

EXPERT DEPOSITION OF RANDALL ATLAS, PH.D., VOLUME 1 ; 2016
DEPO. TRANS. LEXIS 4861

CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT OF FLORIDA, ORANGE COUNTY

Case No. 2012-CA-013326-0

April 8, 2016

Reporter

2016 DEPO. TRANS. LEXIS 4861

EARLINE WINDOM, as Personal Representative of the Estate of CONNIE EDWARD WALKER, JR., deceased, Plaintiff, vs. HADIED FAMILY LIMITED PARTNERSHIP, a Foreign limited partnership, 7-ELEVEN, INC., a Foreign for-profit corporation, and ASHRAF CONVENIENCE INC., a Florida for-profit corporation d/b/a 7-ELEVEN STORE # 32221A;, 7-ELEVEN, INC., a Foreign for-profit corporation f/k/a THE SOUTHLAND CORPORATION, d/b/a 7-ELEVEN STORE # 32221A, Defendants. HADIED FAMILY LIMITED PARTNERSHIP, Cross-Plaintiff vs. 7-ELEVEN, INC., a Foreign for-profit corporation f/k/a THE SOUTHLAND CORPORATION, d/b/a 7-ELEVEN STORE # 32221A, Cross-Defendants.

Expert Name: Randall Atlas, Ph.D.

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Counsel

ON BEHALF OF THE PLAINTIFF: KING & MARKMAN, P.A., 941 Lake Baldwin Lane, Orlando, Florida, BY: TYRONE KING, ESQ.

ON BEHALF OF THE DEFENDANTS: WICKER, SMITH, O'HARA, McCOY & FORD, P.A., Orlando, Florida, BY: JOSEPH P. MENELLO, ESQ.

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VIDEOTAPED DEPOSITION OF RANDALL ATLAS, Ph.D.

Friday, April 8, 2016

10:10 a.m. - 2:01 p.m.

333 Las Olas Way

Fort Lauderdale, Florida 33301

Stenographically Reported By:

Andrea Mazor-Stabb, R.P.R., F.P.R.

Registered Professional Reporter

Florida Professional Reporter

U.S. LEGAL SUPPORT

(954) 463-2933

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JASON COOPER, VIDEOGRAPHER

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[1]Deposition taken before ANDREA

[2]MAZOR-STABB, Registered Professional Reporter,

[3]Florida Professional Reporter, and Notary Public in

[4]and for the State of Florida at Large in the above

[5]cause.

[6]****

[7](Whereupon, the above-referenced items

[8]were marked as Defendants' Exhibit Nos. 1

[9]through 12 for Identification by the

[10]reporter.)

[11]THE VIDEOGRAPHER: Here we go, standby.

[12]Good morning. We are on the video record.

[13]Today is Friday the 8th day of April, 2016.

[14]We are here at 333 Las Olas Way, Fort

[15]Lauderdale, Florida for the purpose of taking

[16]the video deposition of Randall Atlas, Ph.D.

[17]The case No, 2012-CA-013326-O, case Earline

[18]Windom, as Personal Representative of the

[19]Estate of Connie Edward Walker, Jr., deceased

[20]versus Hadied Family Limited Partnership, et

[21]al., and Hadied Family Limited partnership

[22]versus 7-Eleven, Inc.

[23]The court reporter is Andrea Mazor-Stabb.

[24]The videographer is Jason Cooper.

[25]Would all counsel please state their

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[1]appearance for the record.

[2]MR. KING: Tyrone King for the plaintiff.

[3]MR. MENELLO: Joe Menello for 7-Eleven.

[4]THE COURT REPORTER: Raise your right

[5]hand, please.

[6]Do you solemnly swear the testimony you

[7]are about to give will be the truth, the whole

[8]truth and nothing but the truth, so help you

[9]God?

[10]THE WITNESS: I do.

[11]THEREUPON:

[12]RANDALL ATLAS, Ph.D.

[13]having been first duly sworn or affirmed,

[14]was examined and testified as follows:

[15]DIRECT EXAMINATION

[16]BY MR. MENELLO:

[17]Q. Good morning, sir. Would you please give

[18]us your full name.

[19]A. Randall Ivan Atlas.

[20]Q. Mr. Atlas, my name is Joe Menello. I

[21]represent 7-Eleven in this case. I know you've had

[22]your deposition taken before but let me just remind

[23]you of a couple things.

[24]If you don't understand anything that I

[25]ask you, please let me know. I'll be happy to

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[1]repeat it or restate it. And if you need a break

[2]at any time, I'm happy to do that.

[3]We're going to go through some of your

[4]opinions. I just was handed a document this

[5]morning which appears to outline your opinions so

[6]that may either help or it may lengthen this a
[7]little longer than -- than we want it to but we'll
[8]see what -- what will happen. And -- and let's try
[9]not to talk over each other. That only makes her
[10]job a lot more difficult; okay?

[11]A. Very good.

[12]Q. All right. You have been retained by the
[13]plaintiff as an expert in this particular case,
[14>true?

[15]A. Yes, sir.

[16]Q. All right. And what is it that you were
[17]specifically asked to do in this case?

[18]A. To review the facts of the case, to review
[19]the crime data, to review Interrogatories, request
[20]for production, depositions, photographs, and
[21]render an opinion on whether 7-Eleven corporate and
[22]its enterprises exercised reasonable care in
[23]providing safe premises for its customers and
[24]employees.

[25]Q. And what is your opinion?

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[1]A. My opinion at this point is that 7-Eleven
[2]did not exercise reasonable care in preventing a
[3]group of persons from gathering on their site and
[4]lingering past a reasonable amount of time that
[5]resulted in a confrontation and the shooting and a
[6]death of a person on the property.

[7]Q. Any other opinions you have?

[8]A. The opinions are stated in Exhibit No --

[9]Q. Three?

[10]A. Three.

[11]Q. And we'll go through that, but that's

[12]essentially a summary of your opinion?

[13]A. That's the bottom line, yes.

[14]Q. Okay. What -- what should 7-Eleven have

[15]done that they didn't do on August 16th of 2010, in

[16]failing to provide reasonable security?

[17]A. Based upon review of the facts and the

[18]history of incidents at this location and history

[19]of other 7-Elevens within the Orlando area, it

[20]would have been a reasonable measure for this

[21]7-Eleven at McLeod Road to have hired an off-duty

[22]police officer to work evenings, especially on

[23]weekends, when young people seem to cruise the

[24]highways and look for a place to dock and hang out.

[25]And had there been this measure of having

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[1]a capable guardian, someone in a supervisory type

[2]role, that person would have deterred people from

[3]coming on the property who were not directly being

[4]customers, filling up with gas or going in the

[5]store for something to eat or drunk and would have

[6]been a visual deterrent for a group of people to

[7]come there that were just looking to hang out and

[8]not be customers as per 7-Eleven rules.

[9]Q. So is it your opinion that there was a

[10]breach in the standard of care by 7-Eleven, that it

[11]was unreasonable at this particular 7-Eleven store

[12]not to have an off-duty police officer?

[13]MR. KING: Objection, form.

[14]THE WITNESS: Yes, in -- in the regard
[15]that other 7-Elevens in the area had
[16]successfully used off-duty police officers.
[17]There was a form that was available to be
[18]filled out by the different stores that I've
[19]seen that request for security guards and/or
[20]off-duty police officers. That there had been
[21]other shootings at other 7-Elevens and clearly
[22]other group gatherings or what is known as
[23]"let outs" by the young people cruising the
[24]streets or the neighborhoods, and that waiting
[25]until the group assembled was too late.

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[1]BY MR. MENELLO:
[2]Q. Why -- why at this particular 7-Eleven
[3]store, other than the fact that other 7-Elevens had
[4]hired off-duty officers, why at this store at the
[5]corner of LB McLeod and Kirkman Road was it
[6]unreasonable or a breach of the standard of care
[7]for this 7-Eleven store not to have an off-duty
[8]officer?

[9]MR. KING: Objection, form.

[10]THE WITNESS: I believe it was
[11]unreasonable because the standards of care
[12]within the 7-Eleven corporate empire, for lack
[13]of a better word, was that if a store was
[14]experiencing distress, crime, a previous
[15]robbery, loitering problems, whatever, that
[16]they could have that ability of getting
[17]someone in authority that could make a

[18]presence and deter potential robberies and/or

[19]problems on the site and/or in the store.

[20]The 20 plus incidents at this specific

[21]location, in my opinion, is the notice and

[22]foreseeability that this store could have,

[23]would have, should have taken some action and

[24]didn't, especially considering there had been

[25]a -- an armed robbery at the store less than a

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[1]week before.

[2]BY MR. MENELLO:

[3]Q. Okay. What -- what I meant, the basis of

[4]your opinion, from what I understand, is why there

[5]was a breach in the standard of care by this

[6]particular store is because of 7-Eleven's own

[7]standard of care? Am I understanding that

[8]correctly?

[9]A. I'm going to say, yes, in the sense that,

[10]I mean, this isn't a Publix and it wasn't -- you

[11]know, nightclubs hire their own security and Publix

[12]sometimes hires their security and a hospital, you

[13]know, might have a security -- will have a police

[14]officer or security guard. So each building

[15]environment has its own standard of care and the

[16]highest level of correlation would clearly be gas

[17]stations and/or convenience store industry of which

[18]7-Eleven is a leader --

[19]Q. And let me ask you --

[20]MR. KING: Allow him to finish. Allow him

[21]to finish.

[22]THE WITNESS: Is a leader in that
[23]industry. In fact, the Florida Convenience
[24]Store Act law was passed in 1992, if memory
[25]serves me correct, really came out of attacks to
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[1]7-Elevens in the State of Florida. I was in
[2]Florida State University in Tallahassee when the
[3]police chief there was the prime instigation for
[4]getting that law passed. I had gone to graduate
[5]school in criminology at Florida State, and it
[6]was some of the graduate students who had done
[7]that research on 7-Eleven robberies that
[8]ultimately led to a state law being passed to
[9]establish minimum standards of care.
[10]So the answer to your question is, it is a
[11]state law, there are minimum standards of care
[12]for security on a state code level, however,
[13]it's based on industry standard and industry
[14]best practices.

[15]BY MR. MENELLO:

[16]Q. And that's what I'm trying to ask you.
[17]Other than you getting evidence in this particular
[18]case about other 7-Elevens hiring off-duty
[19]officers, do you have any other basis, any other
[20]company, any other convenience store company, that
[21]you can cite to where there are standards of care
[22]that you believe required 7-Eleven at LB McLeod and
[23]Kirkman to hire an off-duty officer?

[24]MR. KING: Objection, form.

[25]THE WITNESS: That is beyond what the
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[1]scope of my work has been. The partial answer
[2]to that, for example, like Circle K,
[3]convenience store industry, they co-link with
[4]gas stations. I know that Circle K has
[5]security standards.

[6]I'm working on a case of Circle K of a
[7]stabbing in Canada, and the security director
[8]for Circle K used to work to for 7-Eleven and
[9]essentially gleaned off of the 7-Eleven
[10]standards to develop the circle K standards.

[11]So as an industry your question was, is this
[12]7-Eleven specific and the answer is, no.

[13]BY MR. MENELLO:

[14]Q. And -- and -- and I -- I don't mean to
[15]interrupt, I don't want -- what I'm to trying
[16]figure out is, what other standards, what other
[17]protocols, what other processes other than
[18]7-Eleven's own processes are you saying required
[19]the 7-Eleven at this particular store at the corner
[20]of LB McLeod and Kirkman to have an off-duty
[21]officer? You've already told me well, 7-Eleven did
[22]it at other stores. I'm trying to figure out what
[23]is -- what other basis do you have, what other
[24]standard, what other regulation that you can cite
[25]to that required this store to have an off-duty

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[1]officer?

[2]MR. KING: Objection to form.

[3]THE WITNESS: As stated earlier --

[4]MR. KING: Sorry, you can answer.

[5]THE WITNESS: As stated earlier, the
[6]Florida Business Convenience law of 1992.
[7]BY MR. MENELLO:
[8]Q. Okay. And -- and anything else that --
[9]that you can think of, as you sit here today, that
[10]you would be able to tell or will tell a jury this
[11]was the standards and these are the standards that
[12]I believe that 7-Eleven violated by not having an
[13]off-duty officer?

[14]A. I think the highest standard of care, of
[15]course, is state law, that is ordinance. So that
[16]clearly becomes code at that point. That becomes
[17]the global standard of care for the State of
[18]Florida, enforceable as a state law.
[19]Now, going from there your next highest
[20]level of standard of care and best practice is what
[21]the store policy and procedures and practices are
[22]within their own industry. And especially when
[23]you're dealing with corporate run stores and
[24]franchise -- franchises you try to hold the
[25]franchisees to the corporate standard of care,
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[1]whether it be a Marriott or a Dominos Pizza or
[2]whatever it might be, when you're having corporate
[3]run stores versus franchisee stores. It's my
[4]understanding that most of the stores, if not all
[5]of the stores, at this time were corporate owned
[6]stores as compared to franchisees.

[7]Q. Let me ask -- so if this 7-Eleven store
[8]complied with the Florida Convenience Business

[9]Security Act, you believe that then they would have

[10]-- that store would have met the standard of care

[11]and would not be -- would not have acted

[12]unreasonably; correct?

[13]MR. KING: Objection, form.

[14]THE WITNESS: Correct. And I've reviewed

[15]the law and the state law does call for the

[16]fact that if there had been a prior crime on

[17]the property of certain types of felony

[18]crimes, that they suggest strongly, if not

[19]require, I have to get the -- you have the

[20]exhibit in front of you.

[21]MR. MENELLO: I think you have -- I gave

[22]it back to you, you should have it there.

[23]THE WITNESS: That you have to have

[24]additional security measures. Now, there are

[25]choices of what those security measures are

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[1]and in some areas the 7-Eleven at McLeod did

[2]comply. I'm not contesting that or suggesting

[3]that they didn't take any measures. I'm

[4]saying that the practice of just even having

[5]two employees, which would have been a -- one

[6]of the suggested measures for the store to

[7]take additional security because it's not just

[8]a lone clerk on a dark road at night where the

[9]person is all by themselves. So they -- the

[10]7-Elevens did have two employees. That is one

[11]of the four options that is suggested.

[12]However, the fact that there had been a

[13]repeated pattern of people gathering on-site
[14]in the parking lot primarily, with some people
[15]coming in and out of the store to consume
[16]stuff, which is fine, or buying gas I would
[17]imagine, the 7-Eleven policy that I read in
[18]the manuals here, the safety manuals, was very
[19]clear those clerks are not to leave the
[20]storefront.

[21]BY MR. MENELLO:

[22]Q. And we'll get --

[23]MR. KING: Let him finish.

[24]MR. MENELLO: It's getting off track here.

[25]THE WITNESS: I'm trying to answer your
Page 17

[1]question. You asked me is there a standard of
[2]care that holds 7-Eleven responsible for
[3]hiring security guards?

[4]MR. MENELLO: I asked if -- I asked if the
[5]Convenience Business Security Act --

[6]THE WITNESS: Yes.

[7]MR. MENELLO: -- set the standard of care.

[8]MR. KING: That wasn't the question that
[9]you asked.

[10]THE WITNESS: Well, that's not what I
[11]heard as the question.

[12]BY MR. MENELLO:

[13]Q. Go ahead, you can finish and I'll ask it.

[14]A. I mean I -- Court Reporter, would you

[15]please repeat the question that counsel asked and
[16]see if I misheard.

[17](Whereupon, the requested portion was read
[18]back by the Court Reporter, after which time
[19]the following proceedings were had:)

[20]THE WITNESS: Correct, and I said, yes.

[21]MR. MENELLO: Okay. And --

[22]MR. KING: But that -- so he gave you an
[23]answer.

[24]MR. MENELLO: And that's the answer, but

[25]I'm limited on time here, Tyrone, and I'm
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[1]trying to get through the deposition.

[2]MR. KING: I understand that, but when --

[3]when we end up in court arguing over the
[4]answer, the answer was yes with an explanation
[5]and he's allowed to gave his explanation and
[6]he didn't finish.

[7]THE WITNESS: Correct.

[8]BY MR. MENELLO:

[9]Q. Go ahead. Finish your answer, Mr. Atlas.

[10]A. So, yes, the standard of care is the state
[11]law with, I qualified it, that the next highest
[12]level of standard of care, of course, is the
[13]industry standard or best practices of that
[14]particular company whether it be Circle K or
[15]7-Eleven or Marriott or Domino's Pizza. In that
[16]regard the state law requires that if you've had
[17]prior time on the property, that you are required
[18]to take, the key word here must, so it's not even a
[19]would like you to. It says, the business must have
[20]one of the following additional security measures

[21]between 11:00 at night and 5:00 in the morning.

[22]The four choices are having at least two employees

[23]on the premises at all times. 7-Eleven did that

[24]and they complied.

[25]Secondly, a secured safety enclosure made

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[1]of transparent polycarbonates, this particular

[2]7-Eleven was not designed in that way, the two

[3]employees essentially could handle transactions.

[4]Third, a security guard or off duty law

[5]enforcement officer on the premises. That is the

[6]key here with regard to your previous question of

[7]what would have 7-Eleven have done to have actually

[8]prevented this crime. Having the two employees --

[9]if this had been the first time, we could have a

[10]reasonable discussion whether the two employees

[11]could have, would have, should have prevented

[12]something from happening. But the fact there had

[13]been at least 20 plus incidents and the employee

[14]struggling with, you know, calling the police and

[15]police coming after the fact and being reactive,

[16]was not preventing future gatherings or the

[17]gathering of this particular night where the

[18]shooting took place.

[19]The fourth requirement is locked premises

[20]with business conducted through an indirect pass

[21]through, and I don't recall whether the 7-Eleven,

[22]based on the photographs, I don't think it had a

[23]pass through. And based on the videotape the store

[24]was open, the doors were open because the officer

[25]came in and out and women were coming in and out so

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[1]it doesn't appear that the store was locked at

[2]certain hours of the night so that the store clerks

[3]can safely conduct business without being in direct

[4]contact with a customer or potential robber.

[5]So in summary getting back to what I heard

[6]your question asked, which is, did the 7-Eleven --

[7]what was -- what was the standard of care that the

[8]7-Eleven had to comply to? The answer is, in the

[9]State of Florida, the Florida Convenience Store

[10]Business Security Act of 1992.

[11]Q. Okay. And -- and let me -- and this store

[12]at LB McLeod and Kirkman, did that store comply

[13]with the Convenience Business Security Act?

[14]A. Yes, in that they hired -- because of

[15]crime on the property they did have two employees

[16]on duty, yes.

[17]Q. Okay.

[18]A. In -- in regard to the four points

[19]required they did have -- again, it says, must have

[20]one of the following additional measures. In this

[21]particular case they had the two employees who were

[22]again limited within the boundaries of the interior

[23]of that store and not being able to address the

[24]challenges they were facing on a regular basis in

[25]the parking lot.

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[1]Q. So if we assume, as you stated, that the

[2]Florida Convenience Business Security Act sets the

[3]standard of care for convenience stores in Florida

[4]and this 7-Eleven store complied with the act as of
[5]August 16th of 2010, you would agree with me that
[6]this store met the standard of care as far as
[7]security for convenience stores in the State of
[8]Florida, true?

[9]MR. KING: Objection, form.

[10]THE WITNESS: No, sir. My opinion that it
[11]did not comply fully with the standard of care
[12]and/or best practices is that even though they
[13]had two additional -- they had two employees
[14]working at night, they were continuing to have
[15]attacks on the property by outside forces of
[16]people gathering there and engaging in hanging
[17]out activity, noise, fights, eventually a
[18]shooting and a murder that at some point it
[19]became apparent not only to the employees but
[20]also to 7-Eleven that just having the two
[21]employees was not enough. The -- there's
[22]nothing in the ordinance that requires them to
[23]do more than one additional item so I can't
[24]argue with that, the words are clear. What
[25]I'm suggesting is that the best practice and
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[1]industry standard and reasonable measures to
[2]provide a safe premise would have required
[3]taking additional measures beyond just having
[4]the two employees.

[5]BY MR. MENELLO:

[6]Q. Okay. But the -- the -- the purpose of
[7]the -- of the law, and as you've agreed to, is that

[8]this law establishes what would be the reasonable
[9]standard of care and the law also addresses if
[10]there's crime what additional measures can be taken
[11]under particular circumstances, true?
[12]A. Absolutely. And, of course, the key word
[13]here as you discussed that is that we're looking at
[14]minimum security standards. So it's not suggesting
[15]that you can't do more, it's saying that at the
[16]very least you must have a drop box and have the
[17]height bar and if you've had a crime on the
[18]property you must have one of the four measures as
[19]a minimum standard of care. And that's where my
[20]answer has been that did they comply with the
[21]minimum standards, yes. Did they take reasonable
[22]measures to protect the assets on that property of
[23]the customers, the employees and their product, no.
[24]In my opinion.

[25]Q. And I understand, we'll get into it.

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[1]What other -- other than this statute and
[2]we'll -- it's 812.173, other than this statute, any
[3]other regulation, code, statutory authority that
[4]you can cite to that establishes any type of
[5]standards or standard of care for security at
[6]convenience stores in the State of Florida?

[7]A. No, sir.

[8]Q. Okay.

[9]A. Not that I'm aware of.

[10]Q. All right. Other than -- strike that.

[11]When you typically do these reviews in

[12]these criminal cases, I mean these -- these

[13]negligent security cases, you've done many of

[14]these, do you typically look in your -- your

[15]practice, your practices, you look two to

[16]three years prior to the incident that's the

[17]subject of the lawsuit, true? Typically that's

[18]what you do?

[19]A. The -- the industry standard for security

[20]experts look typically between three to five years.

[21]Sometimes they'll go back as far as five. I

[22]typically go back three. It depends on the history

[23]of the property whether -- clearly the closer in

[24]time the more relevant it becomes. However, I very

[25]seldom go beyond five years.

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[1]Q. Okay. Typically you do three years?

[2]A. Correct.

[3]Q. Okay. And in this particular case have

[4]you ever been to this store?

[5]A. Yes, I have.

[6]Q. When did you go?

[7]A. March 28th of this year.

[8]Q. And how long were you there?

[9]A. An hour.

[10]Q. Okay. Anyone with you?

[11]A. I just had a -- an Uber driver, I don't

[12]know who that was, just a nameless person that took

[13]me there because I was going to and from someplace

[14]else to the airport. So I made sure I did a

[15]drive-by, took some pictures, walked around and at

[16]least got familiar enough with that site and also
[17]went to Club Envy or the nightclub space just so I
[18]could get a frame of reference of how far or close
[19]it was.

[20]Q. Okay. And how long were you at the store?

[21]A. 30 minutes, a half hour, 45 minutes,
[22]something like that. It wasn't terribly long.

[23]Q. Did you let anyone know that you were
[24]there or why you were there?

[25]A. No. I actually went in as a customer and
Page 25

[1]bought a soft drink.

[2]Q. Okay. Did you -- did you tell Mr. King
[3]that you had been there on March 28th?

[4]A. Yes.

[5]Q. So prior to April 4th of 2016 which was --
[6]or April 5th of 2016, which was Tuesday, I guess,
[7]had you formulated your opinions.

[8]A. I -- on a base level, yes, but they were
[9]still evolving this week to be prepared for today.

[10]Q. Okay. All right. Now, you said you took
[11]photographs of the store?

[12]A. Yes, sir.

[13]Q. Do you have those?

[14]A. Yes, sir.

[15]Q. And those are what we marked -- what's the
[16]exhibit we marked them as?

[17]A. Exhibit 11.

[18]Q. Okay. Let me see that.

[19]Have you ever been to the store at night?

[20]A. No, sir.

[21]Q. Other than the 30 minutes on March 28th of

[22]2016 had you ever been to that store before?

[23]MR. KING: Objection, form.

[24]THE WITNESS: No, sir.

[25]BY MR. MENELLO:

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[1]Q. And how far is Club Envy from the store?

[2]A. A mile. I don't have the exact readings,

[3]but it was a five-minute drive, five to

[4]seven minutes tops.

[5]Q. Have you measured the substance as to how

[6]far it is from the 7-Eleven store?

[7]A. I did a Google earth map just to get a

[8]frame of reference and would defer to their scale.

[9]Q. What was -- what was the address of the

[10]Club Envy store -- of the Club Envy location that

[11]you went to?

[12]A. I don't have the exact street address but

[13]it's just proximate to the Wet and Wild Water Park

[14]off of I Drive.

