

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001008

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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #177 (PHOTO-KNEE), STATE’S EXHIBIT #206 (BODY RECOVERY VIDEO), STATE’S EXHIBIT #207 (ELIAS BODY RECOVERY PHOTOS), STATE’S EXHIBIT #207A (PHOTO-ELIAS), STATE’S EXHIBIT #207B (PHOTO-ELIAS), STATE’S EXHIBIT #208 (MERAH BODY RECOVERY PHOTO), STATE’S EXHIBIT #208A (PHOTO-MERAH), STATE’S EXHIBIT #208B (PHOTO-MERAH), STATE’S EXHIBIT #209 (GABRIEL BODY RECOVERY PHOTO), STATE’S EXHIBIT #209A (PHOTO-GABRIEL), STATE’S EXHIBIT #209B (PHOTO-GABRIEL), STATE’S EXHIBIT #209C (PHOTO-GABRIEL), STATE’S EXHIBIT #209D (PHOTO-GABRIEL), STATE’S EXHIBIT #210 (ABIGAIL BODY RECOVERY), STATE’S EXHIBIT #210A (PHOTO-ABIGAIL), STATE’S EXHIBIT #210B (PHOTO-ABIGAIL), STATE’S EXHIBIT #211 (NAHTAHN BODY RECOVERY PHOTO), STATE’S EXHIBIT #211A (PHOTO-NAHTAHN), STATE’S EXHIBIT #211B (PHOTO-NAHTAHN), STATE’S EXHIBIT #211C (PHOTO-NAHTAHN), STATE’S EXHIBIT #211D (PHOTO-NAHTAHN), STATE’S EXHIBIT #212 (AUTOPSY-ELI), STATE’S EXHIBIT #212A (PHOTO-ELI), STATE’S EXHIBIT #212B (PHOTO-ELI), STATE’S EXHIBIT #212C (PHOTO-ELI), STATE’S EXHIBIT #213 (AUTOPSY-MERAH), STATE’S EXHIBIT #213A (PHOTO-MERAH), STATE’S EXHIBIT #213B (PHOTO-MERAH), STATE’S EXHIBIT #214 (AUTOPSY-GABRIEL), STATE’S EXHIBIT #214A (PHOTO BODY-GABRIEL), STATE’S EXHIBIT #214B (PHOTO SHIRT-GABRIEL), STATE’S EXHIBIT #214C (PHOTO SLIPPER-GABRIEL), STATE’S EXHIBIT #214D (PHOTO JOURNAL-GABRIEL), STATE’S EXHIBIT #214E (PHOTO DIAPER-GABRIEL), STATE’S EXHIBIT #214G (PHOTO BODY-GABRIEL), STATE’S EXHIBIT #215 (AUTOPSY ABIGAIL), STATE’S EXHIBIT #215A (PHOTO BODY-ABIGAIL), STATE’S EXHIBIT #215B (PHOTO BODY-ABIGAIL), STATE’S EXHIBIT #216 (AUTOPSY NAHTAHN), STATE’S EXHIBIT #216A (PHOTO BODY-NAHTAHN), STATE’S EXHIBIT #216B (PHOTO BODY-NAHTAHN), STATE’S EXHIBIT #216C (PHOTO ELBOW-NAHTAHN), DEFENDANT’S EXHIBIT #135 (CD DR. BIGLER-IMAGES), DEFENDANT’S EXHIBIT #137 (POWERPOINT), COURT’S EXHIBIT #90 (VIDEO-CYNTHIA TURNER)

1 there.

2 Q When you got in Alabama do you remember when you --
3 let me ask you this. At any time did you all stop, take
4 any detours along the way?

5 A No, we didn't stop anywhere. We made one -- like I
6 say, everything over there looked a lot alike. It was --
7 it's a lot of heavy pine plantation type timber over
8 there. And we made -- we had radio contact with our
9 deputy and he said that, "We think we're at the spot," I
10 believe is the way he put it. He said, "Smith One, we
11 think we're here at the location." So he said, "You all
12 just hold right here for a minute," and we did. And they
13 went up the road to our left, which would be -- we were
14 heading east on Alabama 10. It's that road veered off to
15 the left at an angle, which would be heading, I guess you
16 would say, northeast. And when I tell you all a road, I'm
17 talking about not a -- I'm talking about a log road, which
18 is where a bulldozer lays a road in, made a loading ramp
19 for logs. That's the kind of roads we're talking about
20 when we speak to you about the roads. This is -- this is
21 just a red dirt, red dirt area, red dust. It's not a
22 road. But the first one was not the right place.

23 Q How long did you all spend before you realized it
24 wasn't right?

25 A Just a second. Tim Jones, Jr. told -- he said this

1 is not it. This is not it. And I was not in the car, but
2 that's what my officer said. I'm just telling you what he
3 said. But he radioed to us that it was not the right
4 place. And we got back in the convoy, you want to call
5 it. And we headed back in an easterly direction again
6 going toward, toward Camden, Alabama, I believe is one of
7 the towns over there. Camden, and then there was a
8 Greenville. We were heading in that direction.

9 Q Did you turn off again?

10 A We did. I can't tell you how far that was. All I
11 know is it was a matter of minutes. But again, we were --
12 we were making good time. But it wasn't far and he
13 radioed and said that they were turning again and felt
14 sure this was the spot, so we all turned into this spot.

15 Q You turned left again?

16 A We turned left again. The road looked just like that
17 one. Like I say, this is -- this is just a logging
18 community apparently. A lot of pine timber there. But
19 the road was, you know, I could see why it looked like the
20 other road, because it did look like the other road.

21 Q Alabama 10, was that four-lane road, or how --

22 A No, sir. It's a -- it's a two-lane state highway.

23 Q Just a road in the country?

24 A We were in the country. Yes, sir.

25 Q I'll show you a couple photographs. State's 103 and

1 104. 103, big aerial. Do you see the location on it?

2 A I do. I do.

3 Q Do you see a cutout on there of the location?

4 A I do.

5 Q State's 104. Is that a closeup of the location?

6 A That's -- that's a lot closer than the first one.

7 Yes, sir. Yes, sir.

8 Q Still aerial?

9 A It's still aerial. Yes, sir. But that's --

10 Q But these are the ones we're talking about?

11 A That is. Yes, sir.

12 MR. HUBBARD: I offer these into evidence.

13 MR. SECOR: No objection.

14 THE COURT: That's 103 and 104?

15 MR. HUBBARD: Yes, sir. 103 and 104.

16 THE COURT: I thought they were already in. They are
17 already in.

18 Q State's 103. You see that little red box?

19 A Yes, sir.

20 Q That road going through that red box. What road is
21 that?

22 A That's Alabama 10, to the best of my knowledge.

23 Alabama 10. Like I say, it's the first time I'd ever been
24 on that road. It was Alabama 10.

25 Q And so, this little cutout down at the bottom, is

1 that what's represented in that box?

2 A Yes, sir. Yes, sir.

3 Q That's a little bit more of a closeup view of the
4 area we're talking about?

5 A It is. It is.

6 Q This whole area around Highway 10, how would you
7 describe that? The area you saw from this highway?

8 A A very rural area. Like I said, a lot of -- lot of
9 timber industry there.

10 Q This road, this Highway 10, would you be coming from,
11 looking at this photograph, the right-hand side going to
12 the red box or would you be coming from the left-hand
13 side?

14 A We were from the right-hand heading -- we were on the
15 west side, which would be the right-hand side. And we
16 were heading east, which would be going to our left -- or
17 your left on that picture.

18 Q I'll show you State's 104. This road that we see
19 cutting through State's 104, what road is that?

20 A That's Alabama 10.

21 Q This area here, what is that, Sheriff?

22 A That is going to be the aerial photo of where the
23 bodies were found.

24 Q And you have a pointer with you?

25 A I've got one. I don't know how much I'll shake doing

1 it, but I'll try. Right here, if I'm not mistaken, ladies
2 and gentlemen, is the road that we turned off. And about
3 where I'm sitting here shaking that mark is about where we
4 parked our cars. But now, this looks a lot different on
5 this picture than it did at that time, because to the best
6 of my knowledge that's -- we actually -- we went up that
7 road to our left and we parked the cars at the first
8 loading ramp, we call it. I'm -- my family logged, too,
9 at one time, so loading ramps we called them. First
10 loading ramp, and we parked the cars there, the deputy
11 told us this was the spot. And so, we got out of the
12 vehicles. Like I say, there's -- Alabama authorities were
13 there in force because we knew the area was close but we
14 didn't know where. So right after we pulled in there,
15 there was a lot of -- lot of law enforcement there. But
16 before they got there, we did confirm what we confirmed
17 before, called them into that spot because we didn't know
18 whether we were going to move again or not.

19 Q Where about did you find the bodies?

20 A We parked and we walked probably 50 or 60 yards up a
21 small incline and --

22 Q Can you show us approximately where you, you believe
23 --

24 A I would say right in that area right there is the
25 best I remember. It's what, you want me to describe what

1 we saw? Is that what you want me to --

2 Q Absolutely.

3 A We got there. I actually had gone over the hill,
4 because I was going by scent. The scent was very strong
5 and I was going by scent. And I actually was going down a
6 hill because this, I don't know who was with me. We were
7 actually following what we were smelling. But that smell
8 had gone down a holler. Just drifted that way. And so,
9 one of the deputies hollered at me and told me to come
10 back up there. And so, we came back up there and which I
11 was only -- I'd say another 50 yards past that. Log roads
12 are everywhere in the woods, you know. Skidder trails
13 where they'd been dragging the timber. And so, we went
14 over there and looked and he hollered, "They're over
15 there." I heard that much. But again, I wasn't sure what
16 over there was, but he was cuffed and shackled. But he
17 led us to where the bodies were in plastic bags.

18 Q Did he walk all the way up to them or --

19 A No, sir. He didn't -- he didn't walk up to them.
20 No, sir. They were in -- I don't know whether they had a
21 lemon gate there, we call them, which was where a skidder
22 gets sometime 15 to 20, depending on how big the timber
23 is, they get 15, 20 trees. And they'll pull up and
24 they'll back through a lemon gate which is, it breaks the
25 limbs off the logs, even with the log. And then they put

1 them through a slash saw and cut the very tip of them off.
2 That's the way they do it at home and I'm assuming they
3 do it that way there. And these were in those piles,
4 because once the pile gets full the skidder would grab
5 those tops and just would put them in a pile. And that's
6 what it looked to me like. They was on in those, those
7 dead timber tops. That's where the bodies were.

8 Q Were the bodies exposed or were they in bags?

9 A They were in bags, but one of them -- one of them was
10 exposed somewhat that I saw. Sure was.

11 Q When you first got out of the vehicle before you
12 walked up to it could you smell it?

13 A Yes, sir. Very strong.

14 Q You knew you were at the right spot?

15 A Yes, sir.

16 Q Even before you saw, you saw the bags?

17 A We did. We felt sure we were at the right spot.

18 Q When you were talking about -- mentioning going up
19 and down. The bodies, were they located in a low section
20 or a high part of that area?

21 A Well, we walked up a hill but then we went over a,
22 they were not way down but they were, we were actually on
23 a knoll of a hill looking somewhat down another 20, 25
24 yards. I would say no further than that.

25 Q This place across the road here, Highway 10 across

1 the logging area, when you got up on that hill did you
2 happen to notice if you could see--

3 A Yes, sir. There was -- I think there was a house,
4 the best I remember. I think the name of the community,
5 best I remember, I may be wrong. Was it Pine Apple? I
6 think I'm right. But that was the only house that I could
7 see from where we were.

8 Q Did you see any other houses in that vicinity?

9 A No, sir. None whatsoever.

10 Q Now, when you all were out here about what time of
11 day was it?

12 A This was probably, I'm guessing 4:00 o'clock or 4:30,
13 maybe 5:00. Like I say, we left Raleigh, Mississippi at,
14 I think, 12:30. We stopped at Forest, Mississippi, which
15 is right on Interstate 20, and got Tim, Jr. something to
16 eat. He hadn't had anything to eat. Of course, we had
17 not either, but we never got out of the car. We just went
18 through and we all ate on the way. And that was -- that
19 would have been -- we would have been at Forest,
20 Mississippi by 1:00 o'clock. So I would say we were there
21 3:30, 4:00 o'clock. At least 4:00 o'clock we were there.

22 Q Once you realized the bodies were there and you knew
23 the direction to go what, if anything, did you direct your
24 folks to do with Mr. Jones?

25 A Well, he was in my custody, and for his safety, I

1 didn't know who all was pulling in. I didn't know if
2 neighbors were coming. I didn't know. I knew that
3 community pretty much by that time knew what we were doing
4 over there. And he was mine to protect while I have him
5 in my custody. That's part of the Sheriff's job. And so,
6 I told my men to, we were out, 10 to 15 minutes, no
7 longer, was he out. He was pretty emotional at times and
8 I told him to go ahead and get him back in the car and
9 let's get back to Smith County. And we left also because,
10 you know, that was not my county, it was not my State. We
11 just did our part, what we could do to help, and we came
12 on back with him to Smith County.

13 MR. HUBBARD: Sheriff, I believe that's all I've got
14 for you right now.

15 THE WITNESS: Okay, sir.

16 MR. HUBBARD: Thank you, sir.

17 THE WITNESS: Yes, sir.

18 MR. SECOR: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION8

21 By Mr. Secor:

22 Q Morning, Sheriff.

23 A Good morning, sir.

24 Q Mr. Hubbard was talking to you about the evening of
25 September 7 which was -- I guess that was the first time

1 that you met with Tim, Jr., right?

2 A That's correct. I had not even laid eyes on him
3 until they brought him up to the Court House. I didn't go
4 back to the jail.

5 Q Mr. Hubbard talked to you about circumstances under
6 which the State says that he waived his rights, right?

7 MR. HUBBARD: Your Honor, may we approach?

8 (Whereupon, a bench conference was held in the
9 presence of the jury but out of the hearing of the
10 jury.)

11 THE COURT: I got to put something on the record.
12 I'm going to put you all in the jury room for a little
13 bit. Don't talk about the case.

14 (Whereupon, the jury was excused from open court.)

15 THE COURT: All right. Let's go back to where we
16 were. Solicitor said he had a matter of law regarding the
17 question proposed by the Defense. Solicitor, I'm going to
18 hear from you first and then I'm going to see what Mr.
19 Secor wishes to proffer.

20 MR. HUBBARD: Yes, sir. Your Honor, I objected
21 because for the past two days, two different witnesses,
22 the Defense has tried to open the door of re-litigating
23 what Your Honor has already ruled on back in March about
24 the voluntariness of the statement given on September 7th,
25 2014. And we met in March and we discussed the statement

1 or interview, on the 6th. That interview was out. All
2 the parties understand it's out. Your Honor ruled it
3 wouldn't be coming in. The State hasn't even offered.
4 What they want to do is go back and try to say the
5 conversation that happened on the 6th, when Mr. Jones
6 said, I assert the Fifth, taints the one on the 7th which
7 Your Honor ruled on because we went through that ad
8 nauseam back in March, Your Honor ruled on it. They try
9 to say it tainted every other statement made out to that.
10 Your Honor ruled on it after hearing voluminous arguments.
11 We came into this courtroom and you gave the ruling. Your
12 Honor reiterated it yesterday. And I have a witness up,
13 there is an interview. I will always start, did you have
14 permission from this man to interview him. Did you give
15 Miranda, or Miranda given. I have got to do that because
16 the jury, when they evaluate the statement, as Your Honor
17 knows, is the September 7th statement. They have to
18 evaluate whether it was free and voluntary. Your Honor
19 will charge them that. But it in no way opens up your
20 ruling as to the 6th.

21 THE COURT: I agree with you. Let me see what he
22 wants to say.

23 MR. SECOR: Your Honor, my position was, is that it
24 absolutely opens the door to Defense questioning the
25 voluntariness of it. That's exactly what it does. The

1 record will be clear that on both of these witnesses,
2 Sheriff Crumpton and Agent Johnson, the State unilaterally
3 of their own volition brought up the issue of
4 voluntariness. We were not going to bring up the issues
5 of voluntariness because it was our understanding that the
6 Judge had ruled on that and, therefore, it became a
7 non-issue for this trial. They decided to bring it up.
8 And they think that by presenting it as voluntary on the
9 7th, without there being information about the preceding
10 24 hours is legitimate and it's completely not legitimate.
11 If I water board a boy for 24 hours and then he confessed
12 to rob and signed a waiver that wouldn't make it--

13 THE COURT: Don't give me, that's not part of your
14 argument.

15 MR. SECOR: No, it is very much part of --

16 THE COURT: No, it's not.

17 MR. SECOR: It is, because --

18 THE COURT: Don't give me another example about
19 something that's not relevant to the case, please.

20 MR. SECOR: The comparison I'm making is that his
21 will was overborn by his invocations of his Fifth
22 Amendment rights on the 6th being repeatedly ignored, told
23 that he was going to stay in that jail until he told law
24 enforcement what they wanted to know. And then the next
25 day when they, when they asked him if he would consent to

1 samples of blood and hair and DNA, he says no. He has
2 shown that that refusal is not going to make any
3 difference because he's transported to a hospital, the
4 samples are taken --

5 THE COURT: And you have got the right to ask that,
6 and it's been asked and presented to the jury. I don't
7 understand why the State can't say, brought him into the
8 room, his dad was there, got the waiver, asked the
9 questions, this is how he appeared and how he acted.
10 You've got all that. I don't see what door you're
11 opening, you are claiming they're opening. I don't see
12 it. You want to open the door because it's convenient and
13 advantageous, but that's against my ruling. I don't
14 understand.

15 MR. SECOR: But your ruling was that the statements
16 were voluntary.

17 THE COURT: Correct.

18 MR. SECOR: But they're --

19 THE COURT: So if the State can't say, did you get a
20 waiver, y'all are going to say, I didn't get a waiver.
21 The jury didn't see the waiver. So how do they know if it
22 was voluntary or not when they have got to evaluate that.

23 MR. SECOR: Well, they have to evaluate that. They
24 have to evaluate it in the context of the entire case, not
25 just that one moment in time.

1 THE COURT: I think they're doing more than that one
2 moment in time, because you got the request for blood
3 samples and saliva samples. He refused. You've got that.
4 Come back in, Johnson gives him a waiver form, he
5 describes the behavior, Mr. Jones took the waiver form and
6 read it. Y'all have got all of that.

7 MR. SECOR: There's also a video recording of
8 repeated invocations by Mr. Jones being --

9 THE COURT: And that's off limits because you all
10 wanted it off limits.

11 THE SECOR: Well, no, sir. The State has made it
12 relevant now.

13 THE COURT: No, they have not.

14 MR. SECOR: Well, respectfully I disagree.

15 THE COURT: I respectfully am sticking by my ruling.

16 MR. SECOR: Yes, sir. I understand.

17 THE COURT: I want you all to stay away from that.

18 MR. SECOR: I understand. But correct me if I'm
19 wrong, but my understanding is that if evidence is
20 suppressed as a consequence of a Constitutional violation,
21 that does not prohibit the Defense from bringing it up if
22 it deems it necessary.

23 THE COURT: No, that's, you're saying, I think you're
24 saying we will do it anyway whether you like it or not,
25 Judge. That's what it sounds you just said to me. And I

1 respectfully hope you're not saying that.

2 MR. SECOR: No. And I --

3 THE COURT: That's what it sounded like.

4 MR. SECOR: Well, I did not, I didn't mean to be, I
5 didn't mean to be disrespectful at all. I'm saying --

6 THE COURT: It sounded like it.

7 MR. SECOR: I literally, I literally, my literal
8 understanding is that if evidence is suppressed it is a
9 consequence of a Constitutional violation. My
10 understanding is that doesn't prohibit the Defense from
11 bringing it up but it prohibits the State from bringing it
12 up because that's the penalty for Constitutional
13 violation.

14 THE COURT: All right. There was no Constitutional
15 violation if Mr. Jones says I'm not talking. They
16 stopped. That's not in front of the jury. That's not a
17 violation. That's a request, please give me my
18 Constitutional rights which was abided by the State.

19 MR. SECOR: But then they reinitiated contact the
20 next day--

21 THE COURT: Nothing against the rules about
22 reinitiating.

23 MR. SECOR: I'm sorry?

24 THE COURT: There's no reason the State can't
25 reinitiate.

1 MR. SECOR: Well, respectfully, Your Honor, from our
2 argument on the Denno issue there is if they do not
3 scrupulously honor invocation of rights, they do not have
4 the right to reinitiate contact with the suspect.

5 THE COURT: With the circumstance of five missing
6 kids and you're saying the State didn't have the
7 responsibility to go back and talk to him again?

8 MR. SECOR: They had the responsibility to preserve
9 his Constitutional rights.

10 THE COURT: All right. All right. We've been over
11 this. The interview of the 9th is off limits. The State
12 did not open the door, in my opinion. I understand the
13 legal issue. Did not open the door by revisiting the
14 waiver before talking to him 20 or 22 hours later
15 depending on whose testimony you believe. Nearly a full
16 day later, the waiver is given, he read it. He refused to
17 give the blood samples. And so, you get that. I don't
18 understand why you keep wanting to go outside of that,
19 other than it would be more advantageous to you.

20 MR. SECOR: Well, to be honest, I don't, I don't want
21 to go into it. The State has--

22 THE COURT: Well, then don't. I grant your wish.

23 MR. SECOR: The State has forced me to do it.

24 THE COURT: No, they've not. They've not done that.
25 I don't want, I don't want to discuss this anymore,

1 really.

2 MR. SECOR: I understand, Your Honor.

3 THE COURT: I think you've, I think you've made a
4 full record of you think you should be able to go into it.
5 You've made a nice record with Lieutenant Johnson
6 yesterday about it. And you want to further proffer with
7 this Sheriff. If you do get it, I'm ready to move on.

8 MR. SECOR: Yes, sir.

9 THE COURT: You all wasted enough time yesterday with
10 this jury, so we're going to push through it a little bit
11 today.

12 MR. SECOR: Yes, sir.

13 THE COURT: And that's for everybody.

14 MR. SECOR: Yes, sir.

15 PROFFER TESTIMONY

16 Q Sheriff, just a couple of questions if I may ask you
17 before the jury comes back in. Mr. Hubbard asked you
18 about the voluntariness surrounding Tim, Jr.'s statement
19 on the 7th and you were there, correct?

20 A I was there.

21 Q At that time, did you know that he had invoked his
22 Fifth Amendment rights in the Smith County jail numerous
23 times and those invocations were ignored on the 6th?

24 A I knew that when it came into play, I guess --

25 THE COURT: That's not, that's not a fair question.

1 They were observed, they quit questioning him about it.

2 THE WITNESS: Right. That's what I was going to say.
3 Yes, sir.

4 MR. SECOR: Well, he --

5 THE COURT: That's really an unfair question when you
6 saw the video.

7 MR. SECOR: Your Honor, he --

8 THE COURT: That's what I don't like when you all
9 keep twisting the words. You all did it yesterday when I
10 said you can ask about the waiver. You can ask about him
11 refusing consent. And Mr. Young came up and said when he
12 invoked. You all keep doing that, and you're really --
13 you're going across the line and y'all are keep opening
14 the door.

15 MR. SECOR: But, Your Honor --

16 THE COURT: The Defense team is.

17 MR. SECOR: May I just say one thing? On that video
18 one of the first things that's heard is Mr. Jones saying
19 that he invokes his Fifth Amendment rights and the video
20 is over 10 minutes long. So I think to say that his
21 invocation was scrupulously honored is contradicted by the
22 video.

23 THE COURT: You are always going back and
24 representing the scrupulously honored. I like those
25 words. Move on.

1 MR. SECOR: So should I not ask that question?

2 THE COURT: Ask him, but don't say repeatedly. I
3 just don't understand that.

4 MR. SECOR: I'm not trying to be difficult. I
5 apologize if it comes across that way.

6 THE COURT: Well, you're reading me right.

7 MR. SECOR: Yes, sir.

8 THE COURT: All right.

9 Q Sheriff, I'm not trying to be disrespectful to you or
10 anything.

11 A I understand.

12 Q But on the day of the 7th, September 7th, 2014, did
13 you know that Mr. Jones had told Undersheriff Patterson he
14 wanted to take the Fifth?

15 A I do know they talked to him the night before and I
16 do know he would not tell them anything. I was not there
17 in that conversation and I have not watched that video
18 that you're talking about.

19 MR. SECOR: Thank you, sir. I appreciate it.

20 THE COURT: All right.

21 MR. SECOR: May I have just a moment, Your Honor.

22 THE COURT: We're going to break because I am going
23 to step off and get another cup of coffee.

24 THE WITNESS: Can I get up, sir?

25 THE COURT: You may.

1 (Whereupon, the witness steps down from the witness
2 stand.)

3 (Whereupon, a short break was taken.)

4 THE COURT: Are we ready to go?

5 MR. HUBBARD: Your Honor, you want the witness back
6 on?

7 THE COURT: Yes.

8 MR. SECOR: Sheriff, please step up.

9 THE COURT: Step back up.

10 (Whereupon, the witness returns to the witness
11 stand.)

12 THE COURT: One last thing on that last issue. Ten
13 minutes of questioning on the 6th, which has been
14 suppressed because Mr. Jones, Jr. invoked his rights, this
15 Court does not find that to be anything close to water
16 boarding for any extensive period of time. He was not
17 tortured, his will was not overborn. Ten minutes of
18 questioning of the five kids. Ten minutes seems to be a
19 very reasonable follow-up of time. So I don't consider
20 that torture, threats or otherwise overcoming his will. I
21 don't see it. All right. Bring in the jury.

22 MR. SECOR: I respectfully object to the Court's
23 ruling.

24 THE COURT: Okay.

25 (Whereupon, the jury came into open court at

1 approximately 9:55 a.m.)

2 THE COURT: All right. Thank you all for that. We
3 took a break also. Continue on, Mr. Secor.

4 MR. SECOR: Thank you, sir.

5 CROSS-EXAMINATION

6 By Mr. Secor:

7 Q Sheriff, when you met with Tim, Jr. on the night of
8 the 7th, is that correct?

9 A Yes, sir.

10 Q I believe you told Solicitor Hubbard that he was sort
11 of all over the place in terms of what he was saying and
12 the way that he was acting. Is that right?

13 A He was acting, like I say, from one extreme to the
14 other. Very high up, very down low, very emotional,
15 couldn't be still, a lot of anger. Yes, sir.

16 Q And you heard him say things that didn't make any
17 sense as well, didn't you?

18 A Yeah, I guess you could put it that way. I guess
19 that would be a way to put it.

20 Q Yes, sir. Things about his mother putting voices
21 into his head?

22 A We didn't know who Cindy was at that time, but the
23 name Cindy came up, yes --

24 Q Yes, sir.

25 A -- and I didn't know who that was, but later on found

1 out to be his mother. Yes, sir.

2 Q Yes, sir. And I believe you said that he appeared,
3 based on your experience, which is obviously significant,
4 he appeared to be somebody who was under the influence of
5 something, right?

6 A That was certainly my opinion.

7 Q But just to be clear, at that point you knew that
8 he'd been in your facility for almost 24 hours -- 20
9 hours?

10 A At that time he'd been in there 20 to 22 hours. Like
11 I say, I'm not a note keeper, but that's --

12 Q Yes, sir.

13 A -- that's close. Yes, sir.

14 Q And he'd been in a cell where he was, somebody put
15 eyes on him every 15 minutes?

16 A They certainly did. Yes, sir.

17 Q And certainly he's not doing any drugs in your
18 facility?

19 A No, sir.

20 Q And I believe you were here the other day when
21 Undersheriff Patterson was testifying. You saw the
22 records from your department that indicated the people who
23 were checking him into the jail --

24 A Uh-huh.

25 Q -- initially indicated that he appeared to be under

1 the influence of something, correct?

2 A The best I remember. Like I say, I've not seen
3 those. You all put them out here those -- as far as those
4 records. I don't hardly ever look at those records.

5 Q Okay. But they are from your department?

6 A They were from my department. Yes, sir.

7 Q Yes, sir. And people -- they're filled out from
8 people who --

9 A They are.

10 Q -- are from your department who are trained to do
11 that?

12 A That is correct.

13 Q Now, when you were talking to Mr. Hubbard you brought
14 up the issue of you inadvertently mistakenly
15 mispronouncing the Nahtahn's name.

16 A I did. I sure did.

17 Q And that sounded like that caused a very visceral
18 reaction in Tim, Jr., is that correct?

19 A It was, it was quite a reaction. Yes, sir.

20 Q And that --

21 A Strong reaction.

22 Q I didn't mean to interrupt you.

23 A That's all right. I just said a strong reaction.
24 Yes, sir.

25 Q And it seems like that left an impression on you.

1 A It did. It did.

2 Q Because at that point you believed that he was
3 responsible for Nahtahn's death?

4 A I thought at that time if any of them were dead it
5 would have been Nahtahn. That was just from -- from years
6 of doing this and trying to listen real closely, I thought
7 if we had any child dead at that time it probably would
8 have been Nahtahn.

9 Q Yes, sir. And it struck you as odd because it seemed
10 like Tim was jumping to his son's defense when you
11 mispronounced his name?

12 A That struck me as real odd. Sure did.

13 Q And you've been sheriff for a long time and you've
14 conducted all sorts of interviews during the course of
15 your career there at Smith County, correct?

16 A We have. Lots of them.

17 Q And I think you said to Mr. Hubbard you'd never seen
18 anybody that acted the way that Tim did?

19 A I have never seen that. No, sir.

20 Q I wanted to, if I could, to tell the jury about what
21 you, as a sheriff, did in Smith County when you first
22 learned that spice was in your county.

23 A We had never dealt a whole lot with spice. We, you
24 know, we started seeing some of it but I had never seen
25 anyone actually strung out, for lack of a better word, on

1 spice. It had been -- we'd been seeing it on the national
2 news a lot. At that time it was some, several deaths from
3 it actually in, I believe it was, Nebraska and Kansas, and
4 also Arizona, and Mississippi was starting to feel it.
5 Actually the northern part of the County, the state
6 actually started feeling it first. I believe Lafayette
7 County, which is where Oxford, Mississippi is, was the
8 first county to wage war against it, if you would, with
9 their, with their local laws. And I went to our Board of
10 Supervisors and we were second of -- if I remember, second
11 in the State to wage war against on a level where it could
12 never be sold.

13 Q Yes, sir.

14 A So we saw something bad coming. We sure did.

15 Q And if I recall correctly from our conversations, you
16 didn't -- you didn't necessarily wait until the law was in
17 place to make it illegal. You took action as a public
18 safety officer in that County to get rid of it even before
19 that?

20 A That's what we were trying. Yes, sir.

21 Q And that's because you, as Sheriff of that County,
22 weren't going to wait around to find out what happened if
23 somebody smoked that?

24 A No. We'd seen the devastation of methamphetamine and
25 we didn't want to deal with that again.

1 Q Yes, sir. And after Tim, Jr. being arrested and gone
2 back -- been transported back to South Carolina, at some
3 point you had a conversation with a drug analyst involved
4 in this case. Is that correct?

5 A I did. I did.

6 Q And that was somebody that had analyzed some of the
7 spice that had been recovered from Tim, Jr.'s vehicle?

8 A Yes, sir. It was in our custody under my name at
9 that time. And so, I did release some for, it was a, and
10 forgive me. I can't remember his name. It was, he was an
11 MD with DEA out of Washington.

12 Q Washington, D.C.?

13 A Uh-huh.

14 Q And it was your understanding, based on that
15 conversation, that he had been involved in the testing of
16 the spice or he had seen the result?

17 A Apparently so. Like I say, he was, this was
18 something new and he realized that, they were also trying
19 to get a battle started against it.

20 Q Yes, sir. And when you were talking to him about the
21 results of the spice in this case, the spice that was
22 taken from Tim's vehicle --

23 A Uh-huh.

24 Q -- tell the jury what you heard in his voice.

25 A I heard him -- I believe the quote was when it came,

1 when the results came back, and I'm certainly not an
2 analyst by any means at all, but I do read on it and I do
3 listen. Apparently there are several different versions
4 of this spice, that something becomes illegal today and
5 tomorrow the chemist, they just change it. Get the same
6 effect with a different drug is the way I, a poor man's
7 way of putting it to you. But the quote that man told me
8 was, "Sir, we got a -- looks like we got a monster on our
9 hands," I believe was the quote he told me from talking to
10 me. He called me on, I think, two occasions.

11 Q Yes, sir. And correct me if I'm wrong, but I've seen
12 in a number of our conversations that you felt like you
13 heard fear in his voice.

14 A I did. I really did. He was -- and again, I don't
15 know that man. Never laid eyes on him. Talked to him
16 twice. But I could tell he was very concerned of what I
17 was telling him we had seen as a result of it and what
18 they were seeing nationwide. It was a --

19 Q And that was the fear that, of him knowing that
20 something of this potency was out in the public. Is that
21 right?

22 A That's correct.

23 Q I just want to talk to you a little bit about Tim,
24 Sr. Tim's, obviously you know Tim. Jr.'s dad in this --

25 A Certainly. Certainly.

1 Q You weren't involved in them coming to Raleigh when
2 they, on the first day they came to --

3 A -- what do you mean involved in them coming up?

4 Q I guess, it wasn't you that asked them to come?

5 A No, but we discussed it.

6 Q Yes, sir.

7 A We discussed it. But I actually believe he again,
8 it's been a long time and a lot of stuff has happened
9 between now and then. I believe South Carolina talked to
10 him on maybe that Saturday night, I'm thinking, and then
11 Agent Johnson had talked to them sometime Sunday --

12 Q Yes, sir.

13 A -- we discussed that. And somebody made contact with
14 the father and I can't tell you who. It was not me. But
15 someone made contact with him, which I thought was a great
16 idea. And, yes sir, so someone in law enforcement had
17 contact with his father.

18 Q Yes. And you met with them on the afternoon of the
19 7th before you went and met with Tim, Jr., right?

20 A Right. I met the father before I met the son. I
21 sure did.

22 Q And I assume that you were aware of the anguish that
23 Tim, Sr. and Julie were in at that point not knowing where
24 their grandbabies were?

25 A Certainly. I felt their -- I felt their emotions. I

1 sure did.

2 Q Yes, sir. And they were, is it fair to say they were
3 impassioned about wanting to help you?

4 A They were. There was -- there was no coercing, no
5 nothing. They were just genuinely concerned for their
6 grandchildren.

7 Q Yes, sir. And for their son, too, correct?

8 A Certainly for their son. He was not only a good
9 grandfather, apparently he was a good father.

10 Q And it wasn't, it wasn't an easy process when you
11 went into or when Tim, Jr. was brought into the room.
12 There was a lot of emotion between the two of them?

13 A It was. It was, really was. Yes, sir.

14 Q And they went back and forth for a while. That
15 sometimes they would be calm, and then sometimes they
16 would be seemingly angry at one another?

17 A Yeah, the father, he remained, he remained calm. He
18 did. He impressed me. The anguish was coming mostly from
19 the son, not the father.

20 Q Yes, sir. And there was significant headway made in
21 the investigation of this case in that interview on the,
22 on the 7th. Would you agree with that?

23 A A lot of headway was made.

24 Q Yes, sir.

25 A Yes, sir.

1 Q And you would give Tim, Sr. and Julie significant
2 credit for that headway that was made?

3 A I would. I would. Sure would.

4 Q And you saw, you saw Tim, Sr. and Julie demonstrate
5 tremendous strength for their grandbabies?

6 A I did.

7 Q And that was when they maybe still had some hope that
8 they were still alive they demonstrated strength -- or you
9 saw them demonstrate strength through that process?

10 A I did. We all had that hope.

11 Q And even after information came out that indicated
12 that your hopes were probably tragically going to be
13 dashed, they still showed strength for their grandbabies?

14 A They did.

15 Q Because they wanted them to be brought home --

16 A Regardless.

17 Q -- regardless? Yes, sir. And you saw them be strong
18 for Tim, Jr., too?

19 A I did.

20 Q And you feel for them, don't you?

21 A I did feel for them. Still do feel for them.

22 Q Yes, sir.

23 MR. SECOR: May I have just one moment? Sheriff,
24 thank you for all your work in this case.

25 THE WITNESS: Thank you, sir.

REDIRECT EXAMINATION

By Mr. Hubbard:

Q Sheriff.

A Yes, sir.

Q We've talked about all your experience with other drugs, and since this incident you've had other dealings with spice, correct?

A We have.

Q That evening on the 7th did you see red flags, based on your experience, about mental health?

A No, sir. We're in a rural county and all. In fact, all States may be this way, but the sheriff ends up with a -- with commitments from mental health. We end up having to handle those people. That's our job. We get an order from our Chancery Court system. And so, we handle a lot of mentally ill patients. We do.

Q And you didn't see that that night?

A No, sir. I didn't see that.

Q What you saw from Mr. Jones when you mentioned Nahtahn, was it just that time when you mispronounced the name or was it every time that you brought up Nahtahn?

A He really got angry and, and it may have, you know, he got angry every time that, even if I pronounced that name right, that triggered something in him in my opinion. But I saw that every time that little Nahtahn's -- I think

1 he was six-years-old. I believe he's a six-year-old.

2 Every time his name was mentioned.

3 Q And that's what caused your concern about if one of
4 them was dead?

5 A It really did. That concerned me a lot.

6 MR. HUBBARD: Thank you, Sheriff. Thank you so much.

7 THE COURT: Thank you, Sheriff.

8 THE WITNESS: Yes, sir.

9 THE COURT: You can step down.

10 THE WITNESS: Yes, sir.

11 MR. GRAHAM: The State calls Keith McMahan.

12 KEITH MCMAHAN, being

13 first duly sworn, testified as follows:

14 MADAM CLERK: Have a seat, please. State your name
15 and spell your last name for the record, please.

16 THE WITNESS: My name is Keith McMahan. Last name is
17 spelled M-c-M-a-h-a-n.

18 DIRECT EXAMINATION

19 By Mr. Graham:

20 Q Mr. McMahan, where are you currently employed?

21 A I'm employed by the Mississippi Forensics Laboratory
22 and work at the Meridian Regional Branch of that
23 laboratory.

24 Q What is your position there?

25 A I'm a forensic scientist specializing in the field of

1 drug analysis.

2 Q Would you tell the jury about your background,
3 education and training in that field.

4 A Sure. I earned an Associate Degree from East Central
5 Community College in Decatur, Mississippi in May of 1992
6 and then earned a Bachelor's of Arts degree with a Major
7 in Chemistry and a Minor in Biology from the University of
8 Mississippi in December of 1998. I then completed a
9 formal training program at the Mississippi Forensics
10 Laboratory and I have achieved Certification through the
11 American Board of Criminalistics.

12 Q Have you ever been qualified before as an expert in
13 the field of controlled -- controlled substance
14 examination?

15 A Yes, sir.

16 Q Approximately how many times?

17 A Approximately 110 times.

18 MR. GRAHAM: Your Honor, at this time the State would
19 offer Mr. McMahan as an expert in the field of controlled
20 substance examination.

21 MR. MADSEN: No objection.

22 THE COURT: No objection. So qualified forensic drug
23 examination, is that what you're offering him a drug
24 analyst.

25 MR. GRAHAM: Thank you.

1 Q Agent McMahan, do you remember being involved with
2 analyzing a can and some contents of a package that came
3 from Smith County in September of 2014?

4 A Yes, sir. I do.

5 Q Let me show you what's been marked as State's Exhibit
6 number 58 and ask if you recognize it. And if you need to
7 go in the bag let me know and I'll get a pair of scissors
8 or a knife so you can go inside.

9 A I can recognize it.

10 Q In previous testimony it was an officer of Smith
11 County took that bag and brought it to a -- at your agency
12 by the name of Stephanie Baskin. Do you recognize her
13 name?

14 A I do.

15 Q Could you describe what Ms. Baskin does for your
16 agency?

17 A Ms. Baskin receives evidence from law enforcement
18 agencies into the crime laboratory system.

19 Q So when she received -- that item in your hand,
20 State's 58, actually came to you once she had received it
21 in. Is that correct?

22 A Whenever evidence is brought into the laboratory,
23 each case is given a unique Mississippi Forensics
24 Laboratory case number and a unique bar code within that
25 case number. Then a bar code with that information is

1 generated and placed on the evidence. The evidence then
2 will go into our vault and it will eventually be assigned
3 to the specific analyst that needs to work it. And then
4 when that analyst gets ready to work it they'll request it
5 from the vault.

6 Q And at some point did you retrieve that item from the
7 vault?

8 A Yes, sir.

9 Q And when you retrieved it was it properly sealed with
10 no evidence of it being tampered with since the time the
11 Smith County officer had brought it in?

12 A That is correct.

13 Q Could you describe to the jury what you do next?

14 A Once the case is assigned to me and I'm ready to work
15 the evidence, I go to the vault and one of the evidence
16 technicians then pulls the evidence, they check it out to
17 me. I then take it to the laboratory. If I'm ready to
18 analyze it then, I'll go ahead and inspect the contents of
19 the bag, compare it to the submission form from what it
20 was received into the laboratory, make sure everything
21 matches up there. And then I open the bag and take
22 samples from it for analysis.

23 Q Would you describe what you found in the contents of
24 the bag when you opened it, and your comparison was
25 submitted.

1 A Inside the bag there was a can that had been crushed
2 on one side. It had like a concave place in it made so it
3 could be used as a smoking device. And there were also
4 two foil packs that contained a material.

5 Q Would you describe the foil packs to the jury?

6 A They were zippered foil packs and on the outside they
7 had Scooby Snax written on the outside.

8 Q And State's 58 contains both of those items; the can
9 that you just discussed and also the packages of --
10 described as Scooby Snax with material inside of it?

11 A Yes, sir.

12 Q And in referring to those items in your analysis, how
13 did you describe those items? I believe the can has been
14 noted as -- how did you designate the can in your report?

15 A In my report the can was designated as an aluminum
16 can.

17 Q And that would have been submission 1-B?

18 A Yes, sir.

19 Q Now, 1-A was described as the two bags of Scooby
20 Snax. Is that correct?

21 A Yes, sir. And I designated that as two foil packets
22 in the report.

23 Q Going through each one separately -- let's start with
24 the can. That would be 1-B. Would you describe to the
25 jury what you did as far as any type of testing on it?

1 A I did two tests on the can. The first was a
2 retention time test which comes from an instrument called
3 a gas chromatograph, or we just call it GCMS for short.
4 Different compounds will take differing amounts of time to
5 go through this instrument from the time it is injected
6 until the time it is detected. That time is called the
7 retention time. That is one of the tests that I used.
8 This compound then, after it goes through the gas
9 chromatograph, then goes into an instrument called a mass
10 spectrometer. The mass spectrometer will fragment a
11 molecule in predictable times each and every time. Each
12 and every time it sees that compound it will fragment it
13 the same way. I can then use that fragmentation pattern
14 which is printed out on a graph along with the retention
15 time to identify the compound.

16 Q And how did you actually -- from the can itself, how
17 did you actually get something to analyze?

18 A I took a cotton swab, soaked it with methanol, and
19 then in the area where they would have had the substance
20 to heat it to be able to smoke it, I swabbed that area.
21 Then I took that swab and put it in a tube, diluted it a
22 little bit more with methanol. I put that methanol into a
23 small vile that then goes on that instrument, the GC,
24 where it gets sampled by an autoscent, (phonetic) that is
25 on the instrument.

1 Q What were the results of your examination as far as
2 the contents of the can?

3 A The can contained a residue amount of a substance
4 called AB Pinaca.

5 Q And you might call that a synthetic cannabinoid. Is
6 that correct?

7 A Yes, sir.

8 Q In general terms what is a synthetic cannabinoid?

9 A A synthetic cannabinoid is a stimulant substance,
10 psychoactive substance, that is somewhat similar to
11 marijuana but not exactly.

12 Q Do you know how it is made or produced?

13 A Typically the way it's made is some innocuous plant
14 material. It can be from the marshmallow plant. It
15 really doesn't matter what type of plant it is. They'll
16 take the AB Pinaca chemical and then spray it on this
17 plant material and let it dry, or sometimes they can mix
18 is in a tub with plant material, then take it out and let
19 it dry. The plant material itself is simply a carrier for
20 the controlled substance.

21 Q Going back to submissions 1-A which were the two foil
22 packs of Scooby Snax.

23 A Yes.

24 Q Can you describe what test you performed on that?

25 A Again, on this submission I performed the same two

1 tests that I mentioned before. The retention time from
2 the GC and also the mass spectrometry test.

3 Q Now, there were two bags that came to you. Were the
4 bags open or unopen when they came to you? Specifically
5 I'm talking about the foil packs.

6 A I don't have it indicated in my notes if they were
7 already open or not.

8 Q Were you able to determine the amounts of material
9 within those packs?

10 A Yes, sir.

11 Q How much plant like material was inside those two
12 foil packs?

13 A The total amount in both bags was 3.765 grams.

14 Q And that's combined?

15 A Combined. Yes, sir.

16 Q And you said you performed the same test on that
17 material that you performed on the residue of the can,
18 correct?

19 A That is correct.

20 Q Would you tell the jury what the results were of the
21 plant like material itself.

22 A The results of the plant like material in submission
23 1-A were AB Pinaca also.

24 MR. HUBBARD: Thank you. Please answer any questions
25 the Defense has.

CROSS-EXAMINATION

1
2 By Mr. Madsen:

3 Q How are you?

4 A I'm good. How are you.

5 Q So you said that AB-Pinanca is a synthetic
6 cannabinoid and it is similar to marijuana, correct?

7 A That's correct.

8 Q And I guess the difference is it is a full agonist to
9 the CB1 receptor where marijuana is only a partial
10 agonist. Is that correct?

11 A Sir, to get into the affects in the human body of the
12 substance is a little bit outside of my expertise.

13 Q Okay. So that's not something you know?

14 A Correct.

15 Q And AB Pinaca was not put on a federal ban list until
16 sometime in 2015. Is that correct?

17 A That's possible around that time. I think you are
18 correct.

19 Q But in Mississippi it was a little bit earlier?

20 A Correct.

21 Q You think July?

22 A July the 1st of 2014.

23 Q And that kind of mirrors the legislative sessions.
24 Is that correct?

25 A Yes, sir.

1 MR. MADSEN: That's all I have, Your Honor.

2 THE COURT: All right.

3 MR. GRAHAM: Just one question, Your Honor.

4 REDIRECT EXAMINATION

5 By Mr. Graham:

6 Q Agent McMahan, just to be clear, AB Pinaca was
7 illegal in your state in September of 2014?

8 A Yes, sir. It was.

9 MR. GRAHAM: Thank you.

10 THE COURT: All right. You may step down.

11 (Whereupon the witness stepped down from the witness
12 stand.)

13 THE COURT: Yes, ma'am.

14 MS. MAYES: May it please the Court, Your Honor, at
15 this time we have a matter of stipulation. At this time
16 we offer State's Exhibit 70 as evidence. These are the
17 results of the blood toxicology test of the Defendant,
18 Timothy Jones, Jr. and request the Court's instruction on
19 that stipulation.

20 THE COURT: All right. Ladies and gentlemen, so you
21 understand. A stipulation is an agreement, we agree that
22 this is fact. Today's Friday. They have agreed on a
23 stipulation. A stipulation with regard to Exhibit 70 is
24 the blood samples collected from Timothy Ray Jones, Jr. on
25 September the 7th, 2014 at about 10:0 a.m. in the morning.

1 The blood sample was sent to a toxicology lab known as NMS
2 Labs for testing. The results of the testing were
3 positive for AB Pinaca.

4 MS. MAYES: Thank you, Your Honor. And State's
5 Exhibit 70.

6 (Whereupon, State's Exhibit 70 was admitted into
7 evidence.)

8 MS. MAYES: The State calls Lieutenant Dustin Smith.

9 DUSTIN SMITH, being
10 first duly sworn, testified as follows:

11 MADAM CLERK: Please have a seat, and if you'll state
12 your name and spell your last name for the record.

13 THE WITNESS: My name is Lieutenant Dustin Smith.

14 MS. MAYES: May it please the Court.

15 DIRECT EXAMINATION

16 By Ms. Mayes:

17 Q Lieutenant Smith, can you state your full name for
18 the record.

19 A Sure. My name is Lieutenant Dustin Smith, S-M-I-T-H.

20 Q Tell us -- tell us a little bit about yourself.

21 Where are you currently employed and in what capacity.

22 A I am the current Forensic Toxicology Supervisor and
23 Chief Toxicologist at the South Carolina Law Enforcement
24 Division, commonly known as SLED.

25 Q What can you tell us about your educational

1 background that led you to the field of toxicology?

2 A Sure. I have a Bachelor's of Science in Biology with
3 a Minor in Chemistry from the College of Charleston.

4 Since that point I've undergone extensive internal and
5 external training both within the forensic toxicology
6 laboratory at the South Carolina Law Enforcement Division
7 and at multiple courses and classes outside of the
8 laboratory. I am also a member of the Technology Working
9 Group through the National Institute of Justice. I sit on
10 the most recent forum to determine the best practices
11 forensic, for forensic DUI casework sponsored by the
12 National Safety Council. And I am certified as a Fellow
13 of the American Board of Forensic Toxicology.

14 Q All right. And, Lieutenant Smith, if you could pull
15 the microphone just a little bit closer.

16 A Sorry.

17 Q You mentioned that you were a Chief Toxicologist at
18 the State Law Enforcement Division?

19 A Yes, ma'am. That's correct.

20 Q What does that job entail?

21 A So I oversee the toxicology department. I receive
22 the day-to-day operations from budget and personnel. I
23 also am responsible for the training of new technicians
24 and toxicologists. I'm responsible for method development
25 and validation in the laboratory, and I'm responsible for

1 reviewing all casework that involves any drug work before
2 those finalized reports are released back to the
3 submitting agencies.

4 Q Is it possible to give us an overview of your
5 training in the field of forensic toxicology?

6 A Like I said before, I have undergone extensive
7 training inside and outside. So inside the South Carolina
8 Law Enforcement Division toxicology department, I have
9 been certified as a Forensic Toxicologist. Externally I
10 routinely attend the Society of Forensic Toxicologist
11 meetings where there are courses that keep me current with
12 the field of forensic toxicology. I have attended both
13 the Borkenstein alcohol and driving and drugs and driving
14 courses, and course work.

15 Q And, Lieutenant Smith, can you tell us whether or not
16 you have been qualified previously as an expert in the
17 field of forensic toxicology?

18 A Yes, I have.

19 Q Is it possible to estimate how many such times you've
20 been qualified as an expert in courts of South Carolina?

21 A Approximately 100 times.

22 MS. MAYES: Your Honor, at this time the State offers
23 Lieutenant Dustin Smith as an expert in the field of
24 forensic toxicology.

25 THE COURT: Any voir dire?

1 MR. MADSEN: No.

2 THE COURT: All right. Lieutenant Smith is qualified
3 as an expert in the field of forensic toxicology and may
4 testify and offer opinions in that field because of his
5 training and experience.

6 Q So, Lieutenant Smith, I'm going to start by asking
7 about this drug, we've heard some about it this morning,
8 specifically, synthetic cannabis.

9 A Okay. So just to kind of go over briefly what
10 synthetic cannabis, or synthetic cannabinoids are. It's
11 the same thing as spice, or K2. Those are kind of
12 colloquial terms for it. Synthetic cannabinoids were
13 first produced in order to predate a legal alternative to
14 marijuana. The first compounds that were produced very
15 closely mirrored the effects of marijuana. Very similar
16 psychoactive effects. They were -- they interacted with
17 the same receptors and to the same extent as marijuana
18 does. As those compounds began becoming scheduled, or
19 becoming illegal, the clandestine drug manufacturers would
20 move on to another suite of compounds. And the next suite
21 of compounds had effects that were also similar but not
22 quite the same, and then the next set would get a little
23 bit further from the true marijuana effects, and then so
24 on and so on. At this point we're to the tenth or
25 eleventh or twelfth iteration of those compounds. It's a

1 revolving door. As soon as one suite of compounds becomes
2 established, the governments will make the determinations
3 that those are dangerous, they will make those illegal,
4 and then the clandestine labs will create new drugs after
5 that.

6 Q And, Lieutenant Smith, was AB Pinaca ever one of the
7 drugs that contained within synthetic cannabinoid?

8 A Yes, it was.

9 Q And today in South Carolina is this drug, AB Pinaca,
10 legal or illegal?

11 A It is -- it is federally illegal.

12 Q When did it become a controlled substance in South
13 Carolina?

14 A It became a controlled substance through the federal
15 government on January 1st, 2015.

16 Q Prior to that, January 2015, do you know or have
17 personal knowledge through your education and training
18 whether this drug was sold in South Carolina at head shops
19 and things of that nature?

20 A We certainly did see it in our casework, yes.

21 Q Lieutenant Smith, have there been published studies
22 on the effects of AB Pinaca among professionals in your
23 field?

24 A There have been. The studies are limited, but there
25 have been studies. Like I said before, the problem with

1 synthetic cannabinoids and the study of synthetic
2 cannabinoids is that they don't hang around for long. So
3 by the time that the studies get completed it's not
4 pertinent any longer because they've moved on to the next
5 suit of compounds. But yes, there have been some studies
6 that have been done on various suits of synthetic
7 cannabinoids including AB Pinaca.

8 Q Are the studies accepted by professionals in the
9 field of toxicology?

10 A Yes, they are.

11 Q And subject to peer review?

12 A Yes.

13 Q Are you familiar with these studies?

14 A I am.

15 Q I'm going to ask you specifically about some of the
16 known effects of AB Pinaca on the user.

17 A So by the time AB Pinaca, the iteration of synthetic
18 cannabinoids that included AB Pinaca came onto the market,
19 we're pretty far away now from traditional marijuana. The
20 effects aren't terribly similar any longer. Obviously you
21 take one of these drugs, or any illicit drug for the
22 euphoric effects of the drugs. You want to take a drug
23 because you want to feel good. So one of the primary
24 effects of the drug is that -- still is euphoria. Sort of
25 the side-effects of the drug, which are interesting

1 because they differ so much from the traditional
2 marijuana, include agitation, can include --

3 Q I'm going to need you to slow down just a little bit.

4 A Okay.

5 Q Agitation.

6 A Confusion, anxiety. They can include paranoia, and
7 they can include hallucinations. And one of the -- one of
8 the interesting things that really is specific to some of
9 the later iterations of synthetic cannabinoids, which AB
10 Pinaca is a member of, are psychosis or altered mental
11 state. So both of those two things would be big things
12 that would be associated with it.

13 Q All right. And so, just to clarify and follow-up a
14 little bit more. Psychosis or an altered mental state?

15 A That's correct.

16 Q These side-effects have been noted throughout the
17 literature?

18 A They have. They are consistent with the use of AB
19 Pinaca.

20 Q In addition to those side-effects, let me ask you,
21 what type of physiological effects the drug is known to
22 have?

23 A Sure. So the synthetic cannabinoids are interesting
24 in that they don't -- typical drugs will usually go one
25 way or the other. They're either going to be a central

1 nervous depressant, like alcohol or opioids, or they'll be
2 a central nervous system stimulant like cocaine or
3 methamphetamine. Synthetic cannabinoids kind of share
4 some from each. So some of the central nervous system
5 depressant like effects that you expect to see include
6 things like lethargy, which means you move very slowly,
7 drowsiness, slurred speech, some -- those are the primary
8 ones that would be associated with the central nervous
9 system depressant side. As far as the central nervous
10 system stimulant side goes, you can experience increased
11 heart rate, although there are instances where you can
12 also experience decreased heart rate. A lot of these
13 symptoms are dose specific also. Sometimes you may
14 exhibit one suite of symptoms at a lower dose of the drug
15 and then you may exhibit a different suite of symptoms at
16 a higher dose of the drug.

17 Q All right. So with the understanding that
18 side-effects can be dose specific as you explained,
19 increased heart rate, I want to ask you a little bit
20 specifically about that. How may that manifest
21 physiologically?

22 A Well, typically the low dose of this drug you see
23 symptoms that are more consistent with a central nervous
24 system depressant. You see decreased heart rate. You see
25 decreased body temperature. You see decreased --

1 THE COURT REPORTER: Can you slow down?

2 THE WITNESS: I'm sorry.

3 A You see decreased heart rate, decreased blood
4 pressure, decreased body temperature. But at higher
5 levels it does act much more like a stimulant where you
6 may see increased heart rate, increased blood pressure and
7 increased body temperature. Some of the things that you
8 would expect to see with these, you know, may include
9 agitation, confusion, potentially sweating. There also is
10 something called excited delirium that you may experience
11 at these higher levels, which means you might make excited
12 gestures or comments that might be nonsensical.

13 Q And may that include yelling, shouting, mood swings?

14 A Absolutely, yes.

15 Q When we're talking about the excitable behavior?

16 A That's correct, yes.

17 Q Lieutenant Smith, in addition to the physical
18 symptoms, physiological systems and altered mental state
19 that you described, what, if anything, do the studies
20 indicate regarding addiction or dependency of AB Pinaca?

21 A Like I said before, unfortunately the literature on
22 AB Pinaca is relatively limited. But the literature does
23 state that there is an indication that this is a drug of
24 considerable abuse potential, meaning that people could
25 become addicted to this drug quite easily, and that the

1 withdrawal from this drug can also be significant.

2 Q What, if anything, can you tell us as a toxicologist
3 generally about withdrawal? Can you explain the
4 withdrawal process in relation to the substance abuse?

5 A Sure. So like I said before, when you take a drug,
6 an illicit drug particularly, the expectation is that
7 you're going to feel good. That's the reason why you take
8 that drug. You want to escape reality. You want to feel
9 better than what you're currently, you want to get away
10 from whatever pain you might be in or what have you. If
11 you take that drug consistently over a long period of time
12 you develop a dependence to it. After you develop a
13 dependence to the drug your body wants to go back to
14 what's called homeostasis. It wants to go back to what's
15 normal. And so, that your body actually starts to make
16 conformational changes to the receptors in the body. So
17 what that means is it starts to change the structure of
18 the receptor a little bit. It makes it so the drug might
19 not fit into the receptor quite as well anymore, so you
20 don't get the same affect from it as you did before. So
21 you have to take it more often and you have to take it --
22 take more of it, get the same affect that you were getting
23 before. Well, unfortunately when you stop taking that
24 drug, at that point your body is used to having that drug
25 there to fill that receptor, and once that drug is not

1 there anymore you may develop -- or you typically develop
2 withdrawal systems. Where you were taking the drug before
3 to feel good, when you don't have that drug anymore you
4 feel bad. So you go into what's called a dysphoric state
5 where you just, you know, feel bad all the time. And
6 that, that dysphoric state can just be, can include
7 depression. It can include actual physical pain. And so,
8 those are kind of some of the things that you would expect
9 to see from a withdrawal.

10 Q If someone's been using any type of substance for a
11 prolonged period of time, for months, how may that impact
12 withdrawal symptoms?

13 A So the longer you use the drug and the more drug that
14 you have to have in order to accomplish the affect that
15 you want, the more significant the withdrawal could be
16 when you remove that drug from the, from the body.

17 Q And then you mentioned that some of the studies on AB
18 Pinaca are limited?

19 A That's correct.

20 Q The drug hasn't been around that long?

21 A That's correct, yeah. It was only around for a
22 couple of months. It was, you know, it was very common
23 during that time period. You know, it became scheduled,
24 or became illegal, and then they moved on to another drug.
25 So there wasn't a lot of time there for them to do a lot

1 of studies on it.

2 Q And so, understanding that, are the full effects of
3 withdrawal clear regarding this particular drug, AB
4 Pinaca?

5 A Unfortunately they are not.

6 Q I'm going to show you what is State's Exhibit 58 and
7 ask you to take a look at this, components therein.

8 A Okay.

9 Q Then also State's Exhibit 70 being the results of the
10 blood test of Timothy Ray Jones, Jr. collected on
11 September 7th, 2014, and ask you whether or not you had a
12 chance to review that prior to today's date.

13 A Yes, I have.

14 Q Okay. Lieutenant Smith, can you tell us whether or
15 not the AB Pinaca, as noted by that blood test result, is
16 known to be an ingredient of the street drug known as
17 Spice?

18 A It is one of many components. Potential components,
19 yes.

20 Q I'm going to show you what is the Scooby Snax. What
21 is labeled Scooby Snax in State's Exhibit 58.

22 A Yes.

23 Q And ask you whether or not that's consistent with the
24 drug as you know it to have been sold in the State of
25 South Carolina back in 2014.

1 A It took the form of very many synthetic cannabinoids
2 named very many names. Scooby Snax is one of them.

3 Q Okay. And this particular type of packaging, a brand
4 known as Scooby Snax was sold right here in the State of
5 South Carolina in various head shops at that point in time
6 in 2014?

7 A That's my understanding, yes.

8 Q And you also see a can utilized as a smoking device.
9 Tell us what is the most common form of ingestion for this
10 drug AB Pinaca.

11 A So smoking is the most common. The vast majority of
12 the time when you ingest a synthetic cannabinoid it will
13 be smoked in some way or another.

14 MS. MAYES: Nothing further for Lieutenant Smith at
15 this time, Your Honor.

16 THE COURT: Mr. Madsen.

17 CROSS-EXAMINATION

18 By Mr. Madsen:

19 Q Lieutenant Smith, how are you doing this morning?

20 A Good, thank you.

21 Q So, Lieutenant Smith, let me see if I've got this
22 correct. This AB Pinaca was not illegal in South Carolina
23 until, I guess, 2015, correct?

24 A That's correct. January 2015.

25 Q And you had said -- I guess, I'm not going to go into

1 a head shop and say, hey, can I have some AB Pinaca? I
2 would ask for synthetic marijuana?

3 A That's correct.

4 Q Or Spice, or K2?

5 A That's correct, yes.

6 Q I guess what you had said is even though it's
7 synthetic -- or known as synthetic marijuana, it's not
8 even close to marijuana now?

9 A Not anymore. No, it's not.

10 Q And there's like 160 different varieties?

11 A There are. There have been over time. They're not
12 160 varieties on the market at one time. There are
13 typically somewhere between six and fifteen different
14 drugs that constitute what is known as synthetic
15 cannabinoids at any given time.

16 Q And I think that your testimony was that of all those
17 different types that were like ten or eleven versions kind
18 of down?

19 A That's correct. We're very far removed from the
20 initial synthetic cannabinoids at this point.

21 Q You're the expert, and correct me if I'm wrong. I
22 think that the first synthetic cannabinoid, or the
23 synthetic marijuana, you said that was for testing,
24 correct?

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

1 Q Well, it was developed to do testing initially,
2 something similar to kind of like marijuana?

3 A Sure. So the initial synthetic cannabinoids were
4 created for a very useful -- well, were synthesized for a
5 potentially a very useful thing. Marijuana interacts with
6 two different receptors primarily. What's called a CB1
7 and a CB2. The CB1 is the receptor that typically gives
8 you the euphoric effects and the CB2 has some of the
9 peripheral effects, one of which is the increased
10 appetite. So a lot of these drugs were being created as
11 appetite stimulants -- or being created as potential
12 appetite stimulants for people who had cancer or had other
13 reasons why they weren't able to eat very well.

14 Q And around '95 is when that kind of came about?

15 A Yes, I believe so.

16 Q Wasn't it developed by a guy or started using at
17 Clemson?

18 A That's correct. Dr. Hoffman at Clemson was the first
19 person who published.

20 Q And like you had said, so marijuana is a partial
21 agonist to that CB1 receptor, correct?

22 A That is correct, yes.

23 Q And so, if it's kind of like a hole and a key, it
24 fits in there, but it's not one-hundred percent, I guess.
25 Is that kind of a layman's term?

1 A That's --

2 Q That's a partial --

3 A That's sort of the idea, yeah. If you put it, the
4 key goes in. It still fits. But it just doesn't, it
5 doesn't initiate the full response of the receptor.

6 Q And the AB Pinaca, that's a full agonist?

7 A AB Pinaca has been shown to have a far greater
8 receptor affinity than marijuana does. Now, whether it's
9 a true full agonist or not I don't know. But it has --
10 has somewhere, there are differing reports. But somewhere
11 between two and twenty times more affinity for the
12 receptor than marijuana does.

13 Q And all these different effects, they're going to be
14 the same if someone with mental illness uses?

15 A That's correct, yeah. Sure, yes.

16 Q And, in fact, there's studies that indicate that
17 cannabinoids that it's, people with mental illness, it's
18 even more pleasurable for them to use?

19 A Well, people with mental illness who use synthetic
20 cannabinoids, synthetic cannabinoids can exacerbate the
21 effects of mental illness.

22 Q And you had indicated if you're under -- under the
23 influence you can have slurred speech, correct?

24 A That is correct, yes.

25 Q And then you had, had you done some study on some

1 half-life's?

