

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 30 2021

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

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

SUSAN B. HACKETT
Appellate Defender

DONALD J. ZELENKA
Deputy Attorney General

DAVID ALEXANDER
Appellate Defender

MELODY J. BROWN
Senior Assistant Deputy Attorney General

LARA M. CAUDY
Appellate Defender

TOMMY EVANS, JR.
Assistant Attorney General

TAYLOR D. GILLIAM
Appellate Defender

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3727

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR APPELLANT

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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 He's the only one that has spoken on that issue. No one
2 else has. Dr. Frierson's approach is a little different.
3 It's different from yours. When he was evaluating this
4 man, he said I gave him a lot of credit. Did you hear him
5 say that? Like the voices, he said it became clear to me
6 when he was talking about voices, he wasn't really -- that
7 wasn't psychotic voices, that's negative self-talk. The
8 voice is Tim Jones. The voice is Tim Jones. He said but
9 there are two voices that he mentioned and you know what,
10 I gave those to him. He was ten years old and he said his
11 stepmother was mean to him and he had that gremlin voice
12 that said something about, you know, kill yourself. And
13 then after he killed Nahtahn, he said he heard it again.
14 Dr. Frierson said, you know what -- he looked at y'all and
15 said I'm not saying he's lying. He might be lying to me,
16 but for purposes of this, I'm going to assume, give it to
17 him. Even if I do that, even if I do that, he knew what
18 he was doing. He knew what he was doing. He goes on to
19 make several conclusions, one of which -- and I've got his
20 reports. One is saying certain actions showed he knew
21 legal right from wrong. Certain actions showed he knew
22 moral right from wrong. One of the things was he said --
23 he brought up Tim Jones didn't call 911 that night. He
24 had his phone right there and he didn't call 911. And he
25 told the doctor why. He said, I knew I'd get arrested for

1 murder. That is an understanding, I just did something,
2 I'm going to get locked up. I know legal right from
3 wrong. He goes through a whole list of things, how he
4 calls Christina Ehlke the next day and says, Look, we'll
5 be late. And then a couple days later, September 2nd,
6 calls her and says, Hey, we're moving away. He even says
7 we're going to use -- we're looking for a fresh start. I
8 bet he was as his dead babies laid behind him. The doctor
9 said that shows moral and legal knowledge of right and
10 wrong. Looking for all the dumps, the canine sniffers and
11 the campgrounds, all that, legal right from wrong, looking
12 for destruction of evidence. Looking to get in the
13 Mexican border, remember that on this note? You see MB on
14 here? He said he tells me that's what that is. What did
15 he have with him? His passport. In all his panic, he
16 sure made sure he had this. You think this man's insane?
17 He said he took the time to buy additional stuff to
18 destroy evidence. He went to Wal-Mart. His kids are dead
19 in the car while he's walking through Wal-Mart. And he
20 looks just like another shopper, only in his basket, he's
21 got some saws, acid, things to dismember and mutilate the
22 bodies of his little babies. You think he's insane? You
23 think this isn't planning? And he goes on and he tells
24 the officers in Mississippi about his voices, which are
25 really intrusive thoughts. He says even if the voices

1 were actual hallucinations, they further indicate he was
2 aware of the wrongfulness of his actions. Even if they
3 were actual hallucinations. That his lying to law
4 enforcement is additional knowledge of legal wrongfulness.
5 And then he addressed the American History X movie and
6 said it's moral wrongfulness. When he asked Tim Jones,
7 what do you think those other inmates will think of you?
8 You think they'd be morally outraged? Yes. Yes. You got
9 it right there. Dr. Frierson moves on. He goes capacity
10 to conform on guilty but mentally ill. He said it's not
11 there, not there. Here's the deal, he says I'm assuming
12 when I'm giving the Defendant paranoia with Nahtahn. He's
13 paranoid, but it doesn't rise to the level of keeping him
14 from controlling his actions. He said I'm giving him that
15 based on what I'm hearing. He is grading on a curve for
16 Tim Jones. Tim Jones still can't make this test. He
17 still can't pass this one. He believes the paranoia was
18 not due to any mental illness, it was due to drugs.
19 Voluntary consumption of drugs is not a defense. If it
20 was, you could go get drunk, ride down the highway, kill
21 somebody when the cops come to get you, hey, I didn't know
22 what I was doing, I was drunk. It doesn't work. So if
23 you ingest any kind of drugs and do something horrible,
24 sorry, you're out of luck. It's not a defense. And as to
25 Merah, Eli, Gabriel and Abigail, well, he said, you know

1 what, that was just a conscious decision. It was a
2 conscious decision. That's Dr. Frierson. Now, Dr.
3 Dorney, she was all over the place, wasn't she? She was
4 looking for some type of fixed delusion. She was
5 struggling. She kept saying it's a complicated case.
6 Yes, but can you give us an answer? Can you tell this
7 jury what the delusion is? She said, Well, you've got to
8 pick a piece here and here. No, you don't. No, you
9 don't. Well, you know, he's concerned about Amber and
10 there's prostitution. There's -- you know, Nahtahn wants
11 his momma. Merah wants her mom. Maybe they're plotting.
12 She could not give you really what in the world the
13 delusion was and for how long it's been going on. Even if
14 it's momentary, that's not schizophrenia, folks. That's
15 not -- that's not a fixed delusion. That's not psychosis.
16 She totally ignores Dr. Kruse. So when we get up on
17 cross, remember Mr. Graham crossing Dr. Dorney, she
18 acknowledges that she has Dr. Kruse's report, she just --
19 she relied on Brawley's, the doctor who wouldn't show up.
20 That tells you everything. Is she looking for the truth
21 or for a defense? Is she looking for the truth or for a
22 defense? She ends up saying that at the killing of
23 Nahtahn, Mr. Jones didn't know it was legally wrong. I
24 should be able to spank my child. I've done it this way
25 in the past. I should be able to discipline my child.

1 I've done it this way in the past. It's legally right.
2 She ignores the fact DSS has stepped in that house several
3 times. For all the things DSS has missed in this case,
4 they, at least, put him on notice saying you can't behave
5 this way. This is not right. This is not lawful. It's
6 child abuse. He's on notice. And any argument that says
7 oh, well, the safety plan is expired. What does that
8 mean? Game on again? This man knows, he's been put on
9 notice. They have come to his doorstep saying thou shalt
10 stop. And she says he doesn't know it's unlawful. How
11 can she look at you and say that? And then as to the
12 other kids, well, he knew that was unlawful, that was an
13 amazing turn around, but he didn't know it was morally
14 wrong because he's sending them off to Jesus. They'll be
15 better off. They won't have to live a life like me. So
16 I'm doing them a favor. Remember how Dr. Frierson
17 addressed that? He said that's maybe his moral value set,
18 it may even be a rationalization, but that's not what we
19 mean when we talk about moral right from wrong. All of us
20 should be able to look at the act and say, is that morally
21 right or wrong? He doesn't get to pick. He doesn't get
22 to decide. But even if Dr. Dorney is right and he gets to
23 decide and say that this is morally -- the morally right
24 thing to do or I thought it was moral, why in the world is
25 he saying Lord, forgive me? What's he asking forgiveness

1 for if he thought he was right? Why is he saying I'm
2 sorry if he thought he was right? She couldn't make sense
3 of any of it. Now, who, between Frierson and Dorney, made
4 the most sense to you? Who looked like they were trying
5 to clarify as opposed to muddy the waters? That's what
6 you've got, folks, with your experts. You've got Tim
7 Jones long past, his hard past, but what Dr. Kruse today
8 said makes that past make a lot more sense. The whole
9 fear of rejection, he feels like he was wronged by his
10 mom, Cindy. She left him. He's felt wronged by his daddy
11 at times. You remember Christmas 2012? He walks out,
12 doesn't talk to his dad. His dad has to reach out to him
13 in August of 2014. Tim Jones, Jr. can hold a grudge.
14 That's not psychosis, that's who he is. Tim Jones is
15 focused on himself. The night of the murders, the
16 killings, the murders, the night of those killings, who
17 did he think about? When Nahtahn lay dead on his floor,
18 it's Tim, you're F'd. My life is over. What a shot, a
19 good window shot into who that man is. But if you have
20 any doubt about whether he's sane or not, Tim Jones
21 himself answered it for you. You didn't need a single
22 expert, no one did. When he that night, after a prolonged
23 period of, basically, brutalizing his son, Nahtahn, until
24 his son dies, when he picked up his phone and chose not to
25 call 911, he told every one of y'all, I know what the law

1 is and I know I'm in trouble. But when he also took the
2 time, took the time to download a movie clip. When his
3 son's dead, he's got four other kids here, two of them
4 horrified, he downloads a movie, a movie clip, a rape
5 scene in prison. Who goes to prison? People who break
6 the law. But its inmates raping an inmate. Inmates don't
7 really care what the law is. Even the lowest of the low,
8 the worst of the worst know killing your babies is
9 obscene, outrageous and it is just absolutely morally
10 unacceptable. Tim Jones did that in a matter of minutes
11 and he told you that by his actions. His words may say
12 voices, voices, but that night, it's not voices, it's
13 choices. Look at his life, all this stuff about Cindy,
14 Cindy, Cindy. When he sees his dad on September 7th, Dad,
15 Cindy's in my head. I'm going to tell you, you heard his
16 dad, he acts a lot more like his dad than he does that
17 schizophrenic Cindy. Look at how they talk, how they
18 think about women, their actions. Now, his dad, I have to
19 give him credit, he loves those babies, too. He's in a
20 hard situation. Who would ever trade spots with him?
21 He's got his babies and he's got his son. And he's
22 sitting behind his son right now. That's where he is.
23 But he tells you, Tim grew up always wanting his way. If
24 he didn't get it, he'd storm off. Dealing with him is
25 like walking on eggshells. And when he got in trouble,

1 got in trouble and went to the boot camp, he got hooked
2 up, and his daddy calls it a cult. Well, it's not really
3 a cult. There is an apostolic group out there, they are
4 more of a Pentecostal style form of worship. They speak
5 in tongues. They're not crazy. They're not
6 schizophrenic. But his pastor, his former pastor came in
7 here and said Tim Jones embraced it, but he embraced it
8 for a different reason than most people. He liked the
9 control. He used his religion for control. Frankly, the
10 anxiety that Dr. Frierson talks about, the more he
11 controls the setting, the soother he is. But with this
12 religious view, a Bible's a brick, he can hit you on the
13 head with it. I'm the head of my house. I am the head of
14 my house. I am the authority figure in this house. You
15 shall obey me. And he meets Amber. She has just been
16 through it. They have drug her name through it. And
17 folks, you can think whatever you want of her, you can.
18 She's made horrible mistakes. But here she is, she's 19,
19 uneducated. No high school diploma. No family. Nothing.
20 She's not a goal digger. Tim, Sr. kind of suggested she
21 thought Tim was going places. They met at the Enchanted
22 Castle, a restaurant. Tim's going to school part time.
23 She found somebody that was bright that actually saw
24 something in her. And they started having babies
25 immediately. I want to tell you, Tim, Sr. talked about

1 how at some point, Amber just gave up. Can you blame her?
2 She's had all these kids, then she has a stillborn child,
3 a stillborn child. She goes full term. All the pain of
4 bringing a child into this world knowing that child's
5 dead, if that doesn't do something to you, I don't know
6 what will. And they're like, well, she wouldn't just get
7 over it. She wouldn't clean the house. And when they
8 picked up and moved to South Carolina for that new job,
9 she was excited. Tim's now got a really good education.
10 He's got prospects. He's going to work for Intel. Maybe
11 this is our chance to actually enjoy life. Maybe she will
12 enjoy life. Tim Jones doesn't ask her what she wants. He
13 moves to a trailer in the middle of nowhere. You heard
14 Tim's dad say it took about a week just to fix the
15 bathroom. It's like Green Acres. She's pregnant again.
16 That's Tim, Jr.'s way of fixing the problem, having a
17 miscarriage. She's got to take care of all these kids,
18 ends up being five eventually, four at that time. And he
19 buys all these animals because he's going to be a
20 homesteader, only he's not going to be at home. So Amber,
21 take care of all this. Is it really shocking that she
22 stepped out? May not be right, but it's not shocking.
23 And Tim Jones was offended. You left me? You left me?
24 After all I've done? Do you know who I am? You're
25 nothing without me. I've got an education. I've got

1 money. There's no way you'll get these kids. You have
2 nothing. I have family. You have nothing. That's Tim
3 Jones. He started spiraling out of control. He got some
4 help, tried to get his life back together. But folks, by
5 May 2014, he's suffering. He's a daddy of five. He's
6 stressed. He needs control and he needs Amber or someone
7 like Amber. Remember, he even got a babysitter who was
8 17, just turned 17 to move in with them. He can condemn
9 Amber for violating the law of God, but it doesn't apply
10 to Tim. Tim is his own law. He brings another woman in
11 the house and that doesn't last because Tim is brutal with
12 the kids. He has adopted a form of punishment, corporal
13 punishment. Not just spanking, pulling their pants down
14 and beating them and then PT testing, PT, PTing these
15 kids. Who didn't make it through boot camp in the Navy?
16 Tim Jones. He couldn't do it, but by gosh, he wants
17 six-year-old Nahtahn to do it. He wants all of his kids
18 doing it. Give me jumping jacks, pushups, stand on your
19 toes, the things Tim Jones couldn't do. By May, he's
20 using spice. There's no question. You've seen the
21 purchases. It affected his work. Not the quality of work
22 like Dorney said. Dr. Dorney was wrong. He started
23 showing up late. He started getting behind. He's still
24 getting it done. He's just that bright. But he's
25 stressed. Something is happening. August 28th, 2014,

1 it's a good picture, that video, just a good clip. Is
2 this man insane or not? Is he under a delusion about his
3 kids? About Amber? He opens that door up to pick up
4 those kids. Do you hear those kids? You hear their
5 little chirping voices, daddy, daddy, daddy? Running to
6 him. And he does arrrrrr, just like you think any dad
7 would. Looking at it, you see no problem. He's not
8 afraid of Nahtahn or Merah. He's not saying get back from
9 me. He's taking them off. And it looks like a normal dad
10 with a normal family. And you hear a little voice, a
11 little girl's voice maybe, Merah? Daddy, do you feel
12 better? Daddy, do you feel better? Remember when you
13 take spice, you have your high and you come off of it and
14 you go through the deep withdrawals, then you just feel
15 bad. This little girl is asking her daddy do you feel
16 better just a few hours from being dead. He takes them
17 home, gets them dinner and he finds that outlet is blown.
18 And that's when Tim Jones blows a fuse. He knows who did
19 it. Nahtahn's been doing it in the past. You think that
20 little boy has studied his daddy? Dad's interested in
21 electronics, computers. There's evidence Tim Jones looked
22 up what happens when your kids play with outlets. And
23 what does he do? He loses it. He punishes him. He
24 doesn't just spank him, folks. He is absolutely
25 brutalizing this poor little child. He's putting him

1 through the paces, PT'ing his ass. Those were his words.
2 Spanking him. Come off of it. Tell me what you did. And
3 Nahtahn's not saying a word. Nahtahn, little, little
4 Nahtahn is not saying a word. You think he was too
5 scared? You think if he admitted it, it would have made
6 any difference? He'd just get punished then for what he
7 did again. And there's just one little moment where there
8 was hope. Amber calls right in the middle of the drama
9 and she hears all the noise, the ruckus. Tim saying, Son,
10 you could have killed yourself. Not oh, my God, Nahtahn
11 is trying to kill me. Or Merah and Nahtahn, what are
12 y'all up to? Amber, are you involved in this? None of
13 that. There's no delusion. There's no delusion. And
14 Amber is like, What's going on? And little Nahtahn,
15 Mommy, I didn't mean to do it. Mommy, I didn't mean to do
16 it. And she says he says that, he gasping for air,
17 gulping for air. He's in deep distress. Mommy, I didn't
18 mean to do it. That's a cry for help from a little boy.
19 Reaching through that phone, Mommy, I didn't mean to do
20 it. She tries to communicate with Junior. He has nothing
21 to say about it. Why do you always defend the kids? She
22 wants to talk and settle everything down. She's doing
23 what a mom should do. And he tells her to shut the F up
24 and cuts the phone line. Don't you know right then and
25 there that little boy, Nahtahn, knew I have no one. No

1 one's here now. That was his lifeline. Any prospect of
2 living is gone. That child, that child who should be able
3 to run to his daddy when he's scared. When there's a
4 monster in your room, you run to your daddy. Who do you
5 run to when your daddy's the monster? The fear that
6 little boy experienced, the fear that this little child --
7 how in the world do you do this to this child? But it was
8 on at that point. Nahtahn paid the price. Daddy said I
9 did everything I could to get it out of him. Well, at
10 that point, folks, it probably wasn't getting out of him.
11 It wasn't about the outlets anymore. You already admit
12 that you did it. Now, the anger is, You told your mom.
13 I've been working on you for almost an hour and you
14 haven't told me a thing. She calls and you blurt out like
15 that, Mommy, I didn't mean to do it. Why her? Why not
16 me? I'm your daddy. I feed you. I take you to school.
17 I have a bed for you. Your mom doesn't love you. She's
18 away from you. She didn't want you. Why her? Why are
19 you rejecting me? How does a six-year-old handle that?
20 And the paces he put him through, oh, they'll talk about
21 accident. Accident is when the death was unintentional,
22 the defendant was acting lawfully. You can't be a child
23 abuser and doing this type of stuff and claim you're doing
24 something lawfully. And he was using reasonable care.
25 Was he using reasonable care? There's no accident in this

1 case. They'll say well, you know what, with Nahtahn,
2 maybe it was involuntary manslaughter, maybe it wasn't
3 murder. Voluntary manslaughter, when a defendant
4 intentionally kills a victim without malice. There's
5 nothing evil or depraved about the behavior. But while
6 engaged in an unlawful activity not naturally, not
7 naturally tending to cause death or great bodily harm.
8 How can you not cause great bodily harm? You heard Dr.
9 Ross. She said the signs would be evident. For almost 15
10 minutes or so as he's going through all the hydration,
11 he's dehydrated, he's going to be in dire stress. The
12 signs would be evident to anybody who cared. Tim Jones
13 saw it. Remember when his son collapses, what's he going
14 to get? A cup of water. This isn't involuntary, folks.
15 Another way it could be involuntary is unintentionally
16 kill the victim without malice while engaged in lawful
17 activity in a reckless manner. There's nothing lawful
18 about abusing your kids. Dr. Ross made a point of saying
19 this was a healthy six-year-old little boy. There was
20 nothing wrong with his heart, his organs. He was healthy.
21 He was small, but he was healthy. She even looked at
22 records from a former doctor who had seen him. No blood
23 disorder. That little boy shouldn't have died. You
24 remember when I asked could she rule this accident, no.
25 She cut that off real quick. No. Because it's not just

1 what you did, you could see it happening, it's what you
2 didn't do. That's -- folks, she's not saying it, but I
3 will, that's malice. It's not just what he's inflicting
4 on this child, it's what he's withholding. Help.
5 Restraint. No child suffered more than Nahtahn. That
6 night -- and Nahtahn, though, had a bulls eye on his
7 backside. Nahtahn, this little boy, bruise on his chin
8 and his arms. DSS got involved. This was in May, back
9 when the spice use started. The defense goes on, no, no,
10 hang on. Those bruises are on his chin. When you have an
11 adult hand on a little head -- he was just a little -- if
12 he was a little bit smaller, he wouldn't have been able to
13 use his hand. But an adult hand on a little child, he had
14 a hold on him. It's abuse. And don't you know the night
15 of the 28th was just off the charts. When Nahtahn
16 collapses and is dead, what does that man say? Tim,
17 you're fucked. Your life is over. Not, on my God, my son
18 is down. My life is over. Tim Jones may claim he loves
19 his family, but there's somebody he loves more than
20 anybody and that's Tim Jones. He knew he lost everything
21 right then and there, everything. His world is gone. How
22 do you get out of this? You don't. You've got a dead
23 child. You've got a dead child. So what does he do?
24 Burns the rest of his dream down. Burns it all down. But
25 he stops, he takes time to think about it, looks like

1 maybe several hours of faking. He consciously decides --
2 remember Dr. Frierson, a conscious decision, he
3 consciously decides to end it all. Oh, not, not him. Tim
4 Jones isn't going to kill Tim Jones, but he's going to
5 kill those babies. You heard evidence that he took Merah
6 to get cigarettes. Now, why would he take her? If that
7 happened. Would it be because he was afraid she might go
8 get help. Remember how he thought Merah and Nahtahn were
9 conspiring, they both wanted to go live with their mom,
10 and they did, they did. Do you wonder why? And Eli, he's
11 going to be loyal lieutenant. He leaves Eli home with his
12 dead brother and the two little ones. And he comes back
13 home, clearly, packing, he's panicking. And then decides
14 I've got to do it. He goes to Eli, Daddy, just take me
15 with you. Daddy, take me with. Is it that he didn't
16 finish his sentence as his hyoid bone is broken by his
17 father as he squeezed so tight? And then he had to hold
18 it for three to five minutes. What was Merah doing while
19 that was happening? What was she doing seeing Eli die, as
20 Eli fought? They didn't want to go, none of them did.
21 Would you? Tim Jones turns to Merah. You heard different
22 stories, No, no, no. He gets her. What does a child do
23 when their parent's enraged and they want to find, where's
24 my daddy in there? Where's my daddy in there inside this
25 monster? The way you do it, she said, Daddy, I love you.

