number 113C-8551811, filed by Christopher Newman, Ken Mascara. (Attachments: # 1 Exhibit)(Barranco, Summer) (Entered: 03/09/2016)
03/09/2016	2	Judge Assignment to Judge Robin L. Rosenberg and Ch. Magistrate Judge Frank J. Lynch, Jr (jc) (Entered: 03/09/2016)
03/09/2016	3	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S.

		Magistrate Judge Frank J. Lynch, Jr. has any or all proceedings in this case. If agreed, parties should complete and file the attached form. (jc) (Entered: 03/09/2016)
03/09/2016	4	Clerks Notice to Filer re: Electronic Case. No Civil Cover Sheet. Filer is instructed to file a Notice (Other) with the Civil Cover Sheet attached within 24 hours of the notice. (jc) (Entered: 03/09/2016)
03/10/2016	5	NOTICE by Ken Mascara, Christopher Newman re 1 Notice of Removal (State Court Complaint), 4 Clerks Notice to Filer re: Electronic Case (Attachments: # 1 Civil Cover Sheet) (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	6	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Christopher Newman. (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	7	ANSWER and Affirmative Defenses to Complaint re the Notice of Removal with Jury Demand by Ken Mascara. (Barranco, Summer) (Entered: 03/10/2016)
03/10/2016	8	ORDER SETTING STATUS CONFERENCE, CALENDAR CALL, AND TRIAL DATE AND ORDER OF REFERENCE TO MAGISTRATE: (Pretrial Conference set for 3/1/2017 09:30 AM before Judge Robin L. Rosenberg., Jury Trial set for 4/10/2017 09:00 AM in Fort Pierce Division before Judge Robin L. Rosenberg., Calendar Call set for 4/5/2017 09:00 AM before Judge Robin L. Rosenberg.), ORDER REFERRING CASE to Magistrate Judge Frank J. Lynch, Jr. for Discovery Matters Signed by Judge Robin L. Rosenberg on 3/10/2016. (yha) (Entered: 03/11/2016)
03/11/2016	9	ORDER SETTING TELEPHONIC SCHEDULING CONFERENCE AND ORDER REQUIRING JOINT SCHEDULING REPORT: Scheduling Conference set for 5/11/2016 02:00 PM before Ch. Magistrate Judge Frank J. Lynch Jr. -Joint Scheduling Report due by 5/9/2016 Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 3/11/2016. (yha) (Entered: 03/11/2016)
03/17/2016	10	RESPONSE/REPLY to 7 ANSWER to Complaint (Notice of Removal) <i>Reply to Affirmative Defenses of Defendant Mascara</i> by Viola Bryant. (Phillips, John) (Entered: 03/17/2016)
03/17/2016	11	RESPONSE/REPLY to 6 ANSWER to Complaint (Notice of Removal) <i>Reply to Affirmative Defenses of Defendant Newman</i> by Viola Bryant. (Phillips, John) (Entered: 03/17/2016)
05/09/2016	12	SCHEDULING REPORT - Rule 26(f) by Viola Bryant (Phillips, John) (Entered: 05/09/2016)
05/11/2016	13	Minute Entry for proceedings held before Ch. Magistrate Judge Frank J. Lynch, Jr: Scheduling Conference held on 5/11/2016. Scheduling Order entered (Digital 140519.) (cga) (Entered: 05/11/2016)
05/11/2016	14	ORDER SETTING PRE -TRIAL SCHEDULE AND ORDER REFERRING CASE TO MEDIATION: (Amended Pleadings due by 6/10/2016., Discovery due by 11/11/2016., Fact Discovery due by 9/16/2016., Joinder of Parties due by 6/10/2016., Mediation Deadline 2/10/2017., In Limine Motions due by 12/9/2016., Pretrial Dispositive Motions due by 12/9/2016., Joint Pretrial Stipulation due by 3/13/2017.), ORDER REFERRING CASE to Mediation. Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 5/11/2016. (jas) (Entered: 05/12/2016)
05/20/2016	15	Initial Disclosure(s) of Plaintiff's Initial Rule 26(A)(1) Disclosure by Viola Bryant (Phillips, John) (Entered: 05/20/2016)
05/26/2016	16	NOTICE by Viola Bryant <i>of Selection of Mediator</i> (Phillips, John) (Entered: 05/26/2016)

05/27/2016	17	Clerks Notice to Filer Date (Notice 1709) 0200 Mediator Not Added ; ERROR - The Filer failed to add all parties to the case. Filer is instructed to file a Notice of Entry of Parties and add the mediator. (asl) (Entered: 05/27/2016)
06/02/2016	18	Notice of Entry of Parties Listed NOTE: New Filer(s) will appear twice, since they are also a new party in the case. New Filer(s)/Party(s): E. Hugh Chappell. (Phillips, John) (Entered: 06/02/2016)
09/16/2016	19	Plaintiff's MOTION for Extension of Time to Complete Discovery by Viola Bryant. (Attachments: # 1 Text of Proposed Order)(Phillips, John). Added MOTION to Continue on 9/19/2016 (asl). (Entered: 09/16/2016)
09/19/2016	20	Clerks Notice to Filer re 19 Plaintiff's MOTION for Extension of Time to Complete Discovery <i>and to Continue Trial</i> . Motion with Multiple Reliefs Filed as One Relief ; ERROR - The Filer selected only one relief event and failed to select the additional corresponding events for each relief requested in the motion. The docket entry was corrected by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (asl) (Entered: 09/19/2016)
09/20/2016	21	PAPERLESS ORDER Setting Hearing on 19 Plaintiff's MOTION for Extension of Time to Complete Discovery and to Continue Trial for 9/21/2016 02:00 PM in Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear telephonically but must file a notice of telephonic appearance at least one (1) day prior to the hearing. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. 1. Toll-Free Number: 1 (877) 873-8018; 2. Access Code: 9890482; 3. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 9/20/2016. (as00) (Entered: 09/20/2016)
09/20/2016	22	NOTICE by Ken Mascara, Christopher Newman re 21 Order Setting Hearing on Motion,, (Barranco, Summer) (Entered: 09/20/2016)
09/20/2016	23	NOTICE by Viola Bryant re 21 Order Setting Hearing on Motion,, (Phillips, John) (Entered: 09/20/2016)
09/21/2016	24	Paperless Minute Entry for proceedings held before Judge Robin L. Rosenberg: Telephonic Motion Hearing held on 9/21/2016 re 19 Plaintiff's MOTION for Extension of Time to Complete Discovery <i>and to Continue Trial</i> MOTION to Continue filed by Viola Bryant. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov (lw1) (Entered: 09/21/2016)
09/21/2016	25	PAPERLESS ORDER directing the parties to submit a Proposed Amended Pre-Trial Plan to the Court's e-mail address in Word format. For purposes of the Proposed Amended Pre-Trial Plan, the deadline for dispositive motions shall be re-set to December 30, 2016. The parties' Proposed Amended Pre-Trial Plan may adjust all deadlines preceding the new dispositive motion deadline of December 30, 2016. All deadlines following the dispositive motion deadline, including the date of the trial itself, shall remain as set in [DE 14] Order Setting Pre-Trial Schedule and Order Referring Case to Mediation. The parties are also directed to file a Discovery Plan in a separate filing. This Discovery Plan shall contain a detailed schedule for the first phase of depositions, which, as discussed at the Status Conference held on September 19, 2016, will include approximately 6 depositions by Plaintiff and approximately 3 depositions by Defendant. The Discovery Plan shall reflect that these depositions are to be completed by October 7, 2016, and include the dates and times of the depositions. Both the Proposed Amended Pre-Trial Plan and the Discovery Plan shall be filed with the Court by September 23, 2016 at 5:00pm. A status conference is scheduled for Monday, October 24, 2016, at 8:30 a.m. in West Palm Beach. Counsel may appear telephonically but must file a notice of telephonic

		Open the latest on file (8 of 1709) the hearing instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. 1. Toll-Free Number: 1 (877) 873-8018; 2. Access Code: 9890482; 3. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 9/21/2016. (as00) (Entered: 09/21/2016)
09/21/2016		Dispositive Motions due by 12/30/2016. (as00) (Entered: 09/21/2016)
09/22/2016		Set/Reset Hearings: Status Conference set for 10/24/2016 at 8:30 AM in West Palm Beach Division before Judge Robin L. Rosenberg. SEE DE 25 ORDER (ail) (Entered: 09/22/2016)
09/23/2016	26	REPORT REGARDING Proposed Amended Pretrial Plan by Viola Bryant (Phillips, John) (Entered: 09/23/2016)
09/23/2016	27	REPORT REGARDING Joint Discovery Plan by Viola Bryant (Phillips, John) (Entered: 09/23/2016)
09/26/2016	28	AMENDED SCHEDULING ORDER: Discovery due by 12/16/2016. Fact Discovery due by 10/21/2016. Mediation Deadline 2/10/2017. In Limine Motions due by 12/30/2016. Pretrial Motions due by 12/30/2016. Joint Pretrial Stipulation due by 3/13/2017. Signed by Judge Robin L. Rosenberg on 9/26/2016. (jas) Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 09/26/2016)
09/26/2016	29	Joint Discovery Plan re 26 Report Regarding filed by Viola Bryant. Signed by Judge Robin L. Rosenberg on 9/26/2016. (jas) (Entered: 09/26/2016)
09/26/2016	30	MOTION for Protective Order <i>as to Sheriff's deposition being set for next Monday October 3, 2016</i> and Memorandum of Law by Ken Mascara. (Barranco, Summer) Modified title text on 9/27/2016 (asl). (Entered: 09/26/2016)
09/27/2016	31	ORDER OF RECUSAL. Ch. Magistrate Judge Frank J. Lynch, Jr recused. Case reassigned to Magistrate Judge James M. Hopkins for all further proceedings Motions referred to Judge James M. Hopkins Signed by Ch. Magistrate Judge Frank J. Lynch, Jr on 9/27/2016. (vjk) (Entered: 09/28/2016)
09/28/2016	32	Clerks Notice pursuant to 28 USC 636(c). Parties are hereby notified that the U.S. Magistrate Judge James M. Hopkins is available to handle any or all proceedings in this case. If agreed, parties should complete and file the attached form. (vjk) (Entered: 09/28/2016)
09/30/2016	33	PAPERLESS ORDER Setting Hearing on 30 Defendant's MOTION for Protective Order for TODAY, 9/30/2016, at 02:00 PM in the West Palm Beach Division before Magistrate Judge James M. Hopkins. The parties may appear telephonically using the call-in information provided by the Court. Signed by Magistrate Judge James M. Hopkins on 9/30/2016. (ckr) (Entered: 09/30/2016)
09/30/2016	34	PAPERLESS Minute Order for proceedings held before Magistrate Judge James M. Hopkins: GRANTING 30 Defendant's Motion for Protective Order for the reasons stated on the record during the 9/30/16 Hearing on the Motion. (Digital 14:09:36.) (ckr) (Entered: 09/30/2016)
10/14/2016	35	NOTICE by Ken Mascara, Christopher Newman <i>of Telephonic Appearance</i> (Barranco, Summer) (Entered: 10/14/2016)
10/17/2016	36	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 10/17/2016)

10/24/2016	37	Case: 18-13002 Date Filed: 10/24/2016 Page: 9 of 243 Paperless Minute Entry for (Court) held before Judge Robin L. Rosenberg: Telephonic Status Conference held on 10/24/2016. **Telephonic Appearances: Thomas Roberts, Esq. present on behalf of the Plaintiff. Summer Barranco, Esq. present on behalf of the Defendants. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov (lw1) (Entered: 10/24/2016)
10/25/2016	38	PAPERLESS ORDER directing the parties to submit a Second Proposed Amended Pre-Trial Plan to the Court's e-mail address in Word format. For purposes of the Second Proposed Amended Pre-Trial Plan, the deadline for dispositive motions may be re-set no later than January 30, 2016. The parties' Second Proposed Amended Pre-Trial Plan may adjust all deadlines preceding the new dispositive motions deadline. The trial shall remain as set in [DE 8] Order Setting Status Conference, Calendar Call, and Trial Date. The Proposed Amended Pre-Trial Plan shall be filed with the Court by October 28, 2016 at 12:00pm. Signed by Judge Robin L. Rosenberg on 10/25/2016. (as00) (Entered: 10/25/2016)
10/31/2016	39	SECOND AMENDED SCHEDULING ORDER: Discovery due by 1/17/2017. Fact Discovery due by 12/6/2016. Mediation Deadline 2/10/2017. In Limine Motions due by 1/30/2017. Pretrial Motions due by 1/30/2017. Joint Pretrial Stipulation due by 3/13/2017. Signed by Judge Robin L. Rosenberg on 10/31/2016. (jas) Pattern Jury Instruction Builder - To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here. (Entered: 11/01/2016)
01/17/2017	40	Plaintiff's EMERGENCY MOTION with Certification of Emergency attached by Viola Bryant. Responses due by 1/31/2017 (Attachments: # 1 Certification of Emergency, # 2 Affidavit in Support)(Phillips, John) (Entered: 01/17/2017)
01/17/2017	41	PAPERLESS ORDER decertifying 40 Plaintiff's Unopposed Emergency Motion to Extend Discovery Deadline, Mediation, and to Continue Trial as an emergency motion and denying the same without prejudice. Several aspects of this motion cause the Court concern. The only ground cited for the three to four month extension of all deadlines and continuation of trial requested therein is the fact that three lawyers, including one who played a large role in this case, have left Plaintiff's counsel's law firm. However, these three lawyers, according to the motion, left on January 13, 2017--only four days before the scheduled close of discovery on January 17, 2017. The Court simply does not understand how the work left to be done during those four days could warrant the three to four month extension of the discovery deadline requested. And the motion itself provides no clarification; it is silent as to what discovery remains to be conducted in this case. Therefore, the requirement stated in Local Rule 7.1(d) that an emergency motion "shall set forth in detail the necessity for [] expedited procedure" is unmet. The Court also notes that it has already extended the deadlines in this case twice, having entered both an 28 Amended Scheduling Order and a 39 Second Amended Scheduling Order. Since the Second Amended Scheduling Order was entered on October 31, 2016, the Court has received no indication that the parties were straining to complete discovery or that complications had arisen until the instant motion was filed on the day of the discovery deadline. Should Plaintiff persist in this request for relief, an amended motion that addresses the Court's concerns must be filed on or before 5:00 p.m. on January 18, 2017. Signed by Judge Robin L. Rosenberg on 1/17/2017. (as00) (Entered: 01/17/2017)
01/18/2017	42	Amended EMERGENCY MOTION with Certification of Emergency attached by Viola Bryant. Responses due by 2/1/2017 (Attachments: # 1 Certification of Emergency, # 2 Affidavit in Support)(Phillips, John) (Entered: 01/18/2017)
01/18/2017	43	PAPERLESS ORDER decertifying 42 Plaintiff's Amended Unopposed Emergency

		Motion to Extend Discovery Deadline, Mediation, and Continue Trial as an Emergency Motion . Signed by Judge Robin L. Rosenberg on 1/18/2017. (as00) (Entered: 01/18/2017)
01/19/2017	44	PAPERLESS ORDER denying without prejudice 42 Plaintiff's Amended Unopposed Emergency Motion to Extend Discovery Deadline, Mediation, and Continue Trial. Absent an account of what discovery has been conducted and what discovery is yet to be completed in this case, the Court cannot meaningfully evaluate the Motion. The Court, therefore, requires that counsel review the firm's records in an effort to establish what discovery has been completed and what remains to be completed. The Court is sympathetic to counsel's plight and understands that a forensic reconstruction of discovery is not a simple undertaking, particularly without the aid of the attorney who handled the bulk of discovery--but it is a necessary one. This information must be included in the Second Amended Motion, which shall be filed on or before 5:00pm on Friday January 20, 2017. It should not be filed as an emergency motion. Signed by Judge Robin L. Rosenberg on 1/19/2017. (as00) (Entered: 01/19/2017)
01/20/2017	45	Second MOTION for Extension of Time to Extend Discovery Deadline and Continue Trial <i>Amended</i> re 43 Order, 42 Amended EMERGENCY MOTION with Certification of Emergency attached , 39 Scheduling Order,, 44 Order on Emergency Motion/Certification of Emergency,,, 40 Plaintiff's EMERGENCY MOTION with Certification of Emergency attached , 41 Order on Emergency Motion/Certification of Emergency,,,,,, by Viola Bryant. Responses due by 2/3/2017 (Attachments: # 1 Affidavit) (Phillips, John) (Entered: 01/20/2017)
01/20/2017	46	PAPERLESS ORDER setting hearing on 45 Plaintiff's Second Amended Unopposed Motion to Extend Discovery Deadline and Continue Trial for 1/23/2017 at 3:00 PM in West Palm Beach Division before Judge Robin L. Rosenberg. Counsel may appear at the hearing by telephone but must file a notice of telephonic appearance by 1:00pm on 1/23/2017. Instructions for appearing by telephone are as follows: Please call five (5) minutes prior to the hearing. The toll-free number is: 1 (877) 873-8018. The access code is: 9890482. The security code is: 4008. Signed by Judge Robin L. Rosenberg on 1/20/2017. (as00) (Entered: 01/20/2017)
01/23/2017	47	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 01/23/2017)
01/23/2017	48	NOTICE by Ken Mascara, Christopher Newman <i>of Telephonic Hearing</i> (Barranco, Summer) (Entered: 01/23/2017)
01/23/2017	49	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 01/23/2017)
01/23/2017	50	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Motion Hearing held on 1/23/2017 re 45 Second MOTION for Extension of Time to Extend Discovery Deadline and Continue Trial <i>Amended</i> re 43 Order, 42 Amended EMERGENCY MOTION with Certification of Emergency attached , 39 Scheduling Order,, 44 Order on Emergency Mot filed by Viola Bryant. **Attorney Appearance(s): John Phillips, Esq. present (via phone) on behalf of the Plaintiff. Summer Barranco, Esq. present (via phone) on behalf of the Defendants. Total time in court: 45 minutes. (Digital 14:59:24) (lw1) (Entered: 01/23/2017)
01/24/2017	51	PAPERLESS ORDER granting in part and denying in part Plaintiffs Second Amended Unopposed Motion to Extend Discovery Deadline and Continue Trial. Plaintiff represented that an extension of the discovery deadline was required so that Plaintiff could: (i) propound approximately 10 to 20 additional interrogatories, (ii) propound a supplemental request for production, (iii) take the deposition of Christopher Lawrence

		<p>Case 1:17-cv-00012-DWM Document 170-1 Filed 01/24/17 Page 24 of 24 who has been identified as Plaintiff's expert and Page take the depositions of Ray Bedard and William R. Anderson, M.D., whom have been identified as Plaintiff's experts. Defendant, during the status conference, also expressed a desire to depose Mr. Anthony Brown, a recently located fact witness. The Court hereby extends the discovery deadline until February 8, 2017 in order to facilitate these requests, as follows. Plaintiff may propound an additional 20 interrogatories and a supplemental request for production on or before January 25, 2017. Defendants must respond thereto on or before February 7, 2017. By 5:00pm on February 24, 2017 the parties shall jointly file a notice indicating the schedule of the three expert depositions discussed above to be taken on or before February 7, 2017. The Court emphasizes that the parties are required to make all reasonable efforts to schedule these depositions within that time frame. If a deposition cannot be scheduled, the notice shall explain in detail why not. The dispositive motion deadline of January 30, 2017 is hereby stayed. The matter of the motion deadline will be revisited following the parties mediation on February 8, 2017, as will the scheduling of Mr. Anthony Browns deposition. Immediately following the mediation on February 8, 2017, counsel for Plaintiff shall file a notice informing the Court of the outcome of the mediation. Moreover, lead counsel for Defendant shall file a notice with the Court by days end on January 25, 2017 informing the Court of the outcome of the mediation being held in Adams v. Bradshaw, another of counsels cases. If Adams v. Bradshaw does not settle, counsel for Defendant shall file another notice on January 26, 2017, following the calendar call in that case, informing the court of when Adams v. Bradshaw will be tried and how long that trial is expected to last. Signed by Judge Robin L. Rosenberg on 1/24/2017. (as00) (Entered: 01/24/2017)</p>
01/24/2017		Reset Deadlines per 51 Order. Discovery due by 2/8/2017. (asl) (Entered: 01/24/2017)
01/24/2017	52	NOTICE of Compliance to Court's Order dated January 24, 2017 by Viola Bryant re 51 Order on Motion for Extension of Time,,,,,,,,, (Phillips, John) (Entered: 01/24/2017)
01/25/2017	53	NOTICE by Ken Mascara, Christopher Newman re 51 Order on Motion for Extension of Time,,,,,,,,, (Barranco, Summer) (Entered: 01/25/2017)
01/26/2017	54	NOTICE by Ken Mascara, Christopher Newman re 51 Order on Motion for Extension of Time,,,,,,,,, (Barranco, Summer) (Entered: 01/26/2017)
02/07/2017	55	Unopposed MOTION for Extension of Time to File Response/Reply/Answer to Plaintiff's Expert Witness Discovery Dated 1/25/2017 by Ken Mascara, Christopher Newman. (Attachments: # 1 Exhibit)(Barranco, Summer) Modified title text on 2/7/2017 (asl). (Entered: 02/07/2017)
02/08/2017	56	PAPERLESS ORDER granting 55 Defendants' Unopposed Motion for Extension of Time to Respond to Plaintiff's Expert Discovery Dated January 25, 2017. Defendants must respond on or before February 10, 2017. Signed by Judge Robin L. Rosenberg on 2/8/2017. (as00) (Entered: 02/08/2017)
02/09/2017	57	NOTICE by Viola Bryant re 51 Order on Motion for Extension of Time,,,,,,,,, (Phillips, John) (Entered: 02/09/2017)
02/23/2017	58	NOTICE by Viola Bryant of Telephonic Appearance (Phillips, John) (Entered: 02/23/2017)
02/23/2017	59	FINAL MEDIATION REPORT by Hugh Chappell. Disposition: Case did not settle. (Chaplin, James) (Entered: 02/23/2017)
02/23/2017		PAPERLESS ORDER re-setting pre-trial status conference for 2/24/2017 at 11:00 AM in West Palm Beach Division before Judge Robin L. Rosenberg. Counsel may appear at the hearing by telephone but must file a notice of telephonic appearance by 1:00pm on 1/23/2017. Instructions for appearing by telephone are as follows: Please call five (5)

		Case # 18-00021 Hearing Date 02/09/2018 Page (87) of 248 minutes prior to the hearing. The number is 877-687-2480. The access code is: 9890482. The security code is: 4008. Signed by Judge Robin L. Rosenberg on 2/23/2017. (as00) (Entered: 02/23/2017)
02/23/2017	60	NOTICE by Viola Bryant <i>Telephonic Appearance</i> (Phillips, John) (Entered: 02/23/2017)
02/24/2017	61	NOTICE by Ken Mascara, Christopher Newman re Set/Reset Hearings,, (Barranco, Summer) (Entered: 02/24/2017)
02/24/2017	62	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Status Conference held on 2/24/2017. **Telephonic Attorney Appearance(s): John Phillips, Esq. present (via phone) on behalf of the Plaintiff. Summer Barranco, Esq. present (via phone) on behalf of the Defendants. Total time in court: 42 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (lw1) (Entered: 02/24/2017)
02/27/2017	63	PAPERLESS ORDER memorializing the outcome of the status conference held on February 24, 2017. During the status conference counsel jointly requested a continuance of trial. The Court construed this request as an ore tenus motion to continue trial and granted the same. Jury Trial is hereby set for June 13, 2017 at 9:00 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Calendar Call is hereby set for June 7, 2017 at 9:30 AM in Fort Pierce Division before Judge Robin L. Rosenberg. The remaining deadlines are hereby adjusted as follows: Counsel's Jury Instructions or Proposed Findings of Fact and Conclusions of Law are due on June 6, 2017; Counsel's objections to designations of deposition testimony are due on May 30, 2017; Counsel's Joint Pretrial Stipulation, designations of deposition testimony, and witness and exhibit lists are due on May 12, 2017; and Dispositive motions are due on March 31, 2017. Dispositive motions, which are now on March 31, 2017, are hereby set on an expedited briefing schedule as follows: Responses are due on April 7, 2017 and Replies are due on April 12, 2017. Counsel is also hereby required to submit a discovery plan in Word format to the Courts e-mail address. The discovery plan shall contain a detailed schedule for all discovery that remains to be conducted in this case, including the date, time, and location of any depositions. Signed by Judge Robin L. Rosenberg on 2/27/2017. (as00) (Entered: 02/27/2017)
02/27/2017		Reset Deadlines per 63 Order. Pretrial Stipulation due by 5/12/2017. (asl) (Entered: 02/28/2017)
03/01/2017	64	PAPERLESS ORDER terminating the status conference previously set for March 1, 2017, in light of the fact that the status conference was re-set for, and held on, February 24, 2017. Signed by Judge Robin L. Rosenberg on 3/1/2017. (as00) (Entered: 03/01/2017)
03/06/2017	65	ORDER MEMORIALIZING JOINT DISCOVERY PLAN. Signed by Judge Robin L. Rosenberg on 3/6/2017. (jas) (Entered: 03/06/2017)
03/31/2017	66	MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) by Ken Mascara. Responses due by 4/14/2017 (Barranco, Summer) (Entered: 03/31/2017)
03/31/2017	67	MOTION for Summary Judgment by Christopher Newman. Responses due by 4/14/2017 (Barranco, Summer) (Entered: 03/31/2017)
03/31/2017	68	Statement of: Material Facts in Support of Motions for Summary Judgment by Ken Mascara, Christopher Newman re 66 MOTION for Summary Judgment (<i>as to Counts I, III & V</i>), 67 MOTION for Summary Judgment (Attachments: # 1 Exhibit Exhibit A - Deposition Transcript of Christopher Newman, # 2 Exhibit Exhibit B - Deposition Transcript of Stefani Mill, # 3 Exhibit Exhibit C - Deposition Transcript of Edward Lopez, # 4 Exhibit Exhibit D - SWAT memo, # 5 Exhibit Exhibit E - Photo of Hill in

		Case 1:18-cr-00011-UNA Document 13-1 Filed 04/07/19 Page 14 of 143 - Transcript of Radio Transmissions, # 8 Exhibit Exhibit H - Deposition Transcript of Lisa McGuire, # 9 Exhibit Exhibit I - Deposition Transcript of Lizbeth Enriquez Ruiz, # 10 Affidavit Exhibit J - Affidavit of Lt. Michael Sheelar, # 11 Exhibit Composite Exhibit 1 to Exhibit J - SLCSO General Orders, # 12 Exhibit Composite Exhibit 2 to Exhibit J - Additional SLCSO General Orders)(Barranco, Summer) (Entered: 03/31/2017)
04/07/2017	69	RESPONSE in Opposition re 66 MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Viola Bryant. Replies due by 4/14/2017. (Phillips, John) (Entered: 04/07/2017)
04/07/2017	70	RESPONSE in Opposition re 67 MOTION for Summary Judgment filed by Viola Bryant. Replies due by 4/14/2017. (Phillips, John) (Entered: 04/07/2017)
04/07/2017	71	Statement of: Material Facts in Opposition by Viola Bryant re 66 MOTION for Summary Judgment (as to Counts I, III & V) 67 MOTION for Summary Judgment (Attachments: # 1 Exhibit A - Deposition of Edward Lopez, # 2 Exhibit B - CAD Report, # 3 Exhibit C - Medical Examiner's Report, # 4 Exhibit D - Deposition of Andrew Brown, # 5 Exhibit E - Deposition of Stephani Mills, # 6 Exhibit F - Deposition of Lizabeth Enriquez-Ruiz, # 7 Exhibit G - Deposition of Joseph Hall, # 8 Exhibit H - Deposition of Juanita Wright, # 9 Exhibit I - Deposition of Lisa McGuire, # 10 Exhibit J - Deposition of Donna Hellums, # 11 Exhibit K - Deposition of David Morales, # 12 Exhibit L - Deposition of D. Hill, # 13 Exhibit M - Indian River Crime Lab, # 14 Exhibit N - Deposition of William Anderson, M.D., # 15 Exhibit O - Deposition of Roy Bedard, # 16 Exhibit P - Deposition of Christopher Newman, # 17 Exhibit Q - Deposition of Brian Hester, # 18 Exhibit R - Deposition of Christopher Cicio, # 19 Exhibit S - Deposition of Wade Courtemanche, # 20 Exhibit T - Deposition of Michael Gajewski)(Phillips, John) Modified Links on 4/10/2017 (ls). (Entered: 04/07/2017)
04/10/2017	72	Clerks Notice to Filer re 71 Statement,,,,. Incorrect Document Link ; ERROR - The filed document was not correctly linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (ls) (Entered: 04/10/2017)
04/12/2017	73	REPLY to Response to Motion re 66 MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Ken Mascara. (Barranco, Summer) (Entered: 04/12/2017)
04/12/2017	74	REPLY to Response to Motion re 67 MOTION for Summary Judgment filed by Christopher Newman. (Attachments: # 1 Exhibit "K" - aerial photo attached to Joseph Hall depo.)(Barranco, Summer) (Entered: 04/12/2017)
04/13/2017	75	PAPERLESS ORDER setting hearing on 67 Defendant Christopher Newman's Motion for Summary Judgment and on 66 Defendant Ken Mascara's Motion for Summary Judgment for 4/27/2017 at 11:00 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear by telephone but must file a notice of telephonic appearance at least one day prior to the Status Conference. Instructions for appearing by telephone are as follows: Please call five minutes prior to the Status Conference. Toll-Free Number: 1 (877) 873-8018. Access Code: 9890482. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 4/13/2017. (as00) (Entered: 04/13/2017)
04/26/2017	76	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 04/26/2017)
04/26/2017	77	PAPERLESS ORDER re-setting hearing on 67 Defendant Christopher Newman's Motion for Summary Judgment and on 66 Defendant Ken Mascara's Motion for Summary Judgment for 5/4/2017 at 11:30 AM in the Fort Pierce Division before Judge Robin L. Rosenberg. Counsel may appear by telephone but must file a notice of telephonic

		appeared at least on day (14 of 170) Status Conference Page 4 Instructions for appearing by telephone are as follows: Please call five minutes prior to the Status Conference. Toll-Free Number: 1 (877) 873-8018. Access Code: 9890482. Security Code: 4008. Signed by Judge Robin L. Rosenberg on 4/26/2017. (as00) (Entered: 04/26/2017)
05/04/2017	78	PAPERLESS ORDER memorializing the outcome of the hearing held on May 4, 2017. As stated on the record, Plaintiff's Statement of Material Facts [DE 71] is hereby stricken for failure to comply with Local Rule 56.1(a). Plaintiff must file a reorganized Statement of Material Facts on or before Tuesday, May 9, 2017 at 12:00pm. The Court cautions that the changes made should be organizational only. By Thursday, May 11, 2017, Defendants shall file a notice to the docket indicating whether or not they object to any aspect of Plaintiff's reorganized Statement of Material Facts. If so, the notice must detail the nature of the objection. The Court further notes that at the Calendar Call scheduled for June 7, 2017 at 9:30am, the parties must be prepared to address the following issues: (i) The number of days trial is expected to last; (ii) How many jurors should be called up; (iii) How many alternate jurors should be selected; and (iv) How many peremptory strikes each party will have. The parties must meet and confer about these matters before calendar call in an effort to reach agreement. Signed by Judge Robin L. Rosenberg on 5/4/2017. (as00) (Entered: 05/04/2017)
05/04/2017	79	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Motion Hearing held on 5/4/2017 re 66 MOTION for Summary Judgment (<i>as to Counts I, III & V</i>) filed by Ken Mascara, 67 MOTION for Summary Judgment filed by Christopher Newman. Total time in court: 1 hour(s) : 15 minutes. Attorney Appearance(s): John Michael Phillips, Thomas Caldwell Roberts, Summer Marie Barranco, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/08/2017)
05/08/2017	80	Statement of: Amended Statement of Material Facts in Opposition fo The Motions for Summary Judgment of Defendants by Viola Bryant re 66 MOTION for Summary Judgment (<i>as to Counts I, III & V</i>), 67 MOTION for Summary Judgment (Attachments: # 1 Exhibit A- Deposition of Edward Lopez, # 2 Exhibit B - CAD Report, # 3 Exhibit C - Medical Examiner's Report, # 4 Exhibit D - Deposition of Andrew Brown, # 5 Exhibit E - Deposition of Stefani Mills, # 6 Exhibit F - Deposition of Lizabeth Enriquez-Ruiz, # 7 Exhibit G - Deposition of Joseph Hall, # 8 Exhibit H - Deposition of Juanita Wright, # 9 Exhibit I - Deposition of Lisa Mcguire, # 10 Exhibit J - Deposition of Donna Hellums, # 11 Exhibit K - Deposition of David Morales, # 12 Exhibit L - Deposition of Destiny Hill, # 13 Exhibit M - Indian River Crime Lab Reports, # 14 Exhibit N - Deposition of William Anderson, M.D., # 15 Exhibit O - Deposition of Roy Bedard, # 16 Exhibit P - Deposition of Christopher Newman, # 17 Exhibit Q - Deposition of Brian Hester, # 18 Exhibit R - Deposition of Christopher Cicio, # 19 Exhibit S - Deposition of Wade Courtemanche, # 20 Exhibit T - Deposition of Michael Gajewski)(Phillips, John) (Entered: 05/08/2017)
05/09/2017	81	NOTICE of Attorney Appearance by John Michael Phillips on behalf of Viola Bryant (Phillips, John) (Entered: 05/09/2017)
05/09/2017	82	PAPERLESS ORDER requiring the parties to file notices by 4:00pm on May 10, 2017 directing the Court to any evidence already cited in support of the parties' respective motions for summary judgment which indicates how quickly the bullets fired by Deputy Newman were fired. Signed by Judge Robin L. Rosenberg on 5/9/2017. (as00) (Entered: 05/09/2017)
05/10/2017	83	RESPONSE to 82 Order, by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2017)
05/10/2017	84	NOTICE by Viola Bryant re 82 Order, <i>Directing Court to Cited Evidence In Support of</i>

		Case 1:17-cv-00302-Date Filed 05/10/17-Page 143 (Entered: 05/10/2017)
05/11/2017	85	NOTICE by Ken Mascara, Christopher Newman re 80 Statement,,,,, of Objection (Barranco, Summer) (Entered: 05/11/2017)
05/12/2017	86	NOTICE by Ken Mascara, Christopher Newman of Filing Defendants' Designation of Deposition Excerpts (Barranco, Summer) (Entered: 05/12/2017)
05/12/2017	87	NOTICE by Viola Bryant of Filing Plaintiff's Designation of Deposition Excerpts (Phillips, John) (Entered: 05/12/2017)
05/12/2017	88	PAPERLESS NOTICE regarding 85 Plaintiff's Notice of Objections to Plaintiff's Amended Statement of Material Facts. The Court instructed in its Order that the changes in Plaintiff's Amended Statement of Material Facts were to be "organizational only." Accordingly, the Court will not consider the statement that Plaintiff has learned of a subsequent claim of excessive force against Deputy Newman which was not otherwise disclosed," which is repeated in paragraphs 39, 49, and 50. Signed by Judge Robin L. Rosenberg on 5/12/2017. (as00) (Entered: 05/12/2017)
05/12/2017	89	PRETRIAL STIPULATION by Viola Bryant (Attachments: # 1 Exhibit "A" Plaintiff's Exhibit and Witness List, # 2 Exhibit "B" Defendants' Exhibit and Witness List)(Phillips, John) (Entered: 05/12/2017)
05/13/2017	90	PAPERLESS ORDER noting that the parties' Joint Pretrial Stipulation includes, in the "Undisposed of Motions" section, several motions in limine designated "to be filed." However, the motions deadline passed on March 31, 2017. While the March 31, 2017 deadline set in the 63 Paperless Order is styled a "dispositive motions deadline," all of the scheduling orders in this case since the initial scheduling order entered by Judge Lynch on May 11, 2016 have included only a single motions deadline applicable to all pretrial motions including dispositive motions, motions in limine, and Daubert motions. Moreover, trial in this case is set to begin June 12, 2017. Even if the motions in limine were filed on Monday May 15, 2017, they would not be ripe until four business days before the start of trial. Signed by Judge Robin L. Rosenberg on 5/13/2017. (as00) (Entered: 05/13/2017)
05/16/2017	91	ORDER granting in part and denying in part 66 Motion for Summary Judgment filed by Defendant Mascara; denying 67 Motion for Summary Judgment filed by Defendant Newman. The Court hereby requires that the parties jointly contact Judge Brannon's chambers on or before Thursday May 18, 2017 at 5:00 pm to schedule a settlement conference in this matter. The settlement conference is to be held no later than June 2, 2017. Signed by Judge Robin L. Rosenberg on 5/16/2017. (mc) (Entered: 05/16/2017)
05/18/2017	92	PAPERLESS ORDER requiring that the parties confer and submit a joint notice estimating the length of the trial to be held in this case on or before May 19, 2017 at 12:00pm. Signed by Judge Robin L. Rosenberg on 5/18/2017. (as00) (Entered: 05/18/2017)
05/18/2017	93	Joint NOTICE by Ken Mascara, Christopher Newman re 92 Order in Response to Court Order (Barranco, Summer) Modified title text on 5/19/2017 (asl). (Entered: 05/18/2017)
05/18/2017	94	ORDER SCHEDULING SETTLEMENT CONFERENCE BEFORE U.S. MAGISTRATE JUDGE (Settlement Conference set for 6/2/2017 10:00 AM in West Palm Beach Division before Magistrate Judge Dave Lee Brannon). Signed by Magistrate Judge Dave Lee Brannon on 5/18/2017. (mc) (Entered: 05/19/2017)
05/25/2017	95	MOTION to be Excused from Settlement Conference by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/25/2017)

05/25/2017	96	PAPERLESS ORDER Revised from 94 to be Filed 05/25/2017 Revised from 94 to be Filed 05/25/2017 Settlement Conference. Signed by Judge Robin L. Rosenberg on 5/25/2017. (as00) (Entered: 05/25/2017)
05/30/2017	97	NOTICE by Ken Mascara, Christopher Newman re 87 Notice (Other) of Counter Deposition Designations and Objections to Plaintiff's Deposition Designations (Barranco, Summer) (Entered: 05/30/2017)
06/01/2017	98	PAPERLESS ORDER requiring Plaintiff to file any objections to Defendants' 97 Counter Deposition Designations by 5:00pm on June 2, 2017. Signed by Judge Robin L. Rosenberg on 6/1/2017. (as00) (Entered: 06/01/2017)
06/01/2017	99	Plaintiff's MOTION to Bring Electronic Equipment into the courtroom by Viola Bryant. Responses due by 6/15/2017 (Phillips, John) (Entered: 06/01/2017)
06/01/2017	100	PAPERLESS ORDER granting 99 Plaintiff's Motion to Bring Electronic Equipment into the Courtroom. Plaintiff's attorney, John M. Phillips, Esq., may use and bring his cell phone and laptop computer to the Settlement Conference scheduled for Friday, June 2, 2017, at 10:00 A.M. Signed by U.S. Magistrate Judge Dave Lee Brannon on 6/1/2017. (jrz) (Entered: 06/01/2017)
06/02/2017	101	Minute Entry for proceedings held before U.S. Magistrate Judge Dave Lee Brannon: Settlement Conference held on 6/2/2017. John Phillips, Esq. present with Plaintiff and decedent's fiancée. Summer Barranco, Esq. and Adam Fetterman, Esq. present with Defendant Deputy Newman and defense representative Joe Belitzky. Negotiations held. Case did not settle. (Digital/Time in Court: 10:07:48 / 2 hrs. 29 mins.) (jrz) (Entered: 06/02/2017)
06/02/2017	102	NOTICE by Viola Bryant <i>Objections to Defendants' Counter Deposition Designations</i> (Phillips, John) (Entered: 06/02/2017)
06/02/2017	103	Notice of Interlocutory Appeal as to 91 Order on Motion for Summary Judgment,, by Christopher Newman. Filing fee \$ 505.00 receipt number 113C-9785522. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Barranco, Summer) (Entered: 06/02/2017)
06/04/2017	104	MOTION to Stay <i>Trial Pending Interlocutory Appeal</i> by Ken Mascara, Christopher Newman. Responses due by 6/19/2017 (Barranco, Summer) (Entered: 06/04/2017)
06/05/2017		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re 103 Notice of Interlocutory Appeal, Notice has been electronically mailed. (apz) (Entered: 06/05/2017)
06/05/2017	105	Plaintiff's MOTION to Continue <i>Trial and Response in Opposition to Defendants' Motion to Stay</i> by Viola Bryant. Responses due by 6/19/2017 (Phillips, John) (Entered: 06/05/2017)
06/05/2017	106	NOTICE by Ken Mascara, Christopher Newman <i>of Telephonic Appearance at Calendar Call</i> (Barranco, Summer) (Entered: 06/05/2017)
06/05/2017	107	NOTICE by Viola Bryant <i>Joint Trial Plan</i> (Phillips, John) (Entered: 06/05/2017)
06/06/2017	108	NOTICE by Viola Bryant <i>of Telephonic Appearance</i> (Phillips, John) (Entered: 06/06/2017)
06/06/2017	109	PAPERLESS ORDER requiring that the parties be prepared to address 104 Defendants' Motion to Stay Pending Appeal and 105 Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal during the status

		<p>Conference 100 for June 7, 2017 of 17092019 are also hereby required, by 5:00pm today, June 6, 2017, to file an expedited response to 105 Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal. Signed by Judge Robin L. Rosenberg on 6/6/2017. (as00) (Entered: 06/06/2017)</p>
06/06/2017	110	Proposed Jury Instructions by Viola Bryant. (Phillips, John) (Entered: 06/06/2017)
06/06/2017	111	RESPONSE in Opposition re 104 MOTION to Stay <i>Trial Pending Interlocutory Appeal</i> , 105 Plaintiff's MOTION to Continue <i>Trial and Response in Opposition to Defendants' Motion to Stay</i> filed by Ken Mascara, Christopher Newman. Replies due by 6/13/2017. (Barranco, Summer) (Entered: 06/06/2017)
06/07/2017	112	<p>PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Calendar Call held on 6/7/2017. Total time in court: 15 minutes. Attorney Appearance(s): John Michael Phillips, Summer Marie Barranco, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov.</p> <p>NOTICE OF NEW POLICY RE ELECTRONIC SUBMISSION OF EXHIBITS. Unless otherwise ordered by the presiding Judge, Administrative Order 2016-70 directs that within three (3) days of the conclusion of a proceeding, parties must file in the CMECF system electronic versions of most documentary exhibits admitted into evidence (excluding sealed exhibits in criminal cases), including photographs of non-documentary physical exhibits. At the time of filing the electronic exhibits, the attorney for the filing party shall complete and file a Certificate of Compliance Re Admitted Evidence. Electronically filed exhibits are subject to CM/ECF Administrative Procedures, Section 6, Redaction of Personal Information, Privacy Policy, and Inappropriate Materials. Failure to file the electronic exhibits and Notice of Compliance within three (3) days may result in the imposition of sanctions. The Certificate of Compliance Re Admitted Evidence, a Quick Reference Guide to Electronically Filing Trial Exhibits, and the full text of Administrative Order 2016-70 can be found at the Courts website, http://www.flsd.uscourts.gov (mg) (Entered: 06/07/2017)</p>
06/07/2017	113	<p>PAPERLESS ORDER memorializing the outcome of the status conference held on June 7, 2017. On or before July 10, 2017, the parties shall file a joint status report addressing the issues raised in Plaintiff's 105 Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal and in Defendants' 111 Response in Opposition-namely, whether the proceedings should be stayed or the trial continued and whether any additional discovery is appropriate and if so, the timeframe for conducting such discovery. The joint status report shall clearly outline any areas of agreement. Where there is disagreement, the parties shall clearly outline the matters which remain for ruling and note their respective positions thereon. Signed by Judge Robin L. Rosenberg on 6/7/2017. (as00) (Entered: 06/07/2017)</p>
06/07/2017	114	NOTICE by Viola Bryant <i>of Serving Proposal for Settlement to Christopher Newman</i> (Phillips, John) (Entered: 06/07/2017)
06/07/2017	115	NOTICE by Viola Bryant <i>Of Serving Proposal for Settlement to Defendant Sheriff Ken Mascara</i> (Phillips, John) (Entered: 06/07/2017)
06/07/2017	116	Acknowledgment of Receipt of NOA from USCA re 103 Notice of Interlocutory Appeal, filed by Christopher Newman. Date received by USCA: 6/5/2017. USCA Case Number: 17-12547-A. (apz) (Entered: 06/07/2017)
07/10/2017	117	NOTICE by Viola Bryant <i>Joint Status Report</i> (Phillips, John) (Entered: 07/10/2017)
07/10/2017	120	JOINT STATUS REPORT by Viola Bryant, Ken Mascara, Christopher Newman. (See DE# 117 for image). (jas) (Entered: 07/11/2017)

07/11/2017	118	PAPERLESS ORDER granting in part and denying in part 105 Plaintiffs Motion to Stay Pending Appeal. A stay will be entered by separate order. This case shall be stayed pending Defendants' appeal except that discovery will be re-opened for the sole purpose of allowing Plaintiff to depose Earl Ritzline, a request Defendants do not oppose. Earl Ritzline's deposition shall be conducted within 45 days of the date of this Order. Signed by Judge Robin L. Rosenberg on 7/11/2017. (as00) (Entered: 07/11/2017)
07/11/2017	119	PAPERLESS ORDER granting in part and denying in part 105 Plaintiff's Motion to Continue Trial and Response in Opposition to Defendants' Motion to Stay Pending Appeal. Discovery will be re-opened for the sole purpose of allowing Plaintiff to depose Earl Ritzline, a request Defendants do not oppose. The parties shall complete Earl Ritzline's deposition within the deadline set in the 118 Paperless Order. However, all other requests for relief are denied, including Plaintiff's unopposed request to file motions in limine following the resolution of Defendants' appeal. The Court notes that the present appeal was taken shortly before trial and that the discovery and motions deadlines had already passed. Once the Eleventh Circuit has completed its consideration of Defendants' appeal, the Court will hold a status conference to set this case for a new trial docket. Signed by Judge Robin L. Rosenberg on 7/11/2017. (as00) (Entered: 07/11/2017)
07/11/2017	121	Clerks Notice to Filer re 117 Notice (Other). Wrong Event Selected ; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see DE# 120 . It is not necessary to refile this document. (jas) (Entered: 07/11/2017)
07/12/2017	122	ORDER STAYING CASE AND DIRECTING THE CLERK OF THE COURT TO CLOSE THIS CASE FOR STATISTICAL PURPOSES. This case is STAYED pending the outcome of Plaintiffs interlocutory appeal. Plaintiff shall immediately apprise the Court of any change in the status of the appeal. The Clerk of the Court is directed to CLOSE THIS CASE FOR STATISTICAL PURPOSES. This closure shall not affect the merits of any partys claim. Signed by Judge Robin L. Rosenberg on 7/11/2017. (jas) NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be permanently sealed. See Local Rule 5.4 and Administrative Order 2014-69. (Entered: 07/12/2017)
07/28/2017	123	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 103 Notice of Interlocutory Appeal, Appeal No. 17-12547-CC. The entire record on appeal is available electronically. (apz) (Entered: 07/28/2017)
02/22/2018	124	MANDATE of USCA (certified copy). AFFIRM Order of the district court with court's opinion re 103 Notice of Interlocutory Appeal, filed by Christopher Newman; Date Issued: 2/22/2018; USCA Case Number: 17-12547-CC. (apz) (Entered: 02/22/2018)
02/22/2018	125	PAPERLESS ORDER Setting Status Conference for 3/2/2018 10:00 AM in West Palm Beach Division before Judge Robin L. Rosenberg. Signed by Judge Robin L. Rosenberg on 2/22/2018. (ege) (Entered: 02/22/2018)
02/23/2018	126	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 02/23/2018)
02/23/2018	127	NOTICE of Telephonic Appearance by Ken Mascara, Christopher Newman re 125 Order Setting Status Conference (Barranco, Summer) Modified text on 2/23/2018 (kpe). (Entered: 02/23/2018)
03/02/2018	128	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Status Conference held on 3/2/2018. Total time in court: 30 minutes. Attorney

	Case No.	Description
03/23/2018	137	RESPONSE in Opposition re 135 Plaintiff's MOTION to Take Deposition from Stefani Mills by <i>Videography</i> filed by Ken Mascara, Christopher Newman. Attorney Matthew Joseph Wildner added to party Ken Mascara(pty:dft), Attorney Matthew Joseph Wildner added to party Christopher Newman(pty:dft). Replies due by 3/30/2018. (Wildner, Matthew) (Entered: 03/23/2018)
03/26/2018	138	PAPERLESS ORDER denying 135 Plaintiff's Motion for Authorization to Perpetuate Trial Testimony by Videography of Unavailable Witness, Stefani Mills, for the reasons set forth in 137 Defendants Sheriff and Newman's Response in Opposition to Plaintiff's Motion for Authorization to Perpetuate Trial Testimony by Videography of Unavailable Witness, Stefani Mills. Signed by Judge Robin L. Rosenberg on 3/26/2018. (ege) (Entered: 03/26/2018)
03/26/2018	139	In the parties' Joint Trial Plan, the parties state that they "will notify the Court of any potential witness availability issues with the above referenced witnesses upon notification by witness and how the parties have resolved to handle each witness. If the parties can not resolve the issue [the parties] will file the appropriate Motion with the Court seeking the relief requested." Any motions seeking the Court's relief with respect to the unavailability of these witnesses must be filed by 4/9/18. Designations of deposition testimony shall be filed by 4/16/18. Counter-designations of deposition testimony and objections to designations of deposition testimony shall be filed by 4/20/18. Objections to counter-designations of deposition testimony and responses to objections to designations of deposition testimony shall be filed by 4/25/18. Objections to counter-designations of deposition testimony and responses to objections to designations of deposition testimony shall be filed by 4/30/18. The Court's procedure regarding deposition designations is below: First, the parties are ordered to provide the Court with a deposition designation notebook. This notebook must be delivered to Chambers on the same day that the parties' jury instructions or proposed findings and conclusions are due. Second, the notebook (or notebooks) must contain the full deposition transcript for each designated witness. Third, the designated (or counter-designated) testimony for each witness must be highlighted and easy to locate and identify. Fourth, objections to the designated testimony must be supplemented with an appendix that contains detailed legal argument explaining the objections, together with a response from the opposing party. Fifth and finally, an objection to designated testimony may only be raised after a full, reasonable conferral between the parties on the issue in dispute as more fully set forth below. Deposition designation objections must be accompanied by a certification, by the party objecting, that: (i) the parties have conferred on the objection, (ii) the objection is raised in good faith, (iii) the objection raises an issue that the parties, working together as professionals, cannot resolve without court intervention, and (iv) the expenditure of judicial labor is the only avenue by which the dispute may be resolved. The Court will carefully consider all of the objections brought to its attention. In the event the Court concludes that a designating party or counsel, or an objecting party or counsel, has failed "to secure the just, speedy, and inexpensive determination of every action and proceeding," the Court may consider sanctions, as appropriate. Similarly, if the Court concludes that objections to designations must be ruled upon contemporaneously with the reading of designated testimony at trial because of a party or counsel's failure to comply with this Order, the Court may consider sanctions, as appropriate. The parties shall file a joint trial plan that complies with the requirements in the Court's Order Setting Status Conference, Calendar Call, and Trial Date by 5/3/18. DE 8 at 4-5. Jury instructions must be filed by 5/9/18. Signed by Judge Robin L. Rosenberg on 3/26/2018. (ege) (Entered: 03/26/2018)

04/10/2018	140	MOTION TO EXCLUDE JEREMIAH HILL'S TESTIMONY AT TRIAL by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 04/10/2018)
04/10/2018	141	PAPERLESS ORDER expediting briefing on 140 Defendant's MOTION TO EXCLUDE JEREMIAH HILL'S TESTIMONY AT TRIAL. Response due by 4/12/2018 at 5:00 p.m. Reply due by 4/16/2018 at 5:00 p.m. Signed by Judge Robin L. Rosenberg on 4/10/2018. (ege) (Entered: 04/10/2018)
04/12/2018	142	RESPONSE to Motion re 140 MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL filed by Viola Bryant. Replies due by 4/19/2018. (Phillips, John) (Entered: 04/12/2018)
04/16/2018	143	NOTICE by Viola Bryant re 87 Notice (Other) of Plaintiff's Supplemental Designation of Deposition Excerpts (Phillips, John) (Entered: 04/16/2018)
04/16/2018	144	RESPONSE in Support re 140 MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL filed by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 04/16/2018)
04/16/2018	145	NOTICE by Ken Mascara, Christopher Newman of Filing Updated Designation of Deposition Excerpts (Barranco, Summer) (Entered: 04/16/2018)
04/17/2018	146	NOTICE by Viola Bryant re 143 Notice (Other) Amended Supplemental Designation of Deposition Excerpts (Phillips, John) (Entered: 04/17/2018)
04/18/2018	147	ORDER DENYING WITHOUT PREJUDICE DEFENDANTS 140 MOTION TO EXCLUDE JEREMIAH HILLS TESTIMONY AT TRIAL. Signed by Judge Robin L. Rosenberg on 4/18/2018. (kpe) (Entered: 04/18/2018)
04/19/2018	148	Unopposed MOTION Request for Non-Party Witness to Testify at Trial by Contemporaneous Video Conference by Viola Bryant. (Attachments: # 1 Exhibit "A") (Phillips, John) (Entered: 04/19/2018)
04/20/2018	149	NOTICE by Viola Bryant re 145 Notice (Other) of Counter Designations and Objections to Defendants' Updated Designation of Deposition Excerpts (Phillips, John) (Entered: 04/20/2018)
04/20/2018	150	NOTICE by Ken Mascara, Christopher Newman re 146 Notice (Other), 87 Notice (Other) Counter Deposition Designations and Objections to Plaintiff's Deposition Designations (Barranco, Summer) (Entered: 04/20/2018)
04/23/2018	151	ACKNOWLEDGMENT OF SERVICE on Subpoena to Appear and Testify at a Hearing or Trial as to Stefani Mills. (kpe) (Entered: 04/24/2018)
04/24/2018	152	PAPERLESS ORDER granting 148 Plaintiff's Unopposed Request for Non-Party Witness to Testify at Trial by Contemporaneous Video Conference from Another Location. Plaintiff shall contact the Court's IT specialist, Ricardo Gerena, at 561-803-3730 to set up the logistics of having the witness appear by video during the trial. The Court notes that Plaintiff shall be prepared to proceed through the use of deposition testimony if for any reason the witness cannot appear via video during the trial. Signed by Judge Robin L. Rosenberg on 4/24/2018. (ege) (Entered: 04/24/2018)
04/25/2018	153	NOTICE by Ken Mascara, Christopher Newman re 149 Notice (Other) Counter Deposition Designations and Objections to Plaintiff's Deposition Designations and Responses to Plaintiff's Objections (Barranco, Summer) (Entered: 04/25/2018)
05/01/2018	154	PAPERLESS ORDER. The parties' deposition designation notebook, which is due by 5/9/18, shall be delivered to Chambers in West Palm Beach. The Court also notes that the parties may appear telephonically at the calendar call set for 5/7/18 in West Palm Beach.

		<p>Instructions for appearance (2/26/17) as follows: (1) Please call five (5) minutes prior to the Calendar Call; (2) The toll-free number is: 1 (877) 873-8018; (3) The access code is: 9890482; (4) The security code is: 4008. Signed by Judge Robin L. Rosenberg on 5/1/2018. (ege) (Entered: 05/01/2018)</p>
05/02/2018	155	NOTICE of Attorney Appearance by Gregory James Jolly on behalf of Ken Mascara, Christopher Newman. Attorney Gregory James Jolly added to party Ken Mascara(pty:dft), Attorney Gregory James Jolly added to party Christopher Newman(pty:dft). (Jolly, Gregory) (Entered: 05/02/2018)
05/03/2018	156	NOTICE by Ken Mascara, Christopher Newman of <i>Telephonic Appearance at Calendar Call scheduled for Monday, May 7, 2018</i> (Barranco, Summer) (Entered: 05/03/2018)
05/03/2018	157	NOTICE by Viola Bryant re 139 Order,,,,,,,,,,,,, <i>Joint Second Amended Trial Plan</i> (Phillips, John) (Entered: 05/03/2018)
05/04/2018	158	NOTICE by Viola Bryant of <i>Telephonic Appearance</i> (Phillips, John) (Entered: 05/04/2018)
05/04/2018	159	NOTICE by Ken Mascara, Christopher Newman <i>Defendants' Designation of Karen Stephens' Deposition Excerpts</i> (Barranco, Summer) (Entered: 05/04/2018)
05/04/2018	160	PRETRIAL STIPULATION <i>Updated</i> by Viola Bryant (Attachments: # 1 Exhibit "A" Plaintiff's Amended Exhibit and Witness List, # 2 Exhibit Defs' Second Amended Exhibit and Witness List)(Phillips, John) (Entered: 05/04/2018)
05/05/2018	161	NOTICE of Attorney Appearance by John Michael Phillips on behalf of Viola Bryant (Phillips, John) (Entered: 05/05/2018)
05/07/2018	162	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Final Pretrial Conference held on 5/7/2018. Total time in court: 45 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/07/2018)
05/07/2018	163	PAPERLESS ORDER. Trial will now begin on Thursday, May 17, 2018, not on Wednesday May 16, 2018. The Court overlooked three sentencings on May 16, 2018 that it is reluctant to reschedule. The following are due by 5/10/18: (1) The parties' proposed jury instructions and verdict form. The parties shall submit one copy of the jury instructions and they should be in the order that they will be read to the jurors. The parties shall indicate any instructions that are disputed. (2) The parties' deposition designation notebook and joint trial notebook are due to Chambers in West Palm Beach. (3) Given Plaintiff representation during the Calendar Call that Plaintiff will file a motion to strike one of Defendants' witnesses, Defendants shall try to respond by 5/10/18. If Defendants cannot respond fully by 5/10/18, Defendants shall respond as fully as possible and if not all issues can be addressed in the response, Defendants shall indicate how much time they need to respond and indicating what remaining issues they need to address. (4) The parties shall file a list of any agreed upon questions for the venire that they would like the Court to consider including in its juror questionnaire. (5) The parties shall file an agreed statement of the case that the Court will read to the venire. (6) The parties shall file an amended joint trial plan, narrowing the number of witnesses if possible and indicating which witnesses will be called by Plaintiff, which will be called by Defendants, and which will be called by both Plaintiff and Defendants. (7) The parties shall file amended exhibit and witness lists that eliminate objections that the parties have worked out and eliminate exhibits that the parties are not going to use during trial. The Court reiterates the importance of counsel working together to resolve disputes relating to exhibits and all other matters that may affect the conduct of the trial. Signed by Judge Robin L. Rosenberg on 5/7/2018. (ege) (Entered: 05/07/2018)

05/07/2018		Reset Hearings Calendar for 5/17/2018 for 5/17/2018 before Judge Robin L. Rosenberg. (asl) (Entered: 05/07/2018)
05/07/2018	164	Plaintiff's MOTION to Exclude Deposition Testimony of Deputy Karen Stephens for Use at Trial by Viola Bryant. (Phillips, John) (Entered: 05/07/2018)
05/07/2018	165	NOTICE by Viola Bryant re 159 Notice (Other) of <i>Objections and Counter Designation to Defendants' Designation of Karen Stephens' Deposition Excerpts</i> (Phillips, John) (Entered: 05/07/2018)
05/10/2018	166	Proposed Voir Dire Questions by Viola Bryant. (Phillips, John) (Entered: 05/10/2018)
05/10/2018	167	Plaintiff's MOTION to Bring Electronic Equipment into the courtroom <i>for Use at Trial</i> by Viola Bryant. Responses due by 5/24/2018 (Attachments: # 1 Exhibit Proposed Order) (Phillips, John) (Entered: 05/10/2018)
05/10/2018	168	Unopposed MOTION for Extension of Time to submit the Joint Trial Notebook and Defendants' Deposition Designation Notebook by Ken Mascara, Christopher Newman. Responses due by 5/24/2018 (Jolly, Gregory) (Entered: 05/10/2018)
05/10/2018	169	NOTICE by Viola Bryant re 163 Order,,,,,,,,, <i>Joint Third Amended Trial Plan</i> (Phillips, John) (Entered: 05/10/2018)
05/10/2018	170	PAPERLESS ORDER granting 168 Defendants' Unopposed Motion for Extension of Time to Submit the Joint Trial Notebook and Defendants' Deposition Designation Notebook. Joint Trial Notebook and Defendants' Deposition Designation Notebook due by 4:30 p.m. today, May 10, 2018. Signed by Judge Robin L. Rosenberg on 5/10/2018. (ege) (Entered: 05/10/2018)
05/10/2018	171	MOTION to Allow the Use of Electronic Equipment and Communication Devices During Trial by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	172	PAPERLESS ORDER. The Court is in receipt of Plaintiff's Proposed Voir Dire Questions. DE 166. It appears that page 2 of the proposed questions is missing. Accordingly, Plaintiff shall file the Amended Proposed Voir Dire Questions by 5:00 p.m. today, May 10, 2018, if Plaintiff would like the Court to consider adding the questions to its Juror Questionnaire. Signed by Judge Robin L. Rosenberg on 5/10/2018. (ege) (Entered: 05/10/2018)
05/10/2018	173	ORDER GRANTING PLAINTIFFS 167 MOTION TO ALLOW ELECTRONIC EQUIPMENT IN COURTROOM FOR USE AT TRIAL Signed by Judge Robin L. Rosenberg on 5/10/2018. (kpe) (Entered: 05/10/2018)
05/10/2018	174	RESPONSE in Opposition re 164 Plaintiff's MOTION to Exclude Deposition Testimony of Deputy Karen Stephens for Use at Trial filed by Ken Mascara, Christopher Newman. Replies due by 5/17/2018. (Jolly, Gregory) (Entered: 05/10/2018)
05/10/2018	175	Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	176	Proposed Jury Instructions by Viola Bryant. (Phillips, John) (Entered: 05/10/2018)
05/10/2018	177	PRETRIAL STIPULATION (<i>JOINT</i>) by Ken Mascara, Christopher Newman (Attachments: # 1 Exhibit, # 2 Exhibit)(Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	178	Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/10/2018)
05/10/2018	179	Proposed Voir Dire Questions by Ken Mascara, Christopher Newman. (Barranco,

		Case 1:18-cv-00022-ROB Document 170-1 Filed 05/10/18 Page 24 of 243
05/11/2018	180	PAPERLESS ORDER. The Court notes the parties' Proposed Joint Questions for the Venire. DE 179. The final Juror Questionnaire that the Court will use is attached to this Order. The Court notes, however, that this does not preclude Counsel from asking their proposed questions in their respective fifteen minutes of voir dire following the Courts voir dire, which will be based on the attached Juror Questionnaire. Signed by Judge Robin L. Rosenberg on 5/11/2018. (ege) (Entered: 05/11/2018)
05/12/2018	181	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 168, 169 and 170</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	182	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Numbers 228-230 & 361-368</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	183	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Number 27</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	184	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Exhibit Numbers 24 and 25</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	185	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Evidence as to Mr.Hill's Intoxication</i> (Phillips, John) (Entered: 05/12/2018)
05/12/2018	186	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Evidence regarding Mr. Hill's Probationary Status</i> (Phillips, John) (Entered: 05/12/2018)
05/14/2018	187	PAPERLESS ORDER requiring responses to 181 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 168, 169, and 170 as Listed on Defendants' Third Amended Exhibit and Witness List; 182 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers 228-230 and 361-368 on Defendants' Third Amended Exhibit and Witness List; 183 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Number Twenty Seven as Listed on Defendants' Third Amended Exhibit and Witness List; 184 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Exhibit Numbers Twenty-Four and Twenty Five as Listed on Defendants' Third Amended Exhibit and Witness List; 185 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Evidence of Mr. Hill's Intoxication at the Time of the Subject Incident; and 186 Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Evidence Regarding Mr. Hill's Probationary Status at the Time of Incident. Responses due by 5/15/18 at 5:00 p.m. Signed by Judge Robin L. Rosenberg on 5/14/2018. (ege) (Entered: 05/14/2018)
05/14/2018	188	NOTICE by Viola Bryant <i>Bench Memorandum in Support of Pl's Objection to Defs' Introduction of Exhibit Number 30</i> (Phillips, John) (Entered: 05/14/2018)
05/14/2018	190	ORDER DENYING WITHOUT PREJUDICE PLAINTIFFS 164 MOTION TO EXCLUDE DEPOSITION TESTIMONY OF KAREN STEPHENS FOR USE AT TRIAL. Signed by Judge Robin L. Rosenberg on 5/14/2018. (kpe) (Entered: 05/15/2018)
05/15/2018	189	PAPERLESS ORDER requiring response to 188 Plaintiff's Bench Memorandum in Support of Plaintiff's Objection to Defendants' Introduction of Exhibit Number 30 Pursuant to Defendant's Third Amended Exhibit and Witness List by 5:00 p.m. today, 5/15/18. Defendants shall also file the exhibits to which Plaintiff filed notices of objections in docket entries 181, 182, 183, 184, 185, 186, and 188. Signed by Judge Robin L. Rosenberg on 5/15/2018. (ege) (Entered: 05/15/2018)

		Case 18-1902 Document 160-1 Filed 05/16/18 Page 26 of 28 Newman's Motion to Allow Filing of Exhibits in Courtroom as an Exhibit During Trial. Signed by Judge Robin L. Rosenberg on 5/16/2018. (ege) (Entered: 05/16/2018)
05/16/2018	204	NOTICE of Attorney Appearance by Bruce Wallace Jolly on behalf of Ken Mascara, Christopher Newman. Attorney Bruce Wallace Jolly added to party Ken Mascara(pty:dft), Attorney Bruce Wallace Jolly added to party Christopher Newman(pty:dft). (Jolly, Bruce) (Entered: 05/16/2018)
05/16/2018	205	REPLY to Response to Motion re 192 MOTION To Allow Unloaded Firearm in Courtroom as an Exhibit During Trial filed by Ken Mascara, Christopher Newman. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I)(Barranco, Summer) (Entered: 05/16/2018)
05/17/2018	206	NOTICE by Ken Mascara, Christopher Newman of <i>Filing Exhibit 26</i> (Attachments: # 1 Exhibit) (Barranco, Summer) (Entered: 05/17/2018)
05/17/2018	207	PAPERLESS ORDER. By 11:59 p.m. on 5/18/18, Plaintiff shall file a supplement to docket entry 188 specifically explaining her objection to Defendants' Exhibit 30. By 11:59 p.m. on 5/18/18, Defendants shall file a response to docket entry 199 Plaintiff's objection to Defendants' introduction of evidence that Mr. Hill was playing poker on the date of the incident. Signed by Judge Robin L. Rosenberg on 5/17/2018. (ege) (Entered: 05/17/2018)
05/17/2018	209	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Selection/Voir Dire held on 5/17/2018, Jury Trial begun on 5/17/2018. Total time in court: 10 hour(s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/18/2018)
05/18/2018	208	PAPERLESS ORDER requiring Defendants to respond to Plaintiff's supplement to docket entry 188 regarding Defendants' Exhibit 30 by 9:00 a.m. on May 21, 2018. Signed by Judge Robin L. Rosenberg on 5/18/2018. (ege) (Entered: 05/18/2018)
05/18/2018	210	NOTICE by Ken Mascara, Christopher Newman re 207 Order, 199 Notice (Other) <i>Defendants' Response to Plaintiff's Bench Memoranda in Support of Plaintiff's Objections to Defendants' Introduction of Evidence regarding Mr. Hill Playing Poker on the date of the Subject Incident [DE199]</i> (Barranco, Summer) (Entered: 05/18/2018)
05/18/2018	211	NOTICE by Viola Bryant re 188 Notice (Other) <i>Supplemental Memorandum in Support of Pl's Objection to Defs' Introduction of Exhibit Number 30</i> (Phillips, John) (Entered: 05/18/2018)
05/18/2018	214	RESPONSE to 199 Notice (Other)/Bench Memoranda In Support Plaintiff's Objection to Defendant's Introduction of Evidence by Ken Mascara, Christopher Newman. (kpe) See DE [210] for image. (Entered: 05/21/2018)
05/18/2018	217	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Trial held on 5/18/2018. Day 2. Total time in court: 8 hour(s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/21/2018)
05/20/2018	212	NOTICE by Ken Mascara, Christopher Newman re 208 Order, 211 Notice (Other) <i>Response to Plaintiff's Supplemental Memorandum regarding Defendants' Exhibit 30</i> (Barranco, Summer) (Entered: 05/20/2018)
05/20/2018	213	Proposed Jury Instructions by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 05/20/2018)
05/20/2018	215	RESPONSE to 211 Notice (Other)/ Plaintiff's Supplemental Memorandum regarding

		Defendants' Third Amended Exhibit 10 by Ken Mascara, Christopher Newman set DE 212 for image. (kpe) (Entered: 05/21/2018)
05/21/2018	216	Clerks Notice to Filer re 210 Notice (Other), 211 Notice (Other). Wrong Event Selected; ERROR - The Filer selected the wrong event. The document was re-docketed by the Clerk, see DE 215 Response/Reply (Other), 214 Response/Reply (Other). It is not necessary to refile this document. (kpe) (Entered: 05/21/2018)
05/21/2018	218	PAPERLESS Minute Entry for proceedings held before Judge Robin L. Rosenberg: Jury Trial held on 5/21/2018. Day 3. Total time in court: 10 hour(s) : 30 minutes. Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. (mg) (Entered: 05/22/2018)
05/22/2018	219	Court's First Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/22/2018. (ege) (Entered: 05/22/2018)
05/22/2018	220	NOTICE by Viola Bryant re 213 Proposed Jury Instructions <i>Pl's Objection to Defs' Special Jury Instruction [DE213]</i> (Phillips, John) (Entered: 05/22/2018)
05/23/2018	221	Court's Second Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/23/2018. (ege) (Entered: 05/23/2018)
05/23/2018	222	Court's Third Draft Jury Instructions. Signed by Judge Robin L. Rosenberg on 5/23/2018. (ege) (Entered: 05/23/2018)
05/25/2018	223	JURY VERDICT. (mg) (Additional attachment(s) added on 5/25/2018: # 1 Restricted Unredacted Jury Note/Verdict) (mg). (Entered: 05/25/2018)
05/25/2018	224	Court's Final Jury Instructions. (kpe) (Entered: 05/25/2018)
05/25/2018	225	Jury Notes. (mg) (Additional attachment(s) added on 5/25/2018: # 1 Restricted Unredacted Jury Note/Verdict) (mg). (Entered: 05/25/2018)
05/25/2018	226	Plaintiff's Second Amended Exhibit and Witness List by Viola Bryant.(kpe) (Entered: 05/25/2018)
05/25/2018	227	Defendants' Third Amended Exhibit and Witness List by Ken Mascara, Christopher Newman.. (kpe) (Entered: 05/25/2018)
05/30/2018	228	TRIAL EXHIBITS <i>Plaintiff's</i> 7, 17, 18, 22, 27, 28, 33, 38, 45, 50, 55, 75, 76, 81, 92, 94, 98, 101, 104, 106, 107, 112, 115, 117, 123, 124, 141, 143, 148, 151, 152, 163, 165, 168, 169, 171, 172, 173, 174, 175, 179, 186, 188, 189, 196 by Viola Bryant. (Attachments: # 1 Certification of Compliance Re Admitted Evidence, # 2 Exhibit 7, # 3 Exhibit 17, # 4 Exhibit 18, # 5 Exhibit 22, # 6 Exhibit 27, # 7 Exhibit 28, # 8 Exhibit 33, # 9 Exhibit 38, # 10 Exhibit 45, # 11 Exhibit 50, # 12 Exhibit 55, # 13 Exhibit 75, # 14 Exhibit 76, # 15 Exhibit 81, # 16 Exhibit 92, # 17 Exhibit 94, # 18 Exhibit 98, # 19 Exhibit 101, # 20 Exhibit 104, # 21 Exhibit 106, # 22 Exhibit 107, # 23 Exhibit 112, # 24 Exhibit 115, # 25 Exhibit 117, # 26 Exhibit 123, # 27 Exhibit 124, # 28 Exhibit 141, # 29 Exhibit 143, # 30 Exhibit 148, # 31 Exhibit 151, # 32 Exhibit 152, # 33 Exhibit 163, # 34 Exhibit 165, # 35 Exhibit 168, # 36 Exhibit 169, # 37 Exhibit 171, # 38 Exhibit 172, # 39 Exhibit 173, # 40 Exhibit 174, # 41 Exhibit 175, # 42 Exhibit 179, # 43 Exhibit 186, # 44 Exhibit 188, # 45 Exhibit 189, # 46 Exhibit 196)(Phillips, John) (Entered: 05/30/2018)
05/30/2018	229	FINAL JUDGMENT. The Clerk of Court shall CLOSE this case. Signed by Judge Robin L. Rosenberg on 5/30/2018. (kpe) NOTICE: If there are sealed documents in this case, they may be unsealed after 1 year or as directed by Court Order, unless they have been designated to be

		Permanently Sealed Case (Case # 05/2018) and Administrative Order 2014-69. (Entered: 05/31/2018)
06/04/2018	230	NOTICE by Ken Mascara, Christopher Newman <i>Notice of Filing Exhibits Admitted into Evidence</i> (Attachments: # 1 Exhibit Exhibit 7 CAD, # 2 Exhibit Exhibit 26 Medical Examiners Report, # 3 Exhibit Exhibit 34 Toxicology Report, # 4 Exhibit Exhibit 89 SLCSO Photos 01150002, # 5 Exhibit Exhibit 102 SLCSO Photos 01150040, # 6 Exhibit Exhibit 121 SLCSO Photos 01150064, # 7 Exhibit Exhibit 122 SLCSO Photos 01150065, # 8 Exhibit Exhibit 150 SLCSO Photos 01150095, # 9 Exhibit Exhibit 157 SLCSO Photos 01150102, # 10 Exhibit Exhibit 158 SLCSO Photos 01150103, # 11 Exhibit Exhibit 183 SLCSO Photos 01150128, # 12 Exhibit Exhibit 189 SLCSO Photos 01150134, # 13 Exhibit Exhibit 204 SLCSO Photos 01150150, # 14 Exhibit Exhibit 205 SLCSO Photos 01150151, # 15 Exhibit Exhibit 352 SLCSO Photos DSCN0040, # 16 Exhibit Exhibit 358 SLCSO Photos set0019 new image, # 17 Exhibit Exhibit 369 Gun, magazine, and shorts) (Barranco, Summer) (Entered: 06/04/2018)
06/04/2018	231	Defendant's CERTIFICATE of Compliance Re Admitted Evidence for exhibit(s): 7, 9, 26, 34, 89, 102, 121, 122, 150, 157, 158, 183, 189, 204, 205, 352, 358, 369 by Summer Marie Barranco on behalf of Ken Mascara, Christopher Newman (Barranco, Summer) (Entered: 06/04/2018)
06/07/2018	232	CLERK'S Notice Directing Counsel to Retrieve Original Exhibits within 5 days as to Viola Bryant, Ken Mascara, Christopher Newman. Original exhibits to be retrieved: Plaintiff's and Defendant's Original Trial Exhibits. For retrieval information, please contact the Clerks Office - Records Section of the Paul G. Rogers Federal Building and U.S. Courthouse, 701 Clematis Street, Room 202, West Palm Beach, FL 33401, (561) 803-3400. (dj) (Entered: 06/07/2018)
06/12/2018	233	RELEASE OF TRIAL EXHIBITS released to Law Office of John M. Phillips. (gp) (Entered: 06/13/2018)
06/14/2018	234	RELEASE OF DEFENDANT'S TRIAL EXHIBITS released to USA Legal Services, Inc. (gp) (Entered: 06/15/2018)
06/27/2018	235	Plaintiff's MOTION to Change Venue by Viola Bryant. Responses due by 7/11/2018 (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Exhibit "C", # 4 Exhibit "D", # 5 Exhibit "E", # 6 Exhibit "F", # 7 Exhibit "G")(Phillips, John) (Entered: 06/27/2018)
06/27/2018	236	Plaintiff's MOTION to Compel <i>Release of Property</i> by Viola Bryant. Responses due by 7/11/2018 (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Exhibit "C")(Phillips, John) (Entered: 06/27/2018)
06/27/2018	237	Plaintiff's MOTION for New Trial by Viola Bryant. (Attachments: # 1 Exhibit "A", # 2 Exhibit "B", # 3 Exhibit "C", # 4 Exhibit "D", # 5 Exhibit "E", # 6 Exhibit "F")(Phillips, John) (Entered: 06/27/2018)
06/28/2018	238	TRANSCRIPT of Jury Trial held on 5.17.18 before Judge Robin L. Rosenberg, Volume Number 1 of 6, 1-348 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # 1 Transcripts) (mg). (Entered: 06/28/2018)
06/28/2018	239	TRANSCRIPT of Jury Trial held on 05.18.2018 before Judge Robin L. Rosenberg, Volume Number 2 of 6, 1-274 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal

		Case 1:18-cv-00202-DWM Document 20-1 Filed 06/28/18 Page 29 of 43 <p>Copy based on contact dated 06/17/18) 2019. Transcript before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)</p>
06/28/2018	240	TRANSCRIPT of Jury Trial held on 05.21.2018 before Judge Robin L. Rosenberg, Volume Number 3 of 6, 1-341 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)
06/28/2018	241	TRANSCRIPT of Jury Trial held on 05.22.2018 before Judge Robin L. Rosenberg, Volume Number 4 of 6, 1-308 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Entered: 06/28/2018)
06/28/2018	242	TRANSCRIPT of Jury Trial held on 05.23.2018 before Judge Robin L. Rosenberg, Volume Number 5 of 6, 1-220 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # 1 unredacted transcript) (mg). (Entered: 06/28/2018)
06/28/2018	243	TRANSCRIPT of Jury Trial held on 05.24.2018 before Judge Robin L. Rosenberg, Volume Number 6 of 6, 1-38 pages, Court Reporter: Pauline Stipes, 561-803-3434 / Pauline_Stipes@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018. (ps) (Additional attachment(s) added on 6/28/2018: # 1 unredacted transcript) (mg). (Entered: 06/28/2018)
06/29/2018	244	MOTION to Tax Costs by Ken Mascara, Christopher Newman. Responses due by 7/13/2018 (Attachments: # 1 Affidavit, # 2 Bill of Costs, # 3 Supporting Bills)(Barranco, Summer) (Entered: 06/29/2018)
07/11/2018	245	RESPONSE to Motion re 235 Plaintiff's MOTION to Change Venue filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Jolly, Gregory) (Entered: 07/11/2018)
07/11/2018	246	RESPONSE in Opposition re 236 Plaintiff's MOTION to Compel <i>Release of Property</i> filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Jolly, Gregory) (Entered: 07/11/2018)
07/11/2018	247	RESPONSE in Opposition re 237 Plaintiff's MOTION for New Trial filed by Ken Mascara, Christopher Newman. Replies due by 7/18/2018. (Attachments: # 1 Exhibit "A" Excerpt of Christopher Lawrence deposition)(Jolly, Gregory) (Entered: 07/11/2018)
07/13/2018	248	REPLY to Response to Motion re 244 MOTION to Tax Costs filed by Viola Bryant. (Phillips, John) (Entered: 07/13/2018)

07/18/2018	249	REPLY to Response to Motion re 230 Plaintiff's MOTION to Compel Release of Property filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/18/2018	250	REPLY to Response to Motion re 235 Plaintiff's MOTION to Change Venue filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/18/2018	251	REPLY to Response to Motion re 237 Plaintiff's MOTION for New Trial filed by Viola Bryant. (Phillips, John) (Entered: 07/18/2018)
07/20/2018	252	REPLY to Response to Motion re 244 MOTION to Tax Costs filed by Ken Mascara, Christopher Newman. (Barranco, Summer) (Entered: 07/20/2018)
08/03/2018	253	Plaintiff's MOTION PI's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of PI's Timely Filed Motion for New Trial re 237 Plaintiff's MOTION for New Trial by Viola Bryant. (Phillips, John) (Entered: 08/03/2018)
08/03/2018	254	PAPERLESS ORDER expediting briefing on 253 Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. In light of the fact that 237 Plaintiff's Motion for New Trial is fully briefed and that 253 Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial is brief, the Court hereby expedites briefing on 253 Plaintiff's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of Plaintiff's Timely Filed Motion for New Trial. Defendants' response is due by August 7, 2018 and Plaintiff's reply is due by August 10, 2018. Signed by Judge Robin L. Rosenberg on 8/3/2018. (ege) (Entered: 08/03/2018)
08/07/2018	255	ORDER DENYING WITHOUT PREJUDICE PLAINTIFFS 236 MOTION TO COMPEL RELEASE OF PROPERTY. Signed by Judge Robin L. Rosenberg on 8/7/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/07/2018)
08/07/2018	256	RESPONSE in Opposition re 253 Plaintiff's MOTION PI's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of PI's Timely Filed Motion for New Trial re 237 Plaintiff's MOTION for New Trial filed by Ken Mascara, Christopher Newman. Replies due by 8/14/2018. (Barranco, Summer) (Entered: 08/07/2018)
08/10/2018	257	REPLY to Response to Motion re 253 Plaintiff's MOTION PI's Motion for Juror Interview and Motion for Leave to File Additional Evidence in Support of PI's Timely Filed Motion for New Trial re 237 Plaintiff's MOTION for New Trial filed by Viola Bryant. (Phillips, John) (Entered: 08/10/2018)
08/14/2018	258	ORDER DENYING PLAINTIFFS 253 MOTION FOR JUROR INTERVIEW AND MOTION FORLEAVE TO FILE ADDITIONAL EVIDENCE IN SUPPORT OF PLAINTIFFS TIMELY FILED MOTION FOR NEW TRIAL. Signed by Judge Robin L. Rosenberg on 8/14/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/14/2018)
08/14/2018	259	ORDER denying Plaintiff's 237 Motion for New Trial. Signed by Judge Robin L. Rosenberg on 8/14/2018. <i>See attached document for full details.</i> (kpe) (Entered: 08/14/2018)
08/14/2018	260	PAPERLESS ORDER denying as moot 235 Plaintiff's Motion for Change/Transfer of Venue, in light of the Court's 259 Order Denying Plaintiff's Motion for New Trial. Signed by Judge Robin L. Rosenberg on 8/14/2018. (ege) (Entered: 08/14/2018)
08/23/2018	261	CLERK'S Notice of Maintaining Audio-Visual Defendant's Exhibit(s) #9 consisting of 1 (CD) Re D.E. 231 as to Ken Mascara, Christopher Newman. (rrs) (Entered: 08/23/2018)

08/23/2018	262	Case: 18-13902 Date Filed: 08/23/2018 Page: 31 of 243 CLERK'S Notice of Maintaining Audio-Visual Plaintiff's Exhibit(s)#1,2,190,191 consisting of 4 (CDS) Re D.E. 228 as to Viola Bryant. (rrs) (Entered: 08/23/2018)
09/11/2018	263	Notice of Appeal RE: DE 229 Final Judgment and DE 259 Order by Viola Bryant. Filing fee \$ 505.00 receipt number 113C-10985321. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Phillips, John) (linked docket entry) Text Modified on 9/12/2018 (apz). (Entered: 09/11/2018)
09/12/2018	264	Clerks Notice to Filer re 263 Notice of Appeal. Document Not Linked ; ERROR - The filed document was not linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document. (apz) (Entered: 09/12/2018)
09/12/2018		Transmission of Notice of Appeal, Judgment/Order under appeal and Docket Sheet to US Court of Appeals re 263 Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 09/12/2018)
09/12/2018	265	THIS CAUSE came before the Court on Defendant's Bill of Costs, filed as a Motion to Tax Costs [DE 244], on June 29, 2018. Although costs may properly be taxed at this time, cf. Rothenberg v. Sec. Mgmt. Co., 677 F.2d 64, 64 (11th Cir. 1982) ("[C]osts may be taxed after a notice of appeal has been filed."), the Court uses its discretion to stay this matter pending the outcome of the appeal, cf. Belize Telecom, Ltd. v. Govt of Belize, 528 F.3d 1298, 1310 (11th Cir. 2008) ("[W]e leave for the district court to determine whether a stay or a hearing on costs and fees is appropriate, given the pending appeal...."). Accordingly, it is ORDERED AND ADJUDGED that Defendant's Motion [DE 244] is TERMINATED in light of Plaintiff's Notice of Appeal at DE 263. Either party may move for the motion to be reinstated at such time as the pending appeal has concluded. Signed by Judge Robin L. Rosenberg on 9/12/2018. (kbs) (Entered: 09/12/2018)
09/19/2018	266	Acknowledgment of Receipt of NOA from USCA re 263 Notice of Appeal, filed by Viola Bryant. Date received by USCA: 9/12/2018. USCA Case Number: 18-13902-E. (apz) (Entered: 09/19/2018)
09/24/2018	267	TRANSCRIPT INFORMATION FORM by Viola Bryant re 263 Notice of Appeal,. No Transcript Requested. (Phillips, John) (Entered: 09/24/2018)
02/05/2019	268	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 263 Notice of Appeal, Appeal No. 18-13902-EE. The record on appeal is available electronically with the exception of: DE 228 as to Audio/Video Exhibits and DE 231 as to Audio/Video Exhibits. (apz) (Entered: 02/05/2019)
02/08/2019	269	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: 263 Notice of Appeal, Appeal No. 18-13902-EE. The record on appeal is available electronically with the exception of: DE 231 as to Audio/Video Exhibit (1 CD) and DE 228 as to Audio/Video Exhibits (4 CDs) which will be forwarded to the USCA Eleventh Circuit via mail. (apz) (Entered: 02/08/2019)
02/11/2019	270	Certified and Transmitted Record on Appeal to US Court of Appeals (Atlanta Office) consisting of (1) Accordion Folder containing DE 228 (4 CDs) and DE 231 (1 CD) re 263 Notice of Appeal. USCA #18-13902-EE. (apz) (Entered: 02/11/2019)
02/20/2019	271	Acknowledgment of Receipt of ROA from USCA re 263 Notice of Appeal, filed by Viola Bryant. Date received by USCA: 2/14/2019. USCA Case Number: 18-13902-EE. (apz) (Entered: 02/21/2019)

PACER Service Center			
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03/11/2019 13:24:14			
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Description:	Docket Report	Search Criteria:	2:16-cv-14072-RLR
Billable Pages:	30	Cost:	3.00

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

_____/

DEFENDANT SHERIFF MASCARA'S
MOTION FOR PROTECTIVE ORDER [AS TO HIS DEPOSITION BEING SET FOR
NEXT MONDAY, OCTOBER 3, 2016]
(AND MEMORANDUM OF LAW)

Defendant Ken Mascara, as Sheriff of St. Lucie County, Florida, in his official capacity, through his undersigned attorneys, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, files this his Motion for Protective Order (and Memorandum of Law) and in support thereof states as follows:

1. This lawsuit arises out of an incident which occurred on January 14, 2014 between St. Lucie County Sheriff's deputies Christopher Newman and Edward Lopez and the Plaintiff's decedent Gregory Vaughn Hill, Jr. at a residence located in St. Lucie County, Florida. During the incident, Deputy Newman shot Mr. Hill. The Plaintiff brings federal civil rights claims and state law claims for battery resulting in wrongful death and negligence. Sheriff Mascara is a named party, in his official capacity only.

2. Plaintiff, through counsel, has indicated she wishes to take the deposition of Sheriff Ken Mascara in this matter. As indicated during the recent status conference before the Court, the Defendant Sheriff opposes the deposition as he is a high level public official who has an extremely busy schedule and who has no first hand knowledge regarding the subject incident. Pursuant to this Honorable Court's Order [DE 25] the parties submitted a joint discovery plan which included Sheriff Ken Mascara's deposition being set for next Monday, October 3, 2016 at 3:00 p.m. with a footnote referencing a proposed motion for protective order being filed. [DE 26]. Today, the Court issued a Joint Discovery Plan which also included the deposition of Sheriff Ken Mascara being conducted **next Monday, October 3, 2016 at 3:00 p.m.** [DE 29].

3. Compelling the deposition of Sheriff Mascara, who is a high ranking elected official, would cause annoyance, oppression, or undue burden, and would interfere with his duties as Sheriff of St. Lucie County. Any relevant information he may have is available with more specificity from sources other than the Sheriff himself such that it would not cause any undue hardship on the Plaintiff if Sheriff Mascara were not obligated to attend a deposition.

WHEREFORE, Defendant Sheriff Mascara objects to the Plaintiff being permitted to take his deposition in this proceeding on the grounds that it would cause annoyance, oppression, or undue burden and respectfully requests this Honorable Court to enter an Order of Protection prohibiting Plaintiff from taking his deposition, which is currently being set for next Monday, October 3, 2016 at 3:00 p.m.

Further, and in support of the foregoing Motion for Protective Order, the Defendant Sheriff would refer this Honorable Court to the Memorandum of Law attached hereto and incorporated herein by reference.

MEMORANDUM OF LAW

Federal Rule of Civil Procedure 26(c) states, in pertinent part, as follows:

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending.... The court, may for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including ... forbidding the disclosure or discovery....

The Court has broad discretion to control discovery, even to the extent of barring certain discovery altogether. See Phipps v. Blakeney, 8 F.3d 788 (11th Cir. 1993); Lee v. Etowah County Bd. Of Education, 963 F.2d 1416 (11th Cir. 1992); see also Crawford-El v. Britton, 523 U.S. 574, 118 S.Ct. 1584 (1998)(discusses district court's broad discretion under Rule 26).

In regard to the depositions of high ranking public officials, courts have recognized that absent *extraordinary circumstances*, they should not be called to testify or be deposed concerning their reasons for taking official action. See City of Fort Lauderdale v. Scott, 2012 W.L. 760743, *2 (S.D. Fla. 2012) and cases cited therein including In re: United States (Kessler), 985 F.2d 510, 512 (11th Cir. 1993).

Two reasons underlie the reluctance of courts to allow discovery of high-ranking officials. The first is to protect the officials from discovery that will burden the performance of their duties, particularly given the frequency with which such officials are likely to be named in lawsuits. The second is to protect the officials from unwarranted inquiries into their decision making process.

See Scott at *2, citing Coleman v. Schwarzenegger, 2008 W.L. 4300437, *2 (E.D. Cal. 2008) and United States v. Morgan, 313 U.S. 409, 422, 61 S.Ct. 999, 85 L.Ed. 1429 (1941). It is clear that Sheriff Ken Mascara is a high ranking public official who merits heightened protection from discovery. See Rocker v. City of Ocala, Florida, 355 Fed. Appx. 312 (11th Cir. 2009); Gray v. Kohl, 2008 W.L. 1803643 (S.D. Fla. 2008); Jarbo v. County of Orange, 2010 W.L. 3584440 (C.D. Cal.

2010). As a result, Plaintiff here has the burden to show:

(1) the official's testimony is necessary to obtain relevant information that is not available from another source; (2) the official has first-hand information that cannot reasonably be obtained from other sources; (3) the testimony is essential to the case at hand; (4) the deposition would not significantly interfere with the ability of the official to perform his government duties; and (5) the evidence sought is not available through less burdensome means or alternative sources.

City of Fort Lauderdale v. Scott, 2012 W.L. 760743, *3 (S.D. Fla. 2012). Plaintiff here will not be able to sufficiently show *any* of these factors have been met.

Furthermore, the Federal Rules have a mechanism in place to alleviate this very intrusion in Federal Rule of Civil Procedure 30(b)(6). Plaintiff has failed to utilize Rule 30(b)(6) during the discovery stage of this proceeding to date, which would enable her to obtain the information being sought from more knowledgeable agents. Federal Rule of Civil Procedure 30(b)(6) states in pertinent part, as follows:

a party may name as the deponent a ... governmental agency... and must describe with reasonable particularity the matters for examination. The named organization must then designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify....The persons designated must testify about information known or reasonably available to the organization....

In discussing the instant motion, Plaintiff's counsel has indicated to the undersigned that the Sheriff is properly the subject of a deposition here because he has given press conferences about the subject incident. However, although the Sheriff, as the head of the agency, often times speaks to the media or conducts press conferences regarding critical incidents such as this officer involved shooting, it should not be presumed that he has the most knowledge of all the specifics of the subject incident and the investigation regarding same. He is not the one that conducts the investigations and,

not surprisingly, relies on others within the agency to conduct those investigative activities and report to him via the chain of command, as to the facts of the case as learned during the investigation as it unfolds. Thereafter, the Sheriff merely passes this hearsay information along to the media as it becomes known. In this instance, more specific and detailed information is obtainable from a lower ranking official who actually was involved in investigating the subject incident. Frankly, to require the Sheriff to prepare for and give a deposition in a lawsuit such as this merely because he has spoken with the press about the incident, would require him to give a deposition in most every federal civil rights case in which his agency was a named defendant. The relevant law regarding this issue clearly does not support this conclusion. See infra.

Compelling Sheriff Mascara to appear for deposition because of his public office would be unduly burdensome and would interfere with his busy schedule as a high ranking elected official. Such a request is properly denied because as Sheriff, Defendant Mascara is particularly susceptible to being the target of discovery abuses such as being set for deposition for purposes of harassment. Plaintiff here can not show that Sheriff Mascara has any relevant first hand knowledge concerning the particular facts in this case nor why she could not obtain any such information, to the extent that Sheriff Mascara did have such knowledge, in a less burdensome and time consuming manner, such as through interrogatories or from other sources within the Sheriff's office. It is clearly within this Court's discretion to disallow the deposition of the head of a governmental agency such as the Sheriff. See Rucker v. City of Ocala, Florida, 355 Fed.Appx. 312 (11th Cir. 2009)(sheriff); Spadaro v. City of Miramar, 2012 W.L. 3614202 (S.D. Fla. 2012)(police chief and assistant police chief); City of Fort Lauderdale v. Scott, 2012 W.L. 760743 (S.D. Fla. 2012)(city manager); Jarbo v. County of Orange, 2010 W.L. 3584440 (C.D. Cal. 2010)(former sheriff); Mulvey v. Chrysler Corp., 106

F.R.D. 364 (D.R.I. 1985) (chairman of the board); Warzon v. Drew, 155 F.R.D. 183 (E.D.Wis. 1994)(high ranking government officials); and Baine v. General Motors Corp., 141 F.R.D. 332 (M.D.Ala. 1991)(vice president of corporation).

Sheriff Mascara is a busy public official conferred with the duty to enforce the laws of the State of Florida in St. Lucie County. It is apparent that there are other means by which Plaintiff can obtain discovery regarding the subject incident or the customs, policies, and practices of the Sheriff at all times relevant to this lawsuit. It is unreasonable and unduly burdensome to command the appearance of a public official to give testimony on issues that can readily be answered by individuals who are not elected government officials. As an elected public official, Sheriff Mascara should not be compelled to appear at any deposition where the Plaintiff can employ other means of discovery that are less burdensome and intrusive into the official duties of the Sheriff. Just as the Court has granted protective orders to the high ranking government officials in the Scott and Spadaro cases, so too should the Court grant a protective order for the Sheriff in this case. Just as in Scott and Spadaro, the Plaintiff here cannot carry her burden of establishing extraordinary circumstances justifying Sheriff Mascara's deposition in this case.

CONCLUSION

The Defendant Sheriff Mascara's Motion for Protective Order should be granted. As a practical matter, given the obvious time constraints as the date of the Sheriff's deposition is only a week away, the Defendant Sheriff would request that the Court *immediately* enter a temporary order of protection as to the October 3rd deposition date and that the Court permit the parties to fully brief this request for protective order (on an expedited briefing schedule, if need be) so that the Court can make a more fully informed determination in this regard as to whether or not the Plaintiff should be

permitted to take the Sheriff's deposition at a later date.

Certification

Counsel for the Defendants has conferred with Plaintiff's counsel regarding the instant motion and it is opposed by the Plaintiff.

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this **26th** day of September, 2016.

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BY s/ **Summer M. Barranco**
SUMMER M. BARRANCO
Fla. Bar No. 984663

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

**BENCH MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTION TO
DEFENDANTS' INTRODUCTION OF EXHIBIT NUMBER 30 PURSUANT TO
DEFENDANT'S THIRD AMENDED EXHIBIT AND WITNESS LIST**

COMES NOW, Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, JR., by and through her undersigned counsel, and hereby respectfully submits this Bench Memorandum in Support of Plaintiff's Objection to Defendants' exhibit number thirty as listed to Defendant's Third Amended Exhibit and Witness List.

Specifically, Defendants' seek to introduce exhibit number thirty which contains a Microsoft PowerPoint presentation prepared by Sergeant Kyle King of the Indian River County Sheriff's Office. This PowerPoint presentation contains a series of reconstructed animated illustrations which depicts a contested version of the subject incident. Plaintiff objects to the introduction of this PowerPoint presentation because it was not disclosed pursuant to Federal Rule of Civil Procedure 26. In addition, the PowerPoint illustrations are predicated upon hearsay statements. In addition, any probative value of this PowerPoint illustration is outweighed by the prejudicial effect.

DEFENDANTS' PROPOSED OBJECTIONABLE EVIDENCE

1. Defendant's Exhibit Number thirty pursuant to Defendants' Third Amended Exhibit and Witness List.
2. Testimony from any witness expected to testify in this trial, including, but not limited to: Sgt. Kyle King, regarding this PowerPoint reconstruction.

MEMORANDUM OF LAW

Defendant Newman was responding to a noise complaint at a house across the street from Frances K. Sweet Elementary School. Within sixty seconds of Defendant Newman's arrival, Gregory Vaughn Hill, Jr. was shot and killed by Defendant Newman. Defendant Newman fired four rounds of forty caliber bullets through a closing garage door. Two bullets struck Mr. Hill in the stomach. One bullet struck Mr. Hill in the head.

Viola Bryant, as the personal representative of the estate of Gregory Vaughn Hill, Jr. filed this 42 U.S.C. § 1983 civil rights violation action against Defendants claiming that Defendant Newman used excessive force and violated Mr. Hill's constitutional fourth amendment right to be free from unwarranted searches and seizures.

**I. DEFENDANTS FAILED TO DISCLOSE THIS EXHIBIT PURSUANT TO
FED. R. CIV. PRO. 26.**

On December 27, 2016, Defendants filed their expert witness disclosures pursuant to Federal Rule of Civil Procedure 26(a)(2). Defendants disclosed Sgt. Kyle King as a "non-retained expert." The scope of Sgt. Kyle King's expected testimony was disclosed as follows:

"Sgt. Kyle King
c/o Indian River County Sheriff's Office
4055 41st Avenue
Vero Beach, FL 32960

Sgt. King is expected to testify regarding his knowledge regarding reconstruction of the subject incident."

Significantly, no reconstruction PowerPoint was provided in Defendants' disclosure. Pursuant to Federal Rule of Civil Procedure 26(a)(2)(C), the disclosure must state i) the subject matter on which the witness is expected to present evidence under Federal Rule of Evidence 702, 703, or 705; and ii) **a summary of the facts and opinions to which the witness is expected to testify.** Fed. R. Civ. Pro. 26(a)(2)(C). Defendants failed to disclose any "facts and opinions" to which Sgt. King is expected to testify. "If a party fails to provide information ... as required by Rule 26(a) or (e), the party is not allowed to use that information ... to supply evidence ... at a trial, unless the failure was substantially justified or is harmless." *Companhia Energetica Potiguar v. Caterpillar, Inc.*, No. 14cv24277, 2016 WL 3102225, at *5 (S.D. Fla. June 2, 2016)

Defendants' one sentence disclosure, failed to include Sgt. King's PowerPoint presentation contrary to the requirements of Fed. R. Civ. Pro. 26(a)(2). Defendants' failure to disclose this reconstruction presentation is not justified. Sgt. King initially prepared this presentation for the purposes of presenting it to a criminal grand jury, long before the Complaint in the present action was filed. The reconstruction presentation was completed before the expert disclosure deadlines as set forth in this honorable court's Second Amended Scheduling Order. As such, Defendants' failure to disclose this PowerPoint presentation pursuant to Fed. R. Civ. Pro. 26(a) is not justified, and should be excluded from evidence at trial.

II. EXHIBIT THIRTY FAILS TO MEET THE REQUIREMENTS OF RULE 702 AND DAUBERT

Defendants' disclosed Sgt. Kyle King as a "non-retained expert witness." The PowerPoint reconstruction as listed on exhibit thirty constitutes Sgt. King's opinion regarding how the subject incident occurred. The admission of expert evidence and testimony is governed

by Federal Rule of Evidence 702 and the standards set forth by *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and its progeny.

In essence, Rule 702 and the *Daubert* line of cases permit an expert to testify in the form of an opinion where three criteria are met: (1) the expert is qualified to offer the opinion he intends to offer, (2) the expert applied reliable methods and principles in forming his opinion, and (3) the expert's opinion will assist the jury in deciding a disputed fact or issue. *Rink v. Cheminova, Inc.*, 400 F.3d 1286, 1291–92 (11th Cir. 2005). Significantly, “It is ultimately the burden of the party who offers the expert to show that the expert’s opinion is admissible, and the party must do so by a preponderance of the evidence.” *Id.* at 1292.

Aside from the conclusory single sentence disclosure, Defendants’ have provided no evidence that Sgt. King is qualified to offer the reconstruction opinions set forth in exhibit thirty. In addition, Defendants’ disclosure did not state the methods and principles utilized by Sgt. King when reconstructing the subject incident.

Furthermore, the PowerPoint reconstruction will not assist the jury in deciding a disputed fact or issue. As previously stated, Sgt. King’s PowerPoint reconstruction was completed long before this instant action was filed. As such, Sgt. King’s reconstruction did not take into consideration the testimony of any witnesses given under oath in the present case. Rather, the basis for Sgt. King’s PowerPoint reconstruction is hearsay statements obtained by various law enforcement personnel through informal conversations with other law enforcement personnel. The hearsay statements obtained by law enforcement personnel, and the PowerPoint presentation constructed therefrom, will not assist the jury in deciding the facts and issues of this case.

WHEREFORE, Plaintiff respectfully requests this Honorable Court sustain Plaintiff’s objection to the introduction of Defendants’ exhibit thirty which contains a reconstruction

PowerPoint, as this evidence was not disclosed pursuant to Fed. R. Civ. Pro. 26(a) and this honorable court's deadlines set forth in the Second Amended Scheduling Order. In addition, Plaintiff respectfully request this Honorable Court sustain Plaintiff's objection because this evidence is fails to meet the requirements of Fed. R. Evid. 702 and the *Daubert* standards and is predicated upon otherwise inadmissible hearsay statements.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and a copy hereof has been furnished to Summer M. Barranco, Esquire, Purdy, Jolly, Giuffreda & Barranco, P.A., 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL 33304, by email to summer@purdylaw.com, and melissa@purdylaw.com, this 14th day of May, 2018.

Law Office of John M. Phillips, LLC

/s/ Kirby Johnson _____

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. **2:16cv14072-ROSENBERG/LYNCH**

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

**DEFENDANTS' OMNIBUS RESPONSE TO PLAINTIFF'S
BENCH MEMORANDA [DE 181, 182, 183, 184, 185, 186, and 188]**

The Defendants, SHERIFF MASCARA in his official capacity as Sheriff of St. Lucie County, and CHRISTOPHER NEWMAN, in his individual capacity, pursuant to this Court's paperless Orders requiring a response to Plaintiff's Bench Memoranda [DE 187 and 189], file this their Omnibus Response to Plaintiff's Bench Memoranda [DE 181, 182, 183, 184, 185, 186 and 188], and would state as follows:

Plaintiff's Bench Memoranda are directed to seven categories of evidence. The Defendants will respond to each of the seven issues as identified and separated by the Plaintiff in her memoranda in numerical sequence.

1. DE 181: Plaintiff's Objection to Defendants' Exhibits 168, 169, and 170.

In DE 181, Plaintiff objects to the introduction of any photographs depicting small plastic bags found within Mr. Hill's garage in the post-shooting investigation conducted by members of the St. Lucie County Sheriff's Office. Defendants agree to not introduce evidence of the nature identified

in Plaintiff's Memorandum, unless of course the Plaintiff opens the door to the admissibility of this evidence based on the theory of Plaintiff's case or the evidence Plaintiff elicits during the trial in her case-in-chief.

2. DE 182: Plaintiff's Objection to Defendants' Exhibits 228-230 and 361-368.

In DE 182, Plaintiff objects to the introduction of photographs of Mr. Hill's cell phone which was discovered and photographed by Sheriff's Office investigators after Deputy Newman's use of force. Mr. Hill's cell phone, and more importantly its contents as will be demonstrated below, has relevance regarding the Sheriff's office's downloading of the contents of Mr. Hill's cell phone (as noted below), Mr. Hill's actions immediately prior to the shooting as well as to Plaintiff's wrongful death damages, specifically the loss of support claims.

3. DE 183: Plaintiff's Objection to Defendants' Exhibit 27.

In DE 183, Plaintiff objects to the introduction of an extraction report of Mr. Hill's cell phone data around the time of the subject incident. As part of the Sheriff's Office investigation into the subject incident, a search warrant was obtained permitting the Sheriff's Office forensic investigators to conduct a forensic search of Mr. Hill's cell phone. On January 27, 2014, Detective Kevin Pfeiffer of the Sheriff's Office Computer Forensic Unit conducted the forensic examination of Mr. Hill's cell phone in accordance with the search warrant. Detective Pfeiffer was able to retrieve data from the phone including the call history, text messages and phonebook information from Mr. Hill's phone including evidence of Mr. Hill's communications between himself and his then fiancée immediately prior to the subject incident. This evidence is relevant under Rule 404(b) to show Mr. Hill's motive for acting as he did during his encounter with the deputies (see Knight, *infra*), to refute testimony that is expected from Plaintiff's friends and family members that this was an uneventful, normal day for Mr. Hill (prior to his contact with law enforcement) as well as to Plaintiff's loss of parental

support claim.

4. DE 184: Plaintiff's Objection to Defendants' Exhibit 24 and Exhibit 25.

In DE 184, Plaintiff objects to the introduction of two photographs depicting a letter drafted by Mr. Hill's then girlfriend which was discovered in the Hill residence by Sheriff's office personnel after the shooting. This evidence is directly relevant to the Plaintiff's loss of parental support claim as well as pursuant to Rule 404(b) as to motive in regard to Mr. Hill's state of mind on the day of the subject incident and to refute any testimony that this was otherwise an uneventful, normal day for Mr. Hill prior to his contact with law enforcement.

5. DE 185: Plaintiff's Objection to Defendants' introduction of evidence of Mr. Hill's intoxication at the time of the subject incident.

In DE 185, Plaintiff objects to the introduction of any evidence regarding the fact that Mr. Hill's blood alcohol content (BAC) was at least a .328 g/dL at the time of the subject incident. Plaintiff asserts that since this information was unknown to Deputy Newman at the time of the incident. It is irrelevant to the issue of whether Deputy Newman's use of force was unreasonable. However, in evaluating the reasonableness of Deputy Newman's actions, the jury is not limited to information known to the defendant law enforcement officer at the time of the shooting.

“In a case...where what the officer perceived just prior to the use of force is in dispute, evidence that may support one version of events over another is relevant and admissible.” Boyd v. City and Cnty. Of San Francisco, 576 F.3d 938, 948-949 (9th Cir. 2009). In Boyd, the Ninth Circuit approved a trial court's ruling allowing evidence that the decedent had been on drugs at the time of a police shooting because the evidence “was highly probative of the decedent's conduct, particularly in light of [the decedent's] alleged erratic behavior...” Id. at 949. This type of evidence is routinely permitted to explain unusual behavior or to support a law enforcement officer's version of how a decedent acted. See Turner v. White, 980 F.2d 1180, 1182-1183 (8th Cir. 1992) (“it was incumbent

upon the jury to consider [the defendant officer's] actions in relation to all the circumstances of the situation that confronted him. We therefore believe the evidence of alcohol consumption is relevant to the jury's assessment of that situation...").

In Plaintiff's Memorandum, Plaintiff asserts that Defendants will attempt to demonstrate through the introduction of evidence demonstrating Mr. Hill's intoxication that Mr. Hill intended on instigating the altercation with the deputies. Plaintiff completely misses the point regarding the probative value of this evidence. Defendants respectfully submit that Mr. Hill's subjective intentions are immaterial to the ultimate question the jury will be asked to answer: whether Mr. Hill's actions caused Deputy Newman to reasonably fear for his life or the life of others. To answer that question, the jury must consider all the circumstances of the situation that confronted the deputies. Further, Mr. Hill's level of intoxication is relevant in light of the deputies' testimony that they shouted commands for Mr. Hill to drop the weapon he was holding. See Turner at 1183 (explaining that evidence of intoxication is relevant to question of subject's ability to perceive officer's commands).

Additionally, and as will be further addressed in the following section, Defendants believe that the evidence will show Mr. Hill was on felony drug offender probation at the time of the subject incident and that as a consequence of Mr. Hill's probation status he was not permitted to drink **any** alcoholic beverages or to possess a firearm. The fact that Mr. Hill was almost four times more intoxicated than the legal limit to drive and thus in clear violation of his probation is relevant to explain Mr. Hill's actions prior to the subject incident. See Knight through Kerr v. Miami-Dade County, 856 F.3d 795, 816 (11th Cir. 2017).

Finally, Plaintiff brings a claim for negligence arising out of the subject incident. Thus Mr. Hill's level of intoxication is also relevant to the defense of comparative negligence as well as to Florida's statutory "alcohol or drug defense." See F.S. §768.36 (2014); Griffis v. Wheeler, 18 So.3d

2, *5-6 (Fla. 1st DCA 2009) (recognizing that Florida's alcohol defense applies to wrongful death action).

6. DE 186 Plaintiff's objection to Defendants' introduction of evidence regarding Mr. Hill's probationary status.

In DE 186, Plaintiff objects to the introduction of evidence regarding Mr. Hill's probation status arguing that the evidence is irrelevant, that the probative value of this evidence is substantially outweighed by its danger of unfair prejudice and that this evidence amounts to unfair character evidence.

Plaintiff's arguments in support of her objection regarding this evidence are similar to her arguments related to evidence of Mr. Hill's intoxication. Likewise, Defendants' arguments related to the admissibility of Mr. Hill's probation status are closely tied to the issue of the admissibility of evidence regarding Mr. Hill's intoxication since, as alluded to above, Mr. Hill was not permitted to drink any alcohol nor was he permitted to possess a firearm as a consequence of his probation status. The Knight case, cited above by Defendants regarding the admissibility of Mr. Hill's intoxication, is likewise instructive here.

In Knight, the Plaintiffs brought federal and state claims arising out of an incident which involved a police chase that ultimately culminated in a police shooting. Two of the passengers of the car were killed and the other was injured. Knight, 856 F.3d at 803-805. Prior to trial, the Plaintiffs in Knight moved to exclude evidence of the driver's previous felony convictions. The trial court permitted the driver's most recent conviction because the court found "it was material to the defense theory that his earlier conviction and his probation status caused him to initiate, and refuse to cease flight when confronted by the officers." Id., at 815-816. In evaluating the propriety of the trial court's ruling, the Eleventh Circuit first noted Rule 404(b)'s exception regarding evidence of a crime, wrong

or other act when the evidence is used to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. Id. at 816. In ratifying the trial court's decision to allow evidence of the driver's probation status, the Eleventh Circuit concluded that the evidence was plainly admissible under Rule 404(b) to establish the driver's motive in fleeing since if he had simply pulled over, "he would have been caught associating with other people on probation, which might have jeopardized his probationary status." Id. at 816-817. Like in Knight, evidence of Mr. Hill's probation status is probative of his motive to quickly hide his gun in his back pocket and to forcefully slam his garage door after being confronted by two law enforcement officers while in violation of at least two conditions of his probation. See also Boyd, 576 F.3d at 948 (permitting evidence of Plaintiff's criminal history to explain Plaintiff's actions where the Plaintiff was facing consequences for his actions). Whether Mr. Hill's actions placed Deputy Newman in reasonable fear for his own or others' safety will be for the jury to determine.

Additionally, Mr. Hill's probation status is otherwise relevant to the issue of damages and Plaintiff's loss of support claim as to Mr. Hill's children.

As to Plaintiff's assertion that the evidence's probative value is substantially outweighed by its danger of unfair prejudice, any evidence the Defendants seek to offer will be inherently prejudicial to the Plaintiff otherwise it would not be material. See Ballou v. Henri Studios, Inc., 656 F.2d 1147, 1155 (5th Cir. 1981). It is only when the probative value of the evidence is **substantially outweighed by its danger of unfair prejudice** that the evidence should be excluded. See Dollar v. Long Mfg., N.C., Inc., 561 F.2d 613, 618 (5th Cir. 1977) ("unfair prejudice is not to be equated with testimony simply adverse to the opposing party"). The standard for exclusion in the Eleventh Circuit under Rule 403 is:

Relevant evidence is inherently prejudicial; but it is only *unfair* prejudice *substantially* outweighing probative value, which permits exclusion of relevant matter under Rule 403. Unless trials are to be conducted on scenarios, on unreal facts tailored and sanitized for the occasion, the application of Rule 403 must be cautious and sparing. Its major function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its probative value.

U.S. v. Sawyer, 799 F.2d 1494, 1506 (11th Cir. 1986) (emphasis in original).

7. DE 188 Plaintiff's objection to Defendants' introduction of Sgt Kyle King's reconstruction powerpoint presentation.

Plaintiff objects to the introduction of a PowerPoint presentation prepared by Sgt. King of the Indian River County Sheriff's Office. It is Defendants' understanding that Sgt. King is routinely requested by the State Attorney's Office, as an expert in shooting reconstructions, to conduct incident reconstructions for presentation to the grand jury. Plaintiff asserts that PowerPoint was not disclosed in Defendants' initial disclosures. This is simply not true. On Page 34 of Defendants' initial disclosures, served on the Plaintiff on May 20, 2016 Defendants identified the PowerPoint in question as item 34. (See Exhibit A, Defendants' Initial Rule 26 Disclosures). As to Plaintiff's other assertions, on December 27, 2016, Defendants served their Expert disclosures.(See Exhibit B, Defendants' Expert Disclosures). In that disclosure, Defendants identified Kyle King as a non-retained expert expected to testify regarding his knowledge of the reconstruction of the subject incident.

Federal Rule of Civil Procedure 26(A)(2) governs the expert disclosure requirements. Pursuant to Federal Rule of Civil Procedure 26(A)(2)(C), Defendants were required to disclose the subject matter on which the witness is expected to testify and a summary of the facts and opinions to which the witness is expected to testify. It is the Defendants' position that Defendants' expert

disclosure satisfied their disclosure obligations. Defendants provided the Plaintiff with as much information as the Defendants possessed. Plaintiff has been aware of Sgt. King's identity as well as the PowerPoint reconstruction he created since well before the discovery deadline which has now passed. Plaintiff's election to not depose him should not operate to prejudice the Defendants, especially at this late hour. To the extent Plaintiff contends Sgt. King is unqualified to offer opinions regarding reconstruction of the subject incident, Defendants respectfully request that Plaintiff be permitted to conduct voir dire of the expert witness during trial, outside of the presence of the jury. See Kellner v. NCL (Bahamas), LTD., 15-23002-CIV, 2016 WL 8679313, at *2 (S.D. Fla. Aug. 17, 2016).

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, this 15^h day of May, 2018.

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BY /s/ Gregory J. Jolly
GREGORY J. JOLLY
Fla. Bar No.: 118287

EXHIBIT

A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

DEFENDANTS' INITIAL DISCLOSURES PURSUANT TO FRCP 26 (a)(1)

Pursuant to Fed. R.Civ. P. 26(a)(1), Defendants, by and through their undersigned counsel
submit the following disclosures:

(A) Individuals likely to have discoverable information that the Defendants may use to support defenses:

1.	<p>Jeffrey T. Ball 10 Kassaba Lane Port St. Lucie, FL 34952</p> <p>Mr. Ball may have knowledge regarding the handgun the decedent had on his person at the time of the subject incident.</p>
2.	<p>Detective Blatchford c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Blatchford has knowledge regarding his canvas of the neighborhood where the subject incident occurred.</p>

3.	<p>Andrew (DJ) Brown 1908 Avenue Ave O Fort Pierce, FL 34950</p> <p>Mr. Brown is Gregory Hill's cousin. He is expected to have knowledge regarding Plaintiff's alleged damages. He may have knowledge regarding Mr. Hill's activities prior to the shooting as well as Mr. Hill's alcohol usage.</p>
4.	<p>Detective Matthew Briglia #1126 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Briglia has knowledge regarding his involvement at the scene wherein he conducted an observation of the crime scene and interviews of Deputy Newman and Deputy Lopez.</p>
5.	<p>Detective Frank Burns #1076 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Burns has knowledge regarding videotaping the scene, taking photos of Deputy Newman, and aerial photos of scene (in helicopter).</p>
6.	<p>CSI Donna Carmichael #710 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>CSI Carmichael has knowledge about the autopsy and the investigation of the subject incident, specifically taking photographs and searching for shell casings.</p>
7.	<p>Joseph Carollo 1458 Se Colchester Cir. Port St. Lucie, FL 34952</p> <p>Mr. Carollo may have knowledge regarding the handgun the decedent had on his person at the time of the subject incident.</p>

8.	<p>Mark Chapman, Criminalist Indian River Crime Laboratory at Indian River State College 4602 Kirby Loop Road Ft. Pierce, FL 34981</p> <p>Mr. Chapman has knowledge regarding his examination of Deputy Newman's firearms.</p>
9.	<p>Sergeant Christopher M. Cicco #677 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Sgt. Cicco has knowledge regarding his involvement at the scene with the Remotec F-6 robot and Sentinel Remote Surveillance Camera/Repeater System.</p>
10.	<p>Detective Wade Courtemanche Special Weapons and Tactics (SWAT) c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Courtemanche has knowledge regarding his involvement at the scene as part of an entry team of the subject residence.</p>
11.	<p>Tammy Davis 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. Davis is a teacher at F.K. Sweet Elementary who may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
12.	<p>Terrica Monique Davis 703 Made Drive Fort Pierce, FL 34981</p> <p>Ms. Davis was Gregory Hill's fiancé. She is expected to have knowledge regarding Plaintiff's alleged damages. She may have knowledge regarding Mr. Hill's activities prior to the shooting as well as Mr. Hill's alcohol usage.</p>

13.	<p>Sergeant Jim DeFonzo #728 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Sgt. DeFonzo has knowledge regarding his involvement at the scene.</p>
14.	<p>Detective Scott DeMichael c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective DeMichael has knowledge regarding his canvas of the neighborhood where the subject incident occurred.</p>
15.	<p>Lizabeth Enriquez-Ruiz 337 North US Hwy 1 Fort Pierce, FL 34950</p> <p>Ms. Enriquez-Ruiz may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
16.	<p>Shirley Fowler 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. Fowler may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
17.	<p>Kelly Fox, Esq. Assistant State Attorney</p> <p>This witness has knowledge regarding approval of a search warrant.</p>
18.	<p>Arnold Gaines 1505 Ave Q, Fort Pierce, FL 34950</p> <p>Mr. Gaines may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>

19.	<p>Theresse D. Gaines 1505 Ave Q, Fort Pierce, FL 34950</p> <p>Mrs. Gaines may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
20.	<p>Doris Garret (neighbor-heard gunshots) 1804 16th Street N, Fort Pierce, FL 34950</p> <p>Mrs. Garret may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
21.	<p>Detective Michael Gajewski #1539 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Gajewski has knowledge regarding his involvement with the SWAT team at the subject scene.</p>
22.	<p>Lt. A. K. Goodner #312 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Lt. Goodner may have knowledge of the subject scene.</p>
23.	<p>Jeff Hamrick State Attorney Investigator</p> <p>Mr. Hamrick may have knowledge regarding the autopsy.</p>
24.	<p>Donna Hellums 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Mrs. Hellums may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>

25.	<p>Detective Jennifer Hendricks c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Hendricks has knowledge regarding her canvas of the neighborhood where the subject incident occurred, specifically the witnesses from F.K.Sweet Elementary school.</p>
26.	<p>Jeffrey Hendricks, Esq. Assistant State Attorney</p> <p>Mr. Hendricks has knowledge regarding search warrant applications to search residence.</p>
27.	<p>Detective Michelle Hernandez #1412 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Hernandez may have knowledge regarding her involvement in the investigation into the subject incident.</p>
28.	<p>Sergeant Hester #1042 St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Sgt. Hester has knowledge regarding his involvement with the SWAT team at the subject scene.</p>
29.	<p>Deputy T. Johnson St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Deputy Johnson has knowledge regarding his involvement with the SWAT team at the subject scene.</p>

30.	<p>Lieutenant Larry Hostetler Members of Criminal Investigations Division (CID) c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Lt. Hostetler may have knowledge regarding his involvement in the investigation into the subject incident.</p>
31.	<p>Investigator Edgar J. Lebeau #1060 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Investigator Lebeau has knowledge regarding his involvement at the scene and conducting interviews.</p>
32.	<p>Detective Robert Lee #901 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Lee has knowledge regarding his canvas of the neighborhood where the subject incident occurred.</p>
33.	<p>Deputy Edward Lopez #217 (Defendant) c/o Purdy, Jolly, Giuffreda & Barranco, P.A. 2455 E. Sunrise Blvd., Suite 1216 Ft. Lauderdale, FL 33304</p> <p>Deputy Lopez has knowledge regarding his activities on the subject date to include his interaction with Gregory Hill and the subject shooting.</p>
34.	<p>Elish Mancuso 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. Mancuso may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>

35.	<p>Lisa McGuire 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. McGuire may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
36.	<p>William Russell Melton 1405 Avenue Q. Fort Pierce, FL 34950</p> <p>Mr. Melton may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
37.	<p>Stefanie Ann Mills 8102 Carnoustie Pl. Port St. Lucie, FL 34986</p> <p>Ms. Mills may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
38.	<p>David Morales 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Mr. Morales may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
39.	<p>Deputy Christopher E. Newman #280 Defendant c/o Purdy, Jolly, Giuffreda & Barranco, P.A. 2455 E. Sunrise Blvd., Suite 1216 Ft. Lauderdale, FL 33304</p> <p>Deputy Newman has knowledge regarding his activities on the subject date to include his interaction with Gregory Hill and the subject shooting.</p>

40.	<p>Detective Troy E. Norman #1102 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Norman has knowledge regarding his canvas of the neighborhood where the subject incident occurred.</p>
41.	<p>Christy Jo Nuccio 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. Nuccio may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
42.	<p>Dr. Linda O'Neil, ME Office of the Medical Examiner, District 19</p> <p>Dr. O'Neil has knowledge regarding the autopsy she conducted on Gregory Hill. She may have knowledge regarding Mr. Hill's injuries and cause of death from the subject shooting.)</p>
43.	<p>Sandra Park-Picano 1400 Ave Q. Fort Pierce, FL 34950</p> <p>Ms. Park-Picano may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
44.	<p>Supervisor Robert M. Petit #967 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Mr. Petit may have knowledge regarding his involvement at the scene.</p>

45.	<p>Detective Kevin Pfeiffer #1327 Computer Forensic Unit c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Pfeiffer has knowledge regarding the data extraction he conducted on Gregory Hill's cell phone.</p>
46.	<p>Jorge Rosado 1705 N. 15th Street Fort Pierce, FL 34950</p> <p>Mr. Rosado may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
47.	<p>Charles Russ 1803 16th Street N. Fort Pierce, FL 34950</p> <p>Mr. Charles Russ may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
48.	<p>Ricky Andre Russ 1803 16th Street N. Fort Pierce, FL 34950</p> <p>Mr. Ricky Russ may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
49.	<p>Sergeant Steve Sessoms c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Sgt. Sessoms may have knowledge regarding his involvement at the subject scene.</p>
50.	<p>Sergeant Mike Sheelar #485 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Sgt. Sheelar has knowledge regarding his inspection of Deputy Lopez's gun.</p>

51.	<p>Stedman A. Smith 1706 16th Street N Fort Pierce, FL 34950</p> <p>Mr. Smith may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
52.	<p>Deputy Karen Stephens #1481 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Deputy Stephens has knowledge regarding her involvement as a member of the negotiation team during the investigation.</p>
53.	<p>Tony Stevens 1908 Avenue O Fort Pierce, FL 34950</p> <p>Mr. Stevens is Gregory Hill's uncle. He is expected to have knowledge regarding Plaintiff's alleged damages. He may have knowledge regarding Mr. Hill's activities prior to the shooting.</p>
54.	<p>Detective Paul Taylor c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Paul Taylor has knowledge regarding his canvas of the neighborhood where the subject incident occurred, specifically the witnesses from F.K.Sweet Elementary school.</p>
55.	<p>Detective Timothy Taylor #1699 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Timothy Taylor has knowledge regarding search warrant applications and his assistance with conducting walk through videos of Deputy Newman and Deputy Lopez.</p>

56.	<p>Sherman Lee Thomas 1706 North 15th Street Fort Pierce, FL 34950</p> <p>Mr. Thomas may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
57.	<p>Victoria Thomas 1707 North 15th Street Fort Pierce, FL 34950</p> <p>Mrs. Thomas may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
58.	<p>Walter Thomas 1707 North 15th Street Fort Pierce, FL 34950</p> <p>Mr. Thomas may have knowledge about the subject incident or Gregory Hill's activities prior to the shooting.</p>
59.	<p>CSI Gynne Vazquez #1739 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Ms. Vazquez has knowledge regarding her involvement at the scene wherein she took aerial photographs and aerial video of the property.</p>
60.	<p>Merv Waldron, Investigator District 19 Medical Examiner's Office</p> <p>Mr. Waldron has knowledge regarding his involvement on the scene.</p>
61.	<p>Detective Eric Wax #1609 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Wax has knowledge regarding his canvas of the neighborhood where the subject incident occurred, specifically the witnesses from F.K.Sweet Elementary school.</p>

62.	<p>Detective Wentz #917 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Det. Wentz has knowledge regarding his involvement at the scene and his canvas of the neighborhood where the subject incident occurred.</p>
63.	<p>Kaneshia L. White 1804 16th Street N. Fort Pierce, FL 34950</p> <p>Ms. White is Gregory Hill's cousin. She is expected to have knowledge regarding Plaintiff's alleged damages. She may have knowledge regarding Mr. Hill's activities prior to the shooting as well as Mr. Hill's alcohol usage.</p>
64.	<p>Juanita Wright 1400 Avenue Q Fort Pierce, FL 34950</p> <p>Ms. Wright may have knowledge about the subject incident or Mr. Hill's activities prior to the shooting.</p>
65.	<p>Detective Richard Young #174 c/o St. Lucie County Sheriff's Office 4700 W. Midway Rd. Fort Pierce, FL 34952</p> <p>Detective Young has knowledge regarding the subject investigation, specifically regarding Deputy Newman's Glock, and evidence at the scene.</p>
66.	<p>Susan Adams Wuesthoff Reference Laboratory 6800 Spyglass Court Melbourne, FL 32940</p> <p>Ms. Adams has knowledge regarding Gregory Hill's toxicology results.</p>
67.	<p>All witnesses identified by the Plaintiff in her initial disclosures pursuant to Federal Rules of Civil Procedure, Rule 26(a)(1).</p>

Defendants will supplement the initial disclosures of individuals likely to have discoverable

information in accordance with Fed.R.Civ. P. 26(e)(1)(A).

(B) All documents, electronically stored information and tangible things in the possession, custody or control of Defendants, and that the Defendants may use to support their claims or defenses

Defendants reserve the right to supplement, amend and otherwise modify this list after further discovery and investigation, and may rely upon additional materials.

DEF. NO.	DESCRIPTION OF EXHIBITS
1	Application and Affidavit for Search Warrant for property (signed 1/14/14) (3 pages)
2	Search Warrant, including Inventory and Return for Property (3 pages)
3	Application and Affidavit for Search Warrant for property (signed 1/14/14) (2 pages)
4	Search Warrant, including Inventory and Return for Property (2 pages)
5	Application and Affidavit for Search Warrant for cell phone (signed 1/24/14) (3 pages)
6	Search Warrant, including Inventory and Return for cell phone (signed 1/24/14) (3 pages)
7	CAD (2 pages)
8	CD containing songs Gregory Hill was listening to prior to subject incident
9	Communications-Event Report (Report Generated 1/15/14 13:38:11) (14 pages)
10	Communications-Event Report (Report Generated 1/15/14 13:38:33) (10 pages)
11	Communications-Event Report (Report Generated 1/15/14 13:38:41) (7 pages)
12	Communications-Event Report (Report Generated 1/15/14 13:38:49) (3 pages)
13	Communications-Event Report (Report Generated 1/15/14 13:39:04) (4 pages)
14	Computer informational screen print out (with photo of Gregory V. Hill) (1 page)

15	Computer informational screen print out (with information of Gregory V. Hill) (1 page)
16	Crime Scene Diagram (4 pages)
17	Crime Scene Logs (4 pages)
18	Evidence List (dated 2/13/14 10:15:52 am) (1 pages)
19	Evidence List (undated) (2 pages)
20	Google Images (2 images of 1501 Avenue 1501 Avenue Q)
21	Google Pro Images (4 images of subject property)
22	Laboratory Report (3 pages)
23	Medical Examiners Report, including Death Investigation Field Report) (10 pages)
24	Pictures of Scene (1 CD containing 306 pictures)
25	Pictures of Scene (including autopsy pictures) (1 CD containing 207 pictures)
26	St. Lucie County Sheriff's Office Digital Extraction Report (18 pages)
27	St. Lucie County Sheriff's Office Incident/Investigative Report Case No.: 14-00572 (including supplemental reports) (70 pages)
28	St. Lucie County Sheriff's Office Memorandum to Deputy Lopez from Major David R. Thompson dated 1/15/14 (1 page)
29	St. Lucie County Sheriff's Office Memorandum to Deputy Newman from Major David R. Thompson dated 1/15/14 (1 page)
30	St. Lucie County Sheriff's Office Memorandum to Major David R. Thompson from Lt. Larry Hostetler dated 1/21/14 (1 page)
31	St. Lucie County Sheriff's Office Memorandum to Deputy Lopez from Major David R. Thompson dated 1/22/14 (1 page)
32	St. Lucie County Sheriff's Office Memorandum to Deputy Newman from Major David R. Thompson dated 1/22/14 (1 page)
33	St. Lucie County Sheriff's Office Memorandum to Cpt. Jerry Rothman from Lt. Larry Hostetler dated 2/20/14 (4 page)
34	St. Lucie County Sheriff's Office Powerpoint regarding subject incident (no title) (25 slides)
35	St. Lucie County Sheriff's Office's Press Release, including two Google pictures of the subject property (undated) (3 pages)

36	St. Lucie County Sheriff's Office's Press Release dated 1/28/14 (3 pages)
37	St. Lucie County Sheriff's Office's Use of Force Report (4 pages)
38	Toxicology Report (2 pages)
39	Transcribed Initial Interview of Deputy Lopez (6 pages)
40	Transcribed Initial Interview of Deputy Lopez (part 2) (1 page)
41	Transcribed Initial Interview of Deputy Newman (5 pages)
42	Transcribed Walk through interview of Deputy Lopez (8 pages)
43	Transcribed Walk through interview of Deputy Newman (2 pages)
44	Witness Statement (audio file) of Shirley Fowler (1 CD)
45	Witness Statement (audio file) of Lisa McGuire
46	Witness Statement (audio file) of Christy Nuccio (1 CD)
47	Witness Statement (audio file) of Sandra Park-Picano (1 CD)
48	Witness Statement (audio interview transcribed) of Lizbeth Enriquez-Ruiz, including Google photo of property from where she was at, at the time the subject incident occurred (8 pages)
49	Witness Statement (audio interview transcribed) of Lisa McGuire (8 pages)
50	Witness Statement (audio interview transcribed) of Stephanie Mills (8 pages)
51	Witness Statement (written) of Shirley Ann Fowler (1 page)
52	Witness Statement (written) of Donna L. Hellums (1 page)
53	Witness Statement (written) of Lisa McGuire, including Google photo of property from where she was at, at the time the subject incident occurred (3 pages)
54	Witness Statement (written) David M. Morales (1 page)
55	Witness Statement (written) Christy Nuccio (1 page)
56	Witness Statement (written) Sandra P. Picano (1 page)
57	Witness Statement (written) Juanita Wright (1 page)
58	Written statement of Shirley Ann Fowler (1 page)
59	All exhibits produced by the Plaintiff in her initial disclosures pursuant to Federal Rules of Civil Procedure, Rule 26(a)(1).

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a copy of the foregoing was furnished via email to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this 20th day of May, 2016.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
Attorneys for Defendants
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Fort Lauderdale, FL 33304
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melissa@purdylaw.com

BY s/Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

EXHIBIT

B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

DEFENDANTS' EXPERT DISCLOSURES

The Defendants, KEN MASCARA, in his official capacity as SHERIFF OF ST. LUCIE COUNTY, and CHRISTOPHER NEWMAN, in his individual capacity, by and through their undersigned counsel, in accordance with Federal Rule of Civil Procedure 26(a)(2) and pursuant to the Court's Second Amended Scheduling Order dated October 31, 2016 [DE 39] as extended by agreement of the parties hereby files their Expert Disclosures as follows:

RETAINED EXPERTS

1. Christopher Lawrence
Elgin Security Consultant, Inc.
22033 Elmwood Square
St. Thomas, Ontario, N5R 6A1

In compliance with Federal Rule of Civil Procedure 26 attached hereto as Exhibit A is the expert report of Chris Lawrence, his CV, recent deposition and trial testimony list, and fee schedule for work as an expert witness. It is expected that he will testify in this case and give opinions consistent with his report.

NON-RETAINED EXPERTS

1. Dr. Linda O'Neil, ME
Office of the Medical Examiner, District 19

Dr. O'Neil will provide testimony regarding the autopsy of Gregory Hill and the autopsy findings, cause of death, and manner of death of Gregory Hill. It is expected that she will testify in the case and give opinions consistent with her reports.

2. Susan Adams
Wuesthoff Reference Laboratory
6800 Spyglass Court
Melbourne, Florida 32940

Ms. Adams is expected to testify regarding the tests conducted on the specimens submitted to the Wuesthoff Reference Laboratory in this case, the results of same as well as the chain of custody of that evidence.

3. Sgt. Kyle King
c/o Indian River County Sheriff's Office
4055 41st Avenue
Vero Beach, FL 32960

Sgt. King is expected to testify regarding his knowledge regarding reconstruction of the subject incident.

4. Daniel C. Nippes
Laboratory Director
Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

Mr. Nippes is expected to testify regarding the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

5. Analyst who reviewed and analyzed the evidence submitted in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

This individual is expected to testify regarding his review of the evidence as referenced in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

6. Robert Parsons, Jr.
Blood Alcohol Analyst
Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

Mr. Parsons is expected to testify regarding his review of the evidence as referenced in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol as well as chain of custody of this evidence.

RESERVATION OF RIGHTS

The Defendants reserve the right to call additional witnesses to rebut or respond to any testimony presented by the Plaintiff's witnesses or experts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I furnished a copy via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this 27th day of December, 2016.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.
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melissa@purdylaw.com

BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFF'S OBJECTION
TO DEFENDANTS' INTRODUCTION OF EXHIBIT NUMBER 30 [DE188]**

COMES NOW, Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, JR., by and through her undersigned counsel, and hereby respectfully submits this Supplemental Memorandum in Support of Plaintiff's Objection to Defendants exhibit number thirty as listed to Defendants' Third Amended Exhibit and Witness List [DE177].

Specifically, Defendants' seek to introduce exhibit number thirty which contains a Microsoft PowerPoint presentation prepared by Sergeant Kyle King of the Indian River County Sheriff's Office. This PowerPoint presentation contains a series of reconstructed animated illustrations which depicts a contested version of the subject incident. Plaintiff objects to the introduction of the text contained within the PowerPoint because it contains hearsay statements. In addition, Plaintiff objects to the introduction of this exhibit as it is akin to an expert report.

PLAINTIFF OBJECTS TO THE TEXT CONTAINED WITHIN THE POWERPOINT

Specifically, Plaintiff objects to the text contained within Defendant's exhibit thirty. The twenty-three slide PowerPoint presentation contains various hearsay statements. In addition, the sources of the statements are omitted from the presentation. Furthermore, many of the statements contained within the presentation are conclusory.¹

In addition to the text, the PowerPoint contains a series of animated depictions of the subject incident. The animations, predicated upon non-authenticated statements, were developed by Sgt. King. Plaintiff is agreeable to withdraw her objection to the animations contained within the PowerPoint. However, Plaintiff maintains her objection to the unsourced text throughout the exhibit.

PLAINTIFF AGREES THAT SGT. KING BE PERMITTED TO USE THE ANIMATIONS WITH EXHIBIT THIRTY AS A DEMONSTRATIVE AID

Plaintiff maintains her objections to the text contained within the PowerPoint presentation. However, assuming Defendants lay the proper foundation, Plaintiff is agreeable that Sgt. King be permitted to use the animated slides as a demonstrative aid. Plaintiff maintains

¹ "Newman hears music becoming louder as garage door opens."
"Hill standing on west side of open door with gun in hand looking toward Lopez."
"Gun in Hills right hand moves upward pointing toward Lopez."
"Hills Kel-Tec 9mm"
"Garage Door of residence closed"
"Loud vulgar music coming from garage interior"
"Deputies Newman and Lopez attempt to make contact with occupants."
"Garage door closed"
"Deputy Newman bangs on garage door in an attempt to contact occupant."
"Newman knocking on front door and Lopez standing at northwest corner of garage."
"Lopez yells, "Sheriff's Office". Lopez sees Hill with a gun and Lopez yells, "gun".
"Newman turns towards Hill and sees Hill with gun."
"Newman yelled for Hill to drop the gun."
"Newman fears Lopez will be shot."
"Newman fires four times towards Hill as garage door is closing."
"2nd shot entering & exiting door striking Hill in the groin"
"3rd and 4th projectiles entered garage door and exited into the interior striking Hill in the abdomen and head"

her objection to the introduction of this PowerPoint into evidence, as it is akin to an expert report.

DEFENDANTS' REPLY

Pursuant to this honorable courts request, Plaintiff and Defendants' have conferred about the objected evidence. Defendants' informed Plaintiff that they were "close" to agreeing with Plaintiff. However, Defendants' were unwilling to withdraw the text at the time of conferral.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and a copy hereof has been furnished to Summer M. Barranco, Esquire, Purdy, Jolly, Giuffreda & Barranco, P.A., 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL 33304, by email to summer@purdylaw.com, and melissa@purdylaw.com, this **18th** day of May, 2018.

Law Office of John M. Phillips, LLC

/s/ Kirby Johnson

JOHN M. PHILLIPS, ESQUIRE

Florida Bar Number: 0477575

NATASHIA D. HINES, ESQUIRE

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. **2:16cv14072-ROSENBERG/LYNCH**

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

**DEFENDANTS' RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF PLAINTIFF'S OBJECTION TO DEFENDANTS' INTRODUCTION
OF EXHIBIT NUMBER 30 [DE 211]**

The Defendants, SHERIFF MASCARA in his official capacity as Sheriff of St. Lucie County, and CHRISTOPHER NEWMAN, in his individual capacity, pursuant to this Court's paperless Order requiring a response to Plaintiff's Supplement to docket entry 188 regarding Defendants' Exhibit 30 [DE 208], file this their Response to Plaintiff's Supplemental Memorandum In Support of Plaintiff's Objection to Defendants' Introduction of Exhibit Number 30 [DE 211], and would state as follows:

The Defendants agree that they will not utilize any text portion of their Exhibit 30. Moreover, to the extent they utilize any on the animations or photographs contained therein, they will do so for demonstrative purposes only (unless any of the photographs are otherwise already in evidence as another exhibit). As a result, it appears that the Plaintiff's concerns in regard to this exhibit are now moot.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, this 20th day of May, 2018.

PURDY, JOLLY, GIUFFREDA & BARRANCO, P.A.

Attorneys for Defendants

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BY s/ Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 2:16-cv-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL, JR.,

Plaintiff,

v.

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County and
CHRISTOPHER NEWMAN,

Defendants.

PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff, VIOLA BRYANT, as Personal Representative of the Estate of GREGORY VAUGHN HILL, JR., by and through her undersigned counsel, moves this Honorable Court for a new trial. In support thereof, Plaintiff states the following:

This cause came on for trial for six days commencing on May 17, 2018 and ending on May 24, 2018. Just before 5:00pm on May 24, 2018, the jury returned a perplexing or punitive verdict. [DE 223] The returned verdict was vastly inconsistent with the evidence presented at trial. Moreover, the verdict was influenced by improper evidence, incomplete evidence, juror confusion regarding essential instructions and key terms, material changes in testimony and expert opinions, and/or improper argument by the Defense. Singularly and as a whole the aforementioned issues were highly prejudicial to the Plaintiff and contributed to a verdict against the manifest weight of the evidence.

Pursuant to Fed. R. Civ. P. 59, "[t]he court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: After a jury trial for any reason or which a

new trial has heretofore been granted in an action at law in federal court...” Fed. R. Civ. P. 59(a). A judge should grant a new trial when, “the verdict is against the clear weight of the evidence or will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict.” *Lipphardt v. Durango Steakhouse of Brandon*, 267 F.3d 1183, 1186 (11th Cir. 2001).

A motion for new trial is committed to the sound discretion of the trial court, and a more lenient standard is applied than with a motion for judgment as a matter of law. *Kubiak v. S.W. Cowboy, Inc.*, No. 3:12-CV-1306-J-34JRK, 2016 WL 5933388, at *2 (M.D. Fla. Oct. 12, 2016). When considering a motion for new trial, the court is to view not only that evidence favoring the jury verdict but evidence in favor of the moving party as well. *Williams v. City of Valdosta*, 689 F.2d 964, 973 (11th Cir. 1982). The court is permitted to reweigh the evidence in determining whether to grant a new trial. *Id.* at 973

Though courts generally sustain jury verdicts if reasonable bases exist to uphold them, they will not do so when the trial was unfair and substantial errors occurred in the admission or rejection of evidence and in the giving or refusal to give jury instructions. [I]f one cannot say, with fair assurance ...that the judgment was not substantially swayed by the error, it is impossible to conclude that substantial rights were not affected. Among the factors to consider in determining whether [Plaintiffs’] substantial rights were affected are the number of errors, the closeness of the factual disputes, the prejudicial effect of the evidence, the instructions given, and whether counsel intentionally elicited the evidence and focused on it during the trial. *Aetna Casualty & Surety Co. v. Gosdin*, 803 F.2d 1153, 1160 (11th Cir. 1986).

In this case, the unorthodox verdict, the submission of incomplete evidence for the jury’s consideration, juror confusion regarding jury instructions and key terms on the verdict form,

improper Defense presentation of evidence and improper testimony from Defense witnesses were highly prejudicial to Plaintiff. It cannot be said with fair assurance that the verdict was not substantially swayed by the singular or cumulative effect of these errors and evidentiary issues. *Ad-Vantage Telephone Directory Consultants, Inc. v. GTE Directories Corp.*, 37 F.3d 1460, 1465 (11th Cir. 1994) (internal citations omitted). Further, the greater weight of the evidence did not suggest that Gregory Vaughn Hill, Jr., was 99% negligent in the incident that resulted in his death and that his intoxication contributed more than 50% to his negligence, as the jury verdict would suggest.

I. IMPROPER AND INCONSISTENT TESTIMONY FROM DEFENSE EXPERT CHRISTOPHER LAWRENCE

Fed. R. Civ. P. 59(a)(1)(A) allows the court to grant a new trial “for any of the reasons for which new trials have heretofore been granted.” Fed. R. Civ. P. 60 allows the court to grant a partial new trial “upon such terms as are just,” on the grounds of “**misrepresentation, or other misconduct** of an adverse party,” among other grounds. (*Emphasis added*). The standards for granting new trials are essentially the same under both rules.

A new trial is properly granted where a party can prove by clear and convincing evidence that verdict was obtained through fraud, **misrepresentation, or other misconduct**, and that conduct complained of prevented the losing party from fully and fairly presenting his case or defense. Fed. R. Civ. P. 59 and 60. The rule applies to misconduct in withholding information called for by discovery and it does not require that the information withheld be of such a nature as to alter the result in the case. The rule is addressed to judgments that are unfairly obtained and not at those which are factually incorrect. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978).

Expert testimony falls squarely within the purview of Rule 59 and Rule 60; and is particularly important in assisting the trier of fact in cases involving allegations of constitutional violations arising under 42 U.S.C. §1983. Federal Rule of Evidence 702 states, “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Of course, each party is permitted to retain an expert to offer such testimony. The party retaining the expert may not, however, control the expert witness. Fed. R. Evid. 702. Expert witnesses, as all other witnesses, are bound to testify truthfully. **An expert witness should never become one party's expert advocate.** An expert witness should be an advocate of the truth with testimony to help the court and the jury reach the ultimate truth in a case, which should be the basis of any verdict. *Selvidge v. U.S.*, 160 F.R.D. 153 D. Kansas January 19, 1995 (“The court finds that there is no right on behalf of an expert witness to answer only those questions propounded to him which he believes he has been retained to answer.”). *Van Blargan v. Williams Hospitality Corporation*, 754 F.Supp. 246, 248 (D.P.R.1991).

Defendants’ retained expert witness, Christopher Lawrence’s contumacious testimony created severe prejudice on the proceedings. Defense counsel questioned Defendant’s expert witness on the stand for over an hour. Defense counsel was never asked to speak up, move or alter his voice or diction in any way. Prior to Mr. Lawrence’s testimony, Plaintiff’s counsel, a board certified civil trial attorney, was never asked throughout trial to “raise his voice” or otherwise repeat any questions based on volume or diction.

From the instant Plaintiff’s counsel, John Phillips, began cross examination, Defendant’s expert, Mr. Chris Lawrence displayed bias and attempted to advocate, or obfuscate, to the benefit

of the Defendant. Mr. Lawrence sought sympathy for a self-proclaimed hearing impairment, which had never before been a problem at any stage in the proceedings. (Trial Tr. Vol. 51: 4-18).

He constantly claimed he could not hear Plaintiff's counsel, made him move all around, raise and lower his voice and otherwise garnered sympathy from the jury while heaping prejudice upon Plaintiff.

Mr. Lawrence's misconduct and bias worsened. On question number five, Plaintiff's counsel simply asked Mr. Lawrence for an accounting of costs of his services. He refused to answer this question as his pre-trial deposition. Mr. Lawrence bellowed out his father had recently passed away a "couple weeks" prior and this and other questions would be difficult to answer. *Id.* at 15:3-18. It was severely unfair and improper. Making matters worse, Mr. Lawrence testified that his "father died a couple of weeks ago and things have been kind of upside down." It was also a lie. Mr. Lawrence's father died on April 10, 2018, at age 84 (Attached hereto as **Exhibit "A" & "B"**). While our condolences remain, this is egregious misconduct. It was one month over a "couple weeks" and could not be impeached or rehabilitated.

As the selective hearing and excuses mounted (his 3 AM flight, exhaustion, prior travel to the jurisdiction to testify, but not being called), Mr. Lawrence repeatedly refused to answer questions. *Id.* at 54:1-10. He then began to vomit non-responsive answers, including testifying that a car may have struck a piece of evidence, damaging it. *Id.* at 63:3-12. There was zero evidence of this fact, which was repeated twice and completely non-responsive. *Id.* at 64-1-11. Plaintiff sought the courts intervention at that point.

At least one member of the jury was in Mr. Lawrence's peer group and appeared visibly displeased with Mr. Phillips to the point he specifically said he was going to skip forward.

Invoking “a death in the family” as a shield to further questioning is one of those matters so inflammatory and offensive that courts need to regulate such misconduct. Furthermore, Mr. Lawrence’s non-responsive commentary, repeated sudden and selective hearing loss, exhaustion, and blaming of Plaintiff after a completely problem free direct examination was not only a violation of Fed. R. Evid. 702, but created such irreversible prejudice that it warrants a new trial and sanctions.

II. ERRONEOUS EVIDENTIARY RULINGS

The party seeking a new trial based on an erroneous evidentiary ruling has the burden of proving that the error prejudiced a substantial right of that party. *Munn v. Algee*, 924 F.2d 568, 571 (5th Cir.1991).

a. Undisclosed firearm and shorts used as demonstrative aid

One of the central issues of this trial was whether or not Mr. Hill raised a handgun in the direction of Deputy Lopez. Less than forty-eight hours prior to trial, Defendants disclosed to Plaintiff for the first time that they were in possession of, and intended to use as evidence, the gun allegedly raised by Mr. Hill.

Over Plaintiff’s written and spoken objections, Defendants were granted permission to display the Kel-Tec handgun to the jury. In addition, Defendants witness Sergeant Lebeau was permitted to testify about the handgun and perform an impromptu demonstration of placing the handgun into the back-right pocket of Mr. Hill’s jean shorts. Significantly, Sergeant Lebeau was not disclosed as an expert witness and was testifying as a lay witness.

Allowing a lay witness to perform an in-court recreation of an event that they themselves did not witness is erroneous. To do so by surprise is worse. This lay witness’s recreation not only constituted unfair surprise, but created a significant substantive disadvantage because

Plaintiff's actual expert witnesses were not provided opportunity to perform similar testing or recreations.

Defendants disclosed to Plaintiff that they possessed the subject firearm in an email transmitted less than forty-eight hours before opening statements. Defendants are prohibited from engaging in such deceptive practices. Pursuant to Federal Rule of Civil Procedure 26(a)(ii), Defendants' initial disclosure must include "a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment" (emphasis added) Fed. R. Civ. Pro. 26(a)(1)(A)(ii).

Over the course of this litigation, Defendants filed six separate Rule 26(a) disclosures. The Kel-Tec gun the Defendants presented to the jury was not disclosed in any of them. Defendants were in possession, custody, or control of the Kel-Tec gun from the day Mr. Hill died through trial even though the criminal investigation was concluded years before.

Fed. R. Civ. Pro. 37(c)(1) states the sanctions for Defendants failure to timely disclose their possession of the Kel-Tec. It states in pertinent part:

If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. Fed. R. Civ. Pro. 37(c)(1)

As discussed above, Defendants failed to disclose their possession of the handgun pursuant to Rule 26(a). Therefore, pursuant to Fed. R. Civ. Pro. 37(c)(1), Defendants should have been prohibited from introducing this evidence at trial, unless their failure to disclose was substantially justified or harmless. As discussed below, Defendants actions were neither.

"In determining whether a failure to disclose evidence is substantially justified or harmless, courts are guided by the following factors: the unfair prejudice or surprise of the

opposing party; the opposing party's ability to cure the surprise; the likelihood and extent of disruption to the trial; the importance of the evidence; and the offering party's explanation for its failure to timely disclose the evidence.” (emphasis added) *Mobile Shelter Sys. USA, Inc. v. Grate Pallet Sols., LLC*, 845 F. Supp. 2d 1241, 1250–51 (M.D. Fla. 2012).

Plaintiffs are not required to guess or assume in federal court. “Mandatory” means “mandatory.” Sergeant Lebeau’s in-court demonstration with the Kel-Tec came as a surprise to Plaintiff. Plaintiff had no ability to cure this late surprise disclosure because she was never afforded the opportunity to review the evidence nor have her expert witnesses, whom had already formulated their opinions based upon the properly disclosed evidence, examine the gun. Defendants’ failure to disclose their possession of the handgun is not remotely justified, let alone substantially justified.

In addition, Defendants’ failure to disclose is far from harmless. “A harmless error is one where one party made an honest mistake and the other had sufficient knowledge of it.” *Two Men & a Truck Int’l, Inc. v. Residential & Commercial Transp. Co., LLC*, No. 4:08-CV67-WS/WCS, 2008 WL 5235115, at *2 (N.D. Fla. Oct. 20, 2008).

As stated above, Defendants’ failed to disclose the handgun in all six of their Rule 26(a) disclosures. It was also not disclosed on a single exhibit list despite Defendants’ sandbagging Plaintiff with over 500 separate items on said exhibit lists. Defendants’ failure to disclose the handgun was not the result of several separate honest mistakes. In addition, as stated above, Plaintiff had absolutely no knowledge that Defendants’ possessed or controlled said gun. Let alone, *sufficient knowledge* that Defendants’ were in possession, custody, or control of the gun.

The cumulative effect of repeatedly failing to disclose the handgun in all six of their Rule 26(a) disclosures, their exhibit disclosures, and then compounding this non-disclosure by

surprising the Plaintiff on the eve of trial, allowing a lay-witness to perform a reconstruction demonstration of an event the lay-witness never actually saw, and denying the Plaintiff the opportunity to have her expert witness perform testing on the handgun, amounts to a substantial injustice and warrants a new trial.

b. Evidence of Mr. Hill's probationary status

The United States Supreme Court has set forth the standard by which a jury is to judge Defendant Newman's actions at the time he fired the fatal shot. The question the jury was asked to answer is whether or not Defendant Newman acted objectively reasonable in light of the facts and circumstances confronting him. *Graham v. Connor*, 490 U.S. 386 (1989). Defendant Newman was responding to a noise complaint and was clearly and admittedly unaware of Mr. Hill's probationary status at the time he fired the fatal shot. As such, Mr. Hill's probation status was not a known fact or circumstance confronting Defendant Newman.

As such, Plaintiff moved to exclude evidence of Mr. Hill's probationary status prior to and during trial. Immediately prior to jury selection, this honorable court held a brief hearing on the matter. Plaintiff argued that evidence of Mr. Hill's probationary status at the time of shooting is irrelevant, unfairly prejudicial, and constituted inadmissible character evidence. As discussed below, Plaintiff relied upon the Seventh Circuit opinion in *Sherrod v. Berry*, 856 F.2d 802 (7th Cir. 1988) in support of her motion.

Defendants argued that evidence of Mr. Hill's probationary status was admissible because it was relevant to Mr. Hill's speculative motive and/or intent. In support of their argument, Defendants relied on the Seventh Circuit's later decision in *Escobedo v. Martin*, 728 F.3d 388 (7th Cir. 2012). Minutes before the hearing, Defense counsel provided a copy of the nineteen page *Escobedo* opinion to Plaintiff. Plaintiff was not given an opportunity to read the

Escobedo opinion prior to oral arguments and Defendants did not bring forth the negative aspects of *Escobedo* to their case.

Defendants' grossly misstated the holding of *Escobedo* and argued that evidence of Mr. Hill's probationary status is admissible under *Escobedo* because it was potentially relevant to Mr. Hill's motive and/or intent. As discussed below, this honorable court's reliance on Defendants' argument and *Escobedo* was misled and misplaced under the facts of this case.

As stated previously, Plaintiff relied on *Sherrod* in support of their motion to exclude evidence of Mr. Hill's probationary status because it was admittedly unknown by Defendant Newman at the time of the shooting. *Sherrod*, a 42 U.S.C §1983 excessive force civil rights case, states the general rule concerning the admissibility of evidence outside of the shooting officer's knowledge at the time he fires. *Sherrod* held in pertinent part:

"Knowledge of facts and circumstances gained after the fact... has no place in the trial court's or jury's proper post-hoc analysis of the reasonableness of the actor's judgment. Were the rule otherwise... the jury would possess more information that the officer possessed when he made the crucial decision. Thus, we are convinced that **the objective reasonableness standard...requires that Officer Berry's liability be determined exclusively upon an examination and weighing of the information Officer Berry possessed immediately prior to and at the very moment he fired the fatal shot.** The reception of evidence or any information beyond that which Officer Berry had and reasonably believed at the time he fired his revolver is improper, irrelevant and prejudicial to the determination of whether Officer Berry acted reasonably "under the circumstances." *Sherrod* at 804.

However, the *Sherrod* opinion also enumerated two exceptions to the general rule.

"Our holding today should not be interpreted as establishing a black-letter rule precluding the admission of evidence which would establish whether the individual alleging a § 1983 violation was unarmed at the time of the incident. Clearly, the **credibility of the witness** "can always be attacked by showing that his capacity to observe, remember or narrate is impaired." 3 Weinstein's Evidence ¶ 607[04] p. 607-55. Further, "**impeachment by contradiction** is a technique well recognized in the federal courts by which specific errors in the witness's testimony are brought to the attention of the trier of fact." (emphasis added) *Id.* at 806

In *Escobedo*, the Seventh Circuit applied the Sherrod rule and exceptions when tasked with determining if the trial court committed reversible error in admitting evidence of the decedent Plaintiff's then-upcoming court date and potential five-year prison sentence for his recent substance abuse violations. The defendant officer was admittedly unaware of the decedents' pending trial date at the time of the shooting. The court properly admitted the evidence, even though it was unknown by the officer at the time of the shooting, because Plaintiff's estate "opened the door" and the evidence was used to impeach and attack the credibility of a testifying witness.

On appeal, the Seventh Circuit held that because one of Plaintiff's witnesses opened the door "to [the decedents] demeanor and state of mind, the defense has an opportunity to now examine it on cross to determine **whether or not this witness was aware** that [the decedent] had these other events and situations in his life at the same approximate time." *Escobedo*, at 400. Significantly, it was only after the Plaintiff opened the door to Plaintiff's state of mind that the contested evidence fell within one of the exceptions to the *Sherrod* rule and was admitted.

The court went on to explain,

"[W]hen a party opens the door to evidence that would be **otherwise inadmissible**, that party cannot complain on appeal about the admission of that evidence." *Griffin v. Foley*, 542 F.3d 209, 219 (7th Cir. 2008) (quotations omitted). And when a party puts evidence at issue that party must "accept the consequence[s]" of opening the door to that evidence. *S.E.C. v. Koenig*, 557 F.3d 736, 740-41 (7th Cir. 2009). The Estate opened the door to evidence concerning Escobedo's state of mind when it questioned [the sister] about it." *Id.*

Clearly, evidence unknown to the shooting officer was admitted in *Escobedo* because it fell within one of the two enumerated exceptions to the *Sherrod* rule. The evidence was used to impeach and challenge the credibility of Escobedo's sister who testified and opened the door

regarding “her brother’s demeanor and state of mind.” The *Escobedo* court did not admit evidence of decedent Plaintiff’s then upcoming court date and potential five-year prison sentence because it was potentially relevant to motive or intent.

Here, Defendants’ reliance on *Escobedo* is wholly inapplicable because Plaintiff never opened the door to evidence of Mr. Hill’s state of mind. At the time evidence of Mr. Hill’s probation was deemed admissible, no witness had even taken the stand. As such, neither of the two exceptions enumerated in *Sherrod* and *Escobedo* apply.

Defendants have cited to no authority which allows Defendants to introduce evidence of Mr. Hill’s probationary status at the time he was shot because of some possible or speculative relevance to motive or intent. Evidence of Mr. Hill’s probationary status was clearly admitted in error, over objection, and convicted Mr. Hill’s character.

Not every evidentiary error, of course, requires reversal. The eleventh circuit has held that a new trial is warranted where the error has caused substantial prejudice to the affected party (or, stated somewhat differently, affected the party’s “substantial rights” or resulted in “substantial injustice”). See, e.g. *Hall v. United Ins. Co. of America*, 367 F.3d 1255, 1258–59 (11th Cir.2004) (“substantial prejudice”). Notwithstanding the difference in terminology, the inquiry is always directed to the same central question—how much of an effect did the improperly admitted or excluded evidence have on the verdict? *Peat Inc. v. Vanguard Research, Inc.*, 378 F.3d 1154-62 (11th Cir. 2004).

To answer this question, the court weighs a number of factors, including the closeness of the factual disputes, the prejudicial effect of the evidence, whether counsel intentionally elicited the evidence, whether counsel focused on the evidence during the trial, and whether any cautionary or limiting instructions were given. *Id.*

Evidence that Mr. Hill was on probation at the time of his death is extremely prejudicial because it informs the jury that Mr. Hill was a past criminal. Significantly, in thirty years of life, Mr. Hill was never convicted of a felony. Mr. Hill was on probation for a crime where he pled no contest and adjudication of guilt was withheld. Nevertheless, by introducing evidence that Mr. Hill was on probation, Defendants were permitted to prejudicially inform the jury that Mr. Hill was a past criminal. Making matters worse, in their case in chief, Defendants' could not actually prove Mr. Hill was on probation as there was evidence of a prior automatic termination.

In addition to informing the jury that Mr. Hill was a past criminal, Defendants submitted evidence that at the time of the shooting Mr. Hill was actively committing a crime. Defense witness Niles Graben testified that as a condition of Mr. Hill's probation, he was prohibited from consuming alcohol and possessing a firearm. (Trial Tr. Vol. 3, 129:4-11). Over Plaintiff's objection, Defendants' introduced evidence that Mr. Hill's blood alcohol level was over three times the legal limit to drive. Also, numerous defense witnesses testified that a gun was recovered in Mr. Hill's back pocket. By allowing evidence of Mr. Hill's probation restrictions in effect at the time of the incident (no alcohol and no firearm), the jury was plainly aware that, according to law enforcement officials, Mr. Hill was actively committing the crime of violating the terms of his probation at the time of the shooting.

Defendant Newman was investigating a loud noise complaint, not a probation violation. Mr. Hill was shot and killed before he was arrested, charged or convicted of violating the terms of his probation. Nevertheless, the jury was allowed to hear testimony from law enforcement officers that Mr. Hill was actively committing the completely unrelated crime of violating his probation at the time of the shooting. This amounts to nothing short of a substantial injustice.

In addition, Mr. Graben's testimony made Mr. Hill's probationary status a central issue of the trial. The prejudicial impact of admitting such evidence is that it confuses the jury as to the issues of the present 42 U.S.C. § 1983 and the Negligence case. The issue of the trial is whether or not Defendant Newman violated Mr. Hill's constitution rights and/or was negligent, not whether Mr. Hill violated the terms of his probation. Courts have prohibited evidence of probation restrictions for this very purpose. *See U.S. v. Becker*, 490 F. Supp.2d 1029 (N.D. Iowa 2007). ("Ultimately, the court concludes that evidence of [litigants] probation status should be excluded, because the serious potential prejudice arising from the possibility that the jurors might convict [litigant] of the charged offenses for the unrelated reason that he violated the terms of his probation, rather than on the basis of evidence of charged wrongdoing, exceeds the relatively limited probative value of such evidence, if any.")

The jury verdict itself is evidence that the precise pitfall cautioned in *Becker* happened here. The jury ultimately determined that Mr. Hill's constitutional rights were not violated and that he himself was 99% comparatively negligent. While Mr. Hill may have been 99% responsible for violating the terms of his probation (if he was even on probation), the clear weight of the evidence demonstrates that he was not 99% responsible for being shot three times through a closed garage door.

In an effort to reduce the prejudicial impact of this probation evidence, the court offered a limiting instruction which stated: "Ladies and gentlemen, as you have heard, Mr. Hill was on probation. This evidence is only admissible to the extent that you think it is relevant to Mr. Hill's actions on the date of the incident. It is not to be considered for any other purpose. What Mr. Hill was on probation for is irrelevant and should not be considered by you."

The courts limiting instruction did nothing to quell the prejudicial impact of informing the jury that Mr. Hill was a criminal. It also did not delineate the relative inadmissibility probation had in the federal versus state law claim. The jury was informed that Mr. Hill was a criminal, but they were not aware as to what crime he committed. In addition, the jury was allowed to consider Mr. Hill's probationary status as it related to "Mr. Hill's actions on the date of the incident." Based on the admissibility of the probation restrictions in effect, the jury was allowed to consider that Mr. Hill's actions of drinking and possessing a handgun equates to actively committing the unrelated crime of violating the terms of his probation. The introduction of probation evidence substantially deprived Mr. Hill of a fair trial and turned a 42 U.S.C. § 1983 and negligence trial, into a probation violation trial. It improperly devalued Mr. Hill's life which lead to a jury holding that Mr. Hill's children's pain and suffering from losing that life was merely \$1.00 per child.

III. MATERIAL CHANGES IN TESTIMONY

As previously stated, the Federal Rules of Civil Procedure pertaining to a parties' request for a new trial, applies to misconduct in withholding information called for by discovery and it does not require that the information withheld be of such a nature as to alter the result in the case. The rule is addressed to judgments that are unfairly obtained and not at those which are factually incorrect. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978).

A new trial may be granted on grounds that a witness willfully testified falsely to material facts, especially where perjured testimony was induced by the opposite party or the false testimony was that of the opposite party. *Traylor v. Pickering*, 324 F.2d 655 (5th Cir. 1963).

a. Sgt. Kyle King and Defendant Christopher Newman

Defendants called Sergeant Kyle King of the Indian River Sheriff's office to testify as a non-retained expert witness. According to Defendants expert witness disclosure, Sgt. King's

testimony was limited to “his knowledge regarding reconstruction of the subject incident.” (*See* Defendants’ Expert Witness Disclosure attached hereto as **Exhibit “C”**). At trial, Sgt. King testified that he reconstructed the incident in the form of a Powerpoint presentation.

The Powerpoint consisted of several animated images depicting the garage door open and the gun parallel to the ground. (Attached hereto as **Exhibit “D”**). When asked how he determined the gun was pointed at Deputy Lopez, Sgt. King testified that he relied on Defendant Newman’s statements made to other SLCSO officers wherein he said, the gun was “about waist level when I fired.”

At his deposition, Defendant Newman testified that Mr. Hill, “did, like, a simultaneous bringing the gun up as he was bringing the garage door down.” (P. 46, line 22-47). Further, Defendant Newman testified that he “lost sight of the gun as it was coming up around his hip area, I believe, is where I last saw it, and, yeah.” (P. 47, L. 6-20). Defendant Newman also testified “the muzzle would have been aiming towards Deputy Lopez’ thigh area.” [DE No. 80-17 69:19-20] (Also *See Exhibits “E” and “F”* attached hereto). At all times prior to trial, Mr. Hill’s gun was aimed at or in the direction of Deputy Lopez when Defendant Newman last saw it. Just not, “center mass”, said Newman. *Id.*

Throughout the course of trial, Defendant Newman was present for all witness testimony, including that of Plaintiff expert Dr. William Anderson. Dr. Anderson testified that it is highly unlikely that Mr. Hill raised a gun “anywhere near” Deputy Lopez based upon the positioning of the hand relative to Mr. Hill’s abdomen wound. (Trial Tr. vol. 3, 36:19-24, May 26, 2018.) Dr. Anderson testified that if the gun was raised in the direction of Deputy Lopez, the bullet would have had to gone through Mr. Hill’s arm, which clearly did not happen. Roy Bedard, Plaintiff’s

police expert also testified about the “paradox” caused by the location Newman claimed the gun was in, as it couldn’t get back in Hill’s pocket if it was in the location.

After hearing this testimony, Defendant Newman materially changed his testimony. In fact, Defendant Newman was asked to perform a demonstration in the courtroom wherein he raised his arm, ever so slightly, in an upward direction. Defendant Newman’s trial testimony, given after all of Plaintiff’s expert witnesses had testified, in no way indicated that the Mr. Hill ever pointed the gun up, or at Deputy Lopez’ thigh area. It was pointed at the ground to now compensate for Mr. Bedard and Mr. Anderson’s testimony.

After trial, Defendants even admitted that Sgt. Kyle King’s powerpoint “wasn’t an accurate depiction or what happened here.” (Trial Tr. Vol. 6, 7:7-11) Nevertheless, Defendants still called Sgt. King to testify as an expert witness at trial even though his testimony was limited to the admittedly inaccurate reconstruction of the subject incident and fought by pre-trial motion to have this introduced. [DE 195] The entirety of Sgt. King’s testimony was predicated on materially false facts. Admitting that a non-retained expert witness testified about facts that were known to be false warrants a new trial.

IV. JUROR ISSUES

The inconsistent and legally improper verdict indicates juror confusion over the jury instructions and verdict form. In particular, there appeared to be confusion over the jury instructions’ explanation of awardable damages and how those damages are apportioned on the verdict form. A new trial is required only if the trial judge’s instructions taken as a whole give a **misleading impression or inadequate understanding** of the law and the issues to be resolved. *Bass v. International Brotherhood of Boilermakers*, 630 F.2d 1058, 1062 (5th Cir.1980).

Prior to deliberations, this honorable court read the jury instructions to the members of the jury. Significantly, this honorable court did not read the title to each instruction (Trial Tr. Vol. 5, 82:5). The practical impact of failing to read the title of each jury instruction clearly confused the jury- or they otherwise sought to be punitive. In either scenario, a new trial is warranted.

The written jury instruction at issue, titled **Civil Rights – 42 U.S.C. § 1983 Claims – Damages**, states as follows, “You may award \$1.00 in nominal damages...” By law, nominal damages only apply to the 42 U.S.C. § 1983 claim. Significantly, the only part of the jury instruction that limits nominal damages to the 42 U.S.C. § 1983 claim, is the title. By failing to read the complete instruction to the jury (including the title), combined with an omission of instructions in the verdict form, the Plaintiff was prejudiced and the jury was confused. This confusion is confirmed by the erroneous jury verdict.

On the negligence claim, the jury awarded \$1.00 in damages to the Estate of Gregory Vaughn Hill, Jr. and each of his surviving minor children (for a total of \$4.00). Thus, the jury purported to make a finding that only nominal damages were appropriate or sought to punish the Plaintiff and awarded an amount unsupported by evidence. The issue here is that nominal damages only pertained to the federal civil rights claim, *not* the negligence claim.

During deliberations the jury asked for help by submitting the following question: “If we find minimal negligence, can the courts over rule monetary amounts presented by the jury.” [DE 225] The Court and the parties struggled to fully understand the jury’s question. The Court sent back a request for clarification, and instead of explaining their question, the jury rendered its verdict. The verdict rendered was improper due to the jury’s confusion over the instructions and verdict form.

The other logical explanation for the jury's inconsistent verdict was that it was intended to be punitive. The jury assessed a sliver of fault on the Defendant, but wanted to ensure the Court would not alter their numbers. A punitive verdict in this context ignores un rebutted evidence presented throughout trial, particularly related to objective, un rebutted funeral expenses. In sum, the jury's rendered verdict either signals a punitive measure or an improper attempt to award nominal damages. Either way, the verdict is legally improper. This confusion or misunderstanding clearly prejudiced the Plaintiff.

V. VERDICT AGAINST CLEAR WEIGHT OF THE EVIDENCE

A jury's verdict is not contrary to the great weight of the evidence simply because the party moving for a new trial believes that his evidence is more persuasive than his opponent's; rather, a new trial should only be granted on evidentiary grounds where the moving party points to an error in admitting or excluding evidence that was so harmful as to sway the jury in its consideration of the matter. *Noel v. Terrace of St. Cloud, LLC.*, 212 F.Supp.3d 1193 (M.D. Fla. April 5, 2016).

The jury disregarded the expert testimony of Roy Bedard, Dr. William Anderson, the DNA lab test results and testimony of Earl Ritzline, and the multitude of eye and ear witness testimony from independent witnesses in finding completely for the Defendant, Christopher Newman on the federal civil rights violation claim (42 U.S.C. §1983), and apportioning fault at 1% for the SLCSO and 99% for the decedent, Gregory Vaughn Hill, Jr., on the state law negligence claim. The jury's disregard of the testimony and evidence presented resulted in a miscarriage of justice.

Roy Bedard, an expert on police practices, testified extensively on proper police protocol when a subject is behind an opaque surface. He also testified specifically about the troubling

paradox created by discrepancies between Defendant Christopher Newman's testimony and the physical evidence presented. (Trial Tr. Vol. 2, 181-182, 16). Dr. William Anderson, a trained Medical Examiner, gave testimony regarding Mr. Hill's gunshot wounds and the order in which they were likely sustained. Dr. Anderson's testimony supported that of Earl Ritzline of the Indian River Crime Lab who testified about the DNA results which revealed that none of Mr. Hill's DNA was conclusively found on the KelTec firearm recovered from his back pocket. Furthermore, several independent eye witnesses located directly across the street from where the shooting occurred testified that they never saw Mr. Hill holding a gun in his hand.

No rational jury could have found that Defendant Christopher Newman's use of deadly force against Mr. Hill was not excessive as set forth in 42 U.S.C. §1983. Likewise, no rational jury could have found Mr. Hill 99% at fault for his own death after being shot by Defendant Deputy Newman through a closed garage door.

VI. THE CUMULATIVE EFFECT OF THE ERRORS AND EVIDENTIARY RULINGS WARRANTS A NEW TRIAL

Erroneous evidentiary rulings by a trial court can be treated as harmless only if the error does not affect the substantial rights of a party. *Dartez v. Fibreboard Corp.*, 765 F.2d 456, 569 (5th Cir. 1985). The errors identified throughout this motion undeniably affected the substantial rights of the Plaintiff (cumulative effect of the errors in evidentiary rulings rendered the verdict unreliable) *Frymire-Brianti v. Marwick*, 2 F.3d 183 (7th Cir. 1993). A new trial should be granted.

WHEREFORE, for the reasons set forth hereinabove, Plaintiff VIOLA BRYANT, as Personal Representative of the Estate of Gregory Vaughn Hill, Jr., respectfully requests this Court grant the instant Motion for New Trial. Plaintiff also moves for such other relief as the Court deems appropriate.

7.1 (a)(3) STATEMENT

Counsel for Plaintiff has conferred with all parties who may be affected by the relief sought in the motion in a good faith effort to resolve the issues raised in the motion and has been unable to do so.

PLAINTIFF REQUESTS A HEARING ON THIS MATTER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and a copy hereof has been furnished to Summer M. Barranco, Esquire, Purdy, Jolly, Giuffreda & Barranco, P.A., 2455 East Sunrise Boulevard, Suite 1216, Fort Lauderdale, FL 33304, by email to summer@purdylaw.com, and melissa@purdylaw.com, this 27th of June, 2018.

Law Office of John M. Phillips, LLC

/s/ John M. Phillips

JOHN M. PHILLIPS, ESQUIRE

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LAWRENCE: William C. "Bill", of St. Thomas, Ontario

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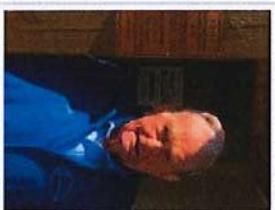
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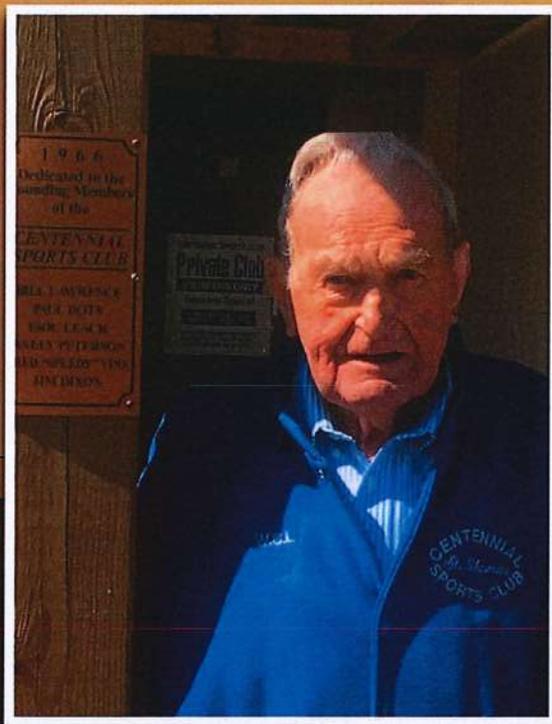
» Kelowna



LAWRENCE, William C. "Bill", of St. Thomas, passed away at the St. Thomas Elgin General Hospital on Tuesday, April 10, 2018, in his 84th year. Beloved husband for over 60 years to Lorraine (née Lacroix) Lawrence. Dearly loved father of Chris Lawrence (Sharon), and John Lawrence, and cherished grandfather of Will Lawrence (Tami Ansems), and Catherine Lawrence (Jeff Laidlaw), all of St. Thomas. He was the proud great grandfather of Cora and Alexis Lawrence. Dear brother of Claribel "Sue" Rowe of St.

Thomas, Myrtle Zylstra of Delta, BC, Gus C. Lawrence of Cambridge, late Jean Parkins, late Shirley Bradley, and the late Helen Mathewson. Also fondly remembered by many in-laws, nieces and nephews. Born in St. Thomas, January 20, 1935, he was the son of the late William H. and Pearl (née Dennis) Lawrence. Bill was a retired CNR trainman. He was the last surviving founding member (1966), a Past President, and a life member of the Centennial Sports Club, St. Thomas. Bill was a charter member of the Elgin County Railway Museum. In his younger years, he was active in baseball and fastball. In keeping with his wishes, cremation has taken place, and there will be no public visitation or funeral service. Private interment of Bill's cremated remains will be made in Union Cemetery. Memorial donations to the Centennial Sports Club (to be used to support local sports), the Elgin County Railway Museum, or the charity of one's choice will be gratefully acknowledged. Arrangements entrusted to the **SIFTON FUNERAL HOME, 118 Wellington St., St. Thomas, ON (519-631-1160).**

Online condolences graciously accepted at www.siftonfuneralhome.com



In Memory of

William C. "Bill" Lawrence
1935 - 2018

Obituary

Obituary of William Lawrence

LAWRENCE, William C. "Bill", of St. Thomas, passed away at the St. Thomas Elgin General Hospital on Tuesday, April 10, 2018, in his 84th year. Beloved husband for over 60 years to Lorraine (née Lacroix) Lawrence. Dearly loved father of Chris Lawrence (Sharon), and John Lawrence, and cherished grandfather of Will Lawrence (Tami Ansems), and Catherine Lawrence (Jeff Laidlaw), all of St. Thomas. He was the proud great grandfather of Cora and Alexis Lawrence. Dear brother of Claribel "Sue" Rowe of St. Thomas, Myrtle Zylstra of Delta, BC, Gus C. Lawrence of Cambridge, late Jean Parkins, late Shirley Bradley, and the late Helen Mathewson. Also fondly remembered by many in-laws, nieces and nephews. Born in St. Thomas, January 20, 1935, he was the son of the late William H. and Pearl (née Dennis) Lawrence. Bill was a retired CNR trainman. He was the last surviving founding member (1966), a Past President, and a life member of the Centennial Sports Club, St. Thomas. Bill was a charter member of the Elgin County Railway Museum. In his younger years, he was active in baseball and fastball. In keeping with his wishes, cremation has taken place, and there will be no public visitation or funeral service. Private interment of Bill's cremated remains will be made in Union Cemetery. Memorial donations to the Centennial Sports Club (to be used to support local sports), the Elgin County Railway Museum, or the charity of one's choice will

Condolences

Service Information

Candles

Symbolic Gestures

PLAINTIFF'S EXHIBIT
"B"
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

Defendants.

DEFENDANTS' EXPERT DISCLOSURES

The Defendants, KEN MASCARA, in his official capacity as SHERIFF OF ST. LUCIE COUNTY, and CHRISTOPHER NEWMAN, in his individual capacity, by and through their undersigned counsel, in accordance with Federal Rule of Civil Procedure 26(a)(2) and pursuant to the Court's Second Amended Scheduling Order dated October 31, 2016 [DE 39] as extended by agreement of the parties hereby files their Expert Disclosures as follows:

RETAINED EXPERTS

1. Christopher Lawrence
Elgin Security Consultant, Inc.
22033 Elmwood Square
St. Thomas, Ontario, N5R 6A1

In compliance with Federal Rule of Civil Procedure 26 attached hereto as Exhibit A is the expert report of Chris Lawrence, his CV, recent deposition and trial testimony list, and fee schedule for work as an expert witness. It is expected that he will testify in this case and give opinions consistent with his report.



NON-RETAINED EXPERTS

1. Dr. Linda O'Neil, ME
Office of the Medical Examiner, District 19

Dr. O'Neil will provide testimony regarding the autopsy of Gregory Hill and the autopsy findings, cause of death, and manner of death of Gregory Hill. It is expected that she will testify in the case and give opinions consistent with her reports.

2. Susan Adams
Wuesthoff Reference Laboratory
6800 Spyglass Court
Melbourne, Florida 32940

Ms. Adams is expected to testify regarding the tests conducted on the specimens submitted to the Wuesthoff Reference Laboratory in this case, the results of same as well as the chain of custody of that evidence.

3. Sgt. Kyle King
c/o Indian River County Sheriff's Office
4055 41st Avenue
Vero Beach, FL 32960

Sgt. King is expected to testify regarding his knowledge regarding reconstruction of the subject incident.

4. Daniel C. Nippes
Laboratory Director
Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

Mr. Nippes is expected to testify regarding the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

5. Analyst who reviewed and analyzed the evidence submitted in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

This individual is expected to testify regarding his review of the evidence as referenced in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol.

6. Robert Parsons, Jr.
Blood Alcohol Analyst
Indian River Crime Laboratory at Indian River State College
4602 Kirby Loop Road
Ft. Pierce, FL 34981

Mr. Parsons is expected to testify regarding his review of the evidence as referenced in the Indian River Crime Laboratory Report dated May 20, 2014 for the forensic biology examination of Mr. Hill's DNA and the DNA swabs of the Kel-Tec pistol as well as chain of custody of this evidence.

RESERVATION OF RIGHTS

The Defendants reserve the right to call additional witnesses to rebut or respond to any testimony presented by the Plaintiff's witnesses or experts.

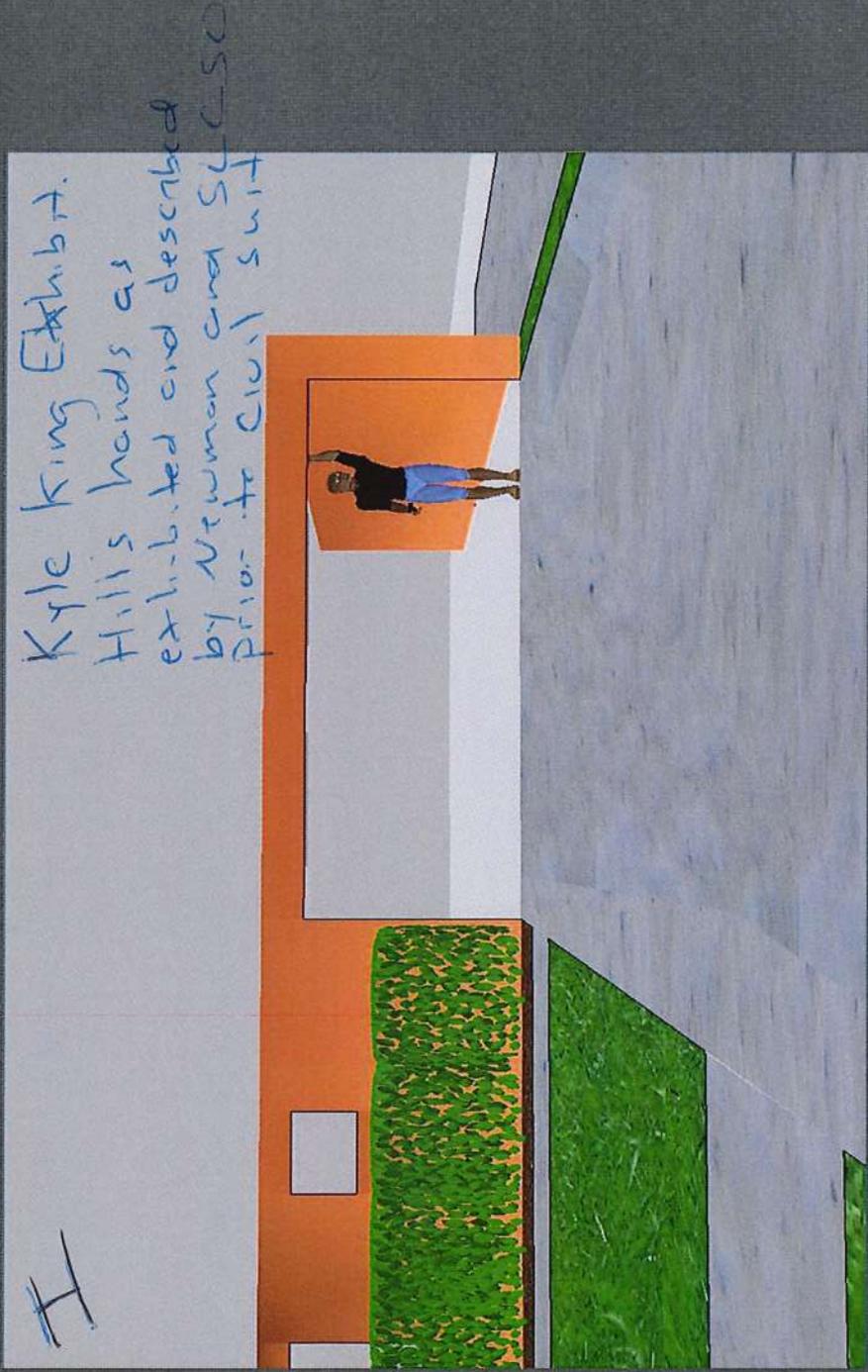
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I furnished a copy via email a copy to: **John M. Phillips, Esquire, T.C. Roberts, Esquire, Brent Latour, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, tc@floridajustice.com, brent@floridajustice.com this 27th day of December, 2016.

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BY s/Summer M. Barranco
SUMMER M. BARRANCO
Fla. Bar No. 984663

PLAINTIFF'S
EXHIBIT
"D"
tabbles



- Newman hears music becoming louder as garage door opens
- Hill standing on west side of open door with gun in hand looking toward Lopez

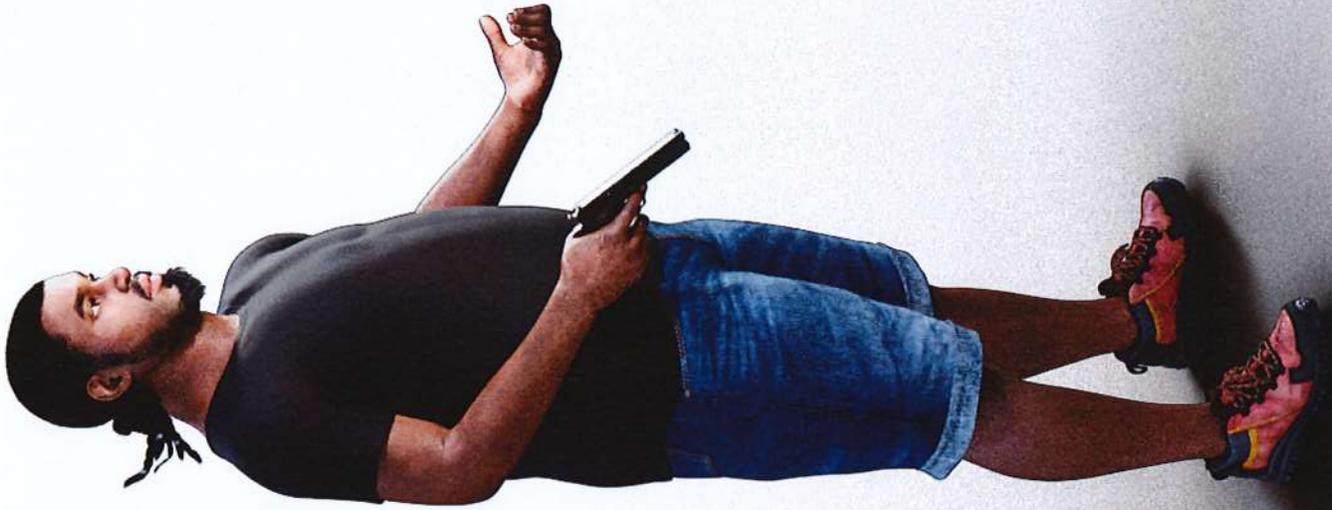
Hill's hands as
exhibited and described
by Newman during
pre-trial deposition.



II

PLAINTIFF'S
EXHIBIT
"8"
tabbles

Hill's hands as
exhibited and described
by Newman during
trial.



PLAINTIFF'S
EXHIBIT
"F"
tabbles

III

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 17, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 1

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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Official Federal Reporter
HON. ROBIN L. ROSENBERG

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EXHIBITS

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1 **JUROR NAMES HAVE BEEN REDACTED PURSUANT TO A DIRECTIVE**
2 **FROM JUDGE ROBIN L. ROSENBERG. JUROR NAMES MAY BE REQUESTED**
3 **VIA A MOTION TO THE COURT.**

4
5 *THE COURT:* Good morning, everyone, please be seated.
6 All right. Good morning, everyone. We are here in
7 the matter of Viola Bryant as personal representative of the
8 Estate of Gregory Vaughn Hill, Jr., versus Sheriff Ken Mascara
9 and Christopher Newman as the Defendants. It is case number
10 16-CV-14072.

11 So, let's begin by having all counsel state their
12 appearance for the record and anyone who is at counsel's table
13 as well. Let's begin with the Plaintiff.

14 *MR. PHILLIPS:* Good morning, John Phillips on behalf
15 of the Plaintiff.

16 *THE COURT:* Good morning.

17 *THE PLAINTIFF:* Good morning, my name is Viola Bryant.

18 *THE COURT:* That is Ms.?

19 *THE PLAINTIFF:* Yes.

20 *MS. HINES:* Natasha Hines for the Plaintiff, Viola
21 Bryant.

22 *THE COURT:* Good morning.

23 *MR. JOHNSON:* Kirby Johnson on behalf of the
24 Plaintiff, Viola Bryant.

25 *THE COURT:* Okay, good morning. And we have for the

1 Defendants.

2 *MS. BARRANCO:* Good morning, Summer Barranco on behalf
3 of both of the Defendants, Sheriff of St. Lucie County and
4 Chris Newman, who is here, and I have general counsel for
5 Sheriff Mascara, Mr. Jolly, for the Defendants.

6 *MR. BRUCE JOLLY:* I am Bruce Jolly.

7 *THE COURT:* Are you related to Greg Jolly?

8 *MR. JOLLY:* He doesn't want to admit it, but his
9 mother does.

10 *THE COURT:* The jurors are assembling and filling out
11 the questionnaire. The questionnaire is the one I showed you
12 by way of one of my orders. I added a few questions, as you
13 saw, that are particularized in part to this case and you will
14 each have 15 minutes of your own voir dire, and if you find
15 that is not adequate after all of the questions I asked, and I
16 let you know your 15 minutes is up, you can let me know what
17 additional time, if any, that you need.

18 So, when our jury has completed filling out the
19 questionnaires, we will make copies for you so the Plaintiff
20 will have one set and the Defendant another set and I will, and
21 we will bring our jury in, and I will go through some
22 preliminary remarks.

23 Let me tell you what I do. I tell them what the case
24 name is, I turn to each side and have you introduce yourself,
25 simply introduce yourself, and since some of you are attorneys

1 and some are not, without any lengthy description, let the jury
2 know who you are, in what capacity you are here.

3 I then explain the voir dire process to them with the
4 purpose. I then let them know an estimate of the length of the
5 case, and I'm going to let them know that it can be between
6 five and seven days. I will let them know they should be
7 available through the 25th of May, and I will keep them
8 apprised as we go along, but that is what they should count on,
9 although I always tell them we stay with the case until it
10 ends, and they are expected to do that.

11 I tell them about mid-morning and mid-afternoon
12 breaks, lunch break. I then read the case description that you
13 all have provided to me, so I am going to read exactly what you
14 have submitted as your joint statement of the case at Docket
15 Entry 176, and that would then allow me to ask them whether
16 they know anything about the case, and I ask them whether they
17 know anybody at counsel table.

18 I do then go through a list of the witnesses. I am a
19 little concerned about that. I want to know if they know any
20 of the witnesses. Your witness list is incredibly lengthy.

21 I mean, I know that not all of the witnesses are being
22 called, because I know that from your trial plan.

23 Should I rely upon the trial plan as far as the names
24 of the potential witnesses to see whether the jurors know any
25 of them, as opposed to what is at Docket Entry 177-1, which is

1 your exhibit and witness list? Would that be a more effective
2 and practical way to go about it?

3 *MR. PHILLIPS:* That is for the Plaintiff. That is a
4 more narrowed down list than the original witness list.

5 *MS. BARRANCO:* Your Honor, that should work.

6 *THE COURT:* It is definitely more narrowed down, I
7 will go with that. It is not as lengthy as what you have on
8 your 177-1 witness list.

9 And I read them the preliminary instruction about jury
10 conduct, not to talk about the case, do any research about the
11 case.

12 I then go over the questionnaire, each and every
13 question, and have them put their answers on the record as a
14 result of followup answers to their questions and I turn that
15 over to you.

16 I want to do that before the lunch hour, I don't want
17 anyone to be caught off guard. And then we have to have our
18 conference, you select your jurors, do your cause challenges,
19 and we will do the peremptories.

20 Out of curiosity, did anybody see anything in the
21 media today, yesterday, today, in the recent period?

22 I have been in West Palm dealing with other cases that
23 have been in the media, so I am not aware of what happened
24 here.

25 *MR. PHILLIPS:* We are both out-of-towners, I haven't

1 had any phone calls.

2 MS. BARRANCO: I have, I saw an article, I think on
3 tcpalm.com, and it did include background facts involving the
4 case, although interestingly omitted from the presentation in
5 the newspaper article is the fact that Mr. Hill had a gun in
6 his hand when he raised the garage door. That was not
7 mentioned at all, even as a theory.

8 THE COURT: Okay. I do ask a general question about
9 whether anybody knows anything about the case, and then I, of
10 course, give my instructions about not discussing it, not
11 viewing any media, but I think we will get a little bit of an
12 indication when I ask whether anybody knows anything about the
13 case. That is one of the early questions I ask. We'll play it
14 by ear. If it hasn't gotten a lot of publicity, that is great,
15 nobody has to deal with it on the front end.

16 And I am persistent in reminding the jurors in any
17 case, even if it is a media grabber of attention or not, and
18 tell them they cannot view any media and explain what that
19 means and how they do that.

20 So, let me go over a couple of preliminary matters
21 while we are waiting for the jury.

22 Number one, on the jury instructions, I did not see a
23 jury instruction from either side on Count 4, the battery. Are
24 you proceeding with that?

25 MR. PHILLIPS: We withdraw that.

1 *THE COURT:* Okay. And that is on record somewhere,
2 that is a Docket Entry?

3 *MR. PHILLIPS:* We will get you a Docket Entry, we told
4 Defendants, I don't think we communicated it with the Court. I
5 apologize for that. It may be in the stipulation.

6 *MS. BARRANCO:* I do recall Mr. Phillips emailing me a
7 couple of weeks ago that he was dropping the battery count.

8 *THE COURT:* No opposition?

9 *MS. BARRANCO:* No opposition, your Honor.

10 *THE COURT:* Looking for common ground as we start the
11 day. Do we agree a stipulation of dismissal would be the most
12 appropriate thing to do procedurally or not? Because we are
13 beyond the summary judgment.

14 *MR. PHILLIPS:* If we have a stipulation that the
15 parties are to bear their own fees and costs to that count and
16 that count alone.

17 *THE COURT:* All right. If you get that filed by the
18 end of the day, let's get that filed and it is done.

19 *MR. PHILLIPS:* Definitely filed by midnight.

20 *THE COURT:* You are pursuing your negligence count?

21 *MR. PHILLIPS:* Yes.

22 *THE COURT:* I want to use our time -- when the jury is
23 here, we spend our time with the jury, we spend time off hours
24 not taking up the jury's time. I will go through some
25 objections to certain evidence, whether it is in the way of an

1 exhibit or whatnot, and I will take it in turn as I have
2 considered them.

3 So, on the issue of intoxication, I know Plaintiff
4 filed their objection to Defendant's introduction of evidence
5 of Mr. Hill's intoxication at the time of the subject incident
6 at Docket Entry 185. In it Plaintiff argues Mr. Hill's
7 intoxication should be excluded because it is not relevant to
8 whether or not Defendant Newman acted objectively or reasonably
9 under the facts and circumstances confronting him at the time
10 of the incident.

11 The Defendant responded that it is relevant to explain
12 Mr. Hill's unusual behavior and to support the officers'
13 version of events, Docket Entry 195, pages three to four.
14 Defendants also note that Plaintiff brings a claim for
15 negligence arising out of the subject incident and thus Mr.
16 Hill's intoxication is relevant to the defense of comparative
17 negligence and Florida's statutory "alcohol or drug defense"
18 found at Florida Statute 768.36.

19 That Statute states that "in any civil action, a
20 Plaintiff may not recover any damages for loss or injury to his
21 or her person or property if the trier of fact finds that at
22 the time the Plaintiff was injured: The Plaintiff was under
23 the influence of any alcoholic beverage or drug to the extent
24 that the Plaintiff's normal faculties were impaired or the
25 Plaintiff had a blood or breath alcohol level of .08 percent or

1 higher; and as a result of the influence of such alcoholic
2 beverage or drug the Plaintiff was more than 50 percent at
3 fault for his or her own harm."

4 As the Plaintiff has brought a claim for negligence
5 against Sheriff Mascara, how is it that Plaintiff's
6 intoxication is not relevant to the Defendant Sheriff's defense
7 given that statute?

8 *MR. PHILLIPS:* Your Honor, it is going to be our case
9 in chief that Mr. Hill did not raise a gun, Deputy Newman did
10 not respond to any issues regarding drunk and disorderly or
11 anything.

12 *THE COURT:* Negligence, you have a negligence claim,
13 there is a statutory defense based on alcohol or drug defense.

14 *MR. PHILLIPS:* Negligence arises out of 1983, core
15 actions against Deputy Newman. We --

16 *THE COURT:* But it is its own count, negligence.

17 *MR. PHILLIPS:* Yes.

18 *THE COURT:* I don't see in a negligence count and
19 statutory defense, separate and apart from all the other
20 arguments made, but honing in on that, how that can't be
21 brought up.

22 *MR. PHILLIPS:* We would generally agree, your Honor.
23 The issue then becomes how far is that door opened, because he
24 was .35, .33, and then it becomes more prejudicial than
25 probative, if we stipulate he was legally intoxicated at the

1 time.

2 *THE COURT:* That is a proposal, that you would
3 stipulate he was legally intoxicated at the time?

4 *MR. PHILLIPS:* Yes.

5 *MR. BRUCE JOLLY:* Your Honor, separate from the
6 negligence claim, it is relevant to Mr. Hill's perception of
7 the incident. Our deputies are going to testify they are
8 giving commands to Mr. Hill and the defense theory is, because
9 of the level of intoxication, he may not have perceived what
10 they were saying and explains some of his other actions.

11 *THE COURT:* I understand, and no one is saying you
12 can't make arguments out of it. Why is it not sufficient to
13 reach a stipulation that he was illegally intoxicated at the
14 time and then make argument? I suppose you can make argument,
15 if you have testimony that he was acting in certain ways, and
16 you can make a connection between, well, he was legally
17 intoxicated and this is what the officer observed. That would
18 be for argument.

19 Why is the stipulation not sufficient? What more
20 would you need than the stipulation?

21 *MR. BRUCE JOLLY:* I would suggest it goes to
22 impeachment to some of his witnesses. Mr. Brown, who spent the
23 morning with Mr. Hill and who suggested Mr. Hill only had one
24 beer, I think it could be go to credibility for impeachment of
25 that.

1 *THE COURT:* Is the stipulation that he was legally
2 intoxicated sufficient for you to do anything you need to do,
3 impeach, talking about officers' perceptions and making
4 argument?

5 *MR. BRUCE JOLLY:* The Defendants believe, because he
6 was so much above the level of intoxication, it is critical for
7 the jury to hear that.

8 *THE COURT:* So, what about a stipulation that he was
9 above the level of legal intoxication?

10 *MR. BRUCE JOLLY:* If it was accurate to that level. I
11 am not sure what they are willing to stipulate to so long as it
12 reflects how intoxicated he was.

13 *THE COURT:* Are you going to have a toxicologist
14 person coming in talking about what it means to be a .3?

15 *MR. BRUCE JOLLY:* Yes.

16 *THE COURT:* Okay. Any response?

17 *MR. PHILLIPS:* No, your Honor.

18 *THE COURT:* So, what I hear is a proposal from the
19 Plaintiff being a stipulation that he was -- are you amenable
20 to a stipulation that he was above the legal level of
21 intoxication?

22 *MR. PHILLIPS:* Yes, your Honor.

23 *THE COURT:* Are you objecting to the actual number?

24 *MR. PHILLIPS:* Yes, your Honor, it is .3. It depends
25 on what -- .32 to .38, and we think that is highly prejudicial.

1 *THE COURT:* Defense apparently has a witness coming in
2 and talking about what it means to be at that level. Is that
3 part of your objection, objecting to that witness? Have you
4 issued an objection to that witness?

5 *MR. PHILLIPS:* We have as to that part of the
6 testimony, and we have Dr. Anderson who is coming, so it can be
7 fleshed out.

8 *THE COURT:* Who is Dr. Anderson?

9 *MR. PHILLIPS:* A forensic pathologist.

10 *THE COURT:* What is he going to talk about?

11 *MR. PHILLIPS:* The nature of the brain injury and if
12 there was motor movement possible after he was shot. He also
13 has testimony about intoxication.

14 *THE COURT:* If you have experts on intoxication, is it
15 undisputed what his level was?

16 *MR. PHILLIPS:* It was not. We have a lay witness who
17 was with him and he said he had one tall beer.

18 We don't know how he got intoxicated under --

19 *THE COURT:* But he -- a test was taken to show the .3.

20 *MR. PHILLIPS:* We have the questions about the
21 methodology of that test.

22 *THE COURT:* Isn't that for cross-examination?

23 *MR. PHILLIPS:* That would be.

24 *THE COURT:* I am going to consider the ruling, but
25 what I am hearing, there is no objection to there being some

1 sort of stipulation, which I think that means Plaintiff
2 acknowledges that intoxication is an issue, if for no other
3 reason, although there may be other reasons, there is a
4 negligence count, whether this is statutorily, and there is a
5 stipulation that it is higher than the legal intoxication
6 level. You both have experts who are going to talk about the
7 intoxication and its effects.

8 Defense wants the actual level, and the Plaintiff is
9 thinking that is more prejudicial than not.

10 Do I have expert reports from the experts to see what
11 they say? Have you submitted those to the Court in a certain
12 Docket Entry? If not, do you have copies of them?

13 *MR. PHILLIPS:* We can get you copies, your Honor.

14 *MR. BRUCE JOLLY:* The reason I am here is to deal with
15 the experts, I will respond to that question. The ME, Dr.
16 O'Neil, issued a report not as an expert, or retained expert,
17 but instead she did the report. If you do not have that, we
18 will get that to you.

19 *THE COURT:* Why don't we assume for these purposes I
20 may or may not. Why don't we get the Court right away both
21 reports.

22 Now, the question is, when you get into opening, I
23 generally don't like things mentioned until I flush out the
24 ruling.

25 Was it pertinent in either opening that it must be

1 stated to the jury that Mr. Hill was intoxicated or can the
2 openings be done -- I don't necessarily have the support
3 reports and the issues were only flushed out at the last minute
4 and, quite frankly, at the Court's proactive inquiry regarding
5 objections. Is it acceptable not to mention intoxication in
6 the opening? But that is in no way prejudicial or implying
7 that you can't then flush it out with your testimony.

8 It appears it is going to come in. I want to make
9 sure my ruling is sensitized to the proper way in which it
10 comes in. I know you want proper rulings so this case does not
11 have to come back on improper rulings.

12 *MS. BARRANCO:* If I may be heard on behalf of the
13 Defendants. I was in the opening statement stage setting the
14 tone to the jurors to hear what is expected.

15 If the Plaintiff is not objecting to the fact and
16 willing to stipulate that Mr. Hill was legally intoxicated at
17 the time of the incident, at a minimum, the parties should be
18 able to say that much.

19 *THE COURT:* Okay, I agree, that is fair. Does
20 Plaintiff agree?

21 *MR. PHILLIPS:* Yes.

22 *THE COURT:* Okay, the ruling is, you may say he was
23 legally intoxicated at the time, and I will look into the
24 nuanced differences you have as to what extent you can go into
25 it, and getting your expert reports will be helpful.

1 I think Melanie is still working on the
2 questionnaires. I will still go through this until she comes
3 up with the questionnaires.

