

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Anderson County  
Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JESSE DEWITT OSBORNE,

APPELLANT

APPELLATE CASE NO. 2023-001596

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| DEFENDANT’S EXHIBIT NO. 17 (DETENTION CENTER RECORDS).....                        | 2079 |
| DEFENDANT’S EXHIBIT NO. 18 (DETENTION CENTER RECORDS).....                        | 2081 |
| DEFENDANT’S EXHIBIT NO. 19 (PSYCHIATRIC FORM).....                                | 2083 |
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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:**

**STATE’S EXHIBIT NO. 3 (APPELLANT INTERVIEW)  
DEFENDANT’S EXHIBIT NO. 12 (TIFFANY OSBORNE INTERVIEW)  
DEFENDANT’S EXHIBIT NO. 13 (TOMMY OSBORNE INTERVIEW)**

## CROSS EXAMINATION OF BARBARA PRESSLEY BY MR. SMITH

478

- 1 A. No. I wouldn't know stuff like that.
- 2 Q. Aren't you the boss?
- 3 A. Yes. The medical personnel does that.
- 4 Q. So, what ended up happening to the boys that did
- 5 that to him?
- 6 A. They were placed on administrative separation and a
- 7 recommendation for charges to be filed.
- 8 Q. And you talked about how he was loud about his
- 9 crime and so forth. Right?
- 10 A. Yes. That was reported.
- 11 Q. Could that be a method of defense?
- 12 A. I don't understand your question.
- 13 Q. By talking nonsense like that to scare possible
- 14 beatings again?
- 15 A. I wouldn't say that. No, sir.
- 16 Q. No?
- 17 A. No.
- 18 Q. Because you've got a good handle on the facility?
- 19 A. Yes, sir.
- 20 Q. How did that happen in a classroom?
- 21 A. They were coming back from a break and it happened
- 22 spontaneously.
- 23 Q. And three victims?
- 24 A. Yes.
- 25 Q. Did you do anything about a concussion protocol

1 based on the fact that he was dizzy and throwing  
2 up?

3 A. I'm not medical personnel. I'm not qualified to do  
4 that, sir.

5 Q. But you didn't look in those notes before you came  
6 in today?

7 A. Before I came in today?

8 Q. Yes, to testify.

9 A. No.

10 Q. Very well. Thank you.

11 THE COURT: Ms. Looper?

12 MS. LOOPER: Briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. LOOPER:

15 Q. Lieutenant Pressley, does anyone pick on or bully  
16 Jesse at the facility?

17 A. No, ma'am.

18 Q. And has he been under tight security since he has  
19 been brought to the detention facility in 2016?

20 A. Everybody is under tight security.

21 Q. So, has he been given the freedom to access things  
22 that could be considered weapons?

23 A. Say that again?

24 Q. Has he been given the freedom to access things such  
25 as weapons and things that could be considered



## RE-CROSS EXAMINATION OF BARBARA PRESSLEY BY MR. EPPES

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1 weapons in your facility?

2 A. Well, they mop and sweep the floors, so...

3 Q. Would you say he has been given access to anything

4 that could start fires, such as matches or

5 lighters?

6 A. No, ma'am.

7 Q. Does he have access to animals?

8 A. No, ma'am.

9 Q. Lieutenant Pressley, is it fair to say that he has  
10 actually had access to the internet since he has  
11 been in your facility?

12 A. Yes, ma'am.

13 Q. Thank you.

14 MS. LOOPER: No further questions.

15 THE COURT: Re-cross?

16 RE-CROSS EXAMINATION

17 BY MR. EPPES:

18 Q. Lieutenant, he came in weighing about 147 and he  
19 weighs about 204 pounds now. Correct?

20 A. Correct.

21 Q. Thank you.

22 MR. EPPES: That's all my questions.

23 THE COURT: Thank you, ma'am. You may step down.

24 MS. LOOPER: Your Honor, may Lieutenant Pressley be  
25 excused?

1 THE COURT: Any objection to that?

2 MR. EPPES: Without objection, Your Honor.

3 THE COURT: All right. Thank you. You are free to  
4 stay or go, whichever you prefer.

5 MR. EPPES: Your Honor, we had subpoenaed Lieutenant  
6 Pressley and she is relieved from that subpoena as well  
7 and as far as I'm concerned she has no other obligation  
8 to be here.

9 THE COURT: Very good. Thank you for informing the  
10 Court of that.

11 MS. LOOPER: May it please the Court? Your Honor,  
12 the State calls Officer Trista Price to the stand.

13 (After being duly sworn by the Clerk of Court,  
14 TRISTA PRICE testified as follows:)

15 CLERK OF COURT: If you would take the witness  
16 stand, please, and state your name and spell your last  
17 name for the reporter, please.

18 MS. PRICE: Trista Price. P-R-I-C-E.

19 DIRECT EXAMINATION

20 BY MS. LOOPER:

21 Q. Officer Price, where are you employed?

22 A. The Greenville County Detention Center.

23 Q. And is that the adult facility or the juvenile  
24 facility?

25 A. The juvenile.

## DIRECT EXAMINATION OF TRISTA PRICE BY MS. LOOPER

482

- 1 Q. And how long have you been working at the juvenile  
2 facility?
- 3 A. Two years.
- 4 Q. And in that time, have you come familiar with Jesse  
5 Osborne?
- 6 A. Yes, ma'am.
- 7 Q. And do you interact with him on a weekly basis per  
8 your work schedule?
- 9 A. Yes, ma'am.
- 10 Q. And what would you consider his overall behavior to  
11 be like since he entered the facility and you've  
12 interacted with him?
- 13 A. Other than the one incident, he's been cooperative.
- 14 Q. And the one incident that you are referring to, was  
15 that a negative behavior write-up?
- 16 A. Yes, ma'am.
- 17 Q. Officer Price, I'm going to hand you what has been  
18 marked as State's Exhibit #45 that has been  
19 admitted into evidence. Officer Price, are you  
20 familiar with this report?
- 21 A. Yes, ma'am.
- 22 Q. And were you one of the officers that was directly  
23 involved with the incident as it occurred?
- 24 A. Yes, ma'am.
- 25 Q. Can you please describe to the Court the events

1       that took place that required this write-up?

2 A.   When I came in from a restroom break, Jesse was  
3       kicking on his door and so I did a security round  
4       to talk to him and check on everybody else and he  
5       had stated that when he got out that he would hit  
6       Officer Howard in the face and that he did the same  
7       thing his dad did and he put him in the fucking  
8       ground.

9 Q.   And is that quoted in that incident report?

10 A.   Yes, ma'am.

11 Q.   And do you recall the events that led up to why he  
12       made those statements?

13 A.   I was on the restroom break, but I was just told  
14       that there was another juvenile that was in trouble  
15       and he kept egging him on and he told him to stop  
16       and if he didn't he'd have to go to his room and  
17       that's why Officer Howard placed him in his room.

18 Q.   And so, Officer Howard put him in his room. Would  
19       that be considered a negative consequence for his  
20       behavior?

21 A.   Yes. Just for a cool down period, because he  
22       wasn't...

23 Q.   And what was Jesse's response to that? You can read  
24       it from the report, officer.

25 A.   Do you want me to read the whole report?

## DIRECT EXAMINATION OF TRISTA PRICE BY MS. LOOPER

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1 Q. Just the incident with his response for being sent  
2 to his room.

3 A. Okay. I asked juvenile Osborne to enter his room.  
4 After juvenile Osborne entered his room he started  
5 banging on his door and yelling, "I'm the joker and  
6 I laugh. Ha, ha, ha." On my next pro round,  
7 juvenile Osborne asked if he could speak to me as I  
8 walked by room B-7. Juvenile Osborne stated, "You  
9 wrecked my fucking day and the fucking mood, and  
10 you're going to piss me off." I think advised  
11 juvenile Osborne that as long as he continued to  
12 display this behavior that he would remain in his  
13 room and that I would speak with him again when he  
14 calmed down. Jesse Osborne then began kicking his  
15 door and yelling to juvenile Brown that this was  
16 his fault and he was going to show out with him  
17 because it was fun. I advised Sergeant Shay Norris  
18 via radio of juvenile Osborne's behavior. As I  
19 conducted pro rounds, juvenile Osborne would yell,  
20 "When I come out of this room, I'm going to show  
21 you what pissed off is." Juvenile Osborne then  
22 stated to Officer Price during her round that "I  
23 will punch Howard in the face when I see him  
24 again." He then stated that "He did the same thing  
25 my daddy did and you see I put him in the fucking

- 1 ground."
- 2 Q. And Officer Price, when, approximately, did this
- 3 event occur?
- 4 A. December 18th, 2000 ---
- 5 Q. 2016?
- 6 A. 16. Yes.
- 7 Q. And Officer Price, in the amount of time that you
- 8 have been a supervisor working with Jesse Osborne,
- 9 how many times have you noticed him crying
- 10 uncontrollably in the dorm area or in his room?
- 11 A. Never.
- 12 Q. And how many times have you been made aware or seen
- 13 him pacing in his cell to the point that you or
- 14 another officer has had to require him to stop?
- 15 A. Never.
- 16 Q. And how many times have you seen him or had reports
- 17 that he's banging his head against the wall?
- 18 A. Never.
- 19 Q. And if you had noticed any of this kind of
- 20 behavior, is that something that you are required
- 21 to report to Lieutenant Pressley?
- 22 A. I would report it to Sergeant Shay Norris and he
- 23 would carry it on to the chain of command.
- 24 Q. And then they would report it to Lieutenant
- 25 Pressley? Correct?

## CROSS EXAMINATION OF TRISTA PRICE BY MR. CAMPBELL

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1 A. Yes.

2 Q. And Officer Price, how many times has he attempted  
3 to harm himself that you've been on duty or you've  
4 been made aware of?

5 A. None that I'm aware of.

6 Q. And so, in that situation would you be required to  
7 report it to your supervising officer to report it  
8 to Lieutenant Pressley?

9 A. Yes, ma'am.

10 Q. Officer Price, I don't have any further questions  
11 for you at this time.

12 THE COURT: Mr. Campbell?

13 MS. LOOPER: Hang on one second.

14 THE COURT: Go ahead.

15 CONTINUED DIRECT EXAMINATION

16 BY MS. LOOPER:

17 Q. And Officer Price, you are one of the officers that  
18 go in the dorm areas. Is that correct?

19 A. Yes, ma'am.

20 Q. And you can observe their behavior in their cells.  
21 Is that correct?

22 A. Yes, ma'am.

23 Q. Have you ever observed him talking to imaginary  
24 entities or things of that nature?

25 A. No, ma'am.

1 MS. LOOPER: Nothing further at this time, Your  
2 Honor.

3 THE COURT: All right. Mr. Campbell?

4 CROSS EXAMINATION

5 BY MR. CAMPBELL:

6 Q. Officer Price, how long have you worked at the  
7 detention center?

8 A. A total of five years, juvenile for two.

9 Q. And that's all been at the Greenville County  
10 Detention Center?

11 A. Yes, sir.

12 Q. So, you've been there the entire time that Mr.  
13 Osborne has been in the facility?

14 A. No, sir. I was on maternity leave when he first got  
15 there.

16 Q. Okay. So, how long have you been there while he's  
17 been an inmate there?

18 A. I think I came a month after he was there.

19 Q. October, 2016?

20 A. Uh-huh.

21 Q. And during your time I think you testified that you  
22 have daily contact with him?

23 A. Weekly.

24 Q. Weekly contact?

25 A. At some point in time.



## CROSS EXAMINATION OF TRISTA PRICE BY MR. CAMPBELL

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- 1 Q. And if you don't have contact with him on a daily  
2 basis, other officers underneath you do. Correct?
- 3 A. Well, whoever is on shift. Somebody is around him.
- 4 Q. And if there is anything reported or going on they  
5 would report it to you? You would eventually see a  
6 report, is that fair to say?
- 7 A. Not me.
- 8 Q. Are you a shift supervisor?
- 9 A. I'm just a regular officer.
- 10 Q. Just a regular officer? Okay. Now, in the time that  
11 you have been there with him, you only had this one  
12 write-up, which was on December 18, 2016?
- 13 A. Yes, sir.
- 14 Q. And since that time period, he's had no other  
15 negative write-ups or negative behavior?
- 16 A. Not in front of me.
- 17 Q. During this time frame that you have been there,  
18 hasn't he been placed on suicide watch?
- 19 A. Not that I know of.
- 20 Q. On two different occasions?
- 21 A. Not that I remember.
- 22 Q. Would you be aware of that if he was?
- 23 A. If I was on shift.
- 24 Q. But if you were not on shift, somebody else would  
25 know about that?

- 1 A. Yes.
- 2 Q. So, it's fair to say that you don't know what  
3 everybody else does at the detention center on  
4 different shifts?
- 5 A. Yes.
- 6 Q. How many shifts do y'all run?
- 7 A. We have four. Two day, two night.
- 8 Q. Now, in this report that you took and he's talking  
9 about punching somebody, is there actually any  
10 proof that he actually physically harmed another  
11 individual?
- 12 A. No.
- 13 Q. So, that is basically just him running off at the  
14 mouth?
- 15 A. I guess.
- 16 Q. So, there's no evidence that another individual  
17 after this at the detention center had been harmed  
18 as a result of his activities?
- 19 A. Not at the time. No.
- 20 Q. And I believe at this time he was still fourteen  
21 years old.
- 22 A. Yes, sir.
- 23 Q. And since this incident took place December 18,  
24 2016, would you describe him as being a cooperative  
25 inmate?

## CROSS EXAMINATION OF TRISTA PRICE BY MR. SMITH

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- 1 A. Yes, sir.
- 2 Q. He follows the rules?
- 3 A. Yes, sir.
- 4 Q. And does what he's supposed to?
- 5 A. Yes, sir.
- 6 Q. Does he give the officers any problems?
- 7 A. Not any distinct problem. He's like any other ---
- 8 Q. Like any other kid?
- 9 A. Yeah.
- 10 Q. But if he did give a lot of problems, it would be
- 11 documented and written in a report at the detention
- 12 center?
- 13 A. Yes, sir.
- 14 MR. CAMPBELL: Court's indulgence?
- 15 THE COURT: Yes, sir.
- 16 MR. CAMPBELL: I have no further questions. Thank
- 17 you.
- 18 THE COURT: Mr. Smith?
- 19 MR. SMITH: Thank you. May it please the Court?

20 CROSS EXAMINATION

21 BY MR. SMITH:

- 22 Q. The incident that you wrote the report on happened
- 23 on 12/16/16?
- 24 A. Twelve eighteen.
- 25 Q. Twelve eighteen, or sixteen days after the

- 1 classroom fight?
- 2 A. I'm not sure.
- 3 MR. SMITH: May I approach the witness, Your Honor?
- 4 THE COURT: Sure.
- 5 Q. I'm showing you the records from that particular
- 6 day, December 2nd. Are those the records that are
- 7 created at your facility?
- 8 A. This is a health form, medical. I don't do anything
- 9 with that.
- 10 Q. All right. So, you have no idea?
- 11 A. No, sir.
- 12 Q. Were you one of the officers responsible for the
- 13 students in that classroom?
- 14 A. No, sir.
- 15 Q. When you had a meeting or staffing or discussion,
- 16 what was said about that particular incident?
- 17 A. I don't recall. We didn't have a specific meeting
- 18 about it.
- 19 Q. Is that a regular occurrence over at your place?
- 20 A. To not have meetings about specific incidents?
- 21 Q. Well, three victims. Isn't that extreme?
- 22 A. No, sir.
- 23 Q. What is a big number of victims for you?
- 24 A. I mean, it's like not uncommon for an initiation.
- 25 Q. So, it's okay, then?

## CROSS EXAMINATION OF TRISTA PRICE BY MR. SMITH

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- 1 A. No. I didn't say that.
- 2 Q. He was struck in the head an unknown amount of  
3 times. How does that happen with your staffing  
4 right there?
- 5 A. They spontaneously start hitting somebody.
- 6 Q. He had a broken nose. Right?
- 7 A. I don't ---
- 8 Q. So, you wouldn't be told about the broken nose to  
9 be sure nothing ---
- 10 A. I wasn't there for the incident.
- 11 Q. Well, I understand that, but a broken nose didn't  
12 repair before you got back to work. Right?
- 13 A. No.
- 14 Q. So, wouldn't you be aware of the injuries  
15 sustained?
- 16 A. Yeah.
- 17 Q. Are you saying you didn't know about it?
- 18 A. I don't think I was there for the incident.
- 19 Q. But you do know about it?
- 20 A. From hearing about it here. I don't believe I was  
21 there. I think I was still out on maternity leave.  
22 I don't remember that incident.
- 23 Q. You wrote that report sixteen days later and so you  
24 got off maternity leave right after ---
- 25 A. It was right at the time. I don't remember exactly

1       when I came back from maternity leave.

2 Q.     So, the people that had done this act, they were on  
3       sort of a probationary situation? What was going on  
4       with that?

5 A.     I'm sure they were.

6 Q.     But you'd know about that, wouldn't you?

7 A.     If I was there and they were still in their room.

8 Q.     I have nothing further.

9       MS. LOOPER: Your Honor, I have no further  
10       questions.

11       THE COURT: All right. Thank you. You may step down.

12       MS. LOOPER: Your Honor, I would ask that Officer  
13       Price be excused.

14       THE COURT: Any objection?

15       MR. EPPES: Without objection, Your Honor.

16       THE COURT: Thank you, officer. You may stay or go.  
17       Whichever you prefer.

18       MS. LOOPER: Judge, could we take a short break  
19       before the next witness? She might a little bit late. We  
20       may need a few minutes.

21       THE COURT: All right. Let's try to be back no later  
22       than twenty-five to three. That's a little less than ten  
23       minutes.

24       MS. LOOPER: Thank you, Your Honor.

25                               (Brief Break)

## DIRECT EXAMINATION OF CHRISTEL S. HARRIS BY MS. LOOPER

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1 THE COURT: We're back on the record in the case of  
2 State v. Osborne. It's now approximately twenty minutes  
3 till three. We are still in the State's case. Ms.

4 Looper, you may proceed.

5 MS. LOOPER: Thank you, Your Honor. May it please  
6 the Court. The State call Christel Harris to the stand.

7 (After being duly sworn by the Clerk of Court,  
8 CHRISTEL HARRIS testified as follows:)

9 CLERK OF COURT: If you will take the witness stand,  
10 please, ma'am and state your name and spell your last  
11 name for the reporter, please.

12 MS. HARRIS: Christel Harris. H-A-R-R-I-S.

13 DIRECT EXAMINATION

14 BY MS. LOOPER:

15 Q. Ms. Harris, who is your employer?

16 A. Greenville County School District.

17 Q. And where do you actually work?

18 A. G-D-C.

19 Q. At the Greenville ---

20 A. The Greenville Detention Center.

21 Q. And so, are you Jesse's teacher?

22 A. Yes.

23 Q. And how long have you been a teacher?

24 A. I've been a teacher fourteen years.

25 Q. And how long have you been at the detention center?

- 1 A. Six months.
- 2 Q. And you are familiar with Jesse as a student over  
3 those six months, then?
- 4 A. Yes.
- 5 Q. What kind of student is he?
- 6 A. Honor roll, compliant, respectful.
- 7 Q. And, approximately, I know it varies because it is  
8 the detention center, but approximately how many  
9 students do you typically have in your class at any  
10 one time?
- 11 A. Around ten to twelve.
- 12 Q. And what does a daily class look like?
- 13 A. Come in at 8:30, get out their computers, open up  
14 their work, which is virtual. We have two virtual  
15 classrooms they go to and then they go on break,  
16 lunch, come back and then we end at 2:30.
- 17 Q. And do they get to interact with the other students  
18 in the class, at all?
- 19 A. I mean, they are at their own desks and computers.  
20 If they ask a question it goes across the class  
21 sometimes.
- 22 Q. Do they remain in their classrooms during break  
23 time or do they have to return to the dorm areas?
- 24 A. They return to the dorm.
- 25 Q. Are the students generally friendly with one



## DIRECT EXAMINATION OF CHRISTEL S. HARRIS BY MS. LOOPER

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- 1 another?
- 2 A. I mean, overall. They don't really talk a lot
- 3 because they are working on individual classes and
- 4 there is all different kinds of class work.
- 5 Q. Does Jesse have any particular friends at school?
- 6 A. They are all friendly with him in the classroom.
- 7 Q. And does he specifically talk to one student more
- 8 so than another?
- 9 A. Yes.
- 10 Q. Who would that student be?
- 11 A. Can I say their name?
- 12 Q. Yes, ma'am.
- 13 A. Miguel Cano.
- 14 Q. And you stated they have their own computers in
- 15 class. Do they each get their own personal
- 16 computers to complete their schoolwork?
- 17 A. Yes.
- 18 Q. Is that a desktop or laptop?
- 19 A. Laptop.
- 20 Q. Does it remain in the classroom facility?
- 21 A. I keep them locked up in my classroom at the end of
- 22 each day until the next morning.
- 23 Q. And so, they are only allowed access during
- 24 classroom. Is that correct?
- 25 A. Correct.

1 Q. And are there restrictions on internet access on  
2 those computers?

3 A. Yes. By Greenville County.

4 Q. And are they allowed access to things such as  
5 social media?

6 A. No.

7 Q. And are they allowed access to Google?

8 A. Yes.

9 Q. And is that due to the school being Google-based?  
10 Is that what I understand?

11 A. That is the platform that we use to access. They  
12 can use Internet Explorer, but Google works better  
13 with the platform that we use.

14 Q. And are there specific sites that Greenville County  
15 Schools have deemed inappropriate and block?

16 A. We do. It's called a white list and a black list.  
17 For virtual school, we white list specific websites  
18 they may need to access for that classroom,  
19 especially when they have virtual labs and then  
20 they also have ones that they have blocked that are  
21 restricted.

22 Q. And do you have the ability to add additional  
23 websites if you happen to notice a student  
24 accessing something that you feel is inappropriate?

25 A. Yes.

## DIRECT EXAMINATION OF CHRISTEL S. HARRIS BY MS. LOOPER

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- 1 Q. And have you continued to do that over the past six  
2 months?
- 3 A. Yes.
- 4 Q. And do they have access to any kind of streaming  
5 music?
- 6 A. Google Play is the only streaming music that works.  
7 It doesn't work on all computers or every day.
- 8 Q. And do they have access to the same computer every  
9 day?
- 10 A. Yes.
- 11 Q. And are there any restrictions that are put in  
12 place on that Google Play or can they listen to  
13 anything that's accessible in Google Play?
- 14 A. As long as it's accessible on there.
- 15 Q. So, there is no restriction on the type of music  
16 that can be listened to or if it has expletives?
- 17 A. No.
- 18 Q. Ms. Harris, are you able to retrieve each student's  
19 search history every day?
- 20 A. Daily.
- 21 Q. And is that documented past that day?
- 22 A. No, once the system shuts down for the day it  
23 refreshes for the next day.
- 24 Q. And was a request put in for you to begin saving  
25 those?

- 1 A. Yes.
- 2 Q. And do you remember approximately when you began  
3 saving those search histories?
- 4 A. When we were out on Christmas break.
- 5 Q. And do you recall any non school related searches  
6 or topics that peaked Jesse Osborne's interests?
- 7 A. Space.
- 8 Q. And are there any other outside issues that he has  
9 continued to research?
- 10 A. That I noticed? No.
- 11 Q. And have you been able to review the types of music  
12 that he's been listening to since we began saving  
13 the search histories?
- 14 A. Yes.
- 15 Q. What would your opinion be of the type of music  
16 Jesse is listening to most often?
- 17 A. The genre?
- 18 Q. Yes, ma'am.
- 19 A. Rap, heavy metal.
- 20 Q. And are you aware that Jesse Osborne has continued  
21 to access social media sites since you began saving  
22 those search histories?
- 23 A. Yes.
- 24 Q. Do you recall what social media sites he attempted  
25 to access?

## DIRECT EXAMINATION OF CHRISTEL S. HARRIS BY MS. LOOPER

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1 A. One time, Facebook. It's blocked. One time,  
2 Twitter, and it was blocked, and I don't recall the  
3 third.

4 Q. Would it have been Skype?

5 A. Possibly. Yes.

6 Q. And Ms. Harris, I'm going to hand you a stack of  
7 documents that have been marked State's Exhibit #48  
8 (A-P).

9 MR. EPPES: Your Honor, I believe we were provided  
10 these. I've reviewed them. I have no objection to them.

11 THE COURT: Thank you. Exhibit #48 (A-P) is  
12 admitted, without objection. Thank you.

13 (Whereupon, school records are entered into  
14 evidence as State's Exhibit #48, without objection)

15 Q. Ms. Harris, would you please look at those  
16 documents? Do you recognize those?

17 A. Yes.

18 Q. What are those documents?

19 A. These are the reports from our system we use called  
20 net support.

21 Q. And does that reflect the search histories that we  
22 just referred to?

23 A. Uh-huh.

24 Q. Are these fair and accurate copies that you saved  
25 and provided to our office?

1 A. Yes.

2 Q. All right, Ms. Harris, I'm going to ask that you  
3 step down here if you don't mind.

4 MS. LOOPER: And Your Honor, on this first document  
5 that I'm going to display is marked as State's Exhibit  
6 #48-A, this document does reflect other students. It is  
7 the entire search report and so at this time, I would  
8 request that there not be any recording due to the other  
9 juveniles that are inmates at that facility for their  
10 privacy so that we don't release any names of the  
11 juveniles that may be at that facility, just to not  
12 violate any privacy issues with other inmates at the  
13 detention center.

14 THE COURT: All right. It's my understanding that  
15 all the people on that list, at this point, were  
16 relatively recently were minors.

17 MR. LOOPER: That's correct.

18 THE COURT: So, I will grant that request. No media  
19 coverage of the names of the other students.

20 MS. LOOPER: And it will be very brief, Your Honor.

21 THE COURT: All right. Thank you.

22 Q. Ms. Harris, I'm going to show you what has been  
23 marked as State's #48-A. Can you provide the Court  
24 with the date at the very top of that document?

25 A. Tuesday, January 9th.

1 Q. And what year?

2 A. 2018.

3 MS. LOOPER: And Your Honor, just for the Court's  
4 record, these are double-sided.

5 THE COURT: Okay.

6 Q. And Ms. Harris, I'm going to show you page 48-A  
7 from January 9, 2018.

8 MS. LOOPER: And Your Honor, this is a document that  
9 does contain the other juveniles detained at that  
10 facility and so I'd ask that this not be photographed.

11 THE COURT: All right.

12 Q. And Ms. Harris, can you look at, this is page 48,  
13 and can you look at the history at approximately  
14 12:54:49. And can you please read what the general  
15 website was that was used?

16 A. Google Play Newsstand.

17 Q. And what was the topic that was looked at?

18 A. Autism.

19 Q. And are you familiar with what Google Play  
20 Newsstand is?

21 A. I've actually never gone on it myself. I mean, it's  
22 just news. It covers global news.

23 Q. But you can search for various news articles and  
24 such?

25 A. Yes.

1 Q. All right. And I'm going to turn to page 51. And  
2 could you please look at the search history at  
3 12:50?

4 A. Okay.

5 Q. 12:50:54 and read what that website was.

6 A. Google Play Newsstand. Schizophrenia.

7 Q. And page 84. Just for clarification, these are in  
8 reverse chronological order. Is that correct?

9 A. Yes. It starts at the end of the day and goes to  
10 the beginning.

11 MS. LOOPER: I'm sorry, Your Honor. I believe it's  
12 page 81. I'm sorry.

13 THE COURT: The same day?

14 MS. LOOPER: This is all the same day, Your Honor.

15 THE COURT: Okay.

16 Q. On page 81, can you provide the Court at the time  
17 stamp of 11:17:02?

18 A. Google Play Newsstand. Townville, South Carolina.

19 MS. LOOPER: And Your Honor, I'm going to move to  
20 State's Exhibit #48-B.

21 MR. EPPES: Your Honor, before we go to the second  
22 exhibit, just for clarification. Ms. Looper said there  
23 was more than one juvenile's name listed on there. Can  
24 she explain how she knows it's my client's search or if  
25 it's my client's search, because I don't know that she's



1 done that.

2 THE COURT: Okay. I think that would be a good idea  
3 as far as foundation. Go ahead, Ms. Looper.

4 Q. Ms. Harris, looking at this document, there are  
5 other juvenile's names that appear on this.

6 Correct?

7 A. Correct.

8 Q. And how were you able to tell which juvenile is  
9 accessing which website on this report?

10 A. It states the juvenile's name, the Greenville  
11 County log on, the computer name and number, the  
12 website, and it time stamps it from the time they  
13 click on it until they close it and how long. It  
14 has their name and their log in.

15 Q. And do they access each other's log in information?

16 A. No.

17 MS. LOOPER: And Your Honor, we are going to go  
18 again to page or excuse me, what's been marked as  
19 State's Exhibit #48-B.

20 THE COURT: All right.

21 Q. And Ms. Harris, can you provide the information on  
22 what this date is?

23 A. Wednesday, January 10th, 2018.

24 Q. Thank you.

25 MS. LOOPER: And Your Honor, we are going to move to

1 page 18. This is actually just Jesse Osborne's  
2 documents. Your Honor, there are not other juvenile's  
3 names that appear on this report.

4 THE COURT: All right.

5 MR. EPPES: Your Honor, can she repeat the date of  
6 that one?

7 THE COURT: I'm sorry?

8 MR. EPPES: Could you ask her to repeat the date on  
9 that one?

10 THE COURT: Yes. What was the date?

11 MS. LOOPER: Your Honor, this is for December 10,  
12 2018. Or January. I'm sorry.

13 THE COURT: January 10, 2018?

14 Q. Ms. Harris does it appear at the very top of the  
15 document, does it say December 10, 2018?

16 A. Yes. That's how I say each day.

17 Q. Are all the time stamps on there reflecting the  
18 appropriate date of January 10, 2018?

19 A. Yes.

20 MS. LOOPER: Your Honor, I believe that was just a  
21 typo. I think that was what Mr. Eppes may have been  
22 referring to.

23 THE COURT: All right.

24 MS. LOOPER: And these are all on January 10, 2018.

25 THE COURT: All right. So, this is the day after the

1 first ---

2 MS. LOOPER: Correct, Your Honor.

3 THE COURT: All right. You may proceed.

4 Q. Ms. Harris, I'm going to ask that you look at page  
5 eight and if you could provide the Court with the  
6 information of the history at 13:24:22.

7 A. Google Play Newsstand. Autism.

8 Q. And the search history at 13:25:26.

9 A. Schizophrenia. Google Play Newsstand.

10 MS. LOOPER: And Your Honor, I'm going to move to  
11 the Exhibit marked #48-F.

12 THE COURT: All right.

13 Q. Ms. Harris can you provide the date for this  
14 report?

15 A. January 23, 2018.

16 Q. Ms. Harris, do you happen to ask your students to  
17 look up any type of breaking news or other current  
18 events for their course work?

19 A. No.

20 Q. And do you recall a nationally recorded event that  
21 occurred on that date?

22 A. I heard about it that night.

23 Q. And what was that event?

24 A. The Kentucky school shooting.

25 Q. Did you ask your students to look that up at any

1 point during the day?

2 A. No.

3 MS. LOOPER: Your Honor, I'm going to ask her to  
4 look at page 9 of that report.

5 THE COURT: All right.

6 Q. And Ms. Harris, on the time stamp of 13:48:28, can  
7 you please provide the Court with that information?

8 A. Google Play Newsstand Search. Kentucky.

9 Q. And can you read the information at 13:49:37?

10 MS. LOOPER: This is on page 8, Your Honor. I  
11 apologize.

12 Q. 13:49:37.

13 A. Google Play Newsstand. Kentucky.

14 Q. And moving to page 7. If you could look at the time  
15 for 13:54:34.

16 A. Violence In America. Google Play Newsstand.

17 Q. And 13:55:17.

18 A. Google Play Newsstand. Kentucky.

19 Q. And Ms. Harris could you provide the Court with the  
20 information at time stamp 13:58:40?

21 A. West Oak Middle. Google Search.

22 Q. Do you recall approximately how many times he did  
23 searches on Google Play Newsstand that day?

24 A. I don't know.

25 Q. Did you review, did you happen to look back over

1       that record?

2 A.    I did, but I don't recall the number.

3 Q.    Did it seem excessive?

4 A.    He looks at Newsstand daily. I mean, every time he  
5       has a break from class work. So, he does look at it  
6       often.

7       MS. LOOPER: I'm going to move to State's #48-J.

8       THE COURT: All right.

9 Q.    And Ms. Harris, could you provide the Court with  
10       the date on this report?

11 A.   January 29, 2018.

12       MS. LOOPER: And Your Honor, I'm going to refer to  
13       page 86 for the record.

14 Q.   And Ms. Harris could you provide the Court with the  
15       information at 10:08:01?

16 A.   Google Play Newsstand. Kentucky.

17       MS. LOOPER: Moving to page 67, Your Honor.

18 Q.   Ms. Harris, could you provide the Court with the  
19       information at 10:48:27?

20 A.   A 21 Savage Lyrics.

21 Q.   Did you have a chance to look up those lyrics at  
22       all?

23 A.   I did.

24       MS. LOOPER: Your Honor, I'm going to hand Ms.  
25       Harris what has been marked as State's Exhibit #49 for

1 identification purposes.

2 MR. EPPES: Your Honor, I will stipulate to what I  
3 believe to be a true and correct copy of rap song  
4 lyrics.

5 THE COURT: Okay.

6 Q. And Ms. Harris, did you happen to look up the  
7 lyrics to this song?

8 A. I did.

9 Q. And does this look like a fair and accurate  
10 representation of the lyrics you looked up?

11 A. Yes.

12 Q. And is this, in fact, one of the links that was  
13 found on that date?

14 A. Yes.

15 MS. LOOPER: And Your Honor, I'm going to put this  
16 up here. (Projects to large screen)

17 Q. Ms. Harris, did you happen to read over the lyrics  
18 of this song?

19 A. I did.

20 Q. What did you consider was being referred to  
21 throughout this song?

22 A. I actually had to ask for some of it because I was  
23 unfamiliar with it, but it's talking about a gun.  
24 That's the stick.

25 Q. Okay. And does he in fact tend to listen to this

1 song quite extensively?

2 A. Yes.

3 Q. And Ms. Harris, I'm going to turn to page 41 in  
4 that same exhibit.

5 MS. LOOPER: And Your Honor, for the same date of  
6 January 29th.

7 THE COURT: All right.

8 MS. LOOPER: Or excuse me, Your Honor, I'm going to  
9 look at page 19. I apologize.

10 Q. Ms. Harris, the search history at 13:58:26.

11 A. Google Play Newsstand. Autism.

12 Q. And also on page 18, Ms. Harris, could you read the  
13 information at 13:59:06?

14 A. Major depression with psychotic features. Google  
15 Search.

16 MS. LOOPER: And Your Honor, I'm going to ask her to  
17 look at page 15 at this time.

18 THE COURT: All right.

19 Q. And could you please provide the Court the  
20 information at 14:05:47?

21 A. Facebook.

22 Q. And so this is the date that he attempted to access  
23 Facebook?

24 A. Yes. That's why it says network error.

25 Q. So, he was not able to access Facebook at that

1 time?

2 A. Right.

3 Q. Did you happen to look over to see how many times  
4 he had listened to the song or pulled up the lyrics  
5 to the song "Air It Out" that date?

6 A. More than 10 times.

7 MS. LOOPER: And Your Honor, I'm going to ask Ms.  
8 Harris to refer to what's been marked as State's Exhibit  
9 #48-L.

10 THE COURT: All right.

11 Q. Ms. Harris, what is the date on this?

12 A. January 31, 2018.

13 Q. Did you happen to notice one song that appeared  
14 throughout that date?

15 A. It's just as normal, "Air It Out".

16 Q. And do you recall any rough idea how many times he  
17 may have pulled out those lyrics or pulled up that  
18 song throughout the day?

19 A. I don't know the count.

20 Q. If I said more than 50, would that be accurate?

21 A. More than 50? I don't know if he'd have enough time  
22 to listen to it that often. I guess if he replayed  
23 it that might be accurate, I guess.

24 MS. LOOPER: And Your Honor, the last Exhibit #48-N.

25 Q. Ms. Harris, I'm going to ask you to provide the



## DIRECT EXAMINATION OF CHRISTEL S. HARRIS BY MS. LOOPER

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1 Court with the date on that, as well.

2 A. February 7, 2018.

3 Q. And did he ever research any particular topics that  
4 date that caught your attention?

5 A. Yes.

6 Q. Do you recall what those topics might have been?

7 A. He was looking up space and it was felons leave the  
8 planet or something about felons leaving the  
9 planet.

10 Q. Did he also look up anything about felons getting a  
11 job?

12 A. Yes.

13 THE COURT: While she's returning to the stand, I  
14 believe that you referred to Exhibit #49, which was the  
15 song lyrics. Are you offering that into evidence?

16 MS. LOOPER: Yes, sir, Your Honor. I was under the  
17 impression that Mr. Eppes was ---

18 MR. EPPES: Without objection, Your Honor.

19 THE COURT: Okay. I think that he didn't object, but  
20 I wasn't sure if you were offering it.

21 MS. LOOPER: I apologize. Yes, sir. Thank you.

22 THE COURT: So admitted. Thank you.

23 (Whereupon, song lyrics to Air It Out are entered  
24 into evidence as State's Exhibit #49, without objection)

25 Q. Ms. Harris, I apologize. One last thing. Would you

1 mind stepping back down here one last time?

2 MS. LOOPER: Your Honor, I'm going to go ahead and  
3 publish this, the song lyrics, due to the fact that it  
4 has now been officially admitted.

5 THE COURT: Okay. This is the Air It Out?

6 MS. LOOPER: Yes.

7 Q. And Ms. Harris, do you mind reading through the  
8 lyrics?

9 A. Pull up and air it out. Pull up and air it out.  
10 Pull up and air it out. Pull up and air it out.  
11 Pull up and air it out. Pull up and air it out.  
12 Pull up and air it out. Pull up and air it out. Got  
13 the .30 on me now. Got that .30 on me now. Pull up  
14 and air it out. Pull up and air it out. I got the  
15 stick on me now. I got the stick on me now. Pull up  
16 and air shit out. I pull up and dick your hoe down.  
17 Young savage bitch I got pounds. Young savage bitch  
18 I got rounds. Pull up and shot up your town. Pew  
19 Pew Slaughter gang bitch we go brady P-D-E bitch  
20 they go brady drinking on lean got me lazy Glock 40  
21 number.380 I'm cooking up dope in this tin. You  
22 need a new pistol it jammed. I don't fuck around  
23 with the zans. I dripping little bitch I don't dab  
24 your bitch a little freak ouch I fuck her one time  
25 bounce ha, ha, ha. Ya ha yah yah still got the

## CROSS EXAMINATION OF CHRISTEL S. HARRIS BY MR. EPES

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1 chopper round my motherfucking shoulder still that  
2 same nigga I just got a little older Pull up and  
3 air it out repeats seven times. Eight times. Got  
4 that .30 on me now. Got that .30 on me now. Pull up  
5 and air it out. Pull up and air it out. I got the  
6 stick on me now. I got this stick on me now. Pull  
7 up and air shit out. I pull up and air shit out.  
8 Got the stick on me now. Pull up and air that bitch  
9 out. Glock 17 on me now young niggas shot up your  
10 house what that shit you talking about look how  
11 that .30 hang out walk through the motherf-ing  
12 crowd. Pussy nigga shut your mouth. All of my young  
13 niggas killers P-D-E "n" drug dealers nah we don't  
14 f with you niggas get your ass slaughtered little  
15 nigga I keep them 5ths on my pistols I keep them  
16 hunnas on my stick when that bitch click on don't  
17 miss one and the head and I hit bitch land straight  
18 in your temp I told you don't F with me "n". Shawty  
19 be popping them "n" now they call cops on a "n"  
20 'cause they couldn't stop a little "n". Right at  
21 the bottom little "n". P-D-E slaughter gang "n".  
22 Pull up and air it out repeats again 8 times. Got  
23 that .30 on me now. Got that .30 on me now. Pull up  
24 and air it out. Pull up and air it out. I got that  
25 stick on me now. I got that stick on me now. Pull

1 up and air shit out. Pull up and air shit out.

2 MS. LOOPER: Your Honor, I have no further questions  
3 for this witness.

4 Q. Ms. Harris, please answer any questions the defense  
5 may have.

6 THE COURT: Mr. Eppes?

7 CROSS EXAMINATION

8 BY MR. EPPES:

9 Q. Were you familiar with this particular work before  
10 this?

11 A. This particular song?

12 Q. Yes, ma'am.

13 A. No.

14 Q. Do you listen to much gangsta rap?

15 A. I listen to everything. I don't know what is  
16 considered gangsta.

17 Q. Gangsta rap is a genre of rap music that glorifies  
18 guns and violence and other things.

19 A. Then, no.

20 Q. Do you know anything about the types of music that  
21 adolescent boys listen to?

22 A. Rap.

23 Q. They listen to rap. Are you a person who  
24 sufficiently understands what the lyrics are  
25 usually about or do you do like me and tune it out

## CROSS EXAMINATION OF CHRISTEL S. HARRIS BY MR. EPPE

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- 1       and try not to listen to it much?
- 2 A.    I listen to more mainstream rap if I was going to
- 3       say that, not anything that is like that song.
- 4 Q.    Yes, ma'am. But you teach adolescents and
- 5       juveniles, don't you?
- 6 A.    Yes.
- 7 Q.    And it's fair to say that adolescents at a facility
- 8       usually listen to heavy metal, gangsta rap music
- 9       and music comparable to that right there?
- 10 A.   Yes.
- 11 Q.   And you are familiar with that. Correct?
- 12 A.   Yes.
- 13 Q.   And they search for it on the Google -- I forgot
- 14       what it's called.
- 15 A.   Google Play.
- 16 Q.   Do you know whether or not Google Play will play
- 17       that song if you bring up the lyrics?
- 18 A.   I would assume so, yes. I've heard it. That's how
- 19       they listen to it.
- 20 Q.   But do you know if he was actually playing it or it
- 21       was just the lyrics pulled up?
- 22 A.   I do not know, because I can turn on their
- 23       headphones so I can hear what they are listening
- 24       to, but I don't.
- 25 Q.   Do you know that Mr. Osborne recently had a

1 psychological evaluation?

2 A. I did not.

3 Q. Mr. Osborne recently had a psychological evaluation  
4 by Dr. James Ballenger. If I told you that he  
5 looked up all these terms: autism, Schizophrenia,  
6 and major depression with psychosis after he was  
7 interviewed by Dr. Ballenger, would you have any  
8 way of knowing if that was true or false?

9 A. I would not.

10 Q. Thank you.

11 MR. EPPE: No further questions.

12 THE COURT: Mr. Smith?

13 MR. SMITH: I have no questions, Your Honor.

14 THE COURT: Ms. Looper, any redirect?

15 MS. LOOPER: Your Honor, very briefly.

16 REDIRECT EXAMINATION

17 BY MS. LOOPER:

18 Q. Ms. Harris, due to the fact that the solicitor's  
19 office was unable to discover that he was able to  
20 access the internet until recently and asked you to  
21 start saving those searches for us, do we have any  
22 search history prior to January 9th of this year to  
23 verify that he wasn't already looking up these  
24 topics and interests?

25 A. No.

## CROSS EXAMINATION OF CHRISTEL HARRIS BY MR. SMITH

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1 Q. Thank you.

2 MS. LOOPER: No more questions, Your Honor.

3 RE-CROSS EXAMINATION

4 BY MR. EPPES:

5 Q. Ma'am, a part of your job is to police what these  
6 kids are doing and make sure that they aren't doing  
7 anything that they shouldn't be doing. Correct?

8 A. Right.

9 Q. You may give a little leeway with song lyrics and  
10 stuff like that, but if you saw somebody doing  
11 something that shouldn't be done, something that  
12 crept through the cracks for example or anything  
13 else, you'd certainly block those websites and stop  
14 it from happening. Correct?

15 A. Yes. I read them from the computer. If I ever found  
16 something inappropriate.

17 Q. And you check what they are looking up and review  
18 it on a regular basis and have been doing so since  
19 you were employed. Correct?

20 A. Yes. Their screens are visible to me at all times.

21 Q. Thank you.

22 MR. SMITH: May it please the Court?

23 CROSS EXAMINATION

24 BY MR. SMITH:

25 Q. Ms. Harris, with regard to that particular song,

DIRECT EXAMINATION OF AMY BRADSHAW BY MR. MCELHANNON 519

1 are you aware of any other juveniles that have  
2 brought that song up?

3 A. I haven't looked for that one.

4 Q. But you didn't look?

5 A. For that song for other people? No.

6 Q. All right. Thank you.

7 THE COURT: Thank you, ma'am. You may step down.

8 MS. LOOPER: Your Honor, I'd ask that Ms. Harris be  
9 excused.

10 THE COURT: Any objection to that?

11 MR. EPPES: Without objection, Your Honor.

12 THE COURT: Thank you, Ms. Harris. You are free to  
13 stay or go, whichever you prefer.

14 MR. MCELHANNON: The State calls Amy Bradshaw, Your  
15 Honor.

16 THE COURT: All right.

17 (After being duly sworn by the Clerk of Court, AMY  
18 BRADSHAW testified as follows:)

19 CLERK OF COURT: Please have a seat in the  
20 witness chair and state your name for the record and  
21 spell your last name for the reporter.

22 MS. BRADSHAW: Amy Bradshaw. B-R-A-D-S-H-A-W.

23 DIRECT EXAMINATION

24 BY MR. MCELHANNON:

25 Q. Ms. Bradshaw, who are you employed with?

STATE OF SOUTH CAROLINA VERSUS JESSE DEWITT OSBORNE



## DIRECT EXAMINATION OF AMY BRADSHAW BY MR. MCELHANNON 520

- 1 A. The Department of Juvenile Justice.
- 2 Q. For how long?,
- 3 A. Approximately, nineteen years.
- 4 Q. And what is your job title now?
- 5 A. I'm the county director.
- 6 Q. How long have you been the Anderson County
- 7 Director?
- 8 A. Since 2006.
- 9 Q. So, eleven-plus years?
- 10 A. Yes, sir.
- 11 Q. What are your duties as the director of the
- 12 Anderson County Juvenile Justice?
- 13 A. I'm responsible for the day to day operations in
- 14 the county office.
- 15 Q. And, certainly, as being the director you would
- 16 know the term, "indeterminate commitment?"
- 17 A. Yes.
- 18 Q. Can you explain to the Court what indeterminate
- 19 commitment means?
- 20 A. Indeterminate commitment is when a juvenile is
- 21 given a period of time to serve at DJJ that is not
- 22 definite. It has a minimum and a maximum deadline.
- 23 Q. And what would be the maximum age that a juvenile
- 24 could stay on an indeterminate commitment?
- 25 A. Twenty-one.

- 1 Q. Their twenty-first birthday?
- 2 A. Yes.
- 3 Q. If a juvenile does receive an indeterminate
- 4 commitment with DJJ, are there sentencing
- 5 guidelines?
- 6 A. Yes.
- 7 Q. And what are the guidelines based on?
- 8 A. They're based on the offenses.
- 9 Q. The committing offense?
- 10 A. Yes, sir.
- 11 Q. So, if it was murder, it would be based on murder?
- 12 A. Yes.
- 13 Q. C-S-C would be based on C-S-C.
- 14 A. Yes, sir.
- 15 Q. Have you had the opportunity to run the guidelines
- 16 on Jesse Osborne if he remains in the family court
- 17 system and is adjudicated delinquent and sentenced
- 18 to two counts of murder, three counts of attempted
- 19 murder, five counts of possession of a weapon
- 20 during the commission of a violent crime?
- 21 A. Yes, I do have those guidelines.
- 22 Q. What do those guidelines tell you?
- 23 A. Thirty-six to fifty-four months.
- 24 Q. And if we translate that into years, it would be,
- 25 if I'm correct, three to four-and-a-half years?

## DIRECT EXAMINATION OF AMY BRADSHAW BY MR. MCELHANNON 522

- 1 A. I believe that's correct. Yes, sir.
- 2 Q. And four-and-a-half years would be his max-out  
3 date?
- 4 A. Yes, sir.
- 5 Q. How much of thirty-six to fifty-four months would  
6 he be required to serve?
- 7 A. It's based on the parole board. The parole board  
8 releases the juvenile based on recommendations that  
9 come from the social worker, DJJ community office  
10 and the teachers.
- 11 Q. Okay. So, would he have to serve at least the  
12 thirty-six months, or could he be released sooner?
- 13 A. The presumption is minimum.
- 14 Q. Thirty-six months.
- 15 A. Yes, sir.
- 16 Q. Do juveniles get good time credit?
- 17 A. They get pre-dispositional confinement credit.
- 18 Q. Pre-confinement credit, but not good time credit  
19 like in the adult system?
- 20 A. That's correct.
- 21 Q. Do you know how many days Jesse Osborne has been in  
22 detention, as of today?
- 23 A. As of today it has been 504 days.
- 24 Q. And if I translate that correct, that's about 16.8  
25 months?

- 1 A. Yes, sir.
- 2 Q. So, if Mr. Osborne were to remain in juvenile  
3 system, how soon would he be eligible for release,  
4 taking into consideration for the time he's already  
5 served, pre-confinement credit.
- 6 A. I believe at minimum, he will be close to 17 years  
7 old.
- 8 Q. So, he's 15 now, so roughly 19 months? A year and  
9 seven months would be him minimum?
- 10 A. Yes, sir.
- 11 Q. And his maximum would be?
- 12 A. Approximately, about 18-and-a-half years old. About  
13 37 months.
- 14 Q. So, another three years and a month?
- 15 A. Yes, sir.
- 16 Q. Would he come up for a parole hearing prior to his  
17 thirty-six months?
- 18 A. They have administrative hearings prior to 36  
19 months. Those are typically paperwork hearings.
- 20 Q. Okay. And so, they are almost for administrative  
21 purposes only?
- 22 A. Yes.
- 23 Q. How often are those board hearings?
- 24 A. Nine months, eighteen months, twenty-seven months  
25 and thirty-three months.

## DIRECT EXAMINATION OF AMY BRADSHAW BY MR. MCELHANNON 524

1 Q. Is it possible if for some reason, say if all three  
2 of the agencies or all three of the reports come  
3 back exceptional that he could actually be released  
4 prior to his minimum guidelines?

5 A. There is a possibility.

6 Q. So, if I'm understanding this correctly, once he  
7 would reach the minimum thirty-six months, he would  
8 be eligible to be released, there would be no  
9 requirement that he serve the full guideline, the  
10 maximum. Correct?

11 A. That is correct.

12 Q. Have you ever known, or would it be fair to say  
13 that most juveniles are released prior to serving  
14 their maximum guideline?

15 A. I don't have that statistical information.

16 Q. Do you know if it's ever happened?

17 A. I don't, personally.

18 Q. Does DJJ have the discretion on indeterminate  
19 commitment where they place that juvenile?

20 A. Yes, sir.

21 Q. And how do they decide that?

22 A. The parole board decides everything with a  
23 juvenile. However, for instance, if a juvenile is  
24 committed, and every child goes through the  
25 classification process, and if he were to be sub-

- 1        classed, mental health would become involved and  
2        they can place him as well as DJJ can place him.
- 3 Q.     So, DJJ has the discretion as to where a juvenile  
4        is placed?
- 5 A.     No, sir.
- 6 Q.     If Jesse Osborne remained in family court and was  
7        sentenced to an indeterminate commitment, would he  
8        go, say to the Broad River Facility in Columbia,  
9        directly?
- 10 A.    No, he goes to the Upstate Evaluation Center for  
11        processing.
- 12 Q.    And that's for classification?
- 13 A.    Yes.
- 14 Q.    And if he were adjudicated delinquent in family  
15        court, do you know how long it would be before he  
16        would go to any juvenile facility?
- 17 A.    I do not.
- 18 Q.    You don't have any idea?
- 19 A.    I don't.
- 20 Q.    If he were adjudicated delinquent in family court  
21        and sent to the Upstate Evaluation Center, U-E-C,  
22        are there services provided to him in terms of  
23        mental health programs, treatment programs?
- 24 A.    No, sir. There are psychologists and social workers  
25        available, but not services as far as counseling.

## DIRECT EXAMINATION OF AMY BRADSHAW BY MR. MCELHANNON 526

- 1 Q. And what age would he be actually transferred out  
2 of DJJ custody into the Department of Corrections  
3 on murder charges?
- 4 A. Seventeen.
- 5 Q. Seventeen years old?
- 6 A. Yes, sir.
- 7 Q. On his seventeenth birthday?
- 8 A. Yes, sir.
- 9 Q. I'll show you what's been marked State's Exhibit  
10 #44. I'll ask you, Ms. Bradshaw, if you can  
11 identify this document?
- 12 A. Yes. It's a Form 5.
- 13 Q. What is a Form 5 in DJJ language?
- 14 A. It has all the charges listed on it.
- 15 Q. Just for my edification, would it be a juvenile rap  
16 sheet?
- 17 A. Yes, sir.
- 18 Q. And whose juvenile rap sheet is State's Exhibit  
19 #44?
- 20 A. Jesse Osborne's.
- 21 Q. Can you tell from that rap sheet if he had a prior  
22 record prior to the charges that he's in court on  
23 today?
- 24 A. Yes, sir.
- 25 Q. Do you have a date of that?

- 1 A. His prior charge?
- 2 Q. Yes.
- 3 A. He had a disturbing school charge and he was placed
- 4 on probation on August 9, 2016.
- 5 Q. What was the incident date that he actually came to
- 6 court on that?
- 7 A. When it was prosecuted, it was March 8th, but he
- 8 actually was placed on probation August 9, 2016.
- 9 Q. And you said that was a disturbing school charge?
- 10 A. Yes, sir.
- 11 Q. Are you aware of what the nature of that charge
- 12 was?
- 13 A. I read some in the file.
- 14 Q. Was it bringing a hatchet and machete to school?
- 15 A. That's what I believe I read, sir.
- 16 Q. And that was an Oconee case. Right?
- 17 A. Sir?
- 18 Q. That was an Oconee County case?
- 19 A. Yes, sir.
- 20 Q. And then the other things on his Form 5 are, it's
- 21 basically the procedural history of the charges
- 22 he's in court on this time. Correct?
- 23 A. Yes, sir.
- 24 MR. MCELHANNON: Your Honor, at this time I would
- 25 ask that State's Exhibit #44 be admitted.



## CROSS EXAMINATION OF AMY BRADSHAW BY MR. EPPES

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1 MR. EPPES: Without objection, Your Honor.

2 THE COURT: Without objection, so admitted.

3 (Whereupon, a DJJ Form 5 is entered into evidence  
4 as State's Exhibit #44, without objection)

5 MR. MCELHANNON: That's all the questions I have.

6 THE COURT: All right. Cross examination?

7 CROSS EXAMINATION

8 BY MR. EPPES:

9 Q. Ms. Bradshaw, how familiar are you with that Oconee  
10 County matter?

11 A. Not familiar.

12 Q. If the recommendation in Oconee was that Mr.  
13 Osborne get counseling and therapy, who would make  
14 sure that recommendation was followed? Oconee  
15 County DSS or y'all?

16 A. That would be Oconee County DJJ.

17 Q. DJJ. I'm sorry. Even though he lived in Anderson  
18 County?

19 A. Yes. It's my understanding they chose to keep the  
20 case because they already had a relationship with  
21 the family and they live as close to Townville, I  
22 mean, from the Oconee office to the Anderson  
23 office.

24 Q. It's actually closer. Do you know anything about  
25 whether they followed up on those recommendations

1 of counseling on the original disturbing school  
2 charge?

3 A. I do not.

4 Q. Okay. You talked a lot about what the sentence  
5 would be if somebody stayed in DJJ and then you  
6 mentioned the words "so classified". What does "so  
7 classified" mean?

8 A. Each juvenile goes to the evaluation center when  
9 they have been committed. They will go for a, for  
10 the lack of a better term, a mental health  
11 screening and if they are sub-classed, then the  
12 Department of Mental Health will become involved  
13 and at that time if they meet the requirements, of  
14 course, they could be moved to a mental health  
15 facility.

16 Q. So if they got diagnosed, for example, with a  
17 psychosis, they could get moved to a mental health  
18 facility?

19 A. I believe so.

20 Q. And how long would they stay there?

21 A. It would be up to the Department of Mental Health.

22 Q. So, it would be completely up to the Department of  
23 Mental Health?

24 A. I believe so.

25 Q. So, if someone is adjudged mentally ill and a

## CROSS EXAMINATION OF AMY BRADSHAW BY MR. EPPES

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- 1 danger to themselves or others, the Department of  
2 Mental Health could keep them in custody in a  
3 locked facility up to such time as a psychiatrist  
4 or counselor deemed them no longer a threat to  
5 themselves or others?
- 6 A. Yes. They could place them when they found them  
7 fit.
- 8 Q. And they could stay perpetually? For as long as it  
9 takes. Correct?
- 10 A. I believe so, but I'm not 100%.
- 11 Q. You've never heard a limit on that?
- 12 A. I've not, specifically.
- 13 Q. Okay. And is it fair to say that the Department of  
14 Corrections has no corresponding relationship with  
15 the Department of Mental Health?
- 16 A. I do not know that.
- 17 Q. You don't know the answer to that. So, a  
18 psychiatrist, if Mr. Osborne was judged delinquent,  
19 a psychiatrist would see him. Correct?
- 20 A. Yes.
- 21 Q. And based upon the psychiatrist's investigation,  
22 which would include the horrific nature of these  
23 crimes, Mr. Osborne's presentation at an assessment  
24 of his psychological condition, they might send him  
25 to the Department of Mental Health. Correct?

- 1 A. That's a possibility. There's a team of  
2 professionals that meet yearly, if that's the case.
- 3 Q. And if that team of professionals met and did that,  
4 he would go and get the treatment that he needs for  
5 whatever may or may not have led him to this?
- 6 A. If that were deemed appropriate and he met the  
7 requirements for sub-class.
- 8 Q. And as far as you know, the SCDC does not do that?
- 9 A. I don't know.
- 10 Q. Thank you. Oh, you know what? I'm going to ask you  
11 one more thing. If someone was charged in Anderson  
12 County with disturbing schools and they brought a  
13 machete and hatchet to school and the judge said  
14 they needed counseling and therapy how would you  
15 staff that if they were ordered to get counseling  
16 and therapy as a part of the DJJ sentence?
- 17 A. If they already had a probation order or ordered to  
18 cooperate with counseling, we would meet with them  
19 and refer them to services.
- 20 Q. And how often would you meet with them?
- 21 A. Typically, it's once a month. However, each child  
22 is different and we do it based on their needs.
- 23 Q. And how soon would you expect them to be involved  
24 in therapy in a situation like that?
- 25 A. Every situation is different. It depends on how

1       soon they can get an appointment with the  
2       Department of Mental Health or if they have  
3       insurance, whether you know, when someone will take  
4       them. There are a lot of factors that go into that.

5 Q.   But it would be fair to say that within sixty to  
6       ninety days you'd expect that ball to be rolling?

7 A.   You would hope so.

8 Q.   Thank you.

9       THE COURT: Mr. Smith.

10      MR. SMITH: I have no questions, sir.

11      THE COURT: Any redirect?

12      MR. MCELHANNON: No redirect. I'd ask that Ms.

13 Bradshaw be released.

14      THE COURT: Thank you, Ms. Bradshaw. You are free to  
15 stay or leave. Whichever you prefer to do.

16      MS. PRICE: Hour Honor, may it please the Court. Our  
17 next witness is very lengthy and I believe that Mr.  
18 Eppes will have a lengthy cross examination, as well. It  
19 would probably be in the best interests of all so that I  
20 can show Mr. Eppes the exhibits and I believe everyone  
21 could use a bit of a break before we get started.

22      THE COURT: All right. Do you anticipate that this  
23 will be the last witness of the day?

24      MS. PRICE: Yes, sir.

25      THE COURT: All right. Let's take a break until

1 twenty 'till. That's about twelve minutes.

2 (Brief Break)

3 THE COURT: I believe we are back on the record in  
4 the case of State v. Osborne. It's about ten minutes to  
5 four in the State's direct case. You may call your next  
6 witness.

7 MS. PRICE: Thank you, Your Honor. May it please the  
8 Court. Before I call our next witness, Mr. Eppes and I  
9 agreed to sign a stipulation as to language in a manual  
10 for a psychological test, actually two, in fact.

11 THE COURT: Do I need to make this an exhibit?

12 MS. PRICE: A Court's Exhibit.

13 THE COURT: All right. I assume there is no  
14 objection to that. Court's Exhibit #1.

15 (Whereupon, a stipulation is entered into evidence  
16 as Court's Exhibit #1, without objection)

17 MS. PRICE: Thank you, Your Honor. At this time, the  
18 State calls Dr. Danielle Atkinson.

19 (After being duly sworn by the Clerk of Court, DR.  
20 DANIELLE ATKINSON testified as follows:)

21 CLERK OF COURT: If you would take the witness  
22 stand, please, and state your name and spell your last  
23 name for the reporter, please.

24 DR. ATKINSON: Danielle Atkinson. A-T-K-I-N-S-O-N.

25 DIRECT EXAMINATION

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 BY MS. PRICE:

2 Q. Thank you, Dr. Atkinson. What is your occupation?

3 A. I am a clinical psychologist.

4 Q. Okay. And by whom are you employed?

5 A. South Carolina Department of Juvenile Justice.

6 Q. And do you supervise for the South Carolina

7 Department of Juvenile Justice?

8 A. I do. I'm an upstate psychologist supervisor.

9 Q. And what is a clinical psychologist?

10 A. A clinical psychologist is someone who has

11 specialized psychological training in order to

12 diagnose and treat individuals with various mental

13 health disorders.

14 Q. Do you have any areas of specialty?

15 A. I don't have any certifications in any specialties,

16 however, my background is primarily in the forensic

17 field.

18 Q. Could you describe your educational background as

19 it pertains to your field?

20 A. Sure. I have a masters degree in forensic

21 psychology from John Jay College of Juvenile

22 Justice as well as a doctorate in clinical

23 psychology from Philadelphia College of Osteopathic

24 Medicine.

25 Q. And were you required to complete a residency

- 1 program or internship after the completion of your  
2 academic degree programs?
- 3 A. I did. I completed an APA approved internship.
- 4 Q. And how many licenses or certifications do you have  
5 in your field?
- 6 A. I have a license to practice psychology in both  
7 North and South Carolina.
- 8 Q. And when were you licensed in South Carolina?
- 9 A. December of 2015.
- 10 Q. Is there a professional board or organization that  
11 can certify your profession?
- 12 A. I am not board certified.
- 13 Q. Okay. Do you receive ongoing training and  
14 certification your field?
- 15 A. I do. We are required to maintain our licensure  
16 with continuing education credits.
- 17 Q. Do you remember any of the continuing education  
18 courses you attended within the past year?
- 19 A. I believe we had a waiver training. I don't know if  
20 that was in the past year. I would have to look at  
21 my CV to be sure.
- 22 Q. I think that was in 2016.
- 23 A. Okay.
- 24 Q. Have you been involved in teaching in your field?
- 25 A. I do. I teach online graduate classes for a masters



## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 degree in forensic psychology.

2 Q. And have you written any publications?

3 A. No.

4 Q. Do you keep a curriculum vitae of your  
5 qualifications and experiences pertaining to your  
6 field work?

7 A. I do.

8 MS. PRICE: Mr. Eppes, this is State's #50-A.

9 MR. EPPES: Your Honor, I've believe I've been  
10 provided a copy of her CV and I have no objection.

11 THE COURT: Without objection.

12 MS. PRICE: Thank you, Your Honor. At this time,  
13 State moves #50-A into evidence.

14 THE COURT: All right. So admitted. Thank you.

15 (Whereupon, a curriculum vitae is admitted into  
16 evidence as State's Exhibit #50-A, without objection)

17 Q. Dr. Atkinson, is that a true and accurate copy of  
18 your current curriculum vitae?

19 A. Yes.

20 Q. And how many patients would you say you see in a  
21 year?

22 A. Prior to becoming a supervisor several months ago,  
23 I probably see about five to six juveniles a month,  
24 so sixty to seventy-five juveniles a year.

25 Q. And have you been previously qualified to give

1 expert testimony in a judicial proceeding?

2 A. I have not.

3 Q. And so, how many waiver evaluations have you  
4 conducted?

5 A. Five.

6 Q. And how many times have you been called to testify  
7 in a waiver hearing such as this?

8 A. This is the first.

9 Q. Okay.

10 MS. PRICE: Your Honor, at this time, the State  
11 moves that Dr. Atkinson be declared an expert in the  
12 field of clinical psychology.

13 MR. EPPES: Your Honor, did she say that this is her  
14 second time being called or first time?

15 MS. PRICE: First time.

16 MR. EPPES: May I ask one question?

17 THE COURT: Sure. You may voir dire as much as you  
18 deem appropriate.

19 VOIR DIRE BY MR. EPPES:

20 Q. Dr. Atkinson, have you ever, other than Mr.  
21 Osborne, ever conducted an exam for a waiver  
22 hearing in a murder case?

23 A. Yes.

24 MR. EPPES: Your Honor, I have no objection to her  
25 being qualified as an expert in clinical psychology. I

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 was just curious about that.

2 THE COURT: I understand. All right. I will qualify

3 Dr. Atkinson as a ---

4 MR. EPPES: Your Honor?

5 THE COURT: I'm sorry?

6 MR. SMITH: Could I ask a question?

7 THE COURT: If you wish to voir dire, but it is only

8 limited to her qualifications.

9 VOIR DIRE BY MR. SMITH:

10 Q. You are a D.O. Is that right?

11 A. A PsyD.

12 Q. You were licensed in 2015?

13 A. In South Carolina, yes.

14 Q. Where were you initially licensed?

15 A. In North Carolina.

16 Q. When?

17 A. 2010.

18 Q. Approximately, how many clients or patients have

19 you seen?

20 A. To now, with the Department of Juvenile Justice?

21 Q. Yes, ma'am.

22 A. I've would see approximately five to six juveniles

23 a month and so sixty to seventy-five a year.

24 Q. So, multiply that by six?

25 A. I'm sorry?

1 Q. The total amount of patients have you had?

2 A. Since I began practicing psychology? Oh, I have no  
3 idea.

4 Q. Yes, ma'am. Thank you very much.

5 THE COURT: If there is nothing further, I am going  
6 to qualify Dr. Atkinson as an expert in the field of  
7 clinical psychology. You may proceed.

8 MS. PRICE: Thank you, Your Honor.

9 Q. Pursuant to court order, did you at some point in  
10 time have occasion to examine the juvenile, Jesse  
11 Osborne?

12 A. I did.

13 Q. And is that individual that you examined in the  
14 courtroom today?

15 A. He is.

16 Q. Could you point him out and describe what he is  
17 wearing for me? Can you see? You have the same  
18 problem I have, which is height impairment.

19 A. He's right over there next to Mr. Eppes and he is  
20 wearing the yellow jumpsuit.

21 Q. And who assigned you to that evaluation?

22 A. Our director of psychology typically assigns  
23 waivers as well as my supervisor at the time, Dr.  
24 Jennifer Crismon. (Ph)

25 Q. Okay. And there is another name in your report of

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 another doctor.
- 2 A. Dr. Jennifer Miller Green?
- 3 Q. Yes.
- 4 A. She's the director of psychology.
- 5 Q. And is that why she was included on your report,
- 6 she approved it?
- 7 A. Correct. She's on, what we consider, the evaluation
- 8 team for the waiver, the pre-waiver evaluations.
- 9 Q. So, there is an entire team that weighs in on this
- 10 even though you do the evaluations?
- 11 A. Correct.
- 12 Q. What is the purpose behind a pre-adjudicatory
- 13 transfer or waiver evaluation?
- 14 A. To provide specific information regarding the Kent
- 15 factors that are looked at in the waiver hearing.
- 16 Q. Is that to assist the judge in making his
- 17 determination?
- 18 A. Correct.
- 19 Q. About whether a juvenile, such as Mr. Osborne, is
- 20 to be waived up to general sessions to be tried as
- 21 an adult or to remain in juvenile Court?
- 22 A. Yes.
- 23 Q. What is the procedure you use for conducting a
- 24 waiver evaluation? Could you briefly describe it to
- 25 the Court?

