

Key Direct - *Washington v. State*

1. Please tell the judge what materials you reviewed which aided you in forming your opinions. (I will read from the list submitted with my disclosure)
2. Mr. Key, have you ever been called as a witness or consulted in a police involved shooting criminal case? a. Yes
3. How many times? a. Dozens
4. For which side, prosecution or defense? a. Both
5. Can you give the court a breakdown regarding for which side you consulted or testified in some of those cases.
 - a. I've consulted or testified with defense well over twenty times, including testimony in Grand Juries
 - b. I've consulted or testified for the prosecution in three or more cases
6. You said you testified for defense in Grand Juries. Explain to the court the circumstances of that testimony.
 - a. When the prosecutor had a close call to make or the shooting had drawn a lot of public attention, they would have me testify as to the police officer's training and my opinions in the case.
7. Have you testified or consulted in criminal cases in which police officers were charged with using lethal force but not firearms against citizens? Yes
8. How many times? a. 3 or more for defense and 5 for prosecution
9. What methodology do you use in analyzing a police involved shooting?
 - a. As the name implies it is an analytical process. You collect as much information as possible and then validate it, if possible, by using physical evidence to support or disprove it.
 - b. It can involve all aspects of investigation
 - i. Witness accounts of what happened
 - ii. Trace analysis testing, including GSR
 - iii. Blood stain analysis
 - iv. Shell casing pattern analysis
 - v. Trajectory analysis
 - vi. Wound characteristics

10. According to police training, when may an officer use lethal force?
 - a. Officers may use lethal force when they have probable cause to believe that their lives or the lives of others are in imminent danger of serious bodily injury or death.
11. What constitutes imminent danger?
 - a. Imminent does not mean 'immediate' or 'instantaneous,' but that an action is pending. Thus, a subject may pose an imminent danger even if he is not at that very moment using a weapon on the officer.
12. Are the definition and example you gave nationally accepted standards? a. Yes
13. Where do they come from?
 - a. The FBI guidelines governing use of lethal force.
14. What constitutes serious injury?
 - a. Any injury that is disfiguring, disabling, or potentially life threatening.
15. Can you give examples of serious injuries that could result in disfigurement or incapacitation?
 - a. Thumb in the eye, torn cartilage, broken bones, etc.
16. Does an officer have to be seriously injured before using lethal force to protect himself? a. No
17. Why not?
 - a. Once an officer is seriously injured, he or she might be incapable of stopping the attacker from killing him or her.
18. In the materials you reviewed in this case, did you read anything which contained the phrase "covering up"? a. Yes
19. In what material did you find that phrase?
 - a. In the civil and criminal trial transcripts of Mr. Keith Washington's testimony.
20. In your expertise in defensive skills, are you familiar with what covering up means? a. Yes

21. Please explain to the court what it means.
 - a. It is the phrase that describes an action by boxers and MMA fighters which reduces the likelihood of injury from blows from an opponent
22. Can you demonstrate it for the judge? [DEMONSTRATION]
23. What training, if any, do officers receive regarding how they establish probable cause that a person poses an imminent threat of serious injury or death to themselves or others?
 - a. They are taught to assess the totality of the circumstances
 - i. What is the nature of the incident in which they are involved
 - ii. What, specifically, is the person doing
 - iii. Is there a firearm or other weapon present
 - iv. What is the potential threat to the officers or others
24. Let's take those one at a time, why is the nature of the incident in which they are involved relevant to an officer's decision as to what force should be used?
 - a. Some incidents by their nature can put the officer's alert level higher.
 - b. The nature of some incidents may seem to be routine, but, because of the actions of the individual, the officer's perception of danger is increased (eg)
25. What's the significance of assessing specifically what the subject is doing?
 - a. Even if the subject hasn't committed an obviously dangerous offense, his actions may indicate he is a threat
 - b. For instance, is the subject assaulting or threatening the officer or others
 - i. Is the possibility that a firearm is present
 - ii. Is the person is in a location where there are weapons of opportunity
26. What are weapons of opportunity?
 - a. Utilitarian objects which are normally expected be found in a place
 - b. Screwdrivers, hammers, pots, pans, pens, kitchen knives, boiling water, hot coffee, chairs
27. What is it about the potential of a firearm being present that's important to an officer's analysis as the whether there is probable cause to believe the person presents a threat to the officers or others?
 - a. The threat of a firearm is at the top of the list of weapons that can kill or seriously injure