4 There is the issue of the probationary status,
5 Plaintiff filed an objection to the introduction of Mr. Hill's
6 probationary status. Plaintiff argues that evidence of Mr.
7 Hill's probationary status is not relevant as to whether Mr.
8 Newman acted reasonably and is overly prejudicial.

9 Defendant responded that "Mr. Hill's probation status
10 is probative of his motive to quickly hide his gun in his back
11 pocket and forcefully slam his garage door after being
12 confronted by two law enforcement officers while in violation
13 of at least two conditions of his probation." That is Docket
14 Entry 195, at 6.

15 How would the Defendants plan on introducing Mr.
16 Hill's probationary status, how would that get introduced?

17 *MR. GREGG JOLLY:* We have Niles Graben, he worked for
18 the Florida Department of Corrections, and it is the
19 Defendants' understanding that Mr. Graben will testify that Mr.
20 Hill was on a drug offender probation, felony probation, I am
21 not sure of the exact terminology, at the time of the incident.

22 It would come in through Niles Graben, a Probation
23 Officer.

24 *THE COURT:* And he has been listed on your witness
25 list?

1 MR. GREGG JOLLY: Yes.

2 THE COURT: Has he been deposed?

3 MR. GREGG JOLLY: No, your Honor.

4 THE COURT: What is the Plaintiff's view?

5 MR. JOHNSON: Well, your Honor, our view is relatively
6 simple on this matter.

7 Mr. Hill, in his 30 years, has never been convicted of
8 a felony. If Defense is able to stand up here and argue that
9 he was on probation, that gives the connotation that he was a
10 convicted criminal, which he was not, certainly not convicted
11 of a felony. A review of the Court records we found shows he
12 was on probation for a misdemeanor, and it will, if anything,
13 confuse the issues for the jury and put the Plaintiffs in a
14 position of having to explain adjudication of withholds, and it
15 may be easiest to go to the probation route. Adjudication for
16 any felony charges are withheld and he has never been
17 convicted.

18 THE COURT: Do we know whether he was convicted or
19 not?

20 MR. GREGG JOLLY: I think it was a felony, I could be
21 wrong. It was a possession charge, he pled no contest and
22 adjudication was withheld, contingent on him completing the
23 drug offender probation. I think as a consequence of this
24 incident, you know, and I think Mr. Graben is going to testify
25 to the fact that he was facing -- he would have been

1 adjudicated guilty for the underlying charge and he would have
2 been facing more serious consequences for the fact that he was
3 in possession of a firearm.

4 And that is why the Defendants feel it is relevant to
5 explain his actions.

6 *THE COURT:* So, what I am hearing from the Plaintiff
7 is you are not necessarily saying it is not relevant, but you
8 are saying it is prejudicial and confusing.

9 Could we agree anything that would have a bearing on
10 how Mr. Hill acted that day is arguably relevant because it may
11 have influenced how he acted which would have influenced,
12 arguably, possibly, it is up to the jury how you present it and
13 argue it to the jury, how Mr. Newman perceived the situation?
14 Is that a fair statement?

15 *MR. JOHNSON:* That would be a fair statement, your
16 Honor. I would add at the time Officer Newman was at the
17 property, or Deputy Newman, he was unaware of Mr. Hill's
18 probation --

19 *THE COURT:* I understand he was not aware. I am
20 viewing it through the lens of anything that might have had a
21 bearing on how Mr. Hill was acting that day.

22 *MR. JOHNSON:* If I may, your Honor, I believe, you
23 know, Defense argues two things; number one, Mr. Hill was
24 hiding a gun, and number two, he was slamming the door. The
25 case they cite in support of that is the Boyd case out of

1 California, and those facts are vastly different from this
2 case.

3 The Court said they allowed the evidence of probation
4 in that case to show the evidence of Stephens' erratic
5 behavior. It is our position by closing the garage door Mr.
6 Hill was not acting -- engaging in erratic behavior.

7 *THE COURT:* Here is what I would like you to do. That
8 may be something the Court concludes is for cross-examination
9 and argument. What I would like you to work on in the interim
10 is the following. I am not sure -- at this point, I am not
11 going to allow this to be mentioned until I make my ruling.
12 Unlike the intoxication, it will not be prejudicial to either
13 side until I get a ruling before hand, so I may very well have
14 the ruling.

15 Nothing discussed here -- that the Court discussed
16 here is mentioned in voir dire or opening until the Court
17 rules.

18 What I would like the parties to do is work on a
19 limiting instruction. Assuming the Court allows it, I believe
20 that it may be most appropriate to have a limiting instruction,
21 because it obviously is not -- it wouldn't be admitted for
22 anything to do with character or, you know, what he was doing
23 at that time. I think it is the Defendant's position that it
24 may have some bearing on, you know, how he may have been acting
25 at the time when he was confronted with a Sheriff's officer.

1 It is not being offered for certain things, it is
2 being offered for other things.

3 I personally don't believe that it is necessary to get
4 into -- when I say personally, I mean as a matter of law under
5 the rules of evidence and case law if it were to come in.
6 Again, I am reserving, but I would want to see what a limiting
7 instruction looks like and for what reason. Whether it was
8 guns, drugs, anything else, that is not the point.

9 The point the Defendant is making is that he was in a
10 status where he was under the watch and supervision -- in a
11 probationary status of law enforcement, and law enforcement
12 coming to the house, it may give reason to act in a certain way
13 and it goes back to Mr. Hill's actions are relevant because it
14 bears on how Deputy Sheriff Newman perceived him, but it is a
15 matter of to what extent, how much comes in relating to his
16 actions.

17 I want to see what a limiting instruction looks like.
18 I think that would be the appropriate way to allow it to come
19 in, if it comes in, and I will give it further thought. That
20 is where I am thinking, but I haven't arrived at a final
21 decision on that.

22 *MR. GREGG JOLLY:* Your Honor, to that point, I have
23 additional authority. I gave it to opposing counsel.

24 *THE COURT:* Yes, if you have given it to opposing
25 counsel, give us the authority, that would be fine. Any time

1 you have authority, I am happy to take it, I will review it.

2 And I know you have multiple counsel working on either
3 side. I would ask if certain counsel are working on jury
4 instructions, we can take a brief break and you decide who
5 would like to take the lead on writing that limiting
6 instruction and show it to the other side and agree upon the
7 language. I will make a final ruling on that.

8 I would rather do it before opening. If I decide you
9 can use it, you will have the benefit of using it. That is how
10 we will leave probationary status.

11 I understand Plaintiff filed an objection to
12 Defendant's Exhibits 168, 169, 170, photographs of plastic
13 bags, Docket Entry 181. Defendant agrees not to introduce this
14 evidence unless Plaintiff opens the door. That is Docket Entry
15 195, at 2.

16 The Court considers this moot.

17 If Defense believes before it gets into its case that
18 the Plaintiff opened the door, you must approach the Court
19 about those exhibits first outside the jury's hearing so you
20 can tell me how and why the Plaintiff opened the door.

21 Exhibits 228 to 230, and 361 to 368, Plaintiff filed
22 an objection to 228 to 230, 361 to 368, photographs of Mr.
23 Hill's cell phone. Defendants respond that Mr. Hill's cell
24 phone and its contents have relevance to the events prior to
25 the shooting.

1 I found the explanation and arguments to be too vague,
2 I don't know what the issue is, what the disagreement is.

3 MR. GREGG JOLLY: Pictures of the cell phone itself,
4 it is probably not relevant. We listed the cell phone if there
5 is a chain of custody issue. If there is not a chain of
6 custody issue, we do not seek to introduce those pictures.

7 THE COURT: Any chain of custody issue?

8 MR. JOHNSON: No.

9 THE COURT: I consider that moot.

10 Same thing, if you find that changes your view, you
11 need to let the Court know outside the jury's hearing.

12 Exhibit 27, Plaintiff filed an objection to
13 Plaintiff's 27 which consists of text messages between Mr.
14 Hill and his fiancée', Monique Davis, hours before Mr. Hill
15 died. Plaintiff argues that these text messages are irrelevant
16 because they do not weigh on the reasonableness of Deputy
17 Newman's actions. Plaintiff also argues that the text messages
18 constitute inadmissible hearsay.

19 Defendants respond that the text messages are relevant
20 to "show Mr. Hill's motive for acting as he did during his
21 encounter with the deputies to refute testimony that is
22 expected from Plaintiff's friends and family members that this
23 was an uneventful normal day for Mr. Hill (prior to his contact
24 with law enforcement) as well as to Plaintiff's loss of
25 parental support claim." Docket Entry 195 at pages 2 to 3.

1 Is this something you do not wish to introduce unless
2 this is done in Plaintiff's case?

3 MR. GREGG JOLLY: We believe this is relevant to more
4 of the substantive claims. Obviously, we can't get inside Mr.
5 Hill's head, but the text messages we believe provide insight
6 into his mindset that day.

7 THE COURT: Have you provided the text messages?

8 MR. GREGG JOLLY: I have seen your clerk shake her
9 head. I think we have, the text messages are from that morning
10 up to the incident.

11 THE COURT: From whom to whom?

12 MR. GREGG JOLLY: From Mr. Hill's fiancée' to Mr.
13 Hill.

14 THE COURT: Give me the substance.

15 MR. GREGG JOLLY: You are not being a good father, you
16 only care about drinking, you only care about gambling. And we
17 believe the evidence shows those texts were consistent with Mr.
18 Hill's actions that morning.

19 THE COURT: What, he was not a good father and --

20 MR. GREGG JOLLY: It would go to loss of parental
21 support, damages.

22 And Mr. Brown is going to testify that this was kind
23 of a normal day.

24 Those texts kind of call that into question. This was
25 not a normal day, at least it appears this was a pretty

1 eventful day for Mr. Hill, and some things were going pretty
2 wrong for him that day, and we believe it kind of paints the
3 picture for why he was acting the way he was acting.

4 *THE COURT:* Who would testify what was on the phone?

5 *MR. GREGG JOLLY:* I believe Ms. Davis would.

6 *THE COURT:* That is what she wrote to him, the
7 fiancée'?

8 *MR. GREGG JOLLY:* Yes, your Honor. Also, we believe
9 the evidence would show the text messages would suggest Ms.
10 Davis said to Mr. Hill she was going to call off the wedding
11 that day.

12 We think this evidence is kind of critical for the
13 jury to see, to explain why he was acting the way he was
14 acting.

15 *THE COURT:* What is the response?

16 *MR. JOHNSON:* The response is, for every reason the
17 Defendants just gave they would have to offer the truth of the
18 matter asserted in the text messages to make that point. They
19 would have to prove what is stated in the text messages, I am
20 calling off the wedding, actually --

21 *THE COURT:* What if they are not offering it for the
22 truth of the matter, they are saying it would be for the effect
23 on Mr. Hill, to the listener.

24 *MR. JOHNSON:* The text message was sent hours before
25 the incident happened, it was a pre-wedding squabble between

1 two fiancées.

2 *THE COURT:* Is there any objection -- hypothetically,
3 if Ms. Davis comes in and testifies I was in touch with him
4 that day and at such and such an hour I was sending him text
5 messages, and this is what I was telling him, would that be
6 objectionable?

7 It sets the stage for what was going on that day, it
8 is part of the narrative, part of the overall picture.

9 You have the questionnaires? Perfect. We'll
10 disseminate a copy for us and copies for counsel. We will
11 finish the last argument and move into the jury.

12 *MS. BARRANCO:* Your Honor, I notice there are a lot of
13 people in the gallery seated behind Plaintiff's counsel. I am
14 wondering if any of those people are intending to testify
15 during this case.

16 *THE COURT:* Do we have any witnesses in the courtroom?

17 *MR. PHILLIPS:* No, your Honor.

18 *THE COURT:* Are the parties invoking the Rule, either
19 party invoking the Rule?

20 *MS. BARRANCO:* Yes, your Honor.

21 *THE COURT:* The Rule will be invoked, and that means
22 every attorney needs to be cognizant of who comes in and out of
23 the courtroom. It is your position to let the witnesses know
24 they are not to discuss his or her testimony with anyone who
25 will be testifying, or anyone else who will then be able to

1 communicate that to any witness who will be testifying.

2 MR. PHILLIPS: We would ask for a partial exclusion
3 for Ms. Davis while her children are testifying, the minor
4 children.

5 THE COURT: Ms. Davis will be a witness as well?

6 MR. PHILLIPS: Yes.

7 THE COURT: How many minor children are testifying?

8 MR. PHILLIPS: Three.

9 THE COURT: Any objection that she is going to remain
10 in?

11 MR. BRUCE JOLLY: Who is testifying first? If she
12 testifies first, Defense wouldn't have a problem.

13 THE COURT: Okay. Did you say Ms. Davis?

14 MR. PHILLIPS: That was fairly equivocal.

15 MR. BRUCE JOLLY: That is a given.

16 MS. BARRANCO: Hold on a second, if I could. It's my
17 understanding the eldest daughter, 12 or 13 now, is supposed to
18 be testifying first.

19 MR. PHILLIPS: She is not first.

20 MS. BARRANCO: She is not first?

21 MR. PHILLIPS: No.

22 MS. BARRANCO: I am relying on what it is --

23 THE COURT: You should -- both of you should keep each
24 other apprised.

25 MR. PHILLIPS: When your Honor moved us back a day, we

1 may have resubmitted a new list, and it moved witnesses that
2 must testify today.

3 *THE COURT:* You think you submitted a new trial plan?

4 *MR. PHILLIPS:* We did not. The only thing we have
5 done is move Destiny down with the other kids.

6 *THE COURT:* Before we get off track, the issue with
7 Ms. Davis staying in with the three children, and we will talk
8 about the order, what is Defense's position on that?

9 *MS. BARRANCO:* To be frank, I wasn't yet prepared for
10 Ms. Davis' testimony.

11 *MR. PHILLIPS:* She won't be in until Monday. We
12 didn't move anybody up, we moved people down.

13 *MS. BARRANCO:* That was the first concern I had.

14 *THE COURT:* Okay.

15 *MS. BARRANCO:* In my opinion, Ms. Bryant is these
16 children's grandmother, so if there is any concern about a
17 family member being with the children, that could be alleviated
18 by Ms. Bryant being here.

19 *THE COURT:* Why can't Ms. Davis be here while the
20 children are testifying? You are saying you prefer for her to
21 testify first, so it doesn't influence her testimony.

22 *MR. BRUCE JOLLY:* I misspoke, it is her case, it is
23 going to go the way she wants.

24 *THE COURT:* Who is "she"?

25 *MR. BRUCE JOLLY:* Ms. Barranco.

1 *MS. BARRANCO:* Depending where Ms. Davis is, if she is
2 in the back of the courtroom, I don't have a problem with that.
3 I do have a problem with the children being right with the mom.

4 *THE COURT:* No, the mother is not going to be by the
5 witness stand. She will be in the back where other people sit
6 and she will be physically present in the courtroom while three
7 young children testify.

8 *MS. BARRANCO:* I am sensitive to the fact that the
9 they are three young children. I want to make sure Ms. Davis
10 understands she is not to be in any way --

11 *THE COURT:* Coaching or anything of that nature.

12 *MS. BARRANCO:* Yes. That is my concern.

13 *THE COURT:* So, Plaintiff's counsel is to talk about
14 her role, not to coach, send facial messages or expressions,
15 anything of that nature. She is to sit in the back of the
16 courtroom, her children can know she is sitting in the
17 courtroom, but when they are witnesses they are on their own in
18 the witness stand.

19 *MR. PHILLIPS:* Absolutely.

20 *THE COURT:* Is there an issue with the witnesses?

21 *MS. BARRANCO:* No, your Honor. We want to know about
22 the order.

23 *THE COURT:* Yes. Ms. Davis will be in the room when
24 the children are testifying. Who is number one today?

25 *MR. PHILLIPS:* Juanita wright has to testify today.

1 She will be one of the first.

2 *THE COURT:* Juanita Wright. Who is number two?

3 *MR. PHILLIPS:* Donna Hellums. Number one, Stephanie
4 Mills has to go first thing tomorrow.

5 *THE COURT:* We will talk about tomorrow, tomorrow.
6 Who is third today?

7 *MR. PHILLIPS:* We'll read the deposition of Lizabeth
8 Enriquez-Ruiz.

9 *THE COURT:* Has everything been ruled on? Do we have
10 outstanding issues in that deposition?

11 *MR. PHILLIPS:* None that I am aware of. One issue we
12 stipulated to.

13 *THE COURT:* Okay, that is number three. Give me a
14 fourth just in case.

15 *MR. PHILLIPS:* Lisa McGuire and -- no, Lisa has
16 surgery today. Probably David Morales.

17 *THE COURT:* Okay, Lizabeth is number three, David is
18 number four.

19 What I ask is that you maybe work on -- because that
20 probably impacts everything else, work on a fourth amended
21 trial plan that you can get to the Court so I have a good
22 understanding of the order, but in any event, whether you have
23 gotten a plan to me or not, at all times counsel should be
24 communicating with one another if any change of witness list
25 occurs because, obviously, everyone deserves to be fully

1 prepared for the witnesses each day.

2 MS. BARRANCO: Your Honor, if I may ask one question.
3 Since Destiny Hill was listed as the first witness as far as I
4 had known coming into court this morning, can Plaintiff's
5 counsel advise when Destiny Hill will be called?

6 MR. PHILLIPS: Depends on how fast we go, but it would
7 either be Friday or Monday, more than likely Monday, and I
8 would call Monique Davis and the three children in
9 chronological order, the younger to the oldest.

10 MS. BARRANCO: On Monday?

11 MR. PHILLIPS: On Monday.

12 THE COURT: When today concludes, we will go over all
13 of this again.

14 Let me say today could be a long day with jury
15 selection and opening. I like to get to our witnesses. I will
16 let the jury know that today we will go longer than a typical
17 trial day, than five o'clock, because I want everything set and
18 get in motion, and get into the trial ideally with the
19 presentation of evidence so we know where we can settle in.

20 At this point, we will pick up on the other
21 objections, at least we got through a few, and we will
22 distribute now our questionnaires.

23 Three peremptories for each side and one for the two
24 alternates that everybody agreed to.

25 Does anyone need to use the restroom before we bring

1 the jury in?

2 MR. PHILLIPS: No, your Honor. But should we move
3 these people on this side?

4 THE COURT: Yes, that is right. That is how we have
5 done it in the past.

6 Let me remind counsel, if one attorney is handling an
7 issue, that attorney must speak. If you need to confer with
8 counsel, that is fine. Let's have one attorney designated per
9 witness, per issue.

10 Okay, I will step off for literally two minutes. If
11 you want to use the restroom, you can do that. You can move
12 your chairs how you need to.

13 *(Thereupon, a short recess was taken.)*

14 THE COURT: All right. You may be seated.

15 Although our jury is out there, so you may remain
16 standing.

17 Bring the jury venire in now.

18 *(Thereupon, the jury venire entered the courtroom.)*

19 THE COURT: All right. Thank you. We all may be
20 seated.

21 Good morning, everyone, and welcome to the Ft. Pierce
22 Federal Courthouse. It is a pleasure to have you. My name is
23 Judge Rosenberg, and I am presiding over the trial you have
24 been called in today to potentially serve on as a juror. Not
25 all of you will end up serving, but some of you will.

1 I hope everyone is excited to be here. Jury service
2 is very important and we are happy you are fulfilling your
3 civic duty.

4 The case is Viola Bryant, as Personal representative
5 of the Estate of Gregory Vaughn Hill, Jr. versus Sheriff Ken
6 Mascara, in his official capacity as Sheriff of St. Lucie
7 County, and Christopher Newman, case number 16-CV-14072.

8 The first thing I would like to do is acclimate you to
9 the courtroom and everyone in the courtroom.

10 The persons at this table are associated with or
11 representing the Plaintiff in this case. This is a civil case.

12 So, let me ask that each and every one at the
13 Plaintiff's table stand up and introduce yourself.

14 *MR. PHILLIPS:* Good morning, John Phillips, attorney
15 for Ms. Bryant and the Estate of Gregory Hill.

16 *THE PLAINTIFF:* Good morning, Viola Bryant, the
17 representative for Gregory Vaughn Hill, his mother.

18 *MS. HINES:* Good morning, Natasha Hines for the
19 Plaintiff.

20 *MR. JOHNSON:* Gregory Johnson for the Plaintiff.

21 *THE COURT:* Now, can you hear, can you all hear?

22 *THE JUROR:* I could barely hear anybody. I could not
23 hear the Plaintiff at all, just the Plaintiff herself.

24 *THE COURT:* If you could state your name again.

25 *THE PLAINTIFF:* Viola Bryant, I the am representative

1 for Gregory Vaughn Hill, Jr.'s estate.

2 *THE COURT:* If you can't hear, please let me know and
3 we will have it repeated.

4 My question first, does anybody in the courtroom know
5 anyone at the Plaintiff's table? If so, raise your hand.
6 Seeing no hands.

7 I am pointing over to the right now, this is where the
8 representatives and those associated with the Defendants are
9 seated.

10 So, if I could have everybody at that table introduce
11 yourselves and speak into the microphone when you introduce
12 yourself.

13 *MS. BARRANCO:* Good morning, my name is Summer
14 Barranco, I am one of the attorneys for the Sheriff of St.
15 Lucie County and Deputy Newman.

16 *THE DEFENDANT:* Good morning, Deputy Christopher
17 Newman.

18 *MR. GREGG JOLLY:* Good morning, my name is Greg Jolly
19 on behalf of the Defendants.

20 *MR. BRUCE JOLLY:* Good morning, I am Bruce Jolly, and
21 with the other two attorneys, I am also representing the
22 Defendants.

23 *MR. FEDERMAN:* Good morning, I am Mr. Federman,
24 in-house attorney for the St. Lucie Sheriff's Office.

25 *THE COURT:* Does anyone know anyone at Defense table?

1 Seeing no hands.

2 Other important people are our court security officer,
3 Larry Branford, who will be here throughout the trial. At
4 times he will leave, but he assures that everything is safe and
5 secure and it is a comfortable environment for everybody.

6 We have our courtroom deputy, Ms. Richardson, she will
7 take care of you. When she is in the courtroom she will swear
8 witnesses in, and escort you in and out of the courtroom. And
9 we have down below where I am pointing, Ms. Pauline Stipes, who
10 is taking down every single word that is said in the courtroom
11 which is why you need to speak up, so she can make a record of
12 this proceeding, this trial, and that is very, very important
13 for everybody involved.

14 And what that means for all of us is that we need to
15 talk clearly, loud enough that everyone can be heard and that
16 we don't shake our head, nodding up and down or side-by-side,
17 when we answer questions because that doesn't translate well
18 onto a record, or say uh-huh or ah-ah as in our normal lives
19 because that also does not translate well.

20 If you don't answer in a way -- and people will
21 forget, I will point it out. I am not going to be rude, I want
22 it to be a perfect record that Mrs. Stipes wants for every
23 trial that she is a part of.

24 In a jury trial, the first part is voir dire
25 examination. At this time I will ask Ms. Williams --

1 Ms. Richardson to please administer the oath.

2 (Thereupon, the jury venire was duly sworn.)

3 *THE COURT:* Okay, you may be seated.

4 The purpose of the voir dire examination is to attempt
5 to determine if your verdict in this case would in any way be
6 influenced by any experiences you may have had, any opinions
7 you currently hold, or any special training or knowledge that
8 you may possess.

9 Please understand that the questions that will be
10 asked of you and those asked of you on the questionnaire -- and
11 I thank you for filling that out -- are not intended, whether
12 there are questions by the Court or the attorneys, are not
13 intended to pry into your personal affairs or embarrass you in
14 any way. I hope you understand it is important we understand a
15 little bit about your background so the lawyers can make an
16 intelligent decision whether or not this would be an
17 appropriate case for you to serve.

18 The trial is estimated to last five to seven days. It
19 is not always easy to predict precisely how long a trial will
20 last, and I will do my best to keep you up to date as we go
21 along. What I mean by five to seven days, it will go today and
22 tomorrow, that is two days, it will go next Monday, Tuesday,
23 Wednesday, three more days, and could be over by then, but if
24 it is not over, it can go into the next day, the 24th of May,
25 or possibly the 25th of May. We will do our best keeping

1 everything moving along and keep things on track, but at this
2 point, that is the best estimate the attorneys have given the
3 Court.

4 We don't end trials just because day five comes and it
5 is not over. If the trial is not over, the service continues
6 until the trial is over.

7 I want you to know you are expected to stay from
8 beginning to end regarding when the trial ends if you are
9 selected. I will keep you informed so you can make plans
10 accordingly and there is minimal disruption as a result of your
11 jury service.

12 During the day we start at 9:00 and end -- it depends.
13 I will say right now, this is the first day of trial, it is
14 always the longest, I am not going to give an estimate. I want
15 to get the jury selected and opening statements and start the
16 witnesses. I want to try to see if we can get the trial done
17 within that time frame. If I see we are running tight on time
18 we may need to go later, but I will say I will keep you posted
19 each evening when we will conclude our day.

20 An estimate may be a 5:30 time frame, but today it
21 most likely would be later than that. I try not to keep it too
22 long because I know these are long days, and we want you to be
23 comfortable and attentive.

24 We take mid-morning breaks, mid-afternoon breaks for
25 15 minutes so you can take a rest and stretch, things of that

1 nature. If you feel you need a break, raise your hand and we
2 will accommodate you.

3 I hope you recognize jury service is an important part
4 of citizenship, it is a right for you to be participating and
5 it is a high calling. I hope that all of you would want to
6 serve. If you do serve, you will find this to be a rewarding
7 experience. I know your time is valuable and I and the
8 attorneys will do everything we can to ensure that your time is
9 not wasted.

10 Now, let me give you a little overview of what this
11 case entails, and what I am going to read to you is not
12 evidence. You should not consider it as such, but we need to
13 tell you something about this case so we can find out whether
14 or not this is an appropriate case for you to serve, and
15 whether you know anything about the case.

16 So, let me read this to you. Again, it is not
17 evidence, it is a description of the case.

18 This lawsuit involves an incident which occurred at
19 approximately 3:30 p.m. on January 14, 2014, between St. Lucie
20 County Sheriff's Deputies Christopher Newman and Edward Lopez
21 and the decedent, Gregory Vaughn Hill, Jr., at Mr. Hill's Ft.
22 Pierce residence which resulted in the Defendant Gregory Newman
23 fatally shooting Mr. Hill.

24 This case, which arises out of Mr. Hill's death, was
25 brought by Mr. Hill's estate through the Plaintiff, Viola

1 Bryant. Ms. Bryant brings a claim pursuant to 42 U.S.C.
2 Section 1983, alleging that her son, Gregory Vaughn Hill, Jr.,
3 was subjected to the use of excessive force when he was shot by
4 Deputy Newman in violation of the Fourth Amendment. Plaintiff
5 Viola Bryant also brings a state law wrongful death claim
6 against the Defendant Sheriff Ken Mascara, in his official
7 capacity as Sheriff of St. Lucie County.

8 The Defendants deny the Plaintiff's allegations and
9 affirmatively assert that only a reasonable and necessary
10 amount of force was used.

11 Is there anyone here to who knows anything about this
12 case? If so, raise your hand. Seeing no hands -- seeing one
13 hand.

14 Don't say anything yet, just let me figure out -- are
15 you?

16 *THE JUROR:* Juror 21.

17 *THE COURT:*

18 *THE JUROR:* Yes.

19 *THE COURT:* I don't want to know anything in
20 particular. Are you raising your hand because you know
21 something about this case?

22 *THE JUROR:* Yes.

23 *THE COURT:* I will talk to you later about that, I
24 don't want anything to be said in the courtroom. I will make a
25 note of that. Thank you for raising your hand and I will come

1 back to you later on that. Thank you.

2 As I said, this is an overview of the case, this is
3 not evidence. The evidence will come from essentially four
4 sources.

5 The most common source of evidence is witnesses who
6 will come into the courtroom, who will take an oath to tell the
7 truth and provide testimony from the witness stand which is
8 right there.

9 The second most common source of evidence is tangible
10 evidence, documents, things you can see and touch that you take
11 back with you when you go into the jury room to deliberate.

12 The third source of evidence are matters that the
13 parties agree to. The parties are not required to agree to
14 anything, but should they agree to anything, that is a source
15 of evidence that you should consider as you would any evidence.

16 The fourth source of evidence is judicial notice.
17 That could be laws or court records of this jurisdiction and
18 matters of common knowledge.

19 Those are the four most common sources of evidence.

20 I told you what this lawsuit is seeking. The burden
21 of proof is on the party who asserts the claim. In this case
22 the Plaintiff, Viola Bryant, as representative of the Estate of
23 Gregory Vaughn, Jr., has filed a claim against the Defendants,
24 Sheriff Mascara and Christopher Newman, so the Plaintiff has
25 the burden of proof.

1 In order for the Plaintiff to prevail, the Plaintiff
2 must provide you with enough evidence to persuade you that the
3 Plaintiff's claim is more likely true than not true, in
4 legalese, this is a preponderance of the evidence. The burden
5 is to prove by a preponderance of the evidence her claim, that
6 is, to persuade you that her claim is more likely true than not
7 true. In other words, tip the scales in the Plaintiff's favor
8 in order for the Plaintiff to prevail.

9 Now, there are certain affirmative defenses alleged by
10 the Defendants. And with respect to affirmative defenses, it
11 is the Defendants, since they assert an affirmative defense,
12 they would have the burden of proving these affirmative
13 defenses by the evidence. If you decide the Plaintiff does not
14 meet her burden, the case goes no further.

15 I use the word evidence. The Plaintiff has to produce
16 enough evidence to persuade you the claim is more likely true
17 than not true. The evidence comes from witnesses, exhibits,
18 stipulations and matters the Court may take as judicial notice.

19 Your function is to decide what evidence is reliable
20 and you, as jurors, have the right to believe or disbelieve all
21 or any part of the testimony of any witness in the case.

22 You and exclusively you, the jury, will determine what
23 the facts of the case are, and it is the Court's responsibility
24 to determine all issues relating to the law.

25 The Court does that in essentially two ways; the Court

1 will rule on objections that are made by the lawyers, and to
2 instruct you at the end of the case on all the law that you
3 will need to know in order to decide the case.

4 When lawyers make objections, they relate solely to
5 matters of law totally within the Court's province, so you
6 should not pay any attention to objections. Lawyers have a
7 duty to make objections that they deem appropriate. You should
8 not speculate on why they made an objection. If the Court
9 sustains an objection, the and witness is not permitted to
10 answer the question, you should not speculate on what the
11 witness might have said had he or she been permitted to answer.
12 That is a matter of law not within your province.

13 As I said, at the end of the case it is the Court's
14 job to instruct you on the law that pertains to this case, and
15 not only will I read the law to you, but each juror will be
16 entitled to your own set of instructions so you take it back to
17 you in the jury room when you deliberate your verdict.

18 The reason we have you take an oath is to follow the
19 law whether you agree with the law or not. When you take that
20 oath, you follow the law. The verdict is your ultimate
21 decision of whether or not the Plaintiff met her burden of
22 proof.

23 With respect to the verdict, the verdict must be based
24 on two things, the evidence presented in the courtroom in your
25 presence, and the law that the Court gives you.

1 Is there anyone here who could not or would not base
2 his or her verdict solely upon the evidence and the law? If
3 you are not able to do that, please raise your hand.

4 We have one hand -- we have two hands.

5 8?

6 *THE JUROR:* Yes.

7 *THE COURT:* Why did you raise your hand?

8 *THE JUROR:* I would like to feel that I can, but I am
9 close friends with Sheriff Mascara --

10 *THE COURT:* So, when I asked whether anybody knew
11 anyone, that would have been the time to raise your hand, that
12 you know someone. I don't want you to go further. I know he
13 is not sitting there, but I mentioned that is one of the
14 Defendants.

15 *THE JUROR:* I didn't realize that. I didn't know any
16 of those people. Sheriff Mascara I do know.

17 *THE COURT:* It is your position you don't believe you
18 can listen to the evidence and base your decision on the
19 evidence and the law because you have too close a relationship
20 to one of the Defendants in this case, is that what you are
21 saying?

22 *THE JUROR:* Yes.

23 *THE COURT:* Okay. We have which juror number?

24 *THE JUROR:* 22.

25 *THE COURT:* Juror 22, and that is?

1 THE JUROR: Yes.

2 THE COURT: Why did you raise your hand?

3 THE JUROR: Because I don't totally trust the police
4 department from different issues that I have had encountered in
5 the past. I don't have total trust.

6 THE COURT: Okay, we are going to get into questions.
7 One of the questions on the questionnaire had to do with law
8 enforcement, but are you telling me just based on having heard
9 no evidence at all --

10 THE JUROR: I --

11 THE COURT: Just a moment. Are you telling me, based
12 on no evidence that you heard so far, you come to court with
13 such strong personal views and opinions that you would be
14 unable to put those personal opinions aside, to put those aside
15 and base it on the evidence and the law?

16 THE JUROR: Yes, I will.

17 THE COURT: Let me ask, because the issue of Sheriff
18 Mascara came up, although he is not sitting in the courtroom,
19 is there anyone else here who knows Sheriff Mascara? Seeing no
20 hands.

21 Followup question, other than what jurors number 8 and
22 number 22 have told me, is there anyone here who could not
23 fairly and impartially evaluate the evidence in this case?
24 Please raise your hand if you are not able to fairly and
25 impartially evaluate the evidence in this case of which you

1 heard no evidence so far? Seeing no hands.

2 All right. Now I am going to read the names of some
3 of the individuals who may come up during trial. This does not
4 mean all of these people will testify, but I do want to go over
5 the names because these names may come up during the trial.

6 Raise your hand if you hear a name that you think you
7 know one of these people. And if I can ask Officer Branford to
8 stop me if you see a hand that is raised, because my head is
9 going to be down looking at the names, stop me at any time when
10 you see a hand that is raised.

11 Destiny Hill, Donna Hellums, Juanita Wright, Stefanie
12 Mills, Lisa McGuire, David Morales, Lisabeth Enriquez-Ruiz, Roy
13 Bedard, Christopher Newman, Edward Lopez, William Anderson,
14 Earl Ritzline, Mark Chapman, Susan Adams, Joseph Hall, Terrica
15 or Monique Davis, Aryanna Hill, Gregory Hill, III, Viola
16 Bryant, Kanasha White, Andrew Brown, Deputy Thomas Johnson,
17 Detective Wade Courtemanche, Michael Gawjewski, Lieutenant
18 Brian Hester, Shirley Fowler, Sandra Park Picano, Theresse
19 Gaines, Arnold Gaines, Tony Stevens, Jeremiah Hill, Captain
20 Chris Cicio, Christopher Lawrence, Niles Graben, Dr. Linda
21 O'Neil, Sergeant Kyle King, Deputy Karen Stephens, Sergeant
22 Wade Courtemanche, Deputy Johnson, Captain Hester, Lieutenant
23 Larry Hostetler, Sergeant Lebeau, Kevin Pfeiffer, Richard
24 Young, Donna Carmichael, Robert Parsons, Jr., Dawn Radke,
25 Deputy Ed Lopez, Deputy Christopher Newman.

1 There were no hands as to any of the witnesses?

2 Three.

3 Juror number 8, who did you know?

4 *THE JUROR:* I remember the name Hester and a captain
5 earlier in the thing, I don't remember. Two of the names in
6 there.

7 *THE COURT:* Okay. So you knew two names, Hester and
8 somebody else?

9 *THE JUROR:* I think you may have said Hester twice, I
10 am not sure.

11 *THE COURT:* I did repeat some of the names twice.

12 *THE JUROR:* Maybe that is what it was, I heard the
13 same name twice.

14 *THE COURT:* Okay. And who else did we have? Juror
15 number 22.

16 *THE JUROR:* Yes, Shirley Fowler, she is a friend of
17 mine.

18 *THE COURT:* Shirley Fowler?

19 *THE JUROR:* Yes.

20 *THE COURT:* Thanks.

21 *THE JUROR:* 27.

22 *THE COURT:* ?

23 *THE JUROR:* Yes.

24 *THE COURT:* Who do you know?

25 *THE JUROR:* Sandra Park Picano.

1 THE COURT: Sandra Picano?

2 THE JUROR: Yes.

3 THE COURT: What is the level of relationship with
4 Ms. Picano?

5 THE JUROR: We are friends and I work with her every
6 day.

7 THE COURT: All right. Thank you. All right.

8 So, let me read an important instruction to you that
9 you must be guided by in every stage throughout this case.

10 We know, again, the jurors haven't been selected yet,
11 but this applies to all of you until you have been selected and
12 will continue to apply to those of you who are selected to be
13 jurors in this case.

14 While serving on the jury you must not talk to anyone
15 about anything related to the case. You may tell them you are
16 a juror and give them information when you must be in court,
17 but you must not discuss anything about the case itself with
18 anyone. You shouldn't even talk about the case with each other
19 until you begin your deliberations. You want to make sure you
20 hear everything, all the evidence, the lawyers' closing
21 arguments and my instructions on the law before you begin
22 deliberating.

23 You should keep an open mind until the end of the
24 trial because premature discussions may lead to a premature
25 decision.

1 In the age of technology, I want to emphasize in
2 addition to not talking to anybody face-to-face about the case,
3 you must not communicate anything about the case by any other
4 means, this includes the internet, social networking, Facebook,
5 My Space, and Twitter. You shouldn't Google online or off line
6 about any information about the case, the parties, or the law.

7 Don't read or listen to the news about this case,
8 don't visit any places related to the case or research any
9 issue or place of the case. The law forbids any of the jurors
10 to talk to anyone about it. It is important you understand why
11 these rules exist and are so important. You must base your
12 decision only on the testimony and other evidence presented in
13 the courtroom. It is not fair to the parties if you base your
14 decision on information that you acquire outside of the
15 courtroom.

16 For example, the law often uses words and phrases in
17 special ways, so it is important that any definitions you hear
18 come from me and not from any other source.

19 Only you, as jurors, can decide the verdict in this
20 case. The law sees only you as fair and only you have promised
21 to be fair. No one else is so qualified.

22 So, if I can simplify it, this is what it means.

23 When you go in and out of the courtroom on breaks you
24 can't talk to anyone about what went on in the courtroom. You
25 can talk to each other, what were you doing this weekend, where

1 do you work, nothing about what is going on in the courtroom,
2 even if it is mundane like it is cold, or you don't like the
3 way somebody is sitting, or you like somebody's suit, nothing,
4 nothing are you to talk about with each other or with anybody
5 else, by phone, in person, or any type of social media.

6 You are not to do any research. If I say something or
7 somebody says something and it peeks your interest and you
8 think you are being diligent to look for further information
9 about it, that is not permitted at all. The only thing you
10 need to know is going to be here in the courtroom.

11 If you start doing your own research, I don't know
12 what you are looking at, the parties can't be looking at it,
13 and don't know how we can address it. It is not permitted.

14 There may or may not be media coverage of this case.
15 You are not to listen or review any media coverage of this
16 case. Hypothetically, if you hear something that sounds
17 familiar about this case, turn it off.

18 If you go home and there is a newspaper or news flash,
19 and somebody in your family is watching the news and something
20 comes up that seems remotely related to this case walk out of
21 the room or ask that the TV been turned off.

22 I want to know if there is any exposure to any media
23 the next day. If you come in the next day and you saw
24 something, or you didn't see it, but it was in the newspaper
25 and you turned your eyes away, I want you to let me know.

1 Raise your hand and tell me what happened, but in no instance
2 should you be getting any information from any other source,
3 friend, family member, colleague, radio show, news report, TV,
4 paper, period.

5 Very important, the internet as well.

6 You are insulated for purposes of this trial.
7 Anything you need to know and should know and have to know is
8 in the courtroom only, not a public rendition, not a friend's
9 view, not what Google tells you, it is what is presented
10 through the evidence. It's very important.

11 If I find in that you have not followed these
12 instructions, I will leave it at this, there are consequences
13 to that because we invest a lot of time and money in assembling
14 and fair and impartial jury and we do not want this fair and
15 impartial jury to be tainted by outside influences.

16 Does anyone have a problem with what I just said?
17 Anyone here who cannot follow the rules I just set forth? If
18 so, raise your hand. Seeing no hands.

19 Again, I want to thank you for filling out the
20 questionnaire. I am going to go through that with you right
21 now.

22 *BY THE COURT:*

23 Q. And we are going to begin with juror number 1.

24 A. Yes.

25 Q. Okay, let's go through everything.

1 So, you were a factory worker at Harley-Davidson, but you
2 are now retired?

3 A. Yes.

4 Q. You have some college background?

5 A. Yes.

6 Q. Your partner has a GED and is currently retired?

7 A. Yes.

8 Q. Children graduated from high school?

9 A. Yes.

10 Q. No service in the military?

11 A. Stepchildren, my granddaughter is in the Army, the other
12 one is a Marine.

13 Q. You never served on a jury before?

14 A. No. I, did not.

15 Q. You like gardening?

16 A. That is where I spend my time.

17 Q. And you read and view Hometown News and Better Homes and
18 Gardens, and you like to watch Grit. Is that a TV show?

19 A. That is a magazine, farming, raising chickens and canning.
20 I was brought up in the country in Pennsylvania, Maryland, so
21 we just always farmed and canned.

22 Q. Okay, terrific. You have a brother, possibly 40 years ago
23 who had interaction with law enforcement because of drugs?

24 A. Yes, he went to the penitentiary, but I didn't know what
25 year, but it was approximately 40 years ago, and he only served

1 a couple of years in the penitentiary in Maryland.

2 Q. And is there anything about that experience that would
3 affect in any way your ability to be fair and impartial as a
4 juror in this case?

5 A. I don't think anything. I am open minded, that is all I
6 can say.

7 Q. So you can be fair and impartial?

8 A. I feel as though I can.

9 Q. And you also indicate that your home was broken into about
10 37 years ago in Maryland?

11 A. Right. The neighbor children broke into it when we were
12 ready to move to a farm area, and came in a window and
13 burglarized the house.

14 Q. Anything about that experience that would prevent you from
15 being fair and impartial in this case?

16 A. I wouldn't want my home to be broken into, but there are
17 reasons for everything.

18 Q. So, in light of that having happened to you, could you be
19 fair and impartial in this case?

20 A. I feel as though I could.

21 Q. Neither you nor close family member or friend ever worked
22 for a law enforcement agency?

23 A. No.

24 Q. You don't participate in organizations or groups?

25 A. I think there I messed up.

1 I am a member of the Legion here in Ft. Pierce and VFW up
2 in Maryland.

3 Q. Okay. And there is nothing in your background or personal
4 feelings which might affect your ability to be fair and
5 impartial for both sides?

6 A. I don't think I could be any more open minded than I am.

7 Q. And fair and impartial?

8 A. Right.

9 Q. Juror number 2?

10 A. Good morning.

11 Q. You are an aircraft mechanic?

12 A. I work at Flight Safety International in Vero Beach.

13 Q. And you have four years of college?

14 A. Yes, two different times, I went two years for automotive
15 technician, and two more years for automatic mechanic.

16 Q. Your spouse or partner is an RN, with two years of college.

17 A. Correct?

18 Q. No adult children.

19 A. No adult children. I claim my wife's daughter as my child,
20 but I do not legally have children.

21 Q. No service in the military?

22 A. No.

23 Q. Never served on a jury before?

24 A. No.

25 Q. You like cars, sports and shooting?

1 A. That is correct.

2 Q. You read Hot Rod and you like history and science T.V.
3 shows?

4 A. Oh, yeah, love them.

5 Q. You -- so, were you -- in 1982, did you have an issue with
6 a misdemeanor?

7 A. That is correct. I slipped in a bar and broke a mirror.
8 The officer that was drunk and intoxicated arrested me, said I
9 did it on purpose and it turned into a big mess for me, still
10 follows me to this day.

11 Q. You were arrested and did you go to trial or what happened?

12 A. No. The actual officer that did arrest me, that was on
13 duty came in, did a quick investigation, and decided that I was
14 not a threat to society or did something evil and went to the
15 magistrate and informed them that I did not resist arrest, and
16 I did not assault the officer, and the magistrate decided to
17 fine me for the misdemeanor anyway of a broken mirror, and the
18 other two charges were dropped. I still have a record and
19 fingerprint card saying I committed a misdemeanor and forfeited
20 bail.

21 Q. Is there anything about that experience that would affect
22 your ability to be a fair and impartial juror in this case?

23 A. I really would hope not.

24 Q. Well, I need to know whether or not you believe so, based
25 on that experience and what you learned about the case, because

1 once you are selected as a juror, we don't unselect you.

2 So, we owe it to the parties in this case to the best of
3 your ability to dig deep inside and ask yourself, can you put
4 aside any personal feelings or experiences or opinions you may
5 hold -- and we all come in with feelings, experiences, and
6 opinions, but the issue, really, is not having them, but will
7 they interfere with your ability to be fair and impartial to
8 both sides in this case. Can you do that?

9 A. If they bring the evidence forward, I can come to a
10 decision, yes.

11 Q. The jury's verdict is based on the evidence and the law, so
12 I give you the law, you must follow the law I give you, and you
13 apply the law to the facts and you come up with a verdict. Can
14 you do that?

15 A. I can do that.

16 Q. Fairly and impartially?

17 A. Yes.

18 Q. Okay. You also indicate that no one in your family,
19 including yourself, has been the victim of a crime?

20 A. Correct.

21 Q. Okay. And you have two friends who are police officers?

22 A. Well, let me correct that. Deputy Sheriff, Indian River,
23 and the other works on the island, Orchid Island -- not Orchid
24 Island, right outside of Vero.

25 *THE JUROR:* Indian River Shores.

1 *THE JUROR:* There you go.

2 *BY THE COURT:*

3 Q. Anything about the fact that you are friendly with two law
4 enforcement officers that would affect your decision in this
5 case?

6 A. No.

7 Q. You don't belong to any groups or organizations?

8 A. No longer, I used to belong to a motorcycle club.

9 Q. Okay. There is nothing in your background or permanent
10 feelings that would affect your ability to be fair and
11 impartial to both sides?

12 A. No.

13 Q. And you are able to serve during the days and times I
14 indicated?

15 A. Yes, as long -- I hope it doesn't go any longer than the
16 end of next week, I have a vacation planned to go see my
17 grandkids.

18 Q. Went does that happen?

19 A. That starts Memorial Day week.

20 Q. Starting that weekend. Memorial Day is Monday?

21 A. That Monday.

22 Q. Vacation beginning on 5/28, otherwise you are fine?

23 A. Correct.

24 Q. What about Ms. Walbeck, are you able to serve the days and
25 hours I indicated?

1 A. Yes.

2 Q. Thank you, perfect.

3 Juror number 3, you are a high school teacher?

4 A. Yes.

5 Q. You have a BA from college?

6 A. Correct.

7 Q. Your spouse or partner has a Master's Degree in library
8 information, and is a librarian?

9 A. Yes.

10 Q. You have an adult child who is an RN, a nurse in a
11 hospital?

12 A. Yes.

13 Q. No military service?

14 A. No.

15 Q. No service on a jury before?

16 A. No.

17 Q. You like sewing and cooking?

18 A. Yes.

19 Q. You watch NCIS and Chopped?

20 A. Yes.

21 Q. None of your family members or close friends or you have
22 been accused of a crime?

23 A. No.

24 Q. Neither you nor close family member have been the victim of
25 a crime?

1 A. No.

2 Q. Or worked for a law enforcement agency?

3 A. No.

4 Q. You don't belong to any organizations or groups?

5 A. Just my church.

6 Q. Nothing in your background that makes you feel you cannot
7 be fair to both sides?

8 A. No.

9 Q. You could serve the days I mentioned?

10 A. I am supposed to be leaving to go out-of-town on the 25th.

11 Q. How flexible are you on that day?

12 A. I could be flexible, but I am scheduled to leave that
13 morning if possible.

14 Q. On a flight?

15 A. No, driving.

16 Q. Let me ask you, if you were in trial, hypothetically, on
17 the 25th, that Friday, would that pose an insurmountable
18 problem for you not to be available to leave until after trial
19 is concluded that day? I am not suggesting we will or will not
20 be in trial.

21 A. Would it be finished on that day?

22 Q. That is the anticipated outer limit of the time frame.

23 A. That could be workable.

24 Q. Okay. Thank you.

25 Juror number 4.

1 A. Yes.

2 Q. You are an engraver and a health care worker?

3 A. Yes.

4 Q. Both?

5 A. Yes.

6 Q. You have a college background, Master's Degree?

7 A. Yes, ma'am.

8 Q. No spouse or partner?

9 A. Excuse me?

10 Q. Do you have a spouse or partner?

11 A. No. Divorced.

12 Q. You don't have any adult children?

13 A. No.

14 Q. No service in the military?

15 A. No.

16 Q. Never served on a jury before?

17 A. No.

18 Q. You like golf?

19 A. Yes.

20 Q. You like reading trade magazines?

21 A. Yes.

22 Q. Neither you nor close family member or friend has been
23 accused or arrested or convicted of a crime?

24 A. No.

25 Q. Neither you nor close family member or friend have been the

1 victim of a crime?

2 A. No.

3 Q. Neither you or close family member or friend worked for a
4 law enforcement agency?

5 A. No.

6 Q. You don't participate in any organizations?

7 A. Not currently.

8 Q. When I asked if there is anything in your background which
9 might affect your ability to be fair and impartial, you
10 indicate you are a born again Christian and hold to Biblical
11 principles and values. What our American society considers
12 acceptable, if God does not consider it acceptable, I am with
13 God no matter what society may think.

14 So, I guess the question I have for you in light of what
15 you disclosed in answer to that question is the following. The
16 Court will give you the law in this case, it comes in the form
17 of what we call jury instructions, I read it to you, it is on
18 paper when you go back to deliberate, and you hear the evidence
19 in the courtroom from the testimony, witnesses, documents, all
20 the things I talked about.

21 Anything about your religious beliefs that would prevent
22 you from being a fair and impartial juror and applying the law
23 I give you to the evidence in the courtroom?

24 A. I don't believe so.

25 Q. Is there any doubt at all in your mind?

1 A. No, because our laws are based on Judeo-Christian
2 principles.

3 Q. And is there any scenario where you could imagine a law
4 that I would give you that is in our books and the state of law
5 within our judicial and legal system that would conflict with
6 your religious beliefs?

7 A. Well, I know if the law is relating in this case to
8 morality.

9 Q. There is not a law on morality, it is much more clear and
10 delineated. It describes what one side needs to prove to be
11 successful on a claim and what another side needs to prove to
12 be successful on an affirmative defense, and how you weigh the
13 evidence and how you determine credibility of witnesses and how
14 you determine damages, and things of that nature.

15 A. Then in that case, I would say no.

16 Q. You could be a fair and impartial juror?

17 A. Yes.

18 Q. You could serve during the days and hours I indicated?

19 A. Yes, ma'am.

20 Q. Okay. Juror number 5?

21 A. Yes.

22 Q. Good morning.

23 A. Good morning.

24 Q. You are retired, but you were previously a?

25 A. Floor covering.

1 Q. Floor covering business?

2 A. Yes.

3 Q. You have a college background?

4 A. Yes.

5 Q. No spouse or partner?

6 A. No.

7 Q. No adult children?

8 A. No.

9 Q. No service in the military?

10 A. No.

11 Q. You served as a juror seven times?

12 A. This is the seventh time.

13 Q. First time in Federal Court because it looks like the other
14 ones were in State Court?

15 A. State Court.

16 Q. In those cases you reached two verdicts -- I think it says
17 two verdicts.

18 A. Two verdicts, but I went five days and the prosecution
19 copped a plea.

20 Q. Okay.

21 A. And once was a two day -- three day trial. I was foreman.

22 Q. In one of the six cases you have been the foreperson?

23 A. Yes.

24 Q. Okay. And you like swimming?

25 A. Swimming.

1 Q. And you like to follow the news and listen to Judge Judy?

2 A. Yes.

3 Q. Okay. And you have one DUI 25 years ago?

4 A. Yes.

5 Q. Anything about that experience that would interfere with
6 your ability to be fair and impartial in the case?

7 A. I was guilty.

8 Q. Okay. Anything about that that would interfere with your
9 ability to be fair and impartial?

10 A. No.

11 Q. Okay. As to whether you or a close family member or friend
12 has ever been the victim of a crime?

13 A. I was robbed about 20 years ago when I was traveling.

14 Q. Okay. Anything about that incident that would affect your
15 ability to be a fair and impartial juror?

16 A. No.

17 Q. Neither you nor close family member or friend worked for a
18 law enforcement agency?

19 A. No.

20 Q. You don't participate in organizations or groups?

21 A. No.

22 Q. There is nothing in your background that make you feel you
23 could not be fair and impartial to both sides?

24 A. No.

25 Q. Could you serve the days and hours I indicated?

1 A. Yes.

2 Q. Six. You have a lot here.

3 Tell me about your current and past work experience.

4 A. I am a lawyer.

5 Q. Okay.

6 A. I work -- I am a sole practitioner, I work with my dad.

7 Q. What kind of law?

8 A. Estate planning, probation and guardianship. I work in
9 Inverness for Alfred Kaufman doing worker's comp and child
10 support enforcement work, and I also worked in college, in law
11 school as a work study student.

12 My husband is in the travel industry, he does corporate
13 travel and he also -- he does not have a college degree, but he
14 has a degree in travel, and he worked for different airlines.

15 I do not have adult children.

16 Q. Let me ask you, anything about the fact that you are a
17 lawyer that you think would interfere with your ability to be a
18 fair and impartial juror in the case?

19 A. I am an officer, but I have never been called.

20 Q. Could you do it and be fair and impartial?

21 A. Yes.

22 Q. Okay. Your area of law is not the area of law that is
23 consistent with what is --

24 A. No, but you mentioned -- I do estate work, I do probate.
25 It is different.

1 Q. Okay.

2 A. I have to file probates for people who have died, so I am
3 familiar with that aspect of it.

4 Q. Okay. And so, you like to exercise, travel, time with
5 family, friends and reading. You like Hawaii 5-0, Blue Bloods,
6 Designated Survivor, the Middle and Roseanne?

7 A. Yes, she came back.

8 Q. Okay. And you said your neighbor's son has been in jail
9 for drug charges?

10 A. I don't have all the details, they are good friends of
11 ours, right across the street from us in our neighborhood.

12 Q. Is there anything about that fact that would affect your
13 ability to be fair and impartial in this case?

14 A. No.

15 Q. You indicate your father's wallet has been stolen from his
16 car?

17 A. Yes.

18 Q. What else with respect to whether you, a close family
19 member or friend has been a victim of a crime?

20 A. That is all that I could recall.

21 Q. Okay. Is there anything about that incident that would
22 affect your ability to be fair and impartial?

23 A. No.

24 Q. You indicate that your daughter's close friend works for
25 the Vero Beach Police Department?

1 A. Yes.

2 Q. And is there anything about that fact that would affect
3 your ability to be fair and impartial to both sides?

4 A. No. And I do have individuals I am friends with that work
5 for, I think Indian River Sheriff's Department as well. That
6 wouldn't affect my ability.

7 Q. Do you have an adult daughter?

8 A. No. She is nine years old, she will have a birthday over
9 the weekend. She will be ten.

10 Q. It is her friend?

11 A. Yes, she is a girl, and it is her father.

12 Q. The friend's father?

13 A. Yes.

14 Q. You are involved in Girl Scouts and you are coleader of
15 your daughter's group?

16 A. Retired from that.

17 Q. Okay. Anything about your background that makes you feel
18 you could not be fair and impartial to both sides?

19 A. No.

20 Q. Could you serve the days and hours I indicated?

21 A. Yes.

22 Q. Juror number 7?

23 A. You actually said it correct.

24 Q. Good morning. You are a bartender at the Gafford and also
25 a counselor at Just Believe Recovery Center?

1 A. Yes.

2 Q. You are working on your Master's at PBA?

3 A. Yes.

4 Q. Your spouse is currently unemployed, stays at home with
5 your son and worked as a bartender at the Pawnbroker Grill?

6 A. Correct.

7 Q. No service on a jury before?

8 A. No.

9 Q. You like going antiquing and shopping with your family?

10 A. Yes.

11 Q. You like watching the Goldbergs, Family Guy and American
12 Dad?

13 A. Yes.

14 Q. Is it you who had a 2015 DUI manslaughter?

15 A. No, a friend.

16 Q. Is there anything about that incident that would affect
17 your ability to be fair and impartial to both sides in this
18 case?

19 A. No, ma'am.

20 Q. And the next question, if you or close family member or
21 friend ever was the victim of a crime, you said DUI, 2011?

22 A. My uncle had a DUI in Oklahoma in 2011.

23 Q. That is your DUI?

24 A. No, my uncle.

25 Q. Uncle's DUI in Oklahoma. Anything about that fact that

1 would affect your ability to be fair and impartial?

2 A. No.

3 Q. Any close family member or friend work for a law
4 enforcement agency?

5 A. No.

6 Q. You don't participate in organizations or groups?

7 A. No.

8 Q. You indicate whether there is anything in your background
9 that might affect your ability to be fair and impartial, you
10 struggle with the black and white thinking required of the
11 judicial process mostly due to your background in studying
12 mental health disorders?

13 A. Right.

14 Q. Let me ask you, can you be -- now that you know what the
15 case is about, can you be fair and impartial to both sides?

16 A. Yes, I believe so.

17 Q. Do you want to explain what that answer is?

18 A. I always think there are other factors involved, so it is
19 difficult for me to look at it plainly by law. Do I think I am
20 able to do that? Yes. I wasn't sure about the case we are
21 dealing with. I feel I could do it.

22 Q. Now that you know the case, you get the law from the Court
23 and you must follow the law and apply the law through the facts
24 and the evidence, can you render a fair and impartial verdict?

25 A. Yes.

1 Q. Juror number 8?

2 A. You didn't ask -- I am the sole bread winner for my home.
3 I work weekends, really, it should be okay. I do work starting
4 Friday, it is tough, in Martin County. That is my only issue.

5 Q. Let me ask you this: Can you manage it financially if you
6 are here during this trial?

7 A. Probably, but it would be very stressful.

8 Q. Would the stress be such that you would not be able to give
9 the parties your full attention if you were a --

10 A. No.

11 Q. The stress would be enough to distract you?

12 A. No.

13 Q. You would give them your full attention?

14 A. Yes.

15 Q. Thank you.

16 Juror number 8, you are a part time?

17 A. Part time at La Mesa RV.

18 Q. What is that, part-time driver?

19 A. Yes.

20 Q. Are you doing that now?

21 A. Yes.

22 Q. And your background is high school and some college?

23 A. Yes, ma'am.

24 Q. And your spouse or partner is an accountant with Fulmer
25 Logistics?

1 A. Yes, your Honor.

2 Q. You have six adult children?

3 A. Yes, your Honor.

4 Q. What are they all doing, if you can keep track?

5 A. Well, the oldest one is disabled. I have a son doing
6 landscaping, a daughter is a medical assistant, another
7 daughter works for St. Lucie County Tax Collector's Office,
8 another daughter is a dental technician, and a son is an
9 irrigation manager.

10 Q. Okay. You served in the U.S. Army for 22 years?

11 A. Yes, your Honor.

12 Q. And you served on a jury before in County Court?

13 A. Yes, your Honor.

14 Q. And you were not the foreperson?

15 A. No, ma'am.

16 Q. And was it a civil or criminal case, if you remember?

17 A. It was a criminal case.

18 Q. Any personal hobbies or interests?

19 A. I have a variety of them, nothing major.

20 Q. Okay. Any particular newspapers, magazines or shows that
21 you like?

22 A. There is nothing that I am glued to that I got to be, you
23 know, can't miss it on Friday night, no.

24 Q. Okay. Neither you nor close family member or friend have
25 been accused or convicted of a crime?

1 A. No, your Honor.

2 Q. With respect to whether you or close family member or
3 friend has been the victim of a crime, you indicate that in
4 1995, in Stafford, Virginia there was a rape involved?

5 A. Yes, my oldest daughter, she was sexually assaulted by her
6 friend's uncle.

7 Q. I am very sorry to hear that.

8 Is there anything about that experience that would affect
9 your ability to be fair and impartial in this case?

10 A. No, ma'am.

11 Q. Okay. With respect to whether you or close family member
12 or friend has ever worked for a law enforcement agency, so you
13 are indicating your father retired as the Sheriff from Brevard
14 County?

15 A. He was a Major on the Brevard County Sheriff's Department.

16 Q. So, he is retired?

17 A. And deceased.

18 Q. You know numerous what?

19 A. United States Secret Service agents, my last assignment in
20 the military I worked closely with a lot of them.

21 Q. Anything about your relationship and father's relationship
22 with law enforcement that would affect your ability to be a
23 fair juror in this case?

24 A. I know Sheriff Mascara, and a lot of the deputies. I would
25 like to think I could, I don't want to push it and possibly be

1 unfair.

2 Q. Is there a reasonable doubt in your mind in light of your
3 relationship with law enforcement officers, along with the
4 names you indicated, that you have a reasonable doubt whether
5 you could be fair and impartial to both sides?

6 A. I would say there is a doubt.

7 Q. Okay.

8 A. I like to think I could be fair, but I don't want to be
9 unfair to the Plaintiff.

10 Q. Okay. And you participate in American Legion and Boy
11 Scouts?

12 A. Yes, your Honor.

13 Q. And are you able to serve during the days and hours we
14 indicated?

15 A. Yes, your Honor.

16 Q. Okay, all right. All right. Thank you.

17 Juror number 9?

18 A. Yes.

19 Q. Okay. And, let's see. Where do you work?

20 A. Indian River County, 25 years, heavy equipment operator.

21 Q. Okay. High school graduate?

22 A. Yes.

23 Q. And your spouse or partner works at Piper Aircraft?

24 A. Yes.

25 Q. Has a high school background?

1 A. Yes.

2 Q. No adult children?

3 A. No.

4 Q. You served in the Army?

5 A. Yes.

6 Q. Never served on a jury before?

7 A. No.

8 Q. You like sports?

9 A. Yes.

10 Q. You like -- let's see. What do you like reading and
11 watching?

12 A. USA newspaper, Sports Illustrated.

13 Q. Sports Illustrated. No favorite TV show?

14 A. No.

15 Q. Something about your brother and drugs in Wisconsin?

16 A. Yes, he got busted 15, 20 years ago.

17 Q. Okay. Did he serve any time?

18 A. Yes, he did.

19 Q. Okay.

20 A. I am not sure how many years.

21 Q. And anything about that experience that would affect your
22 ability to be fair and impartial?

23 A. No, ma'am.

24 Q. Okay. And neither you nor close family member or friend
25 has ever been the victim of a crime?

1 A. No.

2 Q. Neither you nor close family member or friend worked for a
3 law enforcement agency?

4 A. No.

5 Q. You don't participate in organizations or groups?

6 A. No.

7 Q. Anything about your background or feelings that make you
8 feel you could not be a fair and impartial juror?

9 A. No.

10 Q. Could you serve the days and hours I indicated?

11 A. Yes.

12 Q. Thank you so much.

13 Juror number 10?

14 A. Yes.

15 Q. You own a kitchen and bath design firm?

16 A. Correct.

17 Q. And prior to that, you worked for the firm and now you own
18 it?

19 A. Yes.

20 Q. Okay. And before you were in the citrus industry?

21 A. Correct.

22 Q. And you have four years of college, a degree in business
23 management and accounting, two year degree?

24 A. Yes.

25 Q. Okay. Your husband is retired due to health issues, but he

1 was an ESE teacher for 15 years and advertising salesman?

2 A. Yes.

3 Q. You have a 19 year old currently in college, accounting
4 major. No military service?

5 A. No.

6 Q. No jury service before?

7 A. No.

8 Q. You like reading, music, crocheting and crafts?

9 A. Yes.

10 Q. You read the daily local newspaper, Pintrist, and like
11 crime shows, CSI and Snapped?

12 A. Correct.

13 Q. Your husband did have a DUI in 2016/17?

14 A. Yes.

15 Q. Was that a violation of probation?

16 A. The DUI was in 16, and violation was in 17.

17 Q. Okay. Is there anything about that experience that would
18 prevent you from being a fair and impartial juror in this case?

19 A. No.

20 Q. And with respect to whether you or a close family member or
21 friend was a victim of a crime, your college roommate did
22 experience a date rape in 1987?

23 A. Yes.

24 Q. Your home was broken into and robbed in 2011?

25 A. Yes.

1 Q. Anything about those experiences that would influence you
2 from being fair and impartial to both sides?

3 A. No.

4 Q. You have a cousin that's a retired law enforcement officer
5 in Kansas and Orlando?

6 A. Yes.

7 Q. Anything about that relationship that your cousin has in
8 law enforcement, although retired, that would affect your
9 ability to be fair and impartial to both sides in this case?

10 A. No.

11 Q. You are a member of the First Church of God in Vero Beach,
12 but you don't hold a position?

13 A. Correct.

14 Q. Is there anything that might affect your ability to be fair
15 and impartial to both sides?

16 A. No.

17 Q. Can you serve during the days and hours I indicated?

18 A. Well, we have a small firm and our work is primarily in
19 condominiums and the -- I have about ten projects that started
20 on the 15th, so I have about 15 projects running, it is a
21 strain on the company for me to be out. There is my business
22 partner, myself, and our designer. It is a little bit
23 stressful for me to be out of the office for that long.

24 Q. Can I ask you the same question I asked Ms., is the level
25 of stress such that it would interfere with your ability, if

1 you are selected, to give your full attention to the parties in
2 this case?

3 A. Yes, it would, honestly.

4 Q. Have you spoken with your partner about the ability of him
5 or her to shoulder the load if you are selected as a juror?

6 A. Yes, and she is more stressed out about it than I would be.

7 Q. I am not insensitive to that, believe me, but I know
8 everybody in the courtroom has something going on personally or
9 professionally. Some of us are called upon to serve in the
10 military, as we have two of our jurors, and others don't do
11 that, but they have a different kind of civic duty, and that is
12 to serve as jurors. So, it really is one of the most important
13 things you can do as a citizen of this country.

14 So, can you manage it?

15 A. If I have to, I can go into the office after I finish.

16 Q. You may not be selected. I need to know, if you are
17 selected, can you make it work?

18 A. Yes, I will make it work.

19 Q. Okay. Thank you so much.

20 Juror number 11?

21 A. Yes.

22 Q. You do pool maintenance and pizza delivery?

23 A. I used to do pizza delivery, I do pool service for about 11
24 years now. I own my own business.

25 Q. You have a high school background?

1 A. Yes.

2 Q. No spouse or partner?

3 A. No.

4 Q. No adult children?

5 A. No.

6 Q. Never served on a jury before?

7 A. No.

8 Q. You like disc golf, surfing and fishing?

9 A. Yes.

10 Q. Do you have any newspapers or magazines that you read
11 regularly?

12 A. No.

13 Q. Do you have any favorite T.V. shows?

14 A. The Office.

15 Q. That is a good one. What else?

16 A. Blacklist.

17 Q. Okay. No family members or friends accused or arrested or
18 convicted of a crime?

19 A. My younger brother, he was charged with possession of
20 marijuana a few times and DUI.

21 Q. Is there anything about the experiences your brother had
22 with law enforcement that would affect your ability to be fair
23 and impartial in this case?

24 A. No.

25 Q. Have you or your close family member or friend worked for a

1 law enforcement agency?

2 A. No.

3 Q. Or belong to any organization devoted to crime prevention?

4 A. No.

5 Q. Do you participate in organizations or groups?

6 A. No.

7 Q. Anything that might affect your ability to be fair and
8 impartial to both sides?

9 A. No.

10 Q. Can you serve the days and hours I indicated?

11 A. Yes.

12 Q. Thank you.

13 Juror 12, you have been a fund raiser and director of
14 development and cashier, but you are now retired?

15 A. Yes.

16 Q. You have a BA degree?

17 A. Yes.

18 Q. Your spouse or partner has two years of college.

19 A. Yes.

20 Q. He works for Lowes in mill work?

21 A. Yes.

22 Q. You have adult children. Let me know what they do.

23 A. The oldest one is an investment manager, Scott is a chef
24 and owns three restaurants, Curtis is an interventional
25 radiologist, he has his MD Ph.D., and my daughter does

1 marketing for a hotel chain.

2 Q. No military service?

3 A. No.

4 Q. No service on a jury before?

5 A. No.

6 Q. You like paper and candle making, quilting and photography?

7 A. Yes, all kinds of crafts.

8 Q. You read the Treasure Coast newspaper, New York Times, and
9 watch Criminal Minds, Blacklist and Property Brothers?

10 A. Yes.

11 Q. Okay. You have -- someone was convicted of --

12 A. Oh, my brother.

13 Q. Your brother. Tell me about that.

14 A. He was convicted many times for many different things,
15 drugs, drinking, assault.

16 I actually cut all relationships with my mother and brother
17 because of the trauma and chaos. There is probably more, but
18 they both passed away, so I don't know.

19 Q. Anything about that experience that would get in the way of
20 you being a fair and impartial juror in this case?

21 A. I don't think so, although I am not really sure. I don't
22 quite understand what this case is. Yes, I think I would be
23 okay.

24 Q. Well, you haven't heard any evidence yet, so it is always a
25 tricky thing to project. That is why we give a summary of the

1 case. I hopefully have given you enough to know, generally
2 speaking, who the -- what the case involves, it is a civil
3 case. Regardless of what kind of case it is, at the end of the
4 day every juror is charged with the same responsibility,
5 whether it is criminal or civil, any case, no matter what it
6 is.

7 The question for the juror is, can you follow the law and
8 apply the law to the evidence that you hear in court and learn
9 in court and be fair and impartial to both sides, keep an open
10 mind and when you go back and deliberate with your fellow
11 jurors you render a verdict that is fair and impartial?

12 A. I can do that.

13 Q. Okay. You do indicate your mother was mugged in Miami, but
14 you don't know the year?

15 A. Yes.

16 Q. Anything about that that would interfere with your ability
17 to be fair and impartial?

18 A. No.

19 Q. Neither you nor close family member or friend worked for a
20 law enforcement agency?

21 A. No.

22 Q. You don't belong to organizations or groups?

23 A. No.

24 Q. When I asked you -- you say you have no sympathy for
25 alcoholics and drug users. Anything about that statement that

1 you want to elaborate on that would be suggestive of a
2 situation where you may not be able to be fair and impartial?

3 A. Its --

4 Q. How does that come into play?

5 A. Because I had to deal with it so much personally I have the
6 attitude of get over it, go get it fixed, that is all.

7 Q. Okay. So, how might that come into play in terms of your
8 inability to be fair and impartial in a case?

9 A. I don't think it would come in.

10 Q. Can you serve during the days and hours that I have
11 indicated?

12 A. Yes, ma'am.

13 Q. Okay. All right. Thank you very much.

14 Juror 13, you are a service technician for Nestle
15 Professional Beverage?

16 A. Yes.

17 Q. You have a high school, trade school background?

18 A. Yes.

19 Q. Did you coordinate with juror 14 with the blue tops? They
20 are identical in color. Your spouse or partner has a high
21 school background and works in a doctor's office?

22 A. Yes.

23 Q. You have adult children, all of whom are in college?

24 A. Yes.

25 Q. Okay. No service in the military?

1 A. No.

2 Q. No service on a jury?

3 A. No.

4 Q. You like biking and bowling?

5 A. Yes.

6 Q. You don't read magazines, but you like Arrow and Blacklist
7 on TV?

8 A. Yes.

9 Q. You -- let's see. In 2001, in West Palm Beach there was a
10 domestic battery charge. Is that something you were involved
11 with?

12 A. Yes.

13 Q. What happened there? Was there an arrest, and did it end
14 up going to trial?

15 A. Yes, it did.

16 Q. Were you convicted?

17 A. Yes, and I filed an appeal and I won the appeal.

18 Q. You won the appeal?

19 A. Yes.

20 Q. And then also in 1997, were you involved in a DUI?

21 A. Yes.

22 Q. And what was the disposition of that?

23 A. Back then it was nothing, I think it was throwed out.

24 Q. Okay. Is there anything about either one of those
25 experiences you had that you believe would interfere with your

1 ability to be a fair and impartial juror in this case?

2 A. No.

3 Q. Okay. And you say in 1999, someone broke into your home?

4 A. Yes.

5 Q. Anything about that experience that would affect your
6 ability to be fair and impartial to both sides in this case?

7 A. No.

8 Q. Neither you nor close family member or friend ever worked
9 for a law enforcement agency or belonged to an organization
10 with law enforcement?

11 A. I have a friend in the Secret Service and a couple friends
12 with the West Palm Sheriff Department.

13 Q. Anything about those relationships that would affect your
14 ability to be fair and impartial to both sides?

15 A. No.

16 Q. You indicate you are a Jehovah Witness?

17 A. Yes.

18 Q. Okay. And is there anything in your personal background or
19 personal feelings that would affect your ability to be fair and
20 impartial to both sides?

21 A. No.

22 Q. The Jehovah Witness, anything about your beliefs that would
23 get in the way of your ability to do what you are required to
24 do, follow the law I will give you, something I will read to
25 you at the end of the case and give you, and apply the law to

1 the evidence presented in the case?

2 A. I just started studying with them.

3 Q. What is that?

4 A. I just started studying with them, I don't know what their
5 laws are.

6 Q. Regardless of what their laws are, I don't know what degree
7 of studying you are going to be doing, you could follow the
8 laws I will give you?

9 A. Exactly.

10 Q. Can you do the days and hours I indicated?

11 A. Not really unless I have to. I cover West Palm to
12 Melbourne, and I am the only technician for the area.

13 Q. You work for a big company?

14 A. Yes.

15 Q. Do they know you are called up for jury duty?

16 A. Yes.

17 Q. Anybody giving you a hard time about that?

18 A. So far, not.

19 Q. All right. I know it's an inconvenience because you have
20 job responsibilities. Can you serve -- but if you serve, will
21 you give your full and undivided attention to the parties in
22 this case?

23 A. Yes.

24 Q. Thank you.

25 Juror number 14?

1 A. Yes.

2 Q. You are a service technician.

3 A. Correct.

4 Q. With what company?

5 A. Cugin Acura.

6 Q. Okay. And what did you do before?

7 A. I worked at DBD's as a busser, food service.

8 Q. You have a high school background?

9 A. Correct.

10 Q. No spouse or partner?

11 A. No.

12 Q. No partner?

13 A. No.

14 Q. No military service?

15 A. No.

16 Q. You like working out and basketball?

17 A. Correct.

18 Q. You don't have favorite magazines, T.V. shows or websites?

19 A. No.

20 Q. Neither you nor family member or close friend has been
21 accused of a crime?

22 A. No.

23 Q. Neither you nor close family member or friend has been the
24 victim of a crime?

25 A. No.

1 Q. You know people on the St. Lucie County Sheriff's Office?

2 A. Yes.

3 Q. And how do you know them?

4 A. My brother and my stepbrother.

5 Q. Brother and stepbrother?

6 A. Brother.

7 Q. Your brother works for the St. Lucie County Sheriff's
8 Office?

9 A. Yes.

10 Q. What kind of work does he do?

11 A. He is a police officer.

12 Q. How long has he been a police officer?

13 A. Less than five months, six months.

14 Q. He just started?

15 A. Yes.

16 Q. Is there anything about his working for the St. Lucie
17 Sheriff's Office that would affect your ability to be fair and
18 impartial in this case?

19 A. No, ma'am.

20 Q. And you didn't know any of the people that I listed off?

21 A. No, ma'am.

22 Q. And so, given that persons who are associated with the St.
23 Lucie County Sheriff's Office are parties in this case, that is
24 not going to put you in any kind of a difficult position to be
25 fair and impartial to both sides?

1 A. No, ma'am.

2 Q. You don't feel you need to favor or not favor one side or
3 the other because of your brother working there?

4 A. No, ma'am.

5 Q. Okay. You don't participate in organizations or groups?

6 A. No, ma'am.

7 Q. And you -- is there anything in your background or personal
8 feelings which might affect your ability to be fair and
9 impartial to both sides?

10 A. No, ma'am.

11 Q. Can you serve during the days and hours I indicated?

12 A. Might be rough, I have a job interview and background test
13 and drug test coming up. I have no clue, don't know if the
14 position will still be open or not.

15 Q. When is your interview and background test and all of that?

16 A. The 21st.

17 Q. Okay. It is an interview for a job?

18 A. Yes.

19 Q. And what job is that?

20 A. Another technician job in West Palm Beach for BMW.

21 Q. Okay. And so, you are saying if you are not able to
22 attend, do you know whether they would be willing to reschedule
23 that if you ask them if you were called as a juror?

24 A. No clue.

25 Q. You don't know. Other than that interview, is there any

1 other matter that would interfere with your ability to serve
2 during the days and hours?

3 A. No, ma'am.

4 Q. Okay. Okay. Thank you so much.

5 Juror number 15?

6 A. Yes.

7 Q. You are retired, you were a practical nurse?

8 A. Correct.

9 Q. Your educational background is graduate of --

10 A. Technical.

11 Q. Technical school?

12 A. Yes.

13 Q. LPN?

14 A. Yes.

15 Q. Your spouse or partner is a retired surface coal miner?

16 A. Correct.

17 Q. You have a son who is an attorney with the U.S. Attorney's
18 Office in West Virginia?

19 A. Yes, he is the U.S. Attorney.

20 Q. He is?

21 A. Yes, of the Southern District of West Virginia.

22 Q. Got it, okay. Your daughter is a beautician?

23 A. Correct.

24 Q. Anything about the fact that your son holds that position
25 that would interfere with your ability to be fair and impartial

1 in this case?

2 A. No. It would make it even more.

3 Q. No service in the military?

4 A. No.

5 Q. No service on a jury before?

6 A. No.

7 Q. You like reading, the beach, movies, you like going on

8 Google, Facebook, reading Good Housekeeping and Southern

9 Living?

10 A. Uh-hum, and the Cooking Channel.

11 Q. The Cooking Channel. Your husband did have a DUI in West

12 Virginia in the 1990's?

13 A. Correct.

14 Q. Anything about that fact that would affect you being a fair
15 and impartial juror?

16 A. No. Glad they got him.

17 Q. And in the 1990's your son was beaten by a biker?

18 A. Prior to him being my son-in-law, the Pagan motorcycle
19 group, they decided they needed an initiation and my son-in-law
20 happened to be at the wrong place at the wrong time.

21 Q. Anything about that experience that would --

22 A. No.

23 Q. -- interfere with your ability to be fair and impartial?

24 A. No.

25 Q. You don't participate in any groups or organizations?

1 A. No.

2 Q. And there is nothing in your background or personal
3 feelings which might affect your ability to be fair and
4 impartial to both sides?

5 A. I could be fair.

6 Q. And impartial?

7 A. Yes.

8 Q. Can you serve the days and hours I indicated?

9 A. Yes.

10 Q. Okay.

11 A. There is one thing I never thought about saying, but my
12 brother-in-law, it has been 35 years, but he was a city police
13 officer up north.

14 Q. Retired for 30 years?

15 A. Yes.

16 Q. He was a police officer up north?

17 A. Yes.

18 Q. Anything about that fact that would interfere with your
19 ability to be impartial to both sides?

20 A. No.

21 Q. Thank you.

22 Juror 16, you are a nanny?

23 A. Yes.

24 Q. You have a high school background?

25 A. Yes.

1 Q. Your son is a truck driver and -- no, you have a son in
2 college?

3 A. Yes.

4 Q. No jury service?

5 A. No.

6 Q. You like to learn music?

7 A. I don't understand it.

8 Q. What do you like to do as your personal hobbies and
9 interests?

10 A. Music.

11 Q. You like music. What do you read, the Bible?

12 A. The Bible, I am a Christian person.

13 Q. And your daughter was arrested for DUI in 2015?

14 A. Correct.

15 Q. And what happened, what was the final outcome of that?

16 A. She was in an accident first and then she violate -- they
17 suspend the driver license, and she drive again, and she was
18 arrested, and she was in jail for two months, I think.

19 Q. Okay. Let me ask you, so, what is your first language,
20 Spanish?

21 A. Spanish. I make a note that I have a problem with
22 understand, writing and speak English. My language is Spanish.

23 Q. Okay. Have you had some trouble understanding everything?

24 A. Yes.

25 Q. Do you have some concerns about your ability to be able to

1 understand what would happen in a trial, five to seven days,
2 are you concerned with that at all?

3 A. Yes, what happened if I don't understand.

4 Q. Right. And so far there have been some things you have not
5 been able to understand?

6 A. Can you say that again?

7 Q. Have I said some things today that you have not understood?

8 A. In the beginning, in the beginning, when we was here and
9 you explain the case, there was some things that really not
10 clear to me.

11 Q. Okay.

12 A. Yes.

13 Q. Okay. Okay. Okay, thank you very much.

14 A. Thank you.

15 Q. Juror number 17?

16 A. Yes.

17 Q. Okay, good morning. You are a bartender at the Olive
18 Garden?

19 A. Yes.

20 Q. You went up to college and finished your AS, and are
21 working toward nursing?

22 A. Yes.

23 Q. No spouse or partner?

24 A. No.

25 Q. No service in the military?

1 A. No.

2 Q. You like reading, Netflix and swimming?

3 A. Yes.

4 Q. Your favorite shows are Grey's Anatomy and Dexter?

5 A. Yes.

6 Q. None of your family or friends have been accused or
7 arrested or convicted of a crime?

8 A. No.

9 Q. Neither you nor close family member or friend work for a
10 law enforcement agency or are a member of a law enforcement
11 organization?

12 A. No.

13 Q. You told me that your cousin works for the police
14 department in Ocala?

15 A. Yes.

16 Q. Anything about that that would prevent you from being fair
17 and impartial to both sides?

18 A. No.

19 Q. You don't participate in organizations or groups?

20 A. No.

21 Q. Nothing in your background would affect your ability to be
22 a fair and impartial juror?

23 A. No.

24 Q. You could serve the days and hours I indicated?

25 A. I have class on Mondays and we had days that would not go

1 very well. I have tests on Monday and Wednesday of this week.

2 Q. You are in college now?

3 A. Yes.

4 Q. You are still in session?

5 A. Yes.

6 Q. So you are a student currently?

7 A. Yes.

8 Q. Next Monday and next Wednesday you are in class and you
9 have tests?

10 A. Yes.

11 Q. Okay. Has school ended or are you in summer?

12 A. We just started summer, IRCA.

13 Q. When do you go to school?

14 A. Monday and Wednesday, I have an online class between 12:00
15 and IV, and on Wednesday I have a class at 5:30, it is in
16 school that day.

17 Q. That one test happens to be online?

18 A. That one test is the online class, but I do have to go to
19 the campus for the test.

20 Q. All right. Thank you.

21 Juror number 18?

22 A. Yes.

23 Q. You work for FPL?

24 A. Yes.

25 Q. As a fleet chemistry specialist?

1 A. Yes.

2 Q. You have a BS in nuclear engineering technology?

3 A. Yes.

4 Q. Your partner is a student?

5 A. Yes, she is going to school for welding.

6 Q. Okay. What did you say?

7 A. Welding.

8 Q. Welding, okay. No adult children?

9 A. No.

10 Q. You served in the U.S. Navy, honorable discharge as --

11 A. I was an E-6.

12 Q. Okay. That was from 2003 to 2009?

13 A. Correct.

14 Q. No service on a jury before?

15 A. No.

16 Q. You like books, movies, hiking, biking, home improvement
17 and music?

18 A. Yes.

19 Q. You don't particularly take to newspapers or magazines, you
20 get news from Fox and Drudge Report?

21 A. And local news.

22 Q. Local. Neither you nor family members have been arrested
23 or convicted of a crime?

24 A. No.

25 Q. Neither you or close family members or friends work for a

1 law enforcement agency or are a member of an organization?

2 A. No.

3 Q. You don't participate in organizations or groups?

4 A. No.

5 Q. Nothing in your background that makes you feel you cannot
6 be fair and impartial?

7 A. No.

8 Q. You could serve the days and hours I indicated?

9 A. Yes.

10 Q. Okay, thank you.

11 Juror number 19. Let me get them back in order here.

12 A. Yes, ma'am.

13 Q. You are a lead insurance representative at Martin Health
14 System?

15 A. Yes.

16 Q. You have an AA degree and high school diploma?

17 A. Yes.

18 Q. Your spouse is a property manager?

19 A. Yes.

20 Q. No adult children?

21 A. No.

22 Q. No service on a jury?

23 A. No.

24 Q. You like boating, fishing?

25 A. Yes.

1 Q. You like to watch Discovery Channel?

2 A. Yes.

3 Q. Neither you nor family member or close friend has been
4 arrested or convicted of a crime?

5 A. No.

6 Q. Neither you or close family member or friend has been the
7 victim of a crime?

8 A. No.

9 Q. Neither you or family member or close friend have worked
10 for a law enforcement agency or belonged to any organization?

11 A. No.

12 Q. You are the president of the South Fork Basketball Booster
13 Club and secretary/treasurer of Coast Basketball.

14 A. Yes, I am a basketball mom.

15 Q. There's nothing in your background or personal feelings
16 that would affect your ability to be fair and impartial?

17 A. No.

18 Q. You would be able to work the days and hours I mentioned?

19 A. My kids would like me to be on the road at 2:00 p.m.
20 Friday, but no.

21 Q. You are not going?

22 A. We have two cars going.

23 Q. Juror number 20, you are a supervisor at Martin Health
24 System?

25 A. Yes.

1 Q. Do you know each other?

2 A. No.

3 Q. You work at the same place, but you don't know each other?

4 A. No. It is a big organization.

5 Q. Let me ask that question. Does any juror know any juror
6 here? If so, raise your hand. No hands.

7 You have some college background, continuing education for
8 health care?

9 A. Yes.

10 Q. Your partner is a manager with Express Scripts and was a
11 manager of Planet Fitness?

12 A. Yes.

13 Q. You have children with a college background?

14 A. Yes.

15 Q. Working in music and for Symplex?

16 A. He inspects fire alarms.

17 Q. No military service?

18 A. No.

19 Q. You did have one trial, it was a State case, you served for
20 three days and then you were released?

21 A. Yes.

22 Q. Okay. You enjoy cycling?

23 A. Up cycling.

24 Q. Up cycling. Used furniture?

25 A. I refurbish furniture.

1 Q. You are interested in designing and painting?

2 A. Yes.

3 Q. You like Doctor Oz, newspapers on line, Pintrist and TED
4 TV?

5 A. Yes.

6 Q. Neither you nor a close relative or friend has been
7 arrested or convicted of a crime?

8 A. No.

9 Q. Neither you nor close family member or friend worked for a
10 law enforcement agency, or belong to an organization devoted to
11 law enforcement?

12 A. No.

13 Q. You don't participate in organizations or groups?

14 A. No.

15 Q. Nothing in your background that would affect your ability
16 to be fair and impartial to both sides?

17 A. No.

18 Q. And you could serve the days and hours I indicated?

19 A. Yes.

20 Q. Juror 21, I know you raised your hand earlier.

21 Why don't we hold off on you. I know you indicated you
22 knew something about the case before. I am going to put a tab
23 and we'll come back to you separately, if that is okay.

24 And similarly, juror 22, I will hold you off for a moment
25 because you had feelings you wanted to express.

1 Juror number 23?

2 A. Yes.

3 Q. ?

4 A. Yes.

5 Q. And you are a full-time occupational therapist working with
6 mentally, physically handicapped children?

7 A. Yes.

8 Q. College background, occupational therapy assistant?

9 A. Yes.

10 Q. Single?

11 A. Yes.

12 Q. No children?

13 A. No.

14 Q. No service in the military?

15 A. No.

16 Q. You are working on a new house?

17 A. Yes, I bought my new house back in March.

18 Q. Congratulations.

19 You like books, no cable. You do not like watching cable?

20 A. No.

21 Q. You like Netflix, websites, mainly for work purposes?

22 A. Right.

23 Q. Your brother, in 2000, was arrested for trespassing and
24 charged with possession of marijuana?

25 A. Yes.

1 Q. Anything about that that would affect you being a fair and
2 impartial juror?

3 A. No.

4 Q. Okay. Neither you nor close family member or friend has
5 been the victim of a crime?

6 A. No.

7 Q. Neither you nor close family member work for law
8 enforcement or an organization devoted to law enforcement?

9 A. No.

10 Q. You are not involved in any organizations or groups?

11 A. No.

12 Q. When I asked if there is anything in your background or
13 personal feelings that might affect your ability to be fair and
14 impartial to both sides, you indicate, honestly, I don't think
15 I would be comfortable voting someone guilty if not guilty, or
16 actually were guilty to end up not guilty to be free to commit
17 another crime.

18 That seemed to be you were anticipating this would be a
19 criminal case?

20 A. Yes. I didn't know what the case would be. I didn't know
21 whether I would feel comfortable enough to say if the person is
22 guilty or not guilty, whatever, depending on what the case was.

23 Q. Now that you know it is a civil case and I have given you a
24 brief description, do you believe there is anything in your
25 background or feelings that make you feel you might not be fair

1 and impartial to both sides?

2 A. No.

3 Q. Can you serve the days and hours I indicated?

4 A. I can. Again, like a couple of others, financially it
5 would be a burden for me, I am my only income, and I bought a
6 house, it would be a setback for me.

7 Q. Do you think you would be able to handle it if called upon
8 to fulfill your civic duty?

9 A. Yes.

10 Q. Would you be in a position to -- would the burden not
11 interfere in any way with your ability to give your full and
12 undivided attention to the parties in this case?

13 A. It would, but it would be stressful.

14 Q. We do know, of course, nothing prohibits anyone from after
15 court each day to tend to whatever personal or professional
16 matters, there are no restrictions on what you do after you
17 leave here, other than you cannot talk about it or anything I
18 told you, obviously, during the hours that you are here you are
19 not do those things.

20 A. Those are the same hours I work.

21 Q. Thank you. Juror 24?

22 A. Yes.

23 Q. You work for Diversified Roofing Solutions as a roofer?

24 A. Yes.

25 Q. You went to Martin County High School and GED and a little

1 trade school?

2 A. Yes.

3 Q. No spouse or partner?

4 A. No.

5 Q. No adult children?

6 A. No.

7 Q. No service in the military?

8 A. No.

9 Q. No service on a jury before?

10 A. No.

11 Q. You like to run/jog and exercise?

12 A. Yes.

13 Q. You like the TV show -- is it called Two Broke Girls?

14 A. Yes.

15 Q. Okay. I wouldn't know the difference, you could tell me
16 that, and I'd believe it.

17 Your brother was accused of a crime, and your dad helped
18 release him by paying for his release?

19 A. Yes.

20 Q. Anything about that experience that would affect your
21 ability to be fair and impartial in this case?

22 A. No.

23 Q. And neither you nor close family member or friend have been
24 the victim of a crime?

25 A. No.

1 Q. Neither you nor close family member or friend ever worked
2 for a law enforcement agency or been involved with a law
3 enforcement organization?

4 A. No.

5 Q. You don't belong to any organizations or groups?

6 A. No.

7 Q. When I ask is there anything in your background or personal
8 feelings which might affect your ability to be fair and
9 impartial to both sides, you say "I don't feel comfortable
10 around people who seem to obviously be racist. I think that's
11 it."

12 Now that you know who you are with, your fellow potential
13 jurors, although nobody has been selected yet, you are possible
14 jurors, and you know about the case from the brief description
15 I have given you, anything in your background or personal
16 feelings which might affect your ability to be fair and
17 impartial to both sides?

18 A. No.

19 Q. Can you serve during the days and hours I indicated?

20 A. Yes. Yes, I can.

21 Q. Okay. All right. Thank you.

22 Juror 25, you work as a dishwasher, washing dishes, trash,
23 bathrooms, mostly washing dishes?

24 A. Yes. I have dish washing down here and in Massachusetts
25 also. This is kind of preventing me from -- I do have a job,

1 and kind of preventing me from working, because I asked for
2 these two weeks off because of jury duty.

3 I can serve, it is not that I can't serve, but I would like
4 to be working.

5 Q. So, let me make sure I understand.

6 So, you asked for time off because you knew you had jury
7 duty, and you were given time off. I am assuming you are not
8 getting paid, or are you?

9 A. No, I am not getting paid right now, no. I have to let her
10 know after the two weeks are up when I can start because I was
11 going to start, you know, probably this coming week if
12 possible, but I knew I had jury duty, and I didn't know if I
13 was going to get the job or not.

14 I can still serve, but it's just putting a damper on my job
15 right now.

16 Q. Do you have the job or are you applying for the job?

17 A. No, I do have the job. I had to ask for the two weeks off,
18 I didn't know if I was going to get the job or not.

19 Q. Have they said it is okay to take the time off and they
20 will hold the job for you?

21 A. Yes, she told me to let her know when I can start working.

22 Q. Let's say you are not picked as a juror, could you say, I
23 am not a juror, and could you be back to work?

24 A. Yes.

25 Q. If you are not working, you still have your job, but not

1 making money from your job?

2 A. Yes.

3 Q. Do you live alone?

4 A. No. I live with my aunt.

5 Q. You live with your aunt?

6 A. Yes.

7 Q. Could you swing it financially if you don't have money
8 coming in from your job?

9 A. Yes, I can.

10 Q. You are okay with that?

11 A. Yes.

12 Q. You have a high school background?

13 A. Yes, I do.

14 Q. Okay. You are not married?

15 A. No. Single.

16 Q. You don't have adult children?

17 A. No.

18 Q. You have never served in the military?

19 A. No.

20 Q. You served on a jury in Massachusetts?

21 A. Yes. I don't really -- I remember little bits and pieces
22 of the case, I don't remember if it was criminal or not
23 criminal. We did come with a verdict, but we didn't find out
24 the Sentencing or anything with that, so...

25 Q. All right. And you like movies?

1 A. Yes, I do.

2 Q. Okay, you like to watch -- is it called Golden Girls?

3 A. Yes.

4 Q. Is there another show called Mom or is that part of Golden
5 Girls?

6 A. No, that is another show, after midnight.

7 Q. No wonder I don't know anything about it.

8 A. Sorry, I shouldn't have said that.

9 Q. That is okay. Neither you nor close family member or
10 friends have been arrested or convicted of a crime?

11 A. I should have put down my friend. I didn't want to put
12 down my friend because she may not want me to give the
13 information out.

14 Q. You don't have to tell me the name, just tell me what
15 happened.

16 A. Supposedly it was a drug thing and she supposedly is on
17 probation right now.

18 Q. Okay, you don't have to give me her name.

19 Anything about this experience that happened with your
20 friend that would prevent you from being a fair and impartial
21 juror in this case?

22 A. I don't think so, no.

23 Q. And you say neither you nor close family member or friend
24 have ever been the victim of a crime; is that correct?

25 A. Yes.

1 Q. Neither you nor close family member or friend have ever
2 worked for law enforcement?

3 A. No.

4 Q. And you participate in the Treasure Coast Friend Group?

5 A. Yes, I do.

6 Q. Other than what you described about your job, is there
7 anything in your background or personal feelings which might
8 affect your ability to be fair and impartial to both sides?

9 A. I do have a question. This is criminal, right?

10 Q. No, this is a civil case. Civil is not criminal, meaning
11 nobody is sentenced, no one is going to be sentenced, there is
12 nothing to do with jail or anything that people usually think
13 about in criminal cases.

14 So, it is a dispute between two parties, and they are going
15 to present the evidence and tell you their side of the story
16 and you are going to listen to the evidence, and I am going to
17 give you the law and I will explain it to you and you will
18 decide which side has proven their case.

19 A. Okay. Yes, I can do that.

20 Q. Do you feel comfortable doing that?

21 A. Yes.

22 Q. Okay, all right, thank you.

23 A. You are welcome.

24 Q. Juror 26. You are -- you work at Wal-Mart customer
25 service?

1 A. Yes.

2 Q. You have a 12th grade background?

3 A. Yes.

4 Q. And your spouse or partner is the owner of a landscaping
5 company?

6 A. Yes.

7 Q. Okay. He is a college graduate?

8 A. Yes.

9 Q. No adult children?

10 A. No.

11 Q. No service in the military?

12 A. No.

13 Q. No service on a jury before?

14 A. No.

15 Q. You read urban books?

16 A. Yes.

17 Q. You like Criminal Minds and SVU Law and Order?

18 A. Yes.

19 Q. You had problems in 2008?

20 A. Yes.

21 Q. What happened there?

22 A. I was intoxicated, basically.

23 Q. Okay. What was the final disposition, was there an arrest?

24 A. Yes, I was arrested and I was on six months probation.

25 Q. Okay. That was by St. Lucie County Sheriff's Office?

1 A. Yes.

2 Q. Okay. And also were you involved with resisting arrest --

3 A. Those two were together. They just went together.

4 Q. One says 2008 and one says 2006?

5 A. I don't remember, it was between 2006 and 2008.

6 Q. The same incident?

7 A. Yes.

8 Q. Given you had this experience and you had this experience
9 with the St. Lucie County Sheriff's Office, which is one of the
10 parties here in this case, or involved in this case, is there
11 anything about this personal experience you had that would
12 affect your ability to be fair and impartial to both sides in
13 this case?

14 A. No.

15 Q. You believe you could be fair and impartial to both sides?

16 A. Yes.

17 Q. Okay. Neither you nor close family member or friend has
18 ever been the victim of a crime?

19 A. No.

20 Q. Neither you nor close family member or friend work for a
21 law enforcement agency or belong to any organization associated
22 with law enforcement?

23 A. I do. I have an uncle and his wife, but I haven't spoken
24 to him in like six years.

25 Q. They are in law enforcement?

1 A. I have an uncle -- she works in St. Lucie County Jail and
2 my uncle is in Okeechobee Correctional, yes.

3 Q. Anything about the fact that they have these jobs, I guess
4 particularly also your aunt being with St. Lucie County Jail,
5 anything about their work and affiliations with these employers
6 that would affect your ability to be fair and impartial in this
7 case?

8 A. I don't speak with them.

9 Q. The answer is no?

10 A. No.

11 Q. You don't participate in organizations or groups?

12 A. No.

13 Q. Is there anything that would affect your ability to be fair
14 and impartial?

15 A. No.

16 Q. Can you serve the days and hours indicated?

17 A. I can, but I don't want to.

18 Q. Why don't you want to?

19 A. I don't want to be in the courthouse and sit and listen to
20 people talk all day.

21 Q. Are you capable?

22 A. I am capable.

23 Q. Capable of listening?

24 A. Yes.

25 Q. Being fair?

1 A. Yes.

2 Q. Impartial?

3 A. Yes.

4 Q. Capable of having an open mind after you've heard all of
5 the evidence?

6 A. Yes.

7 Q. Capable to reach a fair and just verdict?

8 A. Yes.

9 Q. You have a personal preference you'd rather be somewhere
10 else?

11 A. Yes.

12 Q. This is a very important calling and privilege to be a
13 juror in the case.

14 A. Yes, I know.

15 Q. If you are here and chosen, you won't hold that against
16 anybody and you would be attentive throughout the entire trial?

17 A. Yes.

18 Q. All right. Thank you.

19 Juror 27?

20 A. Yes.

21 Q. You spoke about someone you knew already?

22 A. Yes.

23 Q. I will put a sticky on yours as well, and maybe we'll come
24 back to you.

25 A. Okay.

1 Q. No, I guess I can go through --

2 A. Whatever you want, I am here.

3 Q. We won't get into who you know and how, that is what I want
4 to ask you separately.

5 You are a teacher?

6 A. Yes.

7 Q. Did you work for local news?

8 A. Yes, Time Warner.

9 Q. You have a college background?

10 A. Yes.

11 Q. Divorced?

12 A. Yes.

13 Q. Two children, they are not adults?

14 A. Right.

15 Q. They might be acting like they are?

16 A. They sure do.

17 Q. No service in the military?

18 A. No.

19 Q. No service on a jury?

20 A. No.

21 Q. You like football, baseball and following Trump?

22 A. Yes.

23 Q. You like Fox News?

24 A. Love Fox News.

25 Q. You don't have a close family member or friend who has been

1 the victim of a crime?

2 A. No.

3 Q. You don't have a close family member or friend that works
4 for a law enforcement agency or association with law
5 enforcement?

6 A. My boyfriend's brother is a police officer.

7 Q. Where is that?

8 A. Miami.

9 Q. Anything about that that would affect your ability to be
10 fair and impartial to both sides?

11 A. No, not at all. Blue lives matters, actually everyone's
12 life matters, yes.

13 Q. Okay. And you are part of your church, which is Catholic?

14 A. Yes.

15 Q. You indicate -- when I say is there anything in your
16 background or personal feelings which might affect your ability
17 to be fair and impartial, you say "I feel most people are
18 guilty. Zero tolerance"?

19 A. They are guilty of something. I have zero tolerance.
20 Everyone needs to step up and do the right thing, we won't have
21 everything that is going on.

22 Q. You know this is a civil case and not a criminal case?

23 A. Absolutely.

24 Q. Sometimes we use the word guilty, sometimes people
25 associate that with a criminal case. Now that you heard about

1 what the case is about, and know what your role is as a juror,
2 do you believe there is anything in your background or personal
3 feelings which might affect your ability to be fair and
4 impartial to both sides?

5 A. No.

6 Q. Can you serve during the days and hours I indicated?

7 A. Yes, it will be stressful, but yes.

8 Q. And we'll revisit the issue of who you know separately.

9 A. Sure.

10 Q. Thanks.

11 Juror number 28?

12 A. Yes.

13 Q. You were branch manager at --

14 A. Oculina.

15 Q. Carolina?

16 A. Oculina.

17 Q. I had it right the first time, Oculina Bank.

18 High school graduate, two years of college, AA degree?

19 A. Yes.

20 Q. Your partner is a high school graduate, college graduate,
21 territory sales manager in food service?

22 A. Yes.

23 Q. You have children who are employed in what fields?

24 A. She is in -- she is a computer programmer, and she does
25 software design, and she is a four-year graduate of college.

1 Q. Okay. All right. No service in the military?

2 A. No.

3 Q. You have served as a juror before, two times in civil cases
4 in State Court, there was a verdict reached and you were not
5 the foreperson?

6 A. Correct.

7 Q. You like horseback riding?

8 A. Yes.

9 Q. Watch the news, no newspapers, magazines, and you have no
10 favorite websites?

11 A. Correct.

12 Q. Neither you nor family or friends have been arrested or
13 convicted of a crime?

14 A. Correct.

15 Q. Neither you nor close family member have been the victim of
16 a crime?

17 A. Correct.

18 Q. Neither you nor your -- you are associated with the South
19 Beach Association, you are on the board of directors?

20 A. Yes.

21 Q. Nothing in your background that would affect your ability
22 to be fair and impartial to both sides?

23 A. No.

24 Q. You could serve during the days and hours I indicated?

25 A. Yes, I can.

1 Q. Thank you so much.

2 Juror 29?

3 A. Good morning.

4 Q. You are currently retired, but you do substitute teaching.

5 A. Yes.

6 Q. You have been a deputy clerk in criminal traffic?

7 A. Yes, that was like 30 years ago.

8 Q. Okay. You have an AA degree in elementary education?

9 A. Towards, yes.

10 Q. No spouse or partner?

11 A. No. Single.

12 Q. Four children and what type of work do they do?

13 A. My oldest son is in citrus, the citrus industry, he is
14 production manager for a corporation. The second son owns his
15 own business in Ocala, a feed store, and my third son works for
16 a local oil company. My daughter is a stay-at-home mom.

17 Q. Okay. No service in the military?

18 A. None.

19 Q. No service on a jury before?

20 A. Never.

21 Q. You like scrapbooking and playing with your grandchildren?

22 A. Yes.

23 Q. You don't read magazines, but you like Perry Mason and
24 Psych.

25 A. And Bull.

1 Q. And Bull. Your daughter was arrested for domestic abuse of
2 an elder, but the charges were dropped, and you had a family
3 dispute in Highlands County?

4 A. Yes, it was a big mistake. She and her grandmother, my
5 mother, got into it one day, and the older brother, the brother
6 that is eight years her senior, thought he was doing the right
7 thing by calling 911 to settle it. Anyway, the charges were
8 dropped.

9 Q. Anything about that experience that would affect your
10 ability to be a fair and impartial juror to both sides?

11 A. No. Not at all.

12 Q. You indicate your mom was a victim -- the same issue?

13 A. Yes.

14 Q. That is how you answered the question regarding victim?

15 A. Yes.

16 Q. Neither you nor close family friend worked in law
17 enforcement?

18 A. My oldest granddaughter is going to be married in November,
19 and her fiancée' is currently a deputy in Highlands County.

20 Q. Anything about that relationship that would affect your
21 ability to be fair and impartial to both sides?

22 A. Absolutely not.

23 Q. And you belong to -- you are a choir member at First
24 Baptist?

25 A. Avon Park.

1 Q. And are you --

2 A. I teach third grade.

3 Q. There is nothing in your background or personal feelings
4 which might affect your ability to be fair and impartial to
5 both sides?

6 A. Nothing.

7 Q. You could serve the days and hours as indicated?

8 A. Yes, ma'am.

9 Q. Thank you.

10 Juror 30?

11 A. Yes.

12 Q. You are retired and previously worked in?

13 A. Vocational rehabilitation.

14 Q. You have a BA educational background?

15 A. Yes.

16 Q. Your partner is an RN with a BS background?

17 A. Correct.

18 Q. You have two sons, and what do they do?

19 A. One is a CFO in a hospital in Las Vegas, and the other
20 works in the aeronautics industry.

21 Q. You did serve in the military?

22 A. Yes.

23 Q. For two years?

24 A. Yes.

25 Q. You never served on a jury before?

1 A. No, I haven't.

2 Q. You like golf?

3 A. It doesn't like me, but yes, I do.

4 Q. Do you like to read newspapers, magazines or have favorite
5 T.V. shows?

6 A. Mostly online I check out news and television, Bull and For
7 the People are my favorites now.

8 Q. That is two for Bull.

9 A. Yes, it is good.

10 Q. You had a son who was involved in a sexual assault?

11 A. Correct.

12 Q. In 2007 in Wisconsin?

13 A. Yes.

14 Q. What was the disposition there?

15 A. We won it.

16 Q. Was there a trial?

17 A. Yes, there was a conviction.

18 Q. And what was it, was there a penalty involved? Did he
19 serve any time?

20 A. Yes.

21 Q. He served time. Is there anything about that experience
22 that would affect your ability to be fair and impartial to both
23 sides in this case?

24 A. Not in this case, I don't believe so.

25 Q. And that was in Wisconsin; is that correct?

1 A. Correct.

2 Q. Neither you nor close family member or friend have been the
3 victim of a crime?

4 A. Not to my knowledge.

5 Q. And you have worked -- is it a CID in the Navy --

6 A. No, Army CID, criminal intelligence there.

7 Q. Anything about that prior work experience that would affect
8 your ability to be fair and impartial to both sides?

9 A. I don't believe so.

10 Q. You are not involved in any organizations at this time?

11 A. Not since I retired.

12 Q. Anything in your background that would interfere with you
13 being fair and impartial?

14 A. No.

15 Q. Can you serve the days and hours I indicated?

16 A. Yes.

17 Q. 31. You are in auto sales and trucking?

18 A. Yes, auto sales for eight years, I was in trucking for 14
19 years, over the road and locally.

20 Q. You are a high school graduate?

21 A. Yes.

22 Q. Your spouse or partner works in retail sales?

23 A. Yes, she's been at Target for 17 years now.

24 Q. You have two children, one in the medical field and one a
25 food server?

1 A. Yes, my younger works at Mulligans.

2 Q. No military service before?

3 A. Yes.

4 Q. You like cars and guns?

5 A. Yes.

6 Q. You like auto programs?

7 A. Auto programs, I have gone on line, I am in the auto
8 industry, I do a lot of looking on line for that as well.

9 Q. Neither you nor close family member or friend have been
10 arrested or convicted of a crime?

11 A. Not to my knowledge.

12 Q. Neither been a victim of a crime?

13 A. No.

14 Q. You had multiple relatives who were former NYPD, relatives
15 serving in New York City court system?

16 A. Two retired cousins with NYPD, two former NYPD, and two
17 cousins in the New York court systems as bailiffs.

18 Q. Would any of that -- the fact that you have the
19 relationships with these individuals in law enforcement, would
20 that affect your ability to be fair and impartial to both sides
21 in this case?

22 A. I would say not, ma'am, I would say not.

23 My cousins have been in law enforcement over 30 years, I
24 think I can come to a fair judgment here.

25 Q. You don't belong to any organizations or groups?

1 A. No. Just every other Sunday a bunch of us go shooting, we
2 are members of the gun club.

3 Q. When I ask if there is anything in your background which
4 might affect your ability to be fair and impartial, you
5 indicate you are partial to law enforcement?

6 A. I did write that. If push comes to shove, I could make an
7 impartial decision.

8 Q. It's not a matter of push comes to shove, this involves law
9 enforcement.

10 A. I didn't know that before we did the --

11 Q. It is perfectly fine to have partial views, there is
12 nothing about this process that would suggest that people
13 shouldn't. All that matters is that you make it known to the
14 Court so that the parties can make a decision ultimately
15 whether you would be an appropriate juror for this case.

16 A. I understand.

17 Q. So, I guess, is that accurate, that you are partial to law
18 enforcement?

19 A. I guess you could say I am.

20 Q. In a case where one side involves law enforcement, is it
21 possible that you would be starting off favoring them or more
22 inclined?

23 A. No, not necessarily, ma'am.

24 Q. So, what does it mean to be partial for law enforcement?

25 A. Because of my strong ties -- 30 years total just being

1 around police officers, I understand what things they're around
2 and risks they take, and all of that.

3 Q. Would you give law enforcement officers who testify greater
4 weight to their testimony than maybe somebody who is not law
5 enforcement?

6 A. I feel I can be impartial in this case if you need me.

7 Q. If a law enforcement officer is testifying on the stand,
8 would you be giving any greater weight to that person than
9 someone who is not law enforcement just because that person is
10 law enforcement?

11 A. Right, I know what you are telling me. Like I said, I have
12 a strong law enforcement background with relationships, yes, I
13 would say that I probably couldn't.

14 Q. Could not what?

15 A. Be impartial.

16 Q. You probably could not be law enforcement -- you probably
17 could not be impartial because of your strong ties to law
18 enforcement?

19 A. Correct. Correct.

20 Q. Okay. Okay, thank you so much.

21 And can you serve during the days and hours I indicated?

22 A. Yes, ma'am.

23 Q. Okay. All right. I know everyone is getting restless, we
24 have four more to go through. We will finish up with the last
25 row and we'll break.

1 ?

2 A. Yes.

3 Q. You are a mechanic in the duct cleaning business?

4 A. Yes.

5 Q. High school background?

6 A. Yes.

7 Q. Partner or spouse is a Publix manager?

8 A. Yes.

9 Q. No adult children?

10 A. No.

11 Q. No service in the military?

12 A. No.

13 Q. No service on a jury before?

14 A. No.

15 Q. You enjoy sports, going to the beach and TV.

16 A. Yes

17 Q. You don't read any newspapers, but you do watch TV news?

18 A. Yes.

19 Q. Neither you nor close family member or friend have been
20 accused or arrested or convicted of a crime?

21 A. No.

22 Q. Neither you nor close family member or friend has been the
23 victim of a crime?

24 A. No.

25 Q. You don't participate in organizations or groups?

1 A. No.

2 Q. There is nothing in your background or personal feelings
3 which might affect your ability to be fair and impartial to
4 both sides?

5 A. No.

6 Q. You could serve the days and hours I indicated?

7 A. Yes.

8 Q. All right. Juror 33?

9 A. Yes.

10 Q. And you are a service worker in water and sewer?

11 A. I am retired.

12 Q. Retired?

13 A. Yes.

14 Q. That is what you used to do?

15 A. Yes, ma'am.

16 Q. High school background?

17 A. Graduated 12th grade.

18 Q. No spouse or partner?

19 A. No.

20 Q. No adult children?

21 A. No.

22 Q. No service in the military?

23 A. No.

24 Q. You served on a jury two times before?

25 A. Yes.

1 Q. Were you the foreperson?

2 A. I was a juror, I -- a couple of those broke in houses.

3 Q. Do you remember if you were the foreperson on the jury?

4 A. No.

5 Q. Do you have any hobbies or interests?

6 A. No. No yet.

7 Q. You like watching NFL.

8 A. Yes.

9 Q. Do you have any close family member or friend that's been
10 accused, arrested or convicted of a crime?

11 A. Nope.

12 Q. Did you have a DUI in 1987?

13 A. Yep.

14 Q. Is there anything about that experience that would affect
15 your ability to be fair and impartial to both sides?

16 A. No, ma'am.

17 Q. Have either you or a close family member or friend ever
18 worked for a law enforcement agency?

19 A. Nope.

20 Q. You are a member of Teamsters?

21 A. Retired.

22 Q. Retired?

23 A. Yes.

24 Q. Anything in your background or personal feelings that might
25 affect your ability to be fair and impartial to both sides?

1 A. No.

2 Q. Can you serve during the days and hours I indicated?

3 A. Yes.

4 Q. Thank you. ?

5 A. Yes.

6 Q. You work in a nursing home?

7 A. Yes, ma'am.

8 Q. You have an AA in organizational management?

9 A. Yes.

10 Q. No spouse or partner?

11 A. No.

12 Q. No adult children?

13 A. No.

14 Q. No service in the military?

15 A. No.

16 Q. No service on a jury before?

17 A. No.

18 Q. You like fishing and -- what is the other thing you like,
19 personal hobbies or interests?

20 A. Fishing, books.

21 Q. Okay.

22 A. I don't remember exactly what I put.

23 Q. Okay. And you like the Sunday paper and is it Atlanta, is
24 that a show?

25 A. Yes.

1 Q. You like that. Neither you nor a close family member or
2 friend have been accused, arrested or convicted of a crime?

3 A. Yes.

4 Q. Is that correct?

5 A. Yes.

6 Q. Neither you nor close family member or friend have been the
7 victim of a crime?

8 A. Correct.

9 Q. Neither you or close family member or friend have worked
10 for law enforcement?

11 A. Correct.

12 Q. You don't participate in organizations or groups?

13 A. Not at this moment.

14 Q. Nothing in your background that would affect your ability
15 to be fair and impartial to both sides?

16 A. No, ma'am.

17 Q. You could serve the times and hours I indicated?

18 A. Yes.

19 Q. ?

20 A. Yes.

21 Q. You work for Express Scripts?

22 A. Yes.

23 Q. You have high school, some college?

24 A. Yes.

25 Q. No spouse or partner?

1 A. No.

2 Q. No children?

3 A. No.

4 Q. No service in the military?

5 A. No.

6 Q. No service on a jury?

7 A. No.

8 Q. You like reading?

9 A. Yes.

10 Q. Essence and People magazines?

11 A. Yes.

12 Q. You don't have a close family member or friend that has
13 been accused, arrested or convicted of a crime?

14 A. No.

15 Q. You had a car broken into at your home?

16 A. Yes.

17 Q. Anything about that experience that would affect your
18 ability to be fair and impartial to both sides?

19 A. No.

20 Q. You don't have -- either you or a close family member or
21 friend that has worked for a law enforcement agency or
22 affiliated with a law enforcement organization?

23 A. No.

24 Q. Do you participate in any organizations or groups?

25 A. No.

1 Q. Is there anything in your background or personal feelings
2 which might affect your ability to be fair and impartial to
3 both sides?

4 A. No.

5 Q. Can you serve during the days and hours I indicated?

6 A. Yes.

7 *THE COURT:* All right. Thank you, everyone, for your
8 patience. Here is what we are going to do now. I am going to
9 give you your lunch break. I want to be clear about a few
10 things.

11 There are a few people I will ask to remain behind for
12 followup questions. I will ask you to leave the courtroom.
13 You can use the restroom and come back out and wait outside the
14 courtroom. If I don't call your name and number, that means
15 you are released to go back to lunch.

16 We will have everyone back at 1:30. Remember, this is
17 your first break since you came in. You can leave together,
18 you can talk together, you can walk together, you can go to
19 lunch together, you can drive and go somewhere else, you can
20 talk on the phone, you are allowed to use your electronic
21 equipment, but you are not allowed to talk to each other about
22 the case, anything, even like the cup sitting on the desk,
23 nothing going on in the courtroom. You are not allowed to talk
24 to anyone else about what is going on in the courtroom. You
25 are not allowed to research about what is going on in the

1 courtroom.

2 You are not allowed to do any -- you can certainly
3 communicate with friends, family members or colleagues, and it
4 is perfectly okay to let them know you have been called up for
5 jury service, you are not sure you have been selected. That is
6 true, you haven't been selected yet. You can update them
7 later, maybe family members or friends. You are not to discuss
8 the name of the case, what it is about, civil, criminal. They
9 might be curious, and all you have to say is the judge says I
10 can't talk about it.

11 You can tell them after. If you are not a juror you
12 can go back to your lives this afternoon. If you are a juror,
13 you will be here for five to seven days, you don't know that
14 yet.

15 Any questions about those rules or requirements?

16 It's very important. If anybody violates those, there
17 are consequences. You can see how time consuming and how much
18 effort is involved in going through the process of finding a
19 fair and impartial jury for the parties.

20 Juror number 10.

21 *THE JUROR:* If we are dismissed from today.

22 *THE COURT:* If you are dismissed from this case?

23 *THE JUROR:* Do we need to continue to call through the
24 week?

25 *THE COURT:* Yes.

1 *THE JUROR:* Thank you.

2 *THE COURT:* Let me have the following jurors --

3 *THE JUROR:* If we are dismissed during the case, are
4 we allowed to talk about that?

5 *THE COURT:* I will go over the rules for the people
6 who are dismissed. That is a fair question. Nobody is
7 dismissed now to be clear.

8 So, let me first say there are a couple of people
9 offhand that I want to have remain behind. Juror number -- you
10 can use the restroom and come back and line up so we can bring
11 you in one at a time.

12 Juror 21, Ms. Burns, you remain behind, don't go to
13 lunch right away. Juror number 8, juror number 22, juror
14 number 27, juror number 7, juror number 10, juror number 12,
15 juror number 14, juror number 16, juror number 17, juror number
16 23, juror number 31, juror number 26.

17 So, the ones I called out, take a quick break, line up
18 outside the courtroom and we will bring you in quickly and get
19 you out so you can have your lunch. And the same rules apply
20 to you when you do go to lunch about not researching and
21 talking about the case.

22 If I did not call your name or juror number you are
23 released now with the rules and instructions I have given you
24 and we will see everybody back at 1:30.

25 (Thereupon, the jury venire left the courtroom.)

1 THE COURT: We will be in recess -- let's take a five
2 minute break.

3 *(Thereupon, a short recess was taken.)*

4 THE COURT: All right. We have everybody here.

5 So, let's go through the list. I wanted to bring
6 juror number 21 in because she says that she knows something
7 about the case.

8 What I am going to do is find out what she knows about
9 the case, and then turn it over to both sides, if you have any
10 followup questions about that, and then, if, for example, she
11 knows so much it doesn't appear either side wants her to remain
12 on the jury, I don't know that I have to go through the
13 questionnaire, but if she doesn't know enough that it is
14 problematic, I will go through the questionnaire with her.

15 Before she is excused if any of the things she says
16 suggests that she shouldn't be on the jury, I need to get a
17 signal from both sides, you need to nod or hold up a sticky,
18 counsel, so I can see if you believe the person should be
19 excused. Okay.

20 So, juror 21 is coming in because she said she knew
21 something about the case.

22 We will start with juror number 21. It is, I think.

23 *(Thereupon, the prospective juror entered the*
24 *courtroom.)*

25 THE COURT: Okay, you may come up to the podium.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 2

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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1 Thank you.

2 *BY THE COURT:*

3 Q. You indicated you knew something about the case. Can you
4 let me know how you know about the case?

5 A. I know about the case over there by my grandson's school,
6 the house that is over there, my cousin stays next door to the
7 house.

8 Q. Okay. So, did you know about what happened at the time
9 that it happened?

10 A. No, later on, hearing it through other friends, like my
11 kids and cousin, and other people talking about the case, that
12 is how I know about it.

13 Q. What do you know about the case?

14 A. There was music playing during that day, he was playing
15 music, and officers came up there and shot through the doorway
16 of the garage. Yes, I know about the incident, you know how
17 you hear things about it, that is what happens. That is how I
18 know about it, from there.

19 Like I say, my grandson, he goes to that school and we had
20 to pick him up.

21 *THE COURT:* Okay, it doesn't appear counsel have any
22 questions for you.

23 *MR. PHILLIPS:* No, we are in agreement on this one.

24 *THE COURT:* In light of the fact you do know something
25 about the case before the case begins, we are not going to have

1 you serve as a juror on this case.

2 *THE JUROR:* Okay.

3 *THE COURT:* I want to thank you for your service, and
4 thank you for letting us know that. You didn't do anything
5 wrong, but you know what I told everybody, you can't hear about
6 the case outside, only what is in the courtroom.

7 I don't want you to let anybody else know you have
8 been excused, you can leave the courthouse, and any other
9 jurors, you are not to tell them you have been excused. And
10 once you leave, call in each day for your service for the rest
11 of your term.

12 And I don't want you communicating with any of the
13 jurors who are still here, even during the next week or two
14 when they are here, because I don't want them to know anything
15 you might know about the case.

16 *THE JUROR:* Okay.

17 *THE COURT:* The next person is juror number 8, because
18 he knows the Sheriff very well.

19 (Thereupon, the prospective juror entered the
20 courtroom.)

21 *THE COURT:* You can come up to the podium.

22 *BY THE COURT:*

23 Q. You had indicated that you know Sheriff Mascara very well?

24 A. Yes, ma'am.

25 Q. Can you tell us a little more? I didn't want you to say it

1 in front of everybody else. What is your relationship?

2 A. I am involved with the Boy Scouts and Sheriff Mascara has
3 been deeply involved in it and I know quite a few of the other
4 officers from my involvement with Ft. Pierce Little League, a
5 lot of their children play on the Little League.

6 Q. With the kind of relationship you have with the sheriff and
7 some of the others involved, do you believe that you can be
8 fair and impartial and not give any leg up or advantage to the
9 Sheriff and the Defendant in this case and -- you know there
10 will be a number of witnesses who come in and testify from the
11 Defendant, law enforcement related, and we need to know how you
12 stand with that.

13 A. I would like to think I could be fair and impartial, but I
14 don't want to put myself in a position to where I wouldn't be.

15 *THE COURT:* Okay. Agreement? Okay.

16 So, in light of that -- we appreciate you bringing it
17 to our attention, that is what you are supposed to do.

18 I will excuse you from this case, you will not serve
19 as a juror on this case. You are permitted to leave. I would
20 ask you not tell the other jurors you are excused. Once you
21 leave, you can talk to anyone about your experience, although
22 do not talk to anyone who remains on the jury because they are
23 still potential jurors on this case. You should continue to
24 call in for your service.

25 Call in juror 22, she says she doesn't trust police.

1 Now, you should feel free if you need to ask
2 questions. Let me know if you are in agreement based on what I
3 do. I need to see your stickies, and I know we'll end the
4 conversation there.

5 (Thereupon, the prospective juror entered the
6 courtroom.)

7 *THE COURT:* You can come up to the podium, speak into
8 the microphone.

9 *BY THE COURT:*

10 Q. So, you were letting the Court know you can't trust the
11 police department, you can't be fair and impartial?

12 A. Correct. Well, it was awhile back, once I encountered an
13 officer -- I was coming home from work with my grandson in the
14 car with me, I am sitting at the stop sign and I look to my
15 right at someone working on the house. I pulled around and I
16 get all the way to, if you are familiar with Ft. Pierce, Avenue
17 Q, Westward High School. The police gets behind me and flashes
18 her light and pulls me off to the side. She said I ran a stop
19 sign. Well, I am just going to give you a warning. I said to
20 my daughter, she works for Ron Rode (phon), what if I refused
21 it, because she was kind of like huf-huf when she approached me
22 about it.

23 I said how could I have when I am sitting in my car looking
24 at someone working on their roof. She said I will give you a
25 warning, whatever. And recently my grandson got into trouble,

1 he had dreads, so it seems like that one bit of trouble and all
2 of a sudden police officers stop him, and once he cut his
3 dreads off he doesn't get stopped any more.

4 I know not all police officers are on the force to protect
5 and serve. I don't always look at them, because they have a
6 uniform on, that they are going to stand before me and tell the
7 truth. I have an issue with that.

8 Q. You know the Defendants in this case are law enforcement?

9 A. Yes.

10 Q. The Sheriff and Deputy Newman, and a lot of witnesses who
11 will be testifying are from law enforcement. Do you believe
12 you can be a fair and impartial juror?

13 A. My question would be, is it all law enforcement that is
14 basically testifying for the law enforcement, or people in the
15 community that will testify for law enforcement as to what they
16 see? That is where I stand when it comes down to things like
17 that.

18 If all I have are a bunch of police officers telling me how
19 much of a service they have done, they are human, and they are
20 capable of making mistakes, but how you handle those mistakes,
21 I have an issue with that. If you can't step up to the plate
22 and say I made a mistake and I am willing to accept the
23 consequences, don't cover it up because they are police
24 officers. All lives, although you say blue lives, all lives
25 matter. What has been happening in the community is against

1 African-Americans. If that is all I am going to hear from,
2 then I have an issue with that.

3 *THE COURT:* You did exactly what you are supposed to
4 do, which is let the Court know your personal views and let the
5 Court know so a determination can be made to decide whether
6 this is an appropriate case for you.

7 I will excuse you from this case, you do not need to
8 serve as a juror on this case. I ask you to call in as your
9 summons requires you to do for the rest of your jury service.
10 I ask when you leave, do not tell anyone else you have been
11 excused, do not talk to them about being excused. Once you
12 leave, you are free to tell anyone else or you can choose not
13 to talk to them. What I will say is you are not to communicate
14 with anyone who are remaining behind as possible jurors in this
15 case.

16 *THE JUROR:* Thank you.

17 *THE COURT:* Have a nice day.

18 Next I will call in number 27, because she knows --
19 she works and is friends with Sandra Picano. Is that a
20 definite witness in this case?

21 *MR. PHILLIPS:* Yes, she saw the incident, Ms. Picano
22 did.

23 *THE COURT:* We need to flush that out.

24 Number 27.

25 *MR. PHILLIPS:* Your Honor, we may have a stipulation

1 regarding her?

2 MS. BARRANCO: Both sides agree that she can be
3 stricken for cause.

4 THE COURT: Okay.

5 (Thereupon, the prospective juror entered the
6 courtroom.)

7 BY THE COURT:

8 Q. ?

9 A. Yes.

10 Q. You know Ms. Picano?

11 A. Yes.

12 Q. Let me know about that.

13 A. I work with her every day, she is a friend of mine, I have
14 known her for probably about 35 years.

15 THE COURT: Okay. All right. In light of that fact,
16 and in light of the fact she is a potential witness in this
17 case, we are going to excuse you as a juror in this case. We
18 want to thank you for your service. You need to continue to
19 call in consistent with what your juror summons indicates, and
20 I ask when you leave, you don't need to come back, but that you
21 not communicate with any of the other jurors. Do not let them
22 know you are excused. You are free to talk about any
23 experience you had or free not to talk to them. In any event,
24 do not talk to anyone remaining because we are going through
25 the selection process.

1 *THE JUROR:* Thank you very much. I appreciate what
2 you guys do.

3 *THE COURT:* Have a great day.
4 Jumping out of order, juror 16, because of the
5 language, is there an agreement on 16?

6 *MS. BARRANCO:* Yes.

7 *THE COURT:* Okay, let me bring her in to let her know.

8 (Thereupon, the prospective juror entered the
9 courtroom.)

10 *THE COURT:* If you could come forward. We want to
11 thank you for your service. You can come to the podium.

12 Because of the difficulty you said in understanding
13 some of the things I said so far, I am going to excuse you as a
14 juror, so you don't need to continue serving because it will
15 only get more complicated. If language is a problem, we don't
16 want you to feel disadvantaged and not having the benefit of
17 hearing all of the evidence. That wouldn't be fair to the
18 parties.

19 You are excused. Continue to call in like your juror
20 summons tells you. Don't tell anybody else, just leave. You
21 are free to talk to other people outside the courthouse about
22 your experience if you want to, or you can choose not to talk
23 to them, but you are not allowed to talk to anyone else who is
24 still being considered as a juror in this case.

25 Does that make sense?

1 *THE JUROR:* Yes.

2 *THE COURT:* Have a nice day. Thank you for your
3 service.

4 *THE JUROR:* Thank you.

5 *THE COURT:* The next one I had left to come in was 31
6 because of the partiality to law enforcement. He kind of went
7 back and forth, but at the end he indicated that he couldn't be
8 impartial.

9 You both agree on that? We will bring him in to let
10 him know that.

11 (Thereupon, the prospective juror entered the
12 courtroom.)

13 *THE COURT:* You can come forward, thank you.

14 I did want to thank you very much for your service
15 thus far and your candor, but in light of your affiliation with
16 law enforcement persons and the nature of this case, I don't
17 think that it is a good match for you to be a juror on this
18 particular case, and that often happens, you can be a good
19 juror, but not necessarily on a certain case. I appreciate you
20 being candid with the Court about that. We need to know these
21 things. Given your background and relationships, I don't think
22 this is the right case for you.

23 You will be excused and continue to call in. When you
24 leave, please don't tell anybody you have been excused, just
25 quietly leave. You can talk to other people about your

1 experience or you can choose not to talk about it. In any
2 event, don't talk to anybody who has been with you and will
3 come to be potential jurors and ultimately some will be jurors
4 in this case, stay away from them. If you want to communicate
5 with others about your half a day experience here, feel free to
6 do that.

7 *THE JUROR:* Yes, ma'am.

8 *THE COURT:* You are excused.

9 *THE JUROR:* Have a good day.

10 *THE COURT:* You, too.

11 The next one, I was concerned about 17 who is a
12 student, tests, and things like that, next Monday, Wednesday.
13 Do you both agree number 17 without further inquiry should be
14 excused?

15 Okay, if you'd bring in number 17.

16 (Thereupon, the prospective juror entered the
17 courtroom.)

18 *THE COURT:* You may come forward. We want to thank
19 you for your service coming here today. We are in agreement
20 your studies are important and you should be paying attention
21 to school and your tests, so we will excuse you.

22 When you leave, that means your jury service for this
23 case is over. You do need to continue to call in like your
24 jury summons requires to you do if there is another case. I
25 think that is unlikely. Once you leave you are free to talk

1 about your experience or you can choose to keep it private and
2 not talk to anybody. If you chose to talk about it, you are
3 not going to talk with anybody who is around and potential
4 jurors in this case.

5 *THE JUROR:* I don't have to come back after lunch?

6 *THE COURT:* You do not. Now you can go home and
7 study.

8 *THE JUROR:* I was hoping for that.

9 *THE COURT:* So, this is kind of a different scenario,
10 juror number 12 talked about the intolerance for alcohol, and I
11 didn't know how that struck anybody. I didn't want to get into
12 a big to-do of jury questioning about alcoholism and make it a
13 bigger issue than it may or may not be.

14 I already reached a tentative ruling it will come in.
15 There is a stipulation to that, just a matter of how it comes
16 in.

17 That juror number 12 in the last question, 14, says
18 she has no sympathy for alcoholics and/or drug users.

19 Plaintiff's counsel is holding a tab up saying you
20 would want her stricken. Does Defense want any inquiry of her?

21 *MS. BARRANCO:* Yes, your Honor, we do.

22 *THE COURT:* What I will do is bring her in and I am
23 going to --

24 *MR. PHILLIPS:* When your Honor is asking questions,
25 she was one of the ones who said she had trouble hearing.

1 *THE COURT:* She couldn't hear Ms. Bryant. I didn't
2 discern an issue.

3 I will ask a question or two, and if there is followup
4 you need to ask. After the followup, if you agree -- one
5 agrees and the other doesn't, I will keep her in. I don't want
6 questioning about alcoholism in front of the jury. You don't
7 need to ask anything else on that topic, this is your time to
8 do it.

9 (Thereupon, the prospective juror entered the
10 courtroom.)

11 *BY THE COURT:*

12 Q. After we had everybody speak up, have you been able to hear
13 everything okay?

14 A. No.

15 Q. You haven't heard everything?

16 A. Could I hear some, but some sounds like mumbling in the
17 back. Back over here, I had a hard time.

18 Q. Okay. Remember, I told you to raise your hand so I could
19 have people speak up.

20 May I ask whether you have any hearing difficulties?

21 A. A little bit in the left ear.

22 *THE COURT:* We do have equipment that we could make
23 available to persons to aid hearing things, don't we, Melanie?

24 *THE COURTROOM DEPUTY:* The interpreter equipment on a
25 certain channel can amplify.

1 BY THE COURT:

2 Q. Now, when we start the trial, if you are selected, all the
3 jurors will sit there, and the witness will be here, everybody
4 will be speaking into a microphone, and the attorneys will be
5 where you are. Do you think, based on your experience with
6 your hearing, you may still have trouble hearing?

7 A. No. I think I will be fine, just when it is way back in
8 the corners there.

9 Q. Will you make a promise that if you didn't hear anything
10 you will raise your hand?

11 A. Yes.

12 Q. And if you needed equipment that might help, you would let
13 us know that?

14 A. Yes.

15 Q. Okay. Secondly, you indicate you have no sympathy for
16 alcoholics and/or drug users?

17 A. That is true.

18 Q. We don't have a case about alcoholics or drug users,
19 however, there may be some evidence that the person who is
20 deceased, the person who was shot, had some alcohol in him at
21 the time he was shot.

22 It is not a case about somebody being an alcoholic or drug
23 user or anything else of that nature.

24 But I want to make sure and I want to know, I want a
25 truthful answer, no right or wrong answer, just a truthful

1 answer, if you were to hear evidence -- if you were to hear
2 evidence that the person who was shot who had alcohol in him at
3 a level higher than sort of legally intoxicated, higher than
4 the legal intoxication level, do your views about no sympathy
5 for alcoholics and drug users automatically make you not able
6 to be fair and impartial and open minded and follow all of my
7 rules as relates to that person?

8 A. No. No.

9 Q. No what?

10 A. I had too many people, experiences with people drinking and
11 drugs and no, there is no sympathy whatsoever, none.

12 *THE COURT:* Okay. Were there any followup questions
13 that Defense counsel has?

14 *MS. BARRANCO:* I do have a question.

15 *THE COURT:* Okay, I will let Ms. Barranco ask a
16 question.

17 *BY MS. BARRANCO:*

18 Q. I want to ask a question concerning your last answer. Do
19 you believe you could listen to the evidence and be fair and
20 impartial in regard to what you believe the evidence showed
21 regardless of whether or not -- your feelings about what you
22 told us, this zero tolerance, regardless of that, do you
23 believe you could listen to the evidence and be fair and
24 impartial, or the fact that you have zero tolerance, that would
25 make it hard for you to be impartial and --

1 A. That is difficult to answer, I don't know what it would be.

2 Q. The judge said a moment ago it may be the person that was
3 shot. If the evidence shows you that he at the time of the
4 incident was over the legal level of intoxication, whether or
5 not that would automatically in your mind -- you would lean in
6 favor of the Defendants or away from the Plaintiff because of
7 that information?

8 A. Away from the Plaintiff.

9 Q. So, you do not believe you could be fair and impartial?

10 A. No. I don't mean to seem angry.

11 MS. BARRANCO: We are trying to get to the bottom of
12 this. Thank you for your honesty.

13 THE COURT: The important thing is for you to do what
14 you did, be candid and honest, so the lawyers can advise their
15 clients accordingly.

16 With that, I thank you, we are going to excuse you
17 from this case. I don't think this would be the appropriate
18 case for you to serve on. Sometimes there is not always a
19 match between a juror and a particular case. I will excuse you
20 and I will ask you to continue to call in, and I will ask you
21 not to talk to anybody when you leave. You may choose to speak
22 to people out in the public about your experience here today,
23 and that is fine, or you can choose not to speak with them,
24 that is your personal preference. In any event, you are not to
25 have any contact with anyone who remains on the case.

1 *THE JUROR:* Thank you.

2 *THE COURT:* I had juror number 14 stay behind. His
3 brother worked with the St. Lucie Sheriff's Office. He was
4 unequivocal that it wouldn't impact him at all. I wanted to
5 see if anybody wanted to ask questions about that, or whether
6 you are comfortable keeping him on for now. It doesn't mean
7 you will keep him on forever, but I wanted to see if there are
8 any questions about that after hearing --

9 *MR. PHILLIPS:* If your Honor is giving me 20 seconds
10 to ask a question, I will do so. We don't see any bias as of
11 right now.

12 *THE COURT:* Okay, then what you can do is let --
13 Larry, let number 14 know he can go to lunch and come back.

14 Also, what about number 26? I thought she answered
15 all of my questions properly about -- she was honest, she said
16 she didn't want to be here, but she committed to all the right
17 answers, and in an abundance of caution, I kept her here. Does
18 anyone want to ask her more about that issue?

19 *MS. BARRANCO:* I had a feeling in terms of her
20 mentioning disorderly intoxication and the resisting without
21 violence, and it is involving the St. Lucie County Sheriff's
22 Office, and she is telling us she doesn't want to be here.
23 Looking at the body language she has, it appears to me this
24 wouldn't be a good case for her. I don't think she could be
25 fair and impartial given who the Defendants are in this case

1 and given what the allegations are.

2 *THE COURT:* Plaintiff.

3 *MR. PHILLIPS:* As your Honor pointed out, she
4 rehabilitated herself for that. That is something we could
5 address.

6 *THE COURT:* Let number 14 know he can go, and if we
7 could bring in number 26. I would like to clear out a couple
8 of those questions outside the jury's hearing so there is not a
9 potential tainting of the jury.

10 I will give you enough time for lunch.

11 *MS. BARRANCO:* We are going to go out, we don't have
12 food waiting for us in the rooms.

13 *THE COURT:* All right.

14 If you could come forward. So, I want -- I will let
15 the attorneys ask questions if they want of you as well right
16 now.

17 *BY THE COURT:*

18 *Q.* I was kind of concerned about you saying you didn't want to
19 be here, and I am concerned that might effect your, I guess,
20 commitment to the process. Should I be concerned about that?

21 *A.* No, I just didn't want to -- I would rather be somewhere
22 else. If I had to say, no, it wouldn't. Would I prefer to be
23 somewhere else? Yes, I would.

24 *Q.* When you are here how importantly are you going to treat
25 the case?

1 A. It is going to have to be very important.

2 Q. You would be able to listen to the evidence and not be
3 thinking about something else, maybe through next Friday, all
4 day, every day?

5 A. Yes. When you asked the question would I rather be
6 somewhere else, yes, I would.

7 Q. You are being honest with that, but you are saying you
8 could be fair and impartial about the case?

9 A. Yes.

10 *THE COURT:* Does Defense have any questions?

11 *MS. BARRANCO:* On a related area, I wanted to follow
12 up on something said earlier.

13 *BY MS. BARRANCO:*

14 Q. You said something about your aunt at the jail or with the
15 jail?

16 A. She is married to my uncle, and she works at Rock Road.

17 Q. What does she do there, do you know?

18 A. I don't know, we are not close. I haven't spoke with him
19 in years. When they were talking and, okay, I have an uncle
20 and auntie there.

21 Q. My other question is, the fact that your aunt who is
22 married to your uncle works at the jail, is that the reason why
23 you haven't talked to her in six years?

24 A. No. No. We had a family situation at home.

25 Q. Okay.

1 A. It had nothing to do with her job or where she works, it
2 was a private family issue.

3 MS. BARRANCO: Okay. Thank you, your Honor.

4 THE COURT: Did you want to talk about with respect to
5 how she answered her question number ten regarding her prior
6 experiences with law enforcement?

7 MS. BARRANCO: Sure, your Honor. I thought we were
8 going to be talking more with her later.

9 THE COURT: Well, you are, as long as you are here.

10 BY MS. BARRANCO:

11 Q. If I understood what you told us earlier, did you have one
12 arrest or two different arrests?

13 A. It was -- I don't have other arrests. I never had to go to
14 court, they were dropped. I know I had assault -- not assault,
15 resisting arrest and disorderly conduct, but I think they were
16 both together or separate, that is why I gave you the time
17 frame. Once you looked on there you would be able to see that,
18 but the charges were dropped, never went to court, so I didn't
19 think that was an issue. I never had to go to court from
20 those.

21 Q. I am sure you heard from the judge both of the Defendants
22 in this case are with the St. Lucie Sheriff's Office, the
23 Sheriff, as the Sheriff, is being sued as well as Deputy
24 Newman.

25 I know you told us earlier one of the arrests was by the

1 St. Lucie Sheriff's Office. Can you tell us the other one,
2 which agencies were involved?

3 A. Disorderly and resisting, of course it was St. Lucie
4 County, that was 2006 or 2008, and my other ones I didn't have
5 to go to court for, that was in Indian River County.

6 Q. And you mentioned the other ones, is that one incident or
7 was there more than one time?

8 A. I have a battery, charges got dropped.

9 Q. One arrest in Indian River County by the Sheriff of Indian
10 River County?

11 A. It was three.

12 Q. Three different arrests?

13 A. Yes.

14 Q. And one time by St. Lucie Sheriff's Office?

15 A. One or two.

16 Q. Are the two times listed on your questionnaire here?

17 A. Yes, yes.

18 Q. Let me ask you this: The fact you have been arrested and
19 sometimes the charges have been dropped, have all of the times
20 the charges been dropped?

21 A. Not with the resisting arrest and disorderly conduct. I
22 was on probation, I was intoxicated. You are intoxicated, you
23 are acting out, of course, they are going to arrest you.

24 Q. That happened about ten years ago?

25 A. Yes, that is why I could barely remember. I knew you would

1 look on and verify it. I gave you around the time it would
2 have happened.

3 Q. And give us a time period when the three different arrests
4 were you mentioned.

5 A. 2010, 2011, during that time.

6 Q. Three different times?

7 A. Yes, those charges were -- I didn't have to go to court for
8 none of those.

9 Q. And for any of those arrests by any of those different
10 officers, did you look back now on those incidents and --

11 A. I --

12 Q. Hold on. Did you look back on the incidents and believe
13 the officers did what they needed to do because you were
14 breaking the law; is that your position?

15 A. They weren't there, I shouldn't be upset with them, they
16 weren't up there during the incident. They came to do their
17 job, I have no ill will at them. Is that what you are asking,
18 ill will?

19 Q. Your feelings about law enforcement officers.

20 A. I have no hate toward law enforcement, none of that.

21 MS. BARRANCO: Thank you.

22 THE COURT: Any questions on that issue from
23 Plaintiff?

24 MR. PHILLIPS: No.

25 THE COURT: Thank you so much.

1 I know I put a tight lunch squeeze on everyone, 1:30.
2 The truth of the matter is, if you need more time, say quarter
3 of 2:00, that gives you enough time to get lunch?

4 *THE JUROR:* I am not going to get lunch.

5 *THE COURT:* Same instructions, don't say anything to
6 anyone, we will see you back. Thank you.

7 Really, the other three, jurors 7, 10, and 23, all
8 fell under the same category, sole breadwinner, stress relating
9 to jobs, although each of them ultimately said that the stress
10 or burden of not working would not get in the way of their
11 being able to listen and give full attention to the case.

12 So, I could forego that and have you ask any questions
13 you may want to during your own voir dire. 7, 10, and 23,
14 anything about any one of them that jumped out that you felt we
15 should bring that person in to let them know?

16 7 is the bartender, 10, she is in a small firm, works
17 with condos, she has ten projects starting on 5/15, and 23 is
18 the full-time occupational therapist and she is single, no
19 children, no adult children at least. But she said she could
20 be fair and impartial.

21 They just sort of talked about stress and work.

22 *MR. PHILLIPS:* Out of that triad, number 10 was the
23 only one where she said work would interfere with
24 deliberations. Once she rings the bell --

25 *THE COURT:* She ultimately said she could make it

1 work.

2 Did you want me to bring in number 10? Do we agree I
3 let 7 and 23 go to lunch and just bring in number 10?

4 *MS. BARRANCO:* That is fine.

5 *THE COURT:* We can let 7 and 23 go to lunch. If they
6 need to get back late in light of the hour, quite honestly,
7 quarter to 2:00 would be fine.

8 Bring in number 10.

9 (Thereupon, the prospective juror entered the
10 courtroom.)

11 If we could have you come forward to the microphone at
12 the podium.

13 *BY THE COURT:*

14 *Q.* So, I want to make sure I understand.

15 I think you sat through -- you have sat through everything,
16 and you see some people have concerns about their jobs and some
17 don't, but they have other concerns.

18 At the end of the day, I need to make sure we select jurors
19 who can give a hundred percent of their time and attention.
20 Sure, they could have other things on their mind in their lives
21 outside the courtroom, but not something to interfere with
22 their ability to be here in a trial.

23 You talked about the projects starting May 15th, it is a
24 strain on the company. You have a business partner, but she
25 was feeling stress as well.

1 If you had to sum it up and tell me the honest assessment
2 of your ability to serve as a juror, it is never ideal, it is
3 never perfect, but when you weigh what you have going on with
4 the responsibilities of fulfilling your civic duty, tell me how
5 it comes out for you.

6 A. If it boils down to it, I can go into the office after I am
7 finished here. The thing is, this time of year my partner and
8 the designer are primarily out in the field, so there is not
9 anyone in the office handling day-to-day phone calls,
10 communication with clients, those types of things.

11 Like I said, if it boils down to it, I can go in on
12 weekends and evenings and take care of what needs to be done.

13 Q. Will you feel resentful, jittery, angry? This is the only
14 day the parties have in court, this is it. They need to know,
15 and I, as the protector of the system, need to know that we
16 know we have you when you are here unburdened by life things.

17 A. Yes, I can do what needs to be done here and what needs to
18 be done there if I have to.

19 Q. Thank you so much.

20 We are going to excuse you to go to lunch, and come back a
21 little late. If you got here by quarter of 2:00 that would be
22 fine. Thank you.

23 A. Thank you.

24 *THE COURT:* All right. Just to review so everybody is
25 on the same page who has been excused for cause, juror numbers

1 8, 12, 16, 17, 21, 22, 26, 27, and 31.

2 Does that match everybody?

3 *THE COURTROOM DEPUTY:* We did not excuse 26, we told
4 her to come back.

5 *THE COURT:* Right. Why did I do that? We did.

6 Is that the only mistake I did?

7 *THE COURTROOM DEPUTY:* Yes.

8 *THE COURT:* 3, 4, 5, 6, 7, 8.

9 So we have lost eight jurors, we are down to 27 jurors
10 left, and we ultimately need -- we are fine, we ultimately
11 need -- we could have up to 19 excusals and seat six plus two
12 with everyone getting their peremptories. But I would not let
13 them release the jurors.

14 Let's take a lunch break. Can we come back by 2:00,
15 unless it is quarter of 2:00?

16 I don't know what is involved -- what your needs are.
17 I could live with quarter of 2:00 or 2:00. What is most
18 comfortable for everybody?

19 *MS. BARRANCO:* We'll say 2:00, and we will be back
20 sooner if we can.

21 *THE COURT:* Yes, we'll say 2:00. If you come back
22 earlier, we'll open the courtroom at quarter of 2:00 so we know
23 you are here.

24 I think my questioning was fairly thorough, that isn't
25 bragging, it was thorough, and with all of the followup, I will

1 make every effort to live within the 15 minutes you are
2 allotted. That is generally how I operate. If you need more
3 time it would be de minimus, it would seem to me. If you need
4 more time, let me know.

5 Use the time over the lunch hour to look through all
6 of your notes and see what really is remaining to be asked, and
7 we will proceed accordingly. Okay?

8 MS. BARRANCO: Thank you, your Honor.

9 THE COURT: The courtroom will be locked, take what
10 you need, otherwise it will be protected here and we'll open it
11 at quarter of.

12 Anything else?

13 MS. BARRANCO: No.

14 THE COURT: Okay, we will see everybody back then.
15 *(Thereupon, a short recess was taken.)*

16 *(Thereupon, trial reconvened after recess.)*

17 THE COURT: Okay, we were about to bring our jurors
18 in. Is there a matter?

19 MR. BRUCE JOLLY: Your Honor, none of us asked you to
20 advise the jurors -- advise the jurors that we'll avoid them.

21 THE COURT: Yes, I forgot to do that. Yes, okay.

22 So let's bring our jurors in.

23 *(Thereupon, the jury venire returns to the courtroom.)*

24 THE COURT: All right. Everybody may be seated.

25 I want to thank everyone for patiently answering all

1 of my questions, and now I am going to turn it over to the
2 attorneys so they have an opportunity to ask any questions that
3 they may have, so we will begin with the Plaintiff's counsel.

4 Do you have any questions?

5 *MR. PHILLIPS:* Yes, your Honor.

6 *THE COURT:* You may take the podium. Everyone listen
7 carefully and give the same attention you did to me, answer the
8 questions honestly, truthfully and completely.

9 *MR. PHILLIPS:* Good afternoon.

10 *BY MR. PHILLIPS:*

11 *Q.* So, voir dire is what we have been doing this morning, and
12 it means to speak the truth.

13 This jury system started in about the 12th century, and we
14 evolved to the point you kind of learn how it goes. It is an
15 interview for a very important constitutionally protected job.

16 It is -- for those that talked about Bull, and watch Bull,
17 it is not like that, as you will see.

18 We are a little different, not Law and Order, it's not
19 going to be somebody coming flying in the courtroom with
20 special evidence. We worked very hard for many years with
21 great defense lawyers who we respect, we hope they have the
22 same respect for us, to get prepared for this week.

23 And I am from the south, I know you all -- most of you all
24 are from the south. I heard a couple of exceptions as we
25 talked. And we talk about jury selection sometimes like a

1 barbecue competition.

2 It may be a vegetarian, vegan, maybe they are not right for
3 the barbecue. Maybe the people who like boar may not like the
4 barbecue chicken. Please don't be offended if we ask questions
5 that disqualifies you. It means you are jurors better suited
6 for another case.

7 There are no right or wrong answers, and while we are
8 talking about being offended, you will see the attorneys coming
9 and going back and forth, and we are going to try to yes,
10 ma'am, and yes, sir, the judge and smile, but we can't
11 communicate with the jury.

12 We may even kind of run away when we see you. Again, that
13 is not anything personal against you, it is that we want this
14 to happen full and fair.

15 *THE COURT:* Yes, let me interrupt you. I will stop
16 your time to say that I should have said that earlier.

17 The attorneys are not to have any contact with the
18 jurors outside the courtroom at all. They are not supposed to
19 say hi, smile, be in the elevator with you, in the restroom.
20 If they find themselves in that position, they may turn the
21 other way. It might come off as being rude and disrespectful,
22 it is not that at all. They are not to have any contact with
23 the jurors outside the courtroom.

24 If that happened, I want you to understand the context
25 of why they have not said hello or smiled and that would be the

1 case throughout the entire trial.

2 *BY MR. PHILLIPS:*

3 Q. This is my first show of hands question.

4 We talked about adult children. Who here has small
5 children, still school age?

6 Okay. Okay. Who here is a single -- by show of hands, who
7 here is a single parent? Who here is a single parent because
8 you lost the father or mother?

9 Okay. A bunch of questions were asked, and I have a few
10 follow-ups that I want to go through. We are going to start
11 with you.

12 I notice you are a hobby shooter. What kind of guns do you
13 shoot with?

14 A. Long rifles, shotguns, handguns. I shot antique firearms,
15 black powder. There is almost no kind of firearm I haven't
16 shot, I even shot Florida lofus (phon).

17 Q. Have you ever been paid related to -- like a vocation to
18 render opinions on firearms?

19 A. Never, no.

20 Q. What kind of handguns do you currently own?

21 A. I have four of them currently, right now, a Glock, Kel-Tec
22 9-millimeter, a .38 revolver, and what is that last one? I
23 can't remember what the last one is right now.

24 There are three of them right there.

25 Q. Thank you, sir.

1 A fellow lawyer?

2 A. Yes.

3 Q. Did you say something about worker's comp, that you worked
4 in worker's comp briefly?

5 A. Briefly, yes.

6 Q. What side, Plaintiffs or Defendants?

7 A. It would have been -- we represented the clients seeking to
8 obtain benefits. It was very briefly, I did mostly child
9 support enforcement work in the office.

10 Q. Now, mom always said never ask somebody their age, I am
11 not. When did you finish law school?

12 A. 1999.

13 Q. Okay. Since 1999, have you had any further CLE work or
14 course work in constitutional law, civil rights law, any of
15 those fields?

16 A. No.

17 Q. Have you pursued any personal injury course work
18 whatsoever?

19 A. No.

20 Q. On your form -- bear with me.

21 A. I would like to modify that question -- that answer,
22 rather. When I had to do my general course requirements to
23 become a lawyer, I may have had to sit for CLE and there may
24 have been different things covered generally, that is when I
25 first became a lawyer.

1 Q. Right.

2 A. So I don't want to -- since then it has always been
3 probate, guardianship course work.

4 Q. We all that are practicing in the profession know the
5 course work we had to do. They forced a lot of knowledge on
6 us.

7 A. Yes.

8 Q. In your questionnaire response, you put something for
9 number 14 which is -- the question is, is there anything in
10 your background or personal feelings which might affect your
11 ability to be fair to both sides, and you scratched something
12 out. Do you recall that?

13 A. Just that I am a lawyer, that is all, I didn't know if that
14 was relevant.

15 Q. Thank you so much.

16 A. You are welcome.

17 Q. Tell me about the ten projects briefly. I don't want to
18 the know about your business, just the ten projects you
19 acquired.

20 A. We oversee and supervise renovation projects.

21 Q. And what is your role with that?

22 A. I am primarily the person that runs the office, keeps
23 everything organized, pays everything, pays subcontractors,
24 does the billing. I run the office, my partner is more in the
25 field.

1 Q. Now, we are on kind of radio silence in the courtroom, no
2 phones, no internet. It is going to be kind of nice sometimes.

3 A. That is sort of what I am thinking.

4 Q. At the same time, we might get that pitter-patter, missing
5 out. Kids call it phone no. Is there going to be a business
6 when you leave. You can check your phones in the car.

7 A. Exactly.

8 Q. Going on to the questions we asked earlier, is there any
9 concern you feel you will be so distracted by what messages you
10 are missing you won't be able to be fair and impartial?

11 A. No, sir.

12 Q. Thank you so much.

13 You covered up the blue so you didn't match quite as well.

14 How long has your brother been with the St. Lucie Sheriff's
15 Office?

16 A. For about four months now.

17 Q. What did he have to do to get that job? He had to go
18 through training, Police Academy?

19 A. Yes, he went to the academy in Palm Beach, and transferred
20 into St. Lucie County.

21 Q. What is he doing day-to-day?

22 A. Not too sure.

23 Q. So, when we talked about the difference between criminal
24 and civil, and the judge explained, basically, that nobody is
25 going to be sentenced, nobody is going to jail after this week,

1 as long as I don't do anything too wrong, I guess, what we are
2 going to have is a monetary judgment. There is going to be at
3 the end of the day a request by the Plaintiff for an amount of
4 money. The Defendants are going to say no, they are not due
5 that amount of money.

6 The question I have, that amount of money will be -- if
7 there is an amount of money the jury awards, it will be against
8 St. Lucie County Sheriff's Office, Deputy Newman, or both.

9 Is there any reservation, hesitation, or issue that you
10 have with your brother working with those entities with you not
11 being able to award an amount of money against his employer?

12 A. He recently just had a newborn, so that would probably hurt
13 him. Other than that, no.

14 Q. Your brother is not going to have a judgment against him,
15 and I don't expect that this is going to trickle down to pay
16 cuts, okay.

17 It brings up a good question. Thank you.

18 Is there anybody here that because this is a monetary
19 request, and a monetary request against the St. Lucie County
20 Sheriff's Office, that feels that amount should be -- without
21 knowing any facts whatsoever, standing on the fact that it is a
22 case against St. Lucie County Sheriff's Office and Deputy
23 Newman, that that amount should be limited by a show of hands?
24 Anyone? Okay.

25 Is there anybody who feels if the evidence proves an

1 amount, and I am not going to guess at a number for purposes of
2 today, but if the evidence proves an amount that is in the six
3 or seven figures, that you couldn't award that against St.
4 Lucie County Sheriff's Office or Deputy Newman? Anyone?
5 Including yourself.

6 Let me ask it specifically to you.

7 A. Um-m-m --

8 *THE COURT:* You are speaking with number 14.

9 *MR. PHILLIPS:* Yes, your Honor.

10 *THE JUROR:* In a way, that is kind of difficult to
11 answer because already what we know could cause a stir in how
12 the Plaintiff might feel if she doesn't get what she is asking,
13 nor whatever the evidence may bring the amount to be, along
14 with St. Lucie County, we don't know how that will affect them
15 and their officers. So, it's kind of an even playing field,
16 but it can also be quickly to become an uneven playing field
17 for either side of this.

18 *BY MR. PHILLIPS:*

19 Q. Okay. I am speaking for you particularly, not as a
20 taxpayer, but as somebody that has to go to Thanksgiving with
21 their family, if the evidence proves it, and only if the
22 evidence proves it, and you have entered a verdict for 500,000
23 or 5 million, whatever number the evidence proved, are you
24 going to be able to do that without fear or concern of family
25 issues or, you know, strife relating to who you are just

1 because your brother works for St. Lucie County Sheriff's
2 Office?

3 A. Possibly.

4 Q. Thank you, sir.

5 *THE COURT:* I am sorry, when you said possibly, what
6 are you referring to? Maybe state it in your own words.

7 *THE JUROR:* Possibly that it could have an effect on
8 day-to-day. It will be difficult, you never know, just, I
9 don't know, kind of difficult knowing that I do respect the law
10 and my brother is a cop. I don't know.

11 *THE COURT:* Well, if you are selected and you are back
12 in the jury room deliberating with your fellow jurors, and you
13 listened to all the evidence and you listened to the law, can
14 you follow the law and apply it to the evidence without any
15 regard for what implications or consequences may flow from that
16 as relates to your brother or St. Lucie County or anyone else?

17 *THE JUROR:* Yes.

18 *THE COURT:* You can do that?

19 *THE JUROR:* Yes.

20 *THE COURT:* Okay.

21 *MR. PHILLIPS:* Thank you. Thank you, judge.

22 *BY MR. PHILLIPS:*

23 Q. Back to, you wrote working on a new book. Is that writing
24 or reading? Are you writing a book or reading a book?

25 A. I read books.

1 Q. You -- in your answers, you put in your answers you were
2 working on a new book, I wondered if we had a famous author in
3 our midst.

4 A. No.

5 THE COURT: That is 15 minutes, a couple of minutes
6 over. How are you doing?

7 MR. PHILLIPS: I need ten minutes.

8 BY MR. PHILLIPS:

9 Q. You mentioned Bull, wonderfully enacted. We are not going
10 to have that here.

11 A. I understand.

12 Q. As Plaintiff's attorney, I go first, I have to present
13 everything, and if you don't get the Bull show after three or
14 four days, are you going to have any prejudice against me and
15 say this guy let me down?

16 A. Absolutely not. This is not TV.

17 Q. Absolutely. This couldn't been more real for both tables,
18 and we appreciate how you have taken this so far.

19 Does anybody have -- we talked a little bit about it. Does
20 anybody have any serious health issues, or hearing issues,
21 where they are going to need to take breaks or there is going
22 to be, you know, anything that you feel like the Court needs to
23 know about related to health or being able to hear?

24 A. I am a diabetic, so I need to check my blood sugar
25 occasionally.

1 Q. Fully under control?

2 A. Yes.

3 THE COURT: That is. Any time you need accommodation
4 for that, let the Court know.

5 Wait, there is another.

6 THE JUROR: I also have diabetes, too. I don't know
7 what you guys can do for me, but I am letting you guys know
8 that that is the only health issue I pretty much have.

9 THE COURT: That is juror 25?

10 THE JUROR: Yes.

11 THE COURT: Whatever you need to do, whether you need
12 to bring food or drink or take time to take any testing or
13 anything that you do, whatever you need, just let the Court
14 know and you will be able to do it. But you have to speak up
15 and let me know, otherwise I won't know.

16 THE JUROR: Okay.

17 THE COURT: Okay.

18 BY MR. PHILLIPS:

19 Q. Once again, this is a money damages case, we can't change
20 past facts. At the end of the case I will get up here and ask
21 for a range of an amount or an amount. Again, it can exceed a
22 million dollars.

23 There have been jurors in the past that would say when I
24 ask the question, there is no way I am going to award a million
25 dollars no matter what facts I present. What I want is jurors

1 that say I am going to listen to the evidence, what we all
2 want, and rule based upon the evidence.

3 Let me go back to my first question, is there anybody that
4 there is an amount of money that you would not award no matter
5 the facts?

6 I see no hands.

7 As we discussed, this is a case where there are police
8 officers as witnesses, teachers as witnesses, people from
9 different aspects of the community.

10 So, we think of Lady Justice holding the scales, and they
11 start truly what? Truly even.

12 Is there anybody, because there is a police officer on the
13 stand, that tips it a little bit because of that uniform?

14 In other words, that officer is going to get a little more
15 benefit of the doubt because of his honorable profession than a
16 teacher or someone else? I see no hands.

17 I once represented a young man who was shot after loud
18 music started an altercation and we heard people say no matter
19 what happened related to the shooting, if he hadn't been
20 listening to loud music that never would have happened.

21 Is there anybody that feels just because police respond or
22 responded here to what we expect the evidence to show is a loud
23 music complaint, that any use of force after that was
24 justifiable or -- including deadly force? I see no hands.

25 My final question is, we have taken four years to get here,

1 I have had the pleasure of representing Ms. Bryant and her
2 family, and people have to deal with a lot of lawyer ads, and a
3 lot of discussion of tort reform and, you know, if I have heard
4 one lawyer joke, I heard them all.

5 But is there anything that you have seen or heard thus far
6 from me and my side and my team where I don't start out or my
7 team doesn't start out in the race perfectly at the same line,
8 anything at all? You may not like my tie. Anything?

9 Yes, sir.

10 *THE COURT:* That is juror number 4.

11 *THE JUROR:* Is this a wrongful death case?

12 *MR. PHILLIPS:* Yes, it is.

13 *THE JUROR:* Is this case establishing a precedent for
14 this county or has there been other cases similar?

15 *MR. PHILLIPS:* I don't think I can answer that.

16 *THE COURT:* Those are not matters before the jury
17 whatsoever.

18 There is a very limited role for this jury in this
19 case, it is to listen to the evidence in this case with an open
20 mind, fairly and impartially, listen to the law that the Court
21 gives you, apply the law that is in this case because the law
22 can change from case to case, as do the facts, and you apply
23 the law to the facts of this case and render a fair and
24 impartial verdict.

25 There is no issue in this case about whether there

1 were prior situations or there will be prior situations or
2 precedent. There will be evidence presented, and the Court
3 will make rulings on whether certain things are admissible or
4 not, but in terms of precedent, that is not an issue for this
5 jury.

6 *THE JUROR:* He said it is wrongful death. Was the
7 Defendant exonerated in that case?

8 *THE COURT:* The only case is this case, the only case
9 is this case, everything you need to know will be presented.

10 The question that counsel asked is -- what was the
11 last question?

12 *MR. PHILLIPS:* Is there anything by what you heard so
13 far that we start other than at the same starting line.

14 *THE JUROR:* That is why I asked about the wrongful
15 death.

16 *MR. PHILLIPS:* Finding out this is a wrongful death
17 case --

18 *THE JUROR:* And the disposition of exoneration of the
19 Defendant, if the man is innocent, obviously he is innocent.
20 That is what I need to know in order to make --

21 *THE COURT:* I will stop you there. First of all, what
22 you are saying is not evidence, and so none of the other jurors
23 should give it any weight, and that is with no disrespect, but
24 your comments about exonerated or not exonerated are not facts
25 that either you know or are presented in this case, so no

1 conclusions should be drawn one way or the other.

2 The truth is you don't know and no one is to draw
3 assumptions. I tell witnesses that they are not to assume or
4 speculate. What you hear in this case is facts.

5 I think what I am hearing you tell counsel is that
6 there are certain conditions under which you may or may not be
7 able to be fair and impartial.

8 If certain things of which you don't know were true,
9 that maybe they are not starting on an equal playing field, but
10 if other things were true, maybe they are starting on an equal
11 playing field. Is that what you are saying, even though you
12 don't know what the other things are?

13 *THE JUROR:* He did mention wrongful death.

14 *THE COURT:* Yes, it is a wrongful death. What
15 happened in any other proceeding, if there was even any other
16 proceeding, you are making assumptions that cannot and should
17 not be made.

18 Yes, it is a wrongful death, and given that, not
19 knowing about whether there was another proceeding and what did
20 or did not happen if there were another proceeding, can you be
21 fair and impartial unequivocally and unconditionally?

22 *THE JUROR:* If I have to take that out of my mind, I
23 could do that. I could make that leap if that is necessary.

24 *THE COURT:* Okay. Any followup questions on that?

25 *MR. PHILLIPS:* Just one to the venire.

1 BY MR. PHILLIPS:

2 Q. We have all heard the judge, and we are going to hear
3 Ms. Barranco, unless somebody else gets up, but we need to make
4 sure everybody has the same exact fair balance. I am not
5 trying to quote that TV show, fair balanced shot at justice.

6 What you hear from this witness stand, what you hear from
7 in here and seeing exhibits is all that you are supposed to
8 judge.

9 Is there anybody that for any reason whatsoever cannot do
10 that?

11 I see no hands. Thank you very much.

12 THE COURT: Okay, thank you.

13 Are there any questions from the Defense?

14 MS. BARRANCO: Yes, your Honor, thank you.

15 THE COURT: Okay.

16 MS. BARRANCO: Good afternoon, everybody. Can
17 everybody hear me all right? I will try to use the microphone
18 as much as I can.

19 After lunch it is more challenging to focus your
20 attention now. We appreciate your attention here today, and if
21 you get selected as jurors on this case, the time and attention
22 for the remainder of the matter.

23 I will do my best not to jump around too much. There
24 are things I want to cover with specific folks, and I want to
25 ask general questions.

1 As Plaintiff's counsel mentioned his client, as you
2 heard earlier, I have the pleasure of representing the Sheriff
3 of St. Lucie County and Deputy Newman seated at counsel's
4 table. One question I want to ask everyone that is important
5 to us, although the Sheriff, Ken Mascara, is named as a party
6 in this case, Mr. Mascara, the man, the individual, is not
7 being personally sued, it is the Office of the Sheriff being
8 sued.

9 Does everyone understand that concept? It is the
10 Office of the Sheriff being sued, not Ken Mascara personally.
11 I see heads nodding up and down.

12 The flip side of this, I ask you to raise your hand if
13 this applies, can everyone here understand and will you be able
14 to hold the fact that Sheriff Mascara himself isn't sitting
15 here -- are you able to not hold that against the Defendants in
16 this case?

17 Is there anybody here that is going to feel, well,
18 Sheriff Mascara himself is not sitting in the courtroom for the
19 entirety of the trial, therefore, I don't think that is right,
20 I am feeling, you know, feeling more in favor of the Plaintiffs
21 because Ms. Bryant is here, the Plaintiff, and we have Deputy
22 Newman here, the Defendant, but does anyone feel the fact that
23 the Sheriff is not here they will hold that against the
24 Defendants?

25 I don't see any hands.

1 With that said, earlier I believe we introduced to you
2 Adam Federman who is seated behind counsel table. He is
3 general counsel for the Sheriff's Office. He will be here, but
4 he has other matters to attend to during this trial, which is
5 expected to go five or seven days. Will anybody here hold it
6 against either of the Defendants if you see the Sheriff's
7 counsel, Mr. Federman get up at any point and go outside
8 dealing with other matters, or does everyone here understand
9 that is the nature of the situation and that is going to
10 happen?

11 Does everybody feel they can be fair and impartial to
12 the Sheriff's Office and Deputy Newman given those
13 circumstances?

14 Okay, I don't see anybody saying no, so that is just
15 for the record. Thank you.

16 Now, Plaintiff's counsel asked you about damages, and
17 he was asking the panel here whether or not at the end of the
18 case if he asked for a million dollars, \$10 million, however
19 much he would ask for, does anybody have a reason they wouldn't
20 go there and award an amount of money they felt the evidence
21 showed in the case.

22 My question to you all is, does everybody understand
23 in this case, which is a civil case, does everybody understand
24 you all, if you are chosen as a juror in this case, do not get
25 to the issue of damages unless and until you hear the evidence,

1 see the evidence, and determine that based on that evidence and
2 that evidence alone, that the Defendants are liable for any
3 damage that was caused to Ms. Bryant or the estate?

4 Does everybody understand that, first you are going to
5 be talking about and dealing with liability, that is the word
6 we use? It is not conviction, it is not a criminal case,
7 liability, whether you believe the Defendants are liable, and
8 only at that point you will be talking about damages. Does
9 everybody understand that concept?

10 I see everybody staring straight ahead or nodding up
11 and down. I will move on to the next question.

12 Another thing mentioned, I know the judge talked about
13 this in followup a moment ago, that this case is a wrongful
14 death case.

15 Does everybody here understand that the fact that this
16 case is labeled a wrongful death case, does everybody
17 understand that does not mean that anyone has yet determined
18 that the person that died in this case suffered a wrongful
19 death?

20 Does everybody understand that part of what any of the
21 jurors are going to be asked to decide after reviewing and
22 hearing the evidence in this case, it will be your job as
23 jurors to determine whether or not the death was wrongful?
24 Does everybody here understand that?

25 Does anybody think, oh, the judge said it was a

1 wrongful death, so this person died wrongfully? Nobody
2 believes that, correct? That is why we are here, to determine
3 whether or not the death occurred in this case on the subject
4 date, whether it was wrongful or not.

5 I don't see anybody shaking their heads, so I am going
6 to assume that everybody understands what the issues are here.

7 We understand, the lawyers understand that some of you
8 served as jurors before, most of you have not.

9 We are trying not to talk down to anybody, but at the
10 same time we don't want to assume everybody understands the
11 process. You may not. Please don't take any part of our
12 question that we believe you don't get it or aren't smart
13 enough not to get it. On the contrary, we want to make sure we
14 are all on the same page.

15 As counsel said, this is a very important case to both
16 sides, there is a lot of preparation going into this case, we
17 are looking for fair and impartial jurors, and that is all we
18 are asking. Maybe some of the questions are probing and
19 prodding and even uncomfortable.

20 Anybody here -- I will say it to the whole panel.
21 Does anybody have specialized training in law enforcement
22 yourselves? Anybody? I don't see any hands raised.

23 Has anybody -- I think somebody might have an LPN
24 license or RN. Has anybody received specialized medical
25 training of any kind?

1 I see hand going up.

2 BY MS. BARRANCO:

3 Q. What kind of special medical training have you received?

4 A. CNA, certified nursing assistant.

5 Q. When did you get that certification?

6 A. In high school.

7 Q. Okay, thank you. Another hand. Thank you. You are the
8 LPN?

9 A. I am the occupational therapist.

10 Q. I am sorry.

11 A. Also emergency medical technician, I worked for Indian
12 River County.

13 Q. Did you work in the ER?

14 A. No. I worked in the recreation department as a lifeguard.

15 Q. Because of that you received that medical training?

16 A. Yes.

17 Q. Thank you very much.

18 Anyone else? I don't see any other hands.

19 Other than -- I know one of our jurors, or potential jurors
20 is a lawyer. Anyone else here, other than, anyone else here
21 receive legal training in your background?

22 I see a hand raised.

23 A. In college we have to take business law classes for my
24 degree, other than that, no.

25 Q. Okay, thank you.

1 And then we've got juror number 29?

2 A. I have been a receptionist/secretary for a couple of
3 different attorneys in my county.

4 Q. And I know you were also a deputy clerk?

5 A. I was a deputy clerk in the criminal traffic division.

6 Q. Did you do that after or before you worked for the lawyers?

7 A. Before.

8 Q. Thank you.

9 Now, Plaintiff's counsel mentioned a moment ago, he wanted
10 to know if any of you here in looking at the scales of justice
11 and measuring -- and we want everybody here, both sides, to
12 start as an equal playing field. He was asking if anybody
13 tipped in favor of the Defense.

14 My question, of course, anybody -- here you are sitting
15 listening to what everybody is saying. Is anybody tipping the
16 scales, frankly, in favor of the Plaintiff in this case or away
17 from law enforcement?

18 Anybody here, in listening so far, sitting there quietly
19 thinking, you know, I am not sure I could be fair because one
20 of the parties is a cop? I will use that word, that is what
21 you hear on the news all the time.

22 Anybody feel they cannot be fair and impartial to Deputy
23 Newman and the Sheriff's Office?

24 Again, asking you to be fair and impartial. Certainly not
25 even leaning the scales in his favor, both sides want fair and

1 impartial jurors. I don't see any hands.

2 I assume you believe going into this case you could be fair
3 and impartial to both sides of this case.

4 Now, this has been touched on a little bit, but does
5 everybody understand here -- everybody knows coming in today,
6 certainly we have all been around for awhile on this earth and
7 you can't avoid TV, media, social media, and all those things
8 we encounter every day of our lives, all of the stories all of
9 us heard over the years.

10 Does everybody here understand if you get selected as a
11 juror you will be required, not just asked of you, but required
12 to judge this case involving these two parties and not judge it
13 in relation to any other case that might even sound similar to
14 this case?

15 What I mean by that, I think you have gotten the gist that
16 this obviously involves a law enforcement officer or law
17 enforcement officers and a gentleman who is now deceased.

18 So, I am sure you heard at least that kind of similar fact
19 pattern in the media before. Is there anybody here that won't
20 be able to judge this case on only the facts of this case?
21 Even if it might remind you of a different case, do you
22 understand you are required to judge this case on its facts and
23 its facts alone?

24 Everybody understand that? I see a lot of nodding of
25 heads. Don't been afraid to say so because, again, there is no

1 wrong answer. We are looking for the truth. This is the only
2 time the lawyers get a chance to kind of pick your brains a
3 little bit, otherwise we have to take you at your word and hope
4 for the best. As both sides know, this is important to all of
5 us. We are asking you to be honest with us.

6 Has anybody here ever been in a life or death situation?

7 I'm looking. I see raised his hand.

8 What happened, just generally?

9 A. I am allergic to bees and I actually got stuck and almost
10 died.

11 Q. Okay.

12 A. In my father's care because he was intoxicated.

13 Q. How old were you?

14 A. Five. When I got diagnosed I was a diabetic.

15 Q. Which you told us about that.

16 A. Yes.

17 Q. Do you still think about that years later?

18 A. Yes, I do. It plays a huge factor in my life today.

19 Q. All right. Thank you for sharing that with me.

20 Now, I know at least Mr. is going to answer yes to this
21 question. I don't mean to pick on you.

22 Does anybody own a firearm?

23 I see hands raised. Let's go down for the record.

24 A. Yes.

25 Q. Did I see somebody in the front row there?

1 You must be?

2 A. Yes.

3 Q. Anyone else on this side that owns a firearm?

4 I see in the back.

5 Okay, let me briefly ask you collectively, those of you
6 that have a gun or own guns, do any of you feel strongly one
7 way or the other about gun ownership or being around guns?

8 I see raised his hand. Could I ask you how you answer that
9 question?

10 A. Yes, I believe every person on the face of this planet has
11 a responsibility to themselves, their family and friends to
12 defend themselves. This world is a dangerous place, ask
13 anybody. Turn on the television, turn on the news, newspaper,
14 people who do not defend themselves are sheep.

15 I consider myself a sheep dog. I reserve the right to pick
16 anybody in this room any time if I have the ability to, and I
17 will. People who do bad things against other people, I don't
18 care what the circumstance is, it is a bad thing.

19 I believe people who don't defend themselves, I don't
20 understand it, I really don't. Police departments and Sheriff
21 Departments and law enforcement in general are over stressed
22 and over taxed and they can't be everywhere all the time, they
23 can't. Most of the time they show up to circumstances over
24 with, done, gone, the moment is missed.

25 Q. While you have the microphone, I have one question with

1 you, because you shared with us earlier today about your
2 misdemeanor arrest back in the early '80's?

3 A. '82, yes.

4 Q. You made the comment even today, all the years later, it
5 resides with you?

6 A. Yes, it followed me all my life.

7 Q. It won't surprise you if I ask you, I am curious about what
8 your feelings are about the police all these years later. You
9 made comments about what happened and what the officer did and
10 didn't do. Do you believe, based on that experience that you
11 had that you still carry with you today, do you believe that
12 impacts your ability to be fair and impartial to Deputy Newman
13 and the Sheriff?

14 A. Absolutely. Two of my best friends meet my feet under the
15 kitchen table, we dine together, go camping together, and they
16 are both officers of the law. My uncle was a South Carolina
17 Highway Patrolman.

18 They are, just like in this room and everywhere we walk, a
19 the face of the planet, there are good people and bad people in
20 all professions. That is a fact of life, we can't change that,
21 we never will.

22 So, as long as people act like they are supposed to and
23 treat others like they are supposed to, I have nothing against
24 them, including an officer of the law.

25 Q. I'd like to ask you as a followup, to be fair to the

1 Plaintiff side --

2 A. Absolutely.

3 Q. -- do you believe that you would tip the scales against the
4 Plaintiff in this case because of your feelings about law
5 enforcement?

6 A. I was trying to explain earlier about this.

7 Without knowing the facts, and they are going to be put in
8 front of us later on, it is sometimes hard to say. I can't say
9 for a fact how I will feel until I hear all of the evidence. I
10 am human, too.

11 I feel like the jury is going in, we are supposed to go in
12 with a totally empty mind and follow the evidence. Once again,
13 I am human too, I hope I do my best if I get selected. If not,
14 I have to apologize now.

15 Q. Would you endeavor to keep an open mind and be fair and
16 impartial to both sides?

17 A. Absolutely.

18 *THE COURT:* 17 minutes. You can have additional time.

19 *MS. BARRANCO:* Thank you.

20 *BY MS. BARRANCO:*

21 Q. Is there anybody here that doesn't have a gun that has any
22 strong feelings, positive or negative, about guns?

23 Just the fact there is a gun somewhere you would be freaked
24 out about it, anybody feel that way?

25 I see two hands over here. Let me see if I can say for the

1 record it is?

2 A.

3 Q. Thank you. Yes. Tell me.

4 A. You asked any weapon, and I really, really don't understand
5 why AR's are being sold in this country still. Just -- I see
6 no use for them.

7 Q. So, your feeling is particularly about that type of weapon?

8 A. That is what you asked, yes.

9 Q. If you could pass the mic to the lady in front of you in
10 the pink shirt.

11 You raised your hand as well?

12 A. I strongly feel guns are scary, even for someone to just
13 take a gun and blow their brains out, you know, they are scary.

14 Q. Thank you for sharing this.

15 *MS. BARRANCO:* Thank you, your Honor.

16 *THE COURT:* Okay, thank you very much.

17 Ladies and gentlemen, that does conclude the
18 attorneys' questions. At this point, I will give you a break.
19 I will ask you to stay close by. You can use the restroom, you
20 can talk with one another, can't research the case, review
21 anything about the case. The attorneys will review their notes
22 with their clients and we will have a conference and they will
23 let me know who they select to be jurors in this case.

24 Hopefully it won't take too much time. With the same
25 very important instructions, we will give you a recess and stay

1 close by, and we will let you know who the jurors are so I can
2 make that announcement.

3 It is five minutes to 3:00, and I suspect that we will
4 take at least 15 minutes, probably a little more. Let me say
5 at least 15 minutes.

6 So, if that gives you any freedom to walk around the
7 building, fine. Otherwise, be close by after the next 15
8 minutes. Okay? Thank you.

9 (Thereupon, the jury venire left the courtroom.)

10 *THE COURT:* Okay, I hope you had time to look at your
11 notes over the lunch time.

12 We eliminated a lot of jurors during the first thing.
13 I will ask you to maybe take a moment to confer, look at your
14 own notes, confer with your own teams, and cross the aisle and
15 cross to the other side. I want to know if there are cause
16 challenges that both sides agree on, and then cause challenges
17 one side holds and the other doesn't, and then we will go into
18 the challenges. I think I told you that at the last
19 conference.

20 Do you want to refer to you notes?

21 *MS. BARRANCO:* Yes, please.

22 *THE COURT:* All right. I will stay here. I don't
23 want to put any pressure on you, but I will stay here.

24 (Pause.)

25 *MR. PHILLIPS:* Your Honor, we agree to number 4.

1 *THE COURT:* All right. We are on the record now.
2 There is agreement from both counsel that juror number 4 should
3 be stricken.

4 *MR. PHILLIPS:* Yes.

5 *THE COURT:* Any other agreement?

6 *MS. BARRANCO:* Your Honor -- no more agreement.

7 *MR. PHILLIPS:* No more agreement.

8 *THE COURT:* Plaintiff, any cause challenges for
9 Plaintiff?

10 *MR. PHILLIPS:* Yes, your Honor.

11 *THE COURT:* Tell me the numbers first. List out the
12 juror numbers.

13 *MR. PHILLIPS:* Number 14.

14 *THE COURT:* Who else?

15 *MR. PHILLIPS:* That is it.

16 *THE COURT:* 14 is. We heard a lot from. Why are you
17 seeking to strike?

18 *MR. PHILLIPS:* His brother is with the St. Lucie
19 Sheriff's Office, he said he would have reservations and family
20 strife if he had to enter a verdict against his brother's
21 employer. That is common sense, I'd hate to put him in that
22 position.

23 *THE COURT:* Defendant.

24 *MS. BARRANCO:* I recall, he didn't understand what the
25 question was, he said I am not really sure.

1 It didn't sound to me in his answers that he wouldn't
2 be able to be fair and impartial, and they don't get to the
3 damages issue until they talk about the liability issue,
4 otherwise I think he sounded like he could be fair and
5 impartial. He didn't even know what his brother did at the
6 Sheriff's Office.

7 *THE COURT:* Well, I think that 14 is arguably a close
8 call. I think he is really trying to give honest answers. I
9 think sometimes the long questions can confuse jurors and I
10 think that did happen which is why I tried to step in and
11 reword the question, maybe.

12 But I tell you what, in an abundance of caution, and
13 because there were certain things he said, I don't want to rely
14 simply on the fact of an assumption that he didn't understand
15 to conclude unequivocally that the Court has found him to be
16 setting forth that he could be fair and impartial.

17 It is true at various points he said he could be fair
18 and impartial, but it is also true that he was very focused on
19 the fact that his brother works for the St. Lucie County
20 Sheriff's Office, that was a theme that came up each and every
21 time the question was posed to him.

22 Because that is a party, that he is the Sheriff, the
23 Sheriff in an official capacity where his brother works, I am
24 going to strike juror number 14.

25 No one else from the Plaintiff. What about from

1 Defense?

2 *MS. BARRANCO:* We move to strike for cause juror 26.

3 *THE COURT:* Is she the only one?

4 *MS. BARRANCO:* Yes, your Honor.

5 *THE COURT:* Tell me about, why do you want to strike
6 her for cause?

7 *MS. BARRANCO:* She was candid and said she had no
8 interest being here, and when you asked her further, she said
9 she would do her best.

10 The concern that the Defense has is she lists two
11 different arrests on her questionnaire initially, and when she
12 was questioned about it, she said one arrest, and then two
13 arrests, and when I asked her, she added three more arrests.
14 Two of those five arrests were by the Defendant in this case,
15 the Sheriff of St. Lucie County, and the other three, the fact
16 she didn't feel it was necessary to disclose that initially in
17 the questionnaire is very concerning.

18 And whether or not she can really be fair and
19 impartial in this case involving the kinds of facts that this
20 case involves and the Defendants in this case, they are law
21 enforcement officers employed with the agency that arrested her
22 on more than one occasion.

23 *THE COURT:* Okay. And response.

24 *MR. PHILLIPS:* My response hasn't changed much from
25 last time. There is a reason for them to dislike what she

1 said, I don't think it escalates to cause.

2 *THE COURT:* I am going to strike for the reasons that
3 the Defense has put forth. Not unlike, although their
4 situations are different, we heard fair and impartial, and we
5 also heard other things that might be suggestive of either
6 deliberately not disclosing something or forgetting about
7 something, but in any event, she has had interaction presumably
8 in an adverse way, although she didn't seem to say they were
9 negative experiences, with the St. Lucie County Sheriff's
10 Office.

11 She too said something different than. I think the
12 prudent thing would be to strike for cause. There is a chance
13 she could be fair and impartial because of her background and
14 situation.

15 With that, let me review who we have left.

16 Let me review who has been stricken for cause so
17 everyone is in agreement. 4, 8, 12, 14, 16, 17, 21, 22, 26,
18 27, and 31. Correct?

19 *MR. PHILLIPS:* Yes.

20 *THE COURT:* The first six jurors are 1, 2, 3, 5, 6 and
21 7. Those are the first six jurors, those are the ones we are
22 going to work with first.

23 I will start with -- we'll seat our six and go to the
24 alternates. We will take turns, Plaintiffs going first and
25 then Defendant, and I will switch it.

1 Plaintiff, do you want to keep juror number 1 or
2 strike juror number 1?

3 *MR. PHILLIPS:* Juror 1 is acceptable.

4 *THE COURT:* Number 1 is acceptable. From the Defense?

5 *MS. BARRANCO:* Also acceptable, your Honor.

6 *THE COURT:* Okay. Juror number 1 is our first juror.
7 Then juror number two, do you accept or not accept
8 juror 2?

9 *MS. BARRANCO:* We accept number 2.

10 *THE COURT:* Plaintiff.

11 *MR. PHILLIPS:* Plaintiff uses its first peremptory to
12 strike juror number 2.

13 *THE COURT:* That is the Plaintiff's first peremptory.
14 We bring our pool of six to juror number 9. We extend it out
15 with that peremptory being exercised, and we go to juror number
16 3.

17 I will begin with the Plaintiff, juror number 3.

18 *MR. PHILLIPS:* Juror 3 is acceptable.

19 *THE COURT:* Defense.

20 *MS. BARRANCO:* Number 3 is acceptable.

21 *THE COURT:* Number 3 is our second juror.

22 And then we skip over to juror number 5, and begin
23 with Defense. Juror number 5.

24 *MS. BARRANCO:* Juror number 5 is acceptable.

25 *THE COURT:* Plaintiff.

1 MR. PHILLIPS: Juror number 5 is acceptable.

2 THE COURT: Juror number 5 is our third juror.

3 And then Plaintiff, juror number 6.

4 MR. PHILLIPS: Your Honor, Plaintiff moves to -- uses
5 its second peremptory on juror number 6.

6 THE COURT: That is Plaintiff's second peremptory.
7 That brings the pool of six to juror number 10.

8 I turn to Defense for juror number 7.

9 MS. BARRANCO: Your Honor, we would exercise our first
10 peremptory on juror number 7.

11 THE COURT: That is the Defendant's first peremptory,
12 and that brings the pool to juror number 11.

13 I go to the Plaintiff for juror number 9.

14 MR. PHILLIPS: Juror number 9 is acceptable.

15 THE COURT: Defense.

16 MS. BARRANCO: Number 9 is also acceptable for the
17 Defense.

18 THE COURT: Okay, that is our fourth juror.

19 And defense for number 10. Juror number 10.

20 MS. BARRANCO: Your Honor, there is no back striking,
21 correct?

22 THE COURT: Correct.

23 MS. BARRANCO: Number 10 is acceptable.

24 THE COURT: Juror number 10 is our fifth juror, and --
25 oh, wait a minute, I'm sorry, I started with the Defense.

1 Defense accepts 10. What about the Plaintiff?

2 MR. PHILLIPS: Accepts.

3 THE COURT: Juror number 10 is our fifth juror.

4 Now we are on juror number 11. Plaintiff.

5 MR. PHILLIPS: Juror number 11 is acceptable.

6 THE COURT: From the Defense.

7 MS. BARRANCO: Your Honor, we are we up to now --

8 THE COURT: That would be our sixth juror. We have
9 five jurors so far.

10 MS. BARRANCO: May I have one second?

11 THE COURT: Sure.

12 MR. BRUCE JOLLY: Your Honor, I have a question. Are
13 the alternates deliberating?

14 THE COURT: Yes, they go back to deliberate if we
15 don't lose any jurors. If we lose somebody, the first
16 alternate will move in. If we lose a second, the second will
17 move in. If they don't go, we have all eight.

18 Number 11.

19 MS. BARRANCO: Juror number 11 is acceptable, your
20 Honor.

21 THE COURT: That is our sixth juror, that is our panel
22 of six.

23 Our very next jurors for the alternates are 13 and 15.

24 We will begin anew. You don't get to carry over your
25 peremptories, you have one peremptory for two alternates. We

1 will start with Defense, number 13, for alternate number one,
2 accept or not accept?

3 *MS. BARRANCO:* Not accept, your Honor.

4 *THE COURT:* Okay, so strike.

5 *MR. PHILLIPS:* Plaintiff would ask for a race neutral
6 reason under Batson. I don't know if you want to do that now.

7 *THE COURT:* We will do that now. Under Batson and its
8 progeny, the Defendant -- let's see. First, I believe -- all
9 right. So, the objecting party is the Plaintiff, so the
10 Plaintiff, you must make a prima facie case showing the
11 totality of the relevant facts that give an inference of
12 discriminatory purposes under Batson, citing *Washington v*
13 *Davis*, 426 U.S. 239, at 242. You are not required to show it
14 is more likely than not that the other party's challenge was
15 based on race, but you must make a prima facie case showing
16 discriminatory purpose.

17 *MR. PHILLIPS:* Mr. Hill, the victim, is a black male.
18 African-Americans are a cognizable protected group. Juror
19 number 13, is a black male in that same protected group. That
20 sets forth a prima facie case, your Honor.

21 *THE COURT:* Okay. Then I turn to the Defense, the
22 burden shifts to the Defense to articulate a race neutral
23 reason under Batson.

24 *MS. BARRANCO:* The reason we were striking is based on
25 his arrest history. He told us that he was arrested in 2001

1 for domestic battery and convicted and won on appeal, which
2 would suggest perhaps he was wrongfully arrested from the
3 get-go, and he advised he was arrested for a DUI in 1997.

4 Additionally, he shared with us he has become a
5 Jehovah Witness and there is a concern he may have difficulty
6 applying the law that your Honor gives him as opposed to
7 Jehovah's laws that he may otherwise be following as his new
8 religion and learning that new religion.

9 *THE COURT:* Okay. Well, the Court will sustain the
10 objection.

11 The Court finds that Defense has given a race neutral
12 explanation and that the Plaintiff has not carried the burden
13 of showing purposeful discrimination. The Court considers in
14 terms of assessing counsel's demeanor, whether the non-racial
15 explanation has a connection with the facts of the case to be
16 tried, whether the -- whether the explanation has some basis in
17 accepted trial strategy, and the Court finds in assessing these
18 factors the explanation by the Defense is race neutral.

19 The Court, too, had noted the Jehovah Witness answer
20 that he gave in question number 13 of the questionnaire, and
21 delved into that because the Court has had experience, as maybe
22 counsel have, with jurors or prospective jurors who practice in
23 the Jehovah Witness faith and it is the Court's experience that
24 often times, actually all times, they have indicated that they
25 don't believe they are in a position to make judgment of

1 others, and while he indicates that he has just started, it
2 nevertheless raises the question of whether he would be put in
3 a position of a conflict between his beliefs and the law that
4 the Court gives him. And also, the Court acknowledges the
5 prior criminal history and conviction and an appeal.

6 In addition, the Court notes that the Defense did not
7 object to juror number 13 -- juror number 14, who is
8 African-American, and in fact the Defendant was seeking to have
9 that juror -- didn't ask for that juror to be stricken, I think
10 opposed the cause challenge on that, and it was the Plaintiff
11 who was seeking for other reasons to have 14 stricken.

12 So, I will overrule the objection, sustain the strike,
13 and so, 13 will be stricken, and that is the Defense's first
14 and only strike for an alternate.

15 So, our alternates now are 15 and 18, and it is up to
16 the Plaintiff whether you want to exercise a strike to either
17 one of them.

18 *MR. PHILLIPS:* We'll strike 18.

19 *THE COURT:* Okay, that is Plaintiff's first and only
20 peremptory as to the alternate, so it would be number 19.

21 Alternate number one will be juror 15, and alternate
22 number two is juror 19. Okay.

23 So, what I am going to do is bring the jury in, excuse
24 those -- we'll seat those who have been selected, have them
25 sworn in, excuse everyone else, review my preliminary

1 instructions. And how long do you each need for opening?

2 Each of you gave 30 minutes. Are you thinking 30
3 minutes?

4 *MR. PHILLIPS:* I should be under 30.

5 *MS. BARRANCO:* Around 30 or maybe a little less.

6 *THE COURT:* All right. Call them in. Have everybody
7 sit in the back of the room. As I call them out, they will
8 come up.

9 *THE COURTROOM DEPUTY:* Okay.

10 (Thereupon, the jury venire returns to the courtroom.)

11 *THE COURT:* Okay, as I call your name, please come
12 forward.

13 Juror number 1, juror number 3, juror number 5, juror
14 number nine, juror number 10, juror number 11, juror number 15,
15 and juror number 19.

16 If we could have our jury sworn in, please.

17 (Thereupon, the jury was duly sworn.)

18 *THE COURT:* Okay, you may be seated.

19 For the rest of you who are here, I want to thank you
20 on behalf of everyone for your service here today. You were
21 not selected to be a juror on this case, that does not mean you
22 did anything wrong. You did everything you were expected to
23 do, show up, been punctual and answer the questions truthfully,
24 completely and honestly. We appreciate that.

25 Sometimes there are reasons why certain persons are

1 selected as jurors, and sometimes there is no reason at all, it
2 could be where you fell on the seating chart. In any event,
3 you did your job and we appreciate it. You are excused, you
4 can be released from this trial. You can continue to call in
5 according to your jury summons. If you have time on your
6 service, continue to follow those instructions.

7 You are also released from your duty not to speak
8 about the case or view any media, research, all the things I
9 was telling you that you couldn't do or you can do, or you can
10 choose not to talk about it at all.

11 In any event, you are not permitted to speak to any of
12 these jurors if you befriended others, you are not to have any
13 communication with them about this case at all while they
14 continue to serve as jurors in this case.

15 Thank you again, and I wish you a nice rest of the
16 day. You are excused from this trial.

17 *(Thereupon, the jury venire leaves the courtroom.)*

18 *THE COURT:* Members of the jury, now that you are
19 sworn I need to give you instructions about your duty as
20 jurors. These are preliminary instructions and I will instruct
21 you further at the end of the case.

22 It is your duty to listen to the evidence, it is my
23 job to provide you with the law that you must apply, and you
24 must follow the law even if you disagree with it. You must
25 decide the case only on the evidence presented in the

1 courtroom.

2 Evidence comes in many forms. It could be testimony
3 about what someone saw, heard or smelled, it can be an exhibit,
4 photograph, or someone's opinion.

5 Some evidence may prove a fact indirectly. Let's say
6 a witness saw wet grass outside and people walking into the
7 courthouse carrying wet umbrellas. This may be indirect
8 evidence that it rained even though the person didn't see it
9 rain. Indirect evidence like this is also called
10 circumstantial evidence and as far as the law is concerned, it
11 makes no difference whether the evidence is direct or indirect,
12 you may choose to believe or disbelief either kind. Your job
13 is to give each piece of evidence whatever weight you think it
14 deserves.

15 During the trial you will hear things that are not
16 evidence and you must not consider them. The lawyers
17 statements are not evidence. The lawyers will discuss the
18 case, and their remarks may help you follow each sides' view in
19 the presentation of the evidence, but remarks are not evidence
20 and should not play a role in your deliberations.

21 Second, the lawyers' questions and objections are not
22 evidence, only the witnesses' answers are evidence. Don't
23 decide something is true because a lawyer's question suggests
24 that it is. For example, a lawyer may ask a witness, you saw
25 Mr. Jones hit his sister, didn't you? That is not evidence of

1 what the witness saw or what Mr. Jones did.

2 There are rules of evidence that will control what the
3 Court can receive into evidence. When a lawyer asks a
4 question, the opposing lawyer may object if he or she thinks
5 the rules of evidence don't permit it. If I overrule the
6 objection, the witness may answer the question. If I sustain
7 the objection, the witness cannot answer the question, and the
8 Court cannot receive the exhibit.

9 When I sustain an objection to a question, you must
10 ignore the question and not guess what the answer might have
11 been.

12 Sometimes I may disallow evidence, this is also called
13 striking evidence, and order you to disregard or ignore it.
14 That means you may not consider that evidence when deciding the
15 case. I may allow some evidence only for a limited purpose,
16 and when I instruct you that I have admitted evidence for a
17 limited purpose, you must consider it for that purpose and no
18 other.

19 To reach a verdict you will have to decide which
20 testimony to believe and which testimony not to believe. You
21 may believe everything a witness says, part of it, or none of
22 it.

23 When considering a witness' testimony, you may take
24 into account the witness' opportunity and ability to see, hear
25 or know the things the witness is testifying about; the

1 witness' memory, the witness' demeanor while testifying; any
2 interest the witness has in the outcome of the case; any bias
3 or prejudice the witness may have 'or any evidence that
4 contradicts the witnesses' testimony; the reasonableness of the
5 witness' testimony in light of all of the evidence, and any
6 other factors bearing on believability. At the end of the
7 trial I will give you additional guidelines for determining a
8 witness' credibility.

9 I already explained what the case is about earlier
10 this morning.

11 The Plaintiff, Viola Bryant, as personal
12 representative of the Estate of Gregory Vaughn Hill, Jr., has
13 the burden of proving her claims by a preponderance of the
14 evidence, that is, Viola Bryant must prove what she claims is
15 more likely true than not.

16 If you put the evidence concerning Ken Mascara, in his
17 official capacity as Sheriff of St. Lucie County, and
18 Christopher Newman on opposite sides, Viola Bryant needs to
19 make the scales tip to her side. If the Plaintiff fails to
20 meet the burden, you must find in favor of the Defendants.

21 To decide whether any fact is proved by a
22 preponderance of the evidence, you may, unless I instruct you
23 otherwise, consider the testimony of all witnesses regardless
24 of who calls them, and all exhibits, regardless of who
25 introduced them.

1 After considering all of the evidence, if you decide
2 that a claim or fact is more likely true than not, then the
3 claim or fact has been proved by a preponderance of evidence.

4 On certain issues called affirmative defenses, the
5 Defendants have the burden of proving the elements of the
6 offense by a preponderance of the evidence. I will instruct
7 you on the facts that your decision -- I will instruct you on
8 the facts -- let's see, it looks like it was cut off here.

9 I don't know whether counsel has one that was not cut
10 off.

11 *MR. BRUCE JOLLY:* What page were you on?

12 *THE COURT:* After considering all of the evidence, if
13 you decide the Defendants have successfully proven that the
14 required facts are more likely true than not, the affirmative
15 defense is proved.

16 I have already given you the instruction on your
17 conduct regarding not talking to people, not researching the
18 case, not viewing any media, and before you leave today, you
19 will be sure I will go over that again.

20 I want to let you know if you wish, you may take notes
21 to help you remember -- I think we have that here -- if you
22 wish, you may take notes to help you remember what the
23 witnesses said. If you do not -- if you do take notes, please
24 don't share them with anyone until you go to the jury room to
25 decide the case. Don't let note-taking distract you from

1 carefully listening to and observing the witnesses. When you
2 leave the courtroom, you should leave your notes hidden from
3 view in the jury room.

4 Whether you take notes or not, you should rely on your
5 own memory. Notes are not entitled to any greater weight than
6 your memory or impression about the testimony.

7 So I don't have my back to you, let me pull this up in
8 a different place.

9 I know that each of you have your notepads and
10 pencils, so you should feel free to start using them at any
11 time.

12 So, let's walk through the trial.

13 First, each side may make an opening statement, but
14 they don't have to. Remember, an opening statement is not
15 evidence, it is not argumentative.

16 Next, Plaintiff Viola Bryant will present her
17 witnesses and ask them questions. After Plaintiff questions
18 the witness or witnesses, Defendants Sheriff Mascara and
19 Christopher Newman may ask the witnesses questions. This is
20 called cross-examining the witness. Plaintiff may
21 cross-examine the Defendant's witnesses. You should base your
22 decision on all of the evidence regardless of which party
23 presented it.

24 After all the evidence is in, the parties' lawyers
25 will present closing arguments to summarize and interpret the

1 evidence for you, and then I will give you instructions on the
2 law, and then you will go to the jury room to deliberate.

3 So, with that, I will turn it over to Plaintiff's
4 counsel for opening statement.

5 Do you wish to make an opening statement?

6 *MR. PHILLIPS:* Yes, your Honor.

7 *THE COURT:* Okay.

8 *MR. PHILLIPS:* May it please the Court, counsel,
9 ladies and gentlemen of the jury.

10 Law enforcement is required to abide by the freedoms
11 protected and granted to us by the Constitution, the Bill of
12 Rights, and its amendments. If law enforcement doesn't do
13 that, even for an instant, and harm results, they are
14 responsible for that harm.

15 We hear a lot about the Constitution these days, and
16 unfortunately a lot of it comes with shouting and disagreement,
17 and the important thing to realize, and I think you get it, you
18 walk into a Federal Court and you get it, this week isn't about
19 shouting. This week is the core of how we resolve disputes,
20 and it is very important.

21 My name is John Phillips, and as you met, this is Ms.
22 Bryant and the attorneys with my office. This week it is our
23 obligation, our job, and our duty to present Ms. Bryant's case.
24 Ms. Bryant stands as the representative of her son, Gregory
25 Vaughn Hill, Jr. He left behind three children who we will

1 talk about. He is no longer with us.

2 You won't hear his words in the courtroom this week.
3 You will only hear through the facts that we can assemble about
4 his last moments.

5 We talk about the Constitution, and the 17th word in
6 the U.S. Constitution is justice. That is what both parties
7 seek.

8 We heard about the Fourth and Fourteenth Amendment
9 when we first started, and the Fourth says -- I am not going to
10 give you guys a constitutional law class today, but the Fourth
11 says it is the right of the people to be secure in their houses
12 and in their person. The Fourteenth Amendment says a state
13 actor, police department, Government, can't deprive any person
14 of life, liberty and the pursuit of happiness.

15 It is the Plaintiff's contention that is exactly what
16 happened. The Defendant will have disagreement.

17 The date was January 14, 2014. That is when Ft.
18 Pierce homeowner Gregory Vaughn Hill was listening to music in
19 his garage. Miley Cyrus was on the CD, he was playing music
20 before his kid got out of school. Some names I won't try to
21 pronounce on the CD. It was his man cave.

22 The song playing when parent Stefanie Mills pulled up
23 was, best we can tell, Drake's All Me. It says I got
24 everything, I got everything, I cannot complain, I cannot.

25 His garage door was open as Ms. Mills pulled up. The

1 lyrics I didn't read are probably not for public consumption,
2 probably not polite conversation.

3 Ms. Mills, going to pick up her kids, called her
4 sister and said can you believe this, can you believe this, and
5 they agreed that calling the police was a prudent thing.

6 At some point in time, and we are talking about
7 minutes and seconds here, Mr. Hill put his garage door down.
8 You will hear testimony about whether or not at that point the
9 music offended anybody else.

10 It was a manual garage door, one you have to pick up
11 yourself, put down yourself. He put it down. I expect the
12 evidence to show and Ms. Mills to say she called the police to
13 teach her kids a lesson about right and wrong. You will hear
14 her police call. No one responding will say that listening to
15 music, even music with an F bomb or music that is too loud, is
16 a crime, even the officers who responded.

17 Officer Newman, who in fact would say that was a
18 stranger on the other side of the door. I didn't know who came
19 to the door, I didn't know Mr. Hill, just wanted the music
20 down.

21 There's two radio recordings, CAD recordings, with
22 police officers communicating that will be very important.
23 Before that there was one at 15:19:30, 3:19 and 30 seconds:
24 Officer 280, that is Deputy Newman, 14 Avenue Q, 14 Avenue Q,
25 signal 22, loud music, across the street from a school, brown

1 house, garage door open, obscene music, very loud. Called in
2 at 15:19.

3 About 32 seconds later, Officer -- Deputy Lopez in
4 another car radioed he was going to attend and they were on
5 their way. It was about four minutes after dispatch.

