

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Lexington County

S.C. SUPREME COURT

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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INDEX**VOLUME I**

INDEX	i
TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1
MOTION FOR FORMAL ARRAIGNMENT IN FRONT OF JURY	81
MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	105
COURT’S RULING DENYING MOTION FOR FORMAL ARRAIGNMENT IN FRONT OF JURY AND DENYING MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	113
MOTION FOR A CONTINUANCE, CHANGE OF VENUE, AND TO ESTABLISH PENALTY FOR VIOLATION OF GAG ORDER	115
COURT DEFERS RULING	115
DEFENDANT’S PLEA OF NOT GUILTY BY REASON OF INSANITY	121
VOIR DIRE	127
MOTION AND MEMORANDUM SUBMITTED REGARDING EMOTIONAL NATURE OF GRUESOME PHOTOGRAPHS	156
COURT DEFERS RULING	157
DISCUSSION OF JUROR FORM.....	159
DISCUSSION OF GAG ORDER VIOLATIONS INVOLVING AMBER KYZER.....	169
COURT’S RULING NOT TO ISSUE SANCTIONS WITH LEAVE TO REVISIT	178
MOTION FOR A CONTINUANCE TO REVIEW VIDEO FOOTAGE	179
COURT’S RULING DENYING MOTION	180
MOTION TO PROHIBIT “MAGIC QUESTION” REHABILITATION IN LIEU OF A CHALLENGE.....	183

MOTION TO RESTRICT REHABILITATION OF BIASED JURORS	184
COURT’S RULING ON BOTH MOTIONS DETAILING VOIR DIRE PROCESS.....	186
RENEWED MOTION TO DEFER DEATH PENALTY VOIR DIRE UNTIL PENALTY PHASE IF NECESSARY	187
COURT’S RULING DENYING MOTION	188
RENEWED MOTION TO ALLOW JURORS WITH RELIGIOUS OBJECTION TO DEATH PENALTY.....	188
COURT’S RULING DENYING MOTION	188
RENEWED MOTION TO STRIKE JURORS AS THEY ARE QUALIFIED	188
COURT’S RULING DENYING MOTION	189
RENEWED AMENDED MOTION TO INSTRUCT JURORS ON NOT GUILTY BY REASON OF INSANITY PRIOR TO INDIVIDUAL VOIR DIRE.....	194
COURT DEFERS RULING	202
RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	210
COURT’S RULING DENYING RENEWED MOTION.....	227
MOTION TO EXCLUDE EVIDENCE BASED ON LATE DISCLOSURE AND/OR TO GRANT A CONTINUANCE.....	229
COURT’S RULING DENYING MOTION WITH LEAVE TO REVISIT	231

April 30, 2019

QUALIFYING OF JURORS INDIVIDUALLY

ROBERT CODY (JUROR #97)	
Examination by the Court	263
Direct Examination by Mr. Young	282
Juror Disqualified by the Court.....	283

KENNETH HALL (JUROR #174)	
Examination by the Court	285
Direct Examination by Mr. Young	296
Cross-examination by Mr. Hubbard	352
Re-direct Examination by Mr. Young	359
Juror Qualified by the Court over Defense Objection	368

May 1, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL LONG (JUROR #256)	
Examination by the Court	370
Juror Disqualified by the Court.....	383
GARRETT JOHNSON (JUROR #221)	
Examination by the Court	383
Direct Examination by Mr. McGuire.....	396
Cross-examination by Mr. Hubbard	431
Juror Qualified by the Court over Defense Objection	440

RENEWED MOTION FOR A CHANGE OF VENUE	447

COURT’S RULING DENYING MOTION	448

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

THOMAS LANGDALE (JUROR #240)	
Examination by the Court	448
Juror Disqualified by the Court.....	458

JACOB WHITTEN (JUROR #473)	
Examination by the Court	459
Direct Examination by Mr. Young	476
Cross-examination by Mr. Hubbard	490
Re-direct Examination by Mr. Young	493
Juror Qualified by the Court	494

SARAH FUCCI (JUROR #150)	
Examination by the Court	497
Juror Disqualified by the Court.....	500

VOLUME II

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	501

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JAMES PRESCOTT (JUROR #339)

Examination by the Court	501
Direct Examination by Mr. McGuire.....	521
Cross-examination by Ms. Mayes.....	533
Juror Qualified by the Court	535

MARTHA EDWARDS (JUROR #135)

Examination by the Court	549
Juror Disqualified by the Court.....	562

KANDY THIVIERGE (JUROR #432)

Examination by the Court	563
Juror Disqualified by the Court.....	574

ARTHUR CHAVIS (JUROR #91)

Examination by the Court	575
Direct Examination by Mr. Young	592
Cross-examination by Mr. Graham.....	602
Juror Qualified by the Court	604

SARA RUSSO (JUROR #368)

Examination by the Court	605
Juror Disqualified by the Court.....	617

May 2, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KRISTIANA MCGILL (JUROR #24)

Examination by the Court	618
Direct Examination by Mr. Young	636
Cross-examination by Mr. Graham.....	653
Juror Disqualified by the Court.....	658

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES
OF A NOT GUILTY BY REASON OF INSANITY VERDICT

663

COURT'S RULING DENYING MOTION	664

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL JENNINGS (JUROR #219)

Examination by the Court	675
Direct Examination by Mr. McGuire.....	689
Cross-examination by Mr. Hubbard	693
Juror Qualified by the Court	698

TAMIKA SUMMERS (JUROR #421)

Examination by the Court	708
Juror Disqualified by the Court.....	717

KEITH SHIREY (JUROR #393)

Examination by the Court	717
Juror Disqualified by the Court.....	719

RENEWED MOTION FOR A CHANGE OF VENUE	723

COURT'S RULING DENYING MOTION	723

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PHILLIP SMITH (JUROR #405)

Examination by the Court	731
Juror Disqualified by the Court.....	733

CONRAD GORE (JUROR #166)

Examination by the Court	733
Direct Examination by Mr. Secor	742
Cross-examination by Ms. Mayes.....	753
Juror Qualified by the Court	754

DANIEL HALL (JUROR #172)

Examination by the Court	760
Juror Disqualified by the Court.....	761

LAURA NIELSON (JUROR #312)

Examination by the Court	762
Juror Disqualified by the Court.....	764

KELLY STONE (JUROR #416)

Examination by the Court	766
Juror Disqualified by the Court.....	781

SARAH MCNEAL (JUROR #283)	
Examination by the Court	781
Juror Disqualified by the Court.....	785
TIFFANY KENT (JUROR #231)	
Examination by the Court	785
Direct Examination by Mr. Young	795
Cross-examination by Mr. Graham.....	805
Juror Qualified by the Court	808
JESSICA MILLER (JUROR #283)	
Examination by the Court	809
Direct Examination by Mr. McGuire.....	818
Cross-examination by Ms. Mayes.....	826
Juror Qualified by the Court	828

May 3, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

AMY GIRARDEAU (JUROR #162)	
Examination by the Court	854
Direct Examination by Mr. Young	862
Cross-examination by Ms. Mayes.....	871
Juror Qualified by the Court over Defense Objection	875
DAVID MURPHY (JUROR #302)	
Examination by the Court	876
Direct Examination by Mr. McGuire.....	885
Cross-examination by Mr. Graham.....	894
Juror Qualified by the Court over Defense Objection	907
NATHANAEL BROWN (JUROR #59)	
Examination by the Court	909
Juror Disqualified by the Court.....	913
DAVID CONNELLY (JUROR #101)	
Examination by the Court	914
Juror Disqualified by the Court.....	916
HOPE DERRICK (JUROR #125)	
Examination by the Court	916
Juror Disqualified by the Court.....	918

DESIREE JORDAN (JUROR #226)	
Examination by the Court	919
Direct Examination by Mr. Secor	928
Cross-examination by Mr. Hubbard	935
Juror Qualified by the Court	939
JEFFREY GRIFFITH (JUROR #169)	
Examination by the Court	941
Juror Disqualified by the Court.....	946
SCOTT SPIGENER (JUROR #411)	
Examination by the Court	952
Direct Examination by Mr. Secor	962
Cross-examination by Ms. Mayes.....	975
Juror Qualified by the Court	976
TONYA HARMON (JUROR #179)	
Examination by the Court	977
Direct Examination by Mr. McGuire.....	985
Cross-examination by Mr. Hubbard	992
Juror Qualified by the Court	995
ANDREW LEWIS (JUROR #247)	
Examination by the Court	997

VOLUME III

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1001

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

ANDREW LEWIS (JUROR #247) (CONTINUED)	
Direct Examination by Mr. Secor	1005
Cross-examination by Mr. Graham.....	1018
Juror Qualified by the Court	1027
JOE MEDLOCK (JUROR #286)	
Examination by the Court	1028
Court Disqualified by the Court.....	1035
CARMEN LUCAS (JUROR #260)	
Examination by the Court	1036
Juror Disqualified by the Court.....	1038

FRANKLIN NELSON (JUROR #306)	
Examination by the Court	1038
Juror Disqualified by the Court.....	1041
JEREMY MASON (JUROR #272)	
Examination by the Court	1041
Direct Examination by Mr. Young	1049
Cross-examination by Ms. Mayes.....	1056
Juror Qualified by the Court	1059

May 6, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KELLY TOMLINSON (JUROR #438)	
Examination by the Court	1065
Juror Disqualified by the Court.....	1070
DINAH WASHINGTON (JUROR #457)	
Examination by the Court	1070
Direct Examination by Mr. Young	1079
Cross-examination by Mr. Hubbard	1086
Juror Qualified by the Court	1094
PHILIP TURNER (JUROR #444)	
Examination by the Court	1101
Direct Examination by Mr. Secor	1110
Cross-examination by Mr. Graham.....	1118
Juror Qualified by the Court	1120
ANH PHAM (JUROR #329)	
Examination by the Court	1121
Direct Examination by Mr. Young	1130
Cross-examination by Ms. Mayes.....	1140
Juror Qualified by the Court	1142
CHRISTOPHER WILDE (JUROR #476)	
Examination by the Court	1143
Juror Disqualified by the Court.....	1146
GEOFFREY SHACKLEY (JUROR #383)	
Examination by the Court	1146
Juror Disqualified by the Court.....	1148

RYAN HATCHER (JUROR #183)	
Examination by the Court	1152
Juror Disqualified by the Court.....	1154
CAROLYN MAYERS (JUROR #275)	
Examination by the Court	1155
Juror Disqualified by the Court.....	1159
AVERY RENWICK (JUROR #348)	
Examination by the Court	1164
KRISTIN ASHBURN (JUROR #17)	
Examination by the Court	1168
Juror Disqualified by the Court.....	1179
AVERY RENWICK (JUROR #348) (CONTINUED)	
Re-examination by the Court	1179
Juror Disqualified by the Court.....	1181
TRACY WEHR (JUROR #464)	
Examination by the Court	1182
Direct Examination by Mr. Secor	1189
Cross-examination by Ms. Mayes.....	1197
Re-direct Examination by Mr. Secor	1200
Juror Qualified by the Court	1201
ELIZABETH DURHAM (JUROR #129)	
Examination by the Court	1202
Juror Disqualified by the Court.....	1204
LAWRYN HENDERSON (JUROR #186)	
Examination by the Court	1205
Juror Disqualified by the Court.....	1209
PETER KLEEMOFF (JUROR #237)	
Examination by the Court	1210
Juror Disqualified by the Court.....	1212
TERRIE HANLEY (JUROR #177)	
Examination by the Court	1212
Direct Examination by Mr. Madsen.....	1220
Cross-examination by Ms. Mayes.....	1231
Juror Qualified by the Court	1233

RACHNA PRASAD (JUROR #338)

Examination by the Court	1235
Direct Examination by Mr. McGuire.....	1244

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	1270

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

RACHNA PRASAD (JUROR #338) CONTINUED

Re-examination by the Court	1274
Juror Disqualified by the Court over Defense Objection.....	1274

SHARON LINDLER (JUROR #249)

Examination by the Court	1280
Direct Examination by Mr. Secor	1288
Cross-examination by Ms. Mayes.....	1298
Juror Qualified by the Court	1302

JEFFREY LONG (JUROR #254)

Examination by the Court	1309
Direct Examination by Mr. Young	1317
Cross-examination by Mr. Hubbard	1329
Re-direct Examination by Mr. Young	1331
Juror Qualified by the Court over Defense Objection	1334

EMILY ATKINS (JUROR #19)

Examination by the Court	1336
Direct Examination by Mr. McGuire.....	1346
Cross-examination by Mr. Hubbard	1348
Re-direct Examination by Mr. McGuire.....	1350
Juror Disqualified by the Court over Defense Objection.....	1357

TOSHIA ADDISON (JUROR #241)

Examination by the Court	1359
Direct Examination by Mr. Madsen.....	1366
Cross-examination by Mr. Graham.....	1379
Juror Qualified by the Court	1380

EDGARDO ALVIRA (JUROR #10)

Examination by the Court	1382
Direct Examination by Mr. Secor	1398
Direct Examination by Mr. Hubbard	1402
Cross-Examination by Mr. Secor.....	1408
Re-direct Examination by Mr. Hubbard	1412
Juror Qualified by the Court over State's Objection	1417

JOHNNY ROWELL (JUROR #363)	
Examination by the Court	1417
Juror Disqualified by the Court.....	1419
GAIL MASSARO (JUROR #273)	
Examination by the Court	1419
Juror Disqualified by the Court.....	1423
ANTONIO WRIGHT (JUROR #496)	
Examination by the Court	1423
Juror Disqualified by the Court.....	1426

May 7, 2019

MOTION FOR STATE TO EXAMINE JURORS FIRST ON NEXT PANEL	1433
COURT’S RULING GRANTING MOTION	1434
QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)	

SYLVIA CANNON (JUROR #74)	
Examination by the Court	1434
Juror Disqualified by the Court.....	1438
STACEY FOSTER (JUROR #146)	
Examination by the Court	1439
Direct Examination by Mr. Hubbard	1451
Cross-examination by Mr. Young.....	1464
Juror Qualified by the Court	1477
LASHAREE MELVIN-JONES (JUROR #287)	
Examination by the Court	1479
Juror Disqualified by the Court.....	1481
JUDY NIXON (JUROR #314)	
Examination by the Court	1482
Direct Examination by Mr. Hubbard	1489
Cross-examination by Mr. Secor	1494

VOLUME IV

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	1501

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JUDY NIXON (JUROR #314) (CONTINUED)

Juror Qualified by the Court	1501

TONI CLARK (JUROR #96)

Examination by the Court	1503
Direct Examination by Ms. Mayes	1512
Cross-examination by Mr. Madsen	1518
Juror Qualified by the Court	1523

NATHAN CHAPMAN (JUROR #89)

Examination by the Court	1524
Direct Examination by Mr. Graham	1534
Cross-examination by Mr. McGuire	1539
Re-direct Examination by Mr. Graham	1550
Juror Disqualified by the Court	1555

DORIS TAYLOR (JUROR #426)

Examination by the Court	1565
Juror Disqualified by the Court	1567

ZACHARY GANTT (JUROR #156)

Examination by the Court	1567
Direct Examination by Mr. Hubbard	1576
Cross-examination by Mr. Young	1581
Re-direct Examination by Mr. Hubbard	1590
Juror Qualified by the Court over Defense Objection	1595

BARBARA HOWELL-STEVENSON (JUROR #199)

Examination by the Court	1602
Direct Examination by Mr. Young	1612
Juror Disqualified by the Court	1621

RICHARD GENTLE (JUROR #159)

Examination by the Court	1621
Direct Examination by Mr. Secor	1628
Cross-examination by Ms. Mayes	1636
Re-direct Examination by Mr. Secor	1640
Re-cross Examination by Ms. Mayes	1642
Juror Qualified by the Court over Defense Objection	1646

TONYA SASSER (JUROR #372)

Examination by the Court	1647
Juror Disqualified by the Court	1649

TODD BUEHRIG (JUROR #62)	
Examination by the Court	1649
Direct Examination by Mr. Madsen.....	1659
Cross-examination by Mr. Graham.....	1669
Juror Qualified by the Court over Defense Objection	1674
AMY WRIGHT (JUROR #495)	
Examination by the Court	1675
Direct Examination by Mr. McGuire.....	1682
Cross-examination by Ms. Mayes.....	1689
Juror Qualified by the Court	1694
ROBIN EHRLICH (JUROR #136)	
Examination by the Court	1695
Direct Examination by Mr. Young	1705
Cross-examination by Mr. Graham.....	1712
Juror Qualified by the Court	1715
LADONNA LEE (JUROR #244)	
Examination by the Court	1718
Direct Examination by Mr. Madsen.....	1729
Cross-examination by Mr. Graham.....	1741
Juror Qualified by the Court	1744
ELIZABETH BROWN (JUROR #56)	
Examination by the Court	1749
Direct Examination by Ms. Kuchar	1757
Cross Examination by Ms. Mayes	1765
Juror Qualified by the Court	1766
LAURIE LONG (JUROR #255)	
Examination by the Court	1773
Juror Disqualified by the Court.....	1777
DEBORA CARTER (JUROR #77)	
Examination by the Court	1777
Juror Disqualified by the Court.....	1780
PATRICIA TEAL (JUROR #430)	
Examination by the Court	1780
Juror Disqualified by the Court.....	1783
PATRICIA FOWLER (JUROR #147)	
Examination by the Court	1784
Juror Disqualified by the Court.....	1788

TAMEKA MERRITT (JUROR #288)	
Examination by the Court	1788
Juror Disqualified by the Court.....	1790
ANDREW KIRKWOOD (JUROR #236)	
Examination by the Court	1790
Direct Examination by Mr. Young	1802
Juror Disqualified by the Court.....	1807

May 8, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JEREMY DAVIS (JUROR #117)	
Examination by the Court	1811
Juror Disqualified by the Court.....	1814
SHANNA NELSON (JUROR #308)	
Examination by the Court	1814
Direct Examination by Mr. Young	1826
Cross-examination by Ms. Mayes.....	1840
Re-direct Examination by Mr. Young	1845
Juror Qualified by the Court over Defense Objection	1848
AMY SIMPSON (JUROR #396)	
Examination by the Court	1853
Direct Examination by Mr. McGuire.....	1863
Juror Disqualified by the Court.....	1882
JONATHAN JACKSON (JUROR #210)	
Examination by the Court	1885
Juror Disqualified by the Court.....	1890
SCOTT JOHNSON (JUROR #222)	
Examination by the Court	1890
Direct Examination by Mr. Madsen.....	1898
Cross-examination by Mr. Graham.....	1906
Juror Qualified by the Court	1908
KAREN PEREZ (JUROR #326)	
Examination by the Court	1909
RENEWED MOTION FOR A CHANGE OF VENUE	1919
COURT'S RULING DENYING MOTION	1920

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KAREN PEREZ (JUROR #326) (CONTINUED)

Direct Examination by Mr. Young	1921
Juror Disqualified by the Court.....	1927

JASON SMITH (JUROR #402)

Examination by the Court	1928
Direct Examination by Mr. Young	1938
Cross-examination by Ms. Mayes.....	1948
Juror Qualified by the Court	1949

LASHONDA ROBERTS (JUROR #355)

Examination by the Court	1951
Juror Disqualified by the Court.....	1954

KAYLA BURGESS (JUROR #65)

Examination by the Court	1955
Juror Disqualified by the Court.....	1957

DONNIE BLACKMON (JUROR #39)

Examination by the Court	1962
Direct Examination by Mr. McGuire.....	1971
Cross-examination by Mr. Hubbard	1983
Juror Qualified by the Court	1985

DAWN APPEGATE (JUROR #14)

Examination by the Court	1986
Direct Examination by Mr. Madsen.....	1997

VOLUME V

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	2001

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

DAWN APPEGATE (JUROR #14) (CONTINUED)

Cross-examination by Mr. Graham.....	2006
Juror Qualified by the Court	2010

ROGER SANDY (JUROR #370)

Examination by the Court	2012
Direct Examination by Mr. Young	2021
Cross-examination by Ms. Mayes.....	2029
Juror Qualified by the Court over Defense Objection	2033

REBA WILLIAMS (JUROR #41)	
Examination by the Court	2035
Direct Examination by Mr. McGuire.....	2044
Cross-examination by Mr. Hubbard	2051
Juror Qualified by the Court	2053
AMY BOOZER (JUROR #44)	
Examination by the Court	2055
Juror Disqualified by the Court.....	2057
TINA PENN (JUROR #325)	
Examination by the Court	2057
Juror Disqualified by the Court.....	2059
ROBERT TATE (#425)	
Examination by the Court	2059
Juror Disqualified by the Court.....	2061
JOSEPH STRACZEK (JUROR #417)	
Examination by the Court	2062
Juror Disqualified by the Court.....	2065
TRAVIS ROSS (JUROR #361)	
Examination by the Court	2070
Juror Disqualified by the Court.....	2073
WILLIAM CUNNINGHAM (JUROR #109)	
Examination by the Court	2074
Direct Examination by Mr. McGuire.....	2085
Cross-examination by Mr. Hubbard	2095
Juror Qualified by the Court over Defense Objection	2100
RICHARD SHINN (JUROR #392)	
Examination by the Court	2101
Juror Disqualified by the Court.....	2104
MATTHEW HASLINGER (JUROR #181)	
Examination by the Court	2104
Juror Disqualified by the Court.....	2106
BRIAN PUGH (JUROR #343)	
Examination by the Court	2107
Juror Disqualified by the Court.....	2109

WENDY ALLISON (JUROR #8)

Examination by the Court	2109
Direct Examination by Mr. Madsen.....	2120
Cross-examination by Mr. Graham.....	2128
Juror Disqualified by the Court.....	2134

LINDA SMITH (JUROR #403)

Examination by the Court	2134
Direct Examination by Mr. Young	2142
Cross-examination by Ms. Mayes.....	2151
Juror Qualified by the Court	2154

May 9, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KIMBERLY HUGHES (JUROR #200)

Examination by the Court	2159
Juror Disqualified by the Court.....	2162

CHRISTOPHER ROCKER (JUROR #357)

Examination by the Court	2162
Direct Examination by Mr. Young	2171
Cross-examination by Mr. Hubbard	2181
Juror Disqualified by the Court.....	2186

JOSEPH NEELEY (JUROR #305)

Examination by the Court	2186
Juror Disqualified by the Court.....	2188

SUSAN WATSON (JUROR #461)

Examination by the Court	2188
Juror Disqualified by the Court.....	2191

TIMOTHY BELAY (JUROR #34)

Examination by the Court	2191
Direct Examination by Mr. Madsen.....	2199
Cross-examination by Mr. Hubbard	2208
Juror Qualified by the Court	2211

TODD BEDENBAUGH (JUROR #32)	
Examination by the Court	2212
Direct Examination by Mr. McGuire.....	2222
Cross-examination by Mr. Hubbard	2232
Re-examination by the Court	2236
Re-direct Examination by Mr. McGuire	2237
Juror Qualified by the Court	2237
ROGERS CHAMBERS (JUROR #86)	
Examination by the Court	2238
Juror Disqualified by the Court.....	2243
TERESA MACFAWN (JUROR #264)	
Examination by the Court	2247
Direct Examination by Mr. Young	2257
Cross-examination by Mr. Graham.....	2266
Juror Qualified by the Court	2269
THOMAS LEE (JUROR #245)	
Examination by the Court	2270
Direct Examination by Mr. McGuire.....	2280
Cross-examination by Ms. Mayes.....	2288
Juror Qualified by the Court over Defense Objection	2292
TAYLOR MEDLIN (JUROR #285)	
Examination by the Court	2293
Direct Examination by Mr. Madsen.....	2302
Cross-examination by Mr. Graham.....	2310
Juror Qualified by the Court over Defense Objection	2316
VICTORIA SCHNEIDER (JUROR #377)	
Examination by the Court	2319
Juror Disqualified by the Court.....	2324
ASHLEY RUSSELL (JUROR #366)	
Examination by the Court	2325
Juror Disqualified by the Court.....	2326
CANDY WHISENANT (JUROR #469)	
Examination by the Court	2326
Direct Examination by Mr. Young	2335
Cross-examination by Ms. Mayes.....	2344
Re-direct Examination by Mr. Young	2348
Juror Qualified by the Court	2349

LAGUADIA CAUGHMAN (JUROR #83)	
Examination by the Court	2351
Juror Disqualified by the Court.....	2355
 BRYAN FERREIRA (JUROR #143)	
Examination by the Court	2355
Juror Disqualified by the Court.....	2358

May 13, 2019

RENEWED MOTION FOR A CHANGE OF VENUE	2363
COURT’S RULING DENYING MOTION	2363
MOTION FOR COURT TO RULE JURORS #10 AND #226 NOT QUALIFIED	2365
MOTION FOR JUROR #444 TO BE STRUCK FOR NOT TRUTHFULLY ANSWERING JURY QUESTIONNAIRE	2370
MOTION FOR COURT TO REVIEW RULINGS ON JUROR #174, JUROR #221, JUROR #302, AND JUROR #411	2374
COURT’S RULING DISQUALIFYING JUROR #10 AND JUROR #444 ONLY	2382
JURY SELECTION.....	2384
MOTION FOR DISQUALIFICATION FOR CAUSE OF JUROR #156, ZACHARY GANTT	2389
COURT’S RULING DENYING MOTION	2389
JURY SELECTION CONTINUED	2389
DEFENSE <u>BATSON</u> CHALLENGE TO JURY SELECTION.....	2392
COURT’S RULING DENYING MOTION TO RESTRIKE THE JURY BASED UPON A <u>BATSON</u> VIOLATION	2398
RENEWED MOTION FOR A CHANGE OF VENUE	2399
COURT’S RULING DENYING MOTION	2399

MOTION TO REQUIRE SPECIFICITY OF “OTHER BAD ACTS” EVIDENCE IN RESPONSE TO STATE’S MOTION TO ADMIT SUCH EVIDENCE	2408
DISCUSSION AND OBJECTION TO A JURY INSTRUCTION ON NOT CONSIDERING THE CONSEQUENCES OF A VERDICT AND REFUSAL TO CHARGE THE STATUTE.....	2419
MOTION TO SUPPRESS DEFENDANT’S STATEMENTS TO MISSISSIPPI INVESTIGATORS	2424
COURT’S RULING DENYING MOTION	2426
MOTION TO EXCLUDE DEFENDANT’S STATEMENT TO MISSISSIPPI INVESTIGATORS REFERENCING “GARBAGE”	2427
COURT’S RULING DENYING MOTION	2430
MOTION TO EXCLUDE DEFENDANT’S STATEMENTS TO MISSISSIPPI INVESTIGATORS AS AN INADMISSABLE OPINION ON A LEGAL ISSUE.....	2430
COURT’S RULING DENYING MOTION IN PART.....	2433
MOTION TO EXCLUDE STATEMENT FROM DEFENDANT’S INTERVIEW WITH MISSISSIPPI INVESTIGATORS AS AN INADMISSABLE OPINION ON THE ULTIMATE ISSUE	2434
COURT’S RULING DENYING MOTION	2435
MOTION TO EXCLUDE STATEMENT FROM DEFENDANT’S INTERVIEW WITH MISSISSIPPI INVESTIGATORS AS AN IRRELEVANT LAY OPINION	2435
COURT’S RULING DENYING MOTION	2436
MOTION TO EXCLUDE DEFENDANT’S STATEMENT TO MISSISSIPPI INVESTIGATORS REGARDING CAR ODOR	2436
COURT’S RULING DENYING MOTION	2439
STATE’S MOTION FOR A <u>BLAIR</u> HEARING.....	2452
COURT DEFERS RULING.....	2453

May 14, 2019

**TESTIMONY VIDEOTAPED (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY)**

DR. TRAVIS SNYDER

Direct Examination by Mr. Young	2454
Voir Dire Examination by Mr. Graham	2461
Continued Direct Examination by Mr. Young.....	2463
Cross-examination by Mr. Graham.....	2483

VOLUME VI

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019 2501

**TESTIMONY VIDEOTAPED (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY CONTINUED)**

DR. TRAVIS SNYDER

Re-direct Examination by Mr. Young	2507

TESTIMONY (IN CAMERA)

DR. TRAVIS SNYDER

Examination by Mr. Young	2512

**TESTIMONY (FOR LATER VIEWING ON
VIDEOTAPE IN THE PRESENCE OF THE JURY)**

DR. TRAVIS SNYDER

Re-direct Examination by Mr. Young (Continued)	2514

**PROFFERED TESTIMONY REGARDING THE
SUFFICIENCY OF THE SEARCH WARRANT
AFFIDAVIT FOR CELL PHONE**

LT. JESSIE LAINTZ (IN CAMERA)

Direct Examination by Ms. Mayes	2519

ARGUMENT BY MR. SECOR 2526

ARGUMENT BY MS. MAYES.....2529

REPLY ARGUMENT BY MR. SECOR.....2529

COURT’S RULING THAT AFFIDAVIT IS SUFFICIENT AND DENYING MOTION TO SUPPRESS	2542

RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	2547

COURT’S RULING DENYING MOTION	2547

GUILT PHASE OF TRIAL

OPENING STATEMENT BY MR. GRAHAM.....	2556

OPENING STATEMENT BY MR. MADSEN.....	2563

MOTION FOR A MISTRIAL	2573

COURT’S RULING DENYING MOTION	2573

May 15, 2019

TESTIMONY

JAN WISE

Direct Examination by Ms. Mayes	2576
Cross-examination by Mr. Madsen.....	2588
Re-direct Examination by Ms. Mayes	2590

JANET RICARD

Direct Examination by Ms. Mayes	2591
Cross-examination by Mr. Madsen.....	2603
Re-direct Examination by Ms. Mayes	2611
Re-cross Examination by Mr. Madsen.....	2615

JIM MCCONNELL

Direct Examination by Mr. Hubbard	2618
Cross-examination by Mr. Secor	2648
Re-direct Examination by Mr. Hubbard	2656

CHRISTINA EHLKE

Direct Examination by Ms. Mayes	2658
Cross-examination by Mr. Young.....	2685
Re-direct Examination by Ms. Mayes	2700
Re-cross Examination by Mr. Young	2705

LIEUTENANT JESSE LAINTZ

Direct Examination by Mr. Graham	2708
Cross-examination by Mr. Madsen	2712
Re-direct Examination by Mr. Graham	2721
Re-cross Examination by Mr. Madsen.....	2722

LINDA WATKINS

Direct Examination by Mr. Hubbard	2723

CHARLES JOHNSON

Direct Examination by Ms. Mayes	2739
Cross-examination by Mr. Madsen.....	2758
Re-direct Examination by Mr. Mayes.....	2760

JAMIE MCCLELLAN

Direct Examination by Mr. Graham	2761
Cross-examination by Mr. Young.....	2771

MARTY PATTERSON

Direct Examination by Mr. Hubbard	2778
Cross-examination by Mr. Secor	2803
Re-direct Examination by Mr. Hubbard	2827
Re-cross Examination by Mr. Secor	2831

May 16, 2019

TESTIMONY CONTINUED

STACY JONES

Direct Examination by Mr. Graham	2835
Cross-examination by Mr. Madsen.....	2888
Re-direct Examination by Mr. Graham	2914

ERIC JOHNSON

Direct Examination by Mr. Graham	2918
Cross-examination by Mr. Young.....	2956

DISCUSSION OF THE AWARENESS OF
THE WITNESS OF WHETHER THE DEFENDANT
INVOKED HIS RIGHT TO COUNSEL

2973

PROFFERED TESTIMONY

ERIC JOHNSON (IN CAMERA)

Cross-examination by Mr. Young.....	2978

COURT’S RULING ALLOWING QUESTIONS FROM THE STATE ABOUT OBTAINING A SEARCH WARRANT	2980

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ERIC JOHNSON (CONTINUED)	
Cross-examination by Mr. Young (Continued)	2982
Re-direct Examination by Mr. Graham	2982

May 17, 2019

TESTIMONY CONTINUED

CHARLIE CRUMPTON	
Direct Examination by Mr. Hubbard	2986

VOLUME VII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	3001

TESTIMONY CONTINUED

CHARLIE CRUMPTON (CONTINUED)	
Cross-examination by Mr. Secor	3009

DISCUSSION OF THE DEFENSE’S POSITION THAT THE STATE HAS OPENED THE DOOR TO QUESTIONING THE VOLUNTARINESS OF THE DEFENDANT’S STATEMENTS	3010

COURT’S RULING THAT ITS PRIOR RULING CONTROLS.....	3014

PROFFERED TESTIMONY

CHARLIE CRUMPTON (IN CAMERA)	
Cross-examination by Mr. Secor	3017

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

CHARLIE CRUMPTON (CONTINUED)	
Cross-examination by Mr. Secor (Continued)	3021
Re-direct Examination by Mr. Hubbard	3031

KEITH MCMAHAN	
Direct Examination by Mr. Graham	3032
Cross-examination by Mr. Madsen.....	3040
Re-direct Examination by Mr. Graham	3041

STIPULATION REGARDING BLOOD SAMPLE, STATE'S EXHIBIT #70.....	3041

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DUSTIN SMITH	
Direct Examination by Ms. Mayes	3042
Cross-examination by Mr. Madsen	3054
Re-direct Examination by Ms. Mayes	3061

KENNAN FREDERICK	
Direct Examination by Ms. Mayes	3065
Cross-examination by Mr. Madsen	3078

DENISE ATKINSON	
Direct Examination by Ms. Mayes	3079
Cross-examination by Mr. Madsen	3087

MARTY LONGSHORE	
Direct Examination by Ms. Mayes	3088

PROFFERED TESTIMONY

DAVID MACKEY (IN CAMERA)	
Direct Examination by Mr. Young	3092

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DAVID MACKEY	
Direct Examination by Mr. Hubbard	3094
Cross-examination by Mr. Young	3131
Re-direct Examination by Mr. Hubbard	3144

BRITTANY PICKLE	
Direct Examination by Mr. Graham	3146

MOTION <i>IN LIMINE</i> TO EXCLUDE CERTAIN CRIME SCENE PHOTOGRAPHS.....	3163

COURT DEFERS RULING ON MOTION <i>IN LIMINE</i> BECAUSE OF UNCERTAINTY OF THE PHOTOGRAPHS SOUGHT TO BE ADMITTED	3164

MOTION <i>IN LIMINE</i> TO LIMIT TESTIMONY REGARDING CHILDREN'S STATE OF UNDRESS	3164

COURT DEFERS RULING ON PHOTOGRAPHS	3166
TESTIMONY CONTINUED	
BRITTANY PICKLE (CONTINUED)	
Direct Examination by Mr. Graham (Continued)	3168
May 20, 2019	
TESTIMONY CONTINUED	
STEPHANIE STANLEY	
Direct Examination by Mr. Graham	3175
KAREN LEONHARDT	
Direct Examination by Ms. Mayes	3185
Cross-examination by Mr. Madsen	3190
PROFFERED TESTIMONY	
KAREN LEONHARDT (IN CAMERA)	
Re-direct Examination by Ms. Mayes	3194
TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)	
KAREN LEONHARDT (CONTINUED)	
Cross-examination by Mr. Madsen (Continued)	3194
Re-direct Examination by Ms. Mayes	3195
Re-cross Examination by Mr. Madsen	3196
RULE 403 DISCUSSION OF STATE'S EXHIBIT #177	3199
ARGUMENT BY MR. HUBBARD	3200
ARGUMENT BY MR. YOUNG	3201
COURT'S RULING ALLOWING EXHIBIT	3201
RULE 403 DISCUSSION OF AUTOPSY PHOTOGRAPHS	3202
COURT'S RULING PROHIBITING ADMISSION OF PHOTOGRAPHIC EVIDENCE WITH LEAVE TO REVISIT	3213

TESTIMONY CONTINUED

DR. JANICE ROSS

Direct Examination by Mr. Hubbard	3218
Cross-examination by Mr. Young.....	3245
Re-direct Examination by Mr. Hubbard	3255
Re-cross Examination by Mr. Young	3258
Re-direct Examination by Mr. Hubbard	3259

SHELBY DERRICK

Direct Examination by Mr. Graham	3263
Cross-examination by Mr. Young.....	3266

MOTION TO PROHIBIT THE STATE FROM MAKING
POTENTIAL PCR ISSUE ARGUMENTS

3275

COURT'S RULING DENYING MOTION	3276

TESTIMONY CONTINUED

SHELBY DERRICK (CONTINUED)

Cross-examination by Mr. Young (Continued)	3276

CANDY KYZER

Direct Examination by Mr. Graham	3279
Cross-examination by Mr. Madsen.....	3284

BRITT DOVE

Direct Examination by Mr. Graham	3285
Cross-examination by Mr. Madsen.....	3292

AMBER KYZER

Direct Examination by Ms. Mayes	3294

MOTION FOR A MISTRIAL	3334

COURT'S RULING DENYING MOTION	3337

RENEWED MOTION FOR A MISTRIAL	3342

COURT'S RULING DENYING MOTION	3342

TESTIMONY CONTINUED

AMBER KYZER (CONTINUED)

Direct Examination by Ms. Mayes (Continued)	3342
Cross-examination by Mr. Young	3344
Re-direct Examination by Ms. Mayes	3351

HEATHER CLARY

Direct Examination by Mr. Graham	3352

May 21, 2019TESTIMONY (OUT OF THE PRESENCE OF
THE JURY FOR LATER PRESENTATION TO THE JURY)

DR. JONATHAN LIPMAN

Direct Examination by Mr. Madsen	3363
Cross-examination by Ms. Mayes	3411
Re-direct Examination by Mr. Madsen	3446
Re-cross Examination by Ms. Mayes	3450

TESTIMONY (IN THE PRESENCE OF THE JURY)

CYNTHIA BOBE

Direct Examination by Mr. Graham	3455
Cross-examination by Mr. Young	3459

VICKIE ROBERTS

Direct Examination by Mr. Graham	3461

JACKSON V. DENNO HEARING (IN CAMERA)

TESTIMONY

TRAVIS PRESSLEY

Direct Examination by Mr. Hubbard	3464
Cross-examination by Mr. Young	3470

DEFENSE TESTIMONY

BENJAMIN BOYD

Direct Examination by Mr. Madsen	3476
Cross-examination by Mr. Hubbard	3481
Re-direct Examination by Mr. Madsen	3483

ARGUMENT BY MR. HUBBARD	3484

ARGUMENT BY MR. YOUNG.....	3484

COURT’S RULING THAT DEFENDANT’S STATEMENTS WERE VOLUNTARY	3485

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TRAVIS PRESSLEY	
Direct Examination by Mr. Hubbard	3489
Cross-examination by Mr. Young.....	3496

VOLUME VIII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	3501

TESTIMONY CONTINUED

BENJAMIN BOYD	
Direct Examination by Mr. Hubbard	3516
Cross-examination by Mr. Madsen.....	3520

ARGUMENTS ABOUT REDACTIONS TO STATE’S EXHIBITS #187 AND #198.....	3529

TESTIMONY CONTINUED

MIKE PHIPPS	
Direct Examination by Mr. Graham	3536
Cross-examination by Mr. Young.....	3576
Re-direct Examination by Mr. Graham	3590

May 22, 2019

DISCUSSION OF REDACTIONS TO A “PACKET” OF CELL PHONE EXTRACTION EVIDENCE.....	3595

TESTIMONY CONTINUED

MIKE PHIPPS (CONTINUED)	
Re-direct Examination by Mr. Graham (Continued)	3600
Re-cross Examination by Mr. Young	3609

THE STATE RESTS	3612

MOTION FOR A DIRECTED VERDICT.....	3612

ALL PREVIOUS MOTIONS RENEWED	3612
RENEWED MOTION FOR A MISTRIAL	3613
RENEWED MOTION FOR A CHANGE IN VENUE	3613
COURT’S RULINGS DENYING ALL MOTIONS	3613

DEFENSE CASE

PRESENTATION OF PRE-RECORDED TESTIMONY OF DR. TRAVIS SNYDER	3619

PROFFERED TESTIMONY

ADAM CREECH (IN CAMERA) Direct Examination by Mr. Madsen.....	3623

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ADAM CREECH Direct Examination by Mr. Madsen.....	3628
Cross-examination by Mr. Hubbard	3699

PROFFERED TESTIMONY

ADAM CREECH (IN CAMERA) Cross-examination by Mr. Hubbard	3702

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ADAM CREECH (CONTINUED) Cross-examination by Mr. Hubbard (Continued)	3716

May 23, 2019

DEFENSE TESTIMONY CONTINUED

ADAM CREECH (CONTINUED) Cross-examination by Mr. Hubbard (Continued)	3735
Re-direct Examination by Mr. Madsen.....	3757
Re-cross Examination by Mr. Hubbard	3764

DR. BHUSHAN AGHARKAR Direct Examination by Mr. Secor	3765
Cross-examination by Ms. Mayes.....	3809

ERIC BRENTON SANDREAMELI

Direct Examination by Mr. Young	3838
Cross-examination by Mr. Hubbard	3849

MICAH SUTTON

Direct Examination by Mr. Secor	3850
Cross-examination by Mr. Hubbard	3863

DR. APRIL HAMES

Direct Examination by Mr. Young	3865
Cross-examination by Mr. Graham.....	3894
Re-direct Examination by Mr. Young	3914
Re-cross Examination by Mr. Graham	3918

STATE'S MOTION TO EXCLUDE VIDEOTAPED

TESTIMONY OF CYNTHIA TURNER	3920

May 24, 2019

COURT'S RULING GRANTING STATE'S MOTION

TO EXCLUDE VIDEOTAPED TESTIMONY OF CYNTHIA TURNER.....	3926

DEFENSE TESTIMONY CONTINUED

DR. ERIN BIGLER

Direct Examination by Mr. Young	3932
Cross-Examination by Mr. Hubbard.....	3959
Re-direct Examination by Mr. Young	3971
Re-cross Examination by Mr. Hubbard	3975

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	3978

ARGUMENTS ON PROPOSED LIMITATIONS

ON DEFENSE TESTIMONY	3991

VOLUME IX**CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019**4001

COURT'S RULING LIMITING THE

TESTIMONY OF ROBERTA THORNSBERRY	4005

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY

Direct Examination by Mr. Secor	4010
Cross-examination by Mr. Graham.....	4037
Re-direct Examination by Mr. Secor	4052

MOTION TO LEAD WITNESS UNDER RULE 611(C).....	4055

COURT’S RULING GRANTING MOTION	4055

DEFENSE TESTIMONY CONTINUED

BRIAN TRAVIS

Direct Examination by Mr. Madsen.....	4055
Cross-examination by Mr. Graham.....	4067
Voir Dire Examination by Mr. Madsen	4069
Cross-examination by Mr. Graham (Continued)	4071

May 28, 2019

DEFENSE TESTIMONY CONTINUED

PRESENTATION OF PRE-RECORDED TESTIMONY

OF DR. JONATHAN LIPMAN	4101

STATE’S MOTION TO EXCLUDE TESTIMONY OF CHILDREN’S COUNSELOR, KIMBERLY FENDER	4101

COURT DEFERS RULING	4104

DEFENSE TESTIMONY CONTINUED

SHERRY HENRY

Direct Examination by Mr. Madsen.....	4105
Cross-examination by Ms. Mayes.....	4127
Re-direct Examination by Mr. Madsen.....	4141
Re-cross Examination by Ms. Mayes	4144

PROFFERED TESTIMONY

KIMBERLY FENDER (IN CAMERA)

Direct Examination by Mr. Young	4150
Cross-examination by Ms. Mayes.....	4157

COURT’S RULING GRANTING STATE’S MOTION TO EXCLUDE TESTIMONY OF CHILDREN’S COUNSELOR, KIMBERLY FENDER EXCEPT FOR THE FACT SHE WAS A COUNSELOR	4159

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

KIMBERLY FENDER

Direct Examination by Mr. Young	4163
Cross-examination by Ms. Mayes.....	4163

BRANTLEY BROKAW

Direct Examination by Mr. Secor	4164
Cross-examination by Mr. Graham.....	4179

BRICE MANKOWSKI

Direct Examination by Mr. Secor	4184
Cross-examination by Ms. Mayes.....	4192

TODD SCHELLING

Direct Examination by Mr. Secor	4199
Cross-examination by Ms. Mayes.....	4214
Re-direct Examination by Mr. Secor	4221
Re-cross Examination by Ms. Mayes	4222

JAIMEET ANEJA

Direct Examination by Mr. Secor	4223
Cross-examination by Mr. Hubbard	4229

May 29, 2019

DEFENSE TESTIMONY CONTINUED

JODIE DURNEY

Direct Examination by Mr. Madsen.....	4234
Cross-examination by Ms. Mayes.....	4244

RUBY DURNEY

Direct Examination by Mr. Madsen.....	4246
Cross-examination by Mr. Graham.....	4251

CHRYSTAL BALLENTINE

Direct Examination by Mr. Young	4254
Cross-examination by Ms. Mayes.....	4266
Re-direct Examination by Mr. Young	4277

SANDRA BLACK

Direct Examination by Mr. Young	4278
Cross-examination by Ms. Mayes.....	4281

JOY LORICK

Direct Examination by Mr. Young	4287
Cross-examination by Ms. Mayes.....	4309
Re-direct Examination by Mr. Young	4321
Re-cross Examination by Ms. Mayes	4323

CAROLYN WILLIFORD

Direct Examination by Mr. Secor	4325

PROFFERED TESTIMONY

CAROLYN WILLIFORD (IN CAMERA)

Direct Examination by Mr. Secor	4347

COURT'S RULING ALLOWING DEFENDANT'S

EXHIBIT #262, BUT DENYING ADMISSION OF

DEFENDANT'S EXHIBITS #263, #264, #265, #266.....	4352

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

CAROLYN WILLIFORD (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	4353
Cross-examination by Ms. Mayes.....	4357
Re-direct Examination by Mr. Secor	4362

TIMOTHY JONES, SR.

Direct Examination by Mr. Secor	4363

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	4415

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR. (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	4416
Cross-examination by Mr. Hubbard	4434

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA) Re-direct Examination by Mr. Secor	4477

COURT’S RULING LIMITING TESTIMONY OF TIMOTHY JONES, SR.	4488

May 30, 2019

MOTION TO ISSUE A LIMITING INSTRUCTION PRIOR TO DR. FRIERSON’S TESTIMONY	4490

VOLUME X

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	4501

COURT’S RULING GRANTING MOTION TO ISSUE LIMITING INSTRUCTION IN PART, BUT DEFERING FURTHER RULING	4505

STATE’S MOTION TO EXCLUDE TESTIMONY OF BETHANY YEISER	4505

PROFFERED TESTIMONY

BETHANY YEISER (IN CAMERA) Direct Examination by Mr. Madsen.....	4513

COURT’S RULING GRANTING STATE’S MOTION TO EXCLUDE TESTIMONY OF BETHANY YEISER.....	4538

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON Direct Examination by Mr. Young	4544

LIMITING INSTRUCTION BY COURT.....	4544

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON (CONTINUED) Direct Examination by Mr. Young (Continued)	4546

PROFFERED TESTIMONY

DR. RICHARD FRIERSON (IN CAMERA)

Direct Examination by Mr. Young 4602

MOTION FOR A MISTRIAL 4604

COURT'S RULING DENYING MOTION 4605

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON (CONTINUED)

Cross-examination by Mr. Graham.....4605

Re-direct Examination by Mr. Young 4705

MOTION TO RECONSIDER RULING TO

EXCLUDE THE TESTIMONY OF BETHANY YEISER.....4710

COURT'S RULING DENYING RENEWED MOTION.....4711

May 31, 2019

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. BEVERLY WOOD

Direct Examination by Mr. Young 4715

Cross-examination by Ms. Mayes.....4733

Re-direct Examination by Mr. Young 4753

DR. JULIE DORNEY

Direct Examination by Mr. Young 4755

PROFFERED TESTIMONY

DR. JULIE DORNEY (IN CAMERA)

Direct Examination by Mr. Young 4765

Cross-examination by Mr. Graham.....4766

Re-direct Examination by Mr. Young 4770

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. JULIE DORNEY (CONTINUED)

Direct Examination by Mr. Young (Continued) 4773

Cross-examination by Mr. Graham.....4809

Re-direct Examination by Mr. Young 4888

THE DEFENSE RESTS	4894
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	4896
MOTION FOR A MISTRIAL ON DRUG USAGE.....	4899
COURT’S RULING DENYING MOTION	4899
RENEWED MOTION FOR A DIRECTED VERDICT, RENEWED MOTION FOR A MISTRIAL, RENEWED MOTION FOR A CHANGE OF VENUE, RENEWED MOTION FOR SUPPRESSION OF ALL ROADBLOCK EVIDENCE, AND ALL OTHER PREVIOUS MOTIONS	4900
COURT’S RULINGS DENYING MOTIONS.....	4901

June 3, 2019

REPLY TESTIMONY

DR. KIMBERLY KRUSE

Direct Examination by Mr. Hubbard	4911
Cross-examination by Mr. Secor	4947
Re-direct Examination by Mr. Hubbard	4973
Re-cross Examination by Mr. Secor	4978
THE STATE RESTS	4980
CURATIVE INSTRUCTION ON TESTIMONY OF DR. WOOD REGARDING COCAINE	4987
RENEWED OBJECTION AND MOTION FOR A MISTRIAL	4987
COURT’S RULING DENYING MOTION	4987
CLOSING ARGUMENT BY MR. HUBBARD	4988

VOLUME XI

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	5001
CLOSING ARGUMENT BY MR. YOUNG	5021

DEFENSE REQUEST FOR INSTRUCTION ON INVOLUNTARY INTOXICATION AND ON THE CONSEQUENCES OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND THE CONSEQUENCES OF A VERDICT OF NOT GUILTY BUT MENTALLY ILL	5051

COURT’S RULING DENYING REQUEST FOR JURY INSTRUCTION	5053

JURY CHARGE	5053

RENEWED OBJECTIONS TO REFUSAL TO GIVE REQUESTED JURY INSTRUCTIONS.....	5073

RENEWED DENIAL OF REQUEST TO CHARGE	5073

COLLOQUY WITH THE DEFENDANT AND COUNSEL ON THE DEFENDANT’S RIGHT TO ADDRESS THE JURY	5074

COLLOQUY REGARDING BLU-RAY PLAYER.....	5076

COLLOQUY WITH FOREPERSON OF THE JURY REGARDING TEXT MESSAGES AND GOOGLE SEARCHES	5078

June 4, 2019

DEFENSE MOTION FOR A MISTRIAL	5083

COURT’S RULING DENYING MISTRIAL MOTION	5085

CONTINUED COLLOQUY PERTAINING TO EXHIBITS VIEWED DURING DELIBERATION.....	5086

RENEWED DEFENSE MOTION FOR A MISTRIAL	5095

COURT’S RULING DENYING RENEWED MISTRIAL MOTION	5095

JURY VERDICT	5097

POLLING OF THE JURY	5097

DEFENSE MOTION FOR A NEW TRIAL AND RENEWAL OF ALL PREVIOUS MOTIONS AND OBJECTIONS.....	5101

COURT’S RULING DENYING MOTION FOR A NEW TRIAL AND RENEWED MOTIONS AND OBJECTIONS.....	5101

COURT EXPLAINS TWENTY-FOUR HOUR WAITING PERIOD TO JURY	5103

June 5, 2019

MOTION BY COUNSEL BEATTIE BUTLER TO ELICIT TESTIMONY AND ADDRESS THE JURY ON BEHALF OF TIM JONES, SR., PURSUANT TO THE VICTIMS’ BILL OF RIGHTS	5108

SOLICITOR’S OPPOSITION TO THE MOTION.....	5109

RESPONSE BY COUNSEL BUTLER	5111

COURT DEFERS RULING ON MOTION	5112

DEFENSE REQUEST FOR A LIMITING INSTRUCTION REGARDING THE TESTIMONY OF DR. FRIERSON AND DR. KRUSE	5112

COURT DEFERS RULING	5125

DEFENSE MOTION TO EXCLUDE POST-MORTEM PHOTOGRAPHS OF VICTIMS	5126

DISCUSSION PERTAINING TO PENALTY PHASE PHOTOGRAPHS.....	5130

COURT’S RULING ALLOWING STATE’S PENALTY PHASE PHOTOGRAPHS AND VIDEOTAPE.....	5146

RENEWED OBJECTION TO THE COURT’S RULING	5147

DEFENSE MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS	5148

COURT’S RULING ALLOWING AUTOPSY PHOTOGRAPHS	5156

June 6, 2019

PENALTY PHASE OF TRIAL

OPENING STATEMENT BY MS. MAYES.....	5162

OPENING STATEMENT BY MR. YOUNG	5167

STATE’S MOTION TO INCORPORATE GUILT PHASE EVIDENCE INTO THE PENALTY PHASE	5175

COURT’S RULING GRANTING MOTION TO INCORPORATE GUILT PHASE EVIDENCE	5175

RENEWED MOTION FOR A LIMITING INSTRUCTION REGARDING THE TESTIMONY OF DR. FRIERSON	5176

COURT’S RULING DENYING MOTION FOR A LIMITING INSTRUCTION	5176

TESTIMONY

DAVE LAWRENCE Direct Examination by Mr. Hubbard	5178

DEFENSE MOTION FOR A MISTRIAL BASED ON JUROR CRYING OVER PHOTOGRAPHS.....	5199

DISCUSSION OF JUROR’S REACTION TO PHOTOGRAPHS	5199

COURT’S RULING DENYING DEFENSE MOTION FOR A MISTRIAL	5204

TESTIMONY CONTINUED

DAVE LAWRENCE CONTINUED Direct Examination by Mr. Hubbard (Continued).....	5206
Cross-examination by Mr. Madsen	5207

SHELBY DERRICK Direct Examination by Mr. Graham	5213

DR. JANICE ROSS Direct Examination by Mr. Hubbard	5222

JANET RICARD Direct Examination by Ms. Mayes	5232

DEFENSE OBJECTION TO TESTIMONY (IN CAMERA).....	5246

PROFFERED TESTIMONY

JANET RICARD (IN CAMERA) Direct Examination by Ms. Mayes	5248

ARGUMENT PERTAINING TO PROFFERED TESTIMONY	5249

COURT’S RULING ALLOWING TESTIMONY	5251

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

JANET RICARD CONTINUED

Direct Examination by Ms. Mayes (Continued)	5254

Cross-examination by Mr. Madsen	5264

JOY LORICK

Direct Examination by Ms. Mayes	5266

Cross-examination by Mr. Young	5274

JURY EXCUSED FOR THE DAY	5276

DEFENSE MOTION THAT AUTOPSY PHOTOGRAPHS BE VIEWED IN OPEN COURT	5276

STATE’S OPPOSITION TO THE DEFENSE MOTION	5277

COURT DEFERS RULING ON MOTION	5278

June 7, 2019

COURT’S RULING DENYING DEFENSE MOTION REGARDING VIEWING OF AUTOPSY PHOTOGRAPHS	5278

DEFENSE EXCEPTION TO THE COURT’S RULING REGARDING VIEWING OF AUTOPSY PHOTOGRAPHS	5279

COURT’S RULING REFUSING TO RECONSIDER DENIAL OF DEFENSE MOTION	5279

TESTIMONY CONTINUED

JACQUELYN MORAN

Direct Examination by Ms. Mayes	5281

Cross-examination by Mr. Madsen	5297

JOHNATHAN STONE

Direct Examination by Mr. Hubbard	5298

AMY SHEARER

Direct Examination by Ms. Mayes	5319

THE STATE RESTS	5336
DEFENSE MOTION FOR A DIRECTED VERDICT, RENEWED MOTION FOR A MISTRIAL, RENEWED MOTION FOR A NEW TRIAL, AND RENEWAL OF ALL PREVIOUS MOTIONS	5336
COURT’S RULINGS DENYING MOTIONS	5336
DEFENSE MOTION TO INCORPORATE DEFENSE GUILT PHASE EVIDENCE INTO PENALTY PHASE	5337
COURT’S RULING GRANTING MOTION	5337
STATE’S OBJECTION TO THE DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5337
DISCUSSION REGARDING OPPOSED TESTIMONY OF SERGEANT BARRY SOWARDS	5338
COURT’S RULING ALLOWING DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5342
COURT RECONSIDERS RULING ALLOWING DEFENSE TESTIMONY OF SERGEANT BARRY SOWARDS	5344
PROFFERED TESTIMONY	
BARRY SOWARDS (IN CAMERA) Direct Examination by Mr. Madsen	5345
COURT’S RULING EXCLUDING THE TESTIMONY OF SERGEANT BARRY SOWARDS	5346
DEFENSE TESTIMONY (IN THE PRESENCE OF THE JURY)	
KERRY BREEN Direct Examination by Mr. Young	5348
Cross-examination by Mr. Hubbard	5353
Re-direct Examination by Mr. Young	5354
SERGEANT BARRY SOWARDS Direct Examination by Mr. Madsen	5354
RENEWED DEFENSE OBJECTION TO EXCLUSION OF TESTIMONY OF SERGEANT BARRY SOWARDS	5367

June 10, 2019

DEFENSE TESTIMONY CONTINUED

DR. DONNA MADDOX

Direct Examination by Mr. Young	5373
Cross-examination by Mr. Hubbard	5398
Re-direct Examination by Mr. Young	5427

STATE’S OBJECTION TO VIDEOTAPE OF ROBERTA THORNSBERRY, THE DEFENDANT’S GRANDMOTHER AND GREAT-GRANDMOTHER TO THE FIVE VICTIMS	5430

DISCUSSION OF ROBERTA THORNSBERRY EVIDENCE	5431

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERT BRANNON

Direct Examination by Mr. Madsen.....	5441
Cross-examination by Mr. Graham.....	5444
Re-direct Examination by Mr. Madsen.....	5447

RONALD ROGERS

Direct Examination by Mr. Madsen.....	5447

ROBERTA THORNSBERRY

Direct Examination by Mr. Secor	5452

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	5453

ARGUMENTS PERTAINING TO LIMITATIONS ON THE TESTIMONY OF ROBERTA THORNSBERRY	5457

COURT’S RULING SUSTAINING STATE’S OBJECTIONS TO TESTIMONY OF ROBERTA THORNSBERRY	5463

OBJECTION TO THE COURT’S RULING	5463

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	5466
Cross-examination by Mr. Graham.....	5474
Re-direct Examination by Mr. Secor	5480

DISCUSSION OF THE ADMISSABILITY OF THE TESTIMONY OF DR. ADRIANA FLORES.....	5483

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	5493

VOLUME XII

CONTINUED - TRANSCRIPT OF TRIAL HELD APRIL 29 – JUNE 13, 2019	5501

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR.

Direct Examination by Mr. Secor	5505
Cross-examination by Mr. Hubbard	5524
Re-direct Examination by Mr. Secor	5532
Re-cross Examination by Mr. Hubbard	5533

DISCUSSION OF THE PROFFER OF DEBORAH GREY’S TESTIMONY, THE PROFFER OF DR. ADRIANA FLORES’ TESTIMONY, AND THE PROFFER OF BETHANY YEISER’S TESTIMONY	5534

REQUEST TO PLAY PROFFERED TESTIMONY OF BETHANY YEISER FOR JURY.....	5536

COURT’S RULING DENYING REQUEST TO PLAY PROFFERED TESTIMONY OF BETHANY YEISER FOR JURY	5539

PROFFERED TESTIMONY

DEBORAH GREY (IN CAMERA)

Direct Examination by Mr. Secor	5543

STATE’S OBJECTIONS AND DISCUSSION REGARDING THE TESTIMONY OF DEBORAH GREY	5594

June 11, 2019

STATE’S OBJECTION TO ALLOWING THE TESTIMONY OF DR. ADRIANA FLORES.....	5598
DISCUSSION REGARDING THE TESTIMONY OF DR. ADRIANA FLORES	5600
STATE’S MOTION TO SEAL PROFFERED TESTIMONY OF DR. ADRIANA FLORES	5603
DEFENSE OPPOSITION TO MOTION	5604
COURT’S RULING GRANTING MOTION	5604
PROFFERED TESTIMONY	
DR. ADRIANA FLORES (IN CAMERA)	
Direct Examination by Mr. Young	5606
Cross-examination by Mr. Hubbard	5630
MOTION TO SEAL ALL RELATED COURT’S EXHIBITS.....	5639
MOTION FOR A NEW TRIAL BASED ON AFTER-DISCOVERED EVIDENCE THAT DR. KRUSE’S TESTIMONY WAS UNRELIABLE DURING THE GUILT PHASE	5639
COURT’S RULING DENYING MOTION	5640
ARGUMENTS ON THE ADMISSABILITY OF DR. ADRIANA FLORES’S TESTIMONY	5640
COURT’S RULING EXCLUDING TESTIMONY OF DR. ADRIANA FLORES.....	5645
COURT’S RULING LIMITING TESTIMONY OF DEBORAH GREY	5647
DEFENSE EXCEPTION TO RULING LIMITING SOCIAL HISTORY TESTIMONY	5651
DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)	
DEBORAH GREY	
Direct Examination by Mr. Secor	5657

AMBER KYZER

Direct Examination by Mr. Young	5715
Cross-examination by Ms. Mayes.....	5719
Re-direct Examination by Mr. Young	5734
Re-cross Examination by Ms. Mayes	5735

DEBORAH GREY (CONTINUED)

Direct Examination by Mr. Secor (Continued).....	5735

June 12, 2019

DEFENSE TESTIMONY CONTINUED

DEBORAH GREY (CONTINUED)

Cross-examination by Mr. Hubbard	5789
Re-direct Examination by Mr. Secor	5807

STATE’S OBJECTION TO PUBLISHING THE VIDEOTAPED TESTIMONY OF CYNTHIA TURNER DURING THE PENALTY PHASE AND ARGUMENT REGARDING THAT TESTIMONY	5810

COURT’S RULING EXCLUDING THE TESTIMONY OF CYNTHIA TURNER	5821

DEFENSE TESTIMONY CONTINUED

JULIE JONES

Direct Examination by Mr. Secor	5824
Cross-examination by Mr. Graham.....	5843

TYLER JONES

Direct Examination by Mr. Young	5850

TRAVIS JONES

Direct Examination by Mr. Secor	5859

JACKIE RANGEL

Direct Examination by Mr. Secor	5869

THE DEFENSE RESTS	5886

COLLOQUY WITH DEFENSE COUNSEL AND DEFENDANT ON HIS RIGHT TO ADDRESS THE JURY AND TO TESTIFY	5887

DEFENSE RENEWS ALL PREVIOUS MOTIONS	5889

COURT’S RULING DENYING MOTIONS	5890
June 13, 2019	
CLOSING ARGUMENT BY MR. HUBBARD	5892
DEFENSE OBJECTION THAT STATE’S CLOSING ARGUMENT DENIED DEFENDANT’S DUE PROCESS RIGHT TO A FAIR TRIAL	5917
COURT’S RULING DENYING RELIEF.....	5918
STATE’S MOTION <i>IN LIMINE</i> TO PLACE LIMITATIONS ON THE DEFENSE CLOSING ARGUMENT	5919
DISCUSSION OF THOSE PROPOSED LIMITATIONS.....	5919
DEFENSE RENEWED MOTION THAT STATE’S USE OF AUTOPSY PHOTOGRAPHS AND INFLAMMATORY CLOSING ARGUMENT VIOLATED DEFENDANT’S DUE PROCESS RIGHT TO A FAIR TRIAL	5924
COURT’S RULING REFUSING TO RECONSIDER ITS PRIOR RULING	5926
CLOSING ARGUMENT BY MR. SECOR.....	5927
ARGUMENTS PERTAINING TO THE JURY INSTRUCTIONS (IN CAMERA).....	5940
JURY CHARGE	5947
EXCEPTIONS TO JURY INSTRUCTION	5962
NOTE FROM THE JURY	5964
SENTENCING VERDICT	5965
POLLING OF THE JURY.....	5966
MOTION TO SET ASIDE VERDICT, <u>INTER ALIA</u> , AS BEING THE RESULT OF PASSION AND BASED ON UNCONSTITUTIONAL LIMITATIONS ON MITIGATING EVIDENCE	5969
ALL PREVIOUS MOTIONS RENEWED	5969

REQUEST FOR INDIVIDUAL RULINGS ON EACH GROUND FOR A NEW TRIAL	5970
COURT’S RULING DENYING MOTION FOR A NEW TRIAL.....	5970
COURT’S RULING DENYING ALL RENEWED PREVIOUS MOTIONS	5971
COURT SENTENCES DEFENDANT TO DEATH	5971
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 13, 2017.....	5976
<u>SCHMERBER</u> MOTION AND MOTION FOR COLLECTION OF SUSPECT STANDARDS	5979
TESTIMONY	
ADAM CREECH	
Direct Examination by Ms. Mayes	5982
Cross-examination by Mr. Madsen.....	5996
VOLUME XIII	
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 13, 2017.....	6001
TESTIMONY CONTINUED	
ADAM CREECH (CONTINUED)	
Cross-examination by Mr. Young.....	6005
Re-direct Examination by Ms. Mayes	6008
Re-cross Examination by Mr. Madsen.....	6018
GAILE HEATH	
Direct Examination by Ms. Mayes	6019
Cross-examination by Mr. Young.....	6022
Re-direct Examination by Ms. Mayes	6026
Re-cross Examination by Mr. Young	6028
ARGUMENT BY MS. MAYES.....	6029
ARGUMENT BY MR. MADSEN	6034
ARGUMENT AS TO MR. YOUNG ON HANDWRITING COMPARISONS	6041
COURT DEFERS RULING.....	6050

DEFENSE MOTION TO REVOKE ANY PRIOR CONSENT OR WAIVER OF FOURTH OR FIFTH AMENDMENT RIGHTS BY DEFENDANT	6054
COURT’S RULING GRANTING MOTION IN PART	6060
DEFENSE MOTION REASSERTING DEFENDANT’S FIFTH AND SIXTH AMENDMENT RIGHTS AND NOT CONSENTING TO ANY QUESTIONING WITHOUT A LAWYER PRESENT	6061
COURT’S RULING GRANTING MOTION	6061
DEFENSE MOTION FOR DEFENDANT TO BE PRESENT AT ALL HEARINGS	6064
COURT’S RULING GRANTING MOTION OTHER THAN FOR STATUS CONFERENCES	6064
MOTION TO QUASH INDICTMENTS, PROVIDE WITNESSES THAT HAVE ACTUAL KNOWLEDGE OF THE CASE, PROVIDE FAVORABLE INFORMATION TO THE DEFENSE, AND TO HAVE A COURT REPORTER PRESENT FOR THE GRAND JURY PROCEEDINGS	6065
COURT DEFERS RULING	6066
MOTION TO PROHIBIT THE DEFENDANT FROM BEING EXHIBITED IN JAIL CLOTHING OR WHILE SHACKLED	6067
COURT’S RULING GRANTING MOTION	6068
MOTION TO PRESERVE ALL EVIDENCE AND TO PRECLUDE ADDITIONAL TESTING DESTROYING EVIDENCE WITHOUT NOTICE AND PRIOR COURT APPROVAL	6069
COURT’S RULING TO HAVE A MOTION HEARING IF SPECIFIC EVIDENCE IS IDENTIFIED	6070
MOTION TO REQUIRE INVESTIGATIVE AGENCIES TO PRESERVE NOTES OF ALL INTERVIEWS AND INVESTIGATIVE ACTIONS	6070
COURT’S RULING FOR THE SOLICITOR TO NOTIFY APPLICABLE AGENCIES TO PRESERVE NOTES	6072
MOTION THAT ALL HEARINGS BE ON THE RECORD WITH A COURT REPORTER	6072

COURT’S RULING GRANTING MOTION	6073
MOTION FOR THE SOLICITOR TO RESPOND IN WRITING TO EACH MOTION THAT IS CONTESTED	6073
COURT’S RULING GRANTING MOTION	6074
DEFENSE MOTION TO SET HEARING DATES ON ALL PRE-TRIAL MOTIONS	6074
COURT’S RULING AGREEING TO SET A “PREDICTABLE SCHEDULE”	6074
TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 5, 2018.....	6076
MOTION FOR CONSENT ORDER PERTAINING TO SCDC RECORDS	6078
AGREEMENT TO CONSENT ORDER.....	6079
MOTION FOR AN ORDER SEALING PRISON VISITATION LOGS TO ENSURE CONFIDENTIALITY.....	6079
COURT’S RULING TO PARTIALLY SEAL PRISON VISITATION LOGS	6089
MOTION REGARDING COLLECTION OF BUCCAL SWABS AND HANDWRITING EXEMPLARS	6090
COURT’S RULING THAT DEFENSE COUNSEL CAN BE PRESENT DURING THE COLLECTION OF SAMPLES.....	6090
TRANSCRIPT OF PRETRIAL HEARING HELD MAY 25, 2018	6100
STATE’S MOTION FOR CLARIFICATION OF RULING THAT IT RESPOND TO EVERY MOTION IN WRITING.....	6104
COURT’S RULING THAT THE STATE RESPONDING IN WRITING IS OPTIONAL	6106
MOTION FOR ALL EVIDENTIARY MATTERS TO BE HEARD IN CAMERA.....	6107
COURT’S RULING GRANTING MOTION	6109

MOTION TO HAVE SOLICITOR PROVIDE WRITTEN NOTICE OF NON-STATUTORY EVIDENCE IN AGGRAVATION NO LATER THAN THIRTY DAYS AFTER DISCOVERY OF SUCH EVIDENCE.....	6109
COURT’S RULING GRANTING MOTION IN PART	6110
MOTION FOR AN ORDER REQUIRING THE PRODUCTION OF ALL MATTERS INVOLVING VICTIM IMPACT EVIDENCE AND FOR A PRE-TRIAL HEARING ON VICTIM IMPACT TRIAL PRESENTATION	6111
COURT’S RULING FOR ALL PARTIES TO COMPLY WITH DISCOVERY, <u>BRADY</u> , AND RULE 5 STANDARDS	6116
MOTION FOR AN ORDER DIRECTING THE STATE TO PROVIDE BIRTH DATES AND SOCIAL SECURITY NUMBERS OF ALL STATE’S WITNESSES	6120
COURT’S RULING THAT NON-LAW ENFORCEMENT BIRTH DATES AND SOCIAL SECURITY NUMBERS BE PROVIDED	6122
MOTION FOR DISCLOSURE OF PSYCHIATRIC HISTORY OF STATE’S WITNESSES	6123
COURT DEFERS RULING	6128
MOTION TO PREVENT THE STATE FROM SEEKING A SENTENCE OF DEATH, OR IN THE ALTERNATIVE, TO QUASH THE INDICTMENTS FOR FAILURE TO ALLEGE STATUTORY AGGRAVATING CIRCUMSTANCES THAT CONSTITUTE THE ELEMENTS OF A CAPITAL OFFENSE IN THE INDICTMENTS	6128
COURT’S RULING DENYING MOTION	6128
MOTION FOR DISCLOSURE OF ANY IMPROPER BIAS OR PREJUDICE ON THE PART OF THE SOLICITOR, COURT PERSONNEL, OR OTHER STATE ACTORS.....	6129
COURT’S RULING THAT ANY SUCH BIAS OR PREJUDICE MUST BE REVEALED	6130
MOTION FOR DISCLOSURE OF ALLEGED PRIOR WRONGS, CRIMES, OR BAD ACTS EVIDENCE THE STATE INTENDS TO INTRODUCE AT TRIAL	6130

STATE CONSENTS TO MOTION	6130
MOTION FOR DISCLOSURE OF ANY POSSIBLE BIAS ON THE PART OF THE TRIAL COURT THAT COULD BE GROUNDS FOR A MOTION FOR RECUSAL	6131
COURT’S RULING THAT NO BIAS EXISTS WHICH WOULD BE A GROUNDS FOR RECUSAL	6131
MOTION TO DECLARE THE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL AS OVER BROAD AND ARBITRARY BECAUSE IT FAILS TO NARROW THE CLASS OF ELIGIBLE CANDIDATES	6131
COURT’S RULING DENYING MOTION	6132
MOTION TO PREVENT EX PARTE COMMUNICATION BETWEEN THE STATE AND THE COURT	6132
COURT’S RULING GRANTING MOTION	6133
SECOND MOTION TO DECLARE THE DEATH PENALTY STATUTE UNCONSTITUTIONAL	6133
COURT’S RULING DENYING MOTION	6134
MOTION TO DECLARE DEATH PENALTY UNCONSTITUTIONAL BASED ON LACK OF STANDARDS AND SAFEGUARDS TO PRESENT DISPARATE AND ARBITRARY TREATMENT	6134
COURT’S RULING DENYING MOTION	6138
MOTION FOR THE COURT REPORTER’S TAPES AND NOTES TO BE MADE A PART OF THE RECORD	6138
COURT’S RULING GRANTING MOTION AS FAR AS PRACTICABLE	6139
MOTION TO CHALLENGE THE PARTICULAR EXECUTION PROCEDURE	6140
COURT’S RULING DENYING MOTION AS PREMATURE	6140
MOTION FOR A <u>NEIL V. BIGGERS</u> HEARING BEFORE AN IN-COURT IDENTIFICATION	6141

COURT’S RULING GRANTING MOTION	6141
MOTION TO PREVENT LAW ENFORCEMENT, COURT OFFICIALS, AND BAILIFFS FROM HAVING IMPROPER INFLUENCE ON THE JURY.....	6142
COURT’S RULING THAT IT WILL MEET WITH BAILIFFS AND COURT PERSONNEL ON PROPER PROCEDURES.....	6142
MOTION TO DECLARE THE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL IN DENYING JURY SENTENCING FOR A DEFENDANT WHO PLEADS GUILTY	6143
COURT’S RULING DENYING MOTION	6144
MOTION TO SEQUESTER WITNESSES PRIOR TO HEARINGS	6145
COURT’S RULING GRANTING MOTION	6147
MOTION FOR APPOINTMENT OF A NEUTRAL WITNESS MONITOR TO ENFORCE SEQUESTRATION ORDERS.....	6147
COURT’S RULING DENYING MOTION	6149
MOTION FOR INSTRUCTION TO VICTIMS’ FAMILY AND OTHER SPECTATORS TO REFRAIN FROM SHOWING EMOTIONS IN THE COURT ROOM	6149
COURT’S RULING THAT IT WILL MANAGE ANY PROBLEMS THAT ARISE	6149
DEFENSE MOTION THAT PETIT JURY NOT BE SEQUESTERED	6149
COURT’S DEFERS RULING	6150
MOTION TO DECLARE DEATH PENALTY STATUTORY SCHEME UNCONSTITUTIONAL AS ARBITRARY AND STANDARDLESS PURSUANT TO <u>FURMAN V. GEORGIA</u>	6150
MOTION TO PREVENT PREJUDICIAL SECURITY MEASURES	6152
COURT’S RULING AGREEING TO COORDINATE COURTROOM SECURITY AND MANAGEMENT	6153

MOTION FOR A DAILY TRANSCRIPT OF ALL VOIR DIRE PROCEEDINGS	6153
COURT DEFERS RULING	6155
MOTION TO PROHIBIT PROSECUTORIAL MISCONDUCT AND TO LIMIT THE PROSECUTORS' OPENING STATEMENT AND CLOSING ARGUMENT	6157
COURT'S RULING THAT THE STATE HAS BEEN PUT ON NOTICE BUT A CONTEMPORANEOUS DEFENSE OBJECTION IS REQUIRED	6157
MOTION FOR JURY TO VIEW EXECUTION PROCESS	6158
COURT'S RULING DENYING MOTION	6159
MOTION TO PROHIBIT JURY ARGUMENT ON GENERAL DETERRENCE OR TO PERMIT THE DEFENSE TO PRESENT EVIDENCE ON THE TOPIC	6159
COURT'S RULING DENYING MOTION	6161
MOTION TO EXCLUDE EVIDENCE OF PRISON CONDITIONS AND PRIVILEGES	6161
COURT DEFERS RULING	6162
MOTION TO PROHIBIT COMPARATIVE WORTH EVIDENCE AND ARGUMENT	6162
COURT'S RULING GRANTING MOTION	6162
DEFENSE NOTICE OF INTENT TO TENDER PLEA OF NOT GUILTY BY REASON OF INSANITY	6163
COURT RECOGNIZES THE GIVING OF NOTICE	6163
TRANSCRIPT OF PRETRIAL HEARING HELD DECEMBER 19, 2018	6175
ORDER FOR DR. DORNEY TO PRODUCE REPORT BY JANUARY 9, 2019	6186
DISCUSSION OF CONSENT ORDER REGARDING DOCUMENTS FROM DSS AND A PENDING CIVIL CASE	6188
COUNSEL FOR DSS OPPOSES	

DISCLOSURE OF DSS DOCUMENTS.....	6190
COURT DEFERS RULING	6203
DEFENSE REQUEST FOR COURT ORDER FOR THE DEPARTMENT OF MENTAL HEALTH TO TAPE-RECORD ANY INTERVIEWS WITH AMBER JONES	6210
COURT DEFERS RULING	6212
DEFENSE REQUEST FOR A HEARING ON THE LEGALITY OF THE MISSISSIPPI ROADBLOCK.....	6216
DEFENSE MOTION FOR INDEPENDENT TESTING OF EVIDENCE.....	6221
COURT’S RULING THAT BOTH SIDES COMPLY WITH SECURITY MEASURES DURING TESTING	6222
DISCUSSION AND ARGUMENTS ON JURY QUESTIONNAIRE	6228
COURT DEFERS RULING ON JURY QUESTIONNAIRE LEGAL ISSUES.....	6245
TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 11, 2019.....	6251
DEFENSE MOTION TO AUDIO RECORD INTERVIEW WITH AMBER JONES.....	6254
COURT’S RULING DENYING MOTION IN PART.....	6267
DISCUSSION OF JURY QUESTIONNAIRE.....	6269
COURT’S TENTATIVE RULING THAT JURY QUESTIONNAIRE WILL BE MORE GENERAL	6281
DISCUSSION OF DEFENSE EXPERT’S TESTIMONY ON UNCONSTITUTIONALITY OF THE SOUTH CAROLINA DEATH PENALTY STATUTE	6288
COURT’S RULING THAT THE DEFENSE CAN PROFFER EVIDENCE ON THE UNCONSTITUTIONALITY OF THE DEATH PENALTY	6306

PROFFERED TESTIMONY

DR. WANDA FOGLIA

Direct Examination by Mr. Young 6314

END OF PROFFERED TESTIMONY 6420

MOTION FOR DEFENDANT TO BE TRANSFERRED

TO LEXINGTON COUNTY DETENTION CENTER PENDING TRIAL 6421

COURT’S RULING GRANTING MOTION 6421

COURT’S RULING ON HOW IT WILL

PRODUCE A JURY QUESTIONNAIRE.....6426

TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 31, 2019.....6434

TESTIMONY

DR. RICHARD FRIERSON

Examination by the Court 6437

COLLOQUY REGARDING DR. FRIERSON

EVALUATING DEFENDANT.....6439

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. RICHARD FRIERSON (CONTINUED)

