

Exhibit 32  
(Arden Deposition)



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2

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25 (Appearances Continued on Next Page)

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Deposition of JONATHAN L. ARDEN, M.D.

August 15, 2016

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(Original exhibits attached to original transcript. Copies of exhibits attached to copies of transcript.)

PROCEEDINGS

1 Whereupon,  
2 JONATHAN L. ARDEN, M.D.,  
3 called as a witness, having been first duly sworn to  
4 tell the truth, the whole truth, and nothing but the  
5 truth, was examined and testified as follows:

EXAMINATION BY MR. HALL:

6 Q Good morning, Dr. Arden. My name is Sam  
7 Hall. We met briefly off the record. I'm the attorney  
8 that represents the police officer, Matthew Kenny, in a  
9 lawsuit that's been filed by the estate of Tony  
10 Robinson.

11 It's my understanding that you've been  
12 retained as an expert by the Plaintiffs; is that  
13 correct?

14 A Yes, sir.

15 Q I know that you've been through depositions  
16 and trial testimony before, so I'm probably not going  
17 to tell you anything you don't already know here. But  
18 if you need to take a break at any time today, just let  
19 me know. If you don't understand one of my questions,  
20 it's likely my fault and not your fault, so just let me  
21 know and I'll be happy to rephrase it so that I can be  
22 sure that we're both on the same page here.

23 My understanding is that you have, in

1 response to the notice of deposition duces tecum,  
2 transferred your file materials on to a thumb drive; is  
3 that correct?

4 A Yes.

5 Q Do you have any other materials that are  
6 not included on the thumb drive?

7 A I do. And I have a paper file here in  
8 front of me. Virtually everything in this file is part  
9 of what's on that electronic file, except -- well, I  
10 brought a clean copy of my CV, which has one small  
11 update to it, which is -- you can have. And whether  
12 you want to use it as an exhibit or not, that's fine.

13 And I apologize in advance for a little bit  
14 of coughing and clearing. I'm getting over a cold.

15 You also asked for billing records, and so  
16 I have two pages here of billing records. And the only  
17 other thing that exists -- actually, I only brought the  
18 original. I have two pages, single sided, of  
19 handwritten notes that have to do with trajectory  
20 analysis and angles that are part of the foundation of  
21 my opinions in my report. So that's the only piece of  
22 notes or anything that I have.

23 Q Thank you for that, and I will mark these,  
24 but we'll do them a little bit later --

25 A Yes.

1 Q -- or at least as we go.  
2 (Arden Exhibit 191 marked for purposes of  
3 identification.)

4 BY MR. HALL:

5 Q I want to show you what's been previously  
6 marked as Exhibit 191.

7 Can you identify that document?

8 A Yes. This is a one-page copy of my fee  
9 schedule. It's the Arden Forensics 2016 fee schedule.

10 Q And that is current as of today's date,  
11 correct?

12 A Yes, sir.

13 (Arden Exhibit 192 marked for purposes of  
14 identification.)

15 BY MR. HALL:

16 Q Now, I'm going to show you what's been  
17 marked as Exhibit 192.

18 Can you identify that document?

19 A One second here.

20 Right. What you've handed me marked 192 is  
21 a copy of my testimony log that I keep for Federal Rule  
22 26. The first six pages of what you handed me are the  
23 actually log that's current in compliance with 26 --  
24 Rule 26.

25 And for some reason, we have -- pages 7

1 through 12 have printed as blank pages with my old logo  
2 on the bottom, but the first six pages actually are the  
3 complete exhibit that you are entitled to under Rule  
4 26.

5 Q And your description is perfect, as it was  
6 going to anticipate my next question. What you see in  
7 front of you, I'll represent to you, is what was  
8 provided to me, and, so, obviously, the first six pages  
9 covers your testimony history, but then the pages that  
10 follow are blank.

11 To your knowledge, is that just an error in  
12 terms of printing or from reviewing, particularly the  
13 dates of testimony? Is there anything that appears to  
14 be missing from it?

15 A No, there's nothing missing. Just to be  
16 very ultra clear here on the record, the Rule 26 says  
17 you have to give four years. My practice is to give  
18 you four full years, plus whatever is the current year.  
19 So you'll notice that starting on page 1, this begins  
20 in the beginning of 2012. So you have 2012, 2013,  
21 2014, 2015, and then up to what's current, actually,  
22 today in 2016.

23 And then those blank pages, I cannot  
24 explain, but you're not missing anything, I can tell  
25 you that.

1 Q And, again, your answer kind of anticipated  
2 my next question.

3 You've testified in cases that aren't  
4 included in Exhibit 192, because this is only a  
5 snapshot of the last four-plus years, correct?

6 A Correct.

7 Q This firm or -- strike that.

8 This case, you've been retained by the firm  
9 of Loevy & Loevy, correct?

10 A Yes.

11 Q Have you been retained by that firm in  
12 other cases?

13 A I have.

14 Q Can -- and I'm speaking now of your career  
15 much more broadly, beyond just the past four-plus  
16 years, can you tell me how many times you've been  
17 retained by the Loevy & Loevy firm?

18 A You know, I did not check the records for  
19 that before today. We just got back from a week away  
20 the day before yesterday. I can get you that  
21 information. I can estimate it's probably in the  
22 neighborhood of half a dozen cases total. I don't  
23 think it's any more than that. It may be one or two  
24 fewer, but it's that range.

25 Q Fair enough.

1 And at this point, do you have any other  
2 cases that are currently pending where you're serving  
3 as a consultant or an expert for Loevy & Loevy?

4 A Not to my knowledge.

5 Q Okay. Within Exhibit 192, you have,  
6 actually, a very helpful chart where you've made Xs for  
7 the type of case, the appearance type, and the party  
8 that you were retained by, correct?

9 A Yes, sir.

10 Q And in terms of -- rather than asking you  
11 questions about what percentage of cases you're  
12 retained by the plaintiff or the defense, can you  
13 testify to the accuracy of the chart that you've  
14 included as part of 192?

15 A I can testify to the accuracy of the chart  
16 that is the log that is 192, but in response to your  
17 question, remember, this chart is all the cases in that  
18 time period where I've offered testimony. It doesn't  
19 necessarily reflect everything which I've been  
20 retained.

21 And I specifically mention that because I  
22 believe the percentage of civil cases in which I have  
23 been retained by defense is greater than what is  
24 represented in testimony. I think that's the subset of  
25 cases where I'm less frequently asked to testify. But

1 this is truly accurate as far as all my testimonial  
2 appearances.

3 Q And if you can't answer this, that's fair,  
4 but do you have any knowledge or explanation as to why  
5 it seems that in cases, civil cases where you've been  
6 retained by the defense, you're perhaps less likely to  
7 testify?

8 A I don't actually know why. I can only  
9 assume that there are more cases there where opinions  
10 are not helpful, and so I'm not asked to issue a report  
11 or testify.

12 Q Within Exhibit 192, and perhaps drawing on  
13 your memory, can you identify any police-related civil  
14 case where you were retained by the defendant officer  
15 and provided testimony regarding the case?

16 A I know that there are some in here. I'll  
17 have to look at this.

18 (Witness reviewing document.)

19 For instance -- and, again, from memory I  
20 can't do very well, because I don't keep this in my  
21 memory, but -- oh, and actually, you know what? Now  
22 that I'm looking at page 6, the last page that actually  
23 has the log on it, I suddenly realize that the copy  
24 that you have is missing one other case.

25 There's another criminal case that was

1 in -- I think in July of 2016, which is a companion  
2 case to the last one that's listed, Maryland versus  
3 Caesar Goods. There should be another one there,  
4 Maryland versus -- I think the first name is Brian  
5 Rice. And those are both cases relating to the Freddie  
6 Gray issues, where I appeared -- retained by defense.  
7 Those are criminal not civil.

8 But I know that there should be probably a  
9 couple of cases here, civil cases, where I appeared --  
10 I was retained by the defense for police officers in  
11 the city of Philadelphia. And I have to see if I can  
12 find these easily.

13 Q And if you can't, what you just described  
14 to me is, frankly, enough. I mean, if you recall that  
15 you testified in cases involving the Philadelphia  
16 police officers, that's enough to get me started.

17 A Yes. On page 5, it looks like six entries  
18 down, April 23, 2015, there's Morfiah, M-O-R-F-I-A-H,  
19 versus City of Philadelphia. It's a civil case. I was  
20 retained and testified by defense. That's a City of  
21 Philadelphia case.

22 I think there's -- I won't prolong this. I  
23 think there's probably one other on those Philadelphia  
24 cases that should be on this list. I'm not quickly  
25 finding it, but I can tell you there have been a few

1 other of those where I was retained by the City of  
2 Philadelphia.

3 Q Okay. You're anticipating my next  
4 question, which is great.

5 The cases where you have testified, where  
6 you've been retained by law enforcement in a civil  
7 case, it sounds like the City of Philadelphia, there's  
8 at least one, and probably more cases, that you've  
9 testified in.

10 Can you recall any other municipalities or  
11 cities, towns, villages, counties where you've been  
12 retained by the defense by a police officer in a civil  
13 case to provide testimony?

14 A I am not sure. There may be others. I'm  
15 not sure. Nothing else I can remember. I've been  
16 retained several times in criminal matters in defense  
17 of officers, and I'm not sure if there's other civil  
18 matters that involve defense of officers, other than  
19 the -- probably, I'm guessing -- three times where I've  
20 actually offered testimony on behalf of the City of  
21 Philadelphia.

22 Q Okay. You're not a lawyer, correct?

23 A Correct.

24 Q But, generally, you're aware that when  
25 experts testify in court, from time to time, the judges

1 will evaluate the opinions and the background of the  
2 expert and determine whether or not the expert's able  
3 to render opinions in whole or part?

4 You're generally aware of that concept?

5 A Yes, sir.

6 Q With that in mind, have there been any  
7 cases where your opinions have been entirely excluded  
8 where you haven't been allowed to testify at all?

9 A There's never been a case where I actually  
10 appeared and went through voir dire and my opinions  
11 were entirely excluded.

12 There is one case that people have brought  
13 up to me in depositions like this where in pretrial  
14 motions I was not permitted to offer an opinion based  
15 on a ruling by the judge who -- it was a criminal case,  
16 where he said that was an issue for the jury and not a  
17 matter of whether I was qualified.

18 It happens to be a type of opinion that  
19 I've been permitted to offer in other cases, but that  
20 judge in that matter said no one can give that opinion.  
21 It's a trier of fact issue. But other than that, no.

22 Q Do you recall what that opinion was?

23 A It had to do with a stab-wound case and an  
24 issue of interpreting the patterning and distribution  
25 of stab wounds as to what types of activities it was

1 consistent with.

2 Q My next question is similar to my first  
3 question, and the question is: Have there been any  
4 cases where your opinions have been partially excluded,  
5 where the Court has allowed you to testify, but has  
6 only allowed you to testify regarding certain of your  
7 opinions?