6 The next call is very important, the next communique.

7 Newman, correction, and says dispatch 1501 Avenue Q,
8 different address. That call ended at 15:23:30, 3:23 in the
9 afternoon, 30 seconds past -- 30 seconds past 3:23 in the
10 afternoon.

11 Two officers pulled up perpendicular to Mr. Hill's
12 driveway, not necessarily the driveway they were dispatched to,
13 not necessarily the driveway that matched the address or color,
14 it was a pink house instead of a brown house. Clearly it was a
15 house with loud music, the garage door wasn't up, it was down,
16 but they knew this must be what they are talking about.

17 The next call you will hear is Deputy Lopez, not on
18 trial here. Deputy Lopez is not on trial. You will hear the
19 voice of, I imagine it is one of these automated computer
20 systems, the call starts at 15:24:30, that is -- the last one
21 ended at 15:23:30 -- one minute, 60 seconds later, and you will
22 hear Deputy Lopez' voice, shots fired.

23 I don't want to use adjectives to describe his voice,
24 that is for you to fill in, what weight to give the evidence,
25 that is for you. Shots fired.

1 It takes some amount of time to do this, to call for
2 help, to call dispatch. In fact, it would be fair, we expect
3 the evidence to show it is sometime less than 60 seconds from
4 when they arrive, and when they arrive, it is important to
5 listen to that call, whether you hear music, just take it in.
6 All of this occurred in less than 60 seconds.

7 No shots had been fired at the officers, four shots
8 went in the direction of Mr. Hill's home, all traveled through
9 a closed or closing garage door.

10 You will hear that 60 seconds described by several
11 people, people picking up their kids from school, the
12 elementary school principal, elementary school teachers,
13 Deputies Newman and Lopez, and Mr. Hill's own daughter. School
14 was about to get out, she was already out there. She saw all
15 of it.

16 I can run through each witness, but every second of
17 your time is also valuable, and we rather you hear it from the
18 witnesses than what the lawyers say.

19 They do say it happened quickly. Experts are going to
20 weigh in on how quickly the shots were fired. We retained Roy
21 Bedard, and he will say the shots were fired within one second,
22 not one second each, all within one second.

23 I believe Defense expert -- I expect their expert to
24 say and that the evidence will say 1.2, 1.4, and we agree,
25 within fractions of a second how quickly Deputy Newman fired

1 his service revolver. Like a football game, we all have a
2 different view, but we all saw the same event.

3 After that 60 seconds, Mr. Hill collapsed.
4 Fortunately, according to Dr. Anderson, the injury to his
5 brain, we expect the evidence to show, was fairly immediate,
6 fairly immediate.

7 Mr. Hill was found with two gunshots in the right
8 lower abdominal quadrant and right lower pelvic area, this
9 side.

10 I am no doctor, so I am going to quote the forensic
11 pathologist, related to the brain injury he said the bullet
12 passed through his skin, his skull, through the cerebellum
13 spheres and basal ganglia, through the neuron pathways of the
14 brain with consequent associated hemorrhage.

15 He further says this injury would have immediately
16 destroyed the neurological pathways needed for purposeful
17 activity and that no significant movements would have been
18 possible following the infliction of this injury.

19 That is important because a gun wasn't found in Mr.
20 Hill's hand or by his side, or loose on the garage floor, or
21 with blood on it or brain matter on it, or DNA, or
22 fingerprints, but it was found in his back pocket.

23 We expect the Defendant to say I shot because when Mr.
24 Hill was a threat to Deputy Lopez, the garage door was coming
25 up, that -- coming down, that gun was coming up, and he may

1 demonstrate it, and shots rang out.

2 From the Plaintiff's side, we expect the evidence to
3 show -- we will present three important pieces of evidence.
4 Witnesses from around the school didn't see what the officer
5 saw. Destiny Hill saw her father's empty hand.

6 An unloaded gun was recovered from Mr. Hill's back
7 pocket by the St. Lucie County Sheriff's Office with no blood,
8 no DNA, no splatter, despite there being -- the evidence will
9 say Mr. Hill was incapable of putting his gun in the back
10 pocket after sustaining the shots he sustained.

11 You will listen for two more pieces of evidence.
12 Listen to Ms. Mills, she will start at nine o'clock tomorrow
13 morning, or whenever the Court requests us to start, about
14 Deputy Newman's reaction because she saw the whole thing.

15 Another important piece of evidence we expect you to
16 hear, sort of lack of evidence, Deputy Lopez only heard Deputy
17 Newman say one word during this entire sequence of events, hey,
18 hey, not police, police, not police, police, put down the
19 weapon. They will both say they screamed at the top of their
20 lungs, neither one of them heard it from each other. Deputy
21 Newman heard Deputy Lopez say nothing.

22 Listen to the witnesses carefully. We will talk about
23 damages in closing argument. I have to prove my case -- my
24 client has to prove her case first, but we are here because Mr.
25 Hill left behind three children, Gregory, III, age seven now,

1 Aryanna, age ten now, and Destiny, age 13 now.

2 You will meet them, you will hear their stories and I
3 don't want to prolong opening statement talking about snooker,
4 and things they did together, you will hear the stories.

5 Ms. Bryant seeks to recover damages for loss of
6 companionship, parental guidance, and pain and suffering from
7 the date of the injury for the minutes and hours and years they
8 won't have with their dad. She also seeks to recover funeral
9 expenses.

10 Like all of the jurors before you, you are guardians
11 of the 17th word in the Constitution, justice, for both sides,
12 for both sides.

13 Your role is to resolve something that we couldn't
14 resolve. It is a big responsibility. You will determine fault
15 and damages in this case. Full and fair reimbursement no
16 matter what that is, and that evidence begins today.

17 Thank you for your time.

18 *THE COURT:* And from the Defense.

19 *MS. BARRANCO:* Thank you, your Honor.

20 Good afternoon again, ladies and gentlemen. It's an
21 easier panel, smaller space I am looking at here.

22 Again, we would thank you all for your time and
23 consideration here. I know it is going to be several days, so
24 we appreciate all of your attention through the entirety of
25 this process, and why that is important is because the lawyers

1 get up here now and tell you what we expect the evidence will
2 show, and at the very end of the case the lawyers get up again
3 and argue to you what we believe the evidence showed and how
4 you should find, arguably, in favor of either of our clients
5 based on what we believe the evidence is.

6 But what is most important for you all is to keep your
7 eye on the ball here in this case and focus on the testimony.
8 We will have a series of witnesses coming before you over the
9 next several days, and it is out of their mouths that the
10 testimonial evidence will come forth, and there will be during
11 the trial items of evidence, documents, perhaps even things --
12 or videos or audios that you will be allowed to listen to and
13 consider. That, too, will be the evidence.

14 It is important for you all to focus on all of that,
15 and why it is important for the Defendants to remind you of
16 that. We don't want you to get caught up on mere argument of
17 counsel, it is important for you all to pay attention, keep an
18 open mind and listen to all of the facts that come before you
19 as presented by the evidence in the case.

20 As I stated earlier, my name is Summer Barranco, I am
21 an attorney, I represent the Sheriff of St. Lucie County and
22 Deputy Newman, and we are here to present our side of the case.
23 It is only one of the times -- opening statement is one of the
24 only times I will speak to you directly, and I will make the
25 most of it. I will not unnecessarily repeat things. As

1 Plaintiff's counsel said, I am not here to go through every bit
2 of evidence with you, certainly not now, but I am here to ask
3 you to listen to all of the evidence presented before you over
4 the next several days, even those times first thing in the
5 morning you may not be fully awake yet or the end of the day
6 that you may be tired.

7 We ask you focus on the evidence presented, because it
8 is important for both sides for you to know what actually
9 happened on January 14, 2014.

10 It is important for me to remind you for both sides,
11 and especially the Defendants, your decision is not to be
12 driven by sympathy. You will hear from Mr. Hill's family
13 members, his mother now, his children and then fiancée', and it
14 undoubtedly will be emotional testimony, very sad testimony.

15 Obviously what happened on January 14, 2014 was a
16 tragic situation, nobody is going to tell you otherwise.

17 It was a tragic situation, however, the question that
18 is before all of you is to decide who is responsible for that
19 tragic situation that ultimately unfolded.

20 January 14, 2014 is over four years ago, so you are
21 going to hear evidence and testimony from witnesses that are
22 trying their best to remember things from four years ago. That
23 is something important for you to remember as well, and the
24 jury instructions will address that. In case somebody doesn't
25 remember something specifically or says something differently

1 in an initial statement and comes into court and says something
2 different, it is important for you to remember if it is an
3 innocent lapse of judgment because it is four years -- more
4 than four years, or perhaps they are not being truthful with
5 you.

6 As jurors, that is your job, to determine who you
7 believe and who you may not believe that takes the stand here
8 in the next several days, and that is an important part of your
9 job.

10 Now, January 14, 2014 was a very typical day for
11 Deputy Newman, and you heard about Deputy Lopez. As
12 Plaintiff's counsel already told you, Deputy Lopez was an
13 employee of the Sheriff's Office, St. Lucie County, another
14 deputy, and there are many deputies. Deputy Newman and Deputy
15 Lopez responded to this call, seemed like an ordinary seemingly
16 mundane call. There are lots of those calls police get
17 regularly, and generated not by the Sheriff's Office, not by
18 Deputy Newman, but by a concerned parent who, as the
19 Plaintiff's counsel mentioned a moment ago, was in the parent
20 pickup line at the elementary school right here in Ft. Pierce,
21 Florida on Avenue Q.

22 Across the street of Avenue Q was the home of Mr.
23 Gregory Hill, who is the deceased in this case, as well as his
24 girlfriend, Ms. Davis, and you will be hearing testimony from
25 her, as well as two of his children lived in that house. And

1 defense expects that you will hear evidence in this case that
2 on January 14, 2014, at about 3:00, 3:10 in the afternoon, the
3 school, the elementary school across the street from Mr. Hill's
4 house, was released from school that day like it typically did,
5 and there were lots of kids outside.

6 For whatever reason, Mr. Hill decided he was going to
7 play music in his garage with big loud speakers, some really
8 nasty music. I am sure you have heard music over the years,
9 and there are clean versions and explicit lyrics versions.
10 Suffice it to say, the music playing out of Mr. Hill's house
11 that day would fall under the explicit lyrics category. That
12 is important to remember because that is the reason the call
13 got initiated.

14 It is important for you to remember that Mr. Hill was
15 ultimately shot by Deputy Newman not because Mr. Hill was
16 playing loud music, not because he was playing loud, even if
17 you want to call it obscene music. The evidence will show Mr.
18 Hill was shot when the deputies went there, as they are tasked
19 to do, to investigate the call, and by the time they get to the
20 house the garage door is down, but they could still hear the
21 music from a block away on that side of the street.

22 The deputies approach the house, you will hear they
23 knocked on the garage door, they knocked on the front door, and
24 their intention was to make contact with whoever lived there
25 and say, man, can you just turn down the music. That was their

1 intention.

2 Unfortunately, Mr. Hill decided to do something,
3 something that ultimately changed the course of events that
4 happened that day and which ultimately forced Deputy Newman to
5 make a moment -- split-second decision when he reasonably
6 feared for the life of his co-deputy, Deputy Lopez, who was
7 standing right in front of the garage door while Mr. Hill
8 raised up the garage door, and in doing that, the deputies see
9 him with the gun. He had a gun on the side of his leg in his
10 right hand.

11 You will hear testimony that the deputies, despite
12 being in full St. Lucie Sheriff's Office uniforms, said
13 Sheriff's Office, but you also remember the music is very loud
14 still, and getting louder when the garage door goes up and the
15 deputies see the gun in Mr. Hill's hand and they tell him, drop
16 the gun, drop the gun and, unfortunately, Mr. Hill -- and you
17 will hear testimony that Mr. Hill had been drinking that day,
18 and then Mr. Hill raised the garage door with his left hand,
19 and then started to slam it down, and raised the firearm in his
20 right hand up in the direction of Deputy Lopez who was
21 literally standing three or four feet in front of Mr. Hill.

22 You will hear testimony from both Deputy Newman in
23 regard to that and Deputy Lopez. You will hear them take the
24 stand and tell you exactly what happened that day.

25 And unfortunately, it was Mr. Hill's conduct that day

1 that forced Deputy Newman to do something he had no idea he was
2 going to be doing that morning when he woke up, he had to pull
3 the trigger on his service revolver at Mr. Hill.

4 Now, as I mentioned a moment ago, the evidence will
5 show Mr. Hill, as he was raising the firearm, was closing the
6 garage door. By the time the bullets get out of Deputy
7 Newman's gun, they actually hit the garage door as it comes
8 down. Three or four bullets passed through the garage door and
9 made contact with Mr. Hill. You will hear evidence that Mr.
10 Hill was shot three times, and as Plaintiff's counsel mentioned
11 a moment ago, the evidence will show two of the times it was
12 over here. Deputy Newman is over here, and Deputy Lopez is in
13 front of Mr. Hill, and one of the shots hit the head. That
14 head shot would have ceased any motor function in Mr. Hill.

15 Now, the door comes down, and you will hear testimony
16 the deputies, they immediately go to the patrol car and they
17 are on the radio saying shots fired, we saw a black male with
18 dreads, he had a handgun in his hand.

19 They don't know if they shot Mr. Hill or not. They
20 don't know if he is injured and in there getting ready to come
21 out with guns ablaze. They don't know what is going to happen,
22 and you will hear testimony about that.

23 There was a series of things that happened on the
24 scene involving the Sheriff's Office having to call out
25 multiple different teams, special teams to deal with the

1 situation there on Avenue Q with a gentleman inside the house
2 known to have a handgun, but unknown whether he had been
3 injured, if he was deceased, or if he was holed up inside. You
4 will hear a phrase called "barricaded subject", and you will
5 hear testimony from the police officers and deputies about what
6 that means and what the Sheriff's Office did to address that
7 situation.

8 I know I don't have a lot of time here, this is
9 opening statement. I want to give you a flavor of what the
10 evidence will tell you all.

11 At some point, the SWAT team was called out, Deputy
12 Newman and Deputy Lopez are removed from the scene safely,
13 again, because they were concerned about this gentleman in the
14 house with a gun.

15 Ultimately, the SWAT team had to utilize gas in the
16 house to try to get the gentleman to come out peaceably. They
17 tried to contact him by his phone, didn't get any answers.
18 They utilized some technology they had where they were able to
19 insert a camera into the garage and actually were able to
20 visualize Mr. Hill's body on the ground. You will see and hear
21 testimony about that.

22 You will also hear testimony and see a photograph
23 taken by the robot that shows Mr. Hill on the ground and you
24 will see at that moment, when no one else had been in that
25 house after Mr. Hill was shot, that there is a dark object in

1 his back pocket.

2 Fast forwarding a little bit, once it was determined
3 that Mr. Hill was on the ground and it appeared he was injured,
4 not moving, then the SWAT team was able to physically enter the
5 house. And so there he is no confusion, the evidence will
6 show, ladies and gentlemen, Deputy Newman was nowhere near the
7 house at that point. He wasn't part of the SWAT team.

8 I don't want to confuse you about it, but it was part
9 of what happened out there. We need you to understand what
10 happened out there that night.

11 The SWAT team goes in the garage, sees Mr. Hill on the
12 ground and is able to ascertain that he did appear to be
13 deceased, as well as he had a handgun in his back rear pocket.

14 Now, we are early in this case, I am not here to
15 second-guess what the Plaintiff's arguments are going to be to
16 you or theories are going to be other than what he shared. I
17 will not try to explain what might happen if it doesn't
18 ultimately, but I can tell you that the evidence will show that
19 within a minute or so of this shooting happening -- and
20 Plaintiff's counsel made reference to the radio communication.
21 You will more than likely hear the radio communication itself,
22 and hear Deputy Lopez say "shots fired, shots fired, black man
23 with dreads and a handgun." You will hear within a minute or
24 so Deputy Newman get on the radio and describe the gun he saw.
25 He believed it was a Kel-Tec model. I think you heard Mr.

1 Crosby earlier, he said one of the guns he had was a Kel-Tec.

2 Well, the gun found in Mr. Hill's pocket was a
3 Kel-Tec, and Deputy Newman will say he thought it was a Glock
4 that was in Mr. Hill's hand.

5 The point is, within a very short period of time after
6 the shots were fired and the garage door down you have the
7 deputies on the radio describing the kind of gun in Mr. Hill's
8 hand, and ultimately the deputy was describing the type of
9 weapon ultimately found in Mr. Hill's back pocket.

10 Now, you will hear from a lot of different witnesses,
11 not only law enforcement, but you will hear evidence, testimony
12 from parents that were across the street, teachers that were
13 across the street. Destiny Hill, who is the daughter of
14 Gregory Hill, will testify. She was also across the street.

15 When you listen to all of this testimony, keep in mind
16 people's locations were different, people's perspectives were
17 different, things they thought they saw, and things they didn't
18 see. Keep in mind that when an event occurs you have people in
19 different places doing different things. It is not surprising
20 to hear they saw only part of what happened, and not everything
21 that happened. So, keep that in mind when you are hearing the
22 testimony.

23 The same goes for if you hear testimony from law
24 enforcement officers that go into the house, or law enforcement
25 officers that are out on the scene, if you hear them telling

1 you different things about different parts, keep in mind the
2 evidence that you hear will show different law enforcement
3 officers played different roles. Some of them were part of the
4 SWAT team, or negotiations team, or the bomb truck team, so
5 they each had a special role.

6 It will be important to remember that if one
7 individual is focusing on one thing, they may not notice
8 something else. That doesn't mean something else didn't happen
9 or wasn't there, but it may be that particular person wasn't
10 paying attention to it given what was happening that day.

11 Now, as I mentioned before, it will be important for
12 you to listen to the testimony and not to let emotions dictate
13 to you how you decide this case.

14 That is always important to remember, particularly in
15 a case, as I mentioned before, that is tragic, a sad case, a
16 tragic case. Do not let that cloud your judgment in terms of
17 what the evidence shows, and the ultimate question on whether
18 or not the Defendants in this case are liable, and I will leave
19 that to your sound judgment and, of course, I will have an
20 opportunity at the end of the case to argue to you what the
21 defense believes that the evidence showed.

22 So, at this time I thank you all for your time and
23 attention.

24 *MS. HINES:* At this time the Plaintiff is going to
25 call Ms. Juanita Wright.

1 Q. How long have you lived in Ft. Pierce?

2 A. At that address, 34 years, since, I believe, '96.

3 Q. Okay. And are you employed?

4 A. Just recently retired.

5 Q. Where were you last employed?

6 A. St. Lucie school system.

7 Q. And what was your position with the St. Lucie school
8 system?

9 A. Principal at F. K. Sweet.

10 Q. How long were you the principal at F. K. Sweet?

11 A. Since 2008, so, about ten years.

12 Q. And what were your general duties as principal at F. K.
13 Sweet?

14 A. Well, first and foremost, to make certain that all of the
15 students, faculty and staff are safe and, of course, make sure
16 that the students are getting quality education.

17 Q. Thank you.

18 Ms. Wright, we are here today regarding an incident that
19 occurred across the street from F. K. Sweet on January 14,
20 2014.

21 Do you recall this day?

22 A. Yes, I do.

23 Q. Can you please tell the jury what you recall about that
24 day, January 14, 2014?

25 A. At about 3:15, I went out to assist with parent pickup and

1 we had about -- at that time, we had about 50 students around
2 3:25 left in that area. And as I walked out, I proceeded to
3 assist with the students, and I saw three police cars across
4 the street and one policeman, I noticed, went to the door and
5 knocked on the door and then I -- that policeman came back and
6 opened his car door and crouched down and almost immediately we
7 heard gunshots.

8 I heard about five gunshots, and we started herding the
9 kids back into the school.

10 Q. Okay. And you said you saw three police cars or three
11 police officers?

12 A. I saw three cars.

13 Q. Okay.

14 A. But I noticed one policeman as I walked outside was leaving
15 the front door because the front door is on the same side as
16 the garage, and that policeman was headed back from the -- I
17 believe the front door to his car, and the car door was open.

18 Q. So, from where you were standing outside at F. K. Sweet for
19 the parent pickup, could you see the home across the street?

20 A. Yes.

21 Q. Okay. At that point, did you hear any music?

22 A. No. As I walked outside at 3:15, we heard no music -- I
23 heard no music playing.

24 Q. When you walked outside, did you see the garage door of the
25 home across the street?

1 A. The garage door was up about -- I don't know if I can --
2 about that far from the bottom of the cement, so it was up.

3 Q. And at the point when you heard the -- what you described
4 as gunshots, was the garage door still up?

5 A. Yes, it was.

6 Q. How long after you noticed the police cars arrive, did you
7 hear the gun shots?

8 A. Um-m-m, well, I walked out about 3:15, so, probably about
9 ten minutes, because at about 3:25 most of the students were
10 gone, and we had about 50 kids out on the benches.

11 Q. And when you saw the police officers, did you hear them
12 give any commands?

13 A. No, I did not.

14 Q. Did the police cars have any sirens?

15 A. No.

16 Q. After hearing the gun shots, what did you do next?

17 A. We immediately -- the staff that was assisting out in the
18 parent pickup area, we started rushing the kids inside the
19 building.

20 Q. And you mentioned that the garage door was up and you
21 gestured --

22 A. Slightly from the bottom.

23 Q. Slightly from the bottom.

24 Could you see anyone inside the garage?

25 A. No, I could not.

1 BY MR. GREGG JOLLY:

2 Q. Good afternoon, Ms. Wright.

3 A. Good afternoon.

4 Q. Could you explain to the jury the parent pickup system,
5 what time the kids get out?

6 A. At about 3:00 o'clock we have the -- two of the
7 kindergarten teachers bring out the kindergarten students and
8 about 3:05 we have two of the first grade teachers bring out
9 those students who are parent pickup from first grade, and
10 about 3:10, second grade teachers -- two of the second grade
11 teachers bring out the second grade students, and at 3:15,
12 which is dismissal time, three, four, five, two teachers from
13 those grades bring out those students.

14 Q. You went out at about 3:15; is that right?

15 A. 3:15, 3:20.

16 Q. I am speaking about January 14, 2014.

17 Do you remember on that day when you went out were there
18 cars picking up children at that time?

19 A. I don't recall any cars in the loop at that time because
20 most of our parents -- a lot of the parents, I won't say most,
21 start coming in at about 2:30, and of course, first grade and
22 second grade students and kindergarten students, most of them
23 are picked up at about 3:15.

24 Q. Is that because there are times when parents are waiting
25 for -- the parents are waiting for kids to get out of school?

1 A. Yes.

2 Q. When you went out there, are you overseeing what is
3 happening or are you loading children in cars?

4 A. I am overseeing as well as putting kids in cards.

5 Q. Do you have a memory of assisting children in the cars?

6 A. A few of the kids, yes.

7 Q. You mentioned in your testimony on direct your concern is
8 the safety of the children, correct?

9 A. Yes.

10 Q. That is where your focus is directed?

11 A. Assistant -- the kids who were sitting on the bench, many
12 times I am talking to the kids and making sure there is not a
13 problem as they are sitting waiting for the parents.

14 Q. Now, I believe you said you saw -- at some point in time
15 after you went outside on that day, you saw three deputy patrol
16 cars, correct?

17 A. Yes.

18 Q. Okay. Ms. Wright, do you wear glasses?

19 A. Only at night when I am driving.

20 Q. What do you use your glasses for at night when you are
21 driving?

22 A. To see the signs.

23 Q. Is that because you have trouble seeing distance at night?

24 A. Not necessarily, the glare from the headlights bothers me.

25 Q. I take that to mean since this incident happened during the

1 day, you were not wearing your glasses in the day?

2 A. I don't usually wear my glasses during the day.

3 Q. Fair enough.

4 I want to ask you about -- so I believe you said you saw
5 three deputy vehicles. Did you actually see them driving or
6 you only saw them when they were stationary?

7 A. I saw the vehicles as they were stationed.

8 Q. You do not know when the deputies got there?

9 A. No, I do not.

10 Q. Do you know what direction they were facing?

11 A. One was facing directly to the house, and one was cross
12 wise the street, and the other two facing -- so sort of facing
13 each other as I remember, facing the house.

14 Q. If I understand you correctly, correct me if I am wrong,
15 they were sort of perpendicular?

16 A. Yes.

17 Q. You mentioned the garage door being at least a little bit
18 open when you saw it?

19 A. Yes.

20 Q. Did you ever see the garage door moving?

21 A. No, I did not.

22 Q. Okay. Were you facing the Hill house when you heard the
23 gun shots?

24 A. We were all facing in that direction because the parent
25 pickup area faces in that direction.

1 Q. Okay.

2 A. So, yes.

3 MR. GREGG JOLLY: Your Honor, may I have a moment?

4 THE COURT: Yep.

5 BY MR. GREGG JOLLY:

6 Q. Ms. Wright, during this incident, did you say how many
7 deputies you actually saw on the scene?

8 A. I saw the three cars, but I saw one deputy leaving the
9 front door. That is the one that I --

10 Q. Do you remember there only being one or there being more
11 deputies?

12 A. There could have been more. I know I saw three cars and I
13 saw the one leaving the front door.

14 Q. Leaving the front door. Did you ever hear that deputy
15 knock on the front door?

16 A. No, I didn't. When I came out he was coming from the door.

17 Q. And I understood your testimony, you were asked if you ever
18 saw Mr. Hill with a gun. It is accurate to say you never saw
19 Mr. Hill at all, correct?

20 A. That day, no.

21 Q. That is the question. Okay.

22 How long have you been working for the school system,
23 Mrs. Wright?

24 A. A total of 36 years.

25 Q. In that time, did you have an opportunity to work with Ms.

1 Bryant, the named Plaintiff in this case?

2 A. Yes, in 1997.

3 MR. GREGG JOLLY: No more questions, your Honor.

4 THE COURT: Okay. Any redirect?

5 MS. HINES: Yes, your Honor, just briefly.

6 THE COURT: Okay.

7 **REDIRECT EXAMINATION**

8 BY MS. HINES:

9 Q. Ms. Wright, did you see any of the officer -- strike that.
10 You stated that you saw an officer that day, one?

11 A. Yes.

12 Q. Okay. Did you see an officer shoot at the house?

13 A. No. I heard gunshots, and at that time, as soon as we
14 heard gunshots, we started rushing the kids inside.

15 Q. And do you recognize the officer that you saw that day?

16 A. Not at all.

17 Q. Okay.

18 MS. HINES: All right. Ms. Wright, I have no further
19 questions.

20 THE COURT: Thank you, Ms. Wright, you may step down.
21 Plaintiff may call your next witness.

22 MS. HINES: Yes, your Honor. Your Honor, at this time
23 Plaintiff calls Donna Hellums.

24 THE COURT: Okay.

25 DONNA HELLUMS, PLAINTIFF'S WITNESS, SWORN

1 have instruction, and nap time, and every day the teachers have
2 duty and my duty is pickup duty.

3 Q. We are here involving an incident involving Gregory Vaughn
4 Hill on January 14, 2014. Do you remember that day?

5 A. Yes, I do.

6 Q. Would you please tell the jury what you remember about that
7 day?

8 A. I was out at parent pickup that day. I am responsible for
9 putting kindergarteners and first graders in the car. We were
10 out -- the first grade and kindergarten go out five minutes
11 earlier than the rest of the school, they are younger and we
12 have to get them situated.

13 I walked out, got kindergarten and first grade settled
14 down, and I remember looking to my right and seeing a police
15 car and seeing two officers, and I remember seeing guns.

16 I heard -- I saw the garage door go up and start coming
17 back down and I heard some pops.

18 Q. And you mentioned that you were in charge at that time of
19 the kindergarteners and first graders, and they went out five
20 minutes earlier than the rest of the school. Approximately
21 what time would that have been?

22 A. 3:10.

23 Q. When you saw the deputies -- strike that.

24 How many deputies did you see?

25 A. Two.

1 Q. Okay. And did you hear the deputies give any verbal
2 commands?

3 A. Not that I recall.

4 Q. Can you describe what you saw the deputies doing?

5 A. Um-m-m, the car was in front of the house, they were
6 walking toward the garage and I saw a gun drawn.

7 Q. When you saw the deputies walking towards the garage, was
8 the garage door up?

9 A. It was down.

10 Q. Did you hear any music when you went outside for parent
11 pickup that day?

12 A. I don't recall hearing any music that day.

13 Q. During the time you were outside for parent pickup, did you
14 ever see the garage door go up?

15 A. I saw it go partially up and then it started to go back
16 down.

17 Q. When you saw the garage door go partially up, did you see
18 anyone inside the garage?

19 A. No, I did not.

20 Q. And when you saw the garage door up, where were the
21 deputies?

22 A. Um-m-m, walking toward -- I don't really recall.

23 Q. Do you know how long it was before -- or in between when
24 the deputies arrived and when you heard gunshots?

25 A. I don't recall.

1 Q. And the gun shots you heard, were those from the deputies?

2 MR. GREGG JOLLY: Objection, speculation.

3 THE COURT: Well, you can answer the question if you
4 know. You shouldn't guess or speculate.

5 THE WITNESS: I have no clue.

6 MS. HINES: Your Honor, if I could have a moment to
7 confer.

8 THE COURT: Yes.

9 BY MS. HINES:

10 Q. Okay. Ms. Hellums, you said at some point during this
11 moment you saw the garage door go up?

12 A. Yes.

13 Q. Did you see Mr. Hill holding a gun?

14 A. No, I did not.

15 MS. HINES: No further questions at this time.

16 THE COURT: Okay. From the Defense,
17 cross-examination.

18 MR. GREGG JOLLY: Thank you, your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. GREGG JOLLY:

21 Q. Good afternoon, ma'am.

22 A. Hello.

23 Q. During parent pickup, is it loud?

24 A. Yes.

25 Q. Are the children making noise?

1 A. Oh, yes.

2 Q. Okay. If I understood your testimony correctly, I believe
3 you said the first time you saw the deputies, one of them -- at
4 least one of them had their gun drawn; is that right?

5 A. Yes.

6 Q. You did not see the deputies when they arrived at that
7 house; is that correct?

8 A. No, I did not.

9 Q. Did you happen to hear them knock on the house, knock on
10 the door?

11 A. No.

12 Q. Okay. And how many cars did you say you saw, deputy cars?
13 Maybe you didn't say.

14 A. I don't believe I did. I recall it was one.

15 Q. Okay. As far as you remember, you saw one police deputy
16 vehicle?

17 A. Yes.

18 Q. Okay. Where was your attention focused at the time you
19 heard the pops?

20 A. My attention was focused on getting my students to safety.

21 Q. Were you looking at the house when you heard the pops?

22 A. No.

23 Q. You were asked on direct if you saw Mr. Hill with a gun.
24 You never saw Mr. Hill at all, correct?

25 A. I never saw Mr. Hill at all.

1 Q. Okay. Did you see anyone in the garage at any time?

2 A. No, I did not.

3 Q. Okay.

4 MR. GREGG JOLLY: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 MR. GREGG JOLLY: No more questions, your Honor.

7 THE COURT: Any redirect?

8 MS. HINES: Yes, briefly, your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. HINES:

11 Q. Ms. Hellums, you testified earlier that the parent pickup
12 area was loud.

13 Could you see even though that pickup area was loud?

14 A. Yes.

15 Q. Okay. And would you -- could you still hear what was going
16 on even over the noise of the parent pickup area?

17 A. Yes.

18 Q. Okay.

19 MS. HINES: All right. I have no further questions.

20 THE COURT: Okay, thank you, Ms. Hellums, you may step
21 down.

22 Plaintiff may call your next witness.

23 MR. PHILLIPS: Your Honor, the next witness is a
24 transcript to be read, and if we could have a brief break to
25 get that set up.

1 THE COURT: Do you have the depo ready to go?

2 MR. PHILLIPS: There is something we want to be heard
3 about in this depo. We do have a copy, I think we only have
4 one copy.

5 THE COURT: Is there an objection that hasn't been
6 addressed yet?

7 MR. PHILLIPS: It is the issue of why we are reading
8 it I would like to address with your Honor.

9 THE COURT: Okay. Can we do that sidebar?

10 MR. PHILLIPS: Yes.

11 THE COURT: Okay, ladies and gentlemen, the next
12 witness is going to appear by deposition. That witness is
13 Lisabeth Enriquez-Ruiz. A deposition is a witness' sworn
14 testimony that is taken before the trial.

15 During a deposition, the witness is under oath and
16 swears to tell the truth, and lawyers for each party may ask
17 questions. A court reporter is present and records the
18 questions and answers. The deposition of some witnesses may be
19 presented to you by video, or in this next instance, reading
20 the deposition transcript. Deposition testimony is the same as
21 live testimony and you must judge it in the same way as if the
22 witness were testifying in court.

23 So, is there a need for a sidebar, or would counsel
24 like to work it out?

25 (Proceedings at sidebar.)

1 *THE COURT:* I will do sidebars when necessary, I am
2 not crazy about it. You see the logistics with it.

3 *MR. PHILLIPS:* This witness was subpoenaed, validly
4 subpoenaed, and refused to cooperate in any way. We are going
5 to read the transcript just to not have her picked up, but we
6 are not -- there is case law that says we can ask her that fact
7 and put it before the jury. We are not asking for that.

8 I want to make your Honor aware, if she does show up
9 live, I would like to ask her questions that weren't covered in
10 the deposition.

11 *MS. BARRANCO:* I'm sorry, I must have missed the last
12 part of what counsel said.

13 Either he gets her live or reads the depo and not
14 both. That would be my concern.

15 The jury would listen to the same witness twice, and
16 hear more questions from counsel unnecessarily.

17 *THE COURT:* It seems like you have a choice, call her
18 live or use the transcript. She is not showing up, fortunately
19 you have a transcript. That is a decision you make.

20 *MR. PHILLIPS:* We will use the transcript, and I don't
21 know if we have two highlighted copies, so we may do question,
22 answer, question, answer. We are ready to go.

23 *THE COURT:* One of the attorneys will be on the
24 witness stand and one asking questions?

25 *MR. PHILLIPS:* Yes. This is our last wet for the day.

1 Morales didn't show up this afternoon, he said he had to do it
2 tomorrow morning.

3 *THE COURT:* Do you have anyone else here? I did put
4 them on notice.

5 *MR. PHILLIPS:* The only one we have here is Ms.
6 Bryant.

7 *MS. BARRANCO:* That is the point, there would be a
8 problem, I wasn't prepared for this.

9 *THE COURT:* How long will you be with her?

10 *MS. HINES:* 10, 20 minutes.

11 *THE COURT:* You should be prepared to do direct with
12 her, I want to utilize all the time we have, especially since I
13 told them we would go later.

14 *MR. PHILLIPS:* We may be able to publish the CAD calls
15 or 911 calls.

16 *THE COURT:* Were there any other depositions?

17 *MR. PHILLIPS:* Not that are ours.

18 *THE COURT:* Why don't you take care of this and we
19 will plan on having the direct of Ms. Bryant and not do the
20 cross. How long is this deposition?

21 *MR. PHILLIPS:* Probably ten minutes or less.

22 *THE COURT:* Okay. All right. If you could publish
23 certain things.

24 *MR. PHILLIPS:* We will try to do something like that.
25 The other housekeeping matter, at 9:00 a.m. tomorrow is the

1 witness doing video contemporaneously, she needs to get on and
2 off. If we are doing cross-examination, and they last 45
3 minutes, we'll miss her window.

4 *THE COURT:* You want to hear direct and see if you are
5 comfortable with cross or not. Let me know. You shouldn't be
6 surprised. She wasn't on the lineup, maybe after the direct --

7 (Sidebar concluded.)

8 *THE COURT:* All right. This is a reading of the
9 deposition, the witness isn't here.

10 (Deposition of Lizabeth Enrique-Ruiz read.)

11 *MR. JOHNSON:* That is it.

12 *THE COURT:* Okay. All right. You may step down. And
13 the Plaintiff wants to call Ms. Bryant?

14 *MR. PHILLIPS:* Your Honor, we are going to publish --
15 your Honor, before we do that, we are going to publish
16 Plaintiff's Exhibit 1.

17 We are going to enter into evidence Plaintiff's
18 Exhibit 1, the 911 calls, without objection.

19 *MS. BARRANCO:* No objection, your Honor.

20 *THE COURT:* All right. So, Plaintiff's Exhibit 1 is
21 admitted without objection.

22 (Whereupon Plaintiff Exhibit 1 was marked for
23 evidence.)

24 *THE COURT:* And ladies and gentlemen, when an exhibit
25 is admitted, it means it will go back to the jury deliberation

1 room with you when you deliberate.

2 Sometimes exhibits are shown to you in the courtroom
3 and sometimes they are admitted in evidence and not necessarily
4 shown to you, but they go into the room with you when you
5 deliberate.

6 Counsel now wants to, in addition to have it admitted,
7 publish it -- is it audio?

8 *MR. PHILLIPS:* Yes.

9 *THE COURT:* He is going to play it, it is an audio
10 recording. We can discuss whether -- what counsel's opinion is
11 whether that goes back to the jury, whether you have equipment
12 so they can listen to it in the jury room or come back into the
13 courtroom. This is unusual, it is not like a piece of paper
14 that will go back with you. That is for us to discuss later.
15 It is in evidence and, counsel, you can play it now, or publish
16 it now.

17 (Thereupon, Plaintiff Exhibit 1 was played.)

18 *MR. PHILLIPS:* Your Honor, we also move into evidence
19 Exhibit 2, it is a redacted version of Exhibit 2, it is only
20 three of the CAD calls, three of the recordings on the prior
21 Exhibit 2 that we submitted to your Honor.

22 This is more for your Clerk's housekeeping, we are
23 submitting Exhibit 2.

24 *THE COURT:* The one we have now is more comprehensive
25 than what you are going to be playing?

1 house, garage door open, obscene music, very loud. Called in
2 at 15:19.

3 About 32 seconds later, Officer -- Deputy Lopez in
4 another car radioed he was going to attend and they were on
5 their way. It was about four minutes after dispatch.

6 The next call is very important, the next communique.

7 Newman, correction, and says dispatch 1501 Avenue Q,
8 different address. That call ended at 15:23:30, 3:23 in the
9 afternoon, 30 seconds past -- 30 seconds past 3:23 in the
10 afternoon.

11 Two officers pulled up perpendicular to Mr. Hill's
12 driveway, not necessarily the driveway they were dispatched to,
13 not necessarily the driveway that matched the address or color,
14 it was a pink house instead of a brown house. Clearly it was a
15 house with loud music, the garage door wasn't up, it was down,
16 but they knew this must be what they are talking about.

17 The next call you will hear is Deputy Lopez, not on
18 trial here. Deputy Lopez is not on trial. You will hear the
19 voice of, I imagine it is one of these automated computer
20 systems, the call starts at 15:24:30, that is -- the last one
21 ended at 15:23:30 -- one minute, 60 seconds later, and you will
22 hear Deputy Lopez' voice, shots fired.

23 I don't want to use adjectives to describe his voice,
24 that is for you to fill in, what weight to give the evidence,
25 that is for you. Shots fired.

1 It takes some amount of time to do this, to call for
2 help, to call dispatch. In fact, it would be fair, we expect
3 the evidence to show it is sometime less than 60 seconds from
4 when they arrive, and when they arrive, it is important to
5 listen to that call, whether you hear music, just take it in.
6 All of this occurred in less than 60 seconds.

7 No shots had been fired at the officers, four shots
8 went in the direction of Mr. Hill's home, all traveled through
9 a closed or closing garage door.

10 You will hear that 60 seconds described by several
11 people, people picking up their kids from school, the
12 elementary school principal, elementary school teachers,
13 Deputies Newman and Lopez, and Mr. Hill's own daughter. School
14 was about to get out, she was already out there. She saw all
15 of it.

16 I can run through each witness, but every second of
17 your time is also valuable, and we rather you hear it from the
18 witnesses than what the lawyers say.

19 They do say it happened quickly. Experts are going to
20 weigh in on how quickly the shots were fired. We retained Roy
21 Bedard, and he will say the shots were fired within one second,
22 not one second each, all within one second.

23 I believe Defense expert -- I expect their expert to
24 say and that the evidence will say 1.2, 1.4, and we agree,
25 within fractions of a second how quickly Deputy Newman fired

1 his service revolver. Like a football game, we all have a
2 different view, but we all saw the same event.

3 After that 60 seconds, Mr. Hill collapsed.
4 Fortunately, according to Dr. Anderson, the injury to his
5 brain, we expect the evidence to show, was fairly immediate,
6 fairly immediate.

7 Mr. Hill was found with two gunshots in the right
8 lower abdominal quadrant and right lower pelvic area, this
9 side.

10 I am no doctor, so I am going to quote the forensic
11 pathologist, related to the brain injury he said the bullet
12 passed through his skin, his skull, through the cerebellum
13 spheres and basal ganglia, through the neuron pathways of the
14 brain with consequent associated hemorrhage.

15 He further says this injury would have immediately
16 destroyed the neurological pathways needed for purposeful
17 activity and that no significant movements would have been
18 possible following the infliction of this injury.

19 That is important because a gun wasn't found in Mr.
20 Hill's hand or by his side, or loose on the garage floor, or
21 with blood on it or brain matter on it, or DNA, or
22 fingerprints, but it was found in his back pocket.

23 We expect the Defendant to say I shot because when Mr.
24 Hill was a threat to Deputy Lopez, the garage door was coming
25 up, that -- coming down, that gun was coming up, and he may

1 demonstrate it, and shots rang out.

2 From the Plaintiff's side, we expect the evidence to
3 show -- we will present three important pieces of evidence.
4 Witnesses from around the school didn't see what the officer
5 saw. Destiny Hill saw her father's empty hand.

6 An unloaded gun was recovered from Mr. Hill's back
7 pocket by the St. Lucie County Sheriff's Office with no blood,
8 no DNA, no splatter, despite there being -- the evidence will
9 say Mr. Hill was incapable of putting his gun in the back
10 pocket after sustaining the shots he sustained.

11 You will listen for two more pieces of evidence.
12 Listen to Ms. Mills, she will start at nine o'clock tomorrow
13 morning, or whenever the Court requests us to start, about
14 Deputy Newman's reaction because she saw the whole thing.

15 Another important piece of evidence we expect you to
16 hear, sort of lack of evidence, Deputy Lopez only heard Deputy
17 Newman say one word during this entire sequence of events, hey,
18 hey, not police, police, not police, police, put down the
19 weapon. They will both say they screamed at the top of their
20 lungs, neither one of them heard it from each other. Deputy
21 Newman heard Deputy Lopez say nothing.

22 Listen to the witnesses carefully. We will talk about
23 damages in closing argument. I have to prove my case -- my
24 client has to prove her case first, but we are here because Mr.
25 Hill left behind three children, Gregory, III, age seven now,

1 Aryanna, age ten now, and Destiny, age 13 now.

2 You will meet them, you will hear their stories and I
3 don't want to prolong opening statement talking about snooker,
4 and things they did together, you will hear the stories.

5 Ms. Bryant seeks to recover damages for loss of
6 companionship, parental guidance, and pain and suffering from
7 the date of the injury for the minutes and hours and years they
8 won't have with their dad. She also seeks to recover funeral
9 expenses.

10 Like all of the jurors before you, you are guardians
11 of the 17th word in the Constitution, justice, for both sides,
12 for both sides.

13 Your role is to resolve something that we couldn't
14 resolve. It is a big responsibility. You will determine fault
15 and damages in this case. Full and fair reimbursement no
16 matter what that is, and that evidence begins today.

17 Thank you for your time.

18 *THE COURT:* And from the Defense.

19 *MS. BARRANCO:* Thank you, your Honor.

20 Good afternoon again, ladies and gentlemen. It's an
21 easier panel, smaller space I am looking at here.

22 Again, we would thank you all for your time and
23 consideration here. I know it is going to be several days, so
24 we appreciate all of your attention through the entirety of
25 this process, and why that is important is because the lawyers

1 get up here now and tell you what we expect the evidence will
2 show, and at the very end of the case the lawyers get up again
3 and argue to you what we believe the evidence showed and how
4 you should find, arguably, in favor of either of our clients
5 based on what we believe the evidence is.

6 But what is most important for you all is to keep your
7 eye on the ball here in this case and focus on the testimony.
8 We will have a series of witnesses coming before you over the
9 next several days, and it is out of their mouths that the
10 testimonial evidence will come forth, and there will be during
11 the trial items of evidence, documents, perhaps even things --
12 or videos or audios that you will be allowed to listen to and
13 consider. That, too, will be the evidence.

14 It is important for you all to focus on all of that,
15 and why it is important for the Defendants to remind you of
16 that. We don't want you to get caught up on mere argument of
17 counsel, it is important for you all to pay attention, keep an
18 open mind and listen to all of the facts that come before you
19 as presented by the evidence in the case.

20 As I stated earlier, my name is Summer Barranco, I am
21 an attorney, I represent the Sheriff of St. Lucie County and
22 Deputy Newman, and we are here to present our side of the case.
23 It is only one of the times -- opening statement is one of the
24 only times I will speak to you directly, and I will make the
25 most of it. I will not unnecessarily repeat things. As

1 Plaintiff's counsel said, I am not here to go through every bit
2 of evidence with you, certainly not now, but I am here to ask
3 you to listen to all of the evidence presented before you over
4 the next several days, even those times first thing in the
5 morning you may not be fully awake yet or the end of the day
6 that you may be tired.

7 We ask you focus on the evidence presented, because it
8 is important for both sides for you to know what actually
9 happened on January 14, 2014.

10 It is important for me to remind you for both sides,
11 and especially the Defendants, your decision is not to be
12 driven by sympathy. You will hear from Mr. Hill's family
13 members, his mother now, his children and then fiancée', and it
14 undoubtedly will be emotional testimony, very sad testimony.

15 Obviously what happened on January 14, 2014 was a
16 tragic situation, nobody is going to tell you otherwise.

17 It was a tragic situation, however, the question that
18 is before all of you is to decide who is responsible for that
19 tragic situation that ultimately unfolded.

20 January 14, 2014 is over four years ago, so you are
21 going to hear evidence and testimony from witnesses that are
22 trying their best to remember things from four years ago. That
23 is something important for you to remember as well, and the
24 jury instructions will address that. In case somebody doesn't
25 remember something specifically or says something differently

1 in an initial statement and comes into court and says something
2 different, it is important for you to remember if it is an
3 innocent lapse of judgment because it is four years -- more
4 than four years, or perhaps they are not being truthful with
5 you.

6 As jurors, that is your job, to determine who you
7 believe and who you may not believe that takes the stand here
8 in the next several days, and that is an important part of your
9 job.

10 Now, January 14, 2014 was a very typical day for
11 Deputy Newman, and you heard about Deputy Lopez. As
12 Plaintiff's counsel already told you, Deputy Lopez was an
13 employee of the Sheriff's Office, St. Lucie County, another
14 deputy, and there are many deputies. Deputy Newman and Deputy
15 Lopez responded to this call, seemed like an ordinary seemingly
16 mundane call. There are lots of those calls police get
17 regularly, and generated not by the Sheriff's Office, not by
18 Deputy Newman, but by a concerned parent who, as the
19 Plaintiff's counsel mentioned a moment ago, was in the parent
20 pickup line at the elementary school right here in Ft. Pierce,
21 Florida on Avenue Q.

22 Across the street of Avenue Q was the home of Mr.
23 Gregory Hill, who is the deceased in this case, as well as his
24 girlfriend, Ms. Davis, and you will be hearing testimony from
25 her, as well as two of his children lived in that house. And

1 defense expects that you will hear evidence in this case that
2 on January 14, 2014, at about 3:00, 3:10 in the afternoon, the
3 school, the elementary school across the street from Mr. Hill's
4 house, was released from school that day like it typically did,
5 and there were lots of kids outside.

6 For whatever reason, Mr. Hill decided he was going to
7 play music in his garage with big loud speakers, some really
8 nasty music. I am sure you have heard music over the years,
9 and there are clean versions and explicit lyrics versions.
10 Suffice it to say, the music playing out of Mr. Hill's house
11 that day would fall under the explicit lyrics category. That
12 is important to remember because that is the reason the call
13 got initiated.

14 It is important for you to remember that Mr. Hill was
15 ultimately shot by Deputy Newman not because Mr. Hill was
16 playing loud music, not because he was playing loud, even if
17 you want to call it obscene music. The evidence will show Mr.
18 Hill was shot when the deputies went there, as they are tasked
19 to do, to investigate the call, and by the time they get to the
20 house the garage door is down, but they could still hear the
21 music from a block away on that side of the street.

22 The deputies approach the house, you will hear they
23 knocked on the garage door, they knocked on the front door, and
24 their intention was to make contact with whoever lived there
25 and say, man, can you just turn down the music. That was their

1 intention.

2 Unfortunately, Mr. Hill decided to do something,
3 something that ultimately changed the course of events that
4 happened that day and which ultimately forced Deputy Newman to
5 make a moment -- split-second decision when he reasonably
6 feared for the life of his co-deputy, Deputy Lopez, who was
7 standing right in front of the garage door while Mr. Hill
8 raised up the garage door, and in doing that, the deputies see
9 him with the gun. He had a gun on the side of his leg in his
10 right hand.

11 You will hear testimony that the deputies, despite
12 being in full St. Lucie Sheriff's Office uniforms, said
13 Sheriff's Office, but you also remember the music is very loud
14 still, and getting louder when the garage door goes up and the
15 deputies see the gun in Mr. Hill's hand and they tell him, drop
16 the gun, drop the gun and, unfortunately, Mr. Hill -- and you
17 will hear testimony that Mr. Hill had been drinking that day,
18 and then Mr. Hill raised the garage door with his left hand,
19 and then started to slam it down, and raised the firearm in his
20 right hand up in the direction of Deputy Lopez who was
21 literally standing three or four feet in front of Mr. Hill.

22 You will hear testimony from both Deputy Newman in
23 regard to that and Deputy Lopez. You will hear them take the
24 stand and tell you exactly what happened that day.

25 And unfortunately, it was Mr. Hill's conduct that day

1 that forced Deputy Newman to do something he had no idea he was
2 going to be doing that morning when he woke up, he had to pull
3 the trigger on his service revolver at Mr. Hill.

4 Now, as I mentioned a moment ago, the evidence will
5 show Mr. Hill, as he was raising the firearm, was closing the
6 garage door. By the time the bullets get out of Deputy
7 Newman's gun, they actually hit the garage door as it comes
8 down. Three or four bullets passed through the garage door and
9 made contact with Mr. Hill. You will hear evidence that Mr.
10 Hill was shot three times, and as Plaintiff's counsel mentioned
11 a moment ago, the evidence will show two of the times it was
12 over here. Deputy Newman is over here, and Deputy Lopez is in
13 front of Mr. Hill, and one of the shots hit the head. That
14 head shot would have ceased any motor function in Mr. Hill.

15 Now, the door comes down, and you will hear testimony
16 the deputies, they immediately go to the patrol car and they
17 are on the radio saying shots fired, we saw a black male with
18 dreads, he had a handgun in his hand.

19 They don't know if they shot Mr. Hill or not. They
20 don't know if he is injured and in there getting ready to come
21 out with guns ablaze. They don't know what is going to happen,
22 and you will hear testimony about that.

23 There was a series of things that happened on the
24 scene involving the Sheriff's Office having to call out
25 multiple different teams, special teams to deal with the

1 situation there on Avenue Q with a gentleman inside the house
2 known to have a handgun, but unknown whether he had been
3 injured, if he was deceased, or if he was holed up inside. You
4 will hear a phrase called "barricaded subject", and you will
5 hear testimony from the police officers and deputies about what
6 that means and what the Sheriff's Office did to address that
7 situation.

8 I know I don't have a lot of time here, this is
9 opening statement. I want to give you a flavor of what the
10 evidence will tell you all.

11 At some point, the SWAT team was called out, Deputy
12 Newman and Deputy Lopez are removed from the scene safely,
13 again, because they were concerned about this gentleman in the
14 house with a gun.

15 Ultimately, the SWAT team had to utilize gas in the
16 house to try to get the gentleman to come out peaceably. They
17 tried to contact him by his phone, didn't get any answers.
18 They utilized some technology they had where they were able to
19 insert a camera into the garage and actually were able to
20 visualize Mr. Hill's body on the ground. You will see and hear
21 testimony about that.

22 You will also hear testimony and see a photograph
23 taken by the robot that shows Mr. Hill on the ground and you
24 will see at that moment, when no one else had been in that
25 house after Mr. Hill was shot, that there is a dark object in

1 his back pocket.

2 Fast forwarding a little bit, once it was determined
3 that Mr. Hill was on the ground and it appeared he was injured,
4 not moving, then the SWAT team was able to physically enter the
5 house. And so there he is no confusion, the evidence will
6 show, ladies and gentlemen, Deputy Newman was nowhere near the
7 house at that point. He wasn't part of the SWAT team.

8 I don't want to confuse you about it, but it was part
9 of what happened out there. We need you to understand what
10 happened out there that night.

11 The SWAT team goes in the garage, sees Mr. Hill on the
12 ground and is able to ascertain that he did appear to be
13 deceased, as well as he had a handgun in his back rear pocket.

14 Now, we are early in this case, I am not here to
15 second-guess what the Plaintiff's arguments are going to be to
16 you or theories are going to be other than what he shared. I
17 will not try to explain what might happen if it doesn't
18 ultimately, but I can tell you that the evidence will show that
19 within a minute or so of this shooting happening -- and
20 Plaintiff's counsel made reference to the radio communication.
21 You will more than likely hear the radio communication itself,
22 and hear Deputy Lopez say "shots fired, shots fired, black man
23 with dreads and a handgun." You will hear within a minute or
24 so Deputy Newman get on the radio and describe the gun he saw.
25 He believed it was a Kel-Tec model. I think you heard Mr.

1 Crosby earlier, he said one of the guns he had was a Kel-Tec.

2 Well, the gun found in Mr. Hill's pocket was a
3 Kel-Tec, and Deputy Newman will say he thought it was a Glock
4 that was in Mr. Hill's hand.

5 The point is, within a very short period of time after
6 the shots were fired and the garage door down you have the
7 deputies on the radio describing the kind of gun in Mr. Hill's
8 hand, and ultimately the deputy was describing the type of
9 weapon ultimately found in Mr. Hill's back pocket.

10 Now, you will hear from a lot of different witnesses,
11 not only law enforcement, but you will hear evidence, testimony
12 from parents that were across the street, teachers that were
13 across the street. Destiny Hill, who is the daughter of
14 Gregory Hill, will testify. She was also across the street.

15 When you listen to all of this testimony, keep in mind
16 people's locations were different, people's perspectives were
17 different, things they thought they saw, and things they didn't
18 see. Keep in mind that when an event occurs you have people in
19 different places doing different things. It is not surprising
20 to hear they saw only part of what happened, and not everything
21 that happened. So, keep that in mind when you are hearing the
22 testimony.

23 The same goes for if you hear testimony from law
24 enforcement officers that go into the house, or law enforcement
25 officers that are out on the scene, if you hear them telling

1 you different things about different parts, keep in mind the
2 evidence that you hear will show different law enforcement
3 officers played different roles. Some of them were part of the
4 SWAT team, or negotiations team, or the bomb truck team, so
5 they each had a special role.

6 It will be important to remember that if one
7 individual is focusing on one thing, they may not notice
8 something else. That doesn't mean something else didn't happen
9 or wasn't there, but it may be that particular person wasn't
10 paying attention to it given what was happening that day.

11 Now, as I mentioned before, it will be important for
12 you to listen to the testimony and not to let emotions dictate
13 to you how you decide this case.

14 That is always important to remember, particularly in
15 a case, as I mentioned before, that is tragic, a sad case, a
16 tragic case. Do not let that cloud your judgment in terms of
17 what the evidence shows, and the ultimate question on whether
18 or not the Defendants in this case are liable, and I will leave
19 that to your sound judgment and, of course, I will have an
20 opportunity at the end of the case to argue to you what the
21 defense believes that the evidence showed.

22 So, at this time I thank you all for your time and
23 attention.

24 *MS. HINES:* At this time the Plaintiff is going to
25 call Ms. Juanita Wright.

1 Q. How long have you lived in Ft. Pierce?

2 A. At that address, 34 years, since, I believe, '96.

3 Q. Okay. And are you employed?

4 A. Just recently retired.

5 Q. Where were you last employed?

6 A. St. Lucie school system.

7 Q. And what was your position with the St. Lucie school
8 system?

9 A. Principal at F. K. Sweet.

10 Q. How long were you the principal at F. K. Sweet?

11 A. Since 2008, so, about ten years.

12 Q. And what were your general duties as principal at F. K.
13 Sweet?

14 A. Well, first and foremost, to make certain that all of the
15 students, faculty and staff are safe and, of course, make sure
16 that the students are getting quality education.

17 Q. Thank you.

18 Ms. Wright, we are here today regarding an incident that
19 occurred across the street from F. K. Sweet on January 14,
20 2014.

21 Do you recall this day?

22 A. Yes, I do.

23 Q. Can you please tell the jury what you recall about that
24 day, January 14, 2014?

25 A. At about 3:15, I went out to assist with parent pickup and

1 we had about -- at that time, we had about 50 students around
2 3:25 left in that area. And as I walked out, I proceeded to
3 assist with the students, and I saw three police cars across
4 the street and one policeman, I noticed, went to the door and
5 knocked on the door and then I -- that policeman came back and
6 opened his car door and crouched down and almost immediately we
7 heard gunshots.

8 I heard about five gunshots, and we started herding the
9 kids back into the school.

10 Q. Okay. And you said you saw three police cars or three
11 police officers?

12 A. I saw three cars.

13 Q. Okay.

14 A. But I noticed one policeman as I walked outside was leaving
15 the front door because the front door is on the same side as
16 the garage, and that policeman was headed back from the -- I
17 believe the front door to his car, and the car door was open.

18 Q. So, from where you were standing outside at F. K. Sweet for
19 the parent pickup, could you see the home across the street?

20 A. Yes.

21 Q. Okay. At that point, did you hear any music?

22 A. No. As I walked outside at 3:15, we heard no music -- I
23 heard no music playing.

24 Q. When you walked outside, did you see the garage door of the
25 home across the street?

1 A. The garage door was up about -- I don't know if I can --
2 about that far from the bottom of the cement, so it was up.

3 Q. And at the point when you heard the -- what you described
4 as gunshots, was the garage door still up?

5 A. Yes, it was.

6 Q. How long after you noticed the police cars arrive, did you
7 hear the gun shots?

8 A. Um-m-m, well, I walked out about 3:15, so, probably about
9 ten minutes, because at about 3:25 most of the students were
10 gone, and we had about 50 kids out on the benches.

11 Q. And when you saw the police officers, did you hear them
12 give any commands?

13 A. No, I did not.

14 Q. Did the police cars have any sirens?

15 A. No.

16 Q. After hearing the gun shots, what did you do next?

17 A. We immediately -- the staff that was assisting out in the
18 parent pickup area, we started rushing the kids inside the
19 building.

20 Q. And you mentioned that the garage door was up and you
21 gestured --

22 A. Slightly from the bottom.

23 Q. Slightly from the bottom.

24 Could you see anyone inside the garage?

25 A. No, I could not.

1 BY MR. GREGG JOLLY:

2 Q. Good afternoon, Ms. Wright.

3 A. Good afternoon.

4 Q. Could you explain to the jury the parent pickup system,
5 what time the kids get out?

6 A. At about 3:00 o'clock we have the -- two of the
7 kindergarten teachers bring out the kindergarten students and
8 about 3:05 we have two of the first grade teachers bring out
9 those students who are parent pickup from first grade, and
10 about 3:10, second grade teachers -- two of the second grade
11 teachers bring out the second grade students, and at 3:15,
12 which is dismissal time, three, four, five, two teachers from
13 those grades bring out those students.

14 Q. You went out at about 3:15; is that right?

15 A. 3:15, 3:20.

16 Q. I am speaking about January 14, 2014.

17 Do you remember on that day when you went out were there
18 cars picking up children at that time?

19 A. I don't recall any cars in the loop at that time because
20 most of our parents -- a lot of the parents, I won't say most,
21 start coming in at about 2:30, and of course, first grade and
22 second grade students and kindergarten students, most of them
23 are picked up at about 3:15.

24 Q. Is that because there are times when parents are waiting
25 for -- the parents are waiting for kids to get out of school?

1 A. Yes.

2 Q. When you went out there, are you overseeing what is
3 happening or are you loading children in cars?

4 A. I am overseeing as well as putting kids in cards.

5 Q. Do you have a memory of assisting children in the cars?

6 A. A few of the kids, yes.

7 Q. You mentioned in your testimony on direct your concern is
8 the safety of the children, correct?

9 A. Yes.

10 Q. That is where your focus is directed?

11 A. Assistant -- the kids who were sitting on the bench, many
12 times I am talking to the kids and making sure there is not a
13 problem as they are sitting waiting for the parents.

14 Q. Now, I believe you said you saw -- at some point in time
15 after you went outside on that day, you saw three deputy patrol
16 cars, correct?

17 A. Yes.

18 Q. Okay. Ms. Wright, do you wear glasses?

19 A. Only at night when I am driving.

20 Q. What do you use your glasses for at night when you are
21 driving?

22 A. To see the signs.

23 Q. Is that because you have trouble seeing distance at night?

24 A. Not necessarily, the glare from the headlights bothers me.

25 Q. I take that to mean since this incident happened during the

1 day, you were not wearing your glasses in the day?

2 A. I don't usually wear my glasses during the day.

3 Q. Fair enough.

4 I want to ask you about -- so I believe you said you saw
5 three deputy vehicles. Did you actually see them driving or
6 you only saw them when they were stationary?

7 A. I saw the vehicles as they were stationed.

8 Q. You do not know when the deputies got there?

9 A. No, I do not.

10 Q. Do you know what direction they were facing?

11 A. One was facing directly to the house, and one was cross
12 wise the street, and the other two facing -- so sort of facing
13 each other as I remember, facing the house.

14 Q. If I understand you correctly, correct me if I am wrong,
15 they were sort of perpendicular?

16 A. Yes.

17 Q. You mentioned the garage door being at least a little bit
18 open when you saw it?

19 A. Yes.

20 Q. Did you ever see the garage door moving?

21 A. No, I did not.

22 Q. Okay. Were you facing the Hill house when you heard the
23 gun shots?

24 A. We were all facing in that direction because the parent
25 pickup area faces in that direction.

1 Q. Okay.

2 A. So, yes.

3 MR. GREGG JOLLY: Your Honor, may I have a moment?

4 THE COURT: Yep.

5 BY MR. GREGG JOLLY:

6 Q. Ms. Wright, during this incident, did you say how many
7 deputies you actually saw on the scene?

8 A. I saw the three cars, but I saw one deputy leaving the
9 front door. That is the one that I --

10 Q. Do you remember there only being one or there being more
11 deputies?

12 A. There could have been more. I know I saw three cars and I
13 saw the one leaving the front door.

14 Q. Leaving the front door. Did you ever hear that deputy
15 knock on the front door?

16 A. No, I didn't. When I came out he was coming from the door.

17 Q. And I understood your testimony, you were asked if you ever
18 saw Mr. Hill with a gun. It is accurate to say you never saw
19 Mr. Hill at all, correct?

20 A. That day, no.

21 Q. That is the question. Okay.

22 How long have you been working for the school system,
23 Mrs. Wright?

24 A. A total of 36 years.

25 Q. In that time, did you have an opportunity to work with Ms.

1 Bryant, the named Plaintiff in this case?

2 A. Yes, in 1997.

3 MR. GREGG JOLLY: No more questions, your Honor.

4 THE COURT: Okay. Any redirect?

5 MS. HINES: Yes, your Honor, just briefly.

6 THE COURT: Okay.

7 **REDIRECT EXAMINATION**

8 BY MS. HINES:

9 Q. Ms. Wright, did you see any of the officer -- strike that.
10 You stated that you saw an officer that day, one?

11 A. Yes.

12 Q. Okay. Did you see an officer shoot at the house?

13 A. No. I heard gunshots, and at that time, as soon as we
14 heard gunshots, we started rushing the kids inside.

15 Q. And do you recognize the officer that you saw that day?

16 A. Not at all.

17 Q. Okay.

18 MS. HINES: All right. Ms. Wright, I have no further
19 questions.

20 THE COURT: Thank you, Ms. Wright, you may step down.
21 Plaintiff may call your next witness.

22 MS. HINES: Yes, your Honor. Your Honor, at this time
23 Plaintiff calls Donna Hellums.

24 THE COURT: Okay.

25 DONNA HELLUMS, PLAINTIFF'S WITNESS, SWORN

1 have instruction, and nap time, and every day the teachers have
2 duty and my duty is pickup duty.

3 Q. We are here involving an incident involving Gregory Vaughn
4 Hill on January 14, 2014. Do you remember that day?

5 A. Yes, I do.

6 Q. Would you please tell the jury what you remember about that
7 day?

8 A. I was out at parent pickup that day. I am responsible for
9 putting kindergarteners and first graders in the car. We were
10 out -- the first grade and kindergarten go out five minutes
11 earlier than the rest of the school, they are younger and we
12 have to get them situated.

13 I walked out, got kindergarten and first grade settled
14 down, and I remember looking to my right and seeing a police
15 car and seeing two officers, and I remember seeing guns.

16 I heard -- I saw the garage door go up and start coming
17 back down and I heard some pops.

18 Q. And you mentioned that you were in charge at that time of
19 the kindergarteners and first graders, and they went out five
20 minutes earlier than the rest of the school. Approximately
21 what time would that have been?

22 A. 3:10.

23 Q. When you saw the deputies -- strike that.

24 How many deputies did you see?

25 A. Two.

1 Q. Okay. And did you hear the deputies give any verbal
2 commands?

3 A. Not that I recall.

4 Q. Can you describe what you saw the deputies doing?

5 A. Um-m-m, the car was in front of the house, they were
6 walking toward the garage and I saw a gun drawn.

7 Q. When you saw the deputies walking towards the garage, was
8 the garage door up?

9 A. It was down.

10 Q. Did you hear any music when you went outside for parent
11 pickup that day?

12 A. I don't recall hearing any music that day.

13 Q. During the time you were outside for parent pickup, did you
14 ever see the garage door go up?

15 A. I saw it go partially up and then it started to go back
16 down.

17 Q. When you saw the garage door go partially up, did you see
18 anyone inside the garage?

19 A. No, I did not.

20 Q. And when you saw the garage door up, where were the
21 deputies?

22 A. Um-m-m, walking toward -- I don't really recall.

23 Q. Do you know how long it was before -- or in between when
24 the deputies arrived and when you heard gunshots?

25 A. I don't recall.

1 Q. And the gun shots you heard, were those from the deputies?

2 MR. GREGG JOLLY: Objection, speculation.

3 THE COURT: Well, you can answer the question if you
4 know. You shouldn't guess or speculate.

5 THE WITNESS: I have no clue.

6 MS. HINES: Your Honor, if I could have a moment to
7 confer.

8 THE COURT: Yes.

9 BY MS. HINES:

10 Q. Okay. Ms. Hellums, you said at some point during this
11 moment you saw the garage door go up?

12 A. Yes.

13 Q. Did you see Mr. Hill holding a gun?

14 A. No, I did not.

15 MS. HINES: No further questions at this time.

16 THE COURT: Okay. From the Defense,
17 cross-examination.

18 MR. GREGG JOLLY: Thank you, your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. GREGG JOLLY:

21 Q. Good afternoon, ma'am.

22 A. Hello.

23 Q. During parent pickup, is it loud?

24 A. Yes.

25 Q. Are the children making noise?

1 A. Oh, yes.

2 Q. Okay. If I understood your testimony correctly, I believe
3 you said the first time you saw the deputies, one of them -- at
4 least one of them had their gun drawn; is that right?

5 A. Yes.

6 Q. You did not see the deputies when they arrived at that
7 house; is that correct?

8 A. No, I did not.

9 Q. Did you happen to hear them knock on the house, knock on
10 the door?

11 A. No.

12 Q. Okay. And how many cars did you say you saw, deputy cars?
13 Maybe you didn't say.

14 A. I don't believe I did. I recall it was one.

15 Q. Okay. As far as you remember, you saw one police deputy
16 vehicle?

17 A. Yes.

18 Q. Okay. Where was your attention focused at the time you
19 heard the pops?

20 A. My attention was focused on getting my students to safety.

21 Q. Were you looking at the house when you heard the pops?

22 A. No.

23 Q. You were asked on direct if you saw Mr. Hill with a gun.
24 You never saw Mr. Hill at all, correct?

25 A. I never saw Mr. Hill at all.

1 Q. Okay. Did you see anyone in the garage at any time?

2 A. No, I did not.

3 Q. Okay.

4 MR. GREGG JOLLY: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 MR. GREGG JOLLY: No more questions, your Honor.

7 THE COURT: Any redirect?

8 MS. HINES: Yes, briefly, your Honor.

9 **REDIRECT EXAMINATION**

10 BY MS. HINES:

11 Q. Ms. Hellums, you testified earlier that the parent pickup
12 area was loud.

13 Could you see even though that pickup area was loud?

14 A. Yes.

15 Q. Okay. And would you -- could you still hear what was going
16 on even over the noise of the parent pickup area?

17 A. Yes.

18 Q. Okay.

19 MS. HINES: All right. I have no further questions.

20 THE COURT: Okay, thank you, Ms. Hellums, you may step
21 down.

22 Plaintiff may call your next witness.

23 MR. PHILLIPS: Your Honor, the next witness is a
24 transcript to be read, and if we could have a brief break to
25 get that set up.

1 *THE COURT:* Do you have the depo ready to go?

2 *MR. PHILLIPS:* There is something we want to be heard
3 about in this depo. We do have a copy, I think we only have
4 one copy.

5 *THE COURT:* Is there an objection that hasn't been
6 addressed yet?

7 *MR. PHILLIPS:* It is the issue of why we are reading
8 it I would like to address with your Honor.

9 *THE COURT:* Okay. Can we do that sidebar?

10 *MR. PHILLIPS:* Yes.

11 *THE COURT:* Okay, ladies and gentlemen, the next
12 witness is going to appear by deposition. That witness is
13 Lisabeth Enriquez-Ruiz. A deposition is a witness' sworn
14 testimony that is taken before the trial.

15 During a deposition, the witness is under oath and
16 swears to tell the truth, and lawyers for each party may ask
17 questions. A court reporter is present and records the
18 questions and answers. The deposition of some witnesses may be
19 presented to you by video, or in this next instance, reading
20 the deposition transcript. Deposition testimony is the same as
21 live testimony and you must judge it in the same way as if the
22 witness were testifying in court.

23 So, is there a need for a sidebar, or would counsel
24 like to work it out?

25 (Proceedings at sidebar.)

1 *THE COURT:* I will do sidebars when necessary, I am
2 not crazy about it. You see the logistics with it.

3 *MR. PHILLIPS:* This witness was subpoenaed, validly
4 subpoenaed, and refused to cooperate in any way. We are going
5 to read the transcript just to not have her picked up, but we
6 are not -- there is case law that says we can ask her that fact
7 and put it before the jury. We are not asking for that.

8 I want to make your Honor aware, if she does show up
9 live, I would like to ask her questions that weren't covered in
10 the deposition.

11 *MS. BARRANCO:* I'm sorry, I must have missed the last
12 part of what counsel said.

13 Either he gets her live or reads the depo and not
14 both. That would be my concern.

15 The jury would listen to the same witness twice, and
16 hear more questions from counsel unnecessarily.

17 *THE COURT:* It seems like you have a choice, call her
18 live or use the transcript. She is not showing up, fortunately
19 you have a transcript. That is a decision you make.

20 *MR. PHILLIPS:* We will use the transcript, and I don't
21 know if we have two highlighted copies, so we may do question,
22 answer, question, answer. We are ready to go.

23 *THE COURT:* One of the attorneys will be on the
24 witness stand and one asking questions?

25 *MR. PHILLIPS:* Yes. This is our last wet for the day.

1 Morales didn't show up this afternoon, he said he had to do it
2 tomorrow morning.

3 *THE COURT:* Do you have anyone else here? I did put
4 them on notice.

5 *MR. PHILLIPS:* The only one we have here is Ms.
6 Bryant.

7 *MS. BARRANCO:* That is the point, there would be a
8 problem, I wasn't prepared for this.

9 *THE COURT:* How long will you be with her?

10 *MS. HINES:* 10, 20 minutes.

11 *THE COURT:* You should be prepared to do direct with
12 her, I want to utilize all the time we have, especially since I
13 told them we would go later.

14 *MR. PHILLIPS:* We may be able to publish the CAD calls
15 or 911 calls.

16 *THE COURT:* Were there any other depositions?

17 *MR. PHILLIPS:* Not that are ours.

18 *THE COURT:* Why don't you take care of this and we
19 will plan on having the direct of Ms. Bryant and not do the
20 cross. How long is this deposition?

21 *MR. PHILLIPS:* Probably ten minutes or less.

22 *THE COURT:* Okay. All right. If you could publish
23 certain things.

24 *MR. PHILLIPS:* We will try to do something like that.
25 The other housekeeping matter, at 9:00 a.m. tomorrow is the

1 witness doing video contemporaneously, she needs to get on and
2 off. If we are doing cross-examination, and they last 45
3 minutes, we'll miss her window.

4 *THE COURT:* You want to hear direct and see if you are
5 comfortable with cross or not. Let me know. You shouldn't be
6 surprised. She wasn't on the lineup, maybe after the direct --

7 (Sidebar concluded.)

8 *THE COURT:* All right. This is a reading of the
9 deposition, the witness isn't here.

10 (Deposition of Lizabeth Enrique-Ruiz read.)

11 *MR. JOHNSON:* That is it.

12 *THE COURT:* Okay. All right. You may step down. And
13 the Plaintiff wants to call Ms. Bryant?

14 *MR. PHILLIPS:* Your Honor, we are going to publish --
15 your Honor, before we do that, we are going to publish
16 Plaintiff's Exhibit 1.

17 We are going to enter into evidence Plaintiff's
18 Exhibit 1, the 911 calls, without objection.

19 *MS. BARRANCO:* No objection, your Honor.

20 *THE COURT:* All right. So, Plaintiff's Exhibit 1 is
21 admitted without objection.

22 (Whereupon Plaintiff Exhibit 1 was marked for
23 evidence.)

24 *THE COURT:* And ladies and gentlemen, when an exhibit
25 is admitted, it means it will go back to the jury deliberation

1 room with you when you deliberate.

2 Sometimes exhibits are shown to you in the courtroom
3 and sometimes they are admitted in evidence and not necessarily
4 shown to you, but they go into the room with you when you
5 deliberate.

6 Counsel now wants to, in addition to have it admitted,
7 publish it -- is it audio?

8 *MR. PHILLIPS:* Yes.

9 *THE COURT:* He is going to play it, it is an audio
10 recording. We can discuss whether -- what counsel's opinion is
11 whether that goes back to the jury, whether you have equipment
12 so they can listen to it in the jury room or come back into the
13 courtroom. This is unusual, it is not like a piece of paper
14 that will go back with you. That is for us to discuss later.
15 It is in evidence and, counsel, you can play it now, or publish
16 it now.

17 (Thereupon, Plaintiff Exhibit 1 was played.)

18 *MR. PHILLIPS:* Your Honor, we also move into evidence
19 Exhibit 2, it is a redacted version of Exhibit 2, it is only
20 three of the CAD calls, three of the recordings on the prior
21 Exhibit 2 that we submitted to your Honor.

22 This is more for your Clerk's housekeeping, we are
23 submitting Exhibit 2.

24 *THE COURT:* The one we have now is more comprehensive
25 than what you are going to be playing?

1 MR. PHILLIPS: Yes.

2 THE COURT: Is there any objection to Exhibit 2?

3 MS. BARRANCO: My only concern is, I was not advised
4 there was going to be a revision to Exhibit 2.

5 I am not in a position to agree without knowing
6 specifically what --

7 THE COURT: Is there any objection?

8 MS. BARRANCO: No, your Honor.

9 THE COURT: Exhibit 2 is admitted, and it is an audio
10 recording, and counsel will now play that for the jury.

11 (Whereupon Plaintiff Exhibit 2 was marked for
12 evidence.)

13 (Thereupon, Plaintiff Exhibit 2 was played.)

14 MR. PHILLIPS: That is the exhibit, your Honor.

15 THE COURT: Okay.

16 Any and all exhibits that come in, if you would do
17 that, leave them up at the front.

18 Any other publication of exhibits?

19 MR. PHILLIPS: Not at this time.

20 THE COURT: Are you able to call Ms. Bryant?

21 MR. PHILLIPS: Yes, your Honor.

22 THE COURT: You had some witnesses that both may call,
23 but -- we will proceed with Ms. Bryant.

24 VIOLA BRYANT, PLAINTIFF'S WITNESS, SWORN

25 THE WITNESS: Viola Bryant, B-R-Y-A-N-T.

DIRECT EXAMINATION

1
2 BY MS. HINES:

3 Q. Thank you, Ms. Bryant.

4 Ms. Bryant, would you please tell the jury where you live?

5 A. 512 Florida Avenue, Ft. Pierce, Florida.

6 Q. How long have you lived in Ft. Pierce?

7 A. Probably about 60 years.

8 Q. And where did you go to high school?

9 A. Ft. Pierce Central High.

10 Q. Are you currently employed?

11 A. No, ma'am, retired.

12 Q. What was your last job before retiring?

13 A. I worked with the St. Lucie School Board for 35 years.

14 Q. And what specifically did you do for the St. Lucie School
15 Board?

16 A. I did many things, I worked in the office, helped parents,
17 set up the classroom. Whatever they wanted me to do, I did.

18 Q. Do you have any children?

19 A. Yes, ma'am.

20 Q. What are their names and ages?

21 A. Um-m-m, the deceased, Gregory Hill, he was 30, and I have a
22 daughter, Hope Bryant, 40, and I have a son, Antonio Hill, he
23 is 27, and I have a stepdaughter, Shashana Hill, she is 35.

24 Q. And you mentioned your son, Gregory Vaughn Hill, Jr., was
25 deceased; is that correct?

1 A. Yes, ma'am.

2 Q. Are you the personal representative of his estate?

3 A. Yes, ma'am.

4 Q. Would you please tell the jury about your son Greg?

5 A. Gregory was an adorable husband, father, son, nephew,
6 cousin, fiancée', and he also loved fishing.

7 Q. How often did you see your son?

8 A. I seen him about every week, a couple of times a week.

9 Q. Did he have any hobbies?

10 A. He loved fishing and helping people.

11 Q. How often would he go fishing?

12 A. He go fishing all the time, whenever he could go, he is off
13 from work, he go fishing, sometime in the day time sometime at
14 night.

15 Q. Did your son have any children?

16 A. Yes, ma'am.

17 Q. How many children?

18 A. Three.

19 Q. And what are their names and ages?

20 A. I might get the ages wrong.

21 The oldest one, Destiny Hill, she is in the seventh grade,
22 Aryanna Hill is in the fourth grade, and he have a son, Gregory
23 Vaughn Hill, III, and he is in the second grade.

24 Q. And to your knowledge, did your son spend time with his
25 children?

1 A. Yes, ma'am.

2 Q. What types of things would you see him do with the
3 children?

4 A. Well, he spent time with them, took them fishing and to the
5 park, and he was always there for his kids and always tell you,
6 like when I try to do something with the kids, he tell me, mom,
7 you don't have to do it with my kids, that is why I have a job,
8 that is why I provide somewhere for them to stay.

9 Q. Ms. Bryant, at this time I would like to hand you some
10 photographs. They have been premarked as Plaintiff's Exhibits
11 143, 148, 151, 159, 165, 166, 179, and 188.

12 MS. HINES: If your Honor would allow it to be
13 admitted maybe as a composite exhibit?

14 THE COURT: Well, they all have their own numbers.

15 MS. HINES: Yes, they are already premarked.

16 THE COURT: Are there any objections?

17 MS. BARRANCO: Your Honor, may I see the specific
18 exhibits that are being referenced?

19 THE COURT: Yes. Counsel, if you would show the
20 exhibits.

21 So, any objection?

22 MS. BARRANCO: Yes, at this time, until Plaintiff's
23 counsel has an opportunity to show the witness the pictures,
24 and I ask them to be identified, I may have objections,
25 depending on what the witness says.

1 THE COURT: Take one exhibit at a time.

2 MS. HINES: Your Honor, may I approach the witness
3 with the exhibits?

4 THE COURT: You may, yes.

5 MS. HINES: Thank you.

6 BY MS. HINES:

7 Q. Ms. Bryant, I have handed you some photographs that I have
8 listed, premarked as exhibits.

9 Would you take a moment to look at those photographs, just
10 to yourself, don't show them to the jury.

11 Thank you.

12 Let's go through them one by one so that if Defense counsel
13 has any objections, they can make them at that time.

14 For the first exhibit, which was premarked 143, do you
15 recognize who is in that photograph?

16 A. Yes, ma'am.

17 Q. And when was this picture taken?

18 A. It was taken like when he was two years old.

19 Q. And Ms. Bryant, the second photograph which should be
20 marked 148 --

21 THE COURT: You want to do them one at a time to see
22 if there is any objection. Is there any objection to 143?

23 MS. BARRANCO: Did the witness depict who is in the
24 picture?

25 THE COURT: No, she said he. Do you want to clarify

1 who is in the photo?

2 *BY MS. HINES:*

3 *Q.* Yes. Could you clarify who is in 143?

4 *A.* Gregory Vaughn Hill, Jr.

5 *Q.* That is your son, correct?

6 *A.* Yes, ma'am.

7 *THE COURT:* Any objection to 143.

8 *MS. BARRANCO:* No.

9 *THE COURT:* 143 is admitted without objection.

10 (Whereupon Plaintiff Exhibit 143 was marked for evidence.)

11 *MS. HINES:* Your Honor, may I have permission to
12 publish this exhibit to the jury?

13 *THE COURT:* Yes. Hold them up. We will get the
14 technology, certain people have left, we don't have access to
15 all the experts yet.

16 *MS. HINES:* This is Plaintiff's Exhibit 143 identified
17 by the witness.

18 *BY MS. HINES:*

19 *Q.* Ms. Bryant, now directing your attention to the next
20 photograph which is premarked as exhibit 148.

21 *A.* Gregory Vaughn Hill, Jr., this is a picture where he was at
22 Head Start, he was four years old.

23 *Q.* So, this was taken approximately when he was four years
24 old?

25 *A.* Yes, ma'am.

1 *THE COURT:* Are you seeking to move it in?

2 *MS. HINES:* Yes, your Honor, permission to move 148
3 into evidence.

4 *MS. BARRANCO:* No objection, your Honor.

5 *THE COURT:* Admitted without objection.

6 (Whereupon Plaintiff Exhibit 148 was marked for evidence.)

7 *BY MS. HINES:*

8 *Q.* The next photograph is Exhibit 151. Do you recognize who
9 is in this picture?

10 *A.* Yes, ma'am.

11 *Q.* Can you identify who is in the picture, please?

12 *A.* Gregory Hill, Jr., his father, Gregory Hill, Sr., his
13 brother, Antonio Hill, his grandmother, Rosa Hill, and his
14 sister, Shashana Hill.

15 *Q.* Thank you, Ms. Bryant.

16 *MS. HINES:* The Plaintiff would move 151 into
17 evidence.

18 *MS. BARRANCO:* I object on relevance. I want to do a
19 brief sidebar to explain what the specific objection is so we
20 might be able to avoid the problem in the future.

21 *THE COURT:* Okay. How many other photos are there,
22 totally?

23 *MS. HINES:* There are five more photos.

24 *THE COURT:* Does it apply to the other five as well?

25 *MS. BARRANCO:* It may. I don't know who the folks are

1 in the picture, it is hard for me to say for sure.

2 *THE COURT:* There is a relevancy objection, and you
3 want to elaborate sidebar?

4 *MS. BARRANCO:* Correct.

5 *THE COURT:* We will take a brief sidebar.

6 (Proceedings at sidebar.)

7 *THE COURT:* Can I see the one you are showing?

8 *MS. BARRANCO:* Your Honor, my objection to the
9 relevancy of this picture, it apparently has a lot of people
10 other than Mr. Hill, and those people are claiming they are not
11 entitled to damages. Particularly, Ms. Bryant is on the stand
12 based on the wrongful death act, and Mr. Hill -- the law states
13 Ms. Bryant is not entitled to her pain and suffering.

14 I am not sure what the relevance of any of these
15 pictures is, other than showing Mr. Hill and his children what
16 relevancy the photographs have.

17 *THE COURT:* So, this is a picture of Mr. Hill, the
18 decedent, and his children --

19 *MS. BARRANCO:* No, this is Mr. Hill, the young child
20 in this picture, and his sister and mother and deceased father.

21 *MS. HINES:* Yes.

22 *THE COURT:* What is the relevance?

23 *MS. HINES:* To show he was a young child and the
24 relationship he had with his family.

25 *THE COURT:* There is presumably a jury instruction

1 that clearly explains who is entitled to damages and who is
2 not, correct?

3 MS. BARRANCO: Yes.

4 THE COURT: How many photos do you have in total?

5 MS. HINES: I have five, we can cut it down to three
6 more.

7 THE COURT: Okay, so I am going to allow it over the
8 objection of relevancy. I understand the issue, and as long as
9 we are certain the jury instructions are accurate and correct
10 with respect to who is entitled to recover and who is not, I
11 think that can be addressed with jury instructions.

12 I will allow 151 over objection.

13 MS. BARRANCO: Does your Honor want to address the
14 other ones?

15 THE COURT: Is it the same type of objection?

16 MS. BARRANCO: Yes. It looks like Plaintiff's 165 may
17 have Ms. Bryant with Mr. Hill as a young child and his sister.
18 Again, it is another picture, your Honor ruled, I understand
19 that, now my objection would go to cumulative.

20 One photo of the family, okay, but several,
21 particularly when Ms. Bryant is not entitled to her own pain
22 and suffering --

23 THE COURT: Response. What is the purpose of
24 showing --

25 MS. HINES: It goes to the relationship in the context

1 of who they are as a family.

2 *THE COURT:* You have 185 --

3 *MS. HINES:* 165, 179.

4 *THE COURT:* Just Mr. Hill?

5 *MS. HINES:* This one is Mr. Hill and his mother, that
6 is 188.

7 *THE COURT:* That is the extent of the photographs?

8 *MS. HINES:* Yes.

9 *THE COURT:* I will allow them in over objection. I do
10 need her to identify them, the witness.

11 *MS. BARRANCO:* It would be nice.

12 *THE COURT:* Yes.

13 *MS. HINES:* As far as publishing them to the jury, can
14 I hand them as a composite?

15 *THE COURT:* How much longer do we have with the
16 questioning on direct? We'll only do direct today.

17 *MS. HINES:* Five minutes or so.

18 *THE COURT:* Hold them up so they can see them and we
19 will let you complete your direct. We won't do cross, and I
20 will explain they will have another witness first thing in the
21 morning and you will resume cross-examination after the first
22 witness, so we have the accommodation, and before we leave
23 tonight we will go over the schedule.

24 (Sidebar concluded.)

25 *THE COURT:* 151 is admitted over objection.

1 (Whereupon Plaintiff Exhibit 151 was marked for
2 evidence.)

3 *MS. HINES:* Thank you, your Honor. Do we have
4 permission to publish to the jury?

5 *THE COURT:* Yes.

6 *BY MS. HINES:*

7 *Q.* Ms. Bryant, 165, could you tell us who is identified in
8 this photograph?

9 *A.* Me, Gregory Hill, Jr. and his sister, Hope Bryant.

10 *MS. HINES:* At this time Plaintiff would move to have
11 Exhibit 165 admitted into evidence.

12 *THE COURT:* Defense, same objection?

13 *MS. BARRANCO:* Yes, your Honor, for the record.

14 *THE COURT:* Sure. Admitted over objection.

15 (Whereupon Plaintiff Exhibit 165 was marked for evidence.)

16 *MS. HINES:* Permission to publish to the jury, your
17 Honor.

18 *THE COURT:* Yes.

19 *BY MS. HINES:*

20 *Q.* Ms. Bryant, Exhibit 179, can you identify who is in this
21 photograph?

22 *A.* Gregory Vaughn Hill, Jr., this is one of the fishing days.
23 I was working and he told me he had caught some fish, he
24 brought them back to the school house for me to see it, and
25 that is me taking the picture.

1 Q. Do you remember approximately when this was taken?

2 A. It was back in -- I really can't recall the day, I know I
3 was working.

4 MS. HINES: At this time the Plaintiff would move to
5 admit 179 into evidence.

6 THE COURT: Same objection?

7 MS. BARRANCO: No, not with this one.

8 THE COURT: Admitted with no objection.

9 (Whereupon Plaintiff Exhibit 179 was marked for evidence.)

10 MS. HINES: Permission to publish to the jury.

11 THE COURT: Yes.

12 BY MS. HINES:

13 Q. Ms. Bryant, calling your attention to Plaintiff's Exhibit
14 188, could you please identify who is in this photograph?

15 A. In this photograph is me, and -- I am sorry, Gregory Hill,
16 Jr.

17 Q. Do you remember approximately when this photograph was
18 taken?

19 A. It was taken when Greg was almost two years old and we was
20 out at Disney World somewhere.

21 MS. HINES: At this time Plaintiff would move to admit
22 Exhibit 188 into evidence.

23 THE COURT: Response.

24 MS. BARRANCO: Same objection.

25 THE COURT: Admitted over objection.

1 (Whereupon Plaintiff Exhibit 188 was marked for evidence.)

2 MS. HINES: Permission to publish to the jury.

3 THE COURT: Yes.

4 MS. HINES: Thank you.

5 BY MS. HINES:

6 Q. Now, Ms. Bryant, were there any funeral expenses associated
7 with your son's death?

8 A. Yes, ma'am.

9 Q. And what were those funeral expenses?

10 A. \$11,352.

11 Q. How were the funeral expenses paid?

12 A. I paid them.

13 MS. HINES: Your Honor, may I have a moment to confer
14 with counsel?

15 THE COURT: Yes.

16 MS. HINES: Your Honor, we have no more questions at
17 this time.

18 THE COURT: Okay. Okay, unless Defense wanted to do
19 cross now.

20 MS. BARRANCO: I will defer on that, your Honor.

21 THE COURT: All right. Let me note we completed that
22 direct.

23 Okay. Ladies and gentlemen, you have been incredibly
24 patient, thank you very much. I know it has been a long day,
25 and we appreciate it.

1 We are going to end right now. As you can see, we
2 have just had direct examination of Ms. Bryant. What remains
3 for tomorrow will be the cross-examination by Defense and any
4 redirect examination by the Plaintiff.

5 So, I will first tell Ms. Bryant that you are free to
6 step down from the witness stand, but you remain under oath,
7 and so you are not to discuss your testimony with anyone, and
8 you will come back to the stand tomorrow for cross-examination
9 and redirect examination. Okay?

10 *THE WITNESS:* Yes, ma'am.

11 *THE COURT:* I will tell you the parties work very well
12 together, and to accommodate one another, first thing tomorrow
13 morning there is going to be a witness for the Plaintiff who
14 could not be here, but is going to be appearing live, but by
15 video, so you will be able to see the person and hear the
16 person. The person will be sworn in just like any witness here
17 in the courtroom, and I will go into more detail about who that
18 witness is and explain that tomorrow.

19 But I tell you that because that will be the first
20 thing we do at nine o'clock, and when we finish, then Defense
21 will have the chance to bring Ms. Bryant back on the stand to
22 cross-examine her. It is a brief interruption so we could
23 accommodate moving parts and people's schedules, and things
24 like that.

25 Really, it is a simple good-bye to you, but with an

1 important reminder.

2 This is the first time we are letting you go for more
3 than an hour, I will not see you again until nine o'clock
4 tomorrow morning. So, it is very likely that people you see or
5 talk to this evening are going to be curious, I would think,
6 maybe not, but maybe, about where you've been, what you have
7 been doing, and what is going on, and interested in having you
8 tell them about it.

9 You can certainly tell them you have been selected as
10 a juror, you can tell them you are here at the Ft. Pierce
11 Federal Courthouse, you can tell them you will be in trial for
12 five or seven days, that is all. You can't tell them the name
13 of the case, how you find it so far, interesting, not
14 interesting, any legal issues, any of the claims or impressions
15 you formed, nothing.

16 It is easy, you just say the judge told us I can't
17 answer your questions. If I do, I will get in trouble.
18 Hopefully they will leave you alone.

19 You are to do no research about anything directly,
20 indirectly, or tangentially entered in the case. Third, if
21 there is any media by way of television, newspaper, radio,
22 anything else, avoid it. Don't listen to the radio or watch TV
23 tonight or the morning if that is part of your ritual. If
24 anything comes across the news that happens to appear related
25 to what you have been hearing today, leave the room. If you

1 don't let me know, I am going to assume no one saw, heard or
2 reviewed or researched anything.

3 Does anyone have any questions about those
4 instructions?

5 *THE JURORS:* No.

6 *THE COURT:* Seeing no hands.

7 I also wanted to let you know as far as where you meet
8 tomorrow, when you come in in the morning, you are to go to the
9 jury assembly room. That is where you met this morning.

10 So, I would like you to be here with enough time that
11 you are in the jury assembly room no later than 9:00 so we can
12 pull you in at nine o'clock sharp, however you work back in
13 terms of your travel and parking, as long as you are in the
14 jury assembly room by nine o'clock.

15 We will go with all of the witnesses lined up for
16 tomorrow, it will be all evidence and testimony tomorrow. We
17 have gotten past the jury selection and opening statements, so
18 in that sense it will -- not that today didn't go smoothly, but
19 there won't be the breaks with having to meet and confer about
20 jurors and things of that nature.

21 Any questions that anyone has about procedures or
22 scheduling or any of the rules we have gone over?

23 *THE JUROR:* Are we allowed to bring in a water bottle?

24 *THE COURT:* Yes. Your name?

25 *THE JUROR:* .

1 *THE COURT:* You can bring in an appropriate beverage
2 of your choice so you are comfortable. Everybody is drinking
3 different things these days, sparkling water, soda. Yes, you
4 can bring in a beverage, even coffee. Just put a lid on it, we
5 want to make sure the courtroom stays nice and we don't have
6 any spilling. Coffee, too, is okay.

7 Thank you so much.

8 Notebooks, Pauline will pick them up.

9 *(Thereupon, the jury leaves the courtroom.)*

10 *THE COURT:* We have a couple of housekeeping matters
11 to take up before everyone is excused.

12 Let me first tell you right now what we are doing is
13 distributing to you a redlined and a clean version of the
14 Court's first preliminary initial review of your joint proposed
15 jury instructions, some of which you agreed to and some of
16 which you don't.

17 By no means should it suggest to you that this is the
18 Court's final ruling or any ruling at all, but it was the
19 Court's attempt to take what you gave the Court, look at it in
20 the context of the applicable law and give you feedback so you
21 can work with it, so you can feel comfortable to come back and
22 tell the Court how the Court is wrong in how the Court
23 approached it, but until we begin the dialogue we won't have
24 the collective input.

25 What I don't want to have happen is any scrambling at

1 the end. We are well before the end of the trial, we are quite
2 organized, I think, in this regard, but it is important because
3 some of the issues could be more complicated than others, so
4 that you begin to start thinking about it, so we know where
5 there are differences and when we can select the appropriate
6 time to talk about it.

7 I will point out that this initial proposal from the
8 Court does on the verdict form include some interrogatory
9 questions that I don't believe either side proposed, and
10 without going into extensive detail and discussion about it, it
11 can be done at the charge conference.

12 It is the Court's understanding of the law, I am
13 talking very generally now, that the qualified immunity is a
14 mixed question of law and fact, and because the summary
15 judgment was denied based on certain factual disputed facts,
16 that it is the Court's understanding of the law that perhaps
17 certain of those factual questions should be presented to the
18 jury recognizing that the judge, the Court, ultimately makes a
19 legal determination. And so, that is just a general background
20 and explanation of why you will see some interrogatory
21 questions that neither side proposed.

22 Again, everyone will have an opportunity to be heard,
23 this is not to be construed as a final determination of what
24 the jury instruction will be, but it is an effort to be
25 efficient and get the ball rolling in that regard.

1 With respect to -- I don't know how we are moving.
2 Before I take up any of the objections, because we will have a
3 better sense, let's talk about the lineup for tomorrow, and we
4 can dovetail into remaining objections so we can try to take
5 care of it.

6 I don't want to have a long day tomorrow, I know it is
7 Friday and everybody wants to end at 5:00. The goal is to end
8 it early. It is Thursday. I want to give you your lunch
9 break, so let's first talk about the lineup for tomorrow.

10 Who is the Plaintiff's first witness tomorrow? Who is
11 this, again? Remind me who the witness is appearing by video.

12 *MR. PHILLIPS:* Stefanie Mills, your Honor.

13 *THE COURT:* Okay. She is going to be our -- what we
14 will be calling the first one tomorrow, but in fact she will
15 now be our fourth witness because you had three so far. And
16 then we'll finish up -- Defense should be prepared to finish up
17 with -- no, Ms. Bryant was our fourth.

18 Who will we go into?

19 *MR. PHILLIPS:* Lisa McGuire.

20 *THE COURT:* And then who?

21 *MR. PHILLIPS:* David Morales.

22 *THE COURT:* David Morales is the next witness.

23 *MR. PHILLIPS:* Defendants need to take Captain Chris
24 Cicio out of order.

25 *THE COURT:* So, Defendants need to take Cicio

1 tomorrow?

2 MS. BARRANCO: Yes, he is unavailable all next week.

3 THE COURT: After Morales, we will have Captain Chris
4 Cicio. Is he on both of your lists or is he just Defense?

5 MR. PHILLIPS: Just Defense.

6 THE COURT: Then we have Cicio, and who else?

7 MR. PHILLIPS: Roy Bedard.

8 THE COURT: Bedard is your eighth witness.

9 MR. PHILLIPS: And depending upon timing, we would
10 potentially call Deputy Lopez.

11 THE COURT: Okay, so he would be nine if you call him,
12 and we have time.

13 MR. PHILLIPS: Earl Ritzline would be 10. If we need
14 witnesses we could call Monique Davis.

15 THE COURT: Yes. That should be 11.

16 MR. PHILLIPS: The three kids, Greg, III --

17 THE COURT: All right.

18 MR. PHILLIPS: -- then Aryanna Hill.

19 THE COURT: 13.

20 MR. PHILLIPS: And then Destiny Hill.

21 THE COURT: All right. So the only persons you
22 haven't mentioned -- well, everybody else -- everyone else
23 still listed, they are witnesses you plan to call?

24 MR. PHILLIPS: It really depends how things develop.

25 We have, Mr. Anderson, he is a definite, Monday

1 morning he is scheduled.

2 *THE COURT:* Okay.

3 *MR. PHILLIPS:* And we are working on the coordination
4 of the rest.

5 *THE COURT:* Okay. So given that, is there anything
6 about the witnesses tomorrow -- well, let's just -- let's see.
7 Was there anything more that had to be heard on the alcohol,
8 intoxication issue?

9 Has everyone been fully heard on that issue?

10 We left it where the difference was the Plaintiff was
11 willing to go so far as to stipulate he was legally
12 intoxicated, in fact higher than legally intoxicated, but
13 didn't want the specific level of intoxication.

14 *MR. JOHNSON:* That is correct.

15 *THE COURT:* Defense position.

16 *MR. BRUCE JOLLY:* Earlier this afternoon Defense
17 submitted to you Exhibit -- I want to say 126 or 26, Dr.
18 O'Neil, the ME's report. She is going to talk about the level,
19 how they get there, how they got there, and what that means.

20 So there will be specific testimony about it from the
21 medical examiner, as opposed to generic, oh, he was really
22 drunk. It is going to be this is how drunk he was, this is
23 what happens.

24 *THE COURT:* Okay. And as I recall, the Plaintiff also
25 has an expert who is going to be talking about intoxication and

1 the effects of intoxication.

2 *MR. PHILLIPS:* He testified to it in his deposition.

3 *THE COURT:* I am going to overrule the objection to --
4 the Plaintiff's objection to the Defendant's introduction of
5 evidence of Mr. Hill's intoxication at the time of the subject
6 incident at Docket Entry 185. It is a topic that can be fully
7 explored by both sides, cross-examined in the appropriate way
8 with appropriate arguments based on the evidence.

9 The probationary status, I know you probably haven't
10 had time to address that with each other.

11 Is that something that would come up with any of the
12 witnesses tomorrow?

13 *MR. PHILLIPS:* Plaintiff does not plan to bring it up,
14 your Honor.

15 *MR. BRUCE JOLLY:* It might come up on cross.

16 *THE COURT:* I will say we took a stab at a proposed
17 limiting instruction along the lines of, ladies and gentlemen,
18 as you have heard, Mr. Hill was on probation. This evidence is
19 only admissible to the extent that you think it is relevant to
20 Mr. Hill's actions on the date of the incident. It is not to
21 be considered for any other purpose. What Mr. Hill was on
22 probation for is irrelevant and should not be considered by
23 you.

24 How is that with the Plaintiff?

25 *MR. JOHNSON:* Well, your Honor, the problem with

1 introducing the probation or saying probation at all is the
2 negative connotation that comes with it.

3 It would be the first time the jurors would know Mr.
4 Hill was a criminal in any way. He was convicted of a
5 misdemeanor, and never convicted of a felony whatsoever. We
6 talked about the information and it would go to Mr. Hill's
7 motive and the way he acted on this day.

8 Because Mr. Hill was never convicted of a felony, the
9 prejudicial impact far outweighs any probative value that could
10 be gained based on the evidence that could lead to Mr. Hill's
11 motive, which could lead to how he acted on this particular
12 day.

13 *THE COURT:* Response.

14 *MR. BRUCE JOLLY:* We have two people who will respond.
15 I did draft an instruction during the break. Frankly, I like
16 yours better. If you wish me to read it into the record, what
17 I drafted, we have not consulted, I am prepared to do that. My
18 son is going to address the substantive issue.

19 *THE COURT:* You can read it into the record so the
20 Plaintiff has the benefit of hearing it as well.

21 *MR. BRUCE JOLLY:* Following the testimony the
22 Plaintiffs -- decedent was on felony probation. It is felony,
23 not misdemeanor, felony. This evidence is not offered for the
24 purpose of maligning the decedent's character, but instead
25 offered for the limited purpose of consideration by you as an

1 explanation for why the decedent acted in the manner in which
2 he did.

3 *THE COURT:* I can see where why you like mine better.

4 *MR. BRUCE JOLLY:* Yours is better.

5 *THE COURT:* What is the substance of the argument?

6 *MR. GREGG JOLLY:* Your Honor, I have a copy of the
7 probation, but we think the limiting instruction quells any
8 concern the Plaintiff has. I think it is appropriate. We made
9 the argument basically, but I do think the limiting instruction
10 appropriately quells any prejudice.

11 *THE COURT:* I thought it was going to come in through
12 one of the Defense witnesses. How would it come in on cross?
13 I don't see it coming in on cross tomorrow.

14 *MR. PHILLIPS:* The question is, if they try to get
15 into some damages aspect related to the kids, then the limiting
16 instruction is not worth the paper it is written on.

17 *THE COURT:* What do you mean, they get into it with
18 damages?

19 *MR. PHILLIPS:* Mr. Hill was on probation, therefore
20 the loss of support claim is affected by it.

21 *THE COURT:* No, that is not what the Defendants would
22 argue, and I would say that is not permissible. Defendants
23 aren't attempting to use it for that purpose; is that correct?

24 *MR. GREGG JOLLY:* No, your Honor.

25 *THE COURT:* I am understanding it may have impacted --

1 may, but that is what you would argue to the jury once the
2 evidence comes in, why he may have acted in the way you are
3 saying that he acted, that would have impacted the deputy and
4 how he acted, correct?

5 *MR. GREGG JOLLY:* That is correct.

6 *THE COURT:* It is not coming in for damages, won't be
7 allowed to be argued that way or examined that way, and I don't
8 see how it would come in on cross because they need to
9 establish through a witness that he was on probation, which you
10 said you had this witness to do that, this particular witness,
11 who presumably will be very short, will just come in and say he
12 was on probation.

13 But if the Court rules that it is permissible, maybe
14 you want to agree to a stipulation.

15 But I will tell you that, you know, my consideration
16 of all of the issues, having read everything and the case law
17 you cited to me, and everything you argued in court, would lead
18 me to the following ruling: On weighing the relevance of the
19 evidence with the prejudicial effect under 403, the Court finds
20 that the evidence should come in as relevant to explain Mr.
21 Hill's actions or as relevant for the Defense to be able to
22 argue Mr. Hill's actions.

23 As the Court noted in *Estate of Rudy Escobedo versus*
24 *Martin*, 702 F.3d 388, 400, Seventh Circuit, 2012, quote
25 "evidence unknown to officers at the time force was used is

1 also admissible to add credibility to an officer's claim that a
2 suspect acted in a manner described by the officer," end of
3 quote.

4 Mr. Hill's probation status could add credibility to
5 the Defendant Newman's claim that Mr. Hill opened the garage
6 door with a gun in his hand and then slammed the garage door
7 down because having a gun would violate his probation.

8 However, the nature of the underlying offense for
9 which he was on probation should not come in. The Court
10 believes that a limiting instruction is appropriate so that the
11 jurors understand what they may and may not consider the
12 evidence for.

13 *MR. PHILLIPS:* Your Honor, just to make sure we have
14 the Lopez case, as dry as possible. Where we are now, Mr. Hill
15 is on probation, now he is in possession of a firearm and
16 intoxicated in violation of probation, therefore we are
17 convicting Mr. Hill three times.

18 *THE COURT:* There is not going to be any mention that
19 I heard anyone raise about any violation of probation.

20 My understanding is, again, the relevance that Defense
21 was seeking, the purpose was the relevance to explain his
22 actions.

23 *MR. BRUCE JOLLY:* The conditions of probation do play
24 a role in the defense theory as to why he arguably overreacted.

25 *THE COURT:* Is one of the conditions of probation that

1 you are not to have a gun.

2 MR. BRUCE JOLLY: One of them. Don't drink.

3 THE COURT: What is that?

4 MR. BRUCE JOLLY: Don't drink.

5 THE COURT: Was that another condition of probation?

6 MR. BRUCE JOLLY: Yes, your Honor.

7 THE COURT: Is that undisputed?

8 MR. BRUCE JOLLY: It is on the order of probation.

9 MR. PHILLIPS: The fact that he was in possession of a
10 firearm --

11 THE COURT: No. No. Was he on probation and two of
12 the conditions of probation were he wasn't to have a gun and
13 drink -- what is the answer to the question, drink at all or no
14 alcohol?

15 MR. GREGG JOLLY: No alcohol, zero alcohol.

16 MR. PHILLIPS: We ran out of witnesses before we could
17 depose -- I don't know what -- I don't know about what the
18 status of Mr. Hill was January 14, 2014, as far as probation.

19 THE COURT: We have a probation order, presumably they
20 have given it to you.

21 MR. PHILLIPS: We have that.

22 THE COURT: Does it say what they say it says?

23 MR. PHILLIPS: It does. I don't know if anything came
24 after that.

25 THE COURT: What do you mean?

1 MR. PHILLIPS: If all Mr. Hill had left was to pay the
2 fine -- I don't know if there is anything after that snapshot
3 of that probation order. I do agree that he has a probation
4 order. I do agree it says he shouldn't be drinking or be in
5 possession of a firearm.

6 THE COURT: Okay.

7 MR. PHILLIPS: How far we take that for relevance and
8 now we are going to talk about text messages --

9 THE COURT: I have not gotten to text messages, it is
10 a discrete discussion. Probation status, along with the
11 probationary status, the condition of probation, the two
12 particular conditions are don't drink and don't have a gun.
13 There is not going to be any dispute that he was drinking and
14 intoxicated. You have to make whatever argument you make about
15 it, that is what trials are for. Plaintiffs make Plaintiffs'
16 argument about why it doesn't have any bearing on the shooting,
17 and what Mr. Hill was doing, and Defense will make its
18 argument.

19 With respect to the gun, if it is being elicited that
20 he was not allowed to have a gun, that is not saying he never
21 had a gun, you will elicit testimony he didn't have a gun and
22 you will argue he didn't have a gun.

23 Certainly this witness Defense is going to bring in is
24 not going to testify he had a gun. He will testify he was
25 placed on probation and these are the two conditions of

1 probation. Is that right? Are there any other surprises?

2 MR. GREGG JOLLY: That is it, very limited.

3 THE COURT: All right. I am going to stick with the
4 ruling, and what I will do is ask you to think about the
5 limiting instruction I proposed and I will give you the
6 opportunity to add anything to it or come up with a different
7 one, but I want you to be -- nobody is talking about it being a
8 felony. I am talking about my proposed limiting instruction,
9 no mention of felony, no mention of misdemeanor, no mention of
10 conviction, of arrest, no mention of drugs, no mention of
11 anything. It is a probationary status with two conditions of
12 the probationary status, period.

13 You can consider my limiting instruction. Unless I
14 hear differently, I assume that limiting instruction is
15 acceptable to the Plaintiff. It is clean, benign and
16 doesn't -- ladies and gentlemen, as you have heard, Mr. Hill
17 was on probation. This evidence is only admissible to the
18 extent you think it is relevant to Mr. Hill's actions on the
19 date of this incident. It is not to be considered for any
20 other purpose. What Mr. Hill was on probation for is
21 irrelevant and should not be considered by you.

22 I could even eliminate the last sentence because they
23 will not know what he is on probation for.

24 Again, you can think about it.

25 MR. PHILLIPS: We would like to do that, your Honor.

1 *THE COURT:* Okay. Just be prepared to come with
2 something if you want to propose something in the alternative,
3 and let's say nothing is to come out tomorrow about probation
4 unless we take it sidebar first.

5 Exhibits 168, 169, 170, all moot.

6 Exhibits 228 to 230, 361 to 368, these are all Defense
7 exhibits that the Plaintiff filed objections to, it is moot,
8 but the rest of the objections are Plaintiff's objections to
9 Defendant's exhibits, and Defendant is not going -- are you
10 going to be admitting any exhibits through Cicio tomorrow?

11 *MS. BARRANCO:* That was a question I was going to have
12 for your Honor. I didn't know when to broach that in terms of
13 when we are calling a Defense witness out of turn.

14 *THE COURT:* You can bring in an exhibit if that
15 exhibit is going to come from that witness.

16 *MS. BARRANCO:* Okay.

17 *MR. PHILLIPS:* I assume it is photos.

18 *MS. BARRANCO:* Yes.

19 *MR. PHILLIPS:* I have no objection to the photos other
20 than to the extent it is cumulative.

21 *MS. BARRANCO:* At least the ones through the robot,
22 through the camera through the garage door and the body on the
23 floor, that is what I can think of off the top of my head right
24 now, your Honor.

25 *THE COURT:* Okay. All right. So, I guess some of

1 these other exhibits, the ones I still have pending, can I
2 assume you haven't been able to work them out?

3 Exhibit 27, which consists of text messages between
4 Mr. Hill and his fiancée', Monique Davis, hours before Mr.
5 Hill died, Docket Entry 183. Plaintiff argues the text
6 messages are irrelevant because they don't weigh on the
7 reasonableness of Deputy Newman's actions. Plaintiff also
8 argues that the text messages constitute inadmissible hearsay.

9 Defendants respond that the text messages are relevant
10 to "show Mr. Hill's motive for acting as he did during his
11 encounter with the deputies, to refute testimony that is
12 expected from Plaintiff's friends and family members that this
13 was an uneventful, normal day for Mr. Hill, prior to his
14 contact with law enforcement, as well as to Plaintiff's loss of
15 parental support claim. That is Docket Entry 195 at 2 to 3.

16 You are calling Ms. Davis. These are text messages
17 she wrote to Mr. Hill.

18 Is there an objection to the actual text messages or
19 to her testifying this is what she was communicating with Mr.
20 Hill on the day?

21 *MR. PHILLIPS:* Depending on the question, they can get
22 into conversations that day, particularly given your Honor's
23 rulings. The text messages as an independent piece of
24 evidence, your Honor, I don't think are admissible.

25 *THE COURT:* They are not coming in for the truth of

1 the matter, just the impact on Mr. Hill -- for the impact on
2 Mr. Hill?

3 *MR. GREGG JOLLY:* Yes, your Honor, that is correct.

4 *MR. PHILLIPS:* The impact would rely on the truth of
5 that matter being at issue. If she said I am leaving you,
6 which basically is one of the text messages, then it is not
7 that I am leaving you, she was actually leaving him, that is
8 true, it is the fact that she said that. They can inquire
9 about that. Having text messages, it is hard to separate the
10 piece of evidence from the truth.

11 *THE COURT:* Why do you need the text messages if she
12 testifies what she wrote?

13 *MR. GREGG JOLLY:* For impeachment, to the extent that
14 she denies it. If she admits to this, we would not need it.

15 *THE COURT:* Maybe we cross that bridge when we get to
16 it. If she is called by you, if you find that she he is not
17 being truthful in your view, you will let the Court know before
18 you bring up anything and we will have a sidebar about
19 impeachment evidence with respect to the text messages.

20 *MR. GREGG JOLLY:* Yes.

21 *THE COURT:* Exhibits 24 and 25. Plaintiff filed an
22 objection to Defendant's Exhibits 24 and 25, which are photos
23 of a letter presumably drafted by Monique Davis to Mr. Hill.
24 Plaintiff argues that this letter is irrelevant because it does
25 not weigh on the reasonableness of Deputy Newman's actions and

1 is hearsay.

2 And the Defendant's response is this is directly
3 relevant to the Plaintiff's loss of parental support claim and
4 to Mr. Hill's state of mind that day, at Docket Entry 195 at 3.

5 I would need to hear more argument on it. The letter
6 does say "this shit is sad, hurtful, shameful, embarrassing and
7 has to stop. I'm tired of this. All the lies and I'm sorry is
8 played out."

9 Would this be another example like the text messages
10 where you see what she says on the stand and if you believe you
11 need to impeach her, that is when you rely on, 24 and 25?

12 *MR. GREGG JOLLY:* Yes.

13 *THE COURT:* Do that outside of the jury's hearing with
14 me so we can take that up.

15 PowerPoint presentation, Exhibit 30. There is a
16 PowerPoint presentation prepared by Sergeant Kyle King of a
17 reconstructed animation of the subject incident. Plaintiff
18 states that Defendants did not disclose the PowerPoint pursuant
19 to Federal Rule of Civil Procedure 26(a)(2)(C). Plaintiff also
20 argues that Defendants have not provided evidence that Sergeant
21 King is qualified to offer the reconstruction opinions set
22 forth in Exhibit 30.

23 Defendants respond that the PowerPoint was disclosed
24 on their May 20, 2016 disclosure, Docket Entry 195 at 7-8.

25 Did the Plaintiff verify that they did receive it in

1 the initial disclosures?

2 MR. JOHNSON: I believe we did. Our main objection to
3 this piece of evidence would be that it was based entirely on
4 statements that were not made under oath, and made from --
5 given to one investigator and given to this person.

6 We would significantly question the credibility of
7 this evidence and to have an expert, as they claim, come in
8 here and present this evidence we fear would present bad
9 evidence to the jury.

10 THE COURT: Is he an expert for the Defense.

11 MR. GREGG JOLLY: He is a non-retained expert, he
12 testified in front of the grand jury. He is an expert in
13 police unions, basically, and reconstruction, and he was not
14 retained by the Defendants, but he is an expert in his field.
15 He was disclosed -- excuse me. He was disclosed as a
16 non-retained expert and not deposed.

17 THE COURT: Have you seen the PowerPoint? Has the
18 Plaintiff seen the PowerPoint?

19 MR. JOHNSON: We have, your Honor.

20 THE COURT: Well, it would seem to me that this would
21 be sort of a cross-examination issue.

22 I think the best way to handle it is that Sergeant
23 Kyle King gets on the stand and Defense will lay a foundation
24 for who he is, what he does and how he does it, and before
25 actually showing the PowerPoint you get into all of the

1 details, did he put something together, did he put it together,
2 how, why, what are the qualifications for doing it.

3 And I will allow the Plaintiff to do cross-examination
4 of him before anything is shown. If you believe anything in
5 your cross-examination shows to the Court why he is not
6 qualified to be able to present the reconstruction video,
7 PowerPoint you let me know sidebar.

8 *MR. PHILLIPS:* The recreation and photos are what they
9 are, it is the text that we take issue with. Just because they
10 are out of court statements --

11 *THE COURT:* Do we have a copy of the PowerPoint?
12 Why don't I take a closer look.

13 You are saying your objection is only to the text
14 messages?

15 *MR. PHILLIPS:* There is a graphic of the garage door,
16 if those are accurate or not, I can handle it on cross, but it
17 is all these bootleg statements that are hitched to the
18 PowerPoint presentation that I don't know how to unring the
19 bell.

20 *THE COURT:* Who did the statements come from?

21 *MR. PHILLIPS:* I guess part of the pre Grand Jury
22 investigation.

23 *THE COURT:* You know, if you haven't been specific
24 yet, I would ask you to be specific so I know what -- I don't
25 want you to guess what you are objecting to. Could you go back

1 to that document -- you don't have to do it right now. You are
2 not objecting to him or objecting to the PowerPoint, but there
3 are certain aspects that you are objecting to?

4 *MR. PHILLIPS:* We are reserving objections on -- your
5 Honor saw our opening and their opening. They even mentioned
6 the chemical agent being employed, and we weren't going there,
7 and now we are going to have three, four days of law
8 enforcement coming in, and it is what it is. I will stand up
9 and object on relevancy. We are kind of off the 60 seconds,
10 where Plaintiff didn't open the door to that.

11 So, that is kind of what I am worried about, and he is
12 one of those experts that are going to -- a series of them that
13 come in and just say the same thing over and over, this time by
14 PowerPoint.

15 *THE COURT:* Okay. Again, sticking with this one
16 PowerPoint for now, are you going to be in a position at some
17 point to let me know precisely what parts of this PowerPoint
18 you are objecting to?

19 *MR. PHILLIPS:* Yes.

20 *THE COURT:* I don't think I have that yet.

21 *MR. PHILLIPS:* We will file a supplement to our memo.

22 *THE COURT:* As to Exhibit 30, so I know and I can hone
23 in, and maybe Defense won't disagree, if you have a supplement
24 that is more tailored to specific things you object to, maybe
25 they don't feel strongly about that.

1 So, a supplemental memo to be filed.

2 When he is Kyle going to be testifying?

3 *MS. BARRANCO:* I don't think until next week,
4 certainly not tomorrow. It has to be next week.

5 I am not sure in the lineup, I haven't looked at the
6 lineup to see who else will come before him. He is going to be
7 a Defense witness.

8 *THE COURT:* It is possible it could be Monday or
9 Tuesday. Monday at the earliest, Tuesday more reasonably.

10 I want to get the supplement before -- could I get it
11 before Monday?

12 *MR. PHILLIPS:* Yes. By tomorrow.

13 *THE COURT:* Okay, by the end of the day tomorrow we
14 will have the supplement on 30 so I can hone my thinking about
15 it.

16 There is poker, Plaintiff filed an objection to
17 evidence that he was playing poker on the date of the incident.
18 Plaintiff argues that this is irrelevant because Deputy Newman
19 had no knowledge of it, and thus it doesn't weigh on
20 the reasonableness of Deputy Newman's actions. Additionally,
21 Plaintiff argues it is overly prejudicial.

22 As this was only filed yesterday, Defendants haven't
23 responded. Do you plan on bringing in anything about playing
24 poker?

25 *MR. GREGG JOLLY:* Your Honor, I believe the evidence

1 will show that morning Mr. Hill got into an altercation with an
2 unknown person and so we think that kind of ties into the whole
3 explaining his actions that he is are grabbing a firearm when
4 he hears someone banging on the garage, and that is why this
5 evidence is relevant.

6 *THE COURT:* You are going to file a response? I know
7 it was just filed yesterday.

8 *MR. GREGG JOLLY:* Yes.

9 *THE COURT:* You want to do it by the end of the day
10 tomorrow.

11 *MR. GREGG JOLLY:* Yes.

12 *THE COURT:* So I have the benefit of your response and
13 I will be able to rule on it.

14 The last issue is the gun. I want to know where we
15 stand on that. Defendants want to -- seek to bring the gun
16 that was found in Mr. Hill's back pocket into the courtroom for
17 use at trial. Plaintiff objected arguing that the gun was not
18 disclosed pursuant to Rule 26(a). According to Plaintiff,
19 Defendants never disclosed the gun in any of their Rule 26
20 disclosures.

21 In determining whether the failure to sufficiently
22 disclose an expert witness is substantially justified or
23 harmless, we know courts are guided by a number of factors:
24 The surprise to the party against whom the evidence would be
25 offered; the ability of that party to cure the surprise; the

1 extent to which allowing the evidence would disrupt the trial;
2 the importance of the evidence, and; the nondisclosing party's
3 explanation for its failure to disclose the evidence.

4 According to the Plaintiff, the Plaintiff was
5 completely unaware that Defendants were in possession of the
6 gun until less than 48 hours before the start of trial.
7 Plaintiff was never given the opportunity to inspect the gun
8 and Plaintiff's expert did not have an opportunity to examine
9 the gun. Utilizing the gun provides no additional insight for
10 the jury when there are photographs available and will only
11 prejudice Plaintiff.

12 The evidence is not important, this is according to
13 the Plaintiff, because the photographs will accomplish the same
14 objective, and Defendants do not explain the failure to
15 disclose the evidence. Plaintiff also sought sanctions.
16 Docket Entry 198.

17 Defendants respond that the fact that the Sheriff's
18 Office seized the firearm as well as his clothing has been well
19 documented, was known -- has been documented and known to
20 Plaintiff's counsel through the litigation. Docket Entry 205.
21 Defendants argue that they did disclose that they had the gun,
22 quote, "in a material respect through discovery or through the
23 Defendant's Rule 26 disclosures," end of quote.

24 Defendants note that their initial Rule 26 disclosures
25 list the reports, inventory returns and criminal investigative

1 materials associated with the shooting investigation.
2 Defendants also note that their exhibit lists list, quote,
3 "evidence lists."

4 I did issue an order allowing the Defendants to bring
5 the gun to court so you could take care of that. Did you get
6 it into the Court?

7 *MS. BARRANCO:* We haven't attempted to do that. I was
8 going to do it through one of the St. Lucie folks.

9 *THE COURT:* I deferred ruling on the admissibility.
10 Is there anything more anyone wants to say on that
11 issue?

12 *MS. BARRANCO:* We thoroughly briefed it in Docket
13 Entry 205. I could repeat it all.

14 *THE COURT:* So, can we get to the bottom of it. Did
15 you know about the gun?

16 *MR. PHILLIPS:* I have been with this case since day
17 one. We are all of a sudden now kind of, it seems like, privy
18 to everything that happened in the Grand Jury in that
19 investigation. All we got was a 2014 list of items that were
20 seized or used in the grand jury, not any delineation of where
21 things were in 2016 or 2018.

22 And your Honor has been clear to the point, we had
23 every photo documented with a different number as a trial
24 exhibit in this case. The only thing we got is a catchall of
25 physical items, and so, we didn't know --

1 *THE COURT:* You have been aware a gun was recovered,
2 right? That is not a surprise.

3 *MR. PHILLIPS:* Back in 2014, we did. We also were
4 told it was a stolen gun and didn't know if it was returned to
5 its rightful owner.

6 *THE COURT:* The fact that a gun was seized from Mr.
7 Hill is not a surprise to the Plaintiff.

8 *MR. PHILLIPS:* That is not. The disclosure under Rule
9 26 was a surprise.

10 *THE COURT:* The fact that the gun was seized from Mr.
11 Hill, that part is not a surprise, but the fact that it wasn't
12 on the Rule 26 disclosures -- you are saying it was not on the
13 Rule 26 disclosures.

14 *MR. PHILLIPS:* Yes.

15 *THE COURT:* Defense is saying it was on the Rule 26
16 disclosures by listing inventory.

17 *MS. BARRANCO:* Yes, it included all the items and
18 nothing in terms of the gun or shorts has changed since 2014,
19 it was taken in evidence, and it is still in evidence. It is
20 not a situation where it was taken and destroyed and now the
21 Plaintiff wanted to use it and finding out it was destroyed.
22 It's the other way around, hey, it is still here, hasn't moved.
23 There is nothing to disclose because there had been no change
24 when the inventory had been done before.

25 *THE COURT:* The relevance of the gun, who is going to

1 be testifying about it, and how is that evidence going to come
2 in?

3 MS. BARRANCO: I am planning on calling Sergeant
4 Lebeau, he was the lead detective and one of the persons who
5 was present when the gun was taken out of Mr. Hill's back
6 pocket. He unloaded the weapon, it was placed into evidence.

7 And at this point, we are pretty early in the
8 Plaintiffs case, but some of the things Plaintiff's counsel has
9 filed, we are anticipating, and who knows whether they are
10 going to change their theory, but we have been anticipating
11 they will be claiming the gun was planted in Mr. Hill's back
12 pocket and/or attacking the agency in terms of their
13 interaction with Mr. Hill's home and body at the time, that
14 there was some mention of the fact that the agency always knew
15 Mr. Hill was dead inside the house and went ahead and did all
16 of these things as a sham to try to cover up for a wrongful
17 shooting.

18 If that is still going to be their theory, I don't
19 know, that is something we are prepared to address.

20 THE COURT: Somebody will come in and testify that
21 this gun was recovered from the scene of the incident and the
22 proper chain of custody?

23 MS. BARRANCO: Yes, your Honor.

24 The other issue, again depending on what the Plaintiff
25 will present, we anticipate, based on the testimony of some of

1 the experts who are planning on testifying tomorrow, a question
2 as to whether or not Mr. Hill would have been able to get the
3 gun physically into his back pocket.

4 *THE COURT:* Okay. All right. I will issue my ruling
5 tomorrow on the gun.

6 And you pointed the Court to the particular docket
7 entry where you have listed that which was in evidence,
8 including the shorts, gun, everything.

9 *MS. BARRANCO:* Absolutely, your Honor, Docket Entry
10 205 and several exhibits to that.

11 *MR. PHILLIPS:* Your Honor, we would request the shorts
12 back. We had no idea that we had these options or tools to use
13 to do a recreation of the gun in the pocket.

14 I feel like I am being faulted for assuming that
15 evidence of a closed investigation was still in their
16 possession. The criminal investigation is over.

17 Fault me for assuming once a criminal investigation is
18 over, the St. Lucie Sheriff's Office isn't holding on to
19 evidence and that I am on notice of it because they had a 2014
20 laundry list with a gun there.

21 *MS. BARRANCO:* Your Honor --

22 *THE COURT:* But your expert testifies about the use of
23 a gun and how it could or could not fit into a pocket, or not
24 fit into a pocket.

25 *MR. PHILLIPS:* Not specifically. There is a question

1 of whether -- it was a cursory opinion. I don't think we are
2 getting into because he was wearing saggy pants, he could have
3 fit it in, but he has never seen the pants, never seen the gun,
4 and I don't know who has.

5 And if there is going to be a recreation that my
6 expert is not privy to, at that point I would think we need a
7 continuation.

8 *THE COURT:* Have you deposed their expert?

9 *MR. PHILLIPS:* I have, and the expert has not gotten
10 into any of that.

11 *THE COURT:* If he didn't get into it in his
12 deposition -- was there an expert report?

13 *MR. BRUCE JOLLY:* Yes.

14 *THE COURT:* And this recreation is not in the expert
15 report?

16 *MR. BRUCE JOLLY:* That is not.

17 *MS. BARRANCO:* We didn't use that expert for any
18 recreation for this.

19 *THE COURT:* So, that is not coming in for those
20 purposes. There is no recreation with the gun.

21 *MR. PHILLIPS:* If I am reading between the lines,
22 there is a non-retained expert that now is going to be a
23 backdoor expert.

24 *THE COURT:* Who is that. Who are you referring to?

25 *MR. PHILLIPS:* They said Lebeau was going to be

1 talking about it.

2 *MS. BARRANCO:* I'm sorry, I am confused myself.
3 Sergeant Lebeau is not an expert, wasn't retained as an expert.
4 He was a detective, now a sergeant at the Sheriff's Office. He
5 is familiar with the chain of custody of this weapon. And in
6 terms of any recreation, frankly, I wasn't intending on using
7 any expert to do that. It was, frankly, more of a
8 demonstrative aid to the jury using the physical evidence.

9 *THE COURT:* Okay, all right. I think I understand.

10 That is the only -- other than matters which you need
11 to file your response to, we will do an order so there is no
12 misunderstanding of what needs to be done as a result of our
13 conference here today. I will defer ruling on the use of the
14 gun as a demonstrative aid, and let you know what the ruling is
15 tomorrow, with the understanding that there is no expert
16 testifying about the recreation of anything that relates to the
17 gun, and nobody is going outside of what is already disclosed
18 in expert reports and expert depositions.

19 So, I haven't heard anything --

20 *MR. PHILLIPS:* We want to get the shorts back to use
21 in this case if they are going to use the gun. They are Mr.
22 Hill's shorts.

23 *MS. BARRANCO:* I offered -- a couple of days ago, I
24 offered to Plaintiff's counsel that, and the plan is for
25 Sergeant Lebeau to bring the box of physical evidence to the

1 courtroom, and I offered that certainly the Plaintiff is
2 welcome to use the physical evidence because, again, it is a
3 search for the truth, and the jury needs to see a piece of the
4 actual evidence.

5 *THE COURT:* When is he going to bring that? Can he
6 come tomorrow and bring it?

7 *MS. BARRANCO:* We can go that route. My thought was
8 he was going to come next week.

9 *THE COURT:* Do you want any of that evidence for
10 tomorrow? Do you need it for tomorrow?

11 *MR. PHILLIPS:* I need to talk to Mr. Bedard tonight.

12 *THE COURT:* Why don't you stay in touch with Ms.
13 Barranco, and if you want it here tomorrow, then she will make
14 arrangements to have it brought tomorrow.

15 *MR. PHILLIPS:* Not to further exasperate the
16 exasperated, based on the rulings today, we reserve to have a
17 few more questions of Ms. Bryant on the alcohol, based on your
18 rulings.

19 *THE COURT:* Before you turn it over for
20 cross-examination?

21 *MR. PHILLIPS:* Yes.

22 *THE COURT:* Yes, if you need more time on direct, yes,
23 you may.

24 *MR. PHILLIPS:* Thank you.

25 *THE COURT:* All right. We are going to lock the door.

1 Anything that is in the room will stay in the room
2 overnight, you won't have access to it until 15 minutes before
3 9:00 -- 8:30. We'll open the courtroom at 8:30. We will have
4 you back at 8:30 with the jury commencing at 9:00. We'll pick
5 up at 9:00 and make sure all of the technology is set up
6 properly for the video appearance.

7 MR. PHILLIPS: Thank you.

8 THE COURT: Have a nice evening.

9 * * *

10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above matter.

12

13 Date: June 28, 2018

14 /s/ Pauline A. Stipes, Official Federal Reporter

15 Signature of Court Reporter

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 3

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

**SUMMER M. BARRANCO
Florida Bar No. 984663
GREGORY J. JOLLY
Florida Bar No. 118287
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 18, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 2

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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NATASHIA D. HINES, ESQ.
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 Official Federal Reporter
 7 HON. ROBIN L. ROSENBERG

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EXHIBITS

	<u>I.D.</u>	<u>Received</u>
Plaintiff Exhibit 141		Page 9
Plaintiff Exhibit 124		Page 41
Plaintiff Exhibit 22	Page 113	
Plaintiff Exhibit 7		Page 195
Plaintiff Exhibits 92, 94, 98, 104		Page 196
Plaintiff Exhibit 33		Page 228
Defense Exhibit 352		Page 82
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1 *THE COURT:* Okay, good morning, you may be seated.

2 *MR. PHILLIPS:* Good morning.

3 *MS. BARRANCO:* Good morning.

4 *THE COURT:* We do have the jury here and we have the
5 technology set up.

6 Can you remind me the name of the witness so I can
7 tell the jury, who is appearing by video?

8 *MR. PHILLIPS:* Stephanie Mills, and she has gotten
9 married, it is S-C-H-E-U-T-Z.

10 *THE COURT:* Okay, Scheutz.

11 *MR. PHILLIPS:* I think so.

12 *THE COURT:* She is appearing live?

13 *MR. PHILLIPS:* She is in a court reporter's office in
14 Tampa.

15 *THE COURT:* Okay. And we have Ricardo here.

16 *MS. BARRANCO:* Your Honor, I'm sorry, I had one brief
17 thing I wanted to put on the record, if I could, in regard to
18 something that happened yesterday.

19 Plaintiff's counsel read into the record deposition
20 designations of Lizabeth Ruiz, and I want the record to be
21 noted, and we mentioned this to Plaintiff's counsel yesterday,
22 I am not suggesting it was intentional, but there was a small
23 portion of Ms. Ruiz' deposition that was read into the record
24 that counsel had agreed that the Plaintiff was going to
25 withdraw that few sentences, and they ended up reading it

1 anyway. For the record, it was at deposition page 37, lines 17
2 through 25.

3 *THE COURT:* Okay.

4 *MS. BARRANCO:* We didn't mention it during -- frankly,
5 we didn't notice until halfway through, and we didn't want to
6 call attention to it. My main purpose to bring it to the
7 Court's attention is that for the remainder of the trial, we
8 ask that they please double check before they just read
9 something that shouldn't have been read, number one; and number
10 two, the reference in that particular designation mentioned
11 asking the witness if they ever felt threatened by anybody at
12 that house before.

13 I want to make sure the Plaintiff's lawyer doesn't
14 include that in any questions or arguments henceforth. We had
15 an agreement that wasn't going to come in.

16 *THE COURT:* Okay. The Plaintiff agrees to that?

17 *MR. PHILLIPS:* Yes, Your Honor.

18 *THE COURT:* Is there any other request Defense is
19 making in light of that?

20 *MS. BARRANCO:* No, I don't want to draw attention to
21 it. If there was any instruction to the jury, it probably
22 would bring more attention than it is worth.

23 *THE COURT:* All right.

24 So, then, with that, we will bring our jury in.

25 *(Thereupon, the jury returns to the courtroom.)*

1 across the street from F. K. Sweet?

2 A. Yes.

3 Q. Where do you currently live?

4 A. Sarasota, Florida.

5 Q. Tell the jury about yourself.

6 A. Um-m-m, I am a mother of two -- can you hear me?

7 Q. Yes.

8 A. I am a mother of two. I am the CEO of a clothing company
9 for traveling apparel. I am married. That is really --

10 Q. Okay. Where did you live in 2014?

11 A. I lived in Port St. Lucie, Florida.

12 Q. And who attended Francis K. Sweet at that time?

13 A. My son, and my nieces as well.

14 Q. Can you give us -- I don't necessarily need their names,
15 can you give me the grades they were in?

16 A. Um-m-m, at the time, I want to say first grade.

17 Q. Okay.

18 A. My son was seven, so --

19 Q. Did you have the opportunity to review anything before -- I
20 say before you came to court, but before you came to your
21 testimony today?

22 A. I got to scan over -- I have the papers right here.

23 Q. Okay. To give the jury some understanding of your -- not
24 necessarily your role in this, but how often you have given
25 statements, or when you first gave statements, I want to go

1 there. When did you first give a statement about what you saw
2 and/or heard on January 14, 2014?

3 A. I'm not sure officially. I know that I spoke to someone on
4 the phone after the incident, I would say. I got a phone call
5 to my phone.

6 Q. Okay.

7 A. Probably within, you know, within the week, I would say at
8 this point, it seems pretty close thereafter.

9 Q. Was that by Port St. Lucie Sheriff's Office?

10 A. I believe so, if I remember correctly.

11 Q. Did you ultimately give a statement or walk through in
12 2014, do you recall?

13 A. I believe I did on the phone.

14 Q. Okay. And ultimately, you had your deposition taken in
15 this case; is that correct?

16 A. Yes. Yes.

17 Q. Okay. You reviewed that deposition before today?

18 A. Yes.

19 Q. Do you have --

20 A. A little bit.

21 Q. Do you have it with you?

22 A. Yes.

23 Q. Tell us -- we can all figure it out. Tell us why you were
24 going to Francis K. Sweet on January 14, 2014.

25 A. I was going to pick up my son and nieces from school.

1 Q. Tell us the process, what your typical -- I assume you had
2 done that before January 14th?

3 A. Yes.

4 Q. Tell us your usual process, not what happened on
5 January 14th, but tell us what you usually did when you went to
6 pick up your child or nieces or whomever.

7 A. I would just make the loop around the car line. I would
8 come from my house or -- I was working at the hospital there in
9 Ft. Pierce, at Lawnwood, so sometimes I would come from there
10 and so I would make a left into the car line, loop around, and
11 then pick them up. They all kind of up line up outside, and I
12 would pick them up and then leave.

13 MR. PHILLIPS: Your Honor, I would like to show the
14 witness, if this is possible, Plaintiff's premarked Exhibit
15 141, a photograph, aerial photograph, Google aerial photograph
16 of the location. There is no known objection to this exhibit.

17 THE COURT: Any objection to 141?

18 MS. BARRANCO: No, your Honor.

19 THE COURT: 141 is admitted without objection.

20 (Whereupon Plaintiff's Exhibit 141 was marked for evidence)

21 BY MR. PHILLIPS:

22 Q. Were there any photos attached to your deposition, do you
23 recall?

24 A. I have my phone, if you want me to double check.

25 Q. That is okay. You talked about the loop. Where is this

1 loop you have to go through in relation to the house where this
2 occurred?

3 A. I recall it being across the street from the car line.

4 Q. Okay. Let's go to January 14, 2014.

5 How was this day different than your usual day as you
6 arrived?

7 A. When I arrived, there was really loud music playing, so
8 that would be the first thing that was different. The rest
9 would be --

10 Q. The rest --

11 A. Would be what happened.

12 Q. Do you recall whether it was Drake?

13 A. Yes.

14 Q. It was Drake?

15 A. Yes.

16 Q. Do you recall the name of the song? Was it All Me?

17 A. I don't recall the name of the song.

18 Q. Were you familiar with the song before that day?

19 A. Yes.

20 Q. Okay. And is it fair to say that there was foul language
21 in that song?

22 A. Yes. It wasn't the version that would be playing on the
23 radio.

24 Q. Fair enough. Fair enough. And so, who did you call after
25 hearing that music?

1 A. I called my sister.

2 Q. And why did you call your sister?

3 A. Um-m-m, I was just upset that it was so loud with all of
4 the kids lined up outside just plain as day able to hear it, so
5 I called my sister to see what I should do, if that was kind of
6 a good reason to call the police. I wasn't sure what to do
7 about the situation.

8 Q. And who did you call next?

9 A. I called 911.

10 Q. Okay. And I think we know why. Why did you call 911?

11 A. Because there was loud profanity playing where
12 kindergarteners were lining up.

13 Q. How long after you called 911 did you see a marked police
14 car arrive, approximately?

15 A. Um-m-m, well, I called when I was getting into the car
16 line, and they were arriving as I was getting out of the car
17 line. I had the kids in the car when they were arriving.

18 Q. So, where --

19 A. So --

20 Q. Where in the loop do the kids get in the car? Is your car
21 facing -- the front windshield, would that be facing away from
22 the house where this happened, parallel, perpendicular to the
23 house where this happened, or in the direction of the
24 windshield would be in the direction of where this happened?

25 A. It would be perpen- -- when the kids get in the car is when

1 I was facing the house head on, yes.

2 Q. Okay. So, did you see this incident from the time that the
3 cops arrived to the time gunshots were fired?

4 A. I don't recall seeing them get like out of their vehicles.

5 Q. Okay.

6 A. I recall seeing them coming around the house at this point.

7 Q. Okay. What do you mean, coming around the house?

8 A. Going towards the garage.

9 Q. Did either of the police officers that you recall leave
10 your side or go around the side of the house or the back of the
11 house at any point?

12 A. I'm not sure, I can't say. I was -- I had all of the kids
13 in the car and I wouldn't say that for sure, I wasn't just very
14 focused on them at that point.

15 Q. Fair enough. What did the police do the first time you saw
16 them? Just walk us through what you saw.

17 A. I recall them walking towards the garage where the music
18 was coming from.

19 Q. And what did they do next?

20 A. If I remember correctly, at that time the door -- the
21 garage door was shut and, I mean the next thing I remember at
22 this point is just the -- um-m-m, can I look at my notes again?

23 Q. Yes, if you need to refresh recollection from prior
24 statements made, you may.

25 A. Um-m-m, I mean, I guess, as I said before, then the garage

1 door was opened, and then it was very quickly closed, which I
2 never saw -- at that time I never saw anyone inside the garage,
3 but I do remember it looking like it was a pull garage, that is
4 really what I recall.

5 Q. As if it was manual? You said a pull --

6 A. Yes, that is what it seemed like to me, it just seemed like
7 it opened and closed very quickly, like someone did it.

8 Q. And then what happened?

9 A. I saw the police officer jump back and shoot into the
10 garage.

11 Q. What do you mean, jump back?

12 A. Like he was very surprised at what was behind the garage at
13 that time, which I could not see from my perspective.

14 Q. So, just to clarify, did you see anybody on the interior of
15 the house, meaning anybody on the inside of the garage door at
16 any point?

17 A. Not at that time. I don't recall if I saw them earlier,
18 when the music was playing, you know, in the beginning, but at
19 that point, I had not -- I could not see what was in the
20 garage.

21 Q. And therefore, for any instant during this, I think I know
22 the answer, but did you see anybody holding up a gun or -- from
23 inside the garage, holding up a gun or bringing the gun in the
24 direction of anybody outside the garage?

25 A. No. I couldn't see anyone from my angle at all. If there

1 was -- I could not see inside the garage and it was also -- it
2 happened very fast to where I -- at that time I sped my car
3 away, I wasn't looking at all.

4 Q. Certainly, certainly. When you saw the last seconds of
5 this before you sped out, where was your car situated?

6 A. Um-m-m, I was coming out of the car line, so, I would
7 normally go right out of the car line. At that time I sped
8 left trying not to pass by the house, so I was at the end of
9 the car line. If you see on the map there -- do you see the
10 loop, and kind of when you are at the intersection to turn back
11 on the road is where it was.

12 MR. PHILLIPS: Your Honor, may I publish the photo,
13 141, to the jury?

14 THE COURT: Yes.

15 MR. PHILLIPS: Can we switch?

16 BY MR. PHILLIPS:

17 Q. We can't see you now. So, we are looking at what seems to
18 be depicted as Francis K. Sweet school, and there is kind of a
19 long U-turn, long parking area, and it has kind of like a
20 U-turn next to the school. Is that where you were?

21 A. Yes.

22 Q. And then the stop sign where you would have been when you
23 saw this, tell us where that was again, please.

24 A. It was closest to -- the line closest to the school where
25 all the kids would line up, where there is benches there.

1 Q. And instead of turning -- if you turned right you would
2 have had to cross in front of that house?

3 A. I believe so, because I went left that day, and that is not
4 what I would normally do.

5 Q. Okay. Bear with me.

6 Did you hear anything, any shouting, any words coming from
7 anybody at that house?

8 A. Not that I recall. I also, you know, at that time, was
9 just trying to get out of there, I would say.

10 Q. How quickly did all of this happen?

11 A. Um-m-m, it seemed to happen very quickly from my
12 perspective.

13 I wasn't expecting that to happen that day, obviously, so,
14 I just tried to get out of the situation as fast as possible.

15 Q. Thank you so much, ma'am.

16 MR. PHILLIPS: No further questions.

17 THE COURT: Nothing further, okay. One moment. Any
18 cross-examination?

19 MS. BARRANCO: Yes, your Honor, thank you.

20 **CROSS-EXAMINATION**

21 BY MS. BARRANCO:

22 Q. Good morning, Ms. Scheutz now?

23 A. Yes, Scheutz.

24 Q. Good morning. I remember last team I met you, you were
25 Ms. Mills.

1 A. Yes, yes.

2 Q. Can you see me okay?

3 A. Yes.

4 Q. And just so you know, my name is Summer Barranco. We met
5 once before during your deposition; is that right?

6 A. Yes.

7 Q. Do you remember that? I know it has been a little while.

8 A. Yes.

9 Q. Okay. Now, I know I can't show you anything so bear with
10 me.

11 Based on your earlier testimony, I just wanted to clarify
12 some things with you.

13 So, on this particular day, January 14, 2014, do you
14 remember about what time it was that you would have gone to
15 Francis K. Sweet to pick up your son and your nieces?

16 A. It was, um-m-m -- whatever time the school gets out is what
17 time I went.

18 Q. Okay. Do you think it was sometime after 3:00 p.m.?

19 A. I would -- yes, I would assume it was around 3:00. That
20 was pretty standard time.

21 Q. And what kind of car were you in?

22 A. I believe I was in a Toyota Corolla.

23 Q. And do you recall if your windows were up or down on your
24 car?

25 A. I don't recall.

1 Q. Do you remember if you had your air conditioning on?

2 A. I don't recall at this time.

3 Q. And do you remember if you had the radio on in your car?

4 A. I don't know.

5 Q. I know it has been more than four years, so, I understand.

6 I just needed to ask to see what your memory was about that.

7 A. Yes.

8 Q. Now, let me ask you -- and I know Plaintiff's counsel asked
9 you what you typically did, but I want to focus on what you
10 recall doing on this particular day, and I know I can't show
11 you the map so you can see it, but do you recall that the house
12 that you heard this loud obscene music coming from was located
13 on Avenue Q?

14 A. If that is the name of the street that you would pull out
15 on to after, yes.

16 Q. Okay.

17 A. Again, I am not -- I am sorry.

18 Q. Go ahead, finish.

19 A. Oh. So, I am not sure if that was the actual address of
20 the house just because there were a lot of other small streets,
21 so I am not sure if the garage was on this side. Does that
22 make sense? If that is the address of the house.

23 Q. Let's just assume -- I can submit to you the testimony thus
24 far in this case is that that street that goes between Francis
25 K. Sweet Elementary School and the subject location where this

1 incident happened was Avenue Q. Let's work with that
2 assumption, that was Avenue Q.

3 Did you typically -- let me restate it.

4 On this particular day when you were going to the school
5 did, you come from the west on Avenue Q to approach the school
6 and turn into the parent pickup line?

7 A. I am not sure if it was west. I know I turned into the
8 parent pickup line, I made a left into the parent pickup line.

9 Q. On your way into the parent pickup line, did your car have
10 to travel in front of the subject location where this incident
11 happened, where you heard the loud music was coming from?

12 A. I believe so.

13 Q. You believe so?

14 A. As far as I know, yes.

15 Q. Now, when you first got to the school, were there other
16 cars in line to pick up children?

17 A. Yes, many, there were many cars in line.

18 Q. Do you recall whether that caused the line to basically
19 back out from the school driveway into and on to Avenue Q?

20 A. That was very typical --

21 Q. Okay.

22 A. -- of a day. Yes, I would assume so. That was the norm
23 for the car line, depending on what time I got there.

24 Q. Okay. So, as you are in the car line, can you tell us
25 approximately where your car was when you first heard this loud

1 music that you said would not have been clear to play on the
2 radio?

3 A. Um-m-m, I believe I was on Avenue Q, I hadn't yet turned
4 into the car line.

5 Q. And when you first heard this music, do you know if the
6 garage door was open or closed?

7 A. It was open at that time.

8 Q. Okay. And I know you were asked generally about this
9 music, but do you remember -- you don't necessarily have to say
10 the full word if you are not comfortable. Do you recall any of
11 the words in particular you found to be offensive?

12 A. Um-m-m, yes, there was the F word, that is what -- when I
13 got upset that that was happening.

14 Q. Did you just hear the F word one time?

15 A. I don't recall if I heard it one time.

16 Q. Do you remember any other words that you heard that you
17 were upset by coming from that music?

18 A. Not at this time.

19 Q. Four years ago?

20 A. Yes. Whatever -- if you guys have the exact song from when
21 it happened, I mean you can look up the lyrics, I guess.

22 Q. Okay. Well, would you agree with me -- I don't want to
23 butcher your name. Ms. Scheutz?

24 A. Yes.

25 Q. -- that the music was such that you felt compelled to first

1 call your sister, as you told us, to ask her whether she
2 thought it would be appropriate for you to call the police
3 about it?

4 A. Correct.

5 Q. And then you actually did call 911 about this music,
6 correct?

7 A. Correct.

8 Q. Now, again, I apologize, I am not able to show you a map of
9 the area, but I know you told us in your direct examination
10 that when you first called 911, you were entering, I guess,
11 into the school parking lot, you were going on the -- into the
12 school in the parent pickup line, and you saw the police
13 arriving as you were leaving; is that right?

14 A. Correct.

15 Q. When you are first going into the school driveway for the
16 parent pickup line you mentioned something about children and
17 benches?

18 A. Yes.

19 Q. When you are driving your car through the parent pickup
20 line, do the cars line up in front of where the children are
21 seated on the benches?

22 A. Yes.

23 Q. And is that how you would eventually move up to the area
24 where the kids you were picking up would be and they would get
25 into your car?

1 A. Yes.

2 Q. Likewise, were other parents and caretakers pulling their
3 cars up along the curb where the benches were and apparently
4 doors were opening up on the cars and kids going in?

5 A. Yes.

6 Q. Besides children -- let me ask you, do you remember how
7 many kids are out there?

8 A. I don't. It's a lot of kids. I don't recall how many.

9 Q. Besides the kids, do you remember seeing anybody else out
10 there?

11 A. The teachers are out with them.

12 Q. Are the teachers assisting in the loading process of the
13 children into the cars?

14 A. Yes, typically, yes.

15 Q. Okay. So, on this particular day you enter the school
16 property in this parent pickup line, and obviously did pick up
17 your son and nieces; is that right?

18 A. Yes.

19 Q. And am I correct that the parent pickup line kind of loops
20 around and then heads back towards Avenue Q?

21 A. Yes.

22 Q. And would you agree with me that when you are first going
23 into the parent pickup line on the school property you are
24 headed away from the house where this incident happened?

25 A. Yes.

1 Q. And then when you loop back around and you start going
2 toward the exit of the school property, you are actually headed
3 back towards this house?

4 A. Yes.

5 Q. Okay. So, then you make this loop after you pick up the
6 kids and started to proceed towards the exit on the school
7 property; is that right?

8 A. Yes.

9 Q. And you mentioned to us there was a stop sign there located
10 at the exit of the parent pickup line and Avenue Q; is that
11 right?

12 A. Yes.

13 Q. And did you stop at the stop sign?

14 A. Yes.

15 Q. And had the shooting happened before you stopped at the
16 stop sign, do you remember?

17 A. I don't believe so. From what I recall, it happened when I
18 was stopped at the stop sign.

19 Q. Okay. Now, I recall in looking at this loop that you had
20 advised us -- and I understood it from your earlier testimony,
21 but I was present with you before when you showed us on a map.
22 Is it correct that even in this loop, even though there is a
23 loop on the map, you actually double back in the first bay
24 closest to the bench in the school; is that right?

25 You don't go around in the other parking lot where there is

1 a stop sign farther away from the school. Am I remembering
2 that correctly?

3 A. I am not sure I am understanding what.

4 *THE COURT:* Is there no way to show her the exhibit?

5 *MS. BARRANCO:* That is what I understand, your Honor.

6 *THE COURT:* How is that? If the witness can see the
7 attorney, is there a way she could see the exhibit?

8 *THE TECHNICIAN:* Your Honor, we could get in contact
9 with the person on the other side.

10 *THE COURT:* She could see her face. Can you hold it
11 up?

12 *MS. BARRANCO:* Maybe I could hold it up for her to see
13 if she could see it.

14 *THE TECHNICIAN:* You can try that.

15 *THE COURT:* You are talking about 141.

16 *THE WITNESS:* I am going to get up and get closer to
17 the TV so I can see better.

18 *BY MS. BARRANCO:*

19 Q. Sure. I am not sure what you can see. Tell me when and I
20 will hold it up as best I can.

21 A. Okay, you can put it up.

22 Q. Can you see the picture?

23 A. No.

24 Q. Because it is too far away?

25 A. If you bring it up above your head and turn it to the -- if

1 you point her to the camera.

2 *THE TECHNICIAN:* Come closer.

3 *THE WITNESS:* It is too far away.

4 *THE COURT:* Can the attorney walk closer to the
5 camera, would that help?

6 Maybe take a picture of it and sending it to her. Why
7 don't do you that, and why don't you publish the exhibit. It
8 seems like your testimony -- the testimony and question is
9 confusing because she doesn't have the benefit of the map.

10 *THE WITNESS:* Yes, and it could be emailed here, also.

11 *THE COURT:* They are taking a picture of it now.

12 *THE WITNESS:* And then send it to my phone.

13 *THE COURT:* They are going to do it right now.

14 *THE WITNESS:* Okay, I have it.

15 *MS. BARRANCO:* Technology is a beautiful thing
16 sometimes.

17 *THE COURT:* Sometimes.

18 *THE WITNESS:* Okay. Can you repeat your --

19 *MS. BARRANCO:* Absolutely. Your Honor, am I able,
20 with your indulgence -- this might be hard to do. I want to be
21 able to show the jury what I am showing the witness or what I
22 am saying --

23 *THE COURTROOM DEPUTY:* You can put it on there, and we
24 just won't see her while you are doing it.

25 *THE COURT:* So the jury has it, I have it, and the

1 witness should have it, although the jury is not going to see
2 the witness, so you know that.

3 MS. BARRANCO: I understand. She is not going to
4 point to the picture anyway. I will try to point as I explain.

5 THE COURT: All right.

6 BY MS. BARRANCO:

7 Q. Let me know when you have the picture in front of you.

8 A. I am ready.

9 Q. I will start again.

10 Do you see where Avenue Q is written on this picture?

11 A. Yes, in the middle.

12 Q. And so what we were talking about earlier, would you agree,
13 is this street that runs between Francis K. Sweet Elementary
14 School? I am showing this big gray building here on the upper
15 right-hand side of the picture, and there is a little pin drop
16 from this Google map here, and I am showing it to the jury
17 where it is a white circle.

18 And I will let you know that that is my understanding of
19 where the subject incident occurred. Is that accurate?

20 A. From what I recall, yes. I agree with that.

21 Q. And that is to kind of get the layout of this picture.

22 Now, I was asking you earlier, you were traveling up Avenue
23 Q on your way to the school and you would have turned in, made
24 a left in front of where the parent pickup line begins and the
25 kids are sitting out on the benches.

1 Do you see the -- the loop area, but the first driveway in
2 closest to the school parent pickup bench area?

3 Do you understand the area I am referring to?

4 A. Yes.

5 Q. So, now that you have the benefit of the picture --

6 A. Yes.

7 Q. -- how far toward the top of this picture would you have
8 gone to pick up your son and nieces? Would you go up to the
9 extreme top where you see the loop coming back around or before
10 that?

11 A. Yes, I would actually enter from that first -- you go all
12 the way around the loop.

13 I would enter coming from -- I don't know what other
14 intersection that is, where 16th Street is, coming from that
15 way on Avenue Q, I would make the first left into the car line,
16 and I pick the kids up at the end of the car line.

17 Q. Would you turn in -- I am looking at the loop here in front
18 of the school, and there appears to be two driveways that open
19 up on to Avenue Q.

20 A. Yes.

21 Q. Would you have turned into the driveway closest to the
22 school or the one a little farther to the west of it?

23 A. The one a little farther is the entrance.

24 Q. You would have come in on the left-hand side of this loop
25 and travel around back out in the area closest to the school?

1 A. Yes.

2 Q. And stop at the stop sign there?

3 A. Yes.

4 Q. Okay. That is what I wanted to understand.

5 Was it at that stop sign that you then witnessed the
6 shooting at the subject house?

7 A. Yes.

8 Q. And the garage door area of the subject house, is that on
9 the end of the house farther from the school or closer to the
10 school?

11 A. I'm not positive. I think it was on -- from what I recall,
12 looking at the house to the right, like the right side of the
13 house. It was on the side facing Avenue Q, was where the
14 garage was, but I believe it was on the right side of the
15 house.

16 Q. Okay.

17 A. Yeah.

18 Q. If you are looking at it from the front of the house, it
19 would have been toward your right?

20 A. Yes, from what I recall.

21 Q. Thank you.

22 I will remove this exhibit so we can all see you again.

23 A. Okay.

24 Q. Can you see me all right?

25 A. I can see you, yes.

1 Q. All right. Thank you.

2 I just wanted to understand and so the jury can understand
3 exactly where you were located during this incident.

4 So, I think you told us that you never saw anyone in that
5 garage at the time of the shooting?

6 A. Right.

7 Q. Is that right?

8 A. Yes, I could not see into the garage.

9 Q. And you do remember seeing the police arriving as you were
10 on your way out of the school property?

11 A. Yes.

12 Q. Okay. They were in uniform?

13 A. Yes.

14 Q. And do you recall that one -- well, do you remember if they
15 were both male officers?

16 A. Yes, they were both male officers.

17 Q. Are you able to describe them in any other detail other
18 than they were both male officers?

19 A. One was older and one was younger, and that is -- that is
20 about all at this point that I can recall from what they looked
21 like.

22 Q. When you say one was older and one was younger, what do you
23 base that on?

24 A. Um-m-m, the way that they looked. It wasn't like, oh,
25 maybe one is older, and maybe one is younger.

1 One also -- the one who was older seemed to be walking in
2 front of the other one who was younger.

3 Q. Do you remember the color of either of the deputy's hair?

4 A. Not at this time, no, but I believe -- if I -- whatever I
5 said prior is accurate.

6 At this point, I just don't remember as clearly in my head
7 as I did over four years ago.

8 Q. Okay. As you described, it was the older deputy that you
9 ultimately saw shoot a firearm?

10 A. Yes.

11 Q. I know you mentioned you recall seeing the garage door
12 going up quickly?

13 A. Right.

14 Q. And also coming down quickly?

15 A. Yes.

16 Q. But at any point during that part of it, did you ever
17 remember seeing anybody inside the garage?

18 A. No.

19 Q. Do you recall that the garage -- when the door was opened,
20 that the garage inside appeared dark?

21 A. Um-m-m, I don't recall -- I don't recall if it was dark. I
22 know I couldn't see into it, I also wasn't really trying to.
23 And as you can see from my angle, I didn't have a straight
24 angle seeing inside of the garage at that time.

25 Q. Okay. Well, Ms. Scheutz, I know you said you had your

1 deposition there.

2 A. Yes, I do.

3 Q. I will ask you to look at it, and this is to simply refresh
4 your recollection. If you look at the bottom of page 28, I
5 don't want you to read it -- I don't want to you read it out
6 loud, I want you to read it to yourself.

7 Look at page 28 and start reading to yourself line 23, and
8 then until the top of page 29, line two, and I will ask you a
9 question about what it looked like inside again and see if it
10 refreshes your recollection.

11 A. Yes, if I said it looked dark, then it looked dark.

12 Q. So, in reading that part of the deposition, does this
13 refresh your memory that the inside of the garage looked dark
14 to you when you were there at the stop sign and witnessed what
15 you told us you witnessed?

16 A. Um-m-m, it just reminds me that that is what I said at the
17 time when it was closer to when it actually happened.

18 Q. Sure. And when you gave your deposition, you were under
19 oath, right?

20 A. Yes. Absolutely.

21 Q. And you told the truth?

22 A. Absolutely. I mean, I just think -- whatever I said back
23 when it was a closer time is absolutely the truth, I just can't
24 recall as easily now.

25 Q. I understand. I understand. I think you have been asked

1 earlier whether you saw a man with a gun in his hand inside
2 that garage.

3 Would it be safe for me to understand that you did not see
4 a gun in anyone's hand because you didn't see anybody in the
5 garage, right?

6 A. Correct.

7 Q. Now, you were asked earlier whether you heard the officer
8 say anything, and I think you told us that you didn't
9 specifically remember that?

10 A. Correct.

11 Q. When you were watching the events unfold at this house with
12 the deputies there and the garage door suddenly coming up, you
13 were facing the house; is that right?

14 A. Yes, I was -- on the map where I -- so, the house would
15 have been at an angle to me from that stop sign.

16 Q. Okay. And then, when the deputies that you saw, when they
17 were -- I think you mentioned the word startled, I think you
18 said one of the deputies was startled or jumped back?

19 A. Yes.

20 Q. And in what direction were the officers facing when that
21 was happening? Are they facing the house?

22 A. If I recall, they were facing the garage, yes.

23 Q. So they were facing the garage, so their backs would have
24 been to you; is that accurate?

25 A. It was more of like a side -- it was really -- I remember

1 it exactly how it is seen on the map where it was kind of -- I
2 couldn't see directly. It wasn't their backs, it was more of a
3 side view. If I saw their backs, I would assume I would be
4 able to see inside the garage, and I absolutely could not.

5 Q. But you were facing the house and garage, and they were
6 facing the house and garage ultimately?

7 A. Yes, yes.

8 MS. BARRANCO: Your Honor, may I have a moment?

9 THE COURT: Yes.

10 BY MS. BARRANCO:

11 Q. Ms. Scheutz, I have hopefully one followup question for
12 you.

13 You remember seeing one of the deputies was startled when
14 the garage door was going up?

15 A. Yes.

16 Q. Do you remember which of the two deputies you saw being
17 startled?

18 A. It was the older gentleman.

19 Q. Was that also the same deputy, as far as you know, who
20 fired his gun at the garage?

21 A. Yes.

22 Q. Okay. Or in the direction of the garage, I should say.

23 MS. BARRANCO: Thank you, no further questions.

24 THE COURT: Anything on redirect?

25 MR. PHILLIPS: Very brief, your Honor.

REDIRECT EXAMINATION

1
2 BY MR. PHILLIPS:

3 Q. Very brief followup, and you can go about your day. Thank
4 you again for your time.

5 Were there any questions asked by Ms. Barranco that changed
6 your opinions or how you answered when I was up here last?

7 A. No.

8 Q. When you saw this, is it fair to say you were stopped at
9 the stop sign across the street from Mr. Hill's house?

10 A. Yes. On the map it was exactly where -- it is the one --
11 let me pull the map back up -- the stop sign.

12 Q. The white bar -- is there a white line there?

13 A. Yes. The one closest to the school.

14 Q. Did you do anything to draw attention to the events to your
15 kids to teach them a lesson or to instruct them to watch this
16 to learn about law and order, the fact that you had called the
17 police?

18 MS. BARRANCO: Objection, your Honor, relevance.

19 THE COURT: Response.

20 MR. PHILLIPS: It goes to the fact that they were
21 paying particular attention to this for a reason.

22 THE COURT: Overruled. You may answer the question if
23 you are able to.

24 THE WITNESS: Yes, yes, I said this is the person, I
25 said they were playing really loud bad music, and the cops are

1 coming to tell them to stop.

2 There was no way in a million years I thought anything
3 like that was ever going to happen, obviously.

4 *BY MR. PHILLIPS:*

5 *Q.* Yes, ma'am. Very important question: When you saw the
6 officer jump back or be startled, or whatever it is you saw,
7 was it when the garage door was going up or coming down?

8 *A.* When -- I am not sure if the shot was fired and then it
9 came down, but that was what was happening at the same time. I
10 recall shots fired and that door -- it looked to me someone was
11 behind it pulling it. It might have been a really fast, you
12 know, automatic door.

13 *Q.* Okay. I don't want to put words in your mouth. Did the
14 officer seem to be startled by the door coming up or going
15 down?

16 *A.* Um-m-m, honestly, he seemed startled, but I don't know what
17 was in the garage. He seemed startled by whatever was in the
18 garage.

19 *MR. PHILLIPS:* Okay, thank you very much.

20 *THE COURT:* Okay. Thank you. That concludes
21 Ms. Scheutz' testimony. We'll disconnect the video at this
22 point.

23 Okay, thank you so much.

24 Who is the Plaintiff going to be calling next?

25 *MR. PHILLIPS:* Your Honor, we have two witnesses here,

1 or we could resume Ms. Bryant.

2 THE COURT: Yes, why don't we bring Ms. Bryant on the
3 stand.

4 I will remind you, Ms. Bryant, that you remain under
5 oath. The Plaintiff has a couple of more questions on direct
6 and then we will move into cross. You're still under oath.

7 You may proceed.

8 MS. HINES: Your Honor, I had no further questions for
9 the witness, Ms. Bryant.

10 THE COURT: All right. Thanks. Cross-examination,
11 then.

12 **CROSS-EXAMINATION**

13 BY MS. BARRANCO:

14 Q. Good morning, Ms. Bryant.

15 A. Good morning.

16 Q. All right. I just want to ask you a few followup
17 questions.

18 I know we heard from you yesterday, obviously we have all
19 slept on it. I am not sure you remember what you were asked
20 yesterday. I have some basic questions so the jury understands
21 who is who in this case in terms of the family ties.

22 Who is Terrica Davis?

23 A. His fiancée.

24 Q. Gregory Hill's?

25 A. Yes, ma'am.

1 Q. Was that the mother of Destiny and Aryanna?

2 A. Yes, ma'am.

3 Q. Okay. Now, was Terrica Davis also the mother of Gregory
4 Hill, III?

5 A. No, ma'am.

6 Q. Who is Gregory Hill, III's mother?

7 A. Melanie.

8 Q. What is her last name?

9 A. Wright.

10 Q. Is that W-R-I-G-H-T?

11 A. Yes, ma'am.

12 Q. Now, all three children of Mr. Hill's didn't live with Mr.
13 Hill full time; is that right?

14 A. The two did, the two girls. The boy, he would come over
15 often.

16 Q. But he generally lived with his mother, Melanie Wright; is
17 that correct?

18 A. Yes, ma'am.

19 *MS. BARRANCO:* Your Honor, may I have a moment?

20 *THE COURT:* Yes.

21 *MS. BARRANCO:* No further questions, thank you.

22 *THE COURT:* Anything on redirect?

23 *MS. HINES:* No, your Honor.

24 *THE COURT:* Thank you, Ms. Bryant, you may step down.

25 The Plaintiff may call your next witness.

1 Could you tell the jury what you recall about that day?

2 A. Um-m-m, at dismissal time, which would have been around
3 3:10, I walked my students out to the parent pickup area. I
4 was assisting students getting into their vehicles and I did
5 know there was some loud music playing that was coming from a
6 house across the street. The garage door was open. I
7 continued to assist students getting into vehicles.

8 At one point there was a lull, so I looked to the south end
9 of the parent pickup area, and I saw my principal, Mrs. Wright,
10 and I wanted to tell her about my luncheon I attended with the
11 superintendent that day, so I walked to the parent pickup area,
12 south end, and I was facing the house across the street,
13 talking to her. When I got down there, I noticed the garage
14 door was closed and I no longer heard any music playing.

15 At some point, I noticed a police car pull up in front of
16 the house and two officers had gotten out of the car and I
17 noticed that one of them went up to the door and forcefully
18 banged on the front door, and I could hear that from the
19 location that I was in.

20 Um-m-m, I said something to my principal such as this is
21 not good, and she tuned around, and then I saw -- I believe it
22 was at that time where I saw the garage door go up and I heard
23 pop, pop, pop and we tuned around and rushed the kids inside
24 the school.

25 Q. Okay, thank you.

1 You said you saw policemen. How many did you see?

2 A. I believe there was two.

3 Q. Can you describe them?

4 A. I can't. I can't recall what they looked like.

5 Q. Okay. About how long was it between when you saw the
6 policeman arrive and you heard the gun shots?

7 A. I don't recall the exact amount of time, but I know it
8 wasn't very long.

9 Q. And did you testify that the garage door was up when the
10 police arrived?

11 A. No. It was not up when the police arrived.

12 Q. Did you -- at any time when you were looking at the home,
13 did you see anyone inside the garage?

14 A. Initially, when I had go out to assist the kids with parent
15 pickup I heard the music and I looked over and I did see a
16 gentleman in the garage at that time. When I was at the south
17 end of the parent pickup line, I -- all I saw was a garage door
18 open and I saw legs, and that was it.

19 Q. Okay. I was going to ask you -- you said you saw a
20 gentleman behind the garage door. Could you describe what you
21 saw?

22 A. Initially, you are talking about?

23 Q. Yes.

24 A. Um-m-m, it was dark in there, he was -- I don't know how
25 tall he would be, I didn't really get to see features.

1 Q. Could you see his hands?

2 A. When he was in the garage?

3 Q. Yes, ma'am.

4 A. No.

5 Q. Okay, thank you.

6 Ms. McGuire, I would like to show you a photograph that was
7 previously attached to your deposition.

8 MS. HINES: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 MS. HINES: Thank you.

11 BY MS. HINES:

12 Q. Ms. McGuire, do you recognize this photograph?

13 A. I do.

14 Q. And can you --

15 MR. BRUCE JOLLY: Your Honor, what is the number of
16 the exhibit that the witness is being asked for ID?

17 MS. HINES: I apologize. For the record, this is
18 Plaintiff's Exhibit 124.

19 MR. BRUCE JOLLY: Thank you.

20 BY MS. HINES:

21 Q. Ms. McGuire, do you recognize the photograph?

22 A. I do.

23 Q. Can you please identify who is in the photograph?

24 A. That would be me standing there.

25 Q. Okay. There appears to be someone standing behind you. Do

1 you know who that is?

2 A. I believe that was somebody from the Sheriff's Department.

3 Q. And do you recall when this photograph would have been
4 taken?

5 A. That would be the next day, I believe, after the incident
6 occurred.

7 Q. Do you recall who took the photograph?

8 A. No.

9 MS. HINES: At this time, your Honor, we would like to
10 move Plaintiff's Exhibit 124 into evidence.

11 THE COURT: Any objection?

12 MS. BARRANCO: No, your Honor.

13 THE COURT: Okay, 124 is admitted without objection.

14 (Whereupon Plaintiff Exhibit 124 was marked for evidence.)

15 MS. HINES: Your Honor, may I publish the exhibit to
16 the jury?

17 BY MS. HINES:

18 Q. Ms. McGuire, would this have been your vantage point on the
19 day of this incident?

20 A. I believe it to be, yes.

21 Q. And the way that you are facing, the stop sign was there
22 right in front of you?

23 A. Uh-hum.

24 Q. And there is the house right behind that stop sign. Is
25 that the home where you saw the police officers arrive?

1 A. Yes.

2 Q. Okay, thank you.

3 Now, Ms. McGuire, you mentioned that the photograph was
4 taken pretty soon after the events. Did you also give a
5 statement?

6 A. I did.

7 Q. And who did you give the statement to?

8 A. The Sheriff's Department.

9 Q. Okay. And did you also give them a walk through?

10 A. Yes, that is what this was, a video walk through.

11 Q. Okay, all right.

12 MS. HINES: Your Honor, may I have a moment to confer?

13 THE COURT: Yes.

14 BY MS. HINES:

15 Q. Okay. Ms. McGuire, to further clarify on the photo, the
16 person taking the photograph is behind you, correct?

17 A. It looks to be that way.

18 Q. The vantage point where you were standing was even closer
19 than that?

20 A. Say that again.

21 Q. Then, from where the picture is taken, the person is
22 standing behind you?

23 A. Yes.

24 Q. You mentioned earlier that you heard one of the police
25 officers bang loudly. Did you hear any verbal commands?

1 A. I don't remember.

2 Q. Did the police cars have their sirens on?

3 A. No.

4 MS. HINES: Thank you, no further questions at this
5 time.

6 THE COURT: Any cross-examination?

7 MS. BARRANCO: Thank you, your Honor.

8 **CROSS-EXAMINATION**

9 BY MS. BARRANCO:

10 Q. Good morning, Ms. McGuire.

11 A. Good morning.

12 Q. Nice to have you live in the courtroom. We had a witness
13 on video, and we were struggling looking at the person.

14 How are you?

15 A. Good, thank you.

16 Q. We met before?

17 A. Yes.

18 Q. We took your deposition in the case?

19 A. Yes.

20 Q. We have got this photograph up here. Let me ask you
21 questions about that.

22 I think you already told us there were some Sheriff's
23 people out on the scene with you when this picture was taken;
24 is that right?

25 A. Yes.

1 Q. Did any of the Sheriff's people tell you what to say?

2 A. Oh, no.

3 Q. Now, do you know what time the bell rang at Francis K.
4 Sweet Elementary School back on January 14, 2014?

5 A. It probably had rung at 3:15, that is when it was scheduled
6 to ring.

7 Q. Sometime after 3:00 p.m.?

8 A. Yes.

9 Q. Before the bell rings, the younger children,
10 kindergarteners and first grade come out?

11 A. Yes.

12 Q. The bell rings and how many grades of children come out at
13 that point?

14 A. At the time, the fourth and fifth grade would have come out
15 about 3:15.

16 Q. I think you told us you were the third grade teacher?

17 A. Yes.

18 Q. What time would you come out?

19 A. It was about 3:10 when we came out there.

20 Q. When your class, third grade, came out, what other classes
21 had been let out?

22 A. Kindergarten, first and second grade.

23 Q. In those grades, how many classes of children in those
24 grades?

25 A. I am not sure. There is normally five or six classes for

1 each grade.

2 Q. How many children are in each class?

3 A. In the primary grades, it is supposed to be 18 for each
4 class.

5 Q. Primary?

6 A. K through -- primary is K through two, in third grade there
7 is a cap on size as well at 18.

8 Q. If we are going to give an approximation, we are talking
9 about six different classrooms of about 18 kids each being
10 released in that area prior to your class being released?

11 A. Probably, but not all kids are parent pickup.

12 Q. Okay.

13 A. The bus riders and walkers go to the east end of the school
14 and are dismissed at that time.

15 Q. Which is not on this picture?

16 A. No.

17 Q. The kids being picked up by a parent or caretaker, they
18 come out in this area, and would you agree the benches where
19 the children sit would be on the side of this picture where you
20 see this person standing in a dark shirt?

21 A. Correct, yes.

22 Q. And they would have been seated on those benches?

23 A. Correct.

24 Q. Now, when you saw what you saw, as you told us here today,
25 you would have been standing, not sitting; is that right?

1 A. Correct.

2 Q. Now, this particular picture we have for the jury's
3 benefit, do you see any cars -- other than the blue car, do you
4 see any cars in the parking lot there?

5 A. Not on that side of the parking lot, but on the other side
6 I see what looks like a Chrysler 3000 --

7 Q. This black car here?

8 A. Yes.

9 Q. You don't see any cars right directly in front of you?

10 A. No.

11 Q. Now, was this picture taken during parent pickup?

12 A. No.

13 Q. Do you remember what time of day this picture was taken?

14 A. I believe it was done before lunchtime.

15 Q. The kids were inside?

16 A. Correct.

17 Q. Hopefully paying attention and learning?

18 A. Hopefully.

19 Q. That is all you can do is hope. And let me -- so I
20 understand, if we were to be out there during parent pickup,
21 what would be different than what is shown in this Plaintiff's
22 Exhibit 124?

23 A. There would be a line of cars against that railing there.

24 Q. So I am going to show -- you mean this area here?

25 A. Correct.

1 Q. This line of cars?

2 A. Correct.

3 Q. Now, let me see if I understand. When the parents first
4 come into the parking lot to pick up their kids, are they
5 pulling in here or back over here where you see the Chrysler?

6 A. They are pulling in where the Chrysler is.

7 Q. They are going, I think that is a north bound direction?

8 A. Yes.

9 Q. And they are going to go off the photograph, but proceed
10 north and eventually come to the end and turn back around?

11 A. Correct.

12 Q. And then they are going to come pull up in front of the
13 curb area?

14 A. Correct.

15 Q. Is that where the parents physically pick up their
16 children?

17 A. We put them in the cars, the parents don't get out.

18 Q. When the parent pickup line is in progress, there are lots
19 of cars lined up along here in front of where you are standing
20 in this picture where there aren't any cars in this picture,
21 correct?

22 A. Correct.

23 Q. And would they also be stopped along this area in the
24 process of actually picking up the children?

25 A. Yes, and it runs pretty smoothly because there are so many

1 adults out there working and we know which kids go in the car,
2 so it is a constant stream of cars. And sometimes, like I said
3 earlier, there is a lull where you don't have the stream of
4 cars and a few come in.

5 Q. It just depends?

6 A. Depends, correct.

7 Q. Would you agree with me, though, that the earlier it is
8 after the bell rings, probably the more cars there would be?

9 A. Yes, I do agree with you on that.

10 Q. Okay. So, was that what was happening -- this line of
11 cars, parents picking up their kids, is that what was happening
12 when you witnessed the events that happened at the house?

13 A. Like I said, there was a lull at one time, that is why --
14 when I first walked out, where I walk out from the second grade
15 hallway, there was a lot of coverage there for teachers putting
16 kids in cars so I walked north to help in that area. When
17 there was a lull, I walked down to the south end to speak to my
18 principal.

19 Q. And her name is Juanita Wright?

20 A. Correct.

21 Q. I think you told us earlier that when you were speaking to
22 Ms. Wright, she was facing you?

23 A. Correct.

24 Q. And her back was to the house across the street?

25 A. Correct.

1 Q. You have a specific memory of that?

2 A. I do.

3 Q. Now --

4 MS. BARRANCO: Your Honor, I am not sure how this
5 works. If I ask her a question, would she be able to point to
6 the exhibit so she sees it?

7 THE COURT: You can ask her to come down and
8 demonstrate that.

9 MS. BARRANCO: In all of the discussion I forgot what
10 I was going to specifically ask her. Let me get back to that.

11 BY MS. BARRANCO:

12 Q. Ms. McGuire, were you in the same approximate location that
13 we see in Plaintiff's Exhibit 124 when you first heard the loud
14 music coming from the house?

15 A. No.

16 Q. Where were you?

17 A. I was a little further north.

18 Q. So, were you farther away from the house?

19 A. Yes.

20 Q. So, you were farther away from the house when you first
21 heard this loud music?

22 A. Correct.

23 Q. Could you make out any of the lyrics of the music?

24 A. No. I know the genre because of the beats, I didn't hear
25 any lyrics.

1 Q. What do you remember the genre of the beats?

2 A. I considered it rap because of the beats.

3 Q. The beat that you heard?

4 A. Yes.

5 Q. When you were in the area and the parent pickup is going
6 on, does it get pretty noisy out there?

7 A. Yes, it can, with the kids.

8 Q. The kids chattering, car engines going and coming?

9 A. Yes.

10 Q. Parents, teachers talking?

11 A. Yes.

12 Q. A lot going on when you are out there?

13 A. Correct.

14 Q. Now, you mentioned you saw the police arrive, and same
15 question as before, does this photograph that we are looking at
16 here, Plaintiffs 124, does that accurately represent where you
17 were standing when you saw the police arrive?

18 A. I believe so.

19 Q. Or were you somewhere else, if you remember?

20 A. I could have been a little closer. Like I said, I don't
21 remember. I know I was at the south end because that is where
22 Mrs. Wright was.

23 Q. Does this picture depict you at the south end as you
24 describe it?

25 A. Yes.

1 Q. Now, do you have any particular memory of where -- let me
2 first ask you, did you back then have a student by the name of
3 Destiny Hill?

4 A. Yes.

5 Q. Do you remember Destiny Hill, where she was on this day?

6 A. She was sitting on a bench.

7 Q. Do you recall where?

8 A. In the south end of the parent pickup line. That is where
9 the third grade usually sat.

10 Q. In the general area of where you are standing here?

11 A. Yes.

12 Q. If she was seated at a bench, would you agree she was
13 farther from the curb area?

14 A. Yes, a little bit farther, the sidewalk.

15 Q. Sitting on the bench, not standing up by the rail?

16 A. Correct.

17 Q. So, did you ever hear the deputies knock on the door of the
18 garage at all?

19 A. I don't recall that, I just heard the forceful bang on the
20 front door.

21 Q. You remember a forceful bang on the front door?

22 A. Yes, I heard the bang.

23 Q. Could you tell what made the forceful bang?

24 A. I saw the deputy do this (indicating) on the door.

25 Q. For the record, tell me what you are doing.

1 A. Using the fists on the door.

2 Q. Would that be the front of the house, the front door or the
3 garage door?

4 A. The front door.

5 Q. In this picture can you see the front door?

6 A. Yes.

7 Q. I see the stop sign next to the pole that has number 2.
8 Would the front door be to the right or left?

9 A. To the right.

10 Q. You were able to see the front door?

11 A. Yes.

12 Q. When I look at the picture, I am not seeing the front door,
13 maybe because I don't know what it looks like. There is a car
14 on Avenue Q?

15 A. It is right behind that car, a brown door.

16 Q. On the other side of where your head is in this picture?

17 A. To the left of my head.

18 Q. The dark rectangle there?

19 A. It's to the right of the palm tree and behind the -- you
20 have a glare on this one.

21 Q. I am trying to fix the glare problem.

22 *THE JUROR:* There you go.

23 *BY MS. BARRANCO:*

24 Q. Are you talking about this area here?

25 A. Yes. Go a little bit to the right. Right there.

1 Q. Right here (indicating) that is the front door?

2 A. Yes.

3 Q. That is where you said you saw the deputy forcefully
4 banging on the front door?

5 A. Yes.

6 Q. And then, can you tell us what you remember the deputies
7 doing, if anything?

8 A. After the bang, they ran over to the garage door, the
9 garage door was lifting.

10 Q. This area here? (Indicating)

11 A. Yes.

12 Q. Is this where your vantage point would have been for these
13 events?

14 A. Yes.

15 Q. Would there be some cars traveling through this area that
16 is not on the photograph?

17 A. That is possible.

18 Q. And you said you saw the garage door go up?

19 A. Yes.

20 Q. Do you recall the speed at which the garage door went up?

21 A. Well, it went -- I would say slowly, it didn't go very
22 high. I only saw legs, and then it went down.

23 Q. Okay. Now, during this time, were you also watching your
24 children and the cars that you were dealing with?

25 A. At that time, I must not have been putting them in the car

1 because I was able to see what was going on.

2 Q. Well, it sounds like you are not a hundred percent sure.

3 You said I am not a hundred percent --

4 A. I wasn't putting anybody in a vehicle, I was standing there
5 watching what was going on.

6 Q. You recall the garage door going up and you saw some legs?

7 A. Yes.

8 Q. Were you able to see more than that?

9 A. No.

10 Q. Do you remember what you saw the deputies do next?

11 A. When the garage door went down, I just heard the pops, and
12 that is when me and my colleagues started getting the kids into
13 that doorway, getting them inside the building.

14 Q. Now, Ms. McGuire, you said something about -- let me reask
15 it.

16 What is the highest you remember seeing the garage door go
17 and what is the highest point of the body you saw inside the
18 garage?

19 A. At this time, I only saw like maybe right before the knee
20 or something. I didn't see like a torso.

21 Q. Do you remember seeing above the waist?

22 A. No.

23 Q. Do you remember giving a deposition back in October 2016?

24 A. Yes.

25 Q. You don't have a copy of your deposition up there, do you?

1 A. No, I don't.

2 MS. BARRANCO: Your Honor, may I approach the witness?

3 THE COURT: Yes. If you want to let counsel know page
4 and line.

5 BY MS. BARRANCO:

6 Q. I will ask you, Ms. McGuire, to read it to yourself to see
7 if it refreshes your memory at all, page six of your
8 deposition, lines 15 through 21.

9 MS. BARRANCO: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MS. BARRANCO:

12 Q. Just to show you what I am handing you.

13 A. Okay.

14 Q. I will flip it to the page, I will tell you what page and
15 line. This is to read to yourself.

16 A. Okay.

17 Q. I want to see if it refreshes your memory at all. For the
18 record, page six, lines 15 through 21. Read that to yourself,
19 Ms. McGuire.

20 Does that refresh your memory at all?

21 A. Yes.

22 MS. BARRANCO: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MS. BARRANCO:

25 Q. Does that refresh your memory, Ms. McGuire, that you

1 testified, when you were asked how much of this person inside
2 the garage you saw, you didn't see the person's face, but you
3 said maybe above the waist a little bit? Do you remember
4 saying that?

5 A. Yes.

6 Q. You were under oath when you gave this deposition?

7 A. Correct, yes.

8 Q. You were telling the truth?

9 A. Correct.

10 Q. So, is it perhaps the passage of time has kind of worn your
11 memory a bit?

12 A. Yes, it has been four years.

13 Q. Obviously this incident was unexpected?

14 A. Yes.

15 Q. You weren't expected to witness what you saw, right?

16 A. Right.

17 Q. As soon as you heard these pops, you go into guardian mode
18 with the children, you are getting them inside?

19 A. Yes.

20 Q. And what happened at the school once the gun shots went
21 off?

22 A. We were on complete lockdown, so we moved the kids into a
23 classroom so they weren't in the hallway.

24 Q. Is there a name for that, accompanied or something?

25 A. I think Code Red -- I don't even know if it is Code Red.

1 It might be Code Blue.

2 Q. If I tell you it is Code Red from what I understood --

3 A. It could be, yes.

4 Q. So all the kids, you immediately brought them inside?

5 A. Yes.

6 Q. Would that have included Destiny Hill?

7 A. Yes.

8 Q. Do you know if Juanita Wright, as the principal, if she
9 might have been outside longer than the other folks?

10 A. I don't recall.

11 Q. You don't remember, you were busy getting the kids inside?

12 A. Correct.

13 MS. BARRANCO: Your Honor, if I may have a minute?

14 THE COURT: Yes.

15 MS. BARRANCO: Thank you.

16 BY MS. BARRANCO:

17 Q. Now, I know you told us that Destiny Hill was one of your
18 students back then?

19 A. Correct.

20 Q. Do you remember who would typically pick up Destiny from
21 the school?

22 A. I usually saw mom a lot.

23 Q. Do you remember her name?

24 A. Ms. Davis.

25 Q. Did you ever see Destiny's father pick her up from school?

1 A. I believe on one occasion he had come to pick her up, he
2 walked up to the parent pickup line and got her.

3 Q. And did you ever meet Destiny's father?

4 A. I don't recall meeting him.

5 Q. Did you know his name?

6 A. Yes.

7 Q. What was his name?

8 A. Gregory Hill.

9 Q. You remember Ms. Davis?

10 A. Yes.

11 Q. When did you ever see Ms. Davis?

12 A. Um-m-m, we would have conferences, Ms. Davis would come in
13 for lunch, she would just pick her up, drop her off. Just
14 any -- I mean, just any time she could come in.

15 Q. Now, if there were any consultations that needed to take
16 place in regard to Destiny, was it her mom that would come to
17 consult with you?

18 A. Yes.

19 Q. During any of those visits, did you remember Mr. Hill
20 coming for those consultations?

21 A. I don't recall.

22 MS. BARRANCO: Thank you, no further questions.

23 THE COURT: Anything on redirect?

24 MS. HINES: Yes, your Honor.

25 **REDIRECT EXAMINATION**

1 BY MS. HINES:

2 Q. Ms. McGuire, I have a few more questions for you.

3 You said usually during parent pickup time there may be a
4 lull in the car traffic passing by.

5 On the day this incident occurred, you were able to have a
6 clear view of Mr. Hill's home, correct?

7 A. Yes.

8 Q. Okay. And you were able to hear the knocking that you
9 described earlier?

10 A. Yes.

11 Q. And when you heard the knocking from the officer, you made
12 a motion with your fist. Do you recall whether there was
13 anything in the officer's fist?

14 A. I don't recall.

15 Q. Okay. And for the day and time this photograph would have
16 been taken, did you schedule that day and time?

17 A. No.

18 Q. Okay. Do you know who scheduled that photograph?

19 A. I was just told to come to the conference room and meet
20 with the Sheriff's Department.

21 Q. Okay.

22 MS. HINES: Your Honor, may I have a moment?

23 THE COURT: Yes.

24 MS. HINES: Your Honor, no further questions.

25 THE COURT: Thank you so much, you may step down.

1 All right. At this point, ladies and gentlemen, we
2 will take our mid-morning break. It is quarter of 11:00. The
3 Plaintiff should be prepared to call your next witness.

4 Remember, you are not to talk to each other about the
5 case, not to talk to one another about the case, not to review
6 anything on the electronic equipment that may be a media
7 portrayal. Enjoy the break and we'll be back in 15 minutes.

8 Take your notebooks back to the jury room and bring
9 them back with you.

10 *(Thereupon, the jury leaves the courtroom.)*

11 *THE COURT:* So, next, are you on track with Mr.
12 Morales and David Bedard.

13 *MR. PHILLIPS:* And Captain Cicio.

14 *THE COURT:* David Morales and then Captain Cicio.

15 *MR. BRUCE JOLLY:* Your Honor, before Mr. Bedard
16 testifies, I wish to alert the Court to some issues.

17 *THE COURT:* We will have to do that during the lunch
18 hour. Remind me again.

19 *MR. BRUCE JOLLY:* We will.

20 *THE COURT:* All right. We will be in recess until
21 11:00.

22 But I would say with Bedard, if you have any issues,
23 first talk to Plaintiff about it and try to resolve it. If it
24 is something unresolvable, we will take it up.

25 *MR. BRUCE JOLLY:* I will do that.

1 (Thereupon, a brief recess was taken.)

2 *THE COURT:* Okay, is the jury ready?

3 Do you have a copy of the Bedard report?

4 (Thereupon, the jury entered the courtroom.)

5 *THE COURT:* Okay, welcome back, you may be seated.

6 The Plaintiff may call your next witness.

7 *MS. HINES:* At this time the Plaintiff calls their
8 next witness, David Morales.

9 DAVID MORALES, PLAINTIFF'S WITNESS, SWORN

10 *THE COURTROOM DEPUTY:* If you would state your full
11 name and spell your last name.

12 *THE WITNESS:* David Morales, M-O-R-A-L-E-S.

13 **DIRECT EXAMINATION**

14 *BY MS. HINES:*

15 Q. Thank you. Mr. Morales, could you please introduce
16 yourself to the jury?

17 A. Yes, my name is David Morales, I am a P.E. teacher at
18 Francis K. Sweet Elementary.

19 Q. How long have you worked at Francis K. Sweet Elementary?

20 A. I have been there for nine years, I have been there since
21 2009.

22 Q. Have you always worked in the capacity of a P.E. teacher?

23 A. No. I started as an ESSA paraprofessional.

24 Q. When did you become a P.E. teacher?

25 A. About three years ago.

1 Q. January 14, 2014, what was your position at Francis K.
2 Sweet?

3 A. I was an ESSA para at the time.

4 Q. Where do you live?

5 A. I live at 1751 Southwest 7th Street, Port St. Lucie,
6 Florida.

7 Q. How long have you lived in Port St. Lucie?

8 A. Since 2006.

9 Q. Mr. Morales, as you know, we are here today regarding an
10 incident that occurred across the street from Francis K. Sweet
11 on January 14, 2014.

12 Would you please tell the jury what you recall about that
13 day?

14 A. It was dismissal time, so at that point in time, my duty
15 was to make sure the kids are safe, not running around, make
16 sure they are sitting in their seats waiting for parents to
17 pick them up.

18 I was more towards the far end of the school, I was walking
19 toward the front area of the school. At that point in time, I
20 saw two police cars pull up in opposite directions. During
21 that time, I approached the principal at the time, Mrs. Wright,
22 and I suggested to her that we should think about bringing the
23 kids inside the school.

24 Q. Why did you make that suggestion to Ms. Wright?

25 A. I just -- just the way they approached the area, it was in

1 both directions, something that I have not seen since I have
2 been at F. K. Sweet. It was different, so I just suggested to
3 her that I think we should think about bringing the kids
4 inside.

5 Q. And what happened next?

6 A. At that point in time, I did turn my back. I was looking
7 at the kids, making sure they were still sitting down, and I
8 turned around and I saw two police officers approach the house.

9 Q. And what did you see the two police officers do at that
10 point?

11 A. At that point in time, I saw one police officer with their
12 hand on their holster while another police officer was
13 approaching the side of the house, at that point in time
14 knocking on the garage door.

15 Q. And you said you saw one police officer approaching the
16 side of the house. Did that police officer go out of your
17 view?

18 A. No. He was not out of my view.

19 Q. Okay. So, at all times you are seeing this incident both
20 officers were in your view?

21 A. Yes, they were.

22 Q. All right. What happened next?

23 A. At that point in time, I turned around again doing my duty
24 to make sure students are following correct precautions, shots
25 are fired.

1 Q. Who -- did you see who fired the shots?

2 A. I don't remember.

3 Q. Did you see if it was one of the police officers who fired
4 the shots?

5 A. In all honesty, I don't know. I heard shots fired, the
6 garage door went down, and I was assisting kids into the
7 school.

8 Q. So, let's back up a little bit. What you said earlier, you
9 saw the two police cars approach. Did you -- were their sirens
10 on?

11 A. No sirens were on.

12 Q. Okay. And did the two police cars approach the school or
13 another area near the school?

14 A. Another area near the school. It was directly in front of
15 the house.

16 Q. Okay. Was that house across the street from the school?

17 A. Correct. It was more towards an angle.

18 Q. Okay. And when you saw the police cars drive up to that
19 house, did you see the garage door?

20 A. I did see the garage door. The garage door at that point
21 in time was closed.

22 Q. Okay. Did you ever see the garage door go up?

23 A. I saw the garage door going up, but at that point in time I
24 had turned my back, so, again, during that time, my duty was to
25 make sure the kids were safe.

1 Q. When you saw the garage door go up, did you see anyone
2 inside the garage?

3 A. I believe there was a man there standing, I believe.

4 Q. Okay. Could you describe what -- the man that you said you
5 believe you saw?

6 A. At that point in time -- I can't describe him, no.

7 Q. And you said that you heard shots fired. Did you hear the
8 words "shots fired" or did you hear actual shots?

9 A. I heard actual shots.

10 Q. Do you recall how many you heard?

11 A. I definitely know it was more than two shots fired.

12 Q. Okay. And did you know that that was the home of Mr.
13 Gregory Hill?

14 A. No, I did not realize until after the incident.

15 Q. And were you aware that Mr. Hill's daughters, Destiny and
16 Aryanna Hill attended Francis K. Sweet?

17 A. Yes, I did.

18 Q. Did you know any of the young ladies?

19 A. Yes, I knew Destiny at that time, I was an ESSA
20 paraprofessional, I am currently Aryanna's P.E. teacher.

21 Q. Did you see Destiny Hill that day, January 14, 2014?

22 A. I do not recall.

23 Q. Did you hear the police officers who arrived at the home
24 give any verbal commands?

25 A. I do not remember, no.

1 Q. Did you give a statement after the incident?

2 A. Yes, I did, a written statement. I do not remember if it
3 was a day or two after the incident.

4 Q. Okay. Who did you give that written statement to?

5 A. At the time, it was a female.

6 Q. Okay. Was this a female employee of the St. Lucie County
7 Sheriff's Office or the school?

8 A. I do not recall. It definitely was not from the school,
9 no.

10 Q. Did you ever give a statement to anyone at the St. Lucie
11 County Sheriff's Office regarding the incident?

12 A. The other person who actually showed up offered me to write
13 that statement down, yes.

14 Q. You say it was a day or two after the actual incident?

15 A. Yes, I believe so, yes.

16 Q. Did you have an opportunity to review that statement before
17 today?

18 A. I had the opportunity to read that statement during a
19 deposition time.

20 Q. Okay. So, there was a time you had your deposition taken
21 regarding this case?

22 A. Correct.

23 Q. Okay. Have you told me everything that you remember about
24 the incident on January 14, 2014?

25 A. Yes, I have, ma'am.

1 Q. Okay.

2 MS. HINES: Your Honor, may I have a moment?

3 THE COURT: Yes.

4 BY MS. HINES:

5 Q. Mr. Morales, you testified that you did at some point see
6 someone inside the garage of the home; is that correct?

7 A. I didn't or I did?

8 Q. That you did.

9 A. Yes.

10 Q. You said you saw legs?

11 A. Yes, I saw legs.

12 Q. Did you see anyone inside the home with a firearm in their
13 hand?

14 A. No, I did not.

15 MS. HINES: Okay, no further questions.

16 THE COURT: Any cross-examination?

17 MR. GREGG JOLLY: Yes, your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. GREGG JOLLY:

20 Q. Good afternoon, Mr. Morales. How are you?

21 A. I am fine, sir. How are you?

22 Q. I am fine. We have never met, have we?

23 A. No.

24 Q. I represent the Sheriff's Office, my name he is Greg Jolly.
25 I have some followup questions.

1 A. Yes.

2 Q. It seems to me, based on your answers that you were
3 responding to Ms. Hines' questions, your primary focus was not
4 on the house across the street, correct?

5 A. Well, yes, my primary focus was to take care of the
6 students.

7 Q. I was confused. There were times you said your back was
8 turned. Can you clear up when exactly your back was turned
9 from the house?

10 A. A --

11 Q. As best you can remember.

12 A. As best I can remember, as soon as I spoke to Ms. Wright
13 and I suggested we should bring the students in, at that point
14 in time, I won't say my back was completely turned, I slightly
15 turned my head, and that is one situation where I feel that I
16 was probably not looking directly at the house.

17 As far as hearing shots fired, that is when I looked
18 towards that direction, and that is when I noticed the garage
19 door going down.

20 Q. So, when the shots are fired, you are looking at the
21 children, correct?

22 A. When the shots are fired, yes, I am looking at the
23 children, but obviously I turned my head as quick as possible
24 because I wanted to know where it was coming from.

25 Q. Of course. The moments immediately preceding the shots

1 fired, you are not looking at the house?

2 A. No.

3 Q. Did you say you saw the deputies getting out of their car?

4 A. Yes.

5 Q. How many deputies were there?

6 A. There were two.

7 Q. Do you remember what the deputies looked like?

8 A. No, sir. They had their backs towards me.

9 Q. Could you tell what their complexions were at all?

10 A. No, sir.

11 Q. Okay, fair enough.

12 You were asked on direct about a statement you provided to
13 the St. Lucie County Sheriff's Office. Did anyone from the
14 Sheriff's Office tell you what to say?

15 A. No, sir.

16 Q. Did you tell the truth?

17 A. Yes, sir.

18 Q. And what did you see of the person that was in the garage?
19 You were asked about seeing a person in the garage. What did
20 you see?

21 A. Again, I saw the garage door go down, I saw legs. I saw
22 the garage door go down, probably around knee, thigh high.

23 Q. Okay. If I understand you correctly, you didn't see his
24 upper body, period?

25 A. No.

1 Q. Okay. Do I understand you correctly, when you are seeing
2 this person in the garage, you are kind of looking over your
3 shoulder?

4 A. No. I am actually looking at the house, sir, at that point
5 in time.

6 Q. Okay, fair enough. And what happened after the shots were
7 fired?

8 A. After the shots were fired, garage door going down, at that
9 point in time my objective was to get the students in the
10 school.

11 Q. Did you see anything in the house after the shots were
12 fired?

13 A. No, sir.

14 MR. GREGG JOLLY: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 MR. GREGG JOLLY: No more questions, your Honor.

17 THE COURT: Okay, anything on redirect?

18 MS. HINES: No, your Honor.

19 THE COURT: Okay, you may step down.

20 Am I understanding now we are going to have a witness
21 out of turn?

22 MS. BARRANCO: Yes, your Honor.

23 THE COURT: Ladies and gentlemen, when I mentioned
24 yesterday that the parties are working with each other to
25 accommodate witnesses, we are doing that now.

1 Q. And you told us your rank now is captain?

2 A. Yes, ma'am.

3 Q. For those of us who never worked for a law enforcement
4 agency or have been in the military, what is beneath captain?

5 A. Sworn ranks in St. Lucie begin with deputy and interim
6 supervisor position, master deputy, first line position
7 sergeant, above sergeant is lieutenant, and above lieutenant is
8 captain, and above captain is major and chief deputy, one of
9 those, and then the sheriff who is elected.

10 Q. Thank you, Captain.

11 Now, I am going to direct your attention -- we are in 2018,
12 but I will direct your attention back to the date of
13 January 14, 2014, and that, obviously, for our purposes today
14 is the reason we are essentially here in the courtroom in
15 regard to an officer involved shooting that happened on that
16 day involving St. Lucie Sheriff's Deputy Chris Newman and an
17 individual named Gregory Hill.

18 Do you know what I am referring to?

19 A. Yes, I do.

20 Q. Back on that date, what was your rank?

21 A. Sergeant, midnight shift supervisor.

22 Q. Midnight shift supervisor?

23 A. I was a patrol supervisor on midnight shift.

24 Q. What is a patrol supervisor?

25 A. The county is slit up into 12 zones and there is a deputy

1 assigned to each. If you split that, a sergeant was in charge
2 of half of that, 12, in my case, 12 deputies. I was first
3 squad that supervised those deputies, took calls and wrote
4 reports.

5 Q. Now, did you do other things with the Sheriff's Office?

6 A. I was assigned as a bomb technician, I had been on the bomb
7 disposal team since 1999. At the time, I was senior technician
8 for the bomb disposal.

9 Q. Now, did you have any involvement in the subject scene
10 involving this officer involved shooting between Deputy Newman
11 and Mr. Hill?

12 A. After the incident between Deputy Newman and Mr. Hill, yes.

13 Q. You mean the shooting itself?

14 A. Yes.

15 Q. So we are clear, the jury is hearing from lots of
16 witnesses. Captain, were you present at the subject shooting?

17 A. No, I was not.

18 Q. You came after?

19 A. Yes, ma'am.

20 Q. You said you were involved as a bomb technician?

21 A. Yes.

22 Q. To your knowledge, was there ever any bombs involved or the
23 possibility of bombs involved in this subject incident we are
24 here about?

25 A. No. Not that I am aware of.

1 Q. Why was it you had any involvement generally?

2 A. Generally, if there was a SWAT condition, such as
3 reconnaissance or assets, we have a bomb disposal team and we
4 can send a robot into what we consider to be the danger zone
5 rather than a human being, we have the technology on the bomb
6 disposal team.

7 Q. Very briefly, what was your understanding of why your
8 services were needed at the subject location, which I will tell
9 you was 1501 Avenue Q in Ft. Pierce, Florida?

10 A. My understanding was there was a SWAT standoff.

11 Q. What do you mean?

12 A. There was a shooting and SWAT was outside of the house, a
13 subject potentially shot was inside the house, creating a
14 standoff situation where the subject would not come out and the
15 SWAT team would not go in until we tried all reasonable assets,
16 as I would assume.

17 Q. You were not a member of the SWAT team that day?

18 A. No.

19 Q. I will not ask you any questions about that part of the
20 matter.

21 To your knowledge, was there some concern -- let me restate
22 that.

23 To your knowledge, was it reported that the individual in
24 the home was armed?

25 A. Yes.

1 Q. Did you have any knowledge about what type of weapon this
2 individual may have had?

3 A. I just knew a handgun.

4 Q. Okay. So, can you tell us approximately what time you
5 arrived on the scene?

6 A. I would have to refer to my report for that.

7 Q. Do you have that there?

8 A. Yes, ma'am.

9 Q. I don't want you to read from it, but if you need to
10 refresh your memory, feel free to do that.

11 My question is: What time did you arrive on the scene of
12 the subject incident on Avenue Q?

13 A. I do not have the time on my report. I was called about
14 3:41 in the afternoon.

15 Q. Okay. How did you arrive on the scene; what vehicle did
16 you arrive in?

17 A. I drove the bomb disposal truck.

18 Q. Very briefly, can you tell us what the bomb disposal truck
19 looks like?

20 A. Sure. It is an International squad cab, four-door cab
21 truck, 24-foot box on the back. We tote a big ball that we can
22 place explosives inside and remove them to a safe area, a truck
23 and trailer combination we take when we deploy.

24 Q. And then, where did you park that large vehicle?

25 A. I was directed to park around the 1600 block, which was an

1 open field to the west of the subject residence.

2 Q. Was that also -- where you parked, was that also west of
3 the elementary school that was located approximately across the
4 street from the subject residence, if you know?

5 A. I do not remember.

6 Q. Okay.

7 Now, can you tell us what you did when you arrived on the
8 scene with the bomb truck?

9 A. Certainly. Once I parked the vehicle, I turned on the
10 generator and powered it up and awaited directions from
11 Lieutenant Hostetler.