2 A I -- unfortunately there's not -- again, there's not
3 a lot of information on the pharmacology of the drug. So
4 there is, there have been some studies on half-life. A
5 half-life is the amount of time it takes for half of the
6 drug to be eliminated from the body. And it typically
7 takes about seven or so half-lives for the drug to be
8 eliminated entirely from the body. The only studies that
9 have thus far been done on AB Pinaca. And I don't know
10 that future studies will be done at this point because the
11 drug is not that much of a concern today. But the only
12 drugs that, I mean, the only studies that have been done
13 have been done in-vitro. And what in-vitro means is that
14 they took liver enzyme cells and they put them into a
15 tube, and then they put the drug in and then they studied
16 the elimination of the drug outside of the body. There
17 have not been any studies done to the best of my
18 knowledge, to the best of my literature search, on how the
19 actual human body interacts with the drug.

20 Q So based on those studies, the half-life of each --
21 or each half-life would be about 20 minutes?

22 A Approximately 20 minutes in-vitro. Now, again, that
23 means that that's in a controlled environment. What we
24 see in half-lives, regardless of the drug in the human
25 body, it's fairly variable. And so, we don't know whether

1 that half-life would be consistent with what's in the
2 human body or not. But that is the only information that
3 we have available to us at the time.

4 Q And you said half-life is about seven?

5 A Well, it takes about seven half-lives to remove it
6 from the body entirely. Typically it takes about five
7 half-lives to remove it from the body so that it's lower
8 than what most forensic laboratories can detect.

9 Q So about one-hundred minutes?

10 A That's correct, based on in-vitro studies.

11 Q And cannabinoids, if I was to use it today and they
12 did a drug test, you could still -- I could not be under
13 the influence and there could be a number of days later
14 that you could still see in that drug test that I have
15 used it?

16 A Are you asking in regards to traditional marijuana or
17 are you asking in regards to synthetic cannabinoids?

18 Q Both.

19 A So in regards to traditional marijuana, the
20 tetrahydrocannabinol, which is the active component of
21 marijuana, metabolizes into a product metabolite known as
22 hydroxytetrahydrocannabinol --

23 THE COURT REPORTER: Wait.

24 THE WITNESS: Sorry.

25 MR. MADSEN: I think you might need to spell it.

1 A It metabolizes into an inactive metobolite. That
2 inactive metabolite, depending on how often you use the
3 drug and how much you use each time that you use it, may
4 potentially be in your system at a detectable level for
5 some type. Typically about three to five days if you're a
6 very heavy user. It could be slightly longer.

7 Unfortunately there are not studies to indicate the --
8 well, the metabolites have been identified for AB Pinaca,
9 but there are not human studies that have been done to
10 indicate the length of time that you would expect to see
11 the AB Pinaca after the ingestion of the AB Pinaca. But
12 again, regardless with that, it would depend on frequency
13 of use and dose.

14 Q And so, I guess in 2014 I go in, I buy -- I'm
15 thinking I'm getting synthetic marijuana but that's not
16 what I'm getting. I'm getting something that's, as you
17 said, really, really different?

18 A Well, I think -- I think that is what you're getting,
19 because I think that's what you're expecting to get. When
20 you go into a store and you buy synthetic cannabinoids, or
21 you buy Spice, you're expecting to get a synthetic
22 cannabinoid. You don't know which one. You have no idea
23 which one. But you are expecting to get a synthetic
24 cannabinoid of some variety, and that's what he got. I
25 mean, that's what, that's what was identified in this

1 case.

2 Q But in 2014 that's really different than marijuana?

3 A It's very different than marijuana, that's correct.

4 MR. MADSEN: That's all the questions I have.

5 THE COURT: Any else, Ms. Mayes?

6 REDIRECT EXAMINATION

7 By Ms. Mayes:

8 Q Just to follow-up a little bit, Lieutenant Smith.

9 One of the responses you gave just a few moments ago to
10 Mr. Madsen was that that drug, AB Pinaca, may exacerbate
11 underlying conditions. What do the studies show in that
12 regard?

13 A So there have been studies in regards to synthetic
14 cannabinoids and their, their effects on those who already
15 have underlying conditions such as anxiety, depression and
16 mental illness. And what those studies show is that
17 synthetic cannabinoids specifically exacerbate those
18 effects when you're already prone to those conditions.

19 Q Including persons who have underlying depression or
20 underlying anxiety?

21 A That is correct, yes.

22 Q Mr. Madsen also asked you about some of these
23 half-life studies. Tell us a little bit more about that.
24 What is a half-life and what are the in-vitro studies?

25 A So again, a half-life is the amount of time that it

1 takes for half of the drug to be eliminated. So if a
2 half-life of this particular drug in-vitro is
3 approximately 20 minutes. That means if you take 10
4 milligrams of drug, after 20 minutes there would only be
5 five milligrams left, and after 20 minutes more there
6 would be two and half, and so on and so on. It
7 traditionally takes about seven and a half lives for that
8 drug to be eliminated from the body almost entirely, or to
9 a level where it's insignificant after seven and a half
10 lives. And then after about five and a half lives you
11 wouldn't expect to see it in a detectable level of the
12 body. Again, in-vitro just means that it's done outside
13 of the body. They take liver enzyme cells, they placed
14 them into a tube with the drug, the drug binds with those
15 cells -- or the drug is effected by those cells, and then
16 the metabolism that you would expect to happen within the
17 body happens in that tube instead. Unfortunately there
18 are a lot of things that go on in the human body that
19 can't be replicated in that tube. Again, half-lives in
20 the human body are quite variable, even for drugs that are
21 very, very well studied. So you may see half-lives where
22 the average is three to six hours. But you may see
23 something, you know, where it's not unusual to see it from
24 two to twelve hours. So while this study does indicate 20
25 minutes, the one study that was done indicates 20 minutes

1 in vitro, that could be, that could be exactly right or it
2 could be quite a ways away from what the true estimated
3 value would be in the human body.

4 Q So in the field of toxicology there have not been
5 full studies regarding human subjects?

6 A Not in an AB Pinaca half-life, no.

7 Q Now, is it your opinion that a prolonged user of AB
8 Pinaca may experience symptoms of withdrawal?

9 A Yes, it is my opinion that --

10 MR. MADSEN: Objection, that is beyond cross.

11 MS. MAYES: I believe it goes to the issues of the
12 half-life, Your Honor.

13 THE COURT: I'll allow it. We're getting close to
14 going beyond. So he can answer it.

15 A I'm sorry. Can you repeat the question?

16 Q Yes. It is your opinion as an expert in the field of
17 toxicology that a prolonged user of AB Pinaca may
18 experience symptoms of withdrawal?

19 A So, yes, someone who's a chronic user of a synthetic
20 cannabinoid such as AB Pinaca after some amount of time
21 will build up some tolerance to that drug. That
22 tolerance, once the drug is then removed from the body,
23 from the equation, would almost certainly cause some level
24 of withdrawal.

25 MS. MAYES: Thank you, Lieutenant Smith, nothing

1 further.

2 THE COURT: All right. You may step down.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness stepped down from the witness
5 stand.)

6 THE COURT: Let's take about 15 minutes. Don't
7 discuss the case.

8 (Whereupon, the jury was excused from open court for
9 a break.)

10 (Whereupon, a short break was taken.)

11 THE COURT: Let's bring them in.

12 (Whereupon, the jury came into open court at
13 approximately 11:20 a.m.)

14 THE COURT: All right. We're ready to go back to
15 work. Ms. Mayes.

16 MS. MAYES: Yes, sir, Your Honor. The State calls
17 Kennan Frederick.

18 KENNAN FREDERICK, being
19 first duly sworn, testified as follows:

20 MADAM CLERK: If you'll have a seat over there. If
21 you'll state your name and spell your last name for the
22 record, please.

23 THE WITNESS: Kennan Frederick, F-r-e-d-e-r-i-c-k.

24 MS. MAYES: Good morning, Mr. Frederick.

25 THE WITNESS: Good morning.

1 MS. MAYES: Can we approach, Your Honor?

2 (Whereupon, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 DIRECT EXAMINATION

6 By Ms. Mayes:

7 Q Mr. Frederick, if you can tell us a little bit about
8 yourself. Where are you employed?

9 A I'm currently at Sleep Number, but I have roughly
10 about 15, 16 years of retail experience. Most of it was
11 at Walmart. I was there for 13 years.

12 Q And regarding your job at Walmart, which Walmart
13 location were you employed at here in Lexington County?

14 A I was employed at two actually in Lexington County.
15 At the 378 one and also at the West Columbia Walmart.

16 Q And were you working there at the Lexington County
17 Walmart here in September of 2014?

18 A Yes, ma'am.

19 Q Tell us about your job at Walmart during that course
20 of time.

21 A I was the co-manager, which was basically second in
22 charge of the store. The hierarchy is the store manager,
23 then co-manager, and then I had several assistants and
24 department managers and employees under me. So I was in
25 charge of the day-to-day operations of the store.

1 Q All right. Mr. Frederick, did members of law
2 enforcement come to you in September of 2014 specifically
3 regarding a receipt?

4 A Yes, ma'am.

5 Q Let me show you a receipt that's already in evidence,
6 State's Exhibit 63 and ask you whether or not you
7 recognize this item.

8 A Yes, ma'am.

9 Q How so?

10 A This is the receipt that the officer gave to me to
11 look up the video for.

12 Q Now I'm going to show you an item and ask you whether
13 or not it's a duplicate of the same.

14 A Okay.

15 Q Does that appear to be the same?

16 A Yes, ma'am.

17 Q All right. I'm going to let you hold the duplicate.
18 I'm going to State's -- take back State's 63 and ask you a
19 few questions about that.

20 A Okay.

21 Q So law enforcement come to you in early September
22 2014 and said we have a receipt and we need you to find
23 out where the video is for this receipt. Take us through
24 the steps of doing that.

25 A Yes, ma'am. So the first step is that you will look

1 at the actual store, and it says store 1183. That is the
2 store number for the West Columbia Walmart. Next you'll
3 go to the TE. That's number 33. That's the register
4 provided. So you can pull the camera and it's subject to
5 basically, we have all the registers on camera, so you'll
6 go to that specific register. And then next you'll look
7 down at the bottom of the receipt, there's a time. And
8 the time says, 11:05:16, and the date is 9/03/14. So you
9 would, so you start from there. You roughly go back two
10 to three minutes because the time is actually the end of
11 the transaction.

12 MS. MAYES: I beg the Court's indulgence.

13 THE COURT: Uh-huh, (indicated in the affirmative.)

14 Q And are you familiar with whether or not members of
15 law enforcement came back to the store to purchase
16 additional duplicate items from a previous receipt?

17 A No, ma'am. I'm not.

18 Q Okay. Do you know whether or not the video
19 surveillance from the September receipt that law
20 enforcement asked you about was, in fact, pulled?

21 A Yes, ma'am. I pulled it.

22 Q You pulled that video. I'm going to show you an item
23 and ask you whether or not you recognize it.

24 A Yes, ma'am. That's the video.

25 Q How so?

1 A I looked at it on that date.

2 Q Okay. And having pulled that video did you have a
3 chance to observe it yourself?

4 A Yes, ma'am.

5 Q Does it bear your initials?

6 A Yes, ma'am.

7 Q Is this video a fair and accurate representation of
8 the transaction that you observed once you pulled that
9 video?

10 A Yes, ma'am.

11 MS. MAYES: Your Honor, this would be State's 71 for
12 evidence.

13 MR. MADSEN: No objection.

14 THE COURT: State's 71 is admitted without objection.

15 (Whereupon, State's Exhibit number 71 was admitted
16 into evidence.)

17 Q While we're doing that, Mr. Frederick, I want to ask
18 you to take a look at State's 63 being that receipt from
19 Walmart. Now that you have a clearer copy, can you -- can
20 you verify the date of that transaction?

21 A 09/03/2014.

22 Q All right. So September 3rd, 2014?

23 A Yes, ma'am.

24 Q And what is the time shown on that transaction?

25 A 11:05:16.

1 Q All right. And you were explaining a little bit
2 about how you go back and actually locate the video that
3 goes specifically with transaction?

4 A Yes, ma'am.

5 Q How did you do that in this case?

6 A So first you pull the register number, which is
7 register 33, and then you will look at the date and the
8 time and you can go forward from there. Usually you start
9 between three to four minutes prior to that because that
10 -- the time on the receipt shows when the transaction
11 actually ended.

12 Q All right. And then is there specific information
13 about each item contained on that receipt that allows you
14 to pull it from inventory, if you need to?

15 A Yes, ma'am. There's a brief description of item and
16 the UPC of item.

17 Q All right. And does that UPC allow you to match it
18 up to any particular items, if needed?

19 A Yes, ma'am.

20 Q Was law enforcement present when you pulled this
21 video?

22 A Yes, ma'am.

23 Q Have you had a chance to observe it in it's entirety?

24 A Yes, ma'am.

25 (Whereupon, State's Exhibit number 71 was published

1 for the jury starting at 11:30.)

2 Q What are we looking at here? What is this?

3 A That is the Garden Center parking lot camera.

4 Q And where is the camera for this parking lot located?

5 A It's on the roof on top of the side of the Garden
6 Center on the top.

7 Q And having observed the video what, if anything, do
8 you recall about any type of dark colored SUV that was in
9 the parking lot?

10 A Yes, ma'am. There's a dark colored SUV that pulls up
11 and then someone gets out.

12 Q Do you recall observing an individual get out of the
13 SUV?

14 A Yes, ma'am.

15 Q Did that individual appear to be alone?

16 A Yes, ma'am.

17 Q You mentioned that the receipt allows you to trace
18 back to the point of transaction?

19 A Yes, ma'am.

20 Q In this particular case, how did you locate the
21 register number within Walmart where this individual had
22 been?

23 A It's on the receipt on the top. You see TE 33, and
24 that's the register number.

25 Q Again, we're talking about September 3rd, 2014?

1 A Yes, ma'am.

2 Q Do you need to look for specific items on the
3 receipt?

4 A Yes, ma'am.

5 Q And what is the actual transaction time shown on the
6 receipt?

7 A 11:05:16.

8 Q 11:05 a.m.?

9 A Yes, ma'am.

10 Q And can you tell us whether or not the receipt that
11 you were shown matched up with the purchases made on the
12 video surveillance for that register?

13 A Yes, ma'am. If you look at the receipt it's actually
14 in chronological order as well.

15 Q And what are all of those items, once more.

16 A Okay. The first two items are two Reece's Big Cups.
17 The third item is a Gatorade Tropical-Mango eight pack.
18 The fourth item is a dust mask. The fifth item are some
19 3M goggles. Then the sixth item is a Jab saw, but the
20 cashier run it up twice, so she voided it off once. The
21 eighth item is a multi-saw. The ninth item is some acid.
22 And the last item is a five gallon Walmart pail.

23 Q All right. A pail?

24 A Yes, ma'am.

25 Q Under the brand name Walmart?

1 A Yes, ma'am.

2 Q Can you tell us, having observed this video, if all
3 of those items appear to be present at this particular
4 register for this particular transaction?

5 A Yes, ma'am. Could you back it up? I didn't see the
6 Reece's.

7 Q And where are the Reece's sold in relation to those
8 other items that you mentioned?

9 A The Reece's are in two locations. The Reece's Big
10 Cups you can find in what we call department 82, which is
11 the front end, but also in grocery.

12 Q And we're talking about candy?

13 A Yes, ma'am.

14 Q I think you also mentioned Gatorade, an eight pack of
15 Gatorade?

16 A Yes, ma'am.

17 Q Where is the Gatorade sold within Walmart?

18 A The Gatorade is just in the back of the store.

19 Q And then all of those other items that you mentioned,
20 the saws, pail, the muriatic acid, where are those sold in
21 the Walmart?

22 A In hardware.

23 Q And what type of shirt -- colored shirt is the person
24 wearing who is making this transaction?

25 A Could you fast-forward? It appears to be maroon.

1 Q This is the subject?

2 A Yes, ma'am.

3 Q Did that transaction match up with what's shown on
4 your receipt?

5 A Yes, ma'am.

6 Q What other camera angles do you have within Walmart?

7 A We have grocery entrance and exit, GM entrance and
8 exit, and Garden Center entrance and exit.

9 Q All right. Were you able to obtain any other camera
10 angles for this particular subject during the timeframe of
11 that transaction?

12 A Yes, ma'am.

13 Q Where is this particular exit located in relation to
14 that register you just mentioned?

15 A Register 33 is exiting out of the GM side. So that
16 exit was the next exit to exit out of the building.

17 Q Does that appear to be the same subject you just saw
18 at the previous register?

19 A Yes, ma'am.

20 Q With that pail and the Gatorade?

21 A Yes, ma'am.

22 Q And then did you also have the occasion to watch the
23 subject leave the Walmart?

24 A Yes, ma'am.

25 Q Is that also captured on video?

1 A Yes, ma'am.

2 Q Having viewed that entire transaction, Mr. Frederick,
3 from the time he arrives at the store, makes the purchase,
4 exits the store and leaves can you tell us whether all of
5 that was done within the period of 15 minutes?

6 A Yes, ma'am. Because I believe the video started at
7 like 10:50, 10:51.

8 Q At the time at the register?

9 A And ended at 11:05.

10 Q And you mentioned that you have a means to look at
11 that receipt and then match it up to particular items?

12 A Yes, ma'am. With the UPC.

13 Q I'm going to show you some photographs already in
14 evidence. That's the chemical splash impact goggles,
15 front side, State's 118; and the backside being the
16 State's 119. The UPC number, all that that I'm going to
17 show you, and I'll ask you whether or not you can
18 recognize that particular number. It is premarked as
19 State's 139.

20 A That's the same UPC.

21 Q Same item?

22 A Yes, ma'am.

23 Q This is State's 121 and 122. I'm going to ask you
24 whether or not you know if those items are sold there at
25 Walmart.

1 A I'd have to look at the UPC, but -- yes, ma'am. That
2 matches the same one as the dust mask.

3 Q I'll show you State's 142 premarked.

4 A Yes, ma'am.

5 Q There was a pail that was purchased, and there was a
6 SKU number for that pail. And I don't know if you can see
7 it from where you are, but I can bring that up to you if
8 you need it.

9 A I can call out the UPC on the receipt.

10 Q I'll bring that to you.

11 A Okay.

12 Q Does that appear to be the same item?

13 A Yes, ma'am.

14 Q I'll show you a bottle of muriatic acid, which is
15 State's Exhibit 98. I believe you've previously testified
16 and I was asking you whether or not you know that's sold
17 at Walmart.

18 A Yes, ma'am.

19 Q I'm going to show you an item which is premarked
20 State's 141 and ask you whether or not you can observe a
21 SKU number on this item.

22 A Yes, ma'am. That matches.

23 Q That's the identical item?

24 A Yes, ma'am.

25 Q State's 141. I'm going to show you an item and ask

1 you what this is.

2 A That's some sort of saw.

3 Q State's 114. And I'm going to show you State's 115.
4 Here's the SKU number. What are we looking at in this
5 photograph.

6 A A Stanley saw again. A multi-saw.

7 Q I'm going to hand you both of these items just to
8 confirm that they are --

9 A Yes, ma'am.

10 Q Is that consistent with your receipt? State's
11 Exhibit 138 and 140.

12 A Yes, ma'am. It's consistent.

13 Q Would that be the blades?

14 A Yes, ma'am.

15 Q Has this item been opened?

16 A Yes, ma'am.

17 Q A blade is missing?

18 A Yes, ma'am.

19 Q Now State's 140.

20 A That's the same UPC.

21 Q So the saw matches the receipt as well?

22 A Yes, ma'am.

23 MS. MAYES: Your Honor, at this time the State would
24 offer all of these items for evidence including State's
25 140, 138, 142, 139.

1 MR. MADSEN: Subject to previous objection.

2 THE COURT: Subject to your previous objection, it's
3 138 and 139, 140, 141 and 142 is what I understand has
4 been identified and is to be admitted without object
5 subject to the previous pretrial hearing.

6 (Whereupon, State's Exhibit numbers 138 through 142.
7 were admitted into evidence.)

8 Q Mr. Frederick, you've watched this transaction as the
9 manager in its entirety?

10 A Yes, ma'am.

11 Q At any point in time did you observe anything on this
12 video that gave you concerns about this individual's
13 mental status?

14 A No, ma'am.

15 Q You've been manager at Walmart -- how many years did
16 you work in that role?

17 A Thirteen years as a manager, but at different stores
18 though. I was at that store for four years.

19 Q Can you tell us whether or not everything about this
20 transaction appeared normal to you?

21 A Yes, ma'am.

22 MS. MAYES: Nothing further, Your Honor.

23 THE COURT: Mr. Madsen.

24 CROSS-EXAMINATION

25 By Mr. Madsen:

1 Q Mr. Frederick, the parking lot videos, you can see
2 that that's a, I guess a black SUV. You can't tell make,
3 model, anything like that, correct?

4 A No, sir.

5 Q You can't tell -- see who the person is that gets in
6 and out, correct?

7 A No, sir.

8 Q And Walmart doesn't make a video that you can
9 actually track that person through the whole thing, right?

10 A We have some cameras in certain areas. Yes, sir.

11 Q But they didn't ask you for them?

12 A No, sir.

13 Q So basically law enforcement came there, said, hey,
14 can you match this receipt and give us the video and you
15 got them the video?

16 A Yes, sir.

17 MR. MADSEN: That's all the questions I have.

18 MS. MAYES: Just to clarify, Your Honor. The video
19 has been published.

20 THE COURT: It has.

21 MS. MAYES: But it's in evidence, if that wasn't
22 clear before, State's 71.

23 THE COURT: It was admitted without objection. All
24 right. You may step down.

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 MS. MAYES: And if Mr. Frederick may be excused.

3 THE COURT: He may.

4 MS. MAYES: The State calls Denise Atkinson.

5 DENISE ATKINSON, being

6 first duly sworn, testified as follows:

7 MADAM CLERK: If you'll have a seat, please. If
8 you'll state your name and spell your last name for the
9 record, please.

10 THE WITNESS: First name Denise. Last name Atkinson,
11 A-t-k-i-n-s-o-n.

12 DIRECT EXAMINATION

13 By Ms. Mayes:

14 Q Good morning, Ms. Atkinson.

15 A Good morning.

16 Q Can you tell us a little bit about yourself? Where
17 are you currently employed?

18 A Exxon in Camden off of 108.

19 Q And how long have you been at the Exxon in Camden?

20 A Ten years.

21 Q What type of job responsibilities do you have there?

22 A Cashier, cook, inventory.

23 Q When you work a shift about how long is your shift?

24 A Twelve hours.

25 Q Can you tell us whether or not you were working in

1 that role, Ms. Atkinson, back in September of 2014?

2 A Yes, ma'am.

3 Q Can you tell us whether or not you had video
4 surveillance in that store?

5 A Yes, ma'am.

6 Q You're familiar with that video surveillance system?

7 A Yes, ma'am.

8 Q And it's maintained in the ordinary course of
9 business?

10 A Yes, ma'am.

11 Q Ms. Atkinson, I'm going to show you a document which
12 is already marked as State's Exhibit 64 and already in
13 evidence. Ms. Atkinson, do you recall whether or not
14 members of law enforcement came to your Exxon in Camden,
15 South Carolina back in September of 2014 to ask you about
16 a receipt?

17 A Yes, ma'am.

18 Q And I'm going to ask you to pull the microphone just
19 a little bit closer to you.

20 A Yes, ma'am.

21 Q All right. And when they did so, were you able to
22 view the video surveillance that went with this
23 transaction?

24 A Yes, ma'am.

25 Q And you've seen that video surveillance yourself?

1 A Yes, ma'am.

2 Q I'm going to show you an item and ask you whether or
3 not you recognize it. This is State's 72.

4 A Yes, ma'am.

5 Q And whose initials are on this video?

6 A Mine.

7 Q Can you tell us, Ms. Atkinson, whether or not this
8 videotape is a fair and accurate representation of that
9 transaction shown on that receipt in its entirety?

10 A Yes, ma'am. It is.

11 Q And you were the cashier on that day?

12 A Yes, ma'am.

13 Q What day was that, Ms. Atkinson?

14 A September the 4th at 11:16.

15 Q September 4th, 2014?

16 A Yes, ma'am.

17 Q And you said 11:16. Is that a.m. or p.m.?

18 A A.M.

19 Q So we're talking about Thursday.

20 MS. MAYES: Your Honor, I had the witness identify
21 the videotape, State's Exhibit 72, we offer it as evidence
22 at this time.

23 MR. MADSEN: No objection.

24 THE COURT: No objection.

25 (Whereupon, State's Exhibit number 72 was admitted

1 into evidence.)

2 Q I'm going up to put up real quickly, Ms. Atkinson,
3 State's Exhibit 64. This is the L&W Exxon. What were the
4 purchases made by this individual who came into your store
5 on September 4th?

6 A He ordered cheese sticks, curly fries, got gas on
7 pump five, \$30, and five packs of Newport reds cigarettes.

8 Q So when we see the two deli purchases, that was
9 refers to the grill?

10 A That's the grill area.

11 Q And I know you have testified already that you were
12 cashier, but who worked the grill?

13 A I do.

14 Q So in addition to ringing people up, you also are
15 making food?

16 A Yes, ma'am.

17 Q If that's what's ordered?

18 A Yes, ma'am.

19 Q You mentioned that there was a gasoline purchase?

20 A Yes.

21 Q And then also how many packs of Newports?

22 A Five.

23 Q Now, do you card for cigarettes?

24 A Yes, ma'am. I do.

25 (Whereupon, State's Exhibit number 72 was published

1 for the jury.)

2 Q What are we looking at here? You see up here,
3 September 4, 2014 at 11:01 a.m. What is this area for,
4 Ms. Atkinson?

5 A That's the cashier part, where the register is at.

6 Q And what is this area for?

7 A That's the grill area.

8 Q Okay. And this seating area here for customer?

9 A For customer to sit down and wait.

10 Q Can you tell us whether or not this is the subject,
11 or can you -- do you see the subject on this videotape who
12 made that transaction you just testified about?

13 A Yes, ma'am, I do.

14 Q What is he wearing?

15 A He's wearing a plaid shirt and a black pair of jeans.

16 Q And that would be this individual here?

17 A Yes, ma'am.

18 Q What is occurring during this timeframe, Ms.
19 Atkinson?

20 A He's waiting on me to prepare something on the grill
21 for someone else.

22 Q Now, what angle, are we looking at here?

23 A I'm at the cash, at the cash -- at the cash register.

24 Q All right. And this would be the same individual?

25 A Yes, ma'am.

1 Q What's taking place right now?

2 A He's -- I'm asking him his pump for his gas. So he's
3 going to go outside and look real quick and come back and
4 tell me the pump number.

5 Q Okay. What's taking place right now?

6 A He's giving me his ID for the cigarettes.

7 Q And what do you like to look at, if anything, in
8 addition to the identification?

9 A I like to check and make sure the credit cards match
10 with the ID.

11 Q And why's that?

12 A To make sure it's not stolen.

13 Q Did you do that in this particular case?

14 A Yes, ma'am. I did.

15 Q Did he appear to follow all of your instructions that
16 he was giving you?

17 A Yes, ma'am. He followed.

18 Q What's taking place right now?

19 A He's swiping his credit card after I check it to make
20 sure it matches up. That's where he's going to sign.

21 Q And now which angle what are we back to?

22 A We're at the grill area where he's going to wait 45
23 minutes for his food.

24 Q And this is after the purchase that we just saw take
25 place?

1 A Yes, ma'am.

2 Q What, if anything, did you tell him regarding the
3 time that it would take you to prepare the food that he
4 ordered?

5 A I told him it would take about 45 minutes.

6 Q You're still at the register?

7 A Yes.

8 Q Assisting other customers?

9 A Yes.

10 Q What do you recall, if anything, about this time
11 period?

12 A Just a normal day. Normal workday.

13 Q Having reviewed this video, Ms. Atkinson, can you
14 tell us whether or not having seen the video, after the
15 fact, you observed this individual interact with any other
16 customers?

17 A Yes, ma'am. I did. I seen him like nod to the
18 customers that was coming through.

19 Q Right there?

20 A Yes, ma'am.

21 Q Now you have completed the process and put the items
22 in containers and bags?

23 A Yes, ma'am.

24 Q In addition to State's 64 which is already in
25 evidence, I'm going to show you State's 74, as well as

1 these photographs from the video, 75, 76, and ask you
2 whether or not you recognize them.

3 A Yes, ma'am. I do.

4 Q How so?

5 A I recognize him from the gas transaction, the
6 cigarettes, the deli, waiting on him.

7 Q This is the same individual?

8 A Yes, ma'am.

9 MS. MAYES: Your Honor, at this time this would be
10 State's 74, 75, 76 being still shots of the video.

11 MR. MADSEN: No objection.

12 THE COURT: 74, 75, 76, still shots photos from the
13 DVD of the Exxon.

14 (Whereupon, State's Exhibit numbers 74, 75, 76 were
15 admitted into evidence.)

16 Q Ms. Atkinson, having been the cashier that day, was
17 there anything at all usual or strange about the
18 Defendant's behavior?

19 A No, ma'am.

20 Q Did he appear normal to you throughout that entire
21 transaction?

22 A Yes, ma'am. Very polite.

23 MS. MAYES: Nothing further.

24 CROSS-EXAMINATION

25 By Mr. Madsen:

1 Q Did someone from the Lee County Sheriff's Office came
2 and talk with you about this and got the video from you.
3 Is that correct?

4 A Correct.

5 Q And had you told him that that same fellow stopped by
6 a couple times that week?

7 A No, I didn't.

8 Q So if he had that in his report that's incorrect?

9 A Dan, he's in India. He stated that one.

10 Q He's -- the Sheriff's Office--

11 A -- Dan is one of the owners.

12 Q Oh, okay.

13 A Yeah.

14 MR. MADSEN: That's all I have.

15 THE COURT: You may step down.

16 THE WITNESS: Thank you.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 MS. MAYES: The State calls Marty Longshore.

20 MARTY LONGSHORE, being

21 first duly sworn, testified as follows:

22 MADAM CLERK: Have a seat over here, please. State
23 your name, spelling your last for the record.

24 THE WITNESS: Marty Longshore, L-o-n-g-s-h-o-r-e.

25 DIRECT EXAMINATION

1 By Ms. Mayes:

2 Q Tell us a little bit about yourself, Investigator
3 Longshore. Where are you currently employed?

4 A Currently employed with the Attorney General's Office
5 in Columbia.

6 Q The South Carolina Office of the Attorney General?

7 A Yes, ma'am.

8 Q Prior to that where were you employed?

9 A Lexington County Sheriff's Department.

10 Q And were you involved in the investigation of State
11 versus Timothy Ray Jones, Jr. in regards to researching
12 some of the receipts in this case?

13 A Yes, ma'am.

14 Q Particular some of the receipts that had come from
15 the vehicle of Timothy Ray Jones, Jr.?

16 A Yes, ma'am.

17 Q I'm going to ask you whether or not you are familiar
18 with a Dollar General receipt.

19 A Yes, ma'am.

20 Q What action, if any, did you take after you were made
21 aware of that Dollar General receipt?

22 A I went to the location of the Dollar General and
23 purchased several items that matched the receipt.

24 Q I'm going to show you what is not premarked. I'm
25 going to ask you whether or not you recognize it. Having

1 viewed that Dollar General receipt that came from the
2 vehicle of Timothy Ray Jones, Jr. were you able to go back
3 to Dollar General and make duplicate purchases?

4 A Yes, ma'am.

5 Q And can you tell us whether or not a receipt was
6 generated for that transaction?

7 A Yes, ma'am.

8 Q Can you tell us whether or not any large trash
9 drawstring bags were part of that duplicate purchase?

10 A Yes, ma'am. They were.

11 Q And can you tell us whether or not any sunglasses
12 were also part of that duplicate purchase?

13 A They were.

14 Q You were able to find both of those items?

15 A Yes, ma'am.

16 Q When you were at Dollar General?

17 A Yes, ma'am.

18 Q This would be the items?

19 A Yes, ma'am. They are.

20 MS. MAYES: That would be State's 143, Your Honor. A
21 joint item.

22 THE COURT: No objection?

23 MR. MADSEN: No objection.

24 THE COURT: No objection.

25 (Whereupon, State's Exhibit number 143 was admitted

1 into evidence.)

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

3 THE COURT: Mr. Madsen?

4 MR. MADSEN: Mr. Longshore, how are you?

5 THE WITNESS: Good. How are you?

6 MR. MADSEN: No questions.

7 MR. HUBBARD: Your Honor, at this time would be a
8 good time to take a lunch break. The next witness will be
9 long.

10 THE COURT: That will be fine. All right. Don't
11 talk about the case. Enjoy your lunch. See you back at
12 1:30 thereabouts. If y'all are late we will wait on you.

13 (Whereupon, the jury was excused from open court for
14 a lunch break.)

15 (Whereupon, a lunch break was taken.)

16 THE COURT: All right, when you sit down Mr. Young
17 will say something on the record.

18 MR. YOUNG: Your Honor, it is my understanding that
19 the State intends to call Special Agent Mackey to the
20 stand, he is the FBI Agent who, along with Detective
21 Creech, conducted the interview of Mr. Jones on the--

22 THE COURT: On the Monday?

23 MR. YOUNG: Yes, sir. And subject to the Court's
24 previous rulings, I just want to put on the record that I
25 would be intending to ask him questions about whether or

1 not he was aware about the prior rights invocations as,
2 when the State talks about Tim Jones voluntarily agreeing
3 to talk to them. Based on the Court's ruling, my
4 understanding is I am ordered not to ask those questions
5 and I will abide by that ruling. I want to put my
6 objection on the record now rather than interrupting or
7 having to send anybody out.

8 THE COURT: And the proffer would be similar to the
9 one done for Eric Johnson as well as the Sheriff.

10 MR. YOUNG: Right, he didn't know, yes.

11 THE COURT: He didn't know but Johnson says he was
12 not aware, wasn't told.

13 MR. YOUNG: Right.

14 THE COURT: Those same facts will carry over for
15 Mackey, it is just a different interview.

16 MR. YOUNG: Yes, sir.

17 THE COURT: Okay. So you are protected on that
18 issue, that question will not be allowed to ask, is there
19 anything about the waiver or invocation of rights from the
20 Saturday night ten minute interview. Now, I don't suppose
21 you are going to ask him anything about the waiver or not
22 on the 7th.

23 MR. YOUNG: We can do it with Mackey. Maybe we can
24 just, do you want to do it real quick or--

25 THE COURT: If y'all are going to have to do it let's

1 do it before they come in because if that, it will be
2 easier to do.

3 MR. YOUNG: Mr. Mackey.

4 DAVID MACKEY, being
5 first duly sworn, testified as follows:

6 MR. MACKEY: David Mackey, M-A-C-K-E-Y.

7 DIRECT EXAMINATION (IN-CAMERA TESTIMONY)

8 By Mr. Young:

9 Q Special Agent Mackey, just cutting to the chase. You
10 interviewed Mr. Jones on the 8th?

11 A That's correct.

12 Q And at the time that you interviewed Mr. Jones you
13 were not aware that he had invoked his Fifth Amendment
14 rights on the 6th?

15 A That's correct.

16 Q And you were not aware that he had invoked his or
17 refused to consent to biological draw on the 7th?

18 A That's correct.

19 THE COURT: That would be allowed.

20 MR. YOUNG: Okay.

21 THE COURT: That question is allowed. He can ask
22 about the consent to give the sample of blood and hair
23 because he said no and then they got a search warrant.
24 That was allowed.

25 MR. HUBBARD: Got a search warrant. As long as it

1 is, yes. We just didn't hold him down and take it.

2 MR. YOUNG: Those are the questions. I understand
3 the Court's ruling as to the 6th would not be allowed and
4 we would object.

5 THE COURT: Okay. But you can ask the question about
6 the samples for blood and hair.

7 MR. YOUNG: Okay.

8 THE COURT: That question was allowed to be asked in
9 Johnson.

10 MR. YOUNG: Yes, sir.

11 THE COURT: Okay. And so my ruling is consistent.
12 Don't ask about the invocation of rights from the 6th.

13 MR. YOUNG: Okay.

14 THE COURT: Are you going to object if the Solicitor
15 asked, you were aware he was interviewed the day before
16 and he waived his rights?

17 MR. YOUNG: No.

18 THE COURT: Okay, fair enough. Good enough. You go
19 sit back down and we will get you back up here.

20 MR. MACKEY: Yes, sir.

21 THE COURT: Bring the jury in.

22 (Whereupon, the jury came into open court at
23 approximately 1:40 p.m.)

24 THE COURT: We mismarked State's exhibits earlier,
25 the two aerial photographs which were identified and

1 talked to about with the Sheriff. They had been marked
2 properly as 146 and 147. The other two, 103 and 104
3 actually were photographs, part of the big packet from
4 Stacy Jones. This is the two photographs, now 146 and 147
5 of the Sheriff from Smith County.

6 (Whereupon, State's Exhibit 146 and 147 were admitted
7 into evidence.)

8 MR. HUBBARD: Okay. Thank you, Your Honor. The
9 State calls Agent Dave Mackey.

10 DAVID MACKEY, being
11 first duly sworn, testified as follows:

12 CLERK OF COURT: State your name and spell your last.

13 MR. MACKEY: David Mackey, M-A-C-K-E-Y.

14 DIRECT EXAMINATION

15 By Mr. Hubbard:

16 Q Agent Mackey, where do you work?

17 A Currently I work for the Columbia Field Office for
18 the FBI.

19 Q How long have you been with the FBI?

20 A Approximately 17 years.

21 Q What are your current duties?

22 A Currently I am the supervisor of our domestic
23 terrorism squad and our joint terrorism task force.

24 Q And do you have an assignment change coming up this
25 month?

1 A I do.

2 Q What will you be doing?

3 A I will be assigned to the U.S. Embassy in London as a
4 Deputy Legal Attaché, Deputy FBI Agent.

5 Q Now, I take it that is a promotion?

6 A Yes, it is.

7 Q Very good. If I can, I will take you back to
8 September of 2014.

9 A Yes.

10 Q Do you recall being called in and your Agency being
11 tasked in the case of Timothy Jones?

12 A Yes, I was contacted on Sunday, September 7th.

13 Q And what was the purpose of that, why the FBI. Why
14 would local authorities reach out to y'all?

15 A At that time what we knew is Timothy Jones had
16 violated a Court order, he had not returned his five
17 children to their mother. He was caught several states
18 away in Mississippi where he was in custody.

19 MR. YOUNG: Your Honor, I don't mean to object. I am
20 sure the State will clear up that there wasn't any Court
21 order.

22 MR. HUBBARD: Your Honor, we can clear that up.

23 THE COURT: Yes, clear that up because I was under
24 the impression of the same thing.

25 MR. HUBBARD: All right.

1 Q Agent Mackey, was it the mother and the family here
2 looking for, law enforcement here looking for those
3 children with the father, that was suppose to be with the
4 father?

5 A That's correct.

6 Q Okay, as opposed to an actual Court order?

7 A Correct.

8 Q Now that we have that clarified. Why would law
9 enforcement reach out to the FBI, what do y'all typically
10 do, do y'all work in local cases or what prompts the FBI
11 coming into a case?

12 A At this point there was concern about potential
13 kidnapping so we were contacted. And then in cases we
14 often, if we can provide assistance to the local
15 authorities or state authorities we also do that as well.

16 Q Can I ask you this. Were you given any real in depth
17 discussion of who had custody of the children or any of
18 the Family Court proceedings?

19 A No.

20 Q So you just knew you had a parent with children?

21 A Correct.

22 Q Now, when a parent takes children across state lines
23 is that, local law enforcement can reach out to the FBI?

24 A Yes.

25 Q Okay, that clarifies that. But basically you weren't

1 given any information on custody status or anything like
2 that?

3 A No.

4 Q Okay. Very good. So you got involved in this case.
5 Now, what agency did you start immediately working with?

6 A That Sunday evening I went to the Lexington County
7 Sheriffs Office. There I met with Detective Creech and a
8 number of other officials from Lexington County as well as
9 SLED.

10 Q Did y'all meet over at headquarters here in
11 Lexington?

12 A That's correct.

13 Q Did y'all develop a plan on who was to go to
14 Mississippi and, or do you know that the suspect was in
15 custody in Mississippi at this time?

16 A We knew he was in custody, we knew the following
17 morning we were going to drive out to Mississippi and
18 attempt to interview Timothy Jones.

19 Q Did y'all develop, you and you say Detective Adam
20 Creech?

21 A That's correct.

22 Q Seated here in the courtroom in the purple shirt?

23 A Yes, he is.

24 Q So you, he and who else went?

25 A Also Dave Lawrence from SLED. He is now retired but

1 at that time he was with SLED.

2 Q In route did y'all develop a plan on how to conduct
3 the interview?

4 A We did.

5 Q And what did y'all talk about?

6 A At that time Dave Lawrence is a polygrapher. He was
7 not going to be part of the interview itself.

8 Q Okay. Let me ask you this. Was he there basically
9 as a polygrapher?

10 A Yes, at this time we did not know the status of the
11 children, if a crime occurred, where it had occurred. We
12 did not have jurisdiction at that time.

13 Q Okay. Let me ask you. Did y'all determine who was
14 actually going to be in the interview?

15 A Yes.

16 Q You and Adam Creech?

17 A And Detective Creech, that's correct.

18 Q Let's, when you get down to Mississippi did you meet
19 with Sheriff Crumpton?

20 A I did.

21 Q Saw him testify earlier?

22 A I did.

23 Q And did you meet with officials from MBI like Eric
24 Johnson?

25 A Yes.

1 Q Now, when you went in were you aware also that the
2 father, Tim Jones father, Tim, Sr. was still in
3 Mississippi at that time?

4 A Yes.

5 Q Did y'all make a decision whether to take him into
6 the interview or not?

7 A We did. We were not going to bring him into the
8 interview.

9 Q And why was that?

10 A Essentially my plan that day was to convincingly
11 accuse Timothy Jones of what he had done to attempt to
12 locate these children. So as part of that I did not plan
13 to bring his father into the interview.

14 Q Prior to asking Mr. Jones any questions did you go
15 over his rights?

16 A Yes.

17 Q Did you use anything to assist you in doing that?

18 A Yes, I did. I had a advise of rights form from
19 Lexington County that I had obtained from Detective
20 Creech.

21 Q I want to show you what has been marked as State's
22 exhibit 144. Does that look familiar?

23 A Yes. This is the advise of rights form that we
24 provided to Timothy Jones that day.

25 Q Okay.

1 MR. HUBBARD: Your Honor, I offer this into evidence.

2 MR. YOUNG: No objection, Your Honor.

3 THE COURT: Without objection 144.

4 (Whereupon, State's Exhibit 144 was admitted into
5 evidence.)

6 MR. YOUNG: Subject to our previous motions and
7 objections, Your Honor.

8 THE COURT: Oh yes, sure. You are protected.

9 Q Agent Mackey, if you would, can you please for the
10 jury show us how you use that form and how you went over
11 that form with Mr. Jones.

12 A Sure. When Mr. Jones came in we had greeted him, we
13 shook his hand, he had sat down. At that point I began
14 reading the advise of rights form to him. I would read
15 each right and at the conclusion of that I would ask Mr.
16 Jones if he understood that right.

17 Q Could you please read just like you did with him.

18 A Sure. Before we ask you any questions you must
19 understand your rights. Anything you say can and will be
20 used against you in a court of law. I ask him if he
21 understood that, he indicated he did. You have the right
22 to talk to a lawyer for advise before we ask you any
23 questions and have him or her present with you during
24 questioning. Again, he indicated he understood. If you
25 have no money for a lawyer's fees that the Court will

1 appoint one to represent you without cost to you, if you
2 wish. He indicated he understood. If you decide to
3 answer questions now without a lawyer present you will
4 still have the right to stop answering questions at any
5 time. You also have the right to stop answering questions
6 at any time until you talk with a lawyer. Again, he
7 indicated he understood that. I then went down to the
8 waiver of rights portion of the document. I told him
9 these were his rights, this would be him waiving the
10 rights and willing to speak with us. This says, I am
11 willing to make a statement and answer questions. I do
12 not want a lawyer at this time. I understand and know
13 what I am doing, no promises or threats have been made to
14 me and no pressures or coercions of any kind have been
15 used against me. After I did that, we had asked Mr.
16 Jones, you understand all of this. He says, yes. He does
17 not want to sign at that time but he indicates he will
18 talk to us. And he says, I know I will be
19 self-incriminating myself. And at that point we continue
20 forward, we continue to ask some background questions of
21 him.

22 Q As you ended up asking questions did at some point he
23 reach over and pull that form over to himself and sign it?

24 A He did, yes.

25 Q And you see his signatures on both the waiver and the

1 rights?

2 A I do.

3 Q So down at the bottom where it has witness, whose
4 signature is on the top?

5 A That would be my signature.

6 Q And below that is whose?

7 A Detective Adam Creech.

8 Q The date is 9/8/14, is that correct?

9 A That's correct.

10 Q And the signature under advise of rights and waiver
11 of rights, those signatures are whose?

12 A The Defendant, Timothy Jones.

13 Q Where was this questioning being conducted, where
14 were y'all?

15 A We were at the Smith County Sheriffs Office, we were
16 on the second floor in a room previously described by the
17 MBI Investigator that you had heard from previously.

18 Q Was it a casual polite atmosphere that you were
19 engaging in with Mr. Jones or when you first brought him
20 in and started talking to him?

21 A When he first sat down we went over the advise of
22 rights. At that point I began going over some of his
23 background information. I began asking him about his
24 employment history, where he worked, what he did. He told
25 me he worked at Intel and told us this and he stated he

1 made approxiamtely \$80.000.00 dollars a year. He was a
2 computer engineer, educated, had thoughts of going on to
3 medical school. So we talked about these issues before
4 moving into his health. We talked both about his general
5 health and his mental health. He said he was not under
6 the influence of any alcohol or drugs at that time. He
7 stated he could completely comprehend what was going on.
8 He understood what was happening. As far as his general
9 health, he talked about having an ulcer and some Crohn's
10 disease. As far as his mental health he mentioned his
11 mother and he thought that he might suffer from the same
12 mental illness that she may have.

13 Q Let me ask you, at that time was he exhibiting any
14 issues?

15 A No. He was certainly very, his answers were very
16 logical at that time and completely made sense to us.

17 Q Now, when he said he had not been using any drugs at
18 this time, he wasn't high at the time. Did you see
19 anything to indicate that he might be under the influence
20 of either drugs or alcohol?

21 A I did not.

22 Q Did you see anything showing that he is now off and
23 maybe going through withdrawals like that, sweating or
24 anything like that?

25 A I did not see those signs.

1 Q No foaming at the mouth?

2 A No.

3 Q All right. Now, once you get down to the meat of
4 what you are asking what, if any, change do you see in his
5 behavior?

6 A So ultimately I began asking him about his children
7 and immediately his demeanor changes and he starts talking
8 about his two boys, Nahtahn and Elias, that both of these
9 boys had made statements. Nahtahn, according to Timothy
10 Jones, made statements that he wanted to kill his father.
11 And Timothy was talking about the children basically
12 colluding against him and they had it out for him. So he
13 was acting as if he was afraid of his children.

14 Q What did you do?

15 A I, upon hearing that, I let him know that I did not
16 believe that and I began confronting him with some of the
17 information that I had with me that day. What I first do
18 is I put down the Walmart receipt that you have seen. And
19 I asked him to start reading off for me what is on that
20 receipt. And he is reading off about the saws. And I
21 asked him, what is this for. And he tells me it is to cut
22 tree limbs. He is reading off the muriatic acid, the
23 goggles, the five gallon bucket. He is telling us this is
24 to etch PVC. Again, I am telling him, I don't believe
25 this. I go to his handwritten notes. He says these are

1 his notes, this is his writing but he claims he does not
2 recall writing this, he doesn't know what it is about.

3 But he reads off for us exactly what he wrote down about
4 sanding down the bones, dissolving and discarding the
5 bodies. He reads this, he denies knowing what any of that
6 is about. I go into the biological evidence.

7 Q Can I stop you for a moment?

8 A Yes.

9 Q And let's just talk about the note, is this the note,
10 State's 79?

11 A It is.

12 Q Can you see that, Agent Mackey?

13 A Yes.

14 Q Is this part of the portion of the note that you were
15 confronting him with about melting the bodies, sand bones
16 to dust or small pieces. Is that part of what you were
17 confronting him with?

18 A Yes and he read that off to us.

19 Q So he admitted everything on this form?

20 A He did.

21 Q His handwriting?

22 A Yes.

23 Q But he didn't know what it was?

24 A That's correct.

25 Q That includes the section down here. Day one, burn

1 up bodies. Day two, sand down bones. Day three, MB
2 dissolve and discard, smiley face.

3 A Yes.

4 Q So that is right in front of him, he admits, he wrote
5 it and he just says he doesn't know what it was about?

6 A Yes.

7 Q What do you confront him with after that?

8 A Yes. And he reads this off matter of factly to us,
9 denies knowing what it is about but he admits he did write
10 it.

11 Q So he just reads it like a list?

12 A Yes. He reads it down to us, he points to areas and
13 he reads, some of the handwriting he didn't know what it
14 is. But the parts that we just went through he was able
15 to read off to us. I then confront with the biological
16 evidence and talk about the blood in the vehicle. And he
17 tells us that blood is from an animal and Detective Creech
18 lets him know that that blood has tested positive for
19 human blood. Timothy says it came from a cut, that he had
20 cut himself, it is from a cut. And we let him know there
21 was a large amount of blood in that vehicle, that what he
22 is telling does not make sense. I then began laying down
23 photographs of his children.

24 Q Are these the same photos that we have been seeing,
25 you know, for some time, him with his kids?

1 A Yes.

2 Q Individual kids?

3 A Yes. Individual photographs of each child. And I
4 began laying those down in front of him. And he had a big
5 reaction to seeing these photos. He began crying heavily
6 and he began saying, keep them away from me, get them
7 away. He had previously maintained that he had dropped
8 them off at Walmart. So he had this reaction to the
9 photographs of the children.

10 Q Let me get this straight. He is sitting at this
11 table, you lay these in front of him and he sits back
12 saying, get them away from me, I'm afraid.

13 A Yes.

14 Q But isn't it true, Agent Mackey, that we had just
15 found photos of those same children in his car?

16 A Yes, I did not know that at the time but yes, that is
17 correct.

18 Q But we all knew, you knew certainly at that time
19 those children had been in his car as well?

20 A At that time I did not know what had happened. We
21 later find out. But I suspected, he said he had dropped
22 those children off and now he was acting if he was afraid
23 when he saw the photographs of his own children.

24 Q Okay. And so how did this reaction strike you?

25 A I thought it was consistent with his behavior before.

1 He was lying, everything put in front of him and I did not
2 believe his reaction to these photographs.

3 Q So once you let him know you weren't being sucked in
4 and in that reaction what did you do to carry on this
5 conversation?

6 A I go back to the Walmart receipt and I go back to
7 what he had purchased and I let him know that this seems
8 consistent, exactly with what his notes say that this,
9 this is consistent with dismembering and discarding
10 bodies. And I asked him to read off the notes to us
11 again. And at that point he says, let's cut to the chase.

12 Q He says that?

13 A He says that.

14 Q Now, up to this point had he been emotional?

15 A Yes, just previously he was, when he saw the
16 photographs he was very emotional.

17 Q When he said, let's cut to the chase what was his
18 demeanor?

19 A It appeared the weight was lifted off of his
20 shoulders and he began logically walking us through what
21 he had done to his children.

22 Q Does he take you back to the night of August 28th of
23 2014?

24 A He does. He says there is large parts he would not
25 remember. When I went into the interview, what I had

1 known was the last time Timothy was seen with his children
2 was that Thursday, August 28th. So we went back to that
3 day. And he walked through with us how he had essentially
4 picked up the children, how they got to the house that
5 day. And that evening he began, he began having a
6 confrontation with his son, Nahtahn. Four outlets in the
7 house had been blown. And Timothy was confronting his son
8 about those outlets. And he wanted his son to tell him
9 what he had done.

10 Q How did he describe the way he confronted his
11 six-year-old son.

12 A He said to get his son to talk about this he began
13 PT'g his ass.

14 Q Those were his words?

15 A Those were his words. We asked him to clarify, what
16 does that mean. He said he had his son do pushups,
17 squats. I asked him, did you use your hands at all. And
18 he said that he did hit his child and he was spanking him.
19 He denied using any objects or anything of that sort to
20 strike him but he did this for hours. And talked about
21 his son being defiant. Again, his words, and his son
22 would not come off of it.

23 Q Again, were those his words, would not come off of
24 it?

25 A Yes.

1 Q What did he say happened then?

2 A He said after doing this for hours he sent his son to
3 bed. He claimed he knew that he had pushed his son too
4 far. And when he checked on his child his son was no
5 longer breathing.

6 Q What term did he use, describing his son was dead?

7 A He said that he was deceased. He told us previously,
8 once he said he wouldn't come off of it. He told us we
9 were not going to find them. And he said that they were
10 deceased.

11 Q So all of the kids were deceased?

12 A All the kids were deceased, yes.

13 Q So going back to the house, did you say this happened
14 at Red Bank at his residence?

15 A That's correct. That's correct, in the living room.

16 Q So going back to Nahtahn, he checks on Nahtahn and
17 Nahtahn is dead?

18 A Yes.

19 Q Did you confront him about that?

20 A I did. To PT a six-year-old to the point where they
21 die is something--

22 MR. YOUNG: Objection, speculation.

23 THE COURT: Rephrase your question. I sustain the
24 way it was presented.

25 Q Your follow-up with him, based on your experience as

1 an officer how did you follow-up with him and why did you
2 follow-up with him on that issue?

3 A I asked him if there was anything further he did to
4 his son. He denied this, he repeatedly said it was not
5 premeditated, that this was an accident with Nahtahn. He
6 claimed that it was the PT'g that did this. I asked him
7 specifically had he used a pillow to place over his son's
8 head, anything of that nature and he denied this. He
9 denied using any objects to strike his child with. I
10 asked him, why would you, after being so angry at your
11 son, go in to check on him. And he told me he knew he had
12 pushed his son too far. That is why he wanted to check in
13 on him.

14 Q Is that why you followed up on his, the fact that he
15 said he pushed too far?

16 A Yes.

17 Q What does he say after that?

18 A After that, I apologize, these are his words. He
19 said, the voices in his head said fuck, no one is going to
20 believe you. So he was going to have to kill the
21 remainder of his children. He talks about going to the
22 oldest son first, Elias.

23 Q Tell me this, does he give you the order, before we
24 get into actually what happens, does he give the order in
25 which he kills his children?

1 A He does.

2 Q So he can remember which child he killed, which one
3 he went to next and next until they are all dead?

4 A Yes.

5 Q What is the order of the children that he killed?

6 A He first goes to his son, Elias.

7 Q And then?

8 A Merah Gracie.

9 Q And then?

10 A The two oldest and then he goes to the youngest,
11 Gabriel and Abigail or Elaine.

12 Q Before he does that does he indicate to both you and
13 Detective Creech that Elias, maybe even Merah, know what
14 is coming?

15 A Yes. The children were afraid, they knew something
16 bad had happened. And he mentioned both of them
17 struggled. He first went to Elias and I asked him, how
18 did you kill your son. He used his hand to strangle his
19 child.

20 Q Can I ask you this. When he strangled Elias what, if
21 anything, does Elias say to his father?

22 A According to Timothy Jones Elias says, Daddy, can I
23 come with.

24 Q Does he finish that sentence?

25 A Not to my knowledge. Again, this is what Mr. Jones

1 had told us.

2 Q Daddy, can I come with?

3 A Yes.

4 Q Does he say he chokes and kills Elias?

5 A He does. He chokes his son to death and his son
6 struggles as he is being strangled.

7 Q Who does he go to next?

8 A Next he goes to his daughter, Merah Gracie. And he
9 kills her in the same manner.

10 Q What, if anything, does Merah say to her father?

11 A According to Mr. Jones, Merah Gracie says, before he
12 strangles her, Daddy, I love you.

13 Q And then he strangles her?

14 A He strangles her in the same way. And she struggles
15 as well.

16 Q When you asked about whether the children resisted,
17 what was his--

18 A Basically stated that, wouldn't you if you were
19 strangled. So he appeared to think that was a normal
20 reaction from his children.

21 Q Who does he go to next?

22 A Next he goes to his son, Gabriel.

23 Q The two-year-old?

24 A The two-year-old. And he says, basically his hands
25 were too big to strangle the smaller children. Initially

1 he told us that is what he did and then he corrected
2 himself to say he had used a belt he placed around their
3 neck and then he had showed us how he had pulled the belt
4 taunt to kill his son.

5 Q And he actually demonstrated it?

6 A He did, yes.

7 Q And then the youngest one-year-old, Abigail?

8 A Yes.

9 Q He says the same thing?

10 A And then he goes to her and he kills her in the same
11 manner with that belt.

12 Q Going back to Nahtahn. When you asked him about
13 Nahtahn and he is disciplining Nahtahn, says he has gone
14 too far. At this point after he says, let's cut to the
15 chase, does he talk about being afraid of Nahtahn or any
16 of his kids?

17 A I do ask him, I confront him after we hear this
18 story, I ask him if this is about being afraid of your son
19 or is this about your son not coming off of it. And he
20 states, this was about his son not coming off of it. His
21 son would not tell him, wouldn't tell the truth about
22 those outlets. And he let's us know that had Nahtahn come
23 off of this none of this would have happened, all of the
24 children would still be alive.

25 Q Let me get this straight. He said if Nahtahn had

1 told the truth none of his children would be dead?

2 A That's correct.

3 Q He blames Nahtahn?

4 A He did, yes.

5 Q And the death of his siblings as well?

6 A Yes.

7 Q Again, how old was Nahtahn?

8 A He was six years old.

9 Q After all five children are dead what does he say he
10 does with his children?

11 A He states at that point he wraps their bodies up in
12 their bedsheets and he takes them out to his vehicle, the
13 Cadillac Escalade and he begins stacking up the bodies
14 behind, behind the driver passenger seat, in that back
15 floorboard, he starts stacking the bodies up there. I had
16 asked him about a piece of tissue or scalp they found in
17 the car. He states that he was not careful with these
18 children, that they were already dead. So he takes their
19 bodies and he stacks them up. He said at that point they
20 were already dead. So he does not know if that could have
21 happened when he had placed the children in the car or if
22 it was possibly from the decay. So he was not sure where
23 that came from but he denied that he had done anything to
24 cause that injury.

25 Q So as far as that piece of tissue that was found in

1 the vehicle that you refer to as possible scalp, he didn't
2 know where it came from but he does admit, once these kids
3 were dead he handles them with any kind of care?

4 A Correct.

5 Q While he is talking is he still clear and coherent?

6 A He is, yes.

7 Q What else does he say at that point?

8 A He, we asked him if he was under the influence at
9 that time and, of drugs. And he said, no, but afterwards
10 he began to use Spice to calm the voices in his head.

11 Q Afterwards?

12 A After, after the children were dead. And he began
13 formulating plans at that point of what to do. And he
14 made plans to dispose of these children's bodies.

15 Q Did you talk to him again about the note that you
16 confronted him with earlier, State's 79?

17 A Yes.

18 Q When you presented him with that again did he
19 remember now?

20 A He remembered some, some of the note. He still
21 stated to us that he didn't know what it meant but he said
22 these were some of the ideas that he had come up with,
23 that he had devised in order to discard the children's
24 bodies. He said ultimately he could not bring himself to
25 go through with it.

1 Q Does he admit that's why he made the purchases he
2 made at Walmart?

3 A Yes.

4 Q The jab saw, the bucket, the acid, all of those
5 items?

6 A That's correct. His plans were ultimately to
7 dismember the bodies and to discard them.

8 Q And did he also admit that is why he bought the trash
9 bags and bleach?

10 A Yes. Now with both of those items, he did state it
11 was because of getting rid of the bodies. But he also
12 stated with the garbage bags that he also had other trash
13 in the car that he was going to get rid of. But he did
14 state he bought those trash bags to place the children in.

15 Q Did he address with you while riding around and as
16 these children, did he place them right behind his seat?

17 A My understanding is he laid them, their bodies
18 across, behind the driver's seat and the passenger seat so
19 they are laying on that floorboard there, they were all
20 stacked up.

21 Q Did he describe with you at some point they began to
22 decay and how he dealt with the smell, what he did?

23 A Yes. We knew there was clearly a strong odor and he
24 did state he had air-fresheners but he ultimately said,
25 you get used to it. So he had gotten used to the smell.

1 Q Even though that smell is coming from his five dead
2 kids?

3 A That's right.

4 Q Again, was he still very lucid and clear with you?

5 A He was.

6 Q Did you at some point ask him, how do you feel about
7 doing this?

8 A I did.

9 Q What was his response?

10 A Again, these are his words. He did state that part
11 of him felt bad, that no dad should ever do this to their
12 children. Part of him said, fuck it, they are already
13 dead.

14 Q Going back to the beginning of this interview, was it
15 your intention and the intention of Investigator Creech to
16 tape record this interview?

17 A It was.

18 Q At some point during the interview did it become
19 clear to you that the tape recorder was not working?

20 A Yes.

21 Q Can you, did either one of you have like a government
22 issued tape recorder, how did that go?

23 A No. While we were traveling to the Smith County
24 Sheriffs Office that day, Detective Creech had received a
25 call and was advised to pick up a tape recorder. Neither

1 Dave Lawrence nor Detective Creech nor myself, we did not
2 have a recorder with us. So we had stopped by to pick up
3 a recorder. We had brought that in with us. We had let
4 Timothy know that we were going to record this
5 conversation and that he could voluntarily say no to that.
6 But he agreed to that. During the course of the interview
7 we ultimately get to a part where we are trying to locate
8 where the bodies might be but we had noticed that the
9 recorder was not recording at that time. So at that point
10 we did a summary tape statement. We turned the recorder
11 on and we went over some of the things that we had
12 previously discussed.

13 Q He was aware that the tape recorder had not worked?

14 A Yes.

15 Q Did he give, make a comment about it?

16 A He did, yes. So he, on the recording you will
17 actually hear him talk about this, I think he says part
18 two.

19 Q Does anything change, when he says, let's cut to the
20 chase, and gives you this full story and then you get to
21 where you realize that tape recorder is not working, once
22 you put the tape in and get it going is there a change in
23 his responses?

24 A I think the biggest change is we had a questionnaire
25 that was asked of Timothy Jones. And on some of those

1 answers he reverts back some of his earlier statements of
2 him being afraid of the children.

3 Q Does he start talking a lot more about voices?

4 A He does. He talks more about voices in his head,
5 seeing people in the room.

6 Q This questionnaire, is it something that you have
7 ever used before?

8 A No.

9 Q Was it something that Detective Creech said he uses
10 and that is why it was utilized that day?

11 A No. Neither one of us had seen that questionnaire
12 previously.

13 Q Is it something that was sent to Detective Creech
14 where he was directed to ask these questions?

15 A Yes. During the interview, what we find out is
16 Lexington County is certainly going to have jurisdiction.
17 That is where the homicides occurred. So during the
18 course of that interview that questionnaire was provided
19 to him and he was to ask those questions. That is what
20 happened.

21 Q And you have captured that recording, that recap?

22 A Yes. Detective Creech actually had possession of the
23 recorder.

24 Q I want to show you what has been marked State's 145
25 and see if you can identify that as the CD or CDV of the

1 tape?

2 A Yes, that is a copy of the recording.

3 Q Okay.

4 A The summary taped statement.

5 MR. HUBBARD: I offer this into evidence.

6 MR. YOUNG: Your Honor, we would request that the
7 un-redacted, I understand--

8 MR. HUBBARD: Your Honor, can we have a sidebar?

9 THE COURT: Yes.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 (Whereupon, State's Exhibit 145 was marked for
14 identification only.)

15 THE COURT: The recording is about 45 minutes, they
16 want to play it for you. You can sit through 45 minutes,
17 take a break, do about half and come back. I think a
18 break would be in order and come back and listen to the
19 entire tape. Step in the jury room, don't talk about the
20 case and see you in just a few minutes.

21 (Whereupon, the jury was excused from open court for
22 a break.)

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring the jury in.

25 (Whereupon, the jury came into open court at

1 approximately 2:42 p.m.)

2 THE COURT: All right, folks, we are going to play
3 the recording.

4 MR. HUBBARD: Yes, sir. If I may ask one question
5 before.

6 THE COURT: Go ahead.

7 Q Agent Mackey, one thing I didn't ask you about. When
8 you first started this interview, as you got into the
9 interview with Tim Jones did there seem to be a difference
10 in how he responded to you versus Adam Creech?

11 A Yes.

12 Q How was that going, the interplay with y'all?

13 A I was asking him questions about the notes, about
14 what he did. Early on he was not truthful about that and
15 what he would often do is turn towards Detective Creech to
16 attempt to engage him in conversation, so as to not answer
17 my questions. This happened for quite a while, early on
18 in the interview.