[15]Q. Do you have your billing records there?

[16]A. Yes, sir.

[17]Q. If you could pull those out and we have

[18]marked the billing records, the expert services

[19]agreement and it looks like a check as Exhibit

[20]No. 10.

[21]All right. You submitted -- the date of

[22]your invoice is April 8th of 2016. Had you ever

[23]submitted any prior invoices?

[24]A. Yes. I was requested to do a preliminary

[25]invoice ahead of time because you-all were in some
Page 27

[1]kind of mediation talks and they wanted to have a

[2]rough estimate as of last weekend what my hours

[3]were. And I did not include in that previous

[4]invoice my site visit just because I was still

[5]forming things. So if that's where you're going,

[6]no, the site visit was not in the prior.

[7]Q. Absolutely I'm going there.

[8]A. Okay.

[9]Q. So you -- let me show you -- let me show

[10]you your invoice of April 4th of 2016, and we'll go

[11]ahead and mark that as the next Exhibit No. 13

[12]after you've looked at it.

[13](Whereupon, the above-referenced item was

[14]marked as Defendants' Exhibit No. 13 for

[15]identification by the reporter.)

[16]BY MR. MENELLO:

[17]Q. It was provided to us in response to

[18]request to produce on April 5th of -- yeah, just

[19]this week, provided to us on April 5th of 2016.

[20]Other than the site visit was there anything else

[21]missing from the invoice?

[22]A. Yes. The time for this week in preparing

[23]for the deposition.

[24]Q. Okay. What -- what date was that?

[25]A. The rest of this week.

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[1]Q. Okay. Well, look -- look at the April 4th

[2]invoice. It looks like we have deposition

[3]preparation on April 4th of 2016; is that correct?

[4]A. Correct.

[5]Q. Okay. So the additional time would have

[6]been April 5th through the 8th, which is on the new

[7]invoice?

[8]A. Correct.

[9]Q. Anything else that you neglected to

[10]mention in the April 4th of 2016, invoice other

[11]than the site visit?

[12]A. No, sir.

[13]Q. Okay. The pictures that you took, how did

[14]you take them?

[15]A. With my iPhone and -- with my iPhone.

[16]Q. Okay. Do you have that iPhone? Are the

[17]pictures still on there?

[18]A. No, I take them out. I drag them on to my

[19]desktop. I clean them up as far as photo shop of

[20]lighting and then put them in a folder and then

[21]from the folder drag them into iPhoto and from

[22]iPhoto I print them out so that you can see what

[23]the pictures are.

[24]And if you require a digital copy, I'm

[25]happy to produce them for counsel.

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[1]Q. Okay. So just so I understand, it's your

[2]testimony that you neglected to put it on the -- on

[3]the -- on your bill on April 4th. The photographs

[4]that you provided to us were taken on that day and

[5]are no longer on that phone if we looked at it?

[6]A. Correct.

[7]Q. Okay. All right. Do you know why in
[8]response to Interrogatories then that we were
[9]provided on April 5th of 2016, that when we asked
[10]to identify what scene, person or object relevant
[11]to this lawsuit that has been tested, analyzed,
[12]examined or inspected it indicates in the answer
[13]that it's 7-Eleven store No. 32221 through photos
[14]and site visit prior to trial?
[15]Do you know why this discovery response
[16]would not indicate that you had been to the store
[17]already?

[18]MR. KING: It does.

[19]THE WITNESS: It does. I'm -- am I not
[20]understanding your words correctly?

[21]MR. KING: He did it before trial.

[22]MR. MENELLO: Okay. Well, we'll attach
[23]that and I guess we can --

[24]THE WITNESS: What part of that am I not
[25]understanding?

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[1]BY MR. MENELLO:

[2]Q. So you -- you -- you take that to mean
[3]that when plaintiff answers that -- that it's a
[4]site visit prior to trial that indicates or a jury
[5]should anticipate that that means that you had been
[6]to the site already?

[7]MR. KING: Prior to trial.

[8]THE WITNESS: Yes. And if I'm asked to go
[9]back again I'm happy to do so.

[10]MR. MENELLO: We'll mark the Answers to

[11]Interrogatories as Exhibit No. 14.

[12](Whereupon, the above-referenced item was

[13]marked as Defendants' Exhibit No. 14 for

[14]identification by the reporter.)

[15]BY MR. MENELLO:

[16]Q. You provided us with a copy of your

[17]curriculum vitae?

[18]A. Yes, sir.

[19]Q. Is that -- that's current and accurate?

[20]A. Yes, sir.

[21]Q. It's current as of what day? When's the

[22]last time it was updated?

[23]A. I have a little note up on the top there.

[24]I want to say March 1st.

[25]Q. Yeah. March 1st of 2016, okay. And you

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[1]run Atlas Security and Safety Design?

[2]A. Atlas Safety and Security Design.

[3]Q. Safety and Security Design?

[4]A. Yes.

[5]Q. Okay. This says Atlas Security and Safety

[6]Design.

[7]A. Oh.

[8]Q. That's -- that's not accurate?

[9]A. No. It's actually -- I -- I've never

[10]noticed that before, how peculiar. No, it's

[11]actually -- it's actually Atlas Safety and Security

[12]Design.

[13]Q. Okay. Have you, in your practice, in your

[14]business practice, ever consulted with a

[15]convenience store in Florida?

[16]A. As a direct consultant?

[17]Q. Yes. Not as an expert in litigation.

[18]A. I don't think so.

[19]Q. Okay. In your professional experience,

[20]separate from litigation, have you ever recommended

[21]to a convenience business, a convenience store, to

[22]hire off-duty police officers?

[23]MR. KING: Objection, form. He's already

[24]told you he has not consulted.

[25]BY MR. MENELLO:

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[1]Q. All right. Go ahead.

[2]A. There would be no vehicle for me to do

[3]that.

[4]Q. The next exhibit we marked as Exhibit No.

[5]2, this is your case list?

[6]A. Yes, sir.

[7]Q. And this is a list of the cases in which

[8]you have given deposition testimony?

[9]A. No, sir. That's a -- the list of all the

[10]cases I've been retained in that includes

[11]investigations, depositions and/or trials.

[12]Q. Okay. And how far back does this go?

[13]A. I'm going to say the mid '90s when I got

[14]my first computer. Prior to that I don't think

[15]most of us kept good records.

[16]Q. And it -- it looks like it goes up until

[17]-- it's current?

[18]A. Yes, sir.

[19]Q. Okay. The most recent case you were hired

[20]by Jose Garcia?

[21]A. Yes, sir.

[22]Q. In Orlando?

[23]A. Yes, sir.

[24]Q. Against Sea World?

[25]A. Yes, sir.

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[1]Q. Did you give testimony in that case?

[2]A. No, sir. So on that case list you'll see

[3]on the left-hand side where it says I, that means

[4]investigation. If it has a D, it means I've given

[5]a deposition. If it says T, it means I've given a

[6]trial. So it becomes easy for you to see how many

[7]cases I've actually been deposed versus actually

[8]gone to trial.

[9]Q. Have you testified in cases involving

[10]7-Elevens?

[11]A. I think I have, yes.

[12]Q. Okay. Presumably it would be referenced

[13]under the case name?

[14]A. Yes, sir.

[15]Q. All right. Were those -- do you remember

[16]if those cases were in Florida or elsewhere?

[17]A. In Florida.

[18]Q. In Orlando?

[19]A. No, I don't believe so.

[20]Q. What percentage of your income comes from

[21]doing expert legal work like this?

[22]A. It varies a little bit from year to year,

[23]but on average 40 to 50 percent.

[24]Q. Of the depositions that you give what

[25]percentage are for the plaintiff where you've been

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[1]retained by the plaintiff as opposed to the

[2]defense?

[3]A. That's too narrow of a question because

[4]you used the word depositions. If you had asked me

[5]what is the percentage of cases that I have been

[6]hired on to do expert witness work, plaintiff or

[7]defense, I could give you a better answer. When

[8]you narrow that down to number of depositions, I --

[9]I don't know how to answer that. But if -- if I'm

[10]allowed to interpret that a little bit wider, I

[11]would say about 60 percent or two-thirds is

[12]plaintiff and about a third to 40 percent is

[13]defense.

[14]Q. Okay.

[15]A. As a general who -- who contracts me to

[16]provide expert services of which only, you know,

[17]20 percent actually goes to deposition and a

[18]smaller percentage even goes to trial.

[19]Q. Do you have any idea what the breakdown

[20]would be as far as depositions that you've given

[21]for a plaintiff versus a defendant, any estimate?

[22]A. No.

[23]Q. What about trial testimony?

[24]A. Again, the ratio would probably be close.

[25]It's just I have no idea of the number. I mean of

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[1]the several hundred cases I've testified, you know,

[2]it's a much smaller number for the number of
[3]depositions and even a smaller number for cases
[4]that actually go to trial that don't settle or
[5]mediate out.

[6]Q. Have you been retained by Mr. King before?

[7]A. No, sir.

[8]Q. Do you know how he got your name?

[9]A. I believe through Google, just web
[10]searched.

[11]Q. Have you ever been retained by 7-Eleven in
[12]a case?

[13]MR. KING: You mean by their counsel?

[14]MR. MENELLO: By 7-Eleven or their
[15]counsel.

[16]THE WITNESS: I'm not sure. I don't think
[17]so, but I've had other 7-Eleven cases from
[18]assault and premises negligence cases to a
[19]couple slip and fall cases, and I don't off
[20]the top of my head recall whether they were --
[21]if any of those were defense cases. It's
[22]possible, I -- I just don't remember.

[23]BY MR. MENELLO:

[24]Q. Again, the list will probably tell us?

[25]A. Yes, sir.

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[1]Q. All right. You not only testify in
[2]security cases, you testify in slip and fall cases?

[3]A. Yes, sir.

[4]Q. What other types of cases do you testify
[5]in?

[6]A. Criminal justice-related cases, inmate
[7]suicides, inmate assaults, building codes,
[8]architectural-related cases, safety-related cases
[9]regarding railings and fall accidents.

[10]Q. Have you ever worked as a police officer?

[11]A. No, sir.

[12]Q. Ever worked actually providing security

[13]for a business?

[14]A. No, sir. I'm not a security guard, but I

[15]am a trainer for police officers and security

[16]guards.

[17]Q. And where do you do that?

[18]A. I've taught at police academies. I've

[19]taught at the ASIS International, which is the

[20]mother organization for security professionals.

[21]I've taught to -- at the American Institute of

[22]Architects conventions, local, state and national.

[23]I have taught at the National Crime Prevention

[24]Institute out of the University of Louisville where

[25]police officers and security directors and

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[1]architects go to for training in the field known as

[2]crime prevention through environmental design,

[3]CPTED. I have given guest lectures to different

[4]police associations at their annual conferences.

[5]So I'm a very well-known commodity in the field of

[6]design and security in the built environment.

[7]Q. Well, and that's -- it seems like from --

[8]from your curriculum vitae a lot of it has to do

[9]with the design, the architecture of the buildings

[10]or the property in order to help deter criminal

[11]activity?

[12]A. That's correct.

[13]Q. And that's -- what about as far as at any

[14]particular police academy or school separate from

[15]talking with folks about the -- the architectural

[16]design of properties, the CPTED things, have you

[17]instructed or taught folks on other aspects of

[18]crime prevention?

[19]A. Yes, sir.

[20]MR. KING: Objection, form.

[21]BY MR. MENELLO:

[22]Q. What -- what other aspects?

[23]A. In the field of crime prevention through

[24]environmental design there are three major

[25]approaches that includes the natural aspects or the
Page 38

[1]architectural aspects, the circulation patterns,

[2]the mechanical aspects, which is the security

[3]technology. So I, as an architectural security

[4]design consultant, have to design security systems.

[5]So I address the cameras and the intercoms and the

[6]motion detectors and all the security lighting,

[7]fencing, signage and then there's organizational

[8]CPTED which is the people component.

[9]So part of what I have to do is look at

[10]staffing, capable guardianship, security posts,

[11]policies and procedures, training so that the

[12]architecture and the technology support the people

[13]who are running the facility. And that applies not

[14]only in the 7-Eleven world, but if you think on a
[15]bigger level, I get involved in hospitals and
[16]schools and jails and prisons where the people
[17]component, the organizational component, is clearly
[18]one-third of that security formula.

[19]I'm fully prepared to humble myself and
[20]acknowledge that I am not a police officer or a
[21]retired FBI agent or a certified law enforcement
[22]officer. That said, I still have a Ph.D. in
[23]criminology, a bachelors of criminal justice and a
[24]masters of architecture. I am the most prolific
[25]and well-known person in the field of crime

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[1]prevention through environmental design presently
[2]alive.

[3]Q. Let me ask you, in this particular
[4]situation, in this particular case, as far as the
[5]CPTED, the three areas that you discussed, are you
[6]going to be providing an opinion that this 7-Eleven
[7]store violated aspects of CPTED?

[8]A. Yes.

[9]Q. Okay. In what respect did this store
[10]violate the -- any of the aspects of the CPTED?

[11]A. Under the strategies of territorial
[12]reinforcement or boundary definition and within the
[13]approach of organizational CPTED of the people
[14]enforcement, capable guardianship aspect, it is my
[15]opinion that the 7-Eleven did not exercise due care
[16]and reasonable measures to enforce its real estate
[17]boundaries for people who were not customers in a

[18]timely manner that followed their own, their --
[19]sorry, their being 7-Elevens own policies and
[20]procedures and practices specifically related to
[21]the no loitering, discussions in your safety manual
[22]and the fact that customers should not be parked
[23]for more than 15 minutes.

[24]Q. Shouldn't be -- I'm sorry what?

[25]A. Parked for more than 15 minutes and
Page 40

[1]obviously not only being responsible for posting
[2]that signage so people are on notice of, you know,
[3]posted regulations, but also then being able to
[4]enforce it. This is not a case about not having
[5]enough lighting. This is not a case about that
[6]there wasn't locks on the door. The issue here was
[7]that the windows were blocked by signs and posters
[8]that is a violation of the Florida Convenience
[9]Store Act law and 7-Eleven's own policies.
[10]So where the clerk's desk was did not have
[11]a clear unobstructed line of site and/or natural
[12]surveillance of the activities in the parking lot.
[13]Because again your question was, am I going to
[14]testify about CPTED violations. So the answer is
[15]about natural surveillance, about the windows being
[16]blocked and that the code violation and the fact
[17]that they didn't enforce the territorial boundary
[18]rules that 7-Eleven had set up to make sure that
[19]they weren't being overwhelmed by persons coming on
[20]the property just hanging out and engaging in
[21]normal young people's behavior.

[22]Q. Okay. And -- and that's the 15-minute

[23]rule that you discussed?

[24]A. Correct.

[25]Q. Okay. Other than the window blockage and

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[1]the 15-minute rule or the 15-minute policy that's

[2]in -- in the materials, any other way in which

[3]CPTED was violated?

[4]A. No, sir.

[5]Q. Okay. What -- on August 16th of 2010, did

[6]the store clerk have a clear view from the register

[7]to the parking lot?

[8]A. No, sir.

[9]Q. And how do you know that?

[10]A. From the videotape of the register and the

[11]counter and I produced a picture that you have

[12]there --

[13]Q. Show it to me.

[14]A. -- demonstrating the lack of visibility.

[15]Do we want to introduce these as exhibits?

[16]Q. Let me see them first. Show me what

[17]you're talking about. Okay. You have produced

[18]some two paragraphs, one is a still from the store

[19]video?

[20]A. Yes, sir.

[21]Q. And the other one is one of the --

[22]A. Crime scene.

[23]Q. -- crime scene photos?

[24]A. Yes sir.

[25]MR. MENELLO: Go ahead and mark that as

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[1]the next exhibit.

[2](Whereupon, the above-referenced item was

[3]marked as Defendants' Exhibit No. 15 for

[4]identification by the reporter.)

[5]BY MR. MENELLO:

[6]Q. Okay. So it's your opinion, based upon or

[7]at least you'll illustrate to a jury, that these

[8]two pictures show that the clerk, the employees on

[9]that night, would not have had a clear view of the

[10]parking lot.

[11]A. Yes, sir. And the crime scene photo shows

[12]that the line of site from the counter area and

[13]where the register is is directly blocked by a

[14]white sign and a poster above that.

[15]Q. Okay. Show that to us, if you could.

[16]Right there?

[17]A. Yes, sir.

[18]Q. Okay. Show that -- show that to the jury

[19]what specifically you're pointing to that you say

[20]blocked the view.

[21]A. This is a photograph that the crime scene

[22]investigator, the CSI technician, took of the

[23]7-Eleven on the night of the incident of the

[24]shooting of Connie Walker. So this is not my photo

[25]post-incident, this is in real time of the day.

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[1]You'll notice that on the -- where my finger is

[2]pointing there is the baseboard of the --

[3]THE VIDEOGRAPHER: You're getting a

[4]reflection of the window.

[5]THE WITNESS: Oh, sorry.

[6]THE VIDEOGRAPHER: That's okay.

[7]THE WITNESS: Better? That above it is a

[8]little white square and above it is sort of a

[9]dark square. The white square is a sign that

[10]is -- further demonstrate another crime scene

[11]photos that gives the store number and a phone

[12]number to call and then above that is the back

[13]of a poster, a marketing poster. And that is

[14]what it looks like from the outside looking in

[15]and from the inside --

[16]BY MR. MENELLO:

[17]Q. Let's take that photograph for just a

[18]minute. You would agree with me that looking at

[19]this picture immediately to the right there's an

[20]unobstructed, unblocked window, true?

[21]A. Yes, sir.

[22]Q. Okay. And then to the right of that the

[23]-- the doors, there's actually another smaller

[24]panel window and then the doors, one would be able

[25]to see through the doors, true?

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[1]A. Correct. However, I'd like to reflect

[2]that your question to me was very pointed and

[3]specific, was there blockage of the register area,

[4]I believe you used the word register, to the

[5]outside area and my answer stands that that view

[6]from the register is blocked. My basis of that

[7]opinion is this picture from -- this still picture

[8]from the video of the store and the register and

[9]the counter on the night of the shooting, just
[10]moments before the shooting, while a customer is
[11]here paying for something, the view out to the
[12]parking lot is blocked by this poster and sign.
[13]Now, according to 7-Eleven policy their
[14]windows are not to be blocked in the register area.
[15]It acknowledges that other windows might have
[16]posters, which from a marketing perspective we
[17]understand, and thus the only clear view from the
[18]parking area for the employees other than this area
[19]here in the register was for them to look through
[20]the doors which, in fact, when you look at the
[21]video of the night of the shooting, the employees
[22]had to keep going to the door to look outside, they
[23]couldn't stand here and look outside.

[24]Q. So -- so let me understand. Have you ever
[25]stood at any of those registers to see what the
Page 45

[1]view is or the view would have been from those
[2]registers to the parking lot?

[3]A. If I did, I would most likely be arrested.

[4]Q. All right. So that would be a no, right?

[5]A. Correct.

[6]Q. Now, how many registers are there? How
[7]many registers are in that -- in that store?

[8]A. Two, I believe.

[9]Q. Well, is there one close to --

[10]A. There may be one over -- that may be a
[11]register also. I can't tell if that's a point of
[12]service station, POS station right over here or

[13]not, I'm -- I'm not a hundred percent sure.

[14]Clearly there's a register here and I believe

[15]that's a register, and I'm unsure exactly what

[16]technology that is in the -- in the corner.

[17]Q. The right top side of the employee's head,

[18]do you see a register there?

[19]A. The right top part. Are you referring to

[20]right over here?

[21]Q. Yes, yes. Is that a register or do you

[22]know?

[23]A. I do not know. I can't tell from this

[24]still in the video. It could be suggested to me

[25]that it might be a third register there, that's

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[1]fine.

[2]Q. You don't know?

[3]A. I -- I have no personal knowledge.

[4]Q. If an employee is standing there, would

[5]they have a clear view of the parking lot or do you

[6]know?

[7]A. I do not know.

[8]Q. Okay.

[9]A. I can say with a high degree of

[10]reliability that based on the videotape still and

[11]me watching the action that night where the clerk

[12]pretty much just used this register, that the view

[13]of where Mr. Walker was shot was over here so that

[14]direct line of sight would have been blocked of the

[15]pumps and of the parking lot area. Is it possible

[16]that someone could look through this part of the

[17]window? Yes, I am not disavowing the fact that
[18]there is glazing here and they could stand and
[19]press through.

[20]My concern is the fact that when you look
[21]back at the setback of the counter and then the
[22]stuff here on the counter, you're looking through
[23]the reflection of the glass and there's tinting of
[24]the windows as is shown on the crime scene
[25]photograph. Here you can see that the view into
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[1]that store is pretty obstructed.

[2]Q. Does the statute require that the -- that
[3]the -- that the signage allow a clear and
[4]unobstructed view of the entire parking lot?

[5]A. No. The view -- the wording is window
[6]sign placement allowing an unobstructed view of the
[7]sales transaction area from the inside and outside
[8]of the building. Therefore, what that wording is
[9]suggesting is that from the parking lot or the
[10]outside of the store, I must have a clear and
[11]unobstructed view of the register and counter area.

[12]In my opinion, as a crime prevention through
[13]environmental design certified practitioner,
[14]instructor and trainer, the view from the outside
[15]is obstructed and not clear. I am not seeing the
[16]clerk. I'm not seeing the counter. I'm not seeing
[17]the shelving behind that is demonstrated in this
[18]picture here.

[19]Q. All right. The statute, I think you're
[20]reading a summary of it, the statute says, window

[21]signage that allows a clear and unobstructed view
[22]from outside the building and in a normal line of
[23]sight of the cash register and sales transaction
[24]area. Just read that. And did I read that
[25]correctly?

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[1]A. Which -- which one are you -- which point
[2]are you reading?

[3]Q. I'm sorry. It was -- it's letter E.

[4]A. Oh.

[5]MR. KING: Can I take a look?

[6]THE WITNESS: The 2000 -- this is the 2015

[7]Florida statutes referring to chapter 12, the

[8]Convenience Business Security 812.173,

[9]Subsection E, 1.E, window signage that allows

[10]a clear and unobstructed view from outside the

[11]building and in a normal line of sight of the

[12]cash register and sales transaction area.

[13]Yes, you're reading that correctly. You also

[14]need to read .2 which says a convenience

[15]business shall not have window tinting that

[16]reduces exterior or interior view in a normal

[17]line of sight. This picture would absolutely,

[18]positively serve as prima facia evidence that

[19]there is screening and/or tinting on those

[20]windows and obstruct the clear line of site.

[21]BY MR. MENELLO:

[22]Q. Did -- did you measure the tinting to see

[23]how much tinting it is or whether it actually even

[24]obstructs the view from either the inside or the

[25]outside the store? Did you yourself ever do that?

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[1]A. I was not on the site on the night of the

[2]murder. However, a photograph speaks a thousand

[3]words.

[4]Q. All right. The store had good lighting?

[5]A. Yes, sir.

[6]Q. Lighting was working appropriately?

[7]A. Inside and out? Yes, sir, to the best my

[8]knowledge, based on review of the crime scene

[9]photos.

[10]MR. MENELLO: We're going to mark the

[11]statute as Exhibit 16.

[12]THE WITNESS: I would also ask that you

[13]attach this as well as the version that I was

[14]reading from.

[15]MR. MENELLO: Sure, we can do that.

[16](Whereupon, the above-referenced item was

[17]marked as Exhibit No. 16 for Identification by

[18]the reporter.)

[19]BY MR. MENELLO:

[20]Q. And this is something it looks like you

[21]printed off from a website, The Florida Crime

[22]Prevention Training and Institute -- Training

[23]Institute?

[24]A. Yes.

[25]Q. Okay.

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[1]MR. MENELLO: Mark that as 17.

[2](Whereupon, the above-referenced item was

[3]marked as Exhibit No. 17 for Identification by

[4]the reporter.)

[5]BY MR. MENELLO:

[6]Q. Now, in this particular case, this store

[7]had defined boundaries?

[8]A. Yes, sir.

[9]Q. Which is also an important aspect of the

[10]CPTED principles, right?

[11]A. Yes, sir.

[12]Q. It was -- it had a -- a signage that

[13]indicates that it was a community, an Orlando

[14]police -- or a community center?

[15]A. Yes, sir.

[16]Q. Does that act as a deterrent?

[17]A. Potentially it -- it suggests that police

[18]have a presence there.