12 Q. Who was Lieutenant Hostetler?

13 A. The commander on the scene when I arrived.

14 Q. At some point in time, were you given instructions what to
15 do?

16 A. Yes.

17 Q. And tell the jury what you did next.

18 A. We prepared the robot for deployment down range. The robot
19 is a 500-pound robot with four wheels, articulates, wheels on
20 the back. It has four cameras, a drive camera that faces
21 forward that allows you to see where you are driving it, and a
22 back camera that can raise and lower and that has a pan, tilt,
23 zoom capability along with the light. There is a camera on the
24 arm of the robot. If you imagine an arm that has a shoulder
25 that moves sideways, it can reach out and with a gripper can

1 grab things. On the top of the arm is an arm camera that
2 focuses on the grip area and a camera that attaches as well.
3 The robot is used for disruption of devices in the bomb world.
4 If there are times we have to use it, it can disrupt the
5 packages with bombs or things of that nature.

6 Q. That was not used for that?

7 A. No. The robot was disarmed for the duration of this event.

8 Q. Tell us what happened next in terms of your involvement.

9 A. In addition to the robot, we have a sentinel, a one foot by
10 one foot box with two antenna on it and its own mast with a
11 pan, tilt camera. It serves two purposes, one, it serves as a
12 camera as described, and it serves as a repeater. If I lose
13 line of sight communication with the robot, if I go around an
14 obstacle and I am no longer able to communicate, this sentinel
15 serves as a repeater. I would communicate from the truck to
16 the repeater and repeater to the robot.

17 I took the robot and gripped the plate on the sentinel and
18 drove it from the back of the truck down to an area directly in
19 front of 1501 Avenue Q, between two patrol cars, and I placed
20 the sentinel system on the ground in that location.

21 From, there I moved the robot to the west side of the
22 residence, which was the garage side, and there appeared to be
23 concrete latticework on that wall, so I utilized the mass
24 camera to see inside that concrete latticework in the garage to
25 see if I could see anything.

1 Initially, when I got there, I could not see beyond the
2 concrete latticework, so what I did is manipulate the iris and
3 lighting on the camera, and opened it and closed it and turned
4 the light on to see if I could peek inside that latticework.
5 Despite all of my efforts, I could not see past the concrete
6 lattice at all. I moved the robot to the west corner of the
7 residence and used the camera as a surveillance platform
8 linking the sentinel and did not see any movement from the
9 robot camera and sentinel camera.

10 Q. So the ladies and gentlemen of the jury understand, during
11 the part you are telling us now, attempting to peer into the
12 latticework inside the garage, where were you, Sergeant Cicio,
13 physically located?

14 A. I was physically sitting in the back of the bomb truck,
15 that 21-foot box. In the front of that is the drive console
16 for the robot. I was sitting in the seat driving it remotely,
17 almost like a remote control truck, if you will.

18 Q. And does the robot serve any purpose other than to
19 physically see things in terms of your permanent safety?

20 A. It replaces a human being. If you did not have a robot,
21 you would have to send a person up to the concrete latticework.
22 We were trying to minimize danger as much as possible by
23 sending the robot. If the robot gets damaged in the process,
24 we lose a robot, we don't hurt anybody in that process.

25 Q. What happened next? You attempted to do what you told us,

1 and then what happens?

2 A. From that point, I was told to move the sentinel which, if
3 you remember, I placed on top of the roadway in front of the
4 residence. I was told they were moving patrol vehicles, and we
5 did not want it to be damaged. I took the robot to the camera
6 and moved it to a power pole, I believe on the northwest corner
7 of the property, and set the sentinel back on the ground, which
8 is where the robot had been. I drove the robot back to my area
9 and powered it down to conserve battery life.

10 Q. Did you use the robot again in regard to the garage of the
11 Hill residence?

12 A. Yes.

13 Q. Tell the jury about that.

14 A. A little while later, we attached what is called a mini
15 gander camera. This technology is like a special purpose tool,
16 it is designed to be used against weapons of mass destruction,
17 large bombs, large packages that I have to visualize what is in
18 that package. If you visualize a 5-foot long pencil, on the
19 shaft towards the front end is a camera and 90 degrees up the
20 shaft is another camera and another light.

21 That is what the sentinel -- I am sorry, the gander system
22 is, it is an external camera attached to the robot. We
23 attached it to the claw. At the back end of the pencil there
24 is a grip area for the claw to grab on to it and hold it. You
25 disconnect the weapons camera and plug the gander system into

1 that port and that way you can see.

2 We had difficulty with it, we could not get it to work. We
3 rebooted the robot, and it is not uncommon when you attach the
4 apparatus it does not recognize it. We turned them all off and
5 all back on, still could not get the camera to work. We
6 consulted the manual. Again, it is a specialty purpose piece
7 of equipment, I trained on it one time. We don't get a lot of
8 large bombs in Palm Beach County.

9 I drove the robot down range to drive the probe, if you
10 will, through the garage door so we could see inside. I lined
11 the robot up, or the tip line of the probe where I would have
12 the least amount of resistance. I tried to avoid any creases
13 in the metal, drove up and touched the door to make sure I was
14 lined up correctly, backed the robot up and drove the probe
15 through the panel of the garage door.

16 Q. At this point, were you still in the box truck?

17 A. I was in the drive location in the back of my truck.

18 Q. The robot is where?

19 A. The robot is in front of the garage door with the probe
20 penetrating through inside the garage.

21 MS. BARRANCO: Your Honor, I know we are on
22 Plaintiff's side of the case, but this is a Defense witness,
23 and I conferred with Plaintiff's counsel, I would like to be
24 able to show the witness what is marked Defendant's Exhibit
25 352. I understand there is no objection.

1 THE COURT: Is that correct?

2 MR. PHILLIPS: Yes, your Honor.

3 THE COURT: Do you want it admitted?

4 MS. BARRANCO: I would like to show it to the witness
5 first. Your Honor, may I approach?

6 THE COURT: You may.

7 BY MS. BARRANCO:

8 Q. Captain, I will show you what is Defendant's 352, and have
9 you look at that.

10 A. Yes.

11 Q. Without showing it to the jury yet, can you tell me what
12 that is a picture of?

13 A. This is a picture of our robot that is stationary in front
14 of the garage door, the arm is extended a little bit and it
15 appears to have the gander camera attached to it sticking into
16 the garage panel.

17 Q. Does that picture essentially demonstrate what you were
18 talking about a moment ago?

19 A. Yes.

20 Q. Now, before we go further with this picture, you mentioned
21 this -- I think you said 5-foot long pencil type gander thing?

22 A. Right.

23 Q. For lack of a better technical term. Can you see that in
24 that picture?

25 A. Barely, it is covered by the robot arm and the weapon that

1 is attached to it.

2 Q. Where is the -- most of that 5-foot long pencil in that
3 picture?

4 A. It is inside the garage.

5 Q. So, it actually has been pierced through the garage door?

6 A. Yes, ma'am.

7 MS. BARRANCO: At this time, Defense would move into
8 evidence what is marked as Defendant's Exhibit 352.

9 MR. PHILLIPS: No objection.

10 THE COURT: Admitted without objection.

11 *(Whereupon Defense Exhibit 352 was marked for evidence.)*

12 THE COURT: I am looking at the exhibits that you gave
13 the Court on the thumb drive. Is it sandwiched in somewhere?

14 MS. BARRANCO: If I could go to counsel's table.

15 THE COURT: You can pull it up on the screen so I will
16 be able to see it.

17 MS. BARRANCO: That was my plan.

18 May I approach the witness?

19 BY MS. BARRANCO:

20 Q. Captain, can you see that?

21 A. Yes.

22 Q. Now that we are showing this picture to the jury, and I
23 know you are not able from where you are sitting to show on the
24 picture, let me try to walk you through it so the jury can
25 understand based on your earlier testimony what you are talking

1 about.

2 What is this thing coming up here?

3 A. That is the second camera. The mass camera is the pan,
4 tilt camera aimed downward, and on top of that the barrel
5 looking thing, which is the light attachment.

6 Q. In this picture and in this incident, was that camera
7 utilized like inside the garage?

8 A. That camera, no.

9 Q. Okay. Let me start with some basic stuff. What is this
10 here?

11 A. Towards the back, those are the rear articulators, there is
12 another set in the front. That keeps the robot from moving
13 backwards and forward going down terrain and helps us to go up
14 stairs, and then the wheels in the middle helps us go into a
15 confined space.

16 And above that is the chassis camera, the first camera up
17 front. If you go down even lower, just above the ground, in
18 that box between the wheels facing forward is the drive camera.

19 Q. I keep referring to it as the 5-foot pencil. What is that
20 word?

21 A. Mini gander camera. That is right in that area protruding
22 inside the garage door.

23 Q. The camera is not visible in this picture?

24 A. Barely. You can see the top and bottom of it, you wouldn't
25 be able to identify it otherwise.

1 Q. If we had X-ray vision, could we see through the garage
2 door and see the mini gander camera system continue forward?

3 A. Yes.

4 Q. We can't see it in this picture?

5 A. No, ma'am.

6 Q. Any part you haven't told us about?

7 A. If you look above the box, if you go to the middle of the
8 arm, you can see where the arm is, there is a wrist, elbow,
9 shoulder, those are movable parts to do different things.

10 Q. Is that the area where you are telling the jury you have
11 the ability to grab something and you grab this mini gander
12 camera?

13 A. That would be the front end, you can't see it. There is a
14 grip area in front there, not visible to you in that picture.

15 Q. Thank you.

16 Did you, yourself, Captain, ever walk up to this area
17 personally that night?

18 A. At the end of the processing of the crime scene when I was
19 told to remove the robot, I did go up there, but I do not
20 remember if I was the one who drove the robot back.

21 Q. You -- tell me what happened next.

22 A. I rotated the wrist, if you will, the wrist rotates
23 clockwise. I rotated the wrist clockwise and downward and I
24 saw an area -- a human being from the waist, torso area down,
25 facing in a downward type position and I stopped movement of

1 the robot.

2 Q. What happened next?

3 A. At that point, I locked down the robot and turned the
4 safety on, which means the robot could not be driven anymore.
5 I moved out of the way and took pictures of the screen I was
6 driving from and left my work station to take on a different
7 job assignment.

8 MS. BARRANCO: Your Honor, may I approach the witness?

9 THE COURT: Yes.

10 MS. BARRANCO: For the record, I am going to be
11 showing the witness what is marked for identification purposes
12 as Defendant's Exhibit 358, and my understanding is that there
13 is no objection to this exhibit either.

14 MR. PHILLIPS: Correct, no objection.

15 THE COURT: 358 admitted without objection.

16 MS. BARRANCO: Thank you. May I approach the witness?

17 THE COURT: Yes.

18 (Whereupon Defense Exhibit 358 was marked for evidence.)

19 BY MS. BARRANCO:

20 Q. Putting it up on the screen, can you tell the ladies and
21 gentlemen what this exhibit depicts?

22 A. That is what I saw out of the right side of the gander
23 camera. Once I rotated it down, I saw the legs and the torso
24 area, from that area down, and that is when I stopped movement.

25 Q. When you are referring to the legs and torso area, would

1 this be this area here? (Indicating)

2 A. Yes.

3 Q. And then you said you locked down the robot?

4 A. Yes. In order to stop the movement of the robot and keep
5 anything from being bumped or manipulated you turn the safety
6 on. That stops the rolling, stops the action of the robot,
7 keeps the camera going, but the actual physical control of the
8 robot stops. I knew it was a crime scene, I knew I had to stop
9 right where it was when I found it.

10 Q. To your acknowledge, had anybody been in the house from the
11 time of the shooting to the time this photograph that we are
12 looking at was taken?

13 A. No.

14 Q. How much time did you spend looking at the scene as
15 depicted here in this exhibit?

16 A. Probably ten seconds. Once I recognized that and I saw no
17 movement, I recognized this is a crime scene, and if I move the
18 robot, I realized I am moving it in a crime scene.

19 Q. What was your focus in looking at this?

20 A. My purpose, really, was to see if anybody was in the
21 garage. I didn't expect to find anybody. Once I saw that, I
22 knew I needed to stop the robot and I needed to take on another
23 job while SWAT does what they need to do and crime scene does
24 what they needed to do.

25 Q. Let me switch back. I want to get an understanding from

1 the jury's perspective -- I will shift the picture over to the
2 very edge. Okay.

3 Can you tell me and tell the jury the area of where this
4 latticework was that you were talking about earlier, that you
5 attempted to look in earlier before piercing the garage door?

6 A. It would have been off to the right side of the picture.

7 Q. Would it be off to this side?

8 A. I believe so.

9 Q. Would it be up here or lower, or do you recall?

10 A. I don't recall.

11 Q. Were your efforts in trying to look through the side of the
12 garage successful at all?

13 A. No. I couldn't see beyond the concrete lattice at all.

14 MS. BARRANCO: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 MS. BARRANCO: Your Honor, no further questions.

17 THE COURT: Okay. Any cross-examination?

18 MR. PHILLIPS: Yes, your Honor.

19 **CROSS-EXAMINATION**

20 BY MR. PHILLIPS:

21 Q. Hi, Captain.

22 A. Good morning.

23 Q. I'm John Phillips.

24 Had you ever driven the bomb truck to a loud music call
25 before?

1 A. No.

2 Q. And are you aware that it is your employer that is a
3 Defendant in this lawsuit?

4 A. Yes.

5 Q. Okay. The bomb truck, is that an armored vehicle?

6 A. No. No, sir.

7 Q. Describe it for me.

8 A. Well, it was built by a company that builds fire engines,
9 it's built up in Ocala, Florida. If you envision a large
10 moving truck, four doors and a cab, a door on the side, doesn't
11 have a roll-up door other than the side where the robot comes
12 out, and compartments on the exterior of the vehicle, roll-up
13 closets inside for our bomb suits.

14 Q. Was it the big tank vehicle on the scene?

15 A. No, sir.

16 Q. What vehicle is that?

17 A. The big military surplus vehicle, that is considered an
18 MRAP.

19 Q. Did you see that on the scene?

20 A. Yes.

21 Q. You had nothing to do with that?

22 A. No, sir.

23 Q. And it was your understanding from somebody in the process
24 that a subject was shot and wouldn't come out?

25 A. Yes, sir.

1 Q. Do you know whether that is true?

2 A. I'm sorry?

3 Q. Do you know whether that is true?

4 A. I don't know. I was there to bring a surveillance
5 platform.

6 Q. Did you ultimately determine a subject was shot and didn't
7 come out because he was deceased?

8 A. That is what I found.

9 Q. Were you off duty at the time you got the call?

10 A. I was off duty, yes.

11 Q. You got that call at about 3:41?

12 A. Yes.

13 Q. It wasn't until about three and a half hours later,
14 7:10 p.m., that you got the robot to take that photo?

15 A. Shortly after 7:10. We deployed it at 7:10.

16 Q. Very good. You indicated no one had access to Mr. Hill in
17 that three and a half hours. Were you standing sentry of the
18 doors?

19 A. No, sir.

20 Q. You didn't have personal knowledge of that?

21 A. No, sir.

22 Q. You don't know whether somebody had access to Mr. Hill in
23 that period or not?

24 A. From the vantage of the cameras, I didn't have that access,
25 I had a small piece of the vantage point.

1 Q. Had you ever worked this robot before?

2 A. Yes, sir.

3 Q. Had you ever worked the robot before in not practice, but
4 actual investigative work?

5 A. Such as a bomb call?

6 Q. Yes.

7 A. Yes, sir.

8 Q. What was it about it that you couldn't get it to work in
9 the first three and a half hours?

10 A. The robot was working when I deployed it the first time.
11 Are you talking about the mini gander camera?

12 Q. Correct.

13 A. I trained on it one time. It was not something we ever
14 encountered, we have that piece of equipment. The reason it
15 took so long, as I explained was, there is no switch on the
16 drive console that says turn gander camera on. You have to
17 toggle the laser. We didn't know until we opened up the manual
18 to look.

19 Q. You pulled out the manual to be able to operate it and take
20 a picture?

21 A. Yes, sir.

22 Q. It is my understanding the bomb truck's DVR or VCR was also
23 broken?

24 A. The DVR system was a 16 channel, multi channel in and out
25 system. When we purchased it, it worked for two or three

1 months and we had nothing but problems with it. The first
2 capability to break was to bring video off it; and secondly,
3 this time we couldn't record anymore, it would turn on and all
4 the lights lit, but it would not function.

5 Q. Were you on scene -- I believe you heard about when some
6 chemical agent was deployed?

7 A. I was on scene when that happened.

8 Q. Do you know whether that happened before or after this
9 photo was taken?

10 A. That would have been before the photo was taken.

11 Q. The chemical agent was before your photo?

12 A. To my knowledge, yes.

13 Q. There are some other holes in Defendant's exhibit, these
14 over here. (Indicating) Are you aware what caused those?

15 A. I wasn't there when it happened, but I assume bullet holes.

16 Q. Those weren't caused by the robot?

17 A. No, sir.

18 Q. When did you write your report in relationship to when this
19 happened, six days later; fair?

20 A. January 20th is what it shows.

21 Q. Six days?

22 A. Yes, sir.

23 Q. And I count 479 words in your report. Gun isn't one; is
24 that correct, you didn't mention a gun in your report?

25 A. No, sir.

1 Q. Why not?

2 A. I did not recognize a gun.

3 Q. It was at some point that you donned a bulletproof vest?

4 A. Yes.

5 Q. When was that?

6 A. After I locked down the robot and was awaiting another
7 assignment.

8 Q. Was the bulletproof vest because of another assignment?

9 A. Yes.

10 Q. It wasn't because you were afraid at the scene?

11 A. I would say the scene became hostile. I do not normally
12 bring my assigned bulletproof vest, I did not anticipate
13 working a post on the perimeter. I asked Lieutenant Hostetler
14 for one of his vests and one of his weapons and I sat on a
15 post.

16 Q. What kind of weapon?

17 A. I believe a 12 gauge shotgun.

18 Q. You had a bulletproof vest and 12 gauge shotgun because who
19 became hostile?

20 A. The crowd became hostile.

21 Q. Do you know who they were?

22 A. I have no idea.

23 Q. Just for summary purposes, you drove a bomb truck with
24 cameras you initially couldn't work, and a DVR that was broken
25 to take photos of a man who had been dead for about four hours?

1 A. That is your summary.

2 Q. Is that accurate?

3 A. With explanation, yes.

4 Q. Thank you.

5 THE COURT: Any redirect?

6 MS. BARRANCO: Just briefly, your Honor.

7 **REDIRECT EXAMINATION**

8 BY MS. BARRANCO:

9 Q. Captain Cicio, I know you were asked questions about how
10 long it took you to get the camera on the mini gander to work.

11 A. Correct.

12 Q. And Plaintiff's counsel mentioned something about three and
13 a half hours. Why does it take three and a half hours -- did
14 it take that long to get it to work?

15 A. No. He was referring to getting that part functioning.
16 The robot had been down range, we were trying to look through
17 the latticework and have a post at the northwest part of the
18 property. We brought it back and powered it down to conserve
19 battery life, and I took it down with the gander system, then
20 we had a problem with the gander system. The robot worked
21 fine.

22 Q. All of these things happened within a three and a half hour
23 period?

24 A. Yes, ma'am.

25 Q. And Plaintiff's counsel mentioned something about

1 ultimately Mr. Hill was found dead inside the garage; is that
2 right?

3 A. Yes, ma'am.

4 Q. Did you know that at the time you were utilizing the camera
5 system on the robot you told us about?

6 A. Prior to looking in?

7 Q. Correct.

8 A. I did not know he was dead in there at all, I didn't expect
9 to find him there.

10 Q. Did anyone ever tell you that Mr. Hill was already dead
11 inside that garage?

12 A. No. Quite the contrary.

13 MS. BARRANCO: No further questions.

14 THE COURT: Okay, thank you very much. You may step
15 down.

16 Okay, any witness who needed to get on and off before
17 the lunch hour?

18 MR. PHILLIPS: No.

19 THE COURT: The next one will be available after the
20 lunch hour?

21 MR. PHILLIPS: Yes.

22 THE COURT: We are going to have lunch now. We will
23 be in recess until one o'clock. I will ask everybody to be
24 punctual when you return, as you have always been.

25 It is with the same reminder you may not talk to

1 anybody about the case, even with each other. If you go out to
2 lunch with one another or go somewhere else or contact anybody
3 else, you should not view any media should there be any media
4 coverage of the case. With those instructions, take your
5 notebooks back into the jury room and we will see you back at
6 one o'clock.

7 *(Thereupon, the jury leaves the courtroom.)*

8 *THE COURT:* Do counsel want to bring up something
9 regarding the next witness, Roy Bedard?

10 *MR. BRUCE JOLLY:* I am Bruce Jolly representing the
11 Defendants, and I will be examining to the extend you permit
12 the Defendant's retained expert.

13 *THE COURT:* The Plaintiff's.

14 *MR. BRUCE JOLLY:* What did I say?

15 *THE COURT:* The Defendant.

16 *MR. BRUCE JOLLY:* You can't trust me.

17 The Plaintiff's retained law enforcement procedures
18 expert. I am prepared.

19 *MS. BARRANCO:* Your Honor, may I approach to see the
20 two exhibits that are in?

21 *THE COURT:* Yes, I think 352 and 358, but you can
22 double check.

23 *MR. BRUCE JOLLY:* Your Honor, Mr. Bedard's testimony,
24 he is an expert, police procedures expert, and he rendered a
25 number of opinions --

1 *THE COURT:* Well, let's just stop right here.

2 We have a expert disclosure to Plaintiff, which I am
3 sure Plaintiff has given to Defense. We have a report, which I
4 am sure Plaintiff gave defense; is that correct?

5 *MR. BRUCE JOLLY:* Yes.

6 *THE COURT:* To my knowledge, there is no motion to
7 strike this expert, or if there was, the Court ruled that he
8 was not stricken. Is that correct?

9 *MR. BRUCE JOLLY:* That is accurate. That is not quite
10 the way we would have done it, that is accurate.

11 *THE COURT:* There is nothing filed by the Defense
12 attacking Bedard.

13 *MR. BRUCE JOLLY:* No.

14 *THE COURT:* I don't want to get into -- since you only
15 get an hour for lunch, I don't think it is appropriate to make
16 a last minute argument about -- I am preempting you, I
17 apologize, I don't know where you are going. I will say this
18 and let you proceed.

19 If there are certain objections within his testimony,
20 you are within your right to make those objections. If we get
21 into legal argument why he is not qualified or why there are
22 certain things that shouldn't come in, I don't believe this
23 would be the time to raise it, as much as I would like to be
24 prepared and have things go seamlessly. Can you distill it
25 down? What is the issue?

1 MR. BRUCE JOLLY: He is going to be testifying and
2 rendering opinions in areas where opinions are not appropriate.
3 I knew this would be a problem, the motion in limine time
4 passed and you were uncomfortable with the parties filing
5 motions in limine. This is one.

6 As he testifies and begins to render opinions in the
7 area of what evidence is believable, what evidence is not
8 credible, not believable --

9 THE COURT: That would be the traditional
10 objectionable type of objections that you can make. Typically
11 speaking, witnesses don't comment on the credibility of other
12 witnesses. That is a rule of evidence, object, improper.

13 MR. BRUCE JOLLY: I was not intending to have you rule
14 on it. It is going to be awkward because we'll be making many
15 more objections as this witness testifies than you would
16 ordinarily expect, and that is because we didn't flush this out
17 before.

18 It is going to be -- there are going to be a lot of
19 objections.

20 THE COURT: Well, I don't think it behooves either
21 side for there to be a lot of objections. If it needs to be
22 the case, it needs to be.

23 What I strongly suggest is that you use the next 55
24 minutes together, or not, and bring these things up. I do not
25 expect Plaintiff to elicit improper testimony from a witness,

1 and maybe you can point out things that maybe Plaintiff's
2 counsel knows or doesn't know, but at least he has the benefit
3 of hearing in advance so that might dictate how he asks his
4 questions because I am sure he doesn't want his witness to be
5 repeatedly interrupted.

6 You do have the right to object if you feel
7 appropriate. I think you should talk about it. I am very
8 pleased with how things are going, and I would hope we can
9 proceed in the same fashion with the next witness, but I
10 understand both parties have to preserve their positions in
11 protecting their clients' interest. I don't want to cut into
12 your lunch, I appreciate the heads up. I would hope over the
13 next 50 minutes you find some minutes to talk about it in
14 fairness to Bedard, the jury, and your clients.

15 *MR. BRUCE JOLLY:* I can alert him to sort of what you
16 just said.

17 *THE COURT:* Alerting him would be helpful for sure.
18 Okay.

19 *MR. BRUCE JOLLY:* Thank you, Judge.

20 *MR. PHILLIPS:* It may take awhile, we may have
21 Ritzline come in before Bedard.

22 *THE COURT:* So counsel knows, you had Ritzline
23 scheduled for today. You are thinking Ritzline first. Do you
24 want to do Lopez before, also?

25 *MR. PHILLIPS:* No.

1 *THE COURT:* Chat, have a good lunch, see you in a few.

2 *MR. BRUCE JOLLY:* Your Honor, would you allow the
3 courtroom to remain open? The room that you typically allow us
4 to use has been taken over.

5 *THE COURT:* It is a security question. I defer to
6 security on that.

7 If you have reasons to unlock it, let us know. It is
8 a security issue. You can work out the issues in the side
9 room.

10 *MR. BRUCE JOLLY:* The side room is compromised.

11 *MS. BARRANCO:* There are friends and family.

12 *THE COURT SECURITY OFFICER:* If the family is there,
13 they have to be down in the atrium, that room is for attorneys.

14 *THE COURT:* Two rooms for attorneys, one for Plaintiff
15 and one for Defense.

16 *THE COURT SECURITY OFFICER:* The atrium where the
17 benches are there's plenty of space.

18 *THE COURT:* All right. Thank you so much.

19 *(Thereupon, a short recess was taken.)*

20 *THE COURT:* While we are talking, I know you are
21 calling William Anderson on Monday. Are you calling
22 Christopher Newman in your case?

23 *MR. PHILLIPS:* I do not plan on calling him in my
24 case.

25 *THE COURT:* I will cross him out. Are you calling

1 Mark Chapman in your case?

2 MR. PHILLIPS: Probably not.

3 THE COURT: What about Susan Adams?

4 MR. PHILLIPS: 50/50, probably not.

5 THE COURT: What about Joseph Hall.

6 MR. PHILLIPS: I will call him on rebuttal, not
7 Monday.

8 THE COURT: Not in your case in chief?

9 MR. PHILLIPS: No, your Honor.

10 THE COURT: You are calling Monique Davis, Aryanna
11 Hill, Destiny Hill, Gregory Hill, III.

12 What about Kanasha White?

13 MR. PHILLIPS: Probably would be rebuttal at this
14 point.

15 THE COURT: What about Andrew Brown?

16 MR. PHILLIPS: Andrew Brown we are reserving for
17 Monday, likely.

18 THE COURT: Likely, yes?

19 MR. PHILLIPS: Yes.

20 THE COURT: Roy Bedard, Edward Lopez, William
21 Anderson, well finish with Earl Ritzline today, and maybe Roy
22 Bedard. Let's assume we are finished with both of those only.
23 Then you have Anderson, Lopez, the three Hills and Davis, and
24 then possibly, likely Andrew Brown.

25 MR. PHILLIPS: And we would rest.

1 *THE COURT:* I think you are going to rest on Monday.

2 *MR. PHILLIPS:* Yes.

3 *THE COURT:* Without a doubt. Yes. So we can be
4 talking while we are waiting for the jury.

5 From the Defense standpoint, what is your
6 anticipated -- anyone from your list that you think you will
7 not be calling? And also, do you know anything about your
8 lineup yet?

9 *MS. BARRANCO:* A lot is going to depend on the next
10 day or so.

11 *THE COURT:* Anybody you know for sure is not going to
12 be called?

13 *MS. BARRANCO:* Christopher Lawrence will be called, he
14 won't be available until Wednesday, he has to fly in on
15 Wednesday.

16 *THE COURT:* First thing in the morning?

17 *MR. BRUCE JOLLY:* Yes, he is coming in Tuesday night.
18 I am not sure about anything.

19 *THE COURT:* He is testifying on Wednesday?

20 *MR. BRUCE JOLLY:* I will have that confirmed this
21 weekend.

22 *THE COURT:* Or even before then. I am trying to look
23 ahead.

24 If you know his flight -- if you don't, you don't. If
25 you do, can you endeavor to find out if he is coming in Tuesday

1 night, if he is available Wednesday morning? I kind of want to
2 know. Knowing when on Wednesday would help me think through
3 everything.

4 What about Niles Graben?

5 *MS. BARRANCO:* Yes.

6 *THE COURT:* Dr. Linda O'Neil?

7 *MR. BRUCE JOLLY:* Yes, and that would be Wednesday.

8 *THE COURT:* Well, let's take it one step at a time. I
9 want to make sure we have enough witnesses to take us through
10 Monday. If the Plaintiff rests on Monday, I want to make sure
11 we have Monday and Tuesday, I -- you are telling me for
12 purposes of discussion you have O'Neil lined up for Wednesday.

13 *MS. BARRANCO:* Correct.

14 *THE COURT:* Is that because she is not available any
15 other day?

16 *MR. BRUCE JOLLY:* I don't know if she is available on
17 Tuesday.

18 *THE COURT:* I will put a question mark by Wednesday,
19 she is local, but the other one, Lawrence, is out-of-town?

20 *MS. BARRANCO:* Correct.

21 *THE COURT:* The jury is here. We'll continue that --
22 I will ask one more. King, I am assuming, since he is an
23 expert, he is testifying. He is a yes?

24 *MS. BARRANCO:* Yes, your Honor.

25 *THE COURT:* He is the one that we are discussing with

1 the PowerPoint?

2 MS. BARRANCO: Yes.

3 THE COURT: I didn't order to get your response
4 because they are going to do a supplemental.

5 I do think you need to take a close look at it. I
6 looked at it a little bit. I don't know what is going to be in
7 your supplement. It is one thing to have a demonstrative, if
8 that is what he is looking to do, to show certain things, but
9 there is a lot of text in there. We have to be careful where
10 that text will be coming from, is that hearsay.

11 That might be an example, if you talk, you can agree
12 on a version.

13 We will stop with him right now.

14 I would like to bring our jury in, and I would like to
15 ask you more questions starting with Stephens and going down,
16 and if you are able to find out about the one who is coming in
17 for Wednesday, if he is coming in Wednesday or Tuesday night,
18 that would be helpful for me to think about. Okay.

19 (Thereupon, the jury entered the courtroom.)

20 THE COURT: Okay, welcome back.

21 The Plaintiff may call your next witness.

22 MR. PHILLIPS: Your Honor, we call Earl Ritzline.

23 THE COURT: Okay, you may come in.

24 EARL RITZLINE, PLAINTIFF'S WITNESS, SWORN

25 THE COURT: You may have a seat, and speak into the

1 funds among -- there are about 15 agencies, we service the four
2 county Sheriff's Offices along with the police departments, so
3 about 15 entities that provide money.

4 That is not part of my purview, I was not in charge of the
5 money.

6 Q. What materials did you bring with you today?

7 A. I have a file that was -- that pertains to this case.

8 Q. Okay. How did you come to review that file or -- I know
9 you weren't the one who wrote the report. There was a Mr.
10 Nips?

11 A. Mr. Nippes.

12 Q. Who is Mr. Nippes related to you?

13 A. Mr. Nippes was the director of the crime lab, he is now
14 deceased, God help him. He was the director of the crime lab
15 the whole time I was there until he retired approximately a
16 year -- two years before I did and so, he was my direct
17 supervisor because we both worked in the forensic biology
18 section. Forensic biology deals with testing and serology.

19 Q. Are you qualified to testify about the lab reports of
20 January 14, 2014?

21 A. I believe I am.

22 Q. Did you have a part in that?

23 A. In the crime lab we have to have another scientist -- have
24 another scientist review it. I signed off on Mr. Nippes' work,
25 that that individual, the other scientist, followed all the

1 protocols and documented everything sufficiently, and those
2 findings would have been placed in a report, we back that up
3 and publish.

4 Q. What is a forensic biology examination?

5 A. A forensic biology examination is an examination of
6 biological fluids, anything that would come from a body. It
7 could be an animal. Sometimes we do forensic biology on animal
8 types, but our primary duty is biological fluids that come from
9 humans, that would incur blood, urine, saliva, anything that
10 would come from the human body.

11 Q. Do you -- ultimately, there was some DNA obtained as I
12 understand it from Mr. Hill. Do you know how it was obtained?

13 A. From Mr. Hill?

14 Q. Yes.

15 A. It was obtained through an autopsy at the Medical
16 Examiner's Office.

17 Q. That was provided to you?

18 A. It was provided to our lab, yes.

19 Q. In what format; was that blood? Where do you draw the DNA
20 from?

21 A. I have been present, not at this autopsy, at many
22 autopsies, and typically they draw biological fluid, usually
23 blood, if the body is in the condition to have blood. That is
24 placed on filter paper, dried, and packaged to us.

25 Q. Where is our DNA found?

1 A. In every cell in your body except for one primary cell.
2 Red blood cells don't have DNA, but what is circulated in the
3 blood is white blood cells. When we test blood we are looking
4 at white blood cells, not red. There is one other population,
5 and that is the lining of the small intestine that doesn't have
6 it. Typically you don't seek that out unless it is a very
7 severe episode that happened to the individual.

8 Q. Bad day?

9 A. Bad day.

10 Q. Skin cells that flake off, do they have DNA?

11 A. No. The first few layers of skin is dead, your skin is
12 rejuvenating itself constantly. If the DNA typically recovered
13 is sluffed off, say you are touching your mouth or your eyes,
14 your eyes and mouth obviously shed tons of DNA all day long.

15 So that is typically -- when you talk about DNA that comes
16 from your skin, it is probably contamination from those parts
17 of your body.

18 Q. If I take my jacket off -- I am not because we are in
19 court -- would my DNA be on the coat?

20 A. Most likely you touch your eyes, mouth, and I saw you touch
21 your jacket, if your jacket comes in touch with your skin you
22 might get an irritation. You might get DNA on it.

23 Q. If I bled on the jacket, would you find more DNA?

24 A. Absolutely, any visible stain would be tested and show DNA.

25 Q. Before I get into what's in the report, are you aware of

1 any involvement by Indian River Crime Laboratory to test
2 fingerprints in this matter?

3 A. I am not aware of any.

4 Q. As far as you were aware, you were not involved in it, and
5 you guys didn't do it?

6 A. No.

7 Q. So, I want to ask a couple of questions. What does low
8 level mean?

9 A. Low level of DNA, basically, when you have a procedure of
10 testing, there is obviously a level that you go down to. You
11 can't go to absolute -- or down to zero. Just the way the
12 technology is, the way science is, when we have low level DNA,
13 you do not have the quantity of DNA present to be able to
14 visualize it, identify it. That is what low level means.

15 In most cases it is typically, maybe 50 cells, which seems
16 very low, it is very low, 50 cells. I should be able to shed
17 50 cells in a heartbeat. In DNA there is a lot of bacteria
18 which destroys DNA when it leaves your body which is a good
19 thing. It depends on the surface it is left on. There may be
20 a lot of DNA at one time, but may be gone because of the
21 environment.

22 Q. Low level was paired with the word partial. What does
23 partial mean?

24 A. Partial means -- we look at 13 regions of genetic makeup,
25 that is determined by the forensic science community, if I want

1 to compare results with another scientist in Germany, I can.
2 We all test the same 13. You might only get 12 of the 13 to
3 come up because it is low level. Not to get too deep in the
4 science, some of the markers are longer and more complex than
5 other portions of DNA, and the more complex degrade faster,
6 therefore you lose them faster than the smaller. It is easier
7 to test the smaller, but we need to look at a lot of different
8 ones to identify a person. Kind of like looking at hair color,
9 eye color, height, if you put them in the room, I could
10 identify somebody more than likely.

11 Q. Low level, partial, and a mixture of three individuals, I
12 think I know what that means, but tell us.

13 A. A mixture of three individuals means the DNA present
14 indicates that three individuals, at least three individuals --
15 once you get past two people, it could be five people, just the
16 way the makeup of the DNA is. That is why we say more than
17 three or at least three.

18 Q. Would you expect on a piece of evidence -- this was a gun?

19 A. Correct.

20 Q. What portion of the gun was tested, do you recall?

21 A. They submitted the trigger and hand grips, I believe is
22 what was swabbed, some of the markings on the packaging.

23 Q. That is what I read. Would you expect if that gun was
24 exposed to blood or to head tissue, that you would have
25 something more significant than a low level, partial mixture of

1 three individuals that you would be looking at?

2 A. You would expect that, but you never know. There is a lot
3 of -- depending where blood would be thrown.

4 I will tell you in this case there was no visible blood
5 seen, no red stains, red blackish stains, which is common from
6 a weapon.

7 Q. Do we know where those stains came from?

8 A. No.

9 Q. Was anybody else tested other than Mr. Hill?

10 A. No.

11 Q. Anybody at Defense counsel table or St. Lucie that we know,
12 Ft. Pierce?

13 A. Nobody was tested, no, other than Mr. Hill.

14 Q. And we talked about my jacket. I want to talk about Mr.
15 Hill. The gun was found in Mr. Hill's back pocket. Okay.

16 Do you know if the back pocket was tested?

17 A. No, it was not, in our laboratory, anyway.

18 Q. Is there sufficient transfer in your level of science that
19 a low level partial DNA could be found just from putting
20 something in your back pocket?

21 A. It would depend on how often that clothing was worn and
22 when was the last time it was washed. DNA stays until it is
23 washed or if it is involved in an environment like a lot of
24 moisture, a lot of factors, you wouldn't know until you test
25 it.

1 Q. The report says it is not an absolute determination that an
2 individual did not come into contact with an item of
3 evidence -- it is not an absolute determination that an
4 individual did not come into contact with an item of evidence.
5 Did that mean Greg Hill?

6 A. No. No. Basically, we said he is included as a possible
7 donor of the DNA on that gun, most likely he has DNA on there.
8 The reason we put that statement in there, if I do not find DNA
9 on there, it does not mean you didn't touch it for various
10 reasons. Sometimes you touch a surface, and you may not leave
11 anything. Negatives cannot be used in our field to say you
12 couldn't touch it.

13 Q. Could you certainly say it was Mr. Hill's DNA?

14 A. I couldn't say that, it is a mixture. If you put three or
15 four people together, more than three in this case, it could
16 look like Mr. Hill's DNA. That is why we are careful.
17 Although when I look at the 13 markers, his 13 markers showed
18 up in that mixture, that is why he can't be eliminated. You
19 can't with an absolute say he is the only possibility.

20 Q. Do we know how many of the 13 markers are in this low level
21 partial?

22 A. They were all there. One epithelial of a heterozygote
23 dropped, it was there, but was below the level that we feel
24 comfortable about testing. There is an electrical current that
25 we use to separate DNA and sometimes that creates background

1 noise. You have to be careful, that is why I can't say much
2 more than what I said.

3 Q. Would Mr. Hill's family have the same or similar traits in
4 their DNA?

5 A. Yes. We get our DNA from our mom and dad, brothers,
6 sisters can contribute. They wouldn't be a match unless they
7 were twins, but they could have levels, if all three or four
8 touched it combined it could match the DNA.

9 Q. From a transfer to a pocket?

10 A. That is one possibility, one scenario.

11 *MR. PHILLIPS:* Thank you, sir.

12 *THE COURT:* Any cross-examination?

13 *MR. GREGG JOLLY:* Yes, your Honor.

14 **CROSS-EXAMINATION**

15 *BY MR. GREGG JOLLY:*

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. I met you outside the courtroom?

19 A. Yes.

20 Q. You were never deposed in this case, were you?

21 A. No, I was not.

22 Q. Okay. You testified earlier that you get some funding
23 from the Sheriff's Office; is that right?

24 A. Yes.

25 Q. Is the Indian River Crime Lab independent of the Sheriff's

1 Office?

2 A. Yes. Their dealings with us, they have a board and all the
3 Sheriffs sit on the board and the police departments, but
4 mainly that board is to set up for funding, not to tell us what
5 our policies are.

6 Q. Do you have your report in front of you, sir?

7 A. Yes, I do.

8 Q. Can you look at the first -- actually the second sentence
9 where it says remarks?

10 A. Yes.

11 *THE COURT:* Is this report listed on anybody's exhibit
12 list? It is not sought to be referred to, what lies.

13 *MR. GREGG JOLLY:* It is the Defense's 59, and
14 Plaintiff's 22.

15 *MR. PHILLIPS:* Correct.

16 *THE COURT:* All right. Plaintiff's 22?

17 *MR. GREGG JOLLY:* That is my understanding, your
18 Honor.

19 *THE COURT:* All right. You are having this marked for
20 ID only?

21 *MR. GREGG JOLLY:* Yes, your Honor.

22 *THE COURT:* Okay. You may proceed.

23 *(Whereupon Plaintiff Exhibit 22 was marked for*
24 *identification.)*

25

1 BY MR. GREGG JOLLY:

2 Q. The second sentence I was describing to you where it says
3 "Gregory Hill could not be excluded as a contributor to this
4 mixture."

5 A. Correct.

6 Q. Could you explain what that means to the jury?

7 A. As I stated earlier, basically we look at 13 regions of
8 your genetic makeup, chromosomes, that is determined by the
9 forensic science community.

10 Looking at the 13 regions in his blood sample, we are able
11 to type him and say these are the 13 regions he has. You swab
12 the gun separately and by taking the profile and comparing it
13 with the profile from the gun swabbings, all the markings
14 present from his blood are seen in that mixture, this is on the
15 swabbing from the gun, except for one very small low level
16 marker. Out of the 13, basically 12 and a half.

17 Now, that other half is there, but it is not enough to say
18 one way or the other. That is why we list it as he is still a
19 contributor based on that.

20 Q. And that was pretty technical. For the layman, do you have
21 an opinion whether Mr. Hill's DNA was on the gun?

22 A. More likely his DNA was on the gun than not.

23 MR. GREGG JOLLY: Your Honor, may I have a moment?

24 THE COURT: Yes.

25 MR. GREGG JOLLY: No further questions.

1 teaching and practice of the use of force and defensive
2 tactics, which are the skills law enforcement officers utilize
3 for taking people into custody, dealing with physical threats
4 in the environment.

5 Q. Is it through that teaching that you present expert
6 testimony?

7 A. Yes.

8 Q. Okay, we will get into that.

9 What is your educational background?

10 A. I have a Bachelor's Degree in criminology, I have a
11 Master's Degree in educational psychology, with an emphasis on
12 performance, and I am currently a Ph.D. candidate in that same
13 study.

14 Q. Why did you choose law enforcement as a career?

15 A. My background is one of combatives. As a kid, I was in
16 martial arts, went pretty far in competitive martial arts,
17 state, national and international competitions. When I went to
18 college, I didn't know what I wanted to do with myself, what I
19 wanted to be, but I was interacting quite often with lots of
20 police officers. They came to my karate school, a place we
21 call the dojo, and conversations led me towards feeling maybe
22 some of my skill set would be better used in this particular
23 area.

24 Q. How did that come to fruition?

25 A. When I was 19, I enrolled myself at the academy under the

1 banner of the Leon County Sheriff's Department. I attended the
2 academy for, I think at the time it was seven months, and
3 before I had graduated the academy I was offered a position
4 there as a defensive tactics instructor for at the time what
5 was called Lively Law Enforcement Academy, my profession was as
6 a trainer.

7 Subsequent to that, I decided to become a police officer,
8 and at the age of 20 I applied and was hired as a law
9 enforcement officer for the Florida State University Police
10 Department. I worked there for almost four years before moving
11 over to the Tallahassee Police Department where I continued to
12 work full time until 1996. And after that, I started my own
13 company, or during that time started my own company and began
14 traveling not only nationally, but internationally, which took
15 too much time away from law enforcement.

16 I went into the reserve program maintaining my status as a
17 law enforcement officer and continued to do full-time training
18 and part-time policing until 2015.

19 That is what I've got.

20 Q. Okay. Going back to your days as an active and reserve
21 police officer, what kind of cases did you work on?

22 A. So, I was a patrol officer, patrol officers do everything,
23 at least the primary things, often times when circumstances are
24 still unfolding. Law enforcement officers who respond in
25 patrol cars are tasked with dealing with them and trying to

1 bring them to some conclusion. Some of the cases get sent over
2 to investigators after the situations have stabilized.

3 So my job, really, at Florida State University was probably
4 more complete, from arriving to the scene, managing the
5 situation, and because of our low resources, we have a small
6 agency, conducting investigations myself. At Tallahassee, we
7 had a bigger division, and many of the cases were fielded off
8 to another division.

9 Q. What role, if any, do you currently have or affiliation
10 with law enforcement agencies, particularly here in the State
11 of Florida?

12 A. Here in the State of Florida, I am presently what is known
13 as a subject matter expert by the Florida Department of Law
14 Enforcement, and perhaps I should explain what that means.

15 FDLE is the organization here in the State of Florida that
16 is charged with being responsible for what is known as the
17 criminal justice standards and training commission. It is a
18 commission of individuals from law enforcement, some outsiders,
19 some from the correction side, and their task is to oversee law
20 enforcement in the State of Florida.

21 Part of what they do is, they have developed a curriculum
22 that all officers in the State of Florida have to undergo to
23 get their -- what are known as standards to pass a state
24 examination, get the standards to be allowed to be a police
25 officer in the State of Florida, and I presently write the

1 curriculum for the CJSTC, the State of Florida's Criminal
2 Justice Standards and Training Commission for use of force and
3 defensive tactics.

4 Q. What are use of force and defensive tactics?

5 A. Let me answer the first question, use of force. Use of
6 force is a philosophical understanding of the use of force, the
7 physical actions that police officers take from talking to
8 somebody to using deadly force with a firearm.

9 It is philosophical because there are models and ways to
10 tell police officers when to do things, not necessarily how to
11 do them, but when to do them, what is appropriate.

12 Defensive tactics is the actual skill building. If you
13 learn a punch, kick, takedown, or arrest, that would be a
14 defensive tactic. It is taught in a separate way from use of
15 force and later integrated in training so that officers, when
16 they are confronted with a situation that perhaps requires a
17 punch, kick or arrest technique, now they have the skill to be
18 able to incorporate the proper way to do that that is described
19 in our curriculum.

20 Q. In addition to you assisting writing manuals that law
21 enforcement -- active law enforcement use, what other role do
22 you have in academics?

23 A. Presently I am back in school, as I think I indicated. I
24 am what is known as an ABD informally, I have done all of my
25 course work for my Ph.D., I am in central Florida right now

1 working on a dissertation with the Seminole County Sheriff's
2 Office and Sanford Police Department on police officer
3 decision-making.

4 This area of study has refocused my involvement in
5 policing. Now I do lectures and various types of conferences
6 explaining the classroom portion more so than ending on the
7 mats like I spent most of my youth doing, and attempting to
8 improve decision-making and police officer competency on a
9 national and international scale.

10 Q. And any publications you care to elaborate about?

11 A. I have written most of my publications, coming from a
12 vocational background, in magazines, web sites, things that
13 police officers would look to to figure out how to do their
14 job. So, you can still find them online, of course, if you
15 text my name in. In terms of academic literature, I am in the
16 process of writing my dissertation which I hope to publish.

17 Q. During your deposition you were asked to bring books that
18 you were affiliated with or wrote. How many books did you
19 bring, do you recall?

20 A. I don't recall.

21 Q. Okay. Any appointments or certifications that you need to
22 discuss?

23 A. Well, the appointment as a subject matter expert, I think
24 is something that I covered, and I think that is very germane
25 to what I talk about.

1 I've also been involved in advising various individuals in
2 terms of policy. I am currently doing policy writing for an
3 agency down in southwest Florida. I have done policy writing
4 for many, many years for many agencies, including my own at the
5 Tallahassee Police Department. I have been appointed, at the
6 time I was a police officer, as defensive tactics coordinator
7 for our particular agency.

8 I was a teacher of many individuals, not only law
9 enforcement officers, but individuals outside of law
10 enforcement that sat in use of force cases, how to improve
11 police performance and sometimes recommend various types of
12 disciplinary action and things like that.

13 Q. When you say agency, you are referring to law enforcement
14 agencies?

15 A. Tallahassee Police Department.

16 Q. What field of techniques have you testified about in court?

17 A. Several, I testified as an expert in use of force and
18 defensive tactics, I testified in terms of bias, I am an expert
19 in that area, clutch reflex, which I don't need to elaborate
20 on. Neurological physiological involuntary reflex upon
21 squeezing your hands, when we have accidental discharges, I
22 have been named as an expert in that area as well.

23 I have been named as an expert in support police procedure,
24 police practices, perhaps a handful of more minor expertises.

25 Q. Now, Mr. Bedard, how does someone with such close ties with

1 law enforcement find himself sitting in a courtroom having been
2 retained as an expert witness to give testimony where law
3 enforcement is the Defendant?

4 A. So, my objective is to make sure that law enforcement
5 officers do it right and to consistently do it right. There
6 are two sides to that, one is teaching how to teach to do it
7 right, and another is offering opinions on how I don't think it
8 was done right and get to the bottom of how it should be done
9 right and have no repeat episodes.

10 I never thought I would be here, but as a subject matter
11 expert in the State of Florida, many attorneys heard my name or
12 were recommended to me by individuals involved, not only on
13 behalf of being critical of law enforcement officers, but my
14 real start of this was testifying on behalf of law enforcement
15 officers that were using skills and techniques and making
16 decisions that required more explanation for the general
17 layman.

18 So, depending on the day -- today, I happen to be here
19 being more critical than I am explaining the behaviors and
20 actions that I took into account in this particular case.

21 Q. Who typically retains you?

22 A. I get retained -- I should say I do criminal and civil
23 cases, I get retained by the Plaintiff, I get retained by the
24 Defendant in civil cases. I do a lot of stand your ground
25 cases, that is popular. I testified on behalf of the Defense

1 and I have been a source by the prosecutor for grand juries.

2 Q. Who retained you in this instance?

3 A. You did.

4 Q. How much am I compensating you? I am?

5 A. Yes. I earn \$200 an hour for my involvement in the case, I
6 cap it at 16 hours. Since the time you retained me, I have
7 been paid \$3,000.

8 Q. And have we worked on cases before?

9 A. Yes.

10 Q. Do you recall how many?

11 A. No more than a handful, I think maybe one or two others. I
12 am not sure.

13 Q. Have we ever been in this circumstance testifying at trial
14 for me?

15 A. No.

16 Q. Does who retains you -- strike that.

17 Do you have -- so, when somebody calls you to give an
18 expert opinion, how do you determine whether you are going to
19 take a case or not, or do you take every case that calls?

20 A. I don't. Generally, what happens when I get a phone call,
21 I do a preliminary hearing on the telephone and try to find out
22 the facts of the case. I may offer some commentary about the
23 facts that I am hearing.

24 If those may not be consistent with who called me, and
25 their opinion they are looking for, I may not get called back.

1 I don't pick the cases, but I've probably caused myself not to
2 be hired on many cases.

3 Basically, in answer to your question, what I try to look
4 for when I am contacted by an attorney on any side, or either
5 side, is whether or not the facts they are relating to me is in
6 my wheelhouse of expertise. If it is use of force or tactics,
7 I ask for the basic facts of the case, offer a very preliminary
8 opinion and send a copy of a retainer agreement. I don't do
9 any contracting, it is just my terms, and they decide after the
10 phone is hung up whether or not they will call me back again.

11 I don't know, I probably have done over 200 cases and
12 probably as many that have not called me back.

13 Q. Okay. What do you perceive is your role here today?

14 A. Um-m-m, I think the questions that you are going to ask me
15 are going to be based on my understanding of how law
16 enforcement officers are intended to conduct themselves based
17 on my experience, education, training, and certainly all -- the
18 majority opinion about how law enforcement officers conduct
19 police work, and there are differences between how officers in
20 Florida might conduct themselves than officers in California.

21 Those differences are close to being, if you forgive me for
22 using the word, nationalized. There are conferences in which
23 members from various states attend and share information, and
24 there are national organizations, National Chiefs of Police,
25 National Sheriff's Association, that come together for a

1 conference. What we are starting to see is there is a bleeding
2 over of philosophy and theory regarding law enforcement, and
3 that is what I'm here to speak to, what those standards are and
4 what we should reasonably expect from the law enforcement
5 officers in the State of Florida.

6 Q. Did you write a report in this case?

7 A. I did.

8 Q. Did you give a deposition in this case to Mr. Jolly?

9 A. Yes, I did.

10 Q. You are prepared to testify as to both of those?

11 A. I am.

12 Q. As part of the report, did you disclose all of the items
13 that you reviewed at the time you read the report?

14 A. Yes.

15 Q. I hate to take the time to do it, but I think it is
16 important for the jury to hear what you reviewed in this case.

17 A. Do you want me to go through the list?

18 Q. I do.

19 A. You want me to do it quickly. Do you intend to stop me and
20 talk about any of these?

21 Q. I do not?

22 A. I reviewed -- I won't preface anything -- complaint for
23 wrongful death, a variety of images taken by the law
24 enforcement agency, personnel files of Deputy Lopez, Deputy
25 Newman, a variety of depositions, perhaps some people you

1 already heard from, I don't know. David Morales, Donna
2 Hellums, Lisa McGuire, Joseph Hall, Juanita Wright, Michael
3 Gajewski, Edward Lopez, Christopher Newman, Enrique Ruiz,
4 Terrica Davis, Viola Bryant, Brian Hester, Christopher Cicio,
5 Wade Courtemanche, Thomas Johnson, and Tony Stevens.

6 I reviewed memorandums put out by law enforcement
7 officials, Chief Deputy Gary Wilson on the 30th of January,
8 2014; one by Major David Thompson put out on the 15th of
9 January, 2014; another from Major Thompson put out on the 22nd
10 of January 2014.

11 The St. Lucie County Sheriff's Office firearms
12 qualifications sheets, these are sheets that document that
13 somebody has not only attended training, but has qualified,
14 these are written in as it is done.

15 Defendant Christopher Newman's verified answers to
16 Plaintiff's interrogatories; Defendant Newman's answers and
17 defenses to the complaint; St. Lucie County Sheriff's Office
18 personnel action form; Plaintiff's notice of serving verified
19 answers to Defendant's first set of interrogatories to the
20 Plaintiff, Viola Bryant; Defendant Sheriff's answers to the
21 complaint; St. Lucie County deputy involved shooting
22 investigation, which is the investigation done internally that
23 constitutes approximately 300 pages, and subsequent to that, I
24 looked at the deposition of opposing counsel's expert as well
25 as the report that he published.

1 Q. Okay. I don't suspect we will get into that today.

2 What is your process? What do you do? You get all the
3 materials, we cut down trees and we send you the materials.
4 What do you do next?

5 A. I begin a review to try to understand what are all of the
6 facts, and we should always recognize, in certainly cases I
7 get, there are always two sides to a story.

8 So, I try to frame out the facts of the case as best I
9 understand them, and I dig deeper into what we call
10 corroborating the evidence. If somebody says something
11 happened, I try to validate or verify what that person says
12 either with the presence of evidence or sometimes in the
13 absence of evidence, and other times I invalidate what they
14 say. It doesn't necessarily mean they are lying, but the
15 perception is inconsistent with what the evidence tells us in
16 hindsight.

17 I make this comparative analysis with the story I frame out
18 and with the documents I read to you, and then I apply, I
19 suppose, my magic where I start to opine on how things are
20 done, and I turn to a resource library I have that includes
21 quite a few texts, text books, treatises, most recently
22 academic papers, that are describing how law enforcement
23 officers are trained and how they react and some of the
24 psychophysiological features that concern stress, how police
25 officers in high stress, how they are affected by that.

1 If there is a case with a police officer that lends itself
2 to the scholarly understanding of why people do those things, I
3 may offer some comment on that that may not be specific to some
4 evidentiary material that I have been given. And then I
5 consolidate that into a report, and that report, I hope, is
6 complete with the information that I derived and the opinions
7 that make the circumstances and situation make more sense to
8 triers of the fact.

9 Q. What do you do with diametrically opposed facts? You have
10 a fact that disagrees with another fact, they both can't be
11 true. How do you reconcile that?

12 A. I am not sure I understand the question fully. It is a
13 fact or it is not a fact. If you are talking about
14 perspectives or opinions diametrically opposed, this is where
15 we look at the evidence and say, okay, whose statement is more
16 accurate.

17 What I don't do, I don't try to lend credibility to a
18 statement. I don't suggest this person is lying or that person
19 is lying, rather to see if what they say comports with what we
20 can later show as evidence of a circumstance happening or not,
21 if there is a conflict, which I think is what your question is.

22 Q. Certainly. If there is a conflict in testimony and a
23 conflict in evidence, what do you do?

24 A. I try to record both. Sometimes I can synthesize it into a
25 specific sentence where I say he said this and she said that.

1 But to put it out there to understand that there is an
2 inconsistency in statements and in evidence, perhaps that needs
3 to be addressed at some point by people who are in the
4 decision-making capacity, i.e. triers of the facts, or if it is
5 an internal investigation, it might be the Internal Affairs
6 investigators who we are all familiar with who review
7 incidents.

8 Q. What are the basic facts on which you relied?

9 A. Well, I have written those out in my report and I will try
10 to summarize the best I can.

11 Q. Okay.

12 A. There was a call -- what we call a call for service. As I
13 indicated to you, patrol officers are responsible for doing
14 many, many things, many of which they are not -- almost all of
15 which they are not in control of.

16 This call for service was a very benign call, it was what
17 we call a loud music complaint. At best, it is in the State of
18 Florida a misdemeanor offense, to disturb the public.
19 Generally speaking, however, law enforcement officers get the
20 things all the time, I particularly do. I live in a college
21 town and I can tell you we respond to reports of loud music all
22 the time, it is something that is routine, not unusual.

23 And depending on the policy -- and this is another area I
24 look at if I am dealing with training issues and even civil
25 issues, there may be a different perspective in how we treat

1 those things, some agencies may have less tolerance than other
2 agencies. I can tell you in a university town we have a
3 tremendous amount of tolerance for it, but it is a law
4 enforcement issue that has to be addressed.

5 Sometimes we have a two warning rule, some agencies may
6 offer a three warning rule. In some of the agencies there are
7 abatement acts, where they try to shut a place down, a bar that
8 continues to invade the peace of the neighborhood.

9 So, law enforcement officers are trained how to handle
10 those things. The frequency is pretty consistent from -- I
11 won't say neighborhood to neighborhood, but state to state, I
12 don't think there are any major differences.

13 The officers were dispatched to a call for loud noise, not
14 only loud noise, but unpleasant noise, perhaps some vulgar
15 music or something like that, and the location of the house was
16 virtually across the street from a school, so there was a
17 sensitive issue with respect to that as well, as to -- it
18 wasn't a nightclub they were going to, it was a peaceful
19 neighborhood with a school across the street.

20 My understanding is that two officers responded, one
21 dispatched. The one dispatched reported to this area on Avenue
22 Q, pulled up, not directly in front of the house, and I can
23 tell you why we don't do that, in case it is some type of an
24 ambush, but to the side of the house, to the west side of the
25 house, and this particular deputy got out of the car.

1 We generally put a police car there, we put people in full
2 uniform so when we show up, you know who we are, and that was
3 done, that was done properly.

4 The second officer, we refer to it as provides backup, so
5 the second officer pulled up on the open site side on the same
6 street of the same house, and the first officer was Deputy
7 Newman and the second officer was Deputy Lopez. We have two
8 deputies that responded to a very minor complaint of loud
9 noise.

10 It's my understanding that Deputy Lopez took up a position
11 that was near the garage. I don't know if you have seen
12 pictures of the home itself, but off -- if you few are facing
13 the house, to the right side is the garage, and in that garage
14 there is sort of a latticed wall, solid concrete, but it has a
15 big garage door in front of it. As you drift to the left, you
16 get closer to the front door, and this is where Deputy Newman
17 went.

18 My understanding is, as he was walking up, he first
19 approached the garage with his flashlight, which we do use to
20 make loud noise. We carry big -- we used to call them five
21 cell flashlights, today they are not five cells anymore, but
22 they are about the same size, and he pounded on the garage door
23 to get the attention of somebody who might be inside there. As
24 I understand, the door was down and he couldn't see in.

25 After not receiving any direct answer from inside or having

1 any direct action occur, he then moved to the east and headed
2 to the front door. And after striking the front door a couple
3 of times with his flashlight, he sort of stepped away from the
4 door, again not receiving any type of a response, and started
5 to head back towards the garage which is where, as far as he
6 could tell as I understand, the noise was coming from.

7 And as that happened, my understanding is the garage
8 suddenly went up, and the deputy said that he noticed
9 immediately that the individual standing on the inside of the
10 door was holding a firearm down by his side.

11 My understanding is that he immediately started to what we
12 call in law enforcement clear leather, took his firearm out of
13 his holster to address the threat. About that time the door
14 started coming down. My understanding is the door, depending
15 on whose testimony you give more credence to, was either all
16 the way up, just covering the head or just above the waist. We
17 don't know that and we can't know that. It was high enough to
18 be able to see at least the waist of the decedent.

19 As the door started to come down, according to Deputy
20 Newman, the individual raised up a firearm. He never saw it
21 level, he saw it angular, changed from hanging down to being
22 lifted up, and he could see no more, and the door covered that
23 individual. At that point, Deputy Newman, according to Deputy
24 Lopez, screamed "hey", and discharged multiple shots into the
25 garage, of course, striking the decedent and killing him.

1 Q. Are there differences of opinion in the materials that you
2 reviewed regarding whether Mr. Hill had a gun in his hand?

3 A. Yes.

4 MR. BRUCE JOLLY: Your Honor, that is an improper
5 comment. Difference of opinion with --

6 THE COURT: What is the legal objection?

7 MR. BRUCE JOLLY: Relevance, given how it was phrased.

8 THE COURT: I am going to overrule the objection. So,
9 I don't know if the witness -- did he answer the question?

10 BY MR. PHILLIPS:

11 Q. Were there other -- we don't have to get into all of them,
12 but were there other variances of opinion or variances of
13 perception?

14 A. Yes.

15 Q. And were there times that both of those sets of evidence or
16 statements could not have been true, they both couldn't --

17 MR. BRUCE JOLLY: That is improper asking him to
18 comment on credibility.

19 MR. PHILLIPS: I am not giving weight to one or the
20 other, your Honor.

21 THE COURT: Without commenting on the credibility of
22 any one witness, if you are able to answer the question, I will
23 overrule the objection and allow you to answer.

24 THE WITNESS: I would say some of the witness
25 testimony did not comport with the evidence.

1 BY MR. PHILLIPS:

2 Q. Okay. Again, in your field of expertise, and again, I
3 don't want to weigh in on individual facts at this point, but
4 what do you do to reconcile that when that happens?

5 A. When I have statements that don't comport with the
6 evidence, I try to understand if I am missing something first
7 and foremost. That often times requires a deeper review of the
8 evidence or perhaps even calling an attorney back saying
9 something is missing here, can you provide it to me.

10 At other times I document the discrepancy between what
11 somebody says happened versus what we, in hindsight, now know
12 happened.

13 Q. If I say I am wearing red shoes, how would you document the
14 veracity of that statement?

15 A. I would say that you indicated that you were wearing red
16 shoes, but it appeared to myself that they were black.

17 Q. And need a shine.

18 Have you had an opportunity to review photos of the scene?

19 A. Yes.

20 Q. Is there anything from that or anything from your review of
21 the scene that would help the jury's understanding of the
22 premises or the area?

23 A. Yes.

24 Q. What is that?

25 A. I think if you see the aerial shot of the scene, of course,

1 you understand this was a neighborhood, as I indicated to you.
2 There was a school across the street, approximately across the
3 street, there was a parking lot of the school across the
4 street. The body of the school was kind of catercorner to
5 where the area was. Officers' decisions are partly based on
6 their environment.

7 If you look at the photographs where the shots actually
8 entered into the garage door, you can see they are angularly,
9 which comports with where Deputy Newman said he was when he
10 fired the shots, they weren't perpendicular. I am not
11 attempting to make a forensic analysis, but this is common
12 sense. The tear in the aluminum, the report where he was is
13 approximately correct.

14 I think that the photographs of the decedent on the inside
15 raise some questions that have not been answered, by my review
16 of the evidence, by the agency as to how it ended up that Mr.
17 Hill had a firearm in his pocket after apparently experiencing
18 a rapid successions of rounds, not the least of one to the
19 head. I think that is curious.

20 Q. Have you rendered an opinion -- you said rapid succession.
21 Have you rendered an opinion on what a reasonably prudent law
22 enforcement officer with Officer Newman's training would be
23 able to fire four shots out of a revolver, a service weapon?

24 A. The question is how fast can he do it. I can't tell you
25 how fast he did do it. Four shots can take four days if you

1 shoot one a day, but we do know in terms of the neurological
2 ability, your central nervous system's ability to flex your
3 muscles, which is what is required when you are pulling the
4 trigger, it happens somewhere in the neighborhood of between,
5 arguably, one-tenth of a second or one hundred milliseconds, to
6 perhaps up to 300 milliseconds. So, this is partly also based
7 on what officer we are talking about.

8 There are a lot of dynamics -- this is my area of study on
9 the academic side. There are a lot of dynamics going into
10 competency and ability to perform motor movements. Age is one
11 of them, we tend to slow down. And also anxiety, how high is
12 the anxiety from one person to another and that happens to do
13 with the appraisal of the circumstances.

14 One who is anxious perhaps is not the same as one more
15 level headed. The fastest you could do it is a tenth of a
16 second from round to round. The slowness of the speed is
17 unlimited, it could be days.

18 Q. The fastest speed is round to round, multiply that per
19 round?

20 A. The very fastest that a human could perform, you could
21 discharge six rounds in six-tenths of a second, which is about
22 half a second.

23 Q. What was the total for a reasonably prudent officer, again,
24 we don't know exactly here, under similar circumstances?

25 A. I don't understand the question.

1 MR. BRUCE JOLLY: I am sorry --

2 MR. PHILLIPS: I withdraw the question.

3 BY MR. PHILLIPS:

4 Q. Do you have an opinion as to the speed of discharge of a
5 service revolver by a reasonably prudent officer?

6 A. So, there is more to this equation. You asked me a motor
7 question previously, which he is how fast can we flex.
8 Reasonably prudent police officers don't just flex, we flex and
9 assess, we fire a shot, issue commands, we find out if we have
10 compliance. If we have compliance, we stop shooting. If we
11 don't have compliance, we may continue shooting.

12 So, again, when you start asserting things like verbal
13 commands or visual assessment of the effectiveness of your shot
14 you start adding time to that equation.

15 So, when you add the element of reasonably prudent it
16 changes the dynamic of the other question you asked me. It is
17 an empirical question, how fast can people shoot guns. We can
18 line up a thousand of them and generate an average, and it is
19 pretty significant what you have found. We have done that,
20 that is how I came up with the one hundred millisecond answer.

21 When you come to the reasonable prudent part, now you have
22 a lot of things coming into the equation that will affect that
23 timeframe.

24 Q. Okay. You indicated about some correlation between use of
25 force and compliance. What is that?

1 A. So, when we use force, we use force to stop threats.
2 Police officers don't shoot to kill, they stop the threat,
3 which means you have to analyze the threat, you have to analyze
4 whether it stopped or not.

5 This means you have to be able to see the threat. You have
6 to be able to react to what we call compliance, whether or not
7 a person has stopped doing the behavior that causes you to
8 shoot in the first place. If the person has stopped, you are
9 obligated by law and trained to also stop delivering force.

10 Q. How would one make that determination through an opaque
11 surface, a solid surface?

12 A. I don't know. I could imagine a police officer receiving
13 rounds through an opaque surface would suggest that you are
14 being fired at. After that, I don't think there is any visual
15 clue to suggest you are complying or not.

16 Q. What are the guidelines for a reasonably prudent officer
17 relating to shooting through a closed door or into a room that
18 you can't see?

19 A. We don't do it. We don't do it as a matter of professional
20 law enforcement. Any hunter would say the same thing, you
21 don't shoot into a blind and anticipate results, you don't know
22 what is on the other side. People have shot civilians when
23 they were hunting for a deer only to find out it was another
24 hunter.

25 Q. Does the garage have any windows that Mr. Hill can see out

1 of or Deputy Newman can see in?

2 A. No.

3 Q. You kind of touched on this, but based upon Deputy Newman's
4 rendition of the facts, where would you expect the gun to have
5 been found in proximity -- where would you expect a gun to have
6 been found?

7 MR. BRUCE JOLLY: Speculation, no scientific basis for
8 that kind of an opinion.

9 THE COURT: Well, maybe you want to lay a foundation
10 to ensure the witness is answering it -- if he is answering it
11 on something other than speculative.

12 MR. PHILLIPS: Yes, your Honor, fair enough.

13 BY MR. PHILLIPS:

14 Q. Let me start from the beginning, have you had an
15 opportunity to review statements and deposition testimony from
16 Deputy Newman?

17 A. Yes.

18 Q. And where was -- according to Deputy Newman, where was the
19 firearm when Deputy Newman was firing at Mr. Hill, meaning
20 where was the gun in Mr. Hill's alleged possession?

21 A. It was in his hand at the time, but angularly coming up.
22 He indicated he could still see the firearm, he never saw it
23 level, but he saw it level as he released his first shot.

24 Q. Where was the firearm found?

25 A. In Mr. Hill's back pocket.

1 Q. I believe tomorrow we are going to get into -- or next week
2 we are going to get into some PowerPoint photos of -- strike
3 that.

4 Are you able to make a determination, based upon your
5 review of all of the facts that you reviewed, when Mr. Hill
6 would have put the gun back in his pocket?

7 A. Um-m-m, I think there's one of two ways --

8 MR. BRUCE JOLLY: Respectfully, this is all
9 speculation. There is no scientific basis for --

10 THE COURT: Legal basis only. Speculation is the
11 objection?

12 MR. BRUCE JOLLY: Yes, your Honor.

13 THE COURT: I don't want the witness to speculate, so
14 I don't know if you have a foundation to lay that this is part
15 of what he analyzed and testified to, and maybe if you lay that
16 foundation --

17 MR. PHILLIPS: I was headed that way.

18 BY MR. PHILLIPS:

19 Q. Have you analyzed exactly that, the circumstances or the --
20 again, without commenting on the -- the divergent testimony,
21 but have you reviewed the -- strike that. Let me come back to
22 this.

23 The firearm that was found, do you have an opinion -- in
24 the garage -- do you have an opinion -- first of all, the
25 opinions we discussed thus far, very they to a reasonable

1 degree and probability in your vocation?

2 A. Yes.

3 Q. Can we agree to limit your opinions to a reasonable degree
4 of probability?

5 A. Yes.

6 Q. The firearm found, are you aware whether it had any blood
7 or significant DNA on it?

8 A. I saw a picture, I didn't see any. I also -- I think I
9 specifically looked for that, and I think it appeared to be,
10 for lack of a better word, clean.

11 Q. Any significance to your opinion that that firearm would be
12 clean?

13 A. I would find it highly unusual that it would have been
14 clean if he would have been shot while holding it.

15 Q. Why?

16 A. So, our nervous system responds to pain. Perhaps the best
17 example, if a mosquito lands on your face, you immediately slap
18 at it involuntarily.

19 So, when something is affecting your body, your hand goes
20 to that area. These were bullet holes that were projecting
21 biological material, blood, tissue, things like that. If the
22 gun was in the hand when he was hit and hit in rapid
23 succession, my experience would be his hands would go to those
24 areas first, and I would anticipate seeing some type of
25 exchange of matter on the firearm.

1 Q. Okay. Post shooting, would you expect all officers
2 involved with the investigation to write reports?

3 A. Yes.

4 Q. Why?

5 A. It is probably a policy that if you are involved, certainly
6 in a case like this, everyone plays a different role, everyone
7 sees something different, everyone knows something different
8 about their particular role. We see cases where the crime
9 scene person who does nothing other than stands outside the
10 tape, that is important so we have a chain of evidence. We
11 want to know who was in there. To the casual observer, it
12 might seem like an unimportant role, but it is critically
13 important when you are trying to track evidence.

14 So, everyone who responds there, if they are stopping
15 traffic at the intersection near the house, writes a report,
16 they are stopping traffic. This becomes part and parcel of
17 capturing the event. Law enforcement by policy, especially
18 when you are involved in the death of somebody, you document
19 your role and involvement in that.

20 Q. What does threat assessment mean in the context of law
21 enforcement?

22 A. So, whenever law enforcement officers are working, whether
23 there is circumstances they are aware of or circumstances they
24 are not aware of, they have some level of environmental
25 assessment.

1 They are constantly appraising who is around them. Many
2 people are aware police officers are proactive as well as
3 reactive. From a proactive perspective, when you get in your
4 car, you may not even know a police officer is there, that is a
5 proactive response. To be called to loud music, that is a
6 reactive response.

7 You are constantly under the possibility of being involved
8 or having to interact or intercept something in the
9 environment. So, your assessment is always looking for how you
10 might get hurt or somebody else might get hurt, that is the
11 general role of law enforcement, to protect society.

12 A threat assessment becomes more acute when you become more
13 aware of a threat, it is called a color code chart. So, when
14 you are relaxed and you don't think anything is going on, you
15 say you are Code White. If you alert that something may be
16 going on, this is Code Yellow. If you identify a threat you
17 are Code Orange. If you are addressing that threat you are
18 called Code Red. This has been used in law enforcement for a
19 long time, that is how the threat assessment is done.

20 We are constantly appraising them and whether they require
21 law enforcement action. In doing that, we make sure when we
22 are attending to one thing that something else doesn't end up
23 harming us. For instance, when you are getting a citation from
24 a law enforcement officer, he or she is looking over their
25 shoulder to make sure they are not struck by a car coming by,

1 so the threat assessment is not a single issue, but the
2 environment.

3 We are trained to attend to some forms and what is known as
4 attenuate other forms. What is not important we try to filter
5 out and we teach officers to look for the things that are
6 important.

7 Q. What is deadly force?

8 A. Deadly force is a statutory term, actually, and every state
9 has their own definition, they are all very similar. Here in
10 the State of Florida, deadly force is that force which is
11 likely to cause death or great bodily harm.

12 Q. Was deadly force used here?

13 A. Yes.

14 Q. What are -- when is deadly force appropriate?

15 A. So --

16 *MR. BRUCE JOLLY:* I didn't hear the question.

17 *MR. PHILLIPS:* When is deadly force appropriate?

18 *THE WITNESS:* Speaking generally, this is also Chapter
19 10 of the curriculum, deadly force is decided based on
20 criteria, and there are three criteria we have written into the
21 continuum. The first one, the person has the ability to cause
22 you death or great bodily harm, that is the definition of
23 deadly force. If they have the ability, that means that they
24 either possess something or they themselves perhaps are so
25 large or perhaps you are in a location like on the edge of a

1 cliff where their actions would very quickly be able to cause
2 you death or great bodily harm.

3 If I possess a gun or a knife or brick or rock or
4 ballpoint pen or automobile, you say I had the ability to cause
5 you great bodily harm, that he is the first.

6 The second criteria is opportunity. Opportunity means
7 not only do I have the ability to cause it, but I am in such a
8 location that I am able to use that particular thing. For
9 instance, I don't know who that person is sitting in the corner
10 of the courtroom there, but if I were up here with a knife, you
11 could say I have the ability to cause them great bodily harm
12 because knives cut and could kill, but I would have to get
13 closer, go around or through those seats to get to that person.
14 So I would be lacking opportunity.

15 So, let's say that he is a police officer, and I have
16 my knife in my hand; the function of that individual would be
17 to say drop the knife, drop the knife, not shoot me, even
18 though I don't have the ability to be closer, and that officer
19 would be able to recognize that, that opportunity comes as a
20 result of changing circumstances in the environment.

21 And finally, I have to demonstrate some behavior, at
22 least some behavior. If I could take the law enforcement
23 officer's role back to describe how I felt I was in jeopardy,
24 the word jeopardy -- we called it in the State of Florida
25 intent. We stopped using intent because it requires us to get

1 into the head of the other individual and we can't do that.
2 But through behavior, we can decide we think what they are
3 thinking.

4 For instance, when an individual steers a motor
5 vehicle towards me, it is possible that they are just trying to
6 get on the roadway, but it is also possible and I may perceive
7 an angle of the wheel is coming towards me, and I am in
8 jeopardy. We saw in the newspaper many police officers
9 shooting at vehicles and declaring they felt their lives were
10 in danger. Those three elements are required, ability,
11 opportunity and jeopardy, every time we use deadly force.

12 Q. Ability, opportunity and jeopardy. Again, looking at the
13 reasonably prudent police officer, how would a reasonably
14 prudent police officer reconcile a closed or closing or closed
15 garage door with when to use deadly force based upon ability,
16 opportunity -- and what was the third?

17 A. Jeopardy.

18 Q. -- jeopardy?

19 A. Jeopardy. I don't know if I mentioned this word to you, I
20 did when I provided the definition of deadly force, I will
21 expound on it. The word is imminent, it is happening now, not
22 that it might happen or perhaps happened moments ago, right now
23 it is happening, it is imminent. This is a criteria of
24 jeopardy. Jeopardy means not only are you perceiving your life
25 is somehow in danger, but that danger is ongoing and happening

1 now.

2 This requires data, requires visual information. Visual
3 information, essentially as human beings, arguably 80 to 90
4 percent of the data we receive comes in through our eyes.
5 Other animals gets that through their noses, like rats. That
6 is not humans.

7 We are drawing conclusions of imminency, you have to be
8 able to see what is happening or interpret from other
9 evidence -- for instance, if bullets were coming through the
10 door, that is something you saw. Even though you might not see
11 who is necessarily shooting, you could argue the threat was
12 imminent, it was happening at that moment. Absent that, you
13 are relying on guesswork, you are relying on something might
14 happen. You have no idea what is going on on the other side of
15 that opaque door. That is a critical error in law enforcement
16 training and law enforcement response to threats.

17 Q. Are law enforcement officers trained about what the seizure
18 of a person is?

19 A. Yes.

20 Q. What does that mean in law enforcement terms?

21 A. So, since 1985, seizing somebody is a constitutional issue
22 transferred from the Eighth Amendment, which is trying to
23 decide if punishment was cruel and unusual to the Fourth
24 Amendment, which indicates how we conduct seizures. The word
25 reasonable entered into the lexicon of law enforcement during

1 this particular Supreme Court case.

2 The theory is that all seizures, certainly deadly seizures,
3 are governed by the language of the Fourth Amendment, they must
4 be reasonable.

5 Q. Is taking a life seizure?

6 A. Yes.

7 THE COURT: 60 minutes.

8 BY MR. PHILLIPS:

9 Q. What is a reasonably prudent officer instructed related to
10 looking at the hands of a perceived threat?

11 MR. BRUCE JOLLY: It is not relevant in this case,
12 relevance.

13 MR. PHILLIPS: Looking at the hands of a perceived
14 threat, I think it is.

15 THE COURT: Overruled.

16 THE WITNESS: Law enforcement officers are trained --
17 they are drafted from the public, there he is nothing that
18 makes them unique except we train them. Sometimes we have to
19 untrain them. Sometimes law enforcement officers come to the
20 academy, and I have been teaching since '86, and they tend to
21 use social mechanisms, they tend to look them in the face,
22 study a face, look them in the eyes. We hear, I saw it in his
23 eyes. That is how some of us are socially adapted.

24 Law enforcement officers have to learn that. We say
25 watch the hands, watch the hands, it is the hands that kill

1 you.

2 When a law enforcement officer walks up on somebody,
3 perhaps if you watch TV they say this, they say take your hands
4 out of your pocket, puts your hands on the steering wheel,
5 hands, hands, hands. They recognize if there is an imminent
6 threat thereby, they want to make sure it is not visually
7 imminent. They want to control the hands, know where they are
8 at all times. As a result, law enforcement officers, they
9 attend to -- that is the word we use, they attend to the hands
10 first and foremost.

11 *BY MR. PHILLIPS:*

12 *Q.* A gun was found in Mr. Hill's possession, and we all agree
13 to that. We expect there is going to be evidence to show that
14 Mr. Hill was on some sort of probation.

15 What significance does that have related to this case?

16 *A.* No significance.

17 *Q.* Why not?

18 *A.* I think the fact that he was on probation, if he was on
19 probation, has to be calculated from the perspective of the
20 officers on the scene. What is it that they knew they were
21 responding to at the event, not what they found out later.

22 Often, this can poison the review. If we bring in data not
23 available to the officer at the time and allow it in the
24 calculus of the decision-making, it corrupts our understanding
25 of what the law enforcement officers did.

1 In this case, my understanding is that they didn't know
2 that he was on probation, and should not be alarmed by the fact
3 that the he had a gun because you could have a gun in your
4 house. I offer that no relevance at all in the decision to
5 address the weapon.

6 MR. PHILLIPS: I am trying to wrap up, your Honor.

7 THE COURT: Did you want a limiting instruction on
8 that issue?

9 MR. PHILLIPS: Yes.

10 THE COURT: Ladies and gentlemen, as you heard from
11 this witness, Mr. Hill was on probation. This evidence is only
12 admissible to the extent you think it is relevant to Mr.
13 Hill's actions on the day of the incident. It is not to be
14 considered for any other purpose.

15 BY MR. PHILLIPS:

16 Q. A police officer places himself in safety to avoid having
17 to make split-second decisions?

18 A. Yes, when possible.

19 Q. Why?

20 A. Law enforcement officers are challenged by many
21 circumstances, we have the phenomenon of suicide by cop, and we
22 are trained to that.

23 So, our basic understanding of dealing with individuals is
24 to reduce or eliminate the possibility of having to shoot
25 somebody. As part of the threat assessment, we look for where

1 the cover is, where the concealment is, whether or not there is
2 an alternative action that could be taken. If we walk into a
3 warehouse late at night and see somebody standing in the middle
4 of the floor with a gun in their hand, you argue they have the
5 ability to be in jeopardy, but it's just as easy to step out of
6 the warehouse. We call that preclusion, law enforcement
7 officers preclude something. We wouldn't turn and get in the
8 car and drive away.

9 We treat that -- we are also trained to treat what we refer
10 to as a barricaded suspect. We call out everybody, we may call
11 out the SWAT team, setting up a command station that could last
12 for hours as we try to talk that individual out rather than
13 take their life. This is the way law enforcement officers
14 train from a reasonable and responsible perspective.

15 Q. Do you have an opinion about whether deadly force was
16 appropriate on January 14, 2014?

17 A. I do.

18 Q. What is your opinion?

19 A. I don't think it was appropriate.

20 Q. Why not?

21 A. For the reasons I gave you. I don't think the officer was
22 able to say with any degree of certainty that anyone was in
23 danger from the simple lifting of the forearm. I could think
24 of many reasons an individual would raise it up, not the least
25 of which is to lower the garage door, and when they found that

1 the individual had the pants down around their knees, what we
2 would say saggin in the vernacular, that happens all the time.
3 I can tell you working the street, individuals run from us and
4 they are holding their pants up when they are running.

5 To draw the assumption that one of the things this person
6 was going to do is draw a gun on a police officer is
7 inappropriate. There is a reasonableness to assuming what the
8 other person can do. And what we know is that when Mr. Hill
9 lowered the garage, and I think there can be an argument here,
10 he blinded himself to the officers, he didn't know where they
11 were at that point, meaning the probability was the officers
12 were able to get out of there.

13 Deputy Lopez was behind cover, it was a concrete building,
14 chances are rounds would not have gone through that, and
15 certainly Deputy Newman was at a strong angle to that garage,
16 an area we refer to as the fatal funnel. If you are standing
17 inside an enclosure, you only turn so far before you are
18 shooting into your own enclosure. That is referred to as a
19 fatal funnel. It appears where Deputy Newman was, he was on
20 the edge of that fatal funnel. Stepping outside of that edge
21 could have preserved his own safety.

22 I don't believe he said he was in danger, he was firing for
23 the purpose of saving Deputy Lopez. Deputy Lopez never fired
24 at all, he was starting to create distance, back track and get
25 out of his own corner of the fatal funnel, but there are many

1 things that should have been done beside shooting rounds into a
2 blinded area.

3 Q. If no one heard Deputy Newman say anything other than "hey"
4 in a very excited manner, granted, not how I put it, is that an
5 appropriate notice before using deadly force?

6 A. I don't think in this case it was. In some cases it could
7 be. I could imagine a situation where you are stepping into an
8 area and being fired upon, you may say nothing before returning
9 fire. The location of the individual in his own home,
10 essentially restricted by the outer walls of the home, there
11 was time to issue commands and look for compliance, and I don't
12 think that happened.

13 Q. Okay. If there was -- if in this instance Mr. Hill had no
14 gun in his hand, would that have been an appropriate use of
15 force, deadly force?

16 A. No.

17 Q. Any equivocation about that?

18 A. No.

19 Q. Why not?

20 A. He would not have posed a threat at all to the officers. I
21 don't think he posed a threat to them under the circumstances
22 with a gun in his hand.

23 Q. Are there any opinions you expressed in this case we
24 haven't covered?

25 MR. BRUCE JOLLY: That is not a proper question.

1 MR. PHILLIPS: Strike that. I agree. I am trying to
2 short circuit. Bear with me, your Honor.

3 THE COURT: Yep.

4 MR. PHILLIPS: I almost missed the easiest one.

5 BY MR. PHILLIPS:

6 Q. Did Mr. Hill ever fire?

7 A. No.

8 Q. Were there bullets in his gun?

9 A. No.

10 Q. Or the gun found on him?

11 A. No.

12 Q. Have all of your opinions been within a reasonable
13 probability within your field of expertise?

14 A. Yes.

15 MR. PHILLIPS: That is all. May I have a two-minute
16 break?

17 THE COURT: Maybe we will take our mid-afternoon
18 break.

19 Okay, all right. Putting all the pressure on me. It
20 is quarter of 3:00, we will take a break until 3:00 o'clock.
21 In 15 minutes we will return.

22 I remind our witness you remain under oath, you are
23 not to discuss your testimony over the break.

24 I am going to remind our jurors you are not to discuss
25 the case among yourselves or with anyone else, not to do any

1 research, and as always, not to have any contact with any of
2 the persons associated with the case, witnesses, lawyers,
3 parties.

4 We will see everybody back a couple of minutes after
5 3:00 o'clock.

6 (Thereupon, a brief recess was taken.)

7 *THE COURT:* All right. Bring the jury in.

8 (Thereupon, the jury returned to the courtroom.)

9 *THE COURT:* Welcome back, you may be seated. And you
10 may commence your cross-examination.

11 **CROSS-EXAMINATION**

12 *BY MR. BRUCE JOLLY:*

13 Q. Mr. Bedard, we have met before?

14 A. Yes, sir.

15 Q. All right.

16 I don't think you told the jury that you, in your trainer
17 capacity, have ever been a firearms trainer.

18 A. I have not said that, but I am.

19 Q. You are currently one?

20 A. Yes.

21 Q. Where is that, sir?

22 A. Here in the State of Florida.

23 Q. Well, where -- at a specific facility?

24 A. I am a firearms instructor, I can be contracted to teach
25 anywhere.

1 Q. Are you currently teaching anywhere?

2 A. I am currently in court.

3 Q. Good answer. Other than when you are here or in court, are
4 you training?

5 A. Yes.

6 Q. Where? That is what I have should have asked.

7 A. I have trained at my headquarters, Patton Academy, in
8 Tallahassee, I have trained around the world, and around the
9 country, so many different locations.

10 Q. As a firearms trainer, you are familiar, generally, with
11 the training given law enforcement officers, I will start in
12 Florida?

13 A. Yes.

14 Q. Okay. And you do not have, as we sit here today, an
15 opinion that Deputy Newman's training as relates to use of
16 deadly force was improper?

17 A. I don't agree with that statement. I think his use of
18 deadly force was improper.

19 Q. I am sorry, I apparently was not clear. His training on
20 use of force.

21 A. No, I don't have an opinion about his training on use of
22 force.

23 Q. And you would agree with me, I think, the training, at
24 least in most of the law enforcement agencies in Florida, of
25 law enforcement officers, deputies, as relates to the use of a

1 firearm is that more than one shot is expended.

2 If they decide to shoot, they are taught to shoot more than
3 once?

4 A. The data or training?

5 Q. The training.

6 A. We shoot until the threat stops. If it is one time, that
7 is when we stop; if it is ten times, that is when we stop.

8 Q. In this -- not in this instance. I assume you always
9 testify that as relates to use of force, about the three
10 factors for law enforcement officers to consider as they decide
11 to use deadly force or not to use deadly force?

12 A. Yes.

13 Q. Ability, opportunity, and I think the third was perception
14 of jeopardy?

15 A. Yes.

16 Q. Okay. And those principles would apply in other instances
17 as well as this instance?

18 A. Other deadly force instances?

19 Q. Yes, I meant deadly force.

20 A. Yes.

21 Q. You, as a cop, when you were a Tallahassee cop, you had to
22 use deadly force?

23 A. Yes, I did.

24 Q. You didn't kill a person?

25 A. No.

1 Q. And in that particular instance, when you used deadly
2 force, you thought the person had the ability to harm you?

3 A. No.

4 Q. Okay, I'm sorry. You did not perceive that the woman had
5 the -- the individual had the ability to harm you while she was
6 carrying the knife?

7 A. She had the ability, that was not the criteria I used. She
8 was attacking somebody else.

9 Q. She had the ability and opportunity to cause great bodily
10 harm to someone else?

11 A. Yes.

12 Q. That is why you discharged the firearm?

13 A. Yes.

14 Q. Your perception was, whether real or not real, that she
15 could harm this other person seriously?

16 A. Yes.

17 Q. You were asked about whether you had noted as you were
18 conducting your review that the Plaintiff -- the decedent at
19 the time of this incident was on probation?

20 A. That's right.

21 Q. And I assume as you went through your thorough review of
22 the materials, you had available to you and you accessed the
23 order of probation?

24 A. I believe I did.

25 Q. And do you recall from your review of that document, the

1 order of probation, that --

2 *THE COURT:* Just one moment. I want counsel to limit
3 it to precisely what we spoke about. If you are not sure we
4 can --

5 *MR. BRUCE JOLLY:* I am pretty sure, and that is not
6 where I am going.

7 *THE COURT:* Okay, I want to make sure.

8 *BY MR. BRUCE JOLLY:*

9 Q. You noted that he was prohibited by that order from
10 possessing a firearm?

11 A. Yes.

12 Q. And that would be kind of typical of that setting, would it
13 not?

14 A. What setting are you referring to?

15 Q. When somebody is on probation, the order of probation.

16 A. I don't know if all probation prohibits you from having a
17 firearm, but this one did.

18 Q. Are you -- do you know that that probation prohibited the
19 use of alcohol?

20 A. I believe so, yes.

21 Q. And as you went through your review of the materials which
22 you relied upon in rendering the opinions that you have given
23 us, you noted that Mr. Hill was impaired by alcohol?

24 A. I don't know if he was impaired. I know he had a lot of
25 alcohol in him. Impaired is a decision that can only be made

1 in looking at behavior.

2 Q. Well you are an ex-cop, correct?

3 A. Yes.

4 Q. You have had life experiences where you interacted both
5 professionally as a cop or personally with people who are
6 impaired by alcohol, correct?

7 A. Yes.

8 Q. And in your experience as a cop, you are aware that the
9 legal limit for operating a motor vehicle so as to not be
10 impaired is .08?

11 MR. PHILLIPS: Objection.

12 THE COURT: Basis.

13 MR. PHILLIPS: He wasn't operating a motor vehicle.

14 MR. BRUCE JOLLY: Well, I will fix it.

15 THE COURT: Sustained.

16 BY MR. BRUCE JOLLY:

17 Q. I am not suggesting that the materials you reviewed
18 suggests he was driving, but in Florida, you are aware that
19 where one has a blood alcohol count in excess of .08, he is
20 presumed to be impaired?

21 A. Um-m-m, I believe so. I don't know if it is intoxicated or
22 impaired. Impaired provides the behavioral response from which
23 we --

24 Q. I know you don't want to go --

25 THE COURT: Let the witness finish his sentence before

1 you ask the next question.

2 BY MR. BRUCE JOLLY:

3 Q. The statutory definition is that a person over .08 is
4 presumed impaired.

5 A. Okay.

6 Q. Okay. And in this instance, from your review of the
7 materials, in fact Mr. Hill's level of -- blood alcohol level
8 was .34, at a minimum. You knew that?

9 A. Yes.

10 Q. And, you know, I assume in your review you looked at the
11 medical examiner's report in this case, correct?

12 A. Yes.

13 Q. And actually, there was also a secondary reading that was
14 more than .34, wasn't there?

15 A. I believe so.

16 Q. And that was .38?

17 A. I don't recall the number exactly.

18 Q. But it was clearly four or four and a half times, as you
19 understand the law, the legal impairment limit as defined by
20 statute?

21 A. For operating a motor vehicle, yes.

22 Q. Well, okay. I mean, from your review of the materials, do
23 you have reason to believe that this man was not impaired at
24 the time of the incident?

25 A. I wasn't there to observe any behavior, which is how I

1 would judge the impairment of this individual.

2 Q. And yet, you weren't there for when this deputy had to make
3 a decision as to whether his life or Deputy Lopez' was in
4 jeopardy? I think that was your word.

5 A. I was not there, that is true.

6 Q. I don't think I heard this. You didn't tell this jury, did
7 you, that in fact a law enforcement officer has to wait until
8 he is shot at before he can use deadly force?

9 A. I did not say that.

10 Q. In fact, you don't agree with that?

11 A. No, I don't agree with that.

12 Q. The threat doesn't compel that the officer already had been
13 shot at in order to use deadly force?

14 A. It could compel that, but it is not the sole requirement.
15 If you are shot at, certainly that threat would compel a deadly
16 force response, but it does not require that. It is
17 sufficient, but not necessary.

18 Q. So, am I to understand that it is your opinion that where a
19 law enforcement officer has a gun pointed at him, that he
20 cannot use deadly force?

21 A. I don't think -- is this a hypothetical?

22 Q. Sure, I will start with that.

23 A. Hypothetically, if an officer has a gun pointed at him,
24 yes, he may address that with deadly force.

25 Q. And you -- you know, one of the things about this, as you

1 go through this material, having been hired by Mr. Phillips,
2 you don't try to discount what the law enforcement officers
3 testified to about what they saw?

4 A. No, I don't.

5 Q. And you will recall, I think, since you indicated you
6 reviewed the depositions as well as the reporting on the
7 incident, that Deputy Newman indicated that the gun was pointed
8 at Lopez?

9 A. I don't believe he said that.

10 Q. What is your recollection?

11 A. My recollection is that he never saw the gun leveled at
12 anyone, but rather saw the gun lifted up and -- unilaterally
13 from a side position and slightly coming up before he could see
14 no more.

15 Q. Clearly, you would agree that posed a threat to the two
16 deputies?

17 A. I think a threat to the deputies is one possibility. What
18 it also may have reflected, as I indicated, he could have been
19 lifting his arm to take the rest of the door down, he could
20 have been clutching at his pants, many different possibilities.
21 Our idea is to get it right when we use deadly force.

22 Q. You would agree with me one of the possibilities within the
23 reasonable perception of the two officers on the scene, the
24 deputies, was that they were under threat?

25 A. I think the perception that the weapon may very clearly and

1 imminently be headed in a position where it would be a threat
2 is valid. I don't think anyone actually saw the weapon
3 pointing at anyone.

4 Q. You will concede, I think, that the deputies observed this
5 man, Mr. Hill, quickly jerk up the door, look at them, the gun
6 was coming up, and the door went back down?

7 A. That is how I understand it.

8 Q. Those facts?

9 A. Yes.

10 Q. I don't know that you personally have been involved, but
11 certainly in your experience you have reviewed situations where
12 shooting was accomplished, the law enforcement officers used
13 deadly force, through an object where they could not see the
14 other side?

15 A. I don't recall any case where that has happened with the
16 exception, perhaps, of shooting at or into motor vehicles,
17 which is why we have such a strong policy against that.

18 Q. But you would never tell this jury, under no circumstances
19 could a law enforcement officer shoot into a garage door?

20 A. I am trying to imagine a circumstance. I think it is
21 better to address that.

22 Q. That is not what I asked.

23 A. Then I can't answer that question.

24 Q. You will concede the deputies observed a man before the
25 door was closed?

1 A. Yes.

2 Q. You will concede that the deputies observed a gun in his
3 hand?

4 A. I will concede that is what they said.

5 Q. And that that does not prohibit, if they perceive they are
6 at risk, imminent threat of seriously bodily harm, that they
7 could shoot into the door as it was coming down?

8 A. No.

9 Q. You would agree with me, would you not, that when the first
10 shot was fired the gun had not reached the ground -- the
11 garage -- the door had not reached the ground?

12 A. I have seen mixed evidence on that. I am not sure.

13 I think, according to Deputy Newman, it had not closed.
14 According to the reenactment by the Sheriff's Department, it
15 had closed when the first shot was fired.

16 Q. And even though you were hired by the Plaintiff here, you
17 didn't assume that Deputy Newman was wrong?

18 A. Before I looked at the evidence.

19 Q. No, not before you looked at the evidence, as a part of the
20 review of the evidence. Although that brings up a point, I
21 will get to that next.

22 Sir, Mr. Phillips here, you know him, correct?

23 A. I do know him, yes.

24 Q. You have worked with him before?

25 A. Yes.

1 Q. I think you indicated a half dozen cases or so?

2 A. I don't think I indicated that, I think I said a couple,
3 less than a handful. On my hand, that is only five.

4 Q. I get it. I misheard you, and I apologize to you.

5 On something less than a handful you and he worked
6 together?

7 A. Yes.

8 Q. And in this particular instance, your methodology, I think
9 you described is what you would typically do?

10 A. Yes.

11 Q. A lawyer calls you, hey, let me run these facts by you, and
12 that is sort of what happened here, wasn't it?

13 A. Yes.

14 Q. It wasn't Mr. Phillips, it was one of his associates?

15 A. I don't recall.

16 Q. By the way, do you recall anything about that first
17 conversation?

18 A. It has been a long time, I would be speculating on what I
19 learned after that first conversation versus what the original
20 conversation was.

21 Q. But the facts are generally, hopefully not specifically,
22 run by you in the first conversation?

23 A. That is correct.

24 Q. And then later on -- and you make the decision at this
25 time, is this a case that interests me, is this a case that

1 falls within my field of expertise, do I want to be involved?

2 A. I think the second thing you said has probably the most
3 weight on it, if I put any weight on the other two things you
4 said at all.

5 Q. In this instance, you expressed interest in being retained,
6 correct?

7 A. I offered my services to be retained, yes.

8 Q. Is that different than what I asked you?

9 A. I don't know that I was interested. I get a lot of cases,
10 they don't call me back. It is not healthy to have investment
11 in a case I might be interested in.

12 Q. Based on that first conversation, although you don't
13 remember what it was about, you apparently indicated send me
14 the stuff?

15 A. Yes.

16 Q. At that point in time, you hadn't reviewed anything?

17 A. That is right.

18 Q. And, of course, you certainly didn't formulate any
19 opinions?

20 A. The opinion I would have formulated was are these claims
21 made by whoever I spoke to within my purview of expertise.

22 Q. Other than that opinion, you don't have an opinion
23 substantively based upon whether somehow the matter was wrongly
24 conducted or properly conducted?

25 A. Not that I recall.

1 Q. Of course not, because you hadn't even seen anything yet,
2 right?

3 A. Sometimes somebody would say to me if these facts happened,
4 would this be correct, and I look at the facts and say that
5 wouldn't be correct. I can't say whether that happened or
6 didn't happen. My next comment would be please send me the
7 materials and let me look at it because maybe you didn't look
8 at it right.

9 Q. And that is what you did in this situation?

10 A. Yes.

11 Q. And your first conversation was in October of 2016; is that
12 right?

13 A. Yes.

14 Q. And the materials came to you in early December, 2016,
15 correct?

16 A. You know more about that than I do. I don't know.

17 Q. That was in the depo?

18 A. I don't recall at this moment.

19 Q. And the report that you rendered, which was submitted to
20 all of us, is like Christmas day, I think, 2016?

21 A. I don't recall.

22 Q. Okay. So the review -- I keep talking about review of the
23 materials. It is all those materials that you chronicled for
24 the jury on direct?

25 A. That is right.

1 Q. All right. And by the time your written opinion was
2 rendered, you had formulated the opinions that you had in this
3 case?

4 A. Yes.

5 Q. And if I understood you correctly, the only thing you have
6 done since I deposed you in February '17 was to read the
7 deposition of the expert that the defense has hired?

8 A. I also did a site review.

9 Q. When did you do that?

10 A. When I got here.

11 Q. In the last day or so?

12 A. Yes.

13 Q. That didn't change any opinion you had?

14 A. No.

15 Q. The opinion formulated I guess a year and a half ago, you
16 didn't need a site visit to formulate that opinion?

17 A. No. I thought it was well captured in the imagery and --

18 Q. That may be why. The question I have is: Had you done it?
19 So, when did you do the site visit?

20 A. Yesterday, when I arrived.

21 Q. Was anybody there?

22 A. No.

23 Q. Did you talk to anybody?

24 A. No.

25 Q. And it was kind of -- if I understand you correctly, it was

1 kind of what you expected based upon all of the photos you
2 looked at?

3 A. Yes, it was kind of what I expected. It is always nice to
4 get some dimension in terms of when you are looking at a two x
5 two photo versus a three dimensional environment. I think it
6 helps to understand things like distances, and that is perhaps
7 what I gathered. The school seemed to be a lot closer than I
8 recall seeing in the photograph.

9 Q. Did you measure it?

10 A. I didn't measure it, but it was much closer than I had
11 imagined it would be.

12 Q. Did you take any measurements?

13 A. No.

14 Q. Did you take any photographs?

15 A. No.

16 Q. So you just went by there to see what it looked like?

17 A. Yes.

18 Q. All right. By the way, speaking of that, as you went
19 through the materials, the materials -- the reports and the
20 materials that were provided to you, did you notice that there
21 was inventory of the property which was taken as the scene was
22 searched?

23 A. I don't specifically recall that. It wouldn't surprise me,
24 that is what we should do.

25 Q. Right. And you would expect that?

1 A. Yes.

2 Q. And, of course, you would have expected from -- with your
3 level of expertise, that the gun that was retrieved from the
4 scene, the Kel-Tec, would have been retained in evidence?

5 A. For the time being, yes. I don't know that it would have
6 been retained forever, but it would have been retained
7 certainly during the criminal part of this investigation.

8 Q. How about -- if there is a civil suit pending that came out
9 of the incident, wouldn't you expect the agency being sued,
10 from your experience, to retain that firearm?

11 A. I think if a spoliation letter is issued, they are required
12 to. I don't think it would require an agency in a civil case
13 to retain evidence against them.

14 Q. Would you be shocked that the St. Lucie County Sheriff kept
15 the evidence while they are being sued?

16 A. No.

17 Q. And by the way, would you expect that the agency, I guess,
18 seize the shorts and retain the shorts that Mr. Hill was
19 wearing?

20 A. I'm sorry, ask that question one more time.

21 Q. Sure. Wouldn't you expect the agency to retain -- or first
22 take the shorts into evidence, the shorts he was wearing, the
23 ones you said he was wearing -- what is that term?

24 A. Saggin.

25 Q. Saggin. Okay. The shorts that were being sagged, if that

1 is a verb, adjective, would you expect them to take them and
2 put them in evidence?

3 A. Your question doesn't seem like it has an end to it. I
4 would say to the criminal investigation, I would expect to see
5 that. I think after that, they are compelled to release that
6 evidence back -- whatever evidence back to the family or
7 destroy it if it has no particular value.

8 Q. You are aware the family has to request it before they
9 return it?

10 A. Yes, by policy -- I can't tell you their policy. There is
11 usually a time limit in which the agency will keep it and they
12 start to purge their evidence.

13 Q. If this was an agency you were involved in or with, you
14 would want them to retain that evidence while there was a civil
15 suit pending, it just makes sense, doesn't it?

16 A. Yes, I would want that, sure.

17 Q. Okay. When you were retained in this case, did you say at
18 any point in time, hey, I want to see the physical evidence?
19 Did you ask anybody to do that?

20 A. No.

21 Q. So you don't -- other than what you observed in any
22 photograph, you really can't describe how the shorts are, how
23 they are cut, how they are tailored, how big they are. Do you
24 know anything about those shorts?

25 A. Only what I saw in the photographs.

1 Q. From what you saw in the photographs, what can you tell
2 this jury?

3 A. Well, certainly they were halfway down his body.

4 Q. That is not the shorts' fault?

5 A. I don't know what they look like, I don't recall if they
6 were jean shorts, I think they were. I don't think that is
7 relevant to my analysis, what the shorts look like.

8 Q. You seemed to express as you were testifying on direct
9 some -- it wasn't really a surprise -- concern, I think, about
10 how this gun got in the back -- it is actually kind of a side
11 pocket -- I guess a back pocket, of these shorts as was found.
12 You did have some concerns about that?

13 A. I still do.

14 Q. Okay. Well, did you ever look at the shorts to see, oh, I
15 understand how this happened?

16 A. No.

17 Q. By the way, you are retained by the Plaintiff -- you
18 described yourself -- I think the first question was: What do
19 you do? And your answer, if I recall correctly, was "I am a
20 trainer?"

21 A. Yes.

22 Q. Well, you are also a litigation consultant, aren't you?

23 A. Yes.

24 Q. And in fact, the greater percentage of your income from
25 which you support your family comes from litigation consulting?

1 A. I am not sure that is true.

2 Q. It is a significant portion of your income?

3 A. I get paid for consulting, yes.

4 Q. I guess that means the answer is, it is a significant
5 portion of your income?

6 A. It is not exactly. I do a lot of consulting, I do policy
7 writing, I review cases, I have a pretty significant security
8 contract to write their policy as well for one of the largest
9 security agencies in North America. All of those pay me. I
10 haven't broken it down to what part is litigation consulting to
11 tell you that it is the majority of my money.

12 Q. I am not sure you knew or did not know it is a majority.
13 It is significant?

14 A. Yes. Sure.

15 Q. And when Mr Phillips was asking questions, you indicated
16 you have charged him \$3,000 to this point?

17 A. Yes.

18 Q. One hundred dollars an hour?

19 A. Yes.

20 Q. And you don't bill in excess of 15 hours, at least as a
21 retainer?

22 A. Right.

23 Q. You have charged him, or are charging him more than
24 that as we sit here today?

25 A. I have a day rate to offer testimony in trials as well as

1 deposition. I think I charged you also when you called me for
2 deposition.

3 Q. We paid it?

4 A. You did.

5 Q. So, you are not down here for free, you are getting paid?

6 A. I couldn't afford to do this for free.

7 Q. What are you charging -- the jury should know, what have
8 you charged for the work you are performing today?

9 A. My day rate is \$1,800 to be here today to speak to you.

10 Q. Did you charge to drive down here yesterday?

11 A. I have not charged yet, but I get whatever the state rate
12 is, whatever the per mile rate is to come from Tallahassee to
13 this location.

14 Q. The travel down here is not included had in the \$1,800 a
15 day or is it?

16 A. I know it surprises you, I do not charge travel time, I
17 charge gas to get down here.

18 Q. When you return home tomorrow, you are not going to charge
19 that as another day?

20 A. No.

21 Q. So, your fee to testify here today is \$1,800?

22 A. Yes.

23 Q. Oh. So you are hired by the other side, the Plaintiff -- I
24 shouldn't say the other side. You are hired by the Plaintiff,
25 right?

1 A. Yes.

2 Q. And you go into this thing open minded?

3 A. Yes.

4 Q. Just because the Plaintiff has hired you, you are not going
5 to -- theoretically, whoever hires you, your opinion is going
6 to be the same?

7 A. Is going to be the same as what?

8 Q. It is going to be the same, whatever your opinion is. Who
9 hires you does not affect, if I understood you, what your
10 opinion is going to be?

11 A. Yes. I have evidence of that.

12 Q. And as you sit here today testifying for the Plaintiff, you
13 understand you are not an advocate?

14 A. I am not an advocate.

15 Q. And that would be wrong, for you to be an advocate, at
16 least in this context?

17 A. In this context, yes.

18 Q. So, if I understood you, as of the time that you were
19 deposed on February 10, 2017, your opinion in this matter was
20 formulated?

21 A. Yes.

22 Q. Finalized?

23 A. At that time, yes.

24 Q. I guess since you didn't conduct an examination of the
25 weapon, you did not -- or ask -- did you ask anyone to see the

1 weapon before you came here today?

2 A. No. I didn't even know it was in evidence, it wasn't
3 provided in discovery.

4 Q. Excuse --

5 A. No mention of that was provided to me in discovery, it was
6 in evidence.

7 Q. You had the materials to make that determination yourself?

8 A. That it was in evidence when I had the case?

9 Q. Sure.

10 A. No, I didn't followup on it. It is typical to purge
11 evidence when the criminal case is completed.

12 Q. Did you ask Mr. Phillips, hey, I would like to see this
13 gun?

14 A. I didn't see it as necessary.

15 Q. It must not have been important to you in your analysis?

16 A. What was important about it was its presence and whether I
17 could see blood on it. It was analyzed. I am not a forensic
18 person, I am not there to tell you what is on it or not.

19 Q. How about how big it is?

20 A. I know what a Kel-Tec is. I am aware of firearms.

21 Q. Did you ask to see the shorts? I have this theory out
22 there, I need to see the shorts to confirm it?

23 A. My theory didn't have anything to do with the shorts, other
24 than how the weapon got in them. I could see them in the
25 photograph.

1 Q. How big is the pocket?

2 A. Big enough to put a gun in it.

3 Q. Is it so much bigger than the gun it is easy to slip the
4 gun into the pocket?

5 A. I think it was slipped into the pocket. How easy with a
6 shot to the head I don't know.

7 Q. If I remember correctly, you said the gun was neatly tucked
8 into the pocket. Do you remember that?

9 A. Yes.

10 Q. If you didn't know how big the pocket was, you don't know
11 how neatly or sloppily it was put in the pocket?

12 A. Nobody saw it when they went in. The SWAT team is charged
13 with making it safe so no one got shot, and they did not find
14 it. Nobody reported it being there during that time period.
15 That is very curious.

16 Q. Just a few moments ago I asked you if you perceive yourself
17 as an advocate?

18 A. You did.

19 Q. And you indicated, I am not an advocate for this family?

20 A. I stand by that.

21 Q. Okay. I mean, I may have asked you, I apologize if I did.

22 You are supposed to be objective as you look at this
23 evidence?

24 A. That is right.

25 Q. You are supposed to be objective, that is my understanding,

1 as you analyze the materials that have been provided to you so
2 as to be able to render an opinion?

3 A. That is right.

4 Q. All right. You don't necessarily make a deduction where
5 the evidence is in dispute that is favorable to one side as
6 opposed to being unfavorable to the other side; you wouldn't do
7 that?

8 A. Not intentionally. Certainly my deduction can be favorable
9 to one or the other side, it usually is.

10 Q. Now, as you conduct this analysis for the purpose of being
11 able to testify on behalf of the Plaintiff, where you see
12 conflicts, you don't default in resolving those conflicts in
13 favor of the Plaintiff and against the law enforcement?

14 A. No.

15 Q. Okay. Four shots through the door, garage door, correct?

16 A. Yes.

17 Q. You know as you are looking at this thing, with your vast
18 experience, you could -- you did note this, that the entries
19 into the door, the gun -- what is the word -- the gun shots
20 through the door were not regularly spaced, there were
21 different distances between them?

22 A. Yes.

23 Q. And I think you concluded, did you not, that the lowest of
24 the entries through the garage door was the first shot that was
25 fired?

1 A. I don't know if I concluded that or not. I think someone
2 else did.

3 Q. Somebody else concluded it?

4 A. I think I read that. I don't think anybody knows exactly.
5 It's my understanding the door was in motion. I don't think
6 anybody could say with any degree of certainty what that
7 pattern exhibits, whether it is high or low.

8 Q. The evidence -- that is what you are doing, evaluating the
9 evidence -- was consistent as it relates to the projectiles,
10 the bullets going through the door as going from lowest to
11 highest sequentially?

12 A. Are you asking me if the lowest shot was the first and
13 highest was the last?

14 Q. I thought I was clear on that.

15 A. I don't know.

16 Q. It suggests the door was coming down as the first shot
17 pierced it?

18 A. Yes. Mr. Hill was on the opposite side of the door when
19 the bullet pierced it.

20 Q. Now, I don't think, you may tell me if I am wrong, that you
21 analyzed which of the projectiles hit Mr. Hill in which order?

22 A. I don't think anyone could possibly do that.

23 Q. How about the medical examiner?

24 A. The medical examiner can't tell you what round going
25 through that door hit in what place.

1 Q. Okay. How about, were you aware the first projectile got
2 hung up in the fold of the door? Did you know that?

3 A. Yes.

4 Q. You saw that?

5 A. I am not sure it is the first projectile, there was a
6 projectile in that part of the door, yes.

7 Q. Your review of the evidence suggested that Mr. Hill was
8 leaning forward as he was shot?

9 A. I don't think I said that.

10 My indication in my report was nobody observed him
11 slouching in a pugilistic posture.

12 Q. So you don't have an opinion on that?

13 A. I don't.

14 Q. Fair enough.

15 You are not telling this jury, at least I don't think you
16 are, that Mr. Hill did not have the opportunity to place the
17 gun from his right hand into the baggy shorts pocket. You
18 can't say that, or can you?

19 A. I can point to a paradox between --

20 Q. I am not asking for a paradox?

21 A. I think I can say that. It is one version of the events
22 that comports with the evidence or the other, you can't have it
23 both ways.

24 Q. What both ways?

25 A. From the statements of the officers that the shot was fired

1 when the weapon was coming up, the officer indicated he could
2 see the weapon when he first fired the first shot, and rapidly
3 fired it. That means the head shot was within a half second of
4 the first shot. I'm not sure which one hit him in the head
5 first. I don't think you have the where-with-all to tuck your
6 weapon in a back pocket when you are hit in the head.

7 The paradox from the St. Lucie Sheriff's Office, they have
8 the first shot coming into Mr. Hill after the door is closed,
9 and another paradox, that is the officer not telling it like he
10 saw it, if he fired it after the door was closed, he wouldn't
11 know where Mr. Hill was and it would have been guesswork.

12 You can either say you saw the weapon and fired rapidly,
13 which I think is refuted by where the gun ends up, or there is
14 time to put the gun in the back pocket after the command is
15 given and the door closed and you shoot into a closed door.
16 That is a difficult paradox for not only me, but most of us.

17 Q. When you commented on direct, my memory is you said that is
18 inconsistent with what people do when they get shot, they grab
19 where they get shot. I think that is what you said.

20 A. Everything I said is a probability statement, no absolute.

21 The great probability is that when you get shot, your hands
22 go to that area. We have seen this, I have been a police
23 officer many years, when somebody is shot, they don't come out
24 with their hands clean, they are nursing their own wound. I
25 feel confident in telling you it's more likely than not that

1 the weapon, if it is in his hand, should have picked up some of
2 that material, and it did not.

3 Q. Of course, I think you indicated when you were asked that
4 question earlier that that is what people do, if they get shot
5 in the belly, they grab their belly?

6 A. Yes. I don't mean -- I hope I clarify this. I don't mean
7 to make it an absolute. I don't think they can. I don't think
8 that disqualifies us from doing this.

9 Q. I am just asking the question --

10 A. Yes, the probability of somebody grabbing a wound on their
11 body is higher than it is that they do not.

12 Q. You juxtapose that with no blood on the gun because there
13 would be blood on the gun if he grabbed his belly; is that
14 right?

15 A. If he grabbed any area that was shot, there would be blood.
16 There is certainly blood all over his hands that we saw in the
17 photographs.

18 Q. Of course, when one is as impaired as Mr. Hill was, one's
19 motor skills are not quite what you would ordinarily expect?

20 A. I think a shot to the head would be more important than the
21 motor skills.

22 Q. I sought a specific answer.

23 You would agree with me the level of impairment, especially
24 as impaired as he was, affects typically the motor skills of
25 the impaired person?

1 A. Yes. So you don't put words in my mouth, we are getting
2 into --

3 Q. I would never do that.

4 A. We are getting into the hypothetical again. Impairment, as
5 I indicated, is a behavioral response. We pull a car over of
6 suspected DUI's because they are swerving, lights out. There
7 are a million ways to suggest you are impaired, you weren't
8 driving as you would if you weren't under the influence.

9 Q. I --

10 A. You told me to give you the whole truth.

11 Q. I didn't say that.

12 A. So the impairment we are not certain of, we don't know. I
13 don't think there is any record whether or not he was impaired.
14 There is a record how much alcohol he has in them, as your own
15 expert said in his report, people behave differently with
16 different amounts of alcohol. In terms of motor skills, I
17 can't answer that question as can anyone in this room.

18 Q. You are not comfortable, as we sit here today, knowing this
19 guy was .34, that he wasn't impaired?

20 MR. PHILLIPS: Objection, asked and answered,
21 argumentative.

22 THE COURT: Sustained.

23 BY MR. BRUCE JOLLY:

24 Q. You know one of the things about this case, you listened to
25 the tapes of the -- it is not an announcement, of the -- well,

1 shots fired, you listened to that tape?

2 A. Yes.

3 Q. And you listened to the communications tape that succeeded
4 the shots fired tape, did you not?

5 A. Yes.

6 Q. And you would agree with me, I think, that within three and
7 a half minutes Deputy Newman indicated the guy had a Kel-Tec,
8 you heard that?

9 A. I did.

10 Q. And you have information from the review of the materials
11 that you conducted that Deputy Newman, in that three and a half
12 minutes, had the opportunity to go in the house and look to see
13 what kind of a gun it was?

14 A. I think he did go around the back of the house. I am not
15 saying that to suggest he went in the house or anything. There
16 was a time he did go around to the back of the house, he did
17 say that in one of his statements.

18 Q. Is there any indication from what anybody said, and that
19 would certainly include the deputy, that he entered the house
20 so as to put a gun in the guy's pocket?

21 A. Only the fact that the gun is there may be some indication.
22 I don't know how it got there, and I certainly have not accused
23 the deputy of doing that. That is one possibility, sure.

24 Q. I get it, but what evidence was there that that happened?

25 A. The evidence is that nobody saw a gun in the back pocket

1 and wrote about it, and that is really suspicious. When the
2 SWAT team went inside and looked at the body and rolled it
3 around and didn't see a firearm in the pocket, that is unusual,
4 that the entire team could have missed it. I just don't
5 normally see that.

6 When the weapon was in the back pocket, I can't tell you.
7 It appears it wasn't there when the SWAT team went in there.
8 That is the evidence.

9 Q. Okay. That is your understanding?

10 A. Yes. It is not up to me to decide how it got there, but it
11 appeared not to be there at that time.

12 Q. Did you see the photograph of the -- what is that thing --
13 of the machine --

14 A. Robot.

15 Q. Thank you. Robot that pierced the door and took a
16 photograph of Mr. Hill as he was lying on the floor?

17 A. Yes.

18 Q. You did notice, I assume, that the gun was in the pocket at
19 that time?

20 A. What time?

21 Q. When the picture was taken.

22 A. And what time was that?

23 Q. When it was taken, like 7:00 o'clock.

24 A. I don't know what time it was, the time stamp was blurred.
25 It could have been taken after the gun was placed there. There

1 is no way to verify that. Apparently the video wasn't working
2 when that photo was taken, it is a still, and no way to know
3 had that happened late into the night or earlier into the
4 night. I don't know.

5 Q. I asked you earlier, as you reviewed these facts having
6 been hired by the Plaintiff, the default position when there
7 are conflicts is not to resolve them against the deputy?

8 A. No.

9 Q. I want you to assume that photo was taken before the SWAT
10 team went in, assume that.

11 A. Okay.

12 Q. That would kind of discredit, would it not, your
13 speculation that the SWAT guy -- why the SWAT guys didn't see
14 it?

15 A. That would be all the more curious because the gun is
16 obvious. When the SWAT team goes in, how could the guy not see
17 what I am seeing from a two dimensional photograph taken by a
18 robot? That I cannot square.

19 Q. One of the first things I think you said was that you
20 understand that your role in this thing is not to find certain
21 witnesses credible, certain witnesses uncredible, certain
22 evidence credible, certain evidence not credible. You get
23 that?

24 A. Yes.

25 Q. You are not going to try to resolve those conflicts?

1 A. No.

2 Q. So, as you sit here today, nothing that you reviewed
3 contradicts the deputies' version -- description of what
4 happened?

5 A. I don't agree with that statement, and I mentioned it to
6 you when I mentioned my paradox.

7 Q. I didn't ask that question. You agree --

8 *THE COURT:* Let's not be argumentative. The witness
9 can fully answer the question, he can say yes or no, and then
10 he can explain.

11 Do you need to explain your answer?

12 *THE WITNESS:* No. I think I did.

13 *MR. BRUCE JOLLY:* I would never argue with the
14 witness.

15 *BY MR. BRUCE JOLLY:*

16 Q. In your review of the materials, you would agree with me
17 both deputies testified they were in fear when this incident
18 happened?

19 A. Yes.

20 Q. And you understand, since you were not there, it is not
21 your job to determine whether that fear was reasonable or not?

22 A. That is correct.

23 Q. I apologize if I asked this. Did you indicate a deputy
24 does not have to be shot before he could use deadly force?

25 A. I did indicate that, he does not have to be shot.

1 Q. In the same vein, he does not have to be shot at to use
2 deadly force?

3 A. That is a trick question.

4 Once again, the deputy has to be able to see if they are
5 being shot at. Once again, when the garage door goes down, the
6 deputy would have to be shot at because he cannot see the
7 weapon or who is firing it. The answer to the question is
8 circumstantially, you have to know somebody is about to shoot
9 at you and the only way you can tell that through an opaque
10 door is with bullets coming through.

11 Q. What if he shoots the deputy, uses deadly force as the door
12 is coming down?

13 A. What if -- sorry, reframe that.

14 Q. For purposes of this exercise, you will concede that Newman
15 reports having seen a gun?

16 A. Yes.

17 Q. You will concede, for purposes of what we are doing today,
18 that Lopez reports that he, too, saw the gun?

19 A. Yes.

20 Q. And your recollection of how close Lopez and Mr. Hill were
21 at the time is like three and a half, maybe four feet. Does
22 that sound right?

23 A. I think somebody made that estimate. I think your expert
24 estimated that. I would agree it is probably that.

25 Q. Do you have a recollection that Newman, when he testified,

1 indicated that he gave a direction and order to Hill?

2 A. Yes.

3 Q. Drop the gun?

4 A. Yes.

5 Q. And I think you would agree with me, would you not, that
6 the failure by an individual who is directed, ordered to drop a
7 gun that he is not even supposed to have, raises the threat
8 level as perceived by the law enforcement officers that are
9 present?

10 A. I think when you point to Deputy Newman, you make this
11 specific. I would like to say this also as a hypothetical, I
12 am not sure what he said, Deputy Lopez relayed.

13 Q. You are not going to resolve conflicts against them in
14 favor of the Plaintiff?

15 A. I am not. I am saying evidence -- you are asking me a
16 question, generally speaking, drop the weapon, and they don't.
17 Generally, the answer is yes.

18 Q. Okay, that is fair. That is what you should have answered.

19 Oh, you were talking at one point about Mr. Hill having a
20 gun in his own home. I think you mentioned that, did you not,
21 on direct?

22 A. Yes.

23 Q. Okay. That does not -- the fact that one might have the
24 right to possess a firearm in his own home, even though he has
25 been ordered not to, doesn't authorize him -- you would not

1 think it right for that individual to then point the gun at a
2 cop in uniform?

3 A. No.

4 Q. That would be a crime?

5 A. Yes.

6 *THE COURT:* That is an hour.

7 *MR. BRUCE JOLLY:* Yes, ma'am, and I am close.

8 *BY MR. BRUCE JOLLY:*

9 Q. You know, twice on direct testimony you described this
10 incident as a -- you used the term "benign". Do you recall
11 doing that?

12 A. I don't remember doing that. You have to give me more
13 context, what part was benign?

14 Q. The noise complaint.

15 A. Yes.

16 Q. That is benign?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. You are not suggesting to this jury, at least I don't think
21 you are, that benign incidents, at least at the beginning,
22 cannot escalate to a tragedy?

23 A. No, I am not suggesting that.

24 Q. I only mention that because you kept using the term as if
25 this was not important.

1 MR. BRUCE JOLLY: Judge, may I have one, maybe two
2 moments?

3 THE COURT: Yes.

4 BY MR. BRUCE JOLLY:

5 Q. Did I understand you on direct to say none of the SWAT guys
6 who entered the house well after this incident occurred
7 observed a firearm in the pocket of Mr. Hill?

8 A. I think it was after the fact. I don't remember a report
9 being written on it, as I would expect whenever the event
10 occurred. I think in deposition somebody saw it and was asked,
11 did you see any pictures of it in his pocket, and he said yes.
12 And he said, who showed you the pictures? And I think it was
13 your cocounsel that did that.

14 Q. The female or the young one?

15 A. Ms. Barranco, if I said that right.

16 Q. There were four projectiles that either got stuck in or
17 penetrated the garage door?

18 A. Right.

19 Q. And he got hit three times?

20 A. Yes.

21 Q. Do you remember that the lowest -- is that right, the
22 lowest of the projectiles was stuck in the door? Is that your
23 memory?

24 A. Again, I don't know which projectile was in the door.
25 There was one in there, yes.

1 MR. BRUCE JOLLY: That is all.

2 THE COURT: All right. Redirect.

3 **REDIRECT EXAMINATION**

4 BY MR. PHILLIPS:

5 Q. Mr. Bedard, is this important?

6 A. I am sorry?

7 Q. Is this important?

8 A. This hearing?

9 Q. Yes.

10 A. Incredibly important.

11 Q. Important to them, important to us, important to you?

12 A. Yes.

13 Q. I hate to bring up this point, your report was written on
14 December 26, 2016?

15 A. Yes.

16 Q. Is that Christmas?

17 A. It was the day after Christmas.

18 Q. The St. Lucie County Sheriff's Office you all discussed,
19 and you said something about a closed investigation, and
20 questions about when would you expect evidence to be turned
21 over and there was discussion about that.

22 MR. PHILLIPS: Your Honor, may I approach the witness
23 with Plaintiff's Exhibit 7 for identification purposes
24 currently?

25 THE COURT: Yes.

1 BY MR. PHILLIPS:

2 Q. Mr. Bedard, take a look. Do you recall seeing that in the
3 file? Do you know when you saw it?

4 A. Do I know when I saw it?

5 Q. Do you know whether you saw it?

6 A. It is an inventory list, I am sure I saw it.

7 Q. What is an inventory list?

8 A. When law enforcement conducts investigations, we have a
9 chain of evidence, and this begins at the moment we come in
10 contact with evidence. We have to document precisely when the
11 evidence was located, who gathered the evidence and what they
12 did it with and so on. This evidence list begins that.

13 It tells us what evidence was seized and taken, and
14 certainly if it becomes evidence in a trial, this becomes very
15 important because the value of the evidence is only good and
16 has value of how pristine it is. We have to know how it was
17 gathered, how they managed it. There are protocols, people go
18 to school for evidence management. This is an accounting of
19 what the Sheriff's Department thought was important in this
20 case.

21 Q. The criminal case?

22 A. Yes.

23 Q. There is \$13 on there found in Mr. Hill's pocket, isn't
24 there?

25 A. Yes.

1 Q. Do you know if that was returned to Ms. Bryant?

2 A. I have no idea.

3 MR. PHILLIPS: I move that in, Plaintiff's Exhibit 7,
4 your Honor.

5 THE COURT: Any objection?

6 MS. BARRANCO: No, your Honor.

7 THE COURT: Plaintiff's Exhibit 7 admitted without
8 objection.

9 (Whereupon Plaintiff's Exhibit 7 was marked for evidence.)

10 BY MR. PHILLIPS:

11 Q. Would you expect if \$13 was found in the shooting victim's
12 pocket, no matter how he died, that that would be returned to
13 the family?

14 A. Yes.

15 Q. And other property?

16 A. Yes.

17 MR. PHILLIPS: Your Honor, we'll move in Plaintiff's
18 Exhibits 92, 94, 98 --

19 THE COURT: Wait. Are any of these objected to?

20 MS. BARRANCO: No objection, your Honor.

21 THE COURT: Tell me the numbers again.

22 MR. PHILLIPS: 92, 94, 98, and 104 I will move into
23 evidence.

24 THE COURT: Those are all admitted into evidence
25 without objection.

1 (Whereupon Plaintiff's Exhibits 92, 94, 98, 104 were marked
2 for evidence.)

3 BY MR. PHILLIPS:

4 Q. Mr. Bedard, what are those photos? Take a minute and look
5 at them, please.

6 A. They are crime scene photos of the decedent.

7 Q. Okay. Referring to Plaintiff's Exhibit 92, Mr. Bedard, I
8 think I asked, did you have a chance to review this?

9 A. Yes.

10 Q. Does this depict the jeans that you described as sagging?

11 A. Yes.

12 Q. Do you need to take a tape measure to determine that these
13 are sagging or falling off of Mr. Hill's waist?

14 A. No.

15 Q. What else do you see in the photo?

16 A. I see a significant amount of blood, most of it pooling in
17 the upper area. I see what is a butt stock of what looks like
18 a handgun, there is a slight outline of it as well placed in
19 the pocket.

20 Q. Moving to 94, same type?

21 A. Yes.

22 Q. Different angle?

23 A. Yes.

24 Q. 98 and 104.

25 You talked about -- I -- you talked about the blood on the

1 scene and the blood on the hands. Is that -- I know you
2 weren't there, but are these the type of photos that you were
3 referring to when you talked about the amount of blood that was
4 involved with Mr. Hill's hands?

5 A. Yes.

6 Q. Which you, I think, further used to support your opinion
7 that -- what was that, what was your opinion?

8 A. My opinion was that probably when he was hit by gun fire
9 that his hands would have gone to those wounds and we should
10 have seen some type of material on the weapon itself if the
11 weapon was in his hand at that time.

12 Q. More than just trace DNA?

13 A. I should think so.

14 Q. Do you need to examine a firearm -- did you need to examine
15 the firearm in this case?

16 A. No.

17 Q. Why not?

18 A. It was never used. It wasn't a question of whether it was
19 functioning properly, not functioning properly, for that
20 matter, if it could fire. The officers don't need to know
21 that. They don't have to know if the weapon could fire, if it
22 is pointed, it is a deadly force threat. In fact, it was
23 unloaded. In fact, we know they weren't in danger had the
24 weapon actually been used, that is not how we analyze deadly
25 force. We look at the perception at that time and information

1 they could be aware of.

2 It was not necessary for me to go down and take a look at
3 the firearm for any reason beyond what I could see in the
4 photographs.

5 Q. You used the word paradox. What is a paradox?

6 A. So, paradox is a type of reasoning in which your premises
7 can't possibly reach your conclusions, there is something
8 fundamentally flawed, and there is a lot of paradoxes that
9 people are exposed to.

10 If I can give you a for instance, a silly one --

11 MR. BRUCE JOLLY: Paradox can be easily defined.

12 THE COURT: What is the objection?

13 MR. BRUCE JOLLY: It does not aid the trier of fact,
14 relevance.

15 THE COURT: Overruled.

16 THE WITNESS: If God can do anything, can he create a
17 rock so big he can't lift it? That is a paradox. If he can do
18 anything, he can create a rock that large, but he can't lift
19 it. We found something he can't do, this is a philosophical
20 problem.

21 BY MR. PHILLIPS:

22 Q. What was the paradox you were talking about here? I don't
23 know, you have to finish that question.

24 A. The paradox I was talking about in this case was, when
25 Deputy Newman reports he fires the shot and probably follows

1 with a volley of quick successive shots which could happen
2 extremely rapidly, within a course of milliseconds, he says he
3 sees a weapon in the hand. That means the four shots would
4 have entered not only the body, but the head of the decedent
5 very rapidly.

6 The question I have is how, if the weapon is in his hand,
7 it wouldn't have any blood on it? How would he get it in his
8 pocket like that? I find that incredulous --

9 *MR. BRUCE JOLLY:* Your Honor, that is commenting on
10 the evidence.

11 *THE COURT:* Response.

12 *MR. PHILLIPS:* The door was opened, your Honor, based
13 on the questioning of prior counsel.

14 *THE COURT:* I will overrule the objection.

15 *MR. PHILLIPS:* Thank you.

16 *THE WITNESS:* So, that was the first possibility, is
17 that the gun probably would not have ended up in the pocket.

18 The second part of the paradox, there is a way the gun
19 could end up in the pocket. If he wasn't shot -- the deputy
20 shot him, and the deputy said put the gun down, and at that
21 time the decedent tucked it in his pocket and received gun
22 fire, but it is not consistent with what happened. You can't
23 have a rapid succession of shots and the gun found in the back
24 pocket while the door is still up, or you can't have the doors
25 down and a verifiable threat because the deputy obviously can't

1 see through the door.

2 I struggled with this. I didn't know how to address
3 it because I have never seen it before.

4 Q. Mr. Jolly yelled here "drop the gun, drop the gun." I am
5 not a yeller, and I said I wouldn't be yelling, I have to ask
6 the question. Drop the gun, from your review of the evidence,
7 did anyone -- literally anyone hear that phrase uttered, "drop
8 the gun?"

9 A. No one reported that.

10 Q. Not even a fellow officer?

11 A. No.

12 Q. I've had my firm for seven years and I recall one case we
13 had with each other. Do you recall anything different than
14 that?

15 A. No, I don't. I thought it was one or two.

16 Q. We don't vacation together?

17 A. No.

18 Q. Is there -- again, we get -- we talked about probation, but
19 is there anything illegal from -- it is Friday night, almost,
20 we are close. Is there anything illegal about anybody sitting
21 at home being .31, .34, .38 intoxicated?

22 A. No.

23 Q. Police -- is this a fair statement, police take the people
24 they encounter day-to-day as they are?

25 A. I'm not sure I understand.

1 Q. Okay. As an officer is walking through the community, is
2 it fair that they don't know what they are going to run into
3 next?

4 A. Yes.

5 Q. Whether somebody had been drinking before they met them,
6 right?

7 A. I don't understand the question.

8 Q. Does an officer know whether somebody had alcohol if they
9 weren't drinking in his presence?

10 A. No.

11 Q. Does that give law enforcement to use force in cases -- can
12 officers use force for drunk and disorderly conduct?

13 A. No. I should qualify that and there are other factors.
14 Certainly we use force when people are drunk and disorderly, as
15 I think about it.

16 Q. Generally, without there being some other crime and some
17 other issue?

18 A. Yes.

19 Q. A couple more.

20 There was a discussion about the evidence of fear,
21 particularly of Deputy Newman. Do you recall that?

22 A. Yes.

23 Q. Was there not evidence of fear by Deputy Newman as the
24 garage door went up before he saw a gun?

25 A. I think somebody reported that the officer appeared

1 startled and jumped back and said "hey".

2 Q. You were asked if you were an advocate for this family.
3 What are you an advocate for?

4 A. Good police work.

5 Q. Thank you, sir.

6 THE COURT: Okay, thank you very much. You may step
7 down.

8 The Plaintiff may call your next witness.

9 MR. BRUCE JOLLY: Your Honor, if the witness has
10 concluded, could the photographs be removed?

11 THE COURT: Yes, make sure any evidence is left at the
12 front of the desk there.

13 MR. PHILLIPS: We will call Deputy Lopez.

14 EDWARD LOPEZ, PLAINTIFF'S WITNESS, SWORN

15 THE COURTROOM DEPUTY: Have a seat and state your full
16 name for the record and spell your last name for the Court
17 Reporter.

18 THE WITNESS: My name is Deputy Edward Lopez, last
19 name is L-O-P-E-Z.

20 **DIRECT EXAMINATION**

21 BY MR. PHILLIPS:

22 Q. Good afternoon. Thank you for being here.

23 Tell the jury about yourself.

24 A. I am a deputy with St. Lucie County Sheriff, I have been
25 employed with St. Lucie Sheriff for 14 years. I started

1 working at the jail I believe the first five years and I
2 transferred over to road patrol.

3 Q. What do you do day in and day out on road patrol?

4 A. In road patrol we patrol the streets, close patrol of the
5 neighbors, we stop vehicles for traffic violations, we -- we
6 respond to calls.

7 *THE COURT:* Deputy Lopez, could you lean forward or
8 pull the microphone closer to you. Thank you.

9 *BY MR. PHILLIPS:*

10 Q. What is the St. Lucie Sheriff's Office jurisdiction
11 compared to the Ft. Pierce jurisdiction?

12 A. We cover the whole county. St. Lucie County Sheriff's
13 Office covers the whole county.

14 Q. 15011501 Avenue Q, is that covered by St. Lucie or Ft.
15 Pierce?

16 A. Ft. Pierce Police.

17 Q. Why did you guys respond that day?

18 A. Because the call came from the school, I believe that is
19 the reason why they dispatched us.

20 Q. Are you aware --

21 *THE COURTROOM DEPUTY:* Counsel, they are having a hard
22 time hearing your witness.

23 *BY MR. PHILLIPS:*

24 Q. You'd probably rather be serving, right.

25 Do you recall whether -- are you saying the call come from

1 Francis K. Sweet?

2 A. That is where I believe the call came from, yes, from the
3 school.

4 Q. What is your familiarity with Ft. Pierce?

5 A. I patrol the area, mostly the jurisdiction that is
6 patrolled by the county. The city area, we go in there if we
7 are dispatched in that particular area, but I'm not -- I am a
8 little familiar with it.

9 Q. Describe Ft. Pierce for me.

10 A. Ft. Pierce starts --

11 Q. Not -- sorry, that is a bad question. I don't want to know
12 geographically.

13 What kind of town is Ft. Pierce?

14 A. Ft. Pierce, what kind of a town is it? A neighborhood in
15 Ft. Pierce -- I am not understanding the question, sorry.

16 Q. Okay. In your time patrolling Ft. Pierce, how is crime in
17 Ft. Pierce?

18 A. There is crime in Ft. Pierce, it is -- there is a lot of
19 crime in Ft. Pierce, yes.

20 Q. Okay. Where were you coming from on January 14, 2014?

21 A. We were by the church on Avenue Q and, I believe, 33rd
22 Street or 31 Street, in that area.

23 Q. Had you been on another call?

24 A. Yes.

25 Q. What kind of call?

1 A. Detective Person called for a deputy who had a fingerprint
2 reader. He was having a hard time identifying someone he was
3 out with, so I went there to assist him because I had a
4 fingerprint reader.

5 Q. Was Deputy Newman with you at that point?

6 A. No.

7 Q. Okay. Let me go back to January 14, 2014. Did Ft. Pierce
8 assign any body cameras -- do you have a body camera so that we
9 could see a video of what happened that day?

10 A. No.

11 Q. Did the squad cars have one pointed toward the garage that
12 day?

13 A. No.

14 Q. Okay. And at your deposition we talked about your
15 understanding of the law about loud music, right? Remember
16 that?

17 A. Yes.

18 Q. Tell us about that.

19 A. Well, basically somebody calls for a loud noise complaint
20 disturbance and we respond to the call, and we basically go to
21 the house and speak to, you know, whoever answers the door when
22 we knock on the door, and we ask them to lower the music.

23 Q. And most people do just that?

24 A. Yes.

25 Q. Is it an arrestable offense?

1 A. No.

2 Q. Does it matter how loud the music is?

3 A. After certain hours, yes.

4 Q. Does it matter how non church-worthy the lyrics are?

5 A. It depends on where you are playing the music. If you are
6 playing it around kids, it could be.

7 Q. Does that make it an arrestable offense?

8 A. No.

9 Q. Before the garage door opened, did you know Mr. Hill?

10 A. No.

11 Q. Were you investigating Mr. Hill?

12 A. No.

13 Q. Did you have any reason to expect Mr. Hill was on
14 probation?

15 A. No.

16 Q. Intoxicated?

17 A. No.

18 Q. Doing anything wrong other than loud music?

19 A. No.

20 Q. Okay. What did you use to knock on what doors?

21 A. I used my hand to knock -- my right hand and I knocked on
22 the garage door.

23 Q. Did you see Deputy Newman use anything to knock on doors?
24 Do you know if he used his ASP or a flashlight?

25 A. I believe he used his hand. I am not sure at this time.

1 Q. Okay. Did you hear Deputy Newman -- the entire time you
2 were on the scene, did you hear Deputy Newman say anything
3 other than yell "hey"?

4 A. No.

5 Q. When did he yell "hey"?

6 A. When Mr. Hill started to raise the gun in my direction.

7 Q. Not when he started opening the door?

8 A. No.

9 Q. Were you looking at Deputy Newman when he said "hey"?

10 A. No.

11 Q. Do you know if he jumped back when he said "hey"?

12 A. No.

13 Q. Do you know if he seemed surprised or startled when he said
14 "hey"?

15 A. Deputy Newman?

16 Q. Yes.

17 A. No, I do not.

18 Q. Do you know when Deputy Newman first pulled his service
19 weapon out of its holster?

20 A. No.

21 Q. Would you know if Deputy Newman had his service weapon out
22 when he went to the front door?

23 A. Yes.

24 Q. Do you know that?

25 A. Yes.

1 Q. Okay. Help me understand when -- so, you know he didn't
2 have it when he went to the front door, right?

3 A. Right.

4 Q. When -- when did you next see him?

5 A. Once Mr. Hill started opening the garage door, I focused my
6 attention on what was on the other side of the garage door.
7 The last time I saw Deputy Newman -- or Detective Newman was
8 when he was knocking on the front door.

9 Q. You changed it to detective. Has Deputy Newman become a
10 detective?

11 A. Yes, he is a detective now.

12 Q. As of when?

13 A. I don't remember.

14 Q. Did you retreat after you saw the gun?

15 A. Yes, I did.

16 Q. Did Deputy Newman retreat after he saw the gun?

17 A. I was looking at Mr. Hill, I didn't see what Deputy Newman
18 was doing.

19 Q. Were you looking at Mr. Hill when you retreated?

20 A. Yes, I was looking at him as I was retreating.

21 Q. Could you explain that for me?

22 A. When I knocked on the door, Mr. Hill opened up the garage
23 door with his left hand. When he opened the garage door, I
24 looked inside and I saw Mr. Hill. I looked, I saw the gun in
25 Mr Hill's right hand, and I yelled "gun, gun, gun, drop the

1 gun." Mr. Hill started to raise the gun in my direction, and I
2 heard "hey", and Mr. Hill started to bring the garage door down
3 really quick, as soon as he heard "hey". As soon as Mr. Hill
4 started to raise the gun in my direction, I started retreating
5 very fast and withdrawing my weapon from the holster.

6 Q. That is what I want to understand. Were you back pedaling?

7 A. Yes, back pedaling and to the side, trying to go behind the
8 trim that holds the garage door.

9 Q. Okay. You did not fire?

10 A. No.

11 Q. Not one shot?

12 A. No.

13 Q. You didn't stand there and wait to be shot?

14 A. No.

15 Q. You never saw the gun pointed at you?

16 A. He was raising it in my direction.

17 Q. Did you ever see it pointed at you?

18 A. No.

19 Q. Did you ever see it pointed at Newman?

20 A. No.

21 Q. We talked about this during your deposition.

22 When did the gun and the garage door cross paths? Do you
23 understand what I mean by cross paths?

24 A. Yes, I understand.

25 Q. Tell me about that.

1 A. As soon as he started raising the gun, I started retreating
2 and drawing my weapon. For me to answer that, I can't tell
3 you, I don't know.

4 Q. Okay. How many animals were in the garage?

5 A. I can't tell you that. I was so scared when everything
6 took place, I started retreating, the garage door came down --
7 I apologize. I started retreating back, drawing my weapon, I
8 hear the shots go off. I was just looking at Mr. Hill as
9 everything was going on.

10 Q. I understand, sir. Are you taught in police training about
11 visualizing the target?

12 A. Yes.

13 Q. Are you taught in police training about avoiding firing in
14 closed spaces?

15 A. Can you repeat that, please.

16 Q. Are you taught in police training about not firing into
17 closed places, through doors, for instance?

18 A. No.

19 Q. You were not taught you were not supposed to fire your
20 firearm in a closed space?

21 A. I am not understanding the question.

22 Q. Yes, sir. Picture you are in a room where the door is
23 open, you can see inside. With the door closed, you cannot see
24 inside?

25 A. No.

1 Q. Were you taught in police training when it is appropriate
2 to fire into a closed space; were you taught that or not?

3 A. We were taught to fire at -- we were taught to defend
4 ourselves and fire at something then, when you can actually see
5 it, of course.

6 Q. That is one reason you didn't fire that day?

7 A. Correct.

8 Q. Did Mr. Hill take a step toward you that you recall?

9 A. No.

10 Q. Did he say anything?

11 A. No.

12 Q. Did he do anything -- I understand what happened in that
13 right hand. Did he do anything other than to put the garage
14 door up and quickly back down?

15 A. No.

16 MR. PHILLIPS: Thank you, sir.

17 THE COURT: Cross-examination.

18 MS. BARRANCO: Thank you, your Honor.

19 **CROSS-EXAMINATION**

20 BY MS. BARRANCO:

21 Q. Good afternoon, Deputy Lopez.

22 A. Good afternoon.

23 Q. I know you already told us how long you have been with the
24 St. Lucie County Sheriff's Office.

25 How many years have you been a law enforcement officer?

1 A. Approximately nine years.

2 Q. And on this particular day that we are focusing on,
3 January 14, 2014, do you remember what shift you worked that
4 day?

5 A. 3:00 to 11:00 shift.

6 Q. From 3:00 p.m. to 11:00 p.m.?

7 A. That is correct.

8 Q. This incident we are talking about today, did that occur
9 pretty early in your shift that day?

10 A. Yes.

11 Q. And do you know Deputy Newman?

12 A. Yes.

13 Q. How would you describe your relationship to him?

14 A. We are co-workers, we get along well at work, that is about
15 it. We don't deal with each other outside of work.

16 Q. My next question was: Do you typically socialize with
17 Deputy Newman?

18 A. When I see him at work I talk to him, and that is it.

19 Q. On January 14, 2014, do you recall what you were wearing
20 that day while you were working as a deputy sheriff?

21 A. I was in full uniform, full green uniform, short sleeves
22 and the outer vest I believe I had on.

23 Q. The outer vest?

24 A. A full green uniform.

25 Q. Is it similar to what you are wearing today?

1 A. Correct, yes.

2 Q. Today are you wearing long sleeves instead of short
3 sleeves?

4 A. Yes.

5 Q. And when you arrived at Mr. -- well, when you arrived at
6 the house on Avenue Q, what were you driving?

7 A. I was driving a marked patrol car that said St. Lucie
8 County Sheriff's Office.

9 Q. And how did Deputy Newman arrive on the scene?

10 A. He had a marked patrol car also.

11 Q. You came in separate patrol cars?

12 A. Yes.

13 Q. Do you recall how you all parked your patrol cars that day?

14 A. Yes, Deputy Newman pulled up in front of the house, just a
15 little east of the garage, and I pulled up basically in front
16 of the garage, maybe a few inches west of it.

17 Q. Did either of you pull into the driveway of that house?

18 A. No.

19 Q. Any particular reason why you did not do that?

20 A. We were told not to pull into any driveway when we respond
21 to calls.

22 Q. Do you know why you are trained not to park in driveways of
23 houses that you respond to?

24 A. In case of an emergency.

25 Q. Now, what was your understanding of what this call

1 involved, initially anyway?

2 A. It was a noise complaint. Like other noise complaints, we
3 go to where, according to the CAD screen, there was a loud
4 music complaint, we go to those all the time. We go to the
5 door and speak to the person inside occupying the residence,
6 and we ask them nicely if they could lower the music.

7 Q. I think you told us what the outcome typically is.

8 A. Typically, they lower the music.

9 Q. You said something about a CAD screen a moment ago?

10 A. That is the computer in the vehicles. I'm sorry.

11 Q. That is okay. I want the jury to understand what you are
12 referring to.

13 A. That is the computer in the vehicle which gives us a
14 description of the calls even though they are dispatched.

15 Q. When you arrived at this particular house, did you hear any
16 music?

17 A. Yes.

18 Q. Can you tell the ladies and gentlemen of the jury what you
19 remember about the music?

20 A. It was very, very loud, and it was rap music, and a lot of
21 cursing going on.

22 Q. Do you have a memory of hearing it loudly?

23 A. Yes.

24 Q. Did that music continue playing loudly from the time you
25 got on the scene up until the time and through the time that

1 the shooting occurred?

2 A. Yes.

3 Q. Was the loud music playing when you heard Deputy Newman say
4 "hey" as you told us?

5 A. Yes.

6 Q. Now, did you know who lived at that house?

7 A. No.

8 Q. And did you believe, when you first arrived, that you would
9 suddenly be confronted with anything other than a mundane
10 police call?

11 A. No.

12 Q. And how did this call transform into something else, if it
13 did?

14 A. Well, when Mr. Hill opened the gate, he was armed with a
15 handgun, and he failed to put it down when I asked him to put
16 it down and raised it in my direction.

17 Q. So you were there that day, Deputy Lopez. Was Mr. Hill
18 shot because he was playing loud music?

19 A. No.

20 Q. Was Mr. Hill shot because he was playing loud obscene
21 music?

22 A. No.

23 Q. Now, you mentioned the word gate again. When you are
24 saying gate today, what are you referring to?

25 A. The garage door. I say gate, I apologize.

1 Q. You are not talking about something other than the garage
2 door?

3 A. Correct, just a garage door.

4 Q. Thank you.

5 Now, where were you when the garage door started to go up?

6 A. I was on the west side of the garage door, directly in
7 front of Mr. Hill when the garage door went up.

8 MS. BARRANCO: Your Honor, may I show this witness a
9 piece of evidence in evidence, one of the photographs?

10 THE COURT: Yes, just identify what you are showing
11 him.

12 MS. BARRANCO: Yes. For the record, I am showing the
13 witness what is in evidence as Defendant's Exhibit Number 352.

14 BY MS. BARRANCO:

15 Q. Deputy Lopez, looking at the screen there, do you recognize
16 what that is a picture of? When I say that, I mean the
17 building depicted in the picture.

18 A. Yes, this is the garage door to the address we went to.

19 Q. Now, I know you are not able to do it where the jury could
20 see, I will point my pen in an area and tell me if that is the
21 area where you were standing when the garage door started to go
22 up. Over here?

23 A. A little further right.

24 Q. Over here?

25 A. A little further. Right around there.

1 Q. And you were talking about a wall that you had -- after the
2 shooting began, you were -- I should say when you saw the gun
3 in Mr. Hill's hand starting to raise, you were seeking to
4 retreat by a wall. Was this the wall you were referring to?

5 A. That is correct.

6 Q. The side of the house?

7 A. That is correct, the side of the house.

8 Q. All right. So, you were standing approximately in this
9 area when the garage door suddenly went up?

10 A. Correct.

11 Q. Did you remain in that position the entire time, from the
12 time the garage door went up until you saw the gun in Mr.
13 Hill's hand?

14 A. Yes.

15 Q. At what point, if at all, did you ever move from that spot?

16 A. When Mr. Hill started raising a gun in my direction.

17 Q. And how quickly or how slow did things proceed from the
18 time you got up to the garage door and it began to raise until
19 the time that you saw this gun in Mr. Hill's hand?

20 A. It felt like three seconds, it was very quick, very quick.

21 Q. And can you tell us again what it was that you -- when you
22 saw that gun in Mr. Hill's hand, and I don't know if you were
23 asked this, do you remember which hand you saw the gun in of
24 Mr. Hill?

25 A. He had it in the right hand.

1 MS. BARRANCO: Your Honor, could I ask the witness to
2 stand up and demonstrate?

3 THE COURT: Yes.

4 BY MS. BARRANCO:

5 Q. Deputy Lopez, if you could stand up right there, and show
6 the jury where it was that you recall seeing Mr. Hill when you
7 first saw the handgun in Mr. Hill's hand?

8 A. He had his left hand on the garage door and the gun in the
9 right hand right about here.

10 Q. You are looking toward the jury?

11 A. Right.

12 Q. Was Mr. Hill looking in that direction?

13 A. He was looking at me, I was -- no, not there, he was right
14 about here.

15 Q. You can sit down again, thank you.

16 Can you tell us, Deputy Lopez, approximately how far away
17 were you from Mr. Hill when that garage door went up and you
18 suddenly realized that Mr. Hill had opened the garage door and
19 had a gun in his hand?

20 A. It was approximately three feet, maybe, at the most.

21 Q. Did you measure it?

22 A. No.

23 Q. Was it close?

24 A. It was close.

25 Q. Were you surprised when you saw Mr. Hill and the gun in his

1 hand?

2 A. Very surprised.

3 Q. You were asked a moment ago whether you fired your gun or
4 not, and you told us you didn't?

5 A. No.

6 Q. That you were retreating.

7 Why didn't you fire your gun, Deputy?

8 A. I -- after I told him to drop the gun, Mr. Hill started
9 raising the gun in my direction and it was scary, the scariest
10 thing I have ever been through.

11 All I thought about was just move out of the way, he is
12 going to kill you. There was a lot of things going through my
13 mind, that is the thing that was going through my mind as I was
14 retreating back and drawing my weapon, I realized he had the
15 upper hand on me and I was in trouble.

16 Q. Why did you believe Mr. Hill had the upper hand on you?

17 A. The gun was out. I asked him to drop the gun, he didn't,
18 the gun was up in my direction, my gun was still holstered.

19 Q. Now, in looking at Mr. Hill's gun did you have any way of
20 knowing whether it was loaded or not?

21 A. No.

22 Q. Did you have the luxury of stopping the action to find out
23 whether or not, in fact, the gun that Mr. Hill had was in fact
24 unloaded?

25 A. No.

1 Q. Did Deputy Newman have the luxury of freeze framing the
2 action, so to speak, like in a Hollywood movie to determine
3 whether or not the gun found in Mr. Hill's hand that day,
4 whether or not that was loaded or unloaded?

5 A. No.

6 Q. Now, once you started retreating, as you told us, when you
7 thought you were about to be shot, did you then hear Deputy
8 Newman's shots ring out?

9 A. Yes.

10 Q. Did that play a role at all in your decision whether or not
11 to fire on Mr. Hill?

12 A. Yes.

13 Q. And what role did it play for you?

14 A. The garage door came down so fast as Detective Newman was
15 shooting, and once the garage door was completely closed, I
16 couldn't see inside. I just wanted to shoot mine.

17 Q. When the garage door was down was the threat over from
18 inside the garage as far as you were concerned?

19 A. No.

20 Q. Why was that?

21 A. Because it was a unknown, it was the unknown, we didn't
22 know if he was going to fire through the garage door, run out
23 the back door, side door, and, you know, shoot. I didn't know.

24 Q. Did you know whether or not Mr. Hill had actually been
25 struck by any of Deputy Newman's bullets?

1 A. No.

2 Q. Were you aware that bullets can travel through garage
3 doors?

4 A. Yes.

5 Q. In fact, that is what happened with Deputy Newman's
6 bullets, right?

7 A. Yes.

8 Q. Now, when you were there witnessing this, just so we
9 understand, was the garage door closing as Deputy Newman was
10 firing?

11 A. As he was firing.

12 Q. So, it was something happening simultaneously?

13 A. Yes.

14 Q. Now, after the shooting was over, within like seconds
15 after, I want to focus immediately after the shooting, what did
16 you do next?

17 A. I looked to the side of the house, I wasn't sure if there
18 were any doors there or anything, to see if he was going to run
19 out a side door and I started yelling over the radio "shots
20 fired, shots fired" as I was moving backward and taking cover
21 behind my patrol car.

22 Q. Do you recall saying anything else besides shots fired?

23 A. I gave a description of Mr. Hill.

24 Q. And what do you remember about the description you gave of
25 Mr. Hill?

1 A. I said a black male with dreads and dark shirt -- black
2 male with dreads.

3 Q. Okay. What did you mean by dreads?

4 A. Braided hair.

5 Q. That is a hair style?

6 A. Yes, it is a hair style.

7 Q. So, did you see Mr. Hill's hair that day prior to the
8 shooting?

9 A. Yes.

10 Q. How high up do you recall that garage door going up before
11 it started coming down again?

12 A. Right above Mr. Hill's head.

13 Q. And then it started to come down?

14 A. Yes.

15 Q. Now, so you call out on the radio, shots fired, a
16 description of Mr. Hill, that he had a firearm.

17 Do you remember ever saying anything further on the radio
18 within a few minutes of this shooting in regard to the kind of
19 gun Mr. Hill had in his hand?

20 A. Yes, I described it as a Glock, it could be a Glock.

21 Q. Do you remember describing the possible model of the Glock
22 you thought it might have been?

23 A. I think I said compact Glock.

24 Q. For those of us who may not know or are not familiar with
25 firearms, when you are describing a Glock with a particular

1 model number, compact, what was it about the gun you remember?

2 A. Just the top of the slide, a black gun and the top of the
3 slide looked like a typical Glock.

4 Q. What does a typical Glock slide look like?

5 A. It is kind of square on the top.

6 Q. It was more about the shape of the gun?

7 A. The shape of the gun.

8 Q. Did it appear to you to be a large handgun or a small
9 handgun? Were you able to discern what size the handgun was?

10 A. It was small; it was compact.

11 Q. Now, did you also hear -- prior to when you mentioned you
12 thought it was a Glock, do you remember Deputy Newman saying
13 anything on the radio about the type of firearm he believed Mr.
14 Hill had in his hand?

15 A. Yes, I believe he said it was a Sig.

16 Q. Do you remember him saying it was a Kel-Tec?

17 A. Or Kel-Tec, yes, I think he said Kel-Tec.

18 Q. Do you know what kind of gun a Kel-Tec is?

19 A. A small compact weapon also. Kel-Tec makes all different
20 sizes, but a Kel-Tec is similar to a Glock, compact.

21 Q. Is the shape of the Kel-Tec similar to the Glock you were
22 describing as far as you know?

23 A. I wouldn't recall right now.

24 Q. But for what you saw from your perspective, you thought
25 maybe what Mr. Hill had in his hand was a Glock?

1 A. Correct.

2 Q. Why did you put that on the radio? Why would you say that
3 on the radio?

4 A. I was so nervous at the time, I was trying to put out as
5 much information as I could.

6 Q. For your fellow law enforcement officers?

7 A. Correct.

8 Q. And what did you do next?

9 A. Like I said, I looked through the side of the house to make
10 sure he wasn't coming out of the house and start firing again,
11 and I took cover behind the patrol car.

12 Q. Now, you mentioned you looked at the side of the house,
13 around the side of the house. Were you referring to the side
14 of the house which would be off to the right of this picture?

15 A. Right, west side of the house.

16 Q. Do you remember anything in particular about that side of
17 the house in terms of whether or not you perceived there was
18 any potential threat from that side of the house?

19 A. Yes, there were some decorative bricks, the ones that have
20 openings. I imagine you could see through them.

21 Q. Did that cause you any particular concern after the
22 shooting happened?

23 A. Yes.

24 Q. And tell us what that was.

25 A. It told me not to go that way because I could have been

1 shot through the opening of the brick.

2 Q. You were concerned that perhaps the person in the house
3 might shoot through the decorative brick on the side?

4 A. Yes.

5 Q. Now, did you ever go into the house after the shooting on
6 that day?

7 A. No.

8 Q. To your knowledge, did Deputy Newman ever go into the house
9 following the shooting that day?

10 A. No.

11 Q. Did you ever see Mr. Hill's body on that particular day?

12 A. No.

13 Q. And, of course, I mean after the shooting.

14 A. No.

15 Q. Did you ever -- Deputy Lopez, did you ever put a gun in Mr.
16 Hill's back pocket after the shooting?

17 A. No.

18 Q. Did anybody ever tell you to do that?

19 A. No.

20 Q. Did you ever hear anybody saying they were going to do it?

21 A. No.

22 Q. Did there come a time you were removed from the scene of
23 this incident?

24 A. Yes.

25 Q. How did that happen?

1 A. The SWAT team later arrived on scene and they brought the
2 tanker with them and the tanker is a big military truck that
3 they use, you know, in certain circumstances where -- hostile
4 situations, and they pulled up directly in front of the garage
5 door. One of the SWAT members called us and told us to follow
6 the tanker out of the area and we stood behind the tanker as
7 the tanker was traveling in a westbound direction, and we
8 utilized the tanker as cover to get out of the area.

9 Q. Did you ever return to the garage area that night at all?

10 A. No.

11 Q. Do you know if Deputy Newman ever returned to the garage
12 area that night at all?

13 A. No.

14 Q. Now, you mentioned about one reason you didn't fire your
15 weapon, you didn't want to shoot blindly at the garage, by that
16 time the garage door was closed. Do you remember that
17 testimony?

18 A. Yes.

19 Q. Did I understand your testimony that when Deputy Newman was
20 firing, started to fire at Mr. Hill, the garage door was still
21 open, but going down?

22 A. Yes.

23 *MS. BARRANCO:* Your Honor, if I may have a minute.

24 *THE COURT:* Yes.

25

1 BY MS. BARRANCO:

2 Q. Deputy Lopez, on January 14, 2014, when you responded to
3 what was initially a loud noise call at this particular house
4 on Avenue Q, and then when the garage door suddenly went up and
5 you saw the firearm in Mr. Hill's hand, as you told this jury,
6 did you feel any fear?

7 A. Yes.

8 Q. Tell us what you felt.

9 A. It was as serious a thing as I've ever been through. I
10 have never had anyone -- or ever been in a situation close to
11 my life being threatened in that manner, and I was scared for
12 my life in a way you can't imagine.

13 MS. BARRANCO: Thank you. No further questions.

14 THE COURT: Anything on redirect?

15 MR. PHILLIPS: Very briefly, your Honor.

16 **REDIRECT EXAMINATION**

17 BY MR. PHILLIPS:

18 Q. Would you dispute from the time that you and Deputy Newman
19 pulled up to the time you said shots fired was 60 seconds?

20 A. Would I dispute it?

21 Q. Yes.

22 A. No.

23 Q. You said, I think, the time of the garage door coming up
24 and going down was about three seconds. I realize you had
25 other things going on.

1 A. I said it felt like three, three seconds. That is how I
2 felt.

3 Q. Do you recall calling this a troubled neighborhood?

4 A. Yes.

5 Q. Do you know --

6 MR. PHILLIPS: Your Honor, we are going to move to
7 introduce Plaintiff's Exhibit 33.

8 THE COURT: Is there any objection?

9 MS. BARRANCO: No objection, your Honor.

10 THE COURT: Okay, 33 is admitted without objection.

11 *(Whereupon Plaintiff Exhibit 33 was marked for evidence.)*

12 BY MR. PHILLIPS:

13 Q. Do you recognize this gentleman?

14 A. Yes.

15 Q. Who is it?

16 A. That is me.

17 Q. Do you recall the context -- do you know why the photo was
18 taken?

19 A. That is to show that we were in full uniform at the time of
20 the incident.

21 Q. Do you know where that was taken?

22 A. That was taken at the house on Avenue Q and -- on Avenue Q
23 and -- it is going to be the first house across the street on
24 Avenue Q to the west.

25 Q. Okay. This isn't for me. This is the garage door?

1 A. Right.

2 Q. Does that identify you as a police officer?

3 A. No.

4 Q. Does that identify you as a police officer?

5 A. No.

6 Q. Does that identify you as a police officer?

7 A. I would say yes.

8 Q. And that certainly, yes?

9 A. Yes.

10 Q. Okay. Did you go to the side of the house?

11 A. No.

12 Q. Okay. Did you see Deputy Newman leave -- do you recall
13 whether Deputy Newman left your presence after the shooting?

14 A. I don't recall.

15 Q. Okay. You didn't fire?

16 A. No.

17 Q. You didn't want to shoot blind?

18 A. Correct.

19 Q. Because you are not supposed to?

20 A. Correct.

21 MR. PHILLIPS: Thank you, sir.

22 THE COURT: Okay, thank you so much, you may step
23 down.

24 All right. Ladies and gentlemen, that will conclude
25 our day of the trial and our week, so we will be in recess

1 until Monday morning at nine o'clock.

2 Ms. Richardson will escort you out, and you will put
3 your pads in the room where you keep them each time you leave.
4 Nothing is different about you returning on Monday concerning
5 the procedures you followed this morning, that is, to get here
6 with as much control as you have over your schedule. They
7 should be in the jury assembly room.

8 *THE JUROR:* They have us meet downstairs?

9 *THE COURT:* You meet where you have been meeting, so I
10 don't confuse you. We will get started first thing at nine
11 o'clock on Monday morning.

12 There are no restrictions on your weekend plans as far
13 as activities, recreation, dining, anything of that sort,
14 however, consistent with the instruction I have been giving you
15 each and every time you leave, and I will say it more
16 emphatically now because you won't hear me for the next 48
17 hours or so, there may or may not be media coverage of the
18 case. Even though you don't have someone in the courtroom from
19 the media, that doesn't mean that cases are not covered in the
20 paper, on radio, or online. So, it is imperative you not view
21 any coverage of the case.

22 It is imperative, if you befriended each other --
23 there is nothing improper -- if you do something together over
24 the weekend. What is improper is, as I have been saying over
25 and over again, talking about the case, even if it seems

1 innocuous and not important, and your own impression, it is not
2 to be discussed with anyone, and do not do any research out of
3 curiosity or any other reason.

4 Soon enough, when you have the opportunity to go back
5 in the room together with all of the evidence in and brought
6 back to the room after you have been instructed on the law, you
7 will be able to deliberate and talk with each other. That time
8 will come, and after that, if you want to share your experience
9 with other people, you are able to.

10 It isn't a forever ban, but it is a prohibition right
11 now.

12 Anybody have any questions about procedure or
13 schedule?

14 Okay. You have been incredibly patient and attentive,
15 I know we all appreciate it very much. Have a restful weekend
16 and we look forward to seeing everybody at 9:00 a.m. Monday
17 morning.

18 *(Thereupon, the jury leaves the courtroom.)*

19 THE COURT: Just a couple of minutes. It is Friday, I
20 know you want to go out of here. We are not on the record, we
21 are shutting that down right now, nothing substantive.

22 *(Thereupon, the Court was recessed.)*

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above matter.

Date: June 24, 2018

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

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**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

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**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 21, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 3

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

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1 *THE COURT:* Good morning, you can be seated.

2 We can make use of our time in the meantime.

3 At some point we might have to discuss if we begin
4 without juror eight. It is only 9:14, but with the weather, it
5 is understandable.

6 I think you worked this out. I understand Exhibit
7 Number 30, am I correct that Plaintiff's objection is now moot?
8 Initially Plaintiff filed an objection to Exhibit 30
9 a reconstructed animation of the subject incident, Docket Entry
10 188. In the supplement Plaintiff objected to the text.

11 Plaintiff is agreeable that Sergeant King can use the
12 animation without the text as a documentary aid. Defendant
13 agreed they would not allow the text in Exhibit 30, and
14 photographs will be used only for demonstrative purposes.

15 Am I correct, Plaintiff's objection is now moot?

16 *MR. PHILLIPS:* To the extent -- I don't know if that
17 is Defense's position.

18 *MS. BARRANCO:* The response or reply, whatever we
19 called it, stated the Defendants agree, to the extent that they
20 utilize our Exhibit 30, it would only be the visual, not the
21 text, and it would only be for demonstrable purposes.

22 The only other thing we might get into would be, to
23 the extent that any of the photos contained in Exhibit 30, if
24 they are otherwise in evidence, we could refer to that exhibit
25 anyway.

1 It is moot, your Honor.

2 *THE COURT:* Okay. Acceptable to the Plaintiff?

3 *MR. PHILLIPS:* Yes, your Honor.

4 *THE COURT:* Okay, that is taken care of.

5 There are some outstanding issues, an issue about
6 poker, Plaintiff filed an objection to the evidence that Mr.
7 Hill was playing poker. Plaintiff argues that this is
8 irrelevant because Deputy Newman had no knowledge of it and it
9 does not weigh on the reasonableness of Detective Newman's
10 actions and argues it is inadmissible. The Plaintiff also
11 argues t is overly prejudicial.

12 Accordingly, Defendants argue the evidence is
13 relevant to what he did after hearing banging on his garage
14 door.

15 And from whom would Defendants present that evidence
16 if you are going to still proceed with that, or not?

17 *MR. GREGG JOLLY:* We intended to, your Honor, and it
18 would be through Andrew Brown.

19 *THE COURT:* Who would say he got in an altercation
20 with Mr. Brown that day?

21 *MR. GREGG JOLLY:* Mr. Hill got into an altercation
22 with a third person.

23 *THE COURT:* Unless anyone has anything more to say, I
24 read everything, I will make a ruling. Has everyone been heard
25 on that issue?

1 MR. PHILLIPS: Yes, your Honor.

2 MR. GREGG JOLLY: It is in the response.

3 THE COURT: I did consider it, and weighing the
4 relevance of the evidence and the prejudicial effect, the
5 evidence should come in as possibly relevant to explain Mr.
6 Hill's actions. It is up to counsel how you ultimately link
7 your evidence to the argument you make to the jury.

8 As the Court noted in the case of Estate of Rudy
9 Escobedo versus Martin, 702 F.3d 388, Seventh Circuit, 2012,
10 "evidence unknown to officers at the time force was used is
11 also admissible to add credibility to an officer's claim that a
12 suspect acted in the manner described by the officer."

13 Mr. Hill's altercation earlier in the day could, not
14 necessarily, but could add credibility to the Defendant
15 Newman's claim that Mr. Hill opened the door with the gun in
16 his hand.

17 THE COURTROOM DEPUTY: I just spoke to her, she is
18 five or ten minutes away.

19 THE COURT: The juror is on her way, the same accident
20 I was stuck in.

21 Same ruling as with the poker, and as with the
22 probationary status. If the Plaintiff wants any limiting
23 instruction, you can request it. I am not sure how that would
24 work in terms of its applicability, but I am leaving that open.
25 You have to let me know if you want it. If you don't, we

1 won't.

2 *MR. PHILLIPS:* I think it was dominos, not poker.

3 *THE COURT:* And then there is an issue with the gun.

4 Let me ask Defense, was it intended to be used as a
5 demonstrative aid if you are still intending to use the gun?

6 *MS. BARRANCO:* Yes, your Honor.

7 *THE COURT:* Has everyone been heard in full? I
8 reviewed all of the submissions. Has everyone been heard in
9 full through the beginnings of the argument you made the other
10 day and submissions?

11 *MR. PHILLIPS:* It would be cumulative. There are
12 plenty of photos in evidence that were properly disclosed and
13 on exhibits and disclosed particularly on Rule 26.

14 *THE COURT:* Does Defense want to add anything?

15 *MS. BARRANCO:* I don't believe there are any
16 photographs of Mr. Hill's denim shorts that aren't on the body
17 at the crime scene in regard to the demonstrative aid portion
18 of the firearm, and shorts in terms of showing the jury that
19 the gun does fit in the pocket rather easily, and that is not
20 something you can glean from photographs, your Honor.

21 *THE COURT:* Okay.

22 So, Defendants filed a motion to allow an unloaded
23 firearm in the courtroom as an exhibit during trial, Docket
24 Entry 192. In the motion Defendants seek to bring the gun
25 found in Mr. Hill's back pocket. Plaintiff objected, arguing

1 the gun was not disclosed pursuant to 26(a). The Plaintiff was
2 unaware the Defendants were in possession of the gun until less
3 than 48 hours before the start of the trial. Plaintiff was
4 never given an opportunity to inspect the gun, and utilizing
5 the gun provides no additional insight, this is argument from
6 the Plaintiff, and will only prejudice Plaintiff.

7 The evidence is not important because the photographs
8 will accomplish the same objective, and the Defendants do not
9 explain the failure to disclose the evidence. Plaintiff also
10 sought sanctions at Docket Entry 198.

11 Defendants reply that the fact that the Sheriff's
12 Office seized the firearm as well as his clothing is well
13 documented, Docket Entry 205. Defendants argue they did
14 disclose they had the gun: In a material respect through
15 discovery or through the Defendant's Rule 26 disclosures."
16 They argue this should have informed Plaintiff the Defendants
17 were in possession of the gun.

18 They note the various Rule 26 disclosures -- that
19 various of their Rule 26 disclosures listed the reports,
20 inventory returns and criminal investigative materials
21 associated with the shooting investigation, and told Plaintiff
22 listed in the St. Lucie County Sheriff's Office investigation
23 book, that the investigation book included all evidence,
24 including the gun. Defendants point to their 2017 exhibit list
25 which lists its exhibits and state the Plaintiff did not object

1 or inquire about these exhibits.

2 Defendants also note during the 2016 deposition of
3 Edward Lebeau, the Plaintiffs inquired about whether the
4 physical evidence of the case would be in the Sheriff's
5 evidence room. Sergeant Lebeau did not know the answer, but
6 provided the name of the person in the Sheriff's Office to whom
7 Plaintiff's counsel should inquire.

8 Federal Rule of Procedure 37(c)(1), if the parties
9 fail to identify witness as required by 26(a) or (e), the party
10 is not allowed to use that information or evidence on a motion
11 unless the failure was justified or harmless.

12 Even if the gun was not disclosed as clearly as it
13 could have been under Rule 26, the Court finds this is not
14 prejudicial to Plaintiff because Plaintiff's counsel was on
15 notice, therefore the Plaintiff's objection under Rule 37 is
16 denied, and Defendants are not prohibited from using the gun
17 under Rule 37.

18 The Court doesn't have to make a determination as to
19 admissibility because it is going to be used for demonstrative
20 purposes, but it does not mean it is coming in for evidence.

21 The gun has high probative value that Deputy Newman
22 saw Mr. Hill holding the gun. The physical evidence would
23 include what the gun looked like, and its size could be
24 relevant to the jury in assessing Deputy Newman's actions. And
25 then there is the issue of how and if the gun could make its

1 way into the back pocket, so that clearly has been put out
2 there, it is a relevant issue. It is up to counsel how they
3 want to argue the issue. As far as being used for
4 demonstrative purposes, the Court will allow it.

5 I am not expecting we can go through any kind of a
6 conference right now on our jury instructions, but can I ask --
7 now Defense over the weekend filed maybe a supplement to a
8 supplement to the instructions, but I will go through this
9 until I know we have our juror here.

10 Do you have the instructions in front of you, maybe a
11 clean set of the two sets I gave you? I gave you a redline and
12 clean set. We can go through at least some of the
13 unobjectionable ones, and that will save some time down the
14 road.

15 Are they all back there?

16 Okay, scratch that, they are ready to come in. Have
17 it ready and when we have down time, I would like to start
18 going through the jury instructions. We can chip away at it
19 gradually so we don't have to race at the end.

20 It is Monday morning and that is when Dr. Anderson
21 will be testifying. He is here?

22 *MR. PHILLIPS:* Yes, your Honor.

23 *THE COURT:* All right. Our jury is here, we will
24 bring our jury in.

25 (Thereupon, the jury entered the courtroom.)

1 pathologist.

2 In addition, I am a forensic pathologist, and basically use
3 what we know as pathologists as tissues from injuries, and so
4 forth, when injuries arise interfacing with the legal system,
5 that is what forensic pathologists do.

6 The Medical Examiner -- I used to say Quincy, but I guess
7 it is CSI now. That is what we do. I have been in hospital
8 pathology, a Medical Examiner in several districts in Florida,
9 including Orange County, Naples and Daytona, and presently I am
10 in private practice, and my major practice is reading biopsy
11 from a gastroenterology group. I do medical consulting and
12 private autopsies.

13 Q. What is a board certification?

14 A. Board certification is when you are through with the
15 training program, they haven't kicked you out, you take an
16 examination, and each group of physicians, be it surgeons,
17 pediatricians, pathologists, have a set of examinations you
18 take.

19 When you pass those examinations you have what they call
20 board of certification, and that means you passed all of that
21 and you are board certified.

22 Q. What board certifications do you have?

23 A. Anatomic autopsy, tissue diagnostic and clinical pathology,
24 running laboratories, when laboratory tests are done, and
25 forensic pathology as well.

1 Q. Let's run through kind of -- we talked about your
2 education. Let's go through your vocational history, if you
3 will.

4 A. When I finished in 1976, I was at the Medical Examiner's
5 Office in Los Angeles for a year, and then I was in the Atlanta
6 area for two years. I went into hospital pathology after that
7 and did autopsies, and laboratory director.

8 I went to Naples, Florida for a year, and then to Orlando
9 where I was Deputy Chief Medical Examiner from 1990 to about
10 2002. During that period of time, I was the -- basically, I
11 ran the program for pathologists who finished their training
12 and wanted to become forensic pathologists. They'd come to our
13 office for a year and supervise the residents in doing
14 autopsies.

15 And we interfaced with the clinical surgeons, trauma
16 surgeons, because most of the cases did not survive if the
17 Medical Examiner performed autopsies on them, in many instances
18 where it anticipated people with similar injuries, complication
19 did not occur, they knew what to expect and do something to
20 prevent that.

21 After that I was in private practice, I was in Minnesota
22 for a year and went into private practice altogether. Since
23 then, I have been doing laboratory work and consulting, private
24 autopsies for families, and so forth.

25 Q. Have you in your vocational career worked with law

1 enforcement?

2 A. Well, sure. As a Medical Examiner, we actually -- well, we
3 work not with law enforcement, but parallel to law enforcement.
4 One of the objects was to investigate sudden unusual traumatic
5 deaths, how they occurred, what was the cause of death, what
6 was the mechanism of death, what happened to them that caused
7 them to die.

8 Any time there would be a need for a Medical Examiner, we
9 would investigate that, homicide, shootings, all types of
10 homicides, and we worked in conjunction with the State
11 Attorney, in conjunction with law enforcement who basically is
12 an independent investigator. You can imagine in some cases we
13 would investigate where the police were involved in the
14 shooting, so, in order to be objective, you didn't want to be
15 in the same organization, if you will.

16 And so the Medical Examiner, at least in the State of
17 Florida, is a pretty independent group of pathologists, and our
18 opinions basically don't depend upon dealing with anybody. We
19 give our opinions if we are called, obviously. Since we would
20 determine if a case is a homicide or not, the State Attorney
21 would generally call us, not all the time, sometimes a defense
22 attorney would call a pathologist to bring the findings to
23 Court when it came to the trial situation.

24 Q. The Medical Examiner in this case was Dr. O'Neil. Do you
25 recall?

1 A. I believe that is correct, yes.

2 Q. And you reviewed her report?

3 A. Yes. In dealing with this case, I reviewed basically all
4 of the hard data, not people's opinions or thoughts or
5 depositions or whatever, but looked at the hard data from the
6 forensic pathology standpoint. I looked at the Medical
7 Examiner's report, the photos, and that is pretty much it.

8 Q. Why is it important not to review depositions?

9 A. As a scientist, what you want to do is give an unbiased
10 opinion based on the hard data you have.

11 If you start getting into where you look at people's
12 opinions, the opinions change, and then we have to change the
13 diagnosis because somebody's opinion has changed and you are
14 going to have to change your diagnosis. It gets out of the
15 realm of science at that point. You have to be objective.

16 The other thing is, you could be biased. If you are not
17 careful you could be biased. When we do an autopsy, detectives
18 give their version of the case, sometimes it matched, and
19 sometimes it didn't. If it didn't match, the Medical Examiner
20 says this doesn't match the forensic evidence. The forensic
21 evidence is not going to change. People's thoughts and views,
22 what they thought they saw, can change, but the hard evidence
23 is never going to change.

24 Q. Approximately how many autopsies have you conducted in your
25 career?

1 A. I have probably done myself between eight and 9,000, and
2 during the years of the supervision of the residents for about
3 eight, nine years, our residents would have to do 200 autopsies
4 a year, and I would supervise those. That is probably another
5 thousand of supervised.

6 Q. How many gunshot wounds approximately?

7 A. Many, many, it is a major cause of trauma and death in this
8 country. I would say well -- in counting suicides, accidents,
9 homicides, probably in the neighborhood of 1500.

10 Q. Have you been published in your field of expertise?

11 A. I have done a few papers, but my major publication was, as
12 I worked with the trauma surgeons in the Orlando office, I was
13 approached to write a textbook on clinical medicine. We were
14 taking autopsy findings and giving that information to the
15 clinician so they could recognize down the road potential
16 complications that could be avoided.

17 That is pretty much my publication. I presently authored a
18 chapter in a book that is coming out in the next couple of
19 months, Multiple Disciplinary Forensic Pathology. My basic
20 area was to look at the veracity and quality of forensic
21 pathologists when they testify in court.

22 Q. Very good, thank you.

23 Any other background, training or expertise that -- we
24 obviously can't go through your entire career -- that would
25 indicate your qualifications to testify in this matter?

1 A. I think I covered it.

2 Q. Thank you.

3 What is your field of expertise as you testify in Federal
4 Court?

5 A. Basically, I think I have been in Federal Court primarily
6 as a forensic pathologist. I don't think in any other
7 capacity.

8 Q. Who typically retains you for testimony?

9 A. Pardon me?

10 Q. Who typically retains you for forensic opinions or
11 testimony?

12 A. Well, generally speaking, the majority of my career I was a
13 Medical Examiner, and we would be called by the state and the
14 state would take our testimony.

15 If I am retained presently, it is generally by defense in
16 criminal cases, sometimes the Plaintiff in civil cases, a lot
17 of times defense in civil cases. It is sort of across the
18 board.

19 In the criminal area right now, the majority has been with
20 the defense. A couple of times lately, the last year, the
21 state called me in their case, even though I had been retained
22 by the defense attorney.

23 Our testimony is forensic pathology, we try to keep it as
24 neutral as possible.

25 Q. Who retained you?

1 A. I think in this case, I believe your office.

2 Q. Thank you.

3 What did you charge to get to the report stage? What did
4 you charge to get to the end of today?

5 A. Well, I normally charge \$350 an hour, 350 an hour reviewing
6 cases and putting together the report, and \$500 an hour for
7 testimony.

8 Q. Travel time?

9 A. For trial time only.

10 That is charged up front, so as a retainer for four hours.
11 As long as it doesn't go over four hours, this has already been
12 covered, and if the case does not go to trial, that is -- I
13 retain the retainer.

14 Q. Do you charge for any travel time?

15 A. No.

16 Q. Do you have the ability to review a case and say no, you
17 choose not to render an opinion in the case?

18 A. I am sorry?

19 Q. Do you have the ability to say no when people ask you to
20 render an opinion?

21 A. It happens all the time. I at least look at the case, but
22 many times my conclusions of a case do not necessarily help, if
23 you will, or would be helpful to the person that has hired me,
24 a defense attorney, and so forth.

25 So we give them a straight answer. That is why I get a

1 retainer first.

2 Q. Did you draft a report in this case?

3 A. Yes.

4 Q. Did you give a deposition?

5 A. Yes.

6 Q. At the time you wrote the report, did you disclose what
7 materials you reviewed?

8 A. I believe I did, yes.

9 Q. We discussed that.

10 A. Yes, I have seen the Medical Examiner's report and files.

11 Q. That includes the photos?

12 A. Yes.

13 Q. What is your process? What do you do and how do you turn
14 those materials into reports or opinions?

15 A. Essentially, the first thing I do is look at the autopsy
16 itself, what is -- essentially, what are the injuries, what are
17 the characteristics of the injuries, what did they do to the
18 person to sustain the injuries, and then I look at the physical
19 report, written report, as well as notes, office reports, as
20 well as the photos taken at autopsy.

21 A good autopsy for a forensic pathologist includes photos
22 so you can see the wounds itself. When I do autopsies, we take
23 the photos for one reason, for other people to look at and for
24 later review myself.

25 That is what I did in this case. The photos were quite

1 good, very comprehensive, that was not a problem. I reviewed
2 office records and that was it.

3 We did also see scene photos, I think there were law
4 enforcement scene photos.

5 Q. What is an autopsy?

6 A. What is an autopsy? An autopsy basically, if you will, is
7 a very extensive surgical procedure, we basically do the same
8 thing as a surgeon does, we dissect the body, open up, look for
9 areas of injury. In this case, we look at the projectile
10 tracks, where the bullets went through and damaged, how much
11 blood was lost, how significant were the injuries, what effect
12 did the injuries have on the person who sustained those
13 injuries, how long would they be alive, what did they do
14 afterwards, that sort of thing.

15 In some cases, a stab wound to the heart case, you might
16 have somebody alive for ten, 15, 20 minutes after the stabbing
17 in one location and end up running down the road for a half
18 hour, 15 minutes, and dying there. That would not be the scene
19 where the stabbing occurred, so you need to know that. I
20 assume that is where the actual event took place.

21 That is one of the things you can do, you look at how much
22 blood was lost, was it reasonable for the individual to do
23 anything afterwards, was this an injury that basically would
24 immediately incapacitate the person. Rarely it is something so
25 bad that it kills the patient outright. They might be

1 unconscious without motor function if it is a significant brain
2 or spinal cord jury.

3 Q. Are the opinions you render today to a reasonable degree of
4 medical probability or certainty?

5 A. Yes.

6 Q. What was the state toxicology report in the file -- or was
7 there a toxicology report?

8 A. The Medical Examiner did an examination of heart blood and
9 fluid from the eye, and heart blood was .32, almost .33, and
10 the blood from the eye was .39.

11 Q. Was the cause of death, Mr. Hill's death, alcohol related
12 medically speaking?

13 A. No.

14 Q. Did the tox screen reveal any other drugs in Mr. Hill's
15 system, cocaine, marijuana?

16 A. No. They did a comprehensive drug screen, we do in all
17 forensic cases, I do a lot in my own cases, and look for
18 everything -- this also screens for fentanyl, and all this was
19 negative.

20 Q. How many gunshot wounds did Mr. Hill sustain?

21 A. He had three gunshot wounds.

22 Q. Did someone take measurements of the entry wounds in
23 relationship to Mr. Hill's height?

24 A. Yes.

25 MR. PHILLIPS: Your Honor -- excuse me.

1 BY MR. PHILLIPS:

2 Q. Dr. Anderson, can you depict approximately -- and I
3 realize -- about how tall was Mr. = Hill?

4 A. About 6-foot one.

5 Q. How tall are you?

6 A. 5-foot 11.

7 Q. Can you depict on your body where Mr. Hill's entry wounds
8 are and discuss kind of their path?

9 A. Okay, sir.

10 MR. PHILLIPS: Your Honor, may the witness stand down
11 and do so?

12 THE COURT: Yes.

13 THE WITNESS: He had three gunshot wounds.

14 THE COURT: We need to make sure you are loud enough,
15 and when you are making motions, the reporter doesn't pick up
16 the motions, so describe what you are showing.

17 THE WITNESS: One gunshot wound that entered in the
18 lower pelvic area, that went across the body from right to left
19 into the muscles in the back of the pelvis.

20 He had another gunshot wound right in this position
21 (indicating) the upper right abdomen. And that wound went
22 through in this direction, right to left, downward, and entered
23 the soft tissues of the pelvis, hit the iliac artery, the main
24 artery coming from the aorta down the leg on the left side,
25 lacerated that and exited through the upper buttocks area.

1 The first bullet, the one to the lower pelvis, did not
2 exit. We had one bullet.

3 The third gunshot wound was a wound of the upper
4 forehead, this is a tangential area, downward, through the
5 middle of the brain where all of the motor functions and
6 sensory functions come together, that is mid brain, and that
7 was lacerated, and that projectile was found in the back area
8 of the skull. That is the wound that actually killed him.
9 That wound caused massive brain injury and essentially cut off
10 all neurological function.

11 This wound was 40 and one quarter inches from the
12 heel. When we do an autopsy, we put the person in a straight
13 anatomical position, straight, arms up and down.

14 This one, the abdomen, was 44 and a quarter inches
15 from the heel.

16 We have an individual standing up, the trajectory is
17 going downward, this would indicate coming from one of two
18 things, the individual is being shot from up here, or if it is
19 coming in more or less in this direction, you have an
20 individual leaning over. It is still going to go straight, but
21 when you stand him up in the autopsy position, it looks like it
22 is going down.

23 The same with the head, this wound could have come
24 from here, but it would have gone across here, not exiting, so
25 to get that position, you have to have the individual turning

1 to the left, coming around, going through here, and stand that
2 one up, and that shows the trajectory.

3 *BY MR. PHILLIPS:*

4 Q. Did we go through photos in preparation for your testimony?

5 A. Yes.

6 *MR. PHILLIPS:* Your Honor, may I approach with those
7 photos?

8 *THE COURT:* Yes.

9 *MR. PHILLIPS:* Your Honor, we move to enter
10 photographs, Plaintiff's Exhibits 38, 45, 75, 76, 101, 106,
11 107, 112, 115 and 117.

12 *THE COURT:* Any objection to any of those exhibits?

13 *MR. BRUCE JOLLY:* No, your Honor.

14 *THE COURT:* They are all admitted without objection.

15 *(Whereupon Plaintiff Exhibits 38, 45, 75, 76, 101, 106,*
16 *107, 112, 115, 117 were marked for evidence.)*

17 *BY MR. PHILLIPS:*

18 Q. Let's run through these photos, and take them in whatever
19 order you want.

20 Particularly, I would like to start with the photos of Mr.
21 Hill himself related to the three wounds you described.

22 A. That first one is fine.

23 Q. 117, what does that tell us about the injuries.

24 *THE COURT:* Okay, let's proceed.

25 You want to make sure your witness has a copy of it.

1 MR. PHILLIPS: He does.

2 THE COURT: Okay.

3 BY MR. PHILLIPS:

4 Q. 117, Doctor?

5 A. 117.

6 Q. What does this depict related to your opinion?

7 A. This is a picture of basically the pelvis and -- upper
8 pelvis and then the lower, mid abdomen.

9 You can see there are two basically holes in the skin, and
10 those are the two entrance gunshot wounds that I referred to.

11 When a bullet goes into the skin, the bullet is spinning
12 very symmetrically. When it goes into the skin, it not only
13 penetrates the skin itself, makes a hole, but drags a little
14 bit of the skin along with it, but that part of the skin
15 actually isn't broken. As it pops back in place you see an
16 abrasion or scrape where that bullet has not -- is right around
17 the hole. That is how you tell an entrance wound from an exit
18 wound. The bullet comes out this way, it is a smooth split in
19 the skin.

20 If a situation occurs where the bullet, instead of the
21 normal trajectory through the air, passes through something
22 else, like an intermediate target, it will make the bullet
23 wobble. When it hits the skin, it isn't that smooth abrasion
24 around the skin, but an irregular scraping, and in both of
25 these wounds that is what we see. We see areas of irregular

1 scraping because the bullet is not coming in completely
2 symmetrically, but it is wobbly and creates more than the
3 usual.

4 That is one of the ways we can tell it struck an
5 intermediary target.

6 Q. In this case --

7 A. In this case both of the wounds are consistent with having
8 passed through an intermediate target.

9 Q. Next, sir.

10 A. Number 115 shows -- there isn't as much of a glare on this
11 one.

12 This is the wound to the head, and this was described as
13 being about a quarter of an inch or so below the top of the
14 head.

15 As you can see, this is again not a smooth area around the
16 entrance wound, the actual defect hole, and this again is
17 consistent with an intermediate -- a bullet that struck an
18 intermediate target, started to become asymmetrical in the
19 speeding and a tear instead of creating the hole itself.

20 Q. Next?

21 A. This is the wound that went downward, right to left.

22 MR. BRUCE JOLLY: What number?

23 THE WITNESS: Still 115.

24 This is the one that goes downward through the center
25 of the brain and out into the left side of the brain, and

1 destroying all tissue between those two end points.

2 BY MR. PHILLIPS:

3 Q. So it goes through, I don't remember, the dermis and
4 epidermis, the skin and skull, and what parts of the brain does
5 it sequentially go through?

6 A. It goes through the cerebrum, the thinking part of the
7 brain, and then motor traction, central portion of the brain
8 where the neurons come together and start going down the spinal
9 cord, it is like a tree, large outside branches and it comes
10 together and goes through the mid portion of the brain and
11 upper spinal cord, an area of compressed nerve fibers
12 altogether. If it is injured, that area, through everything,
13 you may get struck here, but you won't get the immediate loss
14 of nerve function or ability to function.

15 Q. Assume a shot -- one of the four shots caught in the
16 door -- well, let me strike that.

17 So, how did you identify this shot that I am pointing at,
18 the lower wound on 117? Where did that -- what path did that
19 take similarly to what I asked?

20 A. The Medical Examiner determined that is the one that went
21 through the pelvis and ended up in the opposite side of the
22 body, right to left and downward.

23 Q. And the one above it?

24 A. That one, this is the one that caught some part of the
25 bowel, and down into the pelvis on the left side, and that is

1 the one that hit the main artery going to the lower
2 extremities. It is a big vessel that comes off the aorta, and
3 when you put a hole in the vessel, the blood pressure drops
4 quickly and a lot of bleeding.

5 Q. Which of these had an exit?

6 A. The upper one.

7 Q. The other two shots, the lower shot and the shot to the
8 head --

9 A. Yes, according to the Medical Examiner's report, yes.

10 Q. They remained in?

11 A. I believe they recovered those, yes.

12 Q. Let me refer you to 112.

13 A. Which one are we on now?

14 Q. 112. Where was that photo taken?

15 A. It appears that this was at the scene of the incident, and
16 normally what happens is, when a deceased is found, basically
17 nobody is supposed to touch him. The Medical Examiner is
18 supposed to arrive at the scene. What we normally do, and that
19 is what they did here, put a sheet down and roll the body on
20 the sheet.

21 The reason for the sheet is two-fold; number one, to be
22 able to move the body, but also it's important to collect any
23 trace evidence that might come off the body during the
24 transport, and as necessary, that sheet can be and is there to
25 see if there is any trace evidence.

1 Q. Let's refer to 107, please, sir.

2 Can you tell where this photo was taken?

3 A. This particular photo looks like it was also taken at the
4 scene, and this is what we call a dirty picture, it is not
5 cleaned up. And you can see in this picture some brain
6 material which has come out because of the impact. You can
7 imagine how much force is going in, basically quick, a lot of
8 pressure inside the brain instantaneously, and there is only so
9 much room. It can't expand because the skull is holding it,
10 and it will cause brain matter to be extruded out through that
11 hole, and that is what happened here.

12 Q. In that photo, Mr. Hill appears to be face up; is that
13 correct?

14 A. Yes, he has been moved prior to these photos being taken.
15 He was initially found face down, and I believe somewhere
16 he was rolled over without the sheet, but ultimately put onto
17 the sheet.

18 Q. And this would show a more similar photo of how he was
19 found as best you recall, number 101?

20 A. Yes, I believe that is 101.

21 Q. Why would blood be coming out of the ears?

22 A. As the skull is fractured, all that area within the base of
23 the skull and sinuses is very vascular. If you basically
24 fracture the bone -- the ear canal is inside the bone of the
25 skull, and if you basically fracture that you are going to have

1 bleeding in all of the tissues, so it is very common to see
2 blood coming out of the ear in a situation like that.

3 Q. And so we have seen photos of Mr. Hill essentially, I
4 believe, undressed. As best we can tell, Mr. Hill was not
5 undressed when this incident happened, right, that is part of
6 the medical examination process?

7 A. Right. The first pictures were shown face down, right on
8 here (indicating) adjacent to the room.

9 Q. Referring to Plaintiff's 106?

10 A. 106, apparently the body was rolled over before the sheet
11 was put down by someone, presumably not the Medical Examiner.
12 We see some disturbance of the scene in this photo. In the
13 later photo you see the Medical Examiner rolling him over for
14 transport.

15 MR. PHILLIPS: Your Honor, can he touch the spot where
16 he was shot?

17 THE COURT: He would have to come to you, to the ELMO.

18 MR. PHILLIPS: If you tap it, does it leave a mark or
19 arrow?

20 BY MR. PHILLIPS:

21 Q. Can you depict approximately -- or can you see exactly
22 where the entry wounds on Mr. Hill are that we discussed?

23 A. In this picture?

24 Q. Yes.

25 A. It's pretty hard because of the shirt, but the upper wound

1 should be here and the lower wound here.

2 Remember, the shirt can be moving around. Roughly in that
3 area.

4 Q. And the head?

5 A. Well, you can't see the one on the head, it comes in the
6 right side, and he has the right side of his head turned
7 downward. Generally in this area.

8 Q. Thank you.

9 I'm going to move to photo 75, Doctor, and sequentially a
10 closer version of that, 76. After your 8,000 plus autopsies,
11 can you identify -- do you have an opinion of what is depicted
12 in 76?

13 A. This the brain matter that spattered, and more of what we
14 saw where the brain matter has basically been extruded out, and
15 you can see it is on the door frame as well as the door panels.

16 So, this indicates that the head was pretty close to that
17 area when the bullet hit. It hits, spatters, and starts coming
18 out and spatters to the nearest point. That puts his head
19 leaning toward that area relatively in that position.

20 Q. Two more photos, I refer you to 45 and 38.

21 45, what does that generally depict as you are aware?

22 A. 45 is the garage door from the outside.

23 Q. Is it all the way down?

24 A. No. It is up it looks like a foot, foot and a half.

25 Q. And what would be 38?

1 A. 38 is with the door all the way down.

2 Q. Do you have an opinion to a reasonable degree of
3 probability or certainty which position the door was related to
4 Mr. Hill's entry wounds?

5 A. Well, we know the uppermost shot is the one that had the
6 brain matter, so his head had to have been close to that area.

7 If it is in position of part way open in 45, it would be
8 well above where the head was. Even if he was tip-towing or
9 standing up, it looks like it is higher than six feet.

10 The other thing is the trajectory, because the bullet is
11 going this way downward, we know he has to be bending forward,
12 that is why the brain matter is at the door.

13 And then the other two holes that you see, immediately
14 below and to the left as we look at it, those could not have
15 possibly hit an adult standing. His abdomen here, legs here,
16 abdomen here and here, pretty well matches, with the door
17 closed down, this would be where his head or chest was. If he
18 were standing up, it would hit him in the chest, not the
19 abdomen.

20 Q. I circled in red two shots.

21 A. That is red.

22 Q. That is the only color I've got.

23 That angle, to the extent you are aware and can testify to
24 a reasonable degree of medical probability or forensic medical
25 probability or certainty, with the door raised that much, would

1 those shots line up with the height that the gunshot wounds
2 were found on his body?

3 A. No. It is pretty clear, that is not a medical thing, basic
4 physics, if he is up here, and bullets coming in here, it would
5 not hit the abdomen down here.

6 Q. Within a reasonable degree of medical probability, would
7 you conclude the garage door was completely down when the shots
8 hit Mr. Hill?

9 MR. BRUCE JOLLY: I missed that.

10 BY MR. PHILLIPS

11 Q. Would you conclude the garage door was down when the shots
12 struck Mr. Hill?

13 A. Down or nearly down. It had to be lower than the first one
14 for sure.

15 Q. Very good, thank you.

16 The pelvic region gunshot wound, would that have been
17 fatal?

18 A. The lower one in the pelvis would not in itself be fatal.
19 The wound to the abdomen, since it hit the iliac artery, was
20 going to cause bleeding. People all the time survive
21 automobile accidents and so forth when they have injuries like
22 that, but with immediate surgical intervention. You have to
23 surgically go in and stop the bleeding.

24 In the absence of medical care he would have bled out
25 through that area most likely.

1 Q. The shot to the brain, was that fatal?

2 A. Clearly the shot to the brain was the fatal wound.

3 It is one of those situations where he was never going to
4 be neurologically intact again. Worst case scenario, he was
5 not going to survive that wound. If he could have been kept
6 alive he could have been an organ donor.

7 Q. With regard to the wound to Mr. Hill's head, would he be
8 capable of any motor function after sustaining that shot?

9 A. In my opinion, no.

10 Q. Why?

11 A. Because it interrupted all of the nerve traction, destroyed
12 the connection of the upper brain and the lower portion of the
13 body, cutting the spinal cord completely, but it is higher up,
14 so you even destroy more motor function. You may have some
15 after the other two, but not after the head wound.

16 Q. If there is evidence that Mr. Hill was raising a gun with
17 his right hand? Was there any entry wound or any wound at all
18 through his arm?

19 A. The scenario of raising the hand is interesting because you
20 have a wound here, coming right to left. If you have your arm
21 up like that, it is difficult to miss the arm, I would say
22 highly unlikely that it was anywhere near this position. It
23 was in a down position to allow a clean shot, because to get
24 there you have to go through the arm.

25 Q. Do you have an opinion whether Mr. Hill could have put a

1 gun back in his pocket after sustaining the wound to his head?
2 A. No. After the wound to the head he could not have any
3 purposeful motion of any kind.

4 MR. PHILLIPS: Thank you, sir. Your Honor, I would be
5 negligent if I didn't turn around and ask co-counsel. Could I
6 have a moment?

7 THE COURT: Yes.

8 MR. PHILLIPS: That is all, your Honor.

9 THE COURT: Okay, cross-examination.

10 **CROSS-EXAMINATION**

11 BY MR. BRUCE JOLLY:

12 Q. Dr. Anderson, as you were testifying, you labeled the
13 wounds as the first wound, the second wound, and the third
14 wound?

15 A. As identified -- I am not sure it was in the same order as
16 the Medical Examiner, but that is not meant to indicate -- by
17 labeling those, it does not have anything to do with the
18 sequence. Labeling does not involve the sequence of the
19 wounds. Wound number one -- the Medical Examiner labels wound
20 number one, and it does not necessarily mean it is the first
21 wound.

22 Q. I thought you said the first shot, second shot and third
23 shot as you were describing them.

24 A. Well, they were described as the Medical Examiner described
25 them. We have to label them some way. There is no way to

1 reference --

2 Q. Do you recall when you were first hired, retained by Mr.
3 Phillips' law firm?

4 A. I think it was sometime in 2016, maybe.

5 Q. And do you recall when it was that your opinion, written
6 opinion, was prepared?

7 A. Well, let's see, it should be on the date of the report. I
8 don't remember offhand.

9 Q. Oh, I've got it.

10 A. I have it here. December 24, 2016.

11 Q. And when you were first retained, what were you tasked to
12 do?

13 A. Well, as a scientist, I don't get tasked, they ask me to
14 look at the findings and give my opinions, and that is
15 precisely what I did.

16 Q. When you did the report, when your report was finalized on
17 December 24, 2016, your workup was completed at that time?

18 A. Well, as far as the report of the opinions regarding the
19 autopsy and the findings regarding the cause or manner of
20 death.

21 Q. All right. You haven't done any workup since? I know you
22 are prepared for trial.

23 A. Yes, and we had a depo, if you recall, and I certainly did
24 review that. It wasn't as rainy as it is now.

25 Q. I think it was close.

1 Okay, that is litigation stuff, that is not workup as a
2 scientist?

3 A. Well, no. If I am going to review a case, I don't try to
4 do anything from memory, I review the case. If there is a
5 deposition, I want to be as accurate as possible. The same way
6 in trial, so I review it.

7 If the question is, did I do any further investigation
8 other than at that time, no, I don't believe so. I hadn't gone
9 to the scene or anything like that.

10 Q. If I understood your report, your basic opinions were that
11 you described the wounds, as you did for this jury today. I am
12 not that good. This is not that tough.

13 A. Is there a question?

14 Q. The question was: In your opinion that you wrote, one of
15 the things that you did was to describe the wounds?

16 A. Well to an extent, yes, based upon Medical Examiner
17 findings and also my review of the photos.

18 Q. You concluded that the projectiles that struck Mr. Hill had
19 passed through an intermediate target?

20 A. Yes. I think we went over that fairly extensively a few
21 minutes ago.

22 Q. I thought so. Since I wrote my questions, I don't know.

23 Today, how many photos were sent to you by Mr. Phillips
24 when he retained you?

25 A. I got all the Medical Examiner photos, a ton of scene

1 photos. I can't bring my laptop in, I can't tell you exactly
2 the number, but it was in the hundreds, probably.

3 Q. One of the things that you looked at today was photograph
4 number 38?

5 A. Yes.

6 Q. 45 and 75.

7 Those photos depict the garage door from the front to the
8 back?

9 A. The photos --

10 Q. 38, 75 was one, and the other was 45.

11 A. You think it is or that is the one we are talking about?

12 Q. I think those three were shown to you when you were
13 testifying on direct.

14 A. That's correct.

15 Q. And in fact, you have concluded that that was the garage
16 door, the intermediate object that the bullets passed through
17 before striking Mr. Hill?

