

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 14-300017 CFDB

DIVISION: CASE

VS.

CHRISTOPHER HOIT
_____ /

STATE OF FLORIDA

CASE NO.: 14-300018 CFDB

DIVISION: CASE

vs.

JAMES HOIT

Defendant.
_____ /

Defendants' Petition to Determine Immunity From Prosecution and, alternatively, Motion to Dismiss the Charge of Manslaughter and to Determine Admissibility of Character Evidence

Pursuant to § 776.012, 776.013, 776.031, and 776.032, Fla.Stat. (commonly and collectively referred to as the "Stand Your Ground Law"), Art. I, § 9, Fla. Const., and Fla. R. Crim. P. 3.190(a),(b) and (c), defendants, James and Christopher Hoit¹, move this Court to

1. Conduct an evidentiary hearing where the defendants will show, by the preponderance of the evidence, they are entitled to immunity from prosecution; and
2. Upon the defendants' showing, enter an Order declaring them immune from criminal prosecution and civil liability in connection with the unfortunate death of Ali Malik and dismissing, with prejudice, the charges pending against them.

The evidentiary hearing contemplated by the Stand Your Ground Law is essentially a slightly abbreviated trial; the Court will hear almost all the evidence in the case. Because the Court will receive such a volume of evidence, should the Court find the defendants have not met their burden of proof or are otherwise not entitled to the asserted immunity, defendants request the Court consider the alternative requested relief - dismissal because the facts (based on the sworn

¹ Defendants James and Christopher Hoit are brothers who are both charged with manslaughter in violation of §782.07 Fla.Stat. This Motion is filed in each case but is identical because the facts and legal arguments are the same as to both brothers.

testimony of witnesses) show Mr. Malik's death was the result of "excusable homicide" as it occurred during the heat of sudden combat, without any dangerous weapon being used and not in a cruel or unusual manner. Therefore, the defendants alternatively request this Court enter an Order dismissing the case with prejudice.

Defense counsel recognizes these are two distinct grounds for relief, but in the interests of judicial economy, presents the issues together for the Court's consideration. To the extent a Motion to Dismiss requires facts be specifically alleged and sworn to, this Motion contains a detailed recital of the facts, citations to sworn testimony where available, and is sworn to by the defendants who will execute a separate affidavit to be filed prior to hearing on this matter. Further, the Court will receive sworn testimony during the Stand Your Ground hearing. Accordingly, a Motion to Dismiss is properly before the Court for determination.

Finally, as the Court will see from the Statement of Facts, there will be testimony offered to show the decedent, Ali Malik f/k/a Otis Carr, Jr., had a reputation for being an aggressive and violent individual, boasted of his fighting prowess as a professional boxer and a street fighter and had a significant criminal history with many violent crimes. Defense counsel requests the Court consider the admissibility of such testimony as it is presented during the evidentiary hearing and, if necessary, rule on whether such testimony may be admissible in front of a jury should this case go to trial.

Request for Judicial Notice

Defense counsel has been provided with Mr. Malik's criminal history which contains numerous out of state convictions for violent offenses (attached as Exhibit "A")². This "printout" from South Carolina contains multiple felonies, many of which are violent, such as Aggravated Domestic Violence, Carrying a Pistol, Assault & Battery on Law Enforcement Office While Resisting Arrest and Felony Public Drunk. Defense counsel is obtaining certified copies of these convictions. Additionally, Mr. Malik was arrested for driving under the influence in Volusia County on October 2, 2013. At the time of his death, Mr. Malik was not legally able to drive. A review of this arrest video shows Mr. Malik's physical size and aggressive demeanor towards law enforcement.

To the extent these convictions may be admissible to establish reputation evidence or for any other lawful purpose, defense counsel seeks judicial notice of court records and convictions. Defense counsel is still working with other States to obtain their certified records, but this Notice is given to notify the State that pursuant to § 90.201-204, Fla.Stat., defendants request the Court take judicial notice of accurate copies of court records including convictions.

² This was provided by the State on September 2, 2014.

Statement of Facts

This Statement of Facts draws on deposition testimony and cannot substitute for the nuances of the live testimony of dozens of witnesses. These facts are presented only as a summary and overview for the Court of the testimony which will be elicited during an evidentiary hearing. Whenever possible, deposition testimony has been cited in support of a statement. When this occurs, deposition testimony will be quoted with deponent's last name followed by page and line references (Smith pg. X ln. X) and the depositions themselves will be filed with the Court prior to the hearing. The relevant pages of each deposition have been attached for ease of reading.

In the late evening leading into the early hours of January 4, 2014, an intoxicated³ Ali Malik a/k/a Otis Carr, Jr., walked to his "classic pick-up truck" parked outside Brown's Billiards, in Holly Hill, Florida. Mr. Malik was approximately 6'3 and weighed 270lbs. He was a professional boxer who claimed to have had multiple professional fights.⁴ Song pg. 20 lns. 17-22. Mr. Malik had previously been in fights with patrons of Brown's Billiards. Song pg. 23-24. These fights included an incident where Mr. Malik struck a patron three times in the head, knocking him unconscious. Song pg. 24 lns. 5-9. During these fights, Mr. Malik would continue to attack a downed opponent until pulled off. Song pg. 28 lns. 15-21. Mr. Malik had a temper when he drank and few people could placate him. Mr. Malik's reputation was well known to the regulars at Brown's Billiards and all three defendants were also regulars.

Mr. Malik had a temper which could be triggered by a few unique issues - one was disrespect for his female friends.⁵ Another was because Mr. Malik had exceptional pride in his automobiles. Song. pg. 25 ln. 7-10. "His cars. That was all he had, and he had a lot of pride in those cars. ... You touched -- you touch his car, you know, try to dent it or something, he will go off. ... He is going to want to fight." Mr. Malik's other "hot button" was racial comments. During depositions, when counsel used the word "nigger" the following conversation ensued:

Q: What would Mr. Malik's reaction have been to that word? Do you know?

A: Probably not good.

Q: What do you mean by that?

A: ... He'd probably want to fight you. Song pg. 29 ln. 19-25. See also Gerow pg. 39 lns 6-25.

³ Toxicology Reports attached as Exhibit "B" indicate Mr. Malik's blood alcohol content was 0.153g/100ml (approximately twice the legal limit for intoxicated drivers).

⁴ Mr. Malik's friends admit Mr. Malik boasted about his fighting prowess, both as a "boxer" and a street fighter. However, witness Bruce Song indicates Mr. Malik lied about earning income from boxing because he was ashamed of his job as a machinist. Mr. Malik lost his job the day of this incident.

⁵ Witnesses testify Mr. Malik was upset with one the Hoits for showing up at the billiards hall with another woman, but never communicated this to the brothers. There appears to have been no communication between the parties prior to the fight.

Combining a racial epithet with touching Mr. Malik's vehicle would have disastrous consequences, as this night proved.

Q: What if someone said that word and hit his car? What do you think Mr. Malik's reaction would have been?

A: Oh, then he is coming after you. Song pgs. 30-31. See also Gerow pg. 39 lns 6-25.

Witness Christina Bolin had been inside Browns with her friend Giovanna ("Gia") Castrogiovana and three young men, brothers James and Christopher Hoit and their friend Andrae Jelks. These five friends were standing in the parking lot near Ms. Bolin's vehicle, which was a few car spaces from Mr. Malik's truck. The friends are discussing an early encounter with a black Cadillac when Mr. Jelks, a young african american, uses the word "nigger" in the course of conversation. The word was not directed at Mr. Malik. However, Mr. Malik overheard the conversation and confronted Mr. Jelk's about his use of the word. Prior to this, there had been no communication between the parties that evening and certainly no prior confrontation.

A verbal confrontation ensued between Mr. Jelks and Mr. Malik, during which time the Hoit brothers and the girls tried to calm everyone down. Still being aggressive and difficult, Jelk's strikes the front of Malik's truck as Malik is leaving the parking lot. Although Mr. Malik is already inside his vehicle when Mr. Jelk's strikes the bumper, Malik parks and exits the safety of his truck. Then, Mr. Malik decides to physically engage with the three men. Mr. Malik removes his sportscoat and places it in the open bed of his truck; removing one's jacket or other "extra" items of clothing is universally recognized as a precursor to combat. Traylor pg. 33 lns. 16-25 and pg. 34 lns 1-8. Additionally, both witnesses Bolin and Castrogiovana believe they see a firearm on Mr. Malik and hear a metallic thud when the jacket is placed into the bed of the truck. Mr. Malik was known to own a handgun but "kept it in his other vehicle." Song pg. 42 lns 19-21. Interestingly, the truck was removed from the scene of the fight by Mr. Malik's friends and never searched by law enforcement. No weapon was ever recovered and no other vehicle owned by Mr. Malik was searched.