Examination by the Court (Continued).....6441

Direct Examination by Mr. Young 6444

Re-examination by the Court.....6448

Cross-examination by Mr. Graham.....6449

Re-direct Examination by Mr. Young 6454

COLLOQUY WITH DEFENDANT REGARDING

TESTIMONY OF DR. BRAWLEY 6458

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. TORA BRAWLEY

Direct Examination by Mr. Young 6459

Cross-examination by Mr. Graham.....6464

COURT’S RULING DECLINING TO

LIMIT TESTING BY DR. FRIERSON 6469

DEFENSE MOTION FOR ANY REPORT OR RESULTS FROM THE MMPI TO BE SEALED AND PROVIDED TO THE DEFENSE AND THE COURT FOR REVIEW PRIOR TO DISCLOSURE TO THE STATE	6475

COURT’S RULING ON DISCLOSURE OF TESTING RESULTS	6480

STATE’S MOTION FOR A HEARING SHOULD DEFENDANT INVOKE HIS FIFTH AMENDMENT RIGHTS	6482

COURT’S RULING GRANTING MOTION	6482

FURTHER DISCUSSION OF JURY QUESTIONNAIRE	6485

VOLUME XIV

CONTINUED - TRANSCRIPT OF PRETRIAL HEARING HELD JANUARY 31, 2019	6501

MOTION FOR PERSONAL SERVICE ON ALL RETURNED JURY QUESTIONNAIRES	6512

COURT’S AGREEMENT TO FOLLOW UP ON RETURNED NO SERVICE QUESTIONNAIRES.....	6513

MOTION TO QUASH INDICTMENT AND HAVE COURT REPORTER PRESENT DURING GRAND JURY PROCEEDINGS.....	6516

COURT’S RULING DENYING MOTION	6516

MOTION FOR VICTIM IMPACT TESTIMONY TO BE REDUCED TO WRITING FOR REVIEW BY DEFENSE	6518

COURT’S DEFERS RULING UNTIL AND UNLESS IT BECOMES NECESSARY	6518

MOTION THAT ALTERNATE JURORS NOT BE IDENTIFIED AS ALTERNATES	6519

COURT’S RULING GRANTING MOTION	6520

MOTION TO REQUIRE THE COURT TO ESTABLISH THE RACE, GENDER, AND ETHNICITY OF EVERY PROSPECTIVE JUROR FOR THE RECORD.....	6522

COURT DEFERS RULING	6522
MOTION TO DISCLOSE THE PAST AND PRESENT RELATIONSHIPS, ASSOCIATIONS, AND TIES BETWEEN THE SOLICITOR AND PROSPECTIVE JURORS AND TO DISCLOSE RECORDS ABOUT PROSPECTIVE JURORS IN THE PROSECUTION’S POSSESSION	6522
COURT’S RULING GRANTING MOTION	6523
MOTION TO PROHIBIT THE USE OF JUROR ORIENTATION VIDEOTAPES OR HANDBOOKS	6523
COURT’S RULING GRANTING MOTION	6523
MOTION TO DISQUALIFY FOR CAUSE TYPE ONE OR TYPE TWO JURORS WITHOUT “REHABILITATION”	6523
COURT DEFERS RULING UNTIL ACTUAL VOIR DIRE.....	6524
MOTION FOR COMPENSATION OF JURORS AT CURRENT WAGES	6525
COURT’S RULING DENYING MOTION	6526
MOTION FOR AN ORDER TO VIDEOTAPE VOIR DIRE PROCEEDINGS.....	6527
COURT’S RULING DENYING MOTION	6528
MOTION TO LIMIT CONVERSATIONS BETWEEN JURORS AND BAILIFFS.....	6528
COURT’S RULING GRANTING MOTION	6528
MOTION TO STRIKE JURORS AS THEY ARE QUALIFIED BY THE COURT	6529
COURT’S RULING DENYING MOTION	6530
TRANSCRIPT OF PRETRIAL HEARING HELD FEBRUARY 4, 2019.....	6542
DEFENSE MOTION FOR A CONTINUANCE	6545
MOTION FOR A BENCH TRIAL.....	6547

COLLOQUY PERTAINING TO DEFENSE MOTION.....	6547
COURT’S RULING DENYING MOTION FOR A CONTINUANCE WITH LEAVE TO RESTORE	6552
TRANSCRIPT OF PRETRIAL HEARING HELD MARCH 11-14, 19, 2019	6556
March 11, 2019	
MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6564
TESTIMONY	
MOLLY MILLER	
Direct Examination by Ms. Mayes	6565
Voir Dire Examination by Mr. McGuire	6571
MOTION TO SEQUESTER WITNESSES.....	6575
COURT’S RULING GRANTING SEQUESTRATION.....	6576
TESTIMONY CONTINUED	
MOLLY MILLER (CONTINUED)	
Direct Examination by Ms. Mayes (Continued)	6578
Cross-examination by Mr. McGuire	6583
Re-direct Examination by Ms. Mayes	6618
CHARLIE CRUMPTON	
Direct Examination by Mr. Hubbard	6621
Cross-examination by Mr. McGuire	6625
Re-direct Examination by Mr. Hubbard	6640
CHARLES JOHNSON	
Direct Examination by Ms. Mayes	6642
Cross-examination by Mr. McGuire	6670
MOTION TO BAR QUESTIONS REGARDING PENDING CHARGES AGAINST STATE’S WITNESSES.....	6693
COURT’S RULING GRANTING MOTION	6698

TESTIMONY CONTINUED

ROBERT WAYNE THOMPSON

Direct Examination by Mr. Graham	6700
Cross-examination by Mr. McGuire	6714

MARTY PATTERSON

Direct Examination by Mr. Hubbard	6721
Cross-examination by Mr. McGuire	6731

ARGUMENT BY MS. MAYES.....	6735

ARGUMENT BY MR. MCGUIRE.....	6738

ARGUMENT BY MR. HUBBARD.....	6743

REPLY ARGUMENT BY MR. MCGUIRE	6745

COURT DEFERS RULING ON MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6751

MOTION TO SUPPRESS USE OF DEFENDANT’S PERSONALITY TESTING	6753

COURT DEFERS RULING	6754

MOTION FOR STATE TO PROVIDE BILL OF PARTICULARS REGARDING AGGRAVATING EVIDENCE	6754

COURT DEFERS RULING	6758

March 12, 2019

COURT’S RULING DENYING MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO AN ILLEGAL ROADBLOCK.....	6760

<u>JACKSON V. DENNO</u> HEARING.....	6768

COURT’S RULING ADMITTING DEFENDANT’S STATEMENTS REGARDING SPICE	6769

COURT’S RULING ADMITTING DEFENDANT’S STATEMENTS REGARDING CAR ODORS	6771

TESTIMONY

JAMIE MCCLELLAN

Direct Examination by Mr. Graham	6772
Cross-examination by Mr. Young.....	6778
Re-direct Examination by Mr. Graham	6791

ARGUMENT BY MR. YOUNG.....	6796

ARGUMENT BY MR. HUBBARD.....	6796

REPLY ARGUMENT BY MR. YOUNG	6802

COURT DEFERS RULING ON ADMISSIBILITY OF DEFENDANT’S STATEMENTS TO OFFICER MCCLELLAN REGARDING CHILDREN	6803

TESTIMONY CONTINUED

MARTY PATTERSON

Direct Examination by Mr. Hubbard	6804
Cross-examination by Mr. Secor	6814
Re-direct Examination by Mr. Hubbard	6862
Re-cross Examination by Mr. Secor	6874
Re-direct Examination by Mr. Hubbard	6875

ERIC JOHNSON

Direct Examination by Mr. Graham	6880
Cross-examination by Mr. Young.....	6912
Re-direct Examination by Mr. Graham	6945

THE STATE RESTS	6947

March 13, 2019

<u>JACKSON V. DENNO</u> HEARING CONTINUED	6948

DEFENSE TESTIMONY

TIMOTHY JONES, SR. (CALLED OUT OF ORDER)

Direct Examination by Mr. Secor	6951
Cross-examination by Mr. Hubbard	6974
Re-direct Examination by Mr. Secor	6997

RENEWED MOTION TO HAVE ALL EVIDENTIARY MATTERS HEARD IN CAMERA.....	6998

COURT’S RULING RENEWING HIS GRANT OF THE MOTION	6999

VOLUME XV

CONTINUED - TRANSCRIPT OF PRETRIAL HEARING HELD MARCH 11-14, 19, 2019	7001

DEFENSE TESTIMONY CONTINUED

TIMOTHY JONES, SR. (CONTINUED) Re-direct Examination by Mr. Secor (Continued)	7005

ERIC JOHNSON (RECALLED) Direct Examination by Mr. Young	7009
Cross-examination by Mr. Graham.....	7013
Re-direct Examination by Mr. Young	7018

ADAM CREECH Direct Examination by Mr. Graham	7022
Cross-examination by Mr. Madsen.....	7072
Re-direct Examination by Mr. Graham	7116
Re-cross Examination by Mr. Madsen.....	7137
Re-direct Examination by Mr. Graham	7144

March 14, 2019

MOTION TO CHANGE VENUE DUE TO PRETRIAL PUBLICITY	7148

COURT DEFERS RULING ON MOTION TO CHANGE VENUE.....	7150

<u>JACKSON V. DENNO</u> HEARING CONTINUED	7151

REPLY TESTIMONY

ERIC JOHNSON (RECALLED) Direct Examination by Mr. Graham	7152
Cross-examination by Mr. Young.....	7159

DAVID MACKEY Direct Examination by Ms. Mayes	7162
Cross-examination by Mr. Young.....	7194
Re-direct Examination by Ms. Mayes	7225
Re-cross Examination by Mr. Young	7233

ADAM CREECH (RECALLED)

Direct Examination by Mr. Young	7237
Cross-examination by Mr. Graham.....	7240

March 19, 2019

<u>JACKSON V. DENNO</u> HEARING CONTINUED	7258

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS TO OFFICER MCCLELLAN REGARDING CHILDREN	7259

COURT'S RULING ADMITTING STATEMENTS.....	7274

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT TO UNDER-SHERIFF PATTERSON REGARDING SUV CONTENTS	7275

COURT'S RULING ADMITTING STATEMENT	7283

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT AFTER INVOCATION OF HIS RIGHT TO SILENCE	7287

COURT'S RULING ADMITTING STATEMENT	7300

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 7TH INTERROGATION	7301

COURT'S RULING ADMITTING STATEMENTS.....	7326

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 8TH INTERROGATION	7326

COURT'S RULING ADMITTING STATEMENTS.....	7339

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENT TO HIS FATHER IN THE PRESENCE OF POLICE	7340

COURT'S RULING ADMITTING STATEMENT	7345

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FROM SEPTEMBER 9TH INTERROGATION	7347

COURT'S RULING ADMITTING STATEMENTS.....	7352

ARGUMENTS ON ADMISSIBILITY OF DEFENDANT'S STATEMENTS FOLLOWING LOCATION OF BODIES.....	7353

COURT’S RULING ADMITTING STATEMENTS.....	7355
ARGUMENTS ON ADMISSIBILITY OF DEFENDANT’S STATEMENTS FROM SEPTEMBER 11TH INTERROGATION	7357
COURT DEFERS RULING ON STATEMENTS	7361
TRANSCRIPT OF PRETRIAL HEARING HELD APRIL 11, 2019	7370
MOTION TO CHALLENGE EXECUTION PROCEDURE.....	7376
COURT DEFERS ARGUMENT UNTIL NECESSARY	7376
MOTION <i>IN LIMINE</i> TO SUPPRESS AUTOPSY AND BODY RECOVERY PHOTOGRAPHS.....	7379
COURT DEFERS RULING ON ADMISSIBILITY OF PHOTOGRAPHS	7384
MOTION TO PREVENT DEATH QUALIFICATION OF JURY	7390
COURT’S RULING DENYING MOTION	7402
MOTION TO INSTRUCT JURY ON THE MEANING OF A LIFE SENTENCE WITHOUT PAROLE	7402
COURT’S RULING GRANTING MOTION	7404
MOTION TO ENSURE MITIGATING CIRCUMSTANCES RECEIVE DUE WEIGHT AND ATTENTION FROM JURY	7405
COURT’S RULING GRANTING MOTION	7415
MOTION FOR CONSTITUTIONALLY ADEQUATE VOIR DIRE	7416
COURT’S RULING GRANTING MOTION	7422
MOTION FOR AN INSTRUCTION ON JURORS TAKING NOTES AND FOR JUROR NOTES TO BE MADE PART OF THE RECORD	7423
COURT’S RULING GRANTING MOTION IN PART AND DEFERRING IN PART	7426
MOTION TO ENSURE CHALLENGED QUESTIONS OF PERSPECTIVE JURORS COMPLY WITH A FAIR AND IMPARTIAL TRIAL	7427

COURT DEFERS RULING	7432
MOTION FOR RESTRICTION ON REHABILITATION OF JURORS DURING VOIR DIRE	7437
COURT’S RULING GRANTING MOTION	7438
MOTION TO PRECLUDE TESTIMONY REGARDING PRISON CONDITIONS	7439
STATE CONSENTS TO MOTION	7439
MOTION FOR JURY INSTRUCTION ON NON-UNANIMOUS PENALTY PHASE VERDICT	7440
COURT DEFERS RULING	7445
MOTION TO QUALIFY JURORS WITH RELIGIOUS OBJECTION TO DEATH PENALTY	7447
COURT’S RULING DENYING MOTION	7451
MOTION TO ALLOW JURORS TO SUBMIT WRITTEN QUESTIONS TO WITNESSES	7451
COURT’S RULING DENYING MOTION	7454
MOTION TO PRECLUDE STATE FROM PURSUING DEATH PENALTY DUE TO SEVERE MENTAL ILLNESS	7455
COURT’S RULING DENYING MOTION	7456
MOTION <i>IN LIMINE</i> TO BAR INTRODUCTION OF DEFENDANT’S TATTOOS	7457
STATE CONSENTS TO MOTION	7458
MOTION TO EXCLUDE TESTIMONY REGARDING POSTMORTEM RAPE KITS	7458
STATE CONSENTS TO MOTION	7458
MOTION TO EXCLUDE STATEMENTS OF MERAH JONES	7459
STATE CONSENTS TO MOTION	7459

MOTION <i>IN LIMINE</i> TO EXCLUDE TESTIMONY REGARDING CHILDREN’S STATE OF UNDRESS	7459
COURT DEFERS RULING	7460
MOTION TO PROHIBIT TESTIMONY REGARDING DEFENDANT’S INTERNET SEARCHES	7461
COURT’S RULING GRANTING MOTION UNLESS DEFENSE OPENS THE DOOR	7462
MOTION TO EXCLUDE TESTIMONY REGARDING DEFENDANT USING RACIST LANGUAGE	7462
STATE CONSENTS TO MOTION	7462
MOTION TO EXCLUDE EVIDENCE OF BUTTERFLY KNIFE	7462
STATE CONSENTS TO MOTION	7463
DISCUSSION OF VOIR DIRE PROCESS	7464

WRITTEN EXHIBITS, MOTIONS, AND DOCUMENTS

DEFENDANT’S EXHIBIT #1 (DR. TRAVIS SNYDER’S CURRICULUM VITAE)	7473
DEFENDANT’S EXHIBIT #2 (REPORT OF DR. SNYDER’S MEDICAL IMAGING STUDY)	7480
DEFENDANT’S EXHIBIT #3 (MAGNETIC RESONANCE IMAGING OF JONES’ BRAIN)	7495

VOLUME XVI

DEFENDANT’S EXHIBIT #136 (DR. ERIN D. BIGLER’S CURRICULUM VITAE)	7505
DEFENDANT’S EXHIBIT #362 (GENOGRAM OF JONES’ IMMEDIATE FAMILY)	7626
DEFENDANT’S EXHIBIT #363 (GENOGRAM OF JONES’ EXTENDED FAMILY)	7627
COURT’S EXHIBIT #63 (WITNESS LIST)	7628
COURT’S EXHIBIT #64 (THREE TYPES OF JURORS)	7634

COURT’S EXHIBIT #83 (DEFENDANT’S REQUESTED PRELIMINARY INSTRUCTIONS).....	7635
COURT’S EXHIBIT #88 (DR. BHUSHAN S. AGHARKAR’S SOURCES OF INFORMATION)	7638
COURT’S EXHIBIT #89 (REPORT ISSUED BY DR. BHUSHAN S. AGHARKAR)	7659
COURT’S EXHIBIT #94 (DR. RICHARD FRIERSON’S FORENSIC EVALUATION).....	7668
COURT’S EXHIBIT #95 (DR. RICHARD FRIERSON’S CURRICULUM VITAE).....	7720
COURT’S EXHIBIT #99 (JONES’ SOCIAL HISTORY).....	7744
COURT’S EXHIBIT #100 (DR. JULIE DORNEY’S CURRICULUM VITAE).....	7877
COURT’S EXHIBIT #102 (DR. RICHARD FRIERSON’S SOURCES OF INFORMATION FOR THE FORENSIC EVALUATION)	7884
COURT’S EXHIBIT #103 (JONES’ ADVISEMENT OF RIGHTS SENT TO DR. KIMBERLY KRUSE).....	7899
COURT’S EXHIBIT #104 (TESTING CONDUCTED BY DR. KIMBERLY KRUSE)	7901

VOLUME XVII

COURT’S EXHIBIT #106 (DEFENDANT’S REQUESTED JURY INSTRUCTIONS).....	8153
COURT’S EXHIBIT #120 (DR. DONNA MADDOX’S FORENSIC EVALUATION).....	8175
COURT’S EXHIBIT #121 (GENOGRAM OF JONES’ FAMILY).....	8180
COURT’S EXHIBIT #122 (DR. ADRIANA FLORES’ CURRICULUM VITAE).....	8181
COURT’S EXHIBIT #123 (AFFIDAVIT OF DR. ADRIANA FLORES).....	8188
COURT’S EXHIBIT #124 (CRITIQUE OF DR. KRUSE’S TESTING BY DR. FLORES)	8199

DEFENDANT’S EXHIBIT #1 (LETTER DATED 1/16/2019, OBJECTING TO PERSONALITY TESTING) (FROM THE JANUARY 31, 2019 PRETRIAL HEARING)	8258
COURT’S EXHIBIT #13 (CHARLES JOHNSON’S AFFIDAVIT REGARDING ROADBLOCK) (FROM THE MARCH 11-14, 19, 2019 PRETRIAL HEARING)	8259
EX PARTE PETITION FOR CERTIFICATE TO PRODUCE MATERIAL WITNESS, CYNTHIA TURNER, AND DOCUMENTS FROM OUT OF STATE (DATED MARCH 28, 2019).....	8261
EX PARTE CERTIFICATE REGARDING OUT OF STATE WITNESS, CYNTHIA TURNER (FILED APRIL 2, 2019)	8263
EMERGENCY PETITION FOR COURT ORDER ALLOWING VIDEOTAPED TESTIMONY OF CYNTHIA GRANADO JONES TURNER (DATED MAY 9, 2019).....	8265
ORDER THAT CYNTHIA GRANADO JONES TURNER SUBMIT TO VIDEOTAPED INTERVIEW (DATED MAY 9, 2019).....	8269
MOTION TO VOIR DIRE POTENTIAL JURORS REGARDING THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL AND FOR JURORS TO BE INSTRUCTED AS TO THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL (FILED APRIL 11, 2019).....	8270
SUPPLEMENT TO MOTION TO VOIR DIRE POTENTIAL JURORS REGARDING THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL AND FOR JURORS TO BE INSTRUCTED AS TO THE CONSEQUENCE OF A VERDICT OF NOT GUILTY BY REASON OF INSANITY AND GUILTY BUT MENTALLY ILL (FILED APRIL 24, 2019).....	8284
MOTION FOR CONSTITUTIONALLY ADEQUATE VOIR DIRE (FILED APRIL 25, 2018).....	8342
MOTION TO SUPPRESS EVIDENCE AND FRUITS FROM UNLAWFUL ROADBLOCK (FILED APRIL 12, 2018).....	8348
NOTICE OF INTENT TO SEEK THE DEATH PENALTY AND ORDER (FILED DEC. 9, 2015).....	8352

ORDER ASSIGNING THE HONORABLE EUGENE C. GRIFFITH, JR. AS PRESIDING JUDGE (DATED DEC. 20, 2016)	8355
INDICTMENTS	8356
CERTIFICATE OF COUNSEL	8366

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 Q And that was approximately 3:30?

2 A 3:30? Okay. Okay.

3 Q You wrote your report at approximately 3:30?

4 A Yes.

5 Q Not right as it happens?

6 A No.

7 Q About an hour later?

8 A It can still be between 30 minutes to an hour later,
9 but as long as we still get it within that timeframe.

10 Q Sure. I thought your testimony was that you wrote it
11 right then.

12 A Not right after we -- right after we finished with
13 the incident, no.

14 Q Okay.

15 A Once we get him situated and stuff, which was not
16 that long, then we had to write it.

17 Q Okay. So you got him situated at around 2:20, and
18 then you wrote your report?

19 A Then, write the report.

20 Q Okay. And that was at 3:30, correct?

21 A Correct.

22 Q Okay. Now, in your truthful, accurate and reliable
23 report, you said, "He continued on stating that his oldest
24 son was messing with the electrical socket," right?

25 A If it's on the report, yes.

1 MR. HUBBARD: No objection to it going into evidence,
2 Your Honor.

3 MR. YOUNG: I don't have a clean copy.

4 Q "His oldest son was messing with the electrical
5 socket to where Inmate Jones got angry --

6 THE COURT: Whoa, whoa, whoa, whoa. Hold up. That's
7 not a question.

8 MR. HUBBARD: And, also, misread. It says older, not
9 oldest.

10 THE COURT: Ask questions. If you all can find a
11 clean copy and you all want to put it into evidence, you
12 can. You're editorializing a lot.

13 MR. YOUNG: Yes, sir.

14 THE COURT: Move on.

15 Q Lieutenant Pressley, you wrote down his oldest son
16 was messing with the electrical socket? You don't need to
17 look to him to answer the question.

18 A No. I'm looking at the report that he has.

19 MR. HUBBARD: Again, he's entitled to a copy. I'll
20 give him my copy.

21 THE COURT: Yeah. Don't misread it.

22 MR. YOUNG: I'll put it on the overhead.

23 THE COURT: Okay.

24 MR. HUBBARD: Well, if he wants to put it in
25 evidence, he's got to do that to publish it and I have no

1 problem with it.

2 THE COURT: Well, you all have got all these
3 highlights and stuff on it. That's why I thought you all
4 didn't --

5 MR. HUBBARD: I'll tell you what.

6 THE COURT: -- want to put it in.

7 MR. HUBBARD: I tell you what. Mine doesn't have it.
8 I'll put mine in. Your Honor, I object to him publishing
9 before it's in evidence. If you want to put this in
10 evidence, put it up, clean. Is it going in evidence?

11 MR. YOUNG: Your Honor, the Defense offers number
12 126, Lieutenant Pressley's statement, into evidence.

13 MR. HUBBARD: Certainly, no objection.

14 THE COURT: Without objection.

15 (Whereupon, Defense Exhibit number 126 was admitted
16 into evidence).

17 Q Lieutenant Pressley, can you see that from there?

18 A I can see it. Yes, sir.

19 Q Is this where you said the oldest son was messing
20 with the electrical socket?

21 A It looks like older.

22 Q That looks like an R to you and not an ST?

23 THE COURT: Wait a minute. It's his handwriting.

24 MR. YOUNG: It was Rick back here telling him it said

25 --

1 THE COURT: No, no, no, no, no. Don't argue with me.
2 You ask him the question, it is his handwriting so ask him
3 what he wrote.

4 MR. YOUNG: Okay.

5 Q Mr. Pressley, does that say older or oldest?

6 A It looks like older. O-L-D-E-R.

7 Q His son was messing with the electrical socket. Is
8 that right?

9 A Yes. Yes, sir.

10 Q So that looks like a T there, right?

11 A T.

12 Q But not as an R here?

13 THE COURT: Let's don't cross-examine his
14 handwriting. Come on.

15 MR. YOUNG: Judge, I am allowed to point it out.

16 THE COURT: Move on.

17 Q You wrote this statement back in September of 2014?
18 September 12th, 2014. Is that right?

19 A If it -- yes, sir. If it's on there.

20 Q Is that September the 12th, 2014?

21 A September the 12th of 2014. Yes.

22 Q Okay. Now, you and the Solicitor talked about it
23 didn't have any of this information about him having
24 anything to do with his daughter in this statement, right?

25 A Because during that time, we had to quickly write it.

1 We had to quickly -- we had too much stuff going on that
2 day. So that's why I can only recall -- that's why it
3 looks like that, like it's hand -- sloppy handwriting,
4 because we had to kind of rush to get things done because
5 we had a lot of things going on that day.

6 Q Okay. After you got done that day, did you write a
7 supplemental?

8 A No, sir.

9 Q The next day, when you got to work, did you write a
10 supplemental?

11 A No, sir.

12 Q Any day between that day and April the 3rd, 2019, did
13 you write a supplemental?

14 A No, sir. I don't think so.

15 Q You never did that, correct?

16 A No, sir.

17 Q And then on April the 3rd, 2019, that's when you met
18 with Solicitor Hubbard?

19 A Yes, sir.

20 Q And Suzanne Mayes?

21 A Yes, sir.

22 Q And Mat Martin?

23 A Yes, sir.

24 Q And there was another guy there named Shawn Graham?

25 A Yes, sir. I think so.

1 Q You met with all them and that's when you recalled
2 these new details, right?

3 A I remember the details. I only write what I recall
4 that day. I only write what I could write, but I remember
5 the details clearly afterwards.

6 Q You never reported them to anybody until --

7 A No.

8 Q -- you met with them, right?

9 A No, sir.

10 Q Is that right?

11 A That's right.

12 Q Okay. You didn't tell the psychiatrist at MSU?

13 A No, sir. They've got their own agenda to do. So we
14 don't interfere and involve in them.

15 Q Okay, Tashiro Inabinet, one of the case workers, you
16 never told him?

17 A No.

18 Q Jim Page, one of the caseworkers --

19 A No.

20 Q You never told him?

21 A No, sir.

22 Q Now, your statement didn't include anything -- you
23 don't remember anything about him saying that the kids
24 were going to cut their mother up and feed them to the
25 dog, right?

1 A No, sir.

2 Q You didn't hear anything about that?

3 A No.

4 Q Now, do you recognize these as being medical records
5 from the South Carolina Department of Corrections?

6 MR. HUBBARD: I object to that question. If he knows
7 it's Tim Jones' medical records and he has knowledge of
8 what those records are. Otherwise, I object. This is the
9 wrong witness.

10 THE COURT: If he says, no.

11 A No. We don't get involved in medical.

12 Q Okay. You don't get involved in medical?

13 A We don't get involved in medical.

14 THE COURT: Fair enough.

15 Q So if medical says that they talked to Tim Jones at
16 12:50 on --

17 MR. HUBBARD: Objection.

18 Q -- 9/12/2014, that would be inaccurate, right?

19 A They talked to him on 12:50?

20 Q Right.

21 MR. HUBBARD: Judge --

22 Q 12:50.

23 THE COURT: Wait a minute. Wait a minute. I didn't
24 hear your question. He said object and you kept right on
25 going.

1 MR. HUBBARD: He's now going into the medical stuff.
2 I object.

3 MR. YOUNG: I'm going to ask him what time -- if he's
4 -- if medical says that they saw him at 12:50, that would
5 be inaccurate.

6 THE COURT: We need a break. Why don't you all step
7 into the jury room.

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

10 THE COURT: All right. I'm not sure about the
11 medical records. I don't know where you're going. He's
12 testified. What are you trying to do?

13 MR. YOUNG: I'm trying to impeach his testimony.

14 THE COURT: I don't understand.

15 MR. BOYD: He says he saw -- Tim Jones came to the
16 facility at 2:20 in the afternoon when Tim, in fact, got
17 to the facility at 12:50. He was seen by no less than --
18 he had an appointment at 12:50, he had another appointment
19 with further medical people at 13:03, he had a mental
20 health clinic at 13:08, he had another mental health
21 clinic at 14:07, he had another doctor's clinic at 14:07,
22 he had an inside appointment at 14:07, he had a lab clinic
23 at 14:08 and he met with the mental health clinic at
24 14:21. All things which he says are impossible.

25 THE COURT: No, he didn't.

1 MR. YOUNG: It is if he got there at 14:20.

2 THE COURT: It's not impossible. He didn't say the
3 word impossible. He said when he talked to him. You've
4 got records that say otherwise. It doesn't make anything
5 impossible.

6 MR. YOUNG: If he wasn't there, then he couldn't have
7 talked to him.

8 THE COURT: We're going to stop when he objects and
9 you keep going. And then when he's talking -- you
10 interrupt, too, Solicitor. I want you all to quit this.
11 You all are being very unprofessional towards one another.
12 The two of you all, stop it.

13 MR. HUBBARD: Yes, sir.

14 THE COURT: I've had enough. Be professional. The
15 jury deserves better. The trial deserves better. It's
16 not appropriate. All right. How are you going to impeach
17 him -- if he's not familiar with the medical records. If
18 you can deal with that, that's fine. There's something
19 you can do other than reading your report and saying all
20 of this stuff.

21 MR. YOUNG: I can say, well, if the report says that
22 he met with medical staff at 12:50, that report would be
23 wrong because you said he got there at 2:20. If the
24 report says that he met with a doctor at 13:03, that would
25 be wrong because he wasn't there yet, he doesn't get there

1 until 2:20. If the medical report says that he met with
2 --

3 THE COURT: All right, all right. One example's
4 enough.

5 MR. YOUNG: Yes, sir.

6 THE COURT: I feel like you're being a little bit of
7 a smart aleck.

8 MR. YOUNG: No, sir.

9 THE COURT: I mean, you're rattling off very, very
10 rapidly. I understand you've got to advocate, but --
11 okay. One or two is sufficient.

12 MR. YOUNG: Your Honor, just tell me what -- how --

13 THE COURT: Slow down. You're talking so fast,
14 you're wearing Joy out and me out. That's why I kind of
15 lost track of where you were going because -- we'll take a
16 couple of minutes and you figure out how you're going to
17 do it.

18 MR. HUBBARD: May I look at what he's got?

19 THE COURT: Yes. I think you all need to make sure
20 of where we're going. You sit tight.

21 THE WITNESS: Yes, sir.

22 THE COURT: We'll be back in here in a couple of
23 minutes.

24 (Whereupon, a short break was taken.)

25 THE COURT: Are y'all ready?

1 MR. YOUNG: Yes.

2 THE COURT: Very well. Bring the jury.

3 (Whereupon, the jury came into open court at
4 approximately 2:05 p.m.)

5 THE COURT: You all ready to continue? Mr. Young,
6 still your witness.

7 MR. YOUNG: Thank you, Your Honor.

8 CONTINUE CROSS-EXAMINATION

9 Q So, Lieutenant Pressley, if all of this happened when
10 he first got there, it would have been impossible for him
11 to have met with a nurse at 12:50, right?

12 A At 12:50? Yes. Now, can you give me the times?

13 Q 12:50.

14 A Okay. What nurse was it?

15 Q 12:50 p.m.

16 A What nurse or what was the--

17 Q -- Timothy G. Burkhart, registered nurse one.

18 A What was the date? The same date?

19 Q 9/12/14.

20 A Anything after the, anything after the incident of
21 2:00 -- the time being on--

22 Q -- sure. I'll get to the incident time.

23 A Okay. Go ahead.

24 Q Okay. But that one -- that one would have been
25 impossible, right?

1 A It would, yes.

2 Q And it would have been impossible for him to have a
3 physical exam on 9/12/14 at 13:03, which you understand to
4 be 1:03 p.m., right?

5 A Yes.

6 Q That would have been impossible, right?

7 A Yes.

8 Q It would have been impossible for Tim to have a
9 mental health clinic meeting at 9/12/14 at 13:08 with
10 Wanda F. Sermons and Tonya Hill?

11 A Yes.

12 Q It would have been impossible for him to have another
13 meeting with the mental health clinic on 9/12/14 at 14:07
14 by Wanda Sermons?

15 A Yes. But can I just say something?

16 Q Sure.

17 A If they did all that, that would have probably been
18 before he came to us, because there is a different medical
19 area, too. So I can't recall those times because we have
20 three different medical areas.

21 Q I thought you met him with the deputies coming into
22 the building for the first time --

23 A In the MSU.

24 Q -- Brian Sterling there, all that stuff.

25 A You're right, but I don't know where they carried him

1 before. So I can't answer that.

2 Q I thought you said he came from Lexington? Lexington

3 --

4 A This is a closed -- MSU is a closed area. So we
5 don't see what's coming in, what's coming -- we see what's
6 coming in and what's going out, but we don't see what was
7 going on in that area. Now, if they did something prior
8 before he came to us, I don't know anything about it.

9 Q So you think he went someplace else in Kirkland other
10 than --

11 A If he came to Kirkland before he came to us, they'd
12 probably take him to medical -- to another medical
13 facility before he came to us somewhere on the Kirkland
14 compound. If that's possible. I don't know. I can't
15 tell you.

16 Q So he was still under the care of Lexington County
17 deputies being walked around --

18 A I don't know.

19 Q -- the Kirkland -- that's your testimony, though,
20 right?

21 A No. I mean, he's not going to be walking around if
22 he's in Kirkland. So I can't tell you what happened
23 because we're in a confined area. I don't know what's
24 going on outside.

25 Q So, maybe it wasn't right when he got there?

1 A Maybe what? Say again.

2 Q Maybe it wasn't right when he got there when you all
3 had this incident? Is that what you're saying?

4 A We only do what we do when he come in to us. I don't
5 know what else happened prior before he came. So if what
6 you reading, maybe that happened earlier before he came.
7 I can't recall.

8 Q Is your area called Kirkland Max?

9 A Maximum security unit, yes.

10 Q Yeah. So it would have been impossible for him to
11 have an inside appointment on 9/12/14 at 14:07 in Kirkland
12 Max with Dr. Beverly Wood?

13 A It could because everybody was there. So they
14 probably could. They could have just talked to him prior
15 to me.

16 Q They talked to him like outside the gate?

17 A Well, what we do he's still -- like you said, like
18 they had belly chain, the whole nine yards. If the
19 psychiatrist or anybody wants to see him, they see him
20 when he's in a type of room.

21 Q Okay. Is that before you all did the strip search
22 and all that stuff?

23 A Afterwards.

24 Q I thought you did all that first.

25 A Yeah. Afterwards.

1 Q Okay. Now, this was at 14:07, right?

2 A I don't know.

3 Q Okay. If there was a report about him being with
4 Wanda Sermons, a registered nurse, at 14:08 in Kirkland
5 Max, that would have been impossible, right?

6 A Not necessarily. See, this is what -- I'm trying to
7 think because it's been a while.

8 Q It has been.

9 A When they brought him in everybody was there. So I
10 can -- I know a nurse was there, the psychiatrist was
11 there, all -- Director Sterling was there. So I'm trying
12 to think back. When we bring him in, we bring him to
13 medical, but everybody could have still had a little talk
14 with him. So I can't recall, because there was too much
15 going on, but all those individual's names was there.

16 Q Okay. But all the other stuff that you didn't write
17 down, you independently remember?

18 A Yeah, I remember.

19 MR. YOUNG: Okay. Beg the Court's indulgence.

20 THE COURT: Sure.

21 MR. YOUNG: That's all the questions I have.

22 THE COURT: All right.

23 MR. HUBBARD: No further questions.

24 THE COURT: You may step down.

25 MR. HUBBARD: Thank you, sir.

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

3 MR. HUBBARD: Thank you, sir. The State calls
4 Officer Ben Boyd.

5 BENJAMIN BOYD, being
6 first duly sworn, testified as follows:

7 MADAM CLERK: Sir, once you're seated state your full
8 name, spelling your last.

9 THE WITNESS: My name is Ben Boyd, B-O-Y-D.

10 DIRECT EXAMINATION

11 By Mr. Hubbard:

12 Q Mr. Boyd -- Officer Boyd --

13 A Yes.

14 Q -- where do you work?

15 A Kirkland Institution, and I work for the Department
16 of Corrections for the State of South Carolina.

17 Q How long have you been working there?

18 A Six and a half or seven years, just about, at
19 Kirkland and another two at another institution.

20 Q Back on September 12th, 2014, were you working
21 together with Lieutenant Pressley when the Defendant, Tim
22 Jones, was brought in?

23 A Yes.

24 Q And do you remember him coming in -- is it the
25 maximum security area? That's where you were working?

1 A Yes.

2 Q What do you recall when --

3 MADAM COURT REPORTER: Is that yes?

4 THE WITNESS: Yes.

5 Q What do you recall when he was brought in?

6 A Excuse me. Say that again.

7 Q What do you recall when he was brought in?

8 A I recall that the van pulled up. I was on the outer
9 side of the sally port gate as the door was -- the van was
10 backing in. And then he came in, and then the sheriff's
11 deputy got out and she opened the door and she was getting
12 the rest of his equipment and he jumped down out of the
13 van. I had him by the arm and I escorted him in the door.

14 Q Do you remember what time that was?

15 A I can't remember what time it was. It could have
16 been just before lunch or somewhere around there because I
17 was just coming back with the food for the other 48
18 inmates that's in MSU.

19 Q Did you end up writing a statement at some point?

20 A Yes, I did.

21 Q If I show you the time you wrote, is that your
22 writing?

23 A Yes, it is.

24 Q When did you say this occurred?

25 A About 2:20 p.m.

1 Q All right. Do you remember Inmate Jones saying
2 anything?

3 A Yes.

4 Q Do you remember him becoming a little emotional?

5 A Yeah, he was emotional. A little -- crying a little
6 bit at first. And then --

7 Q What, if anything, did Lieutenant Pressley do at that
8 point?

9 A Well, Lieutenant Pressley had a lot of multiple
10 duties anyway. And then he -- he was standing there at
11 the gate. And then once that door closed and then we
12 opened the door, him and Sergeant Hawkins came in and we
13 strip searched him. We checked all of his items, sit him
14 in a -- he sits in a metal chair to make sure he doesn't
15 have any metal on his body. And then we put him in
16 restraints, and then we take him out of sally port and get
17 ready to have him, medical would see him next.

18 Q What, if any -- so he went to medical after that?

19 A So once he came through the gate, we was standing
20 there with Lieutenant Pressley, and then, you know,
21 Lieutenant Pressley, like I said, multiple duties. He's
22 looking into medical. He's asking them are they ready to
23 see him and, you know, we're all kind of in the same area.
24 We're all pretty much together.

25 Q Before Inmate Jones leaves you, what, if anything, do

1 you hear him say?

2 A He said that his son was messing with an electrical
3 socket. And, in his mind, he thought he was trying to
4 hurt something and he killed him and he put his hands up
5 like this, you know, showing how he did it. And then he
6 put his hands down. And then he said his daughter walked
7 in.

8 Q What did he say about that or did you hear the rest
9 of it?

10 A I heard him say the daughter, and then it was just
11 like -- you know, I'm still turning around and checking on
12 other things that's going on. And then I came back -- you
13 know, came back to him for that minute, but --

14 Q But you heard him mention the daughter?

15 A Yes.

16 Q You didn't hear what happened to the daughter at all,
17 from him?

18 A From him --

19 Q And if you don't remember, that's fine.

20 A I don't -- I don't really remember right now, at this
21 time.

22 Q Okay. That's fair enough. But you remember him
23 talking about his son and an electrical outlet.

24 A Yeah. And his daughter coming in -- walking in and
25 seeing him.

1 Q What did he do to his son with the electrical outlet?

2 A Well, he said he choked his daughter -- I mean, his
3 son. He choked his son out.

4 Q With his hands?

5 A Yeah, with his bare hands.

6 MR. HUBBARD: Thank you, Officer Boyd.

7 CROSS-EXAMINATION

8 By Mr. Madsen:

9 Q Officer Boyd --

10 A Yes.

11 Q -- so you were there when a Lexington County van
12 pulls up with Tim, correct?

13 A Uh-huh.

14 Q And you say he gets out with a sheriff's deputy?

15 A Yeah.

16 Q And you all have to, I guess, strip search him. So
17 take all his Lexington County stuff off?

18 A Once he comes in the building.

19 Q Right.

20 A Yeah.

21 Q But you're there when that happens?

22 A Uh-huh.

23 Q And you give him all that stuff, and then they, I
24 guess, leave and you all put your stuff on him?

25 A Yes.

1 Q And so, the intake procedure. You say you do that,
2 then you sit him in a metal chair to make sure that they
3 don't have any --

4 A Any type of metal in their body, because people do
5 hide stuff in their body.

6 Q Sure.

7 A Cell phones, whatever.

8 Q And who is there when he gets there?

9 A Like I said, I was at the back door and then I said
10 something and Sergeant Hawkins was standing there, then
11 Pressley was standing there. And then we all came in when
12 the sheriff's deputy closed the door.

13 Q How about Officer Stroman?

14 A Stroman was outside where we call on the tier, on
15 the, he's just out -- out there --

16 Q So was he there?

17 A -- for a minute. It was like Stroman was doing a
18 couple more duties. There's 48 people in that building
19 and we have to keep our eyes on everybody while that's
20 going on no matter who was back there. The officers that
21 work on the wing have to go on the wing and check on death
22 row inmates or anybody else that's down there.

23 Q But you understand that your report says that Officer
24 Stroman was there, also, correct?

25 A Yeah. He was on-duty.

1 Q Okay. So you four were the only officers on-duty?

2 A It was four of us and somebody -- somebody was in the
3 control room at that time. They was in the control room
4 opening and closing the gates. I can't recall who was --
5 somebody stepped in there temporarily, but it was a day
6 when we were pretty, you know, short.

7 Q And on September 12th of 2014, I guess, you wrote
8 your report at 3:30, correct?

9 A No. That's 2:00 --

10 Q Well, that's not the time of the report is 3:30?

11 A The time of the report, 3:30. The time of the
12 incident was around 2:00.

13 Q 2:20, I guess, is what you have listed, correct?

14 A Yes.

15 Q And how long have you been with SCDC?

16 A Eight years.

17 Q Eight years. And you've been trained to write
18 truthful, accurate and complete reports?

19 A Yes.

20 Q And you wrote a report about an hour and ten minutes
21 afterwards, correct?

22 A It probably was about that time.

23 Q And yet, there's nothing in your report that says
24 anything about the daughter, does it?

25 A No.

1 Q And, in fact, your report says that he killed his
2 kids with his own hands after his son was messing around
3 with his electrical socket, correct?

4 A That sounds about right.

5 Q And that's all you wrote?

6 A Yeah. I wrote -- somebody told me to write -- I had
7 to write a quick incident report because I was in the
8 middle of doing -- it was time to feed and it was time to
9 pull some other people that was on the red field so long,
10 you know --

11 Q Sure.

12 A -- that -- because he was in the middle.

13 Q It was busy at that time?

14 A Yeah.

15 Q And so, you went back and you wrote a supplemental
16 report later when it wasn't that busy?

17 A No, I didn't.

18 Q How about the next day?

19 A No, I didn't.

20 Q Ever?

21 A No, I didn't. I just wrote that report and nobody
22 asked me to rewrite it.

23 Q And at some point in time, you met with the
24 Solicitor's Office, I guess, April 3rd of 2019, correct?

25 A Yes.

1 Q And we're talking about the two at the table and, I
2 guess, Matt Martin and Shawn Graham who, I guess, is not
3 in here right now, correct?

4 A Uh-huh.

5 Q And --

6 MADAM COURT REPORTER: Is that a yes?

7 THE WITNESS: Yes.

8 Q Sorry. She's got to take down --

9 A Yeah.

10 Q -- everything we say. And you told them that
11 Lieutenant Pressley asked what happened. Is that correct?

12 A Yes.

13 Q And then you said that after that, that you and
14 Pressley were talking about how Jones had arrived at SCDC
15 without the media --

16 MR. HUBBARD: Your Honor --

17 Q -- finding out?

18 MR. HUBBARD: -- if I can interject with an objection
19 just to clarify because of your ruling --

20 THE COURT: Yeah.

21 MR. HUBBARD: -- on the question.

22 THE COURT: Sure. That's fair enough. Keep going.

23 Q And you had indicated that Tim was upset and crying
24 during this time?

25 A He was crying more when he came in the first gate.

1 When he was standing there with us while we was waiting
2 for medical, he kind of was calming down a little bit
3 because I started asking -- I asked him about the escort.
4 I did ask him about the escort, because many times we've
5 seen, you know, they come with a lot of people, two or
6 three people. And he said his escort went left and they
7 went right, faking them out or something. And then
8 Pressley came in and asked him what happened. You know,
9 he thought -- he came in the middle of that conversation.
10 He didn't ask him what happened to ask him what happened
11 to him.

12 Q So it would be inaccurate if the notes from the
13 Solicitor's Office indicate that Boyd stated that Jones
14 began talking when Pressley --

15 MR. HUBBARD: Your Honor --

16 Q -- asked what happened?

17 MR. HUBBARD: -- I object. Publishing the document.

18 MR. MADSEN: Judge, I'm just asking --

19 THE COURT: No, no, no, no. Don't pit a witness. I
20 mean, you can ask him the questions.

21 MR. MADSEN: Judge, I'm trying to. He just said
22 something different.

23 THE COURT: No, I don't know that he did. Rephrase
24 the question.

25 Q And if it says, "Pressley asked what happened," and

1 then it says, "Boyd stated prior to this, he and Pressley
2 were talking about how Jones had arrived at SCDC without
3 the media finding out." Is that incorrect?

4 A That's -- no. That's not incorrect, because he was
5 just -- Pressley stepped away from him for a second. And
6 then came back and Hawkins was standing there and I was
7 standing there and we were just -- Hawkins is CIT trained,
8 too. So he was talking to him and smiling, and there was
9 no -- we didn't ask him anything about what he did or what
10 he'd done. We never do that when people come in the back
11 door.

12 Q That's not part --

13 A We might know what you done, but we never do it.

14 Q That's not part of the intake procedures?

15 A No.

16 Q And so, you see him come in at 2:20. He couldn't
17 have met with medical or anyone else prior to that?

18 A If you had a diagram of MSU, it's possible.

19 Q But I thought you said he came in -- you watched him
20 come in on a van?

21 A When he was standing there with us, if you turned
22 around now, medical will be right behind you. Behind the
23 Judge would be where they was -- people were
24 fingerprinting him and they were out there. Medical was
25 talking to him, either the psychiatrist. It all was done

1 in the same building. Mr. Jones is a safekeeper. He
2 couldn't be on the regular yard and come through the
3 regular process. So he came back to MSU and everybody
4 came to him.

5 Q And you had made mention of death row, but in 2014,
6 death row wasn't at that location, was it?

7 A No. But we had people that were on death row before
8 that. After their death date, they get to go somewhere
9 else because they committed crimes against officers or
10 other inmates in the jail. So they come to Kirkland.

11 Q And that's the majority of those people in that MSU
12 are someone who has gotten in trouble in some other
13 location within the Department of Corrections and that's,
14 basically, the supermax there?

15 A Yes.

16 Q So Tim was different than that?

17 A I don't know if he was different because there was
18 another safekeeper on the same wing as him from Chester --
19 Chester County, I think it was.

20 Q But a safekeeper is not someone who's gotten in
21 trouble in SCDC?

22 A Yeah. He's never been in SCDC and never got in
23 trouble.

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

25 MR. HUBBARD: No further questions. Thank you,

1 Officer.

2 THE COURT: Thank you very much.

3 THE WITNESS: All right.

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

6 MR. HUBBARD: Your Honor, this is that matter that --

7 THE COURT: Okay. We need kind of a ten minute
8 break, do we not. We will back in 15 or 20 minutes. You
9 in the jury, if y'all will step outside, you may. You'll
10 have enough time to do that. There's something I've got
11 to deal with. Don't talk about the case.

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

14 THE COURT: All right, would it be easier for me to
15 hear the unredacted version and I can go into chambers and
16 listen to it and everybody can kind of have a break and
17 y'all won't be sitting here watching me listen. I mean,
18 do you want me to hear the whole thing, and then we can
19 hear your arguments?

20 MR. HUBBARD: Yes, sir.

21 THE COURT: Okay.

22 MR. HUBBARD: All right, I've got our -- the whole
23 unredacted to redacted.

24 THE COURT: Okay.

25 MR. HUBBARD: Just for Your Honor's sake, the

1 unredacted is 187 for ID. The redacted does not have a
2 sticker on it yet --

3 THE COURT: Okay.

4 MR. HUBBARD: But I can go ahead and put one on.

5 MR. YOUNG: And I haven't heard the redacted.

6 THE COURT: Okay. Well, you all listen to that and
7 when you get done with it, then --

8 MR. HUBBARD: We'll send it down to you.

9 THE COURT: Send it back to me through Whitney. So
10 we'll stand down for at least -- you said 14 minutes?

11 MR. HUBBARD: It's probably about 16 plus.

12 THE COURT: Okay.

13 (Whereupon, a short break was taken for the Court and
14 attorneys to listen to a CD.)

15 THE COURT: I now know there's a player that needs to
16 be downloaded than the player it already has. So I had to
17 get Court Administration, IT, to help me and finally they
18 did. All right. Mr. Young, why do you want the whole
19 thing --

20 MR. YOUNG: The --

21 THE COURT: -- or why do you want neither?

22 MR. YOUNG: The State's redaction is misleading in
23 that it cuts out the section of Tim and his parents and
24 his parents interjecting and I snapped. And then the
25 State's cutting all that out, all that initial dialogue

1 out, to then bogus it to make it look like Tim says, later
2 on, I know why this happened, I just snapped. When, in
3 reality, it's part of a much longer conversation where
4 that answer has already been subjected by his family, and
5 that's why it's misleading to play just Tim saying it and
6 not playing the family part, as well. Finally, Your
7 Honor, at the end of the recording, to end it where they
8 did is misleading, as well, because Tim does talk about
9 not wanting to die now and what his life in prison could
10 be like. And we think that should be played under Rule
11 106 and should be required to be played under the Rules of
12 Completion. I understand that the Court has ruled that
13 this phase where Tim says I could one day get out, or be
14 back out on the streets if I was found not guilty by
15 reason of insanity, should not be allowed in. We, of
16 course, from our objection, think that it should be
17 allowed in. If there was anything that was going to be
18 played, it should just be that one line, I could be back
19 out on the street. But other than that, that's the only
20 thing that the Court has ruled should not come in and to
21 redact it, and in the manner the State has makes it
22 misleading.

23 THE COURT: All right. I don't think the whole
24 thing's necessary. But out of an abundance of caution, I
25 want it redacted, just the part about the if he gets a not

1 guilty by reason of insanity, I'd be back on the streets.
2 I want that part out. If you want the rest in, I'll let
3 you play that.

4 MR. HUBBARD: The only question about that is it also
5 talks about I don't want to die, which you've already
6 ruled he can't say that, and that's all --

7 THE COURT: Why can't he say that?

8 MR. HUBBARD: Well, I don't think he can. Not in
9 this phase. First of all, we're in phase one. So if it
10 was phase two and they wanted to put the whole thing in, I
11 get it. I do. We wouldn't have a problem. But your
12 ruling has been very consistent so far that we can't go
13 into that area. So that's why we're trying to honor your
14 ruling and just say all of that truly post-sentencing.
15 And so, we're not there yet. So, frankly, Judge, I was
16 trying to honor your ruling --

17 THE COURT: Yeah.

18 MR. HUBBARD: -- and not confuse the jury, because we
19 spend so much time, as you know, trying to teach them on
20 the phases and that that doesn't come -- it's not supposed
21 to be in their thoughts now. And I think it would be me
22 interjecting with a piece of evidence something that
23 you've properly ruled that doesn't come up now. And
24 that's why -- can we just try to end it with what, I
25 think, is relevant.

1 THE COURT: Well, I mean --

2 MR. YOUNG: The State --

3 THE COURT: Do you really need it at all? I mean, it
4 seems like it would be more appropriate if we get to the
5 second phase to me, because it's just a bunch of talking
6 about, well, you know, we had a cousin and they did this,
7 and it's --

8 MR. HUBBARD: I will tell you --

9 THE COURT: -- a lot of rambling.

10 MR. HUBBARD: The whole front is, I'll tell you why
11 that part is relevant to this section right now, the first
12 phase. It's because he explains yet another version of
13 why he killed Nahtahn and the kids. It is different than
14 anything that we have presented so far and, Judge, we've
15 got -- we've presented what he's said to the FBI agent,
16 you just heard what he said to the SCDC guy. So this is
17 the third version and we're -- I think we're entitled,
18 because that's what this part is about. So we try to keep
19 it to what's relevant and nothing else.

20 THE COURT: All right. Mr. Young, what about the
21 part -- and I don't remember the specific word. I didn't
22 write it down. I only listened to it one time, but, you
23 know, I'm feeling good, about ninety-five -- I thought he
24 meant like ninety-five percent good. Something along
25 those lines. I think that's where this, I don't want to

1 die comment comes in. His dad says, well, that's great,
2 or, you know, it's good to hear that. Something positive
3 back to him. Why do you get that if we're going to stay
4 away from the result of the verdict and--

5 MR. YOUNG: -- well, I think under the Rule of
6 Completeness it is required to be played with the whole
7 conversation into context. He's talking about the meds,
8 how the meds are working for him, how he feels better
9 because he's not talking to himself like he used to. And
10 based on his medical regimen, he finally feels like he
11 doesn't want to die. That's relevant to our case of
12 mental illness and I think it should be played.

13 MR. HUBBARD: That's the problem. It's so tied into
14 what comes next. Your Honor has been very consistent on
15 that. So that's what we try to honor what the Judge has
16 ruled on, Judge. That's -- so as far as 106 Rule of
17 Completeness, what's fair to explain what's going on.
18 What this entire part of our case is about is why did he
19 do what he did. Is he guilty. And they're trying to say
20 he's mentally ill.

21 THE COURT: All right.

22 MR. HUBBARD: What's going to happen with the mental
23 health people, they're going to put up, Judge -- because
24 we read their stuff. They're going to take this and say
25 he didn't want his kids to suffer. So it's actually going

1 to lead right into what they're going to present next in
2 this phase, but not getting into what happens
3 sentence-wise.

4 MR. YOUNG: I don't think saying I feel better, I
5 don't want to die, gets into what happens sentence-wise.

6 THE COURT: I think everything ties into everything.
7 So, I mean, you all have got to quit arguing. You all
8 keep arguing that. Everything ties into everything. My
9 gut and my ruling is, cut out the one part about I could
10 be on the streets again. That part. The rest of it, I
11 don't think is necessary. I don't -- I wouldn't even play
12 it, but it's not my case to try. I wouldn't play any of
13 it. I just think it's not my case to try. It's not very
14 impressive to me.

15 MR. HUBBARD: Well, I understand that, Judge, and,
16 obviously, we've put a lot of time into it. I'll tell you
17 what we'll do. We'll take what you've -- and the ruling
18 would be if it comes in at all, we do what.

19 THE COURT: It's the part where he says, well, if --
20 I think his dad says something like, if you get off of the
21 death row BS, then, you know, we can go there. He says,
22 no, no, I could, if that verdict comes out, be walking the
23 streets again. It's all in there. That's what I want
24 out.

25 MR. HUBBARD: Go up to -- Judge, I'll take it and

1 we'll work on it.

2 THE COURT: Yeah. That's a lot and it's hard to
3 listen to it.

4 MR. HUBBARD: It is and that's why, Judge --

5 THE COURT: That's why I probably wouldn't play it
6 just because it's so difficult to concentrate and listen
7 to.

8 MR. HUBBARD: That's why we focused on the exact
9 thing we thought was relevant for this trial.

10 THE COURT: I don't -- I don't -- and I appreciate
11 that.

12 MADAM COURT REPORTER: What are those numbers on --

13 THE COURT: 186 and 187, ID.

14 MR. HUBBARD: 198 and 187, Judge.

15 THE COURT: Okay.

16 (Whereupon, State's Exhibit 198 was marked for
17 identification only.)

18 MR. HUBBARD: We're ready to move on, Judge.

19 THE COURT: Me, too. We're ready for the jury.

20 (Whereupon, the jury came into open court at
21 approximately 3:32 p.m.)

22 THE COURT: All right. Thank you all for your
23 patience. I had to listen to some stuff, and then my
24 computer gave me trouble. So that was the main part of
25 the wait was me on the phone with Court Administration.

1 So I apologize. Call your next witness.

2 MR. GRAHAM: The State calls Mike Phipps.

3 MIKE PHIPPS, being
4 first duly sworn, testified as follows:

5 MADAM CLERK: Have a seat, sir. Once you're seated
6 state your full name, spelling your last, please.

7 THE WITNESS: Michael Phipps, P-H-I-P-P-S.

8 DIRECT EXAMINATION

9 By Mr. Graham:

10 Q Mr. Phipps, if you'd pull that microphone and speak
11 louder so the jury can hear you. Where are you employed,
12 sir?

13 A With the Lexington County Sheriff's Department.

14 Q And how long have you been in law enforcement?

15 A Twenty-one years.

16 Q And what is your current job title?

17 A I work in our forensic services unit as an examiner
18 of digital evidence.

19 Q In addition to being employed by the sheriff's
20 department, are you also on a federal task force?

21 A I am. The --

22 Q Can you explain to the jury what that is?

23 A The South Carolina Electronic Crimes Task Force.
24 It's a task force administered by the United States Secret
25 Service. They stand this task force up to support state

1 and local jurisdictions in the investigation of crimes
2 that involve digital evidence or digitally facilitated
3 crime.

4 Q When I use the term forensic examiner, what does that
5 mean?

6 A We examine items of evidence. Cell phones,
7 computers, DVRs, GPS units. Anything that's digital that
8 potentially has data on it that would be relevant to an
9 investigation.

10 Q Would you describe to the jury your background,
11 training, education, experience as far as forensic
12 examination of cell phones?

13 A I started receiving specialized training in digital
14 evidence in 2005. Since that time, I've received over 600
15 hours of instruction on various computers, cell phones and
16 other items.

17 Q Approximately, how many cell phones have you
18 examined?

19 A I don't have a firm count, but it would be a
20 conservative estimate of over 800.

21 Q Over how many?

22 A Eight hundred.

23 Q And have you been qualified as an expert in forensic
24 examination in South Carolina before?

25 A Yes, sir. I've been qualified in the area of --

1 various areas of digital forensics 12 times.

2 MR. GRAHAM: Your Honor, the State would offer
3 Investigator Mike Phipps as an expert in the field of
4 forensic examination.

5 THE COURT: Any voir dire?

6 MR. YOUNG: No objection.

7 THE COURT: Okay. Agent Phipps is qualified as an
8 expert and may offer opinions in the field of digital
9 forensic examination.

10 Q Investigator Phipps, let me show you what's been
11 marked as State's number 91, which is a Samsung Galaxy
12 Note 3, I believe, and ask if you recognize that item.

13 A Yes, sir. I do.

14 Q Can you explain to the jury -- in previous testimony,
15 we've gone through chain of custody on that item. You
16 would be the last person to help complete that chain and
17 you actually tested it multiple times. So could you step
18 through your contact with the phone with the jury and
19 let's talk about it a one by one.

20 A I had several times where I had possession of this
21 phone. The first being back in January of 2015 around
22 8:00 o'clock in the morning on that date for a few
23 minutes. I had it signed out, and usually when we sign
24 something out for only a brief period of time like that,
25 we're doing it for the purpose of identifying the device,

1 recovering serial numbers off the device so it can be
2 referenced and searched for.

3 Q And that was on January 7th of 2015?

4 A That is correct.

5 Q And you got that from Candy Kyzer from the Lexington
6 County Sheriff's Department?

7 A Yes, sir.

8 Q And you kept it out for approximately 13 minutes, and
9 then you turned it back to Ms. Kyzer. Is that correct?

10 A Yes, sir.

11 Q During the 13 minutes that you had it, would you have
12 manipulated or changed any of the data or the artifacts, I
13 think is the term of art that you would use, that were on
14 that phone?

15 A No, sir. I did not.

16 Q After you returned it back to Ms. Kyzer on the 7th,
17 when is the next time that you came in contact with it?

18 A Again later that day, January 7th, at 9:00 o'clock.
19 It remained in my possession until January 22nd when it
20 was returned to Ms. Kyzer.

21 Q During that time, again, you got it from Ms. Kyzer on
22 January 7th. Is that correct?

23 A That's correct.

24 Q And then you turned it back to Ms. Kyzer on January
25 22nd, correct?

1 A Correct.

2 Q During that time, did you do a physical examination?

3 A I didn't.

4 Q You did not. Now, is that a time when, pursuant to a
5 court order, there was another examiner who had access to
6 the phone?

7 A Yes.

8 Q And once you got that phone back from that other
9 examiner and you returned it back to Ms. Kyzer, when's the
10 next time that you accessed the phone? I think, at this
11 point, the phone --

12 A I believe, at this point, the phone was at SLED, if
13 I'm correct.

14 Q And I think that would have been on --

15 A November 26th, 2018. I picked the phone up from
16 SLED's computer crime center from Agent Britt Dove.

17 Q And then the phone was in your possession at that
18 time. And at that time, pursuant to the search warrant,
19 did you do an examination of the phone?

20 A I did.

21 Q And then ultimately after your examination was done,
22 you returned the phone to Beth Holliman at the sheriff's
23 department on December 4th of 2018. Is that correct?

24 A Yes, sir. That's correct.

25 Q Two other experts -- well, let me ask you this

1 question. All the artifacts -- when I say artifacts,
2 what's an artifact?

3 A An artifact can be just anything that's recovered off
4 the device whether it's a photo, text message or a text
5 file on it. It's just a general term we use for something
6 that's recovered. An artifact or an item.

7 Q The examination -- when we talk about an examination,
8 what did you do?

9 A We take the device and we process it. In this case,
10 I use a forensic tool by a company called Cellebrite. The
11 device is a universal forensic extraction device or UFED.
12 That is a tool that we use to forensically recover data
13 off the device without changing any of that data.

14 Q Can you give an example of what the artifacts are
15 that you're talking about recovering from the phone?

16 A There's different ways you can acquire that data.
17 Logical, file system, physical. In this case, we did a
18 file system and a physical acquisition or removal or
19 recovery of the data. That data is then processed later
20 on in other forensic tools to make that data visible or
21 readable to a user. Obviously, like a computer, that data
22 is stored in, literally, ones and zeros on the device and
23 it has to be processed to make it usable for an analyst or
24 some other person that wants to read that data, and it can
25 be anything from photos, text messages. Again, just

1 anything that can physically reside on a phone, you could
2 ultimately recover.

3 Q The artifacts that you were able to recover off that
4 phone, did they all appear to be original artifacts
5 created at the time of the event on the phone?

6 A Yes, they do.

7 Q Are you aware of any way -- are you aware of any type
8 of software or any way to go back and actually create or
9 insert events or artifacts after the fact?

10 A I'm not.

11 Q There are different types of extractions. Is that
12 correct?

13 A Yes.

14 Q And I think there are three types. Could you explain
15 to the jury the three different types of extractions there
16 are and what each one of them is?

17 A Again, a logical, a file system and physical are the
18 three types. Logical being what you would see on the
19 phone if you were just to browse through the phone
20 yourself. In other words, you go to text messages and you
21 see all the text messages. File system takes it just a
22 little bit further in that it's taking in, potentially,
23 some items that the phone isn't going to display to the
24 user. It's in the file structure of the phone. So,
25 potentially, there could be a database third party

1 application meaning an application that you installed that
2 didn't come with the phone itself. You would potentially
3 see those items in a file system acquisition. A physical
4 is where we bypass the operating system altogether and we
5 acquire the raw data that's stored in memory on the phone
6 or on the flash memory and, again, that's going to be in a
7 binary form, ones and zeros, and it has to be processed to
8 make it viewable to a user.

9 Q The extraction that you performed on this phone, what
10 kind of extraction was it?

11 A We did both a file system and a physical.

12 Q Let me show you what's been marked as State's number
13 33 for ID, it's a disc, and ask if you recognize that.

14 A I do.

15 Q And what is that document?

16 A It is a disc that I created that has the raw data
17 from both the acquisition, the post-processing, taking
18 that data and running it through a forensic tool that
19 makes it viewable. If I recall, there's also photos of
20 the device itself on here, and then some copies of
21 documentation such as a search warrant.

22 Q You had mentioned a forensic tool. Is that a reader?
23 Is that what you're recalling about -- or talking about?

24 A Right. There's a software tool, a physical analyzer,
25 again, from the same company, Cellebrite. And then we

1 also use other forensic tools as well. But in this case
2 the data that's on here is straight from physical analyzer
3 and there's a reader that allows you to load up all that
4 data and make it visible, sort through it and do key word
5 searches.

6 MR. GRAHAM: Your Honor, the State would offer 33 for
7 identification as just identification at this time.

8 THE COURT: It's marked as 33?

9 MR. GRAHAM: Yes, Your Honor.

10 (Whereupon, State's Exhibit number 33 was marked for
11 identification only.)

12 Q Investigator Phipps, let me show you what's been
13 pre-marked as State's Exhibit number 77 for ID and ask if
14 you recognize that.

15 A Yes, sir. I do.

16 Q And is that a document that you prepared from
17 artifacts that were on the Samsung Galaxy Note 3 that
18 we're discussing, which is State's 91, that came from the
19 Cadillac Escalade?

20 A It is.

21 Q And the time period that that covers is what?

22 A August 28th of 2014 at about 7:51 in the morning
23 through September 4th, 2014 at 12:58 p.m. in the evening.

24 Q In general, what kind of artifacts does that report
25 reflect?

1 A This particular report lists call logs, call history,
2 SMS or text messaging, searches, whether they're various
3 types of web searches and web history.

4 Q Now, you would have also had access to emails, as
5 well, right?

6 A Yes, sir.

7 Q Did the Defendant send out any emails that you're
8 aware of during that time period?

9 A We found no outgoing emails during this time period.

10 MR. GRAHAM: Your Honor, the State would offer 77
11 into evidence at this time. The State would offer it into
12 evidence, Your Honor.

13 MR. YOUNG: Subject to our previous objection.

14 THE COURT: Subject to previous objection and all the
15 pre-trial stuff. Absolutely. Objection's noted. It's
16 admitted.

17 (Whereupon, State's Exhibit number 77 was admitted
18 into evidence).

19 MR. GRAHAM: And, Your Honor, if I could have
20 Investigator Phipps step down and publish this to the
21 jury, Your Honor.

22 THE COURT: Sure.

23 MR. GRAHAM: For the record, Your Honor, what I've
24 done is, State's 77 that Investigator Phipps has that is
25 in evidence that the jury will see actually has telephone

1 numbers in there. What I'm going to display on the
2 overhead has the telephone numbers blacked out.

3 THE COURT: Okay.

4 MR. GRAHAM: If a telephone number becomes important
5 we can bring that up in testimony.

6 THE COURT: Any objection to doing that, Mr. Young?

7 MR. YOUNG: No, Your Honor.

8 (Whereupon the witness steps down from the witness
9 stand.)

10 Q Investigator Phipps, when you start at the top --
11 when you start up here at the top, beginning on the
12 morning of August 28th of 2014. Is that correct?

13 A Yes, sir.

14 Q The first entry you have is at 7:51 a.m. in the
15 morning. Is that correct?

16 A Yes, sir.

17 Q Was there any other activity as far as -- was there
18 any other activity prior to -- starting at midnight or was
19 that the first activity of the day?

20 A That was the first user activity, meaning that
21 someone was interacting with the phone. Obviously, a lot
22 of people leave their phones on, plugged up charging.
23 There can be items that change and update within the
24 operating system. But this was like the first user
25 interaction of doing something on the phone itself.

1 Q All right. So the very first thing that we see in
2 the morning at 7:51 a.m. says that it's coming off the
3 call log. In the direction field it says outgoing. What
4 does that mean?

5 A It means that someone on the phone was placing the
6 call. It was going to someone else.

7 Q Now, the number we discussed that's blacked out on
8 this that's on the copy that the jury will see in
9 evidence, were you able to determine who that number
10 belonged to?

11 A Yes. That was -- the number belonged to the
12 Defendant's father, Tim, Sr.

13 Q So there was an outgoing call to the Defendant's
14 father, Tim, Sr. And in the description field, there are
15 numbers, what do those numbers mean?

16 A It's the time or duration of the call. Minutes and
17 seconds. In this case, four minutes and forty-seven
18 seconds.

19 Q The second entry is the same day, August 28th at
20 12:24 a.m., and it says web history. Will you explain to
21 the jury what web history is?

22 A Web history is another one of those categories of
23 artifacts. In this case, it's shown that there was
24 activity detected, internet activity. In this case,
25 specifically to a certain web address, which is listed on

1 my notes.

2 Q The next entry is at 3:06 p.m. on that day. Again,
3 web history. Can you tell -- can you tell the site that
4 he accessed?

5 A Yes. That was -- would be a Monday morning .com
6 website, Map Quest.com website.

7 Q Continuing on the same date at 1:27. Now, what do
8 you see?

9 A I see an outgoing call -- or from the call log, it's
10 an incoming call from the call log from the number that is
11 listed in his address book as a Roberta Thornsberry.

12 Q So the number -- the contact was on a phone showing
13 Roberta Thornsberry?

14 A Right. When there's a name that appears under the
15 party's name, it's pulling that name from his address
16 book. So that's what appeared when the phone rang. In
17 this case, it was an eight minute and fifty-three second
18 call.

19 Q The next entry shows the same day, August 28th, 2014
20 at 5:44 p.m. What artifact did you discover?

21 A The music artifact is just that an audio file was
22 accessed at that point in time. And in this case it was
23 an MP3, which is a playable music file that resided on the
24 phone.

25 Q And what was the name of the song that was played?

1 A It is Country Girl, Shake It For Me, by Luke Bryan.

2 Q All right. Moving on to 6:42 p.m. on August 28th,
3 what do we see?

4 A This falls under the searched items category. In
5 this case it's specific to Youtube, or Youtube app meaning
6 that person was doing the search within the search box on
7 Youtube and they did a key word search for Sasha Xpander
8 original, which, through research, I've learned is a
9 synthesized music piece.

10 Q As we move on down to August 28th at 7:00 o'clock
11 p.m., there's a call log entry. What do we see there?

12 A Here we see several back-to-back missed calls. These
13 are incoming calls that weren't answered by the phone or
14 by anyone operating the phone. In this case all four
15 missed outgoing -- incoming calls were from Amber Marie
16 McCalley. And you see the duration is zero seconds on all
17 of them.

18 Q And were you able to determine who Amber Marie
19 McCalley is?

20 A Yes. That's going to be the mother of the children.

21 Q So there was a missed call -- incoming missed calls
22 at 7:00 o'clock, 7:02, 7:05 and 7:09 p.m?

23 A That's correct.

24 Q The next entry at 7:10 p.m., would you tell the jury
25 what that is?

1 A This is from the call log, again, but it's an
2 outgoing call to Amber, and that call lasts for one minute
3 and 20 seconds.

4 Q At 7:12 p.m., what's that entry?

5 A Here, we have an incoming call -- excuse me, from
6 Amber that lasts a minute and 54 seconds.

7 Q Moving down to the 7:14 p.m., still on the same
8 evening.

9 A Again, we have a string of missed calls at 7:14, 7:16
10 and 7:17 all belonging to Amber.

11 Q At 7:19 p.m., the bottom entry on this page, the
12 first page of this exhibit, what do we see?

13 A We see an incoming call at 7:19 from Amber that lasts
14 one minute and two seconds.

15 Q Moving on to the second page. Continuing on the
16 night of August 28th, 2014. Now it's 7:56 p.m. What did
17 you find?

18 A This is a missed incoming call. Through research, we
19 identified the number as belonging to CVS pharmacy.
20 Specifically one located in Newberry. It has, of course,
21 a zero second duration because it was missed call.

22 Q The next artifact that you reported in your report on
23 the evening of August 28th is at 8:30 p.m., correct?

24 A That is correct.

25 Q And that is coming, from, it says it's another search

1 on Youtube. Is that correct?

2 A Yes. It's a search for the key words, American
3 History X Rape Scene.

4 Q American History X Rape Scene?

5 A That is correct.

6 Q Now, are you familiar with the movie American X?

7 A Yes.

8 Q And is there a rape scene within the movie, American
9 X?

10 A Yes. American History X was a movie in the late
11 '90s. The principle character in the movie is sentenced
12 to prison. While he's in prison, he's brutally assaulted
13 in a shower scene and sexually assaulted.

14 Q Now, are you able to determine whether whoever was
15 operating the phone actually viewed that rape scene or
16 whether they just searched for it?

17 A We can't tell that. All that I'm able to determine
18 is that he entered those search terms within the Youtube
19 app or the web page.

20 Q At the time on that search, again, was what?

21 A At 8:30 and 32 seconds in the evening on the 28th.

22 Q As we continue down passed that, the next entry is at
23 9:16 p.m. Would you describe to the jury what that entry
24 shows?

25 A It's a missed incoming call from Amber followed up at

1 9:34 by an incoming call that was answered that has a
2 duration of one minute and 12 seconds, and following that
3 up at 9:42 is another incoming call. This one is tagged
4 as rejected. So unlike one that just goes unanswered,
5 someone actually swiped to reject the call saying they
6 didn't want to answer it.

7 Q Continuing on down to 9:57.

8 A At 9:57, again, another incoming missed call from
9 Amber.

10 Q Now, we're moving to August 29th, correct?

11 A Yes, sir.

12 Q At 7:30 a.m. in the morning, an outgoing call is made
13 from this phone and were you able to determine to what
14 number the outgoing call was made?

15 A Yes. The number belonged to the Safe Federal Credit
16 Union and the call lasted for a minute and twenty seconds.

17 Q Continuing on to the morning now of the 29th at 7:43
18 a.m., what do we see?

19 A We see another incoming missed call. This time, it
20 belonged -- the number belongs to the Defendant's father,
21 Tim, Sr. Of course, it has no duration because it was
22 missed.

23 Q 9:36 a.m. on the 29th.

24 A Another missed incoming call. This time, from a
25 person identified in his address book as Christina --

1 Q Ehlke?

2 A Yeah. I can't pronounce the last name. I'm sorry.

3 Q Through your investigation, were you able to
4 determine that she was the children's babysitter?

5 A Yes.

6 Q So that's a call at 9:36 where it's also been
7 followed up with a text at 9:36. Is that correct?

8 A There's a text at 9:38.

9 Q 9:38. Thank you.

10 A 9:38:49 there's a text message incoming. It's also
11 -- the logs tell us whether the individual ultimately read
12 the message. So --

13 Q You denoted by putting in parentheses, read --

14 A Correct.

15 Q -- is that correct?

16 A And, again, from Christina.

17 Q Now, the content of that text message and we are
18 talking, the date on this was the 29th. Is that right?

19 A Correct. At 9:38 a.m.

20 Q The text content that was sent by Christina Ehlke to
21 that phone was what?

22 A It reads, "Just wondering if the kids are coming."

23 Q And what's the next artifact that you found?

24 A At 10:52, an outgoing text message. This time to
25 Christina Ehlke, and the text message read, "Don't worry

1 about this morning. I'll see you later next week."

2 Q So there was an outgoing text on that phone to
3 Christina Ehlke that said, "Don't worry about this
4 morning. I'll see you later next week."

5 A That's correct.

6 Q And that was done on the morning of August 29th?

7 A Yes, sir.

8 Q Moving down to the next artifact, what do we see?

9 A At 10:54 in the morning, an incoming text message, it
10 was read, from Christina and it reads, "So are they coming
11 Monday or when?"

12 Q The next response?

13 A At 10:55, an outgoing to Christina. It reads,
14 "Tuesday." Followed up at 10:57 by an incoming from
15 Christina that reads, "Okay. Well, you all have a good
16 Labor Day."

17 Q All right. Continuing on, then, after those text
18 messages.

19 A At 11:02 in the morning there was a Google search
20 this time for a particular phone number, the number of
21 996-2020, which was determined to belong to Vision Eye
22 Care.

23 Q Continuing on, on the 29th at 12:11?

24 A Another Google search. This time the key words were
25 Herbal Incense Atlanta and Georgia strung together. At

1 12:12 --

2 Q All right. So the date and time it was a web history
3 or was it a Google search, I am sorry.

4 A It was a Google search.

5 Q And what time was it?

6 A At 12:11.

7 Q All right. So when you say a Google search of in
8 this column, you said Herbal Incense, Atlanta, Georgia,
9 and it's a Google search. Is that what the user of that
10 phone actually typed into Google and searched?

11 A That is correct.

12 Q So that was the phrase that the user of the phone
13 chose and the way they spelled it?

14 A Correct.

15 Q And what time was that?

16 A At 12:11 p.m.

17 Q On what day?

18 A On the 29th.

19 Q And then, continuing on to the next one, what do we
20 see?

21 A It's immediately followed up at 12:12 with some web
22 history activity, a website, which is Yellowpages.com and
23 the site -- the title of the site is Herbal Incense Smoke
24 Shops near Atlanta, Georgia, with reviews, YP Mobile,
25 Yellowpages Mobile.

1 Q So was that a search or is that web history?

2 A That's web history.

3 Q So would you explain to the jury, when we go from a
4 search to a web history, what that means?

5 A It means -- of course, obviously, when you search
6 something on Google, there's a table of results and when
7 you click on something, it's going to, potentially, take
8 you to that website. So it's showing the initial Google
9 search and the fact that someone clicked on something
10 after that, which took them to this Yellowpages.com
11 website.

12 Q And the next entry is at what time?

13 A At 12:14 p.m. and it's from the call logs showing an
14 outgoing call. The number that was listed there was
15 ultimately identified as a number belonging to the Zam Zam
16 Incense Shop located at 109 Peachtree Street, Atlanta,
17 Georgia. The call lasted for 13 seconds.

18 Q So we're now down on the 29th at 12:14 in the
19 afternoon, an outgoing call to a number, which you
20 verified that belonged to a business called Zam Zam
21 Incense Shop located in Atlanta, Georgia?