8 A You know, the best answer I can give you  
9 there is the same experience, I think, every expert has  
10 had. There's always an occasion where an objection is  
11 sustained or that kind of thing. I cannot recall a  
12 specific incident where a judge made a ruling and said,  
13 you know, you're not qualified to go here kind of  
14 thing. I'm sure there have been times I've been on the  
15 stand where the judge says, no, that's out of bounds,  
16 in response to an objection, but that's the best I can  
17 offer you.

18 Q Thank you.

19 (Arden Exhibit 193 marked for purposes of  
20 identification.)

21 BY MR. HALL:

22 Q I'm going to show you now what's been  
23 marked as Exhibit 193.

24 Can you identify that document for me?

25 A Yes. What you've handed me is 193. It is

1 a five-page copy of my curriculum vitae, or  
2 professional resume, which is nearly complete. I think  
3 the one that I handed you is clearly the most up to  
4 date one. Excuse me. And there will be -- sorry.  
5 Sorry. There will be very few differences.

6 (Arden Exhibit 195 marked for purposes of  
7 identification.)

8 BY MR. HALL:

9 Q Okay. And now I'm going to show you what's  
10 been marked as Exhibit 195. And we're going out of  
11 order because we've premarked exhibits. But --

12 A Yes.

13 Q -- with regard to 195, can you identify  
14 that document?

15 A Yes. This is the current copy of my CV  
16 that I produced this morning before we started -- well,  
17 actually, I guess we were on the record at that point.  
18 But there will be one or two additions in 195 that were  
19 not in 193. There will be nothing that was removed  
20 from 193 that is now absent from 195.

21 Q And I don't mean to belabor this or have  
22 you go through them and compare the two documents.

23 Off the top of your head, do you know what  
24 the differences are between 193 and 195?

25 A Yes. There's probably only one difference.



1 And 195, on page 3, there is a section entitled  
2 "Selected Lectures and Presentations." And the first  
3 entry -- because these are in reverse chronological  
4 order. So the first entry in that section actually  
5 indicates a talk I gave at a meeting five days ago. So  
6 that's a presentation I gave at the World Association  
7 for Medical Law in Los Angeles, August 10th of 2016,  
8 which was added since I returned the other day. And  
9 that should be the only difference.

10 Q Great. Thank you.

11 A Sure.

12 Q Do you recall when you were first retained  
13 to work on this case?

14 A Should be roughly May of 2016.

15 (Arden Exhibit 196 marked for purposes of  
16 identification.)

17 BY MR. HALL:

18 Q I'm now going to show you what's been  
19 marked as Exhibit 196.

20 Can you identify that document?

21 A Yes. What's marked 196 is a two-page  
22 document. This is copies -- these are copies of my  
23 invoices in this matter to date.

24 Q It appears from looking at it that the  
25 first page of the exhibit, at the top line of the

1 Q Fair enough. And the billing that is  
2 included in Exhibit 196, when does that billing take us  
3 through?

4 A It takes us through June 15 of 2016.

5 Q Okay. And June 15th was the date that your  
6 report -- is the date your report was completed?

7 A Yes, sir.

8 Q So all of the billing contained in 196,  
9 Exhibit 196, includes your background work on the case  
10 as well as the preparation of your expert report in  
11 this case, correct?

12 A Correct.

13 Q And through that time period, from the date  
14 you were retained through the time that you completed  
15 your report, how many hours did you work on this case?

16 A That's reflected in the billing here?

17 Q Feel free to use the billing, if it helps  
18 you, but -- and I assume you billed for your time, but  
19 my question is just: How many hours did you spend  
20 working on the case between the time you were retained  
21 until the time that you completed your report?

22 A Right. The billable time that's included  
23 in the two pages of billing records on 196 should be --  
24 yes, it's 15.75 hours.

25 And since June of 2016, when the billing

1 billing entries, shows a date in April.

2 Did you have initial discussions regarding  
3 this case at that time?

4 A Yes. Actually, you're correct. I had  
5 referenced my file folder, which is the habit we have  
6 of labeling the file folder with a case name and  
7 usually the month and year of -- the case began.

8 But you're right, the first entry on the  
9 first page of 196 references telephone conference in  
10 April and May 2016. So, clearly, at some point in  
11 April is when I actually began my involvement.

12 Q Okay. But it's possible, let's say, that  
13 you may have had an initial phone call in April that  
14 may not have been formally retained until May? Would  
15 that explain...

16 A I don't have the retainer agreement with  
17 me, but it's likely that I was retained in April  
18 because I -- a phone conference in April that I billed  
19 for would have been something substantive. That would  
20 not be the first call.

21 When I get the first call and they explore  
22 will I be retained, do you want to be on this case, et  
23 cetera, that normally doesn't get billed. So it's safe  
24 to say sometime in April 2016 I was actually on the  
25 clock.

1 record ends, I believe I have, I think, two and a half  
2 hours of total preparation time, plus whatever we --  
3 you know, whatever travel time this morning and a brief  
4 preparation meeting, less than an hour this morning,  
5 and whatever we do today.

6 Q Sure. Okay.

7 So from the time that you were retained  
8 until the time that you completed your report, 15.75  
9 hours?

10 A Correct.

11 Q When you prepare your report, can you just  
12 take me through how you go about doing that? I mean,  
13 do you sit down and write the report all at once? Is  
14 it broken off into multiple days? Let me start with  
15 that.

16 MR. OWENS: Objection, compound.

17 THE WITNESS: There is no set way that I  
18 write the report. I mean, typically, I sit down to  
19 write a report at a point where I have opinions formed  
20 and sufficient materials to -- for the basis of the  
21 opinions. I typically sit down and begin to structure  
22 and block out the report.

23 Depending upon how long and involved the  
24 report is and how much time I have the day I sit down,  
25 I may complete a report in one sitting. I may do it in

1 more than one sitting. There's no set rule for that.  
2 BY MR. HALL:  
3 Q Okay. When you prepare a report, do you  
4 use multiple drafts? And what I mean by that is,  
5 sometimes when you use Microsoft Word, let's say, to  
6 type something, you type it out and save it and you  
7 come back and you add or change things and then you  
8 save it again over top of it.

9 Is that your process, or do you save  
10 separate, various drafts?

11 MR. OWENS: Objection to the form of the  
12 question.

13 And just to be clear, I'll tell you, are  
14 you asking what his general practice is? Is that what  
15 you mean by these questions?

16 MR. HALL: Yes.

17 MR. OWENS: Okay.

18 THE WITNESS: Again, that varies from  
19 report to report. My most common practice is that I  
20 write one report in one document, and if it requires  
21 revisions, I usually make those revisions in what's  
22 then a living document, and then becomes final. I  
23 don't automatically save intermediate drafts.

24 Every case is a little different in the  
25 sense that I frequently offer the opinion -- sorry, I

1 offer the attorney the opportunity to review a draft.  
2 Some cases will go through multiple drafts. Some of  
3 them don't go through multiple at all. So depending  
4 upon the case, the most common practice is that I have  
5 one draft, one document which then becomes the final.

6 BY MR. HALL:

7 Q Okay. In this case specifically, was that  
8 what occurred? Did you have one document that was the  
9 draft and then became the final, or did you save  
10 intermediate copies?

11 A I believe -- I didn't know if you -- I  
12 believe that there are several intermediate drafts in  
13 this case.

14 Q And are those intermediate drafts contained  
15 on the thumb drive that you provided us today?

16 A No, sir.

17 Q Okay. Then maybe I misunderstood your  
18 answer. "Intermediate drafts" meaning saved versions  
19 of a draft that was ultimately changed to the final; is  
20 that correct? Are we on the same page?

21 A We are.

22 Q All right.

23 The intermediate drafts, have they been  
24 saved in this case?

25 A Yes.

1 Q And where are they located?

2 MR. OWENS: It's -- so I'm going to object  
3 because I think this is covered under work product. I  
4 didn't know if you were going to go deep into this  
5 road. I was going to just sort of move over it, but  
6 it's our position that the drafts, the reports which  
7 haven't been used, are work product and protected under  
8 Rule 26. And so I'm going to instruct the witness not  
9 to continue to answer questions if we keep going down  
10 this line.

11 MR. HALL: Well, I don't want to get into  
12 the substance, but I want to know what exists for  
13 purposes of we do have to bring the issue to the Court.  
14 And feel free to object, and I don't mean to belabor  
15 the point.

16 BY MR. HALL:

17 Q And, so, from your memory, do you know how  
18 many intermediate drafts in this case exist?

19 A I do not remember how many. I will  
20 anticipate another question, if I may. I do not  
21 independently remember what was changed or when.

22 Q And that, I wasn't actually going to ask.  
23 That, I wasn't --

24 MR. OWENS: Just answer the question.

25 BY MR. HALL:

1 Q But so are there more than one intermediate  
2 drafts?

3 A I think so.

4 Q Okay. And were -- strike that.

5 The changes that were associated in each  
6 one of these intermediate drafts, were those changes  
7 that were prompted by your own review of the case and  
8 your report, or were they prompted by discussions with  
9 Plaintiff's counsel?

10 MR. OWENS: I would object on the basis of  
11 privilege, and instruct the witness not to answer.

12 MR. HALL: Just to be clear, I'm not asking  
13 him what was changed. I'm just asking him, with these  
14 intermediate drafts, whether the changes that occurred  
15 were prompted by his own review or if they were  
16 prompted by discussions with Plaintiff's counsel.

17 MR. OWENS: I understand, and I think the  
18 objection stands.

19 MR. HALL: Okay. So you're instructing him  
20 not to answer that question?

21 MR. OWENS: Yes.

22 BY MR. HALL:

23 Q Okay. Did you make any changes in these  
24 intermediate drafts, based on your own personal review?

25 A I've already said I do not remember what

1 changes were made, why. No independent recollection.  
2 I'm aware of my final report.

3 Q In, generally, the time period when these  
4 intermediate drafts were done and saved, can you give  
5 me any information regarding the timing? Was this all  
6 done within a day or two of the deadline of June 15th,  
7 or was this done out over weeks or months?

8 A I have no recollection.

9 Q Fair enough.

10 MR. OWENS: Do you want me to -- there's a  
11 FedEx here. Do you want me to make copies of that, as  
12 that's the original -- as I understand it, that's the  
13 original.

14 THE WITNESS: Yes.

15 MR. OWENS: And, you know, if you want to  
16 mark it as an exhibit, we probably would all benefit by  
17 having a copy.

18 MR. HALL: Let's go off the record.

19 (A discussion was held off the record.)

20 (Arden Exhibit 197 marked for purposes of  
21 identification.)

22 BY MR. HALL:

23 Q All right. Back on the record.

24 In your review of this case, or in your  
25 review in this case, did you have occasion to make any

1 handwritten notes?

