

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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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 it -- the jury charge to the law. It can even go back
2 with them.

3 MR. YOUNG: The State just explained what the problem
4 is, is that they can't use Dr. Frierson to challenge
5 schizophrenia at penalty.

6 MR. HUBBARD: Actually, that's not -- Dr. Frierson --

7 THE COURT: We don't have to get there today.

8 MR. YOUNG: We don't.

9 THE COURT: I think if Frierson is going to testify
10 and you're going to call him, limiting instruction to him
11 is look, he's offered. He was assigned by the Court to do
12 an evaluation of Mr. Jones. He's done so and he's issued
13 two opinions, ability to conform and morally right from
14 wrong. He's issued those two opinions. He can testify to
15 that end and that's the consideration for the jury.
16 That's all for their consideration, tell them ahead of
17 them.

18 MR. HUBBARD: Right. What the Defense is saying,
19 though, would still hobble him. He had to address was
20 there psychosis. Was there a psychotic episode, whether
21 it's schizophrenia or something else? Because that had a
22 direct bearing on his ability to determine -- the
23 Defendant's ability to determine right and wrong and,
24 also, his capacity to conform. So to say that we can't
25 bring that up is to tell Dr. Frierson, I've assigned you

1 to do a job, but you can't talk about it. So he needs to
2 be able to do what an expert does. That limiting
3 instruction will tell the jury how they can use that
4 information and we're good.

5 THE COURT: I think we're on the same page.

6 MR. YOUNG: The State is trying to show you one thing
7 and say another. They can't use anything Dr. Frierson
8 said at any other part of the case.

9 THE COURT: And they're telling you they're not going
10 to unless you create an issue that they don't anticipate.

11 MR. YOUNG: I understand that his opinion is that
12 Tim's not schizophrenic, I get that, and he's going to
13 testify to that. But the jury has to be told prior to
14 hearing that that they're only allowed to use that opinion
15 for the purpose of determining criminal responsibility.

16 MR. HUBBARD: And capacity.

17 MR. YOUNG: Criminal responsibility is capacity.

18 THE COURT: So what other purpose would he be offered
19 for?

20 MR. YOUNG: To say -- they would offer him at a later
21 stage of the trial to say -- to challenge a finding of
22 schizophrenia.

23 MR. HUBBARD: Your Honor, if --

24 THE COURT: How can you offer that after this stage
25 is over?

1 MR. YOUNG: Well, schizophrenics can still be
2 criminally responsible.

3 THE COURT: I understand. But if you get to the
4 penalty phase, we get there and you offer he's
5 schizophrenic, isn't that -- hasn't the jury already made
6 that determination, answered that question of fact?

7 MR. YOUNG: No, sir.

8 THE COURT: How have they not?

9 MR. YOUNG: Because schizophrenic doesn't equal
10 criminal responsibility. You can still be schizophrenic
11 and you can still be mentally ill and be criminally
12 responsible. The State has already brought that out.

13 MR. HUBBARD: Judge, I think if that issue comes up
14 at that time, we can address it.

15 THE COURT: Yeah, I think we can address it then. I
16 don't think --

17 MR. YOUNG: I can't address it then before Dr.
18 Frierson testifies. I mean, that's what the court order
19 says. It says it's not admissible for any other purpose.

20 THE COURT: From what you're telling me now, I agree
21 with you. He can be offered for a limited purpose and
22 you're going to call him for the limited purpose of
23 criminal responsibility and understanding right from
24 wrong, legally and morally. He's going to testify today
25 to that.

1 MR. YOUNG: Right.

2 THE COURT: Let's do that. I think unless something
3 really odd happens in sentencing, if we get there, then
4 that would be a need for you to decide then. I don't
5 think I can tell you now he's not going to be allowed to
6 testify period because -- I mean, because I don't know
7 what's going to come up.

8 MR. HUBBARD: Well, Your Honor --

9 THE COURT: What's going to prevent the State from
10 calling somebody else to say -- I can't predict the future
11 of what's going to be testified to in the penalty phase,
12 if we get there, to say okay, he can't be called again
13 period because the order says that. I mean, I don't know
14 that I can do that.

15 MR. HUBBARD: And Your Honor may not even need to
16 address the issue because what we do is we incorporate
17 this first phase evidence into the second phase, that's
18 always done, so that we can still use what he said without
19 bringing him back and say here's what his determination
20 was in guilt phase as to -- as to whether there was
21 psychosis. The same is true with Dr. Kruse as to was
22 there psychosis.

23 MR. YOUNG: That's what they can't do.

24 MR. HUBBARD: Absolutely --

25 MR. YOUNG: That's exactly what they can't do.

1 MR. HUBBARD: We'll address that later --

2 MR. YOUNG: That's what the case law and the Court
3 order prevents them from doing.

4 MR. HUBBARD: No. The case law says substantive
5 evidence. You can't -- they can't find guilt or innocence
6 based on Defendant's statements to Dr. Frierson when he's
7 rendering an opinion. That's it.

8 THE COURT: All right. I don't have to make that
9 decision right now.

10 MR. HUBBARD: No sir, that's right.

11 THE COURT: I can read a little more up on it. And
12 that's what I'll do. I will give them the limited
13 instruction right now like you're asking. I don't know if
14 I'll read yours verbatim. When are you going to call him?

15 MR. YOUNG: Second.

16 THE COURT: Second, okay.

17 MR. HUBBARD: We've been apprized there is another
18 witness that -- found out this morning, a witness they
19 want to put up on the stand as an expert, someone who
20 suffers from schizophrenia and wants to talk about
21 schizophrenia. Judge, we absolutely object to that.
22 There are psychiatrists, psychologists and any other
23 trained expert can get up there and talk about --

24 MR. YOUNG: If the Court could give us one second.
25 Mr. Madsen's witness is just coming in, so.

1 THE COURT: Yeah, hang on.

2 MR. YOUNG: The State's had notice of this witness
3 for years.

4 MR. HUBBARD: And we've been saying we're going to
5 object, so we knew this morning. My objection is this,
6 Judge. They've got psychiatrists, one who has already
7 testified saying he diagnosed schizophrenia. They've got
8 Dr. Dorney, who actually reached the issue as to whether
9 he knew right from wrong and had the capacity to conform.
10 She renders an opinion and says he has schizo-effective
11 disorder. It's a form of schizophrenia with bipolar as a
12 secondary diagnosis. They got Dr. Schwartz-Watts, now Dr.
13 Maddox, who says schizophrenia. Now, they want to put up
14 an individual who suffers from schizophrenia and says I
15 can tell you about schizophrenia. The problem is this,
16 it's kind of like putting up a cancer person and saying
17 let me tell you what cancer did to me and what I've
18 learned about that cancer. That may make for a great
19 topic at a discussion or at a school or a class, it is not
20 evidence for court. I think they -- it would be redundant
21 as well, but, also, it would be kind of like me bringing
22 in say somebody who's a mass murderer saying let me tell
23 you what goes through the mind of someone who kills
24 multiple people that had certain traits just like this
25 individual. Let me tell you why that's relevant and what

1 I tried to claim. Judge, it's way off the path. I think
2 it's redundant to actual expert testimony and --

3 THE COURT: Let me hear from Mr. Madsen. Mr. Madsen,
4 tell me about this witness.

5 MR. MADSEN: Judge, Bethany Yeiser, she does suffer
6 from schizophrenia. He's talking about redundant, this is
7 a Capital case. They haven't stipulated to anything that
8 these experts -- in fact, they have been challenging them.
9 And we certainly have the burden of proof to prove to a
10 jury. Their questions have been -- if Your Honor
11 remembers, the Wal-Mart video, the manager, did it appear
12 he had mental illness when he purchased those things? The
13 person at the convenience store, did he appear to have
14 mental illness when he bought the gas, the cigarettes and
15 the food. Questioned yesterday, was he able to have a
16 rationale conversation. Your Honor has heard repeatedly
17 their questions. Even yesterday, did Tim get good grades
18 in school. So they have intentionally and constantly been
19 asking these questions trying to let the jury think that
20 hey, someone who has schizophrenia cannot be intelligent,
21 cannot rationally have a conversation, cannot function.
22 Ms. Yeiser was someone who had great grades in school,
23 scholarship to the University of Southern California in
24 biochemistry and molecular biology. No symptoms prior to
25 her junior year. And then after her junior year, she

1 started having these problems, and what happened to her
2 during that time. It is certainly, Judge, something that
3 the jury needs to hear. It will assist them as the trier
4 of fact. She is experienced in schizophrenia based on her
5 personal knowledge, her experience. She has written a
6 book on it. She writes a blog for Psychology Today. She
7 has written numerous articles. She runs a foundation
8 based on schizophrenia, talks to numerous individuals
9 consistently about that. She has got great insight into
10 kind of what schizophrenia is and that certainly will
11 assist the jury. And like I said, as Your Honor as heard,
12 that's kind of been their whole thing is he's smart, so,
13 obviously, he can't have schizophrenia. He can't have a
14 mental illness. He can carry on a conversation. He can
15 be rationale. She can explain all those things to the
16 jury.

17 MR. HUBBARD: Your Honor, just a quick comeback.
18 Their experts can do all of that as well. What she can
19 present is her personal story, which is absolutely
20 irrelevant. Under 403, the prejudicial aspect of their
21 testimony would outweigh anything probative because her
22 story is not Tim Jones, Jr.'s story.

23 THE COURT: This is what strikes me, she's, more or
24 less, a lay witness with --

25 MR. MADSEN: Well, I think she can be qualified as an

1 expert in schizophrenia based on her experiences -- and,
2 obviously, only someone who has experienced voices can
3 truly explain kind of what's going on.

4 THE COURT: Well, isn't that kind of like calling an
5 alcoholic in a DUI case and saying, well, what happened to
6 you when you drank too much. Well, I couldn't stand up,
7 sometimes I fell down and this and that. Yeah, that all
8 happened to him, but is that relevant here to what
9 happened that day and that time?

10 MR. MADSEN: Well --

11 THE COURT: It sounds like what you're describing to
12 me.

13 MR. MADSEN: The Court has allowed or permitted lay
14 witnesses to render expert opinions on narcotics based on
15 prior use. So there is a line of cases along that way --

16 THE COURT: I've not done that.

17 MR. MADSEN: Excuse me?

18 THE COURT: I don't think I've done that.

19 MR. MADSEN: Not you, but I mean there are cases.

20 THE COURT: Oh, okay. I thought you said I did it.

21 MR. MADSEN: No, no, no, there are cases where that
22 has been done and allowed.

23 MR. HUBBARD: But they always pertain -- for
24 instance, the mechanic who spent a lifetime working on
25 tires and all of that and there's an issue about a tire in

1 a wreck, that has happened, but it pertained to that case.
2 This is her personal story, which is not Tim Jones, Jr.'s
3 story, which all their witnesses have been about let's
4 talk about Tim's past. And all we've done is
5 cross-examine these witnesses as to their knowledge and
6 experience with the Defendant. This is way out of the
7 blue.

8 MR. MADSEN: And Judge, obviously, hearing voices is
9 not a common experience with individuals. I mean, that's
10 what makes her uniquely qualified to explain to the jury
11 kind of what goes on. You know, you can get a doctor that
12 talks to a hundred people with schizophrenia, but they can
13 ever truly understand or express that?

14 THE COURT: Well, they're trained to try to express
15 that.

16 MR. MADSEN: They are trained to try to express that,
17 but they haven't had that personal -- they're not hearing
18 those personal voices, and so --

19 THE COURT: She's not hearing his voice. If she
20 stands close to him, she can hear the voices, too?

21 MR. MADSEN: No, sir, but she can explain, you know,
22 what hearing the voices do -- and like I said, she also --

23 THE COURT: Let's proffer it, but I'm not following
24 your -- I mean, I don't -- I'm going to be very reluctant
25 to allow this. But let's proffer it because if I don't

1 hear some of it, I can't make a full determination. I
2 think y'all arguing about it is not going to help me any
3 further. I need to hear it from her.

4 MR. HUBBARD: I don't know if Your Honor wants to
5 proffer it at a later time or if you want to go ahead and
6 do Frierson, just because the jury -- when you told them
7 to be in at 9:00 o'clock, we had no notice of this.

8 THE COURT: Yeah, y'all really, really, really are
9 making me look bad in front of the jury. Because I try to
10 be punctual for them and y'all keep throwing these huge
11 hurdles in front of me to doing that and I do not like
12 that.

13 MR. HUBBARD: Dr. Frierson is here, if we want to go
14 ahead and do that and then we can proffer after a break.

15 THE COURT: What y'all think? I mean, I told them
16 9:00 o'clock. I came in at quarter till and it's 9:25 and
17 we haven't done a thing with the jury.

18 MR. HUBBARD: I'm just afraid --

19 THE COURT: I'm trying to manage the case.

20 MR. HUBBARD: Yes, sir.

21 MR. MADSEN: Your Honor, we would call Bethany
22 Yeiser. I don't -- she has a flight. She's got to be
23 back Tuesday. We can just go ahead and call her and deal
24 with it.

25 THE COURT: Well, tell the jury they can have a

1 break. I'm not going to get them in here for a little
2 bit. This will probably take 20 minutes or better, so
3 they can step outside. There's no reason for them to sit
4 there in that jury room wondering what's going on. I sure
5 would like to tell them, the lawyers keep ambushing me and
6 disorganizing the case.

7 MR. MADSEN: Your Honor, I have consistently told the
8 State who we're calling, when we're calling them.

9 THE COURT: Y'all consistently have not told me
10 anything, either side.

11 MR. HUBBARD: Judge, here's the thing, I found out
12 this morning. Now, did I know about this witness a long
13 time ago, yeah, and we've been telling them we're going to
14 object. So everybody walked in here thinking we had Dr.
15 Frierson --

16 THE COURT: I understand.

17 MR. HUBBARD: They've got Dr. Frierson here. And
18 I've done my best to keep the Court informed of what we're
19 doing, to let you know of our scheduling difficulties and
20 the Defense. This was absolutely unexpected.

21 THE COURT: I think it was expected, maybe not this
22 morning first thing. I guess what's frustrating to me is
23 y'all realize there's so much stuff to go over. Yesterday
24 afternoon, Judge, we've got an issue that we're going to
25 call our first witness and we may need to deal with it. I

1 mean, there's no way the Defense didn't know the State was
2 objecting to her. Because y'all said we're going to call
3 her, they said we're going to object.

4 MR. MADSEN: They've never communicated an objection
5 until this morning.

6 THE COURT: Y'all have been switching back and forth
7 with that. That's -- the State didn't tell y'all the
8 witnesses day to day, y'all have not told them. It's been
9 huge and frustrating to me watching y'all treat each other
10 that way. There's shame on both sides. Call her up.

11 MR. MADSEN: Bethany Yeiser.

12 BETHANY YEISER, being
13 first duly sworn, testified as follows:

14 THE CLERK: If you'll have a seat over there, please,
15 in that chair. If you'll state your name and spell your
16 last, please, for the record.

17 THE WITNESS: My name is Bethany Yeiser, Y-E-I-S-E-R.

18 PROFFER DIRECT EXAMINATION

19 BY MR. MADSEN:

20 Q Ms. Yeiser, just make sure that you speak up. Any
21 questions that I ask you need to be a yes or a no, not a
22 head nod because she needs to take down everything, okay?

23 A Okay.

24 Q Can you tell me where you live?

25 A Cincinnati, Ohio.

1 Q Did you graduate from high school?

2 A Yes.

3 Q Where did you graduate high school?

4 A Mentor, High School.

5 Q And that is where?

6 A Mento High is a suburb of Clevenland.

7 Q Did you get good grades in high school?

8 A 4.0.

9 Q And based on that 4.0, did you get a scholarship to
10 go to college anywhere?

11 A I did. I had a half tuition scholarship to attend
12 University of Southern California to study biochemistry
13 and molecular biology.

14 Q So a girl from Cleveland, why did you want to go out
15 to University of Southern California?

16 A Well, I was originally attracted to the excellent
17 music school. I planned to study violin, but I changed to
18 molecular biology.

19 Q How long did you study violin?

20 A Since I was seven.

21 Q You mentioned your major was biochemistry and
22 molecular --

23 A Biology, that's correct.

24 Q -- biology? So given that background, what job were
25 you interested in pursuing when you graduated?

1 A I wanted to do clinical trials to obtain an M.D. or
2 Ph.D.

3 Q And what were you intending on researching?

4 A I was thinking about HIV or cancer.

5 Q Were you able to graduate from the University of
6 Southern California?

7 A No. During my senior year, I had my first psychotic
8 episode and, suddenly, my best efforts produced failing
9 grades and I failed to graduate.

10 Q Eventually, did you transfer to the University of
11 Cincinnati?

12 A I did.

13 Q What degree did you get there?

14 A I received my molecular biology degree from the
15 University of Cincinnati in 2011, after I recovered from
16 schizophrenia.

17 Q Do you work anywhere now?

18 A I write and speak about schizophrenia. I write a
19 blog for Psychology Today and -- and I manage the CURESZ
20 Foundation, which stands for Comprehensive Understanding
21 via Research and Education into Schizophrenia.

22 Q At some point in time, did you receive a mental
23 health diagnosis?

24 A Yes.

25 Q And what is that?

1 A I was diagnosed with schizophrenia in March of 2007.

2 Q Have you been able to go through recovery since then?

3 A Yes.

4 Q Have you written any books?

5 A Yes. I wrote my memoir Mind Estranged: My Journey
6 from Schizophrenia and Homelessness to Recovery published
7 in 2014.

8 Q And where could you purchase that?

9 A Amazon.

10 Q And you said it was a memoir?

11 A Yes.

12 Q So it kind of went through your -- the problems you
13 were having?

14 A My story, especially being a high achiever, getting
15 excellent grades before the onset of schizophrenia,
16 delusions, believing that I was the next prophet in 2000
17 years. And, of course, I spent a lot of time talking
18 about my voices. I wanted to explain to the general
19 public the experience of hearing voices, which are not
20 like regular thoughts. I wanted to explain how the voices
21 affected my behavior. Schizophrenia is a treatable brain
22 disorder similar to Parkinson's, Alzheimer's and stroke.
23 A lot of people think that when a person with
24 schizophrenia is experiencing voices, they can choose to
25 follow or to ignore those voices. I wanted to help the

1 general public understand how compelling the voices were.

2 Q And you had mentioned, I guess you write a blog for
3 Psychology --

4 A Today, yes.

5 Q -- Today? How long have you been doing that?

6 A About two years.

7 Q And what is that blog about?

8 A I write about mental illness and I write about
9 homelessness. And I spend a lot of time describing my
10 symptoms of schizophrenia. I was also briefly
11 incarcerated two times. I was incarcerated for
12 trespassing on the University of Southern California
13 campus where I had once been an honor student while I was
14 homeless. And I was trespassing while I was acutely
15 psychotic and hearing voices. I want to help people
16 understand that if I had been able to choose to ignore the
17 voices, I never would have trespassed on the University of
18 Southern California campus. I want people to understand
19 and have more compassion on people with schizophrenia.

20 Q Besides the book and the blog, do you do any other
21 writings?

22 A I've written for some major websites, such as
23 Treatment Advocacy Center website.

24 Q Do you give any presentations or lectures on
25 schizophrenia?

1 A During the last five years, I've been lecturing for
2 doctors, representatives of churches, clinics,
3 non-chapters. I do a lot of speaking.

4 Q And you had mentioned your foundation. When did you
5 start that?

6 A It was founded in 2016, we started work in 2017.

7 Q And who did you start that with?

8 A A psychiatrist named Henry Nasrallah and a Board
9 including 11 other people, including psychiatrists.

10 Q And what is the foundation called again?

11 A Comprehensive Understanding via Research and
12 Education in Schizophrenia, CURESZ.

13 Q And what do y'all do with the foundation?

14 A We promote cutting edge and underutilized
15 medications, such as my medication called Clozapine, which
16 has kept me in full remission for 11 years with no
17 relapse. We also highlight stories of what we call
18 schizophrenia survivors. These are people who are
19 thriving despite the schizophrenia diagnosis. We seek to
20 educate the public about schizophrenia as a brain disorder
21 to try to fight the stigma with schizophrenia. For
22 example, seizures used to be called a mental illness.
23 We'd like to see schizophrenia always called a brain
24 disease and not a mental illness.

25 Q Have you found that the general public has a

1 misconception about schizophrenia?

2 A Yes. One of the biggest misconceptions about
3 schizophrenia is understanding of the voices, thinking
4 that people with schizophrenia should just be strong,
5 should buck up, should pull themselves up by their
6 bootstraps and just ignore the voices, just stop paying
7 attention to the voices, just act normal. But again,
8 schizophrenia is a brain disease, a biological brain
9 disease, like Alzheimer's. You wouldn't tell someone with
10 Alzheimer's disease to just buck up and to just act normal
11 because you understand they have a disease that's
12 influencing their behavior. So we seek to clear up these
13 misconceptions about schizophrenia.

14 Q So let me back up, can you kind of give me -- when
15 you started having your mental health problems, kind of
16 how old were you? Where were you in your life?

17 A So I spent three years at USC. I had a steady
18 decline in my ability to focus. I went to Africa the
19 summer after my junior year of college. Came back from
20 Africa and, suddenly, I'm having these delusions. I'm
21 believing that hundreds of millions of people around the
22 world are personally counting on me to change their living
23 situation. I started believing that I'd be the next
24 Mother Teresa, I'd be a prophet. And while I'm having
25 these delusions, my grades are just dropping and I'm

1 hardly even able to pass. The illness changed my
2 personality. I was irritable. I wasn't making a lot of
3 sense. I was rude. And I was paranoid of my parents. I
4 thought they would stop me from becoming this prophet.
5 About six months later, I moved out of the dormitory,
6 rejecting all help and became homeless. I started
7 sleeping in the University library every night. I hid for
8 three years. And then my fourth year homeless, I started
9 having hallucinations and sleeping outside.

10 Q During that period of time, had you had a close
11 relationship with your parents prior to that?

12 A I had a happy, normal childhood and I had a fantastic
13 relationship with my mom and dad. That's why it's amazing
14 to me looking back that I absolutely refused to speak with
15 them when the illness came on because we had been so close
16 when I was younger.

17 Q How long was it that you didn't speak with them?

18 A Four and a half years.

19 Q So you failed out of school?

20 A Yes.

21 Q And how long were you homeless?

22 A I was homeless from March 3rd, 2003, to March 3,
23 2007, when I was picked up by police and taken for
24 evaluation. I was screaming at the top of my lungs to the
25 voices and was picked up and evaluated.

1 Q And so you're living homeless in Los Angeles?

2 A Yes.

3 Q And where did you live?

4 A For the first three years, I was hiding in University
5 libraries. I still had my University ID. They didn't
6 check my ID. They just noticed that it looked like a
7 valid ID. No one knew that I had failed all of my
8 classes. And then during the summer, there was a certain
9 dormitory where I had lived as a student in good standing.
10 And I knew that half of the dormitory was empty for the
11 summer and I would sneak into the dormitory every night,
12 sleep there and leave very, very early in the morning. So
13 I lived like that for three years. I was looking through
14 garbage for food to eat. And my whole life was centered
15 around my delusions. I thought I was going to become,
16 again, this big international figure, rich, help hundreds
17 and millions of people in poverty.

18 Q Now, when you started having these delusions, did you
19 initially start hearing voices?

20 A I started hearing voices in January 28th of 2006. I
21 was sitting on a park bench on the University of Southern
22 California campus and I hear this chorus of students'
23 voices inside my mind. They're insulting me, telling me
24 I'm homeless, telling me again and again and again. It
25 was the most irritating thing I could ever imagine. And

1 then they changed and they confirmed my delusions and
2 talked about how I would marry a politician, have millions
3 of dollars and make a contribution. And they would go
4 back and forth and back and forth between negative and
5 positive.

6 Q Eventually, was there another type of voice that
7 eventually --

8 A So after six months, I started having what were
9 called -- what the doctors called command hallucinations.
10 They could be simple things like walk to the right, walk
11 to the left. I'd be walking in a zig-zag pattern. They
12 would scream and scream inside of my mind until I did
13 whatever they were telling me to do. I started taking
14 these long, long walks for miles and miles down to Los
15 Angeles. They would scream at me and say look for food
16 when I wasn't even the slightest bit hungry. I started
17 looking for -- you know, for food in the garbage even when
18 other people were around and saw. The voices were
19 unbelievably compelling and they were the most irritating
20 stimulus. I couldn't ever imagine -- basically, whatever
21 they were telling me to do, I just did from taking long
22 walks to hitting myself to looking for garbage to eat.
23 All I really wanted in my life with this in my life was to
24 somehow escape the commands of the voices. It was --
25 again, as I mentioned before, they weren't something that

1 I could follow or choose to just ignore. If they were
2 something that I could choose to follow or ignore, I might
3 not have been diagnosed with schizophrenia. They were
4 also -- they were also a lot like my conscience. You
5 know, somebody might admit to something they've done wrong
6 because they're conscience is pushing them to, even if
7 they know there will be punishment. And the voices, they
8 felt a little bit like my conscience. It almost felt like
9 whatever they did was -- whatever they told me to do was
10 the right thing to do.

11 Q Did you tell anyone that you were hearing voices?

12 A No. No.

13 Q And why not?

14 A Well, I very firmly believed I wasn't mentally ill,
15 so I figured that well, maybe everyone has this experience
16 and I thought maybe the important thing is to just not
17 talk about it because nobody else is talking about it, so
18 I shouldn't talk about it either. I was very sick.

19 Q Were you able to hide the fact that you were hearing
20 voices from other people?

21 A Yes. So I would hear voices night and day, 24/7 and
22 then I -- even when I was homeless, I put up this facade.
23 I was a really, really good liar. I might go to a public
24 park and people would ask where I lived and I had this
25 false address. And I would wash up in public bathrooms, I

1 would try to keep the best hygiene I could. And when I
2 was around other people or I was afraid, the voices would
3 be distracted. So I might be screaming at the voices and
4 then, say, a police officer comes to me and says what's
5 wrong, were you screaming? No, I wasn't screaming.
6 There's nothing wrong with me. You know, I was hearing
7 voices for 13 months before I was picked up by police and
8 taken for an evaluation. And even at that point, when the
9 voices were so bad, when I heard them for 13 months, they
10 almost didn't admit me to the hospital because I was able
11 to put up such a great facade and to convince people that
12 nothing was wrong with me.

13 Q You had mentioned screaming. At other times, would
14 you have kind of an internal conversation within your head
15 with the voices?

16 A Yeah, I would have conversations. I won't say it was
17 screaming. I could be mumbling to myself because of the
18 voices.

19 Q How about hallucinations, at some point in time, did
20 you start having any hallucinations?

21 A Yeah, so the voices, again, they began like January
22 28th, 2006. A few days later, I was taking a shower at a
23 friend's apartment and there were these three guys who
24 were outside the window who were looking at me when I was
25 in the shower. And because of their specific comments and

1 very rude and derogatory, I could tell they could see me
2 in the shower. So I got out of the shower to look through
3 the window to see these three men and there was no window.
4 So I was looking for a sunroof to see where these three
5 guys were coming from. No sunroof. And it took me a few
6 minutes for me to realize that those guys were not there.
7 Same with visual hallucinations. I'd walk by a library
8 and saw the name of the library was changed by one letter.
9 Eventually, I would get to the point where I couldn't
10 check the date on a newspaper without hallucinating and I
11 didn't know what day it was.

12 Q I think you mentioned something about looking at
13 yourself in the mirror?

14 A Yes. I looked at myself in the mirror one day and
15 the image I saw in the mirror was morphed. It looked like
16 a cross between me and the character Lisa from the show of
17 the Simpsons. Very bizarre and I felt afraid.

18 Q Were you paranoid?

19 A Paranoia wasn't my main symptom. My biggest problem
20 was the voices, but I was paranoid that my parents would
21 stop me from becoming a prophet, from making a worldwide
22 impact. You know, they contacted my friends, my church,
23 my professors. They did everything they could. They
24 wanted to make amends. They wanted to be in my life. I
25 would not speak with them.

1 Q And I think you had kind of mentioned washing up.

2 During that period of time, what happened to your hygiene?

3 A Well, for the first three years, I became this expert
4 at washing up in public bathrooms in the early hours of
5 the morning. I would wash my hair with hand soap. And
6 then the fourth year, when the voices came on and I
7 started living outside, my hygiene just slipped. It was
8 like I was giving up. And when I was eventually picked up
9 for evaluation, they were able to tell that I had been
10 living outside for a long time.

11 Q How about your weight?

12 A Originally, when I was looking for garbage to eat, I
13 would be very, very careful to only look for food when
14 nobody was around, nobody was watching and I lost a lot of
15 weight. I probably weighed about 20 pounds less than I do
16 now. And then as the years went by, as I was homeless, I
17 didn't even care if people saw me looking for food in the
18 garbage. I'd be looking for food in the middle of the day
19 that people had discarded.

20 Q How about did your symptoms kind of wax and wane?

21 A A lot of people with schizophrenia wax and wane.
22 Through my foundation, I'm not a doctor, but I encounter
23 people with schizophrenia all the time and a lot of people
24 have that experience. For me, it was very constant. They
25 were always there about the same intensity.

1 Q During the course of your illness with and without
2 voices, were you able to have rationale interactions with
3 people?

4 A Oh, yeah, yeah, especially those first three years
5 before the voices began. I mean, I was hiding on the
6 University campus sleeping in the library. I mean, I made
7 friends. I was a really, really good liar. You know, I
8 had friends who knew that I wasn't in class, but they
9 didn't know that I was homeless. And even when the voices
10 began, I was very rationale. I was able to put up this
11 great fasad. And again, when I was finally picked up by
12 police and I had lived outside and heard voices for 13
13 months, I was almost able to talk my way out of it because
14 the voices were just so distracted when I was with other
15 people.

16 Q And you say that, can you tell me a little bit about
17 when the voices would kind of go away for you?

18 A Well, they never went away completely, but I remember
19 after I had heard voices for several weeks, a friend
20 invited me to a party. And I was in her car, she drove me
21 there, she didn't know I was homeless, and I could hear
22 the voices very faintly in the distance, but they were
23 like a mumbling. I was able to ignore them pretty well.
24 I went to the party and one of the women there had a
25 laptop computer with Wifi, it wasn't plugged in. And I

1 remember seeing a computer on Wifi before and I was really
2 paranoid. I thought that maybe it was plugged in and she
3 was just lying about it that it wasn't really plugged in.
4 So all these different crazy thoughts were going through
5 my mind, but I was able to pull it together. Now, I'm
6 sure no one at the party knew, you know, that I was
7 paranoid and I was having these hallucinations. It's kind
8 of like I was a volcano that was about to explode, but all
9 people around me could see was the mountain. They
10 couldn't see that I was about to explode.

11 Q When your mind was deteriorating, were you able to
12 fully recognize that?

13 A No. No. Absolutely not. I thought I was completely
14 fine. I had a symptom, which doctors call anosognosia,
15 which means lack of insight. And I was a hundred percent
16 absolutely sure that nothing was wrong with me and this is
17 very typical in schizophrenia. Half of patients or so, at
18 least, at first have no -- not even a clue that something
19 is wrong.

20 Q And you had mentioned getting arrested for a couple
21 of times for trespassing. When was that?

22 A I was first arrested for trespassing in October of
23 2006. I had been on the University campus again and again
24 for three and a half years. Police started to recognize
25 me in libraries and lounges at night. I had my ID, nobody

1 checked my ID. And then in October of 2006, I was dirty,
2 I was looking for garbage to eat. And the voices told me
3 to just go to this nice lounge area where people would
4 pick up their diplomas on campus. I knew it was wrong. I
5 knew I was dirty. I knew I didn't belong there, but the
6 voices kept telling me again and again that I was a Noble
7 Peace Prize winner in the future and, of course, I'm
8 walking on the University campus and no one would notice
9 and on and on and then loud and they're screaming at me.
10 And finally, I just give in. It's like well, no one will
11 notice me, I'm not that dirty. So I went to this lounge
12 to just lay down. And the University, they had had enough
13 of me after all these years of hiding in libraries and
14 hiding in lounges. And that day, it was the first day in
15 all of my years at USC that I had ever seen a police car
16 on campus. And they were there to pick me up for
17 trespassing on, you know, this campus where I had once,
18 this scholarship winner. And I was so confused. I really
19 believed it was a mistake. I really believed that yes, I
20 was still welcome on that campus. And again, you know,
21 how could they refuse somebody who was going to win a
22 Noble Peace Prize in the future, which I really believed.
23 You know, when I was in high school, I believed I was
24 going to graduate. Of course, how could I not graduate
25 from high school? When I was hallucinating and having

1 delusions, I believed I would win a Noble Peace Prize. It
2 was as certain as I used to be about graduating from high
3 school. So I was very confused. The jail was very, very
4 crowded and it was dark and it was scary. And I started
5 quietly singing hymns to myself because I believed that I
6 was like a Christian apostle being in jail, not -- not a
7 clue. I thought it was all mistaken. So I was released
8 after a few days. And when I got out, I still thought it
9 was a mistake, but I never went on the campus again. I
10 got out of jail and you would think, you would think that
11 finally I would contact my parents and ask for help at
12 that time. So I got out of jail. I walked from the jail
13 to the churchyard where I was living. I got my sleeping
14 bag from behind the bushes and I just continued living
15 outside. Nothing changed. I couldn't ask for help. A
16 month later, it was Thanksgiving. I never went to the
17 churchyard during the day. I would always stay away, but
18 that day I was having painful hallucinations. Some
19 policeman called out to me from the road, asked me where I
20 lived. I gave them my standard lie, they didn't believe
21 it and I was picked up briefly and jailed again over
22 Thanksgiving.

23 Q And what happened when you were jailed that time?

24 A I was given food. I remember I had Cheerios and a
25 banana. I didn't have to look in the garbage for food.

1 They gave me a uniform that was clean. I was sleeping on
2 a bed at night. There were actually all these perks to
3 being in jail. My second time in jail, there was a lot
4 more natural light and the conditions were a lot better
5 and I was almost ready to just stay in jail. My life home
6 had been so bad that, you know, there was a lot of
7 advantages to be in jail. And another thing that happened
8 when I was jailed was I was afraid and the voices became
9 way better. I was never evaluated for mental illness
10 while I was in jail because I was just so good at putting
11 up the facade.

12 Q And at some point in time, did you have a mental
13 evaluation?

14 A So my third being picked up was March 3rd, 2007. The
15 voices were saying walk to the right, walk to the left.
16 I'm up in the morning walking this zig-zag pattern around
17 the churchyard at the command of the voices. I'm
18 screaming back at the voices. And then a police officer
19 sneaks up on me and I find my hands behind my back. I
20 didn't even see him coming. He told me I was being taken
21 to be evaluated in the psych hospital. And I thought
22 well, that's great. You know, there's nothing wrong with
23 me, they'll let me out right away, of course, you know.
24 So when I was at the psych hospital, they called my
25 parents. They hadn't called my parents when I was in

1 jail. Again, it had been four and a half years since I
2 had spoken with my parents. And my parents got on the
3 phone, called the social worker and explained to them
4 everything that had been happening. Because they realized
5 that, you know, I was so good at putting up this facade
6 that they may not have even kept me in the hospital. They
7 may have discharged me in the streets. So because my
8 parents convinced them to keep me in the hospital, they
9 did. I was there for about two and a half weeks and, of
10 course, I started medication.

11 Q Do you remember what medication you received?

12 A My first medication was called Risperidone.

13 Q And how was your experience with that?

14 A It was like being on chemotherapy. It was worse than
15 I could have ever imagined. I had severe, what they call,
16 EPS, extrapyramidal side effects. Extremely rigid
17 muscles. I had a side effect called akathisia. It's
18 where you are extremely restless. More restless than I
19 had ever been or could ever imagine. Sitting for five
20 minutes was like for sitting three hours used to be. I
21 had a flat affect because of the medication. Anhedonia,
22 got no joy out of hearing my favorite music or seeing my
23 favorite painting. Rapidly gained lots of weight, to ten
24 pounds. Sleeping 16 hours a night or more, waking up
25 exhausted. This medication, it was my worst nightmare. I

1 had a friend who was taking Risperidone, the same dosage.
2 She was premed, going to school full time, getting A's.
3 For some people, the drug is your miracle. For me, the
4 drug was my nightmare. And when these side effects kicked
5 in, I thought to myself I know who I am. I do not need
6 this medication. I am strong. I am an ordinary person.
7 I cannot have schizophrenia. So I went off the
8 medication.

9 Q Was it able -- was that medication able to help you
10 at all with the voices?

11 A I thought it wasn't because when I was on
12 Risperidone, the voices were louder than they had ever
13 been. They were screaming at me. I couldn't ignore them,
14 they were so irritating. But -- you know, I thought it
15 wasn't working at all, but the command hallucinations went
16 away. So when the command hallucinations went away, my
17 behavior changed. I started to act normal and then the
18 doctors determined that they were ready to discharge me
19 from the hospital. So yeah, the medicine was working, but
20 I had no idea it was working. I couldn't see it.

21 Q Did you eventually transition back to Cincinnati?

22 A So I was hospitalized for two and a half weeks in Los
23 Angeles and then I flew to Cincinnati to recover at my
24 parents home.

25 Q When you were there did you stop taking the medicine?

1 A So I stopped taking the medicine when I was there.
2 And I was feeling great. The side effects were
3 disappearing. You know, I was feeling better and better.
4 I was starting to lose the weight I had gained. And then
5 the voices came back and I didn't even tell they had
6 changed to command hallucinations again. And they were
7 stronger than they had ever been. I was acutely
8 psychotic. And I was at my dad's church that day trying
9 to practice my violin. It was the violin they had given
10 me when I was 13. The violin was my life treasure. It
11 was worth thousands of dollars. It was the most precious
12 thing to me. And the voices told me to break the violin,
13 voices told me to just smash the violin. And I did. And
14 I did. And something inside of me told me it was the
15 right thing to do. And I was -- at the same time, I was
16 devastated that I had broken my treasure. Today, I know
17 there are two types of hallucinations. One's called
18 ego-syntonic. It's when you do something that's
19 consistent with who you are. Something normal, like, you
20 love to go to your favorite restaurant, so you -- the
21 voices are telling you to go to that restaurant. There's
22 another type of hallucination called ego-dystonic, which
23 is what I had when I broke the violin. This is when you
24 do something that you would never do in a million years.
25 It's something that's so contrary to who you are as a

1 person, it's something you would never do. And that's
2 what I was having that day, an ego-dystonic hallucination.

3 Q Are you on any medicine now?

4 A I found the right medication for me in 2008 called
5 Clozapine. And for the last 11 years, I have been on
6 Clozapine with full remission and no relapse. That
7 enabled me to transfer to UC and finish my degree with all
8 straight A's.

9 Q You had told me that you have treatment resistant
10 schizophrenia?

11 A Yeah.

12 Q Kind of what does that mean?

13 A Oh, it just means that I don't respond well to pretty
14 much any drug except for the one I take, which is for
15 treatment resistant patients.

16 Q So in kind of that first 12 months that you were
17 being treated, how many drugs did you go through?

18 A I went through five. And it really looked like I
19 would never get better, I would never go back to school or
20 I would never volunteer or work, I would never have normal
21 relationships. Some people have what they -- experience
22 on Clozapine. I was -- that was me. It was incredible.
23 The voices were finally quiet.

24 Q Do you remember the five medications that you took
25 during that 12 months?

1 A Risperidone, Paliperidone, Ziprasidone, Aripiprazole
2 and Olanzapine.

3 Q And Ziprasidone, that's Geodon, isn't it?

4 A Yes, Geodon is a type of Ziprasidone.

5 Q How did that work for you?

6 A I was feeling great. The side effects were going
7 away. And then when I was on the Ziprasidone, the voices
8 were slowly coming back. It works fabulous for some
9 people, but it wasn't for me.

10 Q Did you participate in talk therapy at all?

11 A Originally, some. But, you know, before I had
12 schizophrenia, I had a fabulous relationship with my
13 parents, no trauma, happy, normal childhood. And then
14 when I got on medication, it resumed. There was no
15 trauma. I was fine. There was nothing to talk about
16 really. Many patients benefit from all kinds of -- types
17 of psychotherapy, such as cognitive behavioral therapy.
18 What I did benefit from was my doctor sitting down with
19 me, coaching me saying where do you want to work? Do you
20 want to finish your degree? Do you want to play violin
21 again? So he would help me rebuild my life. So I did
22 that.

23 Q And the medicine you're on now, have there been any
24 side effects for you?

25 A Clozapine is sedating for me. I sleep about 11 hours

1 a night. I can't work full time. And I've been very
2 hesitant to drive, so I've decided not to drive over the
3 last few years. So I can't work full time, no.

4 Q During your treatment, have there kind of been bumps
5 along the way for you and your mental health?

6 A Not really. Not really. I'm one of those people,
7 again, that did fabulous on Clozapine. And I've been very
8 stable with no relapse for 11 years.

9 Q Based on your experience and talking with other
10 individuals through your foundation or through your work,
11 is that usual?

12 A It can be. It can be. A lot of people have mild
13 relapse, maybe briefly hospitalized, but many people on
14 Clozapine recover, as I have, and just do beautifully.
15 And also on other medications as well.

16 Q And do you have any -- does the general public have
17 any misconceptions about people with schizophrenia?

18 A The biggest misconception is that it is a mental
19 illness and that people should just pull themselves up by
20 their bootstraps and act normal, when, in reality, you
21 would never say that to someone with Alzheimer's Disease.
22 You know, this disease -- the voices are not like regular
23 thoughts. They're unbelievably compelling and to this
24 day, I cannot believe that they were so compelling that
25 they made me break my violin. So we want people to

1 understand it's a brain disease. We also want them to
2 understand this is treatable, you know. And today, the
3 medications are not just major tranquilizers like they
4 used to be that wipe you out and make you tired. Today,
5 people on the newer antipsychotics can really have a life,
6 work, volunteer, you know, have normal relationships, have
7 a life. There's a lot of hope.

8 MR. MADSEN: Judge, that's all the questions I have.
9 I would, obviously, during the proffer move that she be
10 qualified as an expert in schizophrenia. She certainly
11 has sufficient knowledge and expertise. I believe that it
12 would assist the trier of fact under Rule 702. As Your --
13 well, I don't know if they have questions.

14 MR. HUBBARD: I have a few questions.

15 THE WITNESS: Yeah.

16 MR. HUBBARD: With Your Honor's permission. Unless
17 Your Honor is ready to rule, I'll ask more questions.

18 THE COURT: I've got a huge concern that her
19 testimony and her condition, mental -- whatever her
20 current condition is, treatable, she's done a wonderful
21 job, that -- very impressive. I don't think that should
22 be interjected into this trial in consideration of guilt,
23 innocence, not guilty by reason of insanity, guilty but
24 mentally ill. I think she's not a physician, although
25 she's gained a lot of experience as a person who suffers

1 from that condition. I don't think her testimony -- I
2 think it's going to confuse the jury as to what the issue
3 is in this case. It's akin to well, she did this and she
4 did that and then she's received proper treatment and
5 she's doing very well. And that's very impressive, but
6 that has very little to do with what happened in August of
7 2014. And the jury's task at hand is to determine what
8 Mr. Jones understood right from wrong, morally right from
9 wrong, capacity to conform in August of 2014. She didn't
10 offer an opinion as to any of that, lay opinion or expert
11 opinion. And I don't believe she would be qualified as an
12 expert opinion, as an expert to say, well, in my opinion,
13 I think he would have not known because his voices were
14 louder than mine. I just think that's a very slippery
15 path and I'm not willing to go there. I don't think this
16 is relevant testimony and if it is relevant, I don't think
17 it's helpful to the jury in understanding the issues. And
18 under 701, I don't think it's -- I think it's just hugely
19 confusing to me, her issues versus his issues. So under
20 403, I find that it would be -- create a prejudice and
21 confusion and mislead the jury as to what Mr. Jones was
22 able to do or not to do or should have done or what voices
23 he heard. She can't do that. She can't offer testimony
24 to that extent. She's offered testimony to her personal
25 experiences, but that is not tantamount to saying well,

1 I'm presuming Mr. Jones had a similar experience, or
2 something similar to that. I just don't think that's
3 helpful to this jury at all.

4 MR. MADSEN: So, Judge, if I understand correctly,
5 your ruling is under 403. How about under 702, if we
6 don't qualify her as an expert?

7 THE COURT: I ruled on that, too. 702, I don't think
8 I qualify her as an expert. I said lay witness or expert
9 witness. I just don't think her opinions as to what she's
10 been through can be associated with Mr. Jones' case.

11 MR. MADSEN: And, Judge, obviously, just -- not
12 arguing or quarreling with the Court, but just to put our
13 position. Obviously, there's a description by her of the
14 voices. I think, also, in telling her story, which I
15 think she has talked with Mr. Jones only once, it
16 interested me a lot of the parallels in her story with the
17 stuff that Your Honor has heard through the different
18 witnesses and that's why we believe that we survive that.
19 Obviously, we have the burden of proof that -- under the
20 Sixth Amendment, we believe that we have the right to
21 present a defense and excluding an expert witness to a
22 contested issue that Mr. Jones has schizophrenia and
23 whether he knows right or wrong or what the voices are
24 would be reversible error to exclude someone when they are
25 qualified and relevant to add to the jury's understanding

1 of the issues presented. Obviously, we believe that the
2 evidentiary rules should give weight to the Constitution.
3 In addition, Mr. Jones has an interest in using all
4 available means to address a relevant issue. As I said,
5 there's been numerous questions about was he intelligent,
6 what was his schooling like. She has schizophrenia and,
7 clearly, she establishes an amazingly bright person. And
8 that is certainly a misconception that they're trying to
9 foster, that hey, you can't have schizophrenia and be
10 smart. We've had some experts say that, the Court has
11 heard that, but I think that hearing that from experts --
12 which they've tried to bring out, what are you paid, how
13 much are you paid, trying to infer you're giving this
14 opinion because you're getting paid for it. But we have
15 someone here who actually has it and is intelligent. And
16 we believe that the exclusion of the evidence is
17 unconstitutional, that it's arbitrary, it's
18 disproportionate where it infringes on the weight of the
19 interest of the accused. That is United States vs.
20 Scheffer, S-C-H-E-F-F-E-R, that is 523 U.S. 303, that is a
21 1998 case. We believe that she is an educational expert
22 on the issue of voices. Even if it is her personal story,
23 we believe that it would be a violation of the Sixth
24 Amendment and the Fourteenth Amendment.

25 MR. HUBBARD: Two quick notes, I think 401,

1 relevance. Her story is not relevant to Mr. Jones.
2 You've already said that, just the rule wasn't cited. But
3 the other issue, as to the intelligence issue, they've put
4 up all this evidence about cognitive deficits. They
5 talked about an 89 IQ for Mr. Jones. That's what all that
6 is. We've never said people with schizophrenia can't be
7 intelligent. So just so the record is clear on that.

8 MR. MADSEN: We have not put up any of that
9 evidence --

10 MR. HUBBARD: That's --

11 MR. MADSEN: They elicited --

12 THE COURT: Y'all quit arguing. I've made my ruling.
13 I ruled under 401, 403 and 702. I ruled on all three.

14 MR. MADSEN: And Judge, if her personal -- and I
15 guess the last thing is, if her personal story is not
16 relevant, her testimony on the voices certainly is, would
17 be our position.

18 THE COURT: I understand your position. I disagree
19 with it. I've made my ruling. Let's take a break.

20 (Whereupon, a short break was taken.)

21 MR. YOUNG: One final housekeeping matter, Your
22 Honor. Part of Dr. Frierson's testimony was that -- would
23 be -- or report is that he viewed and watched an hour-long
24 video that was recorded of Mr. Jones during a suicide
25 attempt on 8/28/15. The State has agreed to allow one

1 still shot from that video in evidence. I'm asking
2 that -- we would, of course, offer to play it, it is an
3 hour-long video during his testimony. I don't want to
4 have to proffer it. I would like to make it a Court's
5 Exhibit. We would object to not being able to play it.
6 I'd like to make it part of the record.

7 THE COURT: All right. It is part of the record.
8 I've not viewed the entirety of it. It's been described
9 to me as an hour-long behavior in the cell by several
10 different experts. And Dr. Frierson is basing portions of
11 testimony opinions on his viewing of that as well as
12 everything else. So I don't believe that's necessary for
13 the jury to see it for him to proffer his opinions as to
14 everything in the case. So it's a Court's Exhibit. The
15 still shot as agreed to, I think, is sufficient. He can
16 be questioned, direct and cross, as to the contents of
17 that video to y'all's heart's content.

18 (WHEREUPON, Court's Exhibit No. 96 was marked for
19 identification only.)

20 THE COURT: Are we ready for the jury?

21 MR. YOUNG: Yes.

22 THE COURT: Is the jury ready for us? Go get them.

23 (Whereupon, the jury came into open court at
24 approximately 10:22 a.m.)

25 THE COURT: All right, folks. I apologize for the

1 delay. We've been in here working. Now, we're ready to
2 go to work together. Call your witness.

3 MR. YOUNG: The State would call Dr. Richard
4 Frierson.

5 RICHARD FRIERSON, being
6 first duly sworn, testified as follows:

7 THE CLERK: If you'll have a seat over there, please.
8 State your name, spelling your last name.

9 THE WITNESS: My name is Richard Lesesne Frierson,
10 F-R-I-E-R-S-O-N.

11 DIRECT EXAMINATION

12 BY MR. YOUNG:

13 Q Good morning, Dr. Frierson.

14 A Good morning.

15 Q How are you doing?

16 A Okay.

17 Q So can you --

18 THE COURT: You want me to tell the jury now?

19 MR. YOUNG: Yes, sir.

20 THE COURT: All right. This is part of what we were
21 discussing. In order to get the trial ready to go, when a
22 person asserts a defense such as been asserted here, the
23 Court can say I would like him evaluated on the Court's
24 behalf. That has been done. This was the Court's
25 evaluator. He is an expert in the field of psychiatry.

1 He's done an evaluation, talked to numbers of people. He
2 is here to help you consider testimony regarding capacity
3 to conform, morally right from wrong, legally right from
4 wrong, the issues y'all are tasked with. Dr. Frierson has
5 performed an evaluation to that end for your
6 consideration. Now, his testimony is not offered for
7 other purposes. It's offered for that. And I wanted you
8 to know that they keep talking about the State. This is
9 the Court's evaluator. The Court is the State, the State
10 is the State, the Defense is the Defense. This is the
11 Court's expert.

12 MR. YOUNG: May we approach?

13 THE COURT: You may.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: Fair suggestion, both parties want me to
18 suggest this. The fact that Dr. Frierson was selected by
19 the Court, he's for y'all's consideration. I can't, as
20 the Court, comment on facts, have an opinion on facts.
21 Y'all are to make the determination of fact. We discussed
22 that. I make rulings, legal, evidence in, evidence out,
23 fair and unfair, those kind of things. You are task at
24 the end when you are finally tasked and begin discussing
25 the case will be to make a determination of fact. The

1 Court's selection of Dr. Frierson does not vouch for, give
2 him any more credibility, less credibility. He's not my
3 guy. He's done an evaluation for y'all's consideration.
4 Y'all will evaluate his opinions to that end, just as you
5 will the other opinions of the other experts. So the fact
6 that I'm telling you he's the Court's person to evaluate
7 Mr. Jones in this case in no way impacts your decision on
8 whether to consider his opinion better, worse. It's still
9 up to y'all to consider the testimony he's offering
10 because it's your job. My job is to assign him a task. I
11 assigned the task, here he is. Fair enough?

12 MR. YOUNG: Yes, sir.

13 MR. HUBBARD: Thank you.

14 BY MR. YOUNG:

15 Q Dr. Frierson, can you tell the jury a little bit
16 about yourself, your background, your history, where you
17 work?

18 A I'm a South Carolina native. I was born in Sumter,
19 South Carolina, finished Sumter High School in 1980. I
20 attended the University of South Carolina. I actually
21 have a Bachelor of Music Degree that I completed in 1984.
22 I completed my Medical Doctorate at USC School of Medicine
23 here in Columbia in 1988. I then completed four years of
24 residency training in general psychiatry in 1992 at
25 William S. Hall Psychiatric Institute. I completed an

1 additional one-year fellowship in forensic psychiatry at
2 Hall Institute. I am Board Certified by the American
3 Board of Psychiatry and Neurology in both general
4 psychiatry and forensic psychiatry. Currently, I am a
5 professor of psychiatry at USC School of Medicine.

6 Q Do you also work for the Department of Mental Health?

7 A We have a contract with the Department of Mental
8 Health that I provide forensic evaluations at their
9 request.

10 Q Is that part of your salary as a clinical professor
11 or is it in addition to?

12 A It's a base fee that they pay per year.

13 Q But that's on top of your clinical professor salary
14 they pay you?

15 A No, that makes up part of it.

16 Q That makes up part of your total salary?

17 A Right.

18 Q But you do get paid for your time?

19 A I get paid salary yearly.

20 Q Right. I know it's an odd question, it's --

21 A I'm not paid by the hour.

22 Q Right. And you didn't do this work for free, it was
23 part of your job?

24 A I was assigned to do this evaluation.

25 Q Now, this evaluation that you've done and the amount

1 of information that you've reviewed in this case, is it a
2 lot, a little bit? How does that work?

3 A This is the most information I have ever had to
4 review in a criminal case in the 30 years that I've been
5 doing my work.

6 Q And is part of your evaluation and assessment taking
7 a social history?

8 A Yes. We rely on social workers to do that usually.
9 In this case, I think that you provided some information.
10 I also spoke with some of his family members.

11 Q And the Defense has provided you with a lot of
12 information as well?

13 A Yes.

14 Q Provided you with social history reports, social
15 history backgrounds from our social worker as well as
16 questionnaires that y'all have filled out, right?

17 A Correct.

18 Q And in order to do a full assessment of somebody and
19 determine what may be going wrong with them, the social
20 history is important, isn't it?

21 A Yes.

22 Q Can you do a complete evaluation without having a
23 complete social history?

24 A Well, it's not going to be as good as if you have a
25 complete social history.

1 Q Okay. Now, you've seen Mr. Jones a number of times.
2 Do you recall how many times you've met with Mr. Jones?

3 A I've interviewed Mr. Jones on six occasions, for a
4 total of 19 hours.

5 Q Do you have any idea how many pages of records that
6 you reviewed in this case?

7 A Several hundred thousand.

8 Q Ultimately, you came to an opinion regarding criminal
9 responsibility, is that right?

10 A Yes.

11 Q And can you tell the jury what your opinion is as to
12 criminal responsibility of Mr. Jones?

13 A It's my opinion that on the dates of August 28th and
14 29th of 2014, Mr. Jones would have been able to
15 distinguish legal and moral right from legal and moral
16 wrong and could recognize his actions as legally and
17 morally wrong.

18 Q Now, that was your opinion based on all the evidence
19 that you reviewed, right?

20 A That's my opinion based on all the evidence I
21 reviewed, my interviews with Mr. Jones, my interviews with
22 family members, all of the evidence I was provided.

23 Q And we've met and talked about this case a number of
24 times, is that right?

25 A Yes, we have.

1 Q Now, in addition to the family history, did Mr. Jones
2 have a family history of mental illness?

3 A Yes.

4 Q Does a family history of mental illness make somebody
5 more likely to eventually have mental illness?

6 A Specifically, with this case or just in general?

7 Q Just in general.

8 A Yes.

9 Q Does Mr. Jones have a history of child abuse and
10 childhood trauma?

11 A He has a history of growing up in a house where there
12 was some domestic violence, so that would be considered,
13 in my book, traumatic for him.

14 Q Does a history of childhood abuse and trauma make
15 somebody more likely to develop mental illness later in
16 life?

17 A Certain mental illnesses, yes.

18 Q Does Mr. Jones have a history of adolescent marijuana
19 use?

20 A Yes.

21 Q Does a history of adolescent marijuana use make
22 somebody more likely to later develop mental illness?

23 A Yes.

24 Q Does Mr. Jones have a history of head trauma?

25 A Yes.

1 Q Does a history of head trauma make somebody more
2 likely to develop later in life mental illness?

3 A It can, yes.

4 Q In your initial notes -- and I'm starting to go
5 through your report a little bit. I'm skipping ahead to
6 sort of -- to Page 18 after your summary of the materials
7 that you reviewed.

8 A Okay.

9 Q And I think in the first little paragraph, you said
10 that you reserved the right to alter your diagnostic
11 opinion should further information become available, is
12 that correct?

13 A Yes.

14 Q And we've met and talked about Mr. Jones and your
15 opinions about him and what you considered and -- I guess
16 what I'm getting at is we had a conversation about Mr.
17 Jones' symptoms and what would happen if he was
18 unmedicated, right?

19 A I don't --

20 Q Let me rephrase the question. Mr. Jones was
21 medicated at all the times that you met with him?

22 A Yes.

23 Q He was not symptomatic any of the times that you met
24 with him?

25 A That's correct.

1 Q And I believe, what you told me was that if he was
2 unmedicated, became symptomatic, the symptoms were
3 verified, that could alter your opinion?

4 A Yes. Depending on what the symptoms were and how
5 they were described and how an evaluation would lead to a
6 diagnostic finding.

7 Q Sure. A couple of other things before I get further
8 into your report. The issue about hyper-religiosity, is
9 that something that's common to schizophrenics?

10 A Persons with schizophrenia can become
11 hyper-religious, yes. Not all, but some.

12 Q And while it's -- it's your opinion that Tim Jones
13 should or had the capacity to know the difference between
14 legal and moral right from wrong at the time of the act,
15 right?

16 A At the time of the alleged offenses, yes.

17 Q Or at the time of killings? I mean, he admits to
18 killing his kids?

19 A Yes.

20 Q And he has never denied that to you?

21 A Denied what?

22 Q That he killed his kids?

23 A No.

24 Q But you told me -- I believe what you said was he
25 felt morally justified?

1 A Well, in his decision-making about -- are we talking
2 about Nahtahn or are we talking about the other four
3 children, because they're different.

4 Q Okay. Well, can you tell us about the differences?

5 A Okay. He reported to me that the death of Nahtahn
6 was accidental, that he was exercising him to try to get
7 him to confess to blowing an electrical outlet and maybe
8 some other outlets in the house, and Nahtahn would not
9 confess. And he exercised him, he spanked him and he sent
10 him to his room, to bed early because he wouldn't confess.
11 And then he went back -- he's told me two different
12 versions of this. One was that he went back in and found
13 him dead. The other was that he went back and shook him
14 and he just collapsed, but he did not intend, in his
15 words, to kill Nahtahn.

16 Q Okay. And then as to the other four?

17 A As to the other four kids -- it would be helpful for
18 me to refer to --

19 Q Please do.

20 A -- my notes. After Nahtahn died, he reported that he
21 went into a mad panic, what am I going to do. He did not
22 have thoughts that Nahthan wanted to harm him until the
23 outlet was blown. Earlier that day, he had no fear of
24 Nahtahn or thought Nahtahn wanted to hurt him. But once
25 he found the outlet blown and Nahtahn wouldn't confess,

1 the fact that Nahtahn would not confess, in his mind, he
2 thought Nahtahn was hiding something. So after he died,
3 he went into a mad panic. He said, I considered calling
4 911, but they'll think I did it. They're going to say I
5 killed him. He reported telling Merah and Eli that I
6 think he's dead. And he stated that Merah said that
7 Nahtahn was not breathing. He then sent Merah and Eli to
8 watch television in the living room. And -- I asked him,
9 you know, do you think possibly you disciplined Nahtahn
10 too harshly? And he said, yes, but I had no intention to
11 kill him. He then went to smoke a cigarette and calm
12 himself down. He tried to smoke spice, he told me, and it
13 was not working. You know, I've interviewed him several
14 times and gone over what happened. In September of last
15 year during my interview, he told me he used spice after
16 Nahtahn died. In March of this year, he denied using
17 spice after Nahtahn died and said he didn't use spice
18 until after the death of the other four children. Then
19 according to phone extraction records, about 8:30 that
20 night -- he said Nahtahn had already died. He did a
21 YouTube search, a YouTube search for a video called
22 American History X Rape Scene. This was done at 8:30 p.m.
23 at night. He had seen this movie previously. He told
24 me -- he reported he watched this scene and thought I am
25 going to prison and they're going to do bad things to me.

1 Inmates will think I'm a baby killer. I asked him, do you
2 think they would -- tell me more about that. And he
3 described that because of people who molest children or
4 people who kill children that other inmates tend to target
5 them. And I asked, why. And I asked, do you think they
6 would be morally outraged and that's why -- because
7 they're not law enforcement. And he said, yes. He then
8 said he went to a convenience store about three minutes
9 from his home and purchased cigarettes, that Merah went
10 with him. Eli chose to stay home. The other two children
11 had already gone to bed. He states that he purchased ten
12 packs of cigarettes at the convenience store and drove
13 home. A receipt indicates that this occurred at 1:50 in
14 the morning, although he thought -- his time is a little
15 bit distorted when he describes this. He thought that was
16 much earlier in the night than 1:50 a.m. He says that on
17 the way home, he heard a demonic voice, which is how he
18 described it in September, and then in March said a
19 creepy, gremlin voice that told him to kill the kids. He
20 described the voice as being inside of his head, being
21 very brief and not prolonged. During the September
22 interview, he reported that he went back to the trailer
23 and smoked. I knew I had schizophrenia. I'm psychotic.
24 I thought it was better for me to take their lives. I cut
25 off their windpipes, kissed them and took their life. He

1 said, I'm not a murderer. I'd rather know where they're
2 at. I killed all four where I left them. I tried to kill
3 myself with spice. I passed out. I woke up the next
4 morning, paranoia kicked in. What am I going to do now.
5 It's a matter of time before I get arrested, I might as
6 well take a trip to Vegas.

7 Q At some point, he told you that he -- in his opinion,
8 it was better for him to send them to heaven than to live
9 what he perceived to be their future?

10 A His thought processes were that -- he described it to
11 me, Amber didn't want them. He was going to go away. He
12 grew up without his mother. He didn't want them -- he
13 thought it would be better if they were just all together.
14 And so he made a decision and a conscious choice to kill
15 them.

16 Q Does --

17 A He felt in a sense -- in his way morally justified,
18 which is much different than not knowing it's morally
19 wrong to do so.

20 Q Right. And that's what he told you?

21 A Yes.

22 Q That he felt morally justified in his actions?

23 A Right. Yes.

24 Q Right. That was -- I mean, that was his decision
25 that he went through?

1 A That's what he told me as to why he decided to do
2 what he did.

3 Q Okay. And you've noticed some inconsistencies in his
4 reports over the years?

5 A Yes.

6 Q And mentally ill people aren't always the most
7 consistent people?

8 A I think non-mentally ill people are not always the
9 most consistent. When you're talking about something that
10 happened five years ago, different times reporting it, our
11 memories get modified over time. That's not abnormal.

12 Q You told me that he was remorseful?

13 A Yes.

14 Q And that he regrets what he did?

15 A Yes.

16 Q You've said you would not describe him as a career
17 criminal?

18 A I'm not sure what that means. He certainly had some
19 legal difficulties early on, but he had a really
20 eight-year period during his marriage to Amber where he
21 appeared to function very well, was stable, not using
22 drugs, not using spice, attending church, no legal
23 difficulties.

24 Q Was he hypersensitive to abandonment?

25 A Yes.

1 Q And did the spice make him paranoid?

2 A I think at the end, it did. He began using spice
3 sometime in the late spring, early summer of 2014. And he
4 used incredible amounts of spice. He says up to five
5 times a day. At work, he would go outside on breaks to
6 use spice. He had used it that day. If you look at his
7 banking records, the amount of money that he's spending at
8 this shop called Time Warp where he bought spice increased
9 throughout the summer, up until I think the -- I don't
10 want to get the exact wrong amounts, but in August, he
11 spent \$230.00 dollars in the month preceding the offenses,
12 \$65.00 dollars on June 30th, \$70.00 dollars on August 4th,
13 \$39.00 dollars on August 13th, \$60.00 dollars on August
14 16th.

15 Q And those are just the ones that you can trace
16 through his banking account, right?

17 A Through a credit card, right. I don't know if he
18 bought extra with cash.

19 Q And you, ultimately, gave Tim a diagnosis?

20 A I did.

21 Q And what was that, what was that diagnosis?

22 A I diagnosed Mr. Jones with a substance induced
23 psychotic disorder from spice or synthetic cannabinoids,
24 as we call it. I also diagnosed him with cannabis use
25 disorder, severe; and alcohol use disorder, mild.

1 Q Now, the substance induced psychotic disorder, we
2 talked about that in relation to these offenses, right?

3 A Yes.

4 Q And --

5 A And what I mean by that specifically is the thought
6 that it's not normal to -- it's not a delusion because it
7 wasn't a fixed false belief. But just to have the
8 paranoid thought that my six-year-old child is somehow
9 going to use an electrical outlet to kill me in my sleep,
10 that's not a normal thought that I think most people in
11 their right mind would think.

12 Q Right. It's psychotic?

13 A Yes. Well, I think it's paranoid, yes.

14 Q And this is a substance induced psychosis, right,
15 that he was in at the time of the offenses on the 28th?

16 A Yes.

17 Q And but for the spice, we wouldn't be here today?

18 A I don't think so, but, you know, I'm not a -- I'm not
19 a fortune teller.

20 Q Based on everything that you have here --

21 A I think spice contributed incredibly to what
22 happened.

23 Q Thank you, sir. I want to go to -- I'm going to go
24 down to Page 19 on your report and talk a little bit about
25 during -- you did a competency to stand trial evaluation

1 of Mr. Jones back in 2016, is that right?

2 A Yes.

3 Q And during that time, he talked about the voices and
4 told you about voices, right?

5 A Yes.

6 Q And at that point in time, and you have a blurb here,
7 I think, where he told you he was hearing voices every day
8 throughout his life, from the time he was ten on, right?