- 1 A. Sure. We gather as much information as possible. We  
2 are usually in touch with both the solicitor's  
3 office and defense attorney to gather that  
4 information and then we conduct clinical interviews  
5 with parents and other family members that may be  
6 relevant as well as the juvenile and conduct  
7 psychological testing with the juvenile, as well.
- 8 Q. Okay. And do you gather materials such as former  
9 reports by other evaluators if those exist?
- 10 A. Yes.
- 11 Q. Do you look at incident reports from incident  
12 reports?
- 13 A. Yes.
- 14 Q. In this case, did you have occasion to look at  
15 transcripts or listen to audio interviews of family  
16 members?
- 17 A. I did.
- 18 Q. Okay. Did you look at other incident reports from  
19 previous calls to [REDACTED] Osborne Road?
- 20 A. Yes.
- 21 Q. And did you review some phone records?
- 22 A. Yes, I believe so.
- 23 Q. And in this process, you followed, when you  
24 evaluated Juvenile Osborne, did you speak with his  
25 mother?

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 A. I did.

2 Q. Did you speak with his grandparents?

3 A. Yes. His paternal grandparents.

4 Q. Okay. His paternal grandparents?

5 A. Yes.

6 Q. And did you speak with any other family members?

7 A. No, I did not.

8 Q. Okay. And when did you evaluate juvenile Osborne?

9 A. I saw him on February 28, 2017, and March 2, 2017.

10 Q. And following your evaluation, did you prepare a  
11 report detailing your evaluation and the results?

12 A. I did.

13 MS. PRICE: Mr. Eppes? It's the report.

14 MR. EPPES: Your Honor, it's a report I previously  
15 have been provided with and I have no objection to the  
16 witness seeing it or to its introduction into evidence.

17 THE COURT: What is the number of that exhibit?

18 MS. PRICE: 50-B.

19 THE COURT: All right. So admitted.

20 MS. PRICE: Thank you, Your Honor.

21 Q. Dr. Atkinson, let me give this copy to you.

22 A. Thank you.

23 THE COURT: So both parties will be aware, I was  
24 notified on the filing of this report by the Clerk of  
25 Court that there was no objection by either party in

1 this matter to the Court reviewing this report prior to  
2 the commencement of the trial so I have a copy report. I  
3 intend to refer to that as you're going through it, but  
4 that is what I'm looking at up here. I wanted to make  
5 everyone aware of that.

6 MS. PRICE: Thank you, Your Honor.

7 Q. Dr. Atkinson, did you specifically address the  
8 factors set forth in Kent versus The United States  
9 regarding: the sophistication and maturity of the  
10 defendant, the likelihood of reasonable  
11 rehabilitation of the defendant, and the adequate  
12 protection of the public?

13 A. Yes.

14 Q. And where was your evaluation of juvenile Osborne  
15 conducted?

16 A. At the Greenville Juvenile Detention Center.

17 Q. Okay. And what was the approximate length of time  
18 that you spent with juvenile Osborne?

19 A. The first time that I met with him on February  
20 28th, I spoke with him approximately four hours.  
21 And the second time on March 2nd, I spent about  
22 three-and-a-half hours doing testing.

23 Q. So, seven-and-a-half hours, total?

24 A. Correct.

25 Q. And was juvenile Osborne compliant and cooperative



## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 with your evaluation?
- 2 A. He was.
- 3 Q. And did you explain to him the reason behind your  
4 evaluation and did you go over some materials and  
5 have him sign a waiver?
- 6 A. A consent form. Yes, I did.
- 7 Q. Okay. And I'd just like you to flip to that consent  
8 form for me. And what did you notify the juvenile  
9 of when you had him sign this form?
- 10 A. We read through it together and then I went over  
11 each aspect to make sure he understood and answered  
12 any questions he might have had.
- 13 Q. Does that essentially inform him that this is not a  
14 private evaluation?
- 15 A. Correct.
- 16 Q. Okay.
- 17 A. That the Court will receive a report and the  
18 solicitor's office and his attorney will receive a  
19 report, as well.
- 20 Q. And did you review the DJJ records and the West Oak  
21 Middle School records which address Jesse's prior  
22 involvement with The Department of Juvenile Justice  
23 as a part of your evaluation?
- 24 A. Yes.
- 25 Q. Jesse reported he had been bullied at school. Did

- 1       you see evidence of that in the records or the  
2       materials that you reviewed?
- 3 A.    Yes.
- 4 Q.    Okay. What exactly?
- 5 A.    His self-report that he was being bullied at school  
6       and those prior two judicial records.
- 7 Q.    Okay. So, you saw self-reporting.
- 8 A.    Correct.
- 9 Q.    Did you see any other evidence that juvenile  
10       Osborne had been bullied?
- 11 A.   Not in school records. No.
- 12 Q.   Okay. And any other records?
- 13 A.   No, other than his self-report. No.
- 14 Q.   And were there ever any names of bullies mentioned  
15       in any of the records that you read?
- 16 A.   Not that I'm aware of.
- 17 Q.   Okay. So, that was all vagaries?
- 18 A.   Correct.
- 19 Q.   Okay. And did you discuss the incident at West Oak  
20       with Jesse?
- 21 A.   I did.
- 22 Q.   How did his version compare with information in the  
23       reports and other things that you reviewed?
- 24 A.   He gave me an abbreviated version of what was in  
25       the official record. He didn't mention a lot of the

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 statements that witnesses reported he had made and  
2 his report also differed from what he reported to  
3 Dr. Sharman when he was in a DJJ facility regarding  
4 his intent to use the weapons.
- 5 Q. Okay. And how did it differ, his report to you from  
6 Dr. Sharman's report?
- 7 A. He told Dr. Sharman that he did intend to use the  
8 weapons to either hurt or possibly kill the  
9 intended victims and he told me that he simply had  
10 the weapons in order to scare them.
- 11 Q. So, his answer to why he had those weapons evolved?
- 12 A. Yes, it changed.
- 13 Q. It changed. Yes. Certainly. And you said that you  
14 met with some of juvenile Osborne's family members  
15 as a part of your evaluation process?
- 16 A. I did.
- 17 Q. Okay. And so that was the mother and the paternal  
18 grandparents?
- 19 A. Correct.
- 20 Q. Do you recall when you met with them and for how  
21 long?
- 22 A. I met them February 27th, separately, for about two  
23 hours, each.
- 24 Q. Tell me what you observed about Jesse's family  
25 history and functioning.

1 A. Could you be more specific?

2 Q. Sure. Tell me if the grandparents appeared to  
3 address Mr. Osborne, meaning Jeffrey Osborne, and  
4 Ms. Osborne, meaning Tiffney Osborne, and their  
5 parental involvement in different ways.

6 A. They did.

7 Q. Okay. Can you explain that to the Court?

8 A. Sure. The grandparents, Mr. And Mrs. Osborne  
9 described Jeffrey Osborne as being very active in  
10 Jesse's life and as Ms. Tiffney Osborne as being  
11 less active in his life.

12 Q. And was there any indicated history with DSS that  
13 you saw as a part of your evaluation?

14 A. There was history reported to me by both Tiffney  
15 Osborne and the grandparents, but I did not see any  
16 documentation of DSS history in any of the reports.

17 Q. Okay. And did you review the statements given by  
18 Tiffney Osborne and Patsy Osborne as part of this  
19 investigation?

20 A. I did.

21 Q. And do you recall who they said they believed had  
22 called DSS?

23 A. If I remember correctly, Patsy Osborne was unaware  
24 of who called DSS, but said that she had been  
25 blamed for calling DSS. That Tiffney Osborne

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 believed that she had called.

2 Q. Would it surprise you to know that both of them  
3 said that Jesse, they believed Jesse had reported  
4 to DSS, had called DSS?

5 A. They did not report that to me.

6 Q. Okay. But that would have been in their audio  
7 statements to law enforcement that you reviewed as  
8 part of your ---

9 A. I don't remember seeing that.

10 Q. Okay.

11 MS. PRICE: Beg the Court's indulgence.

12 THE COURT: Yes, ma'am.

13 (Shows document to Mr. Eppes)

14 Q. Okay. This is a certified copy of Tiffney Osborne's  
15 interview with police the same day that the  
16 shooting incident at Townville occurred. This is  
17 page 41. Can you look at lines 9-12 and read those  
18 to me?

19 A. The question was;

20 Q. Do you think maybe he's the one who called DSS?

21 A. I wondered that myself, too, just to get -- it's  
22 more towards Jeff, because Jeff is the strict one.

23 The second question was;

24 Q. Usually, dad is the disciplinarian?

25 Q. And why don't you go ahead and read lines 13

1 through 15 for me, as well.

2 A. Her answer was;

3 A. And he's with him all the time. So, they've  
4 been fussing about school work. Jesse is not  
5 wanting to do his schoolwork. They have been  
6 fussing about it.

7 Question was;

8 Q. Now, as far as schoolwork goes, before all  
9 this happened, did he enjoy school work?

10 The answer was;

11 A. Yeah, Jesse was like in Algebra I Honors in  
12 seventh grade.

13 Q. So, now since he's been kicked to home school?

14 And her answer was;

15 A. Yeah.

16 The question was;

17 Q. But it's like, you know, that rift is there?

18 And the answer was;

19 A. Yes. Yes.

20 Q. Okay. So, did prior to you meeting with Tiffney  
21 Osborne, did she ever say anything in any of the  
22 records that you reviewed about Mr. Osborne,  
23 Jeffrey Osborne, being abusive towards Jesse?

24 A. No. Prior to these current charges, I did not see  
25 anything in the record reflecting any type of

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 domestic abuse or physical abuse.
- 2 Q. Okay. And did you review George Jones, Dr. George
- 3 Jones' report?
- 4 A. I did.
- 5 Q. Okay. And he was a doctor who did a community
- 6 evaluation after the hatchet incident. Is that
- 7 right?
- 8 A. Yes.
- 9 Q. And in his report, did he specifically say that if
- 10 he had seen abuse he would have had to mandatorily
- 11 report it?
- 12 A. Yes. It's in the introduction of all the reports.
- 13 Q. And there's no indication that he saw any evidence
- 14 of abuse?
- 15 A. No. In fact, there is an indication that there was
- 16 no abuse. He writes that there was no abuse.
- 17 Q. And folks that do community evaluations or waiver
- 18 evaluations, you have some training in recognizing
- 19 some symptoms of abuse. Is that right?
- 20 A. Yes.
- 21 Q. So, Dr. Jones would have had some training ---
- 22 A. Yes.
- 23 Q. --- in that area. And if he had suspected any, he
- 24 would have had to report it. Right?
- 25 A. Correct.

- 1 Q. But you saw no reports?
- 2 A. No.
- 3 Q. Now, the grandparents, you said, Patsy and Thomas
- 4 Osborne said that Jeffrey Osborne had an active
- 5 role in Jesse's life?
- 6 A. That Jeffrey did?
- 7 Q. Yes.
- 8 A. Yes. They did say that.
- 9 Q. Okay. And did Jesse tell you that his father was
- 10 physically and verbally abusive?
- 11 A. He did tell me that.
- 12 Q. And did he -- but you saw no indication of that
- 13 until your interview with him?
- 14 A. Not in the records that I had, no.
- 15 Q. And there have been allegations that the father,
- 16 Jeffrey, used alcohol the day of the incident. Is
- 17 that right?
- 18 A. Correct. That's what Jesse told me.
- 19 Q. Jesse told you ---
- 20 A. Yes.
- 21 Q. ---that his father was drinking the day of the
- 22 incident?
- 23 A. Yes.
- 24 Q. And did you review any records that contradicted
- 25 that?



## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 A. I did. A statement from his supervisor who had  
2 given him his paycheck shortly before his death had  
3 specifically indicated that he appeared sober and I  
4 also reviewed the toxicology report after Mr.  
5 Osborne's death that did not show any indication of  
6 alcohol in his system.

7 Q. What was Jesse's relationship with his  
8 grandparents?

9 A. He seemed to have a good relationship with them. He  
10 seemed to spend a good amount of time with them.

11 Q. And what about his mother?

12 A. Ms. Osborne described her relationship with her son  
13 as being close. Jesse described his relationship  
14 with his mom in positive terms, but as he mentioned  
15 as not being quite as close to her as she reported.

16 Q. And did Jesse report to you that his father had  
17 used physical discipline with him?

18 A. He did.

19 Q. What examples did he give you?

20 A. He gave me a couple of examples. One from when he  
21 was younger where he claims his father hit him with  
22 a baseball bat. He gave me another example where he  
23 said his father began hitting him in the chest  
24 unprovoked and the third example that I recall was  
25 the morning of the shootings that he claimed his

1 father was intoxicated and upset and he shoved him  
2 at the top of the stairs which Jesse perceived as  
3 being intentional.

4 Q. And did you notice that any of those reported  
5 incidents to you were either missing from the  
6 record prior to his arrest or inconsistent with  
7 other reports you saw?

8 A. I didn't see any mention of those things in prior  
9 records.

10 Q. Okay. How was Jesse disciplined, if you know, by  
11 his parents following his West Oak expulsion?

12 A. According to Tiffney Osborne, his phone and video  
13 games were taken away for a couple weeks.

14 Q. For a couple of weeks?

15 A. That's what she said.

16 Q. Did you review any reports -- I know that we've  
17 talked about Dr. Jones already. Did your review  
18 other reports by any other psychiatrist or  
19 psychologist as part of your evaluation?

20 A. I reviewed Dr. Sharman's psychological consult.

21 Q. Okay. And what were your impressions in comparison  
22 to your experience with Jesse of those reports?

23 A. Could you be more specific? I'm sorry.

24 Q. Sure. Did you notice inconsistencies in what Jesse  
25 told Dr. Sharman and Dr. Jones and what he told

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1       you?
- 2 A.    Yes.
- 3 Q.    Many inconsistencies?
- 4 A.    Regarding family history, yes.
- 5 Q.    And were you able to straighten out any of those
- 6       inconsistencies or is it still very murky?
- 7 A.    I think it's clear what Jesse was reporting to me,
- 8       but that's not what was reported in the previous
- 9       records.
- 10 Q.   And certainly, it had changed post-arrest?
- 11 A.    Yes. It appeared to.
- 12 Q.    Did Jesse mention other incidents of violence
- 13       committed at schools in the United States in the
- 14       records you reviewed?
- 15 A.    Yes.
- 16 Q.    For example, what?
- 17 A.    The Columbine shootings, specifically.
- 18 Q.    And what, in the records, showed that he was
- 19       interested in the Columbine shootings?
- 20 A.    They were actually mentioned in the records from
- 21       his first adjudication. They were also included in
- 22       Google searches that were taken from his, I believe
- 23       it was his cell phone and he mentioned them to me
- 24       directly, as well.
- 25 Q.    Did he speak about school shootings other than the

- 1 Townville shooting during your psychological  
2 evaluation?
- 3 A. I'm sorry. Other than what?
- 4 Q. Other than his own shooting at the school.
- 5 A. Yes. He talked about the Columbine shooters.
- 6 Q. To you?
- 7 A. Yes, he did. He mentioned them.
- 8 Q. And did he talk about his own school shooting and  
9 the school shooting group he was in, to you?
- 10 A. He did.
- 11 Q. Okay. Tell me a little bit about what he said to  
12 you about his school shooter group.
- 13 A. He said that he had found a group online that had  
14 similar interests in school shootings and that he  
15 would Skype with them occasionally and they would  
16 discuss what he termed a Rainbow Day where several  
17 school shootings would happen simultaneously all  
18 over the country. Actually, all over the world, I  
19 believe he said.
- 20 Q. And you were not able to review the FBI records at  
21 the time of your evaluation. Is that right?
- 22 A. No, they weren't available at that time.
- 23 Q. They had not yet been provided?
- 24 A. Correct.
- 25 Q. You were not here yesterday for the FBI's

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 testimony. Is that right?
- 2 A. No, I was not.
- 3 Q. So, what you just said is based on your interview  
4 with Jesse Osborne, solely?
- 5 A. Correct.
- 6 Q. Would it surprise you to know that that is  
7 consistent with what the FBI agent testified to  
8 yesterday, that there is a Rainbow Day group  
9 claiming international shootings?
- 10 A. No, I guess it wouldn't surprise me.
- 11 Q. Okay. Did you administer any tests, psychological  
12 tests, to Jesse Osborne?
- 13 A. I did.
- 14 Q. Can you take me through those tests?
- 15 A. Sure. One of the tests we did was the Wechsler  
16 intelligence scale for children, fifth edition, and  
17 that is basically an IQ test and it measures  
18 cognitive abilities on several different scales. We  
19 also did academic skills testing, two sub-tests.  
20 The Wechsler fundamentals academic skills test for  
21 reading comprehension and math skills. I also gave  
22 him the Millon Adolescent Clinical Inventory and  
23 the Minnesota Multiphasic Inventory, personality  
24 inventory for adolescents.
- 25 Q. And explain the differences between those tests.

- 1       What are you looking for when you administer those.
- 2 A.    Sure. The first one was an IQ test. We are looking
- 3       at cognitive abilities, his capabilities, his
- 4       intellectual capabilities. The academic testings
- 5       was to get a measure on his reading and math skills
- 6       and then the last one, the personality measures,
- 7       the MMPI-A, which is the last one I mentioned, is a
- 8       measured adolescent psychopathology and the Mallon,
- 9       the MACI, which is the third one I mentioned, I
- 10      believe, takes a look at personality patterns and
- 11      personal styles and clinical issues.
- 12 Q.   Do you know when the MMPI-A was developed?
- 13 A.    I want to say the 90s, but I'm not 100% sure.
- 14 Q.    1945.
- 15 A.    Oh, wow.
- 16 Q.    And do you know that there are supplemental scales
- 17      on that test for adults?
- 18 A.    For adults. Yes.
- 19 Q.    Yes. Are there supplemental scales for juveniles?
- 20 A.    Yes.
- 21 Q.    Okay. Did you use those supplemental scales when
- 22      assessing juvenile Osborne?
- 23 A.    I looked at all the scales.
- 24 Q.    And for the Court, what are scales?
- 25 A.    Scales are different categories, if you will, in

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- 1       which items are loaded on certain categories to  
2       measure certain traits. And so, the scale is either  
3       elevated or not elevated based on their responses.
- 4 Q.   And did you use any embedded effort measures in the  
5       Wechsler?
- 6 A.   No.
- 7 Q.   Did you use the reliable digits test?
- 8 A.   No. I did not.
- 9 Q.   Okay. So, you are not aware of what the score would  
10      have been on that because you didn't test him. And  
11      for the Court, is it correct to say that embedded  
12      effort measure shows or indicates if someone simply  
13      is not giving it their all.
- 14 A.   I'm not familiar with that.
- 15 Q.   Okay. So, what did the tests that you administered  
16      indicate to you?
- 17 A.   Which one?
- 18 Q.   Well, let's talk about the personality measures.
- 19 A.   The personality measures, looking at them as a  
20      whole, there was some indications that Jesse's  
21      response pattern to that test, to both of those  
22      tests, suggested that he may have been possibly  
23      exaggerating clinical symptoms or trying to present  
24      himself in a more negative light. On the MMPI-A  
25      there were many scales which were elevated, which

1 can be unusual when, I think that even the 10 basic  
2 scales were elevated, but they indicated social  
3 isolation, difficulty with depression, anxiety,  
4 difficulty with reality testing, possible paranoia.

5 Q. Okay. And I think in your report you say most  
6 profiles will yield elevations in one or two  
7 problematic areas. These findings should be  
8 considered and caution should be used in  
9 interpreting results. Is that what you said?

10 A. Yes.

11 Q. What do you mean by caution?

12 A. Just taking into consideration that there's a  
13 possibility that this test-taker may have  
14 exaggerated symptoms, which are to be evaluated in  
15 a certain way.

16 Q. So, malingering?

17 A. Malingering is a different term and that is not  
18 exactly what is meant by these scales.

19 Q. Okay. So, you tell me, what do you mean by  
20 exaggerating?

21 A. It could be that they are trying to present in a  
22 certain way. Malingering is trying to present a  
23 certain way for gain and trying to consciously  
24 fake. Sometimes these scales pick up on  
25 presentations that aren't consciously done, but



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- 1       they pick up on tendency, tendency for the test  
2       taker to approach the test in a certain manner.
- 3 Q.    Okay. Well, juvenile Osborne has a reason to  
4       exaggerate for gain. Wouldn't you agree with that?
- 5 A.    Yes.
- 6 Q.    Okay. So, he certainly has the motivation. We are  
7       here today to see if he stays in juvenile court or  
8       is taken to adult court, so that would be a  
9       motivator for him to exaggerate some symptoms.  
10       Wouldn't you agree with that?
- 11 A.   Correct.
- 12 Q.   Okay. And yet, you did not test for malingering?
- 13 A.   No.
- 14 Q.   Are there malingering specific tests that can be  
15       administered?
- 16 A.   Yes.
- 17 Q.   Okay. And why didn't you administer any malingering  
18       tests?
- 19 A.   It wasn't the focus of the evaluation.
- 20 Q.   Okay. What was the focus of the evaluation, then?
- 21 A.   To address the Kent factors; sophistication,  
22       amenability.
- 23 Q.   Well, how is that not pertaining to the Kent  
24       factors? Deception?
- 25 A.   It can.

1 Q. Okay. So, would you not say that elevated scales  
2 that you saw showing that he is -- and you said,  
3 eight to ten. And you said over two is more.

4 A. I'm sorry. I'm not sure ---

5 Q. Most profiles revealed elevation in one or two  
6 problematic areas.

7 A. Uh-huh.

8 Q. You just testified that you had eight to ten.

9 A. Well, what I'm talking about here is not  
10 necessarily about one or two scales. But, yes, it  
11 doesn't usually show -- if you see profiles that  
12 are elevated to that extent on such a variety of  
13 scales, I would expect to see someone in more of an  
14 inpatient setting, a psychiatric condition setting.  
15 It's not typical for the kids that we see.

16 Q. Okay. So, was this a forensic interview with him or  
17 was this a clinical interview?

18 A. You could call it either, probably.

19 Q. Well, don't forensic evaluations and clinical  
20 evaluations have different standards of care?

21 A. Yes. I would say forensic has more than stringent  
22 standards.

23 Q. Well, if that's forensic, then isn't the ethical  
24 standard of care that you are always on the side of  
25 truth?

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1 A. Yes.

2 Q. Okay. And if you're an advocate for truth in this  
3 situation and you don't have a rationale for things  
4 that you are seeing clinically and you have  
5 suggestive indicators that show that he's got these  
6 issues, but you can't make them fit with the  
7 psychometric testing that you've done, is it not  
8 inherent, then, or isn't your mandate then, as a  
9 provider or as an evaluator, to take it to the next  
10 step?

11 A. No, not always.

12 Q. Why not?

13 A. Because we have certain parameters for waiver  
14 evaluations. If I had indications that he was  
15 malingering memory impairment, I could have given  
16 him what we have a test for that. We don't  
17 currently use a symptom malingering measure with  
18 the juveniles that we see that would look for  
19 psychiatric malingering.

20 Q. Why not?

21 A. I don't know.

22 Q. Okay. That's above your pay grade?

23 A. I guess so.

24 Q. Okay. And are you familiar with the SIMS test or  
25 the SIRS test?

1 A. I'm familiar with SIRS.

2 Q. Okay. And are clinical results valid in either of  
3 those tests or in any of your tests if you don't  
4 know that someone is being forthcoming with you?

5 A. I'm sorry. Can you repeat that? I'm not sure what  
6 you are asking.

7 Q. Sure. If you've gone through these tests and you  
8 know now that Jesse Osborne has given multiple  
9 conflicting statements about what's real and you  
10 have gotten these statements from him in an  
11 interview setting and then you administer tests  
12 that are intellectual and academic and personality  
13 measures and they are skewed and you don't take it  
14 to the next level, can you say that your evaluation  
15 is accurate or complete?

16 A. Yes, you can. Testing is only one part of the  
17 evaluation. The whole evaluation used to be about  
18 the tests, but that is just one piece of  
19 information we use and actually it provides really  
20 good information because it does show there's a  
21 possibility that he may have been exaggerating  
22 symptoms.

23 Q. Okay. You just didn't take it to the next level.

24 A. No.

25 MR. EPPES: Your Honor, I'm going to object to the

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1 characterization of taking it to the next level. She did  
2 the tests she did, she answered Ms. Price's question and  
3 now Ms. Price is attempting to basically testify that  
4 there's a next level and Dr. Atkinson is saying it's  
5 not.

6 THE COURT: I sustain the ---

7 MS. PRICE: She just said, yes.

8 THE COURT: I'll sustain the objection unless you  
9 want to go in that a little bit more.

10 Q. You didn't test for malingerer?

11 A. No.

12 Q. Okay. What was Jesse's reading level?

13 A. His reading comprehension skills were average  
14 compared to other adolescents of his age.

15 Q. Okay. And that would've been eighth grade?

16 A. It would be for a fifteen year old.

17 Q. Okay. Did you review Jesse's health records?

18 A. I reviewed -- you mean, medical health records?

19 Q. Yes.

20 A. I reviewed what seemed to be some of his medical  
21 records.

22 Q. Okay. Did you find any evidence of prior clinical  
23 or mental health or psychiatric issues?

24 A. Not in the records that I reviewed.

25 Q. Okay. Did you review The Greenville County

- 1 Detention Center records?
- 2 A. I did.
- 3 Q. And once again, was Jesse self-reporting issues?
- 4 A. Yes.
- 5 Q. Okay. Did you, in your time with Jesse, observe any
- 6 developmental issues?
- 7 A. No.
- 8 Q. Okay. No neurobiological issues?
- 9 A. I didn't do any neuropsychological testing, but no,
- 10 nothing that I saw during my time with him.
- 11 Q. Okay. You, in your experience, which you said was
- 12 vast with adolescents, you said he appeared to
- 13 function normally for his age.
- 14 A. In most respects, yes.
- 15 Q. Did you see any evidence that prior illnesses are
- 16 or were affecting Jesse's ability to function?
- 17 A. Medically or psychiatric?
- 18 Q. Medical first, and then we will ---
- 19 A. I don't know about any medical illnesses that may
- 20 have been affected.
- 21 Q. Okay. How about psychiatric?
- 22 A. In the reports that I reviewed, he had not been
- 23 diagnosed with any psychiatric symptoms in the
- 24 past.
- 25 A. Okay. And what were your behavioral observations of

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- 1 juvenile Osborne when you met with him?
- 2 A. Can you be more specific?
- 3 Q. Sure. Did he display any indications that he had
- 4 autism?
- 5 A. I didn't see any indications of that, no.
- 6 Q. Okay. How about depression?
- 7 A. The way that he presented in our interview and the
- 8 time we had together, I did not see any obvious
- 9 signs of depression. No.
- 10 Q. Okay. What about major depression?
- 11 A. I didn't see any signs of depression.
- 12 Q. Well, it's different in the DSM-V, major depression
- 13 is specifically listed.
- 14 A. Right. It's a major depressive episode. Correct.
- 15 Q. So, you didn't see any evidence of that when you
- 16 were with him?
- 17 A. I did not.
- 18 Q. And did you see any evidence that he was suffering
- 19 from psychosis?
- 20 A. No, I did not.
- 21 Q. Did you see any evidence that he had suffered from
- 22 (inaudible) incarceration?
- 23 A. No, I did not.
- 24 Q. Okay. Did he report psychosis to you?
- 25 A. He did.

1 Q. Okay. But you didn't see any or you didn't

2 appreciate any actual evidence of that in his

3 presentation?

4 A. I didn't see any signs that he was responding to

5 internal stimuli or anything like that or that he

6 presented with delusional processes or anything

7 like that.

8 Q. Okay. In your evaluation and investigation, did you

9 learn anything about juvenile Osborne socializing

10 with other folks outside of the home?

11 A. In what time period?

12 Q. Prior to his incarceration.

13 A. He did not seem to be socializing much with peers

14 prior to his incarceration.

15 Q. Okay. Well, he was home schooled. Is that right?

16 A. Uh-huh.

17 Q. And did you -- did he talk to you or did you read

18 in your records that he went to Battle Cats often

19 and practiced shooting with other groups?

20 A. The shooting, yes. I did read about that, but I

21 didn't know what it was called.

22 Q. Okay.

23 A. As far as -- I don't remember how long, it's in my

24 report how often they reported that he did that.

25 Q. But that was something he did that was of a social



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- 1 nature?
- 2 A. I'm not sure. I don't know how they do it, and so
- 3 I'm not sure how individual it is.
- 4 Q. That's fine. And you, did you get reports that he
- 5 attended church for youth?
- 6 A. In the past. I don't know that he was doing that
- 7 right prior to his incarceration.
- 8 Q. Okay. And are you aware that his mother gave a
- 9 statement? You had the statements given by his
- 10 mother and grandparents to law enforcement saying
- 11 that he spoke to friends on the phone, regularly?
- 12 A. I don't remember.
- 13 Q. Okay. And you are aware now that he had internet
- 14 friends?
- 15 A. Yes.
- 16 Q. He told you he had internet friends.
- 17 A. Correct.
- 18 Q. Okay. Do you know who Miguel Cano is?
- 19 A. I do not.
- 20 Q. Okay. Did you render a diagnostic opinion of
- 21 juvenile Osborne based on your evaluation?
- 22 A. No.
- 23 Q. Why not?
- 24 A. We don't do that for evaluations.
- 25 Q. Okay. What was your impression regarding the

- 1       sophistication and maturity of juvenile Osborne?
- 2 A.   Considering all aspects, he seemed to be above
- 3       average compared to other adolescents his age.
- 4 Q.   And when you spoke with juvenile Osborne, what were
- 5       his feelings surrounding the shooting at Townville
- 6       Elementary? Did he express remorse?
- 7 A.   He verbalized some remorse. There were no obvious
- 8       signs of remorse. No physical or visible signs.
- 9 Q.   So, his words were inconsistent with his physical
- 10      presentation?
- 11 A.   Yes.
- 12 Q.   In fact, did he emote then the opposite way you
- 13      would expect somebody to react to talking about
- 14      dead children?
- 15 A.   At times. Yeah.
- 16 Q.   How does he discuss the impact of his crime on the
- 17      victims in this case?
- 18 A.   He has a difficult time understanding the impact of
- 19      his behaviors on other people.
- 20 Q.   Okay. How does he speak about the victims and their
- 21      families? How did he speak about them to you?
- 22 A.   Somewhat detached and sometimes negatively.
- 23 Q.   Did he speak negatively about the six-year-old?
- 24 A.   Not the six-year-old, no.
- 25 Q.   Okay. About the six-year-old's family?

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- 1 A. His family, yes.
- 2 Q. Did he use the term "drop dead"?
- 3 A. Not regarding the six-year-old, I believe. He used
- 4 that term at some point but it was a different
- 5 conversation.
- 6 Q. Did he take responsibility for his behavior to you
- 7 in your discussions with him?
- 8 A. He took some responsibility.
- 9 Q. Okay. Did he blame external sources for these
- 10 events?
- 11 A. He did. He seemed to feel that, not only the way
- 12 his father treated him, but his internet friends
- 13 had a large part to play in encouraging him.
- 14 Q. In a review of everything that you have seen in
- 15 your evaluation and prior to your evaluation, all
- 16 the records, is blaming others a common approach
- 17 that juvenile Osborne uses?
- 18 A. In which way?
- 19 Q. Does he frequently blame others and external
- 20 factors for things that he has done?
- 21 A. Yes.
- 22 Q. Do you believe that he understands the seriousness
- 23 of his actions?
- 24 A. No.
- 25 Q. Wouldn't that be an impediment to treatment?

- 1 A. It can be, yes.
- 2 Q. That could definitely make rehabilitation more
- 3 difficult?
- 4 A. Yes, it can.
- 5 Q. Why is that the case?
- 6 A. Someone who doesn't take responsibility for their
- 7 behavior or understands the seriousness of their
- 8 behavior often has a difficult time becoming
- 9 motivated to change their behavior.
- 10 Q. And is someone who blames external forces for
- 11 negative behavior less motivated to change their
- 12 behavior?
- 13 A. Yes. That would be not taking full responsibility.
- 14 Q. Is a part of your waiver evaluation to assess the
- 15 likelihood for recidivism in a juvenile?
- 16 A. In a sense, yes.
- 17 Q. Do you speak to those factors?
- 18 A. Yes.
- 19 Q. In his prior interaction with the Department of
- 20 Juvenile Justice, do you believe that served as a
- 21 deterrent to criminal activity?
- 22 A. It didn't seem to.
- 23 Q. Is there any reason to believe that incarceration
- 24 right now or detention are a deterrent to juvenile
- 25 Osborne?

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- 1 A. It is hard to say. He is facing much bigger  
2 consequences now. I can tell you that as a group,  
3 juveniles who have offended after court sanctions  
4 do have a tendency to have a higher risk of  
5 offending again.
- 6 Q. Does the fact that he went from a hatchet event to  
7 a full-time planning and execution of a school  
8 shooting figure into your evaluation of whether or  
9 not he would be likely to be rehabilitated?
- 10 A. Yes. It shows a progression.
- 11 Q. In which direction?
- 12 A. It shows a progression in intensity and in the  
13 amount of violence used, so that would be an  
14 impediment.
- 15 Q. An intensity and danger that he presents to the  
16 community?
- 17 A. Correct.
- 18 Q. Is there any reason to believe, based on your  
19 meetings with his family members and your review of  
20 records, that his family support is sufficient to  
21 rehabilitate this juvenile? Especially with these  
22 charges?
- 23 A. The family environment seem to be a bit unstable  
24 and in these cases you need a lot of family support  
25 and stability in order to help.

- 1 Q. And didn't he, in fact, kill the parent who was  
2 going to community classes to help him get off  
3 probation?
- 4 A. I believe it was his father who was going to the  
5 classes, yes.
- 6 Q. If juvenile Osborne was being home schooled at the  
7 time he killed his father and J.H. , is it  
8 likely that bullying was the impetus for these  
9 actions?
- 10 A. Well, there were no immediate signs of recent  
11 bullying, but it is still possible that past  
12 bullying could have affected his emotional state.
- 13 Q. Okay. As we spoke earlier, he didn't mention any  
14 specific bullies, it was all vagaries. Correct?
- 15 A. Uh-huh.
- 16 Q. And the only evidence of bullying came from Jesse,  
17 himself.
- 18 A. And his mother.
- 19 Q. And his mother, I'm sorry. Isn't his expressed  
20 desire to be a famous killer a more likely  
21 motivator?
- 22 A. I couldn't say.
- 23 Q. You addressed what you considered to be the  
24 positive and negative factors with regard to the  
25 likelihood of reasonable rehabilitation for

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- 1 juvenile Osborne in your report, did you not?
- 2 A. Yes.
- 3 Q. Okay. And at the time you wrote your report, were
- 4 you required by The Department of Juvenile Justice
- 5 to list an equal number of positive and negative
- 6 factors?
- 7 A. We were strongly advised to do so.
- 8 Q. You were strongly advised to do.
- 9 A. Uh-huh.
- 10 Q. Has this mandate to you since then been changed?
- 11 A. It has.
- 12 Q. Is that because that could have possibly
- 13 conflagrated your reports in one way or another?
- 14 A. I don't know why it was changed.
- 15 A. Could that result in a false inflation of positives
- 16 or negatives?
- 17 A. It could.
- 18 Q. And adjustments would mean that the report wasn't
- 19 totally objective, would it not?
- 20 A. I guess if one were to do that, it may be ---
- 21 Q. And the policy has since changed, but at the time
- 22 you wrote this report, there was a requirement that
- 23 there be an equal number of factors.
- 24 A. It was strongly advised.
- 25 Q. Okay. Can you tell the Court the negative factors

1       that you listed and if you want to publish them by  
2       reading them off to the Court that will be fine.

3 A.   Do you want me to read them in their entirety?

4 Q.   Please.

5 A.   Regarding negative factors. The first is, Jesse is  
6       charged with serious and violent offenses. If  
7       adjudicated delinquent, this would reflect a  
8       serious lack of concern for the community and well-  
9       being of others. Individuals who commit serious  
10      antisocial actions can be more difficult to  
11      rehabilitate. The second is that Jesse has a prior  
12      adjudication for an offence that included planned  
13      violence in a school setting. A pattern of  
14      increasing severity of behavior is noted.  
15      Individuals who commit antisocial acts repeatedly  
16      and of increasing severity can be difficult to  
17      rehabilitate. The third, the current offense  
18      occurred while Jesse was under probation  
19      supervision for prior adjudication. Probation did  
20      not persuade Jesse from continued antisocial  
21      behavior if he is adjudicated delinquent for the  
22      current offenses. Individuals who not respond to  
23      injunctions of the Family Court and efforts by DJJ  
24      can be difficult to rehabilitate. The fourth, Jesse  
25      showed limited evidence of remorse for his past



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1 behavior. He made verbal statements of remorse for  
2 his past antisocial activity, but non-verbal  
3 behavior was indifferent or nonchalant making his  
4 statements indicating that they were superficial in  
5 nature. His feelings of remorse have not served to  
6 inhibit his antisocial behavior. Individuals who do  
7 not feel genuine remorse for their actions and are  
8 not willing to change their behavior are found  
9 difficult to rehabilitate. Jesse showed limited  
10 evidence of empathy for others including the  
11 victims of his past and present offenses and their  
12 families. Jesse made verbal statements of empathy  
13 for others, but his non-verbal behavior was  
14 indifferent and nonchalant in making these  
15 statements indicating they were superficial in  
16 nature. In addition, Jesse's verbal statements  
17 reflected a shallow and superficial understanding  
18 of the impact his behavior have on victims and  
19 their families. Individuals who do not feel empathy  
20 for others may not be motivated to change their  
21 behavior and can be difficult to rehabilitate.  
22 While Jesse accepted some responsibility for his  
23 past and present offenses, he also attempted to  
24 blame others. Individuals who do not accept  
25 responsibility for their actions may be difficult

1 to rehabilitate. Jesse is reporting symptoms of a  
2 serious mental illness. Individuals who suffer from  
3 mental illness can be more difficult to  
4 rehabilitate. There are several indications that  
5 Jesse attempted to deceive this examiner.  
6 Individuals who are purposely deceptive and non-  
7 disclosing are not likely to engage themselves as  
8 active participants in the rehabilitation process  
9 and they may be difficult to rehabilitate.

10 Q. Go ahead and read to the Court the positive  
11 factors.

12 A. Sure. Jesse's behavior and attitude at the  
13 Greenville Detention Facility has been primarily  
14 good. Individuals who respond to a structured  
15 environment in an institutional setting may benefit  
16 from rehabilitation. Prior to Jesse's first  
17 adjudicated offense, he was well behaved at school.  
18 Individuals who conform to the rules of their  
19 schools may benefit from rehabilitation. Jesse has  
20 challenging educational and career plans and  
21 individuals who have challenging career plans are  
22 motivated to improve themselves in order to achieve  
23 their goals and may benefit from rehabilitation.  
24 Jesse has sufficient levels of intellectual ability  
25 and verbal reasoning skills to consider alternative

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1 behaviors, learn from his mistakes, envision an  
2 alternative future for himself and comprehend the  
3 concepts that will be communicated to him during  
4 his rehabilitation. There is no indication that  
5 Jesse is dependent on drugs or alcohol. Individuals  
6 who are not dependent on drugs or alcohol are more  
7 likely to benefit from rehabilitation. Jesse  
8 accepted some responsibility for his past and  
9 current offenses. Individuals who can accept  
10 responsibility for their actions are more likely to  
11 benefit from rehabilitation. Jesse had not been  
12 connected to appropriate services following his  
13 first offense and, therefore, did not have ample  
14 opportunity to benefit from services available to  
15 the juvenile justice system. Jesse at the age of 14  
16 years and five months, and given his parole at 34  
17 to 54 months, he would have sufficient time to work  
18 toward his goal of rehabilitation in the juvenile  
19 justice system.

20 Q. That last factor, you stated sufficient time to  
21 work towards that.

22 A. Correct.

23 Q. That's not saying that that is sufficient time to  
24 fully rehabilitate him, is it?

25 A. Correct.

1 Q. Do you believe following your evaluation that  
2 rehabilitating juvenile Osborne is likely?

3 A. I think rehabilitation is possible. Likely, in what  
4 time period, I just don't know.

5 Q. Okay. Is it difficult for you to speak to that  
6 because you work for The Department of Juvenile  
7 Justice and you are generally advocating for  
8 children?

9 A. No, it's difficult to say because we don't know how  
10 he is going to respond to treatment. He's never  
11 gotten an opportunity to engage in much treatment  
12 and it's difficult to say because every juvenile is  
13 different and so he may respond very well or he may  
14 not.

15 Q. Is the fact that he's been refusing medication at  
16 the detention center -- you were present for that  
17 testimony?

18 A. Yes.

19 Q. So, he's been refusing medication. Would that be an  
20 obstacle to treatment?

21 A. Sure. Noncompliance with medication would indicate  
22 future noncompliance, as well.

23 Q. Okay. Would that make him a higher risk for non-  
24 rehabilitation?

25 A. Yes.

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1 Q. Okay. Showing a pattern of deception as you  
2 described. Would that be an obstacle to treatment?

3 A. Yes.

4 Q. Okay. Why is that?

5 A. Because in order to benefit from rehabilitation one  
6 needs to be fully engaged and motivated and when  
7 you're not honest, then that's hard to deal with.

8 Q. You were present for the publishing of some song  
9 lyrics in one of the State's exhibits recently. Did  
10 you hear all those song lyrics?

11 A. I did.

12 Q. I'm going to hand a copy of that to you. It's  
13 State's Exhibit #49 for any benefit into evidence.  
14 So, juvenile Osborne has been looking at lyrics  
15 that talk about shooting little children. It  
16 doesn't say children, but it does say little  
17 people. It says I'm going to shoot up your town.  
18 Pull it up and air it out means to take out your  
19 gun and shoot it.

20 MR. EPPES: Your Honor, I would object to Ms.

21 Price's clarification of little people. A lot of times  
22 little people means little people. They do not mean  
23 little children, they mean people that annoy them or  
24 insignificant people in other ways and I don't think  
25 it's fair in gangsta rap lyrics, which I'm relatively

1 familiar with to make the assertion that little people  
2 mean children. I, frankly, refer to just about everybody  
3 in this courtroom as little people from time to time for  
4 my own reasons and I just don't believe that is fair and  
5 so I would object to that characterization.

6 THE COURT: I'm going to sustain the objection. I'm  
7 certainly going to allow the solicitor to read the  
8 lyrics and see if she knows ---

9 MS. PRICE: I'll re-phrase, Your Honor.

10 THE COURT: All right.

11 Q. The fact that juvenile Osborne has looked up this  
12 song which involves shooting, shooting up a town,  
13 terms of extreme violence, if he is listening to  
14 that repeatedly, what does that tell you about his  
15 process over the past year of his incarceration?

16 A. Well, I think it does show poor judgment.

17 Q. What about the fact that he's looked up Townville  
18 and looked up West Oak and continued -- doesn't  
19 this indicate that he is continuing to have this  
20 fascination with committing a school shooting or  
21 with his fame from his act of violence?

22 A. I couldn't say that just from that little bit of  
23 information.

24 Q. Would the fact that he is exercising poor judgment  
25 indicate to you that he is less likely to be

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 rehabilitated?
- 2 A. It indicates to me is not very motivated at this
- 3 point to change.
- 4 Q. What if he told people -- What if he told another
- 5 evaluator that he thinks it's fun to kill? Would
- 6 that be concerning to you?
- 7 A. Yes.
- 8 Q. Would that tell you that he still doesn't
- 9 appreciate the seriousness of his crime?
- 10 A. Yes.
- 11 Q. Would that indicate to you that he is not motivated
- 12 to change his behavior?
- 13 A. Not at this time. No.
- 14 Q. In your evaluation -- and you told me you didn't
- 15 diagnose juvenile Osborne?
- 16 A. Correct.
- 17 Q. In your evaluation of juvenile Osborne, did he
- 18 exhibit some traits that were consistent with a
- 19 diagnosis of conduct disorder?
- 20 A. There have been traits that I guess I could say he
- 21 would meet.
- 22 Q. So, you don't diagnose.
- 23 A. Correct.
- 24 Q. Okay. But some of those traits you saw indicated in
- 25 juvenile Osborne.

1 A. Yes.

2 Q. Okay. If juvenile Osborne were diagnosed with  
3 conduct disorder, how would that affect his  
4 likelihood of being rehabilitated?

5 A. Adolescents who are diagnosed with conduct disorder  
6 as a group tend to be more difficult to be  
7 rehabilitated because they are at higher risk for  
8 future aggression and antisocial behavior.

9 Q. And what if there were signs that he may be  
10 developing antisocial personality disorder? How  
11 would that affect his ability to be rehabilitated  
12 if he actually, if he was diagnosed with that?

13 A. To be ---

14 Q. At the age of eighteen. I understand. You have to  
15 be eighteen to be diagnosed with that, but if he is  
16 developing that and let's assume that he is  
17 released, how would that pose a threat?

18 MR. EPPES: Your Honor, I may be wrong about laying  
19 a foundation for that question, but I don't believe that  
20 under the DSM-V, you are allowed to say that somebody is  
21 progressing towards antisocial conduct disorder because  
22 I don't think anything can be said about it until  
23 they're eighteen years old. Now, I may be wrong about  
24 that, but I would like Ms. Price to lay the foundation  
25 before she asks that question, because otherwise I do



1 not believe it's a fair question.

2 THE COURT: I sustain the objection. Go ahead and  
3 lay the foundation.

4 Q. In the DSM-V, are you aware that one of the  
5 criteria for developing antisocial personality  
6 disorder is potentially having conduct disorder  
7 before the age of fourteen?

8 A. Yes.

9 Q. Okay. Does Jesse Osborne meet that criteria?

10 A. I ---

11 Q. Potentially, he exhibits traits that he may have a  
12 diagnosis of conduct disorder. Is that right?

13 A. Conduct disorder looks for persistent and  
14 repetitive pattern of traits. From what I know from  
15 information that I have, while he may meet some  
16 traits, I'm not sure that I would qualify it as a  
17 persistent pattern.

18 Q. Okay. So, did you just diagnose him?

19 A. No. I didn't.

20 Q. Okay. All right. Well, if you didn't see a  
21 persistent pattern -- again, you told me earlier  
22 that you weren't provided with all the evidence in  
23 this case. Is that right?

24 A. I was told.

25 Q. Okay. Well, your report was issued when?

- 1 A. March of 2017.
- 2 Q. So, a year ago.
- 3 A. Almost. ,Yes.
- 4 Q. And when was the last time you met with juvenile  
5 Osborne?
- 6 A. March 2, 2017.
- 7 Q. Okay. So, almost a year ago is the last time you  
8 met with juvenile Osborne.
- 9 A. Correct.
- 10 Q. So, you couldn't speak to the behavior that he has  
11 exhibited over the last year.
- 12 A. Correct.
- 13 Q. Okay. And you can't say that somebody that has the  
14 precursor to antisocial personality disorder is ---  
15 MR. EPPES: Objection, Your Honor.
- 16 Q. --- difficult to rehabilitate?
- 17 MR. EPPES: I don't believe it is a precursor. I  
18 believe it is something that goes into the calculation  
19 after someone is eighteen.
- 20 THE COURT: Sustained. Re-phrase the question.
- 21 Q. How old is juvenile Osborne today?
- 22 A. Fifteen.
- 23 Q. Okay. So, re-phrasing that question, how many years  
24 would it be before he can be officially diagnosed  
25 as having antisocial personality disorder?

## DIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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- 1 A. Two-and-a-half to three years.
- 2 Q. Okay. So, is that more time than I believe was  
3 testified would be the minimum amount he could be  
4 released at this time? That was one year and seven  
5 months.
- 6 A. Correct.
- 7 Q. So, if you release him in one year and seven  
8 months, if he was released into society, he  
9 wouldn't even be able to be properly diagnosed with  
10 that at that time.
- 11 A. With antisocial personality disorder. Correct.
- 12 Q. How would you treat someone with conduct disorder?
- 13 A. There are a variety of treatments: behavioral,  
14 cognitive behavioral therapy, behavior  
15 modification, things of that nature.
- 16 Q. Would it be fair to say that that would be lengthy  
17 treatment?
- 18 A. It can be.
- 19 Q. Would it be more likely that the treatment would be  
20 lengthy if the conduct was violent in nature?
- 21 A. It could be.
- 22 Q. Can that kind of diagnosis be addressed with a  
23 simple administration of medication?
- 24 A. What type of medicine?
- 25 Q. Can I give someone a pill and get rid of conduct

- 1 disorder?
- 2 A. No.
- 3 Q. You were here for testimony and I believe you
- 4 probably know since you work for DJJ, the
- 5 parameters, the guidelines, the parole guidelines
- 6 for juvenile Osborne.
- 7 A. Correct.
- 8 Q. Okay. What are those?
- 9 A. Thirty-six to fifty-four months, I believe.
- 10 Q. Okay. Do you have an opinion as to whether that is
- 11 enough time to completely rehabilitate this
- 12 juvenile?
- 13 A. I don't.
- 14 Q. Okay. You don't have an opinion?
- 15 A. No, I don't. There are too many factors that would
- 16 have to be considered in that length of time.
- 17 Q. Would you say that he certainly has a lot of
- 18 factors that would impede his treatment?
- 19 A. Yes.
- 20 Q. Okay. Were he to remain in the juvenile system, he
- 21 could only be supervised until he is twenty-one. Is
- 22 that correct?
- 23 A. That's correct.
- 24 Q. Okay. After that, DJJ can't mandate where he lives?
- 25 A. I don't believe so.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 Q. Okay. Or who he is with?
- 2 A. No.
- 3 Q. Or what he's doing on the internet?
- 4 A. Correct.
- 5 Q. Or you can't force him to take medication?
- 6 A. Correct.
- 7 Q. Okay. And you can't force him to engage in
- 8 psychotherapy?
- 9 A. No.
- 10 Q. Okay. And do you have an opinion -- I don't know if
- 11 you can give me this opinion or not, either, but do
- 12 you have an opinion as to whether he presents a
- 13 current danger to the community?
- 14 A. Currently?
- 15 Q. Yes.
- 16 A. Yes, I think he does present a danger.
- 17 Q. Okay. And would you say, based on your evaluation
- 18 that he is a higher risk for aggression and
- 19 violence than other adolescents?
- 20 A. Than other -- Yes, I would.
- 21 Q. And can you say with any certainty that the public
- 22 will be adequately protected from juvenile Osborne
- 23 by the time he reaches age 21?
- 24 A. No.
- 25 Q. Okay.

1 MS. PRICE: Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 Q. All right. Thank you very much. Please answer any  
4 questions that Mr. Eppes or Mr. Campbell have for  
5 you.

6 MR. EPPES: Your Honor, it would help me some if we  
7 could take a short break before I begin cross  
8 examination.

9 THE COURT: All right. Be back at five after five,  
10 promptly, please.

11 MR. EPPES: Thank you.

12 (Brief Break)

13 THE COURT: We are back on the record in the case of  
14 State v. Osborne. It's now about 5:05 p.m. I believe we  
15 have completed direct examination of Dr. Atkinson and we  
16 are now going to hear cross examination from Mr. Eppes.

17 CROSS EXAMINATION

18 BY MR. EPPES:

19 Q. Dr. Atkinson, you're a PsyD?

20 A. I am.

21 Q. Explain to me the difference between a PsyD and a  
22 PhD?

23 A. A PsyD is a doctorate in psychology as is a doctor  
24 of philosophy. You can get it in several different  
25 specialties or areas. PsyD tends to be more

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 clinically-based as opposed to research-based.
- 2 Q. Do you prescribe medicine?
- 3 A. I do not.
- 4 Q. Are PsyDs allowed to or not?
- 5 A. No.
- 6 Q. Could you prescribe medicines in Pennsylvania, New
- 7 York, or New Jersey?
- 8 A. I'm not sure.
- 9 Q. I noticed in your resume that, looks like right
- 10 after you did this report, you went to a Guide to
- 11 waiver hearings for clinicians put on by JoJo
- 12 Delaney and Heather Scazo in March, 2016. Do you
- 13 recall that?
- 14 A. I do.
- 15 Q. Did anything about that seminar cause you to re-
- 16 think anything you did in Jesse Osborne's report?
- 17 A. No.
- 18 Q. Are you familiar with Dr. Ernest Martin?
- 19 A. I am not.
- 20 Q. So, am I right that you mostly go around for DJJ as
- 21 a forensic person and do reports?
- 22 A. Typically, we do psychological, court-ordered
- 23 psychological evaluations on adjudicated youth.
- 24 So, after they are adjudicated prior to their
- 25 disposition they're often ordered to have an

1 evaluation.

2 Q. So, you are a part of the sub-classification team.

3 Is that right?

4 A. Not directly, but yes. We have a special needs  
5 coordinator who coordinates that in different  
6 regions and when I have a juvenile that I evaluate  
7 who is sub-classed, then yes, I'm a part of that  
8 team. It differs with each juvenile.

9 Q. Okay. So, if Mr. Osborne was classified as a  
10 juvenile delinquent -- I forget the word they use  
11 for it -- but if he enters the DJJ Criminal Justice  
12 System, would you be a part of the team that  
13 evaluated him?

14 A. No, not necessarily.

15 Q. Not necessarily. Okay. Is there any time limit? I  
16 noticed that this evaluation was ordered on January  
17 3rd. Is there any time limit on when you do your  
18 evaluation? I noticed you didn't go up for about 60  
19 days.

20 A. We try to do it as quickly as possible. A lot of  
21 times it depends on how quickly we can get the  
22 information we need beforehand.

23 Q. Okay. It looks like before you went in, and that's  
24 the exhibit there, or this may have been after you.  
25 A woman named Casey Arflin did a report?



## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 A. She did the social summary that is a part of the  
2 waiver packet, a part of the evaluation.
- 3 Q. Did you review that as a part of your report?
- 4 A. We incorporated a lot of the same information. She  
5 was present during the family interview.
- 6 Q. So, she actually did the family interview with you?
- 7 A. Correct. She observed.
- 8 Q. I want to hand up this report to you. Have you seen  
9 that report?
- 10 A. Ms. Arflin's?
- 11 Q. Yes.
- 12 A. Yes.
- 13 Q Did you review it?
- 14 A. Not recently, but I did at the time.
- 15 Q. At the time you reviewed it, did you agree with the  
16 content or do you recall anything in it that you  
17 disagreed with?
- 18 A. I don't recall seeing any discrepancies or things  
19 that I disagreed with.
- 20 Q. Okay.
- 21 MR. EPPES: Your Honor, I'd move this into evidence.
- 22 THE COURT: All right. I think this is a part of the  
23 overall ---
- 24 MS. PRICE: No objection.
- 25 MR. EPPES: It may already been in there, Judge. I

1 broke them apart so if I'm doubly getting it in, I'll  
2 just use that as my exhibit.

3 THE COURT: Was this admitted into evidence, the  
4 actual eval, the report that she did?

5 MS. PRICE: Yes, sir. It's in the very back of your  
6 report.

7 MR. EPPES: Well, I'm kind of admitting it twice.

8 THE COURT: Okay. That will be fine. So admitted.

9 (Whereupon, a 2-page report is entered into  
10 evidence as Defense Exhibit #3, without objection)

11 Q. In that report it's reported that Tiffney Osborne  
12 told you that Jesse had that not been that close to  
13 his brother lately while he was close to his sister  
14 that relationship has chilled, because his sister's  
15 relationship with her father has chilled. Correct?

16 A. That's what she reported to me.

17 Q. She reported that to you. And did you have the  
18 occasion to interview either Ryan or Mary Lee  
19 Osborne?

20 A. No. I did not.

21 Q. And she also reported that corporal punishment by  
22 Mr. Osborne often resulted in marks left on Jesse.  
23 Is that correct?

24 A. She reported that she felt his physical discipline  
25 was excessive at times and he would leave marks at

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 times. Yes.

2 Q. If you will look at the second page of this and the  
3 first full paragraph, approximately three lines  
4 down, Ms. Arflin reported pretty much word for word  
5 what I said, that corporal punishment did often  
6 result in marks being left. Correct?

7 A. Yes.

8 Q. And you saw no reason to disagree with that when  
9 you reviewed it?

10 A. Correct.

11 Q. And Mr. Osborne hit Jesse and called him names.

12 That is reported there, as well. Correct?

13 A. I'm sorry. Where are you looking?

14 Q. I'm sorry. I'm looking at line 1,2,3,4,5 of that  
15 paragraph. She reported that Mr. Osborne would hit  
16 Jesse and call him names.

17 A. In which paragraph?

18 Q. I'm sorry. The first full paragraph of the second  
19 page of the Arflin report. I could point it out to  
20 you if you'd like.

21 MR. EPPES: May I approach?

22 THE COURT: Certainly. It's the fourth sentence? Is  
23 that right?

24 A. Okay. I see it. In the first full paragraph. I can  
25 see it now. I'm sorry.

- 1 Q. And frankly, this is in evidence and the Court can  
2 read it for himself, but how would you describe Mr.  
3 Osborne's family situation as reported to you by  
4 him, his mother, and his grandparents?
- 5 A. As reported to me by him and his mother, they  
6 reported a history of possible domestic violence  
7 and ongoing physical, occasional physical and  
8 verbal abuse by Mr. Osborne, Jeffrey Osborne,  
9 towards Jesse. The grandparents did not report  
10 that.
- 11 Q. Did you have an occasion to read or review or  
12 listen to Tommy Osborne's interview from the police  
13 in this case?
- 14 A. I believe so.
- 15 Q. And in that report, he did report that Mr. Osborne  
16 was a drunk and the household was chaotic. Is that  
17 correct?
- 18 A. I believe in their initial reports they both  
19 indicated that Jeffrey Osborne had used alcohol  
20 excessively. Yes.
- 21 Q. And that their home life was chaotic?
- 22 A. I don't remember the exact wording of that.
- 23 Q. And didn't they report to you that their belief was  
24 that Mrs. Osborne drank too much and created  
25 problems in the home?

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- 1 A. Yes, they did.
- 2 Q. The grandparents did. And I think you stated, but  
3 if you didn't, it's fair to say, based on the  
4 information you had, Jesse Osborne's support system  
5 is his grandparents and his parent. Correct.
- 6 A. Correct.
- 7 Q. And how would you describe that relationship before  
8 the incident when he killed his father based on  
9 your, what you've read and observed?
- 10 A. The relationship between who, specifically?
- 11 Q. Well, the relationship of his parents and  
12 grandparents.
- 13 A. With each other?
- 14 Q. Uh-huh.
- 15 A. It was vague. I couldn't get a very good report on  
16 how the relationship was. They didn't seem to  
17 interact all that much, at least between the  
18 grandparents and Mrs. Osborne.
- 19 Q. But it did not seem like it had been a good  
20 relationship?
- 21 A. I cannot imagine that it was.
- 22 Q. And often times when a juvenile, if his support  
23 system is not getting along, does that create any  
24 problems?
- 25 A. Sure.

1 Q. What kind of problems might it create?

2 A. It creates instability and feelings of insecurity  
3 at home.

4 Q. I'm going to go sideways a little bit and talk  
5 about something else that we talked about. We spoke  
6 on the phone once. Do you recall that?

7 A. Yes.

8 Q. And I asked you then and I'll ask you again, talk  
9 to me about juveniles and brain development from  
10 the ages of twelve to fifteen.

11 A. Juveniles go through a drastic period of brain  
12 development between ages, throughout their teen  
13 years into their early twenties.

14 MS. PRICE: Your Honor, I'm going to object to Dr.  
15 Atkinson testifying to this. She's already said she  
16 can't diagnose medically, she can't prescribe  
17 medications, she doesn't have a M.D.

18 THE COURT: I'm going to overrule your objection and  
19 allow you to proceed.

20 A. So, they go through a drastic period of brain  
21 development and so there is a lot of change  
22 happening, cognitive skills are being fully  
23 developed, there are things that are not fully  
24 developed. I don't know how specific you want me to  
25 be.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 Q. The first thing that starts to develop, is it fair  
2 to say, is the emotional responses? Is that one of  
3 the first things that starts to develop?

4 A. I can tell you that one of the last things to  
5 develop is their ability to control their impulses  
6 with regulation. That's later on. That's one of the  
7 last things to develop.

8 Q. I read something as I was dealing with this and I  
9 don't remember where I read it. I tried to find it  
10 again and I couldn't, but I will tell you what I  
11 read and you tell me if you agree with this. It  
12 said that between twelve and thirteen as the  
13 emotional development takes hold and the brain  
14 starts to develop, the gray matter in the brain  
15 expands at a very rapid rate and it begins to  
16 expand faster towards the age of fourteen and  
17 because of that, emotions start to flood into the  
18 young person's brain and so it's not unusual to see  
19 them go from anger to crying in a matter of  
20 seconds.

21 A. I can't speak to the gray matter, but I can say  
22 that would be a common thing to happen in  
23 juveniles.

24 Q. It would not be unusual for someone 13 or 14 years  
25 old to go from being very angry to distraught and

1 crying in a matter of seconds?

2 A. I don't know if I would say it's common, but I  
3 wouldn't say that it is rare.

4 Q. And what is executive function?

5 A. Executive functioning is basically one's ability to  
6 manage and control their behaviors.

7 Q. And that ties in with what we were talking about,  
8 the last part in the brain to develop, the ability  
9 to perform and stop your impulses and discipline  
10 yourself because of actions and consequences. Is  
11 that correct?

12 A. Correct.

13 Q. When does that fully develop in a person?

14 A. Research has shown by the early twenties.

15 Q. Okay. A person I know often says and this is a  
16 direct quote, young boys are climbing fools hill  
17 until they are twenty-five years old. Would that  
18 kind of jive with what you just said?

19 A. I'm sure it's based on that, yes.

20 Q. So, Mr. Osborne, just as a juvenile is at a time in  
21 his life when emotions can overtake him and when he  
22 lacks very basic impulse control. Correct?

23 A. Sure. At his age, that would be common.

24 Q. And those problems would be exacerbated by a lack  
25 of stability in his home life?



## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 A. It could be.
- 2 Q. And they could also be exacerbated by a lack of  
3 friendships in typical adolescent-type  
4 relationships?
- 5 A. It could be, yes.
- 6 Q. Just by the nature of him being home schooled, is  
7 it fair to say that he is possibly more isolated  
8 than the typical teenager?
- 9 A. Yes.
- 10 Q. Ms. Arflin's report on the third page under Social  
11 Agency's Involvement.
- 12 A. Yes.
- 13 Q. She reports that some DJJ records reflect that  
14 Jesse reported that a report was made to DSS due to  
15 his father hitting him. Do you know anything about  
16 that incident?
- 17 A. I don't recall that. No.
- 18 Q. And I understand from Ms. Arflin's review, that  
19 there were no records within Anderson County about  
20 that. That's on the last sentence.
- 21 A. Right. That's what he told us, as well.
- 22 Q. And Ms. Arflin's report, but yours, as well, talks  
23 about Jesse's interest in space.
- 24 A. Yes.
- 25 Q. Everybody reported that Jesse really liked his pet

- 1 rabbit. Correct?
- 2 A. Yes.
- 3 Q. And Ms. Arflin reports that according to the
- 4 community evaluation from 2016, that Dr. George
- 5 Jones diagnosed Jesse with social exclusion or
- 6 rejection. That's on page, on the 4th page under
- 7 Psychological Psychiatric Information.
- 8 A. Right. It's not a clinical diagnosis. It's
- 9 something that should be considered.
- 10 Q. It's an observation that should be considered?
- 11 A. Correct.
- 12 Q. Okay. So, he's like you, he's not supposed to
- 13 diagnose, either?
- 14 A. No, you can diagnose. He just didn't have a
- 15 diagnosis at that time.
- 16 Q. Okay. Did you review Dr. Jones' report?
- 17 A. I did.
- 18 Q. And this report also indicates, and I think you're
- 19 already aware of this, that after the incident in
- 20 Oconee, Jesse unfortunately never got any
- 21 counseling.
- 22 A. Correct.
- 23 Q. And is it fair to say that the counseling that was
- 24 ordered in Oconee was ordered so as to avoid an
- 25 exacerbation of actions?

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 A. Sure. That's fair to say.
- 2 Q. And might the counseling have made a difference?
- 3 A. It could have.
- 4 Q. You just don't know.
- 5 A. Just don't know, exactly.
- 6 Q. One of the things that I think you recognized about
- 7 the rabbit -- and I'm switching back to the rabbit
- 8 -- one of the things I think you recognized about
- 9 the rabbit is, because Jesse could speak so fondly
- 10 of the rabbit, it was clear that at some level, he
- 11 had empathy. Correct?
- 12 A. I'm not sure I would put it in those terms, but his
- 13 ability, I think, to form any kind of attachment
- 14 showed capability.
- 15 Q. Capability for empathy?
- 16 A. Yes.
- 17 Q. So, despite his detachment from these events, he
- 18 showed the capability of having empathy.
- 19 A. In that way, yes.
- 20 Q. And it's fair to say that he had some sort of
- 21 detachment from the victims in these events?
- 22 A. Yes.
- 23 Q. Did you look at his school records from West Oak?
- 24 A. I did.
- 25 Q. If I represented to you that there was at least one

1 report in there from the sixth grade of Tiffney  
2 Osborne telling a Ms. Kelly Willimont(ph) of the  
3 school that Jesse had been the victim of bullying,  
4 does that make you realize that his school records  
5 do, at least, reflect that report?

6 A. I don't remember seeing that in there, but...

7 (Mr. Eppes shows document to solicitors)

8 Q. I'm going to show you a page...

9 MR. EPPES: And Your Honor, these are the West Oak  
10 School Records.

11 MS. HUEY: Mr. Eppes, I don't think those records  
12 are actually in evidence.

13 (Mr. Eppes and Ms. Price have a discussion  
14 concerning the exhibit)

15 MR. EPPES: Judge, right now this is not in  
16 evidence, but the full copy will be put into evidence, I  
17 think, tomorrow.

18 THE COURT: All right.

19 MR. EPPES: I will represent to you, Doctor, that  
20 that is a record from West Oak Middle School.

21 THE COURT: The State, I understand, has no  
22 objection notwithstanding this is not technically ---

23 MS. PRICE: Your Honor, I have no objection to that.  
24 We don't intend to move that in tomorrow.

25 THE COURT: Okay.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 A. I don't remember reviewing this, but I see what you  
2 are referring to.

3 Q. So, in fact, there was at least one school record  
4 of recorded bullying. Let's talk about the chat  
5 groups. Were you here today for my extended...

6 A. I was not here this morning. No.

7 Q. You were lucky. I'll represent to you that Mr.  
8 Osborne was involved in some chat groups, as he  
9 reported to you, I believe, and his report, based  
10 on my review of the records is accurate, that he  
11 was involved in some chat groups where people  
12 appeared to be obsessed with the shootings, the  
13 school shootings and things like that. This was on  
14 the internet. Tell me, if you can, what internet  
15 activity in chat rooms, what affect that might have  
16 on someone who is otherwise isolated.

17 A. I'm not sure exactly what you're asking.

18 Q. I don't either. He was in chat rooms where people  
19 were talking about these school shootings all the  
20 time and as he began talking about shooting his  
21 father and other things his friends in these chat  
22 rooms provided some encouragement. It's unclear how  
23 much. What role might that type of activity on the  
24 internet, peer group relationships and the like,  
25 what role might that have in an individual's

1 decision to act or not act at the age of fourteen?