[19]Q. Okay. Prior to August 16th of 2010 it

[20]looks like that you reviewed certain crime history

[21]information for this particular store, true?

[22]A. Yes, sir.

[23]Q. Okay. And you were provided with -- do

[24]you have the crime grid that calls for service for

[25]this store?

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[1]A. Yes, sir.

[2]Q. Okay. Is it here or is it in those

[3]materials?

[4]A. It's in those materials --

[5]Q. In those boxes?

[6]A. Yes, that you have shared before.

[7]Q. Right. And so the crime grid -- actually,

[8]can you pull it out just so we can refer to it?

[9]A. I'm going to ask counsel to help me figure

[10]out which binder it is just so that I'm not --

[11]Q. Are those your binders?

[12]A. Those are binders that were sent to me by

[13]counsel.

[14]Q. But those have been in your possession?

[15]A. Yes.

[16]Q. Okay. All right. So are you able to tell

[17]us which binder has the crime grids for this store?

[18]A. Eventually, yes.

[19]MR. MENELLO: Okay. All right. But you

[20]-- you can start looking.

[21]MR. KING: I'm not going to start looking.

[22]I'm going to listen the questions that you ask

[23]and be able to object.

[24]MR. MENELLO: Okay. Well, let's take a

[25]quick break if you could look quickly.

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[1]THE VIDEOGRAPHER: We're going off the

[2]record, the time is 11:06.

[3](Whereupon, a brief recess was had, after

[4]which time the following proceedings were

[5]had:)

[6]THE VIDEOGRAPHER: Okay. Standby. We're

[7]back the record, the time is 11:14.

[8]BY MR. MENELLO:

[9]Q. Mr. Atlas, you were provided by

[10]plaintiff's counsel some crime grids?

[11]A. Yes, sir.

[12]Q. Crime grids for this particular 7-Eleven

[13]address?

[14]A. Yes, sir.

[15]Q. 5698 LB McLeod Road?

[16]A. Yes, sir.

[17]Q. Okay. You were provided a crime grid

[18]for --

[19]A. Yes.

[20]Q. -- the one mile radius of this address?

[21]A. Correct.

[22]Q. Okay. And you also provided, it looks

[23]like a crime grid from a different address, 3747

[24]Kirkman?

[25]A. Yes. Those two dressers are the same

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[1]property. The property is at a corner so there's

[2]an address on a Kirkman and it's an address on

[3]McLeod. They are the same property.

[4]Q. Okay. And -- and then you also received

[5]from plaintiff's counsel incident reports from

[6]those addresses?

[7]A. Yes, sir.

[8]Q. Okay. And what -- it looks like in

[9]Exhibit No. 3 which basically is your summary of

[10]the case and contains all your opinions, true?

[11]A. Yes, sir.

[12]Q. That you list 25 incidents starting with

[13]the first one in December 20th of 2005?

[14]A. Correct.

[15]Q. And then going to August 16th of 2010?

[16]A. Correct.

[17]Q. So that's --

[18]A. Five years.

[19]Q. -- five years. So you went back for --

[20]plaintiff's counsel provided you with five years of

[21]calls for service, true?

[22]A. Yes, sir. And incident reports.

[23]Q. And -- and incident reports. Were these

[24]25 the only incident reports that you received?

[25]A. No, there were others. I discarded ones

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[1]that I didn't find relevant.

[2]Q. So the 25 listed in Exhibit 3 are the

[3]incident reports that you believe aren't relevant

[4]to your opinions?

[5]A. Yes, sir, that are similar issues of

[6]parking lot problems and/or felony type crimes.

[7]For example, I discarded the shoplifting incidents

[8]not germane to this case.

[9]Q. Right, right.

[10]So of the 25 incident reports that you

[11]received and reviewed and felt are relevant to your

[12]opinions, prior to August 16th of 2010, had there

[13]ever been a shooting at this 7-Eleven store?

[14]A. No, sir.

[15]Q. Okay. Had -- at any point when the police

[16]were called for the crowds loitering in the parking

[17]lot, did the police ever make any arrests?

[18]MR. KING: Objection, form.

[19]THE WITNESS: I don't specifically recall.

[20]BY MR. MENELLO:

[21]Q. Did the police ever do anything other than

[22]ask the crowd to leave?

[23]MR. KING: Objection, form.

[24]THE WITNESS: I don't believe so.

[25]BY MR. MENELLO:

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[1]Q. Okay. At any point in time whenever the

[2]crowds gathered in the parking lot at this

[3]particular 7-Eleven store, had the crowd ever

[4]become violent to your -- based upon your review of

[5]this case?

[6]MR. KING: Objection to form.

[7]THE WITNESS: Yes.

[8]BY MR. MENELLO:

[9]Q. When?

[10]A. The -- November 29th, '09, there was

[11]persons fighting in the parking lot.

[12]Q. Okay. Was that a crowd or do you know

[13]what -- what that entailed, what that involved?

[14]A. I only know what was written in the

[15]incident report.

[16]Q. Okay. So November 29th of 2009, that --

[17]what time did that happen?

[18]A. 11:03 p.m.

[19]Q. Okay. Do you believe that it had to do

[20]with these let outs, these crowds gathering or was

[21]it separate from that or do you know?

[22]MR. KING: Objection to form.

[23]THE WITNESS: I do not know.

[24]BY MR. MENELLO:

[25]Q. All right. Since you don't know

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[1]specifically about that one, can you point to one

[2]incident where there's a report that these crowds

[3]gathered in the 7-Eleven parking lot and at any

[4]time they ever became violent or committed any

[5]other crime other than, I guess, loitering?

[6]MR. KING: Objection, form.

[7]THE WITNESS: Yes, sir.

[8]BY MR. MENELLO:

[9]Q. Go ahead.

[10]A. Yes, sir.

[11]Q. Where?

[12]A. No. 4, October 19th, 2007, at 3:00 in the

[13]morning, which would mean this would have been one

[14]of the let outs, a group of girls in the parking

[15]lot, and resulted in a fight.

[16]Q. How do you know that was a let out?

[17]A. Because it's 3:00 in the morning and

[18]there's no other reason for people to be hanging

[19]out in the parking lot.

[20]Q. How many girls were in the parking lot?

[21]A. Whatever is documented in the incident

[22]report.

[23]Q. Okay. All right. Any other instances

[24]that you can point to where you believe that these

[25]let out crowds ever became violent in any way?

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[1]MR. KING: Objection, form.

[2]THE WITNESS: Disruptive, yes. Violent,

[3]no.

[4]BY MR. MENELLO:

[5]Q. Okay. When you say disruptive, other than

[6]what you see in the reports --

[7]A. Correct.

[8]Q. -- do you really know what else they were

[9]doing other than what's in the reports?

[10]A. All we have is what's in the report.

[11]Q. Okay. All right. And you kind of

[12]summarized what -- what I would imagine would be

[13]the important information from each report that

[14]makes it relevant to this particular case?

[15]A. Correct.

[16]Q. Okay. All right. And in the three -- or

[17]the five-year history that you looked at, how many

[18]incidents were there that involved a gun?

[19]A. Allegedly just one, which would have been

[20]the November 30th, 2006, at 1:22 in the morning, a

[21]threat and assault with a deadly weapon.

[22]Q. Okay. Do you know if it was a gun or not?

[23]A. I believe it was.

[24]Q. Can you pull the report?

[25]A. Yes, sir, I have that report.

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[1]Q. And does the report say anything about a

[2]gun?

[3]A. Yes, sir.

[4]Q. What does it say?

[5]A. It says the, in police jargon, so

[6]someone -- a black male 5-foot 8, thin build, dark

[7]blue pants, I'm not sure what LSH stands for, in a

[8]white SUV towards --

[9]MR. KING: Last seen heading.

[10]THE WITNESS: What's that?

[11]MR. MENELLO: But you -- you don't need to

[12]testify.

[13]MR. KING: LSH means last seen heading.

[14]MR. MENELLO: But you don't need to

[15]testify. If he doesn't know, he can't testify

[16]about it.

[17]MR. KING: Go ahead.

[18]MR. MENELLO: Now, you can't -- you can't

[19]tell him.

[20]THE WITNESS: Last seen -- last seen

[21]heading.

[22]MR. MENELLO: Okay. All right.

[23]THE WITNESS: You're going to bust my

[24]chops about not knowing --

[25]MR. MENELLO: No, no, no. I'm just asking

Page 59

[1]what you know.

[2]MR. KING: You're asking him to read what

[3]it says.

[4]THE WITNESS: For the purposes of a video

[5]record, so when people look at this they're

[6]not confused by the police jargon, last seen

[7]heading so we don't have to sit here and waste

[8]time on whether I'm interpreting the police

[9]jargon correctly, really, towards -- the

[10]suspect threatened to shoot the person at

[11]around 1300 hours. The shoot would suggest a
[12]gun and not a knife unless he's shooting
[13]bottle rockets at him.

[14]BY MR. MENELLO:

[15]Q. What time was it?

[16]A. It says here 1:21 is when the call for
[17]service came in and then this is referring to
[18]1300 hours which I'm not exactly understanding,
[19]that would be like 1:00 in the afternoon.

[20]Q. So according to that report this incident
[21]occurred at 1:00 in the afternoon?

[22]A. In the nature of the call it says -- well,
[23]it says T.L., I'm not sure what T.L. stands for.
[24]It says T.L., 1300 hours. However, the incident
[25]report --

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[1]MR. MENELLO: Do you know what T.L. stands
[2]for?

[3]MR. KING: Go ahead.

[4]THE WITNESS: The call for service came in
[5]at 1:21 in the morning, a.m. They were
[6]dispatched at 1:24, they arrived the 1:52. So
[7]I don't care what the 1300 hours refers to,
[8]the call came into 911 at 1:20 in the morning.

[9]BY MR. MENELLO:

[10]Q. Okay. But just so we're clear, at least
[11]according to the report, the incident happened at
[12]1300 or around 1300 which would be 1:00 in the
[13]afternoon?

[14]A. Potentially, yes. So it's -- there's --

[15]it's unclear exactly what the 1300 hours is

[16]referring to.

[17]Q. Okay. And so -- all right. Was a weapon

[18]ever found?

[19]A. No, sir.

[20]Q. Okay.

[21]A. But your question was, did any of the

[22]incidents ever involve the use or threat of a gun

[23]and the answer is, yes.

[24]Q. Okay. Did -- did that incident have

[25]anything to do with a let out, to your knowledge?

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[1]A. I have no information on that.

[2]Q. Okay. All right. In the five years that

[3]you've looked at as far as reports and crime grids

[4]calls for service, was there ever any incident

[5]where a crowd gathered at this particular 7-Eleven

[6]store and anyone ever witnessed any guns.

[7]A. Not that I'm aware of, no. But clearly

[8]that potential always exists.

[9]Q. Well, it exists everywhere, doesn't it?

[10]A. Yes, it does, but especially where you

[11]have a gathering of young people.

[12]Q. Why is a gathering of young people, why

[13]does -- why would that lead a business owner like

[14]7-Eleven to anticipate that there would be gun

[15]violence?

[16]A. In my opinion as a criminologist when you

[17]are encouraging or promoting groups of young people

[18]to get together without supervision or capable

[19]guardianship, the possibility or the probability of
[20]some of the young people carrying weapons, knives,
[21]guns, drugs is in my opinion fairly high. The fact
[22]that the age group of young people we're talking
[23]about and the time of night, we're not talking
[24]about elementary school kids, we're not talking
[25]about even high school kids potentially, we're
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[1]talking about older teenagers and/or young 20
[2]somethings that are cruising at late club hours in
[3]the evening. The potential for those young people
[4]packing is within reasonable probability that
[5]someone is carrying as is evidenced by this
[6]shooting. Because not only did one person carry
[7]but a series of people shot off weapons.
[8]On a previous case that I worked at a let
[9]out that occurred in the McDonald's in Shreveport,
[10]Louisiana, what started off as just rival high
[11]schools, boys hassling each other and their
[12]respective girlfriends, when someone finally pulled
[13]out a gun and a shot went off, more than a dozen of
[14]the people in that particular case of high school
[15]kids whipped out pistols and started shooting at
[16]each other randomly.
[17]So it is foreseeable, in my opinion as a
[18]criminologist, that if you're attracting groups of
[19]individuals without supervision, and that's the key
[20]word there, that there exists the likelihood that
[21]someone is carrying weapons and that's going to
[22]result in someone's temper being triggered.

[23]Q. Okay. And so the supervision you're

[24]talking about is the off-duty officer?

[25]A. Correct.

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[1]Q. Okay.

[2]A. Or if it was, you know, if it was in a

[3]school football game, it would be the coach or

[4]the --

[5]Q. Well, I'm talking about the 7-Eleven.

[6]A. Well, I understand, but your question

[7]first was -- was broad about, you know, why is it

[8]if you have a group of young people that you can

[9]expect weapons and I was giving an example that

[10]even at a high school on a Friday night live kind

[11]of game they have to screen for weapons and they're

[12]under the capable guardianship of, you know, giving

[13]you the stink eye as you come in to make sure that

[14]you're not packing and that there's a no weapons

[15]policy and things of that nature. So on this store

[16]specific and/or 7-Eleven corporate stores

[17]generally, the State of Florida allows you to carry

[18]concealed weapons if you're permitted. Even if

[19]you're not permitted, a lot of people carry weapons

[20]in the State of Florida. To have testosterone

[21]driven young males all gather showing off their

[22]cars and their girlfriends is especially prone to

[23]short fuses, short tempers and one-upmanship that

[24]can result in displaying of those weapons and/or

[25]using them.

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[1]Q. The crowd that -- that gathered or that

[2]was in this parking lot at the time of Mr. Walker's
[3]shooting, I assumer you're relying upon the police
[4]reports for numbers and folks that were there,
[5]things like that?

[6]A. Yes, sir.

[7]Q. All right. And you're relying upon the
[8]investigation done by the detectives in that case
[9]and his conclusions, true?

[10]MR. KING: Objection, form.

[11]BY MR. MENELLO:

[12]Q. Are you relying upon his -- his
[13]conclusions?

[14]MR. KING: For what purpose?

[15]MR. MENELLO: For your -- his opinions.

[16]MR. KING: On foreseeability or
[17]prevention?

[18]MR. MENELLO: On any opinions he's giving.

[19]MR. KING: Objection, form.

[20]BY MR. MENELLO:

[21]Q. Go ahead.

[22]A. Yes.

[23]Q. Okay. Because you have an incident
[24]summary it would appear that the incident summary
[25]essentially comes from the police report?

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[1]A. Yes, sir. And the -- the -- the detective
[2]report. To be more accurate the police file.

[3]Q. Right. And -- and as far as the police
[4]file itself, as far as your opinions in this
[5]particular case, you have to rely upon what's in

[6]the police investigation, true?

[7]MR. KING: Objection, form.

[8]THE WITNESS: Yes. Yes, sir, as it

[9]pertains to the facts that were best

[10]attainable in the proximity of time and space.

[11]Q. Was -- was this shooting the result of a

[12]-- of a dispute between two gangs?

[13]MR. KING: Objection, form.

[14]THE WITNESS: There is mention in the

[15]police investigation that there was

[16]potentially some persons that may have been

[17]members of gangs but there was never any

[18]conclusive determination whether this was a

[19]gang-related shooting or -- or just a

[20]drive-by.

[21]BY MR. MENELLO:

[22]Q. And you read Detective Gribble's

[23]deposition testimony?

[24]A. Yes, sir.

[25]Q. And what did he -- did he give a

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[1]conclusion as to what he felt the reason for the

[2]shooting was?

[3]MR. KING: Objection, form.

[4]THE WITNESS: I need my deposition

[5]summary.

[6]BY MR. MENELLO:

[7]Q. You don't have an extra copy of this?

[8]A. No. No, the --

[9]Q. I don't have the deposition summary.

[10]A. Are we referring to the deposition of

[11]Officer Gribble?

[12]Q. Yes.

[13]A. According to his deposition he categorized

[14]this shooting as a drive-by. There was discussion

[15]in his deposition of the different gangs and

[16]participants, but there's nothing to explicitly say

[17]that this was a gang-related shooting.

[18]Q. Okay. In this particular instance have

[19]you made any determination as to how long this

[20]crowd of folks was at the 7-Eleven before the

[21]shooting?

[22]A. In my summary of opinions I've created an

[23]approximate timeline based on the videotape and so

[24]I have a rough idea of when you could see some

[25]headlights coming into the parking lot and when the
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[1]first couple of girls came in. So give or take

[2]within a few minutes I have an approximate range

[3]and -- and then a range of time between when those

[4]first cars pulled in, the first girls came in the

[5]store, to when you hear the first shots using the

[6]timeline on the videotape as my reference point as

[7]to compared to other timelines because there's --

[8]Q. You mentioned some girls that were in the

[9]store. Do you know if those girls were with the

[10]group of people that were -- the crowd as you've

[11]described it?

[12]A. I think that -- I'm going to assume that

[13]they were with the let out. I have no personal

[14]knowledge of that. I don't know if it happened to
[15]be random choice that they happened to be there at
[16]this particular time in the morning, but it would
[17]appear by their actions when the shooting occurred
[18]and their concern and the fact that the girls knew
[19]each other, that they seemed to know the people in
[20]the group or were with that group of people. I
[21]have no firsthand knowledge, I was not there that
[22]night in the evening.

[23]The videotape does not provide explicit
[24]audio translation but it would appear to be pretty
[25]reasonable, at the time of the trial when we play
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[1]that videotape, that the girls appear to be part of
[2]either a bunch of girls in that car that happened
[3]to be at the same time and place of the other
[4]people on-site.

[5]Q. How many cars were in the parking lot when
[6]you note at 1:11:08 a girl comes back in a third
[7]time?

[8]A. I have no personal information as I was
[9]not there at the crime scene that night, only
[10]relying upon the police officer's testimony, the
[11]first officer who arrived, Woodyard, and then the
[12]subsequent detective, things that made -- and the
[13]depositions of the employees that said anywhere
[14]between 50 cars to 300 people.

[15]Q. No. I'm -- I'm asking for a specific
[16]time, not -- not at the time of the -- of the call
[17]to the police and the time that the shooting

[18]happened. I'm talking when you note at 1:11:08 a

[19]girl comes back in a third time --

[20]A. Correct.

[21]Q. -- do you know how many cars were in the

[22]parking lot?

[23]A. No, sir, I have no knowledge. It -- it is

[24]my opinion that at that time the parking lot was

[25]locked up or gridlocked or at maximum capacity.

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[1]Q. Okay. Did you see any evidence in viewing

[2]the video of that?

[3]A. No, sir. It's unable to be determined,

[4]however, within four minutes of that benchmark the

[5]shooting occurred and the employees do testify that

[6]the parking lot was full. And, of course, by the

[7]time the police got there, which was just a couple

[8]minutes after the shooting, the parking lot was in

[9]total gridlock.

[10]Q. Okay. So let me go back again is, when

[11]the -- when cars showed in the -- this crowd of

[12]cars that showed up in the parking lot before the

[13]shooting, are you going to tell a jury what time

[14]they got there?

[15]MR. KING: Objection, form.

[16]THE WITNESS: Yes.

[17]BY MR. MENELLO:

[18]Q. And how -- and what time are you going to

[19]tell them.

[20]A. I'm going to say that, according to the

[21]videotape, the first cars pulled in approximately a

[22]little after 1:00 in the morning.

[23]Q. Okay. In your report here you don't make

[24]any mention of first cars pulling in but presumably

[25]since there were customers in the store there would

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[1]have been a car or two in the parking lot; correct?

[2]A. I have no information that says there was

[3]prior customers in the store before the girls came

[4]in. Again, I'm qualifying my comment that the

[5]videotape that was provided to me by 7-Eleven

[6]started at 1:00 in the morning.

[7]Q. Right.

[8]A. I have no information on the number of

[9]customers or cars in the parking lot prior to 1:00

[10]in the morning. I am able to determine through the

[11]glass some headlights coming in around a little

[12]after 1:00 in the morning with the first door

[13]opening at 1:05, 1:06 the first set of girls

[14]started coming in out of the door.

[15]Q. Okay.

[16]A. That would suggest to me that -- that

[17]around that time is when the cars starting coming

[18]on-site.

[19]Q. How many cars were in the parking lot at

[20]1:10:13 when a girl checks out and is joined by a

[21]second girl, how many?

[22]A. I have no information to verify the exact

[23]number.

[24]Q. How many cars were in the parking lot at

[25]1:11:08 when the girl comes back in a third time?

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[1]A. I have no information specifically or
[2]personally to verify that number. I only can go by
[3]the police and their testimony. And I'm sure on
[4]the witness stand they will very comfortably state
[5]with absolute certainty what were the number of
[6]cars they experienced when they got there.

[7]Q. When all those cars showed up, were they
[8]all playing music? Would you have expected that
[9]loud music would be playing when they all showed
[10]up?

[11]A. No, sir.

[12]Q. Okay. So you -- you first hear music at
[13]1:14:36?

[14]A. Yes, sir.

[15]Q. At least from the video?

[16]A. Yes, sir.

[17]Q. If there had been music playing before,
[18]you would have -- would you have expected that when
[19]one of the girls opened the door you would have
[20]been able to hear it?

[21]A. If it had been playing before and at that
[22]volume, yes. But not to say that the radios
[23]weren't playing, it just may not have been a volume
[24]where they had cranked it up yet.

[25]Q. The -- the store employees called the
Page 72

[1]police, true?

[2]A. Yes.

[3]Q. They called the police before the shooting
[4]happens; correct?

[5]A. Yes, sir.

[6]Q. When did the shooter get to the 7-Eleven?

[7]A. We have no information of knowing that.

[8]Q. Where did he come from?

[9]A. We are unclear other than their own

[10]testimony in their depositions.

[11]Q. Okay. He -- he was driving in a car when

[12]he shot his shots?

[13]A. No, sir.

[14]Q. Okay. Where -- where was he?

[15]A. You -- your question was, was he driving

[16]the car and the answer is, no, he was not driving

[17]the car, he was a passenger in a car.

[18]Q. He -- he was riding in a car when he shot

[19]his gun; correct?

[20]A. Yes, sir.

[21]Q. Did other people shoot back?

[22]A. Supposedly, yes.

[23]Q. Okay. For purposes of your opinions are

[24]you assuming that's fact -- factually accurate,

[25]that the gentleman shot from the -- from the car

Page 73

[1]and then others shot back at him?

[2]MR. KING: Objection to form.

[3]THE WITNESS: I believe so.

[4]BY MR. MENELLO:

[5]Q. Okay. That particular night with the --

[6]with the employees calling 911 when they did, do

[7]you have any criticisms of what -- what they did

[8]that night?

[9]A. No, sir.

[10]MR. KING: You mean just in terms of

[11]calling 911?

[12]MR. MENELLO: No. What they did that

[13]night, yeah.

[14]MR. KING: So all of what they did that

[15]night?

[16]MR. MENELLO: Of what he knows of what

[17]they did.

[18]BY MR. MENELLO:

[19]Q. Go ahead.

[20]A. Well, let me -- what I heard in your

[21]question was, did I have any objection to them

[22]meeting reasonable standards of care in calling the

[23]police for assistance, no.

[24]Q. Okay.

[25]A. Do I have any issues that they could have

Page 74

[1]done more, I think that had they called when the

[2]first cars had come on-site it would -- but

[3]according to the timeline the police would have

[4]been there within just two or three minutes and the

[5]shooting would not have occurred.

[6]Q. So you believe -- I just want to ask, are

[7]you -- are you criticizing them for that? Are you

[8]going to tell a jury that those employees were

[9]negligent in -- in not doing that sooner or are you

[10]just saying well, they -- they could have done that

[11]sooner? I'm trying to figure out whether you're

[12]going to tell a jury that that's a criticism of

[13]them.

[14]MR. KING: Objection, form.

[15]He's not going to tell a jury they were

[16]negligent.

[17]BY MR. MENELLO:

[18]Q. Or they -- they -- they breached the

[19]standard of care or acted unreasonable?

[20]A. Yes. I'm going to take the position that

[21]based on the prior incidents of cars coming on this

[22]property from late night let outs from the clubs

[23]and/or from the area, that at the first sign that

[24]they were getting cars in the lot that were not

[25]pulling up to the pumps per se and/or coming into

Page 75

[1]the store as customers, that they should have been

[2]on the -- on the phone to police to call for

[3]clearing of the -- of the location. Had that

[4]occurred five, six minutes earlier the timeline

[5]would have been thrown off and the outcome would

[6]have been different.