9 A That's what he said the first time I saw him.

10 Q In 2016?

11 A I've been hearing voices since I was ten. It's only
12 through many more hours of evaluation that you have to ask
13 him, describe the voices, tell me what you mean by voices,
14 what do they say. And it became clear to me, the more you
15 talked to him about the content and how he described them,
16 that what he is referring to as voices are not psychotic
17 hallucinations, but they are his own anxious thoughts.
18 Give you an example. He told the police officers in
19 Mississippi that the voices started after his divorce --
20 or after his separation from Amber. I asked him about
21 that, what did you mean by that. And he said, the voices
22 were saying what am I going to do. How am I going to take
23 care of five kids. How am I going to be able to work and
24 manage all this. He said he couldn't concentrate at work
25 because he kept having these intrusive thoughts. I think

1 anybody who undergoes a divorce -- or many people who
2 undergo a divorce, it's very stressful. And so the way he
3 refers to the stressful, anxious thoughts is he refers to
4 them as voices. And you ask him do you -- does it sound
5 like someone is in the room talking to you. No. And then
6 later, as we've gone on, he will say to me, I know that --
7 now that these aren't hallucinations, but intrusive
8 thoughts. He will refer to his anxious thoughts as
9 intrusive thoughts instead of voices.

10 Q And that was new language to you, right? That's not
11 common language that you would use?

12 A Well, he actually used the term -- I believe he used
13 the term, thought insertion. And that is a medical term,
14 that's a psychiatric term. I don't know how someone who's
15 a layperson would ever know that term on their own and
16 somehow, in the course of psychiatric interactions with
17 other doctors, they've told him that.

18 Q And you know he's met with a lot of doctors?

19 A I'm sorry?

20 Q You know he's met with a lot of doctors?

21 A Yes.

22 Q And it's possible that is a term that he picked up
23 from them?

24 A It's possible.

25 Q Before I leave that page, could you tell the jury

1 what his medication regime was at the time when you saw
2 him -- or what --

3 A Which time?

4 Q Well, what it's been throughout this time.

5 A I could just say, in general, he has been on
6 antipsychotic medication throughout his time at the
7 Department of Corrections. He's also been on a medicine
8 called selective serotonin reuptake inhibitor. That's a
9 fancy word, it just means -- it's an antidepressant.
10 Things like Paxil, Prozac, Zoloft, all of those are
11 antidepressants. They treat depression and anxiety. He's
12 been on that throughout almost all of his incarceration.
13 More recently, at the suggestion of a defense expert, the
14 Department of Corrections placed him on a mood stabilizer,
15 Depakote.

16 Q How about Geodon, has he been --

17 A He's been on Geodon. He's been on very large doses
18 of Geodon.

19 Q How about Inderal or Propranol--

20 A Propranolol.

21 Q Yes, sir.

22 A Propranolol is a beta-blocker and it's actually just
23 used to manage side effects from some of the antipsychotic
24 drugs.

25 Q Is one of those side effects akathisia?

1 A Akathisia, yes. That's when people have an inner
2 restlessness. Antipsychotics can make people feel like
3 they have to move all the time.

4 Q And how about Remeron?

5 A Remeron is an antidepressant that's frequently used
6 to help with sleep.

7 Q And how about Prazolin--

8 A Prazosin.

9 Q Sorry.

10 A Early on -- and this has since resolved, but very
11 early on in his incarceration, he had reported some
12 nightmares about the -- what happened, his killing his
13 children. It would play over in his mind and he would
14 have some flashbacks about it. And Prazosin is a blood
15 pressure medicine, interestingly enough, that has been
16 used in the VA and some other places to treat these
17 symptoms in PTSD. But those have since resolved and I
18 don't believe he's taking that anymore.

19 Q But he reported at one time, he was having daily
20 flashbacks multiple times a day, that they lasted --

21 A Yes. I mean, people can be traumatized by their own
22 criminal acts or own violent acts. They can -- I'll have
23 people who commit murder who shoot people and after that,
24 they keep thinking about what they did and they don't want
25 to think about it and it's intrusive and bothersome.

1 Q And at one point in time, on April the 28th of 2015,
2 after he had been in the Department of Corrections for a
3 year, he tried to kill himself -- or you tell -- he tied a
4 sheet around his neck --

5 A He tied a sheet around his neck and he stated at that
6 time that he was feeling both depressed and angry. He
7 missed two doses of medication the night before. They had
8 instituted a new policy there because some inmates where
9 he was being kept in safekeeping were dousing nurses with
10 urine and feces and stuff that no one wants to be thrown
11 on them. And they required that the inmates go to the
12 very back of the shower, at the back of their room. They
13 would put the medicine on the flap and they would back up
14 and the inmate -- or the Defendant in this case could get
15 their medication. There was some conflict or -- there's
16 different versions of what exactly happened, but he said
17 that he went into the shower, but the nurse kept telling
18 him you've got to back up against the wall. He didn't do
19 that, so she wouldn't give him his medicine and he became
20 very angry. He stated that after that -- well, he's given
21 me two versions of this. Once -- well, one was after
22 missing that dose of medication, the voices came back.
23 Later, in November, he stated that it wasn't a voice, it
24 was his anxious thoughts came back. Okay. So he tied a
25 bedsheet around his neck, hung it from the door in an

1 attempt to hang himself. And the correctional officers
2 entered and cut him down. He said to me, at that time, he
3 was frustrated with the situation and just wanted to die.
4 There's conflicting reports about this. He later told,
5 supposedly a nurse, that he was not suicidal at all, he
6 was just mad.

7 Q That nurse is no longer employed at SCDC, correct?

8 A That's my understanding. So I reviewed a video, I
9 wanted to see this for myself. So I asked the Department
10 of Corrections, do you have a video of this and they were
11 able to provide it. I went out, it lasted about an hour,
12 and I watched this.

13 Q I'm going to show you what's been marked as Defense
14 Exhibit number 300 for identification, and ask you if you
15 recognize that?

16 A Yes. This appears to be a view from overhead in his
17 cell looking down of him during the suicide attempt.

18 Q And is that -- that's a still from the video that you
19 watched?

20 A It's a still, yes. Appears so.

21 MR. YOUNG: Your Honor, at this time, we would offer
22 Defense Exhibit number 300 into evidence.

23 MR. HUBBARD: No objection.

24 THE COURT: 300 is in without objection.

25 (WHEREUPON, Defendant's Exhibit number 300 was

1 admitted into evidence.)

2 Q I hope they can see it with the glare. So this is
3 the shower area right here, is that right?

4 A I believe so.

5 Q And so he said he was standing here and they wanted
6 him back here?

7 A That's what he says, yes.

8 Q And this is Tim with the sheet around his neck tied
9 to the door?

10 A Yes.

11 Q And he's leaning forward?

12 A Yes.

13 Q Now, the notes that you reviewed around the suicide
14 attempt, also, did they talk about him experiencing
15 anything that night, the night before?

16 A Well, I know that his treating psychiatrist, Dr.
17 Wood, thought that from missing the side effect medicine,
18 the Propranolol, which is one of the medicines he was
19 taking, that he might be experiencing akathisia, that
20 inner -- causes you to feel like you constantly need to
21 keep moving. People with -- on antipsychotic medications
22 on an in-patient unit, you might see them pacing, just
23 constantly walking. So it's an inner feeling of
24 restlessness. And if you look at the video, initially,
25 for the first 20 to 30 minutes, he's just sitting there

1 shaking his leg around, around, around, around, around.

2 And I know that Dr. Wood thought that maybe that was
3 evidence of akathisia. And I think that might have been
4 evidence of akathisia. She's probably correct.

5 Q Now, do you recall from your review of this video,
6 like, what time -- so he's in a cameraed cell that's being
7 monitored, right?

8 A Yes. Sorry.

9 Q Do you recall what time he actually, like, started to
10 try and hang himself?

11 A It was early in the morning to my recollection.

12 Q If I said it was about 8:08 a.m., does that sound
13 about right?

14 A I didn't write the time down, I just remember it was
15 early in the morning.

16 Q Okay.

17 A Sounds about right. I couldn't say for sure.

18 Q Sure. And how long was he doing that before the
19 guards came in and cut him down?

20 A A long time.

21 Q An hour?

22 A He would take it off, adjust it, put it back on, do
23 things with it. It went on for a while. The whole video
24 is over an hour. This went on for maybe -- I'm going on
25 memory here, which isn't always -- it went on for 30, 40

1 minutes, at least.

2 Q Well, in your report on Page 20, you said he would
3 have spent almost an hour attempting to do something?

4 A Okay, well, then maybe it was an hour. Sorry.

5 Q Yes, sir.

6 A It was a long time. You know, he never -- one of the
7 things that I do, I have a contract with the Department of
8 Corrections that I review completed suicides. I look at
9 all the suicides in the Department of Corrections and
10 review the incident reports of how they happen. And most
11 of them that I've reviewed happen very quickly. They
12 happen within minutes. You know, there's a check, they're
13 okay. There's another 15-minute check, they're hanging.
14 So he is never seen picking his feet up, you know, to get
15 leverage on the ligature point.

16 Q Like maximum pressure?

17 A He's leaning forward, but he never lifts his feet off
18 the ground. And I think there's evidence of some
19 ambivalence on his part.

20 Q And you can take your weight --

21 A Which anybody who commits suicide has some degree of
22 ambivalence.

23 Q Can you take your weight and put it on your neck
24 without picking your feet up off the ground?

25 A You can, but it's much more effective to let gravity

1 do it.

2 Q Okay.

3 A And easier to let gravity do it.

4 Q I think at one point in time -- and this -- I'm going
5 over to Page 21, top of Page 21, where he had told you
6 that this was his first suicide attempt at one point in
7 time?

8 A He's -- well -- right, he denied previous suicide
9 attempts, which was -- I think he said he had never tried
10 to kill himself before.

11 Q And then he told you he had on one other occasion?

12 A Well, he tried to kill himself with spice after the
13 murder of the five children.

14 Q He told you that was an overdose of medication,
15 right?

16 A Yeah, but he told me spice. He specifically said I
17 tried to kill myself with spice, but it didn't work.

18 Q So is it your word that he said medication, overdose
19 on medication?

20 A Well, he said both, I think. And I said what med --
21 you know, spice.

22 Q He referred to spice as medication?

23 A Yes.

24 Q He said he was using it medicinally?

25 A Yes. Or implied that it had some benefits for him.

1 Q Going down a little bit down the page where you talk
2 about his psychiatric history. Can you tell the ladies
3 and gentlemen of the jury about his evaluation when he was
4 in the Navy?

5 A Right. According to the military records, he first
6 was evaluated by a mental health professional or by a
7 psychiatrist, I think, in 2000 -- let me take that back.
8 He was sent to a drug counseling program as an adolescent,
9 but his first real encounter with mental health
10 professionals was in 2000 when he was in the Navy. He had
11 gone in the Navy wanting to be a Navy Seal. He had been
12 in a car accident that damaged his -- or caused some hip
13 pain. And during basic training, he was having horrible
14 hip pain and he realized he would never be able to
15 complete this and become a Navy Seal. He thought about
16 being a diesel mechanic, but the pain was too hard. And
17 he had told them -- and this is what he denies to me and
18 no one seems to have any recollection of this. His
19 records from the military says that he informs staff he
20 had suicidal thoughts since the age of 14 and engaged in
21 self-mutilation, which involved cutting himself with a
22 knife and paperclip. He denies ever doing that, ever
23 saying that. I don't know what to make of that. His
24 family has no history of knowing him doing stuff like
25 that. But, anyway, they gave him a diagnosis of

1 depression not otherwise specified or depressive disorder
2 not otherwise specified, alcohol dependence, cannabis
3 dependence and gave him what's called an entry separation
4 and deemed ineligible for reentry into the military.

5 Q Let me show you what's been marked as Defendant's
6 Exhibit number 299, and ask you if you recognize that?

7 A This is a military document from the Department of
8 Navy from commanding officer of the recruit training
9 command to personnel support activity detached of the
10 officer in charge regarding his separation.

11 Q And they note his diagnosis of a depressive disorder
12 and alcohol and cannabis dependency?

13 A Evidenced by a depressive disorder and medical
14 evaluation of alcohol dependence and cannabis dependence.

15 MR. YOUNG: Your Honor, we'd offer Defendant's
16 Exhibit number 299 into evidence.

17 MR. HUBBARD: No objection.

18 THE COURT: 299 is in without objection.

19 (WHEREUPON, Defendant's Exhibit number 299 was
20 admitted into evidence.)

21 Q Now, you have previously testified that it's not
22 uncommon for mental illness to begin as a diagnosis of
23 depressive disorder in early teens, late -- or late teens,
24 early 20's. Is that right?

25 A Can you repeat the question?

1 Q Sure. Is it uncommon for mental illness to begin as
2 a depressive disorder?

3 A What mental illness are we referring to?

4 Q Any --

5 A Depressive disorder is a mental illness.

6 Q Okay.

7 A That's why I was sort of confused on the question.

8 Q Sure. Is a depressive disorder in late teens, early
9 20's, is that something that could lead to a major mental
10 illness later on?

11 A Could that be the first signs, is that what you're
12 asking?

13 Q Yes, sir.

14 A Yes.

15 Q I think that's a better way to ask it. Thank you.
16 One more thing before I go back to Page 21, when talking
17 about his suicide attempt or what he did at the prison,
18 what was his opinion regarding future self-harm?

19 A That he would never kill himself.

20 Q And did he say --

21 A For religious reasons.

22 Q Is that because he hoped to be reunited with his
23 children?

24 A Well, it's a sin, in his book, to commit suicide.

25 Q So he wouldn't be reunited with his children that he

1 had sent to heaven?

2 A Yes.

3 Q Going forward in time in his psychiatric history a
4 little bit and over to Page 22, after he separated from
5 Amber, he started seeing a therapist, right?

6 A Yes.

7 Q And there was something that was described as the
8 monster. Can you tell the jury what you said about that?

9 A Let me find it on my report.

10 Q It's the third paragraph, and I guess I can start
11 with "he was bombarded with anxious thoughts".

12 A Yeah. In discussing the separation from Amber and in
13 treatment with Ms. Hames, he reported that he'd need
14 something to calm his intrusive thoughts. He could not
15 think about anything else other than the loss of his
16 marriage and that he worried about it incessantly. I was
17 bombarded by anxious thoughts. He lost almost all ability
18 to concentrate at work. So his boss -- he reached out to
19 his boss and they referred him to the employee assistance
20 program or EAP, which, in turn, referred him to Ms. Hames.
21 He states that he had the fear that Amber was having an
22 affair. And that is the monster in his mind, that he
23 keeps thinking she's cheating on him.

24 Q Did you ever talk to Dr. Hames?

25 A No, I reviewed her records.

1 Q And the jury can remember what she said. Skipping
2 forward a little bit, you went through his treatment
3 records on Page 23 and 24, going through his treatment at
4 the Department of Corrections, right?

5 A Right. I, in my report, organized it by year for
6 sake of breaking it up somehow.

7 Q Now, in the 2016, 2017, 2018 history here, is he
8 relatively stable?

9 A Yes.

10 Q Could that be a good indication that the medication
11 that he's on is working?

12 A Or else that he doesn't have a major mental illness.

13 Q He's on medication during all this time?

14 A Yes, he is on medicine. And he actually did fairly
15 well going forward from about a month after his
16 incarceration.

17 Q And he was put on Geodon the day that he arrived
18 at --

19 A Yes.

20 Q -- the Department of Corrections?

21 A Yes.

22 Q I think this is -- when you were talking about his
23 alcohol and drug use history on Page 25 in the second
24 paragraph, I think you recorded he had been using
25 marijuana about two weeks prior to killing his children?

1 A He said he last used marijuana about two weeks
2 before -- his last use was two weeks before his arrest.

3 Q And you know he didn't test positive for marijuana?

4 A Right, he did not test positive. He had switched
5 primarily to using synthetic cannabinoids or spice,
6 specifically one called Scooby Snax.

7 Q And that had been several months before as opposed to
8 two weeks before?

9 A He had been using spice all along. He had been using
10 spice and marijuana.

11 Q Okay. So you said then he said, I stopped when I
12 found spice?

13 A Well, he eventually cut down the marijuana use and
14 was not using it anymore. The past two weeks before the
15 alleged crimes happened, he was not using marijuana. He
16 said he was just using spice daily. He described the term
17 wake and bake, meaning he would get up first thing in the
18 morning and use spice.

19 Q But he didn't show up positive for marijuana in his
20 tox?

21 A He didn't show up positive for marijuana. He showed
22 up positive for synthetic cannabinoid called AB Pinaca.

23 Q I think on -- moving forward a little bit to Page 27
24 at the top where you talked about he had had this
25 relatively stable eight years during his marriage or after

1 he got out of boot camp where he was not using drugs or
2 alcohol, right?

3 A Correct. He was completely sober during his
4 eight-year marriage to Amber. He was not using marijuana,
5 not drinking, not smoking cigarettes.

6 Q But he did tell you that he was still hearing voices
7 during that time, right?

8 A Experiencing unwanted thoughts sometime, yes. I
9 mean, I think Mr. Jones has had clearly times when he's
10 been depressed. I think Ms. Hames referred him to a
11 family practitioner for medicine for depression and
12 anxiety after his separation and divorce from Amber. That
13 was a very difficult time for him.

14 Q And I think what you said was that these voices were
15 not an impairment to him, right?

16 A I mean, it's -- that's the only time they were
17 impairing. They're not voices, but his anxious thoughts.
18 But he was having trouble concentrating at work. That's
19 impairment. I can't think of anything else but my wife's
20 going to leave me, she's having an affair and I think
21 about it all the time at work whether I want to or not.
22 And I think it's starting to interfere with my ability to
23 concentrate on what I'm supposed to be doing at Intel.

24 Q Even during his years of sobriety, he reported that
25 the voices were distressing to him?

1 A They didn't interfere with his function, his ability
2 to go to school or work.

3 Q But they still bothered him?

4 A He experienced them, yes.

5 Q Finally, real quick, on the top of Page 28, he also
6 talked about having taken Chantix?

7 A Yes.

8 Q Can you tell the ladies and gentlemen about that?

9 A Chantix is a medicine called Varenicline that's used
10 to stop smoking. It's a nicotine receptor drug. It's
11 supposed to help decrease the craving. People go on it
12 when they want to quit smoking.

13 Q Now, did he say he was taking it as prescribed or --

14 A No. He would frequently forget to take it.

15 Q Okay. Was he taking it inconsistently?

16 A Yes.

17 Q And --

18 A And he continued to smoke on top of it.

19 Q Is that not how you're supposed to do it?

20 A Well, yes, but two packs on top of it.

21 Q It's supposed to naturally cut down on your cravings,
22 is that how it works -- supposed to work?

23 A I believe so.

24 Q And then you talked about his family history?

25 A Yes.

1 Q And I think we -- we've already addressed a little
2 bit about what was going on in the household in which he
3 was raised, right? And I'm skipping forward to about Page
4 30, the second paragraph down. He told you about the
5 chaotic environment in which he grew up. You also got the
6 family history from other relatives?

7 A Yeah, family history mainly. He described his
8 childhood, they did the best they could, but he always
9 missed his mom.

10 Q Now, growing up in a childhood where there's drug
11 abuse, there's violence, mother who is no longer in the
12 picture and abandonment, those types of things. Do those
13 things have an effect on people?

14 A I'm sure they do. I mean, we are all affected by
15 what we experience in childhood.

16 Q As a forensic psychiatrist, is childhood abandonment
17 something that affects people?

18 A Yeah. I mean, I think that Mr. Jones was very
19 sensitive to abandonment. He had been abandoned by his
20 mother. And so when Amber left him, that's a bigger
21 threat to him than somebody who didn't have that childhood
22 history.

23 Q You talked about how he did in school?

24 A Yes.

25 Q On his educational intellect history?

1 A Yeah, he did excellent in school up until his senior
2 year. Almost a straight A student.

3 Q He started getting in trouble around age 17, is that
4 right?

5 A Yes.

6 Q And his grades dropped?

7 A Yeah, he was caught with marijuana at school. He
8 started using marijuana and drinking much more heavily
9 towards his senior year. He said, I knew I wanted to go
10 in the military. I just wanted to graduate and have fun
11 and party with friends.

12 Q And you also knew that he had been in a number of car
13 wrecks, right?

14 A Yes, 15, 16 and 18, I believe.

15 Q And the car wrecks preceded his drop in grades and
16 behavioral problems, is that right?

17 A One of them did -- or two of them did.

18 Q And those are the two where we talked about the --

19 A Yeah, the depressed skull fracture from the one at
20 age 15.

21 Q And the one at 16, was it the same place where he got
22 a scar and that was where his skin was eventually done?

23 A Yes.

24 Q You next -- I think we've already talked about his
25 military history and then you talked about his adult

1 functioning, talked about education, his religious
2 history, his marital and parental history. And I'm going
3 to skip ahead to around Page 36 at the top -- starting at
4 the bottom of Page 35. So this is after he and Amber had
5 divorced, right? Are you with me on that?

6 A They had separated on June 7th of 2012, legally.

7 Q Okay.

8 A And although she admitted to adultery, they decided
9 to divorce after a year of separation.

10 Q Okay.

11 A Because he had found out that she was having an
12 affair with the live-in babysitter.

13 Q Okay. And was there a period of time where she
14 missed some visits?

15 A Yes.

16 Q And what was his response to her missed visits?

17 A He described that the place where Amber was living
18 with her young boyfriend and his parents, that no one in
19 the house was working. That he didn't know exactly how
20 they supported themselves and he thought that they might
21 try to take advantage of Amber. She didn't have a job.
22 She had no source of income. She didn't drive. And he
23 was concerned that they would prostitute her.

24 Q And so what did he do?

25 A He looked at Back Page.

1 Q And he started looking for her on --

2 A Yeah, to see if that's what was going on as an
3 explanation for why she wouldn't show up for visitation.

4 Q So he was searching for her on the internet?

5 A Yes.

6 Q On sites where people normally post for prostitutes?

7 A Yes.

8 Q Same paragraph down, he talked about where DSS was
9 called because of a bruise on Nahtahn, is that right?

10 A Yes.

11 Q I know the jury's already heard it and they've seen
12 the picture. You said that there was a bruise on his
13 neck. Have you seen the picture of the bruising?

14 A I believe I did.

15 Q And was it actually on his chin?

16 A I'd have to see it again. I'm sorry. I've reviewed
17 hundreds of thousands of documents and I just--

18 Q Well, the jury has a picture. You looked at
19 information from collateral sources. Particularly, you
20 talked to Mr. Jones, Sr., Tim Jones, Sr.?

21 A I did.

22 Q And you talked to him about Tim's head injury?

23 A Yes.

24 Q And you asked him about whether or not there was a
25 change in his personality?

1 A Right.

2 Q And what did he tell you?

3 A He did not notice a big change in his personality,
4 but at the same time, Tim was entering late adolescence
5 and doing teenage rebellious-type things.

6 Q Well, I mean, somebody who's been studious and going
7 from a straight A student to I don't care attitude, would
8 that be considered a change in personality?

9 A Not necessarily, especially if he's using drugs and
10 wants to party because he's going to go into the military,
11 doesn't need to keep up the grades to go to college.

12 Q You also talked to his grandmother, Roberta
13 Thornsberry?

14 A Yes.

15 Q And how did she tell you he looked or appeared -- she
16 had seen him in Atlanta a couple weeks prior to --

17 A She thought she saw him in Atlanta the weekend before
18 this happened.

19 Q Was that --

20 A And I just said based on my records and looking at
21 the credit cards, Embassy Suites, text messages about this
22 is where we're going to stay, it was earlier in August.
23 It was the first weekend in August.

24 Q Before the kids started school?

25 A She was very concerned. He had lost weight. Lost a

1 lot of weight. He was drinking excessively. You get, I
2 think, coupons or something to go to the bar when you
3 check into Embassy Suites. He asked for her coupons and
4 her husband's coupons. That he was drinking heavily and
5 looked haggard.

6 Q Did she mention to you that he had come in and
7 thought that Elaine had been behind the couch crying?

8 A Yes, she did.

9 Q And did that make it into your report?

10 A I don't know if that made it into my report or not.
11 I don't think so.

12 Q Well, that would -- she told you that was false,
13 right?

14 A He actually told me it was Gabriel.

15 Q That he thought was behind the couch? And there was
16 no child behind the couch, right?

17 A Apparently, not.

18 Q I mean, from what Ms. Thornsberry told you?

19 A Not that she was aware. She was asleep.

20 Q And I think we've sort of talked about this. And I'm
21 skipping forward to the results of -- these are the
22 results of the neuropsychological evaluation. And we
23 talked about his voices or auditory disturbances may best
24 be explained as negative self-talk. Is that -- that's
25 your conclusion, right?

1 A No. That was Dr. Kruse's conclusion.

2 Q Do you agree with that?

3 A I think that what he reports as voices are anxious
4 thoughts that he has. I mean, just like anybody would
5 have in certain situations.

6 Q Well, it says that they're are not his thoughts,
7 right, when he talks about --

8 A They're thoughts that he doesn't want -- they're
9 intrusive in that he doesn't want to think about this all
10 the time, but he can't stop.

11 Q And they resolved through medication, is that right?
12 That's what he reports?

13 A Right, but I would expect them to because of the SSRI
14 that he's taking, the antidepressant.

15 Q Okay. The voice in your head, your conscience, the
16 negative self-talk, you can't resolve that through
17 medication, right? That doesn't go away?

18 A If it's due to anxiety, yes, it could go away with
19 treatment with antidepressant medication.

20 Q Is this -- let's see. In your -- the diagnostic
21 formulation, is that part of your report or is that part
22 of Dr. Kruse's information?

23 A It's my report.

24 Q Okay. You talked about his mood swings, right?

25 A Right.

1 Q Can you tell the jury about his mood swings? I think
2 it's the bottom of that first paragraph.

3 A He reported incidents -- he had one minute he will
4 feel -- really feel good and then something can happen and
5 he'll immediately get in a bad mood.

6 Q Okay. Now --

7 A That he has rapid mood swings, one minute happy, one
8 minute sad. And that type of description of mood swings
9 is not consistent with bipolar disorder or mania.

10 Q Okay. Did you say it was more consistent with a
11 personality disorder?

12 A Yes.

13 Q Now, you know that he has organic brain damage,
14 right?

15 A I know that he had a depressed skull fracture. I
16 know that initially the CAT scans revealed no brain
17 contusion. I know that you have experts that say there is
18 evidence that there was a brain contusion. I know that
19 there's a structural -- I mean, you can look at scans.
20 It's quite obvious. Functionally, in other words, his
21 performance on the neuropsych testing, his concentration,
22 his memory -- the reason I got the neuropsych testing is I
23 had a defense-provided report that says he has an IQ of
24 87. And I'm sitting there to myself, how does someone
25 with an IQ of 87 get a computer science degree from

1 Mississippi State, Summa Cum Laude, which is the highest
2 grades you can get, that and someone with an IQ of 87
3 don't match. It would be very hard for someone with an IQ
4 of 87 to do that well in such a hard college degree
5 program. So that's why I wanted the neuropsych.

6 Q Right. The frontal lobe is the part that controls
7 executive functioning and emotions, right?

8 A Yes.

9 Q Now, impairments to that can cause personality
10 changes, right?

11 A It can, yes. Frontal lobe damage can cause
12 personality changes.

13 Q And it can cause difficulty with mood regulation?

14 A Yes. But I would have expected that to be quite
15 evident right after the injury and I didn't get that
16 history from his father or his grandmother.

17 Q And the jury has heard from Dr. Snyder about how long
18 and what affects people can have, right?

19 A I wasn't -- I don't know.

20 Q You've reviewed Dr. Snyder's and Dr. Bigler's reports
21 with regard to brain damage?

22 A Yes.

23 Q You don't have any reason to disagree with any of
24 their findings?

25 A I have a reason to disagree with -- I don't have the

1 reports in front of me, but about his function. His
2 memory, concentration, frontal lobe functioning on
3 neuropsych testing is excellent.

4 Q And you're talking about his cognitive testing, his
5 IQ?

6 A Not just IQ, but just ability to plan, to abstract,
7 just, you know. Dr. Kruse specifically gave him tests
8 that are designed to measure frontal lobe functioning and
9 they were all fine.

10 MR. GRAHAM: I'm sorry to interrupt. If I could ask
11 for clarification of his questions. Dr. Frierson read the
12 reports. He was not here for testimony. So I don't want
13 confusion about maybe something that was testified to
14 that's not in his report.

15 THE COURT: That's fair enough.

16 MR. GRAHAM: So if it's something specific, I'd ask
17 that be clarified.

18 THE COURT: That's a fair suggestion, so don't --
19 let's don't misconstrue any prior -- and not that you
20 have. Be clear with your questions since he's not been
21 sitting here during any of the trial.

22 Q And they haven't made any specific findings about Mr.
23 Jones. They've just made findings about possible
24 impairments from brain injury, right?

25 A Yes.

1 Q And you don't have any reason to disagree with what
2 they say about possible impairments --

3 A No, I've seen the pictures.

4 Q I think you described them as very impressive?

5 A They are impressive.

6 Q And what exactly?

7 A You could see structural abnormalities in the brain.
8 But I'm concerned with function, not structure. You could
9 have a very normal-looking brain and have horrible
10 functioning. You could have a very abnormal-looking brain
11 and still be functioning very well.

12 Q And he was. I mean, he went to college, got a
13 degree, graduated, got a job?

14 A Right. There was no evidence of impairment.

15 Q Over on Page -- top of Page 43, I think you were
16 talking about some of the possible symptoms of
17 schizophrenia. And at the bottom of the first paragraph,
18 you were talking about disorganized speech or behavior, is
19 that right?

20 A It's in my report. I mention it.

21 Q And can you tell the ladies and gentlemen of the jury
22 about disorganized speech and behavior as it relates to
23 schizophrenia?

24 A People with schizophrenia, at times when they're not
25 in treatment can display disorganized speech and behavior.

1 You might see bizarre things that people do. You might
2 see someone dressed in three coats when it's a hundred
3 degrees outside. You might see someone speak and it
4 really not make any sense. They jump from topic to topic.
5 They may make up words that mean something to them that
6 you've never heard of. Made up words that they have their
7 meaning for them. So, you know, one of the things I
8 looked at is the description of Mr. Jones twenty-four
9 hours after he was arrested, when he's sweating profusely,
10 foaming at the mouth, screaming one minute, not making a
11 lot of sense. His father said it was just like I was
12 staring at his mother when she was mentally ill. You
13 know, he has all those things and then -- which, you know,
14 could be a presentation of acute psychotic episode
15 schizophrenia. But then without any sort of treatment,
16 twenty-four hours later, he's back to pretty much his
17 normal self. His dad said, I saw my Tim again. If this
18 was schizophrenia or a psychotic disorder due to
19 schizophrenia, I would not expect it to get better without
20 treatment. It doesn't get better on its own.

21 Q How about driving all over the southeast with --

22 A That was purposeful on his part. He was trying not
23 to be at home. He was trying to figure out what to do.

24 Q Did --

25 A Where to go, you know, where to dispose of the

1 bodies.

2 Q Did you review the notes that he had made about the
3 body disposal?

4 A Yes.

5 Q Did those appear to be disorganized?

6 A No.

7 Q Not at all? All the arrows, all the circles.
8 That's --

9 A Well, people have ways of making notes to themselves.
10 They were logical in sequence. Dissolve the bodies, saw
11 them up, burn them, dispose of them. He had looked at
12 places to dispose of the bodies. He had searched cadaver
13 dogs at landfills.

14 Q Which he didn't take them to?

15 A No.

16 Q Can you tell the ladies and gentlemen of the jury a
17 little bit about delusions and how they develop and --

18 A Delusions are --

19 Q --how long it takes.

20 A -- fixed, false beliefs. They are something that
21 someone will believe even when given evidence to the
22 contrary. I'll give you an example. I had a guy who
23 thought the government had planted a computer chip in his
24 body. It was monitoring him and sending him all sorts of
25 messages. And, actually, is physician sent him for a

1 scan, an MRI scan. Said there's nothing in your body, you
2 haven't been implanted. And then, you know, he says it's
3 got a cloaking device. So even when given evidence that
4 this isn't in your body, he still believes it. That's a
5 fixed, false belief. Delusions develop very slowly over
6 time. You might have the neighbor next door is parking
7 his car closer and closer to your property and you become
8 suspicious of that. One day you see him out by the
9 mailbox and think he might be looking in your mailbox.
10 You become suspicious of that. A few days later, you may
11 smell some abnormal smell inside your house and you think
12 the neighbor might be putting something in your air
13 conditioning vent to poison you. And then at some point,
14 you become convinced that your neighbor is trying to hurt
15 you. It begins gradually and over time to reach a
16 conclusion.

17 Q Okay. And you've reviewed some internet searches
18 regarding Merah and whether or not Tim thought she might
19 be schizophrenic?

20 A Yes. He said that one day Merah was talking to
21 herself.

22 Q And he started looking that up?

23 A Yes. He was very afraid that he was going to have
24 what his mother had, that his children were going to have
25 what his mother had, schizophrenia.

1 Q You didn't think that was a delusion?

2 A No. I think a lot of people that have mental illness
3 in their family worry that it might affect them. The risk
4 is greater if you have a parent, but it's not -- 85 to 90
5 percent of people with a parent with schizophrenia will
6 not get schizophrenia. The vast majority do not end up
7 with schizophrenia.

8 Q Nahtahn trying to electrocute me, you did not think
9 that was a delusion?

10 A I thought it was a paranoid thought.

11 Q Okay.

12 A But it wasn't of delusional intensity. It wasn't
13 fixed at that point. He didn't think anything about
14 Nahtahn earlier that day. I mean, he knew that Nahtahn
15 was fascinated with electricity.

16 Q And he had done searches about --

17 A Right, could he hurt himself. He had unscrewed a
18 lightbulb above the bathroom sink. He caught him one day
19 about two weeks, I think, before this happened. And he
20 was making sure that -- he wanted to see how dangerous it
21 was, but he said Nahtahn had a fascination with
22 electricity.

23 Q You don't think that that was the beginning -- I
24 mean --

25 A I think he was getting, well, you know, that turns

1 into -- on the night that this happened, the sudden thing
2 he's not confessing to blowing the thing. He had been
3 using spice all day and then he thinks, you know, maybe
4 he's out to harm me.

5 Q That was a paranoid thought versus it hadn't gotten
6 to the point of a fixed, false belief?

7 A Correct.

8 Q And then Amber being prostituted, that was -- that
9 wasn't a fixed, false belief?

10 A The way he describes that, it sounds like it could be
11 reality based. I mean, there's nothing in the description
12 of that that makes me think it's delusional.

13 THE COURT: Mr. Young, is this a good time to
14 interrupt for a break?

15 MR. YOUNG: Yes, sir.

16 THE COURT: You've still got some more to do?

17 MR. YOUNG: Yes, sir.

18 THE COURT: Okay. Dr. Frierson, you stay right
19 there. We'll take a short break. Have you back out here
20 shortly. Don't discuss the case.

21 (WHEREUPON, the jury was excused from the courtroom
22 for a break.)

23 (Whereupon, a short break was taken.)

24 THE COURT: Let's bring the jury in.

25 (Whereupon, the jury came into open court at

1 approximately 11:55 a.m.)

2 THE COURT: I know y'all have a lunch reservation at
3 a particular time. Mr. Young has agreed to let me give
4 him the signal as to you've got a couple of minutes. So
5 with that in mind, I don't think we'll be through with Dr.
6 Frierson, but he's going to ask questions until we get to
7 that time, okay? Mr. Young.

8 CONTINUE DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q Dr. Frierson, go straight to Page 45, the second
11 paragraph down. Tim reported to you that he could read
12 the cues of the children. He knew when they were lying,
13 is that right?

14 A Right, he was familiar enough with his children that
15 he could tell when someone was lying.

16 Q And him saying I could read their nonverbal cues,
17 that didn't seem unusual to you?

18 A No. Most people -- he was able to explain that a
19 little bit and it made sense.

20 Q Okay. That he knew that it wasn't anybody else that
21 had messed with the outlets. Is that what he was talking
22 about?

23 A That Merah -- well, first of all, he knew it wasn't
24 Gabriel or --

25 Q Elaine?

1 A Elaine, Abigail, I'm not sure what you're referring
2 to, what name you're using. So he was focused on Merah,
3 Elias and Nahtahn. And Merah and Elias looked him right
4 in the eye and denied it immediately. And Nahtahn was
5 fidgety, wouldn't look me in the eye and he sort of
6 clammed up. And he thought that Nahtahn must have done
7 something to the outlet. Plus, he's the one interested in
8 electricity, so.

9 Q Now, at the top of Page 46, he also believed that
10 Merah and Nahtahn were engaged in a plan?

11 A Right. He had thought that -- well, after the
12 separation, the kids missed their mother, as you would
13 expect any child that age to. The only person they've
14 ever known, to raise them, around them twenty-four hours a
15 day, unless they were at school, all of a sudden is taken
16 away from them. And they were very, very -- missing her
17 very much. There are videos I watched where he took of
18 them crying asking for Amber to come back -- asking for
19 their mom to come back that he had sent to Amber. Very
20 emotionally draining videos. So the kids probably did
21 want to go back with Amber. I mean, that would not be
22 unusual for a child. But he had thought that, perhaps,
23 Merah and Nahtahn might have been up to something with the
24 DSS allegations.

25 Q Did he make Google searches about that?

1 A Yes.

2 Q And what were those?

3 A I don't remember the exact words, but children
4 turning against their parents or something like that, or
5 against their father.

6 Q Father betrayed by my young children?

7 A Yeah, father betrayed by my young children.

8 Q And you didn't think that that was odd?

9 A I'm not sure what odd is. I didn't think it was
10 indicative of mental illness.

11 Q On Page 47, I think is where you talked about -- and
12 I think we've already discussed this. Tim expressed to
13 you that he thought it was better for him to send them to
14 heaven than for them to have to live without a mother,
15 right?

16 A Yes.

17 Q At the bottom of Page 49, before you start your
18 conclusions regarding criminal responsibility, you noticed
19 that Tim played a song that, Long Arm of the Law, right?

20 A Yes.

21 Q Did you also notice that he played a song called
22 Butterfly Kisses?

23 A Yes.

24 Q And that didn't make it into your --

25 A Well, that was one of Merah's favorite songs.

1 Q That he was playing -- this is after the children
2 were dead and he was driving around playing these in the
3 car, right?

4 A Yes. He was grieving. He may have done it, but he
5 was still grieving the loss of his children.

6 Q Just a couple more questions. In your report, in
7 these two pages and all of the information that you
8 reviewed, there's no mention of Tim's responses to the
9 initial mental health questionnaire that he was given?

10 A Which mental health questionnaire are you referring
11 to?

12 Q Sure. Where the police asked him, would you still do
13 it if a police officer was with you, did you know it was
14 wrong. All those questions?

15 A Yes.

16 Q They're not mentioned in your report?

17 A I do not mention them in my report, no.

18 Q Those were taken two days after his arrest?

19 A I don't know exactly. They were some time -- I think
20 you're correct, two days after his arrest.

21 Q And this is after his symptoms, the foaming at the
22 mouth and stuff had resolved?

23 A It resolved, yes.

24 Q So why didn't you put those in there?

25 A Because I don't believe that's a very reliable way of

1 determining someone's criminal responsibility or mental
2 state at the time of the offense when you're already in
3 police custody. I don't think it's appropriate for law
4 enforcement to assess someone's mental state.

5 Q You also had some information about -- from law
6 enforcement about statements that Tim made when he was
7 first checked into Kirkland at the MSU unit?

8 A Yes.

9 Q And those weren't in your report either?

10 A No.

11 Q Why?

12 A I try to place in my report what I think is most
13 important. The statements from correctional officers -- I
14 mean, I work in the Department of Corrections and they
15 have a very hard job, they work very hard. But they were
16 outliers.

17 Q They were inconsistent with what he had told you
18 and --

19 A They were not consistent with what he told right
20 after he was arrested. The statements that he gave,
21 they're not consistent with everything that he's told me.

22 Q Or any other report --

23 A And the physical evidence doesn't necessarily support
24 that.

25 Q You did not diagnose Tim as malingering?

1 A It was a very strong consideration, but no.

2 Q Just going back to your CV for just a second. You're
3 on the faculty for the National College of District
4 Attorneys, is that right?

5 A I'm not on their faculty. I have been asked by the
6 National College of District Attorneys to do training for
7 them, to teach them about mental illness. I've done that
8 all over the country. They used to have a National -- the
9 National Advocacy Center is down on the USC campus. It's
10 a big building with eight courtrooms. They train
11 attorneys from all over the country. They bring them here
12 and they train them. And they reached out to me and asked
13 if I was willing to do some mental health training for
14 them since I was here and that then turned into, I've been
15 to Alaska for them to train prosecutors in how to deal
16 with mental health issues in court.

17 Q And specifically, how to deal with mental health
18 issues in death penalty cases?

19 A Some of those, yeah. They've asked about mental
20 health issues that arise in death penalty litigation.

21 Q And do you know how many times you've gone to
22 prosecutor conferences to lecture about --

23 A I have not counted them on my CV yet lately. But I
24 would say a dozen to twenty somewhere.

25 Q Dozen to twenty. Do you know how many times you've

1 gone to a defense seminar?

2 A Once.

3 Q You've written a number of publications, is that
4 right?

5 A I'm a professor. I have to, yes.

6 Q And some of those publications are in conjunction
7 with other psychiatrists?

8 A Yes.

9 Q And one of those psychiatrist is Dr. Schwartz-Watts
10 or Dr. Maddox that you've written publications with?

11 A I recall one publication with her, maybe two.
12 Somehow -- articles one, I wrote a book chapter with her.

13 Q Okay. One article, one book chapter?

14 A That's my recollection.

15 Q Okay. I think one of the things you told me is that
16 you are here sort of as an advocate for your opinion, is
17 that correct?

18 A Well, I'm not an advocate for either side. I'm not
19 an advocate for the defense or prosecution. I'm here just
20 to give my opinion and to advocate for my opinion.

21 Q Right.

22 A To say look, I've done the best I could. I spent a
23 lot of hours on this, I looked at everything. And, you
24 know, it's like I met with you and I said the truth is
25 never what you say and it's never what the other side

1 says. It's always to be somewhere in the middle.

2 Q And other psychiatrists could look at the same
3 information and arrive at a different opinion?

4 A Yes. I mean, the Supreme Court has nine judges on
5 it. Five say one thing, four say the other. We're
6 looking at -- not everything is black and white,
7 especially when it comes to mental health. And reasonable
8 people can disagree.

9 MR. YOUNG: Thank you, Dr. Frierson.

10 THE COURT: All right. Now is a good time to break.

11 MR. YOUNG: Now is a great time to break, Your Honor.
12 I have one more thing I need to do with Dr. Frierson
13 outside the presence of the jury.

14 THE COURT: All right. Y'all go to lunch. Enjoy
15 your lunch. We'll see you about 1:30. When y'all get
16 back, we'll get started when you get back. Don't talk
17 about the case.

18 (WHEREUPON, the jury was excused from the courtroom
19 for a lunch break.)

20 MR. YOUNG: Your Honor, I think we had indicated to
21 the Court and State before that we would intend to ask Dr.
22 Frierson a couple of questions, just a few questions about
23 what happens if somebody is found not guilty by reason of
24 insanity, where they go. And I know the Court has said
25 that doesn't come in, but I'd just like the opportunity to

1 proffer that testimony from Dr. Frierson real quick.

2 THE COURT: Go ahead. And it's consistent with the
3 statute?

4 MR. YOUNG: Sure.

5 PROFFER EXAMINATION

6 BY MR. YOUNG:

7 Q Dr. Frierson, you've written articles about
8 attorneys, Judges and their understanding of not guilty by
9 reason of insanity, guilty but mentally ill?

10 A Yes.

11 Q And your conclusion was, they don't understand it
12 very well?

13 A That's a nickel summary, but, again, some understand
14 better than others. There's misconceptions. And I don't
15 know if you're talking about attorneys or jury's.

16 Q Everybody. What happens to somebody if they are
17 found not guilty by reason of insanity?

18 A According to the statute, they go to the South
19 Carolina Department of Mental Health for a period,
20 initially, not to exceed 120 days, during which time they
21 have further mental evaluation. In that 120-day period
22 they have to determine whether they need continued
23 hospitalization or whether they can be released.

24 Q How many people have to agree for them to be
25 released?

1 A What?

2 Q If a doctor says --

3 A Only a Judge can make that decision.

4 Q And even if the doctor wants somebody to be released,
5 the Judge can still say no?

6 A Yes.

7 Q And in South Carolina, are there specific
8 restrictions on people who are in the custody of the
9 Department of Mental Health under a not guilty by reason
10 of insanity statute?

11 A Yes.

12 Q Are they restricted in their movements?

13 A Yes.

14 Q Are they able to leave the facility for any reason?

15 A No, not without a Judge's permission.

16 Q Not without court approval. And are they housed at
17 the Columbia Regional Care Center?

18 A Yes.

19 Q I'm going to have this marked. Is this the patient
20 handbook for the Columbia Regional Care Center?

21 A I don't work there, so I would not know, but it looks
22 like a picture of it.

23 Q Okay.

24 (WHEREUPON, Court's Exhibit number 97 was marked for
25 identification only.)

1 Q Dr. Frierson, from your research, can you tell us
2 whether or not jurors are affected by their misconceptions
3 about what happens to people found not guilty by reason of
4 insanity?

5 A We have no way of knowing, but we do know that from
6 research that I've done that some jurors think someone
7 found not guilty by reason of insanity gets out.

8 Q And how about guilty but mentally ill?

9 A Most jurors do not believe persons found guilty but
10 mentally ill could get the death penalty.

11 Q Is that correct?

12 A No. Jamie Wilson is on South Carolina death row and
13 he was found guilty but mentally ill.

14 MR. YOUNG: I think that's all the questions I have
15 Dr. Frierson. Thank you very much.

16 THE COURT: Enjoy your lunch. We'll shoot for 1:30
17 and hope the jury does.

18 (WHEREUPON, a lunch break was taken.)

19 MR. YOUNG: Your Honor, the Defense had requested a
20 limited instruction prior to the testimony of Dr.
21 Frierson. Your Honor gave an instruction to which the
22 jury was told that this was a Court's witness and the
23 Court's expert. We objected to the instruction as given
24 at side bar as being possibly considered bolstering or
25 vouching for the witness and requested a curative

1 instruction. Your Honor gave a curative instruction that
2 you were not vouching for his credibility. It would be
3 our position that we request a mistrial because the
4 curative instruction isn't able to sufficiently cure the
5 taint of the first instruction.

6 THE COURT: Okay. I understand. I think both
7 instructions were proper and the curative instruction was
8 proper. So respectfully, you're protected, but denied.

9 MR. YOUNG: Thank you, Your Honor.

10 THE COURT: Are y'all ready for the jury?

11 MR. GRAHAM: Yes, sir, Your Honor.

12 THE COURT: Bring them in.

13 (Whereupon, the jury came into open court at
14 approximately 2:00 p.m.)

15 THE COURT: All right. Ready to continue on. Dr.
16 Frierson is ready to begin his testimony. Mr. Graham.

17 MR. GRAHAM: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GRAHAM:

20 Q Dr. Frierson, you're a forensic psychiatrist,
21 correct?

22 A Yes.

23 Q What is a forensic psychiatrist?

24 A A forensic psychiatrist is a fully trained
25 psychiatrist who has undergone extra training to learn to

1 deal with issues related to psychiatry and the law, the
2 legal system. It might be cases such as this one, where
3 it's a criminal trial and the Defendant needs to be
4 evaluated, but I also do a lot of other things. I review
5 records in malpractice cases for the standard of care. I
6 evaluate physicians and nurses and other professionals
7 referred by the medical board or the nursing board where
8 there's a question about their competence to practice. I
9 might evaluate someone to see if they're competent to make
10 a Will. A whole variety, disability evaluations, a lot of
11 forensic issues.

12 Q You had testified when the Defense called you, that
13 you have a music undergraduate degree --

14 A Yes.

15 Q -- is that correct? What instrument?

16 A I'm sorry.

17 Q What instrument?

18 A Piano.

19 Q And I think you graduated with honors, high honors,
20 didn't you?

21 A Yes.

22 Q You went to a medical school here in South Carolina
23 and graduated with honors from medical school?

24 A Yes.

25 Q And then you've already testified about your

1 residency and Fellowship in forensic psychiatry?

2 A Yes.

3 Q Let me ask a few more questions about your
4 background. Currently -- since 2012, you were Professor
5 of Clinical Psychiatry and Vice-Chair for education. And
6 then in 2017, it became an Endowed Chair. So what does
7 that mean?

8 A An Endowed Professorship. It just, basically, means
9 someone left a lot of money to go towards the University
10 School of Medicine to help offset someone's salary. So
11 Alexander G. Donald was my -- was a Chair of our
12 department many years ago. He died and in his Estate left
13 some money to Endower a Professorship.

14 Q So what currently do you do at the University of
15 South Carolina?

16 A I am the Vice-Chair for education of the Department
17 of Psychiatry. So my job, first of all and foremost, is
18 to run the Forensic Psychiatry Fellowship. That's a
19 program that trains people to do what I do. So every
20 year, I train two, what we call Fellows in forensic
21 psychiatry to become forensic psychiatrist. I, also,
22 oversee the provision of medical suited education, general
23 psychiatry residency training and child psychiatry and
24 geriatric psychiatry residents in training. Although they
25 have their own directors for each one of those programs, I

1 sort of oversee the -- all the educational activities.

2 Q I also notice from your curriculum vitae, your
3 resume, that says you -- since 2007, you've been a
4 consultant to the South Carolina Department of Corrections
5 at Gilliam Psychiatric Hospital. What is that?

6 A That's the hospital in the Department of Corrections
7 for people with severe mental illness are hospitalized
8 when they need an inpatient, which is the highest level of
9 care. So I treat patients every Tuesday afternoon,
10 probably see eight patients, six or eight patients,
11 depending if there are new ones every Tuesday afternoon,
12 and I provide treatment. I prescribe medications for them
13 and talk to them.

14 Q So you're a clinician, too?

15 A Oh, yes.

16 Q That's what that is?

17 A Yes. I supervise some residents in our general
18 psychiatry clinic outside of the prison in treating
19 patients.

20 Q Board certifications. What does that mean and what
21 do you have?

22 A Board Certification means you take a big exam. It's
23 like the bar exam or some exam that's just for your
24 speciality. So it's about a half-day exam. You go to the
25 computer center and sit there and you have to study and

1 you take the exam. If you pass, you are Board Certified.

2 Q And you are Board Certified in Forensic Psychiatry?

3 A Yes.

4 Q And have been since 2002, I think, is that correct?

5 A I think I've been Board Certified in Forensic

6 Psychiatry since 1994. I recertified in 2000 --

7 Q Yes, it says Diplomat is what it says?

8 A Yeah, I first passed it -- you have to pass the test
9 every ten years to make sure you're still up to date, that
10 you know what you're doing. So I've actually -- took the
11 initial test in '94, because I was working for the -- the
12 American Board of Psychiatry and Neurology invited me to
13 help write questions for the exam. So I did that for
14 many, many years and ended up having to take my recert two
15 years early, so I took it in 2002. And then I just took
16 the board certification again a year or two ago.

17 Q What is the American Academy of Psychiatry and the
18 Law?

19 A The American Academy of Psychiatry and the Law is the
20 largest organization of forensic psychiatrists in the
21 country. It's about 2,000 members.

22 Q Of forensic psychiatrists?

23 A All forensic psychiatrists, yes.

24 Q Now, in 2016, you received an award from that
25 organization, is that correct?

1 A Yes.

2 Q And that was the Seymour Pollack Award?

3 A Yes.

4 Q What is that? What was that for?

5 A It's given for outstanding contributions in education
6 and training in forensic psychiatry.

7 Q And then currently -- from October of 2018, you were
8 actually elected and you're actually president of that
9 body right now, aren't you?

10 A Yes. I am president until October.

11 Q You've published two books?

12 A One's in press, but yes.

13 Q And I've counted up maybe 12 different book chapters?

14 A Yes.

15 Q You have been qualified in South Carolina courts as
16 an expert in forensic psychiatry over 300 times?

17 A Yes.

18 Q And you have done over 3,500 court-ordered competency
19 to stand trial and criminal responsibility examinations,
20 is that correct?

21 A Yes.

22 MR. GRAHAM: Your Honor, the State would offer Dr.
23 Frierson as an expert in the field of forensic psychiatry.

24 MR. YOUNG: No objection.

25 THE COURT: I've done it twice now. He's offering an

1 opinion in the field of forensic psychiatry. He can offer
2 opinions based upon his training, expertise, experience.
3 Continue on.

4 MR. GRAHAM: Thank you, Your Honor. For a Court's
5 Exhibit, I have a copy of his curriculum vitae and that's
6 Court's 95 that's already been marked.

7 THE COURT: Right, it will be marked as a Court's
8 Exhibit.

9 MR. GRAHAM: And Court's 94 is actually a copy of his
10 report.

11 THE COURT: I thought was already in as some other
12 Court's Exhibit, but that's okay.

13 MR. GRAHAM: Well, I may have told her wrong.

14 THE COURT: It's okay. If she's got it twice, she'll
15 figure it out. It's okay to have in as a Court's Exhibit
16 twice.

17 COURT REPORTER: And I do have those as 94 and 95,
18 but I'll look back on it later.

19 (Whereupon, Court's Exhibit 94 and 95 were marked for
20 identification only.)

21 Q Dr. Frierson, you became involved in this case after
22 the Defendant put forward an insanity defense and the
23 Court ordered an examination and it was assigned to you,
24 is that correct -- or, I'm sorry, actually, you had done
25 the competency evaluation before?

1 A Right. I first became involved in 2016 when the
2 Court sent an order for an evaluation of Mr. Jones'
3 competency to stand trial, could he understand what was
4 going on in court and work with his attorneys.

5 Q How many times have you interviewed Tim Jones?

6 A Twice in 2016 for that evaluation and then an
7 additional four times beginning September of 2018,
8 November of 2018 and twice in March of this year for the
9 insanity or criminal responsibility evaluation.

10 Q How many hours have you spent talking to him?

11 A Nineteen.

12 Q Why so many?

13 A Because this is not an easy case. It's complicated.
14 There's a lot going on. I wouldn't want to --

15 Q So you would agree with me that anybody that's
16 offering a diagnosis should spend the time --

17 A I think so, yes.

18 Q -- talking?

19 A And, you know, you're always reviewing records, they
20 never end. You would think you're done and then here they
21 send a whole -- more CDs full of thousands of pages. So
22 sometimes you interview a person and then you get this
23 other stuff. And you say wait a minute, I've got to see
24 them again and ask them about this because I didn't know
25 about this.

1 Q And you said this was the biggest amount of data
2 you've had in any case?

3 A Yes.

4 Q Let me show you what's been marked State's 204 for
5 identification and ask you if that is a excerpt of the
6 copy of the report talking about the sources of
7 information that you reviewed in this case?

8 A I'm just making sure it matches what I have.

9 Q Yes, sir. Take your time.

10 A There were 295 sources, so yes, that's an excerpt.

11 MR. GRAHAM: Your Honor, the State would offer 204
12 into evidence at this time.

13 MR. YOUNG: Your Honor, we would have an issue.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: Subject to the redactions that the Court
18 suggested, I'll allow it.

19 MR. GRAHAM: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit number 204 was admitted
21 into evidence.)

22 Q So there was a Court order asking you, Dr. Frierson,
23 to assess the Defendant for criminal responsibility and
24 capacity to conform?

25 A That was the second order, yes.

1 Q What is criminal responsibility in big terms?

2 A Criminal responsibility is another word for the
3 insanity defense or evaluating someone's mental state at
4 the time of the crime. So I was asked to render an
5 opinion as to whether at the time of the crime Mr. Jones
6 would have been criminally responsible. In South Carolina
7 we have a definition for that that's based in a statute.
8 The definition is a person is not responsible if at the
9 time of the act constituting the alleged offense, he or
10 she lacked the capacity to distinguish legal or moral
11 right from legal or moral wrong or to recognize the
12 particular acts charged, the actual crimes, as legally or
13 morally wrong. If someone is unable to do that, then
14 they're eligible for a verdict of not guilty by reason of
15 insanity.

16 Q Thank you, Doctor. So what is it, when it talks
17 about a moral -- I mean, a mental disease or defect, what
18 does that mean?

19 A Generally, a mental disease or defect is something
20 that is defined by DSM-5 or they have a recognized mental
21 disorder that the American Psychiatric Association
22 categorization says this is a legitimate mental illness.
23 Typically, to get to something so severe that it is going
24 to appear knowledge of wrongfulness, either legal or
25 moral, it has to be a severe mental illness.

1 Q When you said DSM-5, what is the DSM-5?

2 A The Diagnostic and Statistical Manual of Mental
3 Disorders.

4 Q What psychiatrists and psychologists use to make
5 diagnoses?

6 A Yes. It's developed so that if I say someone has,
7 let's say, obsessive compulsive disorder, another
8 psychiatrist reading my medical records would know what
9 I'm talking about. It's defined in that -- the criteria
10 for the diagnosis are contained in that manual.

11 Q When you talk about legal and moral right and wrong,
12 what are you talking about? What are you having to try to
13 determine?

14 A Like, legal, do they know it was a crime against man?
15 Do they know what they did was wrong, a criminal act? Do
16 they realize it was a crime they were committing?

17 Q And then the morality part?

18 A Is it against the law of God. Somehow it's morally
19 wrong to do this.

20 Q Society?

21 A Society, right. Not law enforcement, but that people
22 would find it morally --

23 Q Not a value choice? Not a choice that I might make?
24 You would have to weigh that choice against the morality
25 of society --

1 A Yes.

2 Q That's what you're looking at, right?

3 A Yes.

4 Q Capacity to conform, what is that?

5 A Capacity to conform is another issue which we were
6 asked to evaluate. If a person knew right from wrong
7 legally and morally, but they couldn't conform their
8 conduct to the requirements of the law, then they're
9 eligible for a verdict of guilty but mentally ill. In
10 other words, to say someone lacked the capacity to
11 conform, they couldn't resist from doing it. They were
12 acting under some irresistible impulse or they had no
13 other choice in their mind.

14 Q And I think your report, which you have up there with
15 you, and I've made a Court's Exhibit. It's 40 -- 52
16 pages, does that sound about right?

17 A Yes.

18 Q And that documents what your diagnosis is, everything
19 you reviewed and highlights what you felt was to be
20 important in reaching your conclusions. Is that fair to
21 say?

22 A Correct. I mean, certainly, I don't talk about every
23 single thing. I mentioned it in the list of things that I
24 reviewed, but if -- some of the school records, for
25 example, of the children, which I reviewed, I didn't think

1 information needed to be in my report because it wasn't
2 relevant to the issues that I'm looking at. So I tried to
3 put everything here that I thought was relevant to issues
4 of criminal responsibility and capacity to conform.

5 Q So big picture was Exhibit 204 that's in the State is
6 a list of everything you looked at?

7 A Yes.

8 Q What you wrote in your report is what you felt was
9 important to reaching your conclusion?

10 A Yes. Part of my job as an evaluator is to shuffle
11 through this mess of amount of material and say what
12 evidence in this material has relevance to Mr. Jones'
13 mental state at the time of the alleged offense.

14 Q So things that you would consider would be maybe
15 observations by people?

16 A Yes.

17 Q Coworkers, friends, people who came in contact with
18 him?

19 A Certainly.

20 Q Those are obviously important. Also, I guess a big
21 part of it is, is what he tells you during those 19 hours
22 of conversations you had. Is that correct?

23 A What he tells me is important. What he does is
24 important or what he -- his actions.

25 Q Actions speak louder than words?

1 A Yes.

2 Q But the words that --

3 A Sometimes.

4 Q -- you accept for true is what he told you, is that
5 fair to say? That's what your decision is based on?

6 A I have to make a decision as to what he's telling me
7 is supported by evidence, so it's a combination of both.
8 I certainly don't believe everything a criminal defendant
9 tells me is true. But unless I have reason to suspect
10 that it's not, I initially give them the benefit of the
11 doubt, then I look at evidence to make sure it corresponds
12 with what they're telling me. In this case, we also had a
13 tremendous amount of phone, smart phone documentation as
14 far as what he searched, what websites he visited. What
15 he was looking at and what someone is doing on their phone
16 can be very revealing about their state of mind at the
17 time.

18 Q Is this one of the first cases that you've done that
19 has that kind of information?

20 A I've had others, but not to this detail. I've never
21 had a case where I had to have a special program installed
22 on my computer just so I could learn how to navigate all
23 that information.

24 Q But you found information important and helpful?

25 A Yes, yes.

1 Q You'd agree with me that it's pretty much an
2 extension of what he's thinking and doing?

3 A Yes.

4 Q At that time?

5 A Yes.

6 Q One of the first things you address in your report is
7 his claim of auditory hallucinations, which are hearing
8 voices, right?

9 A Yeah, he calls them hearing voices.

10 Q That's what he started with?

11 A Right.

12 Q But during the course -- that's what he told the
13 police, that he heard voices?

14 A Right.

15 Q Now, there's no evidence that he told anybody -- you
16 didn't find any evidence in anything you reviewed, and you
17 got evidence from the State and the Defense, about him
18 hearing voices or claiming to hearing voices before he got
19 arrested by the police, correct?

20 A Not that I recall.

21 Q So after he gets arrested by the police is the
22 first --

23 A I mean, someone said they heard him talking to
24 himself one time from another room and I think -- that
25 doesn't mean he's hearing voices, but it could. Sometimes

1 people with major mental illness talk back to what they're
2 hearing. But other than that, no.

3 Q I understand. Once he gets stopped by the police,
4 though, he starts talking about hearing voices. You've
5 spent 19 hours with him. Over the course of that, it's my
6 understanding that when you asked him further and further
7 what do you mean when you say voices, describe it to me,
8 and you go down, that changes?

9 A Yes.

10 Q Or you get a better understanding of it? Maybe that
11 is a better way to say it.

12 A Yes. And I think that -- like, I asked, are you
13 hearing a voice like I'm talking to you in this room, like
14 someone is in the room talking to you. And he would say
15 no. And I said, well, can you give me an example of the
16 voices that you're talking about and what they say. He
17 would say, like -- he gave me the example of -- it's easy
18 to come to my mind, of when Amber -- when he was convinced
19 Amber was going to leave him, you know, the voices said,
20 Oh, my God, what are you going to do? How are you going
21 to take care of the children? Where are you going to get
22 help? How are you going to be able to handle all this?
23 You know, these are what most of us would think, have
24 anxious thoughts while going through something stressful
25 like having five kids and getting divorced from your wife

1 and having sole custody and care taking. I mean, that's
2 just what normal anxious people would think. So it became
3 clear to me that what he calls voices are really anxious
4 thoughts that he doesn't like experiencing, that are
5 unpleasant.

6 Q That's what -- he agrees with you, right?

7 A Yes.

8 Q During your conversations -- that's not your opinion,
9 that's an agreement that the two of you reached?

10 A He agreed with me, yes. He, at one point, in
11 November in the evaluation, I only heard a voice sounding
12 like something talking to me outside of my head twice in
13 my life and very briefly. And the first time was when he
14 was ten years old and he says his mother told him -- his
15 stepmother, I think her name was Carolyn, that she didn't
16 want him around anymore. He says my imaginary friend told
17 me to kill myself.

18 Q And that's when he was 10 or 12 --

19 A And that would certainly make someone very anxious to
20 have someone who has custody of you in part, I know he was
21 living with his father, but if your stepmother said I
22 don't want you around. And the other time, he says, on
23 the drive back from the convenience store after buying
24 cigarettes the night of the alleged offense that he heard
25 a voice, which he described as a gremlin voice, which is

1 sort of atypical, but he said it said to kill the kids.

2 But it was very brief and fleeting.

3 Q That was coming from outside of his head?

4 A That's what he said, yes.

5 Q And it said kill the kids?

6 A Yes.

7 Q And that was after Nahtahn was dead and after he went
8 to the gas station and bought --

9 A Yes.

10 Q -- carton of cigarettes and came back?

11 A Yes.

12 Q The only proof is him telling you that, though,
13 correct? You're accepting that as true for the purpose of
14 your opinion and diagnosis?

15 A I'm giving him the benefit of the doubt. There is a
16 possibility that it's not true, but I'm just giving him
17 the benefit of the doubt.

18 Q You had made a comment earlier when Mr. Young asked
19 you about him not hearing voices anymore. And I think, if
20 I understood you right, you were explaining that an SSI
21 can stop those anxious thoughts, not a voice --

22 A The SSRI, but that --

23 Q SSR --

24 A -- the way we treat anxiety and the way we treat
25 depression pharmacologically, with medicines, is the same.

1 The first line treatment is a selective serotonin reuptake
2 inhibitor or an SSRI. There's a bunch of them. I think I
3 mentioned this morning. Prozac was the first one, Paxil,
4 Zoloft, Celexa, Lexapro. There's just tons of them
5 available. And sometimes, people will respond to one, but
6 not another. But anyway, those are the medicines used to
7 treat depression and anxiety. And I think -- actually,
8 one of them was prescribed for him by a family
9 practitioner when he was undergoing the divorce. And I
10 think his voices or anxious thoughts likely improved
11 because he was getting one of those medicines.

12 Q One of the questions that Mr. Young had asked you had
13 to do -- it was a series of questions. And it said if you
14 have a family history of mental illness, you're more
15 likely to get, for instance, a mental illness or
16 schizophrenia, correct?

17 A Yes.

18 Q If you have a history of violence in your house, you
19 may end up with a mental illness? We have to be careful
20 what we say, don't we?

21 A Childhood trauma is one risk factor.

22 Q Okay.

23 A But it doesn't -- most people with childhood trauma
24 don't necessarily go on to develop mental illness.

25 Q Drug use, the same thing?

1 A Yes.

2 Q Head trauma, the same thing?

3 A Yes.

4 Q So just because you have one or all of those doesn't
5 mean that you will have mental illness, does it?

6 A That's correct.

7 Q You still have to go to the criterium of the
8 diagnosis in the DSM-5?

9 A Right, that's what we rely on. We don't rely on
10 other tests or scans or genetics. I mean, it's
11 interesting to know genetic background, that's why we ask
12 the family history. It's very clear his mother had
13 schizophrenia and had a severe case of schizophrenia. I
14 mean, she was on -- hospitalized for very long periods of
15 time. She was on medications throughout her life,
16 including medications that are sort of used as a last
17 resort. Like if you fail all these other medicines, we'll
18 give you one called Clozaril, which she, I believe, is
19 taking now or, at least, in the last records that I saw.
20 But having a parent with schizophrenia raises your rate.
21 Schizophrenia occurs in one in 100 people, so the incident
22 of schizophrenia is one person. Having a parent with
23 schizophrenia raises your rate of likely to develop it to
24 somewhere between, let's say, ten and the maximum fifteen
25 percent -- actually, it's like seven and fifteen percent,

1 depending on what study you read. So to say that
2 differently, if my parent has schizophrenia, there's,
3 like, a seven to ten percent chance -- seven to fifteen
4 percent chance that I'll get it, but there's a 85 to 93
5 percent chance I won't develop schizophrenia.