18 A. That is correct. There doesn't seem to be any other
19 intermediate target. We have brain matter on the other side of
20 the door adjacent to one of the holes. It is fair to say that
21 was the intermediate target. If it turns out there was another
22 intermediate target, I could exclude that, but because of the
23 spattering of brain matter, I would say that is probably the
24 intermediate target.

25 Q. I think you indicated you didn't read any of the witnesses'

1 statements?

2 A. Correct.

3 Q. None of the deputies' statements?

4 A. That is correct.

5 Q. You perceive that might interfere with your objectivity?

6 A. Not only do I perceive it, but the forensic community has
7 recognized a lot more of the cognitive bias, that you could
8 have your opinion inadvertently modified or altered by any
9 extraneous information you didn't need.

10 Q. You did --

11 A. One of the things in the chapter I wrote is on that
12 subject.

13 Q. You didn't examine any of the physical evidence?

14 A. Well, I had photos, sure. The wound pictures are physical
15 evidence, the autopsy report is physical evidence. The photos
16 of the scene are physical evidence.

17 Q. But you didn't examine the body?

18 A. Well, obviously not. In this particular case I didn't. In
19 some cases I do a second autopsy, but this is not one of those
20 cases.

21 Q. You found, I think, that there were three wounds?

22 A. I think that is safe to say. That is in the Medical
23 Examiner's report and the photos show there were three wounds.

24 Q. From your review of the autopsy, as well as the
25 photographs, you are in agreement that the shots as they struck

1 Mr. Hill started -- number one was the lower one, number two,
2 the higher one, and the third shot was the shot to the head.
3 That would be a reasonable conclusion?

4 A. I think a minute ago you asked me if I had done that, and I
5 told you no.

6 This is for that precise reason, we are not using that as a
7 sequence, we are using that as numbering so we know where the
8 wounds are and not the sequence.

9 A minute ago you asked if I did that, and I said no, I
10 didn't.

11 Q. I am just --

12 A. No, I took the wounds -- the Medical Examiner took the
13 wounds, labeled the wounds. It would have nothing to do with
14 the potential sequence, but so they could refer to the specific
15 wounds later in the report so they could make sense.

16 Q. Respectfully, Dr. Anderson, this is a different question.
17 Whether you did it or not, it is reasonable to conclude from
18 your review of the evidence that you did review that that is
19 the sequence?

20 A. No. I don't think that at all.

21 Q. What do you think is the sequence?

22 A. I don't think we can tell.

23 We can tell the position, we can tell the door is down, but
24 can we tell whether or not the first wound was the wound to the
25 head? He was bending over for some reason. I would say the

1 most logical thing of this is he is hit twice in the abdomen
2 and moves forward, and puts his head down at a level which is
3 as if he was falling forward and we have the head in the right
4 position with the wound track.

5 Q. You did not conclude that, but you don't dispute that that
6 is a reasonable proposition?

7 A. Well, I just made it, so I would think it would be.

8 Q. By the way, as you had the photographs of the garage door
9 in front of you, did you notice there were four instructions
10 or -- no, four holes in the door?

11 A. Yes, apparently one of the bullets hit the metal, and that
12 stopped it apparently.

13 Q. That is interesting. How did you know that? That is not
14 in any of the reports you read.

15 A. No. I looked at the hole, and there is a picture that
16 shows the bullet in the metal in the police reports. It had
17 nothing to do with the body, so I wasn't going to put it in the
18 report.

19 Q. As you looked at the photograph you have of the relative
20 positioning of the holes, did you conclude that the door was
21 moving as the gun was fired?

22 A. No, I don't think there is any way to tell that. I know by
23 that time it was nearly closed by the position when the shots
24 went into the door and hit him. Whether or not it was on the
25 way down and the shots -- I don't know the sequence between the

1 shots.

2 Q. Without knowing that, we wouldn't know how fast the door
3 was moving down?

4 A. It could have been moving, but if it was moving at the
5 point when the shots occurred it had to be in the position of
6 almost closed or a small opening at the bottom of the door to
7 get those holes lined up with the -- Mr. Hill's body.

8 Q. I know you are not comfortable in rendering an opinion as
9 to whether the door was closing, but you will concede from your
10 observations and your review of this matter that it could have
11 been moving?

12 A. Sure, it could have been moving. At the point of the gun
13 shot it had moved to the point that it was closed, almost
14 closed.

15 Q. I think you concluded -- I think you told this jury you
16 concluded at the time of the last shot, the shot to the head,
17 Mr. Hill was probably leaning over?

18 A. You mischaracterize what I said.

19 Q. What did I mischaracterize?

20 A. Again, you refer to it as the last shot. I was trying to
21 point out repeatedly we are not sequencing this thing. It
22 could have been the first thing as he's going down. More
23 likely than not the pain of the shots to the abdomen could have
24 caused him to fall. We are not sure. I did not conclude that
25 at all.

1 Q. I'm sorry, I did not mean to suggest you have concluded
2 that.

3 A. Your question was, you concluded this. I had to assume you
4 were asking for a conclusion, and again, we are not trying to
5 say what sequence for sure those bullets were fired in.

6 Q. I am sorry.

7 At some point during this incident, most likely when the
8 shot to the head happened, he -- I thought you said he was
9 leaning forward?

10 A. Yes, but that does not necessarily mean that was the first
11 shot or last shot or intermediary shot.

12 Q. I guess, however, the answer is, he was leaning forward, I
13 think, when that shot hit him?

14 A. When that shot hit him? The question is, was that the
15 first, second or third? We can't tell that. What I am telling
16 you is that he was leaning forward where the bullet is and the
17 brain matter for that bullet to go downward.

18 Q. As part of your review, I don't think you could make a
19 determination that -- or the relative time spacing of the four
20 shots?

21 A. That is correct.

22 Q. You don't have any idea?

23 A. No.

24 Q. You cannot testify to this jury as to how much time passed
25 from shot one, shot two, shot three, to shot four?

1 A. Well, there are only three in him, presumably you are
2 talking about the hole in the door that hit the frame. No.

3 Q. Did you notice in the photograph of the door that the shots
4 that penetrated the garage door seemed to be coming from the
5 left to the right?

6 A. Yes.

7 Q. You saw that?

8 A. Yes.

9 Q. And that, I think, played some role in your determination
10 that he was -- that the trajectory of the bullets through his
11 body were consistent with that?

12 A. Well, the trajectory of the bullet -- of the bullet to the
13 body is from right to left. These do appear the bullets are
14 coming as he is facing the door from his right to his left. So
15 that would be consistent with that as opposed to coming from
16 the opposite direction and him facing -- say, facing away from
17 the door.

18 That would be consistent with him standing there, and we
19 know particularly the head -- where the brain matter was found,
20 the head had to be in relative proximity to that area because
21 the brain matter extruded out on the door.

22 Q. Which is part of the reason, if I understood you, you
23 concluded that he was leaning forward?

24 A. Well, that, and also the trajectory of the bullet through
25 the brain.

1 If he is standing up and the shot goes this way, it will go
2 right across here. (Indicating.)

3 Q. I think you indicated when Mr. Phillips was asking you
4 questions that any of the wounds to the abdomen could have been
5 fatal?

6 A. I said the lower wound in itself would not be fatal. The
7 wound to the mid abdomen that caught the iliac artery would
8 require immediate surgical intervention, but would be
9 survivable.

10 Q. Did you tell this jury earlier this morning that neither of
11 the two wounds to the abdomen would have caused a cessation of
12 motor movement, he could still move?

13 A. He could still move after those wounds.

14 Q. One of the things you did is review Dr. O'Neil's autopsy as
15 a part of your autopsy report?

16 A. That is correct.

17 Q. And I think you, especially as a experienced forensic
18 pathologist, you were satisfied with the competency of the
19 autopsy that she performed?

20 MR. PHILLIPS: Objection. Commenting on another
21 witness' competency.

22 THE COURT: Rephrase the question.

23 BY MR. BRUCE JOLLY:

24 Q. You were satisfied the report was done the way it should be
25 done?

1 A. Correct. I didn't find anything particularly absent in the
2 report, correct.

3 Q. That the protocols which were used as that autopsy was
4 conducted were appropriate for what was being done?

5 A. I would say so.

6 Q. I think you went so far as to say it was thorough?

7 A. Yes.

8 Q. You are aware that a toxicology screen was performed?

9 A. I think we have been through that. Yes, and it showed the
10 presence of alcohol, but no other drugs.

11 Q. You are way ahead of me, Doctor.

12 I just want to establish that a toxicology screen was done;
13 yes or no?

14 A. We have been through that. Yes, I read through the report
15 a while ago.

16 Q. You would expect when an autopsy report is conducted that a
17 toxicology screen would be done?

18 A. Definitely.

19 Q. And a toxicology screen is basically withdrawing blood from
20 the body?

21 A. A toxicology screen is run on a sample, blood was drawn and
22 fluid from the eye was drawn.

23 Q. There were two sources of samples for the toxicology
24 screening, correct?

25 A. Yes.

1 Q. One was from the chest cavity, correct?

2 A. No. It was heart blood.

3 Q. One was from the heart. That is even better, isn't it?

4 A. Better in what -- it is a better sample than taking it from
5 somewhere else, yes.

6 Q. And the other blood sample was taken, I think it is called
7 vitreous?

8 A. Yes, but it is not a blood sample.

9 Q. Fluid sample?

10 A. Yes.

11 Q. I get it. And so there are two sources for analysis of
12 bodily fluid if there is any kind of contaminant in the body
13 fluid?

14 A. Yes, that is correct.

15 Q. All right. I think you indicated from your review of the
16 report, that the heart blood sample as tested reflected a blood
17 alcohol level of point -- was it .328? Is that what you said?

18 A. The blood alcohol was .328.

19 Q. And, of course, you are aware from your vast experience
20 working in the system that is essentially four times the legal
21 limit for driving?

22 A. That is correct.

23 Q. Which would, I think, suggest even to you he was impaired.

24 A. Yes, I would say so.

25 Q. By the way, as you reviewed the autopsy, was there any

1 indication on the report that he suffered from an alcohol
2 related disease?

3 A. No.

4 Q. He wasn't addicted to alcohol?

5 A. Well, he had no stigmata, cirrhosis of the liver, fatty
6 liver. That is a little unusual with somebody with this amount
7 of alcohol. Actually, generally, if this is sustained for a
8 period of time, you do get fatty -- even though you don't get
9 cirrhosis of the liver, it interferes with the liver cells, so
10 you get a fatty accumulation. It is unusual that there is no
11 fatty liver, this was an acute elevation.

12 Q. When you say acute, immediate, short term?

13 A. Within hours, yes.

14 Q. And did you -- I assume you noted that the level of alcohol
15 from the vitreous fluid that was taken, the sample that was
16 taken, was higher?

17 A. Right, and the vitreous usually lags behind --

18 *MR. BRUCE JOLLY:* Respectfully, your Honor, I just
19 asked the one question.

20 *THE COURT:* Well, the witness is allowed to explain
21 his answer. If the answer lends itself to a yes or no, you can
22 answer it that way, but then explain your answer.

23 Why don't you restate the question so we are clear.

24 *BY MR. BRUCE JOLLY:*

25 Q. The vitreous, the blood -- no, the alcohol level from the

1 vitreous sample literally taken from the eye was .39, wasn't
2 it?

3 A. Yes.

4 Q. Now -- but that didn't surprise you or shock you
5 particularly?

6 A. That is correct.

7 Q. And that is because that happens when autopsies are
8 performed?

9 A. No, that is not the reason.

10 Q. Well, there again, you are two questions ahead of me.

11 In this particular instance, the vitreous fluid reflects a
12 blood alcohol level from sometime before the blood alcohol
13 level taken from the chest?

14 A. Precisely, it actually lags behind the blood alcohol. If
15 you have a situation where the blood alcohol is going up, the
16 vitreous will lag behind ten minutes or 15 minutes and so
17 forth.

18 Q. And -- sorry.

19 A. So, we have a circumstance here where the blood alcohol is
20 beginning to come down and the vitreous is still higher. At
21 one point the blood alcohol was .39, but it looks like he was
22 acutely elevated in that situation.

23 Q. From your review of the ME's -- Medical Examiner's record,
24 you didn't note or observe any notation that he was an
25 alcoholic?

1 A. No. That is correct. That is why this seems to be an
2 acute process. I have seen this several times. Since you
3 asked the question, I wasn't going to get into it, but
4 sometimes --

5 Q. Go ahead.

6 A. -- sometimes this can be basically a physiologic change.
7 When alcohol is aspirated into the lungs from the stomach,
8 there could be an increase in the alcohol, maybe like several
9 points, .1 to .3, because the alcohol absorbs so much quicker
10 through the capillaries of the lung than through the stomach
11 where you have the digestive processes and everything. That
12 could be a situation where this type of thing could occur.

13 Q. What type of thing? I'm sorry.

14 A. Aspiration. We know from the weight of the lungs that this
15 individual survived awhile. The normal lungs are 200, and this
16 was 400, there was edema, he was unconscious, but his heart was
17 pumping for ten, 15 minutes before he died.

18 If he aspirates the gastric fluid which has alcohol in
19 it -- it was brown fluid, probably beer -- it is going to go in
20 the lungs. In my experience, we have had deaths from that
21 particular phenomena. Since you are asking the question, that
22 might be one of the mechanisms that could have occurred.

23 Q. You didn't conclude that was the mechanism that occurred?

24 A. No, I wasn't going to opine it, but you asked the question.

25 Q. Well, there is no indication that either sample was

1 compromised or contaminated by fluid from the stomach?

2 A. Well, that is not what I am saying.

3 The samples were clean. Obviously, from the vitreous, you
4 are not going to get the sample. What happened is, if the
5 individual was still alive, vomited some, fluid goes into the
6 lungs and that could be absorbed, and that is a problem. It is
7 not a contamination problem, it is a physiologic problem, that
8 alcohol, instead of going through the -- flowing through the
9 stomach, it is absorbed as a large amount into the blood
10 through the lung capillaries and causes the elevation of the
11 blood very suddenly, very high.

12 As I pointed out, I hadn't opined on that. Since you asked
13 the question, that is one of the reasons we could see this
14 scenario, not the only one. The other one, he was drunk at
15 that time.

16 Q. By the way, how close to death is .39?

17 A. Well, it can be almost fatal.

18 Q. Certainly you would -- from your experience -- you have
19 been doing this a long time.

20 From your experience, you would expect a person with a .328
21 or .39, depending where you draw it from, to exhibit confusion?

22 A. Well, there are a lot of things, disorientation, confusion,
23 sure.

24 Q. I will walk you through several, bear with me here.

25 Confusion?

1 A. Yes.

2 Q. Irrational thinking?

3 A. Correct.

4 Q. Physical impairment with motor skills?

5 A. Correct.

6 Q. It can even affect one's reaction to pain?

7 A. Sure.

8 Q. If I understood your testimony, you have concluded that
9 once he was wounded in the head, he was no longer making any
10 movements of any kind except to drop where he was?

11 A. Correct. He might have had some twitching from the --
12 seizure type twitching, but that is pretty much it.

13 MR. BRUCE JOLLY: May I have one moment?

14 THE COURT: Yes.

15 MR. BRUCE JOLLY: I have no further questions, thank
16 you, Doctor.

17 THE COURT: Redirect.

18 MR. PHILLIPS: Very briefly, your Honor.

19 **REDIRECT EXAMINATION**

20 BY MR. PHILLIPS:

21 Q. Dr. Anderson, you were asked essentially whether you needed
22 to go to the scene to render your opinions.

23 Does a doctor need to see someone smoking to determine
24 whether they have lung damage from smoking?

25 A. No.

1 Q. And I think there was some issue with this. If the
2 shooter -- if the trajectory of the bullet was coming from Mr.
3 Hill's right -- correct?

4 A. Correct.

5 Q. -- and the wounds found on here, his right side --

6 A. Correct.

7 Q. -- and if his arm was raising at the elbow, would that
8 potentially have caused a bullet wound through his hand?

9 A. The hand or the arm somewhere.

10 MR. BRUCE JOLLY: I have an objection, Rule 26,
11 outside the disclosures, and he has not been qualified to that.

12 THE COURT: I believe he testified to that on direct.
13 That was covered. I will overrule it.

14 BY MR. PHILLIPS:

15 Q. At .39 motor movement would have been limited by that fact?

16 A. That is why you have a requirement for driving a vehicle,
17 any type of activity can be impaired at that level. Driving a
18 car, performing any functions, using a firearm, anything could
19 be basically impaired.

20 Q. So, because we discussed it -- or you all discussed it,
21 what is aspiration?

22 A. Okay, aspiration is when something is in the stomach, and
23 for whatever reason somebody is neurologically impaired, that
24 is what usually happens, they vomit and aspirate or breathe it
25 into the lung. All that goes into the lungs, capillaries

1 separating, there are air spaces in the blood, these
2 capillaries, so it goes right through into the blood. In the
3 stomach you have blood cells for absorption, and you can
4 imagine it goes into the blood, so the alcohol level is sky
5 high.

6 Q. No matter how I take in air, are they heavier because I
7 took in more air?

8 A. No. They are lighter because you have more air in them.

9 Q. When you say his lungs were heavy, what do you mean?

10 A. After the injury, fluid was billing up into the lungs and
11 that increases the lung weight.

12 Q. How would that potentially affect blood alcohol level?

13 A. In and of itself, it would not. It is the aspiration that
14 would -- the aspiration that could have occurred.

15 In other words, if he died right away, there probably
16 wouldn't be time for him to aspirate because the lungs were
17 heavy, the fluid is building up, you have a longer period of
18 time. There is a chance during that period of time is when
19 aspiration may have occurred.

20 Q. We don't know if there was a spike or how much there was a
21 spike?

22 A. Yes, if it started at 200, goes to 300, 250 to 300, we
23 don't know. For that to occur that quickly, in the absence --
24 particularly in the absence of fatty liver means it was not
25 going on very long. Mr jolly's question was, is there a

1 mechanism where this could have occurred? Yes, there is,
2 including it was there at the time.

3 MR. PHILLIPS: Thank you very much.

4 THE COURT: Thank you very much, you may step down.

5 THE WITNESS: Thank you, your Honor.

6 THE COURT: Yes.

7 THE WITNESS: Everybody done?

8 THE COURT: Everybody is done with you. We are not
9 done, done, but there are no more questions of you.

10 MR. PHILLIPS: That is correct.

11 THE COURT: Bring in your next witness.

12 MR. PHILLIPS: The Plaintiff calls Monique Hill.

13 MS. BARRANCO: Your Honor, I am not sure what witness
14 this is. There is not a Monique Hill.

15 MR. PHILLIPS: Davis.

16 THE COURT: Davis.

17 MS. BARRANCO: Thank you.

18 TARRICA MONIQUE DAVIS, PLAINTIFF'S WITNESS, SWORN

19 THE WITNESS: Tarrica Monique Davis, T-A-R-R-I-C-A,
20 M-O-N-I-Q-U-E, D-A-V-I-S.

21 **DIRECT EXAMINATION**

22 BY MR. PHILLIPS:

23 Q. Good morning.

24 A. Good morning.

25 Q. Tell us where you live.

1 A. Ft. Pierce.

2 Q. How long have you lived in Ft. Pierce?

3 A. 35 years.

4 Q. Tell us about that.

5 A. I was born and raised in Ft. Pierce, I went to high school
6 in Ft. Pierce, I graduated from Ft. Pierce Central. I went to
7 IRCC for cosmetology. I met my high school sweetheart at Ft.
8 Pierce Central, we were together for 13 years. I have two
9 kids.

10 Q. Okay. Where do you work now?

11 A. I work at Bell's Outlet.

12 Q. Where were you working at the time?

13 A. Convey House Solutions.

14 Q. January 14, 2014, that is the day we are going to discuss.
15 Do you remember the events of that day?

16 A. Yes.

17 Q. What was your relationship with Gregory Vaughn Hill, Jr.?

18 A. He was my fiancée'.

19 Q. Okay. When did you meet Mr. Hill?

20 A. High school, 11th grade.

21 Q. Do you recall that?

22 A. Yes.

23 Q. Tell us about that.

24 A. It was love at first sight. I met him through mutual
25 friends in 11th grade at Ft. Pierce Central High, and we had

1 been together up until January 14th.

2 Q. How old were you when you met?

3 A. 15, 16, somewhere around there.

4 Q. Was every single day perfect?

5 A. No.

6 Q. Tell us about that.

7 A. We had disagreements, we had good days, we had bad days, we
8 had ups, downs. I wasn't perfect, Greg wasn't perfect.

9 Q. Where did you live?

10 A. 1501 Avenue Q.

11 Q. That is across the street from a school?

12 A. Yes.

13 Q. What school?

14 A. Francis K. Sweet Elementary.

15 Q. Who attended that school?

16 A. My girls, Destiny and Aryanna.

17 Q. What period of time did Greg live in the house?

18 A. He grew up in that house.

19 Q. At some point you and he moved into that house?

20 A. Yes.

21 Q. How many bedrooms did it have?

22 A. Four.

23 Q. When did you last live there?

24 A. January 14, 2014.

25 Q. Why don't you live there?

1 A. It is damaged, unlivable.

2 Q. Where did Greg work?

3 A. Coca-Cola.

4 Q. For how long before he passed?

5 A. About a year and a half.

6 Q. What did he do?

7 A. He was the order filler.

8 Q. Back in the day, I think I remember Coca-Cola shirts are
9 pretty cool. Did he bring home Coca-Cola swag?

10 A. Yes, shirts, hats, cup holder, cannister.

11 Q. Did the kids wear Coca-Cola branded stuff?

12 A. Yes, he gave Aryanna a Coca-Cola hat.

13 Q. Does she still have it?

14 A. Yes.

15 Q. Why was Greg home on the day he was home?

16 A. He wasn't working, he was on workmen's comp.

17 Q. What happened?

18 A. He hurt his leg on the job, his ankle got caught in a
19 machine.

20 Q. Did Greg have occasion to pick up the kids at Francis K.
21 Sweet?

22 A. Yes.

23 Q. Tell us about that.

24 A. If I was working, it was his responsibility to pick up the
25 girls from school, or if he was working, I was to pick up the

1 kids from school.

2 Q. What was required to do that?

3 A. Walk across the street.

4 Q. Open the garage door, front door?

5 A. Either front door or garage door.

6 Q. You said fiancée'. Were there marriage discussions going
7 on, and when did they first start?

8 A. Yes, they started in 2008, I believe. We called it off
9 because I had so many health problems. Back in 2013, it was
10 back on.

11 Q. What were your wedding plans at the time?

12 A. At the time, before he died?

13 Q. Yes.

14 A. Everything was finalized, all that we had to do, the guys
15 had to be fitted for tuxedos. Everything was paid for.

16 Q. What wedding supplies did you have in the house?

17 A. Shoes, dress, tables of flowers.

18 Q. How excited were you for your wedding day?

19 A. Very excited.

20 Q. How busy were you -- or how complicated were your plans?

21 A. We were very busy, I had 42 people in the wedding. They
22 called me bridezilla. I was very excited.

23 Q. There was mention about a chemical agent or something. Was
24 there anything that got on wedding stuff?

25 MS. BARRANCO: Objection, your Honor, relevance.

1 THE COURT: Response.

2 MR. PHILLIPS: Your Honor, I will withdraw that
3 question.

4 THE COURT: Okay.

5 BY MR. PHILLIPS:

6 Q. Was there any of the pink stuff that got on any of the
7 children's toys?

8 A. Yes.

9 Q. Do you know what that pink stuff was?

10 MS. BARRANCO: Objection, your Honor, relevance.

11 MR. PHILLIPS: The next question is going to be, did
12 toys and memories that Greg shared with his children have to
13 get thrown out?

14 THE COURT: You can ask that question.

15 MR. PHILLIPS: Okay.

16 BY MR. PHILLIPS:

17 Q. We will ask that question. Did any of the pink stuff get
18 on the toys or memories that Greg had with his children?

19 A. Yes.

20 Q. Did they have to get thrown out?

21 A. Yes.

22 Q. Why?

23 A. Because one of the cannisters dropped down in the toy bin,
24 and Destiny's room didn't have a closet, we had bins and we put
25 toys in there. There were new toys from Christmas. One of the

1 cannisters, the tear gas dropped right in there, and a shoe
2 rack next to the toys and the pink stuff was on the shoes.

3 Q. Who is this lady?

4 A. Viola Bryant, the kids' grandmother, and like a mother to
5 me.

6 Q. And Greg's mother?

7 A. Greg's mother.

8 Q. How was she involved in your children's lives?

9 A. She was very involved, helped out a lot. What we couldn't
10 do, she was there.

11 Q. When did you first find out you were pregnant with Destiny?

12 A. After I was graduated from Indian River College.

13 Q. Were you and Greg planning a family?

14 A. Yes.

15 Q. How did it make you feel?

16 A. We was happy, it was our first child, I was done with
17 school.

18 Q. What did you name her?

19 A. Destiny.

20 Q. What is her date of birth?

21 A. 12/29/04.

22 Q. Destiny, any symbolism or meaning to that name?

23 A. Yes.

24 Q. What? Tell us about that.

25 A. When I was pregnant there were complications, she might be

1 Downs Syndrome or stillborn, that was my destiny to do that. I
2 decided I was going to do all the right things and it was my
3 destiny to have her.

4 Q. Tell us about some of the times that Destiny and her dad
5 spent together. Tell us about their relationship.

6 A. They had a great relationship. Mainly in that garage, most
7 of the time was spent in the garage with the kids. He was an
8 outdoor person, those kids were outdoor persons. Whatever they
9 did, toys, riding bikes, on the trampoline, Destiny was right
10 there with her dad. They were very close with their dad.

11 Q. We have some photos that have previously been marked. We
12 will go through them one at a time.

13 MR. PHILLIPS: Your Honor, we move in Plaintiff's 172?

14 THE COURT: What was it, 172?

15 MR. PHILLIPS: Yes, ma'am.

16 THE COURT: Okay. Any objection?

17 MS. BARRANCO: Not as to 172, your Honor.

18 THE COURT: Okay. All right. That is admitted
19 without objection.

20 (Whereupon Plaintiff Exhibit 172 was marked for
21 evidence.)

22 BY MR. PHILLIPS:

23 Q. Who does that depict?

24 A. That is me and Greg.

25 Q. Do you recall that day?

1 A. Yes.

2 Q. Tell us about that.

3 A. It was our prom night.

4 Q. Prom night?

5 A. Yes.

6 Q. What age were you?

7 A. We should have been 17.

8 MR. PHILLIPS: Your Honor, we move in 174.

9 MS. BARRANCO: No objection, your Honor.

10 THE COURT: Admitted without objection.

11 (Whereupon Plaintiff Exhibit 174 was marked for evidence.)

12 BY MR. PHILLIPS:

13 Q. Who is depicted in that photo?

14 A. That is me and Greg.

15 Q. Do you recall that day?

16 A. Yes.

17 Q. Where was that?

18 A. That was in Atlanta, Georgia.

19 MR. PHILLIPS: Your Honor, 175.

20 MS. BARRANCO: Your Honor, I object, cumulative.

21 THE COURT: How many are you going to do total?

22 MR. PHILLIPS: Just two more, your Honor.

23 THE COURT: Overruled. That is admitted over

24 objection, 175.

25 (Whereupon Plaintiff Exhibit 175 was marked for evidence.)

1 BY MR. PHILLIPS:

2 Q. The clothes look familiar, what is that from?

3 A. Prom.

4 Q. Okay.

5 MR. PHILLIPS: Last but not least, we will move in
6 173.

7 THE COURT: Any objection?

8 MS. BARRANCO: No objection.

9 THE COURT: Admitted without objection.

10 (Whereupon Plaintiff Exhibit 173 was marked for evidence.)

11 BY MR. PHILLIPS:

12 Q. Tell us who is in that photo.

13 A. Me, Greg, Aryanna and Destiny.

14 Q. Which one is Aryanna?

15 A. The baby.

16 Q. And Destiny?

17 A. In red and black.

18 Q. When was that taken?

19 A. That was taken at Destiny's Head Start program.

20 Q. How is Destiny doing?

21 A. She is fine right now.

22 Q. Okay. Has Destiny sought counseling since this happened?

23 A. Yes.

24 Q. Tell us about that.

25 A. I took her to counseling maybe a month or two after the

1 January 14th tragedy, she went there for like maybe three to
2 four months, but they dismissed her because she would never
3 open up to them.

4 Q. What effect has this had on Destiny?

5 A. She has been affected a lot. She don't like to talk about
6 it. Any time she hear any situation going on with her dad or
7 anything, she don't like to talk about it.

8 We can sit down and look at pictures, watch video, she
9 would walk out, she won't stay in there. If she do stay in
10 there, she gets very emotional.

11 Q. Did Mr. Hill provide emotional support for his daughter?

12 A. Repeat that question.

13 Q. Did he provide emotional support for his daughter?

14 A. Yes.

15 Q. Did Mr. Hill help them with homework?

16 A. Yes.

17 Q. Did Mr. Hill help them with life's lessons?

18 A. Yes.

19 Q. Does he do that any more?

20 A. No.

21 Q. Let's talk about Ms. Aryanna Hill; what was her
22 relationship like with her dad?

23 A. Aryanna was kind of special, she was a daddy's girl, very
24 attached to her dad. If she could have gone to work with her
25 dad, she would have done it.

1 She was the one -- he woke up at five o'clock in the
2 morning, and we wake her up, Aryanna is going in the garage.
3 If he goes fishing at five o'clock in the morning, she is going
4 fishing with her dad. She is the one very attached to her dad.
5 Q. Do you recall any other stories about a father and his
6 daughters?

7 A. Yes.

8 Q. Tell us one.

9 A. They always -- at dinner time we have conversations about,
10 oh, this is my daughter, that is your daughter, which is
11 Aryanna is Greg's, and Destiny is mom's, Aryanna was daddy's
12 girl, and Destiny was momma's girl.

13 Aryanna would go to dad before mom. If dad says no, she
14 will come to mom, and vice versa to Destiny.

15 Q. Did you vacation together?

16 A. Yes.

17 Q. Tell us about a particular vacation if you have one in
18 mind.

19 A. We went to Tallahassee to visit one of his aunts, had
20 cookouts, kid got in the pool, we did fireworks.

21 Q. Okay. I think I am leaving somebody out. Did Greg have
22 another child?

23 A. Yes.

24 Q. And that was not with you?

25 A. No.

1 Q. Who is that?

2 A. Gregory Hill, III.

3 Q. Before I get to that, what was Aryanna's date of birth?

4 A. 11/05/07.

5 Q. Tell us about Gregory Vaughn Hill, III and his -- who his
6 mom is.

7 A. His mom is Melody Wright.

8 Q. And how did that happen?

9 A. It happened, I think -- maybe around 2009 or 8, somewhere
10 around there, me and Greg broke up, we was apart for about a
11 year, and during that time, that is when he had Greg.

12 Q. Did little Greg, Gregory Vaughn Hill, III, was he a member
13 of the family?

14 A. Yes, he was like a son I never had.

15 Q. Did Aryanna and Destiny and Greg do things together when
16 Greg -- when their father was alive?

17 A. Yes.

18 Q. How often?

19 A. Maybe like twice a week.

20 Q. Okay. Was it important for you and Greg to have your
21 daughters know their brother?

22 A. Yes, I didn't want my daughters growing up knowing they had
23 a brother out there somewhere.

24 Q. This was January 14, 2014, a couple of weeks -- three weeks
25 after Christmas, does that sound about right?

1 A. Yes.

2 Q. Tell me about that Christmas, December 25, 2013.

3 A. Christmas was at our house, at the 1501 address, I cooked,
4 family came over, we exchanged gifts. Everyone was there, all
5 the kids, Gregory, his sisters, his friends.

6 Q. Tell us about that.

7 Do you recall what presents Greg gave his children that
8 Christmas?

9 A. Greg had a basketball hoop with Coca-Cola on it. He bought
10 him a scooter, clothes, Destiny got clothes. Aryanna, I think
11 a camera, she had camera, lip gloss, a bunch of other toys.

12 Q. Now, going to January 13, 2014, did you and Greg have a
13 fight?

14 A. I can't recall.

15 Q. The night before this happened?

16 A. Yes.

17 Q. Tell us about what happened.

18 A. Me and Greg had an agreement before, before any of all
19 this, because we was getting married and everything was going
20 toward the wedding. With the wedding so close, the agreement
21 was I am not going to drink, I am going to get things done.
22 When I came home, Greg was drunk, so I was upset about that.

23 Q. What happened?

24 A. That is what the argument was about.

25 Q. How did you argue?

1 A. Verbally.

2 Q. Okay.

3 A. That night.

4 Q. The next day, how did you argue?

5 A. We talked on the phone and we do text messages.

6 Q. Okay. And what did you say generally in those text
7 messages?

8 A. I told him I am tired, hurt, embarrassed, he needed to get
9 himself together. You promised me that you were not going to
10 do this.

11 Q. Did you threaten to break up with him?

12 A. Yes.

13 Q. Did you threaten to leave him?

14 A. Yes.

15 Q. Had you threatened that before?

16 A. Yes.

17 Q. How many times?

18 A. I can't even recall.

19 Q. Did you get back together?

20 A. When we broke up?

21 Q. Yes.

22 A. Well, not that day we didn't.

23 Q. Certainly. Do you recall the last text message you sent to
24 Mr. Hill?

25 A. I think. I don't know the exact words, but I kind of

1 remember.

2 Q. What was it?

3 A. The last one was I love you, I am with you, please come out
4 if you are in there, something like that.

5 Q. Do you know if he ever received it?

6 A. No.

7 Q. Talking about a firearm, had you ever seen a firearm in the
8 house before?

9 A. No.

10 Q. Did you know Mr. Hill had one?

11 A. No.

12 Q. Do you like guns?

13 A. No.

14 Q. And I assume -- you haven't been in here because you are a
15 witness. If it came out in the courtroom that Mr. Hill was on
16 probation, was illegally drunk and illegally possessing a
17 firearm, that wouldn't surprise you, that is not the first time
18 you heard it from me?

19 A. No.

20 Q. When was the first time you heard that?

21 A. On the news conference and newspapers, all that.

22 MS. BARRANCO: Objection, your Honor, relevance.

23 THE COURT: As to how she learned it?

24 MS. BARRANCO: I guess I am waiting for the next
25 question, your Honor, sorry.

1 THE COURT: So you are withdrawing the objection?

2 MS. BARRANCO: Yes.

3 THE COURT: Okay.

4 BY MR. PHILLIPS:

5 Q. Do you know if your children heard it?

6 A. Yes.

7 Q. How do you know?

8 A. Because one morning I got up and Aryanna was on her iPad
9 and I said, what are you doing, and she said she was reading
10 something, and she asked me a question about the case, and I
11 said, how do you know about that, let me see what you are
12 reading. She said, I put daddy's name in different stories,
13 and she read it all.

14 Q. Do you know for a fact if Mr. Hill was on probation on
15 January 14, 2014?

16 A. Yes.

17 Q. Was he?

18 A. No.

19 Q. Was there a probation order?

20 A. Yes.

21 Q. Would Mr. Hill have been more familiar with the terms of
22 that probation order?

23 A. Yes, he is the one that dealt with it.

24 Q. What was Mr. Hill doing trying to get off probation in the
25 last days, weeks of his life?

1 A. He paid off the money and was completing all his classes.

2 Q. Did Greg particularly like that he was on probation?

3 A. No.

4 Q. Did he want to get that chapter put behind him?

5 A. Yes.

6 Q. Mr. Hill, your high school sweetheart, your fiance at the
7 time he passed, the man you have known for 15 plus years, was
8 he perfect?

9 A. No.

10 Q. Was he a perfect husband or fiance'?

11 A. No.

12 Q. How was he in fatherhood?

13 A. He was great with his kids. He was a great father.

14 Q. Tell us about that.

15 A. Being a young man and with kids, he did more than an
16 average young man would do, pick them up from school, get them
17 dressed, feeding them. He did everything a mother would do as
18 a young man.

19 MR. PHILLIPS: Your Honor, we move in photograph --
20 Plaintiff's Exhibit Number 81.

21 THE COURT: Any objection?

22 MS. BARRANCO: I think the foundation for the
23 photograph should still be first laid.

24 THE COURT: You may show it to the witness first.

25 MR. PHILLIPS: Thank you, your Honor.

1 BY MR. PHILLIPS:

2 Q. Ms. Davis, do you recognize the items depicted in the
3 photograph labeled Plaintiff's Exhibit 81?

4 A. Yes.

5 Q. Where was this photograph taken?

6 A. Inside our garage.

7 Q. Does it contain items possessed by you or Mr. Hill?

8 A. Yes.

9 MR. PHILLIPS: We move it in.

10 MS. BARRANCO: No objection.

11 THE COURT: 81 is admitted without objection.

12 (Whereupon Plaintiff Exhibit 81 was marked for evidence.)

13 BY MR. PHILLIPS:

14 Q. What does that depict?

15 A. Repeat that question.

16 Q. What does that photo depict?

17 A. This is a photo of a stereo, the dog Prince, chairs, all
18 Greg's stuff that was in the garage.

19 Q. Would that be the stereo he was listening to on the day he
20 was shot?

21 A. Yes.

22 Q. Who is that?

23 A. Gregory.

24 Q. No, who is this guy?

25 A. The dog Prince.

1 Q. Would he be in there at the time Mr. Hill was shot?

2 A. Yes.

3 Q. Did Mr. Hill have a name for his garage, is it a man cave
4 or anything like that?

5 A. It was his man cave.

6 Q. Seeking money damages, are you seeking anything out of this
7 civil suit?

8 A. No.

9 Q. You understand if the jury awards any money for your kids
10 it will be protected by guardians. Do you understand that?

11 A. Yes.

12 Q. Will you work with those guardians to take care of your
13 children's needs?

14 A. Yes.

15 MR. PHILLIPS: Bear with me, your Honor.

16 THE COURT: Yes.

17 MR. PHILLIPS: Thank you.

18 THE COURT: Any cross-examination?

19 MS. BARRANCO: Yes, your Honor.

20 **CROSS-EXAMINATION**

21 BY MS. BARRANCO:

22 Q. Good morning, Ms. Davis.

23 A. Good morning.

24 Q. We met before, right?

25 A. Yes.

1 Q. How are you today?

2 A. I am nervous, but I am okay.

3 Q. Nobody likes to be in the courtroom.

4 Your name is Tarrica Monique Davis, right?

5 A. Yes.

6 Q. You never went by Hill?

7 A. Sometimes, people at school say Ms. Hill.

8 Q. On your driver's license?

9 A. Davis.

10 Q. Has it ever been Hill officially?

11 A. No.

12 Q. That is because you and Mr. Hill never got married,
13 correct?

14 A. Correct.

15 Q. You mentioned something about being engaged to Mr. Hill at
16 the time he passed away?

17 A. Yes.

18 Q. But, actually, isn't it true, Ms. Davis, that you had
19 broken off the wedding a few hours before in the text messages
20 you talked about a while ago?

21 A. That is what I said, I said that numerous times in those
22 years, I'm done. Either I left for a few days or I never left.

23 Q. In this particular instance, you told him the wedding is
24 off?

25 A. Yes, but I told him before.

1 Q. This time you also told him, correct?

2 A. Yes, and I told him before.

3 Q. Within a few hours of Mr. Hill and this incident happening
4 on January 14, 2014, you told him again the wedding is off?

5 A. Yes. That is one of numerous times. Actually, that is the
6 last time.

7 Q. Thank you for clarifying that. You mentioned that you have
8 told him before?

9 A. Yes.

10 Q. On this particular occasion, as you already told us, Mr.
11 Hill came home and he was drunk, right?

12 A. Yes.

13 Q. You actually wrote Mr. Hill a letter, you left him a note
14 in the bedroom, correct?

15 A. Yes.

16 Q. Saying you were sick of it, you were done?

17 A. Yes.

18 Q. That he needed to get his act together, right?

19 A. Yes.

20 Q. In fact, you said that in your text messages to Mr. Hill
21 also?

22 A. Yes.

23 Q. Included in the text messages you also told Mr. Hill you
24 were fed up with the way he didn't even take care of your kids
25 after they got home from school, right?

1 A. Correct.

2 Q. Now, on this particular date, January 14, 2014, do you
3 remember that morning?

4 A. Yes.

5 Q. And where did you go when you left the house that morning?

6 A. I went to St. Lucie Medical Hospital.

7 Q. Was that because your daughter, Aryanna, was having surgery
8 the next day?

9 A. Yes.

10 Q. You also went with your mother; is that right?

11 A. Yes.

12 Q. Greg didn't go with you, did he?

13 A. No.

14 Q. When you left the house to go be with your daughter for
15 pre-op for the surgery, Greg was in bed, right?

16 A. He should have been getting up.

17 Q. He was still in bed?

18 A. I'm not sure.

19 Q. You told me that in the deposition.

20 A. Yes, that was two years ago. He couldn't go with me
21 because both of us couldn't be there at the same time. Destiny
22 had to be in school, one at school and one at pre-op.

23 Q. Greg could have taken Destiny across to the school and go
24 to pre-op?

25 A. No. I had to be there at 6:00 o'clock in the morning,

1 someone was taking us, we didn't have our own transportation.

2 Q. When you left the house, Greg was in bed, where is Destiny?

3 A. Should have been in bed. At 6:00 in the morning we had to
4 be to St. Lucie Medical, to outpatient.

5 Q. Do you remember whether Destiny was in bed?

6 A. She was in bed.

7 Q. And Gregory Hill, III didn't live in the house with you,
8 Greg and the girls, correct?

9 A. Correct.

10 Q. Did I misunderstand when you told the jury earlier, the
11 date you met Mr. Hill 14 some years ago, you and him have been
12 together ever since?

13 A. Yes.

14 Q. How did Gregory Hill, III come along with Melody Wright?

15 A. We broke up for almost a year, we were dealing with each
16 other off and on, I was to his house. We wasn't living
17 together, but we still had dealings with each other. In that
18 time, in that year is when little Greg came in.

19 Q. You were broken up?

20 A. We was broken up, but we were dealing with each other.

21 Q. Certainly. You had kids together?

22 A. The kids also, but even sexual, friends. We dealt with
23 each other during that year, we didn't break up and say I don't
24 conversate with you even about the kids or anything. We still
25 had relations, but we wasn't in a relationship, we weren't

1 living in the house together either.

2 Q. Regardless of that, obviously at some point Mr. Hill became
3 intimate with another woman and had Gregory Hill, III?

4 A. Correct, correct.

5 Q. All right. Now, I think you told us that you were in a
6 fight that day, the day of January 14, 2014, and you left to go
7 to handle Aryanna and her doctor's appointment?

8 A. Yes, there was a disagreement.

9 Q. Yes, the argument, it was a pretty big deal, you called off
10 the wedding. Whether it was the first time you called off the
11 wedding or the 33rd time you called off the wedding, you still
12 called off the wedding?

13 A. Correct.

14 Q. You were pretty upset with him, weren't you?

15 A. Yes.

16 Q. You needed him to step up and raise those children, didn't
17 you?

18 A. In those two months before Gregory passed, it was stressful
19 for both of us, Gregory was not doing what he was supposed to
20 do, it was on me. With the wedding, the kids, with him not
21 working, and me just working, that was very stressful.

22 Q. Certainly, and you had to shoulder that yourself, right?

23 A. Yes.

24 Q. Now, on this particular day, January 14, 2014, what was
25 your understanding of what Mr. Hill was supposed to be doing?

1 A. Taking Destiny to school and picking her up.

2 Q. And between those two events, what was Mr. Hill supposed to
3 be doing?

4 A. I'm not sure, I wasn't with him that day.

5 Q. Well, didn't you know that he typically went and hung out
6 at the corner store?

7 A. Yes, I know that, but I wasn't there to see this is what --
8 I wasn't in his mind saying I am going to do this or that
9 today. What I told him, take Destiny to school and pick her up
10 from school. Whatever he was going to do that day was what he
11 was going to do, that was not my concern.

12 Q. It was your concern. Weren't you upset?

13 A. Not what he was going to do that day. His thing was to
14 take her to school and pick her up from school. That is what I
15 told him to do.

16 Q. Were you concerned that he wasn't going to pick up Destiny?

17 A. No.

18 Q. As far as you knew, he was going to do what he said he was
19 going to do?

20 A. Yes.

21 Q. You don't know what he ended up doing that day when she
22 left the house?

23 A. No.

24 Q. Now --

25 MS. BARRANCO: Your Honor, if I may have a moment.

1 THE COURT: Yes.

2 BY MS. BARRANCO:

3 Q. As the day progressed that day, I think you told us the
4 argument between you and Mr. Hill continued by way of telephone
5 and text messages, correct?

6 A. Correct.

7 Q. Isn't it true, Ms. Davis, you texted Greg and told him that
8 you had been crying the night before and your daughter asked
9 you, mom, why are you getting married if you are crying?

10 A. Yes.

11 Q. And that was something that hurt you a lot, didn't it?

12 A. Yes.

13 Q. So, this is something that was happening within hours of
14 this incident, correct?

15 A. The night before.

16 Q. You told Greg that, that his own daughter saw you crying
17 and asked you why are you getting married, momma?

18 A. Yes. Yes.

19 Q. Now, did there come a time that you understood there was
20 something going on at the house at 1501 Avenue Q in terms of
21 Mr. Hill and the police?

22 A. Yes.

23 Q. And do you recall being concerned that your daughter,
24 Destiny, might be at the house?

25 A. Yes.

1 Q. And was that because you thought Greg was supposed to be
2 picking her up?

3 A. Yes.

4 Q. Then you found out that he never did pick her up; is that
5 right?

6 A. Yes.

7 Q. And on that particular day it was only supposed to be
8 Destiny that needed to be picked up, it wasn't Aryanna and
9 Destiny because Aryanna had the doctor's appointment?

10 A. Yes.

11 Q. Now, on January 14, 2014, did he go to the school?

12 A. I am not sure. It was in Ft. Pierce somewhere, I don't
13 know.

14 Q. It was across the street?

15 A. Yes.

16 Q. You knew that Destiny was not inside the house?

17 A. Yes.

18 Q. Did you tell the law enforcement people that you were
19 concerned that Destiny might be in the house?

20 A. Yes.

21 Q. Now, you mentioned earlier -- Plaintiff's counsel asked you
22 whether or not you were seeking damages for yourself in this
23 case. Do you remember that question?

24 A. Yes.

25 Q. You said you were not?

1 A. Yes.

2 Q. You understand you are not because the law does not entitle
3 you to those damages because you were not married to Mr. Hill?

4 A. Yes.

5 Q. It is not because you're a nice lady -- and I am sure you
6 are -- and say I don't want damages, you are legally not able
7 to recover damages?

8 A. Correct.

9 Q. I know Plaintiff's counsel asked you this question. How is
10 Destiny doing right now?

11 A. She is doing okay.

12 Q. What grade was she in at Francis K. Sweet in January 2014?

13 A. Third grade.

14 Q. Did she finish out the school year?

15 A. Yes.

16 Q. Did she continue to go to the next grade, fourth grade,
17 fifth grade, and graduate?

18 A. Yes.

19 Q. Aryanna, is she still a student there?

20 A. Yes.

21 Q. Was she able to finish the school year in '14, after this
22 incident?

23 A. Yes.

24 Q. Did she continue to go there every year and still goes to
25 school?

1 A. Yes.

2 Q. What grade is Aryanna in?

3 A. In the fourth.

4 Q. She goes to school at Francis K. Sweet?

5 A. Yes.

6 MS. BARRANCO: Your Honor, may I have a moment?

7 THE COURT: Yes.

8 MS. BARRANCO: Thank you, your Honor.

9 BY MS. BARRANCO:

10 Q. Now, Ms. Davis, what time -- going back to 2014, what time
11 did your daughter, Destiny, typically get picked up at school?

12 A. The bell rings at 3:11. 3:15 to 3:30.

13 Q. How often did you pick up Aryanna and Destiny?

14 A. Depends on my work schedule, maybe two times a week.

15 Q. And who else ever picked up Destiny or Aryanna?

16 A. Either Gregory, my mother, or Viola or one of my sisters.

17 Q. Was it who was available to pick up the children?

18 A. Yes.

19 Q. If you picked up the children, where would you bring them?

20 A. Home.

21 Q. Across the street?

22 A. Yes.

23 Q. If Mr. Hill picked up the kids, where would he take them?

24 A. Home.

25 Q. And the other family members, where would they take them?

1 A. They would take them back home with them. If we both had
2 to work, that is when someone else would take them until one of
3 us gets off first.

4 Q. You mentioned something about Mr. Hill being injured on the
5 job. Do you remember that?

6 A. Yes.

7 Q. Do you remember when that happened?

8 A. No. It was back in 2013.

9 Q. So a year before, sometime a year before this incident?

10 A. Yes.

11 Q. At the time of this incident, he wasn't walking around on
12 crutches, right?

13 A. Yes, he was on crutches.

14 Q. On the subject day?

15 A. No. Not January 2014.

16 Q. Was he able to walk around?

17 A. Yes.

18 Q. He was mobile?

19 A. Yes, yes.

20 Q. But he wasn't working on that day?

21 A. No.

22 MS. BARRANCO: Your Honor, no further questions.

23 THE COURT: Redirect?

24 MR. PHILLIPS: Very briefly.

25 **REDIRECT EXAMINATION**

1 BY MR. PHILLIPS:

2 Q. Ms. Davis, I don't think I asked, what year or day was the
3 birthday of Greg, III?

4 A. June 8, 2013.

5 Q. And Mr. Hill?

6 A. 10/28/83.

7 Q. This is your life, no one else's life?

8 A. Correct.

9 Q. How was that life with Mr. Hill?

10 A. For Mr. Hill?

11 Q. With Mr. Hill.

12 A. 14 years, Greg was my high school sweetheart, if you are
13 with somebody for 14 years, there is no perfect timing either,
14 we had the ups and downs, happy, sad. We started out young and
15 grew together and had kids together. It wasn't a perfect life.

16 Q. Greg, this is Monique, please answer the phone. I love you
17 and am with you, please pick up the phone. Were those your
18 last words to Mr. Hill?

19 A. Yes.

20 Q. Did he receive them?

21 A. No.

22 Q. You never canceled one thing about your wedding, you didn't
23 call the wedding planner, did you? Did you cancel anything?

24 A. No.

25 Q. The wedding date, Ms. Davis, it wasn't cut off by you, but

1 by the St. Lucie County Sheriff's Office?

2 A. Correct.

3 *THE COURT:* Okay, thank you, Ms. Davis, you may step
4 down.

5 And we will take a 15-minute recess. It is 11:35, 15
6 minutes, we will be back at ten of 12:00. We will take a lunch
7 break -- you have a couple of short witnesses and we will take
8 our lunch break. 15-minute break. Remember the same important
9 instructions, don't discuss the case with anyone, don't do any
10 research connected with the case, and we will see you back in
11 15 minutes.

12 *(Thereupon, the jury exited the courtroom.)*

13 *THE COURT:* Are you calling the three children next?

14 *MS. HINES:* Yes, your Honor. I want the Court's
15 permission to put a small booster seat on the chair for Greg,
16 III. Also, there were photographs of the kids that we wanted
17 to get admitted through the kids.

18 I spoke to Defense counsel about those photographs,
19 and she has an objection to them. I wanted to know if the
20 Court prefer we discuss that not in front of the jury, or would
21 you like me to take a sidebar.

22 *THE COURT:* No. I prefer to take it up beforehand.

23 What is the nature of the objections?

24 *MS. BARRANCO:* Number one, they are cumulative.

25 Plaintiff has gotten into evidence multiple family photos, and

1 now they are seeking to put in multiple family photos. Photos
2 of the children with their father, in and of themselves, I
3 understand. They are seeking to do it with little children.

4 Greg Hill, III is pretty small, Aryanna is not much
5 older than that. Sympathy is not supposed to be playing a role
6 in this jury's decision. They are being told that, however,
7 the reality of several family photographs specifically being
8 shown to only these little children, it is an absolute
9 certainty that there will be lots of sympathy, lots of tears,
10 and it certainly seems calculated in my opinion, your Honor, to
11 play upon the jury's sympathy.

12 While some of it is relevant, at the same time to set
13 up a situation that it is going to be a sympathy explosion --

14 *THE COURT:* Do you have the photos? Can I see the
15 photos and state -- do you have a copy of them?

16 *MS. HINES:* Yes.

17 *THE COURT:* Let me look at them real quick. If that
18 is your only copy, I can pull them up on the screen here.
19 Which numbers?

20 *MS. HINES:* For the witness Aryanna Hill, they would
21 be Plaintiff's premarked Exhibits 152, 163.

22 *THE COURT:* Okay, 152.

23 *MS. HINES:* Yes, your Honor.

24 *THE COURT:* 163.

25 *MS. HINES:* Yes, and finally 168.

1 *THE COURT:* Okay. So, let me understand. Is it that
2 you are objecting to them coming in -- are you objecting to
3 them coming in through these witnesses, are you objecting to
4 them being shown to the witnesses? What exactly --

5 *MS. BARRANCO:* It is hard for me knowing exactly
6 without seeing the children right now. I saw them last year.

7 My concern -- it is all of those things. I think it
8 is relevant, a photo of each child with their father, and there
9 is already in evidence at least one photo, if not more than
10 that. First, for Plaintiff's counsel to forego showing certain
11 photographs of the children with their father with Ms. Davis,
12 who is an adult and more than capable of authenticating them,
13 specifically waiting until it is the little boy or girl to
14 testify, it is calculated to evoke undue and highly prejudicial
15 sympathy with this jury.

16 *THE COURT:* Let's say that they do get them through,
17 do you object to showing the pictures to the children?
18 Presumably Ms. Davis can be called back and authenticate them.

19 *MS. BARRANCO:* If that is the case, I won't have any
20 objection. If they are in evidence, the jury can look at them
21 and consider them. To go through the motions of showing them
22 pictures of their deceased father, especially at their young
23 ages, is right for over the top sympathy, unduly prejudicial
24 sympathy.

25 *THE COURT:* You are going to show the three with

1 Aryanna. What are the others?

2 MS. HINES: Four for Destiny, Plaintiff's Exhibits
3 169, 171, 186, and 189.

4 THE COURT: And what is the age of Destiny right now
5 and Aryanna?

6 MS. HINES: Destiny is 13 and Aryanna is 10.

7 THE COURT: Which pictures were you going to show with
8 Gregory?

9 MS. HINES: None with Gregory.

10 THE COURT: Three with Aryanna and four with Destiny?

11 MS. HINES: Yes.

12 THE COURT: There are already pictures of the kids in
13 evidence as I recall with the family.

14 MS. HINES: Yes, but some of these show Mr. Hill alone
15 with his kids.

16 THE COURT: Right, okay. All right.

17 THE COURTROOM DEPUTY: How do you want me to swear in
18 the kids, the same thing, but maybe simplified?

19 THE COURT: We will talk about that in a moment.

20 Have you shown the photos to the children already?

21 MS. HINES: Yes. While we appreciate counsel's
22 concern for the children, we have shown them these pictures.
23 Many of the pictures they see every day, multiple times at
24 home.

25 THE COURT: What do you anticipate they will do? They

1 will look at the photo and say that is who they are with their
2 dad?

3 *MS. HINES:* Yes, they have been able to do that.

4 *THE COURT:* In your experience, have they been crying
5 when they do that? Have you seen their reactions?

6 *MS. HINES:* Certainly they are sad to see those
7 pictures, but when we went through those with them, they did
8 not cry, particularly Aryanna is very outgoing, so I don't
9 think she will have any sort of emotional outburst in the
10 courtroom.

11 *THE COURT:* Destiny?

12 *MS. HINES:* Destiny is very, very reserved, so I think
13 the tendency would be more to clam up than have an emotional
14 outburst.

15 Again, certainly no one has told them to do that or
16 calculated any sort of emotional reaction from the children.

17 *THE COURT:* Okay.

18 Why don't you select two for Destiny and two for
19 Aryanna, two and two. I will allow it over objection. You are
20 not showing any to Gregory, that is not an issue.

21 One point I want to bring up. What are your
22 collective thoughts on swearing them in? Should they be sworn
23 in, and if so, in the same fashion, or would you like
24 Ms. Richardson to modify it in a way that would be child
25 friendly and understandable?

1 MS. BARRANCO: I think it makes more sense to modify
2 it, child friendly, whether they know the difference between a
3 truth or a lie.

4 MR. PHILLIPS: You might do that outside the presence
5 of the jury.

6 THE COURT: Good point. Would you like them to be
7 sworn in in front of the jury?

8 MR. PHILLIPS: Both. They need to see they are under
9 oath.

10 THE COURT: Yes, yes.

11 I can't break between each witness, but I can bring
12 all three in at the same time so they understand that. That is
13 fine.

14 Why don't we take a break and why don't we bring them
15 in first and I think Ms. Richardson will go over how she is
16 doing the swearing in so they are aware of it.

17 MR. PHILLIPS: Your Honor, I am the evidence guy. If
18 we pick two, is it okay if we move the other two in evidence
19 without showing them to the children?

20 THE COURT: Is there any objection?

21 I allowed two and two. Do you want the fifth one in?

22 MS. HINES: There would be two more.

23 THE COURT: I am allowing two and two as far as
24 showing the witnesses and going over it. Is there any
25 objection to the other ones coming in and not being discussed

1 with the children?

2 MS. BARRANCO: Cumulative.

3 THE COURT: I will overrule on cumulative. Tell me
4 the exhibits now and I will mark them being admitted.

5 MS. HINES: Let me select them.

6 THE COURT: If the Defense can feel comfortable to
7 tell their witnesses to come in after the lunch break.

8 After the three children, are the Plaintiffs resting?

9 MR. PHILLIPS: The only thing we have to do is move in
10 the mortality table.

11 THE COURT: You will publish that to the jury?

12 MR. PHILLIPS: I will have to publish it for all four,
13 Mr. Hill, and the three kids individually.

14 THE COURT: That is fine, and then I would take a
15 lunch break.

16 If you have any motions, is there any -- can there be
17 agreement if the Defense has any motions after Plaintiff's case
18 that I defer -- you preserve it by making it and I reserve
19 hearing argument so you can have your lunch break. We can see
20 how it goes. If need be, reserve to hear it at a time after so
21 there is adequate opportunity.

22 MS. BARRANCO: Yes, I do intend to do a Rule 50(a)
23 motion.

24 MR. PHILLIPS: We expect to.

25 THE COURT: And if Defense makes it, I reserve for

1 argument later.

2 Take a quick break, this is going to be short. Take a
3 quick restroom break, come back, I will do the same. Bring the
4 witnesses, and we know you will be breaking for lunch shortly,
5 so you will get your break then.

6 *(Thereupon, a short recess was taken.)*

7 *THE COURT:* All right. Can we bring the three
8 children in. I am going to talk to them and I will let Melanie
9 tell them in front of the jury.

10 *(The children entered the courtroom.)*

11 *THE COURT:* Hi, Greg, hello. Can you stay right
12 there? Aryanna, Destiny, hi, how are you.

13 So, here is what is going to happen. Right now we
14 don't have anybody sitting in those seats. That is where the
15 jury sits, and when you come in next time, when we bring you in
16 so you can talk in front of the jury, you will be sitting in
17 this seat, and there is the microphone right there. You can
18 talk into it to be sure everyone hears.

19 This woman, Ms. Richardson, she is going to put you
20 under oath, and let me tell you what that means. She will ask
21 you if what you say is the truth. She is going to make sure
22 that you are not making up everything, but that everything you
23 say is the truth.

24 It is okay, if somebody asks you a question -- one
25 lawyer will ask you a question and another lawyer will ask you

1 a question. If you don't know the answer, it is perfectly okay
2 to say I don't know.

3 Do you understand that Aryanna?

4 *MS. A. HILL:* Yes, ma'am.

5 *THE COURT:* Destiny, do you understand that?

6 *MS. D. HILL:* Yes.

7 *THE COURT:* Do you understand that, Greg?

8 *MR. G. HILL, III:* Yes.

9 *THE COURT:* Only answer the questions you understand
10 and only as to the questions you know the answer to.

11 So Ms. Richardson is going to say do you swear you
12 will tell the truth and everything you say is the truth -- let
13 me ask you, do you know the difference between telling the
14 truth and not telling the truth, Aryanna?

15 *MS. A. HILL:* Yes.

16 *THE COURT:* Destiny?

17 *MS. D. HILL:* Yes.

18 *THE COURT:* Gregory?

19 *MR. G. HILL, III:* Yes.

20 *THE COURT:* Do you have any questions?

21 *MS. A. HILL:* No, ma'am.

22 *THE COURT:* There will be people sitting over there,
23 you want to talk into the microphone. And first -- this
24 attorney will be asking you questions first, this gentleman
25 right here -- this woman will be asking you questions first and

1 Ms. Barranco -- and Greg Jolly will be if there are any for
2 Greg Hill, III. One of the two attorneys over at that table
3 will ask you questions, nothing to be nervous about, take your
4 time.

5 The most important thing, guys, make sure you
6 understand the question. If you don't understand it, tell the
7 lawyers I don't understand it. If they ask you a question and
8 you don't know the answer, say I don't know. They might show
9 you pictures, so you look at the pictures and answer the
10 questions about the pictures. It might be some of the pictures
11 you are in the pictures.

12 Any questions, Aryanna?

13 *MS. A. HILL:* No.

14 *THE COURT:* Destiny?

15 *THE COURTROOM DEPUTY:* I will ask you to hold your
16 right hand up.

17 *THE COURT:* That is how she is going to do it.

18 *THE COURTROOM DEPUTY:* I will ask you, do you promise
19 to tell the truth, okay?

20 *THE COURT:* All right. Thanks so much.

21 We will call you in when we are ready, which will be
22 any minute now.

23 (Thereupon, the children exit the courtroom.)

24 *THE COURT:* All right. We are ready for the jury.

25 (Thereupon, the jury returns to the courtroom.)

1 A. Yes.

2 Q. What was your favorite thing to do with your daddy?

3 A. Go fishing.

4 Q. Did you go fishing a lot?

5 A. Yes.

6 Q. And do you miss your dad?

7 A. Yes.

8 MS. HINES: All right. Your Honor, no further
9 questions.

10 THE COURT: Okay. Anything from the other side,
11 cross-examination?

12 MR. GREGG JOLLY: No, Your Honor.

13 THE COURT: Thank you, Mr. Greg, you may step down.
14 The Plaintiff may call your next witness.

15 MS. HINES: Your Honor, the Plaintiff will now call
16 Aryanna Hill.

17 THE COURT: Okay.

18 THE COURTROOM DEPUTY: Do you promise everything you
19 say is going to be the truth and nothing but the truth?

20 THE WITNESS: Yes, I promise.

21 **DIRECT EXAMINATION**

22 BY MS. HINES:

23 Q. Aryanna, thank you. Could you tell the jury your name?

24 A. Aryanna.

25 Q. How old are you?

1 A. Ten.

2 Q. What grade are you in?

3 A. Fourth grade at Francis K. Sweet school.

4 Q. What is your favorite subject?

5 A. Art.

6 Q. Do you know what you want to be when you grow up?

7 A. A fisher girl.

8 Q. A fisher girl?

9 A. Yes.

10 Q. Do you have brothers and sisters?

11 A. Yes.

12 Q. How many?

13 A. One sister and one brother.

14 Q. What are their names?

15 A. Destiny Yvette Hill, and Gregory Vaughn Hill, III.

16 Q. Who is your mom?

17 A. Tarrica Monique Davis.

18 Q. And who is your dad?

19 A. Gregory Vaughn Hill, Jr.

20 Q. Aryanna, is your dad still alive?

21 A. No, ma'am.

22 Q. How did you find out that he passed away?

23 A. My mom.

24 Q. Aryanna, did you used to spend a lot of time with your dad?

25 A. Yes.

1 Q. What are some of the things you two would do together?

2 A. Fishing.

3 Q. Did he teach you how to fish?

4 A. Yes.

5 Q. How often would you go fishing with him?

6 A. Almost every day.

7 Q. Did he ever pick you up from school?

8 A. Yes.

9 Q. And did he ever go and have lunch with you at school?

10 A. Yes.

11 Q. What is your favorite memory of your dad?

12 A. Me and him fishing.

13 Q. Did you ever have a big catch or anything like that?

14 A. Yes.

15 Q. Tell me about that time.

16 A. We was fishing at Taylor Creek and my dad had caught his
17 first snook.

18 Q. And were you excited?

19 A. Yes.

20 Q. And did you ever go to work with your dad?

21 A. Sometimes.

22 Q. Sometimes. Okay. What do you miss most about him?

23 A. How he was to his kids.

24 Q. And what do you mean by that, how was he?

25 A. He was a good dad.

1 Q. Okay. And Ms. Aryanna, I want to show you some pictures.

2 MS. HINES: We've premarked these for the court,
3 Plaintiff's Exhibits 163 and 168. And I would like permission
4 from the Court to approach the witness.

5 THE COURT: Yes.

6 MS. HINES: These were the two we discussed and
7 opposing counsel has seen them.

8 THE COURT: 163 and --

9 MS. HINES: 168.

10 THE COURT: They are admitted.

11 (Whereupon Plaintiff Exhibits 163, 168 were marked for
12 evidence.)

13 MS. HINES: Thank you, your Honor.

14 BY MS. HINES:

15 Q. Okay, Ms. Aryanna, I handed you two pictures. The first
16 one that has a pink background to it, do you recognize that
17 picture?

18 A. Yes.

19 Q. Can you tell us who is in that picture?

20 A. My dad, me and my sister.

21 Q. Okay, thank you. And do you remember where you were when
22 this picture was taken?

23 A. Yes.

24 Q. Where were you?

25 A. At my aunt's house.

1 Q. At your aunt's house. Okay.

2 MS. HINES: Your Honor, may I publish 163 to the jury?

3 THE COURT: Yes.

4 BY MS. HINES:

5 Q. Aryanna, is this you, the one -- the little girl your dad
6 is holding?

7 A. Yes.

8 Q. And who is the other little girl in the picture?

9 A. My sister, Destiny.

10 Q. There is another picture I handed you, do you recognize
11 that picture?

12 A. Yes.

13 Q. Can you tell us who you see in that picture?

14 A. My mom, my dad, my sister, my brother and me.

15 Q. And do you remember where this was taken?

16 A. Yes, at Chuckie Cheese, for my birthday.

17 Q. Okay. All right.

18 MS. HINES: Your Honor, permission to publish this
19 exhibit.

20 THE COURT: Did you say which number this one was?

21 MS. HINES: This is 168.

22 THE COURT: Okay.

23 BY MS. HINES:

24 Q. Are you the one in the blue tutu and the crown?

25 A. Yes.

1 Q. Did you all go to Chuckie Cheese a lot?

2 A. Yes.

3 Q. Okay, all right.

4 MS. HINES: Your Honor, may I have a moment to confer?

5 Your Honor, I have no further questions for

6 Ms. Aryanna.

7 THE COURT: Any cross-examination?

8 MS. BARRANCO: No, your Honor.

9 THE COURT: Thank you, Ms. Aryanna, you may step down.

10 And the Plaintiff may call your next witness.

11 MS. HINES: Your Honor, at this time we call Destiny

12 Hill.

13 THE COURT: Okay.

14 THE COURTROOM DEPUTY: Do you promise to tell the

15 truth and only the truth?

16 THE WITNESS: Yes.

17 THE COURT: You may proceed.

18 **DIRECT EXAMINATION**

19 BY MS. HINES:

20 Q. Ms. Destiny, introduce yourself to the jury.

21 A. Destiny Hill, and I am in seventh grade and go to Lincoln
22 Park Academy.

23 Q. How old are you?

24 A. 13.

25 Q. What is your favorite subject in school?

1 A. Gym.

2 Q. What is your favorite thing about gym?

3 A. We get to play lots of sports.

4 Q. You like sports?

5 A. Yes.

6 Q. Do you have any brothers and sisters?

7 A. Yes.

8 Q. Who are they?

9 A. Gregory Hill and Aryanna Hill.

10 Q. Are you close with your siblings?

11 A. Yes.

12 Q. Do you spend a lot of time together?

13 A. Yes.

14 Q. How about your mom, who is your mom?

15 A. Terrica Davis.

16 Q. And your dad?

17 A. Gregory Hill.

18 Q. Ms. Destiny, is your dad still alive?

19 A. No.

20 Q. How did you know he passed away?

21 A. I seen it and my mom told me.

22 Q. Ms. Destiny, this might be hard to talk about, but I want
23 to ask you questions about January 14, 2014. Do you remember
24 that day?

25 A. Yes.

1 Q. Okay.

2 Can you tell us what you remember about that day?

3 A. I seen two police pulled up and then they got out the car
4 and went up to the garage and said cut down the music, and that
5 is when they say something else, and they asked my dad to shut
6 the garage down and they started shooting, and that is when
7 they called Code Red.

8 Q. So the jury understands, you said the police pulled up,
9 where did they pull up?

10 A. On the side of the house.

11 Q. And the house you are talking about, is that the Avenue Q
12 address?

13 A. Yes.

14 Q. And that is your house?

15 A. Yes.

16 Q. Okay. And so, where were you when you saw what you just
17 described?

18 A. I was at school, on the first bench.

19 Q. At the time, what school did you attend?

20 A. Francis K. Sweet.

21 Q. You say you were sitting on a bench. Is that in the parent
22 pickup line?

23 A. Yes.

24 Q. Okay. Were you sitting on a bench that was closest to your
25 house across the street or furthest away?

1 A. Closest to the house.

2 Q. Okay. So you could see your house very clearly?

3 A. Yes.

4 MS. BARRANCO: Your Honor, I object to leading
5 questions.

6 THE COURT: Sustained.

7 BY MS. HINES:

8 Q. Could you hear anything?

9 A. Yes.

10 Q. What did you hear?

11 A. When the police say cut down the music.

12 Q. Did you hear the police say anything else?

13 A. No.

14 Q. Did you see the garage door?

15 A. Yes.

16 Q. When you first saw the garage door was it up or down?

17 A. It was up.

18 Q. Could you see inside the garage?

19 A. Yes.

20 Q. And what did you see inside the garage?

21 A. I seen my dad sitting up, sitting in a chair, and that is
22 when the police came. He stand up and closed the garage.

23 Q. Could you see your dad's hands?

24 A. Yes.

25 Q. Did you hear your dad say anything to the police?

1 A. No.

2 Q. Did you see your dad holding anything in his hands?

3 A. No.

4 Q. Was your dad holding a gun?

5 A. No.

6 Q. Okay. Ms. Destiny, thank you for telling us that.

7 I do want to talk to you about your relationship with your
8 dad. So, I have some pictures that I wanted you to look at and
9 tell the jury about.

10 MS. HINES: Your Honor, at this time we would like to
11 move Plaintiff's Exhibits 186 and 169 into evidence, and those
12 were already shown to opposing counsel.

13 THE COURT: They are admitted.

14 (Whereupon Plaintiff Exhibits 169, 186 were marked for
15 evidence.)

16 MS. HINES: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 BY MS. HINES:

19 Q. Ms. Destiny, do you recognize the first picture on top with
20 the brown background?

21 A. Yes.

22 Q. Can you tell us who is in that picture?

23 A. Me, my dad and my sister.

24 Q. Okay. And do you know where this was taken?

25 A. Yes.

1 Q. Where was it taken?

2 A. I was at prom.

3 Q. At prom, okay. And the second picture I handed you, do you
4 see that one?

5 A. Yes.

6 Q. Do you recognize that picture?

7 A. Yes.

8 Q. And can you tell us who is in that picture?

9 A. Me, my dad and my sister.

10 Q. And where were you in this picture?

11 A. The second prom.

12 Q. The second prom, okay. And do you know about how old you
13 were in that picture?

14 A. No.

15 Q. Okay. That is okay.

16 MS. HINES: Your Honor, if I may have permission to
17 publish both photographs to the jury.

18 THE COURT: Yes.

19 MR. BRUCE JOLLY: I missed the numbers. What are the
20 numbers?

21 MS. HINES: 186, and 169.

22 MR. BRUCE JOLLY: Thanks.

23 MS. HINES: This is the first one, 186. (Indicating.)
24 And 169. (Indicating.)

25

1 BY MS. HINES:

2 Q. Ms. Destiny, what are some things you and your dad used to
3 do together?

4 A. We used to go fishing and to the store and used to go
5 shopping.

6 Q. Did he teach you how to fish?

7 A. Yes.

8 Q. How often would you go fishing with him?

9 A. On the weekends and --

10 Q. And what do you miss most about your dad?

11 A. We used to go fishing and he used to buy our clothes, toys.

12 Q. And what kind of clothes would he get for you?

13 A. Clothes for school and clothes for like to wear.

14 Q. Did he ever go to school with you, like to pick you up?

15 A. Yes.

16 Q. What is your favorite memory of your dad?

17 A. When we go fishing and he take us shopping, to the store,
18 and he would come to our school and eat lunch with us.

19 Q. Okay.

20 A. When we have parties and barbecues.

21 Q. And Destiny, just to briefly bring you back to January 14,
22 2014, I just have a question about the garage door.

23 When did you see the garage door go down? You said you saw
24 it go down?

25 A. When the police walked to the garage.

1 Q. Did you ever see it go back up?

2 A. No.

3 Q. Okay.

4 MS. HINES: Your Honor, may I have a moment?

5 THE COURT: Yes.

6 MS. HINES: Your Honor, I have no further questions at
7 this time.

8 THE COURT: Okay. Any cross-examination?

9 MS. BARRANCO: Just briefly, your Honor.

10 THE COURT: Okay.

11 **CROSS-EXAMINATION**

12 BY MS. BARRANCO:

13 Q. Good afternoon, Destiny.

14 A. Good afternoon.

15 Q. Do you remember meeting before in a deposition, probably
16 like a year ago? Do you remember that at all?

17 A. Yes.

18 Q. Okay. Did I hear you say you are now 13 years old?

19 A. Yes.

20 Q. What grade are you in?

21 A. Seventh.

22 Q. Where do you go to school now?

23 A. Lincoln Park Academy.

24 Q. Did you graduate from Francis K. Sweet Elementary?

25 A. Yes.

1 Q. Would that have been two years ago?

2 A. Yes.

3 Q. Okay. Now, I need to ask you a few questions about this
4 particular day that the other lawyer was asking you about,
5 January 14, 2014.

6 You said you were at your school sitting outside; is that
7 right?

8 A. Yes.

9 Q. And you were sitting on a bench by the parent pickup line?

10 A. Yes.

11 Q. Were there cars and people around when you were sitting out
12 there?

13 A. Yes.

14 Q. Were there a line of cars and parents coming to pick up
15 their kids?

16 A. Yes.

17 Q. Is that typically what happened when you were waiting out
18 there to get picked up?

19 A. Yes.

20 Q. Do you remember seeing your teacher out there?

21 A. Yes.

22 Q. What is her name?

23 A. Ms. McGuire.

24 Q. That was your teacher at the time of this incident?

25 A. Yes.

1 Q. Do you remember what grade you were in back then?

2 A. Third.

3 Q. You mentioned you remember seeing your father in the
4 garage. Can you tell me what he was wearing that day?

5 A. No.

6 Q. Do you remember if it was sunny outside that day?

7 A. No.

8 Q. It wasn't raining, though, was it?

9 A. No.

10 Q. Okay. And do you remember how many police you saw come to
11 the house?

12 A. Two.

13 Q. Do you remember how many cars they came in?

14 A. It was two.

15 Q. You saw that, the two cars coming?

16 A. Yes.

17 Q. How could you tell they were police cars?

18 A. Because it said "Police" on it.

19 Q. Okay. And what were you doing just prior to the police
20 showing up at the house?

21 A. Can you repeat the question?

22 Q. Sure. Do you remember what you were doing before you saw
23 the two police cars showing up at the house?

24 A. I was waiting on my uncle to pick me up from school.

25 Q. Which uncle would that be?

1 A. Uncle Julian.

2 Q. Did he typically pick you up from school, Uncle Julian?

3 A. I was waiting on him.

4 Q. Okay. You are waiting and you see the police cars coming
5 to the house?

6 A. Yes.

7 Q. Okay. Was it noisy out there at the parent pickup, lots of
8 kids talking?

9 A. Kind of.

10 Q. Do you have friends that sit out there sometimes with you
11 and talk to them?

12 A. Yes.

13 Q. Did the teachers tell you all to be quiet while you are
14 waiting for your parents or do they let you talk because it is
15 after school?

16 A. They let us talk.

17 Q. Do you remember how long you had been sitting out there
18 waiting for your uncle before you saw the police car show up?

19 A. No.

20 Q. And I know you told us earlier, sometimes your father would
21 pick you up from school.

22 Did your mom sometimes pick you up from school?

23 A. Yes.

24 Q. And how often did your mother pick you up from school?

25 A. Sometimes when she's at work my dad picked me up from

1 school.

2 Q. Okay. And sometimes your mom would pick you up?

3 A. Yes.

4 Q. Is that a yes?

5 A. Yes.

6 Q. Okay. Did anybody else in the family -- you said something
7 about your uncle picking you up. Did other people pick you up
8 from school?

9 A. Yes.

10 Q. When you got picked up, was it usually you and your sister,
11 Aryanna, that got picked up?

12 A. Yes.

13 Q. On this particular day which you are talking about, where
14 was your little sister, Aryanna?

15 A. She was at my grandmother's house.

16 Q. Do you know why she wasn't at school that day?

17 A. Because I think that day she had to get surgery on her eye.

18 Q. Okay. So she wasn't at school with you?

19 A. No.

20 Q. Okay.

21 MS. BARRANCO: Your Honor, may I have a moment?

22 THE COURT: Yes.

23 MS. BARRANCO: Your Honor, no further questions, thank
24 you.

25 THE COURT: Anything further on redirect?

1 MS. HINES: Yes, briefly, your Honor.

2 THE COURT: Okay.

3 **REDIRECT EXAMINATION**

4 BY MS. HINES:

5 Q. Destiny, I want to talk about January 14, 2014 again. You
6 said you heard shooting?

7 A. Yes.

8 Q. Okay. Did you see where the shooting was coming from?

9 A. Yes.

10 Q. And where was it coming from?

11 A. From the house.

12 Q. And did you see who was shooting?

13 A. Yes.

14 Q. Who was it?

15 A. The police.

16 Q. And when you saw the shooting, was the garage door up or
17 down?

18 A. Down.

19 Q. Okay. You said earlier as well that you saw your dad in
20 the garage?

21 A. Yes.

22 Q. Okay. Did you at the time, that day, did you ever see your
23 dad with a gun?

24 A. No.

25 MS. BARRANCO: Your Honor, objection, repetitious,

1 asked and answered.

2 *THE COURT:* I think it was asked and answered on
3 direct.

4 *MS. HINES:* I apologize, your Honor.

5 *THE COURT:* Sustained.

6 *BY MS. HINES:*

7 Q. Did you ever see your dad with a gun at all?

8 A. No.

9 *MS. BARRANCO:* Objection. Asked and answered.

10 *MS. HINES:* I meant beyond that day, your Honor.

11 *THE COURT:* Overruled.

12 *BY MS. HINES:*

13 Q. Aside from the day we talked about, had you ever seen your
14 dad with a gun?

15 A. No.

16 *MS. HINES:* Your Honor, I have no further questions.

17 *THE COURT:* All right. Thank you, Ms. Destiny, you
18 may step down. You may step outside. Thank you so much.

19 *MS. HINES:* Your Honor, if I could have a moment, I
20 want to move in the other photos we discussed.

21 *THE COURT:* Yes. What were those?

22 *MS. HINES:* Those were Plaintiff's premarked Exhibits

23 152 --

24 *THE COURT:* Okay. That is admitted.

25 *MS. HINES:* -- 189.

1 THE COURT: Admitted.

2 MS. HINES: -- and 171.

3 THE COURT: Admitted.

4 (Whereupon Plaintiff Exhibits 152, 171, 189 were marked
5 for evidence.)

6 THE COURT: Anything else?

7 MR. PHILLIPS: Yes, the vital statistics reports, we
8 need to publish Mr. Hill's life expectancy.

9 THE COURT: Admitted or just published?

10 MR. PHILLIPS: Both.

11 MS. BARRANCO: No objection.

12 MR. PHILLIPS: Okay.

13 THE COURT: Publish it.

14 MR. PHILLIPS: Based on Mr. Hill's birth date, his
15 life expectancy is 41.2 years.

16 THE COURT: Any others?

17 MR. PHILLIPS: No, the Plaintiff rests.

18 THE COURT: That means the Plaintiff has put in all of
19 the evidence. This is a perfect time for a break. It is
20 12:30. Why don't we go into recess for an hour and ten
21 minutes.

22 If I could ask you to be back at 1:40, with the same
23 important instructions, do not talk about the case with each
24 other or anyone else, or do anything related to the case. You
25 are not to view any media, not to have any interaction with

1 anyone associated with the case. Have a nice lunch, and we
2 will see you back at 1:40. Thank you.

3 *(Thereupon, the jury leaves the courtroom.)*

4 *THE COURT:* I did give an hour and ten minutes. Why
5 don't I hear the motion and hear a response.

6 I will, in any event, not issue a ruling during
7 this -- before the lunch break, but I will benefit from hearing
8 the argument.

9 I know after trial today we need to go over the
10 deposition of -- the video that there is disagreement about,
11 and I want to start the jury instructions. I don't want to
12 back load the day.

13 Let me hear argument from Defense.

14 *MS. BARRANCO:* At this time Defense would make a Rule
15 50(a) motion for judgment as a matter of law, and the grounds
16 for that, your Honor, that is a reasonable jury would not have
17 a legally sufficient evidentiary basis to find for the
18 Plaintiff in this case based on the evidence that has been
19 presented on the following issues:

20 Specifically, your Honor, as to Section 1983
21 individual capacity claim against Deputy Newman, the Plaintiff
22 has not demonstrated a violation of Mr. Hill's constitutional
23 rights.

24 Mr. Hill responded to the knocks on his door by
25 raising a garage door with a firearm in his hand, and despite

1 Deputy Newman and Lopez testifying -- although Deputy Newman
2 has not testified yet, they advised him to drop the gun. He
3 began to raise it in the direction of Deputy Lopez so that
4 Deputy Newman feared for the life of his fellow officer.

5 It is important that the reasonableness of Deputy
6 Newman's use of force is judged from the deputy's judgment, not
7 the others who testified, including Destiny Hill. But the
8 other witnesses, they were all across the street, and no other
9 witness was able to visualize the threat that was facing
10 Deputies Newman and Lopez.

11 As Ms. Hill testified, she was seated across the
12 street at a school bench, and she testified she was able to see
13 her father's hands, and she could tell he didn't have a gun in
14 his hands. That does not comport with any of the other
15 witnesses in this case, including numerous teachers who were
16 closer than she was such that it is properly disregarded by the
17 Court.

18 And I would cite your Honor to Kesinger,
19 K-E-S-I-N-G-E-R, versus Herrington, 381 F.3d 1243, an 11th
20 Circuit case from 2004.

21 Additionally, your Honor, Plaintiff's law enforcement
22 expert, Roy Bedard, testified that Deputy Newman did not act as
23 a reasonably prudent law enforcement officer which essentially
24 is what negligence is made of, and negligence does not rise to
25 a civil rights claim, your Honor. I can think of Daniels

1 versus Williams, I don't have that cite, that is the standard
2 case that says negligence is not a Federal civil rights
3 violation.

4 Additionally, another issue, Deputy Newman would be
5 entitled to qualified immunity under the facts set forth in the
6 testimony in this case, as I stated. I won't restate what I
7 said. Ultimately, whether a reasonable officer would believe
8 that Mr. Hill was gravely dangerous at the moment he decided to
9 use deadly force on Mr. Hill, I site the Court to Penley versus
10 Eslinger, 605 F.3rd 833, also an 11th Circuit case, 2010.

11 Additionally, no reasonable jury would have a
12 sufficient evidentiary basis to find for the Plaintiff as to a
13 negligence claim against the Sheriff. For the record, it is
14 the Defendant's position that the way the Plaintiff pled the
15 negligence claim and the theory they are traveling under in
16 this case is, in essence, a negligent excessive force claim.

17 I know your Honor addressed this in a summary judgment
18 motion. Respectfully, I am putting it in the record now citing
19 to City of Miami versus Sanders, 672 So.2d 46, a Florida
20 Supreme Court case from 1996. And the negligence must pertain
21 to something other than the actual application of force. What
22 I heard before this jury is nothing other than his decision to
23 use the force and actually using the force on Mr. Hill.
24 Defense submits that would not be a cognizable negligence
25 claim.

1 Additionally, the evidence shows that Deputy Newman
2 was not negligent in the use of this firearm. The testimony
3 from the deputy, Deputy Lopez, he testified that Mr. Hill
4 answered the door with a gun, raised it in his direction, and
5 as the door was going down Deputy Newman fired his gun, which
6 he did not fire blindly, something mentioned by Plaintiff's
7 expert during questioning.

8 And it is for those reasons, your Honor, we base our
9 Rule 50(a) motion.

10 *THE COURT:* Thank you. And response.

11 *MR. PHILLIPS:* Yes, your Honor. From the evidence
12 most favorable to the Plaintiff, what we are hearing seems to
13 be, correct me if I am wrong, a version of the summary judgment
14 motion that your Honor has ruled upon and the 11th Circuit
15 ruled upon. We believe the facts are stronger than they were
16 at the time the briefs were filed.

17 Particularly, there is evidence that Mr. Hill was
18 either unarmed or possibly -- this is something that was
19 elicited by the Defendant or wound up the questions of the
20 Defendant, the gun may have even been planted according to Mr.
21 Bedard.

22 There is evidence, according to Deputy Lopez, that the
23 door up and down took three seconds. There is evidence this
24 door was completely closed when he fired not one, not two, not
25 three, but four shots.

1 There is evidence that Deputy Newman gave no commands
2 and was heard by no other person giving commands to Mr. Hill to
3 drop the gun or any warning of the law enforcement officer. We
4 disagree to the extent -- he got all the way to the point,
5 without reaching the jury's conclusion for them, but Mr. Bedard
6 did say this was illegal seizure, discussed the Fourth
7 Amendment, Fourteenth Amendment, and its applicability.

8 And Lopez even said he wouldn't have shot under like
9 circumstances, and Bedard indicated it is not protocol to shoot
10 through an opaque closed surface. And lack of fingerprints on
11 this gun, putting it in the range that Newman and Lopez located
12 it, is an ultimate question of fact.

13 *THE COURT:* Thank you. Anything --

14 *MS. BARRANCO:* Very briefly. The testimony that the
15 Plaintiff elicited -- they chose not to call Deputy Newman,
16 they did call Deputy Lopez. Deputy Lopez testified that he
17 told Mr. Hill to drop the gun, drop the gun. That would have
18 put Mr. Hill on notice he was supposed to be dropping the gun,
19 not raising it toward Deputy Lopez.

20 The other issue is whether or not Lopez -- Newman had
21 shot would decide whether or not to shoot. What the question
22 is, to the extent that Deputy Lopez testified that he wouldn't
23 have shot after hearing Deputy Newman's shot, is not even a
24 question before your Honor.

25 Again, to the extent they are bringing a claim for

1 anyone negligently firing through an opaque surface, this
2 garage, that would go to negligent use of excessive force. No
3 such claim is legally cognizable.

4 *THE COURT:* All right. As I said, I will hold off on
5 making a ruling until I come back from the lunch break. I
6 wanted to hear what the argument was. I do want to give you
7 enough time to break for lunch.

8 Let me ask, one of the things I was going to continue
9 to work on was the deposition of Stevens.

10 Have you narrowed down your issues at all? Have you
11 talked or are they the same matters already presented to the
12 Court? Do they remain outstanding?

13 *MR. PHILLIPS:* They are outstanding matters. Maybe at
14 lunch we can pare them down.

15 *THE COURT:* All right. On the agenda for -- unless
16 you would like to come back early from lunch, I do want to give
17 you your time. It looks like the two things I see remaining
18 are Stevens' depo and taking a crack at the jury instructions.

19 Do you want your full hour and we'll back load it at
20 the end of the trial day? It is 12:43. I asked them to come
21 back -- if you could talk about the jury instructions and that
22 deposition, so maybe our discussion can be short and we don't
23 have to prolong the evening after the trial day ends.

24 We lock the doors, take what you need.

25 *MR. GREGG JOLLY:* If I may, very briefly. I think it

1 could be dealt with, I don't think it is an issue.

2 *THE COURT:* Have you talked to the other side about
3 it?

4 *MR. GREGG JOLLY:* I want to comport with your rulings.
5 With regard to probation, the correctional officer, you said
6 not to mention felony and drugs.

7 *THE COURT:* That is right.

8 *MR. GREGG JOLLY:* I did want to ask him what the
9 consequences were for maybe violating one of the conditions.
10 Out of an abundance of caution --

11 *THE COURT:* What is a consequence if you violate --
12 and they only need to know about two conditions, they don't
13 need to know about any other conditions.

14 A question would be what is a consequence if you
15 violate probation?

16 *MR. GREGG JOLLY:* If you are in possession of a
17 firearm, he would be facing more serious consequences.

18 *THE COURT:* What would the answer be?

19 *MR. GREGG JOLLY:* We say he would have potentially
20 violated the original terms of his probation. The underlying
21 offense, rather than have his adjudication withheld, he would
22 have been convicted of that underlying charge and potentially
23 face some fairly serious consequences for possession of a
24 firearm.

25 *MR. PHILLIPS:* We are getting outside the limiting

1 scope and getting into even more speculation.

2 The fact that he is in violation is, I think,
3 appropriate, and that he would be facing consequences.

4 THE COURT: I think that is right. I think you can
5 elicit that he would be facing consequences. You should
6 instruct that witness very carefully, nothing is to come out
7 about underlying offense, gun, felony, nothing. Make sure that
8 witness knows what the rulings are, and maybe there will be a
9 little leeway. If there is no objection, you can lead him.
10 Would there be consequences to Mr. Hill if he violated -- if he
11 was on probation and violated probation? Answer, yes.

12 MR. GREGG JOLLY: Fair enough.

13 THE COURT: Can he lead on that question?

14 MR. PHILLIPS: Certainly.

15 MR. GREGG JOLLY: I will talk to him again. I have
16 instructed him already.

17 THE COURT: All right. Thanks.

18 *(Thereupon, a short recess was taken.)*

19 THE COURT: All right. Does Defense have your first
20 witness? Is it Niles Graben still?

21 MR. GREGG JOLLY: Yes, your Honor.

22 THE COURT: All right. Bring the jury in.

23 *(Thereupon, the jury returns to the courtroom.)*

24 THE COURT: Welcome back, everyone, you may be seated.
25 We are in the Defense case. They already called one

1 witness out of turn, they called -- we heard from Captain Chris
2 Cicio last week.

3 This is the Defendant's case. You may call your next
4 witness.

5 MR. GREGG JOLLY: Your Honor, Defense will call Niles
6 Graben.

7 THE COURT: Okay.

8 NILES GRABEN, DEFENDANT'S WITNESS, SWORN

9 THE WITNESS: First name is Niles, N-I-L-E-S, last
10 name Graben, G, as in George, R-A-B, bravo, E-N.

11 **DIRECT EXAMINATION**

12 BY MR. GREGG JOLLY:

13 Q. Good afternoon, Mr. Graben. Are you employed?

14 A. Yes, by the State of Florida Department of Corrections,
15 Probation and Parole Services.

16 Q. How long have you been working in that capacity for the
17 State of Florida?

18 A. More than 29 years.

19 Q. Would you be working in that capacity in January 2014?

20 A. Yes.

21 Q. Have you had an opportunity to review the office's file as
22 to a person named Gregory Hill?

23 A. Yes, I have.

24 Q. Did you say you had an opportunity to review it?

25 A. That is correct.

1 Q. In review of that file, did the records that you reviewed
2 reflect that Mr. Hill was on probation on January 14, 2014?

3 A. That is correct.

4 Q. Was one of the prohibitions as a part of that probation
5 that Mr. Hill was not permitted to drink any alcohol?

6 A. That is correct, probation prohibited consumption of
7 alcohol.

8 Q. As another condition of his probation, was Mr. Hill also
9 prohibited from possessing a firearm?

10 A. That is correct, he was prohibited to own, possess or carry
11 a firearm.

12 Q. Would a person who is found to have violated either of
13 those conditions face consequences for that?

14 A. Yes.

15 Q. Do you know if Mr. Hill's probation was ever terminated?

16 A. Yes.

17 Q. When was it terminated?

18 A. Probation was terminated by judicial signature on
19 January 21, 2014, with a nunc pro tunc date back to January 16,
20 2014.

21 Q. And why was it terminated at that time, if you know?

22 A. It was known to the department at that time that Mr. Hill
23 was deceased.

24 Q. Was that done to clear your files?

25 A. It is an administrative function where the department

1 notifies the Court of the passing of a supervision, and there
2 is a State form which the judge signs it and administratively
3 terminates the probation.

4 MR. GREGG JOLLY: Your Honor, may I have a moment,
5 please?

6 THE COURT: Yes.

7 MR. GREGG JOLLY: No more questions.

8 THE COURT: Any cross-examination?

9 MR. PHILLIPS: Yes, your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. PHILLIPS:

12 Q. How are you?

13 A. Good. How are you?

14 Q. We haven't met?

15 A. No.

16 Q. Did you have a deposition taken in this case?

17 A. No.

18 Q. Do you have your file with you?

19 A. Yes.

20 Q. Are you an attorney?

21 A. No.

22 Q. Are you a judge?

23 A. No.

24 Q. Ever been either?

25 A. No.

1 Q. Go to law school?

2 A. I actually did take a year in graduate school, public
3 administration law school.

4 Q. Would you say Mr. Hill was not violated in this term of
5 probation?

6 A. That is correct.

7 Q. Mr. Hill referred to his probation officer as a woman. Can
8 you explain that?

9 A. Ms. Gibson was the probation officer assigned to supervise
10 Mr. Hill. In January 2014, I was supervisor of the intake
11 office where Ms. Gibson worked and I was in charge of any
12 paperwork or electronic case notes reported by the department.

13 Q. Is it fair Ms. Gibson would have a more active relationship
14 with Mr. Hill?

15 A. Yes.

16 Q. You probably would have not?

17 A. Correct.

18 Q. Do you have that probation order?

19 A. Yes.

20 Q. Would you pull it out, please? You have it.

21 What was provision number 20?

22 A. The language in number 20 reads: As a special condition,
23 your probation automatically will terminate upon successfully
24 completing one year of supervision.

25 Q. A special condition?

1 A. Yes.

2 Q. It says automatically?

3 A. Automatically upon successfully completing one year of
4 probation. His reason -- the reason it is was not terminated
5 was court costs were outstanding. By policy, we cannot
6 terminate when court ordered costs are outstanding.

7 Q. Yes, sir. What date was that order completed?

8 A. The order was signed January 9, 2013, nunc pro tunc to
9 January 3rd, 2013.

10 Q. Nunc pro tunc means retroactive to, back dated?

11 A. Right.

12 Q. So, a year from January 3, 2013 would be January 3, 2014?

13 A. That is correct.

14 Q. Okay. Have you ever violated somebody for drinking at home
15 when no harm was caused?

16 A. Our department has.

17 Q. Is violation of probation in and of itself grounds for
18 deadly force?

19 *MR. GREGG JOLLY:* Objection, your Honor, relevance.

20 *THE COURT:* I am going to sustain.

21 *MR. PHILLIPS:* Okay.

22 *BY MR. PHILLIPS:*

23 Q. Do you have any idea whatsoever about any conversations Mr.
24 Hill would have had with Ms. Gibson in January of 2014?

25 A. Yes, our department includes some electronically stored

1 case notes that record the visit of Mr. Hill to the Probation
2 Office on January 3, 2014, at approximately 12:30 p.m.

3 Q. The one year anniversary?

4 A. That is correct.

5 MR. PHILLIPS: No further questions.

6 THE COURT: Anything on redirect?

7 MR. GREGG JOLLY: Just briefly, your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. GREGG JOLLY:

10 Q. Mr. Graben, you were asked about condition number 20 in the
11 probation order?

12 A. That is correct.

13 Q. And do you explain to probationees that one of the
14 conditions to successfully complete one year of supervision is
15 to make sure that your court costs are paid?

16 A. That is part of the instruction process.

17 MR. GREGG JOLLY: No more questions, your Honor.

18 THE COURT: Okay, all right, thank you very much, you
19 may step down.

20 Defense may call your next witness.

21 MS. BARRANCO: Thank you, your Honor. At this time
22 Defense would call sergeant Edgar Lebeau to the stand.

23 EDGAR LEBEAU, DEFENDANT'S WITNESS, SWORN

24 THE WITNESS: My name is Sergeant Edgar Lebeau,
25 L-E-B-E-A-U.

DIRECT EXAMINATION

1
2 BY MS. BARRANCO:

3 Q. Good afternoon, Sergeant.

4 A. Good afternoon.

5 Q. If you lean forward, everybody can hear you. If you talk
6 too loud, we will let you know.

7 A. Thank you, ma'am.

8 Q. Sergeant Lebeau, could you tell the members of the jury
9 where you are employed?

10 A. I work for the St. Lucie County Sheriff's Office.

11 Q. How long have you been so employed?

12 A. For the past 19 years.

13 Q. And what is your current job title at the Sheriff's Office?

14 A. I am a detective sergeant.

15 Q. How long have you been a detective sergeant or sergeant?

16 A. A sergeant or detective sergeant?

17 Q. You are currently a detective sergeant?

18 A. Yes, ma'am.

19 Q. How long have you been a detective sergeant?

20 A. Since January of this year.

21 Q. 2018?

22 A. Yes.

23 Q. Prior to that, what was your title?

24 A. I was a sergeant on patrol.

25 Q. Is that what you held in January 2014?

1 A. No. At that time I was a detective assigned to the
2 Criminal Investigations Division.

3 Q. Criminal Investigations Division?

4 A. Yes, ma'am.

5 Q. Could you tell us what that is?

6 A. It is the detective bureau, we investigate crimes.

7 Q. Now, did there come a time -- I will focus your energy,
8 time. Focus on January 14, 2014, going back about four years.
9 Do you recall if you had any involvement in regard to an
10 incident that was an officer involved shooting that happened in
11 Ft. Pierce between Sheriff's Deputy Christopher Newman and a
12 civilian by the name of Gregory Hill?

13 A. Yes, I did. I was the lead investigator on that case.

14 Q. And did you respond to the scene?

15 A. Yes, ma'am, I did. I initially came out -- I was in the
16 office and I drove from the office to the scene.

17 Q. Would you refer to that as being called out to the scene?

18 A. Yes, ma'am.

19 Q. Could you tell us what time you had been called out to the
20 scene, if you recall?

21 A. It was after 3:00 o'clock.

22 Q. Were you present for the actual shooting itself?

23 A. No, ma'am.

24 Q. If I understand what you are telling us, for the jury's
25 benefit, the shooting would have occurred and you would have

1 been called out to the scene?

2 A. After the fact.

3 Q. Okay. Can you tell us what it was that you did once you
4 arrived on the scene? And first start by telling us, do you
5 know the address where you responded to?

6 A. I believe the 1500 block of Avenue Q.

7 Q. And what city is that in?

8 A. Ft. Pierce, Florida. I am so sorry.

9 Q. That is okay.

10 Do you recall it being located near any landmarks?

11 A. It was across the street from a school.

12 Q. Do you know what kind of school it was?

13 A. Elementary school.

14 Q. If you would tell us, once you responded to the scene, what
15 you recall doing?

16 A. When I got there, the scene was evolving, there were many
17 of our specialists there, hostage team, bomb team, and members
18 of uniform patrol from the Sheriff's Office and Ft. Pierce
19 Police Department.

20 Q. Now, what was your understanding why there were police at
21 this house to begin with?

22 A. The initial call was a loud music call.

23 Q. Now, was the SWAT team, hostage negotiations team and the
24 other teams you mentioned there because there was loud music at
25 the house?

1 A. No, ma'am.

2 Q. Can you tell us why all these teams were there?

3 A. Because there was an understanding there may have been a
4 young child in the residence, it was treated as a barricaded
5 suspect. We try through the hostage team to establish dialogue
6 for a peaceful resolution. We try to get the person to come
7 out, we don't just knock on the door.

8 Q. You mentioned the term "barricaded suspect"?

9 A. Uh-hum.

10 Q. Can you explain basically what does that mean?

11 A. A barricaded suspect is someone inside the structure that
12 refuses to come out, so we treat it as if it is incredibly
13 dangerous for everyone involved. We try to resolve it
14 peacefully.

15 Q. Let me ask you, how long were you personally on this scene?

16 A. Hours. I got there after, obviously, the shooting,
17 probably about 3:30, and I didn't leave until late in the
18 evening.

19 Q. And tell us, then -- you mentioned all of these different
20 teams that were present from the Sheriff's Office. Tell us
21 what happened next in terms of your involvement.

22 A. Once it was determined that the child was not in the
23 residence, our SWAT team deployed chemical munitions, teargas
24 into the house trying to get the person out.

25 That was unsuccessful, and our bomb team used one of their

1 robots that has a long probe on the end of it and put it
2 through the garage door, and through use of a camera they saw a
3 motionless subject on the garage door. That was about 7:10 in
4 the evening. At 7:16, members of our SWAT team were ordered
5 into the residence, that would be Sergeant Hester and Deputy
6 Tommy Johnson. They went in there and found the sole occupant
7 of the residence, a male, that was deceased on the garage floor
8 and he was later identified as Mr. Gregory Hill.

9 Q. Now, did you go in with the SWAT team?

10 A. No, ma'am.

11 Q. Why not?

12 A. I am not a SWAT team member.

13 Q. That is something another -- that is a different component
14 of what you were doing in terms of this incident?

15 A. Yes, ma'am.

16 Q. And what was your main focus as, I think you said lead
17 investigator?

18 A. My main focus was to find out what in the world happened,
19 and piece the puzzle together so everyone could have a clear
20 picture of what happened that day and what brought us all
21 there.

22 Q. Sergeant, were you present during what you just told us
23 about, were you there while there was a concern there was a
24 young child in the house?

25 A. Yes, ma'am.

1 Q. Do you know why there was a concern there was a young child
2 in the house?

3 A. We didn't want to risk hurting anybody, and there was a
4 concern, I believe she was asthmatic, and the deployment of the
5 teargas is active for somebody who has asthma.

6 Q. Did you know whether or not the occupant that was found in
7 the house, and we now know was Mr. Gregory Hill, did you know
8 while you were out there, before the SWAT team went in and
9 before the robot pierced through the door, whether or not Mr.
10 Hill was dead or alive?

11 A. No, ma'am.

12 Q. Did you know whether or not Mr. Hill was injured?

13 A. No, ma'am.

14 Q. To your knowledge, did anybody with the Sheriff's Office --
15 before that probe went in the garage door and saw, the picture
16 was taken of the body on the ground, to your knowledge, did
17 anybody in the agency know whether in fact Mr. Hill was dead or
18 alive?

19 A. No, ma'am, we did not.

20 Q. Was this the purpose of why all the teams were sent out
21 there?

22 A. Yes.

23 Q. Now, did there come a time that you learned that the
24 child -- there was no child in the house?

25 A. Yes.

1 Q. How was that determined?

2 A. I believe that was told to us through our hostage
3 negotiations team.

4 I don't have firsthand knowledge of it. I was told.

5 Q. Okay. So, then the SWAT team goes in, you already told us
6 that, you mentioned some of the members. You didn't personally
7 go inside during that period?

8 A. No, ma'am.

9 Q. Did there come a period of time you did go into the house?

10 A. Yes, ma'am.

11 Q. Tell us about that.

12 A. After the SWAT team had verified there were no other
13 persons in the house and it was safe to enter, the garage door
14 was opened. Windows had been busted out from putting in the
15 teargas into the garage area of the residence.

16 Q. Okay. And do you recall what the lighting was like -- was
17 the -- once the garage door opens, there is light from the
18 outside, but do you recall when you went in the garage what the
19 lighting was like?

20 A. I believe we had to use artificial lights as well, it was
21 later in the evening at that point, but you could see.

22 Q. So --

23 MS. BARRANCO: Your Honor, if I may, I need to show
24 this. May I approach the witness?

25 THE COURT: Yes.

1 MS. BARRANCO: For the record, I am showing the
2 witness Defendant's Exhibit 150.

3 THE COURT: Okay.

4 BY MS. BARRANCO:

5 Q. Sergeant, I ask you, do you recognize that picture?

6 A. Yes, I do.

7 Q. Could you describe what that picture depicts?

8 A. Sure. This is a depiction of the interior of the garage of
9 the residence. There was a dog cage in there. Do you want me
10 to describe the contents as well?

11 Q. Sure, generally.

12 A. Stereo system.

13 Q. Stereo?

14 A. Yes.

15 MS. BARRANCO: Your Honor, I would like to move in
16 Defendant's 150.

17 MR. PHILLIPS: No objection.

18 THE COURT: 150 is admitted without objection.

19 (Whereupon Defense Exhibit 150 was marked for evidence.)

20 BY MS. BARRANCO:

21 Q. Now, Sergeant, you should be able to see this on the screen
22 in front of you if the system is working, which I hope that it
23 is.

24 A. It is.

25 Q. Now, I know you don't have -- maybe you do have the

1 benefit. Earlier, another witness was pointing to things.

2 Is this the stereo system here?

3 A. Yes, ma'am.

4 Q. Do you recall whether or not it was on or off when you
5 arrived on the scene?

6 A. Once we got into the garage, we did notice it was on.

7 Q. Was there still music playing or was the system just still
8 on, no music playing?

9 A. The system was still on, no music.

10 Q. Okay.

11 Now, I see in the foreground of the picture what looks to
12 be a cage?

13 A. Yes, ma'am.

14 Q. Do you remember there being a dog in that cage?

15 A. I don't have any independent recollection now.

16 Q. Is that the location where you saw the dog cage, in front
17 of the large speakers for the radio?

18 A. Yes, ma'am.

19 Q. To the left, could you tell us what the extreme left of the
20 picture shows?

21 A. That is an aluminum roll-down garage door.

22 Q. Is this where you would enter into the door with the door
23 going up so you could access that way?

24 A. Yes.

25 Q. Okay, thank you.

1 Now, what, if anything, did you do when you went into the
2 garage of this house?

3 A. I assisted our crime scene in collecting evidence.

4 Q. And what is crime scene for those of us who don't work in
5 law enforcement?

6 A. Those are folks that specialize in taking photographs,
7 getting fingerprints, doing all the technical evidence
8 collection. They go to specialized training for that. And I
9 assisted Detective Young at that time with part of this case.
10 He did the lion's share of the work, I did very little.

11 Q. What is Detective Young's first name?

12 A. Richard.

13 Q. Did he have a nickname?

14 A. Snoopy.

15 Q. If someone calls him Snoopy --

16 A. I kind of accept it.

17 Q. When you went in the garage, did you remember anything in
18 particular that you would have assisted Detective Young in
19 doing?

20 A. Yes. In the decedent's right rear pocket there was a butt
21 of a handgun protruding out of the pocket itself, and as a
22 result, Detective Young took the gun out of the back pocket. I
23 made it safe, meaning I took the magazine out and pulled the
24 slide back to make sure there was no ammunition that could hurt
25 somebody, and at that time Detective Young put it into the

1 evidence bag.

2 Q. Okay. Did you find that gun to be loaded or unloaded?

3 A. It was unloaded, it was free of ammunition.

4 Q. How were you able to discern that this gun was unloaded as
5 opposed to being loaded?

6 A. I physically ejected the magazine from the weapon, and I
7 pulled the slide to the rear. It was a semiautomatic pistol,
8 and I could see no light around the chamber or the gun at all,
9 so it was safe.

10 Q. Are you able to discern whether a firearm is loaded or
11 unloaded by looking at it from across the room?

12 A. No, ma'am.

13 Q. Are you able to tell whether or not a firearm is loaded or
14 unloaded by simply looking at it even if I had it in my hand in
15 front of me?

16 A. No, ma'am.

17 Q. As you described, you had to do more than that, you had to
18 mechanically open the parts of the gun that were openable, if
19 that is a word, and visualize there are no bullets inside?

20 A. Yes, ma'am.

21 Q. And you mentioned a magazine?

22 A. Yes, ma'am.

23 Q. Could you describe what part of the gun the magazine goes
24 in?

25 A. Magazines, they are used to store the ammunition, they hold

1 different amounts depending on what kind of magazine it is, but
2 they are removable. You could have however many magazines you
3 care to have, you load that into the handle of the gun, and the
4 ammunition is able to feed through the mechanical process.

5 Q. So, if I were holding a gun, it would be the butt of the
6 gun, I would put the magazine in there and load it that way?

7 A. Yes.

8 Q. Once the magazine is removed, is it still possible the gun
9 is loaded?

10 A. Absolutely.

11 Q. Where would you find -- if the gun was loaded but without a
12 magazine, where would the bullet be?

13 A. The bullet would be in the barrel, that is when you pull
14 the slide back and that is when you see if there is a bullet or
15 casing in there, and there would be ammunition.

16 Q. In this particular --

17 A. There was nothing.

18 Q. No bullets or magazine in the chamber?

19 A. No, ma'am.

20 Q. Do you recall what type of weapon it was?

21 A. Kel-Tec 380, semiautomatic handgun.

22 MS. BARRANCO: Your Honor, may I show Defense counsel
23 some pictures?

24 THE COURT: Yes.

25 MS. BARRANCO: Your Honor, for the record, I am going

1 to be showing the witness what has been marked for
2 identification purposes as Defendant's Exhibit Number 121, 122,
3 204, and 205, and at this time, I would ask that they be
4 admitted into evidence. There appears to be no objection from
5 Plaintiff's counsel.

6 *THE COURT:* 121, 122, no objection?

7 *MR. PHILLIPS:* No objection.

8 *THE COURT:* The other ones were?

9 *MS. BARRANCO:* The other ones were 204 and 205.

10 *THE COURT:* No objection to those as well?

11 *MR. PHILLIPS:* No objection.

12 *THE COURT:* Okay, those are all admitted.

13 (Whereupon Defense Exhibits 121, 122, 204, 205 were marked
14 for evidence.)

15 *MS. BARRANCO:* Thank you, your Honor.

16 *BY MS. BARRANCO:*

17 *Q.* Now, Sergeant, I am going to put up on the screen a couple
18 of these photographs.

19 See if you recognize that picture.

20 *A.* I do, ma'am.

21 *Q.* Could you tell me what it depicts?

22 *A.* That is the decedent on the floor of the garage, later
23 identified as Mr. Hill.

24 *Q.* Does this depict the body as you saw it when you went in
25 the garage?

1 A. Yes, ma'am, it does.

2 Q. Is there any way from this picture that you can advise
3 whether or not you see what you testified to in regard to a
4 firearm in Mr. Hill's back pocket?

5 A. Yes, ma'am.

6 Q. If you look at the decedent, the side facing up --

7 A. Hold the pen higher. Right there, that black spot right
8 there, that, to me, is the outline of a gun. If you go further
9 you will actually see what we call the butt -- no, I am sorry,
10 towards the pocket, right there, the butt of the gun.

11 Q. Okay. Is that the area where you load the magazine?

12 A. Yes, ma'am.

13 Q. Let me do the next photograph which might make this easier.
14 This is Defendant's exhibit in evidence 122. A closer up
15 version of what we just showed you?

16 A. Yes, ma'am.

17 Q. Now, if you could explain again what it was that you saw.

18 Does this picture depict ultimately what you recall seeing
19 when you were in the garage?

20 A. Yes, ma'am. The clothing is consistent, the blood on the
21 ground is consistent. You can actually see the magazine of the
22 weapon in his back pocket, and I don't know what else.

23 Q. Do you recall that Mr. Hill's pants or shorts were down,
24 about halfway down his thighs?

25 A. Yes, it is depicted as I saw it.

1 Q. There is nothing about the picture that is any different
2 than what you saw?

3 A. No, ma'am.

4 Q. Let me show you in evidence Defendants Exhibit 204.

5 A. Uh-hum.

6 Q. And tell the ladies and gentlemen of the jury what that
7 picture depicts.

8 A. That is my hand holding the firearm up so Detective Bianci
9 could take the picture.

10 Q. I will go to the last photograph, Defendant's Exhibit 205.

11 Is that a close-up version of that last picture?

12 A. Yes, ma'am, that is.

13 Q. Now that we have a better picture of this firearm, just for
14 visual aid, is this the area here you are referring to as the
15 magazine?

16 A. Yes, ma'am.

17 Q. Is that the area -- the only thing you could see in the
18 picture is this part?

19 A. You could see that and a little bit of a butt of the gun,
20 yes, predominantly the magazine.

21 Q. And is this the top of the magazine and the rest is
22 actually inside the gun?

23 A. It is actually the bottom of the magazine, yes, the rest of
24 the magazine.

25 Q. However you want to call it, top or the bottom. I

1 understand.

2 Can you tell me where to point for the slide?

3 A. You are right on it.

4 Q. Up here, based on what you are telling us earlier, that is
5 the area --

6 A. You have to pull that to the rear.

7 Q. To draw it back?

8 A. Yes.

9 Q. You physically look inside?

10 A. You look inside. If you take your pen and a point above
11 the trigger where that lightly colored metal is, that is called
12 the ejection port, and that is where you pull the slide to the
13 rear and look inside the firearm itself to see if there is any
14 ammunition inside.

15 Q. Why is it called ejection port?

16 A. The spent casing is ejected from the firearm.

17 Q. If I understand you, if somebody were to fire this firearm,
18 the bullet would come out this end?

19 A. Yes, ma'am.

20 Q. And the casing, the shelf where the bullet was housed,
21 would come out this way? (Indicating)

22 A. Yes, ma'am.

23 Q. All right. So, once you made this Kel-Tec safe --

24 A. Yes, ma'am.

25 Q. -- what did you do with it?

1 A. I gave it to Detective Young and he put it in an evidence
2 bag.

3 Q. And was anything else placed in evidence bags?

4 A. Yes, the cell phone that we recovered from the residence.

5 Q. Yes, I wanted to ask you about that.

6 How was it that you were able to take things from this
7 house? And I say you, I mean the Sheriff's Office.

8 A. We had a search warrant signed by a judge.

9 Q. To take items out of the house?

10 A. Yes, ma'am.

11 Q. Did you have anything in regards to simply the cell phone
12 of Mr. Hill?

13 A. Yes, we obtained another search warrant specifically for
14 the cell phone so we could search it.

15 Q. Okay. Now, before I talk to you more about the items,
16 other than what you have already told us about, did you do
17 anything else in regard to the subject scene in terms of any
18 other tasks; did you talk to any witnesses?

19 A. Yes, I spoke to other witnesses.

20 Q. Did you interview the deputies involved in the incident?

21 A. Yes, I did.

22 Q. Did you interview any of the teachers or parents that were
23 located across the street from the residence?

24 A. I did.

25 Q. And was there anything -- let me ask you this: What about

1 the firearm that Deputy Newman used in the subject incident,
2 what happened to that?

3 A. That is --

4 Q. If you know.

5 A. I don't know, to be completely honest with you.

6 Q. Do you know if it would have been taken from Deputy Newman?

7 A. Absolutely.

8 Q. You weren't involved in that process?

9 A. No, I was not.

10 Q. How about Deputy Lopez' weapon, do you know whether anyone
11 looked at that?

12 A. Yes, Lieutenant Schiller looked -- examined that firearm
13 and determined that it contained the 40 rounds that we carry
14 per agency policy and had not been -- he directly returned the
15 firearm to Deputy Lopez.

16 Q. Do you know if it was determined that Deputy Lopez' firearm
17 had not been fired?

18 A. It had not been.

19 Q. The same question as to Deputy Newman, did you determine it
20 was utilized on the subject date?

21 A. It was.

22 Q. Do you know how many bullets were fired by Deputy Newman?

23 A. Four rounds.

24 Q. What was your understanding of how many of the rounds
25 actually made contact with Mr. Hill's body?

1 A. Three.

2 Q. And do you know whether -- what happened to that fourth
3 bullet?

4 A. It was stopped by one of the metal supports of the door.
5 It went through the outer skin of the door and stopped -- hit
6 the metal at the right angle, didn't penetrate it, and we found
7 it when we were in the garage.

8 Q. I will put up Defendant's 150 in evidence, and ask, does
9 this show any of the support bars you are referring to?

10 A. Yes, ma'am.

11 Q. Can you tell me where to point for the jury's benefit?

12 A. If you go down a little bit, a little more. Right in
13 there, one of those supports.

14 Q. Okay. That he is where the fourth bullet was found?

15 A. Yes, ma'am.

16 Q. Now, did you bring anything with you here today, Sergeant?

17 A. I brought every piece of evidence collected from the scene.

18 Q. From the subject scene?

19 A. Yes, ma'am.

20 Q. And where have those items been since January of 2014, to
21 your knowledge?

22 A. In our evidence rooms, and some of the items were sent to
23 our crime lab and returned to our evidence rooms after they
24 were processed.

25 Q. When you say our evidence rooms?

1 A. St. Lucie Sheriff's Office.

2 Q. Okay.

3 MS. BARRANCO: Your Honor, at this time I would ask
4 the witness be permitted to bring out the Kel-Tec weapon that
5 he already testified about from the items of evidence.

6 THE COURT: Okay.

7 MR. PHILLIPS: Your Honor, we renew our objection.

8 THE COURT: The Court will permit it for demonstrative
9 purposes.

10 MS. BARRANCO: Thank you, your Honor.

11 BY MS. BARRANCO:

12 Q. Sergeant, if you need to stand up, I think your Honor is
13 okay if you do that.

14 A. I am going to put on some protective gloves.

15 Q. Yes. And could you bring out the shorts taken from Mr.
16 Hill that was in some of the photographs?

17 A. Would you like the magazine as well or just the firearm and
18 shorts, or all three?

19 Q. The shorts. And I am assuming the firearm doesn't have the
20 magazine in it?

21 A. It does not.

22 Q. Leave it without the magazine for now.

23 A. Okay.

24 Q. Did you --

25 A. I did not break the seals, I don't have anything to do

1 that.

2 Q. What do you need to break the seal?

3 A. A pair of scissors will be great.

4 THE COURT: Let me be clear, though, did this clear
5 security downstairs?

6 THE WITNESS: Yes, ma'am, it did.

7 THE COURT: Because you are breaking the seal now, did
8 they actually --

9 THE WITNESS: They x-rayed it, they did not --

10 THE COURT SECURITY OFFICER: When you do open it, can
11 you just stop?

12 THE WITNESS: Absolutely.

13 THE COURT SECURITY OFFICER: Only because I have seen
14 it all.

15 THE COURT: For the record, our security has reviewed
16 the firearm and it is without its magazine, and therefore, is
17 safe in the courtroom, and could not be used in any way other
18 than for demonstrative purposes.

19 THE WITNESS: Would you like me --

20 BY MS. BARRANCO:

21 Q. If you'd set that down in front of you?

22 A. Sure.

23 Q. If you want to sit down and I will ask you a few questions.

24 Maybe you can move that box so the jury can. You put
25 gloves on before you touched anything?

1 A. Yes.

2 Q. Why did you put gloves on?

3 A. So my DNA and fingerprints do not get on evidence.

4 Q. Is there any concern in regard to any items of the evidence
5 in terms of biohazards?

6 A. Absolutely.

7 Q. Such as sanitary purposes?

8 A. Sanitary purposes, as well as for evidentiary purposes,
9 yes.

10 Q. And I also saw that you were asking for the scissors, and
11 then you used your pen?

12 A. Uh-hum.

13 Q. In a pinch to do something. Can you tell the ladies and
14 gentlemen what you were doing?

15 A. I was breaking the evidence tape, this is the red tape
16 here. It has a white spot where we could write along it, it is
17 very thin, it breaks very easily. We had packing tape over it
18 as well, it took me a little bit to get in. The normal
19 package, as you see, we have evidence tape over the seams of
20 the envelopes so it indicates no one has been in there since the
21 items were placed in there.

22 MS. BARRANCO: Your Honor, may I approach the witness?
23 I would like to put gloves on myself, if I may.

24 THE COURT: Do you have these marked? Do they have ID
25 numbers associated with them? If not, we want to add it to the

1 list so we can be clear which exhibit is which.

2 MS. BARRANCO: It is sort of marked as a composite
3 exhibit.

4 THE COURT: 372, demonstrative aids?

5 MS. BARRANCO: No, under 369, any items of evidence
6 concerning subject incident.

7 THE COURT: Are these the only two you are going to be
8 using?

9 MS. BARRANCO: As far as I know at this moment, your
10 Honor.

11 THE COURT: So, I will have those marked only and we
12 will call those gun and shorts.

13 MS. BARRANCO: Your Honor, could we also include in
14 that, I wouldn't put it in the gun, but the magazine as well?

15 Sergeant, are you able to locate the magazine as well?
16 Your Honor, may I approach to put the gloves on?

17 THE COURT: Yes.

18 MS. BARRANCO: Thank you. Your Honor, may I approach
19 so I can talk about the items?

20 THE COURT: Yes.

21 MS. BARRANCO: I will try to keep my voice up.

22 BY MS. BARRANCO:

23 Q. So, I am holding up this bag number 7. What came in this
24 bag?

25 A. That was the firearm.

1 Q. The Kel-Tec?

2 A. Yes, ma'am.

3 Q. And what is the item there?

4 A. I don't know which number you want to use, our case number,
5 meaning the Sheriff's Office case number -- bag number 8, it is
6 on the back.

7 Q. This was the magazine that goes with this Kel-Tec?

8 A. Yes, ma'am.

9 Q. And I will point this down to show, the magazine would go
10 in here?

11 A. Yes, ma'am, that is correct.

12 Q. Down here and put in there?

13 A. Yes, ma'am.

14 Q. Here it is not loaded?

15 A. No, ma'am.

16 Q. And then, also, is this the slide area that you were
17 referring to?

18 A. That is the slide area, yes, ma'am.

19 Q. And just so everybody is comfortable, does this have any --
20 this appears to have -- what is this black thing here?

21 A. It is a zip tie, you cannot manipulate the slide backwards,
22 that would indicate, number one, there is no ammunition in the
23 barrel; and number two, the slide is not able to load any
24 ammunition, it is safe.

25 Q. This zip tie was put on after the shooting, after the gun

1 was recovered, part of making the gun safe as you testified
2 before?

3 A. Yes.

4 Q. It wasn't found with a zip tie on it in Mr. Hill's pocket?

5 A. No, ma'am.

6 Q. The other item, the shorts, can you tell me what number
7 that is?

8 A. Number 19.

9 Q. Number 19, in terms of the item of evidence?

10 A. Yes, that is the number that was written here.

11 Q. Okay.

12 A. So, I believe it is 19.

13 Q. Is that wrapped up in something?

14 A. I had to repackage it, it wouldn't fit as nicely.

15 Q. When you brought the items to court, were all of them
16 sealed?

17 A. Yes, ma'am.

18 Q. Do you know when they were last sealed?

19 A. These items were last sealed when I resealed them after our
20 pretrial.

21 Q. Okay. That was something you did?

22 A. Yes, ma'am.

23 Q. Since then, nobody has opened the packages?

24 A. No, ma'am.

25 Q. After we are finished in court here today, what will you do

1 with these items?

2 A. I will take all of these back, unless the Court needs them,
3 to the Sheriff's Office evidence room where they will sit until
4 given guidance where to put them.

5 Q. As part of the process, will you again place each item into
6 a respective envelope or box and put fresh evidence tape on it
7 and date it?

8 A. Yes.

9 Q. Is that the typical protocol?

10 A. Yes, ma'am. That is protocol.

11 *MS. BARRANCO:* Your Honor, may I have the witness hold
12 on to the Kel-Tec for a minute while I approach him and ask
13 things about it?

14 *THE COURT:* Yes.

15 *MS. BARRANCO:* Your Honor, will you allow him to come
16 down in front of the jury?

17 *THE COURT:* Yes.

18 *MS. BARRANCO:* Thank you.

19 *BY MS. BARRANCO:*

20 Q. If you can position so everyone could see. I was pointing
21 to things. Could you explain, now that you have the benefit of
22 the weapon, what the parts are you described earlier for the
23 jury?

24 A. This is the magazine, where the magazine will be inserted.
25 Up top here is the slide, this part here. You see it looks

1 like two parts, the lighter color is the barrel, this is the
2 slide. This cutout here is considered the ejection port, this
3 is where the casing would come out. The bullet comes out of
4 the front, obviously, if it is fired, and the casing comes out
5 to the side.

6 When I told you I ejected the magazine to make the weapon
7 safe, if you look here on the other side of the weapon you see
8 this button, this is depressed and unlocks the magazine from
9 the firearm and it falls out, or you can pull it out, depending
10 on whatever it is.

11 And I don't know what else you want me to show.

12 Q. Let me ask you, this does not have a magazine in it?

13 A. No, it does not.

14 Q. At the time you went into the garage at the time of the
15 incident, did this gun have a magazine in it?

16 A. Yes, ma'am.

17 Q. Visually what would the difference be?

18 A. You wouldn't see a hole here, you would see a flat piece of
19 plastic or metal.

20 MS. BARRANCO: Your Honor, can I ask the witness to
21 open up the Kel-Tec magazine so the jury can see what he is
22 referring to?

23 THE COURT: Yes.

24 THE WITNESS: This is what would be considered a
25 magazine, but that is what you see at the bottom of the gun. I

1 am not going to insert it. You can draw a conclusion what it
2 would look like when it is in the gun.

3 *BY MS. BARRANCO:*

4 *Q.* So, when you found the gun in Mr. Hill's back pocket, this
5 would have been inside of the handle of the gun?

6 *A.* Yes, ma'am.

7 *Q.* And so this all would have been invisible and only this
8 part would have been visible?

9 *A.* That is right.

10 *Q.* Is that what we were showing in the pictures earlier?

11 *A.* Yes.

12 *Q.* We aren't going to put this in there. I wanted the jury to
13 understand.

14 *MS. BARRANCO:* Your Honor, I ask that the witness open
15 up the shorts.

16 *THE COURT:* Okay.

17 *MS. BARRANCO:* Your Honor, is it okay if he lays it up
18 here?

19 *THE COURT:* Yes.

20 *THE WITNESS:* This is the shirt, not the shorts.

21 *BY MS. BARRANCO:*

22 *Q.* Okay. I need the shorts.

23 *A.* Okay, one second.

24 *Q.* I know there are a lot of things in that.

25 *A.* This is the shorts, I made a mistake, number 21.

1 MS. BARRANCO: For the record, the shorts are in
2 number 21.

3 THE COURT: All part of 369?

4 MS. BARRANCO: Yes.

5 BY MS. BARRANCO:

6 Q. Take your time. Okay. Those are the shorts?

7 A. Yes, ma'am.

8 MS. BARRANCO: Your Honor, may I have the witness hold
9 up the shorts close for the jury to see, particularly the back
10 side of the shorts?

11 THE COURT: Yes.

12 (Witness complies.)

13 BY MS. BARRANCO:

14 Q. Now, on these shorts there he is a design in the back, a
15 white -- some kind of thing. Do you see that same insignia on
16 this exhibit?

17 MR. PHILLIPS: We stipulate it is the same shorts.

18 MS. BARRANCO: Okay, thank you.

19 What -- if you can gently turn them around to see the
20 other side as well. Now, your Honor, can I ask the witness to
21 hold the shorts so I can utilize the firearm and Kel-Tec with
22 the shorts?

23 THE COURT: Yes.

24 BY MS. BARRANCO:

25 Q. Now, it might be a little hard for you to see this, but

1 when you saw -- when you walked into the garage and visualized
2 Mr. Hill's body, was it this part of the shorts that you were
3 visualizing in those pictures?

4 A. Yes, ma'am.

5 Q. Except the item would have been like dropped in there like
6 that?

7 A. Yes ma'am.

8 Q. Now, we are holding these up in the air, and Mr. Hill was
9 on the ground?

10 A. Yes, ma'am.

11 Q. Ultimately, is that essentially what you found, or what you
12 saw?

13 A. Yes.

14 Q. Actually, I might have flipped it around. I don't know if
15 you recall what way the gun was actually positioned.

16 Hold it like that for a second.

17 A. Uh-hum.

18 Q. I am showing you now Defendant's Exhibit 203.

19 Is that essentially the same position that the firearm
20 would have been in?

21 A. I believe so.

22 Q. Farther in as shown in the pictures?

23 A. Yes. A little more.

24 Q. Which, again, is hard to do, gravity is operating against
25 you?

1 A. Yes.

2 MS. BARRANCO: All right. Thank you, your Honor.

3 BY MS. BARRANCO:

4 Q. I will hold this for you. I don't know if Plaintiff's
5 counsel has questions for you.

6 I have a few more questions for you.

7 A. Okay.

8 Q. Tell me when you are ready for more questions.

9 A. I am ready, ma'am.

10 Q. All right. Let me ask you this question, Sergeant. Did
11 you, Sergeant Lebeau, who was then Detective Lebeau, did you
12 ever put that gun in Mr. Hill's back pocket?

13 A. Absolutely not.

14 Q. Did you ever see anyone put that gun in Mr. Hill's back
15 pocket?

16 A. Absolutely not.

17 Q. Did you ever hear anyone say they put a gun in Mr. Hill's
18 pocket?

19 A. Never.

20 Q. Do you know Detective Newman?

21 A. I do now, yes.

22 Q. How do you know him?

23 A. Detective Newman and I never met during this incident. I
24 knew he worked for other police departments before coming to
25 the Sheriff's Office. I would not know him.

1 Q. My last question, would you lie for Deputy Newman?

2 A. No.

3 MS. BARRANCO: Your Honor, may I have a moment?

4 THE COURT: Yes.

5 MS. BARRANCO: No further questions, your Honor.

6 THE COURT: Okay. Any cross-examination?

7 MR. PHILLIPS: Yes, ma'am.

8 **CROSS-EXAMINATION**

9 BY MR. PHILLIPS:

10 Q. Good afternoon. Did we have the pleasure of meeting you
11 yet?

12 A. I --

13 Q. I may look like my associate, we are both chubby with a
14 beard. You are employed by the Defendant in the civil suit?

15 A. Co-workers, yes.

16 Q. You work with the Defendant in the civil suit?

17 A. Yes, sir.

18 Q. You made no findings or conclusions which are to bear on
19 the civil suit; is that fair?

20 A. I worked the criminal aspect, not a civil suit.

21 Q. How many search warrants were issued within 24 hours of
22 this, do you recall?

23 A. I don't. I did not write the search warrant, sir, I don't
24 have any direct knowledge how long it took. I know at least
25 two were written within 24 hours.

1 Q. A search warrant for the house after the man was found
2 deed, another search warrant, and a search warrant for the cell
3 phone. What was the point of the search warrants?

4 A. Assistant State Attorney Jeff Hendricks told us we needed
5 search warrants so Detective Taylor wrote a search warrant, and
6 once the decedent was found, it was determined by detective --
7 excuse me, Mr. Hendricks that the search warrant needed to be
8 broadened, so they amended.

9 Q. Did you review the search warrant before today?

10 A. I did.

11 Q. Did you review your deposition before today?

12 A. Yes.

13 Q. Help me out, you said Mr. -- Detective Young took the gun
14 out of the pocket?

15 A. Uh-hum.

16 Q. Do you recall testifying you took the gun out of the
17 pocket?

18 A. In my deposition I absolutely made a mistake, I apologize
19 for it. I was shoulder to shoulder with him when it happened,
20 Detective Young took out the gun.

21 Q. Do you know why you made a mistake in the deposition?

22 A. Probably because I remember holding the gun.

23 Q. Did you make any other mistakes in your investigation?

24 A. No, ma'am -- no, sir.

25 Q. You made another one.

1 A. Force of habit.

2 Q. Mistakes are a force of habit?

3 A. No, politeness, sir.

4 Q. Thank you. So it is your hand holding it in the photo that
5 we just saw?

6 A. Yes.

7 Q. So, Detective Young took it out, gave it back to you and
8 you went and, I guess, put it up at the pocket so that you
9 could just show, I guess, the pocket that it came out of?

10 A. So that Detective Young could take the picture, yes.

11 Q. It is not you taking it out of the pocket?

12 A. No.

13 Q. Do you have pictures of Detective Young moving it?

14 A. That is a question for Detective Young, I don't believe so.

15 Q. Before that, no one documented a gun in Mr. Hill's pocket;
16 fair?

17 A. I don't understand the question.

18 Q. Before you took the gun -- sorry, Detective Young took the
19 gun out of Mr. Hill's pocket, no one documented that?

20 A. No. That is where it was found.

21 Q. Nobody else removed it?

22 A. No, sir.

23 Q. As part of your investigation the next day, you did a walk
24 through with the officers?

25 A. I did.

1 Q. Did a neighborhood canvass?

2 A. We did.

3 Q. And do you know how many kids and adults were outside when
4 this happened?

5 A. No, I do not, sir.

6 Q. You don't know whether it was ten or 50?

7 A. I do not know.

8 Q. Do you know how many you spoke with?

9 A. I didn't speak to any children, I spoke to two people that
10 were picking up their children. Other than that, there are
11 other detectives that did the canvass at the school.

12 Q. Okay. You took a statement of Ms. Davis, and she
13 cooperated?

14 A. Uh-hum.

15 Q. The DNA -- do you work typically with DNA in your
16 investigations?

17 A. I do not, no, sir.

18 Q. You don't know low level partial match, versus match, you
19 don't do that?

20 A. No. That is not my line.

21 Q. Fair enough. Do you recall what color shirt Mr. Newman
22 indicated Mr. Hill had on?

23 A. I don't have a recollection of that, no.

24 Q. What color was it? We have it. What color is the shirt?

25 A. It is a dark colored shirt.

1 Q. If that was identified as a white shirt that would be
2 incorrect?

3 A. It is a dark colored shirt in evidence.

4 Q. Did you analyze any inconsistencies between Deputy Newman's
5 statements?

6 A. I found no inconsistency with his statement.

7 Q. Okay. Have you since reviewed -- I don't suppose you
8 reviewed his deposition in this case?

9 A. No, sir.

10 Q. Your investigation is over?

11 A. Yes, sir.

12 Q. Do you recall if Deputy Newman said the gun was waist level
13 when he fired his firearm?

14 A. I remember him saying the firearm was pointed at Deputy
15 Lopez.

16 Q. Directly at Deputy Lopez?

17 A. At Deputy Lopez, he was fearing for his life and that is
18 why he fired.

19 Q. Would you be surprised if that is inconsistent with Deputy
20 Lopez' testimony in this courtroom?

21 A. I don't know about Deputy Lopez' testimony in the
22 courtroom, sir.

23 Q. How long have you been a detective?

24 A. Total time, nine years.

25 Q. Do you know what a leading question is?

1 A. Yes, I do.

2 Q. What is a leading question?

3 A. When you ask the question in a certain way hoping to get
4 the answer you are looking for.

5 Q. Didn't you ask Deputy Lopez and Newman leading questions
6 during your interviews?

7 A. I don't believe so.

8 Q. Do you recall indicating you saw bang marks on the garage
9 consistent with the cap of an ASP?

10 A. Yes, sir.

11 Q. What does that mean, what is a cap of an ASP?

12 A. An ASP is a metallic baton that is collapsible, we wear
13 them on our belts. The cap is something you can take off for
14 maintenance of the impact weapon. Commonly, if you are banging
15 on something you are not going to do it with the front part of
16 the ASP, you use the cap part, which is the back part, and
17 there are semi-circle marks on the front door I remember from
18 where Detective Newman -- Deputy Newman at that time told me he
19 hit the door trying to get the occupants' attention.

20 Q. Damaging the door?

21 A. Yes, sir.

22 Q. Did you write that in the report?

23 A. It is in the photographs, I don't know that it is in the
24 report.

25 Q. Did you turn that in to Sheriff's Office as damaged

1 evidence in light of a loud music investigation?

2 MS. BARRANCO: Objection, relevance.

3 THE COURT: What is the relevance?

4 MR. PHILLIPS: We withdraw it.

5 THE COURT: Okay.

6 BY MR. PHILLIPS:

7 Q. How forcefully would an officer have to hit the door to
8 cause a dent?

9 A. Depends on the door, but I would imagine with some sort of
10 force.

11 Q. Another thing that it appears you did is look into Mr.
12 Hill's probation at the time; is that fair?

13 A. Yes.

14 Q. Do you know if the probation order had been fulfilled days
15 before and hadn't been filed yet?

16 A. No.

17 MS. BARRANCO: Objection, your Honor, misstates the
18 evidence.

19 MR. PHILLIPS: The jury can draw an inference, your
20 Honor.

21 THE COURT: Restate the question.

22 BY MR. PHILLIPS:

23 Q. Do you know when Mr. Hill's probation ended by order?

24 A. No, sir, I do not.

25 Q. Fair enough.

1 What research did you do to determine if the door was up or
2 down when each of the sequence of shots were fired?

3 A. That was taken care of by our CSI's.

4 Q. What investigation did you do to determine what commands
5 were given and the time they would take?

6 A. You are losing me, sir. Restate the question.

7 Q. What investigation did you do to determine what commands
8 were given versus what commands were heard by Deputy Newman and
9 Lopez respectively?

10 A. They were interviewed independently, and witnesses also
11 telling me they heard some verbal sayings from the deputies on
12 scene.

13 Q. What witness said they heard the verbal sayings of a
14 deputy?

15 A. I believe it was Ms. Ruiz, she didn't know what it was, she
16 heard something.

17 Q. Could have been hey?

18 A. I don't know. I am telling you what I know.

19 Q. Fair enough. What research, if any, did you do to
20 determine where the bullet holes were on Mr. Hill's body versus
21 where the bullet holes were on the garage door?

22 A. Again, that would be for CSI and the Medical Examiner.

23 Q. Did you order the DNA testing?

24 A. I did not, sir.

25 Q. Okay. Did you order any fingerprints of the gun?

1 A. Again, sir, that is all in the house of the DNA -- excuse
2 me, the CSI.

3 Q. Has the gun changed in any way since you picked it up on
4 January 14, 2014?

5 A. It went to the crime lab. What happened to it at the crime
6 lab I don't know.

7 Q. Has it been washed, cleaned with Windex or anything?

8 A. Excellent questions for the crime lab, I don't know.

9 Q. In the picture you took, and you saw it, did it have any
10 congealed blood on it that you saw?

11 A. I don't remember, but there would have been plenty of
12 photographs.

13 Q. Certainly. Did you see any blood spatter on it?

14 A. The CSI's take care of that stuff, yes.

15 Q. Do you recall one of the last statements you said to Newman
16 was "we're good"? Do you recall that?

17 A. No, I don't.

18 Q. Referring to Plaintiff's Exhibit 7, it is an itemized list
19 of items taken by St. Lucie County Sheriff's Office --

20 *MR. PHILLIPS:* Your Honor, may I approach the witness?

21 *THE COURT:* Yes.

22 *BY MR. PHILLIPS:*

23 Q. Do you recognize that, Detective Lebeau?

24 A. It would appear the items were taken as a result of the
25 incident.

1 Q. Okay. 13-D is listed other. I guess it was found in Mr.
2 Hill's pocket. Was that in the box?

3 A. I don't know. I have an accounting from our evidence.

4 Q. Please, do you see 13-D on there?

5 A. Yes, I have it.

6 Q. It is in there?

7 A. It is on my list. I have to look through the box to verify
8 it, but I have the list.

9 Q. Do you know why St. Lucie County Sheriff's Office kept the
10 family's money all this time?

11 A. I have no idea --

12 *MS. BARRANCO:* Objection, relevance.

13 *THE COURT:* Response.

14 *MR. PHILLIPS:* We objected initially to this, your
15 Honor. I will rest with that.

16 *THE COURT:* I will overrule the objection.

17 *MS. BARRANCO:* Your Honor, I'm sorry, I didn't hear
18 what the objection was.

19 *THE COURT:* The response to the objection goes to the
20 issue that they brought up earlier. I overruled the objection.

21 *MS. BARRANCO:* Thank you.

22 *THE COURT:* The witness can answer if you are able to.

23 *THE WITNESS:* I don't know, sir.

24 *BY MR. PHILLIPS:*

25 Q. Do you know what attempts were made -- before I get there,

1 is the criminal investigation over?

2 A. Yes, it is, sir.

3 Q. When do you release evidence once a criminal investigation
4 is over? How do you give it back to the rightful owners?

5 A. That is through the evidence custodian, Dawn Radke, she had
6 better answer that question, I don't know the specifics.

7 Q. Yes, sir. Could you hold up the gun again?

8 *THE WITNESS:* Ma'am, is that okay?

9 *THE COURT:* Yes.

10 *BY MR. PHILLIPS:*

11 Q. Could you hold it -- you can't point a gun at anybody. Can
12 you hold it like it would have been held or you would have seen
13 it in Mr. Hill's hand?

14 A. I never saw it in Mr. Hill's hand.

15 Q. I am sorry. Would you hold it in your hand like it would
16 have been in Mr. Hill's hand?

17 A. That is an impossibility. I don't know how he would do it.
18 I know how I would do it.

19 Q. Fair enough. Hold it like Detective Lebeau?

20 A. I will never put my finger on the trigger, hand down here,
21 having a secure grip on it.

22 Q. You are wearing dark gloves. Mr. Hill was an
23 African-American. The gloves are darker. Take it in your hand
24 and point your finger at me for three seconds.

25 A. Okay.

1 Q. One, two, three.

2 Do it with the gun. Are you ready?

3 A. Yes.

4 Q. Are you aware that Detective Lopez said that door went up
5 and down in three seconds?

6 MS. BARRANCO: Objection, your Honor, misstates the
7 evidence in the record.

8 THE COURT: Well, if there is a disagreement what
9 Detective Lopez said, obviously the jury would have to rely
10 upon its own recollection. Maybe you could rephrase the
11 question.

12 BY MR. PHILLIPS:

13 Q. In your investigation, did you determine how quickly that
14 door went up and down?

15 A. I don't have an exact time frame, no.

16 Q. Detective Lopez said it was three seconds or less -- three
17 seconds from the time it went up and down. Would that be
18 consistent or inconsistent with what you found out?

19 MS. BARRANCO: Objection, your Honor, misstates the
20 evidence.

21 THE COURT: Was that a hypothetical, are you saying if
22 he said it went up?

23 MR. PHILLIPS: Yes.

24 THE COURT: Are you posing that as a hypothetical?

25 MR. PHILLIPS: Yes, your Honor.

1 *THE COURT:* Overruled.

2 *THE WITNESS:* I would say Lopez was there, I was not.

3 *BY MR. PHILLIPS:*

4 *Q.* Is a .38 smaller than a Glock? Is a .38 typically a
5 smaller pistol?

6 *A.* That is objective.

7 *Q.* Smaller than a .45?

8 *A.* Yes.

9 *Q.* A .38 is preferred -- strike that.

10 Let's talk about the demonstration you did. Can you do it
11 again? Let's see if we can get it done this way. What
12 happened when you dropped the gun into the pocket?

13 Is it fair to say you couldn't see the gun anymore?

14 *A.* Yes, in this demonstration.

15 *Q.* Because gravity took it down to the bottom?

16 *A.* Yes.

17 *Q.* Was gravity in effect on January 14, 2014?

18 *A.* Yes, it was.

19 *Q.* In fact, to be able to have that gun so that you recreated
20 where it was in the photo, you held it, didn't you? You held
21 on to the gun so that it could peek out of the pocket?

22 *A.* Yes.

23 *MR. PHILLIPS:* Bear with me, your Honor.

24 *BY MR. PHILLIPS:*

25 *Q.* I believe you testified that the gun was found by Detective

1 Young. He went in after SWAT had come and gone?

2 A. Yes.

3 Q. Thank you.

4 THE COURT: Any redirect?

5 MS. BARRANCO: Briefly, your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. BARRANCO:

8 Q. Sergeant, I know you pointed out earlier you made a mistake
9 in your deposition?

10 A. Yes.

11 Q. You said in December 2016 you were the one pulling the gun
12 out of Mr. Hill's pocket. When you looked at the report you
13 witnessed Detective Young do that?

14 A. Yes, ma'am.

15 Q. I just want to understand, our incident was in January of
16 2014?

17 A. Yes.

18 Q. The incident we are here about today -- and your deposition
19 was when? Do you have it in front of you to look at the date?

20 A. Yes, I sure do. If I could refresh my memory.

21 Q. As to the date, sure.

22 A. Okay. It was taken December 16 -- excuse me, December 6,
23 2016.

24 Q. So, is that about almost three years after the subject
25 incident?

1 A. Yes, ma'am.

2 Q. Now, do you remember being asked about whether or not other
3 people on the scene -- again, you weren't there, but as part of
4 your role as the lead investigator interviewing witnesses, do
5 you remember being asked by Plaintiff's counsel in terms of
6 whether or not any other witnesses heard the deputy say
7 anything?

8 A. Yes, ma'am.

9 Q. And you remember saying something about Ms. Ruiz saying she
10 heard something?

11 A. Yes, ma'am.

12 Q. She wasn't sure?

13 A. Right.

14 Q. And Plaintiff's counsel said, was it hey? Do you remember
15 those questions?

16 A. Yes, I do.

17 Q. Do you recall whether or not, in terms of your
18 investigation, whether or not you determined that music that
19 Mr. Hill was playing loudly, was that playing during the time
20 when the police officers arrived and gave the orders that they
21 gave?

22 A. As a matter of fact, it was. Deputy Newman at the time
23 told me that the music was so loud he had trouble hearing his
24 police radio inside the vehicle when he was pulling up to the
25 address.

1 Q. So, what role did or didn't that play with the witnesses
2 that day? Would you leave that decision to the jury here to
3 decide what they believe?

4 A. Yes, ma'am. Yes, ma'am.

5 Q. Now, you were asked questions by Plaintiff's counsel about
6 the probation status of Mr. Hill. Do you remember that?

7 A. Yes, ma'am.

8 Q. Would you defer to the probation supervisor in regard to
9 what the actual status of Mr. Hill's probation was on the
10 subject date?

11 A. Absolutely, that would be prudent.

12 Q. Thank you.

13 And you were asked questions whether or not the Kel-Tec had
14 been cleaned. Do you remember that question?

15 A. Yes, ma'am.

16 Q. Would you defer to the crime scene folks in regard to
17 whether it had been cleaned as far as any of the testing done
18 or anything like that?

19 A. I would.

20 Q. Now, you were also asked whether or not there was any blood
21 or any kind of -- anything on the gun, blood or human tissue,
22 anything like that. I believe you said you would defer to the
23 crime scene folks?

24 A. Yes, ma'am.

25 Q. You were just looking at the shorts?

1 A. Yes.

2 Q. To your knowledge, have the shorts been cleaned or
3 laundered since the subject date?

4 A. No.

5 Q. Do you remember seeing the pocket, back pocket of those
6 shorts?

7 A. Yes.

8 Q. Did you ever look around or in that pocket?

9 A. I did not look inside of it, no.

10 Q. If you need to do that for my next question, my question
11 is, can you tell us whether or not on the shorts, the back
12 right pocket, there appears to be any blood or human tissue
13 anywhere around that black pocket?

14 A. I don't see any. Would you like me to flip it inside out?

15 Q. No.

16 A. I don't see anything, it is clean.

17 Q. Inside the pocket?

18 A. Yes.

19 Q. But there are other areas of the shorts --

20 A. Yes, that have blood and other stuff.

21 Q. If you want to put those shorts down.

22 A. Okay.

23 Q. Now, from what you remember seeing Mr. Hill's body on the
24 ground as you first came into the garage, as you told us
25 before, what side of his body did he rest on after the

1 shooting?

2 A. He was on his left side with his right side up.

3 Q. This side down, this side up?

4 A. Yes.

5 Q. Was it this side that had the gun in the back pocket?

6 A. Yes, ma'am.

7 Q. You were asked questions about items returned or not
8 returned to the family?

9 A. Uh-hum.

10 Q. Do you know if somebody has to ask for the items back
11 before they are given back to an owner?

12 A. I believe they might need to be, but that needs to go
13 before our evidence custodian, she knows how that stuff works.

14 Q. And her name was?

15 A. Dawn Radke.

16 *MS. BARRANCO:* Your Honor, if I may have a moment?

17 *THE COURT:* Okay.

18 *MS. BARRANCO:* No further questions, thank you.

19 *THE COURT:* All right. Thank you so much.

20 You may gather the materials and step down.

21 *THE WITNESS:* Thank you, ma'am.

22 *THE COURT:* Defense can be lining up your next
23 witness.

24 *MS. BARRANCO:* Yes, your Honor. Can I go outside to
25 make sure he is here?

1 Q. And where are you currently employed?

2 A. St. Lucie County Sheriff's Office.

3 Q. Your current title is sergeant?

4 A. Yes.

5 Q. How long have you worked at the St. Lucie County Sheriff's
6 Office?

7 A. Next year will be ten years.

8 Q. What is your current position there?

9 A. Sergeant on the road, road patrol.

10 Q. As opposed to working in the jail?

11 A. Or being in the detective bureau, traffic, or one of the
12 specialty units.

13 Q. Very good. Let me ask you if you -- let me back you up.
14 In January 2014, what was your position at the Sheriff's
15 Office?

16 A. I was assigned to the special investigations unit as a
17 detective, I currently am on the SWAT team, but on the SWAT
18 team as well.

19 Q. The SWAT team, is that a paid position or voluntary?

20 A. Voluntary.

21 Q. For those of us who don't know, what is SWAT?

22 A. Special weapons and tactics.

23 Q. Is it a particular team of Sheriff's Office personnel that
24 has specialized training?

25 A. Yes.

1 Q. Okay. I'm sorry if I missed it, how many years have you
2 been on the SWAT team?

3 A. Nine, eight and a half, something like that.

4 Q. Now, did there come a time on January 14th of 2014, which
5 is the date of what we keep referring to as the subject
6 incident, was there a time that you were called in as a SWAT
7 team member?

8 A. Yes.

9 Q. Was there a SWAT call out on that day?

10 A. Yes.

11 Q. Could you tell the jury, what is a SWAT call out?

12 A. Essentially, our phones go off and tells us that we have a
13 SWAT incident at a certain location and where to meet if we are
14 going to meet at an area prior to.

15 Q. What is a SWAT incident?

16 A. It could be any number of different things. It could be an
17 active shooter, barricaded subject, a number of different
18 things, whatever the agency calls us out for.

19 Q. Does SWAT get called out for loud vulgar music?

20 A. No.

21 Q. To your knowledge, have you ever been called out to a loud
22 music call because that is the problem?

23 A. No.

24 Q. The subject incident date, what was your understanding why
25 were called out?

1 A. There had been a shooting.

2 Q. Where?

3 A. At, I think, Avenue Q.

4 Q. In Ft. Pierce?

5 A. Yes.

6 Q. If I gave you the address, 1501 Avenue Q, would that
7 refresh your memory at all?

8 A. Probably.

9 Q. Okay. Now, what -- I guess at some point you went to this
10 location?

11 A. Yes. They had a staging a few blocks away, that is where
12 we would bring the vehicles, and then our support vehicles
13 would arrive with extra equipment and things like that.

14 Essentially what we did, we were assigned, we got in our
15 uniforms, got in our dress, and we established what -- we call
16 it an immediate action team, and I was on the immediate action
17 team.

18 Q. And I hate to say this, what is the purpose of an immediate
19 action team?

20 A. The immediate action team is exactly that. We get
21 stationed near the structure and that way if the individual
22 decides to give up and walk out, we have a team that is ready
23 to deal with that. If the individual comes out shooting or
24 whatever, we can deal with that. With the immediate action
25 team, immediate action teams go right away, and other SWAT team

1 members essentially take over the perimeter of the incident.

2 So, originally where there would be road patrol in the
3 perimeter, SWAT team members take those positions up.

4 Q. Now, you have worked on the road as a road deputy?

5 A. Yes.

6 Q. Now a road sergeant?

7 A. Yes.

8 Q. You mentioned the perimeter?

9 A. Yes.

10 Q. Can you explain to the ladies and gentlemen of the jury in
11 regards to a road patrol setting up a perimeter, what does that
12 mean?

13 A. Um-m-m, it is basically the four corners of it. If you use
14 a structure, for instance, some may be on the north, some east,
15 some on the west. The incident can be contained in a small
16 area.

17 Now, when the SWAT team comes, we are able to cover more
18 area especially being more specialized.

19 Q. So, in this particular incident with Mr. Hill, when the
20 SWAT team arrived and -- when you arrived --

21 A. Uh-hum.

22 Q. -- had there been a road patrol -- or perimeter set up by
23 the road patrol?

24 A. Yes.

25 Q. This would have been around the perimeter of the Hill

1 house?

2 A. Yes.

3 Q. Now, what happened in regard to that perimeter once the
4 SWAT team arrived?

5 A. Essentially, the team members now fill those spots. So, I
6 remember there was one deputy who was right in front of the
7 house behind his car, so, at one point they used our armored
8 vehicle to come up and allow him to get behind the car and get
9 out of the area. A SWAT team member took a position further
10 away with better cover.

11 Q. Is this like a changing of the guards between road patrol
12 and SWAT team?

13 A. Yes.

14 Q. You mentioned in this particular incident you remember one
15 of the deputies being behind the patrol car in front of the
16 house?

17 A. Yes.

18 Q. Do you remember who that was?

19 A. I believe it was Lopez.

20 Q. Deputy Lopez?

21 A. Yes.

22 Q. Do you know Deputy Lopez?

23 A. I do.

24 Q. Are you friends with Deputy Lopez?

25 A. I am.

1 Q. Did you ever talk to him about this particular incident?

2 A. No. Deputy Lopez and I worked together before I went to
3 special investigations, our families were close, things like
4 that, and then I was in special investigations for over six
5 years until I got promoted on the road and I happened to come
6 back on the road and Deputy Lopez works for me now.

7 Q. You know him now?

8 A. Yes. I never didn't know him.

9 Q. How about Deputy Newman, one of the Defendants in the civil
10 case we are here about today; do you know Deputy Newman?

11 A. I do through work.

12 Q. Do you consider yourself a friend of Deputy Newman?

13 A. We have never hung out outside of work, we never even
14 worked cases together, really.

15 Q. Do you know how many people are employed with the Port St.
16 Lucie Sheriff's office?

17 A. Over 500, I think, sworn.

18 Q. How many are on the SWAT team?

19 A. We just added a few, I think we are up to 26, 27 on the
20 team.

21 Q. 26 or 27 out of the 500 or so?

22 A. Yes.

23 Q. Do you remember ever seeing Deputy Newman on the scene of
24 this incident?

25 A. Not that I recall.

1 Q. So, when you show up there as part of the SWAT team, are
2 you -- do you have a dog in this fight, so to speak, in terms
3 of what happened between the initial officers and the person
4 inside the house?

5 A. I do not.

6 Q. So you show up, and what is SWAT team's central focus?

7 A. At the time we were getting information there could
8 possibly be children inside as hostages. Like I said, I was
9 initially on the immediate action team, so I was on -- there
10 was a stone wall on the west side of the residence, and that is
11 where I was for quite some time.

12 Q. Now, is that where you were, in front of the house or
13 behind the house?

14 A. Actually the side, the exact west side. We could hop the
15 wall to get to the back of the house or hop around to get to
16 the front of the house.

17 Q. So, you were on ultimately that side of the property?

18 A. Yes.

19 Q. Now, were you waiting there, or what was the purpose of you
20 being over there?

21 A. We were waiting, like I said, until the rest of the team
22 had taken all the perimeter spots away, and they were doing the
23 protocols that the bosses have above us as far as trying to
24 establish communications and different things like that.

25 Q. To your knowledge, was that handled by another team?

1 A. Yes.

2 Q. Now, just to make this clear, if I somehow missed it, did
3 you see the shooting that happened between Deputy Newman and
4 Mr. Hill?

5 A. I did not.

6 Q. How long after that happened do you believe you arrived on
7 the scene?

8 A. I have no idea the exact time. If I had to guess, I would
9 say 15, 20 minutes, because I was working that day, so it
10 wasn't like I was at home and I had to respond. I was working
11 that day.

12 Q. You get the SWAT call out and you go to the location?

13 A. That is correct.

14 Q. Now, you mentioned possible children as hostages, you used
15 the word hostages. What do you mean by hostage?

16 A. At one point on the radio they put out they hadn't
17 accounted for all of the children and one could quite possibly
18 be inside.

19 Q. When you mention hostage, is that a belief one might be
20 held against their will, or somebody else, you didn't know the
21 status?

22 A. I didn't know what the status was at the time, command
23 bosses were going through the communication part, they were
24 just putting certain pieces out to us.

25 Q. Then, did there come a time you were given instructions on

1 what you needed to do?

2 A. Yes.

3 Q. And what were you wearing?

4 A. Well, we wear ballistic vests. At that point they were
5 going to introduce gas into the residence, so, at that time, I
6 gas masked up.

7 Q. Did you have any involvement in the introduction of the gas
8 into the house?

9 A. I did not.

10 Q. What was the understanding of putting gas into the house?

11 A. Really, to disorient, if the individual has to try to think
12 through that, if they are struggling to breathe, they are less
13 likely to try and fight and harm us.

14 Q. Or shoot at you?

15 A. Or shoot at us.

16 Q. Do you know if that gas was introduced into the house
17 before or after it was determined that there were no children
18 in the house?

19 A. After.

20 Q. So, it was first determined there were no children in the
21 house, and then the gas was introduced?

22 A. Yes.

23 Q. And then what happened next in terms of your involvement?

24 A. We made entry into the residence through the back. We
25 tried to make residence -- or entry on one door, but it was

1 taking us entirely too long so we moved to a second door.

2 MS. BARRANCO: Your Honor, if I may show a couple of
3 pictures to Plaintiff's counsel.

4 THE COURT: Yes.

5 MS. BARRANCO: Your Honor, for the record, I am going
6 to be showing the witness what is currently marked as
7 Defendant's Exhibit for identification number 189, and number
8 183, and at this time I would move these two items into
9 evidence, and I do not believe there is any objection to them.

10 MR. PHILLIPS: No objection, your Honor.

11 THE COURT: 181 and 183 admitted without objection.

12 MS. BARRANCO: It is actually 183 and 189.

13 THE COURT: Yes.

14 (Whereupon Defense Exhibit 183 was marked for evidence.)

15 BY MS. BARRANCO:

16 Q. What is this, Sergeant?

17 A. That is the first door we tried to make entry into. That
18 would have been the west door.

19 MS. BARRANCO: Your Honor, may I go where the exhibits
20 are?

21 THE COURT: Yes.

22 BY MS. BARRANCO:

23 Q. Would that be the front or the back of the house?

24 A. The back.

25 Q. Do you recall what side of the house it was, east or west,

1 what direction, east or west?

2 A. West.

3 Q. Okay. Do you remember how many doors there were on the
4 back side of the house?

5 A. I believe there were two.

6 Q. I'm going to show you what is already in evidence as
7 Plaintiff's Exhibit 141 real quick.

8 Just to orient you, this would be the school here, and this
9 is the subject residence?

10 A. Yes.

11 Q. For the jury's benefit, are we talking about this side of
12 the house here? (Indicating)

13 A. Yes.

14 Q. This would have been --

15 A. That is where the back door is.

16 Q. This door?

17 A. Yes.

18 Q. If I understood your testimony, this door depicted on
19 Exhibit 189 located farther west on the back side?

20 A. Yes, yes.

21 Q. Yes?

22 A. Yes.

23 Q. Okay. Now I am going to show you what is in evidence as
24 183, and see if you can tell us what that is?

25 A. That is the same back side, but further east.

1 Q. Okay. I am going to switch to Plaintiff's 141. And my
2 understanding of your testimony, then, is the second picture of
3 the second door, is that also back here, but farther east?

4 A. Yes.

5 Q. Okay. Thank you.

6 So, did anybody with the SWAT team first try to see if the
7 doors were unlocked?

8 A. Yes, we have a ram and tool, that is what their job was,
9 ram and tool. Their job is to knock, announce, and check the
10 lock.

11 Q. Is that ram and tool?

12 A. Yes.

13 Q. Two different items?

14 A. Yes.

15 Q. What are you talking about?

16 A. A ram is a giant hammer. If the door swings out, you lock
17 in the tool and would be able to lock it in with the tool.
18 Those are giant tool marks. That looks like that is what
19 happened here.

20 Q. Right here?

21 A. Yes.

22 Q. Can you tell us if that is a door that swings out?

23 A. Yes, it swings out.

24 Q. Is that harder or easier to open than one that swings in?

25 A. Anything that goes in, the ram can push it in. This one

1 here, you have to get the tool seated properly and depending on
2 the concrete sides, it is difficult to get the tool in there
3 properly, so that might have been why we had difficulty with
4 the door.

5 Q. Okay. So you first tried the first door and then you went
6 to the second door here?

7 A. Yes.

8 Q. Do you remember what role you played in the actual physical
9 entry in the second back door?

10 A. Nothing.

11 Q. What were you doing?

12 A. Waiting for them to open the door.

13 Q. So we can advise visualize this, could you tell me how many
14 SWAT team members would have been present while they were
15 forcibly opening this back door?

16 A. I believe there were two teams, so we would have been maybe
17 eight guys, plus the guys who just deployed gas, and shield
18 guys. So, there was probably 12 of us back there.

19 Q. Okay. So, then, at some point the door is forcibly opened?

20 A. Yes.

21 Q. Is that what is depicted in this picture here?

22 A. Yes.

23 Q. What do you remember doing next?

24 A. Just going through the house and I remember making my way
25 towards the garage.

1 Q. Now, if I were standing at the back door of this Hill home
2 that is depicted in this photograph, walk me through this.

3 I am walking in through the door into the house?

4 A. And then you have to go left towards the garage.

5 Q. Was there a door that led from the home into the garage?

6 A. I believe so, but I don't remember exactly.

7 Q. Let me put another one up. This is Defendant's Exhibit 150
8 in evidence.

9 Sergeant, if you could look at that, can you tell us what
10 that is a picture of?

11 A. It looks like the garage.

12 Q. Okay. Do you see this area over here?

13 A. Yes.

14 Q. Can you tell what that is?

15 A. Looks like a door.

16 Q. Do you know if that is the door you would have come in to
17 go into the garage?

18 A. Yes, I believe it was.

19 Q. Now, in this picture, can you see things in the picture
20 pretty clearly?

21 A. Yes.

22 Q. Was that the amount of lighting that you had when you went
23 into the garage?

24 A. No. It was much darker.

25 Q. Can you tell the ladies and gentlemen of the jury what you

1 recall seeing when you went into the garage?

2 A. I don't remember exactly which number person I was through
3 the door, but I wasn't first, and when I came in initially, I
4 saw Mr. Hill on the ground, but I still had a bunch of area
5 over here that I hadn't cleared yet off to this side, and
6 Captain Hester and Deputy Johnson were dealing with Mr. Hill on
7 the ground, so I continued to clear all this area over here
8 (indicating) making sure there was no one else in the garage.

9 Q. Did the different SWAT team members have different roles
10 once you entered into the house?

11 A. Yes.

12 Q. Okay. So, what were the different roles, just generally?

13 A. Well, it all depends on when you get into a certain room,
14 we all -- if you are the first individual in the room, you are
15 going to go a certain way, and the second person in a certain
16 way, so it felt that my area of responsibility was over there.

17 Q. In the garage?

18 A. In the garage, yes.

19 Q. Okay. Now, was there another part of the SWAT team that
20 entered the house?

21 A. Yes, they were on the other side.

22 Q. They came in the back door?

23 A. Yes.

24 Q. Which way would they go?

25 A. They would have split right.

1 Q. Away from the garage?

2 A. Yes.

3 Q. You weren't in that team?

4 A. I was not.

5 Q. So, you are describing sort of as you are entering the
6 garage, did the SWAT team members kind of fan out, or how would
7 you describe that, if you know? If you remember.

8 A. It wasn't a wall flood or anything like that, but we
9 converged toward the center and took our area of
10 responsibilities outward.

11 Q. Now, you are referring to the garage or the whole house?

12 A. To the garage, to the garage.

13 Q. So, what was your focus and your role in this SWAT team
14 entry into the house?

15 A. Basically, what you see there on the pictures here would be
16 that side of the wall.

17 Q. So, the side that butts up against the interior space of the
18 house?

19 A. Yes.

20 Q. So, would you have come in this door then?

21 A. Yes.

22 Q. Do you remember which way you would have gone?

23 A. I would have gone right.

24 Q. So, this way?

25 A. Yes.

1 Q. Do you remember seeing a stereo system in there?

2 A. It looks familiar, I couldn't tell you a hundred percent.

3 Q. Do you remember anything else specifically seeing in that
4 garage? Do you remember seeing any animals in the garage?

5 A. I don't remember seeing any animals. I remember there
6 being stuff there that I had to poke around and look around and
7 over and stuff like that.

8 Q. What were you focusing on?

9 A. Looking for other individuals that were waiting for us to
10 ambush us or whatever could cause any harm, or maybe there was
11 somebody in there that needed help.

12 Q. Now, when the SWAT team entered Mr. Hill's garage, did
13 somebody flip on the lights?

14 A. I don't remember.

15 Q. Do you recall how you personally were able to see around in
16 the garage?

17 A. We have flashlights on our rifles and handguns.

18 Q. Let me ask you about that.

19 Did you have a weapon on you?

20 A. I did.

21 Q. Did you have it in your hand or hands?

22 A. I did.

23 Q. What do you remember carrying into Mr. Hill's garage with
24 you?

25 A. I believe I had my M-4.

1 Q. What is that?

2 A. A rifle.

3 Q. It is not a handgun like we have in the pictures, the
4 Kel-Tec?

5 A. No.

6 Q. Did you have that ready to go if needed?

7 A. Yes.

8 Q. Did the other -- to your knowledge, did the other SWAT team
9 members also have guns in their hands?

10 A. Yes.

11 Q. Now, did you have any interaction with Mr. Hill's body?

12 A. I did not.

13 Q. Did you see his body?

14 A. I did.

15 Q. I am going to show you what is in evidence as Defendant's
16 Exhibit 121, and ask if you recognize that?

17 A. I do.

18 Q. Do you remember seeing Mr. Hill's body like that on the
19 ground?

20 A. Yes.

21 Q. Now, just for perspective here, this particular picture,
22 can you describe for me and the jury, if you would have been
23 there in the room at this moment, where you would have been?

24 A. Straight to his back.

25 Q. Over here?

1 A. Yes.

2 Q. Do you know what this silver thing is?

3 A. I do not.

4 Q. Do you remember it being there when you were in the garage?

5 A. I do not.

6 Q. Could it have been there and you just don't remember?

7 A. Yes, absolutely.

8 Q. So, you saw Mr. Hill and how close or far away did you get
9 to Mr. Hill's body?

10 A. Maybe three feet.

11 Q. And how long of a time did you focus on his body before
12 doing anything else?

13 A. Mine was very quick, I immediately saw him when I came in
14 and I immediately went to my area. At that time Captain Hester
15 and Deputy Johnson were giving verbal commands so I allowed
16 them to deal with that, and I made sure the rest of the garage
17 was secure.

18 Q. And going back to what you said something about earlier,
19 when you were in the garage looking around, were you wearing
20 anything on your face?

21 A. My gas mask, still.

22 Q. Can you describe what that looks like?

23 A. Yes. It has the eye, small eye, and a giant filter on it
24 and covers your entire face.

25 Q. Super comfortable?

1 A. No. Not in summer days, that is for sure.

2 Q. Okay. And then, how long would you say you stayed in that
3 garage?

4 A. Not long at all because as soon as we were able to clear
5 the rest of the garage and make sure there was no one else in
6 there, we immediately left and went to see if they needed help
7 in any other parts of the garage -- or the residence.

8 Q. When you say "we", who are you referring to?

9 A. I remember myself and, I believe, Deputy Johnson, and
10 Captain Hester left the garage at that time.

11 Q. Do you know if any of the SWAT team members stayed behind?

12 A. I believe Detective Gawjewski stayed behind.

13 Q. Would you defer to each of the SWAT team members to recall
14 what they had seen or not seen?

15 A. Absolutely.

16 Q. Did you see a gun on Mr. Hill?

17 A. I did not.

18 Q. Did you look for a gun on Mr. Hill?

19 A. I did not.

20 Q. Was anybody looking for a gun on Mr. Hill to your
21 knowledge?

22 A. I have no idea. I wasn't. I don't know. Like I said, the
23 other guys would have to speak for themselves.

24 Q. Well, I've got to ask this question: Did you ever put a
25 gun in Mr. Hill's back pocket?

1 A. I did not.

2 Q. Did you ever witness anyone else put a gun in Mr. Hill's
3 back pocket?

4 A. I did not.

5 Q. Did you ever hear anyone say they were going to put a gun
6 in Mr. Hill's back pocket, or saw somebody put a gun in Mr.
7 Hill's pocket?

8 A. I did not.

9 Q. Would you ever lie for Deputy Newman?

10 A. No.

11 Q. When you saw Mr. Hill, did you make a determination from
12 your vantage point whether he was alive or deceased?

13 A. He was deceased.

14 Q. What did you base that on?

15 A. Statements from Deputy Johnson when he rolled the body
16 over. When you first come in, you could see the hand was
17 underneath his body. They were given verbal commands to show
18 his hands, when they rolled his body to make sure he didn't
19 have a gun in his hand and rolled him back, he said he was very
20 stiff like lividity and rigor mortis set in.

21 Q. And those are things that happen to people when they pass
22 away?

23 A. Yes.

24 Q. Did you ever write a report about this?

25 A. I did.

1 Q. Why did you write a report?

2 A. Captain Hester said, hey, I need you to do a report because
3 we disturbed the body, we rolled it and placed it back to make
4 sure there was no gun in his hand. We typically don't write
5 reports on the SWAT team, so it was different when we actually
6 did something, you know, to move the body and roll it back, so
7 he asked me to do it, and so I did.

8 MS. BARRANCO: Your Honor, if I may have a moment?

9 THE COURT: Yes.

10 MS. BARRANCO: No further questions, your Honor.

11 THE COURT: Any cross-examination?

12 MR. PHILLIPS: Briefly, your Honor.

13 THE COURT: Okay.

14 **CROSS-EXAMINATION**

15 BY MR. PHILLIPS:

16 Q. How are you, sir?

17 A. Great. How are you?

18 Q. Good, good, good. You indicated there is specialized
19 training to become a specialized weapon and tactical force
20 member. What is that, what training?

21 A. We have SWAT schools, we have one -- we to go a week long
22 SWAT school every year, and actual SWAT schools that give you a
23 basic SWAT certificate and we train once a month.

24 Q. Did your helmet have a light on it?

25 A. No.

1 Q. I assume nobody had cameras equipped?

2 A. No, sir.

3 Q. Okay. And you saw Mr. Hill get rolled over, right?

4 A. No. I -- initially, when I came in, I saw Mr. Hill's body
5 and immediately turned to check the rest of the garage, and I
6 can't remember, maybe I did see Deputy Johnson roll it. I
7 remember him specifically talking about him being stiff when he
8 rolled him.

9 Q. Do you recall having your deposition being taken?

10 A. I do.

11 Q. Do you recall whether or not you said in your deposition
12 that you saw him rolled over?

13 A. Yes.

14 Q. You are not changing your testimony?

15 A. No. No. Absolutely.

16 Q. And you indicated to Ms. Barranco, one of the purposes to
17 roll him over is to look for a gun under him?

18 A. Yes.

19 Q. An officer stated somebody pointed a gun or there was a
20 police incident involving firearms?

21 A. Yes.

22 Q. Okay. And you saw no gun in his hand or on his body?

23 A. I did not see a gun.

24 Q. No gun in his pocket?

25 A. I did not see a gun.

1 Q. You put that in your report?

2 A. I did not write in the report I had seen a gun. If I had
3 seen a gun, I would have put it in the report.

4 Q. Okay. Why? Why is that important?

5 A. Because I would have at least made mention of it, that he
6 had a gun on him.

7 Q. Why are reports important in law enforcement?

8 A. To depict what happened.

9 Q. Is it true that sometimes you guys have to -- you
10 investigate a lot of crimes?

11 A. Sure.

12 Q. And as we say, this is four years ago, sometimes weeks,
13 months, you need to recall that specific crime?

14 A. Yes.

15 Q. And serve justice by testifying?

16 A. Sure.

17 Q. Do you know why it is that SWAT -- so SWAT probably gets
18 the more significant call outs than road patrol?

19 A. Well, road patrol initially responds, yes, absolutely.

20 Q. So, why would it be more important for road patrol to have
21 reports than SWAT?

22 A. Typically -- there is a report written, there is an after
23 action, individual members don't normally write reports.

24 Q. Okay. You wrote a report?

25 A. I did.

1 Q. Hester wrote a report?

2 A. Okay.

3 Q. Did you review anybody else's reports?

4 A. I did not.

5 Q. Those reports should be accurate, truthful and as full as
6 can be, right?

7 A. Yes.

8 MS. BARRANCO: Objection, calls for speculation about
9 what other reports may or may not have in them.

10 MR. PHILLIPS: Reports generally.

11 THE COURT: I will allow the question. I thought the
12 question was what the witness believes reports generally should
13 be. Overruled.

14 BY MR. PHILLIPS:

15 Q. It is important that the reports are accurate?

16 A. Yes.

17 Q. Truthful?

18 A. Yes.

19 Q. It is important reports have a full disclosure of facts so
20 you could recall them later?

21 A. Yes.

22 Q. Do you know if the power had been cut?

23 A. I don't remember.

24 Q. As a detective at the time, right?

25 A. Yes.

1 Q. As SWAT at the time, right?

2 A. Uh-hum.

3 Q. Someone looking for a gun, right?

4 A. I wasn't looking for a gun.

5 Q. Someone investigating a police involved shooting, right?

6 A. I wasn't investigating a police involved shooting.

7 Q. What were you doing?

8 A. I was there acting as a SWAT member.

9 Q. Okay. You saw no gun?

10 A. I did not.

11 Q. You reported no gun?

12 A. That is right.

13 Q. Thank you, sir.

14 A. Thank you.

15 *THE COURT:* Any redirect?

16 *MS. BARRANCO:* Very briefly, your Honor.

17 **REDIRECT EXAMINATION**

18 *BY MS. BARRANCO:*

19 Q. Did you look for a gun on Mr. Hill's body?

20 A. I did not.

21 Q. What were you doing when you were in the garage?

22 A. Safety for the rest of the team, we were looking for Mr.
23 Hill and anybody else in there.

24 Q. Whether or not anyone else on the team saw a gun on Mr.
25 Hill's person, would you defer your testimony to them in that

1 regard?

2 A. Absolutely.

3 MS. BARRANCO: No further questions.

4 THE COURT: Thank you very much, ladies and gentlemen.
5 We will take our afternoon break right now. We will be in
6 recess for 15 minutes. It is ten minutes to 4:00, we'll be
7 back at about five minutes after 4:00, five to seven minutes
8 after 4:00. I will give you a full 15 minutes.

9 Do not discuss the case or do any research. We will
10 see you back at five minutes after 4:00.

11 *(Thereupon, the jury leaves the courtroom.)*

12 *(Thereupon, a short recess was taken.)*

13 THE COURT: Okay, bring them in.

14 *(Thereupon, the jury returned to the courtroom.)*

15 THE COURT: Okay, you may be seated.

16 Defense may call your next witness.

17 MS. BARRANCO: At this time the Defendant will call
18 Deputy Thomas Johnson to the stand.

19 THOMAS JOHNSON, DEFENDANT'S WITNESS, SWORN

20 THE COURTROOM DEPUTY: Please state your full name and
21 spell your last name for the record.

22 THE WITNESS: Thomas Johnson, J-O-H-N-S-O-N.

23 **DIRECT EXAMINATION**

24 BY MS. BARRANCO:

25 Q. Good afternoon, Deputy. How are you?

1 A. I'm good.

2 Q. I hope you didn't get too wet outside.

3 A. No, I am dry.

4 Q. Please state your full name and spell your last name for
5 the record.

6 A. Thomas Johnson, J-O-H-N-S-O-N.

7 Q. Where are you employed, Deputy Johnson?

8 A. St. Lucie County Sheriff's Office.

9 Q. How long have you been employed there?

10 A. 15 years.

11 Q. What is your current rank?

12 A. Detective.

13 Q. That must mean you work currently in the detective bureau?

14 A. I am assigned to CID. I am in the warrants division right
15 now.

16 Q. You serve warrants on people?

17 A. Yes.

18 Q. Currently?

19 A. Yes, currently.

20 Q. Back in January 2014, what was your title back then?

21 A. I was a deputy in the training unit back then.

22 Q. Did you have any affiliation with the SWAT team?

23 A. Yes, ma'am.

24 Q. Were you on the SWAT team?

25 A. Yes, ma'am.

1 Q. Did there come a time you received a SWAT team call out to
2 go to a home on Avenue Q on January 14, 2014?

3 A. Yes, ma'am.

4 Q. And do you have an independent memory of going to this
5 house?

6 A. Yes, ma'am.

7 Q. What was your understanding of the reason for the SWAT call
8 out?

9 A. Once we got there, we learned there was a guy inside there
10 with a gun.

11 Q. And so, to state the obvious, I guess, were you there when
12 the shooting happened?

13 A. No.

14 Q. You came after?

15 A. After.

16 Q. You have no knowledge of what happened between Deputy
17 Newman and Mr. Hill?

18 A. No.

19 Q. Do you know what time it was when you got to the scene?

20 A. I couldn't tell you, no.

21 Q. You were called sometime in the afternoon?

22 A. I know it was daylight when I got there. I can't tell you
23 exactly what time.

24 Q. Tell me if you remember what your role was that day on
25 SWAT?

1 A. I was assigned on the entry unit at that time.

2 Q. When you say entry unit, what do you mean?

3 A. When a decision was made to make entry into that home I was
4 part of that unit to go inside.

5 Q. Do you remember which door or window that you entered the
6 home through?

7 A. It was in the back of the house I know.

8 Q. Was it a door?

9 A. It was a door.

10 Q. Do you recall if it had to be forcibly opened by the SWAT
11 team?

12 A. I don't recall. I don't remember exactly if we had to
13 force our way in.

14 Q. You don't have a memory of that part of the case?

15 A. No.

16 Q. What do you remember about what happened next in terms of
17 your involvement?

18 A. As far as my involvement, we went inside the residence,
19 there was another part of the SWAT team that went in and
20 cleared the right side of the house, and then I was assigned to
21 the part of the team that we cleared the left side of the
22 house.

23 Q. Let me stop you for a moment. Did you have a team leader
24 for your group?

25 A. Yes.

1 Q. Who was that?

2 A. Brian Hester.

3 Q. Bear with me a moment. If I were one of the SWAT team
4 members going in the back door of the house, just to
5 understand, which way would you have gone, right or left?

6 A. To the left.

7 Q. This way?

8 A. Yes.

9 Q. Do you recall who else was on your team that went to the
10 left?

11 A. I know Brian for sure.

12 Q. Brian Hester?

13 A. Brian Hester, sorry, yes. Brian Hester for sure, and I
14 can't recall exactly who else was in that little pack.

15 Q. And tell us what you would have been wearing as a SWAT team
16 member.

17 A. Our uniform was green pants, green top with our SWAT vest
18 on, a big heavy vest.

19 Q. Okay. And --

20 A. And a helmet.

21 Q. And this particular occasion, do you recall if you had to
22 wear any covering on your face?

23 A. Once the decision was made to go inside, yes, I had a gas
24 mask on.

25 Q. Do you know why you had to wear a gas mask?

1 A. Yes, because there was a chemical agent deployed inside the
2 house.

3 Q. Was that before or after you went in?

4 A. Before.

5 Q. They put in the gas first. Do you know if there was a
6 period of time they waited before you were asked to go into the
7 house?

8 A. I know we always wait, as far as how long, I don't
9 remember. I can't tell you.

10 Q. Now, do you ever remember seeing Deputy Newman on the scene
11 that day?

12 A. No.

13 Q. Do you know Deputy Newman?

14 A. Yes.

15 Q. Are you friends of Deputy Newman?

16 A. Yes.

17 Q. Would you lie for Deputy Newman?

18 A. No.

19 Q. Let me ask you, back on the scene, you are going to the
20 left towards the garage, can you describe what the lighting was
21 inside the house?

22 A. It was dim to almost -- to no lighting, but I know it was
23 dim, we had to -- we had lights on the weapons, and we had to
24 use flashlights to see.

25 Q. And what type of weapon were you personally carrying?

1 A. It was a handgun or a rifle.

2 Q. It was something?

3 A. It was something, yes.

4 Q. And were you carrying it in a manner that you were ready to
5 use it if you needed to?

6 A. Yes.

7 Q. And what was the role that you were playing as a member of
8 the SWAT team?

9 A. What do you mean?

10 Q. Were you tasked with any particular job that you, Deputy
11 Johnson, had to focus your energy on?

12 A. As far as we knew, we were looking for a guy with a gun.

13 Q. Do you know whether or not Mr. Hill -- before you entered
14 the house, did you know whether or not he was alive or dead?

15 A. I did not know.

16 Q. Okay. Did you know whether or not there had been any entry
17 of a robot by the bomb team with a camera?

18 A. I know that they said the bomb team was doing something,
19 and then I know they said -- the bomb team -- they said there
20 was a guy laying on the ground.

21 Q. Did you hear that before or after you went in the house
22 yourself?

23 A. That was before.

24 Q. Now, do you know on what side of the house the robot would
25 have introduced this camera to visualize?

1 A. In the garage.

2 Q. Would that be the front or back of the house?

3 A. The garage was in the front.

4 Q. And you would have come in from the opposite side of the
5 house?

6 A. We came in from the back of the house, yes.

7 Q. All right. So, then you get into the garage, and how tall
8 are you?

9 A. 6'5".

10 Q. Are any other members of the SWAT team 6 foot 5 inches or
11 any taller than that?

12 A. No. I was the tallest guy.

13 Q. Now, do you remember how you got into the garage?

14 A. Just -- I don't remember if there was a door or just an
15 open door, I can't remember that. I don't know.

16 Q. Tell us what you remember once you made your way into the
17 garage of Mr. Hill's house.

18 A. Once we got into the garage and I saw a guy lying on the
19 ground, we went -- when I went up to the guy, I basically
20 looked at him and saw a gun in his back pocket, and then I
21 basically -- I touched him, rolled him over, just to check his
22 hand, he had a hand trapped underneath his right side. I
23 rolled him over, and my partner or somebody checked his left
24 hand to see if there were any weapons in his hand. I let him
25 go and he rolled over into the position he was.

1 Q. You mentioned seeing a gun in this person's back pocket?

2 A. Yes.

3 Q. What were you doing when you saw the gun in his back
4 pocket?

5 A. We were trying -- we were going to clear the garage,
6 somebody went around to clear part of the garage. I saw the
7 body, so I went towards the body and that was it, I saw the gun
8 and I told everybody, hey, gun, you know.

9 Q. Now, what was the purpose of you rolling the body from its
10 original state?

11 A. That was literally to check to make sure we could see his
12 hand, if anything was in his left hand.

13 Q. I am going to show you what is in evidence as Plaintiff's
14 Exhibit 94, and see if you recognize that?

15 A. Yes.

16 Q. What does that depict?

17 A. That is exactly what I saw, in his right pocket, that is
18 exactly what I saw, the butt of a gun. You could see the butt
19 of the gun.

20 Q. Are you referring to this area here?

21 A. Yes.

22 Q. Deputy Johnson, did you put that gun in Mr. Hill's back
23 pocket?

24 A. No. No, ma'am.

25 Q. Did you see anyone put that gun in Mr. Hill's back pocket?

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 5

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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1 A. No, ma'am.

2 Q. Did you hear anybody say they were going to put that gun in
3 Mr. Hill's back pocket?

4 A. No, ma'am.

5 Q. So, when you came upon the body, you saw it as we see it
6 here?

7 A. Yes.

8 Q. Now, in this picture -- was the lighting the same as in
9 this picture as when you were in there or different?

10 A. It was -- well, I see a light there now, but it was dark,
11 though, it was dim.

12 Q. And did you say -- I will ask you again, I am not sure if
13 you answered this already, but did you say you had any kind of
14 lighting on your weaponry or anything?

15 A. Yes.

16 Q. How would that work? Was it attached to your weapon?

17 A. Yes, the lights were attached to the weapon.

18 Q. Now, how long would you say you were with the body?

19 A. Um-m-m, I honestly don't -- I couldn't tell you how long.

20 Q. Was there anyone else with you when you saw this gun in Mr.
21 Hill's back pocket?

22 A. I know Brian Hester was next to me. Honestly, I'm not sure
23 who else was, you know, right around me.

24 Q. Do you know if the other SWAT team members had the same
25 role as you or different roles?

1 A. As far as going -- as far as the entry, our task was going
2 in to find a guy with a gun. Once we get inside a room, there
3 is some guys that go and clear, you know, certain parts of that
4 room, the first person -- I went this way, I am sure other
5 people were going around to different sides to make sure there
6 is nobody else in the garage.

7 Q. I apologize if you already explained this, can you tell us
8 what you mean by clearing the room?

9 A. Just to make sure -- we are checking for people or someone
10 can hide -- a person can hide, and that is what clearing means.

11 Q. And when you had contact with Mr. Hill's body, did it
12 appear to you whether he was still alive or deceased?

13 A. He appeared deceased.

14 Q. Why is that?

15 A. The blood there -- once I rolled him over, he was stiff as
16 could be, rigor mortis was setting in, and by the amount of
17 blood there, it looked pretty obvious.

18 Q. Now, did you write a report, Deputy Johnson, in regard to
19 what you did with Mr. Hill's body?

20 A. No.

21 Q. Why not?

22 A. Just because that was normal practice for -- I have never
23 written a report for any SWAT call out, ever.

24 Q. And what is your understanding of the purpose of SWAT as
25 opposed to say like road patrol?

1 A. We were tasked with going in with -- to more specialized
2 calls or tougher calls from road patrol, barricaded subjects,
3 hostage rescue, sometimes search warrants, and in this
4 instance, it is a barricaded subject.

5 MS. BARRANCO: Your Honor, may I have a moment?

6 THE COURT: Yes.

7 MS. BARRANCO: Your Honor, I have no further
8 questions.

9 THE COURT: Cross-examination.

10 **CROSS-EXAMINATION**

11 BY MR. JOHNSON:

12 Q. Good afternoon, Deputy Johnson.

13 A. Good afternoon.

14 Q. When you saw Mr. Hill's body lying on the floor of the
15 garage, was it a bloody scene?

16 A. Yes.

17 Q. I think you mentioned this earlier, but as part of your
18 duties with SWAT, you actually rolled Mr. Hill's body over to
19 check his hands to see if there was a gun in it?

20 A. Yes.

21 Q. Can you confirm there was in fact no gun in Mr. Hill's
22 hands?

23 A. Yes, my partner said it was clear.

24 Q. Okay.

25 MR. JOHNSON: May I have a moment to confer?

1 for us?

2 A. H-E-S-T-E-R.

3 Q. Your current rank is what?

4 A. Captain.

5 Q. Where are you employed?

6 A. St. Lucie Sheriff's Office.

7 Q. How long have you been employed there?

8 A. I have been employed with the St. Lucie Sheriff's Office
9 for a total of about 17 years, 17 and a half years.

10 Q. Okay. And I'm going to take you back in time a little bit,
11 over four years ago, January 2014, which is when our subject
12 event occurred involving Deputy Newman and a man by the name of
13 Gregory Hill.

14 Back in January 2014, do you recall what your rank was at
15 the Sheriff's Office?

16 A. I was a sergeant.

17 Q. And what department did you work in?

18 A. At that time it would be considered patrol support, but I
19 was a sergeant over a training unit for the Sheriff's Office
20 then.

21 Q. And what is your current position with them?

22 A. Currently, I am a captain and my -- I am what is called a
23 division, and division is professional standards and community
24 engagement.

25 Q. So, it sounds like currently you are not going out on the

1 road every day?

2 A. No, ma'am.

3 Q. Okay. Let me go back to January 2014. Did you have any
4 involvement in the SWAT team back in January 2014?

5 A. I did, I was a member of the SWAT team.

6 Q. Was that a voluntary position?

7 A. Yes, ma'am.

8 Q. And are you still currently on the SWAT team?

9 A. No, ma'am, I just retired from the SWAT team in December of
10 this year or -- I am sorry, December 2017.

11 Q. The last December we had?

12 A. The last December we had.

13 Q. Not quite ready for all of the holiday shopping?

14 A. Correct.

15 Q. Soon enough.

16 Why did you retire from SWAT in December 2017?

17 A. It is a generally accepted rule in our agency, once you
18 promote to captain you come off the special team because of the
19 responsibility and tasks associated with being a division
20 commander.

21 Q. Do you recall having a SWAT call out back on January 14,
22 2014, in regard to a house located 1501 Avenue Q, Ft. Pierce,
23 Florida?

24 A. Yes, ma'am.

25 Q. Do you recall what time you responded to the scene?

1 A. It was afternoon, and it was sometime around the
2 3:00 o'clock -- somewhere in that vicinity, 3:00 p.m. Sorry.

3 Q. And do you recall why SWAT was called out on that
4 particular occasion?

5 A. Our initial information was that we had a barricaded
6 subject in a residence and there had been shots fired at that
7 residence and an officer involved as well.

8 Q. And did you have any information in regard to what the
9 initial call was, why law enforcement was ever out at that
10 scene to begin with?

11 A. Not when the initial response and initial notification of
12 SWAT call out, I did not. Once being on the scene, we
13 eventually get debriefed what the situation is, and then I do
14 recall being briefed on what the initial call was, yes.

15 Q. And what is your memory of what you were briefed in regard
16 to what the initial call was in reference to?

17 A. The initial call was in reference to, I believe, a loud
18 music complaint, something to do with the school across the
19 street. That is all I remember.

20 Q. What was the reason why SWAT was called out?

21 A. Barricaded subject.

22 Q. Was SWAT called out because of loud music?

23 A. No, ma'am.

24 Q. Now, did you hold any particular position on this
25 particular SWAT team on this particular day?

1 A. I was a SWAT team leader, what would be called a SWAT team
2 leader.

3 Q. What does that mean?

4 A. I was over an entry team so I would have -- I call it an
5 entry team, but our teams perform various functions.

6 It would have anywhere from seven to eight deputies that
7 would be under my team and we fill numerous different roles,
8 all of our team members are very versatile in their training.

9 Q. Now, did you have any involvement in -- you mentioned entry
10 team. Did you have any involvement in actually breaching the
11 door and getting into the house?

12 A. When the decision was made to enter the residence, I was on
13 the entry team.

14 I was not involved in breaching the door, I was further
15 back in that team because there were two team leaders that
16 night on that entry team and I joined up along with other
17 individuals, part of the SWAT team. We joined up with the team
18 that was already out, what would be called an immediate action
19 team.

20 Q. Now, the immediate action team, to your knowledge, did they
21 ever enter the house as the immediate action team or was that a
22 role tasked to the entry team?

23 A. I'm not following you.

24 Q. That did not make sense. It is getting late, sorry.

25 You mentioned an immediate action team and an entry team?

1 A. Yes.

2 Q. Are they two different teams of SWAT members?

3 A. Two different roles within the course of events. They were
4 assigned as the immediate action team initially, they were
5 staged as an immediate action without going into detail what
6 they did. When the decision to make entry into the residence
7 was made, they become the entry team as well.

8 Q. They switch hats, so to speak?

9 A. Correct.

10 Q. Although they don't move their hats on their heads?

11 A. Correct.

12 Q. They have helmets?

13 A. Yes.

14 Q. Did they have gas masks?

15 A. Yes, we did put gas masks on.

16 Q. Did you have involvement in putting gas into the house?

17 A. I did.

18 Q. Tell us about that. What was your involvement in that
19 regard?

20 A. S-Z remember winding, when the decision was made from the
21 command post to put together a gas plan and introduce gas in
22 the residence, I was in charge of placing out the teams that
23 introduced the gas into the residence.

24 Q. You mentioned going back in time, and I apologize for
25 jumbling around here. So, you get to the scene, Captain, then

1 as a sergeant, as a team leader of the SWAT team, one of the
2 team leaders, and what is generally the first thing that
3 happened out there in regard to the SWAT team's involvement?

4 A. The first thing we are going to do is set up, number one,
5 an immediate action team. Another thing simultaneously going
6 on, we are taking over the perimeter from the patrol units on
7 scene, we will take over the inner perimeter of that scene and
8 get those individuals back out into what we call an outer
9 perimeter area.

10 Q. You are essentially replacing the road patrol perimeter
11 with SWAT team members?

12 A. Correct, and maybe changing the positions of those people
13 as well to a better -- what we would call a better point of
14 cover where they were behind something solid.

15 Q. Is this where the special weapons and tactics start to come
16 into play?

17 A. Correct.

18 Q. That is SWAT?

19 A. Correct.

20 Q. What do you recall doing next on this scene?

21 A. We've rewound, so, from what point are you asking?

22 Q. I apologize again. You are talking about when SWAT first
23 arrives and reestablishing the perimeter, and after that, what
24 happened next from that point?

25 A. After we established an immediate action team, I assisted

1 with the armored vehicle in removing the deputies and officers
2 that were posted to the residence. Using the armored vehicle,
3 we replaced all of those deputies with SWAT personnel for the
4 perimeter.

5 The next thing I recall we did is deployed the LRAD. The
6 LRAD is a communication device that attaches to the front of
7 our armored vehicle or it can be free standing and, for lack of
8 a better term, it is like a loudspeaker that we can use to
9 speak into and it is extremely loud, it can be heard from far
10 away, inside residences and vehicles and so forth.

11 Q. Does it have a volume to it?

12 A. It does.

13 Q. So, you can control whether it is loud, kept up loud or
14 really loud?

15 A. Uh-hum.

16 Q. Do you know if the LRAD was utilized in attempting to make
17 contact verbally with whoever was in the house?

18 A. It was. One of our negotiators was actually in the armored
19 vehicle with us. We positioned the vehicle with the LRAD
20 device, I can't remember if we put it on the front of the
21 vehicle or actually set it in front with the tripod that it
22 also has, and we were across the street from the residence,
23 kind of catercorner. One of the negotiators actually utilized
24 the device and tried to make contact inside the residence.

25 Q. So we don't get confused, is the LRAD something different

1 than the robot?

2 A. Yes.

3 Q. Did you have any involvement in the robot deployment?

4 A. I did not. That is a piece of equipment that is operated
5 and run by the bomb team.

6 Q. Okay. Do you know a gentleman by the name of Christopher
7 Cicio?

8 A. Yes, ma'am.

9 Q. Do you know if he had any involvement in that part of this
10 whole situation?

11 A. I do know he was there that night.

12 Q. And did you know him to be a member of the bomb team?

13 A. Yes.

14 Q. Okay. Now, did you ever see Deputy Newman, Christopher
15 Newman, a defendant in this civil case, did you see him out
16 there that night, or day?

17 A. I don't recall, I honestly don't recall. There were
18 numerous deputies that were on the scene when we got there and,
19 honestly, I could not tell you who was out there.

20 Q. Well, you did mention something about an armored vehicle
21 removing some of the road patrol officers?

22 A. Correct. Uh-hum.

23 Q. Is that just as it sounds? What does this armored vehicle
24 look like?

25 A. It is what is called a military surplus vehicle, it was

1 designed for use in Desert Storm and Afghanistan for IED's. It
2 has six wheels, 12-foot high, really big and probably close to
3 20 some-odd feet long, and so, in utilizing it that evening, we
4 would basically just pull it up to a point where there were
5 deputies behind or in places we wanted to move them from and
6 they walk with us as we slowly backed out and they were behind
7 the cover to evacuate that area.

8 Q. To demonstrate, my notepad, if it were big enough, could be
9 going along and I would be the deputy behind it providing cover
10 by this armored vehicle?

11 A. Correct.

12 Q. To get away from in front of the house?

13 A. That is correct.

14 Q. Was that taking place around the area of the garage in
15 front of Mr. Hill's house?

16 A. It was in front of the house, there was also some deputies
17 that were on the corner of the street, deputies further down
18 the street, and so we utilized that vehicle to replace the
19 entire perimeter.

20 Q. The part you are talking about now is where the SWAT team
21 is going in and replacing the road patrol perimeter with SWAT
22 team members?

23 A. Correct.

24 Q. Now, moving ahead chronologically, what is the next thing
25 you recall?

1 You said something about the gas being introduced into the
2 house?

3 A. So the next -- again, we are being directed from the
4 command post. After the LRAD was -- there is no communication
5 through the LRAD, I was instructed to put together a gas plan
6 for the residence. To put together a gas plan was putting
7 together teams to deploy the gas, how we are going to deploy
8 the gas, and which gas would be used, and we follow protocol
9 and procedures with introducing gas.

10 Q. And what was the purpose of introducing gas into this
11 particular home?

12 A. Introducing gas in this home would be to, number one, draw
13 the persons in the residence out of the residence, or in many
14 cases it is used to funnel the person inside that residence
15 away from certain areas of the residence and into -- for
16 example, if we go in a front door of a residence, instead of
17 going in and trying to search through the residence, we would
18 try to funnel that person more to a part where maybe we can
19 gain access to C N, and things of that nature.

20 Q. C N?

21 A. See inside.

22 Q. Oh, see inside?

23 A. That is my accent.

24 Q. No problem, I want to make sure I understand what you are
25 telling us.

1 The gas introduced into the house, did it have its desired
2 effect?

3 A. Well, there was no -- no one came out of the residence, and
4 there was no communication.

5 Q. Okay. Captain, did you at any time -- through the usage of
6 the gas, did you have reason to believe or did you know whether
7 or not Mr. Hill was either -- whether he was deceased or still
8 alive in the house?

9 A. I did not.

10 Q. To your knowledge, did anybody in the Sheriff's Office know
11 whether or not Mr. Hill was inside dead or alive?

12 A. No, they did not. Not to my knowledge.

13 Q. That is my question. Not to your knowledge, okay.

14 So, the gas is introduced into the home, and how does that
15 happen generally, or in this particular case?

16 A. In this particular case, it was a 40-millimeter launcher,
17 it is a weapon system that is about this big (indicating) that
18 breaches open and a 40-millimeter cannister, approximately
19 6 inches in length, goes inside of that, it is propelled out of
20 that weapon. You can picture a small shotgun, a much bigger
21 round barrel, and it is introduced into the residence, that day
22 through a window, and the trajectory of that particular round
23 is -- it is to make contact with the ceiling area or a high
24 part in the room to where then the contents would be dispersed,
25 whether it is powder or liquid.

1 Q. Did some period of time pass before the next step was
2 taken?

3 A. Yes.

4 Q. And I think you said nobody responded to the gas, nobody
5 came out coughing, nobody, you know, knocked from the inside of
6 the garage saying let me out, I'm in here. Nothing like that
7 happened obviously?

8 A. That is correct.

9 Q. What was the next thing that happened?

10 A. The next thing that happened was, I went back to the
11 command post area at some point and had information that the
12 bomb team had gotten their robot working and they were going to
13 be able to use the robot with a camera system to penetrate an
14 area of the residence to see inside and peer in, so we could at
15 least have an idea of what was going on inside the residence.

16 Q. And to your knowledge, did that occur?

17 A. That did occur.

18 Q. And what was your understanding of the outcome of that
19 action?

20 A. That is when we were informed that there was a subject
21 lying on the floor in the garage.

22 Q. And then, once you got that information, what happened
23 next?

24 A. Once we got that information, the decision was made for us
25 to enter the residence, so that is when I explained that I

1 lined up with Sergeant Petit along with several other members
2 of the SWAT team at that point and we made entry into the
3 residence.

4 Q. How was that accomplished?

5 A. It was done from the back door, south side of the
6 residence, and I can't recall -- I believe they breached the
7 door. I was further back, I can't recall if he breached the
8 door or if there was a key to it, I honestly don't recall.

9 MS. BARRANCO: Your Honor, may I get one of the
10 exhibits?

11 THE COURT: Yes.

12 BY MS. BARRANCO:

13 Q. This is Exhibit 189. Does that look familiar?

14 A. That looks like that is the back door and it looks like we
15 breached the back door.

16 Q. Let me show you 183. Does that refresh your memory at all
17 how the SWAT team got into the residence?

18 A. That would have been a screen that had to be pried, and it
19 would have been in any door, so we would have hit it with the
20 ram.

21 I do not remember seeing it, but it is obvious from the
22 pictures that is what occurred that night.

23 Q. The pictures, did they suggest to you the entry was forced
24 by SWAT or the doors were unlocked?

25 A. No. It was forced.

1 Q. Did you enter the residence?

2 A. We did.

3 Q. What do you remember about your involvement in terms of
4 entry into the residence?

5 A. I just know that I went -- there was like a galley kitchen
6 it seems like, but a little narrow hallway kitchen type area.

7 Q. From the back of the house?

8 A. From the back of the house going to the front of the house.

9 Q. Walking in. Okay.

10 A. Sergeant Petit's team was in front, they went to the right,
11 and so I took my team to the left, and we cleared through the
12 house, and that is just a methodical process that we go through
13 clearing the residence as we go. We were wearing gas masks
14 because we introduced gas into the residence and we ended up in
15 the garage of the residence where we found Mr. Hill.

16 Q. Tell me about that. What do you remember about entering
17 the garage in Mr. Hill's residence?

18 A. I don't remember a whole lot about entering the garage. I
19 remember going into the garage and I know Deputy Sheriff
20 Johnson or Detective Johnson was with me, him and I ended up
21 over by Mr. Hill. And then, you know, then from there, we gave
22 commands to see his hands. I couldn't see one of his hands, I
23 could see a pool of blood on the floor, and he was unresponsive
24 to our commands.

25 Q. And did I ask you what the lighting was like in the garage?

1 A. You did not. It was dark, may have been a little bit of
2 ambient light coming from the back of the house, but I don't
3 recall. It was dark in the garage.

4 Q. You gave Mr. Hill commands. And what was your specific
5 role in regard to the entry team upon entering the garage?

6 A. I would have been the team leader, and as a team leader, I
7 don't put myself in a role unless we run out of members of the
8 team. Generally, I stand back and direct members of the team
9 to clear certain areas or to hold on certain areas.

10 Once we were in the garage and we had cleared that portion,
11 and Tom is holding -- Detective Johnson is holding on to Mr.
12 Hill, I immediately go over to the area and assist him.

13 Q. When you say Deputy Johnson was holding on to Mr. Hill,
14 what do you mean, he was holding on to Mr. Hill?

15 A. No. I am sorry, I shouldn't use police terminology, but he
16 was basically standing there with him at gunpoint and
17 communicating that he had the subject on the ground over there
18 to me.

19 Q. And did you proceed to Mr. Hill's body?

20 A. I did.

21 Q. Please tell the ladies and gentlemen of the jury what you
22 with your own eyes saw with regard to Mr. Hill's body.

23 A. I saw Mr. Hill laying on the ground, laying on his left
24 side in the northwest corner of the garage, corner area, he was
25 laying sort of on his left side. If I remember correct, one

1 hand was concealed under him and there was a pool of blood on
2 the ground.

3 Q. Did you see any weapons on him?

4 A. I did.

5 Q. Would you tell the jury what you saw?

6 A. I saw a small, what was a semiautomatic pistol in his back
7 pocket and it would have been his right back pocket that I saw
8 it in.

9 The handle of it was hanging partially out of his --
10 hanging partially out of the back pocket. It was clear to me
11 it was a handgun.

12 Q. Captain, I need to ask you this question, did you -- on
13 January 14, 2014, when you went into that garage with Mr.
14 Hill's body, did you put a gun in Mr. Hill's back pocket?

15 A. Absolutely not.

16 Q. Did you ever see anybody else put a gun in Mr. Hill's back
17 pocket?

18 A. Absolutely not.

19 Q. Did you ever hear anybody in your presence say that either
20 they had put a gun in Mr. Hill's back pocket or they were
21 planning to put a gun in Mr. Hill's back pocket?