[7]Q. When should they have called 911, at what

[8]time?

[9]A. Based on review of the videotape I'm going

[10]to suggest that the two clerks saw or heard cars

[11]coming in shortly after 1:00 and by the time the

[12]first girls came in at 1:05, 1:06 I -- it's going

[13]to be my opinion, based on the previous patterns of

[14]the let outs, that by the time those girls came in

[15]they were not the only car in the parking lot.

[16]With that -- with that being said if, in

[17]fact, a series of cars had come on to the lot of
[18]the demographic and the age group, the clerks at
[19]that point should have said, we're getting another
[20]group coming in, we need to get the police here
[21]right now. Had that initiated quicker in my
[22]opinion, the outcome would have been different.

[23]Q. So you're saying that prior to 1:05 a.m.
[24]when the two girls come into the store, that the
[25]clerk should have been on the phone calling 911?

Page 76

[1]A. No, sir.

[2]Q. Okay. So what time, I'm just asking what
[3]time based upon your review of the video and your
[4]notation of all these times, what time do you
[5]believe these clerks should have been on the phone
[6]calling 911 that night?

[7]A. At the very least I would say, as I
[8]thought I was clear earlier, that when the girls
[9]came in that was probably with a series of cars.
[10]It could have been earlier based on the information
[11]or knowledge of the clerks when they -- when they
[12]started seeing cars coming in. From the videotape
[13]the only information I have is that when the girls
[14]came in, they were part -- they were obviously part
[15]of a car and my best educated, criminological
[16]analysis is that they were part of a group of cars,
[17]not a lone car of potential customers coming in to
[18]buy a Red Bull or something.

[19]Q. What -- what about your experience, what
[20]-- what have you looked at that allows you to come

[21]to the conclusion that based upon what you see in
[22]the video and the girls coming in that there was a
[23]group of cars already in the parking lot?

[24]MR. KING: Already when?

[25]MR. MENELLO: When he -- as he described
Page 77

[1]when the girls came in the store.

[2]MR. KING: Okay.

[3]BY MR. MENELLO:

[4]Q. Go ahead.

[5]A. In review of the state attorney's file and
[6]the police detective reports and the depositions,
[7]the pattern of the let outs are that when a club
[8]lets out, in this particular case let out early
[9]because of a fight at the club, that the people --
[10]the young people go to their cars and then they
[11]forge their way through town until they find a
[12]place that suits them to hang out and talk and chat
[13]and show off their cars and their sound systems and
[14]their girlfriends and whatever. That it is not a
[15]lone car, it is a pack of cars, and I do not have
[16]specific knowledge of how many cars and which road
[17]they took, that would be clearly information that
[18]is not possible to be known for me not being there
[19]at the scene.
[20]However, your question was, how do I know
[21]that the cars come in a pack and the answer to that
[22]is, the -- the police officer's testimony and the
[23]detective's reports about the nature of these let
[24]outs.

[25]Q. Okay. Were those girls seen on the video

Page 78

[1]or did they arrive with the pack? Is that what

[2]you're saying?

[3]A. I'm taking the opinion that they did.

[4]Q. Okay. Based on what?

[5]A. Based on the fact that it is -- based on

[6]the fact of the demographic and the age and the

[7]activity level of those young people it would

[8]appear to be unusual in that part of town for a

[9]group full of girls to just sort of be hanging out

[10]and decide they're going to hit the 7-Eleven and

[11]get a cold drink or something.

[12]Q. What --

[13]A. Wait, I'm not done.

[14]Q. Go ahead.

[15]A. And the fact that these were young girls

[16]dressed in club attire would suggest that they were

[17]out clubbing or partying that night, and I will

[18]opine that they were in more likely than not part

[19]of the group of young people coming from a club or

[20]the club or out clubbing that night.

[21]Q. Are you done with your answer?

[22]A. Yes, sir.

[23]MR. MENELLO: Let's change the videotape.

[24]THE VIDEOGRAPHER: We're going off the

[25]record. The time is 11:46.

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[1](Whereupon, a brief recess was had, after

[2]which time the following proceedings were

[3]had:)

[4]THE VIDEOGRAPHER: We're back on the

[5]record and the time is 11:47.

[6]BY MR. MENELLO:

[7]Q. In the five-year history that you looked

[8]at at this particular store, did you ever find any

[9]evidence that during any of these let outs it led

[10]to any type of injury to person or any type of

[11]property loss to either the business or any other

[12]customers at this 7-Eleven store?

[13]A. Yes.

[14]Q. Which one?

[15]A. I'm going to just say generic in nature

[16]that the employees stated they had problems with

[17]shoplifting where the kids would storm the interior

[18]of the store and distract the clerks. In fact, on

[19]the night of the shooting the deposition testimony

[20]is that Mr. Valdez buzzed Reggie back in the

[21]coolers to come out and help him and watch that the

[22]patrons or customers were not stealing and were

[23]paying for things. Their prior testimony was that

[24]there was -- they were -- that the clerks were

[25]vulnerable to being overwhelmed with too many

Page 80

[1]customers coming in too fast and that they were

[2]taking advantage of it and there was prior incident

[3]reports of people walking off with cases of beer

[4]and things of that nature. So there is a risk when

[5]you have too many people, especially young people,

[6]that they take advantage of that.

[7]Q. Okay. This -- this group that arrived at

[8]the 7-Eleven store, was Mr. Walker a part of the
[9]group?

[10]MR. KING: Objection, form.

[11]THE WITNESS: Based on my review of the
[12]case it's the most logical conclusion as he
[13]was there with other friends, Mr. Wade, for
[14]example, who was next to him and other
[15]individuals that were -- that Mr. Wade
[16]testified were part of their group of friends.

[17]BY MR. MENELLO:

[18]Q. When -- and when Mr. Walker arrived and
[19]this group arrived on this parking lot at this
[20]7-Eleven, were they committing a crime?

[21]MR. KING: Objection, form. Wait a
[22]minute. Which ones? You can't just lump them
[23]altogether.

[24]MR. MENELLO: I am for purposes of my
[25]question.

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[1]MR. KING: Well, objection, form. Which
[2]person are you talking about?

[3]MR. MENELLO: Every single person that he
[4]describes as the crowd of young people that
[5]arrived altogether simultaneously at this
[6]7-Eleven parking lot when they got to this
[7]store, were they committing a crime?

[8]MR. KING: Collectively. Go ahead. Even
[9]patrons. Go ahead. That made a purchase that
[10]night.

[11]MR. MENELLO: Well, I mean, I'm not -- I'm

[12]not going to argue with you on those points

[13]but go ahead.

[14]BY MR. MENELLO:

[15]Q. Go ahead.

[16]A. I'm unclear on how to answer that question

[17]because the -- the direction of the question is

[18]vague and unclear to me.

[19]Q. Okay. Was Mr. Walker committing a crime

[20]at the 7-Eleven when he arrived there?

[21]A. No, sir. He was acting potentially as a

[22]patron.

[23]Q. Okay. Did he ever come into the store?

[24]A. Not that we're able to determine.

[25]Q. How long was he in the parking lot before

Page 82

[1]he -- the shooting?

[2]A. We do not know that to be certain.

[3]Q. Okay. Are you assuming that he arrived

[4]with the crowd?

[5]A. Yes, sir.

[6]Q. Okay. So all the -- all the prior

[7]questions I asked you about when the crowd arrived,

[8]those would apply to him too?

[9]A. Yes, sir.

[10]Q. Okay. And so when the crowd arrived, the

[11]folks that didn't come into the store, other than

[12]the -- the girls that we've seen in the video --

[13]A. Correct.

[14]Q. -- were they committing a crime on the

[15]property before the shooting?

[16]A. No.

[17]MR. KING: Objection, form.

[18]BY MR. MENELLO:

[19]Q. And so this group of people that arrived

[20]at the store, they were not committing a crime,

[21]they were -- they were playing loud music; correct?

[22]A. Correct.

[23]MR. KING: Objection.

[24]BY MR. MENELLO:

[25]Q. And anything else that you know they were

Page 83

[1]doing other than playing loud music in the parking

[2]lot before the employee called 911?

[3]A. No.

[4]Q. You've described -- testified earlier

[5]about, I think you talked about there was a case

[6]that you had and -- where there was a let out in

[7]Shreveport where there would be history of them

[8]hassling each other and pushing each other around

[9]that eventually that would lead to escalation of

[10]some violence. Is that essentially what your

[11]opinions are in that case?

[12]A. Yes, sir.

[13]Q. Is -- is there anything in any of the

[14]reports that you've seen where when these groups or

[15]crowds would -- would come to this particular

[16]7-Eleven store, whether they were ever hassling or

[17]fighting or anything along those lines? Anything

[18]in the report that you've seen?

[19]A. No, sir.

[20]Q. In any of the reports that you've seen

[21]whenever the police were called for these crowds,

[22]do you have any knowledge as to whether any of

[23]those folks were ever committing a crime on the

[24]7-Eleven property?

[25]MR. KING: Objection, form.

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[1]THE WITNESS: Other than littering and

[2]noise violations, no.

[3]BY MR. MENELLO:

[4]Q. Okay. The crowd that arrived at the

[5]7-Eleven store the night or the early morning of

[6]August 16th, are -- are you going with the timeline

[7]as described in the police investigation as far as

[8]where the crowd started and how they ended up at

[9]the 7-Eleven?

[10]MR. KING: Objection, form.

[11]THE WITNESS: Yes.

[12]BY MR. MENELLO:

[13]Q. Okay. Are you -- are you -- for purposes

[14]of your opinions, assuming that the crowd that was

[15]at the 7-Eleven store the night of Mr. Walker's

[16]shooting were at Club Envy that night, earlier that

[17]night?

[18]MR. KING: Objection, form.

[19]THE WITNESS: Most likely, yes.

[20]BY MR. MENELLO:

[21]Q. Okay. And it's your understanding that

[22]that club closed early?

[23]A. That's correct.

[24]Q. Because of what?

[25]A. A fight.

Page 85

[1]Q. Was anybody in the crowd at the 7-Eleven,

[2]were they involved in the fight?

[3]MR. KING: Objection, form.

[4]THE WITNESS: Not that the police were

[5]able to determine.

[6]BY MR. MENELLO:

[7]Q. What are you assuming for purposes of your

[8]opinion?

[9]A. That I have no information that suggested

[10]any of the people involved in the fight at the club

[11]took that fight to 7-Eleven.

[12]Q. Okay. Where did this -- the -- the crowd

[13]of folks that left Club Envy, where did they first

[14]go?

[15]MR. KING: Objection, form.

[16]THE WITNESS: Based on the police reports

[17]they first went to a gas station, I'm not sure

[18]if it's Mobil or Chevron, I'm a little fuzzy

[19]at the moment, and then went to a McDonald's

[20]and then eventually wound up at the McLeod

[21]7-Eleven.

[22]BY MR. MENELLO:

[23]Q. Do you know the address of the Chevron

[24]they went to?

[25]A. No, sir.

Page 86

[1]Q. Okay. And were the police called to

[2]disperse them at the Chevron?

[3]A. I believe so.

[4]Q. Did the police arrest anyone?

[5]A. No, sir.

[6]Q. Did the police do anything to indicate in

[7]any way that they had any concern that this group

[8]of young people who had just left a club had

[9]weapons or commit any crime?

[10]MR. KING: Objection, form.

[11]THE WITNESS: No, sir.

[12]BY MR. MENELLO:

[13]Q. All right. Did they -- did they search

[14]anybody to see if they were carrying guns or

[15]knives?

[16]A. No, sir.

[17]Q. They simply dispersed them?

[18]A. Correct.

[19]Q. Did they follow them?

[20]MR. KING: Objection, form.

[21]THE WITNESS: Not that I'm aware of.

[22]BY MR. MENELLO:

[23]Q. When this -- when this group of people

[24]from the club were at the Chevron, should the

[25]police have anticipated that they would eventually

Page 87

[1]commit a violent crime?

[2]MR. KING: Objection, form.

[3]THE WITNESS: No.

[4]BY MR. MENELLO:

[5]Q. Why not?

[6]MR. KING: Objection, form.

[7]THE WITNESS: There wasn't sufficient
[8]probable cause that would escalate them from
[9]being moving past traffic violations and/or
[10]just annoying young adult behavior to criminal
[11]felony behavior.

[12]BY MR. MENELLO:

[13]Q. Well, the police knew when these -- these
[14]group of young people were at the Chevron that they
[15]were from a let out after a club, true?

[16]MR. KING: Objection to form.

[17]THE WITNESS: Yes.

[18]BY MR. MENELLO:

[19]Q. And they fit within the demographic and
[20]the age group and the behaviors of folks that you
[21]say 7-Eleven should anticipate might commit a crime
[22]after a let out, true?

[23]MR. KING: Object to the form.

[24]THE WITNESS: Yes, sir.

[25]BY MR. MENELLO:

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[1]Q. So the same information that you say
[2]7-Eleven had and should have led them to hire an
[3]off-duty officer is the same information that the
[4]police knew about this particular crowd when they
[5]dispersed them at Chevron, true?

[6]MR. KING: Objection to form.

[7]THE WITNESS: Yes, sir.

[8]BY MR. MENELLO:

[9]Q. Okay. And then this group of folks that
[10]eventually ended up at the 7-Eleven, after the

[11]Chevron they went to the McDonald's, true.

[12]MR. KING: Objection, form.

[13]THE WITNESS: Yes.

[14]BY MR. MENELLO:

[15]Q. Now, were the police called at that point?

[16]A. I believe so.

[17]Q. And what did the police do?

[18]MR. KING: Objection, form.

[19]THE WITNESS: Dispersed them and moved

[20]them on.

[21]BY MR. MENELLO:

[22]Q. Okay. Did the police know that that group

[23]at the Chev -- at the McDonald's were the same

[24]group that had previously been at the Chevron?

[25]MR. KING: Objection, form.

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[1]THE WITNESS: It could be reasonably

[2]assumed from the police reports, yes.

[3]BY MR. MENELLO:

[4]Q. Okay. And they -- so if they knew it was

[5]the same group from the Chevron, they also then

[6]knew it was the same group that had been let out of

[7]a club that had closed early for fighting, true?

[8]MR. KING: Objection, form.

[9]THE WITNESS: Correct.

[10]BY MR. MENELLO:

[11]Q. Okay. So now this group has gathered

[12]again at the McDonald's, true?

[13]A. Yes, sir.

[14]MR. KING: Object to form.

[15]BY MR. MENELLO:

[16]Q. Did the police make any arrests?

[17]A. No, sir.

[18]Q. Did the police do any type of search or

[19]anything of these groups of people that would in

[20]any way indicate that they were concerned that this

[21]group is carrying knives or guns or anything?

[22]A. No, sir.

[23]Q. Okay. Now, this --

[24]A. Again, my answers are all qualified based

[25]on review of the police reports and the depositions

Page 90

[1]that have been provided in discovery.

[2]Q. Is there any reason that the police should

[3]have anticipated that this group that is now at the

[4]McDonald's, that someone in that group would commit

[5]a violent crime?

[6]MR. KING: Objection, form.

[7]THE WITNESS: Well, it's always reasonable

[8]to presume that someone might be carrying or

[9]has the propensity for violence, but there was

[10]nothing that gave the officers at that time

[11]probable cause.

[12]BY MR. MENELLO:

[13]Q. Okay. So -- but, again, the same

[14]information that you believe should have led

[15]7-Eleven to hire an off-duty officer, the knowledge

[16]about these let outs and the demographics and these

[17]young people and their propensity to maybe carry a

[18]weapon, the police had that same knowledge of this

[19]group now that they're at the McDonald's, true?

[20]MR. KING: Objection, form.

[21]THE WITNESS: That is correct. However,

[22]the leap of faith that the police respond in a

[23]reactive capacity, not a proactive capacity,

[24]the crux of the lack of reasonable care is not

[25]that the police -- that the clerks called the

Page 91

[1]police and the police came in a very timely

[2]manner and that the police broke up the crowds

[3]at the other two previous places and

[4]subsequently at the 7-Eleven, the issue here

[5]is that with the prior notice on this specific

[6]property where the shooting took place should

[7]the 7-Eleven have hired off-duty security or

[8]police officers to prevent the group from even

[9]gathering on their site.

[10]And that in my opinion is the difference

[11]of the questions you're asking me is all after

[12]the fact reactive as compared to what the

[13]7-Eleven could have done or should have done

[14]to prevent the group of people accumulating on

[15]their property.

[16]BY MR. MENELLO:

[17]Q. Was the shooting of Mr. Walker at this

[18]7-Eleven property foreseeable to 7-Eleven?

[19]A. Yes, sir.

[20]Q. Why?

[21]A. It's my opinion as a criminologist based

[22]on my training, education and experience that if

[23]you are encouraging groups of young people to come
[24]who have been fueled by alcohol and/or testosterone
[25]to gather on your property, that the propensity for
Page 92

[1]violence and/or fights or other illegal behavior
[2]such as drugs, sex and rock and roll is within a
[3]reasonable degree of certainty. And that if bad
[4]behavior does result, the property owner
[5]essentially created, promoted and allowed that
[6]group and activity to occur as compared to stopping
[7]it before it even started.

[8]Q. Okay. Any other basis for why the
[9]shooting was foreseeable?

[10]A. No.

[11]Q. Was it foreseeable that a -- to 7-Eleven
[12]that a group gathering that comes from a club, that
[13]that eventually will result in a shooting?

[14]A. No, not specifically. I think it is
[15]reasonable to assume that if you're getting a
[16]repeated pattern between 1:00 and 3:00 in the
[17]morning of large groups of cars that are exhibiting
[18]challenging behavior, not necessarily criminal
[19]behavior, but clearly unruly behavior and/or
[20]annoying behavior at the very least, that it could
[21]escalate very quickly into a crime and/or an act of
[22]violence. And that's why the standards of care for
[23]premises negligence have changed from having an
[24]exact type of crime on the property to the totality
[25]of circumstances.

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[1]The totality of circumstances is about the

[2]fact that I don't have to have four prior shootings
[3]on my property in order to say I can predict the
[4]next one. The totality of circumstances rules
[5]suggests that if I'm getting groups gathering, if
[6]I'm having noise violations, if I'm having
[7]potentially conflicts between young people, if I'm
[8]having people shoplifting in the stores because
[9]they're sort of storming the store, that that's
[10]creating notice that I really don't want to be
[11]having that kind of crowd hanging out on my
[12]property for long periods of time. They're not
[13]really coming in as customers. They may be
[14]consuming, I'm not contesting that, some of them
[15]will consume because, you know, if you build it
[16]they will come.
[17]And that's the problem here, your manager
[18]of your property embraced the idea of the large
[19]crowds as a marketing opportunity and to increase
[20]revenue, your two clerks relied that they were
[21]holding a 900 pound tiger by the tail and it was
[22]out of control. And that at any moment the flash
[23]point will occur and they're going to have
[24]problems.

[25]Q. Okay. So -- and just so I understand is,
Page 94

[1]it's your testimony that 7-Eleven encouraged these
[2]crowds to come to their store, is that what you're
[3]suggesting?

[4]A. Yes, sir, by the manager's testimony.

[5]Q. Okay. And -- and it's -- the -- strike

[6]that.

[7]The crowd at the McDonald's when the
[8]police dispersed them, had they already displayed
[9]unruly behavior?

[10]MR. KING: Objection, form.

[11]THE WITNESS: I have no information on the
[12]activities of that McDonald's gathering other
[13]than just a mere referencing of it in the
[14]police reports.

[15]BY MR. MENELLO:

[16]Q. So we now know that this crowd that ends
[17]up at the 7-Eleven, they have now been at two
[18]different locations and have not dispersed as the
[19]-- the police have asked them to do, true?

[20]MR. KING: Objection to form.

[21]THE WITNESS: Correct.

[22]BY MR. MENELLO:

[23]Q. And then when asking those folks to leave
[24]the McDonald's, the police make no arrests, they
[25]don't search anyone, they don't ask people for guns

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[1]or weapons and they don't -- there's nothing to
[2]suggest that they look to see if any of these --
[3]these people were intoxicated or under the
[4]influence, true?

[5]MR. KING: Objection, form. Which one do
[6]you want him to answer?

[7]BY MR. MENELLO:

[8]Q. Well, go ahead.

[9]A. Counsel is asking me to assume what

[10]exactly transpired between the police officers and
[11]the group of young people. My only knowledge is a
[12] cursory review of the written incident reports that
[13]don't mention specifically what the behaviors of
[14]the police officers were, if they did conduct any
[15]license checks, if they checked any cars, if they
[16]were doing any traffic violations. I'm not going
[17]to assume what they did or did not do other than
[18]the fact that from the written word, the overall
[19]summary was that they went -- the police went to
[20]these prior sites to move the young people along
[21]and disperse the crowds. That I can assume any
[22]actions that they might have taken in addition or
[23]not is unfair to ask me as I was not there on the
[24]night of the shooting.

[25]Q. After the police disperse the crowd from
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[1]the McDonald's, was there any reason for them to
[2]anticipate more likely than not that this group,
[3]someone in that group, would commit a violent
[4]crime?

[5]MR. KING: Objection to form.

[6]THE WITNESS: Not directly, no.

[7]BY MR. MENELLO:

[8]Q. What do you mean not directly, what do you
[9]qualify?

[10]A. The -- again, police operate on a very
[11]different standard of care than civilians. In
[12]order for police to conduct a search or a stop or
[13]ask someone to even produce their driver's license

[14]they need probable cause. They either need to see
[15]a violation or have probable cause. Your question
[16]was stated so vague as not to allow the
[17]possibility. Did the police know that the
[18]potential for violation exists, absolutely. Do the
[19]police know that there are people that within this
[20]group that belong to gangs with violate behavior,
[21]yes. Do the police know that the propensity for
[22]violence in 2010 is a very thin line, yes. Do the
[23]police have probable cause to search people coming
[24]and out of the clubs and driving on the streets and
[25]search their cars, no, not unless someone is

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[1]flashing a weapon or driving dangerously or
[2]erratically.
[3]That is a different standard of care than
[4]a business owner who is attracting groups of young
[5]people who have had prior -- 20 plus prior
[6]incidents on their property of a lot of cars going
[7]where the clerks are feeling overwhelmed and that
[8]they are concerned for their product protection and
[9]their safety and the safety of the people on their
[10]property.

[11]Q. My question is very -- is very specific.
[12]When the police dispersed this crowd at the
[13]McDonald's for the second time, should they have
[14]anticipated more likely than not that someone in
[15]that crowd of folks was going to commit a violent
[16]crime?

[17]MR. KING: Objection, form.

[18]THE WITNESS: I don't feel that I can
[19]answer what was in the police's mind at that
[20]time of the day could have anticipated a
[21]violent crime or not. That's something that
[22]your police officers will testify at trial on
[23]the stand whether they felt they were going to
[24]feel that a potential crime could escalate.
[25]I think police officers in the Orlando

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[1]area, based on these depositions that I read,
[2]knew that the potential existed and that they
[3]were dealing with a group of young people that
[4]some of the boys especially had a history of
[5]weapons and violent issues. Whether they knew
[6]at the McDonald's that it was going to
[7]escalate into a shooting, no, I do not know
[8]what's inside the minds of the police
[9]officers, whether they were going to directly
[10]anticipate that 30 minutes from now a shooting
[11]was going to occur.
[12]Q. But you're here testifying as expert
[13]criminologist on foreseeability. In your mind when
[14]this crowd first let out and arrived at the
[15]Chevron, was it more likely than not foreseeable
[16]that that -- those people in that crowd would
[17]commit a violate crime?

[18]MR. KING: Objection to form.

[19]THE WITNESS: No. I don't think you could
[20]make a leap of faith that just because the
[21]young people came out that particular night

[22]that they were going to engage in a violent
[23]crime any more than the other hundred weekend
[24]nights before then. The potential always
[25]exists but that night was not necessarily
Page 99

[1]intuitively different than any other night.

[2]BY MR. MENELLO:

[3]Q. And -- and we know from the history there
[4]really hadn't been any suggestion of a violent
[5]crime necessarily with these -- with these groups,
[6]true?

[7]A. Correct, they're -- they're cruising.

[8]Q. Right. Now, when the group arrived, you
[9]as an expert criminologist here testifying to a
[10]jury about foreseeability of this shooting, when
[11]the group was at the McDonald's, was it more likely
[12]than not foreseeable that this group, someone in
[13]that group would commit a violent crime?