2 A I did.

3 Q All right.

4 And I'm going to show you what has been  
5 marked as Exhibit 197, which is an original document.

6 Can you identify that document for us?

7 A Yes. What's been marked as 197 is a  
8 two-page document, one sided each, handwritten by me.  
9 These are my notes dating back to June 10 of 2016, and  
10 these are the notes concerning the calculations I did  
11 about trajectory angles, particularly degrees of  
12 downward angulation of bullet trajectories in  
13 Mr.-Robinson, which also includes a few notes to some  
14 photos, which were part of the process of assessing the  
15 angles.

16 Q Besides what we've previously discussed as  
17 Exhibit 197, are there any other handwritten notes that  
18 you made in your review of this case?

19 A No, sir.

20 Q Just in a very general sense, the  
21 calculations that are shown on Exhibit 197, where did  
22 you get the data to make those calculations?

23 A Most of the data that are the basis for  
24 these calculations came from the autopsy report on  
25 Mr.-Robinson. And you'll see in each of these -- first

1 of all, on the left-hand column, I have capital letters  
2 circled. Those refer to the labels on the gunshot  
3 wounds in the autopsy report.

4 And then you'll see I have here "entrance"  
5 with some numbers, and then either "lodged," where a  
6 bullet has lodged, with some measurements from the  
7 autopsy report, or similarly in some of them "entrance"  
8 and "exit." Those numbers are the actual measurements  
9 recorded in the autopsy report for how many inches down  
10 from the top of the head and how many inches, either  
11 left or right of the midline, that particular wound or  
12 bullet was measured to be -- or reported to be in the  
13 autopsy report.

14 And taking those numbers, one can then very  
15 readily calculate what -- what the distance was that  
16 the -- that bullet traveled downward and that distance  
17 that that bullet traveled, either left or right.

18 And constructing right-angle triangles and  
19 doing some basic trigonometry, you can -- using the  
20 tangent of one of the angles in those two measurements,  
21 you can then look up on the -- the function tables what  
22 the angle -- corresponding angle would be.

23 And the only thing, other than those  
24 trigonometric calculations, that are reflected here is  
25 that for the three that are on page 1 of 197, which are

1 gunshot wounds B, C, and F, I have reference to some of  
2 the photographs, because, for instance, gunshot wound  
3 B, if you use the numbers, the downward angle  
4 calculates to be less than 1 degree. But if you look  
5 at the photograph -- photographs, you can see that it's  
6 clearly a steeper downward angle than one -- than less  
7 than 1 degree.

8 And, in fact, I measured on one of the  
9 autopsy photographs, literally just putting the photo  
10 on the screen and using a protractor, that this angle  
11 that calculated to be less than 1 degree was actually  
12 in the neighborhood of 15 to 20 degrees downward.

13 I also -- I have two references to  
14 photographs that are in the PowerPoint that was  
15 produced by the medical examiner, Dr. Tranchida. And  
16 those photographs that are referenced in here, actually  
17 the "Bates" stamped on those pages are DCI-00833 and  
18 DCI-00 -- oh, I think I mis- -- I think I  
19 mistranscribed here. The first one should have been  
20 00, I think, 1833. And the second one is DCI-001864.

21 So those photographs in his PowerPoint  
22 show that B and C are approximately parallel and that C  
23 and F are approximately parallel.

24 So, in other words, all three of these  
25 wounds are actually approximately parallel in their

1 downward courses.

2 And C and F calculate to be extremely  
3 close. F also, by measuring on the screen, is in that  
4 same close ballpark. And the measurement on the screen  
5 for B actually matches with the calculations in the  
6 measurements for C and F. So this is all to show that  
7 the calculations for B are incorrect, because some of  
8 these measurements have to be incorrect.

9 But total basis of the opinion is that  
10 these are all very close to parallel, and they are all  
11 at approximately the same downward angle of roughly 15  
12 to 20 degrees.

13 Q Okay. That's very helpful.

14 And now the second page, can you just  
15 describe for us what those notes reflect?

16 A Yes. The second page is very similar,  
17 except this is -- applies to wounds D and E, which  
18 have, if you look at the photos, fairly similar  
19 downward deflections, although one goes to the right  
20 and one goes to the left.

21 And this has a similar phenomenon here,  
22 that if you look at the calculations for D, it -- the  
23 measurements calculate out to an angle that's slightly  
24 greater than 45 degrees. But if you look at the  
25 photograph and measure on it, it's clearly not in the

1 neighborhood of 45 degrees. It's actually  
2 approximately 75 degrees downward deflection.

3 And then if you look at wound E, the  
4 calculations, based on the measurements in the autopsy  
5 report, actually get you to 75 degrees, which is  
6 consistent with when you eyeball D and E on the  
7 photograph. They actually look like they're rather  
8 symmetric.

9 And so that's why I reflected in my report  
10 that D and E were both approximately 75 degrees  
11 downward off the horizontal.

12 Q So is it fair to deduce from your testimony  
13 here that you believe at least some of the measurements  
14 taken by Dr. Tranchida in the autopsy are not correct?

15 A Yes. A few of them, apparently, are  
16 inaccurate.

17 Q And I'm not a medical examiner.

18 Can you explain, does that happen from time  
19 to time?

20 A It happens. There's some degree of  
21 variation -- variability, I should say, in the  
22 measurements because you -- you're measuring on the  
23 body usually lying face-up on the autopsy table, and  
24 we're not using precision measuring tools, you know,  
25 down to microns and so on. So a little bit of

1 variability is just inherent in the nature of how  
2 you're eyeballing and measuring.

3 And then there's the possibility that  
4 happens probably to all human beings every once in a  
5 while: You get one wrong.

6 Q As long as we're on this point, what is  
7 your current employment status? Can you describe what  
8 your current employment is?

9 A Sure.

10 My primary employment is my consulting  
11 practice in forensic pathology and medicine, the --  
12 under the corporate name of Arden Forensics. That's  
13 probably about 90 percent of what I'm doing these days.  
14 And I consult on the both civil and criminal matters.

15 I also have a part-time appointment under  
16 the title of "forensic pathologist" with the Office of  
17 the Chief Medical Examiner for the state of West  
18 Virginia. And in that position, I perform essentially  
19 the same duties and functions as a full-time medical  
20 examiner.

21 I participate in death investigations. I  
22 perform postmortem examinations, including primarily  
23 autopsies. I write autopsy reports. I participate in  
24 their conferences and quality assurance, and I'm  
25 available when necessary to testify in court, based on

1 my work, but I only do that on a part-time basis.

2 Q When was the last time you performed an  
3 autopsy?

4 A I don't remember exactly. It's been -- my  
5 last trip to West Virginia was a month or two ago,  
6 something like that.

7 Q So certainly within 2016 you've performed  
8 an autopsy?

9 A Yes, sir.

10 Q And -- strike that.

11 Have you been to Madison, Wisconsin?

12 A No, sir. Be happy to the make the trip,  
13 but I haven't been there yet.

14 (Arden Exhibit 194 marked for purposes of  
15 identification.)

16 BY MR. HALL:

17 Q I'm going to show you now, sir, what's been  
18 marked as Exhibit 194.

19 Can you identify that document?

20 A Yes. What you've handed me marked 194 is a  
21 six-page copy of my report of consultation in this  
22 matter.

23 Q Does this report contain all the opinions  
24 that you have in this matter?

25 A Yes, sir.

1 Q And it's my understanding from  
2 communications with plaintiff's counsel before today,  
3 that you've reviewed some additional materials since  
4 this report was prepared, but before we sat down today;  
5 is that correct?

6 A Yes, sir.

7 Q So with regard to page 2 where it indicates  
8 the materials reviewed, what other materials have you  
9 reviewed that are not reflected on page 2?

10 A I believe the only thing that I have --  
11 that I have reviewed that's not reflected is I was very  
12 recently provided the consultation report of Mr. Marso  
13 with his CV, another consultant, retained by the  
14 Plaintiffs. I do not believe that there are any other  
15 substantive materials that I have received that are not  
16 reflected in the report.

17 Q And did reviewing Mr. Marso's report lead  
18 to you developing any additional opinions that aren't  
19 reflected in Exhibit 194?

20 A No, sir.

21 Q Did reviewing Dr. Marso's report -- strike  
22 that. I gave him a promotion.

23 In reviewing Mr. Marso's report, did --  
24 strike that.

25 Did reviewing Mr. Marso's report change any

1 of your opinions that are reflected in Exhibit 194?

2 A No. Actually, reviewing his report did not  
3 change any of my opinions.

4 Q Okay. As you sit here today, at least in  
5 your opinion, have you completed all of your work in  
6 this matter subject to getting any additional documents  
7 from Plaintiff's counsel?

8 A Yes, sir.

9 Q As we sit here today, have you requested  
10 any information or documents in this matter that you  
11 have not yet received?

12 A No, sir.

13 Q Do you believe that you've obtained and  
14 reviewed all of the information in this case that's  
15 necessary for you to form the opinions that you've been  
16 asked to address in this case?

17 A Yes, sir.

18 Q Are you aware that another autopsy was  
19 conducted by someone other than Dr. Tranchida?

20 A No, sir.

21 Q And so I assume you've not reviewed any  
22 reports from a second autopsy, correct?

23 A Correct.

24 Q Would you have wanted to review reports  
25 from a second autopsy before preparing your opinions

1 and your report in this case?

2 A You know, I'm hesitating to answer because  
3 of the word, would you want to. I would be -- I think  
4 I would prefer to review that just because somebody  
5 else has done an exam of the body.

6 I will tell you that a second autopsy, in  
7 general, and especially in an injury case, a  
8 gunshot-wound case like this, is very unlikely to  
9 produce significant new or different information,  
10 especially based on my review of the autopsy  
11 photographs and the PowerPoint produced by  
12 Dr. Tranchida. I don't have any expectation that a  
13 second autopsy would change my opinions, but as a  
14 general rule, would I want to see it? Yes.

15 Q Well, you believe that some of  
16 Dr.~Tranchida's measurements with regard to the bullet  
17 trajectory of at least some of the shots is incorrect,  
18 correct?

19 A Yes.

20 Q And it's possible that a second autopsy may  
21 have provided different measurements that would be  
22 correct or may have come back with the same  
23 measurements that Dr. Tranchida had, correct?

24 MR. OWENS: Well, I'll object to the form  
25 of the question.

1 THE WITNESS: Some of the measurements  
2 would be similar or different in a second autopsy.  
3 Some of the measurements probably could not be  
4 accurately or reasonably reproduced because the body  
5 has been altered by the first autopsy, and so not  
6 everything is in its same condition or position.

7 I don't believe a second autopsy would make  
8 any significant or substantive change in what I saw in  
9 the autopsy photographs, though, which, again, also  
10 formed the basis for my opinion, not merely relying on  
11 measurements or written word from Dr. Tranchida.

12 BY MR. HALL:

13 Q Since being retained in this case, have you  
14 done any independent research, you know, where you've  
15 actually gone to books or studies and reviewed  
16 something, as opposed to just relying on your own  
17 educational background and the wealth of knowledge that  
18 you have?