22 A That's correct.

23 Q The final entry on this page.

24 A It's at 1:17 in the afternoon. It's a Google search
25 for the key words, Herbal Incense Illegal in Alabama.

1 Q Were you able to determine whether spice was legal or
2 illegal in the State of Georgia in September of 2014?

3 A Yes, I was.

4 Q And what did you determine?

5 A It was criminalized in Alabama in 2011.

6 Q How about in Georgia and Mississippi?

7 A Mississippi, I did not research. In Georgia, it was
8 criminalized in 2010.

9 Q Moving on to the third page, Investigator. We're
10 still on August 29th. The top entry is at what time?

11 A At 1:19 in the afternoon.

12 Q And it's a web history?

13 A Correct. It's showing activity on a website, WCTV.TV
14 website. The page title is, "Georgia issues alert over
15 herbal incense."

16 Q Moving down to the next search item at 1:51.

17 A It's a Google search. The key words entered here is
18 Herbal Incense Alabama.

19 Q The next web history at 1:51, what is that?

20 A It's a web address Adpost.com and the paper title is,
21 "Supernova herbal incense and others available for sale
22 from Alabama."

23 Q The next web history at 1:52, on the 29th?

24 A Again, from a website, The Head Shop Finder. The
25 page reads, "Alabama head shops and smoke shops. Bong,

1 kratom, glass pipes, pipe shops, vaporizers in Alabama."

2 Q The next web search at 1:52, what is that?

3 A Again, the same website, The Head Shop Finder, for a
4 Zero Gravity Smoke Shop in Decatur, Alabama.

5 Q Moving on to the call logs at 1:52 p.m. on the 29th,
6 what do we see there?

7 A We see an outgoing call to a number that was
8 identified as belonging to the Zero Gravity Smoke Shop
9 with a zero duration.

10 Q Where was the Zero Gravity Smoke Shop located?

11 A In Decatur, Alabama.

12 Q Moving on to the next at 2:17 p.m. the call log
13 entry, what do we see?

14 A It's a missed -- an incoming call that was missed
15 from Roberta Thornsberry followed up by two more incoming
16 calls from the same number, Roberta Thornsberry. One
17 showing a duration of six seconds, and the other two
18 seconds. And then at 2:22, another incoming call that was
19 ultimately rejected followed up by five more calls through
20 2:38 p.m. that were all rejected, incoming from Roberta.

21 Q As we continue on down to the bottom of the page
22 after those rejected calls, what do we find?

23 A Web activity on The Head Shop Finder. This time it's
24 a page with the title, "Illusion Smoke Shop in Birmingham,
25 Alabama." And then --

1 Q The next entry?

2 A Immediately followed by a page from the same website
3 that reads, "Cloud Nine Southside Tattoo and Piercing
4 Smoke Shop in Birmingham, Alabama."

5 Q And then the two last calls on the third page.

6 A The first one is a missed incoming call from Roberta
7 at 4:13, and then at 4:30 p.m., an outgoing call to
8 Roberta that lasts 31 seconds.

9 Q Moving on to the next page.

10 A On the 29th at 4:41 p.m., there was a Google search
11 for the key words, herbal incense Mississippi illegal,
12 followed by some web history at the same time. The
13 website was Blog. -- .com with the title, "Mississippi law
14 makers snuff out spice." That's followed up by another
15 Google search at 4:44 for the key word, C-A-M-P-U-N-G.
16 After that, it goes directly into some web history. The
17 website is ReserveAmerica.com for campgrounds and camping
18 reservations. And that rolls into two missed incoming
19 calls at 5:00 and 5:02 p.m. on the 29th from Roberta.

20 Q Roberta Thornsberry, we've seen a lot of calls from
21 her. Were you able to determine whether that was his
22 grandmother or not through your investigation?

23 A I was not.

24 Q As we continue on, there was two missed incoming
25 calls there on the 29th at 5:00 o'clock. As we continue

1 on now, we see a text message. Is that correct?

2 A Yes. At 5:04 p.m., there's an incoming text message
3 that's read from Roberta. The content was, "Tim, I want
4 you to come in. I mean, I'm not sick, contagious to the
5 kids. So I just -- I need to see the babies. I need to
6 see you come in."

7 Q And that was from Roberta Thornsberry?

8 A Yes.

9 Q As we continue on down the afternoon/evening of the
10 29th after that text, what do we see?

11 A On the 29th at 5:04 p.m., there's a missed incoming
12 phone call from the Defendant's father. That's followed
13 up at 5:09 of two missed incoming calls at 5:09 and 5:22
14 from Roberta. From there, there's an incoming read text
15 message at 5:24 p.m. It reads, "Hello. Where are you,"
16 and that's from Roberta, followed up by an incoming missed
17 call from Roberta at 5:24 p.m. Then, again, at 5:25 p.m.,
18 an incoming read text message from Roberta that reads,
19 "Are you getting my messages? Come on. I know you can
20 text, or are you in a meeting?" That's followed up at
21 5:28 p.m., another missed incoming call from Roberta. And
22 then we have two rejected incoming calls at 6:00 and 6:12
23 p.m. from Roberta. At that point on the 29th at 6:34,
24 there's an incoming -- actually, there's two incoming
25 rejected calls back-to-back from a number that was

1 identified as coming from Market Traders Institute.

2 Q Were you able to determine what Market Traders
3 Institute is?

4 A It's a website that facilitates traders and they
5 offer a platform for actual trading, educational tools,
6 research tools to facilitate trading in stocks.

7 Q You're saying a rejected call. That's different from
8 a missed call how?

9 A It's different as in the user, whoever had possession
10 of the phone, chose to swipe it to silence it and reject
11 it.

12 Q Moving on to the next page. We're now -- we're still
13 on August 29th at 6:40 p.m.

14 A At 6:40, there's an outgoing text message to Roberta
15 that reads, "Sorry. Been tied up today." That's followed
16 up by another outgoing at 6:41, again to Roberta, that
17 reads, "Not going to be able to make it today." That's
18 followed up by an incoming text from Roberta at 6:48 p.m.
19 that reads, "Call me, please. What's going on,
20 sweetheart? Call me."

21 Q Continue on down.

22 A Then we have two incoming phone calls at 7:02 and
23 7:03, both of them from Roberta, and they're rejected
24 calls. At 7:06, there's an incoming read text message
25 from Roberta that reads, "Hey, sweetheart. When you get a

1 chance, give me a call. I love you and your phone seems
2 to be messed up. Maybe you should get an iPhone." That's
3 followed up at 7:27 with another read incoming from
4 Roberta that reads, "You need to let me know if you're
5 coming in this week. I've got all this meat. What do I
6 do with it?" That leads into at 7:28 p.m. a rejected call
7 from the Defendant's father. At 8:04 p.m. there's an
8 outgoing call to the Market Traders Institute. It only
9 lasts one second. Following up on that at 9:10 p.m., in
10 the call log there's a rejected call from Roberta. That
11 leads into 9:39, a text message incoming from Roberta that
12 reads, "Where are you?" Another at 9:40 from Roberta that
13 reads, "Love you all. Got lots of clothes for the kids."
14 Another incoming at 10:01 from Roberta that reads, "Do you
15 want to meet up on Sunday, Tim?" At -- that was on the
16 29th at 10:01 p.m. The next is the next day at 8:30 -- on
17 8/30, rather, at 9:39 a.m. It's an incoming read text
18 message from Roberta that reads, "Where are you? What are
19 you doing?" Another at 11:57 a.m. from Roberta that
20 reads, "Call me right now." And then another at 11:58
21 from Roberta that reads, "Why aren't you taking my calls,
22 question mark. By the way, Odell, a lot better." At
23 11:58 a.m., another incoming text message from Roberta
24 that reads, "When do you want to meet up with me? I have
25 all these clothes and things for the children." At 5:13

1 p.m., another incoming from Roberta that reads, "Why are
2 you not taking my calls, question mark. By the way,
3 Odell, a lot better."

4 Q Now, are you picking and choosing what we're showing
5 here or is this everything? Are these all the text
6 messages during the time period?

7 A These are all the text messages during that time
8 period.

9 Q Same with the web searches and web history?

10 A Correct.

11 Q Same with the Google searches?

12 A Correct.

13 Q And the same with the call logs showing incoming and
14 outgoing and missed and rejected calls?

15 A That is correct.

16 Q Moving onto the next page.

17 A The next page starts on August 31st of 2014.

18 Incoming read test message from Roberta that reads, "When
19 do you want to meet up with me? I have all these clothes
20 and things for the children." At 5:13:06, incoming from
21 Roberta. "Where are you? What are you doing?" At 5:13,
22 an incoming from Roberta that reads, "Call me right now."
23 From there, at 7:58 p.m. on September 1st is a Youtube
24 search for Bob Carlisle, Butterfly Kisses. On the 1st at
25 10:00 a.m., the call log reflects an outgoing call to

1 Christina Ehlke that has no duration. At 10:08 a.m.,
2 there's a Google search for camping, South Carolina. That
3 leads into some web activity from 10:08 through 10:10 a.m.
4 from the South Carolina Parks.com website and several
5 sections of that site were accessed. The first being the
6 tent and RV camping in South Carolina state parks,
7 campground cooking in South Carolina state parks, boating
8 and camping at state parks and trailside camping in South
9 Carolina state parks.

10 Q Moving on to 10:13 on the 1st.

11 A On the 1st at 10:13 there's a Google search with the
12 key words of South Carolina dumps. That rolls into some
13 web activity at the same time on the LexCo South
14 Carolina.gov website.

15 Q And that's the government website for Lexington
16 County, correct?

17 A That's correct. For Lexington County. The areas of
18 that website that were accessed were the collection and
19 recycling centers, the index, landfill, items accepted,
20 the home page and animal services.

21 Q Moving on, after that there were some Youtube search
22 items. Is that correct?

23 A Correct. At 11:24 a.m. there's a Youtube search for
24 Styx, Long Arm of the Law. Immediately followed up at
25 11:31 was another Youtube search for Styx, Long Arm of the

1 Law, lyrics.

2 Q Moving on to the next page.

3 A At 11:31 on the 1st, another Youtube search for
4 Comfortably Numb, Pink Floyd lyrics. At 4:54 p.m.,
5 there's an incoming text message from Christina. This one
6 we have a notation that it was read late.

7 Q What does that mean?

8 A So in this instance, you can see that the text
9 message came in, but we can also see a time stamp of when
10 the text message was actually -- or the app that contains
11 the text message was opened to look at it. So in this
12 instance, we noted that it came in at 4:54 p.m. on the
13 1st, but it wasn't read or accessed until 6:14 p.m.

14 Q And that was from which individual?

15 A Christina.

16 Q The children's babysitter?

17 A That is correct.

18 Q And what were the contents of that?

19 A It reads --

20 Q What were the contents of that text?

21 A It reads, "Just a reminder, please bring some diapers
22 tomorrow."

23 Q Moving on to the next text, what do we see?

24 A It's 6:19 p.m. There's an outgoing text to Christina
25 with -- it reads, "Busy," with a question mark. And then

1 at 6:19:36, there's an incoming from Christina that reads,
2 "Okay." At 6:19:55, there's an outgoing call to Christina
3 that lasts 17 minutes and 34 seconds, and that's followed
4 up at 7:00 p.m. with an incoming phone call from Amber
5 that lasts seven seconds. That rolls into September 2nd
6 at 10:35 in the morning with a Youtube search. The stream
7 that was entered in the Youtube search was dog search for
8 body in landfill, followed up at 9:38 a.m. with another
9 Youtube search of cleaning pool with muriatic acid. At
10 10:41 a Youtube search for muriatic acid burn, followed by
11 10:43, a Google search for camping Columbia, South
12 Carolina. The result of that Google search at 10:44 shows
13 web activity. The website was River Bottom Farms.com.
14 The title page was, "Yogi Bears Park camp resort in
15 Columbia, South Carolina." And then there's web activity
16 at 10:44, Goodsand camping at Columbia, South Carolina,
17 campgrounds. At 10:46, there's a Google search. The key
18 words that were entered were, what does no extradition
19 laws mean.

20 Q What does no extradition laws mean?

21 A Correct. At 10:57, there was web history. The
22 website was, findlaw.com. The title page was, "Five
23 countries with no U.S. extradition treaty, findlaw." I
24 know what that reads from my reference--

25 Q What does it say?

1 A It says there was web history at 10:58 in the NPR.org
2 website and the title page read, "If you face a U.S. legal
3 problem, where should you run."

4 Q Facing legal problems, where should you run?

5 A Correct.

6 Q Continue on.

7 A At 10:59 a.m., there was an incoming text message
8 that was read from Christina Ehlke, and it reads, "Can you
9 send me a text saying I have permission to enter the house
10 and clean and keep what I want just so I don't get in
11 trouble." At 11:03 a.m. on the 2nd, there was an outgoing
12 call -- I'm sorry, outgoing text message to Christina that
13 reads, "Sure. Go ahead and clean up." And then there's
14 another outgoing at 11:04 to Christina, again, that reads,
15 "Everything is okay," question mark.

16 Q Continuing on -- we're still on September 2nd, I
17 believe. Is that correct?

18 A Yes.

19 Q Google search--

20 A -- at 11:04 a.m. on the 2nd, a Google search for
21 camping, Route 77, exit 88, South Carolina. That's
22 followed up at the same time. A few seconds later,
23 there's an incoming text message that was ultimately read
24 from Christina Ehlke that just reads, "K." The letter K.
25 At 11:07, another incoming read message from Christina

1 that reads, "I haven't done anything, bc or because I want
2 to make sure you don't want any of your stuff," or
3 S-T-U-F-E. At 11:10 a.m., there's an incoming read text
4 message from Christina that reads, "I would call -- I will
5 call His House Charity to pick up the stuff I didn't
6 want." At that point at 11:10, there's an outgoing text
7 to Christina that reads, "Okay." At 11:10 a.m., there's
8 an incoming from Christina that reads, "Is that okay,
9 THT." At 11:11, there's outgoing text to Christina that
10 reads, "Yeah. They're yours." Then at 11:11 an outgoing
11 -- or incoming read from Christina saying, "Thank you and
12 take care." An outgoing at 11:12 to Christina that reads,
13 "You, too. Same to you." At 11:46, an incoming text
14 message that was ultimately read late. It was actually
15 read at 1:19 p.m. on the 2nd and it's an incoming from Jim
16 McConnell.

17 Q Were you able to determine who Jim McConnell was?

18 A It was the Defendant's supervisor.

19 Q At Intel?

20 A Intel.

21 Q And what was the substance of that text?

22 A It reads, "Hey. Are you coming into work today?"

23 question mark. "Did I miss an email," with another

24 question mark. At 12:58 on the 2nd, there's web history

25 indicating activity on the KOA.com website for Charlotte,

1 Fort Mill KOA campgrounds in South Carolina. Then there
2 was an outgoing call at 1:21 in the afternoon on the 2nd
3 to a number that we identified as belonging to Fidelity
4 Investments that lasted 43 seconds. At 1:38 p.m. on the
5 2nd there was a missed incoming call from a number that we
6 identified as belonging to Saxe Gotha Elementary School,
7 and that's immediately followed up by a second missed call
8 from the same number, Saxe Gotha. At 1:53 p.m., there was
9 an incoming text message from Jim McConnell that reads,
10 "There," question mark. At 5:55 p.m. on the 2nd, incoming
11 missed call, also belonging to Saxe Gotha Elementary
12 School. At 5:59 p.m., a missed call from Amber with a
13 zero second duration. At 6:04, another incoming call from
14 Amber. This time with a duration of four minutes and 35
15 seconds. And then at 10:06 p.m., there's an outgoing call
16 to Christina Ehlke that lasts 12 seconds.

17 Q On what date and time was this?

18 A September 2nd of 2014 at 10:06 in the evening.

19 Q And there's a few more pages to go. The first entry
20 on the next to last page.

21 A Then at 10:06, the call log indicates an incoming
22 call from Christina that lasts 56 seconds. At 10:08 p.m.,
23 an incoming call from Christina that lasts 14 minutes and
24 45 seconds. At 11:52 p.m. there was a database that
25 registered a location for the phone. The app that

1 reported that was AccuWeather.com. It was a widget
2 weather app where you -- it reports your local weather for
3 your date and time. This indicated that at that date and
4 time it was reporting a location showing the latitude and
5 longitude. That resolves back to an area around the City
6 of Gray, Georgia. At 8:10 a.m. on the 3rd, there was an
7 incoming text message from Jim McConnell. "Hey. I've
8 been trying to get in touch with you. Please give me a
9 call when you get this." At 10:07 a.m., the call logs
10 indicate an incoming missed call from Kevin McKinney.
11 Actually -- and then that's followed up by an incoming
12 rejected call just a minute later from Kevin McKinney as
13 well. At 10:10, there was an incoming text message. It
14 was read late. It was read actually the next day. It
15 comes in on the 3rd, it's read on the 4th at 3:39 a.m. It
16 reads, "Hey, Tim. Call me ASAP." On the 3rd at 12:11
17 p.m., there's another incoming text message, read late,
18 from Jim McConnell. It was read on the 4th at 3:39 a.m.
19 "Hey. Are you there," question mark. At 9:03 -- on 9/3
20 at 1:16 p.m., an incoming text message that went through a
21 spam folder from a Terry Jackson. It reads, "Are you
22 through with the roach spray and the bottle. Drop by
23 store." At 4:41 p.m., an incoming read late text message
24 that was read on the 4th at 9:27. It reads, "Hey. Call
25 me when you can," from Travis Jones. At 4:42, again

1 another text from Travis Jones that was read late and it
2 reads, "It's an emergency." At 5:15 p.m., an incoming
3 text message from Roberta and it reads, "Timmy, please,
4 baby, let Grandma know where you're at. Please. Please.
5 Call me, please." At 5:16 p.m., an incoming text message
6 from Roberta that reads, "I can do your, sweetheart. So
7 scared. Please, call me -- call me." At 5:25 p.m., an
8 incoming text message from a Brian Day. That reads, "Are
9 you around? No OOP message. Might want to touch base
10 with JC JIM if you haven't." At 5:33 p.m., an incoming
11 text message from Roberta that reads, "Tim, call me,
12 please. I'm begging you. Please, call me." At 6:51 p.m.,
13 an incoming text from Apollo Jones that reads, "Timmy,
14 man, what's going on with you," question mark,
15 exclamation. "Come on, bro. Why are you doing this." At
16 7:02 p.m., an incoming text from Jim McConnell. "Please,
17 give me a call."

18 Q On the last page.

19 A September 3rd at 9:00 p.m., an incoming text message
20 from Martha Weis, (phonetic). It reads, "Hey, Tim.
21 Haven't heard from you lately," question mark, "How is
22 everything going," question mark, "Do the kids start
23 school yet," question mark, "I love you, honey. We're
24 very proud of you. Please call. I haven't talked with
25 you in a while. We need to catch up. I love you mucho,

1 mucho. Kiss all the babies for me."

2 Q Continue on.

3 A At 9:32 p.m., an incoming text from Aunt Rosa Linda.
4 It reads, "Hi, sweetie. Is everything going all right?
5 Aunt Rosa Linda." At 3:37 in the morning, there was a
6 powering event.

7 Q What does that mean?

8 A It just means that the phone had been off for a
9 period of time and we can detect that the power's back up
10 at this point. That was significant because of the read
11 late messages. The times that those messages were read
12 were around that powering event. So the device had been
13 off, it comes back on, all those notifications of those
14 text messages would have appeared at that point.

15 Q On what day was the powering event?

16 A We're on the 4th at 3:37 in the morning.

17 Q Continue on.

18 A At 3:41 a.m., there's an outgoing call. That number
19 was identified as the voice messaging service for that
20 phone. That was identified in the SIM card on the phone
21 and it's showing a seven second duration call immediately
22 followed up at 3:43 in the morning, the same number, 33
23 seconds.

24 Q And then after that, there was some web history?

25 A Correct. At 3:44, there's web history at the Nomad

1 Capitalist.com website. The title page that it landed on
2 was, "The best non-extradition countries to be invisible."
3 And then, I guess, there's a notation that's not
4 available, possibly meaning that he hit a dead link. He
5 was trying to go to that link and there wasn't anything
6 there.

7 Q There's a Google search next. What is the date and
8 time of that Google search?

9 A At 3:47 in the morning, there was a Google search
10 with the key words, missing children Tim Jones.

11 Q And then the last one.

12 A At 8:34 a.m. on the 4th, there's an incoming text
13 from Roberta that reads, "Tim, if your phone is working,
14 please call Grandma. I'm going out of my mind. I love
15 you." That's followed up at 9:30 with an incoming text
16 that reads, "Mr. Jones, this is Beth Houck, principal at
17 Saxe Gotha. I am checking to make sure the students are
18 okay. I've noted they have been absent since Thursday.

19 At 12:58 p.m., there's an incoming text that reads, "Your
20 family is looking for you, but if you need to lay low or
21 get out of Dodge, you call me, bro. I got you. Love you,
22 brother." At 12:58 p.m., there's another incoming text
23 that reads, "Tim, what's up, dog. It's Rudy, your FA, are
24 you okay. I don't know what's going on, but you need
25 anything, money, a place to stay, anything, let me know,

1 bro."

2 Q So as far as the last activity you saw on this phone
3 as far as user activity, what is the date and time of the
4 last user activity you saw?

5 A It would be this incoming read text message at 12:58
6 p.m. There was some additional indications that the phone
7 was accessed as far as being powered on through the
8 evening of the 5th, but there wasn't anything that we
9 could identify as user actions as far as call logs, text
10 messages, photos taken. That kind of thing.

11 Q And that was at 9:27 p.m. on what day?

12 A On September 4th. You're talking about the last time
13 that we --

14 Q -- you detected user activity.

15 A September 5th and I'll have to look at the exact
16 time, but it was late in the evening.

17 MR. GRAHAM: Thank you, Investigator Phipps. You can
18 have a seat in the witness stand.

19 (Whereupon, the witness returns to the witness
20 stand.)

21 Q Mr. Phipps, are you aware of whether the battery was
22 in the phone or not in the phone that was found by Stacy
23 Jones with the Mississippi Bureau of Investigation on the
24 search warrant back in Mississippi?

25 A The investigative note said that it was not in the

1 phone.

2 MR. GRAHAM: Thank you, Investigator Phipps. Please,
3 answer any questions the Defense has.

4 THE COURT: We need a break. So step in the jury
5 room and we'll go back out here. Don't discuss the case.

6 (Whereupon, the jury was excused from open court for
7 a break.)

8 (Whereupon, a short break was taken.)

9 THE COURT: All right. So you're ready, Mr. Young,
10 if I send the jury?

11 MR. YOUNG: Yes, sir. I had some phone numbers in
12 here--

13 MR. GRAHAM: One of the things Mr. Young and I
14 discussed was on the State's 77 which is in evidence,
15 Agent Phipps was looking at, there was one entry that was
16 crushed. I got a clean copy, you can actually read what
17 the web history for that one is.

18 THE COURT: Everybody okay with substituting the
19 easier to read version?

20 MR. YOUNG: Yes, sir.

21 THE COURT: Substitute one for the other.

22 MR. GRAHAM: Put a new number on that one and it is
23 in evidence.

24 (Whereupon, State's Exhibit 77 was admitted into
25 evidence.)

1 THE COURT: Bring the jury in.

2 (Whereupon, the jury came into open court at
3 approximately 4:50 p.m.)

4 THE COURT: All right. Mr. Young, your witness.

5 CROSS-EXAMINATION

6 By Mr. Young:

7 Q Agent Phipps, you have in front of you a copy of an
8 extraction report, right?

9 A Yes, sir.

10 Q And that's a copy of the one that I'm using right
11 now, right?

12 A It is.

13 Q And that extraction report was generated by the
14 Solicitor's Office. They went through and they picked out
15 what records they wanted to reflect and report, and then
16 printed those out?

17 A That is correct.

18 Q And these are not all the records that are on the
19 phone, right?

20 A That's correct.

21 Q All of the records on the phone, I think you told me,
22 was somewhere around 24,750 --

23 A Yes, sir.

24 Q -- total data points, is that what we're calling
25 them?

1 A Yes.

2 Q Artifacts --

3 A Yes, sir.

4 Q -- is that right? And this report -- and I'm not
5 going to go through the whole thing, but this report
6 includes about 1,240 of them in total, right?

7 A It does.

8 Q Okay. All right. I just want to go through -- and
9 this includes -- in the beginning page of this extraction,
10 it includes text messages, phone calls and web searches.
11 Is that right?

12 A It does.

13 Q Anything else?

14 A I haven't looked through the entirety of it to see if
15 there are any other categories included.

16 Q Okay.

17 A It appears to be just text, web history, searched
18 items and notes. Instant messaging is included. I
19 believe that's all.

20 Q All right. I'm going to start with page three down
21 at the bottom. These last three messages. Do you see
22 where it says, "From Candace"? Do you know who Candace
23 is?

24 A I do not.

25 Q Okay. If I told you she was one of the babysitters

1 for the Jones children -- I'm telling you. She's one of
2 the babysitters for --

3 A Okay.

4 Q -- the Jones children. Okay? She says, "What do you
5 want Merah to write", right?

6 A That is correct.

7 Q And there's a response to Candace that's from Tim,
8 right?

9 A It's an outgoing text to Candace from Tim that reads,
10 "I will use my hands to make good and not trouble."

11 Q If we go -- sorry. The date on that message was May
12 the 20th, 2014. Is that right?

13 A That is correct.

14 Q And then on May the 21st, 2014 were there more
15 messages from Candace about what did Merah have to write?

16 A Yes, there was.

17 Q I'm sorry. I should -- and then I'm skipping down to
18 line 39. It says, "In her mouth, shall be found the law
19 of kindness," right?

20 A That's correct.

21 Q That's what Tim says that she had to write?

22 A Yes, sir.

23 Q Now, on 5/25/14, do you see where at 5:20:22 p.m. Tim
24 used a search, right? Search items for Beautiful Mind
25 Trailer?

1 A That is correct.

2 Q And then schizophrenia patient?

3 A That is correct.

4 Q And then schizophrenia patient talking?

5 A Yes, sir.

6 Q And then schizophrenia person seeing people?

7 A That is correct.

8 Q And then he sends Amber McCalley a message, right?

9 "Something's bothering me about Merah. She's saying some
10 creepy stuff."

11 A Correct.

12 Q And that's at 5:57 p.m., right?

13 A That is correct.

14 Q And then he says, "Call me late tonight. Something
15 you really need to hear," and that's at 7:00 p.m. to
16 Amber, right?

17 A Yes.

18 Q I'm skipping forward to page 15 at 6:28. Do you see
19 line 277? There's an outgoing text message.

20 A I do.

21 Q And it's to Amber?

22 A It is.

23 Q And it says, "This is supposed to be our 10th
24 anniversary. I still love you. I'm crying. Anyhow, good
25 night."

1 A Yes.

2 Q And then on the 20 -- and then later that night, on
3 the same night at 11:30 p.m., Tim starts Googling or
4 searching stuff on the internet?

5 A Correct.

6 Q And he's searching, how can young women get caught,
7 because of older women?

8 A Yes.

9 Q Warning signs that my ex-wife is being prostituted?

10 A Yes.

11 Q Eleven signs your woman is fixing to whore from a
12 site called Christwire?

13 A Yes.

14 Q And then he starts searching on Backpage, which
15 Backpage is a site that prostitutes used to use to
16 advertise for services. Is that right?

17 A It was prevalent with escort services. Yes.

18 Q Okay. And he starts searching for a phone number in
19 there, right?

20 A He does.

21 Q And I've blacked it out on here, but you have it up,
22 right?

23 A Yes, I do.

24 Q And he's using a number that was Amber's number, it's
25 one digit off the first couple times he does it, and then

1 he starts using the correct number and continues doing it,
2 right?

3 A Yes, he does.

4 Q I'm skipping to page 16 on the 29th at 8:33. He's
5 still looking for Amber Jones on Backpage. Is that right?

6 A Yes.

7 Q I'm skipping to page 21. I believe the date is
8 7/10/2014. I'm starting at message 432. Are you with me?

9 A On which page?

10 Q Page 21.

11 A Which line?

12 Q 432.

13 A All right.

14 Q There's a message from Amber, right?

15 A Yes. Incoming from Amber.

16 Q And this is at 7:42 p.m., right?

17 A It is.

18 Q On July the 10th?

19 A Yes.

20 Q "And if they don't want to see me, that's fine, but
21 I'm not going to buy them things to only disrespect me as
22 their mother in the end." Right?

23 A Correct.

24 Q And then, she sent him another message. "Don't ask
25 for your Korean stuff or anything else because I don't owe

1 you anything, Tim Jones. You've taken everything from me.
2 So you need not ask me for another damn thing."

3 A Correct.

4 Q And then Tim responds at 7:44 p.m., right?

5 A Yes.

6 Q He says, "They want you to listen to them as they've
7 been recommended by their therapist to express themselves
8 to their mother and you won't let them speak. Anyway,
9 have a nice night." Right?

10 A Yes, sir.

11 Q And then, he sends the XOXO?

12 A He does.

13 Q And then he says, "You can keep the Korean stuff if
14 you want. Peace out. Bye."

15 A Yes.

16 Q And then she responds at 7:46 p.m, is that right?

17 A Yes, she does.

18 Q And she says, "Kiss my ass with that XOXO shit. I'm
19 not the one who has done -- I'm not the only one who has
20 done wrong and you know it. I've answered their
21 questions. I'm not reliving it every day. It's not
22 happening." Right?

23 A Yes, sir.

24 Q And then, she responds, "I'll throw it away.".

25 A She does.

1 Q And then he responds to her at 7:48 p.m. "Well, sorry
2 to burst your bubble, pumpkin, but they want to ask you
3 about what happened. They want closure." Right?

4 A Yes.

5 Q And then Amber response to that, "I gave it to them
6 and teached, (phonetic), them how to pray. God's the only
7 one that can heal their hearts."

8 A Correct.

9 Q And then, finally, Tim says, "You didn't give it to
10 them or they would not be seeking it from you." Right?

11 A Yes.

12 Q Looking at the bottom of page 22, the last three
13 lines, 480, 481 and 482. These are two incoming messages
14 from Amber, right?

15 A They are.

16 Q And these are Youtube URL links?

17 A Yes.

18 Q And you and I have talked about this, but you don't
19 know what those go to, right?

20 A I do not.

21 Q Like if they go to a song or a movie or a movie clip,
22 but you could just click on them and it would take you to
23 whatever's there, right?

24 A Yes. Whatever's there now, yes.

25 Q Okay. If I told you that it was a John Legend song,

1 All Of Me, you wouldn't have any reason to doubt that?

2 A I do not.

3 Q And if I told you the second one was The Dance by
4 Garth Brooks, you wouldn't have any reason to doubt that?

5 A No, sir.

6 Q Okay. And then Tim says, "It looks like a job for a
7 good plastic surgeon, your job security XD," right?

8 A Yes.

9 Q I'm skipping to page 23. On July the 20th, 2014, Tim
10 does a Google search for betrayed by my young children,
11 right?

12 A He does.

13 Q And there's several searches around there that are
14 all, basically, for the same thing, right?

15 A Yes.

16 Q And then on 7 -- July 23rd at 7:51 p.m., Amber sends
17 another couple of Youtube URLs, right?

18 A She does.

19 Q And then she sends a message after that says, "That
20 song is all I've been wanting to say to you, but you're so
21 caught up in what I've done wrong that you don't want to
22 hear it. You did wrong to me as well, but I don't need to
23 sit and bring it and rub it in your face all the damn time
24 because it gets old as hell." Right?

25 A Yes.

1 Q I'm skipping ahead to page 35 and this is August the
2 9th of 2014 around line 743. Do you see that?

3 A I do.

4 Q And this is a text message from Amber to Tim, right?

5 A It is.

6 Q And it says, "Thought it would be neat for the kids
7 to see," and we don't know if she got -- sent a picture
8 with it or what that came from, right?

9 A That's correct.

10 Q But we do know that Tim said to Amber, "Hey. You got
11 any of those college textbooks I had in the large blue tub
12 in the shed where all my father's tools were stolen? I
13 could use some of those for the children to do science and
14 physics experiments." Right?

15 A Yes, sir.

16 Q And then, he sends one more message. "By the way, I
17 will show the children your grandmother's picture in the
18 morning." Right?

19 A Uh-huh (Affirmative response).

20 Q I'm skipping ahead to page 37. On August the 16th of
21 2014 at 9:40 p.m., Tim is searching -- this is a Google
22 search for child killed by an electrical outlet?

23 A On page 37?

24 Q Page 37, numbers --

25 A Okay. Yeah.

1 Q -- 686.

2 A Yes, sir.

3 Q And that's just a Google search or just put it in a
4 search engine?

5 A From this timeline, I can't determine that. There's
6 more data in another part to determine whether it's a
7 Google search or a Youtube search. I believe I may have a
8 note on that, but let me refer to my notes.

9 Q Okay.

10 MR. GRAHAM: Mr. Young, what page are you on?

11 MR. YOUNG: Thirty-seven.

12 A My notes indicate that was a Youtube search.

13 Q Okay. I'm moving ahead to page 39 on 8/17/2014 at
14 8:03 p.m., line 791. Are you with me?

15 A Yes, sir.

16 Q And the question is, "Can I use, HAS funds for
17 Nicorette," and then, under it is, "Can I use HSA funds
18 for Nicorette." A Google search, right?

19 A Yes.

20 Q And you know what HSA funds are?

21 A Not exactly. No, sir.

22 Q Health Savings Account funds?

23 A I've never -- I've heard of it, but I've never had an
24 account. So I'm --

25 Q Okay. Do you know --

1 A -- not familiar.

2 Q Do you know what Nicorette is?

3 A I know what Nicorette is. Yes.

4 Q Nicorette's a stop smoking chewing gum?

5 A Yes, sir.

6 Q I'm going to August the 18th of 2014 at 9:58 a.m.

7 There's a message online, 8:15, from Christina Ehlke. Do
8 you see that?

9 A Yes, sir.

10 Q And it says, was Gabe--

11 A -- yes.

12 Q All right. And Christina Ehlke's already testified
13 she told the jury that -- on the 18th, that's when the
14 kids started school and Gabe walked out of the house,
15 right? Is that -- were you here for that testimony?

16 A No. I have not.

17 Q Okay. Just a couple more, Agent Phipps. I'm going
18 to page 44. This is on August the 26th at 12:54 p.m. Do
19 you see that? Number 921.

20 A Yes, sir.

21 Q Is this -- this is a purchase from Kindle, right?

22 A 12:54 p.m. Yes. It's an entry from the Kindle
23 store.

24 Q Brush me, floss me, be my friend. Welcome to
25 Toothville, learning begins here. A kid's book about

1 caring for their teeth from the Kindle store, right?

2 A It's a web history for the Kindle store. I can't
3 tell you whether the item was purchased or not, but, yes.

4 Q Do you know whether or not a Kindle was recovered in
5 the items that were recovered from Mr. Jones' car?

6 A I do not.

7 Q All right. If I told you that there was a Kindle
8 recovered from Mr. Jones' car, would you have any reason
9 to doubt that?

10 A No, I don't.

11 Q On page 45 on August the 26th of 2014 on lines 948
12 and, again, at 950, there was search items, right?

13 A There are.

14 Q And the question being searched is, "Is Intel
15 planning further layoffs in 2015"?

16 A Yes, sir.

17 Q Last two. Skip ahead to page 58 and there are two
18 notes on this page. Do you see those, do you have those
19 in front of you?

20 A Yes, I see them.

21 Q Okay. And the first note on that page, which was
22 created on August the 17th of 2014 at 9:00 -- it's at 9:22
23 a.m. and that's a school supply list, right?

24 A It is.

25 Q And it goes through what you sort of would expect to

1 have to put a number of children into school, right?

2 A Yes, sir.

3 Q And then, at the bottom of the page, created on
4 August the 4th of 2014 at 9:54:50 a.m. is what appears to
5 be a weekly meal list, right?

6 A It does.

7 Q And then, a way to add those to the grocery list. Is
8 that right?

9 A Yes.

10 Q And it's got breakfast, lunch and dinner for each
11 day?

12 A It does. Yes.

13 MR. YOUNG: Thank you, Agent Phipps. That's all the
14 questions I have.

15 MR. GRAHAM: Your Honor, the State would offer this
16 into evidence.

17 THE COURT: Any objection to--

18 MR. YOUNG: -- yes, sir.

19 THE COURT: Okay. Do we need to get it on the record
20 or--

21 MR. GRAHAM: -- I'm sorry, Your Honor.

22 THE COURT: We need to get it on the record or not.
23 We're on the record, but without the jury.

24 MR. GRAHAM: I can finish my questioning, but I do
25 want to offer it into evidence.

1 THE COURT: Okay. Finish your questions quickly.

2 REDIRECT EXAMINATION

3 By Mr. Graham:

4 Q Agent Phipps, going back to page four. You were
5 asked, I believe, about searches on May 25th of 2014 at
6 5:24, 5:28, 5:32 and 5:34 p.m., is that correct?

7 A Yes.

8 Q What were those searches, again?

9 MR. YOUNG: Asked and answered.

10 THE COURT: I'll let him answer it. I really don't
11 think we need to go through the whole thing again.

12 A Give me just a minute to reference where they came
13 from. Those were all Youtube searches, specifically, and
14 the content deals with A Beautiful Mind and schizophrenia.

15 Q All right. Actually, above that, the searched item
16 was for A Beautiful Mind Trailer, right?

17 A Yes, sir.

18 Q And are you familiar with the movie, A Beautiful
19 Mind?

20 A I've heard of it. I've not seen the movie.

21 Q Are you aware that it's about a schizophrenic?

22 A Yes, sir.

23 Q So after there's a search for the Beautiful Mind
24 Trailer, then there's searches on Youtube for video of
25 schizophrenia patient, schizophrenia patient talking,

1 schizophrenia person seeing people, schizophrenia person A
2 Beautiful Mind?

3 A Yes, sir.

4 Q And the last Google -- or the last Youtube search was
5 at 5:34 on May 25th, right?

6 A Yes, sir.

7 Q The next entries in here are outgoing texts to Amber.
8 Isn't that correct?

9 A They are.

10 Q And that is the same afternoon, approximately, 23
11 minutes --

12 MR. YOUNG: Objection. Leading.

13 THE COURT: He's leading. Sustained.

14 Q Item 52, do you see that?

15 A It is. It's an outgoing text message at 5:37 p.m.

16 Q And it's from -- it's to who?

17 A To Amber.

18 Q And the content of the text message is what?

19 A It reads, "Something is bothering me about Merah.
20 She was saying something -- she's saying some creepy
21 stuff."

22 Q "Something is bothering me about Merah --

23 A Merah.

24 Q -- she's saying some creepy stuff." That's what was
25 texted out to Amber?

1 A It was.

2 MR. YOUNG: All of this has been asked and answered.

3 THE COURT: We're going to finish it tomorrow. I
4 promised the jury I'd take care of them and I am. So
5 we're done for the day. Don't talk about the case. See
6 you in the morning early. Don't talk about the case. So
7 see you in the morning.

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

10 THE COURT: I told the jury I would take care of it.
11 I'm sorry, but today was kind of herky-jerky on them. I
12 didn't mean to be that way, but I want to take care of
13 them if I absolutely can. So, we can finish Agent Phipps
14 in the morning, we'll just have to do that. All right?
15 So I apologize, but I wanted them taken care of because
16 we've had enough trouble with delays and waiting. We'll
17 start back in the morning. All right. See you in the
18 morning. You can't talk to anybody about your testimony.

19 THE WITNESS: Yes, sir.

20 (Whereupon, the witness stepped down from the witness
21 stand).

22 MR. GRAHAM: Your Honor, can I get that marked, I
23 guess, at this moment, for ID and offer it into evidence.

24 THE COURT REPORTER: Which one?

25 MR. GRAHAM: The copy the Defense was questioning him

1 out of the extraction that Mr. Young used. That's what I
2 offered into evidence and he objected to it. So it, at
3 least, needs to be marked for ID.

4 THE COURT: Yeah. It'll be marked for ID right now.

5 (Whereupon, State's Exhibit number 199 was marked for
6 identification only.)

7 (Whereupon, the trial will resume the next day at
8 9:00 a.m.)

9 May 22, 2019.

10 THE COURT: What do y'all have?

11 MR. YOUNG: Your Honor, first up, Defense number 79
12 was the -- you will recall, was the jump drive from Stacy
13 Jones, who processed the car.

14 THE COURT: All the pictures.

15 MR. YOUNG: Right. So we have substituted the jump
16 drive with --

17 COURT REPORTER: That big book over there on the end.

18 MR. YOUNG: All the pictures. And myself and Mr.
19 Martin have verified that all the pictures in here are all
20 the pictures that were on here.

21 THE COURT: Any objection to substituting one for the
22 other?

23 MR. HUBBARD: No, sir.

24 THE COURT: Okay, it is done. So that will stand for
25 the jump drive now?

1 MR. YOUNG: Yes, sir.

2 THE COURT: The expandable folder number -- is it 77?

3 MR. YOUNG: 79.

4 COURT REPORTER: 79. And Mr. Young, Boyd, is going
5 to take that back to him. The jump drive will be his now.

6 THE COURT: The jump drive is now substituted out,
7 the packet of pictures which are all the pictures printed
8 out from the jump drive from Ms. Jones, Stacy Jones'
9 examination of the vehicle.

10 MR. YOUNG: Yes, sir.

11 THE COURT: Okay. Fair enough.

12 MR. YOUNG: Your Honor, this is a motion that we
13 anticipate becoming necessary tomorrow when we start
14 calling some of Mr. Jones' family members. I just gave it
15 to the State this morning. I don't expect to argue it at
16 this time, just make sure everybody has their copy.

17 MR. HUBBARD: I haven't filed a response, don't
18 intend to, but I'll put on the record again, I have five
19 victims and they're not here and they never will be.

20 THE COURT: Okay. We'll take that up at the
21 appropriate time. What about the redaction of the call
22 from yesterday, have y'all got that prepared and shown it
23 to the Defense?

24 MR. HUBBARD: We're going to hold that right now,
25 Your Honor.

1 THE COURT: Okay. Fair enough.

2 MR. YOUNG: I have one other issue that I need to let
3 the Court know about, ex parte. It has to do with Mr.
4 Jones and I don't think it should be appropriate to put on
5 the record. If I could talk to Your Honor for a minute.
6 If Your Honor thinks we need to put something on the
7 record, we will.

8 THE COURT: Before we do that, the packet from the
9 extraction done by Phipps, there were two of them. One
10 was introduced by Mr. Graham, the other one was a thicker
11 packet that you went through on cross-examination. The
12 State attempted to introduce the entire packet. And I
13 think that was from the physical extraction, was the
14 secondary one?

15 MR. YOUNG: Yes, sir.

16 THE COURT: The bigger one?

17 MR. YOUNG: Yes, sir.

18 THE COURT: And you objected. Do we need to argue
19 that.

20 MR. YOUNG: Yes, sir.

21 THE COURT: All right. Let's do that right now.

22 MR. YOUNG: Your Honor, there's a number of things
23 contained in that bigger packet which should not be
24 admitted, including stuff that is subject to motion
25 in-limine regarding a lot of research about sexual assault

1 of children and evidence of sexual assault, evidence that
2 children have been sexually assaulted. I know why it's in
3 there, but out of context, to just hand it to the jury and
4 allow them to go through it would be unduly prejudicial
5 under 403. And the State said that they weren't getting
6 into any of that.

7 THE COURT: And the State didn't.

8 MR. YOUNG: And they haven't, but if they give this
9 to the jury and the jury goes through it, they do.

10 THE COURT: Let me hear from Mr. Graham.

11 MR. GRAHAM: I know that I'm going to follow-up with
12 some questioning when I finish on redirect. What that was
13 created for was for Dr. Frierson to show what kind of
14 texting was going on, what kind of web search was going
15 on. I don't mind going through, before the jury sees
16 things like that, that Mr. Young feels are objectionable
17 and blackening them out. So I'm not going to publish -- I
18 mean, this is a multi --

19 THE COURT: Well, as I remember, Mr. Graham, you
20 didn't intend to introduce it initially. You did the
21 other portions.

22 MR. GRAHAM: I'm sorry, Your Honor?

23 THE COURT: You didn't attempt to introduce it during
24 your direct examination, it's when he went back through
25 it.

1 MR. GRAHAM: Correct. It's a different document.
2 The document that I did on direct started on August 26 --
3 28th and went through the time the phone was dead on the
4 5th. This document goes back further on the phone --

5 THE COURT: I understand.

6 MR. GRAHAM: -- to understand what's happening in the
7 weeks beforehand and months beforehand.

8 THE COURT: Because that's a lot of stuff he asked
9 about. It was texts between Amber and Tim back and forth
10 and what they were talking about the kids and issues and
11 things.

12 MR. GRAHAM: Correct, but it shows, obviously, way
13 more than that, too.

14 THE COURT: Well, it's so thick and voluminous, I
15 don't know that we can take it up right now without taking
16 up an entire day and I don't want to do that. If y'all
17 want to go through and agree on what parts of it comes in
18 and is relevant without going into the other portions.
19 Certainly, Dr. Frierson has considered it -- or what
20 portions he wanted to peruse.

21 MR. GRAHAM: Your Honor, it is the State's opinion
22 that it's relevant to show what's going on in his life.
23 Just like that was then, this goes to show what was going
24 on in the months and weeks before, so it is relevant. I
25 do agree -- I have no problem going through with Mr. Young

1 or somebody to go through and see what they object to and
2 if we can agree upon what they want redacted out.

3 THE COURT: Okay.

4 MR. GRAHAM: But I don't plan on publishing that. I
5 do have questions that I want to follow-up on, but I
6 don't -- none of the questions are going to deal with any
7 kind of sexual assault or --

8 THE COURT: Y'all, clearly, stayed away from that.

9 MR. GRAHAM: Yeah, I have no intent to go into any of
10 that.

11 THE COURT: Can we see about what you want to redact
12 and maybe just introduce portions subject to the sexual
13 allegations?

14 MR. YOUNG: The State -- my understanding, the State
15 can use their program to run the report as it is to just
16 print their records that they select and then just hit
17 print on that rather than putting the whole thing in.

18 THE COURT: I guess what I keep going back to, he
19 didn't go into it on direct. You went through it on cross
20 and you kind of brought it up, now, they want to go into
21 it.

22 MR. YOUNG: I went through selected portions of it.

23 THE COURT: If you had said no questions, I wouldn't
24 be dealing with this. So I'm kind of dumping it on you to
25 say, what don't you want in and then you dump it back on

1 them saying well, they can print it out easier. That's
2 not helping me solve the problem.

3 MR. YOUNG: I'll be happy to --

4 MR. GRAHAM: I'll help solve the problem.

5 THE COURT: Okay.

6 MR. GRAHAM: I will have -- Mike Phipps will be
7 subject to recall after they present their case. And if
8 we want to and choose to print out another report, we'll
9 do that. We'll submit it to the Defense and then they
10 can -- we can argue about what they object when I'm
11 putting it in.

12 THE COURT: That sounds like a good solution. We'll
13 defer.

14 Okay. All right. I want to speak with you very
15 quickly about that, so I want the mics and the noise,
16 please.

17 (Whereupon, a bench conference was held.)

18 THE COURT: Bring me the jury.

19 (Whereupon, the jury came into open court at
20 approximately 9:10 a.m.)

21 THE COURT: We're ready to continue. Just so y'all
22 know, it was y'all's decision whether to work Monday or
23 not. And y'all's decision was consistent with every other
24 person. Everybody agreed on that, all the lawyers, the
25 media. The State is still examining Mr. Phipps, so we'll

1 start with him and move on from there. Anyway, y'all have
2 been great.

3 MR. GRAHAM: The State calls Mike Phipps to the
4 stand.

5 THE COURT: All right. Mr. Phipps is back on the
6 stand. I remind you you are still under oath.

7 THE WITNESS: Yes, sir.

8 CONTINUE REDIRECT EXAMINATION

9 By Mr. Graham:

10 Q One thing I want to make sure we're clear for the
11 record, the exhibit that we showed on the overhead
12 yesterday, which is State's 77, you remember that
13 document?

14 A Yes, sir, I do.

15 Q That document covers the time period starting on the
16 morning of August 28th, 2014, starting at midnight, and
17 going through the last time the phone was used, which I
18 think you testified was on September 5th, is that correct?

19 A Yes.

20 Q And this -- you need to see it?

21 A Yes, sir. This chart only goes through the 4th
22 because that was the last user activity that we could
23 detect. There was activity that could be attributed to
24 just the device being powered on through the 5th.

25 Q And as far as call logs and outgoing and incoming and

1 missed and rejected calls, every call -- every artifact
2 that you found that represented those during this time
3 period is on this document?

4 A It is.

5 Q Every text during that time period is on this
6 document?

7 A It is.

8 Q Every Google search or YouTube search is on this
9 document?

10 A Yes.

11 Q And every web history during the time period is on
12 this document?

13 A Yes.

14 Q When we left off yesterday, we were going through --
15 Mr. Young had asked you some questions out of a partial
16 extraction, which was identified as State's Exhibit 199
17 for ID. Do you remember that one?

18 A I do.

19 Q Let's pick up back there where we left off. Turning
20 to Page 4, going to searched item 47. The searched item
21 47 was what?

22 MR. YOUNG: Your Honor, asked and answered.

23 MR. GRAHAM: I was interrupted during that question.

24 THE COURT: Yeah, I'll allow that since we're on the
25 next day. I don't remember the question myself.

1 THE WITNESS: It's a search for A Beautiful Mind
2 trailer.

3 Q And that's a movie, I believe, that you said you were
4 aware of, correct?

5 A Correct.

6 Q All right. And that was at what time on what date?

7 A That was at 5:20 p.m., in the afternoon on 5/25/2014.

8 Q All right. And then there are four searched items
9 that come directly after that in time. What were those
10 searched items?

11 A The searched items were schizophrenia patient,
12 schizophrenia patient talking, schizophrenia person seeing
13 people and then schizophrenia person beautiful mind.

14 Q And then the next two items, which is items 52 and
15 53, that was on the same date. And what time were those
16 texted at?

17 A The first text was at 5:57 p.m.

18 Q And that was an outgoing text?

19 A Outgoing to Amber.

20 Q And what were the contents of the texts?

21 A The first text reads, Something is bothering me about
22 Merah --

23 Q Merah?

24 A Merah. She's saying some creepy stuff.

25 Q And then following that, there's another text. Who

1 is that to and what are the contents of that text?

2 A That's an outgoing text to Amber at 7:02 p.m. It
3 reads, Call me late tonight, something you really need to
4 hear.

5 Q Going to Page 20 -- excuse me. Going to Page 20,
6 item 419, it's identified as a note. What is a note?

7 A Obviously, on a cell phone, you have the ability to
8 create notes to yourself or just free text if you want to
9 type something you want to remember. So it's categorized
10 just as something that's saved as like a text document, as
11 a note.

12 Q What was the date and time of that note?

13 A It was at 10:21 p.m. on July 7th.

14 Q And what were the contents of that note?

15 A The top of it reads, Time to work on me. And then it
16 goes into a list. Seven things that I think are fantastic
17 in the morning, colon, minus symbol, D. The first is
18 father prayer time in the morning. Second is fitness,
19 exercise time, hygiene. Number three is flourishing
20 time, work on robots, learn, learn, learn, several
21 exclamation points. Number four is favors. You've got to
22 feed. Five is clean house/chores. Number six is spend
23 time with children. And number seven is off time, nap and
24 the hammock.

25 Q Moving on to Page 23, I believe Mr. Young asked you

1 multiple questions starting about searched items and web
2 history at item 492?

3 A Correct.

4 Q What is the searched item at 49 -- what is the date
5 of the searched item at 492?

6 A July 20th, 2014.

7 Q And the time?

8 A At 5:42 p.m.

9 Q And what was the search?

10 A Betrayed by my young children.

11 Q And following on, what is the web history and other
12 search items continuing down to 501?

13 A There's web history activity following that, Google
14 search. There's a, I feel betrayed by my strange son,
15 what should I do? It's from the globe and mail. Same
16 date. Again, multiple Google searches aren't necessarily
17 meaning that the same text was researched. The way the
18 database logs it, it could be just something that's
19 refreshed in there. At 5:44 p.m., it's father betrayed by
20 my young children. And then at 5:49 p.m., my mom betrayed
21 me and cheated on my dad on the friends and family forum.

22 Q Have you had a chance to look through this extraction
23 and actually all the raw data using the reader that you
24 pulled off the phone?

25 A I'm sorry, say that again.

1 Q You had an opportunity to go through this report or
2 just on the stand?

3 A I haven't focused on this section of the data until I
4 was questioned about it.

5 Q Have you ever done any searches -- because those
6 searches said betrayed by my young children, correct?
7 They all related to betrayed by my children?

8 A Correct.

9 Q Did you ever do any searches through your reader to
10 determine whether there was any search or web history that
11 dealt with the Defendant being afraid of his children?
12 Were there any searches talking about being afraid of my
13 children?

14 A Yes, we did just keyword searches taking in those
15 words and we didn't find any.

16 Q You did not find any?

17 A Did not find any.

18 Q Did you also try to do keyword searches to try to
19 find any kind of searches or web history or text content
20 or anything that talked about children trying to harm me?

21 A Yes, and we did not find any.

22 Q You did not find any results on that as well in his
23 phone?

24 A Correct.

25 Q Moving to Page 37 -- well, let me check this. Page

1 33, item 709, it's another note. What was the date of the
2 creation of that note?

3 A August 4th, 2014, at 9:54 a.m.

4 Q And would you publish the contents of that note?

5 A I guess it has an 8/5, I don't know if that's a date
6 at the top of the note. B, trail mix, plus fruit, plus
7 vegetables and boiled eggs. L/chicken stir fried rice,
8 fruit, snacks and banana. And D, crockpot chicken. Then
9 8/8 -- I'm sorry, 8/6, B, cereal, plus milk, plus peanut
10 butter. L is chicken sandwich, plus banana, plus fruit
11 snacks, plus jello. And D is steaks, plus grilled
12 potatoes and vegetables. 8/7, B is bacon, plus eggs, plus
13 fruit. L is spaghetti, plus garlic bread, plus shrimp. D
14 is tacos with Spanish rice. And on 8/8, B is waffles,
15 plus eggs, plus peanut butter. L is chicken stir fried
16 rice. D is chicken noodle soup and carrots, corn, green
17 beans and chicken chunks. 8/9 for B is pancakes,
18 chocolate chip, plus bacon. L is pizza, fries and shrimp.
19 And D is chicken, fries and fruit. And at the bottom, it
20 just says grocery list.

21 Q Grocery list, grocery list?

22 A Grocery list.

23 Q Moving on to Page 37. I think Mr. Young asked you
24 about item 786, that was a searched item. What was the
25 date of that search?

1 A August 16th, 2014, at 9:40 in the evening.

2 Q And do you know where it was searched for this item?

3 A You're speaking of what type of search?

4 Q Whether it was a YouTube search or a Google search or
5 what, do you know?

6 A Let me see if I made a note. My notes indicate it
7 was a YouTube search.

8 Q And the exact words of the YouTube search was what?

9 A Child killed by electronic outlet.

10 Q Let me ask, did you ever have an opportunity to do a
11 search to see whether there was any keyword searches that
12 talked about a child trying to kill their father or
13 someone else with electricity or an electrical outlet?

14 A Yes.

15 Q And what were the results of that search?

16 A Nothing was found in that area.

17 Q The next item down below, 787, is also a note. What
18 was the date that note was created?

19 A On August 17th, 2014, at 9:22 a.m.

20 Q And the note's long. Can you summarize it and
21 explain to the jury what that note is?

22 A It's a supply list of school supplies, various things
23 you would expect, note pads, pencils, pens, lunch items,
24 very extensive list.

25 Q Moving on to the next page, 38. Note 789, would you

1 again summarize the contents of that voluminous note?

2 A Again, a very extensive listing of school items that
3 you would purchase prior to a child going to school.

4 Q Moving on to Page 41, items 834 and 835. Would you
5 describe the date and time of those, who they were to and
6 what they were described as?

7 A Item 835 is a multi-media message, which is a text
8 message. It has some type of multi-media content, whether
9 it's a movie clip or a still image. It was sent outgoing
10 on August 19th at 11:08 p.m. And the text that goes with
11 the images that were included reads snapshot of my
12 admission letter.

13 Q And who were those texted to?

14 A It was texted to Tyler Jones and Travis Jones.

15 Q And I think 834 was also texting to somebody else as
16 well, is that correct?

17 A 834 was texted to Larry Thornsberry and Roberta
18 Thornsberry.

19 Q Did you have an opportunity to view what the
20 attachments were?

21 A I did.

22 Q So the text that was sent that was entitled snapshot
23 of my acceptance letter, what was the letter that was
24 attached to it?

25 A It was a letter of acceptance to medical school.

1 Q For who?

2 A For the Defendant.

3 Q Finally, going to Page 44, items 927 through the
4 bottom of Page 44, those 13 items. What was -- it starts
5 off, I believe, as a searched item. What was the date and
6 time of that searched item?

7 A August 26th, 2014, at 11:22 p.m.

8 Q And what was the search?

9 A The nature of the search, first one was grants for
10 becoming a medical doctor and then it continues on for
11 grants for medical school, how to get grants for medical
12 school, where to get grants for medical school.

13 MR. GRAHAM: Thank you, Mr. Phipps. Please answer
14 any questions the Defense has.

15 RECROSS-EXAMINATION

16 BY MR. YOUNG:

17 Q What medical school was that?

18 A I don't have a note in front of me that I can read
19 from. I just remember it was for a medical school in the
20 Caribbean.

21 Q St. Vincent Medical School in the Caribbean?

22 A That's sounds right, yes, sir.

23 Q The multi-media messages are contained in the phone
24 records, right?

25 A I'm sorry?

1 Q You could look at this and say you could compare it
2 to the multi-media message sent and find the picture of
3 the letter, right?

4 A Right, yes, sir.

5 MR. GRAHAM: Your Honor, I'd like to know what he's
6 showing him.

7 THE COURT: The medical school acceptance, I believe.

8 MR. GRAHAM: It's not the whole book, I didn't know
9 what it was.

10 (Whereupon, a short break was taken while Mr. Graham
11 reviewed the exhibit.)

12 THE COURT: Is it going to be introduced or just show
13 it to him?

14 MR. YOUNG: Your Honor, I'll publish it at a later
15 time. If the State doesn't object, we'll just have it
16 marked.

17 Q Mr. Phipps, will you take a look at these and see if
18 these pictures appear to be pictures from various dates
19 from Tim's phone? I'll get you to check a couple. What
20 number are you on right there, 12?

21 THE COURT: Is this a subset of the bigger book, Mr.
22 Young?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay.

25 Q Do you see picture number four over here?

1 A Yes, sir.

2 Q That was taken from Mr. Jones' phone on 5/17/14?

3 A I would have to see the referencing meta data that
4 goes with the image. I can't tell from --

5 Q From there, right. And I'm pointing you out where
6 number four is on here?

7 A Yes, sir.

8 Q Does that meta data show when that picture was taken?

9 A Yes sir, it does, 5/17/2014.

10 Q Can you tell the ladies and gentlemen of the jury
11 what that picture is?

12 A It's a picture of two children crouched down in front
13 of a lobster tank.

14 Q Do you know those children?

15 A I don't know their names by their images, no sir.

16 MR. YOUNG: Now, I think without objection the State
17 agrees to admit these photos. I just wanted to do on
18 example and we'll publish it at a later time.

19 Thank you, Agent Phipps. That's all the questions I
20 have.

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

22 MR. GRAHAM: Your Honor, just for the record, as we
23 discussed prior to the jury coming in, he's subject to
24 recall.

25 THE COURT: Subject to recall, certainly.

1 127 is in, I think I said that.

2 (WHEREUPON, Defendant's Exhibit number 127 was
3 admitted into evidence.)

4 MR. HUBBARD: Your Honor, at this time, the State
5 rest.

6 THE COURT: All right, folks, we've got a couple
7 things to do. We've got to put a couple things on the
8 record. Before I send you to the jury room, y'all
9 maintain there. There are two SLED officers on the new
10 SLED detail team.

11 I'd like y'all to present yourselves around here to
12 my clerk for placing the new SLED agents on duty, okay?
13 On the spot. Y'all come on around.

14 (WHEREUPON, SLED Agent Jeff Fuller and SLED Agent
15 Sandy Templeton were sworn in.)

16 THE COURT: Thank y'all for y'all's help.

17 Now, y'all get a break. Don't discuss the case. I'm
18 going to give you some instructions when you come back and
19 we'll proceed on.

20 (Whereupon, the jury is excused from the courtroom.)

21 THE COURT: The State has rested. Mr. Young, what
22 you got?

23 MR. YOUNG: Your Honor, I'd move under Rule 19 for a
24 motion for directed verdict. We would renew all our
25 previous motions and objections. We would renew our

1 motions for a mistrial. We would renew our motions for a
2 change in venue. We would renew our continued objection
3 to evidence seized from the motor vehicle and the motions
4 pursuant to any statements attributed to Mr. Jones as
5 being voluntary along with all the objections and motions
6 that we've made during the course of the proceedings.

7 THE COURT: Considering I've been ruling consistently
8 with the traffic safety checkpoint, the statements made
9 after that as well as the search of the vehicle after that
10 and everything throughout the State's case, I've
11 consistently denied y'all's request and will respectfully
12 deny that motion at this time. I will respectfully deny
13 your motion for a mistrial as well as denying your motion
14 for directed verdict. The State has presented ample
15 evidence for the jury to consider the case, based upon
16 what they have presented at this time.

17 Did I rule on all four motions? I think it was four,
18 the search, statements, mistrial, directed verdict?

19 MR. YOUNG: Venue?

20 THE COURT: Venue. The motion for venue change
21 request is respectfully denied, also.

22 MR. YOUNG: And then over the course of the trial, a
23 number of other objections and motions and motions
24 in-limine have been made.

25 THE COURT: Respectfully, I'm going to deny those,

1 also. That should be all. Y'all want a couple of
2 minutes?

3 MR. YOUNG: Yes, sir.

4 THE COURT: I want to give a brief instruction to the
5 jury when they come back in about what to expect now, much
6 like I did earlier. You know, your opportunity as the
7 Defense team to present evidence for them to consider in
8 light of the defense presented and go forward from there.

9 MR. YOUNG: And in light of the fact that when it
10 comes to our burden, we would request the table closest to
11 the jury.

12 THE COURT: I don't think so. The State's burden is
13 still higher. You've got a burden, yes, but I think that
14 creates too many challenges for the courtroom itself. So,
15 respectfully, no. I've never done that motion before.
16 Interesting request, but I don't think that's -- I think
17 that would be in discretion -- all the civil cases I've
18 had where it's been mutual burdens, the tables weren't
19 swapped from plaintiff to the defense even though it's the
20 defense burden on counterclaim. They remained the same.
21 So I'm going to follow that logic and say no sir,
22 respectfully. Stay where you are.

23 MR. HUBBARD: Your Honor, I didn't know if it would
24 be appropriate, and Your Honor is the only one that can
25 determine that, if this is the time you want to ask Mr.

1 Jones if he's discussed whether he's going to testify or
2 not. Typically, it's at this point in the trial when Your
3 Honor goes over that, specifically, with the Defendant. I
4 think this is no different.

5 MR. YOUNG: Your Honor, he understands that he has
6 the right to testify, it's his absolute right. He can
7 testify if he wants to regardless of what Counsel thinks.
8 He understands that.

9 MR. HUBBARD: I think, I would ask --

10 THE COURT: I normally wait until they are about
11 done.

12 MR. HUBBARD: Okay.

13 THE COURT: And I then inquire then, but I'm not
14 going to inquire right now. Yes, I agree with you, I need
15 to inquire that at some point.

16 MR. HUBBARD: And my request would be that it's
17 directly to the Defendant.

18 THE COURT: Oh, yeah.

19 MR. HUBBARD: Thank you, Your Honor.

20 THE COURT: That's my normal practice.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: All right. Stand down for a few minutes.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: All right. Get the jury.

25 (Whereupon, the jury came into open court at

1 approximately 9:50 a.m.)

2 THE COURT: We're ready to continue on. The State's
3 rested. They've presented the testimony and evidence they
4 wanted to in their case-in-chief. They are done for now.
5 The Defense, it's their opportunity to present testimony
6 and evidence as they choose in support of their defense as
7 they presented. So they have a burden of showing the
8 defense.

9 I'll try to explain to you some of the burden of
10 proof. The State's burden is beyond a reasonable doubt.
11 The Defense's burden is going to be something different,
12 called the preponderance or greater weight of the
13 evidence. We'll explain how you consider and weigh this
14 evidence. We're working on making certain -- the first
15 witness is one of those we videoed. I just want to make
16 sure it's going to work right, so he's trying to cue that
17 up. That witness will be called and y'all will get to
18 hear that. We didn't quite have the audio worked out
19 then. We do now, that's why that microphone got added.
20 But I've got copies of the testimony, the questions and
21 answers for y'all to look at and read along with if you
22 like, so we'll hand those out momentarily.

23 This is the Defense's opportunity to present evidence
24 in support of their defense. We'll continue moving along.
25 They'll call witnesses, same scenario except they call the

1 witnesses and the State then cross-examines, so kind of
2 role reversal. I'll explain the burdens both ways in more
3 detail, okay. So that will be my final instruction, but I
4 want you to know the Defense has the burden of proving
5 their defense by a preponderance. All right. Mr. Young.

6 MR. YOUNG: With the Court's permission, I'll hand
7 out a copy of the transcript.

8 THE COURT: Yes, sir. There should be 18 there.

9 MR. YOUNG: If everybody will just take one and pass
10 those.

11 THE COURT: Any objection -- one of the jurors just
12 communicated with me. One of them wants to know if they
13 can write on the transcripts. I say absolutely. It's all
14 right, a good question.

15 MR. YOUNG: Keep the transcript. I mean, I don't --
16 if the State doesn't object to them keeping the
17 transcript. Normally, they would not be allowed to keep
18 them.

19 THE COURT: I hadn't thought about that.

20 MR. HUBBARD: That's going to be in your discretion,
21 Your Honor. I know typically they don't have the
22 transcript in evidence with them, but it's up to you how
23 they take their notes, or if they want to transfer those
24 later. However -- obviously, Your Honor, that's your
25 call.

1 THE COURT: I'm going to allow the jurors to take
2 notes on the transcript if they'd like and then they can
3 maintain it with their notes. Your notes are for
4 yourself. You're not to pass around and grade each
5 other's notes. The notes are for you. If someone didn't
6 take notes -- and I'll explain this. Once you're in
7 deliberations and y'all are discussing well, you know, you
8 remember that batch in the case when they were testifying
9 about this, well, I remember it this way. My notes say I
10 took it that way. The note taker's notes don't trump the
11 listener's listening. Everybody has got equal footing,
12 but it's just how you consider and discuss what was
13 presented to you. So one doesn't trump the other, one
14 doesn't mean more than the other. It's what y'all heard
15 in the presentation of the case. So I will allow the
16 transcripts if they wish to be kept with their notes, to
17 take notes on them, but they're to be yours individually
18 not, here's what I remember, read my stuff. It's y'all's.
19 It's individually yours. Okay. That's what we'll do.

20 MR. YOUNG: At this time, the Defense would call
21 Travis Snyder. And because he was not available to be
22 here when the Defense started the case, we videotaped his
23 testimony in this courtroom prior to the beginning of the
24 trial. And we'll play that now.

25 If anybody has a problem hearing or if I've messed up

1 volume or there's too much feedback, please let us know --

2 THE COURT: Let me know. I'll be talking in the
3 microphone. Most of our control is in the back -- the
4 media is helping us with this. They're the ones doing it.
5 They've got their cameras here, so they were assisting us
6 with preserving it. So we'll start, if we need to adjust
7 something, we'll let the guys in the back know or figure
8 out how to adjust it and we'll go from there. So y'all
9 give me the universal sign for can't hear or it's okay.
10 So proceed on.

11 (WHEREUPON, video testimony of Travis Snyder was
12 played for the jury starting at 10:00 a.m, ended at 11:21
13 a.m.)

14 THE COURT: Is that it?

15 MR. YOUNG: Yes, sir.

16 THE COURT: It's time for a break. Make sure you put
17 your names on the transcript so you don't get them mixed
18 up. Go back to the jury room. Take yourselves a nice
19 break. You'll probably have a good 15 minutes. We'll
20 have you back here in a little bit. Don't discuss the
21 case.

22 (Whereupon, the jury is excused from the courtroom
23 for a break.)

24 MR. GRAHAM: Your Honor, if I may?

25 THE COURT: You may.

1 MR. GRAHAM: The transcript that was prepared did
2 include -- when we were handed it this morning, didn't
3 review it through, but during the testimony, starting on
4 Page 62, it shows the in-camera testimony that the jury is
5 not supposed to hear. They walked out of the courtroom
6 with them. I would ask that you have somebody go get
7 them, grab all of them up and then remove the offending
8 pages.

9 THE COURT: Can we take care of that?

10 BAILIFF: Sure.

11 THE COURT: I will figure out how to do that, but
12 that's not an unreasonable request.

13 MR. GRAHAM: Thank you, Your Honor.

14 THE COURT: All right. We'll stand at ease for a
15 little bit.

16 (WHEREUPON, a short break was taken.)

17 THE COURT: I had my Law Clerk, a SLED detail member
18 retrieve all of the transcripts back in the jury room, she
19 removed, Whitney removed all the in-camera testimony
20 portions of the transcript. I have them here. I think an
21 explanation to the jury would be, we removed a part that
22 wasn't played and now have it back and leave it at that.

23 MR. GRAHAM: That is fine with the State, Your Honor.

24 THE COURT: Okay. Y'all want this marked as an
25 exhibit or anything?

1 MR. YOUNG: I need to mark the transcript and the
2 video as an exhibit.

3 THE COURT: And the transcript subject to the removal
4 without the in-camera.

5 MR. YOUNG: Right, I need one of those too, I need
6 the whole one as a Court's exhibit, right?

7 THE COURT: There you go, you can have mine. There
8 is a whole one.

9 MR. YOUNG: Do you want to do a redacted one.

10 THE COURT: Mine has the in-camera in it.

11 MR. YOUNG: The video we put in--

12 THE COURT: The video will be an exhibit and it has
13 been played. The transcript is Court's 85.

14 (Whereupon, Court's Exhibit 85 was marked for
15 identification only.)

16 Joy, make a note, your transcript includes the
17 in-camera testimony. The transcripts for the jurors, the
18 in-camera testimony was removed. And I have those copies
19 in a clip. It will not be marked.

20 COURT REPORTER: I've got it.

21 (WHEREUPON, Defendant's Exhibit number 128 was
22 admitted into evidence.)

23 (WHEREUPON, Defendant's Exhibit number 129 was marked
24 for identification.)

25 (WHEREUPON, Court's Exhibit number 85 was marked for

1 identification.)

2 THE COURT: All right. Are y'all ready?

3 MR. YOUNG: Can I check with matters real quick?

4 THE COURT: Yes.

5 (Whereupon, a brief recess was taken for Mr. Young.)

6 MR. MADSEN: We have a proffer.

7 THE COURT: Proffer?

8 MR. MADSEN: The same as the other ones.

9 THE COURT: This is a live witness. Tell the jury
10 they are excused for lunch and be back at 1:30. All
11 right, let's do the proffer. I sent the jury to be back
12 at 1:30. Let's go forward with the proffer. Call your
13 witness, please.

14 MR. MADSEN: Judge, we would call Sergeant Adam
15 Creech.

16 ADAM CREECH, being
17 first duly sworn, testified as follows:

18 THE CLERK: Have a seat, please. Once you're seated,
19 state your full name, spelling your last, please.

20 THE WITNESS: Anthony Adam Creech. Creech would be
21 spelled C-R-E-E-C-H.

22 THE COURT: Media, this is a proffer, so I do not
23 want it streamed, please.

24 DIRECT EXAMINATION

25 BY MR. MADSEN:

1 Q Sergeant Creech, you work at the Lexington Sheriff's
2 Office, is that correct?

3 A That's correct.

4 Q And you were the assigned chief investigator on this
5 case?

6 A That is also correct.

7 Q And I believe at some point in time on the 7th of
8 September of 2014, you had -- or excuse me, on -- yes, on
9 the 7th, you had a conversation with Under Sheriff Marty
10 Patterson, is that correct?

11 A That is correct.

12 Q And he told you in that conversation that Tim had yet
13 to invoke his Miranda Rights and that he believed that Tim
14 was open to further questioning?

15 A That is correct. That was my interpretation of that
16 call.

17 Q And you are aware that that is not true now, correct?

18 MR. HUBBARD: Objection to the form of the question.

19 I know it's a proffer, but.

20 THE COURT: I think you need to rephrase that
21 question.

22 Q Are you aware whether that is true or not?

23 A I'm aware since then that on the night of the 6th
24 when he was arrested for DUI, he pled the Fifth in
25 reference to his DUI arrest.

1 Q And you're also aware that Under Sheriff Patterson,
2 when he was walking him back and started to ask, he said,
3 I'm taking the Fifth. And he said, well, I haven't even
4 asked you any questions yet. You're aware of that, also,
5 correct?

6 MR. HUBBARD: Your Honor, I object. That, also, is
7 inaccurate. That was when he was in the conference room
8 when they questioned him, not invoking. We already went
9 over this --

10 THE COURT: Just see if you can--

11 Q In the conference room, you're aware of that
12 conversation, also?

13 A That would be the conversation I was just referring
14 to, yes.

15 Q And you're aware in your collection of notes about
16 taking the Fifth when his father was around? You didn't
17 know it then, but you've heard about that since then,
18 correct?

19 MR. HUBBARD: Object, there was no evidence of that.
20 Object.

21 THE COURT: I'm not sure I understand what you're
22 talking about either.

23 Q You're aware that at some point in time they tried to
24 get blood or hair samples and Tim declined those, also,
25 correct?

1 A I'm aware that they got search warrants for those
2 things and that's all I can directly testify to.

3 Q You didn't collect those incident reports as the
4 chief investigator?

5 A I did, but I can't tell you that I reviewed them all
6 with a fine-tooth comb later on because that was work that
7 had already been done.

8 Q So did you not receive Under Sheriff Patterson's
9 notes?

10 A I did.

11 Q And you did not review those that indicates an
12 invitation of rights on those?

13 MR. HUBBARD: Objection because Marty Patterson
14 explained those. We already went over this.

15 THE COURT: Yeah, we've been through that.

16 MR. MADSEN: Well, Judge, this is a proffer. I'm
17 just --

18 THE COURT: You can make the proffer --

19 MR. HUBBARD: But it's mischarac --

20 THE COURT: Solicitor, I got it. Identify the dates
21 you're talking about each time whether its, are you aware
22 of the night of the arrest, the next day. He's on day
23 three, as I understand it when he's involved with Mr.
24 Jones. So it's confusing when you just pick out a select
25 conversation and don't identify it to him.

1 Q You're aware that he -- or that Tim invoked his Fifth
2 on the 6th, correct?

3 A I am now, yes.

4 Q And were you aware that he also did that on the
5 7th --

6 THE COURT: No, that's mischaracterizing and I told
7 y'all not to do that. He refused to give a hair and
8 saliva sample, that's not invoking the Fifth.

9 Q You're aware that he refused to give hair and blood
10 on the 7th?

11 A Yes. I am now, yes.

12 Q And they got a search warrant?

13 A Correct.

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

15 THE COURT: Anything from the State?

16 MR. HUBBARD: No, sir.

17 THE COURT: All right.

18 MR. MADSEN: And then just want to put on the
19 argument is, obviously, Your Honor is certainly the
20 gatekeeper in reference to statements. But in the end,
21 the jury still has to find the voluntariness of
22 statements. And that goes to the argument that we have
23 made numerous times that we believe the jury hearing that
24 helps them as the fact finder in determining the
25 voluntariness of statements later.

1 THE COURT: I'm aware of all the conversations that
2 have been presented in court. The one on the night of the
3 arrest, the conversation at the police station, walking in
4 the door, the conversation or refusing to provide hair
5 samples, the interview that afternoon with his father and
6 then Mr. Creech's subsequent interview with the FBI
7 detective.

8 MR. MADSEN: We also have the video, Your Honor.

9 THE COURT: Right. I saw the video, also.

10 MR. MADSEN: Yes, sir.

11 THE COURT: I ruled all that consistently and so my
12 ruling remains the same. The two interviews which have
13 been presented on are allowed as freely and voluntarily
14 made under Denno. When he invoked the Fifth on the
15 night -- it's not been referred to and I don't think the
16 door's been opened back up. I am going to consistent rule
17 the same way.

18 MR. MADSEN: Yes, sir.

19 THE COURT: All right. We're down until 1:30.

20 MR. MADSEN: Judge, the only other thing, I would
21 request to be able to lead the Sergeant under Rule 611.

22 THE COURT: Sure. And the State, since they didn't
23 call the witness they will be allowed the same benefit.

24 MR. MADSEN: Yes, sir.

25 MR. HUBBARD: Thank you, Your Honor.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Y'all ready for the jury?

3 MR. MADSEN: Yes, sir.

4 THE COURT: Go get them.

5 (Whereupon, the jury came into open court at
6 approximately 1:45 p.m.)

7 THE COURT: Is the Defense ready to call their
8 witness?

9 MR. MADSEN: Yes, sir. Your Honor, the Defense calls
10 Sergeant Adam Creech.

11 ADAM CREECH, being
12 first duly sworn, testified as follows:

13 THE CLERK: Once you're seated, state your full name,
14 spelling your last.

15 THE WITNESS: Anthony Adam Creech. Creech is
16 C-R-E-E-C-H.

17 DIRECT EXAMINATION

18 BY MR. MADSEN:

19 Q Sergeant Creech, where are you employed?

20 A I'm employed with the Lexington County Sheriff's
21 Department.

22 Q And how long have you been at the sheriff's office?

23 A Ten years this August 24th.

24 Q And, obviously, you're a sergeant. Did you start off
25 as a sergeant there?

1 A No, I didn't. In my time at the sheriff's
2 department, I began like most deputies do as a six lead
3 patrol deputy. I moved through as a field training
4 officer, a master deputy, a criminal investigator and now,
5 I'm currently a sergeant of investigations. I currently
6 supervise our special victim's unit.

7 Q And so back in August, September of 2014, you were a
8 detective back then?

9 A In August of 2014, I was a detective. I believe I
10 had been a detective for about two months, give or take.
11 I was relatively brand new in that position.

12 Q And you were assigned this case at that point in
13 time, correct?

14 A I was. The original report in this case was filed on
15 September 3rd, 2014. It was assigned to me as a missing
16 persons case on September 4th, 2014.