[14]MR. KING: Objection, form. It's a now --

[15]BY MR. MENELLO:

[16]Q. Go ahead.

[17]A. I'm going to take the position of, yes,
[18]that the potential was at the Chevron station, the
[19]potential was at the McDonald's, the potential was
[20]at our 7-Eleven. The potential was there because
[21]of the time, because of the demographic, because of
[22]the propensity for violence of young people, the
[23]potential -- it could have happened at the
[24]McDonald's just as easily as our 7-Eleven.

[25]Q. Well, I'm asking about could. I mean

[1]obviously crimes can happen. But what I'm asking

[2]--

[3]A. But your words were, you know, could I

[4]have predicted that the -- that there would have

[5]been a shooting at the Mc -- you didn't say

[6]shooting, could I have predicted that there would

[7]have been a violent incident at the McDonald's or

[8]at the gas station? And I think that it's

[9]reasonable that that shooting that occurred at your

[10]7-Eleven could have occurred at the McDonald's or

[11]the other gas station.

[12]Q. Okay. And -- and was it reasonably

[13]foreseeable -- let's say if it did happen at the

[14]Chevron or did happen at the McDonald's, was it

[15]reasonably foreseeable that it would happen?

[16]MR. KING: Objection, form.

[17]THE WITNESS: I don't under the question.

[18]BY MR. MENELLO:

[19]Q. Sure.

[20]Well, you're ask -- you're saying that

[21]you're telling a jury that it was reasonably

[22]foreseeable to this 7-Eleven store that this

[23]shooting would happen; correct? That's what you're

[24]telling --

[25]MR. KING: At the 7-Eleven.

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[1]BY MR. MENELLO:

[2]Q. At the 7-Eleven store, right?

[3]A. What I stated was that at the 7-Eleven

[4]store based on its prior frequency of incidents,

[5]that it was very likely that they would have an
[6]incident, a fight that would -- could escalate or
[7]would, could or would escalate to a stabbing or
[8]shooting or a severe beating or an assault on a
[9]women or something of that nature. No, let me
[10]finish my thought.
[11]If that potential could have existed at
[12]the McDonald's or the Chevron, you're asking me
[13]would it have occurred? I am not portraying myself
[14]as a psychic, I'm merely portraying myself as
[15]somebody saying that if you create all the
[16]conditions for a fire, that if you have the heat
[17]and you have the fuel and you have the contained
[18]environment, sparks happen and then you have a
[19]fire.

[20]Q. Maybe I'm misunderstanding what your
[21]opinions are, and correct me if I'm wrong.
[22]Are you going to be telling a jury that a
[23]shooting should have been reasonably foreseeable to
[24]7-Eleven, this shooting should have been
[25]foreseeable to them?

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[1]A. No.

[2]MR. KING: Objection to form.

[3]BY MR. MENELLO:

[4]Q. Okay.

[5]A. But I'm suggesting -- that I'm not
[6]suggesting that this specific shooting was
[7]foreseeable. I'm being very clear that it was
[8]foreseeable that a criminal act would likely result

[9]from having this number of young people gather in a
[10]small area unsupervised and that given a spark of
[11]fire or conflict, it would very likely escalate
[12]into a very serious injury or a felony. And
[13]whether it be by beating someone to death or
[14]stabbing them or shooting, the means of the
[15]violence is not as germane to me as the fact that
[16]you created the flash point and the spark for
[17]conflict to occur that you could know, you should
[18]know and that they did know based on the 20 plus
[19]prior incidents on this property at that time of
[20]night.

[21]Q. Okay. What -- what criminal acts, what
[22]crimes were foreseeable to 7-Eleven at this
[23]property?

[24]A. Okay. That's a general question, so based
[25]on my experience with convenience stores and the
Page 103

[1]review of the crime --

[2]Q. Strike that. It's a bad question. Let me
[3]ask it more appropriately. I know we can
[4]anticipate beer would be sold and I'm not asking
[5]about that.

[6]What criminal -- what crimes against
[7]people, violent crimes against people, were -- do
[8]you believe were reasonably foreseeable based upon
[9]the history of this store at this particular
[10]location?

[11]A. I think it is reasonably foreseeable that
[12]you're going to have fights. I think it's

[13]reasonably foreseeable that the fights could
[14]escalate into a serious aggravated assault or
[15]battery. I think that could very quickly escalate
[16]into weapons being drawn, whatever is available.
[17]It could be, you know, tire irons or a gun or a
[18]knife, chemical spray, mace, something of that
[19]nature. I think the -- I think that it is
[20]reasonably foreseeable that one of the girls could
[21]be assaulted as compared to the boys fighting each
[22]other. I think that it's reasonably foreseeable
[23]that there could be a car accident that related to
[24]someone getting hurt or run over or killed.
[25]Clearly there's a history and pattern of
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[1]product loss within the store but that's not a
[2]person -- the person crime, as you've asked me to
[3]qualify.
[4]I think that the clerks are in potential
[5]jeopardy of a potential personal crime as was
[6]evidenced the week before with a customer in the
[7]evening hours pulling out a -- a knife or a machete
[8]or some -- some kind of a sharp edged weapon that
[9]threatened the clerk to empty the drawer. So that
[10]person-to-person crime exists.
[11]So I think any type of violence, whether
[12]it be person-to-person with or without a weapon
[13]could escalate very quickly given the number of
[14]people there, the ages of people there, the
[15]cultural propensity for engaging in conflict and/or
[16]violence.

[17]Q. What do you mean by that?

[18]A. Meaning that you're dealing with a young
[19]club crowd and young men who have -- who some of
[20]them, according to police testimony, have belonged
[21]to criminal enterprise and/or gangs. And they --
[22]they, the people who belong in these gangs, also
[23]have a propensity, a higher propensity or threshold
[24]for violence.

[25]Q. Okay. The -- the list of reasonably
Page 105

[1]foreseeable crimes, violent crimes that you
[2]described, I know we mentioned there was a robbery
[3]of the clerk in the store with a knife?

[4]A. Yes.

[5]Q. About five days prior?

[6]A. Yes, sir.

[7]Q. In the five-year history of the store had
[8]any of those other reasonably foreseeable crimes
[9]occurred during these let outs?

[10]A. No, sir.

[11]Q. You mentioned the number of people in the
[12]crowd, the age and the cultural propensity in your
[13]belief makes it likely that these crowds can then
[14]lead to one -- one or more of these crimes, true.

[15]A. Yes, sir.

[16]Q. Okay. Any other factors that you believe
[17]would lead one to draw that conclusion?

[18]A. Other than personal conflict or gang
[19]conflicts between each other but that again falls
[20]under, you know, the cultural propensity.

[21]Q. Right. And so going back to the
[22]McDonald's, and I believe it was your testimony
[23]that it was foreseeable at that point that one of
[24]these crimes that you listed for us that you
[25]believe was foreseeable at 7-Eleven, they were also
Page 106

[1]foreseeable when the crowd was at the McDonald's?

[2]MR. KING: Objection to form.

[3]THE WITNESS: Yes, correct.

[4]BY MR. MENELLO:

[5]Q. Do you know or have any evidence to
[6]suggest where typically the Club Envy crowd would
[7]let out first?

[8]MR. KING: Objection to form.

[9]THE WITNESS: No.

[10]BY MR. MENELLO:

[11]Q. Do you know why it is this particular
[12]crowd on this particular night came to the
[13]7-Eleven?

[14]A. A qualified yes in that the police reports
[15]suggested that they picked this location because of
[16]the bright lighting and the size of the parking lot
[17]that could accommodate a large group of cars.

[18]Q. Okay.

[19]A. The other gas stations are a third of this
[20]size typically.

[21]Q. But lighting, good lighting, is typically
[22]a -- a crime deterrent, true?

[23]A. Correct. But it also attracts moths to
[24]the light so the young people want to be in a safe

[25]environment as well. And so they perceive this

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[1]7-Eleven as being a bright location where the

[2]people could see their cars because lighting

[3]highlights the paint jobs on the cars and where the

[4]people can be seen, you know, show off the girls,

[5]their -- their dresses, the guys. So light --

[6]lighting is a -- an attractive magnet just like

[7]moths to a light, it attracts customers to your

[8]store. And it also attracts these let outs because

[9]everyone can see it from afar like, oh, we'll go

[10]there, it's nice and bright and we can be seen and

[11]not going to be surprised or ambushed in an area of

[12]darkness.

[13]Q. The number of eyewitnesses, that can

[14]potentially deter crime, true?

[15]A. Correct.

[16]Q. And this particular group it at least

[17]appears that a lot of them knew each other, true?

[18]MR. KING: Objection, form.

[19]BY MR. MENELLO:

[20]Q. From what you saw?

[21]MR. KING: Objection, form.

[22]THE WITNESS: Based on the police reports,

[23]yes.

[24]BY MR. MENELLO:

[25]Q. Okay. Do you have any idea in the -- in

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[1]the City of Orlando what businesses these let outs

[2]would occur other than this particular store?

[3]A. I don't understand your question.

[4]Q. Any other businesses that you can identify
[5]based upon any materials that you've reviewed that
[6]indicates that that business was also a let out
[7]location?

[8]A. I'd just refer to the police and detective
[9]reports that they would go to the gas stations
[10]and/or convenience stores.

[11]Q. Okay. But can you identify any particular
[12]ones in the Orlando area?

[13]A. Other than what is mentioned in the
[14]reports, no.

[15]Q. Okay. Do --

[16]A. I have no personal knowledge of the let
[17]out geographical hunting patterns of the young
[18]people as I -- that is just not my area of
[19]expertise within the City of Orlando.

[20]Q. To your knowledge, do you know how this
[21]store compares to other businesses where let outs
[22]occur as far as how often they happen, as far as
[23]numbers of folks, things like that?

[24]A. No, sir.

[25]MR. KING: Objection.

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[1]BY MR. MENELLO:

[2]Q. Okay. To your knowledge, do you have any
[3]evidence that any other business where let outs
[4]occur, that those businesses have hired off-duty
[5]officers in -- in the Orlando area?

[6]MR. KING: Including 7-Eleven? Are you
[7]excluding 7-Eleven?

[8]MR. MENELLO: No. I'm including any other
[9]business -- other than -- at any location
[10]where there are let outs where you know and
[11]have evidence to suggest that the off-duty
[12]officer was hired because of let outs.
[13]THE WITNESS: I don't have insufficient
[14]information from the other 7-Elevens to
[15]establish the relationship or correlation
[16]between those stores that hired off-duty
[17]police officers and the correlation between
[18]whether they had let outs or not. There is
[19]clearly some correlation between those
[20]7-Eleven stores that had off-duty police
[21]officers and whether they had shootings and/or
[22]crime on the property and that is a logical
[23]conclusion. But whether they had a prior
[24]history of let outs is more information than I
[25]have access to.

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[1]BY MR. MENELLO:
[2]Q. All right. So -- but what you're saying
[3]is what you've seen at least in the evidence you've
[4]been provided is that where -- at the stores where
[5]7-Eleven has hired off-duty officers there is at
[6]least a history to suggest a -- a shooting or a
[7]similar violent crime, true?
[8]MR. KING: Objection, form.
[9]THE WITNESS: Correct.
[10]BY MR. MENELLO:
[11]Q. Okay. Do you have any evidence to suggest

[12]or -- that any other business in Orlando where
[13]there has been any history of let outs, that any of
[14]those businesses have hired off-duty officers
[15]specifically because of the let outs?

[16]MR. KING: Objection, form.

[17]THE WITNESS: No, I have no specific
[18]information on that.

[19]BY MR. MENELLO:

[20]Q. You've done this for a long time. You've
[21]evaluated cases like this. Have you ever seen an
[22]instance where a business, a convenience store,
[23]hires an off-duty officer specifically because let
[24]outs occur at their business?

[25]A. No, sir. There's lots of examples of --
Page 111

[1]of businesses that hire police officers and
[2]security guards because there's young people there,
[3]everything from the Wet and Wild to Universal to
[4]Disney to nightclubs that have bouncers and police
[5]officers. So there is a rich history of having
[6]security and police officers where there are groups
[7]of young people. That is an easy leap of faith to
[8]make. I -- there's no documentation on -- on the
[9]let out phenomenon, that's been like cruising down
[10]America's street. You know, young people cruising
[11]in their cars to go to locations to hang out and
[12]show off their cars and their sound systems has
[13]been around since American Graffiti.

[14]Q. Okay. And typically what happens is if
[15]they're causing a nuisance, the police are called

[16]and they're dispersed, true?

[17]A. Correct.

[18]Q. Okay. And that's what this 7-Eleven store

[19]did, true?

[20]MR. KING: Objection to form.

[21]THE WITNESS: Correct.

[22]BY MR. MENELLO:

[23]Q. Okay. They did what typically the

[24]practice, as far as you're aware of in the history

[25]of let outs, this 7-Eleven store engaged in that

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[1]same type of practice that all other businesses who

[2]have these type of let outs have engaged in, true?

[3]MR. MENELLO: Objection, form.

[4]THE WITNESS: In a reactive post-incident

[5]capacity, yes. What the issue here is, is

[6]that if they had sufficient prior knowledge of

[7]other large incidents on their property, they

[8]had the ability of mitigating or deterring

[9]that kind of unwanted -- undesired activity on

[10]their property and they chose not to.

[11]BY MR. MENELLO:

[12]Q. Can you cite to any authority, any

[13]treatises, any peer reviewed articles that support

[14]your opinion that the gathering of young people

[15]like this in this demographic, this cultural

[16]demographic or the age group and the number, that

[17]that makes the crime that occurred in this

[18]particular instance involving Mr. Walker

[19]foreseeable?

[20]A. There may be, but I'm not personally
[21]familiar with it. I think that your greatest
[22]reference as a source of information that the
[23]propensity for violence occurs when young people
[24]get together are the police and their testimony and
[25]their investigation and police reports.

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[1]Q. Okay. So essentially what you believe is
[2]7-Eleven should have had an off-duty officer there
[3]to prevent the crowds from gathering?

[4]A. Yes, sir.

[5]Q. Okay. Essentially prevent them from
[6]loitering in the parking lot when they're not doing
[7]business there?

[8]A. Correct.

[9]Q. Okay. If a large crowd comes to the --
[10]comes to the parking lot all at once and they
[11]eventually go into the store and start doing
[12]business, should the police be called for them?

[13]MR. KING: Objection, form.

[14]THE WITNESS: Not necessarily, if they are
[15]engaging in lawful behavior and they are, in
[16]fact, acting as customers.

[17]BY MR. MENELLO:

[18]Q. Well, the group that gathered at -- strike
[19]that.

[20]You have some of the crime grids for other
[21]stores?

[22]A. Yes, sir.

[23]Q. Pull those out. And were these ones that

[24]you obtained yourself or did plaintiff's counsel

[25]provide them to you?

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[1]A. Counsel provided the -- they live in

[2]Orlando, it makes sense that they acquire the crime

[3]grids.

[4]MR. KING: I also gave them to your

[5]experts to use, too.

[6]MR. MENELLO: I'm sorry?

[7]MR. KING: I also gave you a copy for your

[8]experts to use. I don't think they had them

[9]until I gave it to them.

[10]BY MR. MENELLO:

[11]Q. So the first one is 4690 South Kirkman?

[12]A. Yes, sir.

[13]Q. And no shootings were reported?

[14]A. Correct.

[15]Q. Okay. And this is a -- looks like a

[16]five-year history, true?

[17]A. Correct.

[18]Q. And it looks like a total of 241 calls?

[19]A. Correct.

[20]Q. Do you have any incident reports, any

[21]reports from this address?

[22]A. I -- I'm not sure. At this point I have

[23]incident reports from some of the other stores but

[24]we're going to have to go -- start going through

[25]volume by volume to figure out which stores that

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[1]have the incident reports for which ones I don't.

[2]Q. Okay. Well --

[3]A. And that's going to take more time than we
[4]have.

[5]Q. Well, and -- and I understand and -- and I
[6]appreciate that, but is there anything in this
[7]store as far as reports that you believe would be
[8]in any way relevant to your opinion?

[9]A. No.

[10]Q. Okay. These calls for service for 4690 --

[11]A. And let me see it that's one of the stores
[12]that had off duty or not.

[13]MR. KING: What was the address?

[14]MR. MENELLO: 4690.

[15]THE WITNESS: No, that did not have an off
[16]duty.

[17]BY MR. MENELLO:

[18]Q. How far is the 4690 South Kirkman Road
[19]store from the 7-Eleven in this case?

[20]A. I'm not going to play the geography game.
[21]Everyone can use Google Earth just like I do and
[22]they can figure it out for themselves. It's within
[23]the proximity of the City of Orlando.

[24]Q. And you have a map there or Google --

[25]A. Google map and I just plotted some of the
Page 116

[1]stores, not all the addresses, but that's the 4690,
[2]correct?

[3]Q. Yes.

[4]A. So that's store No. 8? Eight, that's
[5]close, that's just right down the street.

[6]Q. And -- and that particular store had no

[7]history of any shootings, true?

[8]A. Correct.

[9]Q. Did it have any history of violent crimes

[10]that you felt was relevant to your opinions

[11]regarding foreseeability in this case?

[12]A. I don't know.

[13]Q. Okay. 4355 Silver Star Road, you document

[14]there were two shootings, Page 28 and Page 35?

[15]A. Correct.

[16]Q. How far is that store from the 7-Eleven in

[17]this case?

[18]A. A couple of miles.

[19]Q. Okay. Did you -- do you have the reports

[20]for those shootings?

[21]A. No. As I stated in my opinions, that I'm

[22]waiting for the incident reports for these specific

[23]crime grids that I have here. So you can ask for

[24]each location, but I stated that for the shootings

[25]on these -- for the shootings at 4355 Silver Star

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[1]Road, 901 South Orange Blossom Trail, 938 West

[2]Colonial Drive and 4305 North Pine Hills Road I am

[3]awaiting the incident reports on that, that will be

[4]something that will be done post-deposition.

[5]Q. Okay. Well, I'm here to get your opinions

[6]today. Have you looked at those for purposes of

[7]formulating any of the opinions that you're giving

[8]today at your deposition?

[9]A. I do not have the incident reports at my

[10]disposal -- at my disposal to have them as part of

[11]my opinion today that will be forthcoming.

[12]Q. Okay.

[13]A. I do not expect it to change my opinion.

[14]My opinion is based on the facts of the incidents

[15]at this store. The information on the other store

[16]is just to show that -- that other stores use off

[17]duty, other stores have shootings, other stores

[18]have the ability of using off-duty police if they

[19]desire or choose to and that there was nothing

[20]prohibiting the 7-Eleven where the shooting took

[21]place that -- where Mr. Walker's shooting took

[22]place to engage the services of an off-duty police

[23]officer that would have act in a proactive

[24]preventative role.

[25]Q. Okay. So the -- the fact that there were

Page 118

[1]these shootings at these other stores, according at

[2]least to the calls for service, does not make this

[3]shooting foreseeable, true?

[4]MR. KING: Objection, form.

[5]BY MR. MENELLO:

[6]Q. Or reasonably foreseeable?

[7]A. No, I disagree. What these shootings at

[8]the other 7-Eleven stores establish a precedent and

[9]industry awareness that shootings occur at

[10]convenience stores, that's why the state law

[11]passed.

[12]So the away you worded the question was

[13]such that, yes, it does -- shootings at other

[14]7-Elevens does create notice at our 7-Eleven just

[15]like shootings at Sandy Hook create notice to every
[16]K through 12 school or university. Today it's hard
[17]to say well, it hasn't happened at my school here,
[18]why would I expect a shooting to take place here
[19]when it occurred in Connecticut or Colorado.

[20]Q. Are -- do you believe that the shootings
[21]at these other 7-Eleven stores should have led this
[22]particular 7-Eleven store to hire off-duty
[23]officers?

[24]MR. KING: Just the shootings?

[25]MR. MENELLO: These shootings, yeah.

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[1]THE WITNESS: I think it's not
[2]unreasonable to make a leap of faith argument
[3]that the shootings at the other sister
[4]corporate 7-Eleven stores would create rise
[5]and notice to this particular store that that
[6]potential exists, which I -- I don't think
[7]anyone would argue with that. And that given
[8]the proximity of the McLeod's 7-Eleven and the
[9]fact that there had been large gatherings of
[10]young people at the 7-Eleven, that the
[11]propensity for violence or shooting could or
[12]would occur here.

[13]BY MR. MENELLO:

[14]Q. Okay. So let -- let me ask you -- and I
[15]don't mean to interrupt, but I'm just trying move
[16]along for time here.

[17]So just -- so let's say in a vacuum, now
[18]I'm just talking specifically the fact that there

[19]were shootings at other -- other 7-Eleven stores.

[20]A. Yes, sir.

[21]Q. You've already given me your opinion about

[22]why you believe this crowd would lead to some

[23]issues, but the fact that shootings happened at

[24]other 7-Eleven stores over a time frame, that

[25]should then lead to other 7-Eleven stores getting

Page 120

[1]off-duty officers?

[2]MR. KING: Objection to form.

[3]BY MR. MENELLO:

[4]Q. Are you saying that?

[5]A. Yes, with a qualifier that it has been

[6]industry standard and best practices that if you

[7]have a particular industry that has a particular

[8]security problem, that that creates notice for that

[9]particular industry.

[10]An example being, let's say, in Orlando

[11]with the hotel industry, motel specifically, if the

[12]problem is clerks -- robbery of the clerks late

[13]night, it is the industry standard for the lobbies

[14]to be locked after 9:00, you have to use your key

[15]card to come in, we've all experienced that, and

[16]that protects the clerk from getting shot and

[17]robbed which is more common than not.

[18]And the fact that an Economy Lodge had a

[19]shooting on I Drive does create notice on an

[20]industry level that the Marriott or the Hilton or

[21]the Hyatt or the Econo Lodge or whatever, that they

[22]need to be mindful and they're on notice. So the

[23]fact that there's a shooting at one motel creates

[24]an industry-wide notice that there's counterfeit

[25]money out. Coming up right now there's a band of

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[1]counterfeiters coming out passing bad bills or

[2]there's a group of robbers that are going hitting

[3]the late night clerks as they're doing their night

[4]-- the late night auditing.

[5]Same thing with the convenience -- the

[6]reason that this convenience store became a state

[7]law, hotels don't have this, hospitals don't have

[8]it, schools sort of have it in the Safe Schools

[9]Act, but I mean we can go through 20 different

[10]building types that do not have a state law saying

[11]you will have security and if you had something bad

[12]happen to your property you've got to amp it up a

[13]couple more notches.

[14]So I don't think it is a leap of faith, an

[15]unreasonable leap of faith, to say that if you had

[16]shootings at other 7-Eleven sister properties in

[17]the geographical proximate area, I mean if it

[18]happened in Dubuque, Iowa does that mean you should

[19]do it here in Orlando? Well, you know, it means

[20]you have awareness but if you're having shootings

[21]within Orlando at 7-Elevens, at other convenience

[22]stores, that creates notice and awareness and a

[23]duty for you to protect your property, your

[24]customers and your employees of which one of the

[25]most reasonable options is hiring an off duty. It

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[1]doesn't mean you will, that you have to. It means

[2]it's notice that you need to be mindful and be

[3]aware that you've got to protect your assets.

[4]Q. But my question simply was, and I

[5]appreciate the -- I know you're talking about the

[6]notice issue, what I'm asking you is, because

[7]shootings have happened at other 7-Elevens, are you

[8]going to say that then 7-Eleven, this particular

[9]7-Eleven store, should have had an off-duty officer

[10]at their store?

[11]MR. KING: Objection, form.

[12]THE WITNESS: Asked and answer. And I'm

[13]going to take the position that the shootings

[14]at these other 7-Elevens created notice to our

[15]specific store that they had available to them

[16]what other 7-Eleven stores was doing, which

[17]was to hire off-duty police officers.

[18]BY MR. MENELLO:

[19]Q. Are you -- you going to say -- are you

[20]going to tell a jury that because other shootings

[21]have happened at 7-Eleven, that that is one of the

[22]reasons why this 7-Eleven store should have had an

[23]off-duty officer?

[24]MR. KING: Objection, asked and answered.

[25]BY MR. MENELLO:

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[1]Q. Go ahead.

[2]A. That is correct. That's just what I've

[3]stated, yes.

[4]Q. How far away is 4305 North Pine Hills Road

[5]store, how far away is that from this store?

[6]A. Several miles.