1 Are you in there? Daddy, come out. Daddy, I love you.
2 That man looked in her eyes and choked her and held her.
3 Remember Travis Pressley, officer at SCDC, he may have
4 gotten some facts jumbled, but, you know what, those were
5 facts from this case that were out, confirmed by Officer
6 Boyd. And he had seen and heard so much, he said but the
7 thing that got me is he talked about how her face turned
8 purple. Yeah, that's what that man did. Then he moves on
9 to Gabriel. He says my hands are too big. Does that mean
10 he tried choking Gabriel first and then realized this
11 isn't working? The belt you have in evidence is Gabriel's
12 DNA. Remember the two marks on Gabriel's face. Daddy
13 cinched that belt. Remember how he described it. He had
14 to hold it as that child's life went out of him. And then
15 he went to Abigail. Abigail has barely begun to live.
16 She was one year old, one. And he takes that belt and he
17 chokes her, too. This man knew right from wrong and he
18 chose, he chose wrong. And he panics. They talk about
19 well, he's got to have schizophrenia, look at the car, all
20 the stuff he threw in there. Yeah, including his kids.
21 Remember how, well, they're already dead. Eli's scalp was
22 in his car. Yeah, I didn't use a lot of care, they were
23 already dead. What kind of man is this? He packs a
24 number of things. These letters, letters that Amber wrote
25 her older kids, the ones that Amber could read. I want

1 you folks to read them. Because I want to tell you, you
2 found all these photos, you saw those from the car, their
3 Bibles, here's what happened, Tim Jones just didn't burn
4 his dream down, he took Amber's. Here's where she's
5 basically admitted she's wrong. He's keeping that.
6 Here's where she's saying I love you. He's keeping that.
7 She doesn't get this back. All those kids' photos, no,
8 you don't get any of it. I'm taking it. You don't get
9 any of it. Nothing. That's malice. That is just pure,
10 evil malice. And where is he heading, folks? Again,
11 Vegas, maybe the Mexican border and he's got a plan. This
12 plan, folks, he said he had hundreds of them. It's
13 malice, malice. He's trying to destroy evidence. His
14 children, he's treating his children as just evidence.
15 That's malice. That's depraved. Looking for campgrounds,
16 dump sites. They've made a big deal about all the
17 traveling he did. He went all over the -- all over
18 Alabama, Mississippi, all over. He ended up back in South
19 Carolina. The whole time he's searching, he's working,
20 he's thinking, he's staying mobile. He comes back to
21 South Carolina. And what does he get? He's getting
22 spice. He can't get it in Alabama, Mississippi, Georgia.
23 He comes back. I need this to sustain me, keep me going.
24 And then when he ventures out for the last time, he's on
25 back roads at that point. And he told us why. This is an

1 enlarged picture of what he's looking for, a spot, a
2 remote, remote spot where I can dump my dead babies. Now,
3 at the beginning of this trial, Mr. Madsen talked about a
4 forest. Talked about the Defendant was like a forest,
5 that the soil wasn't good, that it was distressed, that
6 there was disease. Eventually, there was a fire burning.
7 The only forest you saw in this case is right here where
8 he took those babies. And he took them so that no one
9 else would see them and he dumped them in the woods. And
10 you know what, he says he said a prayer for them. But you
11 know what he didn't do, he didn't go buy a shovel. With
12 all the other stuff, he could have least buried those
13 kids. He left them out there for the wild animals. He
14 left his kids out there in bags. They looked like
15 garbage. He left them in bags knowing that nature will
16 take its course. I'd like to think maybe he was looking
17 for the perfect plan, but remember, he got stopped by a
18 law enforcement officer when he got stuck, when he got ran
19 off the road. He had an act and he acted the next day and
20 he dumped his babies. And, folks, later that day when he
21 goes through that road stop, how fortuitous was that?
22 It's almost mind boggling. Here comes Tim Jones on an old
23 back road in Mississippi going nowhere and two officers in
24 Mississippi decide, you know, we don't have much going on
25 tonight, let's set up a road block. They call Marty

1 Patterson, he says y'all have got the go ahead. Just so
2 happens Tim Jones gets caught. You can't plan any better
3 than that. You heard about all the lies he said on the
4 7th. How angry, how angry he was still at Nahtahn.
5 Nahtahn. And on the 8th, when he finally confesses, you
6 have that audio, how cold that heart is, the things he
7 says. And even when they go -- they're getting ready to
8 go find the bodies, September 9th, before they go to find
9 the dead babies that he dumped in the woods, he mentions
10 Nahtahn broke my glasses. He's still angry, still angry
11 at this little boy. And he told FBI Agent Dave Mackey, if
12 he had just come off of it, none of this would have
13 happened. He still blames Nahtahn. And after they find
14 the bodies, he's still talking about his anger towards
15 Nahtahn. Folks, before this happened, looked like a happy
16 family. They spend one day in Disney, had to come back,
17 daddy's spice addiction wouldn't let them stay there too
18 long. Who's Nahtahn hugged up on? Woody. In the house
19 next to Nahtahn's bed, his favorite toy, is torn up. Is
20 this Biblical correction? Is this lawful behavior? It's
21 in pieces, folks. You think a child did this? This is a
22 dad's rage. Taking it out on his son's toy, his favorite
23 toy. That's part of the torture. And that malice
24 continued the whole time, even after he was caught. He
25 says Amber didn't want them. That was a lie, you read

1 those letters. He took Amber's dream. That's malice.
2 Folks, we seek one thing in this case, just one thing.
3 We're seeking justice. As a prosecutor, I represent the
4 State. I have a good team of people and I've got a flank
5 of good officers. We speak -- when I stand here, I speak
6 for those who can't. I have the unique role of speaking
7 for the dead. Today, I'm speaking for five little babies.
8 I'm asking for justice. They didn't deserve this. They
9 didn't deserve this. They deserve justice. I'm looking
10 for it for each one of them, Merah, for Eli, for Gabriel,
11 Abigail and please don't forget Nahtahn. Justice for
12 them. That's all I can ask for. We've carried this case
13 for so long, we're going to give it to you now. Just give
14 us justice. Thank you.

15 THE COURT: All right. Go back to your jury room.
16 Take a short break. You're not ready to discuss the case.
17 Have you back out here shortly.

18 (Whereupon, the jury was excused from the courtroom.)

19 THE COURT: We'll stand at ease for a few minutes.

20 (WHEREUPON, a short break was taken.)

21 THE COURT: If they're ready, bring them in.

22 (Whereupon, the jury came into open court at
23 approximately 2:30 p.m.)

24 THE COURT: Mr. Young.

25 MR. YOUNG: Thank you, Your Honor. Killing children

1 that you love is insane. What did Tim say? He said this
2 is my fault. I did this. I'm not holding it against
3 Nahtahn, I'm just telling you what happened. That's what
4 he told Deputy Creech. That's the tape that the Defense
5 played for you. We didn't make these laws. We didn't
6 decide what the statutes say. Tim doesn't decide what his
7 defense is. Every psychiatrist that has met with Tim to
8 talk about how he was on August 28th, 2014 has said he was
9 psychotic. They disagree about why, but they all said he
10 was psychotic. Even the Court's expert, Dr. Frierson,
11 says that he felt morally justified in doing what he did,
12 but he had the capacity to know different. That doesn't
13 make any sense to me. To know -- to believe that one
14 thing is right and to know it's wrong. But that's why we
15 have juries. That's why you have to make the decision.
16 Killing children that you love is insane. A brain disease
17 that can make you think that that's the right thing to do
18 is a nightmare, but it's what Tim has. Yes, Tim told some
19 untruths. He tried to buy time. He tried to hide. And
20 after the unintentional death of Nahtahn, what did Tim
21 say? What were his words? I think they were going to
22 have issues like me. I thought they were going to be like
23 me. I thought they would be better off in heaven than
24 being like me. Does it make sense? No. He's crazy. You
25 can't rationalize crazy. But at the time, he thought it

1 was the right thing to do. Everyone says that Tim loved
2 his kids. Every witness you heard from said that Tim
3 loves his kids. And tragic, horrific, that love killed
4 them. He thought they would be better off. His diseased
5 mind believed that the punishment of Nahtahn was not only
6 legal, but ordained by God. It is what you're supposed to
7 do. He did not appreciate the legal wrongfulness of his
8 conduct in his disciplining of Nahtahn. His diseased mind
9 believed that Merah, Eli, Gabriel, and Elaine were better
10 off in heaven than living. He did not appreciate the
11 moral wrongfulness of his conduct and that is insane. If
12 you look at the whole story, the whole forest that Mr.
13 Hubbard wants to belittle Mr. Madsen for making that
14 metaphor, but if you look at the whole forest, not just a
15 couple of trees, this is the forest of insanity. Tim had
16 a diseased and damaged brain and spice and Chantix were
17 like pouring gasoline on a fire. The Defense is trying to
18 tell you the whole story. Here's everything that was in
19 the car. Here's all the pictures from the house. Here's
20 stuff that the State didn't collect from the house, but
21 the Defense did. We've done everything that we can to
22 show you the whole story, not just a few pieces, not just
23 a few trees. If you look at his whole life -- Dr.
24 Frierson tells you he wants to believe that he's mentally
25 ill. He needs to believe that he's mentally ill to live

1 with what he's done. But if you look at his whole life,
2 that doesn't make any sense. He's been brain damaged and
3 crazy long before 2014. Where does it start? Where do
4 you start his story? Where do you first look? His story
5 starts with his genetics and it starts with his family and
6 it starts with his mother. And he told you -- every
7 witness has told you that schizophrenia is a highly
8 inheritable disease. Tim's mother has one of the most
9 untreatable forms of schizophrenia that any of these
10 experts have ever seen. Frierson says that she's on a
11 medication of last resort for the treatment of
12 schizophrenia. Having one parent with schizophrenia makes
13 you ten, fifteen times more likely to develop the disease.
14 And then what did Dr. Dorney tell you? He's got 20 other
15 family members with serious mental illness. What does
16 that do to his odds of developing schizophrenia? It
17 increases it exponentially. The environment that Tim was
18 raised in was one of abuse, neglect, violence. That
19 environment, we know and it's uncontested, increases the
20 odds of somebody developing schizophrenia, especially a
21 person who is already genetically loaded for the disease.
22 That soil, the seed was watered with neglect and
23 abandonment. We know that that increases his odds in
24 developing schizophrenia. He's already fragile and
25 genetically loaded brain suffered a further injury when he

1 was a passenger of a car and through no fault of his own,
2 the car got in a wreck and he suffered a head injury.
3 You've seen the head injury. You've seen the extent of
4 the damage. It's not just a cracked skull. It's not just
5 a skull fracture. There's still blood in the skull. His
6 hippocampus is damaged. His corpus callosum is damaged.
7 You've seen the images. You have copies of them. Tim
8 didn't choose his genetics. Tim didn't choose his
9 environment. Tim didn't choose to have a traumatic brain
10 injury. But what did Dr. Snyder tell you about his brain
11 injury? He told you that the brain in these images is
12 positively correlated to schizophrenia. He says that's
13 not diagnostic of, that doesn't mean that he has it.
14 Positive correlation is like looking at two parents and
15 saying well, you two are tall, I bet you'll have tall
16 kids. That's a positive correlation. The next step from
17 positive correlation to diagnostic of is something that
18 we're not to yet, but Dr. Bigler is working on it. Dr.
19 Bigler also told you what Tim's damaged brain anatomy says
20 about his future. Yes, he said it was a broken brain. He
21 also told you that every behavior has the anatomy. Every
22 emotion, every action originates in our brain. He told
23 you about when people have brain injuries, just like Dr.
24 Agharkar said, how do people see people with brain
25 injuries, they're jerks. They think they're jerks.

1 That's a brain injury. It's not a personality. They want
2 you to believe that he's just mean, Tim's just mean. Just
3 ignore the uncontested fact of a brain injury, that
4 doesn't matter. Tim didn't choose to have a brain injury.
5 It's no surprise that growing up in an environment like
6 that that Tim started experimenting with marijuana. What
7 everybody thought of as innocent teenager experimentation,
8 what nobody knew at the time was that teenage
9 experimentation with marijuana significantly increases the
10 changes of developing schizophrenia. If there's a risk
11 factor for developing schizophrenia, Tim has it. There's
12 not a single risk factor that he doesn't have in space.
13 Tim's brain damage, his wreck, it didn't do anything to
14 him. He was fine. He was doing good in school. He went
15 to Mississippi. He got a job at Intel. His father told
16 you that he changed. He went from a nerd to somebody with
17 an I don't care attitude. He went from a straight A
18 student to somebody who's getting in trouble and having
19 bad grades. That's a significant change. That's an
20 impact from his brain injury. So what does Tim do? He
21 joins the Navy. He's going to be a Navy Seal. He washes
22 out in 44 days. And they all say well, his hip, his hip
23 was bothering him. Must have been his hip. Must have
24 been depressed about not being a Navy Seal because of his
25 hip. Except for the fact that his hip is not mentioned in

1 any record. There's no record from the Navy saying he's
2 complaining about his hip. There's no form from some
3 commanding officer saying he's not able to make the run,
4 he's not able to jump, he's not able to do the pullups,
5 he's not able to do the situps. That's not in there.
6 What's in there, he's isolated. He's crying. His moods
7 are cycling. He gets diagnosed with a depressive disorder
8 around the age of 19 or 20, which the State's experts
9 agrees is often a precursor to a major mental illness, a
10 depressive disorder diagnosis. They knew about his drug
11 use because they gave him a waiver for it. He told them
12 about it beforehand. When Tim leaves the Navy -- or gets
13 kicked out of the Navy, he starts self-medicating or
14 treating his depression with drugs and alcohol. He gets
15 arrested. He steals a couple of cars. He gets arrested
16 for powder cocaine. He steals money. He steals a check
17 book from his father. He has drug paraphernalia. And his
18 dad says I'm going to leave you in there. You're going to
19 stay. I'm not bailing you out. And Tim goes to a boot
20 camp, not unlike a military boot camp, a boot camp which
21 Tim completes without ever complaining about his hip. And
22 in that boot camp, he finds a new way to cope with what's
23 been going on with him. He finds the Bible. He finds a
24 new instruction manual. But it's not just any form of
25 religion that he finds, he finds fundamentalist

1 interpretation of the Bible, which is literal and
2 unalterable word of God. It's his instruction manual. It
3 gives him a purpose in life. It tells him who he is. It
4 tells him how to handle every situation. It told him that
5 he was loved. It's where he found his identity. It was a
6 release from his abandonment. It calmed the fire in his
7 mind. And when he got out, he joined Pastor Sutton's
8 church. And you heard from Pastor Sutton. Tim was the
9 only member of the church that could annoy the whole
10 congregation. He had a prodigious ability to memorize
11 scripture, but couldn't apply it. All he could do was
12 tell everybody else what they were supposed to be doing.
13 That's his disease. Eventually, Tim meets Amber. And Dr.
14 Hames told us Tim bloomed like a rose. They stayed
15 members of the church and Pastor Sutton married them.
16 Eventually, Tim accuses Pastor Sutton's wife of trying to
17 seduce him and Pastor Sutton gives up. He says I can't
18 work with you anymore. I'm tried to trying to get through
19 to you. I'm tired of the two a.m. phone calls. They move
20 on. But he did tell Pastor Sutton one thing. He told
21 Pastor Sutton about the monster inside of him. The
22 monster inside of him trying to get out, which he was able
23 to relieve through speaking in tongues and other church
24 rituals. Pastor Sutton told you that Tim used the Bible
25 to translate a world which he did not understand. That's

1 his damaged and diseased brain trying to make sense of
2 things. Tim and Amber started a family and they found
3 another book, The Godly Seed. This is a book by a guy
4 named Denny Kenaston on how to raise kids. If you follow
5 this guide, your kids will be well-behaved, they will be
6 obedient, they will love you, they will never want to
7 leave you. This is what Brother Denny has to say about
8 raising children.

9 (Whereupon, audio was played for the jury starting at
10 2:50 and ended at 2:55 p.m.)

11 MR. YOUNG: Tim's diseased and damaged brain, what
12 Brother Denny was selling was as poisonous as what he was
13 getting. A rational mind can say well, I understand that,
14 I understand what he means. Tim couldn't. He was
15 divinely inspired and that's what he had to do. Tim and
16 Amber moved to South Carolina and they bought a trailer
17 and they were going to homestead. And Tim was following
18 his instructions and everything was going to be great.
19 But when they got there, everything immediately fell
20 apart. The homestead failed, his marriage failed. He had
21 done what he was supposed to do and he couldn't figure out
22 why it was going wrong. It was going wrong because of his
23 diseased and damaged brain. His symptoms got so impaired
24 that it impaired his ability to work and he sought
25 professional help. He went to Dr. Hames. He knew he

1 couldn't tell her about the voices. He told her about the
2 monster inside. The monster that he was able to soothe
3 with his religion. The monster that Amber couldn't hear
4 either. That's schizophrenia. When he and Amber split
5 up, he moved his kids to Mississippi to be with his
6 parents for the summer and he lived with a couple of
7 coworkers. And they told you about Tim's disease and
8 about his brain damage. They told you he was weird, that
9 he was strange, that he had strict religious views, that
10 he couldn't pick up on social cues, that he didn't have a
11 filter, that he was irrational. He was a tin-foil-hat
12 type. He was paranoid about Facebook. He didn't have any
13 friends and they didn't want anybody thinking that they
14 were his friend. They let him stay there because they
15 felt sorry for him. He isolated himself. And when he
16 started to act weird, he told them I'm on medication from
17 a vasectomy, so that explains why I'm acting weird. But
18 they also told him that he loved -- told you that he loved
19 his kids, that he was devoted to his kids, that he talked
20 about his kids, he doted on his kids. And every Friday
21 after work, he got in his car and he drove back to
22 Mississippi to be with his kids and every Sunday night
23 after he put them to bed, he drove back to arrive in time
24 at work on Monday morning. At the end of the summer of
25 2014 -- at the end of the summer of 2012, Tim moved his

1 kids back into a trailer, [REDACTED] South Lake Drive. He
2 wanted them to be in this school district. He wanted them
3 to go to the Lexington County Schools. He got babysitters
4 to help. And you heard from Ruby and Jodie Durney, they
5 said Tim was a fantastic father. His disease was waning
6 and he was able to pull it together. He had what they
7 needed. He was very thoughtful about what they needed.
8 He had the diaper bag packed. They said he was better
9 than most mothers. And while he was upset about the
10 divorce, Amber was pregnant, so he didn't need their
11 services anymore because he and Amber were going to try
12 again. They were going to try and make it work. We know
13 that that didn't work. And by the end of 2012, Chrystal
14 Ballentine had moved in. She was helping take care of the
15 kids. Her and her daughter had moved in. And we know
16 that Tim had changed. He was a very different person. He
17 was controlling. He was telling her what to buy, telling
18 her what to wear. He was spanking the kids. It's also
19 the time when Elaine, his infant daughter, came to stay
20 with him. Now, Chrystal has changed her story. Chrystal,
21 when she talked to the police, said that Tim was talking
22 to himself like he was answering somebody else. That's
23 what she wrote in her statement. You heard it and you
24 heard Detective Black. Then she meets with the
25 prosecutors and she changes her story. She originally

1 says she heard Tim in a room, she heard two voices coming
2 from the room. He was not on the phone. There was not a
3 TV. She was adamant about it. She meets with the
4 prosecutors, she changes her story. Detective Black said
5 she wrote it as she said it. She's not making it up.
6 That's schizophrenia. She left the house. She moved out.
7 Tim was too strict. But she came back a couple of times.
8 And what she saw when she came back shows you that Tim's
9 mental illness was getting worse. He was unkempt. He was
10 dirty. He looked like a bum. She had to cut his hair,
11 shave him, make him put on clean clothes. That's
12 schizophrenia. She even told the police that he started
13 acting like he had mental problems, obsessing about the
14 kids, studying everything. His disease was getting worse.
15 Christmas of 2012, Tim took the kids to meet with his dad.
16 He took them to Mississippi. And his dad knew something
17 was off. His dad saw Tim spanking the kids and preaching
18 to them. He saw, as the child learns what God's purposes
19 are for the spanking, he will yield and give into what he
20 is receiving. He will learn to let it do its work in him
21 and get done soon. There must be enough pain to drive the
22 evil out of the heart. His dad tried to pacify him. His
23 dad tried to walk on eggshells around him, but he couldn't
24 do it. And on Christmas Eve, after a fight about whether
25 or not you can read A Night Before Christmas or the Bible,

1 Tim packs up his family and leaves. And the Solicitor is
2 right, Tim is so stubborn, so rigid in his thinking that
3 he doesn't talk to his dad again for another year and a
4 half. That's brain damage. When you head into the end of
5 the 2014 school year and Merah and Eli and Nahtahn are
6 finishing up school and they've had the type of problems
7 you would normally expect for kids to have while they're
8 parents are going through a contentious divorce, there's
9 been some lying, there's been some stealing. Normal kid
10 problems when you have a contentious divorce, but Tim
11 doesn't see them as normal problems. Tim sees it as I
12 haven't driven the evil out of their heart. That's his
13 mental illness. That's his coping mechanism. This is on
14 him. His fault. Didn't say well -- he did take them to
15 therapy. He had taken them to therapy before. He blames
16 himself. And he gets more strict with the kids. Nahtahn
17 shows up at school with a bruise on his chin. We don't
18 dispute that. We put that in. Tim's disease is getting
19 worse. DSS comes out, they meet with the children. They
20 meet with Tim at the police department. They follow Tim
21 from the police department to his house where they go into
22 his house and they notice the excessive religious items
23 around his house. They check his house for food. There
24 aren't any bruises on the other kids. They put in place a
25 safety plan, a safety plan that says no corporal

1 punishment. Tim believes that he is told by God that he
2 has to spank them. He's not going to listen to the
3 agency. He's not going to interpret corporal punishment
4 as Biblical direction. Tim said I don't beat my kids, I
5 give them Biblical correction. The school knew and had
6 seen all the signs of mental illness. They knew he was
7 weird. They knew he was strange. They knew that when
8 Merah had lice, he said well, I'll use kerosene and a heat
9 gun. They knew about his disciplinary problems. They
10 knew that he had told people at the school to lock Eli up
11 for taking a pencil, to make Merah go spend a day with the
12 school resource office for taking a cookie. That's why
13 they called DSS. After they get out of school, that
14 summer, it was the summer with Joy Lorick where they went
15 to Myrtle Beach. You saw the video. They went to Disney.
16 You saw the pictures. They left Disney, as Joy said,
17 because of the coming storm, not so Tim could get some
18 fix. But Joy told you that when she got there, when she
19 arrived, she first saw a dirty, roach-filled house with
20 little to no food in it. That's mental illness. That's
21 schizophrenia. And Tim had started to add to his disease
22 and brain damage with spice. A drug that you've heard
23 time and time against exacerbates the signs of mental
24 illness, the symptoms of mental illness. DSS doesn't send
25 him to a parenting class, doesn't make him do a counseling