Once Mr. Malik exits the truck and removes his jacket, he swings a punch at James Hoit, who is closest to him. The blow connects and sends James Hoit back into a car. At this point, a scuffle ensues and Malik ends up with his large arm wrapped around James Hoit's throat, choking him. As a society, we are now painfully aware that a "choke hold" can cause death and is considered lethal force; at a hearing on this matter, defense counsel will establish through the testimony of law enforcement that a choke hold is considered a lethal maneuver which would be met with deadly force.

The only witnesses to the start of the fight are the combatants and the two girls; no one inside the bar sees how the fight starts. Bruce Song, Mr. Malik's friend and one "of the only people who can calm Malik down", did not observe the beginning of the altercation nor did Mr. Malik's other friend, Mr. Gerow, who is confined to a wheelchair. Gerow pg. 9 lns. 13-23. See

also Song. When Mr. Song comes outside from Brown's, he immediately sees Malik choking one of the brothers wearing a black shirt - it "eventually got to the point where Ali had -- black shirt - James in a headlock and they gotten him down on the ground." (Song pg. 12 ln. 1-4) Mr. Jelks and the other Hoit brother continue to strike Mr. Malik in attempt to have him release his choke hold on the black-shirted brother.

Q: And all this time Ali is not letting go of [James]?

A: Correct.

Q: All right. So he's got James and he will not let go of him while the other guys are hitting him, is that correct?

A: Correct. Song pg. 13 lns 15-25

At no point does Mr. Song involve himself in the fight but actually goes back inside the pool hall. When Mr. Gerow sees the fight, he sees Mr. Malik with his arm around the neck of one of the Hoits. Gerow pg. 12 lns 4-16. He cannot tell which brother it was. Mr. Malik is on the ground choking the brother from behind. Gerow pg. 13 lns 7-12

While James Hoit is struggling in the hold, Mr. Jelks and Christopher Hoit are fighting Mr. Malik, striking him and trying to pull the much larger man's arms off from around James Hoit's throat, but Mr. Malik will not release his grip. Mr. Malik manages to stand up from a seated position behind the brother. Gerow pg. 15 lns. 8-18. Mr. Malik is able to stand by pushing back against a plate glass window and "walking up it" while still choking the brother. Gerow pg. 16 lns 8-15.

During the struggle to free James Hoit, Mr. Malik falls through a large glass window while holding James Hoit. During the fall, Mr. Malik and Mr. Hoit's bodies rotated so that Mr. Hoit went through the glass first. Mr. Gerow did not see Mr. Malik pushed into the window, rather the window seemed to break under the pressure of all the weight against it. Mr. Gerow describes the glass breaking as "surreal. I watched the glass flex, then next thing you know it popped ... I guess, the force combined he went through or they went through. He still had one of the Hoits wrapped up at that time." Gerow pg. 16 lns 16-25. Even through all this, Mr. Malik did not release his choke hold. Gerow pg. 17 lns. 1-4. Witnesses describe James Hoit as being restrained by Mr. Malik almost the entire fight and struggling lightly. Gerow pg 15 lns 7-12. Witnesses testify Mr. Malik does not release his grip on James Hoit's throat until Mr. Malik is knocked unconscious after falling through a plate glass window, despite James Hoit's two friends trying to release him. Gerow pg. 15 lns 10-15.

Once through the window, a broken shard of glass pierces Mr. Malik's side and the fall stuns him. It is at this point Mr. Malik releases James Hoit. "When Mr. Malik released his hold, did the brother he was restraining get up? Yes." Gerow pg. 33 lns 2-4. There is some discrepancy as to whether Mr. Malik was struck after he fell through the window, but defense

witnesses characterize the fight as stopping once James Hoit was no longer in danger of being choked. Additionally, Mr. Gerow, (Mr. Malik's friend), describes the fight as ending once Mr. Malik's hold was released and it was clear the threat was over.

Q: Certainly there was no time in which as the three of them were walking away one of them came running back and got in one last punch or anything like that.

A: Not that I remember, no.

Q: Once it was clear that Mr. Malik was not responsive, you think that's about the time that everything stopped?

A: Within a few seconds at least, yes. Gerow pg. 34 lines 1-10.

Once James Hoit is released, the fight ends. Mr. Malik is still conscious, although injured. Mr. Jelks, the Hoit brothers and the girls leave the scene of the fight. Paramedics arrive and try to render aid to a still combative Mr. Malik, but ultimately Mr. Malik dies from his wounds.

I. Mr. Malik's Reputation is Admissible to (1) Show He was the Aggressor and (2) Show the defendants were reasonably apprehensive of Mr. Malik and their use of defensive measures was reasonable

During the Stand your Ground hearing and at any trial in this matter, defendants seek to admit evidence of Mr. Malik's reputation, in the relevant community, to show he was the aggressor (state of mind and conduct) and the reasonableness of the Hoits fear and defensive actions (their state of mind). Testimony from all of Mr. Malik's friends and the "regulars" at Brown's Billards establishes Mr. Malik's reputation as a "street fighter," a "professional boxer," a loud and aggressive individual prone to physical altercations and violence when intoxicated and someone with "triggers" including his vehicle and racial epithets. The defendants were also regulars at Brown's Billards and knew of Mr. Malik and his reputation. Mr. Malik's reputation as an aggressive combative individual prone to violence when intoxicated and fiercely protective of his female friends, possessive of his vehicle and sensitive to perceived racial slurs is admissible for two different purposes.

A. Reputation Evidence is Admissible to Show Mr. Malik was the Aggressor

In a self-defense case such as this, "evidence of the victim's character trait of violence ... may be offered on the issue of who was the aggressor." Charles W. Ehrhardt, *Florida Evidence* § 404.6 (2012 ed.). Under section 90.404(1)(b), Florida Statutes (2012), "evidence of a pertinent character trait of the victim is admissible when it is offered by the accused to prove that the victim acted in conformity with" his character. Ehrhardt, *supra*, § 404.6. Thus, "evidence of the dangerous character of the victim is admissible to show, or as tending to show, that the defendant acted in self-defense." *Smith v. State*, 606 So.2d 641, 642 (Fla. 1st DCA 1992) (citing *Garner v. State*, 28 Fla. 113, 9 So. 835, 841 (1891)). In most self-defense cases, "[e]vidence of the victim's reputation is admissible to disclose his or her propensity for violence and the likelihood that the victim was the aggressor," *Berrios v. State*, 781 So.2d 455, 458 (Fla. 4th DCA 2001), the notion

being that reputation evidence demonstrates “the ‘product of what is generally discussed in the community.’ ” *Johnson v. State*, 108 So.3d 707, 709 (Fla. 5th DCA 2013) (quoting Ehrhardt, *supra*, § 405.1); *see also Larzelere v. State*, 676 So.2d 394, 400 (Fla.1996). Such reputation testimony is admissible in a self-defense case “as circumstantial evidence to prove [the victim’s] conduct,” that at the crucial time the victim acted consistently with his reputation for violence. Ehrhardt, *supra*, §§ 405.3, 404.6. ***A defendant’s prior knowledge of the victim’s reputation for violence is irrelevant when the evidence is offered on the issue of who was the aggressor, “because the evidence is offered to show the conduct of the victim, rather than the defendant’s state of mind.”*** *Dwyer v. State*, 743 So.2d 46, 48 (Fla. 5th DCA 1999) (emphasis added); *see also Melvin v. State*, 592 So.2d 356, 357 (Fla. 4th DCA 1992) (holding that deceased’s reputation as a bully was admissible even though the defendant did not know of that reputation). *See also Antoine v. State*, 138 So. 3d 1064 (Fla. 4th DCA 2014)

The testimony of Mr. Malik’s friends and acquaintances is that, when intoxicated, he was the aggressor and prone to fighting on little or no provocation. Additionally, the testimony is Mr. Malik would have “fought” anyone who touched his vehicle or used a racial epithet. It is not in dispute Mr. Malik was intoxicated; forensic toxicology shows his blood alcohol content was 0.153g/100ml. Additionally, it is not disputed co-defendant Jelks, a young black man, struck Mr. Malik’s vehicle’s bumper and had earlier drawn Mr. Malik’s ire for his use of the word “nigger” in his conversation with the Hoit brothers. Here, Mr. Malik’s reputation evidence is admissible to demonstrate his conduct and establish he was the aggressor and acted consistently with his reputation by exiting his vehicle, removing his jacket and starting a fight with the defendants.