17 Q So it would be fair to say you were the chief
18 investigating officer?

19 A That is correct. I am the chief investigator in this
20 incident.

21 Q And as you said, you received this case on 9/4 of
22 2014. And at that point in time, it was just assigned to
23 you as a missing persons case, correct?

24 A That's correct. On September 4th, 2014 when I
25 received this case for investigation, it was titled as a

1 missing persons report. All indications at the time were
2 that Mr. Jones and his children had possibly just left
3 town. The initial reporting parties had no indications
4 they could state at the time there were any concerns for
5 anybody's safety.

6 Q And the initial reporting, I believe, came through
7 Tim's father and maybe also a school?

8 A Little bit of a complicated answer to that. So
9 earlier that day on the 3rd, there was a welfare check
10 called in by Beth Houck. I believe she was the principal
11 or assistant principal at Saxe Gotha Elementary School
12 where Merah, Eli and Nahtahn all attended school. Then
13 Master Deputy Nicholson and Constable Lawrence Markey did
14 respond out there with Ms. Houck and attempted to do a
15 welfare check. Nobody was home. Late that same evening,
16 Timothy Jones, Sr. called again and spoke to Sergeant
17 Black, one of our west region patrol supervisors, and just
18 kind of explained what was going on. He ended up calling
19 Master Deputy Smith, who is a south region supervisor on
20 duty at the time, and he actually sent him to the home of
21 Ms. Kyzer, she was Amber Jones still back then, to file
22 the initial missing persons report at Russell Rowe Road, I
23 think was the name of the street.

24 Q And that's how in the end it comes to you, correct?

25 A Correct.

1 Q And so once you get the case, you begin to interview
2 witnesses, friends, family, work individuals, such as
3 that?

4 A So initially, it's pretty typical in a missing
5 persons case just to make some phone contact with family,
6 coworkers. I spoke to I believe it was --

7 Q Jim McConnell?

8 A Jim McConnell first.

9 Q And he's the fellow from Intel?

10 A Yeah. He would be Timothy's supervisor at Intel.
11 And then I know in order, I then spoke with Timothy Jones,
12 Sr. and then I think the following day is when I first was
13 able to make contact with Ms. Kyzer.

14 Q And after speaking with Jim McConnell, were you able
15 to determine any type of relationship that Tim had with
16 his children from him?

17 A Give me a second.

18 Q Sure.

19 A Mr. McConnell indicated to me that he believed
20 Timothy's home life kept him pretty busy and pretty
21 stressed. But he said, ultimately, he believed Timothy
22 loved his children.

23 Q I think his words were "loved his children
24 immensely"?

25 A That is correct. That would be what I wrote.

1 Q And he put you in contact with, I guess, a Ben Wyne?

2 A Yes.

3 Q And he was Intel security, correct?

4 A Yes. So Mr. McConnell offered the services of Ben
5 Wyne, Intel's internal security, I guess, kind of internal
6 affairs. Mr. Wyne was a former law enforcement officer
7 and he just wanted to know if there was anything they
8 could do as a company to assist with this. Ultimately, he
9 was able to review Timothy's work emails. I think they
10 ended up reviewing like 12,000 emails. They didn't find
11 anything that was of any interest to us, so that was
12 really the extent of Mr. Wyne's involvement.

13 Q When you say nothing interesting, there was something
14 unusual about the fact that in those 12,000 emails weren't
15 any personal emails, correct?

16 A Correct. Mr. Wyne did note that there was no
17 personal activity on his work email. I guess from his
18 perspective, most employees would have had some kind of
19 personal correspondences even in their work email.

20 Q And just so the court reporter knows, Wyne is
21 spelled, I believe, W-Y-N-E, correct?

22 A Correct, W-Y-N-E.

23 Q And you attempted to make contact with Amber, but
24 couldn't get in touch with her, correct?

25 A Correct. I believe I left her a voice mail on the

1 3rd and I was able to speak with her -- I mean, I'm sorry,
2 the 4th and I spoke with her on the 5th.

3 Q And you ended up speaking with Tim, Sr --

4 A Correct.

5 Q -- Tim's dad? And you asked him about any issues
6 about depression or mental illness with Tim?

7 A I did.

8 Q And you eventually ended up driving to [REDACTED] South
9 Lake?

10 A That is correct.

11 Q And you kind of looked around the residence?

12 A I did. When I got to the residence, it was kind of
13 like it had been at the welfare check. There were no
14 vehicles there. When I went to the front door, it was
15 unlocked. Just as a safety concern, I checked the
16 residence and there were no signs of anybody currently
17 staying in the home. In fact, it looked kind of
18 disheveled. Sheets were missing off the beds. There
19 wasn't any apparent indication anybody was staying there
20 at the time.

21 Q And after you spoke with Amber, you kind of reached
22 out to Georgia Tech, I believe, to see if Tim had an
23 application there, correct? Or was pending enrollment, I
24 guess?

25 A That's correct. When I spoke to Amber, she did

1 mention to me that he had possibly applied for Georgia
2 Technical College, I guess. And I did confirm that
3 through an admissions counselor.

4 Q But he had not completed that enrollment?

5 A He had not completed that enrollment, no.

6 Q Let me jump forward a little bit to the 6th then. I
7 guess you were at home when you get a call from the
8 sheriff's office front desk, front lobby in reference to a
9 call from Marty Patterson in Mississippi?

10 A Correct. So it was a Saturday night, I wasn't
11 working. I received a call from the front desk of the
12 sheriff's department. Now, I know that that would have
13 been highly unusual back then. I was so new to this that
14 it didn't dawn on me that this was anything unusual.
15 Sherry Fallaw was the front desk worker that night and she
16 told me there had been an NCIC hit sent on the missing
17 person case I had involving Timothy Jones and his five
18 children. And she had a name and number for Under Sheriff
19 Marty Patterson with the Smith County Sheriff's Department
20 and requested that I give him a phone call.

21 Q And you mentioned an NCIC hit. Under the missing
22 persons, someone is put in NCIC saying if they get pulled
23 over, hey, call us, we've got questions, correct?

24 A That would be correct.

25 Q And so you ended up calling the Under-Sheriff?

1 A I did. I called Under-Sheriff Patterson and he told
2 me that a couple of his deputies had been working a
3 traffic safety check point and had stopped Mr. Jones.
4 Upon determining that he was a missing person, they had
5 asked him about his children. They said that they also
6 had him detained for suspicion of DUI and possession of
7 spice. They said when asked about his children, he had
8 said initially he didn't have any children, which,
9 obviously, they were concerned because of the NCIC entry
10 and had seen a diaper box in the vehicle with his name on
11 it. While I was on the phone with Mr. Patterson, I could
12 actually hear Mr. Jones, Timothy in the background
13 speaking. Under-Sheriff Patterson actually related to his
14 deputies while I was still on the phone to ask him again
15 and that's when his story changed and he came back and
16 said he had three children, but they were with friends in
17 South Carolina.

18 Q And you put the Under-Sheriff at some point in time,
19 I guess, in contact with, at that point in time, your
20 supervisor, Sergeant Laintz?

21 A Yes. Actually, Sergeant Laintz was not my direct
22 supervisor. He was a supervisor on one of the other teams
23 in the major crimes unit that was actually on call that
24 weekend. So I called then Sergeant Laintz and told him
25 what we had going on, what our concerns were because when

1 I had spoken with Under-Sheriff Patterson, he had told me
2 that there was an extreme smell of decomposition in the
3 vehicle and that he had concerns from his experience what
4 that possibly indicated with Mr. Jones saying that he
5 didn't have any children. So I gave Sergeant Laintz kind
6 of the rundown of what I had done on this case up to this
7 point. I ended up shooting him an email summary. And he
8 said he'd make some phone calls and they'd run down some
9 stuff until we figured out what exactly was going on and
10 whose ultimate law enforcement jurisdiction would be
11 responsible going forward.

12 Q And that email summary contained information about
13 Tim's mother?

14 A It did. When I had spoken to Timothy Jones, Sr., he
15 had told me that Timothy's mother had a history of mental
16 illness and he had always had suspicions that Timothy
17 could potentially follow in her footsteps and he always
18 kept a close eye on him as a result.

19 Q And he thought that he might have -- or suffer from
20 some type of undiagnosed mental illness?

21 A Yes. He said that was a possibility.

22 Q And you relayed that information to Sergeant Laintz?

23 A That is correct.

24 Q And then at some point in time, you end up receiving
25 photographs of some items out of Tim's vehicle, correct?

1 Like receipts?

2 A That's correct. That initial conversation with
3 Sergeant Laintz would have been on September 6th, 2014.
4 The following day, September 7th, 2014, I think it was
5 about 2:00 in the afternoon -- I had spoken to Sergeant
6 Laintz earlier that morning and Lieutenant Frier, who is
7 the next person over Sergeant Laintz. About two o'clock,
8 they said -- they called me back and said that there had
9 been a search warrant conducted on Timothy's vehicle down
10 in Mississippi and that as a result of that, they had
11 taken some pictures of some receipts and some notes and it
12 was giving them reason to believe that if a crime had
13 occurred, it had occurred in Lexington County. At that
14 point, they asked me if I'd be willing to come in even
15 though it was my day off. And of course, I said
16 absolutely. So I went to the sheriff's department and
17 kind of briefed everybody else who was there and we did
18 look at a series of notes and receipts from the vehicle.

19 Q And you list those in your report, or a number of
20 those, correct?

21 A I did.

22 Q And just to go over that, I guess there was a receipt
23 or something indicated on September 1st of 2014 that Tim
24 had been in Spartanburg?

25 A That's correct.

1 Q And that on the next day, the 2nd, that he was in
2 Athens?

3 A That's correct, Athens, Georgia.

4 Q And then on the 3rd, in West Columbia?

5 A That's correct. That would actually be the Wal-Mart
6 in West Columbia, specifically.

7 Q And then, I guess, later on the 3rd, Lake City, South
8 Carolina?

9 A That's correct. That would be Advance Auto Parts.

10 Q And then on the 4th, in Camden, South Carolina?

11 A Yes. That would be the L&W Mart that I believe we
12 had the clerk testify --

13 Q That's that lady, Denise Atkinson, that had spoken --

14 A Correct.

15 Q -- earlier? And then on the 4th, also, in
16 Orangeburg?

17 A And that would be the Dollar General that's been
18 spoken about previously.

19 Q And then later on, of course, back in Lexington?

20 A Correct. On the 4th, he had two back-to-back State
21 Federal Credit Union transactions.

22 Q And then on the 6th, I guess, in Alabama?

23 A Correct, Bypass Food Mart in Greenville, Alabama at
24 8:18 that morning.

25 Q And then, also, on the 6th, Mississippi, I guess,

1 Taco Bell?

2 A Well, before that on the 6th, at 1:06 p.m., he was at
3 the Community Neighbor Bank in Camden, Alabama. And then
4 at 6:09 p.m. that same night, he had a receipt for the
5 Taco Bell in Laurel, Mississippi.

6 Q And then just looking at those, you kind of thought
7 hey, there doesn't appear to be a rhyme or reason why he's
8 traveling back and forth to the Lexington area during that
9 timeframe, correct?

10 A Our initial impression based on what we knew or
11 didn't know at the time, we didn't really know if there
12 was a pattern or not a pattern to him going back and
13 forth.

14 Q And now -- at that point in time, you had no idea
15 that the kids were deceased?

16 A No. I mean, based on what was described to me about
17 the vehicle, I certainly -- I mean, realistically, I
18 wasn't hopeful. I was prepared for the worst, but hoping
19 for the best.

20 Q And we know now the kids were in the car that entire
21 time?

22 A Yes. The children would have been in the car that
23 entire time. In fact, they would still be in the vehicle
24 when the missing person report was filed and it was
25 assigned to me for investigation.

1 Q And based on those driving -- that's just the
2 receipts out of the car. I believe y'all supplemented
3 them later with some phone records, correct?

4 A Correct.

5 Q So after you get all that, I think your next step is,
6 once you have these receipts, to kind of reach out to
7 other areas and say hey, can I get video or something
8 showing the person there, like with Ms. Atkinson, like
9 with Ms. Owens, correct?

10 A Yes. I made contact with investigators at several
11 sheriff's departments throughout the state, South Carolina
12 and Georgia, in reference to possible surveillance video
13 and other detectives working the case, some of which have
14 already testified, who were responsible for later meeting
15 up with those individuals and actually getting copies of
16 that video.

17 Q And then on the 7th, also, you have another
18 conversation with Amber, correct?

19 A I do. So to back track and not leave anything out
20 since we're going fairly chronologically, I had spoken to
21 Amber on the 5th and she said that she was going to go to
22 their scheduled child visitation at Chick-Fil-A on
23 Saturday at 6:00. And she had called me later that day
24 and left me a voice mail.

25 Q Said he hadn't showed up?

1 A To say he hadn't showed up. And so I spoke to her
2 again on the 7th when we had this new information
3 developing, correct.

4 Q And you had asked her about Tim's prior mental health
5 history, correct?

6 A I did. She said that she believed he had possibly
7 seen a psychiatrist at one point in South Carolina. I
8 would find out later that that was related to their
9 divorce. She said he had a -- he may have received some
10 kind of treatment for what -- she used the word bipolar
11 disorder, but she said she ultimately wasn't sure. And
12 she did mention that he all -- at that same time, that he
13 had a history of cocaine abuse.

14 Q You ended up -- on the 8th, you and Agent Mackey and
15 Dave Lawrence from SLED, the decision was made for y'all
16 to go to Mississippi, correct?

17 A That's correct. Dave Lawrence from South Carolina
18 Law Enforcement Division, he was a lieutenant then, myself
19 and Special Agent David Mackey, who testified on Friday,
20 the three of us got selected to drive down to Smith County
21 and try to interview Timothy. The local law enforcement
22 tried to interview him the night before and felt like they
23 hadn't really gotten anywhere. So we were going to drive
24 down and try again. At that time, we still believed if a
25 crime had occurred, it had probably occurred in Lexington

1 County at his residence.

2 Q And Agent Lawrence is a polygrapher with SLED?

3 A He was trained as a polygrapher. I don't think
4 that's his primary duty assignment. He did bring his
5 polygrapher equipment in case we decided to use it, but
6 it's pretty unusual for us to actually use polygrapher
7 equipment in most criminal investigations.

8 Q And to get to Mississippi, about an eight-hour drive,
9 I'm guessing?

10 A Yeah, I remember it being somewhere eight, nine
11 hours. It was a pretty lengthy drive.

12 Q And y'all kind of made plans on what you're going to
13 do when you get down there, correct?

14 A We discussed quite a bit amongst ourselves. Of
15 course, with a case like this, everybody back home was
16 like you had kicked over a fire ant bed. My phone, I
17 don't know if it went five minutes without going off and
18 somebody calling to tell me something or ask me something
19 or give some kind of direction in the case. While we were
20 on the way, we did formulate some ideas -- some general
21 ideas of what we planned to do with the interview once we
22 got down there.

23 Q And then once you got to Mississippi, you kind of got
24 a briefing on what had gone on, correct?

25 A We did. When we got down there, we kind of had a

1 round table discussion with the Smith County Sheriff's
2 Department personnel that were involved in the case and
3 the Mississippi Bureau of Investigation personnel involved
4 in the case. I believe Special Agent Bobe, that testified
5 yesterday, was also at that briefing.

6 Q And then I think after that briefing, you went out
7 and you kind of reviewed the vehicle -- or went to a
8 multi-purpose building and reviewed the vehicle yourself?

9 A I did. Stacy Jones that testified last week with the
10 Mississippi Bureau of Investigation, their forensic
11 technician back then, she did drive me to where they were
12 keeping Timothy's vehicle so that I could review it and
13 all the evidence retrieved from the vehicle in this case.

14 Q And you were going to interview Tim, but you decided
15 you weren't going to use his dad in that interview,
16 correct?

17 A Correct. We knew that his dad had been used the
18 night before in that interview. We had talked about that
19 on the way down there, but that was not anything we ever
20 planned because that's a highly unusual interview tactic.
21 I guess you could call it using a third party
22 intermediary. We didn't see where that was necessarily
23 productive the night before, so we didn't plan on
24 repeating that.

25 Q And you sat down with Tim at about 7:30?

1 A Yes, I do believe it was about 7:30.

2 Q And that's central time there, correct?

3 A Central time, yes.

4 Q And Tim didn't initiate that interview, y'all went
5 and got him?

6 A That is correct.

7 Q And I think on the way to Mississippi, you had
8 stopped and gotten a little hand-held recorder, correct?

9 A Correct. So this is something we'll talk about again
10 here shortly. Just a little bit of background. So in
11 2014, it was not the standard practice for us to video or
12 audio recorded interviews. Again, I had only been in
13 investigations a couple of months, so I was pretty early
14 with this, but had done enough to know that that was not
15 normal procedure with the sheriff's department. We were
16 about halfway in this trip and I received a call from
17 Lieutenant Frier telling me to record the interview. We
18 weren't sure what kind of recording capabilities the Smith
19 County Sheriff's Department would have available, so we
20 did stop at a local Wal-Mart on the way and purchased a
21 digital tape recorder.

22 Q And you told Tim once you met him that you were going
23 to record the interview?

24 A Correct. We did tell him that we were going to
25 record the interview because we weren't sure at the time

1 if Mississippi was a one party consent state.

2 Q And you presented him his Advice of Rights?

3 A That's correct.

4 Q And someone -- I think it was Mackey who went over
5 that with him?

6 A Yes. Special Agent Mackey, I believe he testified to
7 this Friday, he went over the Advice of Rights form. And
8 Timothy acknowledged it, agreed to speak with us. I
9 believe his words were, yes, yes, I know I'm
10 self-incriminating myself. He agreed to speak with us.
11 We started speaking. There was a lot of small talk, what
12 we call rapport building, about employment, jobs, health,
13 just kind of dropping the tension, building a rapport with
14 him before we jumped into the topic. About 20 minutes or
15 so into the interview, the Miranda form had been sitting
16 in front of him, and he reached forward and pulled it and
17 signed it.

18 Q And during the course of -- I mean, you interviewed
19 him multiple times, correct?

20 A That's correct, probably more than anybody else in
21 this case.

22 Q And -- well, you're the chief investigating officer,
23 so that would be pretty much normal, wouldn't it?

24 A It would.

25 Q And at times while he was speaking, his speech could

1 be kind of fast?

2 A It could. He and I talked about at one point. He
3 mentioned to me that people felt like he was kind of a
4 fast talker. I never had any issues keeping pace with
5 him, but I've got a tendency to be a fast talker, too. In
6 fact, I have to make a conscious effort not to --

7 Q Sometimes --

8 A -- get too fast today.

9 Q I'm sorry. Sometimes, he could kind of go off on a
10 tangent or talk about something that was kind of
11 irrelevant?

12 A He could. Sometimes you'd be talking about topic A
13 and he would stray into topic B, but I found usually you
14 could kind of keep him on task if you paid attention to
15 that.

16 Q And I think we even heard on the tape, at one point
17 in time, he kind of stutters?

18 A I've heard mention that he stutters, again, that's
19 something I'm prone to as well, so I don't know that I
20 would have paid particular attention to him stuttering.

21 Q And during the interview -- I know you've got a
22 typewritten report, but you took handwritten notes, also,
23 correct?

24 A I would have had handwritten notes at one point, yes.

25 Q And that's what you used to turn in your report?

1 A That is correct.

2 Q And I would assume normal protocol, you would have
3 shredded those notes after you put them in your report?

4 A Correct. I don't keep any of my handwritten notes,
5 but everything is translated in my report.

6 Q And I think your report indicates that you tried to
7 start the recording after you had gone over his waiver?

8 A Correct. So we tried to start the recording early in
9 the interview, then as the interview proceeds, we speak
10 with Timothy at some length, as Special Agent Mackey
11 testified to, after some initial denials and beating
12 around the bush, Timothy finally admits that he did kill
13 the children and goes into some intimate details about
14 what took place. We talk about that for a while and,
15 actually, as we -- after that, we had gone back and forth
16 with him at some length trying to parse out what the
17 location may have been and we determined it was in Alabama
18 between Camden and Greenville. Shortly after we had kind
19 of gone through all that, we realized at that time that we
20 needed to check the recorder. And to my embarrassment to
21 this day, we thought it had been running the whole time,
22 it actually had not ever been turned on properly, but it
23 was the first time we'd ever used it. I know my nerves
24 were through the roof, but I'll take the blame on that.

25 Q And that was about an hour and 45 minutes into the

1 interview, correct?

2 A That sounds about correct, yes.

3 Q Because it was about a two-and-a-half-hour interview
4 total and we know we've got about 45 minutes that are
5 taped?

6 A That's correct.

7 Q Let me jump back then, and you kind of mentioned
8 this, you kind of started off with asking him about his
9 job, correct?

10 A That's correct.

11 Q And he seemed to be engaged when he was talking about
12 his job, especially kind of the technical minutia?

13 A Yes. So when we initially entered the room, he
14 was -- I can't remember if he was brought in after we
15 were -- actually, I believe we were in there already
16 deciding where we were all going to sit and he got brought
17 in. He was clearly very nervous. I actually think I
18 described him as on edge. So he sat down. So right off
19 the bat, I knew that we weren't going to jump right in to
20 talk about the kids because he didn't seem like he was in
21 a place where I believed we were at a point to have that
22 kind of rapport with him where he'd open up to us about
23 that. So a lot of time in interviews like this, when I
24 get a read like that on somebody, the first thing I'm
25 going to do is talk to them about work or family.

1 Obviously, family is not a great topic in this case. But
2 general things so you just kind of get to know them a
3 little bit. When we started talking to him about work,
4 his nervousness dropped considerably. It, obviously,
5 relaxed him a little bit, but we didn't jump straight into
6 talking about the children.

7 Q That seemed to calm him down and make him more
8 comfortable?

9 A Absolutely.

10 Q And then I believe you kind of talked about his
11 general health? I think he talked about some stomach
12 problems or Crohn's Disease?

13 A He told me he might have Crohn's Disease. He talked
14 about some GI issues.

15 Q And you know from looking at the car that, I guess,
16 there were some medicines that related to issues like
17 that?

18 A Correct. I think there was some general antacids and
19 that kind of medication.

20 Q And at some point in time, the issue of spice came
21 up, didn't it?

22 A It did. I don't remember if he brought it up or we
23 brought it up, but the topic of nonprescription drug use
24 came up and he mentioned that he did use spice. And then
25 he went into great lengths to explain to me that -- the

1 difference between spice and marijuana. And he explained
2 how spice contained an artificial version of THC. And he
3 went into explanation about how it affected receptors on
4 the human brain. It was probably the first time I've ever
5 had somebody get into a breakdown of the biological
6 effects of drugs and the chemistry behind it, so I thought
7 that was pretty unusual.

8 Q I think your report said that he didn't use spice, he
9 used Scooby Snax, which he somehow differentiates?

10 A Yes. And I apologize, let me clarify. He did say
11 Scooby Snax, which he made a point to distinguish from
12 spice. I mean, they're one in the same really.

13 Q Yeah, six of one, half dozen of the other.

14 A They're both artificial cannabinoids.

15 Q Kind of six of one, half dozen of another, but that
16 spice monitor seemed to kind of bug him that, I wasn't
17 using spice, I was using Scooby Snax?

18 A It did. And I had had enough experience dealing with
19 spice as a patrol deputy, which I had just been very
20 recently prior to this. Spice and bath salts were pretty
21 prevalent at the time, so I was familiar with both.

22 Q And he told you he purchased them from Time Warp
23 legally?

24 A That's correct. Time Warp is where he said he
25 purchased his Scooby Snax from, which is a local

1 establishment that used to be in West Columbia.

2 Q And that was something that you were -- you were
3 familiar with Time Warp?

4 A I was. Because when we were dealing with spice
5 pretty heavily, I believe that was one of the main
6 locations a lot of people were purchasing it from.

7 Q And that place has been put out of business since
8 then?

9 A I do believe it has.

10 Q And the fact that it -- that the Scooby Snax were
11 legal seemed important to him, didn't it?

12 A Yes. He made very specific -- went to very specific
13 length to explain that Scooby Snax was legal even if spice
14 in general was not. At the time, the laws were having
15 trouble keeping up with artificial cannabinoids on the
16 market. I think some experts explained there were a
17 number of versions in and once one version would become
18 illegal, they would tweak it a little bit until it was
19 technically a different compound with similar effects and
20 would remarket it. And I guess Scooby Snax was the
21 current rendition of what that was available locally.

22 Q And he told you that he used the Scooby Snax to kind
23 of self-medicate himself?

24 A He did. His exact words were he used it for
25 self-medicating, what he referred to, "Voices in my head.

1 And he said it was used to level himself out."

2 Q And he said also -- I think like you said, he used it
3 to quell the voices in my head?

4 A Yeah -- quell wasn't his word, that was my word in
5 the report. It was the same context.

6 Q And y'all talked about some of his mother's
7 psychological problems, didn't you?

8 A That's correct. He brought this up. And I had known
9 from the night before when they interviewed him on the
10 7th, he brought his mother up during the interview. And,
11 of course, I had the background from Timothy, Sr. that he
12 had brought up during the interview. At this time, when
13 myself and Special Agent Mackey were speaking to Timothy,
14 he did bring up his belief that he may have inherited
15 psychological problems from his mother. And when he
16 talked about his mother, he got very emotional and very --
17 at least, appeared to be upset. And whereas the work
18 topic calmed him down, this topic very much amped him back
19 up. And he said, "I think I've got some of what she has."

20 Q And he had mentioned to you that she had had a
21 series, apparently, of breakdowns when she was near his
22 age?

23 A I do -- I don't remember if I can attribute that to
24 Timothy or his father, but one of them did tell me that
25 she had had a series of psychological breakdowns at Tim's

1 age.

2 Q And at some point in time, I guess he told you if you
3 could find out what was wrong with her that you might be
4 able to find out what's wrong with him?

5 A Correct. And as I'm looking here, to back up on that
6 last question, Timothy did tell me this. I think I ended
7 up hearing it from both of them at one point.

8 Q About the breakdowns?

9 A Yeah, I didn't see it just now.

10 Q And as you've said, that -- the topic of his mother
11 seemed to upset him?

12 A Correct. And I'll note, just because we're a little
13 out of order here, this is about when he pulled the
14 Miranda form to himself and signed the form.

15 Q And when you say upset him, does that mean he's
16 crying?

17 A I believe, if I remember, there's a little bit of
18 crying. Certainly, his speech pattern changed a bit. His
19 voice broke a little bit. Certainly, he had been a
20 fairly -- it had been a fairly calm demeanor up until that
21 point.

22 Q And you said at that point in time, he kind of takes
23 the form and signs it?

24 A Correct. And he once more, as he signed it, told us
25 that he knew he was incriminating himself.

1 Q And that was about 20 or 30 minutes in, wasn't it?

2 A Correct.

3 Q At that point in time, y'all bring up the children,
4 don't you?

5 A We do. We started asking about the children. Kind
6 of like talking about his mother, this topic upset him
7 quite a bit as well. His voice began to waiver again. He
8 actually -- I do know that he was crying a bit at this
9 point.

10 Q He was crying heavily at that point, wasn't he?

11 A Crying heavily. His body language -- he had been
12 fairly calm after initially coming in, that initial
13 nervousness. His body language had kind of leveled out.
14 At this point, he starts, I guess, vibrating, for lack of
15 a better term, and bouncing, almost like when you're
16 dealing with somebody who's nervous about something and
17 they're trying to expel all that nervous energy. But that
18 was his reaction once we start speaking about the
19 children.

20 Q And y'all end up talking about Nahtahn, correct, and
21 him telling you about being afraid?

22 A Correct. So when we started speaking about the
23 children, he told us that -- he told us he was afraid of
24 the children. And he said he had picked the oldest three
25 children, which, again, would be Elias, Merah and Nahtahn

1 up from school on the afternoon of August 28th, 2014. And
2 he said he had picked up the youngest two children from
3 his neighbor, Christine Ehlke's house. He said at home
4 later that night, he attributed -- he said that his son,
5 Nahtahn, threatened him. And threatened was his word.
6 And the statement he attributed to Nahtahn was, when I
7 grow up, I'm going to kill you. And then he told me that
8 his son, Elias, said, I'm going to -- "going to cut people
9 up and feed them to dogs." And then --

10 Q And he --

11 A Oh, no, I was going to say he then -- he started
12 telling us about Nahtahn messing with electrical outlets
13 in the home and he believed that Nahtahn was, "Up to
14 something."

15 Q And you challenged him at that point in time and
16 said, they're just kids. How can they pose a danger to
17 you?

18 A Not exactly. So fast-forwarding a little bit, we --

19 Q Doesn't your report say in that next paragraph, I
20 asked him, Timothy, how his children could pose a danger
21 to him?

22 A Yes, I'm sorry. I'm getting in my own head ahead of
23 things with some other statements that come in later.

24 Q We'll go through them.

25 A Yeah, he did say -- I did ask him how the children

1 could pose a danger to him.

2 Q And he told you that the kids were extremely
3 intelligent?

4 A He said they were extremely intelligent. And then he
5 referred to a recent incident -- turned out there was an
6 incident report with this with the sheriff's department
7 that's been brought up where his youngest son, Gabriel,
8 has walked away from the babysitter's house and had been
9 caught going up South Lake. They think maybe he was going
10 to Saxe Gotha Elementary School. Timothy said this was
11 not normal behavior for a two-year-old. He said this was
12 an example of how intelligent the children were.

13 Q And that that's why they posed a danger to him?

14 A Yes. He said this was the reason he felt they posed
15 a threat to him.

16 Q And he told you that he felt the kids were conspiring
17 to kill him?

18 A Yes, he did. He said that he believed they were
19 conspiring to kill him the night of August 28th, 2014. He
20 said that's why he drove them to Wal-Mart, the nearby
21 Wal-Mart, which would be the Wal-Mart in Red Bank, and
22 said he abandoned them in the parking lot and drove away.

23 Q And he had also told you that he felt that maybe
24 Nahtahn was up to something and was possibly experimenting
25 with -- basically, experimenting with the electricity as a

1 possible means to electrocute him in his sleep?

2 A Yes. He referenced the issue with the outlets. He
3 believed that it was Nahtahn attempting to find a way to
4 electrocute him in his sleep.

5 Q And so after that, that's when Agent Mackey kind of
6 said hey, I believe you killed those children and kind of
7 confronted him, correct?

8 A That is correct. Agent Mackey, for the first time in
9 the interview, gave a very direct accusation. He said, I
10 believe you killed those children. Timothy was surprised
11 at this. It was like he didn't know how to respond to
12 this. It was kind of a brief moment of silence. And
13 after that, his behavior started to amp up again. He got
14 more erratic. He tried to change the topic, which seemed
15 very evasive. This was -- you know, it was like he didn't
16 want to talk about this once confronted with it. Special
17 Agent Mackey and I both remained very calm and focused and
18 kind of kept him on that path because we weren't going to
19 let him change the topic and not get into this at this
20 point.

21 Q Well, he was raising his voice? He was saying very
22 loudly how afraid he was of the children, correct?

23 A Yes, he was saying he was afraid of the children.
24 But after a few minutes of us not reacting to the
25 outbursts, he started to calm down noticeably.

1 Q Well, you describe it as pretty loud behavior, don't
2 you?

3 A Correct.

4 Q And, in fact, you believe that it was similar to the
5 behavior you heard about the night before, isn't that
6 correct?

7 A Yes. They had described his behavior as being kind
8 of wild and erratic the night before. I wasn't there, so
9 I don't know exactly to what level, but the way they
10 described it, this seemed probably the closest to that
11 that I saw during my encounters with Timothy.

12 Q And he had been in custody there for, I guess, a
13 couple of days or close to it?

14 A Yeah, a couple days, give or take, that sounds about
15 right.

16 Q And he's crying at this point in time?

17 A He is.

18 Q And at that point in time, Agent Mackey kind of -- he
19 went over those receipts that y'all had found out of the
20 car?

21 A Correct. He was confronted with the Wal-Mart
22 receipts. When he was confronted with things like the
23 muriatic acid, specifically, and saws, he said the saws
24 were for cutting limbs in the yard. He said the muriatic
25 acid was etching PVC. He kind of had an explanation for

1 everything on the receipt.

2 Q And y'all had showed him the handwritten notes, also,
3 correct?

4 A We did. He actually very quickly acknowledged that
5 that was his handwriting. We had him read the notes out
6 loud. And what was notable was he read the notes and he
7 didn't seem to show any reaction or response to what was
8 written on the notes. It was just a very flat tone like
9 he wasn't surprised about the content.

10 Q And you actually even confronted him with kind of the
11 biological evidence? In other words, the blood that y'all
12 had found?

13 A Correct. So the notes, Special Agent Mackey
14 dismissed the explanation for the notes and the
15 Wal-Mart -- his explanations for the Wal-Mart items and
16 said he believed they were for getting rid of bodies. And
17 then I confronted Timothy with the blood that was found in
18 the vehicle. As previous witnesses have testified to,
19 there was a lot of blood in the vehicle, a lot of signs of
20 decomposition. He had previously told the officers the
21 night before that it was possibly from an animal. When we
22 confronted him on the night of the 8th, he similarly said
23 it was from an animal. I had known from speaking with
24 Stacy Jones earlier that day that they already outsourced
25 some of the biological samples to a local lab called

1 Boscales Biolab and they had gotten some presumptive tests
2 indicating the material was human. So I confronted
3 Timothy with this after he said it was probably from an
4 animal. And he quickly said, oh, it's from a cut. Other
5 than the fact that he didn't have any cuts that we could
6 see, a cut wouldn't account for that shear level of blood
7 in the vehicle. And I confronted him with that. I told
8 him there was enough blood in the vehicle, it couldn't
9 have been from a cut. And he acknowledged it and didn't
10 say anything else about it.

11 Q And at that point in time, you kind of changed
12 tactics and started to emphasize self-defense while you
13 were speaking with him, didn't you?

14 A We did -- or I did, specifically. There's a little
15 bit of background in that. So one of the people we had
16 spoken to over the phone on the way down for this
17 interview was a behaviorist from SLED. And he had kind of
18 given us a range of suggestions and ideas on how to
19 approach the interview and topics to bring up. And one of
20 the things he had suggested was to offer a minimized
21 explanation for what had happened. Because we knew that
22 the children were probably dead, they were dead, he had
23 probably killed them. And that's a hard thing to get
24 somebody to admit to in an interrogative setting. So one
25 of the suggestions was to throw out this -- especially

1 since he was already setting a foundation that he was
2 afraid of the children, he thought they were going to try
3 to harm him. So I tried to throw out self-defense as a
4 very direct offer. And I went through a pretty detailed
5 explanation about -- I think I specifically told him that
6 we had no doubts he had killed them. And that if he
7 killed them, he had to have had a good reason. And I
8 quoted protection of persons and property act. I kind of
9 oversold it a little bit and a little bit of that was on
10 purpose because I wanted to gauge his reaction. And he
11 actually got a pretty -- I described it as a him,
12 disgusted tone and he almost kind of looked perplexed and
13 cocked his head and he said, but they're just kids.

14 Q And so you disregarded that at that point in time?

15 A Yes. In my opinion, I believe that that indicated
16 the fear of the children wasn't as significant as he was
17 claiming it was.

18 Q Well -- and you started to talk with him about a lot
19 of the major life stressors and how someone in his
20 position with five children could easily become
21 overwhelmed, didn't you?

22 A Correct. And that was another level of rapport
23 building on my part, is that I keyed in on that pretty
24 early that who wouldn't be stressed in that situation,
25 having five children and a high stress tech job and a

1 single parent. So I tried to use that to kind of further
2 our interactions and rapport with him and kind of use that
3 to kind of bring the stress level down a little bit more
4 as well since they had raised back up at this point.

5 Q And you say bring the stress levels down, but he was
6 very emotional at that suggestion, wasn't he?

7 A It was emotional in a less erratic way. It seemed to
8 strike a cord with him, like he kind of shook his head in
9 acknowledgment of what I was saying.

10 Q And he was crying?

11 A And he was crying a little bit at that point.

12 Q And you actually told him, hey, I'm not there to
13 judge you. We're simply trying to find out -- to
14 understand what happened to the children and finding them
15 so that they can properly be put to rest, didn't you?

16 A That's correct.

17 Q At that point in time, I believe Agent Mackey starts
18 placing photos in front of him, doesn't he?

19 A He does. I believe the photos are in evidence and
20 they're photos that have been put in the media quite a bit
21 in this case. But they were the initial photos that I had
22 been given as part of the missing persons report. And
23 Special Agent Mackey had started putting those pictures
24 down in front of him. And he got really upset over being
25 presented with those pictures, actually, raised up in his

1 chair quite a bit. He was handcuffed in the front, so
2 there's not a whole lot of movement he can do, but he
3 actually rose up several inches, got really hysterical and
4 began yelling, keep them away from him.

5 Q I mean, he's coming out of the chair. He's sobbing
6 hysterically. He's saying, keep them away from me.

7 Correct?

8 A At that point, Special Agent --

9 Q I mean, he genuinely appears to be terrified?

10 A He's behaving that way.

11 Q You don't put in your report that Timothy appeared to
12 be genuinely terrified of the photographs of his children?

13 A His behavior is indicative of that.

14 Q And you showed him Defendant's 102 at that point in
15 time, did you not?

16 A I did.

17 Q And when you showed him that photograph, what did you
18 say to him?

19 A This is the only one of the pictures that Timothy was
20 depicted in and this is with -- I believe this is Gabriel
21 in the photo. I showed him that picture -- and at this
22 point, I kind of keyed in that Special Agent Mackey was
23 kind of the more direct, kind of bad cop, if you will,
24 even though I think he seemed like a pretty nice guy. But
25 it's just that image, federal agent, he's the one getting

1 in there saying you killed them, you did this, you did
2 this. I'm taking a more understanding, kind of patience,
3 non-demeaning approach, so I'm kind of inserting myself as
4 kind of the good cop in the scenario. So when this
5 picture came up, I -- what I -- like I said, I quote this
6 to him myself, I said, "Tim, you know what this picture
7 shows me? This picture shows me a man who obviously loves
8 his children and if he killed them, he did it because he
9 felt like he had no other choice at the time." Again,
10 trying to give him sort of a hook to minimize what took
11 place and start to tell us what happened.

12 Q Well, he's sobbing heavily at this point in time,
13 isn't he?

14 A He is.

15 Q And at some point in time, he kind of says hey, guys,
16 let's just cut to the chase?

17 A Correct. So Special Agent Mackey immediately went
18 into confronting him with the Wal-Mart receipts again.
19 And Tim was still crying quite a bit. And just one of the
20 wildest things I've ever seen in terms of a demeanor
21 shift. It was like you had flipped a light switch. He
22 just completely calmed down and he very calmly, he said,
23 "Guys, let's cut to the chase." And we asked him what he
24 meant. And he said, "You're not going to find them." We
25 asked him why and he said, "Because they're deceased."

1 Q And you told him that you need to understand what
2 happened so you can find the children, correct?

3 A Correct. And that had been another strategy that had
4 been suggested by the SLED behaviorist, that if we could
5 get him to talk about what happened to the children that
6 one of the big things we needed to push was that we needed
7 to find the children so that we could bring them back
8 home, get them a proper burial, put them to rest, which I
9 think that's where we would have gone anyways because it
10 would have been the appropriate thing to do under the
11 circumstances.

12 Q And Tim told you after he said that, he said, Guys,
13 this wasn't premeditated?

14 A That's correct. That was his -- the quote that I
15 attributed to him was this was not premeditated.

16 Q And if I understand, none of this is recorded at this
17 point in time? You don't know that it hasn't been
18 recorded?

19 A No. The recorder was off to the side. At the angle,
20 it looked like the red light was on, but it was just a
21 reflection of the light in the room.

22 Q Coming through the red --

23 A Yeah.

24 Q -- I don't know, button or whatever they call it, the
25 glass, plastic? And he told you about, basically, Nahtahn

1 and the outlets, blowing the outlets, correct?

2 A Yeah. He went on to talk about Nahtahn and the
3 outlets again in a little bit more detail. He said that
4 he believed that Nahtahn was, "Up to something, "wouldn't
5 come off it. So he PT'd his ass."

6 Q And when we say PT'd, we're talking about exercising
7 him?

8 A Yes, he described it specifically like push-ups and
9 squats and later he used the word hitting and spanking as
10 well.

11 Q And when he says "wouldn't come off of it", he
12 wouldn't admit why he had blown the outlets? That's what
13 we're talking about when we say he wouldn't come off it?

14 A Correct. He was talking about the outlets. He said
15 he pushed the child for hours because he wouldn't --
16 wouldn't tell about the outlets.

17 Q And he went over with you how Nahtahn died?

18 A Yes. He said he had pushed him for hours and said, I
19 "pushed him too far." And he said he sent him to bed and
20 claimed that he later went to check on him and said he was
21 deceased.

22 Q And at that point in time, Mackey says to him hey,
23 this isn't about Nahtahn not coming off of it. Correct?

24 A Correct. Special Agent Mackey says, "This was not
25 about you being afraid of your children. This is about

1 Nahtahn coming off of it." Timothy's response was, Yes.

2 And then Timothy said, "This was all because Nahtahn would
3 not come off of it."

4 Q But Nahtahn not coming off of it, we're talking about
5 Nahtahn not coming off of playing with the outlets in an
6 attempt to electrocute his dad, correct? I mean, that's
7 what he's trying to get out of him, is why are you doing
8 this?

9 A So Timothy had earlier referenced, obviously, when he
10 first brought up the outlets that it was because of his
11 fear Nahtahn was trying to hurt him. He didn't bring that
12 angle up at this point. He just seemed really focused on
13 the fact Nahtahn wouldn't tell him what happened with the
14 outlets and why. He actually used the word defiant to
15 describe the child when he was talking about the PT. And
16 then it was a really odd statement, at one point, he says,
17 " One of the five would have grown up to do something bad.
18 Me killing them prevented that."

19 Q And that seemed really odd to you, didn't it?

20 A Of course.

21 Q But you took as him implying that maybe the kids
22 would grow up to have some sort of mental illness?

23 A I did. That was my impression at the time.

24 Q And that seemed odd?

25 A It did. I don't think that's a good rationalization

1 of what took place.

2 Q And at that point in time, he kind of took you
3 through, when you asked about the other children, and he
4 told you how he had strangled them?

5 A Correct. He went into a detailed explanation. And
6 you guys have all heard about how he strangled the other
7 four. He said he started with Elias. As he was
8 strangling Elias, he stated that Elias said, "Daddy, I
9 want to go with." He told us next he sought out Merah,
10 who he then told us he also manually strangled with his
11 hands. And while doing, as has been previously testified
12 to, she said, "Daddy, I love you." And he initially told
13 us he killed the youngest two children, the babies, the
14 same way. Later, he clarified for us that he had actually
15 used a belt. When we asked what belt, his response was, I
16 don't know. I have a lot of belts. But he did admit that
17 when he did kill the children, it was on August 28th,
18 2014, and it was at his residence, which was [REDACTED] South
19 Lake Drive, which is in Lexington.

20 Q And he still seemed uncertain regarding Nahtahn's
21 exact cause of death, is what he expressed to you?

22 A He did. I noted at the time that I felt like it was
23 kind of unusual that he could be so blatant about how the
24 four died, but he wouldn't explain Nahtahn. Looking back
25 on it, I can see a number of reasons that could be the

1 case. At the time, he suggested that maybe Nahtahn had
2 electrocuted himself with the outlets. He actually used
3 the word, "Sucked all the electrolytes out of his body."
4 He's a pretty intelligent guy. In hindsight, I don't see
5 where he would have necessarily believed something like
6 that. But that was his suggestion at the time.

7 Q But you had placed in your report, Timothy seemed
8 genuinely uncertain regarding Nahtahn's exact cause of
9 death?

10 A That was my impression at that moment.

11 Q And he told how, after that, he had smoked Scooby
12 Snaxs to kind of calm the voices in his head?

13 A He did. So we initially spoke about -- the message
14 he had sent his father, I think was introduced yesterday,
15 about he had too much to do and that's why he wasn't
16 coming to town that weekend, whether or not that had to do
17 with his dilemma about what to do with the children. He
18 said yes. And then he went on to tell us this was also
19 why he told his neighbor, Christine, on the 2nd that she
20 couldn't talk to them. Because, at that point, of course,
21 they were already deceased. He then told us at that point
22 that he had smoked Scooby Snax that he mentioned that he
23 uses after killing the children. He said it was to, "calm
24 the voices in his head."

25 Q And he had told you how he had wrapped the children

1 in sheets and blankets and placed them in his car?

2 A He did. He said he used the sheets and blankets off
3 their beds and he wrapped them up and stacked them in the
4 vehicle.

5 Q And you would ask him, what were you thinking at the
6 time? And he said, I wasn't thinking. I didn't care if I
7 got caught.

8 A That's correct. He did say -- I quoted him with
9 this, I wasn't thinking. I didn't care if I get caught.
10 We talked about whether or not he had ever done anything
11 to any of the bodies, which he denied. But he did make a
12 comment at that time that he was, "not very careful with
13 them as they were already dead."

14 Q And you asked him, hey, with all this going on, why
15 didn't you get any help? And he kind of mistook that
16 question, didn't he?

17 A Correct.

18 Q In other words, he started telling you that Amber
19 didn't want the kids and that he had kind of had a rocky
20 relationship --

21 A Yeah, just --

22 Q -- with his dad --

23 A -- glancing at this --

24 Q -- but that wasn't your intent of the question, was
25 it?

1 A -- I didn't want to misspeak. So we did ask him --
2 so initially, he made a comment about what he thought
3 should happen to him. He mentioned a couple of
4 possibilities. I'm not going to say. And in light of
5 this, I did make the comment -- he did make the comment of
6 I think I need help. And then he went on to explain to us
7 that this wasn't the first time he had thought about
8 harming the children. We asked him as a follow-up, you
9 know, why he didn't previously seek any help. And at the
10 time, he seemed to interpret that as physical help with
11 the children, like childcare-type stuff. Because then he
12 went on to explain that he had a rocky relationship with
13 his own father and family and that, you know, at least,
14 insinuated that the children's mother didn't want to be an
15 active part of their lives.

16 Q And you told him, No, that's not what we were talking
17 about. You were talking more mental health kind of stuff?

18 A Yes, I was inquiring more of potential psychiatric
19 issues if those were valid. And his response was,
20 "Because I thought I could manage it on my own." And he
21 mentioned at that time about how he had seen a
22 psychiatrist briefly after his divorce. And during that,
23 we kind of asked him what his thoughts were about what
24 happened to the children. And to me, this was a pretty
25 notable statement of his. He said, "Part of me says I'm

1 their father and no father should do this to his children.
2 Part of me says fuck it, they're already dead."

3 Q And he had also told you that he had been told
4 numerous times that he needed psychiatric help?

5 A He did.

6 Q And he told you -- or y'all explored about the fact
7 that the children were in the car from August 28th until
8 September 6th, correct?

9 A That's correct.

10 Q And that he drove around with them in the car no
11 matter where he went?

12 A That's correct. He said he was driving around, I
13 believe he described it as fairly aimless, but he said at
14 the time, he was trying to come up with ideas and plans of
15 what he was going to do with the bodies.

16 Q And you thought that that was fairly consistent with
17 what you had seen in the vehicle with all the kids being
18 in the car?

19 A Correct. The vehicle was definitely indicative that
20 they had probably been in there for a week.

21 Q And y'all went back and talked to him about, say, the
22 Wal-Mart receipt and some of the notes, didn't you?

23 A We did. We went back and talked with him about the
24 items on the receipt again. This time, he did acknowledge
25 that he had purchased all those things from the Wal-Mart

1 and that his intent had to be to use those items to
2 dispose of the children. His exact word was, "Dispose of
3 the evidence." He said that he had purchased the garbage
4 bags on the -- so the Wal-Mart purchase was on the 3rd.
5 The garbage bags from Dollar General was on the 4th. He
6 said those were specifically purchased to get rid of the
7 remains. Notably, he said, "I had some of my own trash to
8 throw away, too." And then we asked him about the smell.
9 Because some other witnesses had testified the smell in
10 his vehicle was pretty significant. His comment to us was
11 that you just learn to ignore that after a while.

12 Q That smell would knock you off your feet, even when
13 you saw the vehicle?

14 A When I was exposed to it, it had been airing out for
15 a couple of days, yeah, about knock you off your feet.

16 Q But he also told you that those kind of plans that
17 had been formulated, that he just couldn't follow through
18 with them?

19 A He did. He said, ultimately, he just put the
20 children in garbage bags and tossed them off in a wooded
21 access road.

22 Q And you told him at that point in time what he did
23 was terrible, but you also told him again that it wasn't
24 your place to judge him for what he did?

25 A That's correct. I did tell him that. Again, you

1 know, he said this, he's admitted to what most people
2 would agree is a pretty egregious thing. But at that
3 point -- my goal at this point is that we've still got to
4 find those children and bring them home. So I can't get
5 emotionally invested and reactive to what he's just
6 admitted to. I've got to stay in my role. So again, the
7 empathetic approach to this interview -- and again, it's
8 not my role to judge him for what he did. It's just be a
9 finder of what happened and let's find those children and
10 let's get them home.

11 Q And that's what you told him is hey, we need to find
12 the children and that they deserve a proper burial?

13 A I did. I once more harped on the notion that he
14 needed to help us put these children to rest, which is
15 what they deserved. That they deserved better than being
16 thrown in garbage bags in the woods.

17 Q And Tim wanted to help you find them and put them to
18 rest, didn't he?

19 A He did. I mean, he agreed with us that what he had
20 done wasn't what they deserved. And I think, at the very
21 least, he realized that at this point, he had admitted
22 what he had done and that there was no reason for him not
23 to help us find the children.

24 Q And, in fact, he even seemed eager, didn't he?

25 A Yes, I would say the more involved we got trying to

1 find the location, he did get very engaged and very eager
2 for us to find the spot and take us to the children.

3 Q And you told him that confessing and helping to find
4 the kids was the right thing to do?

5 A I did.

6 Q And so y'all kind of -- at that point in time kind of
7 tried to, I guess, kind of step back in time and start
8 figuring out kind of where the kids might be?

9 A We did. So there was kind of a key incident that I
10 think occurred or, at least, he says occurred. And I
11 think this is significant to the timeline of what
12 happened. He had mentioned this to the officers on the
13 night of the 7th. I don't know if it came up in their
14 testimony or not, I can't remember. But Timothy told
15 us -- at this point, he repeated the story, that on the
16 night of September 6th, he was driving through Georgia or
17 Alabama and he pulled over on the side of the road and he
18 got stuck in the ditch. He said that he should have been
19 caught then because he said a local law enforcement
20 officer got out with him and was concerned that he might
21 have been under the influence and kind of had a loose
22 suspicion of possible DUI. He said the homeowner -- there
23 was a homeowner, I guess a residence right there where he
24 got stuck in the ditch had come out and talked to him
25 already. He came out and vouched for him and said, hey,

1 look, this guy's not a problem. Just let him call a tow
2 truck and get wenched out of the ditch and it will be
3 fine. He said he paid for a tow truck in cash and they
4 came and pulled him out. But he said at that point that
5 he knew he had almost been caught and that he needed to
6 get rid of the children at that point. So the next day --
7 we had talked about receipts, the previous receipts
8 mentioned from the Bypass Food Mart in Greenville,
9 Alabama, at 8:18 a.m., the Community Neighbor Bank in
10 Camden, Alabama at 13:06 p.m., which would be 1:06 p.m.
11 He had mentioned that they were with him at the Food Mart,
12 but they were not with him at the Community Bank. So we
13 had a pretty reasonable belief that somewhere in between
14 those two, he had -- would have been the disposal site.

15 Q Let's not jump to the next day yet. I've got a few
16 more questions.

17 A Sorry.

18 Q That's okay. The idea with the wrecking of the car
19 and the police officer, y'all weren't ever able to confirm
20 that, were you?

21 A We weren't. We tried. Of course, to an extent kind
22 of like a needle in a haystack because I can't imagine
23 would want to come forward and say hey, I was that guy and
24 probably should have arrested him for DUI, but didn't.

25 Q But Tim didn't seem to have any reason to lie about

1 it even though you couldn't confirm it?

2 A Yeah, it was a story that didn't seem to serve any
3 purpose one way or another, so we just kind of -- I, at
4 least, personally took it as a probable fact.

5 Q At that point in time, you kind of give him laptops
6 to try to help kind of figure out the area?

7 A We did. He seemed convinced that if he got access to
8 some kind of topographical maps or something that showed
9 elevation changes that he would be able to find the
10 location on a map. We're still looking at a pretty big
11 search area.

12 Q And I think you might have brought him like an Apple
13 laptop first and he gets frustrated --

14 A I think so.

15 Q -- and he gets frustrated with that --

16 A He got frustrated with the Apple device and
17 specifically requested something with Windows or Android
18 operating system. And I kind of remember joking with him
19 about that because I feel the same way about Apple
20 products.

21 Q You don't like Apple products either?

22 A No. I think they're kind of clunky.

23 Q And during this time, he would kind of have
24 occasional outbursts, but you believe that those were
25 appropriate emotional responses, correct?

1 A I mean, for somebody who had just admitted to having
2 killed their children and under the circumstances, I felt
3 like some of his responses were appropriate.

4 Q And that's about the point in time you realized hey,
5 the recorder is not on?

6 A It is. We actually were planning on concluding the
7 interview and realized that the tape recorder of probably
8 the best interview we'll ever conduct was not recording.

9 Q And so you start again?

10 A That's correct.

11 THE COURT: Let's take a break right now. It's the
12 middle point of the interview. Step in the jury room.
13 Don't talk about the case. We'll have you back out here
14 in ten to 12 minutes.

15 (Whereupon, the jury was excused for a break.)

16 (WHEREUPON, a short break was taken.)

17 THE COURT: Ready for the jury?

18 MR. MADSEN: Yes, sir.

19 (Whereupon, the jury came into open court at
20 approximately 3:30 p.m.)

21 CONTINUE DIRECT EXAMINATION

22 By Mr. Madsen:

23 Q So kind of go back over and taped from there on out,
24 correct?

25 A Certainly. Where we left off, that's where we had

1 learned about the issue with the digital recorder. I
2 don't remember if it was my idea or Special Agent Mackey's
3 idea, but we asked him if he would be willing to allow us
4 to start a second recording and be successful and actually
5 kind of do a summary of what we had spoken about up until
6 that point.

7 Q And at some point, you asked him why he confessed and
8 he told you because he wanted to do the right thing?

9 A I believe so, yes.

10 Q And so everyone's heard that audio taped interview,
11 so I'm not going to go back through all of that. But you
12 asked him if he had killed the kids on purpose and he had
13 always maintained -- and he maintained that Nahtahn was an
14 accident, correct?

15 A That is correct. He does maintain during that
16 recording that Nahtahn was an accident.

17 Q And he even kind of took that -- I don't know what I
18 did with that -- that picture right there, he even kind of
19 took that picture and used it as far as, you know, think
20 of me with Nahtahn like this?

21 A Yes. He used it as a demonstrative aid and said --

22 Q And he told you that he had killed the children
23 because of the voices?

24 A Correct.

25 Q And you've seen Defendant's 103?

1 A I have.

2 Q Which these were given to you by Agent Lawrence,
3 correct?

4 A That's correct.

5 Q And you utilized these 38 questions and asked him
6 before you recorded everything and then I think you went
7 back through these after you recorded?

8 A Yes. So that was a tool that was also given to us by
9 the behaviorist from SLED. He had mentioned that on the
10 trip down about this questionnaire. While we were in the
11 interview, at some point over the duration of the
12 interview, he had sent them to Lieutenant Lawrence by
13 email. Lieutenant Lawrence printed a copy and gave them
14 to us during the interview. And we used them during the
15 interview was the first time I had ever seen those
16 questions.

17 Q And those were used to document someone's mental
18 state?

19 A It was explained to me that they had some role in
20 that, yes.

21 Q And you went through them twice?

22 A I did, because the first time would have been on the
23 first recording. And then we started over, it was easy to
24 just ask those questions again.

25 Q And he gave the same answers almost identical both

1 times?

2 A Yeah, I recall the answers being close enough that it
3 wasn't -- it wasn't any real discernable differences to
4 document.

5 Q And one of those questions were did he know it was
6 against the law?

7 A That's correct.

8 Q And he said, Hey, I wasn't thinking about the law
9 then.

10 A That was part of what he said.

11 Q And I think one of your other questions -- or one of
12 the other questions was, would you have done it if a law
13 enforcement officer was right there?

14 A That's correct.

15 Q And I think your example was would you have done it
16 if you were arm-to-arm with an officer?

17 A Correct. I think I said elbow-to-elbow, but it's the
18 --

19 Q Elbow-to-elbow.

20 A -- same idea, yeah.

21 Q And he said, Yeah, because I saw myself as a target
22 at that point in time?

23 A And I believe he said that he thought Nahtahn was
24 holding a gun.

25 Q Kind of like if Nahtahn was holding a gun on him?

1 A Something like that.

2 Q And you asked if he had any unusual mental
3 experiences when he did it and he said yeah. Is that
4 correct?

5 A Yeah, it is correct. I haven't -- since the actual
6 recording, I haven't studied that section in much detail.

7 Q And he talked more about the voices in his head?

8 A Correct.

9 Q And you had asked him if he had any hallucinations
10 that night and he told you, no, just voices?

11 A Correct, he just said voices.

12 Q Let me show you what's been marked Defense ID 129,
13 you didn't have -- well, do you recognize that entire --

14 MR. HUBBARD: May I see that?

15 MR. MADSEN: Yeah, I'm going to make sure he can ID
16 it first.

17 A I recognize the question portion, which is 1 through
18 38 -- I mean -- yeah, 38. I don't really recall the
19 beginning portion or the ending portion here.

20 Q Well, you didn't have the beginning or the ending
21 that night, correct?

22 A I don't think I did. I think -- in fact, we actually
23 had these printed on a -- this is a Powerpoint. We
24 actually had it printed four slides to a page.

25 Q But you received those later --

1 MR. HUBBARD: If I could interject for just a moment.
2 We can expedite this. What was actually used is in
3 evidence as a Defense Exhibit, I do believe.

4 MR. MADSEN: It is. And I'm asking him if he's aware
5 now of the Powerpoint that goes with it. He had received
6 it afterwards.

7 THE COURT: How is that relevant? I mean, did he use
8 that?

9 MR. MADSEN: He did not use this at that time, but he
10 received the whole thing later.

11 THE COURT: How is that relevant if he wasn't using
12 it? I mean, I saw it on Facebook since then. How is it
13 relevant?

14 MR. MADSEN: I just believe it's relevant.

15 MR. HUBBARD: I don't see any relevance if he didn't
16 use it.

17 THE COURT: I mean, it's already in. You want to put
18 it in three or four times?

19 MR. MADSEN: Not a portion of this, not the
20 Powerpoint that goes along with is not.

21 THE COURT: You didn't use the Powerpoint.

22 MR. MADSEN: I didn't say he did, but he --

23 THE COURT: How is that relevant?

24 MR. MADSEN: Because it explains the questions.

25 THE COURT: No. Make a record of it later. It's

1 already in.

2 Q And you asked him about if he had any other crazy
3 beliefs. And I think he mentioned to you that he was a
4 free mason?

5 A Correct, he did.

6 Q Did that kind of seem odd?

7 A I think it's kind of odd that somebody would
8 reference that as a weird belief. I know quite a few
9 people who are pretty avid free masons. I don't know much
10 about free masonry, but they're all pretty normal people.

11 Q There's a book over there if you want to learn. But
12 --

13 A Sounds like it's a lot of work.

14 Q As you said, Agent Lawrence was a polygrapher. He
15 had his stuff with him, but y'all didn't feel that there
16 was any need to put Tim on a polygraph to check anything
17 that he had told you?

18 A We didn't. And that would be pretty normal. I think
19 in almost ten years I've been doing this, I can only think
20 of one time where we put a person on a polygraph for a
21 criminal case. And it was actually very recently and they
22 actually requested it.

23 Q Let me jump then to the 9th. Tim is still wanting to
24 help find the children, correct?

25 A Correct. He had agreed to us on the night of the 8th

1 that he'd be willing to continue to help us try to find
2 out where the children were.

3 Q And y'all talked with him pretty quickly right then,
4 correct?

5 A We did. We were actually in that same room we had
6 that initial briefing in with all the local law
7 enforcement. It was pretty similar, except Timothy was
8 involved in it and we were looking at a map and just
9 trying to narrow down our search grid, for lack of better
10 terms. And the Alabama authorities had been notified of
11 what was going on and they were actively kind of searching
12 the same area and we were kind of working out a game plan.
13 It appeared that Highway 10 was kind of a direct route
14 that ran between Camden and Greenville. And so with them
15 being with him at point A, but not point B, it was easy to
16 presume that if they were somewhere in between, they were
17 probably somewhere around Highway 10.

18 Q And you did not record those conversations with him?

19 A We didn't because it was mostly planning with law
20 enforcement. He was given another advice of his rights.
21 And Special Agent Mackey did have him go over the general
22 events of the 28th, but it wasn't like a full blown
23 interview. It was all kind of quick because we wanted to
24 certainly take advantage of the daylight we had available
25 and get on the road. That was going to be our plan.

1 Q But he did mention something about Nahtahn breaking
2 some glasses?

3 A He did. He had mentioned that on the night of the
4 28th, Nahtahn had broken a pair of prescription glasses.
5 And as he's mentioning this, he -- he had been pretty
6 upbeat and enthusiastic. When he told the story about the
7 glasses, you could kind of hear a bit of anger in his
8 voice. You could tell it was something he was a bit
9 bitter about.

10 Q At some point after talking with him a little bit,
11 y'all end up heading to Alabama, correct?

12 A We do. So as it's been described by some other
13 witnesses, we had a bit of a convoy going. I was seated
14 in the back seat of a Smith County Sheriff's Department
15 patrol car with Tim. The car was being driven -- in the
16 front seat was Robert Garner, who's now the Under-Sheriff
17 of the Smith County Sheriff's Department since Marty
18 Patterson retired, and a Deputy Charles Johnson, who
19 previously testified on the case. And I sat in the back
20 of the car with Tim as we traveled to Highway 10. Because
21 he was convinced if we could get him to that vicinity,
22 he'd recognize the location, which he had described as
23 just a very almost generic dirt, clay drive with gravel
24 with some elevation details.

25 Q But the topography was going to be up or something

1 and he thought that that's something that could lead him
2 to recognize, correct?

3 A Correct. He had actually drawn us a map during the
4 briefing. And later on, when we actually find the site,
5 the map was actually pretty accurate. He actually made a
6 pretty particular point to denote elevation differences in
7 the map.

8 Q And you had told him while y'all were driving there
9 that he was doing the right thing by cooperating and
10 taking you to the children?

11 A I did. Because it was important for me -- at that
12 point, our big objective was to find those children and
13 bring them home.

14 Q And I think at some point in time, y'all thought --
15 or he thought that it was the right place and it ended up
16 being kind of wrong, y'all made like a wrong turn or went
17 up a wrong drive, is that correct?

18 A Yeah, we were just around Camden. I don't remember
19 if we were -- I think we were just before Camden. He had
20 seen a left-hand turn and said, ah, that might be it. We
21 turned on it. Got a little ways down, it was actually a
22 residential driveway, but it was dirt, clay and gravel. I
23 don't know that the rest of the convey knew it was a
24 residential driveway because they didn't get that far
25 before we turned around and backed out. He was pretty

1 upset about it because he didn't want it to appear that he
2 was just jerking us around and taking us on a wild goose
3 chase. My thing was it's the first wrong turn we've taken
4 in 160 or so miles. I was prepared for more wrong turns
5 than just that.

6 Q And I think you put a quote that he told you that I
7 know I'm prosecuting myself here, but I want to do the
8 right thing?

9 A Correct. That's what I've got him attributed as
10 saying, I know I'm prosecuting myself here, but I want to
11 do the right thing.

12 Q And he was saying that multiple times?

13 A He did. I used that as an opportunity to kind of
14 offer nonjudgmental assurance because, again, we had been
15 pretty professional with him up to this point. I think it
16 would be safe to say a lot of people in that position
17 probably wouldn't have been, but we wanted to maintain
18 because, again, at that point, his cooperation was still
19 very important until we found those children and,
20 potentially, afterwards.

21 Q Well, and he even expressed to you that he was
22 worried that hey, once you -- once we find the kids,
23 you're going to kind of become a jerk to him?

24 A He did express that as a concern and I told him that
25 wasn't going to be the case. I mean, if I was to deal

1 with him today, I'd probably treat him no differently than
2 I did that day.

3 Q You told him hey, I'm not going to punish you for
4 helping with the investigation?

5 A Correct.

6 Q And at some point in time, you found that right
7 driveway, correct?

8 A We did. So I don't think -- without looking at a
9 map, I want to say maybe 10 or 15 miles further down, and
10 we were moving at a pretty good pace, but -- in fact, we
11 actually passed it initially because we were going so
12 fast. Because it's just a stretch of woods, it all just
13 looks the same. It's kind of a blink and you miss. He
14 just happened to snatch his head around and said, we need
15 to turn around, we need to turn around. And I was on the
16 phone with Special Agent Mackey, as he testified, as this
17 was taking place and as we start going up this drive, he
18 starts saying, this is it, this is it, this is it. And
19 prior to that, he had told me that once we get to the
20 site, he goes, it's probably going to be very emotional
21 for me. I mean, I guess I can absolutely see why. And
22 sure enough, as we get further up the drive, he starts
23 crying and sobbing quite heavily.

24 Q And as you get him and he tells you, they're over
25 there, and I think your words were he was highly

1 hysterical at that point in time?

2 A Right. Initially, we got out of the car, it was a
3 pretty intense moment. Initially, I kind of veered left
4 with Under-Sheriff Crumpton -- I'm sorry, Sheriff
5 Crumpton. As he described, the odor had kind of wafted
6 into kind of a low line hollow area and I actually veered
7 that way as well because the odor was -- I mean, we knew
8 we were at the right spot. We had to be. And it wasn't
9 until I kind of got down there and turned around and
10 realized they were walking up and over to the right. And
11 that's when I turned and saw him start gesturing toward
12 where we would find the bodies. And it actually was a
13 pretty accurate description as to what he had drawn for us
14 that morning.

15 Q And you were told at some point in time okay, now,
16 it's time to take him back to Mississippi. So y'all
17 didn't stay there very long, did you?

18 A Correct. We had been on scene just mere minutes and
19 it started to get flooded with local Alabama law
20 enforcement personnel. Helicopters were landing. There
21 were probably several dozen people in just a matter of
22 minutes. Sheriff Crumpton didn't want to keep Timothy
23 there any longer than we had to because Timothy was his
24 responsibility at the time, his prisoner. And we can't
25 account for all these Alabama guys. And there's no

1 need -- there was no further purpose for him to be there,
2 so we want to go ahead and get him back. And it was
3 understood that I was riding back with him to kind of go
4 over what we found.

5 Q And you decided on the way back that you were going
6 to audiotape a portion of that, correct?

7 A I did. It's, you know, I think a few hours up there,
8 but we were driving pretty fast. Driving back, it was a
9 considerably longer trip because we were going the speed
10 limits. We were recorded about a 25-minute-or-so portion,
11 I think because a lot of it was just sitting. I think we
12 were both kind of crashing at that point for a lot of that
13 drive. We did kind of go over the findings and what we
14 may or may not find and talk about the case for 25 minutes
15 recorded.

16 Q Well, actually, didn't you -- you started a recording
17 and it maybe lasted like 25 seconds or something?

18 A Yes. So that was before the decision would be made
19 to rush him from the scene. We were trying to get him a
20 cigarette because he had asked for a cigarette. We had
21 been allowing him to smoke cigarettes the night before,
22 that day. And I didn't care. So we were trying to
23 arrange for him to have a cigarette, but Sheriff Crumpton
24 was more interested in getting him out of the -- out of
25 that area. So we had started recording and stopped it

1 almost immediately. And then got in the car and shortly
2 after that, we started what would actually technically be
3 the third recording if you count the one that's only a
4 couple minutes.

5 Q And you audio taped that 25 minutes?

6 A I did.

7 COURT REPORTER: That's going to be number 130,
8 Judge.

9 MR. MADSEN: Yeah, we would offer 130 into evidence.
10 I don't think that the Solicitor has any objection to it.

11 THE COURT: That's the recording?

12 MR. MADSEN: It's the recording of his. It's on a
13 thumb drive now.

14 THE COURT: Any objection, Solicitor?

15 MR. HUBBARD: No, sir.

16 THE COURT: All right. 130 will be admitted without
17 objection.

18 (WHEREUPON, Defendant's Exhibit number 130 was
19 admitted into evidence.)

20 (WHEREUPON, the audiotape was played for the jury
21 starting at 3:25 p.m., ended at 3:50 p.m.)

22 (WHEREUPON, a bench conference was held.)

23 Q Sergeant Creech, just a few more questions. It
24 appeared on there that you kind of continually asked him
25 about mutilating of the bodies, correct?

1 A Correct.

2 Q And he was always consistent that he tried to cut or
3 cut Nahtahn's leg and he just couldn't go through with it
4 and that's when he --

5 MR. HUBBARD: Your Honor, I object. It's going to
6 speak for itself.

7 THE COURT: I'm going to allow the question. I
8 agree, don't -- I mean --

9 MR. MADSEN: Sure.

10 THE COURT: Be brief with it.

11 A He maintained that he had tried to cut Nahtahn's leg
12 and that was it.

13 Q And he told you that he had driven them around
14 because he just wasn't ready to say goodbye at that point
15 in time?

16 A He did say that.

17 Q And then I believe at some point in time, y'all had
18 an unrecorded conversation, I guess, after that?

19 A Yes. Because we were in the car a couple of hours
20 and, occasionally, there would be burst of conversation.
21 And, clearly, I can't stop every time we're going to have
22 these quick interactions and start the recorder and stop
23 the recorder, so I just tried to document some of that
24 that seemed important as we went.

25 Q I'm going to go to page, I guess, 146 of your report,

1 most of the way down. And it appears he said to you, you
2 know, the thought that there are people in this world that
3 can take another human life and not feel any remorse about
4 it scares me. Those kinds of people scare me. And he
5 said that to you?

6 A He did. He followed this by saying -- asking me
7 directly if those kind of people scared me as well.

8 Q And you had also asked him about if there were any
9 other contributing factors, correct?

10 A I did. I asked him if this had anything to do with
11 the DSS investigation or his ex-wife potentially taking
12 him to Family Court.

13 Q And I think you've documented in your report that
14 Timothy gave me what appeared to be a surprised look at
15 this suggestion and responded no as if those thoughts were
16 not even a remote concern?

17 A I did. The way he reacted to me was that those were
18 not on his mind talking about all this.

19 Q And you didn't end up traveling back with him from
20 Mississippi to Lexington, correct?

21 A I did not. I think --

22 Q Did you come back with Creech and Lawrence -- or
23 rather, excuse me, Mackey and Lawrence?

24 A I had to overnight in Mississippi and had to get a
25 local MBI agent to drive me halfway because they ended up

1 in Alabama. It was a logistical nightmare, but we ended
2 up meeting up and driving back the next day.

3 Q And then at some point in time, you end up seeing Tim
4 again, correct?

5 A I do.

6 Q And I think that that was at the detention center in
7 Lexington when he got there?

8 A It was.

9 Q And he asked you about the autopsies, correct?

10 A He did. Let me just get my dates right so that --
11 yes.

12 Q Yeah, can you tell me what date that was?

13 A That would have been September 11th, 2014, the same
14 day of the autopsies and the same day his extradition was
15 completed to Lexington County.

16 Q And you told him that Elaine, Gabriel, Elias and
17 Merah's autopsies showed signs consistent with
18 strangulation, correct?

19 A Correct. That was the preliminary assessment.

20 Q And he asked you about the cause of Nahtahn's death,
21 didn't he?

22 A He did.

23 Q And you told him that the case of death was ruled as
24 an unknown homicide?

25 A I did. That's what it was ruled as at the time.

1 Q And then he shrugged his shoulders and told you, I
2 think you have "See, I told you so. I don't know how he
3 died."

4 A Correct.

5 Q And he was emotional while he was telling you that,
6 wasn't he?

7 A He was.

8 Q And you tried to reassure him that he did the right
9 thing, didn't you?

10 A I did. And he had a pretty visceral response to this
11 and said, "What do you mean I did the right thing? I
12 killed my fucking kids."

13 Q And you clarified that and told him hey, I was
14 talking about your cooperation in helping us to find the
15 bodies so that they could be put to rest, correct?

16 A Correct.

17 Q And to this day, you still believe that his
18 confessing and taking law enforcement to the children was
19 the right thing to do?

20 A I think it was. It was important for us to bring
21 those children home.

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

23 THE COURT: All right. We'll take a quick break. Go
24 to the jury room. Come back in in about ten minutes and
25 we'll try to get done for the day. Don't talk about the

1 case.

2 (Whereupon, the jury was excused from the courtroom
3 for a break.)

4 THE COURT: All right. Stand down for about ten.

5 (WHEREUPON, a short break was taken.)

6 MR. MADSEN: Judge, we attempted to move State's ID
7 -- or excuse me, Defense ID 129 into evidence. There was
8 an objection. The Court ruled that we could not. I've
9 had it marked as a Court's Exhibit. Obviously, our
10 position is that the law enforcement was attempting at
11 that point in time to preempt a mental health defense and
12 that's why they asked the 38 questions. While he wasn't
13 given the Powerpoint, those are the Powerpoints that are
14 associated with it. We received those from the State
15 during the discovery process and we believe that we should
16 be allowed to put in those associated slides explaining
17 what they were trying to do. And to deny us the ability
18 to do that is to deny Tim due process, the right to
19 present a defense under the Sixth and the Fourteenth.

20 THE COURT: The reason I didn't let it in was during
21 the preliminary hearing and this hearing, he testified I
22 was given these questions on the way down to Alabama -- or
23 Mississippi. I was told just to ask them. He didn't have
24 any background material. He didn't know what they were
25 for. He was just to ask them and he did. So he didn't

1 have any of that basis to ask them. He wasn't trained in
2 that, didn't have any idea or knowledge of that from the
3 preliminary hearing. And that's why I said they're not
4 relevant. The questions he asked are the questions he
5 asked and those are in.

6 MR. MADSEN: Sure. And our point was he got those
7 later through a lead sheet, the entire thing, so he is
8 familiar with them now and that's why I was trying to
9 introduce them afterwards.

10 THE COURT: And I still don't think they're relevant
11 through him. I'm going to maintain my ruling, they're not
12 relevant through him. At the time he used them, he read
13 them.

14 MR. MADSEN: And Judge, in the same vein, I know the
15 Solicitor is going to try to introduce some stills from
16 Wal-Mart from a video. And, obviously, Sergeant Creech
17 wasn't there for the video, so we would object to those
18 under that same vein.

19 MR. HUBBARD: I haven't offered them yet. I'm going
20 to offer two still shots from video. He's the lead
21 investigator. All evidence goes to him. And I was going
22 to bring it up at the appropriate time.

23 THE COURT: I thought the Wal-Mart guy did that.

24 MR. MADSEN: He did, he put in the video.

25 MR. HUBBARD: Well, law enforcement got it. So just

1 two still shots of what's already in. I don't understand

2 --

3 THE COURT: The manager that works at the mattress
4 store, he's the one that identified all that.

5 MR. HUBBARD: Yeah.

6 MR. MADSEN: And like I said, he's saying the chief
7 investigator responsible, that was the same thing that I'm
8 arguing for 86.

9 MR. HUBBARD: Except this investigator used this
10 information as they continue their investigation.

11 THE COURT: We'll see.

12 MR. HUBBARD: And I'll explain why.

13 THE COURT: Okay. Y'all ready for the jury?

14 MR. HUBBARD: Yes, sir.

15 THE COURT: Bring in the jury.

16 (Whereupon, the jury came into open court at
17 approximately 4:10 p.m.)

18 THE COURT: All right. Solicitor.

19 MR. HUBBARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HUBBARD:

22 Q Sergeant Creech, I just want to go over a number of
23 things, not only about your interviews with Mr. Jones, but
24 about the investigation. You're the lead investigator for
25 Lexington County, are you not, on this case?

1 A That's correct.

2 Q Now, you said when you actually got this case, no one
3 knew it was going to be a homicide or multiple homicides?

4 A Not at all. Missing persons cases, probably 95
5 percent of the time are what they are, but five percent of
6 the time, I guess you could call them land mines. You
7 don't know what you're going to step on.

8 Q As you got into this case, certainly when you got to
9 Mississippi and you talked to Sheriff Crumpton and you
10 talked to Marty Patterson and you talked to Agent Johnson,
11 you heard information about the Defendant saying he was
12 hearing voices?

13 A Yes, I think they did mention that there had been
14 some talk of that in the interview the night before.

15 Q Well, let me ask you, in the interview you conducted
16 with Agency Mackey on the 8th, September 8th?

17 A Yes.

18 Q The Defendant at that time starts talking about
19 voices, voices, voices, voices, right?

20 A Yes, he brings it up and it was, from our
21 perspective, consistent with what he had brought up the
22 night before.

23 Q Because of that, was part of your job and Agent
24 Mackey to go ahead and start looking, not only what
25 happened and what happened to those kids, but start

1 determining whether the Defendant himself could express
2 whether he did something wrong or did not see any
3 wrongfulness in his behavior? Is that a fair question?

4 A I believe it is.

5 Q Is that part of what y'all were doing as well, seeing
6 if he could make an admission that he understood something
7 was wrong?

8 A Yes. And I believe it was pretty clear with all the
9 interactions with Tim, I probably spent somewhere in the
10 ballpark of nine, ten, eleven hours with him over the
11 course of a few days. He seemed pretty clear at every
12 point that he knew what he had done was wrong.

13 Q And as an investigator --

14 MR. MADSEN: Object, that's -- that goes to the
15 defense at issue and is not appropriate.

16 MR. HUBBARD: And I have a right to attack their case
17 and that's what I'm doing with their witness.

18 THE COURT: Hold on. Y'all approach.

19 (Whereupon, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: I need to put something on the record
23 real quick. Y'all step in the jury room.)

24 (WHEREUPON, the jury was excused from the courtroom.)

25 THE COURT: All right. At sidebar, we discussed not

1 at great length, but at some length, the anticipated
2 questions by the State. Solicitor, proffer a few
3 questions to the end we were talking about, conduct you
4 are wanting to elicit from the witness and then we'll see
5 if we're getting in areas where the Defense is having
6 objections to it.