- b. When an officer reasonably believes the person can gain access to a firearm, officers are trained that they may use lethal force to stop the threat
28. How does a threat to other people in the vicinity factor in when officers are establishing probable cause to believe that a person poses an imminent threat of serious injury or death to themselves or others?
- a. Officers have to factor in the potential of the threat to other people as well as to themselves when making lethal force decisions
29. What training, if any, do officers receive regarding whether they can use lethal force on a person who is unarmed?
- a. They are taught that they may use lethal force on an Aggressive, unarmed suspect who:
 - i. Is assaultive and aggressively trying to overcome officer
 - ii. The officer is unable to control with any other readily available means
 - iii. Is capable of or has inflicted potentially life threatening injury on the officer or others
 - iv. Do the suspect's actions reasonably indicate that he is capable of taking the officer's weapon or gaining access to a weapon
30. Let's take those one at a time. What are officers trained regarding how to determine when a person is assaultive and aggressively trying to overcome officer?
- a. A person who has not been frisked and is aggressively resisting arrest
 - b. A person who is actively assaulting the officer has demonstrated that he intends to do bodily harm
31. What is the specific training of officers concerning controlling a subject with any other readily available means while they are off-duty?
- a. Officers only have their service pistol when they are off-duty.
 - b. They cannot carry their batons or pepper spray
 - c. They do not wear their bullet resistant vest
 - d. Their training in hand to hand control techniques may be very limited
 - e. They have no radio with which to call for assistance
 - f. This means that they don't have all the defensive devices that on-duty, uniformed officers, have and are, therefore, more vulnerable
32. According to the training, how does an officer determine if a person is capable of inflicting potentially life threatening injury on the officer or others?

- a. A number of things go into the equation:
 - i. Size
 - ii. Age
 - iii. Alcohol or drugs
 - iv. Number of assailants
 - b. The larger a person is the more potentially powerful he is and the more potentially lethal he is.
 - c. Younger people are more agile and react more quickly
 - d. If the person is on drugs or alcohol, they may be impervious to pain and non responsive to commands
 - e. The more assailants there are the more difficult it is to gain control without resorting to lethal force
33. You testified that officers are trained that they may shoot someone if they reasonably believe that a subject is attempting to take their weapon or gain access to a weapon. Why are they trained to do that?
- a. When officers are in a physical struggle and in close contact with someone, there is always a gun present
 - b. Every year officers are killed with their own weapons
 - c. If they are in a place where other weapons are available and they are incapacitated, the weapons can be used against them or others
34. You've been testifying about the training officers receive concerning when they may shoot an unarmed person. Why aren't they trained that they have to see a weapon before they can shoot?
- a. If officers had to wait to see a weapon before they used lethal force to defend themselves, many officers would be killed.
35. Why is that?
- a. Action always beats reaction.
 - b. The concept in officer training is called action vs. reaction
36. What is action vs. reaction training?
- a. The concept of action/reaction is the basis for most officer survival training.
 - b. Action/reaction time is the amount of time it takes a person to perceive and react to a threat.
 - c. The officer sees something occur, analyzes it as to whether it is threatening, analyzes the appropriate response, communicates that response from the cerebral cortex to the flexor tendons of the hand to pull the trigger.

37. How long does it take an average officer to perceive a threat?
 - a. In training scenarios, anywhere from .5 seconds to more than 2 seconds depending on whether the officer is expecting the stimulus that causes the reaction.
 - b. Depending on the potential threat, officers facing real-life dangerous situations take anywhere from 50% to 100% longer to react.