2 A. Well, juveniles, in and of themselves, are very  
3 susceptible to peer influence and we find that  
4 without positive peer influence, the negative peer  
5 influences take over, so it's not unusual for a  
6 juvenile to act in the same way and display some of  
7 the same characteristics of a peer group, whether  
8 positive or negative.

9 Q. So, with a negative peer group, if they question a  
10 person's dedication or veracity, how much would  
11 that cause them to act?

12 A. I think it could cause them to act in any number of  
13 ways, but usually juveniles want to fit in with  
14 their peers.

15 Q. And if your peers say, for example, and I'll  
16 represent to you that on the morning of the  
17 incident with Mr. Osborne, when Mr. Jeffrey Osborne  
18 was shot, Jesse Osborne stated that he had shot his  
19 father and the people on Instagram did not believe  
20 him, would that lack of belief or and I also  
21 represent to you that they requested proof that he  
22 shot his father, would that lack of belief or  
23 request for proof sometimes spur an individual to  
24 action at the age of fourteen?

25 A. I guess it could.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 Q. I'll also represent to you that Mr. Osborne in the  
2 internet chat groups stated that he had bought or  
3 was going to buy long rifles and that he was going  
4 to prepare and take with him bombs and that that he  
5 anticipated the ability to kill anywhere from  
6 twenty to fifty or more people. And yet, I will  
7 also represent to you that he went to the school  
8 with a magazine that was not fully loaded and a  
9 pistol that had twelve or thirteen shots in it that  
10 he had already fired five of and a box with  
11 thirteen shells in it and that was all. Okay? So,  
12 he had these grandiose plans on the internet, but  
13 in the actual carrying out of these plans, it was  
14 just not comparable at all. Does that fit in with  
15 the way an adolescent with a developing executive  
16 function might imagine something and then perform  
17 it?

18 A. Sure.

19 Q. Did you see the testimony about the rap song?

20 A. With the teacher?

21 Q. Yes.

22 A. I did. Yes.

23 Q. I remember being fourteen and I remember I had a  
24 record player and I had about one album so I played  
25 that album excessively. Now, I was listening to

1 something different than that, but taking aside  
2 the, I forget the word you used, poor judgment, I  
3 think that's exactly it, of listening to songs  
4 advocating violence when you've been charged with a  
5 violent crime, taking aside that, is it all that  
6 unusual for a fourteen-year-old boy to listen to  
7 the same song over and over and over again?

8 A. No.

9 Q. That is something that fourteen-year-olds do.

10 A. Sure. Yes.

11 Q. I'm going to tell you more about the Mountain Dew.

12 I bet you never thought that the Mountain Dew issue  
13 would come up and be important to a lawyer but,  
14 Mountain Dew, do you remember that he drank a  
15 Mountain Dew?

16 A. I believe so.

17 Q. Before he left his father and went to the school,  
18 he texted, "I guess I'll have my last Mountain  
19 Dew." I hate to do this to you Dr. Atkinson, but I  
20 need you to come down here, because I'm not  
21 organized enough to have a copy for you to look at.

22 MR. EPPES: Judge, I am looking at page 27 of that  
23 exhibit that we spent most of the morning on.

24 THE COURT: Yes.

25 Q. All right. Now, this is a statement, "I'm going to



## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 have my last Mountain Dew, which I think is in your  
2 report. You and I certainly talked about it. It  
3 showed kind of a lack of or a sense of detachment  
4 from the event in question. And I want to represent  
5 to you that this appears to be about fifteen  
6 minutes before Mr. Osborne killed his father. Okay?

7 A. Okay.

8 Q. Now, up here in gray, this is a State's exhibits,  
9 but there is a conversation that Mr. Osborne was  
10 having on Instagram with some other people and  
11 they're asking him, "So you're not shooting up the  
12 school?" and he says, "Not yet. I'm trying to get  
13 my nerves down," and, obviously, there's a lot of  
14 mis-spellings in how that is and then he gets a  
15 response and I represent to you that that's a  
16 response, "Drink a Mountain Dew." Okay?

17 A. Okay.

18 Q. And immediately, well, not immediately but a few  
19 minutes later he responds, "Okay, I'm going to have  
20 my last Mountain Dew." Is that the kind of thing  
21 that you would expect an adolescent boy to do? I  
22 mean, take aside the horrific nature of what we are  
23 talking about here, but somebody says, "Calm your  
24 nerves and have a Mountain Dew," and he immediately  
25 goes and does it. Is that the kind of peer response

- 1       you might expect from a fourteen-year-old boy?
- 2 A.   Not in this context, but in general.
- 3 Q.   In general, but not in this context.
- 4 A.   Right.
- 5 Q.   Okay. Thank you. So, while the Mountain Dew in the
- 6       middle of this murderous conversation might seem
- 7       detached and out of place, when you put it in the
- 8       context of these internet friends that he's been
- 9       talking to, again, despite the horrific nature of
- 10      it, it makes some contextual sense for a fourteen-
- 11      year-old's action?
- 12 A.   I think it wouldn't be unusual for a fourteen-year-
- 13      old to go and do what their friends said to do.
- 14      Correct.
- 15 Q.   And while the peer pressure would not be an excuse
- 16      for his conduct, it might be a factor that led to
- 17      his actions?
- 18 A.   I don't know how I could say that.
- 19 Q.   Hmmm?
- 20 A.   I couldn't say that.
- 21 Q.   You couldn't say that?
- 22 A.   No. I don't think I have enough information to say
- 23      that.
- 24 Q.   Okay, now, you saw the records from Oconee that Dr.
- 25      Jones and Dr. Sharman had and one of the features

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1       that those doctors viewed as a positive was Mr.  
2       Osborne's relationships in the AirSoft simulated  
3       shooting community. Do you remember that?
- 4 A.    I don't recall exactly what you're talking about  
5       but I believe so.
- 6 Q.    Okay. I'm going to, I can get you Dr. Jones'  
7       report. Would that help?
- 8 A.    Sure. I may have a copy of it.
- 9 Q.    I'm going to get some water. If you find it, would  
10       you take a quick look through it?
- 11 A.    I see the section where they spoke about, they  
12       spoke about Dr. Jones and his report.
- 13 Q.    And Dr. Jones seemed to think that that's a place  
14       where Jesse excelled and had some friends and he  
15       thought that was a positive.
- 16 A.    Well, that seemed to be from his father's report.
- 17 Q.    His father's report, but his father's report was  
18       that he excelled and had some friends.
- 19 A.    Right.
- 20 Q.    You don't know if that was right or not from  
21       Jesse's perspective?
- 22 A.    Correct.
- 23 Q.    Okay. Given that he took a hatchet and a machete to  
24       school, would you think that the best course of  
25       action would of been for him to continue with that

- 1       Airsoft game with simulated violence?
- 2 A.    No.
- 3 Q.    Would you have recommended that if you were the
- 4       recommending clinician?
- 5 A.    I probably would've recommended that he not engage
- 6       in Airsoft guns anymore.
- 7 Q.    And if you had been analyzing Mr. Osborne after the
- 8       incident with the machete and the hatchet at the
- 9       Ocone school, what would your view have been of
- 10      the violator shooting video games?
- 11 A.    That, I don't feel as strongly about. I don't think
- 12      that shooting video games have as strong an
- 13      influence as actual shooting guns.
- 14 Q.    But if someone has had an incident -- is it fair to
- 15      say that if someone has had an incident related to
- 16      violence and they are involved in a game of
- 17      simulated violence, an actual physical game, you
- 18      wouldn't say that the simulated game causes someone
- 19      to be violent, would you?
- 20 A.    No, I wouldn't.
- 21 Q.    But you would say that once they have had an
- 22      incident of violence, they probably should stop
- 23      with the simulated games?
- 24 A.    Yes. I probably would say that.
- 25 Q.    And with a fourteen or fifteen year old, why would

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1       this be important?

2 A.    Because they're very impressionable and I think --  
3       because they are very impressionable.

4 Q.    You saw Mr. Osborne, you saw Jesse about six months  
5       after this event. This was September 28th and you  
6       saw him March 2nd, so you saw him about five months  
7       after the event.

8 A.    Yes.

9 Q.    At that time, he appeared to be behaving at the  
10       school based on the records you saw, at the DJJ  
11       facility. I shouldn't call it a school.

12 A.    Yeah. For the most part, yes.

13 Q.    Okay. And saw some traits of conduct disorder, but  
14       you didn't see enough to make that diagnosis, did  
15       you?

16 A.    Well, I wasn't diagnosing during the evaluation.

17 Q.    Okay. And explain to me, I'm looking at the DSM-5,  
18       but I'm going to read this to you. A repetitive or  
19       persistent pattern of behavior in which the basic  
20       rights of others or major age-appropriate societal  
21       norms or rules are violated. That's the definition.  
22       Right?

23 A.    Correct.

24 Q.    And, obviously, killing somebody hits that criteria  
25       in a lot of ways because it's violated the rights

- 1 of others.
- 2 A. Correct.
- 3 Q. But taking that out, a repetitive and persistent
- 4 pattern of behavior is different from having a
- 5 fistfight or smarting off to your parents or things
- 6 that adolescents do all the time.
- 7 A. Right.
- 8 Q. It's a repetitive persistent pattern that extends
- 9 over a period of time.
- 10 A. Correct. And goes beyond normal adolescent
- 11 behavior.
- 12 Q. Goes beyond the pale. I'm going to switch up on you
- 13 again and ask if you have any thoughts about this.
- 14 Mr. Osborne, we've had previous people testify and
- 15 I will represent that from everything that we have
- 16 heard here up through the end of fifth grade, Mr.
- 17 Osborne was excelling at school and appeared to be
- 18 normal, well-adjusted, and meeting his age
- 19 appropriate expectations.
- 20 A. From the records that I've looked at, yes, it did
- 21 seem that way.
- 22 Q. And between then and the spring of his seventh
- 23 grade year and obviously the fall of his eighth
- 24 grade year, everything went horrifically bad.
- 25 A. He had a lot of problems in that time frame.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 Q. Just immediately. And I don't want you to think  
2 that I'm making an excuse, but for a juvenile to go  
3 from a high academic functioning well-behaved  
4 adolescent to the horrific events of 2016, both in  
5 the spring and the fall, aren't there usually some  
6 external factors that have played a role?

7 A. Sure.

8 Q. And there could be internal factors, as well.

9 A. Yes.

10 Q. And in a perfect world, there would be a place for  
11 a juvenile to go to get the help they needed to  
12 figure that out.

13 A. Yes.

14 Q. And right now, the resources for that, particularly  
15 in a case involving the horrific killings that  
16 we're talking about here, are sorely lacking. Would  
17 you agree with that?

18 A. That's hard to say. I don't know exactly what  
19 particular place you are talking about, but  
20 resources can be lacking in certain areas. That's  
21 true.

22 Q. Now, there is a test you talked about briefly  
23 called SIRS, right? SIRS?

24 A. I didn't talk about it. Ms. Price just ---

25 Q. You talked about the fact that you are familiar

- 1 with it.
- 2 A. Correct. Yes.
- 3 Q. And you did not perform it on Mr. Osborne. Correct?
- 4 A. No I didn't.
- 5 Q. And why didn't you do that?
- 6 A. We don't use the SIRS with juveniles.
- 7 Q. And why is that?
- 8 A. Because it's designed for adults.
- 9 Q. Okay. Let's talk about reporting abuse. Is it fair
- 10 to say that the victims of abuse are not always
- 11 truthful when they talk to authorities?
- 12 A. Yes, that's fair to say.
- 13 Q. Why is that?
- 14 A. Fear. Sometimes shame.
- 15 Q. And you reviewed Dr. Sharman's and Dr. Jones'
- 16 reports. Didn't you?
- 17 A. Correct.
- 18 Q. And in the beginning of Dr. Jones' report, he
- 19 acknowledges that he reported to Mr. Osborne and
- 20 Ms. Osborne and Jesse Osborne that if he saw
- 21 indicia of abuse, that he would have to report it
- 22 to the authorities. Correct?
- 23 A. Correct.
- 24 Q. And on the day that happened, on the day or days of
- 25 those interviews, it was clear that Mr. Osborne and



## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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1 Mrs. Osborne and Jesse Osborne were all going home  
2 to the same house, at least in the case of Dr.  
3 Jones.

4 A. Correct.

5 Q. And some of those interviews actually took place  
6 with all three of them in the room. Is that  
7 correct?

8 A. I don't know. I wasn't there.

9 Q. So, without meaning for this to sound as callous as  
10 it sounds, the difference in reporting between then  
11 and the incident of September 28, 2016, the  
12 difference in reporting concerning any abuse by  
13 Jeffrey Osborne is that Jeffrey Osborne was no  
14 longer a threat to anyone.

15 A. That's true.

16 Q. You never spoke to Jesse's brother or his sister?

17 A. No, I didn't.

18 Q. If I reported to you that Jesse's brother, if he  
19 were here, would state that his father was abusive  
20 to him and he went to school in Texas and when he  
21 left for Texas ---

22 MS. PRICE: Objection, Your Honor, he is not here.

23 MR. EPPES: Your Honor, hearsay is admissible in  
24 this proceeding.

25 MS. PRICE: But we don't have any report to. All we

1 have is a statement. It's not an opinion by an expert.

2 THE COURT: What you are asking is a hypothetical.

3 MR. EPPES: I'm asking a hypothetical question.

4 THE COURT: All right. I will allow it.

5 Q. If I represented to you that Mister, that Jeffrey  
6 Osborne's stepson, who is in school in Texas, would  
7 state that he was abused and beaten by his father  
8 and that when he left for school, his father turned  
9 that abuse on his brother, would that be  
10 significant to you?

11 A. Sure, that would be significant.

12 Q. And that might have an effect on the fact that in  
13 the seventh grade school year, there was the  
14 incident with the hatchet and machete and then in  
15 the eighth grade school year there was, obviously,  
16 the double homicide.

17 A. It could.

18 Q. And would -- if Jesse Osborne had a poor  
19 relationship with his father, would that be  
20 exacerbated if he was left alone to be home  
21 schooled with his father all day while his mother  
22 went to work?

23 A. Could the bad relationship be exacerbated?

24 Q. Yes.

25 A. Yes, it could.

## CROSS EXAMINATION OF DR. ATKINSON BY MR. EPPES

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- 1 Q. And -- you didn't go out to the house.
- 2 A. No, I didn't.
- 3 Q. I will represent to you that the house is down a  
4 quarter mile road from anybody else and at the end  
5 of the road is the grandparents' home, Jeffrey  
6 Osborne's father. Would that isolation of the home  
7 have any potential role in exacerbating the  
8 isolation that a fourteen-year-old boy might feel?
- 9 A. It potentially could.
- 10 Q. I'd like you to turn in your report to the factors  
11 at the end. The first is a general question. If you  
12 were allowed to change this report, based upon the,  
13 with the removal of the strong recommendation that  
14 there be an even number of positive and negative  
15 factors, would you change this report?
- 16 A. I wouldn't change the information. It would be,  
17 just the format would be different.
- 18 Q. We've already discussed this briefly, but of the  
19 eight items that you've listed, how significant --  
20 if you had to rate them in order of positivity, how  
21 significant is number seven; Jesse had not been  
22 connected to appropriate services following his  
23 first offense, therefore, did not have ample  
24 opportunity to benefit from the services available?
- 25 A. I think that is very significant.

- 1 Q. Would you be able to rank them between one to eight  
2 or is that very significant?
- 3 A. It would be in the top three, I would say.
- 4 Q. It would be.
- 5 A. Yes.
- 6 Q. And number eight, similarly, Jesse at the age of 14  
7 years and five months, given his parole guidelines,  
8 I think you kind of testified that there might not  
9 be sufficient time. Is that correct?
- 10 A. It's hard to say.
- 11 Q. It's really hard to say.
- 12 A. Right.
- 13 Q. But if Jesse were sentenced to the Department of  
14 Juvenile Justice and sub-classed to have a mental  
15 illness, there might well be very ample time to get  
16 the help he needs so that he is no longer a danger  
17 to others or himself.
- 18 A. Depending on where he was placed.
- 19 Q. Depending on what would happen with the Department  
20 of Mental Health?
- 21 A. Correct.
- 22 Q. The Department of Mental Health certainly has the  
23 facilities to attempt to achieve that positive  
24 effect for a juvenile who is classified that way.  
25 Correct?

## CROSS EXAMINATION OF DR. ATKINSON BY MR. SMITH

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- 1 A. Yes.
- 2 Q. And our Department of Corrections lack that.
- 3 A. The adult department?
- 4 Q. The South Carolina Department of Corrections.
- 5 A. I'm not familiar with their services there.
- 6 Q. Thank you. Who hired you for this evaluation?
- 7 A. I wasn't hired. It's a part of my job at Department
- 8 of Juvenile Justice.
- 9 Q. So, you effectively work for The Department of
- 10 Juvenile Justice and the Family Court.
- 11 A. Correct.
- 12 Q. And you don't have an agenda with this report?
- 13 A. No.
- 14 Q. And you don't make any more money whether you give
- 15 a good report or a bad report?
- 16 A. No, I don't.
- 17 Q. You don't even get any more money for sitting here
- 18 and listening to me ask you questions, do you?
- 19 A. I don't.
- 20 MR. EPPES: Your Honor, that's all I have at this
- 21 time.
- 22 THE COURT: Before I move on, Mr. Eppes read what I
- 23 believe was a definition from the DSM-V and mentioned a
- 24 repetitive pattern. What was the malady that was being
- 25 described ---

1 MR. EPPES: Your Honor, I was reading from the  
2 definition of conduct disorder.

3 THE COURT: Conduct Disorder. That's what I thought.

4 MR. EPPES: It's on page 489 of what I believe to be  
5 the current edition, the fifth edition of the DSM-V from  
6 the American Psychiatric Association.

7 THE COURT: Okay. All right. Thank you. Mr. Smith?

8 CROSS EXAMINATION

9 BY MR. SMITH:

10 Q. Are you aware that on the day that this incident  
11 occurred, Mr. Osborne, meaning Jeffrey Osborne, had  
12 received a check and he was unhappy with the check?

13 A. I saw that in the record, yes.

14 Q. And it is your understanding that he wasn't happy  
15 with that?

16 A. That's what was described.

17 Q. And you've heard testimony or read in the records  
18 that he drank too much or drank to excess?

19 A. Yes.

20 Q. The other two children, who you've not talked to,  
21 you don't think that's important?

22 A. Typically, we only speak with the parents. We only  
23 speak with other family members when it seems  
24 significant and in this case, it seemed significant  
25 to talk to the grandparents. We don't interview all

## CROSS EXAMINATION OF DR. ATKINSON BY MR. SMITH

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- 1 family members.
- 2 Q. You were aware that the daughter cut off ties with
- 3 her father?
- 4 A. That was reported, yes.
- 5 Q. Doesn't that go to support what Mr. Osborne, Jesse
- 6 Osborne has said about violence or degrading
- 7 labels?
- 8 A. I'm not sure what you mean.
- 9 Q. If Mr. Osborne called Jesse a faggot on a regular
- 10 basis, what would you consider that?
- 11 A. Verbal abuse.
- 12 Q. So, do you think that he would have shared that
- 13 with you, normally?
- 14 A. Jesse?
- 15 Q. Yes.
- 16 A. Sure.
- 17 Q. Based on the fact that you now know that at West
- 18 Oak, that there was bullying, a record a bullying.
- 19 Did anybody tell you about that until you just
- 20 heard it?
- 21 A. I don't remember reading that in the record, no.
- 22 Q. The State didn't offer that to you?
- 23 A. I don't remember seeing it. It doesn't mean it
- 24 wasn't in there. We get a lot of information. I
- 25 just don't recall it.

- 1 Q. Yes, ma'am. Were you aware that he'd been beat in a  
2 classroom at the detention center?
- 3 A. Yes, I was aware of that.
- 4 Q. So, you were aware of that. How would you  
5 characterize that? Would that be characterized as  
6 bullying?
- 7 A. It didn't seem to be bullying in this case.
- 8 Q. You said that he didn't show the proper emotion  
9 with you, so he didn't have remorse?
- 10 A. He didn't show typical emotions that other  
11 adolescents would typically show.
- 12 Q. So, you're grouping him in with others, then?
- 13 A. Sure. We compare to others, exactly. That's how we  
14 get an idea of normal or abnormal behavior.
- 15 Q. Rap music is poor judgment. Is that a choice?
- 16 A. I didn't say rap music was poor judgment. I said  
17 his choice to listen to that type of music in his  
18 situation was poor judgment.
- 19 Q. Yes, ma'am. You said that you hadn't received, that  
20 you were told that you hadn't received everything.  
21 What don't you believe you received?
- 22 A. I was told that new information came in after my  
23 evaluation that I did not read over.
- 24 Q. If a child is sick on a regular basis,  
25 conjunctivitis, vomiting, nausea, things related,



## CROSS EXAMINATION OF DR. ATKINSON BY MR. SMITH

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1       perhaps, to the chicken farm that he worked on ---

2       MS. PRICE: Your Honor, I'm going to object. She  
3 doesn't have a M.D. We've discussed his need for an  
4 expert on the issue related to the chicken farm issue.

5       THE COURT: I don't think she's qualified to address  
6 that. I sustain the objection.

7 Q.   The medical records, being sick on a regular basis,  
8       could that cause depression?

9 A.   It can. It varies. It depends on a lot of different  
10      other of factors.

11 Q.   I believe you said that he had an affinity for the  
12      rabbit, a form of attachment?

13 A.   Uh-huh.

14 Q.   Does that mean animals or that rabbits, in general,  
15      were something that he could relate to without any  
16      sense of -- I withdraw that. He was attached to the  
17      rabbit.

18 A.   He seemed to be.

19 Q.   If his job at the chicken farm was at times to kill  
20      little baby chicks, would that go against that  
21      attachment that you saw with the rabbit?

22 A.   Not necessarily.

23 Q.   How would you characterize that?

24 A.   I think people can form attachments to animals and  
25      treat that particular animal well and treat other

1 animals poorly.

2 Q. So, it would be normal for a child to kill chickens  
3 by their hands?

4 A. No, it wouldn't be normal.

5 Q. Based on what you know, what you've learned and so  
6 forth, for 30 minutes he was not himself, was he?

7 A. I'm sorry. I don't understand.

8 Q. Jesse Osborne, on September 28, 2016, was not  
9 himself from 1:30 to 2:15.

10 A. I don't think I could say that.

11 Q. Can you show me how he was prior to that, before  
12 that, or after that?

13 A. After -- how he was after that? I'm not sure what  
14 you are saying.

15 Q. Except for that forty-five minutes, what other time  
16 has he been like that? Wasn't it your understanding  
17 that he was a good student, very compliant with  
18 people.

19 A. He was adjudicated for bringing weapons to school  
20 with what he initially reported was for his intent  
21 to harm others and there was also evidence of  
22 extensive planning prior to this incident.

23 Q. Extensive planning? Did you know of any long guns  
24 that he purchased?

25 A. No, I don't know what he purchased.

## REDIRECT EXAMINATION OF DR. ATKINSON BY MS. PRICE

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1 Q. Did you know of any bombs that he created?

2 A. No, I wasn't aware of any.

3 Q. Do you count that as a part of the extensive  
4 planning?

5 A. It counts for the research to do those things as a  
6 part of extensive planning.

7 Q. I have nothing further.

8 THE COURT: Redirect?

9 MS. PRICE: Yes, Your Honor. Your Honor, beg the  
10 Court's indulgence while I organize my thoughts.

11 THE COURT: Yes, ma'am.

12 REDIRECT EXAMINATION

13 BY MS. PRICE:

14 Q. Dr. Atkinson, Mr. Eppes said that Jesse had some,  
15 and I'm quoting, some detachment from the victims  
16 in this case. I'd like to direct you to your report  
17 and I believe he had you look at page 17 of your  
18 report. I'd like for you to read, beginning on the  
19 first full sentence that begins, "For example" and  
20 if you can read -- just read that whole paragraph,  
21 if you will.

22 A. Sure. For example, when he first learned that one  
23 of his six-year-old victims had died from his  
24 injuries, Jesse indicated that he could not  
25 understand how that could have occurred because, "I

1        didn't see anyone drop down dead." He then went on  
2        to describe how he had been told the victim's  
3        family had "pulled the plug on him" in order to  
4        gain financial profit. He further stated, "I don't  
5        even know if his parents were sad." When asked  
6        about the impact his actions had on the other  
7        gunshot victims, of a child shot in the foot, Jesse  
8        commented, "I didn't even know his name or his  
9        family." He stated that he saw on the news, "that  
10       the teacher that was shot forgave him." While Jesse  
11       demonstrated some insight into how his current  
12       charges had negatively impacted his family, he had  
13       difficulty understanding how others may have been  
14       affected. For example, when initially questioned as  
15       to how Jesse believed the other children who were  
16       present for the shooting may have been affected,  
17       Jesse responded that he did not believe the  
18       students that were in the building and therefore  
19       did not witness the event firsthand would be  
20       impacted. He then stated, "But I'm pretty sure  
21       they're more aware of bullying now and what it can  
22       cause someone to do." When questioned further of  
23       any knowledge of the children who witnessed the  
24       shooting were likely to be more vigilant of their  
25       surroundings following the incident. When directly

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- 1 asked if he felt the incident could have induced  
2 trauma reactions such as PTSD in those involved, he  
3 quickly responded, "Yes, most likely most of the  
4 kids might have PTSD, but they'll be able to get  
5 help for it." Jesse was then asked how that made  
6 him feel and he stated, "I try not to think about  
7 it, but I do think about why God made me do it." He  
8 appeared to be flustered and further explained, "I  
9 think God makes you do everything. I think he made  
10 me do it to change my life." Notably, a witness  
11 statement from the fireman who initially restrained  
12 Jesse at the scene of the school shooting stated  
13 that when he asked Jesse why he did it, Jesse  
14 replied that "He didn't believe in God anymore."
- 15 Q. So, Dr. Atkinson, when you -- are you, in your  
16 questioning, in this line of questioning, trying to  
17 elicit empathetic responses from the juvenile?
- 18 A. Yes.
- 19 Q. Is that one of the things that you were probing  
20 for?
- 21 A. Yes.
- 22 Q. As you continued to probe him to try to get an  
23 empathetic response from this defendant, he became  
24 flustered? Is that accurate?
- 25 A. I believe he became flustered when he brought the

- 1       issue of God into it.
- 2 Q.    Okay. And is that him deflecting, as well?
- 3 A.    I could be.
- 4 Q.    And blaming some other entity because he cannot
- 5       justify his actions?
- 6 A.    It could be, yes.
- 7 Q.    Okay. Because these are unjustifiable actions.
- 8       Isn't that right?
- 9 A.    Yes.
- 10 Q.   Okay. Are you aware, I know Mr. Eppes showed you
- 11       some portions of school records from West Oak. Are
- 12       you aware that other statements said that Jesse was
- 13       not being bullied? Do you recall?
- 14 A.    I don't. I just don't recall.
- 15 Q.    All right. Would it surprise you to hear that there
- 16       were varying reports that differed from what Jesse
- 17       reported?
- 18 A.    No. It wouldn't surprise me.
- 19 Q.    Okay. You have to refer -- I know Mr. Eppes
- 20       provided you with Dr. Jones' report. You have to
- 21       refer to Dr. Jones' report to get Jeffrey's insight
- 22       on anything. Don't you?
- 23 A.    Yes.
- 24 Q.    And that's because Jesse Osborne killed Jeffrey. Is
- 25       that right?

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1 A. Yes.

2 Q. So, we only have past reports to get Jeffrey's  
3 input. Isn't it true or do you know that Jesse  
4 didn't get put on probation until August before the  
5 shooting occurred?

6 A. Yes. I believe so.

7 Q. Okay. So, if the shooting occurred within almost a  
8 month's span after Jesse was put on probation,  
9 would that have been ample time to get a treatment  
10 plan in place?

11 A. It depended on what was needed, but sometimes it  
12 would not be ample time.

13 Q. And Mr. Eppes showed you a slide from one of his  
14 exhibits from this morning and it is, in fact,  
15 taken, a portion of this was taken from a larger  
16 exhibit that was put in by the State. I believe  
17 it's State's Exhibit #43.

18 MR. EPPES: That's not it.

19 MS. PRICE: I know. It's underneath.

20 Q. So, State's Exhibit #43, which is 1077 pages and so  
21 that was a condensed version and I'm referring to  
22 page 270 of State's Exhibit #43 and the text -- I'm  
23 going to have you read the text.

24 MS. PRICE: Do you need to see it, Mr. Eppes?

25 MR. EPPES: Yes. I'm not sure exactly what that is.

- 1 MS. PRICE: Sure. (Shows Mr. Eppes document)
- 2 Q. Dr. Atkinson, I'm presenting you with page 270, a
- 3 copy of page 270 from State's Exhibit #43 and
- 4 looking at the text, can you tell me, is [REDACTED] the
- 5 author of that first text?
- 6 A. Yes, it seems so.
- 7 Q. And what does that text read?
- 8 A. This is an Adam Lanza situation.
- 9 Q. Okay. And who is the author of the second text?
- 10 A. Also [REDACTED].
- 11 Q. And what does the text say?
- 12 A. This is a Columbine situation.
- 13 Q. Okay. And then there is no author listed for the
- 14 next text, right?
- 15 A. Yes.
- 16 Q. And is that the text that says, "Drink a Mountain
- 17 Dew?"
- 18 A. Yes.
- 19 Q. Okay. And that is what Mr. Eppes pointed out to you
- 20 earlier. Is that right?
- 21 A. Correct.
- 22 Q. Okay. And Mr. Eppes and you have apparently
- 23 discussed this text about drinking a Mountain Dew.
- 24 Is that right?
- 25 A. He had mentioned it.



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- 1 Q. And he mentioned it to you today to say that  
2 juvenile Osborne didn't fully appreciate what was  
3 going on, that it was a sort of immature thing to  
4 say. Is that right?
- 5 A. I took his questioning to be more that he was  
6 influenced by his peers.
- 7 Q. Okay. Well, he also said that was peer influence,  
8 that if someone told him to drink a Mountain Dew  
9 and he said, I'm going to drink a Mountain Dew.  
10 Okay. What if I told you that that is a Columbine  
11 reference to an individual named Chris Morris who  
12 was friends with Dylan and Eric and he drank a  
13 Mountain Dew while they were shooting up the  
14 school. Would that put a different flavor on that?
- 15 A. Sure.
- 16 Q. Okay. So, it may not be a peer influence so much as  
17 an exchange about another school shooting.
- 18 A. Right. In that context.
- 19 (Ms. Price shows document to Mr. Eppes)
- 20 Q. Mr. Eppes asked you, and I asked you some, but Mr.  
21 Eppes asked you again about the home life and  
22 potential violence at [REDACTED] Osborne Road.
- 23 A. Correct.
- 24 Q. And did you review a report of a call-out to  
25 Osborne Road?

1 A. I did.

2 Q. Okay. And no charges were brought as a result of  
3 that call. Is that right?

4 A. It doesn't seem so from the incident report.

5 Q. Okay. And what does it say in the second paragraph  
6 about Mrs. Osborne? Can you read those two lines  
7 for me, please?

8 A. It is noted that while on scene, Mrs. Osborne was  
9 very antagonistic towards her husband. It is also  
10 noted that while outside loading her vehicle to  
11 leave, that Mrs. Osborne stated she had planned  
12 this with her attorney prior to coming home this  
13 evening.

14 A. Okay. Can you read the next line?

15 A. There were no signs of any physical struggle  
16 throughout the residence nor were there any visible  
17 injuries upon Ms. Osborne's body, where she stated  
18 she had been assaulted.

19 Q. Okay. And read the next sentence for me, please.

20 A. As stated, Ms. Osborne's story was conflicting and  
21 differs tremendously from her statement.

22 Q. And in fact, there has been nothing in any record  
23 that you've reviewed that has indicated any visible  
24 injury to Mrs. Osborne or to Jeffrey Osborne. Is  
25 that right?

1 A. Correct.

2 Q. And so, you've read a lot of things about them  
3 providing conflicting statements. Isn't that right?

4 A. Correct.

5 Q. Okay. So, anything that is stated by Mrs. Osborne  
6 may be conflicting or we have to take it with a  
7 grain of salt. Wouldn't that be correct?

8 MR. EPPES: Your Honor, I object to the form. Taken  
9 with a grain of salt. She's asking about the ---

10 MS. PRICE: Sure.

11 Q. If someone has...

12 MS. PRICE: I'll re-phrase.

13 THE COURT: Re-phrase the question, please.

14 Q. If someone has provided conflicting statements,  
15 such as Mrs. Osborne, would you be more skeptical  
16 of what they say to you?

17 A. Yes.

18 Q. Okay. I'm going to, again, hand you the transcript  
19 of the interview of Tiffney Renee Osborne ---

20 MR. SMITH: I object. Out the scope of cross  
21 examination.

22 MS. PRICE: Your Honor, this goes to what Mr. Eppes  
23 brought up, the physical environment in the home.

24 THE COURT: Overruled.

25 Q. This is the transcript of the interview of Tiffney

- 1 Renee Osborne from September 28, 2016. And I'm  
2 going to ask if you will read from it beginning  
3 with page 38, line 22 and ending on page 39, line  
4 8.
- 5 A. Question: what type of music is it? Answer: Some  
6 thrash metal group. K-J, I don't even know. It's K-  
7 J-D-F, K-G-D-F, it's thrash metal. Then he's gotten  
8 on my case for romance, but Jesse would always tell  
9 me, and Jeff, so many stories. You wouldn't know  
10 what was right. Sometimes I just thought that Jesse  
11 was against me and Jeff. You know, we are the bad  
12 people. Like, if he could get us in trouble it  
13 would be perfect and we're not even, I mean, I  
14 would cry. I'd cry a lot and I'd pray a lot because  
15 I wanted Jesse to have friends and get back right,  
16 but we had to get off his probation first.
- 17 Q. Okay. So, that is Jesse's mother, Tiffney, saying  
18 that Jesse was against her and Jeffrey?
- 19 A. That's what it sounded like, yes.
- 20 Q. Okay. And that Jesse would tell them stories and  
21 they didn't know what could be believed?
- 22 A. That's what it sounded like, yes.
- 23 Q. And would try to make them the bad people?
- 24 A. Yes.
- 25 Q. We talked about, or you talked about with Mr.

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- 1 Eppes, about teenagers Jesse's age having impulse  
2 control issues?
- 3 A. Yes.
- 4 Q. If someone spent two years planning an event, is  
5 that an impulse control issue?
- 6 A. The event they planned would not be impulsive if  
7 they spent that much time planning it.
- 8 Q. That wouldn't be impulsive, then.
- 9 A. Correct.
- 10 Q. And when he began planning if, in fact, it was two  
11 years prior to this incident date, then he would  
12 have still been in school. Isn't that right?
- 13 A. Yes.
- 14 Q. So, the isolation wouldn't have been an impetus for  
15 beginning this planning process?
- 16 A. Not if that's when it was planned.
- 17 Q. Okay. And Mr. Eppes brought up a pet rabbit. Right?
- 18 A. Yes.
- 19 Q. And evidenced that that meant that he was able to  
20 make an attachment with an animal. Is that right?
- 21 A. Correct.
- 22 Q. And I think you made a statement that one could be  
23 treating an animal well, but also others poorly.  
24 Correct?
- 25 A. Correct.

- 1 Q. Are you aware that Jesse was watching a video of  
2 kittens being killed before this incident?
- 3 A. No. I was not aware of that.
- 4 Q. Would that cause you concern at all?
- 5 A. Yes.
- 6 Q. Would that be something that you'd have to take up  
7 in treatment?
- 8 A. That's something that should be addressed in  
9 treatment, yes.
- 10 Q. Is that something that you could address in  
11 treatment?
- 12 A. Yes.
- 13 Q. Did you have any other indicators that Jesse had  
14 teased animals in the past?
- 15 A. I don't know about teased. I had some concerns  
16 about the manner in which some of the chickens were  
17 killed on the chicken farm.
- 18 Q. You weren't here for the FBI testimony.
- 19 A. Correct.
- 20 Q. Would it surprise you to hear that on Jesse's  
21 Instagram account he said that he was as willing to  
22 kill his mother as he was his father if she had  
23 come home and interrupted his plan?
- 24 A. I don't know if it would surprise me, but that is  
25 new information.

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- 1 Q. That's new information?
- 2 A. Yes.
- 3 Q. And we haven't heard that Mrs. Osborne was abusive.
- 4 Have we?
- 5 A. No.
- 6 Q. Mr. Eppes also brought up the issue of a negative
- 7 peer group online. Right?
- 8 A. Correct.
- 9 Q. If you were to hear that the individual I asked you
- 10 about earlier, Miguel Cano, is someone who is
- 11 charged with matricide and is currently
- 12 incarcerated in Greenville County Detention Center
- 13 and that earlier today, I think you were present,
- 14 there was testimony when we asked the teacher who
- 15 his buddy was at the detention center and if you
- 16 were to hear that Miguel Cano has testified or has
- 17 reported that he is interested in becoming a serial
- 18 killer, that's one of his goals, would you say that
- 19 he is continuing to find negative peer groups to
- 20 associate with, Jesse Osborne?
- 21 A. He doesn't sound like a positive peer influence.
- 22 Q. It doesn't. And if he is being supervised and still
- 23 associating with negative influences, what are the
- 24 odds that he is going to associate with the right
- 25 influences when he is released?

1 A. To be fair, I don't know what his opportunity to  
2 associate with positive influences in his situation  
3 right now is.

4 Q. Okay. Certainly his choice of friend is, again,  
5 poor judgment, would you say?

6 A. I don't know the contents of the relationship and  
7 it's hard to say, because like I said, in the  
8 detention center you could consider them all  
9 negative peer influences.

10 Q. Okay. Dr. Atkinson, you said that you don't use the  
11 SIRS test. Is that right?

12 A. I don't use it currently, no.

13 Q. Okay. And you said you don't use it with children.

14 A. Correct.

15 Q. And you said it was not made to be used with  
16 children. Is that right?

17 A. That's not how it was originally designed.

18 Q. That's right, it wasn't originally designed that  
19 way and have you recently read a study that you  
20 were provided by the State that endorses the use of  
21 that test with adolescents?

22 A. Yes, it showed some promising results about its use  
23 with adolescents.

24 Q. Okay. And is that, in fact, a study that was done  
25 by the creator of the SIRS test, Richard Rogers?



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1 A. Yes.

2 Q. Okay. And did that study have some criteria or some  
3 parameters that were used to employ, so that there  
4 would be caution with interpreting results when  
5 used with adolescents?

6 A. Yes. I believe so.

7 Q. Do you recall if one of those was if this test is  
8 administered and, or if the validity tests are  
9 administered, and there's an extreme score, that  
10 the danger is not really there for this test to not  
11 be inaccurate when administered to an adolescent?

12 A. I'm sorry. I'm not clear what you're asking.

13 Q. Okay. So, what I'm asking is, you understand what  
14 cutoff scores are?

15 A. Yes.

16 Q. Yes? All right. If a adolescent was administered  
17 this test and, hypothetically, and his cutoff score  
18 was extreme ---

19 A. Okay.

20 Q. --- like, three standard deviations above what it  
21 should be, would it be less likely that there would  
22 be an error in the application of this test and  
23 isn't that what this study does?

24 A. I believe so, yes.

25 Q. Okay. And you said you're not familiar with the

- 1 SIMS test.
- 2 A. Correct.
- 3 Q. Okay. Have you ever heard of it?
- 4 A. No, not until you mentioned it.
- 5 Q. Okay. If I told you it was symptom validity test
- 6 and it had the same parameters, essentially, as the
- 7 SIRS test, however, it has language included in its
- 8 manual that says, although use of the SIMS has been
- 9 examined in one study of court-preferred
- 10 adolescents, the Rogers Signs and Sewell, 1996,
- 11 isn't that what you read?
- 12 A. Correct.
- 13 Q. Okay. Further research is needed prior to the
- 14 widespread clinical use of the SIMS with adolescent
- 15 or child populations. Does that state it shouldn't
- 16 be used in adolescent and child populations?
- 17 A. Not necessarily, no.
- 18 Q. Correct. It says it shouldn't be widespread. Is
- 19 that right?
- 20 A. Correct.
- 21 Q. And what if it said that in order to have a valid
- 22 result on the test an individual would need to have
- 23 a fifth grade reading level? Would juvenile Osborne
- 24 qualify?
- 25 A. Yes.

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1 Q. Okay. And again, the individual who did the study  
2 on juveniles and adolescents and the use of the  
3 SIRS test, who published the study which validates  
4 the use of that test in and adolescent population,  
5 are the same.

6 A. The study I read?

7 Q. Yes.

8 A. I don't know that I would interpret it the same way  
9 that you did, but he did publish the study. That's  
10 correct.

11 MR. EPPES: Your Honor, Ms. Davis gave me a report  
12 that she acted like she was going to talk about and it  
13 doesn't appear to be the report that she is referencing  
14 right now. Could I get a copy of that report?

15 MS. PRICE: Are you talking about me? Ms. Price?

16 MR. EPPES: Yes. Ms. Price Davis.

17 MS. PRICE: I did actually send you this article.

18 MR. EPPES: What did you send it in?

19 MS. PRICE: I don't know, but I will get it to you  
20 right now.

21 MR. EPPES: I'm sorry, Your Honor, if she says she  
22 sent it to me...

23 THE COURT: That's all right.

24 MS. PRICE: And, in fact, I did give Mr. Eppes  
25 another study and I have marked it as State's Exhibit

1 #53 and I'm going to hand it up.

2 Q. And I haven't asked you to look at this study, so I  
3 don't expect you to interpret it, but is The  
4 Journal of Child Neuropsychology a reputable  
5 publication?

6 A. Yes.

7 Q. Okay. Could you please turn with me to page, what's  
8 marked as page 1013? And can you tell me what the  
9 title of Table 12 is?

10 A. The Necessity of Validity Tests During Assessments  
11 in Different Settings.

12 Q. Okay. The Necessity of Validity Tests During  
13 Assessments in Different Settings. And what is it  
14 the first setting that is listed in that table?

15 A. Prison juvenile detention.

16 Q. And can you tell me what percentage of  
17 neurologists, I'm sorry, of neuropsychologists  
18 responded to this survey, saying that the necessity  
19 of validity tests during assessments in a prison or  
20 juvenile detention setting is desirable?

21 A. It looks like 24.4%.

22 Q. Okay. And can you tell me how many  
23 neuropsychologists, practicing, believe that  
24 validity tests during assessments in a prison or  
25 juvenile detention setting are mandatory?

1 A. This says 71.3%.

2 Q. All right. So, is that 95.07%, total, that believe  
3 that validity tests should be used in a juvenile  
4 detention or prison setting when assessing youth?

5 A. That's a statistic. I don't know. The tables are  
6 out of context. I haven't read the article, so I  
7 don't know.

8 Q. Okay. But that's what it says?

9 A. That's a percentage. That's what it adds up to,  
10 yes.

11 Q. Okay. All right. And a validity test, as you  
12 understand it, would be the SIRS. Is that right?

13 A. Yes.

14 MR. EPPES: Objection, Your Honor. Your Honor, this  
15 report talks about validity tests and it lists about 15  
16 of them on page 1009 and those tests go through a gambit  
17 of tests. They are all cognitive tests. They are not  
18 behavioral tests. I believe the SIMS and SIRS tests are  
19 behavioral tests and so I do not believe that's a fair  
20 question.

21 MS. PRICE: Well, is the MMPI-A validity test?

22 A. No, that's not how I would describe it.

23 Q. It's a personality assessment?

24 A. Correct.

25 Q. Okay. Dr. Atkinson, can you look at page 1011? Are

- 1       those all symptom validity tests that you see  
2       there?
- 3 A.   What table are you referring to?
- 4 Q.   The one that says SVT, frequency use of SVTs with  
5       children and adolescents.
- 6 A.   That's not how I would normally describe them, no.  
7       But again, I don't know what it's indicating on  
8       here. I'd have to read the article. It's hard to  
9       take it so out of context.
- 10 Q.   Okay. All right. But you didn't administer any  
11       validity tests?
- 12 A.   No.
- 13 Q.   Okay. And I know I'm beating a dead horse when I  
14       say that, but you didn't and, in fact, you are not  
15       familiar with the SIMS test.
- 16 A.   No, I'm not.
- 17 Q.   Okay. And you did not administer the SIRS, so it's  
18       a non-issue with regard to whether or not you would  
19       have known to administer or felt compelled to  
20       administer a symptom validity test in detention  
21       regardless of what this says. Is that right?
- 22 A.   I'm not sure what question you are asking me.
- 23 Q.   Well, I think you said earlier that wasn't your  
24       role. Is that right?
- 25 A.   That wasn't the point of the evaluation. That

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1       wasn't the referral question.

2 Q.   Would you agree that a symptom validity test is  
3       helpful in determining the truth behind  
4       inconsistencies in clinical presentation and  
5       subjective testing?

6 A.   It can be very helpful in determining whether or  
7       not someone is exaggerating symptoms.

8 Q.   Thank you. One moment. I have no further questions.

9       THE COURT: Mr. Eppes?

10                               RE-CROSS EXAMINATION

11 BY MR. EPPES:

12 Q.   Doctor, one of the reasons you didn't use the SIRS  
13       test is because the SIRS test, as you understand  
14       it, is not to be given to adolescents. Correct?

15 A.   That's one reason. Correct.

16 Q.   And nothing about that article you read by Dr.  
17       Rogers changed your belief of that. Did it?

18 A.   It showed promising results, but it was one study.

19 Q.   Not enough to change the way you do it?

20 A.   Correct.

21 Q.   And again, you're not paid by anybody to be here.

22 A.   Correct.

23 Q.   You heard about Mr. Cano. If I told you that Mr.  
24       Cano and Mr. Osborne are basically the honor roll  
25       of their class of students at the detention center,

1 would that indicate to you a reason they might  
2 socialize with each other?

3 A. It would indicate that they had something in  
4 common.

5 Q. And people who are intelligent and have something  
6 in common, they often become friends.

7 A. Sure.

8 Q. Is there anything particularly strange about a  
9 child in a detention center becoming friends with  
10 another child in the detention center who has  
11 engaged in a bad act?

12 A. No.

13 Q. And why is that?

14 A. Because they are mostly there for engaging in bad  
15 acts and it's very difficult for them to be there  
16 for the length of time that they are and not  
17 associate with each other.

18 Q. You looked at that police report where Ms. Osborne  
19 reported to the police basically that Jesse tells  
20 stories and they found the report of abuse being  
21 unfounded. You saw that, right?

22 A. In Ms. Osborne's statement?

23 Q. In that statement to the police that they put up  
24 there.

25 A. Yes.



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- 1 Q. Apparently, the statement also reports that she was  
2 talking about going to a divorce attorney. Right?
- 3 A. In the incident report. Yes.
- 4 Q. In the incident report. I'm sorry. That's what I  
5 meant.
- 6 A. The other stuff was in the statement.
- 7 Q. You're right. I'm going back to the incident report  
8 where she talked about going to an attorney when  
9 the police were called out there. What do those  
10 kinds of statements indicate to you as to the  
11 familial relationships that Jesse was living with?
- 12 A. It indicates that there was conflict in the home.
- 13 Q. And what effect does conflict have on a thirteen or  
14 fourteen year old boy?
- 15 A. It affects their sense of security and stability  
16 which is important for an adolescent.
- 17 Q. And an unstable environment enhances any behavioral  
18 problems that the child may have?
- 19 A. It can. It also makes it difficult for that child  
20 to get the support that they need and to reach out  
21 for help.
- 22 Q. So, if they need help ---
- 23 A. Right. It makes it more difficult.
- 24 Q. And so, that would create a series of challenges  
25 for someone in early adolescence, particularly if

1       they had other things going on.

2 A.    Yes.

3 Q.    Thank you.

4       THE COURT: Mr. Smith?

5       MR. SMITH: I have no questions, sir.

6       THE COURT: Thank you, Doctor. You may step down.

7       MS. PRICE: Your Honor, may this witness be excused?

8       THE COURT: Certainly.

9       MR. EPPES: Without objection, Your Honor.

10       THE COURT: All right. Thank you. We are going to go  
11 ahead and recess, but before we do that, though, I  
12 believe in the testimony, several times, the name of  
13 another juvenile came up, the individual that's  
14 currently housed at the juvenile detention center. That  
15 is, to the best of my understanding, still a juvenile.

16       MR. EPPES: Your Honor, Mr. Cano has been adjudged  
17 an adult for trial purposes and so I believe his name is  
18 public record.

19       THE COURT: All right. Just scratch everything I  
20 just said. All right. We are going to go ahead and  
21 recess for the evening. We will start back tomorrow at  
22 9:30.

23 FEBRUARY 15, 2018 - FOURTH DAY OF TRIAL

24       THE COURT: Let's go back on the record. This is the  
25 resumption of the hearing in State v. Osborne. It is now

## DIRECT EXAMINATION OF KELLEY ALSTON BY MS. LOOPER

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1 approximately 9:50 on Thursday, day four. I believe we  
2 are still in the State's case. So, if you are ready, you  
3 may proceed.

4 MS. LOOPER: May it please the Court?

5 THE COURT: Yes, ma'am.

6 MS. LOOPER: Your Honor, the State calls Kelley  
7 Alston to the stand.

8 (Oath is administered by the Clerk of Court)

9 CLERK OF COURT: Please have a seat in the witness  
10 chair and state your name for the record and spell your  
11 last name for the reporter.

12 MS. KELLEY: My name is Kelley Alston. A-L-S-T-O-N.

13 MR. EPPES: Your Honor, I apologize. I have one  
14 matter I would like to put on the record.

15 THE COURT: All right.

16 MR. EPPES: Because we went so late last night, my  
17 client got his sleep medication late and because of that  
18 he is somewhat lethargic this morning. He and I have  
19 talked about it. He believes that he can proceed. He  
20 believes that he can understand what's going on. He  
21 understood my conversations with him. However, because  
22 of the nature of this crime and everything else, I would  
23 not want anyone in the courtroom to misinterpret his  
24 lethargy, if he becomes sleepy or something else to  
25 indicate anything other than the fact that he is on some

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1 medication that intends to make him drowsy. He's  
2 supposed to tell me if he feels like he can't stay  
3 awake, but I just wanted to put that on the record lest  
4 somebody misinterprets his actions.

5 THE COURT: All right. Thank you. I heard he was  
6 asking for a Coke?

7 MR. EPPES: He got one, Your Honor. Thank you.

8 THE COURT: If you need anything else, let me know.

9 MR. EPPES: Yes, sir, Your Honor. Thank you.

10 DIRECT EXAMINATION

11 BY MS. LOOPER:

12 Q. Ms. Alston, where are you employed?

13 A. I am employed with the South Carolina Department of  
14 Corrections.

15 Q. And what is your position?

16 A. I am the program coordinator for the Young Offender  
17 Institutional Services with the division of Young  
18 Offender Parole and Entry Services.

19 Q. And how long have you been in that capacity?

20 A. Four years.

21 Q. What are your general duties?

22 A. I coordinate the programing for youthful offenders  
23 between 18 to 29 years old.

24 Q. And Ms. Alston, I am going to hand you what has  
25 been pre-marked as State's Exhibit #59, for

## DIRECT EXAMINATION OF KELLEY ALSTON BY MS. LOOPER

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1 identification purposes.

2 MR. EPPES: No objection, Your Honor.

3 THE COURT: Thank you. Without objection.

4 (Whereupon, a SCDC program is entered into evidence  
5 as State's Exhibit #59, without objection)

6 Q. Ms. Alston, do you recognize this document?

7 A. Yes, ma'am.

8 Q. And what is that?

9 A. This is a program designed which tells us about all  
10 the services and the different areas that are  
11 offered to our youthful offenders.

12 Q. And are you familiar with the information that is  
13 in this packet?

14 A. Yes, ma'am.

15 Q. Do you use this as a part of your daily jobs?

16 A. Yes, ma'am.

17 Q. And Ms. Alston, how long has this program been in  
18 existence?

19 A. The program has actually been in existence for over  
20 25 years.

21 Q. And what is the main goal of the Youthful Offender  
22 Youthful Services Program?

23 A. The main goal is to provide individualized services  
24 to reduce the recidivism rate and produce  
25 productive citizens of society.

1 And do you also offer rehabilitation services as a  
2 part of that goal?

3 A. Yes, ma'am. We do.

4 Q. And does that also include efforts to integrate  
5 them back into society upon completion of their  
6 sentence?

7 A. Yes, ma'am.

8 Q. Do you all utilize any kind of therapies or other  
9 techniques to accomplish that goal?

10 A. Yes, ma'am, we do. We use the risk needs  
11 assessment, which is our GRAB, Global Risk  
12 Assessment. We also use cognitive behavioral  
13 therapy. We use gestalt therapy. So, we utilize  
14 different types of therapy and approaches.

15 Q. And are these therapies and techniques, are they  
16 formulated on an individualized plan for each  
17 inmate?

18 A. Yes, ma'am. They are.

19 Q. And who determines that rehabilitation plan?

20 A. A rehabilitation counselor, after completing the  
21 Global Risk Assessment.

22 Q. And is the progress of each inmate monitored?

23 A. Yes, ma'am. They go through what we call monthly  
24 case management treatment teams or offender focus  
25 and this is where they sit down with that

## DIRECT EXAMINATION OF KELLEY ALSTON BY MS. LOOPER

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1 particular counselor and anyone that's involved  
2 with their services and they discuss any concerns,  
3 any progress, any disciplinary reports and this is  
4 done on a monthly basis.

5 Q. So, that rehabilitation plan can be updated, as  
6 needed?

7 A. Yes, ma'am.

8 Q. And does this program apply to offenders that are  
9 transferred to the Department of Corrections from  
10 the Department of Juvenile Justice when they turn  
11 17?

12 A. Yes, ma'am.

13 Q. And does that also include juveniles adjudicated  
14 delinquent in family court?

15 A. Yes, ma'am.

16 Q. Does that also include defendants who have been  
17 tried as adults and sentenced to straight time?

18 A. Yes, ma'am.

19 Q. And when 17-year-olds are sent to the Department of  
20 Corrections, what facilities are they sent to,  
21 typically?

22 A. They will go through Kirkland R&E where they will  
23 receive their medical and mental health evaluations  
24 and then they are transferred, all 17-year-olds are  
25 transferred over to Turbeville Correctional

1 Institution in Clarendon County.

2 Q. So, all 17-year-olds, regardless if they are  
3 adjudicated in family court or they are sentenced  
4 through the court of general sessions. Correct?

5 A. Yes, ma'am.

6 Q. And what type of mental health services are offered  
7 to these individuals?

8 A. We have what we call intensive mental health and we  
9 have area mental health. We have a psychiatric  
10 hospital, which is our G-P-H, which is located in  
11 Columbia South Carolina, and this is an acute  
12 therapy where they are actually housed in the  
13 hospital. We have area mental health where they  
14 receive mental health counseling, medication  
15 monitoring, and we also have mental health groups.

16 Q. And are these mental health services made available  
17 to juveniles adjudicated delinquent through the  
18 Department of Juvenile Justice?

19 A. Yes, ma'am.

20 Q. Also through straight time?

21 A. Yes, ma'am.

22 Q. And can you explain how individuals are housed when  
23 they are transferred at the age of 17?

24 A. Yes. It's based on their classification. So, all of  
25 our 17-year-old adult timers are based on their



## DIRECT EXAMINATION OF KELLEY ALSTON BY MS. LOOPER

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1 category of offense, mental health. We also look at  
2 their age, their height, the weight, particularly  
3 their demographic, and then they are placed over at  
4 Turbeville together.

5 Q. And what is the purpose of doing that?

6 A. Safety.

7 Q. So, do these individuals when they're 17, are they  
8 housed as people who are adjudicated delinquent in  
9 family court and 17-year-olds who may have been  
10 sentenced in general sessions?

11 A. Yes, ma'am. They are housed by offender types and  
12 so if you have one that's adjudicated in general  
13 sessions, then that is also taken into account for  
14 their classification.

15 Q. And do they interact with each other?

16 A. The 17-year-olds will interact with each other, but  
17 not interact with any other general population.

18 Q. So, there's a little bit of a break when they turn  
19 18. Correct?

20 A. Yes, ma'am.

21 Q. And when they've turned 18 and adjudicated  
22 delinquent in family court, how is the housing  
23 determined at that point?

24 A. The housing is based on offender time, but what we  
25 try to do when they go into general population, we

1 continue on with their classification of their  
2 housing, together.

3 Q. And what is the typical age range that those  
4 individuals are housed by?

5 A. Eighteen to twenty-one, twenty-one to twenty-five,  
6 and then over twenty-five.

7 Q. And are there additional educational services  
8 offered to people who are adjudicated delinquent  
9 through family court?

10 A. Yes, ma'am.

11 Q. And what are those educational services?

12 A. We have high school diploma and we also offer GED.  
13 When we look at their high school diploma, we look  
14 at how many credits they are short and then we  
15 offer those credits.

16 Q. Now, turning to defendants who are sentenced  
17 through the court of general sessions, when they  
18 turn 18, what is the difference in how their  
19 housing is determined?

20 A. Their housing, one of the things that determines  
21 their housing is their education. So, we will look  
22 at that. We have what we call our Educational  
23 Federal Assistance Program, which is EFA and those  
24 are actually housed together. If they already have  
25 have their GED or their diploma, they may be placed

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1 in another general population dorm with other 18 to  
2 21-year-olds.

3 Q. So, at that time, they are only housed with 18 to  
4 21-year-olds?

5 A. Yes, ma'am.

6 Q. And is that sub-classified, I guess would be the  
7 word to use, within that 18 to 21-year-old range?

8 A. Yes, ma'am.

9 Q. And what types of educational opportunities are  
10 given those individuals?

11 A. Those individuals are afforded, again, adult-based  
12 education, which is usually our GED program. We  
13 also have vocational services to include; welding,  
14 plumbing, heating and air. It depends on the  
15 institution what additional services are offered.

16 Q. And are there additional higher education  
17 opportunities offered to those inmates?

18 A. There is. We have an Associates program through  
19 Columbia International University and if the  
20 individual has family members that are supportive,  
21 then they will go on sometimes to do correspondence  
22 programs through other colleges or universities.

23 Q. So, you stated that age range was 18 to 21?

24 A. Yes, ma'am.

25 Q. When they turn 21, how is that different?

- 1 A. Usually, they're not as prioritized in terms of  
2 education, but what we do then is, we try to then  
3 move into our other job training programs and also  
4 offer them what we call work keys through the  
5 Department of Employment and Workforce.
- 6 Q. And, once they turn 21, is there a specified age  
7 range that you typically house them by?
- 8 A. We attempt to keep 21s and 25s together.
- 9 Q. And what is the purpose of that?
- 10 A. Safety, as well.
- 11 Q. Ms. Alston, going back to mental health, just very  
12 briefly, who are the individuals that determine  
13 those mental health services that are provided to  
14 the inmates?
- 15 A. We have what we call qualified mental health  
16 professionals and usually those individuals are  
17 licensed professional counselors or hold their  
18 doctorate or some type of licensure, whether it be  
19 a masters of social work or LISW by the State of  
20 South Carolina Examiners Board.
- 21 Q. Is it considered a team approach or more  
22 individualized?
- 23 A. It's -- Actually, the initial evaluation is done by  
24 an individual and then they move over to a team  
25 approach.

## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 Q. All right. Ms. Alston, I have no further questions  
2 for you at this time. Please answer any questions  
3 the defense may have for you.

4 THE COURT: Mr. Eppes? Mr. Campbell? Have a seat,  
5 Mr. Campbell.

6 (Disturbance in the courtroom. EMS is called for a  
7 spectator in the courtroom)

8 THE COURT: It doesn't appear the media is providing  
9 coverage of this and I'd ask you not to do so at this  
10 time.

11 (Break)

12 THE COURT: We are going to reconvene the hearing at  
13 this time. I realize there are some people still coming  
14 and going out of the courtroom. That's perfectly fine,  
15 but we need to move forward. At this point, the State  
16 had completed their direct examination of Ms. Alston. I  
17 believe we are ready for cross examination. Mr.  
18 Campbell? Mr. Eppes?

19 MR. CAMPBELL: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. CAMPBELL:

22 Q. Ms. Alston, I just have some clarifying questions  
23 to ask you regarding this. Now, dealing with  
24 inmates that come in, the Department of Corrections  
25 is aware that there are certain inmates that have

1        mental health issues.

2 A.    Yes, sir.

3 Q.    And is that taken into consideration regarding the  
4        placement of an individual into the Department of  
5        Corrections?

6 A.    Yes, sir. It is.

7 Q.    And how is that done? Is that done by, like, a  
8        warden or is that done by a mental health doctor  
9        that makes a decision or is there a group of people  
10       at the Department of Corrections that does an  
11       evaluation of each inmate?

12 A.   When he first comes in, he would go to Kirkland to  
13        reception and evaluation and he will receive a  
14        mental health evaluation and then it is staffed  
15        with a team and based off his classification, his  
16        mental health classification, he will be placed at  
17        the appropriate yard.

18 Q.   Now, is that classification, is that done in  
19        coordination with, like the Department of Mental  
20        Health in South Carolina, or is that done with in-  
21        house doctors that work with the Department of  
22        Corrections?

23 A.   We have in-house psychiatrists.

24 Q.   Okay. And these evaluations, do they also look into  
25        and take into consideration other doctors'

## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 evaluations that may have been conducted in the  
2 past, such as in this case hearing we are doing  
3 right now?

4 A. Yes, sir. As long as the information is received.

5 Q. Okay. Now, in the State of South Carolina, do we  
6 have any type of facility strictly for mental  
7 health inmates?

8 A. Yes, sir. We have Broad River Correctional  
9 Institution.

10 Q. Is that, or Broad River, is that a general  
11 population? Are inmates held in the general  
12 population there or is that strictly a mental  
13 health type facility?

14 A. It is. There is a general population, but there are  
15 dorms that are set aside just solely for them. We  
16 also have Kirkland Correctional Institution where  
17 we have our intermediate care services there.

18 Q. And when an individual goes to one of these units,  
19 they are kept away from general population or kept  
20 separated from general population?

21 A. Yes, sir, they are.

22 Q. Is that due to the fact that the Department of  
23 Corrections doesn't want these individuals preyed  
24 upon by other inmates?

25 A. Yes.

1 Q. Now, at the age of 17, all inmates go to

2 Turbeville, I think you said?

3 A. They would go to Turbeville because of their age of

4 17.

5 Q. And at Turbeville, they are evaluated, I think you

6 stated, they get a mental health evaluation. They

7 also get a medical exam?

8 A. There are given a medical exam and they also

9 receive what we call our Global Risk Assessment

10 Device and that is where are able to provide them

11 services at the age of 17. That information is also

12 passed on to that receiving institution once they

13 turn 18.

14 Q. So, a file is kept on an individual as long as he

15 is an inmate with the Department of Corrections

16 that follows him throughout his career at the State

17 Department of Corrections?.

18 A. Yes, sir. They have a medical file and they have a

19 warden's file.

20 Q. And who would determine what type of medication an

21 individual receives if it's deemed by this group of

22 people that he needs to be on medication?

23 A. Our board-certified psychiatrist.

24 Q. Okay. Do they also take into consideration the

25 mental health evaluations and the exams conducted



## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 by other psychiatrists regarding the individual's  
2 case?

3 A. Yes, sir.

4 Q. And so, all individuals basically go to Turbeville  
5 no matter what their charges are if they're the age  
6 of 17?

7 A. Yes, sir.

8 Q. So, there's no classification of where they go,  
9 it's always Turbeville at the age of 17?

10 A. At 17.

11 Q. Now, so I'm assuming Turbeville, that's at age 17,  
12 and after that, after they age out, where do they  
13 go?

14 A. We look at their classification to see, based on  
15 their category of offense, their mental health and  
16 their medical, and so there are different things  
17 that we would look at. We also try to place them as  
18 close to home as possible.

19 Q. And so, individuals, I think you said 18 to 21,  
20 they're not kept in the same general population as  
21 other inmates?

22 A. No, sir. They are placed in a housing unit  
23 together.

24 Q. And when you place somebody in this and their  
25 charge is a violent charge, such as we are dealing

1 here with murder or attempted murder, they are not  
2 eligible for a youthful offender or YOA type  
3 classification?

4 A. Right.

5 Q. And those individuals who are not eligible for that  
6 type of classification, are they kept separate from  
7 those eligible for YOA?

8 A. Yes, they are.

9 Q. So, I think YOA is for non-violent offenses?

10 A. Yes, sir, except for burglary second, violent, and  
11 criminal sexual conduct.

12 Q. So, in Mr. Osborne's case, that wouldn't be an  
13 option for him?

14 A. No, sir. For his kind of sentence, it wouldn't be  
15 an option.

16 Q. And I think a part of, in State's Exhibit #59, you  
17 also look into making sure an individual gets  
18 either an equivalent to a high school diploma or a  
19 GED?

20 A. Yes, sir.

21 Q. Now, are inmates, also, are they classified based  
22 upon their mental health diagnosis?

23 A. Yes, sir, they are.

24 Q. And are there different categories within the  
25 Department of Corrections in which a person with a

## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 certain type of diagnosis would be housed?

2 A. Yes, sir. We also look at their functioning. So,  
3 you may have what we call ICS, which is  
4 Intermediate Care Services which is more severe and  
5 those cannot operate in any type of general  
6 populations and so they're housed separately. You  
7 also have what we call our CAV unit, which works  
8 with intellectually disabled individuals. You have  
9 GBH, which is our acute care center. You also have  
10 area mental health where they're housed together,  
11 but they also receive group services and they have  
12 outpatient which can function -- usually they deal  
13 with anxiety or depression -- so they function in a  
14 general population, but they still receive mental  
15 health services.

16 Q. How often is an individual evaluated for mental  
17 health issues?

18 A. Based on their classification, it's no more than 90  
19 days, and you may have; once a week, you may have  
20 once a month, and you may have 30 to 60 days and  
21 you may have 90 days, depending on their  
22 classification.

23 Q. So, an inmate won't go beyond a 90 day or three  
24 month time frame for a period before he's seen  
25 again to be reevaluated for mental health

1 classification?

2 A. Yes, sir. Exactly.

3 Q. And so, an inmate will receive mental health  
4 counseling and therapy throughout his time in the  
5 Department of Corrections if he's diagnosed or  
6 placed in that type classification?

7 A. Yes, sir.

8 Q. And at the age of 25, where do inmates go?

9 A. They can go to any of the 21 institutions based on  
10 their classification.

11 Q. And in South Carolina, I think there are three  
12 levels or four levels of classifications within the  
13 prison system?

14 A. Yes, sir, there is. Our level three is our more  
15 severe cases. Level two is medium. And our level  
16 one usually is our work release and pre-release  
17 programs.

18 Q. Level three, we are talking about violent crimes;  
19 murder, attempted murder, that type of  
20 classification?

21 A. Yes, sir.

22 Q. If an inmate goes there at the age of 25, they are  
23 housed with everybody from age 25 on up?

24 A. Yes, sir, they are.

25 Q. Now, at the class three type facilities that are

## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 run by the Department of Corrections, do they also  
2 have a mental health facility within those  
3 facilities?

4 A. Yes sir, we do.

5 Q. And if an inmate is diagnosed with a mental health  
6 diagnosis and even if they are a level three  
7 classification, are they kept separate from the  
8 general population?