6 Q So as a psychiatrist, it's nice to know?

7 A It's nice to know there's a family history because
8 you know well, you know, I'm going to try to check this
9 out when I'm interviewing somebody.

10 Q Correct. But it doesn't have anything to do with the
11 diagnosis?

12 A Not making the diagnosis, no.

13 Q Same with head trauma, it's nice to know, but --

14 A It's nice to know that this person has had a head
15 injury because they are at increased risk for things.
16 Then you've got to go --

17 Q You've got to go further?

18 A Got to go further and ask those questions and do some
19 --

20 Q Do some testing?

21 A -- testing, right.

22 Q One other thing that Mr. Young had asked you about
23 was hyper-religious. So if I use the term
24 hyper-religiosity or hyper-religious, what does that mean?

25 A That this person during periods of when they are ill

1 or not stabilized on medication can have bizarre religious
2 thoughts that are outside of an accepted cultural norm. I
3 have a guy right now at the Department of Corrections that
4 he believes he is -- he is Allah.

5 Q But when we get to that level of hyper-religious,
6 hyper-religiosity, it affects your life, it affects your
7 job?

8 A Right. It causes impairment.

9 Q Correct, it causes impairment.

10 A For example, he's gotten in trouble assaulting people
11 when they don't believe him. He feels disrespected.

12 Q When you were looking at Mr. Jones' religious beliefs
13 and backgrounds and practices, you did not find him to be
14 hyper-religious, did you?

15 A No. I mean, not in a mental illness sense, no.

16 Q He --

17 A He's very religious.

18 Q Very conservative?

19 A Very conservative Apostolic Pentecostal. You know, I
20 know other people that I've met across my life that are
21 Apostolic Pentecostals where they speak in tongues, they
22 do a lot of things that I -- it's not been in my religious
23 experience, but I wouldn't call that mental illness by any
24 stretch of the imagination.

25 Q One of the -- of after hearing the voices, one of the

1 next things you talk about in your report is his
2 suicide -- or attempted suicide attempt that Mr. Young was
3 asking you about, correct?

4 A Yes.

5 Q So he first said that he heard voices telling him to
6 kill himself, is that correct?

7 A Yes.

8 Q That's what he reported to the SCDC staff?

9 A Because he had missed a dose of medicine, yes.

10 Q And after that and to -- after that, a few days
11 later, he had something different to say to SCDC, didn't
12 he?

13 A I was never suicidal. I was just mad.

14 Q He was mad over what?

15 A Them not giving him his medicine.

16 Q And I think you actually talked to him and asked him
17 about it and he told you, "I was terribly mad they
18 withheld my meds." Does that sound correct?

19 A Yes.

20 Q And you watched the video and you said he was
21 ambivalent, I think is the word you used to describe the
22 attempt?

23 A I said he appeared ambivalent.

24 Q What does that mean? What do you mean by that?

25 A If someone is definite that this is what they want to

1 do, they will do it. He appeared to be struggling with
2 whether to actually do this or not on the video. I don't
3 think anybody approaches suicide without some degree of
4 ambivalence. But the fact that it went on for so long
5 without a clear attempt, to me, said he's not certain.

6 Q Do you think what you looked at was consistent with
7 anger at having his meds withheld and him showing out a
8 little bit?

9 A It could be. I mean, I'm not a mind reader.

10 Q Next in your report, you go into his psychiatric
11 history. We're on Page 21 now, Doctor.

12 A Okay.

13 Q What was the first psychiatric record that you found?
14 That would have been the Navy record, I think, correct?

15 A Yeah, the first record I have is from the Navy.

16 Q From, I'm sorry?

17 A The Navy, the U.S. Navy.

18 Q That's the one that Mr. Young was talking to you
19 about?

20 A Yes.

21 Q And the diagnosis was depressive disorder not
22 otherwise specified, alcohol dependence and cannabis or
23 marijuana dependence, correct?

24 A Yes.

25 Q He told you, though, when you were talking to him

1 about it he was depressed because why?

2 A He was not going to be able to be a Navy Seal. He
3 was in pain with his hip that he had hurt in a previous
4 car accident. He didn't think he was going to be able to
5 finish basic training due to the physical demands and the
6 pain that he was in.

7 Q Did that explanation seem appropriate with the
8 diagnosis?

9 A Yes.

10 Q The next time you have any kind of mental health
11 documentation, I believe, is after he was in jail in 2001,
12 is that correct?

13 A Yes.

14 Q From the Illinois Department of Corrections?

15 A Yes.

16 Q Let me show you State's 205 for identification and
17 ask if you recognize this document as being that
18 evaluation that you reviewed?

19 A Yes.

20 MR. GRAHAM: Your Honor, the State would offer 205 in
21 evidence at this time.

22 MR. YOUNG: No objection.

23 THE COURT: Without objection, 205.

24 (WHEREUPON, State's Exhibit number 205 was admitted
25 into evidence.)

1 Q So, Doctor, this is a mental health evaluation dated
2 May 28th of 2002 for Tim Jones, correct?

3 A Yes.

4 Q What is the diagnosis at that time?

5 A In the Illinois Department of Corrections, he
6 received a diagnosis of poly-substance dependence, which
7 means he was dependent on multiple drugs, and personality
8 disorder not otherwise specified with narcissistic traits.

9 Q So what does that mean? What is a personality
10 disorder not otherwise specified with narcissistic traits?

11 A Personality disorder is just a long-term pattern of
12 the way people interact with their environment that's
13 maladaptive. Narcissistic persons, they want to be the
14 center of attention. They want to be in control and
15 control others. They require admiration from others.
16 Those are -- they have fantasies of unlimited wealth,
17 power, things like that.

18 Q Then the next documentation you had was the reports
19 of the marriage family therapist, April Hames, from 2012.
20 I'm not sure of the exact dates, the ten months of
21 treatment that he had with her?

22 A Right, during his divorce.

23 Q And he was going to see her about, basically, anxiety
24 about his marriage breaking up and Amber cheating on him,
25 correct?

1 A Yes.

2 Q The next thing you have is a treatment note from Dr.
3 West from the Lexington Family Practice about Lorazepam.
4 Can you tell the jury what that is and why he was taking
5 it?

6 A Right. During this period of time, he lost a
7 significant amount of weight, 188 to 166, according to her
8 records. And this is according to the divorce and stress
9 over the divorce. So she prescribed two medications for
10 his anxiety. One was Citalopram or Celexa. Once again,
11 that's one of those SSRIs, those medicines that we use to
12 treat anxiety and depression. And she also gave him a
13 medicine called Ativan to use prn or as needed. And
14 that's a medicine similar to Valium or Xanax. It's a
15 tranquilizer.

16 Q And then I think he comes back on September 11th?

17 A Right.

18 Q And reports that he doesn't need to take the medicine
19 anymore and he doesn't have depression or anxiety, that is
20 what he tells them, right?

21 A Right. He said he's better. He doesn't feel the
22 anxious -- I think he's adjusted to the fact that he and
23 Amber are going to be splitting up, getting a divorce
24 and --

25 Q And that was September 11th --

1 A He resigned himself.

2 Q -- of 2012?

3 A That was September 11, 2012.

4 Q Moving on to his alcohol and drug use history. Can
5 you tell the jury a little about what his alcohol use was?

6 A He started drinking as a teenager, drinking heavily
7 by the time he was 15. He said he was drinking a fifth a
8 day of Everclear. Then around age 17, it got to the point
9 where he didn't drink. He started getting shaky, having
10 withdrawal symptoms. He said, I was a functional drunk.
11 I was busy with school and a job so nobody paid attention.
12 After that, he reported drinking two shots of whiskey once
13 a week for a number of years, but that once he got
14 married, he gave up all alcohol and drugs. And I'm not
15 sure the marriage was the motivator behind that, but he
16 had a religious conversion when he was in prison.

17 Q It says and then he marries Amber after he gets out?

18 A Right.

19 Q And he says for the eight years they're together, he
20 doesn't drink and he doesn't do drugs, right?

21 A Correct. Never had a DUI.

22 Q He said that he starts smoking marijuana at the age
23 of 12?

24 A Right. He would steal it from his father, multiple
25 times a day, up to an eighth of an ounce a day. And he

1 stopped, of course, after he got out of prison and during
2 his marriage, but he started back after Amber separated --
3 after he and Amber separated.

4 Q And he reported to you that he had paranoia with
5 marijuana use, right?

6 A Yeah, he said marijuana would make him paranoid. He
7 gave an example of people in the -- he thought people in
8 the grocery store, when he smoked, were talking about him.

9 Q And then I think his -- he says he stops using
10 marijuana, I think you said, two weeks before this?

11 A That's what he told me, yes.

12 Q From what I understand, spice kind of replaced
13 marijuana for him?

14 A Spice took over.

15 Q In that summer?

16 A Spice has similar effects, but is much more potent.

17 Q And he told you that he was addicted to marijuana and
18 then when he started spice, he became addicted to spice?

19 A He was addicted to spice per his own reporting. Five
20 times a day, he would use it.

21 Q You noted that a coworker and a former babysitter --
22 I'm on Page 26 now, made comments about what they
23 perceived to be impairments or odd smells during that
24 summer, is that correct? Second paragraph.

25 A Right. One of his coworkers, a Kevin McKinney -- one

1 day Mr. Jones called in sick to work and when Mr. McKinney
2 called Mr. Jones to check on him, he said that he had
3 slurred speech and was not making sense. A former
4 babysitter said that he smelled like he ate a herb cabinet
5 and always appeared high to her.

6 Q You've noted down from talking to him and from
7 reviewing the records that you could actually see the
8 spice purchases escalating in the summer of 2014 from June
9 to August, is that correct?

10 A Yes. He appeared to be using more and more, which
11 would be consistent with developing what we call
12 tolerance. It takes more and more to get the same effect,
13 just like drinking more and more over time.

14 Q And I think your report indicates that in the last
15 month, last four weeks leading up to the killing of his
16 children, he spent about \$230.00 dollars, four different
17 purchases, at least, as far as we know from records?

18 A As far as we know, yes.

19 Q And you also noted from the phone extraction, I'm
20 assuming, that when he was in Orlando taking his kids to
21 Disney Land, he was actually doing internet searches for
22 spice, wasn't he?

23 A He frequently did internet searches, especially if he
24 was going out of town, he wanted to know is it legal in
25 the state and where can you get it. Searching head shops

1 and stuff on the internet.

2 Q In fact, the day -- the 29th, the day after he kills
3 his children, he's looking for drugs on the internet,
4 isn't he?

5 A Yes.

6 Q In addition to marijuana and synthetic cannabinoids,
7 Scooby Snax, he also had some history with cocaine,
8 powdered cocaine, correct?

9 A A handful of times around age 19.

10 Q And the same with heroin as well, snorting heroin?

11 A Twice at the age of 19.

12 Q And then LSD?

13 A A handful of times when he was about 18.

14 Q I believe he got -- drugs seemed to get him in
15 trouble. There's a history of that, isn't there?

16 A His earlier arrest occurred during periods where he
17 was using drugs. He had marijuana at school, he got in
18 trouble for that.

19 Q Moving on to his medical history. Anything in there
20 that you deem to be worthy of talking about in addition to
21 the traumatic brain injury, because I want to talk about
22 that.

23 A He has this weird thing called -- not weird, but
24 glucose-6-phosphate-dehydrogenase deficiency. And that's
25 a fancy medical term, but, basically, it's a condition

1 where if you take certain medications, like sulfur-based
2 drugs, it can cause your red blood cells to break down.
3 So you're not allergic to those drugs, you just should not
4 take them. And so that was noted -- everybody that goes
5 in the military is checked for that. And other than that,
6 everything was pretty much minor, except he did have the
7 head injury.

8 Q And you described that, I think in the questioning
9 from Mr. Young, as impressive?

10 A I think it's impressive --

11 Q You could see it with the naked eye, couldn't you?

12 A Yeah, you could look at his head and see it.

13 Q So what are you concerned about as a psychiatrist as
14 the effect of a traumatic brain injury on his functioning?
15 I know we have all talked about cognition, being smart,
16 not smart, making decisions. So what does your frontal
17 lobe do?

18 A Planning, sequencing, higher levels of thinking that
19 we need to do, thinking abstractly. For example, if I say
20 somebody who doesn't -- to think abstractly is to use
21 words as symbols. If I said people who live in glass
22 houses shouldn't throw stones. That means if you have
23 something about your character or yourself that you're
24 vulnerable, you don't like being criticized about, you
25 shouldn't criticize others about the same thing. Someone

1 who is not able to do that would say you'll break the
2 glass. They're unable to say that has symbolic meaning
3 when you say people who lives in glass houses shouldn't
4 throw stones. Or what goes around, comes around. You
5 know, someone who is concrete might say like a wheel.
6 Whereas someone who can think abstractly would say do unto
7 others as you would have them do unto you. If you did
8 wrong, wrong will come back to you. That would be an
9 abstract way of thinking and that's what the frontal lobe
10 does, helps you do.

11 Q Is that executive functioning, is that what that is?

12 A In part, yes.

13 Q Does the frontal lobe also control having an
14 influence on behavior?

15 A It can.

16 Q So tell the jury about that. What would you be
17 looking for?

18 A Frontal lobe damage can do lots of different things.
19 We have people who become hypersexual. You know, they
20 were pretty normal and, all of a sudden, they get a
21 frontal head injury and their judgment goes out the
22 window, because that's where judgment is, and they'll
23 start being promiscuous, which was just never the case
24 before they had the head injury. You could have people
25 that have trouble with aggression and managing

1 irritability. Our frontal lobe serves in part as our
2 stopping mechanism when we're angry so that we don't go
3 over a certain point. So a variety of different things
4 can happen. It's behavioral manifestations of a frontal
5 head injury. The best to categorize that and diagnose
6 that is by history. How is this -- was this person
7 different after the head injury than they were before?

8 Q And I think I heard you testify that you would expect
9 those changes to manifest themselves within a year?

10 A Oh, certainly, or to be noticed.

11 Q So in your review of all the documents that were
12 provided to you by the State and the Defense, did you see
13 anything that would support frontal lobe damage and the
14 consequences of it?

15 A Well, I did, actually. The one thing that I saw,
16 which was I was provided a report from a neuropsychologist
17 who said he had an IQ of 87. I think I've testified to
18 this before. And I'm like, there's just no way this guy
19 got through Mississippi State University with a Summa Cum
20 Laude computer engineering degree with an IQ of 87. So I
21 had my own neuropsychologist come in and perform testing
22 to locate his ability. And guess what, he did much, much
23 better. He was in the highest percentiles in most of all
24 the tests, or, at least, above 85 percent, which is what
25 you would expect.

1 Q So --

2 A So I had to figure out why was he so low when the
3 neuropsychologist for the Defense tested him. And one of
4 the things is he was on 320 mg of Geodon, which is a very
5 sedating medicine. And having your brain slowed by that
6 medicine can make your results less than what you can
7 actually do. And in fact, he told our neuropsychologist
8 that he didn't do well with the Defense neuropsychologist
9 because he was slowed by the Geodon he was on.

10 Q He told -- Tim Jones told Dr. Kruse that he was
11 slowed by the Geodon?

12 A Yes.

13 Q Other than the 89 -- or the 87 IQ that was reported
14 out, do you see any other evidence of any kind of
15 impairment or deficit or history of behavioral problems
16 related to a TBI?

17 A I do not.

18 Q Do you see any executive functioning problems, the
19 history of, anything reported, documentation related to
20 the traumatic brain injury?

21 A No. There's no way he would be able to do his job at
22 Intel if he had significant executive functioning
23 problems.

24 Q Anything about controlling his emotions?

25 A No. He has a -- he has a history of being a strict

1 disciplinarian with his kids, but I cannot relate that to
2 his head injury. I also -- you know, he had evidence of
3 gullibility, get rich quick schemes on the computer or TV,
4 he would sort of gravitate towards that. According to his
5 grandmother when I spoke to her, he was like that at a
6 very early age, long before the head injury. So I
7 couldn't contribute that to the head injury either.

8 Q Let's move on to -- I think we've discussed -- in big
9 terms, you discussed his success at school at Mississippi
10 State. We've talked about the military. We've talked
11 about the Illinois Department of Corrections. Let's talk
12 about what happens after he graduated Mississippi State.
13 So starting over on 31 now, adult function, employment and
14 education history. Obviously, he did well in school?

15 A He did very well in school, graduated with a 3.81 GPA
16 from Mississippi State as a President Scholar and was a
17 member of a Honor Society's Phi Kappa Phi, Tau Beta Pi,
18 Eta Kappa Nu. He had worked -- he made those good grades
19 while working some part time to help support his family.

20 Q And he was married and had kids, too, right?

21 A He was married and had kids, so he was balancing a
22 whole bunch of things well. And then after he graduated,
23 he got the job at Intel here performing validation
24 engineering. He told me that meant those processes in
25 your computer, his job is to try to make them break, try

1 to break them. He made approximately \$70,000 a year.

2 They moved to Leesville from Starkville, Mississippi --

3 Q Did he -- let me ask you a question right there. Did
4 he explain why he wanted to live out in the country? Was
5 there a reason for it?

6 A Yes, because he was tired of living in an apartment
7 in Starkville. He wanted space. He also has an interest
8 in homesteading.

9 Q What is homesteading?

10 A Living off the land, so to speak. He had animals,
11 chickens. He had -- I can't remember everything he had, a
12 goat, dogs, cats, chickens, turkeys, rabbits and three
13 goats. So having plenty of space --

14 Q So the fact that he wanted --

15 A -- lots of land.

16 Q Go ahead, I didn't mean to interrupt you.

17 A That's what he was interested in.

18 Q What he was interested in, which is my question, I
19 guess. Just because he was interested in homesteading and
20 wanted to live in the country doesn't mean he's crazy,
21 does it?

22 A I hope not.

23 Q During the summer of 2014, he applied to and was
24 accepted to medical school in the Caribbean, correct?

25 A Yes.

1 Q And that is something that had been a dream of his
2 for a long time, isn't that true?

3 A He's had lots of interests, languages. I mean, he's
4 very bright and bright people tend to have a variety of
5 interest. But he would study Hebrew, he would study, I
6 think at one time Russian, maybe, just lots of languages,
7 money, day trading, homesteading. He became interested at
8 one point in free masonry. But he wanted to live in the
9 country. He thought about going to medical school
10 because I think he -- he said he felt somewhat bored with
11 his job at Intel after a while.

12 Q That he was bored with it?

13 A Bored a little bit. He was doing the same thing over
14 and over. He wanted to help people and he wanted to see
15 if he could design skin that would grow on metal. He
16 wanted to do some sort of plastic surgeon is what he told
17 me.

18 Q You had mentioned his discipline style. Did he tell
19 you where the basis for that style came from?

20 A Yes.

21 Q What did he tell you?

22 A Shortly after he and Amber married, they moved to
23 Pennsylvania. There, they met a Mennonite family and --
24 I'm sorry, you asked me about the discipline?

25 Q Yes, and that's exactly -- you're talking about the

1 Mennonite family.

2 A Right. He met a Mennonite family and he was just
3 impressed with how well behaved their children were. They
4 had eight or ten children and he said they were extremely
5 well behaved. He said the Mennonites corrected their
6 children with words and spankings. He always wanted his
7 children to be well behaved. He told me that he reserved
8 corporal or spanking for two particular offenses, that
9 would be lying and fighting. But he became interested in
10 having well-behaved children and wanted to model his
11 upbringing of his children like this Mennonite family.

12 Q He believed in corporal punishment for, he told you,
13 he told you lying and fighting? Those are the two
14 instances when he would use corporal punishment?

15 A Yes, lying, or not telling the truth, and fighting.

16 Q You also, in addition to reviewing records and
17 reviewing police reports and mental health and whatever
18 else was provided to you, you actually called some people
19 and talked to the ones you wanted to follow-up with,
20 correct?

21 A Yes.

22 Q One of those was the Defendant's father, Mr. Timothy
23 Jones, Sr., correct?

24 A Yes.

25 Q He told you that his son was well behaved and did

1 well in school?

2 A Yes.

3 Q He said he didn't know anything about his son having
4 any self-harm behaviors?

5 A That's correct. We had seen that in the military
6 records, so I wanted to ask him about that.

7 Q Well, I was going to say, so why did you ask his
8 father that question?

9 A Because it was in the military records.

10 Q So the military records, he said that he did do
11 self-harm behavior?

12 A Right. Or it says he has a history of cutting on
13 himself with a paperclip and maybe -- I can't remember
14 specifically, a knife or paperclip. And he denied that to
15 me, he goes, I've never said that and I've never done
16 that. And so I wanted to ask the father because you don't
17 just trust what a Defendant tells you. The father said he
18 had no knowledge of that.

19 Q He told you that he did not see a personality change
20 in his son or any change in his son after the traumatic
21 brain injury?

22 A Correct.

23 Q And he said that he had no knowledge of his son
24 having any kind of auditory hallucinations, is that
25 correct?

1 A That's correct.

2 Q He said that he hadn't talked to -- he talked to his
3 son a few days before Labor Day. There were plans for
4 them to come, is that correct?

5 A Yes.

6 Q And then Friday after the children were killed, that
7 day, he called his dad and said that something had come up
8 and canceled. Do you know what he told his dad?

9 A I believe he told him something came up at work.

10 Q Okay.

11 A Said I won't be coming to Mississippi.

12 Q The next thing that you talked to him about is the
13 next time he sees the Defendant, which is in Mississippi
14 after the car is stopped when he and the Mississippi
15 authorities are trying to find out where the children are,
16 correct?

17 A Right.

18 Q And how does he describe his son to you?

19 A You want me to use his words?

20 Q I can use it if you want me to do it.

21 A He said he was bat shit crazy, all over the place,
22 talking crazy. I have never seen him like that. I almost
23 didn't recognize him. That was the day after his arrest
24 about 2:00 to 3:00 p.m. He was arrested the night before,
25 I think, about 9:00 p.m. or something.

1 Q 9:00 p.m., I think, on the 6th, yes sir.

2 A So his mental status -- and that's the same time that
3 the officer said he was sweating profusely.

4 Q And I think he -- he told you that he was using spice
5 as he was driving around, correct?

6 A Yes.

7 Q I mean, State's 58 is --

8 A And these symptoms would be consistent with
9 withdrawal from spice.

10 Q So you get a high on the spice, but when you're
11 addicted to it, your body wants it. So when you say
12 withdrawal, what do you mean?

13 A What he displayed appeared to be consistent with
14 withdrawal from synthetic cannabis and spice.

15 Q Okay.

16 A Sweating, it's delirious and behaves bizarrely. But
17 then by the next 24 hours, that's better.

18 Q Right. So there's a difference. How does he
19 describe the next day? On the 28th, how does he describe
20 his son?

21 A On the next day, the Defendant looked, "A lot more
22 like the Timmy I knew. He was more calm and -- more
23 normal and calmed down."

24 Q And to you, those two descriptions a day apart are
25 very important, aren't they?

1 A They are very important because they indicate to me
2 if this were psychosis due to schizophrenia, it shouldn't
3 get better by itself without treatment.

4 Q If it was schizophrenia and he was crazy, foaming at
5 the mouth or however you want to describe it, short of him
6 getting on antipsychotic medication --

7 A He should not have gotten better.

8 Q He shouldn't have gotten better. So it's your
9 opinion to a reasonable degree of medical certainty as an
10 expert in the field of forensic psychiatry that it's
11 related to drugs?

12 A Yes.

13 Q Specifically, synthetic cannabinoids, the Scooby
14 Snax?

15 A Yes, the one's that is in his system when they tested
16 his blood. His blood had the same chemical in it, AB,
17 dash, P-I-N-A-C-A, I guess you say Pinaca, that his blood
18 tested positive for that. And my understanding is the
19 evidence from the car, the Scooby Snax bag, tested
20 positive for the exact same chemical.

21 Q That's correct.

22 A And I wasn't aware of this chemical because it's not
23 exactly in my area of expertise, but I called the
24 toxicologist, the doctor, M.D., pathologist who ran the
25 lab that tested it. And she even said, we don't even test

1 for that anymore because spice is a moving target. Once
2 they ban one substance, they put another one in it that
3 makes you high. They change the chemical just a little
4 bit. So AB Pinaca is something they were putting in spice
5 back in 2014, but they don't even test for that anymore
6 because --

7 Q It's changed to something else now?

8 A They're using something else to get the same high.

9 Q So if you use marijuana or, in this case, synthetic
10 cannabinoids, does it put you at increased risk for
11 psychotic symptoms?

12 A Yes.

13 Q When we say psychotic symptoms, what do we mean?

14 A Hallucinations, acting bizarrely, disorganized
15 thinking, even delusions at times.

16 Q Doesn't have to, but it could?

17 A Yeah, it can do it to a normal person or a person
18 without any family history.

19 Q But it doesn't have to happen?

20 A It doesn't have to happen, no.

21 Q Smoking synthetic cannabinoids can cause psychotic
22 events later, not just at that moment, correct?

23 A Well, it can last -- typically, a substance-induced
24 psychosis, you could have symptoms that continue up to a
25 month after your last known use.

1 Q In addition to talking to the Defendant's father, you
2 also talked to Ms. Roberta Thornsberry, his grandmother,
3 correct?

4 A Yes.

5 Q She, again, answered your question, she didn't have
6 any knowledge about self-harm?

7 A No.

8 Q She said he was a good kid, didn't get in trouble
9 much. She talks about visiting him in Atlanta, Georgia?

10 A Yes.

11 Q And you and her worked together and figured out the
12 dates, right?

13 A Well, she was -- I don't know whether she believed me
14 or not, but I said I don't think this was the weekend
15 before, I think it was the first weekend in August.

16 Q And you figured that out from --

17 A Phone records and the texts they sent back and forth
18 and the banking records that paid for the room at the
19 Embassy Suites.

20 Q She described him as sweating a lot?

21 A Yes.

22 Q That was one of the things she did. That's important
23 because that's also consistent with synthetic cannabinoid
24 use, isn't it?

25 A Yes, it can be, but it's also August in the South.

1 It's -- it's May in the south right now and I'm hot, so.

2 Q Christina Ehlke, that's the babysitter?

3 A One of them.

4 Q Yes, the last babysitter for Gabriel and Abigail that
5 last month and half of their lives?

6 A Right.

7 Q Was at the house or trailer near where the children
8 lived with the Defendant?

9 A Correct, next door.

10 Q How did she describe him socially to you?

11 A She said he was weird somewhat, geeky, typical
12 computer guy, sort of nerdy. She did not think he was
13 mentally ill and she was not aware that he was using
14 drugs.

15 Q Tashiro Inabinet, who is Tashiro Inabinet?

16 A He was Mr. Jones' first assigned counselor when he
17 got to the South Carolina Department of Corrections for
18 safekeeping.

19 Q So do you know how long -- what kind of contact did
20 Mr. Inabinet have with Mr. Jones?

21 A He had almost daily contact until Mr. Jones was
22 transferred to a different facility.

23 Q Do you know approximately how long that would have
24 been?

25 A If I can look at my timeline, I can tell you. I

1 think it was sometime -- he went into the Department of
2 Corrections on September 12th, I believe. He was
3 transferred as a safekeeper. A safekeeper is somebody
4 that a jail doesn't feel comfortable housing them because
5 he thinks they will be a target of other inmates. He was
6 concerned about the Defendant's safety. So the Governor
7 of South Carolina has to sign an order ordering the
8 Department of Corrections to keep this person and they're
9 a safekeeper, so they're pretty much locked down a lot.
10 So he was there, and that was at the time, I believe, at
11 Kirkland Correctional Institution. He stayed there -- I
12 can't recall -- I mean, it's like a year later or more
13 when he was, I believe, transferred to Lee.

14 Q Do you feel comfortable that Mr. Inabinet had almost
15 daily contact with Mr. Jones for a year?

16 A Yes.

17 Q Or more. Okay. And it's true that Mr. Inabinet told
18 you when you spoke with him that Mr. Jones complained of
19 hearing voices, correct?

20 A Yes.

21 Q And he also told you, though, that Mr. Inabinet never
22 observed any -- never observed the Defendant to be
23 responding to internal stimuli as if truly hallucinating,
24 correct?

25 A Correct.

1 Q So what does that mean?

2 A Many times when people are having psychotic
3 hallucinations and auditory voices, they'll be distracted.
4 You'll ask them something and they'll appear like they're
5 listening to something else that you can see that becomes
6 sort of obvious. Or sometimes, you can see them
7 whispering under their breath to whoever is talking to
8 them, to whatever auditory hallucination they're
9 experiencing, talk back to them. And he never noticed
10 that behavior.

11 Q So that would be -- what Mr. Inabinet told you about
12 no corresponding behavior would actually be consistent
13 with your conversation with Mr. Jones and having the
14 voices change to not being voices and being thoughts?

15 A Right, anxious thoughts. I think that's what he was
16 referring to when he says he's hearing voices.

17 Q You also spoke with Beverly Woods and Jim Page, who
18 also were at the South Carolina Department of Corrections?

19 A Yeah, this might be one typo. I think it's Beverly
20 Wood.

21 Q Wood?

22 A I put an S there, but I think her last name is
23 actually Wood.

24 Q I'm going to cross it out. Ms. Wood, Dr. Wood, she
25 is a clinical psychiatrist for the Department of

1 Corrections?

2 A Yes. She's the lead psychiatrist for the Department
3 of Corrections.

4 Q What did she tell you about her treatment course and
5 her diagnoses with Mr. Jones?

6 A Well, she stated that she based her diagnosis on what
7 he was telling her. And what I specifically wanted to
8 know was, was she aware of the extent of his use of spice
9 prior to him getting to the Department of Corrections or
10 being arrested. And she was not. He had said he used
11 cannabis and alcohol and spice, but she was not aware, had
12 not been provided information as to exactly how much of
13 that he had done.

14 Q Do you know the history of her diagnosis changing for
15 Mr. Jones?

16 A Yes.

17 Q Would you tell the jury what it was and give them the
18 timeline for that, please?

19 A Well --

20 MR. YOUNG: I think Dr. Wood can testify to what her
21 diagnosis was and the reason that she gave it.

22 THE WITNESS: What I'll say is I reviewed the
23 records.

24 THE COURT: Fair enough.

25 MR. GRAHAM: Your Honor, I've got this witness up

1 there. I'm on cross, so I can go into whatever I want.
2 If he wants to call his witnesses, he can do that, too.
3 I'm asking for him -- for purpose for his reasons.

4 THE COURT: I want to hear about his diagnosis. You
5 can ask the question. Go ahead.

6 MR. GRAHAM: Thank you, Your Honor.

7 THE COURT: Your objection is noted.

8 A His -- her initial diagnosis was something we call
9 psychosis not otherwise specified. And what that is, it's
10 a basket term, meaning he's talking about voices or
11 hallucinations, auditory hallucinations. I don't know if
12 it's schizophrenia. I don't know if it's drug induced.
13 You know, it -- it's just saying he's reporting these
14 symptoms and I don't know exactly what the exact diagnosis
15 is. So for right now, I'm just going to call this
16 psychosis not otherwise specified. Then at some point, it
17 was changed to schizo-effective disorder.

18 Q What is schizo-effective disorder?

19 A Schizo-effective disorder means that you have met the
20 diagnostic criteria for schizophrenia, but in addition to
21 that, you have had symptoms of either a depressed mood or
22 manic episodes that have not been brief. You've had
23 ongoing mood symptoms as well.

24 Q In the documents that you received from SCDC, did you
25 see support for that diagnosis?

1 A No.

2 Q What was lacking?

3 A It's not documented that he met the criteria that
4 would be in the DSM-5 to get a diagnosis of
5 schizo-effective disorder. All it just says is complains
6 of mood swings and then the diagnosis changed.

7 Q Your conversation with her, she told you that when he
8 said --

9 MR. YOUNG: Objection, pitting.

10 THE COURT: Don't pit the witnesses. Go ahead with
11 the different diagnosis.

12 Q You called her for information?

13 A Yes. I met with her.

14 Q You met with her. What, if anything, did she tell
15 you about whether he displayed disorganized thinking or
16 behavior?

17 A He never displayed disorganized thinking.

18 Q And why is that important?

19 A Because that's a common symptom of schizophrenia and
20 one of the main symptoms that you look for in addition to
21 hallucinations and delusions.

22 Q And then I think you said she was not aware of the
23 extent of the synthetic cannabinoid use, correct?

24 A Correct.

25 Q Based on your conversations with her, what did she

1 tell you about her diagnosis in retrospect?

2 A She said she believed that he may have had more --

3 MR. YOUNG: Objection, pitting.

4 THE COURT: Overrule the objection. He can answer
5 that.

6 A She thought in retrospect, looking back that,
7 perhaps, he had more of a mood disorder than a psychotic
8 disorder like schizophrenia.

9 Q And a mood disorder is what?

10 A Major depression, bipolar disorder.

11 Q Moving on in your report, mental status exam. What
12 is a mental status exam?

13 A A mental status exam is a series of questions we ask
14 everybody that just looks at their overall cognitive
15 functioning. We ask do you know what today is, do you
16 know the date, the day of the week, are they oriented. We
17 ask them to remember three things. We want to see if they
18 repeat them after five minutes. Is their memory intact.
19 We test their concentration. We ask them to spell the
20 word world backward, D-L-R-O-W, that requires
21 concentration. We ask them to interpret a proverb, like
22 the ones I gave you before, what goes around comes around,
23 glass houses. Just to see if they can think abstractly,
24 that's looking at the frontal lobe function. We ask them
25 about mood. We ask them, knowledge, can you name the

1 president? Who were some past presidents before him? How
2 far can you go back?

3 Q Anything unusual about the mental status --

4 A No, his mental status examination has always been
5 normal. He comes across as very bright by his vocabulary.

6 Q Now, you've also -- you know, we touched on it
7 briefly early. You wanted some neuropsychological
8 testing, correct?

9 A Right. I wanted to see if this head injury could --
10 if we could measure any functional problems with his brain
11 as a result of having the head injury.

12 Q What were the results as far as his cognitive
13 abilities?

14 A Overall, his cognitive abilities were intact. There
15 was no clinically significant findings.

16 Q In addition to cognitive testing, was there also
17 other testing?

18 A Yes. There was some personality testing and there
19 was also some testing, what we call validity testing.

20 Q So what is validity testing?

21 A Validity testing is testing designed to measure his
22 efforts and whether he could be exaggerating or feigning
23 symptoms.

24 Q What, if anything, was reported to you from those
25 tests as far as exaggeration of psychotic symptoms?

1 A There was evidence on those tests that would suggest
2 he was feigning or exaggerating symptoms. However, I did
3 not diagnose him malingering because I felt in judging
4 that, that rather than maybe exaggerating symptoms to be
5 found insane, he was exaggerating symptoms to convince
6 himself that he's mentally ill so that he could live with
7 what he did.

8 Q You gave him the benefit of the doubt again?

9 A Yes. I mean, I've seen people malingering and I've
10 diagnosed malingering lots and his wasn't -- I was
11 actually surprised by his tests a little bit, but they are
12 what they are.

13 Q We've used the word malingering. Tell the jury what
14 malingering means.

15 A Faking. If I say they're faking symptoms for
16 cognitive -- for secondary gain, what I mean by that, to
17 get disability or to get out of military service or, in
18 this type of situation, to be found insane and not held
19 responsible for what you did. Those are secondary gains,
20 things outside of him that he's trying to get by
21 exaggerating symptoms. And I didn't get the sense that
22 that's what he was doing. I got the sense that he needed
23 to -- he was always worried he would get schizophrenia.
24 His mother had schizophrenia. He just assumed these
25 anxious thoughts that he was having was evidence of

1 schizophrenia because he didn't like it. And he was
2 trying to convince himself so he could live with what he
3 did.

4 Q Moving on to diagnostic formulation in your report.
5 What is diagnostic formulation?

6 A That means I take all the information I've gathered
7 about his symptoms and I look at DSM-5 and say does he
8 meet the diagnostic criteria for any of these disorders.

9 Q At the top of Page 42, you explain why
10 schizo-effective disorder was not, in your opinion, an
11 appropriate diagnosis, correct?

12 A Right.

13 Q Why is that?

14 A Schizo-effective disorder is similar to
15 schizophrenia. And you have to -- in order to be
16 diagnosed with either of them, you have to have two or
17 more of the following for a significant portion of time
18 during a one-month period. So not just fleeting, these
19 have to be present for a significant amount of time for an
20 entire month period, at least. And these include, one,
21 delusions. I think he had paranoid thought about Nahtahn.
22 I did not think it was an overtly delusional thought
23 because it came out of nowhere.

24 Q So let's stop for a second. What's the difference
25 between being paranoid and being delusional?

1 A You can have paranoid thoughts that don't reach what
2 we call delusional intensity. In other words, if I had
3 said well, wait a minute, could it be that you -- that
4 Nahtahn was not trying to harm you? And if it's not
5 delusional, he would say well, maybe not. But delusions
6 just don't start suddenly. They develop over time.

7 Q So what you're referring to as a paranoia right here
8 is --

9 A Paranoid thought that he may have motivated some of
10 what he was doing.

11 Q Nahtahn's out to get me?

12 A Yes.

13 Q That's -- you're giving him credit for being true
14 because the only place we know it's coming from is him,
15 right?

16 A That's right, I gave him the benefit of the doubt for
17 that one.

18 Q But there's no history, it's a one time event, and
19 that's what he told you?

20 A Well, there had been some earlier thinking that
21 Nahtahn and Merah wanted to be back with Amber, with their
22 mom. But as far as -- he was very specific, when I woke
23 up that day, everything was normal. I went to work. I
24 had no paranoid thoughts about Nahtahn or anybody else in
25 the family. He smoked spice all day -- or while he was at

1 work. He comes home. He brings food. The outlet doesn't
2 work, oh, Nahtahn has done -- someone has done something
3 to the outlet. He thinks it's Nahtahn and he exercises
4 Nahtahn until he confesses and he won't confess. And then
5 Nahtahn, he says, stomped on his glasses. These expensive
6 glasses he hadn't had very long, which I think probably
7 made him madder, and he -- but he was not -- until that
8 outlet was blown, he had no paranoid thoughts about
9 Nahtahn. It was during the course of the discipline that
10 he's, why isn't he telling me he did it.

11 Q And the reason we're discussing paranoia versus
12 delusion is because to have schizophrenia, one of the
13 things you need to have -- or one of the things you need
14 to look for is delusions?

15 A You have to have two of these things.

16 Q Delusion being one of them?

17 A Right.

18 Q Paranoia is not on that list?

19 A No.

20 Q In addition, did you find he had any delusions? Did
21 he have any fixed, long term beliefs?

22 A In my opinion, no.

23 Q About anything?

24 A No.

25 Q And you also noted that other than the night -- the

1 day after his arrest, there has not been any disorganized
2 speech or behavior?

3 A Right. He was certainly disorganized the twenty-four
4 hours after his arrest.

5 Q When his father was in the room and he was foaming at
6 the mouth?

7 A Right. That is a good description of disorganized
8 behavior.

9 Q But other than that episode, you don't see that
10 anywhere?

11 A No.

12 Q And that's also one of the potential elements for
13 schizophrenia?

14 A Correct.

15 Q So of the five criterium listed in the DSM-5 for
16 schizophrenia, do you see whether he had any?

17 A He may have had two periods of hallucinations that
18 were very brief, one at age ten, if I believe what he's
19 telling me, and maybe one that night. But once again,
20 they have to be present for a significant portion of time
21 during a one-month period. And a fleeting hallucination
22 is not a significant portion of time during a one-month
23 period. So he doesn't meet this criteria. But, more
24 importantly, there's another criteria for schizophrenia
25 that says the symptoms are not better accounted for by the

1 use of illicit substances. So it's very hard to make a
2 diagnosis of schizophrenia when someone's psychotic and
3 they've been using substances and never been psychotic
4 before. It makes medical sense to attribute it to the use
5 of the drug or withdrawal from the drug.

6 Q When there's not a history of psychosis and you're
7 not meeting the criterium, even if you met the criterium,
8 you're supposed to go look for --

9 A For drugs. You need to rule that out before you --

10 Q So you rule drugs out before you even start talking
11 about anything else, correct?

12 A Right. Now, for example, let me give you -- if
13 someone has schizophrenia, then they develop psychotic
14 symptoms, there was no drug use, okay, and they were
15 hospitalized and they were treated and all is well and
16 good and they go back home. And then they get psychotic
17 again and this time, there's drugs in their system. I
18 would still say they have schizophrenia, they just
19 happened to be using drugs. But in his case, there's no
20 prior history of psychiatric symptoms. And the first time
21 he presents twenty-four hours after his arrest with very
22 disorganized behavior, we know there's synthetic
23 cannabinoids in his blood, in his system and in his brain.
24 And he's been using heavily and increasing his use in the
25 months before this happened. That's why I attribute that

1 behavior to the drugs.

2 Q Other than the audible voice that you give him credit
3 for for saying on the night that he killed his four
4 children after Nahtahn, did you see any other symptoms of
5 psychosis?

6 A No.

7 Q He didn't even tell you any other symptoms of
8 psychosis, did he?

9 A No.

10 Q He actually denied them when you asked him?

11 A Yes. I mean, you know, there's been a lot that he's
12 a loner, doesn't have a lot of social, which can be seen
13 in schizophrenia, but he desires relationships. He wants
14 to have relationships. He downloaded books about how to
15 meet women off the internet.

16 Q He has not exhibited disorganized speech and
17 behavior. He didn't have anything you call a delusion.
18 You don't see any functioning impairment with his
19 traumatic brain injury or for any reason other than this
20 event. Correct?

21 A Well, he's losing weight over the summer. I mean, I
22 think that's spice use.

23 Q Yes, sir. I was actually -- and I guess my question,
24 I didn't ask it right. He did not exhibit any impairment
25 in functioning?

1 A No, he was working. He was doing okay at work. He
2 was able to hold his job. There's papers where he was
3 planning meals, you know, what to eat Monday -- for the
4 family. There were a lot of notebooks with that
5 information. He was meeting his bills. Now, he had a
6 tendency to overdraw his account many times. But he knew
7 the money was coming, it was just like right before his
8 deposit happened. But he was paying bills, paying for the
9 after-school program for Merah, Nahtahn and Eli, or Elias.

10 Q He had described to SCDC and I think you followed up
11 talking with him about visual permutations?

12 A Yes.

13 Q Tell the jury what that is and --

14 A He said that he saw things on the wall, Teenage
15 Mutant Ninja Turtles.

16 Q How many times did he tell you he saw -- how many
17 times did he say that he had these visual permutations?

18 A Several times to me. And these are very atypical for
19 mental illness. You don't typically see this type of
20 thing. And they're very common in malingering to have
21 these fantastical-type hallucinations. But if you've ever
22 been locked in a cell for 23 hours a day with nothing to
23 do and no distractions, that type of environment can cause
24 people to start imagining that they're seeing things.
25 Once again, I gave him the benefit of the doubt and not

1 diagnose him with malingering.

2 Q Your diagnosis for Mr. Jones to a reasonable degree
3 of certainty as an expert in the field of forensic
4 psychiatry is what?

5 A Substance-induced psychosis, which is the paranoia I
6 was talking about that was related to his use of spice.
7 That's one diagnosis. That resolved.

8 Q And you're giving him credit when he tells you that
9 he heard a voice? You're giving him credit for that?

10 A Yeah, hearing one voice is not a diagnosis make.

11 Q And you're also giving him credit for, I guess, the
12 paranoia about that one time being afraid of Nahtahn?

13 A Right. And also, you know, thinking that maybe he
14 and Merah might have something to do with the DSS
15 allegations or they're conspiring to get back with Amber.
16 I don't think a six and eight-year-old are -- I could be
17 wrong, but are that sophisticated to do something like
18 that.

19 Q As a forensic psychiatrist, you are aware that
20 voluntary use of drugs is not a defense, correct?

21 A Correct.

22 Q Let's move on to what he says happened that night,
23 on Page 44. You've talked to him, I think, four different
24 times, so it varies a little bit.

25 MR. GRAHAM: I don't know whether Your Honor wants to

1 take a break or you want me to keep going?

2 THE COURT: Let's take a short break. I'm getting a
3 signal from the jury. Don't talk about the case. Have
4 you back here in a few.

5 (WHEREUPON, the jury was excused from open court for
6 a break.)

7 (WHEREUPON, a short break was taken.)

8 THE COURT: Bring the jury.

9 (Whereupon, the jury came into open court at
10 approximately 3:45 p.m.)

11 THE COURT: All right.

12 CONTINUE CROSS-EXAMINATION

13 BY MR. GRAHAM:

14 Q Dr. Frierson, we had left off getting ready to
15 discuss what Tim Jones told you happened that night. You
16 talked to him numerous times. His story was similar, but
17 with some slight differences, correct?

18 A Right, his story is mainly consistent, there's
19 just --

20 Q Would you tell the jury what his story was to you
21 about what happened that night?

22 A Can I just start that day?

23 Q Yes, the bottom of Page 44.

24 A Right. He went to work that morning at Intel. He
25 smoked Scooby Snax or spice, on the way to work, at lunch

1 all the time. He mentioned an increase stress level at
2 work due to a big project at work with a new processor
3 coming out. He said the Scooby Snax would mellow him out.
4 That he relied on that daily to take care of his anxious
5 thoughts. He left work at 4:00 p.m. that day, went home
6 and worked on his computer for two more hours prior to
7 picking up his five children. During these two hours, he
8 reported he used more spice. The youngest two children,
9 that would be Elaine and Gabriel, were being taken care of
10 at the neighbor's house by Ms. Ehlke. He picked up the
11 three oldest children around 6:15 from Saxe Gotha
12 Elementary School at an after-school program. While in
13 the car, he mentioned that he downloaded this song called
14 Expander by Sasha on YouTube because the children had
15 reported that in gym class they had listened to Sandstorm,
16 which is a techno pop song that I think they used to play
17 at USC football games. I don't know if they still do.
18 They really enjoyed listening to that. Prior to going
19 home, he purchased some dinner, takeout from IHop, for the
20 family to eat at home. He said during dinner, he tried
21 plugging in his laptop into an outlet near the front door
22 and discovered that the outlet was nonfunctional or blown.
23 He also said that the light above the stove was out and he
24 thought something had happened to several of the
25 electrical circuits in the house or, at least, one. He

1 said I knew the kids had done something. Through a series
2 of questions, I ascertained that it was Nahtahn. During
3 questioning, Nahtahn appeared fidgety, wouldn't look at me
4 in the eye and he clammed up. He said he could read the
5 nonverbal cues of his children and knew when one of them
6 was lying. He said because Merah and Eli said they didn't
7 do it right away, I knew it wasn't the two of them. I
8 narrowed it down to Nahtahn. He noted that Nahtahn had an
9 unusual interest in electricity. He was afraid that if
10 Nahtahn kept playing with electricity, he would hurt
11 himself. And he gave me an example that Nahtahn had
12 climbed up on the sink in the bathroom and unscrewed a
13 lightbulb about one or two weeks previously. We noted in
14 evidence that that would correlate an August 16th internet
15 search that he did on child killed by electrical outlet
16 and another search on electrical deaths. Mr. Jones
17 confirmed that he performed this search around the time
18 that Nahtahn had unscrewed the lightbulb. So he began
19 what he calls PTing, or physical training, Nathan for the
20 purpose of obtaining a confession. This is one of his
21 ways of discipline. It's a common military term, PTing.
22 He also admitted that he worked him, spanked him and
23 slapped him on the behind. He said PT involves a hundred
24 pushups, a hundred situps and a couple hundred squats.
25 Not continuous, but in sets of give me ten, give me

1 twenty. He did not think this was excessive because he
2 and the children would do sometimes what's called insanity
3 workouts, which I believe is a computer workout --

4 Q Workout --

5 A -- program --

6 Q Yes.

7 A -- that's pretty intense.

8 Q He gave you different reports of how long the PTing
9 lasted, didn't he?

10 A Yes.

11 Q I think one time, he told you -- in one interview, he
12 told you it went on for one or two hours, correct?

13 A Right. And then another time, he said it was just
14 for 20 to 30 minutes. During September interview, he said
15 this went on for one or two hours. And then during the
16 March interview, one of the March interviews, he said this
17 went on for 20 to 30 minutes.

18 Q And he told you as he was PTing Nahtahn, when he was
19 asking him what happened to the outlet, he told you,
20 quote, " He wouldn't tell me what he did, he was defiant."

21 A Right. "And when he wouldn't --

22 Q That was his word?

23 A -- tell me, that's when I thought he was plotting
24 against me." But he had not had that thought before that
25 period of time.

1 Q He told you that that's the first time he became
2 afraid of Nahtahn?

3 A That Nahtahn might be trying to use electricity to do
4 something to him so he could go back and live with his
5 mother. So at some point during this, he received a phone
6 call from Amber. Based on phone records, she called at
7 7:10 p.m. and talked for a minute and twenty seconds after
8 receiving -- after he missed four of her previous calls
9 starting at 7:00 p.m., which was their normal time that
10 she would call the children every night.

11 Q Let me back you up, Doctor, because I missed
12 something that I wanted to ask you. Isn't it true that he
13 told you in one of your interviews that he had never
14 thought that any of the children would want to physically
15 harm him prior to that night?

16 A Physically harm, yes.

17 Q Right. So --

18 A He thought they might want to go back to Merah, but
19 he didn't think they were going to physically harm him.

20 Q That they might want to go back to Amber, the mother?

21 A I'm sorry, Amber. Sorry.

22 Q Okay. Then there was a phone call with Amber,
23 actually, right?

24 A Uh-huh.

25 Q What's his description about that phone call?

1 A He just said he heard Nahtahn tell his mother, It was
2 an accident, Mommy. And then he reported he became
3 enraged because Nahtahn had told his mother what happened,
4 but wouldn't confess to him.

5 Q You've got enraged in quotes, so that's the word he
6 used, I'm assuming --

7 A Yes.

8 Q -- right?

9 A Yes.

10 Q He was enraged because Nahtahn told his mother and
11 would not confess to him?

12 A And then at some point, Ms. Jones told him to be easy
13 with Nahtahn.

14 Q And how did that make him feel or --

15 A I got mad at her and told her to shut the F up, that
16 she was not going to tell me how to raise the kids. And
17 he always felt that she took Nahtahn's side. Later, in an
18 interview in March, he said, I don't like her telling me
19 how to raise the kids when she wasn't around. And that
20 during their marriage, his disciplining of the children
21 was a bone of contention between them.

22 Q How does he describe Nahtahn's behavior during the
23 PTing process?

24 A Never said anything.

25 Q Nahtahn never said a word?

1 A Never said a word. He did take those eyeglasses off
2 the side table and stomped on them.

3 Q So during the middle of PTing when he's not saying
4 anything to his father, he told you that Nahtahn went over
5 to a side table, picked up his dad's glasses and threw
6 them on the floor and stomped on them?

7 A Yes.

8 Q And how did that make him feel?

9 A He added that Nahtahn was quote, "Like a hardened
10 criminal during a confession."

11 Q What does he tell you happens next?

12 A And that this was very alarming to him because
13 Nahtahn had never done this before. He reported that I
14 did anything I could to get it out of him.

15 Q Those were his words, I did anything I could to get
16 it out of him?

17 A Uh-huh.

18 Q Okay.

19 A And, "The point of spanking is to break their will."
20 At some point, he wasn't getting anything from Nahtahn, so
21 he decided to send Nahtahn to bed early as further
22 punishment.

23 Q And then what does he say happens next?

24 A A few minutes later, he went to the bedroom to check
25 on Nahtahn and he shook Nahtahn by the shoulders and asked

1 him to tell him what happened and Nahtahn started losing
2 his balance and collapsed in his arms. He stated, He just
3 died. He fell to the ground and died. I didn't do
4 anything to cause him to die.

5 Q And what does he say happens --

6 A That caused me to lose my mind. I knew he had died,
7 I lost my mind. I was aghast. He put Nahtahn on the bed,
8 left the room for a few minutes, returned with some water,
9 hoping Nahtahn had just passed out. However, he realized
10 he was dead. He stated, I went into a mad panic. What am
11 I going to do? He described that intrusive thoughts, what
12 he had described in the past as voices, started when
13 Nahtahn died. And that he had not had any of these voices
14 or intrusive thoughts until Nahtahn died. He considered
15 calling 911.

16 Q Why didn't he call 911?

17 A He said they'll think I did it. They're going to say
18 I killed him.

19 Q That's his words in quotes, right?

20 A Yes.

21 Q Then what did he say happened next?

22 A He reported telling Merah and Eli that I think he's
23 dead. Merah said that Nahtahn was not breathing. He sent
24 Merah and Eli to watch television in the living room.

25 Q And then at some point, you asked him about his

1 discipline of Nahtahn, right?

2 A I said, do you think you might have been too harsh on
3 Nahtahn?

4 Q And what did he say?

5 A He said, In retrospect, you know, looking back, maybe
6 I was, but I had no intent to kill or harm Nahtahn.

7 Q Then what does he say he does next?

8 A He said he went to smoke a cigarette and try to calm
9 himself down. And then this is where there's a
10 difference. In September, when I first saw him for this
11 evaluation, he said I tried to smoke spice to calm down.

12 Q So in the first interview, Nahtahn's dead and he
13 tries to smoke spice?

14 A Right.

15 Q Okay.

16 A And he said, but it wasn't working.

17 Q It wasn't working --

18 A I mean, he was still panicked.

19 Q That story changed later, though, correct?

20 A Right. In March interviews, he stated that he did
21 not use spice that night, that he had used it at 4:00 to
22 6:00 o'clock when he was at home working, but did not use
23 it again until after all the children were dead. So
24 that's just where his use of spice -- it really doesn't --

25 Q The next thing --

1 A -- make that difference to me, but, anyway. So the
2 next thing he did was he performed a YouTube search for
3 American History X rape scene. That was at 8:30.

4 Q You asked him about that, right?

5 A Right. Because, to me, that's just weird.

6 Q So when you asked him what was American History X
7 rape scene and why did you search it, what --

8 A It is a violent male on male shower rape scene.

9 Q Did he say he searched it or did he say that he
10 watched it?

11 A He had seen this movie previously and he watched this
12 scene and he said he thought I'm going to go to prison and
13 they're going to do bad things to me. The inmates will
14 think I'm a baby killer.

15 Q Those are his words, "I'm going to go to prison and
16 they're going to do bad things to me. The inmates will
17 think I'm a baby killer"?

18 A Right. And then I asked him if he thought the other
19 inmates would be morally outraged to him and he said yes.

20 Q When you asked that question about -- well, so in his
21 timeline to you, does he watch American History X between
22 Nahtahn's death and the death of the other or is it after
23 all the children -- or is there different stories?

24 A It's between. It's always between, that's never
25 changed.

1 Q So Nahtahn is dead, he watches American History rape
2 and then he strangles or uses a belt on his other four
3 children, is that the story?

4 A Not exactly. He goes out and buys cigarettes at the
5 convenience store.

6 Q So is the story always that Nahtahn is dead, he
7 watches American History rape and then he goes out to buy
8 cigarettes at the convenience store --

9 A Right.

10 Q -- and comes back?

11 A Right. And kills the other four.

12 Q Then he kills the other four after coming back?

13 A And the amount of time between Nahtahn's death and
14 the other children's death varies between interviews.

15 Q But we know from a receipt what time he went to the
16 convenient store?

17 A It's like 1:00 something in the morning.

18 Q 1:50 a.m.?

19 A 1:50, he went to the convenience store. He says
20 Merah went with him.

21 Q Why was it important for you to ask him about the
22 American History rape scene?

23 A Well, one would not think that this is something that
24 someone would be downloading if they just killed somebody
25 or killed their kid. And I wanted to know what was he

1 thinking because what he was thinking reflects his mental
2 state at the time of the defense. And he was thinking
3 this is what's going to happen to me when I go to prison.
4 And I think that's evidence that he understood the moral
5 wrongfulness of Nahtahn's death.

6 Q In fact, you specifically asked him would the other
7 inmates be morally outraged at him and he said yes?

8 A Yes.

9 Q So that's going to go in -- one of many things into
10 whether he understood the legal and moral wrong of his
11 actions that night, correct?

12 A Yes.

13 Q So his story to you is that as he's coming home from
14 the convenience store, that's when this -- one of the two
15 times he's saying audible voices in his life?

16 A Right.

17 Q Is telling him to kill the kids?

18 A In September, he described it as demonic voice and
19 then in March, he described it as a, "Creepy, gremlin
20 voice."

21 Q All right. In your September 24th, 2018, interview,
22 he tells you what happens when he goes back to the
23 trailer? What is he thinking?

24 A He went back to the trailer and smoked. He reported
25 that I knew I had schizophrenia. I was psychotic. It was

1 better for me to take their lives. I cut off their
2 windpipes, kissed them, took their life. I'm not a
3 murderer, I'd rather know where they're at.

4 Q So let me stop you. He is telling you I knew I had
5 schizophrenia and I was psychotic. It was better for me
6 to take their lives. Did he explain to you why he thought
7 it was better for him to take their lives? Not better for
8 the children, but better for him? It was better for me to
9 take their lives. Did he ever explain to you why he said
10 that?

11 A You may be reading more into that than I meant.

12 Q Well, you've got it in quotes --

13 A It would be better for him -- well --

14 Q It's a quote from him to you. You said --

15 A I didn't ask him specifically, but I assumed he meant
16 as a father of the children -- in my mind, it was better
17 for me because Amber didn't want them. They would have to
18 go to foster care. They would grow up without not only a
19 mother, but a mom and a father. I don't want them to go
20 through what I went through as a child.

21 Q Okay. That was what he explained to you in the many
22 conversations, correct?

23 A Right.

24 Q But the quote that you wrote down --

25 A That's what he said --

1 Q -- and I agree what wasn't, what the question, it
2 says, It was better for me to take their lives?

3 A He never said that it was better for him because he
4 was going to be able to get away without the children. I
5 mean, he didn't say that he killed them to prevent them
6 from being witnesses against him.

7 Q Did you ever ask him that?

8 A No, I don't think I did.

9 Q Then he says, I tried to kill myself with spice and I
10 passed out?

11 A Right.

12 Q I woke up the next morning, paranoia kicked in. Then
13 he says, What am I going to do now?

14 A Then he thought it was a matter of time before he got
15 arrested, I might as well take a trip to Vegas. I thought
16 about ways to dispose of their bodies. I was
17 scatterbrained. He said he wrapped each child in a
18 blanket and put them in the car. He left August 29th, the
19 next day, and started driving.

20 Q And he tells you he starts ignoring phone calls and
21 texts, right?

22 A Right. He says, If I'm going to go down, I'm going
23 down by myself.

24 Q So why did he tell you that he ignored phone calls
25 and texts? Why did you ask him -- why did that come up?

1 A Because I knew that at some point, even in the days
2 after that, people -- people are trying to contact him. I
3 wanted to know why he didn't answer.

4 Q And his answer was that, If I'm going to go down, I'm
5 going to go down by myself?

6 A Yes.

7 Q I didn't want to involve anybody else?

8 A Right. And this is when he downloaded later, the
9 next few days, that Stix song, Strong Arm of the Law or
10 whatever. I think it's about somebody being on the run.

11 Q He also told you that he eventually took the battery
12 out of his cell phone, correct?

13 A Right.

14 Q Is that so he couldn't be tracked? Did he tell you
15 --

16 A Yes.

17 Q That's what he told you, right?

18 A Yes. That he was riding aimlessly. He just --

19 Q When he said aimlessly, are you aware that he started
20 driving the next morning, made it all the way to the far
21 side of Birmingham, Alabama, and then came back to the
22 Lexington area. Are you aware of that?

23 A Yes.

24 Q That would be during the time when he was doing
25 internet searches --

1 A Or was the next day was the Dunkin' Donuts in
2 Spartanburg day? I thought -- I may be getting my days
3 confused. But he did -- drove towards -- past Atlanta one
4 day. I know one day he drove all the way to Folly Beach.
5 He was in Orangeburg. He was in Lake City. He was
6 outside Camden. He was outside Spartanburg.

7 Q I'm going to hand you State's 77, which is a summary
8 of the timeline of the phone extraction starting on the
9 28th and going down. If you look on the 29th, there's
10 internet searches for Georgia, Alabama and Mississippi for
11 drugs, isn't there? That would be on page -- bottom of
12 Page 2.

13 A Oh, yeah.

14 Q Starts there.

15 A August 29th -- now, I'm -- I always got confused in
16 the 20's, so remind me about what UTC minus four means
17 because it has to do with the time.

18 Q Ignore that point and just go with --

19 A It says 1:17, and I guess that's a.m.

20 Q Well, there's a p.m. on the next line.

21 A Oh, I'm sorry, 1:17, he searched for herbal incense,
22 illegal in Alabama. Then he tried to call the -- at 12:14
23 that afternoon, he tried to call Zam Zam Incense shop on
24 Peachtree Street in Atlanta.

25 Q Well, Doctor, let me ask you a question, if he's

1 driving -- and I think this time -- did he tell you
2 whether he was -- during this first time period, did you
3 get specific enough to ask him when he drove away whether
4 he was on the interstate or back roads?

5 A I know he ended up on back roads because he thought
6 he'd be less visible. I didn't ask. I think I've read
7 somewhere in something that he was on the interstate
8 initially.

9 Q But your conversations with him were --

10 A I didn't ask him personally, no.

11 Q Okay. Would his spice addiction -- if you have an
12 opinion on this, with his addiction to spice, if he was
13 driving and made it three states over and kept searching
14 and it was illegal, illegal, illegal and he needed more
15 spice, would his addiction have him come back to
16 Lexington?

17 A It could. I have no way of knowing what his motive
18 was for coming back.

19 Q Did he give you any -- you've described his story
20 that night. You've also interviewed him different times.
21 Did his story ever change in any of your other interviews?
22 You had a September 24th and a March 18th and 20th
23 interview?

24 A I'm not sure what you're asking, I'm sorry.

25 Q And I apologize for not wording it very well. The

1 September 24th, 2018 interview, that's the first time you
2 talked to him about what happened that night?

3 A Yes, I had never --

4 Q Okay.

5 A During the competency eval in 2016, I don't ask him
6 anything about what happened.

7 Q What you noted from your notes was what I brought out
8 earlier, "It was better for me to take their lives". In
9 your discussion from what he told you on September 24th of
10 2018, I don't see anything in your notes about him saying
11 I don't want my children to go through what I've been. I
12 don't see that until two interviews later.

13 A Yes, that was later.

14 Q So he didn't tell you that in that first interview?

15 A Not in that first interview, no.

16 Q And he didn't -- he didn't tell you until the March
17 18th interview of 2019?

18 A At this point, I just need to look -- glance at my
19 notes because I don't want to say the wrong thing.

20 Q Yes, sir.

21 A He did say, I thought what am I going to do with the
22 other kids. This is after Nahtahn's death. The thought
23 comes to my mind things aren't going well for them. If
24 their mother had been there for them, I wouldn't have done
25 what I did.

1 Q This is on September 24th?

2 A Yes, this is in September. He did tell me that.
3 That's why I wanted to check my notes to make sure.

4 Q He blames Amber? If Amber would have been there,
5 this wouldn't have happened?

6 A Yes.

7 Q It also -- so he said that he -- consistently, his
8 story was that he choked the two older children?

9 A With his hands, yes.

10 Q With his hands. And he told you, and you made a
11 point of noting this, that Merah struggled, is that
12 correct?

13 A Merah struggled.

14 Q Why was that important?

15 A Because I think it shows determination on his part.
16 And that a dose of -- you know, sometimes people might
17 stop and say, what am I doing?

18 Q Now, he gave you a time for the time period that he
19 choked Eli to death. How long did he tell you that it
20 took to choke Eli to death? The top of Page 49.

21 A He said it only took 45 seconds. But, you know,
22 that's medically unlikely --

23 Q I'm -- what, I'm sorry?

24 A Medically unlikely. It would take several minutes to
25 strangle somebody, even a child.

1 Q You can lose conscious quickly, but to kill somebody,
2 you have to keep pressure on for an extended time,
3 minutes, correct?

4 A Yes. I mean, and you know, if he was using spice,
5 his sense of time would -- I mean, the place he bought it
6 was called Time Warp. So using synthetic marijuana
7 distorts your sense of how long things are.

8 Q And also, the truth is, we have to take what he says
9 with a grain of salt because he's the only one saying it
10 and it's the only time he says it, true?

11 A He was the only one there. But what he -- the reason
12 that I give him the benefit of the doubt is because what
13 he said doesn't make it look very good. He was very
14 detail oriented with me on what happened with those kids
15 and it was tough to listen to. But he didn't sugar
16 coat -- sugar coat it. I mean, you could say the voices
17 are sugar coating it to make it look better. I don't -- I
18 have no way of knowing if that voice is real or not. I
19 don't think a single voice like that qualifies someone for
20 schizophrenia. I think the voice, if he did hear it, was
21 likely due to his use of drugs. But he certainly was not
22 giving a version of events that was very kind to him or to
23 his defense.

24 Q In the March 18th and the March 20th interviews, you
25 actually had that phone extraction and you asked him some

1 follow-up questions, correct?

2 A Yes.

3 Q What questions did you ask him and what were his
4 answers? What were you interested in?

5 A What was he searching and why was he searching for
6 it. I mean, it's sort of obvious when you look at what he
7 was searching, but, for example, I asked him, why were you
8 searching local dumpsites? And he said, that was an
9 attempt to hide the corpses. He acknowledged that he had
10 different thoughts about how to dispose of the bodies,
11 such as cutting them or feeding them to hogs or cut them
12 up and put them in a concrete machine, that he was running
13 on fear. He, also, at some point had started searching
14 for extradition laws and where to run if you're in
15 trouble.

16 Q And he told you that he wanted to know where he could
17 run and hide?

18 A Yeah, where he could run and hide does indicate that
19 he knows he's in trouble and he's certainly aware of the
20 legal wrongfulness.

21 Q Right. Let's move to your opinion as to criminal
22 responsibility, as to insanity, as to whether as a result
23 of mental disease or defect Tim Jones lacked the capacity
24 to distinguish moral and legal right from moral and legal
25 wrong or to recognize the act as morally or legally wrong.