19 Q Is that before he said, let's cut to the chase?

20 A Yes.

21 Q So you got through everything after that point on and
22 then realized the recording wasn't working?

23 A Yes.

24 Q And then you put the recording in and starting doing
25 a, kind of a recap?

1 A Yes. Detective Creech had started the tape and we
2 went back to the beginning of September 28th and we had
3 Timothy Jones walk us through that, again, walking him
4 through that.

5 Q And it is State's 166 currently for ID but I would
6 offer it. Agent Mackey, you have listened to that tape?

7 A Yes.

8 MR. HUBBARD: Your Honor, I offer this into evidence.

9 MR. YOUNG: Subject to previous objection.

10 THE COURT: Subject to previous objection, that is
11 the--

12 MR. HUBBARD: Full tape, Your Honor.

13 THE COURT: Okay. All of it is recorded?

14 MR. HUBBARD: Yes, sir. Audio recording, yes sir.

15 (Whereupon, State's Exhibit 166 was admitted
16 into evidence.)

17 (Whereupon, a tape recording of interview of Timothy
18 Jones was played for the jury starting at 2:45 p.m.
19 and ended at 3:35 p.m.)

20 Q Agent Mackey, do you remember the taped portion?

21 A Yes.

22 Q Again, a couple of things about the taped portion of
23 the interview. Prior to that, had all the talk about fear
24 of the kids, had that gone away?

25 A It was there early on in the interview but once we

1 got to the point where he was telling us what he did that
2 had gone away.

3 Q The cut to the chase and all the talk and full
4 confession, there is nothing about fear and what the kids
5 were going to do to him?

6 A Yes, there was no talk about fear. It was about his
7 son not coming off of it.

8 Q And once that tape recorder, everyone realized it
9 wasn't playing, he realized that as well?

10 A He did, yes.

11 Q Once that tape started playing is that when the fear,
12 he starts mentioning fear again?

13 A He does revisit that, yes. And you heard what he
14 said, the tape speaks for itself.

15 Q Yes. Again, the questions, the list, there is
16 something about a list and some of those questions like
17 would you do it if there were a police officer there. Was
18 that a preform list of questions that was supplied to
19 Detective Creech?

20 A It was.

21 Q During the interview or prior to the interview?

22 A He was provided that during the interview itself.

23 Q If you, as an FBI Agent, had been conducting this
24 interview and you realized it is in your jurisdiction so
25 you are in charge, would you have gone through these

1 questions?

2 A I would not have.

3 MR. YOUNG: Objection, speculation.

4 MR. HUBBARD: Speculation, this is the man I am
5 asking.

6 THE COURT: I think it is a fair question so
7 overruled.

8 A No, I would not have.

9 Q As an Agent with the FBI what was your concern with
10 that style of questioning?

11 A Throughout the interview, certainly early on in his
12 conversations with previous law enforcement, he was not
13 being truthful and he was looking to distance himself for
14 this crime and people often give a reason why they do
15 something. When you look at his actions, what he did, he
16 picks those children up that day, he kills those children,
17 he ultimately buys things to dismember those children, he
18 puts them in garbage bags. All of those things he lies to
19 us about and he tells us, he does this because he is
20 afraid of those children, they were conspiring against
21 him. But once he comes off this and he begins telling us
22 why he did these things, this all stems from Nahtahn and
23 that Nahtahn did not tell his father that day, his son
24 would not tell his father the truth. And this is what
25 leads to, what he says was an accidental death with

1 Nahtahn and then after that he does say that the voices in
2 his head tells him no one is going to believe him. So he
3 goes forward and he kills the rest of the children.

4 Q The questions that were asked on that list, does that
5 just give an opportunity to reintroduce the fear issue?

6 A Yes, I think he circles back to that, yes.

7 Q Now, after everything is out, you got to the end of
8 that interview, the taped portion, did you sit down with
9 him along with other law enforcement and try to figure out
10 where these children are?

11 A Yes.

12 Q And did he assist as far, did y'all sit down, was
13 this late in the day or early in the day?

14 A It was late in the day on the 8th and we did try to
15 locate on maps, on computers where the children might be
16 located. But we also revisit the following day on the
17 9th.

18 Q Well, on the 8th, after he had said what he has done
19 to the children, do y'all give him a computer or access to
20 electronics to assist in locating those kids?

21 A We do. He is very good with computers and he said if
22 he had access to a computer he felt he may be able to show
23 us the location. From those receipts we knew the children
24 would be between Greenville, Alabama and Camden, Alabama.
25 He knew there was, the topography of the area where he had

1 dumped the bodies was elevated and it was a logging road.
2 And he believed it was along Highway 10. So we were able
3 to get him initially an Ipad. He did not like that, he
4 wanted a Mac or Windows that he could operate and Google
5 Maps to attempt to locate where these children were. He
6 went into that, he wasn't able to find quite the map he
7 was looking for on that computer. We had maps laid down
8 that the Sheriff and MBI were able to bring in with us and
9 we focused on that area. And he felt that, he was willing
10 to come with us, he was, he acknowledged that his children
11 did deserve a proper burial. And that night he was
12 willing to come with us to try, did not want to waste our
13 time but he was willing to see if he could identify the
14 exact place where he dumped the bodies.

15 Q Did he even ask for a topographical map to show
16 elevation?

17 A He did, yes.

18 Q The next day, September the 9th, which if my day is
19 straight would be a Tuesday?

20 A Yes.

21 Q Is that the day that everyone actually caravanned from
22 Mississippi to Alabama to find these children?

23 A Yes.

24 Q And he went with y'all?

25 A He did. He was in a vehicle in front of the vehicle

1 I was in, sitting beside Detective Creech.

2 Q Prior to heading out was there a meeting with Mr.
3 Jones and all of those law enforcement officers who were
4 involved before going?

5 A Yes.

6 Q What did y'all discuss at that point?

7 A That particular day, Eric Johnson, who you had heard
8 from before with the Mississippi Bureau of Investigations,
9 had provided Timothy Jones an advise of rights when he was
10 brought in. I had witnessed that. At that point I had
11 asked Timothy in front of the investigators just to recap
12 on the night of the 28th the events that had occurred up
13 to the point of where he had dumped those bodies. So we
14 went through those details with the law enforcement
15 officers there. You had SLED, of course you had Lexington
16 County there, you had Smith County Sheriff Deputies there,
17 we had the Mississippi Bureau of Investigations, effected
18 a lot of jurisdictions, so they could hear essentially
19 where the crimes were committed, what his actions were and
20 where he said those bodies should be located.

21 Q So he actually retold the story from, throughout,
22 August 28th, what he did to his kids and his actions
23 following?

24 A Yes. I had him recap the manner and method in which
25 he had killed the children. We spoke about Nahtahn. He

1 did mention something new, he told us that day on the
2 28th, when he was confronting Nahtahn, Nahtahn had broken
3 Timothy Jones' prescription glasses.

4 Q And he tells you this on the 9th, before y'all go and
5 get in the car and go drive to Alabama?

6 A Yes.

7 Q When he tells you about Nahtahn breaking his
8 prescription glasses on the 9th, what was his demeanor?

9 A He appeared to be harboring some anger still towards
10 his son.

11 Q On the day that you are going to go find his body
12 with his siblings?

13 A Yes.

14 Q During the recap does he mention any of this stuff
15 about hearing voices?

16 A No.

17 Q When you rode with all of these other officers to
18 Alabama, a little bit of a journey?

19 A Yes, it was.

20 Q When y'all finally got to the right spot, I think you
21 mentioned or we heard a logging road. Is that correct?

22 A That's correct.

23 Q When you got out did you know you were at the right
24 spot?

25 A I did.

1 Q How did you know?

2 A While we were driving up I was actually on the phone
3 with Detective Creech and I could hear Timothy Jones
4 saying, this is it. And Detective Creech said, okay, he
5 believes this is it. But when you open the doors you
6 immediately could smell the decay. And David Lawrence and
7 myself, who I rode with from SLED, knew that this was
8 going to be the area where the children were.

9 Q Do you remember Sheriff Crumpton having his people
10 take Mr. Jones back to Mississippi?

11 A I do. Detective Creech went back with Timothy Jones
12 as well.

13 Q Did you stay?

14 A I did.

15 Q What did you do, did you actually see where the
16 bodies were?

17 A I did. I actually helped in moving some of the
18 bodies into the body bags we had opened up, I didn't open
19 up the garbage bags themselves but I wanted to see if all
20 five children were there. I also wanted to see if they
21 were dismembered in any way so I did help place a few of
22 the bodies into the body bags and made sure we had
23 accounted for all five of the children.

24 Q Did you account for all five?

25 A Yes.

1 Q Merah, Elias, Nahtahn, Gabriel and Abigail?

2 A That's correct.

3 Q Agent Mackey, I think that is all I have at this
4 time. Thank you, sir.

5 THE COURT: I think we are entitled to another break.
6 Step in the jury room, have you back out here in a few
7 minutes.

8 (Whereupon, the jury was excused from open court for
9 a break.)

10 (Whereupon, a short break was taken.)

11 THE COURT: Let's bring the jury in.

12 (Whereupon, the jury came into open court at
13 approximately 3:55 p.m.)

14 THE COURT: Mr. Young.

15 CROSS-EXAMINATION

16 By Mr. Young:

17 Q Good afternoon.

18 A Good afternoon.

19 Q So prior to going to Mississippi, you and Detective
20 Creech had gotten together, right?

21 A Yes.

22 Q And you had been brought up to speed on what
23 information they knew at that time?

24 A Yes, some of the information, yes.

25 Q Okay. And he had told you that he had talked to Tim,

1 Sr.

2 A That Detective Creech did?

3 Q Yes.

4 A I don't recall.

5 Q You don't remember that?

6 A I don't remember that.

7 Q And you don't remember whether or not he said that he
8 already had a suspicion that Tim, Jr. had mental health
9 problems?

10 A I don't recall, well, I know we showed up at the
11 Smith County jail and we did talk to the Investigators who
12 were with Mr. Jones, Sr. And we did talk about some of
13 the issues with the mother but I don't recall Detective
14 Creech specifically told me that.

15 Q You don't remember?

16 A I don't remember.

17 Q You don't have any notes?

18 A I don't.

19 Q You didn't write a report?

20 A No.

21 Q You have reviewed Detective Creech's report?

22 A Yes.

23 Q But as far as everything that you are testifying to
24 it is just what you remember, right?

25 A Yes.

1 Q And it was four, almost five years ago?

2 A Correct.

3 Q You had started out with your testimony saying, well,
4 there was a violation of a Court order. And that is not
5 true, right, that is not correct?

6 A Correct.

7 Q I don't think you were intentionally trying to lie
8 but it wasn't correct?

9 A That's correct.

10 Q You said there was something about a potential
11 kidnapping but that is not correct?

12 A That's correct. Right.

13 Q You don't know?

14 A We didn't know at that time but we know now that
15 that--

16 Q You didn't know that there was an order from a Judge
17 ordering him custody?

18 A I did not know that.

19 Q Okay. Your testimony today was that Tim immediately,
20 you went through the advisement of rights form and he
21 signed it. That was your testimony today?

22 A No.

23 Q Okay. Because what happened was, you went through it
24 and left it in front of him and he signed it much later on
25 in the interview, right?

1 A Not much later on. But, yes, you are correct. He
2 did not sign it right away, he agreed to speak with us.
3 He did state that he would be self-incriminating himself.
4 But while we were asking those background questions he did
5 reach across and he signed.

6 Q That was after you started talking to him about his
7 educational experience and his work, those types of
8 things?

9 A Yes.

10 Q You indicated that you had a SLED Agent, David
11 Lawrence, who is a polygrapher, he was there with you,
12 right?

13 A He was. He drove actually with Detective Creech and
14 myself. He actually drove us to the Smith County Sheriffs
15 office.

16 Q And he had his polygraph equipment with him?

17 A Yes.

18 Q And he waited outside the room?

19 A He did.

20 Q Now polygraph can be an investigative tool during an
21 interrogation?

22 A It can be.

23 Q At the end of your interview you thought Tim had been
24 forthcoming with you?

25 A With some things, yes. I don't pretend to know what

1 truly happened in that home. I can tell you exactly what
2 he told us.

3 Q Right.

4 A But the only one who truly knows what happened to
5 those children is Timothy Jones.

6 Q You didn't use Agent Lawrence?

7 A No, we did not.

8 Q You never thought the need to like have Tim
9 polygraphed?

10 A No, we did not deploy that investigative tool.

11 Q During the interview, obviously we have listened to
12 it now, but Tim at times talks really fast?

13 A There were times.

14 Q At times he gets loud?

15 A Yes.

16 Q At times he is a little bit quieter?

17 A Sure.

18 Q There was one time where he stuttered like da, da,
19 da, da, da?

20 A Yes, I believe so.

21 Q He sort of will jump from one subject to the other?

22 A Yes.

23 Q Like when he talked about bleach, you bleached to
24 cover up the blood. And he said, well, and I always carry
25 around bleach because I like the smell of bleach. And he

1 would just go off on these other tangents, right?

2 A Yes. And some of that was he got garbage bags, he
3 said for the babies. But also he had trash.

4 Q Right.

5 A So, yes.

6 Q He would just mash things up and wouldn't stay on,
7 you would redirect him, right?

8 A That's correct.

9 Q This thing about Nahtahn wouldn't come off of it,
10 Nahtahn wouldn't come off of it. What really happened was
11 that he was mad at Nahtahn. That is what you told the
12 jury, right?

13 A Yes and that's what he told us, yes.

14 Q And the truth of it was, wouldn't come off of it was
15 that Nahtahn had messed with the outlets, right?

16 A Yes.

17 Q That is what Tim was telling you the truth would have
18 been, right?

19 A Correct.

20 Q And Tim felt that that was directed at him, right?

21 A Yes at times he says that. But at times he told us
22 they are only kids, that it would be, it didn't seem
23 plausible that they would be conspiring against him in
24 that way.

25 Q Right. He says that directly. I mean they are only

1 kids, I mean, I am telling you, I felt like you had a gun
2 pointed at me but they are only kids and that doesn't make
3 any sense.

4 A That portion about the gun he does mention on the
5 tape part.

6 Q Well, let's talk about that, the tape part. So Tim
7 didn't know that you weren't recording the whole thing?

8 A That's correct.

9 Q And as a matter of fact he makes a joke when you
10 start recording because he is like, I thought you were
11 recording the whole thing and now we have got to do it all
12 over again. Right?

13 A Yes.

14 Q And you had to do the whole interview, pretty much,
15 all over again. You skipped the background questions but
16 as far as like what happened, what happened with the kids,
17 you went through the whole thing?

18 A Essentially for twenty minutes we kind of did a
19 cursory summary of what had occurred. And then there is a
20 good portion of the time where the questionnaire, we go
21 over that questionnaire.

22 Q For the second time, right?

23 A Yes.

24 Q You had already done it once and you did it again?

25 A Yes.

1 Q And you didn't say, well, wait a minute, that's not
2 what you told us thirty minutes ago before we started
3 recording?

4 A Correct.

5 Q Because he gave the same answers?

6 A For the questionnaire part?

7 Q Yes.

8 A Yes.

9 Q The one time that he did mention something new was
10 the, that he had cut Nahtahn's leg, right?

11 A Yes.

12 Q And you said, wait a minute, this is the first time
13 we are hearing about that, right?

14 A Yes.

15 Q But every other statement he made that's on that tape
16 you never said that. You never said, wait a minute, this
17 is the first time I am hearing that you might be scared of
18 your kids?

19 A Correct.

20 Q Wait a minute, this is the first time I am hearing
21 about them conspiring with DSS?

22 A That's correct. I had heard that very early on and
23 certainly from previous--

24 Q Wait a minute. You just said that his answers to the
25 mental health questions, which was where those responses

1 came from, were the same?

2 A Correct. They were essentially the same, when he was
3 asked that questionnaire, he essentially gives the same
4 answers when the tape recorder comes on.

5 Q Well, you didn't start your interrogation with the
6 mental health questionnaire?

7 A No.

8 Q That was after he had said, let's cut to the chase,
9 you are not going to find them, they are deceased, this is
10 what I did. Went through all of that and then you did
11 mental health questionnaire and then you realized the tape
12 wasn't on, then you went through it all again and then did
13 the mental health questionnaire again. Right?

14 A That's correct. I clearly, I didn't know that we
15 even had that questionnaire. So at some point that was
16 handed to Detective Creech but it was nothing we had
17 discussed, reviewed. So exactly when he was provided that
18 I don't know. During the course of the interview
19 Detective Creech stepped out once or twice to get some
20 items to make a call to, back to his agency.

21 Q Handed to him by Agent Lawrence?

22 A Yes. I found that out later, yes.

23 Q Okay. That is where it came from?

24 A Correct.

25 Q Let me show you what has been marked as ID as Defense

1 number 97, 98 and 99, 100, 101 and 102 and ask you if you
2 recognize this?

3 THE COURT: 97 through what?

4 MR. YOUNG: 102 I think.

5 COURT REPORTER: 97 through 102.

6 A So these are photographs of Timothy Jones' children
7 and there is also a photograph with Timothy Jones and his
8 son.

9 Q And those are the pictures that you had with you in
10 the interview?

11 A Yes.

12 Q And you showed those pictures to him during then?

13 A Yes.

14 Q And that is when you initially got the really
15 reaction like, keep them away from me, get them away from
16 me, right?

17 A Yes.

18 Q But then he calmed down and y'all talked, right?

19 A That's correct.

20 Q And then later on in the taped interview he says, you
21 remember that picture of me, of me and Gabriel, right?

22 A Yes.

23 Q He referred back to this picture.

24 MR. HUBBARD: Has he offered these yet, Your Honor?

25 I have no objection if he is.

1 MR. YOUNG: I will put 97 through 102 into evidence.

2 MR. HUBBARD: No objection.

3 THE COURT: Without objection they are all in.

4 (Whereupon, Defendant's Exhibits 97 through 102 were
5 admitted into evidence.)

6 Q He referred back to this picture of him and Gabriel.
7 Right?

8 A Yes.

9 Q And he said, think about that picture with me and
10 Nahtahn. Right?

11 A Yes.

12 Q And he said, son, I am trying to help, tell me what
13 happened, tell me what you tried to do. Right?

14 A Yes.

15 Q I am going to show you what has been marked as
16 Defense exhibit number 103 for identification and ask you
17 if you recognize that?

18 A Yes.

19 Q And can you tell me what it is?

20 A This is the mental state interview protocol. I
21 believe it was the questions on this protocol, were the
22 questions that were provided to Detective Creech.

23 Q And those were the questions that he asked during the
24 interrogation?

25 A Yes.

1 MR. YOUNG: Your Honor, at this time we would offer
2 Defense exhibit 103 into evidence.

3 MR. HUBBARD: I don't object to the questions but
4 everything else wasn't used so until there is a foundation
5 for that I would object. But to the questions that were
6 asked I have no objection.

7 THE COURT: There is more to it than just the
8 questions that were asked. Isn't there other questions in
9 there?

10 MR. YOUNG: Yes, sir. There is a couple.

11 THE COURT: And that is the part that the State is
12 objecting to. Whatever questions were used they are okay.
13 The ones that weren't used are not relevant.

14 MR. HUBBARD: We need time later to do this that is
15 fine. I don't have any problem with that.

16 THE COURT: And the questions are on the recording.

17 MR. YOUNG: Right. They are but we will, I will make
18 this--

19 THE COURT: I will let you manage it later. The
20 questions that were used by Detective Creech are in as
21 exhibit 103. The ones that aren't relevant will come off
22 and if we have an issue with that I will put it on the
23 record then.

24 (Whereupon, Defense Exhibit 103 was admitted into
25 evidence.)

1 MR. HUBBARD: Thank you, Your Honor.

2 Q Agent Mackey, did you review a transcript of, that
3 audio portion of the interrogation, have you reviewed
4 that?

5 A I have.

6 Q And we talked about it at a previous hearing?

7 A We did, sir.

8 Q And is that a transcript of the recording accurate?

9 A Yes. To my knowledge, yes, it is.

10 MR. YOUNG: Your Honor, at this time we would offer
11 Defense exhibit number 96 into evidence.

12 MR. HUBBARD: No objection.

13 THE COURT: That is the transcript of what you just
14 heard?

15 MR. YOUNG: Yes, sir.

16 THE COURT: That would be 96 without objection.

17 (Whereupon, Defendant's Exhibit number 96 was
18 admitted into evidence.)

19 Q Now, going back to what Tim told you about Nahtahn
20 and what happened with Nahtahn and PT'g Nahtahn and
21 spanking Nahtahn. He never said he punched Nahtahn in the
22 head?

23 A No, he did not.

24 Q He never said he had strangled Nahtahn?

25 A Correct, he denied doing that yes.

1 Q He never said he beat Nahtahn to death?

2 A No, he said he hit on him and spanked him but
3 essentially he PT'd him.

4 Q And the, there is one point and time where, I think
5 it was Detective Creech was talking and he said, so
6 Nahtahn was an accident but you murdered the other four,
7 right. Do you recall that question?

8 A Yes.

9 Q And y'all didn't go through with Tim Jones, the
10 difference between murder and homicide?

11 A No, we did not.

12 Q Like these jurors will remember that murder is a
13 specific allegation with malice aforethought, right?

14 A Yes. We did not review that with Tim.

15 Q And y'all didn't try and distinguish that?

16 A Correct.

17 Q And that was Detective Creech's words, not Tim's
18 words, right?

19 A Yes.

20 MR. YOUNG: Bear with me one second. Thank you,
21 Special Agent Mackey, that's all I have.

22 REDIRECT EXAMINATION

23 By Mr. Hubbard:

24 Q A few quick follow-up's. In the verbal non-taped
25 portion, when the tape recorder didn't work?

1 A Yes, sir.

2 Q When Mr. Jones' talked about what he did to Nahtahn,
3 did he use the words, he hit on him or spanked him?

4 A He stated that he hit on him and that he also had
5 spanked him.

6 Q That was before the tape recorder was on?

7 A Yes.

8 Q Okay. The Defense asked about Detective Creech's use
9 of the word, murder. Even though there was no legal
10 definition Mr. Jones responded to that?

11 A He did, yes.

12 Q And when we are talking about Nahtahn there is talk
13 about the fear. But again, when you confronted Mr. Jones
14 did he say this was about fear or what?

15 A He stated that it was his son would not come off of
16 it. His son was being defiant. Again, you go back to the
17 pictures where it is laid in front of him. You soon found
18 after that he wasn't afraid of his children right then
19 because he had already killed them, he had already dumped
20 their bodies.

21 Q Thank you, Agent Mackey.

22 MR. YOUNG: Nothing further, Your Honor.

23 MR. GRAHAM: The State calls Brittany Burke to the
24 stand.

25 Brittany BURKE, being

1 first duly sworn, testified as follows:

2 MADAM CLERK: If you'll have a seat, please, and
3 spell your name, spelling your last for the record.

4 THE WITNESS: My name is Brittany Pickle,
5 P-i-c-k-l-e.

6 DIRECT EXAMINATION

7 By Mr. Graham:

8 Q Where are you employed, ma'am?

9 A I am currently employed at American Lighting Store in
10 Knoxville, Tennessee.

11 Q How long have you been employed there?

12 A Since March of this year.

13 Q Prior to that, back in 2014 -- where were you working
14 in 2014?

15 A In 2014 I was working at SLED, the South Carolina Law
16 Enforcement Division.

17 Q And then at one time did you leave SLED?

18 A I left SLED in February of 2016.

19 Q Back in September of 2014 what was your job
20 responsibilities with SLED?

21 A My job responsibility was an agent in the crime scene
22 unit. So my responsibilities were to respond to crime
23 scenes as requested by other local jurisdictions or other
24 state agencies throughout the State of South Carolina.

25 Q And did you respond to Alabama in relation to the

1 discovery of five children?

2 A Yes, I did.

3 Q Could you tell the jury how you became involved in
4 that case and how you arrived in Alabama?

5 A Yes, I will. I became involved in this case after
6 receiving a call from my Lieutenant. She stated that
7 Lexington County Sheriff's Department was requesting
8 assistance from our crime scene unit to travel to Alabama
9 to assist in the recovery of five deceased children that
10 they were attempting to locate in Alabama. She provided
11 Sergeant Novak as a contact for the Lexington County
12 Sheriff's Department. I contacted him and he advised me
13 of the same thing. And I arranged to meet at the
14 Sheriff's Department at about 1:00 o'clock on that
15 afternoon, and that would have been on September the 9th.
16 I met at 1:00 o'clock on September the 9th at the
17 Sheriff's Department here in Lexington and met up with
18 crime scene investigator Glen Ross of the Lexington County
19 Sheriff's Department, and he and I traveled to Alabama
20 from here.

21 Q How long have you been, over your career, a crime
22 scene analyst?

23 A I started with the South Carolina Law Enforcement
24 Division in October of 2012.

25 Q In general terms, what does a crime scene analyst do?

1 A In general terms we respond to crime scenes. At SLED
2 we only worked homicide, suicide, sexual assaults and
3 officer involved shootings. So only a crime against a
4 person. We did not work any burglaries or anything like
5 that. So we responded to crimes against persons. And our
6 job was to document the crime scene through photographs,
7 through notes, through sketches, to locate any items of
8 evidence, to collect that evidence in a manner as to
9 preserve that evidence, and to take it to the lab and
10 package it or process it as necessary.

11 Q When you arrived in Alabama what did you find?

12 A When I arrived in Alabama I was directed to a logging
13 road. And after traveling up that road there were
14 personnel from multiple jurisdictions that had arrived
15 before I had who directed me to a spot where the victims
16 -- the five children had been located. We located them in
17 a wooded area off the dirt logging road in black plastic
18 garbage bag type bags.

19 Q I'm going to show you what's been marked as State's
20 148 through 59 and ask if you recognize those.

21 A I do.

22 Q And do they thoroughly and accurately reflect items
23 that you prepared or if they are photographs of what you
24 actually saw the day they were taken?

25 A They do.

1 MR. GRAHAM: Your Honor, the State would offer these
2 into evidence at this time, 148 through 159.

3 MR. MADSEN: Judge, no objection subject to the
4 previous objection, pretrial.

5 THE COURT: Pretrial objection. All right. Admitted
6 subject to pretrial objection.

7 (Whereupon, State's Exhibit numbers 148 through 159
8 were admitted into evidence.)

9 Q This is 148, are you able to see that from there, Ms.
10 Burke?

11 A Yes, sir. I am.

12 Q Do you have a laser pointer? Can you explain to the
13 jury what we are seeing on this area here?

14 A Do I press the center button to make it work?

15 Q Pardon?

16 A Center button?

17 Q Just press the center button.

18 A Okay. Just making sure. This is the highway that
19 this was located off of. This is a Google Earth picture
20 of the crime scene. This was the entrance from the
21 roadway. You can kind of see this logging road right, up
22 through here is where the trees were located. I do not
23 believe that the whole thing was built at this time. But
24 this location -- this location right here was obtained via
25 GPS coordinates, and that is the location that the victims

1 were located when we were at the scene.

2 Q So if I understand, the pin mark here is the entrance
3 off of Highway 10?

4 A That is correct.

5 Q And the thumbtack up here was where the GPS type
6 transponder, that is where you took GPS coordinates,
7 correct?

8 A Yes. We took GPS coordinates from that spot. They
9 are written up here, in the corner there. My eyesight's
10 not quite good enough to read them from here. Oh, I was
11 talking about the GPS coordinates there.

12 THE COURT: Let's don't publish the GPS coordinates.
13 Just that's it, she's identified it.

14 Q The distance between the two GPS coordinates that you
15 took, do you know what that amount, that as a bird fly's,
16 that is a straight--

17 A -- yes. That's 711.82, and I believe that would be
18 yards there, from the entrance of the roadway to the
19 location of the victims.

20 Q Moving to State's 149. Is this a sketch that you
21 prepared?

22 A Yes. I did prepare that sketch.

23 Q And what does the sketch show?

24 A The sketch shows -- along the bottom it shows Highway
25 10. To the right here is towards Greenville, Alabama, and

1 to the left is showing us toward -- going towards Camden,
2 Alabama. Marker 6 right here is the item that we marked
3 with marker number 6, which would have been a green in
4 color drink bottle. And then markers 1 through 5 up here
5 show the location of the victims.

6 Q State's number 150. Can you explain to the jury what
7 the purpose of this was?

8 A Yes. So this is showing three -- or, I'm sorry, four
9 different Google maps here. May I refer to my notes here
10 to read that small writing?

11 THE COURT: Sure.

12 THE WITNESS: Thank you.

13 Q Let me blow this up. In general terms, what was the
14 purpose --

15 A -- in general terms, the purpose of this sketch was
16 to show the location of the spot where the victims was
17 located in relation to four of the closest towns. It also
18 shows their population of the towns to show that as it was
19 taken during the 2010 census to show just how rural of an
20 area that this area was.

21 Q Starting on the bottom of the left of the sketch that
22 you prepared, what are you trying to depict here?

23 A That was the closest town that I could find on the
24 map, or community, and it was of Oak Hill, Alabama. And
25 it was approximately .8 miles away according to Google

1 Maps there and the population during the 2010 U.S. Census
2 was 26.

3 Q So looking at the map, the red dot -- the red flag is
4 what?

5 A The red flag is the location of the victims. That's
6 the GPS coordinates used.

7 Q And the blue lines, the Highway taking you to, in
8 this case, Oak Hill, Alabama?

9 A That is correct.

10 Q Moving to the next closest town, is the upper left.

11 A Yes. This --

12 Q Can you tell the jury about that.

13 A This one is showing from the location of the victims.
14 Again, the red point up here, to Pine Apple, Alabama,
15 which was the next closest there. And it's showing that
16 the population during the 2010 U.S. Census was 132 people.

17 Q And that is approximately 5.9 miles?

18 A That is correct.

19 Q The next closest town is on the bottom. Can you tell
20 the jury about that?

21 A This was from -- again, from the victim -- location
22 of the victims at the red dot here to Camden, Alabama,
23 which was approximately 14.3 miles and had a population of
24 2,020 people.

25 Q The fourth closest city that you have?

1 A This -- this was to Greenville, Alabama, which was
2 approximately 30.3 miles. This was over to the exit that
3 you would get off of as you were coming down the
4 interstate there from our direction to Alabama. From the
5 direction here in South Carolina you would have traveled
6 down this interstate and this was the next closest town
7 there. And this was 30.3 miles, and the population of it
8 was 8,135 persons.

9 Q Looking at State's number 151, could you explain to
10 the jury what the photograph captures?

11 A Yes. This photograph is starting -- this is Highway
12 10 down here, and this is photographing up that logging
13 road that the victims were located off of. So it's just
14 showing you what the road looked like from the highway
15 that you had to turn up to get to where the victims were
16 located.

17 Q State's 152. How is that in relation to the first
18 picture we saw?

19 A It's just us walking up that road. It's a picture a
20 little bit further up the road there. Just photographing
21 on the way in off the highway.

22 Q State's 153.

23 A Again, the same thing. You saw that black car that
24 you see in this picture was further in the background of
25 the other picture. It's still just walking up the road.

1 Q State's 154.

2 A Again, same thing. These cars here could be seen in
3 the previous picture further in the background just
4 walking up.

5 Q State's 155.

6 A This is, again, same thing walking up towards where
7 the victims were located.

8 Q The van that we see right there in that picture.

9 A Yes.

10 Q Looking at State's 156, is that the same van we see
11 in that picture?

12 A Yes, it would be. As you reached up to where the
13 road kind of took a turn to the right there was a flat
14 spot where a top of the hill -- you got to the top of a
15 hill and then it turned and went back down. And this van
16 is parked up there at that top of the hill so you can see
17 it there in that kind of flat area.

18 Q State's 157.

19 A This is as you turn looking back down the hill. So
20 if the van were still in the picture it would be over in
21 this area. And you just turn and are looking back down
22 the hill towards the area where the victims were located.

23 Q So, again, I guess, orient the jury, 157, that
24 picture right there that we are looking at.

25 A That's going to be past them down -- you can see

1 their shadows in the picture. So the van would have been
2 back up this way and you're down the hill looking down
3 that way.

4 Q State's 158.

5 A This is going to be over to the left of that road as
6 you're looking down the hill. This area with the crime
7 scene tape marked off right here, you had to walk down
8 through it and the victims were located in this foliage
9 back in there.

10 Q So going back to 157 for a moment. The area where
11 the crime scene tape was is where in relation to that
12 photo?

13 A It's on the -- in these trees over on this side.

14 Q 159 -- 158 showed the crime scene tape. What is that
15 we're looking at?

16 A 159 is just showing a picture, once you get under
17 crime scene tape, this is what you are looking at back in
18 that area. And the victims were located back in that
19 area.

20 Q So the victims were kind of where?

21 A Down in this area.

22 Q In front of the brush or on the other side?

23 A I believe they were on the other side of this brush
24 right here.

25 Q I'm going to show you State's number 160 and ask if

1 you recognize that photograph?

2 A I do.

3 Q And did you take that photograph?

4 A That photograph would have been taken in my presence.
5 But that one would have been taken by either the Dallas
6 County Corner or Detective Glen Ross. I was documenting
7 with notes as they were documenting with photographs. I
8 was -- they were -- we were altogether. Just my job was
9 notes and sketch and their job was photographs.

10 Q Does it fairly and accurately depict the children as
11 you found their bodies?

12 A It does.

13 MR. GRAHAM: Your Honor, the State would offer 160
14 into evidence.

15 MR. MADSEN: Subject to pretrial.

16 THE COURT: Subject to pretrial, it will be admitted.
17 (Whereupon, State's Exhibit number 160 was admitted
18 into evidence.)

19 MR. GRAHAM: Your Honor, with the Court's permission,
20 I'd ask that Ms. Burke be allowed to come down off the
21 stand so I can show the jury, personally.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 Q If you would, Ms. Burke, if you would explain what
25 we're seeing here.

1 A What you're seeing is the location where we found the
2 victims and the state that we found them. After finding
3 the victims I placed a yellow evidence marker on top of
4 each bag so that we could identify which bag was located
5 where. The bag -- the photographs were taken of the
6 yellow evidence marker. They were then marked with a
7 piece of tape with that number on it, so that when we got
8 to autopsy we knew bag number five, which location it came
9 from at the scene. So you're seeing the five bags with
10 the five victims located there. And the numbers are just
11 markings so I knew which bag belonged to which victim.

12 Q And, the next--

13 A Again, it's the same thing. The numbers are just
14 marking the bags so that when we got to autopsy I knew
15 which bag was marked for which victim.

16 Q Were there any evidence of any animal activity?

17 A There was. Bag one was torn open. That appeared to
18 be evidence of animal activity. There was also maggot
19 activity. Mostly present on bags one and two, but you
20 could see signs -- evidence of that activity on all five
21 bags.

22 Q If you will go back to your seat. Thank you, Ms.
23 Burke.

24 (Whereupon, the witness returns to the witness
25 stand.)

1 Q What, if anything, after discovering the five bags,
2 at that time you didn't actually know they were -- what
3 was inside the bags. Is that fair to say?

4 A That is fair to say. We knew that there were human
5 remains in bag one because it had been torn open and we
6 could see. But the other four we felt like that was more
7 than likely what was in them, but we were not certain at
8 that time.

9 Q Because you weren't certain, what did you and the
10 other law enforcement agents do?

11 A After marking the bags with those yellow evidence
12 markers, putting a piece of tape to put which number
13 belonged with which one. As we -- we picked up the bag
14 and move it into a bag with a zipper that would then be
15 tied with a seal to move to autopsy. While they were in
16 that bags everything was contained in that bag in case
17 something fell out. We did open each bag just enough to
18 confirm that there were human remains in each of the five
19 bags. We didn't want to collect all five bags and get
20 back to South Carolina to realize two of them only had
21 trash in them or something else. So we did open all five
22 bags just enough to make sure that all five of the
23 children were accounted for.

24 Q After opening the bags and confirming that there were
25 human remains in each one of those five bags could you

1 explain the process of how they were removed from that
2 location from -- in Alabama to the autopsy?

3 A Yes. So as I said, we did -- we did -- took each
4 child and worked with one of them at a time. We started
5 with the bag that was marked number five. We picked it
6 up. We moved it into the autopsy bag, confirmed there
7 were human remains in it, zipped the bag. And then it is
8 -- was sealed by the coroner's office in what can best be
9 described as a zip-tie. You put it on. It clicks on.
10 You can't remove it afterwards unless it's cut. And
11 that's to make sure that they know that nothing -- that
12 nobody has tampered with the remains that were in that bag
13 from the time that it was sealed on the scene to the time
14 that that tag is cut at autopsy. Each of those tags has a
15 serial number on it that identifies that it only belongs
16 on that one bag. And that process was repeated with each
17 of the five victims at that point.

18 Q And after each of the five autopsy bags were sealed
19 and banded, I guess, they were eventually transported back
20 to South Carolina, correct?

21 A They were transported to the coroner's office in
22 Alabama. The coroner's office in South Carolina was
23 currently in route. They were actually transported to be
24 put in -- to put in cold storage, or in the morgue, where
25 they store the bodies there. Putting them in that cold

1 storage slows the rate of decomposition and we did not
2 want any more -- further deterioration to happen between
3 the scene and getting there. So they were taken and put
4 there until the coroner's office from Lexington County
5 could get down there and retrieve them. They were
6 retrieved by the coroner's office and brought back to
7 Lexington, South Carolina.

8 Q Once they were brought back to Lexington County,
9 South Carolina were you present at the autopsy?

10 A Yes, I was.

11 Q And can you tell the jury that happened? Who did the
12 autopsy?

13 A The autopsy was conducted by Dr. Ross of Newberry
14 Pathology, and it was conducted at Newberry Hospital.

15 Q Were you present for that autopsy?

16 A I was.

17 Q When the bodies were received inside the bags, were
18 the seals intact?

19 A Yes. All the seals were still intact on each bag.

20 Q You were present when each autopsy was performed?

21 A Yes, I was.

22 Q Your purpose there was to document the autopsy. Is
23 that correct?

24 A That is correct.

25 Q To document the contents of the actual trash bags

1 that were inside the body bags?

2 A Yes. that were inside --

3 Q And also to collect biological samples for
4 identification. Is that correct?

5 A Yes.

6 MR. GRAHAM: Your Honor, it is my understanding that
7 the Defense has stipulated to the collection of samples
8 that ultimately led to the identification of the children.
9 That they are allowing us to go into which child was
10 identified as being in which bag.

11 THE COURT: Is that fair?

12 MR. YOUNG: That's correct.

13 THE COURT: Okay. So as I understand it, the
14 stipulation is the remains that were analyzed for DNA were
15 then assigned to each bag to identify which child was in
16 each bag?

17 MR. GRAHAM: Correct.

18 THE COURT: Fair enough.

19 Q Ms. Burke, I'm going to show you State's -- what's
20 been premarked as State's 161 through 165 and ask if you
21 recognize that.

22 A Yes, I do.

23 Q And did you prepare those for Court today?

24 A I did.

25 Q And do they document by number the names of the

1 children and the contents of the trash bags and what the
2 children were wearing?

3 A They do.

4 MR. GRAHAM: Your Honor, the State would offer these
5 into evidence. May we approach?

6 THE COURT: Yes.

7 (Whereupon, a bench conference was held in the
8 presence of the jury but out of the hearing of the
9 jury.)

10 THE COURT: I'm trying to get you out of here, she is
11 from out of State. I'd like to get her finished today.
12 You all step in the jury room. I won't have you out there
13 very long. I got to put something on the record and we'll
14 have you back in here. I want her to finish this
15 afternoon. Okay? And I'm mindful of your time too.

16 (Whereupon, the jury was excused from open court for
17 a break.)

18 THE COURT: Mr. Young, can you verify whether or not
19 there was -- the one you mentioned you thought was
20 inconsistent?

21 MR. YOUNG: Coming up right now, Your Honor. I had
22 to go get the paper work off the table from downstairs.

23 THE COURT: Oh, okay.

24 MR. MADSEN: We have a room.

25 THE COURT: Okay.

1 MR. GRAHAM: I do have something I want to put in
2 evidence while we are sitting here and they are reviewing
3 it. A Court's exhibit. Just for the Judge to see and for
4 the people on appeal to see it. This will be a Court's
5 exhibit.

6 THE COURT: I thought we already had that. That is
7 something else?

8 MR. MADSEN: It is different.

9 THE COURT: I am looking at 84. Why can't the media
10 see that.

11 MR. GRAHAM: This is going to be all of the crime
12 scene photos.

13 (Whereupon, Court's Exhibit 84 was marked for
14 identification only.)

15 MR. GRAHAM: Judge, we are ready if you are.

16 THE COURT: Okay, come on.

17 MR. YOUNG: Your Honor, we had a previous hearing
18 where the State, or the Defense had pretrial objected to
19 any evidence that was gruesome or graphic in nature and
20 those photographs shouldn't be allowed in in any way shape
21 or form. We provided the Court with the notebook, I think
22 it was Court's Exhibit number 55.

23 THE COURT: 61. I know where it is.

24 MR. YOUNG: And the State at that time said that they
25 hadn't elected which photographs they intended to use. We

1 would renew that objection at this point in time. I know
2 that the one picture of the trash bags is in, I don't
3 think the State should be allowed to go any further than
4 that. And at this point in time I would make -- I guess
5 it would be Defense motion number 103 at this point in
6 time which would be the motion to suppress the photographs
7 of any remains and/or descriptions thereof. I would like
8 to make that a Court's exhibit with the other motions.
9 And then as far as --

10 THE COURT: That's your motion you're making now?

11 MR. YOUNG: Yes, sir.

12 THE COURT: All right. I understand your motion and
13 the State having not done it we just took it as a motion
14 in limine.

15 MR. YOUNG: Yes, sir.

16 THE COURT: And I still can't rule on it because I
17 don't know what they are trying to introduce.

18 MR. YOUNG: Yes, sir.

19 THE COURT: So we're in the same position. Let's go
20 these, 161, 2, 3, 4 and 5, those.

21 MR. YOUNG: One of our motions in limine was that
22 Merah was listed as being nude or didn't have any clothes.
23 And we had asked the Court to limit that. And the State
24 was still thinking about what they were going to do with
25 that. Of course, that State's number 162 and -- lists

1 Merah as nude. And State's number 165 lists Nahtahn as
2 nude. We would object and move to keep those out. These
3 are summaries, they shouldn't come in, the witness should
4 just testify.

5 MR. GRAHAM: As he -- as Mr. Jones chose to leave the
6 bodies how he left them, clothed or unclothed were choices
7 that he made. They are things fair for us to comment on.
8 Nobody on our side is making any type of allegation, of
9 any kind of inappropriate sexual, there is no proof of
10 that. We are not going down that road. But he did choose
11 to leave Merah and Nahtahn without clothes. And he did
12 choose to put whatever he put in each one of the bags and
13 it is relevant. And he chose to -- malice on some level
14 for what he did and how he chose to leave the bodies.

15 THE COURT: These are--

16 MR. GRAHAM: -- it is a summary of her testimony. It
17 is accurate. But, I mean, the other choice is to get this
18 in, pictures. And we don't want to offer pictures. And I
19 don't believe we should and I don't think it's
20 appropriate.

21 THE COURT: Anything else, Mr. Young?

22 MR. YOUNG: Just under 403 it's --

23 THE COURT: I think 403 analysis is appropriate. And
24 based on my review of these -- I've been handed a copy of
25 the exhibits that were handed up. It's typed testimony --

1 I mean, the descriptions on there are very direct,
2 straightforward. It's not, there's nothing, very few
3 additives. It describes color, black garbage bags,
4 underwear, that sort of thing. I think the State's
5 allowed to get this. I think it's probative to their
6 case. I don't think the way it's presented here is not
7 prejudicial. It certainly is some prejudice, on a sheet
8 of paper for each body. A description of the observation
9 of this crime scene analysis technician. It's a fair
10 summary of what she observed without going and showing
11 graphic pictures. So I'll allow these.

12 MR. YOUNG: Yeah, sure. And I'm not arguing the
13 Court's ruling, but -- and the State's saying they're not
14 going to offer any other pictures. Does that mean they're
15 not going to offer any other pictures at either phase of
16 the trial and they're just going to have written
17 descriptions, or --

18 THE COURT: I don't know.

19 MR. YOUNG: Because if they're allowed to sandbag and
20 save those pictures for their emotional affect at -- if we
21 were to get to a penalty phase, that would be sort of crux
22 of our objection.

23 THE COURT: Well, I don't know that they're going to
24 offer any pictures or not. And so, your ruling on a
25 motion to suppress them, I'm still holding them until I

1 see the pictures and determine a 403, probative versus
2 prejudicial. So I can't answer that. You can ask them,
3 but I can't.

4 MR. YOUNG: I understand. Can I make this a Court's
5 Exhibit, number 103. It is the memorandum that goes with
6 out motion--

7 THE COURT: It's in the Court's file, we will have a
8 copy of that.

9 MR. YOUNG: It wasn't in the binder that we put in
10 with all of the other ones.

11 THE COURT: It wasn't?

12 MR. YOUNG: But I can just add it to that.

13 THE COURT: Sure. Add it to the binder. You said it
14 on the record, so certainly it's preserved. We'll add to
15 the binder all the motions you all have made. It will be
16 part of, part and parcel of that. So it's going to be
17 added to the binder of all the motions filed by the
18 Defense, because that's exactly what it is. It is a part
19 and parcel of that. The binder with all the motions that
20 have been filed and that one was inadvertently left out.
21 All right. Are we ready to bring the jury back in?

22 MR. GRAHAM: Yes, sir.

23 THE COURT: All right. Bring them in.

24 (Whereupon, the jury came into open court at
25 approximately 5:00.)

1 THE COURT: All right. Continue on, Mr. Graham.

2 MR. GRAHAM: The State would offer 161 through 165
3 into evidence.

4 THE COURT: All right. Based upon the objections of
5 the Defense, the Court will accept them and they're in
6 evidence.

7 MR. GRAHAM: Thank you, Your Honor.

8 (Whereupon, State's Exhibit numbers 161 through 165
9 were admitted into evidence.)

10 Q Ms. Burke, looking at State's number 161, can you
11 explain to the jury what this is?

12 A This a list of what victim number 1, Elias Jones, was
13 recovered in. And it says he was recovered in three
14 garbage type plastic bags and clothed in a gray
15 short-sleeved Power of One Saxe Gotha Elementary tee
16 shirt, blue shorts and white underwear.

17 Q I show -- when we see victim number 1 that would
18 correspond to the 1 in the photo where the bodies were
19 recovered?

20 A That is correct.

21 Q State's 162.

22 A The victim that was in bag labeled number 2, Merah
23 Jones, recovered in four black garbage type plastic bags
24 with yellow drawstrings. The victim was not wearing any
25 clothing. And the victim was wrapped in a blue sleeping

1 bag with assorted balls pictured on it.

2 Q State's 163.

3 A Victim that was located in bag number 3, this is
4 Gabriel Jones, recovered in three black plastic bags,
5 garbage type bags, with yellow drawstrings, clothed in one
6 pair of patterned underwear. The victim was also wrapped
7 in one Disney Pixar Cars 2 comforter and a pink Hello
8 Kitty bed sheet. The following items were also located in
9 the black garbage type plastic bags along with the victim.
10 One silver Bob's shoe, one pair of underwear with purple
11 trim, one pink Hello Kitty diary or journal, one
12 adult-size large tee shirt that read Three Fountains
13 Chiropractic, and one diaper.

14 Q State's 164.

15 A The victim that was in bag labeled number 4 was
16 Abigail Jones. This victim was recovered in two black
17 garbage type plastic bags with yellow drawstrings and
18 wearing only a diaper. The victim was wrapped in two blue
19 -- blue and multicolored Disney Pixar Cars 2 sheets. One
20 was a flat sheet and one was the fitted sheet.

21 Q State's 165.

22 A Victim number 5 was Nahtahn Jones. He was recovered
23 in two black garbage type plastic bags with yellow
24 drawstrings. Again, this victim was not wearing any
25 clothing and was wrapped -- this victim was wrapped in a

1 Ninja Turtles comforter.

2 Q In addition to attending a crime scene in Alabama
3 where the bodies were recovered and the autopsy of the
4 children in Newberry, did you also accept the evidence
5 that was collected by Stacy Jones from the inside of the
6 vehicle?

7 A Yes. Most of the evidence that had not been sent
8 elsewhere for processing, some of the electronic evidence
9 was not sent directly to me, but the rest of the evidence
10 that she collected from the vehicle was sent to me.

11 Q And that evidence was sealed up and actually opened
12 in your presence and you inventoried it, correct?

13 A Correct.

14 Q Looking at State's 65 that's already in evidence. Do
15 you recognize that as a Dollar General receipt?

16 A Yes, I do.

17 Q And that was one of the items that was taken from the
18 vehicle?

19 A Correct.

20 Q And let me show you -- what has not been marked yet.
21 My bad. I ask if you recognize that bag and its contents
22 and how so?

23 A Yes, I do.

24 Q What do you recognize the contents of that being?

25 A This bag contains a box of plastic garbage type bags

1 with yellow drawstrings that were taken from the vehicle
2 that was processed by Stacy Jones.

3 Q Can you --

4 MR. GRAHAM: Your Honor, the State would move 167
5 into evidence.

6 MR. YOUNG: Subject to our previous objection.

7 THE COURT: Subject to previous objection it'll be
8 admitted.

9 (Whereupon, State's Exhibit number 167 was admitted
10 into evidence.)

11 Q Can you open the bag and show the jury the contents
12 of that, please.

13 A I can. There is a role of trash bags with the yellow
14 drawstrings, as well as the box that the role of trash
15 bags came out of.

16 Q And the brand of the trash bags is what?

17 A Dollar General.

18 Q And if you could -- let me see the bottom of it.

19 A Here.

20 Q So do you see the SKU number underneath the bar code?

21 A I do.

22 Q And can you compare that to the bar code on the
23 receipt on State's 65.

24 A Yes.

25 Q And do they appear to be the same?

1 A They do.

2 Q One more item. In addition, one of the items that
3 you received were the three black belts --

4 A That is correct.

5 Q -- that came from the vehicle. And one of those
6 belts had a broken buckle. Is that correct?

7 A Correct.

8 Q Let me show you this item, again which has not been
9 marked, and ask if you recognize it.

10 A Yes, I do.

11 Q And is that the item that came in the sealed box from
12 the Cadillac Escalade that was collected in Alabama by
13 Stacy Jones?

14 A Yes. This belt, as well as two others, came from the
15 box. And I packaged them together in a separate packaging
16 out of that box.

17 MR. GRAHAM: Your Honor, the State would offer this
18 into evidence at this time.

19 THE COURT: Would that be 168?

20 THE COURT REPORTER: Yes, sir.

21 THE COURT: Any objection?

22 MR. YOUNG: Subject to previous objection.

23 (Whereupon, State's Exhibit number 168 was admitted
24 into evidence.)

25 MR. GRAHAM: Thank you, Ms. Burke. Please answer any

1 questions the Defense as for you.

2 THE WITNESS: Thank you.

3 MR. YOUNG: No questions.

4 THE COURT: No questions. You may step down.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: All right. I think this is a good place
9 to stop for the day. We got a lot done today. Remember,
10 don't discuss the case, don't do any independent research.
11 Please stay away from perusing any media. What you need
12 to decide this case you all are getting here firsthand.
13 See you back Monday, same time. We're trying to start
14 about 9:00. All right. Enjoy your weekend. Leave your
15 notebooks and stuff here. Don't talk to anybody in the
16 case, and I'll review that first thing Monday morning.

17 (Whereupon, the jury was excused from open court for
18 the day.)

19 THE COURT: Folks, we have been cooperative with the
20 media and everything that has been shown to the jury the
21 media has been able to have. Is there any objection to
22 the media having a copy of that photograph that was shown
23 just directly to the jury by either side, understanding
24 its nature. I have not looked at it but the jury has been
25 shown and we have been consistent with that.

1 MR. HUBBARD: It is in the Court's discretion.

2 MR. YOUNG: No.

3 THE COURT: I am going to let the media do it and use
4 their discretion and tell them to use it, very, very
5 discreet discretion. So we will do that. See y'all
6 Monday.

7 (Whereupon, the trial will resume the following
8 Monday at 9:00 a.m.)

9 May 20, 2019.

10 THE COURT: Let's bring the jury in.

11 (Whereupon, the jury came into open court at
12 approximately 9:03 a.m.)

13 THE COURT: All right. Be seated. All right. I
14 hope you all had a good weekend. Excellent weather,
15 wasn't it. And I hope you all got some rest. We will
16 start here in the next bit. I told you I would ask you,
17 and I'm going to preface by asking you if anybody
18 contacted you or have any -- anything that intervened with
19 your oath to keep your facts received from here in the
20 courtroom and not outside. I want you to receive
21 everything here and not influenced from anything outside.
22 If somebody thinks they've been influenced, has any issue,
23 I'll bring you up and we'll make a record without the
24 presence of everyone else. Okay? I don't want you to
25 think you got to sit here and stand up and say this is

1 what happened and have a -- we'll deal with it in a
2 private session. Anybody have any issue they need to
3 speak with me about? We need to make a record of it?
4 Everybody good? Everybody still ready to listen today?

5 (Whereupon, a nonverbal affirmative response from the
6 jury.)

7 THE COURT: Very good, all right. We'll begin. The
8 State's still up. Call your witness please.

9 MR. GRAHAM: The State calls Stephanie Stanley.

10 STEPHANIE STANLEY, being
11 first duly sworn, testified as follows:

12 MADAM CLERK: Have a seat on the stand, and state
13 your name for the record, spelling your last.

14 THE WITNESS: My name is Stephanie Stanley,
15 S-t-a-n-l-e-y.

16 DIRECT EXAMINATION

17 By Mr. Graham:

18 Q Ms. Stanley, where are you employed, ma'am?

19 A I'm employed by the South Carolina Law Enforcement
20 Division, more commonly referred to as SLED.

21 Q How long have you been employed with SLED?

22 A I've been employed with SLED in the DNA casework
23 department since February of 2005.

24 Q So that would be how many years now?

25 A A little over 14.

1 Q Fourteen years now. And your job, you said you're in
2 the DNA department?

3 A Yes, sir.

4 Q Would you describe to the jury your background and
5 education in DNA and serology.

6 A I have a Bachelor's of Science degree from Clemson
7 University. I completed a training program at SLED where
8 I learned evidence handling, serology, or the
9 identification of body fluids. I learned DNA analysis,
10 extraction, quantitation and amplification of DNA, DNA
11 interpretation, and statistics as it relates to DNA
12 analysis.

13 Q And have you ever been qualified as an expert in
14 South Carolina in the fields of DNA examination and
15 interpretation?

16 A Yes, sir.

17 Q Approximately how many times?

18 A Approximately 35.

19 MR. GRAHAM: Your Honor, the State would offer
20 Stephanie Stanley as an expert in the field of DNA
21 examination.

22 MR. YOUNG: No objection.

23 THE COURT: No objection. Ms. Stanley is qualified
24 to give testimony regarding DNA analysis in that field.
25 Carry on.

1 MR. GRAHAM: Thank you, Your Honor.

2 Q Ms. Stanley, if you could pull the mic a little bit
3 closer to you and speak a little bit louder.

4 A Yes, sir.

5 Q In general terms, would you explain to the jury what
6 DNA is and what serology is.

7 A Let me start with serology, because serology is the
8 identification of body fluids. Typically the body fluids
9 that we're talking about are blood, semen and saliva, for
10 their use in DNA testing. So once we identify something
11 as potential blood, semen or saliva, we attempt to
12 identify a DNA profile from that item. DNA is a chemical
13 that's found in all of our cells, with the exception of
14 your red blood cells, and half of your DNA comes from your
15 mom, and half of your DNA comes from your dad. Most of
16 our DNA, among humans, is the same. But in forensics
17 we're interested in a very small portion of our DNA that's
18 different which allows us to tell individuals apart from
19 one another. In our lab we looked at 15 locations on the
20 DNA, and the information from all those locations combined
21 gives us what is known as a DNA profile. And no two
22 people have the same DNA profile, with the exception of
23 identical twins.

24 THE COURT REPORTER: Can you slow down some?

25 THE WITNESS: Yes, ma'am.

1 MR. GRAHAM: Your Honor, for the record, the Defense
2 has stipulated to the chain of custody as far as material
3 coming to Ms. Stanley for analysis.

4 MR. YOUNG: That's correct.

5 THE COURT: We put that on the record earlier, being
6 transported from Alabama over to Columbia.

7 MR. GRAHAM: And additionally, some of the analysis
8 that Ms. Stanley would have done actually went to the
9 identification of the children which was also stipulated,
10 too, by the Defense as well.

11 THE COURT: Which went over Friday afternoon late.

12 MR. YOUNG: That's correct.

13 THE COURT: Okay. You all understand they've agreed
14 to the chain, hand-to-hand bringing of the samples to her
15 office. And then also to the identification back to the
16 lady who testified last. All that was agreed to as it got
17 passed along, chain-by-chain link consistently and
18 correctly. They agree to that. So that's what all that
19 meant.

20 Q Ms. Stanley, you analyzed numerous items on this
21 case. Isn't that correct?

22 A Yes, sir.

23 Q Today I want to talk to you specifically about six
24 items. This is a photograph, State's 112. It is a five
25 gallon blue Walmart bucket. That item was sent to SLED

1 for processing. And it was item 64, I believe, of SLED.

2 Is that correct?

3 A Yes, sir.

4 Q Now, there is a swab taken from the handle of the
5 bucket, which would be known as 64.1. Is that correct?

6 A Yes, sir.

7 Q Would you describe to the jury what, if any, analysis
8 that you did on the swab taken from the handle of the
9 bucket and what results you found?

10 A DNA analysis was performed on item 64.1, which were
11 the swabs taken from the handle of the bucket. And the
12 partial DNA profile developed from that item matches the
13 DNA profile of Merah Jones. And the probability of
14 randomly selecting an unrelated individual having a DNA
15 profile matching this partial DNA profile on this item is
16 1 in approximately 83,000.

17 Q State's 123 is a photograph of what can be described
18 as biological matter taken from the trunk area of the
19 Cadillac Escalade by Stacy Jones. That would be SLED
20 number 98.

21 A Yes, sir.

22 Q Would you describe to the jury what, if any, analysis
23 was performed on that and what result, if any, you found?

24 A DNA analysis was performed on this item and the
25 partial DNA profile developed from item number 98, the

1 piece of biological material, matches the DNA profile of
2 Elias Jones. The probability of randomly selecting an
3 unrelated individual having a DNA profile matching this
4 partial DNA profile is approximately 1 in 44 billion.

5 Q One in 44?

6 A Billion.

7 Q State's number 78 is described as a swab collected
8 from the center console of the Cadillac Escalade by Stacy
9 Jones. That is, I believe, 102 for SLED.

10 A Yes, sir.

11 Q Would you describe what examination you did and what
12 results you found?

13 A I first checked the item to see if there was any
14 chance that the item had blood on it and presumptive
15 testing for blood was positive. I then performed DNA
16 analysis --

17 Q Let me stop you for just a second. When you say you
18 tested presumptive for blood, would you explain to the
19 jury what that is and what it means?

20 A Yes, sir. This item is -- came to me in the form of
21 swabs. I would have taken a snippet of that item and
22 preformed a chemical test that reacts positive if blood
23 could be present.

24 Q After you did the presumptive positive test for
25 blood, then describe what you did.

1 A I performed DNA analysis on this item, and the DNA
2 profile developed from item 102 matches the DNA profile of
3 Nahtahn Jones. The probability of randomly selecting an
4 unrelated individual having a DNA profile matching this
5 item is approximately one in 370 quadrillion.

6 THE COURT REPORTER: 370 --

7 THE WITNESS: Quadrillion.

8 Q The numbers go billion, trillion --

9 A Right. Million, billion, trillion, quadrillion.

10 Q I'm going to show three photographs, 124, 126 and
11 128. Those are photographs of -- this is a bag containing
12 a white pillow that was collected by Stacy Jones. 126 is
13 a photograph of the pillow itself with writing on the
14 photograph, on the pillow. Do you recognize that being
15 the handwriting of Verinna Rivera?

16 A Yes, I do.

17 Q Okay. Who is she?

18 A Verinna Rivera is a forensic serologist in the DNA
19 casework department.

20 Q So for this item she would have done something before
21 it came to you?

22 A Correct.

23 Q What did she do?

24 A Verinna would have looked at this item. Anything
25 that's much larger than a swab or a cutting goes to our

1 serology section and they're going to look for biological
2 material, those biological stains. And once they're
3 identified they would take a cutting. As you can see next
4 to that 110.1 there's a hole. She would have taken a
5 cutting from that area and forwarded it back to me for
6 analysis.

7 Q Once you got item 110.1, which was a cutting from the
8 pillow casing from the Escalade what, if anything, did you
9 do with it?

10 A I performed DNA testing on that item.

11 Q And what, if anything, did you find?

12 A The partial DNA profile developed from item 110.1,
13 which is the cutting from the pillow, matches the DNA
14 profile of Gabriel Jones. The probability of randomly
15 selecting an unrelated individual having a DNA profile
16 matching this item is approximately one in 28 quadrillion.

17 Q State's 131, a photograph of a sun shade collected
18 from the vehicle. I believe the SLED item that would
19 correspond with that is 89. Is that correct?

20 A Yes, sir. It is.

21 Q And then 89.1 would have been what?

22 A 89.1 would have been swabs collected from that sun
23 shade.

24 Q And what, if any, analysis did you do on the swab
25 that was collected from the sun shade?

1 A I performed DNA analysis on that item.

2 Q And what were your results?

3 A The DNA profile developed from 89.1 matches the DNA
4 profile of Abigail Jones. The probability of randomly
5 selecting an unrelated individual having a DNA profile
6 matching this item is approximately 1 in 34 quadrillion --
7 I'm sorry, quintillion.

8 Q And then finally let me show you what's been marked
9 as State's 168. Let me get you a pair of gloves.

10 A I have got some.

11 Q If you would open the box. And do you recognize that
12 item?

13 A Yes, sir.

14 Q And that's item -- SLED item 77, correct?

15 A Correct.

16 Q And that's described as a belt with a broken buckle
17 that was collected from the Defendant's vehicle, correct?

18 A Yes, sir.

19 MR. GRAHAM: Your Honor, if I could ask the witness
20 to step down from the stand.

21 THE COURT: Sure. Sure.

22 (Whereupon, the witness stepped down from the witness
23 stand.)

24 Q When we describe this as a broken belt buckle, would
25 you describe to the jury what we're talking about?

1 A This portion right there, when it was submitted for
2 analysis, was not intact.

3 Q Can you describe that?

4 A When it was submitted for analysis it was not intact.

5 Q Looking at the belt, there's gray numbering on both
6 sides of the buckle. Can you explain to the jury what the
7 numbering represents.

8 A Yes. Forensic serologist, Verinna Rivera, would have
9 swabbed this item. You can see where one portion starts
10 and stops. This is 772.1, 772.2. A lot of times items
11 like this, we will swab the inside portion separate from
12 the outside portion. And we were trying to identify
13 probably two portions.

14 Q And on the inside as well, the numbers are repeated.

15 A Yes, sir.

16 Q Looking at your -- you can have a seat. Thank you.

17 (Whereupon, the witness returns to the witness
18 stand.)

19 Q And this is State's 168, for the record. Can you
20 describe to the jury what, if any, analysis you performed
21 on 77.2.1 which was a middle swab from the buckle.

22 A Yes, sir. I performed DNA analysis on that item.

23 Q And what, if anything, were the results of that
24 analysis?

25 A The DNA profile developed from 77.2.1 is a mixture of

1 at least two individuals. A DNA mixture simply means that
2 more than one person is contributing DNA from that item.
3 The partial DNA profile of the major contributor, or who's
4 contributing the most of that item, matches the DNA
5 profile of Gabriel Jones. The probability of randomly
6 selecting an unrelated individual having a DNA profile
7 matching the major contributor to this item is
8 approximately 1 in 570,000.

9 MR. GRAHAM: Thank you, Ms. Stanley. Please answer
10 any questions the Defense has for you.

11 MR. YOUNG: No questions.

12 THE COURT: Thank you very much, Ms. Stanley.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 MS. MAYES: The State calls Karen Leonhardt.

16 KAREN LEONHARDT, being
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Mayes:

20 Q Good morning. Could you tell us a little bit about
21 yourself? Where are you employed?

22 A I'm employed at Saxe Gotha Elementary.

23 Q Tell us about your job there.

24 A I am the school nurse at the school.

25 Q Could you tell us about your educational background

1 and training that led you to become a nurse with the
2 Lexington County School District?

3 A I had been a pediatric nurse for 35 years and I have
4 been employed by Saxe Gotha Elementary for 20 years.

5 Q And what type of license do you hold?

6 A I'm a registered nurse.

7 Q And how long have you worked at Saxe Gotha as a
8 school nurse?

9 A Twenty years.

10 Q Now, were you working at Saxe Gotha Elementary back
11 in 2014?

12 A Yes.

13 Q At that school, how do you maintain information which
14 documents the health of individual students?

15 A At that time we would have a health card that we
16 would send home with each child at the beginning of the
17 year and the parents would fill it out and then they would
18 send it back to us.