19 A No, I have not done any independent  
20 research for this matter.

21 Q I want to ask you to turn to your report,  
22 particularly starting on the bottom of page 3, where  
23 you begin your analysis and opinions.

24 It's fair that with regard to your opinions  
25 in this case, the -- at least the two main aspects of

1 your opinions relate to trajectory and range of fire;  
2 is that correct?  
3 A Yes, sir. Well, let me -- let me qualify  
4 that. Yes, the -- the two main aspects I have  
5 discussed and offered opinions in this report are about  
6 trajectory and range of fire, although they -- they  
7 also lead to an ultimate conclusion as to consistency  
8 of the account with the forensic evidence, as I didn't  
9 want to leave that omitted.

10 Q Fair enough. When we talk about  
11 trajectory, your footnote 1 explains that trajectories  
12 are described in relation to the body in a normal  
13 anatomic position; is that correct?

14 A Yes, sir.

15 Q In a normal anatomic position, when we talk  
16 about bullet trajectories, is the individual, or the  
17 target, standing straight up and down, correct?

18 A Standing upright, facing the viewer, the  
19 observer, the arms down at the side, and the palms  
20 facing forward.

21 Q And much of what's in your report discusses  
22 the varying degrees of downward trajectory, which --  
23 when we talk about downward or upward trajectory, I  
24 typically use the -- I typically describe that as a  
25 vertical trajectory, comparing then right -- or

1 contrasting to right versus left being a horizontal  
2 trajectory.

3 Is my description of that right, or would  
4 you describe it in some other way?

5 A No. I think that's -- that's fair. And,  
6 again, because you're referencing the person in -- in  
7 an imaginary position of standing upright relative to  
8 the ground, so upward is always to the head and  
9 downward is always to the feet. So you're right,  
10 that's a vertical dimension.

11 Q And in your report, I know that  
12 particularly as you describe the gunshot wounds, you do  
13 discuss horizontal trajectory.

14 But my question is: Did the horizontal  
15 trajectory -- the horizontal trajectory of these shots,  
16 was that significant to your opinions in this case?

17 A Well, the trajectories are significant in  
18 my opinions, and I've taken into account all three  
19 plains, because, you know, the trajectory is a -- is a  
20 three-dimensional representation. So you have to  
21 describe it with three plains of movement or direction.

22 So you have the up or down, you have a left  
23 or right, and you have the front or back. And you have  
24 to incorporate all three, even -- even if the  
25 trajectory does not vary along one of those -- one or

1 more of those. So you could have a -- theoretically,  
2 you could have a front to back trajectory of a bullet  
3 that does not deviate upward or downward and does not  
4 deviate leftward or rightward [sic] -- rightward,  
5 excuse me, but you would still have to incorporate all  
6 three of them. So I have considered all three,  
7 including -- you've asked about the horizontal.

8 In terms of literally getting the picture  
9 of the wounds and their trajectories, I think the  
10 component that was most significant in terms of my  
11 analysis was the downward.

12 Q Okay. And recognizing that, is there  
13 anything that we can tell or that we can know about  
14 this shooting based on the horizontal trajectory?

15 MR. OWENS: Objection to the form of the  
16 question.

17 BY MR. HALL:

18 Q As opposed to just the vertical trajectory?

19 A I don't really understand the question as  
20 posed.

21 Q Did you reach any conclusions in this case  
22 based on the horizontal trajectory, as opposed to the  
23 vertical trajectory?

24 MR. OWENS: Same objections.

25 THE WITNESS: Right. I mean, in part, the

1 answer is the prior answer. I've taken into account  
2 all three plains to make it a trajectory analysis.  
3 And, in part, I think the answer is, you can't answer  
4 it, because you're asking about the horizontal  
5 trajectory in wounds that have downward trajectories.

6 So the -- the horizontal component actually  
7 involves whether it's left, right, front, or back; but  
8 these wounds are not going horizontally. And that's  
9 where I think the -- the terminology in your question  
10 has kind of a roadblock here. I mean, these are all  
11 downward trajectories, they're not horizontal.

12 BY MR. HALL:

13 Q But you would agree that in each of these  
14 shots there is some degree of right-to-left movement or  
15 left-to-right movement, correct?

16 A Yes. Right to left or left to right, but  
17 not horizontal.

18 Q Okay. And then maybe that's where the  
19 disconnect is. My understanding is that we can discuss  
20 vertical trajectory being upward or downward, but  
21 horizontal trajectory explains the bullet's movement  
22 from right to left or left to right. Is that not -- my  
23 description of that being horizontal trajectory, is  
24 that not correct?

25 A Yes, that's not correct.

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1 Q How would you describe trajectory that  
2 moves from right to left or left to right?  
3 A I -- I would use those words. I would use  
4 left to right. And similarly, front and back. If  
5 you -- as soon as you say horizontal, you've now  
6 implied that it's parallel to the ground. And since  
7 none of these wounds is parallel to the ground, we  
8 can't call them horizontal.  
9 Q Fair enough. Thank you for getting me on  
10 the same page.

11 In your review of the -- of this case, was  
12 the bullet trajectory, to the extent that it went right  
13 to left or left to right, did that have an impact on  
14 your assessment of the case?

15 A Again, I apologize. It's hard to give you  
16 a simple yes-or-no answer. It did have an impact in  
17 the sense that I have to know all three plains in order  
18 to get a conceptualization of what each trajectory was.  
19 And certainly part of what went into my big-picture  
20 understanding of all of the trajectories was that some  
21 went right, some went left.

22 Clearly, the predominant factor that was  
23 relevant to my opinions, though, was the downward  
24 component.

25 Q In your opinion, can we know anything or

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1 learn anything about what happened at the moment of the  
2 shooting based on the right-to-left or left-to-right  
3 trajectory?

4 MR. OWENS: Objection to the form of the  
5 question, and foundation.

6 THE WITNESS: We can certainly know  
7 something about the events of the shooting based, in  
8 part, on the right or left deviations of the various  
9 trajectories, because the right and left components,  
10 just as is true for the upward or downward or front or  
11 back components, is one of the necessary parts of  
12 determining not only the direction of the bullet within  
13 the body, but, therefore, the direction from which the  
14 bullet came.

15 So it relates to what we call relative  
16 positioning between the gun and the body, because the  
17 gun has to be pointed at the entrance location and  
18 aimed or angled such that the straight line from the  
19 gun into or through the body follows the known  
20 trajectory of the bullet within the body.

21 BY MR. HALL:

22 Q And do you have any opinions -- strike  
23 that.

24 In reviewing Exhibit -- I'm sorry. It's  
25 194, isn't it?

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1 A Yes.

2 Q In reviewing Exhibit 194, I see a fair  
3 amount of discussion related to the relative position  
4 of Mr.~Robinson with regard to the downward trajectory,  
5 but as I review 194, I don't see any discussion  
6 regarding the relative position of Mr.~Robinson with  
7 regarding -- with regard to right-to-left trajectory or  
8 left-to-right trajectory; is that correct?

9 A Well, I don't think it's correct. I think  
10 it is fair to say that I have taken note of left and  
11 right in my descriptions. If you look at the second  
12 full paragraph on page 4, the first full paragraph  
13 pretty much dispenses with gunshot wound G, that being,  
14 if you will, the outlier through the index finger,  
15 which, of course, given the mobility of the hand and  
16 the finger, is much more difficult to try to use for  
17 positioning and reconstruction.

18 So then I move on, in the second full  
19 paragraph, to start to talk about the remaining six  
20 gunshot wounds, where there is better ability to assess  
21 relative positionings. And you see in the beginning, I  
22 talk about wounds B, C, and F. And I say they all  
23 enter on the left side, all trajectories predominantly  
24 to the right and slightly downward.

25 And so I have incorporated in the

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1 discussion the left and right, but, as I said  
2 previously, clearly, the most important factor, in my  
3 opinions, given the circumstances of the case, is -- is  
4 the downward component of the trajectories.

5 Q But to be clear, when considering the  
6 right-to-left or left-to-right trajectories, you did  
7 not evaluate those trajectories and formulate any  
8 opinions as to whether or not at least that component  
9 of the trajectory would be consistent with Officer  
10 Kenny's description of what occurred, correct?

11 A Yes, sir.

12 Q Let's discuss -- strike that.

13 Let's back up. With the description of  
14 gunshots in this case, A through F, is there any  
15 guidance given to medical examiners in terms of how to  
16 identify shots, let's say A through F?

17 In other words, do they just randomly  
18 select which shot is A and which shot is B and which  
19 shot is C, or is there some sort of training the  
20 medical examiners receive that would indicate how they  
21 should list off shots when there's multiple gunshot  
22 wounds?

23 MR. OWENS: Object to the form of the  
24 question. I'm not sure --

25 BY MR. HALL:

1 Q I think you understand my question. And if  
2 you don't, it was a horrible question, and I can  
3 rephrase it.  
4 A I think I understand the question. The  
5 guidance and the teaching that I am aware of to  
6 forensic pathologists in terms of notating or labeling  
7 gunshot wounds in -- in an autopsy is that each gunshot  
8 wound should be individually identified, or labeled,  
9 and then in turn, of course, described.

10 So you have to be able to separate them by  
11 numbers or letters or descriptions. There is no  
12 required or preferred way of labeling them in terms of  
13 sequence or importance. I think it is common practice  
14 either to label the most important ones first, or  
15 earliest, in the sequence or -- and that's not always  
16 possible, by the way, when you start the labeling  
17 process in the beginning of the autopsy.

18 So the other -- the other thing that I  
19 think -- or the other approach that I think is very  
20 common, but not required, is that you start in one side  
21 or location and move in a particular direction, such as  
22 you start from the top of the body and move downward.  
23 There's no requirement, though, that you follow top to  
24 bottom, front to back, the most important to least  
25 important.

1 The only thing that's really important is  
2 that you reliably separate them into different numbers,  
3 letters, or descriptions so you can identify which one  
4 is which and describe them separately.

5 And, in fact, almost every forensic  
6 pathologist and autopsy report I've ever dealt with or  
7 seen or read, respectfully, will specifically offer the  
8 disclaimer that the order of labels or descriptions has  
9 no implication for sequence and frequently no  
10 implications for importance.

11 Q In your review of Dr.~Tranchida's autopsy  
12 report, are you able to determine his methodology for  
13 ordering A through F -- or, A -- I'm sorry, A through  
14 G?

15 MR. OWENS: Objection.

16 THE WITNESS: No. I - I think he has  
17 reasonably separated them all. I -- I can't speak for  
18 his frame of mind about how he did it.

19 BY MR. HALL:

20 Q Okay. And with regard to separating them  
21 all, the fact that -- strike that.

22 Shot G went through the finger, correct?

23 A Yes, sir.

24 Q And the fact that G is labeled as a  
25 separate shot, we can deduce from that, that it was at

1 least Dr.~Tranchida's opinion that G did not reenter  
2 the body later, correct?