1 What's your opinion, Doctor?

2 A I think he was capable of distinguishing moral and
3 legal right from moral and legal wrong and to recognize
4 his particular acts as morally and legally wrong.

5 Q And that opinion doesn't change whether he's
6 schizophrenic, that opinion still stays the same, doesn't
7 it?

8 A That's correct.

9 Q If he's schizo-effective disorder with bipolar type,
10 it wouldn't change that opinion?

11 A No, it would not. If I'm wrong about the diagnosis
12 and he has one of those, he still, in my opinion --

13 Q That doesn't make the difference?

14 A -- clearly had the ability to distinguish right from
15 wrong.

16 Q One prong of the insanity -- to start talking about
17 it is a mental disease, that's why we're talking about --

18 A Right.

19 Q -- diagnoses, correct?

20 A Right.

21 Q But the truth is, we're really looking to see whether
22 he understood legal wrong, moral wrong or not?

23 A Correct.

24 Q So let's talk about some examples of legal and moral
25 right and wrong based on his words and on his actions.

1 That's what we look for, right?

2 A Yes.

3 Q He didn't call 911 --

4 A Yes, he --

5 Q -- after Nahtahn -- according to his story, Nahtahn
6 accidentally dies?

7 A Yeah. A normal -- you're exercising your kid,
8 something happens. Let's say the kid has a brain aneurysm
9 or some underlying medical issue and just collapses, the
10 normal thing to do is call 911. But he was afraid that he
11 would be accused of murder.

12 Q Does the quote you have --

13 A That what he -- "I was afraid I was just going to get
14 myself locked up."

15 Q So does that show legal or moral right or wrong or
16 knowledge of legal or moral right or wrong?

17 A Legal.

18 Q Legal.

19 A Locked up, legal.

20 Q Locked up. All right.

21 A Then he misled his actions to other people. He was
22 hiding what had happened.

23 Q Let's talk about how he misled other people. The
24 first one you note is Christina Ehlke. That's the
25 babysitter for the children, correct?

1 A Yes.

2 Q And he misled her how?

3 A He didn't tell her the children were dead. He told
4 her they'd be back at her house for babysitting on
5 Tuesday.

6 Q Right. But at first, he told her -- because she
7 asked when the children are coming over and he said
8 Tuesday. He actually said that.

9 A Right.

10 Q And then there was a telephone conversation and he
11 said he and the kids were moving?

12 A Moving to Mississippi, or moving out of town.

13 Q So his texts and statements and conversations with
14 Christina Ehlke, is that legal or moral or both?

15 A It's a little bit of both.

16 Q Why do you say that?

17 A Because she could call the police and turn him in
18 legally. And then morally, she cared for the children and
19 she would be outraged or find it very upsetting what he
20 had done. Think it was morally wrong.

21 Q So you think that his dealings with Christina Ehlke
22 shows that he was sane?

23 A Yes -- or shows that he knew right from wrong.

24 Q Shows that he knew right from wrong. He also had
25 dealings with his father, Tim, Sr., correct?

1 A Yes.

2 Q He told his father that -- either texted or talked to
3 him and told him that his plans had changed and he
4 wouldn't be able to come?

5 A Right. So he hid the fact of what he had done from
6 his father.

7 Q And is that legal or moral or both again?

8 A I think it's a little of both.

9 Q Did he ever tell you why he didn't call his father?
10 Why he didn't call him and say I need you to take the
11 other four kids?

12 A No.

13 Q He also misled his grandmother, Roberta, isn't that
14 true?

15 A Yes.

16 Q He, basically, avoided all of her calls and all of
17 her texts?

18 A Yes.

19 Q And that again shows legal or moral or both?

20 A Both.

21 Q You asked him about internet searches on September
22 1st of 2014, where he searched for South Carolina dumps
23 and looking at websites related to landfills and camping
24 venues?

25 A Yeah. And he searched for -- he typed in dog search

1 for body in landfill, which indicates he was interested in
2 whether a cadaver dog would find a body if it was placed
3 in the stench of a landfill.

4 Q So he was trying to destroy evidence?

5 A Yes. He got bleach and tried to remove evidence from
6 his car. Disposal of evidence is, in my opinion, a clear
7 indication that someone knew what they did was wrong,
8 tried to hide it.

9 Q Legal or moral?

10 A When it comes to evidence, I would say legal.

11 Q He did an internet search -- in fact, I want to say
12 his last search was missing children, Tim Jones on
13 September 4th. That was his last Google search. What
14 does that say to you or does it say anything to you about
15 legal or moral?

16 A It just says he wanted to know if he had made the
17 news, if he and his children being missing had been
18 covered by news media.

19 Q That would be consistent with his fear --

20 A Getting caught.

21 Q -- getting caught? Mental illness by itself does not
22 equate to insanity, does it?

23 A No, it has to impair your ability to distinguish
24 right from wrong, legally and morally.

25 Q The things we're talking about right now?

1 A Yes.

2 Q In addition to the searches for camping and landfills
3 and dog searches for body in landfills and missing
4 children, Tim Jones, he also looked about extradition laws
5 and where to run?

6 A You face a U.S. legal problem, where should you run.

7 Q What does that tell you?

8 A He knew he was in trouble, or going to be if he
9 didn't get away, out of the country where he could -- and
10 in his car, there were note scribblings about what to do
11 with the body -- bodies. And at one point, it had the
12 initials MB. It was at the end, it said MB. And I said
13 -- in my initial interviews with him, I said, what did
14 that mean? MB, I was thinking Myrtle Beach. You know, I
15 don't know. There it is, up at the top right.

16 Q That's State's 79. So he --

17 A Lexington, camping, Mexican border. Because the
18 thought was he'd go camping and just dispose of the
19 bodies.

20 Q When we follow the line and we're over here to LV.
21 It was Las Vegas?

22 A Yes. But, anyway, MB, he didn't know what that
23 meant. When I first saw him in the fall of 2018
24 interviews, he couldn't remember. And then he
25 spontaneously told me without my asking during the March

1 interview, he says, Oh, by the way, that means Mexican
2 border. He had remembered between my interviews that that
3 meant Mexican border. And, once again, that's a sort of
4 -- what's the word I'm looking for? I think I've been
5 here too long. It doesn't make him look good. Why would
6 he volunteer that to me if he was trying to make himself
7 look good? That's why I was sort of reluctant to diagnose
8 malingering.

9 Q You noted in your report that there was a passport in
10 the car as well?

11 A Correct. Which also shows some ability to organize,
12 plan, what am I going to do as to what he put into the
13 car. Things that meant a lot to him, his diploma, I
14 believe, his free mason materials, things that had
15 sentimental value. He was able to, rationally able to
16 think about what to take with him.

17 Q In addition to his plan of travel that he laid out
18 for you, there's also some other things on here. Day one,
19 burn up bodies; day two, sand down bones; day three, MB,
20 smiley face, dissolve and discard. Do you know whether
21 that MB is Mexican border?

22 A It's my understanding MB meant Mexican border,
23 period.

24 Q So the fact that he is -- has a plan to burn up
25 bodies, sand down bones and go to the Mexican border,

1 dissolve and discard, does that sound legal, moral or
2 both?

3 A Mor -- I mean, legal.

4 Q Legal.

5 A Get out of the country, take the evidence with me.

6 Q Up at the top, head to campground, melt bodies, sand
7 bones to dust or small pieces, something, I think
8 sanitation plant. I'll let everybody read it and get what
9 they get out of it. The fact that he's talking --

10 A Discard by sanitation plant is how I read that.

11 Q Thank you, Doctor. That, also, then would be legal?

12 A Yes.

13 Q When we move down here below, though, it says loose
14 ends. You see that?

15 A Yes. What he needed to do before he got out of town.

16 Q And it's got names. Do you know who those people
17 are?

18 A Christine would be Christine Ehlke.

19 Q The babysitter?

20 A Jim Mc is, I believe, his boss at the time at Intel.
21 SG, I think that's Saxe Gotha Elementary; the
22 pediatrician; Amber. I don't know that top one. I can't
23 read that from here.

24 Q Amber, grandma and dad --

25 A At the very top.

1 Q Oh, up there.

2 A Is that Ter -- I don't know what that is.

3 Q So loose ends, things he has to deal with. People --

4 A Before he leaves and then bills he needs to pay.

5 Q So does that have any bearing on legal or moral right
6 or wrong? Or does that just show organized behavior and

7 --

8 A To me, it shows that he was planning and thinking
9 what he needed to do.

10 Q Same with middle column, bills?

11 A Yes.

12 Q Okay. How about over here on the far right, tattoos,
13 glasses, I'm not sure what that -- did you ever discuss
14 that other word, the third word?

15 A I don't recall discussing this specifically with him.
16 The glasses I know refer to, though, his damaged glasses
17 that he said Nahtahn stomped on.

18 Q Could it have been for disguises?

19 A I think hunting gear is at the bottom.

20 Q Could it have been for disguises, way to avoid, or do
21 you think that's him taking care of loose ends?

22 A I didn't ask and I don't want to venture there
23 because I think I'd be speculating and I don't want to do
24 that.

25 Q Okay. He also went to Wal-Mart. And you questioned

1 him about that --

2 A Yes.

3 Q -- Wal-Mart purchase, correct?

4 A Right. He was buying stuff to try and dismember,
5 destroy the bodies.

6 Q That would be the jab saws, the goggles, the dust
7 mask, the five-gallon bucket and the muriatic acid?

8 A Yes.

9 Q So the fact that he went to Wal-Mart, pulled those
10 items off the shelf and bought them for the purpose of
11 dismembering and destroying his children's bodies, all
12 five of them, legal or moral or both?

13 A Legal.

14 Q And then there's actually -- you're aware there's
15 physical evidence that he actually -- that Nahtahn has
16 marks that are consistent with --

17 A He tried with the saw on Nahtahn's leg, but couldn't
18 bring himself to do it.

19 Q And that would go to legal?

20 A Yes.

21 Q Taking the battery out of the phone, is that legal
22 and moral or both? Because he didn't want to involve his
23 family? He didn't want to involve anybody else because he
24 wanted to go down by himself, right?

25 A Yes.

1 Q And, also, he didn't want to be tracked by --

2 A There was a cousin or something that had texted him
3 offering assistance.

4 Q Yes.

5 A And he didn't respond to that cousin.

6 Q Because he didn't want to drag anybody else into his
7 problems?

8 A I didn't ask him specifically why didn't you, but.

9 Q You also have down in here, which on Page 50, number
10 six, he stated to Lexington County investigators and
11 Mississippi, "the voices in my head told me nobody will
12 ever believe that you didn't murder him. Now you need to
13 kill the rest of the children and get out of town." That
14 statement by itself, if taken for true, legal or moral or
15 both?

16 A Legal. And that's very atypical. That's what I'm
17 saying, I think these are his anxious thoughts. These are
18 not auditory hallucinations because psychotic auditory
19 hallucinations do not give three-step commands.

20 Q Well, would you agree with me that his statement,
21 Nobody will ever believe that you didn't murder him,
22 that's talking about Nahtahn, that can be moral, no one?
23 Society?

24 A Okay. Well --

25 Q Because --

1 A I think you're getting to hair splitting, but it
2 could. I think the moral wrongfulness, to me, comes from
3 the protecting family members, comes from downloading that
4 rape scene, realizing that other inmates would find what
5 he did morally wrong. And as I was preparing for my
6 testimony, I relistened to his confessions or his
7 statements to police. And in the back of the police car
8 after the bodies are found, he says -- he cries out, God,
9 forgive me. Asking God for forgiveness, to me, is really
10 direct evidence that he realized the moral wrongfulness.
11 And then he made another statement that I don't deserve or
12 -- to go to the children's burials. That, also, to me,
13 indicates that he really realized the moral wrongfulness
14 of what he had done.

15 Q And you heard that on the --

16 A Out of his own mouth, yes.

17 Q -- taped interview on September 9th when he's riding
18 back with law enforcement after he's shown them where the
19 bodies are?

20 A Right.

21 Q He also -- your point seven, a lot of lives belong
22 about the children, right?

23 A One other thing I forgot to say. He also says on
24 that tape that he feels ashamed of what he's done.

25 Q On that 9th tape, the September 9th tape?

1 A Yeah, at 44 minutes and 50 seconds, he says he feels
2 ashamed of what he's done. And feeling the sense of shame
3 indicates knowledge of moral wrongfulness.

4 Q He lied to the police. When he first got stopped, he
5 was asked why the car smelled so bad and he said garbage.
6 That wouldn't be true, it was from decomposition.

7 A And he said he didn't have any children.

8 Q He said he had --

9 A Then at some point, he had three children and they're
10 back in Columbia with their mother or a baby -- someone.

11 Q Then the next day, he told another group of law
12 enforcement, I think when his father was there, I put them
13 out of the car at Wal-Mart?

14 A And he admitted to making that up, that the kids
15 never said they wanted to feed him to the dogs.

16 Q All those would be legal wrongfulness, right?

17 A Yes.

18 Q He then is confronted by the FBI agent and Detective
19 Creech with the sheriff's department about the purpose of
20 the saws and he says they were for tree limbs. So he
21 gives not the truth about why he was trying to destroy
22 evidence?

23 A Correct.

24 Q That would be legal?

25 A Legal wrong.

1 Q And then we've already talked about the American
2 History rape scene, which you said is moral wrongfulness?

3 A Yes.

4 Q To all five children?

5 A Yes. I mean, if you know it's morally wrong to kill
6 one --

7 Q At that moment?

8 A -- and you don't have delusions that would impair
9 moral wrongfulness about the other four.

10 Q So those are all of your justifications from either
11 his actions or his words to say that he is not insane?

12 A Correct. That's not all of them. I mean, but it's a
13 good representation of the majority of them, yes.

14 Q The more we look through, probably, the more we could
15 find?

16 A You can always find other things that suggest that.

17 Q All right. So that's criminal responsibility, right?

18 A Yes.

19 Q You were also asked to look at capacity to conform?

20 A Yes.

21 Q Which is also known as guilty but mentally ill,
22 right?

23 A Yes.

24 Q Explain to the jury what that is and what your
25 findings were on that.

1 A In order to find someone guilty but mentally ill, the
2 Court or the trier of fact has to find that the person
3 lacked the ability, sufficient ability to conform their
4 conduct to the requirements of the law. In other words,
5 he couldn't resist doing what he did. He was compelled by
6 his mental illness. But in his --

7 Q Can you give an example of what that is? You know
8 it's wrong, but you can't stop yourself?

9 A Yes. Let's say that -- let me give you the earlier
10 example about the neighbor who you think is trying to kill
11 you by poisoning you through your air conditioning vents.
12 You could kill that neighbor -- you could call the police
13 and say look, my neighbor is trying to kill me. The
14 police come, they investigate. They go, no, we find no
15 evidence of that. And then you call again. About the
16 third time you call them, they say we think you need a
17 mental evaluation, they're going to have you checked out.
18 You get checked out, put in the hospital. Come out, you
19 still think the neighbor is doing it. You say -- think to
20 yourself oh, if I call the police, they think I'm crazy,
21 so you kill the neighbor. But then you dispose of the
22 body, you hide what you did, you wore gloves, you lie to
23 the police, I don't know what happened to the neighbor.
24 You clearly understood it was wrong to kill the neighbor,
25 but you were maybe compelled by your delusion that if I

1 don't kill him, he's going to get me at some point.

2 Q So your opinion to a reasonable degree of medical
3 certainty as an expert in the field of forensic psychiatry
4 is that he did have the capacity to conform?

5 A Yes. He reflected and thought about what he did and
6 made a decision to do it. It wasn't something impulsive.
7 I mean, he says Nahtahn was an accident. But I don't
8 think that he has a mental illness that prevented him from
9 realizing that he was potentially disciplining Nahtahn too
10 harshly. This fits a pattern of excessive discipline that
11 had been reported by ministers, former pastor, babysitters
12 and the DSS investigations.

13 Q So when he says that he doesn't want the children to
14 suffer -- talking about the other four, he doesn't want
15 the children to suffer like him over the loss of his
16 mother, why is that not a delusion that gets him to guilty
17 but mentally ill?

18 A Because delusions don't start suddenly. That's just
19 him morally justifying what he did. There's a difference
20 between being morally justified and not knowing moral
21 wrongfulness.

22 Q And, again, we're going off of his story --

23 A By his statement.

24 Q -- what he tells you?

25 A Yes.

1 Q So he's telling you in your opinion that he's --
2 feels inside himself morally justified for doing it?

3 A Because Amber didn't want them.

4 Q But at the end of the day, he made a choice, didn't
5 he?

6 A Yes. For the four.

7 Q And your 3500 competency, criminal responsibility,
8 capacity to conform, you don't always find people not
9 insane and guilty but mentally ill, do you?

10 A You mean not guilty but mentally --

11 Q I mean, not guilty but mentally ill?

12 A No. I mean, I've opined quite the opposite. I had
13 not too long a case ago where a woman killed her two young
14 children, school-age children, elementary school in
15 Greenville and I opined that she was not guilty by reason
16 of insanity and didn't appreciate or recognize the legal
17 or moral wrongfulness of what she had done. And there
18 have been other murder of adults where I've opined the
19 person lacked the ability to distinguish legal and moral
20 right from legal and moral wrong.

21 Q You looked at all the evidence you could get to you,
22 didn't you?

23 A I did the best that I could, yes. I looked at a lot
24 of evidence. I did -- there was like -- for example, I
25 would get a video of him parking his car in the Dunkin

1 Donuts by the dumpster and I couldn't get it to play. But
2 I was told by -- I think your office provided that video
3 of what it shows. I didn't think it was crucial that I
4 see that piece, but other than that, I think I've tried to
5 review everything that was given to me.

6 MR. GRAHAM: Thank you, Dr. Frierson.

7 MR. YOUNG: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q You talked about the competency evaluation that you
11 did back in 2016. Do you recall whether or not the
12 Defense cooperated with you in that competency evaluation?

13 A Mr. Jones --

14 Q Yeah, the Defense --

15 A -- or you.

16 Q Me.

17 A Yes.

18 Q Did I?

19 A Yes.

20 Q Did I say we think he's not competent or --

21 A No, you were saying it was not your issue.

22 Q We had no concerns about it?

23 A Right. You said we want this evaluation. You had no
24 doubt that he was competent.

25 Q That was not an issue raised by the Defense?

1 A Correct.

2 Q You talked about his anxious thoughts and you had
3 reviewed his statements to law enforcement after he had
4 recovered and we met with Detective Creech, right?

5 A Yes.

6 Q And in those statements, the voices that he was
7 talking about referred to him -- he -- refers to him
8 saying, You're F'd, Tim, right? They use his name,
9 talking about himself in the third person, right?

10 A Yeah, thinking about himself in the third person.

11 Q Right. And that's unusual, isn't it? Because,
12 usually, you say what am I going to, not like what am I
13 going to do, Boyd, or what am I going to do, Dr. Frierson?

14 A Oh, the fact that he uses the word Tim rather than
15 me.

16 Q Yeah.

17 A That's a point that is well taken.

18 Q Tim has always been cooperative with you?

19 A He's been very cooperative.

20 Q He's always been engaged with you?

21 A Yes.

22 Q People -- when we talk about people faking stuff,
23 people can also fake being better than they actually are?

24 A I don't agree with that.

25 Q Okay.

1 A What you mean by better, better in what way?

2 Q Well, they can mask symptoms, they could try and hide
3 symptoms?

4 A They could try to hide symptoms. They can be
5 experiencing symptoms and they can deny them.

6 Q Right. You talked about Tim's mom. You know she's
7 still alive, right?

8 A Yes.

9 Q Did you ever talk to her?

10 A No.

11 Q Did you ever review a video of her statement?

12 A I don't recall seeing her on video. I recall reading
13 through mounds of records of her hospitalizations.

14 Q Okay.

15 A I mean, she's married to another man with
16 schizophrenia. I knew that she had a baby and didn't
17 realize she was even pregnant. She's very mentally ill.
18 To me, that's not even an issue.

19 Q You talked about the glasses being stomped and
20 smashed. If the glasses are still intact, they're still
21 around, would that be a hallucination, would that be a
22 delusion? What would that be if they were still in
23 existence?

24 A Well, it could be a lie. I don't think that would be
25 -- that's not something that people -- delusions don't

1 start suddenly like that, like I said.

2 Q Okay. It could be a hallucination?

3 A But there was some -- also, he had called around this
4 time the glass -- where he got his glasses.

5 Q For, like, a couple seconds?

6 A Yeah, the number, dialed the number, which would make
7 sense about wanting to get glasses.

8 Q Okay.

9 A Replace or whatever. And somewhere on one of those
10 sheets, handwritten pages, it says glasses.

11 Q Okay, right. On the handwritten notes, it said
12 glasses? Is that what you're talking about?

13 A Uh-huh.

14 Q It said glasses right there?

15 A Right.

16 Q The part about the American History X scene and the
17 prison rape scene. Now, you work in the Department of
18 Corrections?

19 A Yes.

20 Q And prisoners who are going to target people for
21 hurting children don't really care if they say I didn't
22 mean to. All they care about is you're in prison and
23 you're charged with a crime against children, right?

24 A Yeah, that's been my experience.

25 Q Did you ask Tim why he put the children in the car

1 and drove around with them for nine days?

2 A Yes.

3 Q And what did he tell you?

4 A He was trying to figure out what to do.

5 Q He didn't tell you that he was trying to spend time
6 with them?

7 A He did say that as well, that he was grieving their
8 loss.

9 Q He said he knew that he was going to get caught,
10 right?

11 A Yes.

12 Q So if he's got his passport, he's got the check for
13 \$3500.00 dollars, how many times did he drive past the
14 Atlanta airport?

15 A I don't know, I mean, two times the first day, then
16 he went back in that direction.

17 Q He didn't do any of that? He didn't fly to --

18 A No. He was still thinking, I think, before he dumped
19 the bodies that he was going to dispose of them before he
20 left for Mexico and he couldn't find an adequate place to
21 do that.

22 Q And all of this stuff that he has written down, melt
23 the bodies, burn the bodies, sand the bodies, take them to
24 a dump, take them to a sanitation plant, he never did any
25 of that?

1 A No. I don't know that that would have been feasible
2 if he tried. I mean, people underestimate the strength of
3 even a corpse, the ligaments. I mean, having done gross
4 anatomy in medical school, it's hard to dissect a body.

5 MR. YOUNG: Your Honor, that's all the questions I
6 have. Thank you, Dr. Frierson.

7 THE COURT: Anything else?

8 MR. GRAHAM: Thank you, Doctor.

9 THE COURT: Thank you.

10 THE WITNESS: Am I excused?

11 THE COURT: Yes, you are.

12 MR. YOUNG: May we approach?

13 THE COURT: You may.

14 (Whereupon, a bench conference was held in the
15 presence of the jury but out of the hearing of the
16 jury.)

17 THE COURT: We're done for the day. We're out of
18 witnesses for the day. So don't talk about the case and
19 see you in the morning.

20 (WHEREUPON, the jury is excused from open court for
21 the day.)

22 THE COURT: Mr. Secor or Mr. Young.

23 MR. YOUNG: One other thing, Your Honor, at this
24 point in time, we think Dr. Frierson, through his
25 testimony and through the case examples he has given and

1 the numerous examples he gave about the patients who
2 suffered from various mental illness has opened the door
3 to Bethany Yeiser and we would ask the Court to reconsider
4 and allow us to call her.

5 THE COURT: The lady from Cincinnati?

6 MR. YOUNG: Yes, sir.

7 THE COURT: No, sir. I don't agree with you on that
8 one. I mean, respectfully, no, sir. I just -- her
9 condition comparing it to someone else, that's just apples
10 to oranges and not apples to apples. And I don't think
11 that's fair to the Defendant. It confuses me to try to
12 compare what she was saying related to Mr. Jones. I don't
13 -- I understand why you're asking, but I think that would
14 create a mountain of confusion for the jury trying to
15 figure out what -- there were so many things that she said
16 that were her personal experience that are not relevant at
17 all to the issues here for Mr. Jones. So I'm not going to
18 reconsider that. My decision stays the same about that.
19 What else?

20 MR. YOUNG: Note our objection.

21 THE COURT: Yes.

22 MR. SECOR: Your Honor, I just wanted to address the
23 issue about additional testimony about social history. Is
24 that all right?

25 THE COURT: Yes, sir.

1 MR. SECOR: And nothing I say am I trying to
2 insinuate that I think -- the Court has already ruled on
3 this issue. I'm just going to sort of raise it from the
4 perspective of what my understanding is on the Court's
5 past ruling on the admissibility of it.

6 THE COURT: Okay.

7 MR. SECOR: Defense had intended in the first phase
8 to call our expert, Deborah Grey to testify to the
9 entirety of Tim's social and family history. And I won't
10 belabor the point, I believe Your Honor knows why we
11 believe that that's relevant. And I believe that the
12 Court's ruling is that it's not relevant prior to Tim's
13 birth.

14 THE COURT: That's been my ruling. Factually, I
15 think that's the relevant portion and that's been an easy
16 rule to apply. Everything before that -- you know, that
17 didn't limit any expert that did any evaluation,
18 considering anything prior to the birth.

19 MR. SECOR: Right, yes sir, I understand. But we
20 were intending to call Deborah Grey to testify to the
21 social history and in order to testify to the social
22 history, it would have to be the entirety of the social
23 history. Because a social history that begins on the day
24 of somebody's birth is not a social history, it's not a
25 family history. A social history and family history is by

1 definition a reference to past events and past patterns to
2 help illuminate future events and patterns. So I believe
3 that the most efficient way to have it in the record is to
4 submit the actual social history as a Court's Exhibit
5 because I don't believe that Your Honor would allow the
6 testimony in front of the jury and a proffer could be
7 extremely lengthy. And it just seems it might make more
8 sense to offer the social history as a Court's Exhibit.

9 THE COURT: I don't think the State would have an
10 objection to that being proffered. Her testimony is
11 consistent with that social history?

12 MR. SECOR: Yes, sir.

13 MR. HUBBARD: No objection.

14 THE COURT: I think that's a very plausible
15 suggestion to make that a Court's Exhibit.

16 MR. HUBBARD: No objection. Do you have an extra
17 copy?

18 MR. SECOR: I do.

19 MR. HUBBARD: What I'll do is keep this separate so
20 I'll know that --

21 MR. SECOR: May I approach?

22 THE COURT: Yes. That will be a Court's Exhibit. I
23 think we're at 97 or 98.

24 COURT REPORTER: We're at 99.

25 (WHEREUPON, Court's Exhibit number 98 and 99 was

1 marked for identification.)

2 MR. SECOR: Your Honor, just so I'm clear, the
3 Court's ruling about her testimony is consistent with the
4 Court's previous rulings on the admissibility of social
5 history?

6 THE COURT: Yes, sir.

7 MR. SECOR: Thank you. And I just ask that you note
8 our objection to that.

9 THE COURT: Got it.

10 MR. SECOR: Thank you.

11 THE COURT: Is that it?

12 MR. SECOR: Yes, sir.

13 (Whereupon, the trial will resume the next morning at
14 9:00 a.m.)

15 May 31, 2019

16 THE COURT: Are we ready?

17 MR. YOUNG: Yes, sir.

18 THE COURT: Bring in the jury.

19 (Whereupon, the jury came into open court at
20 approximately 9:00 a.m.)

21 THE COURT: Mr. Young, call your witness.

22 MR. YOUNG: The Defense calls Beverly Wood.

23 BEVERLY WOOD, being

24 first duly sworn, testified as follows:

25 THE CLERK: Have a seat, please, ma'am. Once you're

1 seated, state your full name, spelling your last.

2 THE WITNESS: Beverly N. Wood, W-O-O-D.

3 DIRECT EXAMINATION

4 BY MR. YOUNG:

5 Q Dr. Wood, where are you employed?

6 A I'm employed by the South Carolina Department of
7 Corrections.

8 Q And how long have you been there?

9 A Thirteen years.

10 Q And what is it that you do?

11 A I'm the chief of psychiatry there, but I also have a
12 case load and I manage all the psychiatric services for
13 the Department of Corrections.

14 Q And can you tell the jury a little bit about your
15 educational experience and background?

16 A Yes. I went to undergraduate school at Virginia
17 Tech. I went to medical school at Virginia Commonwealth
18 University, the Medical College of Virginia in Richmond,
19 Virginia. I did my psychiatry residency at Penn State
20 University's medical school, which is in Hershey,
21 Pennsylvania. And I also did Fellowship in child
22 psychiatry, but I didn't actually work in child
23 psychiatry. I worked two years for the Pennsylvania
24 Department of Mental Health. Then I came to South
25 Carolina in 1991 and I worked for the South Carolina

1 Department of Mental Health until 2006, when I came to the
2 Department of Corrections to be the chief psychiatrist,
3 and I've been there since that time.

4 MR. YOUNG: Your Honor, at this time, the Defense
5 would move that Dr. Wood be declared as an expert in
6 psychiatry.

7 THE COURT: Any voir dire?

8 MS. MAYES: Limited to psychiatry, Your Honor.

9 THE COURT: Very well. Dr. Wood is offered for your
10 consideration of opinions in the field of psychiatry.

11 MR. YOUNG: Thank you.

12 Q Dr. Wood, can you tell the jury a little bit about
13 how you became involved with Tim Jones?

14 A Yes. I happened to be covering the unit that he
15 first resided in. That was one of my areas of
16 responsibility when he came to the Department of
17 Corrections, so I -- he came as a pretrial detainee.
18 Sometimes we get people that haven't been to trial yet.
19 Most of our inmates have already been to trial. We get a
20 few that haven't. And I evaluated him and treated him.
21 And then when he was moved to another campus, I also --
22 that's one of the campuses I covered, so I continued
23 treating him. So I treated him during his entire stay
24 with the Department of Corrections.

25 Q And do you know the dates for that entire stay at the

1 Department of Corrections?

2 A He came September of 2014, I think, the 12th -- I'm
3 not sure of the day. September 2014, and the last time I
4 saw him was in December of 2018. Because I don't know the
5 exact date that he came back to Lexington County, but that
6 was the last time I saw him was in December.

7 Q And if Dr. Frierson had testified that the dates were
8 September 12th, 2014, to May 9th, 2017, that he was at
9 Kirkland and May 9th, '17, to January the 23rd, that he
10 was at Lee, do those dates sound right?

11 A Probably.

12 Q So when you first saw Tim, can you tell me -- tell us
13 how that went? What was that about? What was he like?

14 A I first saw him, basically, to obtain history and
15 figure out what's going on. People don't generally come
16 to us with any information, so we just interview them and
17 try to get as much information as we can, which is what I
18 did. And -- you want me to talk about the actual
19 interview, is that what you want me to talk about?

20 Q Yes, ma'am.

21 A Okay. He gave me a history of -- family history of
22 schizophrenia, said his mother had suffered from
23 schizophrenia. He said that he had started hearing
24 voices, I think, around age 12, I think is what he said.
25 He had a head injury in an automobile accident. That was

1 in his teens, I don't remember the exact age. I think he
2 told me he started using drugs around age 15, started with
3 alcohol, progressed. Used a variety of drugs, marijuana,
4 synthetic marijuanas, cough syrup. Had used cocaine,
5 occasional Ectasy, I think he said.

6 Q So did you obtain a history of his drug use? Did he
7 tell you about that?

8 A Well, yes, he told me what he had used and -- I mean,
9 I didn't get information about how many times a day and
10 that type of thing in that initial, but he did give me
11 extensive use of drugs. I think he said cocaine was his
12 drug of choice, but I don't think that was the one he used
13 the most though.

14 Q Did he tell you about the use of synthetic
15 cannabinoid?

16 A He told me he had used synthetic, yes, he did tell me
17 that.

18 Q And at that time, did you start a working diagnosis?
19 What did you do?

20 A Well, I mean, based on his mental status exam about
21 the voices he said he heard. He said he saw more like
22 strange things. Sometimes when he looked at the walls, he
23 would see like shapes or movement, sometimes faces. He
24 had been depressed. He said -- I guess, he was kind of a
25 loner, I gathered, for most of his life. He liked to do

1 things fast and I think he said he ran wide open
2 sometimes, had been depressed sometimes. So I thought
3 there was a psychotic component with the voices. He also
4 expressed a little paranoia. And I thought there was an
5 affective component because there were some bits of maybe
6 hypomanic or manic behavior, although he did not give me a
7 history of a full blown manic episode, and some
8 depression. So my working diagnosis that I gave him at
9 that time was schizo-affective disorder, although there
10 was also a history of substance abuse. And I had to rule
11 out personality disorder because he said he had been in
12 trouble some in his youth, so that was a rule out, too,
13 that I put in there.

14 Q Did you originally start out as psychosis not
15 otherwise specified?

16 A Probably, yes.

17 Q And did you start him on any medications?

18 A Yes, Geodon, which is an antipsychotic that's also a
19 mood stabilizer.

20 Q Now, with Geodon, can you tell us, like, how that's
21 taken and how it's absorbed in the body? Are there any
22 special requirements when --

23 A Yeah, you have to have food in your stomach, at
24 least, about 360 calories in order for it to be effective,
25 which is a little bit of a challenge within the Department

1 of Corrections to time it with food. I mean, we're
2 supposed to be getting snacks, but that doesn't always
3 work out. But I like to use it because it is a good mood
4 stabilizer and then antipsychotic and the side effect
5 profile is pretty good. I mean, it's -- generally, people
6 maybe get a little tremor, but the side effects are not
7 usually as severe as with the older antipsychotics. And
8 we have a list of preferred antipsychotics that we're
9 supposed to use, you know, it's called a formulary, within
10 the Department of Corrections, so we try to stick to that
11 whenever possible. So Geodon is one that I like to start
12 with because people usually tolerate it pretty well and
13 it's usually fairly effective.

14 Q Now, do you -- like, how did he respond to the
15 Geodon?

16 A Well, I had to keep increasing the dose with him. I
17 mean, he did respond. He said he felt better. We didn't
18 completely get rid -- it took a while to completely get
19 rid of the voices and we mostly got rid of the
20 permutations or -- that's what he called them sometimes,
21 the things he would see. But, again, it was -- so he used
22 a much higher dose than I usually used. I tried to
23 change -- he did have a little tremor, so I gave him
24 Propranolol, which is treatment for tremors of
25 antipsychotics. We tried to switch to Fluphenazine or

1 Prolixin, which is an older, since we were getting so high
2 with the Geodon dose. That was helping him, but then we
3 weren't able to obtain it from the manufacturer because
4 they weren't making enough. It just wasn't available, the
5 tablets. We used the liquid for a little while because we
6 could get that and then that became unavailable, so we had
7 to go back to just the Geodon. And then I think by the
8 end, we had added Perphenazine or Trilafon, which is
9 another antipsychotic. So we were trying to not be on so
10 much Geodon. But throughout with the Geodon, we had
11 trouble with the food, you know. I mean, for a while, I
12 was able to get him Ensure or Boost and then we weren't
13 able to do that. And they were supposed to start bringing
14 snacks and that worked better in some locations than
15 others.

16 Q At the Department of Corrections, on the weekends, do
17 prisoners get lunches?

18 A They get two meals a day on weekends. That's why
19 it's important to get the snacks. But the meds are mostly
20 twice a day throughout -- with the exception of a few
21 special programs, the meds are twice a day. But on the
22 weekends, they don't coincide with mealtime because they
23 get a brunch and a dinner on weekends. So that's another
24 challenge there.

25 Q I'm going to show you one of your notes from October

1 2nd, 2014. This would be a couple weeks after he had been
2 on the Geodon?

3 A Yeah. Then he says something doesn't feel right.

4 Q And --

5 A That the voices had decreased, but he wasn't
6 completely adjusted to the medication.

7 Q How did he feel now that the voices were decreased?

8 A Well, I think he certainly liked that the voices were
9 decreased because I know later, when we were on a really
10 high dose and were trying to decrease it, he said the
11 voices have returned. And I remember him telling me I'd
12 rather have brain fog than hear voices. Because
13 sometimes, if you're on a lot of antipsychotic, the guys
14 do tell me it's like thinking through a fog or something.
15 And he did tell me that at one time, that he would rather
16 have that than hear the voices.

17 Q Now, did you consider the possibility that he was
18 faking?

19 A Well, in that locale, I consider that with everybody
20 because we do have a number of people that do fake for
21 various reasons, to get in special programs or just for a
22 variety of reasons. However, I never saw anything in his
23 behavior that would confirm that or make me think that he
24 was faking. I can't imagine somebody would -- generally,
25 people that are faking don't ever make it to the doses of

1 medication that he's on. You're either going to tell me
2 yeah, that dose stopped or they're going to ask me for
3 something or try to flatter me or intimidate me to get me
4 to do something that they want done. There's just a lot
5 of things that people that try to manipulate us do, and
6 that happens a lot. That never happened with him. He
7 never asked me to do anything or did any of those things.
8 And he would tell me if the medicine was working or wasn't
9 working. He never suggested that I give him one of the
10 medicines that they can sell on the black market or
11 anything like that. So I did not -- although I
12 entertained it, I never felt that he was trying to
13 manipulate me. And none of the staff ever told me they
14 felt like he was trying to manipulate them either.

15 Q Is that something -- like, I feel strange now that I
16 don't have these voices, is that something that somebody
17 would say if they're trying to manipulate you?

18 A I've not had anybody say that that was trying to
19 manipulate me.

20 Q At some point in time, you changed your diagnosis to
21 schizo-affective disorder, is that right?

22 A Yes. Because I thought there was an affective
23 component because sometimes he's had the pressured speech.
24 And again, I never saw a full blown manic attack. You
25 can -- some people with mania are happy and some get

1 agitated. So, I mean, he did have described periods of
2 agitation, which could be consistent with that. And
3 diagnoses in psychiatry are not as clear cut, it's not as
4 easy as it is in other forms of medicine. There's nothing
5 I can measure like a blood pressure or culture for a
6 bacteria because a lot of the criteria of the diagnoses
7 overlap and a lot of it's based upon the psychiatrist or
8 the person treating or interviewing. So that's a big
9 criticism, I guess, with the DSM-5 and it takes years for
10 them to come up with new books because there's so much
11 controversy.

12 Q Now, on October the 9th of 2014, did you add Prozac
13 to his --

14 A I added it at one point in time. I don't know if
15 that was the exact date, but I did add Prozac when he said
16 he was depressed, yes.

17 Q Now, had he already told you that the voices were
18 starting to go away by the time you added the Prozac?

19 A I don't know. I don't know for sure. But it's not
20 unusual if someone is hearing voices and depressed that I
21 would use an antidepressant and an antipsychotic.
22 Although Geodon is a mood stabilizer, it's not a great, by
23 itself, antidepressant.

24 Q At some point in time, did you discontinue the
25 Prozac?

1 A Yes. He hadn't -- we were switching to a new medical
2 record system, not all the medication orders were going
3 through, so there was a problem for a little while. I
4 think he was without the Prozac and he said he didn't feel
5 any different without it than he did with it and he didn't
6 see a need to continue it. So I was okay with that.

7 Q Did he continue to be stable for about a year after
8 you discontinued the Prozac?

9 A There was a long period of time that when he would
10 rate his mood, I think when the counselor went by
11 regularly, and he would say he was eight out of ten. He
12 was okay. So, I mean, there was a period of time that he
13 was doing fairly well, yes.

14 Q Let me skip ahead to August 28th of 2015. That would
15 be the anniversary of the children's deaths. Do you
16 recall that day?

17 A I know that I wasn't present when it happened, but he
18 had made a suicidal gesture or attempt. Some rules had
19 been, I guess, enforced in a program he was in that are
20 usually -- had been enforced in the lockup units, which is
21 that when medication is distributed -- because they
22 have -- it's done through the door, they have to stand at
23 the back of the room because, in some units, people would
24 throw things on the nurses or grab or do things. So they
25 had him stand in the back of the room and medication was

1 placed at the door flap. And, apparently, they
2 implemented it in his unit, but they didn't tell people.
3 And I think he thought that they were just doing that to
4 him. And he got -- he didn't get his medication because
5 he didn't stand in the back of the room for, I think,
6 maybe a couple pill passes. And he made a suicidal
7 gesture or attempt to hang himself. Like I said, I was
8 not there. I did see the video later and I talked to him.
9 He said he was angry. I mean, he had told, I think -- the
10 counselor, I think, he had told that, you know, it was the
11 anniversary of his children's death, but he didn't tell me
12 that. Just was --

13 Q I'm going to show you another page of the records.
14 And the records sort of go in reverse date order, is that
15 right? You start at the bottom?

16 A Yes, that's correct on this page.

17 Q Now, in the days leading up to the 28th, was he
18 talking about his Geodon?

19 A Yes, thought that it needed to be increased, this
20 says. That was August 18. And we did increase it. And
21 he said after the increase that he felt more angry, which
22 sometimes, the restlessness, the side effect, akathisia,
23 the movement can be an internal restlessness that people
24 that interpret as anger. And -- I'm seeing if that's the
25 day that I -- that's not the day that I started the

1 Propranolol for the side effects. So I'm not sure why he
2 was more angry, but it could have been more side effects
3 or it could have been -- it could have been a lot of
4 things. I don't know.

5 Q On the morning of August the 27th, 2015, is there a
6 note about whether or not he got seen that morning?

7 A Apparently, he was scheduled to be seen in psych
8 clinic that day, but they were unable to pull him. There
9 was not enough security staff available, so I was unable
10 to see him that day. And then the nurse said that because
11 he didn't go to the back of his cell, they listed that as
12 refusal of medication. If you don't fully comply with
13 their rules, that's counted as a refusal. And he did not
14 receive medication.

15 Q And then on the morning of the 28th is when he tried
16 to hang himself?

17 A Yes, I think so.

18 Q And you watched the tape from the night before?

19 A I did watch the tape.

20 Q And if you could tell the ladies and gentlemen about
21 how his actions were the night before?

22 A He was very restless. He kept moving around in the
23 bed, getting up, lying down, getting up, lying down. I
24 mean, he tied the sheet -- I think it was a sheet --
25 around his neck and then he untied it. I mean, it seemed

1 there was some ambivalence about the whole thing.

2 Finally, he did tie it and, eventually, the staff came and
3 got him out.

4 Q With regard to your diagnosis of schizo-effective
5 disorder, did you have evidence of symptoms of
6 hallucinations?

7 A He told me multiple times he hallucinated, yes, so
8 I -- that was my evidence, was his word and I had no
9 reason not to believe him.

10 Q And did you -- through medication, were you
11 ultimately able to resolve the hallucinations?

12 A Yes, the auditory hallucinations stopped with
13 medication. Occasionally, I think he still had the
14 permutations would come and go, things he would see, but
15 the things he heard stopped.

16 Q Did you observe disorganized speech?

17 A I wouldn't say it was disorganized. At times, it was
18 strange and it wasn't -- his thoughts were jumbled back
19 and forth between two topics, maybe, so more like flight
20 of ideas I might call that. But if you separate those two
21 things out, I guess they kind of made sense if you could
22 keep up with several trains of thought at the same time.
23 But he did have strange ideas. Like, one time, he was
24 telling me about the way he saw his psyche in a triangle.
25 It wasn't disorganized really, I understood what he was

1 saying, but it was strange.

2 Q Did he talk about that he had three personalities in
3 him?

4 A Yes, that was part of that, yes.

5 Q Would you consider that pressured speech?

6 A He did have pressured speech several times, yes, that
7 just -- I could hardly talk because he had to get it all
8 out, you know.

9 Q Is that sort of a hallmark symptoms of schizophrenia?

10 A More of an affective component. More on the -- that
11 would be leaning more toward like bipolar, maybe. Again,
12 I never -- I have no documentation he ever had a full
13 blown manic episode, but like hypomania.

14 Q Is that why you said schizo-affective?

15 A Yes, because of the affective components with the
16 depression and the pressured speech and the agitation,
17 that could have been that.

18 Q Did you observe negative symptoms?

19 A Absolutely. I mean, I cared more about his hygiene
20 and whether they gave him clean uniforms or he got a shave
21 or a haircut than he did. He didn't really -- those
22 things weren't important to him for a lot of time. And
23 I'd have to go get the officer and say, you've got to get
24 a clean uniform, you know. Because he didn't ask, he
25 didn't really care. He's not a particularly talkative

1 person, so, I mean, that may just be his personality
2 structure that he doesn't talk a lot or explain a lot or
3 anything, but there was paucity of speech a lot. But I'm
4 not sure if that's just the way he is or that could also
5 be a negative symptom.

6 Q Do you medicate people who you don't believe are
7 sick?

8 A No.

9 Q In your opinion, is Tim Jones mentally ill?

10 A Yes.

11 Q Do you have any question about that?

12 A No. No, I believe he's mentally ill.

13 Q Did I ask you to try and average out how many pills
14 he was sort of taking?

15 A You did. I can't remember -- I did it for you, but I
16 don't remember the numbers. As we were changing medicines
17 and trying to treat side effects, I mean, sometimes he was
18 on a lot of medications. And the Department of
19 Corrections doesn't always carry the highest strength
20 available of some medications, so. Like, they make an 80
21 milligram Prozac, but we only carry 20, so -- 20
22 milligrams, if you want to give somebody 80, you've got to
23 give them four pills. That's part of the problem. At
24 Kirkland, one of the times he was on the most pills, he
25 was taking ten in the morning and eight in the evening,

1 that was April of 2017. And when he was at Lee, which was
2 toward the end, he was taking three pills in the morning
3 and five pills in the evening.

4 Q It was three in the morning?

5 A And five in the evening.

6 Q And that was until he left your care to go to the
7 Lexington Detention Center?

8 A Yes, that's what he was on at the end of when I was
9 seeing him, eight a day, yes.

10 Q Now, have you seen people on spice, on synthetic
11 cannabinoids?

12 A I've seen a number of our inmates on synthetic
13 marijuanas. So, I mean, usually, we call it K2 and they
14 all -- there's a lot of variability in the synthetic
15 marijuanas because we don't know what they add into it,
16 yes.

17 Q And have you treated people that were on --

18 A Yes.

19 Q -- the K2 or the spice?

20 A Yes.

21 Q Have you treated them with antipsychotic symptoms?

22 A Yes.

23 Q Do you -- do they require -- how long do you treat
24 them?

25 A Well, generally, they're better within a few days.

1 Those that have underlying psychotic disorders sometimes
2 take a few months to get better.

3 Q Is Tim's condition a result of spice or is he
4 mentally ill?

5 MS. MAYES: Objection, Your Honor, outside the scope.

6 THE COURT: Rephrase that and stay within the scope.

7 Q In your opinion, after having treated people for
8 spice and treated people with mental illness and spice and
9 treated people with mental illness, can you tell us what
10 Tim's condition is in your opinion?

11 A I believe he has an underlying mental illness. It
12 could have been exacerbated with his drug usage. I mean,
13 certainly, he used drugs. That could change your brain's
14 chemistry.

15 Q Does that make him not mentally ill now?

16 A I think he still has -- the last time I saw him, I
17 thought he still had an underlying mental illness and it's
18 one that would not go away, so I would assume he's still
19 mentally ill now.

20 MR. YOUNG: Beg the Court's indulgence.

21 Q Do you know about how many times you met with Tim?

22 A I do not. I saw him consistently for a little over
23 four years. In the beginning, I probably saw him every
24 other week, sometimes every week, depending on how things
25 were going with him. His level of care when he was at Lee

1 was outpatient mental health. Our policy requires us to
2 see people on medication or outpatient mental health, at
3 least, every three months. So, I mean, it went from more
4 frequently to less frequently. And at Lee, it's a lot
5 more difficult to get people pulled to be seen. So I
6 didn't count the number of times, but I saw him a number
7 of times. And I can't -- I didn't count them, I'm sorry,
8 I don't know how many.

9 Q And could you estimate like how many hours over those
10 four years you spent with him?

11 A A lot. I don't know, a lot, though.

12 MR. YOUNG: Thank you, Dr. Wood. Please answer any
13 questions the State has.

14 CROSS-EXAMINATION

15 BY MS. MAYES:

16 Q Good morning, Dr. Wood.

17 A Good morning.

18 Q And I think when we spoke before, one of the things
19 you indicated is that you're actually eligible for
20 retirement. You've been a state employee for over 28
21 years?

22 A Yes. You guys pointed that out to me and I told you
23 I like my job, so, yes.

24 Q And that's one of the reasons you're still doing what
25 you do, because you like working with inmates?

1 A I do.

2 Q And Dr. Wood, just to clarify how your role is
3 different than a forensic psychiatrist, for example, your
4 role is to determine what issues an inmate may have once
5 they're in the Department of Corrections, correct?

6 A That is correct. I don't -- we don't have a lot of
7 pretrial detainees, but for those we do, I don't talk to
8 them about their crime unless it involves their current
9 treatment, something from it. So, I mean, that's not my
10 role is to deal with the crime, but to deal with the
11 symptoms and treatment, that is correct.

12 Q Treating the inmates for any symptoms that they
13 describe once they're actually incarcerated?

14 A That is correct.

15 Q And a forensic psychiatrist, and just to clarify,
16 that's a separate form of board certification within the
17 field of psychiatry, correct?

18 A Right. That's in -- I mentioned that I did
19 additional training in child psychiatry, but I chose not
20 to work with children. They do additional training in
21 forensic psychiatry, so.

22 Q And then the forensic psychiatrist would have the job
23 of actually reviewing materials related to the crime to
24 render an opinion about whether or not someone is
25 criminally responsible or knew right from wrong at the

1 time they committed their crime, right?

2 A That's correct.

3 Q And that is a separate type of field than what you
4 do?

5 A That is correct.

6 Q And so to clarify, you are not here to give any
7 opinion whatsoever as to his state of mind on the night of
8 August 28th, 2014, correct?

9 A That is correct. I didn't talk to him about his
10 state of mind that day.

11 Q So part of your role in treating an inmate is you
12 meet with them and you access whatever symptoms they're
13 describing to you at the time?

14 A Yes.

15 Q And, of course, you're looking for signs of or
16 behavioral symptoms that may correlate with that, but
17 you're also interested in obtaining that history from the
18 patient?

19 A Yes.

20 Q And I believe your words on direct examination were
21 as it relates to Mr. Jones, you said he told me and my
22 evidence was his word. And that's regarding --

23 A For most of his history, yes.

24 Q That would be his history of voices, his history of
25 hallucinations, things of that nature, correct?

1 A Yes, that is correct. I mean, it's -- with
2 hallucinations, you pretty much always have to take
3 someone's word. You're correct, yes.

4 Q And then leading up to the trial of this case, one of
5 the people that met with you and another one of his
6 providers, and if you can just inform us, who is Jim Page?

7 A He is a clinical counselor that works with me and
8 that saw Mr. Jones sometimes with me or independently.

9 Q All right. And then who is Tashiro Inabinet?

10 A Mr. Inabinet was the -- he's now associate warden at
11 Evans, but at that time, he was the counselor in charge of
12 the unit at Kirkland that Mr. Jones was assigned to. And
13 he made regular rounds and saw -- saw the guys on a
14 regular basis. Made daily rounds and I think he made
15 weekly notes of how they were doing.

16 Q All right. So the treatment plan for an inmate isn't
17 limited just to you, but you actually have other staff
18 members who are seeing him on a regular basis as well?

19 A That is correct.

20 Q And everybody makes notes and you, as one of the
21 treatment providers, have access to those notes and review
22 those notes and take all of that into consideration in
23 your treatment, correct?

24 A Yes. I review some of the notes. Now, I don't read
25 all of the group notes. Of course, I don't -- he wasn't

1 allowed to be in groups because he can't mix with the
2 other inmates. But, in general, yes, I review a lot of
3 the notes, not all of them.

4 Q All right. And then you and Jim Page, who you've
5 just told us about, in leading up to this trial, one of
6 the things y'all did is y'all sat down and met with the
7 court-appointed forensic psychiatrist, Dr. Richard
8 Frierson, correct?

9 A Yes, he did meet with us.

10 Q And you're familiar with Dr. Richard Frierson just
11 from years of doing the psychiatry work that you do?

12 A That is correct.

13 Q I'm sure it wasn't the first time you'd met with him
14 about an inmate?

15 A No, we see him a lot.

16 Q And so when you guys sat down and met with Dr.
17 Frierson, one of the things that was indicated that you --
18 you had not seen Mr. Jones display disorganized thinking
19 or behavior, does that sound correct?

20 A That's correct. I never saw him totally lose it and
21 have disorganized behavior. I did not see that.

22 Q Another thing that was noted is that where Mr.
23 Inabinet is concerned, and I believe you told us just a
24 few moments ago who he is and how he plays a role in the
25 treatment plan, that he reported that although Mr. Jones

1 complained of hearing voices, he was never observed to be
2 responding to the stimuli one would expect with
3 hallucinations. Are you familiar with that notation by
4 Dr -- or by Mr. Inabinet?

5 A I don't recall seeing it. Not all the people that
6 hallucinate respond. Mr -- I mean, I never saw him
7 respond either, but a lot of them do not. And he was on
8 medication every time I saw him except the very first
9 time, so. But that's true, I never saw him respond to.

10 Q So in addition to the notes of Mr. Inabinet, you
11 would also agree that you never observed the Defendant
12 responding to any internal stimuli as if one were
13 hallucinating?

14 A Not everybody that I see that hallucinates actually
15 responds to them, so I wouldn't say that discounts it, but
16 I never witnessed that with him.

17 Q And I believe another thing you testified to on
18 direct examination was about malingering. And you said
19 that you, yourself, had not seen any signs of malingering?

20 A That's correct.

21 Q Then I believe you also said that you weren't aware
22 that the staff had observed that either?

23 A That is correct.

24 Q Are you aware of a notation that is in his chart and
25 in his records from August 28th, 2015, from the treating

1 nurse, Justin Gudvangen that what he was reporting about
2 hearing voices --

3 MR. YOUNG: I'm going to object to hearsay.

4 MS. MAYES: It's underlying data, Your Honor. I can
5 rephrase that.

6 THE COURT: All right. Rephrase.

7 Q I believe that was discussed in your meeting with Dr.
8 Frierson, wasn't it, Dr. Wood?

9 A I discussed in a meeting with someone. Mr. Gudvangen
10 was the HCA, the head nurse, at that unit. He didn't
11 actually come up there very often, so I don't know where
12 he got the information for his note. I did discuss that
13 note with him afterwards because I was concerned about why
14 he would say that, so.

15 Q Okay. And that note, specifically, in the chart is a
16 notation regarding malingering and manipulating behaviors,
17 correct?

18 A That's what Mr. Gudvangen said.

19 Q And, specifically, was because he had missed a dosage
20 of Geodon and then immediately reported hearing voices.
21 And according to the notation, he would not have
22 experienced that after having missed just one dosage of
23 Geodon, correct?

24 A I wouldn't expect full fledged voices to return with
25 missing one dose. I think it was two doses, but, anyway,

1 I would not expect that. He did his Propranolol, I think,
2 and I thought he might be experiencing withdrawal
3 akathisia, the abnormal movements, internal restlessness
4 is what I thought. But yes, I did not concur with Mr.
5 Gudvangen's assessment and I don't know anyone else who
6 did.

7 Q All right. And I just wanted to clear that up
8 because I think you had mentioned about staff had not
9 observed that, but there was, in fact, a notation about
10 that --

11 A And he wasn't up there. I don't think he observed
12 that either, but he came to that conclusion somehow.

13 Q Okay. And then, Dr. Wood, I know you addressed that
14 there were no symptoms of disorganized behavior, but you
15 were asked on direct examination about disorganized
16 thinking. And I believe you said that there were
17 sometimes thoughts that were flights of things, correct?

18 A Well, flight of ideas that he would be jumping from
19 topic to topic and talking about strange things, but I
20 didn't feel that it was disorganized. It made some sense
21 to me.

22 Q It made some sense because, ultimately, there would
23 be some type of purpose behind the thought, correct?

24 A He was explaining to me how he -- various things,
25 yes.

1 Q And are you aware of the note in his record from
2 January 2015? I do believe it is also something that you
3 discussed with Dr. Frierson. But in January 2015, he was
4 noted to be angry. He struck a door with his fist. He
5 was then treated for, I believe, some cuts to his hand.
6 But he reported that there were people on the outside who
7 were giving his wife a pity party. And that made him mad,
8 didn't it?

9 A I recall seeing that note. That's what the note
10 says. I mean, he never told me about that, but there is a
11 note that says that.

12 Q All right. So that's not disorganized thinking, he's
13 actually angry that people on the outside, on the street
14 have sympathy for his wife, the mother of the five
15 children that were killed, correct?

16 A I mean, that's what he told the person, that's all I
17 know.

18 Q But you would agree that's not disorganized thinking?

19 A That does not indicate disorganized thinking to me.

20 Q And then on that same topic of disorganized thinking,
21 there is also a notation in the record from May 21 of
22 2015, regarding homicidal ideations. Do you recall that?

23 A No. That one, I do not recall.

24 Q That would have been a notation made by Inabinet --
25 I'm sorry, by Page, who you mentioned earlier, that he

1 reported homicidal ideations towards two people on the
2 street. Wouldn't that be something that you would have
3 taken into account and wanted to address during his
4 treatment?

5 A Every time I saw him, I asked him about homicidal
6 ideation and I don't think he ever acknowledged that to
7 me.

8 Q But, again, that, in and of itself, does not
9 represent disorganized thinking, does it? There would be
10 a purpose or a reason behind that, correct?

11 A That particular statement by itself, taking out of
12 context would not indicate disorganized thinking.

13 Q And then, Dr. Wood, about the Geodon, I just want to
14 ask you a few questions about that because you were the
15 prescribing physician on that. And, of course, those
16 Geodon levels increased over the course of time?

17 A Yes.

18 Q But Geodon can result in cognitive impairment,
19 depending on the dosages, correct?

20 A That is correct.

21 Q And I'm going to show you what is State's Exhibit
22 196, being a publication from Pfizer, specifically, about
23 the side effects associated with Geodon. And then, also,
24 State's 195, which would be his prescription history for
25 that drug?

1 A Uh-huh.

2 Q So cognitive impairment is one of the side effects
3 that goes along with that, correct, can be?

4 A It can be, yes.

5 Q And in his case, I believe, there were notations in
6 his record about experiencing brain fog. I believe that
7 was the word used in his chart. You are familiar with
8 that?

9 A Yes, he did describe that to me at one point in time.

10 Q So he was experiencing some type of side effect from
11 the Geodon, which would be a normal reaction, correct?

12 A For some people, yes.

13 Q And another one of those warnings that goes along
14 with a drug like Geodon is that you're not supposed to
15 drive, use heavy equipment, depending on the dosage,
16 correct?

17 A Yes.

18 Q So one would expect that you wouldn't want to conduct
19 psychological testing if there are large doses of Geodon
20 being prescribed, correct?

21 A We never did a level. And again, if you don't have
22 food, it's like half as effective, so -- but if you have a
23 high level, you are correct. So, I mean, I can't say for
24 sure how much he actually absorbed.

25 Q And it can also affect simple task, like the ability

1 to stay on task or the ability to stay on track, correct,
2 in communications, things of that nature?

3 A It could cause sedation, which could affect that.

4 Q And then some other possible reasons that Geodon
5 would be prescribed to an inmate -- well, you've done your
6 job so long and have treated so many inmates, can you tell
7 us through your own experience as a psychiatrist some of
8 the other conditions that you have prescribed Geodon for?

9 A Generally, we prescribe Geodon as an antipsychotic
10 for people that are out of touch with reality or hearing
11 things or seeing things, or as a mood stabilizer.

12 Q And when we talk about a mood stabilizer, I just want
13 to follow-up on that because bipolar disorder on its own,
14 even if someone isn't schizophrenic or schizo-affective,
15 they just have a mood disorder, serious mood disorder,
16 such as bipolar. Geodon is an accepted form of medication
17 for that condition, correct?

18 A Yes. Yes, it is.

19 Q And there are certainly physicians that prescribe it
20 just for bipolar disorder?

21 A Yes.

22 Q And is that something y'all have done there at the
23 Department of Corrections as well?

24 A Yes, we do.

25 Q Another known use for Geodon could be if a patient is

1 experiencing severe insomnia. Do you know whether the
2 Department of Corrections has provided that for inmates
3 who experience insomnia?

4 A No, we don't. We have very strict guidelines on
5 insomnia. We don't use Geodon for that.

6 Q But it's acceptable just for a mood disorder in and
7 of itself, correct?

8 A That is correct.

9 Q And regarding a mood disorder, that's actually one of
10 the things that you discussed with Dr. Frierson when you
11 met with him, correct?

12 A Yes, that I think there was a mood component to his
13 illness. Because you can have bipolar with psychosis, so
14 you can have primarily bipolar and still hear voices or
15 see things, yes.

16 Q So you did testify a few moments ago that it's your
17 opinion as a psychiatrist that there is an underlying
18 mental illness. A mental illness can include a mood
19 disorder, correct?

20 A Yes.

21 Q So you're not reaching an opinion beyond that at this
22 point in time, are you?

23 A No. I say he has a mental illness that has psychotic
24 components and I think affective components as well. I
25 don't think he neatly -- in my opinion, didn't fit in any

1 of the boxes completely, yes.

2 Q All right. Didn't fit in any particular box
3 completely?

4 A The diagnostic criteria, yes.

5 Q And then part of what goes along with trying to fit
6 someone in a box or reach an actual diagnosis pursuant to
7 the DSM, we all rely on this, but one of the components
8 that goes along with trying to fit someone in a specific
9 box in accordance with the DSM would be to rule out
10 substance abuse, correct?

11 A Yes, that's generally --

12 Q Because any underlying condition has to be explained
13 that it's separate and apart from substance abuse,
14 correct?

15 A Yes, that's generally an exclusion for most of them.

16 Q And as it relates to Mr. Jones, have you been
17 provided his substance abuse records from Department of
18 Corrections in Illinois?

19 A No.

20 Q So a history that included multiple occasions of LSD
21 or acid use, a hallucinogenic, in his teens, that wouldn't
22 have been provided to you?

23 A No, we did not have those records.

24 Q Or the heavy usage of crack cocaine, for example,
25 around 2000, 2001, were you provided with that

1 information?

2 A Other than he told me cocaine was his drug of choice,
3 no. We don't have the outside information. I mean, he
4 did say he used a number of drugs. I'm pretty certain he
5 did not use drugs during the four years he was SCDC, so
6 whatever effects he had were permanent changes, which
7 may -- you know, certain drugs can cause permanent brain
8 changes.

9 Q Well, and going back to the history that he's
10 self-reporting to you about voices and hallucinations,
11 crack cocaine when used at high levels can result in
12 symptoms similar to psychosis, correct?

13 A That is correct, but, again, he told me that the
14 voices started before the drug use. So that is the
15 information that I had.

16 Q And then once he arrived in 2014 after his arrest for
17 these crimes, he reported that he had been using spice,
18 which is known --

19 A Well, he said synthetic marijuana, yes.

20 Q Known to contain an ingredient AB Pinaca, correct?

21 A Different -- I mean, it contains lots of ingredients
22 because you never know what people put in it, right.

23 Q And as it relates to AB Pinaca, were you provided
24 with specific information as to how often and how
25 frequently he was using that up to the date of these

1 crimes?

2 A No.

3 Q And were you provided information as to the known
4 symptoms as side effects of AB Pinaca?

5 A Just of general synthetic cannabinoids, not that
6 particular one -- I mean, not one particular possible
7 component, no.

8 THE COURT: We need a five-minute break. So hold
9 what you've got. You stay right there, Doctor. The jury
10 is asking for a quick break, I'm going to give it to them.
11 Don't talk about the case. See you back here in a few
12 minutes.

13 (WHEREUPON, the jury was excused from the courtroom
14 for a break.)

15 THE COURT: We will take a short break.

16 (WHEREUPON, a short break was taken.)

17 MR. YOUNG: We have a matter before the jury comes
18 back in.

19 THE COURT: Okay.

20 MR. YOUNG: Your Honor, Ms. Mayes has continued to
21 refer to heavy crack use by the Defendant. That is not
22 supported in anything the Defense has been provided or any
23 records in discovery. These are misstatements of fact in
24 front of the jury, which the prosecution has a duty to
25 correct under the cases of State vs. Riddle, the Napue

1 case and the special rule of prosecutors under 3.8 -- the
2 rule of candor specific to prosecutors and the rules of
3 professional conduct under 3.8. For the record, this cite
4 is Riddle vs. Ozmint, 631 S.E.2d 70, and the Napue vs.
5 Illinois, which is a United States Supreme Court case, 360
6 U.S. 264. It's the State's duty to correct those
7 mistakes.

8 MS. MAYES: And, Your Honor, I would correct it by I
9 believe she's already said that his drug of choice as
10 described to her was cocaine. I would ask her if she's
11 aware that when he was arrested in 2001, it involved a
12 rock form of cocaine, which is crack cocaine. That would
13 be --

14 THE COURT: I think the objection is you're saying
15 heavy use rather than he used cocaine and reported to you
16 that that was his drug of choice is more characteristic of
17 the evidence presented rather than heavy use.

18 MR. YOUNG: Well, she's trying to paint this picture
19 of somebody who's a crackhead and that's not true and it's
20 not supported by any evidence. And it's the impression
21 that she's created in front of the jury and the State has
22 an obligation to correct it.

23 THE COURT: All right. So instructed. I will direct
24 Ms. Mayes to use caution in her characterization. You
25 ready to go? Everybody ready, bring them.

1 (Whereupon, the jury came into open court at
2 approximately 10:06 a.m.)

3 THE COURT: All right. Ms. Mayes, you may continue.

4 MS. MAYES: Yes, sir, Your Honor.

5 CONTINUE DIRECT EXAMINATION

6 BY MS. MAYES:

7 Q And, Dr. Wood, I believe you were saying previously
8 that you were not provided his records from his treatment
9 within the Department of Corrections in Illinois, correct?

10 A That is correct.

11 Q Back in 2002. So with part of his drug history being
12 the use -- self-reported use of acid and cocaine, but that
13 was not information you would have had in making your
14 assessment, correct?

15 A Not their records, no. We did not have their
16 records.

17 Q And the fact that he was arrested in 2001, it would
18 have been the rock form of cocaine or crack cocaine, that
19 would not have been information that you had?