19 Q So the health card goes home with the child, but it's
20 the parents' responsibility to fill it out?

21 A That's correct.

22 Q And the parent normally fills it out on their own?

23 A That's correct.

24 Q And then it's returned to you?

25 A Yes.

1 Q Are these records maintained in the ordinary course
2 of business there at Saxe Gotha Elementary?

3 A Yes, they are.

4 Q I'm going to show you some documents and ask you
5 whether or not you recognize them. These have been
6 premarked as State's Exhibits 169, 170 and 171.

7 A I do recognize them.

8 Q And can you tell us what these items are?

9 A These are the health cards that we sent out that year
10 that returned to my health room to us.

11 Q Okay. And specifically can you tell us whether these
12 are the health cards of Merah Jones, Elias Jones and
13 Nahtahn Jones?

14 A They are.

15 Q And does it bear a signature on them?

16 A It does.

17 Q Is that the signature of the parent?

18 A Yes.

19 Q And who is the parent who signed these forms?

20 A Timothy Jones.

21 MS. MAYES: Your Honor, at this time, this will be
22 State's Exhibits 169, 170 and 171 as evidence.

23 THE COURT: Any objection?

24 MR. MADSEN: No objection.

25 THE COURT: No objection. So 169, 170 and 171 are

1 admitted.

2 (Whereupon, State's Exhibit numbers 169, 170 and 171
3 were admitted into evidence.)

4 Q I want to start here by asking you about the health
5 card for Merah. And specifically on this health card,
6 does it state the name of the parent?

7 A It does.

8 Q And what is that name?

9 A Tim Jones.

10 Q Is there any information provided for the mother?

11 A No.

12 Q And then as we go through the cards, tell us what
13 we're looking at in terms of the school year. What date
14 was this submitted?

15 A It was submitted on 9/12/2013.

16 Q Now, back of the form, what are you asking for
17 specifically as to each child?

18 A We're asking for, if there's any health problems that
19 they might have. Those listed on the left side are common
20 ones that we might see in school children. And then we
21 ask for any other information about physicians or if
22 there's any things that are -- keep them from
23 participating in school activities.

24 Q All right. So specifically, you're asking about
25 things like anemia, epilepsy, diabetes, anything of that

1 nature?

2 A That's correct.

3 Q And what, if any, comments did the parent make in
4 this case?

5 A He wrote down the child is in good health.

6 Q All right. And did you go on and ask whether or not
7 the child may have any impairment in function that would
8 limit his or her participation in physical activity?

9 A Yes.

10 Q And what was the parent's response as to Merah?

11 A No.

12 Q All right. We're going to move now to State's
13 Exhibit 170 regarding Elias. And were there any
14 indication of health issues regarding Eli Jones?

15 A No.

16 Q And what comment, if any, did the parent make?

17 A The child is in good health.

18 Q All right. Was he taking any medications?

19 A No.

20 Q And specifically as to whether he had any impairments
21 that would limit his or her participation in physical
22 activities?

23 A The answer is no.

24 Q And then 171 regarding Nahtahn. Was there any
25 indication that Nahtahn had any preexisting medical

1 conditions?

2 A No.

3 Q And what, if any, comments did Timothy Jones make
4 regarding Nahtahn's health?

5 A He said the child was in good health.

6 Q Was Nahtahn taking any medications?

7 A None.

8 Q And then finally when question, does Nahtahn have any
9 impairment in function that would impair his or her
10 participation in physical activity, what was his response?

11 A No.

12 MS. MAYES: Thank you. Nothing further at this time.

13 THE COURT: Mr. Madsen.

14 CROSS-EXAMINATION

15 By Mr. Madsen:

16 Q Ms. Leonhardt, the children being in school would
17 have been up-to-date on their vaccinations, correct?

18 A Correct.

19 Q They wouldn't be allowed in if they weren't?

20 A Correct.

21 Q And I believe you were Merah's nurse for each of the
22 years that she was there, correct?

23 A Correct.

24 Q And it looks like you saw her seven times over the
25 years?

1 A I'd have to look at my notes to -- for that exact
2 number. But I did see her in the health room.

3 Q Scratched an eye in the classroom. Also about some
4 head lice, correct?

5 A That I do remember, correct.

6 Q And she had head lice and you had some interaction
7 with Tim about that, correct?

8 A I did.

9 Q And his idea to get rid of head lice was to use
10 kerosene?

11 A He did mention that, yes.

12 Q And you told him no?

13 A That would not be safe, correct.

14 Q That's not the way you do it. And you said a hair
15 dryer?

16 A That is one of the things that we suggest sometimes
17 to the parents to dry their hair with a hair dryer to
18 dehydrate the eggs of the lice, uh-huh.

19 Q And his thing was I'll use a heat gun.

20 A He did say that.

21 Q And you were like absolutely not. That is not safe?

22 A That's correct. That's what I said.

23 Q And it looks like you saw Elias a number of times for
24 ear infection, eye infection, rash, some playground
25 injuries.

1 A Like I said, I'd have to look at my notes to be
2 exact. But yes, I did see him in the health room.

3 Q It's not unusual for kids to come in, especially that
4 age, to see you every so often for whatever is ailing
5 them?

6 A That's correct.

7 Q And it looks like you saw Nahtahn about 11 times for
8 dry skin, stomach ache, temperature, some itching. I
9 think he had an ear problem at one point in time?

10 A I think I recall that, yes.

11 Q And then only -- and you are familiar that once with
12 Nahtahn DSS was called for some bruising, correct?

13 A That's correct.

14 Q And that was the only time with any of the kids
15 anything occurred that DSS was called?

16 A That's correct. That I recall, uh-huh.

17 Q And you only dealt with Tim --

18 A Let me -- can I go back to that question? No,
19 actually there was another time that a call was made.

20 Q And who was that on?

21 A Merah.

22 Q On Merah?

23 A Uh-huh.

24 Q And you're aware that DSS has no records of those
25 calls?

1 A I have a record in my health room that I did make a
2 call.

3 Q Do you have your notes from the health room?

4 A They're in my car.

5 MR. MADSEN: I'd like to see those, Judge. I don't
6 have those.

7 THE COURT: Sure. All right. We'll stand down for a
8 couple of minutes. You all step in the jury room and
9 we'll have you back in here. We'll let her run to her
10 car.

11 THE WITNESS: Okay.

12 (Whereupon, the jury was excused from open court for
13 a break.)

14 THE COURT: Don't talk to anybody about your
15 testimony.

16 THE WITNESS: I won't. Okay.

17 (Whereupon, the witness stepped down from the witness
18 stand.)

19 (Whereupon, a short break was taken.)

20 THE COURT: So you had no, it was just --

21 MR. MADSEN: DSS says we are not going to take it. So
22 it is something that we knew about.

23 THE COURT: Okay.

24 MS. MAYES: If we could just require a little bit
25 further.

1 (Whereupon, the witness came back in the courtroom.)

2 IN CAMERA REDIRECT EXAMINATION

3 By Ms. Mayes:

4 Q The document that you just brought in regarding the
5 report on the possible use of a heat gun or kerosene for
6 head lice, is that the report that you're referring to?

7 A Correct.

8 THE COURT: Okay. Tell the jury we are ready.

9 MR. MADSEN: That's fine.

10 (Whereupon, the jury came into open court at
11 approximately 9:40 a.m.)

12 THE COURT: All right, Mr. Madsen.

13 Q Ms. Leonhardt, when you said you called DSS, it was
14 over the head lice issue with Merah, correct?

15 A That's correct.

16 Q And they didn't open a case, but you were supposed to
17 monitor it?

18 A That's correct.

19 Q And then you have those health cards in front of you.
20 But you never dealt with the children's mother, correct?

21 A That's correct.

22 Q Never received a call from her, any interaction
23 whatsoever?

24 A That's correct.

25 Q And, in fact, on those cards, I think for each of the

1 children the emergency contact is Roberta Thornsberry and
2 Kevin McKenney. Is that correct?

3 A That's correct.

4 MR. MADSEN: That's all the questions I have.

5 THE COURT: All right. Any redirect?

6 MS. MAYES: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 By Ms. Mayes:

9 Q So, Ms. Leonhardt, one of the questions that Mr.
10 Madsen posed to you just a few moments ago was about a
11 report concerning Nahtahn Jones to DSS?

12 A That's correct.

13 Q You're familiar with that report?

14 A Yes.

15 Q Do you know which teacher made that report on
16 Nahtahn's behalf to DSS?

17 A Yes. His -- the instructional assistant in the
18 classroom, Amy Shearer.

19 Q All right. Amy Shearer, one of Nahtahn's K5
20 teacher's?

21 A That's correct.

22 Q And I'm going to ask you about an exhibit already in
23 evidence. This is Defendant's Exhibit 15 regarding that
24 DSS report. Do you know whether or not that report was
25 made on or about May the 5th of 2014?

1 A Yes, I believe it was.

2 Q "Timothy Jones got upset with Nahtahn. He choked him
3 around the neck, pushed him against the wall and held him
4 there. The child has bruises on the neck." Is that the
5 report that you're referring to?

6 A Yes, ma'am.

7 Q Specifically regarding that report to DSS on Nahtahn
8 in May of 2014, can you tell us whether or not you
9 photographed Nahtahn's bruises?

10 A I did.

11 Q To his neck?

12 A Yes, ma'am.

13 Q Do you recall whether he also had bruising to both
14 forearms?

15 A He did.

16 MS. MAYES: Nothing further, Your Honor.

17 THE COURT: Mr. Madsen, are you done?

18 RECROSS-EXAMINATION

19 By Mr. Madsen:

20 Q Ms. Leonhardt, I'm going to show you what's been
21 marked as Defense for ID number 104 through 108. Take a
22 look and tell me if you recognize those.

23 A I do.

24 Q Are those the photographs that you took of Nahtahn?

25 A They are.

1 MR. MADSEN: Judge, we would move Defense 104 through
2 108 into evidence.

3 MS. MAYES: And if we could approach briefly, Your
4 Honor, on a legal matter.

5 THE COURT: Okay.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury.)

9 THE COURT: All right. You all want to go forward?

10 MR. MADSEN: Yes, sir.

11 THE COURT: All right. Subject to the sidebar,
12 without objection, 104 through 108 is in.

13 (Whereupon, Defendant's Exhibit number 104 through
14 108 were admitted into evidence.)

15 Q And that right there on the jaw line is the photo of
16 the bruise on the neck?

17 A Yes, sir.

18 Q And that is just a photo of Nahtahn?

19 A Yes.

20 Q And then that shows some bruising, I guess, a little
21 bit on the left arm and maybe towards the top of the
22 right?

23 A That's correct.

24 Q Similar in Defense 107?

25 A That's correct.

1 Q And then lastly, I think, Defense 108 shows -- it
2 looks like a bruise right about here on the left arm?

3 A On his left arm. That is correct.

4 MR. MADSEN: That's all the questions I have, Your
5 Honor.

6 THE COURT: All right. You may step down.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness stepped down from the witness
9 stand.)

10 THE COURT: All right. Are we ready for another one?

11 MR. HUBBARD: Your Honor, I think there was a request
12 for--

13 THE COURT: That's what I was thinking, too. I have
14 got to put something on the record before the next
15 witness. I thought we could take a break, we got it
16 early. So you're going to get another 10 minutes. So
17 step in the jury room. We'll have you back out here in a
18 moment.

19 (Whereupon, the jury was excused from the courtroom.)

20 THE COURT: The next witness is Dr. Ross?

21 MR. HUBBARD: It is.

22 THE COURT: Okay.

23 MR. HUBBARD: On the witness we just had, we had a
24 sidebar with Defense who wanted to put those photos in.
25 We brought up the sidebar for the purpose of informing

1 Your Honor that unlike the DSS plan, safety plan, was
2 found in the vehicle. The Defense put that in along with
3 everything from the vehicle. These photos were not in the
4 vehicle. So these were separate and apart, so we wanted
5 to make sure the Defendant himself wanted these in. The
6 Defense team, they even have Appellate Defense here. Part
7 of that sidebar and said -- they're assuring Your Honor
8 that the Defendant wants this. I just want that record
9 clear, because so many times there's an issue about did
10 the Defendant really want this.

11 THE COURT: I think my comment, are they ready, did
12 they want to proceed, was confirming the conference they
13 had at the counsel table that that's what they wanted to
14 do.

15 MR. HUBBARD: Yes, sir. What we will have with Dr.
16 Ross, there's one photo out of all those autopsy photos,
17 there's hundreds of them, I was going to put in. I showed
18 it to Your Honor and the Defense. It is premarked, the
19 cut to Nahtahn's knee. I understand they want to get in
20 other photos. I don't know what those are. We'd like to
21 address that at this point and time.

22 THE COURT: All right. Mr. Young, let's hear you.

23 MR. YOUNG: Are you going to do, the 403 analysis on
24 the photo that the State--

25 THE COURT: I'd like to see it again. But I saw it

1 and it was a photo of the base of the knee and parts of
2 the leg. I don't know if the foot was even in it or the
3 hip. It was in between the hip and the foot. The knee
4 area. The middle part of the leg.

5 MR. HUBBARD: State's ID 177. It is a closeup shot.
6 It's probably the cleanest closeup shot we have of the
7 knee where Dr. Ross can testify as to the saw marks. Your
8 Honor, what we would argue that, obviously we have to
9 prove malice, that he's saying Nahtahn was an accident.
10 As Your Honor has heard, September 7th, the day after Mr.
11 Jones was arrested, we had Sheriff Crumpton say, "I was
12 struck by how angry he still seemed to be at Nahtahn." On
13 the 8th when he was interviewed by FBI, again there was
14 that anger at Nahtahn. And he even said none of this
15 would have happened, all these kids would be alive but for
16 Nahtahn. If he had just come off of it. On the 9th, the
17 day they went to find the bodies, the very day that they
18 found this leg as it was, that's when he -- he also talked
19 about he broke the glasses on that day. He then seemed
20 anger at the time. This photo is highly probative of that
21 continuing malice of all the kids that he attempted to cut
22 or saw, the one we have evidence of that, clear evidence,
23 was Nahtahn. So I think it's highly probative of malice I
24 have to prove. Their argument is it was an accident. So
25 that's my argument on 403.

1 THE COURT: All right. Let me hear from Young on
2 that 403. What is -- what is the number again?

3 MR. HUBBARD: 177 ID for State. I believe Your Honor
4 may still have it up there on the Bench.

5 THE COURT: I don't.

6 MR. HUBBARD: Did I just get it back?

7 THE COURT: Yeah.

8 MR. HUBBARD: Okay. There we go. I got it right
9 here. It's 177.

10 THE COURT: 177. All right. Mr. Young, I'll hear
11 you.

12 MR. YOUNG: Your Honor, given the gruesome nature of
13 the photographs we would ask again that they all be
14 suppressed. But, of course, if this one comes in, I think
15 it would be upon us to put others in.

16 THE COURT: Based upon my understanding of the
17 testimony and the statements of the Defendant regarding
18 the cut, sawing on the child, I believe it would be
19 probative of the State's case and their burden of showing
20 malice. The picture is very restrictive. It doesn't even
21 show his feet, it's a closeup. It's, in my description
22 of, understanding it would be prejudicial, it's graphic
23 but it's close. It's not, it has been cleaned up.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: It's not a fresh wound, I guess, is the

1 best way in layman's terms, Dr. Ross may have better terms
2 for that. I believe it would be -- under 403 it is
3 prejudicial, but the State's request seems reasonable
4 considering, considering everything, one photograph out of
5 dozens. And that particular photograph -- and I've not
6 viewed the others. But that one does not seem unduly
7 prejudicial in the Court's view. So I will allow it.

8 MR. YOUNG: I understand.

9 THE COURT: Now, the State also mentioned when we had
10 the bench conference, they intended to use some sketches
11 by Dr. Ross showing others. You want to be heard on
12 those, or do you want to go into the pictures you made to
13 use to balance --

14 MR. YOUNG: I'm fine with the sketches.

15 THE COURT: The sketches are okay?

16 MR. YOUNG: Yes, sir. I just need to note my
17 objection for the picture--

18 THE COURT: -- it is noted. So that's on 177?

19 MR. YOUNG: Yes, sir. In light of the Court's
20 ruling, we would move -- we intend to offer five pictures
21 taken from the autopsies, one of each child, as they were
22 photographed at the time of autopsy.

23 MR. HUBBARD: And I'm going to strenuously object.
24 One, at this stage, they are absolutely irrelevant. 401,
25 relevance means evidence just for the record having any

1 tendency to make evidence of any fact that is of
2 consequence to the determination of the action more
3 probable or less probable than it would be without the
4 evidence. Your Honor, I cannot, as an officer of the
5 Court, say those show what I need to prove, to prove my
6 case. Under 403 I think you will find it's far more
7 prejudicial than probative. I think what they're trying
8 to do is basically use shock value to diminish the shock
9 should there be a second half of this case. The second
10 phase of this case we get to show the characteristics of
11 the crime, the Defendant, how the victims were found.
12 They become probative at that point, relevant at that
13 point. Right now they're not, even if they want to put
14 them in, Your Honor, I think it's reversible. Even with
15 them saying, because right now I think it's going to be
16 reversible. And if the knee where there was a saw cut was
17 prejudicial, then my God, these are even more so. Plus
18 they're going into other victims that I haven't even
19 brought up. What the State has done, even though we have
20 hundreds and hundreds of autopsy photographs, including
21 two sets from CSI individuals taking photos, I've pulled
22 out one, cleaned up, closeup of a knee. I'm using
23 sketches for the rest. I think it's highly prejudicial
24 under 403. Clearly not even relevant. Not relevant to
25 malice, or anything. It only becomes relevant in the

1 second phase. I think it would be reversible error.

2 THE COURT: Let me hear back from Mr. Young. I think
3 he needs to review them.

4 MR. HUBBARD: Your Honor, in looking at that, I'm at
5 a loss for the probative value in the guilt phase, for
6 those photos.

7 THE COURT: Mr. Young, tell me why these are
8 necessary.

9 MR. YOUNG: Because he was riding around in the car
10 with them for over nine days and it goes to mental
11 illness.

12 THE COURT: Goes to what?

13 MR. YOUNG: Mental illness.

14 MR. HUBBARD: Your Honor, they don't need the photos
15 for that. Just riding around with rotting corpses in the
16 testimony is fine. They don't have to see it. It's not
17 probative. It's highly prejudicial. They have the
18 testimony. They'll have experts talking about mental
19 illness for riding around with rotting corpses in your
20 car.

21 MR. YOUNG: I believe Mr. Hubbard as made an argument
22 that it is probative and I can, to show the conditions of
23 the bodies that he was riding around in the car with, up
24 until hours before he was stopped.

25 MR. HUBBARD: It's not at this phase of the case,

1 Judge. It's not at this phase.

2 MR. YOUNG: It is. It's his -- that's mental
3 illness.

4 THE COURT: Here's what I think. Certainly he'd been
5 riding around in the car with the bodies. I haven't heard
6 any testimony that they were visible. They were in bags.
7 They were covered in sheets. And so, a photograph of that
8 graphic nature that shows mental illness when that's not
9 what he's viewing. If I heard anything that was
10 contradiction to they were covered with bags and/or sheets
11 -- you know, the smell certainly has been testified to by
12 just about every witness who came into contact with Mr.
13 Jones, and officers out there recovering the bodies. The
14 bodies were recovered in black trash bags. So how are
15 pictures of what's inside the bag indicative of mental
16 illness?

17 MR. YOUNG: Well, he took -- he took the bodies out
18 of the car and put them in the bags on the side of the
19 road in Alabama.

20 THE COURT: I haven't heard that.

21 MR. YOUNG: That was -- that was in his taped
22 statement. Taped in, a transcript--

23 THE COURT: I thought the testimony was he put them
24 in trash bags and put them in the car.

25 MR. YOUNG: No.

1 MR. HUBBARD: It's not clear. The only thing it does
2 say, he says at one point that he put them in trash bags
3 right before he dumped them. The problem with that is --

4 MR. YOUNG: Trash bags--

5 MR. HUBBARD: -- excuse me.

6 MR. YOUNG: Sorry.

7 MR. HUBBARD: What he does say is that he puts them
8 in trash bags and dumps them. Here's the problem. Where
9 as in the penalty phase you can go into the conditions as
10 they're found, which is what you see. That's not
11 necessarily the condition they were in. Because as Dr.
12 Ross is going to say, when she testifies, that putting
13 kids -- or bodies in black bags and leaving them out in
14 the hot sun increases and rapidly increases decomposition.
15 So those kids didn't necessarily look in the condition
16 they are right there when they were in his car. So
17 there's a discrepancy. All that can be testified to is
18 that there was decomp, there is a smell. Those photos
19 will not be probative of how they actually looked when he
20 put them in bags. The bags created that condition. They
21 are misleading.

22 MR. YOUNG: I understand the State's argument on
23 that, but that's what it is.

24 MR. HUBBARD: It's fact.

25 MR. YOUNG: I disagree, that that--

1 MR. HUBBARD: It's a fact. Dr. Ross will testify
2 that putting bodies in a black bag and leaving them out in
3 the hot sun increases decomp. That is not how those
4 bodies looked when Mr. Jones rode them around in the car,
5 what they looked like when he put them in bags. The
6 penalty phase, it's purely relevant --

7 THE COURT: Okay. I think we are, I don't need to
8 sit here and argue. I am thinking, y'all are saying the
9 same thing.

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Y'all are repeating yourselves, not
12 saying the same thing.

13 MR. YOUNG: Judge, of course, we can't appeal stuff
14 that we put in. That's not an issue.

15 THE COURT: I'm with you.

16 MR. YOUNG: Barring the Defense from offering up
17 evidence that goes towards his mental illness is
18 appealable. That will get reversed. Letting evidence in
19 that the Defense says is probative of mental illness and
20 the State wants to argue is not, is not appealable.

21 MR. HUBBARD: Number one, this wouldn't be the
22 witness. Number two, they are not being barred from
23 arguing anything at all. But it is misleading photographs
24 and I am highly, highly prejudicial photographs.
25 Misleading in that it would show --they're trying to say

1 that's how they looked when they were in his car. But
2 that is, Dr. Ross will establish --

3 THE COURT: All right. I understand what you're
4 arguing.

5 MR. YOUNG: She can still say that.

6 THE COURT: Tell me again, it seems to me this is not
7 the right witness, number one. Two, maybe this is
8 probably my best analysis is, is this the right witness.
9 We've had other testimony to show -- I think you're
10 allowed to show, you've got a burden to show the mental
11 illness certainly at this phase of the case. Can you do
12 it through another witness?

13 MR. YOUNG: She's the only medical examiner.

14 MR. HUBBARD: Part of the problem is, five days have
15 gone by since they're dropped off to autopsy. There is
16 tremendous decomp between the two.

17 MR. YOUNG: I understand. He keeps making that
18 argument. But their witnesses said that they took them to
19 the cold storage to slow it down. And I'm sure that that
20 is something that she can testify to.

21 THE COURT: Are there any other pictures available
22 that show less graphic -- I mean, these are very graphic,
23 more so than -- these aren't cleaned up like the knee is.
24 I'm not going to -- I'm not going to go pick them out for
25 you.

1 MR. YOUNG: I mean, there's pictures at the location
2 which I would argue are worse. These others where they
3 opened up bags to verify they all had human remains in
4 them. Those witnesses have already testified. And the
5 State put in the one picture of the bags under the tree.
6 There are pictures from the Alabama Coroner's office where
7 they opened the bag, photographed the remains and then put
8 them in individual body bags and transported them to South
9 Carolina. And then Dr. Ross was the next person to see
10 them.

11 MR. HUBBARD: Your Honor, I think they can't even
12 begin to make it relevant until they put their experts up
13 to talk about why this is important. Right now it's
14 attorney argument. It's not testimony.

15 MR. YOUNG: I don't have the medical examiner and my
16 understanding is she has a scheduling conflict.

17 MR. HUBBARD: She's going to have to come back
18 anyway, if we have a second half. If we don't have a
19 second half then it's a moot point.

20 MR. YOUNG: Well, if Your Honor rules I can't get
21 them in now then it's sort of a moot point.

22 MR. HUBBARD: In his case-in-chief, if he can
23 establish that relevancy to show probative value outweighs
24 prejudicial effect under 403 then, Your Honor --

25 MR. YOUNG: Prejudicial effect is to the State.

1 THE COURT: It's not prejudicial. I thought
2 prejudicial effect is the--

3 MR. YOUNG: On evidence that I am arguing, he is
4 saying it shouldn't come in because it's too prejudicial
5 to him. And I don't know what the prejudice is to the
6 State.

7 MR. HUBBARD: I answer to the Court. I answer as an
8 administer of justice because I have to protect a client
9 even if I'm trying to put that man on death row. Because
10 you know five years from now these aren't going to be the
11 attorneys. They're making some major decisions here. And
12 they keep representing, well, we are doing what Tim wants.

13 MR. YOUNG: I never said that. I said I am doing
14 what I want.

15 MR. HUBBARD: And that's, that's the problem. May I
16 see those photographs.

17 THE COURT: Yes. I understand both of you y'all's
18 arguments. All right. I'm having a hard time balancing
19 the prejudicial effect when the knee was prejudicial to
20 the Defense, probative for the State. Now the roles are
21 reversed and these are much more prejudicial in the look.
22 I don't believe this is the appropriate time to put these
23 in. I'm not saying they can't come in, but I don't think
24 it's appropriate right now. You all have got an
25 opportunity later to present them in your case as to the

1 mental illness. I think we'll be in that phase shortly,
2 soon, in a few days. And perhaps there's -- you can call
3 Dr. Ross back if need be. But I don't think right now
4 that's the appropriate entrance. Because how can, explain
5 to me, how can you say the knee is prejudicial, the State
6 says it's probative and then we flip?

7 MR. YOUNG: The State hasn't offered any prejudice to
8 the State on the admissibility -- on the admission of
9 those photographs. Because there's not -- it's not what
10 the Rule is designed for.

11 MR. HUBBARD: I will clearly express it.

12 THE COURT: All right. Clearly express it then.

13 MR. HUBBARD: As administer of justice, obviously as
14 Your Honor knows, I have a duty to the Defendant. I don't
15 want to try it again. I don't want to call Dr. Ross in
16 five years from now. I don't want to call Sheriff
17 Crumpton along into his retirement again and I think
18 that's exactly where I am going to be. Calling people
19 from Mississippi. Ms. Watkins --

20 THE COURT: I guess what I don't understand, Mr.
21 Young, is this. Why are you arguing against it and then
22 you're arguing for it, because of my ruling on the other
23 picture. That's what is kind of confusing me, is it seems
24 to me you should have said the knee is -- I need some
25 also, rather than arguing both sides of it. That's where

1 I'm, that's kind of where I'm losing. No, I don't want
2 that picture in. And then once I make that ruling that
3 it's under 403, then you flip and say now we want more.

4 MR. YOUNG: Yes, sir.

5 THE COURT: I'm having a hard time following that
6 logic.

7 MR. YOUNG: If it makes it easier for the Court, I'll
8 withdraw my objection to the knee picture.

9 MR. HUBBARD: That is a resolve to the ultimate
10 issue.

11 THE COURT: I'm going to step off real quick. Just
12 stand easy for a minute. All right?

13 MR. YOUNG: Thank you, Your Honor.

14 (Whereupon, a short break was taken.)

15 THE COURT: Here's what I've decided. The State's
16 177 is in, or comes in if they offer it, preliminary 403
17 analysis. My understanding of the facts, the bodies were
18 placed on the side of the road sometime Saturday before
19 his arrest.

20 MR. HUBBARD: I am just not hearing, Judge, it may be
21 the air.

22 THE COURT: There we go. Is that better?

23 MR. HUBBARD: Yes, sir.

24 THE COURT: It wasn't on. It wasn't me. 177 is
25 coming in if the State offers it under the 403 analysis we

1 just presented on. The five pictures numbered by the
2 Defense, for the record, 112, 111, 110, 109 and 113.
3 Those are photos, to my understanding, of the bodies in
4 Newberry, the autopsy. Is that correct?

5 MR. HUBBARD: That's correct.

6 THE COURT: Okay. The Defense has represented to the
7 Court that they want to show pictures of the bodies to
8 show mental health issues of the Defendant. I don't
9 believe they're appropriate now. I believe other photos
10 may be more appropriate but closer in time to the
11 disposition of the bodies away from Mr. Jones. I don't
12 know that. I'm not saying what photos would be more
13 appropriate. I don't know. I don't know all the photos
14 y'all have, y'all represented the photos here. There are
15 photos that have been picked up, they've been from
16 Alabama. There's a lot of photos out there. I'm just not
17 aware of them. These are extended, deferred in time. I
18 understand they may be relevant to the mental illness. I
19 think that should come up during the mental health portion
20 of the Defense case. If the Defense believes Dr. Ross is
21 needed for these photos, wants to try to get them, I will
22 assist them in trying to coordinate with Dr. Ross.
23 Hopefully her schedule will coordinate with that, even if
24 we have to wait on her. So I don't think they're
25 appropriate at this time. So they're marked for

1 identification. I'm not going to rule whether the Defense
2 can use photographs or not during their portion of the
3 case. I think you can. I don't think they're appropriate
4 at this point in the case, in the State's case. So that's
5 my ruling now.

6 MR. YOUNG: Your Honor, note our objection that it
7 violates the Sixth Amendment right to present a defense
8 for Mr. Jones.

9 THE COURT: All right. I want to be clear. I'm not
10 saying you can't do it in your portion of the case.

11 MR. YOUNG: Well, the State has certainly tried to
12 preempt -- I mean, they've asked every witness about
13 mental health. They've asked all of their witnesses about
14 mental health. You're not saying that, mental health
15 evidence that comes in is during the Defense's case. The
16 State has tried to preempt our insanity case since their
17 first witness. To say that we can't do the same thing and
18 offer up evidence of mental health through the State's
19 witnesses is not --

20 THE COURT: All right. I want to go back. To my
21 understanding, the presentation on Mr. Jones' mental
22 health status at the time everything happened, these
23 photographs are -- when were they taken? The Thursday or
24 Friday after or the -- I don't even know when.

25 MR. YOUNG: I think it was on the 11th when the

1 autopsy was done.

2 THE COURT: And the bodies were placed on the side of
3 the road on Saturday the --

4 MR. YOUNG: 6th.

5 THE COURT: -- 6th. There's no reason the Defense
6 cannot cross-examine Dr. Ross on the graphic nature of
7 these pictures when she's up here now. And if you want to
8 call her back I'll help you get her back.

9 MR. YOUNG: The Court's saying, you can't use these
10 pictures?

11 THE COURT: Right now.

12 MR. YOUNG: Under this witness?

13 THE COURT: Yes.

14 MR. YOUNG: We believe that we're being prevented
15 from fully presenting our defense of not guilty by reason
16 of insanity, that the Court's ruling violates the Sixth
17 Amendment, the right to confrontation and the right to put
18 on a full defense under both the due process, Fifth,
19 Sixth, Fourteenth Amendments, Article 1 Section 13 of the
20 South Carolina Constitution. And specifically the case of
21 Lee versus State which was reversed by the United States
22 Supreme Court on a failure, or the right to present a
23 defense analysis.

24 THE COURT: Okay. Your objection is noted for the
25 record. With my explanation earlier as to why I am ruling

1 this way at this time.

2 MR. YOUNG: My attempt would be to ask Dr. Ross to
3 identify the pictures, if they came from her, without
4 publication--

5 THE COURT: You can do that.

6 MR. YOUNG: -- at this time.

7 THE COURT: You can do that. She can testify she
8 took several hundred pictures, or some of -- one of her
9 staff members did. So these are some of the newest ones
10 that were taken during the autopsy. That's fine. You can
11 make her identify them.

12 MR. YOUNG: And here's what -- here's what the
13 State's real problem is, is they're just trying to sandbag
14 and wait until the penalty so they can try to shock and
15 awe the jury with these pictures at penalty, which the
16 Court is -- truly is allowing them to to.

17 THE COURT: I disagree with you but I understand you
18 have made a record, and your objection is noted.

19 MR. YOUNG: Thank you.

20 THE COURT: All right. We're ready for the jury.

21 MR. HUBBARD: Yes, sir.

22 MS. MAYES: Your Honor, pursuant to Rule 1002, Mr.
23 Madsen and I have conferred. We have the original
24 photographs of Nahtahn Jones that were collected by DSS
25 and in the possession of law enforcement. They had marked

1 a copy of copies pursuant to discovery. So they have no
2 objection to us substituting with the originals.

3 THE COURT: Okay. So we'll substitute those, marked
4 as the same photographs -- numbers?

5 MS. MAYES: Yes, Your Honor. We'll just let Joy
6 match those up at the appropriate time.

7 MR. YOUNG: These aren't the originals. These are
8 just printed copies. They're the same as those printed
9 copies.

10 MS. MAYES: Those would be the originals that were
11 received by law enforcement from DSS. Those were the
12 original printed versions. These are copies of copies
13 that have been scanned in by our office and provided
14 pursuant to discovery. Based on my communications with
15 Mr. Madsen, my understanding was, is there was no
16 objection.

17 THE COURT: Okay.

18 MR. YOUNG: There's no difference in the quality.

19 THE COURT: I don't want to argue over which is the
20 better quality. If the originals are better than the
21 copies, then use the originals.

22 MR. YOUNG: If they have got the originals I am happy
23 to put those in.

24 THE COURT: Okay.

25 MR. YOUNG: These are just different copies.

1 THE COURT: Well then, I don't want to make a
2 non-issue an issue. Bring in the jury.

3 MR. YOUNG: I don't have any objection of them
4 putting those in, too, I guess.

5 THE COURT: We will substitute the pictures. I don't
6 want an issue of which pictures were first and second and
7 which copies, five pictures, however many it was. We
8 don't need ten pictures of the same two things.

9 COURT REPORTER: I will do this during our next
10 break.

11 (Whereupon, the jury came into open court at
12 approximately 10:35 a.m.)

13 THE COURT: Call your witness.

14 MR. HUBBARD: Thank you, Your Honor. The State calls
15 Dr. Janice Ross.

16 THE COURT: Dr. Ross, come forward and be sworn.

17 DR. JANICE ROSS, being
18 first duly sworn, testified as follows:

19 MADAM CLERK: Once you're seated, state your full
20 name spelling your last.

21 THE WITNESS: Janice Edwards Ross, R-O-S-S.

22 DIRECT EXAMINATION

23 By Mr. Hubbard:

24 Q Dr. Ross, where are you currently working?

25 A I'm currently in Charleston, South Carolina doing

1 autopsies for the coroner there. Before that I was in
2 Newberry, South Carolina. I'm CEO of Newberry Pathology
3 Associates and was in Newberry until November of last
4 year.

5 Q How many years were you at Newberry?

6 A Eighteen or nineteen.

7 Q Nineteen?

8 A Eighteen, I'm sorry, came in 2000.

9 Q And you mentioned you do autopsies. What is -- what
10 is your job?

11 A I'm a forensic pathologist, which means I've been
12 through four years of college, four years of medical
13 school and at least five years of training in pathology.
14 That field, unlike surgery or pediatrics, we learn how to
15 identify and diagnose diseases by using the microscope and
16 the laboratory in the hospital. We also learn how to do
17 an autopsy. I'm also further trained in forensic
18 pathology, which means I'm trained to identify patterns of
19 injury, document those patterns for the court of law, draw
20 fluids for toxicology and formulate a cause and manner of
21 death.

22 Q When you say manner of death, what types of, what are
23 choices of manner of death?

24 A First of all, the cause of death is just that. What
25 caused the death. The manner of death is how that cause

1 came about, whether it was a natural disease, whether it
2 was accidental, suicidal, homicidal. And sometimes we
3 can't determine, so we say undetermined.

4 Q Doctor, how many autopsies have you performed?

5 A Over 14,000.

6 Q How many times have you had an opportunity to testify
7 as an expert in forensic pathology in a court of law?

8 A Over 200 times.

9 MR. HUBBARD: Your Honor, at this time I offer Dr.
10 Ross as an expert in forensic pathology.

11 MR. YOUNG: No objection.

12 THE COURT: No objection. And what it means, again,
13 is Dr. Ross is qualified as an expert in the field of
14 forensic pathology and can offer opinions within that
15 realm of field of expertise.

16 Q Dr. Ross, September 11th, 2014 were you asked to
17 perform autopsies on five children, the Jones' children?

18 A Yes, I was.

19 Q Now, initially when you got them, had they been
20 identified as who was who?

21 A Initially they were just labeled J Doe one, two,
22 three, four and five.

23 Q And that was the way they had been found and marked
24 from the scene, bag one, bag two, bag three, four and
25 five?

1 A Correct.

2 Q And you've since found out their identities and
3 you've included that in your reports?

4 A Yes, I have.

5 Q Looking at the first autopsy you did. Initially John
6 Doe number one, Elias Jones?

7 A Yes.

8 Q Can you tell us what you did in your -- do you do an
9 external examination and then do an internal one?

10 A Yes.

11 Q Can you tell us how you received the body of Elias
12 Jones and what you did?

13 A Yes. This patient was in two black body bags that
14 were zip tied with a yellow tag. But the bags themselves
15 had been torn, consistent with animal eating. And so, we
16 opened the bags and saved those for SLED.

17 Q Then examining Elias' body, how tall was he?

18 A He measured 45 inches in height.

19 Q What else did you note in your external examination?

20 A He was clothed in a short-sleeved shirt which had
21 Saxe Gotha Elementary logo on it, a pair of size medium
22 shorts and a pair of Forte white underwear. And he had a
23 lot of decomposition changes, including skin
24 discoloration, the skin gets darker; skin slippage, the
25 surface of the skin starts sloughing off. Some tissue

1 loss, and that could be from animal eating. Some maggot
2 activity, so indicating that flies were able to get to the
3 patient and lay eggs. Then generally there was
4 significant decomposition changes.

5 Q Dr. Ross, about decomposition. If any human body is
6 placed -- a deceased person is placed in a black bag and
7 left out to the elements on hot sunny days for several
8 days, does that expedite that decomposition or does it
9 slow it down, or does it have any effect?

10 A Yes. Temperature is a tremendous influence on
11 decomposition. If you're in the sun, especially in a
12 black bag if it's a sunny day and a hot day, it's going to
13 speed up the process.

14 Q So the condition of the body when originally put in
15 the bag may not be exactly what it was when you see it
16 without a bag?

17 A Correct.

18 Q Now, as far as -- let me ask you this. I'm going to
19 show you State's ID 172. Can you identify this?

20 A Yes. This is a rough sketch, diagram of the patient
21 with my writing to indicate notes of what I'm going to
22 dictate on the case.

23 MR. HUBBARD: I'd offer this into evidence.

24 MR. YOUNG: Without objection.

25 THE COURT: State's 172?

1 MR. HUBBARD: Yes, sir.

2 THE COURT: Without objection?

3 MR. YOUNG: Yes, sir.

4 THE COURT: 172's in.

5 (Whereupon, State's Exhibit number 172 was admitted
6 into evidence.)

7 Q Looking at 172, the diagram, is that a preexisting
8 diagram you use in multiple cases?

9 A Yes.

10 Q And what's the purpose of your notes that you see
11 there?

12 A Just to give me an idea of what to dictate and where
13 certain features were present. For instance, I put down
14 there is light brown hair. The eye color could not be
15 told. The teeth are natural.

16 Q Is that describing right here up at the top on 172?

17 A Yes. And then --

18 Q What is this portion right here, Doctor?

19 A That's an area -- I'm sorry.

20 Q I'm sorry.

21 A An area where there was tissue loss.

22 Q His hand right here. There's a note you have right
23 there?

24 A I'm sure you can't read my writing. Skeletonization.
25 That means that the soft tissue was eaten off the bones,

1 exposing the bones of the hand and wrist.

2 Q Then you have some other notes down here at the
3 bottom of the diagram.

4 A That's generally what I found as far as decomposition
5 goes. Skin discoloration, skin slippage, tissue loss,
6 maggots and malodor.

7 Q Malodor meaning it smelled?

8 A Yes.

9 Q Doing an internal examination what, if anything, did
10 you find?

11 A Well, the internal organs were decomposed --
12 decomposing also, but you could identify if there's any
13 like congenital heart disease or tumors, which there were
14 not. There was no natural disease. But in the neck we
15 found a fracture of the hyoid bone. The hyoid bone sits
16 above the larynx, the voice box, and it's kind of free
17 floating. It's held -- held on with muscles and tendons.
18 And that's one area where -- one bone where we can see a
19 fracture and is evidence of strangulation. In these kind
20 of cases where there's decomposition we x-ray the whole
21 body. The hyoid bone is so small you can't see it in a
22 major skeletal survey. But we did not see any other
23 fractures, but we did find, in holding it and looking at
24 it directly, a fracture of that bone.

25 Q You made a note that you're looking for also just

1 like congenital defects or other issues that Elias Jones
2 might have had. Did you find any other physical issues
3 with him that might show he was anything other than a
4 healthy boy?

5 A No, I did not.

6 Q So is it your opinion, based on a reasonable degree
7 of medical certainty that prior to his death he was a
8 healthy young boy?

9 A Correct.

10 Q His stomach. Were there any contents in his stomach?

11 A No.

12 Q Did you, with a reasonable degree of medical
13 certainty, determine the cause of death for Elias Jones?

14 A Yes.

15 Q What was that?

16 A That was asphyxia due to strangulation.

17 Q Asphyxia is what, Doctor?

18 A Is lack of oxygen. So it will decrease the blood
19 flow to the brain and cause a lack of oxygenation to the
20 brain.

21 Q Brought on by strangulation?

22 A Yes.

23 Q We talked about the manner of death where you had
24 undetermined accident, natural cause, suicide and
25 homicide, what did you classify this manner of death?

1 A A homicide.

2 Q How about you turn to Merah Jones, Jane Doe number
3 two. Did you do any external on her and report how she
4 was presented to you?

5 A Yes. She was received also in -- well, within four
6 plastic bags, which had yellow ties on them. And those
7 bags were also torn. She was inside a sleeping bag, but
8 she, her body was not clothed.

9 Q She was nude?

10 A Correct.

11 Q You say the bags were torn. Did it look like maybe
12 one of the investigators tore it, or how did it look to
13 you?

14 A It was irregular like animal chewing.

15 Q Looking at her body as it was presented to you, was
16 it consistent with animal activity?

17 A Yes. There was some tissue loss and, again, some
18 maggot activity indicating that the fact that flies could
19 get inside.

20 Q I'm going to show you what's been marked State's 173
21 for ID and see if you recognize this chart?

22 A Yes. It's a diagram of this -- Merah Jones at the
23 time of autopsy.

24 MR. HUBBARD: I offer this into evidence, Your Honor,
25 as 173.

1 MR. YOUNG: Same as --

2 MR. HUBBARD: Same diagram.

3 MR. YOUNG: No objection.

4 THE COURT: 173 without objection, a sketch of the
5 autopsy.

6 MR. HUBBARD: Thank you, Your Honor.

7 (Whereupon, State's Exhibit number 173 was admitted
8 into evidence.)

9 Q Doctor, can you see your sketch on the board, 173?

10 A Yes.

11 Q And again, looking at it. Looking at the front of
12 the face you have a notation on the face. What is that?

13 A That's tissue loss, which --

14 Q And you have notes on the side of that as well. What
15 are those?

16 A She had long brown hair and natural teeth.

17 Q Do you see there's a note right in the middle here.
18 What is that?

19 A That's tissue loss over the sternum.

20 Q The sternum is the area you have marked in the middle
21 of the chest?

22 A Yes.

23 Q Now, looking at, I guess, what would be the left
24 hand, what notations did you make as to the left hand and
25 arm?

1 A The left hand is absent. There's some tissue loss on
2 the left forearm, and in the -- there's tissue loss in the
3 right forearm, lower forearm and the hand.

4 Q The tissue loss on the right hand and arm, tissue
5 loss on the left arm, and then the left hand, the left
6 hand is missing?

7 A Correct.

8 Q And what do we see in your notations down on the
9 legs?

10 A There's tissue loss just above the right knee.

11 Q And what is this?

12 A That's decomp.

13 Q And again, if Merah Jones were placed in a black bag,
14 or any human being, three black bags I think you -- you
15 said four?

16 A Four, yes.

17 Q Four. For several days in the hot sun, would that
18 have increased the level of decomposition?

19 A Yes.

20 Q And in this case there's also animal activity?

21 A Correct.

22 Q On the internal examination, was her stomach full or
23 not?

24 A It was empty.

25 Q As far as the -- I think that is -- I may

1 mispronounce it. Musculoskeletal system?

2 A Yes.

3 Q What finding did you have there?

4 A There was what looked like a blood clot on the
5 surface of the sternum which, because of decomposition,
6 was difficult to identify if there was any pattern or not,
7 so it may or may not represent some kind of blunt force
8 injury there.

9 Q Doctor, on a small child, in a case if you had a
10 strangulation, have you ever seen trauma to the sternum
11 area, even the clavicle area during strangulation?

12 A Well, small children are elastic more than I am, and
13 to cause asphyxiation on a child or a small person it
14 could be pressure around the neck or it can be enough
15 pressure on the chest to hold the person down and not
16 allow breathing to take place so the chest cannot expand.
17 And that can cause asphyxia.

18 Q Did you find any broken bones in the neck?

19 A No.

20 Q Now, Doctor, can you have a case of strangulation
21 where there is no broken neck bones?

22 A Yes.

23 Q And in a case where you had advanced decomposition
24 will you always be able to find physical signs of
25 strangulation?

1 A No, I couldn't -- would not.

2 Q But you can't rule it out?

3 A Correct.

4 Q Doctor, let me ask you. I didn't ask you with Elias
5 Jones. When someone is strangled how long does it take?

6 A Strangulation causes lack of blood supply getting to
7 the brain, and also interferes with brain -- with blood
8 draining from the brain. So there's a lot of pressure on
9 the brain, and that causes unconsciousness within seconds.
10 About eight seconds. We witness this directly in films,
11 so we know that for a fact. But you have to maintain that
12 pressure for three to five minutes to cause total brain
13 death.

14 Q Doctor, if somebody passes out in a matter of eight
15 seconds, if you release that pressure, is it possible for
16 that person to revive?

17 A Yes. Within a certain amount of time, yes.

18 Q So in order to kill a person, a child, is it your
19 testimony that somebody has to maintain that pressure for
20 three to five minutes?

21 A Correct.

22 Q Were there any -- well, let me ask you this. To a
23 reasonable degree of medical certainty did you reach a
24 conclusion as to the cause of Merah Jones' death?

25 A Yes.

1 Q What was that?

2 A Some homicidal violence. It was a homicide in some
3 -- by way of some type of violence.

4 Q So violence that brought about a homicide?

5 A Correct.

6 Q The manner of death, what did you conclude?

7 A Homicide.

8 Q Now I want to talk to you about John Doe number three
9 which is Gabriel Jones. Again, can we go through how did
10 he present to you? When he was brought, how was he
11 presented?

12 A He was in three black plastic bags which were open,
13 and I was told they were open at the scene. The bags
14 themselves were not torn.

15 Q So no animal activity?

16 A Correct. He was wrapped in a comforter and a pink
17 sheet. He had on a pair of underwear, which I couldn't
18 see the size on. But loosely in the bag also were an
19 adult sized shirt with partial bleaching appearance.
20 There was also a pair of child's female type underwear
21 with purple trim and a Hello Kitty pink diary. The
22 underwear had purple trim, and there was also a diary or
23 journal that was from Hello Kitty. He was 36 inches in
24 height. He also had -- there was also a wet diaper in the
25 bag, but not on him.

1 Q So this bag had not only Gabriel Jones, but other
2 items were placed in the bag?

3 A Correct.

4 Q The, like girl's underwear and a diary, among other
5 things?

6 A Yes.

7 Q How did he present to you? How did he look on your
8 external examination?

9 A He had decomposition changes. Skin discoloration,
10 slippage. There was no maggot activity. And also, again,
11 because of the decomposition, we did full body x-rays and
12 found no fractures. But on the right side of the neck
13 were -- was an impression that was kind of why, included
14 two parallel lines on it, on the side of the neck.

15 Q I'm going to show you what's been marked State's ID
16 174 and see if you can identify this diagram.

17 A Yes. That's the diagram I made at the time of
18 autopsy.

19 Q And this is on Gabriel Jones?

20 A Correct.

21 MR. YOUNG: No objection.

22 THE COURT: Without objection.

23 (Whereupon, State's Exhibit number 174 was admitted
24 into evidence.)

25 Q Looking at State's 174, Gabriel Jones. Now, you

1 mentioned something about the neck. What was that?

2 A It was hard to show on the diagram. It was mostly on
3 the right side of the neck underneath the ear and
4 underneath the mandible. The jaw bone. There were two --
5 two parallel lines there.

6 Q What is that indicative of or consistent with?

7 A It was an impression that could be a type of
8 ligature. Something that was a little bit wide, like a
9 belt or a sash or something.

10 Q I want to show you what's already been placed into
11 evidence. State's 168, a black belt. Would a belt like
12 this be consistent with the ligature marks you see on
13 Gabriel Jones' neck?

14 A Yes, something like that would be consistent.

15 Q And, Doctor, describing the ligature marks, how -- do
16 the lines run together, or how did those lines run?

17 A They were parallel for some distance and then they
18 came together underneath the chin, and then they
19 disappeared.

20 Q This was on the right side?

21 A Correct.

22 Q So did they cross one another?

23 A No.

24 Q Did they run parallel?

25 A Parallel.

1 Q Doctor, if you look at your report, I think you said
2 they weren't parallel.

3 A Oh, they--

4 Q -- on the external examination. I know it's been a
5 long time.

6 A Yeah. They, okay, I'm sorry. Yeah. They do -- they
7 come close and cross underneath the chin, and then widen
8 out. So it came to like a V.

9 Q Which would be consistent with cinching?

10 A Yes.

11 Q Now, as to the lower extremities, do you see anything
12 in your report or did you note anything in your report
13 about how he presented as far as his -- particularly his
14 right leg?

15 A Yes. The right leg was disarticulated at the knee,
16 which means the knee joint was cut into and separated, so
17 that the right calf and foot were separate from the right
18 upper right thigh.

19 Q When you say that, would -- could this be describing
20 the leg going back up towards the body? Up to the torso,
21 where the foot instead of down next to the other foot as
22 you see in the diagram, would it have been facing up
23 towards the face?

24 A Well, when we opened the bag, yes, the patient was
25 face down and you could see the foot coming up underneath

1 his arm basically. So it was not aligned correctly. But
2 the incision in the soft tissue was consistent with a
3 sharp instrument.

4 Q Was his stomach full or not full?

5 A It was empty.

6 Q With a reasonable degree of medical certainty, did
7 you determine a cause of death for Gabriel Jones?

8 A Probable strangulation.

9 Q Homicidal violence with probable strangulation?

10 A Yes.

11 Q Okay. More than likely strangulation?

12 A Strangulation, yes.

13 Q And manner of death?

14 A Homicide.

15 Q And move on to Jane Doe number four, Abigail Jones.

16 A Yes. She was received in two plastic bags which were
17 open at the scene and were not torn. There were two
18 sheets around the body which were blue and with
19 multicolored patterns. There was a piece of paper in
20 there from Kangaroo Express.

21 Q Is that like a receipt?

22 A Yes. It's difficult to read because of the fluid on
23 it. And she was wearing a diaper. She was 30 inches in
24 height.

25 Q I'll show you what's been marked State's 175 for ID.

1 It's another diagram. Do you recognize this?

2 A Yes. That's the diagram from the autopsy, Jane Doe
3 number four.

4 MR. HUBBARD: I offer this into evidence.

5 MR. YOUNG: No objection.

6 THE COURT: 175 is in evidence with no objection.

7 (Whereupon, State's Exhibit number 175 was admitted
8 into evidence.)

9 Q Dr. Ross, looking at this diagram, 175, of Abigail
10 Jones what, if any, findings do you have or notations did
11 you make on your diagram?

12 A That she had long brown hair. There's a question
13 mark on eyes. In other words, you couldn't see what eye
14 color it was because of the cloudiness. The teeth were
15 natural. And otherwise don't -- on the bottom, generally
16 the decomposition changes, including skin discoloration,
17 skin slippage and malodor. No maggots.

18 Q How tall was she?

19 A Thirty inches.

20 Q Did you do an internal examination as well?

21 A Yes.

22 Q How was her hyoid bone?

23 A It was intact.

24 Q The rest of her organs to the extent that you could
25 tell?

1 A No evident natural disease.

2 Q Her GI tract, stomach?

3 A Her stomach was empty.

4 Q To a reasonable degree of medical certainty did you
5 determine a cause of death?

6 A Yes.

7 Q What was that?

8 A Homicidal by violence.

9 Q And manner of death?

10 A Homicide.

11 Q I'm going to ask you about Abigail Jones. Again, you
12 note the decomposition. Do you see any outward signs of
13 strangulation?

14 A No.

15 Q But you can't rule that out?

16 A Correct.

17 Q And is that why your cause of death is homicidal
18 violence?

19 A Yes.

20 Q Just as it was for Merah Jones?

21 A Correct.

22 Q Now I want you to look at John Doe number five.

23 A Yes.

24 Q Which is Nahtahn Jones. How did he present to you?

25 A He was in -- wrapped in two black plastic bags that

1 were open at the seam but they were not torn. He was
2 covered with a comforter which had a design of Ninja
3 Turtles. He was 43 inches in height.

4 Q Did you determine his hair and eye color?

5 A Yes. He had brown hair. Could not tell what color
6 the eyes were.

7 Q Doctor, decomposition, is it safe to say the eyes
8 sometimes decompose more quickly than other parts of the
9 body?

10 A Well, in decomposition it dehydrates and the fluid in
11 your eyes evaporates basically and the eyes collapse and
12 the -- the cornea, the outside of the eye, becomes cloudy.
13 So it's difficult to identify color.

14 Q And looking at him externally, did you see any other
15 -- make any other findings?

16 A He had some tissue loss also on his left lower thigh
17 area right above the knee and exposing the bone there, and
18 in the bone it looked like a -- what we call an incised
19 wound. A wound made by a sharp instrument consistent with
20 a saw.

21 Q I'll show you what's been marked State's ID 176. Is
22 this the diagram you used with Nahtahn Jones?

23 A Yes.

24 MR. HUBBARD: I offer this into evidence.

25 MR. YOUNG: No objection.

1 THE COURT: No objection.

2 (Whereupon, State's Exhibit number 176 was admitted
3 into evidence.)

4 Q Doctor, in looking at this diagram, the notations you
5 have around the head area, what -- what do those say?

6 A Brown hair and natural teeth.

7 Q And then looking at -- it looks like his left elbow.
8 What is that--

9 A -- yeah. The back of the left elbow there was some
10 tissue loss there. I couldn't tell from what.

11 Q Could you tell whether it was before he died or after
12 he died?

13 A No.

14 Q Did you make that notation?

15 A Correct.

16 Q The knee. What did you see with the knee?

17 A There's some tissue loss there exposing the
18 underlying bone. Thigh bone. The lower part of it, which
19 showed that incised wound as I described.

20 Q That a sharp instrument had been used?

21 A Yes.

22 Q The notes you have over on the other side of the
23 diagram, what does that say?

24 A That's the, it says, that refers to the wound in the
25 left femur. Incised wound, left femur.

1 Q Doctor, when you do autopsies do you also take
2 photographs?

3 A Yes.

4 Q And document what you're doing?

5 A Yes.

6 Q To document your findings?

7 A Yes.

8 Q I'd like to show you just one photograph. Doctor,
9 State's 177 for ID. What is this?

10 A That's the left knee. It's number five, Nahtahn
11 Jones.

12 Q Nahtahn?

13 A Nahtahn Jones, yes.

14 Q And does this show where the sharp object cut?

15 A Yes.

16 MR. HUBBARD: Your Honor, I offer this into evidence.

17 MR. YOUNG: Subject to previous objections.

18 THE COURT: Subject to the objection, 177 will be
19 admitted.

20 (Whereupon, State's Exhibit number 177 was admitted
21 into evidence.)

22 MR. HUBBARD: Your Honor, if I may ask Dr. Ross to
23 step down --

24 THE COURT: You may.

25 MR. HUBBARD: -- so I can have you assist me publish

1 this State's 177.

2 (Whereupon, the witness stepped down from the witness
3 stand.)

4 Q Doctor, if we can, if we can work on this half of the
5 jury and then we will walk down to the second half so they
6 can see.

7 A Yes.

8 Q Looking at State's 177, what are we looking at?

9 A Okay. First of all, when I take the photograph at
10 the time of autopsy, I put the number such that the head
11 is above that number. So this indicates, this is the left
12 knee. This is the knee joint itself. This is the exposed
13 thigh bone femur. And right here, this dark area, is just
14 a wound on the surface.

15 Q Is that -- where is the cutting or tool marks you
16 saw?

17 A Right there. (Witness indicated.)

18 Q That dark area?

19 A Yes.

20 Q If we can step down here.

21 A So the number shows the head this way, the foot is
22 this way, the knee joint is right here, this is end, end
23 of the femur.

24 Q Thank you, Doctor.

25 (Whereupon, the witness returned to the witness

1 stand.)

2 Q Doctor, as to Nahtahn Jones, to the extent that you
3 are able, did you determine whether he had any preexisting
4 physical defects or if he was an otherwise healthy
5 six-year-old boy?

6 A He had no evident natural disease.

7 Q So he was an otherwise healthy six-year-old boy?

8 A Yes.

9 Q And you also had the benefit of information from a
10 pediatrician who had seen him?

11 A Yes. From -- records from 2012, I believe.

12 Q In review of that, would you say he was a healthy boy
13 at that time as well?

14 A That was the indication, yes.

15 Q As to his stomach contents, did you find any contents
16 in his stomach?

17 A Yes. He had about 50 CCs, about a cup full of brown
18 food with -- the only thing I could identify maybe is some
19 -- possibly a part of a red cherry.

20 Q Of all the children, he was the only one you found
21 some food substance in the stomach?

22 A Correct.

23 Q Doctor, let me ask you a little bit more, and ask you
24 about physical exertion. Is it possible to kill a young
25 child by physical exertion?

1 A Yes. Children in particular will dehydrate faster
2 than adults because they have a larger body surface than
3 the body mass. So they lose fluid quicker than adults.
4 So, you know, if you're working, exercise and whatever,
5 physical activity for a lengthy period of time, then you
6 can lose enough fluid to become dehydrated.

7 Q Would there be any physical signs to an observer that
8 the child was in danger?

9 A They start to become weak and maybe disoriented and
10 eventually become unconscious.

11 Q Does that happen quickly or is it over time?

12 A It depends on the situation and the history of the
13 patient. But it would take, you know, several minutes.
14 Many minutes, maybe 20, maybe 15, 20, hard to say.

15 Q When a child is just in dire straights?

16 A Yes.

17 Q Now, Doctor, as to Nahtahn, was his state of
18 decomposition, did that impair your ability to determine
19 whether strangulation was a possibility?

20 A Yes, it did.

21 Q Can you rule out strangulation?

22 A No.

23 Q And again, with strangulation, is it possible to
24 strangle a human being, a child, and not break any bones?

25 A Correct, yes.

1 Q And in a case of all these children, the level of
2 decomposition, that made that determination difficult by
3 looking at the skin?

4 A Yes.

5 Q What was your, to a reasonable degree of medical
6 certainty, cause of death for Nahtahn Jones?

7 A Again, homicidal violence.

8 Q So this was not a natural death?

9 A No.

10 Q Manner of death, how did you rate this?

11 A Homicide.

12 Q Doctor, there was testimony of muriatic acid being
13 found in the car, an empty bottle. If that had been
14 placed on a body, would you have been able to tell due to
15 the level of composition?

16 A No. That's quite a weak acid, but still, whether
17 burn skin or not, I wouldn't be able to tell.

18 Q So whether it was used or not, the level the
19 decomposition by the time these children ended up in your
20 presence you would not be able to determine it?

21 A No, I cannot.

22 Q As to Nahtahn Jones, cause of death, homicidal
23 violence, is that the same as your findings for Abigail
24 and Merah Jones as well?

25 A Yes.

1 Q And again, if there was any physical abuse, hitting,
2 spanking, would decomposition make that hard to detect?

3 A Absolutely. I couldn't tell bruises.

4 Q And that's true for all these children?

5 A Yes.

6 Q It's true for Nahtahn Jones?

7 A Yes.

8 Q Your conclusion as to him is homicidal violence?

9 A Yes.

10 MR. HUBBARD: Doctor, I believe that's all I have at
11 this time. Thank you.

12 CROSS-EXAMINATION

13 By Mr. Young:

14 Q Good morning, Dr. Ross.

15 A Good morning.

16 Q Dr. Ross, were you able to determine or asked to
17 determine time of death?

18 A No.

19 Q Were you told or was it relayed to you that the
20 probable time of death was around August the 28th?

21 A Yes.

22 Q And was that consistent with the level of
23 decomposition that you observed on September the 11th?

24 A There's no magic way of telling how long somebody's
25 been dead by looking at decomposition because it's so

1 related to the situation, the temperature. The
2 temperature of the patient before they died, all kind of
3 situations.

4 Q There was nothing inconsistent with what had been
5 reported to you in your findings saying, well, no, it
6 wasn't the 28th, it was the 6th.

7 A Correct, nothing inconsistent.

8 Q You knew that they had -- that it had been reported
9 to you that the bodies of the children had been in a car
10 during the summer driven around the Southeast for about
11 nine days?

12 A Yes.

13 Q And that then they were placed in garbage bags and
14 put out in the woods, right?

15 A Yes.

16 Q At the time of your autopsy you knew that Timothy
17 Jones had reported that he had -- did not know how Nahtahn
18 had died?

19 A Yes.

20 Q That he has exercised him and that he had died?

21 A Correct.

22 Q And your testimony today is that that's possible?

23 A Correct.

24 Q There's nothing inconsistent with what you found and
25 what Tim says happened?

1 A Correct.

2 Q And as a matter of fact, the issue with Nahtahn
3 having food in his digestive tract sort of indicates that
4 he did die at some time before the other four children?

5 A Either then or with exercise or stress sometimes your
6 GI tract, your intestinal tract will slow down and not
7 process food. So it's either -- either he ate later than
8 the other kids or his stress level was such that the
9 stomach -- the food stayed in his stomach.

10 Q And none of the other children had anything in their
11 stomach?

12 A That's correct.

13 Q And that could be because they were killed later?

14 A Could be, yeah.

15 Q You did full body x-rays of all of the children
16 involved?

17 A Yes.

18 Q There were no old fractures, old breaks, old
19 indications that they'd been abused or anything like that?

20 A No, there were not.

21 Q Dr. Ross, I'm going to show you what's been marked as
22 Defendant's Exhibit No. 114 through 118 and ask you if you
23 recognize those.

24 MR. HUBBARD: Your Honor, for clarification, I need
25 to know if these are her documents or are these somebody

1 else's.

2 A These are the forms -- in this State the coroner
3 signs death certificates. This is a form from the autopsy
4 where we put down what we think should be put. And I
5 think the one on Nahtahn was later amended.

6 Q It was later amended. Is that your signature on
7 these documents?

8 A Yes.

9 THE COURT: What are they again?

10 MR. YOUNG: They're cause of death certificates.

11 Q Is that what these are?

12 A Yes.

13 MR. YOUNG: Your Honor, at this time the Defense
14 would offer 114 through 118 into evidence.

15 MR. HUBBARD: I would object to the one that was
16 later admitted. I have no objection to the, the one that
17 was amended. She said she amended it.

18 MR. YOUNG: She can talk about how she amended it
19 later. But this is the one she signed and this is the one
20 that was turned over to us in discovery.

21 THE COURT: Okay. That is one--

22 MR. YOUNG: -- this is the only ones I have. I
23 haven't seen another one that was amended.

24 MR. HUBBARD: I object to it. If there's an amended
25 one, I think the final one would be --

1 THE COURT: All right. Let's see if we can find the
2 amended one also.

3 THE WITNESS: I don't have -- I don't have a copy of
4 it.

5 MR. HUBBARD: I tell you what, Your Honor. I'll
6 speed it up. If he wants to put those in, that's fine.
7 I'll just handle it on redirect.

8 THE COURT: Fair enough. So 114 admitted subject to
9 the one on Nahtahn, whichever one that is, the witness had
10 noted that she recollected it had been amended by her.
11 And that's not a part of these yet. So these are in.

12 MR. YOUNG: These are in.

13 MR. HUBBARD: Yes, sir.

14 (Whereupon, Defendant's Exhibit numbers 114 through
15 118 were admitted into evidence.)

16 Q Dr. Ross, I have up here Defendant's number 114. Can
17 you see it from there?

18 A Yes.

19 Q Okay. And that's Elias where you said immediate
20 cause of death, asphyxiation, manual strangulation, right?

21 A Yes.

22 Q And that was because he had the broken hyoid and that
23 was consistent with his report that he had strangled
24 Elias, right?