3 A Not necessarily.

4 Q Okay. Can you explain for me how that  
5 measures with your testimony earlier that each shot  
6 should be separately identified?

7 A Yes.

8 When you have a shot through a mobile part  
9 of the body that could reenter, you frequently do not  
10 know for sure if it reentered, especially at the time  
11 of the autopsy. And so the safest, more conservative  
12 thing to do is to describe it as a separate shot, and  
13 then you allow for the interpretations that it may or  
14 may not have reentered.

15 Now, at some point -- well, in some  
16 circumstances, I will tell you there are times when the  
17 body itself will tell you this is a shot that existed  
18 and reentered. There may be physical features and  
19 configurations that allow that to be overwhelmingly the  
20 most likely interpretation.

21 In that case, you might independently  
22 decide to describe that all as one shot. In a case  
23 like this, where the -- the shot through the finger  
24 could easily have reentered or might not have, with no  
25 evidence to push you one way or the other, I think what

1 he did was the -- the safest thing, which is just  
2 describe it as a separate wound.

3 Q In your review of the case, have you  
4 reached any opinion as to whether shot G reentered the  
5 body?

6 A I have no evidence to suggest that it did  
7 reenter the body. And -- and this goes back to what I  
8 said about when you're doing the autopsy. At this  
9 point, I am aware that seven shots were fired, based on  
10 the scene investigation, and we have seven gunshot  
11 wounds.

12 So absent any evidence that strongly  
13 indicates that one of those bullets did exit and  
14 reenter, I think the most probable scenario here is  
15 that seven shots were fired and seven entered  
16 independently with no reentry. That's not the only  
17 possible explanation, but that, to me, is the most  
18 probable.

19 Q And my understanding and -- strike that.

20 You're aware that two bullets were found at  
21 or near the top of the stairs, correct?

22 MR. OWENS: Objection to the form and  
23 foundation. It's a vague representation.

24 THE WITNESS: You know, I recall  
25 specifically one bullet that was the closet -- in the



1 closet past the top of the stairs. I don't actually  
2 recall where the other bullet was the found.  
3 BY MR. HALL:  
4 Q Okay. Putting aside for the moment where  
5 the other bullet was found, because it's not going to  
6 be that significant for purposes of my question, you're  
7 aware that two bullets were recovered?

8 A Yes, sir.

9 Q And in your report, at the last sentence of  
10 the first full paragraph on page 4, it reads: The  
11 bullet associated with gunshot wound G is the most  
12 likely candidate to have been one of those two bullets.

13 Did I read that correctly?

14 A Yes, sir.

15 Q Okay. And is that your opinion to a  
16 reasonable degree of scientific probability?

17 MR. OWENS: Objection to the form of the  
18 question.

19 MR. HALL: What's wrong with the form?

20 MR. OWENS: I don't even know what the  
21 reasonable degree of scientific probably means in the  
22 sense.

23 MR. HALL: Strike that, then.

24 BY MR. HALL:

25 Q You're providing expert opinions in this

1 case, correct?

2 A Yes, sir.

3 Q When you are providing an expert opinion in  
4 this case, to what degree of reliability do you hold  
5 those opinions?

6 MR. OWENS: Objection to the form of the  
7 question?

8 THE WITNESS: The -- the narrative answer  
9 is I hold my opinions -- if I am expressing opinions in  
10 the report or in testimony, I hold them to the degree  
11 of certainty that I believe them to be the most  
12 probable, and those are the opinions that I would be  
13 willing to sign my name to.

14 In -- in medicine, we talk about enough  
15 certainty that you would treat the patient based upon  
16 that conclusion. I'm not trying to play coy here. I  
17 know that there is some controversy over the  
18 terminology in -- in these days. But, classically,  
19 experts such as myself are held to the standard of  
20 reasonable medical probability or reasonable medical  
21 certainty, which are two terms that probably are  
22 identical.

23 BY MR. HALL:

24 Q And so to the extent that you provide  
25 opinions in your written report, you hold those

1 opinions to that level of reliability that you just  
2 described, correct?

3 A Yes, sir.

4 Q And to the extent that you provide opinions  
5 today in your testimony, you hold those opinions to the  
6 same standard of reliability that you just discussed,  
7 correct?

8 A Yes, sir.

9 Q With regard to the two bullets that were  
10 recovered in this case, do you have an understanding as  
11 to whether either, both, or none of those bullets had  
12 blood on them?

13 A Frankly, I do not even recall that detail.

14 Q When a bullet passes through a finger, such  
15 as what bullet G did, would you expect to find blood on  
16 that bullet?

17 A Visible to the naked eye?

18 Q Yes.

19 A Not necessarily.

20 Q You certainly wouldn't expect to see a  
21 small pool of blood from that bullet, correct?

22 A It first depends upon what you define as a  
23 "small pool," but, you know, the -- and also, what you  
24 mean by "from that bullet." I mean, the bullet itself  
25 is unlikely to carry enough blood to form a small pool,

1 however you define that. The wound in the finger  
2 certainly could bleed, so that could leave a small pool  
3 of blood, or it might not leave very much blood. It's  
4 variable.

5 Q At the point where the bullet is recovered,  
6 assuming that that is somewhere other than where the  
7 bullet struck the finger, you would not expect to see  
8 any pooling of blood, correct?

9 MR. OWENS: Objection to the form of the  
10 question.

11 THE WITNESS: Right. I don't think I would  
12 expect to see a pool related to that bullet, per se. I  
13 mean, there may be other factors, but, no, not from the  
14 bullet, per se.

15 BY MR. HALL:

16 Q Turning now to the other six shots. At  
17 least generally, all of the remaining six shots had a  
18 downward trajectory, correct?

19 A All of the remaining six shots did have  
20 downward trajectories.

21 Q In a dynamic shooting scene, can you  
22 explain scenarios in which you would expect to see a  
23 downward trajectory?

24 MR. OWENS: Are you -- object -- are you  
25 asking him to describe every possible scenario

1 possible?

2 MR. HALL: Well, let's start with some.

3 BY MR. HALL:

4 Q Can you identify any scenarios in which in

5 a dynamic shooting scene you would expect to see a

6 downward trajectory?

7 A Right. Well, I mean, it -- it's one of

8 those -- it's one of those, "isn't it possible"

9 questions. There are enumerable possible scenarios for

10 dynamic shooting scenarios or events, and many of them

11 could account for downward trajectories.

12 Q And one would be simply the individual with

13 the firearm is pointing downward at an individual who's

14 elevated beneath that person, correct?

15 MR. OWENS: Can you just read that back? I

16 missed --

17 MR. HALL: Let me withdraw that.

18 BY MR. HALL:

19 Q Can you describe for me a scenario in which

20 you would expect to see a downward trajectory in a

21 dynamic shooting scene?

22 MR. OWENS: Object to the form of the

23 question.

24 THE WITNESS: Right. I mean -- I mean, I'm

25 just making up stuff here. Sure, you could have a

1 the normal anatomical position, as we've discussed.

2 One is it depends upon the degree of

3 elevation. So if we have the target standing one or

4 two stairs above the shooter in a stairway -- actually,

5 I think I'm going to give you three scenarios here --

6 the shooter could be aiming downward relative to

7 himself and the ground and strike the target in a lower

8 part of his body, like in the ankle, and get a downward

9 trajectory.

10 Another is that the shooter, again,

11 depending upon the -- the actual amount of differential

12 elevation to the target, the shooter may be able to

13 raise the gun higher and point it downward at the

14 target and achieve a downward trajectory.

15 Or if the target person who is elevated

16 above the standing level of shooter were to be leaning

17 forward or inverted -- inverted -- I mean, in its most

18 literal graphic sense, a person could be standing on

19 his head or, you know, hanging by his ankles. That's a

20 pretty odd example, but a person could be standing at a

21 higher level and bent way over, such as leaning forward

22 or falling, where a part of the body then assumes a

23 inverted or partially inverted angle that could lead to

24 a downward trajectory as well.

25 Q I just want to make sure that I have an

1 person sitting down in a chair, and a shooter is

2 standing upright, angling a gun downward at the torso

3 of the seated person and strikes the front of the

4 chest, and the bullet goes through the person front to

5 back and downward.

6 BY MR. HALL:

7 Q In a scenario where the individual who was

8 shot who -- I know -- in your professional practice,

9 what do you call that person? Ballistics experts will

10 call that person a target. What do you -- what

11 nomenclature do you use?

12 A Sometimes I say "target," and sometimes I

13 say "victim."

14 Q Just because I'm used to using the term

15 from the prior depositions, I'll stick with "target."

16 A I'm fine with that.

17 Q In a scenario where the target is elevated

18 higher than the muzzle of the firearm, can you describe

19 a scenario in which you would still achieve a downward

20 trajectory despite the difference in elevation?

21 A Sure.

22 I mean, there is -- there's two relatively

23 straightforward ways that if the person who is the

24 target is evaluated above the shooter, that you could

25 still achieve a downward trajectory, you know, based on

1 understanding of the terminology that you're using.

2 And so at what point would you use the

3 terminology of "partially inverted"? In other words,

4 how far forward does an individual have to be bending

5 forward in order to achieve being partially inverted?

6 A I -- I think you have to get the upper body

7 bent more than 90 degrees. In other words, past

8 horizontal.

9 Q So "horizontal" would be if I bend at the

10 waist with my arms straight out and I would have a

11 90-degree angle between my legs and then where the

12 upper body turns, correct?

13 A Correct.

14 Q And so when you would use the term

15 "partially inverted," it would be that I'm bending more

16 forward than that, almost -- anywhere from there to

17 touching my toes, let's say?

18 A Right. And, I think, you know, again,

19 because you've asked the incredibly broad question, I'm

20 sure we could come up with a scenario. It might

21 require a combination of several of my seminars that

22 I've offered you, but we could probably come up with a

23 scenario where you bent 90 degrees, or maybe close to

24 90 degrees, without going past 90 degrees, and you can

25 still get a downward trajectory. But you really have

1 to set up a lot more detail and specifics.  
2 You know, so the 90-degree mark is not a --  
3 a hard rule that, you know, cannot be transgressed, but  
4 I think is a very fair approximation for where you --  
5 your dividing line is.

6 Q Turning now specifically to the Robinson  
7 someone case, do you know the height of those  
8 individual stairs in that stairwell?

9 A I don't recall. I think they -- they may  
10 have been measured, but I just -- I recall seeing them  
11 in terms of getting a visual, but I don't recall the  
12 actual dimension.

13 Q And it's fair to say that you didn't use  
14 the actual dimensions in forming your opinions in this  
15 case, correct?

16 A Correct.

17 Q Is it possible to essentially put together  
18 an equation that would allow you to tell precisely what  
19 percentage an individual would need to be inverted,  
20 what degree angle they would have to be inverted at in  
21 order to achieve a certain angle of a downward  
22 trajectory given some variation in height deviation  
23 and -- or differential elevation.