22 A. Absolutely not.

23 Q. Captain, did I ask you if you knew Deputy Newman?

24 A. No, ma'am, you did not.

25 Q. Do you know Deputy Newman?

1 A. I do.

2 Q. Are you friends with Deputy Newman?

3 A. We are work acquainted, we are not friends outside of work.

4 Q. Would you lie for Mr. Newman and say you did see a gun on
5 Mr. Hill when you really didn't?

6 A. I would not.

7 Q. Could you tell whether or not Mr. Hill was alive or dead
8 when you had contact with him?

9 A. Initially, I could not, I did see a pool of blood and he
10 was nonresponsive.

11 It wasn't until I had Detective Johnson roll Mr. Hill
12 slightly so I could see his left hand that I realized that the
13 lividity and rigor started to set in. He was very stiff, my
14 assumption was he was deceased.

15 Q. Did you write a report, Captain, in regard to your
16 involvement as you told us here today?

17 A. I did.

18 Q. And why did you write a report?

19 A. The intent of my report was to document the fact that I had
20 Detective Johnson touch and move the body, and the intent was
21 solely for that purpose.

22 Q. Now, does your report document that you saw a gun in Mr.
23 Hill's back pocket?

24 A. No, ma'am.

25 Q. Why not?

1 A. Because that is the crime scene detective's job, to
2 document the incident scene.

3 Q. To your knowledge, was that in fact documented, that there
4 was a firearm found in Mr. Hill's back pocket?

5 A. I am absolutely sure they documented that.

6 Q. Let me show you what is Plaintiff's Exhibit 94.

7 What is that a picture of?

8 A. That is a picture of Mr. Hill.

9 Q. Now, is that ultimately what you saw when you went in the
10 garage?

11 A. It is.

12 Q. And now I am going to show you what is in evidence as
13 Plaintiff's 92.

14 Is that also ultimately what you saw?

15 A. It is.

16 Q. Now, is the lighting different in these pictures?

17 A. It is very well lit in those pictures.

18 Q. When you were in there what was the situation?

19 A. It was dark, I had a gas mask on.

20 Q. And did you carry a firearm with you into that house?

21 A. I did.

22 Q. Do you recall what kind it was?

23 A. I for sure would have had my sidearm on which would have
24 been a Glock 21, .45 caliber handgun, and I don't recall
25 whether I had my -- it is called an H&K UMP .45, a submachine

1 gun. I don't know whether I went in with my handgun or with my
2 UMP as well. I can't recall.

3 Q. Well, regardless of whether it was one or the other, would
4 you have gone into the house ready to use your gun if you
5 needed to?

6 A. I would have had my gun in my hand, yes.

7 Q. Now, do the SWAT team members typically write reports when
8 they do SWAT team things?

9 A. Generally, the only thing we would do is an incident
10 debrief.

11 Q. After --

12 A. After action report. I'm sorry.

13 Q. Is that something that each SWAT team member writes or just
14 one person?

15 A. Generally, the team commander would write that.

16 Q. As an overview of what happened?

17 A. Correct.

18 *MS. BARRANCO:* Your Honor, may I have a moment?

19 *THE COURT:* Yes.

20 *BY MS. BARRANCO:*

21 Q. Captain, when you saw the gun in Mr. Hill's back pocket, as
22 you told us today, did you ever touch the gun?

23 A. No, ma'am.

24 Q. Did you remove it from the pocket?

25 A. No, ma'am.

1 Q. Why didn't you remove it from the pocket?

2 A. The intent of the SWAT team is to render the residence
3 safe, we don't want to disturb the incident scene. And again,
4 disturbing the scene by moving the body was the only thing we
5 were documenting, and I didn't want to touch anything else.

6 Q. By leaving it there, did you rely on the crime scene people
7 to document what was found with the body?

8 A. Yes, ma'am.

9 MS. BARRANCO: No further questions.

10 THE COURT: Cross-examination.

11 MR. PHILLIPS: Very briefly, your Honor.

12 **CROSS-EXAMINATION**

13 BY MR. PHILLIPS:

14 Q. I get flack for my accent too sometimes. Where are you
15 from?

16 A. South Carolina.

17 Q. I am from Alabama. When you went in the garage, was it
18 light or dark?

19 A. I remember it being dark.

20 Q. Do you remember if the power was cut off in the residence?

21 A. I remember in the after hour report power being cut off,
22 whether it was water or power, I don't know.

23 Q. No gun was found on the ground or around Mr. Hill's hand,
24 and you put that in your report; is that fair?

25 A. No gun was found on or --

1 Q. On the ground or around his hand and that was in your
2 report?

3 A. I believe my report exactly states that his hand was empty.

4 Q. Fair enough. Thank you, sir.

5 THE COURT: Any redirect?

6 MS. BARRANCO: No, your Honor.

7 THE COURT: Thank you so much. You may step down.

8 Did the Defense have another witness?

9 MS. BARRANCO: Yes, at this time Defense will call
10 Michael Gawjewski to the stand.

11 MICHAEL GAWJEWSKI, DEFENDANT'S WITNESS, SWORN

12 THE WITNESS: Michael Vincent Gawjewski,

13 G-A-W-J-E-W-S-K-I.

14 **DIRECT EXAMINATION**

15 BY MS. BARRANCO:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. How are you?

19 A. Good. How are you?

20 Q. How are you employed?

21 A. Bureau of Alcohol, Tobacco, Firearms and Explosives.

22 Q. Is that a Federal agency?

23 A. Yes, it is.

24 Q. How long have you been so employed?

25 A. Approximately three years.

1 Q. What did you do prior to that?

2 A. I was a deputy at the St. Lucie County Sheriff's Office.

3 Q. What years did you work there?

4 A. 2006 to 2015.

5 Q. If my math skills are what they should be, that is nine
6 years?

7 A. Almost nine years, yes.

8 Q. And when was it -- you said you left in 2015, the Sheriff's
9 Office?

10 A. Correct.

11 Q. Let me take you back to the subject date that we are
12 focusing on for our purposes here today, January 14, 2014.

13 Were you working for the St. Lucie Sheriff's Office back on
14 that date?

15 A. Yes, I was.

16 Q. What rank did you hold with the agency back at that time?

17 A. I was a detective.

18 Q. What department did you work in?

19 A. Special Investigations Division.

20 Q. Did you have any involvement in the SWAT team?

21 A. Yes, I was also a SWAT operator.

22 Q. When you say SWAT operator, is that something different
23 from a SWAT team member?

24 A. Same thing.

25 Q. Did you receive a SWAT call out to go to a residence

1 located at 1501 Avenue Q in Ft. Pierce, Florida?

2 A. Yes.

3 Q. And do you recall, at least in terms of what you understood
4 the reason for the call, do you recall what it was, why you
5 were called out?

6 A. Yes.

7 Q. And what was that?

8 A. It was an officer involved shooting, the subject possibly
9 barricaded inside.

10 Q. Now, do you recall responding to the scene?

11 A. Yes.

12 Q. Can you tell the ladies and gentlemen of the jury what you
13 recall your involvement was on that particular scene?

14 A. Initially I was the perimeter. As the other components of
15 the Sheriff's Office were negotiating, doing what they were
16 doing, I stand outside the residence until I was authorized to
17 enter the residence.

18 Q. Until you were what?

19 A. Authorized to enter the residence.

20 Q. Okay. And so, did there come a point in time where you
21 were authorized to enter the residence?

22 A. Yes.

23 Q. Did you do so?

24 A. Yes.

25 Q. How were you dressed, if you recall?

1 A. I don't. It was a normal day and a call out, I am not sure
2 if I changed into my SWAT attire or stayed in the attire I was
3 wearing.

4 Q. If you wouldn't have changed into your SWAT attire, what
5 were you wearing?

6 A. At the time, I was in special investigations, narcotics
7 division, I would wear plain clothes and go to a special
8 investigation uniform, it would change as the operations or
9 events of the day would unfold. I don't know what I was
10 wearing on that day.

11 Q. It would depend on the day?

12 A. Yes.

13 Q. It sounds like you don't have an independent memory today
14 of what you were wearing?

15 A. No.

16 Q. Do you recall whether the entry into this particular house
17 was forced or not?

18 A. I know I didn't make forced entry, so, I am not sure if
19 another team member was designated to make forced entry.

20 Q. All right. Let me show you a couple of exhibits here.

21 One is in evidence as Defendant's 189. See if you
22 recognize that.

23 A. I believe that was either the back door or side door to the
24 residence.

25 Q. Okay. Does that refresh your memory whether or not the

1 SWAT team tried to force entry into this home?

2 A. Yes, based on the observations above the door handles, we
3 would have breached the door or attempted to breach it.

4 Q. Let me show you this other picture in evidence, 183.
5 See if that looks familiar to you at all.

6 A. I'm not sure if that is the front door or side door.

7 Q. If I tell you it is one of the back doors --

8 A. Okay.

9 Q. -- would that refresh your memory at all?

10 A. Okay.

11 Q. Do you have a memory what door you entered to get into this
12 house?

13 A. I think it was a back door. It was a back door.

14 Q. Okay. Do you remember entering this house?

15 A. Yes.

16 Q. Whose team were you a member of in terms of this entry into
17 the house?

18 A. I know myself, Deputy Sheriff Tommy Johnson, and now
19 Captain Hester.

20 Q. Okay. Who was the team leader for that group, do you
21 remember?

22 A. Based on rank, it would have been Sergeant Hester.

23 Q. Do you have a memory of going into this house?

24 A. Yes.

25 Q. Do you remember -- if I am walking into the back door, do

1 you recall which direction you would have gone?

2 A. I think we had to go straight and to the left was the
3 garage.

4 Q. Okay. You remember going to the left?

5 A. Yes.

6 Q. Towards the garage?

7 A. Yes.

8 Q. As you were approaching the garage, did you do anything
9 regarding the interior space of the house?

10 A. Just searching for people or threats.

11 Q. That is called clearing?

12 A. It could be.

13 Q. So, did you reach the garage at some point?

14 A. Yes.

15 Q. Were other SWAT team members around you?

16 A. Yes.

17 Q. Did you have a particular role as a SWAT team member as you
18 entered that garage?

19 A. Typically, when SWAT team members went to the garage, we
20 have what is called areas of responsibility within a room, and
21 at this point, I entered the garage, my area of responsibility,
22 and there was nobody there initially.

23 Q. Do you remember where your area of responsibility was?

24 A. When you went into the garage, the door, it was to the
25 left.

1 Q. Okay.

2 MS. BARRANCO: Your Honor, may I look at the exhibits
3 real quick?

4 THE COURT: Yes.

5 BY MS. BARRANCO:

6 Q. This is Defendant's 150 in evidence.

7 If I were to tell you this is the garage door, the door
8 coming from the interior into the garage door, does that
9 refresh your memory at all?

10 A. Yes.

11 Q. You are talking about an area -- you had an area of
12 responsibility to clear?

13 A. Correct.

14 Q. Is that scene in this picture anywhere?

15 A. It would be to the right of the door.

16 Q. Over here somewhere?

17 A. Yes, back that way.

18 Q. And so that area was clear?

19 A. Correct.

20 Q. And then what did you do?

21 A. And then I scanned and I see an individual laying on the
22 ground and that is when I seen Hester and Tommy Johnson tending
23 to the body, to the person.

24 Q. How much time did you spend looking at that body on the
25 ground?

1 A. I was tasked -- well, I was in the room for a long time,
2 but while I was in the room, I didn't look at the body. After
3 it was determined to be no longer a threat, I just remained in
4 the room until another detective relieved me.

5 Q. Okay. So, for how long a period of time did you personally
6 lay eyes on the body on the ground?

7 A. For how long did I look at it?

8 Q. Yes.

9 A. Just -- it was fast.

10 Q. Long enough to --

11 A. To realize exactly what it is, I see a pool of blood and
12 Tommy Johnson and Hester moved the body, and then they had it
13 under control.

14 Q. Now, let me show you this picture now which is in evidence
15 as Plaintiff's Exhibit 94, which is a different angle. Does
16 this picture depict the body that you saw on the ground?

17 A. Yes, the way it was positioned.

18 Q. Okay. Is the lighting in the picture the same as you
19 recall at that time?

20 A. There must be a flash on this because it was dark, it was
21 dark in the garage.

22 Q. Okay. Now, let me ask you, because we can't see it so well
23 in this picture, but I want to understand, where were you
24 physically located when you visualized the body?

25 A. It would be back to your left.

1 Q. Off the photo here?

2 A. Yes, correct.

3 Q. Closer to the door?

4 A. I was closest to the garage door that we entered.

5 Q. When you say garage door -- now I switched to Defendant's
6 150 in evidence -- are you referring to the door that goes into
7 the house?

8 A. Yes.

9 Q. Not the big garage door that opens. Okay.

10 Would you have stayed around this area by the interior
11 garage door that goes into the house?

12 A. Correct.

13 Q. So, you mentioned something about staying with the body?

14 A. Correct.

15 Q. How long did you stay with the body?

16 A. Anywhere between five and 15 minutes.

17 Q. Okay. Did you ever see a gun anywhere on Mr. Hill's body?

18 A. I did not.

19 Q. Did you ever look for a gun on Mr. Hill's body?

20 A. I did not.

21 Q. What was the purpose of you waiting with the body until
22 someone else came?

23 A. Just scene security or maintain integrity of the scene.

24 Q. So, you waited with the body. Did the other SWAT team
25 members leave?

1 A. Yes. I was by myself.

2 Q. Do you know if the garage door, the big one, was it ever
3 lifted at any point?

4 A. No. The detective came from the front door, I met him and
5 he took over the scene.

6 Q. Who was the person who you ultimately turned the body over
7 to?

8 A. At that time Detective Richard Young.

9 Q. Did you ever touch Mr. Hill's body?

10 A. I did not.

11 Q. Did you ever move Mr. Hill's body?

12 A. I did not.

13 Q. Did you ever see anyone touch or move Mr. Hill's body?

14 A. Just Tommy Johnson and Brian Hester.

15 Q. Did you ever see anyone put a firearm into Mr. Hill's back
16 pocket?

17 A. Absolutely not.

18 Q. Did you ever put a gun in Mr. Hill's back pocket?

19 A. Absolutely not.

20 Q. Did you ever hear anyone say they had put a gun in Mr.
21 Hill's back pocket or they were planning on doing that?

22 A. Absolutely not.

23 Q. Do you recall how long after you entered that garage and
24 visualized the body quickly that Detective Young showed up?

25 A. Between five and 15 minutes.

1 Q. Do you recall if anyone else was with Detective Young when
2 he showed up?

3 A. I don't think initially.

4 Q. Were you present when any photographs were taken such as
5 the ones we are showing you here today?

6 A. If I was, I was outside. I was not anywhere within the
7 scene.

8 Q. You didn't take any pictures?

9 A. I did not.

10 Q. What is your understanding of who took the pictures?

11 A. It would be the crime scene seen.

12 Q. Not the SWAT team, they don't take pictures?

13 A. Typically not.

14 Q. Could you tell whether or not Mr. Hill was alive or
15 deceased?

16 A. Based on him not responding, the pool of blood and when
17 they rolled him, to me he appeared somewhat stiff, he appeared
18 to be deceased.

19 Q. And prior to your entry into the garage and visualizing Mr.
20 Hill's body on the ground, as you told us, do you know if
21 anyone -- well, let me ask you this. Do you know whether or
22 not Mr. Hill was dead before you went into the garage?

23 A. I do not.

24 Q. Were you aware that someone utilized a robot with a camera?

25 A. Yes, I believe they poked a hole through the garage door.

1 I remember when I left, I seen a robot, that is what they call
2 it, outside the garage door.

3 Q. In front of it?

4 A. Yes.

5 Q. Okay. Did you write a report about this incident?

6 A. I did.

7 Q. Why did you write a report?

8 A. To document my activities at the scene.

9 Q. Does your report say anything about seeing a gun on Mr.
10 Hill?

11 A. It does not.

12 Q. Is that because you didn't see a gun on Mr. Hill?

13 A. That is correct.

14 MS. BARRANCO: Your Honor, may I have a moment?

15 THE COURT: Yes.

16 MS. BARRANCO: No further questions, your Honor.

17 THE COURT: Okay. Any cross-examination?

18 MR. JOHNSON: Yes, your Honor, very briefly.

19 **CROSS-EXAMINATION**

20 BY MR. JOHNSON:

21 Q. Good afternoon, Mr. Gawjewski.

22 I believe you mentioned when you were in the garage it was
23 pretty dark?

24 A. Correct.

25 Q. Do you know if the power had been cut off when you were in

1 the garage?

2 A. I don't.

3 Q. Okay.

4 MR. JOHNSON: No further questions.

5 THE COURT: Any redirect?

6 MS. BARRANCO: No, your Honor.

7 THE COURT: Thank you so much, you may step down.

8 I know it is after 5:00, but I know that Defense
9 brought one more witness. He probably has been waiting out
10 there.

11 Are you going to call him or not calling him?

12 MR. GREGG JOLLY: We are going to call him and it
13 should be very brief. His name is Tony Stevens.

14 THE COURT: Okay, he will be your last witness.

15 TONY STEVENS, DEFENDANT'S WITNESS, SWORN

16 THE WITNESS: Tony Stevens.

17 **DIRECT EXAMINATION**

18 BY MR. GREGG JOLLY:

19 Q. Good afternoon, Mr. Stevens.

20 A. Good afternoon.

21 Q. Did you know an individual named Gregory Hill, Jr.?

22 A. Yes, sir.

23 Q. What was your relationship to Mr. Hill, Jr.?

24 A. I am his uncle.

25 Q. Okay. And I want to turn your attention to a time period

1 around January of 2014, okay? Around that time period, did you
2 have any knowledge whether Mr. Hill owned or possessed a
3 firearm?

4 A. I think he did, yes, sir.

5 Q. How did you know that?

6 A. Because he told me he did.

7 Q. Did Mr. Hill ever show you the gun?

8 A. Um-m-m, yes, I think I seen it.

9 Q. Okay. Where did Mr. Hill keep his gun, to your knowledge?

10 A. At that time, I think it was in the file cabinet.

11 Q. When you say at that time, can you be more specific?

12 A. When I seen it.

13 Q. When was that, approximately?

14 A. That I can't tell you.

15 Q. Okay. Do you think it was around January 2014?

16 A. I can't give you the date. I just know I seen it. What
17 date it was, I have no idea.

18 Q. Do you remember giving a deposition in this case?

19 A. Yes, sir.

20 Q. Okay. You were under oath at that time?

21 A. Yes, sir.

22 Q. Okay. You knew you were supposed to tell the truth?

23 A. I always tell the truth.

24 Q. Fair enough. And just for the record, I am referring to
25 page 25 of your deposition, it is at line ten.

1 You were asked: Do you know when you had this conversation
2 with him? And your answer was: Probably a month before this
3 happened.

4 Do you remember saying that?

5 A. Um-m-m, yes. If that is what is there, that is what I
6 said. What I am saying is, this is now, I don't know the date
7 that the incident happened. I don't know -- I just don't know
8 the date. That is what happened. I don't know what date it
9 was.

10 Q. You think that is probably accurate?

11 A. Yes, that is the date, that is the date.

12 MR. GREGG JOLLY: Your Honor, may I have a moment?

13 THE COURT: Yes.

14 BY MR. GREGG JOLLY:

15 Q. Mr. Stevens, earlier you were testifying about the file
16 cabinet, which is your understanding where Mr. Hill kept his
17 gun, correct?

18 A. Yes.

19 Q. Where is that file cabinet?

20 A. It is either right inside the back door or right outside
21 the back door, I don't remember.

22 Q. When you say the back door?

23 A. Going inside the garage.

24 MR. GREGG JOLLY: No further questions.

25 THE COURT: Cross-examination.

1 same time.

2 Have a nice evening and we will see you back at 9:00
3 a.m.

4 *(Thereupon, the jury leaves the courtroom.)*

5 *THE COURT:* Brown, I don't know if he is called by
6 deposition, or he may be here live. I ask you to talk about
7 it.

8 It sounds like you will be done with everybody except
9 for Lawrence tomorrow. So, Lawrence will be here first thing
10 Wednesday morning?

11 *MR. BRUCE JOLLY:* No. He is arriving in West Palm at
12 11:00 o'clock, he is arriving here and ready to testify.

13 *THE COURT:* Well, that --

14 *MR. BRUCE JOLLY:* I get it.

15 *THE COURT:* Where is he coming from?

16 *MR. BRUCE JOLLY:* He is coming from Chicago via
17 Detroit.

18 *THE COURT:* We have been leading up to this
19 realization going back to Friday, that it looked like
20 everything would be done except Lawrence for Wednesday morning.

21 It has always been in my mind. I was going to
22 accommodate Wednesday, you told me Wednesday, but it had been
23 in my mind first thing Wednesday I see Lawrence, instructions,
24 closing and jury deliberating.

25 What can be done to get Lawrence here earlier to be

1 here first up? I think you will get done with everyone else
2 tomorrow.

3 *MR. BRUCE JOLLY:* I do not have an answer. I'll make
4 the phone call. He is in -- he is teaching, that is why he was
5 not available. If he tells me, gee whiz, Bruce, I can't make
6 it, I will say okay. You tell us what you want. Our job is to
7 get it done.

8 *THE COURT:* My job is to keep things running smoothly
9 and moving forward.

10 This is the first I am hearing that he wouldn't be
11 here at 9:00 a.m. on Wednesday. I heard last week he would be
12 here Wednesday only, so that is fine. So, yes, I would say
13 that you should call him and let him know that it looks like he
14 will be ready to be called up first thing Wednesday morning and
15 see what he can do.

16 *MR. BRUCE JOLLY:* I am not optimistic, but we'll deal
17 with it.

18 *THE COURT:* It really changes the entire calculus. If
19 you tell me he is not arriving in West Palm until 11:00, and we
20 are sitting around waiting for one expert to start Wednesday
21 afternoon, which puts the trial over to Thursday, which
22 Thursdays are significant, they are significant in counsel's
23 time, the jury's time, not that we don't have the time. We
24 won't make the time. It is my job to keep things moving along.
25 If this trial could be concluded or got the evidence to the

1 jury by Wednesday, it is my responsibility to try to make that
2 happen.

3 I don't know if you can make a phone call while we are
4 going over other things and maybe we will get an answer.

5 You know, I don't know if you are taking the lead on
6 jury instructions.

7 *MR. BRUCE JOLLY:* I am taking the lead with Mr.
8 Lawrence, I will make the call. Ultimately, if he can't get
9 here we are stuck with what we are stuck with. We can deal
10 with it. It is appropriate if he can't get here until 11:00
11 and couldn't testify until 12:00. You run this courtroom, I
12 don't. We will deal with it.

13 *THE COURT:* I am not suggesting I am going to have you
14 put in a position that would prejudice your client. I don't
15 think -- you did not hear me say I would not allow it to go
16 forward at 1:00 or 12:00.

17 Make your best efforts, that is all you can do, and
18 we'll address it when we get to the next step.

19 *MR. BRUCE JOLLY:* I got it.

20 *THE COURT:* Let me go back to the Rule 50 motion so I
21 can circle back to that. Defense made a Rule 50 motion
22 pursuant to Federal Rule of Civil Procedure 50. If the Court
23 finds that a reasonable jury would not have a legally
24 sufficient evidentiary basis, the Court may resolve the issue
25 to the non-moving party. That is Walker versus Nations Bank of

1 Florida, 11th Circuit, 1995.

2 Motion for judgment as a matter of law must be denied
3 when a reasonable and fair minded person in the exercise of
4 impartial judgment could reach a conclusion in favor of the
5 non-moving party.

6 The elements of Plaintiff's 1983 claim are that
7 Christopher Newman intentionally committed acts that violated
8 Gregory Vaughn Hill, Jr.'s constitutional rights; Christopher
9 Newman's conduct caused Gregory Vaughn Hill's injuries; and
10 Christopher Newman acted under color of law.

11 Civil damages, insofar as their conduct does not
12 violate clearly established statutory or constitutional rights
13 such a reasonable person would have known, Simmons versus
14 Bradshaw, 11th Circuit, 2018.

15 The elements of the Plaintiff's negligence claim are
16 that Defendant Newman owed a duty to Gregory Vaughn Hill,
17 Jr. -- and to act as a reasonable law enforcement officer under
18 same or similar circumstances; that Defendant Newman breached
19 the aforementioned duty in the following ways: By unreasonably
20 firing a firearm in the direction of Gregory Vaughn Hill,
21 Jr. -- committed or life threatening situation existed, and
22 that the injury to Gregory Vaughn Hill, Jr. was reasonably
23 caused by Christopher Newman's breach, and Gregory Hill
24 suffered damages as a result of that injury. The Court is
25 going to reserve ruling.

1 If we could make an initial stab at the jury
2 instructions. If you'd pull your jury instructions up.

3 We are going to pass out a new clean version, so if
4 you'd use the new clean version and not the old clean version.

5 *MR. BRUCE JOLLY:* I am handling the jury instructions
6 component. I need to go to the bathroom.

7 *THE COURT:* Okay.

8 (Pause.)

9 *THE COURT:* All right. Does everybody have the new
10 clean version in front of them?

11 I will go page by page. If there is an objection, let
12 me know.

13 What I will do is turn to Plaintiff and Defense and
14 ask if there is an objection both to the content and the
15 sequence.

16 The Court's final jury instructions, Plaintiff, any
17 objection, page by page?

18 *MS. HINES:* No.

19 *THE COURT:* Defense?

20 *MR. BRUCE JOLLY:* No.

21 *THE COURT:* Second page, duty to follow instructions,
22 Plaintiff?

23 *MS. HINES:* No, your Honor.

24 *THE COURT:* Defense?

25 *MR. BRUCE JOLLY:* No, your Honor.

1 *THE COURT:* Next one, consideration of direct and
2 circumstantial evidence, argument of counsel and comments by
3 the Court.

4 *MS. HINES:* No objection.

5 *THE COURT:* Defense?

6 *MR. BRUCE JOLLY:* No objection.

7 *THE COURT:* Credibility of witnesses.

8 *MS. HINES:* No objection.

9 *THE COURT:* Defense.

10 *MR. BRUCE JOLLY:* No objection.

11 *THE COURT:* Next one, impeachment of witness because
12 of inconsistent statements. Plaintiff?

13 *MS. HINES:* No objection.

14 *THE COURT:* Defense?

15 *MR. BRUCE JOLLY:* There was a problem. Something
16 makes me think it was duplicative or there was a duplicative
17 section.

18 *THE COURT:* Well, actually the next one, impeachment
19 of witnesses because of inconsistent statements or felony
20 conviction, that is the next one, I don't think that applies.
21 Shouldn't that come out?

22 *THE COURTROOM DEPUTY:* Andrew Brown has a felony
23 conviction.

24 *THE COURT:* Impeachment of witnesses because of
25 inconsistent statements or felony conviction.

1 Is there anything about Andrew Brown that that becomes
2 a relevant instruction?

3 MR. PHILLIPS: So, they have to ask the qualifying
4 question to determine.

5 THE COURT: It is going to be one or the other
6 depending on what comes out with Andrew Brown. Does Defense
7 agree?

8 MS. BARRANCO: Yes.

9 THE COURT: I will keep them both, but it will be one
10 or the other.

11 MR. PHILLIPS: Your Honor, I assume by the Federal law
12 you say if it is a ten year old felony it shouldn't come in.

13 THE COURT: Well, I follow the rule.

14 MS. BARRANCO: I don't think that is what the rule
15 says.

16 THE COURT: I will follow the rules. I don't think
17 anyone made any argument on that. Should we wait to see what
18 he says?

19 MR. PHILLIPS: We might need to proffer that to
20 determine -- if they say felony, and it is a 20 year old
21 felony, we might have an issue.

22 THE COURT: Is there a dispute as to what his felony
23 was?

24 MS. BARRANCO: I think it's just shy of ten years,
25 under the ten year time.

1 THE COURT: Within ten years?

2 MS. BARRANCO: Correct.

3 THE COURT: So it would fall, would it not? Let's
4 see. What rule are we talking about? 609. I will take a look
5 at it. Wasn't he convicted of a false statement?

6 MS. BARRANCO: Yes, your Honor.

7 THE COURT: If that is the case, it really would come
8 out of the Rule 609 in terms of the ten years everybody is
9 thinking about, crimes of false statement, regardless of felony
10 or misdemeanor.

11 609(a)(2), unless the conviction is more than ten
12 years old, cross-examiner has an absolute right to introduce a
13 conviction of falsehood or dishonesty. It says if the
14 conviction is for crimes of dishonesty, misrepresentation,
15 deceit or other indicia of a propensity to lie and have been
16 held to include bank fraud, embezzlement, false statement to
17 Government officials, failure to file tax return, false and
18 misleading statements, making false claims to the U.S.
19 Government.

20 What was his -- Rule 609(a)(2) was amended
21 effective -- we have -- that goes back a while ago -- in
22 December 2006, to provide for automatic impeachment if the
23 Court can -- proof, proving or the witnesses admitting a
24 dishonest act or false statement.

25 This language permits some limited inquiry, but

1 provides for automatic -- the new language specifically
2 encompasses convictions that resulted from guilty pleas.

3 MS. BARRANCO: Your Honor, I am looking at a certified
4 copy of his Judgment and Sentence, and the crime was giving a
5 false name while arrested or detained, hyphen, adverse effect,
6 a felony in the third degree. On the judgment there he is an X
7 next to the box that says admitted, violation of probation, and
8 the judgment is September 17, 2008, so the ten-year period
9 wouldn't be until this coming September.

10 THE COURT: So he gave a false name?

11 MS. BARRANCO: Yes, giving a false name, correct. And
12 the other issue, too, your Honor, is because this crime -- the
13 law enforcement agency involved was the St. Lucie County
14 Sheriff's Office, so in terms of bias as well.

15 THE COURT: So that is in his depo, and if you had him
16 on the stand, what would you proffer, what would you ask?

17 MS. BARRANCO: I would ask him if he had ever been
18 convicted of a felony or crime involving dishonesty or false
19 statement.

20 THE COURT: If he said yes, you would stop there?

21 MS. BARRANCO: Sure. Yeah.

22 THE COURT: If he said no, you would seek to impeach
23 him with that information?

24 MS. BARRANCO: Yes, your Honor, and we would want to
25 ask what agency arrested him for that, what ultimately

1 culminated in the conviction, only because it is the same
2 agency on trial here.

3 *THE COURT:* Whether a crime involved dishonesty or
4 false statement is a determination for the trial judge.

5 There are cases that suggest conviction for possession
6 of food stamps by filing false statement is a crime of
7 dishonesty. The proponent of the evidence bears the burden of
8 demonstrating the crime was involving dishonesty or false
9 statement.

10 So, is Plaintiff taking issue with whether this is a
11 crime of dishonesty --

12 *MR. PHILLIPS:* Now what we have is the date and the
13 official charge, all we had is the -- at the deposition, I
14 objected to that question. Now the question is -- if they
15 didn't ask the triggering question, that might be academic.
16 The question is, if we get Mr. Hill here or not --

17 *MS. BARRANCO:* Brown.

18 *MR. PHILLIPS:* Anything past five o'clock. The law is
19 what the law is. I thought we were under, not September.

20 *THE COURT:* Okay. So, then you agree if -- I don't
21 know how -- I don't have the depo in front of me. Did you ask
22 it correctly? If he is live, you go through the colloquy we
23 just went through. You don't get into it unless he denies it.

24 *MS. BARRANCO:* My memory of the deposition, I asked if
25 he had ever been convicted of a felony or crime involving a

1 false statement or dishonesty. He said yes to the felony
2 conviction, and I didn't ask further. I don't recall asking
3 when was it.

4 I typically ask what agency. I can tell you that I
5 have certified copies that say what they say.

6 *THE COURT:* Any objection to those two questions, have
7 you ever been convicted of a felony or false statement, he says
8 yes, and a followup question, what agency, he tells you what
9 agency, and that is the end of it?

10 *MR. PHILLIPS:* I don't think I can object to that,
11 your Honor.

12 *THE COURT:* All right. But we'll -- again, not
13 knowing for sure, we'll either use impeachment of witness
14 because of inconsistent statement or impeachment of witness
15 because of inconsistent statement or felony conviction. I will
16 put those aside, one or the other depending on the Brown
17 testimony.

18 Okay, skip over to expert witness. Any objection from
19 Plaintiff?

20 *MR. PHILLIPS:* No.

21 *THE COURT:* Defense?

22 *MR. BRUCE JOLLY:* Yes, your Honor, there are two, and
23 the one I am looking at right now, we would object to that.

24 *THE COURT:* Well, the heading, because we don't have
25 page numbers, one says expert witnesses when expert fees

1 represent a significant portion of the witness' income.

2 Which is the standard?

3 *MR. BRUCE JOLLY:* They are both standard.

4 *MS. HINES:* Yes, your Honor.

5 *THE COURT:* So, remind me who wanted which one.

6 *MR. BRUCE JOLLY:* I want -- Defense wants the second
7 of the two which talks about fees being a significant portion.

8 *THE COURT:* From Plaintiff.

9 *MS. HINES:* Your Honor, the first one should be
10 sufficient, your Honor.

11 *THE COURT:* Well, we have only had one expert so far,
12 Bedard.

13 *MR. PHILLIPS:* Two, your Honor, the forensic
14 pathologist.

15 *THE COURT:* No one got into this issue with him,
16 right?

17 *MR. BRUCE JOLLY:* He was paid.

18 *MR. PHILLIPS:* I asked what he was paid.

19 *THE COURT:* Bedard, there was a lot of questioning,
20 but he did not concede or acknowledge it.

21 *MR. BRUCE JOLLY:* I don't remember him conceding
22 anything.

23 *THE COURT:* Is this going to come up with any other
24 expert?

25 *MR. PHILLIPS:* We have Lawrence. Can we hold off?

1 *THE COURT:* We'll hold these two.

2 So it will be either of the two expert witness
3 instructions. We will see what Lawrence says.

4 Okay. Then we get into responsibility for proof,
5 Plaintiffs claims, cross claims, counterclaims, preponderance
6 of the evidence. Any problem from the Plaintiff, any
7 objection?

8 *MR. PHILLIPS:* Sorry, your Honor, still reading expert
9 witness.

10 No, your Honor.

11 *THE COURT:* From Defense, any objection?

12 *MR. BRUCE JOLLY:* The one you had before we did object
13 to. This looks different.

14 *THE COURT:* Responsibility of proof, Plaintiff's
15 claims.

16 *MR. BRUCE JOLLY:* This is correct, this is an accurate
17 statement of the law.

18 *THE COURT:* No objection from Plaintiff and no
19 objection from Defense?

20 *MR. PHILLIPS:* Your Honor, we will go with expert
21 witness one, the one the Defendant prefers.

22 *THE COURT:* We will get rid of expert witness and say
23 when expert fees represent a significant portion?

24 *MR. PHILLIPS:* Yes, your Honor.

25 *THE COURT:* Okay, we will make a note of that.

1 Now we move on to responsibility of proof, Plaintiffs
2 claims, preponderance of the evidence. Plaintiff?

3 *MS. HINES:* No objection, your Honor.

4 *THE COURT:* Defense.

5 *MR. BRUCE JOLLY:* Isn't this the one we talked about?

6 *THE COURT:* I went back.

7 *MR. BRUCE JOLLY:* That is okay.

8 *THE COURT:* Okay. Now let's go to duty to deliberate
9 when only the Plaintiff claims damages. Acceptable to the
10 Plaintiff?

11 *MS. HINES:* Yes, your Honor.

12 *MR. BRUCE JOLLY:* Yes.

13 *THE COURT:* Then civil rights, 42 U.S.C. Section 1983
14 claims and everything that follows under that. Okay by
15 Plaintiff?

16 *MR. PHILLIPS:* Yes.

17 *THE COURT:* Defense? And really --

18 *MR. BRUCE JOLLY:* This is right.

19 *THE COURT:* It is three pages long. I am asking about
20 three pages.

21 *MR. BRUCE JOLLY:* The first page is okay. We did have
22 an issue.

23 The first, second, and third, I think is an accurate
24 statement, but you have without probable cause, the second line
25 of the paragraph in the middle, and I don't think without

1 probable cause is accurate because you don't need probable
2 cause to use deadly force. I think it is use of excessive
3 force, period. You must decide whether the force was excessive
4 or unreasonable based on the degree of force.

5 *THE COURT:* The pattern is not exactly applicable
6 because it deals with arrestees and detainees. We should
7 remove probable cause.

8 Any objection if we remove without probable cause so
9 it reads Plaintiff, Viola Bryant, claims that Christopher
10 Newman used excessive force, period?

11 *MR. PHILLIPS:* That is right.

12 *THE COURT:* That comes out. Any other objection to
13 this instruction from Defense?

14 *MR. BRUCE JOLLY:* It ends in the last paragraph, if
15 you find?

16 *THE COURT:* Yes.

17 *MR. BRUCE JOLLY:* Okay.

18 *THE COURT:* Meaning you are okay with it?

19 *MR. BRUCE JOLLY:* Yes, it is acceptable.

20 *THE COURT:* Next one, civil rights, 42 U.S.C. Section
21 1983 claims, damages. For the Plaintiff?

22 *MS. HINES:* Your Honor, we had objected to the
23 inclusion of this instruction on the basis that the pattern,
24 11th Circuit pattern instruction on excessive force already
25 discusses the grant factors, which is the standard here. It

1 seems clear enough to us that this additional instruction
2 wasn't needed.

3 *MR. BRUCE JOLLY:* I thought we were on damages.

4 *MS. HINES:* I was on the next page.

5 *MR. BRUCE JOLLY:* We are trying to look at both at the
6 same time.

7 *MS. HINES:* If we are on damages, we don't have any
8 objection.

9 *THE COURT:* You said you were fine with the civil
10 rights 42 U.S.C., three page instruction?

11 *MS. HINES:* Yes.

12 *THE COURT:* Now we are on the civil rights 42 U.S.C.
13 1983 claim, damage instruction, two pages.

14 *MS. HINES:* No objection.

15 *THE COURT:* Defense?

16 *MR. BRUCE JOLLY:* That is an accurate statement.

17 *MS. BARRANCO:* Minor child A.H., and later in that
18 section it says D.H., that needs to be changed to A.H., and
19 then starts with minor child -- that needs to be changed.

20 *THE COURT:* All right. We will make that change.
21 Otherwise acceptable?

22 *MR. BRUCE JOLLY:* Yes.

23 *THE COURT:* We will have one last conference, I will
24 take another look. We'll make all these changes tonight and
25 get them back to you, so there will be one last chance. This

1 is everyone's opportunity to weigh in, of course. Jury
2 instructions are important.

3 Negligent handling of a firearm, three page
4 instruction. Plaintiff, have you had a chance to review it?
5 Do you have any objections?

6 *MS. HINES:* No, your Honor.

7 *THE COURT:* Defense, any objection?

8 *MR. BRUCE JOLLY:* Yes, it is not an accurate statement
9 of law. You are going to give it, I get it. We'll preserve
10 our objection to submit this claim to the jury.

11 *THE COURT:* Wait a minute, let me try and understand.

12 I haven't made any decision about what I am giving or
13 not giving. This is a conference, I am asking if you have any
14 objections. Do you have any objections?

15 *MR. BRUCE JOLLY:* Yes.

16 *THE COURT:* What is the objection?

17 *MR. BRUCE JOLLY:* The form is correct, substantively
18 it is not appropriate. If the form -- if this should be
19 submitted to the jury, the form is what it should look like.

20 *THE COURT:* So, am I understanding you to say you feel
21 this claim shouldn't go to the jury under the Rule 50 motion?
22 You feel the claim shouldn't go to the jury under the Rule 50
23 motion, that is your objection? If the Court reserves and
24 decides to send it to the jury, you don't have any objection to
25 how it is presented?

1 MR. BRUCE JOLLY: How it is presented, that is an
2 accurate statement. This claim conceptually does not exist.
3 If it is going, that is what the instruction should look like.

4 THE COURT: Well, this claim has survived.

5 MR. PHILLIPS: The 11th Circuit --

6 THE COURT: If you want to present me some law to tell
7 me why, other than the Rule 50 motion -- if you want to present
8 me with some law that tells me why this shouldn't go to the
9 jury I will have you bring that to me and bring it to my
10 attention.

11 MR. BRUCE JOLLY: Other than the Rule 50 motion?

12 THE COURT: Yes.

13 MR. BRUCE JOLLY: No, that is what the argument was.

14 THE COURT: We will move on to wrongful death.

15 From the Plaintiff?

16 MS. HINES: No objection, your Honor.

17 THE COURT: And from the Defense?

18 MR. BRUCE JOLLY: Yes, I thought paragraph one, the
19 conduct of the Defendant amounted to a wrongful act,
20 negligence, default or breach of contract or warranty, I didn't
21 think that was appropriate.

22 MR. PHILLIPS: We clearly aren't breaching a contract
23 or warranty.

24 THE COURT: Where am I looking?

25 MR. BRUCE JOLLY: Paragraph one.

1 *THE COURT:* What do you want me to take out?

2 *MR. BRUCE JOLLY:* Defense proposes that the paragraph
3 should read the conduct of the Defendant amounted to a wrongful
4 act or -- wrongful or negligent act, period.

5 *THE COURT:* Plaintiff?

6 *MR. PHILLIPS:* Wrongful or negligent act, period.
7 That is fine.

8 *THE COURT:* Plaintiff said that is fine. Okay,
9 conduct of the Defendant amounted to wrongful or negligent act,
10 period, take out the rest.

11 Any other comments on that page?

12 *MS. HINES:* Not from Plaintiff, your Honor.

13 *MS. BARRANCO:* Your Honor, may I briefly be heard?

14 *THE COURT:* Yes.

15 *MS. BARRANCO:* When I read those two, the jury may get
16 confused whether it could be an intentional act or negligence.
17 My understanding in this case as presented to this jury is
18 based solely on a negligence theory and the Plaintiff decided
19 to drop his battery claim or her battery claim a few weeks ago.

20 My concern is to refer to wrongful act and negligence
21 in the alternative, it seems that you are opening it up to more
22 than negligence conduct on behalf of Deputy Newman. That is my
23 concern.

24 *THE COURT:* Does plaintiff want to be heard on that?

25 *MS. HINES:* Your Honor, the action -- or claim is that

1 the action is negligent.

2 I am not sure why that would be confusing, it doesn't
3 say anything about battery. Battery is a separate act from the
4 negligence.

5 *THE COURT:* We'll look that one up. Let me be clear,
6 everyone, we are taking out the contract language and default,
7 and Plaintiff is finding it acceptable to use wrongful or
8 negligent act, and Defendant is objecting to the wrongful act
9 and negligence.

10 *MR. BRUCE JOLLY:* On this case.

11 *THE COURT:* I would ask you to bring any law, if you
12 have law that suggests that when it is based on negligence you
13 don't use the word wrongful, or you use something different. I
14 would like you to bring that in, and we'll look into paragraph
15 one as well. In particular, any case law or commentary to see
16 if anything different than this language should be used when
17 based on negligence. Okay?

18 *MS. BARRANCO:* Yes.

19 *THE COURT:* Wrongful death damages, introduction. Any
20 objection from Plaintiff?

21 *MS. HINES:* No, your Honor.

22 *THE COURT:* Defense?

23 *MR. BRUCE JOLLY:* No.

24 *THE COURT:* Okay. Wrongful death damages, elements
25 for estate and survivors. Plaintiff?

1 MS. HINES: No objection.

2 THE COURT: Defense?

3 MR. BRUCE JOLLY: No objection. Here we are using the
4 full name of the kids; before we did not.

5 THE COURT: We'll change all that. We'll change that,
6 if that is acceptable to everybody, to the initials.

7 MS. HINES: Yes.

8 THE COURT: We will make changes to initials, and we
9 will do that for that particular instruction, and we will do
10 the same thing for the next one, wrongful death for estate and
11 survivors, change to initials. Other than that, any objection?

12 MS. HINES: No.

13 MR. BRUCE JOLLY: No.

14 THE COURT: Mortality tables. Any objection from the
15 Plaintiff? I see the initials need to be changed. Any
16 objection other than that from the Plaintiff?

17 MS. HINES: No.

18 THE COURT: Defense?

19 MR. BRUCE JOLLY: No. Can we go back one? The
20 verdict form you suggested or proposed or gave us to look at
21 really doesn't comport with the wrongful death damages
22 instruction which has been given. At some point the verdict
23 has to be corrected.

24 THE COURT: We will get to that.

25 The next one is election of foreperson, explanation of

1 verdict. Acceptable for the Plaintiff?

2 *MS. HINES:* Yes.

3 *THE COURT:* Defense?

4 *MR. BRUCE JOLLY:* Yes.

5 *THE COURT:* Let's get to the verdict form, and I am
6 putting the wrongful death damages instruction in front of me,
7 too.

8 Let's take it question by question. The first
9 question, any objection from Plaintiff?

10 *MS. HINES:* Your Honor, I don't think our copy had
11 the --

12 *THE COURT:* You don't have the verdict form, your new
13 clean copy?

14 *MR. PHILLIPS:* We did not --

15 *THE COURT:* Two verdict forms, one is 1983, and one
16 negligence, starting with the 1983.

17 Do we agree language for cases brought by
18 non-prisoners should come out?

19 *MR. BRUCE JOLLY:* Where is that?

20 *THE COURT:* The top of the verdict forms, the title.

21 *MR. BRUCE JOLLY:* Agreed.

22 *THE COURT:* Do you want -- yes, so that should come
23 out. And so, it would be civil rights special interrogatories,
24 42 U.S.C. Section 1983 claims.

25 *MR. BRUCE JOLLY:* Yes.

1 *THE COURT:* And special interrogatories to the jury.
2 Do you find from a preponderance of the evidence that Defendant
3 Christopher Newman intentionally committed acts that violated
4 Gregory Vaughn Hill, Jr.'s right to be free from excessive
5 force? Answer yes or no.

6 That is acceptable to the Plaintiff?

7 *MS. HINES:* Yes, your Honor.

8 *THE COURT:* Defense?

9 *MR. BRUCE JOLLY:* If your answer is no, this ends your
10 deliberations on this claim, because there is --

11 *THE COURT:* Yes, right, right, it would be on this
12 claim.

13 *MR. PHILLIPS:* Right.

14 *THE COURT:* If your answer is no, this ends your
15 deliberations on this claim, and we'll change the language, but
16 basically we want them to go to the negligence claim.

17 *MR. BRUCE JOLLY:* Yes.

18 *THE COURT:* Maybe we'll say under claim --

19 *MR. PHILLIPS:* We could probably do it by against.

20 *THE COURT:* The top one doesn't say against. We can
21 do that.

22 *MR. PHILLIPS:* Say this is one and this is the other.

23 *THE COURT:* Because the other one does, it will be
24 1983 claims against, and we'll write out Deputy Newman, and
25 then -- so we will come up with language where if they answer

1 no to question number one on the Newman verdict, that we send
2 them over to the negligence claim against Mascara. If yes,
3 they go to question number two.

4 Question number two, that Defendant Christopher
5 Newman's conduct caused Gregory Vaughn Hill, Jr.'s injuries.
6 Yes or no. We'll make all of the changes if no, consistent
7 with what we just discussed about going on to the negligence
8 claim.

9 Is that otherwise acceptable to the Plaintiff?

10 *MR. PHILLIPS:* Yes, your Honor.

11 *THE COURT:* Defense?

12 *MR. BRUCE JOLLY:* Yes.

13 *THE COURT:* Three A, that the estate of Gregory Vaughn
14 Hill, Jr. should be awarded compensatory damages against
15 Defendant Christopher Newman. If the answer is yes, in what
16 amount.

17 Four, that the estate of Gregory Vaughn Hill, Jr.
18 should be awarded nominal damages against Christopher Newman.
19 If your answer is yes, in what amount.

20 Is that all acceptable to the Plaintiff?

21 *MR. PHILLIPS:* Yes, your Honor.

22 *THE COURT:* Defense?

23 *MR. BRUCE JOLLY:* I actually prefer it, but I don't
24 think it is an accurate statement.

25 We have to break out according to the earlier

1 instruction how much the individual claimants get.

2 *THE COURT:* That is what you are saying to match up
3 with the instruction.

4 *MR. PHILLIPS:* Which I prefer.

5 *MR. BRUCE JOLLY:* Of course you do, it is more money.

6 Both for the compensatory and nominal, it should be
7 broken out as to the estate -- no, just as to the surviving
8 children or --

9 *MR. PHILLIPS:* So the estate has the \$13,000 funeral
10 bill, whatever it was, and then there is the three children.

11 *THE COURT:* So, we need a separate line for estate and
12 three children under both nominal and compensatory or just
13 compensatory?

14 *MR. BRUCE JOLLY:* I don't think nominal, but for
15 compensatory.

16 *MR. PHILLIPS:* I agree.

17 *THE COURT:* We'll break that out for the three
18 children and do it by initials.

19 *MR. PHILLIPS:* The only question is, in State Court we
20 do it past and future as well, but I think we might --

21 *MR. BRUCE JOLLY:* This is the problem we have in every
22 case, the more blanks you have, the more theoretical problems.

23 The claims are different --

24 *THE COURT:* Do the patterns provide for past and
25 future?

1 *THE LAW CLERK:* The 1983 pattern does not break it
2 out.

3 *THE COURT:* We will take a closer look at that, and
4 again, if you have anything you want to bring to the Court's
5 attention on that, we'll look at that. We all agree estate and
6 three children should be separated out for 3-A, but then the
7 question is past and future.

8 Why don't we take a closer look. Any input you could
9 give on that will be appreciated as well.

10 Let's look at negligence so we let everybody go.
11 Negligence, let me ask, rather than reading each one -- let's
12 see here. Okay. Then there is interrogatory fact questions
13 after all of that.

14 So, the negligence claim against Sheriff Mascara, did
15 the Plaintiff have an opportunity to review the entire set of
16 six questions?

17 *MR. PHILLIPS:* Yes.

18 *THE COURT:* Is there any objection to it?

19 *MR. PHILLIPS:* Your Honor, would bad faith be in
20 question two?

21 *MR. BRUCE JOLLY:* There is a reason for that.

22 *THE COURT:* You want to explain, from the Defense?

23 *MR. BRUCE JOLLY:* Yes, your Honor. The Sheriff only
24 is sued, the Sheriff only is defending, not that I expect a
25 jury to find that Deputy Newman's actions were in bad faith.

1 If they did find his actions were in bad faith, the Sheriff is
2 immune.

3 *THE COURT:* So, you need to know that as a factual
4 question so as to come to a legal --

5 *MR. BRUCE JOLLY:* Factual.

6 *MR. PHILLIPS:* Which would be a 726.28 issue, I don't
7 think that reflects what is required by 726.28.

8 *THE COURT:* You think the language is --

9 *MR. PHILLIPS:* Harsher than necessary.

10 *MS. BARRANCO:* 9-A.

11 *THE COURT:* All right. We'll look at that and make
12 that comport with that statute and take another crack at that
13 one.

14 Other than question number two, anything else
15 problematic about the negligence instruction?

16 *MR. PHILLIPS:* The only thing, going back to the same
17 question of how many lines, your Honor.

18 *THE COURT:* In which one?

19 *MR. PHILLIPS:* Total damages, that will be the last.

20 *THE COURT:* That is for the estate.

21 *MR. BRUCE JOLLY:* The kids benefit theoretically.

22 *THE COURT:* You think it should be estate and three
23 children?

24 *MR. PHILLIPS:* Yes.

25 *THE COURT:* Are we also talking possibly past and

1 future here, too? Would it be consistent with 83, whatever we
2 do with 83, we do with this one?

3 MR. PHILLIPS: Yes.

4 MR. BRUCE JOLLY: Your Honor, could we have a day to
5 figure that one out?

6 THE COURT: Yes. Put your minds to it and we will as
7 well. That is why I wanted to have this preliminary conference
8 to highlight the areas that need more delving into.

9 Lastly, we have the interrogatory fact questions that
10 are questions that would aid the Court in ultimately -- you
11 know, if there is still a question of qualified immunity, which
12 is a mixed question, you know, of fact and law. I was trying
13 to come up with the right factual questions that would aid the
14 Court in making a legal determination should that still be
15 lingering out there on qualified immunity.

16 We have the questions: Did Gregory Vaughn Hill have a
17 gun in his hand? Did Christopher Newman tell Gregory Vaughn
18 Hill to drop the gun? Did Gregory Hill raise the gun toward
19 the Defendant.

20 Does Plaintiff have an objection to these?

21 MR. PHILLIPS: I need to think about them, if you
22 don't mind, but right off, I don't know that these -- there are
23 shades of degree with this. Did Mr. Hill have a gun in his
24 hand? He could have had a gun in his hand and put it away and
25 it still doesn't raise the question did he have a gun in his

1 hand in the operative time for the first shot, second shot,
2 third shot, fourth shot.

3 *THE COURT:* Do we all agree this series of questions
4 should be appropriate so ultimately the Court has -- I know, I
5 feel that it -- there should be questions along these lines so
6 that when the Court is called upon to consider the legal issue
7 of qualified immunity it has the benefit of the jury's factual
8 findings.

9 So, I am not wedded to these questions and perhaps
10 they could be more narrowly tailored and specific.

11 They are not questions that bear on the, you know, the
12 other set of interrogatory questions for 1983 and for
13 negligence, but they ultimately will be questions that would
14 aid the Court in any legal argument that may be made to the
15 Court and that already was made to the Court in summary
16 judgment and Rule 50 on qualified immunity.

17 So, I think the tighter the question, the more precise
18 the questions, although maybe no question can be perfect, and
19 there still may be argument even in the face -- if the jury
20 would say yes to all of them, I could still hear your
21 objections. It is not that you are waiving your right to
22 persist in the qualified immunity defense if there is a verdict
23 for the Plaintiff, but I think the questions should be as
24 precise as possible.

25 I don't know if you have gotten this far in

1 considering them. Do you want to take the evening and give the
2 Court input on this tomorrow and maybe work together to see --

3 *MR. BRUCE JOLLY:* I normally defer to the Plaintiff,
4 they get to go first.

5 *THE COURT:* Plaintiff, do you want the time?

6 *MR. PHILLIPS:* I always need more time.

7 *THE COURT:* Defense?

8 *MR. BRUCE JOLLY:* I can answer the question now, he
9 needs more time, so it doesn't matter what I think.

10 *THE COURT:* We will take the benefit of your thinking.

11 *MR. BRUCE JOLLY:* It should read did Gregory Vaughn
12 Hill have a gun in his hand at any point in time when
13 confronting the deputies? It has to be when he was interacting
14 with the deputies.

15 Number two, did either Deputy Lopez or Newman tell
16 Gregory Vaughn Hill to drop the gun? The answer is they both
17 did.

18 The next one, that is a legitimate question.

19 *MS. BARRANCO:* Either deputy, not both deputies.

20 *THE COURT:* What are you saying for number three?

21 *MR. BRUCE JOLLY:* Did Gregory Vaughn Hill raise the
22 gun toward either Deputy Lopez or Newman.

23 *THE COURT:* What was your proposal for two?

24 *MR. BRUCE JOLLY:* Did either Deputy Lopez or Deputy
25 Newman tell Gregory Vaughn Hill to drop the gun in his hand?

1 *THE COURT:* Okay. And the first one you said, at any
2 point in time?

3 *MR. BRUCE JOLLY:* However you want to phrase it.

4 *THE COURT:* The Plaintiff has the benefit of Defense's
5 thinking on that.

6 We have narrowed it down to some discrete issues,
7 mainly damages, and I think everyone agrees it should be broken
8 out for the children by their initials and estate. There is
9 the issue of past versus future, and anything -- the special
10 interrogatories to give the Court factual findings from the
11 jury that will assist in qualified immunity.

12 I am going to file in the court file this clean copy
13 with what we have been talking about, and we have taken notes
14 on the issues that have arisen. Hopefully, if not by tomorrow
15 morning, sometime tomorrow -- it doesn't have to be first thing
16 in the morning, but we will give you a redline copy that will
17 show changes in what we discussed, some of which were
18 uncontested and others that require more work.

19 If you come in tomorrow morning and you have case law
20 and additional thoughts, bring it in immediately. Jury
21 instructions seem to snag things at the end when you think
22 there is something you haven't done and someone brings it up.

23 I do appreciate you telling me tomorrow morning about
24 the expert, and encouraging the spirit, teaching is important,
25 but if he is your expert in this case, and this is important to

1 your clients -- I am not saying being in a trial is more
2 important than teaching, but there is only one trial, and there
3 are probably many opportunities to teach. If it is truly the
4 teaching that is keeping him from getting here, maybe you can
5 have a conversation about that.

6 *MR. BRUCE JOLLY:* Yes, your Honor.

7 *THE COURT:* Okay.

8 *MR. BRUCE JOLLY:* I have one more comment. Defense
9 submitted this morning, or yesterday, Defendant Mascara's and
10 Newman's proposed jury instructions. I do not have the docket
11 entry. Yes, I do. 213.

12 *THE LAW CLERK:* I saw it and read it, I was reading
13 the cases.

14 *THE COURT:* It was a special instruction?

15 *MR. BRUCE JOLLY:* It was.

16 *THE COURT:* You provided case law, and we are still
17 looking at it.

18 *MR. JOHNSON:* We got it last night.

19 *THE COURT:* Do you want time to look at that?

20 *MR. PHILLIPS:* Yes.

21 *THE COURT:* I will make a note of that as well. We'll
22 look at the recently filed Defense supplemental instruction.
23 All right. So, we will see everybody tomorrow morning ready to
24 go at 9:00 a.m.

25 (Thereupon, the Court was recessed.)

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above matter.

Date: June 26, 2018

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

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<p>MS. A. HILL: [4] 97/3 97/14 97/20 98/12</p> <p>MS. BARRANCO: [123] 6/17 9/5 9/14 57/12 57/16 61/24 62/9 64/16 65/8 65/19 66/7 72/21 72/23 73/1 74/21 75/9 76/18 82/24 86/5 86/7 87/21 89/23 91/4 91/18 93/25 95/1</p>	<p>THE COURT SECURITY OFFICER: [2] 154/9 154/12</p> <p>THE COURT: [378]</p> <p>THE COURTROOM DEPUTY: [11] 8/16 92/16 98/14 98/17 99/5 99/8 100/17 105/13 183/10 210/19 264/21</p> <p>THE LAW CLERK: [2] 283/25 290/11</p> <p>THE WITNESS: [29] 13/11 24/12 24/16 28/22 57/4 57/6 57/18 99/7 99/10 100/19 105/15 128/8 133/23 154/5 154/8 154/11 154/18 160/23 161/19 174/22 175/7 177/1 182/20 183/12 210/21 222/17 243/11 255/15 258/18</p> <p>\$ \$13,000 [1] 283/9 \$350 [1] 20/5 \$500 [1] 20/6</p>	<p>11:00 [2] 260/19 261/10 11:00 o'clock [1] 259/12 11:35 [1] 89/5 11th [9] 58/20 58/25 121/19 122/10 123/14 262/1 262/14 273/24 276/5 12 [1] 196/18 12-foot [1] 231/2 12/29/04 [1] 63/21 121 [5] 4/9 146/2 146/6 146/13 201/16 122 [5] 4/9 146/2 146/6 146/13 147/14 1243 [1] 121/19 128 [1] 3/2 12:00 [3] 89/6 261/11 261/16 12:30 [1] 119/20 12:30 p.m [1] 133/2 12:43 [1] 125/20 13 [6] 2/10 58/8 70/12 92/6 105/24 112/18 13-D [2] 174/1 174/4 130 [1] 3/3 133 [1] 3/4 134 [1] 3/6</p>

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 22, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 4

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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FOR THE DEFENDANTS: **BRUCE W. JOLLY, ESQ.**
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772-467-2337
Official Federal Reporter
HON. ROBIN L. ROSENBERG

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1 *THE COURT:* Okay, good morning, everyone. We have all
2 of our jurors. Do you have Mr. Young ready?

3 *MR. GREGG JOLLY:* Yes, your Honor.

4 *THE COURT:* Okay.

5 (Thereupon, the jury enters the courtroom.)

6 *THE COURT:* Good morning, everyone, you may be seated.
7 We are all tested with this weather, we doubly thank
8 you.

9 With that, I ask the Defense to call the next witness.

10 *MR. GREGG JOLLY:* Defense calls Richard Young.

11 *THE COURT:* Okay, he may come in.

12 RICHARD YOUNG, DEFENSE WITNESS, SWORN

13 *THE COURTROOM DEPUTY:* Have a seat. If you'd state
14 your full name and spell your last name for the record.

15 *THE WITNESS:* Richard Thomas Young, Y-O-U-N-G.

16 **DIRECT EXAMINATION**

17 *BY MR. GREGG JOLLY:*

18 *Q.* Good morning.

19 *A.* Good morning.

20 *Q.* You said your name is Mr. Young. Do you have a nickname?

21 *A.* Snoopy.

22 *Q.* If some of the witnesses refer to you as Snoopy, is that
23 you?

24 *A.* That would be me.

25 *Q.* Are you working?

1 A. No. Retired.

2 Q. When did you retire?

3 A. July 2015.

4 Q. What did you retire from?

5 A. St. Lucie Sheriff's Office, I was a crime scene detective
6 when I retired.

7 Q. How long were you a crime scene detective?

8 A. Ten and a half years.

9 Q. Were you a crime scene detective in January 2014?

10 A. Yes, I was.

11 Q. Did you have occasion to be called to a house on
12 January 14, 2014?

13 A. Yes.

14 Q. Okay. What time were you called to the house, if you
15 remember?

16 A. I was notified, I believe, at quarter to 4:00 that day, in
17 the afternoon.

18 Q. You were notified at quarter to 4:00. Do you remember when
19 you got there?

20 A. I think it was 20 after 4:00.

21 Q. What, to your knowledge, was going on at the house when you
22 were called out?

23 A. I was notified there was an officer involved shooting. At
24 the time, the residence wasn't secured, we weren't sure, we
25 were a block away.

1 Q. Why were you called?

2 A. To process the scene, document the scene, take pictures.

3 Q. Document the scene, can you explain to the jury what you
4 mean by that?

5 A. When we document a scene, basically it is my job to make a
6 report of what we see, collecting the evidence there,
7 processing evidence, make diagrams if need be.

8 Q. Now, you said the scene wasn't secure when you first
9 arrived; is that right?

10 A. That is what I was told, we were waiting a block away.

11 Q. Did the scene become secure?

12 A. Yes. It was about three hours later when I arrived at the
13 scene.

14 Q. What do you remember when you arrived at the scene?

15 A. Basically, a lot of tear gas and whatnot put in the house,
16 there were some bullet holes in the overhead garage door, and
17 we just started photographing that and eventually opening up
18 the door and finding the deceased inside the garage.

19 Q. What do you remember about the deceased when you went in
20 the garage?

21 A. He was laying at the west end of the garage door, just
22 inside the door, he was bleeding, he had been struck by a
23 couple, three bullets. He was deceased.

24 Q. Do you remember seeing a gun on the decedent when you saw
25 him?

1 A. Yes, there was a partial view on his right rear pocket. It
2 was the -- partial, it was the grip visible.

3 Q. As part of your workup, did you do any investigation as to
4 the deputies who were involved in the shooting?

5 A. Yes. Prior to me going to the scene, I think it was
6 Sergeant Schiller who asked us to photograph the deputies
7 involved in the incident. We photographed both deputies and I
8 collected the weapon from Deputy Newman. He is the deputy that
9 fired the shots.

10 Q. Did you do any investigation regarding the gun you took
11 from Deputy Newman?

12 A. Yes, I looked at it. He fired four rounds, nine rounds
13 were in the magazine and one round in the chamber of his duty
14 weapon. I also removed his magazines from his belt and those
15 were fully loaded still, 13 rounds each. I collected all those
16 and secured them in my vehicle.

17 Q. What about, was there another deputy involved in the
18 incident?

19 A. Yes. I took pictures of him.

20 Q. Did you do anything with his service weapon?

21 A. No, I did not. He did not fire any rounds.

22 Q. Did you check to see if all the rounds were inside Deputy
23 Lopez' gun?

24 A. No. I don't recall checking his gun.

25 Q. I want to ask you about the garage door you mentioned

1 earlier.

2 As part of your workup, you saw the bullet holes in the
3 garage door, correct?

4 A. Correct.

5 Q. As part of your workup, did you attempt to recover any
6 projectiles that went through the garage door?

7 A. Yes, we did, actually, we recovered two projectiles, one
8 was in the enter user channel, the aluminum channel that comes
9 down the inside of the door, the bullet struck a hand rung of
10 that and dropped down, and we found one of the projectiles that
11 struck the victim, passed through him and struck the wall, a
12 four or five-foot tall wall in the garage, cement wall.

13 A projectile struck that and ricocheted over into a bag of
14 clothes on the table in the garage, and we recovered that
15 projectile.

16 MR. GREGG JOLLY: Your Honor, may I approach?

17 THE COURT: Yes.

18 MR. GREGG JOLLY: For the record, 157 and 158, to my
19 understanding, there is no objection.

20 THE COURT: Are you seeking to have them admitted?

21 MR. GREGG JOLLY: Yes.

22 MR. PHILLIPS: No objection.

23 THE COURT: 157 and 158 are admitted into evidence.

24 (Whereupon Defense Exhibits 157, 158 were marked for
25 evidence.)

1 MR. GREGG JOLLY: May I project them, your Honor?

2 THE COURT: Yes.

3 BY MR. GREGG JOLLY:

4 Q. Mr. Young, can you tell the jury what is depicted in the
5 picture?

6 A. Yes, that would be inside, the channel where we recovered
7 the projectile, the tag shows where the bullet struck that
8 aluminum and fell straight down.

9 Q. Okay. Where was the bullet recovered? You said it got
10 stuck in the chamber?

11 A. At the bottom of the channel, at the bottom of the picture
12 there.

13 Q. Right around here somewhere? (Indicating)

14 A. Yes.

15 Q. Okay. Detective Young, what does this picture depict?

16 A. That is the closeup of the adhesive scale and that is where
17 the bullet passed through there and fell down.

18 Q. I see this picture is marked number 1.

19 A. Yes, the four defects in the door were marked 1 through 4,
20 with 1 being the lowest on the door, 2, 3, 4 the higher up.

21 Q. Is this picture just a closeup of the previous picture you
22 just were looking at?

23 A. Yes.

24 Q. Okay.

25 MR. GREGG JOLLY: Your Honor, may I approach the

1 exhibits in evidence?

2 *THE COURT:* Yes.

3 *MR. GREGG JOLLY:* For the record, I am going to be
4 putting on the ELMO, with your Honor's permission, Plaintiff's
5 Exhibit 38.

6 *THE COURT:* Okay.

7 *BY MR. GREGG JOLLY:*

8 *Q.* Detective Young, can you identify which of these defects in
9 the garage door correspond to the defect we have been looking
10 at in the previous picture?

11 *A.* Defect 1 would be the lowest one on the door there, closest
12 to the ground.

13 *Q.* Now, you mentioned earlier you saw a gun in the back of the
14 decedent's pocket, correct?

15 *A.* Correct.

16 *Q.* What was done with that gun, if anything?

17 *A.* It was collected and put into my van.

18 *Q.* Okay.

19 *A.* We checked it, it was unloaded, no bullet in the chamber,
20 and no bullets in the magazine.

21 *Q.* Was any other piece of evidence recovered?

22 *A.* Projectiles. I think he also had \$13 in his right front
23 pocket, we collected that.

24 *Q.* Why is it important for you to retain that evidence?

25 *A.* Anything belonging to the victim we collect at the scene

1 there and return to family at a later date.

2 Q. Mr. Young, was any testing done to the gun, to your
3 knowledge?

4 A. I turned it in and it would have gone to the lab; at the
5 scene, no.

6 Q. What about not on the scene?

7 A. Yes, the gun would have been brought back to my office. At
8 that point, I think a day or two later I took other pictures of
9 it, I believe, and would have swabbed it for DNA.

10 Q. And what do you do with that swab?

11 A. I turn the swab back into evidence.

12 Q. Do you do any testing of the swab?

13 A. No.

14 Q. Do you know if any DNA was recovered on that?

15 A. I do not know. I did not see the lab report.

16 Q. Do you know Detective Newman?

17 A. Deputy, he was a deputy at the time.

18 Q. Deputy Newman, now Detective Newman?

19 A. We worked in the same department, that is about it.

20 Q. Are you friends?

21 A. No.

22 Q. Would you plant a gun for Deputy Newman?

23 A. No.

24 Q. Did you see anyone plant a gun for Deputy Newman?

25 A. No.

1 Q. Would you let anyone plant a gun for Deputy Newman?

2 A. No.

3 Q. Mr. Young, in addition to taking measurements at a scene,
4 did you do any testing for -- testing to determine the
5 trajectory of the bullets?

6 A. No, we did not.

7 Q. Do you know who did that?

8 A. Indian River County Sheriff's Office, their crime scene
9 unit.

10 Q. Was your role to document the scene?

11 A. Document the scene, collect whatever evidence is there.

12 MR. GREGG JOLLY: Your Honor, may I have a moment?

13 THE COURT: Yes.

14 BY MR. GREGG JOLLY:

15 Q. Mr. Young, do you have memory of what type gun was
16 recovered on the decedent?

17 A. A Kel-Tec, 9-millimeter, semiautomatic.

18 MR. GREGG JOLLY: No more questions.

19 THE COURT: Cross-examination?

20 MR. PHILLIPS: Yes, your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. PHILLIPS:

23 Q. Good morning, Detective, thank you for coming in this
24 morning. Sorry about that. Good morning.

25 A. Good morning.

1 Q. As a part of your duties on the scene, did you take
2 measurements of the door?

3 A. Yes, of the garage door.

4 Q. Do you have a copy of that with you?

5 A. I don't have my report, it is in the report.

6 Q. If we give you a copy of the report, could you refresh your
7 recollection as to what measurements you took?

8 A. Sure.

9 Q. We will come back to that.

10 There was some discussion about a missing shell casing in
11 your report. Why is that significant or why did you document
12 that?

13 A. They fired four rounds and we were only able to recover
14 three of the spent casings, I don't know where the fourth one
15 went. We checked with a metal detector and tried to find it,
16 still couldn't come up with it. I just documented it.

17 MR. PHILLIPS: At this time we move in and seek to
18 show the witness Plaintiff's Exhibits 50 and 55.

19 MR. GREGG JOLLY: No objection, your Honor.

20 THE COURT: Okay. Plaintiff's Exhibits 50 and 55 are
21 admitted without objection.

22 (Whereupon Plaintiff Exhibits 50, 55 were marked for
23 evidence.)

24 BY MR. PHILLIPS:

25 Q. Do you recognize that?

1 A. Yes, those are markers I placed next to the casing, a photo
2 marker.

3 Q. What is a photo marker?

4 A. A photo marker, 1 and 2.

5 Q. What is the purpose?

6 A. So you can see the location and distinguish between the
7 different shell casings.

8 Q. This is 1 and 2, this is blurry, but the jury can take it
9 back. And over here was another shell casing?

10 A. Correct, number 3 was in the grass.

11 Q. Did you check the school to see if they had any video that
12 may have shown the incident?

13 A. I didn't.

14 Q. You said Deputy Newman had one in the chamber?

15 A. Yes, and nine in the magazine.

16 Q. Bear with me.

17 *MR. PHILLIPS:* Your Honor, I am waiting on a clean
18 copy of the report.

19 *THE COURT:* Okay.

20 *MR. PHILLIPS:* Your Honor, may I approach the witness?

21 *THE COURT:* Yes. What are you handing the witness?

22 *MR. PHILLIPS:* I will ask him that question. It
23 purports to be the report he wrote in his investigation of this
24 matter.

25

1 BY MR. PHILLIPS:

2 Q. Does that appear to be your report?

3 A. Yes.

4 Q. Does that help you refresh your recollection of the
5 measurements you took of the defects on the garage door?

6 A. Yes.

7 Q. Do you feel that evidence would assist the trier of fact in
8 their determination of what happened here?

9 A. Yes.

10 Q. Do you mind stepping down and writing down those numbers
11 for us?

12 THE COURT: Is there an exhibit number associated with
13 that document?

14 MR. PHILLIPS: There is not.

15 THE COURT: It would be for ID only?

16 MR. PHILLIPS: Yes.

17 THE COURT: Just to be clear, I think your last
18 exhibit is 193, if I am not mistaken -- no 195. Why don't we
19 call this 196, and it its marked for ID only. And we are
20 calling it?

21 MR. PHILLIPS: Detective Young's report.

22 THE COURT: ID only.

23 (Whereupon Plaintiff Exhibit 196 was marked for
24 identification.)

25

1 BY MR. PHILLIPS:

2 Q. I am going to keep you on one side, if you don't mind.

3 MR. GREGG JOLLY: Your Honor, may I stand over here?

4 THE COURT: Yes.

5 BY MR. PHILLIPS:

6 Q. All I want you to do is put a number, 1, 2, 3, 4,
7 sequentially with the measurements above the cement floor that
8 you took.

9 A. Okay. Just above the floor?

10 Q. Yes, above the concrete floor, inches, feet, however you
11 want to do it.

12 A. All four?

13 Q. Yes, sir.

14 A. (Witness complying.)

15 Q. Could you sign and date it May 23rd, sir?

16 A. Initial it or sign it?

17 Q. Just sign it.

18 A. Today's date?

19 Q. I think it is the 22nd.

20 MR. PHILLIPS: Could we get judicial notice on that,
21 your Honor, the 22nd?

22 THE COURT: Today is the 22nd.

23 BY MR. PHILLIPS:

24 Q. Tell us what the measurements were.

25 A. The lowest defect on the door is one foot nine inches above

1 the cement floor; number 2, three feet eight inches, number 3,
2 three feet nine inches, and number 4, four feet four inches.

3 Q. You would have put the door all the way on the ground and
4 put a tape measure or measuring device on the defects and
5 gathered the numbers?

6 A. Yes.

7 Q. Is that from the bottom of the hole, top of the hole?

8 A. Should have been the bottom, to the bottom of the defect.

9 Q. Very good. You can step back, sir.

10 You indicated something about -- now we can't see each
11 other.

12 You indicated something about returning property to a
13 family at a later date. That is St. Lucie County Sheriff's
14 Office's obligation?

15 A. That is policy.

16 MR. GREGG JOLLY: Objection, I don't believe that was
17 covered on direct.

18 THE COURT: I believe it was. Overruled. The general
19 topic was about what you do with property when it is taken in.

20 BY MR. PHILLIPS:

21 Q. You weren't there during the shooting incident?

22 A. No.

23 Q. Did you spend five full days listening to witnesses and
24 looking at evidence?

25 A. No.

1 Q. Thank you, sir.

2 THE COURT: Anything on redirect?

3 MR. GREGG JOLLY: Very briefly, your Honor.

4 **REDIRECT EXAMINATION**

5 BY MR. GREGG JOLLY:

6 Q. Mr. Young, you were shown a picture indicating where the
7 shell casings were found. Do you remember that?

8 A. Yes.

9 Q. Okay. Is that an accurate representation of where those
10 shell casings were immediately after they were fired?

11 A. No.

12 Q. Why is that?

13 A. Because I wasn't there. There are people walking around,
14 the SWAT team was there, any of those things could be kicked or
15 moved.

16 Q. You said you were there approximately three hours after the
17 initial incident took place; is that correct?

18 A. That is correct.

19 MR. GREGG JOLLY: No more questions.

20 THE COURT: Thank you very much, you may step down.

21 THE WITNESS: Thank you.

22 THE COURT: Defense may call your next witness.

23 MR. GREGG JOLLY: Defense would call Donna Carmichael.

24 THE COURT: Okay.

25 DONNA CARMICHAEL, DEFENSE WITNESS, SWORN

1 *THE WITNESS:* My name is Donna Carmichael,
2 C-A-R-M-I-C-H-A-E-L.

3 **DIRECT EXAMINATION**

4 *BY MR. GREGG JOLLY:*

5 Q. Good morning, Ms. Carmichael.

6 A. Good morning.

7 Q. Are you employed?

8 A. Yes, sir.

9 Q. Where are you employed?

10 A. St. Lucie County Sheriff's Office.

11 Q. What do you do at the Sheriff's Office?

12 A. I am the crime scene supervisor.

13 Q. How long have you been the supervisor?

14 A. I have been the supervisor for a little over a year.

15 Q. Can you tell the jury some of your training that qualifies
16 you to be the crime scene supervisor?

17 A. Yes, sir. I have been in the crime scene unit for 15
18 years, I have been with the agency for 25 years. Prior to
19 being in the crime scene unit, I was the evidence custodian
20 with the Sheriff's Office.

21 During my 25 years with the Sheriff's Office I attended
22 over 2,000 hours of training through various organizations such
23 as the FBI, American Institute of Applied Science, West
24 Virginia University, Miami Training Complex and various other
25 organizations.

1 The training includes different things from property and
2 evidence handling to crime scene investigations, analysis and
3 comparison of latent prints, processing evidence, handling and
4 investigating death investigations and homicide investigations,
5 shooting reconstructions, blood spatter investigations and
6 various items to do with different scenes we respond to. I am
7 a certified senior crime scene analyst with the International
8 Association of Identification.

9 Q. That is a lot of information. Did you say you do DNA
10 forensic testing?

11 A. I do not do the testing like you see on TV where I am in a
12 lab and run DNA through machines to analyze it. What I do is
13 process the evidence collected and swab the areas that have
14 possible DNA to collect any possible DNA off an item.

15 Q. Now, when you swab an item for DNA, are you always able to
16 recover DNA on that item if the person has touched it?

17 A. No, sir, unfortunately, we call that the CSI myth from T.V.
18 shows. Unfortunately a lot of T.V. shows makes it look like
19 any time a person touches something or -- touches something
20 that DNA is fluffing off of them or leaving fingerprints. We
21 wish that would happen, but it does not happen. There are a
22 multitude of reasons why DNA is not left on an item.

23 Q. What are the reasons?

24 A. Number one, depending on the texture and surface of an
25 item, if I am sitting here and touch the wood here, I am not

1 going to leave my DNA or fingerprints because I was touching
2 the cloth of my jacket first, that is wiping any moisture off
3 my fingers. Fingerprints are made of 99 percent water, there
4 are inorganic substances such as oils. If you have eaten or
5 touched a surface that has an oily substance, touching my
6 clothing and then touching an item, I wiped any moisture off
7 and so I am not going to leave a fingerprint.

8 The same thing with DNA, our DNA is not just falling off of
9 us other than our hair. With your hair, you need a root
10 follicle to collect DNA from. If I am -- unless I am leaving
11 actual skin cells, I am not going to leave my DNA. This being
12 a smooth surface, I will not leave my skin cells. You need
13 friction to rub the skin cells off to leave the DNA.

14 Q. You mentioned friction. Can friction cause DNA to come off
15 an item?

16 A. Yes. If you have an item in a package or material running
17 up against something, your pen -- if you have a pen in your
18 jacket pocket, and you are pulling it out of the pocket, any
19 DNA in the clothing pocket, you rub the DNA off that item.

20 Q. If an item is in a pocket, that might transfer the DNA off
21 the item and into the pocket?

22 A. Yes.

23 *MR. GREGG JOLLY:* Your Honor, may I have a moment?

24 *THE COURT:* Yes.

25 *MR. GREGG JOLLY:* No more questions.

1 Q. And I think you took photos from the witnesses'
2 perspective, at least one?

3 A. Yes, sir.

4 Q. Do you recall if you were several feet behind her when you
5 took that photo?

6 A. Initially, I was several feet behind her when I took that
7 photo so I could show where the witness was standing when they
8 were describing what they saw. Once the witness was done
9 stating what they saw from their witness vantage point I moved
10 to the exact spot that she was at and took additional photos.

11 Q. Did you turn that photo in?

12 A. Yes, sir.

13 Q. You watched the autopsy?

14 A. Yes.

15 Q. Collected fingerprints of Mr. Hill?

16 A. Yes, sir.

17 Q. Do you know if that was used with the firearm analysis in
18 any way?

19 A. No.

20 Q. You noted there were holes in the boxers, but not his
21 shorts?

22 A. Yes.

23 Q. What is the significance of that?

24 A. They were not in the same location as the body.

25 Q. The boxers were substantially with more blood than the

1 shorts?

2 A. Yes.

3 Q. A drop of blood has DNA in it?

4 A. Yes, sir.

5 Q. You cannot not get a good read from a drop of blood. Is
6 that fair?

7 A. As long as the blood does not separate.

8 Q. You weren't there when the shooting happened?

9 A. No, sir.

10 Q. Did you spend five full days listening to and reviewing
11 evidence?

12 A. No, sir.

13 Q. Thank you.

14 *MR. GREGG JOLLY:* Your Honor, may I have a moment,
15 please?

16 *THE COURT:* Yes.

17 **REDIRECT EXAMINATION**

18 *BY MR. GREGG JOLLY:*

19 Q. You were asked about the shell casing not recovered. Do
20 you remember that?

21 A. Yes.

22 Q. Is it atypical to have a shell casing not recovered at a
23 crime scene?

24 A. No, it really isn't due to the personnel that responds to
25 an incident. If you have the medical personnel, anybody like

1 that responding, a lot of times shell casings, unfortunately,
2 get kicked out of the way or vehicles get driven over them. We
3 see that shell casings have been run over and crushed and
4 things happen to them at scenes, unfortunately.

5 *MR. GREGG JOLLY:* Your Honor, we are looking for the
6 picture that the witness talked about on cross from the
7 witness' perspective.

8 Your Honor, may I show the witness Plaintiff's 124
9 already in evidence?

10 *THE COURT:* Yes.

11 *BY MR. GREGG JOLLY:*

12 Q. Ms. Carmichael, you were testifying earlier about a picture
13 you took from one of the witness' perspective. Do you remember
14 that?

15 A. Yes, sir.

16 Q. Is this the picture that has the actual witness in the
17 picture?

18 A. Yes, sir.

19 Q. Okay. You took another picture from the witness'
20 perspective without the witness in the picture?

21 A. From what I remember.

22 Q. Okay.

23 *MR. GREGG JOLLY:* No more questions, your Honor.

24 *THE COURT:* Okay, thank you very much, you may step
25 down.

1 And Defense may call your next witness.

2 MS. BARRANCO: Thank you, your Honor. At this time
3 Defense will call to the stand Sergeant Kyle King.

4 KYLE KING, DEFENDANTS' WITNESS, SWORN

5 THE COURTROOM DEPUTY: State your full name for the
6 record and spell your last name, please.

7 THE WITNESS: Detective Sergeant Kyle King, K-I-N-G.

8 **DIRECT EXAMINATION**

9 BY MS. BARRANCO:

10 Q. Good morning.

11 A. Good morning.

12 Q. Sergeant King, where are you currently employed?

13 A. Crime scene supervisor, Indian River Sheriff's Office, Vero
14 Beach.

15 Q. That means you are not employed by the St. Lucie County
16 Sheriff's Office?

17 A. That is right.

18 Q. Indian River County, for those of us who do not know, is
19 located north of St. Lucie County?

20 A. Yes, ma'am.

21 Q. You told us what your current employment is. How long have
22 you been employed with the Indian River County Sheriff's
23 Office?

24 A. Since October 1989, just about 30 years.

25 Q. And what do you do at the Indian River County Sheriff's

1 Office?

2 A. I supervise all forensic operations for the Sheriff's
3 Office as part of all criminal investigations.

4 Q. You mentioned yu supervise for the Sheriff's Office; do you
5 mean the Indian River County Sheriff's Office?

6 A. Yes, Indian River.

7 Q. We are here today where one of the Defendants is from the
8 St. Lucie County Sheriff's Office, Deputy Newman.

9 Could you tell us what your involvement was that concerns
10 an officer shooting, Mr. Newman, and an individual named
11 Gregory Hill?

12 A. Our involvement was an advisory role. The investigators
13 from St. Lucie County, more specifically the 19th Judicial
14 Circuit prosecutor's office, asked us to render opinions about
15 the facts and circumstances that occurred.

16 Q. Was that unusual for you, a different agency to be called
17 in from this county to look at evidence and render opinions?

18 A. No, ma'am, it is a pretty common occurrence.

19 Q. Now, can you briefly tell us about your education?

20 A. Yes. I have a Bachelor's Degree from Warner Southern
21 College, an AA degree from Indian River State College in
22 criminal justice. I am a certified by the International
23 Association for Identification as a senior crime scene analyst.
24 I am a certified forensic photographer and Florida certified
25 instructor in a variety of disciplines in law enforcement.

1 Q. Now, do you have any particular training in regard to the
2 kinds of things you did in regard to this case?

3 A. I have several thousand hours of advance training in
4 general crime scene topics, but in particular, a heavy training
5 background in shooting event reconstruction, and I teach
6 shooting and reconstruction matters to law enforcement officers
7 throughout the country.

8 Q. You mentioned shooting event reconstruction; is that
9 essentially what your role was with regard to this incident
10 between Deputy Newman and Mr. Hill?

11 A. Yes.

12 Q. Okay. What did you do in regard to the subject incident?

13 A. I looked through -- I looked at the work product from the
14 St. Lucie County Sheriff's Office from the materials collected
15 from the scene itself. I was never at the actual crime scene
16 nor were any of the personnel at Indian River Sheriff's Office
17 staff.

18 We evaluate photographs, statements, physical evidence, to
19 look for any inconsistencies or determine if there is anything
20 missing, if you will.

21 Q. And factually, what is your understanding of what occurred
22 on January 14, 2014?

23 A. That two deputies from the St. Lucie County Sheriff's
24 Office were sent to the address where this occurred in regard
25 to a loud music complaint. While there, they approached and

1 tried to gain the attention of somebody in the home to address
2 the music complaint. The music was very loud.

3 At some point, those two deputies were in the front yard
4 area and the garage door opened swiftly and on the other side
5 of the garage door was Mr. Hill who was holding a firearm. The
6 deputies addressed him and Deputy Newman I believe fired four
7 shots at Mr. Hill as the garage door was coming down, and they
8 called for backup and proceeded with the investigation from
9 that point forward.

10 Q. Now, did you have anything to do with looking at what
11 happened subsequent to what you just told us in terms of the
12 SWAT team's involvement or the bomb squad's involvement, those
13 things?

14 A. As far as appropriateness?

15 Q. Correct.

16 A. No, ma'am.

17 Q. So, did you come to any conclusions in regard to this
18 shooting?

19 A. Yes, it -- all of the physical evidence and the documents
20 that I reviewed made it appear that it happened just as
21 described by the deputies on the scene, I didn't find any
22 inconsistencies. The shots came from where they were reported
23 to have come from, etc.

24 Q. Now, did you ever see -- from your review of the items you
25 told us, did you ever see any indication that anyone other than

1 Mr. Hill placed that Kel-Tec in Mr. Hill's back right pocket?

2 A. No, ma'am.

3 Q. Now, were you ever able to make any determination as to the
4 order of the shots that Deputy Newman put toward Mr. Hill?

5 A. In a general sense, yes.

6 MS. BARRANCO: Your Honor, if I could pull one of the
7 exhibits from evidence.

8 THE COURT: Yes.

9 BY MS. BARRANCO:

10 Q. For the record, I will show what is in evidence as
11 Plaintiff's Exhibit 38, and ask you, Sergeant, do you recognize
12 this photograph?

13 A. Yes.

14 Q. What does it depict?

15 A. That is the garage door at the front of the residence, it
16 has four bullet strikes in the garage door, and at the left is
17 the arm -- we will call it some type of robot they use in their
18 operation.

19 Q. Do you know what occurred with the robot?

20 A. I believe -- yes, they were using it to look into the
21 garage door, I think they pushed it through the garage door.
22 It has a camera on it and they were looking inside as a part of
23 their operation.

24 Q. Okay.

25 MS. BARRANCO: Your Honor, I don't know if I missed

1 the instructions yesterday, but I believe the witness was able
2 to utilize something to mark on the seen.

3 BY MS. BARRANCO:

4 Q. Sergeant, if you could be so kind as to tell me if you
5 recall whether you were able to make a determination as to the
6 order of the shots in this case?

7 A. Yes, the shots in general are sequenced from one to four,
8 from the bottom to the top.

9 Those conclusions come to -- you have to apply contexts to
10 them, so the shot number one is called -- we refer to that as
11 shot number one, the lower most shot because of the context of
12 the situation as described, the garage door was still partially
13 up. Shot number two and three both struck Mr. Hill, one in the
14 groin and one in the abdomen, and the final shot, number four,
15 the highest one, struck him in the head. We conclude number
16 four would be the last one based on the immediately
17 incapacitating wound that resulted from that shot.

18 The two in the middle, number two and three, could be in
19 reverse order. There is no way to determine for certain that
20 those two shots weren't three and two or two and three, but as
21 a general sense, they are progressing upward. That is a
22 conclusion we came to.

23 Q. And what is your understanding in regard to what the garage
24 door was doing, if anything, while the shots were being fired?

25 A. The garage door was coming down. That is what all the

1 statements were, the garage door was moving down, Mr. Hill was
2 pulling the garage door down as the shots began.

3 Q. Now, can you point out, now that we know you can touch the
4 screen, and make a mark next to the holes so there is no
5 confusion among the jury what you refer to as shot number one,
6 two, three, four?

7 A. (Indicating.)

8 Q. Now, tell the jury what you just did there.

9 A. I wrote a 1 next to the lower most strike, and 2 to the
10 next one up, 3, the one that is about an inch and a half above
11 number 2, and number 4 would be the final shot at the very top.

12 Q. Okay. So I understand your testimony, Sergeant, are you
13 telling us, based on your investigation and what you reviewed,
14 you came to the conclusion that the shot you labeled as number
15 1 was in fact the first shot, and then the last shot would have
16 been for sure number 4, which you told us would have been the
17 head shot to Mr. Hill's head, and 2 and 3 came between 1 and 4,
18 but you are not a hundred percent sure whether it was 2, 3, 4
19 or 3, 2, 4?

20 A. There is no way to tell that.

21 Q. Are you able to tell the fourth shot was the head shot?

22 A. With most certainty.

23 As opposed to if it was very rapid, 4 doesn't have to be
24 the very last, but in my opinion, 4 most likely came last
25 because it was immediately incapacitating and that would have

1 started Mr. Hill's falling down.

2 Q. Do you recall if there is any other evidence that suggested
3 to you that the number 4 shot you have here was in fact the
4 head shot to Mr. Hill?

5 A. The conditions on the reverse side of this door. There was
6 material from Mr. Hill's wounds that placed his head in rather
7 close proximity to that shot.

8 MS. BARRANCO: Your Honor, may I approach the
9 exhibits?

10 THE COURT: Yes.

11 BY MS. BARRANCO:

12 Q. All right, I am going to show you Exhibit 75. See if you
13 recognize that.

14 Do you recognize that photograph?

15 A. Yes, that is the back side of the garage door.

16 Q. So, is that what you were telling us about a moment ago?

17 A. Yes.

18 Q. Can you see anything on this picture that depicts what you
19 were talking about to the jury?

20 A. Yes, if you look --

21 Q. Feel free to touch the screen, because I can clear it.

22 A. Up in this area is the bullet strike to the door, which I
23 believe that shot passed through the door and into Mr. Hill's
24 head, and the material on the door would have been cerebral
25 material ejected from that wound.

1 Q. The circle you just made on what is in evidence as
2 Plaintiff's Exhibit 75, what does that depict? What are you
3 circling there?

4 A. The biological material that was ejected from Mr. Hill's
5 wound, and the bottom of that circle is the bullet hole in the
6 door.

7 Q. Okay. Now, looking at Plaintiff's Exhibit 75, are you able
8 to assist this jury in matching up the shot numbers as you did
9 on the front side?

10 A. Yes.

11 Q. I know this only shows part of the garage door.

12 A. Well, 1, 2, 3 -- I can't been certain of that.

13 MS. BARRANCO: Your Honor, if I may look at the
14 exhibits again?

15 THE COURT: Yes.

16 BY MS. BARRANCO:

17 Q. Let me see if I can find you a picture of the back side
18 that has the entirety of the garage door.

19 A. I am pretty sure that is the bullet strike there.

20 MS. BARRANCO: Your Honor, could you give me a moment?

21 THE COURT: Yes.

22 MS. BARRANCO: I need to locate a better picture.

23 THE COURT: Yes.

24 MS. BARRANCO: I apologize, a lot of pictures to go
25 through.

1 THE COURT: That is okay.

2 BY MS. BARRANCO:

3 Q. I was asking you about looking at the picture which depicts
4 part of the garage door.

5 Are you able with certainty to say if all of the bullet
6 holes are present in this picture?

7 A. I can't tell for certain because I believe that the -- I
8 just can't see it well enough to see if the one I have marked 4
9 is indeed the highest shot or if that is a bullet strike to the
10 left of it from this angle. If we look at the previous one --

11 Q. Yes, I am putting this back on and I will hit clear.

12 A. So, I believe in the picture I was just reviewing, I
13 believe number 1, which is right here (Indicating) I don't
14 believe you could see that one. If I could look at the picture
15 again, I can work that out.

16 Q. Sure.

17 A. Yes, I believe the bullet strike number 1 would be down
18 there a little bit. Lower.

19 Q. Okay.

20 A. I think -- I can only make out three of the strikes in this
21 particular photograph.

22 Q. I apologize for any confusion. Right now we are looking at
23 Plaintiff's 75, and you are indicating it appears the lowest
24 shot, number 1, is actually below where the photograph
25 captured; is that right?

1 A. I believe so.

2 Q. We are switching one more time back between the
3 photographs.

4 Looking at the back side of the photograph here it looks
5 like a cluster of two and a third shot there; is that right,
6 from that picture, the back side?

7 A. Yes.

8 Q. Does that appear to comport with -- now looking at
9 Plaintiff's 38 -- with the cluster of the three shots here on
10 the front side?

11 A. Yes, ma'am.

12 Q. Let me switch gears back, and we are looking for a better
13 photograph of the entirety of the back of the garage door, and
14 we were talking about any other evidence that you recall that
15 suggested to you that the last shot, the highest shot, was in
16 fact the head shot.

17 You mentioned the biological material, and I think you
18 circled it on this photo. Can you do that again for me?

19 A. (Witness complying.)

20 Q. Okay.

21 For the record, I will show you what is in evidence as
22 Plaintiff's 76, and ask if that -- I will clear what you just
23 did. I am not sure why it is not clearing. Well, it doesn't
24 always work.

25 Ignoring the black circle in the middle there, can you tell

1 me what Plaintiff's Exhibit 76 depicts?

2 A. Yes. You can see the bullet strike which we have been
3 referring to as number 4 at the lower right corner of the
4 photograph.

5 Q. Right here?

6 A. Yes. And above and to the left of that is cerebral
7 materials.

8 Q. You basically have the circle from the last picture?

9 A. Yes.

10 Q. Is that a closeup of Plaintiff's Exhibit 75?

11 A. It appears to be, yes, ma'am.

12 Q. Okay. Now, did you look at any photographs of the injuries
13 that Mr. Hill's body sustained?

14 A. Yes.

15 *MS. BARRANCO:* Your Honor, may I approach?

16 *THE COURT:* Yes.

17 *BY MS. BARRANCO:*

18 Q. Now, Sergeant, do you remember where Mr. Hill sustained
19 injuries on his body during this incident?

20 A. Yes.

21 Q. Would you tell us where that would be?

22 A. Two in the torso, rather low, near the groin, one about an
23 inch and a half above that in the torso, and one in the upper
24 right side of his head.

25 Q. Okay. Sergeant, I am going to show you what is in evidence

1 as Plaintiff's 117, and see if you can tell us what that is.

2 It is kind of dark.

3 A. I believe that is his torso with two bullet strikes, one at
4 the bottom left and one just above it.

5 Q. Would that be here and here?

6 A. Yes, ma'am.

7 Q. Okay.

8 Let me show you another picture in evidence, Plaintiff's
9 115, and see if you recognize that.

10 A. Yes.

11 Q. What does that depict?

12 A. That is the bullet strike in the upper right side of his
13 head.

14 Q. Now, those pictures, do those comport with the
15 understanding of the injuries Mr. Hill sustained in this
16 incident?

17 A. Yes.

18 Q. Did you take the location of the wounds into consideration
19 in coming to the conclusion you told us about today?

20 A. Yes.

21 Q. How about the trajectory of the bullets, what role did that
22 play in your analysis?

23 A. It all plays a role, context is everything, if you will.

24 The flight path of the projectiles through the garage door
25 aligning with the wound locations helps lead to the conclusion

1 which one came first, second, etc.

2 Q. Did you also rely at all on the Medical Examiner's report,
3 what Dr. O'Neil did in regard to the measurements she took of
4 the wounds on the body and trajectories that she set forth in
5 her report?

6 A. Yes, of course.

7 MS. BARRANCO: Your Honor, may I have a moment?

8 THE COURT: Yes.

9 BY MS. BARRANCO:

10 Q. Okay. Sergeant, do you know Deputy Christopher Newman?

11 A. No, ma'am.

12 Q. Have you ever seen him before?

13 A. I don't think so.

14 Q. I think you told us you didn't actually go to the scene at
15 the time of the incident, you hadn't been involved in the case?

16 A. That is right.

17 Q. Who was it specifically who asked you to be involved in
18 this investigation, what agency or entity?

19 A. I believe that request came from the State Attorney's
20 Office, which would have been Mr. Bakkedahl or perhaps Mr.
21 Butler of the State Attorney's Office.

22 Q. Those are attorneys that worked at the State Attorney's
23 Office?

24 A. Mr. Bakkedahl is the second in command at the State
25 Attorney's Office, and Mr. Butler is, I think, the third.

1 Q. Was it your understanding you were brought in as a neutral,
2 independent party to look at this stuff?

3 A. Yes.

4 MS. BARRANCO: No further questions.

5 THE COURT: Okay. Cross-examination.

6 MR. PHILLIPS: Yes, your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. PHILLIPS:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. I am from Jacksonville, where he is Indian River?

12 A. The next county north of us.

13 Q. Very good, I pass through it probably.

14 Your investigation was not prepared in any way for a civil
15 matter, right, not for a wrongful death case or civil rights
16 case?

17 A. No.

18 Q. You reviewed no depositions?

19 A. Um-m-m, no, no depositions per se. I reviewed statements
20 of witnesses and the officers involved contemporaneously with
21 my investigative efforts.

22 Q. Certainly there were statements by Detective Lebeau and
23 Deputy Newman?

24 A. Yes.

25 Q. You didn't see any inconsistencies there?

1 A. No, sir.

2 Q. And you prepared a PowerPoint at some point that you
3 presented to the St. Lucie Sheriff's Office, right?

4 A. Not just -- it was not just by myself, members of my team,
5 as you will. As we commonly do, we use PowerPoint in lieu of a
6 stack of photographs. Yes, there are probably several versions
7 of a PowerPoint.

8 Q. In that PowerPoint there are kind of animated drawings of
9 the scene from what you relied on in the formulation of your
10 opinions that you testified today?

11 A. There are drawings that were created by my office, if you
12 will, yes.

13 Q. Which incorporate your opinions as you testified today;
14 fair?

15 A. Yes.

16 Q. Okay. You wouldn't have an inaccurate drawing that --
17 strike that.

18 You wouldn't have a drawing inconsistent with your opinion?

19 A. No.

20 Q. Okay. Do you have that PowerPoint with you or the pictures
21 from it?

22 A. I don't have them -- I have a printout of a PowerPoint.

23 Q. Is that the PowerPoint?

24 A. Well, that is -- that has come up a couple of times during
25 the subpoena process, that our PowerPoints are not part of our

1 permanent record, it is a fluid document, and so there may be
2 more than one version.

3 Q. Okay.

4 A. I will refer to what I have.

5 Q. You don't necessarily need to refer to it unless you need
6 to refresh your recollection.

7 Do you recall a drawing with Mr. Hill with his arm up, the
8 door wide open, and a gun pointed straight at him? Is that
9 depicted in your PowerPoint?

10 A. Yes.

11 Q. Multiple times?

12 A. Okay.

13 Q. So you see this, this is depicted in your PowerPoint; fair?

14 A. Yes.

15 Q. If that is not accurate, your PowerPoint is not accurate;
16 fair?

17 A. Okay. Fair --

18 Q. Some of your findings --

19 A. I am not conceding it is not accurate. But, yes.

20 Q. And what is your basis for the accuracy of this? Depicting
21 Mr. Hill like this, what is the basis for that?

22 A. That is a static image showing a moment in time and range
23 of motion. It doesn't apply to any particular length of time
24 that that position occurred.

25 Q. Okay. And in the PowerPoint, and in your investigation,

1 Mr. Hill's pants, one more time, were all the way around his
2 waist, all the way up; is that fair?

3 A. I don't recall particularly, but, yeah.

4 Q. And you have seen pictures of the scene and where were Mr.
5 Hill's pants when they found him?

6 A. Yes.

7 Q. Were his pants all the way around the waist when they found
8 him?

9 A. No.

10 Q. When you prepared these materials, was it a static series
11 of images, or was there a animation sequenced in time?

12 A. Static.

13 Q. I think you testified to this, did you just work in an
14 office or did you go out to the scene?

15 A. I was not at the scene.

16 Q. And you received and relied upon what the St. Lucie County
17 Sheriff's Office gave you, correct?

18 A. That is correct.

19 Q. No independent investigation by you?

20 A. That is correct.

21 Q. Did you do a PowerPoint on what happens if the gun never
22 leaves Mr. Hill's pocket?

23 A. Say that again.

24 Q. Did you do a PowerPoint on what happens in the sequence of
25 events if the gun never left Mr. Hill's pocket?

1 MS. BARRANCO: Objection, speculation.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. PHILLIPS:

5 Q. Did you do a PowerPoint on how the gun could avoid blood
6 splatter or brain splatter?

7 I didn't end that normally like we do. I cut off a word,
8 thus I put my inflection on the long --

9 A. I concede this is the only PowerPoint we did whatsoever, or
10 some version of it.

11 Q. You didn't do a PowerPoint of the officers' perspective or
12 what was going on with the officers when they were shooting, no
13 animation or perspective or opinions on what exactly was going
14 on with Deputy Newman at the time he shot; is that fair?

15 A. There is a 3-D drawing that is in the file that can be
16 viewed for that purpose. I am not sure if that is what you
17 mean. Yes, there is a 3-D rendering that you can view from any
18 perspective, which is what the snapshots in the PowerPoint we
19 are referring to is from. It is a snapshot of a 3-D view
20 within that 3-D drawing for demonstrative purposes.

21 Q. Was there a PowerPoint or drawings within a PowerPoint that
22 reflected -- did you review any statements from a witness
23 Stephanie Miles?

24 A. I don't recall particularly if I did. There were a number
25 of witnesses that we did have statements from.

1 Q. You testified about that photo -- I know it is real dark.

2 I think you said before you saw this photo and that Mr.
3 Hill's abdominal shots were an inch apart. Do you recall
4 testifying to that?

5 A. Perhaps I said that.

6 Q. Is that more than an inch? Does that appear to be more
7 than an inch?

8 A. I can't tell you. I defer to the Medical Examiner's
9 report.

10 Q. Fair enough. You weren't there at the shooting, you were
11 brought in to give an opinion and to the best of your ability
12 you did?

13 A. Yes.

14 Q. You didn't spend four or five days listening to witnesses
15 and going through evidence before you came in, correct?

16 A. I spent several days, but I didn't listen to witnesses.

17 Q. Thank you.

18 *THE COURT:* Any redirect?

19 *MS. BARRANCO:* Just briefly, your Honor.

20 **REDIRECT EXAMINATION**

21 *BY MS. BARRANCO:*

22 Q. Sergeant, can you tell us what -- the PowerPoint that came
23 up during counsel's questioning, what is that?

24 A. It's a simplified method of conveying an opinion. We use
25 PowerPoint, it is not an official record, it is not part of the

1 reporting mechanism. We choose to use PowerPoint in lieu of a
2 stack of photographs that we hand to someone to explain our
3 findings, that is how we often use PowerPoint.

4 Q. Now, the PowerPoint that was discussed, were some of the
5 entries in that PowerPoint photographs?

6 A. Yes.

7 Q. Were some of them snapshots of animations?

8 A. I don't like to use the word animations. It is a 3-D
9 drawing. Animation implies there is a time movement presented.

10 It is not that, it is a three dimensional rendering by our
11 detectives that uses preprogrammed, if you will, human beings,
12 clothing, etc. that we use for demonstrative purpose and that
13 is what the snapshots are. It is to convey an opinion rather
14 than present a particular precise measurement, if you will.

15 Q. So it is not meant to convey -- it is not to scale?

16 A. No, ma'am.

17 Q. Okay.

18 Now, when you were preparing to testify before this jury in
19 this case did you think, wow, I want to make sure to show this
20 jury my PowerPoint?

21 A. No.

22 Q. Why not?

23 A. I don't have any reason to show them the PowerPoint, I
24 assume you ask the questions that you want answered, and you
25 have methods of demonstrating those answers to the jury here.

1 Q. And based on what has transpired here today, do you believe
2 that the spirit of what you were trying to demonstrate in the
3 PowerPoint has been conveyed to this jury?

4 A. I believe so.

5 Q. Is there anything else you recall from the PowerPoint that
6 we haven't covered that you believe is important for this jury
7 to know?

8 MR. PHILLIPS: Objection.

9 THE COURT: Overruled.

10 THE WITNESS: Nothing else.

11 BY MS. BARRANCO:

12 Q. You mentioned something about you didn't want to use the
13 word animations, and something about preprogrammed settings of
14 the bodies or the people. Is that what you were referring to
15 earlier?

16 A. The software has a library of automobiles, every-day
17 objects, furniture, clothing, etc. so we can move those bodies
18 around. So, we grab a human being of a particular size to put
19 into the drawing, and we can orient their arms and legs in
20 such -- in the position we think they were in. We don't adjust
21 clothing or those kinds of things, those are part of the
22 drawings. It would take many, many hours of work to try to
23 alter those clothings and such, it is something we don't need
24 to do.

25 So, in that sense, yes, there is a library available that

1 we drop and drag in place to demonstrate the ideas we are
2 trying to convey.

3 Q. So, if there were a crime scene where there happened to be
4 a Ferrari out front, would you be able to see a Ferrari or
5 would you pick a basic sedan and refer to it as a Ferrari?

6 A. If somebody put the Ferrari in the library, we would grab
7 that, but there are not a lot of selections.

8 Q. Plaintiff's counsel a moment ago asked you about the
9 PowerPoint having Mr. Hill with his pants at the waist. Do you
10 recall having a saggy pants option in the library for the
11 animation?

12 A. I don't know if there is one in there. It, frankly,
13 doesn't matter.

14 Q. That is my next question. As you sit here today, based on
15 the questions you were asked, do you believe your ultimate
16 opinions would differ if in fact the demonstrative aid, the
17 PowerPoint which we haven't used here today, shows the pants of
18 Mr. Hill up here as opposed to down here? Does that change
19 anything in your opinion?

20 A. No.

21 Q. And in regard to the evidence that you looked at in this
22 case, what was your understanding of where Mr. Hill's pants
23 were when he was found in the garage?

24 A. You could see them in the photograph. I have no reason to
25 not believe they were as they were in the photograph, that they

1 were kind of down lower on his waist somewhat.

2 MS. BARRANCO: Your Honor, may I approach the
3 exhibits?

4 THE COURT: Yes.

5 BY MS. BARRANCO:

6 Q. Sergeant, I show you Exhibit 121. Do you recognize that
7 picture?

8 A. Uh-hum.

9 Q. Do you recall if this is one of many that you reviewed in
10 in this case?

11 A. Yes.

12 Q. To your recollection, does this photograph accurately
13 depict how Mr. Hill's body was found in the garage?

14 A. Yes.

15 Q. Can you tell us where you can see Mr. Hill's pants in this
16 picture?

17 A. They are pulled down below his buttocks.

18 Q. Here is his boxers, and here is his jean shorts?

19 A. Yes.

20 Q. Did you take that into account in terms of the opinion you
21 told this jury here today?

22 A. Of course.

23 MS. BARRANCO: No further questions.

24 THE COURT: Thank you very much, you may step down.

25 Defense may call your next witness.

1 MR. BRUCE JOLLY: The next witness is Dr. O'Neil, we
2 have her scheduled for 10:30. I will reach out to make sure
3 she is on her way.

4 THE COURT: Okay, the other one, Hostetler, he is not
5 here?

6 MS. BARRANCO: Correct, he is scheduled this afternoon
7 after lunch.

8 THE COURT: You might want to reschedule how we are
9 doing, we are moving more quickly than we anticipated
10 yesterday.

11 If you would like to step outside and give us an
12 update. I will hold the jury on O'Neil, and if she is here, we
13 will bring her in. If not, I will give the mid-morning break.

14 Did you say you had Hostetler after lunch?

15 MS. BARRANCO: Yes. I can reach out to him, he is not
16 that far away.

17 THE COURT: Particularly since we are moving ahead of
18 schedule, I think that would be a good idea.

19 MS. BARRANCO: Thank you, your Honor.

20 THE COURT: What is the update on Dr. O'Neil?

21 MR. BRUCE JOLLY: She just parked.

22 THE COURT: We will be in recess for 15 minutes. Same
23 instructions, don't talk about the case, research it, and we
24 will be back a little after 10:30.

25 (Thereupon, the jury leaves the courtroom.)

1 THE COURT: All right. Bring the jury in.

2 (Thereupon, the jury returns to the courtroom.)

3 THE COURT: All right. You can call your next
4 witness.

5 MR. BRUCE JOLLY: Dr. O'Neil.

6 (Thereupon, the Witness was sworn.)

7 THE COURTROOM DEPUTY: State your full name and spell
8 your last name for the record.

9 THE WITNESS: Linda Rush O'Neil, O, apostrophe,
10 N-E-I-L.

11 **DIRECT EXAMINATION**

12 BY MR. BRUCE JOLLY:

13 Q. Dr. O'Neil, you have stated your name. I would ask you to
14 state for the record and for the jury what your business
15 address is.

16 A. My business address is 2500 South 35th Street, Ft. Pierce,
17 Florida, 34981.

18 Q. And what is that business?

19 A. That is the 15 Circuit Medical Examiner's Office.

20 Q. That is on the campus of Indian River State College?

21 A. Yes.

22 Q. Who are you employed by?

23 A. I am employed by the 15th District Medical Examiner's
24 Office.

25 Q. What is your occupation?

1 A. Associate medical examiner for the State of Florida.

2 Q. How long have you done that?

3 A. I have been with the Medical Examiner's Office in District
4 19 from May 2009 to present.

5 Q. And what does that office, that facility that you just
6 described, what do you all do there?

7 A. We are Government, State of Florida, our duty is to
8 determine the cause and manner of death of cases that fall
9 under our jurisdiction by state law.

10 Q. In January 2014, were you employed at that same location in
11 that same capacity?

12 A. Yes.

13 Q. Now, the District 19 Medical Examiner's Office serves what
14 community?

15 A. We serve the four counties, Indian River, St. Lucie, Martin
16 County and Okeechobee County.

17 Q. Would you be kind enough to share with this jury your
18 educational background?

19 A. I graduated from the University of Memphis in 1987 with a
20 Bachelor of Science Degree. After that I attended Tennessee
21 State, where I graduated with a medical degree. I did a
22 five-year residency in anatomical pathology, I completed that
23 in St. Louis, Missouri. I followed that with five years with
24 the Broward County Medical Examiner's Office and became a staff
25 associate with the Broward Medical Examiner's Office in 1999.

1 Q. Work history, tell us about that. Where you have done this
2 kind of stuff?

3 A. I worked as assistant medical examiner at the Broward
4 Medical Examiner's Office from '99 to 2004, then I joined the
5 department in West Palm Beach for Palm Beach County, and I
6 worked there as associate medical examiner from 2004 to 2009,
7 and then began my employment with the District 19 Medical
8 Examiner's Office.

9 Q. Is what you do basically as a forensic pathologist?

10 A. I am a forensic pathologist, I am employed as an associate
11 medical examiner.

12 Q. What do forensic pathologists do?

13 A. Forensic pathology is a subspecialty of pathology,
14 pathology being the study of the body, disease processes of the
15 body. If you had a lump or bump taken out and looked at by a
16 pathologist, they would tell you what that was, and do
17 chemistry testing looking at urine and blood.

18 Forensic pathology is geared toward examination of the body
19 as we do at the Medical Examiner's Office, looking at a cause
20 or manner of death, any disease processes that may be seen at
21 the time of death.

22 Q. I guess if you are a medical examiner you have to be a
23 pathologist?

24 A. In the State of Florida medical examiners are forensic
25 pathologists, yes.

1 Q. Are you licensed to be a medical examiner?

2 A. I am licensed by the State of Florida to be a doctor.

3 Q. There is no special license to be a medical examiner?

4 A. No.

5 Q. How long have you been an associate medical examiner?

6 A. For 20 -- almost 20 years.

7 Q. And do you have any sense how many autopsies you have
8 performed during that time?

9 A. Well, including my fellowship year, which would make it 21
10 years, I've done approximately 5,000. I haven't had a recent
11 count of exactly how many.

12 Q. I assume this is not the first time you have been to court?

13 A. No, it is not.

14 Q. Have you been qualified as an expert to render opinions in
15 pathology in State Court?

16 A. In forensic pathology, yes.

17 Q. And what -- do you have any recollection that any opinion
18 you have ever rendered in court has been rejected --

19 A. No.

20 Q. -- by the judge?

21 A. No. I have no knowledge of that.

22 Q. Have you ever been precluded from testifying in any court,
23 again, as a pathologist?

24 A. No.

25 Q. Now, you know, I think, that we are here in connection with

1 the death of Gregory Hill?

2 A. Yes.

3 Q. And you have brought that file, your file pertaining to the
4 autopsy of Mr. Hill with you today?

5 A. Yes.

6 Q. If you need at any time to refer to it, let us know and we
7 will have you do that.

8 Were you involved in conducting the autopsy as a medical --
9 associate medical examiner of Mr. Hill?

10 A. Yes.

11 Q. And who assisted you, if anyone, in performing -- is
12 performing the right -- in conducting the autopsy? It is not a
13 performance.

14 A. At the Medical Examiner's Office we have people who work as
15 forensic technicians, and they help us. Nathaniel Bailey, he
16 was the one working with me that day.

17 Q. In anticipation of an autopsy being conducted, do you have
18 any other field persons that participate?

19 A. I am not sure what you mean.

20 Q. Guys that go out and take pictures on the scene and that
21 kind of stuff?

22 A. We do have investigators at our office, they take in
23 information about cases coming to our office. If they need to
24 go to a scene of the investigation, they also do that.

25 Q. I think there was an investigator that also assisted in the

1 overall conducting of this autopsy?

2 A. He assisted in the examination and circumstances of death
3 and field of investigation, yes.

4 Q. His name?

5 A. Merf (phon) Waldron.

6 Q. Now, I want you -- and again, to the extent that you need
7 to refer to your report, please do so.

8 But I want you to talk about -- first, when was the autopsy
9 performed?

10 A. The autopsy was conducted on January 16, 2014, at 9:30 a.m.

11 Q. Where?

12 A. At the Medical Examiner's Office in Ft. Pierce, Florida.

13 Q. Who did it?

14 A. I did it.

15 Q. Please tell the jury how it is that you do what you did as
16 it relates to conducting the autopsy.

17 A. Well, the examination starts with the external examination
18 of the body.

19 The body is brought into the office, we take photographs of
20 the body how it was received, and then we do an external
21 examination involving collection of evidence, X-ray
22 examination, removing clothing, examining that, and following
23 the external examination, we proceed to an internal
24 examination.

25 The internal examination involves opening the chest in the

1 abdominal cavity, examining the body and all the organs, take
2 any tissues we might need for any type of testing, and we open
3 the cranium, the head, and remove the brain and examine the
4 brain.

5 *MR. BRUCE JOLLY:* Your Honor, with your permission, I
6 would like to approach the witness and show her Defendant's
7 Exhibit Number 34 and Defendant's Exhibit Number 26, 34 being
8 the toxicology report, and 26 being the autopsy report.

9 *THE COURT:* Plaintiff's?

10 *MR. BRUCE JOLLY:* They are both Defendant's.

11 *THE COURT:* 34 and 26?

12 *MR. BRUCE JOLLY:* Yes, your Honor.

13 *THE COURT:* Okay.

14 *MR. BRUCE JOLLY:* May I approach?

15 *THE COURT:* Yes.

16 *BY MR. BRUCE JOLLY:*

17 *Q.* Dr. O'Neil, do you recognize those items?

18 *A.* Yes, I recognize the laboratory toxicology report.

19 Attached to my autopsy report is a death investigation field
20 report prepared by law enforcement. That is not actually a
21 part of my autopsy.

22 *Q.* I did not include it in the document for you to look at.

23 *A.* Okay. The attached autopsy report is the autopsy report
24 that I prepared.

25 *Q.* Do you recognize both?

1 A. Yes.

2 Q. Do they relate to the autopsy conducted in this matter?

3 A. Yes.

4 Q. Those are not your copies, all of those documents are
5 retained in the possession of the Medical Examiner in the
6 ordinary course and scope of its business activities?

7 A. Yes.

8 MR. BRUCE JOLLY: At this time I would offer those two
9 exhibits, your Honor.

10 THE COURT: Any objection?

11 MR. PHILLIPS: We object to the extent that it is
12 cumulative as to the non-retained expert's report.

13 THE COURT: That is the only objection?

14 MR. PHILLIPS: Yes, your Honor.

15 THE COURT: So this is Defendant's 34 and 26?

16 MR. BRUCE JOLLY: Yes.

17 MR. PHILLIPS: Your Honor, we withdraw our objection.

18 THE COURT: All right. I'm admitting them with no
19 objection.

20 (Whereupon Defense Exhibits 26, 34 were marked for
21 evidence.)

22 BY MR. BRUCE JOLLY:

23 Q. Now, Doctor, I am going to ask you -- I just gave you my
24 copy.

25 What is the form that is documented, what do you denote as

1 the report is prepared? Literally, I want you to go through
2 the external examination.

3 A. The external examination begins with the external exam,
4 male, female, height, weight, those types of identification
5 features, and everything including -- what we see externally,
6 including any type of injuries.

7 In this case, Gregory Hill, he was a well developed
8 adequately nourished black male, weighed 212 pounds and
9 measured 6 feet one inch. And we note all of the clothing that
10 the person is wearing and this person was dressed in a black
11 T-shirt, blue jean shorts, blue plaid boxers, brown shoes with
12 Polo on the side and black socks.

13 In this particular case there were defects in the clothing
14 that were also noted.

15 Q. I don't need to go through the clothing. Eventually I will
16 have you describe the wounds and about the other organs and
17 what you observed about that.

18 A. Okay.

19 External examination includes hair color, eye color, if the
20 person has natural teeth or not, and in this case, the person
21 did have natural teeth, he had a beard and mustache.

22 These are all things, dark brown hair, long dark brown hair
23 in multiple dreadlock fashion, and I go through the examination
24 looking at each part of the body, neck, chest, abdomen, to see
25 if there is any natural disease processes there or any injury.

1 In this particular case I did find injuries of the head and
2 abdomen that were consistent with gun shot defects.

3 Q. With the exception of the wounds, did you observe any
4 irregularities to any other portion of the body, neck,
5 shoulders, chest, abdomen, with the exception of the injury?

6 A. I do not recall there being any.

7 Q. It was all normal?

8 A. Yes.

9 Q. At some point, I will jump ahead, do you extract organs
10 from the body as a part of the autopsy?

11 A. Yes.

12 Q. And those organs that you would particularly look at are
13 what?

14 A. Actually, we take the organs from the chest and the
15 abdomen, which would include the heart, lungs, liver, kidney,
16 gallbladder, intestines, bladder, prostate, adrenal glands,
17 pancreas, stomach. All the internal organs are taken from the
18 chest and the abdomen.

19 Q. With the exception of the wounds, again, we are going to
20 get there, what abnormalities did you observe in the organs
21 that were examined?

22 A. There was no natural disease process noted in the
23 examination. I did not find any abnormal disease process,
24 natural disease process in any of the organ systems.

25 Q. One of the organs I think you examined is the liver?

1 A. That is correct.

2 Q. If you sought evidence of deterioration or disease to the
3 liver, you would have noted it?

4 A. Yes.

5 Q. For example, if any person is a hugely or ordinarily heavy
6 drinker, to the extent that there is liver disease, you would
7 note that?

8 A. If there is liver disease present we should see it, yes.

9 Q. Like cirrhosis?

10 A. Yes.

11 Q. That was not here?

12 A. No.

13 Q. All right. Please describe for the jury the wounds that
14 you observed and noted.

15 A. There were three gunshot wounds that I noted on the body.
16 There was a gunshot wound that involved the head and two
17 gunshot wounds that involved the abdomen.

18 The gunshot wound of the head entered the right side of the
19 head, right scalp, went through the skull and the brain, and
20 the projectile was recovered under the subcutaneous tissue,
21 underneath the skin on the left side of the head.

22 There were two wounds of the abdomen, one of the wounds
23 more superior. The upper wound went through the abdomen, it
24 went through what is called the iliac artery, vein. These are
25 two major vessels that come up from the aorta and went through

1 and exited the buttocks of the decedent.

2 Another wound on the lower part of the abdomen went into
3 the abdominal cavity, into the pelvic cavity, the bladder, and
4 I recovered a projectile in the pubic region.

5 Q. Did you describe the trajectory?

6 A. The trajectory of each of the wounds -- when I talk about
7 trajectory, I am talking about the directionality of the wounds
8 in an anatomic position, anatomic position being if I were
9 standing in front of you with my palms facing outward,
10 everything you see is anterior, my back, posterior, head,
11 posterior, and feet, anterior.

12 The head wound directionality was from right to left, front
13 to back and downward, and each of the wounds of the abdomen,
14 the directionality was front to back, right to left and
15 downward.

16 Q. As a part of this process, are trajectory rods utilized to
17 show -- demonstrate the track?

18 A. Yes, they are for photographic documentation.

19 Q. Were you present when that was done?

20 A. Yes.

21 Q. I am not using those photos, but what you just told this
22 jury about the track is what you observed?

23 A. Yes.

24 Q. My memory is you don't have -- you are not comfortable
25 telling this jury which shot was first, second or third?

1 A. From my autopsy examination, I am not able to give the
2 order in which the wounds were received.

3 Q. But my understanding is the one or two shots to the
4 abdo- -- to the center one probably wasn't fatal?

5 A. Not immediately fatal, that is correct.

6 Q. On down the road it might have been fatal?

7 A. The one that went through the vessels, the artery and the
8 vein, those are major vessels which the person was bleeding
9 from. Without immediate attention, this person would die
10 within minutes from blood loss of that.

11 Q. But in this instance, neither of those wounds were the
12 fatal wound?

13 A. Well, actually the cause of death is listed as multiple
14 gunshot wounds. There is bleeding from all of the wounds,
15 especially from the iliac artery and vein.

16 Q. But you have an opinion, do you not, as to the effect of
17 the wound to the head, how, if at all, it was disabling?

18 A. The projectile to the head would have immediately rendered
19 a person unconscious.

20 Q. He is going to drop where he stands?

21 A. Pretty much, yes.

22 Q. The other two are not disabling?

23 A. Not disabling in the fact that he would still be able to
24 move with those wounds. There is nothing that would stop him
25 from making any movement after this.

1 Q. As a part of the autopsy are fluids taken for sample
2 purposes?

3 A. Yes.

4 Q. Where -- well, where? I will start with where.

5 A. During the autopsy examination we collect blood, urine,
6 bile, ocular fluid, gastric contents. These are all collected
7 at the time of the autopsy and then the examination is done on
8 blood. In this case, I did blood and vitreous fluid for the
9 toxicology analysis.

10 Q. The blood sample -- why do you do that?

11 A. Um-m-m, in many of these cases we are looking for the
12 toxicology analysis, if there are any drugs or alcohol in the
13 system at the time of death.

14 I said normally we collect urine, too. In this case there
15 wasn't any urine to collect because a projectile had gone
16 through the bladder.

17 Q. In this particular incident, examination, where was the
18 blood drawn from?

19 A. In this particular case, the blood was drawn from the
20 heart.

21 Q. Are there alternatives that you can use to withdraw blood
22 samples for testing?

23 A. Typically we like to collect blood from a peripheral site,
24 peripheral meaning away from the core of the body. One of the
25 more common cases, we take blood from the artery right in the

1 groin, femoral artery, in that vein or region. From this case
2 there was so much blood loss that I was not able to collect
3 blood from that region, and I collected blood from the heart.

4 Q. You called it ocular fluid and vitreous fluid. What is the
5 difference?

6 A. It is same thing, different terms.

7 Q. Why would you, or one, withdraw ocular fluid in a case like
8 this?

9 A. We take ocular fluid for many reasons. Sometimes we need
10 to test to see if they think there was a problem with
11 electrolytes or glucose, and we can't test those things in
12 blood after death.

13 In this case we collected it as usual and I tested a level
14 of alcohol and it did turn out that alcohol was present in the
15 blood.

16 Q. Why did you do that? I missed that, I am sorry. You had
17 an explanation for why the two are drawn?

18 A. Well, we always draw vitreous in every autopsy.

19 Sometimes we need it for different things, and in this
20 particular case, I used it as a backup for when the blood was
21 tested for alcohol. If the blood was positive for alcohol, I
22 wanted to see what the vitreous level was to make the
23 comparison.

24 Q. What is it that is done with these samples?

25 A. These samples are collected during the autopsy process.

1 They are packaged, labeled, and we have the courier with
2 Wuesthoff Laboratories that picks them up from our office and
3 delivers them to Wuesthoff Laboratories, and they are the ones
4 that do the actual testing.

5 Q. What precautions are taken to ensure the integrity of this
6 process?

7 A. These are kept in the Medical Examiner's Office in a
8 locked -- they are placed in a padlocked carrier case so when
9 they are taken from our office it is under lock from our office
10 to the laboratory.

11 Q. Where is Wuesthoff Laboratories that conducts the testing
12 for you all?

13 A. I believe they just moved, at this time they were in
14 Melbourne, Florida.

15 Q. Your office, the 19th Judicial Circuit ME, has been using
16 Wuesthoff for how long?

17 A. Ever since I have been there.

18 Q. So the testing, however, is actually done off site, not at
19 your facility, but by Wuesthoff?

20 A. Correct.

21 Q. Does Wuesthoff, as a consequence of the testing that it
22 does, submit a report to you?

23 A. Yes.

24 Q. And I think that report is the second of the two exhibits
25 that I referenced there?

1 A. Yes.

2 Q. That is ultimately included in your -- as a part of your
3 final autopsy report?

4 A. Yes.

5 Q. Dr. O'Neil, do you tell Wuesthoff what to look for?

6 A. Yes, I order the screens, yes.

7 Q. By screens, what does that mean? I'm sorry.

8 A. We do screens for drugs and alcohol, anything that may be
9 there, and we select what we are going to quantify.

10 Q. In this instance, you were looking for whether there was
11 the presence of alcohol in the blood?

12 A. Alcohol and/or drugs.

13 Q. And the level of that level -- the level of that alcohol,
14 the amount of that alcohol?

15 A. Yes.

16 Q. Measured --

17 A. The quantitation of the alcohol, yes.

18 Q. And the same question with respect to the ocular fluid, you
19 give direction what you are looking for or what you want them
20 to test for?

21 A. Yes.

22 Q. And that was done?

23 A. Yes.

24 Q. Now, I know the results came back because they are the
25 second exhibit.

1 Did you have occasion to examine those results?

2 A. Yes.

3 Q. Now, first, there are no drugs in there, no illegal drugs?

4 A. That is correct.

5 Q. But what was the finding as it related to the quantity --
6 the presence or quantity of alcohol?

7 A. Um-m-m, the heart blood -- it is called ethanol. Ethanol
8 is the type of alcohol we drink. The ethanol level was
9 detected at .328 grams per deciliter.

10 Q. What was the quantity -- was there alcohol, ethanol present
11 in the ocular fluid; and if so, what amount?

12 A. Yes, the vitreous level of the ethanol was reported at
13 .39 grams per deciliter.

14 Q. Doctor, shouldn't it be the same?

15 A. Well, our body -- as far as the way the body metabolizes
16 alcohol, it could be different in different parts of the body.

17 Q. That means what for what we are doing?

18 A. Depending on when the person is drinking, how much they are
19 drinking, if they stopped drinking, the levels of alcohol could
20 be different in different body fluids.

21 In this case, this was a postmortem examination. With a
22 postmortem blood examination, I wanted to compare the ethanol
23 level I had with the heart blood as compared with the ethanol
24 level in the vitreous to see if these are consistent with one
25 another, in other words, are these good values.

1 Q. Well, there is a difference?

2 A. Yes.

3 Q. How is that explained?

4 A. As we metabolize alcohol, it becomes higher or lower in
5 different parts of our body. As we are drinking it, it takes a
6 while to absorb, and as we stop drinking it, it goes away at
7 different rates.

8 Q. Does that mean at some point in time before he was shot, he
9 had .39 in his system?

10 A. The toxicology analysis is consistent with the blood level
11 at some point in time being at .390.

12 Q. We have had some testimony about this, but what is the
13 legal limit for impairment as relates to operating a vehicle?

14 A. In the State of Florida the legal limit is .08 grams
15 decibel level.

16 Q. Do you know why that impairment is at that level?

17 *MR. PHILLIPS:* Objection.

18 *BY MR. BRUCE JOLLY:*

19 Q. Do you know --

20 *MR. PHILLIPS:* Objection to relevance on driving
21 versus this situation.

22 *THE COURT:* Overruled.

23 *THE WITNESS:* .08 has been shown -- in general, most
24 people when they get to .08 alcohol level, reflexes, hand/eye
25 coordination, and people making a judgment, that appears to be

1 the cutoff level for driving.

2 BY MR. BRUCE JOLLY:

3 Q. That is the general rule, right?

4 A. That is correct.

5 Q. You can't testify before this jury today, which is why I
6 did not ask you, about Hill himself, whether his judgment was
7 impaired, whether he was so drunk he didn't have any idea where
8 he was. You don't know that?

9 A. I cannot testify how he specifically was acting, no.

10 Q. In your experience, can you tell me whether .39 is pretty
11 high?

12 A. That is a very high ethanol level.

13 Q. What did you determine to be the cause of death?

14 A. The cause of death was determined to be multiple gunshot
15 wounds.

16 Q. The mechanism of death, is that the same?

17 A. Yes, cause and mechanism are the same.

18 Q. Now, you know as this case has proceeded, there has been
19 some testimony about, I think it is called aspiration. Do you
20 know -- is that right? Aspiration, do you recognize that term?

21 A. Aspiration in -- aspiration is basically inhaling
22 something. Aspiration as we talk about it in a body means
23 aspirating -- pulmonary aspiration or aspiration of gastric
24 contents.

25 Q. Did you find gastric contents in his body?

1 A. In the abdomen, yes.

2 Q. That does not determine the samples that you analyzed?

3 A. I am not sure what you are asking.

4 Q. Because I have no idea what I am asking.

5 My question is: What effect, if any, did the gastric
6 contents have on the determination of the amount of alcohol in
7 his system?

8 A. Going back to the aspiration, I did not find any evidence
9 there was any aspiration as far as looking at the gastric
10 contents in the stomach. I didn't find any of that in his
11 airway or in his lungs at the time of the autopsy or at the
12 microscopic examination. We take tissue and samples and look
13 at them under the microscope.

14 The question regarding the gastric contents and level of
15 alcohol, one of the reasons I wanted to test the vitreous,
16 there have been some suggestion that id there is alcohol in the
17 stomach after someone dies, it can diffuse or leak into
18 surrounding tissues, and that might elevate blood that may have
19 been taken from the heart.

20 That is why I wanted to compare that with the vitreous
21 level to make sure the blood level I was looking at was an
22 accurate alcohol level.

23 Q. As you sit here today testifying before this jury, you are
24 confident that the level of alcohol as measured in the blood
25 and vitreous fluid is accurate?

1 A. Yes.

2 Q. And even though one is higher than the other, that doesn't
3 mean that they invalidate the other?

4 A. No, that is actually a normal finding.

5 Q. That is consistent?

6 A. Yes.

7 Q. You would expect that?

8 A. Yes.

9 MR. BRUCE JOLLY: May I have one moment, your Honor?

10 THE COURT: Yes.

11 MR. BRUCE JOLLY: Okay. You know, I never get this
12 right on the first time. Okay.

13 BY MR. BRUCE JOLLY:

14 Q. You did not find evidence of aspiration, did you?

15 A. No, I did not.

16 Q. I want you to assume, as we have heard, that aspiration
17 might explain why the lungs weighed more than normal.

18 A. Um-m-m, well, the lung weights in this particular case were
19 elevated. The lung weights -- the right lung weighed 430 grams
20 and the left 400 grams. Normally in an adult with a lung that
21 is normal it would be about 250.

22 The lungs were heavy, I believe I described them as -- let
23 me refer to my report -- dark red. The lungs typically should
24 be like a very light pink color, light pink and fluffy. These
25 were dark red and had a lot of edema, fluid, backup of fluid in

1 the lungs and congestion, backup of blood in the lungs. It is
2 not specific for any type of death, but in the dying process
3 that tends to happen with whatever the mechanism of death is,
4 unless it is an immediate instantaneous death.

5 Q. Which this was not?

6 A. It was not instantaneous.

7 Q. Did you find any indication from your examination of the
8 blood -- I am sorry, the lungs that aspiration had occurred at
9 all?

10 A. I did not see any evidence of aspiration. As I said, his
11 gastric contents contained tan fluid and recognizable white
12 rice. I did not see that in the airways of the lungs, and at
13 that time I take tissue samples to look under the microscope
14 and there was no evidence of aspiration under the microscope.

15 MR. BRUCE JOLLY: That is all I have, tender.

16 THE COURT: Any cross-examination?

17 MR. PHILLIPS: Yes, your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. PHILLIPS:

20 Q. Still morning, good morning, Doctor.

21 A. Good morning.

22 Q. So, let's start with some good news. No disease in Mr.
23 Hill's body?

24 A. No natural disease process, correct.

25 Q. Healthy black male?

1 A. Yes.

2 Q. Any reason to expect that Mr. Hill would have lived to his
3 full life expectancy from what you saw on the dissection?

4 A. Correct.

5 Q. As far as -- were you aware what happened to Mr. Hill when
6 he sustained this homicide?

7 A. I'm not sure what you mean.

8 Q. Do you know how he was killed?

9 A. He was shot by law enforcement.

10 Q. And where was he killed?

11 A. In his garage.

12 Q. He wasn't driving or out on the street?

13 A. That is correct.

14 Q. Okay. Somebody at .39, generally, ma'am, would they be
15 expected to have nimble movements?

16 A. Well, like I said, I can't say specifically for any one
17 person, but someone under the influence at .39 would definitely
18 been under the influence of alcohol and not capable of acting
19 normally.

20 Q. Where do you often see a fatality from alcohol poisoning.

21 A. I believe at .4, you can start seeing fatalities.

22 Q. Somebody close to fatality, are they generally nimble in
23 movement?

24 A. I am not sure what you mean. Do they walk a straight line?
25 I would think not.

1 Q. Nimble in thought, are they fast thinking at .39,
2 typically?

3 A. I would expect someone at .39 to be impaired mentally.

4 Q. Severely impaired, would you expect?

5 A. I would expect.

6 Q. Thank you, ma'am.

7 Do you have the measurements with you that you took where
8 the wounds were on Mr. Hill's body?

9 A. Yes, I do.

10 Q. What kind of device did you measure that with?

11 A. With a ruler.

12 Q. And did you measure that from the top, bottom, or center
13 mass of the wound.

14 A. From the mid wound.

15 Q. The middle of the wound?

16 A. Yes.

17 Q. Do you think knowing those measurements would help the
18 trier of fact decide some of the decisions they have to decide?

19 *MR. BRUCE JOLLY:* Your Honor, that is not a proper
20 question.

21 *THE COURT:* Why don't you restate the question.

22 *BY MR. PHILLIPS:*

23 Q. Easier question. Were those measurements important to your
24 findings that you just testified to today?

25 A. They were important as to where the location of the wounds

1 were on the body.

2 Q. Could you step down and write down where those measurements
3 were, please?

4 I want you to ignore what is on the left side of the pad.

5 *THE COURT:* You my step down, yes.

6 *BY MR. PHILLIPS:*

7 Q. There were only three wounds, correct?

8 A. There were three projectile tracks, but one of the
9 projectiles exited the body.

10 Q. Bear with me. I will put an X right there.

11 If you do a number starting from bottom -- starting from
12 the foot going up, I want to know how high up the wounds were
13 on Mr. Hill's body that you documented, please, ma'am.

14 A. So, I have measurements from the top of the head to the
15 base of the heel.

16 Q. Start with the base of the heel.

17 A. Okay, the measurements as far as the lower abdominal
18 wound --

19 Q. Would you put a number 1 by that?

20 A. In my report they are labeled A, B, C, starting from the
21 head going down. If we are starting from the foot going up,
22 they are going to be C, B, A.

23 *THE COURT:* You need to keep your voice up, our court
24 reporter is taking everything down.

25 *THE WITNESS:* Yes, your Honor.

1 THE COURT: Thanks.

2 THE WITNESS: I am not sure how you want me to write
3 it out.

4 BY MR. PHILLIPS:

5 Q. That is all right. A and B.

6 A. I will draw an arrow meaning above the head.

7 Q. What do you mean, above the head?

8 A. From the bottom of the head up.

9 Gunshot wound C was on the head, it was measured from the
10 top of the head down.

11 Q. A?

12 A. A is a measurement from the top of the head down.

13 THE COURT: Has this been marked for ID?

14 MR. PHILLIPS: We did not.

15 THE COURT: Is it all Plaintiff's -- I can't see what
16 is on it.

17 MR. PHILLIPS: Plaintiff's demonstrative aid by
18 Richard Young and Dr. O'Neil.

19 THE COURT: I will put it as 197, demonstrative by
20 Young and O'Neil. Is that right?

21 MR. PHILLIPS: Yes, your Honor.

22 THE COURT: Okay. That is for ID only.

23 MR. PHILLIPS: Yes, your Honor.

24 BY MR. PHILLIPS:

25 Q. A is three-quarters of an inch?

1 A. Below the top of the head.

2 Q. How tall is Mr. Hill?

3 A. Mr. Hill was 6 feet one inch.

4 Q. You estimated 6 feet one inch?

5 A. At the time we measure a body the person is laying on a
6 table, that is an approximate height. It might be different if
7 someone were standing up.

8 Q. Could you sign and date your side of that, please?

9 A. (Witness complies.) Today is the 22nd?

10 Q. Yes, ma'am. You can return to the stand. Thank you,
11 ma'am.

12 Ma'am --

13 A. I'm sorry, I think I made a mistake.

14 Q. Okay.

15 A. On B, I think I put the exit wound.

16 Q. Okay. I think you did. Mr. Johnson, would you bring it
17 back?

18 It should be 44 and a quarter, not 44?

19 A. 44 and one-fourth.

20 Q. Would you make the revision, please?

21 A. (Witness complies.)

22 Q. Thank you, ma'am.

23 If wound C would have prompted a 911 call, would rescue be
24 able to save that injury?

25 A. There is nothing that would cause immediate death.

1 Q. The same thing with the B injury?

2 A. B is actually a little bit more severe of a wound because
3 of the arterial and venous bleeding, it would need to be a
4 very, very rapid response.

5 Q. And then wound A, would paramedics be able to save Mr.
6 Hill from that?

7 A. In my opinion, no.

8 Q. He was already unconscious and probably deceased pretty
9 quickly after the shot?

10 A. Yes.

11 Q. Wound C, would this have caused pain as you would expect in
12 the human body?

13 A. Yes.

14 Q. B?

15 A. Yes.

16 Q. Would he have felt the pain from A?

17 A. Not for long.

18 Q. Is the term "shock" a medical term?

19 A. Yes.

20 Q. You know what I mean if I say shock?

21 A. Yes.

22 Q. Would getting shot in C cause medical shock to the human
23 body?

24 A. Well, shock is basically something that develops, so, in
25 this type of case I don't think there would be enough time for

1 a development of shock as a medical clinical evaluation.

2 Q. Okay. What would happen to the body physiologically after
3 one shot?

4 A. There would be pain.

5 Q. Okay. What else?

6 A. There would be bleeding.

7 Q. With these particular wounds would you expect a lot of
8 bleeding?

9 A. Yes.

10 Q. Immediate bleeding?

11 A. Yes.

12 Q. And what kind of drugs -- other than alcohol, what kind of
13 drugs were tested in the panel you ordered?

14 A. There is a screen that is ordered that tests for drugs, all
15 types of drugs, but as far as the types of drugs that may be
16 considered, illicit types of drugs, we check for amphetamines,
17 barbiturates, cocaine, any type of opioids, and other drugs we
18 normally would take, aspirin, ibuprofen, those things are
19 tested for.

20 Q. Did you note that -- so, doctors tend to use remarkable and
21 unremarkable. What is the difference?

22 A. Remarkable, I really don't use the term remarkable. If I
23 say unremarkable, that means there wasn't any abnormality.

24 Q. If something is remarkable, you make the remark?

25 A. Correct.

1 Q. Otherwise it is a word, and we didn't finish what we
2 started, right?

3 A. Yes.

4 Q. Okay. Did you indicate in your report that Mr. Hill had
5 remarkable lung weight?

6 A. No, I just listed the weight.

7 Q. Do you know as a matter of certainty whether there was beer
8 or any sort of alcohol whatsoever in Mr. Hill's lungs?

9 A. I did not test the lung tissue for an alcohol level.

10 Q. Thank you.

11 *THE COURT:* Redirect.

12 *MR. BRUCE JOLLY:* Thank you, your Honor.

13 **REDIRECT EXAMINATION**

14 *BY MR. BRUCE JOLLY:*

15 Q. The cause of death, and I didn't bring my copy up, but on
16 the front sheet you have two categories that you list, correct?

17 A. Yes.

18 Q. What are the two categories?

19 A. Cause of death and manner of death.

20 Q. What was listed under cause of death?

21 A. Multiple gunshot wounds.

22 Q. Manner of death?

23 A. Manner of death, homicide.

24 Q. When you use the term "homicide" in preparing an autopsy
25 report, it is not the same as murder?

1 A. No, it is not a ruling like you would find in a court of
2 law.

3 Q. It is what you use when someone dies as a consequence of --
4 just dies?

5 A. At the hands of another, actions of another.

6 Q. I think I misheard when you were on cross. Death -- was
7 death immediate from the head wound?

8 A. No. He would have been immediately unconscious.

9 Q. And when one is unconscious, one does not feel pain?

10 A. That is correct.

11 Q. I think you were asked -- I think you had the opinion that
12 there would have been a lot of bleeding from these wounds?

13 A. Yes.

14 Q. I don't know that you were asked to describe whether that
15 would be external or internal?

16 A. I don't believe I was asked.

17 Q. So, which is it?

18 A. There is actually both in this particular case.

19 Q. Dr. O'Neil, it is necessary to see you. I am trainable.
20 Which injuries and wounds were internal and which wounds
21 were external as related to bleeding?

22 A. I'm not sure I understand the question.

23 Q. You know, you really think I know? She listens closer than
24 I do.

25 Apparently at some point you indicated some of the bleeding

1 was internal and some was external?

2 A. That is correct.

3 Q. That is what I was supposed to ask.

4 Which wounds caused internal bleeding and which wounds
5 caused external bleeding?

6 A. There was some external bleeding from all of the wounds,
7 the majority was from the head wound. There was internal
8 bleeding from all of the wounds, but the wound that involved
9 the left iliac artery and left iliac vein caused more internal
10 bleeding.

11 MR. BRUCE JOLLY: That is all, thanks.

12 THE COURT: Okay, thank you very much. You may step
13 down.

14 And Defense may call your next witness.

15 MS. BARRANCO: Your Honor, at this time defense would
16 call Larry Hostetler. I am not sure if he is physically here
17 or not.

18 THE COURT: Okay.

19 LARRY HOSTETLER, DEFENSE WITNESS, SWORN

20 THE WITNESS: Larry Hostetler, H-O-S-T-E-T-L-E-R.

21 **DIRECT EXAMINATION**

22 BY MS. BARRANCO:

23 Q. Good morning.

24 A. Good morning.

25 Q. Could you tell us where you are currently employed?

1 A. I am actually currently retired.

2 Q. Okay.

3 A. As of about 30 days ago.

4 Q. Very good. Congratulations.

5 Where were you last employed, Mr. Hostetler?

6 A. I was employed by St. Lucie County Sheriff's Office.

7 Q. How long were you so employed?

8 A. 32 years.

9 Q. When you retired, what was your rank?

10 A. I was a lieutenant.

11 Q. And what division or department did you work in when you
12 retired?

13 A. When I retired, I was in charge of Internal Affairs.

14 Q. Okay. Now, I am going to ask you to go back in time to
15 January 2014, which is generally the focus of why we are here
16 today, and ask you what was your rank with the St. Lucie
17 Sheriff's Office back in January 2014?

18 A. In 2014, I was also a lieutenant, I had two scopes of
19 supervision; I was the lieutenant in criminal investigations,
20 and I was also the bomb team commander. I had been the bomb
21 team commander for 23 years.

22 Q. I am going to focus your energy, your -- direct your
23 attention to the bomb team commander hat you would have worn on
24 January 14, 2014. And let me ask you first, did you ever
25 respond to the scene of an officer involved shooting at 1501

1 Avenue Q in Ft. Pierce, Florida?

2 A. Yes, I did.

3 Q. And first, let me ask you, did you ever witness the
4 shooting that occurred between Deputy Newman and Gregory Hill
5 at that location?

6 A. I did not.

7 Q. Is it safe to say you arrived after the shooting had
8 already happened?

9 A. That is correct.

10 Q. Do you recall when you arrived on the scene?

11 A. No, not exactly, somewhere in the timeline it would dictate
12 when the bomb truck arrived. Off the top of my head, I do not
13 remember.

14 Q. Okay. Now, what was -- in regard to your bomb team
15 commander position or role, could you please tell us what you
16 did on that particular day when you arrived on the scene?

17 A. Well, to give you a little step further back as to the
18 reason why the bomb team would be going to a circumstance like
19 that.

20 Q. That is fine.

21 A. Many years ago, six or eight years ago, we decided the SWAT
22 team, hostage negotiation team and bomb team had become very
23 proficient, outfitted with the modern technology, modern tools
24 to the point we could work with one another and share
25 equipment. The robot, as you have all seen on TV, the SWAT

1 guys could utilize a robot down range as opposed to utilizing a
2 man down range first.

3 We utilized it when the SWAT team would roll -- if it is a
4 person barricaded, they were needed at a hostage location, they
5 also would call us. Our truck is a large vehicle and has a
6 tower camera, and we have a tower that can put down range video
7 back in the staging area and all the other tools that might go
8 along with it.

9 On that particular day, my duties were to facilitate
10 getting the truck in a position, somewhere in a safe location,
11 but there was a ton of vehicles and people, and things like
12 that, and we got to a position that we could get, basically.

13 The next thing would be to -- I had two bomb techs that
14 rolled out with me, Sergeant Chris Cicio at that time and
15 Detective Robbie Wentz. The three of us began preparing the
16 bomb truck for anything we need.

17 Primarily we'll roll out the robot first. We have a
18 stationery wireless camera that we can put down range, it is
19 called the sentinel. We can utilize that and put in a fixed
20 location just to stare at something, therefore we have
21 continuing eyes on whatever we need to look at.

22 So, we were getting all this equipment ready and preparing
23 it to be used for whatever they needed. Basically, it is a
24 SWAT type call, we are there to help them for what they ask
25 for.

1 Q. What was your understanding why you were called out to this
2 particular scene?

3 A. That there was a deputy involved shooting and the subject
4 had closed the door and was somewhere inside the house.

5 Q. When you say the subject closed the door, do you know what
6 kind of door it was?

7 A. Garage door.

8 MS. BARRANCO: Your Honor, could I approach the
9 exhibits?

10 THE COURT: Yes.

11 MS. BARRANCO: Thank you.

12 BY MS. BARRANCO:

13 Q. Mr. Hostetler, I know you are here and you haven't been
14 present for any of the other testimony in this case. I was
15 going to ask you about this picture that is in evidence as
16 Defendant's Exhibit 352, and see if you can tell us what is
17 depicted in that picture?

18 A. That is our robot in the final place of where we utilized
19 the gander camera. The gander camera is a long pole that can
20 pierce drywall, maybe some plywood, obviously garage doors,
21 things like that, regular doors, and it has cameras to where we
22 can see and light an interior of a room without putting a human
23 person sticking their head in the doorway, something like that.

24 The majority of my career has been investigations of some
25 type of another, so once we pierced the door and ultimately saw

1 Mr. Hill laying there, the direction from me was to shut the
2 robot down, it's evidence, don't disturb it, leave it where it
3 sits and leave it as is.

4 Q. Okay. Now, let me back you up a moment.

5 To your knowledge, was the piercing of this, that is shown
6 in the picture, that you can't see through the door, was this
7 introduction of this camera, the gander camera into the garage
8 door, to your knowledge, was that the first time after this
9 shooting had occurred that anyone was able to have eyes inside
10 of this house?

11 A. Yes. As I was responding, obviously, I am listening on the
12 radio, I could hear the patrol guys talking. They are setting
13 up a full perimeter, they have eyes around the structure. When
14 we arrived the SWAT team was there and deploying. Their normal
15 deployment is to relieve all of the road patrol guys. They are
16 better outfitted with body armor and the same communications s,
17 so they relieved those guys.

18 At that time, we observed -- nobody approached the house,
19 they are working on trying to get the perimeter, as they always
20 do where they have it.

21 Q. Sure, okay.

22 Now, just so the jury understands, during this operation
23 with the robot and the camera, where were you, then Lieutenant
24 Hostetler, physically located?

25 A. I was probably a block and a half west of that location.

1 That is where the actual staging area of the larger vehicles
2 were, the SWAT truck, hostage negotiations truck, my truck and
3 I believe the command bus was also there.

4 Q. And were you located inside one of the vehicles?

5 A. I was inside my bomb truck at the time of this. There were
6 three of us inside.

7 Q. And who were the three of you inside the bomb truck?

8 A. Myself, obviously, the driver of the robot was Sergeant
9 Chris Cicio at that time and Detective Robbie Wentz.

10 Q. And what do you recall in regard to you -- what you
11 actually saw in regard to this particular scene and the usage
12 of this robot and this camera?

13 A. Well, basically, this particular camera, we had discussion
14 prior to how we are going to insert it. Obviously, we are not
15 going to hit seams where there is large metal bars and things
16 like that. So, Sergeant Cicio positioned it in one of the
17 panels and got it level, stable, and backed up to where --
18 obviously it is a force impact item, you have to drive it into
19 it. So, he backed up and drove it and pierced the aluminum
20 skin.

21 Once he did, then we turned on -- or he turned on the
22 cameras and the lighting, and it can rotate 360 degrees. Once
23 we rotated it to where we could actually see down off to the
24 side was Mr. Hill.

25 Q. Okay.

1 Now, you mentioned about rotating with the camera. Was
2 this the object that looks like a long silver pencil or a
3 sword?

4 A. Like a long piece of tape with a pointed tip on the end,
5 and just before the pointed tip is a collar that has recessed
6 cameras and lighting.

7 Q. Okay. Who is actually operating the controls in the bomb
8 truck for this gander camera?

9 A. Sergeant Cicio.

10 Q. Do you know what Sergeant Cicio's rank is?

11 A. He just made captain in January.

12 Q. So, what were you doing when Captain Cicio was utilizing
13 the knobs and gizmos in the bomb truck to operate this gander
14 camera?

15 A. When you get promoted to the point where you are in charge,
16 they resolve you to the person giving direction. I am overall
17 looking at it, making sure any hiccups I see that might come
18 into play, ground structures that may stop the robot, anything,
19 I'm the guy in overall charge. He is focused on making sure he
20 is driving the robot, he is not seeing anything to the
21 peripherals. He is strictly driving the robot to make sure
22 there is not a problem.

23 Q. And what are you focused on as then Sergeant Cicio is
24 driving the robot?

25 A. I try not to focus on anything, I am looking at the wild

1 card, anything that might be a hindrance of getting our
2 operation done. I am looking for pitfalls of communications,
3 pitfalls of seeing something that might throw it off kilter. I
4 am looking for anything.

5 Q. In this instance, the gander camera pierces through and
6 Sergeant Cicio manipulates it until Mr. Hill's body comes into
7 view.

8 Where are you physically standing?

9 A. The driving in the console is similar to the desk set up,
10 with a lower platform and on top it has a control panel. The
11 control panel has the knobs and joy stick for driving the
12 robot. Right in front of him is a monitor he is focused on to
13 watch what the robot is doing.

14 I am standing over -- I think I was over his left shoulder
15 and Detective Wentz wa over his right or vice-versa.

16 Q. Were you visualizing him and the screen when he was doing
17 what he was doing?

18 A. Absolutely.

19 Q. I show you Defendant's Exhibit 358, and see if you
20 recognize that picture.

21 A. Yes, I do.

22 Q. And can you tell us what you recognize this to be?

23 A. That is a picture depicting the gander's camera view of
24 seeing Mr. Hill.

25 As we saw that, we could see that there was a pool of

1 blood, and also the top of a pistol sticking out of his rear
2 pocket.

3 As I was telling Sergeant -- or Captain Cicio to shut down
4 the robot and leave it, now it is part of the evidence of that
5 crime scene, I was about to tell Detective Wentz, take a photo
6 of that, let's preserve that, and he was already in the process
7 of doing so.

8 That is a screen shot of our monitor.

9 Q. Do you know anything about why there was a screen shot
10 taken of the monitor?

11 A. Yes, I do. It has been a long battle. In our truck we
12 have some very sophisticated equipment and some equipment that
13 I would rather have not had in a bomb truck, but when you get a
14 grant to purchase something you are locked into certain items.

15 One of the things we did not like was the DVR. The DVR got
16 to a point where sometime prior to this event it stopped
17 recording, but yet allowed the signal to come through where we
18 could see it on the monitors, but we could not record it. And
19 we had been trying to get a new recording system because it is
20 not one piece. You have to hook up to all these other
21 elements, the robot, outside cameras, the mass cam, you have to
22 integrate all of that together. That takes budgeting, that
23 takes somebody who knows more than we do about video equipment
24 to make all that work.

25 So, that took us on a process until last year sometime we

1 probably got it all done. We had to have a team come in and
2 rewire part of the truck to get it up and running. Yes, I know
3 something about the aggravation of the camera.

4 Q. The issue about the capabilities of the video of the gander
5 camera, that was a preexisting issue that happened before the
6 Hill circumstance?

7 A. Oh, absolutely, yes.

8 Q. How often was this gander camera system used by the bomb
9 team?

10 A. That was documented in my after actual report, that was the
11 first time it was used in operation. We used it in training,
12 but it was not used proficiently enough.

13 That was in the report indicating there was a long time
14 hooking it up and getting it operational. We don't deal in
15 long periods of time when we work, we try to be more proficient
16 with time.

17 So, that was indicated in my report stating that it needs
18 to be used more often so it would be hooked up and computer
19 integrated to our controls and the monitor station works a
20 little more efficiently.

21 Q. So, although things didn't necessarily operate perfectly,
22 in essence, though, with the assistance of Detective Wentz,
23 were you able to capture the screen as it existed immediately
24 after that gander camera pierced through Mr. Hill's garage
25 door?

1 A. Yes. This photo was taken immediately after, because as
2 soon as the photo was taken, Captain Cicio was in the process
3 of shutting everything down, that means depowering everything,
4 and it never came back to power until crime scene had already
5 gone through and started doing their work. Because we didn't
6 want to move it, they had to photograph it where it sat,
7 photograph it from the inside, all that stuff, before we
8 powered it up to move it again, and then we moved it out of the
9 scene so the door could be raised.

10 Q. When you first saw this screen image that is up here on our
11 screen, did I hear you say you saw a firearm on Mr. Hill?

12 A. Detective Wentz and I both, when we were looking at it,
13 commented on -- it is much better through the camera system
14 itself than through the screen shot, but there is a firearm
15 sticking there in the pocket.

16 Q. You were able to recognize in this photograph on the screen
17 that there was a handgun in Mr. Hill's pocket?

18 A. If I am not mistaken, Detective Wentz knew the model of it.
19 I am not that proficient. I knew it to be a pistol.

20 Q. Could you circle on the screen where you recall seeing the
21 handgun?

22 A. (Witness complies.) That is a bad circle.

23 Q. Thank you. Doesn't have to be perfect.

24 Now I am going to show you what is in evidence as Defense
25 Exhibit 121, and ask you if you have ever seen that picture

1 before.

2 A. Yes, I have.

3 Q. I'm trying to remove the circle that you did there. I will
4 move it up like that.

5 Okay. What is that a picture of?

6 A. It's also depicting Mr. Hill from the vantage point of the
7 end of our gander camera, just above it.

8 Q. Is this the gander camera?

9 A. The bottom lower left, yes, that is the end of the camera
10 sticking through the door.

11 Q. Okay. Do you know who took this particular photograph that
12 is in front of us right now?

13 A. It would have been one of the members of crime scene. Who
14 actually took the photo, I don't know.

15 Q. Okay. Did you then, Lieutenant Hostetler, ever physically
16 enter this garage where Mr. Hill's body was?

17 A. I don't know that I ever did to tell you the truth.

18 I was -- once the situation resided, that was the believed
19 barricaded suspect, my bomb duties stopped and my criminal
20 investigation duties took over. As lieutenant in criminal
21 investigations, I am the force investigation team leader, my
22 team investigated that.

23 Q. Let me stop you. The jury has heard a lot of evidence
24 already, we want to keep it pointed.

25 My question is whether or not you ever recall going in the

1 garage yourself, and I think you told us, you don't really
2 remember?

3 A. The majority of my time would have been in the driveway. I
4 would have been right at the door, I had no need to go in
5 there. I had evidence people, all the other investigators, and
6 as boss, I stay out of their way, let them do their job.

7 Q. There are a lot of other individuals involved in this
8 incident?

9 A. I wouldn't say a lot. Crime scene, two to three people,
10 and several detectives.

11 Q. I was referring to the folks on the SWAT team, hostage
12 negotiation, folks on crime scene, not necessarily they all
13 went in the garage, but lots of different people doing
14 different things at different points during this whole
15 incident?

16 A. That is correct.

17 Q. I have to ask you these questions because you told us you
18 don't remember if you ever went in the garage. Let me ask you
19 this: Did you, Larry Hostetler, then the lieutenant in the St.
20 Lucie Sheriff's Office, did you ever put a gun in Mr. Hill's
21 back pocket?

22 A. No, I did not.

23 Q. Do you -- Chris Newman, Deputy Newman, were you friends
24 with him?

25 A. I don't think we said two or three words.

1 Q. Would you lie for Mr. Newman?

2 A. I wouldn't lie for anybody.

3 Q. When you told us no, you didn't put a gun in Mr. Hill's
4 pocket, on this subject date, did you ever see anybody put a
5 gun in Mr. Hill's pocket?

6 A. No, I did not.

7 Q. Did you hear anyone say that they were going to put a gun
8 in Mr. Hill's pocket or -- they were going to put a gun in Mr.
9 Hill's pocket?

10 A. No.

11 MS. BARRANCO: May I have a moment?

12 THE COURT: Yes.

13 MS. BARRANCO: No further questions.

14 THE COURT: Cross-examination.

15 **CROSS-EXAMINATION**

16 MR. PHILLIPS: Your Honor, we move to enter
17 Plaintiff's Exhibit 123.

18 THE COURT: Any objection?

19 MS. BARRANCO: Your Honor, I ask the witness be shown
20 what it is to see if he can identify it.

21 BY MR. PHILLIPS:

22 Q. Do you recall -- do you recall whether there were other
23 photos taken?

24 A. In which reference, into our monitor?

25 MR. PHILLIPS: May I approach, your Honor?

1 THE COURT: Yes.

2 BY MR. PHILLIPS:

3 Q. Do you recall this photo?

4 A. Aren't we talking about one in the same?

5 MR. PHILLIPS: Bear with me.

6 THE WITNESS: Okay.

7 BY MR. PHILLIPS:

8 Q. You and I know this photo wasn't taken on January 15th.

9 Nobody contends that the robot was in there the day after this
10 happened.

11 A. Okay, that is correct, yes.

12 Q. I didn't know what this little box was and was going to ask
13 if you knew what it was, this blue, yellow and white box.

14 A. That is just part of the programming of the control panel
15 for the robot.

16 Q. Am I correct that identifies January 15, 2014, though?

17 A. That unit is powered up and down so often, we never keep
18 track of the date. I guess it could be that date or it could
19 be the hours.

20 Q. Fair. For any of these photos, referring to Plaintiff's
21 123 or Defense 358, is there a time on it so we know
22 affirmatively what time these were taken?

23 A. There is not on the photo. On the digital evidence there
24 is a time stamp on the digital evidence, yes.

25 Q. On the digital?

1 A. Yes.

2 Q. Do you know if the digital was turned over?

3 A. I am pretty sure that Detective Wentz downloaded it into
4 the foray system.

5 Q. Do you know if that was provided to Ms. Bryant?

6 A. That is out of the scope of what I do.

7 Looking back at your time frame, if you go back to the
8 first photo, please, I don't think that is a date, I think that
9 is the time.

10 Q. 2014, zero, one, zero, one, five?

11 A. I think it is 1:15. We don't use it, it is not part of
12 what we utilize.

13 Q. Fair enough. And what was Wentz's position at the time?

14 A. He was a detective and bomb tech, he was a bomb tech on my
15 team and criminal tech in criminal investigation.

16 Q. Did he have road patrol?

17 A. Yes.

18 Q. Do St. Lucie officers see a lot of handguns?

19 A. Sure.

20 Q. You become proficient at that because it is part of the
21 job?

22 A. Yes.

23 Q. A Kel-Tec he is a pretty common handgun?

24 A. Yes.

25 Q. They are manufactured in Florida, aren't they?

1 A. I believe you are right.

2 Q. Detective Wentz correctly identified the model of the gun
3 in Mr. Hill's pocket based merely on the butt peeking out of
4 his pocket; is that what you said?

5 A. Yes.

6 Q. That is all he needed to identify this as a Kel-Tec?

7 A. Yes.

8 THE COURT: I don't think there is an answer on the
9 record. Did you say yes?

10 THE WITNESS: Yes.

11 THE COURT: Any redirect?

12 MS. BARRANCO: Briefly, your Honor.

13 **REDIRECT EXAMINATION**

14 BY MS. BARRANCO:

15 Q. So, once again, technology is not perfect?

16 A. Correct.

17 Q. Let me direct you to the two photographs. Plaintiff's
18 counsel was asking you about 123, and whether or not the blue,
19 yellow and white box depicted the time stamp or whether that
20 was accurate or not.

21 Do you have any idea whether that is accurate or not,
22 whether that is a date or something else?

23 A. Again, we don't use that, so we don't rely on that as part
24 of our date because it is a control center. If we are relying
25 on a recording, it would have gone through the DVR.

1 Since the DVR was on the fritz, we don't use anything like
2 that.

3 Q. Okay.

4 A. Now, the other side of it would have been the bomb truck
5 was not there the next day, it was there for a few hours.

6 Q. The next question, before I say that, this next photograph
7 you looked at, 358, Defendant's, that doesn't have a date and
8 time on it anywhere, or anything that looks like it could be a
9 date and time. Would you agree with that?

10 A. Yes.

11 Q. Regardless of what the photographs have on them, Mr.
12 Hostetler, I want to say lieutenant, but Mr. Hostetler, are you
13 telling the ladies and gentlemen of the jury under oath that on
14 January 14, 2014 you witnessed these photographs being taken
15 immediately after the gander camera poked through the garage
16 door of Mr. Hill's house and focused on what we have here?

17 A. Absolutely. Could not be taken any other time because we
18 shut the entire system down.

19 MS. BARRANCO: I have no further questions, your
20 Honor, thank you.

21 THE COURT: Okay. Thank you very much. You may step
22 down.

23 All right. Ladies and gentlemen, we will take our
24 lunch break at this time. It is 12:15 or so, so we will be in
25 recess until 1:30. We are going to go over a few things with

1 the attorneys before we then will let the attorneys break for
2 lunch.

3 So, we will see everybody back at 1:30. I will remind
4 everyone that you are not to discuss the case with each other,
5 you are not to discuss the case with anyone else, you are not
6 to do any research about the case, do not review any media
7 coverage should there be media coverage, and we look forward to
8 seeing everybody back at 1:30.

9 *(Thereupon, the jury leaves the courtroom.)*

10 *THE COURT:* All right. Please be seated.

11 So, let's see, after lunch, I have the lineup as Dawn
12 Radke.

13 *MS. BARRANCO:* She is not needed.

14 *THE COURT:* Andrew Brown.

15 *MR. PHILLIPS:* He should be here at one o'clock.

16 *THE COURT:* Do we need to have any potential
17 objections -- have you been able to work that out?

18 *MR. PHILLIPS:* Probably want to look at that.

19 *MS. BARRANCO:* We were hoping not to do that. He was
20 supposed to be here.

21 *THE COURT:* What specifically in the depo was a
22 concern or do you anticipate would be of concern in his live --
23 he will be the first live witness and Deputy Newman will be the
24 second witness of the day; is that correct?

25 *MS. BARRANCO:* Correct.

1 *THE COURT:* And then Defense will be resting?

2 *MR. BRUCE JOLLY:* No. No.

3 *THE COURT:* No, right, you have one tomorrow morning.

4 *MS. BARRANCO:* I would defer to the deposition
5 designations in the notebook, objections and pendings. On the
6 very first page we had at that point three objections that were
7 pending after trying to confer repeatedly, but there are still
8 issues. This morning I went --

9 *THE COURT:* I have the depo. Tell me page and line
10 and I will refer to it that way.

11 *MS. BARRANCO:* The only thing I was going to say, in
12 going through the materials this morning I realized there were
13 a couple of additional objections that must have been missed, a
14 counter to a counter and objections. Those are still pending
15 and I'm pointing them out. I will list them all to your Honor.

16 The first one is at page 32, line 13, after him, to
17 line 14, after meal.

18 *THE COURT:* Okay. All right. So, tell me about page
19 32.

20 *MS. BARRANCO:* The gist of this particular issue was
21 the inclusion or exclusion, Defense was objecting to the
22 inclusion of Mr. Brown characterizing feeding Mr. Hill on
23 January 14, 2014, feeding him his last meal, and he said I feed
24 him, period, and the rest of the testimony is, I hate to say
25 this, his last meal, it is unduly prejudicial, religious

1 connotations to the phrase, and he was referring to Mr. Hill's
2 execution.

3 *THE COURT:* He is going to be here live.

4 Who has control over the witness, the Plaintiff?

5 *MR. PHILLIPS:* Defendant is calling him.

6 *THE COURT:* Who is going to be telling him things that
7 he can't testify to?

8 *MR. PHILLIPS:* I have a better relationship with him,
9 he is a member of the family.

10 *THE COURT:* So, you want him to say that he had a
11 conversation with him, and gave him a meal, you don't want him
12 to say it was his last meal.

13 *MS. BARRANCO:* Correct, that is our objection. It
14 gives it that religious connotation, he is eating his last
15 meal.

16 *THE COURT:* Okay.

17 *MR. PHILLIPS:* Whatever it is, whether it is the last
18 meal or first meal, we have to get into the meal now.

19 *THE COURT:* He could talk about he fed him, he gave
20 him the meal. Did he know that was his last meal?

21 *MR. PHILLIPS:* He left right before Mr. Hill was shot.

22 *THE COURT:* You can ask him --

23 *MR. PHILLIPS:* This shouldn't come up, I am not going
24 to get up and say you fed him --

25 *THE COURT:* Just talk to him about that.

1 *MS. BARRANCO:* He may volunteer it. He does tend to
2 be proactive in terms of some of his testimony.

3 *THE COURT:* Okay. What is the next one?

4 *MS. BARRANCO:* The next one, page 63, lines 16 through
5 18, it had to do with whether or not Mr. Brown testified that
6 he never knew the police to have ever gone to this house
7 before. The objection is relevance.

8 *THE COURT:* So, in all the time you knew Mr. Hill, did
9 you ever know police to go to his house for any reason?

10 Answer: No, never.

11 And you are objecting that it is irrelevant?

12 *MS. BARRANCO:* Whether or not Mr. Brown ever knew any
13 other time the police were at the house.

14 *MR. PHILLIPS:* We have gotten into Mr. Hill's state of
15 mind and fears and racial beliefs and what led him to what he
16 did that day.

17 This is not something I plan to necessarily bring up,
18 but it is all going to state of mind of Mr. Hill, if the police
19 harassed him or didn't harass him.

20 *THE COURT:* It doesn't sound like anyone is going to
21 elicit it. I don't find that objectionable. It is true, I
22 have allowed quite a bit in about things that may or may not
23 have impacted Mr. Hill, including his probationary status, so I
24 think that there may be some probative value, but I don't see
25 the prejudicial effect outweighing probative value.

1 It may be a moot point. I would not sustain an
2 objection if it is phrased that way. If it is phrased
3 something differently, feel free to object.

4 *MS. BARRANCO:* Thank you, your Honor.

5 Moving on, page 70, lines 12 through 21.

6 *THE COURT:* Haven't we already dealt with this
7 regarding the ruling on probation?

8 *MS. BARRANCO:* Yes, your Honor, I apologize, that is
9 something we dealt with.

10 *THE COURT:* So that is resolved. Withdrawn?

11 *MS. BARRANCO:* Yes, it probably won't need to be read,
12 probation is on the table.

13 *THE COURT:* Under the parameters we discussed, and
14 that should be made clear to him, there is no discussion about
15 why he is on probation, no mention of the crime, felony,
16 misdemeanor, nothing. The only thing that comes in, he was on
17 probation and there were two conditions, no drinking and no
18 gun.

19 *MS. BARRANCO:* The next one, your Honor, we may very
20 well have laid it to rest, page 80, lines four through 11
21 talking about Mr. Browns' prior felony conviction, and it's my
22 understanding that I am allowed to ask Mr. Brown if he has ever
23 been convicted of a felony or crime involving dishonesty and
24 false statement, presumably he will answer yes, and what agency
25 arrested him for that felony offense.

1 *THE COURT:* Did I understand Plaintiff to withdraw any
2 objection you may or may not have had to that?

3 *MR. PHILLIPS:* Yes, your Honor, if it is limited as we
4 discussed yesterday.

5 *THE COURT:* As long as you are limited to that, and
6 you might be able to tell him that you can anticipate that
7 question and as long as he answers truthfully, nothing else is
8 coming in.

9 *MS. BARRANCO:* Am I able to ask him what was that for,
10 just because it involved giving a false name to law
11 enforcement? Because that also, arguably, would fall under the
12 other allowable prior crime of a crime involving dishonesty or
13 false statement as opposed to a felony, this was kind of both.
14 If I ask it as a double question, he is going to say yes, and
15 then the jury won't know was it a felony, a crime involving a
16 false statement, was it both?

17 Maybe I should be breaking it down. I don't want to
18 over step my bounds.

19 *MR. PHILLIPS:* Every time in a civil trial lawyers, we
20 do it both, when you get specific with it, do you qualify under
21 this rule, state or federal, your credibility should be
22 questioned, not why.

23 *THE COURT:* Right, but I don't know if I understood
24 your answer to the question counsel is asking. Can she ask it
25 as a -- to clarify that it is both, a felony -- doesn't the

1 rule read or --

2 MR. PHILLIPS: Have you ever been convicted of a crime
3 involving moral turpitude is a short version of it. He will
4 say yes, and if she comes back and says, well, it is both, it
5 would be double impeachment. And Mr. Johnson made a good
6 point. If she just says --

7 THE COURT: A felony and a crime --

8 MR. PHILLIPS: Don't necessarily emphasize and, say
9 felony and crime of moral turpitude.

10 THE COURT: I think it is a crime of dishonesty and
11 false statement. If you use the word and --

12 MS. BARRANCO: The only problem, that could happen if
13 Mr. Brown says no.

14 MR. PHILLIPS: I am allowed to elbow him -- the
15 question is coming.

16 MS. BARRANCO: I don't have a problem with you talking
17 about these particular things.

18 THE COURT: You are allowed to talk to him about it,
19 anticipate the question, as long as he answers it truthfully --
20 the answer is yes. As long as he answers it truthfully, the
21 only followup question would be what agency arrested him, and
22 that would be it. That would be the end of it.

23 MS. BARRANCO: The last objection, page 87, line 13 to
24 page 89, line two.

25 THE COURT: 87, line 13?

1 *MS. BARRANCO:* Yes. This is an example where Mr.
2 Brown tended to volunteer things that he thought would help his
3 cause. I am concerned that he might do that here in front of
4 this jury in response to perhaps even an innocuous question.

5 *THE COURT:* So, you are objecting to everything from
6 line 13 to 87, line two.

7 *MS. BARRANCO:* Yes. Plaintiff's counsel was trying to
8 show -- or did show Mr. Brown a picture of Mr. Hill, it is in
9 evidence, on the ground, there is blood in the picture. Mr.
10 Phillips was trying to confirm he was wearing that clothing
11 that day. He can confirm what clothing he was wearing that
12 day, but then asking if he talked about the gun that day, I
13 don't have a problem with that.

14 When he starts to get down to the bottom of 88 asking,
15 you know, does he answer the door with the gun pointed at
16 people? No, he wouldn't even point the gun at nobody.

17 *MR. PHILLIPS:* I don't plan to ask that. He said he
18 wouldn't, that ain't the type of person he is.

19 *THE COURT:* All right. You counsel Mr. Brown not to
20 bring that up.

21 *MR. PHILLIPS:* Yes, Mr. Hill doesn't --

22 *THE COURT:* Okay, all right. All right. Does that
23 take care of Mr. Brown?

24 *MS. BARRANCO:* I believe so, your Honor.

25 *THE COURT:* Okay. So that is good. And what are we

1 distributing, red line and clean?

2 We are distributing a red line version and clean
3 version of the jury instructions. At the end of the day we
4 will go over them before we break, with the understanding that
5 the special interrogatories at the very end might change.

6 I think maybe once Deputy Newman testifies there might
7 be clarification on what questions should be the special
8 interrogatory questions. We made some modification based on
9 the input last night, and that might change. We will have
10 another conference tonight.

11 Unless there is a drastic change in any evidence
12 tomorrow or a motion that is granted, these would be the jury
13 instructions that, once we come to final conclusion on them
14 this evening, would be the ones distributed to the jury and I
15 would want them already to go because we have to make multiple
16 copies, and the Court reads the instructions after the evidence
17 and before closing.

18 That is how everybody wants it, I am not assuming you
19 want it any differently. Or after closing? You prefer them
20 before closing.

21 *MR. PHILLIPS:* We prefer them before.

22 *THE COURT:* That is how I have done it, then you can
23 talk about it in your closing, refer to the verdict form and
24 things of that nature.

25 *MR. BRUCE JOLLY:* That is the way to do it. I have

1 done it both. It makes sense.

2 *THE COURT:* And it goes back with them, too.

3 We will proceed that way. As I said, we will call in
4 lunch for them tomorrow.

5 You will let them know, if you all want to bring lunch
6 or have something delivered. We are moving at a pace where you
7 need to eat and not worry about food.

8 We'll come back and hear from Andrew Brown and Deputy
9 Newman and then have the charge conference on the instructions.

10 *MS. BARRANCO:* Your Honor, I didn't know if we are
11 going to get booted out of the courtroom, we are trying to make
12 sure our audio can play.

13 *THE COURT:* You can do that.

14 At some point it would be helpful, too, to make sure
15 that all the, you know, exhibits are up there and in order,
16 because before I let the jury deliberate -- and you probably
17 want them for closing. It probably would behoove you to
18 organize them in a fashion that would be helpful to you in
19 closing. And before I send them back I have all counsel
20 acknowledge they are there and they go back to the jury.

21 *(Thereupon, a luncheon recess was taken.)*

22 *MR. PHILLIPS:* Your Honor, you ruled on gambling,
23 didn't you?

24 *THE COURT:* Poker, yes, I did. There was a question
25 on whether I ruled on poker. I did, I went through an

1 objection, what the response was, and I indicated that, under
2 403, the Court finds the evidence should come in to explain Mr.
3 Hill's actions. Under he Escovedo versus Martin, evidence
4 unknown to officers at the time force was used is also
5 admissible to add credibility to an officer's claim in a -- Mr.
6 Hill's altercation earlier in the day could add to the reasons
7 that Mr. Hill opened the garage door with the gun in his hand.

8 *MR. PHILLIPS:* Certainly sounds familiar.

9 All right. We have all attorneys, and all jurors. We
10 will bring them in.

11 (Thereupon, the jury returned to the courtroom.)

12 *THE COURT:* Okay, welcome back, everyone, you may be
13 seated.

14 Defense may call your next witness.

15 *MS. BARRANCO:* Thank you, your Honor. Defense will
16 call Andrew Brown to the stand.

17 *ANDREW BROWN, DEFENSE WITNESS, SWORN*

18 *THE COURTROOM DEPUTY:* Have a seat, speak into the
19 microphone, and state your full name for the record and spell
20 your last name.

21 *THE WITNESS:* Andrew Brown, B-R-O-W-N.

22 **DIRECT EXAMINATION**

23 *BY MS. BARRANCO:*

24 *Q.* Good afternoon, Mr. Brown. We met before, right?

25 *A.* Yes.

1 Q. Thank you for coming in today.

2 Tell us, how do you know Gregory Hill, Jr.?

3 A. He is my cousin.

4 Q. Were you with him on January 14, 2014?

5 A. Yes.

6 Q. When did you first meet up with Mr. Hill on that day?

7 A. Um-m-m, in front of a corner store on 17th.

8 Q. Is that Ft. Pierce?

9 A. Yes.

10 Q. How far away or close to that is Mr. Hill's house?

11 A. Like maybe two blocks away.

12 Q. And to your knowledge, did Mr. Hill spend a lot of time at
13 that corner store?

14 A. Somewhat.

15 Q. Okay. And what is the name of that place, if you know?

16 A. I have no idea.

17 Q. So, you meet up with him. What time was it?

18 A. It was early morning. I can say like between 8:00 and
19 10:00.

20 Q. 8:00 and 10:00 in the morning?

21 A. Yes.

22 Q. Was anybody else with Mr. Hill or yourself?

23 A. No.

24 Q. And did you all meet up at the store just happenstance or
25 did you plan to meet there?

1 A. No, we didn't plan to meet there, just I was coming from
2 home and he was coming from home, and that is where we seen
3 each other in front of the store.

4 Q. And what did you and Mr. Hill do next after you met up at
5 the store?

6 A. We went inside the store.

7 Q. And what did you do in the store?

8 A. Well, Mr. Hill purchased a beer.

9 THE COURT: Mr. Brown, could I have you pull the
10 microphone close to you so we make sure you are being heard by
11 everybody.

12 THE WITNESS: Yes.

13 THE COURT: Thanks.

14 BY MS. BARRANCO:

15 Q. Can you tell us what kind of beer it was?

16 A. A Colt 45.

17 Q. And can you remember the kind of container?

18 A. A tall can.

19 Q. What time was it that Mr. Hill purchased that Colt 45 at
20 the store?

21 A. I am not sure, but between 8:00 and 10:00 in the morning.

22 Q. Did you buy anything to drink at the store?

23 A. No, ma'am.

24 Q. What did you do next?

25 A. We continued to go on the side of the store where we was --

1 he began to play poker.

2 Q. What did you do while Mr. Hill was playing poker?

3 A. I just sat right next to him.

4 Q. And how long were you and Mr. Hill there at the side of
5 the store while Mr. Hill was playing poker?

6 A. Maybe an hour or two.

7 Q. And who was Mr. Hill playing poker with?

8 A. Um-m-m, a friend.

9 Q. Was that somebody that you and Mr. Hill saw regularly at
10 the store there?

11 A. Yes.

12 Q. Did you say the side of the store?

13 A. Yes, it was like on the side or behind the store.

14 Q. Okay. Not in front of the store?

15 A. Not in front of the store.

16 Q. Obviously not inside the store?

17 A. No, it is not.

18 Q. Other than you, Mr. Hill and this friend, was anyone else
19 out there playing poker?

20 A. No, ma'am.

21 Q. Did Mr. Hill get into a fight with the man he was playing
22 poker with?

23 A. He didn't get into a fight, no.

24 Q. Did they get into a disagreement?

25 A. Yes.

1 Q. Tell us about that.

2 A. It was just over the game. They got in each other's face
3 and that is when I stepped in and separated them.

4 Q. Okay. And then what happened?

5 A. I continued --

6 Q. It is okay. What do you remember happening next?

7 A. I like pushed Mr. Hill away from the session and like told
8 him let's go home, even though he didn't want to.

9 Q. Okay. So, what happened next, then?

10 A. We continued to go to the house, his house.

11 Q. And how did you and Mr. Hill get to his house?

12 A. Walk.

13 Q. Do you remember the address of Mr. Hill's house?

14 A. I couldn't tell you right off the bat, no.

15 Q. Do you remember the street it was on?

16 A. On Avenue Q.

17 Q. Is it located across the street from an elementary school?

18 A. Yes.

19 Q. All right. Then, was anybody home at Mr. Hill's house when
20 you and he arrived?

21 A. No, ma'am.

22 Q. Do you remember what time it was when you got to his house?

23 A. No, ma'am.

24 Q. Was it still in the morning?

25 A. No. Somewhere in the afternoon, around the time he had to

1 go get his daughter from school.

2 Q. When was he supposed to be getting his daughter from
3 school?

4 A. If I am not mistaken, it was may be like 3:00, 3:15, if I
5 am not mistaken.

6 Q. Okay. You get to Mr. Hill's house with him. What did you
7 and Mr. Hill do at his house?

8 A. We begin to talk. We had a dope conversation.

9 Q. And generally, what was the conversation about?

10 A. About family, his kids, his father.

11 Q. And how many children does Mr. Hill have?

12 A. He has three.

13 Q. What are their names?

14 A. Aryanna, Gregory, Jr., and Destiny.

15 Q. And which one is the oldest child?

16 A. Destiny.

17 Q. Who was Mr. Hill supposed to be picking up across the
18 street that day?

19 A. Destiny.

20 Q. And once you got to his house, did he immediately go across
21 the street and pick up Destiny that afternoon?

22 A. No, ma'am.

23 Q. What did Mr. Hill do instead of picking his daughter up
24 from school?

25 A. We went into the house at first, and we were conversating.

1 Q. You mentioned that. I am sorry, yes. Did you do anything
2 else?

3 A. We ate, I warmed food up for him, and he ate it, and we
4 continued talking. We went on the front patio and like when it
5 was just about time for the kids to get out, we went into the
6 garage.

7 Q. Okay. And then what did you and Mr. Hill do in the garage?

8 A. Listening to music.

9 Q. What kind of music were you and Mr. Hill listening to?

10 A. Um-m-m, rap music.

11 Q. And how would you describe the lyrics of the rap music,
12 would it be something you would play to any audience or is it
13 for a more mature audience?

14 A. More mature audience.

15 Q. Do you remember there being obscenities in the music being
16 played?

17 A. It could have been.

18 Q. Do you remember the volume at which the music was being
19 played?

20 A. It was pretty loud.

21 Q. Wasn't it so loud that at one point you noticed people
22 across the street, because the garage door was open, you
23 noticed people looking over there and you turned down the
24 music? Remember?

25 A. Yes.

1 Q. And Mr. Hill turned it back up, right?

2 A. Yes.

3 Q. Weren't you telling Mr. Hill, you know, there are people
4 looking, this is really loud, and turned it down again?

5 A. Yes.

6 Q. And Mr. Hill turned it up again. Now, while this was
7 happening, was the garage door to Mr. Hill's house up or down?

8 A. Up.

9 Q. Now, did you do anything else while you were in Mr. Hill's
10 garage?

11 A. I cleaned out his dog cage.

12 Q. Where was the dog cage located?

13 A. In the garage.

14 Q. Right in front of the speakers, right?

15 A. No. It was more off to the other side of the garage.

16 Q. And what dog was associated with that cage?

17 A. The red -- the pit bull.

18 Q. And did Mr. Hill have any other animals?

19 A. Yes.

20 Q. Did you have anything to do with the other animal?

21 A. Yes.

22 Q. Did there come a time you took that dog for a walk?

23 A. Yes.

24 Q. Because you got frustrated with Mr. Hill turning up the
25 music really loud?

1 A. Yes.

2 Q. Now, you mentioned Mr. Hill having bought a Colt 45, a tall
3 can of beer, sometime between 8:00 and 10:00 that morning. Can
4 you tell the ladies and gentlemen of the jury if you recall
5 your cousin, Mr. Hill, appearing to you to be under the
6 influence of alcohol during this particular day you were with
7 him?

8 A. Um-m-m, under the influence?

9 Q. Did he seem drunk to you?

10 A. No, not at all.

11 Q. How would you describe him?

12 A. He was maybe a little tipsy.

13 Q. That is what you told me in your deposition, right, you
14 thought he was a little tipsy?

15 A. Yes.

16 Q. What did you mean by that?

17 A. He wasn't drunk and he wasn't sober.

18 Q. Now, did there come a time Mr. Hill was supposed to pick up
19 his daughter?

20 A. Yes.

21 Q. And didn't he try to get you to pick up his daughter?

22 A. Yes.

23 Q. Tell us about that.

24 A. He asked me, and I told him I couldn't go across the street
25 because I wouldn't be able to sign his daughter out.

1 Q. Do you remember why he wanted you to pick up his daughter?

2 A. No.

3 Q. Wasn't it because, as you told me before, that he smelled
4 like beer?

5 A. No.

6 Q. Mr. Brown, do you remember giving a deposition to me back
7 in March of 2017, March 21, 2017?

8 A. Yes.

9 Q. For the record, I am looking at page 40, lines 15 through
10 18. Do you remember being asked this question and giving this
11 answer, Mr. Brown: "Okay. Now, do you know why he was asking
12 you to pick up his daughter that day? I don't know, maybe
13 because he probably smelled like beer."

14 Do you remember giving that answer?

15 A. Yes.

16 Q. You were under oath?

17 A. Yes. I said maybe, I didn't say he did smell like beer.

18 Q. He had been drinking?

19 A. Yes.

20 Q. He had been drinking beer?

21 A. He was drinking beer, yes.

22 Q. Any other reason why you believe Mr. Hill didn't want to
23 pick up his daughter that day?

24 A. No.

25 Q. Now, which daughter was across the street waiting for her

1 father to come pick her up?

2 A. Destiny.

3 Q. Do you know where Aryanna was?

4 A. No. Not at the time.

5 Q. Was Aryanna also typically waiting with her sister to be
6 picked up?

7 A. Not to my knowledge.

8 Q. Did you ever pick up the girls?

9 A. No.

10 Q. That is something the other members of the family would do?

11 A. Yes.

12 Q. As far as you know?

13 A. As far as I know.

14 Q. At some point we mentioned this other dog. You got so
15 frustrated with Mr. Hill turning that music up, you said I am
16 going to get out of here with the dog and walk to the store?

17 A. Yes.

18 Q. And you did that?

19 A. Yes.

20 Q. And did there come a time, then, that you came back toward
21 the house and you heard police sirens?

22 A. Well, I heard them, but I didn't know where, like the
23 direction it was going.

24 Q. Okay. Did you eventually come to find out that the police
25 activity involved Mr. Hill's house?

1 A. Yes.

2 Q. And did you -- were you present during the shooting that
3 occurred?

4 A. No.

5 Q. So, you weren't a witness to the shooting?

6 A. No.

7 Q. Okay. Now, Mr. Brown, did you know that Mr. -- did you
8 ever know Mr. Hill to have a gun?

9 A. Did I ever know -- did I ever know him to have a gun? Yes.

10 Q. And where would he have typically kept his gun?

11 A. In the file cabinet.

12 Q. And where was the file cabinet?

13 A. In his garage.

14 Q. And, Mr. Brown, have you ever been convicted of a felony
15 and a crime involving dishonesty and false statement?

16 A. Yes.

17 Q. What agency was involved in that conviction?

18 A. Ft. Pierce Police Department.

19 Q. Are you sure it wasn't the St. Lucie Sheriff's Office?

20 A. No.

21 Q. You are not sure or it wasn't?

22 A. It was the Ft. Pierce Police Department.

23 MS. BARRANCO: Your Honor, no further questions at
24 this time.

25 THE COURT: Okay. Cross-examination.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 6

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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1 MR. PHILLIPS: Yes.

2 CROSS-EXAMINATION

3 BY MR. PHILLIPS:

4 Q. Good afternoon, Mr. Brown.

5 A. Good afternoon.

6 Q. Let's start where she ended.

7 A. Okay.

8 Q. How long ago were you arrested?

9 A. Ten years ago.

10 Q. For what.

11 A. For giving a false name.

12 Q. Why?

13 A. Because I gave a false name.

14 Q. How old were you then?

15 A. I was like 21 years old.

16 Q. How old are you now?

17 A. I am 31.

18 Q. Did you learn a lesson?

19 A. Yes.

20 Q. You talked about a dope conversation. What was on Greg's
21 state of mind that day?

22 MS. BARRANCO: Objection.

23 MR. PHILLIPS: What was on his mind, what was he
24 talking about?

25 MS. BARRANCO: Objection, speculation.

1 BY MR. PHILLIPS:

2 Q. What was he talking about?

3 A. It wasn't him talking, it was more I was talking to him.

4 Q. About what?

5 A. About his kids, he wanted to see his kids grow up to, like,
6 basically see him be a good father. He wanted to be a good
7 husband to his soon to be wife. It is like his father did
8 everything for him, and I wish I had that type of father in my
9 life.

10 Q. Was Mr. Hill angry?

11 A. No.

12 Q. Was he mad?

13 A. No.

14 Q. Did he have conversations about wanting to harm himself or
15 harm others?

16 A. No.

17 Q. You have seen Mr. Hill around his kids?

18 A. Yes.

19 Q. Tell us about some of those times.

20 A. They loved their dad, like he used to barbecue, fry fish,
21 he used to keep the family together. After my grandma passed,
22 he was the only person that did that.

23 Q. I am going to show you what is marked into evidence as
24 Exhibit 204.

25 This is your cousin. I will show you a piece of it, if

1 that is okay. Do you recall if that is what your cousin was
2 wearing that day?

3 A. Yes. Yes, that is him.

4 Q. Sorry, Mr. Brown.

5 MS. BARRANCO: Your Honor, could we have a break?

6 THE COURT: Mr. Brown, would you like to take a break?

7 THE WITNESS: No, let's go, let's go.

8 THE COURT: Do you have more questions?

9 MR. PHILLIPS: One more question.

10 THE COURT: One more question.

11 BY MR. PHILLIPS:

12 Q. Did you see the black item in the pocket in the photo?

13 That is identified as a gun. Did you see him with a gun at any
14 point that day?

15 A. No. No. No.

16 Q. Thank you, Mr. Brown.

17 MS. BARRANCO: Your Honor, I have no redirect.

18 THE COURT: Okay. Thank you very much, Mr. Brown, you
19 may be excused.

20 THE COURT: Defense have your next witness?

21 MS. BARRANCO: Yes, at this point the Defense will
22 call Deputy Christopher Newman to the stand.

23 THE COURT: Okay.

24 CHRISTOPHER NEWMAN, DEFENDANT'S WITNESS, SWORN

25 THE WITNESS: My name is Deputy Christopher Newman,

1 N-E-W-M-A-N.

2 **DIRECT EXAMINATION**

3 *BY MS. BARRANCO:*

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Since you already spelled your last name, I will not ask
7 you to do that.

8 Where do you work?

9 A. I am employed at the St. Lucie Sheriff's Office.

10 Q. How long have you been so employed?

11 A. October 1st, 2013.

12 Q. 2013?

13 A. Yes, ma'am.

14 Q. Okay. And I think I heard earlier, but what is your
15 current title at the Sheriff's Office?

16 A. I am currently a detective.

17 Q. What unit do you work in?

18 A. Internet crimes against children for child pornography.

19 Q. How long have you been in that unit?

20 A. About a year.

21 Q. Going back in time, back in January 2014, what was your
22 position in the Sheriff's Office?

23 A. I was on road patrol that day.

24 Q. What does road patrol mean?

25 A. It is your basic police service, answering calls for

1 service, patrolling areas.

2 Q. Okay. Now, let me ask you, briefly, can you tell us what
3 your prior law enforcement employment history was prior to
4 working with the St. Lucie County Sheriff's Office in October
5 2013?

6 A. I started with the Ft. Pierce Police Department in '99, I
7 started off as a patrol officer, I was a detective for eight
8 years. I went from the Ft. Pierce Police Department in 2009 to
9 the State Division of Alcohol and Tobacco and worked as a
10 Special Agent for the State from 2009 to, I believe, mid 2010,
11 where I was promoted to the rank of lieutenant.

12 I worked in West Palm Beach, and I came up to around the
13 Ft. Pierce -- Indian River, Okeechobee and Martin County
14 office, and I left there in 2013 to come to the Sheriff's
15 Office.

16 Q. So, as of January 2014, the time of the subject incident,
17 how long had you been a law enforcement officer?

18 A. About 15 years.

19 Q. Now, you told us in January 2014, you were working road
20 patrol.

21 I want to direct your attention to the subject date,
22 January 14, 2014. Do you recall that day?

23 A. Yes, ma'am.

24 Q. What was your shift that day, if you recall?

25 A. When I first started I believe I was on rotating eight-hour

1 schedules, my schedule was 3:00 p.m. to 11:00 p.m.

2 Q. And what were you wearing while on patrol?

3 A. My -- what they call the green pickle suit, just a green
4 uniform.

5 MS. BARRANCO: Okay. May I confer with Plaintiff's
6 counsel for a minute?

7 THE COURT: Yes.

8 MS. BARRANCO: Your Honor, at this time I will be
9 showing the witness what is marked for identification as
10 Defendant's Exhibit 89.

11 At this time I would offer it into evidence, and there
12 does not appear to be any objection by Plaintiff's counsel.

13 MR. PHILLIPS: No objection.

14 THE COURT: 89 is admitted without objection.

15 (Whereupon Defense Exhibit 89 was marked for evidence.)

16 BY MS. BARRANCO:

17 Q. Okay, Deputy Newman, what is that a picture of?

18 A. A battered version of me.

19 Q. And when was that taken?

20 A. That was taken on the day of the incident.

21 Q. Was that before or after?

22 A. After.

23 Q. Does this accurately depict what you were wearing on the
24 subject date when you had interaction with Mr. Gregory Hill?

25 A. Yes, ma'am.

1 Q. Affectionately known as the pickle suit?

2 A. Yes, ma'am.

3 Q. Where was this picture taken?

4 A. I don't know the exact address. That would have been on
5 the west side of 16th Street. On Avenue Q, there is an
6 abandoned -- like a lot that is empty and there is a house, and
7 it was taken in front of that house.

8 Q. So, it was not taken in front of Mr. Hill's house?

9 A. No, ma'am.

10 Q. Now, did there come a time that you responded to the
11 address of 1501 Avenue Q?

12 A. Yes, ma'am.

13 Q. And do you recall if that was the actual address that came
14 out over the radio where the call was coming from?

15 A. No, ma'am, it did not, the address came out as 1402 Avenue
16 Q, which is the school.

17 Q. What was that address in relation to the call?

18 A. Somebody at the school, either a teacher was calling in
19 something or there was a problem with the school.

20 Q. Did you have any information in terms of what the concern
21 was about?

22 A. It came in as a vulgar loud music complaint.

23 Q. Okay. So, tell us, then, what you remember happening.
24 When you heard this call over the radio and you responded to
25 it, how did you arrive at the subject location?

1 A. I had been previously stopped out with Detective Paul
2 Pearson with the warrants unit, and he was in the 3200 block of
3 Avenue Q, there is a church, and he was by himself. He was by
4 himself, I stopped out with him, he needed a fingerprint
5 reader, the person didn't have an ID. Deputy Lopez arrived
6 with a reader, and the person wasn't who we thought it was.
7 And we heard this on the radio.

8 Q. What you are describing is something that happened before
9 the call of the loud music?

10 A. Yes.

11 Q. Referenced 3200 Avenue Q?

12 A. Yes.

13 Q. That is about 15 blocks from the Hill house?

14 A. Yes.

15 Q. Still on Avenue Q?

16 A. Yes.

17 Q. You still proceeded to go to where the subject call was,
18 and how did you figure out where to go?

19 A. I went east on Avenue Q.

20 Q. What were you driving?

21 A. I was driving a marked patrol car.

22 Q. With the St. Lucie Sheriff's insignia on it?

23 A. Yes.

24 Q. Overhead lights?

25 A. Yes, ma'am.

1 Q. Now, did anyone also respond to the call with you?

2 A. Deputy Lopez did.

3 Q. Was he likewise dressed in a full St. Lucie Sheriff's
4 Office uniform?

5 A. Yes.

6 Q. Did he arrive in a similarly marked patrol car?

7 A. Yes, ma'am.

8 Q. Do you recall how it was you figured out what house to stop
9 at?

10 A. As I was pulling toward the school, I could hear the loud
11 music. As I was driving east on Avenue Q, the music got louder
12 and seemed to be emanating from the house which was later found
13 to be 1501.

14 Q. Avenue Q?

15 A. Yes, ma'am.

16 Q. Do you remember putting it out on the radio?

17 A. Yes, ma'am.

18 Q. When you figured out what house it was?

19 A. Yes, ma'am.

20 Q. Do you remember if you could see anybody at the house when
21 you arrived?

22 A. No, I did not.

23 Q. Was the garage door up or down or anything in between?

24 A. It was closed.

25 Q. And do you remember, when you were able to hear this loud

1 music, whether or not your windows were up or down on your
2 patrol car?

3 A. I believe they were up.

4 Q. Okay. So, tell us, then -- walk us through what happened
5 next.

6 A. I pulled up and I parked -- parked facing east on Avenue Q,
7 on the east side of his driveway. I called out our location so
8 dispatch would know exactly where we were at.

9 Deputy Lopez, I believe, parked west or partially west of
10 his driveway.

11 We exited out of the cars and began to approach the garage
12 and front door.

13 Q. Let me stop you for a moment, Deputy.

14 Now that you are out of your car and approaching this
15 house, could you hear -- could you still hear this music
16 playing?

17 A. Yes, ma'am.

18 Q. Describe the volume of the music.

19 A. It was loud.

20 Q. So, you were able to hear it through the garage door?

21 A. Yes, ma'am.

22 Q. And we are all adults here, can you share with us any of
23 the particular words you recall contained in the music that you
24 heard as you were approaching in house?

25 A. I heard the word fuck a lot. The N word was on there quite

1 a bit, and also bitches and ho's.

2 Q. And once you arrived at this residence, what was your
3 intention; what were you planning on doing?

4 A. Asking him to turn the music down.

5 Q. And in terms of a loud vulgar music call, loud music call,
6 how would you describe that as a type of police call? Is that
7 an unusual police call, typical police call? How would you
8 describe it?

9 A. Just an average call.

10 Q. Now, did it remain an average call that day?

11 A. No, ma'am.

12 Q. What changed things?

13 A. Um-m-m, we made contact with whoever the occupant was at
14 the time, I didn't know. They came to the garage and faced
15 Deputy Lopez with a firearm in their hand.

16 Q. With regard to this being an average call or basic call
17 that elevated, who changed things?

18 A. In my opinion, Mr. Hill.

19 Q. Can you tell us with what speed things changed from a
20 mundane typical police call to something else?

21 A. Rather quickly.

22 Q. Now, where were you -- and we will show some pictures
23 later, but I want to walk you through. You arrive on scene,
24 and tell the ladies and gentlemen of the jury where you
25 remember going when you got there.

1 A. We arrived on scene, I walked up on the east side of the
2 driveway and Deputy Lopez walked on the west side because you
3 never walk in the center of any doorway. We went to the garage
4 door and I know I banged on the garage door and I said "St.
5 Lucie County Sheriff's Office," and I believe Deputy Lopez
6 banged on the door, too. I didn't get a response. I went to
7 the front door thinking they left the music on and went into
8 the house.

9 I opened a screen door and I banged on the front door and I
10 used the -- we carry a collapsible baton, it is called an ASP.
11 I used the end of that to bang louder so I could get somebody's
12 attention.

13 Q. Was the music still playing loudly?

14 A. Yes, ma'am.

15 Q. The entire time, at least before the shooting happened, was
16 that music always playing very loudly?

17 A. Yes, ma'am.

18 Q. Okay.

19 So, you first bang on the garage door, you don't get a
20 response. Did I hear you say you identified yourself as
21 Sheriff's Office?

22 A. Yes, ma'am.

23 Q. And then you went to the front door?

24 A. I banged and I said "Sheriff's Office" again.

25 Q. And were you hitting the door hard enough to try to

1 overcome the volume of the music?

2 A. Yes, because I actually remember my ASP put a couple of
3 dents in the door and I said to myself, I am going to get a
4 complaint on it.

5 Q. Because of the damage to the door?

6 A. Yes.

7 Q. Were you trying to damage the door?

8 A. No.

9 Q. Why were you hitting it so hard with the ASP?

10 A. I wanted to give the person inside the benefit of the doubt
11 to let them know I was outside.

12 Q. Did anybody answer the door?

13 A. No.

14 Q. What happened?

15 A. As I opened the door, Deputy Lopez was still by the garage,
16 and I saw the garage door coming up, Deputy Lopez was by the
17 garage. When the garage door came up, Mr. Hill was standing
18 there, he was staring at Deputy Lopez, he had a gun in his
19 hand. I immediately drew my firearm and I yelled "gun, gun."
20 I don't know if from his point of view Deputy Lopez could see
21 it. I yelled "drop the gun, drop the gun," and there was no
22 response. Mr. Hill was looking directly at Deputy Lopez and --
23 and I -- you know, it seemed to me that he wasn't responding to
24 our commands.

25 The way he was -- his body positioning and the way he was

1 holding the firearm and the way he was staring at Deputy Lopez,
2 it seemed to me he was intent on having a confrontation. I
3 thought I was going to witness Deputy Lopez get shot so I
4 yelled "hey", trying to get his attention. Mr. Hill looked
5 away from Deputy Lopez and looked at me, he looked back at
6 Deputy Lopez and started to raise the gun and bring the door
7 down.

8 As the door was coming down, I could still see his legs and
9 I lost sight of the gun as the gun was traveling up, and I
10 fired.

11 Q. Okay. Now, we will go back through that.

12 So, let me back you up a moment. Let me show a picture --
13 let me show this to Plaintiff's counsel first.

14 MS. BARRANCO: Your Honor, I am going to show the
15 witness what is marked for identification purposes as Exhibit
16 102. I would like to move it into evidence, and it appears
17 there is no objection from Plaintiff's counsel.

18 THE COURT: Any objection?

19 MR. PHILLIPS: No, your Honor.

20 THE COURT: 102?

21 MS. BARRANCO: Yes.

22 THE COURT: Okay, admitted without objection.

23 (Whereupon Defense Exhibit 102 was marked for evidence.)

24 BY MS. BARRANCO:

25 Q. Thank you.

1 Deputy Newman, I am going to show you this, and tell the
2 jury what this depicts.

3 A. That is the front side of Mr. Hill's house.

4 Q. Can you show us where the garage door is?

5 A. Right here. (Indicating.)

6 Q. Okay. And where is the front door?

7 A. (Indicating).

8 Q. Is this the area of the house you were just telling us
9 about where you started at the garage door, knocked, announced
10 who you were, didn't get an answer, and moved to your left,
11 which was frankly toward the school, to the east, to the front
12 door area, and knocked again? Does that depict this area?

13 A. Yes, ma'am.

14 Q. Okay. Was there any kind of a screen door on the front of
15 the house?

16 A. I don't know if you can see it, there was an outer security
17 screen, I don't know if it was mesh or screen. It was
18 unlocked, so I opened the door.

19 Q. This doesn't show the entire garage door?

20 A. No, ma'am.

21 Q. Does this depict the area where you were when you walked
22 over back toward the garage and visualized Mr. Hill as -- with
23 the garage door going up?

24 A. Yes, ma'am.

25 Q. Can you point out approximately where you remember being

1 where you first saw Mr. Hill?