25 A Yes.

1 Q On 115, this is the cause of death for Merah Jones?

2 A Yes.

3 Q In this one you listed possible strangulation, right,
4 as the immediate cause of death?

5 A That should be -- that should be Gabriel.

6 Q Does it say Merah at the top of it?

7 A It does there, but --

8 Q Does it say white female?

9 A I don't have copies of those, but I think those were
10 --

11 Q Well, can you see right here the autopsy number,
12 FA14679?

13 A Correct. That's Merah. But that's -- I think these
14 were all corrected afterwards.

15 Q So that's Merah, right?

16 A These were printed out at the time of autopsy, and
17 then later reviewed and corrected.

18 Q And this is your signature right here, right?

19 A Yes.

20 Q So you signed it?

21 A Yes.

22 Q So it says possible strangulation?

23 A Yes.

24 Q And it has Merah's name?

25 A Yes.

1 Q And this FA14679, that's the number that was used for
2 Merah's autopsy, correct?

3 A Right.

4 Q And at that time you said probably strangulation
5 because it was -- you didn't have any injuries, right?
6 You didn't have any other cause of death?

7 A That's correct.

8 Q Other than what Tim Jones reported to law enforcement
9 that he had strangled them?

10 A Well, at that time I didn't know that, I don't think.
11 I found out afterwards.

12 Q I thought earlier when I was asking you questions you
13 knew that Tim had reported that he had exercised Nahtahn
14 and said that he had fallen down and that he had strangled
15 the other four children?

16 A I can't remember when I heard that.

17 Q So your testimony earlier may have been incorrect --

18 A Correct.

19 Q -- and you didn't know that at the time of the
20 autopsy?

21 A I'm not sure if I did or not.

22 Q Defendant's Exhibit number 116, it says for Gabriel
23 Jones, that his cause of death was probable strangulation,
24 right?

25 A Correct.

1 Q Now, in Gabriel's case you testified that he had some
2 marks on his neck and they were consistent with
3 strangulation, right?

4 A Correct.

5 Q And you also may or may not have known that Tim had
6 reported strangulation?

7 A Correct.

8 Q Defendant's Exhibit 117. This is Abigail Jones and
9 you listed probable strangulation as the cause, correct?

10 A Yes.

11 Q And here again, you didn't have any evidence during
12 the autopsy that it was strangulation other than what Tim
13 Jones had reported to law enforcement, correct?

14 A Correct.

15 Q Now, on Defendant's Exhibit number 118, this is for
16 Nahtahn?

17 A Yes.

18 Q And in this immediate cause you said could not be
19 determined, correct?

20 A Yes. And that was changed to homicidal violence
21 afterwards.

22 Q Changed by you, the coroner?

23 A Both of us.

24 Q And this is your signature on this document?

25 A Yes.

1 Q So at the time that you did the autopsy you said you
2 can't determine it?

3 A Correct.

4 Q And you later changed it to homicidal violence?

5 A Correct.

6 Q I'm going to show you what's been marked as
7 Defendant's Exhibits numbers 113 -- sorry. They're out of
8 order. I'm going to show you what's been marked for ID as
9 Defendant's Exhibit numbers 109 through 1 -- my apologies,
10 13, and ask you if you recognize those.

11 A Yes.

12 Q Are those pictures that you took during the course of
13 your autopsy?

14 A Yes.

15 Q Is one of the picture's of Elias as he was at the
16 time that you got him for autopsy?

17 A Correct.

18 Q Is one of the pictures of Merah Jones, and that is
19 number 110, I think?

20 A Yes.

21 Q And number 109 is a picture of Merah Jones as she was
22 at the time of the autopsy?

23 A Yes.

24 Q Number 111 is a picture of Gabriel Jones as he was at
25 the time of the autopsy?

1 A 109 is Merah Jones, 679.

2 Q Can you just go through it and identify each one of
3 those?

4 A Okay. 110 is case number 678 which is Elias Jones.
5 Exhibit 109 is case number 679 which is Merah Jones. 112
6 is our case number 680, Gabriel Jones. 113 is our case
7 number 681, Abigail Jones. And number 111 is 682, Nahtahn
8 Jones.

9 MR. YOUNG: Your Honor, at this time I'd offer
10 Defendant's Exhibit numbers 109 through 114 into evidence.

11 THE COURT: Subject to the in-camera hearing, the
12 Court is not going to allow introduction at this time.

13 MR. YOUNG: Beg the Court's indulgence.

14 Q Doctor, I have just a couple more questions about --
15 and I'm referring back to the autopsy of Gabriel Jones,
16 FA14680.

17 A Yes.

18 Q You had talked about his lower leg being
19 disarticulated --

20 A Yes.

21 Q -- during your direct examination. Did you have --
22 you have your report in front of you?

23 A Yes.

24 Q At the time you wrote your report you said that both
25 the knees were intact with no evidence of sawing, right?

1 A Correct.

2 Q The soft tissue, much decomposition and it is
3 difficult to identify whether this injury is pre-mortem or
4 post-mortem, is that correct?

5 A Correct.

6 MR. YOUNG: Thank you, Dr. Ross. Those are all the
7 questions I have.

8 MR. HUBBARD: A few follow-up.

9 REDIRECT EXAMINATION

10 By Mr. Hubbard:

11 Q Defense exhibits 114, 115, 116, 117 and 118. Going
12 through those, did you find some of these are not accurate
13 with your final conclusions?

14 A Yes. Those are printed out at the time of autopsy.
15 And after review, and after review with my colleagues,
16 this situation and how the death certificate should be
17 summarized, since those -- two of them had evidence of
18 probable strangulation. The others didn't have any
19 indication of injury, but a lot of decomposition changes.
20 And the term used by most medical examiners is homicidal
21 violence. That's why homicidal violence was on the
22 subsequent death certificate.

23 Q Well, going through these, 114 is as to Elias where
24 before you had had strangulation. Homicide by
25 strangulation?

1 A Yes.

2 Q Here it has manual strangulation. Did you see any
3 ligature marks?

4 A No.

5 Q Now, looking at 115, which is Merah Jones. Here it
6 says probable strangulation. That wasn't your ultimate
7 conclusion, was it?

8 A No, it was not.

9 Q It was homicidal violence?

10 A Yes.

11 Q As to 116 which is Gabriel Jones, had probable
12 strangulation. Now is it correct you had homicidal
13 violence, probable strangulation?

14 A Yes.

15 Q And he's the child that -- the two-year-old that had
16 the ligature marks on his right neck and jaw?

17 A Correct.

18 Q Abigail, the one-year-old, which is Defendant's
19 Exhibit 117, it says probable strangulation. Did you find
20 any broken bones, hyoid bones or any bruising around the
21 neck for probable strangulation?

22 A Not specifically, but with decomposition couldn't
23 tell if there were contusions, bruises or not.

24 Q So how did you rule her death, the cause?

25 A In the end, homicidal violence.

1 Q Homicidal violence. And Nahtahn, which is 118, which
2 said could not be determined, you did make a conclusion on
3 that. You just talked with your colleagues and you all
4 looked at this one hard, correct?

5 A Yes.

6 Q You had other factors to consider like physical
7 exertion and things that were presented to you as
8 possibilities that might lead to death?

9 A Yes.

10 Q But is it fair to say no matter what, you had to look
11 at a child that was in a heavy state of decomposition?

12 A Correct.

13 Q So your conclusion was homicidal violence?

14 A Yes.

15 Q So Nahtahn Jones, Abigail Jones and Merah Jones all
16 had the same conclusion, homicidal violence?

17 A That's correct.

18 Q And as for manner of death you had homicide for each
19 one?

20 A Yes.

21 Q Specifically as to Nahtahn, the issue about accident,
22 did you project accident as to Nahtahn Jones and determine
23 his manner of death?

24 MR. YOUNG: Objection,--

25 THE COURT: She's a forensic pathologist expert. She

1 is an expert, she can answer, opinion. Rephrase it,
2 please.

3 Q You had as a possible choice for manner of death,
4 accident, for Nahtahn Jones. Did you accept that or
5 reject that?

6 A No. The definition of homicide, to me, is the death
7 of a person at the activity or inactivity of another.

8 Q So somebody subjecting somebody with either trauma or
9 not giving them help after they've been put in trauma by
10 that person, that's homicide?

11 A Yes.

12 Q So as far as manner of death, you saw no accident
13 with Nahtahn Jones?

14 A Correct.

15 MR. HUBBARD: Thank you.

16 RECROSS-EXAMINATION

17 By Mr. Young:

18 Q Everything that you observed during your autopsy --
19 autopsies was consistent with what you had been told Tim
20 Jones had told law enforcement, correct?

21 A Well, again, I don't remember when I heard what he
22 stated, but I think I probably did hear that he strangled
23 -- but other than that, we look for evidence of
24 strangulation versus something else.

25 Q Right. And as far as Nahtahn goes, the evidence was

1 consistent with him saying he exercised him until he got
2 exhausted and then checked on him and found him deceased?

3 A That's consistent, yes.

4 Q And as far as Elias and Merah, Gabriel, and Abigail
5 or Elaine, he reported to law enforcement that he had
6 strangled them, right?

7 A Yes.

8 Q Two with his hands and two with a belt, right?

9 A I didn't hear that exactly.

10 Q Okay. But the evidence in your autopsy was
11 consistent with what he had reported to law enforcement,
12 correct?

13 A Yes.

14 Q Including the one cut on Nahthan's leg?

15 A Correct.

16 MR. HUBBARD: One just for clarification.

17 THE COURT: All right.

18 REDIRECT EXAMINATION

19 By Mr. Hubbard:

20 Q As to Nahtahn, did you also determine--

21 MR. YOUNG: One second. Thank you.

22 Q But it is also your testimony you can't rule out
23 strangulation for all five children?

24 A Correct.

25 Q Including Nahtahn?

1 A Right.

2 MR. HUBBARD: Thank you.

3 THE COURT: You may step down.

4 MR. YOUNG: Your Honor.

5 THE COURT: Yes.

6 MR. YOUNG: We need to put some stuff on the record
7 outside the presence of the jury.

8 THE COURT: Okay. It's time for a break anyway.
9 That will work. You may step down.

10 (Whereupon, the witness stepped down from the witness
11 stand.)

12 THE COURT: Let's take a short break. You all step
13 in the jury room and then we'll get you back in here and
14 have lunch. Don't talk about the case. We'll have you
15 back in here in a couple of minutes.

16 (Whereupon, the jury was excused from open court.)

17 MR. YOUNG: Your Honor, and I apologize. It's my
18 understanding that we just need to go through those
19 pictures that the Defense wants to offer and make those a
20 Court's exhibit. I don't know if we need Dr. Ross to
21 continue to testify. I think she's identified them
22 enough.

23 THE COURT: You've got them marked for identification
24 as your Exhibit numbers, 109 through 114.

25 MR. HUBBARD: And I think she identified them on the

1 stand when I showed them to her.

2 MR. YOUNG: I think she did too.

3 MR. HUBBARD: She did.

4 THE COURT: She did?

5 MR. HUBBARD: Yes.

6 THE COURT: They were actually 109 through 113 for ID
7 only.

8 MR. HUBBARD: She actually identified the name of the
9 child.

10 THE COURT: Which one by number.

11 MR. HUBBARD: Yes, sir.

12 MR. YOUNG: I just need to make one 114 -- I think
13 109 through 114 as a Court exhibit for the record.

14 THE COURT: No, no, no. 109 through 113 are the five
15 photos. 114 is in, those are starting at 114, 115, 116,
16 117 and 118 are the death certificates and those got in.

17 MR. YOUNG: Okay.

18 THE COURT: It's 109 through 113 for ID.

19 COURT REPORTER: ID for the Defense.

20 MR. HUBBARD: Your Honor, if they want to make
21 Court's Exhibits as well so that--

22 THE COURT: I think they were identified in the
23 in-camera hearing as well as on the record for the jury,
24 both times. Those group of pictures, 109 through 113.

25 MR. YOUNG: Judge, you tell me I'm protected, I'm

1 going to trust you on that.

2 THE COURT: We've said it twice. I don't think I
3 would miss it twice.

4 (Whereupon, Defendant's Exhibit number 109 through
5 113 were marked for identification only.)

6 THE COURT: I'm ready for a break. I mean, you good
7 for a break?

8 MR. HUBBARD: Yes, sir.

9 THE COURT: Okay. We'll take about 10 minutes and
10 we'll get them back in here. We have another witness
11 that's not going to be lengthy next?

12 MS. MAYES: Short witness.

13 THE COURT: Okay, that will be good. That will get
14 us close to 12:30, time for lunch.

15 MS. MAYES: Yes, sir.

16 (Whereupon, a short break was taken.)

17 THE COURT: Let's get them in.

18 (Whereupon, the jury came into open court at
19 approximately 12:59 p.m.)

20 THE COURT: Call your witness, please.

21 MR. GRAHAM: Shelby Derrick.

22 SHELBY DERRICK, being
23 first duly sworn, testified as follows:

24 MADAM CLERK: Once your seated, state your full name,
25 spelling your last, please.

1 THE WITNESS: Shelby Derrick. Last name
2 D-e-r-r-i-c-k.

3 DIRECT EXAMINATION

4 By Mr. Graham:

5 Q Ms. Derrick, back in September of 2014 where were you
6 employed?

7 A I was employed at Lexington County Sheriff's
8 Department as a crime scene investigator.

9 Q In general terms, what is a crime scene investigator?

10 A We help out with the investigation. When we're
11 notified we go to the scene location and take photographs,
12 document with notes and photographs, collect any possible
13 evidence and carry on with the investigation.

14 Q Back in 2014 how long had you been in law
15 enforcement?

16 A 2014 would have been, I think, right at nine years.

17 Q Back on September 23rd of 2014 did you do something
18 in relation to this case?

19 A I did.

20 Q Could you tell the jury what you did?

21 A I did a number of things. I actually drove to a
22 location, Atlanta, Georgia; picked up evidence, as well as
23 I did a supplement search warrant of the residence. And I
24 believe I picked up or delivered other evidence to other
25 various locations.

1 Q I'm going to show you a cell phone that's been marked
2 State's number 91 that's in evidence and ask if you
3 recognize that.

4 A I do.

5 Q Is this one of the items that you drove to Atlanta to
6 retrieve?

7 A Yes, sir.

8 Q Who did you actually get this item from?

9 A I drove to Atlanta and met with the Jackson,
10 Mississippi Division FBI Agent Bobe, I believe or is it
11 Bobe, B-O-B-E.

12 Q Bobe.

13 A Bobe. Met with them, and she transferred that
14 evidence over to me.

15 Q And where did you meet her at?

16 A It was a Marriot Hotel in Atlanta, Georgia at 2000
17 Century Boulevard.

18 Q Now, when I refer to it as State's 91 the jury
19 doesn't know what that is. So can you tell the jury what
20 that item is?

21 A This is a Samsung Galaxy Note 3 cell phone.

22 Q Now, when that item was handed to you, do you
23 remember whether it was already sealed or whether you
24 sealed it?

25 A It was already packaged and sealed.

1 Q Did you go and break the seal and go into it at all?

2 A No, sir. I just transferred -- she just transferred
3 the custody over to me.

4 Q So once it was transferred into you, at any time did
5 you ever go inside that package?

6 A No, sir.

7 Q So the security seal was on it and it was sealed for
8 the whole time you had it?

9 A Yes, sir.

10 Q At some point did you -- tell the jury what you did
11 with that item once you retrieved it?

12 A Once I gained custody, or took custody of the items
13 that were transferred, the cell phone and several other
14 items, I placed them in my vehicle that I had driven down
15 there. It was a Lexington County -- my Lexington County
16 crime scene truck, and I brought the evidence back to
17 Lexington County. At that point I believe I logged them
18 into our crime lab, because of the time. And then did the
19 paperwork to log them into our evidence room, and then
20 logged them into our evidence room.

21 Q When you logged them into your evidence room did you
22 actually turn it over physically to somebody?

23 A I did.

24 Q And do you remember who that individual was?

25 A I believe it was evidence custodian Candy Kyzer.

1 Q At any time that item was in your possession did you
2 open it up and go inside?

3 A No, sir.

4 MR. GRAHAM: Thank you, Ms. Derrick. Please answer
5 any questions that Mr. Young has for you.

6 THE WITNESS: Yes, sir.

7 CROSS-EXAMINATION

8 By Mr. Young:

9 Q Hello, Ms. Derrick.

10 A Hello.

11 Q Did you on September the 9th have occasion to go to
12 the Jones home on South Lake Drive?

13 A Hang on one second. Let me get that report.
14 September 9th?

15 Q Yeah.

16 A Yes, sir. September the 9th at about 10:15 hours,
17 which is 10:15 a.m., I went to [REDACTED] South Lake Drive.

18 Q And did you take pictures of the inside of that
19 residence?

20 A Yes, sir. I executed a search warrant in the
21 presence of -- well, at that time it was Detective
22 Sergeant Jessie Laintz, Lieutenant Laintz. Along with him
23 I took -- executed a search warrant, which basically I
24 started on the outside of the house, took photographs of
25 the exterior and in the interior and go from there.

1 Q I'm going to mark these one exhibit at a later time
2 but first I need you to look through them and see if this
3 is a copy of the pictures that you took.

4 A Okay.

5 Q And I know it might take a minute. And I have a flag
6 on a couple of them.

7 A I took -- took a few.

8 Q Does that appear to be all the pictures you took?

9 A Yes, sir.

10 Q And are they accurate?

11 A Yes, sir. They're fair and accurate.

12 MR. YOUNG: Your Honor, at this time the Defense
13 would offer Defendant's Exhibit number 119 which is the
14 pictures taken by Ms. Derrick of [REDACTED] South Lake Drive.

15 MR. GRAHAM: No objection, Your Honor.

16 THE COURT: If you're going to pull them out, I want
17 those marked as 119-A, B, C, something along those lines.
18 That way we can keep track of it.

19 MR. YOUNG: Yes, sir.

20 THE COURT: All right, fair enough. They're admitted
21 without objection.

22 (Whereupon, Defendant's Exhibit number 119-A through
23 119-C were admitted into evidence.)

24 Q Ms. Derrick, I show you what's marked as Defendant's
25 Exhibit number 119-A. Can you tell the ladies and

1 gentlemen of the jury what that is?

2 A It's a plastic drawer out of a, like a Rubber Maid
3 container with three or four drawers. It's a plastic
4 drawer with what appears to be different medication items
5 or pill bottles or different bottles of some sort, a
6 thermometer and some other items.

7 Q Does there appear to be three sort of blue different
8 packs of meds in them?

9 A There's, yeah, there's three color, blue color paper
10 bags that appear to be medication.

11 Q I'm going to show you Defendant's number 120, 121 and
12 133 for ID and ask you take a look at those. Look at the
13 picture. Do those appear to be the same?

14 MR. GRAHAM: Your Honor, I object, I would like to at
15 least see what's being offered.

16 (Whereupon, Mr. Graham looks at exhibits.)

17 THE COURT: Those are marked as 120, 121 and 133?

18 MR. YOUNG: Yes, sir. Your Honor, we would offer
19 Defendant's Exhibit numbers 120, 121 and 133 into
20 evidence.

21 MR. GRAHAM: No objection.

22 THE COURT: No objection. 120, 121 and 133.

23 (Whereupon, Defendant's Exhibit numbers 120, 121 and
24 133 were admitted into evidence.)

25 Q Can you tell the ladies and gentlemen of the jury

1 what these -- what these are?

2 A Well, they're labeled Chantix.

3 Q It's just blister packs of medication labeled
4 Chantix?

5 A Blister packs, that's what they're called.

6 MR. YOUNG: Just one second.

7 THE COURT: Sure.

8 MR. YOUNG: May we approach?

9 THE COURT: You may.

10 (Whereupon, a bench conference was held in the
11 presence of the jury but out of the hearing of the
12 jury.)

13 THE COURT: All right. We'll take a lunch break. Go
14 back to the jury room. Don't talk about the case. We'll
15 get you all back in here. It's 12:25, come back at
16 1:45p.m.

17 (Whereupon, the jury was excused from open court for
18 a lunch break.)

19 THE COURT: We had a sidebar about a picture -- a
20 photograph taken by this witness of, the books found in
21 the house. The State did not collect them. Some time
22 after that the Defense got an opportunity to go to the
23 house and collect things they needed or thought were
24 appropriate for court. And they did and they numbered the
25 things they collected and provided the State with notice

1 of what they collected. These books were among that
2 numbered, correct?

3 MR. GRAHAM: Correct.

4 THE COURT: So aside from the Defense collecting
5 these from the Jones' house, notifying the State of what
6 they collected, they've not been analyzed by the State in
7 any manner whatsoever. And so, the State hasn't
8 determined as to what's contained therein. And so, Mr.
9 Young, you had a proposal maybe of how to resolve this.

10 MR. YOUNG: Your Honor, I mean, it was Mr. Secor and
11 myself that went to the house. I'm happy for Mr. Secor to
12 testify as to the collection of them and they've been
13 maintained in my office which is locked since the time
14 they were collected.

15 THE COURT: All right. Do you plan on utilizing and
16 publishing parts of the book?

17 MR. YOUNG: Yes, sir.

18 THE COURT: In portions of your case?

19 MR. YOUNG: Yes, sir.

20 THE COURT: All right. Mr. Graham, what do you
21 think?

22 MR. GRAHAM: Your Honor, I guess my concern is if I
23 don't do -- we've never seen what's been highlighted,
24 we've never seen what's been underlined, we've never seen
25 what notations have been made in there.

1 THE COURT: Would you all like an opportunity to see
2 that? I mean, I think Mr. Young said that.

3 MR. GRAHAM: I don't -- we've never seen a copy --

4 THE COURT: No, no. Would you like to?

5 MR. GRAHAM: I would like to know -- yes, I would
6 like to see what's in there. But I would also like to
7 know which experts are going to rely on what. If each
8 book, are we talking about all six of those books, and
9 apparently there's more down on the floor. Or are we
10 talking about one of them and we're talking about a
11 certain phrase. That's what I'd like to know, is how much
12 of that's important so we can decide what our argument is
13 going to be.

14 MR. YOUNG: I think as far as contents of the book
15 and what's highlighted and underlined, I believe it's
16 mostly the Pursuit of the Godly Seed that is -- that one
17 of our Historian's relied on with regard to how Tim and
18 Amber, this is by the same author has the guy who did the
19 13 tape series.

20 THE COURT: Cassette.

21 MR. YOUNG: Yes, sir. Yes, sir. So he did a
22 cassette series that was called The Godly Home, and then
23 he did, based on that he wrote a book called The Godly
24 Seed. Tim listened to the tape set and got the book. The
25 book tells you how to raise kids. How to, the rod is

1 love. How to discipline kids. What it means for you if
2 the kids aren't disciplined as to what Denny Kenaston says
3 is appropriate. The rest of the books were sort of more
4 along the lines of aggregate where DSS noticed a large
5 number of religious items in the home during one of the
6 home visits. These would sort of go to that. And then
7 there will be testimony regarding that people with -- in
8 particular people who have schizophrenia tend to gravitate
9 toward hyper-religiosity. So most of them are aggregate.
10 I believe this, the Torah, the Hebrew-English Torah does
11 contain a note from Amber that was given to him from
12 6/29/08, "Happy anniversary. I love you." But that's the
13 only writings.

14 THE COURT: So, notes annotating the books
15 themselves.

16 MR. YOUNG: Right.

17 THE COURT: Okay. Mr. Graham, do you understand?

18 MR. YOUNG: There are annotations in The Pursuit of
19 the Godly Seed, yes, and we're going to talk about those.
20 This, other than saying Amber gave it to him on his happy
21 anniversary.

22 THE COURT: Right.

23 MR. YOUNG: But those are the only ones that --

24 THE COURT: The Godly Seed has annotations in it that
25 are follow-up to the cassette set that was in that

1 aluminum and black box that you produced earlier.

2 MR. YOUNG: And for the record, Your Honor -- I mean,
3 we talked about this earlier. But we sent the State a
4 list of all items that we took out of the home, when we
5 took them out, and we said these are available. Please
6 let us know if you want to see any of them. We brought
7 that up again at the start of the trial.

8 THE COURT: I agree with that. They just haven't,
9 didn't know what was in there. Y'all have done that.

10 MR. YOUNG: Okay.

11 THE COURT: They didn't know. Mr. Graham, I
12 understand that the one, The Godly Seed, has some
13 annotations and it will be the one that perhaps will be
14 used. Do you all want to examine that book over the break
15 or this afternoon? They're not coming today, are they?

16 MR. YOUNG: If I can't get them in through this
17 witness today then no, they won't be coming in today.

18 MR. GRAHAM: I think our position is we would object
19 to the introduction of the books. If they want to go buy
20 clean copies of all those books and put them in, that's
21 fine. If they want to have their experts testify about
22 that they saw those books and they reviewed them, as long
23 as they're not putting in the underlined passages and
24 notes on the side, then we don't have an objection to that
25 either.

1 THE COURT: I don't believe this witness can identify
2 those books other than she photographed a collection of
3 books that had to be the same six or seven books. I don't
4 believe she is the proper witness to get them into
5 evidence. I think it has to be someone else. Now, does
6 the State -- you all can look through them. If there's no
7 annotations are you all okay with them coming in later by
8 another witness, so I can help speed up the process later?
9 She's going to step down and we can finish her after
10 lunch. Is there anything else about the books?

11 MR. GRAHAM: I agree with what Your Honor said, that
12 doesn't know--

13 THE COURT: She took pictures of some books.

14 MR. GRAHAM: She took pictures of the books she saw.
15 Their experts are going to testify to what their expert is
16 going to testify. If the expert was provided those books,
17 the expert is going to say what the expert is going to say
18 about them.

19 THE COURT: The one book, the Strong Seed, has
20 excerpts in there that I think they're going to try to
21 utilize later in some fashion. I'm not going to inquire
22 any further than that.

23 MR. GRAHAM: If they want to, I mean --

24 THE COURT: That is for y'all to inquire. And we'll
25 take it up -- when we get back from lunch we'll take it up

1 again. But let's go to lunch and you all figure out
2 exactly what's going on.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: Have y'all resolved any of the issues
5 regarding the books?

6 MR. GRAHAM: No, sir.

7 MR. YOUNG: No, sir.

8 THE COURT: All right. I think I ruled, she can't
9 identify and get them into evidence. This lady, Ms.
10 Derrick, she didn't collect them. She took a photograph
11 of them, or what appears to be them. Y'all figure it out.

12 MR. YOUNG: Yes, sir.

13 THE COURT: All right.

14 MR. YOUNG: One other issue before we bring the jury
15 back in, Your Honor. The State continues to make
16 arguments regarding potential PCR and analysis and these
17 are improper arguments to be made by the State to the
18 Court, and in particularly disingenuous in light of the
19 fact that they're seeking the execution of Mr. Jones. And
20 our trial strategy, of course, is to have Mr. Jones found
21 not guilty by reason of insanity. And the Defense has
22 filed a memorandum, it will be number 104 in opposition to
23 the State's arguments and motion and would ask that the
24 State be instructed not to make arguments in that nature
25 to the Court in the future.

1 THE COURT: I'm not going to restrict anybody from
2 making whatever arguments they want. I mean, they've got,
3 y'all can, y'all are in an advocacy role, argue what you
4 want. And if I find it to be disingenuous, I'll stop it.

5 MR. YOUNG: Your Honor, we would ask that Defense
6 pleading number 104 be made part of the pleading binder.

7 THE COURT: Will be glad to, it will be added to that
8 as Court's exhibit or the pleadings summaries will be 104.

9 MR. HUBBARD: Just for the record, I'm just trying to
10 do my job in the way I believe the High Court has told me
11 to do it as well.

12 THE COURT: I'm doing the same, and I think Mr. Young
13 is doing the same thing. Ms. Derrick, come on back up,
14 and I remind you you're still under oath. Bring in the
15 jury.

16 (Whereupon, the jury came into open court at
17 approximately 1:50 p.m.)

18 THE COURT: All right. All accounted for. We're
19 ready to continue on. Mr. Young, still your witness. Ms.
20 Derrick, you're still under oath.

21 MR. YOUNG: Thank you, Your Honor.

22 CONTINUE CROSS-EXAMINATION

23 By Mr. Young:

24 Q Ms. Derrick, I'm going to show you one more
25 photograph. I believe this one inadvertently came off of

1 my stack. Is that like one of the pictures you took?

2 A Yes, sir.

3 Q That exhibit?

4 A Yes, sir. I don't know if it was on--

5 MR. YOUNG: -- is that on?

6 THE WITNESS: Could you hear me on that? Yeah.

7 MR. YOUNG: If it's okay with the Court and the
8 State, I'm just going to add this picture that I
9 inadvertently left off to the back of the binder, of 119.

10 MR. GRAHAM: No objection.

11 Q Now, Ms. Derrick, while you were photographing the
12 inside of [REDACTED] South Lake did you notice a number of
13 religious books, different books about religion, about
14 God?

15 A There was several books, textbooks, bibles, religious
16 books. There were a lot of different -- different types
17 of books.

18 Q A lot of religious paraphernalia?

19 A Yes.

20 Q And did you at one point in time lay out those books
21 and take just sort of pictures of each one of the
22 religious books? I'll show you what's been marked as
23 119-B.

24 A Yes, sir.

25 Q And then were there other things that you were

1 interested in taking pictures of while you were at the
2 residence?

3 A Just the interior of the residence. The state that
4 we found it in, the amount of clothes, if there was
5 anything that pointed out to us. I think at that point we
6 had heard something about electrical sockets, so I did
7 photograph a bunch of the electric sockets.

8 Q So you photographed all the electrical sockets?

9 A Yes, sir.

10 Q And you photographed the picture of the circuit
11 breaker box?

12 A I did.

13 Q So you were sort of paying attention to that stuff?

14 A Yes, sir.

15 Q Did you test any of the outlets?

16 A I did not personally. No, sir.

17 MR. YOUNG: Beg the Court's indulgence.

18 THE COURT: Sure.

19 MR. YOUNG: Ms. Derrick, that's all the questions I
20 have.

21 MR. GRAHAM: State has no questions at this time,
22 subject to be called at a later time.

23 THE COURT: Fair enough. We may see you again.

24 THE WITNESS: All right. Thank you.

25 THE COURT: Enjoy your afternoon.

1 MR. GRAHAM: The State calls Candy Kyzer to the
2 stand.

3 CANDY KYZER, being
4 first duly sworn, testified as follows:

5 MADAM CLERK: Once you're seated, state your full
6 name, spelling your last.

7 THE WITNESS: Candy Kyzer, K-y-z-e-r.

8 MADAM CLERK: How do you spell your first name?

9 THE WITNESS: C-a-n-d-y.

10 DIRECT EXAMINATION

11 By Mr. Graham:

12 Q Ms. Kyzer, where are you employed, ma'am?

13 A With the Lexington County Sheriff's Department.

14 Q And what do you do there?

15 A I'm an evidence custodian.

16 Q And can you tell the jury what an evidence custodian
17 does?

18 A We get in packages or evidence from investigators or
19 deputies in cases. What we do is we enter them into the
20 computer system, put a bar code label on them and then
21 package them and store them until they're needed for
22 processing or court purposes.

23 Q How long have you worked for the Sheriff's Department
24 as an evidence custodian?

25 A I've actually been with the Sheriff's Department for

1 24 years, or almost 24 years. I've done evidence for 16.

2 Q So is it fair to say that you intake evidence, you
3 keep it secure, bring it out when it needs to go out to be
4 used in court?

5 A Correct.

6 Q In the regular course of your business at the
7 Sheriff's Department and the evidence department do you
8 all keep track of the movement of pieces of evidence in
9 and out of the Sheriff's Department?

10 A We do.

11 Q And is that made at the time the event, that it
12 occurs?

13 A That's correct.

14 Q Meaning when you do something, you actually record
15 that event?

16 A Yes. The computer system that we have allows us to
17 enter that into the computer system. And we have the
18 capabilities of signing it out along with -- we can get my
19 signature and the person that we're signing it out to,
20 their signature also.

21 Q Actually, do you all have like a bar code tracking?

22 A Yes, we do.

23 Q And do you have a document that helps you explain the
24 movement of a particular piece of item that you brought
25 with you today?

1 A I do.

2 Q Let me show you State's number 91 which is a Samsung
3 Galaxy Note 3 cell phone and ask if you recognize that as
4 an item that was maintained in the Lexington County
5 Sheriff's Department for significant periods of time?

6 A It is.

7 Q And the document you have shows the movement of that
8 phone within the Sheriff's Department and also leaving out
9 and coming back. Is that correct?

10 A That's correct.

11 Q If you would help walk me through that item as into
12 the Sheriff's Department. What is the first entry that
13 you have with reference to that cell phone?

14 A The first entry that I have is where Shelby Derrick
15 seized it September the 23rd, 2014.

16 Q And the next entry, what does it show that Ms.
17 Derrick does with it?

18 A The next entry shows that she is -- what it is, is
19 she's completing the voucher on that same day. And then
20 the following entry is on September the 25th she is
21 actually handing it to a custodian, which is me.

22 Q So she actually physically handed that phone to you?

23 A That's correct.

24 Q Once it was in your possession did you ever break any
25 of the seals or go inside or do anything with the phone

1 itself inside?

2 A No, I did not.

3 Q So after you received the phone, tell the jury where
4 it goes next?

5 A Once I sign it in and make sure that everything on it
6 is correct, then I ended up putting it in a storage
7 location in our warehouse until it is needed again, which
8 at that time would be then Mike Phipps comes to get it on
9 January the 7th of 2015.

10 Q Let me back up just a second. On September 25th of
11 2014, after you got it from Shelby Derrick, it went into a
12 particular spot in the evidence room?

13 A Yes, it did.

14 Q And then now you're testifying that on January 7th
15 you actually retrieved that item and released it to Mike
16 Phipps. Is that correct?

17 A That's correct.

18 Q And who is Mike Phipps?

19 A He is our -- he deals with all the cell phones and
20 computers. He does all the downloading of those items.

21 Q So it goes to Mike Phipps, per the document, at 8:30
22 in the morning. Is that correct?

23 A That's correct.

24 Q On January the 7th. When does Agent Phipps return it
25 to you?

1 A He returns it back that same day.

2 Q At approximately --

3 A -- at 8:52.

4 Q Thirteen minutes later?

5 A Yes.

6 Q The next entry then, so it comes back into your
7 possession on January the 7th at 8:52. What do you do
8 with it?

9 A On the 22nd -- let's see. I sign it back out on
10 January the 7th to Mike Phipps.

11 Q So the same day at 9:00 o'clock you're signing it
12 back out --

13 A Back out to --

14 Q -- to Agent Phipps?

15 A Yes.

16 Q And then describe what happens next.

17 A Then on the 22nd of January at 2:49 he brings it back
18 and I sign it back in.

19 Q So he had it in his possession for about 15 days and
20 then it comes back to the Sheriff's Department?

21 A Yes.

22 Q All right. What happens next?

23 A Then I ended up on September the 28th of 2017 I sign
24 it out to Detective Adam Creech.

25 Q And then what happens next?

1 A The same day Adam Creech ends up taking it to a lab
2 for testing and he turns it over to Britt Dove.

3 Q And then what's the, I believe the last entry?

4 A Then it looks like it comes back in from Mike Phipps
5 on December the 4th, 2018.

6 Q So on September 28th of 2017 it was released to Britt
7 Dove, and then Mike Phipps turns it back in, and it's been
8 in the Sheriff's Department custody in their evidence room
9 since?

10 A Yes.

11 MR. GRAHAM: Thank you, Ms. Kyzer. Please answer any
12 questions the Defense may have.

13 CROSS-EXAMINATION

14 By Mr. Madsen:

15 Q Ms. Kyzer.

16 A Hey.

17 Q Do you have -- I notice you are -- do you have any
18 independent, do you remember receiving this in or checking
19 it out?

20 A Not right offhand because it's been so many years
21 ago. We usually go off of the documentation that the
22 computer provides for us.

23 MR. MADSEN: That's all the questions I have.

24 THE COURT: You may step down.

25 (Whereupon, the witness steps down from the witness

1 stand.)

2 MR. GRAHAM: The State calls Lieutenant Britt Dove.

3 BRITT DOVE, being

4 first duly sworn, testified as follows:

5 MADAM CLERK: Have a seat, please, sir. Once you're
6 seated, state your full name, spelling your last.

7 THE WITNESS: My name is David B. Dove, D-o-v-e.

8 DIRECT EXAMINATION

9 By Mr. Graham:

10 Q It's Lieutenant, is that correct?

11 A Yes, sir.

12 Q Would you tell the jury where you're employed and
13 what you do there?

14 A I'm employed by the South Carolina Law Enforcement
15 Division, also known as SLED. I'm the Lieutenant in
16 charge of the computer crime center. On a day-to-day
17 basis I run -- handle the management of the unit. I
18 assign cases. I do forensic examinations of digital
19 items, investigations. I'm also an evidence custodian
20 with us and handle the validation and accreditation for
21 our unit for ASCLD and ANAB.

22 Q How long have you worked with SLED?

23 A I've been at SLED a couple of weeks short of 11
24 years.

25 Q And how long have you been in law enforcement?

1 A I've been in law enforcement a little over 19 years.

2 Q And you have a document, I believe, that you brought
3 up with you that talks about the chain of custody on a
4 piece of item.

5 A Yes, sir. I do.

6 Q And are you considered the records custodian, as far
7 as this particular item that we're discussing?

8 A Yes, sir. I am.

9 Q State's 91 is a Samsung cell phone. And I see a bar
10 code with a 70140142 and an item number 27 with a green
11 sticker. Can you tell the jury what that means?

12 A What that means is once we receive an item into our
13 lab we assign it a case number that is unique to our unit.
14 The 70, the first two numbers, represents our unit as far
15 as SLED goes with computer crimes. Next two numbers are
16 the year for the case when it was originally open with our
17 unit. And then the following four numbers are the case
18 number for us. Then you have a dash and another number,
19 which is the item number in that case. Every time we
20 receive evidence in we enter it into the computer. It
21 prints a label. We adhere the label to it. That's how we
22 track evidence in our unit. The green dot on there, once
23 something is processed by us it gets a green dot if it was
24 a successful process. If there is an error or some kind
25 of malfunction with a hard drive, for instance, it would

1 receive a red dot.

2 Q So there are -- the top bar code is a SLED bar code.
3 Is that correct?

4 A Yes, sir.

5 Q Could you describe to the jury how that phone came to
6 SLED, came to be in their possession?

7 A Yes, sir. On September 28th, 2017 Detective Creech
8 with the Lexington County Sheriff's Department had
9 previously contacted me about bringing evidence in on this
10 case. I met him when he came in. There was a large
11 number of items. So we helped him carry the items up from
12 downstairs to our second floor location. While he was
13 there I was speaking with him while the items were being
14 logged in and numbers were being adhered to them. They
15 were also being checked and photographed. Then once the
16 items came in and that was completed, myself and one of
17 the other employees with the unit took the items to the
18 evidence vault and placed them on the shelf in the
19 evidence vault.

20 Q As far as opening the item or getting into it, this
21 time you would have opened it to verify serial numbers.
22 Is that correct?

23 A Yes, sir. We would have.

24 Q And as far as doing anything else at that time,
25 nothing else would have been done?

1 A No, sir.

2 Q So what was the date and time that it was received
3 into SLED from Detective Creech?

4 A It was logged in on September 28th, 2017 at 10:13
5 a.m.

6 Q From that point on would you explain the movement of
7 the phone to the jury.

8 A Yes. After that point, after it came in -- like I
9 said, it was a large number of items that were logged in.
10 So after they were logged in the items were taken in place
11 in the evidence vault on the shelf at approximately 10:40
12 on September 28th, 2017. Because of the items, I began
13 processing some of the computers in the case. And then on
14 October 13th, 2017 at approximately 13:31, 1:31 p.m., I
15 removed this item from the evidence to begin processing
16 it. Once I got through processing it on the same date,
17 October 13th at approximately 3:48 p.m., I returned it to
18 the evidence vault.

19 Q Let me stop you there for a second. When the item
20 originally came in you said that you did break the seal to
21 go into it to verify the serial numbers. Obviously with a
22 search warrant to go in later and also make sure you had,
23 and did you seal it at that time?

24 A We reclosed it. Yes, sir.

25 Q And then on October 13th you actually removed it out

1 yourself and you said you did an examination on it?

2 A Yes, sir. I did.

3 Q Now, that would have been a logical examination?

4 A Yes, sir. I performed -- was able to perform a
5 logical examination of the cell phone. I was not able to
6 get a physical examination at the time.

7 Q So let me stop you there and let's talk about what is
8 -- can you explain to the jury what is a Cellebrite
9 examination and what is a logical examination?

10 A Cellebrite is a software and hardware device that can
11 be used to extract things from tablets, cell phones. You
12 go in and it decodes a lot of the apps that you have on
13 your phone. A lot of the information. It'll extract that
14 information. It doesn't just strictly read only form, so
15 that it can't put information back on the phone. Such if
16 I wanted to type a cell phone number in there I couldn't
17 do that. It'll pull that information off and produce it
18 in a report. A logical is basically what you can pull out
19 your phone and look at and see on it right now. Whereas a
20 physical you can get deleted items. Things that you may
21 not be able to see, you thought you deleted are still in
22 memory. And sometimes it'll also give you additional file
23 system information.

24 Q So on that day of October 13th of 2017 you performed
25 a successful, because of the green dot, logical

1 examination. Is that correct?

2 A Yes, sir. I did.

3 Q According to the chain of custody can you explain to
4 the jury what happens after you finish that, when you turn
5 it back into evidence storage?

6 A After I return it back on October 13th to the
7 evidence locker, on July 30th, 2018, pursuant to request
8 from the Prosecutor's Office and Defense in this case,
9 there was a Defense expert that came to our office and the
10 phone was signed out to him. At that time he took it and
11 he performed whatever examinations he was going to do on
12 it, research on it, and then he signed that back in on
13 July 31st, 2018 to us at approximately 12:47 p.m.

14 Q His name was what?

15 A Jake Green.

16 Q And would you explain how Mr. Green got access to the
17 phone? It actually looks like from your records that he
18 got it out on July 30th at 11:15 and he didn't return it
19 until the next day, July 31st at 12:47. You all didn't
20 let him leave the building with it though, right?

21 A No, sir. What happens when we have a Defense expert
22 come to our unit for any case, because we never know if
23 there's potential for contraband, and to also maintain the
24 integrity of it, they will come, they sign it out from us
25 in our unit. Now, our unit is a controlled environment.

1 It has key swipe to get in. And the only people that are
2 allowed in are SLED employees between 8:30 and 5:00,
3 Monday through Friday. Outside of that 5:00 p.m. or
4 before 8:30 the only people that are allowed into the unit
5 are myself, the other employees of the unit and command
6 staff are able to get access, except during an emergency
7 situation, the fire department. So once he came in and
8 signed it out from us he would have gone around the corner
9 to a cube that we have set up with just a monitor and it
10 has a cabinet that has a key in it and it has power in the
11 key. He would have been able to set his equipment up.
12 Once he sets his equipment up he can begin his processing.
13 If for any time whether it's him or another expert needs
14 to leave for the day, or they want to take lunch or go to
15 the restroom, that cabinet they're able to use, they are
16 able to place the item in there, close it, lock it, take
17 the key with them when they leave. And then when they
18 return they're able to unlock it and continue the process.

19 Q So this shows that he finished whatever examination
20 he was going to do and returned the item actually
21 physically to you?

22 A He returned it to me July 31st at 12:47 p.m.

23 Q 2018?

24 A Yes, sir.

25 Q And then once you got it back in your hands what did

1 you do with it?

2 A I took it then -- he signed that out along with
3 several other items. So I took all the items and placed
4 them back into the evidence vault on July 31st, 2018 at
5 12:52 p.m.

6 Q Back in the evidence room sitting there?

7 A Yes, sir. It was in the evidence room.

8 Q What's the final entry that you show as far as SLED's
9 involvement with State's 91, the Samsung Galaxy Note 3?

10 A With this item it was signed out November 26th, 2018
11 at 2:11 p.m., and it was signed out to Detective Phipps
12 with the Lexington County Sheriff's Department.

13 MR. GRAHAM: Thank you, Lieutenant. Please answer
14 any questions the Defense may have.

15 CROSS-EXAMINATION

16 By Mr. Madsen:

17 Q Agent Dove, you mentioned, I guess, the Cellebrite
18 software --

19 A Yes, sir.

20 Q -- which is extracting from cell phones, correct?

21 A Yes, sir.

22 Q And Mike Phipps with the Sheriff's Office basically
23 has that same software, correct?

24 A He may have -- I believe he does have that, but
25 there's also other software out there that can be

1 utilized.

2 MR. MADSEN: That's all the questions I have.

3 MR. GRAHAM: Nothing else, Your Honor.

4 THE COURT: You may stand down.

5 THE WITNESS: Thank you.

6 (Whereupon, the witness stepped down from the witness
7 stand.)

8 THE COURT: All right. We're going to take about 15
9 minutes. We've got a few things to go over before we call
10 the next witness. You all step into the jury room. We'll
11 have you back out here at 2:30.

12 (Whereupon, the jury was excused from open court for
13 a break.)

14 THE COURT: We will take a break.

15 (Whereupon, a short break was taken.)

16 THE COURT: All right. Bring the jury in.

17 (Whereupon, the jury came into open court at
18 approximately 2:35 p.m.)

19 THE COURT: All right. Are we ready to continue?

20 MS. MAYES: Yes, sir, Your Honor.

21 THE COURT: Call you witness.

22 MS. MAYES: The State calls Amber Kyzer.

23 AMBER KYZER, being
24 first duly sworn, testified as follows:

25 MADAM CLERK: Have a seat right here near me. Once

1 you're seated, state your full name, spelling your last,
2 please.

3 THE WITNESS: Amber Kyzer, K-Y-Z-E-R.

4 DIRECT EXAMINATION

5 By Ms. Mayes:

6 Q Pull that just a little bit closer to you. Good
7 afternoon, Ms. Kyzer.

8 A Good afternoon.

9 Q In what county do you currently reside?

10 A West Columbia, Lexington County.

11 Q Ms. Kyzer, how is it you know the victims in this
12 case; Merah, Elias, Nahtahn, Abigail and Gabriel?

13 A They are my children.

14 Q How is it you know the Defendant in this case,
15 Timothy Jones, Jr.?

16 A He is my ex-husband of nine years.

17 Q Have you been in this courtroom until this moment?

18 A No.

19 Q Why is that?

20 A I can't handle it. I can't handle it.

21 Q What were the dates of birth for each of your
22 children? And I'm going to hand up to you some documents
23 which are already in evidence. Beginning with Defense
24 Exhibit 58. State's Exhibits 103, 104, 105, 106 and 107,
25 and I want to start by asking you a few questions about

1 these documents. Ms. Kyzer, when were you and Timothy
2 Jones, Jr. married?

3 A June 29th of 2004.

4 Q And in what State were you married in?

5 A Chicago, Illinois.

6 Q Regarding your children, what were the dates of birth
7 for each of your children and in what State were they
8 born?

9 A Sorry. I'm sorry. Merah Gracie, born in
10 Pennsylvania, 5/15/2006. Elias Xavier, born in
11 Mississippi, 4/22/07. Sorry. Nahthan Hehseyd, born
12 4/11/2008, born in Mississippi. Gabriel Asher, born here
13 in South Carolina -- oh, God, 12/5/2011. And my daughter
14 Abigail Elizabeth, born here in South Carolina, 12/12/12.

15 Q 12/12?

16 A Yes.

17 Q Ms. Kyzer, when you first lived here as a family in
18 Lexington County, where did you live?

19 A We lived in Leesville-Batesburg.

20 Q Leesville-Batesburg here?

21 A Yes, ma'am.

22 Q And what was the address?

23 A [REDACTED] Russell Rowe Road.

24 Q Approximately what year was it that your family
25 relocated here to South Carolina?

1 A I believe it was around July of 2011.

2 Q What is it that brought your family, your children,
3 your husband at that time to South Carolina?

4 A Intel. A work that -- a job that had been offered to
5 my then husband.

6 Q It was a job opportunity at Intel?

7 A Yes, ma'am.

8 Q And who would stay home with the children during the
9 day as your husband worked at Intel?

10 A I did.

11 Q While living here in Lexington County, were any of
12 your children born here?

13 A Yes.

14 Q Which child was that?

15 A I'm sorry.

16 Q Which child was that?

17 A Born here? S.K. .

18 Q I'm going to ask a little bit more about that.

19 A Yes.

20 Q Do you have a daughter today?

21 A I do.

22 Q What is her name?

23 A S.K. .

24 Q And what is her date of birth?

25 A Oh, God. She's .

1 Q Who is her father?

2 A Shawn Kyzer.

3 Q Are you remarried?

4 A Yes, ma'am.

5 Q Amber, I'd like to start by asking you a little bit
6 about your background with Timothy Jones. What State were
7 you brought up?

8 A Pennsylvania.

9 Q And ultimately how is it that you met the Defendant,
10 Timothy Jones?

11 A I moved out to Chicago where my mother was.

12 Q And while living in Chicago, about how old were you
13 when you met the Defendant?

14 A Nineteen.

15 Q Where was it that the two of you met?

16 A It was a workplace called Enchanted Castle.

17 Q The Enchanted Castle. Tell us a little bit about
18 that place.

19 A It's a children's facility, kind of like a Chuck E.
20 Cheese, if you will.

21 Q And what did you do there at the Enchanted Castle?

22 A I ran the redemption desk.

23 Q And what about Timothy Jones?

24 A I believe he did the same.

25 Q How long did the two of you date after meeting at the

1 Enchanted Castle?

2 A Six weeks.

3 Q You were married after six weeks?

4 A Yes, ma'am.

5 Q Early in your relationship did you attend church
6 together?

7 A Yes, ma'am.

8 Q Explain how that came about.

9 A When I met Tim he was already involved in the church.
10 I was not. I was working three jobs. I thought, wow,
11 this guy has it together. He was going to school
12 part-time, working part-time and had church under the
13 belt. I started going with him to the services, and we
14 found a church family together.

15 Q I want to ask a little bit more about that. You said
16 you dated six weeks before marriage.

17 A Yes.

18 Q What was it that encouraged you to marry Timothy
19 Jones after just six weeks of dating?

20 A In the church that we were attending, I guess you
21 could say didn't believe in long dating periods. They
22 felt like it was too -- too enticing to be around each
23 other and not be married. So in retrospect we decided to
24 get married. He was already -- he was already speaking in
25 the church and they thought that it was more appropriate

1 to get married.

2 Q And you mentioned that he had a job and was attending
3 school. Where was he attending school back then when the
4 two of you first met.

5 A College of DuPage.

6 Q DuPage, and that's in Illinois?

7 A Yes, ma'am.

8 Q What was his undergraduate degree? What kind of
9 degree was he pursuing at that time?

10 A I believe he was going for pediatric doctor,
11 something along those lines. I don't know the specific
12 word for it.

13 Q So he spoke with you about that as far as when the
14 two of you first met?

15 A Yes, ma'am.

16 Q That he wanted to be a doctor?

17 A Yes.

18 Q What else attracted you to him?

19 A Tim was very goal oriented. I'm sorry.

20 Q You mentioned that you attended church --

21 A Very smart. Very smart man, and everything that he
22 had set out to do as a goal he accomplished and I found
23 that very honorable. That's one of the main things that
24 attracted me to him.

25 Q And you were how old when the two of you were

1 married?

2 A I was nineteen.

3 Q And, Amber, you yourself at that point in time, did
4 you have a college degree?

5 A No, ma'am. I didn't.

6 Q Were you attending college?

7 A No, ma'am. I was not.

8 Q Had you attained a high school diploma at that stage
9 in your life?

10 A No, ma'am.

11 Q So you mentioned that the two of you started
12 attending a church together early in your marriage. How
13 would you describe his church? Do you know what branch of
14 church this was?

15 A It was an Apostolic church, also known as
16 Pentecostal.

17 Q And this is in Illinois?

18 A Yes, ma'am.

19 Q What, if any, restrictions did the church -- that
20 church that the two of you originally attended have in
21 place for females?

22 A Women generally were not allowed to cut or trim their
23 hair, no pants, no makeup, no jewelry. The more -- they
24 underlined modesty for women to a T.

25 Q And what, if anything, did Tim say about these

1 restrictions for women?

2 A It was just -- it was a woman's -- Tim's motto was
3 women are supposed to be fruitful and multiply. A woman
4 is supposed to listen to her husband.

5 Q Did the majority of the females within the church
6 follow these restrictions based on your observations?

7 A Yes.

8 Q Did you also begin to follow these restrictions?

9 A Yes, I did.

10 Q Eventually did the two of you find a place of your
11 own after you were married and he was attending DuPage
12 College?

13 A We did.

14 Q And after DuPage College where did he next attend
15 school?

16 A After College of DuPage, we would have moved down to
17 Mississippi and he would have attended Itawamba Community
18 College next.

19 Q So Itawamba is a College in Mississippi?

20 A Yes.

21 Q And what type of degree was he pursuing at this
22 stage?

23 A I can't recall at that -- at this time. I can't
24 recall.

25 Q Approximately how long was he at Itawamba?

1 A I can't even -- I can't recall that either.

2 Q From there where did he next attend college?

3 A MSU, Mississippi State University.

4 Q So when you say MSU you're referring to Mississippi
5 State?

6 A Yes, ma'am.

7 Q While attending Mississippi State what was his
8 undergraduate degree that he was pursuing?

9 A Computer science and engineering.

10 Q Where did your family live while attending
11 Mississippi State?

12 A We were living on -- on campus housing.

13 Q So at this point in time, once you're living on
14 campus housing, you're in Mississippi -- you're at
15 Mississippi State College, how many of your children were
16 born?

17 A Three.

18 Q Merah, Elias and Nahtahn?

19 A Yes, ma'am.

20 Q They all lived there on campus while Tim was
21 attending school?

22 A Yes.

23 Q While attending Mississippi State, did the Defendant
24 have the opportunity to travel overseas?

25 A Yes, he did.

1 Q Where did he go?

2 A South Korea.

3 Q And for what purpose?

4 A I believe it was just offered out by the school as an
5 opportunity.

6 Q It was a class trip?

7 A Yes.

8 Q Related to Mississippi State?

9 A Yes.

10 Q Now, after his graduation from Mississippi State
11 where did your family go to live at?

12 A We moved down here directly, I believe, yes.

13 Q So immediately upon his graduation from Mississippi
14 State --

15 A Yes.

16 Q -- he got the job at Intel?

17 A He did.

18 Q And your family relocated here in Lexington County?

19 A Yes, ma'am.

20 Q I believe your previous testimony was you were living
21 in the Leesville --

22 A Leesville-Batesburg, yes. I'm sorry.

23 Q Where did you -- or what type of housing did you have
24 when you first moved here as a family when he initially
25 got that job at Intel?

1 A It was a rundown trailer. It needed a lot of work
2 done to it.

3 Q How many children were born at this stage?

4 A Well, I was pregnant with Gabriel at the time, so
5 still had the three.

6 Q And pregnant with Gabriel?

7 A Yes, ma'am.

8 Q Were you working at this stage of your marriage, Ms.
9 Kyzer?

10 A Just as a mother.

11 Q What do you mean by that?

12 A A mother has many, many jobs. So yes, I worked every
13 day as a mother, as a provider, as his wife. I worked in
14 my house every day, yes.

15 Q And at that stage were any of the children actually
16 in formal school?

17 A No.

18 Q You were at home pretty much all day with all three
19 of your older children?

20 A Yes, ma'am.

21 Q I think you may have mentioned before but what, if
22 anything, did Tim say about your role in the marriage?

23 A Women were to be heard -- I'm sorry. Women are to be
24 seen and not heard. I was merely to take care of the
25 children, to keep them out of his way, and to do as he

1 asked as my husband.

2 Q Did he ever discuss with you how many children he
3 wanted?

4 A At one point he wanted a farm full he said.

5 Q And, Ms. Kyzer, under the circumstances you were
6 facing at the time, were you able to make your marriage
7 work?

8 A No.

9 Q Ultimately you made the decision to leave your
10 marriage?

11 A Yes, I did.

12 Q During that time did you become involved with
13 someone?

14 A Yes, I did.

15 Q Who was that person?

16 A Shawn Kyzer.

17 Q The person you're married to now?

18 A Yes, ma'am.

19 Q S.K. [REDACTED]'s father?

20 A Yes, ma'am.

21 Q How long have the two of you been together?

22 A Eight years, married four.

23 Q Who was the first to file for separation in your
24 marriage with Timothy Jones?

25 A Tim.

1 Q And approximately when did you become pregnant with
2 your daughter, Abigail, your last child with Tim?

3 A March --

4 Q 2012?

5 A -- of 2012, yeah.

6 Q Was there a paternity test regarding Abigail?

7 A Yes, ma'am.

8 Q And who was determined to be Abigail's biological
9 father?

10 A Tim.

11 Q So after your separation from Timothy Jones where did
12 you go to live?

13 A I went to live with a neighbor.

14 Q And specifically that neighbor was who?

15 A Cathy Poole.

16 Q Is she your mother-in-law?

17 A She is now, yes.

18 Q Shawn's mother?

19 A Yes.

20 Q And where did the Defendant, Timothy Jones, go live?

21 A I believe that he was either making trips back to
22 Mississippi around his dad's or staying in hotels.

23 Q Ultimately do you know whether or not he purchased a
24 home in Red Bank, being the home at South Lake Drive?

25 A I wasn't aware of that at the time.

1 Q Let's talk about the child custody agreement. What
2 was the final order regarding child custody?

3 A I was not willing to give up my rights as their
4 mother, so we came to an understanding, arrangement, that
5 we had joint custody, him being the primary caregiver. I
6 did not want him being the primary caregiver, if you will,
7 but he was the better provider. He made the finances. I
8 was just getting on my feet. I thought I was making the
9 best decision I could as a mother.

10 Q What do you mean when you say he was the best
11 provider at that point?

12 A He had a steady job. He had a roof over his head.
13 He had a vehicle.

14 Q Did you have any of those things of your own then?

15 A I didn't.

16 Q Did you have a degree?

17 A No.

18 Q Or a job?

19 A No.

20 Q Did you have any money to afford a lawyer in your
21 divorce case?

22 A No.

23 Q So this was joint custody?

24 A Yes, ma'am.

25 Q And he had the primary physical custody?

1 A Yes, ma'am.

2 Q Now, pursuant to that child custody agreement, what
3 order was put in place regarding visitation with the
4 children? Was that to be supervised or unsupervised on
5 your part?

6 A I think, to satisfy Tim, it was supervised by him.
7 So I agreed to that, yes, because I was willing to do
8 whatever I had to do to see my children, absolutely.

9 Q And at this divorce hearing was he represented by an
10 attorney?

11 A Yes, he was.

12 Q Were you?

13 A No, ma'am.

14 Q So at that divorce hearing you get supervised
15 visitation --

16 A Yes.

17 Q -- for you to see your children?

18 A Yes.

19 Q And who was to supervise your visits with your
20 children?

21 A Tim.

22 Q Is there anything in that order that would allow you
23 to have the children at your home? The home you shared
24 with Shawn and your mother-in-law?

25 A No.

1 Q What, if anything, did the Defendant ever say to you
2 about whether the children could live with you?

3 A That was never going to happen. My children were
4 never going to be with me.

5 Q After your separation, were there times that he tried
6 to approach you to come back to him?

7 A Yes, ma'am.

8 Q Did you ever accept his offer for you to come back to
9 the marriage?

10 A No. I think as a mother I went back and forth in my
11 head for my children, but I did not.

12 Q Now, eventually were you able to contribute to the
13 support of the children?

14 A Yes.

15 Q And how did you go about doing that?

16 A I bought them clothing. I bought them what they
17 needed and then some. I offered to give Tim some checks.
18 I think at one point I asked him not to cash one
19 immediately, but I did write some checks.

20 Q To provide support for the children?

21 A Yes, ma'am.

22 Q In addition to the clothing?

23 A Yes. I bought them clothes, things they might need
24 for school, diapers, wipes.

25 Q When you would have the supervised visitation with

1 the children where did that normally occur?

2 A Chick-fil-A.

3 Q Who would be present for those visitations?

4 A Tim and my five children.

5 Q Who decided the when and where of when you would have
6 visitation with the children?

7 A Tim.

8 Q Now, let's move forward to the timeframe of 2014.

9 How frequently was Tim allowing you to see the children?

10 A It was becoming less and less frequent.

11 Q Would he always follow through with the supervised
12 visits?

13 A Not all the time. There were times that he caved in
14 or would give me an answer as to, well, one of them got in
15 trouble in school or something along those lines where I
16 wasn't able to see them. It was their punishment.

17 Q So part of the punishment for the children would be
18 to take away the visitation with you?

19 A Yeah. And sometimes -- sometimes I was not able to
20 make it myself. I didn't have the gas.

21 Q What, if anything, did you ever hear the Defendant
22 say to the children about taking away visitation?

23 A He would just simply tell them, hey, you misbehaved
24 at school. Now you don't get to see her. Guess you don't
25 get to see her on Saturday.

1 Q Ms. Kyzer, did you ever say to your children that you
2 did not want them?

3 A No, ma'am.

4 Q Now, did you become aware of a DSS report regarding
5 Nahtahn in May of 2004?

6 A I'm sorry. Can you restate it.

7 Q Did you become aware of a DSS report regarding
8 Nahtahn in May of 2004?

9 A I was. I was made aware of that.

10 Q 2014. I'm sorry.

11 A Yes, ma'am.

12 Q Did DSS ever come to meet with you about that case?

13 A No.

14 Q August 28th, 2014, do you remember that day?

15 A Yes. Yes, I do.

16 Q When would you normally speak with your children?

17 A They would call at 7:00 o'clock every night. Sorry.

18 THE WITNESS: I'm sorry. Can I have a minute?

19 THE COURT: Yes, ma'am.

20 THE WITNESS: I'm sorry.

21 THE COURT: It's all right.

22 Q Whose phone would you call.

23 A I called Tim's phone.

24 Q Did you call his phone that night?

25 A Yes, ma'am. Yes.

1 Q I'm going to ask you a few questions about that. Who
2 answered the phone when you called?

3 A Tim did, but he had it on speaker phone.

4 Q What happened next?

5 A I heard my son crying, and I asked him what was
6 wrong.

7 Q Which son?

8 A My son, Nahtahn. I said, "Son, what's wrong?" He
9 said, "Mom, I didn't mean to." And Tim was going on in
10 the background, "You could have killed yourself, son," and
11 then got mad at me because I was trying to calm my son
12 down.

13 Q What did you say to Nahtahn?

14 A That it was okay.

15 Q What could you hear Nahtahn doing?

16 A Dry heaving, like --

17 Q What do you mean by that?

18 A (Demonstrating), like that. Like gasping for air
19 because he had been crying so much, like he couldn't catch
20 his breath. He was just (demonstrating), like that.

21 Q You told Nahtahn it was okay?

22 A Yeah. And Tim got mad and said, "Why do you always
23 have to defend the kids." I guess you could say I always
24 defended the kids. He was more the disciplinary. I was
25 not. I went on to disagree with him and let him know that

1 I didn't think -- that I thought that my son had gotten
2 the point and that I was tired of hearing my kids crying
3 all the time. And Tim -- Tim hung up the phone and told
4 -- before he hung up the phone he told me to shut the fuck
5 up and hung up the phone. Sorry for the language.

6 Q When he said that and hung up the phone, Amber, at
7 the end of that conversation and you heard Nahtahn in the
8 background, what was the tone of voice of the Defendant,
9 Timothy Jones, Jr.?

10 A He was outraged. He was outraged.

11 Q At any point in time did he say he was afraid of
12 Nahtahn?

13 A No.

14 Q At any point in time did he say Nahtahn was trying to
15 kill him?

16 A No. All he said was, "You're going to kill -- you
17 could have killed yourself, son."

18 Q Talking to Nahtahn?

19 A Yes.

20 Q And after he hangs up the phone with you what did you
21 do next?

22 A I tried calling him back. I called, and I called,
23 and I called.

24 Q Is it possible to know how many times you called?
25 More than one time?

1 A Yes, ma'am. Maybe six or seven, guesstimate.

2 Q Have you seen a phone log of calls that were made in
3 this case, Ms. Kyzer?

4 A Yes, ma'am.

5 Q And in addition to making calls after the phone was
6 hung up on you by the Defendant, did you also leave any
7 type of message?

8 A I did. I left, I believe, a couple voicemails.

9 Q One message or more than one message?

10 A A few. Sorry.

11 Q Let me show you a document and ask you whether or not
12 you recognize it and whether or not that's a fair and
13 accurate reflection of the phone calls that you made to
14 Timothy Jones on the night of August 28th, 2014.