1 session, they don't do anything. They close the case with
2 no services offered. When they come back, he has the kids
3 go to Christina Ehlke's house, the next door neighbor, the
4 one who lived right around the corner. What does she tell
5 you about Tim? She tells you that he's a good father,
6 that he's weird, that he has strange ideas about the
7 Bible, that he was scatter-brained and changed his mind a
8 lot. He never had any visitors at all. These are all
9 signs and symptoms of mental illness. What about when the
10 State asked Christina Ehlke about what Merah had told her
11 about her mom? My mom doesn't want us. Now, the State
12 wants you to -- the State wanted her to say that it was
13 Tim saying mom doesn't want us, but that's not what she
14 said. What she said was Tim said, Tell her what your mom
15 said, and Merah's response was, my mom doesn't want us.
16 What matters is it's what Tim believed. In his brain
17 damaged and diseased mind, he believed that to be true.
18 He believed that their mother didn't want them. Finally,
19 they went to Atlanta the first week in August to meet with
20 their great-grandparents, Roberta and Larry. You saw the
21 video from that meeting. You heard about Tim and
22 Roberta's concerns about Tim at that meeting. She knew
23 something was wrong. She knew that Tim was not well.
24 She's seen enough mental illness in her life to know it
25 when she sees it. What's the first thing she does? She

1 gets on the phone with Tim's dad and says you've got to
2 call him. Y'all are both hard-headed, I don't care,
3 apologize. You've got to get in touch with him, he's
4 going downhill. Then on August 7th, DSS comes back to the
5 house. They take pictures of all the kids. Everybody has
6 to raise their shirt. Nahtahn raises his shirt, too. I
7 don't know why Christina Ehlke thought he didn't. There's
8 food in the house. DSS takes pictures of the house. But
9 Tim doesn't know where the complaint comes from. Tim
10 doesn't know that it's Joy Lorick's friend, Mary Tanner,
11 calling and reporting what Joy told her. Tim doesn't know
12 if his children are conspiring against him or somebody
13 else. All he knows is that DSS is coming back. His
14 paranoia is going up. His disease is coming out. What do
15 we know about how he was doing at work during this time?
16 Jim McConnell tells you his work was suffering. He was
17 changing. He was haggard. He had lost a lot of weight.
18 He had started smoking. He was different. And we also
19 know that he was using Chantix. Not just because he had
20 boxes of it at his house, but because of the searches, the
21 phone searches the State was talking about. You see him
22 search for can I use my health savings account money for
23 Nicorette? He's looking for things to help him stop
24 smoking. He has boxes of Chantix at his house. The State
25 says taking Chantix irregularly shouldn't cause anybody

1 any problems, but if you have a mental illness and you
2 have brain damage, it can. Taking it irregularly, taking
3 it not as prescribed, taking it without the starter pack
4 is dangerous. That's what Dr. Lipton told you. We had
5 the black box warning from Chantix in evidence. All
6 patients being treated with Chantix should be observed for
7 neuropsychiatric symptoms, including changes in behavior,
8 hostility, agitation, depressed mood and suicide-related
9 events, including ideation, behavior and attempted
10 suicide. These symptoms as well as worsening preexisting
11 psychiatric illness and completed suicide have been
12 reported in some cases of attempting to quit smoking while
13 taking Chantix. You also know that in the weeks leading
14 up to August the 28th, he had begun searching through
15 Google talking about the children electrocuting themselves
16 in outlets, talking about people being electrocuted by
17 electricity. The State says that's just paranoia. It
18 wasn't long enough to build up to a delusion. Nobody said
19 how long it had to go on to be a delusion. When does it
20 finally crystalize into a delusion? When does it become a
21 delusion? When does it become a delusional belief? Is it
22 when you go home, you're already paranoid, you believe
23 that the kids are conspiring against you and you try to
24 plug something in and that socket doesn't work? Is that
25 when it crystalizes into a delusion? Is that when it

1 becomes a firmly held false belief? That's something you
2 have to decide. On August 28th, 2014, Tim went to work.
3 He went home -- he went and picked up his kids. You saw
4 the video. Solicitor Hubbard was absolutely right, you
5 can hear Merah saying, Daddy, are you feeling better?
6 Tim's being a normal parent. There's nothing that seems
7 to be going on. You know from the computer records and
8 from the phone records that he was manic, that he hadn't
9 slept in three days. Why is Merah asking him, Daddy, are
10 you all right? Because he hadn't been asleep. He hadn't
11 been seeming himself. The voice mail that Amber leaves
12 him after he hangs up on her, I've been worried about you.
13 You haven't been yourself these past three days. The
14 State has done their best to block your view of the whole
15 story. Ask yourself what they blocked, what they
16 obscured, what they tried to hide. I'm asking you to see
17 the forest for the trees. The State wants to tell you
18 that they know what happened. Believe Tim about one part,
19 but not the other. Solicitor Hubbard said I know what
20 happened with that Woody doll. Unless he was there, he
21 doesn't. Nobody knows how long that doll had been broken.
22 Nobody said, nobody testified anything about it other than
23 it was found in the house. That's made up. It's made up
24 by the Solicitor. There's no evidence of it. Believe Tim
25 when he says he strangled the kids, but don't believe him

1 when he says he didn't intend to kill Nahtahn. Believe
2 him when he says that the kids struggled, but don't
3 believe him when he says that he loves them. Today, for
4 the first time, believe him when he says he got pulled
5 over by law enforcement the night before the 6th, but
6 don't believe the rest. Believe him when he says I'll
7 take you to the children, but don't believe him when he
8 says I hear voices. That's what they're trying to do.
9 That's what they're telling you to do. It's such an
10 intellectually dishonest thing. Even the investigators
11 said why would he tell us -- why would he tell us all this
12 bad stuff? Why would he say so much damaging information
13 and not be telling the truth about the rest? Not be
14 telling the truth about Nahtahn? Tim's cell phone. He
15 knows he's going to get caught. He's put the kids in the
16 car and he's driving around. The State wants to go on and
17 on about his cell phone. Look at his cell phone searches.
18 What is he doing on his cell phone? How about what he's
19 not doing on his cell phone? He's not buying a plane
20 ticket on his cell phone. He's not depositing a check on
21 his cell phone. He's not searching on how to get away
22 with murder. Did he search for non-extradition countries?
23 Yes. Did he go to any of them? No. How many times did
24 he drive past an airport with a passport and \$3500 in his
25 pocket? It's not rational. It doesn't make sense. It

1 doesn't make sense because he's crazy. He could have
2 called work, called the school, called his dad, called his
3 grandmother, called the babysitter, made up an excuse and
4 been out of the country. If he's this genius, if he's
5 such a smart guy and he's so capable and so has everything
6 together, why is he still here? It's five days before
7 anybody even knows he's missing. He doesn't do any of
8 that. And all of these calls they want to talk about, all
9 these calls that he made, every single text or call that
10 he made was in response to somebody reaching out to him.
11 He never initiated anything. And this excuse about well,
12 he's got to come back to Lexington because Lexington is
13 the only place that you can get spice. This stuff is sold
14 in gas stations. It's not like you go in and say I need
15 the brand with the AB PINACA. You heard a lot of
16 testimony about how they change the chemical formula and
17 add a new chemical and it's back to being legal in that
18 state, even in Alabama, even in Mississippi. All he had
19 to do was Google hey, where is spice legal and go to that
20 state. He didn't do any of that. He was spending time,
21 like Dr. Frierson, told you grieving with his children.
22 On the 6th, after spending almost nine days in the car
23 riding around the southeast eating, sleeping, stopping to
24 change the oil in his car with his children, playing
25 Merah's favorite song Butterfly Kisses, all with the

1 decomposing children in the car, that's insanity. He runs
2 into Linda Owens. What does she tell you? She says he's
3 not high, he's not drunk. He shuffles around the store.
4 He buys some water. He buys a Starbucks shot. And this
5 evil genius, this master criminal planner, the guy who's
6 already Googled himself and knows that they're looking for
7 him, who's taken the battery out of his cell phone so that
8 nobody can find him, pulls out his ID and pays with a
9 credit card. That's not rational. That's not somebody
10 who knows what they're doing. After he leaves -- he finds
11 a logging road and he pulls off and he puts his kids in
12 garbage bags and he puts them out and he prays with them
13 and he drives off. That's not rational. That's insanity.
14 And everybody wants to talk about he gets stopped and
15 everybody wants to talk about the note. I know you have a
16 different version of the note. It has a lot of writing on
17 it. The State says yep, makes total sense. This isn't
18 disorganized in any way. This is just a list of stuff to
19 take, how to do it. I tell you what, I will say this, I
20 think that Dr. Frierson was right when he thought that MB
21 stood for Myrtle Beach. To me, it makes sense. Here's
22 Lexington, here we are. Where's Myrtle Beach? It would
23 be northeast. Camping in between, Las Vegas would be over
24 here. It sort of geometrically makes sense --
25 geographically makes sense. And so does the smiley face

1 because Myrtle Beach would be a place that he would be
2 happy with his kids, a place where his kids were happy.
3 But you have to make your own mind up. Yep, Tim said to
4 Frierson when questioned, Mexican Border. But it wouldn't
5 be the only thing that Tim got wrong, right? Here they
6 are, Tim's glasses that everybody is looking for, Tim's
7 intact, abandoned, not broken glasses that didn't drive
8 him into a rage. They're on the floor of the house.
9 They're left there by the police. After Tim's arrest, the
10 next morning, he gets taken to a hospital to have blood
11 drawn and DNA samples and hair pulled. He meets with
12 medical professionals to do that. Nobody says this guy is
13 high. Nobody says this guy is drunk. Nobody says that
14 this is guy is impaired. And then that night, he had the
15 interview with his dad and Marty Patterson where he's
16 screaming about the voices in his head, screaming that
17 Cindy put it in there, screaming put a bullet in my head
18 and end it. The State says that's all spice. It's all
19 spice. He's not psychotic. He's not in any way delusion,
20 it's just spice. It's just coming down from drugs, that's
21 all it is. And I'd tell you to watch it and decide for
22 yourself, but they didn't tape it. I guess we'll just
23 have to take their word for it. But you do know that it
24 was unlike anything they had ever seen before. Patterson
25 told you in his own handwriting he believes the children

1 want to harm him. And then you have the next night, he
2 meets with Detective Creech and Agent Mackey. If it's all
3 spice and it's all him coming down from spice and the next
4 day he's so much better, why is he still talking about the
5 voices? Why is he still talking about the delusions? The
6 delusions, the paranoia, whatever you want to call it,
7 he's still saying that Nahtahn was trying to harm him.
8 He's still saying the children are conspiring against him.
9 If you want to say it hasn't crystalized into a delusion
10 yet, fine, but it's still what he believes. It's still
11 psychosis and it's still a break from reality. And they
12 want you to ignore the questions Detective Creech and
13 Agency Mackey asked where if you listen to the tape, and
14 it's in evidence, and I hope that you do, where Detective
15 Creech says, Should we ask these questions again? And
16 Detective Mackey, who now says the questions are
17 ridiculous, said, Absolutely. And they go through them
18 and they get the same responses they had before. Tim
19 didn't know it was wrong, would have done it with a cop
20 standing elbow to elbow with him. You know that if his
21 answers to those questions were different, they would have
22 been the first thing you heard about during the trial.
23 But trust Mackey's word on that's not what he said before
24 he turned on the tape, despite the fact that the first two
25 things out of his mouth were wrong. No court order and no

1 custody order violation. What is Tim telling them? What
2 is he finally telling them why? I thought they were going
3 to be like me. I thought they were going to have issues
4 like me. He always maintained, always has maintained to
5 everybody that he's met with and to this day that Nahtahn
6 was an accident. It was unintentional. He did not mean
7 to hurt him. But that he killed Merah, Eli, Gabriel and
8 Elaine to save them from what he believed to be a worse
9 fate. The worse fate of being like him. Him growing up
10 without a mother, him having abandonment issues, him
11 having voices. He believed he was morally justified in
12 trying to save them. And then the next day, on the 9th,
13 he takes them without a promise of any kind, without any
14 hope of reward, the only promise they had given him is the
15 child's Christian burial, he takes them to the bodies.
16 And how does Eric Johnson tell us he acted out there on
17 the side of the road? Wailing, screaming, crying. That's
18 not how somebody -- how an evil genius on the run acts.
19 It doesn't make any sense. It's irrational. And the
20 Defense played you the tape that Detective Creech made of
21 him and Tim on the ride back. Tim says, This is my fault.
22 I did this. He's not blaming anybody else. How about
23 what Detective Creech says, I think you loved those kids,
24 but you did what you thought you had to do at the time.
25 What are they saying, Detective Creech was just trying to

1 trick him, trying to get him to provide more information
2 after he had confessed, after he had taken them to the
3 bodies, after they had all the evidence. Why would he say
4 that? He said it because it's true. The same reason he
5 said to Tim, I think you did the right thing. You've got
6 the jail intake records from Smyth County where they
7 changed the forms from intoxicated to psychotic,
8 psychiatric problems. There's two of them. They were
9 changed intentionally. The other reason that you know
10 that Tim -- what Tim said was true was because of what Dr.
11 Ross told you, the pathologist. She told you that the
12 times of death were different because Nahtahn still had
13 contents in his stomach. Nobody had any injuries
14 consistent with abuse. They x-rayed the whole body. If
15 Tim had flown into a rage and beaten Nahtahn, there would
16 be evidence of it and there's not. There's not so much as
17 a split lip. And that's how you also know that Officers
18 Pressley and Boyd are wrong when they talk about this new
19 version that's not in any of the reports where they can't
20 get the timeline straight. But if Merah had come in and
21 he had killed her at the same time as Nahtahn, they both
22 would have had stomach contents and they didn't. Tim gets
23 taken straight to SCDC where he meets with Dr. Wood. He's
24 taken there for safekeeping to keep him away from other
25 detainees at the Lexington County Detention Center, the

1 people that the State now wants you to use as your moral
2 barometer to determine whether or not you know something
3 is wrong or not. Dr. Wood sees him that day. She takes
4 his drug history. She takes his family history. She
5 learns about his head injury. And she starts him on
6 Geodon that day. He tells her about the voices. He tells
7 her about the psychotic symptoms. And she keeps changing
8 his meds. She keeps adding meds. She gets up to where
9 he's getting 18 pills a day for his time at Kirkland.
10 He's not sick, according to the State, he's just enjoying
11 taking all these meds. His meds continue when he gets
12 transferred to Lee Correctional. He's taking such high
13 doses that somebody who was not mentally ill couldn't
14 possibly handle it. Dr. Frierson says well, the negative
15 self-talk resolved after they added Prozac, the SSRI that
16 he talked about. You know that that's not true because
17 Dr. Wood in her notes told you that Tim said it feels
18 weird and it feels funny without the voices, but I'd
19 rather have the brain fog. That's before she ever starts
20 him on Prozac. And the voices stayed gone after the
21 Prozac was discontinued in January of 2017. Dr. Wood
22 didn't get a dime. All she does is treat patients. Every
23 day, she sees people who are trying to scam her. As the
24 Solicitor called them, the lowest of the low. She sees
25 more people trying to malingering mental illness than any

1 other expert in this case. She says he's not malingering.
2 His symptoms are genuine, they're consistent with a mental
3 illness. She's diagnosed him as schizo-affective disorder
4 because she saw mania, she saw pressured speech and she
5 thought that was a bipolar component to his mental
6 illness. She says he doesn't fit neatly into any one box.
7 The same thing that Dr. Agharkar told you about people who
8 have mental illness and a head injury. She doesn't
9 medicate people who she doesn't believe are sick. She
10 also told you that even if, even if his mental illness was
11 caused through some sort of voluntary intoxication or some
12 sort of drug, the changes are permanent. The damage has
13 been done. His brain is broken. Dr. Agharkar -- I know
14 that the State wants to pretend that they can't say his
15 name and call him the \$25,000 expert. He has testified in
16 nine percent of the cases in which he consults with
17 people. He says he doesn't always tell them what they
18 want to hear. In Tim's case, he saw genuine mental
19 illness and he told you what schizophrenia is. He told
20 you it's a break from reality. It's a thought disorder.
21 It's a brain disorder. It's a brain disease. It's common
22 to have disorganized thoughts, disorganized behavior,
23 hallucinations, negative symptoms. And he also told you
24 that deficits define the disease. You don't define a
25 disease by what a person can do, you look at what they

1 can't do. Tim isn't able to control his life. That's
2 what he couldn't do. Yes, he could go to work. Yes, he
3 was good on computers. What he couldn't do is go out to
4 Wendy's without barking at someone. He's a 30-year-old
5 man. Dr. Agharkar also told you about listening to Tim's
6 taped interviews. The taped interviews from before he was
7 medicated. That's pressured speech. That's indicative of
8 mental illness. It's a brain disease called schizophrenia
9 and it's definitely a nightmare. Dr. Frierson, who's the
10 Court's expert, he told you what Tim relayed to him. That
11 Tim believed that Amber didn't want them and he was going
12 to go away, so he thought it was better for them to all be
13 together. He told you that Tim felt morally justified and
14 he didn't want them to grow up the way he did. He also
15 told you that Tim was remorseful and regrets it. That's
16 why you ask for forgiveness. The State wanted to say
17 well, why ask for forgiveness? Because he regrets it.
18 He's remorseful. That doesn't mean on August 28th, 2014,
19 at that time and in that moment, he didn't think it was
20 morally the right thing to do. And that's what you have
21 to decide. Dr. Frierson thinks that Tim believing that
22 Amber is being prostituted is perfectly rational, not
23 delusional. That people searching are my kids trying to
24 betray me, perfectly rational, not delusional. The belief
25 that my kids might be trying to electrocute me with a

1 socket, not a delusion, maybe a little paranoia brought on
2 by the spice. He also told you that but for the spice, we
3 wouldn't be here and that the spice made him psychotic.
4 Dr. Frierson told you that he diagnoses people with
5 malingering all the time and he didn't do it with Tim.
6 Dr. Dorney told you about her conclusions about criminal
7 responsibility and she told you about schizophrenia. She
8 talked to you about brain damage. She talked to you about
9 when Amber called and talked to Tim's dad, talked about
10 the changes in Tim when they moved to South Carolina, that
11 he wasn't right. She does say that she did not consider
12 Dr. Kruse's report and she told you why. She said those
13 tests are designed to try and figure out people who are
14 actively faking psychotic symptoms and that Tim said he
15 didn't have it. That's why she didn't rely on the tests.
16 Tim was not psychotic at the time that he took the tests
17 designed to determine whether or not somebody is actively
18 trying to fake psychosis. If you're answering tests
19 trying to determine whether or not you're actively faking
20 psychosis about you used to be, you're going to come out
21 malingering. Based on everything she viewed, it was Dr.
22 Dorney's conclusion that Tim was not able to appreciate
23 the legal wrongfulness of his actions in disciplining
24 Nahtahn and he was not able to appreciate the moral
25 wrongfulness of his actions in killing Merah, Eli, Gabriel

1 and Abigail. He was insane. Brain images, family
2 history, all the witnesses you've heard from support what
3 Tim says. It's hard for me to imagine having voices
4 inside of my head telling me what to do, sometimes good
5 things, sometimes bad things, sometimes command delusions,
6 sometimes commands that you have no choice but to follow.
7 They're coming from inside his head. I can't even imagine
8 what it's like. And I can't imagine how you would have to
9 come to terms with what your brain made you do, what your
10 diseased and damaged brain made you do. But I do know
11 that every action has an anatomy. When we think about
12 mental illness, we think about it as the loss of the
13 ability to reason. You can't get from point A to point B.
14 In fact, you see that there's only one inevitable outcome
15 just like Brice Mankowski told you about how Tim viewed
16 things. He would see the inevitable outcome and then get
17 there. He only saw one inevitable outcome for his kids
18 and that was a tortured existence with
19 institutionalization or worse. He thought that the only
20 thing he could do was send them to heaven and that they
21 would be together and that they would be there and that
22 they would one day be together again. Tim's dad knew
23 something was wrong with him. He can tell when he sits
24 here today. He says this Timmy is the nightmare. I saw
25 it coming. I saw it in his mother and I see it in him.

1 He knew something was wrong with him. Killing someone out
2 of murder -- out of hatred is murder. Killing children
3 out of love is insanity.

4 THE COURT: All right. Let's take a few minutes.
5 Step in the jury room. Don't discuss the case. I'll get
6 you back in here for my instructions shortly.

7 (WHEREUPON, the jury was excused from the courtroom.)

8 THE COURT: We will take a few minutes.

9 (WHEREUPON, a short break was taken.)

10 (WHEREUPON, Court's Exhibit number 106 and 106A was
11 marked for identification only.)

12 THE COURT: All right, Mr. Secor, anything on the
13 record before I charge them, go ahead.

14 MR. SECOR: Your Honor, we admitted Defense request
15 to charge as Court's Exhibit 106.

16 COURT REPORTER: 106.

17 MR. SECOR: 106. Thank you. And I just wanted to
18 make a record about a couple of issues.

19 THE COURT: And we had a charge conference in the
20 back in my chambers before lunch and this is -- you're
21 making a record of some of the things we discussed.

22 MR. SECOR: Yes, sir. I think the majority of them
23 were resolved in the conference with Your Honor. I just
24 wanted to make a record on a couple of issues. The
25 Defense has requested a charge on involuntary

1 intoxication. My understanding is the Court is not
2 inclined to charge that. I just wanted to make a record
3 regarding that. The requested charge is in Court's
4 Exhibit 106 and it is from South Carolina requested charge
5 by Judge Ralph King Anderson. And I won't read it because
6 it's in the record, but I just wanted to cite State vs.
7 Santiago, 370 S.C. 153 from 2006 to the proposition that
8 if there's any evidence to support a jury charge, the
9 trial Judge should grant the request to charge. Refusing
10 to grant a request to jury charge that states a sound
11 principle of law applicable to the case at hand is an
12 error of law. And we would argue that the requested
13 charge by the Defense from Ralph King Anderson's South
14 Carolina Request to Charge is a sound principle of law and
15 supported by the evidence presented, specifically with
16 regard to the issue of Chantix, which has been testified
17 to by experts in the case and the potential side effects
18 which can include irritability, violence and
19 homicidal/suicidal ideation. The other thing I wanted to
20 address specifically, Your Honor, is the request for a
21 charge on the consequences of a verdict of not guilty by
22 reason of insanity and the consequences of a verdict of
23 guilty but mentally ill. These are pursuant to pretrial
24 motions filed by the Defense that we requested in Court's
25 Exhibit 106 that the Court instruct the jury on the plain

1 language of the statute regarding not guilty by reason or
2 insanity as well as guilty but mentally ill. May I have
3 just a moment?