2 A. Somewhere in here. (Indicating.)

3 Q. Would that be the grass area?

4 A. Yes, ma'am.

5 MS. BARRANCO: Your Honor, may I approach the
6 exhibits?

7 THE COURT: Yes.

8 MS. BARRANCO: Thank you.

9 BY MS. BARRANCO:

10 Q. Now, you mentioned that Deputy Lopez was located -- while
11 you were originally going to the front door, that Deputy Lopez
12 stayed by the garage?

13 A. Yes, ma'am.

14 Q. I am going to show you what is in evidence as Plaintiff's
15 Exhibit 38.

16 Obviously this is taken later, but does this depict the
17 area where you recall Deputy Lopez being when that garage door
18 started going up?

19 A. Yes, ma'am.

20 Q. And I know you have been sitting here with all of us
21 listening to the testimony.

22 Do you remember the testimony about this area here being
23 the bullet holes?

24 A. Yes, ma'am.

25 Q. Do you remember witnessing those bullet holes forming on

1 that door?

2 A. Yes.

3 Q. And we will talk about that.

4 Do you recall when that garage door went up -- first let me
5 ask you, how quickly did that garage door go up or how slowly
6 did it go up?

7 A. It went up rather quick.

8 Q. Do you recall how far into that garage Mr. Hill was
9 standing?

10 A. He was close enough that he was holding onto the garage
11 door with his left hand.

12 Q. Did you get the impression the garage door was an automatic
13 door or did it appear the garage door was being lifted by Mr.
14 Hill?

15 A. At the time I didn't even think about it.

16 Q. Okay. But he appeared to be within close proximity --

17 A. He was holding on to the door with his left hand.

18 Q. Okay. Now, do you have any idea what distance Deputy Lopez
19 was from the front of that garage door?

20 A. Maybe two, two and a half feet.

21 MS. BARRANCO: Your Honor, could I have the witness
22 step off the stand for a moment?

23 THE COURT: Yes.

24 BY MS. BARRANCO:

25 Q. Do you mind stepping down, Deputy.

1 I want to give the jury an understanding, if you are Mr.
2 Hill and -- show them what you recall seeing Mr. Hill do. If
3 you are Mr. Hill, if you recall, show the jury what Mr. Hill
4 was doing.

5 A. Like this, his hand was here, and he kind of had his head
6 like this, with the gun at his side.

7 Q. Okay. Now, assuming I am Deputy Lopez, can you tell me
8 where to stop in terms of how far apart you recall Deputy Lopez
9 being from that door?

10 A. Right there.

11 Q. Right here?

12 A. Yes.

13 Q. The garage door is right there?

14 A. Right here.

15 Q. Now, move over a little. I want to try to move to where
16 you would have been.

17 You are Mr. Hill, assuming Deputy Lopez is here, if I am
18 you, am I going over here? Start walking that way to try to
19 approximate how far away if I am you --

20 A. Step back, maybe another step.

21 Q. Maybe you can move that way. I can't go in the jury box.

22 A. Somewhere in that area.

23 Q. That's an approximation?

24 A. Yes, ma'am.

25 Q. You weren't out there measuring?

1 A. No, ma'am.

2 MS. BARRANCO: All right. Take the stand for now.

3 BY MS. BARRANCO:

4 Q. All right. So, when you saw that garage door go up, you
5 were visualizing Mr. Hill and Deputy Lopez mere feet apart from
6 each other?

7 A. Yes, ma'am.

8 Q. Now, when you first walked up to that house, did you have
9 your gun drawn?

10 A. No, ma'am.

11 Q. How about Deputy Lopez, did he have his gun drawn?

12 A. No.

13 Q. Did there come a time you drew your weapon?

14 A. When I saw Mr. Hill with a firearm.

15 Q. And where would you have been when that occurred?

16 A. I was walking back from the front door and that was
17 approximately where I pointed to in another picture, in the
18 grassy area there.

19 Q. Around here somewhere?

20 A. Somewhere right in here where the sidewalk and grass meet
21 at a 90 degree angle, somewhere in there.

22 Q. Okay. Now, did you shoot Mr. Hill as soon as you saw that
23 gun in his hand?

24 A. No, ma'am.

25 Q. Why not?

1 A. We are not trained to do that.

2 Q. Well, what was it that prompted you to feel that you needed
3 to use deadly force on Mr. Hill?

4 A. Mr. Hill did not comply to my lawful commands. I got his
5 attention. He took his attention away from me back to Deputy
6 Lopez, began to raise the gun at the direction of Deputy Lopez
7 closing the door, and at that moment I honestly thought that if
8 he was not firing rounds at Deputy Lopez he was going to -- as
9 he was closing the door -- to barricade himself.

10 Q. Could you hear whether or not Deputy Lopez said anything
11 during this part of the incident?

12 A. No, ma'am.

13 Q. Do you know why?

14 A. The music was rather loud.

15 Q. When you say rather loud, are you being a smart Alec?

16 A. No. I mean it was loud.

17 Q. Do you believe it was impacting your ability to hear
18 things?

19 A. Yes, ma'am.

20 Q. Now, did you ever hear-- I just asked you that question
21 about the loud music. Did you hear Mr. Hill say anything?

22 A. No, ma'am.

23 Q. How high up do you recall seeing that garage door go?

24 A. I would say almost all the way. Like I said, there was a
25 part of it that he was able to hold on to, and he had his head

1 cocked to look at Deputy Lopez.

2 Q. Were you able to see Mr. Hill's face?

3 A. Yes.

4 Q. Were you able to see his hair?

5 A. Yes.

6 Q. Do you remember what the lighting looked like in the
7 garage?

8 A. It was dim, but where he was standing, I could see him. I
9 really couldn't see farther back into the garage.

10 Q. Do you remember what the weather was like that day?

11 A. I believe it was clear. I don't remember.

12 Q. It wasn't raining?

13 A. No, ma'am.

14 Q. Now, can you tell us -- I may have already asked you this,
15 I apologize.

16 Once you saw the garage door -- you saw Mr. Hill take the
17 garage door down, can you describe the speed of that?

18 A. It was very rapid.

19 Q. From the time you first arrived on the scene until the time
20 you discharged your firearm, how would you describe how much
21 time lapsed?

22 A. I couldn't even begin to imagine.

23 Q. Did you have a stop watch out there?

24 A. No, I did not.

25 Q. Were you looking at your watch?

1 A. No.

2 Q. Now, I want to focus on some details.

3 A. Yes, ma'am.

4 Q. You told us when the garage door went up, you saw Mr. Hill
5 with a firearm in his hand?

6 A. Yes, ma'am.

7 Q. Which hand was that?

8 A. It was in his right hand.

9 Q. Would that have been the hand closer to you?

10 A. Yes, ma'am.

11 Q. If the garage door was here, and I was Mr. Hill, you would
12 have been over here?

13 A. Yes, ma'am.

14 Q. And Lopez was right here?

15 A. Yes.

16 Q. And you recall Mr. Hill having the gun in his right hand?

17 A. Yes, ma'am.

18 Q. You said something about being concerned that maybe Deputy
19 Lopez, who had a different vantage point -- you were concerned
20 he may not have seen the gun in Mr. Hill's right hand. Can you
21 explain why you felt that way?

22 A. Because we were at different angles. I didn't know --
23 since Deputy Lopez was straight on, I didn't know if he could
24 see the gun or if it was from my vantage point.

25 Q. And can you just stand up. I know earlier you were showing

1 us a little bit when you were sitting. Can you stand up and
2 show the ladies and gentlemen of the jury how you recall Mr.
3 Hill having his right hand with the gun in it when you first
4 saw the garage door raised? You can step out.

5 A. He was kind of like this (indicating) he was hunching to
6 the side looking below it like this.

7 Q. And you would have been in that direction?

8 A. Yes, ma'am.

9 Q. In that moment, could you tell what kind of gun Mr. Hill
10 had in his hand?

11 A. Not at that exact moment.

12 Q. Did there come a time you felt like you knew what kind of
13 gun it was that you saw?

14 A. Yes, ma'am. Basically, when something like that happens,
15 you get tunnel vision. I got tunnel vision and I looked at the
16 gun, stared at the gun, and for a moment it -- I was basically
17 looking at him and the gun. I didn't see anybody else in the
18 garage or around the garage, I was totally focused on him and
19 his gun.

20 Q. I know you were here listening to the testimony. Do you
21 recall a witness saying something about a deputy being startled
22 when the garage door went up?

23 A. Yes, ma'am.

24 Q. Do you remember -- remember being startled when the garage
25 door went up?

1 A. No, ma'am.

2 Q. Do you remember doing anything when the garage door went
3 up?

4 A. Yes, I drew my firearm and assumed a ready position,
5 basically.

6 Q. Is that something you could demonstrate up there?
7 Obviously, you have to stand up.

8 A. Yes, ma'am.

9 Q. Would you demonstrate what it is you were explaining to us?

10 A. I was standing basically like this, and when I saw he had a
11 firearm, I drew my firearm and shifted my weight to assume a
12 shooting stance in case I had to shoot.

13 Q. Where did you learn how to do that?

14 A. Since the Academy we were taught that.

15 Q. And what is your understanding of the purpose of shifting
16 your weight?

17 A. To lower your center and get a better balance so when you
18 fire, you hit your target instead of missing.

19 Q. Now, in this situation with Mr. Hill, you assumed the
20 shooting stance. Did you fire your weapon?

21 A. No.

22 Q. Why not?

23 A. I was giving commands.

24 Q. The commands were?

25 A. "Drop the gun."

1 Q. And they were directed to who?

2 A. Mr. Hill.

3 Q. What volume did you deliver those commands?

4 A. As loud as I could possibly imagine.

5 Q. You are sitting here talking to us.

6 A. Yes, ma'am.

7 Q. I am not going to ask you to show us. Would you say it was
8 more than the conversational level that you are talking to us
9 here today?

10 A. Yes.

11 Q. Now, did Mr. Hill ever drop the gun?

12 A. No, he did not.

13 Q. Did he ever put his other hand up and give any indication
14 that he wanted to surrender or not be a threat to you or your
15 fellow officer?

16 A. No, ma'am, he did not.

17 Q. How long a period of time passed between when you took a
18 shooting stance and when you made a determination to use deadly
19 force on Mr. Hill?

20 A. I have no idea. It was long enough to give several
21 commands, and then realize that he wasn't responding.

22 Q. I know we have heard testimony about the Kel-Tec found in
23 Mr. Hill's back pocket.

24 What kind of gun did you have that day that ultimately you
25 ended up having to use on Mr. Hill?

1 A. I had my department Glock 21.

2 Q. Is that something the Sheriff's Office issues you as part
3 of your uniform and equipment?

4 A. Yes, ma'am.

5 Q. Are you issued a Kel-Tec?

6 A. No, we are not.

7 Q. Do you know if any of the St. Lucie Sheriff's Office
8 deputies working road patrol, do they typically carry Kel-Tecs?

9 A. Not that I know of.

10 Q. Yours was a Glock?

11 A. Yes, ma'am.

12 Q. Let me ask you this: You sat through several days of
13 testimony, did you ever put a gun in Mr. Hill's back pocket?

14 A. No, ma'am, absolutely not.

15 Q. Did you ever tell anyone to put a gun in his back pocket?

16 A. No.

17 Q. Did you ever witness anyone else put a gun in his back
18 pocket?

19 A. No.

20 Q. Did you hear anybody suggest they were going to put a gun
21 in Mr. Hill's back pocket?

22 A. No, ma'am.

23 Q. Did you ever go into the house after this incident?

24 A. No, ma'am.

25 Q. Now, was the garage door closed when you started shooting

1 off rounds at Mr. Hill?

2 A. No. It was coming down, still partially open, halfway
3 partially open when I started.

4 Q. Did it eventually close all the way, though?

5 A. Yes, ma'am.

6 Q. You've probably heard "firing blindly." Do you believe you
7 fired blindly in this garage?

8 A. No, I did not. The garage door was coming down, he was
9 partially concealed, I could see his lower half of the body. I
10 used that as a reference to shoot up to his center mass like we
11 are taught.

12 Q. You said like you are taught.

13 At the time of this incident you had been a police officer,
14 deputy sheriff for about 15 years?

15 A. Yes, ma'am.

16 Q. Just generally, I don't know of any police officers or law
17 enforcement officers on our jury, tell them generally how much
18 training in using firearms you have -- up to the point of the
19 incident you had received, generally. Start with the
20 beginning, when you became a law enforcement officer.

21 A. In the Academy, I believe it was a three-week block back
22 then, three-week block of firearms qualification, and that was
23 over use of force, a couple days of classroom, and the rest of
24 the time is on the range, you are basically shooting for five
25 hours a day.

1 After that, when you get hired -- I got hired for Ft.
2 Pierce. Before you fire a -- shoot a gun, you have to qualify
3 with that gun. After you do that, that is your gun until you
4 retire or it breaks or something happens to it.

5 FDLE requires you to qualify with a handgun every year.
6 Most departments do more than that, most departments qualify
7 quarterly, so four times a year you are going to the firing
8 range and shooting.

9 Q. So, you mentioned that happens every year?

10 A. Yes, ma'am.

11 Q. Every year for 15 years as of this time, at a minimum, you
12 were training with that firearm?

13 A. Yes, ma'am.

14 Q. And were you also working on the stance while you were
15 firing?

16 A. Yes, ma'am.

17 Q. Okay.

18 Now, since we are talking about training, Deputy Newman,
19 what training have you received in regard to the number of
20 shots that you are trained to fire in a deadly force encounter?

21 A. As law enforcement officers, we are trained never to fire
22 one shot, you are trained to fire in volleys.

23 Q. What is a volley?

24 A. A volley is anywhere -- you are supposed to be shooting two
25 to four shots, in there, whatever you assess at that time, but

1 more than one shot.

2 Q. Now, Deputy, I have never been a law enforcement officer,
3 why wouldn't I want to just shoot once and pause and see what
4 is going on before I decided whether I should shoot again? Why
5 would that be a bad idea based on your training and experience?

6 A. Because it probably would get you killed.

7 Q. Why is that?

8 A. In a situation where you come to that kind of stress and
9 you pull a firearm and you fire the first round, it usually
10 misses.

11 Q. If you were to just fire a single shot and you miss, and
12 the other guy happens to have a firearm, in your training, how
13 quickly can somebody go from this to bang?

14 A. In tenths of a second.

15 Q. Very quickly?

16 A. Yes.

17 Q. In this situation, you remember Deputy Lopez, when that
18 garage door goes up he was about three feet away from Mr.
19 Hill?

20 A. Yes.

21 Q. At that moment was Deputy Lopez's gun drawn?

22 A. No, it was not.

23 Q. But Mr. Hill's firearm was already drawn?

24 A. It was what we call low ready.

25 Q. In your training and experience, out of those two

1 gentlemen, Deputy Lopez and Mr. Hill, who had the upper hand in
2 regard to using deadly force on the other?

3 A. Mr. Hill.

4 Q. Why is that?

5 A. Because all he had to do is raise and shoot. Deputy Lopez
6 would have to activate the security measures on his holster,
7 draw it out, get it raised up and pointed at and fire.

8 Q. Which takes longer than just bang?

9 A. Yes, ma'am.

10 Q. Now, can you describe for us the cadence of the shots that
11 you fired, meaning the timing of the shots that you fired at
12 Mr. Hill?

13 A. Yes.

14 Q. First let me ask you, how many shots did you fire at Mr.
15 Hill?

16 A. Four.

17 Q. Knowing you fired four rounds at Mr. Hill, do you recall
18 the timing of those shots?

19 A. Yes, ma'am.

20 Q. Can you tell the jury what you recall in regard to the
21 timing of the shots?

22 A. I fired my first round and it was like you got to fire your
23 volley instead of one. I went one, and two, three, four.

24 Q. What you said you got to fire your volley, is that what was
25 going on in your mind?

1 A. Yes, ma'am.

2 Q. Was this taking seconds of time, you were thinking about
3 this between the first and second shot, or something else?

4 A. You get trained to do something, and I was trying to make
5 myself follow the training.

6 Q. How much of a time spread would you say there was between
7 the first and second shot?

8 A. It was quick, but there was more of a gap between the first
9 and the second than the third and fourth.

10 Q. Showing you Plaintiff's 38, seeing those bullet holes
11 there, is that -- does that bear out what your memory was of
12 the shots being fired and the timing?

13 A. Yes, ma'am.

14 Q. Now, earlier I said I was going to get to it. As you were
15 firing, you told us that you remember firing once and firing
16 again, two, three, four. Do you remember -- can you tell us in
17 what order you fired these shots?

18 A. Yes, ma'am.

19 Q. How can you do that?

20 A. I remember seeing them hit the door.

21 Q. Looking at this, Plaintiff's Exhibit 38, can you show us --
22 I suppose you can do what Sergeant King did earlier. If you
23 want to number the shots as you recall them hitting the door --
24 and you were there that day?

25 A. Yes.

1 Q. Are you able to do that?

2 A. Yes, ma'am.

3 Q. All right.

4 A. (Witness complies.)

5 Q. Do you have an independent memory of how far down the
6 garage door was when that first shot went off?

7 A. I could see -- I remember when I fired that first shot I
8 could see the upper thigh to lower legs of Mr. Hill, I could
9 not see his torso.

10 Q. Now, just so I understand, and so the jury understands,
11 what we are talking about between you firing the shots and the
12 garage door, were both things happening at different times or
13 at the same time?

14 A. At the same time.

15 Q. So, you've got you shooting your gun four times, and I
16 think you told us you tracked up?

17 A. Yes.

18 Q. Meanwhile, the garage door is simultaneously coming down as
19 you are shooting up; is that right?

20 A. Yes, ma'am.

21 Q. So, would it be incorrect to look at this picture and
22 assume that the first shot that you have labeled was actually
23 in that spot when the bullet hole was made; it was a lot higher
24 on the door?

25 A. Yes, ma'am.

1 Q. Then the garage door kept coming down?

2 A. Yes, ma'am.

3 Q. And you kept firing?

4 A. Yes, ma'am.

5 Q. Now, what was your reason for firing at Mr. Hill?

6 A. He had the gun in his hand, he refused to drop it. He
7 heard me, he took his attention off Deputy Lopez for a minute,
8 looked at me, looked at Deputy Lopez, began to raise the gun
9 and closed the door.

10 When I lost sight of the gun coming up with the door coming
11 down, I didn't see him drop it or hit the ground. I took it as
12 the gun still in his hand and he is going to shoot at Deputy
13 Lopez, and since he was partially concealed, I decided to fire.

14 Q. So I understand, did Mr. Hill have the gun straight down
15 when you started shooting at him?

16 A. No, ma'am.

17 Q. I am going to slowly raise my arm for demonstrative
18 purposes and see if you could stop me approximately when you
19 remember making that decision that you needed to use deadly
20 force on Mr. Hill.

21 A. Right about in here. It doesn't take much to go up, it was
22 continuing to go up. At that point I realized he wasn't going
23 to drop the gun. It was raising, I didn't fire at that point,
24 but that is when I decided I might have to shoot.

25 Q. Deputy Newman, I am demonstrating slowly. Did Mr. Hill

1 raise his arm slowly?

2 A. No, ma'am.

3 Q. Did anything happen slowly when you got there and the
4 garage door raised?

5 A. No, ma'am.

6 Q. I think you kind of addressed this already, the timing of
7 the shots. When you raised your gun and you made a
8 determination you need to pull the trigger, did you pull it as
9 fast as possible?

10 A. No, ma'am.

11 Q. Why was that?

12 A. Because you will miss.

13 Q. Were you aiming at anything in particular?

14 A. Yes. Like I said, I was using his legs as a reference
15 where his torso would be.

16 Q. And how many shots did you fire?

17 A. Four.

18 Q. And how many bullets did you have in your gun?

19 A. Fourteen.

20 Q. So, why didn't you keep shooting until you were out of
21 bullets?

22 A. Because after I fired my volley, I kind of remember cocking
23 my handgun to the side, and seeing the door was closed, there
24 was not a reason to shoot at that point because I had no
25 target.

1 Q. Was the garage door down at that point?

2 A. Yes, ma'am.

3 Q. Now, I want to talk to you about shell casings.

4 MS. BARRANCO: Your Honor, may I look at the exhibits
5 here?

6 THE COURT: Yes.

7 BY MS. BARRANCO:

8 Q. Do you remember testimony earlier about shell casings on
9 the scene?

10 A. Yes, ma'am.

11 Q. I think it was Richard Young, a/k/a Snoopy?

12 A. Yes, ma'am.

13 Q. I will put up what is in evidence as Plaintiff's Exhibit
14 50, and you see those yellow markers. I think the testimony
15 was those are marking some of the shell casings?

16 A. Yes.

17 Q. Were you there when the crime scene folks were out there
18 marking pieces of evidence?

19 A. No, ma'am, I was not.

20 Q. You left the scene?

21 A. I was ordered off the scene, yes, ma'am.

22 Q. That is a typical protocol if there is an officer involved
23 shooting?

24 A. Yes, ma'am.

25 Q. Could you tell the jury what shell casings look like?

1 A. If you have ever seen a round or a bullet, the first part
2 is copper jacketed or brass -- or lead. There is a brass
3 container underneath it that is crimped on the lead, and the
4 container is the primer powder that expels the bullet out of
5 the barrel.

6 Q. I show you this picture, Plaintiff's 55. Do you see these
7 three yellow placards?

8 A. Yes.

9 Q. If that is the right word for it.

10 I believe your earlier testimony was that those are marking
11 the shell casings found in the front yard.

12 Earlier, there was testimony about the gun Mr. Hill had
13 when Sergeant Lebeau was here the other day and talking about
14 the ejection port.

15 Could you tell us, when a bullet comes out of the front of
16 the gun, where does the shell casing go?

17 A. A handgun uses a mechanical action of the explosion, what
18 it basically is, is a controlled explosion. When the bullet
19 goes over, the projectile is forced out of the barrel, that is
20 the only place it can go, and the casing goes backward and
21 there is a hook that pulls it and it basically flicks out of
22 the gun.

23 Q. Now, does it typically go in a particular direction, the
24 shell casing, after ejecting from the gun?

25 A. They can fly anywhere.

1 Q. What is the material it is made out of?

2 A. Usually brass.

3 Q. What is the weight of the shell casing typically?

4 A. Very light.

5 Q. When they land, in your experience, can they bounce?

6 A. Yes, ma'am.

7 Q. And in your experience, if a shell casing lands -- like
8 here you see there is a concrete driveway there. If a shell
9 casing would land on a smooth surface like a driveway, does the
10 shell casing have the ability to roll?

11 A. Yes, ma'am.

12 Q. Can they be stepped on by people?

13 A. Yes, ma'am.

14 Q. And can they get crushed?

15 A. Yes, ma'am.

16 Q. So, they are not hard enough to sustain being stepped on
17 without being misshaped in some way in your experience?

18 A. Sometimes, it depends on the boot you are wearing, they
19 could be misshapen when you step on them.

20 Q. How about a heavy armored vehicle, might that disturb where
21 they are located?

22 A. Yes, ma'am.

23 Q. Now, the shooting happens.

24 A. Yes, ma'am.

25 Q. What do you do next?

1 A. Well, I saw the garage door was closed. I assumed I missed
2 and then went from an armed confrontation in my mind to a
3 barricaded suspect. I retreated back to my car for cover, and
4 I put Deputy Lopez -- once I realized that Lopez wasn't hurt, I
5 told him to stay where he was, since there was only two of us,
6 and I ran to cover the rear of the house by -- what we do is
7 you have an officer -- if there is only two people waiting for
8 more units, you have an officer stand on each side of the
9 corner if you are looking at the back of the house, and we each
10 can cover two angles of the house, which is all covered if
11 there are only two people.

12 Q. We will talk about that in a minute.

13 Do you remember putting anything out on the radio in regard
14 to what you had witnessed with Mr. Hill?

15 A. I did.

16 Q. What do you remember that was in regard to?

17 A. I remember getting out he had I believed what was a Kel-Tec
18 in his hand.

19 Q. What made you believe that the gun was a Kel-Tec?

20 A. I actually had been looking a couple days before, previous
21 at different backup guns, and that is one I was looking at. I
22 didn't like the model and the brand. Where the back strap and
23 everything is, the slide, I didn't like the curve of it, it
24 stuck out in my head that I thought it was ugly.

25 Q. Did it happen to be a few days later that you have this

1 confrontation with Mr. Hill, and you happen to see a firearm in
2 his hand that looked like the Kel-Tec?

3 A. It resembled the Kel-Tec so that is what I decided.

4 Q. Do you remember how long after the shooting you put that on
5 the radio, that you thought it was a Kel-Tec in Mr. Hill's
6 hand?

7 A. No, I don't.

8 Q. Do you recall it being a fairly short amount of time?

9 A. It could have been.

10 Q. Once the garage door is down after the shooting happened,
11 did you feel like the threat was over?

12 A. No.

13 Q. Why not?

14 A. For all in my mind, I missed the target and there was still
15 an armed suspect in the house.

16 Q. Why did you think you missed the target?

17 A. I was just assuming the worst.

18 Q. As far as you knew -- as far as you know, the garage door
19 may offer the ability to conceal yourself, but are the -- do
20 the bullets still go through garage doors?

21 A. Yes, it is not cover, it is concealment.

22 Q. What does that mean?

23 A. Cover is an item that will give you protection from a
24 projectile or a round. Concealment just hides you from view,
25 projectiles can still go through.

1 Q. Now, this is kind of restating something, but I want to
2 ask: After shooting and the garage door is down, did you know
3 if Mr. Hill was injured?

4 A. No, I did not.

5 Q. Did you have any idea whether Mr. Hill was alive or dead?

6 A. No, I didn't.

7 Q. As far as you know, did anyone ever know until -- I know
8 you have been sitting here listening. To your knowledge, did
9 anybody with the Sheriff's Office know -- until that gander
10 camera pierced through the garage door and visualized Mr. Hill
11 on the ground, before that period of time, did anybody from the
12 Sheriff's Office know Mr. Hill was laying inside that garage?

13 A. No, ma'am.

14 Q. Now, you talked a little bit about going around the
15 perimeter.

16 I am going to put up what he is in evidence as Government
17 Exhibit 141. It is a little far away, but it is already in
18 evidence. Let's see if we can't use it.

19 Feel free, Deputy, to utilize the screen to let the jury
20 know what part of the picture you are referring to.

21 Do you recognize this picture?

22 A. Yes.

23 Q. Is this the school across the street from Mr. Hill's house?

24 A. Yes.

25 Q. And is this Mr. Hill's house depicted in this Google Map

1 aerial photo?

2 A. Yes, ma'am.

3 Q. Can you show us where it was right after the shooting that
4 you moved to when you initially sought cover behind your patrol
5 vehicle?

6 A. My patrol car would be right in there. (Indicating.)

7 Q. Okay. So I understand, are you saying it would have been
8 east of the driveway, more toward the school?

9 A. Yes, ma'am.

10 Q. So, is that the area where you initially took cover after
11 shots were fired?

12 A. Yes, that is where I retreated to.

13 Q. Okay. Now, where did you go next?

14 A. Well, I believed we had an armed barricaded suspect. I
15 told Deputy Lopez to cover where he was, he was still in the
16 front of the house. I didn't want somebody to come out the
17 back of the house. I ran down Avenue Q to 15th Street, and I
18 ran down 15th Street here to -- I believe there was a telephone
19 pole on the east side of the road there, and I tried to take a
20 position to use some sort of cover so I could cover the south
21 side of the house and the east side of the house and Deputy
22 Lopez could cover the north and the west.

23 Q. Is that what you were telling us before, typically, when
24 you are trying to establish a perimeter around a four-sided
25 object like a house, when you have limited people there, you

1 have one on one corner eye balling these corners and the other
2 deputy on the other corner eye balling those two corners?

3 A. Yes, ma'am.

4 Q. Is that what you did that day?

5 A. That is exactly what I did.

6 Q. Did you make any comments on the radio about this part of
7 the incident?

8 A. I recall as I was running down Avenue Q to go east of 15th
9 Street I could see children outside. I didn't know if the
10 school had been ordered on lock down or if they knew what
11 happened. I broadcast over the radio they need to put the
12 school on lock down and get the kids inside.

13 Q. Do you remember where you saw the children in this picture?

14 A. I believe somewhere in this area.

15 Q. Had you ever been to that school before?

16 A. No, ma'am.

17 Q. You are not familiar with the layout of the school or
18 anything like that?

19 A. No, ma'am.

20 Q. You recall seeing children in that area where you put a
21 circle?

22 A. Yes, ma'am.

23 Q. So, you say something about it on the radio, the school
24 needs to put the children on lock down?

25 A. Yes.

1 Q. Do you know if that was communicated to the school?

2 A. I have no idea. I am sure dispatch did it, I called for
3 it.

4 Q. For those of us who are not familiar with the police radio
5 system, what is a dispatcher or dispatch? What does that mean?

6 A. They work at the EEOC center and dispatch them over the
7 radio to us.

8 Q. Is that basically a remote location where there are people
9 sitting taking calls and routing calls?

10 A. Yes, ma'am.

11 Q. So, when you get on the radio, are you able to hear the
12 dispatcher?

13 A. As far as being on the phone?

14 Q. Communicating with the deputies in regard to a situation.

15 A. Yes. There is a dispatcher on our two-way radio and they
16 communicate back and forth to us.

17 Q. Is that someone different than the call taker?

18 A. Yes, usually.

19 Q. And then, are you able to hear other deputies on the radio?

20 A. Yes, ma'am.

21 Q. I know earlier in this proceeding we heard a short portion
22 of the radio communications. Do you remember that?

23 A. Yes, ma'am.

24 Q. Were you able to hear voices that you recognized?

25 A. Some, yes.

1 Q. Did you recognize your own voice?

2 A. Yes, ma'am.

3 Q. Any others that you remember hearing right now?

4 A. I believe another one was Deputy Lopez.

5 Q. Anyone else that you remember?

6 A. It was very brief, I don't remember anybody else.

7 Q. Okay. So, your point of putting on the radio that the
8 school needed to go on lock down, was it your understanding
9 that the dispatcher would communicate that information to
10 whoever needed to know to make it happen?

11 A. Yes, ma'am.

12 Q. All right. And so, from the point that we left off here on
13 the picture, where else did you go after trying to get cover, I
14 think you said behind a telephone pole?

15 A. I stayed there and heard other units arriving on the radio.
16 I believe I called out and said I needed a unit to where I was
17 on 15th Street because I had no cover. At that point
18 detective -- I believe Detective Paul Pearson and Detective
19 Blatchford arrived in an unmarked vehicle. They parked their
20 vehicle pretty much where I was standing, and they took a
21 position behind the car. I told them if they had that position
22 I would go back around the front to take position up with Lopez
23 since he was by himself.

24 Q. Did you do that?

25 A. Yes, ma'am.

1 Q. What route of travel did you go?

2 A. The same way back.

3 Q. You doubled back the way you went?

4 A. Yes, ma'am.

5 Q. Did you ever go around the back side of the house?

6 A. No, ma'am.

7 Q. Did you ever enter the Hill yard once the shooting happened
8 and once you retreated, as you told us already?

9 A. No, ma'am.

10 Q. Why not?

11 A. If there is an armed suspect in the house, I am not going
12 to put myself close to that where he could shoot out a window
13 or something.

14 Q. Did you ever go in Mr. Hill's house after the shooting?

15 A. No, I didn't.

16 Q. Did you have anything to do with the SWAT team when they
17 arrived?

18 A. No, I did not.

19 Q. Or the bomb squad?

20 A. No.

21 Q. Or the hostage negotiation team?

22 A. No, ma'am.

23 Q. You weren't involved in that part of this incident?

24 A. No, ma'am.

25 Q. Then you go back to where Deputy Lopez is, and how was it

1 that you got removed from the scene?

2 A. Um-m-m, after Deputy Lopez and I had been sitting there for
3 some time, I don't know if it was over the radio, but we were
4 told the SWAT team was going to use what they call the MRAP,
5 the armored vehicle, to provide cover for us to get us out.

6 The MRAP pulled down -- came down Avenue Q, and if I
7 remember correctly, it came diagonally between Deputy Lopez and
8 my car up the grass area of the Hill's yard.

9 Because it is a large vehicle and there was a team member
10 at the back left tire he motioned to us, and we ran since
11 basically the MRAP pulled up and provided cover to my car and
12 us. So, we ran to the team member at the back left wheel and
13 the MRAP backed out slowly and went down Avenue Q with us
14 walking slowly beside it.

15 Q. Where did you go?

16 A. I was met by Sergeant Sheelar and other detectives, I knew
17 him as Snoop, I didn't know his name, and they took our
18 photographs and took my firearm.

19 Q. And did you ever return to the house?

20 A. The next day.

21 Q. Was that for some kind of an interview with Sergeant
22 Lebeau?

23 A. Yes, ma'am.

24 Q. Did you ever go into that house while the body was there?

25 A. No, I did not.

1 Q. All right. Now, we talked about some radio communications.

2 MS. BARRANCO: Your Honor, at this time, I would like
3 to -- I have to confer with Plaintiff's counsel. I would like
4 to introduce into evidence and play for the jury what has been
5 marked for identification as Defendant's Exhibit 9, which is in
6 essence what you already played, but a little more.

7 MR. PHILLIPS: Okay, no objection.

8 THE COURT: 9 is admitted without objection. Do you
9 want to admit it or just play it?

10 MS. BARRANCO: I would like it admitted and played.

11 THE COURT: All right.

12 (Whereupon Defense Exhibit 9 was marked for evidence.)

13 BY MS. BARRANCO:

14 Q. Now, Deputy, before I get ready to play this, you recall
15 the earlier communications that were played, maybe a minute, I
16 don't remember. Do you remember there being more radio
17 communications?

18 A. Yes, ma'am.

19 Q. What I will do is hit play and let everyone hear the part
20 that we are going to talk about and I will hit stop and ask you
21 some questions. Okay?

22 A. Yes, ma'am.

23 Q. So you know, after I hit stop and I start asking you
24 questions, if you need me to go back and play any part again, I
25 will do my best, but I am no technician.

1 (Thereupon, Defense Exhibit 9 was played.)

2 MS. BARRANCO: Your Honor, I am going to stop at the
3 11 minute mark. It goes for another two minutes.

4 Your Honor, I also wanted to discuss Defendant's
5 Exhibit for identification number 7. Your Honor, at this time
6 Defense would like to move in Defense Exhibit 7, which I
7 understand there is no objection.

8 MR. PHILLIPS: No objection.

9 THE COURT: Admitted without objection.

10 (Whereupon Defense Exhibit 7 was marked for evidence.)

11 MS. BARRANCO: Thank you, your Honor.

12 BY MS. BARRANCO:

13 Q. Now, Deputy, you had the opportunity to listen to the radio
14 communications. Did you recognize your voice during that?

15 A. Yes, ma'am.

16 MS. BARRANCO: I am going to put up Defense Exhibit 7.
17 Do you feel the need for me to replay any part of
18 that?

19 THE WITNESS: No.

20 MS. BARRANCO: I am going to put up here Exhibit 7. I
21 know this is really hard to see. I think there is a way to
22 zoom in here.

23 BY MS. BARRANCO:

24 Q. Do you recognize what I am showing you here, Deputy? Let
25 me back it out a minute.

1 Do you recognize what this is?

2 A. It looks like a transcript of the radio communications.

3 Q. Okay. And for the jury's benefit, this is going to be in
4 evidence, as will the audio that we just heard. So, to the
5 extent that anyone can't see or hear something, these items
6 will be going back with the jury.

7 I will be doing my best to show you what I am referring to.

8 Now, Deputy, talking about this particular radio
9 transmission, do you remember hearing something on the audio
10 that says something about Long John Silvers, a silver colored
11 Toyota?

12 A. Yes, ma'am.

13 Q. Did that have anything to do with the Hill call?

14 A. No. That was daily activity on the radio.

15 Q. All right. Is it your understanding -- have you had a
16 chance to look at this radio transcript? My question is, do
17 you recall this transcript only reflecting the audio
18 transmissions in regard to the Hill call?

19 A. Yes, ma'am.

20 Q. Okay. Just so the jury understands, Deputy, to the extent
21 you know the answer to this, the audio is going to include what
22 we just listened to, more than just the radio communications
23 about the subject call, something about the silver Toyota and
24 long John Silvers?

25 A. Yes, ma'am.

1 Q. This transcript only has to do with the transmission about
2 this incident?

3 A. That is what I see.

4 Q. Going through this, can you read it here -- you have a
5 closeup, I want to cover part of it. Do you see where it says
6 unit here?

7 A. Yes, ma'am.

8 Q. Did you have a particular unit number?

9 A. Yes, everybody has their own radio ID number. Mine at the
10 time was 280.

11 Q. How about Lopez?

12 A. 217.

13 Q. What is SO?

14 A. That is dispatch.

15 Q. At the place on the audio was the dispatch voice a female
16 voice?

17 A. Yes, ma'am.

18 Q. Now, looking at the transcript, I can move it if you need
19 me to, can you explain what it is that is being said between
20 you and the others on the audio and decipher some of the police
21 codes for us?

22 A. Yes, ma'am. Where would you like me to start?

23 Q. How about at the very beginning.

24 A. That would be dispatch calling my radio ID number asking me
25 1065, which means can you copy a call.

1 Q. Up here?

2 A. Yes, ma'am.

3 Q. That was the dispatcher talking to you asking if you were
4 ready for another call?

5 A. Yes, ma'am, to take a call.

6 Q. And was this your response, the second line?

7 A. The next line would be my response.

8 Q. What was it that you said?

9 A. Lima is a clearance code to let them know I was with Deputy
10 Pearson, and a clearance code would be I would be with another
11 unit.

12 Q. Now, the next section here, what is the next line?

13 A. That would be dispatch getting out the call to me, it is in
14 reference to a signal 22, a disturbance across the street of
15 the school on Avenue Q, garage door open, no 1025, which means
16 the caller does not want contact back.

17 Q. You see it has brown house?

18 A. Yes.

19 Q. Do you know if the house you went to was brown, as far as
20 you knew?

21 A. I would have to see the picture of the house again, I don't
22 remember.

23 Q. I am putting up Defense Exhibit 102. Maybe the lighting
24 may not be -- can you tell what color the house is?

25 A. It looks like a beige color.

1 Q. That is the house you went to?

2 A. Yes, ma'am.

3 Q. That is the house that had the loud obscene music?

4 A. Yes, ma'am.

5 Q. Here you are saying 51. What does that mean?

6 A. That means I am on my way.

7 Q. To the call?

8 A. Yes, ma'am.

9 Q. And the dispatcher responds back, 51. Is that basically
10 confirming?

11 A. She is confirming she heard what I said.

12 Q. Who is 205?

13 A. That is Deputy Jackson.

14 Q. Did he end up having anything to do with this call at all?

15 A. No, ma'am.

16 Q. Why was that?

17 A. He was canceled off the call.

18 Q. Why was that?

19 A. Deputy Lopez canceled him because he was right there with
20 me, he responded.

21 Q. And is that depicted here in this line, 217 being Lopez?

22 A. Yes, ma'am.

23 Q. What does that say in normal language?

24 A. It says he is basically right behind me, and 66 is to
25 cancel the other unit.

1 Q. And dispatch responds, 205, I will show you 108?

2 A. Yes.

3 Q. What does that mean?

4 A. In service, ready for a call.

5 Q. So, for the deputy that ended up getting canceled for the
6 call, he is going to get assigned another call?

7 A. Yes, ma'am.

8 Q. Going forward a little bit here, I see number 280, you say
9 280, SO?

10 A. Yes, ma'am.

11 Q. What does that mean?

12 A. That is to let dispatch know I am calling dispatch and not
13 another unit. We identify ourselves and who we are calling.

14 Q. What do you mean, who you were calling?

15 A. If I was calling 217, I would have said 280 to 217. If I
16 am calling dispatch, I say 280 to SO.

17 Q. And who were you calling?

18 A. At that time, it looks like dispatch.

19 Q. What was your purpose for doing that?

20 A. Looks like I was going on the scene.

21 Q. And what code tells us that you are going on scene?

22 A. 97.

23 Q. Would that be here?

24 A. Yes, ma'am.

25 Q. All right. And then SO responds, you are on scene?

1 A. Basically she acknowledges that she heard and she is
2 logging us on scene.

3 Q. At that point, do you know if you and Deputy Lopez arrived
4 at the subject location, at Mr. Hill's house?

5 A. Yes.

6 Q. Can you tell us what time is depicted on this exhibit?

7 A. It is kind of cut off on my screen.

8 Q. Oh, I am sorry.

9 A. 15:22:56.

10 Q. That is military time?

11 A. 3:22 and 56 seconds.

12 Q. As you sit here today, do you know if this is exactly to
13 the second the time that you arrived at Mr. Hill's address or
14 do you understand it to be an approximation?

15 A. It was an approximation.

16 Q. Okay. So, then I see another 280. What are you doing
17 there, 1523 and 24 seconds?

18 A. I was advising dispatch of the exact location. When we get
19 a general call like that and find out what the address is, we
20 advise dispatch where we are going to be in case something bad
21 happens to us.

22 Q. Just to be safe?

23 A. Just to be safe.

24 Q. As you were walking up to this particular house, did you
25 have any reason to believe it was going to be anything other

1 than a garden variety plain police call?

2 A. No, ma'am, that is just protocol.

3 Q. And then dispatcher responds 10-4?

4 A. She acknowledges that she got the address.

5 Q. Okay, and then -- do see the next line that is at 1524 and
6 32 seconds?

7 A. Yes, ma'am.

8 Q. Is that where you hear on the radio someone say: Shots
9 fired, shots fired, black male, dreads, armed with a handgun?

10 A. Yes, ma'am.

11 Q. Do you know whose voice that is?

12 A. I believe Deputy Lopez.

13 Q. Is that designated with unit 217?

14 A. Yes.

15 Q. It says: SO, all units, the main is going to be 1034.
16 What does that mean?

17 A. To let all the other units know that radio transmission is
18 limited, something bad happened, they don't want somebody to
19 talk about the color of the sky while somebody could be getting
20 hurt or --

21 Q. Or the guy illegally parked at the Long John Silvers?

22 A. Yes, ma'am.

23 Q. What happens to all those calls?

24 A. The protocol is when the main channel is limited traffic --
25 we have a main channel and we have a dispatch or records

1 channel, and we have other channels. Usually what happens when
2 main is on limited traffic, everybody switches over to one
3 channel, to the records channel, and all regular calls with the
4 rest of the county that are not involved with that go out
5 through records.

6 Q. Okay. Can you just -- rather than me asking line by line,
7 if you could pick up from where I was just discussing the shots
8 fired, Deputy Lopez pulled out. Could you walk us through what
9 was going on back and forth here on this first page?

10 A. Deputy Lopez called out shots fired, the dispatcher said
11 the main channel is going to be on limited traffic, no ID.
12 Somebody asked who is that.

13 Q. Did you hear that on the audio?

14 A. Yes.

15 Q. Did you recognize that voice?

16 A. Not really, no.

17 Q. What was your understanding why they were asking who is
18 that?

19 A. Because when something like that happens everybody wants to
20 know who is in trouble and who needs help.

21 Q. That wasn't you saying that?

22 A. No, ma'am.

23 Q. If you'd pick up, give us an understanding of what the rest
24 at least of this page is discussing?

25 A. Then, this would be dispatch answering whoever said who is

1 that, that it was 217, for Lopez, and 121 is a supervisor, I
2 don't remember who that is, and he says where is he. SO says
3 15, and I keyed up and said Avenue Q, and then it looks like
4 Lopez keyed up and said 1501 Avenue Q, and another unit, who
5 didn't identify himself, said he was en route from Indrio
6 (phon) and Kings and dispatch acknowledges.

7 Q. 51, is that en route?

8 A. Yes, ma'am.

9 Q. That is here. All right.

10 A. Another unit, who I thought might have been the
11 supervisor's voice, advised stay off the radio.

12 Q. Why would a supervisor say to stay off the radio?

13 A. Protocol is when something -- limited traffic is for a
14 reason, people know that people are responding. If something
15 bad happens, it must be heard on the main channel. People know
16 you are responding, but you don't need to put that on the main
17 channel.

18 Q. Just leave what is the shooting incident, have those folks
19 on the main channel?

20 A. So they can say and do what needs to be done.

21 Q. And what do you see next here?

22 A. That would be me calling dispatch and telling them they
23 need to advise the school to get everybody inside.

24 Q. All right. That's what you told us about earlier.

25 A. And SO advised they acknowledged.

1 Q. Is that the 104 here?

2 A. Yes, ma'am.

3 Q. All right. And what else is here? Is this Lopez talking
4 here?

5 A. That was Lopez, I don't know if he meant the school is
6 securing everyone, and then he transmits units responding, we
7 are going to need a unit on north 15th, on the east side of the
8 house, and then 417 would be a detective's number. I am
9 pulling up -- that would be based on our conversation, that
10 would be Detective Pearson.

11 Q. Was he asking whether or not the person was still inside
12 the house?

13 A. Yes.

14 Q. Okay. And what was the last line on that page?

15 A. That was Deputy Lopez saying he closed the garage.

16 Q. And who did you understand he was referring to?

17 A. Mr. Hill.

18 Q. Going to the next page, we won't go over everything here.
19 Do you see where you ask -- here I see 280, which would have
20 been you. What is that; what are you conveying there?

21 A. That was me giving out my location, where I had go to on
22 15th Street to take a position to watch the south and east side
23 of the house, and I probably would have gotten that address off
24 the mailbox or house right there to give my location so they
25 know where I was setting on the perimeter.

1 Q. Is that what you showed us earlier with the aerial?

2 A. Yes.

3 Q. You attempted to take cover behind a telephone pole?

4 A. Yes, ma'am.

5 Q. At this point in the radio communications, are there other
6 deputies arriving in the area to try to figure out what needs
7 to have a perimeter established?

8 A. Yes, ma'am.

9 Q. Let me move you forward a bit, and just to focus on what
10 you said here, here I see again 280, your number, 15-28, 14.
11 What are you saying there?

12 A. I was calling dispatch, and she advised, and I said signal
13 14, which is just information for everybody, is what that code
14 means. I was saying he was using a handgun like a Kel-Tec
15 model.

16 Q. That is what you recall putting out on the radio, the kind
17 of gun you believed you saw in Mr. Hill's hand?

18 A. Yes, ma'am.

19 Q. If we look at the time there -- you said you weren't sure
20 of the time. Do you see what is the time connected to the
21 entry where you mention the Kel-Tec model being the handgun in
22 Mr. Hill's hand?

23 A. 15:28:14, 3:28 and 14 seconds.

24 Q. And if we go to the prior page, if we look when the shots
25 were fired, is that 3:24?

1 A. And 32 seconds, yes, ma'am.

2 Q. Does it look like within four minutes you are on the radio
3 describing what kind of gun you saw in Mr. Hill's hand?

4 A. Yes, ma'am.

5 Q. Does Deputy Lopez have a different -- does he have any
6 input on the kind of gun he thought he saw in Mr. Hill's hand?

7 A. Yes, ma'am.

8 Q. Where is that?

9 A. He says 217, signal 14, more like a Glock 30, 32, more like
10 a 27.

11 Q. Is that almost a minute after you said the thing about the
12 Kel-Tec?

13 A. I can't see the time on my screen.

14 Q. I am sorry.

15 A. Yes, 1529.

16 Q. And you said about the Kel-Tec at 15:28:14.

17 A. So, a little less than a minute later he is putting on the
18 radio what he saw in Mr. Hill's hand, the handgun, he thought
19 maybe it was a Glock 30, 22 or 27.

20 Q. What kind of a gun is a Glock 30, 22 or 27?

21 A. A Glock 27 is a compact model, a smaller Glock.

22 Q. How would you describe a Kel-Tec in terms of its size?

23 A. They vary.

24 Q. In terms of the Kel-Tec you saw in Mr. Hill's hand, did
25 you see it and see it as a big gun or a smaller gun?

1 A. I saw it as kind of a compact.

2 Q. Okay. Now, is there anything else that you see on this
3 radio transmission here that you feel we need to discuss, that
4 is pertinent to what we are talking about here today?

5 A. No, just the dispatch advised that the school is on lock
6 down.

7 Q. Okay. I see something about an opening on the west side of
8 the house. Do you remember anything about that in regard to
9 Mr. Hill's house?

10 A. I didn't actually go over there, but Deputy Lopez told me
11 he was advising other units that were trying to set up a
12 perimeter to be directly on the west side of the house, there
13 was some decorative cement blocks that had a design with
14 openings on them that somebody could shoot through.

15 Q. And then, at the very end here there is reference to, all
16 right, let's go ahead and get track -- I am not sure if it is
17 T-R-A-C -- TAC 1, take everybody over to TAC 1, T-A-C, all
18 caps, and the number 1. Do you know what TAC 1 is?

19 A. TAC 1 is another off channel and if an event looks like it
20 will take a long time they will move the event to its own
21 channel so they can have the main dispatch channel back.

22 Q. As far as you know, did you go to a TAC 1 channel then?

23 A. If they advised, yes, ma'am.

24 MS. BARRANCO: Your Honor, if I may have a moment?

25 THE COURT: Yes.

1 BY MS. BARRANCO:

2 Q. Deputy Newman, I asked you at least once if you knew if Mr.
3 Hill was injured or dead or alive in the house. Did you know
4 Mr. Hill was the only occupant of the house when you
5 encountered him?

6 A. I didn't know who was in the house.

7 Q. You had no idea whether there was a child in the house or
8 an adult or more than one adult in the house; all you saw was
9 Mr. Hill?

10 A. That is all I saw.

11 Q. And then the garage door went down as you told us?

12 A. Yes.

13 MS. BARRANCO: Nothing further.

14 THE COURT: We will take our mid-afternoon break,
15 we'll come back at 4:00 o'clock.

16 I remind you, Deputy Newman, that you remain under
17 oath, do not discuss your testimony with anyone.

18 And jurors, don't discuss the case with anyone, no
19 interaction with anyone associated with the case. We will see
20 you back in 15 minutes. Thank you.

21 *(Thereupon, the jury leaves the courtroom.)*

22 THE COURT: Okay, we will be in recess.

23 *(Thereupon, a short recess was taken.)*

24 THE COURT: All right. Are the jurors here?

25 All right. You can bring them in.

1 A. I can't see the color here from the light. Better. Yes.

2 Q. This is blue; is that fair?

3 A. Yes, sir.

4 Q. Okay. If for any reason I am caught up in my questions and
5 I don't let you answer, I want you to stop me. Okay?

6 A. Yes, sir.

7 Q. Okay. You certainly understand, I imagine, as a law
8 enforcement officer, the nature of the work you do, the
9 profession you chose, involves a degree of injury at all times?

10 A. Yes, sir.

11 Q. And even a risk of death?

12 A. Yes, sir.

13 Q. Especially in a high crime town?

14 A. Yes.

15 Q. You recognize the fact that no matter what aspect of your
16 job you are performing, your life may be in danger?

17 A. Yes, sir, I understand that.

18 Q. That is from the moment you start your day to the moment
19 you go to bed at night?

20 A. Yes, sir.

21 Q. The same goes for your fellow officers?

22 A. Yes, sir.

23 Q. And you also understand, correct me if I am wrong, the
24 feeling your life is in danger, or fellow officers' lives may
25 be in danger, doesn't justify using force?

1 A. I don't understand your question.

2 Q. Fair. The general feeling that because you are a law
3 enforcement officer, that you may have some danger and do have
4 danger, no doubt about it, that doesn't -- that general feeling
5 doesn't justify use of force?

6 A. I'm still not following you. I don't understand what you
7 are trying to say.

8 Q. Okay. That is exactly how I want to do this. Let me back
9 up, that is my fault.

10 We talked about there is danger in law enforcement.

11 A. Yes, sir.

12 Q. And I guess I will break it down this way, just because
13 there is danger in law enforcement, doesn't mean law
14 enforcement officers automatically get to use force?

15 A. No. We are justified to use force based on the parameters
16 set by the State of Florida.

17 Q. Okay. We live in a country with over 300 million guns and
18 300 million people. You are probably used to seeing guns?

19 A. Yes, sir.

20 Q. That is an American right?

21 A. Yes, sir, it is.

22 Q. So, seeing a gun doesn't necessarily mean you get to use
23 force in response to that gun?

24 A. No, sir, it does not.

25 Q. Okay. There has to be more than a general feeling, not a

1 specific feeling? Do you understand what I mean by that, the
2 difference between a general feeling of fear and a specific
3 feeling of fear?

4 A. I think I do. If you want to define it, please do.

5 Q. I am afraid of clowns, that is a general fear. There is no
6 clown in this room, some might say it is me, but if a clown
7 comes running in, it is a specific fear, it is a silly one. Do
8 you get the difference?

9 A. Yes.

10 Q. As a law enforcement officer, you have an understanding of
11 the danger, but when a particularized danger comes at you, that
12 is the difference between general and specific that I am
13 referring to. Is that fair?

14 A. Yes, sir.

15 Q. Okay. Can we also agree that not all -- strike that.

16 You're, in fact, taught how to defend yourself as part of
17 becoming an officer; fair?

18 A. Yes, sir.

19 Q. The escalation techniques, how to retreat, things like
20 that?

21 A. As law enforcement, we don't have a duty to retreat.

22 Q. Okay. Do you always have to seize the violator?

23 A. If it is going to put the general public at risk, depending
24 on the crime. There are certain aspects you have to weigh
25 against, what is the crime, and what is the outcome that could

1 happen. You wouldn't go on a car chase for somebody who stole
2 a sweater from Bells.

3 Q. If you smell marijuana from a car, you don't get to bash in
4 the window, right?

5 A. No, sir.

6 Q. Would you agree that if a person you were confronting --
7 this is the opposite, this is the opposite side.

8 If the person you are confronting is known to be dangerous,
9 you know them to be dangerous, would this be something you
10 could take into account as a law enforcement officer when using
11 force?

12 A. If I had personal knowledge of it, yes, I would take that
13 into account.

14 Q. If there was a BOLO, be on the lookout for X, Y, Z, John
15 Smith is running around with a certain description, and you see
16 that description, it is something you could measure properly?

17 A. Yes, that is a factor.

18 Q. Mr. Hill that day was armed -- before what happened, before
19 shots were fired, Mr. Hill was armed with a dirty rap CD; he is
20 that fair, before shots were fired?

21 A. I don't think he could be armed with a rap CD.

22 Q. That is what you were responding to?

23 A. Yes, sir, that was the call.

24 Q. And you didn't know who at this house on Q Street, who
25 lived there?

1 A. I believe it was Avenue Q.

2 Q. Sorry, Avenue Q. You didn't know who lived in the house on
3 Avenue Q?

4 A. I had no idea.

5 Q. You didn't know if they were armed or unarmed?

6 A. I had no idea.

7 Q. You were investigating loud music?

8 A. Yes, sir.

9 Q. Not probation violations?

10 A. No, sir.

11 Q. Not intoxication?

12 A. No, sir.

13 Q. Not whether probation had expired a week before or still
14 had a week to go, nothing like that, you were there because of
15 a loud music complaint?

16 A. Yes, sir.

17 Q. You told me the signal 22 was -- is the signal you get for
18 loud or vulgar music?

19 A. No. Signal 22 was a disturbance, vulgar music was by
20 dispatch.

21 Q. Generally, loud music, particularly loud music or vulgar
22 music, was not a misdemeanor, just a complaint?

23 A. Yes, sir.

24 Q. Okay. In the United States -- again putting probation
25 violation possibilities aside -- are people allowed in America

1 to open the door, their doors with a firearm in their hand?

2 A. You are allowed to possess a firearm in your home if you
3 are legally allowed to.

4 Q. Can you open the door with one?

5 A. Nothing would stop you.

6 Q. Okay. And that is something you must take into account
7 every single time you knock on the door, right?

8 A. Yes, sir.

9 Q. It doesn't matter if it is a white neighborhood, black
10 neighborhood, poor neighborhood or rich neighborhood, that
11 would be illegal, to shoot someone if they opened the door with
12 a gun?

13 A. If there was no other action with it, yes.

14 Q. That would be a violation of their civil rights?

15 A. If there were no other actions, yes.

16 Q. The CAD we have been through, we heard two separate
17 versions of it. The time I played had segments, had an entry
18 time and exit time, and the one today is a big piece, and we
19 have seen the written transmission.

20 Does that describe the three iterations of the CAD we
21 heard?

22 A. Yes, sir.

23 Q. And the times on there, we don't know if they are accurate.
24 I assume they are accurate.

25 A. It is whatever time the EEOC has dispatched in the

1 computer, it time stamps everything.

2 Q. Thank you, very good.

3 You have been sitting here all week, probably hearing good
4 things, tough things, and you were here for Deputy Lopez?

5 A. Yes, sir.

6 Q. Was there anything that rang out that Deputy Lopez
7 misstated?

8 A. I am not sure what you are asking.

9 Q. Did you hear Deputy Lopez say anything wrong when he was
10 here?

11 MS. BARRANCO: Objection, he's asking one witness to
12 comment on the testimony of another.

13 THE COURT: You want to restate that question.

14 MR. PHILLIPS: Yes, ma'am.

15 THE COURT: Okay.

16 BY MR. PHILLIPS:

17 Q. Deputy, do you disagree -- do you have a disagreement that
18 the garage door went from down to up to down in three seconds?

19 A. I can't confirm or deny that because I would be giving you
20 a general satisfaction, and it wouldn't be a fact, I couldn't
21 testify to a time. You know, I am not going to guess.

22 Q. And I appreciate that, Detective Newman.

23 I've known you as Deputy Newman for years, and so, please,
24 I am going to try to go to detective, I understand you are a
25 detective, it's not out of disrespect.

1 A. It doesn't bother me.

2 Q. Okay. To fire your service weapon, you have to choose --
3 it is not an automatic weapon, you have to choose to pull the
4 trigger each time. Is that fair?

5 A. Yes, sir.

6 Q. So, each act is an intentional act by you and you alone?

7 A. Yes, sir.

8 Q. You can fire one time and stop?

9 A. We are really not trained to do that, but that is a
10 possibility.

11 Q. You can fire two times and stop?

12 A. Yes.

13 Q. You can fire three times and stop?

14 A. Yes, sir.

15 Q. But you didn't, even after the door was shut?

16 A. That is not correct, sir.

17 Q. Okay. Did you keep -- they say in the gun world -- what
18 does one in the chamber mean?

19 A. One in the chamber means if there is not a round from the
20 magazine seeded in the handle of the gun, if there is not a
21 round in the chamber when you pull the trigger, and when you
22 see somebody pull out a gun, you have to rack the slide because
23 you are moving a round from the magazine into the chamber to be
24 fired.

25 Q. You didn't have to be -- you didn't have to rack that day?

1 A. No. We carry one in the chamber for accuracy.

2 Q. You have to fill up the chamber --

3 A. When we qualify with a firearm at the range, once we
4 qualify and clean our guns, we reload our magazines, go back
5 down range, we do what is called administratively load, we put
6 the magazine into the firearm and chamber the round and holster
7 the weapon, and we put another load in the magazine to top it
8 off, and that is how your gun is kept.

9 Q. The next time you are at the range it services through?

10 A. I service the firearm when we do it quarterly.

11 Q. There is nothing related to a malfunction or anything that
12 shot any of these shots?

13 A. No, sir.

14 Q. Let's talk quickly about the back. You didn't go around
15 the side to the back before the shooting; fair?

16 A. Yes, sir.

17 Q. And I think you mentioned and discussed with Ms. Barranco
18 that you did that after the shooting. Is that fair?

19 A. Yes, sir.

20 Q. Okay. Are verbal commands important when there is an
21 escalating circumstance?

22 A. Yes.

23 Q. Why?

24 A. It communicates our desire for somebody to comply.

25 Q. I think earlier today you said these words as loud as you

1 possibly can imagine. Is that fair?

2 A. Yes.

3 Q. You said you said them at the top of your lungs. Is that
4 fair?

5 A. Yes, sir.

6 Q. Drop the gun, Sheriff's Office, drop the gun?

7 A. I never said Sheriff's Office, I said "gun, gun, drop the
8 gun."

9 Q. You never said Sheriff's Office?

10 A. Only when I was knocking on the doors.

11 Q. Okay. What, as best as you recall, did you say and how
12 many times?

13 A. I know I said, "gun, gun, drop the gun" and I believe I
14 said "drop the gun" again.

15 Q. Ms. Barranco didn't want to blow out the equipment, and I
16 don't either, I don't want you to do it in the microphone, but
17 I do want to ask you, because it may be important for to you
18 demonstrate that.

19 A. You want me to yell to disarm somebody?

20 Q. I do. And I understand, too, that there is going to be a
21 difference in the way you yelled it that day, okay, I
22 understand that. But I would like to time you yelling "gun,
23 gun, drop the gun" as you said it that day as loud as you can
24 say it. If your Honor will allow.

25 *THE COURT:* Yes. Sure. You probably don't want it in

1 the microphone because there was not a microphone that day.

2 Maybe standing behind the seat, not into the
3 microphone. Yes, that would be fine.

4 *BY MR. PHILLIPS:*

5 *Q.* As soon as you are ready, I will hit start.

6 *A.* Gun, gun, drop the gun, drop the gun.

7 *Q.* That was not fair, one more time. I will go as soon as you
8 go.

9 *A.* Gun, gun, drop the gun, drop the gun.

10 *Q.* That was one time. Is that fair?

11 *A.* Yes, sir.

12 *Q.* It took you 2.7 seconds, and again, that is my stopwatch,
13 that was me timing you, and you said that two to three times?

14 *A.* No. That is what I said right there.

15 *Q.* That was everything you said?

16 *A.* The entirety of it.

17 *Q.* Okay.

18 *A.* That was all I had time for.

19 *Q.* I understand. Do you recall having your deposition
20 taken -- do you have your deposition with you, a copy of your
21 transcript? If not, I have an extra.

22 *A.* I don't have it up here with me, sir.

23 *Q.* So your counsel can see, it is unmarked, it is a copy of
24 your deposition.

25 *MR. PHILLIPS:* Your Honor, may I approach the witness?

1 THE COURT: Yes.

2 BY MR. PHILLIPS:

3 Q. Your deposition was on October 24, 2016. Do you recall it?

4 A. Yes.

5 Q. In preparation for your deposition, did you review your
6 statements that happened on January 14 and 15th, that you gave
7 at the scene? Do you remember if you did that?

8 A. I don't remember. I don't recall.

9 Q. Okay. I refer you to page 84, if you could take a look at
10 lines one through five. Would you please read them to the
11 jury.

12 A. "Do you have a specific recollection of what you said other
13 than gun, gun, put down the gun? I believe I said something
14 like Sheriff's Office, drop the gun."

15 Q. Thank you, sir.

16 Did you just tell me you didn't say you said Sheriff's
17 Office, and in October 2016 you said Sheriff's Office?

18 A. I said, I believe I said it.

19 Q. Have you heard the recordings of yourself since 2016, to
20 refresh your recollection about whether you said Sheriff's
21 Office?

22 A. I don't think there was any recording, sir.

23 Q. Okay. If you said Sheriff's Office, gun, gun, drop the
24 gun, it would take more time than gun, gun, drop the gun; isn't
25 that fair?

1 A. Yes, sir.

2 Q. Let's talk briefly about the timing of the shot, sir. We
3 discussed at deposition the door was closing as the hand was
4 going up. Is that fair?

5 A. I believe so, yes.

6 Q. I am not trying to demonstrate, I don't want to
7 demonstrate, it didn't happen to me.

8 Ms. Barranco demonstrated as I saw it, and correct me, this
9 is how I saw it. I believe you were asked when you first fired
10 and it was when the gun reached about that level?

11 A. That is when I said I made the decision to fire, but I
12 didn't actually fire at that point. It takes a little bit to
13 get from your head to your hand.

14 Q. Certainly, and it takes a little bit to get from your eyes
15 to your brain, right?

16 A. Yes, sir.

17 Q. Okay. So, if you had already decided to fire by here, what
18 had you seen from here to here that appeared -- that it
19 appeared you were going to have to use deadly force on Mr.
20 Hill?

21 A. Because it wasn't a slow motion like that. It wasn't like
22 he was doing a robotic motion, it was fluid, like it was about
23 to swing up and it was coming in Deputy Lopez's direction.

24 Q. I don't want either one of us to get in a prediction game.
25 Okay.

1 You made a decision -- you have seen something by this
2 point, and you made a decision by this point to fire. You did
3 not change your decision, correct?

4 A. No, sir.

5 Q. You fired?

6 A. I did.

7 Q. Not here, definitely not here, the first shot was not fired
8 here?

9 A. I couldn't tell you, sir. Like I said, the gun was coming
10 up, the door was coming down, and as the door kind of started
11 to conceal the firearm, I didn't see the firearm hit the
12 ground, that it was dropped or anything. So, the last point I
13 saw the gun it was coming up, I assumed it was going to
14 continue to come up because he didn't comply, and I then fired.

15 Q. Okay. And you fired again?

16 A. I feared a volley, yes, sir.

17 Q. And two more.

18 The outer limit of a volley -- the volley is two to four,
19 and you fired a full volley?

20 A. I fired -- yes, sir, I did.

21 Q. You never saw a gun pointed at a human being?

22 A. Um-m-m --

23 Q. Let me repeat it. You never saw a gun pointed at a human
24 being?

25 A. No, I did not see him point it directly at him.

1 Q. Okay. And in fact, before that -- let me ask this
2 question: Did you say today, May 22, 2018, that you drew the
3 firearm at the point the garage went up?

4 A. No, sir. I said basically what happened is the garage went
5 up, and when I saw Mr. Hill and I saw the firearm, and I saw
6 somebody was there and they had a firearm, I drew my weapon.
7 Yes, sir, it wasn't like I saw the door go up and turned around
8 with a gun in my hand.

9 Q. Okay. So I misheard that?

10 A. Yes, sir.

11 Q. Okay. You lost sight of the gun before you fired?

12 A. Yes, as I decided to fire, I was losing sight of the gun.

13 Q. You predicted the gun was coming up at Lopez before you
14 fired?

15 A. Based on the action it was taking when I lost sight of it.

16 Q. Pure speculation, but if Hill was trying to flick the gun
17 under the garage door, would he have been able to do that
18 before he got shot?

19 A. I don't believe I want to speculate on that.

20 Q. Okay, fair.

21 By the contrary, if Mr. Hill's hand was empty, you can't
22 shoot in that situation, correct?

23 A. His hand was not empty.

24 Q. I understand. Venture for me on a hypothetical.

25 If Mr. Hill's hand was empty when you shot, that would be

1 a violation of his rights, correct?

2 A. I'm not sure I am here to answer hypotheticals. I thought
3 I was here to testify to what I did.

4 Q. Then let's just recreate the circumstances.

5 Forget January 14, 2014. A garage door opens, a man is
6 behind that garage door with an empty hand. Whether you see a
7 gun in his back pocket or on a table next to him, you can't
8 shoot that man?

9 A. No, sir, I would not.

10 Q. Under any authority you have as a law enforcement officer?

11 A. No, sir, I would not.

12 Q. Would your memory of this have been better on January 14th
13 or January 15th, when you gave statements, or on October 4,
14 2016, or all the way in May of 2018?

15 A. It depends, sir. Sometimes memory is a funny thing,
16 especially when there are traumatic events. Sometimes people,
17 especially kids who go through traumatic events, remember
18 things years later that they didn't recall two days after it
19 happened.

20 I couldn't offer an opinion on that.

21 Q. Do you recall giving statements on January 14th and
22 January 15th?

23 A. To the investigators?

24 Q. Yes.

25 A. Yes, sir. Yes, sir.

1 Q. We have premarked Plaintiff's Exhibit 17 and Plaintiff's
2 Exhibit 18. Plaintiff's Exhibit 17 is what I think is a
3 statement given by you to Detective Lebeau and Detective
4 Briglia. Am I pronouncing that right?

5 A. Yes, sir.

6 Q. Plaintiff's Exhibit 18 is a statement from January 15th,
7 which I think they call a walk through, which is again Ed
8 Lebeau and Detective Tim Taylor. Do you recall that?

9 A. Yes, sir.

10 MR. PHILLIPS: Your Honor, we will move these into
11 evidence. Before I get there, let me mark them for
12 identification.

13 THE COURT: What are the numbers again?

14 MR. PHILLIPS: 17 and 18.

15 BY MR. PHILLIPS:

16 Q. Take a look at those, sir, and let me know when you are
17 good for another question.

18 A. Was there something specific you wanted me to look at?

19 Q. Certainly. I wanted to give you as much time as you
20 needed.

21 Do you recognize those as your statements?

22 A. If they were recorded, yes, they are.

23 MR. PHILLIPS: We move in Plaintiff's Exhibits 17 and
24 18.

25 THE COURT: Any objection?

1 MS. BARRANCO: No objection.

2 THE COURT: Admitted without objection.

3 (Whereupon Plaintiff Exhibits 17 and 18 were marked for
4 evidence.)

5 MR. PHILLIPS: Just for housekeeping, there are audio
6 recordings of the statements. Because there are parts
7 inaudible on the transcriptions, we are moving in 190 and 191
8 without objection.

9 MS. BARRANCO: That is correct.

10 THE COURT: 190 and 191 admitted without objection.

11 (Whereupon Plaintiff Exhibits 190 and 191 were marked for
12 evidence.)

13 BY MR. PHILLIPS:

14 Q. Refer to the January 15th statement, sir.

15 A. Okay.

16 Q. I believe page seven. Did you tell Detective Lebeau that
17 you saw a gun behind Mr. Hill's leg?

18 A. Yes, sir. As I demonstrated earlier, that is considered
19 behind his leg.

20 Q. And then I think you stated he started coming out. Was he
21 charging Deputy Lopez?

22 A. I am sure that is supposed to be coming up. I do not
23 recall that he was coming out of the garage. I would never say
24 that.

25 Q. Okay, we have the audio.

1 A. Looking at the statement, it might be an improper
2 statement, talking about myself coming back to the walkway, the
3 front door. I don't know without hearing the tape, sir.

4 Q. Any other excuse you want to give me?

5 A. It is not an excuse --

6 *MS. BARRANCO:* Objection, your Honor, argumentative.

7 *THE COURT:* Sustained.

8 *BY MR. PHILLIPS:*

9 Q. Is that you, sir?

10 A. Yes, sir.

11 Q. Does that identify you as a law enforcement officer?

12 A. I was never in front of the garage, sir.

13 Q. Okay. Were you in the line of sight of Gregory Van Hill,
14 Jr.?

15 A. When the door was up, he did look at me, not from a rising
16 garage door. I don't know, I wasn't there with him. From my
17 perspective, he would only see me and looked at me when I saw
18 him, when I yelled at him.

19 Q. Would your shoes identify you as a law enforcement officer?

20 A. No.

21 Q. Would your lower pants identify you as a law enforcement
22 officer?

23 A. No, sir.

24 Q. Would up to your wrists identify you as a law enforcement
25 officer?

1 A. No, sir.

2 Q. Your belt?

3 A. It would give an indication.

4 Q. It certainly would. What would be the next indication?

5 A. The sleeve patches and the star. And certainly that badge.

6 Q. What do you mean, sleeve patches?

7 A. The insignia patches on the sleeves of the uniforms where
8 it says St. Lucie Sheriff's Office.

9 Q. Okay. Okay.

10 You were banging so hard on Mr. Hill's garage door that you
11 thought you were going to get written up?

12 A. Yes, sir.

13 Q. Over loud music in a high crime area?

14 A. Over loud music.

15 Q. Was the music bothering you?

16 A. I had no feeling whatsoever on the music.

17 Q. Was him not coming to the door bothering you?

18 A. No. None of that interaction was personal. My personal
19 feelings do not come into that. I am responding as a public
20 servant, that is what I do. I don't let personal feelings get
21 involved with anything like that.

22 Q. I can't remember your precise testimony on this. Do you
23 dispute about what my recollection of Stefanie Mills' testimony
24 was, that you jumped back?

25 A. I tried to demonstrate that. What she might have

1 thought -- interpreted me as jumping back was drawing my
2 firearm and coming to a position.

3 When you do it suddenly like that, it may appear you are
4 jumping back, but you are taking a step and dropping your
5 weight.

6 Q. You are more aware of your body mechanics than Stefanie
7 Mills was?

8 A. It is my body, yes, sir.

9 Q. Okay. Could you see yourself?

10 A. No, I could not see myself.

11 Q. I think you admitted you had gone shopping for a Kel-Tec a
12 day or two before this?

13 A. I don't know if you are familiar with the gun site
14 gunbroker.com, it deals with firearms all over the country. I
15 look at it occasionally, weekly, seeing if there are guns for
16 sale that might interest me.

17 Q. And like Detective Williams, you are able to identify guns
18 every day; is that right?

19 A. Particularly if you are interested in firearms, some stand
20 out more than others.

21 Q. Particularly if you are considering purchasing?

22 A. Yes, sir.

23 Q. In fact, going to Stefanie Mills' line, you were so self
24 aware that day, did you see the bullets going through the door
25 or did you just recognize the order of the holes appearing in

1 the door?

2 A. I saw the holes going through the door.

3 Q. How fast did you fire that firearm?

4 A. I don't know, sir, I didn't time myself.

5 Q. Okay. Fractions of a second apart?

6 A. Yes, sir, that is safe to say.

7 Q. Okay. At 2:27 today, May 22, 2018, I thought I heard that

8 Mr. Hill, if not to harm Lopez, was closing the door to

9 barricade himself. Do you agree with that statement?

10 A. I said I believed he was going to fire rounds and barricade

11 himself, yes.

12 Q. What made you assume that, that he would barricade himself

13 on a loud music complaint?

14 A. At that point, it was not a loud music complaint, sir.

15 Q. Was it a loud music complaint, again, assuming your facts,

16 when he was opening his garage door like that?

17 A. At that point, it was a loud music complaint with a raised

18 awareness of having a firearm, yes.

19 Q. Was it a loud music complaint when he was like this?

20 A. It was a loud music complaint that was basically recessing

21 when he refused to comply with orders to drop the gun.

22 Q. Let's talk about that. The music was really loud; fair?

23 A. Fair.

24 Q. Deputy Lopez didn't hear you; fair?

25 A. I couldn't tell you. If he said no, then no.

1 Q. You assume Mr. Hill on the other side of the garage door or
2 on the other side of the room heard everything you said?

3 A. Well, I assumed, and plus he was looking at Deputy Lopez in
4 full uniform.

5 Q. Looking at somebody in full uniform means they can hear
6 you?

7 A. I said I assumed he heard me.

8 Q. Okay. We talked about how important those commands were.
9 When I talk about how important commands were, I am asking you,
10 are commands both important to be sent and received, meaning
11 said and heard?

12 A. That he is the whole idea of communication.

13 Q. Yes, sir. You can't use force on somebody simply desiring
14 to barricade themselves into a place?

15 A. And I didn't.

16 Q. Okay. Another thing I have a question about, you said you
17 assumed you missed. How does a well-trained law enforcement
18 officer who had just seen a subject close to a door, putting a
19 door down in an instant and you fired at that same spot, assume
20 you missed?

21 A. Because when I pulled up, I did not know if there were any
22 other people in the house, I did not know the condition of Mr.
23 Hill, and I don't know if you have been in a stressful
24 situation trying to fire a gun, your accuracy is usually not
25 the best.

1 So, I automatically assumed there may have been other
2 people in the house, that he was not hit, and at that point he
3 was barricaded in. For officer safety wise and policy, I
4 wasn't going to lift the garage door and stick my head in
5 there.

6 Q. You didn't assume he needed medical care?

7 A. No. I assumed I missed.

8 Q. And you also said you were assuming the worst when you said
9 you assumed you missed?

10 A. For law enforcement, that there was an armed barricaded
11 suspect inside.

12 Q. In fact, it was the worst for Mr. Hill. Is that fair?

13 A. Unfortunately, yes, it was, sir.

14 Q. Had you met Mr. Hill before that day?

15 A. At that time, I did not know who Mr. Hill was. Afterwards,
16 during the investigation, I saw I had interaction with Mr.
17 Hill, I couldn't tell you what Hill off the top of my head,
18 when I worked for Ft. Pierce.

19 Q. Interaction. What was that interaction?

20 A. The year of the double hurricanes, Frances and Jean, and we
21 had a curfew in place from the Governor, and I think it was
22 8:00 or nine o'clock, and he was one of many of the people who
23 violated curfew and he was taken to jail.

24 Q. He wasn't taken to jail for violation of curfew. Do you
25 recall chasing him down and making the arrest?

1 A. I don't recall that.

2 Q. Do you want to review your statement about that?

3 MR. PHILLIPS: Your Honor, marked for identification
4 as Plaintiff's 27. There was an objection noted.

5 THE COURT: All right. It is marked at this point.

6 BY MR. PHILLIPS:

7 Q. The page I was looking at is the last page. You may look
8 at what you want.

9 A. I will look at that.

10 Q. The last page, is that your handwriting?

11 A. Yes.

12 Q. Please refresh your recollection about what you said.

13 A. He was out past curfew, Detective Chris Newman stopped to
14 tell him there was a curfew at 1:20 in the morning. The curfew
15 was at 8:00 o'clock p.m. When we identified ourselves -- we
16 stopped and identified ourselves as police officers, the
17 Defendant saw us and ran into the house at 520 N. 20th Street.
18 I chased the Defendant into the house and I caught and arrested
19 the Defendant in the back bedroom and the Defendant was
20 transported to jail.

21 Q. Do you know whose house that was?

22 A. No idea.

23 Q. Did you get a search warrant to go in the house?

24 A. It was a fresh pursuit.

25 Q. Fresh pursuit. He was past curfew?

1 A. He was committing a crime.

2 Q. What was it, past curfew?

3 A. Violation of an emergency order.

4 Q. Not being out -- not drugs, it was for being out late?

5 A. Yes, sir.

6 Q. You didn't charge him with it, right?

7 A. Yes, sir.

8 Q. Do you have the date on that; is it on the report?

9 A. September 29, 2004.

10 Q. Ten years before this incident; is that correct?

11 A. Yes, sir.

12 Q. Now, I think you indicated you didn't recognize Mr. Hill?

13 A. No, I did not.

14 Q. Do you know if he recognized you?

15 A. I have no clue.

16 Q. Do you know if he simply didn't want to be part of another
17 arrest?

18 A. Which incident are you talking about, sir?

19 Q. 2014.

20 A. I have no idea what Mr. Hill thought.

21 Q. Okay. You don't disagree that the door was all the way
22 closed when you fired at least one shot?

23 A. I don't remember it being all the way closed. I began
24 firing as the door was coming down and I could still see his
25 legs.

1 Q. If the bullet holes on the door match up with the bullet
2 holes on Mr. Hill, would you defer to those measurements?

3 A. I am not going to argue measurements, sir, no.

4 Q. Thank you, sir.

5 You fired into a closed space?

6 A. I am not understanding what you are trying to say.

7 Q. Did you fire into a space that was closed?

8 A. As far as --

9 Q. Meaning you couldn't see inside?

10 A. When I was firing, I could see Mr. Hill, sir, I saw partial
11 of Mr. Hill.

12 Q. On shot one. On shot two, could you see Mr. Hill?

13 A. Well, I am sorry, I missed your question.

14 Q. On shot number two, could you see Mr. Hill at all?

15 A. If I recall, yes, sir.

16 Q. On shot number three, did you see Mr. Hill at all?

17 A. I don't recall.

18 Q. You yelled "put down the gun" multiple tomes, right?

19 A. Something to that effect, yes.

20 Q. Yes, sir. We've all seen in photos, to the extent that gun
21 was ever in Mr. Hill's hand, it was found put down, wasn't it?

22 A. According to the photographs, yes, sir.

23 Q. The garage door was also found put down, wasn't it?

24 A. He closed it, yes, sir.

25 Q. At that point, had he not been shot, he would have been

1 trapped and you could have called in SWAT, right?

2 MS. BARRANCO: Objection, calls for speculation.

3 MR. PHILLIPS: Let me rephrase, your Honor.

4 BY MR. PHILLIPS:

5 Q. Had the same things happened, hypothetically, and Mr. Hill
6 had not been shot, you had not shot Mr. Hill, he would have
7 been barricaded in his house, right?

8 A. Yes.

9 Q. And SWAT could have responded?

10 A. I am sure they would have.

11 Q. And done everything just about that they did that night?

12 A. Yes, sir.

13 Q. With a different result?

14 A. Yes, sir.

15 MR. PHILLIPS: May I confer with counsel, your Honor?

16 BY MR. PHILLIPS:

17 Q. Sir, in your CAD call, when you mentioned -- referring to
18 Defendant's Exhibit 7, you're 217?

19 A. No. I am 280.

20 Q. That is right. When you refer to the Kel-Tec, Deputy
21 Newman said -- Deputy Lopez specifically said black male,
22 dreads, armed with a handgun, and you added it was like a
23 handgun, maybe like a Kel-Tec model.

24 You didn't say it was in his hand, did you?

25 A. I was -- I am sorry, could you read it back or could I look

1 at it?

2 Q. Certainly. At any point in the CAD calls did you mention
3 there was a gun in a hand?

4 A. Which line are you referring to, sir?

5 Q. At any point.

6 A. You asked me a question specifically, I was trying to
7 answer that first.

8 Q. Certainly. Page two, about a third of the way down is
9 where you mentioned the Kel-Tec?

10 A. Yes, sir. It says he was armed with a Kel-Tec. Yes, sir.

11 Q. At any time during that recording did you mention there was
12 a suspect with a gun in their hand?

13 A. I did not. Deputy Lopez broadcast it on the radio, I was
14 adding to the broadcast.

15 Q. In Deputy Lopez's report I know he said armed. Did he say
16 there was a gun in the suspect's hand?

17 A. Sir, you can't be armed unless the gun is in your
18 possession, in your hand.

19 Q. Have you been to a bank?

20 A. Yes, sir.

21 Q. Have you been to a bank that has security?

22 A. Yes, sir.

23 Q. Are those armed guards?

24 A. Because they are in possession of a firearm, in their
25 immediate possession.

1 Q. Can you shoot them because they are armed?

2 A. Do you really need an answer to that? No.

3 Q. I don't. Thank you, sir.

4 THE COURT: Redirect.

5 MS. BARRANCO: Briefly, your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. BARRANCO:

8 Q. Plaintiff's counsel, deputy -- Detective Newman,
9 Plaintiff's counsel mentioned something about a specific fear
10 and a general fear of, I guess, being harmed by someone as a
11 law enforcement officer, he asked you questions about that.

12 When you were confronted with Mr. Hill raising that garage
13 door and starting to lift that firearm in Deputy Lopez's
14 direction, what were you feeling?

15 A. I was feeling that pretty much I was going to witness
16 Deputy Lopez get shot.

17 Q. Is that why you fired at Mr. Hill?

18 A. Yes.

19 Q. Did you fire at Mr. Hill because you woke up that day and
20 say, wow, being a cop is a tough job, did you fire at Mr. Hill
21 because of that?

22 A. No, ma'am.

23 Q. You were asked questions about all four shots were
24 intentional, and you intentionally must have fired every single
25 shot. Do you remember those questions?

1 A. Yes, ma'am.

2 Q. Once you pull the trigger and the bullet comes out, can you
3 recall the bullet?

4 A. No, ma'am.

5 Q. So, in this case, did you fear what Mr. Hill was intending
6 to do with that firearm as you saw it starting to raise in
7 Lopez's direction at the moment you decided to use deadly force
8 on Mr. Hill?

9 A. Yes, ma'am.

10 Q. Did that fear subside as you were pulling the trigger?

11 A. No, ma'am.

12 Q. Did the fact that the garage door started to come down
13 change that fear you had for Deputy Lopez's life?

14 A. No, ma'am.

15 Q. Why is that?

16 A. Like I say, when I started firing, he was still partially
17 visible, and Deputy Lopez was still directly in front of him.
18 There was a firearm being raised in his direction, and all I
19 could picture is Deputy Lopez being shot.

20 Q. And would you agree with me that the four shots that you
21 fired -- we already discussed the timing and the CAD evens.
22 Did those four shots occur quickly or was there any significant
23 passage of time between any of those shots?

24 A. No, ma'am, they were quickly.

25 Q. And you were asked questions about a deposition you gave,

1 whether or not you said drop the gun, drop the gun, Sheriff's
2 Office. First of all, how long ago did you give that
3 deposition?

4 A. October 4, 2016.

5 Q. Okay. So, a year and a half ago?

6 A. Yes, ma'am.

7 Q. And just so the ladies and gentlemen of the jury understand
8 your testimony in the courtroom today, did you ever identify
9 yourself verbally while you were at Mr. Hill's residence on the
10 subject date, did you ever verbally identify yourself as
11 Sheriff's Office, being with the Sheriff's Office?

12 A. Yes, ma'am, when I was knocking on the doors. I just don't
13 knock and stand there quietly, we knock and announce.

14 Q. The point is, you were trying to communicate with whoever
15 was inside?

16 A. Yes, ma'am.

17 Q. Do I understand your testimony to be that you told Mr.
18 Hill on more than one occasion to drop the gun?

19 A. Yes, ma'am.

20 Q. And you said it as loudly as you could?

21 A. Yes, ma'am.

22 Q. But you had to deal with the loud music that was going on,
23 right?

24 A. Yes, ma'am.

25 Q. Everybody in that immediate area, were they also, as far as

1 you know, dealing with the loud music?

2 A. Yes, ma'am.

3 Q. Now, when that garage door went up, did you know what Mr.
4 Hill was thinking?

5 A. No, ma'am, I didn't.

6 Q. Did you have the luxury of waiting -- as you saw that gun
7 coming up at Deputy Lopez, did you have the luxury of waiting
8 to see what Mr. Hill's intentions were? Whether he was just
9 going to pull down the garage door and was just motioning with
10 his right hand, or if he was intending to pull the trigger, did
11 you have the luxury of time to wait to find out?

12 A. No, ma'am.

13 Q. If you waited to find out -- we know now the gun wasn't
14 loaded. At the time, if you waited to find out what would have
15 happened?

16 A. Deputy Lopez could have been shot.

17 Q. Is there any way for you to tell -- we talked about this
18 before. Is there any way to tell by looking at Mr. Hill's gun
19 as it started to raise whether it was loaded or not?

20 A. No, ma'am.

21 Q. Now, I know -- and these are in evidence -- you were shown
22 two statements that you gave to Sergeant Lebeau, right?

23 A. Yes, ma'am.

24 Q. And just for the jury's benefit, do you remember the first
25 statement, the date of it? If you need to look at it to

1 refresh your memory, that is fine. That is Plaintiff's
2 Exhibits 17 and 18. I don't know if you have it there.

3 A. I believe the first statement was the same night of the
4 incident, I remember giving it in the back of a vehicle, and
5 that was before -- this was 16:56, which is 4:56 p.m., this he
6 is before we knew anybody had been deceased. It was just
7 giving a statement, a generalized statement, about a shooting.

8 Q. So, that was the first statement. What is the exhibit
9 number on there?

10 A. 17.

11 Q. Plaintiff's Exhibit 17, whoever the reader of that may be,
12 when the jury takes the statement back there, they should
13 recall that that was taken from you while the incident is still
14 unfolding, the shooting is over. As far as you know, was the
15 SWAT team on scene while you were giving that statement?

16 A. Yes, command center set up, people moving around and all
17 that.

18 Q. If you look at Plaintiff's Exhibit 18, can you tell me --
19 that is your other statement in evidence. Can you tell me what
20 the date of that is?

21 A. January 15, 2014, at 11:33 a.m.

22 Q. So, when would this have been in relation to the shooting?

23 A. The following morning.

24 Q. And where would you have been when you gave that second
25 statement?

1 A. The second statement, that was at the house, at the walk
2 through.

3 Q. Would you have had the benefit at that point of knowing
4 ultimately what was discovered inside Mr. Hill's garage?

5 A. Yes, ma'am.

6 Q. Would you, however -- at that time, Deputy Newman, would
7 you have actually with your own eyes seen Mr. Hill deceased in
8 the garage?

9 A. No, ma'am, I did not.

10 Q. Now, I think you were asked a little bit about shopping for
11 Kel-Tecs. That is what the lawyer mentioned?

12 A. Just handguns, ma'am.

13 Q. You have been a law enforcement officer for a long time,
14 correct?

15 A. 19 years now.

16 Q. So, if you liked motorcycles, might you shop for
17 motorcycles?

18 A. Yes, ma'am.

19 Q. If somebody liked sports cars, might they shop for sports
20 cars?

21 A. Yes, ma'am.

22 Q. Why were you looking at Kel-Tecs?

23 A. I was looking at handguns in general. I am kind of cheap,
24 so I try to find ones that are affordable.

25 Q. Was this for your own -- what was the purpose of you --

1 A. For personal possession.

2 Q. Now, I know Plaintiff's counsel talked to you some about
3 this earlier incident you had with Mr. Hill, and did I
4 understand you to say it happened in 2004?

5 A. Yes, ma'am, the arrest report is dated September 29, 2004,
6 1:20 in the morning.

7 Q. Did I understand your earlier testimony, Detective, to be
8 that in that incident with Mr. Hill there had been a hurricane?

9 A. It was after the second hurricane.

10 Q. Okay. So, there was a curfew in effect?

11 A. Yes, ma'am.

12 Q. There is a rule of law that everybody was supposed to be
13 off the streets by what time?

14 A. It looked like 8:00 o'clock.

15 Q. And when was it back in 2004, that you, as a law
16 enforcement officer, and I guess at that time you were working
17 for Ft. Pierce P.D. -- what time of day or night was it that
18 you discovered Mr. Hill out and about?

19 A. At 1:20 in the morning.

20 Q. Any idea what Mr. Hill was doing out there at 1:20 in the
21 morning?

22 A. I have no idea.

23 Q. When you confronted Mr. Hill in regard to the fact that he
24 was out more than five hours later than he was lawfully
25 entitled to be out, did Mr. Hill cooperate and respond as you

1 directed him to?

2 A. No, ma'am, it appears he ran.

3 Q. And you had to run after him?

4 A. Yes, ma'am.

5 Q. Did you eventually capture him?

6 A. Yes, ma'am.

7 Q. Now, back in 2004, when you had that incident with Mr.

8 Hill, did you shoot him then?

9 A. No, ma'am.

10 Q. Why not?

11 A. There was no need.

12 *MS. BARRANCO:* Your Honor, if I may have a moment?

13 *THE COURT:* Yes.

14 *MS. BARRANCO:* No further questions, your Honor.

15 *THE COURT:* Okay, all right. Thank you very much.

16 You may step down.

17 All right. Any further witnesses from the Defendant
18 for today?

19 *MS. BARRANCO:* No, your Honor.

20 *THE COURT:* Okay, all right, ladies and gentlemen,
21 we'll conclude today and ask you to be back tomorrow at nine
22 o'clock.

23 I do have one matter that I am taking up at nine
24 o'clock, but it won't take long, it is a calendar call status
25 conference that attorneys may appear by phone or may be here in

1 person.

2 So, I would say more realistically, we will begin at
3 9:15, if that gives you some leeway. If you are just as
4 comfortable coming by 9:00, make yourself comfortable and I
5 will finish the preliminary matter with the other case.

6 Melanie took your lunch order. The reason we are
7 doing that is because we want to make it easy for you to stay
8 here and eat.

9 The anticipation, although things could always change,
10 at this point is that Defense will have at least one witness in
11 the morning and then Defense may rest, but they need to review
12 their notes to see, and they ay or may not have a rebuttal case
13 with a witness or not. But in any event, once that is all
14 complete, I will instruct you on the law, give you a copy of
15 the jury instructions, and then each side has an opportunity to
16 give you what is called closing arguments.

17 So, that will take us throughout the morning and
18 probably even after the lunch hour. If you have your lunch
19 here, we thought we could shorten the lunch hour so you can eat
20 here, then come back in and finish up what you haven't heard
21 that still needs to be presented, and depending on what time it
22 is, you may or may not begin your deliberations tomorrow.

23 When it gets to be later in the day, I have concerns
24 about beginning deliberations because you get started and 45
25 minutes later, an hour later you stop and come back the next

1 day.

2 It depends on when all of the evidence is presented
3 and when the closing arguments have been made, but in any
4 event, if you don't begin your jury deliberations tomorrow, it
5 is fair to say, unless something really unexpected happens, you
6 would begin your deliberations first thing Thursday morning.

7 We are very much on schedule, I said it would be five
8 to seven days. Tomorrow he is the fifth day, well within the
9 schedule we projected, nothing happening out of the ordinary.
10 In fact, the attorneys worked well with each other to make sure
11 everything comes in smoothly and not waste your time.

12 With that, as we get closer to the end, the
13 instructions remain equally important, and that is to continue
14 following them, no review of any media coverage, no discussion
15 of the case, no research about the case, no talking about the
16 case, and no interaction with anyone associated with the case.

17 We will see you back at 9:00. If you are here a few
18 minutes late, between 9:00 and 9:15 is fair, I will be working
19 15 minutes on the morning matter, and we will get started.

20 Have a nice evening. We will see you tomorrow.

21 (Thereupon, the jury exited the courtroom.)

22 *THE COURT:* Okay. It should go quickly, but in the
23 interest of thoroughness, I will go through each page, from
24 Plaintiff to Defense.

25 First page, Court's final jury instructions.

1 Plaintiff?

2 MR. PHILLIPS: Your Honor, could you give me a minute
3 for Ms. Hines?

4 THE COURT: Yes.

5 MS. BARRANCO: Your Honor, could Deputy Newman be
6 excused for the evening?

7 THE COURT: Yes.

8 THE DEFENDANT: Thank you, your Honor.

9 THE COURT: Okay. If you want to have your
10 instructions in front of you, you have the redline and a clean
11 copy.

12 I will do the same format, I will start with each page
13 and ask the Plaintiff, and tell me if there is objection, no
14 objection, and go to the next page.

15 First page, Court's final jury instructions.
16 Plaintiff.

17 MS. HINES: No objection.

18 MR. BRUCE JOLLY: No objection.

19 THE COURT: Duty to follow instructions, Government
20 entity or agency involved.

21 MS. HINES: No objection.

22 MR. BRUCE JOLLY: No objection.

23 THE COURT: Direct and circumstantial evidence.

24 MS. HINES: No objection.

25 MR. BRUCE JOLLY: No objection.

1 *THE COURT:* Okay. So, as you can see, we took out
2 impeachment of witness because of inconsistent statements and I
3 have kept impeachment of witness because of inconsistent
4 statements or felony conviction, and you see the line there
5 that says to decide whether you believe a witness, you may
6 consider the fact that the witness has been convicted of a
7 felony or a crime involving dishonesty or false statement.

8 Is that acceptable?

9 *MS. HINES:* Yes.

10 *THE COURT:* Defendant?

11 *MR. BRUCE JOLLY:* Yes.

12 *THE COURT:* You can see the first expert instruction
13 is stricken. I see at the bottom of the page, maybe the clean
14 version looks better, yes, we are going with expert witness
15 when expert fees represent a significant portion of the
16 witness' income. Acceptable to the Plaintiff?

17 *MS. HINES:* Yes.

18 *THE COURT:* Defense?

19 *MR. BRUCE JOLLY:* I don't know if you want to clean
20 it.

21 *THE COURT:* I am looking at the clean version, there
22 is nothing I would do unless someone is requesting it. I was
23 looking at the redline version split up.

24 *MR. BRUCE JOLLY:* I think there should be a third
25 paragraph. When a witness is being paid, this is just a

1 grammar thing, the indention.

2 *THE COURT:* Where it says when a witness is being
3 paid?

4 *MR. BRUCE JOLLY:* It is not a big deal, the language
5 is correct.

6 *THE COURT:* Everything is the same on that one except
7 you want when a witness is being paid indented?

8 *MR. BRUCE JOLLY:* That is my request.

9 *MS. HINES:* No objection.

10 *THE COURT:* All right. Next one responsibility for
11 proof, Plaintiff's claims, cross claims, counterclaims,
12 preponderance of the evidence. Plaintiff?

13 *MS. HINES:* No objection.

14 *THE COURT:* Defense?

15 *MR. BRUCE JOLLY:* Acceptable.

16 *THE COURT:* Next one, duty to deliberate.

17 *MS. HINES:* No objection.

18 *MR. BRUCE JOLLY:* Accepted.

19 *THE COURT:* 1983 claims. Let me go over that with you
20 so you know what we did here.

21 To begin, this is a three-page instruction, the only
22 change was we took out was on page two in the first large
23 paragraph after the third element, the words without probable
24 cause, and otherwise everything remained the same.

25 Acceptable to the Plaintiff?

1 MS. HINES: Yes.

2 THE COURT: Defense?

3 MR. BRUCE JOLLY: Yes.

4 THE COURT: Civil rights, 42 U.S.C. Section 1983,
5 damages, and then we made changes to the initials. You can see
6 in subsection C it says A.H. instead of D.H., and the same
7 thing on the second page, it says G.H. instead of D.H. That is
8 the only change.

9 Acceptable to the Plaintiff?

10 MS. HINES: Yes.

11 MR. BRUCE JOLLY: Acceptable.

12 THE COURT: Next, negligent handling of a firearm,
13 negligent decision to use a firearm, that is a three-page
14 instruction and no changes were made to that.

15 Acceptable to the Plaintiff?

16 MS. HINES: We found one small item where it starts
17 listing basically duty, breach, causation, damages, where it
18 says second, and has subparts A and B, we thought there should
19 be an "or" after subsection A, so it would read: By
20 unreasonably firing his firearm in the direction of Gregory
21 Vaughn Hill, Jr. semicolon, or, sub B, etc.

22 THE COURT: Defense position?

23 MR. BRUCE JOLLY: I'm sorry. I think that makes
24 sense, Judge.

25 THE COURT: All right. We will add the word "or".

1 Okay.

2 Then the wrongful death instruction, we changed number
3 one there, so it reads: The conduct of the Defendant amounted
4 to negligence, and took out wrongful act, default or breach of
5 contract or warranty.

6 Acceptable to Plaintiff?

7 *MS. HINES:* Yes.

8 *THE COURT:* Defense?

9 *MR. BRUCE JOLLY:* Yes.

10 *THE COURT:* Wrongful death damages, introduction. I
11 don't think any changes were made to that one.

12 *THE CLERK:* I made a note that you should only send
13 back one of those, right?

14 *THE COURT:* So, if there is no -- they call it
15 directed verdict. If there is no ruling by the Court for
16 judgment as a matter of law pursuant to anyone's motion, don't
17 you agree that only B would go back, and not A. It looks like
18 A is only when a directed verdict is given on liability.

19 *MR. BRUCE JOLLY:* Your Honor, B is the right one.

20 *THE COURT:* Does the Plaintiff agree?

21 *MS. HINES:* One moment, your Honor.

22 *THE COURT:* Based on the status right now, I haven't
23 granted any directed verdict or judgment as a matter of law.

24 *MS. HINES:* Yes, your Honor, that is correct, we have
25 no objection.

1 *THE COURT:* Take out A, and what I would do is
2 actually take out the letter B in all other cases and just
3 start: If your verdict is for the Defendants, and it goes on
4 from there. Okay?

5 The next page is wrongful death damages, elements for
6 estate and survivors. The only changes were taking out the
7 names of the children and substituting the names with the
8 initials. That is what was done on the first page, as you can
9 see, of the two-page instruction. And then on the second page,
10 in addition to that change of taking out names and putting in
11 initials, I did delete -- and I don't think we addressed this
12 yesterday, you can tell me if you don't think it should be
13 deleted; and if so, how to handle it.

14 Under lost support and services, the survivors, D.H.,
15 A.H and G.H. loss -- shouldn't it be losses or survivors'
16 losses by reason of Gregory Vaughn Hill, Jr.'s injury and death
17 and Gregory Vaughn Hill, Jr.'s support and services? And I
18 deleted interest at legal rate of interest from any amount from
19 the date of injury to the date of death.

20 *MR. BRUCE JOLLY:* It is --

21 *THE COURT:* That is why I deleted it.

22 *MR. BRUCE JOLLY:* Right, I understood that.

23 *THE COURT:* So, is the instruction as edited right now
24 acceptable to the Plaintiff?

25 *MS. HINES:* Yes.

1 MR. BRUCE JOLLY: Elements for wrongful death, yes,
2 acceptable.

3 THE COURT: Next, wrongful death damages of estate and
4 survivors, the only change I made was substituting names with
5 initials.

6 Acceptable to the Plaintiff?

7 MS. HINES: Yes.

8 MR. BRUCE JOLLY: Yes, your Honor.

9 THE COURT: Next one, mortality tables, the only
10 change I made was taking out the names and substituting them
11 with initials.

12 Acceptable to the Plaintiff?

13 MS. HINES: Yes, your Honor.

14 THE COURT: Defendant?

15 MS. BARRANCO: Your Honor, if I could state the second
16 paragraph, B, I see where you changed the children to the
17 initials. If you go to the last paragraph, G.H. and Gregory
18 Vaughn Hill, Jr., that needs to be stricken also.

19 It should end with G.H. -- no. I'm sorry, you are
20 right. My mistake.

21 MR. BRUCE JOLLY: We got it.

22 THE COURT: All right. Acceptable?

23 MS. HINES: Yes.

24 MR. BRUCE JOLLY: Yes.

25 THE COURT: Election of foreperson.

1 MS. HINES: That is acceptable.

2 MR. BRUCE JOLLY: That is fine.

3 THE COURT: All right. Let's take a look at the
4 verdict form now.

5 The first verdict form reads: Civil rights, special
6 interrogatories, 42 U.S.C. Section 1983 claim against Defendant
7 Christopher Newman.

8 Now, you know what, though, I think the verdict form
9 should have the caption of the case on it. I have always seen
10 the verdict forms that way.

11 Does Plaintiff agree?

12 MS. HINES: Yes.

13 THE COURT: Defense?

14 MR. BRUCE JOLLY: Yes, your Honor.

15 THE COURT: We are going to put the caption of the
16 case on everything -- it all goes together, it is fine. It
17 should be on the first page because it will be one verdict
18 form. It has multiple parts to it. It will be put together.

19 Caption of the case, civil rights, special
20 interrogatories, 42 U.S.C. Section 1983 claim against Defendant
21 Christopher Newman, we talked about that. And then we made the
22 change this number 1.

23 It reads: If your answer is no, this ends your
24 deliberations on this claim. You should move on to answer the
25 question on the page "negligence claim against Sheriff Ken

1 Mascara." And that same change was made following question
2 number 2, so let's take 1 and 2 first.

3 And then the change to number 3 was adding funeral
4 expenses that Viola Bryant, as personal representative of the
5 estate of Gregory Vaughn Hill, Jr., incurred, and that is A.
6 And B is minor child, D.H.'s loss of parental companionship,
7 instruction and guidance, and D.H.'s mental pain and suffering
8 from the date of January 14, 2014, and in the future.

9 C is minor child A.H.'s loss of parental
10 companionship, instruction and guidance, and A.H.'s mental pain
11 and suffering from the date of January 14, 2014, and in the
12 future.

13 And D is minor child G.H.'s loss of parental
14 companionship, instruction and guidance and G.H.'s mental pain
15 and suffering from the date of January 14, 2014 and in the
16 future. And at the bottom it says, please proceed to the
17 answer.

18 I think it should be to answer the questions -- please
19 proceed to answer the questions on the page "negligence claim
20 against Sheriff Ken Mascara."

21 Let's take up those, and were there any -- that is
22 acceptable to Plaintiff?

23 *MS. HINES:* Yes. The only thing we would change, and
24 this spills over into the title of the next instruction, is to
25 designate Sheriff Mascara in his official capacity, so on so

1 forth.

2 *THE COURT:* Wherever we refer to Sheriff Mascara,
3 Sheriff Mascara in his official capacity?

4 *MS. HINES:* Yes.

5 *THE COURT:* That would be after number 2, it would be
6 after number 1, and then it would be at the bottom of the
7 second part of that interrogatory, in his official capacity.

8 So, are those the only changes Plaintiff has to the
9 special interrogatories to the jury as relates to Defendant
10 Newman?

11 *MS. HINES:* As relates to Defendant Newman, yes, just
12 that the full title of the Sheriff is captured there, Sheriff
13 of St. Lucie County.

14 *THE COURT:* You want -- tell me what you want.

15 *MR. PHILLIPS:* As it is in the caption.

16 *THE COURT:* So, you want in his official capacity as
17 Sheriff of St. Lucie County.

18 *MS. HINES:* Yes, as it is captioned.

19 *THE COURT:* Okay.

20 *MR. PHILLIPS:* At some point we had it --

21 *THE COURT:* The way the caption reads, Viola Bryant
22 and Sheriff Ken Mascara and Christopher Newman.

23 *MR. PHILLIPS:* Right.

24 *THE COURT:* In the Newman interrogatories, where we
25 have, if you are moving on to answer the questions on the page

1 negligence claim, I will add negligence claim against Sheriff
2 Mascara in his official capacity as Sheriff of St. Lucie
3 County.

4 *MS. HINES:* Yes.

5 *THE COURT:* Is that acceptable to the Plaintiff?

6 *MS. HINES:* Yes.

7 *THE COURT:* Defense?

8 *MR. BRUCE JOLLY:* Yes.

9 *THE COURT:* If we move to the negligence form, it
10 should be against Sheriff Mascara in his official capacity. We
11 will do the same thing. It is Ken Mascara. Shouldn't we put
12 Ken Mascara?

13 *MS. HINES:* Yes.

14 *THE COURT:* We will do it exactly like the caption.

15 And then, let's see, what else. So, on the negligence
16 one, the changes we made -- of course, we will add that it is
17 Sheriff Ken Mascara in his official capacity as Sheriff of St.
18 Lucie County.

19 Then for number 1, if you answer -- if your answer to
20 question number 1 is no, this ends your deliberations on this
21 claim. You should move to answer the questions on the page
22 interrogatory fact questions.

23 So, we made that change after number 1 and I don't
24 know that there were any other changes -- no, I take it back.
25 Skip over to question number 6. You will see that the damages

1 are broken out similar to how they were in 1983, subsection A,
2 B, C, and D, so it mirrors the 1983 damage interrogatory. And
3 then, of course, at the very end it says "please proceed to
4 answer the questions on the page interrogatory fact questions.

5 So, first from Plaintiff, do you --

6 *MS. HINES:* Your Honor, I think there had been some
7 discussion yesterday about number 2.

8 *THE COURT:* We looked at the law. Did the law,
9 Eleanor, 768 --

10 *THE LAW CLERK:* Yes, I can double check, that is what
11 the statute was.

12 *THE COURT:* We tried to track the statutory language.

13 *MR. PHILLIPS:* That tracks when you are trying an
14 officer or agent personally libel, and we believe fully that
15 should come out.

16 *MR. BRUCE JOLLY:* No, that is exactly opposite.

17 *THE COURT:* Just a minute. What is the Florida
18 Statute number, 768?

19 *MS. HINES:* .28.

20 *THE COURT:* What subsection are we looking at?

21 *MR. PHILLIPS:* (9)(a).

22 *THE COURT:* Let me see here. 9. Okay.

23 So, (9)(a) reads: No officer, employee, or agent of
24 the state or of any of its subdivisions shall be held
25 personally liable in tort or named as a party Defendant in any

1 action for any injury or damage suffered as a result of any
2 act, event or omission of action in the scope of his or her
3 employment or function, unless such officer, employee, or agent
4 acted in bad faith or with malicious purpose or in a manner
5 exhibiting wanton and willful disregard of human rights,
6 safety, or property.

7 However, such officer, employee, or agent shall be
8 considered an adverse witness in a tort action for any injury
9 or damage suffered as a result of any act, event, or omission
10 of action in the scope of his or her employment or function.

11 The exclusive remedy for injury or damage suffered as
12 a result of an act, event, or omission of an officer, employee,
13 or agent of the state or any of its subdivisions or
14 constitutional officers, shall be by action against the
15 Governmental entity, or the head of such entity in his or her
16 official capacity, or the constitutional officer of which the
17 officer, employee, or agent is an employee, unless such act or
18 omission was committed in bad faith or with malicious purpose
19 or in a manner exhibiting wanton and willful disregard of civil
20 rights, safety or property.

21 The state or its subdivisions shall not be liable in
22 tort for the acts or omissions of an officer, employee, or
23 agent committed while acting outside the course and scope of
24 his or her employment or committed in bad faith or with
25 malicious purpose or in a manner exhibiting wanton and willful

1 disregard of human rights, safety, or property.

2 So, um-m-m, Newman was named individually, and am I
3 understanding generally it is the Defendant's position under
4 the law that the entity would be responsible for any verdict
5 and any damages awarded to the Plaintiff against Newman
6 individually, the Sheriff would be -- the entity would be
7 responsible except if he acted with -- in bad faith or with
8 malicious purpose and disregard of safety and property?

9 MR. BRUCE JOLLY: That is accurate, that is how it
10 works. The Sheriff is liable if it is a purely negligent act.
11 The Sheriff is not liable if it is a willful and wanton act,
12 which is consistent with the one claim against Newman
13 individually under the civil rights statute.

14 This theoretically could be an inconsistent verdict.
15 It is not an affirmative defense, we raise immunity in that the
16 Sheriff not liable if the finding is that the individual acted
17 outside the course and scope. If they check no on that, but
18 they find there is liability, the Sheriff is liable. If they
19 check that off, the Sheriff walks on that negligence claim.

20 THE COURT: So, the negligence claim is just against
21 Newman.

22 MR. BRUCE JOLLY: No, the negligence claim is against
23 the Sheriff.

24 THE COURT: Is against the Sheriff, but the Sheriff is
25 only responsible under the statute if they find negligence only

1 and not bad faith. If they find bad faith, your interpretation
2 of (9)(a) is the Sheriff is not --

3 *MR. BRUCE JOLLY:* It can be pled in the alternative.
4 We have tried cases where the jury has both options to them.
5 In this instance, the Sheriff was sued on the negligence claim.
6 If they think what Newman did it is so outrageous, it is
7 outside the course and scope.

8 *THE COURT:* Two different things, outside the course
9 and scope.

10 *MR. BRUCE JOLLY:* I shortened it.

11 *THE COURT:* Those are two different propositions.

12 *MR. BRUCE JOLLY:* Clearly they are, but both could
13 have erred under the waiver of sovereign immunity.

14 *THE COURT:* No one is disputing that, that is an
15 undisputed fact, that he was acting within the scope of his
16 employment.

17 *MR. BRUCE JOLLY:* That is accurate.

18 *THE COURT:* So, what is the Plaintiff's response?

19 *MR. PHILLIPS:* That is a great point, actually. So, I
20 would be interested to hear more -- the thing I would worry
21 about is an inconsistent verdict, the standards are different.

22 *THE COURT:* Let's talk about the inconsistent verdict.

23 If the jury found -- hypothetically, in answer number
24 2 to the negligence claim against Mascara, if the jury found,
25 what, yes, he acted in bad faith, but in the 1983 count they

1 found no, that he didn't intentionally commit acts that
2 violated Hill's right to have excessive force?

3 *MR. PHILLIPS:* I don't think they are inconsistent.

4 *MR. BRUCE JOLLY:* I think they are consistent. They
5 can find there is not a civil rights violation, but it is
6 negligent. If it is purely negligent, the Sheriff is liable.

7 I don't see them finding he did not violate civil
8 rights and acted in a willful and wanton manner. That would be
9 inconsistent.

10 *MR. PHILLIPS:* When I read this, I jump to the thing
11 you see after a question like this, sign it and go away. This
12 comes to who pays the damages, and I think they are right. I
13 think they are right.

14 *THE COURT:* It does.

15 Did the Defendant Christopher Newman act in bad faith
16 or with malicious purpose or in a manner exhibiting wanton and
17 willful disregard? That is what the statute says.

18 *MR. PHILLIPS:* Okay.

19 *THE COURT:* Okay. So, is the negligence interrogatory
20 verdict form, other than making it Sheriff Ken Mascara in his
21 official capacity as Sheriff of St. Lucie County, is that
22 verdict form acceptable to the Plaintiff?

23 *MR. PHILLIPS:* Yes, your Honor.

24 *THE COURT:* Defense?

25 *MR. BRUCE JOLLY:* There is one more problem. If we

1 all can agree on the fact that both verdict forms have the same
2 damage questions in it, because the damages are the same, and
3 we all understand that, we could leave it this way.

4 Theoretically the verdict form, if it is not a Defense
5 verdict, should have the same damage numbers on both of them.
6 That should not be interpreted as a double recovery, and that
7 is my concern if it is on two different verdict forms.

8 *THE COURT:* Right. And what if they come up with
9 different numbers?

10 Is there an agreement that damages -- if damages are
11 recovered under 1983, and against Newman, and the jury finds
12 negligence against the Sheriff, that it would be exactly the
13 same damages as 1983 damages against --

14 *MR. PHILLIPS:* I get they don't have double the pain.
15 My concern becomes, when we are dealing with declaratory
16 actions under policy or under sovereign immunity and claims --
17 and that whole section, that again I would defer to some extent
18 to Mr. Jolly because they have dealt with this more, defer with
19 hope and trust.

20 *MR. BRUCE JOLLY:* I would never let you down. He had
21 an alternative, but, you know, there is a lot of work you put
22 into this.

23 *THE COURT:* It has to be right.

24 *MR. BRUCE JOLLY:* Theoretically, you could have an
25 interrogatory verdict form on civil rights without damages,

1 another verdict form on negligence and one set of damages that
2 they either would funnel into --

3 *THE COURT:* Something along the lines if you found
4 either in favor of the Plaintiff under the civil rights or the
5 negligence, then you go to the damages and you fill it out.

6 *MR. BRUCE JOLLY:* That was my alternative, unless we
7 could all agree the damages are going to be the same.

8 *THE COURT:* We know that. Do we agree that is a
9 correct statement of the law, if they find either one or the
10 other, 1983 violation or negligence in favor of the Plaintiff,
11 either/or, it sends them to the exact same damages? They are
12 only to find it once, and there is no contemplation that they
13 might be allowed to think of damages in one way as to
14 negligence, but a different way, i.e. amount as to 1983. That
15 would be improper and inconsistent.

16 *MR. BRUCE JOLLY:* I think so. Your instructions as
17 relate to two damages are exactly the same. They shouldn't
18 come up with something different.

19 *THE COURT:* I think that might be the cleaner way.
20 What about the nominal damage claim in 1983 and not in the
21 negligence?

22 *MR. PHILLIPS:* Let's do two verdict forms and let them
23 have one and give -- no, it is too sloppy.

24 *MR. BRUCE JOLLY:* Nominal damages, the simple answer
25 to that, what if nominal damages was not a question to be

1 submitted to them? I have been trying to persuade her to do
2 that, but it is her case.

3 *THE COURT:* What is the point of the nominal damages,
4 it is attorney's fees?

5 *MR. BRUCE JOLLY:* No. Well, it could be, probably
6 not.

7 *THE COURT:* If they found no actual damages, but if
8 they found --

9 *MR. BRUCE JOLLY:* Our internal dispute is that I did
10 not anticipate a nominal damage award, if they were going to
11 award any damages at all, I didn't see that in this case.

12 *MS. BARRANCO:* Nominal damages, you may award nominal
13 damages if you find that, A, Plaintiff has submitted no
14 credible evidence of injury; or, B, Plaintiff's injuries have
15 no monetary value or are not quantifiable with any reasonable
16 certainty; or, C, Defendant Christopher Newman used both
17 justifiable and unjustifiable force against Gregory Vaughn
18 Hill, Jr. and it is entirely unclear whether Gregory Vaughn
19 Hill, Jr.'s injuries resulted from the use of justifiable or
20 unjustifiable force.

21 *THE COURT:* What is the legal import of an award of
22 nominal damages in the absence of the actual, you know,
23 damages?

24 *MR. BRUCE JOLLY:* Theoretically, if there was an award
25 of nominal damages where the request was for an award of

1 consequential or compensatory damages, that could -- I don't
2 want to predict that it would because you have discretion in
3 that -- it could affect an award of attorney's fees that are
4 otherwise appropriate.

5 I haven't convinced them. I didn't see this as a
6 nominal damage case. If they think Newman did this, they are
7 going to award real damages if for no other reason, the funeral
8 damages.

9 *THE COURT:* It is in the instructions.

10 *MR. PHILLIPS:* I don't want it in.

11 *MS. BARRANCO:* Of course he doesn't.

12 *MR. BRUCE JOLLY:* Summer, I defer to you.

13 *MS. BARRANCO:* I don't know how the jury is going to
14 see this. A lot of what he questioned Mr. Newman about, what
15 was Mr. Hill thinking. Your Honor's instruction is to view
16 this from the perspective of Deputy Newman, not Mr. Hill. If
17 they decide they can't decide, I don't want to take away an
18 option that could be an option for them.

19 *THE COURT:* If I am going to redo the damages the way
20 we discussed where we have interrogatory questions for 1983, an
21 interrogatory for negligence, I could figure out a way to word
22 it so if they find either, they go to this next page, which are
23 the damage questions. So we are only answering damages once,
24 should they find one or the other, but then I have a section
25 for nominal that only applies to 1983. We could structure it

1 that way.

2 Unless there is an agreement from both sides that it
3 should come out, it is the law and I think we should follow the
4 law, unless both sides agree that you don't want to follow the
5 law.

6 *MR. PHILLIPS:* I agree, your Honor. The concern I
7 have -- and it is because Mr. Johnson already ended up in the
8 11th Circuit in a dec action because 768.28 is capped.

9 It may be double capped if it is just against Newman,
10 where 1983 is not, and I -- the last thing we need is double
11 damages. I don't know -- this isn't joint and several
12 liability, it is all one.

13 From a form perspective, it has to be good enough that
14 I could survive a dec action.

15 *THE COURT:* It has to be super clear. We will work on
16 restructuring it. Don't you have ones you used in your
17 multiple cases?

18 *MR. BRUCE JOLLY:* I thought we submitted how to do the
19 verdict.

20 *MS. BARRANCO:* Verdict, no. I don't have that.

21 *MR. PHILLIPS:* If they are both pointing to each other
22 who pays, that is also going to give us a problem. One loss
23 may be insured and one may not. We are sitting here saying
24 that losses are not insured, we are not paying it.

25 *MR. BRUCE JOLLY:* I am fairly confident that is not an

1 issue in this case.

2 *THE COURT:* What we are discussing isn't making it
3 clear enough whether it is Newman or Mascara, that they would
4 be pointing at each other.

5 *MR. PHILLIPS:* No, this counsel can't -- they have an
6 obligation not to. Coverage, counsel, is what I am concerned
7 about because we did something wrong.

8 *THE COURT:* What did you do wrong?

9 *MR. PHILLIPS:* The fund has exceptions and everything
10 else, and if -- as Mr. Johnson says, one says this was accepted
11 specifically and the other one says this is capped
12 specifically, and I have two separate documents, what I will
13 do -- I think I can clear this up. I'll tell them to put the
14 same number on each and agree to collect once.

15 *MR. BRUCE JOLLY:* I get it. That is what I thought
16 from the beginning. If we have an agreement, you don't have to
17 change it.

18 *THE COURT:* In that regard, maybe we won't change it,
19 but there are damages that go with both.

20 I don't know if I want to leave it to you that --

21 *MR. PHILLIPS:* They could finger point.

22 *MR. BRUCE JOLLY:* That is not the way it works.

23 *THE COURT:* Each set of interrogatories has a set of
24 damages.

25 I think what remains is an agreed upon instruction

1 that you all should draft that explains -- that we add a
2 sentence or two in the damages so they are instructed if you
3 both agree that, one, the damages must be the same if they are
4 awarded for the negligence under 1983, and two, they understand
5 it is just going to be the recovery --

6 *MR. BRUCE JOLLY:* I think that can be done.

7 *THE COURT:* All right. So, why don't you work on
8 added language on damages that you think addresses all of this
9 myriad of issues that you are talking about in terms of proper
10 statement of the law, that you have an understanding of what
11 goes on behind the scenes in terms of your claims and things of
12 that nature and insurance.

13 I do think I feel more comfortable with the verdict
14 form staying where it is with the damages staying with each
15 claim.

16 *MR. PHILLIPS:* Mr Johnson brought up another good
17 point. In a case where one Defendant appeals and the other
18 doesn't, unless there is joint and several liability, this has
19 to have been resolved by somebody.

20 *MR. BRUCE JOLLY:* It is not joint and several
21 liability. In all the years we have been doing this, we have
22 not seen this circumstance where the verdict is like that. I
23 don't anticipate it.

24 *THE COURT:* We have to anticipate everything. I am
25 not understanding. What is the next issue you brought up?

1 MR. JOHNSON: You are going to have the
2 interrogatories for negligence, the 1983 claim and one for
3 damages.

4 THE COURT: Damages for each, but some kind of an
5 instruction that everyone seems to agree that that is, in
6 essence, saying to them if you find liability as to both Newman
7 and Mascara, I am not saying this artfully, that you get to
8 damages, whatever you award for one has to be the same for the
9 other.

10 MR. JOHNSON: That makes sense.

11 MR. BRUCE JOLLY: That is fine.

12 MR. PHILLIPS: They are both collectible damages.

13 THE COURT: The jury doesn't need to know that.

14 You also want to tell them that it's not double, in
15 other words, I think it is important because they are going to
16 have an amount in their mind for this action. It needs to be
17 communicated to them that, one, it needs to be the same if you
18 find both liable, and two, that it is just one recovery. I
19 mean that is the total dollar amount.

20 MR. JOHNSON: Right, you don't want them to cut it in
21 half.

22 THE COURT: Exactly. If you can come up with
23 language, we keep the damages with each of the interrogatories.

24 Let's try to conclude.

25 I have been rethinking the interrogatory fact

1 questions in light of the testimony today. I'm not sure I
2 think these are the proper questions.

3 Now we are on the last one, these are interrogatory
4 fact questions. Do you have that in front of you?

5 *MS. BARRANCO:* Yes.

6 *THE COURT:* These are the ones I think are important
7 for the Court to have should it be faced with having to make a
8 legal determination on any type of a motion from Defense and
9 any type of response or motion from the Plaintiff that touches
10 on the qualified immunity.

11 It is this mixed fact/law question.

12 So, let me just tell you what I thought that is
13 different than what is on the paper. Maybe you can listen
14 first and then we can discuss it, because this arose today out
15 of Deputy Newman's testimony. I don't know that these are
16 applicable any more. Are you listening?

17 *MR. PHILLIPS:* Yes, your Honor.

18 *THE COURT:* I could draft them up and give them to you
19 tomorrow.

20 Something along the line, was Christopher Newman in
21 fear of Deputy Lopez being shot? Number two, did Deputy
22 Newman tell Gregory Hill to drop the gun? Number three, was
23 Gregory Vaughn Hill, Jr. given sufficient time to comply with
24 the deputies' orders to drop the gun before Defendant
25 Christopher Newman shot?

1 I rethought it because I think the questions that were
2 written earlier, before Newman's testimony today, aren't really
3 applicable anymore.

4 We had, did Newman believe that Hill had a gun in his
5 hand -- did Newman believe Hill had a gun in his hand when he
6 interacted with the deputies?

7 I mean, I guess we could ask them that. Newman said
8 he had a gun in his hand, but if we still think having a jury
9 make a determination -- Newman testified he believed, you know,
10 Hill had a gun in his hand. It is not did Hill have a gun in
11 his hand; it is did he believe it.

12 *MR. BRUCE JOLLY:* Reasonably believe it. Objective,
13 not subjective.

14 *THE COURT:* Isn't that the legal issue before the
15 Court? I could have the jury make certain factual
16 determinations, and ultimately it will be a determination for
17 the Court whether Newman acted reasonably under the
18 circumstances.

19 *MR. PHILLIPS:* My issue with that is what does that do
20 to us, whether he had a gun? It is the next step your Honor is
21 getting to, and your Honor said, what about the next instance,
22 because if he had a gun, you can answer he had a gun. But --

23 *THE COURT:* That is why I rewrote the question. The
24 better questions were was Defendant Newman in fear of Deputy
25 Lopez being shot. Hypothetically, let's play that out if that

1 is a question.

2 The jury could say no, and then -- or the jury could
3 say no, and I would think that would be the factual
4 underpinning of the Court being called upon to make a legal
5 determination if asked to do so. Well, did Newman reasonably
6 have reasonable -- was it reasonable for Newman to believe that
7 he was in fear of Lopez being shot?

8 I would have the benefit of the jury making a factual
9 finding. They are not making a reasonable finding, they are
10 making a factual finding if he was in fear. You can still make
11 argument to the Court of qualified immunity, was Deputy Newman
12 in fear of Lopez being shot.

13 Number two, did either of the deputies instruct
14 Gregory Vaughn Hill, Jr. to drop the gun, because that, too, I
15 think bears on the reasonableness of Newman's actions, you know
16 that fact. And if yes, go to three. Was Gregory Vaughn Hill,
17 Jr. given sufficient time to comply with the deputies' orders
18 to drop the gun before Newman shot?

19 It doesn't bind anyone, but at the end of the trial it
20 gives the Court the benefit of certain factual findings that we
21 could agree have some relevance to the Court's determination if
22 qualified immunity is put back before the Court.

23 Have you had these kinds of questions?

24 *MR. BRUCE JOLLY:* Not number three.

25 *THE COURT:* Have I lost you all? Do you understand

1 what I am trying to accomplish here?

2 MR. BRUCE JOLLY: Number three -- I think you do a
3 really good job of trying to get the parties to assert on the
4 record that they are not in opposition of something.

5 I can represent to you number three we will never
6 agree to. It is not an accurate statement of the law and it
7 denies Newman the question that should be asked. We think --
8 you know, I kind of like this set that you submitted.

9 THE COURT: So, the redline version where we left off
10 from yesterday, number one, did Defendant Christopher Newman
11 believe that Gregory Vaughn Hill, Jr. had a gun in his hand
12 when he interacted with the deputies?

13 That is acceptable to the Plaintiff?

14 MR. PHILLIPS: No, your Honor, because there was a
15 time when he never got a chance -- whether he put it down or
16 picked it back up, sufficient compliance in number three, if
17 you add it in, needs to be addressed.

18 MR. BRUCE JOLLY: That is an inaccurate statement of
19 the law.

20 THE COURT: We can go back to these other ones in a
21 moment. Let's take the ones we were working on last night.

22 They are not intended to be statements of anything,
23 they are just questions that will help inform the Court on
24 legal determinations that I may be called upon to make.

25 Is there anything problematic with the question: Did

1 Newman believe Hill had a gun in his hand when he interacted
2 with the deputies, meaning when Hill interacted with the
3 deputies?

4 I personally don't know that that really is -- I think
5 the better question is the first one I was proposing that I
6 read to you: Was Defendant Christopher Newman in fear of
7 Deputy Lopez being shot? Isn't that what we want to know from
8 the jury?

9 *MS. HINES:* That goes to the imminent threat.

10 *THE COURT:* To me, that is what it is about. It is
11 not about did he have a gun, not have a gun, was he holding it
12 up, not holding it up. What did the jury think, was
13 Christopher Newman in fear of Deputy Lopez being shot?

14 It doesn't bear on the legal outcome, they are going
15 to answer 1983 and negligence. These are fact questions that,
16 quite frankly, the Court will be utilizing if necessary in
17 making any legal determination it is called upon to make.

18 *MS. BARRANCO:* The way I see it, when I hear that
19 question, did Newman believe, I think of that as a subjective
20 question which now the Fourth Amendment is supposed to be
21 objective.

22 Okay, if we did that to start, the next question
23 arguably should be, was that perception a reasonable
24 perception, and that is kind of where the qualified immunity
25 could come in, if the deputy had a reasonable perception that

1 turned out to be a wrong perception, as long as it was
2 reasonable.

3 *THE COURT:* Where did they draw the line?

4 *THE LAW CLERK:* Reasonableness is a legal question.

5 *THE COURT:* Isn't that the last case we looked at?

6 There is a recent 11th Circuit case on it. I thought
7 reasonableness was a determination for the Court to make, that
8 is why I didn't have it in there. They are making a factual
9 finding. It doesn't mean just because the jury finds that he
10 was in fear, or not in fear, that doesn't preclude Defense from
11 arguing that he had the reasonable belief, you know,
12 reasonableness component of it. This is sort of the factual.
13 Are they able --

14 *MR. BRUCE JOLLY:* So, if I understand this, you would
15 be taking the answer to that question and deciding that it was
16 or wasn't reasonable. I don't think that is fair to you.

17 *THE COURT:* Whether it is fair or not, I think that is
18 how I understood the law to be. I am sure it is not the only
19 case, but one just happened to come out and it had to do with a
20 jury instruction.

21 *THE LAW CLERK:* It had to do with telling the Court
22 that their job is to submit factual interrogatories that
23 included summary judgment as to qualified immunity. *Simmons*
24 *versus Bradshaw.*

25 *THE COURT:* I think Ms. Barranco spoke to that. The

1 case is --

2 *MR. PHILLIPS:* One of Ms. Barranco's cases.

3 *THE COURT:* The one that just came back?

4 *MS. BARRANCO:* It is pending rehearing.

5 *THE COURT:* You should know this well. So, why don't
6 you articulate what you glean from this as informs this Court
7 and what we might want to glean from the jury factually. What
8 do you believe are appropriate factual determinations that
9 would be either called upon by this case, or at least
10 appropriate or sanctioned by the 11th Circuit to ask versus
11 then what the Court would do with that as a matter of law
12 should motions been made to the Court? How do you read the
13 case?

14 *MS. BARRANCO:* I first want to say, your Honor, I have
15 read the Simmons case because it is my case, I haven't read it
16 again lately. I would like to have the benefit of that to,
17 frankly, refresh my recollection.

18 I can tell your Honor what happened in Simmons is, the
19 trial court denied Defense's request to have a special
20 interrogatory question exploring that factual component of the
21 qualified immunity which, in essence, denied the deputy even a
22 chance of going down the qualified immunity road post verdict,
23 which is why the 11th Circuit reversed the rather significant
24 award the jury gave, and said that a retrial on the issue of --
25 you know, on that issue so the jury could be properly

1 instructed to include these fact questions.

2 There is another case out there, the Montero versus
3 Nanderl (phon) case that went up to the 11th Circuit. What
4 happened in that case, also an officer involved shooting out of
5 Palm Beach County, Federal Court, and the jury was submitted
6 questions, although more of a -- that case involved a
7 protracted altercation between two deputies and the decedent,
8 there was a taser used, all kinds of things, and ultimately
9 culminated in a shooting.

10 So, when we submitted the questions we wanted, we did
11 more of a general, it was, was the deputy reasonable -- was it
12 a reasonable mistake, that it couldn't have been a reasonable
13 mistake when he used the firearm, maybe he didn't need to shoot
14 the guy. Ultimately, the trial judge permitted it and the jury
15 entered a verdict in favor of the Plaintiff, found it was
16 reasonable, but checked, yes, it was a reasonable mistake.
17 That judge entered a verdict in favor of the deputy based on
18 the yes answer to the reasonable mistake.

19 I have seen it being a couple of ways.

20 *THE COURT:* So, here, quickly, reading from the
21 Simmons case, um-m-m, right here -- where was I just reading
22 from?

23 So, at trial -- reading from the Simmons case, "At
24 trial, the Court uses the jury's factual findings to render its
25 ultimate legal determination as to whether it would be evident

1 to a reasonable officer, in light of clearly established law,
2 that his conduct was unlawful in the situation he confronted."

3 And then, quoting, "Officers can have reasonable, but
4 mistaken, beliefs as to the facts establishing the existence of
5 probable cause or exigent circumstances," and keeps going on.

6 In other words, the question of what existed at the
7 time of the encounter is a question of fact for the jury, but
8 the question whether the officers' actions were reasonable
9 under the circumstances, were reasonable for the Court, that is
10 what I was trying to say.

11 It cites to Harris versus Coweta County, 21 F.3d 388,
12 Eleventh Circuit, 1994. "Questions of whether the law
13 allegedly violated was clearly established at the time of the
14 complaint—about conduct and whether the official's conduct was
15 objectively reasonable in light of the information known to the
16 official at the time are objective, albeit fact specific,
17 inquiries which we undertake as questions of law."

18 So, what else is instructed in this case, Eleanor?
19 Apparently the judge in the Simmons case gave an instruction
20 rather than submitting the contested factual issues, i.e.
21 historical facts to the jury.

22 At trial the Court opted to give the following
23 instruction: "Whether a specific use of force is excessive or
24 unreasonable depends on factors such as the nature of any
25 offense involved, whether a citizen poses an immediate violent

1 threat to others, including the police officer, and whether the
2 citizen resists or flees.

3 "In assessing these factors, you should consider
4 whether a officer's belief that a citizen is posing an
5 immediate violent threat is an objectively reasonable belief
6 under the circumstances, notwithstanding that it is a mistaken
7 belief. Where an officer's mistaken belief that a citizen
8 poses an immediate and deadly threat is objectively reasonable
9 under the circumstances, then that officer's use of deadly
10 force is not excessive or unreasonable.

11 "On the other hand, where an officer's mistaken belief
12 that a citizen poses an immediate and deadly threat is not
13 objectively reasonable under the circumstances, then that
14 officer's use of deadly force is excessive or reasonable.

15 "This instruction is problematic not only because it
16 is an incorrect statement of the law, but moreover because it
17 effectively delegated resolution of the issue of qualified
18 immunity to the jury, presumably as to both facts and law, and
19 thus the District Court never decided whether Deputy Lin was
20 entitled to his defense of qualified immunity.

21 "This instruction is also consistent with Supreme
22 Court precedent addressing facts to be considered in excessive
23 force cases. They are distinct from the legal issues bearing
24 on the Defendant's entitlement to qualified immunity.

25 "In this case, however, the excessive force inquiry

1 was not sufficient divorced from the qualified immunity and
2 conflated the two."

3 That is what I was trying to communicate, there are
4 factual questions that can and should go to the jury that are
5 historical, that are facts, and then it leaves open for
6 argument from both sides as to reasonableness or not. And so,
7 it is a matter of coming up with what those factual questions
8 are.

9 Here is what we are going to do. You have the redline
10 version of the three we discussed yesterday. We are going to
11 email to you as we are heading out today the other questions
12 that we came up with, and I am going to ask that you meet and
13 confer. It sounds like we have an agreement on the entire set
14 of instructions and verdict forms. We are going to make
15 changes, and I will give you redline versions tomorrow with the
16 last changes, and this is the only open issue. Now that
17 everyone understands the law, you can agree upon one or two or
18 three questions.

19 It could be one or two or three, however many you
20 want, but they are factual questions that will then inform the
21 Court not as a matter of law, because the Court will make the
22 legal determination -- when I say inform, will be the factual
23 part of the fact/legal query that goes into qualified immunity.
24 Okay?

25 MR. BRUCE JOLLY: All right.

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THE COURT: So -- all right.

MR. BRUCE JOLLY: This is supposed to be easy.

(Thereupon, the hearing was concluded.)

* * *

I certify that the foregoing is a correct transcript
from the record of proceedings in the above matter.

Date: June 26, 2018

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 23, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 5

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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Official Federal Reporter
HON. ROBIN L. ROSENBERG

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CHRIS LAWRENCE

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EXHIBITS

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1 JUROR NAMES HAVE BEEN REDACTED PURSUANT TO A DIRECTIVE
2 FROM JUDGE ROBIN L. ROSENBERG. JUROR NAMES MAY BE REQUESTED
3 VIA A MOTION TO THE COURT.

4 *THE COURT:* If we could call up the attorneys in the
5 next case, the attorneys in Bryant versus Mascara.

6 *MR. PHILLIPS:* Good morning, your Honor.

7 *THE COURT:* Good morning. Everybody is here. Maybe
8 state your appearance for the record to be clear.

9 *MR. PHILLIPS:* John Phillips, Natasha Hines and Kirby
10 Johnson for the Plaintiff.

11 *MS. BARRANCO:* Summer Barranco, Gregory Jolly and
12 Bruce Jolly on behalf of the Defendants.

13 *THE COURT:* And Mr. Newman as well?

14 *MS. BARRANCO:* Yes.

15 *THE COURT:* What is being distributed is the clean and
16 redline version from last night.

17 With the last witness, we will be going into jury
18 instructions. We have gone over them now two or three times,
19 so what I am going to do, I will go right to the pages where
20 changes were made based on last night's conference.

21 If you want to pull up either version of it, and I
22 know you don't have page numbers. I have stickies that show me
23 the pages that were changed. Follow along with me.

24 I am assuming every page there was a change you stated
25 on the record at least two times, maybe three, so unless

1 someone brings it to my attention, the instructions I am not
2 going over are unobjected to. Someone is going to have to tell
3 me they are objected to. We have gone over them several times.
4 We have gone through them at least once after the changes with
5 no objection.

6 The first page I made changes to based on last night,
7 if you go to the one expert witness, expert fees represent a
8 significant portion of the witness' income, look through that
9 one, and you notice I indented the paragraph you asked me to
10 indent. Is that acceptable?

11 *MR. BRUCE JOLLY:* Yes.

12 *THE COURT:* The next one, thumb through a few more, go
13 to negligent handling of a firearm, at the very top, negligent
14 decision to use a firearm.

15 The change I made there, at the very top I added after
16 Ken Mascara, in his official capacity as Sheriff of St. Lucie
17 County, Florida, I added it in the first paragraph of the first
18 page, and that is what I did on that instruction.

19 *THE LAW CLERK:* And the "or" between --

20 *THE COURT:* And I added an "or" after the little a
21 there.

22 We are filing the drafts on the record so if anyone
23 reads the transcript they will be able to read it easily.

24 Is it acceptable to the Plaintiff?

25 *MS. HINES:* Yes.

1 THE COURT: To the Defendant?

2 MR. BRUCE JOLLY: Yes, your Honor.

3 THE COURT: On the next one, wrongful death, I added a
4 comma after county.

5 Is that acceptable to the Plaintiff?

6 MR. PHILLIPS: Yes.

7 THE COURT: Defense?

8 MR. BRUCE JOLLY: Yes.

9 THE COURT: Next one, wrongful death damages
10 introduction, I took out all of A, and B, where it says all
11 other cases, and so it just begins with the language under B.

12 Is that acceptable to the Plaintiff?

13 MR. PHILLIPS: Yes.

14 THE COURT: Defense?

15 MR. BRUCE JOLLY: Yes, your Honor.

16 THE COURT: The next change, the verdict form -- let's
17 start with the verdict form and we see there is the caption
18 added and we see that this is the verdict form as to
19 Christopher Newman. And we see the first change on the first
20 page under question one is we put Ken Mascara's full name as
21 requested, Ken Mascara in his official capacity.

22 On question two we did the same thing, and lastly, on
23 the third page of the verdict form we did the same thing.

24 Those were the changes made to that portion of the
25 verdict form, it is not all of the verdict form, but that

1 portion of it.

2 Is that acceptable to the Plaintiff?

3 *MS. HINES:* Yes.

4 *THE COURT:* To Defense?

5 *MR. BRUCE JOLLY:* Yes, your Honor.

6 *THE COURT:* Then the negligence claim as to Ken
7 Mascara, the negligence claim begins Ken Mascara in his
8 official capacity as Sheriff of St. Lucie County, we added it
9 again, added in his official capacity as Sheriff of St. Lucie
10 County, that is the change to the first page.

11 On the second page you will see in question number 5,
12 we modified on the first page the name.

13 This is taking a stab at this, see what you think.

14 It says on the second page of the negligence claim
15 verdict form after question five, after where it reads, in
16 determining the amount of damages, do not make any reduction
17 because of the negligence, if any, of Gregory Vaughn Hill, Jr.
18 If you find that Gregory Vaughn Hill, Jr. was negligent, make
19 an appropriate reduction in the damages awarded. That was
20 there.

21 I added, if you award damages against Defendant
22 Christopher Newman on the 42 U.S.C. 1983 claim -- I am not sure
23 it should say you should write the same damages, because
24 wouldn't it be, and if you find negligence --

25 *THE LAW CLERK:* They only get to the question if they

1 found it.

2 *THE COURT:* That is true, they would only get to this
3 question if they had found the other -- if they found yes as to
4 negligence. They only get here if they found negligence
5 against Ken Mascara.

6 If you awarded damages on the 42 U.S.C. Section 1983
7 claim, you should write the same damages amount below.
8 Plaintiff will not be able to double recover, so do not split
9 the damages between the two Defendants.

10 If you did not award damages against Defendant
11 Christopher Newman on the 42 U.S.C. Section 1983 claim, proceed
12 to consider damages against Sheriff Ken Mascara in his official
13 capacity as Sheriff of St. Lucie County. And it has question
14 number 6 there with the damages.

15 How does that sound to the Plaintiff?

16 *MR. PHILLIPS:* It is definitely real close. I like
17 the form. I am rereading the wording.

18 *THE COURT:* Remember, if they don't find negligence in
19 question 1, if the answer is no, they end their deliberation.
20 They only get to this if they found negligence.

21 So, what we are saying is that if you award damages
22 against Newman, you should write the same damages amount below.

23 *MR. PHILLIPS:* That is acceptable.

24 *THE COURT:* The Plaintiffs will not be able to double
25 recover. If you didn't award damages against Newman in 1983,

1 proceed to consider damages against Mascara in his official
2 capacity as Sheriff of St. Lucie County.

3 *MR. PHILLIPS:* What you said in part one is fair and
4 full, what you said is fair and full, so just -- you know, I
5 think that works.

6 *THE COURT:* From the Defense?

7 *MR. BRUCE JOLLY:* It is better than what I did, so I
8 have to say it is about as close as I think we are going to get
9 and therefore it is acceptable.

10 *THE COURT:* Is there anything problematic about it?
11 Anything that is prejudicial or contrary to the law or improper
12 or confusing or misleading in any way?

13 *MR. BRUCE JOLLY:* Not that can't be helped during
14 closing, you literally walk them through it providing --
15 explaining what the verdict form says.

16 Frankly, judge, I know you know this, what we don't
17 find to be confusing I have experienced jurors find confusing.
18 So, all we can do is the best and I think this is pretty darn
19 good.

20 *THE COURT:* Okay. Then on the next page -- Eleanor,
21 what was the change on the next page?

22 *THE LAW CLERK:* Just a spacing.

23 *THE COURT:* Now, I came up with different questions
24 for the interrogatory fact questions. So maybe, you know, you
25 are seeing these for the first time this morning. It is a

1 variation of what we talked about.

2 The first question -- again, remember, this doesn't
3 bear on the findings of 1983, negligence, this is really more
4 for the Court if presented with legal questions regarding
5 qualified immunity. We want to make sure, first of all, there
6 would be no finding here that could be inconsistent with any
7 finding they make in the 1983, and negligence, and they are
8 fact questions only. So, I took out this belief and any words
9 that had to do with belief and perception, that is the Court's
10 role, the reasonableness, and that gets into, you know, what
11 Deputy Newman believed or didn't.

12 These are fact questions. Did Gregory Vaughn Hill,
13 Jr. have a gun in his hand when he interacted with the
14 deputies; yes or no?

15 If yes, continue to 2. If no, we don't go any
16 further.

17 Number 2, did either of the deputies instruct Gregory
18 Vaughn Hill, Jr. to drop the gun in his hand?

19 Number 3, did Gregory Vaughn Hill, Jr. raise a gun in
20 his hand?

21 Again, counsel can make whatever argument you want to
22 make. These are factual findings that we are not asking the
23 jury to make, but we can all agree would have some bearing on
24 an ultimate determination that the Court may be asked to make,
25 not the final bearing, not that you can't argue other things,

1 but that is the Court's thinking.

2 You can give me your comment as to whether you think
3 you don't like the question or the questions or you think an
4 additional question should be -- I don't think we should have
5 took many to confuse them, but to me, this seemed to be short
6 and to the point and relevant information to glean from the
7 jury.

8 From the Plaintiff?

9 MR. PHILLIPS: I will begin my comment with 3 would
10 be, how sufficiently was it raised? That is a point for later.

11 THE COURT: Yes.

12 MR. PHILLIPS: Let me confer. These are going to go
13 back with the verdict?

14 THE COURT: It will, yes.

15 MR. PHILLIPS: That is important. That worries me
16 that they interpret --

17 THE COURT: This having bearing on -- what about this,
18 one possibility is, this is really not part of the verdict form
19 per se -- well, I don't want to use words lightly.

20 What if they were just to get the 1983 and the
21 negligence and then it comes back and then I send this back?
22 That is another way to do it.

23 MR. PHILLIPS: I would be content with that.

24 THE COURT: It doesn't bear on the verdict.

25 Are the questions okay by the Plaintiff, and do you

1 prefer it to go back after the verdict form?

2 *MR. PHILLIPS:* I do prefer it to go back after the
3 verdict form strongly. I can live with the questions with the
4 understanding we discussed.

5 *THE COURT:* Defense?

6 *MR. BRUCE JOLLY:* I will start with the Defense
7 opposes any instruction -- special interrogatory different than
8 that which was proposed at document 176. The Defense perceives
9 that is a back door way to have this given the Montero opinion.

10 That being said, if these are the three questions
11 being asked, the answer to the second question is, if -- it may
12 be that they resolve the civil rights claim with the verdict,
13 in which case you would never have to get to these -- the
14 questions you are proposing. It sort of makes sense it is
15 given after they resolve the first part of the verdict.

16 *THE COURT:* You are in agreement the interrogatory
17 fact questions don't go back with the verdict form?

18 *MR. BRUCE JOLLY:* Yes.

19 *THE COURT:* What is the second part of your point?

20 *MR. BRUCE JOLLY:* Question number three we opposed
21 yesterday and continue to oppose, raise the gun, raise the gun
22 at all, a little bit, completely? That is a problem for the
23 Defense. And question number one, I have always thought the
24 question should be not did he have a gun in his hand, but did
25 Deputy Newman perceive --

1 *THE COURT:* No. No. That is getting into the Judge's
2 role.

3 *MR. BRUCE JOLLY:* I understood that. I wanted the
4 record to reflect I do not happen to agree with you. I do
5 disagree with you, but someone has to make the decision here
6 and that is appropriately your role. We do not concede that
7 that is appropriate.

8 *THE COURT:* What is the Plaintiff's -- I did have
9 that, did you perceive that he had the gun --

10 *MR. PHILLIPS:* It is in that subjective
11 interpretational thing, I would want the alternative version of
12 that, at what level was the gun. And we are getting into the
13 question of just the fact finders' role or what weighed upon
14 them, whether there was a gun, whether he was requested to drop
15 it and whether he raised it. I don't like did he raise it,
16 because we have seen he only raised it this much.

17 *THE COURT:* You are going to argue he raised it?

18 *MR. PHILLIPS:* I am going to argue it wasn't in his
19 hand. I will concede the worst evidence he had was this.

20 *THE COURT:* Here's what I will say.

21 First of all, we all agree it should go after the
22 verdict form and maybe you get your verdict form and there is a
23 consensus that it is not necessary. I don't think so, but we
24 can see that.

25 Secondly -- we all agree on that, it goes after the

1 verdict form if at all?

2 MR. PHILLIPS: Yes.

3 MR. BRUCE JOLLY: Yes.

4 THE COURT: We agree there is no instruction on the
5 interrogatory fact questions. If I were to send those back,
6 probably what I would do is script out a couple of lines and
7 get you to review it like now that you have --

8 MR. PHILLIPS: There is no discussion whether it has
9 to be unanimous, and what happens if it is not.

10 THE COURT: On the interrogatory fact questions?

11 MR. PHILLIPS: Yes.

12 THE COURT: We agree nothing in the main body of the
13 jury instructions should address these fact questions?

14 MR. PHILLIPS: I agree a hundred percent.

15 THE COURT: Defense?

16 MR. BRUCE JOLLY: Yes.

17 THE COURT: We will have plenty of time to talk about
18 that some more. We will put that aside.

19 We are going to put the jury instructions in -- I
20 didn't rule, I don't think, yet, maybe I did. Docket Entry
21 213, Defendant's proposed special jury instruction: A deputy
22 does not have to wait to see the barrel of a gun pointed at him
23 or a fellow officer until he uses deadly force.

24 Plaintiffs responded at Docket Entry 220, and the
25 Court overrules. The Court believes the pattern instruction

1 adequately explains the law to the jury.

2 Has the Court made every ruling it needs to make on
3 the jury instructions?

4 *MR. PHILLIPS:* Yes.

5 *THE COURT:* Defense?

6 *MR. BRUCE JOLLY:* Do you -- you did, but is there
7 anything about going over the verdict forms?

8 *THE COURT:* I will go over the verdict form, and they
9 are going to have a copy of them, but only the one they fill
10 out is in blue. Because it is so extensive, I want them to
11 look at it.

12 Everyone is going to have a copy of the verdict form.
13 It is clear that only one gets filled out by the foreperson on
14 the blue one.

15 So, we are going to put them in final, copies for all
16 of the jurors, final clean copy -- the clean copy you have now
17 is the clean copy.

18 Did we make any change just now?

19 *THE LAW CLERK:* On the last one it says, proceed to
20 interrogatory fact questions.

21 *THE COURT:* We will make a change on the one where it
22 says to proceed to interrogatory fact questions. We will take
23 that off.

24 We are going to clean those up now, and then other
25 than that one page, you have your clean version now. You have

1 the version I am going to distribute to the jury. Eleanor, we
2 will give them that one page and make multiple copies for
3 everybody.

4 I will give you this back so I don't get confused
5 right here.

6 And is our jury here?

7 *THE COURTROOM DEPUTY:* Yes, your Honor.

8 *THE COURT:* Is your witness here?

9 *MR. BRUCE JOLLY:* Yes.

10 *MS. BARRANCO:* Since your Honor just said you are not
11 planning on reading these interrogatory fact questions before
12 closing --

13 *THE COURT:* Yes.

14 *MS. BARRANCO:* -- are we allowed to explain these fact
15 questions?

16 *THE COURT:* After the verdict forms come back, we will
17 have come up with an instruction that the Court will give which
18 will simply be something along the lines, now that you have
19 returned your verdict, please fill out, you know, the
20 interrogatory fact questions. I will let you have input at
21 that point on what I instruct the jury as to filling it out. I
22 don't know why you would need to bring that up in closing.

23 You are able to argue the points that are on that
24 form, as well as any other factual piece of evidence you think
25 came in, but --

1 MS. BARRANCO: If I may be heard, I understand your
2 Honor saying the lawyers can argue anything, but it assists the
3 trier of fact when the lawyers during closings do put up parts
4 of the jury instructions, verdict form, walking them through,
5 suggesting to them how they should answer the questions. And I
6 am concerned if they have never heard anything about these from
7 the lawyers and what they should do or not do based on the
8 evidence that we believe it should be, I suppose there is
9 confusion from them.

10 I never had this happen where I wouldn't have been
11 able to talk about what we believe, based on the Defense's
12 perspective, how the jury should be responding to these
13 questions, particularly because it is so important to the heart
14 of the qualified defense of Deputy Newman.

15 THE COURT: If we are going to do it that way, it
16 should go back to them with the verdict form and it should be
17 one.

18 MS. BARRANCO: Initially, when the Defendant presented
19 the instructions and verdict form, I want to say there is
20 language that says you are only to answer these questions if
21 you find Deputy Newman used force on Mr. Hill, so they know why
22 they are answering the questions.

23 MR. PHILLIPS: Post verdict they will have found the
24 facts that they need.

25 I don't think that prevents us from reading the

1 question and discussing it in argument in full. I am worried.
2 about -- when I was a kid, I knew how to do the maze backwards,
3 start with the end and go back. That is what I am worried
4 about.

5 *THE COURT:* What about the point about being able to
6 argue -- to make argument as part of your closing about what
7 they are being asked to fill out? Do you think they should be
8 given an amount of time -- if there is a consensus after the
9 verdict form and these interrogatories go back and the Court
10 believes I should give each side an additional amount of time?

11 *MR. PHILLIPS:* I would recommend bifurcation of that
12 issue rather than potential confusion. There is no harm from
13 bifurcation, there is harm from consolidation.

14 *THE COURT:* And giving counsel an opportunity to make
15 whatever points you want, not duplicative, but now something
16 else is going back that they otherwise didn't have and now you
17 need to specifically address.

18 Does that address your concern?

19 *MS. BARRANCO:* I think it does, your Honor.

20 *THE COURT:* Just to be clear, everyone agreed to the
21 jury instructions and 1983 and negligence verdict forms, and so
22 that is what is going to be read to the jury before your
23 closing.

24 While they are deliberating we'll refine the special
25 interrogatory questions. We'll discuss scenarios in which we

1 think it should or should not be read based on projecting
2 different scenarios of verdict outcome.

3 We will talk about an instruction that the Court will
4 read if we agree or I decide that the interrogatories will go
5 back, and I will let you be heard on how much time you want to
6 be able to speak to the jury in closing argument part two as
7 relates to those questions.

8 Fair, from the Plaintiff?

9 MR. PHILLIPS: Yes, your Honor.

10 THE COURT: Defense?

11 MS. BARRANCO: Yes, your Honor.

12 THE COURT: All right. Let's bring our jury in.

13 Thanks.

14 (Thereupon, the jury enters the courtroom.)

15 THE COURT: Okay, you may -- welcome back, everyone,
16 you may be seated.

17 Defense may call their next witness.

18 MR. BRUCE JOLLY: Mr. Chris Lawrence.

19 CHRIS LAWRENCE, DEFENDANT'S WITNESS, SWORN

20 THE WITNESS: Chris Lawrence, C-H-R-I-S,

21 L-A-W-R-E-N-C-E.

22 **DIRECT EXAMINATION**

23 BY MR. BRUCE JOLLY:

24 Q. Mr. Lawrence, you stated your name. What is your business
25 address?

1 A. My business address is -- I use P.O. Box 22033 Elmwood
2 Square, St. Thomas, Ontario. The physical address is St.
3 Thomas.

4 Q. Are you currently employed?

5 A. Technically I am. I am entering my retirement very
6 shortly, I got an early retirement because I am using up
7 holidays, vacation, that sort of stuff. I am technically
8 employed, but I don't have to go to the place that I worked at.

9 Q. And although you are no longer actively working, but you
10 are still on the books, what is it that you did by way of
11 employment?

12 A. I was an instructor at a Government run police college in
13 Ontario, Canada.

14 Q. And do you also perform litigation consult services as an
15 expert witness?

16 A. I do independently under my own business, and it was part
17 of my duties as a member of the college staff.

18 Q. And your own business is?

19 A. Elgin Security Consultants Incorporated.

20 Q. And when you were teaching, that was for whom or what?

21 A. The entity is known as the Ontario Police College and is
22 run by the Government of Ontario, Canada.

23 Q. And would you describe for this jury -- give us a little
24 bit about your work history and experience?

25 A. Okay. I started my role as a police officer in June of

1 1979, and I worked in a small police department that had about
2 55 sworn officers, I wasn't very old, I had only been out of
3 high school a couple of years. Essentially, the job I had was
4 a sworn police officer, I walked the beat as a foot patrol
5 officer. Back in those days you walked it by yourself, you
6 didn't have a partner that you worked with.

7 Over the years I worked as a patrol officer, I drove a car
8 occasionally, but there was a hierarchy, it took a while before
9 they took you off the beat and gave you a job. I did that just
10 over four years, and when I started there was actually no
11 formal training. So, when I went for formal training, it was
12 at the college that I actually end my career at, but I had a
13 few years of experience.

14 After that, 1983, I had applied to a larger department
15 because there really wasn't much opportunity at a small
16 department, and I was hired at the larger department, so I left
17 the 55 person department and moved to one in the Toronto area
18 that had a thousand sworn officers. I started there in October
19 1983, and I was working in a car doing general patrol.

20 Shortly after that, I was approached about becoming a
21 member of the underwater search and recovery unit. I had been
22 a diver before, I had done police diving, I did that for five
23 years. At same time I was asked if I would become a member of
24 the police marine unit. In Ontario, where I live, the water
25 freezes a couple of months in the year, people are on the lake

1 for the most part from April to November. I ended up working
2 April to November for five summers in a row running around on
3 lake Ontario with a couple of people, that was our job.

4 In the winter time I put the boat away and I would go back
5 on patrol and work on the dive team and do underwater search
6 and recovery as needed, including under the ice.

7 I did that for a few years, about five years in total, and
8 I was asked to become a station duty officer. I worked at
9 headquarters, and the primary job is a job at the front desk.

10 Q. What agency is this?

11 A. The smaller one is the St. Thomas Police Department and the
12 larger was the Peel Regional Police Service.

13 Q. Tell us what you did.

14 A. My primary role was to take complaints and my other role
15 was booking officer. I was responsible for taking people into
16 custody, taking them out of custody, serving them, and that was
17 part of headquarters. We looked after homicide, robbery, auto
18 theft, drug unit, so we were pretty busy.

19 I did that for a couple of years, and during that time I
20 qualified as a sergeant. If I wasn't working station duty, I
21 was on the road as a patrol supervisor. Then I was asked to --
22 if I was interested in joining the SWAT team, we call it the
23 tactical unit. It was a full-time job, and we would do
24 basically emergency responses, or when the uniform patrol ran
25 into a dangerous situation, somebody with a gun or rifle, or

1 high risk search warrants, people to transport, we looked after
2 heads of state when they came in.

3 The station I worked in, the international airport is in
4 the jurisdiction I worked in, it is not in Toronto. Every time
5 the President of the United States or the President of the
6 Philippines or the Queen or somebody like that would come into
7 Canada and land in the airport we would have to do the security
8 details, or help out anyways.

9 I did that for a couple of years, and then I went into the
10 criminal investigations unit away from headquarters. The
11 tactical team and dive unit were associated with headquarters.
12 I went into criminal investigation, 21st division, and did
13 general assignments. I was a detective, and then the chief
14 said he wanted experienced people back on the road as we had a
15 very young department, there wasn't much experience out there.
16 I had small children and it was better for me to work a
17 different shift, so I went back on the road, did that for about
18 18 months and an opportunity came up to apply for a job at the
19 Ontario Police College which was nine miles from my hometown,
20 so it was a chance to move back home. I applied, there is a
21 competition, I was successful and I left policing at the end of
22 1995 and joined the staff at the college in January of 1996 and
23 I worked there for 21 years.

24 When I started, I was a defensive tactics instructor,
25 teaching how to use empty hands, pepper spray, baton, execute

1 an arrest, all those things, handcuffs, searching somebody.
2 And four or five years after I started they asked if I would be
3 the team leader of that section, and I became the boss and had
4 people working for me.

5 And then in 2008, I ended up being asked to -- there is an
6 entity called the Canadian Police Research Center, equivalent
7 of the National Institute of Justice, almost the same idea.
8 There were a lot of controversies about tasers, and custody
9 deaths, and I had done a Master's Degree subject in that area.

10 I was asked -- the Canadian Police Research Center asked my
11 employers if they could borrow me for a year. It was supposed
12 to be one and turned into 30. During that time I managed
13 research projects studying in-custody deaths, less lethal
14 weapons, bomb suits, body armor, things of that nature.

15 The Federal Government funded research projects that looked
16 into those areas. Then in 2011, I ended up going back to the
17 college, and they assigned me to do a special project, to get
18 it completed when I first came back.

19 I did that, I think it took about a year to do, and then I
20 went into the officer safety section which runs scenarios for
21 recruiting police officers. I did that for a couple of years,
22 and the last two years, two and a half years I was in the
23 firearms section as a firearms instructor on the range, and
24 throughout the time I was at the college I was also instructing
25 instructor level courses -- recruit level courses and

1 instructor level courses. I was also a facilitator, evaluator,
2 instructor/trainer, and then the last day I had to report for
3 work in that role was last year, in August, and I have been
4 able to start my phased retirement which is about to become
5 full retirement shortly.

6 Q. In this matter, were you retained by my law firm to perform
7 an analysis of the Hill incident, what we are talking about
8 here, and to render expert opinions?

9 A. Yes.

10 Q. And were there any specific instructions which were given
11 to you as to how you go about your business from us?

12 A. No. Not really.

13 Q. Would you tell the Court a little bit about your
14 experience. I want you to talk about the field in which you
15 are permitted to render opinions and then your experience as an
16 expert witness.

17 A. The areas I have generally been allowed to give opinions on
18 are police procedures, police training and police use of force.
19 That encompasses the activities of police officers.

20 I have given expert evidence on over 60 occasions in Canada
21 and the United States.

22 I have given expert opinions in Canada, in British
23 Columbia, Alberta, Ontario, Quebec and Newfoundland, basically
24 coast to coast. In the United States I have given expert
25 evidence in State Court in Utah and Colorado, and I have given

1 expert evidence -- been permitted to give expert evidence in
2 Federal Court in Alabama and most recently, last summer in the
3 State of New York.

4 Q. And do you remember when you were deposed by Mr. Phillips?

5 A. Yes, I have a recollection, yes.

6 Q. And do you remember being asked, gee whiz, you are from
7 Canada, how can you talk about what happened in the U.S.? Do
8 you remember that?

9 A. Yes.

10 Q. Explain to the jury why you can do that.

11 A. I have been trained a lot by American law enforcement,
12 American law enforcement instructors. I am a member of a
13 number of associations, National Tactic Officer Associations, I
14 have been trained as a defensive tactics instructor by the FBI.
15 I have been to seminars and conferences where the Constitution
16 has been explained to everybody, not just me, but the people
17 who are there.

18 I have talked to a lot of police officers in the almost 40
19 years I have been involved in this activity and done scenarios
20 in the United States and been evaluated by American
21 instructors. The procedures are basically the same.

22 As far as the differences in the Constitution, there is not
23 much of a difference. There are a few, we in Canada do not
24 have the right to bear arms, that is not a Constitutional
25 allowance. I know it is here under the Second Amendment. The

1 U.S. Constitution, Third Amendment, allows you to refuse to put
2 soldiers up in your house during peace time, we don't have
3 that. Freedom of speech, freedom of search and seizure, right
4 to a jury trial, right to be informed, you don't have to give a
5 statement, they are all the same.

6 Your right to cross-examine your witnesses, there are
7 different terms, but the end result is pretty much identical.

8 Q. You mentioned -- I think you said the Second Amendment?

9 A. Second Amendment, right to bear arms, yes.

10 Q. And I think you indicated Canada does not have any such
11 equivalent provision?

12 A. Right.

13 Q. As you understand the Second Amendment, and we will get
14 into this in a few minutes in greater detail, does your
15 understanding of the Second Amendment allow an individual in
16 his home to point a gun at a cop?

17 A. Not point a gun at a police officer.

18 Q. Possess?

19 A. Yes, you can possess a gun in your home.

20 Q. But not point it at a cop?

21 A. I don't think you should point a gun at a police officer at
22 any particular time.

23 Q. All right. Although you indicated we didn't ask you to do
24 any specific thing, what is it that you did? And in this
25 context, if you have your report in front of you, there is a

1 lengthy listing of what you reviewed.

2 A. Yes.

3 Q. Would you chronicle for the jury what it is you looked at
4 in anticipation of participating before this jury?

5 A. I wrote the report and I can't remember if there is any
6 supplementary information between the time I wrote the report
7 and today. As far as the report is concerned, I was given a
8 copy of the incident report, that is the report the police
9 officers collectively establish.

10 I read the Medical Examiner's report and the reconstruction
11 PowerPoint of what the Sheriff's Office believed occurred based
12 on the investigation. They did a PowerPoint presentation, I
13 looked at that. I read Deputy Lopez's first interview, and
14 there was a second one to finish off things they missed, Deputy
15 Lopez's transcript of the walk through of the event, his
16 initial interview. I have that in there redundantly. 360
17 photographs of the scene outside, the scene inside, photographs
18 taken from the helicopter --

19 Q. You looked at all those photos?

20 A. Yes.

21 Q. As we go through this, all of this played some role in your
22 analysis?

23 A. Yes.

24 Q. Please continue.

25 A. I looked at the Defendants' response to Plaintiff's

1 production and interrogatories. I took the name in the file
2 when it was sent to me, this came to me electronically.

3 Q. So you looked at the discovery in this case --

4 A. Yes.

5 Q. -- exchanged as between the lawyers as the litigation was
6 progressing?

7 A. Yes.

8 Q. Please continue, sir.

9 A. So, again, I was given another copy of the police report, a
10 memorandum that was dated January 30, 2014 that related to this
11 event, copies of various policies, including the policy with
12 respect to unlawful conduct and misconduct in investigations
13 and disciplinary actions.

14 I looked at the Internal Affairs history of the Ft. Pierce
15 Police Department, organizational descriptions at various times
16 between 2013 and 2015, five different versions of the way the
17 Sheriff's Department had been set up.

18 I was given a copy of Mr. Hill's criminal record, and then
19 something to do with the insurance, there was documentation
20 about insurance coverage, law enforcement liability coverage, a
21 certificate -- new request of certification of coverage
22 regarding this matter, Deputy Newman's answers to
23 interrogatories signed and notarized, Sheriff's response to the
24 Plaintiff's request for production, dated July 21, 2016, and
25 Plaintiff's response to the Defendants production and

1 interrogatories, 26 photos in one group and 37 photos in the
2 second group, and they were different from the hundreds of
3 photos from the earlier group, and various answers and requests
4 for production, response number one, response number five,
5 response number ten. Those are things the lawyers would
6 exchange, they ask for something and the other side provides
7 information.

8 I reviewed the policy of use of force, firearms and
9 ammunition, deployment armored personnel carrier, special
10 purpose utility vehicles, another copy of the police report,
11 audio files of radio transmissions associated with this event.

12 Q. The original call out, the complaint?

13 A. What do you mean?

14 Q. The person who called in the complaint, that was one of the
15 things you listened to?

16 A. Right, I listened to -- not the 911 call, but the person
17 who said there is something wrong here.

18 Q. In addition to that listening are the communications by law
19 enforcement officers, the deputies with their dispatcher?

20 A. Initially, yes, and then there is another one of the event
21 as it unfolded involving the SWAT team, etc. That is about
22 eight hours, it was from the beginning of the event once it was
23 determined how serious it had become until the matter
24 concluded.

25 Q. That was after the shooting had occurred?

1 A. Right, response to the shooting.

2 Q. Please continue. I interrupted you again.

3 A. Policies of the operation of Sheriff's Office vehicles,
4 policy of the use of the aviation unit, their SWAT policy. I
5 looked at Mr. Hill's cell phone information around the time of
6 this event.

7 There is another memorandum, an internal memo dated
8 January 30, 2014, and a series of transcripts based on
9 discussions with witnesses and officers that were involved, and
10 they included Andrew Brown, Arnold and Theresa Gaines. One was
11 described as a courtesy call, no one identified. It makes
12 sense to me, it was the Sheriff's Department trying to speak to
13 members of Mr. Hill's family, although no one was identified,
14 that is what it sounded like was being done, updating them on
15 the investigation. Transcriptions of the interview with David
16 Morales, Donna Hellums, Doris Garrett, Elish Mancuso, Jeff
17 Ball, Joseph Corollo, Juanita Wright, Nesha Wright, and two
18 transcriptions that were only identified as Nuccio part 1 and
19 Nuccio part 2. I think it was somebody operating the bomb
20 robot or one of the people on the edge of the event.

21 The transcription with Sandra Picano, Shirley Fowler, Tammy
22 Davis, a walk through with someone, I don't recall who that one
23 involved, which walk through that was.

24 I read the deposition of Deputy Christopher Newman, Deputy
25 Edward Lopez, the deposition of Ms. Viola Bryant, the

1 deposition of Terrica Davis, the deposition of Lizbeth
2 Enriquez-Ruiz, who was one of the witnesses from across the
3 street picking up her child, and some emails between members of
4 the Sheriff's Department, Scott Wells and Brian Hester, who I
5 think were tactical supervisors, after event techniques,
6 something we need to fix, something that didn't work.

7 There was another one, an attachment memorandum between
8 Scott Wells and David Thompson, an attachment memorandum from
9 Lieutenant Larry Hostetler and Major Thompson that had to do
10 with the bomb robot. There were issues, it didn't work the
11 right way or they couldn't get something to work right away,
12 took some time to get it fixed.

13 The deposition of Tony Stevens, I think Mr. Stevens was an
14 uncle of Mr. Hill, and the deposition of Thomas Johnson. He
15 was one of the SWAT operators on the Sheriff's Department. I
16 think he was the one who rolled Mr. Hill over once they were
17 inside the garage.

18 Those are the documents I looked at.

19 In case I didn't list them in that, there were specific use
20 of force policies that I was asked to look at, the use of force
21 policy from the St. Lucie County Sheriff's Office, firearms and
22 ammunition, and some headings underneath all the things they
23 included, unlawful conduct, misconduct investigation,
24 disciplinary actions and operation of sheriff's vehicles,
25 special tactics team, special purpose utility vehicles, and

1 aviation units.

2 I think I already mentioned that.

3 Q. You have been retained. Are you being compensated for the
4 work that you have done so far and as you are sitting here
5 today that you are doing?

6 A. Yes.

7 Q. And at what rate, how much have you charged?

8 A. My flat -- my rate has been \$250 an hour for years. That
9 is just what it is. And I don't know how much it is, I haven't
10 billed anybody anything in the 16 or 18 months I have been
11 involved.

12 Last time I looked at producing a document was for
13 Plaintiff's counsel at the deposition, and at that time it was
14 about \$14,000, but there will be additional fees beyond that.
15 It has been 16 months of work on and off.

16 Q. Based upon your review of the items that you described to
17 the jury, are you comfortable that you have a fair
18 understanding of what happened in this incident?

19 A. Based on the review of the material I have, I haven't heard
20 what anyone said to the jury, but based on the written material
21 that I was able to review and the audio material I was able to
22 review, I think I have a fairly good understanding of what took
23 place.

24 Q. Before I get into any opinion, would you tell this jury
25 your understanding of what happened?

1 A. In simple terms, on a date in 2014, January 2014, the
2 Sheriff's Department received a call from an individual who
3 said they were concerned about the loudness and the type of
4 music that was being played across from a public school, and it
5 was about the time that children were being released, and the
6 caller, I forget the caller's name, didn't think it was
7 appropriate and thought something should be done about it.

8 So, the dispatch communication center at the Sheriff's
9 Department contacted an officer and asked that person to
10 attend, and one of the other officers was nearby and said I
11 will go with them, and that is not unusual. It is not
12 required, but not unusual, and it involved Deputy Newman and
13 Deputy Lopez.

14 So, they drove to the scene at 1501 Q Avenue in Ft. Pierce,
15 and Deputy Newman arrived and parked outside the front of the
16 residence, and Deputy Lopez arrived at the same time and parked
17 farther west on the street towards the garage area. And I
18 remember somebody saying that although their windows were
19 rolled up and the doors were closed and the doors on the house
20 were closed and the windows seemed to be closed, they could
21 hear the music and it was quite loud.

22 The deputies exited their cars, one deputy in each car, and
23 went up and the noise or music seemed to be coming from the
24 garage and they went up and banged on the garage with their
25 hands, I think both of them. They said they banged on the

1 garage and said Sheriff's Office and didn't get a response.

2 So, Deputy Lopez stayed in the driveway area, and Deputy
3 Newman walked farther east and went towards the front of the
4 residence and banged on the door forcefully to try to get
5 somebody's attention, and the garage door opened. And I am
6 trying to keep the names straight.

7 Deputy Newman heard the music get louder and looked over
8 towards the garage and saw the door was opening and took a
9 couple of steps back from the front door.

10 Deputy Lopez saw the door opening, and as it came up, there
11 was an individual standing there, determined to be Mr. Hill.
12 Mr. Hill was holding the garage door up with the left hand and
13 the deputies noticed he had a small black handgun in his right
14 hand that was next to his leg.

15 The officers called out, shouted out to the effect, gun,
16 drop the gun, that sort of thing, called out more than once,
17 and Deputy Lopez started to back up and started to draw his
18 pistol from his holster. At the same time Deputy Newman drew
19 his pistol from the holster and aimed it at Mr. Hill, told him
20 to drop the weapon, drop the gun, something of that nature.

21 Mr. Hill had been looking towards Deputy Lopez, looked over
22 towards Deputy Newman, and suddenly the garage door started to
23 come down relatively quickly. At the same time Mr. Hill's
24 right hand with the gun started to come up towards Deputy
25 Lopez's direction, seemed to be pointing towards Deputy Lopez.

1 At that time Deputy Newman fired his duty pistol, .45 Glock,
2 four times and struck the door.

3 The first round went through the door skin, but got trapped
4 in one of the hinges, didn't go farther than that. The other
5 three rounds pierced the door skin and struck Mr. Hill twice in
6 the abdomen, one went into Mr. Hill and one went through Mr.
7 Hill and hit the wall behind him, and the final wound was to
8 Mr. Hill's head. The door was down, probably all the way down
9 for the second, third and fourth shot, up for the first shot.

10 The two officers were treated -- no, Newman ran around
11 toward the side of the house to make sure whoever was in the
12 house didn't get out of the back. That was a form of
13 containment. Deputy Lopez went towards his car and took cover.
14 They called in shots fired and that is when everybody started
15 to show up, as would be normal, and it turned into what do we
16 do now.

17 It was looked at as a barricaded individual. They thought
18 there might be people inside that couldn't leave. They call it
19 a barricaded hostage situation, that is a generic term for they
20 didn't know. They called out, used an LRAD, a hailing device.
21 We looked at LRADs in Canada as well.

22 Q. A hailing device?

23 A. It could be used as a weapon, it could be used very
24 intensely as a weapon.

25 Q. What does it look like?

1 A. It is an enormous loud speaker, and you can speak over it
2 and it will carry a long, long way. Actually the Navy uses it
3 to call from ships to what they call the lateral, the beach
4 area. But it can be used for police purposes to project sound
5 a long way so you can let people know, when cell phones don't
6 work, about a hurricane or tornado. They call it an LRAD, long
7 range acoustics device. They tried that, didn't get a
8 response.

9 After awhile, the command decision was that they were going
10 to enter aerosol weapons into the residence to see if they
11 could flush out anybody that might be in there. They used
12 pepper spray initially, fired pepper spray rounds in; and when
13 that didn't work, they used teargas; and when that didn't work,
14 then they had an immediate action team, which is normal in case
15 something happened quickly, they have people that can deal with
16 it. Once no one came out they said, okay, we will do an entry.

17 They took a number of people, put on their gas masks for
18 the most part, somebody has to be able to speak clearly so one
19 wouldn't have one, they cleared the residence -- I missed a
20 step. After the gas was introduced, they got the robot -- bomb
21 robot working and the bomb robot had the capability of piercing
22 the door and taking photographs, at least looking inside.

23 So, once they had that, the gas had been introduced and a
24 short time later they put the bomb robot up to the garage and
25 drove the spike, if you will, into the door and had a camera on

1 it, and they were able to see that Mr. Hill was on the ground
2 not moving.

3 They were still clearing the house, they didn't know if
4 anybody else was home. Once they got to the garage they
5 checked and saw that Mr. Hill was apparently deceased. They
6 rolled him over to see if there was anything in his hand, but
7 there wasn't. Some of the officers noticed there was a pistol
8 in his right rear pocket, and other members said they didn't
9 notice or see a weapon.

10 Q. As a part of your participation in this lawsuit, did you
11 consider -- can you discuss the factors that are taught to
12 deputies in how and when and under what circumstances they can
13 use firearms?

14 A. Yes.

15 Q. I am specifically referring to the section of your opinion
16 dealing with firearms training -- firearms training.

17 Would you explain to the jury what these young law
18 enforcement officers are told about how and when to use their
19 guns, the kinds of things that come into play?

20 A. In relation to this event -- officers in Canada, officers
21 in the United States, armed officers are told you may use, or
22 you are allowed to use lethal force when you fear that you or
23 someone that you have an obligation to protect, including
24 another police officer, may be imminently injured or killed or
25 seriously harmed by the activity of someone else. You may use

1 your pistol or rifle depending on a number of factors, or
2 shotgun, you can use lethal force to defend yourself or someone
3 else.

4 Q. What are law enforcement officers generally taught as to
5 where the direction of the firearm discharges?

6 A. Where do they aim at?

7 Q. Yes. I was trying to act as a lawyer, I should have known
8 better.

9 A. Usually you shoot for center mass, which is the middle of
10 the torso on the individual, it is stable, doesn't move
11 quickly. Hands move. Trying to hit a small target -- the
12 entertainment industry might show someone shooting guns out of
13 people's hands, that is highly unlikely, particularly with a
14 pistol. Police officers are told to shoot for center mass,
15 that is the thickest part of the body. That is -- you have the
16 best chance of actually hitting the individual rather than to
17 shoot at a leg or hand which could move quickly.

18 Q. What is the standard of training as relates to how many
19 shots can be fired, or at what point are you obligated to cease
20 shooting? There might be a couple of ways I could phrase it.
21 I think you know where I am going.

22 A. The training is you shoot until the threat stops or the
23 subject gives up.

24 There is no particular number of shots fired because,
25 again, going back to what the entertainment industry portrays

1 in movies and television, you don't get feedback like it shows
2 on television. When someone is shot with a handgun, the most
3 common reaction is no reaction. They don't immediately fall
4 down. They might fall down if they miss, that is a form of
5 psychological incapacitation.

6 If you strike somebody, they may be lethal wounds, but
7 unless you shatter a knee or hip, even then people can stand up
8 and act in a manner of dangerousness. You shoot until the
9 threat stops, or the subject gives up and drops their weapon,
10 whatever the case may be.

11 Q. In your analysis you talk about one shot incapacitation?

12 A. Yes.

13 Q. What is that? How does it play a role here?

14 A. People will ask, you shoot the person once, is that enough?
15 One, you don't know that you hit them. A handgun -- a .45
16 caliber bullet weighs about a half an ounce, that is it. It is
17 not like it is a big steel ball or a wrecking ball that is
18 going to knock somebody off their feet.

19 The only time you get a one shot drop -- and I was trained
20 as designated marksman, and some people might understand the
21 term sniper. When I was on the tactical rescue unit that was
22 my role. If you want to stop somebody with one shot you have
23 to take a very fast or large bullet and it has to pass through
24 the center of the person's brain and take out the brain stem.
25 That is where you can get somebody to immediately drop with no

1 ability to do anything.

2 The only way you are going to be able to do a one -- when
3 you do that as a designated marksman, you have a rifle that is
4 well sighted, they are usually hand adjusted. Ours were sent
5 away, they were taken care of by a gunsmith. We would practice
6 them at a hundred yards and you could fire four shots and cover
7 it up with a cover. I had a target with two bullets in one
8 hole. That is different, taking a pistol and shooting as
9 opposed to a tripod up against my shoulder and one shot, etc.

10 You take one shot and you know you have the ability to stop
11 somebody, transect the spinal column. To do that at a moment's
12 notice with a handgun is very unlikely. The idea that one shot
13 is going to drop somebody doesn't work that way.

14 Q. In your training and your experience, have you had occasion
15 to learn about reaction times?

16 A. Yes.

17 Q. Do you -- not you, but is that taught in police training?

18 A. Oh, yes.

19 Q. Would you describe for the jury -- um-m-m, wrong page --
20 explain the types of reaction time and how that, in your
21 analysis, played a role in this incident?

22 A. There is a lag time when something occurs in the world and
23 someone has to respond to it. It is not very long, but the
24 idea that somebody is going to instantly do something is not
25 consistent with what the research demonstrates or tells us.

1 So, in this type of event there are three types of reaction
2 times. Based on numbers taken from research studies done in
3 classrooms, if you will, the time for response to touch
4 averages somewhere between .12 to .14, just a little over a
5 tenth of a second.

6 If somebody touches you, you don't immediately react. You
7 think you do, but it is not immediate, it is not instant.

8 The next one, a little slower, is auditory reaction time.
9 The tone goes off, if you have to respond to the tone, it
10 averages a little bit longer, somewhere between .14 and .16.
11 College students pushing a key pad on a computer mouse or a
12 keyboard.

13 And the slower of the three is the visual response, and
14 that is somewhere around .18 to .22 on a simple key press or
15 mouse click.

16 People say, wait a second, isn't light the fastest thing in
17 the universe, like the speed of light? If light is so fast,
18 why is visual reaction time slower than the other two? It has
19 nothing to do with the speed of light and has everything to do
20 with the speed of the mind. It takes time to figure out what
21 you have actually seen, a much more complex vision compared to
22 touch or hearing.

23 We tell police officers, it is going to take some time when
24 you realize that something has to be done. We tell them, you
25 are behind a reaction curve.

1 When you have to undo a holster, the more complex the motor
2 skill associated with the reaction time, the longer it takes to
3 load the program in the brain, reaction to action time to draw
4 and fire a pistol. The time you put a laser light on a target
5 and you say to the police officer, draw your pistol and shoot
6 at the target, it is generally reliable it is a quarter of a
7 second before you see movement after the light is on.

8 I have not only read that, I tested officers to confirm
9 whether it is accurate. It is a quarter of a second in a
10 nonthreatening situation, reasonable reaction time.

11 Q. How did that information play a role in your analysis of
12 this case?

13 A. You have to look at the research beyond simple reaction
14 time because they have tried to replicate decision-making under
15 some uncertainty, and that research found it could be as much
16 as a half second before movement towards drawing your pistol
17 might occur.

18 So, we tell police officers, look, it has to be half a
19 second before you even start your movement, it will take a
20 second and a half to get your gun up. If you think things are
21 uncertain, if you think a person is armed, if there is danger,
22 potential for lethal force, you might want to get it out to
23 have it in your hand to reduce the time to take the pistol out.
24 We teach them not to put your finger on the trigger and not to
25 point it at anybody unless you are ready to fire at that

1 individual.

2 The pistol may point towards an individual. If the finger
3 is off the trigger, the officer is trained the gun won't go off
4 by itself. We try to minimize that as much as we can.

5 Q. Does that factor into not only the decision to use your
6 weapon, but to cease using your weapon?

7 A. Yes. From the research done, it takes time to start and
8 takes time to stop.

9 Some people can stop immediately, but not everybody can
10 stop immediately, and they have tested officers where they put
11 them in a situation and said when this particular set of lights
12 start, not just a light, but a particular sequence of lights,
13 we want you to start firing. That is how we know it takes half
14 a second to realize -- it is a little more complex. They say
15 when the lights go out, the moment it goes out stop pulling the
16 trigger, and they found on average reaction time -- the
17 response time to stop firing is about .29 seconds on average.

18 So that -- given the sequence of how rapidly you can fire a
19 gun, that might result in two more shots. Even though the
20 officer realizes, I have to stop pulling the trigger, they are
21 pulling it so fast it is possible an additional two shots might
22 be fired.

23 Q. As a part of your review, did you examine the photographs
24 taken of the exterior of the garage door?

25 A. Yes.

1 Q. In addition, at some point in time, did you conduct an
2 examination and inspection of that same garage door?

3 A. Yes.

4 Q. In your report you talk about a thing called bullet wipes?

5 A. Bullet wipe, yes.

6 Q. What is that?

7 A. Again, to make it simple so everybody understands it, when
8 you fire a pistol or a gun, when you fire a barreled weapon,
9 the bullet comes out, but it doesn't come out pristine,
10 sterilized and clean, it comes out with grease, soot, oil from
11 around it and the solvents used to clean the gun.

12 When the bullet is flying through the air that doesn't blow
13 off. When it strikes a garage door, when it strikes a shirt,
14 it will leave a ring around the hole, and to the extent that
15 the bullet passes an item that is hit on an angle, it helps you
16 to understand what angle that bullet may have passed through
17 that shirt or that jacket or the garage door or the dry wall.

18 So, bullet wipe in this case, there was bullet wipe on one
19 side of the hole, it was a tear drop shaped hole, that is what
20 it does, it tears a hole on the side. If there is bullet wipe
21 on one side, the side of the wipe will indicate which direction
22 the bullet was fired from.

23 Q. You looked at that?

24 A. There is bullet wipe on the garage door, they call them
25 dents, bullet holes.

1 Q. Was what you just described as the bullet wipe one of the
2 three points you thought needed to be considered in evaluating
3 the matter?

4 A. Yes.

5 Q. I want you to describe the first two.

6 A. Sorry?

7 Q. I want you to describe the first two points. I got ahead
8 of myself. The angle?

9 A. Yes, the angle is located by the bullet wipe and by the
10 tear shaped tear that the bullet created as it passed through
11 the aluminum door. When I was inside the garage, I looked
12 through to try to line up the dents in the door associated with
13 the bullets to see, okay, if this is where the shoulder of the
14 bullet passed through, where did it line up with. It happens
15 to line up with a light toward the school, one of the hydro
16 poles across the street.

17 What you should do is, and you couldn't do it here, what
18 you are supposed to do, you take the garage door and go
19 somewhere and fire at the door at known angles, and compare
20 what you know you did to the angle that has -- that was created
21 by the bullets that went through the door, and you know
22 precisely. That is the best way to do it.

23 That is taking the door off the Hill residence and finding
24 a range. It would cost a lot of money and take a lot of time,
25 and it wouldn't prove anything terribly revealing. It is

1 pretty obvious the bullets came from that direction.

2 Q. Did you make any determination upon which you reported as
3 to the angle or direction, I am not sure which term you want to
4 use, where the bullets came from and went?

5 A. Yes. It would be better stated direction than angle. I
6 didn't measure the angle. If I was going to measure the angle,
7 it would have been a research project. Firing came from the
8 front of the residence farther east of the garage, almost in
9 alignment -- I can't remember if there is a light there on the
10 front, or a for sale sign, something in the grass, and behind
11 it was a -- across the street was a hydro pole, roughly
12 45 degrees, that sort of direction. It wasn't flat against the
13 door or square to the door, it was off to the side.

14 Q. How, if at all, was that consistent with the materials that
15 you reviewed?

16 A. It fit with the recollections of Officer Lopez -- sorry,
17 Deputy Lopez and Deputy Newman where Deputy Newman said he was.

18 Q. What evidence, if any, did your review of the materials
19 indicate or suggest that Lopez discharged his firearm at all?

20 A. There is no indication that he did.

21 Q. As a part of your analysis of this incident, did you make a
22 determination of the sequence of the shots?

23 A. Yes.

24 Q. And how do you do that and what was your opinion?

25 A. You make comparisons with what was known.

1 Number one, there are holes at the bottom of the garage and
2 towards the top of the garage, and they were measured. The
3 bottom one was at 20 inches, the one at the top was about
4 54 inches.

5 The Medical Examiner measured the injuries to Mr. Hill from
6 the bottom of his heels, that was a consistent measurement, the
7 door was on the ground and Mr. Hill was standing on the ground
8 at one point.

9 The first round that was fired was identified in all of the
10 reference materials, round number one, and that one was
11 21 inches off the bottom of the door. That is the one that was
12 trapped in the metal hinge, went through the door skin, but did
13 not get through the hinge, didn't hit anybody. I think that is
14 the first round that would be fired as the door is coming down.

15 The other two rounds were about the height of the
16 injuries -- consistent with the height of the injuries to Mr.
17 Hill where he was struck in the abdominal area.

18 One of the things I did was, I took a ruler and very
19 carefully tried to -- as I was taught in a shooting
20 reconstruction course I took, you align the ruler as best you
21 can with the hole and that will give you some indication of an
22 angle, whether the shot was coming down or coming forward.

23 It is not always guaranteed that is what happened, but it
24 gives you an indication. Everything seemed to line up with the
25 door finally hitting the ground and the second shot, third shot

1 being fired, striking Mr. Hill in the abdomen, and then the
2 last shot was more of an upward direction, and that would be
3 the one that passed through the door at 54 inches, but struck
4 Mr. Hill three-quarters of an inch from the top of the head,
5 which would have been roughly 72 inches off the ground.

6 The trajectory of the bullet as you line up the blips in
7 the door, the defects in the door, it was angled upwards. In
8 order for that to happen, Mr. Hill would have to be leaning
9 forward or bending over at some point. I don't think it could
10 change directions and pull up that much given the thickness of
11 the door, the metal that it went through.

12 In all likelihood, the first shot was the one that didn't
13 go anywhere. The next one shot Mr. Hill in the abdomen and
14 caused him to start to lean or maybe fall, and the last shot
15 was in the door while it was closed and struck Mr. Hill, and
16 that is the one that struck him in the head. That is the only
17 thing that makes sense, that was the last shot fired.

18 Q. Is a closed garage door, from your experience and
19 observation in this case, a protective barrier to deadly
20 force -- to a deadly force gun, a situation involving a
21 firearm?

22 A. No, it doesn't protect. As is obvious, bullets will go
23 through a garage door relatively simply.

24 In police parlance we refer to it as concealment, not
25 cover. If you get behind a brick wall that is cover, it

1 conceals you, but provides protection. If you step out in a
2 shadow, it might be concealment, but no protection. A garage
3 door would be concealment, not cover, it will not stop a
4 bullet.

5 Q. One of the things I was going to ask, a couple of days ago
6 we had another police practices type of guy testify, and there
7 was a -- he kept describing it as a benign incident.

8 A. What do you mean, the call, the noise complaint?

9 Q. Yes.

10 A. It is.

11 Q. But how does that factor into -- how does the fact that it
12 starts as a benign incident factor into the eventual use of
13 force?

14 A. Some of the worst things that could happen start out with
15 what appear to be quite innocent things. Whether you are
16 talking to a guy on a bicycle, as one of my partners was doing,
17 the next thing he is disarmed and shot in the head with his own
18 gun. Another person thought he was talking to a robbery victim
19 and the guy sliced him from ear to ear. He thought he was
20 helping out somebody who said somebody was trying to rob him.
21 He said you go find the bad guy, I will help the victim, and
22 the victim killed him over nothing.

23 Q. The fact that it starts as one thing doesn't mean at the
24 end --

25 A. The fact that something starts out very innocently does not

1 guarantee that it isn't going to end in a very different set of
2 circumstances. Things change, can change.

3 Q. Do you have an opinion, based upon your training, your
4 experience, applying the applicable principles for analysis of
5 use of force, as to whether use of deadly force in this
6 instance by Deputy Newman was or was not appropriate?

7 A. Yes, I do have an opinion.

8 Q. That is?

9 A. In the context of that, based on what the officers saw and
10 could know, or reasonably know at the time, I think what they
11 did was reasonable. That is my opinion.

12 Ultimately, it is the jury that decides the ultimate issue.

13 MR. BRUCE JOLLY: That is all I have.

14 THE COURT: Cross-examination.

15 MR. BRUCE JOLLY: Mr. Lawrence, thank you, sir.

16 THE COURT: Cross-examination.

17 MR. PHILLIPS: Yes, your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. PHILLIPS:

20 Q. Good morning.

21 A. Good morning. I am going to remind you, please, he did a
22 good job speaking up, my hearing is not that great, I do not
23 want to ask you to repeat yourself.

24 Q. Certainly. Okay, I will do my best with that. If you
25 don't hear anything I say, let me know. Okay?

1 A. Yes.

2 Q. Has your CV been updated since February 2016?

3 A. Yes.

4 Q. Have the rates gone up?

5 A. No.

6 Q. Question: How do you -- I asked the question about what
7 you charged the St. Lucie County Sheriff's Office at your
8 deposition, right?

9 A. I believe so.

10 Q. Somebody who testified before would probably expect I was
11 going to ask the question again at trial, right?

12 A. Yes.

13 Q. You didn't think it was important to prepare an invoice
14 that would let the jury know what your current billed fees are
15 in this case?

16 A. My father died a couple of weeks ago and things have been
17 kind of upside down, and I have had other things to attend to.
18 So, frankly, if I wanted the money, I would have asked for the
19 money a long time ago. I do this because of the money, but I
20 have had other factors that I think are more important.

21 Q. Certainly, and I apologize for that.

22 A. No, you couldn't know.

23 Q. I couldn't know?

24 A. No.

25 Q. And I also don't necessarily want to be seen as

1 unsympathetic, but you prepared things for trial, but not an
2 invoice; fair?

3 A. I still haven't done the invoice.

4 Q. But you prepared for trial today?

5 A. I had to, I had deadlines.

6 Q. And that didn't meet a deadline?

7 A. No. I will figure it out once I get home.

8 Q. Are you over \$20,000?

9 A. It might be approaching that. I would be surprised if it
10 was -- it might be, yes. I would have to look at it.

11 Q. Okay. Is that U.S. or Canadian dollars?

12 A. U.S.

13 Q. How do you charge for travel, like travel days?

14 A. I charge -- it depends on how long, and I try to be
15 reasonable.

16 If it is just a short -- like if I have to go 20 miles
17 away, I don't charge for travel at all, or something relatively
18 close. If I have to take four, five hours to get somewhere, I
19 charge half a day of my time. If I have to take a whole day, I
20 charge a whole day of my time. I am away from my family and I
21 have other things to do.

22 Q. Each way?

23 A. Yes, if I am away each day. For example, when we did the
24 deposition, I charged for a deposition and I put on my fee
25 schedule for site visit. If I am doing a deposition, I am not

1 going to stick somebody for money if I travel that same day. I
2 try to be reasonable.

3 Q. You traveled 1400 miles from Canada yesterday or today?

4 A. Yes, I got in at 2:30 this morning, I was on the road from
5 2:00 yesterday afternoon.

6 Q. And you leave today or tomorrow?

7 A. I didn't know how this was going to play out so my schedule
8 is, my flight was to leave on Friday, is to leave on Friday.
9 If I had to change that it would be additional expenses, etc.
10 If I am done today, great, I am going to sleep in Florida
11 tomorrow and not charge anybody for it and fly home on Friday.

12 Q. Do you know if you are charging 2,000 or 4,000 for travel
13 for this trip?

14 A. For this trip, I don't think I am charging anything for
15 this particular trip.

16 Q. Okay. Why? Why is this one a freebie?

17 A. I was already here to do some other stuff and I was here
18 last week, and I am not blaming anybody, scheduled court events
19 of this nature don't always run on schedule. We booked that I
20 would be testifying potentially last Friday. I was here last
21 week, I didn't do anything. If they are going to pay for that,
22 I am not going -- I am not going to jam a bill up. I spent a
23 couple of days here last week, I didn't do anything, and I had
24 to come back this week.

25 Q. So, last week -- and I get charging travel one time, but I

1 am trying to get a number basically or an estimate.

2 A. I said an estimate, somewhere around \$20,000. That is a
3 reasonable estimate.

4 Q. I am trying to get an estimate of an hour and a half of
5 testimony. If we have 200 times two, plus the hourly rate to
6 prepare, is it fair, testifying in this case for this jury not
7 relating to the prior money, you stand to make 5 to \$6,000?

8 A. To testify today, I will get paid \$2,000 whether I am here
9 for half an hour or nine hours, it is a flat rate. I have no
10 control over how long these things will take, I charge \$2,000.

11 Q. Plus \$2,000 for travel?

12 A. Not this time. I am sorry, I am tired and you are asking
13 me to do math. That is why I got into policing.

14 Q. What I am trying to get is this a \$6,000 opinion regardless
15 of when you are charging for the travel, 2,000, 2,000, and
16 testimony 2,000, \$6,000. Is that fair?

17 A. A day to get down here and a day to testify and day to get
18 back.

19 Q. Okay.

20 A. I am not being paid for my opinion, I am being paid for the
21 time I am giving up, just like you.

22 Q. I fully understand, yes, sir.

23 The -- how many times have you been retained -- well, how
24 many times have you been retained by this law firm?

25 A. You asked me that before, I think this is the fourth matter

1 I have done for them, might be the third, certainly not the
2 sixth or seventh.

3 Q. You couldn't give me an exact number then, and it was a
4 question I asked, and you said you think four times. And now,
5 I don't want to get caught up in the math again, but it was a
6 question I asked before. Were you not prepared for me to ask
7 it again?

8 A. I have done 250 cases, I have trial dates booked in the
9 next couple of weeks that I am getting prepared for. I don't
10 put into my memory something I could look up later because I
11 don't think it is a big deal.

12 Q. They are not an important enough client to you so you can't
13 tell what cases you have been retained on at what point,
14 business is that good?

15 A. It is three or four cases. If it is five, I would be
16 surprised, certainly not one or two. They have asked me to do
17 a number of cases for them.

18 Q. Do you know if the total billing exceeds a hundred thousand
19 dollars?

20 A. Pardon me?

21 Q. Do you know if it exceeds a hundred thousand?

22 A. No, it wouldn't exceed that.

23 Q. 20, 50, 50, a hundred?

24 A. It would be -- it would probably be between 20 and 50, I
25 would think.

1 Q. Okay. It is Elgin Security?

2 A. Elgin, a corporation.

3 Q. I understand. You originally trained security guards in
4 shopping malls?

5 A. That is what caused the company to be formed, one of my
6 former partners was a real estate manager of a very large
7 corporation that had shopping centers and they ended up being
8 sued successfully and said we need to take risk management
9 steps, could you help us. I never envisioned me sitting in a
10 courtroom in Florida.

11 Q. Certainly. And you mostly testify in civil cases for the
12 defense. Is that fair?

13 A. Um-m-m, I do a lot of defense work. I don't know that it
14 is mostly civil. I have done a lot of inquests and a fair
15 number of criminal trials, but it is fair that there is a large
16 portion that involves police defense.

17 But I have also testified against officers, officers who
18 lost their job, I told investigators that steps should be taken
19 to have events evaluated by prosecutors, and have participated
20 where officers have gone to jail, assisting the prosecution.
21 It is not a one-sided thing. I don't call people up asking for
22 cases.

23 Q. Those are criminal cases?

24 A. Some are criminal cases, yes.

25 Q. I want to get you some rest, I will have you answer yes or

1 no questions. Okay?

2 A. Yes.

3 Q. You have never been a sworn police officer in the United
4 States?

5 A. Correct.

6 Q. No formal training in the United States?

7 A. I don't think --

8 Q. Is that correct?

9 A. Academic training, no, I haven't been to university or
10 college.

11 Q. Certainly. Now, your course work on the police training
12 and on the United States Constitution has come from seminars
13 and talking with police officers, and meeting with police
14 officers?

15 A. Lawyers. The instruction came from fairly substantial
16 counsel at national meetings and national events, including the
17 International Association of Chiefs of Police. I also was
18 asked -- I was asked by -- on -- how do I say this correctly?
19 United States and Canada are entering into an agreement to
20 cross swear Federal officers to police in each other's
21 jurisdiction. An NCP officer would work with a patrol officer,
22 and when they are in the United States, American laws would
23 apply. When a Border Patrol person would be in Canada,
24 Canadian law would apply. I was asked to assist in the
25 discussions between the Department of Justice and our

1 Government to help people understand how similar the two
2 systems were.

3 Q. Great.

4 A. That is to some level how I have an understanding.

5 Q. Wonderful.

6 You have not been a law enforcement officer anywhere since
7 1995?

8 A. No, I had to give up my sworn statute to work in the
9 college.

10 Q. Never used deadly force while on the force?

11 A. Fortunately, I never had to shoot anybody.

12 Q. Never fired a live round at a human being?

13 A. Correct.

14 Q. We discussed this, or Mr. Jolly said I had my gee whiz
15 moment, you had to educate me about the Canadian law
16 enforcement system and regulating firearms in Canada. We
17 talked about it for awhile?

18 A. Yes, we are strict in Canada.

19 Q. What are the Federal requirements for you to have a
20 firearm?

21 A. You have to take a training course, criminal background
22 check, it takes a month or two to three months to get a
23 firearm, that is a handgun. You could get a rifle or shotgun,
24 a hunting rifle, if you have the -- what's called a personal
25 acquisition license. If you have a personal acquisition

1 license you can buy a rifle or shotgun simply. The handgun has
2 to go through the chief firearms officer, that could take a
3 month.

4 Q. Did the Kel-Tec have a small barrel?

5 A. It is a small barrel, a small slide. The Kel-Tec was
6 smaller than the guns the two deputies were carrying.

7 Q. Is it illegal to have a gun less than four inches in
8 Canada?

9 A. I have one, they are considered prohibited, you have to
10 have a special license to have them. Some guns are not
11 allowed, a .25 or .32, because there is no reason that you
12 would use it for target practice, they are very small guns,
13 very easy to conceal.

14 Q. Virtually no private concealed weapons carriers?

15 A. I am sorry?

16 Q. Concealed weapons carriers is not the thing that it is
17 here?

18 A. No.

19 Q. You are not supposed to have a firearm in your car if it
20 has bullets in it and it is locked up?

21 A. If you have a gun in your car it is not supposed to be
22 loaded, ammunition and pistol locked up separately and out of
23 sight, like in your trunk.

24 Q. And so, you would agree that creates a different series of
25 relationships between the American public and police officers

1 with regard to expectations related to firearms?

2 A. It can. Like we said before, there is a greater chance
3 that someone could have a firearm in their car lawfully during
4 a traffic stop in the United States as compared to having it in
5 Canada. Firearms are more common here in the U.S. than they
6 are back home as far as handguns.

7 Q. Did you inspect any of the firearms in this case?

8 A. No.

9 Q. You mentioned you testified in Utah. Was that Chapman
10 versus Trapper City?

11 A. No.

12 Q. Did you render an opinion in that case?

13 A. I wrote a report. That case settled.

14 Q. Do you know what happened to that report?

15 A. No.

16 Q. Okay. So, you did a site inspection in this case. Before
17 your deposition you did a site inspection?

18 A. We went to the site prior to deposition, yes.

19 Q. Me and Ms. Bryant were there?

20 A. There were two ladies there, there was a younger lady and
21 an older lady. One was Ms. Bryant, and the other one was Mr.
22 Hill's fiancée', I believe.

23 Q. This is the second time you have been in the room with Ms.
24 Bryant and the first time you have been in the room with Deputy
25 Newman. Is that fair?

1 A. I believe we met Ms. Bryant before, we didn't actually
2 formally meet, and the first time I met Deputy Newman was
3 today.

4 Q. We didn't in any way interfere with your investigation, did
5 we?

6 A. I can't make out what you are saying.

7 Q. We didn't interfere with your investigation?

8 A. Did you?

9 Q. Yes.

10 A. No.

11 Q. The evidence was preserved nearly like it was, even in the
12 photographs, even years later?

13 A. I can't make out what you are saying, you are too close.

14 Q. Do you know why -- how did Mr. Jolly --

15 A. He has a big booming voice.

16 Q. Let me boom. Is that better?

17 A. Just don't loom over the top of the microphone.

18 Q. I am also trying to save my voice for closing argument.

19 Let me see if we can fast forward, bear with me.

20 Do you recall ever demonstrating this at the scene, exactly
21 what you claim happened, did you ever lift the door with one
22 hand and --

23 A. Yes.

24 Q. Do you remember us talking about that in your deposition?

25 A. Yes.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 7

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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1 Q. In fact, we took photos and videos of you doing it?

2 A. You were outside, you had a camera, I don't know what you
3 took pictures of.

4 Q. Okay.

5 A. I was inside with the door closed and I had the door partly
6 closed and partly opened.

7 Q. Okay. Did you ask to play the stereo?

8 A. I am sorry?

9 Q. Did you ask to play the stereo?

10 A. No.

11 Q. You took no measurements?

12 A. I didn't need measurements, the measurements were taken
13 before I got there.

14 Q. No stopwatch?

15 A. I didn't need a stopwatch, there was nobody for me to time.

16 Q. Meters or gauges?

17 A. All the measurements I needed were taken during the
18 investigation, and your people took photographs as well and
19 measurements, and I got copies of those. I didn't see a need
20 to continue to take redundant measurements.

21 Q. Let me fast forward some. Could you step down, please, and
22 demonstrate what you know the facts to be insofar as Mr.
23 Hill's body mechanics at the time this happened?

24 A. Okay, clarify. That is a pretty broad statement.

25 Q. Certainly. You did this when you were on the stand, but

1 the stand was blocking you. I would like you to step down here
2 and show what you understand Mr. Hill's body mechanics were at
3 the time of this incident.

4 *THE WITNESS:* Is that okay, your Honor?

5 *THE COURT:* Yes, you may.

6 *THE WITNESS:* When I went to the scene, I wanted to
7 see what the garage door looked like when it was opened and
8 closed. I went to the scene and I opened it and closed it. It
9 binds, doesn't roll nice and smooth like other garage doors I
10 have seen, it is metal.

11 I looked to see if there is any evidence someone
12 backed a car against it. There is quite a bit of time between
13 when the event occurred --

14 *MR. PHILLIPS:* Your Honor, this is nonresponsive. I
15 asked him to recreate Mr. Hill's body mechanics.