38. In a real life confrontation, what, if any, effect does reaction time have regarding officer safety?
 - a. The closer an opponent is to the officer, the less reaction time the officer has and, as a consequence, the greater the potential threat
 - b. It means that officers are trained not to wait to see a gun or a knife before resorting to deadly force

39. In the testimony you reviewed in this case, what is your recollection regarding whether either Mr. Clark or Mr. White were found to have a weapon? a. No weapons were discovered on them

40. How does the fact that no weapons were found on them after the fact factor in your conclusions in this case. a. It doesn't

41. Why not?
 - a. They hadn't been frisked so Washington didn't know whether they had a weapon
 - b. They were in a house that contained many weapons of opportunity
 - c. Officers are not required to see a weapon before using deadly force
 - d. Given the totality of the circumstances, Mr. Clark's and Mr. White's actions, even without a weapon, would lead any reasonable officer to conclude that they presented a threat of serious injury or death to himself or his family

42. What specific area of the body, if any, are officers trained to shoot once they determine that lethal force is necessary to stop a threat?
 - a. They are taught to shoot center mass and/or the place of opportunity.

43. Please explain to the judge what center mass is and why officers are taught to shoot there?
 - a. Since officers only hit somewhere on the body approximately 25-30% of time, they are taught to point their weapons or aim at the center of the chest

- b. The center of the chest or center mass is largest part of body
 - c. Area has heart, major arteries, lungs, spine, airways
 - d. A single bullet rarely incapacitates an individual.
44. What is the training of police officers regarding how many times they are taught to shoot someone with whom they are struggling and attempting to arrest?
- a. Officers are trained to shoot as many times as necessary
45. You testified that officers are taught to shoot as many times as necessary to stop the threat. Why is that?
- a. Bullet strikes don't immediately disable someone
 - i. Bullets incapacitate by causing blood loss or disrupting the central nervous system
 - ii. Unless the bullet disrupts the central nervous system, even a person who has been shot through the heart has up to a 30 seconds or so to attack before he/she loses consciousness
46. Is there a specific number of shots that are permitted? a. No
47. Why not?
- a. A person who has been shot, is still capable of inflicting serious injury
 - b. The officer has no way of knowing what effects his shots have had
 - c. What appears to be a fatal wound may not be and vice versa
 - d. As long as the person is conscious, has not indicated surrender, and is capable of causing serious injury to the officer the officer may continue to use lethal force against him.
48. Why aren't officers trained to just shoot a person in the leg or arm?
- a. Hitting someone in the arm or leg is practically impossible
 - b. As I testified before, officers only hit somewhere on the body approximately 25-30% of time even though they are taught to aim at the center of the chest
 - c. Even if they hit the arm or leg, such shots aren't likely to cause quick incapacitation
49. You testified about shooting the place of opportunity. What does that mean?
- a. If a person's center mass is covered or it is impractical to hit it, the officer may target other parts of the body

- b. If for instance, the officer is in close quarters combat, they will shoot wherever on the body they can to stop the attack
- 50. In your list of materials that you read at the beginning of your testimony, you indicated you reviewed the crime scene diagrams, and photos? a. Yes
- 51. Did your review include the location the shell casings were found? a. Yes
- 52. What significance, if any, does shell casing placement have in evaluating a police shooting?
 - a. Depending on the environment and circumstances in which the shots are fired, shell casing placement can determine the location from which the shots were or were not fired.
- 53. Are you familiar with shell casing ejection testing? a. Yes
- 54. What is the basis of your familiarity?
 - a. I've both read studies concerning shell casing ejection testing and conducted numerous tests myself.
- 55. Have you conducted such tests on the Beretta 9mm 92F handgun? a. Yes
- 56. Is this the weapon which Mr. Washington used in this case? a. Yes
- 57. Please explain to the court how a casing is ejected from the Beretta.
- 58. In which direction does the Beretta eject shell casings?
 - a. To the right and slightly to the rear
- 59. You testified that depending on the environment and circumstances in which the shots are fired, shell casing placement can determine the location from which the shots were or were not fired. What did you mean by "depending on the environment and circumstances"?
 - a. Where a shell casing ends up depends, in part, on how confined the area in which the shots are fired is, is there an intermediate object which would redirect the trajectory of the casing, and the surface of the ground or floor on which the casings come to rest.
- 60. Can you give the court an example of what you mean?