4 THE COURT: Yes, sir. And for my record, the request
5 on the consequences as against Poindexter currently
6 stands.

7 MR. SECOR: We would just ask that our objections to
8 the Court's decision to not charge consequences of NGRI,
9 consequences of GBMI as well as the charge on involuntary
10 intoxication, we just ask that the Court note our
11 objection to those.

12 THE COURT: All right. The objections are so noted.

13 MR. SECOR: Thank you.

14 THE COURT: Y'all ready. Bring them in.

15 (Whereupon, the jury came into open court at
16 approximately 4:01 p.m.)

17 THE COURT: Welcome back. I'm going to give you my
18 instructions. Ms. Miller, did you tell your cohorts the
19 nature of our conversation?

20 THE FOREPERSON: I did.

21 THE COURT: Okay. So thank you for being selected by
22 one. You'll preside over the deliberations for us. There
23 will be some other jurors who have some responsibilities,
24 too, like keeping this organized. There's a lot of it, so
25 I'm going to allow one or two kind of have it explained by

1 my Law Clerk, perhaps, the Clerk of Court, Ms. Frick. And
2 I'll need somebody also to be the computer person to help
3 replay any of the recordings y'all may want to hear.
4 Anyway, we'll get to that in a moment. The purpose of now
5 is to give you my instructions. And for a trial this
6 long, they're not that long. Y'all's job will be to
7 answer the questions of fact presented.

8 Ms. Miller and members of the jury, the State of
9 South Carolina has charged the Defendant, Timothy Jones,
10 with the crimes of murder. You bear in mind that he has
11 pled not guilty by reason of insanity. And by that plea,
12 he is denied all the charges alleged in the indictments.
13 Mr. Jones comes to the court clothed with the presumption
14 of innocence. This presumption of innocence continues
15 throughout the case and entitles him to a verdict of not
16 guilty unless and until it is dispelled by evidence
17 satisfying you, the jury, beyond a reasonable doubt that
18 he is guilty of the offenses charged and the State has
19 proved each and every element of those alleged crimes
20 beyond a reasonable doubt. Now, the same constitution and
21 law which makes you the jury, the judges or the finders of
22 fact, which I've discussed with you before, makes me the
23 sole and exclusive Judge and instructor of the law. You
24 must accept the law as correct as I am instructing you and
25 apply it to the evidence.

1 Now, you apply the evidence as you find it and reach
2 these findings of fact, you will reach a verdict which
3 will have to be unanimous. Now, if you have a different
4 understanding or a different belief of what the law is and
5 it's different from my instructions, you must set aside
6 your belief, set it aside and accept it as I am now
7 instructing you. Neither you nor I, for any matter, have
8 to concern ourself with whatever you think the law ought
9 to be, but concern ourselves with the law as I instruct it
10 to you currently. It is my job and my responsibility to
11 instruct the law as I understand it currently is in the
12 State of South Carolina.

13 Now, under the Constitution and the laws of South
14 Carolina, you as a group are the sole finders of facts in
15 this case. I'm not allowed to suggest in any way what I
16 may think about the guilt or innocence of Mr. Jones. You
17 as a group are the judges of the credibility and
18 believability of the witnesses who testified in the case.
19 In passing upon a person's credibility, which is
20 believability, you can take into consideration many
21 things. What was the manner or the appearance of the
22 witness who testified. Was the witness straightforward in
23 answering the questions or was he or she evasive in
24 answering the questions. Did the witness or how did the
25 witness come to know the facts to which he or she

1 testified to and what was his or her ability to recollect
2 or to know these facts. You can consider whether there's
3 a reason a witness would want to give testimony which
4 would help or hurt one side or the other. In other words,
5 does the witness have a bias or a prejudice in any way
6 towards one side or the other. Is there some reason a
7 witness would want to give testimony which would help or
8 hurt the other side. And additionally, whether a witness'
9 testimony was strengthened or weakened by other testimony
10 or other evidence. You, the jury, may believe as much or
11 as little of each witness' testimony as you deem
12 appropriate. You can believe the testimony of one witness
13 against that of many or just the opposite. You may
14 believe part of a witness' testimony and disbelieve the
15 rest. The fact that testimony is not controverted does
16 not mean you have to accept it as true and undisputed.
17 You still have to gauge the credibility or the
18 believability of the witnesses providing you that
19 testimony.

20 Now, in this case, there were several witnesses who
21 testified and it was brought up they had a prior criminal
22 record. A person who has a prior criminal record is
23 competent to testify during a trial. A past record does
24 not affect the ability of that witness to testify. The
25 past record may only be considered by you, if at all, in

1 determining the believability. Remember, y'all are the
2 judges of the facts in this case and, therefore, the
3 believability of the witnesses who testify.

4 Now, I complimented y'all yesterday on having
5 listened closely to this trial that's lasted more than 14
6 days, exclusive of today. Today is day 15. Because of
7 listening closely, y'all should be able and will be able
8 to weigh the evidence. And I tell you now, the weighing
9 of evidence is entirely a mental process. You're not
10 going to count the number of witnesses on one side and
11 number of witnesses on the other and say there's the
12 answer. You weigh the evidence using your good judgment
13 and your common sense.

14 There are two types of evidence generally presented
15 at trials, direct evidence and circumstantial evidence.
16 Direct evidence is testimony from a person who has actual
17 knowledge, such as an eyewitness who can testify I saw
18 this, I noticed that. Circumstantial evidence is slightly
19 different. It's proof of a chain of facts and
20 circumstances indicating the existence of a fact. Our law
21 makes no distinction between the weight or value to be
22 given to either direct evidence or circumstantial
23 evidence. There is not a greater degree of certainty
24 required of circumstantial evidence than that of direct.
25 You weigh all the evidence in the case. However, to the

1 extent the State relies upon circumstantial evidence, all
2 of the circumstances must be consistent with one another
3 and when taken together, point conclusively to the guilt
4 of the accused beyond a reasonable doubt. If the
5 circumstances merely portray the Defendant's behavior
6 suspicious, then the State's proof has failed. So after
7 weighing all the evidence, whether it be direct or
8 circumstantial, or any combination of those two, if you're
9 not convinced of the guilt of Mr. Jones beyond a
10 reasonable doubt, you must find him not guilty.

11 Now, as I told you during the trial, the rules of
12 evidence normally do not permit witnesses to testify about
13 their opinions or their conclusions. There is an
14 exception to that rule and it's when we call expert
15 witnesses. Expert witnesses are people who by education
16 and experience have become an expert in an art, science,
17 profession or a calling. And they may state their opinion
18 as to relevant material matters within that field which
19 they claim to be an expert in and may also state the
20 reasons for that opinion. You should consider any expert
21 opinion received in the evidence in this case and, like
22 any other evidence, give it the weight you think it
23 deserves. If you conclude that the reasons given in
24 support of the opinion are not sound or the expert opinion
25 is outweighed by other evidence, you may disregard the

1 expert opinion entirely. An expert witness' testimony is
2 to be given no greater weight than that of the other
3 witnesses simply because they're an expert. You're not
4 required to accept an expert's opinion even though it's
5 not contradicted.

6 In criminal prosecution cases such as this, the State
7 has the burden of proof. According to our Constitution, a
8 prosecution must prove their case to the standard of proof
9 called beyond a reasonable doubt before a finding of guilt
10 may occur. If the State fails to meet this high burden, a
11 defendant is entitled to a verdict of not guilty.

12 Normally, a defense has no burden because of this
13 presumption of innocence, but in this case, Mr. Jones has
14 entered a plea of not guilty by reason of insanity. The
15 Defense has the burden of proving that defense. The
16 burden of proof on that defense upon the Defense is by the
17 greater weight or a preponderance of the evidence.

18 As to the burden of proof on the State, proof beyond
19 a reasonable doubt. What is a reasonable doubt. It is
20 simply this, a reasonable doubt is the kind of doubt which
21 would cause a reasonable person to hesitate to act.
22 Reasonable doubt may arise from evidence which is in the
23 case or from absence or lack of evidence in the case.
24 Proof beyond a reasonable doubt is proof that leaves you
25 firmly convinced of a Defendant's guilt. It is a doubt to

1 which you can assign a reason if the assignment can be
2 done reasonably, firmly and convincingly. A reasonable
3 doubt is the kind of doubt that would make a reasonable,
4 conscientious and honest person hesitate to act in a
5 matter important to their own affairs. I charge you that
6 the Defendant is entitled to every reasonable doubt which
7 may arise in this case. I also tell you the very fact
8 that y'all, as a group, may engage in full and free
9 discussion on the issue of guilt or nonguilt does not
10 automatically create or mean that a reasonable doubt
11 exist. You must make a determination of whether or not a
12 reasonable doubt exist as to his guilt. If you find the
13 State has not met the burden of proof beyond a reasonable
14 doubt, Mr. Jones will be entitled to a verdict of not
15 guilty.

16 Now, criminal intent is a necessary element of each
17 crime and must be proven by the State beyond a reasonable
18 doubt. Criminal intent is always a matter that must be
19 determined by the jury from the circumstances surrounding
20 the situation. There's no way to prove intent to a
21 mathematical certainty. There's no way medical science
22 can dissect a person's brain and determine what he or she
23 had in mind. So our law states criminal intent may be
24 inferred from the circumstances shown to have existed both
25 before and after the fact. This is how you, as a jury,

1 will make the determination of whether or not requisite
2 intent was present. Criminal intent is a state of mind
3 that operates jointly with an act in the omission or in
4 the commission of a crime. Criminal intent is a mental
5 state, a conscious wrongdoing. It is up to you, the jury,
6 to determine what the Defendant intended to do based on
7 the circumstances which are shown to have existed. And I
8 tell you, the State must prove criminal intent beyond a
9 reasonable doubt just as it must prove the other elements
10 of the crime beyond a reasonable doubt.

11 I also told you I'm reading these charges to you,
12 these instructions on the law. Y'all will have several
13 copies of these instructions to review if you need, so
14 rest easy.

15 The specifics, the law in this case, we went over
16 some of this a little bit during jury selection process.
17 Murder, the elements are, killing of another person with
18 malice aforethought. Mr. Jones is charged with five
19 counts of murder. For each indictment, the State must
20 prove beyond a reasonable doubt all of these elements for
21 each of these counts of murder beyond a reasonable doubt.
22 Malice is hatred, ill-will, hostility towards another
23 person. It is the intentional doing of a wrongful act
24 without just cause or excuse and with the intent to
25 inflict an injury which the law will infer an evil intent.

1 Malice aforethought does not require that malice exist for
2 any particular length of time before the act is committed,
3 but malice must exist in the mind of the Defendant just
4 before or at the time the act is committed. Therefore,
5 there must be a combination of a previous evil intent and
6 the act itself. Malice aforethought may be either
7 expressed or inferred. The term don't mean different
8 things, but they're different, the manner in which they
9 show, the State attempts to prove malice to have been
10 existing at that time. They do this either by direct
11 evidence or by inference from the facts and circumstances
12 which are proven.

13 Expressed malice may be shown when a person speaks
14 words which express hatred and ill-will toward another
15 person or when a person prepares beforehand to do the act
16 which was later accomplished. For example, lying in wait
17 for a person or any other acts of preparation going to
18 show the deed was within the Defendant's mind could be an
19 example of expressed malice. Malice may be inferred from
20 a conduct showing total disregard for human life.

21 Mr. Jones has raised the defense of insanity. He
22 entered that plea. Criminal intent is required to prove
23 the Defendant is guilty of the crime charged. A person
24 who is insane cannot have criminal intent and, therefore,
25 cannot be found guilty of a crime. In order to be found

1 not guilty by reason of insanity, it must be shown that at
2 the time of the commission of the act constituting the
3 offense the Defendant had a mental disease or defect,
4 lacked the capacity to distinguish moral or legal right or
5 moral or legal wrong or to recognize the particular act is
6 morally or legally wrong. The key to insanity is the
7 power of the Defendant to distinguish right from wrong in
8 the act itself, to recognize the act complained of was
9 either morally or legally wrong.

10 Now, by raising the defense of insanity, the
11 Defendant does not necessarily admit the crime was
12 committed. The State must still prove beyond a reasonable
13 doubt the Defendant committed the crime. However, the
14 Defendant must prove the insanity by a preponderance of
15 the evidence. Preponderance is slightly different from
16 beyond a reasonable doubt. Preponderance of the evidence
17 simply means by the greater weight of the evidence, more
18 likely than not. If you find, after considering all the
19 evidence, both the State's and the Defense's evidence,
20 that at the time the crime was allegedly committed, it is
21 more likely than not because of a mental disease or defect
22 that the Defendant did not know the alleged crime was
23 morally or legally wrong, you must find the Defendant not
24 guilty by reason of insanity. It is for you to decide
25 what the state or condition of the Defendant's mind was at

1 the time the alleged crime was committed. Insanity caused
2 by the use of drugs or alcohol may be a defense if the
3 insanity is permanent and destroys the Defendant's ability
4 to know right from wrong. However, when voluntary
5 intoxication does not produce permanent brain defects or
6 diseases, it is not a defense of the crime. A person who
7 voluntarily becomes intoxicated is just as responsible for
8 the acts committed while intoxicated as if the person was
9 not intoxicated at all.

10 During jury selection, we discussed the case would
11 have four possible verdicts. One, if you have any
12 reasonable doubt as to the Defendant's guilt after
13 considering all the evidence, you must find the Defendant
14 not guilty. Two, if you have no reasonable doubt the
15 Defendant committed the crime, but you find it is more
16 likely than not that because of a mental disease or defect
17 that he could not distinguish moral or legal right from
18 wrong or recognize the crime as morally or legally wrong,
19 you must find him guilty, not guilty by reason of
20 insanity. Three, if you have no reasonable doubt the
21 Defendant committed the crime and the Defendant had mental
22 capacity to distinguish moral and legal right from wrong
23 and recognize, or recognize the crime was morally or
24 legally wrong, but you find it more likely than not
25 because of mental disease or defect, the Defendant could

1 not follow the law, you must find the Defendant guilty but
2 mentally ill. As with insanity, the defense has the
3 burden of proving he or she is guilty but mentally ill by
4 a preponderance of the evidence. Four, the final verdict
5 is guilty. You may only find the Defendant guilty if the
6 State has proven beyond a reasonable doubt that the
7 Defendant committed the crime. And that order of proof
8 stands on each indictment.

9 Now, one indictment has a slightly different
10 additional consideration and that's the indictment
11 regarding Nahtahn. As to the indictment of murder against
12 Nahtahn. If you find that the State has failed to prove
13 beyond a reasonable doubt that Mr. Jones committed murder,
14 you may consider whether the State has proven beyond a
15 reasonable doubt that Mr. Jones committed involuntary
16 manslaughter. To prove involuntary manslaughter, the
17 State must prove beyond a reasonable doubt the Defendant
18 unintentionally killed the victim without malice, but
19 while engaged in an unlawful activity not naturally
20 tending to cause death or great bodily harm or that the
21 Defendant unintentionally killed the victim without malice
22 while engaged in a lawful activity with a reckless
23 disregard for the safety of others. Unintentional means
24 that he did not intend for anyone to be killed or
25 seriously injured. Reckless disregard for the safety of

1 others is more than mere negligence or carelessness. Mere
2 negligence or carelessness is the failure to use the care
3 that a person of ordinary reason would use under the same
4 circumstances. Recklessness is a conscious failure to use
5 ordinary care. Reckless disregard for the safety of
6 others means that you are not interested in the
7 consequences of your act over the rights and safety of
8 others.

9 The State must also prove beyond a reasonable doubt
10 that the Defendant's act was the proximate cause of the
11 death. Proximate cause is defined as the direct cause.
12 It is the immediate cause. It is the efficient cause. It
13 is that cause which the death of the victim would not have
14 resulted if but for that cause. There must be a chain of
15 causation from the time the injury was inflicted by the
16 Defendant until the time of the victim's death. Proximate
17 cause does not necessarily mean that it occurred
18 immediately prior to death.

19 Now, regarding statements of Mr. Jones that have been
20 introduced. Statements alleged to have been made by Mr.
21 Jones have been admitted in evidence in this case. While
22 the Court has determined the statements are admissible, I
23 instruct you that you must make the ultimate decision as
24 to whether or not the Defendant made the statement. If
25 the Defendant did make the statements, you must determine

1 whether the statements were made by the Defendant
2 voluntary and of his own free will. This means the
3 statements were not caused by pressure, force, fear,
4 threats, coercion or intimidation or by hope or promise of
5 leniency or reward of any kind. In determining whether
6 the statements were voluntary, you should consider both
7 the characteristics of the Defendant and the details of
8 the question. Some facts or factors you may consider, the
9 age of the Defendant, the Defendant's education, the lack
10 of education, the Defendant's mental ability or capacity,
11 the Defendant's IQ or his intelligence, the Defendant's
12 background and his environment, the place and length of
13 the detention, the nature of the questioning, the advice
14 or lack thereof to the Defendant of his constitutional
15 rights including, but not limited to the right to remain
16 silent, that any statement could be used against him in a
17 court of law, the right to have a lawyer present and that
18 if he could not afford a lawyer, a lawyer would be
19 appointed to represent him without any costs, and that he
20 could stop making statements at any time. You must
21 carefully consider all the surrounding circumstances
22 before you give any weight to any of the alleged
23 statements. The State has the burden of proving beyond a
24 reasonable doubt the alleged statements were voluntary.
25 If you determine they were or any one of them, they all

1 stand on their own. You may give the statements any
2 further consideration that you deem proper. You must
3 decide what weight, if any, should be given to any of the
4 alleged statements. If you determine the alleged
5 statements were not the free and voluntary statement of
6 the Defendant, you should not consider the statement at
7 all.

8 Now, additionally, with regard to the indictment of
9 Nahtahn, Mr. Jones has raised the defense of accident. An
10 act may be excused on the ground of accident if it is
11 shown that the act was unintentional, that the Defendant
12 was acting lawfully, that reasonable care was used by the
13 Defendant. The burden is on the State to prove beyond a
14 reasonable doubt that the act was not an accident.

15 I've already discussed with you voluntary
16 intoxication. Insanity caused by the use of drugs or
17 alcohol may be a defense if the insanity is permanent and
18 destroys the Defendant's ability to know right from wrong.
19 However, when voluntary intoxication does not produce a
20 permanent brain disease or defect, it is not a defense to
21 a crime. A person who voluntarily becomes intoxicated is
22 just as responsible for the acts committed while
23 intoxicated as when the person is not intoxicated.

24 Additionally, in determining guilt or innocence of
25 the Defendant, you should not consider any possible

1 penalty or consequence of any of your verdicts. Any
2 consequence of any potential verdicts should not be
3 considered by you in any way in arriving a fair and
4 impartial verdict.

5 Now, Mr. Jones has chosen to claim or exercise his
6 constitutional right to remain silent. That's his right.
7 I instruct you and emphasize the fact he did not testify
8 is not a factor to be considered by you in any way in your
9 deliberations and in your consideration of the question of
10 guilt or innocence of him. It must not be considered by
11 you in any manner whatsoever. A Defendant has a
12 constitutional right to remain silent and his assertion to
13 that right must not be considered by you in your
14 deliberations. Under your oath, you are to draw no
15 conclusion whatsoever from the fact that he did not
16 testify in this case. The fact that he did not testify
17 may not even be discussed in the jury room. The burden of
18 proof in the case is upon the State. The Defendant is not
19 required to prove his innocence. The burden of proof
20 remains on the State to prove guilt beyond a reasonable
21 doubt.

22 Ms. Miller and other members of the jury, as y'all
23 begin or retire to begin your deliberations, I'm going to
24 express hope that each of you be mindful of the importance
25 of y'all's responsibility. It's my responsibility to make

1 certain that every trial conducted before me is fair and
2 impartial. Now, my instructions to you have been kind of
3 consistent all the way through from the time we selected
4 y'all. I want y'all's verdict to be confined to this.
5 Consider only the testimony that you've heard in this
6 courtroom, consider the instructions of the law which I
7 have now given you, weighing and deciding the testimony
8 and the evidence fairly and impartially in reaching a
9 unanimous verdict. That's y'all's job. Now, those are my
10 instructions. What happens now is I'm going to send you
11 all back to the jury room. The evidence has got to be
12 organized. The lawyers have an opportunity to make
13 comments on my instructions. They'll get a chance to make
14 -- if I wasn't thorough enough or if I skipped over
15 something, I may bring you back in here. So here's the
16 way it's going to work. You are to go into the jury room,
17 all 18 of you. When the lawyers make their comments, if I
18 bring you back in here for additional instructions, I
19 will. If not, we're going to bring the evidence to you
20 and the verdict form. And the verdict form has the
21 indictment numbers, has names, such as this. The last
22 page is the one that's different and has the lesser
23 offense. Y'all will have this. It's not a roadmap of
24 what you need to do or which order to do it. Once you
25 begin your deliberations, here's the rules. Y'all talk

1 about the case as long as you want. If somebody wants to
2 see a video or replay of a recording, play it. Y'all are
3 on your own time. You work as long as you want. You need
4 a break, stop deliberating. If somebody wants to step
5 outside, like y'all have done, and exercise, get some
6 fresh air, you don't have to ask the Bailiff can we have a
7 break or the SLED team. You tell them, we're ready for a
8 break and they'll take you. You don't have to get my
9 permission. We're on y'all's time now, okay. Now, as far
10 as any additional instruction, I'm going to give you my
11 instructions. If you have any questions about those
12 instructions, write it down, send a note to the Bailiff,
13 they'll bring it to me. I'll talk to the lawyers and try
14 to resolve your question, okay. Now, questions I can't
15 answer, why didn't they call so and so as a witness for
16 this. You've got the testimony you're going to get. Why
17 somebody wasn't called, I don't know. We can't answer
18 that. I can't answer that. It's not allowed. All right.
19 If you have any questions, write them down. If you want a
20 break, take it. But all 12 of you, once I pull the
21 alternates -- the alternates will stay here with us.
22 They're going to be here in the Court House because they
23 have to be. But once I pull them out, it's going to be 12
24 of y'all. And I'll let you know that in a few moments,
25 who's what. Obviously, you know you're one of the 12

1 because I asked you to be the Foreperson. And again,
2 thank you. So, all right, the other two things I'm going
3 to do and here's the other thing. As far as working
4 tonight, y'all can start your deliberations and deliberate
5 for 30 minutes if you want to and say, Judge, we want to
6 come back tomorrow at 9:00. I'm going to instruct you,
7 you can't talk about the case, you're going home. Off
8 limits to talking to anybody about it. Come back here
9 tomorrow and we resume deliberations. Since we're on your
10 time, we're going to follow y'all's schedule. Now, we're
11 not going 30 minutes and come back two weeks from now. We
12 can't do that, okay. So that's off the table. There was
13 some notes to me about some obligations Wednesday morning
14 early. I feel certain we can work around those, okay.
15 Those are very easy to manage. There's a computer that we
16 generally send back to the jury room. Identify somebody
17 that can learn to work the computer. I think you've got
18 some pretty good candidates that are computer people. I'd
19 like somebody to kind of be your evidence manager that can
20 talk with Joy and Whitney and Hope and say okay, here's
21 kind of how it's organized to whatever degree, highest
22 number, what's where, so somebody kind of be that person.
23 We're going to bring it all back there, that's what we're
24 going to do. So step in the jury room. I'm going to ask
25 the lawyers if they need any further comments. If they

1 don't, then we're going to try to get the evidence ready
2 to bring to you. Once you get the verdict form in your
3 hand, that's when you can start talking about the case.
4 Now, it's not a bad time to take a break right now while
5 they're organizing the evidence. Okay. It's a good time
6 for a break. So y'all stay as a group of 18 until I pull
7 you out and give you the verdict form, y'all stay
8 together. Okay. Step back in the jury room. Once you
9 start deliberations 12 people got to be there. If
10 somebody goes to the bathroom deliberations stop. Okay.
11 All 12 have to be there.