16 *THE COURT:* Can I ask our witness if you'd stand where
17 counsel is so both our court reporter can better hear you and
18 the jury can hear you and see you. Thank you.

19 *THE WITNESS:* When I got there, the door bound, as I
20 pulled down on the door, my other hand wanted to come up at the
21 same time. It took effort to pull it down, your other hand
22 would come up like this. I said, okay, I can see how it could
23 play out.

24 *BY MR. PHILLIPS:*

25 *Q.* You can resume your seat.

1 When you recreated this up there, I want to make sure, is
2 it your understanding that the gun was raising as the door
3 passed it in a 90 degree fashion?

4 A. It could have. I don't know where the door would have
5 been -- the bottom of the door would have been relative to
6 where the gun was. If the door was all the way open and I
7 wanted to pull the door down with my left hand, I could feel
8 the tension in my right arm coming towards because it was not
9 easy to pull the garage door down, particularly on one side
10 where Mr. Hill was standing. He wasn't standing at the middle
11 of the door, he was to one side.

12 As I said before, it was awhile from the event. I wanted
13 to see if that is the way the door was or was it that way
14 because of somebody backing into it.

15 Q. I was asking about body mechanics as you understand through
16 Deputy Newman's and Deputy Lopez's testimony.

17 You had to rely on Deputy Newman and Deputy Lopez,
18 particularly Deputy Newman's rendition of where that gun was
19 exactly, correct?

20 A. He said -- yes.

21 Q. Where was it?

22 A. He said it was around Mr. Hill's hip.

23 Q. And pointed in the direction of Lopez?

24 A. Correct.

25 Q. Not at Lopez, in the direction of Lopez?

1 A. He was standing off to the side, he couldn't see exactly
2 where that weapon was pointed.

3 Q. Is this in the direction of people?

4 A. It is.

5 Q. Is this in the direction of people?

6 A. It can be.

7 Q. Is this in the direction of people?

8 A. My general direction.

9 Q. Is this in the direction of people?

10 A. Not really.

11 Q. Not unless they are under me?

12 A. Yes.

13 Q. If it is before this jury that this was the maximum
14 position, this, that Deputy Newman saw the gun, that is not
15 aimed at people, is it?

16 A. It is not at that particular time when you freeze frame it
17 like that, when the gun has been perpendicular to the seam of a
18 pair of trousers, and the gun comes up quickly towards a police
19 officer, at the time you could think about it and reflect. It
20 is difficult to expect objective reflex in the face of a rising
21 gun.

22 Q. Is this aggravated assault in America, do you know, with a
23 gun like this?

24 A. That is for the jury to decide.

25 Q. Well, you rendered one opinion.

1 A. But if you're asking for an opinion, which I think you are
2 --

3 Q. I am.

4 A. The gun was down and started to come up and be pointed
5 towards the police officer. If the officer waits to find out
6 what happens, you have to wait to see if any shots are being
7 fired. This event was over in about two seconds.

8 Q. Sure.

9 A. This event was over in about two seconds. That is the
10 unfortunate part of it. If it unfolded a lot slower it might
11 not have happened this way.

12 Q. I am trying to understand. I believe at your deposition we
13 were both under the understanding from all the transcripts this
14 was the -- raising in the direction of where the firearm was.

15 I think we were all in agreement, were we not?

16 A. That is my understanding.

17 Q. This is a different fact that you haven't even analyzed in
18 your reports?

19 A. I had no information that was the case.

20 Q. Exactly. You haven't been here for five days taking
21 testimony and taking evidence; fair?

22 A. Correct.

23 Q. Okay. Was that something that was prepared for you? Did
24 you meet with defense counsel before this?

25 A. I met with them this morning.

1 Q. Did they tell you Deputy Newman might have said it is here
2 now?

3 A. No.

4 Q. Do you know why that is important now?

5 MR. BRUCE JOLLY: I'm sorry, that is not a proper
6 question.

7 MR. PHILLIPS: I withdraw it.

8 BY MR. PHILLIPS:

9 Q. How does -- how does -- how does deputy -- how does Mr.
10 Hill get the gun -- is it easier to get a gun back in a pocket
11 when it is right here or right here?

12 A. I don't know. It wasn't tested.

13 Q. You didn't do any biomechanical testing?

14 A. No.

15 Q. If it happened, it would be the gun here, not here?

16 A. I don't understand.

17 Q. If it is based on the facts you had, that is when the gun
18 was right here. The gun was right here, not right here?

19 MR. BRUCE JOLLY: Objection, that is speculative.

20 THE WITNESS: So --

21 THE COURT: Wait just a minute, there is an objection.
22 Do you want to rephrase the question?

23 MR. PHILLIPS: I withdraw it, your Honor.

24 THE COURT: Okay.

25

1 BY MR. PHILLIPS:

2 Q. Use of force cannot be guesswork?

3 A. It is not supposed to be guesswork, correct.

4 Q. It is not based upon predicting the future moments from
5 now?

6 A. An officer is going to take action based on what has
7 already occurred and the movement will occur in the present
8 moment and the outcome is yet to be known.

9 Q. Are we in a hundred percent agreement an officer,
10 reasonably prudent officer, cannot assume the worst and use
11 lethal force based upon that assumption?

12 A. Um-m-m, I don't agree with that completely.

13 If they have reason to believe that lethal force is about
14 to be used, and the jury will decide whether that is reasonable
15 or not, they are allowed to use lethal force. It will depend
16 on the totality of the circumstances, actions of the
17 individual, context of the event, information the officer has
18 or doesn't have. That all has to be evaluated.

19 Q. A few more points.

20 I believe Mr. Jolly said when he started about -- something
21 about pointing a gun at a police officer.

22 Can we agree there has never been anybody saying a gun was
23 pointed at a police officer in this fact pattern?

24 A. It's my understanding it was pointed at Deputy Lopez.

25 Q. That would be a false epithet that doesn't belong here. It

1 was not pointed at a police officer.

2 A. I heard it was pointed towards Deputy Lopez.

3 Q. Did you get to listen to the CAD audio in addition to
4 reading what it said?

5 A. Yes.

6 Q. When Deputy Lopez pulls up and says, uh, address change,
7 can you hear the music?

8 A. I heard music in the background, I couldn't make out what
9 was being said. I don't recognize the tune, I am not familiar
10 with it, but there was music in the background.

11 Q. You said the deputies banged with their hands and not the
12 ASP?

13 A. I didn't say that -- I did. I said they initially banged
14 on it with their hands, but later Deputy Newman banged with the
15 baton, with the ASP.

16 Q. Deputy Newman testified he was afraid he was going to get
17 in trouble because he left marks on the garage door. Those are
18 marks you didn't see?

19 A. I didn't notice them.

20 Q. We talked about imminent, I think you used the term
21 imminent. Is a synonym for that immediate?

22 A. About to happen, next few moments.

23 Q. What is collateral damage?

24 A. Collateral damage is damage -- unintended damage to
25 something nearby, for example. So if you were to -- in

1 military terms, if you were to bomb a structure, collateral
2 damage would be to a structure next door.

3 Q. How does collateral damage correlate with opaque surfaces
4 or closed surfaces? Do you understand my question?

5 A. Not particularly.

6 Q. Do you know what I mean by a closed surface or closed
7 meeting, sort of like the garage door with the garage door
8 down?

9 A. Closed surface?

10 Q. You got that?

11 A. I never heard it that way.

12 Q. How would you describe it?

13 A. I don't -- you can't look down when you speak to me, sorry,
14 I don't hear very well.

15 Q. I am sorry. As a sniper --

16 *THE COURT:* If you want to come closer. You can do
17 that.

18 *BY MR. PHILLIPS:*

19 Q. As a sniper -- as a sniper, were you trained to shoot
20 through walls?

21 A. We could if you had to, it would depend on the
22 circumstances.

23 Q. Okay.

24 A. It would be unusual. I learned a long time ago to never
25 say never and avoid saying always.

1 Q. Never say never and avoid saying always?

2 A. Yes. There are circumstances -- there are times when
3 situations have to be responded to in the best manner possible.
4 You know, to say, for example, you would never use a taster on
5 a person who had a firearm, that is starting to evolve a little
6 bit.

7 Q. Let me try one. You would never use lethal force on
8 somebody with an empty hand?

9 A. That is not true. I could create a set of circumstances --
10 I don't need a weapon, I don't have a weapon, and I could
11 create a circumstance where officers use lethal force.

12 Q. Sure, sometimes the hands are a weapon.

13 In this case, if Mr. Hill didn't have a weapon in his hand,
14 we would agree lethal force would be entirely inappropriate?

15 A. In this case, if he didn't have a weapon, and all he was
16 doing is closing the door, yes.

17 Q. That would be a never?

18 A. That would be a never.

19 MR. PHILLIPS: Thank you.

20 THE COURT: Any redirect?

21 MR. BRUCE JOLLY: No, your Honor.

22 THE COURT: Okay, thank you very much, you may step
23 down.

24 All right, ladies and gentlemen, we are going to take
25 a 15-minute break. It is about 11:20, so we will be back at

1 about 35 minutes -- 25 minutes to 12:00.

2 What I am thinking might make the most sense is we
3 bring you back after the break, I go over the jury instructions
4 with you, which will probably bring us to about noon -- we will
5 try to time it so the lunch will be here when we take that
6 break, and then the attorneys will give closing arguments when
7 you come back.

8 I think we had the lunch delivered at 12:30, we might
9 want to get it earlier.

10 Same instructions, nothing has changed -- I am sorry,
11 let me ask. Does Defense have any other witnesses?

12 MS. BARRANCO: No.

13 THE COURT: Does Defense rest?

14 MS. BARRANCO: It does, your Honor.

15 THE COURT: Is the Plaintiff --

16 MR. PHILLIPS: No rebuttal, your Honor, we rest.

17 THE COURT: Now we can take our break.

18 We will see you back at 20 minutes to 12:00. Same
19 instructions, no discussing the case, no researching or
20 discussing the case with each other.

21 *(Thereupon, the jury leaves the courtroom.)*

22 *(Thereupon, a brief recess was taken.)*

23 THE COURT: All right. Do we have everyone here?
24 Everyone has the packet of jury instructions.

25 *(Thereupon, the jury returned to the courtroom).*

1 *THE COURT:* I'm sorry, you wanted to put something on
2 the record.

3 *MS. BARRANCO:* At this time the Defense would renew
4 their Rule 50(a) motion for judgment as a matter of law.

5 *THE COURT:* Any objection to the Court deferring on
6 that from the Defense?

7 *MS. BARRANCO:* No, your Honor.

8 *THE COURT:* Plaintiff?

9 *MR. PHILLIPS:* No.

10 *THE COURT:* You have a copy of the jury instructions
11 on the chairs and the verdict form.

12 I will tell you right now I did make a copy of the
13 verdict form for all of you, but that is only so you can follow
14 along with me.

15 Ultimately, the only verdict form that is going to be
16 filled out is the one I am holding. It will go back with you,
17 it is blue. The other ones there is so you can actually look
18 at what I am saying. One verdict form gets filled out by one
19 foreperson, it is blue, I am holding it right now. No other
20 verdict form gets filled out.

21 I will say this, too, so I don't forget. You don't
22 begin deliberating until everything is done -- first of all,
23 after I do jury instructions, we'll break for lunch, you can
24 eat lunch together in that room. Because you are in the room
25 nothing changes about the rule I have given you, still do not

1 discuss the case, research the case, talk to anybody about the
2 case, period.

3 Come back after lunch and hear the closing arguments
4 and only when all of the evidence goes back in can you begin
5 deliberating. You can pick your foreperson if you want while
6 you are waiting, but only when all of the evidence goes back in
7 will you begin deliberating.

8 You are close, but not there yet.

9 Here are the instructions, the Court's final jury
10 instructions.

11 Members of the jury: It is my duty to instruct you on
12 the rules of law that you must use in deciding this case. When
13 I have finished, you will go to the jury room and begin your
14 discussions, sometimes called deliberations.

15 Your decision must be based only on the evidence
16 presented here. You must not be influenced in any way by
17 either sympathy for or prejudice against anyone.

18 You must follow the law as I explain it, even if you
19 do not agree with the law, and you must follow all of my
20 instructions as a whole. You must not single out or disregard
21 any of the instructions on the law.

22 The fact that a Governmental entity or agency is
23 involved as a party must not affect your decision in any way.
24 A Governmental agency and all other persons stand equal before
25 the law and must be dealt with as equals in a court of justice.

1 When a Governmental agency is involved, of course, it
2 may act only through people as its employees; and, in general,
3 a Governmental agency is responsible under the law for the acts
4 and statements of its employees that are made within the scope
5 of their duties as employees of the Governmental agency.

6 As I said before, you must consider only the evidence
7 that I have admitted in the case. Evidence includes the
8 testimony of witnesses and the exhibits admitted. But,
9 anything the lawyers say is not evidence and isn't binding on
10 you.

11 You shouldn't assume from anything I have said that I
12 have any opinion about any factual issue in this case. Except
13 for my instructions to you on the law, you should disregard
14 anything I may have said during the trial in arriving at your
15 decision about the facts. Your own recollection and
16 interpretation of the evidence is what matters.

17 In considering the evidence you may use reasoning and
18 common sense to make decisions and reach conclusions. You
19 shouldn't be concerned about whether the evidence is direct or
20 circumstantial.

21 "Direct evidence" is the testimony of a person who
22 asserts that he or she has actual knowledge of a fact, such as
23 an eyewitness.

24 "Circumstantial evidence" is proof of a chain of facts
25 and circumstances that tend to prove or disprove a fact. There

1 is no legal difference in the weight you may give to either
2 direct or circumstantial evidence.

3 When I say you must consider all of the evidence, I
4 don't mean that you must accept all of the evidence as true or
5 accurate. You should decide whether you believe what each
6 witness had to say, and how important that testimony was. In
7 making that decision you may believe or disbelieve any witness,
8 in whole or in part.

9 The number of witnesses testifying concerning a
10 particular point doesn't necessarily matter.

11 To decide whether you believe any witness I suggest
12 that you ask yourself a few questions:

13 Did the witness impress you as one who was telling the
14 truth?

15 Did the witness have any particular reason not to tell
16 the truth?

17 Did the person have a personal interest in the outcome
18 of the case?

19 Did the witness seem to have a good memory?

20 Did the witness have the opportunity and ability to
21 accurately observe the things he or she testified about?

22 Did the witness appear to understand the questions
23 clearly and answer them directly?

24 Did the witness' testimony differ from other testimony
25 or other evidence?

1 You should also ask yourself whether there was
2 evidence that a witness testified falsely about an important
3 fact, and ask whether there was evidence that at some other
4 time a witness said or did something, or didn't say or do
5 something, that was different from the testimony the witness
6 gave during this trial.

7 To decide whether you believe a witness, you may
8 consider the fact that the witness has been convicted of a
9 felony or a crime involving dishonesty or a false statement.

10 Keep in mind that a simple mistake doesn't mean the
11 witness wasn't telling the truth as he or she remembers it.
12 People naturally tend to forget some things or remember them
13 inaccurately. So, if a witness misstated something, you must
14 decide whether it was because of an innocent lapse in memory or
15 an intentional deception. The significance of your decision
16 may depend on whether the misstatement is about an important
17 fact or about an unimportant detail.

18 When scientific, technical or other specialized
19 knowledge might be helpful, a person who has special training
20 or experience in that field is allowed to state an opinion
21 about the matter. But that doesn't mean you must accept the
22 witness' opinion. As with any other witness' testimony, you
23 must decide for yourself whether to rely upon the opinion.

24 When a witness is being paid for reviewing and
25 testifying concerning the evidence, you may consider the

1 possibility of bias and should view with caution the testimony
2 of such witness where court testimony is given with
3 regularity and represents a significant portion of the witness'
4 income.

5 In this case, it is the responsibility of the
6 Plaintiff to prove every essential part of her claims by a
7 "preponderance of the evidence." This is sometimes called the
8 "burden of proof" or the "burden of persuasion."

9 A "preponderance of the evidence" simply means an
10 amount of evidence that is enough to persuade you that the
11 Plaintiff's claim is more likely true than not true. If
12 the proof fails to establish any essential part of a claim or
13 contention by a preponderance of the evidence, you should --
14 you should -- oh, there is something missing.

15 Maybe it is right. What number is it?

16 *MR. BRUCE JOLLY:* 371.

17 *THE COURT:* You should find against the Plaintiff. Do
18 you all agree?

19 *MR. BRUCE JOLLY:* Defense, yes.

20 *MS. HINES:* Yes, your Honor, Plaintiff agrees.

21 *THE COURT:* Take your pencils there, it should read if
22 the proof fails to establish any essential part of a claim or
23 contention by a preponderance of the evidence, comma, you
24 should find -- cross out and, and put in the word find -- find
25 against the Plaintiff.

1 When more than one claim is involved, you should
2 consider each claim separately. In deciding whether any fact
3 is proved by a preponderance of the evidence, you may consider
4 the testimony of all of the witnesses, regardless of who may
5 have called them, and all of the exhibits received in evidence,
6 regardless of who may have produced them.

7 If the proof fails to establish any essential part of
8 the Plaintiff's claims by a preponderance of the evidence, you
9 should find for the Defendant as to that claim.

10 Of course, the fact that I have given you instructions
11 concerning the issue of Plaintiff's damages should not be
12 interpreted in any way as an indication that I believe the
13 Plaintiff should, or should not, prevail in this case.

14 Your verdict must be unanimous, in other words, you
15 must all agree. Your deliberations are secret, and you will
16 never have to explain your verdict to anyone.

17 Each of you must decide the case for yourself, but only
18 after fully considering the evidence with the other jurors. So
19 you must discuss the case with one another and try to reach an
20 agreement. While you are discussing the case, don't hesitate
21 to reexamine your own opinion and change your mind if you
22 become convinced that you were wrong. But don't give up your
23 honest beliefs just because others think differently or because
24 you simply want to get the case over with.

25 Remember that, in a very real way, you are judges,

1 judges of the facts. Your only interest is to seek the
2 evidence from the evidence in the case.

3 In this case, Viola Bryant, as personal representative
4 of the estate of Gregory Vaughn Hill, Jr. claims that Deputy
5 Christopher Newman, while acting under color of law,
6 intentionally committed acts that violated Gregory Vaughn Hill,
7 Jr.'s right to be free from the use of excessive or
8 unreasonable force.

9 Under the Fourth Amendment to the United States
10 Constitution, every person has the right not to be subjected
11 to excessive or unreasonable force.

12 To succeed on this claim, Plaintiff viola Bryant must
13 prove each of the following facts by a preponderance of the
14 evidence:

15 First, that Christopher Newman intentionally committed
16 acts that violated Gregory Vaughn Hill, Jr.'s Constitutional
17 right not to be subjected to excessive or unreasonable force;

18 Second, that Christopher Newman's conduct caused
19 Gregory Vaughn Hill, Jr.'s injuries;

20 And third, that Christopher Newman acted under color
21 of law.

22 The parties have agreed that Christopher Newman acted
23 under color of law, so you should accept that as a proven fact.

24 Plaintiff Viola Bryant claims that Christopher Newman
25 used excessive force against Gregory Vaughn Hill, Jr. You must

1 decide whether the force Christopher Newman used in this case
2 was excessive or unreasonable based on the degree of force a
3 reasonable and prudent law enforcement officer would have
4 applied on the scene under the same circumstances. Whether a
5 specific use of force is excessive or unreasonable depends on
6 factors such as the crime's severity, whether a suspect poses
7 an immediate violent threat to others, whether the
8 suspect resists or flees, the need for application of force,
9 the relationship between the need for force and the amount of
10 force used, and the extent of the injury inflicted.

11 Christopher Newman's underlying intent or motivation
12 is irrelevant.

13 For the second element, Christopher Newman's conduct
14 caused Gregory Vaughn Hill, Jr.'s injuries if Gregory Vaughn
15 Hill, Jr. would not have been injured without Christopher
16 Newman's conduct, and the injuries were a reasonably
17 foreseeable consequence of Christopher Newman's conduct.

18 If you find Viola Bryant has proved each fact that she
19 must prove, you must decide the issue of her damages. If you
20 find that Viola Bryant has not proved each of these facts, then
21 you must find for Christopher Newman.

22 You should assess the monetary amount that a
23 preponderance of the evidence justifies as full and reasonable
24 compensation for the damages of the survivors of Gregory Vaughn
25 Hill, Jr.'s estate, no more, no less. You must not impose or

1 increase these compensatory damages to punish or penalize the
2 Defendants. And you must not base these compensatory damages
3 on speculation or guesswork.

4 Plaintiff does not have to introduce evidence of a
5 monetary value for intangible things like physical pain. You
6 must determine what amount will fairly compensate the survivors
7 for those claims. There is no exact standard to apply, but the
8 award should be fair in light of the evidence.

9 You should consider the following elements of damage,
10 to the extent you find that Viola Bryant has proved them by a
11 preponderance of the evidence, and no others:

12 A, funeral expenses that Viola Bryant, as personal
13 representative of the estate of Gregory Vaughn Hill, Jr.
14 incurred;

15 B, minor child D.H.'s loss of parental
16 companionship -- you note we didn't include the name of the
17 children, but you heard them testify, so the initials are used
18 in place of their names -- instruction and guidance and D.H.'s
19 mental pain and suffering from the date of January 14, 2014,
20 and in the future. And D.H. was the oldest child, just for
21 recollection purposes.

22 C, minor child A.H.'s loss of parental companionship,
23 instruction and guidance and A.H.'s mental pain and suffering
24 from the date of January 14, 2014, and in the future. And that
25 is the younger of the two female minor children.

1 And D, minor child G.H.'s, the young boy, loss of
2 parental companionship, instruction and guidance and G.H.'s
3 mental pain and suffering from the date of January 14, 2014,
4 and in the future.

5 Nominal damages: You may award one dollar in nominal
6 damages and no compensatory damages if you find that:

7 A, Plaintiff has submitted no credible evidence of
8 injury;

9 Or B, Plaintiff's injuries have no monetary value or
10 are not quantifiable with any reasonable certainty;

11 Or C, Defendant Christopher Newman used both
12 justifiable and unjustifiable force against Gregory Vaughn
13 Hill, Jr. and it is entirely unclear whether Gregory Vaughn
14 Hill, Jr.'s injuries resulted from the use of justifiable or
15 unjustifiable force.

16 An additional claim for your consideration is the
17 Plaintiff's negligence claim against Ken Mascara, in his
18 official capacity as Sheriff of St. Lucie County, Florida.
19 This is not a claim against the Sheriff personally, but is a
20 claim against the Office of the Sheriff, which Ken Mascara
21 currently holds.

22 To prevail on this claim, the Plaintiff must prove
23 each of the following elements by a preponderance of the
24 evidence:

25 First, that Defendant Newman owed a duty to Gregory

1 Vaughn Hill, Jr. to refrain from -- sorry. First, that the
2 Defendant Newman owed a duty to Gregory Vaughn Hill, Jr. to
3 refrain from firing in an unsafe or unreasonable manner and to
4 act as a reasonable law enforcement officer under same or
5 similar circumstances;

6 Second, that Defendant Newman breached the
7 aforementioned duty in the following ways:

8 A, by reasonably -- excuse me -- by unreasonably
9 firing his firearm in the direction of Gregory Vaughn Hill, Jr;

10 B, by unreasonably firing his firearm when it was
11 apparent that no forcible felony was being committed or
12 life-threatening situation existed.

13 Third, that the injury to Gregory Vaughn Hill, Jr. was
14 legally caused by Christopher Newman's breach;

15 And fourth, that Gregory Vaughn Hill, Jr. suffered
16 damages as a result of that injury.

17 An additional claim for your consideration is the
18 Plaintiff's negligence claim against Ken Mascara, in his
19 official capacity as Sheriff of St. Lucie County, Florida.
20 This is not a claim against the Sheriff personally, but is a
21 claim against the Office of the Sheriff, which Ken Mascara
22 currently holds.

23 Negligence is a failure to use reasonable care which
24 is care a reasonable person would -- reasonably careful person
25 would not do under like circumstances, or failing to do

1 something a reasonably careful person would do under like
2 circumstances.

3 Negligence is a legal cause of loss if it directly and
4 in natural and continuous sequence produces or contributes
5 substantially to producing such a loss, so that it can
6 reasonably be said that, but for the negligence, the loss would
7 not have occurred.

8 In order to be regarded as a legal cause of injury or
9 damage, negligence need not be the only cause. Negligence may
10 be a legal cause of injury or damage even though it operates in
11 combination with some other cause if the negligence contributes
12 substantially to producing such injury or damage.

13 The Sheriff is responsible for any negligence of
14 Deputy Newman in the alleged failure to employ lethal force in
15 a reasonable manner.

16 If the preponderance of the evidence does not support
17 the Plaintiff's claim, your verdict should be for the Sheriff.
18 If, however, the preponderance of the evidence supports the
19 Plaintiff's claim, then you shall consider the defense raised
20 by the Sheriff.

21 On the first affirmative defense, the issue for you to
22 decide is whether Gregory Vaughn Hill, Jr. was under the
23 influence of any alcoholic beverage to the extent that his
24 normal faculties were impaired, or that he had a blood or
25 breath alcohol level of 0.08 percent or higher; and whether as

1 a result of the influence of such alcoholic beverage or drug
2 Gregory Vaughn Hill, Jr. was more than 50 percent at fault for
3 his own harm.

4 "Normal faculties" include but not limited to the
5 ability to see, hear, walk, talk, judge distances,
6 make judgments, act in emergencies and, in general, to normally
7 perform the many mental and physical acts of our daily lives.

8 The second affirmative defense is whether Gregory
9 Vaughn Hill, Jr. was himself negligent during the incident and,
10 if so, whether that negligence was a contributing legal cause
11 of injury or damage to Gregory Vaughn Hill, Jr.

12 If the preponderance of the evidence does not support
13 the Sheriff's affirmative defense and the preponderance of the
14 evidence does support Plaintiff's claim, then your verdict
15 should be for Plaintiff. If, however, the preponderance of the
16 evidence shows that Gregory Vaughn Hill, Jr. was negligent and
17 that his negligence was a legal cause of loss sustained by
18 Gregory Vaughn Hill, Jr., you should decide and write on the
19 verdict form what percentage of the total negligence of all
20 parties to this action was caused by each of them.

21 I previously instructed you regarding the question of
22 damages, should you find in favor of the Plaintiff on her
23 Section 1983 excessive force claim. The same instructions
24 apply with equal force to your consideration of damages for the
25 claim of negligence.

1 In this case, the Plaintiff, Viola Bryant, claims that
2 Defendant Ken Mascara, in his official capacity as Sheriff of
3 St. Lucie County, caused the wrongful death of Gregory Vaughn
4 Hill, Jr. under Florida State Law. To establish this claim,
5 Plaintiff must prove the following elements by a preponderance
6 of the evidence:

7 One, the conduct of the Defendant amounted to
8 negligence;

9 Two, that conduct caused the death of Gregory Vaughn
10 Hill, Jr., and;

11 The conduct would have entitled Gregory Vaughn Hill,
12 Jr. to recover damages if he had not died.

13 If your verdict is for the Defendants, you will not
14 consider the matter of damages. But if the greater weight of
15 the evidence supports Viola Bryant's claims, you should
16 determine and write on the verdict form in dollars the total
17 amount of damage which the greater weight of the evidence shows
18 the Estate of Gregory Vaughn Hill, Jr. and his survivors
19 sustained as a result of his injury and death, including any
20 damages that the estate and the survivors are reasonably
21 certain to incur or experience in the future.

22 In determining the damages recoverable on behalf of
23 Gregory Vaughn Hill, Jr.'s estate, you shall consider the
24 following elements:

25 Funeral expenses: Funeral expenses due to Gregory

1 Vaughn Hill, Jr.'s death which were paid by or on behalf of
2 Gregory Vaughn Hill Jr. by one other than a survivor.

3 Elements for surviving children: In determining any
4 damages to be awarded Gregory Vaughn Hill, Jr.'s personal
5 representative for the benefit of the surviving children, you
6 shall consider certain additional elements of damage for which
7 there is no exact standard for fixing the compensation to be
8 awarded. Any such award should be fair and just in light of
9 the evidence regarding the following elements:

10 Damages by surviving children: The loss by D.H., A.H.
11 and G.H. of parental companionship, instruction and guidance,
12 and their mental pain and suffering as a result of Gregory
13 Vaughn Hill, Jr.'s injury and death.

14 In determining the duration of those losses, you may
15 consider the joint life expectancies of Gregory Vaughn Hill,
16 Jr. and D.H., A.H. and G.H. together with the other evidence in
17 the case.

18 Elements for survivors, including surviving spouse,
19 child, or parents of child. In determining any damages to be
20 awarded Gregory Vaughn Hill, Jr.'s personal representative for
21 the benefit of each of Gregory Vaughn Hill, Jr.'s survivors,
22 you shall consider the following elements:

23 Lost support and services:

24 The survivors, D.H., A.H. and G.H., loss by reason of
25 Gregory Vaughn Hill, Jr.'s injury and death of Gregory Vaughn

1 Hill, Jr.'s support and services. In determining the duration
2 of any future loss, you may consider the joint life expectancy
3 of the survivors and Gregory Vaughn Hill, Jr. in the period of
4 minority ending ay age 25 of a healthy minor child.

5 In evaluating past and future loss of support
6 services, you shall consider the survivor's relationship to
7 Gregory Vaughn Hill, Jr. and the replacement value of Gregory
8 Vaughn Hill, Jr.'s services to the survivors. "Support"
9 includes contributions in kind as well as sums of money.
10 "Services" means tasks regularly performed by Gregory Vaughn
11 Hill, Jr. for a survivor that will be a necessary expense to
12 the survivor because of Gregory Vaughn Hill, Jr.'s death.

13 Medical and funeral expenses due to Gregory Vaughn
14 Hill, Jr.'s paid by any survivor.

15 Any damages that you find were sustained by Gregory
16 Vaughn Hill, Jr.'s estate and by D.H., A.H. and G.H. shall be
17 separately stated in your verdict.

18 Let's see. Um-m-m, this is the mortality tables,
19 personal representative claiming damages for benefit of
20 decedent's estate.

21 Was that to be included or not?

22 *MR. BRUCE JOLLY:* Yes.

23 *THE COURT:* Okay. In determining how long Gregory
24 Vaughn Hill, Jr. would have lived had he lived out his normal
25 life, you may consider his life expectancy at the time of his

1 death. The mortality tables received in evidence may be
2 considered in determining how long he may be expected to
3 live. Mortality tables are not binding on you, but may be
4 considered together with other evidence in the case bearing on
5 his health, age, and physical condition before his death in
6 determining the probable length of his life.

7 B, Personal representative claiming damages for loss
8 to survivor:

9 In determining the duration of any future loss
10 sustained by D.H., A.H. and G.H. by reason of the death of
11 Gregory Vaughn Hill, Jr., you may consider the joint life
12 expectancy of D.H., A.H. and G.H., and Gregory Vaughn Hill, Jr.
13 The joint life expectancy is that period of time when both the
14 decedent and a survivor would have remained alive. The
15 mortality tables received in evidence may be considered,
16 together with the other evidence in the case, in determining
17 how long each may have been expected to live.

18 When you get to the jury room, choose one of your
19 members to act as foreperson. The foreperson will direct your
20 deliberations and speak for you in court.

21 A verdict form has been prepared for your convenience.
22 Go to the next page.

23 Civil rights, special interrogatories, 42 U.S.C.
24 Section 1983 claim against Christopher Newman.

25 Special interrogatories to the jury.

1 Do you find from a preponderance of the evidence:
2 1, that Defendant Christopher Newman intentionally
3 committed acts that violated Gregory Vaughn Hill's right to be
4 free from excessive force; yes or no?

5 If your answer is no, this ends your deliberation on
6 this claim. You should move on to answer the questions on the
7 page "Negligence claim against Sheriff Ken Mascara, in his
8 official capacity as Sheriff of St. Lucie County."

9 If your answer is yes, go to the next question.

10 2, that Defendant Christopher Newman's conduct caused
11 Gregory Vaughn Hill, Jr.'s injuries; yes or no?

12 If your answer is no, this ends your deliberations on
13 this claim. You should move on to answer the questions on the
14 page "Negligence claim against Sheriff Ken Mascara, in his
15 official capacity as Sheriff of St. Lucie County."

16 If your answer is yes, go to the next question.

17 3 a, that the Estate of Gregory Vaughn Hill, Jr.
18 should be awarded compensatory damages against Defendant
19 Christopher Newman; yes or no?

20 If your answer is yes, in what amount for?

21 A, funeral expenses that Viola Bryant, as personal
22 representative of the estate Gregory Vaughn Hill, Jr. incurred;

23 B, Minor child D.H.'s loss of parental companionship,
24 instruction and guidance, and D.H.'s mental pain and suffering
25 from the date of January 14, 2014, and in the future;

1 C, Minor child A.H.'s loss of parental companionship,
2 instruction, and guidance and A.H.'s mental pain and suffering
3 from the date of January 14, 2014, and in the future.

4 D, minor child G.H.'s loss of parental companionship,
5 instruction and guidance and G.H.'s mental pain and suffering
6 from the date of January 14, 2014, and in the future.

7 3 b, that the estate of Gregory Vaughn Hill, Jr.
8 should be awarded nominal damages against Defendant Christopher
9 Newman; yes or no?

10 If your answer is yes, in what amount?

11 Please proceed to answer the questions on the page
12 "Negligence claim against Sheriff Ken Mascara, in his official
13 capacity as Sheriff of St. Lucie County."

14 Negligence claim against Sheriff Ken Mascara, in his
15 official capacity as Sheriff of St. Lucie County.

16 1. Was there negligence on the part of Sheriff Ken
17 Mascara, in his official capacity as Sheriff of St. Lucie
18 County, through his deputy Christopher Newman, which was a
19 legal cause of Gregory Vaughn Hill, Jr.'s injuries; yes or no?

20 If your answer is no, this ends your deliberations on
21 this claim. Please sign and date the form. If your answer is
22 yes, please answer question 2.

23 2. Did the Defendant Christopher Newman act in bad
24 faith or with malicious purpose or in a manner exhibiting
25 wanton and willful disregard of and human rights, safety or

1 property; yes or no?

2 Please answer question 3.

3 3. Was there negligence on the part of Gregory Vaughn
4 Hill, Jr. which was a legal cause of his injuries; yes or no?

5 Please answer question 4.

6 4. Was Gregory Vaughn Hill, Jr. under the influence
7 of alcoholic beverages to the extent that his normal faculties
8 were impaired and that as a result of the influence of such
9 alcoholic beverage, Gregory Vaughn Hill, Jr. was more than
10 50 percent at fault for this incident and his resulting
11 injuries; yes or no?

12 Please answer question 5.

13 5. State the percentage of any negligence which was a
14 legal cause of Gregory Vaughn Hill, Jr.'s injuries that you
15 charge to Sheriff Ken Mascara, in his official capacity as
16 Sheriff of St. Lucie County, and there is a space with a
17 percentage.

18 Gregory Vaughn Hill, Jr. and a space with a
19 percentage.

20 Total must be one hundred percent.

21 Please answer question 6.

22 In determining the amount of damages, do not make any
23 reduction because of the negligence, if any, of Gregory Vaughn
24 Hill, Jr. If you find that Gregory Vaughn Hill, Jr. was
25 negligent, the Court in entering judgment will make an

1 appropriate reduction in the damages awarded.

2 If you awarded damages against Defendant Christopher
3 Newman on the 42 U.S.C., Section 1983 claim, you should write
4 the same damages amount below. Plaintiff will not be able to
5 double recover, so do not split the damages between the two
6 Defendants.

7 If you did not award damages against Defendant
8 Christopher Newman on the 1983 claim, proceed to consider
9 damages against Sheriff Ken Mascara in his official capacity as
10 Sheriff of St. Lucie County.

11 6. What is the total amount of damages sustained by
12 the Estate of Gregory Vaughn Hill, Jr.?

13 A, funeral expenses that Viola Bryant, as personal
14 representative of the estate of Gregory Vaughn Hill, Jr.,
15 incurred.

16 B, minor child D.H.'s loss of parental companionship,
17 instruction and guidance, and D.H.'s mental pain and suffering
18 from the date of January 14, 2014, and in the future.

19 C, minor child A.H.'s loss of parental companionship,
20 instruction and guidance, and A.H.'s mental pain and suffering
21 from the date of January, 14, 2014, and in the future.

22 D, minor child G.H.'s loss of parental companionship,
23 instruction and guidance, and G.H.'s mental pain and suffering
24 from the date of January 14, 2014, and in the future.

25 And it says please sign and date this form. So say we

1 all, a place to be dated and signed by the foreperson.

2 Going back to the instruction that says election of
3 foreperson, explanation of verdict, let me finish reading that.

4 Take the verdict form with you to the jury room. When
5 you have all agreed on a verdict, your foreperson must fill in
6 the form, sign it and date it. Then you will return it to the
7 courtroom. If you wish to communicate with me at any time,
8 please write down your message or question and give it to the
9 Court security officer. The Court security officer will bring
10 it to me and I will respond as promptly as possible either in
11 writing or by talking to you in the courtroom.

12 Please understand that I may have to talk to the
13 lawyers and the parties before I respond to your question or
14 message, so you should be patient as you await my response. I
15 caution you not to tell me how many jurors have voted one way
16 or the other at that time. That type of information should
17 remain in the jury room and not be shared with anyone,
18 including me, in your note or question.

19 How that works practically, if there is a question for
20 whatever reason, write the question down on a piece of paper in
21 your notepad, the foreperson can date and sign it, knock on the
22 door, the security officer will take the note and give it to
23 me, and I will discuss it with the attorneys. At no time do I
24 want to know about your deliberations, I just want to know what
25 the question is.

1 Excuse me for a minute.

2 Okay, at this point, again, just to go over the
3 sequence of events, your food has arrived, I have word of that.

4 What I would say is that you leave your jury
5 instructions on your chair because you don't need them back
6 there, you are not going to discuss them back there, we are
7 taking a lunch break. I think you can leave your notepads on
8 your chair, too. We will have the lunch break, it will be a
9 half hour.

10 It is 12:18. At about ten minutes to 1:00 -- it is
11 possible it could be one o'clock quite honestly, I do have to
12 go over one matter with the attorneys right now.

13 Somewhere a few minutes to one o'clock we will bring
14 you back in. You are not to talk about the case. I know it
15 may sound odd, you are going to be in the room where you are
16 deliberating. Talk about what movies you are going to see this
17 weekend or what you did last weekend, nothing about the case,
18 no research, no viewing of any media. It's very, very
19 important.

20 We will bring you back out and that is when the
21 attorneys will give their closing arguments, and we will send
22 you back to deliberate with the evidence.

23 From the Plaintiff, did the Court give the
24 instructions as discussed in the conference?

25 *MS. HINES:* Yes, your Honor.

1 THE COURT: Are there any objections that have not
2 already been made as a matter of record?

3 MS. HINES: No, your Honor.

4 THE COURT: Defense, has the Court read the
5 instructions discussed in the conference?

6 MR. BRUCE JOLLY: Yes.

7 THE COURT: Are there any objections that have not
8 been made on the record?

9 MR. BRUCE JOLLY: No, your Honor.

10 THE COURT: All right. We can let the jurors go to
11 lunch.

12 (Thereupon, the jury leaves the courtroom.)

13 THE COURT: One thing occurred to me, there is no
14 instruction on malicious and willful. It occurred to me that
15 there should be because everything else is defined.

16 And so I have asked Eleanor to look into whether there
17 is a state -- I first ask your opinion, do you believe there
18 should be an instruction? And if so, do you know what it is?
19 Is there a state instruction that describes that?

20 Let me let you be heard on that.

21 MS. HINES: Your Honor, we would have no objection to
22 including a definition, and I think that is important as well
23 given, I think it was in our last charge conference, the
24 extensive discussion about the language of 728.68.

25 THE COURT: And from the Defense? Because we can do

1 it since they are coming back. You haven't given your closing,
2 I caught it in time, if we thought we needed it, I can give it
3 when they come back.

4 What do you think?

5 *MR. BRUCE JOLLY:* There is no standard. We have in
6 the past when this has come up kind of made one up defining
7 malicious, willful and wanton.

8 *THE COURT:* You don't think there is a definition of
9 malicious and willful in the state? Let's start with state, do
10 you think maybe it is under punitive damages?

11 *MR. BRUCE JOLLY:* I do. I am not sure.

12 *THE COURT:* Punitive damages, it defines gross
13 negligence, those are not the --

14 *MR. PHILLIPS:* Wanton in Florida, in state law is way
15 up there.

16 *THE COURT:* Those are the terms in punitive damages.
17 Where else would bad faith, malicious, willful and wanton come
18 up? It is not under any of the wrongful death damages? No, we
19 have gone through all of those.

20 If you want to see if you can -- I am trying to -- I
21 could also try to find a case.

22 I will give you time to look here. I want to be able
23 to give you your lunch break. If you agree that an instruction
24 should be given, I want to give it to them as soon as they come
25 back so you can include that as part of your -- under

1 insurance, there is one for punitive damages, insurer's bad
2 faith, there is an instruction on punitive damages.

3 Punitive damages are warranted if you find the acts
4 give action to -- the acts show reckless disregard -- it does
5 not define what willful, wanton and malicious is, only defines
6 what clear and convincing evidence is.

7 I will check the Federal real quick.

8 *MR. PHILLIPS:* The place where I see it is worker's
9 comp immunity.

10 *THE COURT:* Is there no 11th Circuit punitive damage
11 instruction?

12 *MR. GREGG JOLLY:* Your Honor, we have people in the
13 office looking.

14 *THE COURT:* Okay. There is case law that talks about
15 what willful and wanton conduct is. Willful conduct is willful
16 injury done intentionally or the act committed under
17 circumstances such as the failure of knowledge of impending --
18 failure to discover the danger of recklessness and carelessness
19 whether it could have been discovered by the exercise of
20 ordinary care, or something along the lines of acting
21 consciously or disregard of when the Defendant is aware of her
22 conduct and aware of her knowledge of existing circumstances
23 and conditions and conduct that would result in injury.

24 Do you agree maybe the research for Florida case
25 law -- I was looking at cases not in Florida, but I would say

1 it is similar.

2 If we have a clear definition that really didn't seem
3 debatable, it probably is consistent in the case law, I would
4 think of wanton and willful conduct -- I don't think we will
5 find something for bad faith, malicious and in the manner of
6 wanton and willful.

7 If we define wanton and willful, don't you think that
8 would be helpful?

9 Why don't you see what you can find. We will keep
10 looking, and what I will do is, I would like to give, if you
11 agree, one additional instruction on that so they are guided by
12 it, and we will make a copy for all of them, but we'll first
13 have everyone agree to it.

14 So, with that, why don't we come back -- I want to
15 give you time to eat your lunch -- at one o'clock and come back
16 with what you have, and we will have to agree on it and make
17 copies, it won't be hard, and just give it to them.

18 Does everybody agree there should be an instruction on
19 that?

20 MS. HINES: Yes, your Honor.

21 MS. BARRANCO: Yes, your Honor.

22 THE COURT: All right.

23 *(Thereupon, a short recess was taken.)*

24 THE COURT: All right. So, the instruction that has
25 been distributed is as follows: Bad faith, malice and wanton

1 and willful disregard describe conduct much more reprehensible
2 and unacceptable than mere intentional conduct. Bad faith has
3 been equated with actual malice. Actual malice requires proof
4 of evil intent or motive. Wanton and willful means worse than
5 gross negligence and is the equivalent of reckless conduct.

6 Is that acceptable to read to the jury? It comes from
7 case law and in particular other places, there is a Southern
8 District of Florida case, Alexander versus Darlor, case number
9 16-14422, set forth in an order on cross motions for summary
10 judgment at Docket Entry 57.

11 The purpose would be because we have a verdict form
12 with question number 2 on the negligence claim that uses the
13 words bad faith, malicious purpose, wanton and willful, but
14 there was no instruction defining these terms.

15 Is it acceptable to give that instruction to the jury
16 from the Plaintiff?

17 *MR. PHILLIPS:* Yes.

18 *THE COURT:* From Defense?

19 *MR. BRUCE JOLLY:* Yes.

20 *THE COURT:* Is it acceptable I tell them the Court had
21 not given them an instruction and point them to that verdict
22 question, or do you simply want me to say this was an
23 additional instruction that the Court is adding that goes with
24 the packet?

25 *MR. PHILLIPS:* No problem, your Honor.

1 MR. BRUCE JOLLY: It was a either/or. We do not have
2 an objection as to which you do.

3 THE COURT: All right. I am going to have them come
4 back out and say that we have added one additional instruction.
5 Eleanor is putting it there now. I will read it like I did the
6 other instructions.

7 I want to go over this one more time to make sure
8 everyone is in agreement.

9 Everyone is in agreement that the issue of the
10 special -- where is the copy of that factual interrogatory --
11 what is it called, factual interrogatory?

12 The factual interrogatory questions, Plaintiff is in
13 agreement that is bifurcated from the verdict form, correct?

14 MR. PHILLIPS: Yes.

15 THE COURT: Defense, correct?

16 MR. BRUCE JOLLY: Yes, your Honor.

17 THE COURT: When the jury begins deliberating we'll
18 further the discussion about the questions that are on that
19 special interrogatory and hopefully come to a consensus on
20 those questions, and then what, if any, instruction you propose
21 the Court gives in conjunction with those interrogatory
22 questions and how much time, if any, you need to argue anything
23 in this bifurcated process.

24 Acceptable to the Plaintiff?

25 MR. PHILLIPS: Yes.

1 *THE COURT:* Defendant?

2 *MR. BRUCE JOLLY:* You are literally going to bifurcate
3 it with new argument?

4 *THE COURT:* Well, counsel had requested that you be
5 able to make some closing remarks in your argument, closing
6 argument, that relate only to the special interrogatory
7 questions.

8 Of course, I am sure generally you are going to be
9 covering it in your closing arguments, but Ms. Barranco asked
10 for additional argument. I don't think Plaintiff objected. I
11 will allow both sides to do that if that is what they want.
12 Okay?

13 *MS. BARRANCO:* Yes, thank you, your Honor.

14 *MR. PHILLIPS:* Yes.

15 *THE COURT:* We will bring the jury in, I will read the
16 instruction and you will go to your closing.

17 What kind of notice do you want?

18 Plaintiff has asked for 90 minutes. How are you
19 dividing your time?

20 *MR. PHILLIPS:* 60 and 30.

21 *THE COURT:* What kind of notice?

22 *MR. PHILLIPS:* 50. If you give me a ten-minute
23 warning, I will go when I go and take it from the back end.

24 *THE COURT:* You want a 50 minute warning?

25 *MR. PHILLIPS:* 50 minutes and 20 minutes later if

1 possible.

2 *THE COURT:* Okay.

3 What kind of warning does Defense want?

4 *MS. BARRANCO:* With ten minutes left, your Honor.

5 *THE COURT:* Of the 90?

6 *MS. BARRANCO:* Yes.

7 (Thereupon, the jury returned to the courtroom.)

8 *THE COURT:* Welcome back, everyone, you may be seated.

9 There is one additional instruction I put on your
10 chair, I neglected to give that to you, it is part of the jury
11 instruction packet.

12 It says, bad faith, malice and wanton and willful
13 disregard describe conduct much more reprehensible and
14 unacceptable than mere intentional conduct. Bad faith has been
15 equated with actual malice. Actual malice requires proof of
16 evil intent or motive. Wanton and willful means worse than
17 gross negligence and is the equivalent of reckless conduct.

18 So, with that, I am going to turn it over to the
19 Plaintiff for closing argument.

20 *MR. PHILLIPS:* Thank you, your Honor. One last time,
21 may it please the Court.

22 Ladies and gentlemen of the jury, law enforcement is
23 required to abide by the freedoms protected by the
24 Constitution, the Bill of Rights and the Eighth Amendment.

25 If law enforcement does not, even for an instant, and

1 the case results in injury or death, they are responsible for
2 the damages caused. Those were my first words after the jury
3 was picked.

4 We started Thursday talking a little bit about the
5 Constitution and justice and how the jury system is the heart
6 of resolving those disputes, and you guys have had five days on
7 the job, long days, 31 witnesses. Fantastic work. I also
8 promised that I would do this with civility and grace. I hope
9 I kept that promise. I hope I kept all my promises this week.

10 You could sit on a half dozen juries and probably not
11 see what you have seen this week. 31 witnesses, many in law
12 enforcement, many detectives, real life CSI people for those
13 who are fans of Bull, CSI and those TV show. This is not a TV
14 show, it has been real life.

15 We took our job seriously when we prepared this case,
16 as did the Defendant. We worked for years to get to this
17 point. Our goal was to arm you with all of the tools that you
18 need. We've heard some detectives that may have only had one
19 tool, one piece of evidence. You have 31 witnesses and dozens
20 and dozens pieces of evidence.

21 You, the jury, are the detectives of the detectives.
22 You've heard more about this incident than anybody else,
23 probably too much.

24 You look at this stuff sometimes like putting together
25 a puzzle, you have all put together puzzles. As detectives,

1 you have all these pieces, and I want you to ask yourself, who
2 gave you pieces to what puzzle? Two different puzzles,
3 sometimes -- two different types of puzzle pieces that
4 sometimes seem to be presented.

5 What happened in the 60 seconds, and what happened
6 with this after response. But the important thing is that you
7 get a complete picture. We hope we helped you with that.

8 Sometimes I get to a stage and I can see by the eyes
9 you are glazing over and finally get to talk about what you
10 were hired to talk about. I will kind of try to get through it
11 as quickly as possible. I will end my statement with that
12 statement. Bear with me.

13 The burden of proof, the scales, however you want to
14 do it, all -- it is the Plaintiff's burden. I hope we carried
15 that burden, I hope I have proven more than what we said in
16 opening statement. The question is, is what we presented more
17 likely true than not?

18 We don't have to give you an exact theory, we just
19 have to show you there was a violation, an illegal improper use
20 of force. More likely true than not.

21 The little things, too, you have seen the big
22 pictures, but the little things when you get in the jury room
23 you can look at. You heard all the testimony about Mr. Hill's
24 alcohol level. I am not allowed to tell you what you should
25 look at. Look at what was on the stereo system, bottles of

1 water, not beer.

2 The little nuances that happened before you, like Mr.
3 Lawrence demonstrating opening the door and kind of poking out
4 his finger, not simulating a gun, but talking about how hard
5 the door was; the fact that this was Drake and not NWA.

6 Mr. Hill may have taken for granted he had a great
7 fiancée', amazing mother of three kids anybody would be blessed
8 to have. Maybe he didn't. That is what Andrew Brown seemed to
9 believe, that is what Andrew Brown testified about, his last
10 conversation.

11 We brought you 15 witnesses, 14 live and one from
12 Tampa. The Defendant brought you 16. We started with a road
13 map. I want to go through the 31 witnesses as quickly as
14 possible.

15 The first witness on Thursday, we brought Juanita
16 Wright, a retired principal. You may not have realized the
17 magnifying glass she needed to look in when Juanita Wright was
18 first over here, because you don't know how the pieces are
19 going to be assembled. She said she heard the officers knock
20 hard, never saw the door fully open, knew Hill's daughters at
21 school.

22 Next, Donna Hellums, another teacher, saw the door go
23 up and down quickly, saw it never all the way up, didn't hear
24 any officers' commands.

25 Lizbeth Enriquez-Ruiz worked with Deputy Newman, she

1 said she had a complete view of the incident. She had a good
2 parking spot on Avenue Q, saw banging on the front door, saw
3 the garage door open and somebody yell something, probably hey,
4 and simultaneously pulled his gun up and heard the shots very
5 quick. Once the door was half open, we believe the evidence
6 showed, she said it was on its way back down.

7 Viola Bryant testified to the \$11,352 in funeral
8 expenses, but also how much his son loved her grandkids.

9 On Friday we brought you Stefanie Mills. Stefanie
10 Mills indeed called 911 over loud music, but after she called
11 her sister. She was going to use this as a moment to teach her
12 children about the justice system and told them watch this.
13 She had no idea what was about to happen.

14 So, the door went up real fast, saw a deputy, she
15 didn't know which one it was, get startled, jump back and
16 pulled his gun and shot, the door slammed shut, never saw a
17 man.

18 The final independent witness was Lisa McGuire, back
19 to back to back, except for Ms. Bryant, getting there, banging
20 on the door, the door going up and down, quickly lifted to only
21 about the waist, never saw Hill's face, didn't hear any officer
22 commands.

23 Were there any other independent witnesses?

24 The only witness that we presented was Destiny who
25 said similar things, but she -- she affirmatively said there

1 was no gun in her father's hand.

2 So, the next witness we had was Earl Ritzline, the DNA
3 expert. That is fairly significant. My goal is not to take
4 through -- take two hours and go through everything you seem to
5 already get, but the quick version is the gun only had a low
6 level partial mixture.

7 I think now you know more than any time why that is
8 significant. If the gun had been covered in blood, if the gun
9 had been wiped or had any residue on it, if Mr. Hill was
10 nervous and sweated on that gun there should have been more
11 DNA.

12 It is entirely -- the evidence is entirely
13 inconsistent with it being out of Mr. Hill's pocket, entirely.
14 In fact, I think I recall a scene where they actually pulled
15 the pants apart trying to see if they could turn the pocket
16 upside down or inside out.

17 The next witness was Roy Bedard, an expert from
18 Tallahassee, Florida, works with the Florida Department of Law
19 Enforcement. He said it was his job and his responsibility to
20 try to protect good police work.

21 He was accused of being an advocate for us, kind of
22 interesting after we heard today. I don't remember what Roy
23 Bedard said we paid him, I think \$2,500, and 500 more to
24 testify.

25 We had a guy fly in from Canada who got paid \$20,000

1 to make me dance and try to modulate my voice in a certain way.

2 And I hope with any of these witnesses I was
3 appropriate. There was a time with Mr. Lawrence, I will get to
4 him in a minute, but a time he brought up his father, and I
5 didn't know how to respond. I have questions to ask, I have a
6 job to do, I can't stop because we have a trial. We are on
7 your time.

8 Referring back to Roy Bedard, we went round and round,
9 particularly on the word paradox. He explained the Sheriff's
10 Office and Deputy Newman can't have it both ways, have a gun
11 constitute a threat, and have it clean and have the shots fire
12 through it. That was the original story, and I think you've
13 seen it. And there are the statements from Lebeau, there is
14 other evidence in there that you can go through, that this
15 wasn't the story, and this is also not an act that you get a
16 man killed, particularly through a closed garage door.

17 I think Mr. Bedard was our longest witness. Again, it
18 is not my job to tell you what to think, but he was critical
19 over the lack of commands, actions by Officer Newman, the
20 nature and number of shots fired by Newman, the inconsistencies
21 of statements, the shootings through a completely closed door,
22 shots two, three, four, shooting blind, the fact that the
23 garage door wasn't -- clearly there was splatter effect, the
24 issues regarding unarmed and innocent over and over again and
25 critical of the police work.

1 I didn't ask Bedard about a planting of a gun, I don't
2 know why we kept hearing that. Mr. Jolly and Bedard had that
3 conversation. There is no evidence this gun was planted, we
4 are not claiming it was planted. We don't want you to think it
5 was planted. There is questionable police work.

6 We can't ask Mr. Hill. It wasn't planted. We don't
7 believe that. We can't believe that.

8 And then Edward Lopez, he admitted the gun was never
9 pointed at him. He twice said he didn't shoot because he
10 wasn't supposed to. He knew proper protocol. So, the total
11 time was three seconds from top to bottom.

12 Mr. Lawrence said it was less than that today. Monday
13 day we finished with William Anderson, our independent medical
14 examiner. He did a residency at Duke University, Chief Medical
15 Examiner, 8,000 autopsies. He testified about Mr. Hill's
16 injury, found it inconceivable that Mr. Hill could sustain
17 injuries right here and right here because either it is high,
18 it is low, either way, if he is lifting that gun, that arm gets
19 in the way from that trajectory.

20 He didn't know Mr. Hill's level of intoxication. He
21 did say there could be a postmortem effect, including breathing
22 in alcohol. We don't know. We can't ask Mr. Hill what he had
23 to drink and why on his day off.

24 They did affirmatively, both medical examiners agreed
25 that is the only evidence, is that Mr. Hill wasn't an

1 alcoholic, there was nothing wrong with his liver. He had no
2 drugs in his system, no signs of abuse, nothing to expect that
3 he would in any way have a shortened life span. That is the
4 only evidence, both medical examiners agree, to motor movement.

5 While we are talking about points we agree to, I'm
6 fine with the sequence of shots from top to bottom, one, two,
7 three, four. I think the evidence does prove that.

8 That evidence also shows that he kept firing and each
9 shot -- with each shot Mr. Hill's injuries were more fatal.
10 The first one missed him; second one, ER, stitches, some
11 recovery time; third one, you got to get there quick; fourth
12 one, immediate.

13 The next witness was Monique Davis, high school
14 sweetheart, 15-year relationship, literally for better, for
15 worse, for richer and poorer, in sickness and in health, they
16 were set to tie the knot.

17 We could make a big deal about their fight, things
18 couples say to each other. There is something we really need
19 to talk about, but I'd rather talk about her last words that
20 she thought were received. I love you, I am in with you.

21 She talked about the chemical agent and tear gas,
22 destroyed memories, that Greg's children had to move out of the
23 family home that Greg grew up in, the mom and Destiny had to
24 have counseling. They are struggling with the loss of their
25 father.

1 The next was our shortest witness, to the point I had
2 to give him a booster seat, and even with that booster seat
3 that young man stood tall, Gregory Vaughn Hill, III.

4 He remembered, despite being seven years old now, only
5 about three when this happened, going fishing with his dad. We
6 didn't have much to talk to him about because of his young age,
7 and number two, he didn't remember -- he didn't get the time to
8 have these memories.

9 With each of Mr. Hill's children -- we are going to
10 get into damages in a second -- each of the three, there are
11 three areas of damages, you will see them in the jury
12 instructions. It is loss of parental companionship, it is the
13 loss of instruction and guidance, and it is mental pain and
14 suffering.

15 Whether you somehow didn't agree with my version or
16 our version, not even our version, the overwhelming weight of
17 the evidence is the version of the facts how this happened, you
18 can't diminish the loss of a parent. Greg will grow up not
19 knowing the man who he is named after.

20 Next up Aryanna Hill, age ten, the ray of light for
21 the family, talking about catching snook with her dad, daddy's
22 girl, wants to be a fisher girl when she grows up. That old
23 saying, I will change it for her, give a girl a fish, she will
24 eat for a day, teach a girl to fish, she will want to be a
25 fisher girl and provide for her own family, I guess.

1 Next up Destiny Hill, age 13. She saw this and
2 testified no gun was in her dad's hands, saw shots through the
3 closed garage door. She loves sports. She is coping.

4 The Defense took over after lunch on Monday. After
5 saying in opening keep your eye on the ball, what actually
6 happened, and after that, there was one witness they put on
7 that actually saw something.

8 I can run through their experts, their detectives and
9 police officers, real quick. Cicio operated the robot. Graben
10 wanted to come in to say Mr. Hill indeed was on probation, but
11 was he? He admitted that the order said it automatically
12 terminated January 3rd. It just so happened Mr. Hill had a
13 meeting on January 3rd with the Probation Officer that Mr.
14 Graben wasn't necessarily privy to. He is the boss.

15 And whether because justice is so fast for Mr. Hill
16 that that Probation Office entered it two days after he is dead
17 because somehow word got up and down that he had died and that
18 was going to happen anyway, the fact is way too much has been
19 made about probation.

20 No one knows what Mr. Hill knew or thought, and now we
21 don't know was it the garage door to raise his hand because of
22 the twitch, the hitch, was he afraid of the guy he gambled
23 with, was it because he was drinking, was it because he, oh, I
24 don't know, was on probation, he didn't want to get in trouble?
25 Usually the most common explanation is the simplest, and

1 usually when facts change, you need to ask why.

2 The next witness was Sergeant Lebeau, and his
3 statements and those of Deputy Newman are in there for you,
4 both the audio and the written. Look towards the end of those.

5 I asked questions, leading, some not, and at the end
6 they go, are we good? Yeah, we are good. It is in there. And
7 I guess the kind of trial recreation moment was when they
8 wanted to hurriedly have that gun go back into the pocket. It
9 is a panic, he has to hide that gun, and blip, it went back to
10 the bottom. They did it again, if you recall, every one of you
11 will, they held it so the gun sat where it needed to sit, not
12 that it was in there the whole time.

13 And I asked Detective Lebeau to -- to show the gun was
14 small, to show how well it hides in the hand, but also so I
15 could come to you and say, ladies and gentlemen, that is what a
16 gun getting pointed at you, in your direction looks like, not
17 this.

18 There was a series of SWAT witnesses with the
19 question, no plant, but what we heard was teargas, sub-machine
20 guns, hostage negotiations, snipers. Every resource from the
21 St. Lucie Sheriff's Office responded, and these are everyday
22 heroes. But why the focus on that?

23 So, that takes care of Courtemanche, Johnson, Kester
24 and Gajewski. They had various statements about how bloody it
25 was, pools of blood, and blood everywhere, and blood all over

1 their hands, and that is important. The gun was like on an
2 island, it was as dry as could be.

3 Next was Tony Stevens, yes, bought a gun in January.
4 Tuesday, Richard Young, said he did measurements on
5 the door which I had him write down. Um-m-m, let me go get
6 that.

7 If you haven't written these down, if you haven't
8 taken a moment to reconcile these, I hope you will. This does
9 not go back with you in evidence, this is a demonstrative aid.

10 If you are still having trouble with realizing that 40
11 and a half inches is 3.8 feet, nearly, and these two and these
12 two virtually match up, such that that garage door was down for
13 shots two and three, I don't think it is a contended fact any
14 more, but there is no question that garage door was completely
15 shut.

16 I asked him if he checked the school to see if they
17 had video. Either he had or had not. I don't recall. We
18 haven't seen any.

19 Donna Carmichael was next in a parade of investigators
20 and said the shell casing was missing. She searched the grass,
21 and got a metal detector, and otherwise there is no big deal.
22 I am not saying there is a conspiracy theory there, I just
23 said, ma'am, the jury needs to know about the shell casing, if
24 it is found in the road that might be relevant.

25 She took a photo several feet behind the witness and

1 took a moment and said what the witness saw. She watched the
2 autopsy, took fingerprints, didn't know whether it was tested
3 on the gun.

4 Linda O'Neil, we discussed nimble in thought, in
5 action, no drugs. We talked about the ER, shot one missed,
6 shot two, okay, shot three, trouble, shot four, fatal.

7 The one point, it seemed to me, where the experts
8 disagreed really was on the aspiration issue. I don't know
9 that it is that big of a deal here, but his lungs were supposed
10 to weigh 250 and they weighed 400. Clearly there was something
11 in there that shouldn't be. They didn't test them for alcohol,
12 didn't know what Hill had to drink. Again, this is not a drunk
13 driving case. All the wounds would be severely painful, all
14 the wounds would have excessive bleeding.

15 Sergeant Kyle King came in with opinions and a
16 PowerPoint presentation that didn't get presented, I guess, or
17 he had prepared, and admitted that PowerPoint presentation, or
18 multiple photos like this, that he got it from evidence
19 directly submitted by St. Lucie County Sheriff's Office, nobody
20 else, he didn't do any independent.

21 I asked him if he did a PowerPoint about the facts
22 that the jury heard, you guys, how the arm could avoid being
23 hit, blood spattering, DNA on the gun, no. How he put it back
24 in the back pocket with all this going on, no.

25 The most common explanation is always the simplest.

1 Larry Hostetler, he was from CID. He said -- you know
2 what, I could have crossed him, no way, no way, do you know a
3 detective that could just see this much of a gun and know what
4 it is? That is what these guys do. That is what these guys
5 do. He said Detective Wentz identified this as a Kel-Tec in
6 the back pocket. I submit Deputy Newman did, too.

7 Andrew Brown, it is important to know that we didn't
8 call him. He was there when Greg died, right before he died.
9 Greg was his cousin and best friend. He was walking around,
10 yeah, he saw him with a gun before, talked about the deep
11 conversation. Bob Marley has some redemption song, kind of
12 what Andrew Brown reminded me of. Greg was recognizing the
13 things people take for granted. It is a daily battle with all
14 of us, I suspect.

15 Then Deputy Newman. I asked you before trial what
16 would be the most difficult witness to cross-examine,
17 Christopher Lawrence or Deputy Newman. I would say Deputy
18 Newman, a complete gentleman, I submit made a really bad error,
19 a fatal error, a fatal avoidable error, and they tinkered with
20 the story since then to try to avoid liability. Now it is your
21 call.

22 We had a few battles, though. You saw it. From the
23 Kel-Tec shopping, to the conversations about the whole paradox,
24 to me asking him, let's just assume, Deputy Newman, that
25 everything you say is correct, we take just your word, which

1 nearly ever other witness contradicts. Even assume all of
2 that, and you yell, put down the gun -- we did the test, we
3 debated whether Sheriff's Office was on there or not because it
4 adds on another half second -- gun, gun, put down the gun. You
5 can try it in the jury room, gun, gun, put down the gun, gun,
6 gun, put down the gun. To do that three times, you are nine to
7 12 seconds into this thing. Mr. Hill could have been out the
8 back door hanging out with Andrew Brown again.

9 But even assume, you get ever benefit of the clock
10 stopping for this, was the gun found down, was the door found
11 down? And I meant to ask Mr. Lawrence, and I forgot, whether
12 with his shooting expertise he could shoot four shots within a
13 second and a half and actually see the paper where they land on
14 in the range. You can ask yourself that.

15 This is what I recall his testimony to be before you.

16 Mr. Hill did not comply to my lawful commands, I got
17 his attention, he took his attention away from me back to
18 Deputy Lopez. He began to raise the gun at Deputy Lopez,
19 closing the door, and at that moment I honestly thought that if
20 he was not firing rounds at Deputy Lopez, he was going to as he
21 was closing the door to barricade himself.

22 And then he told you this was as far as he saw, and
23 that is not Deputy Lopez. And you can't shoot somebody for
24 barricading yourself in a house, much less closing a garage
25 door. He had it all right to the end, except for the whole

1 Lopez thing. He said he assumed he missed Mr. Hill and that he
2 assumed the worst.

3 At one point he said, I think, he was worried about
4 the children. He said that in his statements, too, he was
5 worried about the children, and the first thing he did is go
6 around back alone.

7 That led us here today. I didn't fill in Chris
8 Lawrence's section yet. We all saw it. I'm still at a loss
9 what to say about it.

10 That brings us to the law, the jury instructions the
11 judge read you, and what we discussed in the beginning, you
12 guys get it, a civil rights violation against Deputy Newman.
13 You must decide whether the force Newman used in this case was
14 excessive or reasonable based on the degree of force a
15 reasonable prudent law enforcement officer would apply under
16 the same circumstances.

17 One of the first things I did in this case is the
18 First Amendment and the ability to be free from search and
19 seizures. He intentionally committed this act. He didn't
20 negligently fire this gun, it didn't accidentally go off, he
21 pulled the trigger, in fact took a shooter's stance. That is
22 step one and he fulfilled it. That caused injuries and death,
23 you heard that.

24 The question becomes what are those damages, funeral
25 expenses, and then the damages to the children? And each child

1 is broken down separately, and we can talk about this, and this
2 is one hundred percent within your discretion. You can award
3 the children different amounts.

4 I submit all of their damages are real, all of their
5 damages are going to work out about the same. Destiny may have
6 seen it, Greg, III is going to have a longer history of issues
7 and separation.

8 So, that Deputy Christopher Newman intentionally
9 committed acts that violated Gregory Vaughn Hill's right to be
10 free from excessive force? We submit the answer is yes.

11 That Defendant Christopher Newman's conduct caused
12 Gregory Vaughn's injuries? We submit that is yes.

13 3 a is the question about what are the damages. That
14 is to your discretion. We are going to give you some
15 conversation about that.

16 And then 3 b, that the estate of Gregory Vaughn Hill
17 should be awarded nominal damages against Deputy Christopher
18 Newman. Ms. Barranco will get up and explain that. That is in
19 case we haven't proved damages.

20 I don't think that is deniable. Your role here is to
21 award a fair and full verdict, not to listen to what I say, an
22 award that -- you heard it, this is your call, no external
23 forces, not anything should apply.

24 The intended act to pull the trigger when he shouldn't
25 have, to keep pulling the trigger, to do what he did and how he

1 did it, that is sufficient, it is overwhelming.

2 The next claim -- there are two claims, one is the
3 Federal claim, the 1983 claim, the civil rights claim against
4 Newman directly, and then there is another claim, a state law
5 claim of negligence against Sheriff Ken Mascara in his official
6 capacity as sheriff of St. Lucie County.

7 We'll run through those questions. This is not
8 seeking a personal judgment against the Sheriff. This is based
9 on what we would need to show, that Newman owed a duty to avoid
10 firing in an unsafe or unreasonable manner.

11 You guys have heard it to be as a reasonable officer,
12 you heard it. He breached that duty by unreasonably firing or
13 firing when no life-threatening situation existed, you heard
14 it. So, that will lead you to this question: Was the
15 negligence on the part of Sheriff Ken Mascara, through his
16 deputy Christopher Newman, a legal cause of injuries? We
17 submit that answer is yes.

18 Did the Defendant Christopher Newman act in bad faith
19 or with malicious purpose or in a manner exhibiting wanton and
20 willful disregard of human rights, safety or property? That is
21 the instruction you just got.

22 We do not submit in any way that Deputy Newman acted
23 maliciously. He wasn't trying to kill Gregory Hill out of
24 malicious -- out of severe maliciousness because he is Greg
25 hill, because they had run into each other ten years ago. This

1 is not that. And in fact, I think Ms. Barranco would probably
2 agree to that and Deputy Newman would agree to that. That you
3 know.

4 Number 2, that is no.

5 Number 3, on the part of Gregory Hill -- was there
6 negligence on the part of Gregory Vaughn Hill, Jr. which was
7 the legal cause of his injuries. What did Greg do to get shot?

8 Now, I asked in the beginning when we were selecting
9 the jury, how far out do we have to go? Is the fact you are
10 listening to loud music and that had someone call the cops, the
11 cops come, you don't answer the door, you got in a fight, at
12 what point does that cause you to get shot? At no point. At
13 no point does Greg -- the speculation about Greg, this isn't a
14 claim for ear drum damage, or liver damage, not bad decision
15 making.

16 Mr. Hill heard a thundering bang on the garage door
17 such that he put marks in it. He put a gun in his back pocket
18 according to most of the evidence, pretty much all of the
19 evidence, had a gun to his side, according to Newman, was shot
20 fully inside his home through a closed garage door. Today,
21 like I said, we have a new explanation about, you know, now
22 it's the garage doors' fault, I guess.

23 So, that leads you to question number 4, because Mr.
24 Hill was under now the influence of alcohol, which you know he
25 had drank probably more than he should that day. He had no

1 idea such that his faculties were impaired and as a result of
2 the influence and that impairment he was more than half at
3 fault for the fact that he got shot. I submit he wasn't. He
4 was shot through a closed garage door.

5 In fact, all of the evidence shows, and for this one
6 you can consider all of the evidence, that he was deescalating
7 the situation. Look at it from the inside of the garage door
8 almost down.

9 5, what percentage of any negligence was a legal cause
10 of Gregory Hill, Jr.'s injuries? A hundred percent on the
11 Sheriff's Office, zero percent on Greg Hill, we submit.

12 6, you get into the damages of the children and the
13 estate and, as I said, there are three areas related to each
14 child, loss of parental companionship, loss of instruction and
15 guidance, and mental pain and suffering.

16 You have been read a jury instruction that says you
17 can consider Greg Hill's life expectancy at 41.2 years, you can
18 also consider the testimony of whether that would have been
19 effected by any disease, and I submit there wasn't. But that
20 leaves us with four years, four months and nine days, 1509 days
21 of past damages, and 41.2 years of future damages.

22 Now, certainly they need their daddy, children need
23 their daddy when they are young, but on the same token, they
24 need their granddad I when they've got kids.

25 These are things money can't replace. It is one of

1 the toughest jobs of a jury, to try to put a dollar amount on
2 life, pain and suffering. It is not an enviable position, it
3 is your discretion. The kids are missing a lot of their firsts
4 with their father, learning to drive, proms, marriages,
5 grandchildren. Full and fair is all we ask.

6 Hopefully -- I am going to remind you of testimony
7 that we expect was presented in front of you that these kids
8 don't -- if you award anything, it gets protected. The law
9 allows for nothing less. Each child is separate, their own
10 tragic story, name sake of his father, daddy's girl, saw her
11 father shot. How do you do it? There's no real measure, not
12 an accountant that can come in and say this is what the value
13 is.

14 In their joint defense I can say this, the St. Lucie
15 County Sheriff's Office, and we heard it today, and Deputy
16 Newman paid \$20,000 for an expert to testify to you for an hour
17 and a half. Is \$20,000 for an hour's worth of testimony
18 reasonable? No, that is insane. Is \$250 an hour fair? No,
19 that is not fair.

20 What is missing prom worth with your dad taking
21 pictures, tutoring, skee ball at Chuckie Cheese?

22 The saying around our office is that justice is
23 spelled one way, it is defined many different ways, defined
24 with accountability.

25 So, we took a stab to run some numbers and this is an

1 example of what you can use to figure it out.

2 Past, we said let's look at the hours lost. So, for
3 each and every hour in the past, four years and change, \$25 an
4 hour for what they have been through to get closure per child.
5 That is 38,160 hours. That is \$954,000 per child.

6 Then there is the future. 38,160 hours, \$954,000.
7 The future is 31.42 years, the future for the kids, there are
8 going to be times when they are minors, and school age, college
9 age, and times when they are on their own.

10 There would be a fair determination that that
11 should -- the pain and suffering and emotional support and all
12 of that should reduce as they get older, so we averaged out the
13 three kids. They get about 15 more years of time that they
14 would have spent with their father as minors, day in, day out,
15 weekends, time playing with the Coca-Cola basketball hoop that
16 you heard about, that you could see in the garage.

17 For those 15 years we request 35,000 a year, \$525,000
18 a child.

19 That leaves 32 years. We request \$19,000 a year for
20 the time that they would miss their children's grandfather,
21 \$608,000 per child.

22 Again, this is your decision. Is the number \$500,000
23 per child, is it \$10 million total? I have no idea. It has to
24 be full and it has to be fair and it has to be based on what
25 you heard in this courtroom, in this case, this important case.

1 When an officer breaches one's civil rights and tries
2 to even in the slightest alter facts to fit a justification,
3 that officer shouldn't get the benefit of any doubt. We hope
4 you agree.

5 I also started with a little Drake to start off from
6 the song that Stefanie Mills confirmed was playing: I got
7 everything, I got everything, I cannot complain, I cannot -- it
8 is true the next line has the F bomb in it.

9 Like I said, like all of the juries in all of the
10 courtrooms all over the country, you stand as guardians of the
11 17th word of the Constitution, and that is justice. Don't take
12 offense to anything I said. If I am wrong, don't hold it
13 against this family. We did our best this week, long days. We
14 appreciate your sacrifices, missing small businesses, families,
15 and passions.

16 I get the opportunity to come back up. You are the
17 detectives of the detectives this week. Your job is about to
18 start. We understand and appreciate the difficulty.

19 Thank you.

20 *THE COURT:* Okay, that was 54:24.

21 Okay. And from the Defense.

22 *MS. BARRANCO:* Thank you, your Honor. Good afternoon,
23 ladies and gentlemen.

24 As you heard earlier, at the beginning of this case,
25 there is always two sides to every story, and this situation is

1 no different.

2 I want to first thank you all on behalf of the
3 Defendants and, frankly, I believe on behalf of everybody here,
4 thank you for all of the time, service. You have been sitting
5 here listening to us and the witnesses for the last five days,
6 and we can't thank you enough, every single one of you, for
7 your time and attention.

8 This case is important not only to Mr. Hill's family,
9 but to Deputy Newman and the Sheriff's Office.

10 Now, Plaintiff's lawyer mentioned something about the
11 fact that he gets to come up here again and address you all.
12 Unfortunately, as Defendants' counsel, I don't get that
13 benefit. This is it, this is the only time, the last time I
14 get to come up here and tell you from the Defendants'
15 perspective what we believe the evidence has shown in this
16 case.

17 We are not going to tell you what to do. You seem
18 like smart people, you are paying attention, and ultimately,
19 after you hear us all, I will sit down, Mr. Phillips will come
20 up and talk to you, and you will go back to the jury room and
21 it's up to you, each one of you, to listen to the evidence and
22 make your determination in regard to how to answer these
23 questions.

24 I am going to do my best right now to help sift you
25 through some of the evidence in this case and explain to you

1 why Defense believes you should find in favor of the Defendants
2 in this case.

3 It is important for me to remind you that, yes, you
4 all are judging the facts in this case based on the evidence,
5 and that's very important for you to remember particularly
6 because there is a sympathy factor here.

7 Nobody is denying that, this is a tragic situation
8 that happened on both sides of the table.

9 We all heard the children come up here and testify, we
10 heard family members, we heard Mr. Brown, and to the extent you
11 all felt that emotion, it is okay to know it is emotional for
12 people, including Deputies Newman and Lopez, who were there
13 that day, who were confronted with this young man behind a
14 garage door.

15 Remember, you are not to base this on sympathy for
16 either party. Just because you feel bad because Mr. Hill's
17 children are not going to have their dad around to walk them
18 down the aisle or give them a kiss when they go out to prom,
19 doesn't mean you find for the Plaintiff because you feel bad
20 about that.

21 I direct your attention to the evidence in this case.

22 You heard the evidence, you have seen the evidence,
23 and to remind you what it was, it was the witnesses that took
24 that stand over the course of several days and the items that
25 are going to go back with you. That is the evidence.

1 Some of it is the CAD screen as well as the audio
2 recordings of the radio transmissions, and I would direct you
3 to listen to that carefully because it tells you a lot about
4 what was happening immediately after shots were fired.

5 For instance, you will hear Deputy Lopez, as you
6 already heard, and I direct your attention. You heard Deputy
7 Lopez describe the man behind the garage door, black male,
8 dreads, armed with a handgun. You hear that on the radio.

9 To the extent there is any suggestion by the
10 Plaintiffs in this case for any reason that garage door didn't
11 go up all the way, we know that is not accurate.

12 Deputy Lopez is telling you by that radio transmission
13 that he saw Mr. Hill's dreadlocks, it was high enough for the
14 deputies to see Mr. Hill, and likewise, it would suggest Mr.
15 Hill would have seen the deputies.

16 Another important part for the CAD call, the radio
17 call that has been referenced by Plaintiff's counsel, within
18 moments, within minutes after the shots were fired you heard
19 Deputy Newman describe the kind of gun he thought he saw in Mr.
20 Hill's hand.

21 I know Plaintiff's counsel mentioned something about,
22 well, you didn't say on the radio that it was in his hand.
23 Again, if you listen to the radio transmissions, when you see
24 Lopez, when he first gets on the radio, he says black male with
25 dreads with a handgun. It was not we didn't see a gun, it was

1 in his pocket. That is not the way it happened.

2 It is important to remember counsel's argument today,
3 frankly, in my own eyes not evidence in the case.

4 It is important to remember that the lawyers get up
5 here, we tell you what we believe the evidence shows you, and
6 maybe we get it wrong. It is for you to decide based on your
7 collective memories, what you heard the witness say, what you
8 see in the papers, the photographs, that is up to you. Please
9 don't check your thinking caps at the door. We invite you to
10 use your common sense, it is in the jury instructions. Don't
11 be afraid to use your common sense, ladies and gentlemen.

12 I know Plaintiff's counsel mentioned something about
13 they don't need to have a theory in this case. Well, frankly,
14 it is because other than what the deputies said happened
15 because they were right there, other than that, there isn't any
16 other version of what happened that makes really much sense at
17 all.

18 Now, it may be that certain family members can't
19 believe that the Greg Hill they knew would do what these
20 deputies claim that he did, but you are not here today to try
21 to figure out why did Mr. Hill do what he did, what these
22 deputies did what they said he did. Why would Mr. Hill start
23 raising a gun toward the deputy? Why would he do that? He
24 could see the deputies are in uniform.

25 It is not your job to figure out why he did what he

1 did. Frankly, it is your job to figure out whether or not what
2 the deputies say happened, happened.

3 Frankly, the discussions about the probation, evidence
4 about the probation, evidence about intoxication, which I don't
5 think at this point, based on what Plaintiff's counsel said, is
6 disputed in this case, Mr. Hill was drunk and he was on
7 probation.

8 They did take issue with that. Mr. Graben got on the
9 stand and he told you whether or not he knew Mr. Hill was on
10 probation that day. I would submit that Mr. Hill probably knew
11 he was on probation.

12 The reason that is important, whether or not Mr.
13 Newman had a clue what his situation was, whether he was
14 drinking or on probation, the reason that is important is that
15 it explains why, why, once he realizes that he has got police
16 there, knowing he is on probation, knowing he is drinking,
17 knowing he has a gun he has no business having because he is on
18 probation, that explains why, in fact, ladies and gentlemen, he
19 put it in that pocket right away. That is what he is focused
20 on.

21 Why is that important? Because it was on Mr. Hill.
22 Plaintiff's counsel is saying hey, we are not claiming that the
23 gun was planted, that is not what we are claiming. You heard
24 the last five days, I would suggest to you there was more than
25 a few times that at least the implication was made.

1 How did this gun get back in the pocket? It was
2 clean, how did it get back there?

3 Well, I submit to you it got back there because Mr.
4 Hill put it back there. It didn't take very much. You saw
5 when I demonstrated with the gun and shorts, it wasn't hard to
6 get that gun back in that pocket, small gun, big pocket.

7 Now, I know Plaintiff's counsel mentioned something
8 about, well, you know, when they were demonstrating out there,
9 they had Sergeant Lebeau holding the gun, and you could see it
10 when Ms. Barranco dropped the gun and it went to the bottom.
11 Common sense, thinking caps, gravity, we were unable to
12 demonstrate what actually happened here.

13 Mr. Hill was struck by the bullets, puts the gun back
14 in his pocket and falls on the ground, as you see in the
15 pictures. I submit gravity and jostling of the body as it is
16 landing clearly could have popped that gun up a little bit so
17 you saw it. The deputies saw it, the detectives saw it right
18 where it was, where you see in the pictures.

19 Now, there is a Federal claim and a State claim. The
20 first one is a Federal claim against Deputy Newman personally
21 for a Federal rights violation, using excessive force on Mr.
22 Hill. I want to clear up something right now.

23 Plaintiff's counsel referred you to the jury verdict
24 form, and he mentioned to you that -- well, let me read it. He
25 said Defendant Chris Newman intentionally committed acts that

1 violated Mr. Hill's rights. Well, he did shoot the gun at Mr.
2 Hill, we got that, the answer to that is yes.

3 Ladies and gentlemen, you have the instruction, you
4 are going to take it back with you, you will have time to look
5 at this. I want to zoom in because it is important.

6 Notice it says "do you find from a preponderance of
7 the evidence that Defendant Christopher Newman intentionally
8 committed acts that violated Gregory Vaughn Hill, Jr.'s right
9 to be free from excessive force?"

10 The question isn't just whether or not Deputy Newman
11 intentionally fired his gun; he did. That is not the question
12 for you. The question is whether or not you believe in doing
13 that, that was a violation of Mr. Hill's Constitutional rights.

14 Defense would submit it was not a violation of Mr.
15 Hill's Constitutional rights, and why is that? Because it was
16 Mr. Hill, and what Mr. Hill did on that particular day that set
17 the stage for why Deputy Newman was ultimately forced in a
18 split-second decision to use his firearm on Mr. Hill.

19 First important thing to note for that claim.

20 Now, there is the other claim, State law claim of
21 wrongful death based on the negligence of Deputy Newman
22 negligently firing his firearm. You would find against the
23 sheriff on that claim, and there is an alcohol defense for you
24 to determine in whether or not you believe that Mr. Hill was
25 the cause of his own demise in terms of whether or not he was

1 negligent himself.

2 I submit to you, based on the evidence in this case,
3 number one, you heard from multiple witnesses, Mr. Hill was
4 about four times the legal limit, he was definitely
5 intoxicated. The .38 threshold is easily met in this case.
6 You heard the testimony from the Medical Examiner, even from
7 the Plaintiff's own witnesses, that Mr. Hill would have been
8 impaired.

9 Again, whether or not his impairment made Mr. Hill do
10 things that were not real smart, that might go to the
11 negligence claim, but it isn't so much about the civil rights
12 claim.

13 And what is important for me to point out when you are
14 judging the Federal civil rights claim and whether or not
15 Deputy Newman used excessive force on Mr. Hill, you must judge
16 it from the perspective of Deputy Newman, not Mr. Hill, Deputy
17 Newman.

18 I will show that to you now because it is really
19 important and I don't want to forget it.

20 Why is it important, ladies and gentlemen? It is
21 important because, to the extent that Plaintiff's counsel makes
22 argument about what was going on in Mr. Hill's mind, he had
23 both of the deputies' photographs and Plaintiff's counsel was
24 saying he lifted it a little bit, could you tell you were a cop
25 by your shoes, by your knees, by your thighs? Interesting

1 questions, but frankly, ladies and gentlemen, that is from Mr.
2 Hill's perspective, not from Deputy Newman's perspective.

3 You have to judge the civil rights claim from Deputy
4 Newman's perspective.

5 Why is that also important, ladies and gentlemen?
6 Because we know now, we know today that the gun that was found
7 on Mr. Hill was unloaded.

8 You heard testimony that there is no way anybody can
9 tell whether a gun is unloaded unless they literally move the
10 slide and look inside. You heard Sergeant Lebeau describe
11 that. I think I had Deputy Newman talk about that. It's not a
12 situation where a gun is going to be glowing red if it is
13 loaded and green if it is unloaded. As of 2018, that
14 technology does not exist, and as of 2014, that technology did
15 not exist. There is no way Deputy Newman would know if the gun
16 is loaded or not.

17 You may go in the back room and say, gee whiz, guys,
18 after it is all said and done, his gun was not loaded, that was
19 not reasonable for Deputy Newman to shoot at an unarmed guy.

20 The law tells you that you are not to judge this case
21 with 20/20 hindsight, you are not to base this on what Mr.
22 Hill knew or what a teacher might have seen or thought she saw.
23 That is not how you judge it.

24 You judge it from Deputy Newman's perspective at the
25 time based on what he knew.

1 Now, I am trying to find an instruction and I know it
2 is here. I don't want to get too off kilter here. It is in
3 here for you to look at as you review the jury instructions,
4 and if I have time, I will get back to that in a moment.

5 So, moving forward and getting back to -- I think I
6 mentioned this, but to reiterate, to the extent we learned now
7 that Mr. Hill was on probation or he was intoxicated, although
8 that may not have been known to Mr. Deputy Newman at the time
9 of the incident, that is just for you to take back to the jury
10 room to understand why Mr. Hill did what he did and, frankly,
11 to be in your own mind that what Deputy Newman said happened,
12 happened. Every reason in the world why Mr. Hill would want to
13 put that gun back in his pocket and throw that garage door
14 down.

15 It is important for you to note, too, you have two
16 claims, and if at the end of the day you believe what Deputy
17 Newman was negligent, just negligent, negligence is not a
18 Federal civil rights violation. If you find that Deputy Newman
19 acted negligently, you would have to find for Deputy Newman on
20 the 1983 Federal excessive force claim.

21 I've got to tell you what this case is not about.
22 This case is not about whether or not the Sheriff's Office has
23 given back any of Mr. Hill's property since the shooting.
24 Counsel mentioned about \$13 found in Mr. Hill's pocket. You
25 heard the items are being held in evidence and once this case

1 comes to conclusion, however that happens, those items will be
2 available and the family is entitled to get those if the
3 Sheriff's Office is able to provide them to them.

4 Regardless of that, that is not what this case is
5 about. As I mentioned before, it is important for you to keep
6 your eye on the ball and the things you are asked to decide and
7 the things you are not asked to decide are not for your
8 concern.

9 You are also not being asked to consider, in terms of
10 the civil rights violation, whether or not Deputy Newman could
11 have done something different.

12 He did not have a duty to retreat from that garage
13 door. The law does not say Deputy Newman, as he sees the gun
14 coming up, was supposed to scurry away. He is a law
15 enforcement officer, and part of his job is dealing with
16 threats that he is presented with.

17 Another very important point, ladies and gentlemen, in
18 terms of what this case is not about, and I know there is a lot
19 being made about this, the law does not require that Deputy
20 Newman see the barrel of Mr. Hill's gun before he is entitled
21 to use deadly force on Mr. Hill. I think if it was required,
22 we would have more dead deputies if they have to wait to see if
23 bullets are coming at them before they decide to use deadly
24 force or not.

25 You heard from Chris Lawrence this morning about

1 action, reaction time, and from the other deputies. Even
2 Deputy Lopez told you, he knew, the door goes up, Mr. Hill is
3 three feet in front of him, gun out, and Deputy Lopez is
4 basically like, oh my God, I don't have my gun out yet, if this
5 man shoots me, I am done, I am dead.

6 You also heard Deputy Lopez say he didn't shoot at Mr.
7 Hill. Plaintiff says Deputy Lopez did the right thing, he
8 followed protocol, didn't shoot in the closed garage door.

9 I submit, if you recall Deputy Lopez' testimony in
10 terms of the timing, Deputy Lopez said Deputy Newman already
11 shot. At that point the garage door hadn't closed fully, and
12 at that point Deputy Lopez felt like I should have gotten out
13 of here, and he retreated. He didn't have to retreat, but he
14 did.

15 Counsel mentioned in closing that the evidence was
16 clear the garage door was down when Deputy Newman fired those
17 shots. It is true, you saw pictures upon pictures that all
18 four of the bullets hit that garage door. That is true.

19 I submit that the overwhelming evidence, other than
20 the argument of counsel, the garage door was on the way down,
21 it was not fully closed when Deputy Newman started firing the
22 weapon. As much as we are trying to demonstrate to you, this
23 incident was not a -- it was fast moving, in an instant Deputy
24 Newman has to make a decision, life or death.

25 I don't know if you saw the movie Click, I think it

1 was Adam Sandler who got to push a button and everything froze,
2 and play, okay, great. If he didn't like it, back it up. We
3 all know that is not real life and certainly wasn't what Deputy
4 Newman had the benefit of on January 14, 2014.

5 That is very important for you to take into
6 consideration when you are judging the reasonableness of Deputy
7 Newman's actions on January 14th, more than four years ago.

8 I know you have been given a lot of information over
9 the last few days and I know Plaintiff's counsel sort of walked
10 through the witnesses' testimony. I will do my best not to
11 repeat, but I want you to focus on other points, other pieces
12 of evidence. Keeping your thinking caps on, using your common
13 sense, based on the evidence you heard, ladies and gentlemen, I
14 think you all agree Mr. Hill made a lot of really bad decisions
15 that day.

16 It had nothing to do with Deputy Newman. Deputy
17 Newman was doing whatever Deputy Newman was doing before
18 3:00 o'clock when his shift started. Unbeknownst by Deputy
19 Newman -- I am not here to judge what Mr. Hill was doing, but
20 what you heard from Andrew Brown was that he was up at the
21 corner store buying a Colt 45 at 10:00 o'clock in the morning.
22 He was playing poker behind the convenience store with some
23 friends and got into a disagreement to the point that Mr. Brown
24 decided to remove his cousin from the scene, and they go back
25 to the house.

1 Mr. Brown is testifying, he is feeding his cousin, and
2 they decide to listen to some music. Mr. Brown said he could
3 see the people across the street, they are across from the
4 elementary school. He was offended, he tried to turn down the
5 music. I am not here to judge, everybody has different music
6 they want to listen to, that is fine, it is their right to
7 listen to whatever they want to listen to. We are trying to
8 live on the planet, even if you want to do or listen to
9 something, maybe it is not right to do that with little kids
10 across the street.

11 Mr. Hill didn't think about that, he was in his man
12 cave doing his own thing. Obviously, we know he had been
13 drinking. You heard it wasn't a little drinking, his blood
14 alcohol, you heard the testimony, was .39, like four times over
15 the legal limit. It wasn't just a little something in the
16 morning.

17 Now, I know Ms. Davis took the stand and she told you
18 that, you know, it was the Sheriff's Office that canceled our
19 wedding. I didn't do that. I can appreciate her perspective,
20 but I submit to you, ladies and gentlemen, that the evidence in
21 this case demonstrates that the only person that could possibly
22 and did stop the chances of any wedding happening between Mr.
23 Hill and Ms. Davis, regardless of whether they were broken up,
24 not broken up, whatever the situation was, that was all on Mr.
25 Hill.

1 You heard testimony from Ms. Davis that the night
2 before, the morning of, the morning of this incident, within
3 hours of this confrontation between these two individuals,
4 Ms. Davis is explaining to Mr. Hill how he needs to get his
5 life together, his act together, you know, cut it out, stop
6 drinking, get your stuff together. You are not even taking
7 care of our kids after they get out of school. That came from
8 Ms. Davis' mouth.

9 And I tell you that, ladies and gentlemen, not to try
10 to convince you that Mr. Hill was a bad guy, but certainly
11 damages is one of the issues in this case. As much as it
12 personally -- it is our suggestion that you find for the
13 Defendants in this case, but I would be remiss in not
14 mentioning damages.

15 What was Mr. Hill doing on the day of the incident?
16 At the corner store drinking alcohol, and when it came time to
17 pick up his daughter -- Plaintiff's counsel mentioned water
18 bottles in some of the pictures in the garage. Maybe at that
19 time he was maybe trying to sober up because he was trying to
20 pick up his daughter. He was trying to get Mr. Brown to pick
21 up his kid.

22 That is the evidence here, ladies and gentlemen, so
23 keep that in mind if and when you find yourself talking about
24 damages.

25 I will move on from that.

1 Now, you heard Deputy Newman and Deputy Lopez, and I
2 would submit I think the evidence is clear as day, this
3 incident happened across the street from a school. You heard
4 lots of witnesses that saw many things. Frankly, I think they
5 saw different parts of the same incident.

6 It was Deputy Newman and Deputy Lopez right there in
7 the action, they were there, that is what deputies do. They
8 get calls, this is one of the calls, loud music, whatever. You
9 heard them testify. What were you planning on doing? Well, we
10 were going to tell whoever is inside to turn the music down.

11 Unfortunately, it was Mr. Hill that made the decision
12 or whatever to change this call from a simple loud music
13 complaint to a life or death, holy cow for Deputy Newman in
14 those seconds.

15 We can mince words, was it 1.2 seconds, 2.5 seconds.
16 Well, neither of these deputies have a stopwatch. We do know
17 from the radio calls that from about the time they said they
18 were arriving until the time you hear shots fired is about a
19 minute. It all happened really fast. It doesn't always take
20 very long for stuff to go bad, and that is what happened here.

21 I would submit to you ladies and gentlemen, it went
22 bad because Mr. Hill made it get bad. It was Mr. Hill, for
23 whatever reason, who decided to get his gun.

24 Now, I know now they are saying, well, we are not
25 saying the gun was planted. Well, it is important for you to

1 remember, ladies and gentlemen, that there is no dispute that
2 Mr. Hill had a gun. He did, he did have a gun, and it was
3 found in his back pocket. That is not disputed.

4 Now, I don't know what Plaintiff's counsel is going to
5 say on his last part, but I would say, to the extent that
6 anyone were to suggest at any point somebody planted a gun in
7 Mr. Hill's back pocket -- and I know one of the last words was
8 Deputy Newman went around the back, kind of implying, we don't
9 know what Deputy Newman was up to. I think the suggestion is
10 that Deputy Newman was worrying about the kids across the
11 street. He said, tell the school to put the kids on lockdown.
12 He was worried about the kids across the street.

13 If you look at the pictures and heard the testimony
14 from Tony Stevens and Andrew Brown, Mr. Hill kept his gun in a
15 file cabinet in the garage. There is a photograph here, there
16 is a photograph, ladies and gentlemen, that shows you the
17 garage and shows you that garage -- I'm sorry, shows you the
18 drawer open on the file cabinet. So, obviously, that is where
19 Mr. Hill got his gun from.

20 Okay, there is the garage, and if you look over here,
21 notice, there is the file cabinet with the door open.

22 Now, you are not going to remember any testimony
23 because it didn't happen, there was no testimony from anybody
24 that noted the cabinet door was open or anything like that.

25 They were going in this person's house after getting a

1 warrant, clearing it and figuring out what was important. But
2 we now have four years to look at what happened here, and we
3 heard the evidence. Today is your day, maybe tomorrow is your
4 day, whatever time it takes you to make a decision, but to the
5 extent anyone on the jury has in your mind maybe it wasn't his
6 gun, he was on probation, we don't know what Newman was doing,
7 I would suggest to you that file cabinet door open, with the
8 testimony of Mr. Brown and Mr. Stevens, that is where Mr. Hill
9 got his gun from.

10 He hears the banging on the door. Of course, if the
11 music wasn't so dang loud, maybe he wouldn't have heard
12 anything, we don't know. And you are not to judge this case
13 from Mr. Hill's perspective. If somebody wonders, maybe Mr.
14 Hill didn't know who it was, okay, maybe he didn't. But for
15 your purposes in the excessive force claim, you have to judge
16 it from Deputy Newman's perspective. Deputy Newman doesn't
17 know if he heard every command that he was giving, but Deputy
18 Newman knew that he told Hill to drop the gun more than once.
19 Deputy Newman knew that he and Deputy Lopez were dressed in
20 uniform.

21 There is no question when he opened that garage door
22 he was looking at two law enforcement officers. Unfortunately,
23 Mr. Hill decided to raise the gun and start to close the door.

24 A moment ago Plaintiff's attorney said Mr. Hill was
25 trying to deescalate the situation. It is not from Mr. Hill's

1 perspective. Maybe in his .39 alcohol brain he was thinking
2 that is what he was doing and, frankly, it doesn't matter.

3 What matters is, he is lifting the gun toward Deputy
4 Lopez, and that is what Deputy Newman sees, and because of
5 that, the law permits Deputy Newman to use deadly force to
6 address that threat even if the gun turns out to be unloaded
7 because there is no way Deputy Newman is ever going to know
8 that. The law doesn't put that burden on him to know with
9 certainty that gun is loaded.

10 Now, there was reference to Deputy Newman.
11 Plaintiff's lawyers, Plaintiff's side says Deputy Newman was
12 firing blindly into the closed garage and, wow, that is
13 negligence, that is bad, whatever word you want to use.

14 I would submit to you the evidence does not support
15 Deputy Newman firing blindly in the garage. Number one, the
16 garage door had gone up far enough to see Mr. Hill's head and
17 what kind of head he had, and starts going down, and there are
18 numerous teachers and parents that saw parts of that scenario.

19 It shouldn't be surprising that different people saw
20 the garage door at different heights. That is what happens
21 when things move and people are in different locations and
22 might glance over a shoulder, dealing with children, walking
23 across the street, whatever it is they are doing. They are not
24 sitting there watching like they are watching a movie with
25 popcorn. That is not how this happened.

1 We know the garage door was on its way down as Deputy
2 Newman was firing, and Deputy Newman said he was trying to
3 track up, and he remembers seeing the bullet marks going into
4 the door. Plaintiff's counsel today in closing has submitted
5 that, you know, those shot sequences, yeah, that is probably
6 how it happened.

7 Defense would submit to you that is how it happened.
8 Deputy Newman was there, he saw it, it was his bullets, he saw
9 it.

10 And Deputy Newman testified that he wasn't just
11 shooting blindly, he was aiming at Mr. Hill. Unfortunately, by
12 the time he sees the gun come up, the garage door is put down,
13 and as Deputy Newman is firing, he sees the legs and that is
14 what he is aiming for, that is what he is shooting at.

15 The evidence in this case clearly shows he wasn't
16 firing blindly. Out of the four shots that Deputy Newman fired
17 out of the firearm, three of them struck the target. The only
18 reason the last one didn't strike the target is because it got
19 hung up in the middle of the crossbar.

20 Deputy Young, Snoopy, testified about that. There are
21 pictures you can look at.

22 I submit, ladies and gentlemen, if you are firing
23 blindly in a closed space, you are not going to be hitting
24 three out of four shots, especially in a situation like this.

25 You heard Deputy Newman testify, contrary to Mr.

1 Bedard. He came in here and said, well, you know, you fire
2 once and then you assess, and you fire again and assess,
3 therefore Deputy Newman firing four times, that is unbelievably
4 unreasonable.

5 You heard Deputy Newman tell you I have never been
6 trained to only fire once. If you fire once and you assess,
7 and the guy has a gun, you may be dead.

8 That is common sense. Again, don't forget your common
9 sense when you go back into the jury room.

10 There was mention of the measurements on the easel, he
11 mentioned them already, that they are consistent with the
12 shots. Again, remember when you are looking at it, if any of
13 you are focused on the measurements, inches and all that stuff,
14 don't forget there are a lot of moving parts during this
15 incident; you had Mr. Hill moving, Deputy Newman moving. I
16 appreciate making measurements, that is what crime scene folks
17 do. It isn't a situation where a static object is shot and you
18 are measuring and you say that is where it was when you were
19 shot. The garage door moves.

20 The fact that they say on this side -- it was
21 Detective Young that said the first shot, which was the lowest
22 shot, which was one foot 9 inches above the ground, that is not
23 where the garage door was when he shot because it was moving,
24 coming down. I submit to you do not get hung up on the
25 numbers, keep your eye on the ball, ladies and gentlemen.

1 Now, also focus on other folks that were around. In
2 opening statement Plaintiff's counsel mentioned you need -- you
3 are going to hear from Juanita Wright, she is the principal,
4 she saw it all. She told you she was the principal and told
5 you that she worked with Ms. Bryant at the School Board. She
6 saw three patrol cars, one officer, didn't hear anything.

7 And we heard from Ms. McGuire, Destiny Hill's teacher,
8 that when she was talking to Mrs. Wright, Mrs. Wright's back
9 was to the house, at least part of it. Whether Mrs. Wright was
10 able to realize it or not, the evidence in this case is that
11 Mrs. Wright did not see it all, to the contrary.

12 That is an example where you should not get caught up
13 in counsel's arguments. You need to then, when you go back to
14 the jury room, remember the evidence collectively, remember
15 what the testimony was, look at the evidence. That is where
16 you should always go back to answer your questions.

17 And we had Donna Hellums, David Morales, Lisa McGuire,
18 they were over there at different locations.

19 One thing I wanted to show you was an overview of the
20 scene to the extent that you all -- anyone might be confused
21 about who was where and when. And again, don't take my word
22 for it, I am doing my best to refresh your memory as to who was
23 where.

24 Here is the school, here is Mr. Hill's house. When
25 you are looking at who is where, remember that Ms. Ruiz, she

1 parked around here facing this way, got out of her car and went
2 to walk to pick up her daughter. She remembers orders or
3 something the deputy was saying. I don't think any witness
4 heard what was said.

5 Plaintiffs would suggest it was just hey. Defense
6 would suggest it was much more than hey.

7 And then also, Ms. McGuire was over here by where the
8 pickup area was, and Ms. Mills was over here, pulling directly
9 out of the school when she witnessed what she saw. That is
10 important to remember as well.

11 Now, you did hear testimony from Ms. Destiny Hill, Mr.
12 Hill's own daughter, who was very young at the time of this
13 incident, she was over here where her teacher was located.

14 I would like to show you a picture of that perspective
15 if I could. It is in evidence, and please look at this when
16 you go back.

17 This was Ms. McGuire, on the other side would have
18 been the school benches where the kids were seated, and there
19 is testimony those kids were supposed to be sitting in their
20 seat. You heard Destiny testify that she was sitting there and
21 cars go by, it was pickup time. You heard that from many
22 witnesses. Over here is the Hill house, you can see that. I
23 know you heard testimony from Destiny Hill that she looked over
24 and she saw her daddy, and he didn't have a gun in his hand.

25 You heard testimony from a lot of the witnesses, a lot

1 of them didn't see Mr. Hill. Some of them only saw legs, none
2 of them saw a gun, none of them even saw his hands.

3 I submit to you Destiny Hill, she couldn't have seen
4 the gun, she was too far away.

5 Everybody testified the lighting in that garage, it
6 was dark. In this picture you see white because the garage
7 door is down.

8 I submit to you, and the evidence is that Mr. Hill was
9 wearing dark clothing on this occasion, it was a black shirt,
10 dark jean shorts, and he was inside a dark area holding a dark
11 handgun.

12 I submit to you that seeing a dark object like that, a
13 small dark object against a dark background, is going to be
14 impossible for somebody across the street to see. So, again,
15 if Destiny Hill said she didn't see a gun it is because she
16 couldn't see a gun.

17 You have to remember what Mr. Hill was wearing, and
18 don't take my word for it, it will be in those pictures.

19 Now, Ms. McGuire, Destiny Hill's teacher, aside from
20 the incident, she did have interesting things to add in this
21 case. Ms. McGuire mentioned she dealt mostly with Ms. Davis
22 when she was dealing with Destiny about student issues, open
23 houses, whatever it was. She doesn't really remember meeting
24 Mr. Greg Hill.

25 Again, I will mention it again, I have it again

1 highlighted.

2 If you get back in the room and start discussing,
3 well, this witness saw this, this witness saw that, they didn't
4 hear this, they didn't see this, remember that you are supposed
5 to judge this excessive force claim against Deputy Newman from
6 his perspective, not what somebody may or may not have seen
7 across the street many, many feet away. You are supposed to
8 judge it from his perspective.

9 The fact that Ms. Wright, Mr. Morales, any of them
10 maybe didn't hear something, maybe even weren't paying
11 attention, that should not change that you are viewing this
12 from the perspective of Deputy Newman.

13 And his testimony, Deputy Lopez, is that they both
14 gave commands for him to drop that gun and he didn't do it. If
15 Mr. Hill wanted to deescalate the situation, by God, I suggest
16 to you deescalating with a gun in your hand is not doing that.
17 Not starting to do that or variations of that, that is how you
18 deescalate a situation.

19 One thing I need to tell you, too, Plaintiff's counsel
20 mentioned this a few times on his side of the closing, that
21 when I had Deputy Newman on the stand I said free spraying, and
22 I will refer to your collective memories on this, I will not
23 tell you what to think.

24 I will suggest to you Deputy Newman testified and I
25 asked him, and he had the benefit of free spraying, that didn't

1 happen that day. I tried to ask Deputy Newman, at that point,
2 what did you see, and his testimony was that he -- it started
3 to raise, and that is what I thought, I have to use common
4 sense on this guy. So, common sense, Deputy Newman sees Mr.
5 Hill start to bring that gun up, I am going to have to -- that
6 gun keeps coming up, that door is going down, and you heard
7 from multiple witnesses that door was merely concealment, not
8 cover. That is evidenced, frankly, by the bullet holes from
9 the pictures in evidence. Clearly that door was not going to
10 stop a bullet.

11 Now, the fact that we know today that Mr. Hill didn't
12 have a loaded weapon, so ultimately didn't fire the weapon, the
13 fact that we know that today is not to be held against Deputy
14 Newman. He is not to be judged by 20/20 hindsight on the
15 excessive force claim. He had no idea. The law does not make
16 him wait to get fired upon before he can shoot his weapon.

17 Now, I know we had a lot of testimony about the SWAT
18 team, various sundry SWAT team members, about the gun, where it
19 was found, and I wanted to show you one of the pictures because
20 it is important. You heard testimony this is one of the first
21 pictures, that once that camera that the bomb team person had
22 behind the garage door, and Captain Cicio was able to
23 manipulate the camera from the bomb truck, that is what they
24 saw in the bomb truck.

25 Deputy Newman, he was not seeing this. If the

1 Plaintiff's side is claiming the gun is not planted, that is
2 one thing. We are trying to bring out all possible issues, I
3 don't want to miss anything. It is important, I can't get up
4 here and talk about it again.

5 You heard testimony, people are willing to testify
6 under oath in front of you, take the stand with many, many
7 years of law enforcement experience and look you in the eye and
8 say I can't tell, but the date on here, I could swear I was
9 there on January 14, 2014, when that robot showed that picture,
10 and that is what I saw.

11 There is no question that is what the robot saw before
12 anybody went in there. There is no question there was a gun
13 found in Mr. Hill's back pocket. I want to tell you, to say
14 that somebody is going to contend that the gun was planted on
15 Mr. Hill, if they were trying to make it look like this man was
16 a threat, why would they put an unloaded gun in his back
17 pocket? Wouldn't they put it near his hand? Wouldn't they
18 want it to be loaded? It didn't happen here, just think about
19 it, common sense.

20 The facts of the case are what they are, there was an
21 unloaded gun in Mr. Hill's back pocket. You heard testimony
22 about the injury to his body, he had a couple of shots to the
23 abdomen, and he had a head shot. You heard testimony that once
24 he got that head shot pretty much any significant movement
25 would have been not possible, and he pretty much would have

1 dropped where he was. That was the testimony.

2 I submitted to you, ladies and gentlemen, it is
3 obvious the last shot was the head shot for a couple of
4 reasons.

5 Number one, we know from the testimony, when he
6 sustained those first two shots he was able to move, and
7 frankly, because Mr. Hill knew he was on probation, had no
8 business having a gun and being under the influence of alcohol,
9 his main concern was getting that gun out of view, get it in
10 his pocket, put it away, and it was found in his back pocket.
11 He was able to put it there on his own.

12 Another thing, very important, if you are struggling
13 with this when you get back there, the reason why it makes
14 sense is that the first two shots hit him first. If the head
15 shot hit him first, he wouldn't have been there for the abdomen
16 shots, he would have been on the ground.

17 I think the evidence is pretty clear, and Plaintiff's
18 counsel conceded as much, those shots were one, two, three,
19 four, first the abdomen and then the head, the head being last.

20 Nobody took the stand to say there is no way with that
21 order that Mr. Hill couldn't have put that gun back in his
22 pocket. Nobody said that that was absolutely what could have
23 happened. And I submit to you, based on the evidence in this
24 case, that is what happened.

25 There was mention of an interview by Sergeant Lebeau.

1 He brought in the box of evidence, I made him put on gloves,
2 and he brought out the Kel-Tec and the shorts so you could see
3 what we were talking about.

4 There was reference a moment ago to one of his
5 statements, or maybe both of his statements that he took of one
6 or both of the deputies, and at the end there is reference to
7 we are good.

8 I am sure Plaintiff, when he gets up again, if he
9 doesn't mention it, the implication is, we need to get out
10 something to cover our butts here, implying that something
11 happened improperly with the shooting.

12 Well, I submit to you just as easily -- and I submit
13 they are trying to ask all the questions they need to ask, they
14 are saying we are good, we are good, all the questions we need
15 to ask have been asked. I submit it is not even an issue.

16 It is interesting that nobody mentioned it to Sergeant
17 Lebeau, to ask him, what do you mean by that, Sergeant. They
18 are implying now what he must have meant by that.

19 Now, you heard from Sergeant King, the Sheriff's
20 Office person from Indian River, and he was brought in to look
21 at the evidence, look at the initial statements to determine
22 did it ultimately jive with what Deputy Newman and Deputy Lopez
23 said happened?

24 You heard him. Use your own minds and thinking caps,
25 put them on. Part of the evidence is his testimony, but it is

1 up to you to decide what you believe.

2 You heard from Donna Carmichael, and this may go to
3 maybe not even issues that matter much any more, but there was
4 mention of there being fingerprints on the gun, if there was
5 moisture, etc., etc. I am not sure what that is about if
6 nobody claims the gun was planted, but I need to address it.

7 Ms. Carmichael had a lot of information about
8 fingerprints. She explained a lot of people believe our DNA
9 sluffs off all the time, and she explained it doesn't really
10 work that way.

11 So, I would submit to you the fact that the DNA
12 reading was what it was, and I will not take the time to pull
13 it out, but it is in evidence, I submit it is entirely
14 consistent with what happened here. Mr. Hill's gun, he got it
15 out of the drawer, brought it out, sees the cops, puts it back
16 in his pocket, does something really not good, didn't drop it
17 when he was told to, and forces Deputy Newman to make a life or
18 death decision for Deputy Lopez in a matter of seconds.

19 There is mention of -- I am not sure how much this
20 matters either -- aspiration, that was one of the possible
21 theories that Dr. Anderson, hired by the family, had. You
22 heard Dr. O'Neil, the woman who did the autopsy on Mr. Hill in
23 this case, specifically said she looked, she didn't see any
24 aspiration in terms of why his blood alcohol was as high as it
25 was. Frankly, that is not an issue. Clearly Mr. Hill's blood

1 alcohol was well in excess of .08.

2 Now, you heard some testimony from Christopher
3 Lawrence today explaining about the action, reaction time. You
4 heard that Mr. Lawrence went to the scene and he made mention
5 of he, himself, trying to pull the garage door down, and he
6 said to you he had some difficulty doing that.

7 In that regard, I ask you to recall, I think it was
8 Ms. Davis' testimony, that house has not been lived in, that
9 garage door has been sitting every day for four years in the
10 lovely South Florida heat and in the moderate cool winters, but
11 in the heat and humidity it is not going to be in the same
12 condition as it was four years ago when Mr. Hill and Deputy
13 Newman had the incident happen.

14 I say -- with no disrespect to Mr. Lawrence, I would
15 submit to you that Mr. Lawrence physical abilities, whatever
16 age he is, versus Mr. Hill at 30 years old is probably night
17 and day, frankly, but I have no way of knowing for sure. But I
18 submit to you that Mr. Lawrence attempting to lower a garage
19 door four years later is not particularly helpful in terms for
20 you to decide whether or not Mr. Hill was able to do what these
21 deputies said they saw him do, and they saw the garage door
22 going down quickly.

23 I want to show you -- it is hard for me to look and
24 talk at the same time.

25 I want to show you the verdict forms in this case.

1 And let me direct your attention -- this is not a verdict form,
2 it is a jury instruction about the 1983 claim. I will have to
3 zoom it in.

4 Plaintiff Viola Bryant claims that Christopher Newman
5 used excessive force against Gregory Vaughn Hill, Jr. You must
6 decide whether the force Christopher Newman used in this case
7 was excessive or unreasonable based on the degree of force a
8 reasonable and prudent law enforcement officer would have
9 applied on the scene under the same circumstances.

10 That was the language I was trying to find earlier.
11 It is not big and bold, doesn't have big lights around it, kind
12 of a quiet part of the instruction. You heard the Judge talk
13 about it and read to you the jury instructions.

14 I cannot emphasize enough to you how important that
15 sentence is. It is what I told you about it, I won't repeat
16 it, it is a reminder that you must judge Deputy Newman from his
17 position, what he knew at the time, not what we found out
18 later.

19 Now, there is reference to nominal damage and
20 Plaintiff's counsel mentioned that I might cover it. I want to
21 at least address to you certainly nominal damages is an option
22 for you to give to the Plaintiff in this case as opposed to
23 compensatory damages. You may award a dollar in nominal
24 damages if there is no credible evidence of injury, etc., etc.

25 I would have you focus on C, Defendant Christopher

1 Newman used both justifiable and unjustifiable force against
2 Gregory Vaughn Hill, Jr. and it is entirely unclear whether
3 Gregory Vaughn Hill, Jr.'s injuries resulted from the use of
4 justifiable or unjustifiable force.

5 Again, it pains me to talk about damages, and
6 ultimately your verdict has to be unanimous. If you went down
7 the road of damages, I would submit to you that that would be
8 the way to go if there was any confusion about whether or not
9 Deputy Newman should have used deadly force on Mr. Hill.

10 But, frankly, my main focus here being, and I will say
11 it again, based on the evidence in this case, the Defendant
12 would submit to you the evidence shows that Deputy Newman had
13 to react and reasonably react in that moment of time to Mr.
14 Hill starting to raise that gun such that you should be finding
15 in favor of the Defendants and not even consider the issue of
16 damages in this case.

17 So, let me get to the verdict forms before I run out
18 of my time.

19 Here is the first one, and I explained it to you a bit
20 earlier, that that first question isn't just asking you do you
21 find that Deputy Newman intentionally used his firearm. If it
22 were that easy, you probably wouldn't be here. Not only do
23 they have to show that he intentionally used his firearm, and
24 he did, that is not the dispute; the dispute is whether or not
25 that violated Mr. Hill's right to be free from excessive force.

1 I submit you should write no there, that you do not
2 find from a preponderance of the evidence that Deputy Newman
3 intentionally committed acts that violated Mr. Hill's
4 Constitutional rights.

5 That ends your deliberation on this claim and you
6 should go to the next claim. And I would submit that should be
7 your response to that first verdict form, ladies and gentlemen.

8 The next verdict form has to do with the negligence
9 claim against the Sheriff's Office, and the first question was,
10 was there negligence on the part of Sheriff Ken Mascara in
11 official capacity as Sheriff of St. Lucie County, through his
12 deputy Christopher Newman, which was a legal cause of Gregory
13 Vaughn Hill, Jr.'s injuries? I would submit the appropriate
14 answer based on the evidence in this case is no.

15 Even though we talk about the Sheriff here, if it is
16 not clear, what it means is, you are judging Deputy Newman's
17 conduct against Mr. Hill, and because it is a State law claim,
18 it would be the Sheriff's responsibility for that action, that
19 is why the Sheriff is in this one and not Deputy Newman.

20 Nobody is claiming that Sheriff Mascara was there and
21 did anything. I would say, based on the circumstances, Deputy
22 Newman acted very good -- the best he could under the
23 circumstances, there was not any blind firing into the garage.

24 If you answer no there, that would be the end of your
25 deliberations for this claim as well. That is what it says

1 here.

2 If for some reason you are to go past that, there are
3 more questions, and I submit going past -- talking about Mr.
4 Hill's negligence, I would submit to you the evidence in this
5 case is replete with Mr. Hill's negligence, wrongful conduct,
6 his raising of the gun toward Deputy Lopez.

7 This may be where you think, maybe he was just
8 negligent in doing that, he didn't intend to point the gun at
9 Deputy Lopez. Well, here is your opportunity to put the
10 percentage you believe Mr. Hill was negligent in what he did
11 that day.

12 The next question, number four, addresses the alcohol
13 defense and talks about was Mr. Hill -- I will shorten it for
14 time purposes. Was Mr. Hill under the influence of alcoholic
15 beverages such that his normal faculties were impaired and that
16 as a result, Gregory Hill was more than 50 percent at fault in
17 this incident and his resulting injuries? If you get this far,
18 yes, obviously he was very intoxicated and very impaired.

19 Again, as I stated at the beginning of my closing,
20 this incident happened because of Mr. Hill's actions. Deputy
21 Newman reacted to Mr. Hill's reactions.

22 And the next page tells you, if you get this far, to
23 attribute negligence. If you get this far you would think
24 Newman had some negligent fault here. You shouldn't get this
25 far, but if you did, I suggest you put a very small number for

1 Sheriff Mascara and a large number for Mr. Hill, certainly more
2 than 50 percent.

3 And the rest is talking about damages, I am not going
4 to go through those things, but I suggest what the damages are
5 and are not.

6 Ultimately, there is no price you could put on the
7 things that these children are not going to have. I would say
8 to you that loss is a direct result of Mr. Hill's actions, not
9 anything Mr. Newman did.

10 Now, just in closing, ladies and gentlemen, I want to
11 remind you all that you are to judge this case on the facts and
12 the evidence, and you are not to judge it by any other case you
13 heard about in the entirety of you living life and listening to
14 the news, because we all listen to the news and listen to
15 things that happen between people, law enforcement officers and
16 other folks.

17 Today is about Mr. Hill and Deputy Newman, not about
18 anybody else at any other time or any other circumstances. It
19 is important for you to remember that in your deliberations. I
20 submit to you, ladies and gentlemen, based on the evidence in
21 this case and the facts in this case and the testimony that you
22 heard, you should find in favor of the Defendants in this case.

23 Again, thank you so much for your time and attention.

24 *THE COURT:* Let me ask how long you are going to be.

25 *MR. PHILLIPS:* Very brief, probably two minutes.

1 *THE COURT:* All right.

2 *MR. PHILLIPS:* You can't have perception and reaction
3 time both ways. You can't say we have to give Deputy Newman
4 perception and reaction time without giving Mr. Hill perception
5 and reaction time.

6 The same thing with his character, we can't call him a
7 drunk and he's got this gun and he has all these problems. We
8 all have problems. You can't say all that and say, well, don't
9 put that family photo up there, don't take sympathy into it,
10 sympathy is irrelevant to your deliberations. Who his family
11 is has been shown to you.

12 Mr. Lawrence's physical abilities, this is the guy who
13 has flown back and forth to Florida twice, made \$20,000 to
14 appear.

15 My final point -- you guys, I have 30 minutes I could
16 have taken, you all are ready.

17 My final point, we heard seven or eight times Newman's
18 mind matters, Newman's mind matters. He can be impeached. You
19 can listen to everybody else, you can go back to 2004 if you
20 want to, if it calls character into question, if it calls
21 veracity into question. That is the important thing. He
22 doesn't get to hide because he says it is so.

23 We can look at the garage door, quote, we can look at
24 what Stefanie Mills said, we can look at the changing story,
25 but I want to keep a promise. Get to deliberating.

1 Thank you for your time.

2 *THE COURT:* Okay, that was two minutes.

3 So, here is the thing, it is 3:22. We are going to
4 end at five o'clock today. We can do one of two things; we can
5 allow you to begin deliberations, which means I just need to
6 have the attorneys sort out the exhibits, but they have been
7 doing that all along, that won't take very long, and you get
8 underway for about an hour and a half, and we would end at
9 5:00, and maybe you would have a verdict and the verdicts would
10 be announced, or if you don't have a verdict, which happens all
11 the time in cases, or many times, we go overnight and come back
12 the next morning and you pick up from where you left off.

13 So, I haven't given you the opportunity to discuss it
14 among yourselves because I tell you that you can't talk about
15 anything among yourselves.

16 Can I see a show of hands of those who would like a
17 fresh start tomorrow versus, you know, starting now for the
18 next hour and a half?

19 Maybe -- can I see a show of hands of those who want
20 to start and get an hour and a half under their belt before we
21 conclude at 5:00?

22 Most of you raised your hand, you would like to get
23 started. One says you don't care.

24 Is there someone who has a strong feeling you don't
25 want to start right now? If so, raise your hand.

1 What we will do is this, you go back to the jury
2 deliberation room, bring your instructions with you, a copy of
3 the verdict form, not the one you fill out.

4 Ms. Richardson is going to bring back to you in a very
5 short period of time the verdict form, the blue one, the one
6 completed only by the foreperson, and I am going to get all of
7 the exhibits together and the attorneys are going to put it on
8 the record. And if we don't hear from you by 5:00, there will
9 be a knock on your door to bring you out to say good night and
10 let you know what your instructions are when you leave, and you
11 will come back by 9:00 tomorrow to continue your deliberations.

12 If a question comes up in the interim, follow the
13 procedures I told you, knock on the door, and if and when you
14 reach a verdict knock on the door and let your court security
15 officer know you have a verdict.

16 One last thing, I said it before, don't begin
17 deliberations until the exhibits come back. You can pick your
18 foreperson, but do not start deliberating until the exhibits
19 come back.

20 *(Thereupon, the jury begins deliberations at 3:20 p.m.)*

21 **THE COURT:** Both sides come to the front and go
22 through the exhibits and also check my exhibit list, which does
23 not go back with them, but make sure you are in agreement with
24 my exhibit list, the one for Plaintiff and one for Defense is
25 correct.

1 (Pause)

2 *THE COURT:* Was there an issue with all of the
3 exhibits you wanted clarified?

4 *THE COURTROOM DEPUTY:* Exhibit 123, you have a date,
5 but you don't have a check that it was admitted or not.

6 *THE COURT:* 123. Do you want it admitted?

7 *MS. BARRANCO:* Yes.

8 *MR. PHILLIPS:* Yes.

9 *THE COURT:* Okay. Admitted.

10 (Whereupon Defense Exhibit 123 was marked for evidence.)

11 *THE COURT:* Can I get it on the record to make sure
12 they are all there?

13 *MS. BARRANCO:* I would like to double check first.

14 *THE COURT:* I am going to end at 5:00 today because I
15 have to. We will be back at 9:00.

16 If they are still deliberating, I will have them go
17 into the deliberation room, they don't need to go into the
18 courtroom. I will tell them tonight if they are going to be
19 deliberating through the lunch hour we will have lunch brought
20 in.

21 Are the Plaintiff's and Defense exhibit lists correct,
22 Plaintiff?

23 *MR. PHILLIPS:* Yes.

24 *THE COURT:* Defense?

25 *MS. BARRANCO:* Yes.

1 THE COURT: All the Plaintiff's exhibits are there?

2 MR. PHILLIPS: Yes.

3 THE COURT: All the Defense exhibits are there?

4 MR. PHILLIPS: Yes.

5 THE COURT: Defense, are all of the Defendant's
6 exhibits there?

7 MS. BARRANCO: There is not anything I could tell that
8 should be --

9 THE COURT: Are all of the Defendant's exhibits there?

10 MS. BARRANCO: Yes.

11 THE COURT: We will bring the verdict back and all of
12 the exhibits. I know you reserved on the Rule 50. We'll hear
13 argument tomorrow.

14 MS. BARRANCO: That is good, your Honor.

15 THE COURT: I know you wanted to talk about the
16 interrogatory fact question.

17 MS. BARRANCO: Did I say that or he said that?

18 THE COURT: I cut you off.

19 MR. BRUCE JOLLY: We talked about it. I thought the
20 last we talked, we said let it go. That is what we concluded.
21 The special interrogatory goes to them, the three questions.

22 MS. BARRANCO: My memory, in terms of what I needed to
23 say in regard to how you were going to address, if they get
24 there, giving us additional time, how much time that would be.

25 MR. BRUCE JOLLY: Yes, okay.

1 *THE COURT:* Okay from Defense. Plaintiff?

2 *MR. PHILLIPS:* Yes.

3 *THE COURT:* Okay. How much time would you want?

4 *MS. BARRANCO:* I don't think I need very long, five,
5 ten minutes. They heard -- to be honest, maybe after I sleep
6 on it, maybe I don't need to say anything else.

7 *THE COURT:* Up to ten minutes.

8 *MR. PHILLIPS:* I will dovetail off her.

9 *THE COURT:* Okay. Maybe what I will do is I will
10 write up something as to what I will say to them and send them
11 back with these questions, and I will present it to you
12 tomorrow morning when we go over the renewed motion, and I
13 guess you should think about, too, whether you think it should
14 be unanimous, or in this instance whether we want all eight to
15 have it and fill it out.

16 You can think about that. That just came to my mind.
17 I think someone brought that up the other day.

18 *MR. BRUCE JOLLY:* You are talking about the last three
19 questions?

20 *MS. BARRANCO:* It has to be unanimous. Normally they
21 would go back -- it always has to be unanimous.

22 *MR. PHILLIPS:* I think it has to be, doesn't do any
23 good with a 4/4 split.

24 *THE COURT:* That is true.

25 So, I will put a writeup together explaining what they

1 need to do now. So, we will do that tomorrow morning, and
2 we'll also do the renewed motion, and we just need to have you
3 stay close by. We have your cell numbers. If anything comes
4 up between now and 5:00 we will call you. If nothing comes up
5 before 5:00, I will bring them in at 5:00 and give them the
6 instructions and tell them tomorrow when they arrive, I will
7 coordinate with Melanie, but we will let them go back and
8 deliberate.

9 I don't have any communication with the jury even if
10 they are asking for an opinion. I wait for you to come back
11 and discuss whether I bring them in or, more commonly, an
12 agreed upon response, I write it and sign it and the answer
13 goes right back to them.

14 *MR. BRUCE JOLLY:* I have a question that is ultimately
15 important. We didn't have the jurors ask questions. You do
16 not do that?

17 *THE COURT:* No.

18 *MR. BRUCE JOLLY:* Their questions are pretty
19 interesting.

20 *THE COURT:* They are, I experienced that in State
21 Court. One of the benefits of Federal Court. I haven't heard
22 of too many doing it.

23 *MS. BARRANCO:* Magistrate Seltzer may have permitted
24 it in the Simmons case.

25 *MR. BRUCE JOLLY:* I understand why judges hate lawyers

1 to do voir dire.

2 *THE COURT:* I didn't say that.

3 (Thereupon, a brief recess was taken.)

4 *THE COURT:* Okay, you may be seated.

5 Okay, there is a note and it says: On Thursday
6 morning we would like to review Deputy Lopez's testimony.

7 So, why don't we take that question up first, and I
8 can send it back, the response, so we can then bring them back
9 in to excuse them.

10 I will let you be heard first, Plaintiff.

11 *MR. PHILLIPS:* The law is pretty clear, you have to
12 tell them to rely on their memories.

13 *MS. BARRANCO:* That is my understanding, your Honor.

14 *THE COURT:* Yes, that is pretty clear. I will do a
15 sample first.

16 You must rely upon your recollection of the evidence,
17 including Deputy Lopez's testimony.

18 *MS. BARRANCO:* Or the testimony of the witnesses.

19 *THE COURT:* Recollection of the testimony of the
20 witnesses.

21 *MS. BARRANCO:* That is fine with me, your Honor.

22 *MR. PHILLIPS:* Yes, your Honor.

23 *THE COURT:* You must rely upon your recollection of
24 the testimony of the witnesses.

25 It is signed by, foreperson. That is who your

1 forewoman is.

2 Let me just write this. We will make copies of all of
3 this.

4 *THE COURTROOM DEPUTY:* I will make a copy before I
5 take it back.

6 *THE COURT:* You must rely on your -- all right. I am
7 signing it and dating it. Today is the 23rd.

8 We are going to pass it out to you right now. Did we
9 already? Okay. So, what I would propose, if we get to the
10 point where the interrogatory fact questions become relevant,
11 that is that there is an agreement that I should submit this to
12 the jury, that I would bring in the jury -- well, first, they
13 would return their verdict and I would go through the normal
14 procedure of publishing, having the verdict published, see if
15 you want to poll the jury, taking care of all of that. And then
16 I would say, now that the verdict has been submitted, the Court
17 is submitting interrogatory fact questions for you to answer.

18 I will read the interrogatory fact questions, and I
19 will say all of the instructions I gave you would apply. Just
20 like the verdict, these fact questions must be unanimous. You
21 should use the same foreperson you used in your earlier
22 deliberations.

23 Maybe I will add a sentence about if you give
24 additional argument. How does that sound so far, Plaintiff?

25 *MR. PHILLIPS:* That is fine.

1 THE COURT: Defendant?

2 MS. BARRANCO: That is fine.

3 THE COURT: Do you want me to add a sentence if you
4 are going to present something to the jury? The jury is going
5 to speak about the interrogatory fact questions. I may not
6 need to do that.

7 Let me know, Eleanor, remind me, we will do a sidebar
8 after -- usually after the verdict things move pretty quickly,
9 jurors are accustomed -- they may not be, this is the first
10 time being released and leaving. You might tell me that before
11 I excuse them -- not before I excuse them, before I send them
12 back to answer the questions, whether you want to make a
13 statement. If you do, I will add a line that the attorneys
14 will make some additional argument as relates to the fact
15 questions. Okay.

16 And in the morning, as I said, when they come back
17 they will go to the jury assembly room, you are not going to
18 see them. We'll seal the jury room, it will be sealed tonight,
19 all the evidence will be sealed. I would like you here at
20 9:00. The courtroom will be opened at 8:30. Really, they are
21 not going to start deliberating until 9:00.

22 We'll open it at 8:30, you don't need to be here until
23 9:00, and you just need to be in the general vicinity. You
24 don't need to be in the courtroom, I just need you to be
25 around.

1 MS. BARRANCO: The only other thing would be hearing
2 argument on the Rule 50 motion.

3 THE COURT: Yes, we could do that first thing in the
4 morning. Why don't you come on in and we will do that.

5 MS. BARRANCO: At 9:00?

6 THE COURT: Yes.

7 Let's bring the jury in.

8 *(Thereupon, the jury returns to the courtroom.)*

9 THE COURT: Okay, you may be seated.

10 There are a few things I want to go over with you,
11 ladies and gentlemen. First of all, I trust you received the
12 note that I wrote, my answer, and that is often times how I
13 handle notes. Sometimes I may bring you in. That is back
14 there with you.

15 I want you to know the room where you have left your
16 jury instructions and notebooks and all of the exhibits will be
17 sealed tonight, nobody will go into that room, and it will
18 remain that way until you come in tomorrow morning.

19 When you come in, you should go to the jury assembly
20 room. Whatever you have been doing, you have been doing it
21 perfectly, the only differences is from where you convene, you
22 will be brought back into that room, you cannot pass through
23 the courtroom. You don't necessarily see us, we will be here.
24 Everyone is instructed to be here at 9:00.

25 We will let you go into deliberations, we will be

1 waiting. If a question comes up, we'll answer it, and we are
2 here to -- you are welcome to bring your own lunch, but I will
3 let you know by mid-morning, if you are still deliberating,
4 we'll offer to purchase lunch again, so it is convenient and
5 you just remain in the room while you eat and deliberate. But
6 fair notice, can you bring something if you want, but we'll
7 order you lunch like we did today.

8 You do not begin deliberating until everybody is in
9 that room, everybody. That is number one. Number two, just
10 because you have started deliberating now doesn't mean that you
11 can now talk to each other about the case outside of that room.
12 That is a special room, that is the only place you can talk
13 about the case.

14 So, as you leave here today it is back to the old
15 rules. When you walk down to your car, walk outside, if you
16 want to call each other this evening, that is fine, go to a
17 movie tonight together, but you can't talk about the case. It
18 is only in that room.

19 The same rules apply, no viewing of media, no
20 research, no talking to anybody, not like, oh, yeah, we are
21 deliberating now. That is very important, things have shifted,
22 and I want to make sure nobody thinks things have changed
23 because you are now deliberating.

24 What has changed, when you go back to that room and
25 all eight of you are there, you can talk about the case until

1 all eight of you are there, and the same rules apply.

2 Any questions about that?

3 Okay, all right. Have a nice evening, and we will see
4 you back at nine o'clock tomorrow morning.

5 *(Thereupon, the jury leaves the courtroom.)*

6 *THE COURT:* I just wanted to say a brief word while we
7 have the parties here, this is for the parties' benefit,
8 although the lawyers like to hear it, too, and for the people
9 who have taken the time day in and day out to be here.

10 This is a very difficult case, I want to say that from
11 my viewpoint, and I have been a Federal judge for four years
12 and State judge for eight years. In my view, the attorneys
13 have done an excellent job, highly professional, highly cordial
14 to one another, highly prepared and appropriate advocates for
15 their client's position.

16 The way the system works, people have lawyers in civil
17 and criminal cases, and lawyers do the best job they can do
18 within the bounds of ethics and the rules and the evidence that
19 they have, and they do it in a professional way. That is how
20 it occurred in this case, even though the two positions are
21 different, that is often the case. That is why the case comes
22 to court, because the positions are different.

23 It doesn't mean that anyone has done less than a
24 superb job or anyone is doing anything for any improper
25 purposes or motives. Lawyers take an oath of office to follow

1 the rules that govern them and they -- and every person is
2 entitled to representation.

3 Certainly in criminal trials, as a matter of right
4 under the Constitution, every Defendant has a right to an
5 attorney. In civil cases that Constitutional right doesn't
6 necessarily exist, but the -- but when persons can afford to
7 hire attorneys, it usually is the best thing to do because
8 attorneys are well schooled in the law.

9 And I am having this talk now because when the verdict
10 comes back often times, and probably particularly in this case,
11 it can be emotional and people don't want to hear or listen,
12 and they lose track of what is going on and they don't care to
13 hear from the judge. That is why I am saying it now.

14 I don't know what the outcome is going to be. The
15 lawyers don't know what the outcome is going to be. In my
16 view, they have don't best job they can do to present the
17 evidence to the jury. That is our system, we have to trust and
18 rely upon these eight people to ultimately make a fact
19 determination. They are the people who are judging the facts
20 and making the determination.

21 I am just judging the law. Really, quite frankly, I
22 think I have the easier job. It is difficult, and if any of
23 you served as jurors, you would know that, that is very
24 important. I know there are feelings one way or the other,
25 understandable, there is in all cases, but obviously,

1 particularly in this case.

2 I just want you to know from my standpoint, I believe
3 that this trial has been fair, it has been done in a
4 professional way, and I can't really think of anything else
5 that could be done differently. The parties have had a chance
6 to be heard, this has gone on for a long time. As you may or
7 may not know for some of the people who aren't following the
8 case day-to-day, certain rulings were made. The parties had a
9 right to appeal it to the next court, that court made a
10 decision and it came back and was set for trial. This has been
11 on the docket for a long time.

12 So, I say that to really impress upon everyone, at
13 least in my view, that I am really impressed with how the
14 attorneys have conducted themselves. I feel the parties have
15 been as well represented as they can. If you come out and you
16 are not happy with the outcome, you are entitled to be unhappy
17 with the outcome, but I hope you know that in the Court's view
18 you have been well represented and you had a fair day in court,
19 and there is some peace and comfort that can come from that,
20 even if the outcome was not the outcome that you were hoping
21 for or that you think is the right outcome.

22 That is all I really want to say.

23 Melanie is telling me there is media outside waiting.
24 The jury has been told not to speak with them, and I would
25 simply say that, you know, we have worked very hard to get this

1 case to where it is, so, any time someone speaks to the media,
2 there is the possibility that what you say gets put in the
3 media, and you know I've told this jury countless times not to
4 read anything in the media should there be any media because
5 everything in the courtroom is what the jury should hear, not
6 what someone says to someone else that then gets reported in an
7 editorialized way. That's not to say it is accurate or is not
8 accurate, but I hope everyone exercises proper caution.

9 The attorneys are well versed, I know, in how to
10 handle this, but maybe you also can discuss this with your
11 clients and anyone else who might be associated with your case
12 so that nothing undermines or compromises what we have all
13 worked so hard to accomplish at this point on day five, going
14 on day six of a trial pending on the docket for years based on
15 an incident that occurred four years ago.

16 All right. Everybody have a nice evening and we will see
17 you back at nine o'clock tomorrow.

18 MS. BARRANCO: Thank you, your Honor.

19 MR. PHILLIPS: Thank you, Judge.

20 *(Thereupon, the Court was recessed.)*

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I certify that the foregoing is a correct transcript
from the record of proceedings in the above matter.

Date: June 28, 2018

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

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<p>THE COURT: [133] 3/3 3/6 3/12 3/14 4/11 4/19 4/25 5/2 5/6 5/8 5/13 5/15 6/3 6/5 7/1 7/17 7/23 8/5 8/9 8/19 8/22 10/10 10/13 10/16 10/23 11/4 11/15 11/18 11/25 12/7 12/16 12/19 13/3 13/9 13/11 13/14 13/16 14/4 14/7 14/20 15/7 15/12 15/15 16/14 17/4 17/13 17/19 18/9 18/11 18/14 50/13 50/15 63/4 63/15 67/20 67/23 70/15 71/19 71/21 72/12 72/14 72/16 72/22 72/25 73/4 73/7 73/9 78/16 78/20 89/22 96/25 97/3 97/6 97/9 97/12 97/24 98/7 98/11 98/15 99/9 99/13 100/21 100/23 101/17 101/19 102/2 102/14 102/16 102/25 103/3 103/14 103/20 103/23 104/1 104/4 104/7 127/19 163/23 163/25 165/1 166/20 167/1 167/5 167/8 167/10 167/13 167/23 167/25 168/2 168/4 168/8 168/10 168/14 168/17 168/25 169/2 169/6 169/8 169/23 170/16 170/19 171/1 171/3 171/13 171/18 171/22 172/5 172/25 173/2 174/2 174/5 174/8 176/5</p>	<p>/ /s [1] 180/5</p>	<p>3 3.8 feet [1] 116/11 30 [6] 23/12 28/10 30/8 103/20 158/16 164/15 31 [4] 105/7 105/11 105/19 107/13 31.42 [1] 126/7 32 [1] 126/19 3200 [1] 2/4 32210 [1] 1/23 33304 [1] 2/3 35 [1] 72/1 35,000 [1] 126/17</p>
<p>THE COURTROOM DEPUTY: [3]</p>	<p>0 0.08 [1] 85/25 1 1.2 [1] 143/15 10:00 o'clock [1] 140/21 11:20 [1] 71/25 11th [1] 99/10 12 [1] 119/7 123 [4] 2/16 167/4 167/6 167/10 12:00 [2] 72/1 72/18 12:18 [1] 96/10 12:30 [1] 72/8 13 [1] 114/1 14 [12] 82/19 82/24 83/3 91/25 92/3 92/6 94/18 94/21 94/24 107/11 140/4 154/9 1400 miles [1] 53/3 14422 [1] 101/9 14th [1] 140/7 15 [3] 107/11 126/13 126/17 15-minute [1] 71/25 15-year [1] 112/14 1501 [1] 33/14 1509 [1] 124/20</p>	<p>2 200 [1] 54/5 2004 [1] 164/19 2008 [1] 23/5 2011 [1] 23/16 2013 [1] 28/16 2014 [16] 28/10 30/8 33/1 33/1 82/19 82/24 83/3 91/25 92/3 92/6 94/18 94/21 94/24 136/14 140/4 154/9 2015 [1] 28/16 2016 [2] 28/24 51/2 2018 [3] 1/10 136/13 180/4 21 [2] 22/23 28/24 21 inches [1] 47/11 213 [1] 13/21 21st [1] 22/12 220 [1] 13/24 22033 [1] 19/1 23 [1] 1/10 2337 [1] 2/6 23rd [1] 172/7 2455 [1] 2/3 25 [2] 72/1 89/4 250 [2] 55/8 117/10 26 [1] 29/1 28 [1] 180/4 2:00 [1] 53/5 2:30 [1] 53/4</p>

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

CASE NO. 16-CV-14072-ROSENBERG

VIOLA BRYANT, as Personal .
Representative of the Estate.
of Gregory V. Hill, Jr., .

Plaintiff, .

vs. .

SHERIFF KEN MASCARA, . Fort Pierce, FL
in his official capacity, . May 24, 2018
as Sheriff of St. Lucie .
County, and .
CHRISTOPHER NEWMAN .
as an individual, .

Defendants. .

VOLUME 6

JURY TRIAL PROCEEDINGS
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANTS:

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GREGORY JOLLY, ESQ.
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Official Court Reporter: Pauline A. Stipes
Fort Pierce/West Palm Beach
772-467-2337
Official Federal Reporter
HON. ROBIN L. ROSENBERG

1 JUROR NAMES HAVE BEEN REDACTED PURSUANT TO A DIRECTIVE
2 FROM JUDGE ROBIN L. ROSENBERG. JUROR NAMES MAY BE REQUESTED
3 VIA A MOTION TO THE COURT.

4 *THE COURT:* Good morning, I apologize, I did tell you
5 9:00. You had to be here anyway if we had a question or
6 verdict. I have been here since 9:00, and I was tending to
7 other matters. I apologize if I kept you waiting.

8 I think defense renewed your motion. You may be heard
9 on that.

10 *MS. BARRANCO:* In regard to the Defendant's Rule 50(a)
11 motion, your Honor, the Defendants would ask that judgment be
12 entered in their favor in that a reasonable jury would not have
13 a legally sufficient evidentiary basis to find for the
14 Plaintiff in this case on the following issues -- and
15 ultimately, your Honor, I wanted to basically restate --
16 without restating, reincorporate or incorporate the earlier
17 argument I made before your Honor into this part of the case.

18 And obviously your Honor now has had the benefit of
19 the Defense side and the testimony most particularly of Deputy
20 Newman, who was the individual in this matter who used the
21 deadly force on Mr. Hill. And now, with the benefit of that
22 testimony, your Honor, in addition to all else you heard, it is
23 important to point out, number one, the Plaintiff has not
24 demonstrated an underlying Constitutional right of Mr. Hill's
25 has been violated.

1 Deputy Newman's testimony was that he saw Mr. Hill
2 begin to raise his gun such that he reasonably feared for his
3 life, as well as the life of his fellow officer, and he gave
4 multiple orders from Mr. -- to Mr. Hill to drop the gun which
5 went unheeded. He further testified that the situation was
6 rapidly evolving and he had to make a split-second decision to
7 use deadly force when he saw Mr. Hill's gun rise in Deputy
8 Lopez's direction.

9 The law is that a deputy does not have to wait for the
10 barrel of a gun to be pointed at him or a fellow officer before
11 he is entitled to use deadly force upon that person.

12 I will cite your Honor to Garzynski,
13 G-A-R-Z-Y-N-S-K-I, versus Bradshaw, 573 F.3d 1158, that is an
14 Eleventh Circuit case of 2009, and Montoute, M-O-N-T-O-U-T-E,
15 versus Carr, C-A-R-R, 114 F.3rd 181, Eleventh Circuit, 1997,
16 Long versus Slaton, 508 F.3d 576, Eleventh Circuit from 2007,
17 and lastly, Young versus Borders, 850 F.3rd 1274, that is an
18 Eleventh Circuit case, 2017.

19 Those cases stand for that proposition, ultimately the
20 deputy does not have to wait to find out if the individual is
21 using deadly force before the officer is entitled to use deadly
22 force to protect his life and the life of his fellow officer.

23 For those reasons, we believe Deputy Newman would be
24 entitled to judgment in his favor in this case, and Deputy
25 Newman would be entitled to qualified immunity based on the

1 testimony of Deputy Newman. The relevant question in regard to
2 Deputy Newman's qualified immunity is whether a reasonable
3 officer would have believed Hill was gravely dangerous, Penly
4 versus Eslinger, 605 F.3rd 1143, Eleventh Circuit, 2010. Based
5 on the testimony and evidence presented in this case, your
6 Honor, no reasonable jury would conclude that Deputy Newman
7 would not have reasonably seen Mr. Hill as "gravely dangerous"
8 at the time that the decision by Mr. Newman was made to use
9 deadly force upon Mr. Hill.

10 Additionally, the Plaintiff failed to demonstrate
11 negligence in regard to the decision to use the gun, and as you
12 heard from Deputy Newman, he did not fire blindly, the door of
13 the garage was on its way down as he began to fire, and he
14 aimed at where Mr. Hill was standing, and he began to see Mr.
15 Hill's legs as the garage door was going down as he was using
16 his firearm. The evidence was that all of the bullets that
17 went through the door struck Mr. Hill, such that no reasonable
18 jury could conclude that Deputy Newman's actions were
19 negligent.

20 That is what I have to present at this time.

21 *THE COURT:* Thank you. In response.

22 *MR. PHILLIPS:* Yes, kind of like prior counsel, I will
23 adopt and stand by the earlier argument and the response to the
24 summary judgment.

25 There was evidence there was no gun in the hand.

1 There was evidence that the threat was nonexistent. There was
2 evidence it wasn't raised at any deputy or in the direction of
3 any deputy. Even Mr. Lawrence said that this would be only
4 raised at a deputy laying on the ground.

5 There were no commands given that were heard by
6 anybody.

7 The other issue that came out, to the extent that
8 three to four commands were given at the time of the incident,
9 it would take an inordinate amount of time, nine or 12 seconds,
10 which we didn't have in this case.

11 The other issue we have now is probably grounds for
12 motion for a new trial. We worked on this case for multiple
13 years, evidence was locked in a long time ago, expert reports
14 were locked in a long time ago. We had a non-return expert who
15 had a PowerPoint where the gun is pointed straight out. We
16 have everybody opining based upon the gun being at waist level,
17 and when Deputy Newman testified, for the first time we have
18 the gun pointed in the direction of the ground. It was brand
19 new testimony, materially changed testimony, there was nothing
20 we could do to deal with it.

21 And I will bring that up at a motion for new trial,
22 but it does go to impeachment for purposes of this argument of
23 Deputy Newman. And Deputy Lopez also said he didn't shoot, and
24 the reasons why, and he could be judged as a reasonable
25 officer.

1 *THE COURT:* Was there any reply?

2 *MS. BARRANCO:* Just briefly, your Honor.

3 I am not really sure why Plaintiff's counsel mentioned
4 a motion for new trial during a Rule 50(a), or a new motion
5 while your Honor is supposed to be testing the legal
6 sufficiency of the issues at this point. I would take issue
7 with what counsel just said.

8 The testimony of Detective Newman was that this was a
9 fluid, evolving incident. The testimony from everyone has been
10 this is not a stop issue motion, a PowerPoint wasn't shown
11 because it wasn't an accurate depiction of what happened here,
12 and it was a concern it could be misleading to the jury. There
13 has never been a material change in the testimony of Deputy
14 Newman, it is always he saw the gun as it started to raise.

15 Otherwise, I want to say in regard to the renewed
16 motion under 50(a), most of those witnesses, other than the two
17 deputies that were right there at the garage door who obviously
18 did testify they did see the gun in Mr. Hill's hand, all of the
19 witnesses said, to the extent they could see anyone in that
20 garage, it was only part of Mr. Hill, which made sense when you
21 consider the garage door was moving downward.

22 In addition, there is testimony from multiple sources
23 the garage inside is very dark. Destiny Hill testified she did
24 not see anything in her father's hand. I would submit to you
25 the evidence suggested -- showed that she could not see

1 anything in her father's hands, number one, from the distance
2 where she was and the fact that Mr. Hill was wearing dark
3 clothing, with a small dark firearm in his hand, with a dark
4 background. As I told the jury in closing, the evidence shows
5 that Destiny Hill could not see the gun. She did not see the
6 gun, and it is because she could not see the gun from her
7 perspective.

8 I want to put that on the record.

9 *THE COURT:* Okay, all right. Consistent with what
10 counsel has done, of course it is the same, I adopt and
11 reincorporate the analysis that I gave at the end of the
12 Plaintiff's case when Defense made its first Rule 50 argument
13 with respect to laying out what the rule says, how it can be
14 presented to the Court. I went over the elements of the claims
15 and as I did after the Plaintiff's presentation of evidence
16 only, I am doing the same thing now that all of the evidence
17 has been put in, which is reserve ruling on the Rule 50 motion
18 as to Defendants Newman and Mascara.

19 I wanted to make sure everybody had been fully heard
20 on the issue.

21 *MR. PHILLIPS:* Thank you, your Honor.

22 *THE COURT:* So, let me confirm, Melanie is not there,
23 we talked about assuming this happened. I am sure counsel
24 would want to have confirmation the computer --

25 *MR. PHILLIPS:* She told us the laptop did go back,

1 without objection by Plaintiff.

2 *THE COURT:* Okay. All right. So I think, then -- it
3 is only 10:00 o'clock. What I would suggest, so you have some
4 degree of freedom, particularly for lunch, the plan is -- you
5 are going to check in with them at 10:30?

6 Unless there is an objection, Melanie will check in at
7 10:30, and ask them do you want me to order lunch. They can
8 say no or yes. No would mean, I think we should all stand by.
9 And I would then have Melanie tell them, okay, from this period
10 of time counsel and the Court are going to be unavailable as
11 far as they are going to be eating lunch. If you have any
12 questions, recognize the Court will not be available
13 immediately. If they say no, Melanie would say that.

14 If they say yes, Melanie will order lunch and order it
15 for twelve o'clock. Consistent with that, I will have Melanie
16 say to them counsel and the Court will be having lunch from
17 12:00 to 1:00, continue to deliberate, but understand if a
18 question comes up between 12:00 and 1:00, you may not get an
19 immediate answer, so that everybody else can eat lunch.

20 So you know your lunch break is 12:00 to 1:00, and you
21 can wander around if you want to do that.

22 Given that, why don't we come back at 10:30 or 10:35,
23 and you will tell us what they say about lunch, and we know
24 what we are doing at twelve o'clock. Okay?

25 *MS. BARRANCO:* Sounds good, your Honor.

1 *(Thereupon, a short recess was taken.)*

2 *THE COURT:* All right. You may be seated.

3 Okay. So, for the record, everybody is here, all
4 counsel and parties, and a copy of the note was made for you
5 which reads -- it is 2:04, is when it was timed, May 24th. "At
6 this time we are not able to come to a unanimous decision."
7 Signed, a signature, and written, Foreperson.

8 Let me first hear from counsel about your
9 recommendation, and then we can have a discussion about it.
10 From the Plaintiff.

11 *MR. PHILLIPS:* I think there is a charge that
12 addresses this very situation, and we are referring to that
13 charge.

14 *THE COURT:* 2.8, the Allen Charge.

15 *MS. BARRANCO:* We would agree, your Honor.

16 *THE COURT:* There is one other option. There could be
17 another instruction before the Allen Charge to see if they
18 might be able to reach a unanimous verdict, and if they are not
19 able to reach a unanimous verdict and come back again with a
20 note, to give the Allen Charge.

21 For example, in the case of *Burkhart versus R. J.*
22 *Reynolds Tobacco*, 884 F.3d 1068, March 7, 2018, a judge gave
23 the following instruction: When presented with a situation
24 where a verdict was not able to be reached on an aspect of -- I
25 want to see, I don't want to misrepresent it. Was it as to

1 damages?

2 *THE LAW CLERK:* Yes, they reached a verdict as to
3 liability, but not as to damages.

4 *THE COURT:* The jury informed the Court that it could
5 not come to a unanimous decision and asked the Court what, "the
6 next step" quote, would be.

7 And, actually, just by way of backdrop, the jury --
8 this is in a tobacco case -- the jury delivered the phase one
9 verdict, which would be liability, which established
10 appellant's liability to compensatory damages, and phase two
11 being a punitive damage amount.

12 After the parties presented their evidence the jury
13 entered deliberations and found it difficult to reach a
14 unanimous verdict. The jury informed the Court that it could
15 not come to a unanimous decision, and asked what the next step
16 would be.

17 After reviewing with the parties, the
18 judge instructed: Each of you must decide the case for
19 yourself, but only after fully considering the evidence with
20 the other jurors, so you must discuss the case with one another
21 in trying to reach an agreement. While you are discussing the
22 case, don't hesitate to re-examine your own opinion and change
23 your mind if you become convinced that you were wrong, but
24 don't give up your honest beliefs just because others think
25 differently or because you simply want to get the case over

1 with.

2 Remember, that in a very real way, you are judges,
3 judges of the facts. Your only interest is to seek the truth
4 from the evidence in the case.

5 The Court explained to counsel that it chose to send
6 this instruction instead of an Allen Charge because it was
7 concerned about the coercive nature of Allen Charges and thus
8 gave the above instruction to make sure it was not imposing an
9 undue burden on the jurors to change opinions.

10 40 minutes later the jury informed the Court it was
11 not able to reach a unanimous decision. They came back with
12 the note, we examined our own opinions and considered and
13 reconsidered the opinions of all jurors. Unfortunately, we
14 find we are still unable to reach a unanimous decision and it
15 does not look likely we will be able to do so without giving up
16 honest beliefs. Our apologies, but what is our next step?

17 At this point the judge decided to deliver an Allen
18 Charge, and the court overruled appellant's objection, and
19 delivered the circuit's pattern Allen Charge along with some
20 prefatory remarks.

21 On appeal what the Eleventh Circuit said was that --
22 in essence, the Court said, um-m-m, indeed the District Court
23 would have been hard pressed to craft a more balanced and more
24 non-coercive instruction. In spite of the short length of time
25 the jury had been deliberating after ten days of trial, the

1 jury was unable to reach a verdict. The Court was well within
2 its discretion to include a full throttled Allen Charge and it
3 was appropriate and respond to the jury in the manner in which
4 it did, and cites to United States versus Alonzo, 7440 F.2d
5 862, 877, Eleventh Circuit, 1984. The timing of the Allen
6 Charge is within the trial Court's discretion.

7 I throw that out there to consider as an approach that
8 the Court give an instruction other than the Allen, and
9 actually exactly like the one that the Eleventh Circuit found
10 to be balanced and non-coercive, and see what the jury does.
11 And if the jury does not reach a verdict and comes back with a
12 similar note, I will ask for argument again or discussion, and
13 one of the options at that point would be to give the Allen
14 Charge.

15 *MR. PHILLIPS:* Your Honor, we would request that
16 instruction. Particularly --

17 *THE COURT:* Which one?

18 *MR. PHILLIPS:* The Reynolds case, pre-Allen
19 instruction, because the jury says "at this time." It is not a
20 call for desperation yet.

21 *THE COURT:* It does say "at this time." So, your
22 recommendation is to give the -- we will call it the pre Allen
23 charge, and I suppose maybe reserve your right to make whatever
24 recommendation when and if we get a note afterwards where they
25 still can't reach a verdict. But I take it to mean if they

1 still can't reach a verdict perhaps the Allen Charge would be
2 appropriate.

3 From the Defense?

4 MS. BARRANCO: I agree.

5 THE COURT: Do you think, then -- I think -- it was
6 hard to tell whether this judge wrote it or brought the jury
7 in.

8 I think what I would feel comfortable doing is
9 bringing the jury in and read verbatim what I read from the
10 case and excuse them.

11 I will acknowledge the note, make sure it is correct,
12 and I will read that, but -- by both parties, agreed I will
13 read it and send them back?

14 MS. BARRANCO: That is fine, your Honor.

15 THE COURT: Okay.

16 *(Thereupon, the jury returns to the courtroom.)*

17 THE COURT: Welcome back, members of the jury. You
18 may be seated.

19 The Court is in receipt of your note and discussed it
20 with the attorneys. May 24, 2:04. It reads: At this time we
21 are not able to come to a unanimous decision. Signed by,
22 Foreperson.

23 Did I read the note correctly?

24 THE JURORS: Yes.

25 THE COURT: And here is the Court's response: Each of

1 you must decide the case for yourself, but only after fully
2 considering the evidence with the other jurors. So you must
3 discuss the case with one another in trying to reach an
4 agreement. While you are discussing the case, don't hesitate
5 to re-examine your own opinion and change your mind if you
6 become convinced that you were wrong, but don't give up your
7 honest beliefs just because others think differently or because
8 you simply want to get the case over with.

9 Remember that in a very real way you are the judges,
10 judges of the facts. Your only interest is to seek the truth
11 from the evidence in the case.

12 And with that, I will send you back to the jury room.

13 *(Thereupon, the jury continued deliberations at 2:40 p.m.)*

14 *THE COURT:* Okay, so we will let you know when we hear
15 anything further.

16 *MR. PHILLIPS:* Thank you, your Honor. This might be
17 pretty quick, your Honor.

18 *(Thereupon, a short recess was taken.)*

19 *THE COURT:* All right. You may be seated.

20 So, we received another note, and the note reads -- it
21 is timed 4:23, dated 5/24/18. You have copies of the note.
22 And it says: If we find minimum negligence, can the Courts
23 overrule monetary amounts presented by the jury? Signed and
24 printed signature of, Foreperson.

25 So, I looked over the negligence claim again on the

1 verdict form. We do have language there in question number 5,
2 state the percentage of any negligence which was the legal
3 cause of Gregory Vaughn Hill, Jr.'s injuries that you charge to
4 Sheriff Mascara, a line and percentage, and Gregory Vaughn
5 Hill, Jr. Total must be one hundred percent, and goes on to
6 answer question 6. And it says, in determining the amount of
7 the damages, do not make any reduction because of the
8 negligence, if any, of Gregory Vaughn Hill, Jr. If you find
9 that Gregory Vaughn Hill, Jr. was negligent, the Court will
10 make an appropriate reduction in the damages awarded. And it
11 goes on to describe what we discussed earlier about the
12 relationship between damages in 1983 and negligence.

13 That does not appear to be where the question is
14 headed. It appears to be directed to the paragraph before, so
15 I took a stab at a response and so I will read it, but I want
16 to hear from you because I was giving it some thought.

17 So, a proposed response would be the following: As
18 instructed on the verdict form regarding the negligence claim
19 against Sheriff Ken Mascara, in his official capacity as
20 Sheriff of St. Lucie County, you must state the percentage of
21 any negligence which was the cause of Gregory Vaughn Hill, Jr.'s
22 injuries that you charge to Ken Mascara and to Gregory Vaughn
23 Hill, Jr. The Court will calculate the amount of total
24 damages, if any, that you find on the negligence claim based on
25 the percentage of negligence you indicated in question 5.

1 So, the first part of what I just read restates what
2 is on the verdict form. The second part, which is one
3 sentence, attempts to maybe give a clear explanation of what I
4 think they may have been confused about, but I will hear from
5 you.

6 When they say, in determining the amount of damages do
7 not make any reduction because of the negligence, if any, of
8 Gregory Vaughn Hill, Jr., if you find that Gregory Vaughn Hill,
9 Jr. was negligent, the Court in entering judgment will make an
10 appropriate reduction, the sentence that I said, the Court will
11 calculate the amount of damages, if any, you find on the
12 negligence claim based on the percentage of negligence,
13 question 5 addresses the question and makes it clearer than
14 maybe they are reading it.

15 *MR. PHILLIPS:* I just don't understand their question,
16 your Honor. I think your answer assumes a very likely
17 possibility that that is what they are asking.

18 I wonder if we could ask what they mean or ask them to
19 clarify.

20 *MS. BARRANCO:* My thought is if you find minimum
21 negligence of the Plaintiff or the Defendant. It is not clear.

22 *THE COURT:* Isn't it true, it doesn't matter,
23 negligence is a percentage, regardless of minimum as to whom,
24 find minimum negligence? I don't think we care as to whom.

25 I think it does suggest that there is some

1 apportionment because there is not no negligence.

2 Can the Courts overrule monetary amounts by the jury?

3 It is suggesting to the Court what can the Court do
4 without a finding of a percentage of negligence, and I believe
5 it is accurate to say the Court will calculate the amount of
6 total damages, if any, that you find on the negligence claim
7 based on the percentage of negligence you indicated in question
8 5.

9 But you can offer a different -- and I can show this
10 to you if you want to look at it, what I typed up.

11 *MR. PHILLIPS:* I just read it as a remitter type
12 question.

13 *THE COURT:* Can the Courts overrule monetary amounts?
14 So, like they understand percentage, and they
15 understand the Court is going to reduce, but even with that,
16 can you, the Court, overrule the total amount.

17 *MR. PHILLIPS:* I think that is a plain reading. I
18 think it is fairly confusing.

19 I don't know if you say take a stab in giving us more
20 detail, like more specificity about your question.

21 *MS. BARRANCO:* Unless they are referring to the
22 alcohol defense, part of it, that question would have been a
23 yes or no, on the page before.

24 *THE COURT:* But if they answer no there, they don't
25 get to --

1 MS. BARRANCO: I don't think they are hung up on we
2 only do ten percent for Mr. Hill or we only do ten percent for
3 the Sheriff, how does that impact the damages? I am guessing.

4 THE COURT: That is how I read it, which was my
5 attempt to tell them that the Court calculates the damages, if
6 any, you find on the negligence based on the percentage of
7 negligence you indicated.

8 So, I was reading it that way.

9 MS. BARRANCO: My first thought when I read the note
10 was, ladies and gentlemen of the jury, it is not your concern
11 what the Court is going to do in terms of what your answers
12 are. You don't need to worry about what happens next, we just
13 need you to answer these questions to the best of your ability.

14 I don't know if that is what they are asking.

15 THE COURT: Is there an objection to having them
16 rephrase or reclarify their question, that the Court doesn't
17 fully understand your question, can you attempt to rephrase it
18 to see if the Court better understands it?

19 MS. BARRANCO: Not a bad idea, not to tell us what the
20 split is or anything like that.

21 MR. PHILLIPS: Before the comma does not necessarily
22 matter. It is what does "can the Courts overrule monetary
23 amounts presented by the jury" mean.

24 MS. BARRANCO: Whether they are worried about what
25 could happen based on their answers, whether they are hung up

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

CASE NO. 18-13902-E

**VIOLA BRYANT, as Personal Representative of the Estate of
GREGORY VAUGHN HILL, JR.,**

Plaintiff/Appellant,

vs.

**SHERIFF KEN MASCARA, in his Official Capacity as Sheriff of St. Lucie
County, Florida and Christopher Newman,**

Defendants/Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 2:16-cv-14072**

VOLUME 7

**APPELLEES SHERIFF KEN MASCARA AND NEWMAN'S
SUPPLEMENTAL APPENDIX**

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1 on -- to me, if they read the verdict form, that question is
2 answered, don't reduce it based on the percentage, the Judge is
3 going to do it.

4 Who knows otherwise what they may be thinking.

5 *THE COURT:* Is there any objection to seeking
6 clarification on the question?

7 *MR. PHILLIPS:* No, your Honor.

8 *MS. BARRANCO:* No, your Honor.

9 *THE COURT:* So, I would propose writing out -- I won't
10 write it on the note yet -- but the Court does not understand
11 the question. Could you restate -- could you rephrase the
12 question?

13 Is that acceptable?

14 *MR. PHILLIPS:* Yes. Yes, your Honor.

15 *MS. BARRANCO:* Yes, your Honor.

16 *THE COURT:* All right. And then I think we should --
17 we might want to add, could you rephrase the question, and then
18 the reminder, I think we should do that. I don't want them
19 coming back with numbers. I think we have it in the --
20 cautioning them not to tell me how many jurors have voted one
21 way or the other.

22 Why don't I add: But I caution you not to tell me how
23 many jurors have voted one way or the other, period.

24 *MR. PHILLIPS:* Yes, your Honor.

25 *MS. BARRANCO:* That sounds good.

1 *MR. PHILLIPS:* Particularly in light of the last
2 question.

3 *THE COURT:* All right. The Court does not understand
4 the question. Could you rephrase the question? But I caution
5 you not to tell me how many jurors voted one way or the
6 other -- could you rephrase the question? Is that all right or
7 should I --

8 *MR. PHILLIPS:* Just put a question mark.

9 *THE COURT:* I should have said please.
10 Should I add a question mark?

11 *MR. PHILLIPS:* Yes.

12 *MS. BARRANCO:* Yes.

13 *THE COURT:* All right. We will make copies. Since
14 there is no room on that one, I suspect they will put it on a
15 new piece of paper.

16 *MS. BARRANCO:* Your Honor, how late are you going to
17 go?

18 *THE COURT:* That is a good point.

19 I was going to ask you if you wanted me to ask the
20 jurors if they wanted to -- ask them if they wanted to continue
21 deliberating even though it is five o'clock.

22 Any mention of continuation of deliberations? It
23 would be along the lines --

24 *MR. PHILLIPS:* We are in a weird state because of the
25 time and what the question was. As long as they should go.

1 *MS. BARRANCO:* Yes, they should have a better sense
2 whether they are making headway and getting closer or not.

3 *THE COURT:* When Melanie brings the question in to
4 them, is there any problem with Melanie asking them if they
5 want to continue deliberating past five o'clock and let the
6 Court know when you want to stop deliberating?

7 *MR. PHILLIPS:* No.

8 *THE COURT:* Is that okay?

9 *THE COURTROOM DEPUTY:* As I give this to them?

10 *THE COURT:* Then you say it is five o'clock, do you
11 want to continue deliberating past five o'clock, and if so,
12 until you tell us you don't want to continue deliberating.

13 *THE COURTROOM DEPUTY:* Okay.

14 *THE COURT:* Thanks. We will wait to hear what she
15 says about that.

16 (Pause.)

17 *THE COURTROOM DEPUTY:* They said give them a minute to
18 decide.

19 *THE COURT:* Okay.

20 Okay, this note dated 5/24/18, at 5:04 says: We have
21 a verdict. Foreperson.

22 Now, remember, we still have to review everything now.

23 Let me put the jury instructions up here for a moment.

24 We still have the interrogatory fact question form,
25 so, depending on the verdict, I would want to have a sidebar

1 with you to ask you if the questions we discussed and you
2 agreed to, the three questions on the interrogatory fact
3 questions, should go back to the jury and also, I was going to
4 ask you if you wanted to make any argument about the
5 interrogatory fact questions, with your decision-making based
6 on what you hear. In anticipation of that possibility, we made
7 copies -- well, no -- yes, we have one interrogatory fact
8 question. We have it on a blue sheet somewhere. We just send
9 one back.

10 Again, as we agreed yesterday, if you want me to
11 proceed with the interrogatory fact questions, I will read the
12 instruction: Now that the verdict is submitted, the Court is
13 submitting interrogatory questions for you to answer, and I go
14 over it. All the jury instructions apply, just like your
15 instructions on the verdict, the answers must be unanimous.
16 You should use the same foreperson in your earlier
17 deliberations.

18 Is that procedure still acceptable to the Plaintiffs?

19 *MR. PHILLIPS:* Yes.

20 *MS. BARRANCO:* Yes.

21 *THE COURT:* We would have a sidebar.

22 *MS. BARRANCO:* One thing I would say, on behalf of the
23 Defense, I don't think it would be necessary to have further
24 discussion or argument to the jury to submit the fact
25 questions.

1 MR. PHILLIPS: Same here.

2 THE COURT: But you want to be heard, based on the
3 verdict, whether you want them to go back or not?

4 MR. PHILLIPS: Sure.

5 THE COURT: Okay.

6 MS. BARRANCO: Sure.

7 THE COURT: Okay. Let's bring our jury in. Just be
8 prepared, I will be asking you after the verdict is published
9 if you want the jury polled. Both sides I will ask.

10 *(Thereupon, the jury returns to the courtroom at 5:10 p.m.)*

11 THE COURT: Ladies and gentlemen, please be seated.

12 I will ask our foreperson, has the jury unanimously
13 agreed upon its verdicts?

14 THE FOREPERSON: We have, your Honor.

15 THE COURT: If you would please hand the verdicts to
16 our courtroom deputy, Ms. Richardson.

17 Okay. The Court finds that there are no
18 inconsistencies with the verdict and so I am going to ask
19 Ms. Richardson to publish the verdict by reading it aloud.

20 So, what I would ask is that the jury listen carefully
21 to the publication or the reading of the verdict because after
22 that, I ask the parties, through their attorneys, whether they
23 want the jury polled, which means Ms. Richardson will ask you
24 if this verdict is in fact your verdict.

25 So, I will hand the verdict form to you.

1 *THE COURTROOM DEPUTY:* Case Number
2 16-CV-14072-Rosenberg, Viola Bryant, as personal representative
3 of the Estate of Gregory Vaughn Hill, Jr. versus Sheriff Ken
4 Mascara, in his official capacity as Sheriff of St. Lucie
5 County and Christopher Newman.

6 Do you find from a preponderance of the evidence:

7 Number 1. That Defendant Christopher Newman
8 intentionally committed acts that violated Gregory Vaughn Hill,
9 Jr.'s right to be free from excessive force? No.

10 The negligence claim against Sheriff Mascara, in his
11 official capacity as Sheriff of St. Lucie County.

12 Was there negligence on the part of Sheriff Mascara,
13 in his official capacity as Sheriff of St. Lucie County,
14 through his deputy Christopher Newman, which was the legal
15 cause of Gregory Vaughn Hill, Jr.'s injuries? Yes.

16 Did the Defendant Christopher Newman act in bad faith
17 or with malicious purpose or in a manner exhibiting wanton and
18 willful disregard of human rights, safety or property? No.

19 Was there negligence on the part of Gregory Vaughn
20 Hill, Jr. which was the legal cause of his injuries? Yes.

21 Was Gregory Vaughn Hill, Jr. under the influence of
22 alcoholic beverages to the extent that his normal faculties
23 were impaired and that as a result of the influence of such
24 alcohol beverage Gregory Vaughn Hill, Jr. was more than
25 50 percent at fault as a result of this incident and his

1 resulting injuries? Yes.

2 State the percentage of any negligence which was the
3 legal cause of Gregory Vaughn Hill, Jr.'s injuries that you
4 charged to Sheriff Ken Mascara, in his official capacity as
5 Sheriff of St. Lucie County. One percent.

6 Gregory Vaughn Hill, Jr., 99 percent.

7 Number 6. What is the total amount of damages
8 sustained by the Estate of Gregory Vaughn Hill, Jr.?

9 Funeral expenses that Viola Bryant, as personal
10 representative of the Estate of Gregory Vaughn Hill, Jr.
11 incurred. One dollar.

12 Minor child D.H.'s loss of parental companionship,
13 instruction and guidance and D.H.'s mental pain and suffering
14 from the date of January 14, 2014, and in the future. One
15 dollar.

16 Minor child A.H.'s loss of parental companionship,
17 instruction and guidance and A.H.'s mental pain and suffering
18 from the date of January 14, 2014, and in the future. One
19 dollar.

20 Minor child G.H.'s loss of parental companionship,
21 instruction and guidance and G.H.'s mental pain and suffering
22 from the date of January 14, 2014, and in the future. One
23 dollar.

24 Signed by the foreperson this 24th day of May, 2018.

25 *THE COURT:* Would either party like the jury to be

1 polled? From the Plaintiff?

2 MR. PHILLIPS: We would like the jury polled on each
3 of their verdicts.

4 THE COURT: Yes. I will ask the jury to be polled as
5 to whether the verdict constitutes your individual verdict in
6 all respects.

7 BY THE COURTROOM DEPUTY:

8 Q. Juror number one, are these your verdicts?

9 A. Yes.

10 Q. Juror number two, are these your verdicts?

11 A. Yes.

12 Q. Juror number three, are these your verdicts?

13 A. Yes.

14 Q. Juror number four, are these your verdicts?

15 A. Yes.

16 Q. Juror number five, are these your verdicts?

17 A. Yes.

18 Q. Juror number six, are these your verdicts?

19 A. Yes.

20 Q. Juror number seven, are these your verdicts?

21 A. Yes.

22 Q. Juror number eight, are these your verdicts?

23 A. Yes.

24 THE COURTROOM DEPUTY: We have a unanimous verdict.

25 THE COURT: If I could ask counsel to come sidebar for

1 a moment.

2 (Proceedings at sidebar.)

3 *THE COURT:* So, what are the parties' positions with
4 respect to the interrogatory fact questions?

5 *MS. BARRANCO:* Well, your Honor, on behalf of the
6 defense, that is no longer needed as the jury's answer to the
7 first question is they find that Deputy Newman did not violate
8 Mr. Hill's Constitutional right.

9 *MR. PHILLIPS:* I would agree.

10 *THE COURT:* So I will be discharging the jury.

11 (Sidebar concluded.)

12 *THE COURT:* Ladies and gentlemen, on behalf of the
13 parties and attorneys and people of the State of Florida, I
14 would like to thank you, and our Federal system, I would like
15 to thank you for your time and consideration of this case.

16 I want to provide you with special privileges. No
17 juror can talk about the discussions in the jury room except by
18 court order. For many centuries our courts have recognized
19 that a jury's deliberations, discussions and votes should
20 remain their private affair as long as they wish it, and
21 therefore the law does give you a unique privilege not to speak
22 about the jury's work. However, you also have the right at
23 this point to speak about the case.

24 So, the instructions I have been giving you up to now
25 no longer apply, and you are free to do what you want in terms

1 of any communications, so it will be up to each one of you
2 individually.

3 I want to thank you very much for your time and
4 commitment and service on this case.

5 I know that we do have as a token of our appreciation
6 a certificate of appreciation which Ms. Richardson will give
7 you, and I think for anyone who has requested any documentation
8 regarding your time here, we have taken care of that as well.

9 Any instructions the jurors need to be aware of?

10 *THE COURTROOM DEPUTY:* No. I need two minutes to do
11 this.

12 *THE COURT:* We wish you a nice rest of the day and
13 upcoming weekend and Ms. Richardson will escort you out and
14 give you the certificates. Thank you so much.

15 *(Thereupon, the jury leaves the courtroom.)*

16 *THE COURT:* Okay. So, I would ask what matters, if
17 any, do you believe the Court needs to tend to?

18 I would request that a proposed judgment be prepared,
19 and preferably I would like agreement on what that judgment
20 would be, so I would ask for counsel to confer. Maybe Defense
21 can take the lead in preparing a proposed judgment and confer
22 with Plaintiff about the format and language in the judgment,
23 and email it to the Court's email, copying Plaintiff's counsel,
24 and indicating in the email there is agreement as to the form
25 of the judgment, and if there is not agreement, explaining

1 where there is disagreement and providing the different forms
2 of judgment so the Court can review what is being -- what is
3 not agreed to.

4 MS. BARRANCO: Yes, your Honor.

5 THE COURT: Let me sign the certificates quickly.

6 Is there anything else that you believe should be
7 addressed or brought to the Court's attention at this time?

8 MR. PHILLIPS: No, your Honor. We obviously preserve
9 for any new trial so I have that out there.

10 THE COURT: From the Defense?

11 MS. BARRANCO: No, not at this time.

12 THE COURT: Thank you all, safe travels back to where
13 everyone is going.

14 *(Thereupon, the proceedings concluded.)*

15 * * *

16 I certify that the foregoing is a correct transcript
17 from the record of proceedings in the above matter.

18
19 Date: June 28, 2018

20 /s/ Pauline A. Stipes, Official Federal Reporter

21 Signature of Court Reporter
22
23
24
25

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<p>THE COURT: [52] THE COURTROOM DEPUTY: [6] 22/8 22/12 22/16 24/25 27/23 29/9 THE FOREPERSON: [1] 24/13 THE JURORS: [1] 14/23 THE LAW CLERK: [1] 11/1</p>	<p>5 5/24/18 [2] 15/21 22/20 50 [5] 3/10 7/4 7/16 8/12 8/17 50 percent [1] 25/25 508 [1] 4/16 573 [1] 4/13 576 [1] 4/16 5:04 [1] 22/20 5:10 [1] 24/10</p>	<p>aimed [1] 5/14 alcohol [2] 18/22 25/24 alcoholic [1] 25/22 all [18] 3/22 5/16 7/18 8/9 8/16 9/2 9/8 10/2 10/3 12/13 15/19 20/16 21/3 21/6 21/13 23/14 27/6 30/12 Allen [14] 10/14 10/17 10/20 12/6 12/7 12/17 12/19 13/2 13/5 13/8 13/13 13/18 13/22 14/1</p>
<p>THE COURT: [52] THE COURTROOM DEPUTY: [6] 22/8 22/12 22/16 24/25 27/23 29/9 THE FOREPERSON: [1] 24/13 THE JURORS: [1] 14/23 THE LAW CLERK: [1] 11/1</p>	<p>6 605 [1] 5/4</p>	<p>along [2] 12/19 21/23 Alonzo [1] 13/4 aloud [1] 24/19 also [3] 6/23 23/3 28/22 always [1] 7/14 am [5] 7/3 8/16 8/23 19/3 24/18</p>
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<p>THE COURT: [52] THE COURTROOM DEPUTY: [6] 22/8 22/12 22/16 24/25 27/23 29/9 THE FOREPERSON: [1] 24/13 THE JURORS: [1] 14/23 THE LAW CLERK: [1] 11/1</p>	<p>9 904-517-8903 [1] 1/23 954-462-3200 [1] 2/4 99 percent [1] 26/6 9:00 [2] 3/5 3/6</p>	<p>anticipation [1] 23/6 any [24] 6/2 6/3 7/1 9/11 16/2 16/7 16/8 16/21 16/24 17/7 17/7 17/11 18/6 19/6 20/5 21/22 22/4 23/4 26/2 29/1 29/7 29/9 29/17 30/9 anybody [1] 6/6 anyone [2] 7/19 29/7 anything [5] 7/24 8/1 15/15 19/20 30/6</p>
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<p>ask... [8] 24/18 24/20 24/22 24/23 27/4 27/25 29/16 29/20 asked [2] 11/5 11/15 asking [4] 17/17 19/14 22/4 24/8 aspect [1] 10/24 assumes [1] 17/16 assuming [1] 8/23 attempt [2] 19/5 19/17 attempts [1] 17/3 attention [1] 30/7 attorneys [3] 14/20 24/22 28/13 available [1] 9/12 awarded [1] 16/10 aware [1] 29/9</p>	<p>break [1] 8/30 briefly [1] 7/2 bring [2] 6/21 24/7 bringing [1] 14/9 brings [1] 22/3 brought [2] 14/6 30/7 BRUCE [1] 2/1 BRYANT [3] 1/4 25/2 26/9 bullets [1] 5/16 burden [1] 12/9 Burkhart [1] 10/21</p>	
<p>B back [13] 8/25 9/22 10/19 12/11 13/11 14/13 14/17 15/12 20/19 23/3 23/9 24/3 30/12 backdrop [1] 11/7 background [1] 8/4 bad [2] 19/19 25/16 balanced [2] 12/23 13/10 BARRANCO [2] 2/2 2/2 barrel [1] 4/10 based [11] 4/25 5/4 6/16 16/24 17/12 18/7 19/6 19/25 20/2 23/5 24/2 basically [1] 3/15 basis [1] 3/13 be [51] Beach [1] 2/5 because [14] 7/11 8/6 11/24 11/25 12/6 13/19 15/7 15/7 16/7 16/16 17/7 18/1 21/24 24/21 become [2] 11/23 15/6 been [12] 3/1 3/6 3/25 7/9 7/13 8/17 8/19 12/23 12/25 17/4 18/22 28/24 before [8] 1/16 3/17 4/10 4/21 10/17 16/14 18/23 19/21 began [2] 5/13 5/14 begin [1] 4/2 behalf [3] 23/22 28/5 28/12 being [3] 6/16 11/11 30/2 beliefs [3] 11/24 12/16 15/7 believe [4] 4/23 18/4 29/17 30/6 believed [1] 5/3 benefit [2] 3/18 3/21 best [1] 19/13 better [2] 19/18 22/1 between [2] 9/18 16/12 beverage [1] 25/24 beverages [1] 25/22 blindly [1] 5/12 blue [1] 23/8 Borders [1] 4/17 both [2] 14/12 24/9 Boulevard [2] 1/22 2/3 Bradshaw [1] 4/13 brand [1] 6/18</p>	<p>C C-A-R-R [1] 4/15 calculate [3] 16/23 17/11 18/5 calculates [1] 19/5 call [2] 13/20 13/22 came [2] 6/7 12/11 can [17] 8/13 9/7 9/19 9/21 10/9 15/22 18/2 18/3 18/9 18/9 18/13 18/16 19/17 19/22 28/17 29/21 30/2 can't [2] 13/25 14/1 capacity [6] 1/10 16/19 25/4 25/11 25/13 26/4 care [2] 17/24 29/8 carefully [1] 24/20 Carr [1] 4/15 case [28] 1/3 3/14 3/17 4/14 4/18 4/24 5/5 6/10 6/12 8/12 10/21 11/8 11/18 11/20 11/22 11/25 12/4 13/18 14/10 15/1 15/3 15/4 15/8 15/11 25/1 28/15 28/23 29/4 cases [1] 4/19 cause [5] 16/3 16/21 25/15 25/20 26/3 caution [2] 20/22 21/4 cautioning [1] 20/20 centuries [1] 28/18 certificate [1] 29/6 certificates [2] 29/14 30/5 certify [1] 30/16 change [4] 7/13 11/22 12/9 15/5 changed [1] 6/19 charge [15] 10/11 10/13 10/14 10/17 10/20 12/6 12/18 12/19 13/2 13/6 13/14 13/23 14/1 16/3 16/22 charged [1] 26/4 Charges [1] 12/7 check [2] 9/5 9/6 child [3] 26/12 26/16 26/20 chose [1] 12/5 CHRISTOPHER [5] 1/11 25/5 25/7 25/14 25/16 Circuit [8] 4/14 4/15 4/16 4/18 5/4 12/21 13/5 13/9 circuit's [1] 12/19 cite [1] 4/12 cites [1] 13/4 claim [6] 15/25 16/18 16/24 17/12 18/6 25/10 claims [1] 8/14 clarification [1] 20/6 clarify [1] 17/19</p>	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

VIOLA BRYANT, as Personal
Representative of the Estate of
GREGORY VAUGHN HILL, JR.,

Case No. 2:16cv14072-ROSENBERG/LYNCH

Plaintiff,

vs.

SHERIFF KEN MASCARA in his official
Capacity as Sheriff of St. Lucie County,
and CHRISTOPHER NEWMAN,
an individual,

_____ /

DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFF'S MOTION FOR NEW TRIAL [DE 237]

The Defendants, SHERIFF MASCARA in his official capacity as Sheriff of St. Lucie County, and CHRISTOPHER NEWMAN, in his individual capacity, file this their Response to Plaintiff's Motion for New Trial [DE 237], and would state as follows:

On May 24, 2018, after a six day trial, an eight (8) person jury reached a unanimous verdict in this case in favor of the Defendant Christopher Newman in his individual capacity on Plaintiff's claim in which she alleged that Mr. Hill's federal civil rights were violated. (See DE 223). As to the state law negligence claim against the Sheriff in his official capacity, the jury found that Mr. Hill was intoxicated and that as a result of his intoxication he was more than 50% at fault for his injuries meaning that the Sheriff was entitled to judgment as a matter of law on that claim pursuant to F.S. §768.36 (2014). Deputies Newman and Lopez testified that in the process of responding to a

noise complaint call, they were confronted by Mr. Hill, who manually opened his garage door while holding a firearm. Although Deputies Newman and Lopez ordered Mr. Hill to drop his weapon, Mr. Hill instead began manually closing his garage door while his gun raised in the direction of Deputy Lopez. Plaintiff, apparently dissatisfied with the jury's verdict, now seeks a new trial. Plaintiff's motion offers little more than a regurgitation of her version of the case in what sounds like a closing argument in support thereof and a rehashing of evidentiary arguments already decided by this Court. Plaintiff has failed to establish sufficient grounds for the relief she seeks and as a result her motion should be denied.

Under Federal Rule of Civil Procedure 59(a), a court may order a new trial only when the verdict is against the great--not merely the greater--weight of the evidence. Lipphardt v. Durango Steakhouse of Brandon, Inc., 267 F.3d 1183, 1186 (11th Cir. 2001). Furthermore, a trial judge's discretion to set aside a jury verdict and order a new trial is very narrow. See Hewitt v. B.F. Goodrich Co., 732 F.2d 1554, 1559 (11th Cir. 1984). "When the resolution of the case boils down to credibility,...the usual deference to the factfinder on issues of credibility requires us to defer to the jury and not the judge." Id at 1558.

Plaintiff's Motion contains five major categories upon which she relies as justification for her contention that she is entitled to a new trial. Defendants will respond to Plaintiff's arguments in kind.

I. IMPROPER AND INCONSISTENT TESTIMONY FROM DEFENSE EXPERT

CHRISTOPHER LAWRENCE

Plaintiff accuses defense expert, Christopher Lawrence, of feigning hearing problems which she believes entitles her to a new trial. Plaintiff supports these assertions by noting that Mr. Lawrence was able to hear defense counsel Bruce Jolly's questions on direct examination, but expressed difficulty in hearing Mr. Phillips during his cross-examination. As the Court is no doubt aware after spending a week in Court with all of the lawyers for both sides, Mr. Jolly has a very loud voice.¹ Therefore, it is not surprising that Mr. Lawrence was able to hear Mr. Jolly without a problem.

In her Motion, Plaintiff claims that "Mr. Lawrence sought sympathy for a self-proclaimed hearing impairment, which had never before been a problem at **any** stage in the proceedings." (emphasis added) (See Plaintiff's Motion at pg. 5). This, however, is incorrect. At the very beginning of Mr. Lawrence's deposition, which was conducted on February 7, 2017, Mr. Lawrence specifically informed Mr. Phillips of his limitations regarding his hearing. (See Exhibit A, depo. of Chris Lawrence, 4:13-23).

Plaintiff further accuses Mr. Lawrence of lying regarding the circumstances his father's death, which, as Mr. Lawrence explained, caused him some distress in the weeks before trial. Specifically Plaintiff states that Mr. Lawrence testified that his father had died a couple of weeks before trial but in reality, his father had actually died a couple of weeks sooner than that. To support the point Plaintiff even goes so far as to file two

¹It is unlikely that in his 40 plus years of practicing law that anyone has ever asked Mr. Jolly to speak up in court.

copies of Mr. Lawrence's father's obituary which reveals that Mr. Lawrence's father actually died about a month before trial. To raise this trivial point in her motion, and even go so far as to file two copies of the obituary with the Court, is mean spirited and, frankly a pathetic argument that is clearly not a sufficient grounds for a new trial. Contrary to Plaintiff's baseless post-trial accusations, Mr. Lawrence conducted himself professionally at all times during the trial. This is further evidenced by the fact that it was not until *after* the Plaintiff lost the trial that claims of improper conduct on the part of this witness are now being lodged. Moreover, Defendants are confident that if any misconduct would have been perceived by the Court during trial, the Court would not have tolerated such improper behavior.

II. ERRONEOUS EVIDENTIARY RULINGS

Plaintiff's Motion suggests that she is entitled to a new trial based on some of this Court's evidentiary rulings. Plaintiff specifically takes issue with the Court's decision to permit the Defendants to conduct a demonstrative presentation utilizing the gun which was found in the decedent's possession and the shorts he was wearing at the time of the subject incident. Additionally, Plaintiff points to the introduction of the decedent's probation status as justification for her entitlement to a new trial. As a general rule, a motion for new trial should not be used to relitigate old arguments already ruled on by the trial court. Ramos v. Boehringer Manheim Corp., 896 F. Supp. 1213, 1214 (S.D. Fla. 1994). Thus Defendants will not repeat arguments made to this Court prior to its rulings but will instead direct the Court to those arguments as appropriate.

a. Undisclosed firearm and shorts used as demonstrative aid

In multiple filings, the Plaintiff has made clear her position regarding her opinion that the Defendants failed to disclose that they were in possession of the firearm that was found in Mr. Hill's possession as well as various other pieces of physical evidence recovered on the scene of the subject incident including the clothes Mr. Hill was wearing on the day in question. Likewise, the Defendants have made their arguments clear regarding their opposition to Plaintiff's contention regarding the disclosure of the physical evidence and would refer this Court to their Reply to Plaintiff's Response in Opposition to Defendants' Motion to Allow Unloaded Firearm in the Courtroom [DE 205] as well as their Response to Plaintiff's Motion to Compel Release of Property². This Court has already ruled on this issue and Defendants respectfully submit that the Plaintiff by simply regurgitating her previously unsuccessful arguments has not shown that this Court has abused its discretion.

As to Plaintiff's suggestion that this Court improperly permitted the Defendants to conduct a demonstrative presentation demonstrating the relative ease that the gun could be placed in the shorts the decedent was wearing, this Court has broad discretion regarding demonstrations the Court perceives will assist the jury. See U.S. v. Rackley, 742 F.2d 1266, 1272 (11th Cir. 1984). As the Court may remember, Plaintiff, at varying times during her case-in-chief, attempted to highlight what she perceived as the

²The Defendants' response to Plaintiff's Motion to Compel Release of Property is being filed contemporaneously with the instant response.

implausibility of Defendant Newman and Deputy Lopez's account of the incident specifically as it related to Mr. Hill's ability to have a gun in his hand when first confronted by the deputies and then for the gun to be found in Mr. Hill's pocket after being shot multiple times, including one shot which immediately incapacitated Mr. Hill. For example, Roy Bedard, Plaintiff's law enforcement expert, found it "curious" that the gun was found "clean" in Mr. Hill's back pocket and went so far as to describe it as a paradox. Plaintiff was clearly attempting to imply that Mr. Hill never held the gun at any point during his interaction with the deputies because he would not have had the time nor the opportunity to place the gun in his back pocket before being fatally wounded. In order to rebut this suggestion, it was appropriate for this Court to permit the Defendants to demonstrate to the jury how easily the gun fell into the pocket of the shorts. This is especially true where the jury would not have had an opportunity to have the gun during jury deliberations for obvious reasons or the shorts because they were contaminated with biohazardous materials.

b. Evidence of Mr. Hill's probationary status

Plaintiff argues that she is entitled to a new trial because this Court improperly allowed introduction of the Plaintiff's status over the Plaintiff's objection. Plaintiff suggests that the "general rule concerning the admissibility of evidence outside of the shooting officer's knowledge at the time he fires", as announced by the Seventh Circuit in Sherrod v. Berry, 856 F.2d 802 (7th Cir. 1988) is that this type of evidence is admissible only if the evidence is used to impeach and attack the credibility of a testifying witness

and only after the Plaintiff opens the door to such evidence. Plaintiff further asserts that in the case of Escobedo v. Martin, 702 F.3d 388 (7th Cir. 2012), the case relied on by the Defendants in support of the admissibility of Plaintiff's probation status, that "[c]learly, evidence unknown to the shooting officer was admitted in Escobedo because it fell within one of the two enumerated exceptions to the Sherrod rule." That proposition is not clear to the Defendants. The Escobedo Court, immediately after noting the two exceptions described in Plaintiff's Motion, quite clearly recognized a third exception to what Plaintiff describes as the general rule when it announced "evidence unknown to officers at the time force was used is **also** admissible to add credibility to an officer's claim that a suspect acted in the manner described by the officer." Escobedo, 702 F.3d at 400. (emphasis added). It was this third exception to the general rule that the Defendants relied on for the admissibility of this evidence and it is undersigned counsel's memory that the Court quoted that passage of Escobedo when it ruled that evidence of Mr. Hill's probation status was admissible.³

Plaintiff complains that the introduction of this evidence was extremely prejudicial because it informed the jury that Mr. Hill had a criminal past. Plaintiff's complaint in that regard rings hollow in light of the fact that it was Plaintiff's counsel,

³During the trial, the Court ruled that the parties were permitted to elicit testimony regarding merely the fact that Mr. Hill was on probation at the time of the subject incident and specifically disallowed reference to the fact that he was on *felony* probation or *felony drug* probation. The parties adhered to this ruling throughout the trial. Plaintiff does not contend otherwise in her motion.

during Defendant Newman's cross-examination, who elicited testimony from Deputy Newman that he had arrested Mr. Hill in the past for violating a curfew which had been imposed after a hurricane. Plaintiff also suggests the Defendants improperly introduced evidence of Mr. Hill's probation asserting that the Defendants could not actually prove Mr. Hill was on probation and that there was evidence that the probation had automatically terminated. (See Plaintiff's motion at pg. 13). However, as this Court will recall, Niles Graben, a probation supervisor for the Florida Department of Corrections, testified that Mr. Hill was actively on probation at the time of the subject incident. He further testified that the automatic termination provision of Mr. Hill's probation only applied if Mr. Hill had paid all of his court costs which were owed and Mr. Hill had not done so. He also testified that Mr. Hill's probation was not terminated until *after* the subject incident once it was determined that he was deceased.

Plaintiff suggests that the introduction of the evidence regarding Mr. Hill's probation status confused the jury as to the important issues and further asserts that the jury must have mistakenly found that Mr. Hill was 99% responsible for a probation violation since, in her opinion, there is no way the jury could have found Mr. Hill 99% at fault for his injuries. (See Plaintiff's motion at pg. 14). However, Plaintiff does not give the jury enough credit. The fact that the jury rejected Plaintiff's case does not mean it was against the weight of the evidence. Further, any confusion regarding the relevance of this evidence was cleared up by the limiting instruction crafted by the Court.

The Defendants were entitled to paint the full picture to the jury of the

circumstances of this incident including Mr. Hill's status as a probationer to explain Mr. Hill's erratic behavior on the day of the subject incident and why he may have behaved as the deputies testified that he did. This Court properly admitted evidence of this nature and the Plaintiff has failed to meet the very high burden of demonstrating that she is entitled to a new trial based on the admission of this evidence.

III. MATERIAL CHANGES IN TESTIMONY

The third ground Plaintiff presents as justification for her entitlement to a new trial is that Defendant Newman allegedly materially changed his testimony at trial from his previous deposition testimony. Even assuming that this were true (which it is not), a witness changing his testimony at trial is not grounds for a new trial. Rather, the appropriate remedy for when a witness changes his testimony is to impeach him on that inconsistency. Plaintiff cites to Traylor v. Pickering, 324 F.2d 655 (5th Cir. 1963) as support for her proposition. However in that case, where the Fifth Circuit reviewed a trial court's denial of a motion for new trial based on allegations that a witness had perjured himself, the reviewing court found that in cases where the testimony is merely different, a new trial is not warranted. Id. at 658. The Fifth Circuit further held that even assuming that the opposing party was surprised by the change in testimony, the objection should have been raised contemporaneously with the testimony and the failure to do so effectively waived the right to raise it post-trial as a trial error. Id. Here Plaintiff's counsel

made no such objection during trial and therefore such an argument was waived.⁴

As to witness Sgt. Kyle King, he testified as a non-retained expert as to his reconstruction of the circumstances of the shooting. Again, to the extent Plaintiff takes issue with some of the information Sgt. King received in formulating his opinions, the appropriate way to address that was in cross-examination of the witness. Plaintiff had that opportunity. That, however, does not entitle the Plaintiff to a new trial.

IV. JUROR ISSUES

Plaintiff's contention that she is entitled to judgment as a matter of law or entitled to a new trial based upon erroneous jury instructions is also misplaced. It is well settled that a trial court has broad discretion in formulating jury instructions. Christopher v. Cutter Laboratories, 53 F.3d 1184, 1190 (11th Cir. 1995)(internal citations omitted). Moreover, as noted by the Plaintiff, in determining the sufficiency of jury instructions, the instructions must be considered as a whole. "So long as the instructions accurately reflect the law, the trial court judge is given wide discretion as to the style and wording employed in the instructions." Palmer v. Bd. of Regents of the University System of Georgia, 208 F.3d 969, 973 (11th Cir. 2000). Plaintiff points to the omission of the title to each instruction as grounds justifying her entitlement to a new trial. However, this Court

⁴Even putting aside the legal deficiencies of Plaintiff's argument, the practical effect of such a rule would result in new trials in nearly every case. How would a trial ever be final if the losing party was always entitled to a new trial merely because a witness's trial testimony was not perfectly in line with his/her prior deposition testimony?

engaged the parties in a lengthy and thorough charge conference during which both sides noted their objections to certain parts of the jury instructions. At the end of the conference where counsel for both sides went page by page through the instruction, the parties noted their agreement to the jury instructions which were ultimately provided to the jury. If the Plaintiff perceived an issue regarding the omission of the title pages from the instruction, the charge conference was the time to make that objection. Pursuant to Federal Rule of Civil Procedure 51(c)(1), “[a] party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection.” Courts are required to interpret Rule 51's provisions strictly to ensure that a trial judge has an opportunity to correct any errors prior to jury deliberations. Landsman Packing Co. v. Continental Can Co., 864 F.2d 721, 726 (11th Cir. 1989). A party who fails to raise an objection to a verdict form interrogatory or jury instruction prior to jury deliberations waives the right to challenge the instruction post trial. Wood v. Pres. and Trustees of Spring Hill College in City of Mobile, 978 F.2d 1214, 1221 (11th Cir. 1992). Plaintiff failed to so object and therefore has waived her right to raise the issue post-trial.

Plaintiff speculates that the jury's verdict must have been the product of punitive intent on the part of the jury. (See Plaintiff's motion at pg.19). Plaintiff offers nothing more than mere speculation to support her argument on this point. In any event, the jury's decision as to Plaintiff's damages was ultimately, in practical effect, irrelevant based on its finding that Mr. Hill was intoxicated and that as a result of his intoxication was more

than 50% at fault for his injuries entitling the Sheriff to judgment as a matter of law pursuant to F.S. §768.36. As the Court will recall, the jury heard testimony that Mr. Hill's blood alcohol content was approximately four times the legal limit to operate a vehicle in Florida at the time of the incident; that Mr. Hill was playing music at an extremely loud volume which would have inhibited his ability to hear verbal commands especially in light of Mr. Hill's intoxication; that Mr. Hill was holding a gun when he opened his garage door; that Deputies Newman and Lopez, who were dressed in Sheriff's Office uniforms, ordered Mr. Hill to drop his gun; that rather than dropping his gun, Mr. Hill closed the garage door while simultaneously raising the gun in the direction of Deputy Lopez. There was ample evidence to support the jury's verdict. As a result, Plaintiff has not met her burden of establishing that she is entitled to a new trial on the basis of the jury instructions.

V. VERDICT AGAINST THE CLEAR WEIGHT OF THE EVIDENCE

Plaintiff's final ground, that the verdict was against the clear weight of the evidence, is the most frivolous of the grounds Plaintiff asserts as justification for her entitlement to a new trial. As Plaintiff correctly concedes, a new trial is not proper simply because the moving party believes her evidence is stronger than her opponents. Despite this concession, Plaintiff engages in a recitation of her experts' testimony as well as an inaccurate description of eyewitness testimony⁵ before declaring that no rational jury

⁵Plaintiff describes multiple eye witnesses who testified that they never saw Mr. Hill holding a gun in his hand. However, only Mr. Hill's own daughter, whose vantage point, was

could have found as they did. Plaintiff's cherry picking of the evidence the jury heard which was favorable to her and suggesting that the jury ignored it does not entitle her to a new trial. Indeed, the jury was entitled to reject Plaintiff's evidence even if it were un-rebutted if it chose to. See Murphy v. City of Flagler Beach, 846 F.2d 1306, 1310 (11th Cir. 1988) (“[t]he jury was not bound to accept the plaintiff's evidence...even if it was not controverted.”); Gregg v. U.S. Industries, Inc., 887 F.2d 1462, 1470 (11th Cir. 1989) (“Even uncontradicted expert opinion testimony is not conclusive, and the jury has every right not to accept it.”).

For all of the foregoing reasons, the Plaintiff's Motion should be denied.

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF and furnished via email a copy to: **John M. Phillips, Esquire**, Law Office of John M. Phillips, LLC, 4230 Ortega Boulevard, Jacksonville, FL 32210; jphillips@floridajustice.com, dmalone@floridajustice.com, this **11th** day of July, 2018.

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BY s/ Gregory J. Jolly
GREGORY J. JOLLY
Fla. Bar No.: 118287

across the street from the subject house and was obscured by multiple visual impediments, testified that she observed Mr. Hill not holding a gun. The other fact witnesses either could not see Mr. Hill's upper body or could not see Mr. Hill at all in the dark garage.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 2:16-CV-14072-ROSENBERG/HOPKINS

VIOLA BRYANT, as Personal Representative
of the Estate of GREGORY VAUGHN HILL,
JR.,

Plaintiff(s),

-vs-

SHERIFF KEN MASCARA, in his Official
Capacity as Sheriff of St. Lucie County
and CHRISTOPHER NEWMAN,

Defendant(s).

St. Lucie County Sheriff's Office
4700 West Midway Road
Fort Pierce, FL 34981

DATE: Tuesday, February 7, 2017
TIME: 1:06 p.m. to 3:11 p.m.

VIDEO DEPOSITION OF CHRIS LAWRENCE

Taken on behalf of the PLAINTIFF before
Jennifer L. Bush, RPR, Notary Public in and for the State
of Florida at Large, pursuant to Notice of Taking
Deposition in the above cause.



1 THE VIDEOGRAPHER: Today is Tuesday,
2 February 7, 2017. We are on the video record at
3 1:06 p.m.

4 At this time, would the court reporter
5 swear in the witness.

6 WHEREUPON,

7 CHRIS LAWRENCE,
8 called as a witness on behalf of the PLAINTIFF, after
9 having been first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. PHILLIPS:

13 Q. John Phillips on behalf of the Estate of
14 Mr. Hill. Would you please --

15 A. Could I ask you to make sure you speak up?

16 Q. Yes.

17 A. I hear what -- I can hear people speaking,
18 but I don't always hear clearly what has been said. My
19 hearing is not as good as it used to be.

20 Q. Okay.

21 A. So I may ask you to repeat yourself.

22 Q. And that's completely fine. Obviously,
23 it's important for you to understand and hear what I say.
24 Probably the opposite order, hear and understand. And I
25 have a habit of looking down while reading and asking

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of March, 2019, a true and correct copy of the foregoing has been e-filed via CM/ECF, and copies sent by Federal Express, U. S. Mail, or by email to:

By Federal Express, seven (2) copies to:
Clerk of the United States Circuit Court
US Courts of Appeals, Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

By US mail to:
Law Office of John M. Phillips, LLC
John M. Phillips, Esq., and
Kirby W. Johnson, Esq.
4230 Ortega Boulevard
Jacksonville, FL 32210

/s/ Summer M. Barranco

SUMMER M. BARRANCO, Esq.

Florida Bar No.: 984663

GREGORY J. JOLLY

Florida Bar No.: 118287

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Attorneys for Defendants-Appellees Sheriff Ken J. Mascara, in his Official Capacity as Sheriff of St. Lucie County, Florida and Christopher Newman.