[7]Q. Okay. Do you have any -- any estimate as

[8]to how far away?

[9]A. I will go on record that like most men we

[10]can be geographically challenged and that's why we

[11]use GPS in our cars, contrary to the women driving

[12]in the cars with us who seem to know exactly where

[13]things are.

[14]Q. So that answer would be, no?

[15]A. I do not represent myself as being able to

[16]accurately project the exact distance from point A

[17]to point B unless I am told so by either my spouse

[18]or the woman in the box of the GPS.

[19]Q. Okay. Let me ask you this. Of the stores

[20]that you had the crime grids for --

[21]A. Even the court reporter appreciated the

[22]sarcasm and accuracy of that statement.

[23]Q. Okay. So let's -- let's kind of move this

[24]along if we could.

[25]So it would be fair to say that you don't

Page 124

[1]know how far away any of these other stores are

[2]from the -- from the store in this case, true?

[3]A. I do not represent myself as being a GPS.

[4]Q. Okay. Do you have any knowledge as to the

[5]different neighborhoods in the Orlando Orange

[6]County area where these particular stores are

[7]located?

[8]A. No, sir.

[9]Q. Do you have any idea about the crime rate

[10]in at different neighborhoods where these other

[11]stores are located?

[12]A. That was beyond the scope of my work for

[13]this project.

[14]Q. Okay. Have you evaluated the crime rates

[15]in the area where this 7-Eleven store is in this

[16]case as compared to other areas in the Orlando --

[17]in the Orlando area?

[18]A. That is beyond the copy of this project.

[19]Q. So you wouldn't be able to tell a jury

[20]whether or not -- where this shooting occurred

[21]whether or not it's a high crime area as compared

[22]to other areas in Orlando, true?

[23]A. At this point in time; correct.

[24]Q. To your knowledge, did any of the

[25]shootings that are identified in these calls for

Page 125

[1]services, did they occur at a time when there was

[2]an off-duty officer at the -- at the store?

[3]A. I don't have that information at this

[4]point.

[5]Q. In this -- go ahead.

[6]A. We know that based on requests for

[7]production that the -- the 4355 Silver Star Road

[8]had a shooting, had two shootings, and they also

[9]had off-duty police so I can at least pin one down.

[10]Q. Right.

[11]A. The 9501 South Orange Blossom Trail had

[12]two shootings and they also had an off-duty police

[13]so that's two. The 4305 North Pine Hills Road had

[14]two shootings and they also had off-duty police so
[15]that's three. The 938 West Colonial Drive had four
[16]shootings and they also had an off-duty police
[17]officer. So God bless four out of four, these four
[18]locations that had shootings did have off-duty
[19]police.

[20]Q. Okay. Do you know if the off-duty police
[21]officers were there at the time of the shootings?

[22]A. I have no information on that.

[23]Q. Do you know what time the shootings were?

[24]A. I have no information on that.

[25]Q. I know you have information as far as when
Page 126

[1]the off-duty officers were assigned to these
[2]particular stores?

[3]A. I believe so, it's -- it's in the
[4]paperwork. I cannot recall specifically what their
[5]-- typically it's late evening hours.

[6]Q. Do you remember what days of the week?

[7]A. Not -- not specifically. I can refer to
[8]you for request for production will have that
[9]information.

[10]Q. Should this store have had an off-duty
[11]officer 24 hours a day, seven days a week?

[12]A. No, I don't believe so.

[13]Q. When -- when do you believe this store
[14]should have had an off-duty officer and then would
[15]have been within the standard of care?

[16]A. Based on the level of risk and based on
[17]the Florida Convenience Store Act, that law

[18]suggests that they -- if you're going to hire an
[19]off-duty security officer, it should be between the
[20]evening hours, excuse me, of 11:00 p.m. to 5:00 in
[21]the morning.

[22]Q. Okay.

[23]A. And the number of days a week, it might be
[24]every night, there's nothing to say you can't get
[25]robbed and shot and killed on a Monday night versus
Page 127

[1]a Saturday night. So I'm not going to opine that
[2]it should be only on weekend nights, but I am going
[3]to say that the standard of care and the industry
[4]standard and the state law dictates that if you are
[5]going to have an off-duty officer because of prior
[6]crime on your property, it needs to be in the late
[7]evening hours when the history of convenience store
[8]murders, deaths and robberies is the greatest time
[9]to occur.

[10]Q. That's -- that is industry wide?

[11]A. Yes, sir.

[12]Q. It's not specific to this particular

[13]7-Eleven, true?

[14]A. Correct.

[15]Q. It's -- it's not specific to 7-Eleven;

[16]correct?

[17]A. Correct. And that's why -- that's the
[18]power and the value of knowing the state law but
[19]the fact that there's a duty by our specific
[20]7-Eleven to comply with industry standards.

[21]Q. Well, what days of the week, if you have

[22]an opinion, should this particular 7-Eleven store
[23]have had off-duty officers between those times?

[24]A. According to the state law it's every

[25]night.

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[1]Q. Are you saying that in this particular
[2]case at this particular store, that in order for
[3]this store to have acted reasonably, met the
[4]standard of care, that they should have had an
[5]off-duty officer at that store between 11:00 p.m.
[6]and 5:00 a.m. seven days a week?

[7]A. No.

[8]Q. What days would -- let me ask you then.

[9]Then what days of the week are you saying this
[10]store should have had off-duty officers and been
[11]within what you perceive to be the standard of
[12]care?

[13]A. Based on review of the 25 incidents, there
[14]appears to be a much greater propensity for let
[15]outs and/or robbery on the weekend nights,
[16]typically the Friday, Saturday slash Sunday nights.
[17]It would make sense that the nightclubs are
[18]typically open on Friday and Saturday nights, some
[19]nightclubs are open Wednesday through Sunday
[20]nights, but the -- the reports are happening almost
[21]on a seven-day cycle. It's June 10th, June 17th,
[22]June 27th, July 4th, July 18th, August 1st. I mean
[23]they're happening almost on a weekly basis if not,
[24]you know, two days or three-day cycles, they're
[25]happening on that -- almost -- almost identical on

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[1]a seven-day cycle.

[2]So that would suggest to me as a

[3]criminologist that if I've got coverage on my high

[4]risk times to be reasonably financially prudent to

[5]the store other than who has to pay for that

[6]expense of an off-duty police officer at top

[7]billable dollar, it's going to be on the weekend

[8]nights and those time periods where I know by a

[9]rich history of prior incidents that I'm getting

[10]overwhelmed by either people -- young people in

[11]cars and/or where people are acting stupid late at

[12]night because they're jonesing from drugs.

[13]Q. Okay. So let me ask you, based upon your

[14]review as a criminologist in this particular --

[15]having looked at all of this, all of the records,

[16]the history of this particular store, what nights

[17]would you say this store was -- should have had

[18]off-duty officers?

[19]MR. KING: Objection, asked and answered.

[20]THE WITNESS: I've already asked and

[21]answered that. I said the weekend nights.

[22]BY MR. MENELLO:

[23]Q. Which would be Friday night?

[24]A. And Saturday night.

[25]Q. And Saturday night? Okay. Any other

Page 130

[1]nights?

[2]A. I leave it open to if -- if it turns out

[3]that ladies night is -- you know, hump night is our

[4]-- our big target night, then it would be Wednesday

[5]nights.

[6]Q. Okay.

[7]A. The normal rule of thumb would be your big

[8]nights for the clubs are the Friday and Saturday

[9]nights.

[10]Q. Okay. So at least at this point what your

[11]opinion is, is that if this 7-Eleven hired off duty

[12]it would be Friday and Saturday nights, true?

[13]A. Correct.

[14]Q. Okay. And it would be during the entire

[15]time between 11:00 p.m. and 5:00 a.m. or would you

[16]shorten that time at all?

[17]A. No. It would be as per state law, that 11

[18]to 5.

[19]Q. And -- and it's your -- also your opinion

[20]that if this off-duty officer was there, it -- it

[21]would have prevented what occurred in this case,

[22>true?

[23]A. Within -- yes, within a reasonable degree

[24]of criminological certainty that it more likely

[25]than not would have deterred the cars from

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[1]overtaking the lot and would have not allowed the

[2]flash point to occur before someone got heated or

[3]into a conflict. It's not to say that just a

[4]random person couldn't come on to the lot and

[5]conduct a shooting of a clerk and, of course,

[6]having an officer on-site would also serve as a

[7]deterrent against that.

[8]However, this particular case is about a

[9]lot of people on a small piece of real estate there
[10]to just be gregarious and have fun and be loud. If
[11]there is capable guardianship and supervision that
[12]prevents that from either happening in the first
[13]place or curbs their enthusiasm, then the
[14]likelihood of it escalating to personal conflict is
[15]greatly diminished in my opinion.

[16]Q. Well, if this was a personal conflict that
[17]had been occurring before they arrived at the
[18]7-Eleven, you would agree with me that, in general
[19]as a criminologist, a shooting that results from
[20]that personal conflict is -- is not preventable?

[21]MR. KING: Objection, form.

[22]THE WITNESS: It would be much -- much
[23]less likely to be able to prevent; correct.

[24]BY MR. MENELLO:

[25]Q. Okay. And --
Page 132

[1]A. It's like a domestic incident, for
[2]example.

[3]Q. Well, what if it was in a situation of,
[4]let's say, hypothetically the jury were to accept
[5]the fact that the shooting occurred because of some
[6]-- some altercation or argument or dispute between
[7]two gangs, that would be that type of incident that
[8]would make it unlikely to be prevented by a
[9]business, true?

[10]MR. KING: Objection to form.

[11]THE WITNESS: In theory, yes. But, again,
[12]if one of the parties isn't there because

[13]they're chased off the property, there's no

[14]one for the other person to shoot at.

[15]BY MR. MENELLO:

[16]Q. No, I -- I understand.

[17]A. So it's sort of like when you grew up if

[18]-- if mom says to the older brother or the younger

[19]brother go to your respective rooms, there can't be

[20]a fight unless the kids get together and bang

[21]heads.

[22]THE WITNESS: I'm going to need a restroom

[23]break before we're going to go a whole bunch

[24]longer.

[25]MR. MENELLO: Yeah. It's not going to be

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[1]much, much longer but if you want to take a

[2]break, we can do that.

[3]THE VIDEOGRAPHER: We're going to go off

[4]the record, the time is 12:47.

[5](Whereupon, a brief recess was had, after

[6]which time the following proceedings were

[7]had:)

[8]THE VIDEOGRAPHER: Okay. We're back on

[9]the record, the time is 12:56.

[10]BY MR. MENELLO:

[11]Q. All right. Mr. Atlas, just a few more

[12]questions here. Had this group of folks that were

[13]at the 7-Eleven at the time of the shooting, had

[14]they ever been to that 7-Eleven before, to your

[15]knowledge?

[16]MR. KING: Objection to form.

[17]THE WITNESS: I have no personal knowledge

[18]of that.

[19]BY MR. MENELLO:

[20]Q. Do you know if the shooter had ever been

[21]there before?

[22]MR. KING: Objection to form.

[23]THE WITNESS: I have no personal knowledge

[24]of that.

[25]BY MR. MENELLO:

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[1]Q. Do you know if Mr. Walker had been there

[2]before?

[3]MR. KING: Objection to form.

[4]THE WITNESS: I have no personal knowledge

[5]of that.

[6]BY MR. MENELLO:

[7]Q. What is your understanding as to how often

[8]the -- the police would patrol this store, come to

[9]the store or stop at the store?

[10]A. I have no personal knowledge of that. I

[11]would defer to the police testimony and the state

[12]attorney's records.

[13]Q. Okay. If you assume hypothetically that

[14]the police patrolling the area would stop at this

[15]7-Eleven store once an hour during the evening,

[16]early morning times, any reason to dispute that?

[17]A. No.

[18]Q. Does that serve as a deterrent?

[19]A. Yes.

[20]Q. Okay. And -- but as far as you know, you

[21]-- you don't know if that was occurring or not,

[22]true?

[23]A. Correct.

[24]Q. Okay. The fact that this crowd had been

[25]called -- strike that.

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[1]The fact that the police had been called

[2]on this crowd two other times at other locations,

[3]does that serve as a deterrent to them committing

[4]any other crimes?

[5]MR. KING: Objection, form.

[6]THE WITNESS: Clarify who them is and --

[7]BY MR. MENELLO:

[8]Q. The crowd, anybody in the crowd. The

[9]propensity for committing one of these reasonably

[10]foreseeable crimes, doesn't -- isn't that deterred

[11]by the fact that the police had already been called

[12]on them twice and the police were aware of what

[13]they were doing?

[14]MR. KING: Objection to form.

[15]THE WITNESS: Well, you're making the

[16]assumption that the same people that went to

[17]the prior locations came to this latter

[18]location. We have no information to show that

[19]it was the same group that would have had a

[20]prior notice or warning that police were

[21]monitoring them.

[22]You're also assuming that the same police

[23]officers were following the same people.

[24]You're also assuming that the police officers

[25]had interaction or presence or were seen by

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[1]the same amount of young people so there's way

[2]too many assumptions there. I have no

[3]information that -- that the people who

[4]ultimately ended up at our 7-Eleven were aware

[5]or the same people that went to the two prior

[6]locations.

[7]BY MR. MENELLO:

[8]Q. Well, in -- in your summary, in your

[9]incident summary, you described the let out?

[10]A. Correct.

[11]Q. Let out is the description of the crowd,

[12>true?

[13]A. Correct.

[14]Q. So in your opinion the let out first

[15]drives to a Chevron, then to a McDonald's, then to

[16]7-Eleven on LB McLeod, true?

[17]MR. KING: Objection, form.

[18]BY MR. MENELLO:

[19]Q. That's what you say in your report?

[20]MR. KING: Which question are you going to

[21]ask because you just said --

[22]MR. MENELLO: Just object.

[23]MR. KING: No, no, because you just said

[24]in your statement and then you said it's your

[25]opinion and then you said in your statement.

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[1]BY MR. MENELLO:

[2]Q. Okay. Mr. Atlas, let's pull out your

[3]Exhibit No. 3. This is a document that you

[4]prepared?

[5]A. Yes.

[6]Q. Okay. Paragraph 2 -- and let me ask you

[7]this.

[8]A. All right. So I'm confused.

[9]Q. Strike that.

[10]A. Stop, time out. We have the same thing

[11]marked twice, that's part of our problem here. One

[12]of these is mine so.

[13]MR. MENELLO: You've marked the -- this as

[14]19, it should be the deposition testimony.

[15]MR. KING: Right. That's the addendum.

[16]MR. MENELLO: Right. And we'll clear

[17]that.

[18]Exhibit 3, we'll clear it with the

[19]exhibit.

[20]BY MR. MENELLO:

[21]Q. Exhibit 3 is entitled what?

[22]A. My opinions on this case.

[23]Q. Okay. And what does the first line of

[24]Paragraph 2 say?

[25]A. According to the review materials, many

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[1]persons went to Club Envy, a nightclub owner -- a

[2]nightclub near international Drive.

[3]Q. Sorry. The second paragraph, Paragraph 2.

[4]MR. KING: Well, the first paragraph is

[5]important in that.

[6]MR. MENELLO: I'm just asking you to read

[7]the first sentence. You can ask any questions

[8]if you want.

[9]MR. KING: Why are you wasting time --

[10]MR. MENELLO: I'm not. You're wasting

[11]time by --

[12]MR. KING: You're wasting time by -- it is

[13]what it is.

[14]BY MR. MENELLO:

[15]Q. Mr. Atlas, what do you say in the first

[16]sentence of the second paragraph of Exhibit 3?

[17]A. The let out drive to a Chevron, then to a

[18]McDonald's then to the 7-Eleven on McLeod.

[19]Q. Okay. For purposes of your opinions are

[20]you assuming that is factually accurate?

[21]MR. KING: Objection, form.

[22]THE WITNESS: Yes, based on the materials

[23]from the police.

[24]BY MR. MENELLO:

[25]Q. And if we assume that to be factually

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[1]accurate, wouldn't it have been a deterrent, the

[2]fact that this let out had already been -- already

[3]had the police called on them twice at prior

[4]locations?

[5]MR. KING: Objection to form.

[6]THE WITNESS: It could serve as a

[7]deterrent because it gave notice to the people

[8]in the let out that the police were on them

[9]and monitoring their activities.

[10]BY MR. MENELLO:

[11]Q. Right. And so presumably then you, as a

[12]criminologist, would agree that when this group
[13]arrives at the 7-Eleven, they would have been aware
[14]that the police were on them and aware of their
[15]activities, true?

[16]MR. KING: Objection, form.

[17]THE WITNESS: I would agree that for those
[18]people who were part of the continuous part of
[19]the let out, yes, they might have been aware.
[20]And, again, we're only talking about the
[21]persons in a few cars acting in a violent
[22]manner. The other 40 to 50 plus cars were
[23]just in the parking lot hanging out and not
[24]necessarily engaging in violent behavior or
[25]criminal behavior. So they may have taken to
Page 140

[1]heed the notice from police and were acting
[2]more responsibly.

[3]The people who ultimately engaged in the
[4]shooting, we don't know if they were part of
[5]the let out earlier or had seen the police at
[6]all earlier to have any kind of deterrent
[7]value whether that would have changed their
[8]violent propensity.

[9]BY MR. MENELLO:

[10]Q. So do we know if the people who shot Mr.
[11]Walker were a part of any let outs?

[12]A. No, we do not.

[13]Q. Okay.

[14]A. We just know that they were on site in the
[15]midst of a lot of other cars that were part of a

[16]let out.

[17]Q. Right. And if we assume that the person

[18]or people involved in the shooting of Mr. Walker

[19]were part of the let out that was at the Chevron

[20]and at the McDonald's, they would have known that

[21]the police were on them and knew of their

[22]whereabouts, true?

[23]MR. KING: Objection, form.

[24]THE WITNESS: Correct.

[25]BY MR. MENELLO:

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[1]Q. And -- and that did not prevent them,

[2]assuming they were part of the let out crowd, that

[3]did not prevent them from committing this crime,

[4>true?

[5]MR. KING: Objection, form.

[6]THE WITNESS: Correct. That reactive and

[7]-- and after the fact that people are on the

[8]site is less likely to prevent an act of

[9]violence than had there been a security

[10]officer or police officer on the site to

[11]prevent them from actually getting on to the

[12]property or leaving before they could get

[13]parked and settled in.

[14]BY MR. MENELLO:

[15]Q. The -- the prior --

[16]A. It's a -- it's a tipping point

[17]perspective.

[18]Q. The -- the prior times when the police

[19]were called to the 7-Eleven for the crowds and the

[20]police dispersed them, those folks who would gather

[21]at the 7-Eleven and had the folks called on them,

[22]they would have been aware that, hey, the police

[23]come here and disperse us, true?

[24]MR. KING: Objection, form.

[25]THE WITNESS: I'm not understanding the

Page 142

[1]subtlety. This sounds like just asked and

[2]answered. I -- I -- I'm not getting what --

[3]what you're asking.

[4]BY MR. MENELLO:

[5]Q. Well, if --

[6]MR. KING: Are you talking about --

[7]THE WITNESS: Didn't I just ask that?

[8]Didn't you just ask that?

[9]BY MR. MENELLO:

[10]Q. No. Let me ask you this. We have reports

[11]where police were called when crowds would gather

[12]at the 7-Eleven, true?

[13]A. Correct.

[14]Q. Okay. So whenever -- at each of those

[15]instances when the police were called, those folks

[16]in those crowds would be -- have been aware that if

[17]they gathered for too long 7-Eleven would call the

[18]police on them, true?

[19]MR. KING: Objection to form.

[20]THE WITNESS: Yes.

[21]BY MR. MENELLO:

[22]Q. And that then serves as a deterrent for

[23]those folks to come back to the 7-Eleven, true?

[24]MR. KING: Objection, form.

[25]THE WITNESS: In theory, yes.

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[1]BY MR. MENELLO:

[2]Q. And that would then deter them from

[3]committing a crime at the 7-Eleven, true?

[4]MR. KING: Objection, form.

[5]THE WITNESS: In theory, yes, because they

[6]would know that the police were regularly

[7]intervening and patrolling around their

[8]activities.

[9]BY MR. MENELLO:

[10]Q. So then as a result of the history of

[11]calling the police and if you assume hypothetically

[12]that the police patrolled this store once an hour

[13]during the late evening, early morning hours, those

[14]would serve as deterrents to people gathering in

[15]the 7-Eleven parking lot and potentially committing

[16]crimes, true?

[17]MR. KING: Objection, form.

[18]THE WITNESS: Read back the question,

[19]please?

[20](Whereupon, the requested portion was read

[21]back by the Court Reporter, after which time

[22]the following proceedings were had:)

[23]THE WITNESS: Correct. With that given

[24]hypothetical, yes, I would concur.

[25]BY MR. MENELLO:

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[1]Q. And if we assume that was what had been

[2]occurring for the years prior to this incident, the

[3]reality is, is we know that there is no evidence of

[4]any violent crime resulting from the crowds

[5]gathering at the store, true?

[6]A. That's correct.

[7]Q. And so it would appear that the practice

[8]of what was being done at the store with the

[9]calling of the police and the police patrolling

[10]every hour was working to prevent violent crime

[11]over the five years prior to Mr. Walker's shooting,

[12>true?

[13]MR. KING: Objection to form.

[14]THE WITNESS: No.

[15]BY MR. MENELLO:

[16]Q. It was not?

[17]A. No.

[18]Q. How did it not work?

[19]A. You're -- you're associating the

[20]relationship between the stressed out staff calling

[21]for police to break up a mob scene at the store as

[22]having a relationship with not having violence

[23]because you haven't had the misfortune of having a

[24]shooting take place prior to Mr. Walker's death.

[25]They -- that is not -- those two events are not

Page 145

[1]necessarily correlated of after the fact

[2]enforcement to a gathering on-site -- there's --

[3]there's not the relationship of whether it was

[4]violence or not. The relationship is whether that

[5]your employees called because things were getting

[6]out of control and they needed help. And rather

[7]than preventing it from getting out of control and
[8]from them having to call the police, they're always
[9]having to act in a reactive role. The fact that
[10]you haven't had a murder or shooting beforehand is
[11]not necessarily a factor that what you're doing is
[12]working, it's just but for the grace of God that no
[13]one killed themselves.

[14]Q. And that's -- you think it's simply by the
[15]grace of God that no one killed themselves in these
[16]let outs?

[17]A. Correct.

[18]Q. Okay. Again, for the reasons that you
[19]gave us earlier?

[20]A. Correct.

[21]Q. Was Mr. Walker, in your opinion, was he
[22]the intended target of the shooting?

[23]MR. KING: Objection, form.

[24]BY MR. MENELLO:

[25]Q. Do you have an opinion either way on it?

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[1]A. I only am reflecting what was in the
[2]police report that he was not the intended target.

[3]Q. And so you're relying on the police
[4]conclusion?

[5]A. Correct.

[6]Q. All right. Do you have any opinion as to
[7]whether the shooter who ultimately shot Mr. Walker
[8]was actually intending on shooting anyone or
[9]whether he was just firing a gun off or do you
[10]have any opinion?

[11]A. I don't have an opinion.

[12]Q. Have you looked through any of Mr.

[13]Walker's criminal history?

[14]MR. KING: Objection, form.

[15]THE WITNESS: No, I have not.

[16]BY MR. MENELLO:

[17]Q. Have you received from plaintiff's counsel

[18]any prior police reports on him?

[19]MR. KING: Objection, form.

[20]THE WITNESS: No, sir, there was only a

[21]reference in one of the depositions of some of

[22]his prior criminal activity.

[23]BY MR. MENELLO:

[24]Q. When -- when you're analyzing these types

[25]of events, is it important for you to look at to

Page 147

[1]see what the history is of the -- of the victim to

[2]determine maybe who he's hanging out with, the

[3]people that he's -- he's hanging with and the

[4]activities he's engaged in with them?

[5]MR. KING: Objection, form. For what

[6]purpose? You said is it important for you to

[7]know. For what purpose?

[8]MR. MENELLO: As a criminologist in

[9]providing opinions in these cases.

[10]MR. KING: On foreseeability at a

[11]location?

[12]BY MR. MENELLO:

[13]Q. Go ahead.

[14]MR. KING: I mean -- okay. Objection,

[15]form.

[16]MR. MENELLO: Thank you.

[17]THE WITNESS: Sometimes I look at the

[18]history of the victim, sometimes I don't. In

[19]this particular case it wasn't provided.