12 (WHEREUPON, the jury was excused from the courtroom.)

13 THE COURT: All right. I know you've got a couple
14 objections to, couple of things. Anything else other than
15 those two? The record is open. The State is good?

16 MR. SECOR: Just renew our objection to the charges
17 that were made or not made that exist in Court's Exhibit
18 106.

19 THE COURT: Yes, sir. You're protected particularly
20 on the involuntary intoxication as well as the
21 consequences of the verdicts.

22 MR. SECOR: Yes sir, thank you.

23 THE COURT: And any other ones in there, too.

24 MR. SECOR: Yes, sir, thank you.

25 THE COURT: Most of which were resolved.

1 (WHEREUPON, a short break was taken while the
2 exhibits were checked to go to the jury.)

3 THE COURT: Are you ready, Joy?

4 COURT REPORTER: Yes.

5 THE COURT: Whether we've got to make a record or
6 not, out of an abundance of caution, I am going to make a
7 record of allocution of this. Mr. Madsen, y'all have
8 advised your client that he has a right to speak with the
9 jury during closings?

10 MR. MADSEN: Yes, sir.

11 THE COURT: And does he wish to make a closing?

12 MR. MADSEN: He does not.

13 THE COURT: All right. Mr. Jones, I'm going to ask
14 you. You have a right to make a closing to this jury
15 today. Would you like to?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you waiving your right to speak to
18 the jury today, guilt or innocence, freely and
19 voluntarily?

20 THE DEFENDANT: The attorneys have already said and I
21 will say, so yes, I am.

22 THE COURT: Very good. Okay, that's all I need.

23 MR. HUBBARD: Thank you, Your Honor.

24 (Whereupon, the jury started deliberations at
25 approximately 5:17 p.m.)

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

2 (Whereupon, the jury came into open court at
3 approximately 6:50 p.m.)

4 THE COURT: Are you ready, Joy?

5 COURT REPORTER: Yes, sir.

6 THE COURT: I got your note. Y'all want to go home
7 for the evening. Y'all come back in the morning, what
8 time do y'all want us here?

9 JUROR: 9:00 o'clock.

10 THE COURT: Come back at 9:00. Y'all come, don't
11 start to deliberate until all twelve are back. We are
12 going to lock that room, basically have it secured so
13 everything in it is going to be secured, safe, all the
14 evidence like you left it. I haven't been in there but
15 any straightening up, cans, cups, stuff like that. If so
16 the Clerk will supervise that. The room will be locked,
17 if I don't lock it we have to go back through them and go
18 back to this closet. I would rather lock them in that
19 room. Here is your rules for the night. Books closed,
20 don't talk with anybody, don't call each other on the
21 phone, text, nothing, no independent research. Leave it
22 alone and when you get back here at 9:00 and all 12 are
23 here you can get back to work. Okay. The same rules
24 apply. Y'all are free to go, get what you need out of
25 there and when y'all leave it will be secured shut. Y'all

1 will see the SLED team in the morning, park in the same
2 places.

3 (Whereupon, the jury was excused from the courtroom
4 for the evening.)

5 (Whereupon, deliberations will resume the next
6 morning at 9:00 a.m.)

7 June 4, 2019

8 (Whereupon, the jury reported to the jury room at
9 9:00 a.m. and resumed deliberations.)

10 (Whereupon, the Foreperson entered the courtroom with
11 a question.)

12 THE COURT: What is the need for the Blu-Ray, what
13 else do you need?

14 FOREPERSON: The transcripts of the phone, we
15 couldn't read it on the computer, we need the Blu-Ray
16 player in order to see it.

17 THE COURT: I have a concern about that. I remember
18 some of that coming in but there was some, a lot of other
19 files on there that perhaps weren't introduced into
20 evidence.

21 FOREPERSON: We only looked at the phone records.

22 THE COURT: Like which phone records. Tell me
23 specifically, like phone numbers and calls and stuff?

24 FOREPERSON: Yes, it was the Google searches and the
25 text messages.

1 THE COURT: Are y'all still dealing with those?

2 FOREPERSON: No, we are listening to the interview in
3 the cop car on the way back.

4 THE COURT: Okay. I know that one.

5 MR. HUBBARD: And if Your Honor wants to take the
6 Blu-Ray back out.

7 FOREPERSON: We are done with the phone records.

8 THE COURT: Okay. Let's get that back out. The
9 lawyers want to make certain what was on that disk or what
10 was not. Because there is confusion, believe it or not,
11 with all of the evidence.

12 THE FOREPERSON: Really?

13 THE COURT: You know, was this in or was this in?
14 Because there's copies of copies of copies and it's kind
15 of hard to follow sometimes. Can we fish the Blu-Ray
16 player and that disk back out from you and so we can see
17 what it is?

18 THE FOREPERSON: Absolutely.

19 THE COURT: We will give it a look. Thank you.

20 FOREPERSON: No problem.

21 MR. SECOR: Can she step outside the door there just
22 for a second?

23 THE COURT: Hold her there real quick, the lawyers
24 want to ask me something. They can't talk to you like I
25 can.

1 (WHEREUPON, the Foreperson is excused from the
2 courtroom.)

3 MR. SECOR: She said they looked at the Google
4 searches.

5 THE COURT: I didn't know they had a Blu-Ray player
6 back there.

7 MR. SECOR: I know you didn't.

8 MR. YOUNG: I didn't either. That's why I looked at
9 you when I heard that they did.

10 MR. SECOR: So she said that they looked at the --

11 THE COURT: Phone records is how she described them.

12 MR. SECOR: -- phone records and Google searches.

13 Obviously, we didn't ask her to elaborate. I mean, I wish
14 we had another copy of it so we could see that if you
15 click on Google searches what comes up.

16 (Whereupon, a bench conference was held.)

17 THE COURT: All right. Bring her back in here.

18 (WHEREUPON, the Foreperson enters the courtroom.)

19 THE COURT: How long did y'all have to fish around on
20 that Blu-Ray disk?

21 THE FOREPERSON: We only looked at it for maybe two
22 to three minutes. We were just looking at some of the
23 dates on the text messages and Google searches.

24 THE COURT: Okay. The Google searches you were
25 looking at, what was the nature of those?

1 THE FOREPERSON: The extra States to go or the
2 Countries to go to that don't have extraditing laws and
3 stuff like that.

4 THE COURT: Anything else? I mean, without pulling
5 the disk out and looking at it. They know more about it
6 than I do because they researched it. I'm in the same
7 position you are. It was presented to me and it has this
8 information on it. Some disks that the lawyers had was
9 like this has 10,000 entries, but only a hundred of them
10 we're only interested in presenting to the jury. So
11 here's the ten, here's the 10,000, so we've got copies --

12 THE FOREPERSON: Right.

13 THE COURT: And I think the confusion for me is to
14 whether the one with the 10,000 entries got to the jury
15 and maybe shouldn't have.

16 THE FOREPERSON: Oh, okay. I don't know. We only
17 looked at like 9/4 or 9/6 timeframe as far as the dates.

18 THE COURT: Okay. Can we get the Blu-Ray player and
19 look at that disk and verify that so the lawyers are
20 comfortable with what y'all have seen?

21 THE FOREPERSON: Okay.

22 THE COURT: You looked on the September 4th and 5th?

23 THE FOREPERSON: Uh-huh.

24 THE COURT: Any other dates?

25 THE FOREPERSON: No. I mean, I only looked at it for

1 like a couple of seconds. The IT person looked at it more
2 in-depth than I did.

3 THE COURT: Okay. Anything else?

4 MR. SECOR: No, sir. Thank you.

5 THE COURT: All right. I want to get the disk and
6 look at it. I'll probably bring it back to you, okay.

7 THE FOREPERSON: Okay.

8 THE COURT: All right. Thank you.

9 FOREPERSON: No problem.

10 (WHEREUPON, the Foreperson was excused from the
11 courtroom.)

12 (Whereupon, a bench conference was held.)

13 THE COURT: Go get me Ms. Miller and the IT guy. I
14 think it's Mr. Lewis, but I'm just guessing. I'd like to
15 talk to them.

16 (WHEREUPON, the Foreperson and another Juror entered
17 the courtroom.)

18 THE COURT: I knew you were the IT guy. Come over
19 here. The lawyers want to listen, I don't want to talk to
20 the whole courtroom. I am involved with y'all, that is
21 why I am talking kind of quiet. That disk has a lot of
22 other information on it from a couple of other cases. The
23 search y'all made on that disk, the Blu-Ray disk, it
24 had -- it was a phone extraction and other stuff?

25 JUROR: Correct.

1 THE COURT: The date range y'all were looking at,
2 what were y'all looking at, the date range?

3 JUROR: I think it was from -- the American X. We
4 were looking at--

5 THE COURT: This is all September?

6 JUROR: September and August.

7 THE COURT: September and August?

8 JUROR: Uh-huh.

9 THE COURT: Okay. And tell me the subject matter of
10 what y'all were looking for. Y'all looking for when he
11 downloaded the video?

12 JUROR: We were looking for that and we were looking
13 for, like med school and we were looking at the TD Bank.
14 I think that was it.

15 THE FOREPERSON: The Countries without the laws.

16 THE COURT: Okay. The date range was
17 August/September. Okay. Anything else?

18 MR. YOUNG: I think that's --

19 THE COURT: I'm comfortable -- it's -- Blu-Ray, that
20 disk has a lot of stuff on it and if it's supposed to be
21 redacted and it didn't -- I mean, we've got a ton of
22 information and evidence in the case. So that was the
23 concern. The guy that put it together is the one that
24 kind of noticed it, it has got some other case, stuff from
25 other cases that we don't want y'all to be concerned about

1 another case. Like wait a minute, what is this going on
2 here.

3 JUROR: What we saw was the same as what was
4 presented. So I didn't think that there was anything else
5 on there.

6 THE COURT: Okay. Fair enough. All right. Y'all
7 get back to work. Thank y'all. And y'all haven't done
8 anything wrong. Somebody realized that disk may have
9 everything on it. So, thank you.

10 (WHEREUPON, the Foreperson and Juror exit the
11 courtroom.)

12 THE COURT: We talked to the Foreperson -- and that
13 was Mr. Lewis, the other Juror. He was the young man who
14 works with Department of Public Safety. And he's the guy
15 I thought was going to be the IT guy for the computer. He
16 knows that sort of thing. Now, having inquired as to the
17 relevant search term of time, August and September, as
18 well as subject matter, he named all three, the video, the
19 extradition laws and the -- what was the --

20 MR. GRAHAM: The American History --

21 THE COURT: No, I got the video. There's one more
22 thing they looked at.

23 MR. HUBBARD: Med --

24 THE COURT: Med school.

25 MR. SECOR: And TD Bank.

1 THE COURT: And TD Bank, four things. So it appears
2 they restricted the search to the dates that were
3 presented in testimony regarding the actual incident of
4 August 28th. If that's all they searched, I don't see any
5 other error for them catching, sensing, searching any
6 other type of information. Mr. Young, I'll hear from you,
7 if you want to --

8 MR. YOUNG: Your Honor, we'd move for a mistrial.
9 They had a disk that had a lot of inadmissible information
10 on it. We were unaware that they had been provided with a
11 Blu-Ray player to look at that information. As soon as we
12 discovered that, I came up and found Your Honor in the
13 hall and told you they didn't have a Blu-Ray player. Then
14 I called -- I had some more questions and I called Mr.
15 Graham. He said he heard something about a Blu-Ray
16 player. Then we talked to Your Honor's law clerk,
17 Whitney, she said she had taken them a computer. She
18 didn't know about a Blu-Ray player. And then at some
19 point in time, it was discovered that somebody from the
20 Solicitor's Office had given them a Blu-Ray player. We
21 knew the only Blu-Ray disk in evidence was the phone
22 extraction. Mr. Graham and I thought that it had been
23 marked for identification and not entered into evidence
24 because we knew --

25 THE COURT: Off the extraneous information.

1 MR. YOUNG: Extraneous and inadmissible information.
2 The jurors had it. I understand what the jury says that
3 they have looked at, but the fact that that has been in
4 their possession for most of the morning, we would
5 necessitate a mistrial.

6 MR. HUBBARD: Judge, my response to that is, the
7 Blu-Ray player itself is not what had the date on it.
8 There's an item that, even if the parties thought it was
9 ID, it was marked evidence. So when the evidence went
10 back, that was one of the items that went back. There was
11 not a player. Apparently, as I understand, a SLED agent
12 said that they needed a Blu-Ray player. The Blu-Ray
13 player, again, is just the device you play the evidence
14 with. But the IT guy who's on the jury, Mr. Lewis, made
15 it clear that the only items he pulled is exactly what
16 they saw in court. So it's four things that he discussed
17 that Your Honor repeated, the American History X, the
18 medical school stuff, the -- I think the extradition
19 information and then --

20 THE COURT: The bank.

21 MR. HUBBARD: The bank, TD records.

22 THE COURT: The bank records.

23 MR. HUBBARD: So that was it. So I think although
24 there could be a lot of concern and fear that that disk
25 was back there, they made it clear -- this is the guy that

1 actually pulled it for the jury, as a Juror, that's all
2 they looked for, all he looked at. There's no prejudice.

3 THE COURT: I'm relying on what that Juror told me
4 and what Ms. Miller told me. Their responses to my
5 question were consistent, it was the August/September
6 timeframe from Ms. Miller, a little more detail from Mr.
7 Lewis. My questions were specific enough that I'm
8 comfortable that's all they looked at, was
9 August/September and those four subject matter of facts,
10 being banking records, extradition laws, the American X
11 video and the --

12 MR. HUBBARD: Medical school.

13 THE COURT: -- medical school. And those were all
14 discussed in the courtroom during testimony. And Mr.
15 Lewis also responded as the information we looked at was
16 consistent with what we saw in the courtroom. I don't
17 believe they looked any further than that because they had
18 no reason to be curious about anything further than that
19 because they've got so much information there. So I don't
20 see any harm. I think it's a discretionary call. I may
21 be wrong, but I don't believe the jury considered,
22 discovered, looked at anything further than what was
23 described by Mr. Lewis.

24 MR. HUBBARD: I would ask that what was previously
25 marked as State's Exhibit 33A be remarked as a Court's

1 Exhibit for the purposes of the record so it doesn't go
2 back. They already have the printout on those items, so I
3 think -- for what was already offered and what they saw.
4 So that way it will correspond, the Court will know on
5 appeal. But I don't see any prejudice either, Your Honor.

6 COURT REPORTER: You want to mark that as a Court's
7 Exhibit, Judge?

8 THE COURT: Just leave it like it is for the time
9 being, but I think if --

10 MR. HUBBARD: I didn't know if we needed to identify
11 to that so -- in the mix.

12 THE COURT: I think we can hold it here. 33A stays
13 here for the time being. All right. Mr. Young, you have
14 something else?

15 MR. YOUNG: Your Honor, I was just going to make this
16 -- this is a clean copy of the extraction report without
17 my notes on it. Of course, the extraction report --
18 there's a lot more information on here. This is just
19 records that the State identified and selected and these
20 are the records --

21 THE COURT: That's 32, isn't it?

22 MR. YOUNG: I never moved it in because it has all
23 the stuff that we were worried about that was inadmissible
24 in it.

25 COURT REPORTER: You're saying it's Defense 32?

1 THE COURT: No, he never moved it in. I thought it
2 was something else.

3 MR. YOUNG: But just for the appellate record,
4 this -- I'm trying to get the State to confirm that this
5 is the copy I used for cross that --

6 THE COURT: This is a printed-out version --

7 MR. HUBBARD: See, I've never looked at the printed
8 version, so I don't know.

9 MR. YOUNG: These are the records that was used for
10 the cross-examination of Mike Phipps. This is the
11 extraction report where the State selected records and
12 these are the records that they provided to Dr. Frierson.

13 THE COURT: Why do we need that versus this for this
14 issue?

15 MR. YOUNG: We don't, but that is hard to find. And
16 on this, you can go to June 20th dates where there's the
17 kids being sexually abused.

18 THE COURT: This is a subset of this? This has more
19 information?

20 MR. YOUNG: Yes, sir.

21 THE COURT: Okay. So the paper version is the phone
22 extraction report, CD or DVD is the full extraction?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Digital information?

25 MR. YOUNG: Yes, sir.

1 THE COURT: Okay. I understand. So this may be
2 easier to refer to on the record from hence forward about
3 what you may be concerned about, but --

4 MR. YOUNG: Right.

5 THE COURT: -- we don't have anything else other than
6 what Mr. Lewis and Ms. Miller told us.

7 MR. YOUNG: Right.

8 THE COURT: Okay.

9 MR. YOUNG: And I'm just asking to make this a
10 Court's Exhibit so I can make it part of the record to
11 show what the impression was that we had --

12 THE COURT: We can do that.

13 MR. HUBBARD: Should we go ahead and put a Court
14 Exhibit on this as well so it corresponds to this?

15 THE COURT: I think so.

16 MR. HUBBARD: Can we do that?

17 THE COURT: I think we can do it as a Court's Exhibit
18 here first and here second. So what are our two next
19 numbers, Joy?

20 COURT REPORTER: 108 and 109.

21 THE COURT: All right. 108 is going to be the disk
22 that was admitted and then 109 will be the extraction
23 report, which is a portion. Do y'all want to cut out this
24 digital information or printed information consistent with
25 what we've already admitted and give it back to the jury?

1 MR. HUBBARD: I think this is fine like this since
2 they have a printed version.

3 THE COURT: Oh, they've got a printed version of it?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: Okay.

6 MR. SECOR: Are we positive they have a printed
7 version?

8 MR. HUBBARD: That's what they said they couldn't
9 read. That's why they wanted to see this.

10 MR. SECOR: Okay.

11 MR. HUBBARD: That's what we put in. I can't talk to
12 a Juror, but I mean, I think what I heard them saying is
13 that's why they wanted to pull this up to read it. So
14 they had what was already admitted, the paper version --
15 remember what we had up on the big screen --

16 MR. SECOR: Right.

17 MR. HUBBARD: And that's when he said that's exactly
18 what they looked at.

19 (WHEREUPON, Court's Exhibit numbers 108 and 109 were
20 marked for identification only.)

21 MR. HUBBARD: We need a printed portion of State's
22 33A, Court's exhibit whatever.

23 THE COURT: This is an extraction, that is an
24 extraction report. It is different.

25 MR. YOUNG: Now, the only thing that they don't have

1 is the material that the Defense used in cross.

2 THE COURT: Get something to give to them if you
3 want. A substitute, a redacted portion of this.

4 MR. YOUNG: Let me hold--

5 THE COURT: If you can do that, that was kind of my
6 question.

7 MR. HUBBARD: What did you use, did you put something
8 in. You didn't put anything in in cross, right?

9 MR. YOUNG: No.

10 THE COURT: Right, because he had it on the disk.

11 MR. YOUNG: Right.

12 MR. HUBBARD: So you used that disk--

13 THE COURT: He used that to cross, that was how he
14 was questioning.

15 MR. HUBBARD: I got you.

16 THE COURT: Boyd needs to come up with a substitute
17 piece of evidence, we will stipulate goes in, which
18 represents 33A redacted.

19 MR. HUBBARD: My concern is now putting something in.
20 I don't remember how it was used, if a physical object
21 wasn't put in, I mean--

22 MR. YOUNG: No, I just showed it to them--

23 MR. HUBBARD: I don't think that gets to come in.
24 You brought it out so they know there was a cross. They
25 heard what you were going after. I think if you put an

1 item in now, we have got another issue.

2 THE COURT: We might. Anyway, I am going to tell
3 them, if he has a proposal to substitute in the 33B for
4 33A, a redacted version of something, whether it is a
5 printed out or a digital copy. I am not opposed to
6 hearing that.

7 MR. HUBBARD: Right. I got you.

8 THE COURT: Boyd, if y'all want to think about that
9 for a few minutes.

10 MR. YOUNG: Basically we just have to take the
11 scissors to this thing and cut it out.

12 THE COURT: Okay. All right.

13 (Whereupon, a short break was taken.)

14 THE COURT: Mr. Young.

15 MR. YOUNG: Judge, this is a copy of the pages that
16 were shown to the jury during my cross-examination of Mr.
17 Phipps regarding the phone records and what we showed the
18 jury during that cross-examination. The Defense would --
19 based on the earlier error, we think that this should be
20 admitted and sent back to the jury.