20 A I did not have anything -- any information about
21 2001, no.

22 Q But he reported that his drug of choice had been
23 cocaine, at least, at some point prior in his life,
24 correct?

25 THE COURT: Mr. Young?

1 MR. YOUNG: Your Honor, we would object. That's not
2 a correction of false statement of heavy crack cocaine
3 use.

4 Q Let me ask you this way --

5 THE COURT: Rephrase your question consistent with
6 the evidence that's been presented.

7 Q Doctor, you're familiar with him having used cocaine
8 in his past, correct?

9 A He did say that he had used cocaine in the past.

10 Q And indicated to you that it was his drug of choice,
11 correct?

12 A That is correct. He said it was his drug of choice,
13 but I don't think -- when he talked to me, that was not
14 what he used most often, but it was his drug of choice.

15 Q All right. And when he talked with you, what was it
16 that he used most often?

17 A The marijuana, maybe the synthetic marijuana as well,
18 I don't recall.

19 Q And I believe he reported that he had been using that
20 throughout his life since a young teenager, correct?

21 A Yes, he had started using it as a teenager.

22 Q Now, Dr. Wood, in reaching a diagnosis under the
23 Diagnostic and Statistical Manual of Mental Disorders, the
24 DSM, it helps to have a clear picture of one's daily
25 activities, correct?

1 A Yes.

2 Q In terms of what they're thinking, how they're
3 behaving, anything along those lines, right?

4 A It is -- yeah, it's helpful to observe them.

5 Q And, Doctor, in modern society, a smart phone can be
6 an essential tool in examining someone's daily activities,
7 would you agree with that?

8 A I'm not sure what you mean.

9 Q Communications through text messages, that can be a
10 reflection of one's thoughts and communications?

11 A Yes, that can. Of course, he did not have a cell
12 phone in -- while he was with us.

13 Q And smart phones can contain one's internet search
14 history, calendars, appointments, anything along those
15 lines that go to show one's daily thoughts and behaviors,
16 correct?

17 MR. YOUNG: Object to relevance.

18 THE COURT: Sustained. Move on.

19 Q You didn't have any information, Dr. Wood, that had
20 been provided to you regarding the extraction from the
21 Defendant's phone up through August 28th, 2014, correct?

22 A No, I did not have any information about his phone.

23 Q And so the extraction was not provided to you by the
24 Defense prior to them calling you as a witness today?

25 A No, I did not see any information about his phone

1 usage.

2 Q And then in reaching your determination as to his
3 current mental illness, I believe was your testimony on
4 direct examination, were you provided any work performance
5 records, evaluation reports, things of that nature to show
6 how he was behaving and thinking leading up to his
7 incarceration?

8 A No, I had no records.

9 Q Including work records?

10 A I had no records of any kind.

11 MS. MAYES: Thank you, Dr. Wood.

12 REDIRECT EXAMINATION

13 BY MR. YOUNG:

14 Q Dr. Wood, are you being paid by anybody to be here?

15 A No, sir.

16 Q You're just the treating psychiatrist for --

17 A Just the treating psychiatrist, yes, sir.

18 Q Do you need to have disorganized thinking in order to
19 be diagnosed with schizophrenia or schizo-affective
20 disorder?

21 A No. That's one of the list of criteria that you have
22 to have, at least, two of, but you don't have to have that
23 particular one, no.

24 MR. YOUNG: Thank you, Dr. Wood.

25 THE COURT: All right. You may step down. You're

1 free to go.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Young.

4 MR. YOUNG: Your Honor, the Defense would call Dr.
5 Julie Dorney.

6 (Whereupon, a bench conference was held in the
7 presence of the jury but out of the hearing of the
8 jury and is stated below.)

9 MR. YOUNG: Judge, just pursuant to the Court's prior
10 rulings, we won't be asking her about social history
11 testimony before--

12 THE COURT: You can ask her if she considered it
13 because, she can consider it.

14 MR. YOUNG: We won't be asking her about specific
15 events.

16 THE COURT: All right. The grandmother had this or
17 the grandmother did that.

18 MR. YOUNG: Right. The grandmother was raped at the
19 age of 12 and had a kid and all of that stuff is stuff
20 that the Court has ruled we can't get into.

21 THE COURT: Off limits, correct.

22 MR. YOUNG: And self abortion and that stuff is off
23 limits.

24 THE COURT: Off limits but she has reviewed all of
25 those records.

1 MR. YOUNG: Sure.

2 THE COURT: You can ask her that. That is consistent
3 with my ruling, yes.

4 MR. GRAHAM: I don't have a report but she made a
5 comment on, seventh interview by Mississippi and all of
6 that.

7 MR. YOUNG: Yeah, we are not.

8 MR. GRAHAM: Okay, I didn't want to get into what you
9 already ruled on about what Marty Patterson said.

10 THE COURT: For your protection, your objection to my
11 limiting you to that social history is noted right now.

12 MR. YOUNG: Still have to do a proffer.

13 THE COURT: Okay.

14 (Whereupon, end of bench conference.)

15 JULIE DORNEY, being
16 first duly sworn, testified as follows:

17 THE CLERK: Have a seat right up there, ma'am. Once
18 you're seated, speak up loud and clear, state your full
19 name, spelling your last.

20 DIRECT EXAMINATION

21 BY MR. YOUNG:

22 Q Good morning, Dr. Dorney.

23 A Good morning.

24 Q Can you tell the jury a little bit about yourself,
25 who you are, your background and your credentials?

1 A My name is Julie Rand Dorney, D-O-R-N-E-Y. I am a
2 forensic psychiatrist. And my educational history is I
3 attended the University of Arkansas and graduated from U
4 of A in 1985 with a degree in chemistry. I went to
5 medical school at the University of Arkansas and graduated
6 in 1989. And I completed general psychiatric residency
7 training at Emory in 1993 and formal forensic in 1995 at
8 Emory. And since that time, I've been on faculty at Emory
9 as Assistant Professor. Currently, an Adjunct Associate
10 Professor and I'm the Assistant Director of Forensic
11 Training at Emory.

12 Q Do you treat patients?

13 A The majority of what I do now is actually treat
14 patients. For many years, I actually worked as one of the
15 lead evaluators on the forensic unit for patients who were
16 found incompetent to stand trial or to assess them for
17 criminal responsibility, insanity. I left the forensic
18 unit in 2008, and for the last 10 years I've worked in
19 private practice.

20 Q The forensic unit, is that the State unit in Georgia?

21 A That's correct. It's Georgia Regional Hospital. The
22 large forensic unit is in Atlanta, but there are multiple
23 forensic units across the state.

24 Q Have you testified for both the Defense and the State
25 in various cases?

1 A Yes, I have. I've testified approximately 150 times,
2 many more times for the Prosecution than for the Defense.

3 Q And have you been qualified as an expert?

4 A Yes.

5 Q And how many times have you been qualified as an
6 expert?

7 A Approximately 150 times.

8 MR. YOUNG: Your Honor, at this time, the Defense
9 would move to qualify Dr. Dorney as an expert in forensic
10 psychiatry.

11 MR. GRAHAM: No questions, Your Honor.

12 THE COURT: She is so qualified. So Dr. Dorney is
13 qualified to offer opinions in the field of forensic
14 psychiatry.

15 Q So, Dr. Dorney, can you tell the jury how you became
16 involved in the case of Tim Jones?

17 A I think you contacted my office in July of 2017 to
18 ask me if I would consider evaluating a Defendant in South
19 Carolina.

20 Q And are you paid for your time?

21 A Yes.

22 Q And how much?

23 A Approximately \$400 per hour. I've not sent an
24 invoice for this case yet, but I will after it's over. I
25 intend to adjust off a significant portion for Government

1 cases.

2 Q For cases that you do with Public Defender offices?

3 A Correct, yes.

4 Q So I know that the jury -- and you've issued a report
5 in this case?

6 A Yes.

7 Q Can you tell the ladies and gentlemen of the jury
8 what your conclusions were with regard to the criminal
9 responsibility of Tim Jones?

10 A Yes. So it's my opinion that related to the death of
11 Nahtahn that Mr. Jones did not recognize that the legal
12 wrongfulness of what he was doing regarding Nahtahn's
13 behavior and his punishment of Nahtahn. And regarding the
14 deaths of the other four children, it's my opinion that he
15 did not have the ability or capacity to distinguish moral
16 right from moral wrong. He was able to distinguish legal
17 right from legal wrong with that particular set of deaths.

18 Q I'm going to go back to your report and sort of talk
19 about how you came to that conclusion --

20 A Well, this is a very -- I'm sorry, I cut you off.

21 Q Did you make a diagram that would help the jury
22 follow along with your testimony?

23 A Yes, I did. Actually -- I did. You want to show it
24 or --

25 MR. YOUNG: Any objection from the State?

1 MR. GRAHAM: No.

2 THE COURT: Okay.

3 A I apologize. It's a little hard to read the text the
4 further you go back. But, basically, just in summary,
5 when I was reviewing this case, I got thousands of pages
6 of documents from the State -- or through the attorney's
7 office from the State. I also got thousands of pages of
8 medical records from Corrections and from -- just various
9 medical records of Mr. Jones and then other documents,
10 interviews, you know, other collateral sources and other
11 reports from other experts and doctors who had evaluated
12 him. I felt like it would be helpful when we were looking
13 at that time of the crime to go back and put all the
14 pieces together. And it's important to look at his
15 history growing up. It's also important to look at the
16 few weeks to months before the offense, the offense itself
17 on the day, which is what this diagram refers to. And
18 then the several days after the offense and then the
19 months following that, even up to today. So it really is
20 looking at all components, obviously, zeroing in on that
21 exact time period to look at his capacity mentally. And
22 if you look at these different components -- and I think
23 you've heard from, you know, various doctors regarding his
24 head injury. The head injury piece, I put at the top
25 because I think if you remember his films and his

1 neuropsychological testing, he definitely had some
2 limitations with his memory and his executive functioning.
3 So those are listed in the green box. And then if we go
4 down and look at the bottom yellow box, I also felt like
5 that spice use, which was around that time period, the two
6 to three months before the actual crime happened, was
7 significant. So it was a significant contributing factor
8 to his level of paranoia, hallucinations, agitation,
9 disinhibition. And then if you look to the right, you'll
10 see the blue box, which is if you were listening to Dr.
11 Wood, she diagnosed schizo-affective disorder, which is a
12 combination of mood disorder symptoms, in the blue, and
13 thought disorder symptoms, in the red. So there's a
14 combination of those symptoms. During that window of
15 time, all of those things were going on. The spice use
16 was a component, the head injury, disinhibition was a
17 component. His mood symptoms were very active with mania
18 and then he actually had some thought disorder symptoms
19 from the schizophrenia side of things.

20 Q Did you take a detailed social history from Tim?

21 A Absolutely. I met with Tim on eight different
22 occasions from the summer of 2017. And the last time I
23 met with him was actually on May 4th of this year, so it
24 was earlier this month. That was after I submitted the
25 report. I went back over to Lexington County jail and

1 spent about five hours with him. So I spent, you know,
2 18, 19 hours with him. I mainly wanted to see how he was
3 doing. There was some speculation that his symptoms were
4 worsening in the Spring and I did go spend time with him.
5 I actually assessed him for competency to stand trial a
6 few weeks ago to make sure he was ready to go to court and
7 he was. So I don't think there was any issue on
8 competency.

9 Q Did you also receive documents and records regarding
10 Tim's family history, what his mother was like, what his
11 grandmother had been through, the members of his family?

12 A Yes. I got extensive records from your office, from
13 Deborah Grey and then from other clinicians in your
14 office. And then I was able to take that information and
15 meet with Mr. Jones about it and corroborate that with
16 him. He actually knew a lot of that information. He was
17 very organized in his thinking with me when he was
18 treated. He couldn't remember dates very well, but we
19 were able to pull the information and actually corroborate
20 that with his history.

21 Q Is that information important in forming your
22 diagnostic impressions?

23 A Yes.

24 Q Does it -- the jury's heard the testimony regarding
25 the environment that he grew up in and what happened to

1 him in his early years of life. Is that stuff important
2 for brain development, for how people turn out in the
3 future?

4 A Absolutely. I think as a child, he -- the first few
5 years, his mother left before he was three, I think. So
6 the first few years are very important as it relates to
7 anxiety developing, attachment problems and relationships.
8 She was -- she neglected him. She would leave him in cold
9 bath water. She refused to feed him. She didn't want a
10 fat baby. She would give him laxatives. So very
11 inappropriate, abusive neglect. And I think that can
12 affect development in a way, psychologically, obviously,
13 neurologically, but, also, too, just in relationships and
14 attachment.

15 Q The head injury that you talked about he suffered at
16 the age of 15 and, again, at 16, is that relevant to
17 determining his ultimate diagnosis or mental state?

18 A Yes. That is relevant in that -- if you heard the
19 psychologist talk about his testing, he had some
20 disinhibitions and memory issues with testing. And, also,
21 executive functioning, which is planning, sequencing, kind
22 of thinking ahead, basically, which I think is -- and we
23 can get into that in a few minutes --

24 MR. GRAHAM: I need to object. I'm not sure what
25 psychological testing she's talking about. The only

1 psychological testing we've received from the Defense only
2 had to do with cognitive functioning. That's the only
3 thing that was testified --

4 THE COURT: Clarify that for me, Mr. Young.

5 MR. GRAHAM: That's not what her testimony was.

6 A Dr. Brawley's testing, neuropsychological testing. I
7 assumed the jury had seen that or had heard evidence
8 related to that testimony.

9 MR. YOUNG: Right.

10 MR. GRAHAM: May we approach?

11 THE COURT: Sure.

12 (Whereupon, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 Q Dr. Dorney, can I ask you to please slow down a
16 little bit.

17 COURT REPORTER: Yes, thank you.

18 THE WITNESS: I'm sorry. Stop me and tell me if I
19 speed up again.

20 Q The neuropsychological testing that you were talking
21 about, can you tell me what information you were talking
22 about and where you got that information?

23 A Yes. I was referring to Dr. Brawley's evaluation and
24 psychological testing report.

25 Q Did she do more than just cognitive testing?

1 A Yes, I think she did neuropsychological testing.

2 Q And is that what you were talking about?

3 A Yes.

4 MR. GRAHAM: Your Honor, we would object. We haven't
5 received anything.

6 THE COURT: All right. Y'all step the jury room.
7 Don't talk about the case. Have you back in a moment.

8 (WHEREUPON, the jury was excused from the courtroom.)

9 THE COURT: I think Mr. Graham retrieved a copy of
10 the report now.

11 MR. GRAHAM: I apologize for interrupting, I just was
12 hearing things I had never heard before. I've got a copy
13 of the report.

14 THE COURT: To summarize the side bar is Mr. Graham
15 is of the belief that Dr. Brawley had only done a portion
16 of the test and there was a reference made to other tests
17 that he was not aware and he was trying to clarify that.
18 So now, Mr. Graham?

19 MR. GRAHAM: Your Honor, we have a report from Tora
20 Brawley, the date of the evaluation, April 19th, 2016.
21 And she says that she was asked by Dr. Schwartz-Watts to
22 administer Mr. Jones and assess his level of cognition.
23 Effort testing was also conducted to ensure the validity
24 of that result. There's nothing in there as far as
25 neurological testing other than the cognitive testing.

1 MR. YOUNG: Can I just ask her?

2 THE COURT: Yeah, you can ask her. We're proffering
3 right now.

4 PROFFER EXAMINATION

5 BY MR. YOUNG:

6 Q Dr. Dorney, can you tell the Court what it is that
7 you are referencing and what you're talking about?

8 A It's the same report, actually. It's -- but she does
9 administer the RBANS, the repeatable battery for the
10 assessment of neuropsychological status, which is
11 neuropsychological testing.

12 Q RBANS?

13 A I'm assuming that's what she's tracking, she's
14 assessing.

15 MR. GRAHAM: Your Honor, I think it's the same
16 report. I guess what I'm confused and objecting about is
17 that she was talking about neurological testing done and
18 showing behavioral issues and spontaneity and those kind
19 of things when the report is limited to cognitive. And I
20 don't see that their report is any different than mine.

21 Q Is that what the RBANS testing showed?

22 A I think it's talking more about memory, which I do
23 refer to up there. His decision making, memory, abstract
24 thinking.

25 Q Was there also test for malingering, though?

1 A Yes.

2 Q And is the malingering test neuropsychological
3 testing?

4 A For that, yes. It was memory malingering.

5 Q Okay.

6 PROFFER EXAMINATION

7 BY MR. GRAHAM:

8 Q Right. Not symptom psychosis malingering --

9 A Not behavioral, yes.

10 Q -- it's more cognitive.

11 A Yes, more cognitive. So I think you're asking the
12 right thing.

13 Q I just --

14 A I don't want to confuse the jury, so I'm happy to
15 reframe it in some way.

16 MR. GRAHAM: My only concern was it looked like we
17 were going beyond what the testing was, which was
18 cognitive testing. And what I heard, and I could be
19 wrong, is that neuropsychological testing done showed
20 results of cognitive deficiencies and problems with other
21 areas outside of cognition. And I would object to that
22 because it's a mischaracterization of the report.

23 THE WITNESS: I think I can sort that out, if that's
24 okay.

25 THE COURT: Is the report consistent with what Mr.

1 Graham is asking the Court?

2 THE WITNESS: I think that what he's saying is that
3 this particular report is more cognitive based --

4 THE COURT: It is.

5 THE WITNESS: -- as far as what she assessed. And
6 I've also included some behavioral changes in the slide,
7 which are not in this report. That came more from Dr.
8 Snyder, so.

9 THE COURT: Okay. Mr. Graham, is that explanation
10 satisfactory as far as where she's getting her
11 information?

12 MR. GRAHAM: As long as we are clear it for the jury.
13 I guess to the extent that that says decision making
14 that's attributed solely to the traumatic brain injury,
15 that would not be correct in the way that the decision is
16 in the green by itself.

17 THE WITNESS: I'm confused. I think that report is
18 one component, obviously, of information that I had to
19 look at his brain injury and that's the cognitive.

20 THE COURT: What curative instruction do I need to
21 give regarding this report or would it be better if Mr.
22 Young characterized a different question to clear it up?

23 MR. GRAHAM: I'd be happy if Mr. Young would just
24 clarify that the neuropsychological testing had solely to
25 do with cognitive issues and not any other type of

1 symptoms. They weren't looking for anything else other
2 than brain functioning cognition. As long as we limit it
3 to that and not talk about behavioral issues or
4 spontaneity or impulsiveness or any of the kind of things
5 that could be attributed to that. I think that's
6 reflective of what Dr. Brawley did. So if we could
7 clarify that, I'd be glad to move on.

8 MR. YOUNG: I'm not sure that's an accurate statement
9 about what all Dr. Brawley did. I'm happy to try -- I
10 don't know what question to ask to say you looked at
11 testing done by Dr. Brawley, what was it.

12 THE COURT: She got some of her opinions from Dr.
13 Snyder.

14 THE WITNESS: Right.

15 THE COURT: She just said that.

16 MR. YOUNG: Right.

17 MR. GRAHAM: And I'm sorry, I didn't hear what was
18 being said.

19 THE COURT: She got a portion of her -- or some of
20 the basis of her opinion was from Dr. Snyder, also. I
21 don't know which portion.

22 MR. YOUNG: And Dr. Bigler.

23 THE WITNESS: Yes --

24 MR. GRAHAM: Right, but those people didn't ever
25 interview him. They never talked to him. They just

1 looked at brain scans. Those things could happen, but
2 they're not observed. The implication was that there was
3 psychological testing that showed those things.

4 THE WITNESS: I did not mean to confuse the jury. I
5 can certainly separate that out.

6 MR. GRAHAM: And Dr. Brawley, she came before -- with
7 the hearing with Dr. Frierson before the mental evaluation
8 had been ordered, she said that she was solely hired for
9 the purpose of cognitive issues. And I just want to make
10 sure that we're all clear.

11 THE COURT: Okay. I'm going to let you ask,
12 basically, the same question and Dr. Dorney can clarify
13 her answer. And if it's not sufficient, then I'll give
14 the jury instructions. Okay, Mr. Graham?

15 MR. GRAHAM: Yes, sir. Thank you.

16 THE COURT: And she understands what Mr. Graham's
17 concern was?

18 MR. YOUNG: Yes, sir.

19 THE COURT: As to how she arrived where she did.

20 MR. YOUNG: Can we just do it now outside the
21 presence of the jury to make sure that we don't have to
22 give a curative instruction?

23 THE COURT: Yes. They asked for a little lengthier
24 break. Somebody wanted to step downstairs and take a
25 breathing treatment. So you've got a few minutes.

1 MR. YOUNG: Okay.

2 BY MR. YOUNG:

3 Q Dr. Dorney, do you recall what the question was? I
4 was asking about the brain injury from when he was in a
5 car wreck.

6 A Correct.

7 Q And what affects that could have on somebody and how
8 it was relevant to a possible -- or your findings?

9 A So after the injury at 15, obviously, he got some
10 treatment at the hospital. But, more recently, he's been
11 evaluated by Dr. Brawley for cognitive functioning. And
12 then he also -- his case was reviewed by Dr. Snyder and
13 Dr. Bigler to look at his particular limitations and
14 review his MRI scans. And they have come to the
15 conclusion that there were some memory issues along with
16 some behavioral changes related to the head injury. Does
17 that clear it up?

18 MR. GRAHAM: Your Honor, I don't believe that's
19 accurate either. I don't believe that either of those
20 other three doctors said that he has behavioral issues as
21 a result of a TBI. They said those could happen --

22 THE WITNESS: They said it could happen.

23 MR. GRAHAM: The testimony is, it is observed and
24 they concluded that it was real, that's not what they
25 said.

1 MR. YOUNG: The testimony was that it could happen
2 and they would be surprised if there weren't.

3 THE COURT: Right. But they've not evaluated Jones
4 in person for any behavioral issues.

5 MR. YOUNG: Right.

6 THE COURT: So their evaluations did not determine
7 there were behavioral problem issues. The injury could
8 cause behavioral changes. They hadn't gone that far as to
9 evaluate him.

10 MR. YOUNG: Right.

11 THE WITNESS: I think they also had said it was
12 associated with, those were the terms that were used in
13 the report.

14 MR. GRAHAM: My only concern is I want clarification
15 separating -- or in my view what's associated with, what
16 could happen versus what's been measured or observed.
17 That needs to be very clear.

18 BY MR. YOUNG:

19 Q Can a head injury lead to the development of mental
20 illness, particularly schizophrenia?

21 A Yes.

22 THE COURT: I think that's fair. And I think as long
23 as Dr. Dorney understands there was no observed behavior
24 or measurement testing done, she can formulate her
25 opinions consistent with that lack of testing or

1 observation. Fair enough?

2 MR. YOUNG: I mean, they're the same questions that I
3 asked Dr. Frierson. Is child abuse related to in later
4 life history of mental illness? Is a head injury
5 relevant? Is adolescent marijuana use relevant?

6 THE WITNESS: I think, too, Your Honor, that Dr.
7 Snyder did observe his actual MRI scans, so --

8 THE COURT: No, no, no. He didn't go and evaluate
9 Jones and observe him. That's where Mr. Graham's
10 distinction is. Is Jones' behavioral changes a result of
11 this? Well, I don't know, I didn't observe him. I
12 examined the MRI in great detail, found all sort of
13 injuries. But to translate that over to his behavioral
14 changes is where Mr. Graham objects.

15 MR. GRAHAM: Yes, Your Honor.

16 THE COURT: I'm right on your objection and I agree
17 with you because that wasn't testified to by them. It was
18 it could cause problems with future as to use of
19 marijuana, traumatic brain injury, family history, those
20 can impact future mental illnesses. And that's what you
21 want to ask and I think that's fair. All right. I think
22 we're all on the same page now.

23 MR. YOUNG: Yes, sir.

24 THE COURT: All right. When the jury's ready, we're
25 ready. Anybody need a break? Because they stepped

1 downstairs. If anybody needs to step out, now is a good
2 time. Let's take a couple minutes.

3 MR. YOUNG: Your Honor, I'm offering Court's Exhibit
4 number 100. It's a copy of Dr. Dorney's CV.

5 THE COURT: You're only one step behind me.

6 (WHEREUPON, Court's Exhibit number 100 was marked for
7 identification only.)

8 (WHEREUPON, a short break was taken.)

9 THE COURT: Let's bring the jury in.

10 (Whereupon, the jury came into open court at
11 approximately 10:50 a.m.)

12 THE COURT: Mr. Young, ready to continue?

13 MR. YOUNG: Yes, sir.

14 CONTINUE DIRECT EXAMINATION

15 BY MR. YOUNG:

16 Q Dr. Dorney, what I was asking about, are things --
17 risk factors for developing schizophrenia later in life,
18 do they include genetics, child abuse, head injury and
19 adolescent use of marijuana?

20 A Yes.

21 Q At this point, I'm going to sort of skip forward a
22 little bit. I know the jury has heard a lot about Mr.
23 Jones' social history, a lot about his work history, so
24 I'd like to sort of skip forward to your assessment of his
25 psychological history.

1 A Okay.

2 Q Can we start there?

3 A Okay, sure.

4 Q Can you tell the ladies and gentlemen of the jury
5 about his psychological history?

6 A Yes. He really has no history of psychiatric
7 hospitalizations prior to his arrest. He had a history of
8 substance use and got into trouble in high school and had
9 to go into outpatient treatment after he was arrested for
10 marijuana use. And that was actually back in 1999. And
11 then his next evaluation is actually in the Navy, and that
12 was in 2000. And at that time, he aspired to be a Navy
13 Seal. He was in basic training, I think, and was starting
14 to have periods of depression, was crying a lot, and was
15 referred for a psychological evaluation. At that point,
16 he was assessed to have depression. He was discharged.
17 But there was also a risk of substance abuse, although not
18 during that moment when he was being assessed. It was, I
19 think, in the past, so.

20 Q Did you review all of the records from the Navy?

21 A Yes.

22 Q And is there anything in the records from the Navy
23 that says my hip hurts. I can't be a Navy Seal, so I'm
24 quitting?

25 A No.

1 Q What did it say?

2 A Basically, talked about that he was crying,
3 isolative, and I think he was referred for psychological
4 evaluation. He was depressed.

5 Q Is boot camp a high stress environment?

6 A I would think so.

7 Q Did you have -- the quote at the top of Page 14 about
8 what was actually -- he told the psychiatrist in the Navy?

9 A I think she was actually a psychologist, if I
10 remember correctly, Dr. Martinelli. He said that -- or
11 she reported in her reports that he was having mood swings
12 all of his life. That he used to cycle every month or so,
13 now he cycles every 24 hours. He will feel okay one
14 minute and then he doesn't care about anything. He can't
15 stop from crying at times.

16 Q And that was when he was diagnosed with the
17 depressive disorder?

18 A Yes. Yes.

19 Q Moving in time a little bit, can you talk to me
20 about -- tell the ladies and gentlemen of the jury about
21 what Tim told you about his psychological history and what
22 he told you about himself?

23 A So that's the extent of what we have early on with
24 him. When I actually interviewed him, he consistently
25 told me that he started hearing voices at age ten. He

1 also was ashamed of hearing voices. He did not want to be
2 mentally ill like his mother. He never told anyone about
3 the voices. He said that he would hear a few voices. He,
4 basically, felt very isolated and lonely. He described
5 the voices as inside of his head. He said he had a creepy
6 male voice on occasion. That was mainly I think -- he
7 specifically talked about the time of the offense, but he
8 also talked about that in the past. The reason -- when
9 you're actually assessing a history of voices, we do have
10 to rely somewhat on what they've told us, particularly
11 when there are no treatment records during that time
12 period. And the way that he described the voice actually
13 seemed like a true hallucination. He said that the voices
14 would come and go. They were inconsistent -- I'm sorry,
15 they were not -- they were intermittent as opposed to
16 consistent. That they would go away with distraction. So
17 if he was working on something or going to school, he was
18 able to fight the voices. So those were typical of true
19 hallucinations. He did not say he heard them all the time
20 and that he couldn't distract himself from the voices.
21 And they were not continuous. And then he -- basically,
22 we can talk -- as we move forward, the voices actually
23 escalated around the time of the divorce and then on into
24 the current day.

25 Q Did he also report having experienced negative

1 thoughts?

2 A He did. He had both. He actually talked about
3 negative -- he didn't say negative self-thought, which is
4 negative intrusive thoughts. When I was reviewing Dr.
5 Frierson's report, he made mention of Tim using the word,
6 thought insertion. That came from me, that did not come
7 from Tim. I actually saw him on several occasions before
8 Dr. Frierson did the responsibility evaluation and I had
9 to ask him, do you ever feel like someone is putting
10 thoughts into your head. That's called thought insertion.
11 And he was mixing up the terms. I think what he was
12 trying to say is that he had negative intrusive thoughts
13 and that they were recurrent thoughts and that they were
14 racing thoughts. So that's the difference. But the term
15 actually came from me.

16 Q And how about visual hallucinations, did he tell you
17 about visual hallucinations?

18 A He did. You know, I don't think that they are what
19 we consider visual hallucinations that are consistent with
20 mental illness. They're actual visual hallucinations that
21 are more typical for people who have sensory deprivation.
22 Like, if you're locked up in a cell without any kind of
23 stimulation, you can start to see things, or sleep
24 deprivation, sometimes we can see that. But I don't think
25 they were consistent with mental illness.

1 Q And as far as you know, has Tim been held in
2 isolation?

3 A Yes.

4 Q Solitary?

5 A Yes.

6 Q Can you tell the ladies and gentlemen what he told
7 you regarding the paranoia and delusional thinking?

8 A So his paranoia -- he may have had it in the past,
9 but really started in 2012. And he started actually
10 forming some delusional thinking about his ex-wife at that
11 point. I don't think they were legally divorced then, but
12 they definitely were separated. He believed that --
13 during that window that she was having an affair with the
14 neighbor, which actually turned out to be true, but he had
15 speculation that she was. He also, as the months went on,
16 became more and more paranoid about her and the children
17 and, obviously, escalated during the summer of 2014.

18 Q And did he seek counseling for --

19 A He did.

20 Q -- that paranoia?

21 A He did. Actually, through employee assistance at his
22 work, he was -- and this was in May of 2012. He was
23 having severe anxiety and depression. He went to see Dr.
24 April Hames at that point for some counseling related to
25 the separation from his wife.

1 Q So can we move forward towards the summer of 2014,
2 how was he doing?

3 A Let me add a couple of things from 2012. He did see
4 Dr. Hames. She referred him to his family practitioner to
5 get on some antidepressant medication and antianxiety
6 medication. I don't think that he ever really took that.
7 The follow-up note says that he was better, but when I've
8 spoken with him about it, he really has very little memory
9 of that. So I would suspect he didn't take it
10 consistently, if he took it at all.

11 Q Okay.

12 A And then in the summer -- so then we skip forward to
13 2014. And between 2012 and 2014, the actual divorce
14 happened. And he, at times, I think thought that he would
15 get back with his ex-wife, but that did not happen and he
16 was very depressed and sad. He did terminate treatment
17 with Dr. Hames in 2013, in the Spring. Terminate is a
18 strong word, I think he just quit going. But he was still
19 having active symptoms of depression related to the
20 divorce at that time period. But in 2014, the symptoms
21 did escalate.

22 Q And at that time, did he sort of become paranoid and
23 delusional about his wife?

24 A At which time?

25 Q In the summer of 2014.

1 A Yes. Around -- I think it was around May that he
2 told me he started using spice. He had actually relapsed
3 on alcohol and marijuana during his separation from her
4 originally in 2012 and he used that heavily
5 intermittently. And then he stopped for a period of time
6 and then he used it again. And around the time -- around
7 May of 2014, he actually was using spice and began
8 escalating the dose of spice between May, June, July of
9 2014.

10 Q Did he develop a delusional belief about his ex-wife
11 being involved in prostitution?

12 A He did. And, you know, fortunately, we do have some
13 excerpts from his -- or extractions from his cell phone
14 and computer. He was actually trying to find out if she
15 prostituted. He was paranoid that she was doing those
16 things. He was also paranoid about his daughter. He felt
17 like his daughter, Merah, was -- could be schizophrenic or
18 mentally ill. She was showing odd behaviors, in his
19 opinion. And then as we move forward into June and
20 July -- so the paranoia is starting more at that point and
21 delusional thinking about them. You know, you've heard
22 this term of fixed, false belief being a delusion. You
23 know, this was a little more fluid, he was having those
24 thoughts, but they were all specific to his family, his
25 children and his wife and they were very paranoid. So it

1 wasn't one fixed delusion that held itself over months, it
2 was generally delusional thinking about his family.

3 Q Does Mr. Jones -- in reviewing his psychiatric
4 history, does he have a history of manic symptoms?

5 A He does. So in June of 2014, again, we're a couple
6 of months before the offense, he starts exhibiting some
7 manic behavior. And let me explain what that is. In that
8 month, he started thinking about changes in his life. I
9 think at that point, he really did realize that the
10 marriage -- he was not going to get back to that
11 relationship again. But he started having these grandiose
12 thoughts that he would go to medical school, that he
13 potentially could teach in Korea, that he may move to
14 Vancouver, that -- you know, probably the most reasonable
15 thought was that he would move back to Mississippi to be
16 close to his family and work. When I asked him about
17 those thoughts, I said they're just random and disjointed
18 and they're not realistic. I mean, I went to medical
19 school and taking five kids out of the country to go to
20 medical school and trying to manage five children while
21 you're in school was just unrealistic. So I don't think
22 he was planning the actual -- what could happen if he
23 actually chose to do that. In addition, financially, I
24 don't know how he could have done that. So it was
25 grandiose in my opinion. I certainly think he was smart

1 enough to do it. He got into medical school. He applied
2 out of the country. But in that time period, it seemed
3 very unrealistic as to how he would manage with that. And
4 he also was focused on money, making lots of money. He
5 was day trading, doing impulsive things along with all the
6 other things that he was doing, with work, raising five
7 children. And then as we started -- kind of into the July
8 months, what I started to see was a lot of increasing
9 goal-directed activity, which is very typical for manic
10 behavior. And if we look at -- we had his Google
11 calendar. I think it was August, I don't have the days in
12 front of me, but he was doing things like between 8:00 and
13 8:15 in the morning, I'm going to practice Spanish, and
14 then I'm going to work all day, and then I'm going to take
15 care of my five children, and then we're going to pray
16 together, and then I'm going to study Hebrew for an hour,
17 and then I'm going to day trade for two hours. And it
18 just went on and on. And then what was paired with that
19 was what we have from his computer and his cell phone is
20 that he was up at night. So, at least, from the 24th of
21 August until the 28th, the day of the offense, he wasn't
22 sleeping. He would sleep here and there, but if you
23 really pull the information, we have evidence that he was
24 up for several nights. And that is a classic symptom of
25 mania. So between that, the grandiose thinking, the fact

1 that he has this increase in goal-directed activity, he's
2 irritable, agitated, labile -- at times, he feels probably
3 happy and normal, but at other times, he's very irritable.
4 Those are classic symptoms of mania.

5 Q And did he also report active depressive symptoms?

6 A He did. He had some mixed periods of depressed mood,
7 suicidal thinking, hopelessness, lack of concentration.
8 You know, this is where there's crossover between mood
9 symptoms and thought disorder symptoms. He was reportedly
10 unkempt, like he didn't care how he looked. His manager,
11 I think, and coworkers had said that he, basically, was,
12 you know, making some errors at work and missed some work
13 over the summer. Obviously, missed, I think it was Monday
14 or Tuesday before the actual offense happened. Had
15 trouble getting his kids to school on time. So a little
16 disheveled. All those are classic symptoms of what could
17 be depression, but also if you're manic and disorganized
18 in your thinking, it could apply to that, too.

19 Q Just staying with his psychiatric history, I know you
20 had been meeting with him for a little while, for most of
21 the times that you met with him, was he stable?

22 A Okay, so we're shifting to my time of evaluation, not
23 his report of the offense?

24 Q Yes.

25 A So I actually saw him beginning in August of 2017. I

1 met with him, at least, four occasions in August through
2 October. And then I met with him in April of 2018, the
3 fall of 2018, January of 2019 and then just three or four
4 weeks ago. So through the first several visits with him,
5 he was on high doses of medication. He was not sedated,
6 but he definitely was slower in his thinking. And then as
7 we got to the time period around the fall of 2018, I think
8 that's when he was not getting his medicine regularly and
9 he was having a withdrawal from the medicine. And it's
10 significant when you go from 320 milligrams of Geodon to
11 zero. And there were several incidents where he was not
12 receiving medicine. And I saw him during that window, he
13 was tearful, hadn't slept for two weeks. He wasn't
14 hallucinating at all, but his mood disregulation was more
15 prominent in November of 2018 when the meds were actually
16 withheld. And what he told Dr. Wood at that time was that
17 I can't stand the way I feel when the meds aren't given to
18 me, so is there a way that we can actually taper these
19 medications. And she did, I think she was tapering his
20 meds and he was not doing well with that. He was moved
21 over to Lexington County jail, I think, at the end of
22 December of 2018 and has been there since. And since that
23 time period, when I did meet with him in January, he was a
24 little hypomanic, actually, in January. He had pressured
25 speech. He was talking about, you know, God. He was

1 talking about how he was going to win this case. He was
2 just a little grandiose, in my opinion, and unrealistic,
3 joked some with me, which I had not seen before. And
4 during that window, Dr. Wood had prescribed Depakote,
5 which is an anticonvulsant that we use for bipolar
6 disorder and for other things, but for mood disorders, and
7 he was stabilizing on that. When I saw him again in May,
8 three or four weeks ago, he was much better in his mood,
9 but for the first time in years, the voices were starting
10 to come back.

11 Q And the Depakote, was that something that you had
12 suggested?

13 A In January when I saw him and I was concerned that he
14 was starting to rev up a little bit, I said -- he did not
15 want to go back on more Geodon because he did not want to
16 feel tired and he didn't want the withdrawal if he
17 couldn't get it or the food that he needed to make it
18 work. I said, you need to speak with Dr. Wood about maybe
19 looking at a mood stabilizer for you that would help with
20 the manic symptoms. And I suggested Depakote, to talk to
21 her about and I think that's what she prescribed.
22 Actually, I don't know -- I think either a nurse
23 practitioner or another doctor is actually prescribing it
24 at Lexington County jail now. Actually, I think Dr.
25 Schwartz-Maddox has prescribed it more recently. That was

1 maybe Geodon instead.

2 Q I want to move forward just a little bit and sort of
3 -- I know that you've talked about the family's
4 psychiatric history. Can you just sort of briefly
5 summarize the family's psychiatric history?

6 A Yes. Mr. Jones has an extensive family history. And
7 I counted about 20 family members who have major mental
8 health problems, substance abuse problems, several
9 suicides in his family. So I hope I counted the math -- I
10 count that up right, but it's around 20 family members.
11 And illnesses, such as schizophrenia and bipolar disorder.

12 Q Kind of move forward towards Mr. Jones' mental status
13 examination?

14 A Yes.

15 Q That starts on Page 20 of your report.

16 A Yes.

17 Q Can you tell the jury about your mental status
18 examination?

19 A Yes. So because I saw him on eight different
20 occasions, I'll summarize what I observed overall. During
21 the first four times that I saw him, which, again, is
22 August of '17 through the October '17 window, he was not
23 complaining of any psychotic symptoms. He did not
24 complain of voices, did not complain of any manic
25 behavior. He was not suicidal. He was very stable on his

1 medication. He was on high doses of Geodon at that time,
2 but I did not see any active symptoms of psychosis or of
3 mania during that window of time. And then, like I said,
4 in the fall of 2018, his medications were changed because
5 he wasn't receiving them on a regular schedule. At that
6 point, he had been weaned down significantly from his
7 antipsychotic medication. At that point, I started to see
8 the mood symptoms come back and withdrawal from the
9 Geodon. And then, as we move into the winter months, into
10 the early part of 2019, he was put on a mood stabilizer
11 for the manic behavior that we were starting to see again.
12 And that did get better. He was much better with that
13 when I saw him in May. But what happened around March to
14 April of this year -- and he told me this on May 4th when
15 I saw him, was that he was starting to hear voices again.
16 And at that point, I don't recall if he was taking 20
17 milligrams or 40 milligrams of Geodon. Again, those doses
18 are very low compared to 320 milligrams that he was on the
19 first, you know, few years of his incarceration. But he
20 was starting to hear voices intermittently and he just
21 would distract himself from the voices himself.

22 Q Can you tell the ladies and gentlemen of the jury
23 what -- so why is it important that you saw him while he
24 was sort of not getting his medications and what his mood
25 and other symptoms were?

1 A I mean, I think what I'm trying to assess is, you
2 know, was this a snapshot in time where he just had
3 illness related to the drug? Was this something that, you
4 know, has continued? And this many years out, when you
5 make those medication changes, you should not have those
6 types of symptoms if there's no illness. So it helped me
7 to really define the diagnosis, but also -- I knew the
8 diagnosis probably, you know, by early January, for sure,
9 because I was starting to see those symptoms come even in
10 the late fall. And then I was always looking for
11 malinger, you know, if he was feigning, I wanted to
12 know that. I discussed that with Dr. Wood in detail, if
13 she felt like he had feigned symptoms and she said no.
14 And there was nothing to support that. He was very
15 cooperative with all of us, as far as I know, all the
16 evaluators who had worked with him. Dr. Frierson had not
17 diagnosed malinger. I didn't see anything that looked
18 liked malinger. This is just illness. And it
19 obviously was at its worst point when this happened and
20 it's been treated ever since that time period.

21 Q Can you tell the jury about your diagnostic
22 assessment and what diagnosis --

23 A Yes.

24 Q -- you eventually concluded? And can you use the
25 chart to tell them why?

1 A Yes. So if you look at the chart -- and again, let's
2 just refer to the red -- I'm going to try to use this
3 pointer. There we go. The red circle and the blue
4 circle, those are the diagnosis that we need to focus on.
5 And those are -- on the red side, this is the thought
6 disorder side, or the schizophrenia side, schizo-affective
7 disorder and the blue side is the mood disorder side or
8 the bipolar side. And so during this time period, on
9 8/28, he had symptoms of both. These symptoms were
10 starting to escalate in the summer months and these were
11 escalating in the summer months and really came to a high
12 level on the day of the offense. What complicates it even
13 more, though, is this middle circle because there is spice
14 that exacerbates this preexisting condition and there is
15 this head injury that can cause frontal disinhibition and
16 make someone act more impulsively if they had that head
17 injury. It's associated with that. So what I did on this
18 word, "disinhibition", is I tried to put that with these
19 three particular conditions, not here. Disinhibition is
20 focused more with mood disorder, substance use and head
21 injury. And these all -- all four of these came to a head
22 during this time period.

23 Q So what was your ultimate diagnosis?

24 A So my diagnosis for mental illness is
25 schizo-affective disorder. It is a combination of

1 psychotic symptoms or thought disorder and a mood
2 disorder, which is, in his case, suggestive of bipolar
3 disorder. I actually thought he was manic during the time
4 period of the crime. I do feel like that Dr. Wood feels
5 like she's seen more depression with him. I think it's
6 complicated with grief as he's been in prison. But he's
7 also been treated with an anti-manic, if you would,
8 medication, Geodon, since I think the 12th of September of
9 2014. So I doubt you would actually see manic symptoms
10 until those medications are removed.

11 Q Can you tell us about his mental functioning in the
12 week leading up to the killings?

13 A In the week -- I think I've touched on those months
14 leading up to the time of the offense. That particular
15 week, and let's say -- so if this happened on a Thursday
16 night, on Monday of that week, when I mentioned earlier
17 that he wasn't sleeping. I think if you look at what we
18 have from his phone and computer records, I mean, he was
19 up on 8/24 into the morning of 8/25 -- now, this is three
20 days before the alleged offense. He was up from 11:00
21 o'clock at night until 3:00 a.m. On the evening of the
22 26th, going into the 27th, he was up from 11:00 p.m. until
23 6:00 a.m. and then went to work all day. And then on the
24 evening of the 27th, going into the evening of the 28th --
25 or going into 8/28 -- I'm sorry, 8/28, he was up from 5:00

1 p.m. until 6:00 a.m. And then that's the day of the
2 alleged offense. So he's not sleeping. If you look at
3 the Google calendar notifications, like I said earlier, he
4 would actually -- each day, he had increased goal-directed
5 activity. He would study in the morning for 15 minutes,
6 study Hebrew at night from 9:00 to 10:00. He would
7 exercise Monday, Wednesday and Friday from 7:30 to 8:30.
8 He would study day trading from 10:00 p.m. to 12:00
9 midnight, along with working, taking care of five children
10 and reading and praying with his children. All of that
11 suggest manic behavior. And that's during this window of
12 time that we're talking about.

13 Q Did he have a -- and I'm looking at Page 23 at the
14 second paragraph. Did he have a description of his
15 thoughts that were going on at that time?

16 A Okay. So if we go to that -- which paragraph are you
17 referring to?

18 Q Up at the top, the second one.

19 A Oh, okay. Oh, the two weeks before the offense?

20 Q Yes.

21 A So this would get us to mid-August, basically. The
22 offense is at the end of August. He was complaining of
23 little sleep. He complained of having pounding thoughts.
24 I asked him what that meant. He said just racing
25 thoughts, they wouldn't stop. They interfered with his

1 functioning. He wasn't sleeping. He reported periods of
2 irritability. He was short with the kids, as we know. He
3 believed that the kids were colluding with Amber to harm
4 him in some way, even though that's not realistic, these
5 are young children. He was easily agitated with his kids
6 and his family. He was depressed about his failed
7 marriage. He was depressed that he actually was not going
8 to church and he wasn't following the Bible as much as he
9 should. So he was putting a lot of pressure on himself to
10 get back into his studies with the Bible. He got
11 depressed. He felt suicidal at times. He did miss work
12 some. He missed earlier during the week of the -- the
13 week of the events. He was late taking the kids to
14 school. And then intermixed with that was this kind of
15 grandiose focus on going to medical school in the
16 Caribbean and how he would accomplish that. Along with
17 those things, he was using spice five times a day. So --
18 or up to five times a day. And he says that he did that
19 to curb the voices in his head and to calm him down. Now,
20 when I evaluated him for a drug-induced psychotic
21 disorder, which I do feel like it contributed, I,
22 basically, said to him, you were using that up to five
23 times a day for three months. You know, why did this
24 happen then? And in my opinion, if it is all spice
25 related, why didn't it happen a few months before? Why

1 did it happen at that particular moment? It happened
2 because there were other things going on.

3 Q Okay. Well, did you then talk to Tim about what had
4 happened, what his account of the offenses were?

5 A Yes. Yeah. In his account -- what he gave me is
6 actually very similar to what he gave Dr. Frierson. And I
7 think he was consistent with pretty much the same sequence
8 of events. He did -- there was probably one
9 inconsistency. When I asked him if he -- he was
10 actually -- he had gone to work that day. He went to pick
11 up his children. He was feeding them dinner. He had used
12 spice that day on, at least, three occasions. And he
13 became angry with Nahtahn for a blown outlet that was in
14 the living area. He said he spanked him. He blew four
15 outlets. He was out to get me. He wanted to move back
16 with his mom. I was paranoid. I thought he was going to
17 kill me with electricity. He was fascinated with
18 electricity. I was paranoid he was either going to start
19 a fire or do something to kill me with electricity. And
20 then he kept pressuring Nahtahn to tell him what had
21 happened. And when I asked him about that, he said, I
22 didn't know if his mom was, you know, conspiring and they
23 were going to do something to harm me. And that's when he
24 brought Amber into the discussion. He did say that Amber
25 called during that time period and Nahtahn did claim to

1 her it was an accident. Mr. Jones became very angry with
2 Amber and did not want her interfering. He didn't feel
3 like she was capable of raising their children and he did
4 curse at her. After Nahtahn would not admit that he had
5 blown the outlets, Mr. Jones began to PT him. And,
6 basically, when I asked him what that meant, he said I
7 would have all the children when I PT them do squats,
8 push-ups, nose and toes, those kinds of things. And I
9 said, when would you do that. He said he would actually
10 do that when they were, you know, obviously, disobedient.
11 He would spank them if they lied or they fought with each
12 other. So he did believe in that. He believed that that
13 was very -- for his religion that he could discipline his
14 children and that was acceptable, even though he did not
15 realize that it could be too aggressive.

16 Q So do you know if that outlet was ever tested?

17 A I do. I received information -- I think Dr. Frierson
18 had requested an electrician to look at that and I do
19 think -- I mean, I got that information back that it was
20 blown.

21 Q Or it wasn't working?

22 A It wasn't working, sorry.

23 Q So he is PTing Nahtahn and then what does he tell you
24 happened?

25 A So he did give me a couple of inconsistencies on how

1 long he asked Nahtahn to PT. He said one time, it was
2 about an hour, then the rest of the interviews, he
3 actually, I think it was 45 minutes. And then he,
4 basically -- Nahtahn wouldn't speak to his father. He
5 sent him to his room. And then he went in to check on
6 Nahtahn, he remembers checking Nahtahn and Nahtahn passing
7 out. He put him in bed. He went to get water. He
8 returned, he realized he wasn't breathing and he panicked.
9 He knew he was not breathing. He knew he was dead. These
10 are his quotes: I was horrified. I was hearing voices
11 and thinking about the kids and what would happen to them
12 if something happened to me. When asked what he meant by
13 that, he said, if I go to jail. He did not call the
14 police because he believed that they would think that he
15 had killed him. Mr. Jones repeatedly stated he had no
16 intention of killing Nahtahn and that he was only
17 punishing him for not answering him about the outlets.
18 Mr. Jones stated he knew that their mom was not around and
19 that they could not depend on her.

20 Q So then what happened?

21 A So then he said Merah and Eli came into the room and
22 Nahtahn wasn't breathing. Mr. Jones told them he believed
23 Nahtahn was dead. He asked them to leave the room and go
24 into the living room. He left the room, smoked a
25 cigarette, took Merah with him to buy more cigarettes. I

1 think that was later. He couldn't give me a timeframe on
2 that. He purchased ten packs of cigarettes and then
3 headed back to his home.

4 Q And did something happen while he was on his way back
5 to the house?

6 A Yes. He was -- he heard a voice, kind of a creepy to
7 kill the kids. He stated it was not a thought, but a
8 voice. It was inside his head. When he returned home,
9 the other children were asleep. And the youngest two were
10 in the back, the older two were in the living area. And
11 then he started thinking about what would happen. If he
12 were to go to jail what would happen to the kids. And he
13 believed that they would be better off in heaven than to
14 not have parents, that he would be in prison, that their
15 mother would not be there for them. And that's when he
16 believes that he would, "send them to the other side, no
17 pain or suffering then." He said he was hearing voices
18 and high levels of anxiety, racing thoughts. He didn't
19 want his kids to have a life without their mother. He
20 knew it would be better for them to take their -- he knew
21 it would be better for him to take their lives than to
22 live without a mother and they would be better off in
23 heaven. He didn't think about other options during that
24 time period. He did not think about his children going to
25 live with his father or with his grandmother. I asked

1 specifically why he didn't think about. He just said he
2 was so anxious and so -- and hallucinating and so agitated
3 and, obviously, just confused that he did not think about
4 that. And then he smoked one to two bowls of spice, went
5 to the living room where the older two children were
6 sleeping. And that's when he put his hands around Eli's
7 neck -- I'm sorry, he put his hands around Merah's neck
8 and then Eli's neck and then he, obviously, strangled the
9 younger two with a belt.

10 Q Did Eli say anything to him?

11 A Yes.

12 Q What did Tim tell you Eli said?

13 A He said, Dad, take me with you.

14 Q And how about Merah, did Merah say anything?

15 A He said that Merah resisted and -- you know, I
16 thought it was interesting he told me that because if he
17 was making up this story, that certainly doesn't support
18 him in any way. But he did say that she resisted when he
19 -- when he choked her.

20 Q Did he tell her anything?

21 A He didn't tell me he told her -- well, he did tell me
22 he loved her and that he would see her again in heaven.
23 And Gabriel told him that he loved him before he died.
24 Mr. Jones told Gabriel he loved him, too.

25 Q After this happened, what did Mr. Jones say he did?

1 A He told me that he overdosed on seven to eight bowls
2 of spice, that he wanted to die. He did awaken and he
3 realized what had happened. He knew he would go to jail.
4 And then the next several days, he drove aimlessly around
5 South Carolina, Georgia, Alabama, Mississippi and thought
6 about escaping to places, such as Mexico, Las Vegas. He
7 knew he would be found by the police. He bought cleaning
8 supplies, tools to dispose of the bodies. He bought
9 muriatic acid, a saw, trash bags, bleach. I mean, he
10 willing told me all of that. When he left Lexington, he
11 wrapped the bodies in sheets and blankets, put them in the
12 back of his SUV where they remained for several days --
13 sorry, I'm going too fast. He wrapped the bodies in
14 sheets and blankets and put them in the back of his SUV,
15 where he remained for several days -- where they remained
16 for several days as he drove. And then he later disposed
17 of the bodies in a wood area in Alabama.

18 Q We're going to come back to your evaluation and
19 conclusions regarding criminal responsibility of those
20 actions. I just sort of want to briefly summarize the
21 collateral source of information that you had supporting
22 mental illness at the time of the killings. Can you
23 briefly summarize that for the jury?

24 A Yes. Yes. Well, I think we've touched on the
25 military history diagnosis or when he was actually

1 assessed by Dr. Martinelli in the Navy. We've also
2 touched on -- in fact, he saw Dr. Hames for counseling
3 after his separation for anxiety and depression. He,
4 also, was briefly prescribed antidepressant and
5 anxiety medication. If he took that, I don't know
6 that he did. And then I think the next information
7 actually goes to the time at Lexington County jail after
8 he was arrested. So this is actually a medical record
9 note from September 11th, 2014. He was on suicide watch
10 at that time. And he was reporting a history of hearing
11 voices and seeing things. And his quote was, "I hear
12 voices when I'm not busy doing things. I hear voices when
13 I did it -- I was hearing voices when I did it. I see
14 shapes, like squares on the wall that change shapes." He
15 reported that he was self-medicating at times to help with
16 the voices and he was too embarrassed to seek mental
17 health treatment. His mood was labile and he complained
18 of hallucinations. So that's just a few days after his
19 arrest. And then the next note was on 9/12/14.
20 Basically, he was again -- he talked about hearing and
21 seeing things that other people don't hear or see. He
22 stated random people pop up and tell him to hurt others.
23 He was prescribed Geodon at that time period. And, again,
24 this is a short time period after the arrest. And then,
25 of course, Dr. Wood titrated his medication at that point.

1 And then as we move on, in September of 2014, continue to
2 receive treatment with Dr. Wood. He continued to be on
3 medication until this time period now. He -- his
4 hallucinations did resolve for a long period of time and
5 they've just now recently come back.

6 Q I'm going to skip forward to your sort of collateral
7 sources around number 11 and 12. Did you also look at
8 discovery, listen to interviews of Mr. Jones, read the
9 police reports involving Mr. Jones, listen to what he had
10 told the police. And if so, what was important to you
11 about those interactions?

12 A I did. I mean, I, obviously, reviewed thousands of
13 pages of information. And the police reports were part of
14 that, all the State discovery was part of that. I found
15 it very helpful. There was a -- on September 7th, which
16 is the day after his arrest, he was meeting with law
17 enforcement. And his quotes on that -- in that interview,
18 and I'd like to read that, to me was significant. Again,
19 this is before -- this is the day after his arrest, so
20 he's not met with a psychiatrist at that point. So these
21 are quotes from him and without any ability to talk with a
22 mental health professional or, you know, how to fake this
23 if he was going to fake it. But he, basically, said that
24 he was pleading the Fifth --

25 Q I'm sorry, can I skip you down to --

1 A Yeah.

2 Q -- where she passed it --

3 A Where?

4 Q She passed --

5 MR. GRAHAM: Your Honor, we would just ask that be
6 stricken from the record.

7 THE COURT: Granted. She's not here to testify about
8 legal issues, she's here to testify about psychiatric
9 issues. So anything about the rights is stricken. Y'all
10 are not to consider it, okay.

11 THE WITNESS: Sorry.

12 BY MR. YOUNG:

13 Q That's all right.

14 A Can I start with "she passed it on to me"?

15 Q Yes.

16 A Sorry. Mr. Jones said she passed it on to me, the
17 voices in my head. She gave me what she had, talking
18 about his mom. I went off the deep end. She put it in my
19 head. The only way you can fix me is to kill me. After
20 Amber left me, it just came out of me. Put a bullet in my
21 head to fix me. Voices are in my head. The investigator
22 noted, "He thinks the kids want to kill him." He also
23 noted Tim, "talked about the electrical outlets in the
24 house and a child getting electrocuted. The kid stuck his
25 tongue in socket. The kids would cut him up with knife."

1 Q And was there another report from -- and I know that
2 you had said Trent Weeks and you learned that it was
3 probably Eric Johnson --

4 A Yes.

5 Q -- regarding that incident?

6 A Yes, so --

7 Q That interaction?

8 A Yes. So Eric Johnson -- in my report it was a report
9 written by Trent Weeks, but it was actually Eric Johnson's
10 information, I think, about his interview with Mr. Jones.
11 And that was on 9/7, also. He, "Acting in such a manner
12 that I have never seen. He was sweating profusely in a
13 cold room with beads of sweat dripping from his hair. He
14 would scream out that it was Cindy, that's his mother, who
15 put these voices in his head and that Cindy passed this on
16 to him. She put this poison in my head." The
17 investigator wrote the following: "Profuse sweating,
18 foaming at the mouth, yelling or screaming out, burst of
19 anger and fear of the children."

20 Q Now, are those symptoms of use of spice or are they
21 symptoms of mental illness? What was your opinion
22 regarding those statements?

23 A Well, it could be both. Clearly, I think that there
24 was illness there and spice, obviously, aggravated that
25 more.

1 Q Did you also review his interactions with Detective
2 Creech and Special Agent Mackey on the 8th?

3 A Yes.

4 Q And what, if anything, about those was significant to
5 you?

6 A So I thought this was actually one of the most
7 helpful interviews when you're trying to figure out mental
8 state around the time of the offense. And I actually
9 listened to that interview several times. Mr. Jones'
10 speech was very pressured and it was disjointed. He
11 seemed to hop around when he was talking. He cried
12 intermittently, which really shows mood lability. He
13 specifically cried when he was talking about choking his
14 children and stated he believed he was mentally ill. He
15 discussed the voices in his head at the time of the
16 offenses and he also said he was having quote, "a hundred
17 thoughts of what he was going to do after the offenses".
18 He reported he heard voices and seeing things both on and
19 off drugs. He stated on the day of the crime, the voices
20 ran rampant in his head. He stated he believed the
21 children were conspiring against him. He stated he would
22 do the same thing if a police officer had been there and
23 he saw himself as a target.

24 Q Did they ask him if he knew it was wrong?

25 A Yes. And he, basically, said he would have done the

1 same thing if a police officer had been there. So that
2 indicates -- and he's talking about the Nahtahn situation.
3 That indicates that the whole issue of punishing Nahtahn
4 in his mind was not legally wrong.

5 Q Okay. Was there a particular way that he talked
6 about the voices that was significant?

7 A Yeah. This is the difference between an auditory
8 hallucination and a thought. So if someone is having
9 recurrent negative thoughts, like if we're upset about
10 something, we have negative thoughts about ourselves,
11 we're thinking what am I going to do? So you kind of
12 think about it as you're talking to yourself. But if it's
13 a hallucination -- and particularly in Mr. Jones' case, he
14 actually was hearing, what is Tim going to do? So he was
15 hearing a third party, actually, that third party voice.
16 And so I feel like that's more consistent with a true
17 hallucination versus a thought.

18 Q Can you tell us what else you reviewed or had as your
19 collateral sources of information about --

20 A We did have some recorded phone conversations between
21 Amber Jones, his ex-wife, Mr. Jones, Sr., and Ms. Julie
22 Jones, his stepmother during that window when Tim was
23 actually missing. And they had a discussion about -- and
24 I'll just quote what Amber Jones said. "Tim needs help
25 really bad. I even told him that he needs to be on some

1 kind of medication. He needs like a psychiatrist or
2 something. He really does need help badly." And then
3 there was another conversation -- I don't know if that was
4 a separate conversation, but with the same people. I
5 guess it was separate because it was following his arrest.
6 Ms. Jones, Amber Jones, indicated that Tim was quote,
7 "losing it" when they moved to South Carolina and turned
8 into quote, "a completely different person". Mr. Jones,
9 Sr. stated quote, "he was not right" and she discussed his
10 erratic behavior.

11 Q What else?

12 A And then the final pieces were these things I've
13 already mentioned. One is just looking at the Google
14 calendar and his kind of increase in his daily structured
15 activities. And then, also, in the same month, in August
16 when this happened, his insomnia.

17 Q Okay. And I believe you've already sort of
18 summarized for the jury Dr. Snyder and Dr. Bigler's
19 findings regarding his --

20 A Yes.

21 Q -- brain injury and the role that that --

22 A Yes, just the head injury component, which, to me,
23 was a contributing factor to his disinhibition.

24 Q And then -- so can we talk about the spice and the
25 exacerbation of existing mental illness?

1 A Yes. So he did test positive for spice, which, to
2 me, is a contributing factor for exacerbating his mental
3 illness during that time period.

4 Q So did you review the records and all the information
5 that you had to figure out whether or not he might be
6 malingering?

7 A Yes, I did. I looked at, obviously, multiple
8 examiners' reports, all of Dr. Wood's records, my
9 interviews, I've met with him on many occasions, and none
10 of those suggested malingering. There was one -- I think
11 there was one note in the prison by a staff member that
12 may be questioned malingering, but there are hundreds and
13 hundreds of pages that do not support that.

14 Q So can we talk about your findings about criminal
15 responsibility?

16 A Yes.

17 Q Can you tell the jury how you came to the conclusion
18 you did and why you did it?

19 A So, again, when we're assessing criminal
20 responsibility, we're assessing the time of the offense.
21 And during that time period, it's my opinion that during
22 the several weeks leading up to the offense and on the day
23 of the offense and for several weeks to months afterwards,
24 he suffered from psychotic thinking, specifically
25 delusional thinking and hallucinations. He also had some

1 negative symptoms, which I did not include in my report,
2 but he had symptoms of psychosis along with a mood
3 disorder, specifically, a manic episode that is consistent
4 with bipolar disorder. Those are two examples of a
5 thought disorder and mood disorder. It's a major mental
6 illness, obviously, but it's combined illness called
7 schizo-affective disorder. So he has a major mental
8 illness. He had a major mental illness on the day of the
9 offense. And because of that mental illness, he was
10 unable to recognize the legal wrongfulness as related to
11 Nahtahn's death. He was unable to recognize the -- or
12 have the capacity to recognize that -- the difference
13 between moral right and moral wrong as it relates to his
14 four other children.

15 Q With regard to -- and I'm skipping over to where you
16 talk about the South Carolina law --

17 A Yes.

18 Q -- and on Page 32. So what is the law in South
19 Carolina with regard to not guilty by reason of insanity?

20 A So the law here is that a Defendant, as a result of
21 mental disease or defect, and in this case,
22 schizo-affective disorder, lacks the capacity to
23 distinguish moral or legal right from moral or legal wrong
24 or to recognize the particular act charged as morally or
25 legally wrong.

1 Q And as to Mr. Jones PTing Nahtahn --

2 A So --

3 Q -- what was --

4 A -- Mr. Jones did not recognize that when he asked
5 Nahtahn to -- when he was Mr -- when he was PTing Nahtahn
6 that he would actually kill Nahtahn or harm Nahtahn in any
7 significant way. And he even said that if a police
8 officer had been there, he would have done the same thing.

9 Q Have you also looked at some of the religious
10 materials that Tim had about disciplining children and the
11 rod is love and --

12 A Yes. He feels very justified in how he punishes --
13 or how he punished his children. Based on his religious
14 beliefs, he believed that he should discipline them, that
15 he had an obligation to discipline them. You know, there
16 was lots of evidence, religious books and Bibles around
17 his mobile home. He prayed with the children. He quoted
18 scripture. He had them write scripture. He spoke in
19 tongues. So he was very involved in his fundamentalist
20 Christian life.

21 Q Regarding the actions of the deaths of Merah, Eli,
22 Gabriel and Elaine or Abigail, what was your conclusion?

23 A It's my conclusion that because of his belief that
24 they would be better off in heaven and he did have -- you
25 know, he thought that through. He believed that they

1 would be better in heaven than without any parents. He
2 was not thinking there was another option to be with
3 grandparents. It's my opinion that he was unable to
4 distinguish moral right from moral wrong.

5 Q Morally, he thought the right thing to do was to send
6 his kids to heaven?

7 A Yes.

8 Q Rather than have to live the life that he had been
9 through without a mother and with his conditions?

10 A Yes.

11 MR. YOUNG: One second, Doctor. Dr. Dorney, please
12 answer any questions the State may have.

13 THE COURT: Mr. Graham.

14 MR. GRAHAM: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. GRAHAM:

17 Q Dr. Dorney, you said that you met with him for eight
18 times now, is that correct?

19 A Eight total, yes.

20 Q The very first time you met with him, though, was
21 three years after. It was actually the anniversary,
22 wasn't it --

23 A Yes.

24 Q -- of the children being killed?

25 A Yes, that's true.

1 Q So as far as what he told you at that time and how
2 the story developed among sources, he had three years to
3 think about it before you and him spoke, correct?

4 A Correct.

5 Q As far as physical evidence of delusions leading up
6 to August 28th of 2014, not his words, after the fact of
7 after his arrest, the only thing I heard you talk about
8 was his concerns about Merah and his concerns about Amber,
9 is that correct?

10 A Specifically, what are you -- what concerns are you
11 talking about?

12 Q Well, you were talking about -- you testified to that
13 there was paranoia about Merah and there was paranoia
14 about Amber during that summer. And while it was kind of
15 a fluid situation, I think were exactly your words --

16 A Right.

17 Q -- because you were talking about how it's not a
18 fixed, long-held false belief, that somehow that's a
19 delusion. That's what you testified to, correct?

20 A He had -- he had general paranoid beliefs about his
21 family members that started in the summer. One was about
22 Merah. He believed that she could be schizophrenic. He
23 also believed that his ex-wife could be a prostitute. And
24 then as he got into -- as we got into the August month, he
25 actually started having fixations about that his children

1 and Amber were colluding against him. And then that's
2 when all that happened with Nahtahn. So there's several
3 pieces to it.