- a. The more confined the area, the more specific the placement of shell casings can determine the location from which they were or were not fired. For instance, shots fired from inside a room is much more determinative of the shooter's location than outside on the lawn.
 - b. If there are walls, doors, or people which deflect or obstruct the trajectory, it can alter the normal ejection pattern.
 - c. The softer the ground or floor is the less distance the shell casing will travel after hitting it.
61. Let me present you with a hypothetical. A person shoots a Beretta 92F toward a target which is approximately eight feet from the door of the room in which the shooter is standing just inside the room. Given that scenario, do you have an opinion to a reasonable degree of scientific certainty as to where the shell casings would be found? a. Yes
62. What is that opinion?
- a. If the pistol is just outside the door, the majority would be found in the room in which the shooter is standing.
63. What are the bases for that opinion?
- a. The shell casings would be ejected from the right side of the pistol and slightly to the rear.
 - b. Regardless of how the pistol were held, the majority of the casings would be in the room in which the shooter was standing.
64. Let me change the hypothetical a little. The shooter is standing just outside the door and shoots a Beretta 92F at a target that's approximately six feet directly in front of him. There is a room to the right of the shooter and a hallway to his left. Do you have an opinion to a reasonable degree of scientific certainty as to where the shell casings would be found? a. Yes
65. What is that opinion? a. They would be found in the room in back of the shooter, or in the room to the right, or, if they hit the wall to his right, they would be found to his right or directly under his feet.
66. What are the bases for your opinion?
- a. If he's standing right at the door, the casings could either go back into the room to his rear or to the room to his right.

- b. If the casings hit the wall between the rooms, they would lose a good deal of energy and either fall to the base of the wall or slightly away from it.
67. You testified you visited the house, reviewed photos taken at the crime scene, and reviewed the crime scene diagram. Where were the shell casings located on the second landing?
- a. Shell casings 6 and 7 were on the landing approximately 9 - 10 feet to the left away from the master bedroom and Mr. Washington's daughter's bedroom.
 - b. Shell casing 10 is in the bathroom, which is also off to the left approximately
68. Do you have an opinion to a reasonable degree of scientific certainty as to whether those shell casings could result from a Beretta 92F being fired by a shooter from either inside the master bedroom or standing in front of the door leading into the master bedroom? a. I do
69. What is that opinion? a. They could not.
70. What are the bases for your opinion?
- a. Trained pistol shooters shoot with the pistol grip at a 90 degree angle to the floor.
 - b. Anyone firing from the positions you indicated with a 92F would eject the casings to the right and rear.
 - c. 9mm shell casings fired from a Beretta 92F typically fall within 5-7 feet to the right and rear of the pistol
 - d. On carpet there is very little bounce because the soft surface absorbs much of the energy from the casing when it hits
71. What about the pistol being held in the so called "gangster" position?
- a. In the first place, trained shooters don't shoot in the gangster position. It can cause malfunctions and makes obtaining a sight picture difficult.
 - b. When a right handed shooter fires with the ejection port facing up, the shell casing still tends to go rearward and the arc is upward, which reduces the distance the casing will be ejected away from the shooter.
 - c. Even if the pistol had been fired from the gangster position, the shell casings could not have landed down the landing to the left of someone shooting from in front of or inside the master bedroom.