15 A Yes, ma'am.

16 Q Now I'm going to show you three items and ask you
17 whether or not you recognize them, and if so, how.

18 A That's a voicemail I left him.

19 Q And how do you recognize it? Does it bear your
20 initials?

21 A It bears my initials.

22 Q You've heard this recording?

23 A Yes, ma'am.

24 Q And this recording on August 28th at 9:16 p.m., can
25 you tell us whether or not it's a fair and accurate

1 representation of your voicemail in its entirety?

2 A Yes, ma'am.

3 Q This item?

4 A It's another voicemail. It's my initials again on
5 August 28th at 9:34 p.m.

6 Q And you've heard it in its entirety?

7 A Yes, ma'am.

8 Q Is it a fair and accurate representation of the
9 message you left?

10 A Yes, ma'am.

11 Q And then finally this item.

12 A It's another voicemail left on 8/24 --

13 Q 9:38 p.m.?

14 A Yes, ma'am, with my initials.

15 Q And you've heard that message in its entirety?

16 A Yes.

17 MS. MAYES: Your Honor, the State would offer these
18 items for evidence at this time.

19 MR. YOUNG: Your Honor, we would object to this,
20 voicemails as being hearsay. No objections to the, have
21 these been marked, no objections to the phone records once
22 they are marked and identified.

23 MS. MAYES: We have a matter of law, Your Honor.

24 THE COURT: All right. Step in the jury room. We'll
25 have you back out here in a moment. Don't talk about the

1 case.

2 (Whereupon, the jury is excused from the courtroom.)

3 THE COURT: All right, Ms. Mayes.

4 MS. MAYES: Yes, sir, Your Honor. This is not
5 hearsay. It's not an out of Court statement. She's in
6 Court. This testimony includes messages that she left.
7 It's certainly relevant to the Defendant's state of mind
8 that night. She makes repeated calls to him in an attempt
9 to defuse the situation and it can't be more probative to
10 this case.

11 THE COURT: How is it hearsay? She's right here.

12 MR. YOUNG: And she can testify. But the voicemails
13 that she left are out of court statements, they are her
14 own hearsay that she reported to --

15 THE COURT: They're her own statements that she left
16 on a recording service.

17 MR. YOUNG: That they are out -- my understanding, I
18 believe, is that she recorded herself on her phone at the
19 time that she was leaving them, or they're off of his
20 phone --

21 MS. MAYES: Correct. They're from his phone
22 extraction.

23 MR. YOUNG: From his phone extraction. But they're
24 hearsay. They're her hearsay, leaving messages to him.
25 How would that go to his state of mind when it's her

1 message and what she's saying. It's not a conversation
2 with him or anything like that. And there's no exception
3 under hearsay that would allow the State to publish
4 voicemails.

5 THE COURT: Ms. Mayes.

6 MS. MAYES: Yes, sir, Your Honor. The voicemail
7 recordings are relevant to establish the relationship
8 between the parties on the day in question, the recording
9 occurs on the night of the murders. She was the last to
10 speak with Nahtahn when he was alive. It's also relevant
11 to the Defendant's state of mind. The Defense has made
12 the Defendant's mental state an issue in this case and the
13 recording corroborates his state of mind, behavior and
14 interaction with the children just prior to the murders.
15 Your Honor, we believe these recordings occurred within an
16 hour of the murders. The original conversation which
17 prompted the voicemail messages occurred at approximately
18 7:12 p.m. and the children are killed the same night. All
19 of the remaining voicemail messages went with no response.
20 These are among the most relevant items of evidence in
21 this case, Your Honor. It's probative, it is an issue of
22 the underlying circumstances of the case just prior to the
23 murders. It is not hearsay, Your Honor. She has
24 identified the voice recording as a fair and accurate
25 representation of the conversation in its entirety and

1 it's not been altered and it's admissible pursuant to
2 State vs. Aragon and other cases of that nature.

3 MR. YOUNG: I'm not familiar with State vs. Aragon,
4 and I'm not objecting under relevance or a probative
5 objection. It is hearsay, none of the State's argument
6 address hearsay or an acceptable hearsay exception other
7 than to say that their assertion that it's not hearsay.
8 To ask Ms. Kyzer what she said, that's fine. But to play
9 voicemails are out of court, they are hearsay.

10 MS. MAYES: Your Honor, it does not meet the
11 definition of hearsay. The declarant is in Court. It's
12 not offered to prove the truth of the matter asserted.
13 It's the events captured exactly as they would have
14 occurred that night. It's present sense impression as
15 much as anything which would be a hearsay impression.

16 MR. YOUNG: Hearsay does not -- just because the
17 declarant is --

18 THE COURT: If it's hearsay, why not 8033, why is it
19 not her existing state of mind when she made the
20 statement. I mean, is that not applicable here.

21 MR. YOUNG: No, sir.

22 THE COURT: Why not. I mean, you're saying she --
23 all she's says is it's not hearsay, and you're saying no.
24 So why is it not an exception under 8033 if it is hearsay?
25 Why is that not her declarance, state of mind, emotions,

1 sensation. Why is that not applicable to what Ms. Mayes
2 is offering is that, I believe, is the motion of the
3 situation. At least that's, I don't want to take the
4 words out of her mouth but I thought what she said.

5 MS. MAYES: Yes, sir.

6 THE COURT: Something along those -- something along
7 those lines is this was during an altercation, that sort
8 of thing.

9 MS. MAYES: During the transactions of the night,
10 Your Honor, very similar to a 911 call or something of
11 that nature where a statement is played and it's
12 consistent with testimony or corroborates testimony.

13 MR. YOUNG: I thought that they were offering it for
14 his state of mind, and now you're saying it's the
15 declarant's existing state of mind?

16 MS. MAYES: And that as well. It meets multiple
17 criteria, Your Honor, for being probative and relevant in
18 this case.

19 THE COURT: I tend to agree with you. Her voicemail,
20 her voicemails to him with him responding to that point
21 showing his state of mind. It's her call and she's
22 excited or emotional or whatever and show her emotional
23 sensation and her state of mind at the time and how --

24 MR. YOUNG: Her state of mind would not be relevant.

25 THE COURT: Why not?

1 MR. YOUNG: Because it's not probative of any fact in
2 issue.

3 MS. MAYES: Your Honor, it absolutely is.

4 THE COURT: I'll let you in on 8033. I think it's
5 her state of mind and her mental condition, her emotional
6 condition based upon the prior conversations. I'll let
7 you have it.

8 MR. YOUNG: Your Honor, in that case it would be a
9 prior consistent statement and we would object under that
10 ground as well. It wouldn't be allowed in unless we tried
11 to argue that it was manufactured.

12 THE COURT: I understand your argument. I'm going to
13 let the State play it, and you can cross-examine her on it
14 if you like.

15 MR. YOUNG: Your Honor, we object to the Court's
16 ruling.

17 THE COURT: Okay. Do we need a couple of minutes
18 while the jury's out?

19 MS. MAYES: I'm sorry, Your Honor?

20 THE COURT: Do we need a couple of minutes while the
21 jury's out?

22 MS. MAYES: We can.

23 THE COURT: All right. We'll take a couple of
24 minutes. I need to run to the restroom. So just a few
25 minutes, because they've already been back there.

1 (Whereupon, a short break was taken.)

2 THE COURT: Let's bring the jury.

3 (Whereupon, the jury came into open court at
4 approximately 3:25 p.m.)

5 THE COURT: All right, Ms. Mayes. Still your
6 witness.

7 MS. MAYES: Yes, sir, Your Honor.

8 DIRECT EXAMINATION

9 By Ms. Mayes:

10 Q Ms. Kyzer, I'm going to show you what is State's 178
11 and 179. I believe you indicated you recognized those as
12 phone calls that were made on the night of the 28th.

13 A Yes, ma'am.

14 Q Now, I'm going to need you to pull the microphone
15 just a little bit closer to you.

16 A Sorry.

17 Q And then can you tell us whether or not you had
18 telephone conversations or communications with the
19 Defendant that continued on through September 2nd of 2014?

20 A Yes, ma'am.

21 Q Having reviewed 178 and 179 does this accurately
22 reflect those communications with Mr. Jones?

23 A Yes, ma'am.

24 Q And I believe you identified the State's 181 and 182
25 as voicemail messages that you left for him on the night

1 of the 28th --

2 A Yes, ma'am.

3 Q -- after he hung up the phone. Let me show you what
4 is State's 180, also marked 8/28/14 at 9:38 p.m. Does it
5 bear your initials?

6 A Yes, ma'am.

7 Q Is it also a true and accurate representation of the
8 phone message that was left for him?

9 A Yes, ma'am.

10 MS. MAYES: Your Honor, this would be State's 181,
11 182, 180, 178 and 179 for evidence.

12 THE COURT: Subject to your objections for the
13 record.

14 MR. YOUNG: We would object under hearsay and prior
15 consistent statements.

16 THE COURT: Understand. You made you record. They
17 are allowed.

18 (Whereupon, State's Exhibit numbers 178 through 182
19 were admitted into evidence.)

20 Q So I'm going to start here, Ms. Kyzer, with the night
21 of August 28th of 2014, calls being made -- is McCall your
22 maiden name?

23 A Yes, ma'am.

24 Q Calls being made from you, and I believe your
25 testimony was to Tim's phone. Those calls begin at 7:00

1 o'clock?

2 A Yes, ma'am.

3 Q In those first series of calls, did he answer those
4 calls?

5 A I don't believe so, no.

6 Q So they show as missed calls?

7 A Yes, ma'am.

8 Q Now I want to look at this call here, an incoming.

9 A Yes.

10 Q To Mr. Jones from you at 7:12 p.m., and that call is
11 one minute and fifty-four seconds.

12 A Yes.

13 Q Can you tell us whether or not that's the call that
14 you referred to previously in your testimony?

15 A That is the call that I last spoke to my son, yes.

16 Q Is there any doubt in your mind that the child you
17 heard on the phone in the background was Nahtahn?

18 A No doubt.

19 Q Were you ever able to get the Defendant, Timothy
20 Jones, back on the phone after he hung up on you that
21 night?

22 A No.

23 Q When he told you to shut up and hung up on you?

24 A No, I was not able to.

25 Q So you attempt to make a call at 7:19, approximately

1 seven minutes later. It's a minute and two seconds of --
2 did you originally -- did you leave a voicemail that time?

3 A I'm not sure if I did that time.

4 Q Did he have voicemail that would pick up?

5 A He did.

6 Q So the minute and two seconds that we're looking at
7 is a voicemail picking up?

8 MR. YOUNG: Your Honor, I object to the leading. I
9 believe the witness' responses was that she wasn't sure,
10 and move to strike.

11 THE COURT: I'll let her rephrase and sustain the
12 leading.

13 Q Do you ever recall him answering the phone after he
14 hung up on you that night?

15 A No.

16 Q Now, looking here at 9:34 p.m. Have you had a chance
17 to listen to that message?

18 A Yes.

19 Q As well as other messages that were left that night
20 for Mr. Jones?

21 A Yes, ma'am.

22 MS. MAYES: Your Honor, we request permission to
23 publish.

24 THE COURT: Subject to the objection.

25 MS. MAYES: First being State's Exhibit 182, Your

1 Honor.

2 THE COURT: You may.

3 (Whereupon, State's Exhibits of voicemails, were
4 played for the jury.)

5 Q So, Ms. Kyzer, after that conversation the night of
6 the 28th, you leaving these voicemail messages, when did
7 you next have a conversation with the Defendant?

8 A I can't remember the exact date, but he was only on
9 the road with my children's remains in his car.

10 Q This would have been Labor Day weekend, and that
11 night that he hung up on you was Thursday the 28th?

12 A Right.

13 Q The next weekend runs into Monday, being Labor Day.
14 Were you initially concerned about the fact that he wasn't
15 returning calls?

16 A No, I was not. He -- it was not uncommon for Tim and
17 I to have arguments and him just not answering. It was
18 not uncommon for Tim to just go disappear for a weekend
19 and not answer his phone and just get back to me and say
20 he was busy. It was not uncommon at all.

21 Q All right. So after that Labor Day weekend, and
22 after Labor Day goes by, I'm going to show you what is
23 already marked and in evidence, State's 179 and ask you
24 about this phone call that you make on September 2nd.

25 A Yes, ma'am.

1 Q First, before we get even to September 2nd, we've got
2 September 1st, which is Labor Day. Did you make a call?

3 A I did.

4 Q Was it answered?

5 A No.

6 Q And then on September 2nd at 5:59 p.m. did you make a
7 call?

8 A Yes, ma'am.

9 Q Was that call answered?

10 A No, ma'am.

11 Q Five minutes later, 6:04 p.m. on the evening of
12 September 2nd, did you make a call?

13 A Yes, ma'am.

14 Q Was this one answered?

15 A Yes.

16 Q Describe the Defendant's demeanor and speech during
17 this call on September 2nd.

18 A It was --

19 Q How would you describe it?

20 A He sounded very maybe intoxicated. I believe I even
21 asked him that on the phone call. He sounded happy but
22 out of it, different.

23 Q Did he ever say exactly where he was going or where
24 he was at when you placed that call?

25 A He didn't.

1 Q Did he give any explanation for where he had been and
2 what had been going on?

3 A I asked him. He said he'd just been moving around a
4 lot. Kind of sounded carefree and sounded intoxicated,
5 like he was on something.

6 Q During the time of that call on September 2nd were
7 you able to hear any of your children in the background?

8 A No, ma'am.

9 Q I'm going to show you an item and ask you whether or
10 not you recognize it.

11 A Yes, ma'am.

12 Q Does it bear your initials?

13 A Yes, ma'am.

14 Q This recording on September 2nd, 2014 was made by
15 who?

16 A Me.

17 Q And what type of app or application did you have on
18 your phone that allowed you to record calls?

19 A It was just a standard phone call recorder. You can
20 pick and choose who's calls you recorded. I chose to
21 record Tim's.

22 Q On this evening of September 2nd at 6:04 p.m.?

23 A Yes, ma'am.

24 MS. MAYES: Your Honor, this would be for evidence.

25 MR. YOUNG: Same objection.

1 THE COURT: Same objection. Subject to the
2 objection, this is 185.

3 MS. MAYES: Yes, sir.

4 THE COURT: 185. Subject to the objection.

5 (Whereupon, State's Exhibit number 185 was admitted
6 into evidence.)

7 Q And, Ms. Kyzer, as to State's 185, can you tell us
8 whether or not it was recorded in its entirety?

9 A Yes, ma'am.

10 Q That conversation with the Defendant?

11 A Yes, ma'am.

12 MS. MAYES: I'll publish, Your Honor.

13 THE COURT: Okay.

14 (Whereupon, State's Exhibit number 185 was published
15 for the jury.)

16 Q At this time, Ms. Kyzer, did you have any indication
17 that your children were in danger?

18 A No.

19 Q The reference to the Georgia traffic, had he told you
20 anything about going to Georgia?

21 A No.

22 Q And when you asked him about being on vacation, had
23 he said anything to you about planning a vacation?

24 A No.

25 Q During the course of this call did he make it appear

1 that the children were still alive and healthy?

2 A Yes.

3 Q Were you making arrangements to talk with them next?

4 A Yes.

5 Q What happened after this call on the 2nd, Ms. Kyzer?

6 A That's the last I heard from him.

7 Q Eventually did you make a report with the Sheriff's
8 Department that your children were missing?

9 A I did. I was concerned about my children, as well as
10 Tim.

11 Q Eventually, after you report to the Sheriff's
12 Department that the children were missing, were
13 arrangements made for you to have a visit with the
14 children on Saturday, September 6th?

15 A That was our -- we always met on Saturdays, so I was
16 just going to go on with it in hopes that they would show
17 up.

18 Q And where was that visitation to occur?

19 A Chick-fil-A in Lexington.

20 Q And was law enforcement also involved in monitoring
21 that visit to see if he did, in fact, show up with the
22 children during this timeframe that they were considered
23 missing?

24 A They were. They were waiting there as well.

25 Q Did you go to Chick-fil-A?

1 A Yes, ma'am.

2 Q Did he ever appear?

3 A No.

4 Q Did he ever respond to any of your messages after
5 that conversation with Tim on September 2nd?

6 A No, ma'am.

7 Q Ms. Kyzer, did you ever see any indication that the
8 Defendant was not of sound mind?

9 A No.

10 Q Being his spouse for many years, what can you tell us
11 about his mental status?

12 A He's intelligent, he's smart. He was the smartest
13 person I know.

14 Q Ms. Kyzer, did Nahtahn have a favorite toy?

15 A Yes, he did.

16 Q What was that toy?

17 A Woody from Toy Story.

18 Q Did the Defendant know that was his favorite toy?

19 A Yes, ma'am. He did.

20 Q Let me show you what's been marked State's Exhibit 83
21 and 80 -- 183 and 184, and ask you if you recognize what's
22 shown in these photographs.

23 A It looks like my son's Woody doll in pieces. It's my
24 son's Woody doll in pieces.

25 MS. MAYES: 183 and 184 marked for identification at

1 this time, Your Honor.

2 (Whereupon, State's Exhibit numbers 183 and 184 were
3 marked for identification.)

4 Q Ms. Kyzer, I'm going to show you a photograph which
5 is a part of a Defense Exhibit already in evidence.
6 Defense Exhibit 72.

7 MS. MAYES: It would be 72-A, Your Honor.

8 Q Is that Nahtahn?

9 A Yes.

10 MS. MAYES: 72-A, Your Honor.

11 Q Ms. Kyzer, what can you tell us about Nahtahn's
12 physical size compared to other children in his age group?

13 A He was my tater tot. I called him tater because he
14 just couldn't catch up with his older siblings in height.
15 He was very small.

16 Q Small for a six-year-old?

17 A Yes, ma'am.

18 Q I'm going to show you what's marked Defense Exhibit
19 56 as evidence and ask you what's in that photograph? I'm
20 sorry, what's in this -- what is reflected here?

21 A That's a \$250.00 dollar check written to Tim from me
22 for the kids.

23 Q And what is in these photographs, 87, 88 and 89?

24 This is part of the support you mentioned that you were
25 providing for the children?

1 A Yes, ma'am. This is a letter to my son, Elias, from
2 me. A sent letter to my son, Nahtahn, from me. And a
3 letter to my daughter, Merah, from me.

4 Q Why did you write those letters, Ms. Kyzer?

5 A Because I knew my kids were hurting over us not being
6 together anymore and I felt as though it was my place to
7 apologize for breaking their hearts, for their broken
8 home, and for all -- and to also let them know how proud I
9 am of them.

10 Q And did your children receive those letters, Nahtahn,
11 Merah and Elias?

12 A I handed them to them personally. Yes, ma'am.

13 Q Is there any doubt, Ms. Kyzer, they knew you wanted
14 them?

15 A My kids knew I loved them. Sorry.

16 Q Those letters are already in evidence. Can you read
17 the letter you wrote to Merah?

18 A I'm sorry. Oh, God, I'm sorry. I'm sorry. "Merah,
19 my sweet, sweet daughter. I know that your heart feels
20 heavy and that you feel really sad sometimes. I want to
21 reassure you, sweetheart, that you, along with your
22 brothers and sister, mean everything to me. You kids are
23 my world and mommy and daddy were very blessed to have
24 you." Oh, God. Oh, God. I'm sorry. I'm sorry. Oh,
25 God.

1 (Whereupon, the witness is crying.)

2 THE COURT: Let's take a break.

3 THE WITNESS: Oh, God. Oh, my God. My babies. My
4 babies. Oh, God. Oh, God. Oh, God. I'm so sorry. Oh,
5 God. Merah. Oh, God.

6 (Whereupon, the jury was excused from the courtroom.)

7 THE WITNESS: I can't breath. My babies, my babies,
8 my babies, my babies, my babies. I miss my babies. I
9 want my babies. Oh, God. Oh, God. I'm so sorry. Why.
10 Why. Oh, God. Oh, God. Help me. Help me, please. Help
11 me, help me, help me, help me, help me, help me, help me,
12 help me, help me, help me, help me.

13 THE COURT: We'll stand at ease a little bit.

14 THE WITNESS: Why, God. They're my babies.

15 (Whereupon, the witness was assisted off the witness
16 stand.)

17 THE COURT: We will stand down for a few minutes.

18 (Whereupon, a short break was taken.)

19 MR. HUBBARD: We will put her back up.

20 THE COURT: You are not going to ask her to read
21 anymore.

22 MR. HUBBARD: No sir, no sir.

23 THE COURT: She has got to get through this. I am
24 going to let her rest for a minute, she is not going to
25 read any more letters.

1 MR. HUBBARD: No, sir.

2 MS. MAYES: We have about three more items to ID.

3 THE COURT: Okay.

4 MR. YOUNG: I have a motion for a mistrial.

5 THE COURT: Let's turn the mike's off. Let's do this
6 right here.

7 MR. YOUNG: Your Honor, the Defense would move for a
8 mistrial based on Ms. Jones reaction on the stand. This
9 was calculated by the State. The State consistently
10 ramped up her emotions in an effort to get her to crack
11 which she then did. The jury had to file past her
12 wailing, screaming, crying and a complete breakdown unlike
13 anything I have ever seen on the stand. The State has
14 prepared her, I am assuming the State has been with her
15 and I am assuming they have been through all of the
16 evidence with her and she knows what these letters are.
17 The State calculated this attempt to cause her to break
18 down and they did and it was in front of the jury and for
19 that basis we would move for a mistrial.

20 MS. MAYES: Your Honor has not seen the report that
21 have been generated by the Defense experts but that we
22 expect are coming. We are looking to call Ms. Kyzer one
23 time in this phase and not have to recall her on reply.
24 But it is repeated throughout the Defense expert's
25 reports, references to the DSS action and that he killed

1 the children because the mother did not want them. And
2 there is one expert that goes as far as to say it was, he
3 did not know that it was morally wrong because he believed
4 that sending to heaven was a morally greater value choice
5 than leaving them with their mother. So the fact that she
6 wanted them is absolutely probative, that is reflected in
7 that letter. That is a Defense expert, that is a Defense
8 exhibit and in response to the expert testimony we believe
9 is coming. Your Honor, as to a mistrial the case law is
10 that it is for manifest necessity and that is not present
11 here. She is emotional, we expect persons to be emotional
12 on the Defendant's behalf when we get to that stage. But
13 certainly in a case where someone has lost five children,
14 she is a necessary witness, we can't expect her not to
15 have any emotion.

16 MR. YOUNG: Expecting her, that is a
17 mischaracterization of the Defense expert's report.
18 Nobody says he did it because he didn't want her to have
19 them. That is not in anybody's report.

20 MS. MAYES: That is our interpretation of the report,
21 so the interpretation of experts we have consulted with.

22 THE COURT: Let's give him a chance.

23 MR. YOUNG: So, they have met with her, they have
24 worked with her, this was a calculated and design response
25 that they created. It is absolutely a manifest necessity

1 that Mr. Jones be granted a mistrial in order to get a
2 fair trial. At least one Juror was visibly crying in of
3 the front row of the jury box. A white female on the
4 front row of the jury box, there is no curative
5 instruction that could possibly cure this. No Juror could
6 ever forget what they saw or conceivably put it out of
7 their mind. Under 16-3-25(c)(1), the jury may not be
8 influenced by passion, prejudice or any other arbitrary
9 factor.

10 THE COURT: Do you know which Juror it was?

11 MR. HUBBARD: It was an alternate.

12 THE COURT: Which one are we talking about so I know.

13 MR. HUBBARD: She is an alternate.

14 MR. YOUNG: Ms. Kent.

15 MR. HUBBARD: It is not Ms. Kent, I think you are
16 talking about the one on down from Ms. Kent, probably on
17 the other side of Ms. Kent.

18 THE COURT: Can y'all tell me which seat she is in
19 because I know about where they have been sitting pretty
20 consistently on the front row. It has been the gentleman
21 with the tattoos, the Clemson tattoo, rides a motorcycle.

22 MR. HUBBARD: She has glasses.

23 THE COURT: The fourth one down wears glasses and is
24 dark headed, always has his hair pulled back.

25 MR. HUBBARD: Ms. Kent doesn't wear glasses. Ms.

1 Kent is the one that is coughing the whole time.

2 MR. YOUNG: I mean the State has the pictures.

3 THE COURT: I have got them. She is down here. Ms.
4 Brown who I think you are thinking about. Ms. Lee is
5 sitting to her right. Ms. Lee is sitting beside her, she
6 is the one that left her notebook in here last. She looks
7 very much like her. It is very close, one looks like the
8 other. I agree with you because I have been studying
9 which one is which for my benefit during the trial. They
10 do look similar, similar build, similar hairstyle. I
11 thought y'all were talking the fourth chair. That is who
12 I think it is, who you are describing, Ms. Brown.

13 MR. YOUNG: As the jury was walking out the witness
14 started yelling, Oh God, Oh God, I want my babies, my
15 babies, my babies. She got loud, scream, she was why,
16 why, why, help me, help me, help me. As part of our
17 record on what--

18 THE COURT: Your record is clearly made and it was
19 loud, it was emotional. I don't find that to be manifest
20 necessity to declare a mistrial. I think the jury needs,
21 I am going to call it a cautionary reassurance instruction
22 that we told them coming in it was going to be emotional,
23 difficult case to listen to. And they understand the
24 emotions run high at times and that was unexpected.
25 Something along those lines. That is what I would like to

1 do to move forward.

2 MR. YOUNG: I don't think it was unexpected.

3 THE COURT: Oh, I think it was unexpected. I don't
4 think either one of those three, particular Ms. Mayes
5 would have done that had she known she was going to get
6 that response.

7 MR. YOUNG: The record needs to reflect that it was
8 the Court that intervened. The State didn't just, said--

9 THE COURT: Intervene on her crying?

10 MR. YOUNG: Yes.

11 THE COURT: Well, you think that I shouldn't?

12 MR. YOUNG: No.

13 THE COURT: Okay. I am the closest one to her.

14 MR. YOUNG: It wasn't the State, the State just said,
15 okay, this is it as if presenting further evidence. This
16 is part of the test, the Court stopped it appropriately
17 and should have stopped it.

18 THE COURT: I thought I did right.

19 MR. YOUNG: You did. But they didn't.

20 THE COURT: What are they suppose to do?

21 MR. YOUNG: Ask for a break.

22 THE COURT: I mean, they knew--

23 MR. HUBBARD: The Judge intervened immediately.

24 MR. YOUNG: That is incorrect, that is not accurate,
25 that is not--

1 MR. HUBBARD: Certainly did. Y'all keep painting a
2 picture--

3 THE COURT: I think I did that appropriately, I don't
4 think they have got any responsibility to say, Judge, we
5 need to take a break. I think I did the job. I think I
6 did what I was suppose to. And if you want to make a
7 record of them not saying a word that is fine.

8 MR. HUBBARD: And I would just tell, Your Honor
9 stepped in pretty quick.

10 THE COURT: I did. She turned to me and I stood up.
11 I mean, I don't think there was any doubt in any of
12 y'all's minds, I'm not putting words in your mouths, y'all
13 didn't think I was going to get the jury out of there as
14 promptly as I could. I mean, that was exactly what I was
15 doing. So, I am not saying y'all thought I was going to
16 do that. I knew that is what I was going to do. I don't
17 think I left any doubt for y'all either. So I don't think
18 it was anybody's responsibility to say something other
19 than me. I think it was my responsibility and that I
20 handled it as efficiently as we could. So if y'all think
21 it is the State's responsibility, make your record. I
22 think I did my job.

23 MR. YOUNG: For the record, I know that it was
24 recorded and there is no way to transcribe what was going
25 on. So we would ask for that section of the recording to

1 be made part of the record.

2 THE COURT: Sure.

3 MR. MADSEN: I think we want to make sure that that
4 is included.

5 THE COURT: They want an audio portion of that part.

6 COURT REPORTER: Just of that.

7 THE COURT: Yes, when she started and stopped. You
8 have got a video. I promise you, they can get you
9 whatever you want. They told us ahead of time, it is
10 available to y'all.

11 MR. HUBBARD: One final note too. Yesterday the
12 Defendant was crying, it is expected that people who are
13 closely to this case. Whether they are sitting at the
14 defense table or whether they take the stand. And, Judge,
15 no one is trying to misstry this case, we are just trying
16 to try it. And Your Honor has already made observations
17 about her earlier on being very emotional. And Ms. Mayes
18 was doing a great job holding her there, trying to address
19 what we know is coming.

20 THE COURT: Okay.

21 COURT REPORTER: So I will do that later and we will
22 put in as a Court's exhibit. I can put in an external
23 hard drive.

24 THE COURT: Do the audio and make it the portion from
25 when the question was asked and she started reading until

1 your recording goes off and we can have that.

2 MR. YOUNG: Thank you.

3 THE COURT: The audio actually, not her
4 parenthetical.

5 (Whereupon, Court's exhibit 87 was marked for
6 identification only.)

7 MR. YOUNG: Understood. The motion is denied?

8 THE COURT: The motion is denied.

9 MR. YOUNG: We object and we object to the, I don't
10 think it can be cured by a curative instruction. I have
11 to object after the curative instruction.

12 THE COURT: Okay. I understand. All right, the
13 mikes are back on. Get the jury in.

14 (Whereupon, the jury came into open court at
15 approximately 4:15 p.m.)

16 THE COURT: All right, folks. We're going to continue
17 on. I told you earlier during the jury selection process
18 the case was going to be challenging. We're going to have
19 some difficult emotional moments. The case will be
20 decided on the sworn testimony and evidence and emotions
21 from the witnesses are going to be shown. I'll give you
22 further instruction on how to consider the testimony. But
23 the affects of the emotion shouldn't be considered, and
24 I'll explain that later at the end. But we need to be
25 cognizant, aware, emotions will be shown during the trial.

1 Thank you all for your consideration. Ms. Mayes.

2 MR. YOUNG: We would object and renew our motion.

3 THE COURT: Okay. Your objection is noted and my
4 ruling has been made.

5 CONTINUE DIRECT EXAMINATION

6 By Ms. Mayes:

7 Q Ms. Kyzer, I only have a few more questions for you.
8 I want to show you a couple of items and ask you whether
9 or not you've had a chance to identify them.

10 MR. YOUNG: May we approach?

11 THE COURT: Yes.

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: Exhibit 79 is stipulated as authentic.

16 (Whereupon, State's Exhibit 79 was stipulated as
17 authentic.)

18 Q I'm going to ask you whether or not you had an
19 opportunity to listen to some recorded calls.

20 A Yes.

21 Q All right. And specifically a call that was recorded
22 between the Defendant, Timothy Jones, and two other
23 individuals.

24 A Yes, ma'am.

25 Q Who were the two other individuals in that call?

1 A Tim Jones, Sr. and his Aunt Bernadine.

2 Q Were you able to recognize all of those voices?

3 A Yes, ma'am.

4 Q Any doubt in your mind as to the identity of the
5 voices on that call?

6 A No.

7 Q Including that of Timothy Jones?

8 A No.

9 Q I'm going to show you what is marked 519-19 and
10 519-19 and ask you whether or not you had an opportunity
11 to review two videos?

12 A Yes, ma'am.

13 Q And who was depicted on these videos?

14 A My daughter, Merah, crying.

15 Q And who was the other person on the other video?

16 A My son, Elias.

17 Q And do these videos bear your initials?

18 A Yes, ma'am.

19 Q Regarding these videos, how were they sent to you?

20 A They were sent to my phone by Tim Jones.

21 Q And can you tell us whether those videos were
22 recorded and whether you identified them in the same
23 format in which they were originally sent to your phone by
24 the phone of Timothy Jones, Jr.?

25 A Yes. In the video of Merah it is Tim's voice and

1 Merah sent to my phone. And the one of Elias is just
2 Elias sent to my phone by Tim Jones.

3 MS. MAYES: This will be, Your Honor, 188 and 189 for
4 identification only. And then 186 and 187 have been
5 identified and are the subject of a certified
6 authentication. So we would offer them as evidence at
7 this time.

8 (Whereupon, State's Exhibit numbers 186, 187, 188 and
9 189 were marked for identification purposes.)

10 MR. YOUNG: Judge, we would object.

11 MS. MAYES: This will be a matter of law at a later
12 time, Your Honor. I have nothing further for Ms. Kyzer.

13 THE COURT: Okay.

14 CROSS-EXAMINATION

15 By Mr. Young:

16 Q Ms. Kyzer, do you mind if I call you Amber?

17 A That is fine.

18 Q Amber, we've met before.

19 A Yes, sir.

20 Q My name is Boyd.

21 A Yes, sir.

22 Q I don't want to take up very much of your time at
23 all. You talked about when you and Tim first met. That
24 was after he had gotten out of boot camp? A boot camp
25 program that he had gone to prison for?

1 A I don't know how long he was already out of it when I
2 met him. I just met him at one of our jobs, at a
3 workplace.

4 Q At that point in time he wasn't drinking?

5 A No.

6 Q He wasn't smoking?

7 A No.

8 Q He was going to church?

9 A Yes.

10 Q And you all were going to church together?

11 A Yes.

12 Q Were you all going more than once a week or just once
13 a week?

14 A Yeah, we would go a couple times a week.

15 Q Would you describe Tim as very religious?

16 A Yes. Yes.

17 Q That church -- I know you talked about Tim's views
18 about women.

19 A Yes.

20 Q Where those views the same as what were shared by the
21 church, right?

22 A It was. I think at some point Tim twisted it a
23 little bit to suit himself, I guess.

24 Q Tim got the message a little bit wrong?

25 A Yes.

1 Q And that was the church that you all were going to
2 before he started Mississippi State?

3 A Yeah. We were actually married at that church.

4 Q It was Pastor Sutton, right?

5 A Yes.

6 Q And then when you moved to Mississippi State he
7 continued to go to church a lot?

8 A Yes.

9 Q You continued in the same faith?

10 A Yes.

11 Q The same type of faith?

12 A Yes.

13 Q And the Pentecostal faith was -- you had these
14 moments where you could sort of emote to God as you saw
15 fit, right?

16 A Right.

17 Q And Tim sometimes did that, speaking in tongues?

18 A Yes.

19 Q That was part of the church process?

20 A Yes.

21 Q And that's where you took the kids to church?

22 A Yes.

23 Q And there was -- there was a book written by a guy
24 named Denny Kenaston. Do you recognize this book?

25 A Yes. Godly Seed, yes.

1 Q And is this a book that you and Tim got about how to
2 raise kids?

3 A Yes, sir.

4 Q And is this a book that you and Tim got together and
5 read together?

6 A We did, and we didn't even get through the whole
7 thing, I don't think. We just kind of skimmed through and
8 picked little things out, yes.

9 Q Amber, I'm going to ask you if you can flip through
10 this book and see if this is the book -- if you recognize
11 it as the book that you and Tim --

12 A I recognize it. I do recognize it. Yes. Yeah, we
13 highlighted a few things. This is it.

14 MR. YOUNG: Your Honor, we would offer Defendant's
15 Exhibit number 122 into evidence.

16 THE COURT: Any objection?

17 MS. MAYES: No objection, Your Honor.

18 THE COURT: 122 is the book that's admitted without
19 objection.

20 (Whereupon, Defendant's Exhibit number 122 was
21 admitted into evidence.)

22 Q Amber, I think like a lot of marriages you had good
23 times?

24 A Yes.

25 Q And some not good times?

1 A Yes.

2 Q We know when having good times you made a lot of
3 movies, took a lot of videos.

4 A We did.

5 Q And you all made those as a family with kids?

6 A Yes, sir. We did.

7 Q And those were stored -- Tim had those stored on a
8 hard drive?

9 A Yeah. We backed them up to hard drive and had them
10 on our big computer. And we did that together so we
11 wouldn't lose them.

12 Q And did -- when you and Tim moved to South Carolina
13 Tim changed. Is that right?

14 A I'd say his anger issues got worse.

15 Q You had listened to a phone call between yourself
16 that you recorded and Tim, Sr. Is that right?

17 A Yes.

18 Q And in that phone call you told Tim, Sr. that Tim had
19 changed when you moved to South Carolina?

20 A He did.

21 Q You went on to say that as far as his anger problems
22 go, you thought that he needed to see a medical
23 professional?

24 A He was just flip-flopping.

25 Q Mood swings?

1 A Mood swings, flip-flopping.

2 Q You described it at one point as bipolar?

3 A Yeah.

4 Q You said that talking with Tim was like walking on
5 egg shells because you never knew how he was going to
6 respond.

7 A Exactly.

8 Q On good days Tim would buy you flowers or write you a
9 letter or bring you dinner home. And on bad days he was
10 always paranoid like you were out to get him?

11 A The thing with Tim is -- is that you didn't really
12 have to do anything, if I could say that. You didn't have
13 to do anything to get him angry. Tim was just angry.
14 There were -- there were more bad times down here than
15 there were good. I'll put it that way. It got worse.

16 Q During that time Tim was a good father?

17 A He was always a good father while we were married,
18 yes.

19 Q He was never abusive towards the children?

20 A Not towards the children, no.

21 Q Is part of the religious principles that he
22 gravitated to and part of the doctrine of Raising the
23 Godly Seed was corporal punishment?

24 A I am not understanding you.

25 Q Sure. Spanking. That spanking is --

1 A He did. He didn't spank often. He didn't -- we're
2 not big spankers in our house. It was -- he did more of
3 push-ups and squats and stuff.

4 Q And writing?

5 A And writing, yes. Writing what they did wrong and
6 apologizing for it. But it was never to an extreme --

7 Q Right.

8 A -- while we were married, no.

9 (Whereupon, Defendant's Exhibit 123 was marked for
10 identification only.)

11 Q Amber, I want to show you an affidavit that's been
12 marked as Defendant's Exhibit number 123 for
13 identification and ask you if you recognize that.

14 A Yes. Yes.

15 Q And that's an affidavit from you?

16 A Yes, it is.

17 Q And that's signed by you?

18 A Yes, sir.

19 MR. YOUNG: Beg the Court's indulgence.

20 Q One more thing, Amber. Sorry. I forgot. This check
21 that you talked about on direct examination. What was the
22 date that that check was written?

23 A 2/8/2004 -- or '14. I'm sorry.

24 Q And what's the check number on there?

25 A 104.

1 Q And was that check ever cashed?

2 A No, it wasn't, and I don't -- I think this was when I
3 probably lost my job at Walmart. So I had asked him to
4 wait until my, like my check had gone through. But this
5 was -- I don't think he cashed this one.

6 Q And your divorce was final in October of 2013. Is
7 that right?

8 A Yes.

9 MR. YOUNG: Thank you. That's all the questions that
10 I have at this time.

11 REDIRECT EXAMINATION

12 By Ms. Mayes:

13 Q Ms. Kyzer, he was asking you about the term, bipolar.
14 What do you mean when you use that term?

15 A To me it just meant that he was flip-flopping. I
16 mean, it was getting worse. It wasn't -- it was like a
17 Jekyll and Hyde thing. Every time I turned around it was
18 like am I going to, pardon my language, piss Tim off
19 today, or is he going to be nice. That's what I meant by
20 that.

21 Q Were you referring to an actual diagnosis of bipolar?

22 A No. I just meant that as just what I had stated.

23 MS. MAYES: Thank you. Nothing further.

24 THE COURT: All right. You may step down.

25 (Whereupon, the witness stepped down from the witness

1 stand.)

2 MR. GRAHAM: The State calls Heather Clary to the
3 stand.

4 HEATHER CLARY, being
5 first duly sworn, testified as follows:

6 MADAM CLERK: Once you're seated state your full
7 name, spelling your last, please.

8 THE WITNESS: Heather Clary, C-l-a-r-y.

9 THE COURT: All right. I am going to go back over
10 something. We attempt to get all of the potential
11 witnesses on the list. This is Ms. Clary. I want you to
12 raise your hand, if it's appropriate, if not, keep your
13 hands down. Does anybody know Ms. Clary in any fashion
14 whatsoever, related by blood or marriage, close personal
15 friends, work with, socialize with in any fashion. If so,
16 raise your hand.

17 (Whereupon, no jurors raised their hand.)

18 THE COURT: No hands raised. Thank y'all.

19 DIRECT EXAMINATION

20 By Mr. Graham:

21 Q Ms. Clary, where are you currently employed?

22 A The Greenwood County Sheriff's Office.

23 Q Could you pull the mic towards you and talk a little
24 bit louder.

25 A My apologies. Greenwood County Sheriff's Office.

1 Q And what do you do for the Greenwood County Sheriff's
2 Office?

3 A I'm a deputy with uniform patrol.

4 Q Back in 2014 were you employed at the Lexington
5 County Sheriff's Department?

6 A Yes.

7 Q What did you do there?

8 A Crime scene investigator.

9 Q And as part of the duties of a crime scene
10 investigator you collect evidence and take photos, right?

11 A Correct.

12 Q How long had you been a crime scene investigator back
13 in September, 2014?

14 A Not very long. I just started the beginning of
15 September.

16 Q So one of the first things you did then was respond
17 on September 8th to Mr. Jones' residence. Is that
18 correct?

19 A Yes.

20 Q And what date was that?

21 A That was September 8th, 2014.

22 Q What time did you go out there?

23 A 5:30 in the afternoon.

24 Q And did you take photographs of the residence in the
25 way that you found it?

1 A Yes.

2 Q Two of the photographs I'm going to show you have
3 already been marked for ID. That's 183 and 184. Do you
4 recognize those two?

5 A Yes.

6 Q And those are photographs that you took?

7 A Yes.

8 Q And that's the way that you found those items?

9 A Yes.

10 Q Do they fairly and accurately represent what you saw?

11 A Yes.

12 MR. GRAHAM: Your Honor, the State would move those
13 two into evidence at this time.

14 MR. YOUNG: No objection.

15 THE COURT: No objection, the photographs are in,
16 that's 183 and 184.

17 (Whereupon, State's exhibit numbers 183 and 184 were
18 admitted into evidence.)

19 Q Ms. Clary, I want to show you a couple of
20 photographs, 190 through 193 and ask if you recognize
21 those as photographs that you took?

22 A Yes.

23 Q And do they fairly and accurately represent what you
24 saw when you were executing the search warrant on
25 photographing the residence on September 8th of 2014?

1 A Yes.

2 MR. GRAHAM: Your Honor, the State would offer those
3 four additional photos into evidence.

4 MR. YOUNG: No objection.

5 THE COURT: No objection to four photographs, 190
6 through 193.

7 (Whereupon, State's Exhibit numbers 190 through 193
8 were admitted into evidence.)

9 MR. GRAHAM: Your Honor, some of these photos are
10 dark. If I can have Ms. Clary step down from the stand.

11 THE COURT: You may.

12 (Whereupon, the witness stepped down from the witness
13 stand.)

14 Q Ms. Clary, the residents had two rooms for the five
15 children. Is that correct?

16 A Yes.

17 Q Do you remember how the beds were separated between
18 the two rooms?

19 A If I remember, there was a bed and a crib in one room
20 and then a bed and a set of bunk beds in the other.

21 Q Looking at 192 and 193, are those the bed and crib
22 that was -- that you testified to that was in one room?

23 A Yes.

24 Q Would you explain to the jury then the condition you
25 found as far as sheets and blankets and comforters and

1 things like that. As to the crib, State's 193, what did
2 you find?

3 A The only items on the crib were the fitted sheet and
4 then the blue blanket thing as shown on the photograph.

5 Q State's 193 was the bed that was in the same room as
6 the crib, correct?

7 A Yes.

8 Q And what was on that bed?

9 A Just the fitted sheet. No other covering.

10 Q As to the crib?

11 A Yes.

12 Q What was on the crib?

13 A Just the fitted sheet and the blue blanket.

14 Q And the small bed that was in the same room?

15 A Just the fitted sheet. No other bedsheets.

16 Q In the other bedroom you testified there was a bed
17 and another set of bunk beds. Is that correct?

18 A Yes.

19 Q Looking at State's 191 and 190. Can you describe to
20 the jury 191 and what we're looking at and the condition
21 of the bed when you found it on September 8th?

22 A Just a normal bed with a mattress. No bedding.

23 Q 190 is the bunk beds that you testified to, and that
24 is in the same room as the bed that we saw in 190. Is
25 that correct?

1 A Correct.

2 Q Or 191. I apologize. So looking at 191 at the bunk
3 beds, would you describe to the jury the condition of the
4 beds as far as any bedding or lack of bedding thereof?

5 A Just the mattresses and the bunk beds. No bedding.

6 Q State's 183 and 184 in evidence. What room are we
7 in?

8 A This is the room with the bed and the set of bunk
9 beds.

10 Q So the -- that would have been 191 and 190.

11 A Yes.

12 Q The poster bed and the set of bunk beds?

13 A Correct.

14 Q What, if anything, in looking at State's 193 did you
15 find on the floor of that room?

16 A There was a Woody doll in pieces.

17 Q 184 is a close-up of that, correct?

18 A Yes.

19 MR. GRAHAM: You can have a seat, Ms. Clary. Thank
20 you.

21 (Whereupon, the witness returned to the witness
22 stand.)

23 Q Ms. Clary, I'm going to hand you a bag that is
24 currently sealed and ask if you recognize that.

25 A Yes.

1 Q And, in fact, you see your initials on the seal?

2 A Yes.

3 Q And had that ever been cut since you put the seal on
4 it?

5 A No.

6 Q And what does that item -- what does that bag
7 contain?

8 A The Woody doll.

9 MR. GRAHAM: Your Honor, I would ask her to -- do you
10 have a pair of scissors, Madam Clerk?

11 Q Ms. Clary, would you cut that open and verify that
12 that's what you collected.

13 MR. YOUNG: Your Honor, can we approach?

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 Q Do you recognize that as the item that you collected?

18 A Yes.

19 Q And that is the Woody doll that's in pieces that we
20 saw in the prior photographs?

21 A Yes.

22 MR. GRAHAM: Your Honor, the State would offer that
23 into evidence at this time.

24 THE COURT: Would you like to be heard on that?

25 MR. YOUNG: Yes, sir.

1 THE COURT: All right. Can we hear it here?

2 MR. YOUNG: Sure.

3 THE COURT: All right.

4 (Whereupon, a bench conference was held in the
5 presence of the jury but out of the hearing of the
6 jury.)

7 THE COURT: As soon as he handed her the scissors she
8 said, it is going to make a noise. You didn't hear her
9 say that.

10 MR. YOUNG: No, sir.

11 THE COURT: He said exactly what, right on cue to
12 where the Woody doll said something.

13 MR. YOUNG: I don't know, I think we can take the
14 batteries out.

15 THE COURT: Can we take the batteries out, will that
16 be all right?

17 MR. YOUNG: Sure.

18 MR. GRAHAM: Okay.

19 THE COURT: As soon as we get through this witness.
20 Do you have an issue, one of the juror's said that they
21 would like to break after this witness. Can you deal with
22 that?

23 MR. YOUNG: Sure.

24 THE COURT: Okay. Just keep it still.

25 MR. GRAHAM: Your Honor, we would offer it into

1 evidence.

2 MR. YOUNG: Subject to the recording of the doll, we
3 would let it in.

4 THE COURT: We will remove the battery of the Woody
5 doll to meet the terms of the objection.

6 MR. YOUNG: I don't have any objection to their
7 evidence technician to do that.

8 THE COURT: Good enough.

9 MR. GRAHAM: Your Honor, the State would offer it
10 into evidence.

11 THE COURT: I want to accept into evidence but I want
12 the battery removed so we don't continue to hear the
13 recording because I think it will still do that. So that
14 will be done subject to it being let into evidence. That
15 will be done this afternoon.

16 (Whereupon, State's Exhibit 194 was admitted into
17 evidence.)

18 MR. GRAHAM: No further questions.

19 THE COURT: Your witness.

20 MR. YOUNG: No questions, Your Honor.

21 THE COURT: All right. Ms. Clary, you're free to go.
22 Thank you.

23 (Whereupon, the witness stepped down from the witness
24 stand.)

25 THE COURT: All right. The lawyers told me they've

1 got two things that I've got to review for in the morning
2 and we've got some time constraints. So I'm going to stop
3 here. So you're through for day. Put your stuff in the
4 jury room. See you back in the morning same time, about
5 8:45. We'll probably start at 9:00 o'clock sharp.
6 Remember, do not discuss the case. If you have any
7 issues, let me know and I'll help you resolve them. So
8 thank you for your all's day. See you in the morning.

9 (Whereupon, the jury was excused from the courtroom
10 for the day.)

11 THE COURT: Do we need to do anything before in the
12 morning, we want to put anything on the record?

13 MR. GRAHAM: Not from the State, Your Honor.

14 THE COURT: Mr. Young, you got anything before we
15 stop for the day?

16 MR. YOUNG: Judge, briefly, with regard to our motion
17 for a mistrial in Ms. Kyzer's emotions on the stand. We
18 would, for the record, we would like to make it clear that
19 we have moved for a mistrial under the due process, the
20 Fifth, the Fourteenth Amendments, Article 1, Section 3 and
21 14 of the South Carolina Constitution. The right to a
22 fair trial, an impartial and unbiased jury, under the
23 Sixth and Fourteenth Amendments to the United States
24 Constitution, Article 1, Section 14 of the South Carolina
25 Constitution. And the heightened reliability and

1 prohibition against cruel and unusual punishment under the
2 Eighth Amendment under the United States Constitution and
3 Article 1, Section 15 of the South Carolina Constitution.

4 THE COURT: The record's complete. My ruling remains
5 the same but you have got on, a basis for your motion.
6 All right, we have got a Denno hearing we need to take
7 care of? How long is this going to take, fifteen minutes?
8 You want to try to do it, 8:30, 8:45?

9 MR. HUBBARD: Yes, sir.

10 MR. YOUNG: Are they just calling one officer or are
11 they calling everybody that was present?

12 MR. HUBBARD: Calling the man that was in charge.

13 THE COURT: All right. 8:30 in the morning. I'll
14 see you early.

15 (Whereupon, the trial will resume the next morning at
16 8:30 a.m.)

17 May 21, 2019

18 THE COURT: Call your witness.

19 MR. MADSEN: Your Honor, the Defense calls Dr.
20 Jonathan Lipman.

21 (Whereupon, Dr. Lipman will testify and this
22 testimony is video-taped for the jury to listen to at
23 a later time.)

24 THE COURT: Come forward and be sworn, Dr. Lipman.

25 JONATHAN LIPMAN, being

1 first duly sworn, testified as follows:

2 THE CLERK: Once you're seated, Doctor, state your
3 full name spelling your last please.

4 THE WITNESS: My name is Jonathan Joseph Lipman,
5 L-I-P-M-A-N.

6 DIRECT EXAMINATION

7 By Mr. Madsen:

8 Q Dr. Lipman, what is your profession?

9 A I'm a neuropharmacologist.

10 Q Can you tell the jury -- what is a
11 neuropharmacologist?

12 A A neuropharmacologist is a person who is trained in
13 the expertise of dealing with the effects of drugs on
14 nerve, brain and behavior. Some of us work in the
15 industry developing and researching these new drugs, some
16 of us work in academia and some of us consult clinically.

17 Q Let me go over your education. Can you go over your
18 educational background, please?

19 A Yes, sir. My educational background is originally
20 British. So it differs in some ways from the American
21 trajectory. My advanced level certificates of education
22 came from Kitson College of Science in Leeds, England. I
23 went on to do my professional degree at the Hatfield
24 Polytechnic in Hertfordshire. It's known as Hertfordshire
25 University. It changed its name. I did my externship at

1 the National Hospital for Nervous Diseases in Queen
2 Square, London and I obtained by State certification as a
3 biomedical scientist, as well as my professional degree,
4 in 1979. I went on then to do my doctoral work at the
5 University of Wales Institute of Science and Technology
6 obtaining a PHD in neuropharmacology. Excuse me. I just
7 misspoke. It was my PHD that I graduated in 1979.
8 Forgive me. And I then went to do a post-doctoral
9 fellowship at the University of Tennessee Center for the
10 Health Sciences in Memphis, Tennessee and over the ensuing
11 years, continued to acquire additional education and board
12 certifications as I moved through my academic and other
13 professional positions.

14 Q Can you tell me about your registrations and/or
15 certifications?

16 A Well, I mentioned, of course, my biomedical science
17 certification in England. I am certified, also, in
18 England, by the Healthcare Professions Council, which is a
19 national organization that controls healthcare
20 professionals. Over the years that I was at the
21 University of Tennessee Center for Health Sciences, and
22 later Vanderbilt University where I held positions for 10
23 years in the departments of medicine and surgery, I
24 obtained additional training and qualifications, becoming
25 board certified as a -- by the American Board of

1 Disability Analysts, the Medical Psychotherapists and
2 Psychometricians, and the American College of Forensic
3 Examiners. A number of different Boards. And the
4 education still continues. It does not stop. I moved
5 from Vanderbilt to join the industry after 10 years at
6 Vanderbilt and worked in the pharmaceutical industry in
7 the medical device development field for 10 years before
8 rejoining academia at East Tennessee State University
9 where I now am on the faculty, clinical faculty, and
10 continue to consult with industry and the courts.

11 Q So you went through school. At some point in time
12 you went into private practice, private industry, for a
13 period of time, as you said, and then back to academia?

14 A Yes. Academia, though continuing to consult in
15 neuropharmacology outside of the academic setting, in
16 addition to academic work in research and development.

17 Q And you've said that you had gone in 10 years in the
18 -- I guess, the business aspect of it. What did you do
19 during that 10 years?

20 A I was Head of pharmacology for the first year of that
21 time at a company that was spun off from Abbott
22 Laboratories. It was called Medical -- Molecular
23 Geriatrics. We were developing drugs that were based on
24 anti-psychotic molecules for neurological purposes, and
25 then transitioned to a medical device development track

1 for Neuroscience Toolworks developing devices and methods
2 for assessing subjective states of pain and suffering in
3 humans by objective methods.

4 Q So were you developing drugs then to do those --

5 A At that point we would -- the devices and methods
6 that we were using were to assess the effectiveness of
7 drugs that we were then not developing. We were
8 developing the methods of assessing them.

9 Q So basically figuring out are these things that
10 people have developed, are they working?

11 A Yes. One of the principle interests was pain
12 medicines, which, of course, takes you into the area of
13 addiction and dependence and withdrawal.

14 Q Do you have any professional affiliations?

15 A I'm currently affiliated with East Tennessee State
16 University, as I mentioned.

17 Q Yes, sir.

18 A I have a list of previous affiliations, no longer
19 current.

20 Q Can you kind of hit the highlights of those?

21 A Well, I mentioned the first, which was the Institute
22 of Neurology. Department of Neurosurgical Studies of
23 National Hospital for Nervous Diseases in Queen Square,
24 London. And then through my departments at University of
25 Tennessee Center of Health Sciences, my affiliations were

1 with the anesthesiology department, the biochemistry
2 department and the Faculty Medical Practice Pain Clinic.
3 At Vanderbilt I was affiliated with -- formally affiliated
4 with the Department of Medicine and Surgery and maintained
5 an adjunct position for some years after that. I'm not
6 sure if it's still current. Possibly not after this time.
7 With work that I was doing with the Department of
8 Neurosurgery on pain assessment and pain treatment methods
9 in chronic pain and intractable pain patients, and there
10 developed several methods for objective measurement of
11 pain, addiction, withdrawal. As I mentioned, I was group
12 leader at Molecular Geriatrics Corporation, which was a
13 spinoff of Abbott Labs. At the university now I hold a
14 number of positions.

15 Q And what are those?

16 A Well, I'm on the Grand Rounds Committee for the
17 Department of Psychiatry. I'm affiliated with the
18 Department of Continuing Medical Education there, and I
19 also am -- last year I was one of the coordinators for the
20 forensics course in the psychiatry residency program, and
21 also a lecturer on that program, and I am still a lecturer
22 on that program. This is in the postgraduate training of
23 psychiatrists.

24 Q You had mentioned continuing education. Can you tell
25 us about any of the lectures, seminars or presentations

1 that you have given?

2 A I'd have to look at my own CV. There are many.

3 Q Can you just give us a thumbnail of a few of them?

4 A The Antidepressant Drug Pipeline was one that I gave
5 a couple of years ago, Genetic Testing in Pain Management
6 was a lecture I gave the previous year as part of a one
7 day seminar for -- actually, it was not just East
8 Tennessee. It was just held there. It was for people
9 from all over. I gave a Grand Rounds that same year on
10 pharmacogenetics. I have given a lecture entitled Update
11 on Recent Trends in Drug -- Abused Drugs, and in 2014, New
12 and Future Drugs of Abuse. One was given to the US
13 Criminal Justice Administration called Drug Abuse
14 Addiction in The Brain, Forensic Relevance. I could go
15 on, but there are many.

16 Q Do you hold any patents?

17 A I do. I hold several, both in the U.S. and abroad,
18 on pain assessment methods. International patents and, I
19 believe, Canadian.

20 Q Have you ever participated in any peer briefs or
21 reviewed research grants?

22 A Yes.

23 Q Can you tell me a little bit about those?

24 A Well, throughout my time at Vanderbilt, I was the
25 beneficiary of numerous grants assessing the effects of

1 dementia and of drugs on the brain, and some of these came
2 from the Division of Toxicology. It's called the Program
3 in Toxicology. Some from the National Institutes of
4 Health. One was with UCLA, Los Angeles VA, on dialysis
5 dementia. Uremic encephalopathy funding that I was part
6 of at Vanderbilt came from Dialysis Clinics Incorporated,
7 a private organization that was funding my work on the
8 brain in dementing patients. After leaving Vanderbilt,
9 the work that I was doing in Chicago with Molecular
10 Geriatrics and with Neuroscience Toolworks was funded
11 through the National Institutes of Health. These were
12 quite large grants. One -- a quarter million was one,
13 \$850,000 was another, to fund our work there on the
14 development of methods for assessing the effects of drugs.
15 I think that might have been my last NIH funded grant.

16 Q Have you ever been published?

17 A Oh, yes.

18 Q Would it be fair to say about six pages of your CV
19 are articles that you have been published?

20 A Yes, it is. These -- what's in my CV are just the
21 peer reviewed ones, but there are more than this, some of
22 which were not in peer reviewed journals.

23 MR. MADSEN: Judge, at this time, we would offer Dr.
24 Lipman as an expert in neuropharmacology.

25 THE COURT: Voir dire, Mr. Graham?

1 MS. MAYES: No voir dire at this time, Your Honor.

2 THE COURT: Considering his background, training,
3 education, experience in all fields, shown in his
4 testimony, the Court will qualify him in the field of
5 neuropharmacology to provide testimony to that end.

6 Q Dr. Lipman, we've heard from a forensic toxicologist.
7 Can you tell me what the difference is between a forensic
8 toxicologist and a neuropharmacologist is?

9 A Yes. Toxicologists have their expertise in the
10 measurement of drug effects in body fluids, body tissues,
11 biological samples. The analytical methods. To some
12 extent their training includes the poisoning effects of
13 those drugs. The difference between a drug effect and the
14 poison effect of that drug is one largely of dose. Now,
15 pharmacologists have their expertise in the mechanism of
16 action of drugs, therapeutic and adverse, how they work
17 and how they interact. We are the people, for instance,
18 that test drugs prior to marketing. We are the people
19 that perform post-marketing surveillance of drug effects
20 in the population being prescribed. And pharmacologists
21 are also the people who research, develop and design these
22 drugs. Now, in the process of that, some of our training
23 is in the measurement of those drug effects. Sorry.
24 Measurement of those drug concentrations in tissues, but
25 that is not our principle focus. So there is a certain

1 amount of toxicological training in a pharmacological
2 career, but it isn't our main focus, whereas that is the
3 main focus of a toxicologist. We rather deal with the
4 effects of drugs, measuring the effects of drugs,
5 assessing the effects of drugs and in the treatment of
6 disease. We -- such as psychiatric disease. We assess
7 the efficacy of the drug, the effectiveness of it, and of
8 drug interactions.

9 Q Let me ask you this. As a neuropharmacologist, when
10 looking at the effects of drugs, initially, what is
11 important to you to look at as far as background?

12 A Drug effects are determined more than by dose. Drug
13 effects have very individual determinates of drug action.
14 In other words, it depends who is -- who the drug is
15 acting upon as to what the effect will be. Drugs produce
16 different effects in different people, and the effect of a
17 drug is influenced then by factors such as their
18 underlying medical condition, their underlying genetic
19 predispositions, their underlying metabolic capabilities.
20 Underlying disease states will completely change the
21 effect of a drug. There are a number of other
22 determinates, but also relevant to the examination of a
23 drug at the time of inspection is the set and setting of
24 drug use because that also determines the effect.

25 Q How so?

1 A The set and setting are -- set is what you bring to
2 the drug experience and the setting is the experience --
3 is the milieu surrounding the effect of drug action. So
4 just to give you an example of how setting can be
5 relevant. Anti-psychotic drugs that are very helpful and
6 therapeutic in a controlled milieu in a psychiatric ward
7 may be completely useless in the chaos of everyday life
8 with traffic and people and responsibilities and noise and
9 family and intrusions. The milieu, the setting, has a lot
10 to do with how effective of the drug will be, and the
11 converse is also true. Not only may a therapeutic drug
12 lose its benefits in the wrong milieu, but a drug that
13 could be relatively innocuous, for instance, LSD, a
14 psychotomimetic drug, can produce catastrophic effects if
15 the milieu is threatening, frightening, uncontrolled, and
16 that would be called a bad trip. The dose hasn't changed,
17 the drug hasn't changed, but the setting has changed the
18 effect of the drug. So set and setting are important
19 determinates of how a drug expresses its effect on an
20 individual.

21 Q Did you have an opportunity to review documents in
22 reference to the life history of Tim Jones?

23 A Yes, I did.

24 Q And why is that important to you?

25 A Well, as I explained, the underlying medical,

1 psychological, psychiatric, genetic, familial condition of
2 the individual can determine, in large part, the effect of
3 a drug.

4 Q And you also reviewed information about a traumatic
5 brain injury that Tim suffered during his pre-adult years?

6 A Correct. That -- as I said, medical. Yeah. For a
7 drug that acts on the brain, it's very important to know
8 how the brain is functioning to start with.

9 Q And you also reviewed his relevant psychiatric
10 history?

11 A Yes.

12 Q And also his relevant drug abuse history?

13 A Yes, I have.

14 Q And why would the drug abuse history be important?

15 A For a number of reasons. One reason is that,
16 depending on other factors, the effect of a drug at a
17 certain time of interest, when we examine that time of
18 interest may be related to the effect of the drug
19 historically. In some cases, that may have an effect --
20 for instance, like tolerance in alcohol use. A person who
21 using it regularly will develop some tolerance and will
22 not be as intoxicated at a blood level that we measure at
23 the time of interest because they are tolerant to it,
24 unlike a person who has never had alcohol and who then
25 achieves the same blood level and is unable to get up off

1 the floor. So the history of drug use is relevant from
2 that point of view. And it's also relevant because prior
3 drug use can effect other things such as the development
4 of the brain, the development of the liver, the
5 development of a certain cognitive and other factors. And
6 depending on the age at which it is used, it will have
7 different effects. Therefore, the history of drug use is
8 relevant to an examination of how a drug acts at a
9 particular time.

10 Q And I believe you reviewed information about Tim's
11 marijuana use during his pre-adulthood years?

12 A Yes, I did.

13 Q And also, I guess, in the last couple of months prior
14 to August, his use of synthetic cannabinoids?

15 A Yes, I did review that.

16 Q And besides the -- and, I guess, when I say synthetic
17 cannabinoids, marijuana is also a cannabinoid?

18 A Marijuana contains cannabinoid drugs.

19 Q And then you also reviewed information in reference
20 to Chantix?

21 A I did. He was prescribed that at the time of this
22 offense.

23 Q Can you just -- before we get into the background,
24 can you give me your opinion on what you believe Tim's
25 drug use had on his thinking and his behavior at the time

1 of his killing of children -- of his children?

2 A I believe that his use of synthetic cannabinoid AB
3 Pinaca more likely than not exacerbated his pre-existing
4 and his continuing psychosis spectrum mental illness,
5 which drove his irrational behavior.

6 Q So let's kind of back up now and just kind of talk
7 about the pharmacology of cannabis. Just kind of run us
8 through kind of how -- is it just that drug or any drug
9 works on -- or with efficacy? Can you --

10 A Cannabis --

11 Q -- Explain that to the jury?

12 A Cannabis contains a number of different drugs. It
13 contains quite a few. Two of them we think of as the main
14 ones. Future research may reveal more.

15 Q What are the two main ones?

16 A Cannabidiol and delta-9-tetrahydrocannabinol.

17 THE COURT: For the record, let's get it -- spell it
18 for the Court.

19 THE WITNESS: C-A-N-N-A-B-I-N-O-L. So it's
20 delta-9-tetrahydrocannabinol. T-E-T-R-A-H-Y-D-R-O --

21 COURT REPORTER: I can't hear you.

22 THE WITNESS: T-E-T-R-A-H-Y-D-R-O-C-A-N-N-A-B-I-N-O-L

23 Q Delta-9-tetracannabinoid, is that what we would kind
24 of on the street call THC or --

25 A Yes.

1 Q -- A lot of people would refer to that as THC?

2 A Yes, it's usually called THC.

3 Q So that's one of the components. What was the other
4 one?

5 A Cannabidiol. C-A-N-N-A-B-I-D-I-O-L.

6 Q And what is that?

7 A That doesn't act on the same receptor as the THC and
8 it exerts different effects. In fact, the effects are
9 very, very different and are currently being evaluated for
10 use as potentially anti-psychotic drugs. And yet, both of
11 them are in the same plant, along with others that may
12 have effects we haven't yet elucidated properly.