B. Reputation Evidence and prior specific acts are Admissible to Show the Hoits were reasonably “apprehensive” of Mr. Malik “dangerous character” and their defensive conduct was reasonable based on their knowledge of Mr. Malik’s reputation and specific prior acts.

In a self-defense case such as this, a second purpose to offer evidence of the victim’s character trait of violence is “to prove that the accused was reasonably apprehensive of the victim and that the defensive measures of the accused were reasonable.” Ehrhardt, *supra*, § 404.6; *see also Arias v. State*, 20 So.3d 980, 983 (Fla. 3d DCA 2009); *Diaz v. State*, 747 So.2d 1021, 1024–25 (Fla. 3d DCA 1999). When the evidence is offered for this purpose, “there must be evidence that the accused knew of the victim’s acts of violence or aggression.” Ehrhardt, *supra*, § 404.6.

Reputation testimony about a victim of a crime is often confused with evidence of prior specific acts of violence by a victim, which must be known by a defendant to be relevant to a self-defense claim. “Evidence of prior specific acts of violence by the victim is admissible,” *if known by the defendant*, “because it is relevant ‘to reveal the reasonableness of the defendant’s apprehension at the time of the incident.’ ” *Hedges v. State*, 667 So.2d 420, 422 (Fla. 1st DCA 1996) (quoting *Smith*, 606 So.2d at 642–43). For this category of evidence, a defendant’s knowledge of a victim’s specific acts of violence is a precondition to admissibility. *See Singh v. State*, 36 So.3d 848, 851 (Fla. 4th DCA 2010); *Shreiteh v. State*, 987 So.2d 761, 763 (Fla. 4th DCA 2008). *See also Antoine v. State*, 138 So. 3d 1064 (Fla. 4th DCA 2014)

Here, the Hoits knew Mr. Malik's reputation as a "dangerous individual" who boasted of his fighting prowess and was "an aggressive drunk." They had heard of his reputation and various "bar stories" about Mr. Malik; specifically, they knew he was a "fighter" and a "professional boxer." The impact of this reputation cannot be down played when they found themselves confronted by Mr. Malik outside Brown's Billards. Mr. Malik chose to exit his truck, remove his jacket to "get ready to fight" three smaller young men, and then attacked and struck James Hoit, driving him back into a vehicle. So not only were all of the accused men set upon by a much larger man, but they were attacked by someone they had heard was a professional fighter and experienced street fighter. On these facts, Mr. Malik's reputation for violence is critical to the Hoits' state of mind, the reasonableness of their defensive measures and should be considered by the fact finder.

II. The Court should grant the Defendants' Petition and declare them immune from criminal prosecution and civil liability in connection with the unfortunate death of Ali Malik.

The Hoits were not engaged in illegal activity and had the right to be in the parking lot outside Brown's Billards.

Mr. Malik's death was caused by his fall through a plate glass window and onto a shard of broken glass. It was not the result of a blow struck by any of the combatants. At no time did either Hoit brother use a weapon or deadly force - the testimony is clear one brother was restrained in a choke hold and the other brother was striking Mr. Malik with his fists in an effort to free his trapped brother.

Each Hoit brother was independently justified in using force, including deadly force, to protect himself from Mr. Malik's unlawful attacks and neither Hoit brother had any duty to retreat. Additionally, each Hoit brother was justified in using force, including deadly force, to defend their brother or friend from Mr. Malik's unlawful attacks.

While Mr. Malik ultimately died from his injuries, there was no use of lethal force on the part of any combatant except Mr. Malik. Even if the Court finds the use of limbs to strike Mr. Malik somehow rises to the level of "deadly force," either Hoit brother was justified in using such deadly force, because they reasonably believed that such force was necessary to prevent imminent death or great bodily harm to themselves or their companions.

III. The Court should dismiss the charges against the defendants because the undisputed facts establish Mr. Malik's death was the result of "excusable homicide" as it occurred during upon sudden combat, without any dangerous weapon being used and not in a cruel or unusual manner.

Under § 782.07, Fla.Stat., not all killings are criminal offenses; specifically, a killing is not a manslaughter where, as here, it involves an "excusable homicide." Here, Mr. Malik's death, while tragic, occurred under circumstances which, as a matter of law, preclude

manslaughter convictions for the Hoits. To establish a killing is "excusable" one of three circumstances need apply. It is the third circumstance - "sudden combat" - which is the most relevant. The Hoits did not have or use a dangerous weapon and Mr. Malik's killing was not done in a cruel or unusual manner. During a melee, the combatants fell through a plate glass window and a shard of glass pierced Mr. Malik's vital organs, ultimately causing his death after the fight was concluded. Mr. Malik had exited his vehicle and willingly engaged in a fight.

Appellate decisions make it clear the determination of what constitutes "sudden combat" is extremely fact specific:

"It is true that courts have sometimes ruled that manslaughter is not established by a death resulting from a brief disagreement between two people. These cases tend to be very fact specific and involve shoving matches rather than fistfights. For example, in *Aiken v. State*, 425 So.2d 641 (Fla. 3d DCA 1983), the defendant was a homeless man searching for food in a dumpster. He was confronted by a man who did not want vagrants in his neighborhood. Mr. Aiken pushed the man backward with a milk crate that he was planning to use as a step to enter the dumpster. The man lost his balance, fell backward, and hit his head on the pavement. The man died from the resulting skull fracture. The Third District ruled that this death was "excusable homicide" as a matter of law because no dangerous weapon was involved and the act was a matter of sudden combat not done in a cruel or unusual manner. *Aiken*, 425 So.2d at 643. Likewise, a shoving match that resulted in a heart attack has been declared insufficient to establish manslaughter. See *Tipton v. State*, 97 So.2d 277 (Fla.1957). It is also true that merely participating in a drag race has been declared insufficient to convict a person of the death of another driver in the drag race, where the defendant's operation of his motor vehicle did not cause the accident. See *Velazquez v. State*, 561 So. 2d 347 (Fla. 3d DCA 1990)." *Acosta v. State*, 884 So. 2d 112, 114-15 (Fla. Dist. Ct. App. 2004)

In a circumstance were the decedent had not been actively fighting, the Fifth District declined to find an "excusable homicide." *J.J.W. v. State*, 892 So.2d 1189 (Fla. 5th DCA 2005) (Suddenly, while the victim was distracted and unprepared to defend himself, the defendant punched him in the face causing him to crumple to the ground. The defendant continued to hit him as he lay on the ground.) See also *Valencia v. State*, 597 So.2d 372 (Fla. 3rd DCA 1992) and *Weir v. State*, 777 So.2d 1073 (Fla. 4th DCA 2001). These cases, which decline to excuse a killing as "sudden combat", are distinguishable. Here, Mr. Malik was clearly involved in the fight and attacked first. His death occurred when the combatants fell through a glass window during which time Mr. Malik had one of the Hoit brothers in a choke hold. It could just have easily been Mr. Hoit who was pierced by the shard of glass. This was unarmed mutual and sudden combat which ended in unforeseen tragedy. It is difficult to write that a killing was excusable because it was a street fight gone wrong, but the law supports this concept and requires dismissal of the manslaughter charges against the Hoits.

IV. Relief Requested

Defendants request the Court conduct the required *Peterson* evidentiary hearing so the defense may establish an entitlement to immunity from prosecution, and following the hearing, declare the defendants immune from prosecution as set forth above. Alternatively, should the Court decline to find the defendants immune from prosecution, defense counsel requests the Court dismiss the charges as excusable homicide and not manslaughter.