72. Let me present you with another hypothetical. A person is fighting in a confined area with two large individuals who are both within arm's reach of him when he fires a Beretta 92F at them. Do you have an opinion to a reasonable degree of scientific certainty as to what the effect on shell casing placement would be under such circumstances? a. I do
73. What is that opinion?
a. Shell casing placement would be confined to a much smaller area than would be the case if the shooter was firing without intermediate, in this case clothing and bodies, surfaces to interfere with the trajectory.
74. What are the bases for that opinion?
a. When officers are defending their lives from adversaries who are beating them, they are taught to shoot one handed while using the other hand to fend off the adversaries.
b. The position of the pistol when the shots are fired will be determined by the dynamics of the struggle.
c. When shots are fired at someone who is engaged in a fight with the shooter, the shell casings are likely to be redirected by clothing or body parts.
d. The casings will, therefore, be confined to the area within which the struggle took place.
75. Did your review of the shell casing placement in this case lead you to any conclusions? a. Yes
76. What were those conclusions?
a. The shooting took place in an area close to where shell casings 6, 7, and 10 were photographed.
77. What are the bases for that opinion?
a. The shell casings could not have come from a position by the master bedroom for the reasons I stated previously.
b. They are very close together, which indicates that their arcs were restricted by some intermediate object such as the clothing or body parts of persons engaged in a struggle.
78. You testified that you had read the report of the shell casing testing done by Dr. William Bruchy. What, if any, impact did his testing have on your opinion?
a. It confirmed my analysis.

79. In the materials you reviewed, was there any other information concerning shell casings that was important to your opinions in this case? a. Yes
80. What was that information?
a. A casing was found in the chamber of Washington's weapon.
81. Of what significance is that to your opinions in this case?
a. It indicates the weapon was fired at a time when there was some interference with the slide.
82. What is a slide on the Beretta 92F?
a. A slide is a part of any semi-automatic pistol
b. It contains the bolt face, which has the extractor which grips the casing to pull it out of the chamber after the weapon is fired
83. What opinions did you form concerning the shell casing left in the chamber?
a. That the slide was grabbed or interfered with causing it to not have sufficient energy to extract the casing from the chamber to remove the casing.
b. That it was consistent with a person who fires a weapon during a physical altercation with another person
84. Do you hold that opinion to a reasonable degree of scientific certainty? Yes
85. What are the bases for that opinion?
a. I have seen many police involved shootings which involved officers in close combat with others which resulted in the officers' weapons malfunctioning due to interference with the slide
b. Absent a report of a mechanical malfunction and given the circumstances of this case, the extraction malfunction could only have occurred during a struggle
86. In your review of the materials of this case, do you recall any information regarding DNA evidence? a. Yes
87. What was that information? a. Mr. White's DNA was found on Washington's gun
88. Was that information relevant to your opinions in this case? a. Yes

89. How so?
- a. Since the gun wasn't displayed until after the altercation began, it supports the conclusion that Mr. White, at least, touched or grabbed the gun during the fight which would be consistent with the extraction malfunction.
90. In your fields of expertise in firearms and ballistics, are you familiar with the term GSR? a. Yes
91. Have you participated in GSR testing? a. Yes
92. What does GSR mean?
- a. Gunshot residue which is made up of elements from the primer which ignites the powder in the cartridge.
 - b. It consists of barium, lead, and antimony
93. Are you familiar with muzzle to garment testing and have you conducted such tests? a. Yes
94. What is muzzle to garment testing?
- a. It is a procedure where the amount of GSR and other gunshot residues are measured on a garment and then test shots are fired onto cloth with the same gun and ammunition that was used in the shooting to determine the range from which the shot was fired.
95. Did you see information regarding muzzle to garment tests in this case?
96. If you recall, what was the information you reviewed?
- a. Muzzle to garment testing demonstrated that the shot that was fired into Mr. White's knee was fired with the muzzle approximately 3 to 12 inches away from his jeans and the shot that was fired into Clark's abdomen was between 12 to 24 inches from his shirt when it was fired.
97. What, if any, impact did this information have on your opinions in this case?
- a. That information is consistent with the shots having been fired during a struggle with Mr. Clark and Mr. White.
 - b. It is not consistent with the shots having been fired while Mr. White was standing on the 2nd or 3rd step of the stairs facing the master bedroom door approximately 8' 5" away when being shot.