4 Q That's all self-reported, though, right there?

5 A That part's self-reported, that part is.

6 Q And if he told Dr. Frierson something different,
7 that's something different, isn't it?

8 A Yeah.

9 Q My question was, though, is proof, not his words, but
10 proof. You have an internet search about Merah and
11 schizophrenia and then a text back and forth to Amber. So
12 he expressed concerns. Did you talk to him about that
13 after the fact to even find out what that was about?

14 A About which part with Amber?

15 Q Merah. Merah and his concerns --

16 A Oh, yeah.

17 Q -- with the internet search? He did an internet
18 search for schizophrenia --

19 A Right.

20 Q -- and then he texted Amber and said we need to talk?

21 A Yes.

22 Q What did he tell you about that?

23 A He was afraid she was going to be schizophrenic like
24 his mother.

25 Q And the reason --

1 A He felt like --

2 Q The reason he told you, was it because Merah had an
3 imaginary friend?

4 A He said that she was talking to herself.

5 Q She was talking to herself. So how is that a
6 delusion?

7 A I think he was just afraid that it could be -- she
8 was hallucinating and that she could be getting some kind
9 of mental illness.

10 Q Right, but it's not a fixed, long-term belief. It's
11 a one-time event and we don't even know whether it's true
12 or not.

13 A No, I don't think he knew if it was true. He was
14 trying to figure out what was going on with her.

15 Q A normal thing that any parent would do, potentially?

16 A I don't know. I don't know if I would jump to a
17 conclusion that maybe my child's mentally ill based on
18 that.

19 Q But we also shouldn't jump to the conclusion that's a
20 delusion either, should we?

21 A Well, I mean, it's a piece of the whole thing I was
22 talking about. It's not one specific thing. But as far
23 as your question goes, the data that I had were those two
24 pieces of data.

25 Q Okay. And the other one was about Amber and

1 prostitution and there was also some internet searches
2 about that?

3 A Yes.

4 Q Just because you're paranoid about something or have
5 concerns or worried or going through a divorce and maybe
6 you think your ex-spouse may be prostituting, again, why
7 are we going from a concern, an anxiety, a paranoia and
8 jumping to delusional?

9 A Because I think it was a pattern that started in that
10 summer that was much more significant and escalated until
11 the day of the offense.

12 Q I mean, the reason you're jumping to it is because
13 you need delusion to get schizophrenia, correct?

14 A No.

15 Q That's what supports your schizophrenia diagnosis is
16 the delusions?

17 A It's one of them.

18 Q Okay.

19 A But there are others. I mean, he certainly had
20 negative symptoms, too.

21 Q But each of those two on their own, a single event,
22 is not a fixed, long-term false belief?

23 A Correct.

24 Q Okay. You would agree with me that psychiatric
25 diagnoses are subjective?

1 A They can be. I mean, you can do some objective data
2 to help with that, yeah.

3 Q You can't do a blood test?

4 A Correct, yeah.

5 Q You can't do a brain scan and even say that someone's
6 got disease, right?

7 A Right. They're just associations.

8 Q They're associated. A lot of it has to do with your
9 talks with somebody, what they tell you, what you observe
10 and then any other kind of data you can get?

11 A Right.

12 Q Different people reach different diagnoses all the
13 time, don't they?

14 A Yes.

15 Q How heavily did you rely on Dr. Wood's diagnosis?

16 A I mean, it was a significant component, but it
17 certainly wasn't the determining factor. I mean, I think
18 the fact that -- specifically, when it comes to diagnosis,
19 I think it's very helpful because she's had more contact
20 with him than any of us and she's provided treatment now
21 for years for him. So from a diagnostic perspective, I
22 think it has significant weight, but, ultimately, I make
23 my own decision on diagnosis.

24 Q You heard her say that she never saw disorganized
25 thinking?

1 A Yes.

2 Q You heard her say that she never saw disorganized
3 behavior?

4 A Yes.

5 Q You heard her say that nobody had any observation of
6 him having an outward response to internal stimuli,
7 meaning when he's hearing voices, he's not talking to them
8 or gesturing to them or anything like that?

9 A Right. And I haven't seen that either.

10 Q You would agree with me that that's normal, though?

11 A What's normal?

12 Q For people to respond -- if there are voices in their
13 head for them to have an outward response?

14 A There certainly are patients that you can see that
15 with, who are actively psychotic, but once they're
16 treated, you tend to not see that, even if they hear
17 voices. So that's actually not correct.

18 Q Right. But she saw him since the first day he walked
19 in SCDC and he didn't start taking Geodon until how long
20 after? He didn't come in and take Geodon the first day he
21 was there?

22 A The 12th of September.

23 Q It was, at least, a month later, wasn't it?

24 A No, it was not.

25 Q Do you have the records?

1 A Yeah -- I mean, I don't have the records, but it was
2 the 12th of September when he started medication.

3 Q He started Geodon on what day, ma'am?

4 A I'll find it, just one second. September 12th, 2014,
5 which was just a few weeks -- it was actually about a week
6 after his arrest, less than a week, he started on Geodon.

7 Q And it quickly went up to 320 milligrams?

8 A Yes.

9 Q You heard her also testify and the notes you reviewed
10 about malingering or manipulative behavior that a head
11 nurse complained of, correct?

12 A I think -- yes, she agreed that that report had been
13 there.

14 Q And --

15 A I don't know that she agreed with the information,
16 but she agreed the report was in there.

17 Q And are you -- what does that affect -- have on your
18 opinion, that somebody has said they saw him using
19 manipulative-type behavior?

20 A Well, it's something I would consider. I mean, I
21 think if there's a pattern of it, it's certainly
22 important. If she had seen him malingering, I certainly
23 would think that that's important, as anybody who has
24 evaluated him that that would be important. Particularly
25 in the treatment setting, that's important.

1 Q And you heard her testify saying that although her
2 report -- her records may show schizo-affective disorder
3 that she said that he did not fit into any mental illness
4 box. That when you actually looked to the criterium under
5 the DSM-5, he did not fit into any box. Are you aware of
6 that testimony?

7 A I did not hear that. I know she's made the diagnosis
8 of schizo-affective disorder.

9 Q Does that change your diagnosis in any way when a
10 clinician who saw him for four years, who's job it is to
11 see and treat people at SCDC says I couldn't really fit
12 him into any box? Does that make a difference to you or
13 not?

14 MR. YOUNG: Your Honor, I object to that as
15 mischaracterization of the testimony. I think, said it
16 doesn't fit in any box.

17 THE COURT: Let him characterize -- he can
18 characterize his question consistent with the testimony.

19 Q The record and the jury heard whatever they're going
20 to say that she heard. My question to you is, is if the
21 treating physician at SCDC who wrote down in the records a
22 diagnosis and you have testified to that that's important
23 to you because that person saw them for so long. My
24 question is, is when -- or if that person says they don't
25 fit into any specific box. I could not meet all the

1 criterium of what was required in DSM-5 to diagnose him
2 with a particular illness. Does that make any difference
3 to your opinion?

4 A It could. I mean, if that's what she believed. I
5 mean, she's made the diagnosis of schizo-affective. If
6 that's what the jury heard, it could. However, what's in
7 the record doesn't support that.

8 Q Well, what in the record supports schizo-affective
9 disorder at all?

10 A She, basically, referenced hallucinations and
11 delusional thinking. She actually said negative symptoms
12 this morning, which would support the schizophrenia side
13 of things. And then she commented on the affective side,
14 which is the mood disorder side, and spoke more to the
15 depressive symptoms, not the manic symptoms. She said
16 there was one period where he had some derailed speech,
17 which could have been supported by manic symptoms, but she
18 mainly focused on depression.

19 Q But your diagnosis is schizophrenia and bipolar,
20 correct?

21 A Schizophrenia bipolar, I think she's saying
22 depressed.

23 Q Right. So she would have whatever, I guess,
24 schizophrenia and depression if she had schizo-affective
25 disorder?

1 A Well, she's diagnosing it as schizo-affective
2 disorder depressed, I think, based on -- from what I could
3 tell.

4 Q I know you said you charge \$400.00 dollars an hour.
5 How many hours do you think you've put into this case?

6 A Probably about a hundred hours. You know, I will
7 adjust off, at least, 25 percent of my fee because it's a
8 government case and adjust off all my travel, so.

9 Q So how many hours with him?

10 A About 19.

11 Q And then 81 between reviewing things and coming here
12 and testifying today and talking with whoever you needed
13 to talk to?

14 A Yes.

15 Q Your list of sources that you reviewed, I think, is
16 about 125 documents, or 125 line items, is that correct?

17 A Yes.

18 Q You were going through Mr. Jones' prior mental health
19 history and you started off with, I think, some drug use
20 and then him going into the Navy, right?

21 A Yes.

22 Q And the diagnosis coming out of the Navy was
23 depression?

24 A Depressive disorder.

25 Q Oh, depressive disorder?

1 A And a history of substance abuse, yes.

2 Q And that could be attributed to him hurting himself,
3 an injury, and not being able to recognize his dream,
4 couldn't it?

5 A I'm sorry? I didn't understand what you said.

6 Q Hypothetically, if he injured his hip and he was not
7 going to be able to reach his dream of being a Navy Seal
8 and became depressed, that could explain that diagnosis at
9 that time, couldn't it?

10 A It could. There's just no reference to his hip in
11 any of the documents.

12 Q You never asked him about it?

13 A Yeah. No, I did ask him about it. He still thinks
14 it's his hip.

15 Q So that's what he told you?

16 A Yeah.

17 Q Oh.

18 A But the documents don't support that. They
19 support --

20 Q Well, the documentation just has a diagnosis.

21 A Right, but he was referred to the psychologist
22 because of the crying spells and the depression.

23 Q And my question to you again, then, is, I guess,
24 could the depression have come because he had a hip injury
25 and he couldn't reach his dream? And you said yes, I

1 thought.

2 A Yeah, I guess it could. Yes.

3 Q The next thing, Doctor, that you talked about in his
4 mental health, I think, was what?

5 A It was around the time of his separation. And he
6 actually was --

7 Q His counseling with Dr. Hames?

8 A Correct, yeah.

9 Q Is there a reason that you skip over his evaluation
10 from May of 2002 from the Department of Corrections in
11 Illinois?

12 A I didn't mean to. I don't know if I just wasn't
13 asked that or what. I'm happy to talk about it.

14 Q Well, in that one, he was diagnosed poly-substance
15 dependence. Do you remember that?

16 A That was when he was in prison, yes.

17 Q Poly-substance dependence means what?

18 A He had a history of substance abuse before he came
19 into prison. And, at that time, that was his arrest when
20 he was -- he was arrested for stealing a car, I think, and
21 cocaine use and he was drinking and smoking pot and had
22 used some other drugs.

23 Q And for it, I guess, to reach the level of a
24 diagnosis -- because you can have symptoms, but until it
25 impairs your active life or have consequences, like

1 criminal consequences?

2 A That's one thing. I mean, it can be related to
3 tolerance and dependence on substances, too.

4 Q His Axis II, or another diagnosis, was personality
5 disorder NOS, not otherwise specified. What does that
6 mean?

7 A So that's just what we call -- it's not a major
8 mental illness, but it's actually enduring patterns of
9 behavior that are maladaptive. And in his case, you know,
10 he had a history of antisocial acts or borderline
11 personality, like chronic adjustment problems that could
12 contribute. And I tend not to make that diagnosis in a
13 one-time evaluation, but, you know, I think that
14 particular evaluator did, so.

15 Q And in this case, it actually said narcissistic
16 traits. What is that?

17 A It's someone who actually is arrogant, entitled,
18 basically, attention seeking, those behaviors.

19 Q Somebody who's selfish?

20 A Could be selfish.

21 Q Spice, synthetic cannabinoids can cause delusional
22 thinking, can't it?

23 A Yes.

24 Q So the two outside proofs we have of the internet
25 searches, if it's delusional, it could have been from

1 spice, couldn't it?

2 A It's possible.

3 Q You described him having manic behavior, grandiose
4 thoughts. Why is manic behavior important?

5 A Because it points to a major mental illness that's a
6 mood disorder. And those -- and bipolar disorder can
7 actually be associated with psychosis. And with
8 psychosis, you can actually hear voices and have
9 delusional thinking. So it all can actually be part of a
10 mood disorder, also.

11 Q So is your observation of manic behavior just in that
12 time period or something that had been going on for a
13 really long time?

14 A Well, I think it escalated that summer. It's gone on
15 this year. So I think -- you know, with his med changes,
16 we've seen it. So there's evidence years later that it's
17 there, but it certainly had escalated in that summer
18 period.

19 Q And it gets kind of confusing sometimes because you
20 were talking about manic behavior can give you goal
21 directed, what you saw in him, by making calendars, I
22 think, right?

23 A I think it's just that high level energy when you're
24 manic and you, every minute of the day were planning and
25 doing things. So I was trying to illustrate to the jury

1 the structure of what he did each day, which, to me, is
2 just off the chain.

3 Q But that kind of goes against one of the components
4 of schizophrenia about being disorganized, doesn't it?

5 A Well, that's the thought disorder side, this is the
6 mood disorder side. This is why it's complicated and why
7 the diagram, because there's overlap in a lot of that.

8 Q So the -- when we're talking about the goal-directed
9 activities, which side does it go to?

10 A Mood disorder. Bipolar disorder, it's mania.

11 Q But it would dispute if you were going to say that he
12 was not goal directed or that he wasn't having clear
13 thoughts?

14 A Absolutely. You're right.

15 Q Okay. You had commented on, I think, his lack of
16 sleeping leading up to his killing of his children, right?

17 A Yes.

18 Q 11:00 p.m. to 3:00 a.m., what day of the week was
19 that?

20 A I'd have to check. It was earlier in the week.

21 Q What was he doing, do you know?

22 A I just know that he was on the computer.

23 Q Do you know if he was doing something on the computer
24 or the computer was on?

25 A I think he was doing something on the computer.

1 Yeah, that was actually on the 24th, so that would have
2 been into the 25th. So that was Sunday night into Monday.

3 Q Do you know what he was doing on the computer?

4 A I don't know.

5 Q So you don't know if he was doing work and there was
6 some computer program running while he was sleeping, do
7 you?

8 A I don't know that. I just know he also -- he told --
9 I mean, he, basically, said he wasn't sleeping at all.

10 Q But for actually -- you know that there's computer
11 usage for those times and the dates that you said, but you
12 don't know whether he was really doing anything or what
13 was going on?

14 A I don't know what all he was doing during that
15 period.

16 Q You made a point of talking about his calendar of
17 activities and how he was becoming very regimented, I
18 guess, in what he was doing. How long had that been going
19 on?

20 A You know, when you look at the records, it looks like
21 some of that started, actually, back in July. But just
22 his plans to exercise, structured time for prayer and
23 reading to his children. And then the day trading piece
24 is not clear to me. But I think it started during that
25 month before. The Google calendar, to me, was much more

1 in line with when the offense happened. That was in
2 August.

3 Q So you would agree with me that all of the things
4 that you brought forward as far as manic behavior and
5 delusional that you've testified to and that we've
6 discussed, all that was, basically, during the summer of
7 2014?

8 A Well, not all of it, no. I think it came -- it
9 escalated during that window in August, but he's had
10 current -- he's had symptoms to this day and he had
11 depression before that. So the illness hasn't gone away.
12 It's still requiring treatment and he still has symptoms.

13 Q Right. But, I guess, my question to you was, the
14 things you highlighted, the calendar and activities, the
15 not sleeping, paranoia or delusions about his family,
16 manic behavior, all that -- the examples you gave were
17 during the summer of 2014?

18 A Right. Because that's what I was asked to assess, is
19 that particular manic episode, that period of time, the
20 detail of that.

21 Q And you would agree with me that that period of time
22 is when he began to use spice and use it heavily?

23 A He used -- he started using spice, actually, a few
24 months before that. And I would challenge why if he
25 started using a few months before this behavior didn't

1 happen beforehand, if it was all from the spice.

2 Q And why didn't it happen years before then? If it
3 has nothing to do --

4 A I'm sorry, I didn't hear you.

5 Q If it has nothing to do with the drugs, why didn't it
6 happen years before? Why didn't it happen before he used
7 spice?

8 A I think it was an accumulation of everything. This
9 is a man who went through a terrible divorce, has custody
10 of his five children, he wanted a change, he was not doing
11 well at work. I mean, it was a series of things. He was
12 overwhelmed. I think it came to a head at that point.

13 Q And drugs made it worse?

14 A And drugs made it worse.

15 Q Whatever was there, whether there was a major
16 illness, a diagnosable illness or just paranoia, stress or
17 whatever, drugs made it worse?

18 A In my opinion, there was a diagnosable illness and
19 drugs did make it worse.

20 Q I understand that, but even if there wasn't a
21 diagnosable illness, drugs, spice would be a problem,
22 wouldn't it?

23 A Could be.

24 Q Something caught my attention when you were
25 describing what he told you about when he killed his

1 children that I wanted to ask you about.

2 A Okay.

3 Q In your timeline of events that were reported to you,
4 he accidentally PT's Nahtahn too hard and goes to check on
5 him and shakes Nahtahn. Did he describe what shaking was?

6 A Yeah, he showed me.

7 Q It wasn't a violent shaking?

8 A He did not say that it was a violent shaking.

9 Q That's not what he showed you?

10 A Yeah.

11 Q And then he realizes Nahtahn collapses and dies?

12 A Yes.

13 Q How long of a time period is between there and when
14 he kills his children, his remaining children?

15 A He couldn't give me an exact time period. He didn't
16 know how long it was. He did know he went to get
17 cigarettes and he came back and it happened, but it wasn't
18 clear as to how long the time was.

19 Q Did he tell you whether he went to get cigarettes by
20 himself or did one of the children go with him?

21 A He went with Merah. Merah went with him.

22 Q And you don't know what time --

23 A I don't.

24 Q -- the purchase was? Does a time difference matter?

25 A Yeah, I mean, I think it could. Yeah, I -- I mean, I

1 think it could.

2 Q In what way?

3 A Well, if it was closer to the time of the first
4 death, it could raise questions more of impulsivity. If
5 he came back and he was thinking it through because we
6 were kind of talking about the capacity issues related to
7 moral wrongfulness and he was thinking about it, I think
8 it could actually go more to what he was thinking from a
9 disorganized standpoint. So I think the -- it's more
10 impulsive if it's closer, it's less impulsive if it's not.

11 Q So what's your understanding of about when Nahtahn
12 died?

13 A Around 7:40 or between 7:30 and 8:30.

14 Q And you're not aware that there's a receipt where he
15 goes to the gas station at 1:50 a.m.?

16 A I'm aware that there's a receipt, I just didn't know
17 the time period, no.

18 Q So that would put it -- from 7:40 to 1:50 is five
19 hours later?

20 A Yes.

21 Q So it would have given him a long time to think,
22 wouldn't it?

23 A Yes.

24 Q Eli, according to you, according to Mr. Jones, said,
25 Daddy, take me with you?

1 A Yes.

2 Q Did you follow up and ask why?

3 A No.

4 Q What was going on?

5 A Well, I just know he had a really good relationship
6 with Eli, but I don't know why he -- other than what he
7 told me.

8 Q Well, I guess, my question is, is how did Eli know he
9 was going anywhere?

10 A Well, that's a good question. I don't know.

11 Q Because Nahtahn's dead and what's he doing?

12 A Good question.

13 Q We don't know whether he was packing up to go and
14 then changes his mind and he kills his children or what,
15 do we?

16 A Well, there wasn't any dialogue about going anywhere
17 else, so.

18 Q Merah was saying -- I think -- I'm not sure that it
19 came out, but it's in your report on Page 24, as he was
20 killing Merah, Merah was screaming, no, no, no. You would
21 agree with me or not that that would show or, at least,
22 should give him pause to the wrongfulness of his actions?

23 A It should. With a rationale person, it should. It
24 did not. And I think the fact that he has told Dr.
25 Frierson and me that story isn't -- I mean, he volunteered

1 to say that, so he certainly didn't sugar coat that at
2 all.

3 Q I think when -- the next you were talking about, I
4 think, his psychiatric intake maybe at the Lexington
5 County Detention Center on September 11th of 2014?

6 A Okay. Let me just get there. All right. On Page
7 25?

8 Q I thought -- earlier, I thought I heard that he told
9 you that he had permutations and you attributed that to
10 maybe being confined?

11 A Uh-huh, yes.

12 Q And that that was really atypical, meaning it doesn't
13 fit in with any of the other symptoms or behavior that he
14 was explaining?

15 A True.

16 Q However, in the September 11, 2014, what you read,
17 he's already reporting that he's seeing things there,
18 isn't it?

19 A Right. And that's four or five days after he was in
20 jail.

21 Q That shouldn't -- if it's related to being confined,
22 it shouldn't be showing up yet?

23 A I guess it could. I don't -- you know, I don't know
24 for sure.

25 Q Does that seem --

1 A That's a good question. I mean, he clearly had been
2 in jail for four days, so I guess if he's just sitting in
3 a jail cell, he could start to see -- it's like an
4 illusion. If you look at a wall long enough, you can
5 start to see things move. That's how I've interpreted it.
6 It's just like a sensory deprivation just sitting in a
7 very small confined area. But I don't think he's had that
8 outside of a jail setting.

9 Q Are you aware of anyone -- is it atypical or not for
10 someone to complain of seeing permutations if the reason
11 is confinement after four days?

12 A Is it atypical? I think it's certainly possible. I
13 can't say that it's atypical. I think I also mentioned he
14 -- sleep deprivation can do that, also.

15 Q And then I think you talked about the August 7th
16 interview with law enforcement where he came into the room
17 and was screaming about mentally ill and being
18 schizophrenic and hearing voices, right?

19 A It was actually September 7th, not August 7th.

20 Q I'm sorry, yes. My bad. Thank you, Doctor.
21 September 7th.

22 A Yes.

23 Q And you found that important why?

24 A Because I think it shows that he's reporting
25 hallucinations at the time of his arrest and he's not had

1 any interaction with mental health professionals at that
2 point, who could have implanted that or given him the idea
3 to feign those symptoms. He spontaneously says all of
4 that, really, just kind of rambling.

5 Q Isn't it true that people who are truly mentally ill
6 and going through psychotic events don't come forward and
7 admit it? In fact, they don't believe it, true?

8 A Well, if they're functioning out in the world, they
9 don't. Oftentimes, they'll hide it. But in a jail
10 setting, if they're that dis-regulated, they often do
11 report it.

12 Q So a homeless person who's picked up on the street,
13 hypothetically, who's suffering from a psychotic event in
14 the middle of a psychotic episode, they get picked up by
15 law enforcement, do they admit they're psychotic or do
16 they continue to deny it because they don't believe it?

17 A Some do and some don't. I don't think you can make a
18 generalization about that.

19 Q You would agree with me, though, that it is possible
20 that Mr. Jones walked into that room knowing that he was
21 going to have to talk to law enforcement, seeing his
22 father, knowing that he's going to have to answer
23 questions about where the children are and he put that out
24 to protect himself or to go ahead and set up talking about
25 a mental illness when it really had nothing to do with it.

1 That's a possibility, isn't it?

2 A That's a possibility and, also, asking for an
3 attorney is, and he did not do that.

4 Q No, ma'am, that is not true. And the Judge has
5 already ruled on that.

6 A Well, he --

7 Q Ma'am --

8 MR. GRAHAM: Your Honor.

9 THE COURT: We're not talking about legal issues. Is
10 it a good time to take a lunch break, Mr. Graham? You've
11 got more? Does that suit?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Okay. Y'all got a lunch plan. Enjoy
14 your lunch. Don't talk about the case. See you back in a
15 little bit.

16 (Whereupon, the jury was excused from the courtroom
17 for a lunch break.)

18 THE COURT: Y'all want to shoot for 1:30, 1:45? No,
19 we've made lunch plans for them to be somewhere between
20 12:30 and 12:45 and I don't think they can get there in
21 that amount of time. That's why I stopped. They didn't
22 ask. We asked them yesterday about going to Hudson's
23 today and that's where they're headed. You've got some
24 more, right?

25 MR. GRAHAM: Yes, sir.

1 THE COURT: I tell you what, let's go -- looking at
2 Hank, I'll be back in the courtroom 20 minutes till
3 2:00 -- no, 20 minutes -- yeah, 20 minutes till 2:00, hour
4 and 15 minutes. Hopefully, the jury will be back.

5 (Whereupon, a lunch break was taken.)

6 THE COURT: What you got, Mr. Graham? You look like
7 you want to say something.

8 MR. GRAHAM: I'd like to. Judge, just for
9 clarification, nothing that anybody should ask should
10 elicit anything about the Fifth Amendment from the
11 witness. I would ask the -- I believe that to be true and
12 ask you to --

13 THE COURT: I agree. I think she was unaware that
14 was a, stay away from legal issues.

15 MR. YOUNG: I wanted to make sure that Dr. Dorney was
16 clear on that there was an interview on the 6th that the
17 Court has ruled that we can't discuss where Tim invoked.

18 THE COURT: If she's not been given that direction --

19 MR. YOUNG: She has not.

20 THE COURT: -- we're giving it to her right now.

21 MR. YOUNG: Right. And there were handwritten notes
22 by Marty Patterson, he's testified to that contains the
23 language that she has put in her report as part of her
24 records. She has that handwritten language. And her
25 response about somebody could say they wanted an attorney

1 was not trying to say that Tim ever said that because that
2 hasn't been testimony. But just so the record is clear --

3 THE COURT: Her intent was not to give -- her
4 response was in the context of someone could assert their
5 rights and that would be indicative of something.

6 MR. GRAHAM: I think what her notes refer to is in
7 Marty Patterson's handwritten notes, the whole confusion
8 about conversations between Tim and his father about
9 requesting an attorney, and that's where it's coming from,
10 that report. So it's a report of the interview itself.

11 MR. YOUNG: I just want to say, you know, that
12 testimony wasn't being offered to provide evidence to the
13 jury to evaluate the voluntariness of Tim's statement. I
14 want to make clear that we're not abandoning earlier
15 motions for admissibility and proffers of law enforcement
16 concerning those indications which the Court has ruled
17 upon. I wanted to make sure for the record that we're not
18 abandoning those in any way.

19 THE COURT: I don't think you're abandoning your
20 arguments. You're trying to make certain the testimony is
21 not in violation of something I said stay away from.

22 MR. YOUNG: Yes, sir.

23 THE COURT: And Dr. Dorney was not aware of those
24 directions, just y'all were. And I think y'all are
25 handling it appropriately considering everything. I

1 thought what she was trying to do is, is indicative of
2 someone who is in his condition, they would do thus and so
3 and responsible for it. Yeah, that's true, but also
4 indicative of somebody who does thus and such. That's
5 what I thought.

6 THE WITNESS: That's what I was trying to say.

7 MR. YOUNG: And, also, the State's questions about
8 the likeliness or unlikeliness of somebody right after
9 being arrested coming in and saying I've got these voices
10 is not true. I mean, that's the impression they've
11 created with this interview on the 7th. But we know that
12 he was interviewed on the 6th and the Court has told us to
13 stay away from. But the State has created an impression
14 that he immediately came in and started saying I'm hearing
15 these voices at his first contact with law enforcement,
16 which is also not true.

17 THE COURT: Right. It's late the next afternoon.

18 MR. YOUNG: It's almost 48 hours later -- or 24 hours
19 later.

20 THE COURT: Twenty-four hours later for the first
21 long interview.

22 MR. YOUNG: So we would believe that the State has
23 opened the door to relitigate with the jury the statements
24 on the 6th and the voluntariness of the statements overall
25 after, in our view, the Court's heard arguments about his

1 initial assertions and those not being honored and
2 continue to be questioned --

3 THE COURT: The State didn't ask that question. Her
4 answer got close to that question. I don't think it
5 opened the door. The State didn't ask that question. Her
6 response was trying to explain more fully how she reached
7 her opinion. I think that's what she was doing. And she
8 got interrupted and we stopped and we struck it for the
9 record. I do not believe it's opened the door to address
10 the statement on the 6th, I really don't. But you've made
11 a good record.

12 MR. YOUNG: Thank you, Your Honor.

13 MR. HUBBARD: Just, also -- since I handled Marty
14 Patterson, everything that occurred on the 6th, not once
15 was voices ever mentioned. You even saw the video, not
16 once did he mention voices. It went to the next day when
17 daddy showed up. So that's just on the record from
18 September stuff you ruled on.

19 THE COURT: Fair enough.

20 MR. YOUNG: Finally, Your Honor, I pulled the police
21 report from Illinois where we allege that the State has
22 misrepresented in their questioning the witnesses, that
23 they did not correct regarding Mr. Jones' possession of
24 cocaine and where the -- the initial police report says a
25 small baggy that two small rocks of suspected cocaine,

1 exhibit number 2. And then went on to explain between Mr.
2 Jones and the driver of the car where he had said the
3 driver had asked him to hold this because he was under
4 suspension and felt like he was going to get searched.
5 And the ultimate lab test being positive for point six
6 grams of white powdered cocaine. So we believe that the
7 State misrepresented that as crack cocaine to the jury
8 through it's questioning. That hasn't been corrected and
9 ask --

10 THE COURT: How would you like me to correct that? I
11 mean, I'll give a corrective instruction if you like.

12 MR. YOUNG: I mean, it's on the State to correct it,
13 that it wasn't crack cocaine, it was point six grams of
14 white powdered cocaine.

15 THE COURT: How do you want them to correct it? You
16 keep saying that. What do you suggest for them to do to
17 fix that for you? How do they do that? What would you
18 like for them to do and I'll consider whether I'll ask
19 them to do that.

20 MR. YOUNG: I think they would have to call Dr. Wood
21 back and say I misrepresented this to you, it was actually
22 point six grams of powdered cocaine that he was arrested
23 with one time.

24 THE COURT: I don't think that's how you do it. I'll
25 consider another way. Let's get the jury in and let's be

1 done with this. I'm not ruling against you on correction
2 on that, but I want to keep moving with this.

3 MR. YOUNG: I understand. I'd like to mark this as a
4 Court's Exhibit.

5 THE COURT: 101, I think.

6 COURT REPORTER: Yes, sir.

7 MR. HUBBARD: I think maybe the best way is when that
8 time comes say at his arrest, it was a rock form, but it
9 tested for powder. That way --

10 THE COURT: Again, it was six-tenths of a gram.

11 MR. HUBBARD: Sure. I think that's probably the
12 easiest way because that's factual. It shows he had rock
13 form, but it tested for powder and the amount if Your
14 Honor wants to.

15 THE COURT: I don't mind telling the jury that when
16 the witness is over, is a correction.

17 MR. HUBBARD: That's fine.

18 THE COURT: That would work.

19 MR. HUBBARD: I think --

20 THE COURT: That's in the record and I can say that.
21 It's been characterized as a huge amount or large amount
22 or whatever the word was.

23 COURT REPORTER: 101. Okay, I'm going to mark this,
24 Judge.

25 (WHEREUPON, Court's Exhibit number 101 was marked for

1 identification only.)

2 THE COURT: Bring the jury.

3 (Whereupon, the jury came into open court at
4 approximately 2:15 p.m.)

5 THE COURT: Ready to continue? Dr. Dorney, you're
6 still under oath. Solicitor.

7 MR. GRAHAM: Thank you, Your Honor.

8 CONTINUED CROSS-EXAMINATION

9 BY MR. GRAHAM:

10 Q Doctor, when we broke for lunch, I was asking you
11 about Mr. Jones coming into an interview on the night of
12 August 7th and saying I've got what my mother has, I'm
13 hearing voices, all the crazy behavior and all the
14 statements that he was making. My question to you is,
15 isn't that unusual for somebody who's truly suffering from
16 a mental illness?

17 A Probably less so for someone who's bipolar disorder,
18 who's disinhibited, a little more so for someone who's
19 just psychotic. Does that make sense? Because the
20 disinhibition, you get more from the mood disorders and
21 less of that from a thought disorder.

22 Q So if he was, really thought he was schizophrenic and
23 really thought there were voices in his head, why wasn't
24 he telling people that his whole life?

25 A Well, I think he covered it for a long time. He

1 didn't want anyone to know. He was ashamed of it unless
2 his illness escalated.

3 Q Well, he did go and talk with April Hames, his
4 marriage/family counselor --

5 A He did.

6 Q -- back in 2012, I think?

7 A That's correct.

8 Q 2012 or '13, for 14 hours and they talked about -- I
9 think he came in talking about voices, is that correct?

10 A He came in talking about depression and anxiety
11 related to his breakup with Amber and then having a kind
12 of monster inside of him related to the loss of his mom.

13 Q And then the monster --

14 A -- or abandonment by his mother.

15 Q Upon conversation with Dr. Hames, the monster came
16 out really to be jealousy and negative thoughts, right?

17 A Jealousy, negative thoughts and then feeling kind of
18 abandoned and lost without his mother.

19 Q In all -- everything you've reviewed, have you seen
20 anything documented anywhere prior to his statement on
21 August 7th about I've got what Cindy has about hearing
22 voices?

23 A You mean on September 7th?

24 Q Yes ma'am, September. Yes, Doctor.

25 A No, nothing, nothing related to that.

1 Q You would agree with me that being confronted by the
2 police after you've killed your children would be a good
3 time to make up a story that was not true?

4 A Could be.

5 Q And when we talk about that, we're talking a little
6 bit about malingering, right?

7 A That -- it's actually lying, not malingering.
8 There's lying and then malingering is actually making up
9 symptoms to get out of something.

10 Q So there's just -- okay, you're right. So you have
11 outright lying and just making up everything. Malingering
12 is an exaggeration of symptoms, is that --

13 A Or a creation of symptoms.

14 Q So it could be a creation of symptoms as well?

15 A Yes. Yes.

16 Q Would you agree with me that you have previously
17 testified, this is a true statement, usually when
18 Defendants malingering, it is pretty obvious. I mean, they
19 call attention to other people in the room that you don't
20 see, they claim to hear voices directing them to harm
21 someone.

22 A That's one example or two examples.

23 Q And other testimony before under oath, you have
24 testified when asked, has anybody ever tried to fool you
25 before. And your answer was, a lot. And that is true,

1 I'm sure everybody -- it's not uncommon for people to try
2 to fool you, is it?

3 A As a forensic evaluator, it's pretty common.

4 Q You also testified in response to this question, it
5 is a higher probability when that person has criminal
6 charges pending over them. And your answer was, yes. And
7 that's true, isn't it?

8 A Yes.

9 Q So you expect to look for it?

10 A Yes.

11 Q You were asked, have you ever been fooled? Your
12 answer under oath was, I feel that I have been fooled at
13 times.

14 A Yes.

15 Q So you have been fooled before?

16 A I think we've all been fooled at times.

17 Q So you don't know -- you have an opinion, but you
18 can't say with certainty that you're not being fooled by
19 Tim Jones?

20 A I think I can within reasonable medical certainty
21 that I'm not on this issue.

22 Q You had made a comment that I found interesting and
23 wanted to follow up with. You said that in -- you were
24 talking about, I guess, Amber describing issues with Tim
25 back in 2011.

1 A You mean her statement? I don't know what you're
2 referring to specifically.

3 Q They -- he had taken the job for Intel and they had
4 moved to South Carolina and you were referring to, I
5 believe, Tim's parents repeating something that Amber had
6 said?

7 A It was actually a phone call conversation among the
8 three of them, Julie Jones, Tim Jones, Sr. and Amber. And
9 this was after he was missing, I think, if that's what
10 you're talking about. And she was talking to them about
11 the problems he had had since they moved to South
12 Carolina.

13 Q That he wasn't right, that he had had erratic
14 behavior and he needed a psychiatrist?

15 A Yes.

16 Q That's all you know is that --

17 A Yeah, I mean, I had a transcript of what she had said
18 on the phone.

19 Q Did you ever talk to Mr. Jones about that and ask him
20 what was going on at that time?

21 A He was missing at that point.

22 Q No, this is from 2011.

23 A Oh, when she's referring back to when he came? I'm
24 confused about the question, I'm sorry.

25 Q My understanding was that the conversation had to do

1 with when they first came to South Carolina, which is when
2 he got a job at Intel, which was, I believe, in 2011 --

3 A Correct.

4 Q -- when they moved to Leesville, South Carolina in a
5 small trailer.

6 A Correct. I think she saw the relationship change and
7 he started having problems when they moved to South
8 Carolina.

9 Q Did you talk to him about that?

10 A Not about that particular phone call. I mean, he's
11 the one who told me that things started going south around
12 that time period, too.

13 Q You had testified earlier about neurological testing.
14 And that goes into the traumatic brain injury --

15 A Neuropsychological testing?

16 Q Yes, ma'am. Yes, Doctor, I am sorry.

17 A That's okay.

18 Q The neuropsychological testing that was done in this
19 case, it was done back in 2016?

20 A Correct.

21 Q By Dr. Brawley?

22 A Yes.

23 Q Okay. Dr. Brawley has not testified, just so you
24 know.

25 A I did not know that. Thank you.

1 Q But her report is something that you relied on?

2 A Her report, yes.

3 Q The testing that was done on that, and correct me if
4 I'm wrong, is just cognitive testing?

5 A Correct.

6 Q And when we say cognitive testing, we're just talking
7 about what?

8 A I think what his intellectual functioning was and
9 then, also, she looked at issues around -- or related to
10 his memory and processing.

11 Q And he did terrible, didn't he?

12 A He did.

13 Q He was in the worse percentiles in processing speed,
14 right?

15 A Yes.

16 Q I mean, he was one percentile in processing speed?

17 A Yes.

18 Q He was also on 320 milligrams of Geodon, wasn't he?

19 A Yes.

20 Q So do you really give this much weight?

21 A So I think that the medication clearly affected his
22 functioning. I do think it's important to note that he --
23 she tested him for malingered memory issues and he did not
24 malinger, so that was important for me to know that. And
25 she also said that medicine could cause this to be

1 impaired, his thinking to be impaired, but she didn't
2 think it solely was related to medication, so.

3 Q When you're talking about malingering, we're talking
4 about exaggerating his symptoms or lying, making up
5 symptoms?

6 A Yes.

7 Q But she only tested him in relation to his memory?

8 A Yes, but he didn't have any active psychotic symptoms
9 then either. So I don't think it's appropriate to assess
10 for malingered psychosis if there aren't any active
11 symptoms. He wasn't complaining of any current symptoms
12 of psychosis then.

13 Q At the moment of testing?

14 A At the moment of testing.

15 Q So you're saying that they should do testing when
16 somebody is in a psychotic episode?

17 A Well --

18 Q That's when you should do --

19 A -- if they're claiming -- if they're claiming voices
20 or claiming psychosis currently, it's a screening -- there
21 are screening tools that you can actually use to assess
22 that. But if they're not claiming anything, any kind of
23 symptoms, I don't know why you would want to assess them
24 with a current malingering tool as an evaluator.

25 Q Her testing was done in April of 2016?

1 A Correct.

2 Q Was he --

3 A And I -- yes, I'm sorry. Yes.

4 Q Was he experiencing psychotic symptoms at that time?

5 A No.

6 Q So when do you say he's experiencing psychotic
7 symptoms? It's not every time he hears a voice,
8 obviously, is it?

9 A His symptoms of psychosis resolved with treatment,
10 you know, after several months of treatment. So this was
11 after that. And he really didn't have psychotic symptoms
12 for a very long time until just the last couple of months.

13 Q Well, he -- he has reported it frequently through the
14 years of hearing voices and seeing permutations -- well,
15 we said the permutations actually weren't consistent with
16 anything, right?

17 A He has reported those symptoms before he was treated,
18 but then after a period of time of treatment, most of that
19 resolved until the most recent month, which could have
20 just been the stress of trial.

21 Q So psychiatrists talk to people, review stuff and
22 make a diagnosis. A psychologist administers tests?

23 A Correct. Well, they also make diagnoses.

24 Q And they make diagnoses as well?

25 A Yes.

1 Q But psychiatrists don't administer tests or interpret
2 tests, right?

3 A Correct.

4 Q You ask a psychologist to do that?

5 A We just ask psychologists to do testing to have
6 objective data to help us with evaluations.

7 Q So that I'm clear, are you saying, when should
8 neuropsychological testing for the presence of psychosis
9 be done?

10 A If you truly -- okay, that's different from
11 malingering scales. I think you were asking me about
12 tools to assess malingering. For current psychological
13 testing, I mean, clearly, you would like them to be a
14 little bit more stable so they can sit through testing and
15 not be actively psychotic. For the purpose of a forensic
16 evaluation, though, malingering tools can be used if
17 someone is claiming active symptoms and you suspect they
18 could be malingering.

19 Q One of the things that you reviewed, I believe, is
20 Dr. Kruse's report, is that correct?

21 A Yes, I did.

22 Q And that was neuropsychological testing that Dr.
23 Frierson requested?

24 A That's correct. Let me just see if I can find her
25 report.

1 Q Sure.

2 A Okay.

3 Q She administered the same -- and you had said
4 earlier, the RBANS test was one that I think they both
5 did, right?

6 A Yes.

7 Q And that is a cognition test that has to do with
8 looking at verbal learning, delayed verbal learning,
9 semantic fluency, delayed recall of a complex design?

10 A Yes.

11 Q When Tora Brawley administered it to him when he was
12 on 320 milligrams of Geodon, he was in the first, the
13 third, the first and the third percent respectively?

14 A Yes.

15 Q There was a control verbal fluency for letter cues,
16 he was in the first percent with Dr. Brawley. When Dr.
17 Kruse administered the test, he was in the 79th
18 percentile?

19 A Correct.

20 Q So how do you explain that difference if it's not for
21 the drugs?

22 A I think he was on much, much less medication the time
23 he saw Dr. Kruse. So I think, in fact, he was on almost
24 no medication when he saw Dr. Kruse.

25 Q So, no question, the cognitive -- or the --

1 A Was affected by the medication.

2 Q Okay. And as far as malingering, he wasn't -- even
3 in Brawley's test, she said that he wasn't malingering as
4 far as to the cognitive part?

5 A Correct.

6 Q Dr. Kruse did some testing on symptom validity?

7 A Yes.

8 Q My understanding is that is looking for the presence
9 and claim regarding psychosis, is that correct?

10 A Yes.

11 Q She did a -- and there's also some validity testing
12 that goes along inside there to make sure they're doing
13 right and trying?

14 A That they're putting effort through, yes.

15 Q The dot counting test, that's an effort test. The
16 Rey 15 and the Rey 15 item recognition -- item memory
17 test, those are both effort tests?

18 A Yes. They are, you know, tools that we use to assess
19 malingering.

20 Q And then she did -- Doctor, there were three that she
21 did that she had concerns about. One was the SIMS test
22 and she noted that in one of the subcategories in the
23 psychosis level, he had a six, correct?

24 A Correct.

25 Q And not her words, but what psychologists all have

1 agreed on is if the score is six is clinically significant
2 for the report of atypical symptoms of psychosis, correct?

3 A Yes. I think what it warrants is to do the SIRS,
4 which is the next test. So they're screening tools for
5 malingering, all of these tests. So I think if there's a
6 certain -- and, again, I'm not a psychologist, but just
7 from reading these reports as an evaluator, I think they
8 also look at those and decide if they're going to do
9 additional tests.

10 Q And she did, she did an additional test, the SIRS
11 test?

12 A Yes.

13 Q On that one, he also had symptoms -- excuse me,
14 scores that were notable?

15 A He did.

16 Q It says on one scale was in the definite range of
17 improbable and absurd symptoms, correct?

18 A He did.

19 Q And two scales were in the probable range of rare
20 symptoms and symptom combinations, correct?

21 A He did.

22 Q So does that second test give you any concern about
23 malingering or exaggerating the claim of psychosis?

24 A I think it can, but I was very confused with this
25 testing because he was not having active symptoms. So

1 these are current tools that you use if someone is
2 actively reporting symptoms. At the time that he saw her,
3 he didn't have any symptoms. So, to me, it raised
4 questions in my mind, is this a misuse of these tests.
5 And when it comes to responsibility, you certainly can't
6 use current assessment tools to go back in time. So I
7 just didn't rely on this information because it was very
8 confusing to me. And it was multiple tests for
9 malingering -- I understand where you're going with this,
10 but it -- she didn't -- she did not diagnose malingering
11 nor did Dr. Frierson and I really didn't understand the
12 purpose of what they were doing other than --

13 Q So you --

14 A -- I do understand the cognitive piece that you've
15 raised.

16 Q So you read it, you didn't understand why she was
17 doing the malingering testing, so it really has nothing to
18 do with your opinion?

19 A Correct. I mean, he didn't have active symptoms, so
20 I didn't understand why she was doing that.

21 Q So if it's relevant, Dr. Kruse is the one to talk
22 about it, I guess?

23 A Yes.

24 Q Okay.

25 A Now, I do understand -- I think Dr. Frierson had

1 concerns about the IQ discrepancy with Dr. Brawley's
2 testing. I attributed that to be too much medication --

3 Q Okay.

4 A -- so I didn't feel like there needed to be another
5 test done. To me, that was pretty obvious. But these
6 other tests, to me, I just was concerned they were
7 misused.

8 Q There's no question he was addicted to spice, is
9 there?

10 A There's no question about that.

11 Q And there's no question that you can have psychosis
12 from spice ingestion?

13 A No question about that.

14 Q You can have paranoia? You can have auditory
15 hallucinations?

16 A Yes.

17 Q How do you explain -- on September 7th, that
18 interview that we discussed earlier when he was foaming at
19 the mouth and acting crazy, is he in a psychotic moment at
20 that time in your opinion?

21 A Yes.

22 Q The next day, September 8th, he talks to law
23 enforcement. He actually sees his dad?

24 A Right.

25 Q And his dad said that he saw --

1 A The old Tim.

2 Q -- the old Tim? So my understanding is that you
3 can't diagnosis schizophrenia unless there's been -- if
4 it's resolved itself without medical intervention. So how
5 do you explain that one day he's in a psychotic episode
6 and the next day he's not? How is that not related to
7 substance-induced psychosis?

8 A Well, I think the substance has exacerbated it, but I
9 don't think it was just the substance. I think the acuity
10 was much, much higher during that window with the
11 substance, but the illness progressed even for several
12 months after that. So I don't think it was just the drug
13 itself.

14 Q You had testified about aimless driving, I think?

15 A I think that's the word that Mr. Jones used, yes.

16 Q And is that your opinion, that he was driving
17 aimlessly? Did you talk to him about that?

18 A Well, I think he, for nine days, drove from state to
19 state. He had talked about going out west, but he never
20 got there. I'm not saying he went around in circles, but
21 he definitely went around, came back and went around
22 again. And, to me, he never got to where he wanted to go,
23 so.

24 Q Does that mean something to you?

25 A It means he could be very confused, he could be, you

1 know, disorganized in his thinking. I mean, he had some
2 discussions about what he wanted to do, but he never did
3 it. So it raises questions on his level of organization
4 and his thinking.

5 Q Did you look at any of the phone extractions from his
6 phone?

7 A Yes, I did.

8 Q So there were internet searches -- you're aware that
9 he left and started to go to Georgia at 10:30 the next
10 morning?

11 A Yes.

12 Q And drove all the way to the far side of Birmingham,
13 Alabama and all during that time, he's doing internet
14 searches looking for spice?

15 A Yes, in states --

16 Q It's illegal in every one of those States --

17 A It's illegal in every one of those States, correct.

18 Q -- and he turns around and comes back to Lexington
19 where it's legal, right.

20 A Yes.

21 Q And then you're aware that he went to Wal-Mart and
22 purchased things to dispose of the bodies?

23 A Yes.

24 Q He went to Advance Auto and purchased things to do an
25 oil change?

1 A Yes.

2 Q And he told law enforcement in the recorded interview
3 on the 8th, the recorded portion, I think you've referred
4 to, he was asked specifically about being aimless. And he
5 said, I was in an aimless path toward Las Vega, that's why
6 I was doing this and that explained me going around to
7 major cities. So is that --

8 A But I don't think he ever got anywhere with that.

9 Q Well, he said he had a plan and you're saying he's
10 aimless and that there wasn't a plan. That's where the
11 point is.

12 A Well, I think he used the word aimless to begin with,
13 but yes, he did go around from State to State.

14 Q You listened to the audio recording on September 8th
15 with the sheriff's department and the FBI agent, right?

16 A Yes.

17 Q He said, "I don't know. At that point, I was just
18 thinking run, get rid of the bodies and you're F'd, Tim."
19 He was thinking. I mean, that's what he said. Not that
20 he was hearing voices, he said I was thinking I need to do
21 these things, run and get rid of the bodies. Those
22 weren't voices telling him to do that, right?

23 A Well, and that comment, but he also has talked about
24 the voices during that time period, so -- and, actually,
25 all through the several days when he started treatment

1 with Geodon, so which is not long after that. So it's
2 mixed. But I see what your point is, in that particular
3 comment, he's talking about thought as opposed to a voice.

4 Q So how do you know which one it is?

5 A Well, he told me it was a voice, but, I mean, I think
6 the way it's written in this statement, it actually was --
7 and now he said it was basically a thought, I guess.

8 Q Well, in this particular moment -- which I agree he
9 said different things at different times. He says, I was
10 just thinking run, get rid of the bodies and you're F'd,
11 Tim. His thinking and says Tim, so he referred to himself
12 as a third person, didn't he, while he was thinking?

13 A Right, but he typically talked about the voices
14 talking to him and calling him Tim. So that's an
15 exception to what he's normally said.

16 Q Doctor, why is he insane?

17 A Because he suffered and continues to suffer with a
18 major mental illness that has a thought disorder
19 component, specifically, delusional thinking and
20 hallucinations and a mood disorder component at the time
21 he was manic. And I think it affected his ability to
22 know, recognize what was legally wrong as related to
23 Nahtahn. And, also, basically, he was not capable of
24 understanding the moral wrongfulness of what he did with
25 the other kids.

1 Q All right. So the mental illness that you're
2 diagnosing him with going back in time -- because you saw
3 him three years later, I think?

4 A Yes.

5 Q You're saying on the night of August 28th, he was
6 suffering from schizophrenia and bipolar?

7 A Schizo-affective disorder, which is both.

8 Q I'm sorry, schizo-affective disorder and bipolar?

9 A Schizo-affective disorder, yes, bipolar type.

10 Q And tell me why. What is it that makes a
11 schizophrenic diagnosis for that night?

12 A Because he had delusional thinking, he had
13 hallucinations. Those are the --

14 Q I'm sorry, the first thing was what?

15 A He had some delusional thinking --

16 Q And what was his delusional thinking?

17 A He had delusions about his children and about his
18 ex-wife.

19 Q And what were the delusions specifically?

20 A The delusions that they were going to harm him. He
21 had delusions that they could be in conspiracy with each
22 other to either burn the house down or electrocute him.

23 Q So -- I'm sorry to interrupt, go ahead.

24 A He -- it's not rationale. I mean, these are --

25 Q So his --

1 A These are delusional thoughts. He's psychotic.

2 Q I just want to talk about the delusion before you go
3 on.

4 A Okay.

5 Q That delusion. And then if there's more delusions,
6 you can talk about those, too. So he is delusional that
7 night because he thinks that his children and Amber are
8 teaming up together to hurt him, is that correct?

9 A Yes.

10 Q That is not what he told law enforcement when he was
11 interviewed, is it?

12 A I don't think he talked about that.

13 Q He did not talk about being afraid of Amber. He
14 talked about being afraid of all three of his children,
15 though, he did?

16 A He did.

17 Q Or excuse me, all five of his children.

18 A And I don't think he said he was afraid of Amber. I
19 think he just said he felt like they were maybe in cahoots
20 or collusion with each other to do something to harm him.

21 Q To be a delusion, we said it needed to be a fixed,
22 long term false belief. So how is that --

23 A Well, I don't think it has to be a long term false
24 belief. It becomes more fixed. And a lot of his paranoia
25 delusion symptoms started in June. So it was more of the

1 same, but it was escalating along with the manic symptoms.

2 Q But other than him telling you that he was afraid
3 that Amber was in on this, that's not documented anywhere
4 you could find other than him telling you that three years
5 after the fact?

6 A Correct.

7 Q Okay. As far as the children being plotting against
8 him to harm him, the first time you can find that is his
9 interview with law enforcement on the 7th -- or the 8th or
10 9th, when -- the 8th or 9th, I guess?

11 A Yes.

12 Q Again, after he was arrested. Okay. Other than
13 those --

14 A Well, there was some data. I mean, he actually was
15 searching related to the electrical issues, the
16 fascination that Nahtahn had with electricity. So he did
17 actually research some of that during that month. And
18 those are -- that's a set of symptoms.

19 Q Did you ask him about that?

20 A Yes.

21 Q And what did he tell you about his researching of the
22 electrical --

23 A He just said that he -- you know, he had a
24 fascination with electricity. He didn't want him to harm
25 himself. And then it turned into he thought that was part

1 of this whole plot against him.

2 Q But the plot against him didn't happen until the
3 night he killed his children?

4 A Correct, but it had been building since June with
5 his -- his paranoia with his family.

6 Q But he didn't even express to you that he thought his
7 children were going to harm him prior to the night he
8 killed them?

9 A Correct.

10 Q So he had a one-night delusion?

11 A No, I don't -- I mean, I think the delusion was
12 building as were the manic symptoms. He just articulated
13 it, you know, when we were talking about that particular
14 night.

15 Q He told you that he was not afraid of his children
16 until the night he killed them, that was the first time he
17 was ever afraid of his children. Isn't that what you
18 testified to?

19 A That was the first time he was afraid of his
20 children, but he had thoughts that they were conspiring
21 against him, wanting to go live with their mother. That
22 all started prior to that.

23 Q Right. So is that true or false?

24 A Is what true or false?

25 Q That they want to go live with the mother?

1 A I don't know.

2 Q So did he tell you it was a false belief?

3 A He believed it to be true.

4 Q If I told you that it was true, does that matter to
5 your opinion?

6 A You mean based on what, though? I don't understand
7 what --

8 Q Well, Merah indicated back in May of 2014 to a
9 counselor that she wanted to go live with her mom.

10 A I mean --

11 MR. YOUNG: Objection, not in evidence.

12 MR. GRAHAM: It's in discovery that she's seen.

13 THE COURT: She's reviewed those records.

14 MR. YOUNG: Can I see the record?

15 THE COURT: He wants to see what you're looking at.

16 MR. GRAHAM: I'm sorry?

17 MR. YOUNG: Can I see the record?

18 MR. GRAHAM: Sure, you can. I'm sorry, Boyd.

19 A I mean, I'm sure she missed her mother. I know that
20 they all missed their mother. I think it's probably
21 really normal to want to go live with your mother at
22 times, but he felt like it was a plot against him.

23 Q So I guess my question to you is -- because I know in
24 part of your opinion he's afraid of his children that
25 night when Nahtahn won't tell him why he messed with the

1 outlets?

2 A Yes.

3 Q Are there any other delusions going on or is that the
4 only delusion going on?

5 A That's the only delusional thinking at that point.

6 Q And talk about later as the night progresses.

7 A He starts having thoughts and he's -- after Nahtahn's
8 death, he actually is having racing thoughts, which is
9 part of the mood disorder, actively hallucinating. He was
10 confused. He talks about his -- he's having pounding
11 thoughts at that point and then he was focused on what's
12 going to happen to my kids. And at that point, he was
13 focused on religious reasons why they would be better off
14 in heaven than on earth without a parent.

15 Q Well, if I understood your report correctly, his
16 first thought is Amber doesn't want the kids?

17 A Correct.

18 Q So is that a delusion or is that true or how does
19 that play into this?

20 A I have no idea. I mean, I think she would have
21 wanted them if he were in prison. So he just assumed that
22 she did not based on the history.

23 Q As part of discovery, did you have an opportunity to
24 review Defendant's Exhibits 87, 88 and 89, which were
25 letters from Amber --

1 A Yes.

2 Q -- to her three oldest?

3 A Yes.

4 Q And those were written --

5 A Much earlier, in March --

6 Q March of '14?

7 A 2014.

8 Q Same year?

9 A Yes.

10 Q She tells them she loves them, doesn't she?

11 A Yes.

12 Q So is that a delusion then when he says the children
13 would be abandoned by Amber? Did you explore that with
14 him?

15 A I don't know that that's really a delusion. That's
16 more his just belief because of what's happened over the
17 course of time with her. You know, the fact that he felt
18 like she was not there for them, not visiting them
19 regularly. He had been abandoned by his mother. I think
20 that was all related to his thinking, disorganized
21 thinking and then just also the reality of what happened.

22 Q So --

23 A So that's less delusional. That's more related to
24 the -- where he was with his mood disorder.

25 Q The next thing you notice is you said that he

1 believed that Amber didn't want the children?

2 A Yes.

3 Q So are we in a delusion or where are we at with that
4 belief?

5 A That's not a delusion, that's a belief. He believed
6 that she did not want the kids and they'd be better off in
7 heaven. He was a very religious man. He felt like they
8 would be better off in heaven than without parents.

9 Q The next thing I see in your development of that
10 night in his story to you is that there's that evil voice,
11 a command voice, I guess, that says kill the children when
12 he's coming back --

13 A Yes.

14 Q -- from the grocery store? And he doesn't talk about
15 command voices. That's a voice telling you to do
16 something, right?

17 A Correct.

18 Q This is one of the only times that he's ever
19 described that to you?

20 A Yes. That is one of the few times. I don't think
21 that he acted just on a voice command. He was actually
22 having other voices. He was having racing thoughts, but
23 he definitely had that one command hallucination. I
24 didn't put a whole lot of weight on that particular
25 symptom at that moment.

1 Q The next step in your analysis is -- from what I
2 understand that he told you is in explaining why he did
3 kill his children, he believed they would be better off if
4 he took their lives than left them with their mother?

5 A Yes. Or left them -- yes. Well, he didn't think
6 that the mother would be around.

7 Q Right. So they really wouldn't have a mother?

8 A They wouldn't have a mother and he would be in
9 prison.

10 Q And they would be abandoned like he was as he grew
11 up?

12 A Right. And he was a religious man. He believed that
13 he would see them in heaven.

14 Q So is that a delusional or is that just a belief?

15 A That's a belief, but it's in the mix of a manic
16 episode, so it's not a delusion. It's just what he
17 believed, but he was -- he had racing thoughts, he was
18 manic that I don't think that he really appreciated what
19 that was going to turn into or the con -- or the fact that
20 they could have lived with his parents.

21 Q Do you remember reading the reports of Agent Mackey
22 with the FBI?

23 A Yes. You'll probably have to show me that particular
24 report.

25 Q And he testified -- and I can if you need it. I'll

1 get it for you. He testified earlier --

2 MR. YOUNG: Objection. Agent Mackey testified he
3 didn't write any reports.

4 THE COURT: Whatever report you're referring to, you
5 can go, but I remember there was one report written from
6 that interview.

7 Q Doctor, do you remember the part of Agent Mackey's
8 report when he says that Tim Jones said, let's cut to the
9 chase?

10 A I don't remember that. I'd have to look at the
11 report. Sorry.

12 Q Do you remember the part where Tim said that what
13 happened to Nahtahn was out of anger, not out of fear?

14 A I remember a piece of that, yes. It's probably
15 better if you just show me the report.

16 Q That's okay, Doctor. Thank you. The last step -- so
17 the only delusion that he has going on at the moment is
18 fear of the children that materializes that night, that
19 coalesces that night, is that a fair way to say it?

20 A The only delusion, correct.

21 Q That's the only delusion going on. Everything else
22 is --

23 A Manic.

24 Q -- thinking and choices?

25 A Well, it's psychotic behavior related to mania.

1 Q So far what I've asked you, though, you've told me is
2 not psychotic, they're just beliefs. I guess that's what
3 I was asking whether those were delusions. When I was
4 asking you about believing the children would be, by
5 Amber, that's what he believed. That's not psychotic.
6 That's what I understood --

7 A That's what he believed when he was manic, yes.

8 Q That's not a delusional, non-reality based --

9 A I mean, he -- well, I mean, he, basically, is a very
10 -- was hyper-religious and was grandiose and believed
11 they'd be better off in heaven. I mean, is it a clear cut
12 delusion, no. Is it manic behavior, yes.

13 Q So his last --

14 A It's a part of the major mental illness.

15 Q The last part is he says they would be better off if
16 they were in heaven before he killed them?

17 A Yes.

18 Q That's a decision he makes?

19 A Yes.

20 Q That's not a delusion, that's his thought? That's
21 his choice?

22 A That's his -- that's his thinking, yes.

23 Q He's making a value choice of what he thinks is best
24 for the situation?

25 A Yes.

1 Q As far as Nahtahn, you're saying that he did not
2 appreciate the legal wrongfulness of his actions?

3 A He didn't recognize that, yes.

4 Q And you're basing that, I guess, in part on the
5 statement that's recorded with the question asking him
6 would you do it with a police officer standing at your
7 shoulder?

8 A In part. I mean, he was a very religious man. He
9 believed in discipline, excessive at times, obviously, and
10 he had rituals that he followed with that. He felt very
11 justified with that. And it was all -- it correlates with
12 his religious thinking and that fundamentalist view of
13 punishment.

14 Q So morally, as far as Nahtahn, does that play an
15 issue?

16 A It's more of a moral justification versus a moral
17 wrongfulness thing. He felt justified by the PT he was
18 doing -- or asking Nahtahn to do, but it's less on moral
19 wrongfulness piece. I know that's complicated. Moral
20 wrongfulness really gets more into capacity. This is more
21 about just the kind of the life that he had and what he
22 believed in discipline related to his religion.

23 Q So when we're talking about knowing the difference
24 between moral right and wrong, we're not talking about
25 what Tim Jones thinks, are we? We're talking about

1 society, isn't that correct?

2 A Not necessarily. There's subjective moral
3 wrongfulness and objective. And this is more about
4 subjective.

5 Q So Tim Jones gets to choose what he thinks is morally
6 right and wrong?

7 A Well, he's in a psychotic mindset, so in his mind,
8 it's actually what he believes to be true and necessary.

9 Q So if I understand you, anybody who's got psychotic
10 symptoms, has a mental health, major mental health
11 diagnosis and thinks they're morally justified in doing
12 something is insane? That's what you're saying, correct?

13 A It has to be in the context of a major mental
14 illness. He has a major mental illness. This is not just
15 about someone who's just religious and acting out morally.

16 Q I understand, Doctor. My question was, anybody who
17 has a major mental illness who thinks they are morally
18 justified in doing something from their internal heart,
19 you would say they were insane?

20 A No, not necessarily. They would have to have these
21 other symptoms to support that.

22 Q If somebody has schizo-affective disorder bipolar
23 type and they have an active delusion going on that night,
24 if they felt morally justified that whatever they did, it
25 doesn't matter what society thinks, it's what I think is

1 right and wrong. You're telling me that person is insane?

2 A No, I'm not. Because you haven't asked me -- he did
3 not have the capacity. He was not able to organize his
4 thoughts. His thoughts were racing. He had manic
5 symptoms that played a part in all of that. There's a
6 psychotic component and there's a manic component to this.

7 Q So you're saying that somebody who has -- the manic
8 part is the bipolar type?

9 A Yes.

10 Q So a schizophrenic who had delusions who had a moral
11 belief about something, they would always be insane?

12 A It's not -- I don't know that they would always be
13 insane. That's not this particular situation.

14 Q Let's talk about the other children.

15 A I'm sorry? I didn't hear you.

16 Q Let's talk about the other children.

17 A The other children. Okay.

18 Q As far as that, if I understand you, because Tim
19 Jones has a major mental illness and has a delusion and
20 because he feels like his children would be better off in
21 heaven, that makes him insane? That he can't appreciate
22 the moral wrongfulness -- it's because he thinks it's
23 morally right, is that what you're saying, Doctor?

24 A I think he just can't -- he didn't have the capacity
25 and couldn't appreciate that was morally wrong in that

1 moment. And a lot of it was --

2 Q What do you base that on?

3 A Everything I've looked at with this case. This is a
4 very extremely religious man who's mentally ill.

5 Q Tell me specifically why you are saying that he did
6 not appreciate the moral wrongfulness of him killing his
7 four children. Not just your opinion, I want to know why.

8 A Because he had strong beliefs about them being in
9 heaven and being better off, the fact that he would have
10 no parents here. And he believed that if you have no
11 parents, you have no mother, no one to take care of you,
12 life's not worth living. I mean, he was very clear with a
13 lot of that discussion. He wasn't thinking that his
14 father or his stepmother or his grandmother could take
15 care of the kids. It didn't cross his mind.

16 Q That's what he tells you?

17 A He wasn't thinking alternatives. Yes, that's what he
18 told me. There's nothing that shows otherwise.

19 Q What if he didn't want Amber to have the other
20 children? What if he thought I'll punish Amber by killing
21 them? That would be another possibility of why he killed
22 them, wouldn't it?

23 A It could be. I mean, he was planning to move with
24 his children away to start medical school. I mean, he
25 certainly had thoughts about moving and relocating

1 somewhere else, not killing his children.

2 Q But for the four children who were left alive after
3 Nahtahn, Tim Jones thought he was going to go to jail?

4 A He did. He did.

5 Q So isn't it possible that he killed the other four
6 children to punish Amber?

7 A It's possible. Certainly, not what I -- not my
8 opinion, but it's possible.

9 Q But that's not what he told you?

10 A That's not what he told me.

11 Q And it doesn't matter -- the way you're interpreting
12 insanity, it doesn't matter what society thinks, it's what
13 the individual thinks, is that correct?

14 A Well, I think you can look at both sides of it. In
15 his situation, it was more subjective. It's what he
16 thought.

17 Q I guess I'm still trying to understand why anybody
18 who's charged with a crime who has a major mental illness
19 can't say I thought I was right when I did it, I thought I
20 was justified and that you wouldn't think -- to me -- I'm
21 confused.

22 A I think you have to look at the whole picture in this
23 case. This is not just someone who has a mental illness
24 who is a religious man and feels justified. I think he is
25 in the active throws of manic state and he's psychotic.

1 It's both of those components. It's really not that
2 simple. It's a complicated situation.

3 Q When I ask what you're basing your opinion on
4 specifically, what's your answer?

5 A About which part? I think I've answered whatever
6 you've asked me.

7 Q Why he thinks -- why his thinking that his children
8 are better off dead means he's insane, by going to heaven?
9 Why does that make him insane

10 A He's not appreciating -- he's not appreciating the
11 wrongfulness of that. He thinks it's the right thing to
12 do, to put them into heaven. They won't suffer. They're
13 not in pain anymore. They will have no parents here. I
14 mean, that was his line of thinking.