Defendants also request the Court determine the admissibility of those evidentiary matters set forth above.

Finally, should this matter proceed to trial, defense counsel requests the necessary self-defense, defense of others, and excusable homicide instructions be given, as supported by the evidence and theory of defense.

V. Verification of Pleadings

To the extent this Motion requires sworn testimony, such testimony is found in the depositions filed with the Court and the live testimony taken in open court. Additionally, defendants will each execute a Verification to be filed at a later date. This is because defendants are in custody and notarization requires defense counsel make additional arrangements.

VI. Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic service via the Florida Courts E-Filing Portal, in accordance with Administrative Order No. AOSC13-49, to the Office of the State Attorney, eservicevolusia@sao7.org this 14th day of January, 2015.

DAMORE, DELGADO, ROMANIK
& RAWLINS

/s/ Aaron D. Delgado

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Dear gentlemen,

I have reviewed Delgado's Motion to Produce Records Regarding Decedent pertaining to Ali A Malik f/k/a Otis Carr, Jr. Below is a list of arrests for the decedent that I have found information on. Disclaimer: I have reviewed any judgments/sentences/court documents to confirm the below information or the outcome of any listed case. Unless specified, the severity of charges, dispositions or case numbers I did not have.

Florida

1. Arrested 10/02/13 DUI and criminal mischief, misd dismissed

South Carolina – Otis Carr, Jr.

1. Arrested 06/27/89 possession alcohol by minor unkn dispo
2. Arrested 01/28/90 DWLS unkn dispo
3. Arrested 04/04/90 DUI, DWLS, No insurance, Fail stop for LEO, Open cont convicted of
DUI, Open cont and No insurance
4. Arrested 06/12/90 DUI, Driving without headlights convicted of
DWLS
5. Arrested 08/03/90 Trespass convicted
6. Arrested 10/16/90 Ass & battery, resisting arrest (Travelers Rest PD) convicted of
both on 11/13/90 (tracking #8191OP)
7. Arrested 07/12/91 Ass LEO while resisting arr (Greenville County SO - GCSO) unkn dispo
(arrest case #98907, tracking #C859905)
8. Arrested 07/25/91 DWLS, Fail stop for LEO convicted of
both
9. Arrested 05/02/93 Breach of peace, Interfering w/LEO, Ass & batt while resisting convicted of
Interfering with LEO, Ass & batt and Common law assault on 12/9/93 or 09/21/94 (arrest case
#98907 tracking #'s D787808, D787809, 06416VT). Ass & batt lists severity as misd. (GCSO)
10. Arrested 01/18/94 Criminal DV (GCSO) convicted
(arrest case #98907, tracking #06420XD)
11. Arrested 02/26/94 Hab traffic off(HTO), DWLS 4th, Resisting arr, Poss of pistol convicted of all
03/23/95, HTO listed as felony (arrest case #98907, tracking #'s 5203VW, D832745, 05201VW)
Greenville PD (GPD).
12. Arrested 07/02/94 DUI, DWLS convicted of
both, DWLS listed as misd
13. Arrested 07/30/94 Ass & batt (GCSO) convicted of
Common law ass & batt 9/15/94 (arrest case #98907, tracking #D708154)
14. Arrested 09/29/94 Breach of trust, Use vehicle w/out permission misd (GPD) convicted of
use veh w/out perm 6/17/96, unkn dispo of the other (arrest case #98907, tracking #E202272)
15. Arrested 03/07/95 Ass & batt aggravated, trespass misd (GCSO) non-
conviction for both 04/04/95 (arrest case #98907, tracking #'s E458649, E485070)
16. Arrested 05/23/95 4 fraudulent check charges (GCSO) conviction for 1
6/30/95 (arrest #98907, tracking #E079464)
17. Arrested 06/04/95 DWLS 5th, Open cont in veh, Res arrest conviction for
all, DWLS listed as misd
18. Arrested 06/22/95 Fraudulent check (GCSO) convicted
(arrest #98907, tracking #E485306)
19. Arrested 06/22/95 Failure to comply Non-conviction



20. Arrested 08/04/95 2 Fraudulent checks (GCSO) conviction for
both 10/5/95 (arrest #98907 tracking #E361561)
21. Arrested 09/18/95 DUI, DWLS, No ins, Viol ABC law, Resist arr, VOP carry pistol, VOP DUI, VOP HTO
convictions on 06/17/97 for all and DUI 4th listed as felony, resisting arr & DUI 3d listed as misds
(arrest #98907) (SC Highway Dept. Dist. 3)
22. Arrested 09/26/95 Failure to appear conviction
23. Arrested 09/26/95 Asslt & batt aggravated (GCSO) non-conviction
2/26/97 (arrest #98907, tracking #E629603)
24. Arrested 09/27/95 Forgery felony (Travelers Rest PD) conviction
3/3/97 & case #TR953730)
25. Arrested 10/24/95 FTA, Res arr, Open cont, Fraud check x 2, Inter w/LEO on VOP, DWLS 3rd - misd,
VOP carrying pistol, VOP DUI, VOP HTO felony, DWLS 2nd convictions for
all, the 10/24/95 date not listed as an arrest date, no tracking number or agency)
26. Arrested 08/27/96 Fraudulent check x 6 (GCSO) (arrest #98907, tracking #D862139) non-conviction
listed for 1, unknown dispo on the others
27. Arrested 08/28/96 Fraudulent check x 2 (GPD) unknown dispo
28. Arrested 06/19/97 DUI 3rd - misd, Resist arrest, DWLS 4th - misd convictions - all
29. Arrested 06/25/00 Ass & batt (GCSO) unknown dispo
(arrest #98907, tracking #G316373)
30. Arrested 09/09/00 Disorderly conduct (GPD) unknown dispo
(arrest #98907, tracking #30367BH)
31. Arrested 04/01/01 Disorderly conduct (GCSO) unknown dispo
(arrest #98907, tracking #24351BV)
32. Arrested 07/30/01 Criminal DV 2nd offense - misd (GCSO) non-conviction
08/29/01 (arrest #98907, tracking #G687311)
33. Arrested 09/23/01 Public drunk - misd (GPD) unknown dispo
34. Arrested 11/08/01 Fraudulent check <500 1st - misd (GCSO) unknown dispo
(arrest #98907, tracking #G859065)
35. Arrested 01/17/02 Fraudulent check <500 1st misd. (GCSO) non-conviction
02/08/02 (arrest #98907, tracking #G99201)
36. Arrested 03/23/02 DWLS 3 or more, DWLS, Fail to surrender DL - all misds conviction
01/22/03 for DUI 2nd - misd, 04/10/02 DWLS and failure to surrender DL non-convictions (SC HWY
Dept. Dist. 3) (arrest #98907, tracking #Z881307)
37. Arrested 05/11/02 Criminal DV aggravated - misd (Travelers Rest PD) conviction
01/22/03 criminal DV 2nd offense misd (tracking #G477466)
38. Arrested 05/21/02 DWLS 2nd misd, HTO felony (Travelers Rest PD) non-conviction
for HTO, unknown dispo for DWLS 06/24/02 (case #TR0202560)
39. Arrested 07/27/02 Public disorderly conduct - misd (GCSO) unknown dispo
40. Arrested 08/27/02 Public drunk - misd (GCSO) unknown dispo
41. Arrested 09/21/02 Public drunk - misd (GPD) unknown dispo
42. Arrested 02/13/03 Criminal DV 1st offense - misd (GPD) unknown dispo
(arrest #98907, tracking #H342633)
43. Arrested 03/29/03 Public disorderly conduct - misd (GCSO) unknown dispo
44. Arrested 11/17/03 DWLS 1st offense - misd unknown dispo
45. Arrested 04/01/04 DWLS 3rd or more - misd, HTO - felony (GPD) conviction of
DWLS - misd, 11/17/04 non-conviction of HTO on 03/07/05
46. Arrested 07/13/04 Ass & battery - misd (GPD) unknown dispo
(arrest #98907, tracking #H703589)

- 47. Arrested 08/21/04 Drinking in public - misd (GPD) unknown dispo
- 48. Arrested 12/29/04 Unlawful use of phone - misd (GCSO) unknown dispo
- 49. Arrested 02/25/05 DWLS - misd, HTO - felony (GCSO) unknown dispo
(arrest #98907, tracking #72879CA)