7 PROFFER DIRECT EXAMINATION

8 BY MR. HUBBARD:

9 Q Sergeant Creech, when you were interviewing Mr.
10 Jones, in addition to trying to find out what had happened
11 to the kids, since you were hearing about voices, were you
12 also trying to elicit any kind of information from the
13 Defendant where he would acknowledge the wrongfulness of
14 his conduct? For instance, actions taken to hide
15 evidence? Were you doing that?

16 A Certainly.

17 Q Actions where he fled because he knew he was going to
18 get in trouble?

19 A Certainly.

20 Q Anything he said where he understood he broke the
21 law?

22 A Absolutely.

23 Q Anything he understood where there was -- he was
24 facing punishment?

25 A Correct.

1 Q Where he was going to get in trouble?

2 A Those were all things we keep in mind.

3 Q And throughout the whole interview, you're making
4 notes and making sure you write down statements accurately
5 as to what he says?

6 A Correct.

7 Q Things like -- and then things that are recorded
8 where he says he kills his son and he goes, I'm fucked.
9 Is that -- in your mind as an officer, is that something
10 you're going to note down because it's a statement about
11 he knows he did something wrong?

12 A It is. I think it's very important.

13 THE COURT: All right.

14 MR. MADSEN: That is not what he asked and that's not
15 what --

16 THE COURT: Okay. That's what I thought he wanted to
17 ask. I'm not certain -- the first question you objected
18 --

19 MR. MADSEN: He, basically, said -- he's got the
20 officer up there saying he knew the difference between
21 right and wrong. That is the ultimate issue. That's a
22 lay opinion. That is not appropriate. That last question
23 needs to be struck, the answer needs to be struck. Your
24 Honor needs to give a curative instruction. That is not
25 appropriate for him to say.

1 THE COURT: All right. I want to be clear. Those
2 four or five questions he just asked are appropriate.

3 MR. MADSEN: He can ask questions about action, but
4 not get the opinion on what do you think.

5 MR. HUBBARD: My question was initially were you
6 looking for any indication of wrongfulness. That's
7 absolutely appropriate. That is absolutely appropriate.
8 Now, his response, his initial response may have -- if
9 Your Honor overrules that, but my question was
10 appropriate. And I'm going to try to make them specific
11 so he doesn't have to guess what I'm asking.

12 MR. MADSEN: Judge, you could have the Court Reporter
13 just read that little part back? I mean, that's what
14 needs to be struck.

15 THE COURT: I'm good with the last question and your
16 objection, the response is struck and the Solicitor asked
17 another question. I'm good with that without repeating
18 it.

19 MR. MADSEN: But we still need a curative
20 instruction.

21 THE COURT: Suggest one for me. Don't listen to the
22 Solicitor's last question, it was improper? I mean --

23 MR. HUBBARD: Let's highlight it and say --

24 THE COURT: Yeah, that's always my concern, is all
25 right, one of these lawyers asked a question that was too

1 detailed, so don't listen to the detailed question he just
2 asked, which was. You know, what color is the White
3 House? Well, you gave the answer in the question. That's
4 not fair, I object. Suggest a curative instruction for
5 me.

6 MR. HUBBARD: Your Honor, I believe my question was
7 appropriate. If Your Honor wants me to just move on, I
8 will.

9 MR. MADSEN: Judge, like I said, the lay witness
10 cannot give an opinion on the ultimate issue.

11 THE COURT: I agree with you.

12 MR. MADSEN: That's what he did.

13 MR. HUBBARD: And if he did, it wasn't my question.
14 So I'm fine if Your Honor says rephrase your question,
15 we'll start over.

16 MR. MADSEN: And with all due -- that's what I think
17 he did and that's what he got.

18 THE COURT: What do you want me to do? I'll be glad
19 to give a curative instruction. You can suggest one.
20 Please ignore the last answer? I don't know.

21 MR. MADSEN: Judge, the question and answer --

22 MR. HUBBARD: My question --

23 THE COURT: Wait a minute, Solicitor.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: You want it read?

1 MR. MADSEN: To the Court.

2 THE COURT: No, no. Do you want Joy to look it up?

3 MR. MADSEN: Yes, sir.

4 THE COURT: Okay. Stop. Don't say anything else.

5 Let her find it.

6 MR. MADSEN: The question and answer.

7 (WHEREUPON, the Court Reporter played back requested
8 question and answer.)

9 MR. HUBBARD: I think the question was fine. I've
10 got to attack the case.

11 THE COURT: How about this, the question, which asked
12 the officer in his opinion did he understand wrong is the
13 question the jury will have. He can only describe what he
14 knew.

15 MR. HUBBARD: Right. And I didn't ask him --

16 THE COURT: I know, but that's my curative
17 instruction.

18 MR. HUBBARD: But, Judge, I didn't ask for his
19 opinion on whether he did something wrong. I don't want
20 them to think I did something wrong.

21 THE COURT: Y'all's semantics is so close. He was
22 asking a question and it was improper and not wrong.
23 You're lashing out at him. Your body language is
24 aggressive and --

25 MR. HUBBARD: I have a suggestion.

1 THE COURT: -- they're not. It's okay.

2 MR. SECOR: We're not breaking the rules, they have.

3 THE COURT: Y'all have broken rules, too, but they
4 don't lash out at you. It's okay.

5 MR. MADSEN: We just think the question needs to be
6 struck and the answer.

7 MR. HUBBARD: No. Judge, here's what I -- I think my
8 question is appropriate. His answer went on. I think you
9 can just say -- you can sustain the objection as to the
10 answer and then I'll start asking specifics.

11 MR. MADSEN: Judge, all we would ask is that you tell
12 them that the last question and answer was struck from the
13 record and it is not in evidence.

14 MR. HUBBARD: I object to that because my question
15 was fine.

16 THE COURT: I think that's the easy way to do it. I
17 think that's the easy way to do it.

18 MR. HUBBARD: Well, how do I ask it, Judge?

19 THE COURT: No, you ask what did he do, did y'all
20 look for him -- like you just did.

21 MR. HUBBARD: Yeah. They want to strike it, though.
22 That's why I'm questioning.

23 THE COURT: No, no, what you just asked, those five
24 questions you just asked proffering is fine, all those.

25 MR. HUBBARD: But my base question, just so Your

1 Honor understood, was you're looking for any kind of
2 indication from him he understands something is wrong and
3 that's why you're looking for these things. The answer is
4 what -- really got. And I'm fine with that.

5 THE COURT: You know, you were looking for him
6 running, him hiding, him lying, whatever.

7 MR. HUBBARD: And why.

8 THE COURT: No, don't say why. You don't have to
9 explain why.

10 MR. HUBBARD: Well, Judge, I do, because that's his
11 job.

12 THE COURT: I think it's obvious.

13 MR. HUBBARD: Well, I'd like to say that, but I've
14 got to attack their case and that is the whole thing.
15 I've got to disprove -- I'm not trying to contest you,
16 but, Judge, I'm just saying --

17 THE COURT: But this is so different in this case.
18 You've not had, nor I've had, nor they've had is they've
19 got a burden and the ultimate issue is decide that.

20 MR. HUBBARD: And I've got to attack it.

21 THE COURT: You can attack it without saying in your
22 opinion, you were looking for the wrongful conduct of him.
23 I don't think you can ask that. The semantics of that are
24 going to be tough. The five questions you just asked are
25 fine.

1 MR. HUBBARD: May I do this --

2 THE COURT: I don't think you can say, and Officer,
3 do you think he knew what he was doing was wrong.

4 MR. HUBBARD: And I didn't mean to put it that way.
5 But can I do this --

6 THE COURT: That's kind of the flavor of it, I guess.

7 MR. HUBBARD: May I do this? Since this has already
8 been presented to each and every Juror about whether he
9 knew legal and moral right from wrong, knowing that,
10 Officer, what type of conducts and actions are you looking
11 for, like coverup, things like that? And anywhere he
12 might admit where he actually says he acknowledges he did
13 it. How about that?

14 THE COURT: I think that's fine.

15 MR. HUBBARD: Can we just do this? Rephrase the
16 question, sustain, rephrase and I'll do it.

17 MR. YOUNG: No, we need it struck.

18 MR. HUBBARD: Why?

19 MR. YOUNG: Because its still in the record, because
20 the jury has to be told to disregard it.

21 THE COURT: I'll say the answer was struck.

22 MR. MADSEN: We ask that the last question and answer
23 be struck.

24 THE COURT: Well, his question was not as harmful to
25 you and so, I don't want to do that. I don't think that's

1 fair. And I think what y'all are doing is trying to --

2 MR. MADSEN: -- I don't think it causes --

3 THE COURT: -- to be honest with you --

4 MR. MADSEN: -- him any problem to say the last
5 question and answer were struck, please disregard.

6 THE COURT: And he's going to rephrase his last
7 question.

8 MR. HUBBARD: Just rephrase, I'll do that. Sustain
9 and rephrase.

10 MR. YOUNG: We ask that it be struck.

11 THE COURT: I'm not going to say strike the last
12 question. Well, what was it? Because I don't want that.
13 So y'all have asked. The answer is -- I'm going to give
14 the last answer is struck. Solicitor, please rephrase
15 your question. That's how we're going to move forward.
16 And y'all do not want me to give a curative instruction?

17 MR. YOUNG: We do want you to give a curative
18 instruction.

19 THE COURT: Well, I mean, y'all are creating the
20 issue because now, they're going to be standing on this
21 thing. When y'all asked a lot of these questions all the
22 way down through this, y'all are going to be on target.
23 So you better be careful what you're asking for, both of
24 you. I mean, this is going to be tedious. It's okay with
25 me, but y'all are really going to be tedious with each

1 other and this is going to be a troubling issue for you.
2 I'm just warning you, all of you. Think about it. How
3 are y'all going to ask the question, okay, so you knew
4 morally. I mean, he didn't know. They're going to be
5 hammering y'all, so this is going to go back and forth.
6 I'm just giving you fair warning. What's good for the
7 goose is going to be good for the gander. Okay?

8 MR. MADSEN: I don't think anyone would intend to put
9 up a lay witness to say no, he doesn't know the ultimate
10 issue. Obviously, the experts --

11 MR. HUBBARD: So when you bring them out, Judge, just
12 to make sure the appropriate question so we don't start
13 this all over again. If I ask him, in light of this
14 information that you had, were you looking for any
15 evidence that would show whether he knew legal and moral
16 right from legal and moral wrong? And then we go on from
17 there.

18 THE COURT: No, I don't think they want that
19 question.

20 MR. HUBBARD: Well, I mean, my question -- it's a
21 preface, but then I go -- and just -- they're looking for
22 that, but -- I've got to explain why he's looking. Why
23 are you asking these type of questions? Because they were
24 strategically geared questions.

25 MR. MADSEN: That's just a different way to say, give

1 us your opinion on the ultimate issue.

2 MR. HUBBARD: No, no. I'm saying what evidence, are
3 you looking for evidence? So evidence of like, why is
4 that important to you? Why are you looking for evidence
5 of flight? Why do you record that?

6 MR. YOUNG: The State is trying to redirect you from
7 the issue before you, which is the question and the answer
8 given. They want to redirect the Court so the Court
9 doesn't end up striking their question and answer, which
10 is hanging out in front of the jury.

11 MR. HUBBARD: It's interesting that --

12 THE COURT: Y'all are making such a big deal out of
13 it. It's mired in a lengthy after recording.

14 MR. MADSEN: The way to protect the record is to
15 strike it and give a curative instruction.

16 THE COURT: I get that, but y'all are going a little
17 too far.

18 MR. HUBBARD: And I'm just asking --

19 THE COURT: What I'm saying is, in the big scheme of
20 things, this one question is not your case, but you're
21 trying to make it your case. That's what y'all are doing.

22 MR. YOUNG: It was an improper question.

23 THE COURT: I'm going to say strike it now.
24 Solicitor, how do you propose you ask your next question?

25 MR. HUBBARD: That is where I just want to make sure

1 I'm not -- I understand parameters from you so I'm not
2 engaging Your Honor and pushing things at 4:30. What I'd
3 like to get at, Your Honor, just the general gist is that
4 this officer is clearly looking for any type of evidence,
5 whether it's responses or physical evidence showing an
6 understanding or -- this is just me speaking, not a
7 question.

8 THE COURT: Okay.

9 MR. HUBBARD: Knowing that the ultimate issue is
10 going to be the legal and moral right and wrongfulness of
11 conduct. So he's gearing his responses in his search. So
12 just starting it out, just cueing the jury in --

13 THE COURT: I think you're giving him too much
14 credit.

15 MR. HUBBARD: Well, actually, I know it's something
16 we've talked about for a long time over there during the
17 past and that's why SLED got involved, Judge.

18 MR. MADSEN: Judge, the problem is he's trying to
19 back door in the answer to the ultimate issue. He can
20 clearly say --

21 MR. HUBBARD: That's where they're wrong.

22 MR. MADSEN: -- did he do this.

23 MR. HUBBARD: They keep telling you what I'm trying
24 to do. I'm not trying to say, do you think he understood
25 right from wrong? I'm not trying to do that. I'm saying

1 now, why are you asking these questions? What do you look
2 for? I look for evidence of flight. Did you find it?

3 THE COURT: That question is fine.

4 MR. HUBBARD: But I need to preface it, why are you
5 looking for this? And then -- because I know this is an
6 ultimate --

7 THE COURT: Now, why do you got to ask him that
8 question, why are you looking for it? Doesn't everybody
9 know where they hide the gun? It's underneath the sofa.
10 I mean --

11 MR. HUBBARD: I would like to think that, Judge, but
12 I can't assume that in a case like this.

13 THE COURT: No, but you can argue it. You can argue,
14 the reason they asked these questions is they wanted to
15 know if he knew and they asked did he run, did he hide,
16 did he lie, did he cheat and steal, whatever. I think
17 you've got that in argument, but you don't have to ask
18 him, since y'all were looking to see if he knew morally
19 right from morally wrong or legally right from legally
20 wrong, y'all asked these questions. Don't they ask them
21 in every case anyway to see if the guy ran?

22 MR. HUBBARD: And sometimes we preface why, what does
23 it show you?

24 THE COURT: Let's --

25 MR. HUBBARD: I'll make it easy for you --

1 THE COURT: Let's don't do it in this case because of
2 the defense they pitched out. Every other case you've
3 ever tried, it hasn't been here with that.

4 MR. HUBBARD: I tell you what, I will do my best.

5 THE COURT: Okay.

6 MR. HUBBARD: And Your Honor knows I'm kind of
7 walking on eggshells because they got brickbats behind me.

8 THE COURT: Yes, I understand.

9 MR. MADSEN: And that's obviously witnesses give
10 facts, not opinions. Certainly, if it was regular run of
11 the mill murder trial, they couldn't say hey, he did this
12 because that shows he's guilty.

13 MR. HUBBARD: What time is Your Honor looking to
14 break?

15 THE COURT: About ten after 5:00, in about 30
16 minutes.

17 MR. HUBBARD: I'm going to be a while. I don't know
18 if you want to do this now or if you want me to regroup.

19 THE COURT: Let's try to get through what you can.

20 MR. HUBBARD: Because I'd hate to have to pick up
21 cross again. I'd like to be done.

22 THE COURT: Yeah. Let's get them back in here and go
23 for about 20 minutes and see where you are, if you're at a
24 breaking point and still need to go further. We'll stop
25 at 5:00, how about that. Get me the jury.

1 (Whereupon, the jury came into open court at
2 approximately 4:40 p.m.)

3 THE COURT: Okay, folks, I'm going to be concise in
4 my instructions. The last question was a little bit
5 in-artfully made. The last answer is struck from the
6 record, so please disregard it. Y'all are going to answer
7 questions of fact at the very end. There's going to be
8 several. Lay witnesses are not allowed to give you the
9 answers to the questions y'all are going to answer. So
10 the Solicitor is going to rephrase his question to the
11 Detective and we're going to move on from there.

12 MR. HUBBARD: Thank you, Your Honor.

13 CONTINUE CROSS-EXAMINATION

14 BY MR. HUBBARD:

15 Q Detective -- or now Sergeant, back then, it was
16 Detective, right?

17 A Correct.

18 Q Okay. I don't want to offend you. You work for that
19 Sergeant, right?

20 A I'll answer to anything.

21 Q Okay. Back on September 8th, 2014, in your
22 conversation with the Defendant, did he bring up the topic
23 of Scooby Snax?

24 A He did bring up Scooby Snax.

25 Q Was part of that conversation, this is a legal drug,

1 it's not an illegal drug?

2 A Correct. I previously testified he was very specific
3 to point out the legality of it.

4 Q So it appeared important enough for him to make sure
5 you understood that?

6 A Yes, it did.

7 Q Now, during this conversation when you're confronting
8 him about the children, you said that's when things got
9 emotional. You had him calmed down, but when you confront
10 him about the children, where they are, he gets emotional?

11 A Correct. As previously mentioned, he was already a
12 little emotional over his mother, too.

13 Q I think you said something about it was like he was
14 trying to expel nervous energy?

15 A That's what it appeared to be.

16 Q Okay. Now, going to what he said that night what
17 happened October [sic] 28th, 2014 and he talks about
18 Nahtahn and messing with the outlets and he's just trying
19 to get to him. And he confronts him, you remember that
20 part?

21 A Yes.

22 Q And he says he PT's him, is that right?

23 A Correct.

24 Q He spanks him?

25 A Correct.

1 Q And he hits him?

2 A Correct. He didn't go more specific than that, but,
3 yes.

4 Q That's as far as he went in any details?

5 A Correct.

6 Q And after, in his words, Nahtahn is deceased?

7 A Yes, that was the word he used, was that he was
8 deceased.

9 Q He didn't give you any -- he didn't make any
10 statement about my, God, Nahtahn's dead?

11 A No, he immediately jumped into the idea that he heard
12 these voices telling him he needed to deal with the other
13 children.

14 Q Well, let me ask you about that. Wasn't the first
15 one he heard, Tim, you're F'd?

16 A Yes.

17 Q Not Nahtahn, my gosh, you're dead, but Tim, you're
18 F'd?

19 A Correct. And he talked about how nobody would
20 believe him that Nahtahn is an accident, so he had to kill
21 the other children and go on the run.

22 Q And now, as an investigator, you also realize that
23 prior to Nahtahn becoming deceased, Amber had actually
24 called during this PT'ing process, is that correct?

25 A Correct. I don't know if she called during or

1 before, but it was right around that timeframe.

2 Q Do you remember her saying how Nahtahn was gasping
3 for air --

4 MR. MADSEN: Judge, objection.

5 THE COURT: Your objection?

6 MR. MADSEN: The Solicitor can't testify as to what
7 somebody said.

8 THE COURT: Rephrase your question.

9 Q Based on what Amber said, did you have -- let me
10 rephrase it just totally. Do you remember the words of
11 Nahtahn to his mom, Mom, I didn't mean to do it?

12 A Yes, I do recall that.

13 Q Do you remember Mr. Jones being upset because he's
14 been trying to get that out of Nahtahn, right?

15 A Yes.

16 Q Some admission?

17 A He repeatedly repeated to us that he wanted him to,
18 "come off of it."

19 Q And he worked at it and worked at it and worked at it
20 and worked at it and couldn't get Nahtahn to say I'm
21 sorry, I did something wrong?

22 A For hours, according to Tim.

23 Q But Amber makes one quick phone call and this little
24 six-year-old says, Mom, I didn't mean to do it. Is that
25 correct?

1 A Correct.

2 Q And Tim Jones, at that point, slams the phone --
3 well, first, he tells her, Why do you always take up for
4 the kids. Right?

5 A Yes.

6 Q He tells her to F off and he slams that phone down.
7 Right?

8 A Right.

9 Q At that point, no other adult walking on this planet
10 ever had any communication with those kids. That was it.
11 That line was cut. Is that correct?

12 A That's correct.

13 Q So now it's just Tim Jones and the kids, according to
14 Tim Jones?

15 A Yes, by his own clear admission.

16 Q And the kid that was the focus of it all was Nahtahn?

17 A Yes, he repeatedly indicated that Nahtahn was the
18 focal point of all of this.

19 Q And when he worked him and spanked him and hit on
20 him, sometime during the process, in his words, Nahtahn
21 becomes deceased. Correct?

22 A Correct.

23 Q Now, he also tells you he's got a phone, but he
24 doesn't call 911. Why?

25 A He indicated that his immediate concerns were --

1 MR. MADSEN: I would object, that calls for
2 speculation.

3 MR. HUBBARD: He told him. That's what I'm asking,
4 what he said.

5 THE COURT: All right.

6 MR. HUBBARD: I'll rephrase it.

7 THE COURT: You can ask that.

8 Q What does Tim Jones say is the reason why he didn't
9 use his phone to call 911?

10 A Because nobody would believe him.

11 Q And?

12 A I believe his exact words were something along the
13 lines of, "You're fucked now, Tim."

14 Q Okay. Now, as an investigator, after that fact,
15 after this, after your investigation -- after your
16 interrogation or interview with him, much later, do you
17 find that he actually downloaded a YouTube site right
18 after Nahtahn became deceased?

19 A Yes. He told us he killed the later four children, I
20 think, around 11 p.m. and he downloaded the American
21 History X video, I believe, an hour or two before that.

22 Q And the scene specifically in American History X that
23 he downloads is what?

24 A It's a -- I've seen the movie. It's a pretty graphic
25 male-on-male prison rape scene in the shower, if I

1 remember correctly.

2 Q So instead of calling 911, we have evidence that he
3 turns to YouTube and watches that?

4 A Correct.

5 Q Then his attention turns to those other four
6 children?

7 A Yes, it does.

8 Q Now, let me stop you here for a moment. If Mr. Jones
9 had done something and Nahtahn became deceased, using his
10 words, and he ran out of that house and just left those
11 other kids, if he had just run, what would you as an
12 investigator -- what are you over right now?

13 A Special victim's unit.

14 Q What would you and your unit do with those other four
15 kids?

16 MR. MADSEN: Objection. I think that's a
17 hypothetical. It calls for speculation.

18 MR. HUBBARD: No, it's police work.

19 MR. MADSEN: It's certainly not relevant.

20 THE COURT: Rephrase that question because that
21 didn't happen here.

22 Q If those kids, those four children, Merah, Elias,
23 Gabriel and Abigail, had been found alive in the home and
24 Nahtahn was the only one dead, is your department equipped
25 for investigation using young kids?

1 A We are. I have a very experienced team when it comes
2 to those specific types of crimes.

3 Q Now, would you have interviewed them or how do you
4 interview them?

5 A We don't interview children directly, especially that
6 age.

7 MR. MADSEN: Again, we're talking about speculation.

8 MR. HUBBARD: This is what they did. I asked what he
9 does. No speculation.

10 MR. MADSEN: But we're talking about a hypothetical
11 that's not even this case.

12 THE COURT: Yeah, I tend to agree with you.

13 MR. HUBBARD: I have a point, Judge, if it gets to --

14 THE COURT: All right. Sustain the objection because
15 I stymied them on a relevant matter that's come into play
16 later on an exhibit. So let's move on.

17 MR. HUBBARD: I'll move on.

18 Q Now, confronting Mr. Jones, this is the man who we
19 kept hearing, said he wanted to do the right thing at the
20 end of that interview on the 9th, correct? Find those
21 bodies, right?

22 A That's correct.

23 Q But, of course, that's after he confessed?

24 A Yes.

25 Q And he really had nothing else to lose at that point,

1 right?

2 A No. In fact, he and I had a conversation, I think,
3 right before we went to find the bodies where we talk
4 about that specifically where he says that he knows we
5 couldn't prosecute him without the bodies, but he's going
6 to take anyways. And we had a bit of a talk about how
7 that's not true. With everything we had at that point, it
8 would probably be a case against him regardless. It was
9 just the right thing to bring those children home because
10 it's absolutely what they deserved.

11 Q Prior to him actually admitting what he had done,
12 isn't it true, he lied and he lied and he lied about what
13 he had done and where those kids were?

14 A He did. As I previously mentioned, I was actually
15 almost directly privy to the one when he was -- I was
16 hearing him in the background over that first phone call
17 with Under-Sheriff Patterson, I heard him yelling in the
18 background that -- or talking in the background, I think
19 they were pretty close to him, that his kids were with
20 friends in South Carolina. And they already told me that
21 he had said he had no kids. And then came the Wal-Mart
22 story about throwing them out at Wal-Mart because he was
23 afraid of them. I think that story took a couple of
24 different versions before he finally told us that he had
25 killed them.

1 Q And Sergeant Creech, it turned out, it was true at
2 some point, he did go to a Wal-Mart, is that correct?

3 A He did.

4 Q What was the purpose of going to Wal-Mart?

5 A To buy implements to assist in getting rid of the
6 bodies.

7 Q You've seen a video. I want to show you two still
8 shots from that, State's ID 200 and 201. Do you recognize
9 that as from the video?

10 A I do. I've seen these particular still shots before
11 and the videos previously shown in this court.

12 MR. HUBBARD: I offer this into evidence.

13 THE COURT: Any objection?

14 MR. MADSEN: Judge, we just renew our pretrial
15 objection.

16 THE COURT: Okay. Pretrial objection, you're
17 protected. It will be admitted subject to the objection.
18 What numbers are those, Joy?

19 COURT REPORTER: 200 and 201.

20 (WHEREUPON, State's Exhibit numbers 200 and 201 were
21 admitted into evidence.)

22 Q State's 201, do you see Mr. Jones standing at the
23 register actually making the purchase of these items?

24 A I do.

25 Q State's 200, back it up a little bit. Do you see Mr.

1 Jones walking out with his purchase?

2 A I do.

3 Q Now, when he was initially confronted about this
4 purchase and about these items, isn't it true he said the
5 jab saw, which is in that bucket, the jab saw, he was just
6 going to use it for limbing?

7 A Yes, he said it was for cutting limbs, even though
8 you wouldn't use a saw like that for cutting limbs.

9 Q The muriatic acid, which is in that bucket, he was
10 going to use for etching PVC pipe?

11 A Yeah, he said etching PVC. And we never asked him to
12 get more specific than that.

13 Q But he lied?

14 A Correct.

15 Q He later admits what he's doing in that video. He
16 took time to shop, is that correct?

17 A Yes, he did.

18 Q And he took time to shop for items so he could
19 dismember and dispose of his children?

20 A He later, that's what those items -- the purpose was
21 of those items.

22 Q Y'all confronted him with a handwritten note out of
23 his car, State's 79?

24 A We did.

25 Q When y'all initially confronted him with this note, I

1 believe he admitted it was his handwriting, right?

2 A He did, right away.

3 Q But isn't it true he said he couldn't remember what
4 it was about?

5 A He did. He said he didn't know what any of the note
6 was about initially.

7 Q And he ends up admitting he lied again, is that
8 correct?

9 A He does. He later tells us that those were some of
10 the plans he had come up with.

11 Q Now, we've seen some of these items. Number one, you
12 see where it says head to campground?

13 A I do.

14 Q Melt bodies, do you see that?

15 A I do, yes.

16 Q Sand bones to dust or small pieces, you see that?

17 A I do.

18 Q Now, let me get my little pointer here, this right
19 here, number two, what does this say right here?

20 A It says loose ends.

21 Q You see a name Terry?

22 A I do. That would be in reference to Terry Jackson,
23 Sr., his landlord, and actually somebody I'm very familiar
24 with from my patrol days.

25 MR. MADSEN: I would object to speculation. It just

1 says Terry.

2 MR. HUBBARD: I'll ask him a specific question.

3 THE COURT: All right. If he knows and he makes the
4 question more specific, then he can answer it.

5 Q In your investigation, were you able to find anyone
6 with the name Terry that had a link to Tim Jones, Jr.?

7 A I did. His landlord was Terry Jackson, Sr.

8 Q The name Christine, were you able to find anybody by
9 that name that had a link to Tim Jones, Jr.?

10 A His babysitter at the time was Christine Ehlke.

11 Q The lady who testified earlier in this case?

12 A Correct.

13 Q What is this, a Jim Mc -- Intel?

14 A That would be what I would presume to be a reference
15 to Jim McConnell, which would have been Timothy's
16 supervisor at Intel.

17 Q What is this here, SGE?

18 A That would appear to be a reference to Saxe Gotha
19 Elementary School where Elias, Merah and Nahtahn were
20 enrolled.

21 Q What about this part, BGC?

22 A Probably a reference to the boys and girls club where
23 those same three children were enrolled in after-school
24 activities.

25 Q Is that where they were picked up on August the 28th?

1 A It is, as that sign-in sheet that was previously
2 introduced shows.

3 Q That was on that video --

4 A Correct.

5 Q -- where you see him picking up his kids? Anywhere
6 in that video show that he's scared?

7 A No, it doesn't.

8 Q What is this right underneath that?

9 A It says pediatrician.

10 Q Pediatricians work on adults or kids?

11 A Children.

12 Q Whose name do you see here?

13 A Amber.

14 Q Do we know who she is?

15 A Would be his ex-wife.

16 Q Then can you make this out?

17 A I can't read that, so I'm not sure what that says.

18 Q But all these folks are loose ends, is that correct?

19 A Correct.

20 Q Bills. On this same page he's got what he's going to
21 do to his children, he's got bills. What's TWC?

22 A Time Warner Cable.

23 Q SCE&G?

24 A South Carolina Electric and Gas Cooperative.

25 Q What's underneath that?

1 A Post office.

2 Q What's underneath that?

3 A Car.

4 Q Had his car been paid off yet?

5 A To be honest, I'm not sure.

6 Q Fair enough. What does it say underneath car?

7 A Bank accounts.

8 Q So he's got loose ends and bills on the same sheet
9 where he's going to dismember and dissolve, sand his
10 children, is that correct?

11 A That's correct.

12 Q Now, when you're investigating a case that involves
13 flight and where you're having to go after somebody, do
14 you look for anything where anybody might take disguise or
15 hide?

16 A I do.

17 Q What do we see up here on the right-hand side of this
18 note?

19 A Tattoos.

20 Q What's this?

21 A Glasses.

22 Q What's this, can you make that out?

23 A I'm not sure. It may say hats, but I'm not sure.

24 Q Okay.

25 A And hunting gear.

1 Q Hunting gear. Let me show you what's in State's 132,
2 also, found in his car. Do you see more notes?

3 A Yes, there are.

4 Q And again, if somebody goes outside of South Carolina
5 and you have to go after them, are you looking for any
6 item that might assist them in hiding?

7 A We would.

8 Q What's this word?

9 A Camping supplies.

10 Q Do you see underneath there?

11 A I believe it says gas and jug, maybe.

12 Q Okay.

13 A Muriatic acid.

14 Q Muriatic acid.

15 A Tent.

16 Q Okay.

17 A Charcoal, steaks, grill.

18 Q Can you make that out?

19 A Yeah, I'm not sure what that is.

20 Q What about underneath that?

21 A I'm not sure what that is either.

22 Q So again, these items are relevant to you?

23 A They are.

24 Q And over here, needs, is that what I see right there?

25 A That does say needs.

1 Q What's that word right there?

2 A Cash.

3 Q What denomination am I looking at as far as money?

4 A \$3500, 401K and 6,000K.

5 Q And then what are we looking at?

6 A Clothes, four pants, eight socks, eight underwear,
7 two shorts and something and ten shirts.

8 Q Does it look like a plan?

9 A It does appear to be a plan.

10 Q Going back to the note. You made note of the day
11 one, day two, day three?

12 A Yes.

13 Q Burn up bodies, sand down bones, dissolve and
14 discard?

15 A Yes.

16 Q And a smiley face?

17 A And a smiley face.

18 Q This is a man several days later who said he was
19 about doing the right thing?

20 A It is.

21 THE COURT: All right, Solicitor, is that a good
22 stopping point? You got through those two exhibits. Can
23 we stop for the day?

24 MR. HUBBARD: Yes, sir.

25 THE COURT: And resume in the morning? Y'all go to

1 the jury room, put your stuff up. Don't talk about the
2 case. Enjoy your evening. See you in the morning. We'll
3 start at 9 o'clock sharp.

4 (Whereupon, the jury was excused from the courtroom
5 for the day.)

6 THE COURT: All right. We're done for the day. Let
7 me make a couple comments to everybody. This is a very
8 emotional case. Be aware of that. Both sides are
9 emotional and forget arguing legal points. I'm going to
10 suggest, just for my benefit so that I don't feel like I'm
11 refereeing a boxing match as opposed to a trial, Judge,
12 that's not a proper question or, Judge, that's an improper
13 question under the rules rather than it's illegal or
14 wrong. That drawing -- from both sides. And it's not one
15 side or the other, I've heard it from both sides. But
16 improper question or not a proper under the rules,
17 something along those lines and I think the, I'm going to
18 call it venom, won't come out so quick. This is late in
19 the day and that's when it happens. It happened yesterday
20 late in the day, happened late in the day today. Be aware
21 of that. Okay?

22 MR. HUBBARD: Yes, sir. Thank you, Your Honor.

23 THE COURT: So that's for everybody. Nobody in
24 particular, nobody being left out. That's to everybody
25 involved. Y'all are doing fine, but let's be aware that's

1 what we're dealing with, okay?

2 MR. YOUNG: Yes, sir.

3 THE COURT: Thank y'all.

4 (Whereupon, the trial will resume the next morning at
5 9:00 a.m.)

6 May 23, 2019.

7 THE COURT: We have got to swear a SLED officer this
8 morning. We are going to mark the video of Amber's scene
9 as a Court's exhibit. It is on a flash drive and is
10 marked as a Court's exhibit number 87.

11 (Whereupon, Court's Exhibit 87 was marked for
12 identification only.)

13 THE COURT: Also, it occurred to me, everybody has
14 got a different way of remembering things. Y'all are
15 walking up here looking for an exhibit or looking for a
16 picture, you know what the picture is. The jury doesn't
17 care about the exhibit numbers. I have got Whitney kind
18 of organizing it by subject matter, stuff in the bucket,
19 picture of the scene, picture of whatever and where ever
20 because they don't know exhibit numbers. We know the
21 exhibit numbers. So if y'all need a subject matter those
22 labels are kind of going to be for the jury's benefit too.

23 MR. HUBBARD: Good idea.

24 THE COURT: That was my idea, not Joy's but y'all
25 keep cluttering up your stuff I am going to tighten you up

1 further. Y'all ready to go?

2 MR. HUBBARD: Yes, sir.

3 (Whereupon, the jury came into open court at
4 approximately 9:04 a.m.)

5 THE COURT: Good morning.

6 THE JURY: Good morning.

7 THE COURT: Everybody have a good evening?

8 THE JURY: Yes.

9 THE COURT: Anybody have any issues with anybody
10 trying to talk to them, speak to them in any way?

11 THE JURY: No.

12 THE COURT: We'll keep moving forward. Agent Creech,
13 I need you to come over here and take your oath from the
14 Clerk.

15 AGENT Adam Creech, being
16 first duly sworn, testified as follows:

17 THE COURT: Thank you, sir. Welcome to Lexington.
18 You didn't have to go to bike week either, huh?

19 AGENT MEANS: No, sir.

20 THE COURT: Solicitor, your witness still.

21 MR. HUBBARD: Thank you, Your Honor.

22 THE COURT: Detective, you're still under oath.

23 CONTINUE CROSS-EXAMINATION

24 BY MR. HUBBARD:

25 Q Sergeant Creech, we've been talking about your

1 interview with the Defendant, Mr. Jones, on September 8th,
2 2014. And I think when we broke, we talked about the
3 number of lies he had told you. We've covered Wal-Mart.
4 We've covered the note. But you also mentioned blood --

5 A Yes, I did.

6 Q -- found in the car? What was his initial story as
7 to the blood?

8 A So he had told the officers on the night of the 7th
9 that it was from an animal. And he repeated that to us on
10 the 8th before then saying that it was from a cut.

11 Q And eventually, as the conversation went on, he
12 finally came off of that as well?

13 A He did.

14 Q Okay. Now, before he came off of it and said let's
15 cut to the chase and he was talking about fear of the kids
16 and things the kids were saying, you offered up an out for
17 him, one that you thought -- I think you had said you kind
18 of pushed it to the limit. What was that?

19 A Yes. So as I previously testified, I offered him a
20 very blatant self-defense argument and I kind of oversold
21 it a little bit. And he reacted accordingly, that he
22 thought it was kind of ridiculous.

23 Q And you mentioned yesterday that his emotions were up
24 and down, a lot of sobbing, a lot of -- when the photos
25 were laid out, how he reacted. At some point, you

1 mentioned a complete change and he said what?

2 A He said, guys, let's cut to the chase.

3 Q Now, watching that emotional change, was that just --
4 did he just fade into that or how was it?

5 A It was a pretty sharp turn in his demeanor. I mean,
6 he went from being very visibly upset that it was snapped
7 your finger or flipped a switch and he was suddenly in a
8 completely different demeanor.

9 Q Did that tell you, as an investigator, he could
10 control his emotions?

11 A It certainly appeared he was controlling them.

12 Q Now, you had mentioned at some point the interview
13 was taped. You tried to tape the first part and it didn't
14 work. I want to show you State's 145. Is that the
15 interview that we went over with Dave Mackey?

16 A Correct. This would be the beginning part of that
17 interview.

18 MR. HUBBARD: Your Honor, I'm not sure if this was
19 admitted, but I'll admit it now.

20 COURT REPORTER: I do not have it as an exhibit.

21 MR. HUBBARD: I'll offer it now.

22 THE COURT: And that's State's Exhibit number what,
23 Joy?

24 COURT REPORTER: That's State's number 145.

25 THE COURT: Is there any objection?

1 MR. MADSEN: Subject to previous objection, Your
2 Honor.

3 THE COURT: Subject to previous objection, it will be
4 admitted.

5 (WHEREUPON, State's Exhibit number 145 was admitted
6 into evidence.)

7 Q Now, once he said -- Mr. Jones said let's cut to the
8 chase, how was his tone?

9 A It was pretty -- I'd call it pretty even, pretty
10 calm, steady.

11 Q And when the topic of Nahtahn came back up, do you
12 recall him admitting he had pushed Nahtahn too far?

13 A Yes, those were his words, that he had pushed Nahtahn
14 too far.

15 Q What word did he use to describe Nahtahn's attitude
16 that night towards him?

17 A As I -- has come up in previous testimony, he
18 specifically used the word defiant to describe Nahtahn.

19 Q And again, he's the little six-year-old?

20 A Yes, he would be the six-year-old.

21 Q Now, do you recall as you and Agent Mackey
22 interviewed him the question being put to him, was this
23 out of fear or was this because Nahtahn wouldn't come off
24 of it? Do you remember that question?

25 A I do. So Special Agent Mackey directly asked if it

1 was out of -- because of fear or because Nahtahn wouldn't
2 come off of it. And Timothy responded, yes, it was
3 because Nahtahn wouldn't come off of it.

4 Q And was he -- as you talked to him, did he appear
5 visibly angered even as he's talking about Nahtahn?

6 A Yes. Most times that Nahtahn would come up, it was
7 clearly a bit of a trigger for Timothy. It would, at
8 least, irritated him if not make him appear to be visibly
9 kind of angry.

10 Q Do you recall him saying something to the effect that
11 if he had just come off of it, none of this would have
12 happened?

13 A Yes, he absolutely attributed that if Nahtahn had
14 been truthful about this issue with the electrical outlets
15 that none of the other children would have been killed.

16 Q In fact, Nahtahn wouldn't have been killed?

17 A Correct.

18 Q When he talks about Scooby Snax, what we now know is
19 spice, AB Pinaca, did he say he smoked that right before
20 he killed Nahtahn and these kids?

21 A No. He was very explicit to say he didn't smoke any
22 beforehand, but he used it afterwards.

23 Q When he placed these kids -- I'm using the word
24 placed, that's my word -- in his car, did he mention he
25 used care in doing that?

1 A No. He said he was not very careful because they
2 were already dead.

3 Q Did he say he used anything to wrap them or cover
4 them with?

5 A Yes. He said he used blankets and sheets from the
6 house.

7 Q Isn't it true, it's not just from the house, but he
8 used the kids' own blankets and sheets from their beds?

9 A Yes. It was the blankets and sheets from their beds.
10 Hence, why the beds were bare once law enforcement
11 searched the house.

12 Q And he covered them up so he didn't have to look at
13 them?

14 A It would appear so.

15 Q And that if you looked in the vehicle, you would just
16 see blankets?

17 A Yes. They were pretty thoroughly covered. I mean,
18 being small children and large blankets and comforters, we
19 had to uncover them pretty good later on to see that they
20 were there.

21 Q And when he says he's driving all over the place,
22 isn't it true, he says when he's doing this, the entire
23 time he's trying to think what's his next step?

24 A Yes. He mentioned that as he formulated different
25 plans of what he was going to do that this was during his

1 travels.

2 Q And isn't it true, he said he's, basically, he's in
3 panic mode?

4 A Yes. He described as if his big dilemma during this
5 period was what was he going to do with the children and
6 how was he going to get rid of, he used the word evidence.

7 Q He referred to his kids as evidence?

8 A He did.

9 Q Evidence is for court, is that right?

10 A Correct.

11 Q When he went to the Dollar General and bought trash
12 bags, and he finally admitted that he did that, do you
13 recall him saying it wasn't just for the kids?

14 A Yes. So I believe that Special Agent Mackey posed
15 the particular question if the trash bags were purchased
16 for the children. And he said, yes, but I had other trash
17 to throw away, too, was his response.

18 Q And when y'all questioned him about the smell of the
19 children's bodies, what did he say about that?

20 A He said it smelled like shit.

21 Q And how -- did you ask him how do you handle that
22 smell, how can you sit in a car and drive? What was his
23 response?

24 A He had used a lot of air fresheners and Febreze, I
25 believe, but he said that -- I mean, the odor was pretty

1 pungent. You couldn't -- you couldn't cut that with a
2 whole lot. But he said, you just get used to it after a
3 while.

4 Q And this isn't just a bad smell, this is coming from
5 his dead children?

6 A Correct. It was clearly a decomp -- decomposition
7 odor.

8 Q And you just get used to after a while?

9 A That's what he said.

10 Q At some point, it came out that why did you ride
11 around looking. Well, I didn't want to part from them. I
12 wasn't ready to part with my kids. You remember that?

13 A Yes. He did eventually tell me during our
14 interactions, our discussions that the reason it took him
15 a week was because he just wasn't ready to let them go.

16 Q But isn't it true, the night before he did something
17 with these children's bodies, he actually got stopped by a
18 law enforcement officer?

19 A Yes. Again, that would be the story of him getting
20 stuck in the ditch the night before and almost getting
21 arrested where he said he should have been caught then.

22 Q So it was a close call?

23 A He certainly made it sound like it was a very close
24 call because he said the children were just right there in
25 the vehicle.

1 Q And if he had got caught, he knew he would be in
2 trouble?

3 A Correct.

4 Q And it's then that he acts and gets rid of these
5 children?

6 A Yes. The next morning, they're gone by lunchtime, I
7 guess, for lack of better words.

8 Q When y'all finally get him to admit everything and
9 then he's now trying to help you find the bodies, did he
10 appear that he could focus and be engaged in that process?

11 A He did. I mean, he became very engaged. Because, I
12 mean, it was, I think, 170, 180 miles from where we were
13 at. So he would have to be pretty focused and engaged to
14 help us do that level of back tracking, especially when he
15 told us that he had tried to be very random and tried to
16 leave them at a place that he wouldn't be able to help us
17 later on. So the fact that he was still able to do that,
18 we thought was pretty remarkable.

19 Q And he's an IT guy, so y'all made sure he had
20 computer access?

21 A Yes. We had hoped that if he could just even give us
22 a location on a map of the general vicinity that we would
23 be able to find them without even having to take him back.

24 Q And he even asked something about a topographical
25 map, something that would show heights and depths?

1 A Yes. It was a pretty difficult type of map to find.
2 I don't think we ever found anything that was quite
3 suitable.

4 Q So during this process, you could actually engage
5 with him and talk technical talk about how to find these
6 kids?

7 A Certainly. Most discussions with him, I would say,
8 were fairly intelligent discussions with, you know, not
9 necessarily advanced topics, but, certainly, fairly
10 technical discussions at times.

11 Q At any time, does he have what might be described as
12 a flat effect, just kind of he's just there?

13 A Yeah, I mean, sometimes -- I mean, you heard that on
14 some of the recordings, he does go -- be very emotional at
15 times, but other times, he does have a very flat out,
16 matter of fact effect and demeanor.

17 Q But when he's matter of fact, that's when he was
18 actually confessing, correct?

19 A Correct.

20 Q So it wasn't like there's just nothing there, he
21 actually talks and tells you details, is that correct?

22 A Oh, correct. He was very communicative.

23 Q It's not like all of a sudden, he goes into zombie
24 mode?

25 A No. Appropriately engaged, no shift in focus, just

1 he would go from being upset to very flat.

2 Q But he could turn it on and off, is that right?

3 A It certainly turned off and on when we interacted
4 with him.

5 Q And when he finally was trying to help find the
6 children, by that point, he had nothing to lose, did he?

7 A No. And I had explained that to him, that -- I mean,
8 the case was effectively made against him at that point
9 whether we found the children or not. But, you know, I
10 felt like it was important for everybody -- once we knew
11 that they weren't alive, it really shifted from a -- kind
12 of -- I guess you could say it went from a rescue mission
13 to a recovery mission. And to me, our most important
14 objective at that point was to find those children so that
15 they could be put to rest and that the family could get
16 some marginal sense of closure.

17 Q Throughout this process dealing with him, your
18 interaction with him, would you describe it as a little
19 different than Dave Mackey's interaction with him?

20 A Yes. It certainly just naturally developed into
21 more -- he saw Special Agent Mackey in a more antagonistic
22 light, I think partially because of his role as an FBI
23 agent and his more direct accusations. So, you know, I
24 kind of began to subtly kind of take advantage of that. I
25 tend to have a more emphatic approach during interviews

1 anyways. I'm very rarely good at being the bad cop. So I
2 certainly took advantage to be in the good cop role in
3 this situation.

4 Q While he was still denying what happened, when he
5 would be confronted by Agent Mackey, would he gravitate to
6 you?

7 A Yes. He would certainly gravitate more toward me in
8 those uncomfortable moments. But I tended to -- I sat
9 pretty close to him, kind of facing toward him. I think
10 at one point, I even put a hand on his shoulder, kind of
11 giving some physical reassurance because -- just kind of
12 creating that bond as we spoke.

13 Q And that's part of your training?

14 A Yes. It's not as much interview training. I've got
15 a lot of background, about eight years in crisis
16 negotiations. So I tend to apply a lot of those tactics
17 when I'm interviewing somebody, especially when they're
18 clearly in what I would call a state of crisis.

19 Q Did it seem important to Tim Jones that you believe
20 him?

21 A It did. He -- he appeared to be very -- our opinion,
22 or my opinion, specifically, appeared to be very important
23 to him.

24 Q Did it seem important to him that you tell him he's
25 doing the right thing?

1 A Yes. And that became a recurring theme. And I would
2 reinforce it because, at that point, like I said, he had
3 confessed. He could have stopped at any point and said
4 you know what, I'm not taking you guys to these kids. I'm
5 done. But at that point, like I said, my main objective
6 wasn't him confessing anymore because he had already done
7 that, it was just really important that we find those
8 children. Whatever I had to do to keep that foregoing, I
9 was going to do that.

10 Q Because your job wasn't done yet?

11 A No, absolutely not.

12 Q The next day, September 9th, the day y'all go to
13 Alabama to find these children, do you remember, as Agent
14 Mackey said, y'all bring him in in front of all the
15 officers and you say all right, Mr. Jones, go through this
16 again. You remember that?

17 A I do.

18 Q When he went through that again, the whole incident
19 about what happened August the 28th, that night when all
20 these children died, or deceased, as he says, does he ever
21 mention voices?

22 A He doesn't. He gives a very basic summary of what
23 took place, starting with Nahtahn and the PT incident, and
24 him strangling the other four children, but he doesn't
25 mention voices during this.

1 Q Do you recall him mentioning for the first time his
2 prescription glasses were broken?

3 A He does. And I don't remember if that was in
4 response to a question or if it just kind of came up as an
5 afterthought, but that was the first time he had
6 mentioned -- that he said Nahtahn had broken a pair of
7 glasses that night that he said cost several hundred
8 dollars. And as he mentioned that, he got noticeably
9 angry about it. It was still something that he was a
10 little bitter about, it appeared.

11 Q So this is on the day he's doing the right thing to
12 take you to the bodies of his children and he's still
13 angry at Nahtahn?

14 A Correct.

15 Q Now, obviously, he -- you rode with him. Are you in
16 the back of the vehicle with Mr. Jones on that long ride
17 to Alabama?

18 A I was. He was on the rear driver's side and I was on
19 the rear passenger side.

20 Q And you had the recorder going and he knew that?

21 A On the way back, we did, yes.

22 Q Okay. So on the way back. So you get down there --
23 let me ask you this. You get to that site and you
24 mentioned something about the bags, one or more of them
25 had tears in them and you were concerned about animal

1 activity. So you asked him -- what did you ask him?

2 A If you don't mind, I want to review the transcript so
3 I'm not speaking out of turn.

4 Q Well, let me ask you, did you ask him if he did
5 something to the bodies that caused those tears?

6 A I did. Because even though he told us initially that
7 he hadn't done anything, he later changed that to say that
8 he had tried to saw Nahtahn's leg. So we didn't have
9 absolutely certainty that we weren't going to get there
10 and find the bags and find the bodies and there be
11 findings contrary to what he had already said we would
12 find.

13 Q And he had already mentioned, I guess, the day before
14 about, I don't know any other way to put it, but that
15 portion of scalp that turned out to be Eli's?

16 A Correct. The bit of scalp tissue that Stacy Jones
17 had originally told me about. I think a picture of it was
18 introduced. We -- that was one of the things we had asked
19 about. He just attributed it to the fact that he hadn't
20 been very careful with the bodies.

21 Q And why wasn't he careful with the bodies?

22 A Because they were already dead.

23 Q And so, when y'all got to the site, which is seen in
24 State's 160, these bags, when you saw some tear damage to
25 the bags and you asked him about that, did he say anything

1 about, you know, maybe it was me? It could have been just
2 because I was careless with the bags, something to that
3 effect? You remember that?

4 A I believe he said I don't know and indicated that his
5 actions could have been responsible.

6 Q As to that discussion on the way back with that tape
7 recorder going, this is on the 9th, you're driving back,
8 taking him back to Mississippi?

9 A That's correct.

10 Q Sheriff Crumpton had wanted to get him on back to
11 Mississippi?

12 A Yeah, he wanted to get it done pretty quick.

13 Q Do you recall Mr. Jones saying, my mind was just put
14 them out and run?

15 A It was. That's what he said.

16 Q Do you recall him saying, I was just trying to buy
17 time?

18 A He did.

19 Q And again, as to the ripped bags, you remember him
20 saying, that was probably me?

21 A He did.

22 Q And then y'all went into that explanation. Do you
23 remember him saying, I was merciless when I put them in
24 there and threw them around. So, I mean, this was after
25 the fact. Remember him saying that?

1 A Yes, I very distinctly recall him using the word
2 merciless. I thought that was a pretty strong choice of
3 words.

4 Q And after the fact means what?

5 A They were already dead.

6 Q Remember him going on and saying, I put them into the
7 vehicle mercilessly and threw stuff in there to try to
8 shelter the smell? You remember him saying that?

9 A I do remember him saying that.

10 Q And again, as the conversation went on, he said, I
11 was running on time borrowed, borrowed time?

12 A Borrowed time, because he believed that he was going
13 to get caught at some point.

14 Q At some point, the conversation shifted about him --
15 about whether he would do anything to himself. And do you
16 remember him saying, I'm not on suicide watch either. I
17 promise you I'm not going that route?

18 A Yes.

19 Q So a man who's killed his children says he's not
20 going to kill himself?

21 A Yes. He explained that for religious reasons, he
22 believed suicide was a cardinal sin and he'd go straight
23 to hell.

24 Q But he didn't mention anything about killing your
25 kids being a cardinal sin?

1 A No, he didn't.

2 Q His focus was on him, correct?

3 A It was certainly a Timothy-focused dilemma.

4 Q And then again for the third time, he mentions how
5 merciless he was with the children. When I threw them in,
6 I wasn't exactly nice about it. I just wanted to get out
7 of there.

8 A That's what he said.

9 Q You remember him minimizing what he did to his
10 children when he said, I tried to make it as little
11 suffering as possible? You remember him saying that?

12 A Yes. And I believe that was in response to us asking
13 how long it took. Because as Dr. Ross previously
14 testified, suffocation is not quick.

15 Q But he made it sound like it was gentle, is that
16 right?

17 A He made it sound like it was as much so as he could
18 make it.

19 Q And you remember him when he's talking, he says, all
20 I know is that I started acting the wrong way. Remember
21 that?

22 A Yes, I do.

23 Q And all this talk about driving all around, you
24 remember him saying again, when you asked him to kind of
25 explain that, he said, I'm just going to buy time. Then

1 he talks about he was trying to make plans, he's planning?

2 A Yes.

3 Q So he had a purpose for his driving?

4 A It appeared that the driving was -- you know, I guess
5 anything than being at home and that's when he formulated
6 all of his plans and bought supplies on various dates,
7 especially there toward the end.

8 Q At some point, the focus shifts back to Nahtahn. He
9 keeps coming back to Nahtahn, doesn't he?

10 A He does. In his conversation, Nahtahn came back up
11 and he once more centered all the blame for this on
12 Nahtahn.

13 Q And he said something to the effect -- if I'm reading
14 this right, I think was trying to get rid of their bodies
15 by mutilating them. He said that on the drive back,
16 right?

17 A Yes, which would be reflected in the one note where
18 he talked about getting rid of the remains.

19 Q And you asked him, how many bodies did you actually
20 attempt to mutilate? And he shifts back to Nahtahn and
21 you remember him saying, I just tried with Nahtahn. I
22 tried to saw his leg and that's about it. You remember
23 him saying that?

24 A I do.

25 Q And you asked why him and he says, he was just the

1 one I went to because he was the focal point. That
2 six-year-old was the focal point. You remember him saying
3 that?

4 A I do. He was the focal point and Timothy, basically,
5 attributed to him that he was the one that started all
6 this and that was responsible.

7 Q And he says it several times, I mean, he was the
8 whole focal point for this whole thing. You remember
9 that?

10 A Yes.

11 Q And then he goes on again, I mean, there was other
12 parts, too, but he's the focal point. I mean, it's
13 centered around him. Those are his words coming back
14 after seeing these bags with his dead children's bodies in
15 them, right?

16 A Yes, that's correct.

17 Q Then he got into the whole -- the DSS stuff that
18 we've heard about with Nahtahn. You remember that?

19 A Yes. We talked about that a little bit.

20 Q And said Nahtahn had said something to, I guess the
21 case worker with DSS. And you remember him saying,
22 basically, Nahtahn and Merah, "wanted to see their mom and
23 they wanted to go live there." You remember that?

24 A Yes, I do.

25 Q And, apparently, the case agent told them no. You

1 remember that?

2 A I do.

3 Q He seemed upset about that, didn't he?

4 A It seemed to bother him quite a bit.

5 Q That his kids would choose Amber instead of him, is
6 that correct?

7 A Yes. And you could say probably next to Nahtahn,
8 Amber was a bit of a button for Timothy.

9 Q And as you drove and you were talking about Nahtahn,
10 you said, are we going to find that you strangled him?
11 You remember his words were, I don't think so. Not
12 absolutely not, but I don't think so. Weren't those his
13 words?

14 A Those were his words, which is a pretty unusual
15 response to something that he's fairly adamantly denied up
16 until that point.

17 Q And again, when he talked about -- in this
18 conversation, he talked about his plans to get rid of the
19 children, his words. You remember him mentioning just cut
20 them up and feed them to a hog? That was one of the
21 plans?

22 A Yes, that was one of the thoughts that went through
23 his head.

24 Q And just throw them into concrete, that was another
25 plan?

1 A Concrete compressor, yes.

2 Q Do you remember right towards the end, he made this
3 statement, can you contact the mug shots, the people that
4 make and handle mug shots for South Carolina and make sure
5 they don't put me in that? You remember him saying that?

6 A Yes, he didn't want his picture in the mug shots. I
7 guess he didn't want the publicity over all of this.

8 Q Tim Jones doesn't want to look bad, does he?

9 A Certainly didn't want to be on the news over this.

10 Q And he's concerned how society or the public might
11 view him?

12 A He was very worried about he would be perceived over
13 all of this.

14 Q And again, you keep telling him, Tim, you've done the
15 right thing. You remember that?

16 A I have because -- we had found the children at that
17 point, but I maintain to this day that it was -- not to
18 excuse anything he did by any means, but it was the right
19 thing for him to take us to those children. I think at
20 that moment, it was the very least he could have done.

21 Q And it was important for him to keep hearing that
22 from you, right?

23 A It appeared so. I felt it was important to keep
24 saying it in equal measure.

25 Q But the last time, this is several days later, after

1 the bodies were recovered of these little children, their
2 bodies were recovered, you mentioned again, Tim, you did
3 the right thing. You remember his response? What do you
4 mean I did the right thing? I killed my fucking kids.
5 Those were his words?

6 A Yes, it was a pretty harsh response to that.

7 Q And this whole time, he's talking about I had no
8 plans and now I'm just trying to do the right thing. In
9 his car, in his panic, the one thing he remembered to take
10 was his passport, State's Exhibit 73. In his panic,
11 loading that car up, he took this, didn't he?

12 A Yes. I remember seeing a passport in the car.

13 Q So for all that stuff in his car, this was his ticket
14 to get away, is that right?

15 A It certainly has that appearance.

16 MR. HUBBARD: Detective Creech, thank you.

17 THE COURT: Mr. Madsen.

18 REDIRECT EXAMINATION

19 BY MR. MADSEN:

20 Q Detective Creech, he didn't have to speak with you,
21 did he?

22 A He absolutely didn't.

23 Q He could have told you to go pound sand and you
24 couldn't have gone back to him?

25 A Yeah, he could have stiff armed us from the start if

1 he had wanted to and we would have had a much more
2 difficult road ahead of us, I'll concede that.

3 Q And when he talked to you about Nahtahn and -- or
4 excuse me, was it Nahtahn and Merah conspiring through DSS
5 to leave?

6 A Yes, he did talk about Nahtahn and Merah.

7 Q And the Solicitor asked you about all these plans
8 that the voices had told him about, but he told you, I
9 couldn't go through with them?

10 A Yes. He said he came up with all these plans, but
11 couldn't go with any -- through with any of them. I think
12 the only one he attempted was the dismemberment when he
13 tried to saw Nahtahn's leg.

14 Q And he told you once he started that, I couldn't go
15 through with that either?

16 A He said one cut and he threw the saw into the
17 treeline, which we never found.

18 Q And the Solicitor asked you about suicide, I guess
19 your words being a cardinal sin?

20 A Yes. He was very explicit that it would be against
21 his religious beliefs.

22 Q Because there's thought that if you do that, you
23 don't have the ability to repent because you're dead?

24 A Correct. He felt like he could be forgiven for
25 everything else short of suicide.

1 Q And he told you, I think it was on tape, that how
2 Agent Mackey intimidated him?

3 A He did. He was very intimidated by Special Agent
4 Mackey, which I don't -- I think he's a nice guy. But I
5 guess I can see how in Timothy's position, he was seeing
6 the FBI agent in the mix as intimidating.

7 Q And the Solicitor also asked you about the
8 conversation on the 9th, I believe, with Tim, correct?
9 That was kind of after the next morning, after the 8th?

10 A Yes. Yes, the one on the 9th.

11 Q And you didn't record that?

12 A I didn't. It was kind of amidst of pretty rapid
13 strategy session that was mostly law enforcement
14 essentially.

15 Q And I guess your report is what, about 40 pages?

16 A I think I've done north of 70, 75 pages ultimately in
17 this case.

18 Q And that conversation on the 9th is a paragraph?

19 A It is. It is. It was pretty brief.

20 Q And your words are the events as Timothy once more
21 related them were entirely consistent with what he told us
22 the night before?

23 A Yes. I was referring to the basic events and I
24 probably could have been a little clearer to establish
25 that.

1 Q And had Agent Lawrence there who could have
2 polygraphed him on anything that y'all wanted to?

3 A He could have, but, again, polygraphs are a nice
4 tool. But, like I said, I've only seen them used once in
5 my ten years in an active criminal investigation.

6 Q But the equipment made the trip with you?

7 A It did.

8 Q And I believe you had even said, and he had told you
9 about aimlessly traveling around, correct?

10 A He did.

11 Q And you talked about when you gave him, I guess, the
12 maps or the computers, when he had something technical to
13 do, he could really focus on that, couldn't he?

14 A Oh, certainly. He certainly whizzed through the
15 computer once it was given to him.

16 Q But you said even when he was doing that, I believe
17 your words were that he still had appropriate emotional
18 responses at times?

19 A Yeah, because at times, he would get choked and
20 crying, similar to responses he's shown in the courtroom
21 in these proceedings I think as anybody would or should
22 under the circumstances.

23 Q And I think the Solicitor also asked you about this
24 point in time where he just stops and says, let's cut to
25 the chase, and his demeanor just on a dime changed,

1 correct?

2 A Yes. It was very sudden. We were not even expecting
3 it. We thought we would eventually get there, but he kind
4 of pulled the rug out from under us when he jumps right
5 into that.

6 Q But he still ended up crying, showing emotion, all
7 those things afterwards, correct?

8 A Yes, he did.

9 Q And he had told you also that when he had placed in
10 the bodies in Alabama, he stayed there for a while, didn't
11 he?

12 A He did. He said he spent some time at the site
13 before he left.

14 Q I think it was about four hours?

15 A I believe. He made it sound like it was several
16 hours possibly.

17 Q And he prayed before he left?

18 A That's what he said he did.

19 MR. MADSEN: May we approach?

20 THE COURT: Sure.

21 (WHEREUPON, a bench conference was held as stated
22 below.)

23 MR. MADSEN: We think that he has made those autopsy
24 photographs relevant. He specifically asked about the
25 bodies but, the ripped bags.

1 MR. HUBBARD: I didn't mention autopsies, right.

2 THE COURT: My ruling hadn't changed yet as far as
3 that goes. Those are five or six days after he dropped
4 them. You can make an argument but my ruling will be the
5 same because he showed the bags at the time of the
6 dropoff.

7 MR. MADSEN: But he also asked about the bodies.

8 THE COURT: We can make a record but those aren't
9 relevant, I mean they are relevant to the case. I don't
10 believe he has opened the door to have those shown, that
11 is the condition when Tim left them. That is my reason
12 for not letting them in. 109, 110, 111, 112, 113, the
13 same pictures they tried to introduce with Dr. Ross and my
14 ruling is the same. And my understanding of the facts is
15 not the same condition between Tim put the bodies on the
16 side of the road in Alabama, there are several days past
17 and more decomposition occurred. I thought that there was
18 an opportunity perhaps of showing other pictures more
19 relevant in time to when Tim dropped them. That is that
20 y'all were arguing then, not what they looked like several
21 days after that. I don't think the State has opened the
22 door by showing the pictures of the trash bags in one
23 group. I don't think the door has been opened.

24 MR. MADSEN: Do I need to--

25 THE COURT: You offered 109 through 113, the five

1 pictures in the autopsy room. I understand y'all's
2 argument but I don't think they are relevant. I think
3 they are prejudicial. Those are not relevant to
4 describing Tim's behavior.

5 CONTINUE REDIRECT EXAMINATION

6 By Mr. Madsen:

7 Q Sergeant Creech, the Solicitor asked you about your
8 job as an investigator. And you collect the facts,
9 correct?

10 A Correct.

11 Q Whether they're good or bad?

12 A That's correct.

13 Q And you and Tim had a conversation where he asked you
14 to contact his mother to help him figure out what's going
15 on with him, correct?

16 A We did, and that was something I never had the time
17 or opportunity to follow up on.

18 Q You told him you would do that, but you didn't?

19 A I didn't.

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

21 MR. HUBBARD: Quick follow-up, just real quick, Your
22 Honor?

23 THE COURT: Okay.

24 MR. HUBBARD: This is new.

25 RECROSS-EXAMINATION

1 BY MR. HUBBARD:

2 Q Mr. Madsen asked you about the voices he heard about
3 mutilating the kids. It's true he was able to ignore
4 those voices and chose not to mutilate them, correct?

5 A Correct.

6 Q Other than cutting on Nahtahn initially?

7 A That would be correct.

8 Q One other question. Mr. Madsen brought up the length
9 of time Mr. Jones said he spent there with their bodies.
10 But he still left them and left them for the wild,
11 correct?

12 A That would be correct.

13 MR. HUBBARD: Thank you.

14 THE COURT: You may step down.

15 All right. The defense needs a five-minute break, so
16 we will take fifteen.

17 (Whereupon, the jury was excused from the courtroom
18 for a break.)

19 THE COURT: Yes, sir.

20 MR. HUBBARD: One quick thing. I understand they may
21 be putting up one of their experts. If it is Dr.
22 Agharkar, the report we have does not appear to be a final
23 one. There's also an appendix. I just need to know what
24 other information was initially supplied to it. And for
25 this report and all other reports, do we have the final

1 report because I don't think we do.

2 THE COURT: Okay.

3 MR. HUBBARD: And Your Honor, if he's got -- if they
4 have any notes about what the Defendant said during these
5 proceedings, we would like those as well.

6 THE COURT: We will take a break.

7 (WHEREUPON, a short break was taken.)

8 (WHEREUPON, Defendant's Exhibit numbers 131 and 132
9 were marked for identification.)

10 THE COURT: Are we ready for the jury?

11 MR. SECOR: Yes, sir.

12 (Whereupon, the jury came into open court at
13 approximately 10:00 a.m.)

14 THE COURT: Call your witness.

15 MR. SECOR: Thank you, sir. The defense calls Dr.
16 Bhushan Agharkar.

17 BHUSHAN AGHARKAR, being
18 first duly sworn, testified as follows:

19 THE CLERK: Have a seat right up there, sir. Once
20 you're seated, state your full name, spelling your last.

21 THE WITNESS: My full name is Bhushan, B-H-U-S-H-A-N,
22 Agharkar, A-G-H-A-R-K-A-R. That's why I go by Shan.

23 DIRECT EXAMINATION

24 BY MR. SECOR:

25 Q Dr. Agharkar, will you tell the jury what you do?

1 A Sure. I'm a psychiatrist. I'm a medical doctor.

2 Q And tell the jury about your education, if you will.

3 A You want to go back to high school or college?

4 Q I think college is probably good enough.

5 A I did my undergraduate degree at Case Western Reserve
6 University in Cleveland, Ohio. I finished there in three
7 years and then I started medical school in Syracuse, which
8 is where I'm from. I got my medical degree in 2000 and I
9 moved to Atlanta and I trained at Emory. I did a
10 four-year residency in adult psychiatry. I was Chief
11 Resident my last year of residency. Then I did an
12 additional one-year Fellowship in Forensic Psychiatry. So
13 I'm an Adult and Forensic Psychiatrist. And I've been in
14 private practice since then, which has been 2005, so
15 almost 15 years.

16 Q And I think what you just said included, obviously,
17 your medical license, but any other certificates or
18 licenses that you have?

19 A I am Board certified -- in addition to being licensed
20 to practice medicine, I am Board certified in both Adult
21 and Forensic Psychiatry. And then every ten years, you
22 have to take the test again, which kind of sucks, and so I
23 recertified in both of those a couple years ago whenever I
24 took them.

25 Q And what are your current professions in terms of

1 your everyday work? What different things do you do?

2 A I treat patients in my office. I treat a wide
3 variety of mental illnesses, from schizophrenia and
4 bipolar disorder to depression, anxiety, substance abuse
5 problems, ADHD. I treat them with both medications as
6 well as talk therapy. So it's called psychotherapy. And
7 so I do both of those things. I'm on faculty at Emory
8 University School of Medicine as well as Morehouse School
9 of Medicine. I've been teaching at Morehouse since 2005
10 and I teach a variety of courses there over the years.
11 And then the rest of my time is spent in forensic
12 consulting work like this. I have a national practice in
13 that regard. I've testified and consulted in many states
14 across the country.

15 Q And I'm just going to ask you a few more categories
16 about your experience for purposes of qualification. Can
17 you tell the jury about any professional Societies or
18 Boards or Honors that you have?

19 A I'm a member of the American Psychiatric Association,
20 which is our National body. I'm actually a Distinguished
21 Fellow of the American Psychiatric Association, which
22 means that your local branch has to nominate you. First
23 you're a Fellow, then they nominate you for a
24 Distinguished Fellow status. You have to fill out an
25 application. You have letters of recommendations, kind of

1 show them what you've been doing. And then the national
2 body votes on you and gives you that designation. So I
3 received that designation three or four years ago or so, I
4 think. And actually -- and as soon as I got that
5 designation, the local branch asked me to be on the
6 committee to nominate people for Distinguished Fellows, so
7 now I review the applications for people who want to be
8 Distinguished Fellows of APA. I'm a member of the
9 American Academy of Psychiatry and the Law, the
10 International Academy of Mental Health and the Law, the
11 American Neuropsychiatric Association. So there may be
12 more, I'm forgetting, but those come to my mind
13 immediately.

14 Q And how about publications, have you published
15 professional writings and research?

16 A I have, yes. Generally, in a number of topic areas
17 involving intellectual disability, mental illness, of
18 course, like schizophrenia, I've published on that, as
19 well as competency issues.

20 Q And you mentioned that you work at Emory University,
21 but you've also done some work for the Federal Government,
22 is that correct?

23 A Yes.

24 Q Can you tell the jury about that, please?

25 A Well, I've consulted to a number of agencies, the

1 FBI. I currently have cases with the Army, the United
2 States Army, as well as the DOD. I continue to consult
3 for the DOD. So in a variety of areas, I've consulted in.

4 Q And what about your work with schools, not Emory, but
5 other schools? Do you work with other schools?

6 A I've consulted to school systems, hospitals. I do
7 fitness for duty evaluations for our local police
8 department. They send me firemen, police to see if
9 they're fit to carry a gun and come back to work and that
10 sort of thing. So I'll do those evaluations as well.

11 Q Now, the area -- or the conditions that you most
12 routinely are dealing with in your practice, can you tell
13 the jury just the types of mental illnesses that you are
14 dealing with on a regular basis with your patients.

15 A Well, I mentioned I pretty much see everything for
16 the most part. I treat people 16 and up, so I don't treat
17 children, but, you know, again, a variety of conditions.
18 When I was starting my private practice -- I've never
19 taken insurance in my practice, so that takes a while to
20 build. So in my early years, probably the first five to
21 eight years of my practice, I was also working at the
22 Georgia Tech Health Center, the Georgia State Student
23 Health Center. I continue to consult to the Georgia Tech
24 Athletic Department when they have athletes that need to
25 be seen. I've worked in community mental health centers

1 and that's where we take care of the severely and
2 persistently mentally ill. So I see the very sick
3 patients. And, certainly, that was my training as well.
4 So it runs the gamut.

5 Q And in terms of the number of people that you've
6 treated with those severe mental conditions, can you
7 approximate the number of people that you've worked with
8 or treated?

9 A Well, I've lost count. It's got to be over several
10 thousand at this point in my career.

11 Q And have you been qualified in the past as an expert
12 in Adult and Forensic Psychiatry in courts before?

13 A Yes, I have.

14 Q Do you have any idea how many times?

15 A I would say approximately 90 times. I testify about
16 seven percent. Of all the cases I've consulted in, about
17 seven percent of the time, I testify. So that's about 90
18 times.

19 MR. SECOR: Your Honor, the Defense would offer Dr.
20 Agharkar as an expert in the field of Adult and Forensic
21 Psychiatry.

22 MS. MAYES: The State has no objection, Your Honor.

23 THE COURT: All right. Ladies and gentlemen of the
24 jury -- Dr. Agharkar?

25 THE WITNESS: Agharkar, yeah.

1 THE COURT: Has been offered as an expert in the
2 field of Adult and Forensic Psychiatry. He can offer
3 opinions in that field.

4 MR. SECOR: Thank you, sir.

5 THE COURT: Yes, sir.

6 Q When did you first start working on Tim's case?

7 A I don't recall exactly, but I saw him in 2017, so my
8 recollection would be that probably late 2016.

9 Q And you've been working on it since then in some
10 capacity, right?

11 A Correct.

12 Q And this is going to come up at some point, can you
13 approximate how much money you've been paid to work on
14 Tim's case thus far?

15 A Well -- and I discount my rate for state and federal
16 cases. So for this case, it's \$400.00 dollars an hour,
17 which is my old discounted rate. I would approximate --
18 you know, I didn't look at my billing right before I left
19 town, but I think it's got to be around \$25,000.00, it
20 could be more.

21 Q And who pays you to work on Tim's case?

22 A The State does.

23 Q The State of South Carolina?

24 A Right.

25 Q And -- because I'm sure this is going to come up in

1 some way. Is the fact that you're paid influence the
2 conclusions that you come to in cases that you work?

3 A No, not at all. I expect to be paid for my time,
4 that makes sense. But I routinely tell lawyers who hire
5 me things they don't want to hear. I mean, I tell them
6 things that look, I just can't help you. This guy doesn't
7 have it or whatever you're looking for isn't there. So I
8 routinely do that.

9 Q Which is why you end up testifying in so few of your
10 cases that you're consulted on?

11 A Exactly right.

12 Q So you were initially hired to do what in this case?
13 What was the initial request?

14 A I was asked to perform an assessment of Mr. Jones to
15 see whether or not he suffered from any major mental
16 illnesses or any other problems that they should be --
17 that you guys should be aware of.

18 Q And if you would, just sort of as concisely as you
19 can, tell the jury what a psychiatric evaluation is. How
20 do you do that?

21 A Well, you talk to the person, first and foremost,
22 right. My training and experience in seeing many patients
23 allows me to be able to see patterns and understand how
24 mental illnesses present. So I'll talk with them, spend
25 time with, kind of understand, ask questions and see how

1 the responses are. I'm not only interested in what he
2 says, but the way in which he says it. Are his thoughts
3 organized? Do they make sense? Do they seem to follow in
4 a linear and logical fashion? That's how our brains work.
5 As far of that, as well, then I would review a number of
6 records. As part of the evaluation, I'll review a great
7 deal of records, medical records, all kinds of things to
8 come to, as best I can, an understanding of this person
9 and what could be going on with him.

10 Q Now, can you tell the jury the role that a person's
11 social history plays in your evaluation? First, let's
12 make sure we all understand what a social history is and
13 then tell the jury what role that plays in your
14 evaluation.

15 A So social history really means as much information as
16 we can get about a person's upbringing, the people around
17 them, what they were experiencing, you know, what was
18 going on in the environment, right? We don't exist in a
19 vacuum. We don't just walk around without having any
20 concept of where we are and where we come from, right? So
21 social history tries to get that information, tries so
22 that we can have a rounder, more 360 kind of view of a
23 person and understand how they've come to be where they
24 are now. And that's why it's very important in
25 psychiatric evaluations to have a social history.

1 Q And could the social history that you take into
2 consideration conducting an evaluation like this, could it
3 include records on a person that the person you're
4 evaluating never even knew, but was biologically related
5 to?

6 A Absolutely, yes. And we call that a family history.
7 Because just diabetes and high blood pressure, mental
8 illness runs in families, okay? So we know that
9 depression, bipolar disorder, schizophrenia are highly
10 hereditary. They pass through the genes. I can go into
11 that in more detail if you want me to now or you can ask
12 me that later.

13 Q We'll do it in just a second.

14 A Sure.

15 MR. SECOR: Your Honor, may I approach?

16 THE COURT: You may.

17 Q I'm just going to ask -- show you, Dr. Agharkar
18 what's been marked as Defense Exhibit 132 and just ask you
19 if you recognize this?

20 A Yes. This is a list of all the materials I was
21 provided and reviewed at some point.

22 Q Okay. And it's a list that totals 262 items. Do you
23 agree with that?

24 A Yes.

25 Q And this is the actual list of things that you

1 reviewed?

2 A Correct.

3 MR. SECOR: Your Honor, we'd offer 132 -- I mean, I'd
4 offer what's been marked for ID Defendant's 132 as
5 Defendant's 132 in evidence.

6 MS. MAYES: Your Honor, I would object to it coming
7 into evidence. I have no objection to it being a Court's
8 Exhibit or being used for identification purposes to
9 refresh the memory of the witness.

10 THE COURT: What is that again?

11 MR. SECOR: It's the list of the items that Dr.
12 Agharkar considered in his evaluation, records and various
13 things related to Tim and other family members.

14 THE COURT: I don't think it needs to come into
15 evidence. So he can use it to refresh his memory and make
16 certain of that. If you need to mark it as a Court's
17 Exhibit, that's fine, also.

18 MR. SECOR: So can we just make Defendant's ID 132 a
19 Court's Exhibit?

20 THE COURT: We may, sure.

21 MR. SECOR: Your Honor, that would be Defense 132 for
22 ID is now Court's 202.

23 THE COURT: Court's 202, correct?

24 MR. SECOR: Yes, sir.

25 COURT REPORTER: I'm sorry, I'm going to have to

1 change that number. That will be Court's No. 88.

2 (WHEREUPON, Court's Exhibit number 88 was marked for
3 identification.)

4 MR. SECOR: Your Honor, I'm sorry, I was wrong about
5 that. What was previously marked as Defendant's Exhibit
6 132 for ID is actually going to be Court's 88.

7 THE COURT: Court's 88 then. Y'all understand the
8 difference. This is what he looked at. All the evidence
9 is in that y'all get to see. What he looked at, he can
10 testify to.

11 Q And you already mentioned that you look at records
12 pertaining to Tim as part of the evaluation. Just tell
13 the jury the types of records that you looked at that
14 pertain specifically to Tim.

15 A So records like medical records, occupational
16 records, school records, things that pertain to a
17 substance abuse history, so those types of records for
18 him.

19 Q And anything that pertained to mental health concerns
20 as well?

21 A Of course, yes, that's right, as well as any jail
22 records as well.

23 Q Right. And then those same type of records that
24 apply to members of his family?

25 A Correct.

1 Q Did you review any of the evaluations or examinations
2 that other people involved in this case did on Tim?

3 A Yes, I have reviewed competency as well as criminal
4 responsibility evaluations that have been done in this
5 case.

6 Q And what about the imaging regarding Tim's brain
7 injury?

8 A Yes, I reviewed Dr. Bigler's reading of that as well
9 as Dr. Snyder and I've seen the images myself.

10 Q And in your in-person work with Tim, do you have any
11 idea of the total amount of time that you've spent with
12 Tim approximately?