15 Q When you say he doesn't think that it's the wrong
16 thing to do, I guess my question is how is that not his
17 choice? How do you get to jump from the choice he makes
18 to do what he wants, to kill his children, to he didn't
19 understand that it was morally wrong? Where is -- connect
20 that dot.

21 A Because it's all the symptoms he had. He had racing
22 thoughts. He was unable to sleep. He couldn't focus. He
23 was hearing voices. I mean, it was all the active
24 symptoms of psychosis and mania all at one time. He's not
25 thinking rationally. It's not a clean, clear cut

1 delusional case. This case is complicated with mood
2 component symptoms and with psychosis.

3 Q Well, let's talk about some issues of legal right and
4 wrong. He didn't call 911 for Nahtahn, did he?

5 A No.

6 Q That shows, doesn't it, that he understood the legal
7 wrongfulness of his act?

8 A I don't think there's any question on that. I agree
9 completely with Dr. Frierson's opinion on legal
10 wrongfulness.

11 Q He did know that it was legally wrong for Nahtahn?

12 A I agree with that.

13 Q But that's not what your report says. Your report
14 finds specifically --

15 A Oh, you're talking about Nahtahn's thing. I'm sorry,
16 I misunderstood what you were saying. Sorry about that.

17 Q On Nahtahn, your report found that he didn't
18 understand the legal wrongfulness with what he did with
19 Nahtahn. That's what your report --

20 A He did not recognize when he was asking Nahtahn to P
21 -- when he was telling Nahtahn to PT, he did not recognize
22 that that would be legally wrong and that that would
23 actually lead to death. He had no intention of harming
24 him that way.

25 Q As he pushed him that hard and put hands on him until

1 it caused his death, he didn't know is what you're saying?

2 A He didn't think that that would happen.

3 Q All right. The moment Nahtahn is dead, when he finds
4 him, according to his own words, which is all we have to
5 go on, he says I'm not going to call 911 because they're
6 going to think I killed him. Right.

7 A Right.

8 Q So you're saying while he was doing the PT he didn't
9 know and then he suddenly realized it, is that the way
10 this works?

11 A I think he was shocked when it happened. He was
12 completely shocked when he found Nahtahn.

13 Q He didn't call 911 because he knew it was legally
14 wrong what he had done to Nahtahn, correct?

15 A He knew that -- he thought he would be blamed for it,
16 yes.

17 Q So the only part that you're saying that he didn't
18 know what he was doing was that moment?

19 A When he was -- when he was telling him to PT, to do
20 sit-ups and squats and everything, I don't think he
21 appreciated the potential harm of that is what I'm saying.

22 Q But after he realized Nahtahn was dead --

23 A The other things happened. And I was -- I was
24 referring to the legal wrongfulness of that. Sorry.

25 Q The moment Nahtahn is dead, he knows it was legally

1 wrong?

2 A Yeah, I think he -- he just -- he panicked, yeah.

3 Q Okay. And at that moment, he knows it was morally
4 wrong for himself and for society?

5 A Don't know about that. He -- I think he felt
6 justified in some way by telling him to do the PT.

7 Q Well, on the taped interview on September 8th,
8 there's a quote where he says, my kid is dead at my hands
9 -- talking about Nahtahn, my kid is dead at my hands.
10 They're going to think I murdered him.

11 A Right.

12 Q They, not the police?

13 A Well, I thought -- I thought he was talking about the
14 police.

15 Q Well, I think he talked about both. I think he was
16 afraid of the police. But my question to you is when he
17 says that, they, they're going to think I murdered him,
18 that can be society?

19 A Well, it could be, but he never said that. I mean,
20 he definitely -- he said to me that he thought police
21 would think that he did it.

22 Q So your opinion is for Nahtahn that for the moment he
23 was PTing in, he didn't know legal right from wrong?

24 A Right. He felt very justified in what he was doing.

25 Q And soon as Nahtahn's dead, he knows it's legally

1 wrong?

2 A He panicked, yes.

3 Q And as far as the moralness of that punishment of
4 Nahtahn, you don't have an opinion?

5 A You know, I don't think it meets that test for moral
6 wrongfulness, that particular one. I mean, I think he
7 felt like if the punishment was at some level with what he
8 thought from a religious perspective, that that discipline
9 was appropriate. But I don't think it rose to that moral
10 wrongfulness level.

11 Q Christina Ehlke, you remember her?

12 A Yes.

13 Q The babysitter?

14 A Yes.

15 Q And you remember how he lied and misled her?

16 A Yes.

17 Q About the children still being alive and then saying
18 that they were leaving?

19 A Yes.

20 Q She's not law enforcement. She's somebody who cared
21 for the children and who loved the children?

22 A Right.

23 Q How can you not say that him lying and deceiving
24 Christina Ehlke is not evidence of his moral wrongfulness?

25 A I think it's evidence he didn't want to go to jail.

1 He knew people would turn him in. I don't see how that's
2 moral wrongfulness. Same thing with his family members,
3 he avoided all of them. He made comments that he was just
4 going to go to Vegas and, basically, you know, eventually,
5 he'd get caught, be arrested.

6 Q His dad, Tim, Sr., he lied to his dad?

7 A Yes.

8 Q Right?

9 A Yes.

10 Q He didn't tell his dad because he was afraid of going
11 to jail or he didn't tell his dad because he couldn't tell
12 his dad that he murdered his grandchildren?

13 A I think at that moment, he was thinking -- he
14 wouldn't respond to anybody because he thought he'd end up
15 -- someone would find him.

16 Q So that is not a recognition in your opinion of moral
17 wrongfulness?

18 A I don't think that is in this case.

19 Q His grandmother, he wouldn't take her calls or texts?

20 A It's the same situation with her.

21 Q Same thing?

22 A Yeah.

23 Q You don't think that shows anything?

24 A I think they would, basically, find him and have him
25 arrested, and he knew he was going to get arrested anyway.

1 Q Amber, same thing? He lied to Amber?

2 A Yes.

3 Q That doesn't mean anything to you other than legal?

4 A It's legal, yes.

5 Q Destroying the evidence, the bleach in the car, the
6 internet searches for dump sites, dog searches and
7 landfills, camping, Tim Jones' missing children, that's
8 all legal for you?

9 A It's all legal wrongfulness.

10 Q For both children -- I mean, for all five children,
11 for Nahtahn and the other ones?

12 A I think he's just destroying evidence period at that
13 point to avoid arrest.

14 Q Well, if I understood, he only didn't understand
15 during the moment of PT. When he realized Nahtahn was
16 dead, you're saying then he realized the legal
17 wrongfulness?

18 A Right.

19 Q So just that moment?

20 A Right.

21 Q Dumping the bodies in remote locations, legal?

22 A Legal.

23 Q Just actually running and leaving, leaving the home
24 and taking the bodies?

25 A Legal.

1 Q If he truly was insane and didn't know right from
2 wrong, wouldn't it have been common or possible for those
3 type of people to just leave the bodies there and not try
4 to hide anything?

5 A Sure.

6 Q Search for extradition laws, legal?

7 A Yes.

8 Q Taking the battery out of the phone, legal?

9 A Yes.

10 Q Making the list about how to discard and dispose all
11 of his children, legal?

12 A Legal.

13 Q On the September 8th, the taped interview, he says,
14 "God, I am sorry."

15 A He's remorseful at that point.

16 Q Is that not morality?

17 A At that point it is, yes.

18 Q Okay. So at some point, he realizes what he did was
19 morally wrong?

20 A Yes.

21 Q You're just saying at the moment that he had his
22 hands around --

23 A When that's going on.

24 Q -- his children's throat he didn't know moral?

25 A Right.

1 Q So after the bodies were found, he also said he
2 didn't deserve to go to the funeral. That would be moral,
3 but that's after the fact to you, so it --

4 A Correct.

5 Q -- doesn't matter to that moment?

6 A Correct.

7 Q Stating he feels ashamed for what he has done, that's
8 morality, but it's after the fact?

9 A Yes.

10 Q So his actions really aren't important to you? What
11 he does really isn't important? It doesn't matter in your
12 determination of whether he knew legal or moral wrong from
13 right?

14 MR. YOUNG: Objection to the form of the question.

15 THE WITNESS: I don't understand --

16 THE COURT: I'll let him rephrase it. I understood
17 what his question was, so --

18 MR. GRAHAM: Thank you, Your Honor.

19 THE COURT: Rephrase that.

20 Q You're limiting -- if I understand correctly, Doctor,
21 you're limiting your decision of whether he knew legal or
22 moral wrong from right from what he tells you the moment
23 -- what he tells you after the fact about the moment he
24 kills his children. Whether it is Nahtahn or whether it's
25 strangling the other four, it's what he tells you at the

1 moment.

2 A That's not true. I considered all of it. And I
3 actually think that he did have knowledge of legal
4 wrongfulness as it related to the other four children.
5 I've looked at all of it. So I'm agreeing with Dr.
6 Frierson on that.

7 Q When did he realize it was morally wrong to kill his
8 other four children?

9 A Probably as he started to clear, so I would think a
10 couple of days after it happened.

11 Q Why do you say that?

12 A Because of what we saw with his original statements.

13 Q What we saw on what?

14 A When he, basically, was asking for forgiveness and in
15 that statement that I heard, that I actually listened to.

16 Q How about in the taped interview -- so when he says
17 -- he was asked this question -- I know you -- the
18 question about the police officer at your shoulder. But
19 he was also asked, "okay, when you did this, did you know
20 society would condemn your actions even if they knew
21 everything you know. And his answer was, I mean, at the
22 time, I sort of didn't care. Does that statement mean
23 anything to you?

24 A Yeah, I mean, I think he wasn't thinking about. He
25 told me he wasn't thinking about anything else except what

1 was going on at that moment. And with manic patients,
2 that's what we see. They're often not rational.

3 Q Doctor, are you familiar with the American History X,
4 the movie?

5 A Roughly.

6 Q Are you familiar that there's a violent prison
7 man-on-man rape scene in it?

8 A Yes.

9 Q Did you talk to Mr. Jones about it?

10 A Yes.

11 Q And he told you that he -- his story is that after he
12 found Nahtahn dead, he went and watched that?

13 A Yes.

14 Q Because he was worried that he would be in prison and
15 that prisoners would think that he was a baby killer and
16 would rape him, correct?

17 A If prisoners are thinking about that. I guess that
18 could be one perception, yes.

19 Q Well, what did he tell you? Did you ask him why he
20 watched it?

21 A Yeah, but -- I mean, I think he was afraid that he
22 would get raped, yes.

23 Q Isn't that what I said?

24 A Yes.

25 Q That's not law enforcement, is it?

1 A What's not law enforcement?

2 Q Being raped in prison --

3 A No.

4 Q -- and worry about being raped by the prisoners has
5 nothing to do with legal wrong or right? I mean, yeah,
6 you're going to get caught to get there, so I guess it
7 does, doesn't it?

8 A Yes.

9 Q But it also has to do with morality in society and
10 what people -- even if you want to call somebody down
11 who's incarcerated, not even people on the street, people
12 who are incarcerated would judge him. That's why he
13 watched that movie and that's what he told you, isn't it?

14 A That's not what he told me, but he did watch the
15 movie and he was afraid he would be raped. I don't think
16 that he's assuming that all of these people are going to
17 rape him just because of what's happened.

18 Q Okay. So he's just worried about being raped, it has
19 nothing to do with him being judged?

20 A I don't know if it has anything to do with him being
21 judged. He certainly didn't say that.

22 Q You didn't ask him or he didn't tell you?

23 A He didn't tell me that.

24 Q Okay. So him watching American History X rape scene
25 while Nahtahn is dead and before he strangles his other

1 children has nothing to do with -- in your opinion, with
2 the morality of him knowing right or wrong of killing the
3 other four children?

4 A I think it has to do with the fact he knew he was
5 going to jail and that those things could happen.

6 MR. GRAHAM: Thank you, Doctor.

7 THE COURT: Mr. Young, how long are you going to be,
8 Mr. Young? The jury is giving me a five-minute.

9 MR. YOUNG: Sure, we can go ahead and take five
10 minutes.

11 THE COURT: All right. Okay. Take a couple minutes.
12 Go back, don't discuss the case.

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

15 THE COURT: We will take a break.

16 (Whereupon, a short break was taken.)

17 (Whereupon, the jury came into open court at
18 approximately 3:25 p.m.)

19 THE COURT: All right. Mr. Young.

20 REDIRECT EXAMINATION

21 BY MR. YOUNG:

22 Q Dr. Dorney, just a couple of questions. The
23 Solicitor, Mr. Graham, was asking you about the American
24 History X --

25 A Yes.

1 Q -- rape scene and prisoners acting badly towards
2 people who have charges against children, right?

3 A Yes.

4 Q Do prisoners care if the accused is innocent? Do
5 they say wait a minute, are you guilty, are you not
6 guilty, we're going to rape you or we're not going to rape
7 you?

8 A No.

9 Q Make your case to us?

10 A No.

11 Q Despite the fact that he thought he was going to go
12 to prison and get raped, he still thought that it was
13 morally the right thing to do to send his other children
14 to heaven, is that --

15 A Yes.

16 Q -- what your understanding of it is?

17 A Yes.

18 Q Even though he had that belief, he still thought this
19 was morally what he had to do?

20 A That's correct.

21 Q Did you review a report from Deborah Grey as part of
22 preparation for the case and your opinions and
23 conclusions?

24 A I did. So Deborah Grey is a social worker who
25 prepared a hundred and, roughly, 20 pages of social

1 history.

2 Q And in part of her report and in talking to Tim, was
3 there anything about Tim's, sort of, lifelong belief he
4 had had about growing up without a mother?

5 A Yes.

6 Q And what was that?

7 A Well, first of all, no one ever told him why his
8 mother left or what was wrong with her, so he for years
9 carried the belief that he caused his mother to go crazy.
10 And -- I'm using his terms. And so Deborah commented on
11 that in this particular section. He also believed that --
12 he was one of the children in school who didn't have a
13 mother who would participate in his school activities --

14 MR. GRAHAM: I would object. This is --

15 A He felt just lonely and isolated.

16 MR. GRAHAM: This is not relevant to anything. It
17 has nothing to do with what happened on the night of
18 August 28th, 2014.

19 MR. YOUNG: The testimony is that the reason that he
20 did it is because the children were going to grow up
21 without a mother.

22 THE COURT: That's not -- I don't think we need to --
23 she reviewed that information. I don't want this entire
24 social history to be published.

25 MR. YOUNG: Yes, sir.

1 THE COURT: There's no -- that's one of the things
2 that's the relevance of everything.

3 MR. YOUNG: I understand.

4 THE COURT: I sustain to a limited amount.

5 Q Did Tim have a lifelong fear of growing up without a
6 mother?

7 A Yes.

8 Q And did he believe that people could see that about
9 him when he was growing up?

10 A Yes.

11 Q And did he believe that it was -- that that was the
12 absolute worst thing that could ever happen to somebody?

13 A Yes.

14 Q That death would be preferable?

15 A Yes.

16 Q In assessing whether or not somebody is not guilty by
17 reason of insanity, is that assessment of their actions at
18 the time that those actions are committed or is it
19 assessed about what they did afterwards?

20 A It's at the time. I mean, you consider the actions
21 afterwards and you consider the actions before. So it
22 really is a continuum. And then I even look at actions
23 more recently when looking at diagnosis.

24 Q In all the stuff that you reviewed and the people
25 that you talked to, is there any evidence to suggest that

1 Tim killed his children to keep them from going to Amber?

2 A I didn't hear you, I'm sorry.

3 Q That Tim killed his children to keep them from going
4 to Amber?

5 A There's nothing that I found. He was angry with
6 Amber and he was hurt by her but there's nothing to
7 support that.

8 Q Based on your conclusions about the legalness or the
9 moral wrongfulness of Tim's actions at the time -- let's
10 back up. Is it possible that Nahtahn's death -- is there
11 anything to say that Nahtahn's death was intentional
12 versus unintentional?

13 A He had no intent to harm Nahtahn, to kill Nahtahn.
14 So he believed it was an accident and that he would be
15 blamed for it.

16 Q Okay.

17 A An accident that he did directly with PT, but he did
18 not think that would kill Nahtahn.

19 Q And that's what you mean when you talk about the
20 legal wrongfulness of the PT?

21 A Right, of the PT, not the death of the PT.

22 Q Okay. You're just talking about the PT?

23 A Yes.

24 Q And then with regard to the other children, that he
25 knew he killed and he knew it was wrong at the time that

1 he killed them? He knew he was going to be punished for
2 that?

3 A Yes.

4 Q But morally, what did he--

5 A -- he believed they would be in a better place, that
6 they would be in heaven.

7 Q And does that mean that he -- what does that mean as
8 far as like whether he is or is not not guilty by reason
9 of insanity?

10 A It means that he meets that particular prong of not
11 being able to distinguish between moral right and moral
12 wrong.

13 Q So in your opinion to a degree of medical certainty,
14 is Tim not guilty by reason of insanity?

15 THE WITNESS: Your Honor, can I answer that question?
16 That's the ultimate --

17 Q Your opinion --

18 MR. GRAHAM: Objection.

19 THE COURT: Y'all approach.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 Q Dr. Dorney, is it your opinion to a reasonable degree
24 of medical certainty that on the night of August 28th,
25 2014, early morning of August 29th, 2014, Tim was legally

1 insane?

2 A Yes.

3 MR. YOUNG: Thank you, Dr. Dorney.

4 MR. GRAHAM: Nothing, Your Honor.

5 THE COURT: Thank you.

6 MR. YOUNG: Your Honor, the Defense rest.

7 THE COURT: All right. Folks, we had a brief talk
8 while y'all were gone, that last break before you came
9 back in, about planning next week. Here's what I kind of
10 anticipate. The Defense has put up its case. The State
11 has the opportunity to reply with a little bit of
12 testimony. They intend to call one witness. It's going
13 to be relatively short. 8:45 start time. We're then
14 going to go from that witness into closing summaries and
15 jury instructions. Okay? That's what you're going to
16 look at tomorrow. Still, during this whole thing, every
17 time y'all leave, it's don't discuss the case. Y'all are
18 still under that strict instruction. It's not time to
19 discuss the case yet until you've heard everything,
20 closing summaries and my instruction on the law. Until
21 then, y'all don't talk about the case. Don't do any
22 internet research over the weekend, don't go reading
23 anything. Y'all have done a wonderful job of paying
24 attention. I've watched you. Thank y'all for y'all's
25 attention, very good attention to this. So Monday, we'll

1 start tying things together and can give it to y'all to
2 discuss it then. Whether we start deliberations Monday
3 afternoon or Tuesday, I don't know. It depends on how
4 long their arguments are, plus organizing the evidence so
5 that y'all can understand it. The idea is I'm going to
6 pick one of y'all to kind of understand how the evidence
7 is organized. I've got an idea of somebody. And then I'm
8 going to pick another person to be the foreperson to kind
9 of supervise the deliberations. And then I'm going to
10 pick another person to use the IT guy for videos to be
11 played. Y'all will have a computer and that type thing.
12 So I'm going to utilize a couple of you to manage some of
13 the stuff, okay? We'll do that Monday. So until then,
14 enjoy your weekend. Enjoy your graduation. See y'all
15 Monday morning. We're going to get here early and start
16 early. We're going to start at 8:45, okay? See y'all
17 then.

18 (WHEREUPON, the jury was excused from open court for
19 the day.)

20 THE COURT: All right. Let's deal with a couple
21 outstanding issues real quick. First of all, I'm going to
22 do this. For the purposes of the jury, so they're gone
23 now, you put on the record the Defense rest. I want to
24 discuss with Mr. Jones his testifying or not and then you
25 can rest on the record officially behind that. Fair

1 enough?

2 MR. YOUNG: And, also, we didn't address the
3 correction of the crack cocaine.

4 THE COURT: Okay. We can address both of those. All
5 right. First and foremost, let's deal with Mr. Jones.
6 Let's place him under oath, also.

7 TIMOTHY JONES, JR., being
8 first duly sworn, testified as follows:

9 THE COURT: All right, Mr. Jones, just a couple of
10 questions for you. You understand your right to testify
11 or not? This is your trial. The jury -- you've been here
12 the whole time. I've watched you. You have an
13 opportunity to present testimony if you so choose. You're
14 not required to. It is solely up to you, also, with the
15 advice of three very competent lawyers who have been
16 assisting you. Have you discussed whether or not you wish
17 to present testimony of your own with your lawyers?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Now, do you -- have you had enough time
20 to counsel with them to make a decision as to whether you
21 wish to testify or not.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, do you understand if you don't
24 testify, the last thing I will tell the jury in my
25 instructions will be they can't consider, discuss in any

1 fashion whatsoever your failure to testify, that that will
2 not be used against you? According to their oath and
3 according to my instructions, they're not to discuss that
4 and make any consideration -- inference from that electing
5 to claim your right to remain silent. Do you understand
6 that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, do you need any further time to talk
9 with your lawyers about whether you wish to testify or
10 not?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: And what's your decision.

13 THE DEFENDANT: I do not wish to testify.

14 THE COURT: Okay. Feel good today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I mean, you've looked relatively healthy
17 all week, so your condition looks favorable to me, alert,
18 you've answered my questions perfectly. So you're not
19 going to testify?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Fair enough. All right. Now, with
22 regard to the correction instruction on the Illinois
23 charge, we'll do whatever y'all think is reasonable. I
24 don't want to comment on the facts. Or maybe it's a
25 stipulation that I could either read -- it will be,

1 basically, it happened in 2000 whatever. It was powdered
2 cocaine, the weight was thus and so. I mean --

3 MR. YOUNG: It --

4 THE COURT: That's what I'd suggest.

5 MR. HUBBARD: Here's what I wrote down just because
6 -- we never had in our files that we saw an actual
7 chemical test. So what we had was he's arrested March 3rd
8 of 2001 by the Illinois State Police. They found rock
9 cocaine. We know it tested positive for cocaine. That's
10 all we know.

11 THE COURT: And six-tenths of a gram, was that the
12 weight?

13 MR. HUBBARD: If somebody wants to put the amount in,
14 that's fine. We don't have it.

15 THE COURT: Okay. I thought I heard in an earlier
16 representation from Mr. Young it was six-tenths of a gram.

17 MR. HUBBARD: They may have something we don't have.

18 MR. YOUNG: We requested just the lab report.

19 MR. HUBBARD: We don't even have the lab report, so
20 how did we misrepresent something we don't have?

21 MR. YOUNG: The misrepresentation was that he --
22 heavy crack cocaine use, heavy crack cocaine use. There's
23 no evidence to support that. Even the arrest for point
24 six grams of powdered cocaine in no way corrects the heavy
25 crack cocaine use allegations. There is a way to correct

1 it other than tell the jury that those allegations were
2 false, that he was arrested with point six grams of
3 powdered cocaine. Even in doing that, I don't know that
4 it cures the misrepresentation by the State and we would
5 move for a mistrial on that basis.

6 THE COURT: I'm not going to grant you a mistrial. I
7 believe a stipulation as to what happened would be
8 appropriate. And I believe you can argue that, what you
9 just said, that it was mischaracterized by them as heavy
10 use, when, in fact, it was simple possession of powdered
11 cocaine as evidenced by the report.

12 MR. YOUNG: They had no evidence to say his heavy
13 crack cocaine use. And this is stuff they said to the
14 jury without any basis in fact or evidence, which is why
15 it's wrong and which is why they're supposed to correct it
16 through the witness and say I was wrong, he never -- I had
17 no evidence that he ever used crack cocaine ever in his
18 life, period, and I made that up.

19 THE COURT: He didn't make it up.

20 MR. YOUNG: No, no, Solicitor Mayes made it up.

21 MR. HUBBARD: Your Honor, there's plenty of evidence
22 he was using drugs. His favorite drug of choice was
23 cocaine. The question was put about rock cocaine. If
24 they really wanted, they could have followed up with
25 questions to clear it up and say it's a factual dispute

1 and say the Solicitor doesn't know what he's talking
2 about. They chose not to do that. There's no --

3 MR. YOUNG: How --

4 MR. HUBBARD: No intentional misrepresentation.

5 THE COURT: I think it goes to the weight of the
6 whole case. I'm not going to comment on the facts the way
7 you're telling me to say that the State made an
8 exaggeration or mischaracterization of it. I'll read a
9 stipulation of the conviction if you like, I'll do that,
10 and y'all can argue that they exaggerated that. But, you
11 know, likewise, there's certain things that both sides
12 have exaggerated in my opinion, but I don't get to argue
13 that. I've noticed it. So that one thing about
14 conviction in 2000, I don't find that a reason to grant
15 you a new trial.

16 MR. YOUNG: I just think there's a distinction
17 between an exaggeration and a fabrication.

18 THE COURT: Well, I mean, the Solicitor's telling me
19 that they didn't know how much the weight was.

20 MR. YOUNG: I understand.

21 THE COURT: I mean, you made your record.

22 MR. YOUNG: Thank you.

23 THE COURT: Now, are there any motions?

24 MR. YOUNG: We renew all our motions and objections
25 for all the grounds and reasons that were stated in the

1 arguments that we made at the time.

2 THE COURT: As to your motions -- these were your
3 motions you made at the close of the State's case, you
4 will be renewing all those six motions: Your motion for
5 directed verdict, your motion for mistrial, your motion
6 for change of venue, your motion for suppression of all
7 the evidence from the search and the statements at the
8 suppression post-safe checkpoint, the statements made
9 subject to the arrest and all the other motions made
10 during the State's case-in-chief respectfully denied.
11 Those were the six you made at the close of the State's
12 case and you renewed all six of those. Same ruling. Any
13 other ones you want on the record?

14 MR. YOUNG: We move for a directed verdict that the
15 Defense has established by a preponderance of the evidence
16 that he was not guilty by reason of insanity and ask for a
17 directed verdict as to that.

18 THE COURT: It's even easier, the preponderance, the
19 jury gets to weigh it, so denied.

20 MR. YOUNG: Your Honor, I'm protected on all my
21 motions --

22 THE COURT: You're protected on all of your grounds.

23 (Whereupon, the trial will resume on June 3rd, 2019.)

24 June 3rd, 2019

25 THE COURT: Anything before we get started? I worked

1 on the charges and y'all's suggestions and it's pretty
2 close on what y'all disagreed with is what I'm going with.

3 MR. SECOR: I have one matter, Your Honor.

4 THE COURT: All right.

5 MR. SECOR: As the Court's aware, Mr. Jones' Defense
6 Team objected to the testing that was conducted pursuant
7 to Dr. Frierson's request to Dr. Kruse. And there are --
8 there was a motion filed about that and discussion on the
9 record at various points prior to trial. And I would just
10 like to bring to the Court's attention what occurred on
11 January the 31st, 2019 before Your Honor where Dr.
12 Frierson was here for a hearing and Mr. Young confirmed
13 with him that he had received a letter from the Defense
14 objecting to the testing that was going to be performed.
15 And Dr. Frierson confirmed that he had, in fact, received
16 that notification. And there was discussion on the record
17 about the reasons for the Defense objecting to the testing
18 being given. Your Honor indicated that you wanted the
19 testing to go forward, but specifically wanted to ensure
20 that it was conducted with the advice of counsel. And the
21 record reflects that Your Honor, in addressing that issue,
22 said with the upcoming testing, did he volunteer to do it
23 with the advice of counsel. Did he make his decision
24 appropriately. Those are obviously the things that Your
25 Honor wanted to ensure occurred. And they didn't, they

1 did not occur because the Defense was unaware of when it
2 was scheduled to take place. Mr. Young was under the
3 impression, based on his conversation with Dr. Frierson,
4 that Dr. Frierson needed to meet with Tim --

5 THE COURT: Now, we've already put all this on the
6 record. Get to your point.

7 MR. SECOR: My point is, Judge --

8 THE COURT: You're summarizing everything consistent
9 with the way I remember it, but --

10 MR. SECOR: Yes, sir. Yes, sir. The issue is that
11 Your Honor wanted to ensure that Mr. Jones did this
12 testing only with the advice of Counsel in order that he
13 may make this decision appropriately. And that didn't
14 occur because the day that he was brought over there, he
15 didn't know the testing was going to be done that day.
16 Mr. Young didn't know the testing was going to be done
17 that day. So the testing was conducted without the advice
18 of Counsel. We would, therefore, argue that it was done
19 in violation of the Sixth Amendment right to Counsel.
20 Defense Counsel was not present, did not know that it was
21 going to occur because Mr. Young believed that it was a
22 subsequent meeting that Dr. Frierson was going to need to
23 have with Tim. I also would note that Dr. Frierson's
24 testimony included his reliance on Dr. Kruse's testing.
25 And so we would object to the testimony pursuant to Rule

1 403 as cumulative, unnecessary and confusion of the
2 issues.

3 THE COURT: All right. It's my recollection y'all
4 made a timely objection during Dr. Frierson's testimony,
5 which was fine, and I ruled on it then appropriately
6 consistent with the facts you re-outlined. The State
7 presented some facts that there was a knowing waiver and
8 Dr. Frierson went over those rights with Mr. Jones. So I
9 think you're protected on the record. But Dr. Frierson
10 did an independent evaluation for the Court, not anyone
11 else. And I think my ruling was that Mr. Jones knew what
12 he was doing when he did it and, you know, it was part and
13 parcel of the entire evaluation. But no part of that
14 evaluation would be singled out for impeachment purposes,
15 things like that. We discussed that way in advance is
16 there wouldn't be questions of, for instance, have you
17 ever told a lie before in part of the tests, that wouldn't
18 be used by either side against any party for any reason,
19 those kinds of things. It was cumulative nature of the
20 tests and the testing the psychologist was needed by Dr.
21 Frierson to have a full and complete evaluation in his
22 determination. What else would you like me to do?

23 MR. HUBBARD: Your Honor, from our standpoint, we
24 understand the letter went to the Defense Team. It was
25 directed to Mr. Madsen, he was put on notice. Obviously,

1 the Defense has no Fifth Amendment rights implicated here
2 because once you claim NGRI, we can move for testing, that
3 was done. Dr. Frierson has already established that it
4 was done voluntarily, we went into that. Judge, there is
5 nothing else.

6 THE COURT: I think it's just part and parcel of the
7 entire evaluation that Dr. Frierson did and there wasn't a
8 violation of the Fifth Amendment right to remain silent.
9 Y'all discussed that and then -- whether the lawyers made
10 a mistake or not, I'm not going to say.

11 MR. SECOR: Well, I would just say, I didn't say
12 Fifth Amendment, I said Sixth Amendment right to Counsel.
13 Because he had a right to Counsel at all stages of the
14 proceeding.

15 THE COURT: Now, I think he did.

16 MR. SECOR: But he specifically did not at that
17 moment when Your Honor said on the record that you wanted
18 to ensure that he did. And that --

19 THE COURT: No, no, he was here when I said that. I
20 wasn't with Dr. Frierson, so don't put me over there.

21 MR. SECOR: No, no, no, I mean when he was brought
22 for the testing, there was no advice of Counsel. And
23 there's no way to determine whether or not that decision
24 was made appropriately because I assure you that had
25 somebody have been there, we would have instructed him as

1 we had previously to invoke his Fifth Amendment right.

2 THE COURT: I think -- I don't know what you're
3 asking me to rule on. I think that's been ruled upon.
4 You've protected yourself, but it's done.

5 MR. SECOR: Your Honor, I would also just like to
6 inquire with the Court, I believe that the Court said that
7 there was going to be a limitation to the extent to which
8 the specific questions in --

9 THE COURT: And I don't believe that was violated at
10 all.

11 MR. SECOR: No, I mean, going forward today.

12 THE COURT: No, I haven't said that. I don't know
13 who the State's going to call.

14 MR. HUBBARD: No, no, no. The understanding -- I'm
15 calling Dr. Kruse. She's been brought up even by their
16 experts, so I'm calling her in reply. They called Dr.
17 Frierson, not me. So Dr. Kruse's work has been brought
18 up, it's been juxtaposed with the work done by Dr. Tora
19 Brawley, who has not testified. I have a right to go into
20 it. The only thing that we've talked about is we wouldn't
21 have the underlying data because sometimes prosecutors
22 will misuse the questioning and underlying data. But I
23 get to go into her tests, what she did, what type of tests
24 she did. Judge, I'm not going to ask specific questions
25 of those testing. I don't know that I'd understand --

1 THE COURT: That's what you can't do, is you can't
2 say didn't you answer question 13, yes, but you lied in
3 the past one time to your mother when you took a cookie.
4 You know, no, no, that is not allowed.

5 MR. HUBBARD: Right but I do want to let the Court
6 know is what I plan to do is like, for instance, there's
7 something called effort testing, so there's three
8 different tests she gives. And Dr. Kruse is going to
9 explain what that is and what her results were and why she
10 was able to move on from there and test cognitive
11 functioning. And then she moved on to cognitive testing.
12 She gave a whole battery of testing there. She's going to
13 explain the different types of tests, what she's looking
14 for. But we're not getting into specifics of what did
15 question whatever say and --

16 THE COURT: No, that's right.

17 MR. HUBBARD: -- how did that go.

18 THE COURT: Yeah.

19 MR. HUBBARD: One other thing I do have is there is
20 the -- there's a copy of the advice that was given to Mr.
21 Jones. I've got it here and would like to make a Court's
22 Exhibit of that.

23 THE COURT: All right.

24 COURT REPORTER: Judge, that's Court's 103.

25 (WHEREUPON, Court's Exhibit number 103 was marked for

1 identification only.)

2 MR. SECOR: I would just suggest that if the waiver
3 were brought to the Court signed by a Capital Defendant
4 without consultation with his lawyers, I think that the
5 suggestion that it would just be admissible because
6 there's a signed waiver would be ordering on would be
7 absurd because the whole point is that you have a lawyer
8 and you have to go through your lawyer. And that's why we
9 have --

10 THE COURT: Here's what is kind of odd to me is, we
11 had a huge hearing on this thing on whether we could have
12 the tests done, seems like it was half a day, and we
13 discussed it. And when we left that hearing, it was we'll
14 let you know if he's going to refuse to take the tests or
15 not. Three days later, I heard he took the tests, nothing
16 else. And somewhere in there the Defense didn't realize
17 that the upcoming tests were going to be those tests. For
18 whatever reason, he took the tests. I don't think that
19 it's -- you know, he took the tests. He knew the tests
20 were coming up, Mr. Jones did. He's been competent all
21 the way through. And I'm sorry y'all weren't certain on
22 what day the tests were done, but it happened, they're
23 done. So it appeared to me Mr. Jones was well aware he
24 was going to be tested. He had very much time to speak
25 with his lawyers, his team of lawyers to decide whether he

1 was going to take it or not and decide it. And if y'all
2 advised him to not do it and he took it anyway, then that
3 was his doing. But if y'all didn't tell him to take the
4 tests or just said nothing and he took the tests, that's
5 his doing. But I can't go back and fix that.

6 MR. SECOR: I understand that. And I'm not trying to
7 argue with the Court, I'm just saying the day that Mr.
8 Jones was brought over for the testing, he did not know
9 testing was going to occur. And the Defense did not know
10 that the testing was going to occur because the Defense
11 was under the impression that Dr. Frierson needed to meet
12 with Tim again, which is what we assumed was occurring
13 that day. I'm not accusing anybody of intentionally
14 duping anybody, I'm just saying we didn't know it was
15 happening that day. Tim didn't know it was happening that
16 day. If we had known it was happening that day, we would
17 have been there. And I think that Mr. Jones' Sixth
18 Amendment rights have been violated.

19 THE COURT: All right. I understand your thinking.
20 I think his Sixth Amendment rights were protected all the
21 way down the line. So I'm going to -- we're going to
22 leave it alone --

23 MR. SECOR: Yes, sir.

24 THE COURT: But in case I'm wrong, you're protected.

25 MR. HUBBARD: For the record, we obviously disagree

1 with their scenario of facts. But, also, there would have
2 been some dire consequences if they had elected to not
3 take this test, if the Defendant had not. It would have
4 had an impact on them presenting all the experts they
5 presented in this trial.

6 THE COURT: Yes, sir. We ready to bring the jury in?

7 MR. HUBBARD: Yes, sir.

8 THE COURT: All right. Bring us the jury, please.

9 (Whereupon, the jury came into open court at
10 approximately 9:00 a.m.)

11 THE COURT: All right. Everybody have a nice
12 weekend?

13 (Whereupon, affirmative response by the Jury.)

14 THE COURT: Anybody have any issues? Anything
15 happen? Anybody try to communicate with you in any
16 fashion?

17 (Whereupon, a negative response by the Jury.)

18 THE COURT: Are we ready to get going? Solicitor.

19 MR. HUBBARD: Thank you, Your Honor. The State calls
20 Dr. Kimberly Kruse.

21 KIMBERLY CRUZ, being
22 first duly sworn, testified as follows:

23 THE CLERK: Have a seat up there, please, ma'am.
24 Once you're seated, I need you to speak up loud and clear,
25 state your full name, spelling your last.

DIRECT EXAMINATION

BY MR. HUBBARD:

Q Good morning, Dr. Kruse. How are you doing?

A Good morning. I'm well. Thank you.

Q I just want to ask you some questions. What do you do for a living?

A I'm a clinical neuropsychologist. Would you like me to elaborate on my history?

Q Well, I tell you what, how did you become involved in this case?

A I was contacted by Dr. Frierson. You saw him testify, I believe it was last week. He asked me to perform a psychological assessment or gather additional information objectively to help him with differential diagnosis and to conceptualize the Defendant.

Q What is a neuropsychologist, or what is neuropsychology?

A Sure. So it's the field -- it's a scientific field of neuroscience with practitioners who develop and use testing to help people understand brain behavior relationships. So not only the psychology or behavioral aspects of how someone functions, but also neuro-cognitively or their thinking abilities.

Q What's your educational background?

A So I have a Doctoral Degree in Clinical Psychology

1 with additional training, post-doctoral training in
2 neuropsychology. I'm originally from Florida. I went to
3 University of Central Florida with my undergraduate
4 degrees. I have a Double Major in Psychology and
5 Sociology and then completed my Doctoral Degree in Florida
6 through the American School of Professional Psychology at
7 Argosy University in Tampa. And then I went on to do my
8 residency or internship in Maryland with the John L.
9 Gildner Regional Institute for Children and Families,
10 which is affiliated with Johns Hopkins, which is where
11 more of the medical or neuro-psych side came in.

12 Q And what's your professional background since you
13 have been practicing?

14 A I've been the Chief Neuropsychologist and a
15 Hospitalist at Prisma Health for 11 years. I'm also
16 affiliated with Kershaw County Hospital System and Compass
17 Health, which used to be Health South. And so on a
18 day-to-day basis, I'm performing differential diagnosis.
19 I'm using psychological testing instruments,
20 neuropsychological testing instruments to determine if
21 patients meet criteria for psychological or
22 neuro-cognitive disorders and help in terms of planning
23 for prognosis and discharge from the hospital or admission
24 to the hospital.

25 Q How many evaluations have you performed?

1 A Thousands.

2 Q How many times have you testified as an expert in a
3 court of law?

4 A I've been qualified in the South Carolina Judicial
5 System approximately 75 times as an expert in the field of
6 neuropsychology and that would span across civil, criminal
7 and Probate Court matters.

8 MR. HUBBARD: Your Honor, at this time, I offer Dr.
9 Kimberly Kruse as an expert in neuropsychology.

10 THE COURT: Any voir dire, please?

11 MR. SECOR: No, sir.

12 THE COURT: All right. Dr. Kruse is qualified in the
13 field of neuropsychology. She can offer opinions to that
14 end.

15 Q Dr. Kruse, you mentioned that Dr. Frierson asked you
16 to get involved in this case. Now, he's a psychiatrist?

17 A Correct.

18 Q Correct. So your fields are obviously a little
19 different. What exactly was he asking you to do in order
20 to assist him?

21 A I've worked with Dr. Frierson for a few years now.
22 My role would be to assist in guiding his clinical opinion
23 by providing objective data. So, clearly, he did, I don't
24 know, even know how many hours of research going through
25 history, various forms of history. But he would --

1 encounter to, I think, or just to compliment or look at
2 psychological testing data, he did have that as part of
3 his review and it didn't seem to make sense to him. And
4 so, from my perspective, my role was to perform similar
5 evaluations to look at how the Defendant measured up in
6 terms of intellectual ability, cognitive and behavioral
7 functioning.

8 Q And did you have an opportunity to do an evaluation
9 on Mr. Jones?

10 A I did.

11 Q What date was that?

12 A February 22nd, 2019. It was a Friday.

13 Q So just earlier this year?

14 A Correct.

15 Q All right. Now, did Dr. Frierson do the introduction
16 with Mr. Jones?

17 A He did.

18 Q And he agreed to take this test?

19 A He did.

20 Q And did you go through with Mr. Jones the purpose of
21 the testing you were going to be doing?

22 A I did.

23 Q And you've talked about the general approach that Dr.
24 Frierson -- the things Dr. Frierson wanted, but what type
25 of testing were you going to be doing. What areas were

1 you focused on for Dr. Frierson?

2 A So Mr. Jones has a complex history. We all have seen
3 the head scans of the structural right frontal depression
4 in his skull. So I did cognitive testing to look to see
5 if he met criteria for a neuro-cognitive disorder or if he
6 had any residual or leftover impact from that that would
7 impact his ability to think clearly and make decisions. I
8 also did a psychological profile, which is, essentially,
9 gathering data or information on behavior and how someone
10 functions, personality aspects. That would be the
11 psychological piece. And then, of course, we needed test
12 for the psychosis piece which was reported, and so I also
13 did that.

14 Q Prior to doing the cognitive testing, was there a
15 series of tests you gave Mr. Jones --

16 A Yes.

17 Q -- to determine his ability to take tests?

18 A Correct.

19 Q We call those -- or I call them effort testing. Is
20 that the proper term?

21 A That's a fine term to call it. So before we assess
22 anyone, we need to know if -- because this is objective
23 data, I need to understand how to apply it. Is this
24 someone who is giving appropriate effort? Because if not,
25 if I say this person is in the second percentile or so,

1 was it because they didn't apply the effort or was it
2 because they couldn't apply the effort in terms of their
3 neurochemistry or what's going on in their brain. So
4 these tests are somewhat of a screen to see if the data is
5 going to be valid that you collect. Because if you
6 collect data and you use it and you stand behind it, you
7 want to say that it is valid. And so I did that not only
8 with the cognitive testing, but also with the other
9 aspects of testing I did.

10 Q How many tests did you give that you classify as
11 effort tests?

12 A So I'll reference my report which I have here. So in
13 terms of effort testing, specifically for cognitive
14 functioning, I administered three tests. I relied upon
15 four.

16 Q Okay. The three tests you gave were what?

17 A Something called the Dot Counting Test, the Rey 15
18 Item Memory Test and the Rey 15 Item Recognition Trial.

19 Q I'm just going to put this up. This is just -- not
20 evidence, but just to assist till we get through this.
21 Now, Doctor, can you kind of explain what each of these
22 tests do and what you're looking for?

23 A Sure. So the Dot Counting Test, it has something we
24 would say has a high face validity. So it's -- it really
25 is just what it says. It's a piece of paper with dots.

1 And we ask the patient to count the dots as quickly as
2 possible. Now, these dots get more complex as you flip
3 through the test. Yet, they're grouped in ways that we
4 are used to seeing, like, if you saw five dots and they
5 were like they would be on a dice or on a set, you would
6 know. You wouldn't have to necessarily count them because
7 you're visually recognizing those. So they get more
8 complex in terms of how they look, but really you should
9 be to kind of scan through them quickly. And Mr. Jones
10 did just fine with that.

11 Q And as to the Rey 15 Item Memory Test and Recognition
12 Test?

13 A And I'll be brief on my summary of these. I mean, I
14 could go on and on. But the Rey 15 Item Memory Test, we
15 present a stimulus sheet with 15 items and there it would
16 say one, two, three, A, B, C and so forth. And it's
17 something, again, it looks like a lot of items, but really
18 you can use mental heuristics or shortcuts to remember
19 those. And then after ten seconds, we ask if the patient
20 can remember what they saw. And again, he performed
21 within normal range on that.

22 Q Is the same true with the recognition test?

23 A Recognition is now tell me -- I take away the
24 stimulus card and say what do you remember. And he did
25 just fine with that as well.

1 Q You said there was a fourth test you relied on, what
2 test was that?

3 A That was a test I reviewed by Dr. Brawley, the test
4 of memory and malingering. It's something I would have
5 given had she not given it. It's a standard test to
6 administer prior to cognitive testing. And again, that
7 was within normal range.

8 Q Dr. Brawley did this test, she wasn't working with
9 Dr. Frierson?

10 A No.

11 Q And she did this test in, was it April of 2016?

12 A Correct. Now, she has worked with Dr. Frierson in
13 the past.

14 Q Right. But for this case --

15 A For this case, she was not associated.

16 Q In fact, I believe she was hired by Mr. Jones' folks,
17 is that right?

18 A That's my understanding.

19 Q So you looked at that test, too. So based on all
20 that, did you determine that Mr. Jones was suitable to
21 continue testing so you could actually test his cognitive
22 functioning?

23 A I did.

24 Q Now, let me see, let's just go into what you did with
25 the cognitive testing if we could and then we'll talk a

1 little bit more. Did you give a number of tests, variety
2 of tests?

3 A Yes. It is considered the best practice to give a
4 variety of tests. No one, depending on what field you're
5 in or what area you're testing, psychologically or
6 neuro-cognitively, should you ever give one or even two
7 tests and make an assumption from that.

8 Q I've got another list of tests here and see if these
9 look like the ones you gave Mr. Jones.

10 A Yes, up there, yeah, now it does.

11 Q Might not be able to get them all on there. And you
12 don't have to go into a lot of detail about these tests,
13 but what are you really looking for on all these different
14 tests?

15 A So the way I explain this to my residents, I -- this
16 is a noninvasive way of seeing how someone's brain works.
17 So it's almost in a way looking at -- it's not like a
18 functional MRI, but I use that example because when you
19 have someone under a brain scan and you give -- introduce
20 different thoughts to them, you can see how their brain
21 works. And so psychological testing in terms of the
22 neuro-cognitive performance, it mimics that. So each of
23 these tests are meant to see how someone is functioning or
24 their ability to attend to information, to remember
25 information, not just right then, but also a delayed

1 memory recall. Visual spacial functioning, so how well
2 are you able to perceive items, remember them, manipulate
3 them in your mind from a visual spacial perspective. And
4 it's something that you -- I think you all have heard of
5 throughout this trial, executive functioning, which is
6 just like what it sounds, it's like having -- it's the
7 executive of your brain, the person who -- or the tendency
8 for your brain to execute attention, concentration, make
9 decisions, reasoning abilities. So these tests, the
10 reason why there's so many different ones, and even within
11 the tests, there's different subtest, is to ensure that
12 we're measuring all of these areas.

13 Q Now, you had mentioned there were scans of Mr. Jones'
14 head injury. Have you had an opportunity to review those
15 as well?

16 A I have.

17 Q And in looking at that, what was your take on his
18 injury, was it a significant injury?

19 A It was. It meets criteria for traumatic brain
20 injury, of course. I mean, he has a structural -- and as
21 people have pointed out -- or experts have pointed out,
22 you can see the skull depression. But a brain injury does
23 not equate to neuro-cognitive disorder. If it was that
24 straightforward, my job probably wouldn't exist. So,
25 certainly, it is impressive in viewing and I think the

1 term in itself, traumatic brain injury, is very scary to
2 people. A lot of times, we have something called
3 neuro-plasticity, the brain kind of regenerates in areas
4 it's been injured. And we are still -- there's so much
5 research to be done about how the brain operates, of
6 course. But at this time, there is the understanding
7 that, you know, impacts the brain can occur and some
8 people are on the negative side of that and some people
9 come out and can function back at their baseline.

10 Q Is it true you can take a brain scan just like Mr.
11 Jones' and put up someone else's that's an
12 identical-looking injury that have two very different
13 outcomes?

14 A Correct.

15 Q So you can't tell the effects of the injury from
16 looking at a brain scan?

17 A Correct.

18 Q Even if you're slicing through the brain doing a very
19 nifty 3D evaluation, you see injury, but you can't see the
20 effect?

21 A I, actually, had the opportunity to dissect a brain
22 this summer and I will tell you, the trauma I saw in some
23 of these brains and the reports on how -- of course, this
24 was postmortem, so I didn't get to assess these people,
25 but the functional aspects of how they were performing in

1 life, it was quite drastic.

2 Q And you actually do work with veterans as well?

3 A I do.

4 Q Who have suffered brain injuries and --

5 A Yes, I see thousands of veterans with co-morbid or --
6 occurring at the same time diagnoses of mental illness and
7 also having some type of traumatic brain injury. And it's
8 one of the things I do for compensation and pension
9 purposes through the VA to assess them and determine if
10 they meet criteria for a neuro-cognitive disorder or
11 psychiatric disorder.

12 Q How did Mr. Jones do in this battery of tests?

13 A He performed very well. In comparison to Dr.
14 Brawley's performance where she had him assessed as being
15 in the first percentile, in, at least, three of the areas
16 I saw, we went from the first percentile back in '16 when
17 she saw him, in my testing, he was in the 79th and 80th
18 percentile.

19 Q Now, when we talk about percentile, if somebody is in
20 first percentile, what does that mean?

21 A If you have a hundred people, 99 of those people
22 would do better than you. You would be at the very bottom
23 of the performance ability.

24 Q And how was his IQ rated by Dr. Brawley back then?

25 A In the 80's, I believe.

1 Q Would that be low IQ or low average?

2 A Lower than certainly his functional abilities would
3 suggest.

4 Q Is that one of the reasons why Dr. Frierson wanted
5 you to test these areas?

6 A I think that was one of the primary things that stuck
7 out to him, yes.

8 Q Because of his background and his high grades and the
9 profession he was in?

10 A Yes, that was of concern to him. When you
11 conceptualize a patient, like I had said before, you never
12 take one piece of information and make all of your
13 assumptions on that. And particular in Dr. Frierson's
14 role in this case was to look at everything. And when he
15 looked at that assessment and the first percentile ranges
16 and what we know for patients functioning in the first
17 percentile ranges, they're not -- you know, a lot of them
18 aren't able to even drive a car. So this didn't make
19 sense to him and I think that was the primary reason he
20 asked me to perform my evaluation.

21 Q And he did exceptionally well on your --

22 A Yes, I mean, there's a variety of scores obtained,
23 but the 80th percentile is very good.

24 Q So based on that, what was your conclusion as to his
25 cognitive functioning?

1 A So overall, he did not meet criteria for a
2 neuro-cognitive disorder based on this evaluation.

3 Q So his brain is basically okay? Just in layman's
4 terms.

5 A Yes.

6 Q Okay. He doesn't have a broken brain?

7 A Correct.

8 Q Let me ask you about did you learn -- or did you know
9 that back when Tim Jones took this testing with Dr.
10 Brawley in 2016, he was taking 320 milligrams of Geodon?

11 A He told me that.

12 Q Who did?

13 A Mr. Jones. He had expressed that to me and had
14 mentioned that he felt very much slowed in his psychomotor
15 behavior, meaning just your ability to kind of move around
16 and function in general, very slowed and, also, that it
17 was infecting -- impacting the way that he was thinking in
18 terms of processing speed, in particular, which is one of
19 the main areas that were at deficit in Dr. Brawley's
20 report.

21 Q So do you determine -- or have you determined that
22 the difference between the testing between what you found
23 and what Dr. Brawley found was based on the medication Mr.
24 Jones had been taking?

25 A That is my conclusion, absolutely.

1 Q As opposed to a head injury and it just got better?

2 A Yeah. We would not see a head injury in the first
3 percentile or neuro-cognitive disorder of such, exclusive
4 from a state of delirium that then jumps into the 80th
5 percentile just -- of any organic reason. There's no
6 research supporting that that I know of or that any of my
7 colleagues --

8 Q You don't just get better like that?

9 A No.

10 Q So it was obvious it was the medication?

11 A That's the biggest explanation I can come -- the best
12 explanation I can come up with.

13 Q And is it important before you test somebody to ask
14 about what medication they're taking?

15 A It is. So I'm not a medical doctor, however, it is
16 my job to understand how my patients are presenting,
17 hence, why I give effort and validity testing and why I
18 have to also understand that day, have you taken anything
19 before this test that will impact your performance.
20 Patients regularly prescribed Xanax, for example, I ask
21 them to withhold that medicine before they come in for
22 testing because, certainly, that would impact their
23 performance. So the information or data I'm collecting
24 must be a valid representation of their true baseline
25 ability. It cannot be their functioning influenced by a

1 substance, prescribed or other drug. And if they've had a
2 good night's sleep sometimes. I need to know they're able
3 to give the appropriate effort.

4 Q So the bottom line, though, although he had a
5 significant or impressive head injury, there was no
6 clinically significant cognitive deficits?

7 A Correct. And that is one of the requirements for a
8 diagnosis of neuro-cognitive disorder.

9 Q So he has no neuro-cognitive disorder?

10 A I did not diagnose him with a neuro-cognitive
11 disorder, no.

12 Q Once you moved on from that, what did you test him
13 for after that?

14 A Then we can get into the report of symptoms regarding
15 psychosis and look in that area. I also performed a
16 series of tests looking at symptom validity. So they all
17 fall under the same category of validity testing, whether
18 you call it effort or performance or symptom validity. I
19 mean, if we got down into the definitions, we could get a
20 little more detailed, but I don't think there's a need for
21 that to help you understand how I used these tests. That
22 is similar, but, of course, in this area, I'm looking to
23 see if I can have valid information collected based on his
24 self report. And these tests are meant to look at the
25 range of symptoms reported by individuals with

1 schizophrenia or psychosis and then it compares the
2 patient's performance to that. So it helps us see if the
3 person is able or is willing to give a straightforward
4 account of symptoms and if those are consistent with known
5 psychiatric populations.

6 Q So you've done effort testing, cognition testing and
7 so now, you're doing testing that involves whether he
8 reports psychosis or --

9 A If it -- right, if it falls within a range that would
10 be clinically relevant.

11 Q Now, prior to you conducting your tests, had anybody
12 else done any kind of testing on Mr. Jones that you're
13 aware of for this case in this area?

14 A No. I would definitely want to know that. As far as
15 I -- all the history I've done through, I'm the only one
16 that has done any personality assessment or any testing of
17 psychosis, any validity of how he's reporting symptoms,
18 any testing to rule out malingering, rule in malingering.
19 I don't see that anywhere else.

20 Q So Dr. Brawley or no other psychologist did this kind
21 of testing?

22 A Correct.

23 Q And again, was Dr. Frierson requesting this testing?

24 A Correct. And Dr. Frierson did not dictate the
25 testing battery I gave.

1 Q That's your professional call, is that correct?

2 A Correct.

3 Q And again, did you give multiple tests?

4 A I did.

5 Q I'm going to put some more up here on the screen. I
6 see SIMS, the SIRS and the M-Fast, do those look like the
7 tests you gave in this particular area?

8 A Yes.

9 Q And if you would, would you walk us through what
10 these tests are?

11 A Yep. And again, I'll summarize and be brief. So the
12 SIMS test is -- and I think Dr. Dorney testified to this.
13 She had said that that was a test that if someone scores
14 high in an area, then it does indicate the need for
15 further testing. It's a structured interview for
16 malingered symptomology. And so it has a series of
17 questions that look to gauge a patient's response in
18 comparison to individuals with known psychiatric disorders
19 that are validated. And so it helps us to see if the
20 person is overreporting symptoms and also if they're
21 underreporting symptoms. And in this area, Mr. Jones had
22 performed within normal ranges in all of the areas except
23 for the area of psychosis, which was a score of six. And
24 just to make this very explicit, I actually copied out of
25 the manual the sentence that goes with the score he

1 obtained. So his score was six. The manual says anything
2 over a one is clinically significant. And this is what it
3 says, Even low levels of endorsement of such inconsistent,
4 bizarre and/or atypical symptoms is highly suggestive of
5 malingered psychosis, even in the rarity and with which
6 such symptoms are endorsed by actual psychiatric patients.
7 So to break that down, if you were to know someone, a
8 friend or someone with schizophrenia and they were to
9 explain to you what it's like to have schizophrenia, that
10 would be a baseline, let's say, of schizophrenia, but this
11 level of endorsement would have been significantly more
12 elevated than that.

13 Q Is this him identifying symptoms that just really
14 don't have --

15 A These are symptoms that are inconsistent with
16 schizophrenia, yet, meant to mimic those of schizophrenia.

17 Q Does it mean he has a different type of disorder or
18 psychosis or it just means that there's --

19 A Based on his self-report, it's suggesting it's not
20 reliable.

21 Q Okay. What about the SEARS test -- or SIRS test. I
22 always want to call it SEARS test. SIRS test, how did he
23 do on that?

24 A So again, we're seeing the same theme in this area.

25 This test also breaks down the patient's reported symptoms

1 into different areas. This is purely really looking for
2 psychosis. And the areas reported by Mr. Jones to be in
3 the clinically significant range were found to be -- let's
4 see, just make sure I'm seeing this clearly. Rare
5 symptoms, so symptoms -- I mean, that's pretty
6 self-explanatory, that are rare within psychosis. So
7 symptoms not typically endorsed by individuals with
8 schizophrenia or other psychotic disorders. Symptom
9 combinations, that was another one that was in a
10 clinically relevant range, so it takes that, may be
11 experienced by patients with known psychiatric disorders
12 and then it puts them together. Like when I hear voices I
13 lose a lot of weight. That's not a specific example, but
14 it's two things that might be reported, but are usually
15 not reported together. And then, also, this is the
16 category, and probable and absurd symptoms. That was the
17 highest rate of responding. And the test found that to be
18 in the definite range of malingered symptomology. And the
19 other two I just mentioned were in the probable range.

20 Q So as far as the range of malingering, finding
21 malingering, you had one range that was definite and
22 another was probable?

23 A Two that are probable and one that is definite per
24 this test.

25 Q The M-Fast, how did he do on that test?

1 A That test also yielded a significant score for the
2 likelihood of malingering. He had -- the highest score
3 was in unusual hallucinations, so the report of
4 hallucinatory experiences, so the visual or auditory
5 symptoms. And in this case, it looks at all kinds of
6 symptoms. Any sensory experience you can have, could be
7 -- some people have tactile hallucinations, that's very
8 rare, olfactory hallucinations where you smell things that
9 are not there, gustatory hallucinations. It goes down all
10 the senses especially, but in this test, in particular,
11 his score was significant in unusual hallucinations.
12 Extreme symptomology, so his report of symptoms was beyond
13 that that individuals with schizophrenia would typically
14 respond to. And also and unusual symptom course. So if
15 you look at symptoms over the course of time, his report
16 of symptoms did not match up with those individuals with
17 known psychotic disorders.

18 Q Your report has something that says highly suggestive
19 of malingered psychopathology?

20 A Correct.

21 Q So all three of these tests show that there's
22 malingered?

23 A Correct.

24 Q Now, while he's -- you're doing these tests, how long
25 did y'all spend testing?

1 A Eight hours.

2 Q Did you take breaks?

3 A We did.

4 Q Did you have an opportunity to talk to Mr. Jones
5 throughout this process and kind of build a rapport with
6 him?

7 A I did.

8 Q Did he at some point talk to you about the types of
9 things he was seeing and make movie references?

10 A He did. He explained that the visual permutations,
11 you've heard that word in this trial, or the visual --
12 atypical visual experiences he was having, he described it
13 like the movie Dumbo, like the pink elephants on parade.
14 There's a part of that movie that has a very odd visual
15 piece to it. And I did look it up because I remember
16 watching the movie as a child, but I didn't remember that
17 part. And it's -- it's an odd video. I mean, it's an odd
18 part of the movie.

19 Q Have you ever had any patients or anybody you're
20 testing make reference to that to describe what they claim
21 they're seeing?

22 A No.

23 Q Did he make reference to another movie to describe
24 the situation?

25 A Yes, A Beautiful Mind.

1 Q Is that with -- is it Professor Nash, the
2 schizophrenia Noble Prize winner?

3 A Correct.

4 Q Did he relate to that individual?

5 A That was his comparison.

6 Q But in doing these tests, did you find any evidence
7 that he suffers from psychosis?

8 A My testing data did not suggest such.

9 Q And just as with cognitive testing, you're asking
10 about medications and all, there's been some question
11 about when you would do testing to determine if somebody
12 has psychosis, there was talk about somebody might need to
13 be in a psychotic state in order to do that testing. Can
14 you test somebody when they're in a full psychotic
15 episode?

16 A I think it would be very apparent if someone was in a
17 full psychotic episode and, certainly, no testing data, if
18 you were trying to look at baseline behavior or cognitive
19 functioning, would be valid in that regard. These tests,
20 particular the ones to rule in or out malingering, are
21 normed in populations. So these are not tests that I came
22 up with, these are not tests that you research on line
23 that you can find and take yourself. These are copyright
24 materials. These tests are based in psychometrics
25 neuroscience. They are normed across populations,

1 thousands of individuals, to look at what is a normal base
2 rate of behavior and it compares the patient's performance
3 to such, to help the doctor if this person can give
4 appropriate effort. And so these are scientifically peer
5 reviewed testing measures. To make a comment like that
6 suggest someone is not competent in psychometrics and is
7 also -- it just explains that maybe someone who makes that
8 comment doesn't really understand how the tests are used
9 or how they're developed.

10 Q And unlike psychiatry, this is -- since it's
11 scientific testing that's used all over this country, you
12 could go into any courtroom and testifying using these
13 tests and everybody would know what you're talking about?

14 A Part of the reason why I do what I do and I feel
15 comfortable on the stand is because it's not -- I'm
16 representing the data here. The data speaks for itself.
17 And so, yes, that is correct. The way this information is
18 collected is standardized and the way it's scored is
19 standardized, so it really takes out -- I wish I could say
20 I'm this brilliant person coming up with all of this, but
21 it's the tests. So the test itself gives us the
22 information.

23 Q So this is, just to put it in very simple terms, too,
24 not only scientific, but it's very objective testing?

25 A Correct, that would be the appropriate word.

1 Q And what Dr. Frierson does as a psychiatrist by
2 talking, doing interviews, there's a greater level of
3 subjectivity to what his field is?

4 A I believe he derives his opinion based on collecting
5 information and history and looking for patterns.

6 Q But I think he mentioned, just for instance, that
7 sometimes, too, psychiatrists can come to different
8 conclusions?

9 A Yes, that's extremely common. Because you all have
10 seen, there's research studies and articles that speak to
11 such, that, you know, subjectivity and clinical
12 interviews, at times, can be up to a rate of about 50
13 percent error rate because of the subjectivity involved.
14 And I think that's one strength of my field, that we're
15 able to provide objective testing data to help support or
16 not support diagnoses.

17 Q Is that one reason why it was so important for him to
18 partner with you on this testing?

19 A I believe so.

20 Q That assisted him?

21 A Correct.

22 Q So at the end of the day, you have no organic
23 cognitive defect, you have no organic psychosis, no
24 psychosis?

25 A Correct.

1 Q And you did find malingering?

2 A Correct.

3 Q Now, you mentioned some more testing. What did you
4 move on to after this?

5 A So in layman's terms, personality testing. So
6 testing of behavior and helping me understand how he
7 thinks, what his attitudes are in life, how he approaches
8 problems.

9 Q And I believe you gave three tests?

10 A Yes.

11 Q And the MMPI-2, the MCMI-III and the PAI Protocol?

12 A Correct.

13 Q Now, can you tell us what you're doing here and what
14 you're looking for here?

15 A So these tests, again, personality measures. They
16 also look at what we -- in the past Diagnostic and
17 Statistical Manual refer to as Axis I disorders or
18 depression, anxiety, that type of thing. But, generally,
19 these tests are helpful in understanding how people go
20 about life and what they might be like in terms of
21 personality and how they might cope with problems or
22 stressors. The next thing, too, about these tests is they
23 have built-in validity scales themselves. So you wouldn't
24 have to administer like I did with the psychotic testing
25 or with the cognitive testing symptom validity tests prior

1 to this. They, themselves, tell you how the patient
2 approaches the test and how they responded. They pick up
3 on patterns.

4 Q Can you walk us through what you did and how he
5 scored on these tests?

6 A Sure. So on the MMPI-2, which is -- I think in our
7 country and also in Canada, the number one used test in
8 forensic settings to gather information. Highly respected
9 in my field, highly valid, highly reliable test. He
10 scored a 65 on the L scale -- oh, I'm sorry, he scored a
11 74 on the L scale with a -- and the cutoff score for that
12 is 65. So what is that telling me? He scored beyond the
13 range of what we would want to see in terms of looking at
14 someone as a reliable historian, if they're able to
15 provide information in the way that would be similar to
16 their true baseline. So within that test, I had to take
17 that into account.

18 Q What's another name for the L scale?

19 A The lie scale.

20 Q So 65 is the cutoff and he scored a 74?

21 A Correct.

22 Q What else -- I cut you off. I think you were still
23 talking about you --

24 A Well, I was just going to report on what he had
25 reported. Now, this is one where it's true/false

1 questions, a lot of true/false questions. And so you go
2 through and you say true or false to questions. And those
3 questions -- we're not going to get into the specifics of
4 the questions. Those are actually -- you don't ever look
5 at the specifics of the questions even though I know
6 that's been done, not in this case. But the way he
7 reported the symptoms revealed his report of persecutory
8 ideas, self-consciousness, social discomfort, emotional
9 alienation.

10 Q And this is how he self-reports?

11 A Correct.

12 Q Okay.

13 A Yes. Schizo-typal characteristics. I mean, that was
14 how he was responding to the tests. Those were the areas
15 that came up.

16 Q How did he do on the MCMI-III test?

17 A So, again, looking at the validity scale built within
18 the test, I found a high degree of self-revealing
19 inclinations, so overreporting of symptoms in that regard.
20 And within that scale, again, similar findings. Anxiety
21 was highly elevated. He hit on a number of personality
22 traits across almost all personality -- that we would say
23 found within personality disorders. So it was somewhat
24 difficult to interpret because you normally don't have
25 someone with say, who is significantly withdrawn, but also

1 an extrovert. It was just difficult to interpret because
2 of the disbursed symptom report.

3 Q In layman's terms, was it just a hodgepodge of
4 symptoms he was identifying saying that he had?

5 A That would probably be an easier way to say that.
6 Thank you.

7 Q And none of those really related to one another, some
8 of them were even contradictory?

9 A Correct. And, certainly, we all have different
10 aspects of our personality. Maybe in some situations, you
11 might feel more comfortable to be outgoing, so it was
12 not -- the test was not completely invalid, it just helped
13 me understand how he sees himself and so that there may be
14 some -- I'll use your word, like kind of a hodgepodge of
15 personality traits or characteristics that are at play in
16 everyday life with him as he experiences the world.