[20]BY MR. MENELLO:

[21]Q. Why would you sometimes do it and why --

[22]or strike that.

[23]Why sometimes would you do it?

[24]MR. KING: Same objection.

[25]THE WITNESS: Well, if the person that was

Page 148

[1]the victim of the crime was a resident of an

[2]apartment complex, I need to know that. If

[3]they were selling drugs or engaged in criminal

[4]enterprise, the incident might be related to

[5]their business as compared to a random act of

[6]third-party negligent security.

[7]BY MR. MENELLO:

[8]Q. Well, what about in this particular case

[9]as to whether Mr. Walker was hanging out with known

[10]gang members, would that be relevant to your

[11]opinions at all?

[12]MR. KING: Objection, form. You mean

[13]members of the Florida bar?

[14]BY MR. MENELLO:

[15]Q. Go ahead.

[16]A. Well, first I have no personal knowledge

[17]of whether the people he was hanging with were or

[18]were not gang members. It was suggested in the

[19]police report that some people might have an
[20]affiliation. So it's a maybe at best.
[21]Secondly, to the best of my knowledge
[22]based on everything I have read in this case, Mr.
[23]Walker was not engaged at the time of his time on
[24]that real estate of the 7-Eleven engaged in any
[25]kind of criminal or illegal behavior.

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[1]Q. Did you have the deposition summary?

[2]A. You have it.

[3]MR. KING: You have it.

[4]THE WITNESS: It's on the bottom of the

[5]pile there.

[6]MR. MENELLO: Okay. And we'll look at it.

[7]Okay. We haven't marked that. Let me just

[8]refer to my notes here.

[9]BY MR. MENELLO:

[10]Q. This 7-Eleven was -- was part of a

[11]property of a bigger shopping center that had other

[12]businesses on it, is that your understanding?

[13]A. Yes, sir.

[14]Q. Okay. And it's your understanding that

[15]the other businesses were closed?

[16]A. Correct. At the time of the -- at this

[17]time of night, yes.

[18]Q. Okay. The -- the other -- there's a

[19]larger parking lot that is connected to the

[20]7-Eleven, true?

[21]A. Yes, sir.

[22]Q. And where there's a Wing House and -- and

[23]another -- another restaurant a little further

[24]down, true?

[25]A. Yes, sir.

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[1]Q. And that is a wide open parking lot. Did

[2]you -- did you look at the lighting in -- in that

[3]parking lot at all?

[4]A. There was no information given to me from

[5]the police crime scene photos on those adjacent

[6]properties.

[7]Q. Okay. Why -- as a criminologist why

[8]wouldn't these group of folks if they were

[9]reasonably anticipated to commit a crime by

[10]gathering where they are, why wouldn't they have

[11]gathered in the other portions of the parking lot?

[12]MR. KING: Objection, form.

[13]THE WITNESS: Well, first of all, we don't

[14]have any information that they didn't. When

[15]you're talking about the sheer number of cars,

[16]it's -- it's always been my assumption that

[17]the cars filled into the adjacent asphalt

[18]areas. So I'm not taking the position that

[19]they weren't across the actual real estate

[20]property line into the adjoining property to

[21]some extent. I don't think they were all the

[22]way around but they're anywhere from, you

[23]know, a couple hundred people in the estimates

[24]from the officers, that's a large crowd of

[25]people. Plus if the lighting was out, they

Page 151

[1]are going to be gathering to where the

[2]lighting is which is underneath the 7-Eleven

[3]store which is -- attracts the moths for the

[4]light.

[5]BY MR. MENELLO:

[6]Q. Do you have any opinion as to how many

[7]cars would have been in the 7-Eleven parking lot as

[8]opposed to the other parking lot?

[9]A. I have no information on that.

[10]Q. When these let outs would occur

[11]historically from the reports where these crowd

[12]would gather, do you have any knowledge as to

[13]whether the crowds gathered at the 7-Eleven parking

[14]lot specifically or whether they gathered in the

[15]neighboring parking lot?

[16]A. I have no information on that.

[17]Q. And do you believe that -- are you going

[18]to be providing opinions to the -- to the jury that

[19]7-Eleven had a responsibility to provide security

[20]to folks who would park in the neighboring parking

[21]lot?

[22]A. No, I will not be opining that.

[23]Q. You were -- you were given records that

[24]discusses or has information about the employee

[25]training program at 7-Eleven?

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[1]A. Yes, sir.

[2]Q. The training that they go through, the

[3]computer-based training, do you have any criticisms

[4]of the training.

[5]A. I don't believe so.

[6]Q. Separate from the training you see that

[7]there's some other like manuals, the documents that

[8]they have, that are sort of the procedures, any

[9]criticism of that, of those materials?

[10]A. No, sir.

[11]Q. Okay. Have you, in your experience, seen

[12]other training materials, procedure manuals for

[13]other convenience store businesses?

[14]MR. KING: Objection, form.

[15]THE WITNESS: Yes, sir.

[16]BY MR. MENELLO:

[17]Q. Okay. You would agree with me that

[18]7-Elevens are -- are more comprehensive and -- and

[19]are in what would be considered an industry leader

[20]in those -- in the training and the procedures for

[21]convenience stores, true?

[22]MR. KING: Objection to form.

[23]THE WITNESS: Yes, sir.

[24]BY MR. MENELLO:

[25]Q. And that would include in the areas where

Page 153

[1]security is discussed, true?

[2]MR. KING: Object to form.

[3]THE WITNESS: Correct. I'm getting pretty

[4]close to hitting my limit. My stomach is

[5]growling pretty loud so I'm hoping you're --

[6]MR. MENELLO: I'm just looking through

[7]your -- I was provided this this morning so

[8]I'm looking through your report real fast so I

[9]can make sure I've covered everything, okay?

[10]THE VIDEOGRAPHER: About 13 minutes until

[11]I need to change, Counsel.

[12]BY MR. MENELLO:

[13]Q. Do you know of any convenience store that

[14]has a specific written policy or procedure as to

[15]when to hire off-duty officers or security guards?

[16]MR. KING: Object to the form.

[17]THE WITNESS: Within the convenience store

[18]industry, no. Within the hotel industry, yes.

[19]BY MR. MENELLO:

[20]Q. You state in Page 6 of your report,

[21]Exhibit 3, I'll just hand it to you so you can look

[22]at it. Had the clerks called police -- I'm sorry,

[23]it's the -- the second full photograph down on

[24]Page 6. Had the clerks called police on earlier

[25]occasion -- occasions and demanded enforcement and
Page 154

[1]arrests, the reputation of this 7-Eleven as a good

[2]place to gather would have been deterred and there

[3]would have been no shooting. Is that a correct

[4]statement of your opinion?

[5]A. Yes, sir.

[6]Q. Did the clerks call the police on earlier

[7]occasions?

[8]A. Yes.

[9]Q. What you're saying is that they should

[10]have demanded that the police arrest somebody?

[11]A. Correct.

[12]Q. Okay. Short -- strike that.

[13]A. With probable cause of course.

[14]Q. Right. But the fact that they called
[15]police on earlier occasions, the reputation of --
[16]I'm trying to understand, do the -- other than if
[17]there's some probable cause for their arrest,
[18]that's -- that's -- well, strike that.

[19]The probable cause for an arrest is
[20]something a police -- that would be a police
[21]judgment, true?

[22]A. Yes.

[23]Q. Okay. So if the -- if the police made
[24]arrests when they were called, that would then
[25]serve as a deterrent to crowds gathering, is that
Page 155

[1]what you're saying here?

[2]A. Yes.

[3]Q. Okay. But as far as from 7-Eleven's
[4]responsibility they did what they were supposed to
[5]by calling police on earlier occasions to -- to
[6]prevent the reputation as then being a place to
[7]gather, true?

[8]A. Partly true. The partly true is, is that
[9]on some occasions they did but not consistently.
[10]Reggie's deposition states very clearly that if it
[11]was just a certain number of cars he would -- he
[12]felt he could handle it. At some point when they
[13]realized it was past, you know, three or five cars,
[14]whatever that number was that he mentioned in his
[15]deposition, that's when things started getting loud
[16]and again creating a flash point where they called
[17]the police to break up and move people along.

[18]My point being that the fact that the
[19]application of the staff with the manager's
[20]support, which they did not have, to consistently
[21]call for police at the first signs of a let out, as
[22]defined by a group of cars with young people
[23]dressed in club attire with the radios playing and
[24]that aren't coming - that aren't parking by the
[25]front, walking right into the store and buying a

Page 156

[1]Red Bull or whatever, that they would have called
[2]the police saying, they're back, come help.
[3]Q. Well, there's evidence they did that on
[4]occasion?

[5]A. On -- correct. That's why I gave a
[6]qualified answer.

[7]Q. Right.

[8]Now, when you say had the clerks called
[9]police on earlier occasions, are you referring to a
[10]specific number or specific date? What are you
[11]referring to when you made that statement?
[12]A. I'm referring to the testimony of the two
[13]clerks that these gathering of people on your
[14]property is happening on a weekly regular basis.
[15]And the crime reports are, as you can see the
[16]dates, are stacking or staggering sometimes weekly
[17]and then it goes a couple months without anything.
[18]I don't know if that's because the numbers were
[19]small or the employees just gave up or because the
[20]let out went to some other place that night.
[21]Q. So from what I'm -- from that paragraph,

[22]what I'm understanding from that paragraph is,
[23]you're saying that if the clerks had called the
[24]police more often when these crowds would gather
[25]and the police would then find probable cause to
Page 157

[1]make arrests, you believe that the reputation of
[2]this 7-Eleven as a good place to gather would have
[3]been deterred and there would have been no
[4]shooting, true?

[5]A. Correct. That the goal here is to create
[6]the reputation that this 7-Eleven is not an
[7]attractive magnet for us to come out and park and
[8]hang out.

[9]Q. Now, let me ask you, if we take out the
[10]police finding probable cause, if we simply say had
[11]the clerks called the police more often, the
[12]reputation of this 7-Eleven as a good place to
[13]gather would have been deterred and there would
[14]have been no shooting, is that an accurate
[15]statement?

[16]A. I believe so.

[17]Q. Okay.

[18]A. I don't think the arrests are the missing
[19]link. It just adds some meat to the motion.

[20]Q. It's -- it's really the -- the calling
[21]more often --

[22]A. Right. And more importantly not calling
[23]when things are so thick and deep that you're in a
[24]swamp up to your neck in alligators, it's deciding
[25]whether I want to drain the water in the swamp so I
Page 158

[1]don't have alligators.

[2]Q. Are you of the opinion that every time a

[3]-- a crowd of a certain number of cars gathered in

[4]the parking lot, that the clerks were required to

[5]call the police?

[6]MR. KING: Objection, form.

[7]THE WITNESS: No. I didn't use the word

[8]required, I used the word suggested. And the

[9]-- and the reaction of the clerks calling for

[10]police is, if a high school bus pulls up with

[11]30 high school football players in it, it

[12]doesn't mean that the clerk is supposed to

[13]call the police.

[14]BY MR. MENELLO:

[15]Q. Why not?

[16]A. Because they're first of all, supervised

[17]by the bus driver and/or teachers.

[18]Secondly, it's not to say that the kids

[19]won't shoplift a pack of gum or something, but that

[20]is not the demographic of persons that are there on

[21]site for the expressed purpose of gathering to hang

[22]out and not go in and just buy something in the

[23]store.

[24]Q. What if it was a crowd that hadn't come

[25]from a club, didn't appear to have come from a

Page 159

[1]club, should -- should the clerks be -- but there's

[2]no adult supervision, just a bunch of teenagers

[3]that have come in, they don't appear to have come

[4]from the club, the clerks -- should they

[5]immediately call the police on them?

[6]A. Yes. For example, you have a biker gang

[7]pull up and they're just revving up their bikes and

[8]they're making a lot of noise and they're doing

[9]wheelies and the women are flashing and everybody

[10]is having a great party, that would qualify, you

[11]know -- Daytona on the typical bike week, there's

[12]police everywhere to make sure they can have fun

[13]safely but not hurt themselves or hurt other

[14]people.

[15]Q. According to the testimony from Mr. Dejour

[16]that you -- that you referenced, the times he

[17]didn't call the police, were they times when he was

[18]able to get the crowd to leave on his own?

[19]MR. KING: Object to form.

[20]THE WITNESS: I don't have specific

[21]information on that.

[22]BY MR. MENELLO:

[23]Q. If that's the case, is it appropriate,

[24]short of calling the police, for the -- for the

[25]employee to say you guys need to go and then the

Page 160

[1]crowd leaves?

[2]A. What I'm hearing in that question is, is

[3]it appropriate for the employee to ask the people

[4]in the parking lot to leave, yes.

[5]Q. Okay.

[6]A. And there's nothing -- there's nothing

[7]wrong with that. That's clearly within -- within

[8]his realm of -- of duty. The challenges are is

[9]that the 7-Eleven procedures are that you can't
[10]leave the store. So the best you're going to get
[11]is the clerk essentially shouting out the door
[12]saying, hey, quiet down, you know, keep it moving.

[13]Q. And -- and if the folks leave as a result
[14]of that, should he still then call the police?

[15]A. No?

[16]Q. Would that action where on occasion where
[17]he calls the police and then times when the clerk
[18]or the employee just comes out and says you have to
[19]leave, would that then help the 7-Eleven's
[20]reputation as a place to gather?

[21]A. You had me until the last sentence there
[22]and then it all went to mud.

[23]Q. Sure.

[24]A. What?

[25]Q. According to your last page you talk about
Page 161

[1]they should have called the police more often.

[2]A. Correct.

[3]Q. We've already discussed that. But in the
[4]instances when these crowds would gather, they
[5]would leave by the employee simply asking them to
[6]leave without any incident?

[7]A. Sometimes, yes, correct. And then you got
[8]weird at the end there.

[9]Q. Right.

[10]A. And then you made a statement that was
[11]what?

[12]Q. Well, because you say then had the clerks

[13]called the police for often.

[14]A. Correct.

[15]Q. The reputation of the 7-Eleven as a good

[16]place to gather would have been deterred. What I'm

[17]asking you is, is if the clerks are calling as much

[18]as they do but at the same time asking the folks to

[19]leave and the folks leave every time, would that

[20]then allow the reputation of this 7-Eleven as a

[21]good place to gather be deterred?

[22]A. Correct.

[23]Q. And that then would have prevented this

[24]shooting from happening?

[25]A. Correct.

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[1]Q. Okay. I have -- I've dealt with all of

[2]your opinions. Any other opinions we haven't

[3]discussed?

[4]A. I don't believe so.

[5]Q. Okay. And when we walk the video, we'll

[6]go through the exhibits so we have an understanding

[7]of what's in here.

[8]THE WITNESS: I would just suggest a

[9]timeout because he's going to need a moment.

[10]THE VIDEOGRAPHER: Take us off the video,

[11]the time is 1:28.

[12](Whereupon, a brief recess was had, after

[13]which time the following proceedings were

[14]had:)

[15]THE VIDEOGRAPHER: Okay. Standby. We're

[16]back on video record and the time is 1:31.

[17]CROSS EXAMINATION

[18]BY MR. KING:

[19]Q. First, let's take them in order. Mr.

[20]Menello asked you questions about your invoice. It

[21]was simply a clerical error that you left off the

[22]-- the site inspection?

[23]A. Yes.

[24]Q. Okay. Nothing nefarious about the error?

[25]A. No, sir.

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[1]Q. All right. CPTED, you talked about three,

[2]I call them a triad, but three different categories

[3]involving CPTED. Could you repeat those quickly?

[4]A. Natural methods of crime prevention which

[5]deals with the architecture and the circulation

[6]patterns, mechanical methods of crime prevention

[7]which deals with security technology and target

[8]hardening, physical hardware and organizational

[9]methods of crime prevention which deals with

[10]persons, people, police officers, security guards,

[11]capable guardians.

[12]Q. Let's deal with the second category first.

[13]Would that include signs and cameras and things of

[14]that nature?

[15]A. Yes, sir.

[16]Q. Okay. Were there any video cameras that

[17]were visible on the exterior of the 7-Eleven on the

[18]night of the shooting?

[19]A. No.

[20]Q. Okay. Do video cameras serve as a

[21]deterrent, a crime deterrent, the ones that are

[22]visible?

[23]MR. MENELLO: Objection.

[24]THE WITNESS: Yes, especially with typical

[25]convenience store signage that says you're

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[1]being videotaped so it puts you on notice if

[2]nothing else for the purposes of preventing

[3]drive-offs and/or for shoplifting.

[4]BY MR. MENELLO:

[5]Q. After the shooting of Mr. Walker on the

[6]date of your inspection, did you see video

[7]surveillance equipment on the exterior of the

[8]7-Eleven?

[9]MR. MENELLO: Object to the form.

[10]THE WITNESS: Yes, I did.

[11]MR. KING: What's wrong with the form?

[12]MR. MENELLO: It's post -- after the

[13]incident.

[14]MR. KING: It's subsequent remedial

[15]measures?

[16]MR. MENELLO: It -- it could be, yes.

[17]MR. KING: Okay. Is that your objection?

[18]MR. MENELLO: Yeah. It has no relevance

[19]to what happened six years ago but go ahead.

[20]MR. KING: Okay.

[21]BY MR. KING:

[22]Q. There were surveillance cameras when you

[23]visited the property?

[24]A. Yes, sir.

[25]Q. All right. Those were on the exterior of

Page 165

[1]the building?

[2]A. Yes, sir.

[3]MR. MENELLO: Objection to form.

[4]BY MR. KING:

[5]Q. How many of them were there?

[6]A. I observed at least three and there may

[7]have been more.

[8]Q. Okay. Were they in the area directed to

[9]or pointed at the area where Mr. Walker was

[10]murdered?

[11]MR. MENELLO: Object to form.

[12]THE WITNESS: Yes. There was also

[13]additional signage that I observed that

[14]addressed the no loitering and the section

[15]statute for enforcement.

[16]BY MR. KING:

[17]Q. This question wasn't asked but in terms of

[18]CPTED, is CPTED a -- a accepted security

[19]methodology in the security industry?

[20]A. Yes, and has been since the early 1970s.

[21]Q. Okay. No. 4 -- or excuse me No. 3 on your

[22]list of CPTED, again I call it a triad, but the --

[23]was there a procedure in place at 7-Eleven for

[24]7-Eleven employees to notify upper management of

[25]these crowds in the parking lot?

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[1]MR. MENELLO: Object to the form.

[2]THE WITNESS: Yes, sir, the hotline.

[3]BY MR. KING:

[4]Q. Okay. Was --

[5]A. And, of course, going through the

[6]management up.

[7]Q. Okay. But did you review any testimony

[8]that indicated that the hotline was not to be used

[9]to advise of these crowds in the parking lot unless

[10]an injury occurred?

[11]A. That is correct.

[12]Q. Okay. And it would had to have been an

[13]injury to a customer, someone they believed to be a

[14]customer, correct?

[15]MR. MENELLO: Object to form.

[16]THE WITNESS: Correct.

[17]BY MR. KING:

[18]Q. Or injury to an employee?

[19]A. Correct. Or damage to the pump, for

[20]example.

[21]Q. But just the fact that the police were

[22]called and there were a number of cars in the

[23]parking lot, the employees were trained that they

[24]didn't have to call or should not call the hotline

[25]for that?

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[1]A. That's correct.

[2]Q. What method was in place that you observed

[3]from any of your review of the records that the

[4]employees were required to call the hotline and

[5]notify management of these crowds?

[6]MR. MENELLO: Object to the form.

[7]THE WITNESS: The -- the procedure was

[8]that there was an injury to an employee or a
[9]customer in the store like a slip and fall or
[10]outside at the pump they slipped on some oil,
[11]that's when they would call the hotline.

[12]BY MR. KING:

[13]Q. But assuming there was no injury and these
[14]crowds were occurring and the police were being
[15]called on a weekly basis, was there some procedure
[16]that 7-Eleven had in place to notify persons higher
[17]than the store level?

[18]A. I do not believe so.

[19]Q. Did you -- do you have an opinion as to
[20]whether or not there was a deficiency on the
[21]organizational level for there not to be
[22]notification to management beyond the store?

[23]MR. MENELLO: Object to the form.

[24]THE WITNESS: Yes. The fact that there
[25]wasn't a procedure in place to provide a
Page 168

[1]timely response and information so that the
[2]higher ups who were empowered to suggest,
[3]recommend, insist on off-duty police weren't
[4]even aware that there was a problem. They
[5]didn't know that they didn't know.

[6]BY MR. KING:

[7]Q. All right. Is it standard in the industry
[8]that if you don't know of a security risk, a
[9]security problem, you can't remedy that problem?

[10]MR. MENELLO: Object to the form.

[11]THE WITNESS: Correct.

[12]BY MR. KING:

[13]Q. Did you see any -- in terms of a capable

[14]guardian, did you see any evidence at this 7-Eleven

[15]that was -- that they took a preventative action as

[16]opposed to a reactive action?

[17]MR. MENELLO: Object to the form.

[18]BY MR. KING:

[19]Q. In terms of a capable guardian?

[20]MR. MENELLO: Object to the form.

[21]THE WITNESS: Only to a minor extent that

[22]the clerks took the initiative to call the

[23]police as cars came on the property or they

[24]felt that there was a problem on the property,

[25]but again at that point it was reactive to a

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[1]stimulus, you know, the cars coming on. It

[2]wasn't that there was somebody already on the

[3]property that could prevent this attractive

[4]magnet from taking place.

[5]BY MR. KING:

[6]Q. And then you would agree that the ability

[7]for these employees, specifically on the night of

[8]the incident to respond to the crowd, they would

[9]have had to have been vigilant for the crowd,

[10]correct?

[11]MR. MENELLO: Object to the form.

[12]THE WITNESS: Vigilant for the -- say that

[13]last part again.

[14]BY MR. KING:

[15]Q. Vigilant looking for the crowd?

[16]MR. MENELLO: Object to the form.

[17]THE WITNESS: Correct.

[18]BY MR. KING:

[19]Q. In reviewing the videotape what efforts

[20]did you see being made by the employees to look for

[21]the crowd?

[22]MR. MENELLO: Object to the form.

[23]THE WITNESS: Absolutely, positively

[24]nothing. In fact, the videotape from at least

[25]1:00 on shows the clerks either in the back

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[1]working in the coolers or the other clerk

[2]working at the counter watching the customers

[3]so they don't steal or that they can be, you

[4]know, checked out properly. At no point did

[5]the clerks actually regularly look out their

[6]window or out the door until there was a

[7]commotion going on.

[8]BY MR. KING:

[9]Q. Mr. Menello seemed to take, I guess,

[10]exception to the fact that you were saying these

[11]crowds to a degree were a security or safety issue,

[12]I'm paraphrasing. Did you review any testimony

[13]that indicated that the employees of the 7-Eleven

[14]felt that these crowds were a safety issue?

[15]MR. MENELLO: Object to the form.

[16]THE WITNESS: I did, consistently. Both

[17]Reggie and Mr. Valdez felt that there was --

[18]they were at risk for not only product loss

[19]but also for the fact that they had lost

[20]control over their property. And it was
[21]violating the policies and procedures of
[22]7-Eleven which is that no loitering, and if
[23]you're going to be parking, you can't -- if
[24]you're not -- if you're not parking as a
[25]customer, you can't be more than 15 minutes.

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[1]Now, that assumes that the signage was
[2]actually posted and according to the crime
[3]scene photos I don't see the no loitering sign
[4]that was evident when I went to my site visit
[5]six years later.

[6]BY MR. KING:

[7]Q. Okay. Now, were your -- your site visit
[8]photos, were they attached as an exhibit?

[9]MR. MENELLO: Yes.

[10]THE WITNESS: You got them back.

[11]MR. MENELLO: And you actually -- you have
[12]two photographs?

[13]THE WITNESS: Yes.

[14]MR. MENELLO: One still and then one from
[15]the night of the crime scene, I think it's
[16]under there. That's Exhibit 15.

[17]MR. KING: Yes.

[18]MR. MENELLO: But the photos he took are
[19]Exhibit 11.

[20]BY MR. KING:

[21]Q. Do you have a photo that depicts the --
[22]the signage that you were referring to that wasn't
[23]present on the night of the murder?

[24]A. Yes, sir. These two pictures here.

[25]Q. Now, this -- the sign indicates that the
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[1]-- that all Orlando Police Department officers are
[2]authorized representatives to advise any person to
[3]leave these premises including parking lots.
[4]Failure to vacate the premises after being
[5]instructed may result in an arrest for trespass
[6]after warning. Do you see that?