13 Q And so, both of those things are inside of just
14 regular marijuana?

15 A To some extent. Some marijuana species more than
16 others. Yes.

17 Q And can you explain to the jury how you can determine
18 the power of a cannabinoid to invoke effects at a
19 receptor? And, I guess, we need to start with kind of
20 explaining what is a receptor and how those --

21 A Yes.

22 Q -- things work.

23 A Let me explain that. There's a reason why cannabis
24 acts on the brain. Can I start there?

25 Q Yes, please. How does it act on the brain?

1 A The brain has receptors for cannabis -- for
2 cannabinoids. And the reason it has receptors is because
3 the human physiology manufactures its own cannabinoids and
4 they have very important purposes in brain function.
5 These are -- we call them endocannabinoids. They are
6 involved in the regulation of temperature, body
7 temperature, blood pressure, they're involved in the
8 regulation of perception, they're involved in memory, and
9 they are neurotransmitters which our brain relies on to
10 function, these endocannabinoids. The first to be
11 identified and synthesized was one called anandamide.

12 A-N?

13 Q We may need you to spell that, I guess.

14 A A-N-A-N-D-A-M-I-D-E. And, of course, it was tested
15 for possible use in humans as a therapeutic drug. Be that
16 as it may, the point is that our brain possesses receptors
17 for endocannabinoids, and it is of those receptors that
18 the cannabinoids in marijuana act. A receptor is a patch
19 on a neuron which, when activated, produces a signal in
20 that nerve. The receptor has a very specific shape and
21 only things that will fit that shape will bind to the
22 receptor.

23 Q Is that kind of like a lock and a key going together?

24 A Yes. You might think of the receptor as being the
25 lock and the chemical, either anandamide or THC or a

1 synthetic, as being the key. When the combination occurs
2 between the neurotransmitter and the receptor, it occurs
3 with a certain vigor that is measurable by
4 neuropharmacologists. A certain attraction. Think of it
5 as the strength of a magnet maybe. And we call that
6 attractiveness of the receptor for the neurotransmitter,
7 we call that affinity. It's a measurable thing.

8 Different drugs have different affinities for the
9 receptor, and yet in order to evoke an effect, simply
10 combining with the receptor is not enough. It must also
11 provoke a response and --

12 Q And what is that called when it provokes that
13 response?

14 A That is -- that response is also measurable, and that
15 is called the efficacy of the neurotransmitter or the
16 drug. So whether a drug produces an effect or not --

17 MADAM COURT REPORTER: How do you spell that?

18 THE COURT: The efficacy.

19 THE WITNESS: Efficacy.

20 MADAM COURT REPORTER: Okay.

21 THE COURT: He said it the British way.

22 MADAM COURT REPORTER: Okay.

23 THE WITNESS: Sorry.

24 THE COURT: It's all right. I knew what you said.

25 Q So the efficacy. Can you, again, explain that?

1 A Yes. Affinity and efficacy, as we would say it in
2 England, are measurable metrics in relation to the action
3 of a drug or a neurotransmitter on a receptor in the
4 brain. Now, when a drug produces a post-receptor action
5 as a result of its binding, its affinity and its effect,
6 its efficacy, we call that an agonist drug.

7 Q So that's a product of affinity and efficacy?

8 A Efficacy. Yes. Not all drugs produce such effects.
9 And an example, for instance, of something that
10 antagonizes an agonist, we call them antagonist drugs, is
11 a drug that perhaps has high affinity to bind with the
12 receptor will, perhaps, even displace the first drug from
13 the receptor, but it has itself no efficacy. All it can
14 do is bind.

15 Q And I think we've all heard of Narcon or Narcan.

16 A Naloxone, Narcan, is an example of an opiate drug
17 that has high affinity, but no efficacy. Therefore, it
18 competes with morphine for the opiate receptor, but it
19 doesn't produce a morphine like effect itself, and this
20 ends the morphine action by displacing it. So it has no
21 efficacy, it has high affinity. Whereas, morphine itself
22 has high affinity and high efficacy. It goes into the
23 lock and it activates it.

24 Q So, basically, the Narcan is kicking the morphine out
25 of that receptor and that's kind of how it works and

1 brings people back in that it's stronger and has more
2 affinity and it has --

3 A It has more affinity, but no efficacy. An example --
4 just to complete the metaphor -- or the example. Heroin
5 has a higher affinity and a higher efficacy than morphine.
6 If a person is under the influence of morphine, heroin can
7 displace that and produce a greater effect because they're
8 both agonists. They both have receptor binding capability
9 and receptor activation capability. Narcan binds, but it
10 has no effect, no efficacy. So it displaces.

11 Q And so, in dealing with THC, you had mentioned that
12 it is an agonist at a receptor. Do we know what that
13 receptor is or what is it called?

14 A Yeah. Well, all of the receptors, and there are a
15 number of receptors for the cannabinoids, are called the
16 CB receptors. The one that THC acts on is the CB1
17 receptor. It's present in the hippocampus of the brain,
18 it's present throughout the limbic system, and I mentioned
19 earlier it has some very lower brain function areas that
20 it is binding to, because that's where anandamide binds.
21 The endogenous cannabinoid that we make ourselves.

22 Q And when you talk about an agonist, is there a
23 difference between a partial agonist and a full agonist?

24 A Yes, there is. The efficacy and the affinity may not
25 be one-hundred percent. There are some drugs that will

1 bind with great avidity to the receptor and you can't get
2 them off. Some will bind gently and they can be bumped
3 off by competing agents. Some will bind strongly and
4 aggressively produce an effect. In a sense, when both
5 affinity and efficacy are at maximum, we have what we call
6 a full agonist drug.

7 Q Would THC be a full agonist to that CB1?

8 A It is not. It is a partial agonist. It is weaker
9 than a full agonist at binding to the receptor and
10 producing post-receptor effects.

11 Q And that's the natural occurring THC found in, say,
12 marijuana, correct?

13 A Yes. Yes. It's a partial agonist. It's not a full
14 agonist.

15 Q What about the synthetic cannabinoids? Do those act
16 on that same CB1 receptor?

17 A They do. They do. Of course, they are not
18 accompanied by the other compounds found in marijuana
19 because they are synthetic. They are just modifications
20 of the shape of the THC molecule made by
21 neuropharmacologists and medicinal chemists for research
22 purposes for exploring how the brain works and how
23 therapeutic drugs may be developed.

24 Q So you had mentioned, say, with marijuana, that it
25 has the THC, and then some other items. The synthetic

1 marijuana doesn't have those other items, correct?

2 A That's correct.

3 Q And with the synthetic cannabinoids, those then are a
4 full agonists to that CB1 receptor and not a partial,
5 correct?

6 A The current generation are full agonists. Yes.
7 There are some available that are partial agonists that
8 have been made by medicinal chemists for research
9 purposes. The reason why you would make them is because
10 there's therapeutic potential in the endocannabinoid
11 system.

12 Q Such as what?

13 A Well, anorexia, sexual dysfunctions, cachexia in
14 cancer where people just starve themselves to death,
15 insomnia in some cases. There are a number of psychiatric
16 illnesses that cannabinoids have been purposed as
17 potential treatment for, but we couldn't, of course, use
18 THC. It's neither specific, nor potent enough, and
19 marijuana contains too many compounds anyway.

20 Q And so, when we talk about these synthetic
21 cannabinoids, these aren't things that are found in
22 nature. You said they're developed in a lab?

23 A Yes, intentionally.

24 Q And those can be used for, as you said, I guess,
25 research?

1 A Yes.

2 Q Would those be kind of classified as almost designer
3 type drugs?

4 A Yes. They're designed by medicinal chemists. So
5 they are designer drugs.

6 Q And I believe when they started was around 1995?

7 A Yes. The first one was developed by J. W. Hoffman
8 and the drug that -- well, a family of drugs are all
9 called the J.W.H drugs because he named them. And J.W.H
10 017 and 018 were, I think, the first drugs that managed to
11 escape from the lab, as it were, and find themselves in
12 street use.

13 Q So when we talk about -- can you kind of give me an
14 idea, as far as the synthetic cannabinoids, how many
15 generations are we now talking about since those, I guess,
16 in your words, escaped from the lab?

17 A It would have to be dozens. I -- about a year ago, I
18 tracked how many new molecule entities are and each of
19 them is really a different generation, and the number then
20 was 150.

21 Q And that was a year ago?

22 A That was a year ago. And they no longer really
23 resemble THC at all either in their effect or in their
24 pharmacology.

25 Q So at one point in time, if I go in buying synthetic

1 marijuana a few years ago and think I'm basically getting
2 legal weed, am I off my rocker?

3 A Not entirely, but you're not getting legal weed. You
4 will be getting a very selective effect due to a selective
5 part of the marijuana experience. It would lack, for
6 instance, the cannabidiol that marijuana contains.

7 Q Is that CBD oil --

8 A Yes.

9 Q -- kind of? I mean, in layman's terms, is that --

10 A The oil presumably contains CBD. But there is no FDA
11 control over that except in the case of one legal product,
12 which is used in the treatment of a certain type of
13 childhood epilepsy. That is FDA approved. I have no idea
14 whether or if you will find true cannabidiol in CBD oil
15 that you buy on the street. But yes, that's the
16 intention.

17 Q Cannabidiol, does that affect that same CB1 receptor?

18 A No, it does not affect it at all. No. It's actually
19 an entirely different mechanism that really is not related
20 to the intoxication effect of marijuana.

21 Q And the -- excuse me. I can't speak. Cannabidiol.
22 You said it doesn't act on that same receptor. That's not
23 found in the synthetic marijuana, is it?

24 A There's no cannabidiol in synthetic marijuanas. They
25 are all analogues. I shouldn't call it -- well, synthetic

1 cannabinoids is best. They're all analogues, at least,
2 built upon the structure of THC. Delta-9-THC.

3 Q And the cannabidiol, has that -- has that been shown
4 to have some anti-psychotic properties?

5 A Yes. It is -- well, it is being evaluated as --
6 molecules derive from it. Excuse me. Not cannabidiol
7 itself. But molecules designed by pharmacologists and
8 medicinal chemists designed around the cannabidiol
9 molecule are being evaluated for use and treatment of
10 anxiety and psychosis.

11 Q Can you just talk a little bit about, in general,
12 cannabis intoxication? What does it do to a person?

13 A Well, it depends so much on the individual.
14 Obviously, it produces euphoria in most people. It
15 increases appetite, it has a range of potential adverse
16 effects.

17 Q Can you tell me what those are?

18 A Yeah. They will affect different people differently,
19 and that relates to their underlying psychological
20 integrity and history, but the -- obviously, the reason
21 why a person would use marijuana or a synthetic is because
22 they are looking for the euphoria. But even THC itself
23 produces, in certain vulnerable people, states of high
24 anxiety, irritability, fear, which can be irrational,
25 which can be paranoid. It can also be grandiose.

1 Paranoia is not always a fear. You may feel that you are
2 a supernatural being with angelic powers. That is also a
3 paranoia. Although, in the vernacular term, people use
4 the word paranoid to mean only fear.

5 Q Can it cause auditory hallucinations?

6 A Yes, it can. And in a large enough dose, even
7 marijuana will do that.

8 Q And you had mentioned -- obviously, I think,
9 initially you talked about the set and setting and you had
10 talked about the effect with someone with an underlying
11 psychiatric condition. Can you speak a little bit more on
12 that? What you mean by that?

13 A Yes. The drug has different effects on different
14 people depending on what you might call how level the
15 playing field is in their mind.

16 Q And, say, the level -- let's start with someone who
17 doesn't have any type of underlying psychotic mental
18 illness. What's going to happen with a cannabis
19 intoxication besides the euphoria?

20 A I think most people have some loose bolts in their
21 past, but -- or in their present or fears. But the
22 adverse effects, even in a normal person, can resemble --
23 can involve panic and anxiety, and to some degree a
24 psychosis like state that we call psychotomimetic, because
25 it isn't true psychosis but it is like a psychosis, and it

1 is transient. It isn't a permanent condition. Maybe --

2 Q So it's just caused by the intoxication?

3 A Yes. It's the adverse effects of the intoxication.

4 Q And just for the court reporter, when you say
5 psychotomimetic, it's P-S-Y-C-O --

6 A No.

7 Q How do you spell it?

8 A P-S-Y-C-H.

9 Q C-H-O-T-O-M-I-M-E-T-I-C?

10 A Yes. Psychotomimetic.

11 Q And what is that again?

12 A It's mimetic of some psychiatric psychotic
13 symptomatology, and it's an adverse effect of the drug.
14 In the vernacular in the street, you will find some people
15 say weed makes me paranoid. I start to hear police
16 radios. I think people are following me. That is a
17 psychotomimetic effect. And then, of course, after a few
18 hours, it passes off.

19 Q And so, that would just be totally drug induced, and
20 that's not mental illness. That's just basically, I
21 guess, the effects of the intoxication?

22 A Yes. We'd call it an adverse effect. Some people
23 would call it a side-effect. It depends on the individual
24 as to how vulnerable they are to experiencing that. And
25 that's the problem, you see. You're asking me what are

1 the adverse effects in a normal individual. A normal
2 individual is someone you don't know very well. There's a
3 range of normality in normal.

4 Q Let me ask you this. How does cannabis exacerbate a
5 psychotic mental person with, say, a psychotic mental
6 illness?

7 A There are two factors that I have to explain in that
8 regard.

9 Q Okay. Please, do.

10 A Psychosis does not usually emerge until quite later
11 in development. Usually around age 20 plus. Prior to
12 that, there may be a condition that we call prodromal
13 psychosis. The person is not psychotic, but they are very
14 unusual and magical in their thinking. Odd. They may be
15 identifiably odd. That doesn't necessarily mean that
16 they're going to turn out to be psychotic. The point
17 being that psychosis is something that develops into
18 adulthood. Now, we have found from a number of different
19 studies, epidemiological and otherwise, that when
20 cannabis, presumably due to its THC content, is used in
21 early childhood, particularly prior to age 15, the odds of
22 developing psychosis later on by age 26, according to one
23 study, are considerably higher. They're, at least,
24 threefold higher than normal, which means that, in part
25 answer to your question of what is the relevance in

1 psychosis, it can have a role in the development of
2 psychosis in the first place.

3 Q So the use of THC in your younger years can
4 potentially increase your risk of developing that
5 psychosis --

6 A Yes.

7 Q Later?

8 A It can. And --

9 Q And there's multiple studies on that?

10 A There are multiple studies and -- because this is the
11 reason why we should keep marijuana away from children
12 because it could produce irreparable effects later on if
13 they are vulnerable to it, but we won't know that they're
14 vulnerable to it until they're in their very late teens.

15 Q And so, you reviewed records from other experts
16 indicating that Tim suffers from a post -- a psychosis
17 factor of mental illness, correct?

18 A Yes, I do.

19 Q And after looking at that, can you just kind of tell
20 me what you can gleam from that?

21 A Could you clarify your question?

22 Q Well, let me back up. Let me ask you this. People
23 with a post-spectrum mental illness, what is their
24 experience as far as the use of cannabinoids as far as
25 pleasurable?

1 A Oh, I see what you're asking. Yes. It's somewhat
2 ironic in that we know that in schizophrenics, for
3 instance, marijuana use makes their psychosis worse, and
4 yet they claim that it relieves their dysphoric mood.

5 Q When you say dysphoric, what do you mean?

6 A Unhappiness. And I don't dispute that it may
7 alleviate some of their dysphoric mood, but the problem
8 that they're suffering from is not primarily a mood
9 disorder. It is that they're out of contact with reality,
10 and that is exacerbated by cannabis. So people with
11 psychotic illnesses should not use THC or cannabis even
12 though they may feel that it is helping their dysphoric
13 mood, their unhappiness, because their underlying
14 psychotic illness is exacerbated.

15 Q And when you say exacerbated, can you give me an
16 example or kind of tell me what you mean by that?

17 A It's gasoline on the fire of their illness.

18 Q And, I guess, could someone go into that not
19 realizing that they have that underlying vulnerability?

20 A Okay. This is the point about psychosis. Psychotics
21 don't think they are psychotic. Their view of reality is
22 very, very different from ours, but it's their reality and
23 they don't see themselves as mentally ill as a rule,
24 unlike people who have a mood disorder who know that
25 they're miserable and depressed and crying. That is

1 identifiable. But when your thinking is so out of line
2 with conventional norms of reality, that can be difficult
3 to identify as an illness. You may think that you are
4 particularly spiritual, for instance, or you may think
5 that you are endowed with certain telepathic powers, or
6 you may think that you are endowed with special functions
7 that most humans don't have, but you do not think of
8 yourself as ill.

9 Q Could that be someone who feels like they can tell
10 when someone's telling the truth almost like a human lie
11 detector?

12 A Yes, that's an example.

13 Q And then, I guess, in your experience, have you had
14 times where individuals had something that was kind of
15 going on that was -- in their life that was kind of
16 mundane, but you take a look at that and realize that it's
17 underlying psychosis?

18 A Yes. Oftentimes -- let me point out that psychotic
19 people of the schizophrenic variety are very often highly
20 intelligent, but usually they are described as odd,
21 idiosyncratic, a little weird, and their behavior may not
22 be entirely congruent with what is typical, but maybe not
23 enough to start the alarm bells running in peoples' minds.
24 But an example that I could give you of a fellow that I
25 evaluated who had this odd way of walking down stairs --

1 MS. MAYES: I'm going to object at this time, Your
2 Honor, to relevance.

3 THE COURT: I'm going to allow it. Continue on.
4 Overruled.

5 A He had an odd way of walking down stairs whereby he
6 would step on the front leading edge of the step. It
7 looked kind of dangerous, actually, and he would touch the
8 bannister with his fingertips only and he would zip up and
9 zip down the stairs, and it seemed a little odd. You
10 know, people thought he's odd. But when I inquired of why
11 does he that, he explained that he has the ability to see
12 gray, sticky clouds of what he called psychic shit that
13 adheres to wood, such as the wood of the stairs, but not
14 the rubber edge of the stair, and to the bannister but not
15 to the bannister rail. And he was manipulating his life
16 so as to not touch any of this gray, sticky cloud of evil,
17 in his mind, which, of course, we cannot see. So, yes, he
18 looked a little odd and his movements were a little
19 strange, but the underlying reason for it was psychotic.

20 Q Can that manifest itself in someone in
21 hyperreligiosity?

22 MS. MAYES: Your Honor, I object that it's beyond the
23 scope of expertise for this witness.

24 THE COURT: I sustain that. I'm not sure that is
25 either.

1 Q In reviewing his records, I believe you said it looks
2 like over a period of time that Tim's drug of choice was
3 marijuana?

4 A Yes.

5 Q Although, he started using synthetic cannabinoids.
6 Did you review a toxicology screen done on him or on his
7 blood by NMS Labs --

8 A Yes, I did.

9 Q -- On 9/7? And that was positive for AB Pinaca?

10 A Yes.

11 Q And then you also reviewed some testing from the
12 Mississippi Crime Lab that tested some Scooby Snax out of
13 his car, correct?

14 A Something labeled Scooby Snax, yes.

15 Q And that also tested for, by them, AB Pinaca?

16 A It did, yes.

17 Q And then you actually requested an additional test or
18 a confirmatory test from NMS Labs? I guess, more of a
19 comprehensive?

20 A Yes. I wanted not just confirmation of the AB
21 Pinaca, but there was evidence coming across my desk that
22 some of the synthetic cannabinoids containing AB Pinaca
23 also contained other synthetic cannabinoids. And so, I
24 asked that they be -- that the sample be examined to see
25 if that was the case with this sample, also.

1 Q And I think you had said earlier -- the AB Pinaca,
2 what would the AB stand for in that?

3 A Usually it's related to the medical -- the medicinal
4 chemist who has developed the drug or the company that has
5 developed the drug. In fact, AB Pinaca was developed by
6 Pfizer Labs and patented by them in 2009.

7 Q And can you tell me about AB Pinaca?

8 A It is a pure agonist unlike THC and it has vastly
9 greater potency as a combination of affinity and efficacy
10 on the CB1 receptor. There are different ways of
11 measuring that affinity and that efficacy, but it is of
12 the order of possibly 20 times, and in some examples of
13 research many more times more potent than THC itself. And
14 it is not a partial agonist. It is a full agonist.

15 Q So it would be stronger than, say, naturally
16 occurring THC?

17 A It would actually displace naturally occurring THC
18 from the brain.

19 Q And then you had said something about with marijuana,
20 is it cannabidiols, the other compounds that have --

21 A It doesn't have any other compounds. It's a pure THC
22 agonist at the CB1 receptor.

23 Q And so, if I use AB Pinaca, how long are the effects
24 going to last?

25 A Typically -- the high typically lasts about 10 hours.

1 We haven't got pharmacokinetic studies in humans of AB
2 Pinaca. They haven't been published if they have been
3 done. The --

4 Q So what does that mean?

5 A That means that no one has actually given it to
6 normal volunteers, as far as I can tell, in the published
7 literature, and measured their blood level and their
8 effect over time. We've done that for the other
9 compounds. The earlier ones. I mentioned the early
10 synthetic J.W.H 017 and 018. That's being done ad
11 nauseam. But as far as I know, no one has published --
12 they may have done the research, but they haven't
13 published it, on measuring the blood level related to the
14 mental effect. We know how it's metabolized, for
15 instance, in the liver, but that doesn't tell us anything
16 at all about its duration of action in the brain. Many
17 drugs, for instance, disappear from blood not because
18 they're being excreted, but because they're being
19 deposited in the brain or other body tissues. So to see
20 it disappearing in blood does not mean it has necessarily
21 stopped acting on the brain.

22 Q And so, the exacerbating effects of the drug, once I
23 have used it and it has been deposited somewhere, is that
24 done? I mean, are there still effects?

25 A There are still effects. Yes.

1 Q And what could those be?

2 A Well -- okay. Drugs are metabolized. An example,
3 for instance, if I could just compare it to THC. THC from
4 marijuana is metabolized ultimately to carboxy-THC. Now,
5 carboxy-THC is inactive. It doesn't act on the brain, but
6 it is deposited in fat, including -- presumably, including
7 the myelin fat around the nerves, and it leeches out of
8 body fat for a period of -- well, many days. In a person
9 who is a regular user of marijuana who isn't using it
10 anymore, from the time that they stop, their urine level,
11 for instance, will go down about 15 milligram per ML per
12 day for a month or more, and yet they're not high and the
13 cannabidiol is leeching out of their body tissues into
14 their urine, and thus being excreted. Now, that --
15 cannabidiol, as I said, is a metabolite of THC, but it is
16 inactive. We do not have that situation with AB Pinaca.
17 The metabolites of AB Pinaca are active. They are THC
18 like, they are -- well, they're AB Pinaca like. And so,
19 to show that the drug is converted to its metabolite does
20 not, of course, mean that it is now inactivated in the
21 case of AB Pinaca. Unlike the case of THC, that's likely
22 an activation. The same is true of many therapeutic
23 drugs. Prozac, Prozac is not an active drug. The
24 metabolite of Prozac is the active drug. So to see it
25 being converted by metabolism into its metabolite is to

1 actually see the active drug being created.

2 Q So the exacerbating effect of a drug on someone with
3 an underlying psychotic illness, does that necessarily
4 dissipate when the drug clears?

5 A Let me just clarify what I wanted to say a moment
6 ago. I was actually intending to use the word Risperdal
7 -- Risperdal, because that's an anti-psychotic drug. Not
8 Prozac. The therapeutic effect of it is therefore
9 maintained by its metabolite. Here we have an
10 intoxicating drug, AB Pinaca, and if metabolites are
11 active -- now, it's not a therapeutic drug at the moment,
12 but it's an example of how metabolism can actually
13 continue the effect of the drug. So I think I answered
14 your question that we don't know what the pharmacokinetics
15 are. They're very complicated because the metabolites are
16 active and they have not, as far as I know, by publication
17 been measured in humans.

18 Q And so, if someone has kind of an underlying
19 psychotic illness, what can AB Pinaca do to them?

20 A It will make it very much worse, and because it's an
21 underlying psychotic illness it is subject to becoming
22 unstable and getting worse.

23 Q Do you have kind of analogy for that?

24 A Well, you might think of, say, an acrobat working on
25 a high-wire. This would be, maybe, the psychotic in some

1 state of balance, going to work and living a life with
2 very unusual thoughts. If the drug then pushes them off
3 the high-wire, their underlying illness in this metaphor
4 is made vastly worse, and that exacerbation continues
5 after the drug has left their system. The exacerbation is
6 not simply a matter of intoxication on top of an illness.
7 The illness is made worse by the intoxication. The
8 underlying mental illness is made worse.

9 Q So to make an analogy compared to, say, alcohol
10 intoxication would not be appropriate?

11 A Acute alcohol intoxication would not be appropriate,
12 but there is actually an analogy in alcohol in that where
13 we have populations of people who used to be alcoholics
14 and some of the VA domiciliary units are filled with these
15 people. Their alcohol intoxication has damaged their
16 brain. They are no longer drinking, but they are no
17 longer normal and they are demented, and their
18 intoxication continues until death, but there is no
19 alcohol there.

20 Q Can you tell me, were you -- were you able to
21 determine the legality of AB Pinaca in South Carolina in
22 2014?

23 A Yes. It was legal. I did research that.

24 Q And can you tell me when it became illegal?

25 A The FDA published an announcement -- no. I'd have to

1 look it up. But it was, I think, the following year.

2 Maybe even later.

3 Q How about -- we know that Tim was given Chantix. Can
4 you describe to the jury what Chantix is?

5 A Yes, I can.

6 Q And, I guess, Chantix is a -- that is not the name of
7 the drug, is it? That's?

8 A That's the trade name.

9 Q That's the trade name?

10 A Yeah.

11 Q So what is it?

12 A Chantix, the actual drug is called Varenicline.

13 Oddly, it's also made by Pfizer Pharmaceuticals, the
14 company that patented AB Pinaca. It is a synthetic drug,
15 but it is based on a natural compound called cysteine that
16 is found in the Scotch broom shrub, and cysteine has a
17 nicotine like effect on the brain's receptors. In fact,
18 during the Second World War, I believe, when tobacco
19 imports from America were halted in Europe, Scotch broom
20 was used as a smoking material for people who were
21 dependent on nicotine. It does substitute. So,
22 obviously, you can't patent a natural product. Therefore,
23 the company made a modification of that molecule and
24 called it Varenicline and trademarked it as Chantix.

25 Q Chantix is used to help people stop smoking?

1 A Yes.

2 Q Is there -- were there any neuropsychiatric problems
3 associated with it?

4 A Yes, indeed, there were.

5 Q And can you tell me about those?

6 A Well, they emerged in the pre-market approval. They
7 were so serious with attempted suicides, depression,
8 psychosis, hallucinations, that in applying for a license
9 to market the drug to the Food and Drug Administration,
10 the Food and Drug Administration insisted that they put
11 what's called a black box warning. The black box warning
12 -- I have it in front of me. Should I read it?

13 MR. MADSEN: Well, let me mark this for Defense, ID.

14 THE COURT: After we do that can we take a break? I
15 mean, we've been going over an hour and I need to step
16 off. I don't know how much longer you've got, I want to
17 take a break.

18 MR. MADSEN: Yes, sir.

19 THE COURT: We are going to take a break while Joy
20 marks that.

21 (Whereupon, a short break was taken.)

22 (Whereupon, Defense Exhibit number 124 was marked for
23 identification purposes).

24 THE COURT: Ms. Mayes, are you ready to go?

25 MS. MAYES: Your Honor, we do have a request for any

1 underlying prescription information for this drug Chantix.
2 I've sent an email. They've sent some supplemental
3 information to Dr. Lipman, I believe, two days ago and I
4 responded by email that we need to get any prescription
5 information related to this drug that -- with the brand
6 name Chantix. So any information like that in the
7 possession of the Defense we would ask for or to question
8 the witness, whether those were prescriptions, refills,
9 anything of that nature.

10 MR. MADSEN: I believe it's from--

11 MR. YOUNG: -- Judge, they have the records.

12 THE COURT: Can you all look for it while you
13 continue questioning?

14 MR. MADSEN: Yes, sir.

15 THE COURT: That way, the two of us can work at the
16 same time.

17 MR. YOUNG: It's from Doctors Care on February 7th,
18 2014.

19 THE COURT: All right. You retrieve that while Mr.
20 Madsen continues questioning. That way we're moving. All
21 right. Let's go back on to the camera. When you're
22 ready, Mr. Madsen.

23 CONTINUE DIRECT EXAMINATION

24 Q Dr. Lipman, let me show you what's been marked as
25 State's -- or, excuse me, Defense Exhibit number 124 for

1 ID purposes and ask you if you recognize that.

2 A Yes, I do.

3 Q And is that referred to as a black box warning?

4 A Yes, it is.

5 Q And was that on Chantix?

6 A Yes, it was.

7 MR. MADSEN: Judge, we would move Defense 124 into
8 evidence.

9 THE COURT: Any objection, Ms. Mayes?

10 MS. MAYES: No objection, Your Honor.

11 THE COURT: 124 Defense Exhibit is admitted without
12 objection.

13 (Whereupon, Defense Exhibit number 124 was admitted
14 into evidence).

15 Q I'm going to show you what's been marked as
16 Defendant's 121 and I believe that 124 is just a blow up
17 of this very small writing. If you can read that.

18 A I would need a hand lens, but it looks the same.

19 Q And so, Doctor, can you tell me, what is a black box
20 warning?

21 A It's a requirement of the Food and Drug
22 Administration and they are not common. In order to
23 obtain marketing approval of a drug through the Food and
24 Drug Administration, what the Food and Drug Administration
25 actually controls is -- apart from the purity and quality

1 of the drug itself, is what's called the label. The label
2 is what most people would call the package insert, and
3 this contains detailed instructions to the practitioner,
4 to the patient, to the pharmacist regarding what the Food
5 and Drug Administration believes, and the company has
6 agreed the users and practitioners need to know. Most
7 labels don't have a black box warning. A black box
8 warning is potentially a reason to keep a drug off the
9 market, unless it is black boxed, and that is --
10 therefore, there is complete disclosure that there is a
11 problem with this drug and that is put on the black box in
12 the labeling.

13 Q And that is on Defense 121, correct?

14 A Yes.

15 Q And can you read that?

16 A Yes, sir.

17 THE COURT: No. We don't -- he does not need to read
18 all of that.

19 THE WITNESS: Okay.

20 THE COURT: It is verbose and lengthy, but it's part
21 of the package of the Chantix box, which is Exhibit 121
22 for the record.

23 MR. MADSEN: Okay.

24 Q Doctor, are there different types of Chantix? Is it
25 sold different ways?

1 A There's only one way that I know, but that way
2 involves several different doses. The patient is given
3 what's called a starter pack and the starter pack, this
4 has green coloration, contains 11 doses of .5 milligram, a
5 half a milligram, to begin treatment and 42 tablets of one
6 milligram tablets to be used in the continuing weeks after
7 the initial week. And the process begins with taking one
8 white pill, that's half a milligram, daily for days one
9 through three, followed by one white half a milligram pill
10 twice daily on days four through seven, and thereafter the
11 patient takes continuation doses of one blue pill, that's
12 a milligram, twice daily. Now, the subsequent doses are
13 all of the latter type. They are all blue one milligram
14 doses.

15 Q So if I had a pack of Chantix that was in, say, a
16 green box, that's kind of the starter?

17 A That's a starter box. Yes.

18 Q And then, the kind of continuation is the blue box?

19 A Yes. You would not be touching the blue box until
20 you had finished the starter box or you'll become quite
21 ill.

22 Q And then, was the black box eventually removed from
23 Chantix?

24 A It's a different kind of box now. We're talking
25 about the box on the label.

1 Q Okay. Can you tell me about that?

2 A Yes. It was removed in December of 2016 following
3 the representation by the company to the Food and Drug
4 Administration that it had performed a study that they
5 argued meant that the black box did not -- that the
6 information could still be there, but not in a black box.

7 Q And who funded the study?

8 A Pfizer, the drug company.

9 Q The people who are producing the drug?

10 A Yes.

11 Q Have you reviewed -- I guess, that study's called the
12 EAGLE study?

13 A It is. Several publications came as a result of
14 that. I've reviewed several of them. Not all of them.

15 Q And in looking at that as a neuropharmacologist, did
16 you see a problem with that?

17 A I did, but in order to explain it, I actually have to
18 -- with tolerance of the Court, I have to read something
19 from the black box or it won't -- my answer won't make any
20 sense.

21 Q Okay. Please.

22 A Or let me do it from the monograph instead.

23 "Patients should be observed for neuropsychiatric symptoms
24 or worsening of pre-existing psychiatric illness, e.g.,
25 schizophrenia, depression --

1 COURT REPORTER: Wait.

2 Q Just slow down when you read.

3 COURT REPORTER: You've got to slow down way slow.

4 Q She's got to take it all down.

5 COURT REPORTER: Just start over.

6 A "Patients should be observed for neuropsychiatric
7 symptoms or worsening of pre-existing psychiatric illness,
8 e.g., schizophrenia, depression, bipolar disorder, during
9 treatment with Varenicline due to some serious
10 neuropsychiatric symptoms reported during use of the drug.
11 Post-marketing reports have included mood or behavioral
12 changes or a psychiatric event such as a psychosis,
13 hallucinations, paranoia, delusions, homicidal ideation,
14 hostility, agitation, anxiety, panic, mania, depression,
15 suicidal ideation, suicide attempt and completed suicide
16 in patients with or without a psychiatric history." Now,
17 the EAGLE study was a study done by the company in
18 psychotic patients. They were either schizoaffective or
19 schizophrenic. They were selected for the study on that
20 basis, and they were all under psychiatric treatment
21 taking antipsychotic drugs. They were all stable, and if
22 they'd had an episode, a return of psychosis or other
23 mental illness in the previous months prior to the giving
24 of them Varenicline, then they were excluded from the
25 study.

1 Q So this study is based on folks who were
2 schizophrenic or schizoaffective, but are actively being
3 treated and haven't had a recent episode?

4 A That's correct. And the company reported that
5 unbalanced Varenicline was safe in those people who were
6 actively under medicated antipsychotic control and mood
7 control and monitored by therapists. However, even in
8 that study, more patients in the Varenicline treated
9 psychiatric cohort had serious neuropsychiatric events
10 involving a psychiatric hospitalization than in patients
11 receiving a placebo even in the EAGLE study, according to
12 a review that I am reading, but the FDA agreed that the
13 black box warning could be removed.

14 Q Let me ask you, then -- let me change subjects and
15 ask you. Have you reviewed Tim's psychiatric drug or what
16 he has been prescribed as far as psychiatric drugs since
17 he has been placed in custody?

18 A Yes, I have. I don't have it in front of me, but I'm
19 familiar with what he's been taking.

20 Q And one of those drugs is Geodon?

21 A It is.

22 Q Who is that made by?

23 A Pfizer, ironically.

24 Q And it appears he's been on that since September of
25 2014?

1 A Yes, sir.

2 Q Is Geodon, is that taken recreationally?

3 A Absolutely not or not to my knowledge. I can't
4 imagine anyone wanting to.

5 Q Is it not a pleasurable experience? Could you
6 describe that to the jury?

7 A It is -- unless you're suffering from psychotic
8 agitation, you would find the effect of Geodon
9 suffocating. It would be oppressively tranquilizing,
10 clouding of consciousness, blunting of mood, it blunts
11 euphoria, which is why it's also useful in bipolar
12 disorder and mania. It would be quite unpleasant as far
13 as I'm aware.

14 Q Besides those side-effects, does it have any physical
15 kind of side-effects, potentially?

16 A There is a risk with all of these drugs, less so with
17 Geodon than some of the early ones, of producing brain
18 damage. You can see the effects of it when the drug is
19 still being given as a kind of tremor, extrapyramidal
20 syndrome. The muscles may also be affecting the mouth and
21 the tongue and the neck, which can effect voice. Speed of
22 thought is clouded, slowed. Word-finding ability is
23 impaired. There are neuropsychological impairments across
24 the board. However, some of the effects on the striatum
25 of the brain can be permanent, and tardive dyskinesia is

1 the one that we worry about, which is a sort of
2 parkinsonism syndrome. You do not use this drug unless
3 the risks and benefits are carefully weighed and in a
4 person who doesn't need it psychiatrically, there are no
5 benefits. All there is, is risks. No physician would do
6 that.

7 Q So would you have an opinion about a physician if
8 they would give Geodon to someone who didn't need it?

9 MS. MAYES: Objection, Your Honor. Cause for
10 speculation outside the scope.

11 THE COURT: I think it's within the scope and I think
12 he already answered a question very similar to that in his
13 follow-ups. So I'm going to allow it. So overruled.

14 A That would be assault.

15 Q Malpractice?

16 A Yes.

17 Q Now, there have been some talk about half lives.
18 What is the half life of Geodon?

19 A It's quite short. Unlike some of the older more
20 established antipsychotic drugs, the effect of the drug
21 dissipates over about eight hours. So the drug is given
22 regularly daily, and in some patients they clear it a
23 little more quickly than others due to their metabolism,
24 they are very, very ready for the next dose because their
25 symptoms are already returning. This is quite different

1 from some of the other longer acting older drugs. In some
2 cases, they only need to be given once a day. In some
3 cases, once every two weeks, but with Geodon, you cannot
4 miss a dose. It is critical that you not miss a dose.
5 You must carry the dose with you so that you do not miss
6 the dose.

7 Q And so, potentially, there could be effects or
8 ramifications if I miss, say, two days?

9 A There would be, yes. You would expect not only
10 uncovering of the underlying illness, but because the
11 underlying illness has been kept under control, suppressed
12 by the drug therapeutically and benevolently, there is a
13 risk of what we call rebound psychosis when the drug is
14 discontinued for withdrawn, and rebound psychosis can be
15 even worse than the underlying condition was before
16 treatment began until it stabilizes.

17 Q And so, Doctor, do you have an opinion, to a
18 reasonable degree of certainty in neuropharmacology, how
19 Tim's drug use would have effected his thinking and
20 behavior at the time of his killing of his children?

21 A Yes, I do.

22 Q Can you tell me that?

23 A It would have exacerbated his underlying psychiatric
24 illness.

25 MR. MADSEN: That's all the questions I have, Your

1 Honor.

2 THE COURT: Ms. Mayes.

3 CROSS-EXAMINATION

4 By Ms. Mayes:

5 Q A few questions for you, Dr. Lipman, to follow-up on
6 what he was just asking you about the drug Geodon. You've
7 testified before about Geodon, haven't you?

8 A I don't know.

9 Q You don't --

10 A I don't remember. I'm sorry.

11 Q You've given extensive testimony in the past
12 concerning the impact of antipsychotic medications, which
13 would include Geodon?

14 A It may or may not include Geodon. If you could refer
15 me to what you're addressing, I will answer you.

16 Q All right. I'm going to show you a document and ask
17 you whether or not you recognize this, similar to the
18 document you previously identified by Pfizer, being the
19 side-effects of Chantix. Are you familiar with this
20 publication, being the side-effects of Geodon?

21 A Yes. I think I referred to these side effects in my
22 direct testimony. I said it would be slowing. It would
23 be impairing. It would not be desirable.

24 Q Can you identify this document as the published
25 side-effects of Geodon by Pfizer?

1 A No. I can only -- I can only say that you represent
2 it so. If I could have a few minutes with a computer --

3 Q Sure.

4 A -- I could?

5 Q Absolutely.

6 A I will need wireless.

7 MS. MAYES: Beg The Court's indulgence.

8 THE COURT: Yes, ma'am.

9 A And a computer.

10 Q We will continue as we get that information. So your
11 testimony right now under oath, Doctor, is that you are or
12 are not familiar with the side-effects of the drug Geodon?

13 A Yes. I testified in my direct about the side-effects
14 that would be produced in a person who didn't need it. It
15 would be quite unpleasant. They would be sedating, they
16 would be disabling cognitively.

17 Q So let's follow-up about your testimony just a few
18 moments ago, specifically as to Geodon. I believe the
19 words you used is that it has the potential for brain
20 damage. Brain damage were your words.

21 A I said all of the antipsychotic drugs. I didn't
22 specifically say Geodon.

23 Q All right. Well, I'm going to ask specifically about
24 Geodon.

25 MR. MADSEN: I ask that she not cut him off and he be

1 allowed to finish his answer.

2 THE COURT: Sure. That's fine. I agree. And I
3 think she was trying to recharacterize her question. So,
4 Ms. Mayes, be aware.

5 MS. MAYES: Yes, sir, Your Honor.

6 Q I'm going to ask you specifically about Geodon
7 because that is the drug that was prescribed to Timothy
8 Jones, Jr. in September, 2014 according to the testimony
9 you gave a few moments ago. So you're familiar with that,
10 correct?

11 A Yes.

12 Q And you are familiar with the fact that following his
13 arrest, he was prescribed Geodon in September of 2014,
14 correct?

15 A Correct.

16 Q Now, what dosage was he taking on a daily basis of
17 Geodon?

18 A I would have to review my records.

19 Q You don't have that information? That wasn't
20 supplied to you?

21 A Yes, it was.

22 Q Okay. We'll take time for you to review that.

23 A Thank you. I have my notes. I don't actually have
24 the record. But my notes say that he was admitted on the
25 13th of September, I believe, in safekeeping status

1 without being on it. Let me double check that. Let me
2 check that. And in the period 18 September to 25
3 September, he was getting Geodon 20 milligrams. And then
4 on 25 September, the instructions were increase to one in
5 the morning and two at night. That would be 60.

6 Q All right. So one in the morning and two at night
7 would be a total of how many milligrams a day?

8 A On the milligrams that were being then dispensed, it
9 would be 60 milligrams a day.

10 Q Sixty milligrams for each pill?

11 A No.

12 Q Twenty milligrams for each pill and that would be 60
13 for a day?

14 A Yes.

15 Q And that was what date?

16 A In my notes, it says 18 September, 2014.

17 Q 2014?

18 A But I don't have the actual notes in front of me.

19 Q Are you aware as to whether or not his Geodon dosage
20 was increased even beyond that at some point?

21 A Yes.

22 Q You are aware?

23 A I am aware.

24 Q Okay. So tell us how much it was increased after
25 that.

1 A On the 9th of October another drug was added. That
2 was Prozac. And then -- which is relevant. And then on
3 the 20th of November, his Prozac dose was increased to 60
4 milligrams a day.

5 Q Okay.

6 A And then, although we don't have the dispensing
7 record, we have a note here that he was, in fact, also
8 being given Nortriptyline. That note being on the 10th of
9 June, 2015.

10 Q And could you spell that drug name out for the Court
11 Reporter's benefit?

12 A N-O-R-T-R-I-P-T-Y-L-I-N-E.

13 Q And what type of drug is that?

14 A That is a tricyclic antidepressant drug.

15 Q That's another antidepressant?

16 A One of the earlier tricyclics. Yes.

17 Q Okay.

18 A And then, continuing to review my notes. Apparently,
19 my notes do not continue beyond that. I am aware -- I
20 have been told that his doses has been increased several
21 times since then.

22 Q All right. So his Geodon dosage has increased
23 several times since the 2014 dosage of 60 milligrams a
24 day. Your testimony today is, you don't know exactly how
25 much it's increased to, correct?

1 A I don't.

2 Q But according to FDA standards, the maximum dosage
3 would be 80 milligrams, correct?

4 A Yes. Well, I don't have the Geodon literature in
5 front of me, but I believe that to be true.

6 Q So understanding that it's increased 60 milligrams,
7 is it your understanding that he's at the maximum dosage
8 or higher for Geodon?

9 A There's no prohibition on using it above the maximum
10 recommended dose. That is up to the discretion of the
11 physician at their own risk.

12 Q Okay. So he could be at the maximum level or even
13 higher if a physician prescribes at a higher level?

14 A Yes.

15 Q It's discretionary?

16 A Yes. Considering the risks and the benefits.

17 Q Okay. So with all of that taken into account, one of
18 the things that you addressed in your report was the
19 potential impact of Geodon on the testing that was
20 conducted on Mr. Jones by Tora Brawley back in September
21 of 2016. Do you recall addressing that in your report?

22 A I don't, but I -- well, if you could, perhaps, draw
23 my attention to --

24 Q Okay. Well, if you could, turn to your report. Page
25 four of your report, dated November, 2017.

1 A Could I see the face page of what you're holding? I
2 don't seem to have one with that date.

3 Q Well -- so you are Dr. Jonathan Lipman with
4 Neuroscience Consulting and did you issue a report dated
5 November 13th of 2017 in your name?

6 A Yes, I did. And thank you, I believe I found it.
7 But there was more than one report, and due to some error,
8 I do not have, in my file the one that you're holding.

9 Q Okay.

10 THE COURT: Can we print out a copy to him?

11 MR. MADSEN: Yes, please.

12 THE COURT: Can you all -- I mean, we'll make a copy.
13 I'll get the Clerk to assist with a copy, but he ought to
14 have a copy of what Ms. Mayes is asking about.

15 MS. MAYES: And I'll continue, Your Honor, while
16 we're looking for that.

17 Q Dr. Lipman, you indicated you issued more than one
18 report. So you have a report beyond the November, 2017
19 report?

20 A I do, but my point was, I have a report dated 2000 --
21 13 November, 2017 that is different from the one that you
22 are holding. It's a single page and it addresses the AB
23 Pinaca found in blood and packaging.

24 MS. MAYES: All right. Well, I'm going to pass up --
25 Your Honor, I believe we do have a duplicate report.

1 THE COURT: Okay.

2 Q I'm going to refer you to page four of your report.
3 Are you not familiar with this document?

4 A I recognize it, yes.

5 Q All right. So page four of your report. You
6 mentioned that the Defendant, Timothy Jones, Jr. was
7 examined April, 2016 by another Defense consultant named
8 Tora Brawley?

9 A Yes, ma'am.

10 Q You go on to state that Mr. Jones was found to suffer
11 from a pattern of deficits that could be explained in part
12 by the drugs with which he had been treated?

13 A Correct. I did say that and I do believe that.

14 Q You stated that he demonstrates deficits including
15 mental tracking speed and motor speed that were severely
16 impaired?

17 A Yes, I did.

18 Q All right. So now, having addressed that he was
19 taking Geodon, according to your notes, at 60 milligrams a
20 day, but you also have information that that dosage was
21 increased and you don't have the amount that it was
22 increased to but you do know that it was increased beyond
23 60 milligrams a day, correct?

24 A Well, I've been told so. I don't have any proof of
25 it.

1 Q You've been told so by who?

2 A The Defense attorney.

3 Q Okay. So the Defense attorney has advised you that
4 his dosage has been increased even beyond the 60
5 milligrams a day and we don't know how much that is,
6 correct?

7 A He didn't mention any dosage. He just said it had
8 been increased.

9 Q All right.

10 A It's possible that it had been decreased, and then
11 increased back to 60. I don't know. I don't -- all I
12 know is I was told it has been increased.

13 Q All right. Well, wouldn't you need that information
14 before coming into court today to render opinion about the
15 effects of drugs on Mr. Jones? Wouldn't you need all of
16 his prescriptions and the amount of dosage prescribed?

17 A I would like to have that information. It depends as
18 to what question I'm being asked as to whether I need to
19 rely on that.

20 Q So you'd like to have it, but you weren't provided
21 it, correct?

22 A I haven't got recent prescription dispensing records
23 for him. No.

24 Q Your testimony was that, according to FDA standards,
25 the maximum dosage would be 80 milligrams a day, but the

1 physician can prescribe higher. Let me show you a
2 document and ask you whether you were ever provided this,
3 being prescription records of Mr. Jones showing that he
4 was taking 80 milligrams a day in 2015.

5 A I don't have the -- I'm still reviewing. I don't
6 have the -- the FDA package insert that I offered to
7 print out when you asked me the previous question and I
8 need it to answer this question.

9 Q Okay. All right.

10 A Because this doesn't say that he was getting 80
11 milligrams a day.

12 Q And would it surprise you to learn that that was
13 increased even more to -- so four times a day at 80
14 milligrams to be 320 milligrams a day?

15 A Right. Without seeing the prescribing information,
16 the FDA prescribing information that I offered to get on
17 the previous question, I can't answer this question or the
18 previous question or the one prior to that.

19 MS. MAYES: And, Your Honor, if we may approach.

20 THE COURT: You may.

21 Q This would be the Pfizer website.

22 A Thank you.

23 Q Feel free to peruse it as necessary. Did that assist
24 you, Dr. Lipman?

25 A Yes. It doesn't actually describe the maximum dose

1 on this page, but it does describe the typical dosing.

2 Q All right. So looking at your records that you
3 relied on that's attached to this same report, numerous
4 records were included from his current facility, and those
5 numerous records would have included prescription dosages,
6 correct?

7 A Yes. Could I keep this here?

8 Q Yes. You can keep that there. So you're familiar
9 with this document because it's part of the underlying
10 data that you were originally provided, correct?

11 A Yes.

12 MS. MAYES: All right. Your Honor, at this time, the
13 State would offer the prescription dosage records of
14 Timothy Jones, Jr. as part of the underlying data relied
15 upon by Dr. Lipman.

16 THE COURT: Mr. Madsen?

17 MR. MADSEN: Don't think I have an objection. I just
18 need to see it real quick.

19 THE COURT: Mr. Madsen.

20 MR. MADSEN: No objection.

21 THE COURT: Is that going to be marked, Ms. Mayes?

22 MS. MAYES: Yes, sir, Your Honor.

23 COURT REPORTER: Exhibit 195.

24 (Whereupon, State's Exhibit number 195 was admitted
25 into evidence.)

1 Q All right. Dr. Lipman, I'm going to pass this back
2 up. This is State's Exhibit 195 now.

3 THE COURT: Which is admitted without objection.

4 Q And, Dr. Lipman, you may continue to rely upon that
5 document. So does that refresh your memory that the
6 amount of dosage prescribed to Mr. Jones was, in fact, 320
7 milligrams a day?

8 A No. Not on this page. Oh, I'm sorry. Are you
9 asking me to look elsewhere?

10 Q It would be 80 milligrams four times a day for a
11 total of 320 milligrams a day for Mr. Jones.

12 A Give me a moment, please. You've handed me two
13 pages. The first page pertains to his administrations in
14 April of 2016 and no other time. The second page, which
15 relates to June of 2016 and at no other time, is not to be
16 added to what he took in April. Am I misunderstanding
17 your question? Could you clarify?

18 Q Yes. So the original prescription there -- do you
19 see the first set of prescriptions? And then it's
20 re-prescribed on the second page.

21 A Yes. In April, he was getting two dosages of 80
22 milligrams of Geodon a day, and in June he was getting two
23 doses of Geodon a day in June.

24 MS. MAYES: May I approach, Your Honor?

25 THE COURT: Yes, ma'am.

1 Q So we're talking about --

2 A I fail to find your 360 milligrams.

3 Q Okay. November of 2015, he is prescribed two
4 capsules a day, 80 milligrams each. So that's 160. And
5 then he has an additional prescription to take two more at
6 80 milligrams a day for a total of 320, and he is taking
7 these in combination. Do you dispute that, Dr. Lipman?

8 A Yes.

9 Q Were you not provided that information?

10 A You have stapled together two pages. Maybe I could
11 review this more closely. One of them pertains to a
12 prescription on the 19th of November, 2015. The other
13 pertains to a prescription on the 28th of April of 2016
14 beginning only on the 1st of the month. They are not -- I
15 don't understand your question.

16 MR. MADSEN: Judge, we would stipulate, at some point
17 in time, he was up to 320 milligrams a day.

18 THE WITNESS: It's just not --

19 MS. MAYES: That's what we're seeking, Your Honor,
20 and I believe that's been clarified.

21 THE WITNESS: It's just not on these pages. I'm
22 sorry.

23 MS. MAYES: Okay. So if we could have a stipulation
24 at this time, Your Honor --

25 THE COURT: How, about this?

1 MS. MAYES: -- that there --

2 THE COURT: He can consider that in rendering his
3 opinion if he's told that. That's the same result. He's
4 an expert. He may consider assuming a dosage of, your
5 question.

6 Q All right. So having a stipulation, Dr. Lipman, that
7 Mr. Jones is taking 320 milligrams a day of Geodon, you
8 would agree that there would be neuropsychological
9 deficits regarding his testing, correct?

10 A Regarding his neuropsychological testing only. Yes.

11 Q I believe your testimony a few moments ago on direct
12 examination is that you would expect it to affect speed of
13 thought, which would be clouded and slow. Those were your
14 words a few moments ago, correct?

15 A Yes.

16 Q And that there would be neuropsychological effects
17 across the board?

18 A Correct.

19 Q And that was -- you made that testimony without even
20 considering that he was at a maximum dosage of 320
21 milligrams, correct?

22 A I still haven't seen that record, but --

23 Q But you accept the stipulation by the Defense,
24 correct?

25 A I'm happy to accept any stipulation.

1 Q All right. So having reviewed now the Pfizer
2 website, I'm going to show you this document that I had
3 previously showed you.

4 THE COURT: Do you need back on there, Doctor? It
5 timed out on him.

6 MS. MAYES: Yes, sir, Your Honor.

7 THE COURT: Okay.

8 Q While we're pulling that website back up, if you
9 could review this document regarding the known
10 side-effects of Geodon. All right. So having compared
11 this publication to its website, are you able to establish
12 that that is, in fact, the known side effects of Geodon?

13 A Yes.

14 MS. MAYES: All right. Your Honor, this will be
15 State's -- I believe it's going to be 196 now --

16 COURT REPORTER: 196.

17 MS. MAYES: -- for evidence.

18 MR. MADSEN: Can I see it?

19 MS. MAYES: Yes.

20 MR. MADSEN: No objection.

21 THE COURT: 196 without objection. It's in.

22 (Whereupon, State's Exhibit number 196 was admitted
23 into evidence).

24 Q All right. So among the published known side-effects
25 of Geodon are the potential for cognitive and motor

1 impairment, correct, Dr. Lipman?

2 A Yes. As I wrote in 2016.

3 MR. MADSEN: I'm going to object. Asked and
4 answered. This is, I think, the third time that she's
5 going over it. I let it go the second time.

6 THE COURT: I tend to agree with you. It's time to
7 move on to something else.

8 Q Now, about the Chantix. You came in this morning to
9 testify about Chantix, being the brand name for the
10 smoking cessation medication. What was the specific
11 dosage that was prescribed to Mr. Jones and when?

12 A Let me check my record. Again, I'm going from my
13 notes rather than the actual record. I found in the 7
14 February 2014 record from Doctors Care, which was a
15 clinic, John Saunders was the physician, that he was given
16 a Chantix starter pack with two continuing months.

17 Q All right. And what is the date?

18 A The date I just spoke was 7/4 -- 7 February of 2014.

19 Q All right. February 7th, 2014. And on this
20 particular document, it states that Mr. Jones said that he
21 wanted to try Chantix and it had worked before, but he
22 stopped taking it, correct?

23 A Yes. That's what my note says.

24 Q And in this doctor's report from February 7th, 2014,
25 he goes on to say that he did well on Chantix in the past,

1 correct?

2 A Correct.

3 Q So the patient was not reporting any known
4 side-effects to Chantix, which he had used in the past?

5 A Correct.

6 Q And it goes on to state that he did not get suicidal
7 on Chantix in the past, correct?

8 A Correct.

9 Q And this also medication records that you relied on
10 in forming your opinion for today, correct?

11 A Correct.

12 Q You were supplied these as part of your underlying
13 data?

14 A Correct.

15 MS. MAYES: Your Honor, we would offer as State's
16 Exhibit 197 the medical records related to the February
17 7th, 2014 Doctors Care visit.

18 THE COURT: Any objection?

19 MR. MADSEN: No objection.

20 THE COURT: 197, the Doctors Care medical records
21 from February '14 without objection.

22 (Whereupon, State's Exhibit number 197 was admitted
23 into evidence.)

24 MS. MAYES: And, Your Honor, we will substitute with
25 a clean copy.

1 THE COURT: Okay.

2 Q So considering 197, that he did not report any known
3 adverse effects, do you know whether or not Mr. Jones was
4 even taking those Chantix pills around the time of the
5 homicides, which was August 28th, 2014?

6 A Not with any certainty, no.

7 Q Well, have you met Mr. Jones or interviewed him?

8 A No.

9 Q So when you say not without -- not with any
10 certainty, you really don't know at all if he was taking
11 Chantix in August of 2014?

12 A That's correct.

13 Q You only know that he was prescribed it in February
14 of 2014 having reported no previous adverse effects,
15 right?

16 A That's what he told his doctor. Yes.

17 Q And I'm looking now at Defense Exhibit 121, being
18 Chantix, and it shows a full course of pills in this box,
19 doesn't it?

20 A It does.

21 Q And then 120 Defense Exhibit?

22 MS. MAYES: It's marked for ID, but I believe it's
23 in, Joy?

24 COURT REPORTER: It is.

25 THE COURT: It's in.

1 Q And then, State's -- I'm sorry, Defense Exhibit 133,
2 also showing a full course of pills, correct? So we have
3 two packs where it wasn't used at all, correct?

4 A I see that now. I have not seen them before.

5 Q You had not been supplied this information?

6 A No.

7 Q All right. And then we see a third pack where there
8 are one, two, three, four, five, six, seven, eight, nine
9 pills missing and numerous pills remaining from this pack,
10 correct?

11 A Correct.

12 Q And that would be Defense Exhibit 120. So all we
13 know is that out of three packs of Chantix, nine pills are
14 missing and that prescription was from February of 2014,
15 correct?

16 A Correct. You're also missing the starter pack, I
17 think.

18 Q So the starter pack precedes that, correct?

19 A Yes.

20 Q Well, we know he took he took the starter pack
21 because he reported that he had no adverse effects,
22 correct?

23 A Correct.

24 Q And that he had done well on Chantix in the past?

25 A Correct.

1 Q So in reality, from a February 2014 prescription,
2 nine Chantix pills are missing?

3 A Apparently, yes.

4 Q Dr. Lipman, you have no idea whether or not he was
5 taking Chantix in August of 2014, correct?

6 A Correct.

7 Q And you're not here to say that taking nine Chantix
8 pills back in February would have caused him to murder his
9 children, are you?

10 A No.

11 Q So now, let's move on --

12 MR. MADSEN: We have an objection.

13 THE COURT: Do we need -- all right. Let me hear
14 your objection.

15 MR. MADSEN: Judge, objection to the word, murder.

16 MS. MAYES: I can rephrase that, Your Honor.

17 THE COURT: All right. Rephrase then, Ms. Mayes.
18 Now, we'll be back on the record.

19 Q Mr. Lipman, you have no knowledge whether or not
20 taking nine Chantix pills in February would have caused
21 him to wrap his hands around the throats of four of his
22 children, do you?

23 MR. MADSEN: Judge, objection. I don't think that
24 that's an appropriate question.

25 THE COURT: I'm going to ask Ms. Mayes to rephrase it

1 again.

2 Q Those nine Chantix pills from February did not cause
3 him to commit the crimes that he is on trial for, did it,
4 Dr. Lipman?

5 A Let me answer that --

6 MR. MADSEN: Same objection, Your Honor.

7 THE COURT: I'm going to allow that one.

8 A Let me answer that this way. No. There's no
9 proximate cause at all. However, people with underlying
10 psychiatric illnesses whose illness is typically, balanced
11 in some way, allowing them to continue their lives, can be
12 completely knocked off the rails by drugs that provoke
13 underlying psychosis. Drugs such as AB Pinaca or, in some
14 cases, Varenicline, once the course of their underlying
15 illness has been disturbed, then their underlying illness
16 can be more severe. So I can't exclude any possibility
17 that it had some relation to how his ongoing mental
18 illness progressed.

19 Q I'm going to ask you some more about that.
20 Especially regarding your reference to an underlying
21 mental illness. You reviewed reports supplied to you by
22 the Defense, correct?

23 A Correct.

24 Q Did you review the final report of Dr. Richard
25 Frierson, the Court appointed forensic psychiatrist, dated

1 April of 2019?

2 A Yes, I did.

3 Q Did you report -- review the report of Dr. Kimberly
4 Kruse in 2019?

5 A For some reason, I don't have that. It's possible I
6 didn't. Let me --

7 Q It's possible you didn't?

8 A Let me look at my record of reviewed notes.

9 Q And, again, the report I'm asking about regarding Dr.
10 Richard Frierson will be dated April of 2019.

11 A Yes, I have that. Please name the last one that you
12 --

13 Q Dr. Kimberly Kruse.

14 A It's not in my list. I'm sorry.

15 Q All right. You were not supplied that information?

16 A It appears not.

17 Q Now, you, yourself, do not have expertise to decide
18 any type of psychiatric diagnosis, correct?

19 A Correct.

20 Q You're relying on information supplied to you by the
21 Defense, correct?

22 A Yes.

23 Q Because the report of Dr. Frierson that you said you
24 reviewed did not find any underlying mental illness,
25 correct?

1 A That was his conclusion. Yes.

2 Q All right. So moving onto to the AB Pinaca since you
3 mentioned that a few moments ago. Known side-effects of
4 AB Pinaca include hallucinations, paranoia, delirium,
5 psychosis, agitation. You're familiar with all those
6 side-effects of AB Pinaca, correct?

7 A Correct.

8 Q Every single one of those can mimic a mental illness,
9 can't it, Doctor?

10 A Yes. For its duration of use -- duration of action.

11 Q And if there is dependence, there can be withdrawal
12 following that dependence, correct?

13 A That's correct, also.

14 Q And what are some of the withdrawal symptoms that one
15 would expect for a drug such as AB Pinaca?

16 A Well, psychosis is not one of them. That's the
17 effect of the drug, not the withdrawal. Although, the
18 effect on a person with an underlying psychosis can be
19 very, very persistent.

20 Q Well, you're familiar with studies on AB Pinaca that
21 include those same side-effects even in people with no
22 underlying illness, correct?

23 A Correct.

24 MR. MADSEN: Judge, I would just ask that he be
25 allowed to finish his answer before she starts the next

1 question. That's the second time.

2 THE COURT: And she's doing that. Continue on.

3 A The withdrawal effects are mostly psychic of anxiety,
4 agitation, depression. To the extent that there is any
5 enduring psychosis such as was present during the acute
6 effect of the drug, if persistent, that represents an
7 underlying vulnerability to the psychosis. Not to the
8 effect of the drug itself.

9 Q You mentioned a little while ago on direct
10 examination that metabolites may remain in the system ever
11 after the drug is clear, correct?

12 A That is correct.

13 Q And the effects in duration of that isn't really
14 known because there haven't been extensive human studies
15 on AB Pinaca, correct?

16 A That's correct, too.

17 Q So a lot of this is just unknown regarding how long
18 the drug stays in the system, how long the metabolites
19 stay in the system and how long it may effect someone,
20 correct?

21 A That is true. Yes.

22 Q And then the withdrawal side-effects of AB Pinaca
23 also are not well known, correct?

24 A That's also true.

25 Q Because there are very limited studies?

1 A Yes, that's right.

2 Q Are you aware, Dr. Lipman, that voluntary drug use is
3 not a defense to a crime in this state?

4 A On its own. Yes, I am.

5 MR. MADSEN: Judge, I would object. That calls for a
6 legal conclusion.

7 THE COURT: Sustained.

8 MR. MADSEN: And I move to strike.

9 THE COURT: To that question and answer.

10 Q So your testimony previously was that the use of
11 Chantix may exacerbate any underlying mental illness, but
12 as you've acknowledged, you don't even know if he was
13 taking Chantix. Now, let's talk about AB Pinaca. Do you
14 have any reliable information that he was taking AB Pinaca
15 at the time of the murder since you gave an opinion in
16 that regard?

17 MR. MADSEN: Object to the use of the word murder.

18 THE COURT: All right. What?

19 MS. MAYES: Crimes for which --

20 THE COURT: What words would you like her to use?
21 Because I want to try to get through this and you don't
22 like any of them.

23 MR. MADSEN: Kill. I mean, that's calling for a
24 legal conclusion from him. She's basically trying to, you
25 know, get her theme for what she thinks --

1 THE COURT: I understand you all both are doing that.
2 Give me your word and I'm going to suggest it. You all
3 are beating a dead horse for me right now and I don't want
4 that on the video, but I'm getting tired of the you don't
5 like her words. Give her the word you want her to use and
6 she'll use it. I promise you.