South Carolina -Ali Malik

- 1. Arrested 05/28/10 Traffic/FTA x 2 - misds (GPD) unknown dispo
- 2. Arrested 05/28/10 Public drunk - felony (GPD) unknown dispo
(arrest case #248855)
- 3. Arrested 08/25/10 DWLS - misd (GPD) unknown dispo
- 4. Arrested 09/12/10 Traffic/FTA x 2 - misds (GCSO) unknown dispo

Thank you,
Heatha Trigones, ASA



NMS Labs

CONFIDENTIAL

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Robert A. Middleberg, PhD, DABFT, DABCC-TC, Laboratory Director

Toxicology Report

Report Issued 01/22/2014 17:00

Patient Name Malik, Ali
Patient ID 14-07-004
Chain 19153
Age 43 Y. DOB 12/19/1970
Gender Male
Workorder 14005812

To: 10277
Volusia County Medical Examiner Office
Attn: Teri Hanans
1360 Indian Lake Road
Daytona Beach, FL 32124

Page 1 of 4

Positive Findings:

Table with 4 columns: Compound, Result, Units, Matrix Source. Rows include Ethanol, Blood Alcohol Concentration (BAC), Caffeine, Midazolam, and Fentanyl.

See Detailed Findings section for additional information

Testing Requested:

Table with 2 columns: Analysis Code, Description. Row: 8052B Postmortem Toxicology - Expanded, Blood (Forensic)

Specimens Received:

Table with 5 columns: ID, Tube/Container, Volume/Mass, Collection Date/Time, Matrix Source, Miscellaneous Information. Rows: 001 Gray Top Tube, 002 Gray Top Tube

All sample volumes/weights are approximations.

Specimens received on 01/09/2014.

Handwritten signature or initials in a circle



ORIG. TO TG
COPY TO TM
DATE 1-23-14 v.11

Detailed Findings:

Analysis and Comments	Result	Units	Rpt. Limit	Specimen Source	Analysis By
Ethanol	153	mg/dL	10	001 - Peripheral Blood	Headspace GC
Blood Alcohol Concentration (BAC)	0.153	g/100 mL	0.010	001 - Peripheral Blood	Headspace GC
Caffeine	Positive	mcg/mL	1.0	001 - Peripheral Blood	LC/TOF-MS
Midazolam	5.6	ng/mL	5.0	001 - Peripheral Blood	LC-MS/MS
Fentanyl	0.71	ng/mL	0.10	001 - Peripheral Blood	LC-MS/MS
Ethanol	Confirmed	mg/dL	10	001 - Peripheral Blood	Headspace GC

Other than the above findings, examination of the specimen(s) submitted did not reveal any positive findings of toxicological significance by procedures outlined in the accompanying Analysis Summary.

Reference Comments:

1. Caffeine (No-Doz) - Peripheral Blood:

Caffeine is a xanthine-derived central nervous system stimulant. It also produces diuresis and cardiac and respiratory stimulation. It can be readily found in such items as coffee, tea, soft drinks and chocolate. As a reference, a typical cup of coffee or tea contains between 40 to 100 mg caffeine.

The reported qualitative result for this substance was based upon a single analysis only. If confirmation testing is required please contact the laboratory.

2. Ethanol (Ethyl Alcohol) - Peripheral Blood:

Ethyl alcohol (ethanol, drinking alcohol) is a central nervous system depressant and can cause effects such as impaired judgment, reduced alertness and impaired muscular coordination. Ethanol can also be a product of decomposition or degradation of biological samples. The blood alcohol concentrations (BAC) can be expressed as a whole number with the units of mg/dL or as a decimal number with units of g/100 mL which is equivalent to % w/v. For example, a BAC of 85 mg/dL equals 0.085 g/100 mL or 0.085% w/v of ethanol.

3. Fentanyl (Duragesic®; Sublimaze®) - Peripheral Blood:

Fentanyl is a DEA Schedule II synthetic morphine substitute anesthetic/analgesic. It is reported to be 80 to 200 times as potent as morphine and has a rapid onset of action as well as addictive properties.

It is reported that patients lost consciousness at mean plasma levels of fentanyl of 34 ng/mL when infused with 75 mcg/Kg over a 15 min period; peak plasma levels averaged 50 ng/mL.

After application of a fentanyl transdermal preparation (patch), serum fentanyl concentrations are reported to be in the following ranges within 24 hours:

- 25 mcg/hour patch: 0.3 - 1.2 ng/mL
- 50 mcg/hour patch: 0.6 - 1.8 ng/mL
- 75 mcg/hour patch: 1.1 - 2.6 ng/mL
- 100 mcg/hour patch: 1.9 - 3.8 ng/mL

Following removal of the patch, serum fentanyl concentrations are reported to decrease with a mean elimination half-life of 17 hours (range, 13 to 22 hours).

The mean peak plasma serum fentanyl concentration in adults given an 800 mcg oral transmucosal fentanyl preparation over 15 minutes is reported at 2.1 ng/mL (range, 1.4 - 3.0 ng/mL) at approximately 0.4 hours.

Signs associated with fentanyl toxicity include severe respiratory depression, seizures, hypotension, coma and death. In fatalities from fentanyl, blood concentrations are variable and have been reported as low as 3 ng/mL.



Reference Comments:

4. Midazolam (Versed®) - Peripheral Blood:

Midazolam is a short acting benzodiazepine (a DEA Schedule IV controlled compound) with strong central nervous system depressant/hypnotic properties. It is usually utilized for preoperative sedation, as a sedative hypnotic, and as an agent for the induction of anesthesia. It has significant abuse potential. Effects noted following use may include sedation, somnolence (drowsiness or sleepiness), visual disturbances (diplopia or double vision), dysarthria (slurred speech), ataxia (shaky movements and unsteady gait), and intellectual impairment and coma may result.

Oral doses of 10 mg given to 20 subjects produced average peak plasma concentrations (at 1 hr post dose) for midazolam of 69 ng/mL in males and 53 ng/mL in females. As a preoperative medication, intramuscular injection of midazolam at 0.13 mg/Kg body weight (9.1 mg/70 Kg body weight) produced peak plasma concentrations of 68 ng/mL.

At high concentrations, confusion, impaired coordination, diminished reflexes, respiratory depression, apnea, hypotension and coma may result.

Sample Comments:

001 Dr. Gallagher T. Malphurs P. Feller

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded two (2) years from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 14005812 was electronically signed on 01/22/2014 16:40 by:

Dawn Sherwood

Dawn N. Sherwood,
Certifying Scientist

Analysis Summary and Reporting Limits:

All of the following tests were performed for this case. For each test, the compounds listed were included in the scope. Please refer to the Positive Findings section of the report for those compounds that were identified as being present.

Acode 50012B - Benzodiazepines Confirmation, Blood (Forensic) - Peripheral Blood

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
7-Amino Clonazepam	5.0 ng/mL	Flurazepam	2.0 ng/mL
Alpha-Hydroxyalprazolam	5.0 ng/mL	Hydroxyethylflurazepam	5.0 ng/mL
Alprazolam	5.0 ng/mL	Hydroxytriazolam	5.0 ng/mL
Chlordiazepoxide	20 ng/mL	Lorazepam	5.0 ng/mL
Clobazam	20 ng/mL	Midazolam	5.0 ng/mL
Clonazepam	2.0 ng/mL	Nordiazepam	20 ng/mL
Desalkylflurazepam	5.0 ng/mL	Oxazepam	20 ng/mL
Diazepam	20 ng/mL	Temazepam	20 ng/mL
Estazolam	5.0 ng/mL	Triazolam	2.0 ng/mL

Acode 52142B - Fentanyl and Metabolite Confirmation, Blood (Forensic) - Peripheral Blood

-Analysis by High Performance Liquid Chromatography/Tandem Mass Spectrometry (LC-MS/MS) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Fentanyl	0.10 ng/mL	Norfentanyl	0.20 ng/mL

Acode 52250B - Alcohols and Acetone Confirmation, Blood (Forensic) - Peripheral Blood



Analysis Summary and Reporting Limits:

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

Acode 8052B - Postmortem Toxicology - Expanded, Blood (Forensic) - Peripheral Blood

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Barbiturates	0.040 mcg/mL	Salicylates	120 mcg/mL
Cannabinoids	10 ng/mL		

-Analysis by Headspace Gas Chromatography (GC) for:

<u>Compound</u>	<u>Rpt. Limit</u>	<u>Compound</u>	<u>Rpt. Limit</u>
Acetone	5.0 mg/dL	Isopropanol	5.0 mg/dL
Ethanol	10 mg/dL	Methanol	5.0 mg/dL

-Analysis by High Performance Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS) for: The following is a general list of compound classes included in this screen. The detection of any specific analyte is concentration-dependent. Note, not all known analytes in each specified compound class are included. Some specific analytes outside these classes are also included. For a detailed list of all analytes and reporting limits, please contact NMS Labs.