9 A. If they're placed in a specialized program such as  
10 ICS or GBH or Hab Unit. Yes, sir, they are.

11 Q. So, they wouldn't be in the normal dorms or the  
12 general population with other inmates?

13 A. Yes, sir. They would be kept in a mental health  
14 dorm.

15 Q. And it's my understanding that in the State of  
16 South Carolina, we do not have a state mental  
17 facility?

18 A. No, sir, we don't.

19 Q. Just, in general.

20 A. In general.

21 Q. And during an inmate's stay with the Department of  
22 Corrections, can his classification change?

23 A. Yes, sir, it can.

24 Q. And how often is that evaluation done?

25 A. Once a year.

1 Q. Is that done through a board or an individual or a  
2 doctor who makes that determination?

3 A. We look at, for mental health individuals, we also  
4 include a psychiatrist, but it's usually done  
5 through our classification board.

6 Q. How many people are on that board? Do you know?

7 A. Usually, three.

8 Q. Now, at any point, is there a certain body or  
9 individual, a warden or group, that can override  
10 classification that an inmate is placed into?

11 A. Yes. Our central classification, all  
12 classifications are approved through them, so even  
13 though the institution may recommend a certain  
14 classification, it does go up to central cloud and  
15 they approve all classifications.

16 Q. At any point, can an inmate -- you know, in the  
17 legal system, we can do appeals, but can an inmate  
18 appeal his classification?

19 A. He can ask for it to be reviewed.

20 Q. Okay.

21 MR. CAMPBELL: Court's indulgence, please?

22 THE COURT: Yes, sir.

23 Q. Just a couple of things. Now, when a person is an  
24 inmate and is classified, is that inmate classified  
25 based on the crime?

## CROSS EXAMINATION OF KELLEY ALSTON BY MR. CAMPBELL

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1 A. Yes, that is taken into account, a category of  
2 offense.

3 Q. And then also, they are classified based upon their  
4 mental health evaluation?

5 A. Yes, sir.

6 Q. And it's used, a combination of where that -- a  
7 combination of both of those is used for where an  
8 individual will be placed?

9 A. Yes, sir.

10 Q. Now, after the age of 25, is there anybody that can  
11 override that committee you were talking about  
12 regarding classification?

13 A. Central classification.

14 Q. Central Classification. And are they the final say  
15 in everything?

16 A. No, sir. You can always go all the way up to the  
17 director.

18 Q. The director. And, ultimately, the director would  
19 have the ultimate say in an individual's  
20 classification?

21 A. Yes, sir.

22 Q. Ms. Alston, just a couple of questions and I'll be  
23 done here. When an individual is placed in the  
24 Department of Corrections before the age of 25,  
25 where he's placed, a part of his classification is

1       based upon his crimes. Is that correct?

2 A.    Yes, sir.

3 Q.    And is at any point, can the classification  
4       committee override where he is placed before the  
5       age of 25?

6 A.    Yes, sir.

7 Q.    How is that? And what's the process that goes along  
8       with that?

9 A.    A review will be done and then it will be sent up  
10       to central classification and they will review all  
11       aspects of his case.

12 Q.   So, that committee can take him out of any type of  
13       services that's been recommended by doctors and  
14       place him somewhere else?

15 A.   They usually don't override what the doctor  
16       recommends.

17 Q.   But it can be done in certain circumstances?

18 A.   Yes, sir.

19 Q.   And do they also consider taking into consideration  
20       how the individual has performed in the facility  
21       between the age of -- where he's housed between the  
22       ages of 18 and 21?

23 A.   Yes, sir.

24 Q.   And does that factor kind of override where he's  
25       also placed?



## CROSS EXAMINATION OF KELLEY ALSTON BY MR. SMITH

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1 A. Yes, sir.

2 Q. Thank you.

3 CROSS EXAMINATION

4 BY MR. SMITH:

5 Q. With regard to the classifications, if an inmate  
6 comes in with bipolar and he's on Depakote, and so  
7 forth, what classification would he have?

8 A. He would be classified as mental health, but they  
9 would also look at the severity of the bipolar, so  
10 he could be all the way up to ICS, depending which  
11 is more severe. So, he would have a mental health  
12 classification and he could be what we consider  
13 level L1 through L4.

14 Q. So, if he came incarcerated in 2015 and just got  
15 moved to Gilliam, is Gilliam a psychiatric  
16 hospital?

17 A. Yes, sir.

18 Q. Three years it took for that to happen even though  
19 he came in on Depakote?

20 A. It depends on whether he was stabilized when he  
21 came in.

22 Q. So, who made the determination to begin with, to  
23 keep him in the general population?

24 A. That would be done by a board psychiatrist. So,  
25 each psychiatrist would review the case.

1 Q. And then, ultimately, it's your intention that he  
2 have some change that allowed the psychiatrist to  
3 move him to Gilliam?

4 A. Yes, sir. So, say if he needed to be stabilized  
5 when he first came in, if he was excessively manic  
6 or exhibiting type of psychotic features or  
7 anything of that nature or behaviors, then they'd  
8 probably recommend him to go to Gilliam psychiatric  
9 for stabilization.

10 Q. How long would he stay there?

11 A. It would depend on how long it takes him to get  
12 stabilized.

13 Q. Yes, ma'am. Thank you very much.

14 MR. SMITH: I have nothing further.

15 MS. LOOPER: Your Honor, that's all from the State.

16 THE COURT: Thank you, ma'am.

17 MR. EPPES: Your Honor?

18 THE COURT: Yes, sir?

19 MR. CAMPBELL: Just one more question on re-cross.

20 Q. And Ms. Alston.

21 A. Yes?

22 MS. HUEY: I'm sorry, Judge. They had a cross  
23 examination, Your Honor, and the State has no more  
24 questions for Ms. Alton and the State, at this time,  
25 would ask that she be excused.

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1 THE COURT: All right. Hold on a second. Let me see  
2 counsel in conference.

3 (Bench conference off the record)

4 THE COURT: Ms. Alston, you are done. You may step  
5 down and you are free to stay or leave, whichever you  
6 prefer to do.

7 MS. ALSTON: Thank you, sir.

8 MS. HUEY: Your Honor, at this time the State calls  
9 Ms. McKindra Bibb to the stand.

10 THE COURT: All right.

11 (After being duly sworn by the Clerk of Court,  
12 DETECTIVE MCKINDRA BIBB testified as follows:)

13 CLERK OF COURT: Please have a seat in the witness  
14 chair and state your name for the record and spell your  
15 last name for the reporter.

16 MS. BIBB: I'm Detective McKindra Bibb. B-I-B-B.

17 MR. EPPES: Your Honor, if I may, before we get  
18 started. There are two issues. Number one, there are  
19 certain matters that are going to involve images and an  
20 audio recording of my client. Based on the fact that the  
21 Court has not ruled he be tried as an adult, I'd ask  
22 that however the Court seeks to do it, the camera be  
23 shut off and we really have no objection if the media  
24 wants in the courtroom for that or not. I trust Ms. Huey  
25 to do whatever she deems appropriate on that front. In

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1 addition, Your Honor, while this witness is starting,  
2 I'm briefly going to let my client's mother, the  
3 decedent's wife, know what's going to be on the video so  
4 she can make the decision as to whether she wants to  
5 stay or go, but you can go ahead and start with the  
6 witness.

7 THE COURT: All right. I'm assuming if the State is  
8 going to have images, maybe, of the defendant ---

9 MS. HUEY: Yes, sir.

10 THE COURT: --- or the juvenile, so what I will ask  
11 you to do is, as I've asked before, just take the camera  
12 down while that's going on and not have any still  
13 photographs taken of those photographs. That's what we  
14 are talking about, right? While the video is up?

15 MS. HUEY: And various photographs, Your Honor, and  
16 of course, I'll announce that before I get started.

17 THE COURT: Yes, video and photographs. She will  
18 announce when there is a photograph or a video that  
19 would come under my ruling.

20 PHOTOGRAPHER: Your Honor, if you will let us know  
21 when to stop.

22 THE COURT: Very good. Thank you.

23 DIRECT EXAMINATION

24 BY MS. HUEY:

25 Q. Detective Bibb, what was your maiden name?

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- 1 A. It was Bearden.
- 2 Q. Because sometimes you may have been referred to as
- 3 Detective Bearden. Is that correct?
- 4 A. Yes.
- 5 Q. Now, you work at the Sheriff's office. Is that
- 6 correct?
- 7 A. Yes. Since 2006.
- 8 Q. And you were, obviously, employed on September 28,
- 9 2016, as well.
- 10 A. Yes, ma'am.
- 11 Q. And I know that you actually responded to Townville
- 12 Elementary School and I don't mean to take away
- 13 from that response, but at the same time, your main
- 14 role in this particular case was another role. Is
- 15 that correct?
- 16 A. Yes, ma'am.
- 17 Q. So, in getting to that, what is your primary role,
- 18 currently, at the sheriff's office?
- 19 A. I do digital forensics. It's cell phone and
- 20 computer forensics, mostly cell phones.
- 21 Q. If you could speak into the microphone just a
- 22 little bit more. You said digital. . .
- 23 A. Digital forensics, cell phones.
- 24 Q. And what does that mean, basically?
- 25 A. I take extractions from cell phones and we analyze

1 the content, both media, call logs, and anything  
2 that may be contained, therein.

3 Q. And as such, did you review evidence in this  
4 particular case?

5 A. Yes, I did.

6 Q. And, specifically, did you analyze an extraction  
7 from a Galaxy Note 5 that was purported to have  
8 been used by Jesse Osborne?

9 A. Yes, I did.

10 Q. Now, generally define what an extraction is.

11 A. An extraction is a binary, we call them a dump.  
12 What it is, is a full extraction of all content  
13 held on a phone in all of its storage space. It is  
14 pulled in a binary form and then placed in a  
15 program that converts it back into a Windows  
16 readable format.

17 A. And when you say binaries, does that just mean  
18 numbers?

19 A. Yes. Everything in computer language is 01, a  
20 binary. It's either off-one, it's a zero or one.

21 Q. And so, your programs translate that back into  
22 things we can actually understand.

23 A. Yes.

24 Q. The normal person. So, what is a logical  
25 extraction?

1 A. A logical extraction is an extraction that's  
2 performed on a phone that only gets what the user  
3 can see. It doesn't pull deleted data. It pulls the  
4 information that you see as the user when you turn  
5 the phone on, that you can access.

6 Q. And what is a file system extraction?

7 A. A file system is the next level deeper. It gets  
8 more file information, possibly some deleted data.  
9 You get more properties of the information that  
10 you've obtained.

11 Q. And then the physical extraction.

12 A. A physical extraction is the deepest extraction. It  
13 pulls any undeleted data from unallocated space.  
14 So, anything that hasn't been written over can be  
15 recovered months, years, days. Any time until that  
16 information is written over, it can be recovered in  
17 a physical extraction.

18 Q. So, what kind of extraction did you get in this  
19 particular case?

20 A. In this particular case, I was provided with a  
21 logical extraction and a file system extraction.

22 Q. And who did you receive that from?

23 A. It was given to me by Detective Woods. He had  
24 gotten it from Daniel Cutts from Homeland Security.

25 Q. So, what training have you received to be able to -

1 - let me back up. Can you actually do an extraction  
2 yourself?

3 A. I did not do the extraction myself. I did the  
4 analyzing.

5 Q. But can you do an extraction, yourself?

6 A. I can do an extraction.

7 Q. You just didn't do so in this case.

8 A. I did not.

9 CLERK OF COURT: Talk in the mic just a little bit  
10 better, please. Let me pull it up. (Adjusts microphone)

11 Q. You can do an extraction, you just didn't do it in  
12 this case.

13 A. I did not on that day.

14 Q. Or in reference to Jesse Osborne's case, that is.

15 A. Correct.

16 Q. And so, what kind training do you receive to be  
17 able to do an extraction and analyze that  
18 extraction?

19 A. In 2015, I went to CelleBrite Certified and they do  
20 a 40-hour intensive class and from there you take  
21 more classes to expand your knowledge. There are  
22 constant webinars. Since that time, I've taken  
23 classes with PATC, Susteen, and Mobilyze BlackBag  
24 technologies.

25 Q. And about how many phones do you analyze a month?



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1 A. About 30.

2 Q. About 30 a month and you've been doing this since

3 2015?

4 A. 2015.

5 Q. And sometimes there can be more than one extraction

6 per phone?

7 A. Yes.

8 Q. What sorts of things can you see in an extraction?

9 A. Anything that's on a phone, you can see. Whether

10 it's ---

11 MR. EPPES: What was that word she used? I'm sorry.

12 Could you repeat that?

13 Q. Just repeat what you just said. Anything that's on

14 the phone?

15 A. Anything that's on the phone.

16 MR. EPPES: Oh, I'm sorry. I misunderstood.

17 Q. So, anything that's on the phone. So, when you --

18 and let me go ahead and show you State's Exhibit

19 #39. Do you recognize this?

20 A. Yes, I do.

21 Q. Okay. And how do you recognize that?

22 A. It's a flash drive that I put the extractions of

23 two phones on. It has a label from a label maker

24 that I made with Bibb on it and then I handwrote

25 The Osborne on it.

1 Q. So, on that note, you also received an extraction  
2 for Jeffrey Osborne's phone. Is that correct?

3 A. I have since that time. I did the extraction for  
4 Jeffrey Osborne.

5 Q. And both of those are on this exhibit, State's #39.  
6 Is that correct?

7 A. Yes.

8 Q. And do they fairly and accurately represent the  
9 extractions as you know them to be?

10 A. Yes.

11 MS. HUEY: At this time, Your Honor, we'd admit  
12 State's #39?

13 MR. EPPES: Your Honor, based on my belief that they  
14 are the same phone extractions we have been provided, I  
15 have no objection.

16 THE COURT: Without objection, so admitted. #39.

17 (Whereupon, a flash drive is admitted into evidence  
18 as State's Exhibit #39, without objection.)

19 MS. HUEY: Thank you, Judge.

20 Q. Okay. So, when you're looking at an extraction with  
21 CelleBrite. Is that correct?

22 A. Yes.

23 Q. Describe what a user, yourself, would see when you  
24 first pull that up on you computer.

25 A. When you first pull it up, you get the extraction

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1 information and it's going to have a root menu on  
2 the lefthand side and then that menu, it's going to  
3 have subcategories. You're going to have your media  
4 files, you are going to have your videos, you're  
5 going to have call logs, you're going to have  
6 contact information, app information, web  
7 locations, web history, locations that phone's  
8 connected to WiFi. There's an entire array and no  
9 two phones are just alike because nobody uses the  
10 same apps or takes the same amount of video or  
11 creates files in the same way.

12 Q. Whatever you want to access would be available  
13 through this menu?

14 A. Yes. It's a drop-down menu.

15 Q. So, for instance, text messages. You'd click on  
16 text messages or SMS messages, whichever the case  
17 may be ---

18 A. Yes.

19 Q. --- and then it would pull up all the messages that  
20 were saved on that phone?

21 A. Yes.

22 Q. Or extracted from that phone.

23 A. Yes.

24 Q. So, you did analyze, then, an extraction from Jesse  
25 Osborne's phone. Is that correct?

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1 A. Yes, ma'am. I did.

2 Q. And what were you looking for when you were looking  
3 at Jesse Osborne's extraction?

4 A. As an investigator, we were looking for reasons  
5 why, possible other people involved.

6 Q. And when you say "why", why, what?

7 A. Why the shooting took place. What may have  
8 instigated it. What brought it to a head. We were  
9 looking for any information whether anybody else  
10 was involved, what preparation, planning may have  
11 went into it. Just trying to answer the questions  
12 of what took place that day and why.

13 Q. Did you, specifically, pull his web history?

14 A. Yes. I did.

15 Q. And now, did you prepare an Excel spreadsheet based  
16 on his web history?

17 A. Yes. I did.

18 Q. And when you were first looking at that, what kinds  
19 of things were you looking for in this web history?

20 A. We were looking for anything that would be related  
21 to the case, anything that he mentioned in the  
22 interview the evening before, keyword searches,  
23 conversations back and forth, anything like that  
24 that, that may have provided information on who,  
25 what, when, where, and why.

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1 Q. So, again, if you're looking at your screen, on  
2 your menu, would there be a specific tab for web  
3 history?

4 A. Yes.

5 Q. Okay. And that would give you all the web history  
6 from that extraction?

7 A. Yes. It would.

8 Q. So, this particular Excel sheet that you prepared  
9 is not every single web history there is?

10 A. No.

11 Q. Okay. You were looking for specific terms.

12 A. Yes.

13 Q. What were some of the terms you were looking for?  
14 Some of the themes?

15 A. Some of the things we were looking for were: gun,  
16 safe, kill, kids, Townville, school, murder. So,  
17 you can do keyword searches. And then, I,  
18 specifically, went through all 2708 web pages to  
19 identify what each page was therein.

20 Q. In order to prepare this Excel spreadsheet?

21 A. To pull the 1553 that I pulled, I went through  
22 2708.

23 (Ms. Huey shows document to Mr. Eppes)

24 Q. All right. Detective Bibb, I'm going to show you  
25 what's been marked as State's #30. If you could

1 take a look at that, please?

2 A. Okay.

3 Q. And is that the Excel spreadsheet you prepared as a  
4 result of your initial investigation into this  
5 case?

6 A. Yes. It is.

7 Q. And again, you were describing that there were, I'm  
8 sorry, the number was 27. . .

9 A. There were 2708 in the web history.

10 Q. And so, what does that mean, 2708?

11 A. That would identify the number of web pages that he  
12 had visited in the history of the phone, without  
13 clearing it. This is just the data that's contained  
14 on the phone. Like I said earlier, in a logical  
15 extraction, what the person can see that has never  
16 been deleted. So, he, in the time of the life of  
17 the phone, had visited 2708 pages, whether it be  
18 Pokemon, school, WYFF, any of those websites that  
19 he goes to are saved in the web history.

20 Q. And so you pulled -- from that, you pulled over  
21 1500 that you thought were relevant to this  
22 particular investigation?

23 A. Yes.

24 Q. Now, when you say web history, how far back does  
25 the web history go?

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1 A. On this phone, from what I can tell, as I said, we  
2 didn't get the deleted data, because it was a  
3 logical distraction, but the phone appeared to have  
4 been set up on 1/23/2016 and we pulled the web  
5 history from 1/23/2016 all the way up to the  
6 incident date on 9/28/2016.

7 Q. But were you able to see websites that he visited  
8 in 2016?

9 A. Yes. The URL's contained in each one of the  
10 websites.

11 Q. But this particular Excel sheet goes from what  
12 dates? If you could take a look at the exhibit.

13 A. This is from 8/31 to 9/28.

14 Q. So, this is just the last -- the month prior to the  
15 incident?

16 A. Yes.

17 Q. Does that exhibit fairly and accurately depict the  
18 spreadsheet that you've prepared for the purpose of  
19 this case Ms. Bibb?

20 A. Yes.

21 Q. Has it been altered in any way?

22 A. It has not.

23 MS. HUEY: At this time, we'd seek to admit State's  
24 #30 into evidence, Your Honor.

25 THE COURT: Any objection?

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1 MR. EPPES: No objection, Your Honor.

2 THE COURT: Without objection, Exhibit #30 is  
3 admitted. Thank you.

4 (Whereupon, an Excel Spreadsheet is admitted into  
5 evidence as State's #30, without objection)

6 Q. All right. Ms. Bibb, so, in looking at -- and I may  
7 have you step down for just a minute.

8 (Witness leaves witness stand)

9 Q. This is State's #30, which has a lot of small  
10 writing on it, doesn't it?

11 A. Yes.

12 Q. Okay, so for example, if we can read aloud, the  
13 very first item that comes on this particular  
14 exhibit is Line 1, How to unlock any digital gun  
15 safe-Google search.

16 A. Yes.

17 Q. So, explain what that means.

18 A. That means that that is the particular term that he  
19 typed in to Google to search for.

20 Q. And when you say "he" you mean the user of the  
21 phone?

22 A. The owner of the phone would have typed that in.

23 Q. Okay. And what is the particular date for that  
24 search?

25 A. That is going to be 9/28/2016.



- 1 Q. And can you read the time? I know it's small.  
2 12:58 a.m.?  
3 A. Yes.  
4 Q. Now, on the 28th of September, 2016. So ---  
5 MR. EPPES: Your Honor, just to be clear, I believe  
6 that time is actually, on that exhibit, UTC time, which  
7 is a different time. I could be wrong.  
8 MS. HUEY: I'll get to that.  
9 MR. EPPES: Okay.  
10 Q. At any rate, my next question would be, why are  
11 there spaces? Why are there blanks after number  
12 five, for instance?  
13 A. He's done a Google search and as a Google search,  
14 anybody that's used a computer, you will get  
15 several hits on a computer search when you complete  
16 one. At that time, he completed the search and then  
17 he went to multiple sites contained, therein, as a  
18 result.  
19 Q. Okay. So, if you plug in your search terms ---  
20 A. Yes.  
21 Q. --- it takes you to a screen where it offers you  
22 various websites that you can go to.  
23 A. Yes.  
24 Q. Okay. And is that what you're referring to?  
25 A. Yes.

- 1 Q. All right, you can have a seat. Okay, so Ms. Bibb,  
2 regarding the time that we just mentioned,  
3 September 28, 2016 and 12:58 is the time and it  
4 does read UTC next to it. Correct?
- 5 A. Yes.
- 6 Q. Okay. But, what program do you use again?  
7 CelleBrite?
- 8 A. CelleBrite.
- 9 Q. So, explain to the Court the time issue.
- 10 A. CelleBrite will adjust to time. UTC is a universal  
11 time and so we are not on Greenwich Mean Time. We  
12 are actually minus five on the Eastern coast and so  
13 CelleBrite recognizes that and adjusts it to the  
14 time that we are looking at.
- 15 Q. Okay. So, is 12:58 the real time, so to speak?
- 16 A. It is.
- 17 Q. Okay. I'm going to walk you through some of these  
18 web sites and search terms that the user, purported  
19 to be Jesse Osborne, would have performed.
- 20 Q. And we have mentioned on the first page, "How to  
21 unlock any digital gun safe," and he uses that  
22 term, that search term phrase several times. Is  
23 that correct?
- 24 A. Yes. He has tried a couple of different variations.  
25 Sometimes he puts in, "How to get into," "How to

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1 unlock," "Century gun". And so, he's changing his  
2 search terms to get more results.

3 Q. Why was that significant in this particular case?

4 A. From our understanding, the larger cache of guns  
5 that his father kept in the home were all inside a  
6 gun safe that he did not have access to.

7 Q. Now, if you flip along in Exhibit #30, Detective  
8 Bibb, let's go to line 43, for instance.

9 A. Nami Dahlia Adorable Black Teen?

10 Q. Yes, ma'am. And that is pornhub.com?

11 A. Yes.

12 Q. So, in preparing this Excel sheet you were also  
13 looking for his visiting various pornographic  
14 websites. Is that correct?

15 A. Yes.

16 Q. Okay. And what was the purpose of that for this  
17 particular investigation?

18 A. One reason, we were trying to determine his mental  
19 state, where his maturity level was.

20 Q. Okay. And so in this particular Excel spreadsheet  
21 you will see various pornographic websites that he  
22 visits?

23 A. Yes.

24 Q. Or the user visits. And again, so line 48, what do  
25 you read there, Detective Bibb?

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- 1 A. He put, "Crack almost any electronic safe with the  
2 bounce technique".
- 3 Q. And again, what was the date and time of that  
4 particular entry?
- 5 A. That's going to be 9/28/2016 at 2:10 a.m.
- 6 Q. At what time?
- 7 A. 2:10 a.m. 12:10 a.m. Excuse me.
- 8 Q. Okay. And again on, let's skip to line 60 through  
9 65 of your spreadsheet.
- 10 A. Yes.
- 11 Q. What were some of the websites or searches that he  
12 was doing?
- 13 A. He was back on pornhub.com. and he did several  
14 searches and went to the resulting pages.
- 15 Q. Okay. And so, for instance, line 60. What is shown?
- 16 A. On line 60, he has, "Orlando ISIS fanatic Omar  
17 Mateen died in a hail of bullets at Pulse Gay  
18 Club." Daily Mail Online.
- 19 Q. And how about line 63?
- 20 A. "Anderson School District Four."
- 21 Q. And line 64?
- 22 A. "Townville Elementary School."
- 23 Q. What are the dates of those two lines?
- 24 A. It's the day before the shooting on 9/27/2016 at  
25 6:25 p.m.

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1 Q. And how about, let's skip to lines 68, 69 and 70,  
2 Detective Bibb.

3 A. 68 is "The deadliest U.S. mass shootings, 1984-2016  
4 timelines," through the Los Angeles Times. Number  
5 69 was, "Youngest mass murderer," Google search.  
6 70, "10 youngest murderers in history." 71,  
7 "Youngest mass murderer." 72, "Deadliest U.S. mass  
8 shootings." 73, "Top 10 mass shooters."

9 Q. All right. Then, let's skip ahead to line 95.

10 A. This is a game that's online called The Akinator.

11 Q. Okay. And so when you say that you know what this  
12 is, that's again, because you went to all these  
13 websites?

14 A. Yes. I'd never heard of The Akinator and so I  
15 Google-searched it on my work computer and went to  
16 the site from there.

17 Q. And what is Akinator?

18 A. It is a application, a game that you can download  
19 on your phone. It's like 20 questions where the  
20 game attempts to ask you certain questions and as  
21 you answer it, it tries to identify which famous  
22 person you are.

23 Q. And so he visited that website several times. Is  
24 that correct?

25 A. Yes.

- 1 Q. Let's skip ahead to line 235.
- 2 A. That was "Eric Harris' birthday" - Google search.
- 3 Q. And what is the date of that?
- 4 A. He searched that term on 9/24/2016.
- 5 Q. And who is Eric Harris, to your knowledge?
- 6 A. He is one of the Columbine shooters.
- 7 Q. And did you also find that he went to various
- 8 websites, the user, looking at guns, various kinds
- 9 of guns?
- 10 A. Yes.
- 11 Q. Okay. And that was a part of the things that you
- 12 were searching for, as well?
- 13 A. Yes.
- 14 Q. So, if you go to line 243, for instance.
- 15 A. He was on Armslist looking for guns.
- 16 Q. And again, what was the date on that one?
- 17 A. 9/24/2016.
- 18 Q. Did he look for a PLR-16?
- 19 A. Yes.
- 20 Q. Did you also find that he was looking for a
- 21 KEL-TEC?
- 22 A. Yes.
- 23 Q. Skip ahead to line 266, if you will.
- 24 A. 266?
- 25 Q. Yes, ma'am. Oh, I'm sorry. 286.

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- 1 A. He was looking for "Code lock gun safe", Google  
2 search.
- 3 Q. And what was the date of that?
- 4 A. 9/23/2016.
- 5 Q. And how about line 303?
- 6 A. He was looking for "Dylan Klebold as a kid," Google  
7 search.
- 8 Q. How about line 305?
- 9 A. "Beslan school siege" - Wikipedia.
- 10 Q. How about line 310?
- 11 A. "Bolivian school siege".
- 12 Q. And how about line 312?
- 13 A. "Omar Mateen".
- 14 Q. Skip ahead to lines 318 and 319.
- 15 A. That is, I'm not sure I know how to pronounce it.  
16 "Seung-Hui Cho". And in the Virginia Tech shooting,  
17 he is the shooter. Cho was the shooter in the  
18 Virginia Tech shooting.
- 19 Q. The mass murder at Virginia Tech?
- 20 A. Yes.
- 21 Q. How about line 323?
- 22 A. 323 was "Lyrics, Walking around looking like I'm  
23 from Columbine", Google search.
- 24 Q. How about line 333?
- 25 A. "Kendrick Lamar, One Shot Kill" lyrics.

- 1 Q. And again, I'm skipping ahead, but in between these  
2 that we're skipping through, are various  
3 pornographic websites and other search terms. Is  
4 that correct?
- 5 A. Yes, ma'am.
- 6 Q. How about line 359.
- 7 A. 359, he was searching for "Pipe bomb steps", Google  
8 search.
- 9 Q. And what's the date of that?
- 10 A. It's going to be 9/21/2016.
- 11 Q. Let's skip ahead to line 394.
- 12 A. He was searching for "Adam Lanza as a kid" on  
13 Google search.
- 14 Q. And who do you know Adam Lanza to be?
- 15 A. He was the Sandy Hook shooter.
- 16 Q. And there were several searches for Adam Lanza. Is  
17 that correct?
- 18 A. Yes.
- 19 Q. Numerous searches, I should say. Now, let's skip  
20 ahead to line 429, Detective Bib.
- 21 A. He was searching for a video called, "One Lunatic,  
22 Two Kittens".
- 23 Q. And that is a Google search?
- 24 A. Yes. It is.
- 25 Q. So, those are terms that he would have plugged in?



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- 1 A. Yes.
- 2 Q. And what's the date of that?
- 3 A. It's going to be 9/21/2016.
- 4 Q. And unfortunately, you had to watch that video. Is
- 5 that correct?
- 6 A. Yes.
- 7 Q. And what is that video?
- 8 A. It is a male that tortures, mutilates, and kills
- 9 two small kittens.
- 10 Q. And he went to that site several times. Is that
- 11 correct?
- 12 A. Yes.
- 13 Q. More than several times. I'm going to ask you to
- 14 skip ahead to 456.
- 15 A. He was looking up "The Pain Olympics".
- 16 Q. Okay. And again, did you go to that website?
- 17 A. Yes.
- 18 Q. And what is the Pain Olympics?
- 19 A. It is a sadistic site where it shows people in
- 20 accidents, getting hurt.
- 21 Q. How about line 461?
- 22 A. "Weapons used during the shootings at Columbine
- 23 High School."
- 24 Q. How about line 462?
- 25 A. "Did any people at Columbine die from pipe bombs?"

- 1 Google search.
- 2 Q. Did he look, skip ahead to line 471. What was he
- 3 looking for at that point?
- 4 A. He was looking for a .40 caliber pistol on Google
- 5 search.
- 6 Q. And what was the date of that?
- 7 A. It was on 9/20/2016.
- 8 Q. How about line 495, Detective Bibb?
- 9 A. That day he was looking for "Eric Harris quotes".
- 10 Google search.
- 11 Q. And again, Eric Harris is one of the Columbine
- 12 shooters.
- 13 A. Yes, ma'am.
- 14 Q. Skipping ahead to 590, Detective Bibb.
- 15 A. 590?
- 16 Q. Yes, ma'am.
- 17 A. 590. "Results, What Columbine victim are you?"
- 18 Q. And again, is he also searching for AR-15s?
- 19 A. Yes.
- 20 Q. How about line 603?
- 21 A. It is looking for KMFDM.
- 22 Q. And what is KMFDM?
- 23 A. KMFDM is a German industrial band that was brought
- 24 to the forefront of fame with Dylan and Eric at
- 25 Columbine because of the tee shirts they were

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- 1 wearing.
- 2 Q. And it's a band they liked?
- 3 A. Yes.
- 4 Q. So, take us to line 615.
- 5 A. It is "Famous people who listen to KMFD".
- 6 Q. How about 618?
- 7 A. 18?
- 8 Q. 618, yes, ma'am.
- 9 A. "South Carolina gun laws."
- 10 Q. And what is the date of that search?
- 11 A. 9/17/2016.
- 12 Q. How about line 696?
- 13 A. 696?
- 14 Q. Yes.
- 15 A. "Dylan Klebold's KMFD one shirt."
- 16 Q. Tee shirt?
- 17 A. 696?
- 18 Q. Yes. And that was on what date?
- 19 A. That was on 9/16/2016.
- 20 Q. And again, throughout this, he is also looking for
- 21 various guns and various gun websites?
- 22 A. Yes.
- 23 Q. How about line 755?
- 24 A. The 755 is Google "MoveOn Petitions, release the
- 25 basement tapes."

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- 1 Q. And what do you know the basement tapes to be?
- 2 A. The basement tapes are the tapes that Dylan Klebold  
3 and Eric Harris made prior to the Columbine  
4 shooting and include the footage from the security  
5 videos.
- 6 Q. Did he make searches for Highpoint firearms?
- 7 A. Yes. He did.
- 8 Q. How about line 922?
- 9 A. On line 912 he's looking for "Intratec AB10".
- 10 Q. And how about 922?
- 11 A. He's looking for "Dylan Klebold" again.
- 12 Q. And what's the date on that?
- 13 A. 9/15/2016.
- 14 Q. And again, he's going to various arms lists looking  
15 for different kinds of guns?
- 16 A. Yes.
- 17 Q. Pawn shops, as well?
- 18 A. Yes.
- 19 Q. Grady's Outdoors, looking for weapons?
- 20 A. Yes, ma'am.
- 21 Q. And, of course, the pornographic websites.
- 22 A. Yes, ma'am.
- 23 Q. Okay. How about line 1134?
- 24 A. He's looking for "Dylan Klebold quotes" on that day  
25 through Google search.

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- 1 Q. 1146?
- 2 A. He's looking for the "Dylan Klebold goodbye video".
- 3 Q. 1150?
- 4 A. "Final speech, Dylan Klebold."
- 5 Q. 1156?
- 6 A. "Dylan Klebold's birthday." Google search.
- 7 Q. And what's the date of that?
- 8 A. He was searching for that on the 13th of September,
- 9 9/13/2016.
- 10 Q. How about line 1170?
- 11 A. 1170, he's looking for "Mom and son on
- 12 pornhub.com."
- 13 Q. Line 1207?
- 14 A. 1207 is a "Columbine" Google search.
- 15 Q. And what's the date on that?
- 16 A. That's going to be 9/11/2016.
- 17 Q. How about 1222?
- 18 A. "VoDKa and vengeance."
- 19 Q. And what do you know Vodka to mean?
- 20 A. Eric Harris and Dylan Klebold went by the names,
- 21 Reb and VoDKa. Dylan Klebold would capitalize the D
- 22 and the K in VoDKa to symbolize his name.
- 23 Q. How about 1247?
- 24 A. "Download to Columbine meme," Google search.
- 25 Q. What was the date on that?

- 1 A. 9/10/2016.
- 2 Q. Line 1328.
- 3 A. 1328, he's looking for "4/20/99, at Columbine site  
4 all about the Columbine High School shootings."
- 5 Q. And how about 1333?
- 6 A. "VPC. Where'd they get their guns. Columbine High  
7 School, Littleton, Colorado."
- 8 Q. Line 1342.
- 9 A. "Who gave Dylan the guns?" Google search.
- 10 Q. Line 1368.
- 11 A. "The Columbine killers." Google search.
- 12 Q. What was the date?
- 13 A. That would be 9/5/2016.
- 14 Q. How about line 1403?
- 15 A. 1403, he's searching for "Dylan Klebold." Google  
16 search.
- 17 Q. Date?
- 18 A. That's going to be 9/4/2016.
- 19 Q. How about 1445?
- 20 A. 1445 is "British media SIMsub rough up and finger"  
21 at pornhub.com.
- 22 Q. What do you know BDSM to stand for?
- 23 A. BDSM is bondage, domination, sadism, masochism.
- 24 Q. And how about line 1450?
- 25 A. "Bondage porn videos" at pornhub.com.

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1 Q. And the date of that?

2 A. That was 9/1/2016.

3 Q. And Detective Bibb, and again, this is just,  
4 essentially, the month prior to the incident?

5 A. Yes, ma'am.

6 Q. Okay. And so, is it fair to say that there is a lot  
7 of interest in Columbine?

8 A. Yes.

9 Q. The Columbine shooters?

10 A. Yes.

11 Q. Is there also a lot of interest in other mass  
12 murderers?

13 A. He was studying, investigating, looking,  
14 researching, and looking at a lot of websites  
15 related to that.

16 Q. So, on that note, did he also have images saved to  
17 his phone?

18 A. Yes. He did.

19 Q. And actually, before I get to that. Just one  
20 second. Detective Bibb, in your field, your area,  
21 are you familiar with a lot of acronyms, lingo, and  
22 that sort of thing for text messages?

23 A. Yes.

24 Q. That's something you come across on a daily basis?

25 A. Yes, ma'am.

1 Q. So, for instance, what does, if you see X-D, which  
2 has come up a lot in Instagram messages.

3 A. Yes.

4 Q. What does that tell you?

5 A. To me, it shows an emoji when you type in the  
6 capital "D" and capital "X", which is a smiley face  
7 that's showing teeth, smiling really big with the  
8 eyes shut, and so, laughing so hard my eyes are  
9 shut.

10 Q. That's was XD means or is that where an emoji  
11 should be?

12 A. When it comes out in my print, it comes up as XD.  
13 If you were to send it from one Android phone or  
14 IOS phone to another, it would show the smiley face  
15 with the squeezed shut eyes.

16 Q. I'm going to show you what has been previously  
17 marked as, admitted, excuse me, as State's #42.  
18 (Portrays on large screen) Do you see XD on several  
19 of these messages, Detective Bibb?

20 A. Yes.

21 Q. So, if I were to replace, for instance, stan  
22 response time is ass where I live. Then, I assume,  
23 Takes them 15 minutes to get here and about an hour  
24 to breach XD weaklings. That's a smiley face  
25 laughing so hard your eyes are shut ---



1 A. Yes.

2 Q. --- type situation? So, then also on 9/20/2016, I'm  
3 not like f-ing Eric saying 250 XD. Again, you would  
4 replace that with a ---

5 A. A smiley face with the eyes shut.

6 Q. Okay. And again, would that be the case with, "Im  
7 working on a spear also, XD?

8 A. Yes.

9 Q. That I can put on the end of my PLR-16, XD?

10 A. Yes, ma'am.

11 Q. And PLR-16 is another search he was doing. Correct?

12 A. Yes.

13 Q. And what is PLR-16?

14 A. I believe it's a long rifle.

15 Q. And, of course, I'll have a backpack with a handgun  
16 and some bombs, XD. Again, smiley face.

17 A. Another smiley face.

18 Q. This is from State's Exhibit #43, Instagram  
19 messages from Jesse Osborne's Instagram account.

20 So, for instance ---

21 MR. EPPES: Your Honor, could she say what page  
22 she's on, please?

23 MS. HUEY: I apologize. Page 258.

24 Q. I'm going to bring a Bible with me so I can burn  
25 it. I hope the footage will be released to the

- 1 public. I'll probably dance something in the halls  
2 once I'm done. XD.
- 3 A. It's another smiley face.
- 4 Q. Add South Carolina to the list, XD.
- 5 A. Smiley face.
- 6 MR. EPPES: What page was that, Your Honor?
- 7 MS. HUEY: I apologize. 301.
- 8 Q. This is page 386. Should be easy for me 'cause  
9 South Carolina active shooter laws tell children  
10 not to leave the school, XD.
- 11 A. Another smiley face.
- 12 Q. Page 440, and, of course, I'll have a backpack with  
13 handgun and some bombs, XD.
- 14 A. Another smiley face.
- 15 Q. Page 487. If you hate school, shoot it up, XD.
- 16 A. That's another smiley face.
- 17 Q. So, now, let me get back to the images, then. So,  
18 when you do the extraction on the phone, images are  
19 also a part of that menu that you can see. Is that  
20 correct?
- 21 A. Yes, ma'am.
- 22 Q. And when it's images, can it be screenshots, photos  
23 that he's taken, what does images mean?
- 24 A. Images can be anything that's contained in the  
25 phone that's in a JPEG format, screenshot format,

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1 any type of GIFs. Anything like that. It's just any  
2 type of art or picture.

3 (Ms. Huey shows document to Mr. Eppes)

4 MR. EPPES: Your Honor, Ms. Huey is showing me some  
5 exhibits that we have previously looked at, but I  
6 noticed that there are 35 and since there are some  
7 issues about the images and videos, would it be a good  
8 time to take a short break?

9 MS. HUEY: I'm fine with that, Judge.

10 THE COURT: All right. Ten minutes. Be back at a  
11 quarter till twelve.

12 MR. EPPES: Thank you, Your Honor.

13 (Break)

14 THE COURT: We're back on the record in the State v  
15 Osborne. It's about a quarter 'till twelve on Thursday.  
16 We are still in the State's presentation. Ms. Huey, you  
17 may proceed.

18 MS. HUEY: Thank you, Judge.

19 CONTINUED DIRECT EXAMINATION

20 BY MS. HUEY:

21 Q. Detective Bibb, when we were talking about XD and  
22 things along those lines, do you also utilize Urban  
23 Dictionary and that sort of thing through the  
24 course of your investigation if you're looking at a  
25 phone and you don't quite understand something?

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1 A. Oh, yeah. Google searches and Urban Dictionary are  
2 our friend.

3 Q. To figure out what the youth might be saying these  
4 days?

5 A. Yes.

6 Q. Also, Detective Bibb, we just touched on images  
7 from Jesse Osborne's phone.

8 A. Yes.

9 Q. I'm going to show you what's been marked as State's  
10 exhibit. . .

11 MR. EPPES: Your Honor, I have no objection to these  
12 pictures being admitted into evidence, but I do have, I  
13 guess, it's too late to object now, but I do have a  
14 qualification for Urban Dictionary. Urban Dictionary is  
15 a user created dictionary. The fact that somebody says  
16 something in there about what it means, only means that  
17 one person has said what it means in the whole world.  
18 It's not a dictionary in the traditional sense of the  
19 word and I think that needs to be made clear if this  
20 officer is going to rely on the Urban Dictionary for any  
21 purpose.

22 MS. HUEY: I think that's a matter for cross, Your  
23 Honor. It's simply a tool she uses.

24 THE COURT: Yes, I think it's much like Wikipedia in  
25 that anybody can post there if they go through the right

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1 steps, but it is not a peer-reviewed document.

2 MR. EPPES: Thank you.

3 THE COURT: Go ahead and proceed.

4 MS. HUEY: So, it's my understanding that these are  
5 admitted. Is that correct?

6 MR. EPPES: Well, I don't object, but the Judge has  
7 to admit them.

8 MS. HUEY: I understand.

9 THE COURT: I will admit them. So admitted.

10 MS. HUEY: Thank you, Judge.

11 COURT REPORTER: What are the numbers?

12 MS. HUEY: Your Honor, that would be 16(A-I), that's  
13 been admitted. 17(A-G) that's been admitted. 18(A-S)  
14 that have been admitted. 20(A-E) that have been  
15 admitted. 21, 22, 23(A-F), 24(A-B), 25(A-M), 26, 27(A-Y)  
16 28(A-D), 19(A-E), as well as 16-E that now have been  
17 admitted, Judge. Thank you.

18 (Whereupon, images are entered into evidence as  
19 State's Exhibits: #16 (A-I), #17 (A-G), #18 (A-S), #20  
20 (A-E), #21, #22, #23 (A-F) #24 (A-B) #25 (A-M), #26,  
21 #27 (A-Y), #28 (A-D), #19 (A-E), #16-E, without  
22 objection)

23 MR. EPPES: Your Honor, if I may just say this. I'm  
24 not sure the question has been asked. I'm agreeing for  
25 them to be admitted with the understanding that Ms. Bibb

1 is going to say they are fair and accurate images as  
2 taken off of the phone of Jesse Osborne.

3 THE COURT: Thank you. Is that how you intend to  
4 offer them?

5 MS. HUEY: Yes, Your Honor.

6 Q. Detective Bibb, I'm going to show you all of these  
7 and if you will look through them and make sure  
8 that these are, in fact, the images you did  
9 retrieve from Jesse Osborne's phone extraction.

10 A. (Witness complies) Yes, they are.

11 Q. So, they fairly and accurately depict the images  
12 that you viewed from the extraction from Jesse  
13 Osborne's phone?

14 A. Yes.

15 Q. Have they been altered in any way?

16 A. No, they have not.

17 Q. Detective Bibb, if you could step down, please,  
18 then.

19 MR. EPPES: Your Honor, before they submit images of  
20 my client, I would like the cameras turned off ---

21 MS. HUEY: No.

22 MR EPPES: Not yet?

23 MS. HUEY: Not quite yet. I was just making sure you  
24 had no other issues with that.

25 MR. EPPES: I have no other issues other than that.

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1 THE COURT: Just make sure you alert us.

2 MS. HUEY: Yes, sir. I will.

3 Q. Detective Bibb, we are not going to go through  
4 every single image, but to give the Court an idea,  
5 these are State's #18-A through #18-S. What is that  
6 an image of?

7 A. That's going to be a tactical long rifle.

8 Q. And so this would be, I see some things at the top  
9 of the screen, a battery percentage time and that  
10 sort of thing. What does that indicate to you?

11 A. That it is a screenshot taken off of an android.

12 Q. And so, this would be the user looking at a  
13 website, or something along those lines, and then  
14 taking a screenshot of that item?

15 A. Yes.

16 Q. And so, #18-A through #18-S, what do those images  
17 depict?

18 A. It's various weapons, guns, knives, web pages, long  
19 rifles, handguns and other weapons that the user  
20 has looked at.

21 Q. And saved?

22 A. And saved.

23 Q. And that, again, is from the extraction of Jesse  
24 Osborne's phone?

25 A. Yes.

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1 Q. I'm now going to show you State's ...

2 MS. HUEY: Judge, I apologize. Would you like to see  
3 the rest of those at this time? (Hands documents to  
4 Judge Long)

5 THE COURT: These are ---

6 MS. HUEY: These are the ones, I'm not publishing  
7 all of them, Judge, in the interest of time.

8 THE COURT: Okay.

9 Q. Detective Bibb, this is State's #17-A. If you could  
10 tell the Court what that is.

11 A. That's going to be a screenshot of a meme from  
12 Sesame Street. It talks about, Big Bird explains to  
13 Elmo he's in the wrong m-f-ing neighborhood, then  
14 proceeds to shank him for his trike.

15 Q. Okay. And this image was modified several times on  
16 the phone. Is that correct?

17 A. Yes.

18 Q. Or there are several different images of it. This  
19 is State's #17-C. What does that read?

20 A. He's written out, "Kill me, please".

21 Q. And that's written across Elmo there on the  
22 tricycle?

23 A. Yes.

24 Q. This is State's #17-G. If you could tell the Court  
25 what that is.



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1 A. It's the same image he went over with some type of  
2 paint program and put in KMFD and Big Bird, the  
3 school shooter, 1999, which was the year of  
4 Columbine.

5 Q. And what was, this is the band again?

6 A. This is the band that was brought to the forefront  
7 with Dylan and Eric Harris.

8 MS. HUEY: And Judge, here are the rest of #17, if  
9 you would like to look at those. (Ms. Huey hands  
10 documents to the Judge)

11 Q. So, this is State's #21 and what does that depict?

12 A. The album cover shirt art for KMFD.

13 Q. And again, in reference to that band?

14 A. Yes.

15 Q. State's #22?

16 A. It's another art album cover.

17 Q. And this is from 21 Savage. Is that correct?

18 A. Yes.

19 Q. State's #23-A and what is this?

20 A. The phone user had saved the pie chart, or not pie  
21 chart, but the chart for deadly mass shootings in  
22 the United States.

23 Q. State's #23-D?

24 A. That's a photo of Omar Mateen, who was the Pulse  
25 Club shooter in Florida and the meme says, "When

1 the club runs out of liquor, you bring your own  
2 shots."

3 Q. State's 23-F.

4 A. Another meme that had been saved to the phone,  
5 "They laughed at my haircut, I laughed at their  
6 screams." This is going to be Dylan Roof, the  
7 Charleston shooter.

8 Q. And again, these are all images retrieved from  
9 Jesse Osborne's phone. State's #26.

10 A. This is going to be a screenshot from American  
11 Horror Story, which was the school massacre  
12 episode.

13 Q. State's #25-A.

14 A. The owner of the phone had looked up and  
15 screenshoted notes and pictures of the Sandy Hook  
16 victims.

17 Q. And would that be State's #25-A through State's  
18 #25-M?

19 A. Yes.

20 Q. Various photos from the Sandy Hook shooting?

21 A. Yes. He had saved every picture of each one of the  
22 victims from Sandy Hook.

23 Q. We talked about the Akinator earlier, which is a  
24 game kind of like a 20 questions game, you said?

25 A. Yes.

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1 Q. I'm going to show you State's #28-A and what does  
2 that depict?

3 A. It's the answer the Akinator comes up with after  
4 it's provided with details and -- the details that  
5 the 20 questions were provided were crafted in such  
6 a way to come up with Eric Harris' result.

7 Q. And how about #28-C?

8 A. And that time he had crafted the answers in such a  
9 way that Dylan Klebold was the result.

10 Q. And again, that's the Akinator?

11 A. Yes, it is.

12 Q. This is State's #27-A. Tell the Court what this is.

13 A. This is a note that says, "Nothing means anything  
14 anymore. I'd rather have nothing than be nothing.

15 Q. Are you familiar with that quote?

16 A. I am, but I have lost it at this time.

17 Q. Is it fair to say that is in reference to  
18 Columbine?

19 A. It is. I don't remember which one of the two that  
20 was attributed to.

21 Q. One of the Columbine shooters?

22 A. Yes.

23 Q. And how about State's #27-B?

24 A. That is from Columbine. It's a piece of artwork  
25 that's been made since that time.

1 Q. #27-C?

2 A. It's a picture of Dylan Klebold, Eric Harris. It's  
3 not what was put into Harris and Klebold's hands  
4 that caused the deaths of those children. It was  
5 what was put in their minds.

6 Q. State's #27-D?

7 A. It's another depiction of the same art. The two of  
8 those standing with weapons with the words wrapped  
9 around to make the image.

10 Q. Again, in reference to Columbine?

11 A. Yes.

12 Q. #27-E?

13 A. It's another picture from a Columbine meme, "I  
14 don't forget people who wronged me."

15 Q. #27-F?

16 A. That is Eric Harris, Dylan Klebold, "What fun is  
17 life without a little death." And, "The human race  
18 isn't worth fighting for anymore."

19 Q. #27-G?

20 A. It's another Columbine shooter, "I wish I was a  
21 fucking sociopath so I didn't have any remorse, but  
22 I do. There's nothing anyone could have done to  
23 prevent this. Noone is to blame except me and  
24 VoDKa. Our actions are a two-man against everyone  
25 else. A basement tapes quote.

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1 Q. State's #27-H?

2 A. "There's no such thing as true God or true evil.

3 It's all relative to the observer." That's from

4 Eric Harris.

5 Q. State's #27-I?

6 A. He found another quiz, 20 question quiz, "What

7 Columbine victim are you?" As a result, he was Eric

8 Harris the shooter and not a victim.

9 Q. State's 27-J?

10 A. He was looking up biographies and history on Dylan

11 Klebold.

12 Q. State's #27-K?

13 A. More of the Eric Harris, Dylan Klebold. It's

14 another website that's got multiple pictures of

15 Columbine in '99.

16 Q. State's 27-L?

17 A. Another quote from Eric Harris, one of the

18 Columbine shooters.

19 Q. State's #27-M?

20 A. Another quote from Eric Harris.

21 Q. State's #27-N?

22 A. It is a depiction of the weapons that they were

23 carrying on the day of Columbine. Also, the car

24 that they drove and pipe bombs that were recovered

25 that day.

- 1 Q. From Columbine?
- 2 A. Yes.
- 3 Q. State's #27-O?
- 4 A. It is another shot of the same page.
- 5 Q. State's #27-P?
- 6 A. It's a dossier with the fingerprint of the
- 7 Columbine shooter.
- 8 Q. State's #27-Q?
- 9 A. That's going to be a screenshot from a documentary
- 10 that's put out on, I believe it's BBC. It's
- 11 available on Amazon Prime and YouTube. It's a
- 12 series that depicts mass incidents. It is from
- 13 Season 1, Episode 3. It's a 50 minute video that
- 14 shows the Columbine massacre.
- 15 Q. State's #27-S?
- 16 A. It's another shot of the same documentary.
- 17 Q. State's #27-T?
- 18 A. These are various documentary pictures. Some of
- 19 them are from YouTube videos.
- 20 Q. State's #27-U?
- 21 A. It's another picture that says, "Outrun my gun,"
- 22 based on Columbine.
- 23 Q. And how about #27-X?
- 24 A. The user was signing up for his Uber account and
- 25 when it asked him to create his user name, he used

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- 1 the username name, School shooter for Prez, 2016.
- 2 Q. State's #27-R?
- 3 A. It is a video in which a person shows how Omar
- 4 Mateen got the long rifle handguns and multiple
- 5 cartridges into the club that night without being
- 6 observed.
- 7 Q. Okay. When you say video, is this a still from the
- 8 video?
- 9 A. It's a still from the video.
- 10 Q. This is States #20-A. Can you tell the Court what
- 11 that is?
- 12 A. That is Jesse or the person taking a picture of
- 13 themselves looking down into a dresser drawer at a
- 14 .40 caliber handgun.
- 15 Q. And you can't tell who is taking the picture.
- 16 Again, it's retrieved from his phone.
- 17 A. It was retrieved from his phone.
- 18 Q. And is State's #20-B just a different angle?
- 19 A. It's a different angle, but another shot.
- 20 Q. And what about #20-C?
- 21 A. This is a laptop, he's taking a picture of the
- 22 question, probably for school homework that is
- 23 sitting on the counter.
- 24 Q. And I believe we had mentioned #20-D and let me
- 25 show #20-E, as well, in previous testimony and

1       these again were images retrieved from Jesse  
2       Osborne's phone and what is the significance of  
3       these two exhibits?

4 A.   He is taking a picture of his laptop as it is  
5       downloading the tor browser.

6       MR. EPPES: Your Honor, he's downloading what?

7       MS. HUEY: Tor.

8 Q.   Were there also various photos and that would be  
9       State's Exhibits 16-A through #16-G depicting,  
10      excuse me, through #16-I, depicting various selfies  
11      of the juvenile Osborne with other students, what  
12      purports to be students?

13 A.   Yes.

14 Q.   Or Facetime and things of that nature?

15 A.   Yes.

16 Q.   As well as some text messages.

17      MS. HUEY: Your Honor, at this time, I do plan to  
18      get into images ---

19      THE COURT: All right.

20      MS. HUEY: --- that would depict the juvenile  
21      Osborne.

22      THE COURT: All right. As previously discussed, I'd  
23      ask that the media turn off any cameras or video at this  
24      time. You may proceed.

25      CLERK OF COURT: Will you allow other reporters to



1 come in?

2 THE COURT: Yes. If they want to.

3 Q. And there are just two more before we get into  
4 juvenile Osborne's face, at least. This is State's  
5 #24-B. Do you know what this picture depicts?

6 A. It's the Bell Tower in Texas where there was a  
7 shooting.

8 Q. Another mass shooting?

9 A. It was a mass shooting.

10 Q. And that was from some time ago. Correct? The mass  
11 shooting?

12 A. I believe it was in the 60s.

13 Q. And this is State's #24-A. What does that show?

14 A. That is a ticket to Austin, Texas. It's from  
15 Atlanta.

16 Q. And this would be considered a selfie?

17 A. Yes.

18 MR. EPPES: Your Honor, I'm going to object to any  
19 implication that that ticket to Austin, Texas, has  
20 anything to do with the Texas Bell Tower shooting. His  
21 brother goes to school there.

22 THE COURT: Okay.

23 MR. EPPES: He and his mother took a trip there. I'd  
24 argue that it's irrelevant or a small part of this.

25 THE COURT: Okay. I note your objection for the

1 record.

2 MS. HUEY: Thank you, Judge.

3 Q. All right. Detective Bibb, this is State's #19-A.

4 A. Yes. It's a picture of the defendant Jesse Osborne  
5 holding a long rifle over his shoulder.

6 Q. This is #19-B.

7 A. It's him in the bathroom. He's holding one of his,  
8 I believe, Airsoft guns.

9 Q. This is #19-C.

10 A. He's wearing his tactical gear. It appears to be  
11 the same vest that he wore that day and Airsoft  
12 guns.

13 Q. Or at least consistent with it. And again, you  
14 can't necessarily see his face in this picture.  
15 Correct?

16 A. Correct.

17 Q. This is #19-D.

18 A. Again, wearing the tactical gear and taking a  
19 selfie in the bathroom mirror.

20 Q. At this point, you can see a little more writing on  
21 the vest. Can you make out what that reads?

22 A. Sniper, I believe.

23 Q. This is State's #19-E.

24 A. It's another picture of the same.

25 Q. And again, Detective Bibb, there were numerous

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- 1 images on this extraction. Correct?
- 2 A. Yes.
- 3 Q. These were just some that were pulled relevant to
- 4 this investigation?
- 5 A. Yes.
- 6 Q. Detective Bibb, did you also view various videos?
- 7 A. Yes, I did.
- 8 Q. Again, retrieved from juvenile Osborne's phone
- 9 extraction?
- 10 A. Yes, ma'am.
- 11 Q. I'm going to show you what's been marked as State's
- 12 #58. If you would explain what State's #58 is, as
- 13 you know it to be.
- 14 A. This is a flash drive that I have placed several
- 15 videos from the extraction on in their original
- 16 format.
- 17 Q. Okay. So, when you say original, we have the full
- 18 extraction on State's #39?
- 19 A. Yes.
- 20 Q. But this is some of the videos that would be on
- 21 that extraction.
- 22 A. Yes.
- 23 Q. Now put on a condensed version.
- 24 A. It's a condensed version, easier to view.
- 25 Q. And in addition, is there a subfolder where you can

1 view just some of the videos that you have put on  
2 that flash drive?

3 A. Yes.

4 Q. Has it been altered in any other way?

5 A. No.

6 Q. And you are the one who prepared this exhibit?

7 A. Yes.

8 MS. HUEY: At this time, we'd move State's #58 into  
9 evidence.

10 MR. EPPES: Your Honor, I have no objection to this  
11 coming into evidence or the video being played, but the  
12 solicitor's office has graciously volunteered to make me  
13 a duplicate of that flash drive so we will have it for  
14 our records without troubling the Court with it.

15 THE COURT: All right. Thank you. #58, without  
16 objection.

17 (Whereupon, a video on a flash drive is entered  
18 into evidence as State's Exhibit #58, without objection.

19 Q. Detective Bibb, prior to, or as a part of your  
20 investigation and your review of the extraction,  
21 did you review photos of a machete or saw or  
22 whatever you want to call it, that was collected  
23 from the Oconee incident that Jesse Osborne was  
24 involved in, in his prior offense?

25 A. Yes, I did.

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1 (Ms. Huey shows document to Mr. Eppes)

2 Q. And did you review specifically #55, #56 and #57 as

3 a part of your investigation?

4 A. Yes ma'am, I did.

5 Q. And what are those images of?

6 A. Those are the weapons collected in the West Oak

7 incident by the school resource officers and Oconee

8 Sheriff's office.

9 MR. EPPES: Your Honor, to clarify, these weapons

10 were not taken at the school. They were found in Mr.

11 Osborne's home. Any implication that the school resource

12 officer at the school found them on Mr. Osborne at

13 school is not accurate. He did not take them out, but he

14 did voluntarily hand them over later and I just wanted

15 to make sure that's clear.

16 THE COURT: That's my understanding of the

17 incident.

18 MS. HUEY: That's right, Judge.

19 THE COURT: It was reported and they subsequently

20 came to the house and located and obtained the weapons.

21 MS. HUEY: Yes, sir, Judge. Regardless, Your Honor,

22 at this time we'd admit State's #55 through #57 into

23 evidence.

24 THE COURT: Subject to your comments, Mr. Eppes?

25 MR. EPPES: No objection, Your Honor.

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1 THE COURT: Without objection, so admitted. Thank  
2 you.

3 (Whereupon, 8x10 photocopies are admitted into  
4 evidence as State's Exhibits #55, #56, #57, without  
5 objection)

6 MS. HUEY: And Your Honor, again, this is State's  
7 #58.

8 (Video is played on large screen)

9 Q. And so, I know that's not a very long clip, but the  
10 machete pictured in this clip, which was a video  
11 retrieved from Jesse Osborne's phone, is it  
12 consistent with State's #56?

13 A. It is.

14 (Video is continued on large screen)

15 A. There is also another video of him using a  
16 different handgun, an Airsoft handgun that he was  
17 shooting towards the dogs that day.

18 (Video is continued on large screen)

19 A. I also have another video that was made on the 24th  
20 that shows him shooting a regular rifle. It's a M-  
21 16, I believe. This is not Airsoft.

22 (Video is continued on large screen)

23 Q. And what date was that?

24 A. This is on the 24th.

25 Q. This was prior to the incident?

1 A. Yes.

2 Q. Now, did he have various versions of this  
3 particular video saved?

4 A. Yes. He had saved it, edited it, sped it up, slowed  
5 it down, shared it in such a way that he could  
6 share it on media sites. And this is another  
7 version of the same video that had been edited.

8 Q. So, this is an edited version that speeds it up?

9 A. It speeds it up. When he turns around, you can see  
10 that it's a good bit faster and that's why there's  
11 no volume.

12 (Video played on large screen)

13 Q. And the next clip?

14 A. That would be all from the weapons.

15 Q. And any reference to homemade bombs?

16 A. On the 18th of August, he had made two videos of  
17 himself and another person. In the first video,  
18 they appear to be making a chemical bomb and  
19 putting it into a gallon jug.

20 (Video played on large screen)

21 Q. And this is on August 18th?

22 A. Yes.

23 A. The video was created on August 18, 2016. The next  
24 video is on the same date and time, except this  
25 time he used a water bottle and had better luck.

1 (Video played on large screen)

2 Q. And then, is there a clip with the rabbit?

3 (Video played on large screen)

4 Q. This is a video that was created on February 2,  
5 2016. It appears to have been involving an unknown  
6 student at this time at West Oak.

7 (Video played on large screen)

8 MS. HUEY: And at this time, I do have another video  
9 to show, Your Honor, but nothing else involving the  
10 juvenile.

11 THE COURT: All right. Thank you. You can turn the  
12 video back on now.

13 Q. Detective Bibb, did you also find various clips? I  
14 believe you mentioned some kind of Columbine  
15 documentary earlier when you testified?

16 A. Yes. There were 18 clips saved, physically, in the  
17 phone and several of them altered into music  
18 videos, shortened, ad libs added in and they were  
19 from the Zero Hour documentary.

20 Q. And if you could play one of those, then.

21 (Video played on large screen)

22 Q. And again, that's just one clip of numerous clips  
23 that he had from that particular documentary?

24 A. Yes.

25 Q. And again, he was trying or the user was trying to



1 edit those videos?

2 A. Yes. He was adding music to make them music

3 montages.

4 Q. If you could have a seat now, Detective Bibb. Just

5 a few more questions, Detective Bibb. Now, we went

6 through State's Exhibit #30, I believe, which is

7 the bigger Excel sheet ---

8 A. Yes.

9 Q. --- that you prepared. Additionally, did you

10 prepare condensed Excel sheets with some of the

11 Google terms that the user would have plugged in to

12 do searches for websites?

13 A. Yes.

14 (Ms. Huey shows document to Mr. Eppes)

15 Q. I'm going to show you what has been marked as

16 State's #29 and #31. Take a look at these and make sure

17 these are reports that you would have prepared.

18 A. Yes. I prepared both of these.

19 Q. And do they fairly and accurately depict, I believe

20 you titled one "Guns or other Violent Search Terms"

21 and that would be State's #29 and then State's #31

22 would be, more of the pornographic or sexual in

23 nature, search terms?

24 A. Yes.

25 Q. Does that fairly and accurately reflect the reports

1       that you created from Jesse Osborne's phone  
2       extraction?

3 A.    Yes, ma'am. It is.

4       MS. HUEY: At this time, we'd admit State's #29 and  
5 #31 into evidence?

6       MR. EPPES: No objection.

7       THE COURT: Without objection, so admitted.

8       (Whereupon, two reports made by Detective Bibb are  
9 entered into evidence as State's Exhibit #29 and #31,  
10 without objection)

11 Q.    Additionally, Detective Bibb, we have talked about  
12       Jeffrey Osborne's phone and an extraction was also  
13       done on that which is in evidence. Correct?

14 A.    Yes, ma'am.

15 Q.    And did you also go through a lot of that  
16       extraction, as well, in preparing for this case?

17 A.    Yes, ma'am. I did.

18 Q.    And did you review various text messages, photos,  
19       images and that sort of thing from Jeffrey  
20       Osborne's phone extraction?

21 A.    Yes, ma'am. I did.

22               (Ms. Huey shows document to Mr. Eppes)

23 Q.    I'm going to show you what's marked as State's #32.  
24       Is this one of the messages you would have reviewed  
25       from Jeffrey Osborne's extraction?

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1 A. Yes, it is.

2 Q. Does it fairly and accurately depict one of the  
3 exchanges from May 31, I believe, of 2016?

4 A. Yes.

5 Q. And again, that would have been something you  
6 retrieved from Jeffrey Osborne's phone extraction?

7 A. Yes, it is.

8 Q. And does that fairly and accurately depict that  
9 text message as you recall it?

10 A. These are text messages between Tiffney and Jeff,  
11 yes.

12 MS. HUEY: Your Honor, at this time we would admit  
13 State's #32 into evidence

14 MR. EPPES: No objection.

15 THE COURT: Without objection, so admitted. Thank  
16 you.

17 (Whereupon, SMS messages from Jeffrey Osborne's  
18 phone are entered into evidence as State's Exhibit #32,  
19 without objection.)

20 Q. If you could just read aloud, State's #32, that  
21 brief text exchange?

22 A. On 5/31/2016, from Tiffney, an incoming call.  
23 There's a read date of 5/31/2016, 11:26. Tiffney  
24 writes; "What is that?" Tiffany also writes just  
25 after that at 11:24; "He made a 100 on it, I

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1 think." Jeffrey replies back; "Russ is sending them  
2 to your Facebook Messenger. Jesse could not get the  
3 printer to work, so I went down to fix it. That is  
4 his comic strip." From Tiffney, she writes back at  
5 11:33; "Did you read it and do you think that's  
6 appropriate for school, talking about shooting?"  
7 Jeffrey replies back; "I do not. Call him first  
8 chance you get."

9 Q. And what is the date of that, again?

10 A. That was May 31st, 2016.

11 Q. Now, additionally, you said you looked through  
12 Jeffrey's extraction. Were there any text messages  
13 that you're aware of between Jeffrey and Jesse that  
14 were of a violent or aggressive nature?

15 A. No. Most of them were very, checking on Jesse, and  
16 both of them replied back and forth to each other,  
17 "Love you".

18 Q. So, there was nothing in their exchanges that  
19 caused you concern or caused you to pull anything  
20 for today's purposes?

21 A. Absolutely not.

22 MS. HUEY: I think that's all I have for this  
23 witness at this time, Judge.

24 CROSS EXAMINATION

25 BY MR. EPPES:

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- 1 Q. Ms. Bibb, I'm going to start with the call on that  
2 last document you were looking at. Do you still  
3 have it in front of you?
- 4 A. No, I do not.
- 5 Q. Okay. I'll ask the court reporter to hand it to  
6 you. That was extracted from a longer phone log,  
7 wasn't it?
- 8 A. This was from Jeff's phone.
- 9 Q. Yes, Jeff's phone, but it was from a longer phone  
10 log. Correct?
- 11 A. From a longer...
- 12 Q. A longer phone log. There are more texts back and  
13 forth in the document that I received. That was  
14 pulled out of it.
- 15 A. Yes. I had not eliminated other dates.
- 16 Q. Okay. I'm going to hand up three pages that I will  
17 represent to you that it was something prepared and  
18 sent to me. Does that appear to be a download of  
19 those text messages?
- 20 A. That's from the full extraction, yes.
- 21 Q. That's from the fuller extraction. I'll represent  
22 to you that those quotes are there on that page.  
23 And I think that's three pages?
- 24 A. Yes.
- 25 Q. Does it appear to be a true and accurate rendition

1 of the downloads from that phone as you would make  
2 a record of it?

3 A. It appears to be from texts 272 through 322.

4 MR. EPPES: Your Honor, I would move that into  
5 evidence.

6 THE COURT: Is there any objection?

7 MS. HUEY: I have no objection, Your Honor.

8 THE COURT: So admitted. Thank you.

9 MR. EPPES: Your Honor, I'm going to hand you a  
10 copy.

11 (Whereupon, phone extractions from Jeffrey  
12 Osborne's phone are entered into evidence as Defense  
13 Exhibit #6, without objection)

14 Q. Review that quickly for me, ma'am.

15 A. Excuse me?

16 Q. Could you just review that, quickly?

17 A. Okay.

18 Q. Is it fair to characterize that as it appears to be  
19 fairly typical back-and-forth between a married  
20 couple, some of it happy, some of it annoyed at one  
21 another?