21 THE COURT: As a substitute for 33A?

22 MR. YOUNG: Yes, sir. In addition to -- I mean, they
23 already have the --

24 MR. HUBBARD: I have not looked at it. My problem is
25 sending something back to the jury now. They've said what

1 they've looked at and they moved on. My suggestion would
2 be this, what's in is in. We've pulled out that disk. If
3 they have anymore questions about items on it that they
4 want to look at, they be directed to come -- let the Court
5 know, come out into the courtroom so we can make sure we
6 can navigate exactly what they want. Otherwise, I think
7 they've already said what they've looked at. They said it
8 was what they saw in court. Whether it was Defense or
9 State, they didn't say. So they may very well have looked
10 at what the Defense crossed on as well. Otherwise, I
11 think we're putting something in after the case has been
12 closed. That would be improper.

13 THE COURT: This is a portion --

14 MR. YOUNG: Of Court's --

15 THE COURT: -- of the 33.

16 MR. HUBBARD: Shawn, I'll let you speak on that.

17 MR. GRAHAM: If I understand and assume, I'm assuming
18 here, 103 for ID is the report that you asked Rhonda to
19 run for you.

20 MR. YOUNG: It's the one that y'all sent to Frierson.

21 THE COURT: They've been calling it the phone
22 extraction report as opposed to the disk as the entire
23 phone extraction.

24 MR. GRAHAM: So if that's the one -- what does it
25 have--

1 MR. HUBBARD: Hang on, Shawn, here's Rhonda. She can
2 take a look at that. We are on the record, Rhonda. So if
3 you can look at that and then you tell us.

4 RHONDA: If this is what was sent to Dr. Frierson,
5 this would have been things that I tab'd and Shawn tab'd
6 in a timeline.

7 MR. HUBBARD: Is that what you did for him, Rhonda?

8 RHONDA: Some of this looks familiar, some of this
9 does not look familiar of things that I would have tab'd.
10 I know that Boyd came over to our office and asked for a
11 certain date range because he couldn't get the reader to
12 work. And I printed out him a section of what he asked
13 for.

14 MR. GRAHAM: But that is now what you are saying this
15 is.

16 MR. YOUNG: No. The dates that were printed, y'all
17 have had two reports that were sent to Frierson. One was
18 this extraction report and then there was a second report
19 that was from, I think it was August the 24th through the
20 6th.

21 RHONDA: We sent Frierson things that were tab'd, a
22 timeline for the dates of August 28th through September
23 6th and we tagged things that were also beyond that. I
24 don't remember sending him a separate timeline of that. I
25 don't remember doing anything -- we only worked that stuff

1 through the 6th.

2 MR. YOUNG: I never got it to -- it was never tagged
3 in the record so if y'all didn't do it, that is why I came
4 to your office.

5 RHONDA: I have not tagged anything that went back
6 other than 2014. Anything that I tagged that went to Dr.
7 Frierson was a week prior at the most, a week prior to --
8 a week after.

9 MR. HUBBARD: What I still suggest, they've told us
10 what they've looked at exactly. If they have any other
11 issues or questions or they want to see something, we
12 still have it. It's out here so the Court's now in
13 control of it. They can let you know, Your Honor, what
14 they want to see. We can make sure it's queued up so they
15 don't see anything else. I think putting in what the
16 Defense pointed out, that was never part of the problem.
17 That's just going to muddy things up. It may get them to
18 elicit additional questions about -- because we don't know
19 what they looked at. You know, as far as from the Defense
20 perspective, State perspective, we don't know what their
21 question was, why they were looking. So I think it just
22 creates an issue that's not there. That way Your Honor
23 stays in control.

24 THE COURT: Shawn, you review what Boyd's pulled out,
25 but for the time being -- until they ask us for something,

1 we're going to sit on it. Like, they may ask. They know
2 we have it, so if they need to see it again, they can ask
3 and we can tell them that. So we're going to keep it here
4 just since there was other information that's not been
5 redacted. If they want to see more of it, we'll show it
6 to them, perhaps, through this method. But until they
7 ask, we don't give it to them.

8 MR. YOUNG: Do we send a note back saying if you want
9 to look at anything else on --

10 THE COURT: I think that would be appropriate, sure.

11 MR. YOUNG: 33 is available to you in court?

12 THE COURT: Yeah.

13 MR. YOUNG: I need to renew the motion for a
14 mistrial.

15 THE COURT: Okay. Consistent with my ruling, I think
16 -- which I believe is proper considering what I've been
17 told by the jurors, I'm respectfully denying it at this
18 time with respect to sending a note saying we're going to
19 hold 33 Exhibit and the Blu-Ray player. If they want to
20 hear more, see more, we can respond to it the
21 old-fashioned way, bring them back in the courtroom as a
22 group for replay and that is what we will do. Whitney,
23 fashion me up a note for the jury that says, if you need
24 to review any further information on Exhibit 33A please so
25 advise by note. And we'll mark this as a Court's Exhibit.

1 (WHEREUPON, Court's Exhibit number 110 and 111 were
2 marked for identification. Jury note for extraction.)

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: I got a note from the Bailiff a few
5 minutes ago the jury said they have reached a verdict,
6 from the Foreperson. Anything before I bring the jury in?

7 MR. HUBBARD: Nothing from the State, Your Honor.

8 MR. YOUNG: One thing, Your Honor, a little bit
9 premature, but just so that Your Honor is thinking about
10 any post-verdict instructions to the jury.

11 MR. HUBBARD: Your Honor, we have some issues with
12 the last language, but we can take that up if it's
13 appropriate at that time.

14 THE COURT: Well, I think we'll -- let's receive the
15 verdict and then decide how we're going to manage our time
16 from that point forward, depending on the verdict. Bring
17 the jury in.

18 (WHEREUPON, the jury came into the courtroom with the
19 verdict at approximately 2:05 p.m.)

20 THE COURT: I have got all 12 here, just what I want.
21 Ms. Miller, have y'all reached a verdict?

22 THE FOREPERSON: Yes.

23 THE COURT: And was your verdict unanimous?

24 THE FOREPERSON: Yes.

25 THE COURT: Would you hand it to Mr. Heigler, please.

1 (Whereupon, the Foreperson handed the verdict to the
2 Bailiff.)

3 THE COURT: Mr. Heigler, give it to the Clerk and she
4 may publish it.

5 CLERK OF COURT: As to indictments 2015-GS-32-0188,
6 0189, 0190, 0191, 0195, we, the jury, find as follows: As
7 to indictment 188, Merah, guilty; as to indictment 189,
8 Elias, guilty; as to indictment 190, Abigail, guilty; as
9 to indictment 191, Gabriel, guilty; as to indictment 195,
10 Nahtahn, guilty. And it is so signed by the Foreperson,
11 this 4th day of June, 2019.

12 THE COURT: Mr. Young, would you like the jury
13 polled?

14 MR. YOUNG: Yes, sir.

15 THE COURT: We'll do it by number. So, ladies and
16 gentlemen, what will happen, the Clerk will explain to
17 you, she's going to ask you a question. She'll poll you
18 by number. If you don't remember your Juror number, she
19 knows your numbers and she'll indicate to you.

20 THE CLERK: 473.

21 THE COURT: Just speak to him. You don't have to
22 stand up.

23 THE CLERK: Please hold your hand up, please. As to
24 the verdicts, is this your verdicts?

25 JUROR: Yes, ma'am.

1 THE CLERK: Are these still your verdicts?

2 JUROR: Yes, ma'am.

3 THE CLERK: Number 339, as to the verdicts, is this
4 your verdict?

5 JUROR: Yes.

6 THE CLERK: Are these still your verdicts?

7 JUROR: Yes.

8 THE CLERK: 166, as to the verdicts, are these your
9 verdicts?

10 JUROR: Yes.

11 THE CLERK: Are these still your verdicts?

12 JUROR: Yes.

13 THE CLERK: 231, as to the verdicts, are these your
14 verdicts?

15 JUROR: Yes, ma'am.

16 THE CLERK: Are they still your verdicts?

17 JUROR: Yes, ma'am.

18 THE CLERK: 293, as to the verdicts, are these your
19 verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: 247, as to the verdicts, are these your
24 verdicts?

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

3 THE CLERK: 272, as to the verdicts, are these your
4 verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE CLERK: 329, as to the verdicts, are these your
9 verdicts?

10 JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

13 THE CLERK: 241, as to the verdicts, are these still
14 your verdicts?

15 JUROR: Yes.

16 THE CLERK: Are these your verdicts?

17 JUROR: Yes.

18 THE CLERK: Are these still your verdicts?

19 JUROR: Yes.

20 THE CLERK: 314.

21 (No response.)

22 THE CLERK: 314?

23 (No response.)

24 THE CLERK: 96.

25 (No response.)

1 THE COURT: You're 96.

2 THE CLERK: Yeah, number 96, your Juror number?

3 JUROR: Yes.

4 THE CLERK: As to the verdicts, are these your
5 verdicts?

6 JUROR: Yes.

7 THE CLERK: Are these still your verdicts?

8 JUROR: Yes.

9 THE CLERK: 314.

10 (No response.)

11 THE CLERK: 241.

12 JUROR: Yes, yes, ma'am.

13 THE CLERK: Are these your verdicts?

14 JUROR: Yes.

15 THE CLERK: Are these still your verdicts?

16 JUROR: Yes, ma'am.

17 THE CLERK: Did I get everybody? I feel like I'm
18 missing one.

19 THE COURT: Front left.

20 THE CLERK: Yes. Did I skip --

21 THE COURT: Yes, front left.

22 THE CLERK: As to the verdicts --

23 JUROR: Yes, ma'am.

24 THE CLERK: Are these your verdicts?

25 JUROR: Yes, ma'am.

1 THE CLERK: Are these still your verdicts?

2 JUROR: Yes, ma'am.

3 THE COURT: And for the record, publish his number?

4 THE CLERK: 166 -- 156, sorry.

5 THE COURT: Everyone was polled in my observation.

6 Anything else for the jury before I send them back to the
7 jury room?

8 MR. YOUNG: No, Your Honor.

9 THE COURT: All right. Most likely bring the other
10 six back with you and have you back in here for further
11 instructions. Take them back to the jury room, please.

12 (WHEREUPON, the jury was excused from the courtroom.)

13 THE COURT: I told Agent Remion to not recombine the
14 alternates with this group until I directed him to do so.
15 Now, let's discuss our planning for the next
16 re-convention. Thursday morning, is that what's probably
17 going to suit everybody?

18 MR. HUBBARD: That will suit us, Your Honor.

19 MR. YOUNG: For the record, we would renew all our --
20 we would move for a new trial and renew all our previous
21 motions and objections.

22 THE COURT: Yes, sir. And those were all the six
23 bases we did before. Certainly, you're protected. Would
24 you like me to go over all them right now --

25 MR. YOUNG: No, sir.

1 THE COURT: -- individually? Respectfully, the jury
2 has reached a verdict, properly submitted evidence for
3 them to consider and they reached unanimous verdicts on
4 all five indictments. Your motion for a new trial is
5 respectfully declined -- or denied on all the bases put
6 forth on the record throughout the State's case, your case
7 and now post-verdict.

8 MR. YOUNG: And, of course, we had the motion from
9 today regarding the mistrial.

10 THE COURT: And renew -- and I think the inquiry the
11 Court -- with the in-camera inquiry with the jurors was
12 sufficient and there was no prejudice and respectfully
13 denied on that basis, also.

14 MR. YOUNG: Yes, sir. Thursday morning, yes, sir.

15 THE COURT: Pardon?

16 MR. YOUNG: Thursday morning sounds fine.

17 THE COURT: Thursday morning sounds good? All right.
18 I have not read your full instructions, but I want to
19 bring all 18 back in and tell them not to discuss the case
20 at all, continue to maintain their oath. Not to monitor
21 or receive any information from any source, news media,
22 internet or otherwise. Continue not talking about the
23 case. Be back in the jury room Thursday morning, 8:45 for
24 us to start at 9:00. That's going to be my basic
25 instruction. Sound okay?

1 MR. YOUNG: Yes, sir.

2 THE COURT: Tell Agent Remion to get the alternates
3 with the 12 and bring them back to the courtroom.

4 MR. YOUNG: Your Honor, I understand the Court's jury
5 instruction, I'd just like to make a record about this.

6 THE COURT: Okay. You got any -- the substance of
7 this, anything particular --

8 MR. HUBBARD: The last two paragraphs I have issues
9 with, I think it singles out one particular sentence. I
10 think it's fine without the last two paragraphs. It tells
11 everything they need to know.

12 THE COURT: Okay. You want to be heard on it, Mr.
13 Young? You want to make that record?

14 MR. YOUNG: Yes, sir.

15 THE COURT: This will go back in your motions
16 notebook. The notebook that has every motion made thus
17 far, it's a Court's Exhibit. It will be added as a
18 supplementary additional motion.

19 MR. YOUNG: Thank you, Your Honor.

20 (WHEREUPON, the jury and alternates enter the
21 courtroom.)

22 THE COURT: All right. We've received the verdict.
23 As I explained to you during jury qualifications, it's a
24 two-step process. A requirement under the statute is to
25 have a delay of an entire day before we start phase two.

1 Now, I gave you instructions consequence of any verdict
2 wasn't to be discussed or decided in those -- that is
3 exactly what y'all should have done. I want y'all back in
4 the jury room at 8:45 Thursday morning. That's this
5 afternoon, all day tomorrow down, back Thursday. Until
6 then, same rules apply. No more discussing the case with
7 one another. No more discussing the case period. I'd
8 like your notebooks. Close them, leave them here. We're
9 going to put them in a box for you, keep them. Whether we
10 start new notebooks for the second phase or not, I've not
11 decided yet. I know y'all got a bunch -- y'all know whose
12 is what, so we can sort that out Thursday morning early if
13 we need to, okay. So do not discuss the case, do not take
14 an interview with anybody, don't do any research on social
15 media, anything. Leave it alone, relax. Y'all have had a
16 tough task, a long three weeks. I told you it'll be okay.
17 So with that being said, thanks for your hard work. The
18 alternate jurors, thank y'all for y'all's patience. See
19 y'all Thursday morning. Anything else I'm leaving out?

20 MR. HUBBARD: Not from the State.

21 THE COURT: See y'all back Thursday morning.
22 Remember, don't discuss the case. Leave everything alone.
23 Books closed. Now, we're going to come over and get the
24 evidence that's in there, reorganize it and put it back in
25 here. So that will be done. Y'all can get your stuff

1 organized. Do we have a box for their notebooks we can
2 get. We'll collect those and they'll be locked up, too,
3 okay. Step back in the jury room, get ready to go.
4 She'll meet you downstairs. See you Thursday morning.

5 (WHEREUPON, the jury is excused from the courtroom at
6 approximately 2:25 p.m.)

7 THE COURT: Your post-verdict motions have been made.
8 Do we need to put anything else on the record right now
9 other than what we have?

10 MR. HUBBARD: I don't think so, Your Honor. I don't
11 know if you want to take up any scheduling stuff.

12 THE COURT: We start back Thursday morning. The
13 State's going to go first. Their mitigation evidence will
14 be coming in behind that. Any estimates on time other
15 than what I've already been told. They should coordinate
16 pretty close to what I was told as to the availability of
17 some of the experts. We'll try to work as best we can to
18 get everything scheduled in.

19 MR. HUBBARD: I don't know, there may be some photos
20 and things that we need to take up maybe tomorrow while
21 we're down.

22 THE COURT: Yeah, if they want to take up any photos
23 maybe tomorrow afternoon before we get here Thursday
24 morning, would that be helpful?

25 MR. YOUNG: I'll be happy to. We also have some

1 motions that need to be argued.

2 THE COURT: Y'all want to do it in the morning or
3 late morning?

4 MR. HUBBARD: About how late morning, Judge.

5 THE COURT: Say 11:00 o'clock, is that late enough?

6 MR. HUBBARD: Yes, sir.

7 MR. YOUNG: Our preference would be to take those up
8 Thursday morning.

9 THE COURT: I don't want to take them up Thursday
10 morning and take my jury's time. I don't want to do that.
11 Let's do them tomorrow while we've got down time. We're
12 imposing on this jury enough. I mean, why Thursday, other
13 than it's Thursday?

14 MR. YOUNG: Just because we need the 24 hours to get
15 ready.

16 MR. HUBBARD: Actually, Your Honor is giving us a
17 little more than 24.

18 THE COURT: I mean, it's 2:30 now. Are these motions
19 going to take longer than an hour?

20 MR. YOUNG: No, sir.

21 MR. HUBBARD: Fine with me tomorrow afternoon.

22 THE COURT: Y'all want to meet tomorrow afternoon at
23 2:00 o'clock or 2:30 to give you the whole 24?

24 MR. YOUNG: Yes, sir.

25 THE COURT: Okay. Do that. Be here at 2:30.

1 MR. YOUNG: Yes, sir.

2 THE COURT: I didn't think about that reason, but
3 it's certainly a valid basis. Everybody is down and
4 rested. See y'all tomorrow back here at 2:30.

5 (Whereupon, the trial will resume the next day at
6 2:30 p.m.)

7 June 5, 2019

8 THE COURT: All right. What all we got to consider
9 today? Have y'all discussed the order of presentation?

10 MR. YOUNG: Briefly, Your Honor. We've got, I think,
11 three issues for the Court to take up and consider today.
12 The first issue we'd like to take up would be Mr. Butler's
13 representation of Mr. Tim Jones, Sr. in this phase of the
14 proceedings.

15 THE COURT: All right. I got an e-mail yesterday
16 from Mr. Butler.

17 MR. BUTLER: Yes, sir.

18 COURT REPORTER: What's his first name, Judge?

19 MR. BUTLER: Beattie, B-E-A-T-T-I-E.

20 COURT REPORTER: B-E-A-T-T-I-E?

21 MR. BUTLER: Yes, ma'am.

22 THE COURT: It's kind of an unusual request.

23 MR. BUTLER: It is an unusual request. It's an
24 unusual case. And I'm asked to do unusual things and I
25 usually agree to do them and I hope that you will allow me

1 maybe 15 minutes to be heard on it.

2 THE COURT: All right. Go ahead.

3 MR. BUTLER: Thank you, sir. I appreciate it. I
4 want to make it clear that I represent Tim Jones, Sr. in
5 his capacity as a victim. And I am here to enforce his
6 rights as a victim under the Victim's Bill of Rights
7 applicable statutes that are in the written materials that
8 I have filed and the South Carolina Constitution. If this
9 case were a unlawful use of a motor vehicle, Mr. Jones,
10 Sr. would have every opportunity to address the sentencing
11 body, which in that case would be the Court, a Judge, and
12 would be able to ask him everything from time served to
13 the maximum sentence. This, of course, is obviously not
14 an unlawful use of a vehicle case. It's the most serious
15 thing we ask of jurors in any capacity in the law. And it
16 is one that is morally hefty and legally complicated. And
17 for that reason, I will ask the Court to entertain three
18 things that I will get to in just one second. Before I do
19 that, I'll pose what to some may sound like a rhetorical
20 question, but which is not. If it hasn't already been
21 posed, I'm sure it will be. If this case doesn't call for
22 the death penalty, then what does. And I'm willing to
23 respond to that. I'm actually anxious to respond to that.
24 It seems to me that I would ask the Court to consider that
25 the death penalty is appropriate only when the crime is

1 horrendous. Nobody disputes that in this case. The
2 Defendant is clearly guilty. The jury has spoken to that.
3 And the sentence of death would bring some peace to the
4 surviving victims. And that's what is absolutely in
5 dispute. Actually, it's not in dispute. There's nobody
6 that can be considered a victim that the Defense has made
7 me aware of that wants anything but a life sentence for
8 Mr. Jones, Jr. I, on behalf of Mr. Jones, Sr., would like
9 to be able to one, conduct his testimony before the jury
10 as his lawyer and I would like to ask him what sentence
11 that he desires and that he be able to ask the jury for my
12 sake and to be made whole, I'm asking on behalf of my son
13 that you impose a life sentence and not a death sentence.
14 And I would like to -- the third thing that I'm requesting
15 on behalf of Mr. Jones, Sr. is that I be able to address
16 the jury on his behalf in closing. And that's all I have.
17 I don't believe I have anything else. Thank you. I would
18 like a brief opportunity to respond, if necessary.

19 THE COURT: Okay. Solicitor, were you aware of this
20 motion?

21 MR. HUBBARD: Your Honor, a while back, I got this
22 motion. And, Your Honor, I'll be quite frank, I've been
23 upfront the entire time with everybody in this courtroom.
24 I've got five victims and they're not here because they're
25 dead and they died at that man's hands. I understand a

1 lot of people have suffered because of that, including
2 Tim, Sr., but Tim Sr. has chosen to sit behind that man,
3 that side of the courtroom. For him to say somehow he
4 belongs on this side of the courtroom if he'd made a
5 choice. He already made his choice. It's obscene to me.
6 Now, I understand he's suffering. I get that. I've got
7 other folks out there that knew these little kids.
8 They're suffering too. But the thought that he can come
9 in here and ask what I can't even get my victims to ask,
10 other folks who've been traumatized. To name what the
11 sentence is going to be, that's in clear violation of
12 State vs. Dickerson, and I've got a copy of that case
13 about execution impact evidence. Our courts said victims,
14 including family members of a Defendant can come into
15 court and talk about they've developed a close
16 relationship with the Defendant and that shows something
17 about the Defendant's character. But when you go beyond
18 his character, the circumstances of the crime, you start
19 treading on the actual sentence, you've gone too far. No
20 one is allowed to do that. That is reserved for the 12
21 people sitting in that box over there. Them and them
22 only. And, Your Honor, I stand on the law, but, also, I
23 stand for those five babies.

24 MR. BUTLER: Just briefly --

25 THE COURT: Wait a minute. Wait a minute. I want to

1 hear from Mr. Young if he wants to say anything.