13 A I've visited with him twice. Once in early 2017 and
14 then once kind of in the middle of 2018. Total is about
15 three and a half hours.

16 Q And was he cooperative with you during that process?

17 A Yes, he was.

18 Q Now, we're, obviously, going to get into this in more
19 detail, but I think it's important the jury knows at this
20 point. Can you tell the jury what your ultimate finding
21 was based on the evaluation you conducted on Tim?

22 A So based on my assessment, he suffers from
23 schizophrenia as well as what's called a minor
24 neuro-cognitive disorder, that's just a fancy term for
25 brain damage.

1 Q Now, you and I talked a lot about you trying to
2 explain things to me and we're going to try to do this as
3 quick as we can because it's a lot of information. But if
4 you can, talk to the jury about just what is
5 schizophrenia.

6 A Sure. Schizophrenia is a major mental illness. It's
7 what we call a thought disorder. You can have mood
8 disorders, like depression, anxiety disorders, like panic
9 attacks and things like that. Here, we're talking about a
10 thought disorder. So it means somebody whose thinking
11 isn't right. Well, why not. So it means that it's a
12 psychotic illness. That means there's a break with
13 reality, that this person's reality is not sane as the
14 rest of our realities. So they may have hallucinations,
15 they may hear things that other people don't hear. They
16 may see things other people don't see. There's other
17 kinds of hallucinations, like they can smell things other
18 people don't. They can taste things other people don't.
19 So those are called hallucinations. And the absence of --
20 in other words, they're not things that the rest of us
21 would experience. People can have delusional thinking. A
22 delusion is a fixed, false belief. So people can have
23 paranoid delusions. People who think that people are
24 after them, they're being monitored, things like that when
25 they're not. They can have grandiose delusions where they

1 believe they have super powers that other people don't
2 have or that they are a very important figure in some way.
3 Some people have delusions in that way as well. Then you
4 can have disorganization in thought, disorganization in
5 behaviors and then what we call negative symptoms.
6 Negative symptoms are a restricted range of affect.
7 People will often talk about it being kind of a flat face,
8 doesn't show much emotion. That's part of the illness.
9 People can have problems with motivation. They can have
10 problems with initiating behaviors and thoughts. Social
11 withdrawal and social isolation is a common negative
12 symptom. So those are the different types of symptoms
13 that we see in the syndrome called schizophrenia.

14 Q And do you see in your work with schizophrenics, or
15 rather, people with schizophrenia, does it -- do they
16 sometimes engage in violent behavior?

17 A Yes, that does happen.

18 Q And is -- in your experience, is violent behavior
19 that's committed by people with schizophrenia, does it
20 usually involve substance abuse?

21 A It often does. Substance abuse and mental illness go
22 hand in hand. You often see people use substances in
23 addition to having a major mental illness. And,
24 unfortunately, it can make those symptoms worse. They may
25 think it's helping them in some way, but, oftentimes, it

1 just makes those situations worse.

2 Q If you would, please tell the jury about the spectrum
3 of schizophrenia and the varying degrees of severity.

4 A So just like people exist on a spectrum, right? I
5 mean, somebody with depression can go to work and function
6 reasonably well, but still have depression versus somebody
7 else with depression might not be able to get out of bed
8 for two weeks because they have no energy and no
9 motivation and they're crying all the time and such, okay.
10 So there's a spectrum of any illness. There's a spectrum
11 in schizophrenia. Some of you may be familiar with, you
12 know, the homeless guy pushing the shopping cart down the
13 street with five coats on in the middle of summer, okay,
14 if you've seen that kind of thing. That person is
15 schizophrenic oftentimes, very low functioning. You can
16 have higher functioning schizophrenics, such as the Noble
17 Prize winner in economics, John Nash. So there can be a
18 wide variety. It's not a one size fits all type of
19 category.

20 Q And can you describe to the jury in considering
21 mental illness, the idea of strengths versus deficits?
22 What is that?

23 A Just listing mental illness, but we all have
24 strengths and deficits, right. We can do some things
25 well, we can do some things not so good, okay. And so

1 everybody has that to some degree. So the same is true
2 with mental illness and schizophrenics. But it's very
3 important to understand that the way we make our diagnoses
4 and the way we consider somebody having impairment, we
5 look at what they can't do. We look at their deficits.
6 So the deficits are what define the disease. It's not the
7 strengths, okay. So somebody can have great strengths.
8 So, for example, if you've seen the movie Rain Man.
9 That -- I actually met him in person. Not the actor, the
10 real person it was based on. He could tell you the
11 weather in Kansas City, Missouri on June 18th, 1975 off
12 the top of his head, but he can't tie his shoes. So
13 that's somebody that has great strengths, but very
14 significant deficits. And he relied on his father for
15 everything. He was not able to live in an independent
16 way. So that's an example of how you can have strengths
17 coexisting with deficits. We look at the deficits, we
18 look at what the person can't do. And that's how we
19 determine whether somebody has an illness or not.

20 Q Does that differentiate the difference between
21 intelligence and cognitive issues or intellectual issues
22 and cognitive issues?

23 A Yes. I mean, so intelligence is measured by IQ
24 testing. That doesn't capture, though, fully who you are
25 and what you're able to do. You can have people with very

1 high IQs make very, very bad decisions and have many kinds
2 of behavioral problems, okay. Because there's other parts
3 of the brain that code for memory, for judgment, for
4 weighing and deliberating and planning. So just because
5 somebody's IQ is high doesn't mean everything else in
6 their brain is good. You kind of have to look at
7 everything together.

8 Q If you would, just tell the jury the three categories
9 of symptoms of schizophrenia and then we'll go through
10 each briefly.

11 A So the way we think about the symptoms of
12 schizophrenia are positive symptoms, negative symptoms and
13 cognitive symptoms.

14 Q And let's just start with the positive symptoms. It
15 seems like a bit of a misnomer to me. Is that right?

16 A Yeah, they're really not positive at all.
17 Unfortunately, that's what it's called, though, positive
18 symptoms. What it means is what I talked to you earlier
19 about, hallucinations, delusions. Those are what we call
20 positive symptoms of schizophrenia.

21 Q And hallucinations are auditory, visual, olfactory,
22 what?

23 A Correct, it can be any of those.

24 Q And negative symptoms?

25 A So the negative symptoms are again what I discussed

1 about social isolation, having restricted range of affect,
2 difficulties initiating behavior, those sorts of things.

3 Q And those positive and negative symptoms, are they
4 the same in every schizophrenia patient?

5 A They're not. There's variability among
6 schizophrenics. Some can have a few of these symptoms and
7 some can have many.

8 Q And what about the category of cognitive symptoms,
9 what is that?

10 A Well, what we knew about -- so, having untreated
11 schizophrenia is bad for your brain, okay. Actually, even
12 Freud talked about this. We didn't have antipsychotics
13 back in that time, but he called schizophrenia dementia of
14 praecox, which means, basically, he saw that people with
15 untreated schizophrenia ultimately become demented. They,
16 basically, look like dementia patients. So we know that
17 it's bad for the brain, it causes deterioration in
18 cognitive functioning. You'll often see cognitive
19 problems in people with schizophrenia, mostly like
20 executive functioning types of things, frontal lobe
21 problems a lot of times.

22 Q What do psychiatrists like yourself refer to the
23 first phase of schizophrenia as?

24 A I think what you mean is there's something called a
25 prodromal phase of schizophrenia. What that really means

1 is they have -- they don't meet criteria for the full
2 syndrome yet, but there's something going on. There's
3 something unusual or strange. And it often is hard to
4 detect. And the way we often figure it out is in
5 retrospect. You know, once we know how the person is, we
6 realize well, looking back, oh, there were even some
7 strange things and it just kind of got, you know, looked
8 at as kind of normal behavior in a sense. And what I mean
9 by that is most people who have schizophrenia will have
10 what we call a first break episode around 18 to 22 as an
11 age range. It's a rough guide. But oftentimes looking
12 back when they were younger, you will see things like kind
13 of eccentric beliefs, kind of weird, you know. They may
14 be social isolated, spend more time by themselves. The
15 problem is what 16 or 17-year-old doesn't do that, right.
16 So that's the difficulty. So it looks like normal teenage
17 behavior, but, in fact, what it is is the starting of the
18 disease. So it can be difficult to detect in that way.
19 That period of time can go on for months or even years
20 until eventually they have all the symptoms and they have
21 what we call a psychotic break and then it's very clear
22 that they have schizophrenia.

23 Q If you would, just discuss with the jury the
24 general -- from the field of psychiatry, the general
25 beliefs about the age of onset of schizophrenia, whether

1 it's fixed or whether it's a range?

2 A Again, it's epidemiology. So you're going to have
3 some that are young and some that are older, but most
4 people will tend to break between 18 and 22, which is
5 right around college age.

6 Q And when you say break, you mean having a psychotic
7 episode?

8 A Correct.

9 Q And if you would now, just discuss the inheritable or
10 genetic nature of schizophrenia.

11 A It's a highly inherited condition. And we know from
12 genetic research that if you have a twin, an identical
13 twin, okay, and that twin has -- let me back up. The
14 prevalence of schizophrenia in the population is one
15 percent. That's one percent of the population will have
16 schizophrenia. Now, if you have an identical twin, so the
17 same genes, right, identical twin who has schizophrenia,
18 your risk goes up to 50 percent, so 50 times risk, okay.
19 It's pretty significant. If you have a first degree
20 relative, like a father, a mother with schizophrenia, your
21 risk goes up to. I've seen usually, at least, ten
22 percent, can be as high as fifteen percent or so I've
23 seen. That's pretty significant. You know, it's a ten to
24 fifteen times increase in getting the disease if you have
25 a family member who has it. And then the more family

1 members who have it, it raises the risk, we're not exactly
2 sure how much, you know, above that ten percent.

3 Q Based on your review of records in this case, do you
4 know whether or not Tim has a parent with schizophrenia?

5 A Yes, he does.

6 Q And have you seen recently a video of his -- it's his
7 mother, Cynthia, right?

8 A Yes, I've seen it.

9 Q You've seen the video. In seeing her, obviously, you
10 weren't there, but watching her, based on your expertise,
11 how does she present to you?

12 A She appears very impaired. She strikes me as chronic
13 schizophrenic. You can see in the video she has memory
14 problems. Even answering sort of the most basic
15 questions, she can only go maybe one step and can't really
16 further tell you more. So she looks like someone who has
17 been treated for a long time is what I've seen.

18 Q In your review of the records, are you aware of other
19 mental health conditions that have affected members of
20 Tim's family on both sides?

21 A Yes. In addition to -- the mother has multiple
22 diagnoses, but one of them is schizophrenia. He has a
23 grandmother who is diagnosed with schizo-affective
24 disorder, which, basically, just means schizophrenia, plus
25 bipolar, that's all it means. A schizophrenic who has

1 some mood problems, that is schizo-affective. So it's not
2 important, but it's really just a term that means still
3 has schizophrenia with mood issues. He also has multiple
4 other family members with mental illness and pretty
5 significant mental illness as well. So yeah, there's a
6 number of family members.

7 Q And to you, was that an important factor? In coming
8 to your determination in this case, did that play a big
9 role in it, knowing his family history of mental illness?

10 A Certainly. I mean, it doesn't make the diagnosis,
11 obviously, but it sets the stage for it. It tells me that
12 there's significant genetic loading for this illness.

13 Q Now, in addition to the genetic component of
14 schizophrenia, explain to the jury the environmental
15 factors that can contribute to its growth, I guess.

16 A You know, we think that there's usually what we call
17 a two-hit hypothesis of schizophrenia, which means you've
18 got the genetics for it and then there's something in the
19 environment as well that goes wrong and that tips you into
20 schizophrenia, so to speak. He's had a host of issues,
21 starting with childhood with abuse and neglect by his
22 mother. His mother wouldn't feed him as an infant because
23 she didn't want a fat baby, so she withheld milk from him.
24 She left him in cold water. He would be screaming and
25 crying. Again, he's a baby. She also had her own issues.

1 She did some very significant and very serious things.
2 Especially in those early years, you know, our brain is
3 very much forming. It's forming all those neuro
4 connections. So that's a state of high stress and that
5 sort of thing, it's incredibly bad for brain development.
6 He's then raised by his grandmother, it's my understanding
7 is the primary caretaker. She has pretty significant
8 mental illness problems as well. And then -- so that sets
9 the stage for that later on development. He starts having
10 symptoms, he reports around the age of ten or so of
11 hearing voices. And then he starts using substances as
12 well at an early age, around 12 years old or so. And he
13 thinks -- he tries to calm the voices, but his moods,
14 also. So those are the kinds of things I was able to
15 glean from the history.

16 Q Thank you. The list of symptoms for -- I guess these
17 are both positive and negative. You discussed psychosis,
18 delusions, hallucinations, thought disorganization,
19 isolation, flat affect or restricted range of emotion,
20 self-medication. Does that cover most of the things that
21 you see in schizophrenic patients?

22 A Yes.

23 Q And are those things that you identified in Tim as
24 part of your evaluation?

25 A Yes, that's right. I did not see disorganized

1 behaviors, but everything else, yes, I interviewed him
2 for, was able to see in his history or in him.

3 Q And just so that we're sure that everybody is on the
4 same page, what do you mean by self-medication?

5 A Self-medication, basically, means that you're having
6 some kind of problem. And for whatever reason, there can
7 be lots of different reasons why you may not go see a
8 doctor. You know, it's expensive, there's stigma
9 associated with seeing a psychiatrist and getting put on
10 medications. Some people don't like to take medications,
11 some patients can have side effects. So there's a lot of
12 reasons why people don't take medicine. So what do they
13 do. They reach for things that are easily kind of in the
14 environment, alcohol, drugs. So people will often drink
15 alcohol to make themselves feel better. They'll smoke
16 weed to relax, calm themselves, reduce their anxiety. And
17 so schizophrenics, but people with mental illness in
18 general will oftentimes do what we call self-medication.
19 You know, they will use these substances to treat
20 themselves. But, of course, it's not really treating it,
21 it may be pushing the symptoms down somewhat so you can
22 hopefully function and get through your day, but,
23 eventually, they become their own problems.

24 Q From an outsider's perspective, it might just look
25 like some is just using drugs, right, or drinking?

1 A Exactly. Yes.

2 Q Now, does a person who has schizophrenia and is
3 experiencing these symptoms, are the symptoms constant and
4 regular or do they wax and wane?

5 A Rarely is it ever constant. Symptoms wax and wane.
6 People have good days, they have bad days just like
7 everybody else. So you wouldn't expect to see all these
8 symptoms present all the time, no.

9 Q Do you see in your practice friends and family
10 members of schizophrenics who miss some of these symptoms
11 or attribute them to something else? Is that something
12 that you see?

13 A All the time, yeah. Unless it's really, really
14 bizarre or gets to the point where it's really dangerous
15 like they try to kill themselves or something like that,
16 tear the house up looking for monitoring devices, I've
17 seen that. Unless it gets to that level, oftentimes,
18 again, it just gets mistaken as regular teenage behavior
19 or substance abuse or he's just weird. Something is
20 just -- he's off. Something's not right with the guy,
21 but, you know, we just don't want to talk to him that
22 much.

23 Q In your experience, can a person with schizophrenia
24 control the disease themselves?

25 A No, they can't control it. I mean, you can't control

1 your diabetes or your high blood pressure. You have it,
2 you know. You can manage it as best you can, but you
3 can't control it.

4 Q How do you treat schizophrenics?

5 A First and foremost, medications. We have a number of
6 antipsychotic medicines that are used and effectively can
7 treat symptoms and get them under control. And then talk
8 therapy as well. You can have, obviously, one-on-one
9 psychotherapy has helped people. Sometimes they'll go to
10 day programs. I was the medical director of a residential
11 treatment facility at one point in my career. And we
12 often took -- these are folks who are too sick to go home,
13 but they're not so sick that they should be in the
14 hospital, so they come and stay with us. So we often have
15 group therapy with them, vocational training, skills
16 development and things like that to help them focus on
17 something other than voices. So there's lots of different
18 treatment modalities we have.

19 Q You also, from your evaluation, reviewed the fact
20 that Tim has a traumatic brain injury?

21 A Yes.

22 Q Can you just discuss briefly what is traumatic brain
23 injury?

24 A So -- I mean, it's what it sounds like. It's,
25 basically, a severe blow to the head. And you can have --

1 you know, it can actually crack the skull. It doesn't
2 have to crack the skull. We call those concussions,
3 right, mild traumatic brain injuries. So you don't
4 necessarily have to have a skull fracture to have a
5 traumatic brain injury.

6 Q And what goes wrong -- what are some of the things
7 that can go wrong as a consequence of that type of brain
8 injury?

9 A Well, it somewhat depends on where the damage happens
10 in the brain, okay. The brain also -- the brain is
11 sitting in fluid in the skull and that's its cushioning,
12 okay. When you have severe jolts, okay, then the brain
13 hits against the skull, for example, that's -- so you'll
14 actually get brain bruising. You'll have what they call
15 axonal shearing, which means, basically, shearing forces,
16 twisting forces are applied to the brain and that will
17 destroy neuro-connections. That's not necessarily obvious
18 on a scan. You have to get a special type of scan to be
19 able to see those types of things. Just real quick, I can
20 tell you about the brain. It kind of looks like a fist,
21 okay. Your knuckles, in the front, this would be the
22 frontal lobe. My thumb here on the side is the temporal
23 lobe. Back here on top is what we call the parietal lobe.
24 And then the back is the occipital lobe. And so those are
25 the four main lobes of the brain. So depending on what

1 gets hit, you'll have different types of deficits.

2 Q And in terms of the consequences of a traumatic brain
3 injury or how they manifest, I assume that, basically, you
4 just said they're not necessarily always consistent, but
5 could you give the jury some idea of what those are?

6 A Sure. Yeah, I mean, again, like I said, it depends
7 on what gets injured. But the front part of the brain
8 called the frontal lobe, which I think you've already
9 heard about from Dr. Snyder who showed you on the scans.
10 You're going to hear more about it. It sits right behind
11 our eyes, okay. And right behind our nose, really, and
12 right behind our eyes are two very sharp bones. It's very
13 unfortunate because, basically, if you have a bad force,
14 your brain gets impaled right there on these very sharp
15 bones. So frontal lobe injuries are very common in
16 traumatic brain injury for that reason. And we have
17 problems in those areas -- you'll often see problems with
18 what we call executive functioning, which means weighing
19 and deliberating things, planning appropriately, making
20 good rational plans. The primary role of the frontal lobe
21 is impulse inhibition. So it means that, you know, if
22 somebody insults me on the street my brain might be
23 saying, you know, attack him. He's insulted you, you've
24 got to hit him. My rational part, the frontal lobe says
25 no, don't do that. You do that and you're going to get

1 arrested, you're going to go to jail, there's going to be
2 big trouble, don't do it. And that's when you have intact
3 frontal lobe functioning, it stops you from doing things.
4 People with damage in that area will often have problems
5 stopping themselves, will often have problems with impulse
6 inhibition. So working memory is also part of what
7 frontal lobes are responsible for. Modulating emotions.
8 You have different parts of the brain -- like the temporal
9 lobe, you have some memory issues, emotional regulation
10 problems. Again, the frontal lobe mediates that and makes
11 it like -- helps kind of translate and understand what's
12 going on. So if you have damage in those areas, you can
13 have a hard time controlling that. So those, in general,
14 are the types of things you can see with traumatic brain
15 injury.

16 Q And does that -- can the signs of traumatic brain
17 injury include changes to a person's personality or
18 character or behavior?

19 A Yes, that's right. Oftentimes, people will act
20 differently, people will notice changes and say that a
21 person is not really the same after having a head injury
22 of some type. We see that in veterans after an IED blast,
23 for example, right, so bomb blast and things like that.
24 Those are concussive forces. They can have a lot of
25 difficulties, just not doing the things that they used to

1 do. And that certainly happens when you get in car
2 accidents and other types of head injuries as well.

3 Q Is there a correlation between traumatic brain injury
4 and things like substance abuse, mental illness,
5 homelessness, imprisonment, those types of things?

6 A Yes. Studies have shown that people with traumatic
7 brain injuries tend to have a higher incident of those
8 things that you just mentioned. And again, it goes to
9 people can develop mental illnesses more readily, or it's
10 sort of a higher association with traumatic brain
11 injuries. And the self-medication plays into that as
12 well.

13 Q Are there symptoms of traumatic brain and symptoms of
14 schizophrenia that overlap one another?

15 A There are, yes. Again, as it relates to frontal lobe
16 functions. So we talk about weighing and deliberating,
17 being able to see the future consequences of your
18 behaviors, certainly, some impulse inhibitions, things
19 like that, sure, there's overlap. Because it's the same
20 brain we're talking about. It's a matter of how it's
21 being affected.

22 Q Now, these symptoms -- if I know somebody that has a
23 traumatic brain injury, but I don't know it, how are their
24 symptoms or the manifestations of the traumatic brain
25 injury, how are they frequently interpreted by somebody

1 that's unaware of the fact that they have a brain injury?

2 What would it look like to somebody that doesn't know?

3 A Again, it depends on the severity of the injury. But
4 oftentimes, what people will experience are the guy's a
5 jerk. He's irritable, he's aggressive, he's short with
6 people, maybe his memory isn't so good. But that's
7 typically what people will notice. Maybe his
8 concentration is off. You know, there are things like
9 that can be noticed. Sometimes, you don't notice anything
10 at all. But that doesn't mean there isn't problems, it
11 just means it's not necessarily obvious.

12 Q Of course. And this seems like sort of a ridiculous
13 question, but I just feel like I need to ask it. If you
14 receive two brain injuries, my assumption is that's worse
15 than one?

16 A Yeah, yeah. Two is worse than one, three is worse
17 than two. What we think is that, basically, the brain
18 doesn't recover as well after that first injury. So when
19 you hit it again, it's got less reserve, kind of less --
20 you know, just doesn't bounce back as well. So the more
21 times it gets hit, typically, the worse the outcomes will
22 be.

23 Q Okay. Now, I want to go through some of the things
24 that you discovered in your evaluation and review of
25 social history and family history that helped you come to

1 the conclusion that you came to in this case. We've
2 already talked about some of the environmental factors
3 that played in it, like childhood neglect and abuse,
4 right?

5 A Right.

6 Q And I think you also touched on family history in
7 terms of Tim's mother and grandmother. And you didn't
8 name other people, but other family members, right?

9 A Yes.

10 Q And I think you mentioned hallucinations. Can you
11 just tell the jury based on your evaluation when Tim first
12 experienced that?

13 A So what he reported was first hearing a voice at the
14 age of ten, which told him to kill himself. And that this
15 was different than his own thoughts. And it scared him,
16 it really terrified him. That was his first recollection
17 of voices.

18 Q And what do you know about his drug and alcohol use?
19 When did that start?

20 A As I say, it started somewhere around the age of 12
21 years old. He started smoking marijuana. He started
22 drinking alcohol, think around the age of 13 to 15. And
23 he was experimenting some with cocaine around the age of
24 19.

25 Q What about things like mood swings and depression,

1 did you find any evidence of that?

2 A Yes. That's what people noticed about him, that he
3 would have mood swings and depression. And he actually
4 had seen -- I had seen some psychiatric evaluations of him
5 in which he was complaining of depression as well. And
6 remember, he had a major head injury at the age of 15, a
7 very serious car accident. All this was after that.

8 Q And the car accident is what caused the traumatic
9 brain injury, is that right?

10 A Yeah. I think there had been other head injuries as
11 well. I think there were other car accidents, but that
12 one was significant because he has a portion of his skull
13 that's caved in.

14 Q And what about past diagnoses, did you review any of
15 those?

16 A I did, yes. And again, they were mostly the
17 depressive types of disorders.

18 Q And did you review his -- the evaluation records from
19 when he was discharged from the Navy?

20 A Yes.

21 Q And do you recall what influence that had on your
22 opinion?

23 A Well, there again, he was complaining -- there was a
24 substance abuse issue, but, also, the issues of depression
25 with the Navy as well.

1 Q Now, there were periods of sobriety in Tim's life,
2 isn't that right?

3 A Yes.

4 Q And do you remember the events that led to him
5 returning to drugs and alcohol?

6 A Well, as I recall, primarily, it was after his
7 divorce. That seemed to really hurt him pretty badly and
8 sent him -- he started drinking and smoking marijuana
9 quite a bit after that.

10 Q And what about neuropsychological testing that was
11 performed, how did that inform your opinion?

12 A So neuropsychological testing, if you haven't heard
13 about it yet, is brain behavior testing. And it's
14 pencil/paper testing. And so he's given tests to do and
15 then they're timed and they sort of see how he does
16 compared to the general population. And so I reviewed
17 testing in that regard and there were findings of -- well,
18 he had an IQ, I think a score of 89, which is much lower
19 than you'd expect given how intelligent he seemed to be in
20 the past. Additionally, there were, at least, some signs
21 of frontal lobe dysfunction on those tests and some
22 problems with memory, as I remember.

23 Q From stuff I've read and our conversations, you told
24 me that an important thing for people who may have mental
25 illness is resilient factors in terms of whether or not --

1 or how they handle them. Can you just discuss with the
2 jury what you mean by resilient factors and what resilient
3 factors you saw in Tim's life?

4 A Well, what I mean by that is that, so why are some
5 people higher functioning and some people lower
6 functioning, right. So what is it about individuals that
7 cause this variation. So for some, it's because of -- if
8 you're highly intelligent, that can help. You know, you
9 can mask a lot of symptoms. If you have a high education,
10 those things help as well. And that's what I saw here
11 with Mr. Jones. And I think partially why maybe people
12 didn't know about his symptoms because he's able to hide
13 them. He didn't talk to people about it because he was
14 terrified he would end up like his mother, who was
15 institutionalized for most of her life and was obviously
16 very, very ill. But I think what happens is if you have
17 problems with concentration or if you have problems with
18 making decisions or things like this, but you're having a
19 good day and you're very smart, sometimes you can get away
20 with that sort of thing, you know. And people don't
21 always know what you're talking about, but that's also
22 because they think well, you're smarter than me, so maybe
23 I just don't understand you. That's oftentimes what
24 happens as well. So those can be reasons as to why
25 somebody with schizophrenia with those factors can do

1 better than somebody else.

2 Q Can a person be smart enough to the point that
3 they're invincible to schizophrenia?

4 A No. There's no barrier to schizophrenia. You can be
5 very smart and schizophrenic.

6 Q If you would, discuss with the jury the idea of
7 impairment versus distress when you, as a psychiatrist, is
8 coming to your conclusion about a patient.

9 A Whenever we are assessing somebody and we're
10 assessing somebody's symptoms, how do we decide what's
11 normal versus abnormal, right. Because that's my job, to
12 figure out okay, this is normal, this is okay, this is
13 not, this needs treatment. That's what I've got to figure
14 out. And the way you do that is through deciding if a
15 symptom causes clinically significant impairment or
16 distress. It's an or, it doesn't have to be both. So
17 earlier, as I was saying, you guys have all heard about a
18 functional alcoholic, somebody who has a serious alcohol
19 problem, but still can go to work, still can provide for
20 their family, right, but just comes home and gets hammered
21 every night, right. I would argue there's maybe some
22 impairment there, but oftentimes, you won't see impairment
23 in a lot of other areas. But, clearly, that's somebody
24 who has a significant problem. They are something that
25 most people wouldn't be doing, right. So same thing with

1 feeling sad. All of us have felt sad in this room, right,
2 but not all of us are depressed. So the way we decide is
3 this depression normal or abnormal is, is it causing you
4 significant impairment or distress. So the same way you
5 look at hallucinations or delusions and things like this
6 is, it doesn't necessarily have to cause impairment in
7 somebody's functioning because again if -- you know,
8 sometimes -- in his case, he took drugs, he said that that
9 helped calm the voices and quiet them and allowed him to
10 function. So sometimes people can do that. Sometimes if
11 they're smart, they can find ways to try to adapt and cope
12 so that they're not impaired, but they can still be very
13 distressed by the symptoms that they're having. And that
14 would be a mental illness.

15 Q Based on everything that you've reviewed about Tim
16 and what you did on the case, did you consider the
17 possibility that what he has is substance-induced
18 psychosis?

19 A Yes, I considered that.

20 Q Okay. And can you tell the jury what your opinion on
21 that is?

22 A So we know that he started using spice a great deal
23 really in the last three months before these events
24 occurred. And so, honestly, when asked to think about
25 well, was it the drugs that caused this issue, well, the

1 first thing is that he told me that the drugs calmed him,
2 that the drugs actually let him function. They quieted
3 the voices, they reduced his irritability, they helped his
4 moods so he was able to actually function and go on. He
5 was using drugs through that time and people didn't think
6 he was psychotic. He wasn't doing anything flagrantly
7 psychotic, openly hallucinating in front of them, that
8 sort of thing. So it wouldn't be as a cause of substances
9 as I would see it from there. But to me, I think the
10 biggest piece of evidence in that is that he has been
11 treated for schizo-affective disorder, but, basically,
12 schizophrenia in the jail for four and a half years with
13 high doses of antipsychotic medicines and there's no way
14 substances would be causing him to have problems now four
15 years later. Additionally, my examination of him is
16 absolutely consistently with someone with schizophrenia.
17 But again, I think the fact that he's been treated in the
18 jail for as long as he's been treated with antipsychotics
19 says this is a real psychotic illness that he has. This
20 is not caused by drugs.

21 Q You're aware of the medication that he's been given
22 by the State of South Carolina, right?

23 A Yes.

24 Q Okay. Is it legal to give those medications to
25 somebody that does not have a psychotic mental illness?

1 A Well, I guess I don't know if it would be legal or
2 not, but it's certainly unethical, it would be malpractice
3 to give somebody medication for a disorder they don't have
4 and don't need it for.

5 Q Is it enjoyable to be on the medications that Tim is
6 on?

7 A No, it is definitely not.

8 Q What would I look like if I took the medications that
9 Tim is on?

10 A You would be on the floor. I don't think you would
11 be awake for much of the day, if any part of the day.
12 They're highly sedating. The doses he's on are serious
13 doses. A quote, unquote, a normal person who isn't
14 psychotic takes those medicines, you'll sleep for days.

15 Q How do you know that Tim wasn't faking?

16 A So faking or malingering is something I'm always
17 considering in a forensic context, that somebody is trying
18 to say they've got something they don't have. So it's
19 certainly something I considered. But in my opinion, no,
20 he's not faking this. Number one, people can -- people
21 can tell you I'm hallucinating, right. You don't know
22 whether that can be true or not true. So you look for
23 behavioral signs of that and there's certainly are things
24 that go along with that. Number one, he often has a
25 restrictive range of affect. He's often very flat in

1 discussing things. He describes hallucinations that are
2 typically consistent with what we'd expect in people with
3 schizophrenia. Remember that when somebody has
4 schizophrenia and brain damage, oftentimes, they may be a
5 little unusual in the way they present. That's part for
6 the course when you have a brain injury as well. He --
7 his thoughts -- when you allow -- oftentimes, the way I
8 interview, I ask questions and then I'm quiet, just let
9 them talk because I just want to see where his thoughts
10 go. Does he stay on task or do things get disorganized
11 and he got disorganized. I would often have to bring him
12 back to the topic. I would often have to reframe the
13 question or redirect him to get an answer. And you see
14 that in people with brain disorders. Many of these
15 things, especially thought disorganization, that's very
16 hard to fake. Our brains typically want to be linear and
17 logical in discussing things. People don't know to fake
18 it, number one. And two, it's very difficult to do. He's
19 been treated with medication for many years now. He says
20 the voices are almost completely eliminated since taking
21 the medication. He feels better with the medicine. Those
22 things would be consistent with what you would expect in
23 mental illness. He certainly cannot fake the
24 neuro-imaging results, right, we see what his brain looks
25 like. You can't fake that. That's certainly -- the

1 damage is there. And then he performed well on effort
2 testing by the psychologists who gave him different tests
3 and things. And so for all those sorts of reasons, I have
4 no reason to think that he is faking.

5 MR. SECOR: Your Honor, may I have just a moment?

6 THE COURT: You may.

7 MR. SECOR: May I approach, Your Honor?

8 THE COURT: You may.

9 Q Dr. Agharkar, I just want to ask if you recognize
10 what has been marked for identification purposes
11 Defendant's Exhibit 131?

12 A Yes. This is a copy of the report that I prepared in
13 this case.

14 Q Is it an exact copy of the actual report?

15 A Yes.

16 MR. SECOR: Your Honor, the Defense would offer
17 Defense Exhibit 131, Dr. Agharkar's report, at this time.
18 The State, I believe, objects.

19 MS. MAYES: Yes, sir, Your Honor, we object, improper
20 bolstering. Certainly, we've heard his report during his
21 testimony.

22 THE COURT: 131?

23 MR. SECOR: Yes, sir.

24 THE COURT: That's just a summary of his report to
25 which he has testified, more or less in summary form?

1 MR. SECOR: It's his actual report, but, yes sir.

2 THE COURT: I thought the general rule was reports
3 stay out because he's here live to testify and you can
4 question him till your heart's content.

5 MR. SECOR: Okay. I appreciate it. Can I make it a
6 Court's Exhibit?

7 THE COURT: So that's my -- you may.

8 COURT REPORTER: Judge, that will be number 89.

9 (WHEREUPON, Court's Exhibit number 89 was marked for
10 identification.)

11 MR. SECOR: Your Honor, Defense 131 has now been
12 marked Court's 89.

13 THE COURT: All right.

14 MR. SECOR: Thank you.

15 THE COURT: You're welcome.

16 Q Dr. Agharkar, one thing I forgot to ask you about
17 earlier in terms of how schizophrenia manifest, which I
18 think you said sometimes they're consistent with how
19 traumatic brain injuries manifest. Can you discuss with
20 the jury the idea of pressured speech or what that means?

21 A Yeah, kind of what I've been doing. I talk fast, but
22 I can slow it down when I need to slow it down. When
23 given feedback, I can adjust. When somebody has pressured
24 speech, it's a psychiatric symptom. You often see it in
25 people who are -- who may have mania, so they talk a mile

1 a minute. They're rushing to get everything out in a very
2 quick way. I would totally do it right now, but I think
3 she'll kill me so I'm not going to do it. But it's
4 talking a mile a minute and really just, you know,
5 pressured to get -- like you've got to get it all in in a
6 certain amount of time. That's what pressured speech is.
7 And it is a sign of both brain injury as well as mental
8 illness.

9 MR. SECOR: Can I have one just --

10 THE COURT: Sure.

11 Q Just one last question, Doctor -- in your practice,
12 have you ever prescribed somebody Chantix?

13 A I have prescribed it once.

14 Q And why only once?

15 A And why only once?

16 Q Why only one time?

17 A So Chantix, as you may know from TV commercials, is
18 an anti-smoking drug, smoking cessation medicine, but it
19 can cause neuro-psychiatric effects. You know, it works
20 in the brain, so it can worsen the risk for suicide. It
21 can worsen depression or anxiety. My patients are often
22 complicated and have those problems already, so I tried it
23 once with somebody who I thought would be a good candidate
24 and it made his depression symptoms worse. He got more
25 irritable, more sort of restless and worsened his

1 depression. He didn't like it. We stopped it pretty
2 quick. So that's the only time I tried it.

3 MR. SECOR: Thank you, Dr. Agharkar. I appreciate
4 it.

5 THE COURT: All right. The jury has asked for a
6 break, so we'll take a break. When y'all get done, let us
7 know.

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

10 (WHEREUPON, a short break was taken.)

11 THE COURT: Bring the jury in.

12 (Whereupon, the jury came into open court at
13 approximately 11:15 a.m.)

14 THE COURT: Ms. Mayes.

15 MS. MAYES: Yes, sir, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. MAYES:

18 Q Doctor, I just want to clear up a few things before
19 we get started. First, I want to ask you to clarify what
20 you said before on direct examination about your payment.
21 I believe you said you've been paid upwards of \$25,000.00
22 dollars for this case?

23 A Right.

24 Q But you were hired by the Defense, correct?

25 A That's correct.

1 Q So when you said you were paid by the State, you're
2 referring to the fact that if it's an indigent Defendant,
3 then you would be paid out of an indigent defense fund,
4 correct?

5 A That's my understanding, correct.

6 Q But, no doubt, in this case, you were not appointed
7 by the Court?

8 A Right.

9 Q You were not hired by the State?

10 A Correct.

11 Q Defense counsel sought you out and hired you?

12 A Yes.

13 Q And I believe you've given testimony as recently as
14 2018 that in death penalty trials, you have testified
15 exclusively for the Defense, correct?

16 A That is correct. In death penalty cases, correct.
17 I've worked for prosecutors, but not in Capital cases.

18 Q And there have been numerous death penalty cases that
19 you've testified in, but always for the Defendant,
20 correct?

21 A Yes, that's right.

22 Q And always hired by the Defendant?

23 A Right.

24 Q So tell us a little bit about how you became involved
25 in this case. When did they first reach out to you about

1 meeting with Timothy Jones after his arrest?

2 A Well, like I say, I had to have received a phone
3 call, I imagine, or possibly an email, but probably a
4 phone call just asking if I had time to take a case. And
5 that's about it. Like I say, I don't have my billing in
6 front of me, but if I saw him in early 2017, knowing what
7 my schedule is like, I typically am booking three to six
8 months out. So I can estimate that probably late 2016 I
9 was contacted.

10 Q All right. I'm going to ask you a few more questions
11 about that, but, first, I just want to make clear, you are
12 here to testify that after his arrest, it's your opinion
13 that he meets the criteria for a diagnosis of
14 schizophrenia, correct?

15 A Yes, that's right.

16 Q You are not giving us an opinion as to his mental
17 state on the date of the killings of his children,
18 correct?

19 A Correct. I did not perform a criminal responsibility
20 evaluation. I'm leaving that to others.

21 Q So you're leaving that to others and you're offering
22 no opinion in this court today as to his mental state
23 regarding the killings?

24 A Right. As it relates to criminal responsibility,
25 correct.

1 Q On the date and time of these killings, which was
2 August 28th, 2014, correct?

3 A Correct.

4 Q And when you said you're giving no opinion on
5 criminal responsibility, I want to go a little bit further
6 and just have you explain that in terms that we all
7 understand. You're not giving an opinion as to whether he
8 knew the difference between right and wrong, correct?

9 A Correct.

10 Q You're here to testify that based on your examination
11 of him, the first being February 21st, 2017, it's your
12 opinion he met the criteria for schizophrenia, correct?

13 A That's correct. Of course, you're doing it by
14 historical information as well, but, certainly, as of my
15 evaluation, yes, that's right.

16 Q So I want to follow-up on that. I believe your first
17 interview with him was February 21, 2017, correct?

18 A Yes.

19 Q So approximately two and a half years after the
20 murders?

21 A Approximately so, yes.

22 Q And that meeting or interview with him was 2.25
23 hours, correct?

24 A If that's what I wrote down in the report, yes.

25 Q So two hours and 15 minutes?

1 A Correct.

2 Q And then you had one more meeting with him September
3 27th, 2018, correct?

4 A Yes.

5 Q And that meeting was one hour and five minutes,
6 correct?

7 A I'll take your word for it if it's in the report,
8 yes.

9 Q So the entire time that you spent with Timothy Jones
10 leading up to this diagnosis after his arrest was a total
11 of three -- roughly, three and a half hours?

12 A That's right.

13 Q Two interviews?

14 A Yep.

15 Q And you testified that you did rely on some
16 historical data, meaning all those records that you told
17 us about earlier?

18 A Yeah.

19 Q Family history, all of those things. But,
20 ultimately, when it came to giving a history of delusions,
21 hallucinations, that came straight from Timothy Jones,
22 correct?

23 A Yes.

24 Q So it was self-reported by him?

25 A Right, that's how we make the diagnosis.

1 Q Is it fair to say, Doctor, when you are relying on
2 the patient for that history and for that diagnosis, is it
3 fair to say that you should consider whether or not he's
4 been a reliable historian in the past?

5 A Sure, to some extent. But the mentally ill are often
6 unreliable, so you have to take it with a grain of salt.

7 Q So mentally ill people can be unreliable in even
8 giving histories about themselves, is that your testimony?

9 A Yes, that can happen, sure.

10 Q But they can also intentionally lie or withhold
11 information when it benefits them, correct?

12 A Sure. Anyone can do that.

13 Q So were you aware in this case that the Defendant has
14 told many different stories about what happened on the
15 night of the murders?

16 A I'm not aware of many, but I didn't interview him
17 about the incident itself.

18 Q Did you consider all the different versions, stories
19 that were told to various law enforcement officials around
20 -- along the way?

21 A I couldn't recite it for you, but I'm certainly aware
22 of what he said to police, sure.

23 Q Okay. So the night that he was initially stopped by
24 law enforcement on September 6th, 2014, you're aware that
25 he initially told the officer who stopped him at the

1 checkpoint that his vehicle smelled because he had garbage
2 in it?

3 A I think -- yes, I recall reading that. And, ma'am, I
4 know you're moving farther away from me, but there's an AC
5 thing right above my head, so it's very difficult.

6 Q I'll speak up. I'll speak up.

7 A Okay.

8 Q And then in addition to that, you're aware that one
9 of the officers who arrived there at the scene of that
10 stop questioned him about where his children were?

11 A Yes.

12 Q And you're aware he told that officer, I don't have
13 any children?

14 A Yes.

15 Q And then when he was re-questioned by the same
16 officer, he goes on to say, Well, I have three children,
17 but they're in South Carolina with their mother, correct?

18 A I'm not sure I recall that, but if you represent it
19 that way, I'll agree.

20 Q And then he told numerous law enforcement officials
21 along the way that the children had been put out of the
22 car at Wal-Mart, that they were safe, but he put them out
23 of the car, correct?

24 A I recall seeing something like that once, yes.

25 Q Led law enforcement to believe that they're still

1 alive somewhere in South Carolina, correct?

2 A Yes.

3 Q And then, eventually, when he's pinned down by an FBI
4 agent and this detective here and questioned about the
5 contents of his vehicle where he had bought numerous items
6 to dismember the bodies of his children, you are aware he
7 came up with numerous lies to explain away those items,
8 correct?

9 A Yes. He gave several statements about why he had
10 those things, yes.

11 Q He gave an explanation for why he bought the muriatic
12 acid?

13 A Yes.

14 Q He gave an explanation for why he had those jab saws,
15 said he was going to cut tree limbs with them?

16 A Yes.

17 Q He even gave explanations as to why he had blood in
18 his Cadillac Escalade?

19 A I don't recall.

20 Q And having reviewed that long list of materials that
21 you told us about and the \$400.00 dollars an hour to
22 review those materials, do you recall him saying that the
23 reason there was blood in the car is because of an animal,
24 an animal had bled in his car?

25 A I don't remember. I didn't memorize all the records

1 I read.

2 Q And then, ultimately, he said, well, it's me. I bled
3 in the car.

4 A I don't recall that.

5 Q So is it fair to say he's given a lot of different
6 versions about what happened up until he, ultimately,
7 admitted to killing the children?

8 A That doesn't sound like a lot of different things
9 about what happened. That's a lot of explanations about
10 why things are where they are, but that's not an
11 explanation of what happened that night.

12 Q So in your opinion, he would still be a reliable
13 historian having told all those different stories?

14 A I guess it depends on what.

15 Q Okay.

16 A What history we're gathering.

17 Q And that's part of what I'm asking you about, is
18 whether or not you, as the diagnostic doctor in this case,
19 whether or not you consider him to be a reliable
20 historian. It sounds like even considering all of those
21 things I just mentioned, you do consider him to be a
22 reliable historian?

23 A For the most part, yes, about psychiatric symptoms,
24 yes, and describing his past history. There were things
25 he could not recall. There were things he was not able to

1 fill in for me. And that does happen, but I never thought
2 he was lying to me about those things.

3 Q So you pretty much take him at face value, correct?

4 A No, I don't know if I take anyone at face value. I'm
5 looking for a consistency or inconsistency. And I saw
6 consistency in both his appearance, in terms of what I was
7 able to observe. And also what he was telling me for
8 psychiatric symptoms, understanding that I did not
9 interview him about any of those things you were just
10 talking about. But don't have anything to do with
11 schizophrenia, frankly.

12 Q So when you questioned him about drug usage, what did
13 he say in that regard?

14 A As I mentioned earlier, that experimentation, you
15 know, age 12, 13, 15 years old or so, then again -- and he
16 had a longer period of time where he was sober, that it
17 worsened after his divorce. He started using spice as
18 well in about three months, like May to August before this
19 happened.

20 Q May to August. Okay. So he did report to you that
21 he was using the drug known as spice, illegal here in
22 South Carolina, in that period of time between May of 2014
23 up through August of 2014?

24 A Yes, that's right.

25 Q Roughly, that three-month period. How many times or

1 how frequently did he report to you that he was using
2 spice?

3 A I believe that it was like daily, but I'd have to
4 check my report again.

5 Q So he told you that he was using spice daily. Did
6 you question him as to whether he was using spice on
7 August 28th, the date that the children were killed?

8 A As I recall, he said he had used it earlier that day.

9 Q So he told you he used spice the day of the killings?

10 A That's my recollection.

11 Q But yet, you're also aware he told that FBI agent and
12 this detective he didn't use spice at all that day,
13 correct?

14 A Yes.

15 Q So now we're talking about something specific as to
16 the date of the killings and that's not reliable
17 information, is it, because he's giving two completely
18 different stories?

19 A Well, you know, some of these drugs impair memory as
20 well. So, you know, for that particular issue, yeah,
21 there may be an issue of reliability in terms of what
22 happened or what didn't happen. That's not pertinent,
23 however, to my diagnosis.

24 Q And that's reliability as to a material event on the
25 day of the killings, correct, whether or not he used spice

1 on that day?

2 A Right.

3 Q And when we talk about spice, you're familiar with
4 the effects of spice, which contains the ingredient AB
5 Pinaca?

6 A Yes.

7 Q And those effects include paranoia, agitation,
8 anxiety, confusion, altered mental status and
9 hallucinations, correct?

10 A Sure, that can happen.

11 Q And he tells you he's using that drug with those side
12 effects on the date of these crimes?

13 A Yes.

14 Q That's what he told you?

15 A That's right. But, of course, that's why I further
16 inquired about the typical effects that drug has on him
17 and he reported the opposite of those types of symptoms.

18 Q So he tells you I'm using spice on the date of the
19 killings, which can cause all of those symptoms, but I
20 didn't experience any of them?

21 A No, I'm not talking about that day particular, I'm
22 talking about three months prior, a month prior, any of
23 the times he's using it. He said that it quieted the
24 voices for him.

25 Q So for him, it didn't seem to exacerbate any type of

1 condition because he's not experiencing anything when he's
2 on spice according to what he told you?

3 A Right.

4 Q No adverse reaction at all?

5 A At least, that he's aware of. I imagine there
6 probably was some because drug users often do not have
7 good insight into their behaviors when they're using, but
8 that's what he's reporting.

9 Q And then you mentioned some of what went into your
10 determination as to whether or not he may be malingering.
11 And that's just a fancy term for faking it, right?

12 A Yes, it's faking with a purpose. It's faking it to
13 get out of something, that's typically what malingering
14 means.

15 Q Faking it to get out of a charge, for example?

16 A Could be.

17 Q And you said part of what you considered is that when
18 you met with him on those two occasions for that total of
19 roughly three and a half hours that you noted that he had
20 a restricted range?

21 A Of affect, yes.

22 Q Flat affect?

23 A Correct.

24 Q Doctor, you're also aware he was taking extremely
25 high dosages of the antipsychotic drug, Geodon, at the

1 time, correct?

2 A Correct, yes.

3 Q Having been prescribed to him following his arrest,
4 part of the treatment plan that other physicians came up
5 with?

6 A Yes.

7 Q And that drug, Geodon, is known to result in exactly
8 what you're describing, correct, flat affect?

9 A You know, it can, but in my opinion, no, that's not
10 what this was. The reason being is because when I did see
11 him, he was on a high dose. The second time I saw him he
12 was not, his affect is the same.

13 Q And let me ask you about that a little bit more.
14 What do you consider -- as a psychiatrist, what do you
15 consider to be a high dosage of Geodon?

16 A Eighty twice a day, I've seen a hundred twice a day.
17 I don't think I've ever seen -- he was treated with 160
18 twice a day. I don't think I've ever seen a dose that
19 high before. That tells me about his severity of
20 symptoms.

21 Q So he was taking up to 320 milligrams of Geodon a
22 day, correct?

23 A Correct. How he was standing, I don't know, but he
24 was standing -- he was having a conversation with me, no
25 problem, taking it.

1 Q And one of the other things that you mentioned in
2 considering that he's not faking it, as you put it, is
3 that he could not stay on task. That's one of the things
4 I wrote down as you testified earlier on direct
5 examination?

6 A Yeah, what I was talking about was thought
7 disorganization. That's a very difficult symptom to fake.
8 That's correct, he did exhibit thought disorganization.

9 Q All right. So when we talk about thought
10 disorganization, inability to stay on task is specifically
11 what you mentioned was your observation of him during that
12 interview. I'm going to ask you to take a look at what is
13 State's 186 in evidence. And this includes the known side
14 effects of that drug, Geodon and, specifically, as to the
15 cognitive and motor impairment known to be caused by that
16 drug. And that would be State's 186.

17 A You want me to read the whole thing or just the first
18 page?

19 Q No, I just want you to review it.

20 A Okay.

21 Q So considering the known side effect of Geodon and
22 the fact that he's taking twice what you would consider to
23 even be a maximum dosage beyond, you said, anything you
24 would ever prescribe to a patient, Doctor. It's certainly
25 within the realm of possibility that what you observed to

1 be cannot stay on task is a result of the Geodon side
2 effects, correct?

3 A No. I didn't see anything in him that I just read on
4 that paper. I know what side effects look like for
5 medicine, he didn't have it, not in either of my
6 examinations. And again, remember, I saw him a second
7 time when he was on less, much less of the Geodon then and
8 they added actually another antipsychotic, so he was
9 taking two on the second time. He was not somnolent, he
10 didn't have impaired -- all these things that are written
11 here, no.

12 Q So it's your opinion then that he was functioning
13 absolutely fine cognitively having taken 320 milligrams of
14 Geodon?

15 A Yes, at least, when I saw him, yes, I felt that way.

16 Q You felt he was functioning at perfectly normal
17 levels?

18 A I wouldn't say he was perfectly normal, he's
19 schizophrenic. So within reason for what I expect
20 somebody with schizophrenia who's taking the medicines
21 he's taking, I was able to interview him -- let me put it
22 to you another way. If I had had concerns the medicine
23 was affecting things, I would have written that down in
24 the report. I would have maybe seen him more often,
25 something else, if I had concerns about the information

1 that I was getting or how I was seeing him that day.

2 Because I have seen people who are heavily sedated on
3 medication and I'll make those types of statements either
4 in the reports or to the attorneys.

5 Q So on that same topic, which would be the ultimate
6 effects of that 320 milligrams of Geodon, one of the
7 things that you noted that you relied on was testing
8 conducted by a Tora Brawley at the request of the Defense
9 back in 2016, correct?

10 A Yes.

11 Q And that testing was also conducted after he had been
12 prescribed Geodon, correct?

13 A Yes.

14 Q And you specifically note that the results of that
15 testing done in 2016 after his arrest showed a full scale
16 IQ of 89?

17 A Right.

18 Q Eight-nine IQ. Doctor, you had that big list of
19 things that you relied on. You're aware this individual
20 is a computer engineer, correct?

21 A Yes.

22 Q Graduated Summa Cum Laude from Mississippi State
23 University, correct?

24 A Yes.

25 Q Numerous academic awards and achievements leading up

1 to his graduation, correct?

2 A Sure.

3 Q And then performing not just satisfactorily, but
4 exceeding expectations at a high level advanced job at the
5 Intel Corporation in 2014, correct?

6 A Yes, I saw some job evaluations that said that, some
7 were satisfactory, yes, but that's right.

8 Q The most recent one in 2014, just months before these
9 crimes, he was noted to be working exceedingly above
10 expectations and was promoted in March of 2014 by Intel.
11 You're aware of that?

12 A Right.

13 Q So that's his status leading up to his arrest. And
14 then after he's incarceration, he's prescribed these, what
15 you consider to be high level of -- dosage level of
16 Geodon, above what you would ever prescribe for a patient.
17 And his full scale IQ in 2016 while on Geodon is 89,
18 correct?

19 A Right.

20 Q And you relied on that information?

21 A I did. I'm not a psychologist. They're the ones who
22 have to give the tests. She believed that to be accurate.
23 She did not find him to be faking in her evaluation. I
24 think it represents a deterioration in cognitive
25 functioning.

1 Q Are you taking into consideration today during your
2 testimony of what role Geodon played in that?

3 A Yes, Geodon does not reduce IQ scores.

4 Q So you don't believe that his cognitive functioning
5 was impaired at all by those high dosage levels of Geodon?

6 A Typically, when you see a side effect of medicine
7 causing some sort of problem on testing, typically, it has
8 to do with motor functioning or processing speed. Those
9 are typically the two areas that you see it in. So I can
10 certainly submit that -- and she actually says that in her
11 testing, too, that she thinks that some of the scoring
12 would be affected because of those two things, but she
13 would not attribute it all to that. And there were other
14 things that were affected that would not be caused by
15 medicine.

16 Q So another thing that you addressed and seemed to
17 rely on is the information about the car accident that he
18 was in back in 1998 when he was 15?

19 A Right.

20 Q And you've also reviewed as part of that Appendix A
21 that was marked for identification his testing scores from
22 the State of Illinois 11 months after that incident,
23 correct?

24 A I'd have to see it again. I don't remember. Are
25 these academic testing?

1 Q Correct.

2 A Okay. I would just point out academic testing is not
3 neuropsychological testing. Academic testing is not meant
4 to measure brain functioning.

5 Q So when we talk about the Illinois testing, would it
6 surprise you to learn that 11 months after the injuries,
7 he tested above his school, his District and the State in
8 numerous levels of academic excellence?

9 A Again, I think he's a -- was, at least, a very smart
10 person, so that doesn't necessarily surprise me. And
11 again, as I mentioned, the smarter you are, the more you
12 can mask the symptoms you're having.

13 Q When you talk about masking the symptoms, Doctor, you
14 would have to mask it in multiple levels of academic
15 testing on multiple subjects, correct?

16 A Sure. The question is strained. This is not how
17 schizophrenia would present. We don't give schizophrenics
18 academic tests and see how you do.

19 Q And my question is specifically about the traumatic
20 brain injury because that's something that you noted, so
21 we're not talking yet about what your diagnosis would be
22 regarding schizophrenia. I believe your testimony is that
23 would present later in life most commonly?

24 A Most commonly, correct.

25 Q But I'm asking about the -- what you termed the brain

1 injury because it was something that you noted --

2 A Sure.

3 Q -- specifically and said you relied on --

4 A Fair enough.

5 Q -- that injury occurred in March of 1998. So I'm
6 asking that 11 months later when tested by the State of
7 Illinois, specifically in the area of application and
8 decision making, he tested above the school, District and
9 the State. Are you aware of that?

10 A That's fine. I may have read that. That's not a
11 frontal lobe test. I would put no stock in that
12 whatsoever as regard to frontal lobe functioning.

13 Q So his test results post-injury would not be of any
14 significance to you?

15 A No, I would certainly consider it and I did consider
16 it. But I'm saying sometimes -- sometimes you see effects
17 from the injury immediately, sometimes they may take five,
18 ten years to present, so it really just depends. What I'm
19 saying to you is you're using the wrong test to measuring
20 functioning. By implying that somehow academic testing
21 equals no brain damage is false, that's not an accurate
22 statement. So that's what I'm trying to -- that's not
23 right.

24 Q So why is it, Doctor, that you mentioned the Chantix
25 both in your opinion and in your testimony today? Why did

1 you mention that?

2 A Because I was asked the question.

3 Q Well, how exactly does Chantix relate to this case
4 involving Timothy Jones?

5 A Well, I believe he was taking Chantix to try to quit
6 smoking somewhere right before the incident occurred, but
7 I don't really know the details on it. I seem to recall
8 that he may have missed a dose or two here and there, so
9 then he doubled the dose to make up for it. All I know is
10 that it can cause neuropsychiatric effects, but I'm not
11 saying more than that.

12 Q Let me show you what is State's Exhibit 197 in
13 evidence. Were you provided that document?

14 A I can't recall. If it's on the list, then, yes, but
15 I can't remember a three-page medical record.

16 Q Well, this medical record relates specifically to the
17 Chantix that you mentioned and that you just testified to
18 on direct examination.

19 A I think I literally said one sentence about Chantix.

20 Q Okay.

21 A So it's not really a big part of my opinion, by any
22 means.

23 Q Well, one of the things you testified to on direct is
24 that Chantix can aggravate a condition?

25 A Yes, that's right.

1 Q Is that your testimony?

2 A That's true.

3 Q But you don't have any information as to whether
4 Timothy Jones was using Chantix anywhere around the
5 timeframe of these crimes, do you?

6 A Not that I can recall, no, but I'm sure -- again, my
7 examination was not a mental state at the time of the
8 event, so I really wouldn't have dug that deeply into
9 that.

10 Q That's why I'm asking why it was testified to on
11 direct? What connection does it have to the schizophrenia
12 diagnosis?

13 A You're asking the wrong person. You should ask the
14 attorney that. He asked me a question about the medicine,
15 I answered the question about the medicine.

16 Q All right. So, Doctor, regarding this Chantix,
17 you're aware that according to Timothy Jones, he was
18 prescribed Chantix in February of 2014, so roughly six
19 months before the murders. According to him, he did well
20 on Chantix in the past --

21 MR. SECOR: Your Honor, I have an objection. May we
22 approach?

23 THE COURT: You want to do it right here? All right.

24 (WHEREUPON, a bench conference was held as listed
25 below.)

1 MR. SECOR: My objection would be to, Ms. Mayes, the
2 use to the word, murder.

3 MS. MAYES: I can rephrase that.

4 THE COURT: She was trying to use killing, I think.

5 MR. SECOR: The second is that, the only question I
6 asked Dr. Agharkar regarding Chantix, general question
7 about his experience with a patient of his. I did not ask
8 him whether or not it applied to this case. It is
9 inappropriate impeachment for her to try to attack his
10 credibility on an issue that he did not say, I ask him a
11 complete and general question about whether he had ever
12 prescribed it to somebody which all he said was yes.

13 THE COURT: One time.

14 MR. SECOR: In one situation and it exacerbated the
15 condition.

16 MS. MAYES: I am not going to spend a lot of time on
17 this.

18 THE COURT: But he did say I didn't consider in his
19 time of the event because I didn't study the time, the
20 criminal responsibility portion. He said that, stay away
21 from that.

22 MS. MAYES: I just need to clear up, since it was
23 brought up in direct, that he doesn't have any information
24 in this case linking to this.

25 THE COURT: You limit to that you are good.

1 MR. SECOR: Thank you.

2 THE COURT: So sustained to your two grounds and she
3 is going to clear that up.

4 MR. SECOR: Thank you, sir.

5 BY MS. MAYES:

6 Q So as to the Chantix, were you made aware that he
7 took roughly nine pills since February of 2014?

8 A No.

9 Q Noted, according to the exhibit, that there were no
10 adverse effects. So that really doesn't play a role in
11 your diagnosis at all, correct?

12 A I didn't see anything in here in what I just read,
13 where they actually talked to him about adverse events as
14 a result of it.

15 Q Well, "did well in the past"?

16 A Sure, but that's assuming -- I don't know what that
17 means. I assume what that means is he quit smoking, but
18 that doesn't mean he didn't have an adverse psychiatric
19 effect from it. You can still have a side effect, but it
20 still helps you quit smoking.

21 Q Well, if he did, he certainly didn't report it to
22 that doctor at the time of that prescription, correct?

23 A Or the doctor didn't ask. I mean, this looks to me
24 like a primary care doctor's note. They have a lot to do
25 in one visit and I can guarantee you -- because I get

1 referrals all the time from primary care doctors they are
2 not taking in-depth psychiatric histories.

3 Q The bottom line is, Doctor, you don't have any
4 information as to when he last took Chantix, correct?

5 A I agree with you on that.

6 Q With schizophrenia, there is most often a downward
7 slide affecting one's life and career, correct?

8 A That is often seen, yes, correct. Doesn't always
9 happen, though, but yes.

10 Q I believe your testimony earlier on direct is that
11 during those two meetings with the Defendant, during that
12 three and a half hours, quote, I did not see disorganized
13 behaviors, correct?

14 A Correct.

15 Q And again, Doctor, you're giving us no opinion
16 whatsoever as to whether he knew the difference between
17 right and wrong on August 28th, 2014, correct?

18 A That's right. I'm not providing an opinion on that.

19 Q Everything you're telling us is based on your
20 diagnosis of him after his arrest, correct?

21 A Yes, that's right. Now, keep in mind, nobody wakes
22 up one day and is schizophrenic, so I can see through the
23 past history that he was developing symptoms. I mean,
24 obviously, he's being in the jail, but everything is post
25 crime.

1 Q And when you say you can see, you're referring to you
2 could see from his self-reported symptoms to you, correct?

3 A Yes, that's one part of it, but there's also in the
4 social history other people who were interviewed who noted
5 weird things about him, talking to himself, talking like
6 people who were there weren't there.

7 Q Who is that?

8 A Babysitter. And I just can't recall her name.

9 Q Are you referring to Chrystal Ballentine?

10 A Yes.

11 Q But you've never actually talked to Chrystal
12 Ballentine, have you?

13 A I did not. I read an interview of her.

14 Q All right. Chrystal Ballentine never said that he
15 saw people that weren't there?

16 A I didn't say -- I didn't say --

17 Q Okay.

18 A -- I didn't -- that is not what I said. I said
19 talked to people who were not there. That's what she
20 said.

21 Q All right. I believe, Doctor, if you're going to
22 rely on that information, what Chrystal Ballentine
23 reported is that she was in another room and heard him in
24 another room talking, correct?

25 A Correct, to no one.

1 Q And do you know whether or not he was on the phone?

2 A I don't, but she didn't say he was on the -- she
3 would have said something like he was on the phone.

4 Q Right.

5 A And the context of the interview was that was weird.
6 I thought there was somebody else in the room with him and
7 there wasn't.

8 Q And Chrystal Ballentine was also his girlfriend at
9 the time in addition to being his babysitter, correct?

10 A That's my understanding.

11 Q We're talking about roughly 2012 when he was going
12 through his divorce?

13 A That sounds right. I got to trust you on that.

14 Q And you are also aware he was using substances, such
15 as alcohol and marijuana frequently during that timeframe,
16 correct?

17 A I am aware.

18 MS. MAYES: Nothing further.

19 THE COURT: Mr. Secor.

20 MR. SECOR: Nothing further, Your Honor. Thank you.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you, guys.

23 THE COURT: Safe travels.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Y'all's planning -- the jury

1 is going to eat about 12:30ish. It's about five minutes
2 to 12:00, so with that in mind, we'll go forward. Is that
3 right, Madam Clerk?

4 THE CLERK: Yes, sir, supposed to go at 12:30.

5 MS. MAYES: Judge, your microphone.

6 THE COURT: Is it on or off?

7 MS. MAYES: We're having trouble.

8 THE COURT: Oh, okay, sorry. I was talking to my
9 jury. We've got lunch coming at 12:30, so I want them to
10 be mindful of that. They kind of know more about the
11 witnesses.

12 MR. YOUNG: The defense would call Eric Sadreameli.

13 ERIC SANDREAMELI, being
14 first duly sworn, testified as follows:

15 THE CLERK: Have a seat, sir. Once you're seated,
16 state your full name, spelling your last, please.

17 THE WITNESS: Eric Brenton Sadreameli, last name is
18 S-A-D-R-E-A-M-E-L-I.

19 MR. HUBBARD: Your Honor, may we approach with this
20 witness?

21 THE COURT: You may.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)
25

1 THE COURT: If y'all would step in the jury room
2 while I figure this out. Joy has got a lot of stuff to
3 mark. Y'all don't talk about the case, step in the jury
4 room.

5 (WHEREUPON, the jury was excused from the courtroom
6 for a lunch break.)

7 (Whereupon, a lunch break was taken.)

8 THE COURT: Y'all ready for the jury? I think
9 they're ready for us.

10 (Whereupon, the jury came into open court at
11 approximately 2:04 p.m.)

12 THE COURT: But welcome back and we're ready to
13 continue on.

14 DIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q Brenton, you've already been sworn. Brenton, in
17 September of 2014, do you recall where you were working?

18 A Yes, I was working at the Capital Trial Division of
19 the South Carolina Commission of Indigent Defense.

20 Q And is that the office where I was employed?

21 A Yes, sir.

22 Q And was Casey Secor also employed there?

23 A Yes, that's correct.

24 Q On September the 20th, 2014, were you in the office
25 that day?

1 A No. At that time, I was with another attorney in the
2 office, Bill McGuire, in Conway, South Carolina in court
3 in a Capital trial.

4 Q Do --

5 A Excuse me, it may have been in a pretrial hearing,
6 but it was for a trial in September.

7 Q Do you recall whether or not Casey and I came back to
8 the office with a bunch of stuff?

9 A I do. You guys had a number of Tupperware boxes,
10 bags, all kinds of stuff, yeah, from the house.

11 Q And that was from Tim's house?

12 A Yes, from the house on South Lake Drive.

13 Q And what did we ask you to do with it?

14 A Well, you asked me to take a picture of every single
15 item and number them, so I started about doing that and
16 spent a good deal of time doing that.

17 Q And where was -- where were those items kept like
18 when you weren't working on them?

19 A We kept them in your office, the only office in that
20 area that has a lock on the door. So during the day, you
21 know, while we had access to them, we'd have the door
22 unlocked, be using them and we'd put it all in there at
23 the end of the day and keep it locked.

24 Q I'm going to show you some items. Is this everything
25 that we took?

1 A Absolutely not. There is many, many times that.

2 Q Okay. Did you make a list with an item number of
3 everything and what it was and was that sent to the State?

4 A Yes, I believe so. I did make it and I was under the
5 impression you sent it to the State.

6 Q I'm just going to go through some items. And I think
7 with agreement from the State we're just going to sort of
8 identify them now and we'll introduce pictures of these
9 items at a later time so the jury can just go through the
10 pictures of them.

11 MR. HUBBARD: Right. At this time, I think we'd just
12 introduce -- showing it to the witness, but not publishing
13 it or showing anything necessarily to the jury at this
14 time. They're going to have photographs for that purpose.

15 THE COURT: He can show what was photographed as he
16 goes. He can do that.

17 Q I'm just going to start off of the top, Brenton. I'm
18 going to ask you what is that?

19 A This is a spiral bound book. It's called "A Long
20 Journey" and has a tag on here that says 908. That's my
21 handwriting, so that has nothing to do with the court,
22 this is just what we used in the office to keep track of
23 everything.

24 Q Do you know what the "Long Journey" is about?

25 A I believe that it is -- I looked it up at one point

1 and know it has to do with religion.

2 MR. HUBBARD: My understanding, he's just going to
3 show it to him.

4 THE COURT: That's right. And the numbers on it are
5 the numbers that the Defense team notified the State of
6 the things they removed from the house to keep track of
7 what was what.

8 MR. YOUNG: Right.

9 Q I'm going to show you what -- the Defense number was
10 811 and ask you if you know what that is?

11 A This is the "New International version, the Bible
12 Promise Book". The subtitle is One Thousand Promises from
13 God's Word.

14 Q I'm going to show you, the Defense number was 814,
15 what was that?

16 A It's a hardbound book called "At the Name of Jesus".

17 Q The Defense number was 923, what was that?

18 A "The Oneness of God". Again, this is my handwriting
19 on the tag on there.

20 Q Number 918, do you know what that is?

21 A "The Basics of Biblical Hebrew", and I'm under the
22 impression that this is a kind of textbook form of -- has
23 to do with grammar. It says it on the cover.

24 Q And I think the number came off that one, do you know
25 what it is?

1 A This one, yeah, at one time -- and if you want, I can
2 tell you what it was. This was our number 294 at one
3 point. I guess the number is not on there, but it's "My
4 First Read and Learn Book of Prayers", a children's book.

5 MR. YOUNG: Your Honor, may we approach?

6 THE COURT: Sure.

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

10 Q 954, do you know what that is?

11 A 954 is "Hebrew to English. I believe it's a Holy
12 scripture.

13 Q Is that a copy of The Torah.

14 A Yes, and it's obviously in Hebrew and English. It's
15 got a translation.

16 Q Does it say in the front of it where it came from?

17 A Yes. Here it's handwritten and it says, Presented to
18 Tim Jones by Amber Jones 6/29/08, Happy Anniversary, I
19 love you.

20 Q Defense 905, do you know what that is?

21 A 905 is a black three-ring binder. Yes, this one has
22 got worksheets for learning Hebrew, basically, the
23 alphabet.

24 Q 829, do you know what that is?

25 A This is a small school-type folder, green folder and

1 it's got some handwritten, it looks like practice for some
2 of the Hebrew characters and some translations.

3 Q 920, do you know what that is?

4 A This is a book, "The New Birth", volume two, and it
5 says Pentecostal Theology.

6 Q 952, do you know what that is?

7 A 952 is, "The Complete Guide to Bible Prophecy".

8 Q 953, what is that?

9 A This is "Practical Holiness, a Second Look", volume
10 four. And this also has -- this must be a series of
11 Pentecostal Theology.

12 Q And 948, what is this?

13 A Again, this is from the same series. This is "In
14 Search of Holiness", volume three.

15 Q 941, do you know what that is?

16 A This is a hardback book that says on the front "The
17 Strongest Strong's Exhausted from Words of the Bible".
18 There are other subtitles on there as well.

19 Q So 940, 939 and 950, do you know what these are?

20 A Yeah, these appear to be -- well, let's start with
21 950 is a Red Bull can that I believe there's been previous
22 testimony describing this looks like it was used to smoke
23 something. And then there's -- 939 is the -- is a pouch
24 that has a donkey with a shovel and it says, I believe, No
25 Mames, M-A-M-E-S, and it's got other writing on it. 940

1 is Scooby Snax, pop-free product, blueberry bliss. And I
2 put them in these bags. We didn't fill it out because at
3 that time we were just going by those numbers.

4 Q 944 and 945, do you know what those are?

5 A This, again, looks like one of these is Scooby Snax,
6 it's S-N-A-X, limited edition, potpourri, strawberry
7 smash. 945 is Cloud Nine blueberry Mad Hatter second
8 generation legal herbal sachet, I guess is how you
9 pronounce that. And it's got additional writing on there
10 as well.

11 Q 883, do you know what that is?

12 A This is a textbook here. This is "Biblical Hebrew A,
13 Units 1 to 30".

14 Q And the number came off of that one, do you know what
15 that is?

16 A Yeah. This one is -- at one point bore a number that
17 was in my writing that was 284. And this is -- we have
18 photographs of that, "My Favorite Bible Storybook for
19 Early Readers". It's obviously a children's book.

20 Q And this one?

21 A Same thing with this. This is "Beautiful Bible
22 Stories and Bible Story Collections", also, a children's
23 book. And this one at one point was our number 49.

24 Q 899, do you know what that is?

25 A This is a spiral-bound, looks like a textbook and

1 it's for a class, I guess it's B-I-S 3523, Advanced
2 Languages One. And it's for the session of spring 2011.

3 Q 438, do you know what that is?

4 A Yeah. This is a child's tee-shirt, navy blue polo
5 shirt with J-A-C Junior Epistolic Crusaders embroidered on
6 the front left shoulder -- chest.

7 Q The number came off that. Do you know what that is?

8 A This one is -- this was 645. It's a children's
9 handwriting workbook, "My Writing Book". And under the
10 name portion as a text is Eli Jones.

11 Q Do you know what that one is?

12 A This is -- it's a spiral-bound notebook with graphing
13 paper on it. It's 633, our 633. This one has a couple of
14 drawings. It looks like balloons. One of them says,
15 Daddy is good, in the child's handwriting. And the other
16 says, I love Daddy.

17 Q Let me show you four kids books and if you would just
18 tell for the record what they are and who they appear to
19 have come from in the front cover.

20 A Sure. So the first one is "It's Not Fair" and it
21 looks like it's got some Sesame Street characters on it.
22 The second one is "Oh, Cats". The third is "Ten Monsters
23 in a Bed" and the fourth is "The Little Penguin". And I
24 believe -- let me doublecheck to make sure. I believe
25 every single one of these, the inside cover bears the name

1 McKinney. This one is K. McKinney for "Oh, Cats". This
2 one says Mrs. McKinney, "Ten Monsters in a Bed". "The
3 Little Penguin" just says simply McKinney. And "It's Not
4 Fair", the Sesame Street one has a stamp that says this
5 book belongs to Mrs. E. McKinney, M-C-K-I-N-N-E-Y.

6 Q Do you know what that is?

7 A This one is -- this was our number 621, and, again,
8 the number's not on there. This is a black and white
9 composition notebook and it has some scratching and
10 scribbling, it looks like, but on the front, it has the
11 name Merah. You want me to open it up? It has some
12 children's drawings on the inside as well.

13 Q Okay. Number 240?

14 A Number 240 is Lisa Frank giant coloring and activity
15 book. It says, "Puppy Love".

16 Q Number 211?

17 A Again, 211 is like a writing textbook. I think it's
18 like for a child to practice their forming letters and
19 numbers. It's "Letters and Numbers for Me". And under
20 the name part, it says -- it looks like somebody wrote
21 Nathan and then it was corrected with the H to say
22 Nahtahn.

23 Q And do you know what that one is?

24 A This is another -- let's see, this one is -- this is
25 number 646. Just like the 645 a moment ago, this is a

1 book that says "My Writing Book". In here, it says Merah
2 Gracie Jones handwritten at the bottom.

3 Q Couple more.

4 A This appears to be -- this one is -- let me get the
5 number for this. I'm not sure what our number is, but I
6 guess it's relevant here. This appears to be a homemade
7 book by a child. It's made -- the outside is made with
8 green construction paper. You want me to read the --

9 Q That's okay.

10 A Okay.

11 Q You know what that is?

12 A Yep, I recognize this. This is a sign that says,
13 Repent. It's obviously hand drawn and it's got some felt
14 cut outs and crosses and various things attached to it.

15 Q (Attorney hands witness piece of evidence.)

16 A Again, this says the same sort of -- it's got hearts
17 and crosses, felt and this one says, Baptized. It looks
18 like it was colored by a child.

19 Q (Attorney hands witness piece of evidence.)

20 A Again, this one here says Holy Ghost and it is
21 similar style.

22 Q (Attorney hands witness piece of evidence.)

23 A This has two sides. The first side is -- looks like
24 a children's crayon drawing with some tempera paint on the
25 back. And then on this side, it says -- you want me to

1 read this?

2 Q Yes.

3 A It says in a child's handwriting, Dear Mommy, come
4 back, Merah. It says, You have to stay so we can be
5 happy. And then again, so we can be happy. And then it
6 says Merah in crayon.

7 Q This red bin, do you recognize this?

8 A Yeah, that was -- I believe it was taken intact like
9 that from the house on South Lake with everything in it.
10 It's got -- from what I recall, it's got manila folders
11 that have -- that are -- I think they're separated by the
12 child's -- I mean, it's drawings and school materials and
13 they're separated by the child and I believe their age as
14 well.

15 Q And that's, basically, all their schoolwork?

16 A Yep. And that's how it was found. I've been
17 informed by y'all that's how it was found at the house.

18 Q All this stuff that's not here, do you know where
19 that stuff is?

20 A Yep. I wasn't -- I don't believe I was present at
21 the time. But I heard many references in the offices
22 between you and the other attorneys before and after. I
23 believe at some point, you guys had an occasion for Ms.
24 Amber Kyzer to come by and take -- I think she looked
25 through a variety of things and took some stuff that she

1 wanted as well as the Defendant's parents and some other
2 family members had a chance to come and go through it and
3 take what they wanted.

4 MR. YOUNG: Thank you, Brenton. That's all the
5 questions I have.

6 CROSS-EXAMINATION

7 BY MR. HUBBARD:

8 Q Your name again is?

9 A Brenton Sadreameli.

10 Q We've met, I'm just horrible with names.

11 A Yes, sir.

12 Q All this stuff, all the religious material, this is
13 stuff Tim Jones abandoned when he left his home?

14 A I -- I -- I really can't say. I mean, I wasn't
15 there. I just know that they brought it and brought it to
16 the office at one point.

17 Q You are -- enough with the office to know that he
18 made it clear he wasn't coming back. That's why y'all
19 could go in, right?

20 A Again, I wasn't there. I was in Conway getting ready
21 for another death penalty trial. I just know when I got
22 back, they explained to me and it showed up.

23 Q Just did what they were telling you to do. All of
24 it's kid stuff. All that stuff, it was left at the house,
25 right?

1 A I'm under the impression that it came from South
2 Lake, the house at South Lake.

3 Q It was --

4 A There's also pictures of it.

5 Q It wasn't found in his car when he was arrested?

6 A I would have no reason to think that.

7 Q So he didn't take it with him when he went off to
8 Mississippi?

9 A I would assume that would be physically impossible.

10 Q Me, too.

11 MR. HUBBARD: Thank you.

12 THE COURT: All right. You may step down. Mr.
13 Secor.

14 MR. SECOR: The defense calls Micah Sutton.

15 THE COURT: Okay.

16 MICAH SUTTON, being
17 first duly sworn, testified as follows:

18 THE CLERK: Once you're seated, state your full name,
19 spelling your last.

20 THE WITNESS: My name is Micah Sutton, S-U-T-T-O-N,
21 last name, Micah, M-I-C-A-H, first name.

22 DIRECT EXAMINATION

23 BY MR. SECOR:

24 Q Mr. Sutton, will you just tell the jury where you
25 live and what you do these days?

1 A Yes, sir. I live in a place called Sylvania, Ohio,
2 just outside of the Toledo area -- it's in the Toledo
3 metro area. I pastor a church there, McCord Road
4 Christian Church.

5 Q And if you would, give the jury a little -- I'm
6 sorry. Tell the jury a little bit about your background,
7 the family that you come from and where your family was
8 when you were growing up.

9 A Sure. My family has all been in ministry most of my
10 life. My uncles are pastors, my dad was a pastor for many
11 years, he's now again a pastor. Missionaries in
12 Indonesia, Philippines as well as planting churches around
13 the country. My wife and I met in New Bedford,
14 Massachusetts, where we -- well, where we after six months
15 of marriage went on long-term missions to Botswana, Africa
16 and were there for a while. Then came back to the States
17 and have planted churches around -- served in several
18 churches and then we planted a few churches or started
19 from scratch a few churches around the country, one in
20 Lombard, Illinois and then one in Kona, Hawaii and Hawaii
21 was better.