7 MS. MAYES: Killings will suffice, Your Honor.

8 THE COURT: Killings?

9 MR. MADSEN: Sure.

10 THE COURT: All right. And I'd like that -- I mean,
11 that edited out of the final video, this discussion, and
12 I'm going to pause to give the video a chance to have a
13 break point. Continue, Ms. Mayes.

14 MS. MAYES: Yes, sir, Your Honor.

15 Q Now, Dr. Lipman, you don't have any reliable
16 information that Timothy Jones was using AB Pinaca at the
17 time of these killings, do you?

18 A The only information I have is his self-report and
19 the physical evidence that was attributed to his historic
20 use. I don't have any blood from the time, for instance.

21 Q You know that he was using, of course, at the time of
22 his arrest on September 6th when he was stopped by law
23 enforcement in Mississippi, correct?

24 A Correct.

25 Q And there is a blood report that goes with that, as

1 well as testing of the Scooby Snax and that can that was
2 seized from his vehicle, correct?

3 A Correct.

4 Q And even despite that spice use, he was able to use
5 self-protective measures during the use of that spice such
6 as telling law enforcement --

7 MR. MADSEN: Judge, I would object.

8 THE COURT: To what?

9 MR. MADSEN: I don't believe that it's an appropriate
10 question.

11 THE COURT: If he knows --

12 MR. MADSEN: Saying self-protected --

13 THE COURT: I'm not certain where she was going with
14 it. I'd need to hear the full question. Perhaps it is
15 not allowed. I don't know. Finish your question, Ms.
16 Mayes.

17 MS. MAYES: Yes, sir, Your Honor.

18 Q You are aware -- I believe you noted that you had
19 various police reports in this case, correct?

20 A Correct.

21 Q So you're aware that he was stopped by authorities in
22 Mississippi on September 6th, 2014?

23 A Correct.

24 Q That he had spice in his possession?

25 A Yes, I do.

1 Q Which contains AB Pinaca because that particular
2 spice was tested and contained AB Pinaca, you're aware of
3 that?

4 A I'm aware of that.

5 Q And that his blood test results were positive for AB
6 Pinaca following his arrest on September 6th?

7 A Correct.

8 Q And yet, despite that use, he told law enforcement
9 that he didn't have any children, were you aware of that?

10 A I think that was true, wasn't it?

11 THE COURT: Rephrase your question, Ms. Mayes.

12 MS. MAYES: Yes, sir, Your Honor.

13 Q You're saying it was true that he didn't have any
14 children because he had killed them all?

15 A Yes.

16 Q All right. Are you aware that he then changed his
17 story and told police that he did have three children, but
18 they were with the mother in South Carolina? Did you know
19 that?

20 A I think I recall that, yes.

21 Q All right. So that wasn't true, was it?

22 A That wasn't true, no.

23 Q And then he told the officer, if you're familiar with
24 the case, that the car smelled because he had garbage in
25 it, correct?

1 A Correct.

2 Q And then he went on to explain to the officer all of
3 the chemical components contained in that Scooby Snax and
4 why it was considered legal. Were you aware of that?

5 A I don't actually recall that.

6 Q So even under the influence of AB Pinaca that night
7 and under those circumstances, he was able to lie to law
8 enforcement, wasn't he?

9 A Yes, he was.

10 Q He was able to conceal the evidence in his vehicle,
11 the odor of decomposition, by saying it was garbage,
12 wasn't he?

13 A He was able, yes.

14 Q And the only information that you would have that he
15 used AB Pinaca on the date of the killings would be if he
16 told you that now, correct? You've heard his confession.
17 It was listed -- or his statement. It was listed in your
18 materials. That's something you considered.

19 A Yes.

20 Q So you heard him tell law enforcement that he didn't
21 use AB Pinaca at all on the date of the killings?

22 A I actually don't recall that, but I accept that he
23 did, yes.

24 Q So you're here to testify and ultimately give an
25 opinion as to whether or not AB Pinaca played any role in

1 his behavior on the date of the killings, but you don't
2 remember in his statement to law enforcement when he told
3 them he didn't use it at all that day? You don't recall
4 that?

5 A It wouldn't make any difference. His use on that day
6 is not material. I wasn't suggesting that his
7 intoxication at the time of the offense resulted in the
8 misbehavior. My suggestion was that it exacerbated his
9 underlying mental illness.

10 Q If --

11 A That doesn't go --

12 Q Go ahead.

13 A That doesn't go away when the drug goes away. That
14 puts him -- that knocks him off the rails. And to that
15 extent, he remains in need of antipsychotic medication.

16 Q So all of this is based on if he has a mental illness
17 -- and you know there are contrary reports, correct?

18 A Yes.

19 Q And then all of this would be if he was using AB
20 Pinaca, it could effect an underlying mental illness which
21 may or may not be present, correct?

22 A I have no doubt that Dr. Agharkar and Dr. Smith have
23 diagnosed him as suffering from a psychosis spectrum
24 mental illness.

25 Q You cannot state that to a reasonable degree of

1 medical certainty, can you?

2 A I rely on them for that diagnosis.

3 Q But you don't rely on the Defendant's word as to
4 whether or not he was even using AB Pinaca during the
5 timeframe of the killings?

6 A He had -- I rely on him having told respondents that
7 he had used it for two months prior to the killings and
8 was continuing to use it after the killings.

9 Q All right. And, again, this is self-reported because
10 he's told different stories, hasn't he?

11 A I'm not sure about that.

12 Q You're not sure? You're really not even sure what he
13 said about whether he did or did not use AB Pinaca?

14 A My recollection is that he has said that he was using
15 it for about two months prior. I think he told Dr.
16 Frierson the same thing, and he's told the other
17 psychological/psychiatric examiners the same thing.

18 Q And --

19 A And I would add that his present condition is not
20 being treated lightly. Whoever is prescribing him his
21 medications right now is prescribing him because he has a
22 psychotic mental illness.

23 Q Again, you're relying on their relating that
24 information to you, correct? Not on your own diagnosis,
25 correct?

1 A Correct.

2 Q So let's finish this about AB Pinaca because it's my
3 understanding, based on your direct examination, that's
4 really what you're here for, to explain AB Pinaca and how
5 it may play a role in this, correct?

6 A Correct.

7 Q But you didn't recall that he said he wasn't using on
8 the day of the killings, but --

9 MR. MADSEN: Judge, asked and answered.

10 Q -- if I understand correctly, you're now saying --

11 THE COURT: I'm going to allow the question.

12 Q -- you're now saying you have information that he
13 was using?

14 A I have not said that at all. What I said is -- what
15 I continue to say is that he has told all of the examiners
16 that he had been using it for about two months prior to
17 the offense and continued to use it until his time of
18 arrest following the offense. This is a drug that can
19 exacerbate underlying psychosis spectrum mental illness.
20 He continues to suffer very severely from psychosis
21 spectrum illness. He is not now using AB Pinaca, we can
22 assume, and yet his mental illness is profound enough for
23 him to require antipsychotic medication.

24 Q Antipsychotic medication that, according to the
25 previous discussions about that, is being prescribed at

1 greater than a discretionary level, correct?

2 A Correct.

3 Q And then when you talk about the self-reporting use,
4 again, can you agree that this Defendant, Timothy Jones,
5 is not a reliable historian given his multiple
6 inconsistent stories about what he's used and when?

7 MR. MADSEN: Judge, I object. It calls for
8 speculation. I mean, they're asking his opinion on Tim's
9 reliability. I just don't think it's appropriate. I
10 think that that calls for speculation.

11 THE COURT: I'll let her rephrase the question. So
12 I'll sustain it the way the question was phrased.

13 Q You are?

14 A Yeah. I haven't assessed his reliability. I really
15 have no opinion about his reliability. My opinion is
16 based on the assumptions that I have made, which I have
17 described.

18 Q Assumptions. Your opinion is based on assumptions,
19 correct?

20 A Yes.

21 Q And as you said just moments ago, his reliability
22 isn't important to you?

23 A I haven't assessed it.

24 Q Because you've never met with him and you don't know
25 how many different stories he's told to how many different

1 people, do you, Doctor?

2 A I do not.

3 Q How much are you being paid for your involvement in
4 this case?

5 A I charge for my time.

6 Q And how much is that?

7 A I charge \$275 an hour, time out of office, plus
8 expenses, and \$375 in court or deposition.

9 Q All right. So let's back up to all of those
10 documents that you reviewed leading up to your testimony
11 today. That whole two pages of documents that were listed
12 on your report dated back in 2017. How many hours did you
13 spend reviewing those documents? Have you done an
14 invoice?

15 A I don't think I brought my invoices. It's not
16 typically something I would be carrying. I'm sure it was
17 a lot.

18 Q I'm sorry?

19 A I'm sure it was a lot.

20 Q Okay.

21 A But --

22 Q Well, how much is a lot? Are we talking over \$5,000?

23 A Possibly. Possibly.

24 Q And that's not including your testimony this week,
25 correct?

1 A Correct.

2 Q And your travel time to get here, correct?

3 A Correct.

4 Q Did you drive here or fly here?

5 A I drove here.

6 Q So your billing for the time that you're driving, as
7 well?

8 A I am. My assessment was that it would actually take
9 longer to get here if I flew --

10 Q All right.

11 A -- coming from where I'm coming from.

12 Q So you're being paid by the Defense thousands of
13 dollars for your involvement in this case, correct?

14 A I'm being paid for my time.

15 Q And all that time you're being paid for, you've never
16 once sat down and met with Timothy Jones, have you?

17 A Correct. That was not my referral question.

18 Q You've never thoroughly reviewed all of his
19 prescription information, including that Chantix that I
20 just showed you, correct?

21 A Apparently so.

22 Q You weren't even aware that he had only taken nine
23 pills that date back to February, were you?

24 A Apparently not.

25 MS. MAYES: Nothing further, Your Honor.

1 THE COURT: Mr. Madsen.

2 REDIRECT EXAMINATION

3 By Mr. Madsen:

4 Q With the Chantix, she asked you about that and, I
5 guess, the nine pills. If he'd started taking it a couple
6 of years before, he's not just going to, two years later,
7 go back on the blue box?

8 A Yes, he is.

9 Q Is he?

10 A I'm sorry. He is not. He's got to start it all over
11 again.

12 Q So he's got to start with the green box?

13 A Yes.

14 Q And work his way up to this?

15 A Yeah, or he'd be very sick.

16 Q And you -- she asked you about Dr. Frierson's report,
17 but you also reviewed Dr. Agharkar's?

18 A I did.

19 Q Dr. Schwartz-Maddox?

20 A Is that Schwartz-Watts?

21 Q Schwartz-Watts. Yes.

22 A Yes, I did.

23 Q And Dr. Dorney, I believe, had all found that he had
24 a mental illness?

25 A Yes.

1 Q And then, also, his treating, I guess, psychiatrist
2 from SCDC where he's been for the last four years,
3 correct?

4 A Yes.

5 Q And what does it tell you when someone is receiving
6 320 milligrams of Geodon or a powerful antipsychotic?

7 A It tells me that they are receiving a very large
8 dose --

9 MS. MAYES: Objection to speculation.

10 THE COURT: You asked a question about it. He can go
11 back into it. The dosage and its effects.

12 A It's a very large dose with a risk of unpleasant and
13 potentially dangerous side-effects and in the risk/benefit
14 calculation that a prescriber has to go through, that is
15 not -- that decision is not made lightly. Not at all.
16 And therefore, I'm certain that the prescriber feels it is
17 a justified antipsychotic dose.

18 Q And those can be -- those doses can be upped to deal
19 with additional symptoms or positive symptoms?

20 A Yes.

21 Q And that's what's done, generally?

22 A It is what's -- it is what's done. And/or other
23 medications are added, which are called adjunctive. I
24 haven't seen his current prescribing information.

25 Q And they asked you about State's Exhibit 195. There

1 are some other drugs on there. Can you go over what those
2 are?

3 A Yes. 195 is two pages that are totally disconnected
4 in time. It's rather misleading that they be stabled
5 together like this. But I can answer the question.

6 Q Okay.

7 A The first, which relates to the 1st of April, 2016 to
8 the 30th of April, 2016, describes his daily
9 administration record for Propranolol, which is a beta
10 blocker drug. It lowers blood pressure, but also is used
11 in the treatment of anxiety and PTSD. Ranitidine, which
12 is something that's an antihistamine of the H2 class.
13 Relevant to psychiatry is the fact that he's taking the
14 Ziprasidone, that's the Geodon, and he's taking Prolixin
15 2.5 milligram, one tab in the morning and two tabs at
16 bedtime, and Benadryl 50 milligrams. Now, Prolixin is one
17 of the older antipsychotic medications. It's more
18 stunning, more tranquilizing and it has a greater risk of
19 producing both extrapyramidal syndrome and tardive
20 dyskinesia. So he's taking two antipsychotic drugs. One
21 is the Ziprasidone. The other is Prolixin. Prolixin,
22 he's taking twice a day, Ziprasidone, twice a day, and the
23 Benadryl he's taking twice a day. And although Benadryl
24 is a common name and an over-the-counter drug, its use in
25 this context is almost certainly in the treatment of the

1 extrapyramidal syndrome because Benadryl, in addition to
2 its antihistamine effects, is anticholinergic and it helps
3 to control the Parkinsonian like twitching and shaking
4 that is a side-effect of the antipsychotic drugs. You had
5 asked me -- you had handed me the two pages together and
6 the second one is of months later. It shows that he's
7 still taking Ziprasidone twice a day. But in addition,
8 he's also taking Fluoxetine 20 milligram, that's Prozac,
9 and Mirtazapine 15 milligram at night. That is a sedative
10 antidepressant drug. It's called Remeron. And he is
11 taking -- that's interesting. I'm having difficulty
12 reading some of this scribble. I'm sorry. And he is --
13 there may be another page, but it looks as though he's not
14 taking the Benadryl. Oh, yes, he is. His Benadryl dose
15 is now twice a day. 50 milligrams twice a day. So that
16 is continuing. So that was in June. Therefore, there's
17 been a change in the prescription of the drugs that are
18 being given with the Geodon -- with the Ziprasidone, but
19 he's still taking the Ziprasidone twice day 80 milligram.
20 That's 160 milligram in April and in June of 2016.

21 Q And she has also asked you about Defense Exhibit 120
22 that shows, I guess, the nine pills missing, correct?

23 A I guess, it does. Yes.

24 Q And she talked about the other two being full boxes,
25 but actually, Defense Exhibit 121 is actually missing a

1 pill also, is it not?

2 A Yes, apparently. Yeah. I haven't seen that -- those
3 before.

4 Q And can the side-effects of Chantix be minimized by
5 other prescription medications such as antidepressants or
6 anti-anxiety medications?

7 A I have not actually researched that. That is
8 certainly true, but the recommendation of the manufacturer
9 is to discontinue if necessary.

10 MR. MADSEN: No further questions.

11 RECROSS-EXAMINATION

12 By Ms. Mayes:

13 Q Doctor, at the time of this incident, the killings of
14 the children, nobody had diagnosed a psychotic disorder,
15 correct?

16 A I believe that's correct.

17 Q Even though he had been seen by multiple mental
18 health professionals, correct?

19 A Well, he was diagnosed with a bipolar mood disorder.

20 MR. MADSEN: Judge, I'm going to object. That's
21 beyond the scope.

22 MS. MAYES: I can rephrase that, Your Honor.

23 THE COURT: All right. Rephrase it because it's
24 confusing to me as to when the examinations take place.
25 So rephrase this to prior to.

1 Q Regarding an actual psychosis, there had been no
2 diagnosis prior to the murders, correct -- the killings,
3 correct?

4 A I believe that's correct. Yeah.

5 Q All right. And all of the opinions that you cited a
6 few moments ago that weigh in on your opinion, those were
7 based on self-reported behaviors by the Defendant,
8 correct?

9 A Regarding the use of AB Pinaca and Scooby Snax and
10 other cannabinoids for two months prior to and up to the
11 time of arrest.

12 Q What -- you were talking about any type of underlying
13 mental illness that Mr. Madsen was just asking you about
14 and you cited records that you reviewed. What I'm asking
15 you is, those records are still based on self-reported
16 information from the Defendant, correct?

17 A No. Particularly from the prison, they're based on
18 physicians, psychiatrists, nurse technician observations
19 of him for months and months and months. He was not
20 immediately put on antipsychotic medication after arrest.
21 His condition had to be evaluated, and ultimately it was,
22 and he is diagnosed as suffering from a psychosis spectrum
23 mental disorder.

24 Q Doctor, aren't you aware, having reviewed those
25 records and the reports that you've referred to, that the

1 vast majority of that information is self-reported by Mr.
2 Jones, correct?

3 MR. MADSEN: Judge, that's been asked and answered.

4 THE COURT: No, I don't think it was. He answered
5 what's happened since the arrest as opposed to pre-arrest,
6 and that's where the question's getting confused. And so,
7 I sustained as to the question. She's asking a different
8 question.

9 A Could you ask the question again?

10 Q Yes.

11 A I may have misunderstood.

12 Q Yes. Referring back to any behavior or information
13 relating to his situation prior to the killings, that was
14 self-reported by Mr. Jones, correct?

15 A I'm trying to refresh my memory.

16 Q And if you don't know, you can say you don't know.

17 A Well, I think there was also some neighbor witness
18 interviews, but, essentially, yes.

19 Q Neighbor witness interviews?

20 A Could I look at my --

21 Q Sure.

22 A Notes? I may be thinking of a different case.

23 MR. MADSEN: I would just renew I think we're just
24 beyond the scope of recross.

25 MS. MAYES: I could move along, Your Honor.

1 THE COURT: Please.

2 Q Dr. Lipman, you're not sure, are you? You don't
3 really even know where that information came from, do you?

4 A No.

5 Q And according to you, his reliability for
6 self-reporting isn't something that you consider, is it?

7 MR. MADSEN: And I think it's been asked and
8 answered.

9 THE COURT: It's been asked and answered.

10 MR. MADSEN: And we're beyond the scope.

11 THE COURT: It's been asked and answered. Sustained.

12 MS. MAYES: Nothing further, Your Honor.

13 THE COURT: All right. You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 (Whereupon, the witness steps down from the witness
17 stand).

18 MR. MADSEN: Judge, may I just renew something?

19 THE COURT: Sure.

20 MR. MADSEN: I believe that Ms. Mayes, when she
21 elicited information about the roadblock, that we believe
22 that by asking those questions that she has, again, opened
23 the door to the issue of the voluntariness of his
24 statement. And we ask for permission to move back into
25 that, call back law enforcement at the appropriate time,

1 go into that voluntariness. We know that Your Honor's
2 already ruled, but I think that we need to renew that.

3 THE COURT: I don't see how that door was opened and
4 my ruling will remain consistent, but your objection's
5 noted.

6 MS. MAYES: Judge, we are going to replace Exhibit
7 197 with a clean copy. We can do that at the next
8 opportunity.

9 THE COURT: We can do it right now. We're going to
10 take a break. We've been here a long time.

11 (Whereupon, a short break was taken.)

12 THE COURT: Solicitor, we are going to do the two
13 witnesses and go to lunch, come back and do the Jackson v.
14 Denno hearing and bring the jury in behind them.

15 MR. HUBBARD: Yes, sir.

16 THE COURT: So they will have an extended lunch.
17 Bring the jury in.

18 (Whereupon, the jury came into open court at
19 approximately 11:20 a.m.)

20 THE COURT: All right, folks. I hope you all had a
21 good evening. Everybody good? Sorry for the delay. If I
22 explained to you what we did, it'll make sense, but
23 anybody have any issues? Anything happen at home that we
24 need to bring up and discuss? Everybody still following
25 my -- your oath? Yes? Good. All right. What happened

1 this morning was, I had to take up a matter regarding a
2 witness to be called later, but he couldn't come later.
3 So he was videoed and we just made about an hour long,
4 short on that. So you all will hear the testimony later.
5 It's not easy -- it's easier to piece it together in
6 proper order. And so, the testimony has been preserved on
7 audio/video provided by our friends in the back. So you
8 all will get to hear it. Just later on. All right. Now,
9 we've got two other witnesses who have travel restrictions
10 and they need to be going. So we're going to hear them.
11 Then, we're going to take a lunch break, come back after
12 lunch and keep going. Okay? All right. Call your
13 witness, please.

14 MR. GRAHAM: The State calls Cynthia Bobe.

15 CYNTHIA BOBE, being
16 first duly sworn, testified as follows:

17 MADAM CLERK: Have a seat, please. Once you're
18 seated, state your full name, spelling your last.

19 THE WITNESS: Cynthia Bobe. C-Y-N-T-H-I-A, B-O-B-E.

20 DIRECT EXAMINATION

21 By Mr. Graham:

22 Q Agent Bobe, is that correct?

23 A It is.

24 Q Where are you employed, ma'am?

25 A With the Federal Bureau of Investigation.

1 Q And how long have you been employed with the FBI?

2 A Just over 15 years.

3 Q Back in September of 2014, were you in the Jackson,
4 Mississippi field office?

5 A Yes.

6 Q Let me show you what's been marked and is in evidence
7 as State's 91 and ask if you recognize that. This would
8 be in relation to a group of electronics, specifically a
9 phone that Lieutenant Eric Johnson with the Mississippi
10 Bureau of Investigation asked for your assistance.

11 A Yes.

12 Q Do you recognize that?

13 A I do.

14 Q When you received that from Lieutenant Johnson, was
15 it sealed?

16 A It was.

17 Q What were you asked to do?

18 A I was asked to take it back to the Jackson field
19 office and have our forensic examiners begin to review it.

20 Q Your forensic examiner would be Vickie Roberts. Is
21 that correct?

22 A Yes.

23 Q And did you do that?

24 A Yes, I did.

25 Q Do you remember when you gave it to Ms. Roberts?

1 A I gave it to Ms. Roberts on September the 9th of
2 2014.

3 Q During the time that it was in your possession before
4 you gave it to Ms. Roberts, did you go into the package or
5 manipulate the content of the phone in any way, shape or
6 form?

7 A No.

8 Q Ms. Roberts had it for a period of time to begin
9 with. Is that correct?

10 A Yes.

11 Q And then you received the phone back from her --

12 A I did.

13 Q -- is that correct? Do you remember when you
14 received the phone back from her?

15 A It was a day or two later.

16 Q Once you got the phone back from her, did you try to
17 manipulate the phone or the data contained within the
18 phone?

19 A No, I did not.

20 Q In fact, did you end up sealing the phone back up
21 into that envelope?

22 A Yes.

23 Q And how do you know that?

24 A I have my initials and a date.

25 Q Where do you see your initials and date?

1 A Right here in the bottom right corner across the
2 evidence tape.

3 Q So on the security tape on the bottom, it says, C.B.,
4 which is your initials, and then the date, correct?

5 A Yes.

6 Q And the purpose of that is just to seal it back up
7 and maintain the chain of custody and the integrity of the
8 item --

9 A Yes.

10 Q Is that correct? So after sealing the item back up
11 on September 23rd of 2014, what, if anything, did you do
12 with that phone?

13 A I met Shelby Derrick with the Lexington County
14 Sheriff's Office on September the 23rd of '14 and
15 transferred the evidence items to her.

16 Q So you sealed -- you sealed it back up and you handed
17 it to Shelby Derrick?

18 A Yes.

19 Q And then that was your involvement as far as that
20 phone?

21 A That's correct.

22 MR. GRAHAM: Thank you, Agent Bobe. Please answer
23 any questions the Defense has.

24 CROSS-EXAMINATION

25 By Mr. Young:

1 Q Good morning, Agent Bode.

2 A Good morning.

3 Q Was it just the phone that you had or was there a
4 large volume of electronic devices?

5 A There were other evidence items, as well.

6 Q Do you recall what all there was?

7 A No, not off the top of my head.

8 Q I'll show you what's been marked as Defense Exhibit
9 number 125 and ask you if you recognize that.

10 A I do.

11 Q Does that have your signature on it?

12 A It does.

13 Q And can you tell us what it is?

14 A It is a Mississippi Bureau of Investigation chain of
15 custody form.

16 Q Okay. And the items on it that are listed, are those
17 all the items that you were given?

18 A Yes, I believe so. This is what I signed.

19 Q Okay. Can you tell the ladies and gentlemen of the
20 jury just -- you don't have to read every word on it. Not
21 all the serial numbers, but if you could tell us briefly
22 sort of what all you took possession of.

23 A It's listed, a computer, an additional computer,
24 three computers, an Eagle Consensus external hard drive,
25 an Hitachi Deskstar hard drive, a Western Digital hard

1 drive, Passport Western Digital hard drive, SanDisk
2 Cruzer, Verbatim storage device, several Cruzer micro
3 storage devices, a Kingston DataTraveler, multiple other
4 storage devices. A Lexar two gigabyte storage device,
5 SanDisk Cruzer, Verbatim 128 megabyte storage device, a
6 Diversified Technology storage device, Kingston DT mini
7 slim storage device, a Lexar media compact flash card,
8 Galaxy Note Three cellular telephone, a Samsung cellular
9 telephone, an AT&T cellular telephone and a Verizon
10 cellular telephone.

11 Q A lot of electronics?

12 A Yes.

13 Q A lot of stuff that has a lot of mass storage
14 capabilities?

15 A Correct.

16 Q You didn't manipulate any of them?

17 A No.

18 Q And you turned it all back over to the South
19 Carolina, Ms Derrick?

20 A That's correct.

21 Q Thank you.

22 MR. YOUNG: Your Honor, I'd offer Defense number 125
23 into evidence.

24 MR. GRAHAM: No objection.

25 THE COURT: Defense 125?

1 MR. GRAHAM: Yes, sir.

2 THE COURT: All right. Admitted without objection.

3 (Whereupon, Defense Exhibit number 125 was admitted
4 into evidence).

5 MR. YOUNG: I'm sorry. I have nothing further.

6 MR. GRAHAM: No questions from the State, Your Honor.

7 THE COURT: You may step down.

8 (Whereupon, the witness stepped down from the witness
9 stand).

10 MR. GRAHAM: The State calls Vickie Roberts.

11 VICKIE ROBERTS, being

12 first duly sworn, testified as follows:

13 MADAM CLERK: Once you're seated, state your full
14 name, spelling your last, please.

15 THE WITNESS: Vickie Roberts. V-I-C-K-I-E,
16 R-O-B-E-R-T-S.

17 DIRECT EXAMINATION

18 By Mr. Graham:

19 Q Ms. Roberts, where are you employed, ma'am?

20 A The Federal Bureau of Investigation in Jackson,
21 Mississippi.

22 Q And how long have you been with the FBI?

23 A Nineteen and a half years.

24 Q And were you back in 2014, are you still a forensic
25 examiner?

1 A Yes, sir.

2 Q Briefly, what is a forensic examiner?

3 A A forensic examiner is a trained person to examine
4 digital evidence including cell phones, computers, cameras
5 and different operating systems.

6 Q Back in September of 2014, did Agent Bobe contact you
7 and ask you to begin to look on a phone?

8 A Yes, sir.

9 Q Looking at State's number 91, which is a Samsung
10 Galaxy Note 3 taken from the Defendant's car, do you
11 recognize that as being the phone? Do you need to go into
12 it?

13 A Yes. I don't -- I don't see -- I gave it to her and
14 she sealed it. So I couldn't tell, other than the name of
15 the phone.

16 Q Okay. So Agent Bobe opened something and handed you
17 a phone?

18 A Yes, sir.

19 Q And you kept that phone and you gave that phone back
20 to Agent Bobe?

21 A Yes, sir.

22 Q Okay. What Agent Bobe did with it and what package
23 it was in, you don't know?

24 A That's correct.

25 Q Okay. The same phone that she gave you is the one

1 that you gave her back?

2 A Yes, sir.

3 Q The purpose of you taking the phone is to begin to do
4 a forensic examination --

5 A Yes, sir.

6 Q -- Is that correct? During the course of your
7 examination, were you asked to stop the examination and to
8 allow South Carolina officials --

9 A Yes, sir.

10 Q -- to finish the examination?

11 A Yes, sir.

12 Q As far as the examination you did, did you change
13 anything that was on the phone or add to it or subtract
14 from it?

15 A No, sir.

16 Q So the contents of the phone were the same after --
17 when you turned it back to Cynthia as it was when you got
18 it from Cynthia?

19 A Yes, sir.

20 MR. GRAHAM: Thank you, ma'am. Please, answer any
21 questions the Defense has.

22 MR. YOUNG: No questions.

23 THE COURT: You may step down.

24 (Whereupon, the witness stepped down from the witness
25 stand).

1 THE COURT: All right. You'll are done until 1:30.
2 Back in the jury room at 1:30. Don't talk about the case.
3 Now, as I understand it, lunch, wherever they want to go.
4 Be back at 1:30, do whatever you like.

5 (Whereupon, the jury was excused from the courtroom
6 for a lunch break.)

7 THE COURT: All right. We're going to do the Denno
8 hearing right now. You all ready?

9 MR. HUBBARD: Yes, Your Honor.

10 THE COURT: Call your witness.

11 MR. HUBBARD: The State calls Lieutenant Travis
12 Pressley.

13 TRAVIS PRESSLEY, being
14 first duly sworn, testified as follows:

15 MADAM CLERK: Once you're seated, state your full
16 name, spelling your last.

17 THE WITNESS: Travis Pressley, P-R-E-S-S-L-E-Y.

18 IN-CAMERA DIRECT EXAMINATION

19 By Mr. Hubbard:

20 Q Lieutenant Pressley, where do you work?

21 A Kirkland Correctional Institution and Department of
22 Correction.

23 Q And how long have you been there?

24 A I've been with Kirkland for five years. I've been in
25 the system for 20 years.

1 Q Do you recall back September 12th of 2014 a new
2 inmate being received into your facility by the name of
3 Tim Jones, Jr.?

4 A Yes, sir.

5 Q Were you there at Reception when he came in?

6 A Yes, sir.

7 Q What was your role?

8 A My role, I'm the -- was the head supervising
9 lieutenant for that unit and my job was just to supervise
10 and make sure everything is going correctly. And when we
11 heard about inmate Timothy Jones coming in, we prepared
12 for him and was waiting for him and was waiting for him in
13 operation.

14 Q When he came in -- were you there when he actually
15 first walked through that door?

16 A Yes, sir. We had some people bring him through the
17 gate, bring him to the door and we was waiting for him.

18 Q What did you do when you received him in?

19 A Well, we did our procedure. When they first come in,
20 we explain to him where he's at. Then we start doing our
21 procedure and shaking him down. The normal operation that
22 we -- intake process when you start shaking them down,
23 take them into the chair, getting a haircut. A normal
24 operation.

25 Q While this was going on, was there a point when you

1 brought him into the room and the door was shut?

2 A When he first walked in that door -- when the officer
3 -- when we received him and when the officer had left, the
4 door had slammed. And, I guess, reality kicked in for him
5 and he started to get nervous and started shaking.

6 Q Did he cry?

7 A He cried.

8 Q What, if anything, did he say?

9 A He said a couple of comments about he's sorry for
10 what he did. He was wrong for what he did. He
11 apologized. He wished he could take it back.

12 Q Did you ask him at this point, hey, tell me what's
13 going on and tell what you did?

14 A No. We didn't ask that question.

15 Q As he was getting upset, what was your role?

16 A My role? Well, I'm a CIT certified trained
17 instructor. We normally -- I'm normally trained to see
18 the signs and symptoms of people and individuals. But at
19 that particular point when he was explaining this stuff to
20 me, I just listened.

21 Q Okay. Now, CIT skills. Can you tell the Judge what
22 that's about?

23 A It's Crisis Intervention Training Team. It's a class
24 we use to where we train individuals -- well, they train
25 -- well, I instruct individuals on how to de-escalate

1 problems, situations and diffuse problems with an
2 individual.

3 Q So if somebody is emotional, whether it's angry or
4 upset or crying, you utilize these skills to calm them
5 down?

6 A Yes.

7 Q Now, do you tell an inmate to just calm down or
8 what's the process?

9 A No. We use -- tell them to relax.

10 Q Okay. And if they're talking, do you just let them
11 talk?

12 A We just let them talk and listen.

13 Q Is that part of your training?

14 A It's part of the training.

15 Q All right. Now, when he said I'm sorry, what else
16 was he saying?

17 A He was explaining about the incident or what
18 occurred. You want me to say the incident?

19 Q Yes. And I'm going to pull this microphone just a
20 little bit so when -- you can just sit comfortably and not
21 have to worry about sticking your mouth on it.

22 MR. HUBBARD: And, Madam Court Reporter, if you can't
23 hear, please let me know.

24 Q So, Lieutenant, if you could, just tell me, while you
25 listened what did he say?

1 A Well, he was explaining the situation of what
2 happened. What I can recall is when, I think, one of his
3 sons was messing with the socket, the electrical socket,
4 and was doing something with it, I recall he got angry.
5 Real angry at the son. And for my calculation is where he
6 placed both arms around his son's neck and, I guess, he
7 was continuing to choke his son. I think -- I recall that
8 he said that his hands was too big, that he couldn't
9 really get it good. So he used a belt and continued to
10 use that to strangle his son, and one incident I think he
11 said was his daughter --

12 Q Okay.

13 A -- walked into the -- walked in to see what was
14 going on. And he apparently grabbed her and started
15 choking her until she turned purple. That was really what
16 got me in the end.

17 Q Now, were you directed to write anything down he
18 might say?

19 A Yes. My supervisor informed us to write down an
20 incident report, but we had too much stuff going on. So
21 we only had to write what I could just remember at that
22 time, because doing the job activity we work at, it's too
23 much stuff to be going on.

24 Q I'm going to show you a copy and see if this is the
25 report of what you wrote down. Does that talk about the

1 older son messing with the socket and that he placed his
2 hands around his neck?

3 A Yes, sir.

4 Q And that he admits to killing his son?

5 A Yes, sir.

6 Q Now, you didn't mention anything in there about the
7 daughter. Can you tell me why you didn't go ahead and
8 write all that in there, too?

9 A Because doing it -- in the normal operations that we
10 be doing, too much was going on and we was back and forth
11 because we've got other job duties prior to, you know,
12 dealing with Tim.

13 Q Did you have other inmates coming in?

14 A We had other inmates coming in we had to feed and
15 they had to do showers and stuff, and there was only like
16 five officers there at that time. So we was going back
17 and forth.

18 Q Do you remember or recall him talking about any
19 babies or anything, using a belt on a smaller child, or
20 are you not sure if it was this one or --

21 A I'm not sure if it was this one. I remember him
22 saying about the belt.

23 Q You remember something about a belt being used. And
24 when that belt was being used, whether it was this boy or
25 another child, what did he say happened?

1 A When he took -- I think when he -- when he strangled
2 the kid, one of the child with the belt, I remember he
3 kept saying the daughter walked in. I don't know if it
4 was the oldest daughter or which daughter it was.

5 Q He just said a daughter?

6 A Yeah, a daughter. And I remember he said that when
7 he saw the daughter, she was shocked. I guess -- I don't
8 know if she tried to run away or what, but he grabbed -- I
9 know he said he grabbed her and choked her so hard to
10 where she started turning purple.

11 Q And he killed her, too?

12 A Yes.

13 Q Did you, at any time, ask him anymore questions about
14 this?

15 A No, sir.

16 Q Did you tell him he needed to talk to you?

17 A No, sir.

18 Q Did you interrogate him in any way?

19 A No, sir.

20 Q When he was done talking, did you all just complete
21 his processing?

22 A We just continued with the process.

23 MR. HUBBARD: Thank you.

24 CROSS-EXAMINATION

25 By Mr. Young:

1 Q Good morning, Lieutenant Pressley.

2 A Good morning.

3 Q You've testified you've had 20 years of training and
4 experience in the Corrections Department in South
5 Carolina?

6 A Yes, sir.

7 Q Five of those years were at Kirkland. Where's that?

8 A Wateree.

9 Q Is Wateree the a medium security facility?

10 A Yes, sir.

11 Q Now, at Kirkland, you were working at the maximum
12 security unit at Kirkland, right?

13 A Yes, sir.

14 Q That's like a prison inside of a prison?

15 A Yes, sir.

16 Q And Mr. Jones was taken straight to the maximum
17 security unit at Kirkland. He didn't go to the normal
18 upfront intake, right?

19 A No, sir.

20 Q And that's pretty unusual, right?

21 A Yes.

22 Q Because usually people who get sent to the maximum
23 security unit are just people who have gotten in trouble
24 somewhere else in the prison system, right?

25 A Yes, sir.

1 Q That's why they get sent to the max -- at the time it
2 was called the maximum security unit. Is that right?

3 A Yes, sir.

4 Q It would be South Carolina's version of Supermax?

5 A Yes, sir.

6 Q That would be for people who weren't -- who continued
7 to get in trouble in restricted housing units at other
8 facilities?

9 A Yes, sir.

10 Q The intake process at SCDC, you routinely ask people
11 what happened -- what happened to you to get here, right?

12 A Yes, sir.

13 Q Now, I think your testimony was that he told -- he
14 was in crisis, right? When I say crisis, I mean, you were
15 applying your crisis intervention training, right?

16 A Yes, sir.

17 Q That means he was upset?

18 A He didn't get upset until the door closed and, I
19 guess, that's when reality kicked in to where he
20 understand what he probably did or he just was emotional
21 then and starts just talking.

22 Q You knew -- you didn't know that he had been in
23 custody since September the 6th, for almost a week?

24 A Did I know?

25 Q Yeah.

1 A Yeah. Yes, sir. I knew.

2 Q You knew he had been in custody in Mississippi?

3 A I mean, I didn't know where he was or anything. They
4 don't tell us anything.

5 Q Sure.

6 A All it is, is when we get the word that he's coming,
7 you don't know anything.

8 Q And he was coming from the Lexington County Detention
9 Center --

10 A Yeah.

11 Q -- at that time?

12 A Yes, sir.

13 Q And he had been there for a night, right? You
14 don't --

15 A I can't recall.

16 Q This incident happened at 2:20 p.m. Is that right?

17 A If I'm not mistaken. Yes, sir. Okay. Approximately
18 2:20.

19 Q So a little bit after lunch?

20 A Yes, sir.

21 Q And there were other officers present during this
22 interaction?

23 A Yes, sir.

24 Q And your testimony was that there were five other
25 officers in the unit, right?

1 A Yes.

2 Q How many of them were present for this interaction?

3 A About three. It was me, Officer Boyd and my other
4 sergeant.

5 Q Officer Hawkins?

6 A Well, he's a sergeant.

7 Q Officer Stroman?

8 A They wasn't present.

9 Q So if Officer Stroman gave a statement about this
10 incident, he wasn't present.

11 A I can't recall if -- he wasn't present in the area
12 when I was there, but we all kind of switch up. But they
13 wasn't present.

14 Q I'm sorry. I thought this all happened in a room
15 with the door closed.

16 A In the sally port area when they first come in.
17 Right.

18 Q The sally port at MSU?

19 A It's a sally port. It would be bring the intake when
20 we do the strip search and everything. It's only three
21 people. The other two officers was doing other
22 activities, like feeding or doing whatever, or doing the
23 security checks, while just me and two other officers was
24 there present with him.

25 Q So if four people wrote statements about hearing

1 this, then one of them is not telling the truth?

2 A I can't recall because each of us switch off a little
3 bit. So I don't know what their interaction was.

4 Q Okay. So it could have been four officers there with
5 you?

6 A No, it was three.

7 Q You and three other officers?

8 A No. Me and two other officers.

9 Q Okay. So it couldn't have been four?

10 A It was me, Officer Boyd and Sergeant Hawkins at that
11 time.

12 Q And Officer Stroman wasn't there?

13 A If Officer Stroman -- if Officer Stroman came
14 through, that probably was after or whatever.

15 MR. YOUNG: All right. Beg The Court's indulgence.
16 That's all the questions I have at this time.

17 THE COURT: Anything else?

18 MR. HUBBARD: Nothing at this time, Your Honor.

19 THE COURT: All right. You can step down.

20 (Whereupon, the witness stepped down from the witness
21 stand).

22 MR. HUBBARD: I'd ask the Court to find that the
23 statements are voluntary and that --

24 MR. YOUNG: We have a witness.

25 THE COURT: Okay. Is there a witness?

1 MR. MADSEN: Your Honor, the Defendant would call.

2 MR. HUBBARD: And if Lieutenant Pressley would stay
3 with us for a while --

4 THE COURT: Sure.

5 MR. MADSEN: -- in case he needs to be recalled.

6 THE COURT: Okay.

7 MR. MADSEN: We call Officer Benjamin Boyd.

8 BENJAMIN BOYD, being
9 first duly sworn, testified as follows:

10 MADAM CLERK: Once you're seated, state your full
11 name, spelling your last name.

12 THE WITNESS: My name is Benjamin Boyd. B-O-Y-D.

13 IN-CAMERA DIRECT EXAMINATION

14 By Mr. Madsen:

15 Q Officer Boyd, where are employed?

16 A Kirkland Correctional Center, South Carolina.

17 Q How long have you been at Kirkland?

18 A I've been there seven years.

19 Q Is that the only place that you've worked at while
20 you've been at SCDC?

21 A No. I worked at Manning Correctional Center, too.

22 Q And how long were you there?

23 A Two.

24 Q And at Kirkland, you were working in the supermax
25 area?

1 A Yes.

2 Q And you heard -- so you're there when Tim Jones, Jr.
3 comes in?

4 A Yes.

5 Q And, I guess, that's about 2:20 on the 12th of
6 September of 2014?

7 A Yes.

8 Q And while he's there, he's there for intake, correct?

9 A Yes.

10 Q And what officers are there for the intake?

11 A It was Lieutenant Pressley and Hawkins in the sally
12 port gate, and -- at first. And I came in with Mr. Jones
13 in the door, and in the door with the Lexington County
14 officer.

15 Q And this was something that was unusual, correct?

16 A Unusual, how?

17 Q Well, that -- for someone coming from SCDC -- I mean,
18 there were a lot of people there. You all knew that this
19 was going -- or that Tim was coming through?

20 A Yes, because he was a safekeeper. So they come to
21 supermax instead of him coming in the reception area, R&E.
22 He couldn't go to the regular yard because he's a
23 safekeeper.

24 Q And safekeeper, generally in SCDC, that's where the
25 people go that have gotten in trouble in other facilities,

1 correct?

2 A Or their counties don't want to hold them because
3 they think it's too dangerous for them to be there.

4 Q And even the Director was there, wasn't he?

5 A I'm pretty sure. I think so. It was just about -- I
6 mean, everybody was there.

7 Q So that's Director Sterling. I mean --

8 A Yeah.

9 Q -- in charge of the whole prison system?

10 A Yeah. Yes.

11 Q So very unusual to have all those folks there --

12 A Uh-huh.

13 Q For just a regular ole check-in, correct?

14 A Yes.

15 Q And when Tim came in, was he -- what is the protocol
16 that he went through?

17 A He got out of the van with one sheriff's deputy and
18 he comes through the door and he has to be checked and sit
19 in the metal detector chair and checked out. And then
20 after he's -- then he has to change into other -- out of
21 the uniform he was in into SCD uniforms.

22 Q And does he get strip searched?

23 A Yes.

24 Q Hair cut?

25 A Not that minute. He has to do medical first.

1 Q And at some point in time, you saw Lieutenant
2 Pressley asking what happened, correct?

3 MR. HUBBARD: Objection to leading. This is his
4 witness.

5 THE COURT: All right. Rephrase your question.

6 Q Did you hear Lieutenant Pressley say anything to Tim?

7 A Tim was already talking about the way they
8 transported him.

9 Q Okay.

10 A You know, he was saying something about that all 10
11 cars went one way and he went another way, because he only
12 came with one deputy, you know. That was kind of unusual,
13 you know.

14 Q You all kind of talked about that there wasn't any
15 media attention or anything and that kind of surprised you
16 all?

17 A Just a little bit.

18 Q So at some point in time, did Lieutenant Pressley ask
19 him what happened?

20 A Well, Lieutenant Pressley came into the middle of the
21 conversation when he was talking about the escort and he
22 asked kind of like what happened, and then Tim just held
23 his hands up -- showed us his hands. And then he just
24 kept -- then he said it about his son. He just blurted it
25 out and he just kept going.

1 Q And what did he say?

2 A He blurted out saying that his son was messing with
3 the light socket and he grabbed him.

4 Q What else do you recall?

5 A And he choked him.

6 Q Anything else that you recall?

7 A He was talking so much and there was a lot of other
8 things going on. You know, we kept switching off to get
9 people in the MSU and people was going to the gate and
10 medical people was coming by. I mean, he just said
11 something about that while he was choking his son, his
12 daughter came in the room. And then, that was the last
13 part I heard.

14 Q Okay. Was Tim upset during this time?

15 A It didn't seem like it. It just seemed like he was
16 -- by then, you know, we was just listening and it just
17 seems like he was -- he was shaken a little bit, but not
18 that much.

19 Q You didn't see him crying?

20 A Yes. But he had some tears when he first came in,
21 but when he started talking, he wasn't really -- kept
22 crying. To me, it didn't seem like it.

23 Q Well, you went with the Solicitor's Office and told
24 them that he was upset and crying during that time and
25 that Pressley was using his CIT in an attempt --

1 A Yeah. He was just -- we let me talk, and then he
2 just would say yes, and if you asked him any questions, he
3 would just answer them. It wasn't --

4 MR. MADSEN: That's all the questions I have.

5 MR. HUBBARD: One follow-up.

6 CROSS-EXAMINATION

7 By Mr. Hubbard:

8 Q So Lieutenant Pressley did not interrogate Mr. Jones,
9 didn't say tell me what happened that night when you
10 killed these kids or anything like that?

11 A No, he didn't.

12 Q He didn't say, tell me about the crime you're charged
13 with?

14 A No, he didn't.

15 Q Everything that came out of Mr. Jones' mouth came out
16 of his mouth because he just started talking?

17 A Was pretty much voluntarily, because in MSU most of
18 us -- we never ask anybody what they did or what did they
19 do. We try to treat everybody the same when they're back
20 there because it's kind of like a dangerous area.

21 Q What you heard Mr. Jones say -- do you recall him
22 saying he killed his son?

23 A Uh-huh.

24 Q And is that?

25 MADAM COURT REPORTER: Is that a yes?

1 Q Is that a yes or no?

2 A Yes.

3 Q And is that the son that was messing with the outlet?

4 A Yes.

5 Q How did he say he killed that son?

6 A He just had his hands up. With his bare hands.

7 Q With his bare hands?

8 A Yeah.

9 Q You mentioned something about a daughter, too. Did
10 he talk about killing her?

11 A He said she -- I heard the part where she said -- he
12 said that she came in the room while he was doing it.

13 Q Okay. And did he say anything about -- or did you
14 hear the part about where he went and got her, or did you
15 leave at that time?

16 A I turned around and I was noticing -- there was
17 something else going on behind me --

18 Q Okay.

19 A -- And I turned around and I was checking on
20 something else. Then when I turned back around, you know,
21 they was just sitting there talking.

22 Q All right. Lieutenant Pressley was there that whole
23 time?

24 A Yeah, he was -- he was there.

25 Q So anything about the daughter, he'd be the one to

1 ask about that?

2 A Yes.

3 MR. HUBBARD: Thank you.

4 THE COURT: Anything else?

5 REDIRECT EXAMINATION

6 By Mr. Madsen:

7 Q You just said that Tim was talking and Lieutenant
8 Pressley walked up and asked him what happened?

9 A He came in the middle of the conversation as he was
10 talking about the escort. He didn't -- he didn't ask him
11 a question about what he did or how he did. He came and
12 asked us what -- what were we talking about.

13 Q Okay. Did you tell the Solicitor's Office on April
14 3rd that Pressley asked what happened?

15 MR. HUBBARD: That's asked and answered. He's
16 already answered that.

17 THE WITNESS: I did.

18 MR. MADSEN: I think that's in redirect.

19 THE COURT: I'll let him clarify, because I think
20 he's--

21 MR. HUBBARD: All right.

22 THE COURT: -- I think he has answered, but I want
23 to hear it --

24 MR. HUBBARD: Yes, sir.

25 THE COURT: -- hear it again.

1 Q That's what you told the Solicitor's Office is that
2 Pressley asked what happened?

3 A What happened with the escort. It wasn't about what
4 happened with the murder.

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

6 MR. HUBBARD: I have no further questions, Your
7 Honor.

8 THE COURT: All right. You may step down.

9 THE WITNESS: Okay.

10 (Whereupon, the witness stepped down from the witness
11 stand).

12 MR. HUBBARD: Your Honor, I'd move that the statement
13 was voluntarily given, that there was no interrogation,
14 that a Miranda was not necessary, that it would be
15 admissible.

16 THE COURT: Mr. Young?

17 MR. YOUNG: Judge, we would object under our previous
18 arguments regarding the circumstances surrounding
19 voluntariness of all of the statements in addition to
20 those arguments. At the time of these statements, all of
21 the -- Your Honor is well aware of all of the events that
22 had happened up until that point and including that a
23 conversation that was had between Detective Creech and Mr.
24 Jones at the Lexington County Detention Center the day
25 before. He was then transported to the South Carolina

1 Department of Corrections in a new unit, a maximum
2 security housing unit inside of the Kirkland prison. The
3 evidence, even in the light most favorable to the State is
4 that he's in there talking to officers about what's going
5 on. And then when Lieutenant Pressley comes in and asks
6 him what happened. Lieutenant Pressley also testified
7 that their normal procedure of intake is to ask inmates
8 coming in what happened, how did they get here. That
9 question elicits an incriminating response, Mr. Jones is
10 in custody, he's in a prison. He wasn't Mirandized and
11 therefore, those statements are involuntary and should not
12 be admissible.

13 MR. HUBBARD: Your Honor, what they elicited from
14 Lieutenant Pressley, it might be customary to ask what
15 happened. He never said he did it with this inmate. In
16 fact, he said -- when he started getting upset when that
17 door closed, he just used his CIT skills to let him talk
18 it out.

19 THE COURT: Yeah, all right. My ruling is under
20 Jackson v. Denno, considering the two officers testimonies
21 during the intake into the supermax area, removed from the
22 van, placed in the sally port and going inside, several
23 officers in and around. And there was a discussion about
24 the transport and how it was handled. It doesn't seem to
25 me, in the observation of the testimony presented that

1 what happened from Officer Pressley was intended to what
2 happened, what did you do the night of the murders. It
3 doesn't seem like that's how the conversation was flowing.
4 Him voluntarily continuing on at length, this last officer
5 said that he just kept going on and on and on. It seems
6 voluntary under all the circumstances of that interaction.
7 It wasn't an interview, it was intake. The State would be
8 allowed to use it.

9 MR. HUBBARD: Thank you, Your Honor.

10 THE COURT: All right. We'll stand down until 1:30.

11 MR. HUBBARD: There is going to be one other issue,
12 just so you know, about the phone call. I will get with
13 the Defense and see if there's anything that --

14 THE COURT: Okay.

15 MR. HUBBARD: We can work out.

16 THE COURT: You all can still address that. Mr.
17 Young, you've got another issue?

18 MR. YOUNG: I was just trying to get my objection to
19 the Court's ruling on the record.

20 THE COURT: Oh, you had it. I mean, you argued and I
21 ruled, that's -- you're on the record. We don't have to
22 say everything three times.

23 MR. YOUNG: Evidently sometimes if I argue again,
24 it --

25 THE COURT: You all are all protected redundantly.

1 MR. HUBBARD: We're starting back at what time?

2 THE COURT: 1:30.

3 MR. HUBBARD: Yes, sir.

4 (Whereupon, a lunch break was taken.)

5 THE COURT: Mr. Hubbard.

6 MR. HUBBARD: I have got a sixteen minute phone call
7 from the Defendant. It has already been identified.
8 There is an unredacted call that we don't think can come
9 in. But Amber Kyzer identified the voices on it, it was
10 Tim Jones, the Defendant, calling his father and aunt.

11 THE COURT: I remember that.

12 MR. HUBBARD: We had a redacted portion. They are
13 regenerating that right now. The large part of the front
14 part of that conversation is just chitter chat, talking
15 about stuff. The part that we have redacted down to is
16 where Mr. Jones talks about what happened that night where
17 he expresses his opinion of what happened, what he did.
18 It is something that, then if the tape continues to play
19 he starts talking about, they are talking about
20 consequences where he gets life, death and he talks about
21 what happens if he goes to the Department of Mental
22 Health, how he can be back on the streets again.
23 Obviously you have ruled on that so we want to cut all of
24 that out. That would be the redacted version, they are
25 working on that. I can go ahead and put up two witnesses

1 and then we can take that up, if Your Honor wants to hear
2 the unredacted and then hear the redacted and see if that
3 is fair. If the Defense has something else they want to
4 put, include with it, I think still has to be subject to
5 your prior ruling.

6 THE COURT: Okay. Mr. Young, I guess.

7 MR. YOUNG: Your Honor, I haven't heard -- I haven't
8 heard the redaction yet. I think the Court needs to hear
9 the full version and, obviously, we would need to hear the
10 redaction and figure out --

11 MR. HUBBARD: I think you'd need to hear --

12 MR. YOUNG: -- what our objections are.

13 THE COURT: You don't think I need to listen to all
14 the chit-chat?

15 MR. YOUNG: Yes, sir.

16 THE COURT: All right.

17 MR. HUBBARD: It's sixteen minutes, I think. Maybe,
18 just a little over. The redacted portion would be much
19 shorter. Just a few minutes.

20 THE COURT: So what's you all's take on the whole
21 thing, anyway?

22 MR. YOUNG: We think, if they want to play it, they
23 should play the whole thing.

24 MR. HUBBARD: We think subject to your ruling, we
25 can't.

1 THE COURT: All right. Then I'll -- we'll take it up
2 then.

3 MR. HUBBARD: Yes, sir.

4 THE COURT: Bring in the jury.

5 (Whereupon, the jury came into open court at
6 approximately 1:30 p.m.)

7 THE COURT: All right. Call your witness, please.

8 MR. HUBBARD: Thank you, Your Honor. The State calls
9 Travis Pressley.

10 TRAVIS PRESSLEY, being
11 first duly sworn, testified as follows:

12 MADAM CLERK: Once you're seated state your full
13 name, spelling your last, please.

14 THE WITNESS: Travis Pressley, P-R-E-S-S-L-E-Y.

15 DIRECT EXAMINATION

16 By Mr. Hubbard:

17 Q Lieutenant Pressley, where do you work?

18 A I work for Kirkland Correction Institution,
19 Department of Correction.

20 Q South Carolina Department of Correction --

21 A Yes, sir.

22 Q -- at Kirkland? And where is Kirkland located?

23 A Broad River Road.

24 Q Back in September -- September 12th of 2014, do you
25 recall Defendant Tim Jones being brought in for

1 safekeeping into Kirkland?

2 A Yes, sir.

3 Q And as Lieutenant, were you responsible for meeting
4 him at Reception?

5 A Yes, sir.

6 Q Can you describe the area where this took place?

7 A The area's called the maximum security unit, where we
8 work at. It's called MSU. It's a high risk area to where
9 the inmates are causing a problem within the institution
10 and got a high risk case. So it's like a maximum security
11 -- like Rikers Island, like a area to where it's like two
12 doors and it's all air pressure doors and we house them
13 and separate from the regular general population of
14 inmates.

15 Q And Mr. Jones was being brought there from Lexington
16 for safekeeping?

17 A Yes, sir.

18 Q Can you tell us, as you met him, what happened and
19 what you heard?

20 A When Inmate Jones first approached or came to our
21 institution -- when he first came in, I explained to him
22 the procedure that we've got to do. We've got to strip
23 search, we have to do -- strip search, fingerprint him,
24 and then go to a medical station area. So as they brought
25 him in, the two person -- the sheriff's department,

1 whoever brought him in, they left the area, and when that
2 door closed, I guess, reality kicked in to where he knew
3 he was in prison. So as we proceeded on doing our normal
4 procedures then, you know, strip searching him, about to
5 get his hair cut and take him to medical, he got
6 emotional. And, I guess, everything just started coming
7 out and he started explaining the incident that occurred
8 and what he did.

9 Q Well, let me ask you this, Lieutenant. When that
10 happened, you have special training that you've gotten
11 through the Department of Corrections to handle when an
12 inmate gets emotional?

13 A Yes, sir. I'm also a coach and an instructor for a
14 class called CIT, which is called Crisis Intervention Team
15 Training. I was doing that for like five years, and we
16 are trained to de-escalate problems, situations and to
17 calm an individual or a staff member down.

18 Q Did you use your training with Mr. Jones at that
19 time?

20 A I didn't have to use it, but the training I used was
21 the listening skills because we're always listening for
22 key words. But this type of action that he was saying, it
23 wasn't no need to use my crisis intervention training
24 because the word -- the thing I was looking for is what he
25 was telling me. So as he explained to me the incident, I

1 was listening and gathering all the information.

2 Q Now, when he talks -- when an inmate -- say it's not
3 Mr. Jones. Do you just let them talk themselves down? Is
4 that one of the techniques?

5 A One of the techniques is let them de-escalate by
6 listening to them talk, and as they talk they'll kind of
7 settle themselves down as they're getting all the anger or
8 whatever they want.

9 Q Is that what was -- you were allowing Mr. Jones to
10 do, just talk?

11 A Yes, sir.

12 Q Now, were you questioning him and saying, well, then
13 what happened, and then what happened, and then what
14 happened after that?

15 A No, sir.

16 Q So was this something that he just voluntarily
17 started talking or is this something that you instigated?

18 A No, sir. He was voluntarily talking.

19 Q Voluntarily. What did he tell you when he was
20 brought in, in your presence?

21 A Okay. He was explaining to me about how wrong he --
22 what he did, how he felt sorry and he was wrong for what
23 he did. Do you want me to explain? Go in --

24 Q Yeah, go ahead.

25 A Well, the incident that he explained to me that I

1 recall was one of his son's, the youngest or the oldest,
2 one of his son's was messing with the socket. And, I
3 guess, he got angry because he could have killed himself
4 or whatever and he was saying that he grabbed his son and
5 started strangling him, choking him. And he said, I
6 guess, his hands was too big that he couldn't really put
7 his hands around the neck real good. So he grabbed a belt
8 and he used the belt to start strangling his son. And the
9 daughter -- one of the daughter's, I don't know if it's
10 the oldest or the youngest. The daughter walked in and he
11 saw -- I guess, he saw the daughter, and then he grabbed
12 her. And then it really got to me is when he said he
13 choked the daughter so hard to where she turned purple.

14 Q Did he say he killed them?

15 A Yes, sir.

16 Q Now, as to the belt. Do you recall -- to the best of
17 your memory, was it the child who was messing with the
18 outlets, or do you recall at this point in time?

19 A I can't recall if it was the child that messed with
20 the outlet or the youngest. I can't recall which one.

21 Q But you remember the belt?

22 A I remember the belt.

23 Q He said he used a belt --

24 A He used a belt.

25 Q -- one of his kids?

1 A To my knowledge, I think it was the youngest one or
2 young one, because I recall he said his hand was -- the
3 neck was too small to where he couldn't get his hand
4 around real good. So he had to use a belt.

5 Q Now, when this happened, were you all told to write
6 stuff down?

7 A We was told to write stuff down. Yes, sir.

8 Q And did you do that?

9 A Yes, sir. I write the incident report.

10 Q And I'm going to show you what you've written. Just
11 to show you and refresh your memory, too, about what you--

12 MR. YOUNG: Objection, Your Honor. He has not,
13 memory--

14 MR. HUBBARD: Well, I'll ask the question.

15 THE COURT: Ask the question.

16 Q Is the information about the belt and the daughter on
17 there?

18 A Do you want me to read it?

19 Q No, sir. No, sir. You can just look at what you
20 wrote back then.

21 A It's about the socket. Yes, sir.

22 Q About the socket and about choking --

23 A The choking. Yes, sir.

24 Q -- the boy that messed with the socket?

25 A Yes, sir.

1 Q Now, let me ask you about the additional information.
2 When you wrote this statement, what was going on that you
3 needed to write a statement?

4 A Well, it was a lot of activities going on because we
5 had, you know, other obligations to do, like feed. We had
6 to do showers. We had other inmates that was coming in.
7 So it was kind of busy that day to remember everything to
8 write on the incident report. So we just had to write --
9 I just had to write what I remembered, because we had too
10 many duties to do.

11 Q Was this something you had to do right then, get it
12 done, and then move --

13 A Right.

14 Q -- on to the next --

15 A Yes. We had to do it right then.

16 Q And was part of the task still walking Mr. Jones
17 through that process?

18 A Yes, sir.

19 Q Now, were there a lot of other folks around?

20 A Yes. There were a couple of people around.

21 Q Okay. Do you remember what, if anything, he said he
22 did to the daughter?

23 A Just only that incident.

24 Q Okay. That he choked her --

25 A Yeah. He choked her --

1 Q -- until she turned purple?

2 A -- until she turned purple.

3 Q And did he say she died, as well?

4 A Yes, sir.

5 MR. HUBBARD: That's all I've got at this time, Your
6 Honor.

7 THE COURT: All right. Mr. Young.

8 CROSS-EXAMINATION

9 By Mr. Young:

10 Q Afternoon, Lieutenant Pressley.

11 A Afternoon, sir.

12 Q I believe you said you've got about 20 years of
13 experience in training in corrections?

14 A Yes, sir.

15 Q And during that experience and training, you all were
16 -- learned how to write reports?

17 A Yes, sir.

18 Q You learned that report writing was going to be an
19 important part of your job?

20 A Yes, sir.

21 Q That your reports needed to be truthful?

22 A Uh-huh.

23 Q Right?

24 A Yes, sir.

25 Q They needed to be accurate?

1 A Yes, sir.

2 Q That they needed to be reliable?

3 A Yes, sir.

4 Q Because corrections is a good transient job for some
5 people, right? And there's a lot of people coming and
6 going as far as employment goes?

7 A Yes, sir.

8 Q And sometimes you don't know what happened or you
9 weren't present when something happened and you have to go
10 back and look at somebody else's report to rely on that to
11 determine what happened?

12 A No. We don't have to do that.

13 Q You don't think when people say write up a report
14 about an inmate getting in trouble, maybe that officer's
15 no longer there and somebody else has to rely on that
16 report?

17 A No.

18 Q You don't think that happens?

19 A Because -- no. Because each -- if something happens,
20 so that means each of us got to write our own separate
21 incident report.

22 Q Sure. And those reports go to other people in the
23 chain of command, right?

24 A Yes, sir.

25 Q And those people rely on those reports to determine

1 appropriate outcomes --

2 A Yes, sir.

3 Q -- right? And decide whether or not an inmate's
4 guilty or not guilty of a violation, right?

5 A Yes, sir.

6 Q They rely on those reports?

7 A Yes, sir.

8 Q Which is why it's important that they be truthful,
9 accurate and reliable --

10 A Correct.

11 Q -- right? Now, there were other people present
12 during -- you said this is right when Mr. Jones first
13 arrived, right?

14 A Yes, sir.

15 Q He gets off the van, he's in full shackles?

16 A I can't recall what he had on. Yeah, he had on --
17 yes.

18 Q A belly chain?

19 A I can't recall. I know he probably had on handcuffs,
20 a belly chain. Whenever they bring him in, I can't recall
21 what he had on. But when they did bring him in, we had to
22 put our own stuff on him. So I think they probably did
23 have stuff on him like handcuffs --

24 Q You've got to put your own stuff on him?

25 A Yes.

1 Q Any time an inmate's out of their cell in MSU,
2 they're in full restraints, right?

3 A Full restraints, yes.

4 Q That includes ankle chains?

5 A Yes.

6 Q It includes the belly chain?

7 A Yes, sir.

8 Q It includes a box on the front of the cuffs?

9 A Black box. Yes, sir.

10 Q Right. The black box?

11 A Uh-huh.

12 Q So everything's like this (demonstrating), right?

13 A Yes, sir.

14 Q And you have a dog leash that's clipped to the back
15 of him to maintain control, right?

16 A A lead chain. Yes, sir.

17 Q It's -- I mean, it looks like a dog leash?

18 A Uh-huh.

19 Q Is that right?

20 A Yes, you're right. Correct.

21 Q Okay. And anytime anybody's out of their cell,
22 that's the -- it's mandatory that they --

23 A Yes.

24 Q -- they be restricted in that fashion?

25 A Yes, sir.

1 Q So Mr. Jones was in this fashion in the sally port
2 and there are other officers present, right?

3 A Yes.

4 Q There's Officer Boyd, right?

5 A Officer Boyd.

6 Q And Officer Hawkins?

7 A Sergeant Hawkins, yes.

8 Q And Officer Stroman?

9 A Sergeant Stroman wasn't there.

10 Q Wasn't there?

11 A Wasn't around the area then.

12 Q Okay. Everybody was asked to give a statement
13 regarding what they had heard?

14 A Yes.

15 Q And you wrote down the time that -- the incident,
16 right?

17 A Yes.

18 Q And that was at 2:20?

19 A Approximately 2:20.

20 Q Approximately 2:20. So that's right when he got
21 there, right?

22 A Yes.

23 Q And then you list -- also listed the time that you
24 wrote your report?

25 A Yes.