[7]A. Yes, sir.

[8]Q. Okay. Were you aware that the City of
[9]Orlando Police Department had a sign-up procedure
[10]where stores can authorize their officers to
[11]trespass individuals without speaking to store
[12]employees?

[13]A. Yes, sir.

[14]Q. Okay. Was that -- did that appear to be
[15]in place at the time of Mr. Walker's murder?

[16]A. No, sir.

[17]Q. And, in fact, did you review any testimony
[18]where the officers indicated that there were times
[19]where they came to the property and were limited to
[20]the instructions of the store personnel?

[21]MR. MENELLO: Object to the form.

[22]THE WITNESS: Yes, sir.

[23]BY MR. KING:

[24]Q. Did you review any testimony that
[25]indicated that the officers would come to the scene
Page 173

[1]and at times simply ask people, the crowds, just to
[2]turn down their music?

[3]A. Correct. Yes, sir.

[4]Q. There were times where they came to the

[5]property and told the crowds nothing and left?

[6]MR. MENELLO: Object to the form.

[7]THE WITNESS: Correct.

[8]BY MR. KING:

[9]Q. And then there were times where they said

[10]the store employees asked them to have the crowds

[11]leave?

[12]A. Correct, to disperse.

[13]Q. All right. The signage, I'm just going to

[14]write on the back. Do you mind if he takes this?

[15]I'm just going to write on the back this is

[16]Defendant's No. 1.

[17]MR. MENELLO: Defendant's 1?

[18]MR. KING: Yeah. Plaintiff's -- I'm

[19]sorry, Plaintiff's No. 1. We'll put the

[20]sticker on in a moment.

[21]BY MR. KING:

[22]Q. And then No. 2, is that the camera,

[23]Defendant's -- Plaintiff's No. 2, is that the

[24]cameras that you were referring to, at least two of

[25]them?

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[1]A. Yes, sir.

[2]BY MR. MENELLO: Object to form.

[3]BY MR. KING:

[4]Q. Are those the cameras that are at the

[5]corner of the building where Mr. Walker was

[6]murdered?

[7]A. Yes, sir.

[8]MR. MENELLO: Can I just have a standing

[9]objection to any other questions about the

[10]signage and things in place in 2016 or you

[11]want me to continue to object?

[12]BY MR. KING:

[13]Q. And then I'm going to show you what we'll

[14]mark as Plaintiff's No. 3, is that the third camera

[15]that you were referring to?

[16]MR. MENELLO: Objection, form.

[17]THE WITNESS: Yes, sir.

[18](Whereupon, the above-referenced item was

[19]marked as Plaintiff's Exhibits Numbers 1

[20]through 3 for Identification by the reporter.)

[21]BY MR. KING:

[22]Q. And that camera is pointed in the area

[23]where at least one of the suspect vehicles drove up

[24]and fired shots?

[25]MR. MENELLO: Object to the form.

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[1]THE WITNESS: Yes, of the parking lot

[2]where the pumps are.

[3]BY MR. KING:

[4]Q. Okay. Would you agree that general

[5]disorder on the property, disorder from crowds or

[6]other individuals, could make violent crime

[7]foreseeable?

[8]MR. MENELLO: Object to the form.

[9]THE WITNESS: Yes, sir.

[10]BY MR. KING:

[11]Q. Counsel asked you about foreseeability at
[12]other locations, for instance, the McDonald's, the
[13]Chevron. Have you conducted any type of
[14]foreseeability analysis at the McDonald's?

[15]A. No, sir.

[16]Q. Do you know the address of the McDonald's
[17]that -- that they were referring to?

[18]A. Not specifically, no.

[19]Q. How about a foreseeability analysis of the
[20]Chevron?

[21]A. No, sir.

[22]Q. Okay. How about a CPTED analysis of
[23]either the McDonald's or the Chevron?

[24]A. No, sir. It's been beyond the scope of my
[25]work.

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[1]Q. How about a foreseeability analysis of
[2]Club Envy?

[3]A. No, sir. It's beyond -- not only that but
[4]the club is closed now and -- so that's beyond my
[5]scope.

[6]Q. Okay. CPTED analysis of Club Envy?

[7]A. No, sir.

[8]Q. Counsel asked you about the facts that you
[9]wrote and the first paragraph says according to the
[10]reviewed materials, you're referring to the police
[11]officers statements, their reports, their
[12]transcripts and so forth?

[13]A. Yes, sir.

[14]Q. Okay. Do you have any personal knowledge

[15]or have you interviewed any witnesses who talked
[16]about the crowds at either of these locations, Club
[17]Envy, the Chevron or the McDonald's?

[18]A. No, sir.

[19]Q. Do you know how many vehicles were at the
[20]Chevron at any time on the night of the incident?

[21]A. No, sir.

[22]Q. Who was in that group of people that was
[23]at the Chevron?

[24]A. No, sir.

[25]Q. How long they were at the Chevron?

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[1]A. No, sir.

[2]Q. Who called the police at the Chevron?

[3]A. No, sir.

[4]Q. At the McDonald's, the group of vehicles
[5]that were there, the makeup of those group?

[6]A. Correct.

[7]Q. Do you have any knowledge of that?

[8]A. No, sir.

[9]Q. How many cars were there?

[10]A. No, sir.

[11]Q. How long they were there?

[12]A. No, sir.

[13]Q. Who called the police?

[14]A. No, sir.

[15]Q. Which officers responded either to the
[16]Chevron or the McDonald's?

[17]A. Correct. I do not know.

[18]Q. All right. Did you see where the officers

[19]made any effort to verify that the same individuals
[20]that were at Club Envy were at the Chevron or the
[21]McDonald's?

[22]A. Correct. I have no information on that.

[23]Q. And I think we covered this but the -- the
[24]standards that are set forth in Section 812.173 for
[25]statutes, those are minimum standards?

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[1]A. Correct.

[2]Q. Okay. So when Mr. Menello was asking you
[3]about the things that they did at this property,
[4]like the signage and, you know, lighting and having
[5]two employees, those were minimum standards?

[6]MR. MENELLO: Object to the form.

[7]THE WITNESS: Yes, that is correct.

[8]BY MR. KING:

[9]Q. Okay. And one of the minimum standards
[10]that they could have done was have an off-duty
[11]officer at the -- at the property?

[12]MR. MENELLO: Object to the form.

[13]THE WITNESS: Yes, sir.

[14]BY MR. KING:

[15]Q. Okay. And one of the state's minimum
[16]standards of having an off-duty officer at the
[17]property, that individual would have been a capable
[18]guardian?

[19]A. Yes, sir.

[20]MR. MENELLO: Object to the form.

[21]BY MR. KING:

[22]Q. And that individual would have been

[23]authorized to park his vehicle in the parking lot?

[24]A. Yes, sir.

[25]Q. And would have been authorized to stand in

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[1]the parking lot?

[2]A. Yes, sir, and enforce a trespass.

[3]Q. Something that the employees were not

[4]authorized to do, meaning stand in the parking lot?

[5]A. Correct. They were not allowed to go

[6]outside the store doors.

[7]Q. And they could not trespass anyone without

[8]a law enforcement officer?

[9]A. Correct.

[10]Q. Now, counsel asked you about a deterrent

[11]effect. Having an off-duty officer, that off-duty

[12]officer could have written trespass notices to any

[13]person that was at the property against the will of

[14]the store employees, correct?

[15]MR. MENELLO: Object to the form.

[16]THE WITNESS: Yes, sir.

[17]By MR. KING:

[18]Q. And if that person would have returned to

[19]the property at a later date without being invited

[20]by the store's employees, then that person could

[21]have been arrested for trespass after warning?

[22]A. Correct.

[23]Q. Okay. So these crowds, if the off-duty

[24]officer was at the scene, could have been limited

[25]or arrested for repeat violations?

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[1]MR. MENELLO: Object to the form.

[2]THE WITNESS: Correct.

[3]BY MR. KING:

[4]Q. And then finally, you indicated that

[5]you're waiting some additional information

[6]regarding the shootings at the 7-Eleven stores

[7]listed on Page 2 of your report?

[8]A. Yes, sir.

[9]Q. And if you receive those, if there's any

[10]change to your opinions, you will do the -- provide

[11]those in writing?

[12]A. Yes, sir.

[13]Q. Okay. It's my understanding that you're

[14]going to be out of the country for some time either

[15]next month or this month?

[16]A. Correct. I leave April 18th, I don't come

[17]back until March 8th -- excuse me, May 8th.

[18]Q. May 8th?

[19]A. May 8th, sorry.

[20]Q. April 18th to May 8th?

[21]A. Yes, sir.

[22]Q. All right.

[23]MR. KING: It is now 1:49. Have you been

[24]compensated by Mr. Menello for your time here?

[25]THE WITNESS: Yes, for the first two

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[1]hours. We've now gone two hours over time.

[2]MR. KING: And Mr. Menello, I think,

[3]agrees to compensate you for those additional

[4]two hours?

[5]THE WITNESS: Yes, sir, at \$ 500 per hour.

[6]MR. KING: That's correct.

[7]MR. MENELLO: I agree and I think I said

[8]it earlier to Mr. Atlas.

[9]MR. KING: Okay. So what I intend to do

[10]is I intend to compensate Mr. -- Doctor Atlas,

[11]I'm sorry, I've been saying Menello, Doctor

[12]Atlas for the time that he's here. Can you

[13]write that check to our office?

[14]MR. MENELLO: Yeah. Just send me

[15]whatever -- I need something to indicate an

[16]invoice of some sort. I have his prepayment

[17]where I know I can -- I just need something

[18]from your office --

[19]MR. KING: So if sends an additional

[20]invoice to me for the two hours, I'm going to

[21]pay him now, you're just going to make payment

[22]to my office for that?

[23]MR. MENELLO: That would be fine.

[24]MR. KING: Okay. All right. That's all I

[25]have.

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[1]MR. MENELLO: Just a quick couple of

[2]questions and then just some quick house --

[3]housekeeping matters and we'll been done.

[4]REDIRECT EXAMINATION

[5]BY MR. MENELLO:

[6]Q. I'm a little confused. Do you or do you

[7]not believe that the crowd that was at the 7-Eleven

[8]where Mr. Walker was shot was a part of the let out

[9]from Club Envy to the Chevron to the McDonald's?

[10]A. I do.

[11]Q. You do, okay.

[12]All right. Had any of these folks --

[13]there was a discussion Mr. King asked you about

[14]well, if these folks had been trespassed, they

[15]wouldn't have come back to the store. Is there

[16]anything that you've seen to suggest that any of

[17]the folks at the 7-Eleven, the early morning hours

[18]when Mr. Walker was shot, they had ever been to

[19]that 7-Eleven before?

[20]A. I have no information that anyone

[21]specifically, because there's not like a roll or a

[22]roster and the police don't mention whether they

[23]have seen a repeated pattern of specific cars or

[24]people, we just know that the pattern repeats, we

[25]know that it would be reasonable to assume that

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[1]people go to the same nightclubs on a weekly basis,

[2]a Saturday night or Friday night. So it's not a

[3]big leap of faith that the people had been to the

[4]property before, though I have no documentation to

[5]show one way or the other.

[6]Q. Understood. Are you aware of any

[7]procedure that any convenience store business like

[8]7-Eleven has whereby the store employees are

[9]required to report to corporate every time they

[10]make a call to -- to the police for loitering or to

[11]disperse a crowd?

[12]A. In other industries the answer would be a

[13]firm yes. Dominos Pizza, even a hotel management

[14]company, if there's an arrest, if there's a police
[15]call for service, the -- even the shopping centers,
[16]the security guard companies will write up an
[17]incident report because they want to have it
[18]documented. It is not part of the procedures of
[19]7-Eleven to document those calls and in that regard
[20]I think that is a fault.

[21]Q. What I'm asking you, what other
[22]convenience store, in the convenience store
[23]industry like 7-Eleven, has a procedure that
[24]requires store employees to contact corporate, as
[25]you've described, every time they call the police
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[1]for loitering or asking the police to disperse a
[2]crowd or even if they call the police to ask one
[3]person to leave the parking lot?

[4]MR. KING: Objection to form.

[5]BY MR. MENELLO:

[6]Q. Are you aware of any -- any company that
[7]does that, any company that has that procedure
[8]that's in the convenience store industry?

[9]A. I have no specific knowledge of that.

[10]However, it would seem 7-Eleven as being the leader
[11]in the convenience store industry that they would
[12]-- and since they emphasize documentation of every
[13]slip and fall and of every loss for pilferage,
[14]there is a clear precedent for documentation so
[15]that the clerk is not held liable or responsible or
[16]having to pay the difference or if someone gets
[17]hurt or to document their product inventory.

[18]So it would seem congruent with the
[19]overall practices of 7-Eleven to document that when
[20]they have a police officer come on the property
[21]because there is a -- a problem reported by an
[22]employee, that would seem to be warrant a -- within
[23]a reasonable care that it should be documented even
[24]though there's nothing at 7-Eleven at this time or
[25]back in 2010 that required that clerk to document

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[1]that on the hotline or to the manager or up level
[2]to corporate.

[3]Q. So there's no standard outside of
[4]7-Eleven's own procedures that you can cite to for
[5]that opinion?

[6]A. Correct. It's just incongruent with all
[7]of the other documentation that 7-Eleven requires
[8]for things that are much smaller and pettier than
[9]actually having a risk -- I think it's a big deal
[10]when a police officer gets called to your property.
[11]It's not just someone shoplifted a Red Bull, you
[12]know. If someone walks out with the case of beer
[13]from your store, it's documented. The manager
[14]knows, corporate knows, the hotline may or may not
[15]be called. It's definitely documented in a -- in a
[16]incident report because the clerk is held
[17]accountable for it. Why is the clerk held
[18]accountable for having to call outside law
[19]enforcement assistance when they feel uncomfortable
[20]or threatened or something happens? It's illogical
[21]in my opinion.

[22]Q. Okay. Let's go through these exhibits if

[23]we could. Exhibit 1 is your curriculum vitae?

[24]A. Yes, sir.

[25]Q. Exhibit 2 is your case list?

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[1]A. Yes, sir.

[2]Q. Exhibit 3 is your opinions?

[3]A. Yes, sir.

[4]Q. Exhibit 4 is the calls for service at 938

[5]West Colonial?

[6]A. Yes, sir.

[7]Q. Exhibit 5 is calls for service at 901

[8]South Orange Blossom Trail?

[9]A. Yes, sir.

[10]Q. Exhibit 6 is calls for service at 3355

[11]Vineland Road?

[12]A. Yes, sir.

[13]Q. Exhibit 7 is the calls for service at 4305

[14]North Pine Hills Road?

[15]A. Yes, sir.

[16]Q. Exhibit 8 is the calls for service at 4355

[17]Silver Star?

[18]A. Yes, sir.

[19]Q. Exhibit 9 is the calls for service to 4690

[20]South Kirkman?

[21]A. Yes, sir.

[22]Q. Exhibit 10 is your billing?

[23]A. Yes, sir.

[24]Q. It appears that up until the April 8th of

[25]2016 for your pre-deposition meeting, presumably

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[1]that was with Mr. King this morning?

[2]A. Yes, sir.

[3]MR. KING: Objection to form.

[4]BY MR. MENELLO:

[5]Q. Did you meet with -- who did you meet with

[6]during your pre-deposition meeting?

[7]A. Mr. King.

[8]Q. On April 8th of 2016?

[9]A. Yesterday and today.

[10]Q. Okay. So you have spent a total of

[11]85 hours on this case?

[12]A. Yes, sir.

[13]Q. And that total bill, the total amount of

[14]money that you have billed or will bill is \$ 23,375?

[15]A. Yes, sir.

[16]Q. And it looks like you had a retainer of

[17]\$ 2200?

[18]A. Yes, sir.

[19]Q. You were first retained in December of

[20]2015?

[21]A. Yes, sir.

[22]Q. Had you had any involvement at all in this

[23]matter prior to December 28th of 2015?

[24]A. I don't believe so.

[25]Q. Okay. And you charge \$ 500 an hour for

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[1]your deposition?

[2]A. Yes, sir.

[3]Q. So if we spend four hours it would be

[4]another \$ 2,000 in addition to what you've already

[5]billed?

[6]A. Correct.

[7]Q. So as of couple of minutes from now when

[8]we end, you will have charged and/or billed \$ 25,375

[9]in this case, true?

[10]A. That's correct.

[11]Q. Exhibit 11 are the photographs you took --

[12]A. Yes, sir.

[13]Q. -- when you went to the store in 2016?

[14]Exhibit 12 is the correspondence?

[15]A. Yes, sir.

[16]Q. And you've given me letters. Do you have

[17]any e-mail correspondence that you have either sent

[18]to or received from Mr. King's office?

[19]A. No, sir.

[20]Q. No communication by e-mail?

[21]A. No.

[22]Q. Have you communicated with anyone else

[23]other Mr. King about your opinions in this case?

[24]A. No, sir.

[25]Q. Okay. The report that you prepared, did

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[1]you actually type it yourself?

[2]A. Yes, sir.

[3]Q. Were there drafts that were exchanged

[4]between you and Mr. King or somebody in Mr. King's

[5]office?

[6]A. No. I mean, I went over it with Mr. King

[7]yesterday and he was gracious enough to help me

[8]with some typos.

[9]Q. Okay. Exhibit 13 was the bill dated

[10]April 4th, 2016?

[11]A. Yes.

[12]Q. Exhibit 14 was the Answers to the

[13]Interrogatories we've discussed?

[14]A. Yes, sir.

[15]Q. Exhibit 15 were the two photographs --

[16]actually we got the wrong one. Where's the --

[17]MR. KING: It's composite.

[18]MR. MENELLO: No, no, it wasn't this one.

[19]It was the -- it was the still from the store.

[20]It's that and this.

[21]MR. KING: Okay.

[22]BY MR. MENELLO:

[23]Q. All right. Exhibit 15 is the once picture

[24]from the night of the incident and then the still

[25]from the -- from the video; correct?

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[1]A. Yes, sir.

[2]Q. Okay. Exhibit 16 is the Florida

[3]statute --

[4]A. Yes.

[5]Q. -- 812.173?

[6]Exhibit 17 is the -- the statute that you

[7]pulled from the Crime Prevention Training Institute

[8]web page?

[9]A. Yes, sir.

[10]Q. And finally Exhibit 18 is your deposition

[11]summary?

[12]A. Correct.

[13]Q. And from what I kind of reviewed from the
[14]summary, just a quick glance is these aren't
[15]opinions, these are just factual statements from
[16]the deposition?

[17]A. Correct. Annotations, correct.

[18]Q. Okay. And it looks like there's some
[19]highlighting on -- on these?

[20]A. Correct.

[21]Q. What's the purpose of your highlighting?

[22]A. Just to help as I read it to remind --
[23]remember who said what.

[24](Whereupon, the above-referenced item was
[25]marked as Defendants' Exhibit Number 18 for
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[1]Identification by the reporter.)

[2]BY MR. MENELLO:

[3]Q. Okay. Was this store considered by OPD to
[4]be a regular let out location?

[5]MR. KING: Objection, form.

[6]THE WITNESS: I have no information on
[7]that.

[8]BY MR. MENELLO:

[9]Q. I see you highlighted on Page 13, it says
[10]Scott and Green are from Hope Circle Boys. Why did
[11]you highlight that?

[12]MR. KING: Objection, form.

[13]THE WITNESS: About the discussion whether
[14]they were part of a gang or not.

[15]BY MR. MENELLO:

[16]Q. To your knowledge, have -- or strike that.

[17]Have you done any type of research in your

[18]career about club let outs?

[19]A. No, sir.

[20]Q. And -- and do you have any knowledge as to

[21]whether when these let outs occur whether they go

[22]to random businesses, random parking lots or do

[23]they have in their mind specifically where they're

[24]going to go?

[25]A. I would defer to the police officers, the

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[1]detectives and their knowledge more intimately than

[2]mine.

[3]Q. Great. All right. Mr. Atlas, anything

[4]else that I haven't -- your opinions that I haven't

[5]asked you about?

[6]A. No, sir.

[7]Q. Okay.

[8]MR. MENELLO: Thank you, sir. I have

[9]nothing further.

[10]MR. KING: One thing I forgot.

[11]RE CROSS EXAMINATION

[12]BY MR. KING:

[13]Q. You indicated on -- that nightclubs --

[14]nightclubs have Friday night, Saturday night, it

[15]would have been reasonable to have off duty Friday

[16]night, Saturday night. If nightclubs in the Orange

[17]County area, Orlando had Sunday night, would it

[18]have been unreasonable for them to have off duty on

[19]Sunday nights as well to match those let outs?

[20]A. Correct. And I stated like whether it be

[21]a Wednesday night, hump night, or a Sunday night,

[22]it would have been equally as appropriate.

[23]Q. Okay. All right. So it would not have

[24]been unreasonable for them to have off duty on a

[25]Sunday night 11 to 5?

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[1]THE WITNESS: Correct.

[2]MR. MENELLO: Object to the form.

[3]THE WITNESS: Especially if -- if that's

[4]the track record of their prior incidents is

[5]on Sunday night rather than a Friday night.

[6]MR. KING: Okay.

[7]REDIRECT EXAMINATION

[8]BY MR. MENELLO:

[9]Q. And have you done any of that analysis to

[10]figure out the track record of when they would

[11]happen, what nights?

[12]A. The dates are self-evident.

[13]Q. Okay. So it depends on where -- where

[14]they most likely were going to happen or how --

[15]what dates they were going to happen or most likely

[16]based upon the experience?

[17]A. For example -- correct. For example, some

[18]of the clubs here in Fort Lauderdale, you know,

[19]they have a reggae night on a Sunday night or a

[20]Thursday night and that's the night that's

[21]attracting a certain demographic, Jamaican posses,

[22]Haitians, whatever, the security needs to be

[23]appropriate as compared to it's ballroom dance

[24]night where there's, you know, swing dance music.

[25]MR. MENELLO: Thank you, Mr. Atlas. I

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[1]have nothing further. Appreciate it.

[2]THE VIDEOGRAPHER: We're going off the

[3]record, the time is 2:01.

[4]THE WITNESS: Waive

[5]MR. MENELLO: I'm ordering.

[6]MR. KING: Copy. E-tran.

[7](Whereupon, a discussion was held off the

[8]record, after which the following proceedings

[9]were had:)

[10](The deposition was concluded at 2:01

[11]p.m.)

[12](Reading and signing of the deposition was

[13]waived by the witness and all parties.)

[14]

[15]

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

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[1]CERTIFICATE OF OATH

[2]STATE OF FLORIDA

[3]COUNTY OF BROWARD

[4]

[5]I, Andrea Mazor-Stabb, Registered Professional

[6]Reporter, Florida Professional Reporter, Notary Public,

[7]State of Florida, certify that RANDALL ATLAS, Ph.D.

[8]personally appeared before me on April 8, 2016 and was

[9]duly sworn.

[10]Signed this 10th day of April, 2016.

[11]

[12]

/s/ [Signature]

[13]Andrea Mazor-Stabb

Registered Professional Reporter

[14]Florida Professional Reporter

Notary Public, State of Florida

[15]Commission No.: FF 53145

Expires: October 23rd, 2017

[16]

[17]

[18]

[19]

[20]

[21]

[22]

[23]

[24]

[25]

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[1]CERTIFICATE OF REPORTER

[2]STATE OF FLORIDA

[3]COUNTY OF BROWARD

[4]

[5]I, Andrea Mazor-Stabb, Registered Professional

[6]Reporter, Florida Professional Reporter, certify that I
[7]was authorized to and did stenographically report the
[8]deposition of RANDALL ATLAS, Ph.D., Pages 1 through 196
[9]that a review of the transcript was not requested; and
[10]that the transcript is a true record of my stenographic
[11]notes.

[12]I further certify that I am not a relative,
[13]employee, attorney, or counsel of any of the parties,
[14]nor am I a relative or employee of any of the parties'
[15]attorneys or counsel connected with the action, nor am
[16]I financially interested in the action.

[17]Dated this 10th day of April, 2016.

[18]

[19]

[20]

[21]

[22]

[23]/s/ [Signature]

Andrea Mazor-Stabb, R.P.R., F.P.R.

[24]Registered Professional Reporter

Florida Professional Reporter

[25]

Appendix

[SEE GLOSSARY IN ORIGINAL]