2 MR. BUTLER: I'm sorry.

3 MR. YOUNG: No, sir.

4 THE COURT: Okay.

5 MR. BUTLER: Just briefly. We were always told in
6 law school you should be able to argue both sides of an
7 issue. I don't think they meant in the same case. I'm
8 handing to the State a portion of a transcript and I'd
9 like to ask this be made part of the record. Mr. Hubbard
10 makes it clear that Tim, Sr. is, in fact, as much of a
11 victim as anybody in this case and that is a fact. And as
12 far as what the law holds, unless there's somebody to come
13 along and challenge it, it will always stay the same.
14 That case is intentioned with the Victim's Bill of Rights
15 and the South Carolina Constitution. Given the gravity of
16 the situation and the circumstances, I think that the
17 request that I'm making on behalf of the father of five
18 dead grandchildren -- grandfather of five dead children is
19 not unreasonable. I don't have anything else to add.
20 Thank you.

21 MR. HUBBARD: I do. Those other folks who are
22 victimized aren't getting an attorney to come in here and
23 speak for them. They're not asking to come in here and do
24 closing arguments. This man -- I understand -- I
25 understand his loss, but he's decided where he's sitting

1 in this courtroom and who he wants to speak on behalf of.
2 He did have a tough position. He was in a tough position
3 early on, but he's made his choice. And there is no case
4 anywhere that says he can do what he's asking. In fact,
5 the case I handed up, Dickerson, says he can't do this.

6 THE COURT: I'm going to read Dickerson closely and
7 -- since I only got this motion last night and didn't read
8 it till this morning, I'll let you know. It seems kind of
9 an odd request to me, but I'll let you know.

10 MR. BUTLER: Thank you, Judge.

11 THE COURT: Okay.

12 MR. BUTLER: And may I be excused?

13 THE COURT: You may.

14 MR. BUTLER: Thank you, sir. And I appreciate you
15 hearing from me.

16 THE COURT: Sure. All right. One of three.

17 MR. YOUNG: Your Honor, do you want to talk about the
18 photographs or do you want to talk about the previous
19 motions filed concerning Dr. Frierson and Dr. Kruse.

20 THE COURT: Let's hear about -- I mean, Solicitor
21 Hubbard told you he was likely not going to call Frierson.
22 So if he's going to call him, then maybe we know that
23 first. If he's not, then maybe your argument is something
24 I don't need to hear.

25 MR. YOUNG: Well, it's not a matter of calling him or

1 not calling him, Your Honor. And this is why we requested
2 the limiting instruction prior to his testimony. It's
3 because his testimony is only admissible for the purpose
4 of deciding criminal responsibility or not guilty by
5 reason of --

6 THE COURT: Yeah, but I don't have to rule on that if
7 he's not going to call him, then that makes it easier for
8 me.

9 MR. YOUNG: Right.

10 THE COURT: Can we find that out?

11 MR. YOUNG: Well, the State's going to say we readmit
12 all the testimony and evidence from the first phase and
13 that would -- we would ask the Court to say with the
14 exception of the testimony of Dr. Frierson and Dr. Kruse,
15 who were admitted for the limited purpose of deciding
16 criminal responsibility, which the jury has decided.
17 Their testimony is no longer relevant and is inadmissible
18 pursuant to Your Honor's own order that Your Honor
19 signed --

20 THE COURT: Some time ago.

21 MR. YOUNG: I think May 25th, 2018.

22 THE COURT: Okay. If we say it's readmitted except
23 for that, certainly, Judges are tasked with disregard any
24 irrelevant testimony, you only consider relevant testimony
25 when they're doing Judge only bench trials. You don't

1 expect this jury to be able to discard all that testimony
2 and not consider it at all?

3 MR. YOUNG: I expect the jury to be able to follow
4 the Court's instruction when they're told that that
5 information was for a limited purpose of deciding --

6 THE COURT: I understand that, but they can't do
7 that.

8 MR. YOUNG: And they can't use it in any way, shape
9 or form in the penalty phase and they certainly can't use
10 it for aggravation.

11 THE COURT: I mean, I know you're saying that and I
12 may instruct that but you don't realistically believe that
13 they're going to say -- erase that and not consider it.
14 It's -- I mean, they've got it in their head.

15 MR. YOUNG: Well, I think if Your Honor tells them --
16 just like Mr. Jones' right to remain silent, it's
17 something that you can't consider, you can't talk about,
18 you can't use it in any way.

19 THE COURT: Let me hear from the Solicitor because I
20 think that's an unusual request, also. Let me hear from
21 him. If he's not going to call him, then it's just a
22 matter of can I agree on the instruction.

23 MR. HUBBARD: Your Honor, the way it's always worked
24 with these cases is you have that first phase, all of the
25 evidence from the first phase is always carried into the

1 second phase per statute, which is 16-3-20, section B.
2 The second phase is about additional testimony. State v.
3 Shaw, that old, old Capital case, Your Honor, when we were
4 first getting Capital cases back in line, directly talked
5 about that. Now, as to the issue of Frierson and Kruse,
6 all that evidence comes forward. They don't forget their
7 testimony. The thing about Dr. Frierson, you appointed
8 him and tasked him with two things, determine whether the
9 Defendant was criminally responsible and whether he had
10 the capacity to conform his conduct to the requirements of
11 the law. He testified to that. But now, in the penalty
12 phase, if the defense puts up a psychiatrist, psychologist
13 that in any way implicates any of his findings because he
14 had -- he had to determine if the Defendant suffered from
15 psychosis, to determine if he suffered that night. If
16 they open that door at all, I think I get to knock on Dr.
17 Frierson's door. That's not my hope or my intent. I'd
18 like to leave that man alone. He did a lot of work. He
19 testified. Dr. Kruse, on the other hand, was brought in
20 at the request of Dr. Frierson. She differed in this
21 respect. She was not giving an opinion as to what
22 happened on August the 28th of 2014. She was brought in
23 to supplement and augment him, can you do scientific
24 testing, neurological testing, neuro-psychological testing
25 to determine whether this man has any organic cognitive

1 deficits, whether he has any psychotic disorders. And,
2 also, as you remember, we had the battle over personality
3 testing. He wanted that full battery done. All of that
4 is still in play if they bring it up again. Because her
5 findings say that it's not just that night, he has no
6 psychosis whatsoever. He has no cognitive deficits
7 whatsoever and he has a personality disorder that explains
8 all the stuff they're trying to, I believe in this second
9 phase, saying it is schizophrenia. We've been provided
10 two reports from Dr. Maddox, used to be Dr.
11 Schwartz-Watts. I think back in March of this year, she
12 issued a report saying she diagnosed him with
13 schizophrenia and she's been, basically, working with him
14 since days after he got arrested. We didn't know if she
15 was going to testify first phase or not. We had to be
16 ready. I understand they're talking about bringing her up
17 in this phase of the trial basically to say it's
18 mitigating evidence. He has a mental illness. Well, I
19 have direct testimony that contradicts that. And what
20 brings Dr. Kruse to mind is this, she supplemented her
21 report, Dr. Maddox did. And now for the first time
22 basically said she referenced Dr. Kruse's report, but she
23 kept the same diagnosis. Did not explain anything about
24 how she looked at Dr. Kruse's report. She's called it
25 rightfully and -- on the floor, here it is. So if Dr.

1 Maddox gets on that stand, I'm going to question her, what
2 did you look at in Dr. Kruse's report. What, if any, way
3 did you interpret that? How did it affect your opinion.
4 Dr. Kruse will be a reply witness because of that. And
5 Dr. Maddox will make that so because she says she has
6 looked at, relied on and reviewed that analysis. There is
7 no case, no law that says Dr. Kruse can't come in here and
8 testify nor Dr. Frierson, for that matter. It's the same
9 old rule that you've always had, is this proper reply.
10 Was something brought up where the State has the right to
11 reply. And right now, they're trying to shoot me down and
12 say I don't have an expert and, Solicitor, you don't even
13 know what Dr. Maddox is actually going to say. They can't
14 do that.

15 THE COURT: Mr. Young, let me hear from you again.

16 MR. YOUNG: Your Honor, they can call Dr. Maddox and
17 talk to her if they want to. The order issued by the
18 Court says that the evaluation report may be admissible as
19 evidence in subsequent hearings concerning the Defendant's
20 criminal responsibility and capacity to conform. However,
21 the report shall be inadmissible in any other proceeding,
22 except as expressly permitted by South Carolina law.
23 Examiners and agency staff may not be compelled to testify
24 regarding statements made during the criminal
25 responsibility and capacity forum examination or for any

1 purpose other than on the issue of criminal responsibility
2 and capacity to conform. Dr. Kruse was hired by Dr.
3 Frierson as part of the Court's ordered evaluation and is
4 subject to the same limitations and they're the same
5 order. All of Dr. Kruse's findings relate directly to
6 things that Mr. Jones told her in his responses to
7 specific questions, all of which are inadmissible for any
8 other purpose other than determining criminal
9 responsibility, which the jury has already decided. They
10 can't use it --

11 THE COURT: Well, here's what doesn't make sense --

12 MR. YOUNG: -- they can't argue it --

13 THE COURT: Here's what doesn't make sense to me in
14 what you're asking is, Dr. Maddox, come here and give your
15 opinion and you base it on all these things, including Dr.
16 Kruse's report, findings, testing, whatever, her stuff.
17 If Dr. Maddox uses Dr. Kruse's report, what you're arguing
18 is, that should be off limits to you.

19 MR. YOUNG: Yeah, it should be off limits to Dr.
20 Maddox. She shouldn't talk about it.

21 THE COURT: Well, what if she does?

22 MR. YOUNG: She's going to be instructed not to.
23 She's going to be instructed to say that --

24 THE COURT: I've already been told that she's already
25 reviewed --

1 MR. YOUNG: She has reviewed it. First off, we
2 didn't get Kruse's report until after jury selection had
3 already started in this case. So it's hard to imagine how
4 she could have reviewed something in a report that she
5 issued before the other report was even available. So to
6 say well, she didn't review it and then she did review it
7 is sort of, you know, misstated facts when it wasn't
8 available to her until later. But just like Frierson had
9 a list of materials, some of which were inadmissible.
10 Those were redacted out and he didn't mention them. Some
11 of Dr. Maddox's materials that she's reviewed are
12 inadmissible, then we redact it out and she won't be
13 mentioning it.

14 THE COURT: But if it helped her form her opinion,
15 how is she going to discount them?

16 MR. YOUNG: She can say I looked at a bunch of stuff,
17 I've taken this out of account. I'm not using this stuff
18 as relevant to my opinion. Your Honor, the case law --
19 the case order and what is available to the State and why
20 they get to use the Defendant's answers in a criminal
21 responsibility examination are clear. It is unmistakable.
22 There's no leeway on it. It doesn't say, unless the State
23 really wants to use it for some other purpose. It can't
24 be used, period. That is the order. That is the order
25 Your Honor signed.

1 THE COURT: All right. Quit blaming it on me.

2 MR. YOUNG: Well, it's a form order by the South
3 Carolina Supreme Court that says --

4 THE COURT: Well, you're blaming it on me. You kept
5 saying you signed the order so uphold your own order.
6 Well, what if it's allowed by other South Carolina law,
7 which was the exception in there and I hear law that says
8 okay, it can be used.

9 MR. YOUNG: The South Carolina Supreme Court wrote
10 the form order and said that it has to be used exactly as
11 published without alteration or additions.

12 THE COURT: All right. But that seems kind of unfair
13 to you and to the State that we can't utilize it for first
14 proper purpose.

15 MR. YOUNG: It was utilized first proper--

16 THE COURT: -- I guess you --do you have a case that
17 says the State can't use it other than that form?

18 MR. YOUNG: Other than this Court order?

19 THE COURT: Yes.

20 MR. YOUNG: Nobody has ever tried to use it.

21 THE COURT: Okay. That's what I want to know.
22 Because it's never been tried. You're trying to enforce
23 it for the first time?

24 MR. YOUNG: Everybody has understood that the order
25 plainly says it can't be used for any other purpose.

1 THE COURT: Everybody is not. You said it's never
2 been tried. I understand what you're arguing, but this
3 case presented so many different nuances, like the
4 gentleman that just stood up here and wants to argue to
5 the jury on behalf of Tim, Sr. Never heard that before
6 either. Have you?

7 MR. YOUNG: Once.

8 THE COURT: Okay. Got one more than me, so you've
9 heard it twice. The Solicitor has never heard it.

10 MR. YOUNG: This case, in the presentation of the
11 insanity defense, is a unique situation and that's why the
12 State was permitted to conduct a criminal responsibility
13 evaluation. But even the State in their own proposed
14 limiting instruction proposed that Your Honor tell the
15 jury that statements by Mr. Jones were -- to Dr. Kruse or
16 Dr. Frierson were only admissible for the limited purpose
17 of determining criminal responsibility. Her test results,
18 her conclusions based on her test results are all directly
19 from statements made by him. The State is not allowed to
20 mention it, to argue about it or to bring it up in
21 closings or to cross-examine with it. It's inadmissible
22 for any other purpose now that the jury has decided
23 criminal responsibility.

24 THE COURT: Solicitor.

25 MR. HUBBARD: Judge, when we got Dr. Frierson, his

1 purpose, as you know, you know what it was for. He
2 testified to that. We had the limiting instruction
3 because of that. But they can't come in here now and have
4 their expert agree or pick apart the different parts of
5 what Dr. Frierson said in order to reach a conclusion and
6 expect that he can't be called back to respond. There is
7 no case that says they can do that. And then as to Dr.
8 Kruse -- first of all, they didn't just get the report
9 when jury strikes were going on. It was issued back in
10 March. She supplemented at their request on some factual
11 issues. That's all that is. They've had it since March.
12 But, anyway, her analysis really didn't need a limiting
13 instruction because she wasn't speaking to the ultimate
14 issue the jury had to handle in the first phase as to the
15 issue of insanity, knowing right and wrong on August 28th
16 of 2014.

17 THE COURT: Well, here's what's going to be kind of
18 odd is Dr. Maddox gets up and she composites an opinion
19 he's schizophrenic. The jury has already determined they
20 didn't believe that, but they hear it again.

21 MR. YOUNG: I take issue with that. Part of the
22 State's argument was people can be schizophrenic and still
23 be criminally responsible. The jury has determined that
24 he was criminally responsible and that mentally ill or
25 not, it did not rise to the level of a defense. But to

1 say the jury has already determined that he's not
2 schizophrenic, I don't know. And if the Court knows that,
3 then --

4 THE COURT: Just the verdict speaks to that, more or
5 less, that's where I'm getting it from. That's my
6 suggestion. I've not talked to any of the jurors. I know
7 you're just not suggesting that, but no, I'm not -- it
8 just seems to me that the straight guilty verdict appears
9 that's what the jury has decided, is they didn't buy any
10 of the mental stuff or they weren't compelled to go with
11 it.

12 MR. HUBBARD: But, anyway, Your Honor, the witness
13 they want to bring in has now -- once this trial started,
14 it was just last month, she did an update, Dr. Maddox --
15 and she can do this. She did an update on her report
16 where she specifically said one of her sources of
17 information was Dr. Kruse. How in the world can they put
18 her up and say, Mr. Hubbard, you can't cross her on a
19 source of information that went to her ultimate opinion,
20 whether she accepted or rejected it. How in the world do
21 I get to cross her on that? That wouldn't make any sense.
22 And that's exactly why they want to do that, to cut me off
23 at my feet. Anyway, Your Honor, the only way -- if Dr.
24 Schwartz-Watts or Dr. Maddox, I believe that's her last
25 name now, I've just known her for so long --

1 THE COURT: It is. She's told me that specifically,
2 it's Maddox.

3 MR. HUBBARD: It is. And I've just known her for so
4 many years, it's hard to do that pivot. But if she's
5 going to testify, cross her, and particular if this is one
6 of her relevant sources of information. You don't get to
7 black this out. The Defense doesn't get to say that's --
8 you don't get to go there. I need to know why she
9 rejected an opinion and I get to put somebody up to reply.
10 I have a right to do that. I have a right to do that.
11 And nothing in your order says I can't do that.

12 MR. YOUNG: Your Honor, it specifically blocks
13 cross-examination of particular experts, particularly Dr.
14 Kruse. I mean, we weren't allowed to say well, isn't it
15 true that one of these questions where you get these six
16 points is you ask him if he could sit still in a chair and
17 he told you no and then he sat still in a chair, so you
18 changed the answer to yes. That's one of her questions,
19 but we weren't allowed to cross-examine on that because of
20 the Court's ruling. And to say -- Your Honor can
21 certainly restrict cross-examination and say that's an
22 area that you can't get into. Your Honor has done that in
23 a number of other instances where you've said that
24 evidence is not relevant, I'm directing you to direct away
25 from that or I'm directing you not to go there on cross.

1 MR. HUBBARD: Judge, we can keep going back and
2 forth, but we've got a right to present --

3 THE COURT: Here the thing is, I don't know that I
4 can make a proper ruling, an appropriate ruling until I
5 hear Dr. Maddox's testimony. That's going to impact my
6 decision. So I can't tell you right now, okay, those --
7 particular Dr. Kruse. She was -- she was a source of
8 information for Dr. Frierson just as, apparently, what
9 y'all are saying is she's a source of information also for
10 Dr. Maddox. Dr. Frierson's report may be different. He
11 was the one tasked with criminal responsibility strictly.
12 Dr. Kruse was asked to do studies by Dr. Frierson. I
13 don't know that that's the same thing is we're not going
14 to allow either side to cherry pick questions from Dr.
15 Kruse's studies for cross-examination purposes because it
16 will be too unfair. Seems like that's two separate issues
17 to me. I'm going to consider it a motion in limine if you
18 don't want that testimony coming forward, but until I hear
19 Dr. Maddox's testimony, if she's going to testify, she may
20 not. Then if she doesn't, that makes things easier on me.
21 I can't say right now okay, those are off limits and you
22 put something up and it creates an issue that I have not
23 anticipated that I can say, okay, well, you know, you said
24 it yesterday, therefore -- I can't do that. So I'm not
25 going to rule on that until I hear the testimony as

1 presented by the Defense.

2 MR. YOUNG: I understand. And we would object and
3 we're being asked to formulate a comprehensive penalty
4 phase case and trial strategy for the jury in which to
5 decide whether or not Tim lives or dies. And we're doing
6 that and we have done that and we have prepared that in
7 reliance on the Court's prior orders and the Court's
8 rulings and that those orders would be applicable to this
9 phase of the case and they said what they said -- they
10 meant what they said.

11 THE COURT: And we'll go forward with that in mind.
12 But I'm -- I'm not going to give you a final ruling that
13 something is off limits when I don't know yet. I
14 understand your argument. I generally follow it, but it's
15 hard for me to know now -- I mean, if somebody gets up and
16 says something totally different and you've got to have
17 something to reply with it. And you say well, that's off
18 limits, but something was done unanticipated, it puts me
19 in a very awkward position of ruling. I'm not comfortable
20 making a ruling right now with that. Yes, sir.

21 MR. MADSEN: Judge, we would move to bar the State
22 from entering any photographs into evidence of the victims
23 post-mortem during the penalty phase. There are multiple
24 basis obviously for that. First of all, we do not believe
25 that the introduction of those photographs are necessary

1 to substantiate any material facts or conditions during
2 the penalty phase and, therefore, irrelevant under 401,
3 402. Certainly, we also believe under 403 that those
4 photographs are inadmissible. Obviously, I think you have
5 two sets of photographs there. You have the ones that
6 would depict the recovery of the children's bodies from
7 the logging road. And then, secondly, obviously, the
8 bodies at the autopsy. To kind of use the Solicitor's
9 words that he said, they would just be redundant. They
10 don't need them to prove statutory aggravating. As Your
11 Honor said, by their verdict, you know, there is multiple
12 children and they are under eleven. They have proved that
13 statutory aggravating circumstance. Therefore, certainly,
14 they don't need those photographs to prove that and they
15 are irrelevant because of that. Certainly -- and I don't
16 know if Your Honor has seen those photographs or --

17 THE COURT: I've seen the five autopsy photographs,
18 but not anything else.

19 MR. MADSEN: And, Your Honor, I would submit, I have
20 done this 22 years, hundreds of murder trials, but they're
21 the worst I've ever seen. They're just absolutely
22 horrific. They are nightmarish. It would certainly add
23 an element into the trial that would inflame the heat of
24 passion. I mean, I don't know how you can't look at those
25 photographs and they not get you mad, not get you upset.

1 And they don't need those to prove an element in this case
2 and, therefore, they should not be admissible. Obviously,
3 I think if you look within the case law, State vs. Torres,
4 390 S.C. 618, which was a 2010 case. Even in that case,
5 the Court kind of says hey, Solicitors, you might need to
6 refrain from pushing the envelope on admissibility in
7 order to just gain a conviction. And they even said those
8 photographs in that case were kind of at the outer limits
9 of what their law permits. I haven't seen those
10 photographs, but I would bet good money that these are a
11 hundred times worse than those. Obviously, if you look at
12 these photographs and take them, it's just simply --
13 there's nothing that can be gleaned from these photographs
14 that help the trier of fact. So like I said, we do not
15 believe that they are relevant. We certainly believe that
16 under 403, they ought to be excluded because those
17 photographs certainly would be calculated to arise
18 sympathy or prejudice of a jury and they are not necessary
19 to go to any substantial facts. I mean, the undue
20 prejudice would deny Tim his due process rights.
21 Additionally, Your Honor, I would say that those
22 photographs are not relevant because the Court has
23 previously ruled in the first phase that they were not.
24 So the State can't turn around and argue now, hey, you
25 know, that earlier argument of irrelevance -- I mean,

1 basically, that's the law of the case. Your Honor made
2 that decision. It is the law of the case. The State
3 certainly didn't rule it was error at that point in time.
4 And the law basically says that the Court should not
5 reconsider their earlier decision unless there's
6 extraordinary circumstances such as where the initial
7 decision was clearly erroneous and would work a manifest
8 injustice. We do not believe that that is here. And like
9 I said, Your Honor has ruled that those photos do not show
10 the condition that Mr. Jones left the children in. And,
11 in fact, if Your Honor will remember, there was testimony
12 by Dr. Ross talking about black bags, the heat. I think
13 there was some stuff about the accelerated decomposition.
14 That is the law of the case, so they are certainly not
15 relevant -- or certainly should not come in. Obviously,
16 finally, we would argue judicial estoppel. Your Honor
17 accepted the State's argument and an equitable concept of
18 having them come in in this second phase and present a
19 inconsistent position, which they previously asserted
20 would be inappropriate. And it would be patently wrong to
21 let them argue one position in the guilt phase and then
22 let -- and argue the opposite position in the penalty just
23 because it's beneficial to them now.