Amphetamines, Anticonvulsants, Antidepressants, Antihistamines, Antipsychotic Agents, Benzodiazepines, CNS Stimulants, Cocaine and Metabolites, Hallucinogens, Hypnotics, Hypoglycemics, Muscle Relaxants, Non Steroidal Anti-Inflammatory Agents, Opiates and Opioids.

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT,
IN AND FOR VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

-vs-

Case No. 2014-300019-CFDB

ANDRAE JERMAINE JELKS,

Defendant.

STATE OF FLORIDA

-vs-

Case No. 2014-300017-CFDL

CHRISTOPHER HOIT,

Co-Defendant.

STATE OF FLORIDA

-vs-

Case No. 2014-300018-CFDL

JAMES HOIT,

Co-Defendant.

DEPOSITION OF BRUCE SONG
Taken on Behalf of the Defendant,
Andrae Jermaine Jelks

DATE TAKEN: July 10, 2014

TIME: 12:58 p.m. to 1:42 p.m.

PLACE: Office of the State Attorney
251 North Ridgewood Avenue
Daytona Beach, Florida

STENOGRAPHICALLY
REPORTED BY: Lynne Barge, Court Reporter

TRANSCRIBED BY: Jennifer Harris, RPR, FPR
Santorelly Reporting

1 A. Correct.

2 Q. All right. Now, there was another heavysset black
3 male in the bar that night but he had left before the
4 altercation began?

5 A. Yes. That was -- that one -- he was wearing a
6 white tank top, and there was an altercation with somebody
7 else earlier in the evening with a very drunk guy
8 claiming -- I can't really recollect what gang, but he was
9 claiming some gang.

10 Q. Okay.

11 A. And the chunky guy came over and said, "Do you
12 want me to handle this?" He goes, "I'm not chunky for no
13 reason."

14 Q. This guy had nothing to do with the altercation
15 between the Hoits, Jelks, and Mr. Malik?

16 A. No, not that I know of.

17 Q. Okay. Now, Mr. Malik had professed to be a
18 professional boxer?

19 A. Yes.

20 Q. And he had told you on more than one occasion that
21 he had been in multiple fights?

22 A. Yes.

23 Q. And my understanding from talking to other
24 witnesses is that you were only one of two individuals who
25 could calm Ali down.

1 interview to Investigator Traylor, you told him you would be
2 speculating about what actually started the confrontation
3 out front.

4 A. Correct, because I was not out there.

5 MR. WRENN: All right. Okay. Mr. Delgado?

6 MR. DELGADO: Sure.

7 DIRECT EXAMINATION

8 BY MR. DELGADO:

9 Q. Had you ever seen Mr. Malik get in any
10 confrontations with any patrons at the bar before?

11 A. Yes.

12 Q. Okay. Can you tell me about those kinds of
13 confrontations?

14 A. There was one particular time where he had
15 actually complimented a young lady, and for some reason -- I
16 don't know why -- she went off on him. And it was a skinny
17 white gentleman that kept screaming, "You mess with her, you
18 mess with me." We didn't even know who these people are.

19 Q. Right.

20 A. Never seen these people in there before. There
21 was a couple other people there with them, one lady
22 extremely intoxicated when she walked in. And he kept
23 telling them, exact words, "You don't want to ride this
24 train. Just leave it alone." He was constantly begging
25 this guy, "Just leave it alone. Just stop."

1 The guy kept persisting. And then as we were
2 trying to get -- I was trying to get these people out the
3 door, like, "Listen, enough. Done. You guys are out."

4 Q. Right.

5 A. "Have a good night." As I was getting them out,
6 the skinny gentleman reaches over me and shoves Ali in the
7 side of his head. And that was about all it took. And
8 after that there was three hits and that guy was on the
9 ground.

10 Q. With three punches did Mr. Malik knock him out?

11 A. I'd say he was knocked out, yes.

12 Q. Were the police called?

13 A. No.

14 Q. Okay.

15 A. The drunk lady kept saying, "We don't deal with
16 police."

17 Q. Yeah. Do you recall approximately what month that
18 was?

19 A. I have no idea.

20 Q. Okay. Any other instances like that where
21 Mr. Malik had to get physical?

22 A. No.

23 Q. All right. Would Mr. Malik -- he wouldn't back
24 down from a physical confrontation, though, in your opinion?

25 A. He'll try to talk the people out of it for the

1 A. Correct.

2 Q. Okay. would you say that he was a person with a
3 lot of pride, like a big ego?

4 A. More so when he drank than when he was sober.
5 When he was sober he was very calm, very relaxed, very
6 levelheaded.

7 Q. Had you had to step in before and calm down a
8 situation before it got physical with Mr. Malik when he'd
9 been drinking?

10 A. Yes.

11 Q. Was that something you would have to do often,
12 kind of de-escalate situations?

13 A. I'd say in the two -- two and a half years that I
14 knew him, probably about five times.

15 Q. Okay. And only the one time, though, that you saw
16 him lay someone out?

17 A. Right. And if -- and if I wasn't there, he
18 probably would have kept going.

19 Q. Okay. Meaning, when that guy was on the ground
20 unconscious --

21 A. He probably would have kept on going at him.

22 Q. Okay. Why do you say that?

23 A. Because if I didn't grab him and -- I literally
24 grabbed him by his shoulders, like in any boxing match, you
25 start messaging the shoulder and say, "All right, Champ.

1 most part.

2 Q. Okay.

3 A. But, no, he's not one to back down.

4 Q. Does he have any kind of, you know, hot-button
5 issues? Just, you know, he's very protective -- like some
6 people are very protective of --

7 A. His cars.

8 Q. Cars?

9 A. His cars. That was all he had, and he had a lot
10 of pride in those cars.

11 Q. Okay.

12 A. You touched -- you touch his car, you know, try to
13 dent it or something, he will go off.

14 Q. When you say, "he will go off," what do you mean
15 by that?

16 A. Oh, he's going to want to fight.

17 Q. How about -- is he protective of women, would you
18 say?

19 A. I've never seen anybody try to talk to his
20 girlfriends.

21 Q. Okay. What about --

22 A. He was a very intimidating kind of person.

23 Q. Okay. And that was because of his size and his --

24 A. His size.

25 Q. -- presentation?

1 You got him. He's done. You're good." And that's what
2 calmed him down. I got him back inside, got him back at the
3 seat at the bar.

4 Q. Okay. What about race issues? Was race something
5 that would upset Mr. Malik? If people were being racist or
6 saying "nigger" or something like that, would that have
7 upset Mr. Malik? Do you know?

8 A. I know it upsets me you saying that.

9 Q. Okay.

10 A. I don't appreciate that at all.

11 Q. Well, I mean, that's the word that we're talking
12 about, so...

13 A. Okay. I still don't appreciate you saying that.
14 I have black family.

15 Q. Okay.

16 A. So I find that highly offensive.

17 Q. Okay.

18 A. I don't appreciate that at all.

19 Q. Okay. What would Mr. Malik's reaction have been
20 to that word? Do you know?

21 A. Probably not good.

22 Q. What do you mean by that?

23 A. I mean, he wouldn't react with the same to-do that
24 I do and just flatout telling you that I don't appreciate
25 it. He'd probably want to fight you.

1 Q. Okay. Now, I'm not talking about someone calling
2 him that. I'm talking about him just hearing that word. Do
3 you think that would also provoke him the same way that it
4 seemed to upset you?