22 A. Yes.

23 Q. And if you look back to the State's Exhibit that  
24 comes from, if I represented to you that the school  
25 had sent home an assignment that involved shooting

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- 1 guns and the parents are discussing whether they  
2 should have done that in light of some of the  
3 things going on in the world, would that make you  
4 dispute that at all? Would you dispute that  
5 characterization? And I will point, specifically,  
6 to the statement at the end of the State's Exhibit,  
7 "You need to call the school first thing in the  
8 morning." Isn't that -- you're looking at my  
9 exhibit. I asked that you look back at the State's  
10 Exhibit, that one. What is the last line on that  
11 one?
- 12 A. The State's Exhibit is, "I did not. Call them the  
13 first chance that you get." Which was from Tiffney,  
14 I'm sorry, that was from Jeff to Tiffney.
- 15 Q. And doesn't that appear to be Jeff telling Tiffney  
16 she needs to call the school about the school  
17 assignment?
- 18 A. Yes. "I did not. Call them the first chance you  
19 get."
- 20 Q. Thank you.
- 21 A. There are, MMS messages that are not included in  
22 this SMS exchange that explains what took place.
- 23 Q. Okay. Well, if you want to explain what took place,  
24 let me know. Go ahead.
- 25 A. Jeffrey had received MMS messages, which are

- 1 multimedia messages that contained photos that the  
2 grandmother had sent him and he, in turn, had sent  
3 these to Tiffany and that's what they were  
4 discussing on that date. They're time and date  
5 stamped the same day.
- 6 Q. And what are those photos?
- 7 A. Photos of a cartoon that had been made by Mr.  
8 Osborne on a computer that depicted Jesse's  
9 adventures in Europe and talking about being shot  
10 at, shooting, and don't hurt me.
- 11 Q. Was that during World War II?
- 12 A. Excuse me?
- 13 Q. Was that supposed to be a project about World War  
14 II?
- 15 A. It just says, "Adventures through Europe." It  
16 doesn't say 1940, it doesn't say, 2010.
- 17 Q. Thank you. Do you have the big exhibit up there?
- 18 A. I have a three-page exhibit.
- 19 Q. No, I'm talking about the big exhibit that you went  
20 through, excruciatingly, with Ms. Huey. Would you  
21 go, please, to line 363 and 364?
- 22 A. Yes.
- 23 Q. Okay. And what does that appear to be?
- 24 A. 362?
- 25 Q. 363 and 364.



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1 Q. 363 and 364 are "Pipe bomb steps," Google search.

2 Q. Okay. And do you recall looking at those pipe bomb  
3 steps? Do you recall looking at those? You said you  
4 looked at every image that was pulled up.

5 A. I went to -- I used every http, copied, pasted and  
6 went to each URL, yes. Did I read everything on  
7 each page? No. Once I determined what it was, I  
8 checked it off.

9 Q. Okay. Well, I'm going to hand you what I have  
10 marked as Defense #7 and I will represent to you  
11 that it is five pages that my organized paralegal  
12 downloaded from Google that we believe to be the  
13 same as what is on your summary. Does that appear  
14 to be the same pages?

15 A. There's actually no way it can be the exact same,  
16 because he did his search September 21st. By the  
17 time I did my search on September 29th, there would  
18 have been a movement in the search engine. The way  
19 things move to the top is because of activity and  
20 traffic that goes to the page and so by the time  
21 you did your search, traffic would have moved the  
22 subjects several more pages and so there is no way  
23 the internet stays the same from one day to the  
24 next.

25 Q. Well, let me ask it this way. Does that look

1       comparable to what you found?

2 A.    It does look comparable, yes.

3 Q.    Okay. I'm going to hand you Defense Exhibit #4 from  
4       page 681 from State's Exhibit #43 and I want to  
5       direct you to the two larger quotes at the bottom  
6       of that page that appear to be instructions about  
7       how to create a pipe bomb.

8 A.    Okay.

9 Q.    I would like you to look at Defense Exhibit #7 and  
10       see if you see on the fourth or fifth page exactly  
11       identical language to the language from that  
12       Instagram post.

13 A.   Yes. When he did the search at 363 and got the  
14       results for pipe bomb steps, he then went to the  
15       page [http:Fringe at Day Source.com](http://Fringe at Day Source.com). Subsequently,  
16       he went to the same page and got the exact same  
17       text and it was copied and pasted, apparently into  
18       his Instagram thread.

19 A.   Okay. Thank you. The video from West Oak, that we  
20       believe to be from West Oak School where the kid  
21       was sitting in the corner.

22 A.   The kid that was hiding under the desk? We are not  
23       aware of who he is right now.

24 Q.   Yes, ma'am. I understand that, but let me ask you a  
25       question about that. You could hear the voice in

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1       that video. Correct?

2 A.    Yes.

3 Q.    And would you agree with me that that voice does  
4       not sound like Jesse Osborne's voice in the other  
5       videos that we are more sure it was him, the pipe  
6       bomb instruction, for example?

7 A.    From the videos I've watched, I've watched his  
8       ██████ and YouTube. It sounds exactly like Jesse.

9 Q.    I don't think it is, but I was asking your opinion  
10       and so there we go. In the bottle bomb video, the  
11       second video where the bottle was thrown, there was  
12       a voice at the end of that. Did you hear that  
13       voice?

14 A.    Yes.

15 Q.    That was an adult voice. Correct?

16 A.    I think it appeared, or from what I have spoken to  
17       other people who are familiar with, they think it's  
18       the grandfather, but I haven't spoken with the  
19       family and so I wouldn't be able to identify.

20 Q.    So, if I represented to you that it was the  
21       grandfather, you'd have no reason to doubt that?

22 A.    No.

23 Q.    So, probably, the grandfather was present while  
24       that thing was being thrown out into the yard.

25 A.    That's unfortunate, but probably.

1 Q. And with the M-16 video, it appeared multiple  
2 members of the Osborne family were out there during  
3 that. Correct?

4 A. Yes. Just four days before the Townville shooting.

5 Q. Okay. You had the picture of the tor browser being  
6 downloaded.

7 A. Yes.

8 Q. Did you have any evidence from the phones or the  
9 computer that the tor browser was ever used?

10 A. I didn't do an extraction on the computer and I  
11 haven't seen those results, so I can't testify to  
12 that. As far as on the phone, there's no tor  
13 browser for a phone. There may be an app that  
14 simulates it, but tor browser in itself is a search  
15 engine.

16 Q. But in your part of this investigation, you have  
17 heard no evidence of Mr. Osborne using the tor  
18 browser for anything?

19 A. No.

20 Q. Going back to all these searches, you used the  
21 term, search, but I have a question which is, if he  
22 received a link to a website or a hyperlink to a  
23 website about email or Instagram or something else  
24 and he clicked on it, would it appear in your  
25 downloading the physical, of the physical data to

1 be a search?

2 A. No, it wouldn't. When you go to open a URL link,  
3 you click on it, it goes straight to that http  
4 page. It wouldn't take you through a Google search  
5 engine and then to that page.

6 A. So, when something was searched on that data --  
7 which exhibit was that?

8 A. I do not have that one. This is the web history.  
9 The web history searches and the pages he followed  
10 afterwards. There are two different things. You've  
11 got web searches, which are when you keystroke in  
12 terms.

13 Q. Yep.

14 A. And then a web history is after you've keystroked  
15 these terms in and followed the results.

16 Q. Okay. So, I was asking the question the wrong way.  
17 Is that document, the thick document that you have  
18 been looking at to pull all that information off  
19 of, is that web history or is ---

20 A. That's the web history.

21 Q. It's not a search history?

22 A. Correct.

23 Q. So, if he hit a hyperlink...

24 A. It would contain the -- it would be in the web  
25 history if he went to it.

1 Q. So, that web history that you were reading off of,  
2 some of those things you are reading off may have  
3 been hyperlinks and not searches?

4 A. No. We were specific to only look at the search  
5 terms.

6 Q. So, everything on there was done by search terms?  
7 There is no web history on there that was done by  
8 hyperlink?

9 A. There are subsequent pages that were followed, but  
10 the ones that we marked and remarked on and  
11 testified to were as a result of keystroked in web  
12 search terms.

13 Q. Web search terms. So, there's nothing on that  
14 exhibit that would represent someone who would have  
15 clicked on a message, hyperlinked it, and gone to  
16 that site on the internet?

17 A. Not in the searches, but in the history. You've got  
18 two different animals here.

19 Q. Okay. You're going to have to try again.

20 A. You Google search something, then it's going to  
21 have Google search beside it or you went to the  
22 page or Chrome or you have physically made the  
23 effort to find that page. A history is what you  
24 click on from therein. If I'm reading a recipe for  
25 cake and I don't understand what xanthan gum is, I

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1       may click on the word xanthan gum and find out that  
2       it's something that thickens like flour, but that  
3       doesn't have gluten in it, so I would, therefore,  
4       have the cake search and then subsequently no  
5       searches, I would have just the xanthan gum site  
6       and what it does.

7 Q.   Okay. So, let me try my question one more time.  
8       That exhibit, please tell me the exhibit number,  
9       because I don't know it.

10 A.   Thirty, I believe.

11 Q.   Exhibit #30, that is your investigation wherein you  
12       looked at Google searches and if thereafter, the  
13       Google searches led to links that got click, click,  
14       clicked that is included or possibly included in  
15       that exhibit, but there is nothing in that exhibit  
16       that was a part of a text message or twitter or on  
17       Instagram where someone just clicked on the  
18       hyperlink and got to the website?

19 A.   They could have. He very well could have, but we  
20       did not mention those in the earlier testimony.  
21       They're contained therein, but they are not a part  
22       of the search terms that we were discussing.

23 Q.   So, you're saying that in that exhibit there are  
24       links that could have come from Instagram, however  
25       the ones that you talked about in your testimony

1 with Ms. Huey did not include any of those links.

2 A. Yes. We only talked about the searches in the  
3 titled ones. When there's nothing in the first  
4 screen or when you're looking at the reader that  
5 wasn't a keyed in search, but it was a subsequent  
6 webpage that was followed either through URL or  
7 through the previous search term click results.

8 Q. So, anything that has a blank in your first column  
9 on that Exhibit #30, may have come as a follow-up  
10 to a web search or it may have come from a  
11 hyperlink that was communicated to the phone from  
12 somewhere else?

13 A. Yes.

14 Q. Thank you. Do you know if more than one extraction  
15 method was used for the physical extraction from  
16 the phone?

17 A. I didn't do a physical extraction on Mr. Osborne's  
18 phone.

19 Q. I know. Do you know if more than one method was  
20 used to do it?

21 A. More than one method?

22 Q. There's more than one program to ---

23 A. Oh, provider.

24 Q. Provider. I'm sorry.

25 A. There are several out there. There's Oxygen Sweep,



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1       there's Susteen, there's Cellebrite. The Cellebrite  
2       is a triage unit. It's portable and that's what  
3       Homeland Security had with them that evening.

4       That's why the extraction was done by Cellebrite.

5 Q.   The extraction you got was from Cellebrite?

6 A.   Yes, sir.

7 Q.   And you aren't aware of any other extractions?

8 A.   I have not been given any other extractions.

9 Q.   Thank you.

10       MR. EPPES: No more questions, Your Honor.

11       THE COURT: All right. Mr. Smith?

12       MR. SMITH: May it please the Court?

13       THE COURT: Yes, sir.

14                                   CROSS EXAMINATION

15 BY MR. SMITH:

16 Q.   Ma'am, your review of the searches, and so forth,  
17       you were able to see the times the searches were  
18       conducted. Right?

19 A.   Yes.

20 Q.   Was there any pattern to what time they were done?

21 A.   You can look at his sleeping patterns, yes. Most of  
22       them were late evening, early morning. Midnight, 1,  
23       2,3 and then you can see a pattern where he doesn't  
24       get up until late in the afternoon and then starts  
25       back.

1 Q. So, he wasn't getting up in the morning?

2 A. Well, for example, one night he's looking up the  
3 Sandy Hook victims and goes to bed around one or  
4 two, and then he gets back up that same evening and  
5 starts back looking them up.

6 Q. Yes, ma'am, but wasn't he also homeschooling?

7 A. Homeschooling Calvary Academy.

8 Q. And when did that take place?

9 A. He would, actually, go to school, look at some  
10 porn, check out some Columbine, and go to school  
11 again.

12 Q. I appreciate that. What time?

13 A. Throughout the day. There was no set alarm rings at  
14 eight o'clock to go to class and get out at three.  
15 There was nothing like that. You have a time frame  
16 with online school. It's just when you complete  
17 your assignments.

18 Q. So, it's unknown whether he was sleeping?

19 A. No. A phone can't tell you when someone sleeps. No.

20 Q. Thank you, ma'am.

21 THE COURT: Redirect?

22 MS. HUEY: Just a couple on redirect, Your Honor.

23 THE COURT: All right.

24 REDIRECT EXAMINATION

25 BY MS. HUEY:

1 Q. Detective Bibb, if you click on a link, is that  
2 indicative of interest in that link?

3 A. Yes.

4 Q. Mr. Eppes showed you an exhibit regarding text  
5 messages between Tiffney and Jeffrey. Correct?

6 A. Yes.

7 Q. And let me back up by first saying, are you  
8 married, Detective Bibb?

9 A. Oh, yes.

10 Q. And do you sometimes call your husband names?

11 A. Oh, a lot uglier than what she calls him.

12 Q. Does that mean you still love him?

13 A. Oh, yeah. I love him to pieces.

14 Q. Or does that mean you don't love him?

15 A. Oh, no. He's great. He puts up with me.

16 Q. Just a part of married life. Correct?

17 A. It is.

18 Q. So, on that note, I'm going to show you, and I  
19 forget what Defense Exhibit that is. Do you still  
20 have it? #6? If you could read from line 278, the  
21 date and what was on that.

22 A. Number 278 is to Jeffrey from Tiffney. It's an  
23 incoming. It was at 10:54 in the morning on the  
24 26th of May, 2016. He read it at 10:55 in the  
25 morning. She wrote, "Back home. Put y'all's sub in

- 1 the fridge. Gonna pick out clothes for this  
2 weekend. \$22,000.00 in the bank! Love ya.
- 3 Q. All right. And then, if you go on to line 305 on  
4 page 19.
- 5 A. Yes.
- 6 Q. What's the date of that text and what was read?
- 7 A. This is in his inbox. It's from Tiffney. Incoming  
8 to Jeff. It was the 8th of June, 2016 at 3:08. It's  
9 a two-part text because they only allow so many  
10 numbers or number of letters. The first part says,  
11 "I just got a break to text you. Steven Kelly  
12 messaged me through Facebook and wanted me to ask  
13 you to give him a call. His number is: 864, I'm not  
14 going to repeat the rest of it. Love ya. Part two:  
15 Got to get next patient back.
- 16 Q. And how about line 311?
- 17 A. Three eleven is from Tiffney. Incoming to Jeff on  
18 the 9th of June. It's 5:33 p.m. and she is replying  
19 to a text that Jeffrey sent and she writes,  
20 "Awesome, Love y'all.
- 21 Q. All right. And then, on line 314.
- 22 A. Three fourteen is from Tiffney to Jeff at 1:07 p.m.  
23 on the 11th of June. She writes, "Ryan just posted  
24 to Facebook. You got him a card. How excited he is.  
25 So sweet."

## REDIRECT EXAMINATION OF DET. MCKINDRA BIBB BY MS. HUEY

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1 Q. And is Ryan, Jesse Osborne's brother?

2 A. Yes. It's Jeff's son.

3 Q. And then, on line 322.

4 A. Three twenty,-two. It's from Tiffney. I'm sorry,  
5 it's from ---

6 MR. EPPES: Your Honor, there is one thing I'd like  
7 to clarify. Ryan is Tiffney Osborne's son from a  
8 previous husband.

9 THE COURT: All right.

10 A. Oh, I was not aware of that. I got the daughter and  
11 son mixed up. I didn't speak with either of them.

12 Q. But a half brother of Jesse Osborne, nevertheless.

13 A. Yes. My apologies.

14 Q. I'm sorry. You were reading line 322.

15 A. Three twenty-two is to Tiffney from Jeff on the  
16 11th of June at 3:46 p.m. and he sent, "Thank you.  
17 Love ya."

18 Q. Okay. And then one more exchange, Detective Bibb,  
19 on page 18 from lines 300 to 302. If you could read  
20 that exchange.

21 A. Three hundred to three oh two is, Tiffney writes to  
22 Jeff on 6/6/2016. "I know will July before we go to  
23 court. I believe she left out will be July. But she  
24 had written, I know will July before we go to  
25 court. He then sent back, "That's what it sounds

1       like. Basically, all summer with that on his leg."

2 Q.   And line 302?

3 A.   From Tiffney, she writes back. "Yes, sir. I was  
4       upset. I think it's ridiculous."

5 Q.   And do you know what that is in reference to?

6 A.   It is the ankle monitor that Jesse was required to  
7       wear as a part of his sentence from West Oak.

8 Q.   While he was awaiting sentencing?

9 A.   Yes.

10       MS. HUEY: That's all I have, Judge.

11                               RE-CROSS EXAMINATION

12 BY MR. EPPES:

13 Q.   Detective Bibb, did you ever hit a Google site by  
14       mistake?

15 A.   Excuse me?

16 Q.   Did you ever log onto a search on Google and found  
17       you were on a website by mistake?

18 A.   Oh, yeah.

19 Q.   You did not intend to be there, did you? If you did  
20       it by mistake.

21 A.   No. I went to some horrifying websites. I click off  
22       those.

23 Q.   And so, you didn't necessarily have an interest in  
24       every website that you've ever clicked on?

25 A.   No. I don't have an interest in those websites, but

RE-CROSS EXAMINATION OF DET. MCKINDRA BIBB BY MR. EPPES

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1 if there is a pattern, there's a pattern. You can't  
2 deny that.

3 Q. I'm not debating pattern with you. I just -- every  
4 website does not mean every website was an  
5 intentional interest.

6 A. Correct.

7 Q. And if you're going on horrific websites, you might  
8 hit one or two that are more horrific than the ones  
9 that you actually went on. Correct?

10 A. Yes. One or two might have been mistakes.

11 Q. And I'm not criticizing you, but when your  
12 testimony was being directed to imply to mean that  
13 every website was an intentional interest in that  
14 website, that's not entirely accurate, is it?

15 A. No.

16 Q. Thank you.

17 THE COURT: Mr. Smith, anything?

18 MR. SMITH: I have nothing else.

19 THE COURT: Thank you, ma'am, you may step down.

20 MS. HUEY: Your Honor, may this witness be excused?

21 THE COURT: Any objection to her being excused?

22 MR. EPPES: Your Honor, I feel like I've bonded with  
23 Ms. Bibb. Maybe we ought to see if she can stay. I bet  
24 she doesn't have anything to do. I have no objection to  
25 this witness being excused.

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1 THE COURT: Thank you, Detective. You may stay or  
2 go, whichever you prefer.

3 DETECTIVE BIBB: Thank you.

4 THE COURT: We will take our lunch break at this  
5 time. It's about 1:07. Let's see if we can be back no  
6 later than 2:15.

7 MS. HUEY: Thank you, Judge.

8 (Lunch Break)

9 THE COURT: We're back on the record with the State  
10 v. Osborne. It is now around 2:17 on Thursday afternoon.  
11 We are still in the State's case. Ms. Price, you may  
12 call your next witness.

13 MS. PRICE: Thank you, Your Honor. The State intends  
14 to call Dr. Mark Wagner to the stand. I believe defense  
15 counsel had something he wanted to take up with the  
16 Court prior to my doing that.

17 THE COURT: All right.

18 MR. EPPES: Your Honor, it's my belief that certain  
19 portions, at the very least, of Dr. Wagner's report  
20 violate the restrictions in State v. Council (ph) and I  
21 can tell you the two parts specifically just giving the  
22 SIRS and SIMS test based on the stipulation the Court  
23 has that the manuals he used and said it's not advisable  
24 to give those tests to people under 18 language, quite  
25 frankly, Judge, the manuals are what I have so it might



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1 make sense for Ms. Price to try to explain that through  
2 direct testimony before I make an argument or before I  
3 do some questioning or if I proffer it. I believe it may  
4 go smoother that way than me standing around in the dark  
5 on what she's going to get at.

6 THE COURT: I, understand.

7 MR. EPPES: The second part of that is his Appendix  
8 4, and certain conclusions therefrom have to do with my  
9 client being a "International Cybergangster" and I do  
10 not believe that Dr. Wagner has the expertise to make  
11 that determination and I think I can explore that fairly  
12 quickly with a proffer, as well.

13 THE COURT: All right. Do you want to wait until  
14 that issue comes up and address it at that time?

15 MR. EPPES: I'm happy to do it either way, Your  
16 Honor.

17 MS. PRICE: Your Honor, honestly, if he intends to  
18 address the issue of the SIRS and SIMS and explore it  
19 throughout, it probably does make sense. I will just  
20 qualify him as an expert. I think that would be  
21 important to the Court's evaluation of his ability to  
22 testify to the SIRS and SIMS usage as well as his  
23 opinion about Jesse Osborne being an international  
24 cybergangster.

25 THE COURT: I'm going to go ahead and grant the

1 motion on the cybergangster language.

2 MS. PRICE: Well, Your Honor, if I may. If I may  
3 please proffer Dr. Wagner's expertise as it pertains to  
4 that issue prior to the Court making that ruling?

5 THE COURT: All right. I will do so. Go ahead.

6 (After being duly sworn by the Clerk of Court, DR.  
7 MARK WAGNER testified as follows:)

8 CLERK OF COURT: Please have a seat in the witness  
9 chair and state your name for the record and spell your  
10 last name for the reporter.

11 DR. WAGNER: Mark Wagner. W-A-G-N-E-R.

12 THE COURT: Let the record reflect, as I previously  
13 noted in Dr. Atkinson's testimony, I was provided the  
14 evaluation prior to today's date. I have reviewed that  
15 and I will be referring to that during testimony. Go  
16 ahead, Ms. Price.

17 MS. PRICE: Thank you, Judge. May it please the  
18 Court.

19 DIRECT EXAMINATION

20 BY MS. PRICE:

21 Q. Dr. Wagner, what is your occupation?

22 A. I am a professor in the Department of Neurology at  
23 the Medical University of South Carolina and  
24 practice clinical neuropsychology.

25 Q. Do you have a Masters degree?

1 A. I do.

2 Q. What is it in?

3 A. It's in experimental psychology.

4 Q. And what is neuropsychology?

5 A. Neuropsychology is the study of brain behavior

6 relationships as expressed in overt behavior.

7 Neuropsychology is involved in the diagnosis and

8 treatment of a variety of different neurologic and

9 psychiatric conditions.

10 (Ms. Price shows document to Mr. Eppes)

11 Q. Dr. Wagner you provided me with the definition of a

12 clinical neuropsychologist.

13 A. I did.

14 Q. And where did this definition come from?

15 A. That's published by the National Academy of

16 Neuropsychologists.

17 MR. EPPES: Is that page from that book?

18 Q. Is this a page from a book?

19 A. It's a publication in the professional journal.

20 MR. EPPES: What professional journal?

21 Q. What professional journal would that be? I'm just

22 going to show you what's been marked as State's

23 Exhibit #62 that hasn't been admitted.

24 A. This is a position paper in the Journal of Clinical

25 Neuropsychologists, published in 1989, defining

1        what a neuropsychologist is.

2 A.    Okay. And how does it define a neuropsychologist?

3 A.    The definition as proposed or advanced in this  
4        position paper is, a clinical neuropsychologist is  
5        a professional within the field of psychology that  
6        specializes in applied science of brain behavior  
7        relationships. Clinical neuropsychologists use this  
8        knowledge in the assessment, diagnosis, and  
9        treatment and/or rehabilitation of patients across  
10       the life span with neurologic medical developmental  
11       and psychiatric conditions as well as other  
12       cognitive and learning disorders. The clinical  
13       neuropsychologist uses psychological, neurological,  
14       cognitive, behavioral and physiologic principles,  
15       techniques, and tests to evaluate patients with  
16       neurocognitive, behavioral, and emotional problems  
17       with those strengths and weaknesses and the  
18       relationship to normal and abnormal central nervous  
19       system functioning. The clinical neuropsychologist  
20       uses this information and information provided by  
21       other medical healthcare providers to identify and  
22       diagnose neural behavioral disorders and to plan  
23       and implement intervention strategies. The  
24       specialty of neuropsychology is recognized by the  
25       American Psychologic Association and the Canadian

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1       Psychologic Association. Clinical  
2       Neuropsychologists are independent practitioners of  
3       clinical neuropsychology and psychology.

4 Q.   Thank you, Dr. Wagner. And if you would, hand that  
5       up to the Court, please?

6       MS. PRICE: Your Honor, Mr. Eppes, the State moves  
7       to admit State's #62 into evidence.

8       MR. EPPES: Your Honor, this is a document. I don't  
9       know where it is from. I don't know what book it was in.  
10      It might have been attached to a report, but I don't  
11      know what the report was. If he wants to say this was  
12      taken directly from the definition of a clinical  
13      neuropsychology clinical neuropsychology and number one,  
14      page 22, and it's exactly what that is and then I don't  
15      mind it being put in as an exhibit. But with the idea of  
16      going and pulling random pages out of books we don't  
17      identify and put them in as evidence, I don't think is  
18      appropriate. I think that this doctor could get around  
19      this very easily, but nobody has told me where this page  
20      is from yet.

21      MS. PRICE: Your Honor, I think he did. I think Dr.  
22      Wagner has testified exactly as to where that page comes  
23      from and I don't mean to quibble, Your Honor. I think  
24      he's testified as to what the role of the clinical  
25      psychologist is, and a neuropsychologist, and that it

1 deals with applied science degree, brain behavior and  
2 relationships.

3 THE COURT: All right. I will sustain the objection.  
4 I don't think it's necessary at this point.

5 MS. PRICE: Okay.

6 Q. Do you keep a curriculum vitae of your  
7 qualifications and experiences pertaining to your  
8 field of work?

9 A. Yes, I do.

10 MS. PRICE: Your Honor, I believe you already have a  
11 copy of Dr. Wagner's curriculum vitae. Is that right?

12 THE COURT: I do.

13 MS. PRICE: Okay. And this is State's Exhibit #63-A.  
14 I've also provided a copy to the defense several weeks  
15 ago. Mr. Eppes, do you want to see this copy?

16 MR. EPPES: Sure.

17 (Ms. Price shows document to Mr. Eppes)

18 Q. Dr. Wagner, I'm showing you State's Exhibit #63-A.  
19 Is that a true and accurate copy of your curriculum  
20 vitae?

21 A. That's fairly up-to-date and it is.

22 MS. PRICE: Your Honor, at this time State would  
23 move to admit State's #63-A.

24 MR. EPPES: Without objection, Your Honor.

25 THE COURT: Without objection, #63-A is admitted.

1 Thank you.

2 (Whereupon, Dr. Wagner's curriculum vitae is  
3 entered into evidence as State's Exhibit #63-A, without  
4 objection)

5 MS. PRICE: Thank you, Judge.

6 Q. Could you please describe your educational  
7 background and training?

8 A. Sure. I got an undergraduate degree in psychology.  
9 I went on to graduate school. I received a Masters  
10 degree in experimental psychology. From there I  
11 went directly into a PhD program where I obtained  
12 my PhD degree in clinical neuropsychology. From  
13 there I went on to internship training at Boston  
14 University Medical Center. Then, I entered academic  
15 practice at the University of Rochester and then  
16 later, the Medical University of South Carolina.

17 Q. And so, am I correct in saying that's 13 years of  
18 training in your field?

19 A. Yes. Something like that.

20 Q. Okay. Prior to practicing?

21 A. Yes.

22 Q. And do you have any licenses or certifications?

23 A. I have a license that's in an inactive state in New  
24 York State. My South Carolina license has been  
25 continuous since around 1992.

1 Q. And are you licensed to diagnose across the age  
2 spectrum?

3 A. Yes.

4 Q. Okay. At MUSC, which is where you now work. Is that  
5 correct?

6 A. That's correct.

7 Q. Okay. Do you diagnose and treat across the age  
8 spectrum?

9 A. I'm privileged to practice at MUSC in the same  
10 capacity.

11 Q. And what faculty appointments have you held during  
12 your career?

13 A. I worked my way up through the ranks, so I started  
14 as a teaching fellow. I was permitted at the  
15 internship level. I was permitted to senior  
16 instructor. From there I was permitted to assistant  
17 professor, associate professor, and lastly, a full  
18 professor.

19 Q. And at what institutions?

20 A. Well, I started at the University of Rochester  
21 Medical School. I think I left there at the  
22 assistant professor level. At MUSC, I've gone  
23 through the ranks as an associate and then full  
24 professor.

25 Q. Okay. What is the connotation of or what does the



1 rank of professor denote?

2 A. That's the highest level of achievement in a  
3 academic medical setting. It requires international  
4 recognition of your expertise within the field. You  
5 have to have an acclaimed excellence within the  
6 triad of patient care educator and researcher.

7 Q. And how many post-doctoral psychology fellows have  
8 you mentored for a year or more?

9 A. Probably about 16. It sounds like a low number, but  
10 that typically is a year's worth of work on my  
11 part. So, 16 years of mentoring post-doctoral  
12 students.

13 Q. And how many psychology interns have you mentored  
14 for a year or more?

15 A. I've specifically mentored, I'm assigned to a  
16 student per year, so I have had, probably 22  
17 students that I've mentored over the year.  
18 Associated with that, I've probably trained in  
19 excess of 100 students.

20 Q. How many undergraduate medical students, medical  
21 residents, have you trained?

22 A. I don't keep count of that, but countless numbers.

23 Q. Would you say in the hundreds?

24 A. Probably.

25 Q. Is there a professional board or organization that

- 1 certifies your profession?
- 2 A. The state -- my license or my profession?
- 3 Q. Your profession.
- 4 A. Well, there are a couple of different professions,  
5 so there's the International Neuropsychologic  
6 Association. I've been a member of that for  
7 decades. There's the National Academy of  
8 Neuropsychologists and I have a fellow status in  
9 that organization.
- 10 Q. Do you review peer-review -- do you do peer review  
11 for scientific publications?
- 12 A. Yes, I do. I'm involved in the peer review, the  
13 critical review of journal articles that are  
14 submitted for potential publication.
- 15 Q. And have you previously published your work?
- 16 A. Yes.
- 17 Q. How many times have you published in peer-reviewed  
18 scientific publications?
- 19 A. A lot.
- 20 Q. Approximately?
- 21 A. Maybe 40 or 50 articles.
- 22 Q. Do you present scientific research at professional  
23 conferences?
- 24 A. Yes.
- 25 Q. Do you attend continuing medical education

1 lectures?

2 A. Yes.

3 Q. How many patients do you see per year?

4 A. I would guess that, I'd probably say about 500  
5 patients a year.

6 Q. What percentage of your practice is adolescents?

7 A. Currently, it's low, about 5%.

8 Q. Okay. In what context?

9 A. The typical pediatric patient that I see tend to be  
10 for surgeries. We do a lot of epilepsy surgery on  
11 patients that have intractable epilepsy and are  
12 being considered for brain resection and so I'm  
13 involved in the selection process of evaluating  
14 who's going be a good candidate. My job associated  
15 with brain resection is to try and assess the risk  
16 of cognitive impairment following the resection in  
17 parts of the brain that are used to control  
18 intractable epilepsy. That's, then, a group of  
19 patients I see. I also see pediatric patients in  
20 the context of brain tumors often relating to the  
21 preservation of cognitive function following the  
22 treatment of the tumor and lastly, I tend to see  
23 kids that have had brain injuries.

24 Q. And do you administer tests to those patients?

25 A. Yes.

1 Q. Similar to the tests that you administered in this  
2 case?

3 A. Yes. Well, yes and no. So, with the epilepsy  
4 patients, that's often in an operative setting. So,  
5 it is in an interoperative context, but the rest of  
6 the cases tend to be similar to what I did with Mr.  
7 Osborne in an outpatient medical setting.

8 Q. Okay. Have you published in any pediatric  
9 psychology publications?

10 A. Yes. I have.

11 Q. What were those?

12 A. Journals or what topics?

13 A. What topics and then what journals, if you could  
14 tell us, briefly.

15 A. I have a publication of the role of personality and  
16 other factors regarding mother's decisions to  
17 initiate breast-feeding. That's been published in  
18 the Journal of Human Lactation. We have an article  
19 on the neural rehabilitation intervention of brain  
20 injured children exhibiting aggressive behavior  
21 that was published in the archives of Clinical  
22 Neuropsychology. I have another publication on the  
23 effect of recombinant TGF $\alpha$  on human breast milk. I  
24 was doing statistical work on that particular  
25 project. I have a publication on school-age

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1 followup of single dose surfactant in the original  
2 trial surfactant and looking at the developmental  
3 outcome of the kids maybe five years after their  
4 birth. Unless I have a publication in the Journal  
5 of Child Adolescent Psychotherapy regarding the  
6 stress management treatment for acting out of  
7 inpatient adolescents.

8 Q. Have you ever published any research on performance  
9 or symptom validity testing?

10 A. Yeah. We had a publication back in 2001 on the use  
11 of one of the validity measures and it was called  
12 the test of memory and malingering and that was a  
13 validation in a geriatric population and was a  
14 quite popular article. We got an award for it being  
15 one of the 10 most downloaded journal articles over  
16 the last decade and was frequently referenced in  
17 the literature.

18 Q. As a neuropsychologist, you look at human behavior.

19 A. Yes.

20 Q. Is online behavior human behavior?

21 A. It certainly is.

22 Q. As a psychologist who observes and predicts human  
23 behavior, do you believe that cyber behavior is as  
24 important in understanding personality and motives  
25 as physical behavior?

1 A. Perhaps more so.

2 Q. And tell me some of your experience with online or  
3 cyber research. Let's begin in the late 1980s. I  
4 believe that you had an experience with something  
5 called Apex. What's Apex?

6 A. That was -- this was one of these pivotal classes  
7 that one takes. As I think back to all the classes  
8 that I took in college, this one, in particular,  
9 stood out. This was in the 70s, actually. This is  
10 pre-internet, but the name of the class was Apex  
11 Simulated Society and the way that this class  
12 worked is that this was put on by the Environmental  
13 Protection Agency and we as students were subjects  
14 in one of their experiments and we got course  
15 credit, but it was a very interesting project where  
16 the thinking from the Environmental Protection  
17 Agency is people that are in college are going to  
18 take leadership roles in society and so what they  
19 wanted to do was create a virtual society and this  
20 is in the 70s and so that was kind of ahead of its  
21 time. It was very interesting. But every member in  
22 the class took another, an important position in  
23 the community. I ran Dusty Roads cement factory.  
24 There were judges, there were attorneys, there were  
25 environmental protection people, there were various

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1 agencies, city planners and so forth and so as this  
2 class went on over the semester, every week the  
3 group had to get together and discuss decisions  
4 about what they were going to do during the  
5 following year. And so, we all had to fill out work  
6 sheets and then all of this was sent to Washington  
7 to the Environmental Protection Agency where they  
8 entered the data into a giant mainframe computer  
9 and sort of predicted the consequences of our  
10 behavior over the coming year and then every week  
11 we'd get feedback about what happened based on our  
12 decisions and that would trigger another series of  
13 discussions that I would have with my classmates or  
14 assimilated society members and this went on  
15 throughout the semester. Everybody wanted to stay.  
16 There were kinks in the program where the cement  
17 business may go sour and so it's my job to keep the  
18 cement business lucrative and I had to interact  
19 with people. But it was sort of a class that played  
20 out in the virtual and real world. So, that was my  
21 first introduction to cyber, I guess.

22 Q. And that was a very early experience for you in  
23 decision-making and behavior in a virtual realm.

24 A. Yes.

25 Q. Did you -- were you involved in a publication

1       called the Application of Technological Innovations  
2       for neurorehabilitation?

3 A.    Yes.

4 Q.    Did you write that?

5 A.    I did.

6 Q.    Okay. What was the brief descriptor of that?

7 A.    Well, when an individual has brain damage, often  
8       times it can't be repaired. Damage to the central  
9       nervous system is irreversible and I've been a big  
10       proponent of technology compensating for brain-  
11       related deficits so this was an article that was  
12       presented looking at the different kinds of  
13       external compensatory devices that we could use to  
14       augment brain function in cases where there was  
15       brain dysfunction.

16 Q.   And you've been involved in a case involving an  
17       adolescent claiming brain damage when they were  
18       commanding vast cyber games in the virtual world of  
19       Warcraft?

20 A.   There was an interesting legal case I was involved  
21       in. I was asked to comment on an allegation of  
22       brain damage in an individual that had not had any  
23       serious damage to his brain. There was a lot of  
24       symptom production that seemed to be invalid and it  
25       was discovered that this individual was online



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1       commanding vast armies in a virtual network and per  
2       my involvement in that case, I had to learn how to  
3       play the video game so I could comment on it so I  
4       became, to the extent that I could, an expert  
5       player and in doing so I understood the thought  
6       process, the reasoning, the planning, that needed  
7       to go in to be a successful player and so I used  
8       that information to help bring justice to that  
9       case.

10 Q.   Do you give frequent mini lectures on computer and  
11       brain interfacing?

12 A.   Frequently.

13 Q.   Does your daily patient care involve discussions  
14       about the use of the internet and smart technology  
15       to minimize symptoms of brain dysfunction?

16 A.   Yes.

17 Q.   Does your patient care relate to social media at  
18       all? In particular, with some donors?

19 A.   Yes. So, I do all the living renal dinners at MUSC.  
20       Those are people that have failing kidneys and the  
21       option that a person has with failing kidneys is;  
22       to be put on dialysis, to die, to be put on a list  
23       for a cadaver or to get somebody that's willing to  
24       donate a healthy kidney and so what's critical in  
25       those situations is the lack of coercion, because

1       it's sort of a life-and-death situation for the  
2       patient. So, I always have a discussion about  
3       social media. There are some dark sites with organ  
4       transplant. There are some good sites of interest.  
5       Facebook frequently comes up. But that's something  
6       I ask about on a regular basis. I might see four of  
7       those patients per week.

8 Q.   And have you been involved with cyber research with  
9       implantable devices within the brain?

10 A.   Yes. So, I guess yesterday's science fiction is  
11       today's clinical care. As we develop technology we  
12       are putting things in the brain trying to improve  
13       brain function so there are devices that I would  
14       call dumb devices, VP shunts that regulate the  
15       pressure within the brain. If you set it, it's sort  
16       of like a valve that releases pressure if it gets  
17       too high. There are other devices like vagal nerve  
18       stimulator. It's a little electronic device that  
19       you wrap around one of the nerves that goes into  
20       the brain and the body. There are smart devices  
21       which are really kind of interesting. There is one  
22       called neuro pace where we put a wire deep down  
23       into the brain to detect where seizures are coming  
24       from. That signal goes up to an electronic device  
25       embedded within the skull. The chip then makes

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1 decisions about what needs to be done and fires a  
2 signal back down into the brain to try and abort  
3 seizure activity. So, that's the first time we've  
4 had sort of a two-way communication with an  
5 external chip.

6 Q. Have you previously been qualified to give expert  
7 testimony in a judicial proceeding?

8 A. Yes.

9 Q. How many times?

10 A. Numerous times.

11 Q. And what courts in particular? Federal and State  
12 courts?

13 A. Yes.

14 Q. Have you testified as an expert in any cases or  
15 been consulted as an expert in any cases involving  
16 adolescent violent offenders?

17 A. Yes, I have.

18 MS. PRICE: Your Honor, that's all I have. If Mr.  
19 Eppes wants to question Dr. Wagner's qualifications at  
20 all. Otherwise, I'd move that he be declared an expert  
21 in the fields of clinical psychology and  
22 neuropsychology. And, Your Honor, I think we have  
23 demonstrated that he has vast experience in human  
24 behaviors and in technology and the cyber games, in  
25 fact.

1 THE COURT: All right.

2 MR. EPPES: Your Honor, I'd like to address the  
3 cyber games issue at this time.

4 THE COURT: Go ahead.

5 VOIR DIRE of DR. WAGNER by MR. EPPES:

6 Q. Doctor, as an initial matter, I think you've been  
7 here and heard testimony from Lieutenant Pressley  
8 that Mr. Osborne was beat up as a part of a gang  
9 initiation by somebody else. Do you remember that  
10 testimony?

11 A. I was having trouble hearing during some of that,  
12 but I don't -- I didn't hear that.

13 Q. Well, do you remember the woman with blond hair  
14 from the jail?

15 A. Uh-huh.

16 Q. I'll represent to you that she said that Mr.  
17 Osborne had been beaten up in an altercation that  
18 involved a gang ---

19 A. Where his nose was broken?

20 Q. Hmmm?

21 A. Where the nose was broken? Was that the episode?

22 Q. I'm not sure if his nose was broken, but he was  
23 injured and I asked her if he was in a gang and she  
24 said no. Now, one of your conclusions is, if he got  
25 into an urban situation or some other situation

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1       where he could find a peer group, that he would  
2       probably be in a gang. Does that information change  
3       your conclusion at all?

4 A.   No.

5 Q.   Hmmm?

6 A.   No.

7 Q.   Well, let's go backwards a little bit. You say that  
8       you believe him to be an international cyber  
9       criminal. What do you know about international  
10      crime on the internet?

11 A.   Well, I think the definition is; activity, it's  
12      cyber, it's on the Internet and he's been involved  
13      with people that are international. They're people  
14      from Germany and other countries.

15 Q.   Well, he does listen to gangsta rap, right?

16 A.   Yeah.

17 Q.   Is that enough to make him an international cyber  
18      gangster?

19 A.   Listening to rap?

20 Q.   No, just those three things taken together.

21 A.   Well, I think this whole case has been about  
22      international cyber crime.

23 Q.   Exactly what international cyber crime are you  
24      speaking of that has occurred?

25 A.   His -- There's been -- the Rainbow Group has been

1 plotting a mass shooting to occur internationally.

2 Q. How many individuals from the Rainbow Group have  
3 you studied?

4 A. Have I studied?

5 Q. Yes.

6 A. I've gotten a FBI feed on the activity involved.

7 Q. How many of those individuals do you know their  
8 names?

9 A. I don't know any of their names. I know their code  
10 names that they used.

11 Q. And how many of them are you aware have carried out  
12 their single plan to do something on a single day?

13 A. I don't think any of them have carried out the  
14 plan.

15 Q. Point of fact, if you look through the information,  
16 then, Mr. Osborne, the day that he did things,  
17 nobody else was planning to do anything that day  
18 out of that group of cyber criminals of which you  
19 speak. Correct?

20 A. For reasons that I don't understand, Mr. Osborne  
21 did his attack way ahead of schedule and jumped the  
22 gun, so to speak.

23 Q. Sir, is it possible, is it possible that none of  
24 the other people ever had any intention of carrying  
25 out an international Rainbow Day?

1 A. That's possible, but they also said that they were  
2 going to, so it's hard to know.

3 Q. I say that I'm going to lose weight. Is there any  
4 indication that I'm doing that?

5 A. We would have to observe your behavior.

6 Q. Thank you. Have you seen any -- you're familiar  
7 with tor browsers?

8 A. Yes.

9 Q. Are you familiar with Silk Road?

10 A. Yes.

11 Q. And you're familiar with what that was?

12 A. Yes.

13 Q. Please describe what that was.

14 A. The Silk Road was a website in the dark web where  
15 illegal activities took places such as; selling  
16 drugs, weapons, hiring murderers or assassins.

17 Q. The fellow that developed it, it was very much like  
18 eBay for the dark web. Correct?

19 A. That's correct.

20 Q. Did you find any evidence of Mr. Osborne's  
21 involvement with any of the people that were

---

22 utilizing Silk Road for criminal intent?

23 A. I did not.

24 Q. Did you look for any?

25 A. That wasn't my job, but the FBI was looking for it

1       and they didn't provide me with any of that  
2       information.

3 Q.   Are you familiar with the Folk nation?

4 A.   With what?

5 Q.   Folk nation.

6 A.   No.

7 Q.   Are you familiar with the Bloods of the Crypts,  
8       other than anecdotally?

9 A.   Anecdotally.

10 Q.   Okay. If I told you that Folk Nation and the Blood  
11       of the Crypts actually sometimes operated in rural  
12       South Carolina, would you have any knowledge of  
13       that?

14 A.   I do not.

15       THE COURT: I'm going to see if I can expedite  
16 things. I'm going to go ahead and grant your motion to  
17 suppress the use of the term cyber gangster. I do find  
18 that its prejudicial effect would outweigh its probative  
19 value.

20       MR. EPPES: And Your Honor, I'd like to strike  
21 Appendix 4 of Dr. Wagner's report.

22       THE COURT: I'm going to strike that word from the  
23 Appendix.

24       MR. EPPES: And if it's used in the report, you  
25 won't consider it? Is that the way we do this, I guess?



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1 THE COURT: Yes. I won't consider that terminology.

2 MR. EPPES: Thank you, Your Honor.

3 THE COURT: What's your position on -- do you wish  
4 to voir dire further on the expert witness  
5 qualification?

6 MR. EPPES: I do not, Your Honor. Dr. Wagner's --  
7 I'd love to talk to him later about methamphetamine's  
8 affect on rural South Carolina, because that's of  
9 interest to me.

10 THE COURT: I would like to know that, too. Let me  
11 know what you find out. All right. I'm going to, qualify  
12 him as an expert in the field of clinical psychology and  
13 clinical neuropsychology. You may proceed.

14 MS. PRICE: Thank you, Judge.

15 Q. Did you have occasion to examine the juvenile,  
16 Jesse Osborne?

17 A. Yes, I did.

18 Q. And when did you meet with him?

19 A. I met with him on December 27th.

20 Q. Of what year?

21 A. I'm sorry. 2017.

---

22 Q. And where did you meet with him?

23 A. In the juvenile detention center.

24 Q. Okay. How many times?

25 A. I met with him one time.

- 1 Q. For how long?
- 2 A. Probably, about six hours.
- 3 Q. Okay. Did you take a break during that meeting?
- 4 A. He did. I did not.
- 5 Q. And how was it that you had occasion to examine
- 6 juvenile Osborne?
- 7 A. I was asked to do that.
- 8 Q. Okay. You were hired by the State, in fact?
- 9 A. Yes.
- 10 Q. And pursuant to a court order that was agreed to by
- 11 the Defense and the State, you were allowed to
- 12 conduct your examination. Is that right?
- 13 A. That's correct.
- 14 Q. And is the individual you examined in the courtroom
- 15 today?
- 16 A. Yes, he is.
- 17 Q. Can you point him out and describe what he is
- 18 wearing for me, please?
- 19 A. He's sitting right over there with the yellow shirt
- 20 on.
- 21 Q. Following your examination, did you prepare a
- 22 report detailing your examination results?
- 23 A. Yes, I did.
- 24 Q. Okay. I'm going to show you what's been marked as
- 25 State's Exhibit #63-B, after I show Mr. Eppes.

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1 Q. And what is States Exhibit #63-B?

2 A. This is the report that I generated.

3 Q. And is it a true and accurate copy of your report?

4 A. Yes, it is.

5 MS. PRICE: Your Honor, at this time, the State  
6 moves to admit Exhibit #63-B.

7 MR. EPPES: Your Honor, with the understanding that  
8 the Court will not consider the data from Appendix 4 and  
9 the language, cyber gangsta.

10 MS. PRICE: Your Honor, we will stipulate to  
11 Appendix 4 being struck.

12 THE COURT: All right.

13 MR. EPPES: And, Your Honor, when Ms. Price gets to  
14 the point of discussing the SIMS and the SIRS, I would  
15 like to address the Court.

16 THE COURT: All right. I'm going to admit that  
17 subject to cross examination.

18 MS. PRICE: Thank you.

19 (Whereupon, Dr. Wagner's report is entered into  
20 evidence as State's Exhibit #63-B, without objection)

21 Q. Did you review -- well, let me ask you this. Was  
22 juvenile Osborne compliant and cooperative with  
23 your examination?

24 A. Yes, he was.

25 Q. What were your other behavioral observations of

1 juvenile Osborne during your examination?

2 A. Well, when I got there, he was asleep so the guards  
3 woke him up. It was a holiday. I think it was  
4 around Christmas time and he said he typically  
5 sleeps in until 11, but on that particular day he  
6 got up and was a little sleepy in the morning, in  
7 the beginning, but rallied and was unusually polite  
8 and cooperative. He is a big guy. He's taller than  
9 me, 6'3". He was ambulatory, spry, looked pretty  
10 normal to me. He was well-oriented. His mood was  
11 ethymic. He affect was broad.

12 Q. And what do those terms mean for those of us that  
13 would have to look that up in the dictionary?

14 A. I'm sorry. He just appeared normal, emotionally. He  
15 wasn't distraught or, you know, tearful or  
16 otherwise unusual. He seemed to have a very logical  
17 coherent thought process. He was -- I felt he was  
18 quite competent, socially. I didn't appreciate any  
19 kind of anxiety. His eye contact was good. I didn't  
20 see any repetitive or unusual motor behavior.  
21 Periodically, he described voices that he heard,  
22 but in the context of doing that I didn't  
23 appreciate any loose associations or any poor  
24 contact with reality or responding to internal  
25 cues. So, he seemed like a normal, nice kid on the

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1 surface.

2 MS. PRICE: Your Honor, can we briefly stop the  
3 testimony? (Someone left the courtroom) Thank you, Your  
4 Honor.

5 THE COURT: All right.

6 Q. And what was the procedure that you followed when  
7 conducting your examination of juvenile Osborne?  
8 Can you briefly describe it, overall? Briefly.

9 A. Briefly, I interviewed him. We spent some time  
10 talking about the crime that he had committed, his  
11 background information, and then I administered to  
12 some cognitive tests. I administered some  
13 psychological tests.

14 Q. And that was very brief. Thank you. Is that your  
15 normal examination approach?

16 A. Yes, it is.

17 Q. Okay. And did you review any records or materials  
18 as a part of your examination, either before or  
19 after your meeting with juvenile Osborne?

20 A. I reviewed minimal records beforehand. I continued  
21 to review voluminous records after the fact.

---

22 Q. Did you review any reports by other psychiatrists  
23 or psychologists as a part of your examination?

24 A. Yes, I did.

25 Q. And in reviewing those reports and health records,

- 1 did you see any evidence that juvenile Osborne had  
2 any prior mental health or psychiatric issues?
- 3 A. Prior to the time that I saw him?
- 4 Q. Yes.
- 5 A. Yes. There was an incident with the hatchet and  
6 machete that occurred, perhaps, six months earlier.
- 7 Q. Okay.
- 8 A. Maybe more.
- 9 Q. And what did you observe about that?
- 10 A. That he had been evaluated by two psychologists  
11 related to that incident and there was no  
12 psychiatric diagnosis.
- 13 Q. No psychiatric diagnosis was made? No psychiatric  
14 diagnosis was made by either of those individuals?
- 15 A. Correct.
- 16 Q. Was there something called a E-Code in any of their  
17 reports?
- 18 A. I don't remember.
- 19 Q. Okay. Did you observe any evidence, and you have a  
20 lot of experience with this, of developmental  
21 issues in juvenile Osborne when you met with him?
- 22 A. I did not.
- 23 Q. Okay. Did you use any testing tools in conducting  
24 your examination?
- 25 A. Yes.

1 Q. Did you conduct a neurocognitive evaluation first?

2 A. Yes, I did.

3 Q. Okay. And what are cognitive measures?

4 A. Cognitive measures are things that occur in the  
5 brain such as memory reasoning, problem-solving,  
6 intellect, language, perception, function. So,  
7 those are cognitive measures. I administered I.Q.  
8 tests. I also administered, what's called the  
9 Delis-Kaplan test or the D-Kefs. D-K-E-F-S.

10 Q. Can you explain those tests to us?

11 A. The I.Q. test is kind of the gold standard when we  
12 think about I.Q. tests. It measures intellectual  
13 quotient. The D-kefs test specifically designed to  
14 assess the frontal lobe of the brain. This is the  
15 part of the brain that's most responsible for  
16 what's called executive function, planning,  
17 thoughtful behavior.

18 Q. And did you administer something called a TOM?

19 A. I did.

20 Q. And what is that test for?

21 A. That's a test to rule out poor effort in a  
22 cognitive portion of an exam.

23 Q. Did you administer something called a word memory  
24 test?

25 A. I did.

- 1 Q. And what is that test for?
- 2 A. The same thing.
- 3 Q. And can you tell me how he performed on the I.Q.
- 4 test, the WISC-V. Is that right?
- 5 A. Yes.
- 6 Q. Tell me how juvenile Osborne performed on that
- 7 test.
- 8 A. Really, across the board, all the cognitive
- 9 measures were within the average range.
- 10 Q. And you're including the TOM and word memory and
- 11 D-kefs test in that?
- 12 A. Yes.
- 13 Q. And so, he performed average for his age?
- 14 A. Yes.
- 15 Q. So, he is an average 14-year-old, cognitively?
- 16 Well, he was 15 when you administered the test?
- 17 Correct?
- 18 A. That's correct.
- 19 Q. So, he was an average 15-year-old at the time you
- 20 administered the test?
- 21 A. Yes.
- 22 Q. You didn't notice anything that would give you
- 23 concerns about his frontal lobe function?
- 24 A. That's correct.
- 25 Q. Okay. In following your cognitive measures, did you



1 proceed with an additional psychological evaluation  
2 of juvenile Osborne?

3 A. Yes, I did.

4 Q. Okay. And can you explain to me the test --  
5 describe the test that you administered first.

6 A. I administered the personality assessment  
7 inventory, adolescent version. I administered the  
8 SIRS test and I administered the SIMS test. SIRS  
9 stands for Structured Inventory Malingered  
10 Symptomatology. And SIMS stands for Structured  
11 Inventory of Malingered Symptoms.

12 Q. And explain to me how those tests function. What is  
13 their purpose?

14 A. Their purpose is to evaluate over-endorsement of  
15 psychologic subjective psychologic symptoms that  
16 would be most consistent with malingering a  
17 psychiatric disorder.

18 Q. And did you have an indication that juvenile  
19 Osborne may have been over-exaggerating some  
20 symptoms of a psychological disorder?

21 A. Yes.

---

22 Q. Okay. Did you get some indication of that when you  
23 administered the PAIA?

24 A. Yes.

25 Q. Okay. Can you describe for me what the indicia was

1       that you found?

2 A.    I'm sorry?

3 Q.    Tell me what indicated to you or what flagged for  
4       you that there may be an exaggeration of symptoms?

5 A.    On the PAI?

6 Q.    Yes.

7 A.    Under the PAI there were several things. So, the  
8       first thing was an extreme elevation on the  
9       negative impression management scale. That's one of  
10       the validity scales on this particular measure. It  
11       measures the degree to which an individual just  
12       over-endorses lots of psychologic symptoms, some  
13       being indiscriminately. His, the range of what's  
14       considered normal in this particular test is two  
15       standard deviations. His score was way over that  
16       cut-off. In addition, there were extreme multiple  
17       elevations on all or many of the clinical scales  
18       that were arranged completely inconsistent with  
19       what I was observing and the history that I was  
20       able to review on this individual.

21 Q.    So, give me an example of a question, if you can,  
22       that would be hypothetically on the PAIA. I know a  
23       lot of the information on these tests is  
24       proprietary, so we have to be careful about going  
25       through particular questions on this tests, but is

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1       there anything you can think of that is an example  
2       of a question that would be asked and answered  
3       that would skew the test?

4 A.   Sure. For example, on the scale of somatization  
5       disorder, which a hypochondriac would be a delayed  
6       word for somatization. The question might be, do  
7       you frequently go to the doctor because of multiple  
8       health problems related to multiple organ failure  
9       problems and his response may be true. That would  
10      push that scale up and that would be inconsistent  
11      with, for example, the pediatric records that I  
12      reviewed regarding it, so.

13 Q.   So, in juvenile Osborne's case, you saw evidence in  
14       his previous records, things that you reviewed as  
15       part of your preparation for your evaluation that  
16       you saw were completely inconsistent with the  
17       symptoms he was describing in the test that you  
18       administered. Is that a layman's way of explaining  
19       that?

20 A.   Yes.

21 Q.   And so based on the exaggeration -- and would you  
22       say it was grossly exaggerated?

23 A.   Yes.

24 Q.   The gross exaggeration of various psychological  
25       issues and symptoms that you saw on the

1        psychological evaluation test that you administered  
2        to him, what was your decision? To administer  
3        additional testing?

4 A.    Yes.

5 Q.    And so, is that why you administered the SIMS test  
6        and SIRS test?

7 A.    Yes.

8 Q.    And what do those tests accomplish? What is their  
9        purpose?

10 A.   Those tests are specifically designed to detect  
11       symptoms of over-endorsement that would subjective  
12       symptom over-endorsement of psychiatric science  
13       that would be consistent with malingering.

14 Q.   So, they are designed to weed out or highlight  
15       malingering?

16 A.   Yes.

17 Q.   Is that the layman's way of saying that?

18 A.   Yes.

19       MS. PRICE: And Your Honor, at this time I am going  
20 to continue to question him about his results in these  
21 tests unless Mr. Eppes has a motion he intends to make.

22       MR. EPPES: Your Honor, I'd like to discuss the SIMS  
23 and the SIRS tests.

24       THE COURT: I think it's appropriate to do that. I'm  
25 not sure if it's not better for direct testimony ---

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1 MS. PRICE: Sure.

2 THE COURT: --- to elicit what the test was, why he  
3 administered it ---

4 MS. PRICE: --- absolutely. I'm more than happy ---

5 THE COURT: and then let you ---

6 MS. PRICE: --- to do that.

7 THE COURT: How would you prefer to handle it, Mr.  
8 Eppes?

9 MR. EPPES: I have no problem doing it that way. I  
10 thought Ms. Price was telling me she didn't want to do  
11 it that way.

12 MS. PRICE: I defer to the Court.

13 MR. EPPES: Very good.

14 THE COURT: All right. Go ahead.

15 MS. PRICE: Thank you, Your Honor.

16 Q. Dr. Wagner, tell me what the SIMS test and the SIRS  
17 tests showed you.

18 A. Well, let me add the PAI. The PAI, the SIMS and the  
19 SIRS all indicated that he was malingering an ill-  
20 defined psychiatric illness.

21 Q. And why is it important to know whether or not  
22 someone is malingering?

23 A. Because all psychiatric diagnoses rely very heavily  
24 on self-report. So, the Bible for diagnosing  
25 psychopathology is the DSM manual and the DSM

1 manual, category after category, lists a number of  
2 subjective psychologic complaints that would be  
3 most consistent with the diagnosis. There is very  
4 little way to confirm or refute those subjective  
5 complaints. There is an observational component.  
6 Largely, psychiatric diagnoses are based on  
7 subjective report. So, one of the things of most  
8 critical value to rule out is malingering, that  
9 these symptoms that an individual is reporting are  
10 not made up. Otherwise, there's no credibility to  
11 the diagnosis.

12 Q. And are the tests that you administered to  
13 determine whether or not juvenile Osborne was  
14 malingering or feigning symptoms the gold standard  
15 in your field?

16 A. Yes.

17 Q. Are there other tests, symptom validity tests,  
18 which is what these are. Correct?

19 A. Yes.

20 Q. Are there other symptom validity tests that you  
21 could have used in other circumstances, but could  
22 not use in Mr. Osborne's case?

23 A. Yes.

24 Q. And what are those tests and why couldn't you use  
25 those? Why did you have to use the SIRS test and

- 1 the SIMS test?
- 2 A. The other tests that I could have used are tests  
3 that are really in their infancy and not terribly  
4 sophisticated for the particular problem at hand.  
5 Those are tests that are frequently used in the  
6 pediatric population where you have well-meaning  
7 parents, teachers, and patients that all are  
8 reporting various symptoms and the way these tests  
9 work is, you have parents fill out a questionnaire,  
10 you have teachers fill out a questionnaire, you  
11 have the patient fill out a questionnaire and you  
12 kind of look at consistency across those three  
13 measures. I felt this format would be terribly  
14 biased in this particular case, because the  
15 teachers that would be reporting are Mr. Osborne's  
16 former teachers, one or two of them had had been  
17 hurt by the shooting. Everybody had been  
18 psychologically traumatized and I did not feel like  
19 I could get an objective report from teachers.  
20 Similarly, in reading the transcripts of Mr. and  
21 Mrs. Osborne, as well as the grandparents,  
22 everybody tells a different story and there's a lot  
23 of finger-pointing. I just didn't feel that I could  
24 get a reliable estimate from those sources.
- 25 Q. So, you ---

- 1 A. And then, lastly, the questionnaire from the  
2 patient, the adolescent, that doesn't have any  
3 built-in validity measures and so, you can't  
4 compare it to anything other than what was said.
- 5 Q. And you had evidence of a history of deception on  
6 the part of this juvenile. Is that right?
- 7 A. That's correct.
- 8 Q. And, in fact, that's what your early test  
9 indicated, as well, your first test indicated.
- 10 A. That's correct.
- 11 Q. So, when you have subjective observations, you were  
12 looking to get objective input in your evaluation  
13 and so you administered these tests so you could  
14 find the truth?
- 15 A. Yes.
- 16 Q. And you were made aware that Mr. Eppes takes  
17 umbrage with you having used the SIRS and SIMS  
18 tests. Is that right?
- 19 A. I didn't hear you.
- 20 Q. You are aware that Mr. Eppes is making a motion and  
21 saying that he does not believe it was appropriate  
22 for you to administer the SIRS and SIMS tests.
- 23 A. Yes.
- 24 Q. Is that right? And is that because there is some  
25 language in the manual of the SIRS test, in



1 particular, that says this test is designed for use  
2 in 18 years or older age groups?

3 A. Yes. These tests were developed years ago and the  
4 original development of these tests was on an adult  
5 population above the age of 18. So, that is what is  
6 reported in the test manual that was produced so  
7 many years ago.

8 Q. And since that time, have there been studies  
9 validating the use of these tests in adolescent  
10 groups?

11 A. There have been countless studies looking at  
12 validating adult validity tests in the pediatric  
13 population. The studies that have gotten the  
14 greatest press have been performance validity  
15 measures such as the TOM or the word memory test.  
16 Both the TOM and the word, well, into a lesser  
17 extent, the word memory test in their original  
18 manual -- well, scratch that. Both the TOM and the  
19 word memory test, in their original manual said  
20 this is for the adult population, 18 and older.  
21 Many people have been applying that to the  
22 pediatric population. There's been this growing  
23 literature in the published scientific journals  
24 that have indicated that yes indeed we can take  
25 these adult tests and use them reliably in

1       pediatric patient populations with certain caveats.

2 Q.   And what would those caveats be?

3 A.   Not to use the tests with very young children, say  
4       less than five years old, not to use the test with  
5       individuals that are grossly psychotic, not to use  
6       the test in situations where the reading level is  
7       below third or fourth grade level, depending on the  
8       test.

9 Q.   What about symptom validity tests? What is the  
10       current status of use of symptom validity tests on  
11       adolescent populations?

12 A.   That literature has lagged behind. Those studies  
13       are very difficult to do. There are several studies  
14       that have been published indicating that just like  
15       the performance validity measures, you can use  
16       symptom validity measures in the pediatric  
17       population with the same caveats that I mentioned  
18       earlier.

19 Q.   Are there any studies that you're aware of that  
20       say, don't use the symptom validity tests in the  
21       adolescent population?

22 A.   I know of no study that's ever been published  
23       indicating that.

24 Q.   Are you aware of a study that was done by the  
25       person who created the SIRS test that validates its

- 1 use in adolescent populations?
- 2 A. Yes. So, that was Rogers.
- 3 Q. Rogers? And he's the individual that developed the
- 4 SIRS test?
- 5 A. That's correct.
- 6 Q. And did he write an article for the Journal of
- 7 Personality Assessment?
- 8 A. Yes, he did.
- 9 Q. Okay. And is that a well-respected journal in your
- 10 view?
- 11 A. Yes, it is.
- 12 Q. And I'm going to show you was been marked as
- 13 State's Exhibit #61. And can you tell me the title
- 14 of that article?
- 15 A. This is the Rogers' article that we were just
- 16 talking about. There are a couple other authors.
- 17 Rogers was the lead author. The title is, "Feigning
- 18 psychopathology among adolescent offenders,
- 19 Validation of the SIMS, the M-PIA and SIRS."
- 20 Q. And I have a quick copy if Mr. Eppes does not mind
- 21 if I provide it to the Court.
- 22 MR. EPPES: I don't.
- 23 A. And again, the lead author of the article developed
- 24 the test in the first place?
- 25 A. Yes.

1 Q. And in this article, what does he say?

2 A. He went through some rather elaborate statistics.

3 This was a well-designed study, kind of a standard  
4 of care, things seen in literature nowadays. In his  
5 conclusion is that with appropriate cautions, you  
6 can use this measure in adolescent population.

7 Q. Are you aware if your peers have been, since that  
8 study was released, or even before, I guess, using  
9 these tests in adolescent populations cautiously?

10 A. Many people do, yes.

11 Q. And what is the safety check on using these tests?  
12 Is there a cutoff score? And if so, can you explain  
13 what a cutoff score is to the Court?

14 Q. Sure. So, a cutoff score is, if you score below a  
15 certain score there is no indication of feigning a  
16 psychiatric condition. If you score above a cutoff  
17 score, there is indication of feigning psychiatric  
18 disorder. So, the cutoff score is kind of below or  
19 above the scale. The second part of your question  
20 was...

21 Q. To explain the cutoff score and how that operates  
22 as a check in these tests.

23 Q. Yes. The cutoff score indicates whether you have a  
24 positive or negative finding for malingering a  
25 psychiatric disorder.

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1 Q. And so, in your testing of juvenile Osborne, what  
2 was his cutoff score?

3 A. His cutoff score -- the cutoff score for the SIMS  
4 is 14.5.

5 Q. And what was his score?

6 A. His actual score was 44. So, it was way over the  
7 cutoff score. Oh, the second part of your question  
8 was, so, how does this relate to the validity and  
9 the cautions that you might use.

10 Q. Yes.

11 A. So, the literature suggests using caution with just  
12 sort of not a lot of literature, but to be careful  
13 with the cutoff scores. So, in the literature by  
14 Rogers and others that have looked at symptom  
15 validity they said the bottom line is, they say,  
16 yeah, it looks like we can probably use these  
17 measures with adolescents, but let's be careful,  
18 and especially around cutoff scores. So, if we get  
19 a score that's sort of borderline cutoff, be  
20 careful with that. Don't over-interpret that. So,  
21 the message to me is, be conservative. So, with the  
22 cutoff score of 14.5, if I get a score of 15,  
23 consider all of the other possibilities. That was  
24 not the case in this particular individual. So, a  
25 score of 44 is through the roof. It's an extreme

1 elevation.

2 Q. And we've talked about the SIRS. Let me address the  
3 SIMS with you. Are you familiar with the language  
4 in that manual?

5 A. Yes.

6 Q. And is that manual online? Or you have an online  
7 copy of the manual. Is that right?

8 A. Yes, I do.

9 Q. And in that manual, do you know what reading level  
10 is required for usage of that test?

11 A. I think it's a fourth grade reading level.

12 Q. Fifth grade, possibly?

13 A. Yes. It could be.

14 Q. I think there was testimony that juvenile Osborne  
15 has a reading level commensurate with his grade  
16 yesterday, by Dr. Atkinson.