22 Q And you grew up in the Pentecostal faith, is that
23 correct?

24 A Yes, sir, I did. We were -- I was a part of the
25 United Pentecostal church, my parents were a part of the

1 United Pentecostal church. It's something that in our
2 time there in Lombard, we were building a church that was
3 Pentecostal. And since then, I'm no longer of that
4 denomination, but at the time, I absolutely was.

5 Q And is there -- what was it that led you to
6 transition from the Pentecostal faith to the faith that
7 you hold now?

8 A I'm nondenominational at this particular point. Two
9 things were major components of that. One was, in the
10 Pentecostal faith, there is a much more rigid
11 understanding of scripture and interpretation of that
12 scripture. And while I believe a lot of it is great, a
13 lot of it is good and I honor my heritage, at the same
14 time, I was seeing a broader understanding of the body of
15 Christ and what Christ was doing and who Christ was using.
16 And so in that, I couldn't with integrity remain in the
17 thought process that I was in. I had to move away from
18 that in order to be able to experience what I thought was
19 all that God would have for us.

20 MR. HUBBARD: Your Honor, may we approach real quick?

21 THE COURT: Sure.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 Q Pastor Sutton, I wanted us to move to -- up to 2003.

1 A Sure.

2 Q Just tell the jury the church that you had at that
3 point.

4 A We had planted a church called Center Point and it
5 was there that we met Tim. We planted it -- we moved to
6 the City of -- Town of Lombard, Illinois, just outside of
7 Chicago. And when we arrived, there was no one there, so
8 it was a very, very small church as we began to build it.

9 Q And how did you first come into contact with Tim?

10 A Tim called the church and said that he had just been
11 released from prison and was looking for a place to
12 worship, a place to connect and so asked if anyone could
13 come by from the church to pick him up. So I did, I went
14 to pick him up. Went to an area of town I had never been
15 to before, very rough area of town and met Tim for the
16 first time. Brought him to church and he began to attend
17 on a regular basis.

18 Q And when you say a regular basis, how many times did
19 he attend church per week?

20 A We were having services Sunday morning, Sunday
21 evening and on Wednesday evenings -- or Tuesday evenings
22 with our midweek Bible study. So he would be there most
23 every time.

24 Q Did you ever meet the woman that Tim eventually
25 married, Amber?

1 A Yes. I performed their wedding.

2 Q So she was a member of your church as well?

3 A Amber was a little different. She was not really a
4 member of the church. I didn't meet her until Tim
5 introduced her to us after they had met, started dating a
6 little bit and moved in together.

7 Q How did you feel about their relationship and them
8 getting married? I think we've already heard they got
9 married quickly, but how did you feel about their
10 relationship --

11 MR. HUBBARD: Objection, relevance.

12 THE COURT: Sustained. Move on.

13 Q When Tim started attending your church, what was your
14 opinion of his religious devotion?

15 MR. HUBBARD: Your Honor, again, I'm going to object.
16 If there's some interaction, something the Defendant said,
17 something like that, I'm fine.

18 THE COURT: Ask the question to its relevance to
19 Tim's background.

20 Q Was his dedication to Christianity and your faith, in
21 your opinion, was it authentic?

22 A Yes.

23 Q Was it normal or did it exceed normalcy in terms of
24 his world?

25 A Very intense on every level. I would say exceeded

1 most people's faith that I've known in its level of
2 extremity. Things being interpreted extremely literally,
3 the inability, at times, to differentiate between what --
4 how to -- struggling on how to apply what he was hearing
5 and what he was being taught, what he was reading in the
6 practical world.

7 Q And do you mean that in terms of trying to apply his
8 faith to the real world?

9 A Yes. There's a lot of complete -- what I sensed was
10 complete sincerity and, at the same time, a sense of
11 struggle in how do you -- how do you take what you're
12 reading here and apply into the world in which we live.
13 And to that point, often caused trouble, even in the
14 context of the church because he would be very -- could be
15 insulting to people in things of that nature, get people
16 upset at him. I used to laugh with my wife and say we
17 have a church of 25 people and there's only one person who
18 can make every one of them upset by the end of the service
19 because of his just dedication to trying to literally
20 apply the Word on every level.

21 Q And he would voice those -- I guess, were they
22 perceived as criticisms to people? Is that how you saw
23 it?

24 A Yes. If you know Tim, he has a prodigious memory.
25 And his ability to remember things would often be in

1 conflict simply because other people couldn't remember.
2 So what would end up happening is he would make a
3 statement, somebody would try to come back with an opinion
4 or a thought and his response was simply to quote the Word
5 of God, quote scripture to them, which he has an
6 incredible ability to remember. But remembering isn't
7 always the same thing as applying and so -- and
8 interpreting properly. And so, there were times when it
9 just caused consistent difficulty throughout his time
10 there at Center Point.

11 Q Okay. Did he ask a lot of questions to you about
12 Christianity?

13 A Constant, constant questions. Always wanting to
14 know, always wanting more information. One of his
15 questions came at 2:00 o'clock, 2:30 in the morning. He
16 called me and wanted to know -- we lived in one room, one
17 Sunday School room. We had two babies, one literally
18 newborn, one about two years old and two cats and a dog
19 living in this one room in order to plant this church.
20 And the phone rang at 2:00 o'clock in the morning and I
21 jumped up, tried to put on my best pastor voice and, you
22 know, act like I wasn't sleeping when he called. And he
23 said, I was just thinking, I was reading the Bible and I
24 wanted to know what Jeremiah was talking about. What does
25 he mean by the great speckled bird? And it was constant

1 questions.

2 Q In terms of boundaries, have you experienced that Tim
3 had difficulty with boundaries? Obviously, that's an
4 example, but is there another example that you can tell
5 the jury about that?

6 A Not knowing when to say a thing or when not to say a
7 thing. I remember sitting in the office with him and
8 letting him -- just giving him examples of if someone says
9 to you does this outfit look bad, you probably shouldn't
10 just say yes. Just not knowing exactly how to interact
11 with the outside world. One of the thoughts that I've had
12 repeatedly about Tim 14 years ago is he looks like a -- he
13 seems like a man that is trying to take the Bible and
14 allow it to explain the world around him that he can't
15 understand. And honestly, my regret is I was too young in
16 ministry and knowledge of these types of things to even
17 understand what was happening.

18 Q Did Tim want to have a leadership role in the church?

19 A He did. And, in fact, that's one of the things that
20 precipitated his leaving because I would not allow him to
21 take any leadership roles in the church.

22 Q And I think you've described it to some extent
23 already, but why -- in your estimation, why was he not
24 suited for a leadership role?

25 A The ability to know a lot about the -- the ability

1 even to quote a lot of the Bible is a beautiful gift, but
2 if it's not -- if you're not able to apply it properly and
3 in a way both in personal expression and in explanation to
4 others in a way that doesn't hurt them, but helps them
5 move forward in their relationship with Christ, then it's
6 not a beneficial thing at all. And so in the case of Tim,
7 I felt he had great abilities in himself, but his capacity
8 to help others move forward was limited to none.

9 Q And tell the jury the other major event that resulted
10 in him leaving the church.

11 A Tim came to me one day and let me know that he was
12 needing to potentially move on in his attendance because
13 he felt like my wife of now 22 years and about six, five
14 or six years was trying to seduce him. And we sat in my
15 office and he explained to me how -- how she was wearing
16 things and approaching him and communicating with him not
17 in words, but just by actions and expressions to seduce
18 him. And I explained to him that my wife is an extreme
19 introvert. She is -- that is just -- number one, I trust
20 her implicitly. Number two, it is just completely outside
21 of her character to do something, and even her personality
22 to do something of that nature. An example of that is
23 when we first moved, we only had one person that actually
24 came to church for the first little while. His name was
25 Tom and Tom worked at a Starbucks. So I brought -- my

1 wife said she wanted coffee, so I took her to that
2 Starbucks where Tom worked and he is -- Tom -- and she
3 went in and ordered our coffees. And when she came out, I
4 said, Did you meet anybody, see anybody you knew there?
5 She said, No. I said, Did anybody try to talk to you?
6 She said, Well, there was this one annoying man who kept
7 chatting with me and, you know, trying to talk to me. I
8 said, Well, did you recognize him? She said, No. And I
9 looked in my rearview mirror and there was the only guy in
10 the whole 12 million person city who was attending our
11 church. And I said, Babe, there's one person out of 12
12 million that even cares that we're here doing this and you
13 didn't recognize him? And Tom was in the door of the
14 Starbucks waving at me like this. And I was like, man,
15 that -- my point is just if my wife would miss somebody
16 having that conversation, the idea of her trying to seduce
17 is infallible to me. But yet, for him, it was his
18 complete truth.

19 Q Was there any way that you thought that you could
20 have convinced him that was not true?

21 A No. We talked for quite a while and I tried to
22 convince him that that was not true.

23 Q Did you feel as though, for Tim, being right was very
24 important to him?

25 A When Tim wanted to listen, Tim was an incredible

1 student, but once Tim decided something was right, it was
2 very difficult, if not impossible to break through that.

3 Q I assume when you say right, right in his head, not
4 what was actually right?

5 A Correct. Living his truth, whatever his truth was in
6 that moment.

7 Q You've told me in the past the difference between
8 what you said is calm Tim and not calm Tim. Can you
9 explain to the jury that difference?

10 A Tim had two sides. One minute, he would be calm,
11 listening, open, engaged. If you said -- mentioned
12 something to him, he would hear you, respond to you. But
13 then he had another side of him that once that kicked in,
14 it was very difficult to have any kind of legitimate
15 communication with him. He would say to me sometimes
16 whenever he would start getting frustrated -- and it
17 seemed to escalate when pressure was on or what have you.
18 And he would say, It seems like there's a monster inside
19 of me trying to get out and I don't know how to stop it.
20 And that was a phrase I've heard over and over to the
21 point where I remember it clearly 14 years ago -- you
22 know, 14 years later. And if was -- when that was going
23 on, it was very difficult to communicate with him. And
24 whatever I would say to him would not often be heard or
25 received and it was -- it was as if almost it was no point

1 in talking at all at that particular time, you know, until
2 he calmed down again. Then if he calmed down, he would
3 often come back and we could have a conversation at that
4 point.

5 Q Did you find that worship at the church or any of
6 your activities at the church ever brought him solace,
7 what you saw as solace?

8 A Worship was important to Tim. And it's not just in
9 the Pentecostal world, but one thing that we practiced at
10 Center Point was speaking in tongues and praying in
11 tongues. And when you talk about stuff like that, it's
12 not -- it's more on a spiritual realm than it is on a
13 practice realm, I would guess, for most people. But for
14 those who are engaged in that, what, basically, you're
15 doing is you're allowing God to speak through is, is the
16 belief, is the concept and is the teaching that we see in
17 scripture. So in that, praying in tongues was a big part
18 of what Tim did. And he would seem calmer and he would
19 calm down visibly as he would pray and worship and,
20 specifically, speak in tongues.

21 Q Did you feel like your church was a place where he
22 was trying to find an identity?

23 A Absolutely. Absolutely. And I think that -- when a
24 church is small -- the church I pastor now is much larger
25 and so I've -- and I've built churches over time, so I've

1 seen the development of how this goes. But when you start
2 a church from the beginning, oftentimes, you -- the
3 churches, at first, people who don't have other places to
4 go, maybe they don't fit in anywhere else. And our church
5 in Chicago was very much a church with people that didn't
6 seem to fit in in other places. And I think Tim was
7 finding a place there. And I hope there will always be a
8 place where those who feel like they are not welcome other
9 places will find a place of welcome and rest.

10 Q When Tim finally decided to leave the church, did you
11 ever hear from or see him again after that?

12 A I did not.

13 Q And you did have a chance to talk to him this morning
14 for the first time in however many years that is, over a
15 decade?

16 A Yes.

17 Q And I just want you to explain to the jury the
18 difference between the Tim you talked to today and the one
19 that you knew then.

20 MR. HUBBARD: Your Honor, I'm going to object to
21 that. All these years gone by, I don't know that that's
22 relevant, particularly the situation we're in. I think
23 it's self-serving.

24 THE COURT: I think it is, too. I think you can
25 rephrase the question and ask him if he noticed any

1 difference, but I don't think he can offer an opinion.

2 Q I didn't mean to ask you to offer an opinion. Do you
3 notice things that are different between the Tim you knew
4 then and the Tim you talked to today?

5 A The Tim that I talked to today is very much the calm
6 Tim that I may have witnessed 14 years ago.

7 MR. SECOR: May I have just a moment, Your Honor.
8 Thank you, Pastor Sutton. I appreciate it.

9 CROSS-EXAMINATION

10 BY MR. HUBBARD:

11 Q Pastor Sutton, you had a long drive to get here,
12 didn't you?

13 A Yes, sir.

14 Q You're still in Ohio, right?

15 A I'm in Ohio.

16 Q So Tim Jones wanted a leadership role in your church?

17 A Yes, sir.

18 Q And, obviously, you said -- you just didn't find that
19 suitable and you said no?

20 A Correct.

21 Q And that was a source of conflict in addition to the
22 other conflict you mentioned for him?

23 A The second conflict came up after the first conflict.

24 Q Okay. But this was one that he took offense at, that
25 he wanted a role, he wanted a leadership position?

1 A Definitely something that he pushed, yes.

2 Q I believe -- we got it from someone else, I think
3 from the Defense, but said that your observation of Tim is
4 that he saw scripture as a method to gain control. Does
5 that sound like the way he was viewing scripture?

6 A Definitely as a way to interpret the world around him
7 and try to fit into the world around him, I would say yes
8 to that.

9 Q But would you say control, like, for instance, a
10 leadership role to help control how a church is run?

11 A Uh-huh, (Indicated in the affirmative.)

12 Q Control as to how his wife is to dress, that he set
13 that standard for her? Does that sound right?

14 A I think that he used scripture to try and give him
15 the boundaries, the parameters to live life, yes.

16 Q As he saw fit?

17 A As he interpreted the Bible to explain to him.

18 Q You mentioned that he had a phenomenal memory?

19 A Correct.

20 Q About how old was he when you first saw him?

21 A Eighteen, his early 20's, I'm guessing.

22 Q Okay.

23 A I don't know exactly.

24 Q And you're the one that married him and Amber?

25 A Correct.

1 Q And she was very different than Tim?

2 A Again, I only knew her for a very short period of
3 time.

4 Q But Tim Jones is a guy that he studied scripture.
5 You said it was almost unusual because he just dove in and
6 studied to look for answers, is that correct?

7 A Yes, sir.

8 Q So I guess the most basic question I have for you is
9 do you think he understood that most basic of all concepts
10 and all tenets, Thou shalt not kill?

11 A Yes.

12 MR. HUBBARD: Thank you.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Call your next witness.

16 MR. YOUNG: Your Honor, the defense would call April
17 Hames.

18 APRIL HAMES, being
19 first duly sworn, testified as follows:

20 THE CLERK: Have a seat, ma'am. Once you're seated,
21 state your full name, spelling your last.

22 THE WITNESS: My name is April Hames, H-A-M-E-S.

23 DIRECT EXAMINATION

24 BY MR. YOUNG:

25 Q Good afternoon, Dr. Hames.

1 A Hi.

2 Q Can you tell the jury a little bit about yourself?

3 A Sure. I grew up in this area and went to
4 undergraduate at the University of South Carolina Honors
5 College. Then moved to North Carolina to get my Masters
6 and my Doctorate. My Doctorate is in marriage and family
7 therapy, and that involves studies in child development
8 and family relations.

9 Q Now, are you a hired expert in this case?

10 A I am not.

11 Q How did you get to be involved with Tim Jones?

12 A On May the 3rd, 2012, Tim came into my office for
13 marriage therapy. He came by himself. I invited Amber.
14 He said he wanted Amber to come. Amber -- at the time, it
15 was my understanding she did not have a driver's license
16 and she was caring for the kids at home and she was not
17 able to make it from where they lived in Leesville to my
18 office on St. Andrews Road. So I met with Tim to work on
19 -- when we discovered that Amber wouldn't be able to make
20 it, I did suggest maybe she could have a conference call.
21 And he said he went home and discussed that with her and
22 she was not interested in it at that time, according to
23 what Tim said. So we worked together on, at the time,
24 making him the best man and best husband that he could be
25 given the circumstances.

1 Q When you have a new patient come in, do you get them
2 -- do you have them fill out a form?

3 A I do.

4 Q Can you tell us what religion Tim put down as his
5 religion?

6 A I have my notes here, I'm going to look to be sure.
7 Pentecostal.

8 Q And did he explain his spiritual beliefs at all?

9 A Over the course of the sessions that we had, he
10 discussed his spiritual beliefs. They seemed to be very
11 fundamentalist, similar to what the pastor said, very
12 literal interpretation of scripture, very strict adherence
13 to those scriptures.

14 Q And did he describe that as old-fashioned?

15 A Since it was 2012 and early 2013, I can't remember --
16 oh, it does say that in the notes that he described,
17 conservative and old-fashioned, yes.

18 Q Was your office close enough to where his work was
19 that he could come to you during lunch or how did that
20 work?

21 A Yes. He would come over during lunch and just step
22 in. Always came around lunchtime and then would head back
23 out. He would use his lunch break to come over.

24 Q Did he have any sort of request of you about how you
25 dressed for y'all's visits?

1 A He did. I am above average height, I'm six-one. And
2 I stood up at the end of the session one day and I had on
3 heels that were maybe three inches and he requested that
4 moving forward, I would not wear heels at his
5 appointments.

6 Q Was there a checklist of things that he wanted to
7 work on as part of that screening form?

8 A He identified problem areas with the checklist.

9 Q Can you tell the jury what problem areas he
10 identified?

11 A Sure. Anxiety, depressed mood, feelings of
12 inferiority, poor sleeping, marital relationship, trouble
13 in childhood memories, unable to trust others, fighting
14 and arguing with others, bad temper, anger problems,
15 unfairly treated by others, suspicious of others, family
16 quarreling and feeling rejected by family.

17 Q Before we get to y'all's sessions, he filled out one
18 more page about specifically -- and I think the question
19 was, In your own words, what brought you to counseling?
20 Can you tell us what he told you?

21 A Sure. He said due to childhood issues, I feel like
22 I'm carrying baggage that's affecting my marriage.

23 Q And was he asked if there was ever a time where that
24 problem was better or worse or what had made it worse?

25 A Yes. He was asked, Have there been times when the

1 problem got better or disappeared? And he said, No. Were
2 there times when the problem was especially bad? And he
3 said, Yes. And the time of that was now. And when asked
4 what made it bad, he said he needed to explain. When he
5 was asked are there other people who played a role in
6 causing your problem, he said his neighbors.

7 Q Did he have a goal with your counseling?

8 A Yes. He wanted to know what I must do to relieve
9 these anxieties.

10 Q And after he filled out this questionnaire, is that
11 when you had your first sort of sit-down meeting with him?

12 A It is.

13 Q Tell us, how does that work?

14 A So this form can be filled out prior to the first
15 meeting or it can be filled out -- you come in 30 minutes
16 before the first meeting, fill out the form, have them
17 take your driver's license, your insurance information,
18 that type of thing and then wait to be seen. And that's
19 what happened. And then right after that, I would get the
20 form, read it before I would see him, make an initial kind
21 of plan for the first session to talk about the presenting
22 problem and assess for safety and understand the beginning
23 of the treatment plan and conceptualization of the
24 dynamics of the situation in the case.

25 Q What happened when Tim first sat down with you?

1 A As soon as Tim sat down, he was immediately tearful.
2 I could tell Tim -- or it seemed to be -- in my experience
3 over time as a therapist that you can tell when someone
4 has waited a long time to come in. Often, once you come,
5 it might be you waited too long. And I think the marital
6 issues had gotten to a point that Tim realized it was
7 something bigger than he could work out on his on. So he
8 came in and he was immediately tearful and he started
9 talking about his being a momma's boy. The first things
10 out of his mouth -- he writes on the form the issues are
11 about his marriage, but he starts to talk about being a
12 momma's boy and recalled having very few interactions with
13 his biological mother. And he remembered the one time he
14 saw her that she was swatting at things that were not
15 there and having a conversation with, I think it was her
16 dead mother. It was someone -- oh, he said she had a
17 fight with her dead mother. So that was the beginning of
18 the conversation with Tim, which, conceptually, as a
19 marriage and family therapist thinking about the family
20 system, I realized that this was a bigger issue than a
21 marital problem.

22 Q Did he tell you about any diagnosis that she may
23 have?

24 A He told me that she had schizophrenia and that she
25 was institutionalized.

1 Q As y'all went along in your notes and through your
2 therapy, do you talk about something inside of him on that
3 day, on that May the 3rd, 2012?

4 A Yes. He said, I've got a monster inside me and now
5 it's gotten out.

6 Q And when you talked to him about that, what did you
7 take that to mean?

8 A Any time someone would say something like that, you
9 know, it definitely puts up some red flags, so you need to
10 access for the bigger picture of safety and look at things
11 like would this person have schizophrenia. Schizophrenia
12 is something I would not feel comfortable diagnosing as a
13 licensed marriage and family therapist. And in the case,
14 if I believed that, I would refer someone out. The
15 conversation we had about the monster inside had very much
16 to do with theoretically what I would call his attachment
17 style. Children have an absolute requirement for safe
18 ongoing physical and emotional closeness with a primary
19 caregiver. When a child doesn't have that, typically,
20 with a mother, our security and attachment is formed
21 within the first 18 months, three years of our life, a
22 very critical period. And as he started talking about
23 that monster, what he seemed to be doing was externalizing
24 a very internal feeling, similar to the little green
25 monster. Like this feeling of fear, abandonment,

1 jealousy, inferiority.

2 Q So -- don't let me put words in your mouth. You
3 thought that his reference to the monster inside of him
4 was sort of stemming from his attachment issues from not
5 having a mother?

6 A The combination of things he experienced very early
7 in life, just from the briefing that he had mentioned, you
8 know, I'm here about the marriage. My mom is
9 institutionalized. I'm a momma's boy. I miss my mother.
10 I don't have a relationship with my mother as she was
11 emotionally unavailable based on her diagnosis and also
12 physically unavailable because she was institutionalized.
13 So he didn't have that initial bond with a parent that we
14 need for safe and good mental health. Also, in his life,
15 this was -- this was furthered by infidelity with a
16 girlfriend when he was 18. He stated that Amber had
17 kissed one of their friends. I do believe they had taken
18 a friend in and the friend was living with them. He and
19 Amber kissed while they were at work -- while Tim was at
20 work. Tim also had some experiences in his family home
21 where his father would go to work and his step-mom was
22 allegedly unfaithful and Tim experienced watching that as
23 a child. I can't recall why Tim was really afraid to
24 share that with his father, but as a young child, he knew
25 that had to be a secret. He had a huge fear -- this

1 monster, part of it was this huge fear that he would be
2 that person. That he was going to work and going out of
3 town and his wife was being unfaithful.

4 Q Did Tim tell you about when he and Amber first met?

5 A He did.

6 Q And what did he say about that?

7 A He said that when he met her -- this is a direct
8 quote, he said, I opened up like a rose that bloomed. And
9 he went on to say that it was just natural. And the
10 conceptualization of the attachment and what he shared
11 about Amber's early life, it seems like the two of them
12 had this yin-yang sort of thing where what he was missing,
13 she had, and what she was missing, he had, and they were
14 able to feel a lot more complete in their bond.

15 Q After your initial visit on the 3rd, what was the
16 next time you saw Tim?

17 A I saw him on the 9th.

18 Q So on the 9th, did y'all talk about the monster
19 again?

20 A We did.

21 Q And what was that conversation?

22 A He said that the monster wanted control. And control
23 in the context of knowing more about what was going on
24 while he was at work. And he wanted information and when
25 he -- said when he -- there was a deficit of information

1 that the monster would come out.

2 Q And did he say any -- what, if anything, did he say
3 about Amber's response to that part of him?

4 A He said that she told him that she can't be near him
5 when the monster comes out.

6 Q Did you have some suggestions for him on dealing with
7 the monster on the 9th?

8 A I did. We talked about since -- Tim is incredibly
9 bright. And we enjoyed an exchange of being able to talk
10 about theoretical things that I had not always been able
11 to talk about with clients. You typically try to go to
12 about a sixth to eighth grade education level. And having
13 a really theoretical brain, I enjoyed being able to share
14 some -- he was very fascinated with it, wanted to know a
15 lot about the theories. So for him to be able to kind of
16 externalize this monster and talk about the attachment
17 that was driving -- the attachment wounds that were
18 driving this monster. We talked about externalizing it
19 further and how that was more of his child self. His
20 adult self is the person sitting in the room with me being
21 very present and having a mature conversation and being
22 able to externalize this monster that was more like that
23 wounded child self. And so, we talked about shutting down
24 that internal dialogue. He did use the word voices, that
25 the monster would talk to him. We all have those internal

1 voices that, based on all of our experiences, talk to us.
2 And they talk to us much worse than we would talk to
3 anybody else, usually, even an enemy. So we talked about
4 him redirecting the monster and having that inner child
5 cared for with the adult voice, shutting down that voice
6 so his rational and logical voice could come in.

7 Q And during that time, was he fearful of abandonment?

8 A Absolutely. I asked him what his worst fear was. In
9 trying to understand what the real issue is with folks, I
10 often ask what's the worst case that can happen, what's
11 the worst case scenario. And his worst case scenario was
12 that Amber would get a job and that she would be with the
13 man that he suspected she was having an affair with and
14 that she would leave him.

15 Q And how did he say that? Do you know how he said
16 that? Is it reflected in your notes?

17 A It is. Let me see. It was that day, on 5/9, in the
18 context of talking about abandonment. It was in the sense
19 that he was not wanted. He said he didn't want to feel
20 tossed away without even knowing it. And that's when he
21 talked to me about the history of the ex-girlfriend. And
22 he said, Worst case scenario, she gets a job. She's
23 already with the other guy and she moves on.

24 Q Did you ask him if he had ever been physically
25 violent?

1 A Yes. Based on how upset he got in that moment when I
2 asked about the worst case scenario, I did ask him if he'd
3 ever been physically violent with Amber. And he said that
4 in the context of an argument that she had been in very
5 close proximity to him and that he had pushed her out of
6 the way because she was very much in his personal space,
7 but that he had not ever hit her.

8 Q When was the -- at this point in time, is he still
9 trying to save his marriage?

10 A Absolutely.

11 Q Okay. When was the next time that you saw him?

12 A I saw him on 5/23.

13 Q And at that point in time on the 23rd, and I believe
14 it's on the second page towards the bottom of your notes
15 about the 23rd, had he started doing some other stuff to
16 try and cope?

17 A Yes. He -- well, I've gone back and read these
18 notes. Are you talking about the part where I wrote that
19 he bought a bottle of liquor for Mother's Day. I can't
20 recall if he was drinking that or if he bought that for
21 Amber. I can't recall.

22 Q What did he say about drinking as far as a solution
23 to your problems?

24 A He -- this is a direct quote, and he said, The only
25 problem with drinking to drown your problems is that they

1 don't drown, they float.

2 Q Did he say whether or not he had tried to
3 self-medicate with alcohol in the past?

4 A Yes, he shared that with me. I believe I asked him
5 about it based on the conversation we were having. I just
6 don't remember the context of it from 2012.

7 Q Okay. Now, something significant had happened --
8 when is the next time you saw him?

9 A The next time I saw him was on June the 21st of 2012.

10 Q And had something happened in his life between
11 y'all's last two appointments?

12 A Yes. He had been in Mississippi visiting his
13 parents. From what I recall, it was visiting his family.
14 The children had been left with Amber at home and when he
15 got home, the neighbor was in -- a male neighbor was in
16 his home. He came back early and the neighbor was in the
17 home. He found them together.

18 Q Okay. And what did he do about it?

19 A I did ask what he did and he said that he -- the guy
20 was really terrified of what might happen next, as one
21 might be. He said he reached out his hand and shook his
22 hand and told him he was not going to hit him.

23 Q Did he talk about starting to drink or smoke after
24 that?

25 A Yes. He started drinking and smoking heavily. But

1 to qualify the smoking as he told me was cigarettes.

2 Q Right. Did he shift focus during that meeting with
3 you from his marriage to something else?

4 A Yes. At that point, it seemed clear that his
5 suspicions about his wife were -- according to Tim, they
6 were accurate. He switched course -- now, I don't know
7 what day before -- in between 5/23 when I saw him and
8 6/21, I don't know what day it occurred that he came home.
9 What I do know is that when I saw him on the 21st, the
10 primary goal was the safety of the kids and moving forward
11 and keeping the kids away from that situation.

12 Q And what was his -- at the bottom of the second page
13 of your notes from the 21st, what was his struggle? What
14 was he thinking about?

15 A Loneliness.

16 Q And what was it in relation to the kids?

17 A He was really struggling with thinking about the
18 children not growing up with their mother. And he did put
19 that in the context of not growing up with his own.

20 Q Did his behavior on the 21st cause you some concern?

21 A No.

22 Q Did you write a letter to a doctor on the 21st of
23 2012?

24 A I did.

25 Q And who was that letter to and why did you write it?

1 Can you tell the jury what that was about?

2 A Let me find the letter to make certain. I want to
3 say the correct name. I believe it was Dr. Leslie Jones.

4 Q I'll help you.

5 A Thank you. Oh, Dr. Leslie West.

6 Q And what were your concerns about Tim that you told
7 Dr. West about in that letter?

8 A The troubling childhood issues that were continuing
9 to impact him in his adult life. I didn't get into the
10 situation that Tim was in because there was no need for
11 that. But he shared with me -- you know, impairment is a
12 significant issue when you're diagnosing and he was --
13 what he was sharing with me is that there was impairment
14 in both his occupational and social functioning. And
15 those are very significant issues and what leads to a
16 diagnosis. So I asked her to consider a pharmacologic
17 intervention for him, something of a very limited -- a
18 time limit duration. I suggested three months based on
19 the situation, so that he could sleep and concentrate on
20 his work.

21 Q And in that letter, you noted that he had an
22 impairment or distress in his work and social life?

23 A Correct. But I did say that was anxiety.

24 Q Okay. When was the next time that you saw Tim?

25 A Any time a client comes in with such a significant

1 change, I try to see them the next week. And I did see
2 him the next week, I saw him on the 28th of June.

3 Q And what, if anything, did he say about his drinking?
4 Had he -- was he sort of down, was he doing better?

5 A There's some conflict in my notes here because in
6 this moment, he said he hadn't drank in eight years.

7 Q Okay.

8 A And in the previous -- in the previous note, he had
9 said he was drinking heavily. I wonder -- and this is
10 speculation. I wonder if he was saying prior to when he
11 started drinking heavily again that he hadn't drank for
12 eight years. In the context of my relationship with him,
13 I assumed that, but it is an assumption based on the time.
14 He did say that he was not drinking as much anymore. He
15 was not getting slam drunk is the word he used.

16 Q At that point in time, did he have an attorney?

17 A He did.

18 Q And I'm going to show you what's been marked for ID
19 as Defense Exhibit number 134. Can you tell us what that
20 is?

21 A Sure. This is an affidavit that I gave with a
22 recollection -- an account of the events that Mr. Jones
23 had shared with me. I gave it to be given in Family Court
24 towards the -- I believe it was the emergency hearing for
25 his children.

1 Q For the custody of the children?

2 A Correct.

3 MR. YOUNG: Your Honor, I would offer Defense Exhibit
4 number 134 into evidence.

5 MR. GRAHAM: No objection, Your Honor.

6 THE COURT: Without objection, 134 is in evidence.

7 (WHEREUPON, Defendant's Exhibit number 134 was
8 admitted into evidence.)

9 Q Do you know what the next time that you saw Tim was?

10 A The next time I saw Tim was 7/24.

11 Q At some point in time on the 24th, y'all had a
12 discussion about where the kids should live, where he was
13 going to live and what he wanted as far as school for the
14 children. Do you recall that part?

15 A I do.

16 Q Can you tell the ladies and gentlemen of the jury
17 what he said about that?

18 A He said he wanted the children in the Lexington One
19 School District because of how good the school district
20 was.

21 Q When was the -- did y'all discuss his -- the past
22 anniversary -- the anniversary of his marriage had
23 recently passed, did y'all --

24 A Yes.

25 Q -- talk about that?

1 A Yes. He had been married eight years on June the
2 29th and he was very angry that day.

3 Q Did he do anything or he just said that was something
4 that he felt?

5 A He just said that he was very angry on the day of his
6 eight-year anniversary.

7 Q What is the next day that you saw Tim?

8 A 8/21.

9 Q And what was going on in his life at that time? How
10 was he doing?

11 A He had really organized a plan by that point where,
12 you know, two months to the day from when I had seen him
13 and heard about what had happened at home with his
14 relationship. You know, he had taken the things out of
15 the marital residence and had the kids back in South
16 Carolina. In the process of those two months, it was
17 summertime, so they weren't being held responsible for
18 school at that point. And it's my recollection that they
19 spent a significant portion of that time in Mississippi
20 with his family. While he organized a plan, you know, he
21 was kind of couch surfing to try to figure out where he
22 was going to live and what he was going to do.

23 Q And was he going to put them in school in the
24 Lexington One School District?

25 A Yes, Saxe Gotha.

1 Q What was the next time that you saw him?

2 A I saw him on the 18th of September in 2012.

3 Q Now, was this the -- as far as you know, was that the
4 first time the kids had gone to school during the 2012
5 school year?

6 A Yes.

7 Q And when he came in to you, was he concerned about
8 how they were doing in school?

9 A He was. He had gotten really frustrated with Amber
10 and felt like that what she had represented that she was
11 doing education-wise with home schooling that she didn't
12 -- it was his impression that they were really behind and
13 that she had not been following through with that.

14 Q And what did he say? What did he say?

15 A He said he wanted to strangle her.

16 Q And did you think that he meant I want to strangle, I
17 want to kill her or what did you think?

18 A Any time someone says something I could have killed
19 them, I want to strangle her, while it is a figure of
20 speech, as a mental health professional, I have a duty to
21 report and a duty to warn ethically and legally. So I
22 questioned him. He did not endorse a plan to harm her.
23 He didn't have an established timeline of, you know,
24 tomorrow I'm going to go to the house and this is going to
25 happen. I questioned him about it and I didn't find any

1 reason to believe there were any homicidal ideations. It
2 seemed to be a figure of speech.

3 Q Was he -- was he stretched thin with the kids? Is
4 that a good way to say it?

5 A Yes.

6 Q Did he talk to you -- and flipping over to the second
7 page from that same visit, did he talk to you about his
8 kids and what issues he was concerned they might have?

9 A He said mommy issues again. He didn't want the kids
10 to have mommy issues. He didn't want to bring women in
11 and out of their lives and start dating. He had a lot of
12 conflict about whether or not to start dating. It was
13 something that was like a recurring conversation that he
14 would have after they separated. And, you know, he was
15 trying to figure out fatherhood and wanted to do the right
16 thing. At some point, the children asked for a new mommy.

17 Q Was he also at the same time talking about his own
18 mommy -- what he described as his mommy issues?

19 A Yes.

20 Q After September 18th, when was the next time you saw
21 Tim?

22 A A month later on October 17th.

23 Q And did y'all talk about Amber, whether or not she
24 had seen the kids? And, if so, what was said?

25 A Yes. He said that she had only -- she had not seen

1 the kids since June the 11th of 2012 and that was October
2 the 17th. He said that she had started promising what she
3 was going to do for the kids if he would let her back into
4 their lives and his life.

5 Q Was she following through on those promises?

6 A I recall she was going to -- she promised them maybe
7 on the phone that she was going to give them some movies.
8 If I remember correctly, Tim thought that the movies were
9 for a more mature audience than the age of the children.
10 He didn't think they were age appropriate. I don't
11 remember if he told me what the movies were, so I wouldn't
12 be able to judge that. When I saw him one month
13 following, he did say that she actually brought them the
14 movies that she had promised to do. But it was my
15 understanding that that promise was an ongoing promise
16 that she hadn't delivered on until sometime after that
17 session I had in October with him.

18 Q Did he say anything else about how he disciplined his
19 kids during your visit on the 17th?

20 A He did. Tim had these one-liners that were just very
21 Tim, just unique, unique things. And I would always write
22 them down in a direct quote. On that day, he said,
23 Foolishness is bound in the heart of a child, but the rod
24 will drive it from him.

25 Q And what did he mean by the rod?

1 A I questioned him about it and he -- the rod was
2 spanking.

3 Q Did he go on to describe it further?

4 A He said that spanking was and corporal punishment in
5 general was medicine for their sick bodies.

6 Q So that when the children were foolish, he thought
7 that he was supposed to spank them?

8 A Yes.

9 Q When was the next time that you had seen Tim?

10 A I saw him on October -- excuse me, November the 14th
11 of 2012.

12 Q And when he came there for that visit, had they met
13 with Amber?

14 A Yes. That's when she gave them the movies. They met
15 at a Wendy's.

16 Q And was he -- did he seem upset that she had seen
17 them, was he happy that she had seen them? How did he
18 describe it?

19 A I cannot recall.

20 Q Okay. Was he impressed that she had brought the
21 things that she had promised the kids that she was going
22 to bring?

23 A He was relieved about that, but he felt that they
24 were not age appropriate.

25 Q Did he report whether or not the children were happy

1 to see Amber?

2 A I --

3 Q I think it's on the second -- the next page.

4 A They were. Said that Merah started crying when she
5 had to leave her and that she's the sensitive one.

6 Q And that they were happy to have gotten to see her?

7 A Yes.

8 Q Did he talk about how they were coming along in
9 school?

10 A He said they were really behind, that Eli seemed to
11 be fairly intelligent and he was catching up pretty
12 quickly, but Merah was taking longer. He described
13 working with them long hours in the evening on their
14 homework and teaching them things, going over what they
15 had learned at school. That was really, really important
16 for him for them to be where they needed to be
17 educationally. He put a big emphasis on that. And his
18 kind of assessment of Merah was that maybe she just was
19 not going to be gifted at school.

20 Q Was he okay with that or was he upset about that?

21 A Probably disappointed. You have a certain idea for
22 what your children -- the trajectory of their lives. And
23 I think he was maybe wondering if he might have to adjust
24 that for her.

25 Q How about him personally, how was he and the first

1 time he had seen Amber in about four months or so?

2 A He said he was -- he was just pissed off, those were
3 the words he used.

4 Q Was there a reason that he gave that he was upset?

5 A He was upset that it had been four months and she
6 hadn't seen the kids.

7 Q What is the next time that you saw Tim?

8 A I saw him a month later on 12/19/2012.

9 Q Now, at that point in time, had y'all talked about
10 maybe getting the kids in for some therapy?

11 A Yes, we did.

12 Q And what was that, what was that conversation?

13 A I don't recall who suggested it. I recall us having
14 a conversation about it and me asking him if it was okay
15 for me to connect with someone else in our office that had
16 more expertise in seeing children than I did. It also
17 would not have been appropriate for me to see the
18 children. And he, you know, seemed to be really excited
19 about the opportunity of the kids coming in. Also, if I
20 recall, he had an employee assistance program. That's one
21 of the reasons we stretched out the sessions because he
22 was given a limited number of sessions and after that, his
23 copay increased. Initially, for however many visits, you
24 don't have a copay with his employee assistance program
25 and then after that, he had to start paying a copay. So

1 that's why we stretched out to once a month. But the
2 children also had sessions through the EAP, if I recall
3 correctly. So he gave me permission to speak with the
4 therapist that saw children based on some of the things --
5 you know, he was worried about things like what kind of
6 conversation he was going to have with Merah when she
7 started her period. He didn't know how he was going to
8 handle that. He was already anticipating that when she
9 was eight, nine, ten. I don't -- I'm sorry, I can't
10 recall how old she was in 2012. But he was anticipating
11 those things. And in anticipation of potential issues
12 with what he suspected they had seen with their mother and
13 some of the neglect that he had reported, he wanted them
14 seen. And so he was happy to do that, to have them seen
15 at our counseling center.

16 Q Do you know who it was that they saw?

17 A It was Kim Fender.

18 Q And did you ever see them together? Like, did you
19 ever see Tim and his kids going to see --

20 A I did. In the waiting room, I recall one time very
21 vividly. It may have been twice, but I certainly recall
22 one time. It was either the live-in nanny or the very
23 regular babysitter. She was there and she was sitting
24 kind of to the side. Then -- it was probably the happiest
25 moment I ever saw and I ever shared with him.

1 At first, I was an observer, he didn't know I was
2 there. I was coming in from seeing another client. I
3 wasn't to see him that day. And he came over -- you know,
4 had all -- at that time, all four of the children. The
5 fifth had not yet been born. The four of the children
6 were in the waiting room waiting to see the other
7 counselor. I don't know which one was there to see her
8 that day. But he came over from his work during his lunch
9 to spend that time with them is my assumption. And I got
10 to see them. They were climbing all over him, daddy,
11 daddy, daddy. And he seemed very fulfilled and very happy
12 to be in that moment with his kids and they seemed happy,
13 too.

14 Q What was the next appointment -- he said they were
15 coming in to see Kim the next week, is that right?

16 A Uh-huh, (indicated in the affirmative.)

17 Q And what was your next appointment with Tim?

18 A The next time I saw him was one month later on
19 January 15th of 2013.

20 Q And did he bring back up the monster?

21 A He did.

22 Q And what did he tell you about it?

23 A He told me that the stimulant -- stimulus was gone,
24 the stimulus for the monster being that fear of being
25 coupled, having -- being found out that his wife was being

1 unfaithful. He didn't worry about that because he was at
2 work and not thinking about who his wife was with while he
3 was not there.

4 Q Did he tell you sort of more specifically like how he
5 had gotten it out?

6 A He said that he had been at church that Sunday and he
7 had cried it out and that he felt a significant change.

8 Q At the end -- toward the end of your session on the
9 15th, how did he feel for his kids?

10 A He said that Merah was not crying as much for her
11 mom, that they were asking him to get them another mom.
12 They were catching up at school and he described Eli as
13 his little buddy.

14 Q Did he say that he felt bad for his kids?

15 A He did.

16 Q And did he say why?

17 A It seemed to come back to the mommy issues again. He
18 was still in conflict of whether he should find someone
19 else to be a new mom for them or if he should just leave
20 it alone.

21 MR. YOUNG: Beg the Court's indulgence.

22 Q When you finish out your records, is there a code
23 that goes on the bills to the records?

24 A On --

25 Q When you bill somebody, is there a code that goes on

1 those records?

2 A I was not responsible for the billing at our office.

3 That was completely separate. I would fill out an

4 encounter form that would have a CPT code or an insurance

5 code that would basically say if it was individual, family

6 or group therapy. And that code -- the identifier on that

7 would also indicate how long I spent with him.

8 Q Were there codes on the records for Tim Jones, Merah

9 Jones and Elias Jones, the -- I guess it's called the

10 noncodes, is that right?

11 A A diagnostic code?

12 Q Yes, ma'am.

13 A Yes, there would be.

14 Q Okay. Can you tell us what the diagnostic code on --

15 for Timothy R. Jones was?

16 A You showed that to me earlier and I know there were
17 two codes on there, so I can't recall which one was which.

18 Q (Attorney hands witness document.)

19 A The two codes for Tim were 300.9 and 296.32. 296.32

20 is a recurrent major depressive disorder. Major

21 depression sounds like someone who can't get out of bed,

22 kind of hoping it catches on fire so that you don't live

23 anymore. Major depression is just the diagnosis of

24 depression. It can be very mild, moderate, severe, severe

25 with psychotic features, severe without psychotic

1 features. This particular code is major depressive
2 disorder, it's recurrent and it's moderate.

3 Q And how about the 300.9?

4 A That is an unspecified nonpsychotic mental disorder.
5 The reason there would have been two would have been
6 related most likely to the need for two different codes
7 for the EAP. Perhaps, you get six visits for the first
8 presenting problem and then could have six more visits for
9 an additional issue. So I don't recall why there are two
10 different ones. Since the 300.9 is first, that may have
11 been a provisional diagnosis given on the first session
12 because you can't bill without some sort of diagnosis. So
13 that was likely, you know, just the unspecified -- like,
14 something's going on, but he's not psychotic. That would
15 be my first assessment. And then after that, based on
16 what we talked about, it seemed to be more moderate
17 depression.

18 Q And was there a code on any of the children's
19 records?

20 MR. GRAHAM: Objection, relevance.

21 THE COURT: Sustained.

22 MR. YOUNG: Thank you, Dr. Hames. Please answer any
23 questions the State has.

24 THE COURT: After the jury gets a break. Don't
25 discuss the case. See y'all back in here in a few

1 minutes.

2 (WHEREUPON, the jury was excused from open court for
3 a break.)

4 THE COURT: We will take a break.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: If they're ready, bring them on.

7 (Whereupon, the jury came into open court at
8 approximately 3:50 p.m.)

9 THE COURT: All right. Mr. Graham.

10 MR. GRAHAM: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. GRAHAM:

13 Q Good afternoon, Dr. Hames. How are you?

14 A I'm okay. How are you.

15 Q I'm okay. My understanding is that you saw Tim Jones
16 between the dates of May 3rd, 2012, that was the first
17 session, all the way up until March 28 of 2013, is that
18 correct?

19 A Correct.

20 Q And I have down that you saw him 14 times?

21 A That's what I counted as well.

22 Q Each session is an hour-long session?

23 A Typically. Sometimes there's some doorknob
24 conversations, someone reaches for the door and oh, by the
25 way. Depending on whether there's someone after them,

1 they may last a little longer, but approximately an hour.

2 Q So a minimum of an hour, maybe even a little bit
3 longer?

4 A Correct.

5 Q So that means you spent 14 hours face-to-face with
6 Tim Jones?

7 A Yes, sir.

8 Q Everything -- well, he came to you because of his
9 marriage problems and anxiety. He wanted help with his
10 anxiety I think is what you testified to, is that correct?

11 A Yes, sir.

12 Q Everything in your treatment, your counseling of him,
13 everything you know is only what he told you, correct?

14 A Correct.

15 Q So it's only true as what he told you is true, isn't
16 that correct?

17 A Correct. In -- in my profession, it was not court
18 ordered, it was not -- the EAP didn't say he had to come,
19 to act in the best -- as the best agent of mental health
20 for my client. For the most part, unless there's evidence
21 to the contrary, you have to kind of go on an assumption
22 that they're telling you the truth.

23 Q And I think some of the last questions Mr. Young was
24 asking you was the billing diagnosis?

25 A Correct.

1 Q And I think he was referred to under -- he came under
2 a referral from a benefit from his business at Intel, do
3 you know that?

4 A I don't.

5 Q But for an EAP, an employee assistance program, you
6 have to have some diagnosis for insurance to cover it?

7 A Correct.

8 Q So you have to talk to him and you have to put down
9 something, correct?

10 A Sure.

11 Q The first thing you put down was what again, when his
12 initial visit came?

13 A An unspecified nonpsychotic disorder.

14 Q So what does that mean? What is an unspecified? I
15 guess means we don't know?

16 A That means I don't know, but at this moment, this
17 person is not psychotic as far as I can tell.

18 Q And when we say psychotic, what does that mean?
19 What's the -- what's -- you're an expert, what's psychotic
20 mean?

21 A Psychotic, as I would have evaluated in that moment,
22 would have been any reason to believe that there were
23 auditory, visual hallucinations, delusions that would --
24 or paranoias that couldn't be explained by reality. There
25 was the paranoia of his wife's infidelity, but as much as

1 I can believe, that was a valid paranoia.

2 Q And during your 14 times, you saw no -- while there
3 may be anxiety and paranoia, not psychotic?

4 A Correct.

5 Q Then at some point, your diagnosis changed to
6 depression, moderate depression?

7 A Yes.

8 Q And is it fair to say that the diagnosis of moderate
9 depression could be referred to as situational because of
10 going through a divorce?

11 A The diagnosis I gave was moderate depression
12 recurrent, so it was -- recurrent would mean that there
13 was more than one episode of the depression. So I don't
14 know that I would say that it was necessarily situational,
15 but in the time I saw Mr. Jones, he was going through a
16 situation that would lead to depression.

17 Q You don't know what he was before and you don't know
18 what he was after?

19 A Correct.

20 Q Okay. But you would agree with me that going through
21 a divorce -- the situation of going through a divorce is a
22 very stressful and a very depressing time?

23 A Under the best of circumstances, it is, yes.

24 Q There was a question about the second time that you
25 met with him and he asked you not to wear high heels.

1 What was that about? Could you tell the jury about that
2 encounter?

3 A I'm not sure that was the second time. I'm not sure
4 where in the span that was. It is not written in my
5 notes. So looking that far back, I can't remember. It's
6 just that I stood up at the end of the session and I was
7 wearing two-to-three-inch heels and towering over him when
8 he stood up. And he said that moving forward, he would
9 appreciate it if I didn't wear heels to his sessions.

10 Q Did you ask him why?

11 A I didn't.

12 Q Did you wear flats after that?

13 A I did not. That would have required me knowing what
14 day and paying attention to the schedule beforehand, even
15 know when he was going to be there. I don't think that is
16 a request that I would -- as a professional that I would
17 have adhered to.

18 Q Did he ever make any comments about -- you wear
19 makeup, don't you?

20 A I do.

21 Q Did he ever make any comments about you wearing
22 makeup was inappropriate?

23 A Not that I recall, no. It seems like I would
24 remember that.

25 Q Did he ever make any comments about the way you wore

1 your hair being inappropriate?

2 A He did not.

3 Q Did he ever make any comments to you about the way
4 you dressed being inappropriate?

5 A He did not.

6 Q Did he ever make any comments to you about your
7 interaction with him being inappropriate in any way?

8 A He did not.

9 Q And I think what he told you -- and again, you don't
10 have anything but what he told you, correct?

11 A Correct.

12 Q He told you that Amber had no job, right?

13 A Correct.

14 Q Amber had no car?

15 A Correct.

16 Q Did he tell you that Amber didn't even have a high
17 school diploma?

18 A It seems like I recall that. I know he told me that
19 she did not have a driver's license.

20 Q He talks about the monster several times, is that
21 correct?

22 A Yes.

23 Q And my understanding is that from your conversations
24 with him, your understanding and his understanding of what
25 that monster was had to do with an attachment style that

1 he was externalizing fear, abandonment and jealousy, is
2 that correct?

3 A Fear of abandonment and some jealousy, yes.

4 Q And you said it was -- it even went from a
5 conversation at the counseling session all the way to
6 theoretical and where that comes from and what it actually
7 means, correct?

8 A Yes.

9 Q And he understood that?

10 A It was implied that he did. He was able to have
11 conversations with me about it.

12 Q On a level of an expert and your training, he
13 understood what you were telling him theoretically
14 about --

15 A It appeared so, yes.

16 Q -- where those issues come from in life?

17 A He did.

18 Q And I think you said we all have inner voices. I
19 think I heard you testify to that, is that correct?

20 A Correct.

21 Q Tim Jones never told you that the monster inside of
22 him was voices telling what to do or talking to him, did
23 he?

24 A He did not.

25 Q He was telling you about thoughts that he had,

1 correct?

2 A That's how it was represented to me, yes.

3 Q The monster was from fear of abandonment from his
4 childhood issues with his mommy? It was that child inside
5 of him that still had those issues that was carrying over
6 into his adult life, that was the monster, correct?

7 A Correct.

8 Q And he understood that?

9 A He stated that he did.

10 Q In some of the counseling notes that Mr. Young went
11 through, let me revisit a few of them. August -- no, June
12 28th of 2012, do you see that one?

13 A I do.

14 Q And he told you that Amber drove seven hours to
15 Mississippi to get the kids, correct?

16 A Correct.

17 Q So he represented to you that Amber drove all the way
18 to Mississippi to try to get the kids?

19 A Correct.

20 Q The kids were not in South Carolina, the kids were in
21 Mississippi with his grandparents -- or with their
22 grandparents, isn't that correct?

23 A Right.

24 Q And that Tim's dad showed her the door?

25 A Right.

1 Q He was proud about that, wasn't he?

2 A He was.

3 Q Because he didn't want Amber to have the children,
4 did he?

5 A He did not feel like that was a safe situation for
6 them.

7 Q He told you that he didn't think it was a safe
8 situation. My question was he wanted -- he did not want
9 her to have the children, isn't that true?

10 A That is true.

11 Q August 21st of 2012, Dr. Hames, if you'd turn to your
12 notes. Are you there now, ma'am?

13 A You said August 21st?

14 Q 21st, yes, ma'am.

15 A Okay.

16 Q He says that he is going to try to retract Amber's
17 right as a parent, isn't that correct?

18 A He did say that.

19 Q Did he tell you that was a goal of his?

20 A He said he wanted to space out, I think, the final
21 hearing for the divorce and the custody so that he could
22 revoke her parental rights since they hadn't had her
23 contact them at all.

24 Q I'm sorry, the last part again, Doctor?

25 A He said he was trying to space -- space it out, the

1 final hearing for six months so that he could revoke her
2 parental rights since they hadn't had her contact them.

3 Q And she hadn't -- your understanding was that she had
4 not contacted them because he had taken the children to
5 Mississippi and when she tried to go see them, she was
6 turned away? Is that your understanding?

7 A That is.

8 Q September 18th of 2012, he told you that sometimes he
9 has a short fuse, correct?

10 A He did.

11 Q He has anger issues?

12 A Correct.

13 Q January 15th of 2013, he tells you the monster is
14 gone, correct?

15 A He did.

16 Q After that time, did he ever tell you that the
17 monster came back? Because that wasn't the last session.

18 A It was not the last session and I do not recall. I
19 didn't write in my notes that he said the monster came
20 back and I don't have a recollection of him saying that
21 either.

22 Q Now, Doctor, you, because of your degree and your
23 licensing, can diagnosis people, correct?

24 A Correct.

25 Q Let me go through the key features of schizophrenia

1 with you, all right? Delusions, would you explain to the
2 jury what a delusion is?

3 MR. YOUNG: Your Honor, I'm going to object. It's
4 beyond the scope and she hasn't been qualified.

5 MR. GRAHAM: Your Honor, this is cross-examination.
6 If he wants me to qualify her as an expert, I'll be glad
7 to.

8 THE COURT: You may qualify her as an expert, if you
9 like.

10 Q Dr. Hames, would you please state your training,
11 background and education and experience?

12 A Sure. I have my undergraduate from the University of
13 South Carolina Honors College. It is in -- it's a
14 Bachelor of Arts. I have a Masters of Science from East
15 Carolina University in Greenville, North Carolina. It is
16 in music therapy. I had to take the prerequisites for the
17 Doctorate in Marriage and Family Therapy in my -- to
18 qualify for the doctoral program, so I also took all of
19 the prerequisites, which meant I took the classes for a
20 Masters in Marriage and Family Therapy. I have my
21 Doctorate in Medical and Marriage and Family Therapy, a
22 speciality in child development and family relations. And
23 my specific specialty is how medical issues impact
24 individuals, couples and families and systems. My
25 dissertation was on the bio-psychosocial spiritual

1 implications of management of disease in ethnic minority
2 women. That is the majority of my education. I'm
3 licensed as a marriage and family therapist in the State
4 of South Carolina. I have served on professional boards
5 with the North American Society of Adlerian Psychology. I
6 have studied adlerian psychology overseas in the
7 Netherlands for a summer. And that would be my major
8 theoretical orientation. I taught at East Carolina
9 University in the department of family medicine in the
10 research division. It was a split position where I was
11 faculty as a clinician and also as a professor, both a
12 research professor and a professor that taught bedside
13 manner to early medical students, interviewing. We used
14 standardized patients. And we did co-located care where
15 we would -- I had clinic hours there, but also I would
16 work in the clinic with the medical students while they
17 were learning to be doctors. If something came up that
18 was a psychosocial spiritual issue, I would come in and be
19 part of the treatment team for a family medical home.

20 Q Are you familiar with the DSM-5?

21 A I am.

22 Q As part of your training, education and experience,
23 are you licensed and able to make clinical diagnoses?

24 A I am.

25 MR. GRAHAM: Your Honor, the State would offer her as

1 an expert in marriage and family therapy as a licensed
2 marriage and family therapist with the ability to
3 diagnose.

4 THE COURT: Any voir dire?

5 MR. YOUNG: No voir dire, Your Honor.

6 THE COURT: Okay. Dr. Hames is now qualified as an
7 expert in the field of marriage and family counseling with
8 the ability to make opinions in that field of expertise
9 because of her training, education and experience.

10 MR. GRAHAM: Thank you, Your Honor.

11 Q Dr. Hames, your diagnosis was a nonpsychotic disorder
12 and then moderate depression --

13 A Correct.

14 Q -- correct? The key -- you agree with me that one of
15 the key components of schizophrenia is delusion, correct?

16 A Correct. It is my understanding that it is not
17 always present. It's not a disqualifier.

18 Q Would you explain to the jury in general terms what a
19 delusion is?

20 A A delusion is a belief in something that is not based
21 in reality.

22 Q So if I said it was a fixed, long-term, false belief,
23 is that a definition of a delusion?

24 A Sure.

25 Q During the time that you -- the 14 plus hours that

1 you spent with Tim Jones, did he ever present any
2 delusions to you in anything he said?

3 A From when I was caring for him from May the 3rd of
4 2012, to March the 28th of 2013, he did not.

5 Q So he never told you about it and you never saw
6 anything to indicate it, correct?

7 A Correct.

8 Q Because if you did, you would have referred him out
9 to somebody to deal with that?

10 A Correct.

11 Q In addition to delusions, another possible key
12 feature is hallucinations, correct?

13 A Correct.

14 Q And that could be -- a hallucination could be any of
15 the five senses, I think?

16 A Correct.

17 Q So would you tell the jury what hallucinations are?

18 A Hallucination would be hearing, seeing, smelling,
19 feeling, sensing something that is not there, is not real.
20 It's very real to the person that is experiencing that,
21 but it wouldn't be real to the rest of us.

22 Q Tim Jones never told you that he was having
23 hallucinations?

24 A He did not.

25 Q He never presented in any kind of discussion with you

1 about having any type of hallucination, did he?

2 A He didn't.

3 Q If he would have, you would have referred him out for
4 further treatment?

5 A I would have. That would not have been something I
6 would have felt comfortable with treating on my own
7 because of the medication needs.

8 Q And the 14 and a half -- I'm sorry, the 14 plus hours
9 that you spent with him over those months, did you ever
10 notice that he had disorganized thinking or disorganized
11 speech?

12 A I did not notice any disorganized speech. I did
13 notice disorganized thoughts, but those disorganized
14 thoughts were very consistent with the situational issues
15 that he was facing at the time. I think maybe I will give
16 Amber another chance. No, I don't know. I'm not sure.
17 Maybe it's best for the kids. The disorganization seemed
18 to be appropriate to the time and place.

19 Q Did you notice any grossly disorganized or abnormal
20 motor behavior?

21 A I did not.

22 Q Those are the key components of schizophrenia, isn't
23 that correct?

24 A That is correct.

25 Q There are also some negative symptoms, isn't that

1 true?

2 A Yes. We just went over the positive symptoms.

3 Q The two negative symptoms particularly prominent in
4 schizophrenia are diminished emotional expression -- what
5 is diminished emotional expression?

6 A More of the flat expression, not the ability to
7 emote. The way I would describe it -- or the way I do to
8 couples or families or individuals is that it's kind of
9 like bumper bowling. You have the bumpers on each side
10 and you can have some fluctuation, but you're never going
11 to go in the gutter over in the highs, you know, the more
12 ups and you're not going to go into the gutter in the
13 lows, just going to be bumper bowling.

14 Q You would agree with me that during your 14 plus
15 hours of counseling session over all those months, he
16 didn't have a flat affect, did he?

17 A He did not.

18 Q In fact, he had the highs and the lows, didn't he?

19 A He had highs and lows that seemed appropriate to time
20 and place.

21 Q Appropriate to his marital problems and the
22 infidelity and divorce?

23 A And caring for those kids, yes.

24 Q The other negative symptom besides diminished
25 emotional expression, the flat affect, was also something

1 called, and I'm going to pronounce it wrong, avolition,
2 A-V-O-L-I-T-I-O-N. That's a -- my understanding is that's
3 a decrease in motivated self-initiated purposeful
4 activities. Is that correct?

5 A Correct.

6 Q Did he give you any indication about that?

7 A He didn't. In fact, I would say it was the opposite
8 of that. He started -- you know, once the stimulus, the
9 monster was gone, he started working out. He was doing
10 P90X. One -- another Tim quote was he said he was going
11 for a Vin Diesel. He was getting -- he was working out.
12 He was starting to have some muscle definition. He was
13 going out of town to see relatives and seemed active in
14 church. I would not say there was a presence or an
15 absence -- I would not say he was avolition.

16 Q You prepared an affidavit for him, didn't you?

17 A I did.

18 Q And tell the jury how that came about. Why did you
19 prepare an affidavit for him?

20 A He came in after the session on June 21st, I think it
21 was June 28th, and stated that he had contacted an
22 attorney and he was going to try to get an emergency
23 hearing to get custody of the children. And he asked if I
24 would endorse him having the children.

25 Q So he told you that there was an emergency custody

1 hearing and he asked you to do an affidavit in support of
2 him gaining custody, correct?

3 A Correct.

4 Q So it's your understanding that Amber wanted custody
5 because he needed something to support his claim?

6 A It seemed more that -- nothing he told me ever
7 suggested that she did want custody in the legal sense of
8 trying to get custody of the children. He had put
9 together a plan and wanted to make sure he did all the
10 things he needed to do to make sure he had the children.

11 Q So if there was something he wanted, he would make a
12 detailed plan to get there?

13 A Yes.

14 Q Very smart?

15 A Like, going to school, having multiple jobs, a
16 father.

17 Q Now, when you wrote this affidavit, like I said at
18 the beginning, all you knew is what he had told you,
19 correct?

20 A Correct.

21 Q So if he had had a criminal past, he didn't tell you
22 about it, correct?

23 A He did not.

24 Q If he had used drugs in the past or were using them
25 at the time, he didn't tell you that, did he?

1 A He did not.

2 Q So all you knew is what he told you?

3 A Correct.

4 Q Let me hand you Defendant's Exhibit 134 that's in
5 evidence. Is that the affidavit that you wrote?

6 A It is.

7 Q If he would have told you that he was hearing voices
8 and having delusions and any other type of major mental
9 illness, would you have written this affidavit?

10 A I would not.

11 Q You didn't see sign of anything other than what you
12 diagnosed with, which was, at the beginning, nonpsychotic
13 and then, eventually, moderate depression?

14 A Correct.

15 Q Going to the second paragraph, go ahead and if you
16 would read that second paragraph.

17 A Starting here?

18 Q Yes.

19 A I have an ongoing and professional relationship with
20 Mr. Timothy Jones. He established care with me as his
21 marriage and family therapist on May 3rd, 2012. At that
22 time, Mr. Jones presented with concerns about his marital
23 relationship and family life. His wife, Amber
24 Jones, was aware of his visits with me and, according to
25 Mr. Jones, he asked her to accompany him to work on issues

1 of trust and parenting.

2 Q She never came, is that correct?

3 A Correct.

4 Q Whether he asked her or not, we don't know, we just
5 know what he told you?

6 A Correct.

7 Q If you would go to the next page.

8 A (Witness complies.)

9 Q If you would go to the part where it says "in my
10 professional opinion" and read from there to the end.

11 A In my professional opinion, Mr. Jones is a highly
12 intelligent, responsible father who is capable of caring
13 for his children as the sole custodial parent. He is no
14 stranger to responsibility as he worked his way through a
15 very demanding and challenging undergraduate engineering
16 program while being a father, husband and employee of
17 often more than one job. His thoughts are very detailed,
18 action oriented and focused on his children. This has
19 been the pattern I have observed since the onset of our
20 therapeutic relationship. When Mr. Jones sees an
21 obstacle, he sets his sights on a solution and is willing
22 to go through the often difficult process of achieving his
23 goal of resolution.

24 Q And that's the Tim Jones you knew or you wouldn't
25 have written the affidavit?

1 A Correct.

2 MR. GRAHAM: Thank you, Doctor.

3 THE COURT: Mr. Young.

4 REDIRECT EXAMINATION

5 BY MR. YOUNG:

6 Q Dr. Hames, you haven't reviewed the scans of Tim's
7 brain injury in this case, have you?

8 A I haven't.

9 Q Is it possible that traumatic brain injuries cause
10 changes in people's personality?

11 MR. GRAHAM: Objection, leading.

12 THE COURT: Sustained as to leading. Rephrase.

13 MR. YOUNG: Is it? Your Honor, I didn't suggest the
14 answer.

15 THE COURT: Ask it again. Let me hear it again.

16 MR. YOUNG: Sure.

17 Q Is it possible that traumatic brain injuries cause
18 personality changes in people?

19 THE COURT: That's fair. You can answer.

20 A It is possible, yes. I will tell you that I am not
21 the medical doctor and I don't know that it's going to be
22 in the scope of my practice to speak to anything about
23 traumatic brain injuries.

24 Q Fair enough. Going back to your notes one more time.
25 On February the 12th of 2013 -- and I'm looking at the

1 third line down, did Tim talk about Amber?

2 A That she wanted to get back together.

3 Q What were they talking about?

4 A They talked about that there had to be a paternity
5 test on the fifth child and they found out that the child
6 was Tim's. Tim shared with me that --

7 MR. GRAHAM: I'm going to object. This is beyond the
8 scope of my cross.

9 MR. YOUNG: His cross was Tim was trying to keep the
10 kids from Amber if he and Amber --

11 THE COURT: I think it's relevant. She can go.

12 A He felt that she had been influenced by the mother of
13 the person that she had the alleged affair with and that
14 the parents of that gentleman had hoped to collect and
15 have -- get money from him based on his career. That she
16 had started taking pain pills and she had a lot of pain in
17 her body. If I remember, it was from a lot of -- having a
18 lot of children. And he said he realized he had not been
19 a good husband to her, that he saw it in the past and that
20 he yelled at her a lot. He went to visit her mom. He
21 described the way the mom was living at the time. And he
22 felt very conflicted. He wanted the children to live in a
23 two-parent home. And he was trying to apply some logic to
24 counterbalance his heart and the feelings of whether or
25 not she could show him she was a new person and that --

1 you know, they kind of had a little bit of negotiation and
2 she agreed to -- if they got back together that she would
3 clean the house and do more work with the children. He
4 shared with me that she had come clean about anything the
5 kids had asked her about and that she wanted to be honest
6 and loyal. And some accountability that he set up to make
7 sure she did that was that he thought it would help her if
8 she could be in constant contact with her cousins and her
9 grandmother. He started letting them, the kids talk on
10 the phone with her.

11 Q And was he talking on the phone with her?

12 A He -- based on what he was sharing about the
13 discussions, I assumed so.

14 Q And what did he say about how he felt about her in
15 his heart?

16 A He wanted to be with her.

17 Q You met with him one final time on the 28th, March
18 the 28th of 2013?

19 A Yes, sir.

20 Q And what, if anything, did he tell you about them
21 getting back together?

22 A She continued to say she wanted to get back together
23 and he says he called her bluff. He told her to pack her
24 bags and she backed out.

25 Q Dr. Hames, hypothetically, if someone has a relative

1 who's been institutionalized with schizophrenia and they
2 know that if they tell somebody that they're hearing
3 voices and that they're delusional, then that can result
4 in long-term institutionalization, is it possible --

5 MR. GRAHAM: Objection, Your Honor, inappropriate.

6 MR. YOUNG: She's been declared an expert.
7 Hypothetical's are absolutely appropriate.

8 THE COURT: In family and marriage counseling.

9 MR. GRAHAM: It's again beyond the scope.

10 MR. YOUNG: He went through the DSM-5 about
11 schizophrenia and what the possible symptoms are, Your
12 Honor. He declared her an expert and he went through --

13 THE COURT: She made a very clear point that she was
14 not a medical doctor and did not feel comfortable treating
15 those type things, I thought.

16 MR. YOUNG: I'm asking as a hypothetical that
17 somebody mask symptoms of schizophrenia when they know
18 what --

19 MR. GRAHAM: Your Honor, can we come to the side bar,
20 please?

21 THE COURT: I think so.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Go ahead.

1 BY MR. YOUNG:

2 Q Dr. Hames, hypothetically, is it possible for
3 somebody to mask the signs of schizophrenia?

4 A I think it would depend on the severity of the
5 symptoms, the delusions, the hallucinations, but yes, to a
6 certain extent, you can mask them.

7 MR. YOUNG: Thank you, Dr. Hames.

8 RECROSS-EXAMINATION

9 BY MR. GRAHAM:

10 Q And, Doctor, you would agree with me that people can
11 fake symptoms of schizophrenia, too, wouldn't you?

12 A Yes.

13 MR. GRAHAM: Thank you.

14 THE COURT: All right. Travel safe. You need a
15 break? You want a break? No? All right, call your
16 witness.

17 MR. YOUNG: Your Honor, at this time, we would
18 request to publish the video of Cynthia Turner.

19 MR. HUBBARD: Your Honor, we're going to have to take
20 that one up.

21 THE COURT: Okay. How long is the video?

22 MR. YOUNG: About 16, about 30--

23 THE COURT: About 30 minutes?

24 MR. YOUNG: Yes, sir.

25 THE COURT: All right. A video I haven't seen, may

1 have to review, 30 minutes, I'm going to send y'all home.
2 See you in the morning. Don't talk about the case, put
3 your stuff in the jury room. See you in the morning same
4 time as normal.

5 (WHEREUPON, the jury is excused from the courtroom
6 for the day.)

7 THE COURT: All right. Give me the summary of --
8 make sure I know what this is. This is his mother?

9 MR. YOUNG: Yes, sir. This is his mother. We went
10 to -- Your Honor signed a material witness out-of-state
11 court order for her attendance here in South Carolina as
12 part of this trial. And that was on the 1st of April of
13 2019. We approached Ms. Turner at the place where she
14 lives and she agreed to waive a hearing in New York, and
15 that was on April the 17th, and agreed to come to South
16 Carolina. The facility where she's at then interjected
17 and said they wanted to challenge her waiver in agreeing
18 to come to South Carolina and that they would not allow
19 anybody to accompany her to South Carolina and that she
20 was not able to go to South Carolina on her own
21 unescorted. There was an emergency hearing held in New
22 York on the 8th of May, 2019. And at that time, it was
23 ordered that a videotape testimony be taken of Cynthia
24 Turner because she would not be allowed to leave the
25 State. And we made the State aware of the video being,

1 taking place. They did not participate. And we took the
2 video, I believe, it was later that same day, the 8th or
3 was it the next day.

4 THE COURT: And the Solicitor -- have you seen the
5 video?

6 MR. YOUNG: The video was taken on the 10th, Your
7 Honor.

8 MR. HUBBARD: I have not. Your Honor, this -- it was
9 done during jury selection. We've got multiple issues
10 with this. No expert has relied on this because it was
11 done during jury selection. We had already pulled our
12 pool, called the case. They've already gone over her
13 diagnosis with the expert before Dr. Hames. It was Dr.
14 Agharkar, I think that's how you pronounce it. They've
15 already gotten in she has schizophrenia. I think they
16 mentioned it in their opening. They've covered that.
17 Again, no one has relied on this video for a diagnosis on
18 Mr. Jones. We don't have any problem stipulating whatever
19 problems she has. But, Your Honor, to me, to put up a
20 video where she's interviewed, the State's not there, the
21 Court's not there, it's just making a spectacle of this
22 woman. It's to elicit sympathy. It does nothing to help
23 the jury as finders of fact to determine whether the
24 Defendant was insane at the time he killed his children.
25 She's not a material witness. And, frankly, Judge, she's

1 not even a competent witness. That's why they wouldn't
2 release her. Because you couldn't even put her on the
3 stand if she came down here because of her diagnosis. She
4 can't even testify.

5 THE COURT: What's it going to be relevant to?

6 MR. YOUNG: I apologize, I cut the Court off.

7 THE COURT: What's her testimony relevant to?

8 MR. YOUNG: It's relevant to Tim's diagnosis and it
9 was relied -- reviewed and relied upon and testified to by
10 Dr. Agharkar.

11 THE COURT: I don't remember him saying he relied on
12 it. No, he relied on being told by someone of her
13 diagnosis, but not that video.

14 MR. YOUNG: No, sir, he testified that he had watched
15 the video and his impressions from that video and how they
16 related to his diagnosis of Tim.

17 MR. HUBBARD: Your Honor, my response to that is you
18 heard the Doctor. He had already issued a report in 2018
19 and that report didn't change. He diagnosed the Defendant
20 after three and a half hours of talking to him and then
21 listening to basically hearsay, self-reported information
22 about the Defendant that he had schizophrenia. This video
23 had zero impact. It did not change his diagnosis. He
24 already had it, zero relevance. And it puts the State --
25 what do we do, cross her? And even if she's here, I

1 couldn't cross her. She's not competent. How do I cross
2 somebody --

3 THE COURT: I understand your concerns.

4 MR. YOUNG: I don't think she's ever been declared
5 incompetent. And the State elected to not go or submit
6 any questions or attend by video, all of which they were
7 aware of at the time this video was taken.

8 MR. HUBBARD: While we were striking a jury.

9 THE COURT: I mean, that's really -- how could they?

10 MR. YOUNG: They could have opened up this laptop,
11 gone on Skype and said --

12 THE COURT: Okay, I am not--

13 MR. YOUNG: -- or they could have submitted
14 questions, here's some questions that we want to ask.

15 MR. HUBBARD: I have no problem if they make it a
16 Court's Exhibit for whatever purpose they want.

17 MR. YOUNG: It's up to the jury to decide. This is
18 his mother. There's been a lot of -- there's been
19 testimony about the inheritable nature of schizophrenia,
20 the disease. This is her video. This is a video of her
21 and how she is. It's not a sideshow. It's his mother.
22 It's relevant to determination about the credibility of
23 the experts. It's relevant to a determination as to his
24 mental health. And it's relevant, ultimately, to a
25 determination of whether or not he is or is not, not

1 guilty by reason of insanity.

2 MR. HUBBARD: Your Honor --

3 THE COURT: I'll review the video in-chambers and
4 make a decision. I don't know -- I think I've got to
5 watch it first before I can make a decision. I don't want
6 to watch it -- a case says you can't do that, you have got
7 to do it.

8 MR. HUBBARD: I will say this, Your Honor. Every
9 expert has conceded -- no one has contested she is
10 severely mentally ill, schizophrenia. That's already out
11 there. I don't have any problem with that because it's a
12 fact.

13 THE COURT: Let me look at the video. I'll look at
14 it. It will be marked Court's Exhibit what, Joy?

15 COURT REPORTER: The next one is 90.

16 (WHEREUPON, Court's Exhibit number 90 was marked for
17 identification only.)

18 MR. YOUNG: Your Honor, I'd also like to make part of
19 the record the Court order --

20 THE COURT: Wait a minute. Wait a minute.

21 MR. YOUNG: Sorry.

22 THE COURT: Now, you were wanting to make a record of
23 something else?

24 MR. YOUNG: Yes, Your Honor. I was going to pass a
25 copy of the order from New York in which the video was

1 ordered and it was, there was never any finding as to her
2 being not competent.

3 THE COURT: Okay. That will be Court's Exhibit 91.

4 (WHEREUPON, Court's Exhibit number 91 was marked for
5 identification only.)

6 THE COURT: I'm going to watch the video. We can
7 stand down until in the morning.

8 MR. HUBBARD: Thank you, Your Honor.

9 MR. YOUNG: Thank you.

10 (Whereupon, the trial will resume the next day.)

11 May 24, 2019.

12 THE COURT: Mr. Young.

13 MR. YOUNG: One thing before we get started,
14 yesterday, it came to my attention after court that there
15 was a Juror who was on the elevator. She did not have her
16 Juror badge on. When escorted, she was on the elevator
17 with my paralegal, Ms. Mulligreen. They exchanged
18 pleasantries, I like your dress, I like your dress, too,
19 how you doing, doing okay and got off. Ms. Mullingreen
20 then saw the dress in the jury box that afternoon and said
21 oh, no, I was on the elevator with a Juror. I had
22 contact. It was -- I believe we identified the Juror as
23 Ms. Applegate.

24 THE COURT: She's the blonde?

25 MR. YOUNG: Yes, sir.

1 THE COURT: Sits in the back left most of the time?

2 MR. YOUNG: Yes, sir. If the State wants to address
3 that in any way.

4 THE COURT: Solicitor, you hear that?

5 MR. HUBBARD: Yes, sir, I did.

6 THE COURT: Any issue with that?

7 MR. HUBBARD: No, sir.

8 THE COURT: It sounds an appropriate pleasant
9 exchange and that was it.

10 MR. YOUNG: It was. The more concerning thing is
11 there was a Juror without a badge in the --

12 THE COURT: Courthouse.

13 MR. YOUNG: -- front elevators unescorted.

14 THE COURT: I'll address that with my SLED team. I
15 agree with you.

16 MR. YOUNG: I don't know if Your Honor has made a
17 final decision with regard to the video of Ms. Turner. At
18 this time, we would request that we go ahead and call --
19 be allowed to call Dr. Bigler first and then address the--

20 THE COURT: Okay.

21 MR. YOUNG: -- video issue.

22 THE COURT: And I watched the video. You want me to
23 give you my take on that?

24 MR. HUBBARD: You can just go ahead and rule on that
25 so we know where we're going.

1 THE COURT: I watched the video. It's 29 minutes and
2 change. And I took notes as I watched it. It appears to
3 me she's institutionalized. She was -- I don't know if
4 she's medicated or not, it looked like it to me.

5 MR. YOUNG: She is.

6 THE COURT: Most of her answers were I'm not sure, I
7 don't know.

8 MR. YOUNG: Right.

9 THE COURT: I found it interesting at the very end
10 that she did not know what sex Tim's children were. How
11 many of each does he have, how many has he got, what are
12 they. I don't believe her, 29-minute questioning of her
13 growing up, her parents, her marriage to Tim, Sr. -- she's
14 had little interaction with Tim. The history given to all
15 the medical professionals were consistent with she's
16 institutionalized and she suffers from the condition she
17 suffers from. That's relevant information for them to
18 form an opinion as to Tim, I don't believe that's relevant
19 information for the jury to form an opinion seeing her
20 condition as it was.