24 Let me withdraw that question, because --

25 A Thank you.

1 Q -- I -- as it was coming out, it made less  
2 and less sense. I'll have you know, it made perfect  
3 sense in my head before I started talking.

4 A I'm sure.

5 MR. OWENS: I started knowing, and then  
6 I --

7 BY MR. HALL:

8 Q Is it possible to determine, through some  
9 sort of equation, the degree that a target would need  
10 to be inverted in order to accomplish any given  
11 downward trajectory angle in light of differential  
12 elevation between the firearm and the target?

13 MR. OWENS: Objection to the form of the  
14 question.

15 THE WITNESS: The best answer I can give  
16 you is I believe it's possible. I think it would  
17 require -- I mean, a part of your answer, I believe  
18 it's possible is because, frankly, anything is  
19 possible, but it would require a substantial amount of  
20 detail of all of the various locations and heights and  
21 distances. You'd have to put values for many variables  
22 in there, whether it would be done with some sort of  
23 three-dimensional diagram or literally an equation. I  
24 don't know.

25 You've reached a level of reconstruction

1 that's beyond what I'm offering or what I would do as a  
2 forensic pathologist.

3 BY MR. HALL:

4 Q Okay. And so you anticipated my next  
5 question. Just to be clear, you're offering opinions  
6 with regard to the degree of downward trajectory, but  
7 you're not prepared to offer any opinions related to --  
8 strike that.

9 You're not prepared to offer any opinions  
10 regarding the degree at which Mr.~Robinson would need  
11 to be bent forward in order to achieve the downward  
12 trajectories, again, assuming there's a differential  
13 elevation between Kenny and Robinson; is that correct?

14 MR. OWENS: Objection to the form of the  
15 question. The foundation.

16 THE WITNESS: I'm not offering any opinion  
17 about the degree beyond what is stated in the report.

18 BY MR. HALL:

19 Q And, I guess, similar to this question,  
20 you've not conducted any testing or experiments on your  
21 own to see if the downward trajectories that you've  
22 identified in this case could be recreated with  
23 Mr.~Robinson being a stair, two stairs, or three stairs  
24 above where Officer Kenny was, correct?

25 A Correct, I've not done any experiments to

1 address that.

2 Q And you've not -- strike that.

3 I want to turn briefly to "range of fire."

4 Can you just define that term, as you use  
5 it?

6 A Yes. Range of fire, as I use it, as a  
7 forensic pathologist, refers to characterizing entrance  
8 gunshot wounds in various categories as to relative  
9 distances between the muzzle and the entrance, or the  
10 target's surface.

11 And we can readily separate, if we have the  
12 evidence in a given wound, ranges of fire that include  
13 contact, where the muzzle is touching the surface. We  
14 can separate ranges of fire that include close range,  
15 intermediate range, and then the final category can  
16 variously be called either "distant" or "indeterminate  
17 range."

18 Q Specifically with regard to shot E, I read  
19 your report to indicate -- and I'm looking specifically  
20 at the second to last paragraph on page 5. With regard  
21 to shot E, you write: In my opinion, his gun was  
22 tightly in contact with the skin surface when he fired  
23 shot E.

24 Did I read that correctly, or do you see  
25 that?

1 A I'm sorry, I didn't mean to --  
 2 Q No, it's --  
 3 MR. OWENS: It's right here (indicating).  
 4 BY MR. HALL:  
 5 Q -- fourth line from the bottom.  
 6 A Yes. Thank you. Yes, you read that  
 7 correctly.  
 8 Q Okay. So to be clear -- strike that.  
 9 Why do you believe gunshot E, the gun was  
 10 in -- tightly in contact with the skin?  
 11 A If you look at gunshot E, actually we  
 12 could -- we could split a hair here. You've correctly  
 13 read what I wrote there, and I'm not going to back away  
 14 from it. But you could -- in the -- in the field of --  
 15 or in the realm of contact gunshot wounds, some people  
 16 will split them between tight contact and loose  
 17 contact.  
 18 And if you look at gunshot E, there's  
 19 actually some features that you might want to  
 20 interpret, depending on how you do these things, a  
 21 little more in one direction or the other, the tight  
 22 versus the loose.  
 23 The element of gunshot wound E that is the  
 24 basis for the statement of mine that you just read is  
 25 that along a substantial proportion of the

1 circumference -- I think it's more than half -- there  
 2 is, indeed, a mark which is a muzzle imprint. And at  
 3 least a large proportion of the circumference of the  
 4 muzzle had to be in tight contact when the bullet was  
 5 fired for -- to produce gunshot E, because if the  
 6 muzzle isn't pushing tightly, you don't get a muzzle  
 7 imprint.  
 8 So the only hair split I'm offering here  
 9 from the report is that the other portion of the  
 10 circumference has a rim of soot and gunpowder  
 11 particles. So you could say that there might have been  
 12 a partial circumference where the -- the gun was angled  
 13 a little bit. So maybe it wasn't tight contact in the  
 14 entire circumstance, but that's really getting to a  
 15 hair split. The muzzle imprint is part of a tight  
 16 contact gunshot wound, so that's really the basis for  
 17 that.  
 18 Q In your mind, is it important to know which  
 19 side of the muzzle was not in tight contact with the  
 20 body?  
 21 MR. OWENS: Objection to the form of the  
 22 question.  
 23 THE WITNESS: How do you mean that?  
 24 BY MR. HALL:  
 25 Q Well, your testimony is that this was

1 certainly -- gunshot wound D is a contact --  
 2 A Yes.  
 3 Q -- gunshot wound. And I understand your  
 4 testimony to be that you still believe that the gun was  
 5 tightly in contact with the skin, but your testimony  
 6 today is that you acknowledge that while a portion of  
 7 the muzzle was in tight contact with the skin, another  
 8 portion of the muzzle probably was not?  
 9 A Probably is what we would call "loose  
 10 contact" in that portion, but there's -- there's half  
 11 to two-thirds of the circumference that has a muzzle  
 12 imprint, and that's -- that's a -- that's sound  
 13 evidence of tight contact.  
 14 Q Is it important to you to identify which  
 15 one-third -- let's say, using the two-thirds analysis  
 16 that you just gave us, which one-third was loosely in  
 17 contact versus which two-thirds was tightly in contact?  
 18 MR. OWENS: Objection to the form of the  
 19 question.  
 20 If you understand it, you can answer it.  
 21 MR. HALL: Well, let me back up.  
 22 MR. OWENS: I'm sorry, I don't understand.  
 23 BY MR. HALL:  
 24 Q The muzzle is round, right?  
 25 A Yes.

1 Q Circular?  
 2 A Right.  
 3 Q And if we pick up a clock, we have 12 on  
 4 the top and 6:00 and -- on the bottom. And what you're  
 5 describing for us is that in your at least rough  
 6 estimation, two-thirds of that circle is tightly in  
 7 contact with the body and that approximately one-third  
 8 is loosely in contact with the body.  
 9 Am I correct so far?  
 10 A Yes, sir.  
 11 Q Is it important to you to know which  
 12 one-third, which part on the clock from, let's say,  
 13 12:00 to 3:00 or 3:00 to 6:00 or 6:00 to 9:00 or  
 14 9:00 to 12:00, is it important for you to know which  
 15 part of the circumference is loosely in contact versus  
 16 tightly in contact?  
 17 A You mean which part, if we're going -- if  
 18 we're going to assume that 12:00 is the top of the  
 19 muzzle, like where the site might be, in this case,  
 20 actually, it is not important. I can envision  
 21 hypothetically a case where it might be important.  
 22 In this case, as far as what I know about  
 23 the shooting and as far as where my opinions are in  
 24 terms of trajectories and so on, no, it actually  
 25 doesn't affect my opinions which part of the muzzle is

1 or is not in tight contact.

2 MR. HALL: Are you looking at --

3 MR. OWENS: So I've got it out.

4 MR. HALL: What do you have out?

5 MR. OWENS: I was looking at it myself.

6 I'm sorry.

7 MR. HALL: Okay. Well, the witness is

8 looking at it.

9 MR. OWENS: Sorry. Yes.

10 MR. HALL: And I'd ask that you turn it

11 away.

12 MR. OWENS: Sure. Turn it away. I just

13 had the picture up.

14 MR. HALL: Yes.

15 THE WITNESS: Sorry.

16 BY MR. HALL:

17 Q Perhaps it was a disconnect in the way that  
18 I asked the question, but my understanding of your last  
19 response was, with regard to the firearm, whether the  
20 loose contact was at the top of the firearm or the  
21 bottom of the firearm or the right to the left.

22 With regard to the location of the loose  
23 versus tight contact on the body with regard to the  
24 plain of upward, downward, rightward or leftward, is it  
25 important to know the location of where the loose

1 A I'm not positive, no.

2 MR. OWENS: And I'm sorry about that,  
3 again. I have got a lot of things going on.

4 BY MR. HALL:

5 Q Now, with regard to shots C, D, and F, it's  
6 my understanding that you found that there was  
7 stippling, but no soot; is that correct?

8 A Let me just double-check. Yes, sir, that's  
9 correct.

10 Q Now, the existence of stippling without  
11 soot, what can that tell us, or what does that tell you  
12 about the range of fire?

13 A In any entrance gunshot wound, when you  
14 have stippling present, but no soot deposition, that  
15 typically indicates that you are now in what is  
16 generally categorized as an "intermediate-range gunshot  
17 wound" or "intermediate range of fire." And it means  
18 that the muzzle of the gun is far enough from the  
19 target such that soot is no longer able to be  
20 deposited, which generally takes you out beyond  
21 6 inches, certainly beyond 12 inches.

22 You know, the outer range of soot  
23 deposition -- the farthest outer range of soot  
24 deposition you'll see in the textbook is 12 inches. In  
25 real life, you commonly get soot at 6 inches. You may

1 contact is compared to the tight contact?

2 MR. OWENS: Object to the form of the  
3 question.

4 THE WITNESS: You know, I'm sorry. It's  
5 kind of like one of those "isn't it possible" questions  
6 in the sense that as a forensic pathologist, is it  
7 important for me to recognize, relative to the body,  
8 which part is which? Sure, because it's just part and  
9 parcel of knowing the features and recognizing the  
10 features.

11 Is it important in this case, specifically  
12 affecting my opinions about the downward trajectories  
13 and the ultimate issue about consistency with the  
14 officer's account? Actually, no.

15 BY MR. HALL:

16 Q And as you sit here today, do you know, at  
17 least with respect to the positioning on Mr.~Robinson's  
18 body, what direction the -- or what portion of the  
19 imprint was tight contact versus loose contact?

20 A I have an idea, but, actually, I would like  
21 to look at the -- if -- if it's important, I would want  
22 to look at the photograph to make sure that I'm not  
23 misstating it.