- c. It is not consistent with Mr. Clark being outside the door at the top of the landing next to the steps approximately 6' away and Mr. Washington firing from either inside or standing in the doorway of the master bedroom when the shots were fired.
 - d. It is not consistent with Mr. White standing approximately 11' away at the other end of the landing with Mr. Washington firing while standing in the doorway of the master bedroom.
98. Mr. Key, you've testified that the physical evidence supports Mr. Washington's account that there was a struggle with Mr. Clark and Mr. White. What other evidence of a struggle, if any, did you find in your review of the materials?
- a. The photos and testimony regarding Mr. Washington's watch and the photos of the screw plugs which were popped out on the bottom support rail of the upstairs landing's bannister.
99. What is it about the testimony and photo of the watch that leads you to conclude that it evidences a struggle between Mr. Clark, Mr. White, and Mr. Washington?
- a. Mr. Washington testified that the struggle began in the master bedroom.
 - b. The watch is shown in the photo partially under the open door leading into the master bedroom.
 - c. A closeup of the watch shows the tang bent and on the inside of the strap and the leather strap separated at the point where the tang was inserted.
[ASK ME IF SEEING THE PHOTO WOULD HELP MY EXPLANATION TO THE COURT]
 - d. [USING THE PHOTO] This indicates that the watch was violently pulled off in a struggle that began in the bedroom. The watch strap cannot be fastened in this condition.
100. You also mentioned the screw plugs which were popped out on the support rail of the upstairs landing's bannister. Would it help your explanation to use a crime scene photograph to show the court what you're talking about? [SHOW PHOTO]
101. Please use the photo to explain your opinion regarding how the screw plugs being popped out supports your opinion that a struggle occurred on the second landing.
- a. The bannister had to be torqued significantly in order for those plugs to pop out.
 - b. The combined weight of the three men was over 700 pounds.
 - c. During a struggle, the body of any or all of them smashing against the bannister would move it sufficiently to cause the screw plugs to pop out.

102. How do you know the plugs weren't out prior to the struggle?
 - a. I asked her specifically if she had seen the plugs out prior to that evening and she told me she had not.
 - b. Photos of the remainder of the railing do not show any popped plugs

103. When considering all of the opinions to which you have testified and the facts of this case as you understand them and as you have expressed them in your testimony, do you have an opinion to a reasonable degree of certainty in your fields of expertise as to whether the shooting of Mr. Clark and Mr. White by Keith Washington was objectively reasonable and consistent with accepted standards of police policies, practices, and training? a. Yes

104. What is that opinion?
 - a. The shooting was objectively reasonable and consistent with accepted standards of police policies, practices, and training.

105. What are the bases for your opinion?
 - a. The physical evidence all demonstrates that Mr. Washington was in close combat with two extremely large men in his house with his wife and children present
 - b. Statements and/or testimony from the EMT first responders, Jordan and Washington, and Lieutenant Walls and Officer Jones:
 - i. EMT Washington indicated that he saw redness on the side of Mr. Washington's face shortly after the altercation;
 - ii. Jordan saw swelling that indicated two strikes to Washington's face;
 - iii. Lt. Walls took photos of Washington and said he saw redness
 - iv. Jones indicated he saw blood on Washington's mouth.
 - c. The statement from Volunteer Fire Lieutenant Jordan that he observed a minor injury to Mr. Clark's teeth that he interpreted as having resulted from a blow to the mouth.
 - d. This threat by far exceeded the requirement of an imminent threat of serious injury or death to justify using lethal force to defend himself and his family
 - e. Under those circumstances, he had no choice and no alternative but to use lethal force

106. Have all of your opinions been expressed to a reasonable degree of certainty in your fields of expertise?