21 MR. YOUNG: As it is.

22 THE COURT: Pardon?

23 MR. YOUNG: As it currently is.

24 THE COURT: As it currently is. Because she
25 didn't -- as I understand the medical history and the

1 questioning with her, they're asking, you love Tim? Yeah,
2 nice kid. I just don't see how that's relevant to his
3 defense. It's relevant to the medical folks that are
4 forming opinions as to his condition, but not to this
5 trial. I don't think that's relevant to show the jury to
6 make their determination whether he understood the legal
7 difference, morally right, legally right, morally wrong.
8 Showing her current state, I don't see it.

9 MR. YOUNG: Well, Your Honor, the Defense's position
10 is this is an apple and tree. The apple doesn't fall far
11 from the tree. She is --

12 THE COURT: But she looks so different than Mr. Jones
13 sitting in my presence right now and his interaction with
14 the Court. They're vastly different. I think it's
15 misleading, her condition compared to his condition.
16 Anybody that testifies medically can say they've seen her
17 history or were told her history. I don't believe -- no
18 one has challenged the idea that she is institutionalized
19 and suffers from severe mental issues. I mean, it's
20 almost a given, so -- but I don't see her video of 29
21 minutes of being relevant to the jury to see to make their
22 determination of whether he was legally and morally right
23 or morally wrong. The definition for criminal
24 responsibility, I don't see that is relevant for the
25 jury's determination on that issue.

1 MR. YOUNG: I understand. And Your Honor has ruled
2 we can't play the video to the jury during our
3 case-in-chief?

4 THE COURT: Correct.

5 MR. YOUNG: Now, just to make sure that the record is
6 complete, of course, that video was watched and referenced
7 during Dr. Agharkar's testimony --

8 THE COURT: Absolutely.

9 MR. YOUNG: -- and other experts have viewed the
10 video and find it -- and are prepared to testify as to how
11 it's relevant to --

12 THE COURT: To their opinion.

13 MR. YOUNG: -- to their opinion.

14 THE COURT: Absolutely. It can be referenced.

15 MR. YOUNG: And to deny the jury the opportunity to
16 see it would ask the jury to form decisions about the
17 credibility of these experts who are using it as part of
18 their opinion without the benefit of seeing it themselves.

19 THE COURT: Well, if the State were challenging that
20 factor you based it on her, and she's really not that
21 sick. If they were making any reference that way, I'd
22 probably let you play it, but they're not doing that. The
23 State has not challenged that at all.

24 MR. YOUNG: They challenged the conclusion. They
25 challenge the finding that he's mentally ill. I mean --

1 THE COURT: That's fine. But her being mentally ill
2 is not being challenged. That's why I disagree with you.
3 The professionals can use -- Dr. Agharkar had a list of
4 things that he considered. It was several pages long,
5 single-spaced. I didn't even count the number, numerous
6 things. If this was the only thing he considered, sure,
7 maybe. He considered a whole medical history, interviews,
8 evidence, everything. So I do not believe that video is
9 the sole lynchpin of their determination and opinion of
10 Mr. Jones, the Defendant here.

11 MR. YOUNG: I understand the Court's ruling and I'm
12 not trying to argue against the Court's ruling, I just
13 want to make sure that I put on the record that under the
14 heightened reliability standards necessary in death
15 penalty cases that denying Mr. Jones the opportunity to
16 play an interview of his mother based on relevance would
17 deny Mr. Jones' right to a fair trial under the Fifth,
18 Sixth, Fourteenth Amendments of the Constitution and his
19 right to present a full and fair defense.

20 THE COURT: Okay. I understand your motions -- or
21 request and I've made my ruling. It is marked as Court's
22 Exhibit what, Joy?

23 COURT REPORTER: It is number 90.

24 THE COURT: Court's Exhibit 90. It is there still in
25 the envelope.

1 THE COURT: All right. Are we ready for the jury?

2 MR. HUBBARD: One other thing. I'm not exactly sure
3 what their game plan will be and, obviously, they don't
4 have to tell me or tell us. I know at some point, they
5 have a mitigation expert, social worker, Deborah Grey. I
6 would ask that -- I met -- I will -- we will have an issue
7 with her testimony should they want to put her up. And I
8 will just ask when they think they might do that, if we
9 have enough leeway, so we don't bring the jury out, they
10 call the witness just for me to say Judge, we have a
11 matter. Knowing that we're going to have an issue with
12 that, that we take it up on the front end before we --

13 THE COURT: Is that the social --

14 MR. HUBBARD: Yes.

15 THE COURT: -- history thing? And before you came
16 in, I was handed a memo like they've done to put in the
17 book and I think Mr. Young's anticipating it will be next
18 week sometime, not today.

19 MR. YOUNG: Not today.

20 THE COURT: So she's not going to testify today, so
21 we can take it up then.

22 MR. HUBBARD: Yes, sir.

23 THE COURT: I agree with you, we'll take it up before
24 we get the jury in and out.

25 MR. HUBBARD: Yes, sir.

1 MR. YOUNG: I think I'm good.

2 THE COURT: All right. Bring in the jury.

3 MR. YOUNG: Just so the Court and the State are
4 aware, there are a couple things that Dr. Bigler has to
5 show to the jury that we'll do on the screen, but it will
6 require him to come down to the podium.

7 THE COURT: I don't mind witnesses moving around at
8 all. I kind of like it myself because I like to move
9 around.

10 (Whereupon, the jury came into open court at
11 approximately 9:05 a.m.)

12 THE COURT: Good morning. Y'all be aware that in the
13 Court House those Juror buttons really help everybody else
14 to know to keep arms length with you. These people in
15 here they know not to try to communicate with you. The
16 media knows not to communicate with you. Other people may
17 not. Those buttons are good warning signs for them.
18 Because I have instructed, y'all be careful with the jury,
19 be mindful of them because there is a lot going on. Those
20 are helpful to security, deputies, SLED team because I
21 don't want people interacting with, inadvertently because
22 you never know. I want y'all to be insulated from outside
23 influence as best we can. I keep going over that because
24 I want y'all to decide the case what we hear in the
25 courtroom and not what we see elsewhere. So, with that in

1 mind be mindful of your buttons and people interacting
2 with you. Y'all ready to start?

3 MR. YOUNG: Yes, sir.

4 THE COURT: Call your witness.

5 MR. YOUNG: Your Honor, the Defense calls Erin
6 Bigler.

7 ERIN BIGLER, being
8 first duly sworn, testified as follows:

9 THE CLERK: Have a seat up there, sir. Once you're
10 seated, state your full name, spelling your last, please.

11 THE WITNESS: So my name is Erin, E-R-I-N, David
12 Bigler, B-I-G-L-E-R.

13 DIRECT EXAMINATION

14 BY MR. YOUNG:

15 Q Dr. Bigler, can you tell the jury a little bit about
16 yourself? Where do you work, what do you do?

17 A Sure. This last year, I retired from Brigham Young
18 University where I was Professor of Psychology and
19 Neuroscience and Director of the Magnetic Resonance
20 Imaging research facility there. I still maintain my
21 Adjunct appointments at the University of Utah in
22 psychiatry and neurology. I am a clinical
23 neuropsychologist, that is a psychologist who focuses on
24 understanding brain and behavior relationships. And I
25 have a particular background in looking at brain imaging

1 methods and how to utilize those findings to relate to the
2 behavior of the individual.

3 Q Have you published any articles in this area of
4 looking at brain scans?

5 A Yes. I was a professor for 43 years and directed a
6 large research laboratory. And I also directed the
7 Clinical Neuropsychology Training Subspecialty Program at
8 the University and oversaw the neuropsychology clinical
9 service there. And during that period of time, I was very
10 involved in research and publishing. I've edited or
11 written 13 textbooks and over 380 peer-reviewed articles
12 in this area.

13 Q Have you testified as an expert in courts before?

14 A Yes, I have.

15 Q Do you know about how many times?

16 A Several hundred.

17 MR. YOUNG: Your Honor, at this time, the Defense
18 would offer Dr. Bigler as an expert in neuropsychology.

19 THE COURT: Any voir dire?

20 MR. HUBBARD: No, sir.

21 THE COURT: No voir dire. Dr. Bigler is offered as
22 an expert in the field of neuropsychology and he may offer
23 opinions in that field.

24 Q Dr. Bigler, I'm going to show you what's been marked
25 for ID as Defense Exhibit number 136 and ask if you

1 recognize that.

2 (Whereupon, Defendant's Exhibit 136 was marked for
3 identification only.)

4 A Yes.

5 Q And what is that?

6 A It's referred to as a curriculum vitae, a resume. It
7 summarizes my professional background.

8 MR. YOUNG: At this time, we would offer Dr. Bigler's
9 CV as Defense 136 into evidence.

10 MR. HUBBARD: Your Honor, I think consistent with
11 your prior ruling --

12 THE COURT: So y'all understand, the CV, the resume,
13 all experts have that to show their work history, their
14 education, their background, their publications. The
15 witness here, he can be asked questions about anything
16 he's done. That, to me, is the more appropriate way
17 rather than seeing a copy of his resume. He's here, ask
18 him. So he's qualified. I've reviewed that, so he's
19 qualified to offer opinions for your consideration. So
20 continue on, Mr. Young.

21 Q Dr. Bigler, are you being paid for your time here
22 today?

23 A Yes.

24 Q And how much are you being paid?

25 A \$275 an hour.

1 Q And do you know how much you've billed towards the
2 Tim Jones case so far?

3 A Around \$5,000.00 dollars.

4 Q And how long have you been involved in the Tim Jones
5 case?

6 A Over the last year.

7 Q Does -- are you paid to render a certain opinion or
8 are you paid for your time?

9 A I'm paid for my time.

10 Q Does the fact that you are paid for your time affect
11 your opinion?

12 A No.

13 MR. HUBBARD: Objection, bolstering, Your Honor.

14 THE COURT: I don't think so. He can go -- to that
15 extent, it's allowed.

16 Q So in, I think it was early 2018, late 2017, how did
17 you become involved in the Tim Jones case?

18 A So Dr. Agharkar contacted me and asked if I would
19 review the brain imaging. As I indicated, as a clinical
20 neuropsychologist and professor and director of MRI
21 Research Center, we have developed a variety of techniques
22 to analyze brain scans. And one of those techniques is
23 what's called the volumetric analysis and the
24 three-dimensional image analysis of the brain. The basic
25 premise is that the brain is the master organ of behavior.

1 And so if you're going to look at behavior and you want to
2 know what is driving that behavior, you want to understand
3 the brain as best you can. And we can do that with brain
4 imaging now. And so Dr. Agharkar asked that we apply
5 these imaging methods that we developed to analyze the
6 scans. But the moment that I looked at Mr. Jones' scan, I
7 could tell that there was a significant traumatic brain
8 injury and that he had a skull defect. And that's when I
9 called Dr. Agharkar and said we need to have a
10 neuroradiologist involved in Mr. Jones' case as well to
11 look at this because it appears that there's an old
12 depressed skull fracture and there are these abnormalities
13 that are clearly evident in the imaging. These are the
14 type of abnormalities that I spent my career in analyzing
15 and studying and showing objectively how these
16 abnormalities occur in imaging and how they, in turn,
17 relate to behavior of the individual.

18 Q I'm going to show you what's been marked as Defense
19 Exhibit number 135 for identification.

20 A Yes.

21 Q Do you recognize that?

22 A I do.

23 Q And what is that?

24 A This is what's the original magnetic resonance
25 imaging files that we used for performing image analysis.

1 MR. YOUNG: Your Honor, at this time, I'd offer
2 Defense Exhibit number 135 into evidence.

3 MR. HUBBARD: I believe it may be some stuff I
4 haven't seen, but I have no objection.

5 THE COURT: No objection.

6 (WHEREUPON, Defendant's Exhibit number 135 was
7 admitted into evidence.)

8 Q Now, that's the raw data, right?

9 A That is the raw data, correct.

10 Q So when you got that and after Dr. Snyder had
11 provided you with his findings from -- as a
12 neuroradiologist, what did you do then?

13 A Well, actually, the first thing that I did is I
14 pulled -- this is what's called a DICOM, that's the
15 digital imaging communication in medicine file. And I
16 pulled up that file and there's what's called a 3D viewer.
17 I actually generated a movie of that and you can clearly
18 see the skull defect in that. And that's when I contacted
19 Dr. Agharkar and actually sent him those images. So this
20 is directly off of the MRI scan and you can see the skull
21 defect in the left frontal area of his head. This is
22 untouched. These are raw DICOM files put in 3D. And what
23 the 3D means is that each individual slice, which is like
24 a slab of the head, that is stacked on top of one another
25 and now you're looking at the surface of the head. And

1 this view right here, in particular, shows the defect in
2 the left frontal skull region.

3 Q What did you do after that?

4 A Well, after that, that's when Dr. Snyder was
5 contacted. And he rendered his neuroradiological opinions
6 and we also conducted our own three-dimensional image
7 analysis. And I generated a Powerpoint to share with you
8 what the straightforward defects abnormalities in Mr.
9 Jones' brain were. So if you wanted to go to the
10 Powerpoint, we could take a look at that and we could show
11 the jury what we're looking at.

12 Q Dr. Bigler, I'm going to give you the --

13 A The clicker.

14 Q -- clicker. And it also has a pointer on it, a laser
15 pointer at the top --

16 A The green?

17 Q Yes, sir.

18 A So maybe at this point, it would be good -- I brought
19 a skull, an actual human skull and a brain model and it
20 would probably be appropriate to --

21 Q If that would help you in explaining it to the jury,
22 please use those.

23 A Yes.

24 Q If you need to come down here to show those to the
25 jury, that's fine. Just keep your voice up --

1 A Will do.

2 Q -- so the Court Reporter can hear.

3 THE WITNESS: With your permission, Your Honor?

4 THE COURT: Sure. Absolutely.

5 A So this right here has been casted from an actual
6 adult brain and this is pretty much what the brain looks
7 like if you were to extract the brain at postmortem. A
8 couple of things to point out here. We have two
9 hemispheres, left hemisphere, right hemisphere. And there
10 is what's called a interhemispheric fissure, this line
11 that runs right down the middle. It's a fascinating
12 aspect of the brain. It helps understands what happens
13 when it's injured. I can remove that part of the
14 hemisphere and notice it separates. The two sides of the
15 brain are connected by this structure and we're going to
16 talk about this in just a little bit. This is called the
17 corpus callosum. The corpus callosum interconnects the
18 two hemispheres. They are not -- when I put this like so,
19 they are not connected here. You see I can pull that off.
20 They are connected to one another by this structure called
21 the corpus callosum. I can pull this apart here and take
22 out the corpus callosum and now we're looking at the
23 internal structures of the brain. I'm going to turn it
24 over here and I'm going to show you the base of the brain.
25 This is the brain of the frontal lobe here and this is the

1 base of the temporal lobe here. So frontal and temporal
2 areas of the brain. They are particularly vulnerable to
3 the affects of trauma because if I put this in this
4 plastic see-through bottle here, this is like the base of
5 the skull. And if you have a skull defect from trauma
6 where that skull has indented into the brain, you can see
7 where that defect is, it's going to injure the frontal
8 lobe and the temporal lobe. But there's another very
9 important aspect about trauma and injury. And that is if
10 you have an impact that's sufficient enough to produce
11 skull fractures and damage the brain in the left frontal
12 area, the mechanics of the movement of the brain -- and
13 the brain is very jello-like, it is going to potentially
14 injure the brain opposite of where the impact is. So the
15 impact, we call the coup injury, the direct trauma, and
16 the movement and distortion of the brain opposite of where
17 the trauma occurs is called the contrecoup. So injury
18 here and then, potentially, elsewhere in the brain. So
19 now, if we look at the skull here, and this is an actual
20 human skull. We take the skull cap off -- this is one of
21 the examples that I use in the graduate classes that I
22 teach. If you look inside the skull here, you can see
23 that the skull bone is actually quite small and narrow.
24 It's not a large bone. And the brain, especially in a
25 child or adolescent, it comes right up against the inner

1 surface of -- or what we call the inner cable of the
2 skull. So the brain is sitting right here. There's just
3 an outer membrane that covers the brain. So if you have
4 trauma that has affected the bone in this area and has
5 depressed into the brain, it's going to affect the brain
6 underneath it. And that is what we observed in Mr. Jones'
7 case. The other point to make here is if you -- and I'm
8 going to move a little bit closer so you can see. This is
9 where the frontal lobe is housed and the temporal lobe is
10 housed here. So this is frontal lobe here, temporary lobe
11 in this region here. So frontal and temporal. Notice
12 when you look inside internally in the skull -- and I'll
13 just move back forward again. You'll see that the surface
14 of the skull in this area here is not smooth. There are
15 lots of ridges. And unlike the skull cap, if you look
16 inside the skull cap up here, it's smooth. This is not
17 down here. So this makes it vulnerable to the base of the
18 frontal lobe and the temporal lobe and two structures that
19 are inside the temporal lobe. One called the amygdala and
20 the other called the hippocampus. And those are important
21 brain structures that are involved in emotional control
22 and regulation.

23 Q So you saw the areas where Tim's brain was damaged?

24 A Yes. Maybe we should go to the actual images. May I
25 leave this out because I'll come back --

1 Q Yes, sir.

2 A So what we're looking at here, notice over here where
3 that R is, that means right. So when you're looking at --
4 and these are the raw untouched data and I didn't
5 manipulate this in any way. Because you can see this is
6 what's called the header file. And when they obtained
7 this in the original image, we edited this out when we did
8 our analysis, but I left it in just to show the unedited
9 version here. What you're looking at here is this slab of
10 brain tissue, but it's as if you're looking at the
11 individual. So when you're looking at me or if I'm
12 looking at you, your right side is actually on my left
13 side. So you have to keep that in mind. And this is
14 where the left frontal defect is in Mr. Jones' brain.
15 This is the right side. This is the left side. And what
16 we're looking at here is this slab of tissue and it's at
17 the level of what's called the lateral ventricle. See
18 those internal cavities right there? If I take this image
19 here -- and this is the beauty of magnetic resonance
20 imaging, see, if I hold that up right there, that is
21 basically what you're looking at. So what we can do with
22 the scans is we can look internally in the brain and we
23 can see where these abnormalities are. And you can
24 clearly see that the frontal area here has flattened out.
25 And as Dr. Snyder has also indicated and testified to,

1 there's old hemorrhagic, meaning there was hemorrhaging,
2 bleeding that occurred in the brain, and it's left over in
3 these areas of the frontal cortex where the injury
4 occurred. And you can see again the difference, how the
5 brain is flattened out here in the left frontal area
6 versus the right frontal area. And what I want to point
7 out now is, if I go back to the actual brain model here
8 and we put it back together and you look at it on top, we
9 have the four major lobes: The frontal lobe, the parietal
10 lobe, the occipital lobe, the back of the head, and the
11 temporal lobe here. But if you look down on this, you can
12 see the symmetry of the brain. One side of the brain
13 looks like the other side of the brain. When I'm teaching
14 this in the classroom, I do one little example here. I
15 hide my left hand, then I hold my right hand up. If I
16 show you my right hand, you know what my left hand is
17 going to look like. So now, I bring my left hand up and
18 put it side by side and you can see one is the mirror of
19 the other. If we go back to the brain model and we look
20 at this brain model, we see that one side predicts the
21 other side. So what we're looking for on the imaging
22 standpoint i the brain to appear symmetrical. And just
23 with the naked eye, you can see this is what a more
24 healthy-appearing frontal lobe looks like. This is the
25 right frontal lobe compared to the left frontal lobe.

1 It's misshaped, it's different in size and shape. And
2 these are the things that Dr. Snyder has already testified
3 to.

4 Q So what's the next slide?

5 A Okay. Onto the next slide. Now, we're going to go
6 to the temporal lobe. The temporal lobe here shows --
7 where that arrow is pointing, this area right here is
8 called the temporal horn. So we're going to dissect this
9 brain model just a little bit further up here. So I'm
10 going to pull off the cerebral hemispheres and I'm going
11 to drop down the -- this is called the orbital frontal
12 part of the cerebral cortex. The cerebellum, or the
13 little brain, I'm going to pull that apart. And now, I'm
14 going to take out these areas. These are what are called
15 subcortical areas of the brain. To show you this
16 ventricular system. So this is the internal cavity of the
17 brain, it's called the ventricle. It's a cavity. It's
18 filled with cerebral spinal fluid. The reason why it's
19 filled with cerebral spinal fluid is to pressurize the
20 internal cavity of the brain. Because if the brain is
21 jello-like, it would collapse in on itself, so you have to
22 have an internal pressure gradient that pushes out and
23 maintains the pressure inside the skull. What happens
24 then is if there's a loss of brain tissue or abnormalities
25 in brain tissue, the size of the ventricle may increase.

1 Now, we're back to this symmetry ventricle. Look at -- if
2 I hold this up like this, you can see the beautiful
3 symmetry of the ventricular system. So it's symmetric.
4 If I hold it like this, this is what's called the temporal
5 horn of the lateral ventricle. So this is the left
6 temporal horn, this is the right temporal horn. Notice
7 they're the same size, they're symmetric, evenly
8 distributed and in the same plane and position. If we go
9 to this image right here, what we see here is this is --
10 remember the right and left on the imaging. So it's as if
11 you're looking at Mr. Jones. This is the left side. This
12 is the hippocampal area of the temporal lobe and there is
13 this temporal horn of the lateral ventricle. This is the
14 appearance of it on the right-hand side and you can see
15 that it -- that the ventricle is substantially larger
16 there. And you can also see that there's a wavy
17 appearance -- oh, I'm sorry, I'm standing in front of you.
18 So I'll stand in front of you guys. So there is the
19 temporal horn. With your own eye, you can take a look at
20 this and see that that temporal horn is larger than over
21 here and the shape of the hippocampus is different on the
22 right side than on the left side. And this is what Dr.
23 Snyder was referring to as hippocampal atrophy and a
24 change in this part of the brain. What's also very
25 important about this part of the brain is that the

1 temporal lobe is a critical brain structure for emotional
2 control and regulation. And there's a very interesting
3 issue with how information gets in and out of the temporal
4 lobe. This structure right here is called the temporal
5 stem. These are the cortical sulci. So the cortical
6 sulci move all the way around here. And the only way to
7 get in and out of the temporal lobe is to go in and out
8 this way. So if you have a change in the size of the
9 hippocampus and enlargement of the temporal horn, there is
10 typically degradation in the white matter that surrounds
11 it. And that means that there's a disruption in the
12 ability of this part of the brain to link and connect with
13 other parts of the brain.

14 Q You call this a schizo-form brain?

15 A Okay. So the issue of schizophrenia, if we actually
16 look at the brain in individuals who have a diagnosis of
17 schizophrenia, what we can see are changes in the frontal
18 areas, the temporal lobe areas, the corpus callosum, the
19 amygdala and the hippocampus. Let me point that out, I
20 haven't done that yet. If I hold this structure up like
21 this, you see this sort of pea green structure here, that
22 is the hippocampus. Just in front of the hippocampus,
23 it's actually removed in the model here, where these red
24 lines are coming down. If you look at those red lines,
25 those are the structures that relate to the amygdala. And

1 those areas of the brain are connected and they're very
2 important in terms of emotional control, regulation and
3 cognition. And so when we look at schizophrenia, which is
4 a brain disorder. Schizophrenia is a brain disorder. It
5 is not some ethereal mental illness that happens
6 independent of the brain. It is a brain disorder. So
7 when we look at schizophrenia, we see that there are
8 differences in the frontal area, the temporal lobe area
9 and those structures, amygdala and hippocampus. And so
10 this is the connection between having a traumatic brain
11 injury and the development of schizophrenia.

12 Q Anything else with regard to Tim's brain?

13 A Well, there are a couple of other -- this is just
14 another slide again showing these differences in the
15 frontal area and this is just what's called another
16 imaging sequence. This one here, the cerebral spinal
17 fluid, instead of being dark is actually light and it
18 actually helps you see the normal appearance of the
19 slit-like view that the ventricle should be in this part
20 of the temporal lobe on the left and dilation that's on
21 the right. And then you can see this curly-Q appearance
22 of the hippocampus, which is an indication of the atrophy
23 or shrinkage of that particular brain structure. And this
24 is just another image sequences again showing that change
25 and difference. Now, I also put this into a -- what's

1 called a 3D PDF that allows you to actually look at the
2 surface of the brain and see those differences.

3 Q Do you want to come show the jury that?

4 A Yes. That one I will have to manipulate with the
5 mouse over there, though. Yes, that's it. So you saw
6 that raw imaging file that we started off with, that is
7 untouched. That's straight off of the computer. This
8 one, we've actually edited it some to smooth out and just
9 to isolate the head, but it's the same image. So, you
10 know what, there may be a problem here. No, there we go.
11 So I can control this with the mouse here as you see. And
12 this is Mr. Jones and I can make this big or small. And
13 what we can now do is we can actually look at his brain.
14 And I'm going to move it down so I can enlarge it here and
15 I'm going to move it up just a little bit. And I'm going
16 to spin it around here so we look down on the surface of
17 the brain here. And so back to the model, I won't put it
18 back together right now, but remember when I was holding
19 the model up and one side was mirroring the other side,
20 well, now, you can look at this -- what did I do with the
21 clicker? Just to show that -- there we go. So here we
22 are looking at Mr. Jones' brain on top. This is the
23 three-dimensional rendering of his imaging, so now we're
24 not looking at a single slice, but multiple slices that
25 have been stacked upon one another. And you can see that

1 there's a difference in his left frontal lobe versus his
2 right frontal lobe and the anatomical appearance of that.
3 I have one other image here that I want to show just for
4 the purposes of -- so if you look here, you can see the
5 outline of the brain, but what I'm going to show here now
6 are the internal structures of the brain. The yellow here
7 is the hippocampus. The orange color is the amygdala.
8 And you can see that they butt up right next to each
9 other. They are adjacent to one another and there are
10 important pathways that go between those two structures
11 and one another. And then there are important pathways
12 that go from these regions of the brain that go especially
13 into the orbital frontal cortex and that go off the back
14 of the hippocampus here to the rest of the brain. And
15 that's --

16 Q Okay.

17 A -- what needs to be shown.

18 Q All right. So -- and I'll let you get back on the
19 stand.

20 A Okay.

21 Q Does Mr. Jones have a brain defect?

22 A Clearly.

23 Q There's no question about that?

24 A There's no question about that.

25 Q Okay. Let's talk about -- can we back up a little

1 bit? Before he got this brain defect, how does -- how do
2 brains develop? What's important in brain development?
3 And can you walk us through a little bit about how the
4 process happens and how it's supposed to occur?

5 A Sure. So the developing nervous system is just a
6 unbelievably fascinating story to think about. Because
7 you start off with a single cell that becomes fertilized
8 and nine months later, you have 300 billion cells. And
9 that's just the brain, that's not the rest of the body.
10 Those cells have to develop and they have to migrate to
11 areas of the brain and then they have to connect one with
12 another, all over nine months timeframe. So in
13 neuroscience, we like to talk about brain development as
14 being experience dependent. Your brain develops as an
15 experienced dependent organ in response to its
16 environment, in response to its nutrients, in response to
17 a host of genetic factors. As soon as the baby is in the
18 outside world, now, this experience dependence becomes
19 even more and more important as this infant interacts with
20 the environment. And that's the brain growth and
21 stimulation that occurs. So at the time that you are
22 born, brain volume is approximately 25 percent of adult
23 volume. But by the time you are three or four years of
24 age, it's now 80 to 90 percent of adult volume. And
25 pretty much by the time you're eight years of age, at

1 least, in terms of overall of the brain, it's pretty close
2 to adult. We've all seen the little toddler that the
3 bobble head. Well, there's a perfect explanation for
4 that, that is head growth is critical in those first few
5 years of life. And that's dependent again on nutrition,
6 environment and all of the factors that go into good brain
7 health.

8 Q If you have negative health issues or if you have
9 additional stress or a poor diet or any sort of
10 environmental deprivation, how does that affect that
11 developing brain?

12 A There are periods of time where you're laying down
13 thousands to tens of thousands of new synapses every
14 minute. And so if you have an adverse environment or if
15 you have an adverse metabolic situation or if you have an
16 adverse genetic situation, this occurring at a critical
17 time period can affect brain development.

18 Q What about a brain injury at the age of 15?

19 A A brain injury at the age of 15 is going to disrupt
20 the final maturation aspects that occur as one transitions
21 from adulthood -- I mean, from adolescence to adulthood.
22 My undergraduate students don't like me to point this out,
23 but you really don't have an adult brain until you've
24 about 25 or maybe a little older. There are dynamic
25 changes that happen in the brain that are ongoing

1 throughout adolescence and into young adulthood. And
2 there's a very fascinating process. I like to use the
3 analogy of a -- I love to garden, so pruning a plant back
4 may actually make it healthier. The cerebral cortex is
5 somewhat similar that there's a pruning process where the
6 gray matter is actually pruned back a little back as
7 pathways get honed in and there's a major process that
8 happens in adolescence and young adulthood where there's
9 an expansion of white matter in the brain, but a reduction
10 of gray matter in this dynamic development stage that is
11 going on. An injury at age 15 is going to disrupt those
12 mechanisms that allow that brain to develop normally.

13 Q Does schizophrenia also affect that sort of brain
14 pruning process?

15 A Yes.

16 Q And can you tell us how?

17 A In the same way. Synapses don't form properly.
18 There may be a thinning that's more dramatic than what it
19 should be for a particular age in the cerebral cortex, the
20 outer part of the brain.

21 Q And does the brain have any mechanisms to sort of
22 compensate for a traumatic injury or other issues that may
23 come up?

24 A Yes. So the brain is no different than any other
25 organ system in the body. It's designed to attempt to

1 heal itself and to adapt. And there is a really
2 fascinating aspect of certain aspects of certain regions
3 and certain brain cells. And we refer to it as
4 equipotentiality. In other words, in that developing
5 brain, many cells are equal in what their potential is to
6 become and the pathways that they lay down. I like to use
7 road analogies when describing this. If a particular road
8 is closed for repair or is damaged in some way, there's
9 usually a way to work around it. Now, that work around
10 may not be as fast and as efficient, but there's still a
11 work around, so the brain has all of these parallel
12 systems. And often, it's a rerouting and the adaptation
13 when injured is a combination that occurs in the brain
14 because it has all of these redundancies built into it
15 anticipating that there likely is going to be some kind of
16 injury or change or pathology that's going to happen.

17 Q Now, I know you talked about the areas of injury and
18 brain changes that you've seen in Tim's scans. What are
19 those areas for in the brain? What does the brain use
20 those areas for?

21 A So we go back to the brain model which I have left
22 laid out there. The frontal lobe is very important for
23 what we call executive function, complex reasoning,
24 decision making, problem solving, emotional regulation.
25 The temporal lobe is very important also for emotional

1 regulation and certain aspects of cognition. None of
2 these areas are dedicated areas to motor problems or
3 particular sensory problems. So there may not be any
4 outward manifestation in the individual that they, in
5 quotes, have brain damage because there's nothing visible
6 that shows up outwardly. But damage to the frontal lobe
7 is going to disrupt these executive functions and these
8 emotional control abilities.

9 Q Like, what kind of behaviors do you expect to see in
10 somebody that has those sort of frontal lobe impairments?

11 A So there's a wide spectrum of changes that may occur
12 when there's frontal injury. It may affect social
13 emotional functioning. It may affect their ability to
14 regulate mood. There may be highs and lows that occur in
15 mood regulation. Their behavior may be inappropriate in
16 certain social situations. Some individuals who have
17 frontal damage, because of it being easier if you follow a
18 routine, like to follow a routine rather than having to be
19 adaptive, which requires greater executive control
20 function. So there's a broad spectrum of changes that may
21 occur. Disinterest may occur, lack of motivation, lack of
22 drive, a host of factors can evolve in those that have
23 frontal damage in personality change.

24 Q Does it affect the person's intelligence?

25 A It can. It depends on when the injury occurs and how

1 extensive the damage is. An injury at age 15, basic
2 intellectual and cognitive functions are pretty well
3 established at that point in time. And again, the
4 work-around circumstances that I described earlier are
5 still going to be in play in someone that age. The -- we
6 call it plasticity. There are different issues of
7 plasticity in how the brain may adapt before it's fully
8 matured. But basic intellectual cognitive functions are
9 pretty well established at age 15.

10 Q So could somebody with the brain impairments that
11 you've seen on these scans go to college?

12 A Sure.

13 Q Could they get a job?

14 A Sure.

15 Q And be a computer engineer?

16 A Sure.

17 Q Are you saying that you would expect to find no
18 issues with a person with this type of brain pathology?

19 A No, I would expect you would find issues. But what's
20 important is to understand that brain injury really needs
21 to be viewed in three compartments. One is a physical
22 compartment where it may produce motor and sensory
23 deficits. It may also produce particular symptoms like
24 headaches, dizziness, epilepsy, et cetera. So that's the
25 physical side. Then there's a cognitive side, so the

1 injury may affect cognition, and then there's an emotional
2 side. So you have these three compartments, physical,
3 emotional and cognitive. The brain injury such as we see
4 here is going to effect behavior, behaviors that global,
5 umbrella overall aspect that I'm talking about. Is it
6 going to be in the motor compartment? Is it going to be
7 in the emotional compartment? Is it going to be in the
8 cognitive compartment? Is it going to be some of all,
9 parts? What is it that's related in part to the
10 individual differences that occur when someone is injured?
11 But an injury such as this is going to have an effect.
12 You don't have this kind of injury and it not alter
13 behavior in some fashion.

14 Q Well, what is emotional control? You say somebody
15 has impaired emotional control, what does that mean?

16 A Well, emotional control is, to a certain part,
17 dictated by the social circumstances that you are in.
18 We're in a courtroom right now. There are certain
19 behaviors that are expected and the ability to conform to
20 those behaviors specify the social aspects of what would
21 be normal. If one is not able to regulate emotion to that
22 social situation, then there's a change in their ability
23 to regulate emotions. Mood can escalate, it can become
24 depressed. We have what's called psychomotor retardation.
25 There are all kinds of fluctuations that can happen with

1 emotional regulation that are more likely to occur when
2 there's been damage to the frontal or temporal areas of
3 the brain.

4 Q Are those also things that are associated with
5 positive symptoms of schizophrenia?

6 A So having problems with hearing voices and delusions
7 and things along those lines, if we go into the
8 schizophrenia literature, those are changes that occur in
9 the front and temporal lobe regulatory systems that not
10 only relate to emotion, but also relate to cognition.
11 Auditory processing a temporal lobe function. The
12 auditory hallucinations that someone with schizophrenia
13 has, there are corollaries of abnormalities that are
14 occurring in these areas of the brain.

15 Q And can those functions or dysfunctions be controlled
16 through medication?

17 A Yes. That is, in fact, the goal of medication is --
18 because part of schizophrenia is a neurotransmitter
19 imbalance within these areas. And what the medication is
20 going is it's bringing that into balance.

21 Q And is that the same with regard to the other areas
22 of impairment you talked about with executive functioning
23 and regulation of behavior and decision making?

24 A Yes. And one of the fascinating aspects of this is
25 in a relatively controlled setting that has a lot of

1 predictability to it and maybe even some rigidity to it,
2 the person with a frontal lobe injury may appear to
3 function just fine.

4 Q Couple of final questions. The areas that you've
5 talked about, are those also the areas that are
6 responsible for what we call a person's personality?

7 A Sure.

8 Q And if you have damage in those areas versus -- can
9 you explain to the jury a little bit about damage in those
10 areas versus a personality disorder and what the
11 differences are on those?

12 A So from my perspective, if one is going to be
13 diagnosed with a personality disorder, one needs to rule
14 out obvious, what we call, organic causes because there's
15 this condition called organic personality disorder. And
16 organic personality disorder is this change in
17 personality, temperament, mood, emotional control and
18 regulation that comes from having a brain injury. So it's
19 not a, in quotes, personality disorder in the traditional
20 sense because those individuals do not have a history
21 compatible with this type of brain injury or brain
22 disorder.

23 Q I believe you told me one time every behavior has an
24 anatomy. Can you tell me what that means?

25 A Yes. So that's actually a statement that's in my

1 research laboratory. And that was a statement by a
2 behavioral neurologist by the name of Norman Geschwind
3 back in the early 1970s as we were developing these
4 imaging tools where we could look at the scan and we could
5 see internally what was happening in the brain in someone
6 who was alive and want to know what is driving that
7 behavior. So every behavior has an anatomy. All of our
8 actions, all of our thoughts, all of our behavior goes
9 back to a basic functioning of the brain. So as we
10 understand the brain better, we will understand behavior
11 better.

12 Q And if you have a broken brain, what happens?

13 A Behavior is altered and it is no longer normal.

14 MR. YOUNG: Thank you, Dr. Bigler. Please answer any
15 questions that the State has.

16 THE COURT: Y'all go a little bit longer?

17 (Affirmative response from the jury.)

18 THE COURT: Go ahead.

19 CROSS-EXAMINATION

20 BY MR. HUBBARD:

21 Q Doctor, let's talk about a few things just to clear
22 up what you can and can't say as an expert. You're not
23 here to tell this jury to a reasonable degree of medical
24 certainty that the Defendant's traumatic brain injury
25 caused him to kill his kids?

1 A No.

2 Q You can't say that?

3 A I'm not here to say that. I'm here to explain that
4 he had a traumatic brain injury and you can see these
5 abnormalities and then it's all objective.

6 Q And all these slides, as impressive as they are, none
7 of them would be able to show you scientifically, all
8 right, here's the brain of a man who kills?

9 A We cannot do that.

10 Q Right. So when we talk about anatomy of behavior,
11 there is no anatomy for the behavior of a man who kills
12 his kids?

13 A We can show anatomical areas that are likely to
14 relate to emotional discontrol, cognitive discontrol and
15 we can do that straightforwardly. I cannot specifically
16 answer the question you're raising, though.

17 Q Right. In fact, you can take two brains that almost
18 look identical with similar injuries and one person might
19 do fine in life and another might end up in prison for
20 doing horrible things?

21 A That's correct.

22 Q And just so the jury knows, you're not here to say as
23 an expert, even though you're a psychologist, that you
24 know to a reasonable degree of medical certainty whether
25 Mr. Jones on the night of August 28th, 2014, whether he

1 knew legal and moral right from wrong? You can't say
2 that?

3 A I'm not here to address that question.

4 Q Now, psychologists -- you're a psychologist?

5 A That's correct.

6 Q In your field, you have many colleagues and people in
7 your profession, they can actually do scientific testing
8 to determine not just cognitive functioning, but if there
9 is psychosis as well, is that correct?

10 A Well, there are tests that can be administered. The
11 issue of psychosis, part of the problem there is being
12 able to evaluate the patient when they're in the midst of
13 the psychosis versus being sometime after being treated.

14 Q Let me ask you this, you've referenced in your report
15 two psychologists -- I mean, two psychiatrists hired by
16 the Defense?

17 A Yes.

18 Q And then a psychologist by the name of Tora Brawley,
19 who was also hired by the Defense?

20 A Yes.

21 Q And you saw all their reports, all the things they
22 did?

23 A I did.

24 Q And, of course, the psychologist, Tora Brawley, only
25 did cognitive testing. She did not do any kind of testing

1 for psychosis?

2 A She did not do a personality emotional evaluation.

3 Q Well, not just personality emotional, but like SIRS
4 and some of those other tests that would test if
5 somebody's got, say, schizophrenia?

6 A Well, those are standardized measures where a --

7 Q They're empirical?

8 A They're empirical. There's a score that suggest
9 schizophrenia. It doesn't necessarily mean that the
10 person has it because it's a clinical correlation of all
11 of that information.

12 Q Psychologists and psychiatrists can work really well
13 together coupling their skills to diagnose schizophrenia,
14 correct?

15 A Sure.

16 Q I didn't see in your report where you considered any
17 expert other than the ones the Defense hired, is that
18 correct?

19 A Yes. I mean, at the time that report was generated,
20 those were the individuals I had spoken to and gotten
21 information from.

22 Q Were you not aware that Dr. Kimberly Kruse, who is a
23 psychologist, not hired by me, not hired by the Defense,
24 but appointed by the Court did actual testing to see --

25 MR. YOUNG: Objection as to characterization. He's

1 mischaracterizing the facts.

2 MR. HUBBARD: Court appointed.

3 THE COURT: Go ahead. Rephrase your question.

4 Q Were you aware that Dr. Kimberly Kruse, who was Court
5 appointed, not hired by the State or the Defense, did
6 testing, just that very kind of testing to see if there
7 was any kind of underlying psychosis that could be
8 identified?

9 A So I'm aware that other things were being done. My
10 role here was just to address the traumatic brain injury.

11 Q But, Doctor, you also talked about schizophrenia, so
12 what I'm asking you is there were some other doctors
13 looking to see if there was schizophrenia and they were
14 doctors not hired by the Defense.

15 A I understand.

16 Q Okay. Were you aware that Dr. Kimberly Kruse found
17 nothing that would indicate schizophrenia?

18 MR. YOUNG: I'm going to object.

19 THE COURT: He's an expert. He can give opinions.
20 You can continue to object.

21 MR. YOUNG: If he wants to give him a copy of Dr.
22 Kruse's report, which the State --

23 THE COURT: All right. All right. All right. I
24 agree with everything. I don't need a full argument,
25 okay. If you want to be heard, come on up here.

1 MR. HUBBARD: It's part of my cross because he
2 wasn't. That's part of my cross.

3 THE COURT: All right.

4 Q Were you also aware Dr. Richard Frierson, again, not
5 hired by the State, not hired by the Defense, but Court
6 appointed did a psychiatric examination and concluded no
7 schizophrenia? Were you aware of that?

8 A Yes.

9 Q You were aware of that?

10 A Yes.

11 Q So all this talk about schizophrenia, the only
12 experts saying that come from the other side of this
13 courtroom?

14 A That's correct.

15 Q Now, you've talked about a very clear injury to Mr.
16 Jones' head, the TBI, correct?

17 A That is correct.

18 Q And that you would expect, based on your background,
19 certain deficits, certain issues because of that, correct?

20 A Yes.

21 Q But, again, if you took that same slide, if you never
22 knew anything about Tim Jones, you took that slide and you
23 took an almost identical slide of someone else, you could
24 not tell where they would go in life or what they would do
25 in life, correct?

1 A You would need additional information.

2 Q Right. And that would be beyond what you were given?

3 A Well, I was given some information, of course.

4 Q Okay. We're going to go through that in just a
5 minute. But before we do, you would agree that not
6 everyone who has traumatic brain injury gets
7 schizophrenia?

8 A That is correct.

9 Q In fact, there's studies, but it's showing some
10 linkage?

11 A That is correct, an increased risk for the
12 development of schizophrenia.

13 Q You would agree, the profession right now, we're
14 still in the infancy phase of knowing what damage leads to
15 what effects, wouldn't you agree with that?

16 A I would basically agree with that. The issue here,
17 though, is if you look at the literature, there's a term
18 called schizo-phreniform, meaning features of --

19 Q Sure.

20 A -- so there are a lot of overlap. And as I testified
21 to earlier, these regions of the brain are the regions of
22 the brain -- the whole reason for exploring the TBI
23 linkage is because of commonality between the areas that
24 are damaged in trauma and the areas that show up in the
25 neuro-imaging aspects of schizophrenia.

1 Q But the bottom line is right now, we just don't know
2 what that real linkage right now, it's still -- we see
3 similarities. But a doctor, whether it's you or anybody
4 else, can't look at a scan and say I can diagnose
5 schizophrenia?

6 A No, you're not looking at the scan to diagnose
7 schizophrenia.

8 Q You can't?

9 A You can't. But in the clinic, if you put your
10 clinician hat on and you look at these things, the
11 feedback that you would give to a family is that there --
12 if there was a history of schizophrenia and the person had
13 a TBI like this, you would give them feedback that they're
14 at increased risk.

15 Q Sure, increased risk, but no guarantee it's going to
16 happen?

17 A Yes, that's an accurate statement.

18 Q And you're not aware of any expert that's been
19 provided to you by the Defense that's a psychologist that
20 did any testing to see if there was, in fact,
21 schizophrenia?

22 A No, I don't have anything.

23 Q Okay. You would agree with me, too, that not
24 everyone who has a traumatic brain injury is going to go
25 on to kill people?

1 A That is true.

2 Q And you've written extensively, Doctor, and honestly,
3 I've only just tapped your work, you've been in the
4 business 40 plus years?

5 A Yes.

6 Q But isn't it important when you have somebody who has
7 a head injury like this to look at their daily activities,
8 how they function and how they've gone through the years
9 to see if there's evidence of that brain injury affecting
10 their lives?

11 A Sure, that's an appropriate thing to consider.

12 Q And that's not what you were asked to do?

13 A That's correct.

14 Q But because of what you found, it would be important
15 to know that right after this incident, the Defendant was
16 still in high school, he was still -- both before and
17 after this incident, he was outperforming his fellow
18 students at his school, outperforming the students in his
19 district, he was outperforming students in his state.
20 That would be something you would want to know if you're
21 taking a whole view to look at how's he functioning,
22 right?

23 A So I anticipated that those things actually were
24 occurring because of how well he did with his brain injury
25 and the fact that he was able to go on and get a degree in

1 engineering. There's a concept of what's called cognitive
2 reserve and brain reserve. And so the higher that you are
3 before you're injured, that has an influence on how you
4 recover. So my assumption was that Mr. Jones had
5 significant cognitive and brain reserve when this injury
6 occurred at age 15.

7 Q He has a resilient brain?

8 A I think you would have to conclude that in one sense
9 because of his being able to go on to college.

10 Q And when we talk about college, obviously, initially,
11 he put himself back by some of his activities, but then he
12 went to Itawamba, I believe it is, Community School, made
13 a 4.0?

14 A Uh-huh.

15 Q You were aware of that?

16 A Yes.

17 Q Transferred to Mississippi State in Computer
18 Engineering, very complicated field?

19 A Yes.

20 Q Graduated Summa Cum Laude?

21 A Yes.

22 Q But not just looking at -- you understand all of
23 that. But not just looking at his academic abilities, did
24 you know that while he was attending, he was married and
25 had multiple children and had to work multiple jobs while

1 attending school, while outperforming all his other
2 students? Were you aware of all of that?

3 A I was assuming that those things were occurring and
4 some of that is in the reports that I had.

5 Q That's pretty impressive for anyone to be able to do
6 that, is it not?

7 A It is an indication -- if we go back to those three
8 compartments that I talked about, the physical, the
9 emotional and the cognitive. That from a cognitive
10 standpoint, even in the face of this significant brain
11 injury, there were these adaptations that occurred.

12 Q And you were aware that he got a job at Intel, very
13 competitive environment. Just four months before this
14 incident, he was rated as exceeding expectations compared
15 to his peers and got a raise. You were aware of that?

16 A Some of that is in the records that I had.

17 Q But were you also aware that his manager, Jim
18 McConnell, said he was not only a bright guy working hard,
19 but that he was someone that was fun to work with? Were
20 you aware of that?

21 A No, I didn't have that information.

22 Q That one of the things that was absolutely necessary
23 for that job is that you had to work well with others.
24 Did you know that?

25 A I did not have that information.

1 Q And that he excelled in that environment working with
2 others. You did not know that?

3 A Correct.

4 Q And that at no time while he was working at Intel in
5 this competitive environment, not one time did he have one
6 complaint from any coworker that he was hard to work with.
7 Did you know that?

8 A I did not have any of that work information.

9 Q I'm just going through my notes, Doctor.

10 A That's fine.

11 Q Just a moment. I may be about done. Basically,
12 everything you know about Tim Jones has been provided by
13 the people who hired you?

14 A That is correct.

15 Q And again, nothing in your slides, which are very
16 informative, but nothing in your slides answers the
17 question that these jurors are going to have to answer at
18 the end of this trial as far as whether the Defendant knew
19 right and wrong. Nothing in the slides will be able to
20 show them whether he appreciated on the night of this
21 incident, whether this man, Tim Jones, knew the difference
22 between legal and moral right from wrong?

23 A As Mr. Young asked me at the end, he has a broken
24 brain, that's what I can show.

25 Q And that's all you can show?

1 A That's all that I can show at this point.

2 Q And you can just show that from a slide from
3 something that happened when he was 15?

4 A That's correct.

5 Q But you can't show anything that would answer the
6 ultimate issue in this case about what happened August the
7 28th of 2014?

8 A I can only show that he has a broken brain.

9 MR. HUBBARD: Beg the Court's indulgence. Doctor,
10 thank you so much for answering my questions.

11 THE WITNESS: Thank you.

12 MR. YOUNG: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. YOUNG:

15 Q Dr. Bigler, were you aware that Dr. Wood, a State
16 psychiatrist who has treated Mr. Jones for over four and a
17 half years has diagnosed him with schizo-affective
18 disorder?

19 A Yes.

20 Q And can you tell the ladies and gentlemen of the jury
21 what schizo-affective disorder is?

22 A It's on the spectrum of schizophrenia, but it's more
23 the emotional lability, the up and down, more akin to
24 bipolar-type problems.

25 Q When -- do you recall what the date of your final

1 report was?

2 A Yes, I have it right here in my chart. It was
3 February 28th, 2019.

4 Q So if the State had requested additional testing be
5 done in March of 2019, would that be after your report?

6 A That is correct.

7 MR. HUBBARD: Your Honor, this was Court appointed.
8 Talking about me hiring somebody, I didn't hire anybody.

9 THE COURT: That's true.

10 Q The State being the state psychiatrist of South
11 Carolina as appointed by the Court, if they did additional
12 testing --

13 MR. HUBBARD: Your Honor, I object to the misleading
14 there.

15 THE COURT: I think he characterized it. There's
16 been multiple evaluations, most of which have been paid
17 for with State money, Court-appointed evaluations.

18 Q Those were done after your final report, right?

19 A Correct.

20 Q As a clinician, putting on your clinician hat and
21 taking out the actions that brought us to court today,
22 knowing what you know about Mr. Jones' history and his
23 complaints, how long would it take you to come to a
24 conclusion that this guy is schizophrenic?

25 MR. HUBBARD: Objection to the form of the question,

1 also, beyond his scope of expertise. He's already
2 clarified that of what he's done -- well, not -- what he
3 was asked to do.

4 THE COURT: All right. I'm going to ask you to
5 rephrase that question. It seemed lengthy to me. Make it
6 clearer for the Court's benefit.

7 Q Hypothetically, you as an expert --

8 A Yes.

9 Q -- and as a clinician, somebody presents to you with
10 a family history like Mr. Jones, mother is diagnosed
11 schizophrenic, I have family members on both sides of my
12 family that are schizophrenic, and presents complaints of
13 hearing voices, auditory hallucinations and you get some
14 brain scans and you look at them and they have hippocampal
15 atrophy and enlarged --

16 THE COURT: That's way too long. I lost you about
17 three sentences ago. Break it down. I mean, that's --
18 Mr. Young, that's horribly unfair to him as an expert,
19 much less the jurors and the Court. It's just too long.
20 I mean, it's just way too long.

21 Q Dr. Bigler, putting on your clinical hat as an expert
22 in a hypothetical case, somebody has a family history of
23 schizophrenia. You with me on that?

24 A Yes.

25 Q And then in addition to a family history of

1 schizophrenia, you get brain scans that show an atrophy,
2 hippocampus?

3 A Yes.

4 Q You with me on that.

5 A Yes.

6 Q And an enlarged temporal horn.

7 A And there's no history of trauma or anything else?

8 This is just --

9 Q Right.

10 A -- straightforward issue looking at it from the
11 standpoint of schizophrenia.

12 Q Right. And they have a deformed corpus callosum.

13 A Yes.

14 Q And they're complaining about auditory
15 hallucinations, you with me?

16 A Yes.

17 Q How long would it take for you to come up with a
18 diagnosis and what would it be?

19 MR. HUBBARD: Objection --

20 THE COURT: It's hypothetical. I'm going to let him
21 answer it.

22 MR. HUBBARD: All right.

23 A All of that is certainly consistent with it being
24 schizophrenia. Schizophrenia usually is then diagnosed as
25 more of a team approach where a psychologist and a

1 psychiatrist work together in making that diagnosis. And
2 if there are differences on the -- maybe involving other
3 clinicians as well. But, certainly, that would be a
4 straightforward initial conclusion.

5 MR. YOUNG: Please answer any questions the State
6 would have.

7 RECROSS-EXAMINATION

8 BY MR. HUBBARD:

9 Q Psychologists do testing. You don't just do clinical
10 interviews and take a history from one side in order to
11 reach an opinion? You would never do that, would you,
12 Doctor?

13 A I would want all the history and all the information
14 that I could, yes.

15 Q Not just from one side?

16 A I would take information from all sides, yes.

17 Q And you would also want to know he's presented this
18 information, but is there anything that might also be
19 there that we call malingering or exaggerating your
20 symptoms during testing and presentation, correct? You
21 would also want to know that?

22 A You would want to know that. The straightforwardness
23 of brain imaging, though, is that can't be malingered.
24 Those abnormalities that we looked at are straightforward.

25 Q I'm talking about schizophrenia, whether there's any

1 indication of malingering as to a diagnosis on
2 schizophrenia. You would want other professionals,
3 because you wouldn't be able to do that just from a brain
4 scan, right?

5 A Not just from a brain scan, but I believe that Mr.
6 Young's question was that if you had a scan that had this
7 hippocampal findings and you have his history that you're
8 looking at from a perspective of schizophrenia, those --
9 the imaging is objective. Hearing the symptoms raises the
10 question this is schizophrenia.

11 Q Right. And if those are self-reported, you're going
12 to want to dig deeper, correct?

13 A Sure.

14 Q That's where a psychologist can do testing, right?

15 A Sure.

16 Q And where a psychiatrist would spend, if he's doing
17 his job, hours and hours and hours talking and
18 investigating, correct?

19 A All of that requires clinical correlation and
20 clinical interview and what is referred to as a mental
21 status examination.

22 Q Correct.

23 MR. HUBBARD: Thank you, Doctor.

24 THE COURT: Thank you, Doctor. You may step down.

25 THE WITNESS: Okay. I've got to put my brain back

1 together.

2 THE COURT: Me, too. All right. We've been going an
3 hour and a half and that's a very lengthy presentation.
4 I'm certain we all need a break now, all of us in the
5 courtroom. That was for the benefit of all the streamers
6 that say we take too many breaks. Don't talk about the
7 case.

8 (WHEREUPON, the jury was excused from the courtroom
9 for a break.)

10 MR. YOUNG: Your Honor, we attempted to move in
11 Defendant's Exhibit number 137, which was a copy of the
12 Powerpoint and the head movie and the head thing.

13 THE COURT: Okay.

14 (Whereupon, Defendant's Exhibit 137 was admitted into
15 evidence.)

16 (Whereupon, a bench conference was held.)

17 THE COURT: I will tell you what we are going to do.
18 We are going to proffer this right now. Fair enough. I
19 would like the proffer made and I want your questions to
20 be where you can repeat them verbatim.

21 MR. SECOR: Yes, sir.

22 THE COURT: Okay.

23 MR. SECOR: The Defense calls Roberta Thornsberry.

24 ROBERTA THORNSBERRY, being
25 first duly sworn, testified as follows:

1 THE CLERK: Once you're seated, speak up loud and
2 clear, state your full name, spelling your last.

3 THE WITNESS: My name is Roberta Thornsberry,
4 T-H-O-R-N-S-B-E-R-R-Y.

5 DIRECT EXAMINATION

6 BY MR. SECOR:

7 Q Hi, Ms. Thornsberry.

8 A Hi.

9 Q How are you?

10 A Just fine.

11 Q Make sure you speak close enough to that microphone.

12 THE COURT: She just cut them back on. They were
13 off.

14 Q Ms. Thornsberry, the Court Reporter has to write down
15 everything you say, so if I ask you a question and you say
16 uh-huh instead of yes, just remember you have to say yes
17 so she can write it down, okay? I want to talk to you a
18 little bit about your early life and I'm going to go
19 through it very quickly because I know it's upsetting.
20 And then we'll get on to some other things and a lot more
21 conversation. Is that okay?

22 A That's okay.

23 Q You were originally from Kentucky, right?

24 A Yes.

25 Q Born in 1951?

1 A Yes.

2 Q And your mother's name was Bernadine?

3 A Bernadine.

4 Q Yes, ma'am.

5 A Maloney.

6 Q Yes, ma'am.

7 A When she died.

8 Q And she left you and your siblings at an orphanage
9 when you were three years old, correct?

10 A She didn't leave us in an orphanage, she just left
11 us. We ended up in the orphanage.

12 Q You wound up in the orphanage. You were there in the
13 orphanage for about five years, right?

14 A Three, four, somewhere in there I think.

15 Q When you -- your mother eventually came and picked
16 you up from the orphanage, right?

17 A That's correct.

18 Q And at that time, she was with a man named Ted
19 Montaine, that was her partner at that time in her life?

20 A Correct.

21 Q When she picked you up from -- to bring you home from
22 the orphanage, you were eight years old, right?

23 A Yes.

24 Q And Ted Montaine was essentially your stepfather?

25 A Yes.

1 Q And he started sexually molesting you the day that
2 you came home from the orphanage?

3 A The very next morning.

4 Q And he also sexually abused your sisters?

5 A Yes.

6 Q He also physically abused your mother, right?

7 A Yes.

8 Q When you were age 11, your stepfather, Ted Montaine,
9 impregnated you, correct?

10 A Correct.

11 Q And you gave birth to Tim Jones, Sr. when you were 12
12 years old, right?

13 A Yes.

14 Q This man who had been your stepfather after Tim --
15 we'll call him Tim, Sr. You call him Big Tim?

16 A I do.

17 Q You call him Big Tim, okay. Even though he was
18 little then?

19 A Correct.

20 Q This man, Ted Montaine, took you and Big Tim away
21 from your mother and kept you on the run throughout the
22 United States for a few years, isn't that right?

23 A Yes.

24 Q And he actually created paperwork at some point and
25 married you, even though you didn't have a --

1 A Yes.

2 Q And as part of living with him, he forced you to do
3 things that no child or woman should have to do, as we
4 discussed?

5 A Yes.

6 Q And you felt that was a way for him to control and
7 watch over you?

8 A It was.

9 Q You eventually, thankfully, escaped from this man,
10 Ted Montaine?

11 A I did.

12 Q And you found who ended up being the love of your
13 life, Larry Thornsberry?

14 A Yes.

15 Q You and Larry, your relationship was tumultuous at
16 some times, right?

17 A It was rocky.

18 Q You got divorced, at least, once?

19 A Yes, I did.

20 Q And married a man named Phillip Caliendo at one
21 point?

22 A I did.

23 Q And then divorced him and married Larry again?

24 A That's right.

25 Q And you're still with Larry today, right?

1 A Yes.

2 Q Part of your life when you got together with Larry
3 involved drinking and drugs sometimes?

4 A Yes.

5 Q And sometimes your relationship was violent?

6 A Yes.

7 Q And one time, Big Tim saved you from killing
8 yourself, isn't that right?

9 A Correct.

10 Q And that happened because you had intentionally taken
11 an overdose of drugs with the intention of killing
12 yourself?

13 A Yes.

14 Q And he came looking for you outside and he called
15 your name?

16 A He did.

17 Q And you were in the bushes?

18 A Yes.

19 Q And you called back to him when you heard him calling
20 your name?

21 A Yes, sir.

22 Q I'm going to jump ahead and get to before Little Tim,
23 you call him Little Tim, correct?

24 A I did.

25 Q He's the son of Big Tim and Cynthia, right?

1 A Yes.

2 Q When Big Tim and Cynthia were together, they were
3 living with you, is that right?

4 A Yes.

5 Q And when Cynthia and Big Tim were awaiting the birth
6 of Timmy, tell us how Cynthia's behavior started to
7 change?

8 A She would go off and stay to herself. Tim would come
9 in and ask me, where's Cindy? I would say, she's
10 downstairs, she never left. And he says, well, she's not
11 there. Then he would find out that she had climbed out a
12 window and got in the corner. She cut all her clothes up
13 and hide in the closet. Just, you know, crazy things.
14 She was crazy as a bed bug.

15 Q Timmy was eventually born, right?

16 A Yes, sir.

17 Q And they were still living with you?

18 A Yes.

19 Q And after Timmy was born, how -- if you would, tell
20 us how Cynthia interacted with Timmy as an infant?

21 A She didn't really act like a mother. She would be in
22 bed. He would be screaming and crying. She wouldn't let
23 me in the door. I would send my little boy through a
24 closet that would go into the other area and open the
25 door. I would go in, Timmy would be laying in the bed

1 drenched in the urine. And she would tell me, he's my
2 kid, leave him alone. And I'm like, no, he needs dry
3 clothes on.

4 Q Do you remember her holding him and cuddling him as a
5 child?

6 A I think there was some times she did, but for the
7 most part, no, she -- no, she didn't.

8 Q Do you remember what she would say to you when he
9 would cry about how she wished he wouldn't cry?

10 A She wished he'd just shut the fuck up.

11 Q That's when he was just barely --

12 A -- young --

13 Q -- yes ma'am. In terms of other bizarre things, at
14 least in your perspective, I think you told me bizarre,
15 bizarre things that she did to Timmy in terms of clothing
16 and food and --

17 A It would be 90 degrees outside and she would put him
18 in flannel shirts and a tee shirt. And I'd be telling,
19 you know, Cindy, it's hot out there. His body needs to be
20 covered. She would give him laxatives continuously
21 because his body had to be cleansed. I mean, the baby had
22 no control over his -- he had no control over his bowels.
23 I mean, he would just be standing there and just water
24 would come out.

25 Q Do you remember her withholding food from him?

1 A Oh, yeah, she never wanted him to be fat. She
2 couldn't have a fat kid.

3 Q Did you -- well, you told me you got to the point
4 where you felt it was unsafe for Timmy to be with Cynthia?

5 A Oh, definitely. Definitely, yes.

6 Q And there were times that she would leave the house
7 with him at night and no one would know where she was. And
8 there were some things that Timmy started doing, his
9 behavior that concerned you and concerned you about how he
10 was being treated by Cynthia when no one else was around,
11 is that right?

12 A I was very concerned.

13 Q Cynthia and Tim get pregnant again, right?

14 A Correct.

15 Q And they're still living with you?

16 A They had their own apartment at this time.

17 Q Okay. That second pregnancy, Cynthia got almost to
18 full term, right?

19 A Yes.

20 Q And then tell us what happened.

21 A She was at my house with Little Tim and we were just
22 visiting. And then she went to the bathroom and she
23 called me in there and she was just -- you know, she was
24 laughing. And I'm like, what's the matter? And she says,
25 give me your hand. She took my hand. She put it between

1 her legs and she says, I'm having this baby. I'm like,
2 oh, my God, let me call. She says, I'm having this baby
3 right now. So, you know, hearing stories because my
4 husband's grandmother was a midwife, I know you have to
5 keep the legs separated and from having kids myself to
6 keep the baby from, you know, being crushed. So I'm like,
7 get on the floor, Cindy. And, you know, I'm between her
8 legs. And I'm telling my five-year-old, Call 911. Get
9 the phone, dial 911. And all of a sudden, blood just
10 started gushing at me. And 911, they came and they took
11 her to the hospital. She actually gave birth to this
12 baby, but it was dead. But I always had a feeling that
13 she did something.

14 Q Did something to --

15 A I expressed my feelings to Big Tim and my husband. I
16 said, Tim, I really believe she did something to cause
17 that, just the way she acted. It was strange.

18 Q What was her demeanor when this was happening in the
19 bathroom? Was she upset and crying?

20 A No, she was laughing.

21 Q And that child was actually named even though he
22 died?

23 A Yes.

24 Q That was William?

25 A William.

1 Q Yes, ma'am. And it's your belief that she did
2 something to herself or she did something to try to
3 harm --

4 A I think she put something inside of her. I can't
5 swear to it because I didn't see it, but just --

6 Q I understand.

7 A -- everything indicated it.

8 Q Cynthia eventually disappears when Timmy was about
9 three years old, is that right?

10 A She came back after she had William and that's when
11 she really went off the charts. And my son had her put in
12 a mental hospital.

13 Q How long did that last?

14 A Not very long because he was young and he loved her
15 and he signed her back out. And then she came and she
16 took Little Tim and disappeared with him. It was back and
17 forth then.

18 Q And eventually, at one point --

19 A Tim would get him back. Yeah, he would find him and
20 he would get him back. And then she came to my house, her
21 and her sister, and they were going to take him that day
22 and my daughter actually intervened. The police was
23 there. Tim had to come home from work. They arrested
24 Cindy and her sister and he got them out of jail.

25 Q And that was a fight over Timmy?

1 A That was a fight trying to save Tim from them, yes,
2 sir.

3 Q And --

4 A We would not let her take Little Tim.

5 Q And Cynthia's sister that was there, she actually
6 physically took Timmy and crawled out a window and tried
7 to flee?

8 A Yes, she did. And my daughter physically caught her
9 and took him away from her.

10 Q And then Cynthia does ultimately disappear, right?

11 A Yes.

12 Q And you become the primary caregiver?

13 A Only when he could find Timmy because she would keep
14 him hid here and there. I mean, you know, we would have
15 him and then she would take him. And then, finally, it
16 just ended and Tim got complete custody of him, I think
17 when he was like two, a little over two.

18 Q And once Big Tim got custody of him, that meant you
19 got custody of him?

20 A I took care of him when Tim was working, yes.

21 Q And as Timmy is growing up in your household, there
22 are still issues of drugs and drinking and violence in
23 your home sometimes?

24 A Yes.

25 Q And those are things that Timmy was sometimes exposed

1 to, right?

2 A Tried not to, but he was exposed.

3 Q Yes, ma'am. And police came to the house about
4 people fighting sometimes?

5 A Correct.

6 Q People came to the house about people shooting guns
7 at one another sometimes?

8 A Yes.

9 Q Police came to the house about drug possession and
10 drug dealing at the house?

11 A Yes.

12 Q Now, I know in your family, sometimes people fight.
13 And you've told me in the past that one of the strengths
14 in your family is that you get in fights and sometimes
15 they're very serious and very heated and angry, sometimes
16 even violent, but y'all get over it quickly?

17 A Right. Very forgiving.

18 Q Yes, ma'am. Who in your family didn't have that
19 strength to get over it?

20 A Little Tim.

21 Q Do you have any idea why? What do you think, why is
22 it?

23 A He was just -- he was always different. He was
24 always smarter. He was always -- he had the right answer.
25 He didn't like the food we liked. You know, he was

1 just -- he had his own little way. But, I mean, not in a
2 bad, I'm not saying it in a bad way --

3 Q I understand.

4 A He was just so special, you know. He could do
5 everything.

6 Q Did he seem -- in terms of him not being able to get
7 over the contention and sometime --

8 A When he got mad at you, he didn't talk to you for a
9 while.

10 Q Okay. How about as he's growing up, did he seem to
11 have a lot of friends?

12 A No.

13 Q Do you remember --

14 A He was a loner. Played by himself. He didn't need
15 friends. I mean, he had birthday parties, but like I
16 said, he didn't have to have friends because we had so
17 many in the family that, you know, it was a party with
18 just our family.

19 Q Yes, ma'am.

20 A With the children. But no, I don't remember Tim ever
21 really having -- he had one friend, one little friend -- I
22 can't remember his name, but he had one friend that he
23 had.

24 Q How about him wanting attention? Did he seem like
25 somebody that wanted attention?

1 A Oh, he thrived on attention.

2 Q Did he seem to want to know about his mother?

3 A All the time.

4 THE COURT: All right. You've proffered the social
5 history. You're getting into her rearing him, which is
6 slightly different, correct?

7 MR. SECOR: I mean, I would argue it was part of the
8 social history. But in terms of her history --

9 THE COURT: Correct.

10 MR. SECOR: Yes, sir.

11 THE COURT: That's what I was getting at. How -- how
12 is the stillborn birth in the house, the hospital, how is
13 that relevant to anything regarding this young man? I
14 mean, it happened. Why do we need to present that? What
15 does that really show to prove -- what relevant fact does
16 that prove in this case?

17 MR. SECOR: It is the time around which Cynthia
18 Turner, Tim's biological mother, is breaking
19 psychologically.

20 THE COURT: So what? I agree. Why is that important
21 here?

22 MR. SECOR: Because I would argue that the proof of
23 the -- of her harming herself or her child is evidence of
24 her mental illness and one of the strongest pieces of
25 evidence of her mental illness.

1 THE COURT: I still don't understand why that type of
2 testimony would be needed in this trial to prove his
3 mental condition. I mean, he's not involved in it.

4 MR. SECOR: No, but it's his biological mother. This
5 is an inheritable condition we're talking about and he was
6 present in the home at the time.

7 THE COURT: He was two years old. I don't see how
8 that's relevant to this issue. I understand it was a lot
9 going on in that house.

10 MR. SECOR: Yes, sir.

11 THE COURT: That incident doesn't seem to be relevant
12 to these facts.

13 MR. SECOR: I mean, respectfully -- and I don't mean
14 to go back and forth. Respectfully, our argument would be
15 that schizophrenia is a condition that is a consequence of
16 genetics as well as environment. This would be the
17 environmental factor to his being raised in a home where
18 people are performing abortions on themselves on children
19 that are almost full term.

20 THE COURT: No. You're not going to say that. It's
21 something going on and this witness, Ms. Thornsberry, was
22 very concerned about it, but I don't think that's relevant
23 to here. I think that confuses and adds factors and facts
24 that aren't relevant to making a determination on this
25 issue here. Ms. -- I can't think of her married name,

1 Cynthia's married name, it is a given factor that she has
2 severe mental illness and is institutionalized.

3 MR. SECOR: Yes, sir.

4 THE COURT: No one has challenged that at all. All
5 the physicians have taken it as a given. She has not
6 mild, not moderate, but she is institutionalized. There's
7 no question. I don't think the State has challenged that
8 at all.

9 MR. SECOR: Yes, sir.

10 THE COURT: So that description of the incident in
11 the bathroom to me seems quite not needed on the relevance
12 issue of mental condition of Mr. Jones. I don't say it
13 cannot be taken into account by the medical providers, I
14 mean, obviously, I hope they did.

15 MR. SECOR: Yes, sir.

16 THE COURT: I don't want that withheld and I don't
17 think it was. Why does the jury need to hear it?

18 MR. SECOR: Hang on a minute. May I take a moment?
19 Your Honor, Dr. Bigler just testified to it -- to the
20 importance of environment to the brain development of a
21 child. I specifically remember Dr. Agharkar talking about
22 the first three years of life being absolutely crucial to
23 the development of the human brain. And, obviously --

24 THE COURT: All right. Well, you can get Cynthia was
25 neglectful, was unpredictable, came and went, snuck out

1 the house, was a handful for Ms. Thornsberry to deal with
2 trying to take care of Tim, absolutely. But that incident
3 in the bathroom has nothing to do with her being those
4 things. I mean, it's just another factor.

5 MR. SECOR: And I respectfully disagree and believe
6 that it is profoundly indicative of both genetic problems
7 and environmental factors. I don't mean to continue to
8 argue with the Court. If the Court is ordering me to not
9 present it, I, of course, will comply.

10 THE COURT: I don't want that presented.

11 MR. SECOR: And I just ask for time to be able to
12 present a cohesive argument so that I can properly
13 preserve the record on that.

14 THE COURT: You've got a good proffer. Joy is taking
15 it down. On that issue, that one little window of time of
16 the incident in the bathroom I do not believe is relevant
17 or necessary to show Cynthia -- what's Cynthia's name? I
18 keep calling -- I want to call her Jones. It's not Jones
19 anymore. Cynthia what?

20 MR. SECOR: Turner.

21 THE COURT: Cynthia Turner. Ms. Turner will be the
22 Defendant's, Mr. Jones, Jr.'s biological mother?

23 MR. SECOR: Yes, sir.

24 THE COURT: This lady testified that she was
25 unpredictable, that she was crazy as a bed bug, that she

1 was coming and going from the house. She would take Tim
2 off for days at the time where they couldn't find her.
3 They would track her down and find her. She was doing all
4 sorts of stuff. That is a huge amount of evidence in
5 relevance to her condition without the bathroom incident.
6 I don't think that's preventing you from showing that she
7 was -- had many challenges. That incident does not help
8 the determination of that, I don't believe, for this jury.

9 MR. SECOR: Yes, sir.

10 THE COURT: All right.

11 MR. SECOR: May I just -- I just -- I respectfully
12 object to the Court's ruling regarding not being allowed
13 to present evidence of Cynthia's abortion of her child,
14 William. And I would object under the due process clause
15 of both the United States Constitution and the South
16 Carolina Constitution. I believe that it violates Mr.
17 Jones right to a fair trial and an impartial jury under
18 the Sixth and Fourteenth Amendments of the United States
19 Constitution. And I would specifically object pursuant to
20 Bobbie Lee Holmes versus South Carolina, the right to
21 present a defense. And I believe that this is an integral
22 and important part of our defense and I object to not
23 being able to present it. Thank you.

24 THE COURT: The record is protected. Now, as far as
25 the other way it was presented, the proffer, Mr. Graham,

1 let me hear you on that. Because you haven't said a word
2 yet. I, obviously, addressed one particular factor the
3 Court has concerns with. What other concerns would the
4 State object to the way it was presented?

5 MR. GRAHAM: The ones that we discussed at side bar,
6 Your Honor, was the witness' testimony regarding the
7 incidents that happened to her regarding rape and incest.
8 It's not probative to the issue we're here for today. It
9 doesn't have relevance and it's prejudicial to the fact
10 that it's trying to cause sympathy for this witness and
11 also for the Defendant, but it's not relevant. It has
12 nothing to do with his environment, inflammatory. It
13 happened before he was -- it has nothing to do with the
14 environment that he was in. If they want to talk about
15 specific -- I mean, I didn't hear anything that they're
16 trying to say that she, the witness, did not do a good job
17 raising the Defendant.

18 THE COURT: Well, I kind of stopped them from saying
19 when Tim had birthday parties. They were getting more of
20 his young life when I stopped them.

21 MR. GRAHAM: My point would be is when things happen
22 to you, you can either deal with it or you can be a victim
23 in life. But regardless, how she chose to deal with those
24 events that happened to her, in the relationship with the
25 Defendant, the actions, the way she treated him, the

1 things that she did with him, those are relevant to this
2 case. Anything about her personal background is not. It
3 serves no purpose other than to inflame the jury. No
4 doctor relies on -- there's no expert who's going to say
5 that it's important to me that this witness was raped
6 multiple times and had incest. Nobody is going to say
7 that has anything to do with this case.

8 THE COURT: Mr. Secor.

9 MR. SECOR: Regarding relevance, Your Honor, this is
10 the part of the case where the Defense presents evidence
11 to support our affirmative defense of not guilty by reason
12 of insanity. So in the context of this proceeding,
13 relevance is any evidence tending to make any aspect of
14 NGRI more or less likely than it would be without the
15 evidence.

16 THE COURT: Her being raped was evidence of what?

17 MR. SECOR: The environmental factors and biological
18 factors that Timothy came from. The suggestion that a
19 person can experience trauma and just choose to not be a
20 victim and choose it to not have an effect on them is in
21 direct contradiction with brain science. That would mean
22 when people come back from war with PTSD, we'd just say
23 oh, shake it off, man. You'll be fine. But that doesn't
24 work because they have traumatic memories that are
25 ingrained in their brains that they couldn't forget no

1 matter how hard they tried. And it affects their
2 interactions with their loved ones. That's why we hear
3 horrible stories about people coming back from war and
4 they have difficulties with their marriages when they come
5 back. Sometimes they even get arrested, sometimes they
6 kill family members. I mean, it's horrific. And I'm not
7 trying to excuse it, but we know why. We know why, you
8 know, some football players have a tendency to abuse their
9 girlfriends because they've got brain damage --

10 THE COURT: Everything you said, I agree with. I
11 don't think her childhood is relevant to his childhood.

12 MR. SECOR: And I'm not trying to argue with the
13 Court, but I would think that you think that your
14 grandparents lives are relevant to you. I mean, I would
15 assume that there's things about you that you see from
16 your grandparents that you are proud of and they're a part
17 of you, you know. I know that I see that in myself. A
18 lot of the things I see in myself from my grandparents
19 that I don't like. I wish I could get rid of, but,
20 unfortunately, they made me, you know. There's not much I
21 can do about it now. But I think that Tim's history, his
22 life history, his social history, his family history,
23 these experts have taken into consideration --

24 THE COURT: They have, I mean, that's where you keep
25 saying that they have. How is her saying at -- I was left

1 at an orphanage at age three, my mother came back and got
2 me at age eight. How is that relevant to -- it is her
3 life. It is a history of Tim, Jr.'s life, but how is it
4 relevant to his mental condition in 2014 when all that
5 stuff happened before he was born, so it had nothing to do
6 with his environment? It had to do with her environment,
7 but not Tim, Jr.'s environment in 1980 -- it was about '80
8 when he was born, I guess.

9 MR. SECOR: '81.

10 THE COURT: '81?

11 MR. SECOR: Yes, sir.

12 THE COURT: I mean, this happened in the early 50's,
13 1962 maybe, '63?

14 MR. SECOR: '64, Big Tim was born.

15 THE COURT: All right. Tim was born in '81, why does
16 something that happened in the 1960's to her relevant to
17 what happened in '81 and post? I understand she could say
18 I as -- I married the same man twice. It's been chaotic.
19 But her being put off in an orphanage does not impact
20 Tim's mental condition in 1981. Does it?

21 MR. SECOR: Yes, I believe it does, Your Honor. I
22 believe it does because Ms. Thornsberry tried very hard
23 and was -- loved and loves Tim deeply, but she understands
24 that there are times that he went through things when he
25 was in her care that were not good for him. And we just

1 talked about the police coming to the house because
2 they're fighting, gunshots.

3 THE COURT: I agree, but that's got nothing to do
4 with what happened in the 50's. So why bring up what
5 happened in the 50's if there was trouble in the 80's?
6 Why is that relevant?

7 MR. SECOR: Because I think that if Ms. Thornsberry
8 hadn't experienced those things in her youth, I think that
9 her later life would not have been as chaotic. I think
10 the chaos that occurs during Tim's life is a consequence
11 of the chaos that occurred in Ms. Thornsberry's life.

12 THE COURT: She can describe the chaos in Tim's life,
13 she can, without saying I was put off in an orphanage at
14 age three.

15 MR. SECOR: But I think the reason why it's so
16 important for me to explain is because I don't -- I am not
17 trying to blame Ms. Thornsberry for anything. And I think
18 it's important for the jury to understand the reason why
19 Ms. Thornsberry had problems with alcohol and with
20 violence and with relationships is because she was
21 betrayed by the people who were supposed to protect her as
22 a child. She was abandoned by people who were supposed to
23 take care of her. And as a consequence, despite the fact
24 that she has made tremendous strides from her own parents
25 to where she is now and the fact that she's still alive is