24 Q Okay. And it's -- without looking at the  
25 photograph, you're not sure?

1 get some soot at greater than 6 inches. But, you know,  
2 that's why I use the 6- to 12-inch range.

3 So the -- the no soot, but  
4 positive-stippling gunshot wound is beyond the 6 and  
5 maybe 12-inch range, but it's within -- it's inside,  
6 certainly inside the 24-inch range, which is the outer  
7 limit in which you commonly see stippling in real case  
8 work.

9 You may see stippling as far as 30, 36, and  
10 rarely 40 inches. Certainly the textbooks and the test  
11 firings can sometimes get you some stippling out as far  
12 as 36 or 40 inches, but in terms of what is commonly  
13 seen in real case work, 24 inches or so is -- is the  
14 outer limit of what's reliably and often seen.

15 So the -- to answer your question is that  
16 that situation of no soot, but, yes, stippling puts you  
17 in more than 6 to 12 inches, and inside roughly 24  
18 inches.

19 Q These distances that you just described,  
20 and you referenced textbooks, where do these distances  
21 come from? How do you know those distances?

22 A I know them because there's a substantial  
23 body of knowledge concerning wound ballistics as to the  
24 deposition of gunpowder residues and the appearances of  
25 gunshot wounds and how they get characterized.

1 These are in the ballistics literature.  
2 They are in the forensic pathology literature. You can  
3 find them in common forensic pathology textbooks. So  
4 this is the sum total of journal literature, textbooks,  
5 experience, what I've been taught, what I've heard  
6 other people say.

7 Q And not to belabor the point, but the  
8 ballistics literature, the textbooks that you refer to,  
9 can you point me to any of them by name or by author?

10 A Sure.

11 If you go to any of the standard textbooks  
12 of forensic pathology, I'm sure you'll find that. One  
13 of the very commonly used general forensic pathology  
14 books is properly titled "Medical/Legal Investigation  
15 of Death." It usually goes under the -- it's usually  
16 referenced under the name of the original  
17 author/editors, Spitz and Fisher.

18 There's another forensic pathologist who's  
19 very well known, especially in the gunshot world, named  
20 Vincent DiMaio. He has -- actually, he has a complete  
21 separate textbook entitled "Gunshot Wounds." Primary  
22 audience there is forensic pathologists and ballistics  
23 people. So those are two good examples of textbooks.

24 Q Spitz and Fisher, do you know as -- my  
25 understanding is that Dr. Spitz, the dad, is down in

1 Florida, and Dr. Spitz, the son, is up in Michigan.

2 Do you know which wrote that book? If you  
3 don't know, it's not important.

4 A The original Spitz and Fisher textbook was  
5 written by Werner Spitz, the elder, the father, and  
6 Russell Fisher, who's been dead since 1984.

7 The son, Daniel Spitz, has largely taken  
8 over, but I believe both father and son are  
9 author/editors on the current edition.

10 And I didn't know that the elder had moved  
11 to Florida. Lucky man.

12 Q Turning back to this case now, with C, D,  
13 and F, which you've described as intermediate gunshot  
14 wounds, is there any way to tell by comparison with C,  
15 D, and F which of those three shots was closer or  
16 further?

17 A Again, you asked a very straightforward  
18 yes-or-no question, and I'm going to give you an answer  
19 that's more than one word.

20 Q I'm a lawyer. I'm used to it.

21 A Good. I don't mean it in a bad way.

22 Q No.

23 A The answer is yes and no. I mean, the real  
24 answer is by and large, with greater and denser  
25 deposition of stippling around a wound versus sparser

1 and wider spread of stippling, the former generally  
2 indicates closer and the latter generally indicates  
3 farther.

4 The reason I'm not giving you a simple  
5 answer here is because even though that's true and  
6 reasonable, I generally will not commit -- and I don't  
7 think most of my colleagues will commit -- to narrowing  
8 the distance very much more specifically.

9 So if you show me two intermediate gunshot  
10 wounds, and one has a really pretty dense stippling  
11 pattern and one has a few stipple marks here and there,  
12 it's pretty clear which one is likely to be closer.

13 But by and large, we -- I'm speaking for  
14 the community and my own practice, we -- we tend not to  
15 go to a greater level of detail because that becomes  
16 probably more than you can support.

17 Q Fair enough.

18 So that, at least in this case, with regard  
19 to C, D, and F, you're not prepared to offer any  
20 opinions regarding which of those three was closer or  
21 further away from the others?

22 A Correct.

23 Q And it might be a similar type of question,  
24 but when we talk about order of gunshots, order of  
25 shots, I notice that's missing in your report, so I

1 assume you're not prepared to offer any opinions  
2 regarding the order that these shots were fired,  
3 correct?

4 MR. OWENS: Objection to the form of the  
5 question to the extent it implies there's something  
6 missing in the reports.

7 BY MR. HALL:

8 Q And let me withdraw that question --

9 A Okay.

10 Q -- because I certainly didn't mean to  
11 suggest that. But I'm assuming that what's in your  
12 report, that that contains all of your opinions. And  
13 so let me just start the question over.

14 You don't have any opinions regarding the  
15 order that the shots were fired, correct?

16 A That is correct.

17 Q Going back now to the range of fire.

18 Gunshot wounds A, B, and G, do you have an  
19 opinion as to the range of fire for those shots?

20 A In a general sense, yes.

21 Q Okay. And what is that opinion?

22 A My opinion is that gunshot wounds A, B, and  
23 G do not have any soot or stippling associated with  
24 them. And so they become, depending upon how you  
25 practice, either distant, meaning they're beyond the

1 range at which stippling is deposited, which puts us  
2 outside the 24-inch range, basically, or one can  
3 reasonably characterize those as indeterminate, meaning  
4 that you cannot determine the range.

5 But I can certainly tell you that not one  
6 of those three has evidence of closer intermediate  
7 range firing, so they are more likely from a greater  
8 distance than 24 or 24-plus inches.

9 Q When you say "24-plus inches," what is  
10 your -- from your background, your experience, what is  
11 the outer limit, in your opinion, for those shots? Or  
12 I'm sorry --

13 MR. OWENS: You mean stippling?

14 MR. HALL: No, no.

15 MR. OWENS: I'm sorry.

16 BY MR. HALL:

17 Q With regard to shots A, B, and G, based on  
18 your experience and practice, what is the near limit --

19 A Right.

20 Q -- for those three shots?

21 A Approximately 24 inches. I said 24 and  
22 then I said 24-plus, because if you go back to my prior  
23 testimony, as I was saying, in common practice, real  
24 case work that you see in front of you, 24 inches is  
25 generally the outer range when you easily or commonly

1 will see stippling.

2 But I'm acknowledging that if you look at  
3 the textbooks, and especially a lot of textbooks  
4 include experimental work where you do test firings  
5 under controlled circumstances and to clean white  
6 cloths, yes, you can occasionally see stippling. Even  
7 in real case work, 30, 36. 40 inches is really a  
8 stretch, but it's not impossible.

9 So when I said 24-plus, I'm saying 24 is a  
10 very good generalization for your inner limit. It's  
11 not impossible that we could be going a little farther.  
12 But for an inner limit, 24 is the most reasonable  
13 number, and if we allow for occasionally, it might be  
14 30, 36, that range.

15 Q And just to be clear with regard to  
16 stippling -- let's start with that with regard to  
17 stippling.

18 When life-saving measures are attempted on  
19 an individual and there's compression put on wounds and  
20 things -- are you aware of whether or not stippling can  
21 essentially be wiped away?

22 A I am aware.

23 Q And what is your understanding of that?

24 A Stippling cannot be wiped away. Stippling  
25 is formed by unburned or partially burned gunpowder

1 particles that actually embed into the superficial  
2 layers of the skin, and, therefore, they cannot be  
3 wiped away. In contrast to soot, it can be wiped away.

4 Q So you've anticipated my next question.

5 With regard to soot, what is your  
6 understanding with regard to whether it can be wiped  
7 away?

8 A Soot is composed of finer particles that  
9 are deposited on the skin surface, and, in fact, soot  
10 can be wiped away.

11 Q So for shots C, D, and F, where we saw  
12 stippling -- or where you saw stippling, but no soot,  
13 it's at least possible that at some point soot may have  
14 existed with C, D, and F, but that it was wiped away?

15 MR. OWENS: Objection to foundation.

16 THE WITNESS: Right. I -- I suppose I have  
17 to say, yes, there's a possibility. I mean, if you  
18 want to look at those individual wounds in the  
19 photographs and what condition they were in at the  
20 autopsy, they weren't wiped clean at the time of the  
21 autopsy. They still had blood on them mostly.

22 And so whether there is any substantial  
23 likelihood that soot was wiped from them is a different  
24 question. Is there some theoretical possibility that  
25 it could have happened? Sure.

1 BY MR. HALL:

2 Q And I don't have a lot more questions here,  
3 but I want to take you to the bottom of page 5, the  
4 last paragraph.

5 A Yes, sir.

6 Q It appears that you've reviewed a sing  
7 synchronized video that contains some audio, as well?

8 A Yes, sir.

9 Q And my understanding is that there's two  
10 versions that are out there right now. There's the  
11 vision of synched audio and video that was put together  
12 by the Wisconsin Department of Criminal Investigation,  
13 and then the Plaintiffs' counsel -- he may or may not  
14 know this -- also has retained an expert that put  
15 together a synched audio and video. I'll represent to  
16 you that they're not miles apart from one another.

17 Do you know which video version you  
18 reviewed?

19 A I believe I have the first one that was  
20 done by the police. I wasn't aware of the second one  
21 until today.

22 Q Fair enough.

23 The second paragraph in the -- I'm sorry,  
24 the second sentence in the last paragraph on page 5,  
25 after discussion of the video indicates: This shows

1 that he was at or near the bottom of the stairs during  
2 the entire shooting event, which, therefore, did not  
3 begin while they were closer to the top of the stairs,  
4 as he described.

5 Did I read that correctly?

6 A Yes, sir.

7 Q In that sentence, when you're using the  
8 word "he," you're referring to Officer Kenny, correct?

9 A Correct, sir.

10 Q And so through this sentence, I understand  
11 that it's your understanding that Officer Kenny was at  
12 or near the bottom of the stairs during the entire  
13 shooting event, correct?

14 A Yes, sir. I mean, except for the very end  
15 of the shooting, that when he's visible on the porch  
16 and then fires the seventh shot. Yes.

17 Q So the seventh shot, you understand Officer  
18 Kenny to be out onto the porch, correct?

19 A Yes, sir.

20 Q Okay. With regard to the other six shots  
21 and the location of Officer Kenny at the time that  
22 those shots were fired, besides what you reviewed on  
23 the synchronized audio and video, do you have any other  
24 basis to render an opinion as to where Officer Kenny  
25 was located for those shots?

1 A No. The synchronized video really is the  
2 basis for that, and it's reflected in the -- in that  
3 paragraph in the report.