5 A. Oh, if somebody else is saying it?

6 Q. Yeah.

7 A. If somebody else is saying it to somebody else --

8 Q. Yeah.

9 A. -- in their discussion? No, he could care less.

10 Q. Okay.

11 A. If it was said to him, then, yeah, that would be a
12 different story.

13 Q. And that would be -- that would probably escalate
14 things to physical confrontation, in your opinion?

15 A. Possibly.

16 Q. What if someone used that word --

17 A. I think he -- I think he would -- he would talk
18 first and if the person persisted with it, then, yeah, it
19 would probably get physical, but I'm speculating. I don't
20 know that for sure.

21 Q. Okay. What if someone said that word and hit his
22 car? What do you think Mr. Malik's reaction would have
23 been?

24 A. If you hit his car?

25 Q. Like slapped it or kicked it or something.

1 A. Oh, then he's coming after you.

2 Q. Okay.

3 A. There's no doubt on that one.

4 Sorry, I'm still in shock that you actually said
5 that to me.

6 Q. Well --

7 A. I don't find it very professional to say that, I
8 don't.

9 Q. Okay. Do you need to take a moment to compose
10 yourself before we continue?

11 A. I'm totally composed.

12 Q. Okay. Now, you didn't see what happened outside
13 the bar, correct, at all?

14 A. Okay. You're -- now you're making a general
15 statement. When it initially started?

16 Q. Right.

17 A. No, I did not.

18 Q. Okay. And you were --

19 A. Once I was called outside and where I began from
20 what I started to see, that's what I saw.

21 Q. Okay. And when you were outside watching the
22 incident, how close did you get to the fight?

23 A. At one point I was trying to pull Christopher off,
24 which I couldn't.

25 Q. Okay. Now, somebody got Jelks to back off. That

1 Q. Okay.

2 A. I literally -- I literally got in it, started it,
3 drove it, parked it, got out, got up to her car, and then
4 drove straight back.

5 Q. Okay. Did you find Mr. Malik's jacket in the back
6 of the truck?

7 A. Yes.

8 Q. And that was in the bed of the truck?

9 A. Correct.

10 Q. Okay. But it was Ms. Venook who returned that to
11 the police?

12 A. Correct.

13 Q. Okay. Do you know what happened with Mr. Malik's
14 Lincoln?

15 A. No.

16 Q. Okay. I -- we asked -- Mr. Wrenn asked you about
17 a gun. What did you know about Mr. Malik owning a gun, not
18 owning a gun? What did you know about that?

19 A. From what he had said prior was that he had a .44
20 Magnum that was usually in the trunk of the Lincoln.

21 Q. Okay. And you had never seen that gun before?

22 A. No, never.

23 Q. Okay. Had you ever ridden with him in the
24 Lincoln?

25 A. No, only in the truck.

1 eventually got to the point to where Ali had -- black
2 shirt -- James in a headlock and they had gotten him down to
3 the ground. So he was holding him down to the ground while
4 Andrae and Christopher were beating on him repeatedly.

5 Q. Let me stop you right there.

6 A. Yes.

7 Q. Early in the evening you saw Ali inside the bar,
8 correct?

9 A. Yes.

10 Q. And he was dressed out very nicely --

11 A. Yes.

12 Q. -- with a sport coat and slacks and everything on,
13 correct?

14 A. Yes.

15 Q. When he walked out did, he still have his sport
16 coat on?

17 A. No.

18 Q. Okay. So at some point in time he had taken his
19 jacket off?

20 A. Correct.

21 Q. Okay. And while he's got one individual in a
22 headlock and the other folks are hitting on him, he did not
23 have his jacket on at that point in time?

24 A. No.

25 Q. Okay.

1 A. That was found in the bed of his pickup truck.

2 Q. All right. We'll get to the truck in a little
3 bit.

4 So you said they were down to the ground. Did you
5 see how they got to the ground?

6 A. No, because I was also running, telling them to
7 call the police, running back. So I didn't see how they got
8 to the ground.

9 Q. Did you see them get up off the ground?

10 A. It was a while on the ground. As Christopher was
11 coming from this side (indicating), Andrae from this side
12 (indicating), while James is being held on the ground and
13 Christopher just throwing haymaker punches, knees, kicks,
14 elbows.

15 Q. And all this time Ali is not letting go of James?

16 A. Correct.

17 Q. All right. So he's got James and he will not let
18 go of him while the other guys are hitting him; is that
19 correct?

20 A. Correct.

21 Q. Okay. All right.

22 A. Then at one point while this is going on,
23 Christopher had gotten the arm off from James and they were
24 stood back up again.

25 Q. Okay. Now, where were they at when they got back

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR VOLUSIA COUNTY

STATE OF FLORIDA,

-vs-

Case No. 2014-300019-CFDB

ANDRAE JERMAINE JELKS,

Defendant.

STATE OF FLORIDA,

-vs-

Case No. 2014-300017-CFDB

CHRISTOPHER HOIT

Co-Defendant.

STATE OF FLORIDA,

-vs-

Case No. 2014-300018-CFDB

JAMES HOIT

DEPOSITION OF MICHAEL M. GEROW

Taken on Behalf of the Defendants

DATE TAKEN: JULY 10, 2014

TIME: 11:58 A.M. - 12:31 P.M.

PLACE: OFFICE OF THE STATE ATTORNEY
251 NORTH RIDGEWOOD AVENUE
DAYTONA BEACH, FLORIDA

Stenographically Reported by:
Lynne Barge

Transcribed by:
Jennifer N. Santorelly

1 racial slur, that that would possibly provoke him to
2 violence?

3 A He wouldn't have backed down from something
4 like that.

5 Q Okay.

6 A He -- there are very -- a few keys that would
7 get him fired up, anything racial, he -- yeah, he
8 wouldn't have backed down from that.

9 Q What other things would be in that category?
10 I mean, racial, I think, is pretty much no one would
11 back down from?

12 A The only other thing I can think of is
13 probably his vehicles.

14 Q Okay.

15 A Someone touched, scratched, damaged.

16 Q So if someone said, nigger, and then kicked or
17 punched Mr. Malik's car that would be, like, the perfect
18 storm to provoke him?

19 A He probably would have flipped.

20 Q Would you have a hard time believing that if
21 someone said nigger and then kicked his car that
22 Mr. Malik would engage in a physical altercation with
23 that person?

24 A Would I have a hard time believing that he
25 would, no.

1 A No.

2 Q Okay. In the recorded statement you made a
3 comment that Ali was riled up pretty bad.

4 A Outside, yes.

5 Q Did you see what caused him to get riled up?

6 A No.

7 Q I think you also made a statement that
8 there -- it was pretty obvious that there was something
9 going on between these guys?

10 A Yes.

11 Q Did you hear what they were saying to each
12 other?

13 A I didn't pay attention.

14 Q Did you see who initiated the physical
15 confrontation?

16 A No.

17 Q Did you see them actually, all four of them,
18 involved in a physical confrontation?

19 A After everything had started I had come back
20 outside, yes.

21 Q Okay. You don't know who started the physical
22 confrontation, do you?

23 A I don't know who made first contact, no.

24 Q All right. In your recorded statement to the
25 police you made a comment that you turned to Danny, get

1 MR. DELGADO: So Mr. Malik is -- where his
2 belly is against one of the Hoit's back?

3 THE WITNESS: He had them --

4 MR. DELGADO: Or were they face-to-face?

5 THE WITNESS: He probably had them upper
6 chest, maybe in a chokehold.

7 MR. DELGADO: All right. So Mr. Malik's arm
8 is around the throat of one of the Hoit's and
9 Mr. Malik is behind the Hoit brother?

10 THE WITNESS: Throat or the chest, yes.

11 MR. DELGADO: Okay. All right. But it's
12 positioned so that Mr. Malik is behind --

13 THE WITNESS: Yes.

14 MR. DELGADO: Okay. That's what I wanted to
15 understand.

16 THE WITNESS: One back was against his chest.

17 MR. DELGADO: Okay. Sorry to interrupt.

18 BY MR. WRENN:

19 Q So that's when you saw -- I'll use your
20 words -- Ali wrapped up with somebody?

21 A Yes.

22 Q He was behind the person --

23 A Uh-huh.

24 Q -- wrapped up with them?

25 A I guess, you can call it maybe a restraint.

1 Q Okay.

2 A I don't know.

3 Q Were they standing up or were they on the
4 ground?

5 A At that point they were still standing up.

6 Q And did --

7 A Oh, excuse me. Excuse me. No, at that point
8 when I first saw that Ali had somebody wrapped up he was
9 on the ground.