17 A. Yes.

18 Q. So, he would have had an eighth grade reading  
19 level.

20 A. Yes.

21 Q. So, many grades over the warning in the SIMS  
22 manual. And there is another item and it says,  
23 although use of the SIMS has been examined in one  
24 study of court-referred adolescents, Rogers finds,  
25 and Sewell, that's the study we just discussed. Is

- 1       that right?
- 2 A.    Yes.
- 3 Q.    Further research is needed prior to the widespread
- 4       clinical use of the SIMS with adolescent or child
- 5       populations. Does that say, don't use this with
- 6       adolescent or child populations?
- 7 A.    No, it does not say that. What it says is, exercise
- 8       caution, be thoughtful, don't over-interpret. You
- 9       know, these are the cutoffs, use good common sense.
- 10 Q.   And did you exercise judgment?
- 11 A.    Yes.
- 12 Q.    Did you use your caution, or did you put in every
- 13       cautionary tool that you have to bear?
- 14 A.    Yeah. Particularly, in this case given the
- 15       consequences.
- 16 Q.    And you had no concerns about your results based on
- 17       a grossly exaggerated score that Mr. Osborne had on
- 18       the test. Is that right?
- 19 A.    Yes. Correct.
- 20 Q.    So, the parameters that the author had set in
- 21       place, you followed those parameters ---
- 22 A.    Yes.
- 23 Q.    --- when using this test with juvenile Osborne.
- 24 A.    Yes.
- 25 Q.    After Mr. Eppes' raised the issue of whether or not

1       these tests should be used with adolescents, did  
2       you contact some of your associates, some of your  
3       colleagues, and ask them a hypothetical question or  
4       just tell them the situation that you were  
5       presented with and ask if they agreed with your  
6       usage of the SIMS and SIRS tests?

7 A.   Well, even before that, I searched the literature  
8       and had looked at that issue, in particular. But to  
9       answer your question, yes.

10 Q.   Okay. And then you wrote a letter to some of your  
11       colleagues.

12 A.   Yes.

13 Q.   All right.

14               (Ms. Price shows document to Mr. Eppes.)

15       MR. EPPES: I don't need to see it right now.

16       MS. PRICE: All right. Thank you.

17 Q.   I'm presenting you State's Exhibit #60. Are you  
18       familiar with that?

19 A.   Yes.

20 Q.   And what is that?

21 A.   That's a letter that I sent out to a couple of  
22       colleagues.

23       MS. PRICE: And I'm going to pass up a copy to the  
24 Court if Mr. Eppes has no objection.

25       MR. EPPES: Your Honor, I've talked to the State



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1 concerning these. As I mentioned to you before Court, I  
2 was given these late last night. I feel like they were  
3 in the prosecution's hands a couple days before. I know  
4 it's six-and-a-half or half a dozen of the other, but in  
5 the throes of a trial, this sort of thing gives me pause  
6 and I just want to note that for the record that I  
7 didn't get it until last night, although the State had  
8 it a couple of days ago.

9 THE COURT: All right. Thank you.

10 (Ms. Price gives the Court a document)

11 Q. Dr. Wagner, can you tell me -- go ahead and read  
12 your letter to your colleagues, please.

13 THE COURT: I can read. I don't need him to read it  
14 for me.

15 MS. PRICE: You don't need it read? Okay, thank you,  
16 Judge.

17 Q. And you had two colleagues who agreed with your  
18 assessment. Is that right?

19 A. Yes.

20 Q. Okay. And did either of them express concerns about  
21 the manner in which you approached juvenile  
22 Osborne's testing?

23 A. No.

24 Q. Yesterday, I also introduced an exhibit that is a  
25 article with a table in it. State's Exhibit #53 and

- 1 I asked Dr. Atkinson to look at a table in this  
2 exhibit and you may recall that Mr. Eppes jumped up  
3 and said, no, this only applies to performance  
4 tests. This doesn't apply to symptom validity  
5 tests. You've read this article, have you not?  
6 A. I have.  
7 Q. Tell me what that table indicates on page 1013.  
8 A. This, as I told you earlier, before or in the  
9 process ---  
10 Q. Wait a minute, Dr. Wagner. I'm going to provide the  
11 Court with a copy of that, as well.  
12 MS. PRICE: Page 1013, Your Honor, at the top of the  
13 page.  
14 MR. EPPES: Is that copy highlighted?  
15 MS. PRICE: No, sir.  
16 A. So, this is a survey of psychologists,  
17 neuropsychologists, about practice patterns, the  
18 way they practice and their usage of validity tests  
19 in patient populations that they evaluate. Table 12  
20 is a part of the survey results. Table 12, the  
21 title of it is, The Necessity of Validity Tests  
22 During Assessments in Various Settings. And so, the  
23 questionnaire that had been circulated to 282  
24 psychologists that participated in this survey, you  
25 had to check one of five boxes and the question

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1       that was being addressed is the necessity of using  
2       validity tests in various settings and of  
3       particular interest as it relates to this case is  
4       the use of validity tests in prison or juvenile  
5       detention centers. So, of the 288 respondents,  
6       71.3% said it would be mandatory to use validity  
7       tests and another 24.4% said it would be desirable  
8       to use validity tests, adding that together is  
9       95.7% of the sample of 288 individual psychologists  
10      that were surveyed said that it is either desirable  
11      or mandatory.

12 Q.   And it is not just exclusively performance validity  
13       tests that are discussed in this article. Is that  
14       right?

15 A.   That's right.

16 Q.   So, symptom validity testing is also discussed and  
17       this table is pertaining to both symptom and  
18       performance validity testing. Is that correct?

19 A.   That's correct. So, the respondents felt that you,  
20       in, I think, one of the other tables, that you  
21       should include one performance, at least one  
22       performance validity measure, one symptom validity  
23       measure. Both are of critical importance in these  
24       kinds of evaluations.

25 Q.   And the tests that you used are the gold standard?

- 1 A. Yes.
- 2 Q. And what is the gold standard?
- 3 A. The SIRS.
- 4 Q. What does that mean, the gold standard?
- 5 A. Oh, I'm sorry. So, it means that's the best test in  
6 your arsenal to use to assess the particular  
7 problem.
- 8 Q. Okay. And you were precluded from using some other  
9 tests in this situation due to the external factors  
10 at play. Is that right?
- 11 A. That's correct.
- 12 Q. Okay. And we've been through publications and peer  
13 reviews of your decision and both reviews of your  
14 technique deemed it appropriate. Is that right?
- 15 A. That's correct.
- 16 Q. And a study and 20 years of application have said  
17 that this application is appropriate. Is that  
18 right?
- 19 A. That's correct.
- 20 Q. And you mentioned quality control procedures. The  
21 score that you were -- had as the cutoff score put  
22 into place, guided you as a quality control  
23 measure. Is that right?
- 24 A. That's correct.
- 25 Q. Okay. And you followed the standard consistently

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1 and you didn't deviate from the application of SIRS  
2 and SIMS as you have done in other instances in the  
3 past?

4 A. Yes. And following the protocol.

5 Q. Okay.

6 MS. PRICE: Your Honor, I believe that's all I have  
7 for Dr. Wagner on the administration of the tests at  
8 this time.

9 THE COURT: All right.

10 MR. EPPES: I won't be long.

11 THE COURT: Okay. All right.

12 EXAMINATION

13 BY MR. EPPS:

14 Q. That last article that you got, sir.

15 A. Yes.

16 Q. Is there anything in it about the SIMS test or the  
17 SIRS test, specifically? I understand that...

18 A. No.

19 Q. So, they didn't quiz anybody about whether that  
20 should be used on adolescent jail populations?

21 A. I'm sorry?

22 Q. They didn't ask a survey question about whether the  
23 SIMS or the SIRS should be used.

24 A. They were asking what tests are typically used. In  
25 another test they write the frequency of the tests

1       that are used and the SIRS and the SIMS did not  
2       come up in the list. The other tests that we had  
3       mentioned that would not be applicable in this  
4       situation were very commonly used by child  
5       psychologists.

6 Q.   The tests that are used for juveniles that are not  
7       applicable to this situation are mentioned in that,  
8       but the SIRS and SIMS were not mentioned by the  
9       250-something practitioners.

10 A.   That's correct.

11 Q.   And, in point of fact, it says that the symptom  
12       validity test, they recommended that one be used.  
13       Is it PAI? Is that not a symptom validity test? Did  
14       I get it wrong?

15 A.   You got it wrong.

16 Q.   Okay. What is it?

17 A.   PAI stands for personality assessment inventory,  
18       but within that -- I guess you got it partially  
19       wrong. Within the PAI there are validity measures.

20 Q.   There are symptom validity measures?

21 A.   Yes.

22 Q.   And Mr. Osborne did not do well on those.

23 A.   That's correct.

24 Q.   And is it fair to say that if the SIMS and SIRS  
25       tests were excluded from your report, it wouldn't

- 1 change your conclusions a whit.
- 2 A. It would weaken my conclusions.
- 3 Q. It would weaken them, but it wouldn't change them.
- 4 A. Probably not. Because of the totality of other
- 5 information with inconsistencies and observing
- 6 things that he subjectively reports that are not
- 7 observed.
- 8 Q. Yes, sir. And if I represented to you that Dr.
- 9 Rogers is still of the opinion that the SIRS test,
- 10 Dr. Rogers the developer of the SIRS test, is still
- 11 of the opinion that that test should not be used in
- 12 this as "the gold standard", would have any
- 13 information contrary to that other than the article
- 14 that you've mentioned?
- 15 A. I would suggest that I would suspect that Dr.
- 16 Rogers would not endorse the blanket use of this
- 17 measure by anybody and everybody without the
- 18 cautions that he advised.
- 19 Q. And without knowing a lot about it. Correct?
- 20 A. Without?
- 21 Q. Without knowing a lot about the situation.
- 22 A. Yes.
- 23 Q. So, it might be that I could send a letter to Dr.
- 24 Rogers and get a response that said, "Oh, no,
- 25 don't use that." Correct?

1 A. I doubt he would say that, but yeah.

2 Q. But Dr. Rogers sells a book for \$100 online and a  
3 series of testing materials for \$400.00 online,  
4 both the old one, the SIRS-1 and the SIRS-2, they  
5 both say do not use these tests on juveniles  
6 because there's not enough studies to know for sure  
7 if they are appropriate.

8 A. He is not endorsing the indiscriminate use of this  
9 test for anybody and everybody. It's a legal  
10 responsibility and so without ample validity tests,  
11 you just don't want people that have minimal  
12 training, maybe not even in the field, to be using  
13 these measures and feeling great confidence. But I  
14 would suggest that in the hands of a skilled  
15 clinician who's knowledgeable about the literature  
16 on the topic, there are no problems using this  
17 measure in this age group.

18 Q. So, psychology is a developing field and you feel  
19 comfortable using the SIRS test?

20 A. I'm sorry?

21 Q. Psychology is a developing field and you felt  
22 comfortable using the SIRS test on Mr. Osborne?

23 A. I considered the pros and cons of using this test  
24 in depth and based on my decades of experience, I  
25 felt that it was the most appropriate measure and I



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1       also felt that I had ample scientific as well as  
2       peer support in using this measure and it was an  
3       appropriate measure to use.

4 Q.   And that would be the same for the SIMS test?

5 A.   Yes.

6       MR. EPPES: Your Honor, that's all I have.

7       THE COURT: All right. I'm assuming that you're  
8       renewing your objection?

9       MR. EPPES: I am renewing my objection, Your Honor.

10       THE COURT: All right. I've listened carefully to  
11       the testimony on that. Initially, my observation would  
12       be that the use of the SIMS and SIRS test would be  
13       cumulative at this point as the initial indication of  
14       malingered occurred in the context of the PAI test. I'm  
15       also aware that the original author of the test, at the  
16       time it was developed, indicated he did not believe it  
17       was appropriate for adolescents. Apparently, he's  
18       reconsidered that position at this time and may be in  
19       the process of redeveloping his opinion on that. I am  
20       not going to exclude the test, but I will provide that I  
21       will give the test results such weight as I deem  
22       appropriate. And that will be my ruling on that issue.

23       MS. PRICE: Thank you, Your Honor.

24       THE COURT: You may proceed.

25 Q.   Now, let's discuss your diagnostic opinions ---

1 MR. EPPES: Your Honor?

2 THE COURT: Yes, sir?

3 MR. EPPES: Based upon what's gone on today, I  
4 cannot imagine Ms. Price is going to be quick and it's  
5 one hour and 25 minutes since we began and I'd ask that  
6 we take a break.

7 THE COURT: How long will the remainder of your  
8 direct take, Ms. Price?

9 MS. PRICE: Judge, I really don't think -- well, I  
10 can say 30 minutes, maybe.

11 THE COURT: All right. Let's take a break, then. Be  
12 back at ten 'till four.

13 DR. WAGNER: May I be excused?

14 THE COURT: Yes. You are not to talk to anyone from  
15 the solicitor's office while on break.

16 DR. WAGNER: Sir?

17 THE COURT: Just don't talk with anyone from the  
18 solicitor's office.

19 DR. WAGNER: Yes, sir.

20 (Brief break)

21 THE COURT: We are back on the record in the case of  
22 State v. Osborne. I believe Dr. Wagner is testifying and  
23 we are still in the direct testimony, if I'm not  
24 mistaken. Ms. Price, you may continue.

25 MS. PRICE: Thank you, Your Honor. I had just

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1 finished questioning Dr. Wagner about the use of the  
2 psychometric tests in this case.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. PRICE:

5 Q. Now, I'm going to ask you, Dr. Wagner, what were  
6 your diagnostic opinions about juvenile Osborne  
7 following your evaluation?

8 A. I have five opinions. So, the first opinion was  
9 that he is of average intellectual ability. I did  
10 not feel there was any evidence of brain  
11 dysfunction. I felt he was developmentally at his  
12 expected age in terms of cognitive function. The  
13 second opinion was that there were no signs of  
14 psychotic behavior, that he did not exhibit any  
15 gross psychopathology. My third opinion was that he  
16 had a diagnosis most consistent with conduct  
17 disorder, adolescent onset type severe and that he  
18 had developing, that he had features of a  
19 developing antisocial behavior with the caveat that  
20 that diagnosis cannot be made in that form until  
21 age 18 and then I had opinions about the Kent  
22 criteria, and lastly, the cyber, whatever the word  
23 we are going to use for gangster.

24 Q. We aren't. That opinion has been struck from the  
25 testimony.

1 A. Okay.

2 Q. So, what is your opinion with regard to  
3 malingering?

4 A. I felt that there was very strong evidence of  
5 malingering of a psychiatric -- an ill-defined  
6 psychiatric condition.

7 Q. And this has not been addressed yet. Did juvenile  
8 Osborne report some symptoms of psychosis?

9 A. Yes, he did.

10 Q. What were some of those things that he reported?

11 A. Mostly voices.

12 Q. And did you see any evidence that he was responding  
13 to internal stimuli?

14 A. No.

15 Q. And your tests for malingering showed that he, in  
16 fact, was malingering those symptoms?

17 A. That, and many other conditions.

18 Q. And it would be fair to say that he was grossly  
19 exaggerating many conditions. Is that right?

20 A. That is correct.

21 Q. Okay. Do you have an opinion as to why he would be  
22 doing that?

23 A. Well, the most obvious reason would be because of  
24 the potential secondary gain issues in this  
25 situation as it relates to sentencing.

## DIRECT EXAMINATION OF DR. MARK WAGNER BY MS. PRICE

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1 Q. And by that, do you mean if he's found to have some  
2 sort of diagnosis that would explain his behavior,  
3 he might not be either waived up to adult court or  
4 his sentencing may be lessened?

5 A. Correct.

6 Q. And did you hear testimony that he was doing  
7 internet searches about specific things like;  
8 schizophrenia, autism, major depression with  
9 psychotic features?

10 A. I heard that and I read that.

11 Q. Do you believe that he was trying to emulate those  
12 behaviors in an attempt to manipulate your testing?

13 A. This possible.

14 MR. EPPES: Objection, Your Honor. Those searches  
15 were all after Dr. Wagner's examination. I don't see how  
16 they can be implied to have affected my client's conduct  
17 in that examination.

18 MS. PRICE: I'll re-phrase.

19 THE COURT: Thank you.

20 Q. Do you believe his internet searches are a  
21 continued pattern of an attempt to manipulate his  
22 sentencing?

23 A. That's possible.

24 Q. What is your opinion about the experiences that  
25 other examiners who came before you had with

1 juvenile Osborne?

2 A. I think they both sort of suggested the same thing  
3 with various degrees of assertion and then topic.

4 Q. What would that be?

5 A. Of malingering or not giving best effort in that  
6 spectrum.

7 Q. And in your report, did you specifically address  
8 the factors set forth in Kent versus the United  
9 States?

10 A. Yes. I reviewed those.

11 Q. And what is your opinion as to the first criteria,  
12 the seriousness of the alleged offense as to  
13 community and whether protection of the community  
14 requires waiver to general sessions court?

15 A. Give me just a second. (Looks through document) The  
16 seriousness of the alleged offense to the community  
17 and whether protection of the community requires a  
18 waiver. I thought that was totally an issue in this  
19 particular case. He had shot his father. He was  
20 trying to kill 150 students, if he was lucky, et  
21 cetera, et cetera.

22 Q. And what about the second criteria? Did you find,  
23 and you have been in court this week, as well, and  
24 so you now have additional information, but what's  
25 your opinion as to whether this crime was conducted

- 1 in a violent, premeditated, or willful manner?
- 2 A. Well, it was clearly violent and premeditated, by
- 3 his account, up to 2 years and clearly documented
- 4 within the past few months leading up to the crime.
- 5 Q. Did you find that he was pressured by a peer group
- 6 into doing this act?
- 7 A. I didn't feel that was the case. I -- almost the
- 8 reverse.
- 9 Q. And what do you mean by that?
- 10 A. Perhaps he was pressuring others to join him.
- 11 Q. Are you basing your opinion on the internet
- 12 exchanges that you're able to review?
- 13 A. Yes.
- 14 Q. And other evidences of behavior, for example,
- 15 perhaps, making bombs?
- 16 A. Yes.
- 17 Q. And teaching others how to make bombs?
- 18 A. Yes.
- 19 Q. Sharing that information so that others could
- 20 potentially commit the same heinous act that he's
- 21 committed?
- 22 A. On the internet, yes.
- 23 Q. Okay. Looking at -- we are going to skip three
- 24 through five. Looking at the sixth criterion, what
- 25 is your overall opinion about the sophistication

1 and maturity of juvenile Osborne as determined by  
2 his home environmental situation, emotional  
3 attitude, and pattern of living?

4 A. I think that that's reasonable. I think he had a  
5 relatively stable home environment. He used to have  
6 two parents that, by some accounts, were very  
7 supportive and loving. There's no, I mean there's  
8 mixed messages about alcohol use, but overall, I  
9 felt that he met the criteria.

10 Q. And did you see any evidence that he is  
11 unsophisticated or immature?

12 A. I did not. I saw the reverse.

13 Q. What were some indicators of his level of  
14 sophistication to you?

15 A. His savviness surrounding computer and internet  
16 usage.

17 Q. Including, perhaps, accessing the dark web?

18 A. Yes.

19 Q. Would you say that is a savvy and sophisticated  
20 thing?

21 MR. EPPES: Your Honor, I object to that. There's no  
22 evidence that he's ever ---

23 MS. PRICE: He downloaded the dark web browser.

24 MR. EPPES: He downloaded the tor browser. I've  
25 downloaded the tor browser and I'm surely not



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1 sophisticated about it. There's no evidence that he's  
2 ever used the tor browser for any purpose, which is they  
3 way that they imply he was getting on the dark web.

4 MS. PRICE: Your Honor, he also mentioned the  
5 basement tapes, which are on the dark web and so there's  
6 evidence ---

7 MR. EPPES: Your Honor, the basement tapes are not  
8 on his phone.

9 THE COURT: All right. I'm going to sustain the  
10 objection. Thank you.

11 MS. PRICE: Sure, Your Honor. I'll move on.

12 Q. What other indications do you have of sophisticated  
13 behavior by this juvenile?

14 A. The planning surrounding this was elaborate. He  
15 knew the response times of the police, how long it  
16 would take the SWAT team to set up, the school  
17 schedule, he was keenly aware of that, other things  
18 like that.

19 Q. He said in his Instagrams that this had been two  
20 years in the making. Is that right?

21 A. That's one of the things that he said, yes.

22 Q. Okay. And you also heard testimony that both his  
23 mother and grandmother believed that he called DSS  
24 at some point in time. Is that right?

25 A. That's what I heard.

1 Q. Is it possible that he has set up this defense of  
2 his father being some ogre or ---

3 MR. EPPES: Objection, Your Honor ---

4 MS. PRICE: Your Honor, he's an expert. I can ask  
5 his opinion on this.

6 MR. EPPES: Your Honor, I ---

7 THE COURT: I think there has to be some factual  
8 basis for the question and this is completely  
9 speculative. I'm going to sustain the objection.

10 MR. EPPES: Thank you.

11 MS. PRICE: Thank you, Your Honor.

12 Q. Tell me what your opinion is as to juvenile  
13 Osborne's emotional attitude with regard to this  
14 crime? Have you been in court this week and been  
15 able to observe his responses?

16 A. I have. I have seen his mother in tears and I've  
17 seen Mr. Osborne sort of nonchalant, smiling,  
18 seemingly uninvolved, emotionally.

19 Q. What's your opinion about whether the public would  
20 be adequately protected if Mr. Osborne were to be  
21 released or to remain in juvenile court?

22 Q. I think it would be a danger to the public if he  
23 were released.

24 Q. Why is that?

25 A. He's said that he would do it again. He said that

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- 1 if he doesn't get fixed, he would commit the crime  
2 again. He told me that he frequently enjoys  
3 thinking about killing other people, even up to the  
4 point that I interviewed him. I think that  
5 represents a serious a threat to the community.
- 6 Q. And when he was talking to you about his crime  
7 during your evaluation, how did he behave?
- 8 A. Very nonchalant about the whole thing.
- 9 Q. Did he talk to you about other motivators or the way he  
10 feels about the victims in this case?
- 11 A. I saw no evidence of any kind of remorse.
- 12 Q. And what is your belief as to whether not Jesse Osborne  
13 could be rehabilitated?
- 14 A. I feel that his prognosis is extremely guarded for  
15 rehabilitation. I believe that he has a condition that's  
16 very serious, it's an extreme outlier and the potential  
17 to correct this with the therapies we have available  
18 today, I think it's not likely going to be successful.
- 19 Q. So, are you of the belief that there is treatment that  
20 is currently in existence that would be able to  
21 rehabilitate this juvenile?
- 22 A. I do not think that that's -- I don't think that we have  
23 that sophistication at this point in time.
- 24 Q. And do you have experience in developing revolutionary  
25 therapies?

1 A. Yes.

2 Q. And so, would you know if something existed that was on  
3 the horizon?

4 A. In academic medicine, we're typically at the forefront  
5 of treatments that are new, novel, promising. Some of  
6 them pan out to be successful, some don't. Often, this  
7 kind of testing occurs in a academic medical setting, so  
8 yes, I'm at the forefront of technology and therapies.

9 Q. And what's your overall opinion on the waiver decision  
10 that the Court is making?

11 A. I think he should be tried as an adult.

12 Q. And why?

13 A. Because I think he meets all the Kent criteria.

14 Q. And do you believe he is a danger to society?

15 A. Yes.

16 Q. And you believe that no treatment available at this  
17 point in time would be able to rehabilitate him?

18 A. Unfortunately, not.

19 Q. Thank you. Please answer any questions that Mr. Epps may  
20 have for you at this time.

21 CROSS EXAMINATION

22 BY MR. EPPES:

23 Q. Dr. Wagner, since nobody else brought this out, you are  
24 not related to the Solicitor, are you?

25 A. I am not.

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES

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1 Q. I want to start with that outlier comment. When you said  
2 he was an outlier, I think, and tell me if I'm wrong,  
3 but you were talking about an outlier as far as the  
4 diagnosis that you have under DSM-V. Correct? The  
5 conduct disorder.

6 A. I'm not sure I know what you're talking about.

7 Q. You said that based on your analysis of him, you only  
8 have a guarded picture of his possibility of  
9 rehabilitation. Correct?

10 A. Yes.

11 Q. And you said because he is an outlier.

12 A. Yes.

13 Q. And I thought you were referring to conduct disorder,  
14 but if you weren't, tell me what you were referring to.

15 A. Oh, just in general. I think somebody that shoots their  
16 father four times in the back of the head and then goes  
17 off to do a mass shooting at a school, is not what you  
18 would refer to as your mainstream teenager.

19 Q. Okay. And I want to ask you about that, but first, you  
20 keep saying four times in the back of the head. He shot  
21 his father once in the back of the head and four times  
22 in his body.

23 A. I stand corrected. That's right.

24 Q. And that's in -- I was actually going to ask you on  
25 another point. That is in your report. It's just as

- 1       inaccurate in your report. Correct?
- 2 A.   That's correct. I think he told me that. I think he told
- 3       me he shot his father three times in the back of the
- 4       head. I can't remember. But you are correct. It's three
- 5       in the back and one in the head.
- 6 Q.   And that inaccurate information, he clearly would not
- 7       have given that to you trying to convince you that he
- 8       ought to be treated as a juvenile. Correct?
- 9 A.   He knew that I knew that. I think when I introduced that
- 10      topic, I said, "So, I understand you are in juvenile
- 11      because of shooting your father and s school shooting,
- 12      so...
- 13 Q.   And the statement that I believe he volunteered, I think
- 14      you mentioned, he said if he doesn't get fixed he might
- 15      do it again. He said that to you. Right?
- 16 A.   Yes.
- 17 Q.   Now, does that imply to you somebody that's trying to
- 18      convince you that is crazy and shouldn't be in court?
- 19 A.   That would be one explanation. The other explanation
- 20      would be that that's an effort to get out of a crime
- 21      that he committed.
- 22 Q.   It could be, as he sits right now, does not know why he
- 23      did that. Could that be the reason he said that to you?
- 24 A.   There are numerous explanations of why he might have
- 25      said that.

- 1 Q. Is that one of them?
- 2 A. That's one of them.
- 3 Q. Thank you. What did you do, first, in this case?
- 4 A. In terms of the assessment?
- 5 Q. What did you do first, in terms of, you got retained on
- 6 a Thursday night. Who did you meet with first, who did
- 7 you see first?
- 8 A. My first contact regarding this case, I believe, was Dr.
- 9 Ballenger. He had contacted me and asked if I might be
- 10 interested in becoming involved in the case with him.
- 11 Q. Did you see any preliminary reports from him before you
- 12 began your work?
- 13 A. Yes. I saw one draft of his interview with Mr. Osborne.
- 14 Q. Okay. So, you saw his first draft.
- 15 A. Not of his report. Of his interview with him.
- 16 Q. Okay. And then, did you meet with the State?
- 17 A. I met with -- we had a meeting together with the
- 18 Solicitor, Dr. Ballenger, and myself.
- 19 Q. And at that meeting, did y'all do anything other than
- 20 talk about the case?
- 21 A. No. All we did was talk about the case.
- 22 Q. Did you watch the videos or look at any of the internet
- 23 information or look at any police reports?
- 24 A. Yes. The main thing that we did in that meeting was, we
- 25 talked about the case and relevant to that, we watched

1 the confession.

2 Q. But you didn't watch the video of the incident?

3 A. You know, I think we did see that.

4 (Mr. Eppes shows document to Ms. Price)

5 MS. PRICE: It's already in evidence as a part of his CV.

6 MR. EPPES: I know. I just like doing it this way.

7 MS. PRICE: Yeah. The State already admitted it.

8 MR. EPPES: Your Honor, this is Exhibit #8, which Doctor,  
9 I will represent to you that it is something on the back of  
10 your CV.

11 THE COURT: All right. Since it's already in evidence, I  
12 assume there is no objection to it being re-introduced?

13 MS. PRICE: Your Honor, no objection. I'm sorry.

14 THE COURT: That's all right.

15 MR. EPPES: Thank you, Your Honor.

16 (Whereupon, a portion of Dr. Wagner's CV is entered into  
17 evidence as Defense Exhibit #8, without objection)

18 Q. So, that's your fee schedule. Correct?

19 A. That's correct.

20 Q. And that fee schedule, it says your court time is \$500  
21 an hour. Correct?

22 A. Yes.

23 Q. So, you've been sitting here all week?

24 A. Yes.

25 Q. At \$500 an hour?



## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES

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- 1 A. Yes.
- 2 Q. Do you charge for breaks?
- 3 A. Yes.
- 4 Q. Do you charge for night?
- 5 A. No.
- 6 Q. And you charge for travel, \$300.00 an hour.
- 7 A. Yes.
- 8 Q. So, give or take right now, as you're standing here, the
- 9 County of Anderson is at \$16,000.00 or so?
- 10 A. I haven't added it up.
- 11 Q. Does that seem like a reasonable number to you, four
- 12 days, eight hours a day?
- 13 A. That sounds in the ballpark.
- 14 Q. Are you going to stay after your testimony?
- 15 A. Stay in this area?
- 16 Q. To continue to watch the trial.
- 17 A. I think so. I would like to.
- 18 Q. And if your report wasn't favorable to the prosecution,
- 19 they probably wouldn't be paying your bill this week.
- 20 Correct?
- 21 A. I hope they would.
- 22 Q. All right. Forgive my ignorance, but what's the
- 23 definition of malingering? We've been talking about it a
- 24 lot, but I always think of it as a lazy lollygagger.
- 25 It's very clear that that is not the definition you are

1 using. Could you just tell me the definition?

2 A. The definition of malingering is spelled out in the DSM  
3 as a decode, but basically, it's painting a particular  
4 condition for secondary gain.

5 Q. Okay. And in this case, secondary gain would be avoiding  
6 punishment, a simplified version of it.

7 A. Possibly.

8 Q. Possibly. Now, you said in your testimony that you'd  
9 reviewed the previous doctor's reports. Did you review  
10 any records from Dr. Ernest Martin at the DJJ?

11 A. Yes, I did.

12 Q. I believe Dr. Martin diagnosed, prior to your  
13 examination, diagnosed Mr. Osborne. Do you recall that?

14 A. Yes.

15 Q. Do you recall what that diagnosis was?

16 A. I believe that he diagnosed him with post traumatic  
17 stress disorder and major depressive disorder with  
18 psychotic features ruled out.

19 Q. Okay. And that was, going forward, you ought to consider  
20 ruling out psychotic features. Is that right?

21 A. Yes. And the very next visit, he confirmed it was major  
22 depressive disorder with psychotic features.

23 Q. Okay. Thank you. And when did he see Mr. Osborne?

24 A. I don't have the dates in front of me.

25 Q. If I represent to you that it was within weeks to six

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES

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- 1 months of the incident on September 28, 2016, would that  
2 refresh your recollection that that is probably when he  
3 saw him, in the winter of 2016 or the spring of 2017?
- 4 A. It would not. I would have to look at the report.
- 5 Q. Okay. Thank you. Now, the TOM test is a test that  
6 determines effort or cognitive function. Is that  
7 correct?
- 8 A. That's correct.
- 9 Q. There was no evidence of any problems that Mr. Osborne  
10 had with the TOMS test. Correct?
- 11 A. That's correct.
- 12 Q. I'm going to kind of use that as a jumping off point.  
13 You saw Mr. Osborne's elementary school records and  
14 you've heard the principal talking. Through the fifth  
15 grade it sounds like he was a pretty normal, well-  
16 adjusted, high-achieving student. Correct?
- 17 A. Yes.
- 18 Q. And now, in the detention center, we've heard testimony  
19 that it's a similar situation. He's engaged in his  
20 studies, he, since the disciplinary incident since  
21 early in his arrival, he has behaved appropriately and  
22 he's been going to school and getting good grades. He's  
23 on the honor roll. He gets a hamburger every time he's  
24 on the honor roll.
- 25 A. He's been a good student.

1 Q. Is that unusual? And during the period of this, you  
2 point out, his grades went down, became socially  
3 isolated, you've seen all the stuff on the internet. Is  
4 it odd to see those two evidences of good performance  
5 and cooperation bookending such a horrific period of  
6 time?

7 A. No, not at all based on his activity on the internet. He  
8 was very busy. So, he had other things on his mind and  
9 there wasn't a lot of time for school activities. So,  
10 I'm not surprised that the grades had slipped during  
11 that point in time.

12 Q. So, you think the sole answer would be the fact of his  
13 being on the internet so much?

14 A. Planning this attack, yeah. I think he was spending an  
15 enormous amount of time on the internet.

16 A. And do you think that is possible or do you think that  
17 that's what happened, as a possible explanation?

18 A. I think that's probable.

19 Q. Probable. Would another explanation be that his family  
20 life was in disarray, he didn't like his new school. He  
21 was unhappy at school and at home. Could that be a  
22 possible explanation for the downturn in grades, the  
23 social isolation?

24 A. There's a real mixed story there. So, by some accounts  
25 that could be true. By other accounts, that's not true.

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES

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- 1 Q. You actually addressed that in your report. I'm going to  
2 talk about that in a minute. Do you know any 14-year-old  
3 children?
- 4 A. Yes.
- 5 Q. Do they have Facebook, Instagram and accounts of that  
6 sort?
- 7 A. You listed two.
- 8 Q. Well, I listed two. Facebook, Instagram ---
- 9 A. I have two 14-year-olds with two internet accounts.
- 10 Q. How about Twitter?
- 11 A. Three?
- 12 A. Yes.
- 13 A. Yeah.
- 14 Q. And cell phones, they use to text messages?
- 15 A. Yes.
- 16 Q. And Snapchat?
- 17 A. At fourteen, you are starting to get into the range of a  
18 lot of social media.
- 19 Q. So, Mr. Osborne had more internet than a lot of 14-year-  
20 olds, but there are a lot of 14-year-olds with more  
21 internet access than him.
- 22 A. There are.
- 23 Q. For example, your World of Warcraft person sounds like  
24 he had a lot more internet knowledge than ---
- 25 MS. PRICE: Objection, Your Honor. He excluded that from

1 testimony.

2 MR. EPPES: The World of Warcraft?

3 MS. PRICE: He specifically excluded discussing the cyber  
4 game thing and now he's trying to bring it up for his own  
5 purposes and I think it's disingenuous.

6 MR. EPPES: Your Honor, that's not disingenuous. If I  
7 may, he testified that as a part of his experience, he helped  
8 with the prosecution of an individual who engaged in Cyber  
9 Warcraft while trying to say he had brain damage. In  
10 addition, how ---

11 THE COURT: I'll allow it. Go ahead.

12 MR. EPPES: Thank you.

13 Q. So, you remember you were talking about that guy?

14 A. Yes.

15 Q. Without going into his identity -- I guess you can at  
16 this point, but was he more or less proficient -- first  
17 of all, was he 14 or 15?

18 A. I don't remember the exact age, but he was in that  
19 ballpark.

20 Q. Was he more or less proficient than Mr. Osborne on the  
21 Internet based on your understanding of the two of them?

22 A. On that particular game?

23 Q. Well, on the internet as a whole.

24 A. Well, I only know this individual ---

25 Q. Or you only looked at that game?

1 A. Yes.

2 Q. Okay. Was the sophistication that he showed in that game  
3 more or less proficient than what you observed with Mr.  
4 Osborne on the internet?

5 A. I don't think you can compare the two.

6 Q. Because one is a game and the other is the internet?

7 A. Yes.

8 Q. Thank you.

9 A. So, if Mr. Osborne plays World of Warcraft and he tells  
10 me what level he is, then I could answer that question.

11 Q. You said that Mr. Osborne was compliant, cooperative,  
12 unusually polite, and cooperative.

13 MR. EPPES: Your Honor, should we take a break?

14 THE COURT: Let's take five. (Coughing)

15 Q. Doctor, I'm going to go through your report for a little  
16 bit. Could you get that in front of you?

17 A. I have it.

18 Q. All right. Now, Mr. Osborne, you actually mentioned this  
19 in your report. He spoke about needing \$2000.00, for an  
20 AR-15.

21 A. Yes.

22 Q. At the time of the shooting, he only had \$300. I think  
23 you may be familiar with the fact that he posted online  
24 that he was saving up to get that AR-15?

25 A. He told me that he had \$300.00 and he was saving up for

1       \$2000.00 to buy a gun weapon.

2 Q.   And he never came close to that weapon money as far as  
3       you know, did he?

4 A.   I didn't have his bank account.

5 Q.   Is it not -- is it unusual for juveniles to express a  
6       plan one way that sounds -- well, let me ask you this  
7       first. It is fair to say that if you took Mr. Osborne at  
8       his word on what he tried to do and what he meant to do,  
9       his word was that he planned to spend more money, have  
10      more guns and kill more people. Correct?

11 A.   That was his plan.

12 Q.   And is it unusual for a juvenile who may think these  
13      things or any plan of a juvenile, for it to just flat go  
14      awry?

15 A.   Sure.

16 Q.   Because their brains haven't developed to a level  
17      sufficient to carry out plans and they make extravagant  
18      boasts for their own purposes. Is that not true?

19 A.   That happens in juveniles as well as adults.

20 Q.   I've just thought of somebody at the White House I'd  
21      like you to talk to. Did Mr. Osborne discuss with you  
22      the possibility of dying at the school?

23 A.   Yes, he did.

24 Q.   Did you take that seriously? Do you think that was a  
25      part of his intention?



## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES

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- 1 A. I don't think it was, but he said that often happens. He  
2 had researched the various shooters and many of them had  
3 been killed or committed suicide in the process.
- 4 Q. But you don't think he was suicidal on the day of the  
5 incident based on his reporting to you?
- 6 A. I don't think so.
- 7 Q. Do you attach any significance to the toy vest one way  
8 or the other as far as this report goes?
- 9 A. That he wore to the shooting?
- 10 Q. Yes.
- 11 A. Yeah. I think that was a part of the uniform that he was  
12 trying to create along with the tee shirt, sort of the  
13 symbol of the Rainbow Group, so he was aware of the  
14 Columbine outfits and other outfits that people had  
15 worn. This particular vest was to hold ammunition.
- 16 Q. The vest held ammunition and his phone. Correct?
- 17 A. I'm sorry?
- 18 Q. The vest held ammunition and his phone. Correct?
- 19 A. I'm sorry. I still didn't hear what you said.
- 20 Q. The vest held ammunition and his phone. Correct?
- 21 A. I think that's what it was sort of designed for.
- 22 Q. And he didn't use that ammunition.
- 23 A. Yes. That's correct.
- 24 Q. Now, you mentioned the tee shirt. I think in your  
25 report, and I can't even point you to a page, but I

1 think in your report you said that Mr. Osborne designed  
2 that tee shirt. Correct?

3 A. That was the impression I got, but in the hearing here  
4 it was somebody else that designed that.

5 Q. Based on testimony that we heard, we found out that that  
6 tee shirt was something that was sent to Mr. Osborne  
7 from someone else?

8 A. Yes.

9 Q. So, when you say the tee shirt, talking about him taking  
10 this toy vest to the scene, he didn't have the tee  
11 shirt. He didn't have it on. He had not created it. It  
12 was just on the internet.

13 A. That's correct.

14 Q. Sometimes, isn't stuff on the internet a part of an  
15 imaginary life?

16 A. It can be.

17 Q. Do people invest a lot of time and attention to the  
18 internet because they're lonely or isolated?

19 A. Not necessarily.

20 Q. Do some people?

21 A. Yes, some people do.

22 Q. Did you ask him why he yelled, "Allahu Akbar," when he  
23 jumped out of the car?

24 A. Yes. He told me that that was what all killers do.

25 Q. Did he say that's what all killers do in video games or

1 was that just something he believed?

2 A. I think all shooters do that and I think it's  
3 infrequent, but sometimes people do that on the  
4 internet.

5 Q. Now, when he told you that Donna Maddox was his treating  
6 psychiatric doctor, do you now know that that is not the  
7 case?

8 A. I don't know what the relationship is.

9 Q. Okay. Well, I will represent to you that Dr. Maddox is a  
10 consultant for my law firm and has not been retained to  
11 treat or diagnose Mr. Osborne for any medical purposes.  
12 With that caveat, did you find any records other than  
13 Mr. Osborne's mistaken report to indicate that she was  
14 his treating doctor or had prescribed any medicine?

15 A. I did not.

16 Q. Now, you talked about Mr. Osborne daydreaming about  
17 killing, but he admitted to you that the act of killing  
18 is not much fun.

19 A. Wasn't as much fun as thinking about it.

20 Q. And you said, and I'm on page 8 of your report at the  
21 bottom of the first full paragraph, he didn't  
22 appreciate, which always sounds strange to me, but he  
23 paid attention to everything you were doing. Is that  
24 fair?

25 A. And where are you in the report?

1 Q. I'm on the last -- it begins, "Otherwise," four lines up  
2 from bottom, the full paragraph on page 8.

3 A. All right.

4 Q. Otherwise, I...

5 A. Okay.

6 A. He paid attention to you the whole time?

7 A. Grossly, yes.

8 Q. Grossly?

9 A. Well, he didn't do very well with working memory, which  
10 is an intentional measure, but just overtly, he was  
11 attentive and responsive.

12 Q. Doctor, I'm going to go over the factors for the conduct  
13 disorder that are in your Appendix. It looks like  
14 Appendix 2. But before I do that, you've heard testimony  
15 that throughout the last year, Mr. Osborne has been in a  
16 juvenile detention facility and he has behaved. He  
17 hasn't had a discipline writeup since late 2016 of any  
18 significance. He's refused medicine a nominal amount of  
19 times, not a repetitive amount of times. I forgot the  
20 other thing he did, but anyway, he's behaved, he's done  
21 what he's supposed to do, he hasn't lashed out at guards  
22 or others. How does that fit in with your diagnosis of  
23 conduct disorder?

24 A. He's in a captive setting where, you know, every aspect  
25 of his life is being intensely supervised and his

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- 1 behavior in the detention center is kind of like his  
2 behavior around the house. So, he had been a good kid.  
3 He was attending class, he was doing well with his  
4 school and so I think the overt behavior that we are  
5 observing is kind of consistent with the way that he has  
6 been for some time. It's the other side of him that's  
7 more concerning, what's happening below the surface and  
8 that's reflective in a lot of what we have seen with the  
9 internet and other captures from the FBI.
- 10 Q. The diagnosis of conduct disorder, I'm reading from your  
11 Appendix: The repetitive and persistent pattern of  
12 behavior in which the basic rights of others or major  
13 age-appropriate societal norms or rules are violated  
14 with at least one criterion present within the last six  
15 months. What is the criterion that's present within the  
16 past six months?
- 17 A. I would say that the criteria that is present currently  
18 is in artificial remission, so he doesn't have the  
19 opportunity to engage in any of these conduct disorder  
20 behaviors, because the tools to do this are not  
21 available to him. I would say that this would be  
22 analogous to somebody that has alcohol dependence that's  
23 been incarcerated. Suddenly, they would be alcohol free,  
24 but you would not call them a recovered alcoholic.  
25 They're an alcoholic in forced remission. So, I don't

1 think that what we are able to observe in this setting,  
2 being artificial in the sense that there is intense  
3 scrutiny and controls, that this would be behaviors that  
4 he could engage in. Given the opportunity, he has some  
5 violations, so he's tested the limits with access to the  
6 internet during school. I think we heard that he tried  
7 to get onto Facebook. He's tried to get on Instagram.  
8 During one of the shootings, (verbatim) he was in Google  
9 Play and had accessed things that were not something  
10 that had been assigned by his teacher. So, again, on the  
11 surface he's a very well-behaved and well-mannered boy,  
12 but given the opportunity where the supervision doesn't  
13 exist, that's where I see the problem and that's where I  
14 also see the danger.

15 Q. Go through the factors of conduct disorder and tell me  
16 where trying to listen to rap music or get onto the  
17 internet is ---

18 MS. PRICE: Your Honor, I actually have a copy of the  
19 DSM-V that is being referenced and I would appreciate it if  
20 we could use that for this purpose.

21 MR. EPPES: Your Honor, it's in his report. He can read  
22 his report. He listed each one of the criteria.

23 MS. PRICE: Sure, but I could provide a copy of the  
24 DSM-V.

25 MR. EPPES: It's fine if you want to.

1 THE COURT: Overruled. It's fine. Just use what's in his  
2 report.

3 Q. Your report lists every criteria from the DSM-V for  
4 conduct disorder, does it not?

5 A. Yes, it does.

6 Q. Okay. So, go through there quickly or however long you  
7 need and tell me what criteria trying to sneak onto  
8 Facebook or listen to rap music violates or points to.

9 A. Okay. So, the criteria is: aggression to people and  
10 animals. That was present when he was not in the  
11 detention. It's not present here other than isolated  
12 episodes that we talked about. There are no animals in  
13 the facility ---

14 Q. Okay, sir, I'm not asking you to do that. I'm asking you  
15 to read through those ---

16 A. Oh, and ---

17 Q. --- and see if any of them apply to him sitting in the  
18 detention center on a computer trying to get on Facebook  
19 or listening to rap music or looking at horrible sites  
20 that he ain't got no business looking at.

21 A. Well, I think that would go under the category of  
22 deceitfulness. So, the instructor or teacher had  
23 instructed that, you know, these sites are off limits.  
24 This is your homework assignment and ---

25 Q. Is there any other criteria in there that you would say

- 1       that it went to?
- 2 A.     That would be the main thing.
- 3 Q.     Okay. Would you read the requirement for deceitfulness,
- 4       the criteria as described for deceitfulness?
- 5 A.     Breaking into a house, building or car. Often lies in
- 6       order to obtain goods or favors or to avoid obligations.
- 7       I think that's present.
- 8 Q.     And who did he tell a lie to at the detention center to
- 9       get on the internet?
- 10 A.    He did not lie, he just did it and he violated the
- 11       rules. He lied to me.
- 12 Q.    But that requirement does not say -- it says, he lies or
- 13       cons others for his own benefit. It does not say, if
- 14       you've got a computer and you're looking on the internet
- 15       and you've been told not to, you've disobeyed a rule.
- 16 A.    Well, we differ, but I think that is deceitfulness.
- 17 Q.    Well, but you will admit it's not deceiving others for
- 18       gain. The teacher did not say he did like Eddie Haskell
- 19       on Leave It To Beaver, "Excuse me, Miss Cleaver," and
- 20       then did something without telling her. He did it. The
- 21       sites they are not supposed to go to are blocked. He
- 22       never said I'm going to a blocked site. He just typed it
- 23       in and if she found something bad, she'd block it the
- 24       next time.
- 25 A.    Uh-huh.



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- 1 Q. Thank you. I want to go through these with you. Number  
2 one: Often bullies, threatens or intimidates others. Are  
3 you on page one of Appendix 2?
- 4 A. Yes.
- 5 Q. Okay. Now, I'll give you "B". In "C", he admitted to  
6 taking a hatchet and machete to school for the purpose  
7 of dealing with a group of bullies. How is that  
8 bullying, threatening or intimidating others? Would you  
9 agree that others is the object of all three of those  
10 words; bullies, threatens, intimidates?
- 11 A. Well, taking a hatchet to school to threaten, intimidate  
12 bullies, I think, meets the criteria.
- 13 Q. Who did he bully, threaten or intimidate with that  
14 hatchet?
- 15 A. His intent was to -- I don't know who the people were,  
16 but his intent was to set the record straight.
- 17 Q. All right. I'm a hillbilly with an English teacher  
18 mother, so let's look at this again. Is there anything  
19 about him taking the hatchet to school, the hatchet or  
20 ax to school, that shows him bullying another person?
- 21 A. That did not occur that day.
- 22 Q. Did it show him threatening another person?
- 23 A. That did not occur that day.
- 24 Q. Did it show him intimidating another person?
- 25 A. Not that I know of.

1 Q. He didn't take them out of the bag as far as you know?

2 A. Somebody saw them, I guess. I don't think he

3 intentionally took them out of the bag.

4 Q. Now, here, indeed, from Dr. Jones' interview, student

5 incident reports indicate Jesse encouraged other

6 students to join him in pursuing revenge. Correct?

7 A. Yes.

8 Q. And that is from the same incident of the hatchet at the

9 school?

10 A. I don't know.

11 Q. Well, I'll represent to you that Dr. Jones was the --

12 well, you know this. Dr. Jones did a report based on the

13 incident at the school.

14 A. Yes.

15 Q. And Dr. Jones' report says; student incident reports

16 indicate that Jesse encouraged other students to join

17 him in pursuing revenge against the students.

18 A. Okay.

19 Q. Is there any evidence that he actually pursued revenge

20 against the students?

21 A. Not to my knowledge.

22 Q. Number three: Instagram message to Columbine. All these

23 kids that were Columbine -- and Judge, you remember that

24 moniker. All these kids harmed me. It's time to pay. Is

25 there any evidence there that he was threatening,

1 bullying or intimidating [REDACTED]

2 A. No.

3 Q. And I'll take you back to the diagnostic criteria. In  
4 the beginning where it says; this is a repetitive and  
5 persistent pattern of behavior in which the rights of  
6 others are violated or major age-appropriate societal  
7 norms or rules are violated. So, railing against the  
8 world is something that a lot of us do, but that is not  
9 violating the basic rights of others. Would you agree  
10 with that?

11 A. Yes.

12 Q. Thank you. And again, with criteria "F" which involves  
13 the "E-gang", there's nothing there that shows that he  
14 actually bullied, threatened or intimidated another  
15 person. Correct?

16 A. I think I'd have to go back and review those records.

17 Q. And sir, I'll give you, to the extent that those  
18 discussions involve a plan to shoot up a school, he  
19 actually shot up the school, but as far as the conduct  
20 online, he never threatened any of those people, he  
21 never sought out another person to threaten. He merely  
22 mouthed off about a horrific plan. Would you agree with  
23 that?

24 A. That's mostly what I remember reading.

25 Q. Thank you. And again, in "G", Dr. Ballenger reports that

- 1 Mr. Osborne stated to Dr. Ballenger that he might do it  
2 again. Correct?
- 3 A. Yes.
- 4 Q. And that's what we're all afraid of. Correct?
- 5 A. That's correct.
- 6 Q. But that is not threatening, bullying, or intimidating  
7 another person. That is him, very likely, being  
8 truthful. Correct?
- 9 A. Yeah, it could be truthful or it could be a threat.
- 10 Q. But it's not a threat that's directed at the object of  
11 that threat.
- 12 A. Meaning?
- 13 Q. Meaning, it's not me threatening my imaginary friend in  
14 this chair. It is a threat to telling the clerk of court  
15 about a threat to an imaginary friend in my chair.
- 16 A. Yes. It's a threat to society.
- 17 Q. It's a threat to society, but not to another person as I  
18 would argue that criteria means. And the Rainbow Group,  
19 I think we've covered that. As to number two, often  
20 initiates physical fights. You've heard nothing about  
21 him doing that.
- 22 A. I think there was one episode.
- 23 Q. He was in a fight. He was the victim.
- 24 A. Yeah.
- 25 Q. Is that correct?

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- 1 A. It takes two to fight, but yeah.
- 2 Q. It doesn't, unfortunately. Has used a weapon that can  
3 cause serious harm to others. Yes. Now, let me ask you  
4 about that. Does that mean anybody that uses a gun meets  
5 this criteria or is this someone that uses a gun in a  
6 way that harms another person?
- 7 A. A way that harms another person.
- 8 Q. Okay. So, again, as to part "D", bringing a hatchet and  
9 machete to school does not count as a part of this  
10 criteria.
- 11 A. Correct.
- 12 Q. Correct. And "B", extensive knowledge and recreational  
13 use of guns. That does not count as part of this  
14 criteria.
- 15 A. Correct.
- 16 Q. Thank you. There's no evidence that he's been physically  
17 cruel to people. That's criteria four.
- 18 A. Well, there is that video where he appeared to be  
19 taunting that young boy.
- 20 Q. But other than that, you did not see any when you wrote  
21 your report.
- 22 A. I did not see them.
- 23 Q. Has been physically cruel to animals and you based that  
24 on Dr. Ballenger's report. Correct? That he said that  
25 that was fun?

- 1 A. When I issued this report or during this week?
- 2 Q. When you issued this report.
- 3 A. Yes. And during the week I've seen other evidence to
- 4 support that.
- 5 Q. And what evidence would that be?
- 6 A. Taunting his pet rabbit, shooting the dogs with the
- 7 Airsoft gun and then Dr. Ballenger's report of him
- 8 torturing animals.
- 9 Q. Okay. Have you ever had a dog?
- 10 A. Uh-huh.
- 11 A. Did you have a pull toy with a dog where you gave it one
- 12 end of the rope and he would bite it and you'd play tug
- 13 of war with it?
- 14 A. Uh-huh.
- 15 Q. If I represented to you that that might be what he's
- 16 doing with the rabbit, do you have any reason to
- 17 disagree with that?
- 18 A. Yes.
- 19 Q. Why is that?
- 20 A. He was hitting the rabbit in the face. The rabbit was
- 21 sorta responding to his presence with a sort of a
- 22 threatening, I mean, defending myself.
- 23 Q. Sir, I don't know enough about rabbits to argue with you
- 24 on that.
- 25 A. No. I studied, my masters degree was with animals and

1 animal behavior.

2 Q. So, you've spent a lot of time with animals?

3 A. For a couple of years, yeah.

4 Q. What school was that?

5 A. The University of Pacific in California.

6 Q. Up on the hill?

7 A. It was in Central Valley.

8 Q. Oh, okay. They beat the University of South Carolina in

9 football once. Did you know that? I was at the game. Is

10 there any evidence -- I'm going to criteria six. Is

11 there any evidence that he had stolen while confronting

12 a victim?

13 A. No.

14 Q. Is there any evidence that he has forced someone into

15 sexual activity?

16 A. Not that I know.

17 Q. Is there any evidence he's deliberately engaged in fire

18 setting?

19 A. Not that I know.

20 Q. Is there any evidence that he's deliberately destroyed

21 others property?

22 A. Not that I know.

23 Q. Is there any evidence that he's broken into someone's

24 house, building, or car?

25 A. Not that I know. I think he was trying to break into his

1 father's safe.

2 Q. That is true, but he never was successful. Correct?

3 A. I think he told me he was successful, but from what we  
4 learned here today, he was not.

5 Q. So, he wasn't honest with you about that?

6 A. Apparently.

7 Q. But there's no evidence that he's broken into someone  
8 else's house, building, or car other than himself  
9 reporting to you of that.

10 A. That's correct.

11 Q. And that's not unusual for -- taking aside, again, the  
12 horrific nature of this entire incident...

13 MR. EPPES: And to the extent, Your Honor, that I ever  
14 seem to be making light it, I'm not.

15 Q. But taking aside that, is it unusual for a 14-year-old  
16 to try to crack the safe in his family's home?

17 A. Depends on what's behind the wall.

18 Q. Fair enough. Thank you. Now, the next one is, often lies  
19 to obtain goods, favors or avoid obligations. One of the  
20 criteria you have here is that he faked the shooting of  
21 his father earlier in the morning and apparently fired  
22 the gun so that these people on the internet could hear  
23 it. Is that correct?

24 A. That's correct.

25 Q. So, would that indicate to you some reluctance to



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1 actually shoot his father or does that indicate to you  
2 something else?

3 A. I'm not sure what that indicates. So, it's deceitful. He  
4 was lying to his internet friends, but beyond that I  
5 don't know.

6 A. Do you know anything about domestic violence?

7 A. I'm sorry?

8 Q. Do you know anything about domestic violence?

9 A. Yes.

10 Q. Is it unusual for victims of domestic violence to call  
11 the police and then tell the police nothing happened and  
12 go away or to otherwise lie about them being abused?

13 A. I'd say that could happen, but equally, it could not  
14 happen.

15 Q. If I told you that the vast majority of literature would  
16 indicate that domestic violence victims frequently or  
17 often tell the authorities that nothing happened and lie  
18 about whether they've been abused many times, sometimes  
19 to their deaths. Would that surprise you?

20 A. After they've called?

21 Q. After they've called or even just in general. If an  
22 authority suspected abuse, if a doctor suspected abuse,  
23 domestic violence victims often say they haven't been  
24 abused even though they have?

25 A. In general, I think that's true. I don't know the

- 1 literature on people that have called.
- 2 Q. But in this case, you've decided that Mr. Osborne wasn't
- 3 telling the truth about being abused?
- 4 A. What?
- 5 Q. You've decided Mr. Osborne was not telling the truth
- 6 about being abused?
- 7 A. Well, on one occasion, he said that he was abused. On
- 8 another occasion, he said he wasn't, so I don't know
- 9 where the truth is.
- 10 A. Do you think his mother's lying about being abused?
- 11 A. I can't comment about her.
- 12 Q. And as far as criteria twelve, stolen items of
- 13 nontrivial value without confronting the victim. You
- 14 have no evidence of that, as well?
- 15 A. I have no knowledge of that.
- 16 Q. And the next general area is serious violations of rules
- 17 and these are criteria 13,14, and 15 and they are: often
- 18 stays out at night despite parental prohibitions.
- 19 There's no evidence of that. Correct?
- 20 A. Not that I know of.
- 21 Q. Run away from home overnight at least twice?
- 22 A. Not that I know of.
- 23 Q. Often truant from school, beginning before age 13?
- 24 A. Correct. Not that I know of before the age of 13.
- 25 Q. And then, as far as significant impairment in social,

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1 academic, or occupational functioning, you didn't really  
2 find a whole lot, did you?

3 A. Well, yeah, I did. He was incarcerated because of his  
4 behavior.

5 Q. Okay. And then we've talked about these other factors  
6 here and, frankly, there's not a whole lot about them  
7 until we get down to the lack of remorse, which you've  
8 already discussed at length. Correct?

9 A. Yes.

10 Q. Okay. And then you went through the Kent factors. That's  
11 Appendix 3. Mr. Osborne reported to you that he believed  
12 his gun jammed. Correct?

13 A. Yes.

14 Q. And you've heard evidence today that there was one  
15 bullet in the chamber and no evidence of the gun  
16 jamming?

17 A. I heard some discussion about that. I didn't hear the  
18 details.

19 Q. I will represent you that there were two unspent shells  
20 on the ground, like he took them out of the chamber and  
21 the gun was found many feet away from him. Correct?

22 A. Yes.

23 Q. And now, the bomb making. Mr. Osborne told you that he  
24 was the go-to guy for bombs?

25 A. Yes.

1 Q. Have you followed my review of his bomb-making Instagram  
2 post and the fact that he found it on the internet one  
3 day and put it on Instagram the next day as if he knew  
4 what he was doing?

5 A. I was having a real hard time hearing you during that.

6 Q. I should have talked louder for you, Doctor. I didn't  
7 talk louder for Ms. Mayo, but I will try to straighten  
8 this out as quick as I can. Doctor, I'm going to hand  
9 you what's been marked Defense Exhibits #4 and #7 and if  
10 you'll look at the two paragraphs. They read from the  
11 bottom to the top and if you'll look at the two  
12 paragraphs on Exhibit #4 and compare them to the notes  
13 in this Instagram post, I mean, this Google search, I  
14 think that you'll see that the language is word-for-word  
15 identical.

16 A. By the way, I can hear you fine here. That's -- it's  
17 just that I don't think that microphone is working and  
18 when your back is to the audience and you are speaking  
19 this direction---

20 Q. Oh, yes, sir. I understand.

21 A. --- it's hard to hear.

22 Q. You have now given me a good reason to speak up because  
23 before now I was talking to the Judge, mostly, and I  
24 want him to hear, but I don't really worry as much as I  
25 probably should about others.

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- 1 A. Without going over it word-for-word, it looks similar.
- 2 Q. If I represent to you that he Googled it one day and put  
3 it on the internet the next day, that's a guy who, as  
4 far as that particular post goes leaving aside the Drano  
5 bomb, that's a guy who is pretending to be a bomb expert  
6 while plagiarizing other material and sticking it on  
7 Instagram.
- 8 A. Yeah, and I guess, then, he had lied to me about what he  
9 told me.
- 10 Q. Okay. So, he lied about being a bomb expert.
- 11 A. About being ---
- 12 Q. --- the go-to guy.
- 13 A. --- the go-to guy. Yeah.
- 14 Q. So, he's not really a leader of the TCC, do you think?
- 15 A. Based on the -- well, I don't...
- 16 Q. You really don't know?
- 17 A. I don't know. I don't have enough information to answer  
18 that.
- 19 A. So, it's fair to say that although he professed to be a  
20 leader, you don't have enough information to know that  
21 he was a leader?
- 22 A. Correct.
- 23 Q. Thank you. Doctor, go to page four of your report.
- 24 A. The Appendix?
- 25 Q. The Appendix, yes, sir. I'm sorry. The Kent factors. You

- 1 acknowledge here that rehabilitation is a difficult  
2 question because despite -- is it fair to say that you  
3 are saying that despite the diagnosis of conduct  
4 disorder, there is a lot of information about him that  
5 kind of flies in the face of that. Is that fair?
- 6 A. He has very strong components of one aspect of conduct  
7 disorder and is missing many of the other features.
- 8 Q. And you point out that it really surprises you that  
9 there is a lack of theft, destruction of property,  
10 violation of the rules. Is that correct?
- 11 A. Yes. I mean, those are the points that he does not  
12 demonstrate.
- 13 Q. And you point out that he has generally good behavior  
14 while in detention, compliance with educational  
15 programs, average intellectual capacity with associated  
16 achievement, lack of substance abuse, a young age,  
17 adequate family support and a lack of other psychiatric  
18 comorbidity as far as you can tell. Correct?
- 19 A. Yes.
- 20 Q. And those are positive factors that might mitigate  
21 against the Kent decision to go to general sessions.  
22 Correct?
- 23 A. That's possible.
- 24 Q. Is it fair to say that in your mind the deciding factor  
25 really is the horrific nature of this event and the

- 1 planning that you think went into it?
- 2 A. There are multiple things. There's the -- do you want me
- 3 to go over them?
- 4 Q. Yes, you can go over them if you'd like.
- 5 A. So, there's the terrible crime, crimes, plural that have
- 6 been committed. There's just a total lack of remorse and
- 7 empathy for, not only the victims but the victim's
- 8 families and all the other collateral people that were
- 9 involved. There is this pervasive pattern of not being
- 10 forthcoming with information. Deceptive behavior with
- 11 multiple doctors that have seen him. The deceptive
- 12 behavior extends to, apparently, his friends. So, those
- 13 are some of the other negative things and I think the
- 14 icing on the cake is he said he'd do it again.
- 15 Q. Yes, sir. He needs treatment for something. Correct?
- 16 A. Desperately.
- 17 Q. Thank you. You mentioned how big he was. Did you hear
- 18 the testimony that he was 6 feet when he got in and
- 19 weighed 145 pounds?
- 20 A. I heard that.
- 21 Q. Now is grown. He's 6'3" and 200 pounds.
- 22 A. Yes.
- 23 Q. Did you see the video of Mr. Osborne at the school after
- 24 the shooting?
- 25 A. Yes.

- 1 Q. And did he appear to be distraught?
- 2 A. He was very agitated.
- 3 Q. He was walking around in circles.
- 4 A. Yes.
- 5 Q. And he had his hand on his head and banged his head
- 6 against the wall.
- 7 A. Yes, he did.
- 8 Q. So, he was upset.
- 9 A. He was.
- 10 Q. And ---
- 11 A. I'm not sure why he was upset, but he was upset.
- 12 Q. I understand. But he was emotional.
- 13 A. Yes.
- 14 Q. This is not consistent at all with all that internet
- 15 stuff. Correct?
- 16 A. Say that again?
- 17 Q. This is not consistent with the image he portrayed on
- 18 the internet and in his Instagram chats about his plan
- 19 and what he was going to do when he got to school.
- 20 A. Oh, what transpired?
- 21 Q. Yeah. The anguish and the distraught walking around in
- 22 circles.
- 23 A. Yeah. I'd say that on the internet he was very confident
- 24 and he had this elaborate, well-organized plan and I was
- 25 left wondering if he was frustrated that he failed in



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1 his plan, that he didn't live up to his expectations and  
2 that he was down on himself.

3 Q. Or it could be just as easily that he was distraught  
4 over what he had done and realized what a horrific thing  
5 he did.

6 A. All we can do is speculate.

7 Q. So, your speculation and my speculation are both  
8 speculation?

9 A. That's correct.

10 Q. And did you watch the whole video?

11 A. I did.

12 Q. And you're aware, as am I, that if he had reloaded that  
13 gun and turned the corner instead of throwing it down,  
14 he'd have been standing there with about 20 kids  
15 standing beside a door. Correct?

16 A. Yes.

17 Q. Thank you, Doctor.

18 THE COURT: Mr. Smith?

19 MR. SMITH: May it please the Court.

20 CROSS EXAMINATION

21 BY MR. SMITH:

22 Q. You'd agree with me that the focus of your practice and  
23 research and so forth has been in relation to the  
24 elderly, Alzheimers, things of that nature. Right?

25 A. Some of my research has been in that area.

- 1 Q. Multiple sclerosis?
- 2 A. Yes.
- 3 Q. PTSD?
- 4 A. Yes.
- 5 Q. Not many findings on children. How many do you think
- 6 there are?
- 7 A. I think we went over that earlier, but if you want to go
- 8 over it again, we can.
- 9 Q. How many were there? About three or four?
- 10 A. Five.
- 11 Q. Five. Sorry. You've dealt with acquired brain injury.
- 12 Correct?
- 13 A. Yes.
- 14 Q. What is an acquired brain injury?
- 15 A. What is it?
- 16 Q. Yes, sir.
- 17 A. It's an individual that, for one reason or another,
- 18 acquires a brain injury. That can be traumatic brain
- 19 injury, it could be a stroke, could be a bullet wound.
- 20 Something that you are not born with.
- 21 Q. Could it be sickness?
- 22 A. I'm sorry?
- 23 Q. Sickness?
- 24 A. Yeah. That would qualify. Where there are diseases that
- 25 affect the brain. You mentioned multiple sclerosis.

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH

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1 Q. Meningitis?

2 A. Meningitis typically doesn't affect higher cortical  
3 function.

4 Q. I thought it affected the mangie. Is that correct? The  
5 mangie?

6 A. Yes, it can.

7 Q. And that goes up the spinal cord and the brain stem?

8 A. In extreme situations, yes.

9 Q. Have you ever heard about -- well, you know he grew up  
10 on a chicken farm. Right?

11 A. Yes.

12 Q. And that required him to be in the chicken coops on a  
13 regular basis?

14 A. Yes. I think that was only after he was on probation. I  
15 think he told me that he was not in the chicken farm  
16 before that.

17 Q. Was the chicken farm on another property?

18 A. It was on the same property. It's a ways from the house.  
19 But I think that became his job after he was put on  
20 probation. I'm not sure that he worked there before  
21 that.

22 Q. You had the opportunity to review his medical records?

23 A. I did.

24 Q. And you were able to see that anytime he presented to  
25 the doctor, he had conjunctivitis?

- 1 A. Yes.
- 2 Q. What is that?
- 3 A. It's an infection in your eyes.
- 4 Q. Is that pink eye?
- 5 A. Yes.
- 6 Q. He also had nausea and vomiting every time. Is that
- 7 right?
- 8 A. I don't remember that.
- 9 Q. What is Campylobacter? Campylobacter jejuni?
- 10 A. An infectious disease.
- 11 Q. If I told you that that is something that chickens carry
- 12 at times, would that sound appropriate?
- 13 A. Yes. Possibly.
- 14 Q. But it doesn't affect chickens. Right?
- 15 A. I'm not a chicken expert.
- 16 Q. What causes depression in a child?
- 17 A. What causes it?
- 18 Q. Yes.
- 19 A. That's a very complicated question. There can be
- 20 multiple causes.
- 21 Q. Sickness on a regular basis?
- 22 A. Chronic illness can cause depression.
- 23 Q. Like pink eye?
- 24 A. I've never heard of pink eye causing depression.
- 25 Q. Well, you said that sickness would do that or could do

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH

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- 1       that. Right?
- 2 A.    I said chronic illness can lead to depression.
- 3 Q.    What do you consider pinkeye?
- 4 A.    A transient infection.
- 5 Q.    You talked about the indiscriminate deviations in the
- 6       testing process. Forty-four was his score. Is that
- 7       right?
- 8 A.    Yes.
- 9 Q.    Does that mean that that test was useless?
- 10 A.   No. That score is an extreme score that is highly
- 11       indicative of malingering a vague psychiatric illness.
- 12 Q.   No possibility that he could have those illnesses?
- 13 A.   There is no evidence in any of the records, including
- 14       the pediatric records that I reviewed, that indicated he
- 15       has those illnesses?
- 16 Q.   Do you believe that you did a thorough job in acquiring
- 17       information regarding his home life?
- 18 A.   No. I relied on some of the other reports for that.
- 19 Q.   You've heard that, since you've been in here, that his
- 20       sister cut ties with the family. Is that right?
- 21 A.   I heard that.
- 22 Q.   And the brother is off at the university. Right?
- 23 A.   Yes.
- 24 Q.   He's not here this week.
- 25 A.   This correct. He's in college.