4 Q So your interpretation that Officer  
5 Kenny -- or your belief that Officer Kenny was at or  
6 near the bottom of the stairs at the time of the  
7 shooting, at least the first six shots, is based  
8 entirely on your review of the audio and video  
9 synchronization, correct?

10 A Yes. And, actually, I may add that I  
11 rereviewed this video a number of times since  
12 reading -- since writing this report. And it became  
13 apparent to me that I was being -- in that paragraph,  
14 the bottom of page 5 that you're referencing, I was  
15 actually being very conservative.

16 The sentence that you read -- actually,  
17 just before the sentence that you read, the end of the  
18 first sentence of that paragraph, I stated that Officer  
19 Kenny was backing out of the door during that interval,  
20 meaning between the two, three-shot vollies. And --  
21 and when you look at the video, you can actually start  
22 to see his back coming out of the door during the first  
23 volley.

24 And so I was -- I was being particularly  
25 conservative and cautious when I wrote this and -- and

1 probably a little more than I should have been, because  
2 my writing makes it sound like you can't see him at all  
3 in the first volley.

4 Actually, you can see him starting to  
5 emerge during the first volley, then you see him come  
6 out and fire the second volley of three, and then you  
7 see him go all the way to the porch and fire the  
8 seventh shot.

9 So I -- I think that really strengthens --  
10 that viewing of the video strengthens what I've written  
11 here, that he really was there at the landing at the  
12 base of the stairs for all of the shots.

13 Q And with this next question, I certainly  
14 mean no disrespect, but you're a doctor. You went to  
15 medical school. You've got a substantial amount of  
16 medical experience.

17 You're not drawing on that experience or  
18 knowledge to interpret the video; you're interpreting  
19 the video just like I could, just like Plaintiff's  
20 counsel could, and just like a jury could, correct?

21 MR. OWENS: Objection to the form of the  
22 question.

23 THE WITNESS: Again, I -- I apologize for  
24 not giving you a straight yes-or-no answer. I think I  
25 am drawing, in very large part, on just being a human

1 being who knows how to observe things. You're right, I  
2 don't think that I'm drawing on my medical school  
3 training, but I am drawing on my forensic pathology  
4 training.

5 I mean, assessing shootings and doing scene  
6 examinations and coordinating with criminal lists who  
7 add their own expertise to a shooting investigation is  
8 part of my training and knowledge in forensic  
9 pathology. But you're right, I mean, that's not a  
10 medical school course.

11 BY MR. HALL:

12 Q And you're not drawing on any scientific  
13 expertise to interpret what you see on that video,  
14 correct?

15 MR. OWENS: Objection to the form of the  
16 question.

17 THE WITNESS: Yes. I don't know what you  
18 mean by "scientific." I mean, it's part of my forensic  
19 pathology experience, which is a particular specialized  
20 practice of medicine. It's -- it's not -- I'm not  
21 holding myself out to be a shooting reconstructionist  
22 or a criminalist or a science based on physics and  
23 math, but it's -- it's part of my professional training  
24 and experience. And some of it, indeed, is part of  
25 just being a human being watching the video.



1 BY MR. HALL:  
2 Q Okay. Well, what scientific knowledge or  
3 background did you need to evaluate the audio and video  
4 synchronization and come to the conclusion that Kenny  
5 was at or near the bottom of the stairs during the  
6 shooting event?

7 MR. OWENS: Object to the form of the  
8 question.

9 THE WITNESS: Yes. I -- I don't know  
10 that -- in fact, I even just said I -- I don't know.  
11 This is science. This is understanding time and motion  
12 and interpreting what you see and hear. But it's  
13 not -- there's no particular science to that, that I'm  
14 aware of.

15 BY MR. HALL:

16 Q Okay. Are you aware of whether or not  
17 there was any back spatter found on Officer Kenny's  
18 firearm?

19 A I do not recall.

20 Q With regard to the stairwell itself, did  
21 you review any photographs that contained a picture of  
22 blood spatter on the wall within the stairwell?

23 A I did.

24 Q And did you form any opinions as to what  
25 caused that blood spatter?

1 A No. I've offered no opinions about the  
2 blood spatter.

3 Q Were you asked to render any opinions  
4 regarding --

5 MR. OWENS: Objection --

6 BY MR. HALL:

7 Q -- of blood splatter?

8 MR. OWENS: Objection to the form of the  
9 question.

10 And I'll advise you not to answer, based on  
11 privilege.

12 MR. HALL: On the basis of work product  
13 privilege?

14 MR. OWENS: Yes.

15 BY MR. HALL:

16 Q Did the existence of the blood spatter on  
17 the wall of the stairwell have any impact on your  
18 opinions in this case?

19 A You know, again, this is one of those it's  
20 part of the big picture of what I saw and what I  
21 evaluated. The blood spatter did not have a direct  
22 impact on my opinions as to trajectories and downward  
23 angles and assessing Officer Kenny's account of the  
24 events. I think it was part of big picture of  
25 recognizing the scene.

1 Q And I think this was clear, and this is, I  
2 think, my last question. And I think this may have  
3 been clear with your prior answer, but you previously  
4 testified that you didn't have an opinion on the order  
5 of shots. I just want to make sure that I'm clear on  
6 that, in that you don't have any opinion as to -- with  
7 any respect to the order of shot. In other words, that  
8 one shot was fired before another shot or that a  
9 grouping of shots was fired before another grouping of  
10 shots.

11 I just want to make clear that you have no  
12 opinions whatsoever as to the order that the shots were  
13 fired, correct?

14 A Correct.

15 MR. HALL: That's all the questions I have.  
16 Kate. I'm not sure if you're still awake --

17 MS. HARRELL: I do not have any -- I'm  
18 sorry. I do not have any questions.

19 MR. OWENS: Okay. Just a couple, but can  
20 we just take a quick break?

21 MR. HALL: Sure.

22 (There was a brief recess taken.)

23 EXAMINATION BY MR. OWENS

24 Q I just wanted to ask a couple of questions.

25 The first, Dr. Arden, is about -- you recall discussing

1 the sort of 24 inches-plus in terms of the stippling,  
2 and sometimes you can see it from, you know, 30, 36,  
3 even 40 inches in some cases --

4 A Yes.

5 Q -- do you recall that?

6 A I do.

7 Q Have you ever encountered any cases in  
8 which you've seen stippling in -- over 30 inches in a  
9 officer-involved shooting in your career?

10 A Yes. Actually, I recall one case in  
11 specific, very early in my career. I was a medical  
12 examiner involved in an officer-involved shooting case  
13 where we actually had a great deal of information about  
14 the circumstances and the shooting scenario. And not  
15 only did I have some very sparse stippling related to  
16 the entrance wound in the decedent target, but had the  
17 opportunity to participate with the crime lab, which  
18 was part of the ME office in that jurisdiction, in the  
19 test firing of the gun.

20 And, in fact, we did find that we  
21 reproduced a similar sparse stippling pattern in the  
22 roughly 36-inch range that corresponded very well to  
23 the actual wound in question and to the scenario  
24 provided by the officer.

25 Q Are you familiar with the concept of

1 assured exit wound?  
 2 A I am.  
 3 Q What is that?  
 4 A Assured exit wound is the -- is an atypical  
 5 type of exit gunshot wound that has some features that  
 6 are similar to or may even simulate an entrance gunshot  
 7 wound. The term "shore" or "shoring," S-H-O-R-I-N-G,  
 8 refers to when the skin surface at the point of the  
 9 exit wound is supported either against a firm surface  
 10 or by some other secondary apparatus, like tough or  
 11 tight clothing.

12 So you can see assured exit wound if the  
 13 area of the exit wound is being held -- the skin is  
 14 being held tightly by a garment, like a leather jacket.  
 15 Sometimes you'll see it in the back of a woman where  
 16 the -- the back panel of a brassier is pressing against  
 17 the skin.

18 So it all relates to the physical  
 19 characteristics of the exit wound acquiring some degree  
 20 of abrasion and/or contusion that makes the exit wound  
 21 look more like an entrance wound.

22 Q And did you see any evidence of any shored  
 23 exit wounds in this case?

24 A No, I did not.

25 MR. OWENS: I think that's all I've got.

1 MR. HALL: I've just got a couple of quick  
 2 follow-up questions.

3 FURTHER EXAMINATION BY MR. HALL

4 Q Early on in the redirect, you were asked  
 5 about the officer-involved shooting that you  
 6 investigated, and recreated a stippling pattern.

7 Do you recall that testimony?

8 A Yes, sir.

9 Q When you worked on that case and recreated  
 10 that stippling, do you recall what kind of firearm was  
 11 used in that case?

12 A Yes. The best of my recollection, that was  
 13 a 38-caliber revolver, which is what the police carried  
 14 in those days.

15 Q And do you recall when that was, what year,  
 16 approximately?

17 A This would have been roughly -- either  
 18 latter 1984, might have been 1985, right around there.

19 Q And with regard to stippling, the gun and  
 20 ammunition matter, don't they?

21 A They do. There are some very fair  
 22 generalizations that pertain to most weapons and  
 23 ammunition, but, yes, it's true that they do matter.

24 Q And with regard to that case that you  
 25 recreated the stippling, do you recall what kind of

1 ammunition was used in the 38 caliber?

2 A Oh, I do not recall. Good question.

3 MR. HALL: All right. I don't have any  
 4 other questions.

5 MR. OWENS: That's it.

6 Would you like to reserve or waive your  
 7 signature?

8 THE WITNESS: I prefer to read and sign.

9  
 10 (Deposition concluded at 12:28 p.m.)  
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1 CERTIFICATE OF DEPONENT

2  
 3 I hereby certify that I have read and  
 4 examined the foregoing transcript, and the same is a  
 5 true and accurate record of the testimony given by me.  
 6

7 Any additions or corrections that I feel  
 8 are necessary will be made on the Errata Sheet.  
 9

10  
 11  
 12 \_\_\_\_\_  
 13 Jonathan L. Arden, M.D.  
 14  
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 16  
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 18 (If needed, make additional copies of the Errata Sheet  
 19 on the next page or use a blank piece of paper.)  
 20  
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8/15/2016

Jonathan L. Arden, M.D.

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2

3 I, Steven Poulakos, registered  
4 Professional Reporter, the officer before whom the  
5 foregoing proceedings were taken, do hereby certify  
6 that the foregoing transcript is a true and correct  
7 record of the proceedings; that said proceedings were  
8 taken by me stenographically and thereafter reduced to  
9 typewriting under my supervision; and that I am neither  
10 counsel for, related to, nor employed by any of the  
11 parties to this case and have no interest, financial or  
12 otherwise, in its outcome.

13

14 IN WITNESS WHEREOF, I have hereunto set my  
15 hand this 18th day of August, 2016.

16

17

18

19

20 \_\_\_\_\_  
Steven Poulakos

21 Notary Public

22

23

24 My Commission Expires:

25 May 31, 2021