10 Q Did you see how they ended up on the ground?

11 A No. That must have happened when I went
12 inside to yell.

13 Q Okay. So when you turned back around you see
14 them, Mr. Ali Malik's got an individual wrapped up.
15 Mr. Malik is on the ground and the person is on top of
16 him and he's got a hold of him?

17 A Basically he's seated, not in this lap, but in
18 front of him.

19 Q Uh-huh.

20 A As if they were standing up they would be in
21 the same position just seated.

22 Q Okay. And at that point in time the other two
23 individuals they are doing what?

24 A Punching, kicking, doing anything they can to
25 get Ali. His face, his head, anything.

1 A Yes.

2 Q With some kind of hold or chokehold or
3 something?

4 A Yes.

5 Q Okay.

6 A I'm sorry. Am I speaking loud enough?

7 Q No, you're fine. You're fine.

8 Did you see Ali get up off the ground?

9 A Yes. I did see that.

10 Q He managed to get himself up on to his feet?

11 A Yes.

12 Q Did he still have the person in that hold?

13 A Yes.

14 Q He was not letting go of that hold, was he?

15 A No.

16 Q And what was the person he had the hold on,
17 was he flailing, was he limp, was he still trying to
18 fight?

19 A I believe he might have been flailing a little
20 bit, maybe trying -- you know, use an elbow here and
21 there.

22 Q Okay.

23 A I don't remember seeing anything with the legs
24 as far as kicking or anything. Possibly an elbow or
25 two.

1 Q Okay. And then in your statement you indicate
2 that you turned around for a second, then the next thing
3 you saw they were up against the window?

4 A Yes. When they were on the ground they
5 were -- Ali's back was against the window -- the store
6 front.

7 Q The store front?

8 A From that point it went -- basically, he used
9 the wall to get himself up while still having one of the
10 Hoits wrapped up.

11 Q So he used the wall as a brace to push his
12 legs to climb up the back of the wall?

13 A Yes.

14 Q Then the next you know they were through the
15 window?

16 A It seemed -- yeah, it was surreal. I watched
17 the glass flex, the next thing you know it popped.

18 Q Did you -- how did they end up through the
19 window?

20 A Whoever -- like I said, I don't know the
21 Hoits, whoever he had wrapped up the other -- the
22 brother and Jelks again throwing kicks, punches,
23 anything they could at him. I guess, the force combined
24 he went through or they went through, excuse me. He
25 still had one of the Hoits wrapped up at that time.

1 Q Okay. And all the while Ali Malik was not
2 letting go of the individual he had in this hold, was
3 he?

4 A No. I'm sorry.

5 Q I understand. And while this is going on the
6 other two individuals are kicking and punching in an
7 attempt --

8 A Any way they can get at him.

9 Q Get at him?

10 A Just to -- I guess, I don't know, to release
11 the one he had or just -- I don't know.

12 Q Okay.

13 A I've never been a part of -- a witness to
14 anything like that before, so I don't know what to think
15 at the time.

16 Q After they go through the window they hit the
17 ground, correct?

18 A Ali falls back through the window or goes
19 through the window.

20 Q Uh-huh.

21 A And his knees were the only thing that were on
22 the ledge.

23 Q Okay.

24 A That were hanging out. But, I guess, his
25 upper body, his upper torso, yes, was on the ground

1 paramedics were there, the police were there. They were
2 more important. They needed to do their job.

3 Q When Mr. Malik released his hold, did the Hoit
4 brother he was restraining get up?

5 A Yes.

6 Q Did that brother strike Mr. Malik after he was
7 released?

8 A I believe he did. At least once.

9 Q Okay. Did the other Hoit brother strike
10 Mr. Malik after --

11 A The one who, I guess, was robo punching him,
12 did continue to hit him a few more times.

13 Q All right. And once it was -- at some point
14 you or Bruce or someone said, it's over, he's had enough
15 or something like that?

16 A Yes.

17 Q And at that point did things stop?

18 A After -- at that point, I believe -- well, it
19 was basically almost the same time Bruce is yelling
20 this, Ali -- Bruce was yelling it because more than
21 likely he could see that Ali had been knocked out.

22 Q Okay.

23 A The restraint had been let go at the same
24 time. One brother gets up, you know, got out of that
25 hold, so, yes, it could have happened all at the same

1 time.

2 Q Okay. Certainly there was no time in which as
3 the three of them were walking away one of them came
4 running back and got in one last punch or anything like
5 that?

6 A Not that I remember, no.

7 Q Once it was clear that Mr. Malik was not
8 responsive, you think that's about the time that
9 everything stopped?

10 A Within a few seconds at least, yes.

11 Q And I know it's a pretty chaotic situation and
12 it's hard to be precise with times and all that.

13 Did -- I've had a few friends who were really
14 touchy about their vehicles, was Mr. Malik the kind of
15 person who would let other people drive his truck?

16 A I wouldn't have thought so, no.

17 Q Okay. So Bruce wouldn't have had a key to
18 Mr. Malik's truck?

19 A No.

20 Q Okay. Do you know how Bruce got the keys to
21 Mr. Malik's truck?

22 A No.

23 Q Mr. Malik was wearing a jacket inside the
24 billiards hall, right?

25 A Suit jacket or sport jacket, whatever it's

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR VOLUSIA COUNTY

STATE OF FLORIDA,

-vs-

Case No. 2014-300019-CFDB

ANDRAE JERMAINE JELKS,

Defendant.

STATE OF FLORIDA,

-vs-

Case No. 2014-300017-CFDB

CHRISTOPHER HOIT

Co-Defendant.

STATE OF FLORIDA,

-vs-

Case No. 2014-300018-CFDB

JAMES HOIT

DEPOSITION OF JEFF TRAYLOR

Taken on Behalf of the Defendants

DATE TAKEN: JULY 9, 2014

TIME: 11:25 A.M. - 12:20 P.M.

PLACE: OFFICE OF THE STATE ATTORNEY
251 NORTH RIDGEWOOD AVENUE
DAYTONA BEACH, FLORIDA

Stenographically Reported by:
Lynne Barge

Transcribed by:
Jennifer N. Santorelly

1 A Yes.

2 Q And now it's Ms. Bolin who first -- she's the
3 first witness that you've talked to at this point who
4 mentions anything about the possibility of a firearm?

5 A Yes.

6 Q Did you believe her or disbelieve her when it
7 came to the discussion of the handgun?

8 A I didn't have enough facts to prove or
9 disprove.

10 Q Okay. She kind of described a scenario where
11 Mr. Jelks was mouthing off and if we combine that with
12 the other girl's statement, maybe used a racial epithet
13 and Mr. Malik gets out of the car and he removes his
14 jacket --

15 A Yes.

16 Q -- and puts it in the back of his car. Now
17 that's consistent at least with the fact that later a
18 witness returns to you Mr. Malik's jacket, that
19 wasn't --

20 A Yes.

21 Q Okay. And just my life experience, before men
22 fight, if it's going to be kind of a consensual fight, I
23 removed my shirt, taken my -- handed it to somebody
24 else. People take off things of value that might get
25 mixed up in a scuffle. Is that something that fits with

1 your life experience or is that alien to you, the idea
2 of taking off a jacket and handing it --

3 A That makes sense.

4 Q Okay. Does that detail seem consistent based
5 on what the witnesses have said that it's possible that
6 Mr. Malik was, you know, at least agreeable to square
7 off and fight?

8 A Yes.

9 Q Okay. The next day you interview -- and I'm
10 going to butcher her name --

11 A Uh-huh.

12 Q -- Castrogiovani?

13 A Something like that.

14 Q C-A-S-T-R-O-G-I-O-V-A-N-I. Giavanna,
15 G-I-A-V-A-N-N-A. And again, this is a recorded
16 interview?

17 A Uh-huh.

18 Q And she's the one who provides the detail
19 about basically Jelks saying nigger to Malik, even
20 though they're both black?

21 A Right.

22 Q Okay. And that in her statement seems that
23 she has the opinion that that's what started the
24 confrontation?

25 A Yes.