1 Q. Do you understand that he had trouble with the father,  
2 as well?

3 A. I don't know.

4 Q. Wouldn't it would be extremely important to know what  
5 those children have to say about their home life?

6 A. It might be.

7 Q. Well, if one in particular left for, call it a  
8 disagreement, wouldn't that have a direct bearing on the  
9 relationship that he had with his father?

10 A. No. So, she might have left because of her own issues. I  
11 don't know what those are. I've not met her. I haven't  
12 read anything about her.

13 Q. What did you do to find her?

14 A. What?

15 Q. What did you do to find her?

16 A. What did I do to find her?

17 Q. Yes.

18 A. Nothing.

19 MS. PRICE: Your Honor, I'm going to object. That's not  
20 his role in this.

21 THE COURT: He can answer it if he can. I agree with you.

22 Did you do anything to find the sister?

23 DR. WAGNER: I never found the sister.

24 Q. But did you do anything?

25 A. What do you mean, did I do anything?

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH

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- 1 Q. Did you try to reach her in order to find out?
- 2 A. To find out what?
- 3 Q. What her story is.
- 4 A. I did not.
- 5 Q. The father was in charge of home schooling. Is that
- 6 right?
- 7 A. I'm not sure who was in charge of the home school.
- 8 Q. The mother worked outside the home?
- 9 A. She did.
- 10 Q. So, the father was there on a regular basis.
- 11 A. Yes. The father worked the chicken farm that was
- 12 adjoining the residence.
- 13 Q. At least after the time he was on probation, Jesse
- 14 became a hand at the chicken house, too. Right?
- 15 A. That was my understanding.
- 16 Q. Jesse was going to understand what it was like to be at
- 17 home and a working man. Right? So he'd understand how
- 18 great it is to be in school?
- 19 A. I don't know the answer to that.
- 20 Q. Have you ever studied encephalitis?
- 21 A. Have I what?
- 22 Q. Have you ever studied encephalitis?
- 23 A. I have.
- 24 Q. What did you find out?
- 25 A. What do you mean?

- 1 Q. What was the focus of your study?
- 2 A. That's something that is a possible cause of altered  
3 mental status.
- 4 Q. The people that have the acquired brain injury, have you  
5 noticed or have you studied and found any correlation to  
6 violence?
- 7 A. Generally, no.
- 8 Q. Did you do any work with C.J. Golden? (Ph)
- 9 A. C.J.?
- 10 Q. Golden.
- 11 A. I don't know that name.
- 12 Q. Or Newman or Ticner? (Ph)
- 13 A. You're mispronouncing the names.
- 14 Q. Oh, I'm sorry. Can you tell me the right name?
- 15 A. It's Tigner. (Ph) What was the other name?
- 16 Q. Newman, Golden?
- 17 A. I know someone named Sherry Newman. (Ph)
- 18 Q. Subjects developed serious violent behavior. Have you  
19 seen that before?
- 20 A. Seen those words? I don't understand what you are  
21 saying.
- 22 Q. In your studies or in something that you co-authored.
- 23 A. In my studies, did I see those words?
- 24 Q. Yes.
- 25 A. I'm not sure I know what you are talking about.



## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH 864

1 MS. PRICE: Your Honor, I'm going to ask Mr. Smith to put  
2 some of this in context. He's being very broad.

3 THE COURT: If you want to ask about a particular ---

4 MR. SMITH: Your Honor?

5 THE COURT: --- a particular article or something ---

6 MR. SMITH: --- Yes, sir.

7 THE COURT: --- let him see what you are talking about.

8 (Mr. Smith hands document to Dr. Wagner)

9 A. Okay.

10 Q. Do you recall that article?

11 A. I do.

12 Q. What article is that, sir?

13 A. It's an abstract that was presented at a professional  
14 conference.

15 Q. What did you call it? What did you call the abstract?

16 A. What do you mean, what did I call it?

17 Q. Does it have a name?

18 A. Does it have a title?

19 Q. Yes.

20 A. The title is, "A Neurorehabilitation and Intervention  
21 for Brain Injured Children Exhibiting Aggression."

22 Q. Thank you, sir.

23 A. That's about two children that had severe traumatic  
24 brain injury.

25 MR. SMITH: I would like to submit this into evidence.

1 THE COURT: What is it?

2 MR. SMITH: It's an article written by the doctor.

3 DR. WAGNER: It's listed in my CV.

4 THE COURT: What is the State's position?

5 MS. PRICE: Your Honor, I don't think that it has any  
6 bearing on -- I mean, I don't have any objection to it going  
7 into evidence, I guess. I don't think it adds or takes away  
8 anything from this.

9 THE COURT: What's the relevance of this?

10 MR. SMITH: Acquired brain injury is what we were talking  
11 about.

12 THE COURT: It's what you were talking about, not him.

13 MS. PRICE: Your Honor, actually, there is no proof that  
14 Jesse Osborne has any type of developmental or neurocognitive  
15 defects. He's talking about a brain injury. He's had no head  
16 trauma. There's been no testimony to that. It's irrelevant.

17 MR. SMITH: Well, he's already testified that acquired  
18 brain injury could be by disease.

19 THE COURT: Do you have anything to show me that Mr.  
20 Osborne had any type of brain disease or any type of brain  
21 injury that may have contributed to his conduct?

22 MR. SMITH: I have a doctor under subpoena that diagnosed  
23 him with meningitis.

24 MS. PRICE: Your Honor, I would ask -- I think he is  
25 referring to some medical records that Dr. Wagner has

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH 866

1 reviewed. Perhaps he could ask Dr. Wagner if he believes that  
2 Jesse was ever diagnosed with meningitis.

3 THE COURT: I think that's reasonable. I'm going to hold  
4 the submission of this in abeyance right now and let you  
5 continue your questions.

6 MR. SMITH: Yes, sir.

7 THE COURT: There's got to be some causal connection and  
8 I'm not seeing that.

9 MR. SMITH: Yes, sir. Of course, the doctor will probably  
10 be better -- I mean, Dr. K. I can't pronounce his name, since  
11 he's the one that diagnosed him.

12 THE COURT: Well, if you have a diagnosis, you can ask  
13 him about whether he believes that could have any effect on  
14 your client's or your ward's behavior.

15 Q. Did you see the word meningitis at any point, doctor?

16 A. I can't hear you over there. (Mr. Smith is speaking from  
17 counsel table)

18 MS. PRICE: Your Honor, I hate to do this, but could we  
19 take a two-minute break? We've been going much longer than we  
20 were expecting to go with this witness and I, personally,  
21 need a break for about two minutes.

22 THE COURT: All right. Five minutes.

23 (Brief Break)

24 THE COURT: All right. We are back on the record in State  
25 v. Osborne with Mr. Smith's cross examination. You may

1 continue.

2 MR. SMITH: May it please the Court.

3 CONTINUED CROSS EXAMINATION

4 BY MR. SMITH:

5 Q. Children react to their environment in different ways.

6 Is that right?

7 A. That is true.

8 Q. And what kind of environments affect the chicken farm?

9 Could that be an environment that could affect Mr.

10 Osborne in any way?

11 A. How does the chicken farm affect how children behave?

12 Q. How Mr. Osborne behaved.

13 A. I don't think it has any bearing on his behavior. I

14 mean, he has a potential job with his father, so, I

15 guess that's how it would affect him.

16 Q. Coughing, wheezing, conjunctivitis, do you think those

17 bode well for a child's demeanor?

18 A. Children get sick, sure. It's common.

19 Q. Chronic sickness?

20 A. I don't know that there is any evidence of chronic

21 illness. Mr. Osborne -- I reviewed the pediatric

22 records. He was in decent health. He, periodically, came

23 in for the kinds of things children come in to see their

24 pediatrician for.

25 Q. Yes, sir. Those were, like, yearly visits. Is that

1 right?

2 A. That's true.

3 Q. If his dad is an old-school father, is he going to take  
4 to his dad ---

5 A. I'm sorry. I couldn't hear you.

6 Q. If his dad is an old-school father and played by the  
7 book, strict, is he going to take it to his father that  
8 he is wheezing a little bit too much or his eyes itch  
9 too much?

10 A. There's lots of email messages that they had a very good  
11 relationship and I would suspect that mom would probably  
12 be the first to hear about illnesses. That's generally  
13 the case with kids, but yeah, he may take it to dad,  
14 too.

15 Q. Does the fact that he was malingering mean that he had  
16 no psychosis?

17 A. It would argue very strongly against it. There is an  
18 enormous amount of observation and serial assessments  
19 that would also argue against that. It is totally  
20 inconsistent with my clinical overview of him.

21 Q. Did the clinical include your observations?

22 A. I'm sorry?

23 Q. Did the clinical include your observations?

24 A. Yes.

25 Q. And your observations were that he had no remorse. Is

- 1       that right?
- 2 A.    I observed that.
- 3 Q.    Are you sure about that or you didn't see what you
- 4       typically believe is remorse?
- 5 A.    I did not see it and he did not voice it.
- 6 Q.    So, you didn't find any brain dysfunction with him?
- 7 A.    I did not. In my exam, I did not see that and in my
- 8       review of his medical records, I did not see that and
- 9       throughout all the records I didn't see evidence of
- 10      that.
- 11 Q.   No psychotic behavior?
- 12 A.   We were just talking about medical illness.
- 13 Q.   Yes, sir. Let's talk about secondary gain. The State
- 14      wouldn't have you here all week if what you were going
- 15      to say when they put you on the stand would be opposite
- 16      to what they were trying to do. Would you agree with
- 17      that?
- 18 A.   I can't answer for them.
- 19 Q.   Because they would know what your report is, long ago.
- 20      Right?
- 21 A.   Yes.
- 22 Q.   So, if they know that you are not going to fall in line,
- 23      then they don't need to put you on the witness stand,
- 24      don't need to keep you here for a week. Do they?
- 25 A.   No, they don't.

## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH 870

- 1 Q. Two years of preparation, did what happen that day seem  
2 like there was any preparation at all?
- 3 A. Yes.
- 4 Q. All your analysis is subjective based on his four  
5 validity tests. Right?
- 6 A. I can't hear you. Can you say that again, please?
- 7 Q. Yes, sir. All your findings are subjective based on his  
8 four validity tests?
- 9 A. All my findings are based on the best clinical practice  
10 I can exhibit and our exemplary standard of care.
- 11 Q. Dr. Ballenger gave you an initial draft and that's how  
12 you were introduced to this case. Isn't that right?
- 13 A. No. That's not right.
- 14 Q. Please help me out.
- 15 A. What do you need help with?
- 16 Q. How did you get introduced to this case?
- 17 MS. PRICE: Your Honor, I'm going to object to this. It's  
18 been asked and answered. We've gone over this.
- 19 THE COURT: Sustained. Move on to something else.
- 20 Q. Dr. Sharman talked about Jesse being nonchalant. Is that  
21 right?
- 22 A. Yes.
- 23 Q. Wasn't his explanation plausible?
- 24 A. I'm sorry?
- 25 Q. Wasn't his explanation plausible?

- 1 A. That he was nonchalant? Is that plausible?
- 2 Q. It wasn't necessarily negative, was it?
- 3 A. I'm not sure I understand your question.
- 4 Q. Jesse mature?
- 5 A. Are you asking me?
- 6 Q. Is he mature, Jesse?
- 7 A. Did Dr. Sharman feel that he was mature or me?
- 8 Q. Is Jesse Osborne mature?
- 9 THE COURT: Are you asking if that is his opinion or Dr.
- 10 Sharman's opinion?
- 11 Q. His opinion.
- 12 THE COURT: Okay. Is that your opinion, sir?
- 13 A. Mature for his age, yes.
- 14 Q. What was Dr. Sharman's explanation?
- 15 A. For what?
- 16 Q. For the nonchalance.
- 17 A. That was his observation.
- 18 Q. What was his explanation?
- 19 A. What was his explanation?
- 20 Q. Yes, sir.
- 21 A. I'd have to go back and look at the record. Do you want
- 22 me to do that?
- 23 Q. I'll do it. One moment, please.
- 24 MS. PRICE: May it please the Court. I have a copy of Dr.
- 25 Sharman's report right here for the sake of saving time. I



## CROSS EXAMINATION OF DR. MARK WAGNER BY MR. SMITH

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1 would be more than happy to give it to Dr. Wagner.

2 THE COURT: Okay.

3 MR. SMITH: I appreciate that. Thank you.

4 MS. PRICE: You're welcome.

5 A. Can you point me to the stuff that you are talking  
6 about?

7 MR. SMITH: May I approach, Your Honor?

8 THE COURT: Yes.

9 Q. You would agree nonchalant doesn't necessarily mean a  
10 negative connotation. Right?

11 A. In this context it does. It's huge.

12 Q. How, if you don't know this person? If you don't know  
13 what ---

14 A. Know what person?

15 Q. He's not -- Mr. Osborne.

16 MS. PRICE: Your Honor, I would just ask that Dr. Wagner  
17 publish the sentence that Mr. Smith is talking about right  
18 now. Can we ask that ---

19 THE COURT: I don't know that he found it or not. Did you  
20 find the sentence that you were looking for?

21 MR. SMITH: No, sir.

22 THE COURT: All right. Well, move on to something else.

23 MR. SMITH: Well, yes, sir. I'm simply asking him about  
24 nonchalant.

25 THE COURT: You asked him if he knows Mr. Osborne. He

1 interviewed him for six-and-a-half hours.

2 MR. SMITH: Yes, sir.

3 Q. So, in that six-and-a-half hours, do you know what  
4 nonchalance means to Mr. Osborne?

5 A. Yes.

6 Q. It's your interpretation of nonchalant. Right?

7 A. I concur with Dr. Sharman that I observed nonchalant  
8 behavior regarding the incident in question.

9 Q. Are you saying that Dr. Sharman didn't say that while it  
10 was an appearance of nonchalance, that didn't  
11 necessarily mean that he was nonchalant?

12 A. I'd have to find that in the report.

13 Q. I understand. Thank you, sir.

14 (Mr. Smith walks back to counsel table)

15 MS. PRICE: Your Honor, I will keep it brief.

16 THE COURT: Was that your last question, Mr. Smith?

17 MR. SMITH: Yes, sir.

18 THE COURT: All right. Go ahead, Ms. Price.

19 MS. PRICE: Thank you, Your Honor. I want to have this  
20 marked. This document that was presented to you.

21 MR. SMITH: I would object. We never admitted that.

22 THE COURT: You referred to it. You were going to enter  
23 it, but you couldn't find what you wanted. You opened the  
24 door.

25 MR. SMITH: I just referred to it.

## REDIRECT EXAMINATION OF DR. MARK WAGNER BY MS. PRICE 874

1 THE COURT: You opened the door, Mr. Smith.

2 MS. PRICE: Thank you, Your Honor. This will be State's  
3 Exhibit #66.

4 THE COURT: So, admitted. Thank you.

5 (Whereupon, Dr. Sharman's report is entered into  
6 evidence as State's Exhibit #66, over objection)

7 REDIRECT EXAMINATION

8 BY MS. PRICE:

9 Q. Can you read the second sentence of that last paragraph?

10 A. The second sentence in the last paragraph. Because of  
11 that, it is recommended that Jesse attend some  
12 counseling ---

13 Q. Oh, I'm sorry. Read the sentence before that.

14 A. The last sentence?

15 Q. Well, this is going longer than I thought it would. Just  
16 publish the very last, see the second sentence in the  
17 last paragraph?

18 A. Okay. It is puzzling [to this psychologist] as to how or  
19 why he would resort to such extremes.

20 Q. And it was puzzling to you, wasn't it?

21 A. It was.

22 Q. It's been puzzling to all of the people involved in this  
23 case.

24 A. It has been.

25 Q. And I think that Mr. Eppes said, and you also said, we

1       need to know what's happening below the surface.

2 A.    Yes.

3 Q.    And it's imperative that we know what's happening below  
4       the surface with Mr. Osborne, isn't it?

5 A.    Particularly since what occurs under the surface is not  
6       always forthcoming.

7 Q.    Exactly. There are two sides to Mr. Osborne, aren't  
8       there?

9 A.    There are.

10 Q.   And does he show one side to certain people?

11 A.   His public side and then his real side.

12 Q.   And what is his real side?

13 A.   Oh, some the things that we have seen ---

14       MR. EPPES: I object to the form, Your Honor. Without  
15 going into a metaphysical debate about what your public side  
16 is and your real side is, I believe this witness is about to  
17 testify that you are more real on the internet than you are  
18 in person and I just don't believe that's an appropriate  
19 statement.

20       THE COURT: All right. I overrule the objection.

21       MS. PRICE: Thank you.

22       THE COURT: Go ahead and answer if you can.

23 A.   So, can you repeat the question?

24 Q.   Sure. What is his real side and why would someone be  
25       more authentic behind the scenes?

## REDIRECT EXAMINATION OF DR. MARK WAGNER BY MS. PRICE 876

1 A. Well, there's less -- I think Mr. Osborne started out as  
2 a really good kid. Earlier in the week we saw lots of  
3 pictures of him at Townville Elementary. He was  
4 participating in a lot of activities. He looked like a  
5 really sweet boy and he continues to be a really nice  
6 person on the surface. He's polite, in the detention  
7 center he has been cooperative. Repeatedly, people  
8 comment about his social behavior. That's a marked  
9 contrast to what we're seeing below the surface and I  
10 frankly was shocked by the material that was retrieved  
11 by the FBI, some of the songs that he's been listening  
12 to, particularly the internet searches, his fascination  
13 with shooting and death and guns. There is another side  
14 to him that is very dark and very concerning. That's  
15 what I worry about.

16 Q. And does that mean, for all the more reason, why it  
17 would be important to have someone like yourself examine  
18 Mr. Osborne in this case?

19 A. Yes.

20 Q. Because his overt behavior is not always showing what is  
21 going on with him behind the scenes?

22 A. Yeah, there was a contrast in the reports. The first  
23 visit with Dr. Sharman portrays this beautiful home life  
24 with just friendly interactions and everything is  
25 wonderful and then you know, what we've learned over

1 this past week has been a completely different story.

2 So, he portrays himself in a very socially favorable

3 manner ---

4 Q. And would you say that his ---

5 A. --- with lots of unpredictable behavior below the

6 surface.

7 Q. Would you say that his behavior has been chameleon-like?

8 A. In what sense?

9 Q. In the sense that, perhaps ---

10 MR. EPPES: Objection, Your Honor. She's leading the

11 witness.

12 MS. PRICE: He asked me, in what sense, and so I am

13 clarifying.

14 MR. EPPES: Your Honor, I was talking about his behavior

15 being chameleon-like.

16 THE COURT: I sustain that objection. Re-phrase your

17 question.

18 MS. PRICE: That's fine.

19 Q. Has Mr. Osborne tailored his behavior in various

20 settings?

21 A. Yes.

22 Q. And has his behavior been full of deceptiveness and

23 inconsistencies?

24 A. Yes.

25 Q. Are you paid for your time today?

## REDIRECT EXAMINATION OF DR. MARK WAGNER BY MS. PRICE 878

- 1 A. Yes.
- 2 Q. And are you the Director of Neuropsychology for the lead  
3 medical university in our state?
- 4 A. I have been. I'm turning that down at this point in  
5 time, but I continue as a full professor until  
6 retirement.
- 7 Q. Not to toot your own horn, but would you say it's fair  
8 to call you one of the preeminent, if not the  
9 preeminent, neuropsychologist, in our state?
- 10 A. That's what professor designates.
- 11 Q. And the Department of Juvenile Justice's Dr. Atkinson  
12 told us yesterday that she's prohibited when she does  
13 her waiver evaluation from diagnosing Mr. Osborne.
- 14 A. Yes.
- 15 Q. In fact, she said that to me, repeatedly.
- 16 A. Yes.
- 17 Q. And she also said that she refused, that she didn't  
18 think it was appropriate for juvenile validity testing.
- 19 A. She said that.
- 20 Q. Is that not what she said?
- 21 A. Yes.
- 22 Q. And all of Mr. Osborne's conduct, at least to you, was  
23 it your testimony that he had exaggerated symptoms of  
24 various potentially psychological problems?
- 25 A. Many.

1 Q. Many. So, would you say that it would be imperative to  
2 have a diagnosis or an opinion of a diagnosis rendered  
3 for the purposes of this waiver hearing in light of the  
4 Kent factors?

5 A. Yes.

6 Q. And if you could give back the money that the State's  
7 paid you so that J.H. could live, would you do it?

8 A. Absolutely.

9 MR. EPPES: Objection, Your Honor.

10 THE COURT: Sustained. That's an improper question.

11 MS. PRICE: Okay. Withdrawn.

12 Q. Mr. Eppes talked about how upset Jesse was at the  
13 school. Could it be because he couldn't carry out his  
14 plan to his expressed desires?

15 A. That was one of the questions that I had. That's a  
16 possibility.

17 Q. It's a possibility. If that's the case, would he be more  
18 dangerous as he gets older?

19 A. Yes.

20 Q. Would his ability to succeed increase?

21 A. Yes, it would.

22 Q. He would legally be able to obtain guns?

23 A. Yes.

24 Q. And you testified that you don't see a treatment  
25 currently available that would change his behavior or



## REDIRECT EXAMINATION OF DR. MARK WAGNER BY MS. PRICE 880

1 modify it?

2 A. Unfortunately, I don't think we have that available  
3 currently in mental health.

4 Q. Would that make him an extreme danger to society?

5 A. Yes.

6 Q. Increasingly so as he gets older?

7 A. Absolutely.

8 Q. Would you say he is already presenting a danger to  
9 society?

10 A. Yes.

11 Q. Would you say that Mr. Osborne wants people to know  
12 about his crime?

13 A. Yes.

14 Q. Would you say that he almost publishes it to anyone that  
15 he can?

16 A. Yes.

17 Q. Jesse didn't design that tee shirt. Did he adopt that  
18 tee shirt as a part of his ---

19 MR. EPPES: Objection, Your Honor. The testimony about  
20 that tee shirt was that it was sent to him from someone on  
21 Instagram. There's no testimony that he published it in any  
22 other place. I don't agree with the characterization of  
23 adopting the tee shirt.

24 MS. PRICE: I'll withdraw.

25 THE COURT: Sustained.

1 MS. PRICE: I withdraw it.

2 Q. Did he adopt the mantra of this group?

3 A. Yes.

4 Q. His imaginary life, as Mr. Eppes put it, on the  
5 internet, it's not imaginary anymore, is it?

6 A. It is not.

7 Q. It may not be as grandiose as Mr. Osborne would like it,  
8 but it certainly was not imaginary, was it?

9 A. No. That is correct.

10 Q. Since Mr. Eppes went all the way through the conduct  
11 disorder criteria in the DSM-V with you, we have been  
12 arguing about whether he meets the third criteria for  
13 conduct disorder. If you only had two criteria, what  
14 would your diagnosis then be?

15 A. There is another section in the DSM and if you could  
16 hand that to me.

17 Q. Sure.

18 MS. PRICE: This is State's Exhibit #55. It's a clean  
19 copy of the DSM-V.

20 MR. EPPES: No objection. And I intend to admit it for  
21 the Court's reference later.

22 THE COURT: Without objection, so admitted. Thank you.

23 (Whereupon, a book, the DSM-V is admitted into evidence  
24 as State's Exhibit #65, without objection

25 A. Give me just a minute, please?

1 Q. Certainly. I believe it's on page 684.

2 A. The guidance is -- I'm sorry. The DSM is a guide for  
3 mental health professionals to help them condense a  
4 number of symptoms into diagnostic formulations that  
5 allow us to characterize, treat, and effectively  
6 communicate with other professions. I believe that Mr.  
7 Osborne meets the criteria of conduct disorder with all  
8 the specifiers, but I agree with the defense attorney  
9 that at this point in time, technically, he may not meet  
10 that complete criteria.

11 Q. Due to the 6 month requirement?

12 A. I guess conduct disorder and involuntary remission so he  
13 doesn't have access to the tools that he needs to do  
14 that. And so, the DSM, in their wisdom has given us  
15 other categories. So, in a situation where people may be  
16 arguing whether it's two points versus three points or  
17 whatever, there is another category called unspecified  
18 personality disorder. So, there are two categories  
19 actually; other specified personality disorder,  
20 unspecified personality disorder. But these are two  
21 diagnostic categories that allow clinicians to use their  
22 best judgment in diagnostic formulations so if you don't  
23 meet the letter of the outline, and that happens very  
24 frequently in psychiatric diagnoses, the DSM, in their  
25 wisdom, gives the doctor the other option to choose one

1 of these other conditions such as unspecified  
2 personality disorder. So, to the extent he doesn't  
3 technically meet the exact criteria one could go to one  
4 of these other definitions, but I would argue that this  
5 is not a normal child, psychiatrically, and he doesn't  
6 fit that diagnosis, but clearly, he's not right.

7 Q. And is that one of the reasons why the DSM-V has what's  
8 called unspecified conduct disorder?

9 A. Yes. And like I said, that's the wisdom of the authors  
10 of this book, to provide options for clinicians.

11 Q. And point in fact, when you were going over the threats  
12 and bullying with Mr. Eppes, you did mention, and this  
13 was not in your report, but now in addition, a child in  
14 a video that we saw earlier today?

15 A. Yes.

16 Q. And it appeared that Jesse was bullying that child,  
17 himself?

18 A. Yes.

19 Q. And I don't believe he brought it up, but would the  
20 threat that he made to the guard also qualify as a  
21 threat? I'll put you in the f-ing ground, just like I  
22 did my dad, my father?

23 A. I would interpret that as a threat.

24 Q. So, there are some threats not specifically outlined in  
25 your report might be additional qualifiers

RE-CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES 884

1       diagnostically that we discussed this week?

2 A.    Yes.

3 Q.    That you would, potentially, add if you were able, now?

4       Is that correct?

5 A.    That's correct.

6 Q.    Thank you. Answer any questions the defense has.

7       THE COURT: Mr. Eppes?

8                               RE-CROSS EXAMINATION

9 BY MR. EPPES:

10 Q.    Doctor, so your diagnosis now is, and I'm paraphrasing,  
11       he ain't right?

12 A.    Is what?

13 Q.    He ain't right. You said he's not right.

14 A.    I used that in a tongue and cheek.

15 Q.    And I was responding, he ain't right, which everyone in  
16       this room would agree with.

17 A.    Yes.

18 Q.    I really only have one thing to talk to you about and I  
19       don't know that it's going to take a long time or a  
20       little time. You said the real Mr. Osborne was on the  
21       internet and, in point of fact, isn't it fair to say  
22       that we are all complex human beings?

23 A.    We are.

24 Q.    And I will represent to you that when I was a 15 or  
25       16-year-old boy, I listened to music and I would listen

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1 to one person, compulsively. Have you ever heard of  
2 Warren Zevon?

3 MS. PRICE: Your Honor, I'm going to object. Could he  
4 just ask a question?

5 Q. Do you know anything about Warren Zevon's work?

6 A. I know the name.

7 Q. I will represent to you that he had a song called  
8 "Excitable Boy" about a serial killer. He had a song,  
9 "Roland the Headless Thompson Gunner" about a mercenary  
10 who died in the Congo Jungle. He had a song called  
11 "Frank and Jesse James" about Frank and Jesse James, the  
12 notorious outlaws.

13 A. That rings a bell.

14 Q. Okay. I listened to those songs all the time. I listened  
15 to his albums, constantly, all the time, and the fact  
16 that I did that, I do not believe may be a better or  
17 worse person. Now, that is a very minimal example of  
18 what I'm talking about, but is it fair to say that the  
19 face that Jesse Osborne portrays to the detention  
20 center, to his parents and his family, is a part of him  
21 as a person?

22 A. Yes.

23 Q. And the face that he portrayed, unfortunately, on the  
24 internet is, likewise, a part of him as a person.

25 A. That is true.

RE-CROSS EXAMINATION OF DR. MARK WAGNER BY MR. EPPES 886

- 1 Q. Then I will ask you, Doctor, isn't it a little unfair to  
2 say that the person that behaves in jail is not the real  
3 person and the person that writes all kinds of stuff on  
4 the internet, true or false, is the real person?
- 5 A. I agree with you. I think there are components of the  
6 personality.
- 7 Q. They are components of the same person.
- 8 A. That's correct.
- 9 Q. So, when you said the real person is the dark person,  
10 that is not accurate.
- 11 A. I would agree. They are components that put together the  
12 entire personality.
- 13 Q. All of us are complicated. Correct?
- 14 A. That's correct.
- 15 Q. And all of us, frankly, have things about ourselves that  
16 probably aren't the most flattering things. Correct?
- 17 A. That's correct.
- 18 Q. And a lot of us have associates from one area of our  
19 lives that we probably wouldn't want to be around those  
20 associates in other areas of our lives. Correct?
- 21 A. That's possible.
- 22 Q. So, again, Mr. Osborne is a component of everything you  
23 see; the person who's been able to perform appropriately  
24 at the jail. Correct?
- 25 A. Yes.

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1 Q. And the person that committed these horrible acts.

2 A. Yes.

3 Q. And the person that's loved by his mother and his  
4 family.

5 A. Yes.

6 Q. Thank you.

7 THE COURT: Mr. Smith, anything?

8 MR. SMITH: No, sir.

9 THE COURT: All right. Thank you, Doctor. You may step  
10 down.

11 MS. PRICE: Your Honor, may he be excused should he  
12 choose to be?

13 THE COURT: Yes. Doctor, you are free to stay or leave,  
14 whichever you prefer to do.

15 DR. WAGNER: Yeah.

16 MR. EPPES: I have no objection if he leaves or stays as  
17 long as Anderson County ---

18 MS. PRICE: Yes, unfortunately, I think we have to keep  
19 him for rebuttal purposes, because Mr. Eppes is calling some  
20 extraneous doctors tomorrow.

21 MR. EPPES: Your Honor, I object to the use of the word  
22 extraneous.

23 THE COURT: Do you have another witness to call, a short  
24 witness to call?

25 MR. EPPES: I do have a short witness I can call.



## DIRECT EXAMINATION OF JUDY POPE BY MR. EPPES

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1 THE COURT: All right.

2 (After being duly sworn by the Clerk of Court, JUDY POPE  
3 testified as follows:)

4 CLERK OF COURT: Please have a seat in the witness chair  
5 and state your name for the record and spell your last name  
6 for the reporter.

7 THE COURT: The record should reflect that by consent of  
8 both parties, we are taking this witness out of order who  
9 would normally be a part of the defense's case.

10 MR. EPPES: And, Your Honor, I'd like to thank the State  
11 for that concession.

12 THE COURT: Certainly.

13 CLERK OF COURT: If you could state your name and spell  
14 your last name for the reporter.

15 MS. POPE: Judy Pope. P-O-P-E.

16 DIRECT EXAMINATION

17 BY MR. EPPES:

18 Q. Ms. Pope, tell me where you live, but don't give me your  
19 address. Just what town you live in.

20 A. I live in Greer, South Carolina.

21 Q. Yes, ma'am. And you and I just met today. Correct?

22 A. Excuse me, sir?

23 Q. You and I just met ---

24 A. Yes. Yes.

25 Q. And we arranged for you to be here through my paralegal,

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- 1 Mandy. Correct?
- 2 A. Correct.
- 3 Q. And I did that because you are friends with Tommy and
- 4 Patsy Osborne. Correct?
- 5 A. Correct.
- 6 Q. And so, you know Jesse Osborne.
- 7 A. Yes.
- 8 Q. Where did you meet Tommy, Patsy and Jesse Osborne?
- 9 A. At the Great Smoky Campground in Cherokee, North
- 10 Carolina.
- 11 Q. And when did you meet them?
- 12 A. The summer of 2016, just a few months before the
- 13 incident.
- 14 Q. And how much time during that time did you get to spend
- 15 with Jesse?
- 16 A. There was two different weeks that he was up there that
- 17 I was there and so, I saw him off and on for two
- 18 different weeks.
- 19 Q. Did you see him every day or just occasionally?
- 20 A. I would say everyday. I mean, it's not like I spoke to
- 21 him, but I would see him out every day.
- 22 Q. Did you spend time interacting with him?
- 23 A. Very little interacting with him, but I was, like, at
- 24 the pool when he was at the pool and Jesse didn't know
- 25 me, per se, but I knew his mama and daddy and so

## DIRECT EXAMINATION OF JUDY POPE BY MR. EPPES

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1       everybody kept an eye on everybody and so I just saw his  
2       actions and saw that he was well-behaved.

3 Q.   What did you observe about him?

4 A.   Like I said, he was well-behaved, well-groomed. I did  
5       notice that he was a loner, that he would ride his  
6       bicycle. He didn't interact with the older kids and when  
7       I saw him, like, at the pool, there was a swing set and  
8       a sandbox right there and the little kids would play  
9       there at the swing set and in the sand and all and I saw  
10      him out there playing some with the little kids and he  
11      was good with the little kids. He didn't hang around  
12      with the big kids. I didn't see him ride the golf carts  
13      around the campground like the bigger kids did, but he  
14      was on his bicycle and usually by himself.

15 Q.   Did you ever see him be mean to anyone?

16 A.   No. And he was very polite when he was in the pool. When  
17      he was in the pool, unlike most teenagers who they  
18      wouldn't care whether they splashed you or not, he was  
19      very considerate of the people in the pool.

20 Q.   And did you ever see him do anything hurtful to anyone?

21 A.   No, I didn't.

22 Q.   Did this event surprise you?

23 A.   Not so much surprise, no. I mean, he was, like, a little  
24      bit different, a little loner. In a way, because there  
25      were little girls and Jesse is real cute and, you know,

## CROSS EXAMINATION OF JUDY POPE BY MS. HUEY

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1 well-groomed, well-dressed and real quiet and the little  
2 girls were after him, but he didn't really -- he was  
3 thirteen, almost fourteen and most little boys want to  
4 run after little girls, but he didn't. He kind of stayed  
5 to himself. He was very quiet.

6 Q. Thank you very much. I really appreciate your being  
7 here.

8 A. You're welcome.

9 THE COURT: Mr. Smith, any questions?

10 MR. SMITH: No, sir.

11 THE COURT: Does the State have any questions?

12 CROSS EXAMINATION

13 BY MS. HUEY:

14 Q. Ms. Pope?

15 A. Yes.

16 Q. And so you only knew Jesse for two weeks. Is that  
17 correct?

18 A. Yes. Two weeks, two different weeks, yeah.

19 Q. And so, you didn't see him every single day?

20 A. Well, I would see him everyday, but I didn't interact  
21 with him. I was outside a lot. I stayed outside.

22 Q. That's all my questions.

23 A. Okay.

24 THE COURT: Ma'am, you can step down. May she be excused?

25 MR. EPPES: She can, Your Honor.

## DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE

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1 THE COURT: All right. You are free to go or stay,  
2 whichever you choose to do, ma'am.

3 MS. POPE: Thank you.

4 THE COURT: We will come back at 6:15. Everybody be  
5 prompt back. Let me see counsel in the back.

6 (Brief Break)

7 THE COURT: For the record, we're back on State v.  
8 Osborne. It is 6:15 and we are still in the State's  
9 presentation. I believe they are prepared to call their next  
10 witness.

11 MS. PRICE: That's right, Your Honor. The State calls Dr.  
12 James Ballenger to the stand.

13 THE COURT: All right. Dr. Ballenger?

14 (After being duly sworn by the Clerk of Court,  
15 DR. JAMES BALLENGER testified as follows:)

16 CLERK OF COURT: If you would take the stand, please,  
17 sir, and state your name for the record and spell your last  
18 name for the reporter.

19 DR. BALLENGER: I'm Dr. James E. Ballenger.  
20 B-A-L-L-E-N-G-E-R.

21 DIRECT EXAMINATION

22 BY MS. PRICE:

23 Q. And when you say, doctor, what is your degree?

24 A. I'm a physician, a M.D.

25 THE COURT: Before you proceed, let me also note that

STATE OF SOUTH CAROLINA VERSUS JESSE DEWITT OSBORNE

1 I've also been provided a copy of the report he prepared and  
2 I will also be reviewing that with the consent of both  
3 parties.

4 MS. PRICE: Yes, sir. Thank you. And I believe that Mr.  
5 Eppes is going to stipulate to your qualifications as an  
6 expert.

7 MR. EPPES: That is true, Your Honor.

8 THE COURT: All right. So admitted. He's qualified as an  
9 expert. Clinical psychiatry specialty, is that right?

10 MS. PRICE: Your Honor, I was actually going to qualify  
11 him as an expert in the fields of psychiatry and forensic  
12 psychiatry.

13 THE COURT: Okay. Is that correct, Mr. Eppes?

14 MR. EPPES: Yes, sir.

15 THE COURT: All right. Qualified in psychiatry and  
16 forensic psychiatry, as well.

17 MS. PRICE: And neurology, as well.

18 MR. EPPES: Without objection, Your Honor.

19 Q. And just for clarification on the record, we are  
20 qualifying you in several different areas because you  
21 have several different degrees. Is that right? And you  
22 have a lot of experience.

23 Q. I have a lot of experience.

24 Q. Written how many books?

25 A. Sixteen.

## DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE

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1 Q. Okay. And hundreds of articles. Is that correct?

2 A. Over 350.

3 Q. I am going to move in at this time, without objection I  
4 assume since they've stipulated to your qualifications,  
5 State's Exhibit #64-A, which is a copy of your  
6 curriculum vitae.

7 MR. EPPES: Without objection, your Honor.

8 THE COURT: Without objection, State's #64.

9 (Whereupon, Dr. Ballenger's curriculum vitae is entered  
10 into evidence as State's Exhibit #64, without objection)

11 Q. For the record, again, is that a true and accurate copy?

12 A. Yes.

13 Q. And you've worked on several high-profile cases  
14 involving violence in America, have you not?

15 A. I have. Jared Loughner, the case where he shot Gabby  
16 Gifford in Arizona, but in South Carolina, the  
17 Christopher Pittman case and Dylan Roof, most recently.

18 Q. Okay. And where is your current practice?

19 A. In Charleston, South Carolina.

20 Q. And you've been qualified in court many times.

21 A. Many times.

22 Q. Pursuant to a court order, did you at some point in time  
23 have occasion to examine Jesse Osborne?

24 A. Yes, I did.

25 Q. How many times did you meet with Mr. Osborne?

1 A. I estimate I went to see him three times for three hours  
2 each time and I did that December 12th, December 22nd,  
3 and then, I think, right after Christmas, December 27th,  
4 I think.

5 Q. And is the individual that you examined in the courtroom  
6 today?

7 A. Yes, he is.

8 Q. Can you point him out and describe what he is wearing  
9 for the record?

10 A. Yes. He's wearing one of the orange jail suits.

11 Q. And was juvenile Osborne compliant and cooperative with  
12 your examination?

13 A. He was.

14 Q. And following your examination, did you prepare a  
15 report, which has already been provided to the court as  
16 already mentioned by the Judge, and was provided to the  
17 Defense, the Guardian ad Litem and the State?

18 A. Yes.

19 (Shows document to Mr. Eppes)

20 MR. EPPES: Yes, sir, Your Honor.

21 THE COURT: What number is that?

22 MS. PRICE: It's #64-B. I'm sorry, Your Honor.

23 THE COURT: All right. #64-B, so admitted. Thank you.

24 Q. I'm showing you State's #64-B. Is that a true and  
25 accurate copy of your report, Dr. Ballenger?



DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE 896

1 A. Yes.

2 Q. Can you describe for me, in general terms, the procedure  
3 you followed when you conducted your examination on Mr.  
4 Osborne?

5 A. I was able to do it the way I do each time and the way  
6 people like me in the field do it each time and I start  
7 with an explanation of what we're going to do and not do  
8 and the limits of confidentiality, that it will be  
9 shared in settings like this and with his lawyer and the  
10 State's lawyers and I check to see what his  
11 understanding is, because some people are confused and  
12 think I'm there to be their doctor, to treat them, and  
13 he understood that I was here to evaluate him and that  
14 my time is paid for by the prosecution and I mentioned  
15 that I was, this was an independent medical exam and it  
16 would be whatever it would be and that it might help his  
17 case and it might hurt his case, it might have no effect  
18 on his case and I said I'd like him to answer my  
19 questions, but he didn't have to answer every question,  
20 but if he didn't answer a question I would put it in my  
21 report that he didn't answer that question. He  
22 understood everything we talked about and he asked one  
23 question, he said if I didn't answer a question would  
24 that be held against me and I told him I didn't know  
25 whether it would or wouldn't, it really depend on what

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1 the question was and the rest of his answers during our  
2 times.

3 Q. But this wasn't an interrogation, this was an  
4 evaluation. Is that right?

5 A. Yes. It was an examination and he ---

6 Q. An examination.

7 A. He understood that.

8 Q. And you brought out the fact that you were hired by the  
9 State and you shared that with Mr. Osborne. Is that  
10 right?

11 A. Yes.

12 Q. And we are paying you for your time here today. Is that  
13 right?

14 A. And any day that I'm here.

15 Q. Yes. And are we paying you for a particular opinion?

16 A. Absolutely not. You couldn't afford that.

17 Q. You wouldn't compromise your ethics?

18 A. Absolutely not. Absolutely not.

19 Q. And, in fact, did we discuss the fact that whatever your  
20 results were, the State was mostly interested in knowing  
21 what was going on?

22 A. Yes.

23 Q. We explicitly discussed that with you, did we not?

24 A. Yes. And I appreciated that.

25 Q. And what is a semi-structured interview and did you use

DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE 898

1 that technique with Mr. Osborne?

2 A. I did. I'm sorry, I will try to finish my answer to your  
3 question. The routine way we do this, particularly with  
4 adolescents, is to start out in a semi-structured thing.  
5 So, for instance, I always ask can you tell me why we're  
6 here today and about why we're here today, and then sit  
7 back and if he, as long as he's talking in a relevant  
8 way, I let him do that and if he stops, I would give him  
9 a prompt to start again and I would do that until  
10 that portion was sort of over and then I would fill in  
11 the holes, often going back to issues he had brought up  
12 in that particular time and then at the end, I do a  
13 formal mental status, which is, has to do with  
14 orientation and specific symptoms, but in general that  
15 gets filled in by the fact that I've already talked to  
16 him for two hours and 45 minutes and I sort of  
17 understood those things. At the same time, I write down  
18 a running narrative as he talks, it's pretty accurate  
19 and complete.

20 Q. You took notes the entire time you were speaking with  
21 him. Is that right?

22 A. Yes.

23 Q. And in all three interviews with Jesse, did you take the  
24 same approach?

25 A. I did.

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1 Q. Did you fill out certain issues that came to the surface  
2 in your initial meeting and your second and third  
3 meetings with Jesse?

4 A. Absolutely. The idea is, obviously I know there's  
5 certain questions, certain issues that I have to cover  
6 in my three exams, but I would do that in particular to  
7 fill up, fill out the rest of the answer of things he  
8 brought up.

9 Q. And what is the object of your approach?

10 A. Well, I'm always asked in a trial what is forensic  
11 psychiatry and the idea is to bring psychiatric  
12 experience and science to help the legal questions in  
13 the courtroom. To help the trier of fact, in this case  
14 the judge, to help you guys, and to help other people  
15 understand what I know, what my expertise is, to help  
16 you understand the legal questions that are most  
17 pertinent. For example, in this case, by the end of the  
18 nine hours, I needed to be confident to explain the Dost  
19 factors, this is an example of the issues.

20 Q. The Kent factors in this case.

21 A. Yes.

22 Q. And where was your evaluation conducted for Mr. Osborne?

23 A. In the Greenville County Juvenile Detention Center, all  
24 three.

25 Q. And were you provided a room to conduct the evaluation?

DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE 900

1 A. Yes. Actually they have a nice room off the main  
2 activity room, just quite literally behind the closed  
3 door with a table and at least two chairs. So, I sat on  
4 one side of the table and he on the other side.

5 Q. So, this was private and uninterrupted?

6 A. Yes.

7 Q. And I believe you told me that it was approximately nine  
8 hours that you spent with Mr. Osborne?

9 A. Yes. Three hours on each of three occasions.

10 Q. What time did you start your evaluation or your  
11 examination? Excuse me. I'll get there sometime.

12 A. I began each of them at 1:00 and finished at 4:00,  
13 because he had visitors at 5:00.

14 Q. And did you review records and materials as part of your  
15 examination?

16 A. I reviewed many, many records, because there was a great  
17 deal of evidence in this case.

18 Q. Would you say they are voluminous?

19 A. Yes. I tried not to use the exact same word Dr. Wagner  
20 did ---

21 Q. Sur. --- but voluminous is a good description.

22 Q. And did you enumerate the records that you reviewed in  
23 your report?

24 A. Yes, I listed the ones, yes.

25 Q. Since that time, have you since received additional

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1 material? In fact, did you review a great deal of  
2 material?

3 A. Yes.

4 Q. Is it your understanding that material still continues  
5 to come to the prosecution every day?

6 A. Yes. And therefore, to me everyday and every night, as  
7 well.

8 Q. And is it important for you to have all the information  
9 so that your examination and your testimony today is as  
10 up-to-date as possible?

11 A. It absolutely is. I try to read everything and not only  
12 read it, but analyze it and study it.

13 Q. Did you use any testing tools in conducting your  
14 examination?

15 A. No and that's a part of why I asked Dr. Wagner to do  
16 that part of the exam.

17 Q. That was Dr. Wagner's role?

18 A. It was. Traditionally, psychiatrists, and particularly  
19 in forensic legal settings, don't administer the tests  
20 because he went to school specifically to learn how to  
21 do the tests and understand all the science involved and  
22 he does it every day. I don't. And so he's better  
23 qualified to do that.

24 Q. In your opinion, does Dr. Wagner have considerable  
25 expertise in this area?

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1 A. Very much so. That's why I asked him in this case, as  
2 well as in the Roof case, to help me.

3 Q. And he was your -- exactly, you asked him to assist you.  
4 That was not the State's decision. Is that right?

5 A. That's right.

6 Q. And did you refer to any publications when you wrote  
7 your report and you made your diagnoses of juvenile  
8 Osborne?

9 A. Probably, the only publication I really used was the  
10 DSM-V.

11 Q. That's already been admitted as State's Exhibit #65. I'm  
12 going to hand it to you for your reference. And this is  
13 the DSM-V. Is that correct?

14 A. Yes.

15 Q. There have been other versions of the DSM. Is that  
16 right?

17 A. Yes.

18 MR. EPPE: I stipulate there have been four other  
19 versions.

20 THE COURT: Thank you. So stipulated.

21 Q. And Dr. Ballenger, when you're looking at the DSM and  
22 there have been four other versions, were you on a  
23 committee that, in fact, drafted the DSM that was just  
24 prior to this version?

25 A. Yeah, I headed a section of the DSM-IV and pulled

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1 together 225 people from around the world to help me and  
2 we went through a year-and-a-half process. A tremendous  
3 amount of work goes into it.

4 Q. So, you're familiar with this publication?

5 A. Too much.

6 Q. And I'm going to take us back to your examination. What  
7 were your impressions, based on your examination and on  
8 the material that Dr. Wagner provided to you of Jesse's  
9 intellectual abilities?

10 A. I think there's really no argument that he is solidly in  
11 the average range of intelligence and intellectual  
12 abilities. That was not only Dr. Wagner's findings, but  
13 it was also Dr. Jones' findings in the examination  
14 before and that was clear that that's the case. It  
15 wasn't much of anything to argue about.

16 Q. And what did you appreciate about his, and by appreciate  
17 I mean observe. What did you observe about Jesse's  
18 demeanor when you were speaking with him at the  
19 detention center during your time with him?

20 A. There were a series of just striking things that you  
21 could observe about him. Mr. Osborne is, as Dr. Wagner  
22 said, he was corporative and polite. The first time I  
23 was there he stuck his hand out to say hello and made  
24 eye contact immediately and maintained eye contact the  
25 entire time and maintained it. Back and forth discussion



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1 that was logical, coherent, organized, to the point he  
2 did not display any signs of any psychiatric problems  
3 from social anxiety. The cardinal sin there is blushing  
4 and he certainly didn't blush, but he also showed no  
5 anxiety about meeting a stranger and that's the  
6 principle area where people with social anxiety have  
7 trouble. But he also didn't display any psychiatric  
8 signs of a psychotic process, schizophrenia, which like  
9 bipolar or manic depressive illness, which he also did  
10 not display anything of and in many ways you can  
11 diagnose from across the street because the things you  
12 can see, behavioral patterns, and the same way about  
13 autism, you see behavioral signs. He didn't display any  
14 behavioral signs of any psychiatric condition.

15 Q. And if he had, you would certainly have made a note of  
16 it in your report?

17 A. I would have made a prominent note.

18 Q. And you mentioned that one-on-one discussion is the  
19 point of struggling for people that may have social  
20 anxiety disorder. Is that right?

21 A. Yes. Routinely, that's the problem. They don't have  
22 anxiety when they are off by themselves, but in a social  
23 situation, particularly where somebody they don't know  
24 and in an evaluations sitting like for a job, like a  
25 psychiatric examination, like in front of a new girl,

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1 that is where they are so anxious in a more severe form.  
2 They can't talk. There's that character on "Big Bang",  
3 Raj, who can't talk to a girl, period. It's that kind of  
4 a thing. It's only in social contact.

5 Q. And would it be difficult for someone with social  
6 anxiety to function in a group setting, as well?

7 A. In general, it's very difficult. I mean, the general  
8 population has a lot of social anxieties. All of us  
9 start out afraid to talk, like here, and to give a book  
10 report in school. Most of us get on the other side of  
11 that, eventually, but yes, group settings is hard.

12 Q. And there was testimony this week that Mr. Osborne,  
13 juvenile Osborne, was playing basketball with a group of  
14 people when he injured himself. Is that the kind of  
15 behavior that you would see with someone that had a  
16 social anxiety disorder?

17 A. Well, I do note that, that he did that and that he was  
18 interested in social interaction, but also after he'd  
19 been at the detention center, he actually asked to be  
20 put with everybody because his first, he said he  
21 reported to one of the counselors that he enjoyed being  
22 with the other juveniles and could he please have more  
23 interaction and when I asked him about it, he said he's  
24 really having no social problems.

25 Q. Let's talk about your impressions of Jesse's social and

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1 emotional development. Can you tell me if you saw  
2 anything abnormal?

3 A. Yeah, that's easy. I didn't see anything abnormal. You  
4 know, he -- except all the issues about his internet  
5 behavior and what brought us here today, but in general  
6 the meaning of development, his mother reported normal  
7 milestones of walking, talking, doing things that nobody  
8 reports anything abnormal at school. He has apparently  
9 certainly normal behavior when he's in Cherokee. He told  
10 me that and that he really likes that and had a good  
11 time, but also at church on Wednesdays when he used to  
12 go and on weekends when he'd goes to the Airsoft  
13 battleground and doesn't have any trouble with that. But  
14 he does say he doesn't like to be around a whole bunch  
15 of people, that he doesn't talk a lot to people, but I  
16 think that's a part of his conduct disorder, not any  
17 social anxiety problem.

18 Q. And did he appear to be developmentally average for a  
19 14 or 15-year-old? A fifteen-year-old at the time that  
20 you saw him.

21 A. Yes, including that recent growth spurt. He seems  
22 squarely in the normal range of adolescence. His age in  
23 terms of the way he related, what he seemed to know and  
24 not know, just seemed like other 15 year olds.

25 Q. You didn't appreciate any frontal lobe problems with

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1 him?

2 A. No, I did not. Those are subtle and don't jump out at  
3 you, but for instance, when he's asked the series of  
4 questions about that kind of stuff, is he impulsive,  
5 does he jump to hurt people and other questions like  
6 that and there really was no evidence that he's  
7 different except when we get to the criminal activity,  
8 different from other adolescents.

9 Q. Well, we saw a video this morning of him making a Drano  
10 bomb and throwing it and then he said, "Oh, I'm not  
11 going to go out there." Does that show he has some  
12 impulse control?

13 A. It does. I mean, he did. That was really good sense that  
14 he said he was going to let it cool down and not go out  
15 there and get it. I asked him if he was impulsive or  
16 risk taking and he said, his really only answer the  
17 first time was, yeah, I can ride my bike without using  
18 my hands. Well, you know, that's what kids learn to do  
19 real easily and he thought about that and the second  
20 interview when I asked him what he had been thinking  
21 about and he said, well, I thought about your question  
22 about impulsivity, but I can't think of anything else.

23 Q. So, he brought it up with you?

24 A. Yes.

25 Q. Did you review any reports by any other psychiatrist or

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1 psychologist as part of your examination?

2 A. To my knowledge, I reviewed all the mental health  
3 people's records that he's ever seen. So, Dr. Sharman,  
4 Jones and Atkinson. I did review those, as well as Dr.  
5 Martin's at the detention center.

6 Q. And after reviewing those records, what are your  
7 impressions of what those other individuals were seeing  
8 or not seeing with Jesse?

9 A. Well, I think the first two, Dr. Sharman, who is an  
10 experienced psychologist at DJJ. I had seen his work in  
11 another case and I was very impressed with him. He saw  
12 what I saw and what Dr. Wagner reported seeing, as well.  
13 He didn't see any psychopathology, he didn't see any  
14 psychosis or anything. Now, he did comment that he  
15 thought it was troubling that Jesse would -- I'll call  
16 him Jesse here, because everybody has. He asked me to  
17 call him Mr. Osborne and I did -- but he said it's  
18 really troubling that Jesse could talk about chopping  
19 the heads off others. I don't know. He essentially said,  
20 I don't know what to make of that, but it bothers me,  
21 but he didn't see any psychopathology. When he saw Dr.  
22 Jones, he didn't either. He found him a normal  
23 adolescent, intellectually. He believed his reports  
24 about his social anxiety and I do think he had some  
25 social anxiety, but I think it's not to the level of

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1 social anxiety disorder. It is normal, if you will.  
2 Seventy-five percent of the people in this room and  
3 outside this room have four or more social anxieties,  
4 like giving a talk or speaking to a new person or in a  
5 job interview.

6 Q. And what about Dr. Atkinson?

7 A. Dr. Atkinson actually had a more complex and extensive  
8 report, as is her job to do in a waiver hearing  
9 evaluation, and she was able to -- and her job and she  
10 does a good job of filling in some of the things like  
11 with the family, but also psychiatrically she was able  
12 to evaluate him and didn't report any psychiatric  
13 problems. She said he reports that he has  
14 hallucinations, but she ultimately said they are  
15 atypical. Most people who have real hallucinations are  
16 really bothered by them. I mean, it's very scary to hear  
17 a demon voice like he described as well as Scooby Doo.  
18 Most people react to those and if they are happening, he  
19 says he has them all the time so while he was talking to  
20 her, she never saw him looking off paying attention to  
21 them. That's what we mean by responding to internal  
22 cues, but also, people who have genuine hallucinations  
23 have the other symptoms of the psychiatric disorders  
24 that cause hallucinations, like people with  
25 schizophrenia. They are the most common. They always

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- 1 have delusions if they have hallucinations. So, they  
2 always have ideas like, somebody's put a microchip in my  
3 brain that controls my thoughts and makes me think  
4 certain things or those kinds of, or somebody, the  
5 police are after me or some kind of delusion, but they  
6 also have signs of schizophrenia, they're obviously not  
7 right. They don't talk very much, what we call negative  
8 symptoms, they don't talk correctly, they have loose  
9 associations, what they say doesn't make sense.
- 10 Q. Is personal grooming an issue sometimes with ---
- 11 A. Absolutely. So, the people on the street who have three  
12 coats and two pairs of shoes, you can be absolutely sure  
13 that they have schizophrenia.
- 14 Q. And I think that there was just testimony that even at  
15 Cherokee, Jesse was well-dressed, well-put-together,  
16 clean, attractive.
- 17 A. Is in the detention center, as well.
- 18 Q. And what about Dr. Martin's records? I don't know that  
19 we have complete records provided by Dr. Martin at this  
20 stage, even though they have been asked for repeatedly.  
21 But for today's sake and based on what you've had of Dr.  
22 Martin's report, that the State still has of Dr.  
23 Martin's report, what is your impression of that?
- 24 A. Well, right before Dr. Martin saw him, Jesse was checked  
25 in to the detention center and they did a screen and

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1 they asked him, do you have any psychiatric history, do  
2 you take any psychiatric medicines, do you have any  
3 symptoms, are you upset about anything, do you need to  
4 talk to a mental health person. He said, no, no, no, no,  
5 no, there's nothing wrong with me. I don't have any  
6 trouble. So, we have Drs. Sharman, Jones, Atkinson and  
7 his own report before he checks into the detention  
8 center that he has no psychiatric problems. Dr. Martin  
9 saw him the first time, two days after he was there on  
10 an intake psychiatric exam and from what Dr. Martin  
11 wrote in his note, he didn't see anything abnormal  
12 either. He was logical, coherent. He did say he was  
13 mildly depressed. I haven't had a chance to talk to Dr.  
14 Martin, but I don't understand why he didn't put the  
15 diagnosis rule-out, meaning I will have to gather more  
16 data to figure out if this is right, but ruled-out major  
17 depressive disorder with psychotic features in somebody  
18 who's described as mildly depressed and there weren't  
19 any signs described about psychosis nor any observations  
20 about psychosis and people with that diagnosis are  
21 people who are so depressed they've lost 60 pounds  
22 because they don't eat anymore, they don't sleep  
23 anymore, they think their insides have died. They are  
24 very obviously ill people. Now, he made that tentative  
25 diagnosis and then saw him again six weeks later after

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1 Jesse complained he had ringing in his ears and the  
2 Doctor came back to see him and the Doctor then said --  
3 I'm sorry. In the first visit, he put him on an  
4 extremely low dose of Doxepin, which is an  
5 antidepressant not used in the treatment of major  
6 depressive disorder with psychotic features. That needs  
7 a whole lot of antidepressant and a whole lot of an  
8 antipsychotic medicine and so he put him on a little bit  
9 of an antidepressant that I haven't used in the last  
10 twenty-five years.

11 Q. Is that antiquated?

12 A. Well, I don't use it anymore. He came back six weeks  
13 later because of the ringing in the ears complaint and  
14 he said there's nothing here to see. His note says, this  
15 is a normal child, juvenile, and then he revised the  
16 diagnosis to say again, major depressive disorder with  
17 psychotic features in remission, as if it was there but  
18 it's gone now, which is generally because of treatment  
19 and I don't really understand that. Now, he doesn't see  
20 him again for three months. During that time he sees  
21 some counselors and essentially although he occasionally  
22 reports that he still hears things and I think he told  
23 Dr. Martin he was hearing a demon voice and Scooby Doo,  
24 all the time. Sometimes he reported seeing a blue person  
25 with pointed limbs, like hands ---

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1 Q. I think that may have been in Dr. Atkinson's report.

2 A. Yes. Yes. But his report of the hallucinations are sort  
3 of different to whoever he said them to.

4 Q. Once he's incarcerated, all these things started being  
5 reported. Is that correct?

6 A. That's exactly right. The short answer to this is that  
7 he didn't report them before. Now, he told Dr. Atkinson  
8 that he was hearing these things and he said, I told Dr.  
9 Sharman I was, too. Well, like a good clinician, she  
10 called Dr. Sharman and he said no, he didn't say that,  
11 but when he got to the detention center then they  
12 started. Dr. Martin saw him mid-November again and then  
13 saw him three months later in mid-February and at that  
14 point Jesse had reported jumping with increased startle  
15 to some doors closing that sounded like a gunshot and he  
16 reported the hyper-reflects that people with PTSD have.  
17 Now, that's the only symptom of PTSD he reported. When I  
18 asked all the symptoms of PTSD, intrusive memory,  
19 flashbacks, he didn't have any of those, but he did give  
20 him an additional diagnosis of PTSD after that time.  
21 Jesse did report an additional symptom that's associated  
22 with PTSD and that's trouble sleeping. That's also a  
23 symptom of a whole bunch of other things, obviously. But  
24 Dr. Martin gave him Prazosin, which is a sleep aid for  
25 people with PTSD. It reduces the nightmares people with

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1 PTSD have, but in the main, Jesse doesn't report regular  
2 nightmares. So, that's the jail records in Dr. Martin's  
3 or my understanding of what we have seen already.

4 Q. What we've seen so far. And so these reports of  
5 psychiatric issues, self-reports by juvenile Osborne,  
6 did you see an increase in those?

7 A. Yes. It became a major aspect of what he sort of told  
8 everybody. Now, they varied, you know, from blue people  
9 to people with no faces to Scooby Doo and the demon,  
10 those are the ones he talks about more regularly. But  
11 from the very beginning, the first person we are aware  
12 that he told them to, Dr. Atkinson, they were not  
13 presented in a credible way and that's a part of the  
14 reason why she called Dr. Sharman, I would guess. They  
15 continued to be very atypical and changing, sometimes  
16 they were loud screaming at him, sometimes they switched  
17 to tiny little voices, was his description. He described  
18 them as continuous which is actually almost the first,  
19 when you look up malingered psychosis, one of the  
20 hallucinations reported by people malingerer,  
21 continuous hallucinations. They just don't happen in  
22 what we call genuine patients, but that's what he's  
23 mostly reported.

24 Q. So, in case in point, has he ever displayed any signs  
25 that you can see?

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1 A. Not in my nine hours, Dr. Wagner's six hours, I don't  
2 know how long Dr. Atkinson was with him, but none of us  
3 have seen it.

4 Q. Other than malingering, was there evidence in the  
5 records of any psychiatric issues?

6 A. The only diagnosis, in addition to malingering, that he  
7 has in my opinion is conduct disorder. Now, he does --  
8 adolescent onset, which means its just starting and he's  
9 been in jail a lot of that period.

10 Q. And I heard Mr. Eppes earlier today ask somebody, what  
11 happened, what could have happened? He was so nice his  
12 whole life up until the point that he became an  
13 adolescent. Is it adolescent onset? Is that a  
14 possibility?

15 A. Well, absolutely. When we -- there's a whole group of  
16 conduct disorder kids, adolescents, who develop it only  
17 in adolescence. So, we would have that same question.  
18 Many times, we don't know anything that has happened.  
19 What we do know is that they have generally gone through  
20 puberty and I asked him about that and that's, as well  
21 as his parents are reported by him as to why and they  
22 said oh, maybe your troubles are because you've recently  
23 gone through puberty. We often don't find a specific  
24 thing, but whatever it is that's happening in the brain  
25 that leads people to develop adolescent onset conduct

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1 disorder, you know, it's something that happens over  
2 time.

3 Q. I'd like for you to turn to page 62 in your report, if  
4 you will.

5 A. Okay.

6 Q. And I won't take us through all of these, but you go  
7 into each of these things that we've discussed: autism,  
8 spectrum disorder, social anxiety disorder, and I think  
9 psychosis and schizophrenia at length. Is that right?

10 A. Yes.

11 Q. And did he have any of those?

12 A. No. He did not meet the criteria for any of those and,  
13 in fact, he really had no signs or symptoms of autism,  
14 no signs or symptoms of schizophrenia except his own  
15 self-report of auditory and some visual hallucinations,  
16 but otherwise didn't meet any of the criteria for  
17 schizophrenia, which is a very complex, I've often said  
18 it's the worst psychiatric disorder that we see. It's  
19 what keeps people -- at one point, it filled up half the  
20 hospital beds in the world, but now it's only, only 35%  
21 of all the hospital beds, so he didn't have that. Now,  
22 he had self-report of social anxiety, but he didn't have  
23 hardly any of the, I don't think he had any of the  
24 symptoms of social anxiety disorder. Obsessive-  
25 compulsive disorder, OCD, I don't believe -- he didn't

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1 meet the criteria. He did bring up when I started in my  
2 mental status, he did bring up two things: He said, oh,  
3 does that mean when you touch something with one elbow  
4 you have to touch it with the other elbow or if you  
5 touch something with one hand, you have to touch it with  
6 your other hand, and I said, yeah, it is like that. Do  
7 you have anything like that? No. Why did you do that?  
8 Oh, I don't know. Did you have a thought about that? No.  
9 Did you think there were germs anywhere? No. I  
10 personally think that he saw that on the Columbine, Eric  
11 Harris said what you should report is depression,  
12 paranoia and some obsessional criteria, in that exercise  
13 which he did about which victim you are with the  
14 Columbine, so I don't think he had OCD, but he tried to  
15 use it a little bit. I thought attenuated psychosis  
16 syndrome might be brought up and he doesn't have that,  
17 either. I go on, on page 76 to discuss antisocial  
18 personality, which he does not meet the criteria for.

19 Q. And why is that?

20 A. Because he's not 18.

21 Q. And is that the only reason?

22 A. No, that's not the only reason. He also doesn't meet  
23 multiple other aspects of antisocial personality,  
24 although he does meet a fair bit of the sort of thinking  
25 parts of that. For instance, one of them is lack of

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1 remorse, including being indifferent or rationalizing  
2 why they've hurt, mistreated, or stolen from another  
3 person. These two disorders, in my opinion, are, and in  
4 the DSM, are somewhat linked. So, for instance, you have  
5 to have conduct disorder by the age of 15 to meet  
6 antisocial personality when you're 18. So, he does not  
7 have that now.

8 Q. Do you think he is at risk?

9 A. Yes.

10 Q. And why don't you tell us ---

11 A. High risk.

12 Q. High risk.

13 A. Yes, because he does have conduct disorder now. Now, all  
14 of the discussion notwithstanding about whether he has  
15 the third thing, he clearly has used a weapon to hurt  
16 others. The other one he clearly meets is a remarkable  
17 interest in torturing animals.

18 Q. Can you tell us about your experience with him reporting  
19 that, signs of that to you during your meetings with him  
20 and what you've seen in court?

21 A. Yeah. I almost didn't ask him, it was sort of an  
22 afterthought, and I sort of half-asked the question and  
23 he gleefully jumped to describe in two different  
24 sessions how much fun he has and he first started out  
25 talking about have you ever seen, have you ever pulled

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1 the arms off of a cricket and put them where ants can  
2 eat them? He said that is fantastic fun. And when we  
3 were talking about it, how do you find crickets and he  
4 said, oh you just go out and scoop your hands along the  
5 grass and you can catch them and, oh, that's a lot of  
6 fun and then I just waited and he said, and frogs, I  
7 love to shoot them with BBs, and then smash them on the  
8 concrete and I said okay and then he went on to describe  
9 what he does with bees. He pulls their wings off, he  
10 reports. In the next session, I didn't have to ask about  
11 it, I don't think, but again he brought up and wanted to  
12 tell me more about what he does with other animals and  
13 he said he loves to shoot at dogs or things near them  
14 because he just loves how much it bothers the dogs to do  
15 that and then the other thing he said, and I love to  
16 shoot birds and then feed them to the dogs, and I said  
17 how do you get birds out of the air, and he said, well,  
18 I just shoot them and then I beat them with sticks and  
19 then I feed them to the dogs and it's fun to watch what  
20 the dogs do. Now, I didn't know, he didn't tell me about  
21 the taunting -- I'm sorry, he did, because that's where  
22 I heard the word "taunt". He described that he likes to  
23 taunt his rabbit and I think that's what we saw. It was  
24 just and how much he enjoyed doing that and how much he  
25 smiled and laughed when we touched on those topics in



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1 that video here in the courtroom.