17 Q How about the PAI Protocol, how did he fare on that?

18 A So this one was interesting to me. So, again, back
19 to the validity scale, which is the first thing I look at
20 before I interpret any data as you can see across any
21 domain I do of testing. In this case, not only was
22 overreporting found, but underreporting was found. And in
23 the area of underreporting, it would be that he would not
24 admit to things that most people will admit to, that when
25 people are not -- don't want to quickly get up and say

1 that they do, that they probably might do. So a good
2 example of that would be have you ever left the bathroom
3 before washing your hands? It's not the first thing you
4 might want to tell people that you've ever done in your
5 life when you meet them. Have you stolen a cookie from
6 your grandmother's cookie jar. You know, things like that
7 that you might not want to admit to. Well, his
8 defensiveness in that regard was very high. So there was
9 an underreporting of symptoms in that regard. Yet, an
10 overreporting of symptoms in the area again of psychosis
11 or in that area where you might have difficulty with what
12 we call reality testing.

13 Q Based on these tests, can you determine if there was
14 anything that you might describe as malingering or how
15 would you -- how did you describe it? Or is malingering
16 even a part of this type of testing?

17 A I think it's -- so these tests are not for
18 malingering, but these tests do represent a pattern of
19 behavior similar to that found in the earlier testing we
20 discussed of a tendency to overreport symptoms, a tendency
21 to maybe underreport shortcomings that are even normal
22 shortcomings that we all have. And I think the most
23 important piece to all of it is can we look at this person
24 as a credible historian? And so based on this testing,
25 this is saying no.

1 Q Okay. Now, were you able to, after this testing
2 develop some impressions, clinical impressions of the work
3 you had done on Mr. Jones?

4 A Yes.

5 Q What are those?

6 A So, overall, criteria is not met for a
7 neuro-cognitive disorder. So while we do have history of
8 TBI, there are no findings on my neuro-cognitive
9 assessment to suggest that cognitive impairment impacts
10 daily functioning or that even within the frontal lobe
11 functioning that this is a person who would have
12 difficulty reasoning, engaging in judgment, planning,
13 executing multi-step behaviors. I didn't see anything
14 there to represent a deficit. Beyond that, there were
15 some atypical personality findings, as I discussed. Once
16 I kind of looked at all of the data together, I think that
17 the thing that stuck out to me most was more of an
18 anti-social and borderline personality.

19 Q What does borderline mean?

20 A It's someone sees the world very much in black and
21 white, someone who has a significant fear of rejection,
22 abandonment, disapproval, they're very quick to react to
23 even perceived slights from an interpersonal perspective.
24 These are people that have mood swings very easily
25 throughout the day. And those are based on external

1 triggers, usually, those that are interpersonal. And it's
2 usually prompted by any sense of rejection or abandonment.
3 Borderline personality historically and per data does have
4 a strong pattern of individuals who engage in
5 self-mutilation or cutting behavior on themselves. I know
6 that that was mentioned in the history, yet, I believe Mr.
7 Jones denies ever doing that.

8 Q Now, did you make a full diagnosis on borderline or
9 does --

10 A No.

11 Q -- he just have traits?

12 A Correct. He did not meet criteria for any specific
13 diag -- disorder, I should say, yet, there is a diagnosis
14 of unspecified personality disorder. And that's kind of
15 like what you had mentioned with the hodgepodge of
16 symptoms. So when we have clinically significant symptoms
17 in multiple areas across different disorders, yet, all the
18 criteria are not met for such disorder, we come up with
19 unspecified, which means yes, there's something there, but
20 all of the criteria are not met.

21 Q You mentioned anti-social, what is that?

22 A Someone who has a tendency to not observe regular --
23 regulations of society, laws, lack of empathy for others,
24 more inward focused than outward focused in terms of self
25 versus others.

1 Q So those traits were present as well?

2 A Yes.

3 Q And back to borderline, how does that differ from,
4 say, bipolar?

5 A So in our society, those two are commonly
6 interchanged, yet, they are very much different
7 clinically. Even people I know oh, he's so bipolar. You
8 know, people often use that term to say oh, you know, any
9 little thing will set someone off. That is not bipolar
10 disorder. Bipolar disorder occurs when there's an enate
11 or organic process going on. It's not driven by
12 interpersonal stressors. The borderline process is. It's
13 the person who in the same day might look different in
14 regard to mood. And their ability to regulate emotions in
15 the face of interpersonal stressors is extremely poor.
16 They might have episodes of rage. Whereas, bipolar
17 disorder, you would see mania, disorganized behavior,
18 someone who it looks almost a different person and that
19 would last for several days to weeks. And that's also
20 accompanied by severe depressive episodes.

21 Q Borderline, have you ever heard it described, had any
22 patients or clients describe it as something to the effect
23 of I hate you, don't leave me?

24 A There is a book written and it's since been revised
25 and that's exactly the title, I Hate You, Don't Leave Me.

1 And oftentimes, when I've had borderline patients and they
2 know about that book, they'll say, you know, my
3 relationships are like I Hate You, Don't Leave Me. It's
4 this turmoil of -- you know, this fear of rejection and
5 abandonment, but, also, just the difficulties within the
6 relationship and lots of fighting against each other.

7 Yet, the makeup period kind of meets all the needs that
8 the person wants because it's the opposite of the fear of
9 rejection and abandonment. So it's almost like they
10 create that in their lives at times, significant turmoil.
11 But yes, that is a book written by, I believe
12 psychiatrists working with patients with borderline
13 personality disorder and their experiences of such.

14 Q Now, even though you found these traits and you've
15 got a personality disorder unspecified, is that the same
16 thing as psychosis or being psychotic?

17 A No.

18 Q Personality disorder, again, is what?

19 A It's a pattern of maladaptive behavior over the
20 course of time that is typically seen in the way the
21 person interacts with people and interpersonal
22 functioning. So it's something that over time, it's
23 usually developed, a lot of them, in difficult childhood
24 experiences. I mean, in this case, if we're finding that
25 the borderline personality traits is being strong, it

1 makes sense that there is likely some sense of rejection
2 or abandonment earlier in life that fits in terms of the
3 clinical conceptualization.

4 Q It has nothing to do with psychosis?

5 A There can be dissociative periods in borderline
6 personality disorder, but in that regard, the person would
7 meet full criteria and that is not the same as
8 hallucinogenic psychosis.

9 Q There's no evidence, though, just stepping back from
10 this case of schizophrenia?

11 A Not per my testing or the history I've reviewed, no.

12 Q Schizo-effective disorder?

13 A No.

14 Q Bipolar?

15 A No.

16 Q No psychosis whatsoever?

17 A Correct. Outside of possible substance-induced
18 psychosis.

19 Q Let's talk about that. Substances, that's
20 voluntarily induced drug intoxication?

21 A It means the person took the drug voluntarily, yes.

22 Q But that is short lived once the drug wears away?

23 A Correct. In looking at the history, you wouldn't
24 have schizophrenia occurring over the course of 24 hours,
25 you know, at a one-hundred percent rate and then the next

1 day, not have it outside of an intramuscular injection of
2 -- I mean, that's not a typical course of psychosis, no.

3 Q Of course, voluntary consumption of drugs or alcohol,
4 that's not defense?

5 A I'm sorry, I couldn't hear you.

6 Q Voluntary ingestion of alcohol or drugs is not a
7 defense in court?

8 A I am not an attorney or a lawyer.

9 Q Okay, I just wanted to ask you.

10 A I don't know what is and what is not a defense.

11 Q Okay.

12 A It's not found in my testing and I don't know how to
13 test for that exactly.

14 Q Okay.

15 MR. HUBBARD: I think that's pretty much all I've got
16 for you right now.

17 THE WITNESS: Thank you.

18 MR. HUBBARD: Please answer any questions the Defense
19 has.

20 THE WITNESS: Of course.

21 MR. SECOR: Your Honor, may we take a quick break?

22 THE COURT: Sure. How long you need?

23 MR. SECOR: Just five minutes to get my notes
24 together.

25 THE COURT: You want me to let the jury step out?

1 MR. SECOR: They don't have to.

2 THE COURT: Okay. Well, then, take your time right
3 there. That's fine.

4 Okay, if she needs to go, y'all can step out. Don't
5 talk about the case. We'll get you right back in here.
6 When y'all are ready to come back in, let me know.

7 (Whereupon, the jury was excused from the courtroom
8 for a break.)

9 (WHEREUPON, a short break was taken.)

10 THE COURT: Let's bring the jury.

11 (Whereupon, the jury came into open court at
12 approximately 10:05 a.m.)

13 THE COURT: Mr. Secor, your witness.

14 MR. SECOR: Thank you, sir.

15 CROSS-EXAMINATION

16 BY MR. SECOR:

17 Q Good morning, Dr. Kruse.

18 A Good morning.

19 Q Based on the totality of your testing, viewed in its
20 whole, you found that Tim was not malingering, right?

21 A That's incorrect.

22 Q Well, you and I met before to talk about this before,
23 right?

24 A We did.

25 Q And we talked about how the totality of your testing

1 indicated that he was not malingering because you would
2 have made a diagnosis of malingering, right?

3 A So I did a diagnostic conceptualization at the end.
4 I did not specific -- well, I discussed malingering in
5 terms of the behavior. In terms of the cognitive aspect
6 of his functioning, he did not attempt to present himself
7 in a negative way. So I'm very careful about the way I
8 write things on my reports so in other cases where I might
9 list out diagnoses, if I'm the sole evaluator. In this
10 case, I was providing assistance to Dr. Frierson with my
11 data. So he was the one that formulated the diagnoses.
12 So when you and I had spoken, I said -- I mean, not only
13 did I not list anything in a line like we do with
14 diagnoses, I mean, I didn't list personality disorder, I
15 didn't list substance-induced psychosis, but I did
16 describe everything in a paragraph.

17 Q Right.

18 A Does that clarify your question?

19 Q I'm not sure because Dr. Frierson said that he did
20 not diagnose Tim with malingering, which I assume would be
21 based --

22 MR. HUBBARD: Objection, that's mischaracterization.

23 MR. SECOR: No, it's exactly what he said.

24 THE COURT: No, no, let's don't argue. Rephrase your
25 question consistent with her report, I guess. Rephrase

1 your question to make it clear. I think she may have been
2 unclear.

3 Q I'm not trying to trick you.

4 A I understand.

5 Q Are you aware that Dr. Frierson said that he did not
6 diagnose Tim with malingering?

7 MR. HUBBARD: Objection, that is absolutely not --

8 MR. SECOR: That's exactly what he testified to.

9 THE COURT: All right. You're doing it. Stop. Come
10 over here.

11 (Whereupon, a bench conference was held in the
12 presence of the jury but out of the hearing of the
13 jury.)

14 Q Dr. Kruse, you saw Dr. Frierson's testimony in this
15 case, right?

16 MR. HUBBARD: What was that question?

17 A No.

18 MR. SECOR: Just whether Dr. Kruse saw Dr. Frierson's
19 testimony in this case.

20 A I did not have the opportunity to observe the entire
21 testimony.

22 Q Thank you. Regarding Dr. Brawley's report that you
23 reviewed, right?

24 A Yes, I think I have the summary of her report,
25 correct.

1 Q And she was the one that determined Tim to have an IQ
2 of 87?

3 A Correct.

4 Q But in her report, she says that she thinks that
5 because of his medication, right?

6 A She said that was a factor, but not entirely due to
7 his medication was his IQ suppressed.

8 Q But she surmised or guessed that his IQ was
9 substantially higher?

10 A Yes, correct.

11 Q She thought maybe around 120 or something, right?

12 A Correct.

13 Q I just want to -- before I ask you a little bit more
14 about the tests, I just wanted to ask you a couple of
15 things about some of the things you discussed with the
16 Solicitor. Regarding brain injury and neuro-cognitive
17 disorder -- and you talked about how the brain can
18 regenerate after an injury, right?

19 A Correct.

20 Q And that's what I think you referred to as
21 plasticity?

22 A Neuro-plasticity.

23 Q Neuro-plasticity. But that is made more difficult if
24 a person sustains two brain injuries in the same place,
25 right?

1 A So succinct or successive concussions or brain
2 injuries are known to have exacerbatory impact, yes, in
3 terms of --

4 Q It makes it worse, right?

5 A Yes. You're less likely to recover as well as you
6 did the first time.

7 Q Right. And regarding the fact that a brain injury
8 doesn't necessarily cause a cognitive problem, you, I'm
9 sure, are aware of the case Phineas Gage from the 1840's
10 right?

11 A I am.

12 Q Can you just tell us about that?

13 A Yep. So that's an example we commonly use in
14 teaching the residents or any type of student of someone
15 who had trauma, significant trauma. I believe it's a
16 railroad bar went through the frontal lobe and out of his
17 head, actually. He did survive the accident, but his
18 personality changed drastically.

19 Q And it was a steel bar about this tall, wasn't it?

20 A The pictures -- we use the word impressive. I mean,
21 it was a very -- it wasn't -- it was very large, correct.

22 Q And it entered underneath his right eye, right?

23 A Yeah, and out through the other end of his skull.

24 Q And came out the top of his skull?

25 A Correct.

1 Q And this was in the -- I think 1840?

2 A I don't remember the history of it, but yeah, it was
3 a while ago.

4 Q Right. Because he worked on the railroad and there
5 was an explosion that caused that to happen?

6 A Yes.

7 Q And they -- I think, amazingly enough, he was back at
8 work within a week or two weeks, something very short,
9 after the injury?

10 A Correct.

11 Q And he was still just as good at his job after the
12 injury as he was before, right?

13 A I don't -- I don't remember the exact details, but,
14 right, he was able to perform his job. I remember that.

15 Q But he was a different person?

16 A The teachings of the case are in regard to
17 personality.

18 Q Right.

19 A Drastic change difference in personality for this
20 case in particular you're speaking about.

21 Q So, I mean, he sustained a massive brain injury, but
22 it didn't affect him cognitively, meaning intellectually,
23 he was still put together, right?

24 A I don't know -- put together is not a term I can use
25 in terms of data. I don't know about any data

1 discrepancies with him. I don't know about any IQ testing
2 that was performed.

3 Q Right.

4 A But what you're saying in general is correct. He was
5 able to return back to his work.

6 Q Right.

7 A And the main teaching of the case was that the main
8 symptom that was observed was the personality change in
9 this individual because of that injury.

10 Q Thank you. I just want to ask you a little bit about
11 how these tests are scored and how the reports are
12 generated. And I'm not entirely sure about it because I'm
13 just trying to figure it out on my own. But is it correct
14 that with some of these testing -- with some of these
15 tests, rather, you ask a series of questions or the
16 patient is asked a series of questions, is that right?

17 A Correct.

18 Q And they are -- a lot of them are multiple choice or
19 true or false?

20 A In the personality ones --

21 Q Yes, ma'am.

22 A -- right, some of them, correct.

23 Q And the data are just the person's answers to the
24 questions, right?

25 A In some of the tests, correct.

1 Q And I'm talking about the personality tests, is that
2 right?

3 A There are some personality tests that are entirely
4 different than the ones I administered. You're correct,
5 these were -- right, paper and pencil, true/false-type
6 questions.

7 Q Right. So that's the data that you then put into a
8 system to generate a report, is that right?

9 A Correct.

10 Q And is that what you did in these cases? In the
11 tests that you gave Tim, you took the data and you put it
12 into a program that you have accessible to you because of
13 your profession, is that right?

14 A In the three personality tests I administered, yes,
15 those were scored in that manner.

16 Q Okay. And so the report that gets printed out, it
17 looks like a report that somebody actually sat down and
18 typed up, right? I mean, it's several pages that analyze
19 the data that's just put into the system, is that right?

20 A No.

21 Q How does that report get -- not your report, but the
22 computer-generated report, how does that get created?

23 A So in some cases, you can have reports generated that
24 do some degree of interpretation. Other times, you can
25 just have the profiles, which that's the part that I rely

1 on. In this case, I believe one of them came with some
2 type of interpretation. But that's the computer that's
3 kind of spitting what it would for anyone scoring in those
4 areas --

5 Q Right.

6 A -- but the other two, specifically, the MMPI and
7 MCMI, I utilized the T scores or standardized scores. I
8 can show you, but it's a -- it's a -- kind of peaks and
9 valleys. It's look like if you have an EKG, what you
10 would see go across the screen, that's how I interpret the
11 data. So I don't rely on the computer because it's not a
12 doctor.

13 Q I understand.

14 A Right.

15 Q It struck me as a little bit weird, too, that you
16 would just have the report generated by putting in a bunch
17 of scores. But you did use the computer-generated report
18 to inform your final report that you submitted in this
19 case, in the P -- for the PAI Protocol?

20 A I don't read whatever the computer -- I think it
21 automatically prints it out. I mean, that's not what --
22 I'm actually using the data sets and I extrapolate my
23 opinion based on if something meets a threshold or exceeds
24 a threshold of clinical significance in terms of the T
25 score generated.

1 Q Okay.

2 A I think -- you know, it's helpful for graduate
3 students or people who -- you know, psychometrist, maybe,
4 to gain a better understanding of the tests. But you
5 would never interpret a patient or conceptualize a patient
6 based on what a computer is saying.

7 Q Yeah, I would hope not.

8 A Right.

9 Q But you did -- you had the computer-generated report
10 made based on Tim's answers for the PAI Protocol and you
11 provided that as part of the raw data?

12 A If I did, then I did, yes. I try to send everything
13 I had to you all.

14 Q And the report that you submitted to the Court for
15 purposes of what's your analysis, your report, it has
16 sections in it that are verbatim from the
17 computer-generated report. I assume sometimes you copy
18 and paste sections from the computer-generated report into
19 your report because you think that it made sense?

20 A If it's something relevant to the diagnosis, yes,
21 there are certain ways we say things that are very
22 stereotypical, if you will.

23 Q And do you have a copy of your report up there or do
24 you need -- I've got one here --

25 A I have a copy.

1 Q You do, okay. I just want to talk about the part of
2 your report on the PAI. I believe it's on page 8, yeah.
3 The paragraph that begins in the middle, it starts with
4 "the PAI Protocol"?

5 A Yes.

6 Q And then the paragraph below that that begins with
7 "despite the level", you see that paragraph?

8 A I do.

9 Q Those two paragraphs are, essentially, verbatim from
10 the computer-generated report that you had made based on
11 Tim's testing, is that right?

12 A If they were things I thought were relevant that met
13 my interpretation, that is what I would use, yes.

14 Q And that's because you found that those two
15 paragraphs from the computer-generated report
16 substantiated what you thought?

17 A Not substantiated what I thought, but were relevant
18 to the conceptualization or what I gathered from the
19 instrument.

20 Q Right. They supported what your opinion was
21 regarding everything?

22 A So are you inferring I'm taking pieces of the report
23 to meet my --

24 Q No.

25 A I'm not sure what --

1 Q I'm just trying to say that that part of the
2 computer-generated report, you found to be representative
3 of the testing?

4 A Well, any of the computer part would be. I mean,
5 anything -- anything that is being extrapolated from the
6 data, it will summarize.

7 Q Right. So anything in the computer-generated report
8 would be representative of what the data says?

9 A Right.

10 Q Okay. And that's because the computer is just
11 reading the data?

12 A Right.

13 Q And the data is just the person's answers, right?

14 A Correct.

15 Q But if you look at the two paragraphs from your
16 report that are verbatim taken from the computer-generated
17 report, in the computer-generated report, there's a third
18 paragraph that doesn't exist in your report. And the
19 third paragraph that does not exist in your report says,
20 With respect to negative impression management, that's
21 malingerer, right? That's faking? That's another term
22 for it?

23 A I would definitely characterize it as that. So
24 someone who has a negative view of themselves or -- there
25 can be multiple reasons for negative impression

1 management. I wouldn't say malingerer.

2 Q But it's what they're reporting and it's a way of
3 trying to determine whether or not their information is
4 accurate to them?

5 A Correct, it is part of the validity scales that helps
6 us understand the method by which the patient responded.

7 Q Okay. But the paragraph that is in the
8 computer-generated report based on the data that is not in
9 your report says, With respect to negative impression
10 management, there is no evidence to suggest that the
11 respondent was motivated to portray himself in a more
12 negative or pathological light than the clinical picture
13 would warrant. Do you agree with that? I'm just trying
14 --

15 A If that's from what I had given you, the computer --
16 right, so the computer picks up on different methods of
17 responding. I believe, also, it might have said the same
18 thing about positive impression management. So, again,
19 it's interpreting scale by scale.

20 Q Okay.

21 A But if it was in what I gave you, then it's what --
22 it's from me.

23 Q I understand. And I understand that it would make no
24 sense to take the entire computer-generated report and put
25 it into your own report. I understand that that would

1 make no sense. And that your report is a summary,
2 essentially, of all the data that you've looked at, right?

3 A Correct.

4 Q I just want to ask about a couple other things that
5 are in the computer-generated report that I --

6 A Sure.

7 Q That I don't see in your own report. Again, the
8 computer-generated report based on the data, part of it
9 reads, A number of aspects of the respondent's
10 self-description suggest noteworthy peculiarities in
11 thinking and experience. It is likely that he experiences
12 unusual perceptual or sensory events, perhaps, including
13 full blown hallucinations as well as unusual ideas that
14 may include magical thinking or delusional beliefs. And
15 that part, that's not in your report, right? That's in
16 the computer-generated report?

17 A Again, if it's there and that's what the computer --
18 and I wouldn't be surprised because it's absolutely how he
19 was reporting symptoms.

20 Q I'm just -- I'm not trying to test your memory or
21 play gotcha, I'm just trying to point out that these are
22 in the data and they're not in your actual report?

23 A I confirm anything that I gave you as being part of
24 the report.

25 Q Okay. And the computer-generated report also says

1 that the patient may be involved in a wide variety of
2 activities in a somewhat disorganized manner, may
3 experience accelerated thought processes. And then at the
4 end of the computer-generated report is a section that's
5 entitled DSM-4 diagnostic possibilities, right. And
6 that's the computer using the data to make its best guess
7 at this patient based on the information provided in their
8 tests, right?

9 A Correct.

10 Q And these are suggestions? This is not a doctor
11 evaluating him, but it's the data that you say that you
12 rely on and that you believe in?

13 A Based on this measure, yes. And rarely do we use
14 what the computer is printing out as -- I mean, we may or
15 may not go with any of those diagnoses. But yes, you're
16 absolutely right, based on the data that was put in for
17 that particular assessment, correct.

18 Q And this is data that you -- I mean, you believe in
19 these tests, right? I mean, you believe in the data --

20 A I believe in psychometric properties, so -- and I
21 think I know where you're going. So in terms of the
22 method of responding, I think the validity indicators,
23 which, like you said, there was one piece of the report
24 that said negative impression management was not found,
25 but there's also another part of the report that might

1 contradict that within it.

2 Q The positive impression management, is that what you
3 mean?

4 A Uh-huh.

5 Q And that would be -- that's masking, is that true?
6 Trying to make yourself look not as bad as you might --

7 A In particular areas, uh-huh.

8 Q Okay. But going back to the computer-generated
9 report based on the data that you input for Tim, there's a
10 section that talks about diagnostic possibilities. And it
11 says, The DSM diagnostic possibilities suggested by the
12 configuration of PAI scale scores include delusional
13 disorder, bipolar disorder and schizophrenia paranoid
14 type. Do you remember seeing that?

15 A Yeah, I'm sure it did. That's how he was responding.
16 Yes.

17 Q Now, if you're -- if your data -- you can do the same
18 for the MMPI-2, right? You can take the person's scores
19 and put them into a computer-generated program and it will
20 spit you out a report, right?

21 A Yeah. I don't know if I have the interpreted -- did
22 I give you a report for this case?

23 Q I have one. I can't -- I'm not -- I don't see your
24 name on it. I see -- it says date assessed, February
25 22nd, 2019.

1 A Okay.

2 Q But I've -- this shows the tests scores or responses
3 that Tim gave to you. And I've looked at it -- I mean,
4 this one for the MMPI is long. It's 567 questions, does
5 that sound right?

6 A Yeah.

7 Q I've looked at these and at your raw data and seen
8 that the scores on here are the same as your raw data?

9 A Correct.

10 Q Does anything else affect the computer-generated
11 report other than just the raw data of the answers given?
12 I have absolutely --

13 A The validity of the testing. So there's built-in
14 validity scales. And, specifically, for the MMPI-2, it
15 can do a corrected scoring based on the patient's response
16 pattern. So in this case, we did have a tendency of
17 overreporting symptoms, so sometimes it will correct it to
18 some degree. There's different scales used. The MMPI has
19 become increasingly complex with additional scoring
20 criteria and methods at which this computer -- I mean,
21 when I learned it, we did paper and pencil scoring.
22 Everything we had to do, we did on our own and so -- I
23 mean, as the years have gone by, they've developed all
24 these different criteria for scoring. So when I -- I did
25 the most basic type of printout of data interpretation in

1 this one and utilized that. And, of course, that makes
2 sense scientifically in terms of what's been backed and
3 supported for the most years versus some of these new
4 scoring techniques.

5 Q And you and I have talked about how complicated some
6 of these tests are?

7 A No, my report would be thousands of pages if I did
8 that.

9 Q But, I mean, you and I talked about the tests
10 themselves --

11 A Oh, I -- I'm sorry, I misheard you.

12 Q That's all right.

13 A Yes, we did.

14 Q Yeah. And I know that you testified when you were
15 talking to the Solicitor about how they can't be found
16 online and just taken by lay people, but you and I talked
17 about how I found one and I took one?

18 A You told me you found the SIMS in German and
19 translated it after spending several hours doing so and
20 you took it and had a significant score.

21 Q Yeah, I know. It was interesting. I learned a lot.
22 And we talked about some of my answers to some of the
23 questions and how I and I think other people might read
24 the same question and interpret it differently, right?

25 A Correct.

1 Q Okay. Going back to the MMPI, the computer-generated
2 report that I have that is based on the scores that were
3 input based on Tim's testing -- and I understand, this is
4 just the computer-generated report. I'm not trying to say
5 that you said this. But it says that based on the
6 profile, severe psychological disorder is reflected.
7 Client might suffer hallucinations, blunted or
8 inappropriate affect, hostile and irritable behavior, may
9 have difficulty managing routine affairs, poor memory,
10 concentration problems and inability to make decisions.
11 Endorsement suggest the presence of delusions or
12 hallucinations. He apparently believes he has special
13 mystical powers or a special mission in life that others
14 do not understand or accept, apparently, holds some
15 unusual beliefs that appear to be disconnected from
16 reality, might experience unusual symptoms, such as
17 delusional beliefs, circumstantial and tangential thinking
18 and loose associations.

19 MR. HUBBARD: Is there a question?

20 Q I want to know if you agree that these are things
21 that could exist in the computer-generated report based
22 on --

23 A So I would be surprised if that didn't exist in the
24 computer-generated report. Not only for that, but I bet
25 on the MCMI, I bet you have another one that also says the

1 same thing --

2 Q Yeah.

3 A -- as you do with the PAI because this data is all
4 consistent across the board. So it's actually helpful
5 that you're pointing that out. As we said before, the
6 validity testing I did shows he has a tendency to -- a
7 goal directed tendency to report symptoms of psychosis
8 beyond those experienced by populations with found
9 psychiatric disorders. So in self-report measures such as
10 these three tests that I gave, I would expect him to be
11 reporting those symptoms. You're reading a
12 computer-generated report that says okay, so this person
13 responded to three, 12, 17 and so and so, so this is what
14 we find from that in terms of that person's response
15 style. So as the doctor, I have to make sense of all this
16 information. So when I find that in that area in
17 particular he is not a valid historian, I cannot put that
18 into my report because that is not accurate data that I
19 can support based on my testing. Now, we're not seeing
20 overreporting in the areas of other disorders. We're
21 seeing overreporting in areas or reporting of such in this
22 one area that you're continuously pointing out. And
23 that's the area that I found him to be an unreliable
24 historian in. So if my testing did not have that, I would
25 have to explain that process. I would have to -- I

1 probably wouldn't have made such a big deal of the
2 validity testing in the beginning because it would
3 contradict itself. So this actually supports the testing
4 I had done before this.

5 Q I'm not trying to say that you're saying these
6 things. You understand that? I'm not trying to --

7 A Right, you're just saying what the computer is
8 saying.

9 Q Correct.

10 A I just want to make sure psychometrically that the
11 jury is understanding of where that information comes
12 from.

13 Q Well, I mean, I've tried to make it clear that this
14 comes from a computer.

15 A Okay.

16 Q But it comes from the computer based on the data that
17 was input from the testing, right? It's not just --

18 A Right, based on the Defendant's self-report, yes.

19 Q So just going through the tests that you gave to Tim,
20 the SIMS test, that is solely a malingering test, right?

21 A That's what it's used for, to gauge effort
22 responding, uh-huh.

23 Q Solely a malingering test, trying to tell if somebody
24 is faking, right?

25 A Correct, to see the effort they're able to put in, to

1 see if they're overreporting symptoms.

2 Q Right. And that's the test where you said that you
3 felt that Tim exaggerated psychotic symptoms, is that
4 right?

5 A Correct. That test, in particular, looks beyond
6 psychosis, so that's one we would give for patients that
7 we might want to ensure are not overreporting cognitive
8 symptoms as well. So in traumatic brain injury cases, I
9 might give that test where there's no report of psychosis
10 because that test also has elements of intellectual
11 ability and other properties that someone might overreport
12 or underreport on.

13 Q And the SIMS test has a built-in number that's
14 accepted by people in your profession as to sort of the
15 level at which a person is likely malingering? If they
16 get a certain score, they're likely malingering. If
17 they're below that certain score, they're likely not
18 malingering. Right?

19 A Correct. So for each subscale and also a total
20 score.

21 Q And the total score, you try to make a determination
22 as to whether or not somebody is malingering based on the
23 SIMS test is 16 or above, right?

24 A Correct. He scored below that for a total.

25 Q A 12, right?

1 A Uh-huh.

2 COURT REPORTER: Is that a yes?

3 THE WITNESS: Yes. My apologies.

4 Q And the Dot Counting Test, he wasn't trying to fake
5 good or bad on that?

6 A Correct, he performed within normal limits.

7 Q The Rey-15, he was not trying to fake good or bad on
8 that?

9 A Correct.

10 Q The second Rey-15, he was not trying to fake good or
11 bad on that, right?

12 A Correct.

13 Q And then again, on the SIMS test, you believe that
14 the scoring shows exaggerating psychotic symptoms, but in
15 the totality of it, he scored a 12. 16 and above is
16 malingering, right?

17 A Correct.

18 Q On the S-I-R-S, or do you say SIRS?

19 A SIRS, that's fine.

20 Q SIRS. There was three things that indicated to you
21 possible malingering, right?

22 A Right. Two that fell in the probable range and one
23 in the definite range.

24 Q And then there were five other parts of that test
25 that showed no malingering at all, right?

1 A Correct. Well, I should -- just to be clear, two
2 were in, what we would say, a category of indefinite, yes,
3 and three were in the honest range.

4 Q Okay.

5 A But, essentially, right, subclinical, I wouldn't make
6 anything out of any of them.

7 Q Five not malingering?

8 A Correct.

9 Q Three that were indicative of some degree of
10 malingering based on the tests?

11 A Probable and definite, correct.

12 Q And I need to go back to the M-Fast, but I'm just
13 going to go through the other ones beforehand. The trails
14 A, nothing indicated faking good or bad in that one,
15 right?

16 A Correct.

17 Q Nothing indicated faking good or bad in the trails B,
18 right?

19 A Correct. And those would not -- we would not be able
20 to extrapolate an attempt to exaggerate or perform well.
21 That's a test of cognition. That gets into more of the
22 straightforward testing. So he performed in the 80th
23 percentile on those.

24 Q Meaning --

25 A No, he provided -- on any test of cognitive measure,

1 he provided full effort and performed very well.

2 Q Which tells you he's not trying to fake good or bad
3 because he's trying?

4 A I found no indication he was trying to engage in any
5 type of negative impression management, malingering of
6 cognitive dysfunction at all. He provided excellent
7 effort and worked consistently throughout all of the
8 neuro-cognitive testing.

9 Q And no indication that he was trying to fake good or
10 bad in the controlled oral word association from
11 multilingual aphasia examination, right?

12 A No. He performed in the 79th percentile. It's very
13 excellent for executive and verbal organization ability.

14 Q And not -- and nothing to indicate he was trying to
15 fake good or bad in the Luria Complex Motor Exam, right?

16 A Correct. The Luria Complex Motor Exam looks at motor
17 abilities, visual spacial, follow-through. Again, another
18 task of cognition and he performed without difficulty.

19 Q Same with the WCST-64, right?

20 A The Wisconsin Card Sort Test, yes, that's another one
21 for executive functioning within the neuro-cognitive
22 testing domain. And he performed within normal limits
23 there.

24 Q Meaning, not trying to fake good or bad, just trying
25 hard?

1 A Correct.

2 Q And same with the test of premorbid functioning,
3 right?

4 A Correct.

5 Q And same with Kaplan Baycrest Neuro-cognitive
6 Assessment Test, right?

7 A Right. And that's a very long test with multiple
8 subtests. Again, appropriate effort.

9 Q And all tolled, we're talking about probably over a
10 thousand questions with all the tests combined, right?

11 A Oh, at least.

12 Q Right. Because one of them is 567?

13 A Right. If you look at all the testing across all
14 domains, correct. And just to clarify, there are not over
15 a thousand questions of true/false. So he's talking about
16 all the ones we did together as well. The neuro-cognitive
17 testing is very much interactive with me timing
18 performance and things like that. But in terms of
19 questioning and persisting through testing all day,
20 absolutely. It was a demanding day.

21 Q Yeah, I'm sure for both of you.

22 MR. SECOR: Your Honor, may I have just a moment,
23 please?

24 THE COURT: You may.

25 MR. SECOR: May the Solicitor and I approach?

1 THE COURT: Yeah.

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

5 THE COURT: That will be Exhibit 104? Court's
6 Exhibit 104 is the next one?

7 MR. SECOR: I just need to get --

8 COURT REPORTER: The next one, 104.

9 THE COURT: Mr. Secor is going to hand you a packet
10 of -- the data from the testing that she did.

11 MR. SECOR: Your Honor, I can do that after the
12 State's redirect.

13 THE COURT: All right. Redirect, Solicitor?

14 MR. HUBBARD: Yes, sir. Just a few things.

15 REDIRECT EXAMINATION

16 BY MR. HUBBARD:

17 Q Dr. Kruse, he brought up about -- it was mentioned
18 that Dr. Brawley had determined that the Defendant -- she
19 studied his brain, did his cognitive testing, that she
20 attributed -- whether or not she attributed his
21 functioning to drugs or whether it was brain injury. What
22 is your knowledge of her report?

23 A Within her report, my memory is that she had said
24 that while some of the testing affects in terms of the
25 impairment overall could have been due to the Geodon,

1 which was that 320 milligrams, twice the recommended dose
2 from the FDA, that she felt that that did play a role, but
3 did not explain in entirety the difficulties he had. I
4 think she then surmised it was due to underlying
5 neuro-cognitive impairment from the brain injury or
6 otherwise, I don't know. I haven't had the opportunity to
7 speak with her.

8 Q Did you reach an opinion to a reasonable degree of
9 scientific certainty as to whether the Defendant, Tim
10 Jones, has neuro-cognitive damage or any clinically
11 significant neuro-cognitive impairments?

12 A I did, and I do not believe he does to a reasonable
13 degree of medical or scientific certainty.

14 Q And what do you account the difference in your tests
15 and Dr. Brawley's testing to be?

16 A The effects of the medication Geodon, the psychomotor
17 slowing and neuro-cognitive depression.

18 Q Now, you were questioned about the testing you did,
19 and I'm just going to call it psychosis testing. You did
20 SIMS, which is you look for malingering. You did SIRS and
21 M-Fast. I believe it was mentioned that on the SIMS test
22 that there was a total score, but when you and I talked,
23 you picked out a subscale. Are there -- in SIMS, there
24 are a number of subscales, are there not?

25 A There are.

1 Q But only one specifically for psychosis, is that
2 correct?

3 A Correct.

4 Q And that's the one where you found what?

5 A He scored six with a clinical significance being
6 anything over a one.

7 Q That would be malingering?

8 A The test is, it says highly suggestive of a
9 malingering disorder.

10 Q Again, what is malingering?

11 A It's a goal oriented, voluntary, conscious,
12 self-directed behavior aimed at exaggerating symptoms or
13 creating symptoms that do not exist.

14 Q And the two other tests you gave, the SIRS and
15 M-Fast, were they also consistent with your findings in
16 the SIMS?

17 A Correct, they were.

18 Q Did you reach an opinion to a reasonable degree of
19 scientific certainty as to whether the Defendant, Tim
20 Jones, suffers from a psychosis?

21 A I did.

22 Q And what's your opinion?

23 A And I don't find evidence of an organic psychosis.

24 Q No schizophrenia, no schizo-effective disorder?

25 A Correct.

1 Q Personality testing that you were questioned about,
2 all this computer-generated stuff, that was generated from
3 his responses, right?

4 A Correct.

5 Q So the hodgepodge I was talking about, is that kind
6 of like him going to a grocery store and just pulling
7 things off the shelves --

8 A Correct.

9 Q -- and throwing it in his buggy? And the computer,
10 if I heard correctly, you said if it had to analyze that,
11 he could have all these variety of symptoms?

12 A Correct.

13 Q But it seemed to be goal directed towards psychosis?

14 A Yes.

15 Q So you have to go in as an expert, weed that out and
16 see what he really has, is that correct?

17 A That's correct.

18 Q And you call that what again, what you do?

19 A I'm a clinical neuropsychologist.

20 Q Right. And is there a method you go through? You
21 don't just rely on a computer to do your work, do you?

22 A No. No. We use psychometrics and neuroscience and
23 brain-based behavioral patterns.

24 Q That's what I was getting at. So when you went
25 through and determined what he really -- what his real

1 personality issues were, did you reach an opinion to a
2 reasonable degree of scientific certainty of a diagnosis
3 for Mr. Jones?

4 A I did. It was unspecified personality disorder.

5 Q And the traits for that unspecified personality
6 disorder were what?

7 A Primarily antisocial and borderline traits.

8 Q Now, it was also brought up that you did not write in
9 your report just an official diagnosis.

10 A Correct.

11 Q But you had a diagnosis, is that correct?

12 A Correct.

13 Q You didn't write a report out the way I would
14 normally see one or another attorney because you were
15 writing it for Dr. Frierson?

16 A Right. So you write reports for your audience. If I
17 were to be asked to write a report for the jury, for
18 example, I would certainly use different terminology and
19 explanations with the assumption that they are not trained
20 neuropsychologists, to my knowledge, maybe there is one,
21 but I would write it differently. And so, of course,
22 knowing I was writing this for Dr. Frierson, that guided
23 my methods.

24 Q And as to malingering as to psychosis, did you also
25 reach an opinion to a reasonable degree of scientific

1 certainty as to that?

2 A Yes. Hopefully, I made it clear. So there's a
3 preponderance of evidence supporting that there is a
4 reasonable degree of scientific certainty to assume that
5 malingering does play a role in the presentation here.

6 MR. HUBBARD: Thank you, Dr. Kruse.

7 MR. SECOR: Just briefly.

8 THE COURT: Briefly.

9 RECROSS-EXAMINATION

10 BY MR. SECOR:

11 Q The tests that the Solicitor keeps talking about is
12 the SIMS test, right?

13 A Yes, we have discussed that several times.

14 Q And that's the one where you said the testing
15 indicates exaggerated psychotic symptoms?

16 A In the one domain, yes.

17 Q The totality of the SIMS test says he's not
18 malingering?

19 A It did not meet the cut off for malingering, correct.

20 Q Because it was four below the cut off, his entire
21 score?

22 A The total, correct. It was 12 and the cut off is 16.

23 Q 16 and above is malingering, 16 and below is not,
24 that's the cut off?

25 A Correct.

1 Q And when you met with Tim and were conducting these
2 tests, he wasn't exhibiting psychotic symptoms to you at
3 the time?

4 A No.

5 Q He seemed to be cooperative and tried to do
6 everything you asked him to do?

7 A He was very cooperative.

8 MR. HUBBARD: May I have one follow-up?

9 THE COURT: I think y'all have enough.

10 MR. HUBBARD: All right.

11 THE COURT: Y'all both have had two shots at it.

12 MR. HUBBARD: All right. That will be fine.

13 THE COURT: Because if you get one more, he's going
14 to want one more and y'all both have had two shots and
15 that's been fair.

16 MR. HUBBARD: That's fair enough, Judge. Thank you
17 so much.

18 THE WITNESS: Thank you.

19 THE COURT: Dr. Kruse, you may step down.

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 THE COURT: All right. What else you got?

24 MR. HUBBARD: Your Honor, we move to incorporate Dr.
25 Frierson's testimony as to reply to Dr. Dorney's.

1 THE COURT: Fair enough. We'll do that.

2 MR. YOUNG: They're going to replay his --

3 THE COURT: No, they're incorporating it, just by
4 reference.

5 MR. HUBBARD: At this time, the State rest.

6 THE COURT: Very well. All right. Y'all step in the
7 jury room. We'll take about 15 minutes. We'll have you
8 back in here shortly and I'll find out what we're going to
9 do next. Okay. So don't discuss the case and I'll have
10 you right back out here.

11 (Whereupon, the jury was excused from the courtroom.)

12 (Whereupon, Court's Exhibit 104 was admitted into
13 evidence.)

14 THE COURT: Both parties have asked about the 2001
15 arrest and conviction for cocaine, rock cocaine, the
16 weight. It was characterized in the question by the
17 prosecution as a heavy cocaine user or heavy crack cocaine
18 user. No corrective instruction was given then. I'm not
19 going to comment on the law in front of the jury. Either
20 party can use the report that's in evidence as to what the
21 drug was and how much it was. The State is not going to
22 utilize any large adjectives in the cocaine use. That was
23 inadvertence and unintentional because they were not
24 apprized of the analysis at the time from what I remember.

25 MR. YOUNG: Your Honor, the Defense would object that

1 the lab report indicated that powder cocaine on the police
2 report said two small rocks--

3 COURT REPORTER: Can we get quite back there. Boyd,
4 can you start over.

5 MR. YOUNG: The Defense would object. There was a
6 police report that indicated two small rocks of cocaine
7 were found in possession of Mr. Jones when he was a
8 passenger in a car and indicated that the driver of the
9 car had asked him to hold it because his license was
10 suspended and he believed that he was going to be
11 searched. Mr. Jones had that in his possession. It was
12 later sent to a lab and tested positive for powder
13 cocaine. The State's assertions that Tim Jones was a
14 heavy crack user are false and are a mischaracterization
15 of evidence they knew or should have known at the time and
16 their failure to correct it deprives Mr. Jones of a fair
17 trial under the Sixth, Fourteenth Amendments to both the
18 United States and the reciprocal portions of the South
19 Carolina Constitution. We believe the case is -- the
20 United States Supreme Court case of -- on the duty of the
21 State to correct false or misleading testimony.

22 THE COURT: All right.

23 MR. HUBBARD: For our response, we had no test
24 analysis from Illinois from this arrest. The arrest
25 record had rock cocaine, so there was a reliable basis to

1 ask the question. The record is also replete with the
2 fact that his drug of choice was cocaine. So if there's
3 any misimpression, it was purely unintentional. And I
4 don't know how else to fix it, I just don't.

5 THE COURT: The record is made, stop. The issue is
6 on the record and protected.

7 MR. YOUNG: Can we say what number Court Exhibit the
8 report is?

9 THE COURT: I don't know which one it is. If you
10 find it, Joy, we'll identify it. The police report.

11 MR. HUBBARD: I think the only other thing, Judge, is
12 you want to have them disregard the question and answer
13 without commenting on it. That's the only other thing I
14 know to do.

15 THE COURT: I mean, do y'all want to do that?

16 MR. YOUNG: I don't think that fixes it. I think
17 that's a step.

18 MR. HUBBARD: If I can make this on the record. I do
19 offer this, that if the Defense would like us to disregard
20 both the question and the answer, we would be fine to do
21 that.

22 MR. YOUNG: Any questions and answers regarding Tim's
23 a heavy crack cocaine user.

24 THE COURT: Do you want that instruction?

25 MR. YOUNG: I can't object to that instruction, but I

1 don't think the jurors -- and I would object afterwards.

2 THE COURT: Okay, then I'm not going to give it then
3 because of that.

4 MR. YOUNG: Okay.

5 THE COURT: And I wouldn't either. If I was in your
6 position, I wouldn't want it mentioned again. I'd hope
7 they've forgot it. I mean, that's kind of the position
8 you're in.

9 MR. YOUNG: Right, but I don't want it --

10 THE COURT: You've made your record as to it's an
11 error, if it is, if I'm wrong, but if you want me to -- a
12 curative instruction, I'm not.

13 MR. YOUNG: I do want a curative instruction, but I'm
14 just going to object anyway, so I don't want to say that
15 --

16 THE COURT: We're still in here. We're still
17 conducting business. Y'all have got to quiet down.

18 COURT REPORTER: Go ahead.

19 MR. YOUNG: I did request a curative instruction. I
20 would object -- I would maintain an objection after the
21 curative instruction. I don't want to waive the issue by
22 saying I don't want a curative instruction.

23 THE COURT: Okay. Right. Okay. Fair enough. I'll
24 give a curative instruction and you can do that. I
25 understand what you're saying. It's not going to be

1 sufficient to fix the errors is what you're going to say,
2 so therefore --

3 MR. YOUNG: Right. Or you can say I'm not going to
4 give it anyway and you're still protected.

5 THE COURT: Which way do you want it? I'm giving you
6 your choice. I'll do it either way. I'll give a curative
7 instruction and then you'll be protected on the record
8 that you don't think is sufficient or I won't give it and
9 you're still protected. Your choice.

10 MR. YOUNG: We'll take it, we'll take the
11 instruction.

12 THE COURT: Good enough. My instruction will say
13 there was a question asked of -- who was it?

14 MR. YOUNG: Dr. Wood.

15 THE COURT: Dr. Wood about a prior conviction and use
16 of cocaine. He was characterized as a heavy user of crack
17 cocaine, that testimony should be disregarded and not
18 considered in deliberations. Something to that effect is
19 what I'm going to say.

20 MR. YOUNG: Yes, sir.

21 THE COURT: Fair enough. All right. What you got?

22 MR. GRAHAM: We need to add something on the record,
23 too. When Dr. Frierson was testifying, I introduced
24 State's 204, which was a list of his sources of
25 information --

1 THE COURT: I thought we redacted some of it or
2 something.

3 MR. GRAHAM: Correct. Mr. Young wanted to go back
4 and look at it and he has suggested and we have made the
5 appropriate redactions. So now, 204 is a redacted copy
6 and 102 for Court's ID is actually the unredacted copy.

7 THE COURT: Fair enough. That's a good record.

8 MR. SECOR: One last thing for the record. Is that
9 okay?

10 THE COURT: Yeah.

11 MR. SECOR: I just want to renew our objection to not
12 being allowed to go into further questioning with Dr.
13 Kruse about her data.

14 THE COURT: And all the data is 104 Court's Exhibit
15 now.

16 MR. SECOR: Yes, sir. And the questions about
17 specific questions.

18 THE COURT: I think the State objected to it, too,
19 but I told y'all pretrial nobody was going into the data
20 and y'all didn't. Thank you for following instructions.

21 (WHEREUPON, Court's Exhibit number 102, 105 and 106
22 was marked for identification only.)

23 THE COURT: We will take our lunch break, the jury is
24 taking theirs now.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Solicitor, you ready?

2 MR. HUBBARD: One moment.

3 THE COURT: Okay.

4 (Whereupon, the jury came into open court at
5 approximately 12:55 p.m.)

6 THE COURT: All the evidence and testimony has been
7 presented. Everybody's done. What's left to do now? The
8 State's going to summarize its position, closing argument,
9 if you will, then we'll take a break, 10 minutes, 10, 15
10 minutes between the State getting finished and then
11 getting their exhibits and then Defense will have their
12 opportunity summarize their position, also. Take another
13 short break and I'll give you my instructions. Okay.
14 Now, the lawyers and I -- the reason I was late leaving
15 for lunch. The lawyers and I discussed the basics,
16 details of my instructions to y'all, so they kind of know
17 what I'm going to say. And they may say the Judge is
18 going to instruct you. They're allowed to do that. But
19 I'll give the instruction again. So my instructions,
20 y'all have a copy of in the jury room during
21 deliberations, so I'll tell you that now. You don't have
22 to memorize all the law. Y'all actually don't have to
23 memorize all the evidence because you get it, too. So
24 with all that being said, I'm going to sit down and let
25 Solicitor Hubbard.

1 MR. YOUNG: One issue, Your Honor.

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

5 THE COURT: Okay. One curative instruction, meaning
6 there was something happened during the trial and I wanted
7 to kind of explain it. There was testimony brought out
8 when Dr. Wood was testifying. It was regarding a prior
9 conviction from 2001 involving Mr. Jones. And the gist of
10 it was, did you realize or know that Mr. Jones was a heavy
11 user of crack cocaine. The actual analysis in evidence,
12 hadn't seen it, but he was convicted of possession of
13 cocaine, rock cocaine, not crack cocaine. The comments on
14 heavy user of crack cocaine will be disregarded. So he
15 was not using crack. It was powder cocaine, six-tenths of
16 a gram, possession of, end result. So don't want y'all
17 discussing there was testimony of crack cocaine. It was a
18 mistake on fact. There was a conviction in '01 of powder
19 cocaine.

20 MR. YOUNG: We would renew our objection and our
21 motion.

22 THE COURT: Okay. The motion is renewed and,
23 respectfully, a curative instruction has been given. All
24 right, Solicitor.

25 MR. HUBBARD: Thank you, Your Honor.

1 MR. HUBBARD: A child should feel safe in his
2 father's arms. You heard that at the beginning of the
3 trial when Mr. Graham said it, a child should feel safe in
4 his father's arms. What do daddies do, they protect, they
5 guard, a source of strength. Every child clings to a dad
6 when they're scared. No child should ever feel frightened
7 in their daddy's arms. Y'all have heard horrendous,
8 horrendous facts. There's been no question that man right
9 over there killed five of his babies. Did you hear what
10 he had to say about it when he was sitting there with law
11 enforcement. Part of me says I'm their father and no
12 father should do this to his children. A part of me says
13 fuck it, they're already dead. Those are his words, not
14 mine. That's what you've got to rustle with. You've seen
15 and heard God awful stuff by the hands of that man. So
16 now you've got this big question, is he a murderer or is
17 he truly insane? Now, the Judge is going to go over all
18 the law. And I'll summarize some of the law, any question
19 about that law comes from him. As he said, y'all are the
20 judges of the facts. Y'all determine what happened, what
21 you believe, but you take the law as he gives it. You'll
22 end up having a verdict form that looks something like
23 this, guilty, guilty but mentally ill, not guilty by
24 reason of insanity and not guilty. Y'all heard that when
25 y'all were being qualified as jurors, all that talk about

1 what does that mean. We're going to begin with murder.
2 It's the intentional killing of another human being with
3 malice aforethought. Malice can be inferred by the
4 behavior that is exacted. Folks, malice is evil intent.
5 It's depravity. Every murder involves malice. It's not
6 just from the head, it's the heart. It's a depraved
7 heart. It's evil. You'll hear that I have to establish
8 this and my crew has to establish this case beyond a
9 reasonable doubt. What does that mean. It simply means
10 we have to leave you feeling firmly convinced the
11 Defendant's guilty, firmly convinced. Aren't you? You're
12 going to hear the Defense raised not guilty by reason of
13 insanity, and the Judge has talked about that. They have
14 to establish that by a preponderance of evidence. And
15 he'll explain what that means. He'll explain what that
16 means. He's going to go on to explain the Defendant, to
17 be insane and to be not guilty by reason of insanity, that
18 night on October 28th, 2014, did not appreciate the
19 wrongfulness of his actions. He did not understand the
20 difference between right and wrong in both a legal and
21 moral sense. They have the burden of proving that.
22 That's why all those experts have been up here. We're
23 going to talk about that. You haven't heard much about
24 another -- guilty but mentally ill. Another aspect that
25 you can find. And that is all right, he's mentally ill,

1 but he knew right from wrong. He just didn't have the
2 capacity to control his behavior, to obey the law and
3 that's why he did this. But folks, you're going to hear,
4 though, that doesn't mean he has a mental illness that
5 he's guilty but mentally ill or that he's insane. You can
6 have a mental illness. It has to affect you that night
7 when this incident occurred. If it doesn't, it doesn't
8 matter. You can have schizophrenia and kill someone, but
9 if you weren't psychotic at the time, if you could still
10 tell right from wrong, you're guilty. You're as guilty as
11 somebody who doesn't have it. But I'm going to tell you,
12 this man doesn't have schizophrenia. He doesn't have
13 schizo-affective disorder. As we get into this case, what
14 it's really going to boil down to is guilty versus not
15 guilty by reason of insanity. That's the battle. That's
16 where it really is. That's going to be it. Now, these
17 experts, I'm going to start with them. They talk about
18 insanity. They talk about the presentation the Defense
19 has put up to carry their burden because here's why, if
20 their case crumbles, what does that leave you with? A God
21 awful act, a man who killed his five kids. So let's start
22 with those experts. We can talk about them pretty much in
23 the order they put them up. And I'm going to butcher this
24 man's name. Dr. Agharkar, I can't pronounce it. I just
25 know him as the \$25,000.00 dollar doctor from Atlanta. He

1 came up here and spent three and a half hours with this
2 Defendant and says he's got schizophrenia, I can tell.
3 Supposedly, he read all this material, too, but he
4 couldn't get his facts straight on that stand. Remember,
5 he had something about neighbors and some other stuff. He
6 was fine until Suzanne Mayes got up and started grilling
7 him, then he started drinking water like he was on fire.
8 And he made the most incredible statement any expert made.
9 When she confronted him with the fact that he had been
10 heavily medicated -- because the doctors were talking
11 about that flat affect, and this doctor said I can look at
12 a person and tell whether they're on medication or they
13 have schizophrenia. That was pretty impressive. Is he
14 worth that \$25 grand to you? Did you get your money's
15 worth out of that? That's pretty impressive. Remember
16 that, I can tell the difference when he got pushed by Ms.
17 Mayes. Let me ask you something, with every expert, are
18 they looking for the truth or are they looking for a
19 defense? Are they trying to lead you to what really
20 happened, the true state of this man's mind or are they
21 putting up a defense for the Defendant? You have to
22 decide that. He also said the Defendant has a brain
23 injury. And he relied on Dr. Brawley, that doctor who's
24 name you keep hearing, that doctor who said I found
25 deficits with his brain, he has a low IQ, that doctor who

1 never showed up to court. Dr. Kruse is the one that
2 showed up to court and said that's just -- his brain is
3 fine. We'll talk a little bit more about her. Dr.
4 Lipman, the guy with the British accent. Just qualifying
5 him, it took 30 minutes because he had such a past, all
6 his credentials. He's the drug expert. And he talked
7 about spice. But when he was talking, did you watch what
8 he said? His entire opinion is based on the assumption
9 that the Defendant has schizophrenia or some form of
10 psychosis, that his opinion is telling you how these drugs
11 exacerbate that underlying problem. He talked about
12 spice. Now, a lot of what he said about spice, our man
13 from SLED said the same thing. Don't really know how long
14 it stays in your system, coming off of it is just about as
15 bad as being on it. You sweat and you have all those
16 characteristics, all the things those Mississippi officers
17 -- you remember them, that was such a long time ago --
18 said they observed when the Defendant was in that room,
19 frothing at the mouth, real emotional, saying the kids
20 were at Wal-Mart. I dropped them off somewhere between
21 Wal-Mart and home. Remember that? And then the next day,
22 he's fine. But his opinion is based on the assumption
23 that some other expert got it right and found
24 schizophrenia. He talked about Chantix, a smoking drug.
25 It's only important if you have schizophrenia or some

1 schizo-affective disorder. Chantix can amp that up. He
2 didn't seem to realize the Defendant had taken Chantix
3 sporadically, inconsistently, have never had any side
4 effects. And then the Defense brought up Geodon, the drug
5 that we've all been talking about, that Dr. Brawley didn't
6 recognize the Defendant was on, that 320 milligrams.
7 Remember that? He talked about it, talked about what a
8 good drug it is. It's used for schizophrenia. It's
9 actually used for other things, too. A doctor would only
10 give it if it's necessary. You remember -- it makes you
11 wonder, doesn't it? Doctors don't overprescribe. Don't
12 we have an opioid epidemic where doctors overprescribe
13 pain pills? Sometimes doctors do overprescribe.
14 Sometimes they overmedicate. You found out where that
15 overmedication came from, it's Dr. Wood. She wasn't
16 brought in as an expert for the defense. She's just the
17 SCDC doctor. She doesn't sit down like Dr. Frierson and
18 these other doctors and get to know folks. She's dealing
19 with the worst of the worst. If they complain of
20 something, she gives them medication. She tries to
21 formulate an idea of what might be going on, but she
22 doesn't have the tools, the resources to really figure
23 that out. She's in a hospital environment trying to keep
24 people down and placid. She pumped Geodon to 320
25 milligrams. And this doctor, he didn't even know what the

1 dosage was. This doctor, who's an expert, again, it's Ms.
2 Mayes grilling him, she said, what's the maximum dose? I
3 don't know. All right. You don't know. Well, what was
4 the Defendant taking? I don't know. You've come all the
5 way to this courtroom as an expert to talk to this jury
6 and you don't know. Something that's going to be hotly
7 contested, you don't know. Remember, she had to let him
8 look at her computer and he still didn't find it. He
9 still couldn't tell you. And then we showed the schedule
10 that Dr. Wood had drawn up, the prescription schedule, a
11 time period of giving 320 milligrams of Geodon. He
12 couldn't read it. Remember, it looks like 80. Well,
13 maybe 160. You know, I don't know. This doesn't make
14 sense. Finally, in the middle of his testimony, the
15 Defense stood up and said we stipulate it's 320
16 milligrams. Why was he here? Why was he here? Was he
17 helping you? Was he leading you to the truth or was he
18 working on the Defense? Dr. Snyder out of Arizona, he
19 looked at brain scans. Said there was a horrible head
20 injury, everybody would know when it happened. He is
21 right. It's when the Defendant was 15. He said there
22 could be side effects from that. You've got to look at
23 cognitive issues. And in the literature, there is a
24 tenuous link to schizophrenia with some of the stuff we
25 see here, but I can't tell you because all I did was look

1 at the scans. All right, great, somebody needs to do some
2 testing. They brought Dr. Bigler in. He's a
3 neuropsychologist, just like Dr. Kruse. He's fascinating.
4 It was like going back to school, but you don't have to
5 take a test. Plastic brain. Who knew the brain had all
6 those parts? All I knew about a brain when I was growing
7 up was my daddy said I didn't use it enough. I had no
8 idea you had different -- all the different parts. And he
9 was showing all the things that could be injured. And he
10 had a little skull. How many times do you see somebody
11 carrying a little skull and not getting arrested? He gets
12 to. That's fascinating. A real human skull. And then he
13 had 3D slides of the Defendant's brain. We could actually
14 slice and dice and look in there. But he really didn't
15 add much to Dr. Snyder. Because he said all right, you've
16 got a horrible injury, TBI, traumatic brain injury.
17 Everybody agrees. Dr. Kruse agreed with that. He said I
18 would expect to see issues, but there has to be testing.
19 Okay. Let's do some testing. Let's do some testing.
20 Let's find out if there really is cognitive deficits. And
21 then he tried to go a little too far. Even though he
22 agreed he could not diagnose off those scans as neat as
23 they were, when I pressed him, he wanted to say there had
24 to be something there. I said, Doctor, you've even
25 written you can take two scans, even like what you've got

1 of Mr. Jones, put one right next to it that looks
2 identical and they might have completely different
3 outcomes. One person might have no problems and another
4 might be absolutely incapacitated. He agreed. But he
5 couldn't let go. Why? Remember his final little thing?
6 After all this show, Mr. Jones has a broken brain. Did
7 that sound very medical and scientific to you? He has a
8 broken brain, but he couldn't show you why. He just had a
9 fractured skull. He had a skull injury. So who did the
10 Defense bring in here to show the testing? No one. No
11 one. But it was done. It was Dr. Tora Brawley. She did
12 the testing. And every expert the Defense put up relies
13 on her, including Dr. Dorney, the psychiatrist. She
14 relied on Tora Brawley's findings. Remember she did the
15 nice pie chart with overlapping rings, one of it was Dr.
16 Brawley's findings. They all ignored Dr. Kruse, all of
17 them. But Dr. Brawley's findings -- and maybe this is why
18 she's not here -- were invalid. Because when she did her
19 testing, the Defendant was on 320 milligrams of Geodon.
20 Even he told Dr. Kruse, I had that brain fog. Remember
21 Dr. Wood saying that? I felt slowed and I couldn't think.
22 It just negated the entire test. She gave him a low IQ,
23 like 87, 89, somewhere in there. To a man that we all
24 know is extremely bright, Summa Cum Laude from Mississippi
25 State and he did while raising kids, supporting a wife.

1 That's pretty incredible. He goes on to Intel. And he
2 was working at Intel right up to the point of these
3 murders and had just gotten a raise, right up to the point
4 of the crimes. That's why Dr. Frierson goes whoa,
5 something's wrong here. Why didn't anybody else do that?
6 Why didn't anybody else look at this and go, wait a
7 minute, what's going on here? This doesn't fit. What is
8 the Defense doing? Dr. Frierson has come in and said
9 listen, I want to have another battery of tests, but I
10 don't want to just test his cognitive abilities, I want
11 the full panel. I want to see if he's got an underlying
12 psychosis. I want to see if there's a personality
13 disorder. So he got Dr. Kruse. And you just heard her
14 today. She made sure the Defendant was fine and he even
15 said I'm doing good now. He's ready and eager to take the
16 tests. She gives him effort tests. Is this guy really
17 going to take these tests? Is he going to try? Am I
18 going to really be able to see if he's doing all right?
19 Three different ones, he does great. And they have that
20 cognitive aspect, so they're looking. Is there any issue
21 going on here? So she gives a whole battery of cognitive
22 tests. Remember, that was the one he had like seven or
23 eight tests. And they all -- they've got weird names, but
24 they all are looking at different parts of the brain.
25 When Bigler and Snyder were talking about different areas

1 of the brain, the frontal lobe, the executive function.
2 All of these are looking at all those areas they were
3 talking about. Is he okay? Remember the Defense made a
4 big deal, well, there was no malingering. Not with that
5 part. Absolutely none. And he knocked it out of the
6 park. He's a bright man. That horrible head injury that
7 looked so bad that Dr. Bigler kept saying he had a broken
8 brain. No problems. No clinically significant cognitive
9 deficits. No problems. His brain's okay. And you
10 already knew that because he's been proving it every day
11 since that wreck. He's been proving with school work,
12 proving it by how he advanced in life, showing his brain
13 works fine. She tested to see if there's any underlying
14 psychosis as well. That's Dr. Kruse. Nobody on the
15 defense did that. Why? It's their burden. Why wouldn't
16 Dr. Dorney want to team up with somebody like the way Dr.
17 Frierson did? Why wouldn't she want somebody. It's a
18 different set of testing. It's scientific, objective
19 testing. And it's the kind of testing you can walk into
20 courtroom and these experts are going to understand what
21 it is. Why didn't they want that? Maybe they knew what
22 they were going to get. Dr. Kruse did three different
23 types of test, y'all hear, the SIMS, the SIRS and M-Fast.
24 All of them, all of them showed no psychosis. There's no
25 schizophrenia. There's no schizo-affective disorder. But

1 what she found is these tests, basically, have built-in
2 lie detectors. There's malingerer. He's looking and
3 trying to make himself look mentally ill. He's looking
4 for schizophrenia. He's looking to present to you and
5 everybody and maybe even himself, I'm crazy. I'm insane.
6 But it's not there. And then the biggest eyeopener
7 probably was the personality testing. That was some of
8 the most confusing questioning because he goes through the
9 testing, he's identifying everything he can think of that
10 looks like it might be psychosis. And so Dr. Kruse says I
11 get this huge hodgepodge of stuff, so yeah, when it gets
12 in the computer, it would diagnose him with a half a dozen
13 things, which is why it was unreliable. She said he was
14 not a reliable historian. He's not a reliable historian.
15 And so her work is not just done by a computer. She sits
16 down and says, what do I really have here. She said a
17 couple things really stood out. Not a big full diagnosis,
18 but he has a personality disorder. It's not specified
19 because there's traits of other things, one of which is
20 borderline. You know that up and down personality, hot
21 flash anger, fear of abandonment, all those things you've
22 been hearing about for several weeks from the Defendant.
23 You feel like you're walking on eggshells around him.
24 Some people misdiagnose it as bipolar. Shouldn't have.
25 That's that trait of borderline and it's something he

1 developed growing up, maybe because he did have some bad
2 experiences in his life. And he developed something else,
3 too, a trait, a hard trait of anti-social behavior, which
4 is when somebody's in pain, he didn't see it. Daddy, I
5 love you. No, no, no. He felt nothing. It's not there.
6 The inability to empathize. If it's not proven he's
7 insane -- look at Dr. Frierson and Dr. Dorney. Looking at
8 the two of them, they both are psychiatrists. Who did you
9 feel like came in here and made sense to you? That when
10 he was talking, he could lay out something complicated.
11 Because this case is huge, he said, what was it, over a
12 hundred thousand pages he had to go through. He had
13 videos, he had audios. He went through all of it. Very
14 different from the three and a half hour man from Atlanta.
15 He went through all of it. He pulled in another doctor.
16 He's not proud. Help me out. Give me some good hard core
17 scientific data, Dr. Kruse. Help me. He took his time.
18 He spent almost 20 hours just talking to this man over
19 here. He called people. He read everything. Folks, the
20 bottom line is this, he said he knew what he was doing
21 that night. He knew the difference between right and
22 wrong, both legally and morally. And he went on to that
23 second question, guilty but mentally ill. He said he had
24 the ability to control his actions. He had the capacity
25 to conform his conduct to the requirements of the law.