2 Q. You are talking about the ways he's been presenting in  
3 court?

4 A. There are times when he can hardly keep himself from  
5 laughing, in my opinion, and he has to hide that he's  
6 smiling about a lot of things and I think that's a big  
7 part in that criteria of his conduct disorder is his  
8 attitude of indifference, lack of remorse, no feelings  
9 about harming other people. He would laugh when the  
10 autopsy with J.H. 's autopsy findings were announced and  
11 he tried to hide it, because he's learned that he's not  
12 supposed to do that, but he has a real hard time hiding  
13 it.

14 Q. And you observed that personally this week in court?

15 A. Again and again and again, despite efforts to hide it.

16 Q. And what do you make of this kitten video?

17 A. Like I said, probably in my experience, he has more  
18 evidence of cruelty to animals than I've personally  
19 seen, I think. I decided not to watch that video. The  
20 people described it literally as chopping up kittens and  
21 he likes that. He tells me he likes it, it's a lot of  
22 joy. When I asked him in the second or third interview,  
23 what do you like to do, what brings you pleasure, he  
24 went to that and that was it. That's what he likes to  
25 do. And I said, how about video games? And oh, yeah, I

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1       like to play video games, too. Anything else?

2       MR. EPPES: Your Honor, could he repeat that? I didn't  
3 catch that word, to something.

4       MS. PRICE: He likes to play video games.

5       DR. BALLENGER: Yes.

6       MR. EPPES: Is that what you said?

7 A.    I did. Oh, it was the second thing because I asked him,  
8       because I knew from other references that he liked to  
9       play video games and I don't know an adolescent male who  
10       doesn't, so it seemed a safe answer, but again, there  
11       was nothing beyond that.

12 Q.   So, he said some of his interests and that was one of  
13       them.

14 A.    Yes.

15 Q.    Was there any other topic that made juvenile Osborne  
16       emote in such an interesting and excited way while you  
17       were meeting with him that you recall?

18 A.    Yeah. He liked and wanted to tell me his activities with  
19       the Rainbow Group. His plan to become the best shooter,  
20       meaning the one that got the highest number of victims,  
21       but also did it more efficiently. He made fun of the  
22       Columbine people who only got 12 with all the guns and  
23       everything and so his own personal figure in that  
24       discussion was the Virginia Tech shooter who killed  
25       thirty -- it's hard, it's easy to forget what we're

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1 talking about -- but he killed 32 people with just two  
2 pistols and Jesse admired that and thought it was good.  
3 Now, obviously, he admired, tremendously, Dylan Klebold  
4 and Eric Harris and what they did and their clothes and  
5 their lyrics and their tee shirts and their weapons and  
6 the bombs that they used. I mean, he obviously, sort of  
7 admires them very much.

8 Q. Talking about Jesse's shooting, can you explain to the  
9 Court what you think Jesse's motivations were that day  
10 based on your examination and review of all the  
11 evidence?

12 A. Yeah. And I've spent a lot of time thinking about this  
13 and working with him and I have now a strongly held  
14 conviction that the thing that has motivated him and  
15 explains this is, it's really not schizophrenia or  
16 hallucinations. He's claimed that he had hallucinations  
17 telling him to do it. I don't believe that. I don't  
18 think that's a motivation. I don't think he has them. I  
19 don't think it's autism. I don't think it's bullying.  
20 Now, I think there are varying reports about how much  
21 bullying went on. I believe some of it did, because he  
22 did report it at the school once and he did go, it  
23 seemed that they did have a conference and in many  
24 schools, you bring the perpetrators and victim together  
25 and it's out in the open and everyone is admonished and

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1 they sort of described that kind of thing and so I think  
2 some of that happened. It is entirely possible all that  
3 with his father -- but reading Tiffney's description in  
4 her interview, as she was just learning of all of the  
5 horror, the fact that she just lost her husband, and  
6 essentially, lost her son, a time when she would be most  
7 honest -- that's one of the principles of my field in  
8 that type of a setting, that's when people are most  
9 honest -- and she described that at home that Jesse was  
10 a real problem, that he wants what he wants and if he  
11 doesn't get what he wants, he's in their face and he is  
12 physically threatening and he's hit them in the past and  
13 gets real mad at them real frequently and she even  
14 intimated that maybe what happened that day was that he  
15 didn't do his homework and his father confronted him,  
16 which he did, frequently apparently, that maybe that led  
17 to a confrontation between the two of them, but you  
18 know, it led me to think that maybe the kind of physical  
19 stuff with the father, with his father, was more than  
20 discipline, too harsh discipline, probably, maybe. I  
21 don't know for sure, but there are reports that he  
22 wasn't bullied at school by one of his friends, that he  
23 was by another. There are reports by his family that he  
24 stopped talking about Townville. It didn't seem like  
25 bullying was happening so much. What I think is that the

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1 bullying, but it's also a good cause. It's what  
2 Columbine guys -- the way he described it, the way it  
3 started was, that he heard a song about Columbine, he  
4 asked his father what was Columbine and his father said,  
5 that's where bullies killed their, no bullies killed the  
6 people, that they killed the people that bullied them  
7 and it's hard to know how long this has gone on for  
8 Jesse. Jesse brags that he spent two years. The evidence  
9 that I've seen takes it back to the first of July when  
10 he asked, of '16, when he asked people, do you know,  
11 what was your favorite shooter. When actually, it goes  
12 back to March of 2016 when he took the hatchet and  
13 machete to school -- and by the way, he got back home,  
14 the police came, they asked his father to search his  
15 bag, there wasn't anything in it and then at that point  
16 or some point Jesse says, I hid them out in the woods  
17 and that's how they found the weapons, but apparently,  
18 then, he was already talking about Columbine and these  
19 kinds of things so I -- he's real clear about wanting to  
20 be famous. He told me that the hard way and the  
21 uncertain way, is to go to college, work hard and do  
22 that. He says it's almost immediate that you get on the  
23 front page and it seemed to me, his sense that he had no  
24 life, now he talks about having a life. He was going to  
25 be famous, the best shooter ever who's going to be

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1       worshipped for a long time, worshipped. And that's what  
2       keeps happening all the way along. He spends hours and  
3       hours with this idea, not the other ideas. This is the  
4       one that keeps on going and sends him to find one school  
5       shooter group and then a second one to keep working at  
6       it.

7 Q.   Did you see evidence of him looking at statistics of  
8       people to see how he lines up?

9 A.   Well, the day before the event, he actually confirmed  
10      that he would be one of the youngest, if not the  
11      youngest.

12 Q.   And was that one of his goals?

13 A.   It was his goal, to be the best shooter, to get 50 to 60  
14      and he was disappointed. This is a very complex thing.  
15      He had mixed feelings and he had some upset for sure  
16      that day. He said he had an emotional breakdown after he  
17      killed his father. After he shot his father, what he  
18      then said was, I wasn't sure. I thought he'd come back  
19      to life. That's stupid. It was one shot. He didn't say  
20      it was shot into the head or the back so he said, he  
21      told me, two more times, and then he had an emotional  
22      breakdown and then he thought, I might as well go ahead  
23      because I'm going to get life anyway, I might as well go  
24      ahead and kill a lot of people. Because what he has told  
25      me so many times is that for him to think about and plan

- 1 to kill a lot of people is fun.
- 2 Q. And that's a quote from Jesse?
- 3 A. It's a repeated quote, again and again.
- 4 Q. He thinks killing is fun?
- 5 A. Thinking about killing.
- 6 Q. Thinking about killing.
- 7 A. He said actually when you have to do it, he said,
- 8 hatchets would be really gruesome for me. He said
- 9 actually when you get to it, you don't know if the kids
- 10 might turn on you or something and beat you or a guard
- 11 might come around the corner and shoot you. There are
- 12 all kinds of details about whether you might crash on
- 13 the way. He said so it's really hard. I didn't really
- 14 enjoy it that day, but it's still fun right after that
- 15 and it's still now, it's fun to think about it and to
- 16 plan ---
- 17 Q. And he indicated to you that he is still having those
- 18 thoughts?
- 19 A. Absolutely.
- 20 Q. I want to take us back for just a second to the
- 21 discipline and the bullying only to ask you, in the DSM
- 22 under conduct disorder is there a mention of perceptions
- 23 by someone with conduct disorder of being wronged by
- 24 something that would be normal discipline or normal, or
- 25 maybe, just blowing things way out of proportion?

1 A. Yes. And that's a part of why he still has, I think he  
2 has conduct disorder. He, clearly, has two criteria and  
3 I think he has bullying. At school, he told me one  
4 instance where somebody poked him in the chest and he  
5 told that kid, when I come back with a rifle, you're  
6 going to be one that I shoot and he loved how much it  
7 scared the boy. So, I mean, we at least have that one  
8 and so I think he does bullying. I think the whole  
9 joining a super group, you know, the True Crime  
10 Community, the school shooter group, I think that's  
11 bullying.

12 Q. Is terrorizing children, school children, elementary  
13 school children, bullying? Would that qualify?

14 A. In my mind, it does. But this sort of attitude of  
15 absolutely don't care about people. The people he shot  
16 were pieces of trash. He said he shot J.H. and did him  
17 a favor because his parents were drug addicts, that  
18 people until they are 13, don't have a soul so it  
19 doesn't mean anything to kill them. He said, I know  
20 somebody, and I think it's probably the guy at the  
21 center, that's killed four people and I only killed two  
22 and he said, I don't know why people were so exercised  
23 about this, so upset.

24 Q. So, he doesn't understand why this is a big deal?

25 A. He absolutely doesn't.



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1 Q. Except as it pertains, perhaps, to him being famous?

2 A. Yeah, but he said, I only, in the midst of the thing, he  
3 threw the gun down, but I hadn't even killed one person  
4 yet, so I think there's that and sort of the idea that  
5 he might do it again is including what he's going to do  
6 to try to come back and finish the job.

7 Q. Does the fact that after the Kentucky school shooting  
8 occurred, and he did multiple searches for the Kentucky  
9 school shooting, and then once again looked up West Oak  
10 and Townville and looked for himself, perhaps, does  
11 that indicate to you Jesse might still have an issue  
12 with this or what does it indicate to you?

13 A. Well, yeah, he's still -- and you know he's also still  
14 looking at West Oak and Townville and the Kentucky and  
15 broader issues in society about violence in America.

16 Q. And just to be clear, this is in 2018, this behavior.

17 A. This is in the last couple of months. I mean, he's real  
18 clear. He still has the mindset of indifference to  
19 victims, no remorse, whatsoever, and I think that's why  
20 he still has conduct disorder and why he still is so  
21 dangerous, is that he does and it's as current now as it  
22 was before. It's something that's been years already and  
23 shows no sign of abating. I mean, Dr. Jones had this  
24 hopeful kind of comment and said at this point, and Dr.  
25 Sharman's comment, but he said there's no evidence now

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1       that he's a danger to the community, but he still talked  
2       about chopping people's heads off so that worries me  
3       that Dr. Jones said; I think he's learned something, he  
4       sees the consequences of what his acts are, he's been  
5       jailed for 12 days, so I think, you know, he's learned  
6       his lesson. Well, you know, as best as I can tell,  
7       sometime in the next six months from between the hatchet  
8       and the school shooting, he spent at least two to three,  
9       if not all six months, planning his next thing and so  
10      it's almost like -- there's no evidence that he stopped.

11 Q.   It wasn't a deterrent at all?

12 A.   Absolutely not. There is no evidence that he didn't  
13       start back the next day going forward with the idea of  
14       becoming -- of killing and killing a lot of people. We  
15       don't know when it really definitely started, but it  
16       clearly was there -- I mean, he was interested in  
17       Columbine and seeing movies around and movies of  
18       killings and Hitler before the hatchet incident. I think  
19       that's the issue and is still the issue.

20 Q.   Tell me about the structure of the DSM-5. What is it  
21       for?

22 A.   The DSM is, it's what the field of American psychiatry  
23       has agreed that now, what is the science and clinical  
24       experience suggest is the best way to describe these  
25       illnesses. What Dr. Wagner said is really true, we still

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1 don't have a blood test for a single psychiatric thing  
2 or an x-ray, although we are coming close to having an  
3 x-ray of some conditions and so all our disorders are  
4 reported symptoms and signs we can see. And the first  
5 goal of the DSM is to make diagnoses more and more  
6 reliable because before, if somebody saw one doctor,  
7 they'd get one diagnosis and if they went to see another  
8 doctor, they'd get another diagnosis. DSM makes it  
9 reliable so most doctors will diagnose a patient with  
10 the same diagnosis. So, that's the main idea. And then,  
11 it's the process of us sitting around tables in  
12 Washington and arguing and having data presented. As I  
13 said, I brought over 200 in from all over the world and  
14 all of them were sure they knew everything, and we  
15 argued about it and then we do agree and then it goes up  
16 the chain and, ultimately, the president of the ABA  
17 decides what the criteria will be. And so, they are  
18 arbitrary and they change and about every 10 years we  
19 have to revise it because of new experience and  
20 research, but they are just guidelines. They are saying  
21 this is our best guideline for how to make a diagnosis.  
22 I'm a doctor. I might diagnose these quite separate from  
23 this. This is a part of why I'm sure he has conduct  
24 disorder. Mostly, because of this attitude of  
25 indifference and enjoying cruelty, having no remorse,

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1 blaming kids for being pieces of shit is why they get  
2 shot.

3 Q. And that's a direct quote. Is that right?

4 A. Yes. Absolutely. So, it's a guideline. Now, it's been  
5 adopted, as Dr. Wagner even said, as the Bible. Well,  
6 it's not. It's what I described. It wasn't written by  
7 God or anybody. It was written by a bunch of people like  
8 me.

9 Q. So, you bring the DSM-V to bear and that's what you  
10 consulted, but what else do you bring to bear when you  
11 are making a diagnosis?

12 A. Well, me personally, 45 years of experience, seeing  
13 patients through that whole period, going to seminars,  
14 reading books and writing books.

15 Q. And in this case, is there any doubt in your mind what  
16 you're seeing?

17 A. You know, a part of my job as a forensic psychiatrist is  
18 to be skeptical, just not to believe anything placed in  
19 front of my nose or somebody tells me, until I get a lot  
20 of evidence. But having said that, I really don't have  
21 any doubt about what the diagnosis is and isn't. It's  
22 conduct disorder and malingering, nothing else. I really  
23 don't have much doubt about that. I don't have much  
24 doubt about what the driving force for Jesse to do what  
25 he did, was, and is, and so no, there's not a whole lot

1 of doubt.

2 Q. What do you make, speaking of the driving force ---

3 A. By the way, can I add to that? I don't stop my work  
4 until the doubt is gone, because if I came in here and  
5 said, I don't know, I mean, how would that help the  
6 judge? So, I work and so if I didn't know after nine  
7 hours, I would've asked you, can I please see him more.

8 Q. And in fact, as we said already, we've continued to  
9 provide you with the records and will continue to do so,  
10 in case there is something that would change your  
11 opinion or influence it, you'd to be able to ---

12 A. To revise it.

13 Q. And that's a part of your ethics, is it not?

14 A. Absolutely. The ethics of being a forensic expert is to  
15 strive as hard as I can for the objective truth. Now, we  
16 use the word strive in the field, because it's hard and  
17 we try to do the best we can about that, but like I said  
18 and you asked me about that, I think, have you seen  
19 enough that you don't need to see him any more and I  
20 said, yes. Do I still want new evidence? Yes. I wanted  
21 Dr. Wagner to see him to confirm what I thought about  
22 malingering and so those tests that we argued about so  
23 much, I already had a firm diagnosis of malingering  
24 before he administered the SIRS and the SIMS, but these  
25 are ways I've used in the past to amplify, to confirm,

1 and people like tests, generally, except for lawyers.  
2 They seem somehow better than what I could do in nine  
3 hours. They aren't, but they are good.

4 Q. And did Dr. Wagner's tests support or supplement what  
5 you observed in your nine hours?

6 A. Almost more than ever before. I mean, his test -- you  
7 know, Jesse was two to three standard deviations or  
8 three times higher than he had to be. His malingerer on  
9 the clinical test, where you answer all these questions  
10 and the computer says, consider this diagnosis;  
11 schizophrenia, bipolar, social anxiety disorder. The  
12 computer spit out 13 major psychiatric syndromes.

13 Q. Is that unusual?

14 A. Yes. Extremely.

15 Q. And is that indicative of somebody who is grossly  
16 malingerer?

17 A. Grossly malingerer, absolutely.

18 Q. And maybe in an unsophisticated way?

19 A. Yes. Yes. I mean, how would he be sophisticated? You  
20 know, where a 45-year-old sociopath, arrested 16 times,  
21 they sometimes figure it out. They have sometimes  
22 studied it. If they've been in prison for a long time,  
23 they study how to fake this stuff.

24 Q. And that brings up an interesting point. Do you find  
25 that since he's had multiple interactions with law

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1 enforcement and with evaluators, that he's attempting or  
2 he's adding to his knowledge base and becoming more  
3 sophisticated?

4 A. The reason why we do unstructured in the beginning is to  
5 not suggest any ideas to the juvenile, because it's a  
6 sad part of police work with children that if you  
7 interview them wrong, you can suggest all sorts of  
8 things. You can get a child to say anything that's  
9 happened by just how you interview them and so you  
10 really can't suggest anything to them. A person who is  
11 looking for ways to malingering, listens to what we ask and  
12 say, oh, they're asking me about autism. Okay. I think I  
13 have autism and maybe that's why he goes to the internet  
14 to study it.

15 Q. May Google that result and then try to evidence that in  
16 a setting where someone that could be making a judgment  
17 about them would be influenced?

18 A. Yes.

19 Q. Did you specifically address -- and I just want to say,  
20 I think we adequately addressed the conduct disorder  
21 diagnosis that you made. Is there something else that is  
22 relevant to this waiver hearing with regard to your  
23 diagnosis? I don't know if Mr. Eppes plans to take you  
24 through every criteria again, as he did with Dr. Wagner,  
25 but is there anything else for the sake of completeness

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1 that you find important to share with regard to your  
2 diagnosis?

3 A. Only to say again, with apologies, that the attitude,  
4 the lack of remorse, the pleasure in cruelty to animals  
5 and about victims, that's highly pertinent to my  
6 analysis of the Kent factors.

7 Q. And again, you went through, well, not the Kent factors,  
8 but the conduct disorder factors and you went through  
9 all of those criteria in your report provided to the  
10 Court. Did you not?

11 A. Absolutely. And Dr. Wagner and I talked about it and the  
12 only criteria that he currently meets if you take that  
13 silly restriction out about 12 months, because how could  
14 he do anything except continue to think like a conduct  
15 disorder person and meet criteria like that quite ---

16 Q. And there's evidence that he's doing that, is it not?

17 A. Oh, absolutely. In this courtroom, in his repeated lying  
18 to me, to Dr. Wagner, everybody, Dr. Atkinson. That's an  
19 example of his continuing conduct disorder.

20 Q. All right. And you specifically addressed the factors  
21 set forth in Kent versus United States in your  
22 examination report. Didn't you?

23 A. Yes.

24 Q. I want to go through a few of those criterion with you.  
25 Not all of them, not exhaustively. All of them are



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1 addressed in your voluminous report, but what is your  
2 opinion as to the seriousness of the alleged offense to  
3 the community and whether protection of the community  
4 requires waiver to general sessions court?

5 A. Almost anybody in this room can talk about the  
6 seriousness of the crime. Killing children couldn't  
7 possibly be more serious. The real issue is about  
8 protecting the community and that really depends on what  
9 we can do now to predict how dangerous he's going to be  
10 if he's let out tomorrow or when he's seventeen-and-a-  
11 half or eighteen-and-a-half or twenty-one and that  
12 really depends on our best prediction now and the best  
13 we can do about that is to look at, currently. And this  
14 is easier than most, because he wants to talk about how  
15 dangerous he is and I don't think he understands it in  
16 those terms. He does want to talk about it. I think he  
17 wants to get his story out there. I think making these  
18 videos and everything was to prepare the press for how  
19 they would report his big shooting. There would be  
20 videos, tee shirts, lyrics. I think that.

21 Q. Did he mention cameras at the elementary school or did  
22 you observe anything about his behavior in front of the  
23 cameras at the elementary school? In putting his hands  
24 up even though he still had a gun in front of one camera  
25 and then his behavior when he's on camera and stays sort

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1 of in the area where the camera is. Is that  
2 coincidental?

3 A. I don't know. I absolutely think I know that he wanted  
4 people to know. I mean, everybody that interviewed him  
5 during his confession said, he wanted to tell us, and I  
6 think he wants to do that. I think he wants publicity.  
7 So, he doesn't know and at some level, he doesn't care.  
8 I think the best way to say it is, he cares more about  
9 his image as the best shooter than he does about how  
10 he's going to be punished. He has, and again as part of  
11 his attitude problem, he doesn't appreciate that aspect  
12 of what he says. I mean, Dr. Atkinson said a simple  
13 little thing, it's poor judgment to search these things  
14 on the internet. It certainly is, because it's in his  
15 waiver hearing that he did that and so the future  
16 dangerousness comes from his descriptions to me and  
17 others how he still has thoughts, he's plagued by  
18 thoughts that just keep coming into his mind that he  
19 should kill a lot of people, that he should kill people  
20 in a crowd, he should shoot people, he should plan  
21 things. And then, as already has been reported, he said  
22 to me, too, you know, first, and it's sort of a threat,  
23 if you don't get me treatment, I'll do it again, and  
24 then, I'll do it again, period. I want to. It's fun,  
25 it's fun to think about it. And then, well, don't you

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- 1 feel bad about it? The short answer is, no. So, that  
2 kind of danger. And can we cure that in the amount of  
3 time that we have? I'm a little, little more optimistic  
4 or hopeful and I think it is just my character, that  
5 really good psychotherapy for years and years could make  
6 a difference, but actually you have to ask me, the Judge  
7 has to ask me, what do I predict. And I predict that  
8 certainly in the time we have available, no, it's a bad  
9 risk in my opinion.
- 10 Q. And the second criterion is if this offense was  
11 conducted in a violent, pre-meditated and willful manner  
12 and I think we've gone over that.
- 13 A. Yes. Can I at least say one or two sentences about that?
- 14 A. Please. I want you to address the criterion until you  
15 feel you've addressed them fully.
- 16 A. Yes, well, the notion is this premeditated. After what  
17 we've all sat through in the last few days, it's pretty  
18 clear that it was premeditated to a remarkable degree.  
19 To me, the searches he did in the last week, the  
20 finishing of getting ready just makes it incredibly  
21 clear how premeditated it was.
- 22 Q. Skipping criterion three through five and going to six.  
23 Sophistication and maturity of the juvenile as  
24 determined by his home, environmental situation,  
25 emotional attitude and pattern of living. What's your

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1 opinion on that?

2 A. Well, I think the evidence that we have is mixed about  
3 his home. I don't think it was ideal. On the other hand,  
4 very few of us have ideal homes. I don't think it was  
5 grossly atypical. His maturity level, he seems not  
6 different than his peer group in all sorts of ways and  
7 in sophistication, not different than his peer group  
8 except he may be more sophisticated. The complexity of  
9 what he thought about and planned to do and searched out  
10 is impressive. It's staggering, actually. He's an expert  
11 on shooters now and for me, that's one of the main  
12 aspects of the criteria about sophistication. Not many  
13 14 and 15-year-olds are terribly sophisticated in the  
14 world, but he's as sophisticated as his peer group, I  
15 think.

16 Q. And what about his emotional attitude?

17 A. I think his emotional attitude is what I've been trying  
18 to describe about his conduct disorder. It's very  
19 pathological and determinative of a lot of what happened  
20 already and what might happen in the future. My  
21 observations of him in this courtroom over the last few  
22 days have been that he is still 100% in that mindset. He  
23 smiles at the grownups here who are astounded that he  
24 can make videos and that we are freaked out by the  
25 lyrics of the song that he loves and he smiles and

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1 laughs. He's very comfortable in this hearing. Talk  
2 about bad judgment.

3 Q. And you said that he had made mocking comments about the  
4 victims and their families in this case to you and  
5 others.

6 A. Yes, terribly mocking, but the kinds of things that we  
7 put in the DSM, you know, the people who were injured  
8 were pieces of excrement and worthless, don't deserve to  
9 live, did Adam a favor, his parents turned off the life  
10 support to make money.

11 Q. And he said that about J.H. . Is that right?

12 A. Yes, I'm sorry. J.H. .

13 Q. He said his parents were motivated by money to turn off  
14 the life support?

15 A. Yes.

16 Q. And that he, meaning Jesse, did J.H. , the six-  
17 year-old boy that he shot and killed, a favor.

18 A. Yes, a favor. And that everyone loves him for it. His  
19 parents, grandparents told him they hadn't found anybody  
20 that wasn't supportive of him. Now, I don't know whether  
21 they did that, that's hearsay. That's what he told me  
22 and that even the teacher that he shot said on TV that  
23 she forgave him. I don't know whether she did or not.  
24 Maybe she's a Christian enough lady that she did. That  
25 everybody out there thinks he should get treatment, not

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1 punishment. He thinks that if it were up to him, he'd  
2 get one day in prison.

3 Q. And he had researched the sentences that he could  
4 receive, had he not?

5 A. Yes. He was surprisingly knowledgeable about those  
6 things. Now, he espoused this, you know, you guys aren't  
7 going to be able to keep me past 21, but what he told me  
8 is that he knew he was going to get 30 years and then  
9 later that maybe, talking to his lawyer, maybe he'd only  
10 get 20, but that he, you know, he told me he thought he  
11 was going to get 30 years.

12 Q. And in that confession tape, he asked in a excited  
13 manner, is he going to get charged with additional  
14 charges. What do you make of that?

15 A. I'm not really sure, but I think he's thinking about how  
16 long he's going to have to spend in prison.

17 Q. Could that be a part of one of his records, goals, to  
18 get the most charges, the youngest mass shooter ---

19 A. No, I think he was searching, because I looked back on  
20 his internet searches. There were, what are the laws in  
21 South Carolina for driving without a license, what are  
22 the laws about sawed-off shotguns, when you get a charge  
23 of that. How about how many gun charges would he get in  
24 the commission of a crime. I think he was trying to -- I  
25 don't exactly know what that was about.

DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE 942

1 Q. But he was researching the legal consequences of his  
2 actions before he took them.

3 A. Absolutely.

4 Q. So, it would be difficult to say he didn't fully --  
5 especially watching, looking at pictures of dead  
6 children from Sandy Hook?

7 A. Which he denied a couple of times with me, but when I  
8 sort of confronted him that I knew that he did look at  
9 them, he said, oh yeah, I did. Oh, no, I didn't. Yeah, I  
10 did.

11 Q. So, another inconsistency?

12 A. Well, he -- we can call them consistencies or lies. He  
13 has and is still lying all day long when it suits his  
14 purposes and that's a part of the conduct disorder or  
15 the way the antisocial personality lies to get what you  
16 want.

17 Q. I think you've already spoken, but if you would like to  
18 speak additionally to the seventh criterion, which is,  
19 what is your opinion about the record and previous  
20 criminal history of the juvenile. You have said it did  
21 not serve as a deterrent to him. What else do you make  
22 of it?

23 A. Well, you know, we talk about -- he's, in my opinion  
24 what we are seeing is he's early in his conduct disorder  
25 antisocial career. Now, we can all hope that it stops

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- 1 with this, but that's exactly what it is, it's a hope.  
2 And that's why we use, to diagnose antisocial  
3 personality, a long history of repeated acts, because  
4 that is predictive of the future. That's why with  
5 adolescents, these temp hearings are very difficult,  
6 because for most adolescents to do something bad when  
7 they're an adolescent, they don't do it again. It's just  
8 some do and that's what this is about and that's the  
9 tough decision here, in my opinion, is that he is in  
10 that group that is at very high risk to ---  
11 Q. Of re-offending?  
12 A. Yes.  
13 Q. And there has been, would you say, evolution since that  
14 first criminal incident?  
15 A. I think that's the way we should think about this. That  
16 it is an evolution and that it went from before the  
17 hatchet to the six months after the hatchet, to the  
18 school shooting, or mass shooter, you could also call it  
19 that and what's going to stop that evolution from going  
20 on to worse things or more things? That's the question.  
21 Q. And that leads me straight into the eighth criterion,  
22 which is, would the public be adequately protected if  
23 Jesse Osborne were to remain in juvenile court and what  
24 likelihood is there of any rehabilitation for him?  
25 A. You know, since he would probably, as I understand it



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1 from that good complex testimony this morning, you know,  
2 he and we are at risk that he would get credit for time  
3 served already and therefore after 36 months, if we  
4 start the clock the 28th of September, 2016, the 36  
5 months could be reached at 17 1/2 years, you know, which  
6 is two years from now. The treatment efforts in that two  
7 years, I wouldn't want to be the person responsible for  
8 curing him in or substantially improving him in two  
9 years or 18 1/2, which is another flexion point, that,  
10 or either/or 21. I think it's just -- it's very hard  
11 treatment with a juvenile who has a, bad prognosis at  
12 this point and the amount of time that's available to  
13 us, realistically, also argues against it. He has, if  
14 you add the positive predictors of good response and the  
15 negative predictors of a bad response, there are few on  
16 the positive side. The fact that he hasn't yet  
17 discovered substance abuse and that he used to have a  
18 stable family and he doesn't have a long history yet,  
19 but he has all of these other negative factors, which I  
20 put in my report. That dominates my thinking about the  
21 eighth, in adding them all up.

22 Q. What's your overall psychiatric opinion on the waiver  
23 decision that the Court's making?

24 A. My psychic?

25 Q. Did I say psychic?

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1 A. No. Psychiatric. I wish I were a psychic. In my opinion  
2 as a psychiatrist and a forensic expert is that he  
3 should be waived up to general sessions for the  
4 protection of the public. The treatment options are  
5 better because they have control of him for a longer  
6 period of time. If he's going to respond, we need more  
7 time and more control. I learned when I was a navy  
8 psychiatrist, and I was the commanding officer of people  
9 and, you know, I could command my patients to sit there,  
10 listen, and get better. A silly idea, but I could also  
11 say, you're not going back to duty until you take your  
12 therapy more seriously. That kind of control that exists  
13 in a prison is helpful when treating somebody like this,  
14 but longer, and I still don't think the prognosis is  
15 good.

16 Q. How difficult is it to treat someone with conduct  
17 disorder that's showing the signs and symptoms and  
18 progression that juvenile Osborne has already shown at  
19 his young age?

20 A. Yeah, you have to look at all the qualifiers. Conduct  
21 disorder by itself is hard to treat, but conduct  
22 disorder in someone who has already murdered two people,  
23 one of them a parent and who thinks planning and  
24 thinking about killing is fun, well, that's very, very  
25 hard to treat.

DIRECT EXAMINATION OF DR. JAMES BALLENGER BY MS. PRICE 946

1 Q. And in the event that he reached the age of 18 and some  
2 of these traits that you've seen evidenced resulted in  
3 him having an antisocial personality disorder, if, if  
4 someone had an antisocial personality disorder, which  
5 you can't diagnose anyway, but if that was the case  
6 since he has traits and we won't know until he's 18 or  
7 be able to diagnose, anyway, what would rehabilitation  
8 be like for somebody with that disorder?

9 A. He's have to be in a controlled setting like prison.  
10 He'd have to have a good treatment program and I know  
11 some about the treatment facilities in prison and  
12 they're not bad, particularly if you have a disorder  
13 that will respond to medicines. He doesn't. There's no  
14 medicine that we have any idea that would make any  
15 difference with him and so it's real psychotherapy, it's  
16 group therapy where other people can call him out. You  
17 know, that's bull what you just said, you know, that can  
18 be helpful. So, I think he needs a controlled, secure  
19 setting before we have any hope of making any difference  
20 and I think he needs longer and he's liable if he's not  
21 waived up.

22 Q. Do you think that you can say at this point that it's  
23 likely that juvenile Osborne will always present a  
24 danger to society?

25 A. No. I can't do that. One of the things that we know is

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1       that even antisocial people burn out. The chief of  
2       police in Charleston used to say, put them in jail until  
3       they are 39 and then let them out, period. That was the  
4       treatment program. They'd get older and burn out. So,  
5       no, you know, maybe when he's 50 years old. He said,  
6       maybe in prison he will really find God and be forgiven.  
7       Maybe he will. I hope so.

8 Q. But certainly not in the amount of time until he's 21?

9 A. I don't think so.

10 Q. What is it that sets juvenile Osborne apart from others?

11       What is it that makes him more dangerous?

12 A. His absolute fascination and obsession with killing,  
13 cruelty, and killing large numbers as his, sort of,  
14 life's goal and the only thing he enjoys.

15 Q. Do you see any evidence that that goal has been changed  
16 with incarceration?

17 A. No, not really. I mean, he's -- I don't know. I mean, he  
18 doesn't have the ability to plan in quite the same way.

19 Q. Any evidence of remorse?

20 A. Oh, absolutely no evidence of remorse.

21 MS. PRICE: Beg the Court's indulgence.

22 Q. Thank you so much, Dr. Ballenger. Please answer any  
23 questions Mr. Eppes may have.

24 THE COURT: Back at 8:00. It's the last break of the day.

25 (Brief Break)

## CROSS EXAMINATION OF DR. JAMES BALLENGER BY MR. EPPES 948

1 THE COURT: All right. We are back on the record in State  
2 v. Osborne. It's approximately 8:00 p.m. Dr. Ballenger is  
3 currently on the stand. I believe the State has finished  
4 direct. We are ready to move on to cross examination. Mr.  
5 Eppes?

6 CROSS EXAMINATION

7 BY MR. EPPES:

8 Q. Hello, Doctor.

9 A. Mr. Eppes, how are you?

10 Q. Good. What's your vision? What's your vision the last  
11 time you went to the eye doctor?

12 A. 20/20.

13 Q. Really?

14 A. Yeah. Cataract surgery is a miracle. I can see like an  
15 18-year-old out of this eye. If you need any help, I'll  
16 help you.

17 A. I appreciate it. Is it possible, I'm not asking for  
18 probable, I'm asking, possible, that you've misconstrued  
19 some of my client's emotions during this hearing?

20 MS. PRICE: Could you repeat that for me?

21 Q. Is it possible that you have misconstrued some of my  
22 client's expressions during this hearing?

23 A. Anything is possible, but it's my opinion that I got it  
24 right, mostly.

25 Q. I understand. But it's possible?

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1 A. Yes.

2 Q. And going back to the legal research, you work a lot of  
3 court cases, don't you?

4 A. Not a lot. I've only been in court eight or nine times.

5 Q. Okay. But over the last 10 years, how many court cases  
6 have you worked?

7 A. Eight or nine.

8 Q. The whole ten years? Court cases, not just criminal  
9 cases.

10 A. Ten, eleven, twelve.

11 Q. And Mr. Osborne has been AT that facility, when you  
12 examined him, he'd been down there for what, fourteen  
13 months, thirteen months?

14 A. Yeah. Ballpark.

15 Q. I've been his lawyer, frankly, since 4:00 of the  
16 afternoon on the day of this incident, Mr. Campbell and  
17 I. Would you expect during that period of time that an  
18 attorney would've discussed with Mr. Osborne, in detail,  
19 the potential penalties and exposures he faced for his  
20 crimes?

21 A. I'm absolutely sure you did.

22 Q. And would you also expect that Mr. Osborne, with his age  
23 and understanding although it's age-appropriate, might  
24 misconstrue some of these discussions and report them to  
25 you in an inaccurate manner?

1 A. Yes. That's certainly possible and even reasonably,  
2 likely.

3 Q. And would it surprise you to understand that criminal  
4 defense lawyers often do not say to their clients, well,  
5 here's the worst thing that's going to happen to you and  
6 that they also do not say this is absolutely what's  
7 going to happen to you and instead they give a range and  
8 like many people, the clients tend to take the range of  
9 information and adopt the lowest portions of it for  
10 their own thought processes and hopes?

11 A. I'm a psychiatrist and so, of course, I agree with you.

12 Q. Thank you. You ended with a discussion of Mr. Osborne's  
13 obsession and there are so many ways to describe it with  
14 killing, school shooting, all things Columbine. I want  
15 to ask you, what is obsession? That may be a harder  
16 question than I think.

17 A. Yeah, it is. Because you didn't say what is an  
18 obsession. That's one thing. I've got to wash my hands  
19 because I'm chewing this. There are more germs on there  
20 and so I have to wash them for two hours.

21 Q. Well, let me say this, if this helps. Obsession with a  
22 subject or a range of subjects.

23 A. Well, to try to help with this discussion along, an  
24 obsessional interest in a topic implies it's a  
25 pathological interest in it. It's a, too much, is

1 excessive to a problematic level, a dysfunctional level  
2 that causes dysfunction.

3 Q. And would you agree with me that this obsession as  
4 reflected in the internet details and actions of March  
5 and September of 2016, would make this entire obsession  
6 that Mr. Osborne has appear to be chronic rather than  
7 acute?

8 A. That, and other things, make it pretty clear that it's  
9 chronic.

10 Q. Dr. Wagner, I probably should've asked him and I'm  
11 sorry, but Dr. Wagner, I know, has some expertise on the  
12 internet and its affect on individuals. Have you read  
13 studies and studied the internet and people's activities  
14 on the internet very much?

15 A. I can remember my first introduction to the internet  
16 was, I was on a study section in Washington where we  
17 give grants to deserving people and my job was to  
18 evaluate a grant that was going to investigate, because  
19 the internet was new then, to investigate whether people  
20 acted differently on the internet than when they were  
21 face-to-face with somebody. Clearly, even then and  
22 since, there's a tremendous amount of research that  
23 people are more frank, they are a little bit nastier and  
24 other things, but I am by no means an expert.

25 Q. Their inhibitions come down on the internet. Correct?



1 A. Yes, sort of.

2 Q. In addition to that, if you have an obsession, the  
3 internet, is it fair to say that access to the internet  
4 encourages that obsession because of the vast amount of  
5 information and data available about any given subject?

6 A. I would agree with that, too.

7 Q. And so, someone who is relatively fluent on the internet  
8 is left to their own devices for hours at a time and  
9 have an obsession or compulsion, they can become lost  
10 in it. Is that a fair statement?

11 A. That's a flowery way. Did you say earlier you are an  
12 English major?

13 Q. Oh, I said my mom was an English teacher.

14 A. That's a flowery way to say it. I'm not exactly sure  
15 what that means. I do agree with you that if you feed an  
16 obsession, it tends to grow.

17 Q. So, if you feed an obsession, it tends to grow.

18 A. Yes.

19 Q. Would you agree with me that having access to the  
20 internet in an isolated situation where the internet is  
21 one of your limited means of communication with the  
22 outside world, might put you in a position to binge on  
23 your obsession? And I'm not using binge for any  
24 psychological reason. I'm just using ---

25 A. You have an unconscious, too.

1 Q. Yeah.

2 A. Yeah, I think people in an isolated setting could do a  
3 lot of it. Yeah.

4 Q. Okay. Now, this is the question that I was leading up to  
5 and it's a little bit hard for me to express. It is  
6 obvious from what we've seen here that there was a  
7 compulsion or obsession that led Mr. Osborne down his  
8 path on the internet and I understand that because that  
9 obsession concerned killing and possibly torture and  
10 injuring others, that it fits in with the identifiers.  
11 I'm not going to agree with you 100%, but the  
12 identifiers for conduct disorder which is about;  
13 bullying, taunting, threatening others, disrespecting  
14 others, and hurting them. Right?

15 A. That's a good part of it, yeah.

16 Q. But are there other psychological problems for which an  
17 obsession with even this ghastly subject -- making  
18 another flowery use of words -- that even this subject,  
19 it might be a symptom of other psychological problems?

20 A. What might be a symptom of other problems?

21 Q. This obsessive-compulsive internet activity concerning  
22 school shootings, Columbine, death, and all the other  
23 things that were going on with Mr. Osborne's phone. I  
24 know you ruled out obsessive-compulsive disorder and I'm  
25 asking you if there are any other things that ---

1 A. I even have a hypothesis that I have expressed, that he  
2 is, that his opinions of his life, like he said when he  
3 threw that homemade bomb, my life is, some expletive, I  
4 don't remember what, but he and his friends talked about  
5 his life was pretty much dead-end and so it was going to  
6 be solved by being famous or infamous. That would make  
7 his life worth doing. Yes, that's one problem that it's  
8 related to, I think. Now, there could be others, too.

9 Q. I had another case a long time ago where my client  
10 obsessively wrote in his Bible. He had a hyper need to  
11 write down his thoughts over and over and over again. To  
12 me, that was like a compulsion and it fed into some  
13 other problems. He was, I don't remember his diagnosis,  
14 honestly, but is it fair to say that there are other  
15 psychiatric problems for which a compulsion fits the  
16 criteria other than, in the DSM? And I represent to you,  
17 Doctor, that I do not have one in mind when I say that.

18 A. Okay. Well, the one that jumps to mind, if I understand  
19 what you're asking is pedophilia. That's a compulsion  
20 that's in here and like the problem here is, that  
21 crosses over into criminal behavior.

22 Q. Yes, sir.

23 A. If it were just sitting around in a room clicking on  
24 your computer ---

25 Q. Well, that crosses over to criminal behavior, too. Are

1       you familiar with child pornography and the compulsive  
2       way people look at child pornography?

3 A.    But you said it wrong. It can crossover.

4 Q.    Can.

5 A.    Yeah. Silk Road. It can crossover, but if it's nothing  
6       other than a prurient time on the internet every day and  
7       it doesn't crossover into criminal behavior, that's a  
8       harmless problem, unless they don't go to work the next  
9       day, they don't relate to their spouse or children.

10 Q.   And so, the versions of that, and I've read about it,  
11       things that disrupted people's behavior was an addiction  
12       to pornography.

13 A.   Yeah.

14 Q.   And if someone got so obsessive with pornography that it  
15       disrupted the rest of their life, what might be some  
16       possible diagnoses?

17 A.   I am absolutely sure that there's a diagnosis in here,  
18       because we try to limit it, but there are lots of fringe  
19       diagnoses, but if you have something that you're  
20       obsessed with so much that it disrupts your life, your  
21       major role responsibilities; work, major relationships,  
22       health, then that's a disorder that's in the DSM.

23 Q.   So, is it fair to say that there might be something else  
24       in the DSM based upon Mr. Osborne's obsession with these  
25       acts which led him to disrupt his life by committing

- 1 these murders, there might be some other underlying  
2 psychological problem that we haven't gotten our handle  
3 around yet or our arms around yet? I'm not saying there  
4 is. I'm asking you if there might.
- 5 A. I'm trying to think if there is an answer different  
6 than, of course, everything is possible. This behavior  
7 is characteristic of what we've been talking about in  
8 that this obsession is, and that's why conduct disorder  
9 in a sort of nascent antisocial personality disorder are  
10 what seems to be the answer, because it does crossover  
11 into cruelty to animals and hurting people with a weapon  
12 and the callous, shallow, superficial feelings,  
13 insincerity, and so forth. It does fit that. I mean, to  
14 then try to go somewhere else with what we know, I'm  
15 having a hard time thinking what other diagnoses,  
16 because you would have to ignore what we already know.
- 17 Q. But you will say, it's possible?
- 18 A. Anything is possible.
- 19 Q. And when we look at Jesse's Osborne's behavior and  
20 there's four things that spring out to me. Obviously,  
21 the incident that occurred September 28, 2016. There's  
22 what you said about animals. There's what you said about  
23 what was possibly a bullying incident at school,  
24 although I disagree with that assessment. When you take  
25 those things out, everybody that sees this boy says he's

- 1 thoughtful, he's helpful, he cooperates with what he  
2 does and he did that before he was in a juvenile  
3 detention facility and he's doing it now.
- 4 A. But that's just part of his behavior and I disagree,  
5 everybody doesn't say that. What I said is that he's  
6 superficially nice and even charming, but he was lying,  
7 he was constantly trying to trick me, his whole way of  
8 relating to me was disrespectful, ultimately, because he  
9 was lying to me thinking he could fool me and so-and-so.  
10 And so, no, I think if you now know the whole thing,  
11 what you have is compliance in a setting with authority  
12 figures, except his parents. Apparently, he wasn't  
13 compliant, but when he goes to school, yeah, and that's  
14 not atypical. I mean, that's not a giant mystery that  
15 implies to me in any way that we got it wrong. That's --  
16 when I walked out of the courtroom the other night and I  
17 just wanted something to distract me, I turned the TV on  
18 and there was a documentary about an amazing criminal  
19 who I will not name, but the part of the whole thing  
20 was, he looked absolutely normal at work and to his mom  
21 and when she'd visit his apartment, he'd be normal, so  
22 people do that.
- 23 Q. Going back to the truthfulness, you stated that you  
24 believe that now there may have been some abuse in the  
25 home.

1 A. Some harsh treatment. I think it's almost certainly in  
2 the notion of discipline. I always tell parents what  
3 should we do about discipline, I always tell them,  
4 whatever you do, don't make your child resent you. I  
5 think, I don't know, but I think it's in that ballpark.

6 Q. You'll agree with me, going back to the incident at West  
7 Oak Middle, it is not unusual for the victims of abuse  
8 to downplay abuse or flat-out lie about it when  
9 confronted with authority figures?

10 A. No, I think that's common.

11 Q. It's very common, isn't it?

12 A. Yeah. I think that happened when the DSS worker came  
13 there, all three of them said everything is wonderful.  
14 They didn't say, well, everything's wonderful except  
15 this and except that. I mean, that's, I think that's  
16 human behavior.

17 Q. So, do you really think it was significant that between  
18 then and the time of this incident that it went from  
19 saying, there's nothing wrong in the home, to reports of  
20 abuse? Do you think he was lying or his family was lying  
21 at the West Oak incident when they said there was no  
22 abuse going on in the home?

23 A. I'll tell you, my mostly, my single argument, that I'm  
24 putting a lot of weight on this, is what I said earlier  
25 about what his mother said when she was talking to the

1 people on the phone right after she'd learned of this  
2 calamity and she said, my husband loved him and he loved  
3 my husband and it wasn't perfect, but Jesse was hard to  
4 raise. He wanted what he wanted and he talked back to  
5 us. Jesse told me, I said why do you think your father  
6 was hard on you? He said because I talked back. And so,  
7 I think that was a little bit of truth from him and a  
8 big chunk of truth from his mother about it. So, I think  
9 something happened and I think something happened in the  
10 school, as I said earlier.

11 Q. You didn't to talk to his brother or his sister. Is  
12 there a reason for that?

13 A. I don't typically do that. They've been out of the house  
14 for a good time. He told me his relationship with his  
15 brother is great, he plays video games with him. He said  
16 my sister got mad at my dad years ago and she's gone. I  
17 don't really have much of a relationship. I miss her,  
18 but she's gone. And I don't normally do that. My  
19 investigational investigating usually doesn't go that  
20 far.

21 Q. The comments about J.H. and his parents and the  
22 insurance struck you as inherently cruel?

23 A. I think they were, but more importantly was,  
24 insensitive, disrespectful, disregarding of normal human  
25 feelings. I conclude from it, he just didn't care.



1 Q. Do 14-year-old or 15-year-olds usually appreciate  
2 insurance proceeds from someone's death?

3 A. I didn't make much of that piece of it. What was still  
4 ringing in my ears was, you know, I did him a favor and  
5 his parents are just damn drug addicts anyway. Who cares  
6 about them.

7 Q. If I represented to you that Mr. Osborne saying that was  
8 parading something another family member had told him,  
9 would that change your interpretation of it?

10 A. Of that single thing, it would. All the other swallows  
11 in this flock, it wouldn't change at all.

12 Q. I understand that.

13 A. You do? I mean, because ---

14 Q. I understand that it might change the single fact, but  
15 it would not change all the other things that lead you  
16 to your own conclusion.

17 A. Yeah. In my opinion about what his feelings are.

18 Q. But it would make a difference to you if a parent or  
19 someone else had suggested those facts to him or made  
20 that exact statement to him and then he had simply  
21 repeated that to you.

22 A. Yeah. I would take that one off the table.

23 Q. You'd take it off the table, but it would not indicate  
24 to you any lack of compassion about the Halls or J.H.

25 ?

1 A. No, that's not right, because he said so many other  
2 things about them ---

3 Q. That, I understand. But this one statement would not  
4 indicate that to you, the statement itself.

5 A. No, but it's trivial given all the other stuff.

6 Q. Thank you. I understand that. Would the fact that he  
7 said he clearly did not enjoy killing, would that have  
8 any indication to you about his ability to be treated  
9 for this disorder or any path to treatment, how about  
10 that?

11 A. Yes and no, because I take two things about that away.  
12 He didn't really say it about killing. He said it was  
13 the process of killing that he said, maybe the children  
14 could gang up on you and beat you with baseball bats, a  
15 cop could around the corner and shoot you and your car  
16 might run off the road. It's just real complicated to  
17 actually do it and the same thing about the hatchet. He  
18 said, you know, that would be gruesome for me to have to  
19 chop people's head off. It would be really nasty with  
20 blood all over me, but he didn't say, but they deserved  
21 to have their heads chopped off. That's still on the  
22 table. He still thought that and he still said he agreed  
23 with what he did at the school, so ---

24 Q. He agreed with it or he acknowledged that he'd done it?

25 A. He didn't care about it. To him, it didn't matter.

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1 Again, he said, why are people so upset about this. You  
2 know, killing people -- he also, we had a long  
3 discussion about this. Ultimately, he said killing  
4 people doesn't matter and we had a nice conversation  
5 about the golden rule and ultimately, I said, well, wait  
6 a minute, if you killed somebody the golden rule would  
7 suggest it would be okay for them to kill you and he  
8 said, yeah, that would be all right. So, and that he had  
9 no feeling about the killing at the school, the kids  
10 that died, their parents, even his incredulity that  
11 anybody else in the school would be upset. All of that  
12 and more tells me that he doesn't really care about what  
13 happened at the school, except he failed, it was hard,  
14 but I will give you something you didn't ask for, which  
15 is that I think it upset him in some way he doesn't  
16 understand.

17 Q. You think he was upset about it?

18 A. In part.

19 Q. Upset in the manner of some empathy or upset that he'd  
20 done something bad?

21 A. Neither. He was upset.

22 Q. And you haven't found the root base of that?

23 A. I don't know what you mean by that question.

24 Q. You don't know exactly why he was upset?

25 A. No. But I think on an elemental level as a human, if you

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1 kill one of your parents, if you're a human being, it's  
2 bothersome, but the problem here is, he said, I wasn't  
3 sure he was dead and so I shot him a couple more times.  
4 You know, both are there. I think to kill anybody is  
5 upsetting. Now, there are monsters who say it didn't  
6 bother them. I think it bothered him. At least at the  
7 time.

8 Q. Where's Jesse Osborne from?

9 A. All I know is Townville.

10 Q. He's from Townville. Would you necessarily draw an  
11 insidious conclusion from the fact that he Googled the  
12 name of his hometown? It might be a conclusion, but it's  
13 fair to say that he might just want to know what was  
14 going on in his hometown?

15 A. Yeah, that's possible.

16 Q. Thank you. You've heard most of the testimony. Did you  
17 hear any testimony from the teachers looking out the  
18 window or Jamie Brock that Mr. Osborne's behavior was  
19 changing at all when he would walk in and out of the  
20 sight of the cameras?

21 A. I didn't hear any testimony from them. In my  
22 observation, it was very hard to understand his behavior  
23 in relationship to the camera. Sometimes he seemed to be  
24 posing. He told me that he wanted it clear on the camera  
25 that he didn't have a gun, because he didn't want to be

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1 shot. I asked him a fair bit about what was happening as  
2 he was pacing around and it was obvious but he confirmed  
3 that he was upset and he was on the phone he was cagey  
4 about who he was talking to and what they said and lied  
5 to me about that, so I didn't draw a whole lot of  
6 conclusions from that.

7 Q. He didn't tell you was talking to his grandfather?

8 A. He did. He did tell me that, but then -- he said in his  
9 confession and then to me in the second interview, my  
10 grandfather said, I'm sorry this is happening to you and  
11 then when I asked him in the follow-up interview what  
12 did he think he meant and he said, did I tell you that?  
13 And I said, yeah, and, he said, Oh, he didn't say that.  
14 And so, he's back and forth.

15 Q. Back and forth about the substance of the conversation  
16 but not who he was talking to?

17 A. Right. He also said he talked to his grandmother, who  
18 hung up on him because he was so distraught and she was  
19 so distraught and then he talked to his mother. He was  
20 cagey about what contact, if any, he had with the  
21 Rainbow Group.

22 Q. You mentioned his mother. She was being, you looked at  
23 her record, she was being treated for depression.  
24 Correct?

25 A. I thought she started right after the event.

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1 Q. But she's been treated with Effexor. Correct?

2 A. Yes, or was.

3 Q. And often, children with parents, when a parent has a  
4 history of depression, a child may be at a higher risk  
5 for that. Correct?

6 A. Yes. I made the assumption obviously that since she  
7 started after this horrible event, which must be  
8 unbelievably horrible for her, that it is related to  
9 that.

10 Q. After looking at the prosecution's submission in your  
11 report you said that Jesse might have been in a  
12 leadership role in the Rainbow Group, but I did not  
13 quote that and so I'm not saying that's exactly what it  
14 says, possibly be in a leadership role. Did you see any  
15 evidence in the presentation of the prosecution to make  
16 you think he was in a leadership role?

17 A. Yes. My opinion about that has gone a little farther. I  
18 would say he was in the leadership role. The group  
19 didn't appear to have a real leader. When I asked him  
20 who the leader was, he said, some psychotic guy. Why was  
21 he the leader? Because he killed cats. But then I didn't  
22 hear anything more about a leader. But he did say, you  
23 know, these people didn't even know how to sight down a  
24 gun, so I taught them how to do that. They didn't know  
25 how to clear room. They didn't know how to kill a

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1 hundred people. And watching some of the transcripts, he  
2 was not, he was not the wallflower in the group. He had  
3 a significant role in the group. A part of it was some  
4 leadership affects.

5 Q. But he may not have actually been the leader of the  
6 group. It may not have had a leader at all.

7 A. Well, leader in the sense of somebody who called the  
8 meeting to order and tells people to be quiet, no, I  
9 don't think it did.

10 Q. Now, I will represent to you that Dr. Maddox is not and  
11 has not treated Mr. Osborne or prescribed him any  
12 medicine. Do you think he was lying or do you think he  
13 was just wrong?

14 A. I don't think he understood that issue. I sort of asked  
15 him in several different ways. He said she was and that  
16 she was doing all sorts of things, bringing in an autism  
17 expert, told him he was schizophrenic, and so forth and  
18 then when I came back and asked at the end, he said, no,  
19 no she just gives recommendations and my treating doctor  
20 will be somebody in the mental health center.

21 Q. Mr. Osborne described voices to you at the first  
22 session. Correct?

23 A. Yes.

24 Q. He said that they talked to each other and talked to  
25 him. Correct?

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- 1 A. In response to a question I asked.
- 2 Q. Hmmm?
- 3 A. Yes.
- 4 Q. He said they come at night when it is quiet?
- 5 A. But he also said they were continuous.
- 6 Q. And he reported he uses a strategy of staying busy to
- 7 keep them away?
- 8 A. Yes. Yes. In a second interview he said that doesn't
- 9 work.
- 10 Q. Other than him naming one of the voices Scooby Doo,
- 11 what's atypical about his report of hearing voices?
- 12 A. Oh, all sorts of things. Continuous, seeing a blue
- 13 person once, seeing a person with pointed limbs, once.
- 14 Seeing a figure with no face, seeing blood dripping down
- 15 the wall, the fact that it changed over time. One time
- 16 it was the blue person, one time Scooby Doo, and the
- 17 only continuous ---
- 18 Q. Did he ever say he saw Scooby Doo or he just heard
- 19 Scooby Doo?
- 20 A. I think just heard.
- 21 Q. Sorry for interrupting.
- 22 A. Scooby Doo and demon. He heard people walking down the
- 23 stairs. It's atypical that they change, today it's this
- 24 and tomorrow it's this, the next week it's gray. It's
- 25 atypical that it's continuous. It's atypical that it



- 1 would be something silly like Scooby Doo.
- 2 Q. Would you agree that emerging psychosis is a challenging
- 3 presentation?
- 4 A. Emerging?
- 5 Q. Yes. The first phases of psychosis.
- 6 A. It would be for you. It's not as hard for me.
- 7 Q. That's fair. But it can be challenging to doctors and
- 8 healthcare professionals?
- 9 A. Yes.
- 10 Q. Am I right to say that the onset of schizophrenia is
- 11 usually between the ages of 14 and 25, or am I
- 12 completely off base?
- 13 A. No, you're not completely off base. It's more 18 to 24.
- 14 Fourteen would be an early presentation.
- 15 Q. During your second interview, did Mr. Osborne describe a
- 16 form of disassociation?
- 17 A. You'd have to tell me what you -- I don't think so.
- 18 Q. That he described disassociated from his life, from his
- 19 peers, from his family?
- 20 A. Not disassociated.
- 21 Q. Okay. Look at page 30 of your report.
- 22 A. Okay.
- 23 Q. And read the sentence that talks about being like a
- 24 dream. And Doctor, if I knew where to find it on the
- 25 page I'd tell you.

1 A. Well, I can remember what he told me. He said the act  
2 didn't seem real. It seemed like a dream the next day.

3 Q. Okay. Would you read it, exactly?

4 A. If I can find it.

5 THE COURT: I think it's the last sentence in that  
6 paragraph. (Indicting)

7 A. Oh, thank you. He stated, "It pretty much felt like a  
8 dream until the next day in jail."

9 Q. Is that any kind of indicia of disassociation? Could it  
10 be?

11 A. Well, I wouldn't call it a disassociation, because that  
12 has connotations that are not appropriate. Was I  
13 surprised to hear that in the rush of deciding to do it  
14 that day and when he did and doing what he did, you  
15 know, in a rush and being upset and pacing, that's what  
16 I thought was ballpark about it, but I have to put in  
17 there that he was calm, cool, and collected in the  
18 interview, his confession interview, and seemed in tune  
19 with the officers and not in a dissociated state at that  
20 point. His other comment he made to me about similar  
21 stuff was he said to his friends, you know, it was like  
22 Call of Duty, except for real.

23 Q. He said that to you?

24 A. No, he said that on his text.

25 Q. When you asked him why he was crying during the

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- 1 shooting, what did he say? I believe that's on page 33.
- 2 A. It started out when I asked about his feelings of the
- 3 events and he stated that he didn't know what his
- 4 feelings were. Is there another reference?
- 5 Q. No, that was all. He just told you he didn't know what
- 6 his feelings were when he was crying?
- 7 A. Yes. Well, during the event. I wasn't talking about just
- 8 the crying.
- 9 Q. I'm going back to page 32. I'm sorry I'm jumping back
- 10 and forth.
- 11 A. Thirty-two?
- 12 Q. Thirty-two, yes, sir. The top of the first paragraph, he
- 13 did say that after he looked at his father after he shot
- 14 him he felt upset?
- 15 A. Yes. Somewhere, he told me, I had a nervous breakdown
- 16 after I did it, which, he meant, he got upset.
- 17 Q. Is that in your report?
- 18 A. I think so.
- 19 Q. You don't use the word nervous breakdown, though. You
- 20 don't on page 32. You might somewhere else.
- 21 A. Okay.
- 22 Q. Did he tell you, at some point, that his medicine made
- 23 him feel like a vegetable?
- 24 A. Made him feel, what?
- 25 Q. Like a vegetable.

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- 1 A. Yeah. I didn't know whether -- he seemed to be referring  
2 to the Ativan, benzodiazepine, but I subsequently  
3 learned that he's on a minuscule dose of the  
4 antipsychotic, Zyprexa. As it turns out, he could've  
5 been talking about that or the Ativan. He might have  
6 thought it was one of the others, the melatonin for  
7 sleep, but that wouldn't do that so, to me, the only two  
8 that might, in a ballpark, do that would be those two.
- 9 Q. The antipsychotic, is that something that helps if you  
10 do have hallucinations?
- 11 A. Yes, it can. That level of dose 1.25 mg is a little over  
12 1 mg, is really low. The antipsychotic dosages are 15 to  
13 30.
- 14 Q. Jesse appeared to be aware of conflicts between his  
15 mother and his grandparents. Correct?
- 16 A. Yes.
- 17 Q. And that would create some poor boundary issues? Where  
18 he knows too much about his parents' business, improper  
19 boundaries. Is that something ---
- 20 A. Yeah, it is, but I don't think it applies here.
- 21 Q. Okay.
- 22 A. He actually seems pretty healthy about that.
- 23 Q. Did you ever talk to Jesse about what a friend is?
- 24 A. I don't think so, not certainly in those terms.
- 25 Q. You asked him about his friends, but you never asked him

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1        what a friend was?

2 A.    No.

3 Q.    Going back to the situation in March, the incident  
4        occurred in March, and his DJJ hearing was not resolved  
5        until August. That's six months. Describe, based on what  
6        you know, of the March incident, what you believe that  
7        the progression was during the six months that Jesse  
8        Osborne was without any treatment based upon what you  
9        described as his evolution or progression to the acts of  
10       September.

11 A.   I believe that in the months two, three, after that,  
12       that he went on the internet to find a school shooter,  
13       which is an extension of his being interested in  
14       Columbine before the hatchet thing. That he went and  
15       found one and didn't think they were serious enough,  
16       went to another and stuck with them, the Rainbow Group,  
17       and by July 1st, he was already seriously into planning  
18       a school shooting event.

19 Q.   Why did you pick July 1st?

20 A.   Why did I pick it?

21 Q.   Yes.

22 A.   Because of seeing some texts that he was asking  
23       somebody, who's your favorite school shooter.

24 Q.   Weren't you told, and I can't remember if it was his  
25       mother or him, that after the incident in March he

1        didn't have access to the internet for about four  
2        months?

3 A.    Yes. That turned out not to be true. His mother  
4        subsequently testified that they gave him back his phone  
5        in a couple of months, I think, or something. And he  
6        said he converted a school computer. I'm a little  
7        confused whether it fits that time course that he  
8        converted a school computer, but I think it was during  
9        that time period that he got back to the internet sooner  
10       than four months.

11 Q.   Do you know anything about the other people that he was  
12        chatting with on Instagram?

13 A.    Just what you can think you glean from what they say and  
14        do on the internet.

15 Q.   Do you know -- did you see the Instagram chat in which,  
16        and I think you reported that you viewed it, that Mr.  
17        Osborne said his rabbit was his best friend?

18 A.    I don't specifically remember that.

19 Q.   I believe you said it one time, that he said it in his  
20        taped confession.

21 A.    I've heard it here.

22 Q.   But you don't remember talking to him about it?

23 A.    No.

24 Q.   As we've been talking and we've gone over these chats,  
25        ad nauseam, I will now represent to you that many of

1 these chats occurred in the wee hours of the morning.

2 Did you notice that?

3 A. Oh, I did.

4 Q. And it's clear, in the weeks leading up to this  
5 incident, Jesse was not sleeping very much. Is that  
6 fair?

7 A. That's fair. The first that I've heard today that some  
8 days he slept to 4:00. I didn't really see any evidence  
9 of that, so I saw him on the internet at 2:00, 3:00, and  
10 also, 5:25, but I assume that was coming back.

11 Q. So, he clearly has disturbed sleep or he did during that  
12 period?

13 A. All I would agree with is he has what we adults call and  
14 sleep experts call, disturbed schedule of sleeping, but  
15 if you look at teenagers and college students, there's a  
16 great amount of being awake from midnight until 5:00 in  
17 the morning. That's not a rare event.

18 Q. What is sleep paralysis?

19 A. It's a very odd disorder, sleep disorder, where it seems  
20 to be an abnormality. I don't know whether you've  
21 noticed, but when you dream, you're actually paralyzed  
22 but you're the closest to wakefulness possible. In sleep  
23 paralysis, you're paralyzed and you go from being close  
24 to wakeful to awake and you wake up and you're paralyzed  
25 and doing something like dreaming, but the kind of odd

1        thing about it is, it tends to be the same sort of  
2        figures. Everybody around the world describes an old hag  
3        that comes to them. A very scary old hag, so it's really  
4        interesting why would everybody be having the same dream  
5        but it seems to be in that twilight sleep between being  
6        asleep and dreaming and awake.

7 Q.    Did anybody ever say that Jesse Osborne had sleep  
8        paralysis, that you saw?

9 A.    He did, but he dropped it. If it was still going on,  
10       it's a very, very frightening thing.

11 Q..   It's a very frightening thing that's going on? Is it  
12        frightening to him or frightening to you?

13 A.    Him and it would be hard for him not to continue to talk  
14        about it, so I just put it in a bucket of skepticism  
15        place.

16 Q.    I'm going to go back to something that we talked about.  
17        Did Jesse describe some obsessive-compulsive behaviors  
18        to you?

19 A.    Just a tiny bit. A little bit.

20 Q.    What did he talk to you about living in space?

21 A.    I have to correct something that I said earlier. The  
22        other interest he has in life is space. He described a  
23        handful of things on the pathological end, he liked to  
24        go out in space where nobody would ever see him again,  
25        and he can do whatever he dadgum well wanted to do. Less



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1 pathological, he stumbled on this idea, hey, there's  
2 gonna be a lot of entrepreneurial possibilities; mining  
3 asteroids for minerals and you could make a lot of money  
4 doing that and other places in space you could get  
5 minerals and that is an exciting kind of career  
6 opportunity that he is thinking about.

7 Q. Doctor, is it fair to say that depressed individuals  
8 exaggerate their symptoms sometimes?

9 A. Yeah, but it's usually; exaggerate their physical  
10 symptoms or overemphasize their physical symptoms or  
11 exaggerate their worries, but I haven't seen a single  
12 thing that indicated to me that Jesse is depressed or  
13 that he has been. He actually describes himself as very  
14 happy.

15 Q. Are you aware of any recent articles, for example; one  
16 of the journals, Consciousness and Cognition, from March  
17 of 2017, which found that over-endorsement of eccentric  
18 items of self-reports of disassociative symptoms  
19 overlap?

20 A. Over-endorsing and disassociative symptoms overlap?

21 Q. Uh-huh.

22 A. No, I've certainly not seen that article.

23 Q. This crime occurred when Mr. Osborne was 14 years and a  
24 month old, or not quite a month old.

25 A. Not quite a month.

- 1 Q. And Dr. Wagner found normal frontal lobe functioning.  
2 Correct?
- 3 A. On the test that he did, yes.
- 4 Q. And the frontal lobe testing wasn't done until a year  
5 and two months later when Jesse was 15 years and three  
6 months. Is that correct?
- 7 A. Yeah.
- 8 Q. You don't have a measure of his frontal lobe function at  
9 the time of the crime?
- 10 A. No.
- 11 Q. And Jesse grew from the time of the crime until now, he  
12 grew approximately 55 pounds and 3 inches. Is that  
13 correct?
- 14 A. Yes.
- 15 Q. And his brain would've been growing in that period of  
16 time, as well. Correct?
- 17 A. Yeah, whether he grew in inches or pounds or not. Yeah.  
18 His brain didn't grow proportionately, though. I mean,  
19 the brain maturation just happens. Fifteen is a typical  
20 time for boys to shoot up.
- 21 Q. Your brain would be maturing as that went on, but the  
22 two things are not related?
- 23 A. Yes. Exactly.
- 24 Q. Now, you mentioned earlier on that you believed there  
25 was some bullying. Correct?