24 THE COURT: Now, wait a minute. Y'all both are doing
25 that.

1 MR. MADSEN: We just believe that the use of those
2 photographs would deny -- or would make Tim's sentencing
3 aspect of this trial fundamentally unfair under the
4 Fourteenth and South Carolina's due process clauses.
5 Well, like I said, Your Honor, I mean, you have seen the
6 photographs. I mean, they are the worst I've ever seen
7 and I've been involved in hundreds of cases. And to
8 introduce that arbitrary factor, so we do not believe they
9 should be presented.

10 THE COURT: All right.

11 MR. HUBBARD: It's me again, Your Honor. Apparently,
12 I missed that ruling where you held out all those
13 photographs because I put in charts, diagrams used by Dr.
14 Ross. I put in one photograph, the close-up of Nahtahn's
15 leg showing that daddy cut on his knee post-mortem that
16 corroborated his confession that of all the kids he
17 decided to try to dismember, he picked the one he said was
18 the focal point. Your Honor, this is a Capital case. The
19 penalty phase, we're always allowed to put in photos
20 because photos depict -- which depict the bodies of the
21 victims in the same or condition he left them in -- or
22 condition he left them to become in. We're always allowed
23 to put that in. It's admissible because it shows the
24 circumstances of the crime, the crime he committed. It
25 shows his character, the work of his hands. Now, the fact

1 he put them in bags and left them out in the hot sun, he
2 did that deliberately. That shows his character. He knew
3 it would enhance and speed up decomp. All of that is
4 relevant. And if he had wanted to intervene before then,
5 he could have done something or he could have spoken to
6 law enforcement on the night of the 6th and said, hey, I
7 do know where the kids are, before they get in a much
8 worse way. They had several days of just baking in the
9 sun. He rode around with them in the back of his car.
10 That shows his character. It shows the nature of the
11 crime he committed. What I'd like to do, what I plan to
12 do, with Your Honor's permission, pursuant to the law,
13 which is very clear under a number of cases. I can read
14 those into the record. But I'm going to have the officer
15 at the crime scene, who is a lieutenant from SLED. He was
16 there and he held that crime scene until CSI could get
17 there. We have a short video that was taken so you can
18 see how those bags were left. You can hear the bug life,
19 Judge, in this wild area. You can hear it. He chose this
20 spot. That tells you something about the Defendant. He
21 chose to put them in bags. And they held them there. And
22 the he'll tell you about when CSI got there, it was later
23 in the day. It was almost dark, how they had to hold
24 lights. They marked them. They numbered them. And the
25 meticulous process they took to put each bag on top of a

1 body bag. Then he was the one that said, y'all know what
2 we got to do next, we got to open them to verify there are
3 babies in there, make sure this is what we're here for.
4 He's going to testify to all that, Judge. That jury gets
5 to see the open bag. It's just enough to identify a human
6 remain. And then what happens there, it goes to Dr. Ross.
7 And what is presented -- what will be presented, it's not
8 a Y-cut incision, the typical thing you think of at
9 autopsy, I'm showing how they arrived to her, the
10 condition they were in when she got them. The case law is
11 directly on point on that. At autopsy, condition the
12 doctor receives them in. And then she'll go through and
13 explain, again, the cause of death, not the manner, which
14 is to remind the jury of what happened and what she looked
15 at, what she looked for. And she has always preferred to
16 use photos to be able to talk about that, what she's
17 looking at. And the difficulty, we'll explain the
18 difficulty in explaining Nahtahn and Abigail and Merah's
19 death because she ruled them homicidal violence. She can
20 show here's why. Now you can see what I'm talking about.
21 Look at the heavy state of decomp because that man left
22 them in a position to decompose. This always comes in,
23 Judge. I've got just an autopsy. There are 569 photos.
24 I'm not putting all those in. I'm putting a few in for
25 each child and anything specifically that she needs. I do

1 plan on putting some things in in Gabriel's bag. Looks
2 like most of Merah's clothing and stuff was in that bag.
3 I'm going to bring that out. What did you find in the
4 bag. Because that's different. Again, it shows this man
5 is thinking about what he's doing with one of his children
6 and dumping it in another child's bag. It shows something
7 about the Defendant. That's the crux of it all. The
8 crime itself and the character of the Defendant. So,
9 Judge, even in Non-Cap -- well, looking at Capital cases,
10 State v. Johnson, for the record, 338 S.C. 114, it's a
11 2000 Capital case. We have State vs --

12 THE COURT: You got copies of those?

13 MR. HUBBARD: I've got them, Judge. I tell you what,
14 I can pass them up while I'm saying this. I don't want to
15 mispronounce, State vs Kornahrens. K-O-R-N-A-H-R-E-N-S.

16 MR. HUBBARD: State vs. Bentley Collins. It is
17 another Capital case. The court has ruled consistently on
18 these matters about the admissibility of crime scene
19 photos, the admissibility of autopsy photos, both showing
20 the condition of the body and it shows the character of
21 the Defendant. Non-Capital cases also have discussed very
22 gruesome photographs. State vs. Collins, 409 South
23 Carolina 524, it's a 2014 case. There were pre-autopsy
24 photos of a child victim who was mauled by dogs. And they
25 were relevant to the extent the injuries served to

1 corroborate the testimony. State versus Dooley, again,
2 tried in Lexington in 2013. It was a homicide by child
3 abuse case. They showed a reflected scalp during the
4 autopsy showing the hemorrhaging inside the head.
5 Incredibly graphic. We're not showing anything like that.
6 We're showing the condition of the bodies, how they are
7 dressed, how they appear. And, Judge, frankly, if
8 wildlife got to them because that man left them for
9 wildlife to get to. He left them there to decompose. He
10 left them there to rot and he left them there for the
11 wild. And that shows something about who he is. So our
12 argument is he made them relevant.

13 MR. MADSEN: Judge, if I might, Solicitor points to
14 State vs. Bentley Collins, which I believe was a
15 two-one-two opinion. The Court of Appeals -- Justice Few
16 wrote the Court of Appeals opinion holding that that case
17 should be reversed. Judge Kittredge and Judge Hearn
18 concurred saying that those photographs should have been
19 kept out, but it was a harmless error analysis and that is
20 why they concurred, said that those photographs were not
21 appropriate.

22 THE COURT: Looks to me like it was Beatty wrote it.

23 MR. MADSEN: Beatty wrote --

24 THE COURT: Kittredge and Hearn concurred and
25 Pleicones consented.

1 MR. MADSEN: Right, but Justice Few was actually on
2 the Court of Appeals. He wrote the Court of Appeals
3 opinion to reverse and then Justice Beatty reversed him.
4 I mean, that's more of a law school thing kind of telling
5 you what the Justices were thinking with Few not being on
6 there. And, obviously, Justice James was not on the Court
7 at that point in time, which you had two Justices that
8 said that those photographs should not come in. I would
9 assume that Justice Few now being on the Supreme Court
10 would be consistent with his Court of Appeals opinion.
11 And like I said, the Solicitor argued in the first that
12 they weren't relevant to show the condition of the bodies.

13 THE COURT: Well, I remember my ruling. This is what
14 it was. I remembered what my thinking was. I tried to
15 put it on the record, if I didn't, I'm going to put it on
16 the record again. The Defense tried to introduce them
17 showing the evidence of his insanity, only a person who is
18 insane would do that. I said these are five days, four
19 days, whatever the past of the dropoff and if they were
20 closer in condition to the condition they were in his
21 truck, vehicle and then he disposed of the bodies, that
22 may be a different thing. Those were not offered, the
23 autopsies photos which were five days after. That was the
24 gist of my ruling, I believe, and I think that's
25 consistent with what we discussed on the record up here

1 during our bench conferences. I didn't think that was
2 evidence of his insanity, the autopsy photos of the bodies
3 in the table, bag unzipped is what I remember.

4 MR. MADSEN: I would just submit to the Court that I
5 think all that kind of falls under his character, which is
6 what the Solicitor is saying hey, we want to get it in
7 now. Like I said --

8 THE COURT: Well, I mean, hey, want to keep it out
9 now. The roles reversed. I told y'all that.

10 MR. HUBBARD: And they do go to his character.
11 Character wasn't an issue. It would have been reversible
12 in the first phase. I understand what they're trying to
13 do, trying to beat us to the punch, trying to suck the
14 oxygen out of the room in the first phase. It's a very
15 well thought-out strategy. I appreciate it. But, Judge,
16 they are relevant now. And just quickly back to Collins,
17 of course, that's a Non-Capital case. I put that in there
18 just showing even a Non-Capital case because there are
19 heinous photos that come in. That's all they're there
20 for. But where the Court has stood on Capital cases, they
21 still stand. They haven't changed their opinion in a long
22 time, saying the photos can come in showing the
23 circumstances of the crime.

24 THE COURT: I'll read these very quickly. But also,
25 can you -- have y'all discussed what photos you're

1 attempting to enter with the Defense?

2 MR. HUBBARD: I've got them pulled, I was going to go
3 through them. Right now, I know they're saying no to
4 everything. But it is worth noting, they were willing to
5 put many of these same photos in in the guilt phase.

6 THE COURT: Let's take a short break so I can step
7 off the bench. I have got one other issue I want to
8 discuss with y'all that y'all have not brought up, but it
9 was brought to me. We can do it over here.

10 (WHEREUPON, a bench conference was held.)

11 THE COURT: This is an issue regarding a Juror.
12 Danny Remion, SLED agent, approached me when the jury left
13 and he was really concerned about alternate Juror Donna
14 Lee, the dark-complexioned girl with--

15 MR. HUBBARD: Outspoken.

16 THE COURT: -- very outspoken young lady. She is
17 very unhappy because she didn't make it on the jury. She
18 blames me. She's told him that. She's told him that she
19 hopes I trip on my robe.

20 MR. HUBBARD: What?

21 THE COURT: Yeah.

22 MR. HUBBARD: Seriously?

23 THE COURT: Yeah, that's why he stopped and told me
24 that. She's mad because -- now, I made this mistake. I
25 was not aware that I didn't tell the alternate jurors what

1 the verdict was. She also felt like they came in here and
2 everybody was glaring at them, the jurors, because of
3 something they done wrong, which they came in during a
4 tense situation, period. It wasn't glaring at the jury's
5 -- well, I'm concerned she's going to stir the pot with
6 the other jurors being outspoken like she is. And I want
7 to know what do y'all think about -- she's an alternate,
8 but she's unhappy with me. She's mad because she didn't
9 get in the jury, that she wanted to be on the jury, which
10 tells me that's not a good idea. I'm glad she wasn't now
11 looking back on it. She was unhappy that I didn't tell
12 the six of them the verdict. She made comments to Remion
13 that she hoped I tripped on my robe. And he said, Ma'am,
14 you don't mean that. I said, he's really taken good care
15 of y'all. I mean, Danny was very defensive of how good
16 treatments that the Court and the lawyers and everybody
17 had done with this jury and how patient they've been. The
18 gist of it is she feels like she put her heart and soul in
19 this, committed -- you know, emotional to it and do a good
20 job and then she got excluded and now I'm getting the
21 blame. I wanted to point that out to y'all.

22 MR. HUBBARD: I agree with Boyd, Your Honor. We've
23 got five other alternates.

24 MR. YOUNG: I'd just keep the first two and cut the
25 other four loose and that way it's not specifically her,

1 it's not like she's done anything.

2 MR. HUBBARD: I would cut her loose if she's your
3 problem and here's why --

4 THE COURT: Well, the other lady back there is kind
5 of like her teammate and that would be Ms -- what's the
6 lady that called your office raising so much sand?

7 THE CLERK: Ehrlich.

8 THE COURT: Ehrlich, Ms. Ehrlich. She is an
9 alternate, too. She has lighter hair. She sits on the
10 back row with glasses. She's an alternate, also. She
11 would be one of the last four.

12 MR. YOUNG: We have got two, that is all we are going
13 to need, we have another week worth of work.

14 THE COURT: Yeah, she sat -- these two seats right
15 here on the back row is where she sat.

16 MR. HUBBARD: I don't have my big board, but I know
17 who you're talking about and if they teamed up --

18 THE COURT: Well, I like his idea of cutting four,
19 that way, it looks like we're just lightening the load.

20 MR. HUBBARD: Well, I think you can do that. I'm
21 just afraid as you get into the crunchy stuff--

22 THE COURT: Yeah.

23 MR. HUBBARD: -- that would be my only concern.

24 THE COURT: Who's the one you're talking about?

25 THE CLERK: The lady, the one that grabs the bowl --

1 THE COURT: Oh, her.

2 MR. HUBBARD: She's a Juror. We're talking about
3 alternates.

4 THE COURT: When we went to Hudson's, I went out
5 there, also, and they were sitting on the outside on the
6 porch and Joy and Whitney and I ate inside and we got the
7 buffet. And I went and spoke to her, how you like it,
8 it's good, oh, this was a great idea. This was Friday we
9 went out there. She was sitting away from everybody and
10 ordered a plate as opposed to getting the buffet.

11 THE CLERK: She's complained about all the food from
12 everywhere.

13 THE COURT: Anyway, she's a Juror, so I can't throw
14 her away.

15 THE CLERK: But she has informed me that -- she
16 informed me and Whitney when we were coming out before
17 deliberations to make sure you were aware that she has to
18 be out of here by 3:00 o'clock Wednesday and Thursday.

19 THE COURT: I doubt she's going to get her wish
20 Thursday. I got her covered today.

21 THE CLERK: Yeah.

22 THE COURT: The two ladies, both alternates had
23 kindergarten graduation or graduation this morning, so
24 they were covered. All right. I just wanted to tell
25 y'all about the Juror.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: What is the best way to proceed with the
3 photographs? I have read the cases, Dickerson and one of
4 the other issues. What is the best way to proceed with
5 the photograph consideration.

6 MR. HUBBARD: I don't know if it is easier where you
7 can see them here. However you want to do it. This is
8 the body recovery photos.

9 THE COURT: The video we are talking about?

10 MR. HUBBARD: Yes, sir. And we have not, they have,
11 we have not played it for them. But on Eli, what I have
12 done is mark the bag, stick with the photos. So this is
13 207 ID, two photos, 207A and B. How it is found, placed
14 the child in the body bag. What they had to do is open
15 them up, this bag was already pretty much open. Two is
16 Merah which is 208 ID. Two photos, A and B, that is the
17 bag. That is the bag where they put her in the body bag.
18 It was already open so they could tell that -- the
19 remains.

20 Gabriel which is 209. There are several here just to
21 get to it. 209A is the bag, 209B is the bag on the body
22 bag. 209C, they opened the bag and you just see the
23 blanket, the bedding. 209D, is where you actually see
24 body. And you can barely make out what it is. You can
25 just tell there is a body.

1 210 is Abigail, two photos. A, just showing the bag.
2 B is them opening the bag on the body bag, just enough to
3 see human remains.

4 211 is Nahthan. We have five. 211A is the bag; B is
5 the bag on the body bag; they opened it up, that is C, you
6 can just see bedding. When you get to D, 211D you see
7 body. That is it.

8 That is all they did to confirm human remains at that
9 point in time. The video, which I know they have is a
10 video when officers get there, maybe four minutes where
11 the actual bags are.

12 MR. YOUNG: I have never watched the video.

13 MR. HUBBARD: We can play it but I didn't know if you
14 want to play it in here. If you want to put it up on the
15 big screen we can.

16 THE COURT: No, I don't want to do that. We might
17 play it on the computer.

18 MR. HUBBARD: If you want I will go ahead and jump to
19 the autopsy.

20 THE COURT: Yeah, the autopsy.

21 MR. HUBBARD: 212 is Elias. I have several in here
22 because there is some with Dr. Ross. I am going to go
23 over and may throw some of these out. A is how the bag
24 comes to her, that is how she sees it which picks up on
25 what you just saw of the body recovery. They open it up,

1 part of the ID is, which is in B, the shirt, Saxe Gotha.
2 This is how his body is which is C. Shows the animal
3 activity. Then these are the ones I am going to talk to
4 her about. I don't anticipate necessarily having to put
5 these in. He is the one with the bone that is broken. So
6 I wanted to know what is her focus here which is D and E.
7 You will notice there is evidence into the neck that
8 obviously something that she focused on. F and G, I think
9 were related to that. I wanted her to confirm that, maybe
10 the hyoid bone. Then she had Xrays which are H and I. I
11 am not sure, she would have to tell me if these have any
12 significance or she could tell anything from those.

13 THE COURT: Okay.

14 MR. HUBBARD: This one is, Elias and Gabriel have the
15 most because those were the ones that showed physical
16 injury--

17 THE COURT: With the belt.

18 MR. HUBBARD: At the neck, yes sir. That was Elias.
19 Merah which is 213, got two. This is how she presented
20 when they pulled her out of the bag, she is wrapped in one
21 of her brother's bedding. She is not clothed, to show the
22 damage to her arm that she talked about. That is the one
23 that they think there is a hand missing. The only other
24 photo is so close up, the other photo shows her head.

25 THE COURT: The other photo shows her head.

1 MR. HUBBARD: Right, it does. And I have got, she
2 has got plenty of closeups on that. So that is 213A and
3 B. Gabriel which is 214, this is one that has got several
4 at the neck. Which she said he had a distended leg, that
5 is 214A. That is how he was in the bag. Then there was
6 clothing that she mentioned. That is B, that is the
7 shirt, the large adult shirt. C is a slipper. D is the
8 Hello Kitty journal. E is the diaper she mentioned. And
9 then we get to the neck and, again, going to meet with
10 her. Some may be duplicative. This is the back of the
11 neck showing a mark on the neck. That is 214F. And you
12 have 214G and H which are very similar but you see, look
13 at the striation, explain should it be one or both, what
14 does she need.

15 THE COURT: She is coming Friday?

16 MR. HUBBARD: Yes, sir. She is coming tomorrow but
17 it will be lunch time.

18 THE COURT: Okay.

19 MR. HUBBARD: 215 is Abigail. We have got two
20 photos, that is how she was in A, when they pulled her out
21 of the bag she was pretty much incased in bedding. And
22 then, B, when they unfold it that is it. I have got 569
23 photos. There is a lot of more graphic ones of her.

24 Nathan which is 216. I have got A when they pulled
25 him out of the bag, he is also wrapped in bedding. And

1 they open him up. In B, he is not clothed. And then he
2 has an unusual mark, she testified about that there --
3 pre-mortem, postmortem, that is C, that is his elbow.
4 Now, we already have in his knee that was cut. That is
5 the only photo that is already in.

6 So, basically all the photos for purposes to show how
7 they were when they got to her, the condition. And then
8 any injuries. And if Your Honor wants we can play this
9 video.

10 THE COURT: Let's play the video. Put it on that
11 computer. The computer was in the jury room when I saw it
12 last.

13 MR. HUBBARD: Get Rhonda to get the computer. The
14 computer that the jury had, can you bring it.

15 (Whereupon, a video was played for the Court starting
16 at 4:12 and ended at 4:16.)

17 THE COURT: Did Joy mark that?

18 MR. HUBBARD: Yes sir, it is 206.

19 THE COURT: 206, you can mark that. That is the
20 video, about four minutes of the scene on the logging
21 road.

22 (Whereupon, State's Exhibit 206 was admitted into
23 evidence.)

24 THE COURT: Speak to me on first the video and the
25 scene at the logging road. That group of photos, those

1 all seem to be of similar time and quality and
2 graphicness. They're all about the same tone. I'm going
3 to use that word.

4 MR. MADSEN: Obviously, our argument is much weaker
5 on, say, the video because of the ungraphic nature. But,
6 I mean, it's not -- they put photographs in in the first
7 phase, I believe, of the bags.

8 MR. HUBBARD: Of a distant shot of the bags after
9 they were marked, that's it. That's the only thing other
10 than Nahtahn's knee, a close-up. That's it.

11 MR. MADSEN: Like I said, kind of getting back to on
12 one of our arguments, Rick's words, is that it's
13 redundant. I mean, they got that in. They don't need it.
14 It's more prejudicial than probative. We know where the
15 bags were. No one has disputed that fact whatsoever. I
16 mean, they don't need it to prove anything.

17 MR. HUBBARD: Of course, our position is it goes to
18 character and circumstances of the crime. Those closed
19 bags don't. They just show he dumped them there. This
20 shows their actual bodies there. And, obviously, they're
21 extremely relevant to that issue.

22 THE COURT: All right. I was reading a case, it's
23 State vs. Johnson, which is 338 S.C. 114, and it addresses
24 photographs in sentencing proceedings. And it also quotes
25 Kornahrens, which is 290 S.C. 281, I've read that and

1 that's also in this packet. And they're consistently
2 ruling with -- it appears to me that in the sentencing
3 side, the trial Court admitted photos depicting bodies in
4 substantially the same condition in which the Defendant
5 left and more to show the circumstances of the crime and
6 the character of the defendant. And it appears to me
7 under 401, 402 and 403 that the ones at the scene,
8 including the video, all are similar nature, graphicness,
9 and depiction of each of the children collectively. I'm
10 going to allow them under those three rules, 401, 402 and
11 403. Certainly, they're probative. Certainly, they're
12 prejudicial. But weighing everything, those are allowed,
13 this group.

14 MR. MADSEN: Just note our objection.

15 THE COURT: I will.

16 MR. MADSEN: Judge, and I think you have a copy of
17 our motion, also. We also put in there -- I mean,
18 obviously, the decision by the jurors -- I mean, we know
19 that they have proven the aggravating circumstances based
20 on the verdict. So it's an emotional decision, obviously,
21 by the jurors on whether it's life or death. That is
22 obviously an option for them. Back of the motion, we had
23 some social studies dealing with photographs. And like I
24 said, it's kind of introducing an arbitrary factor for
25 their decision, which is not appropriate. You know,

1 they're trying to lather up the passion of the jury and
2 so -- and based on the fact that they had already -- that
3 that wasn't the circumstances that he left them at and
4 then the testimony that came out. I don't need to rehash
5 that, I've already --

6 THE COURT: All right. Now, I'm going to allow those
7 in. I'm comfortable with the ruling on those. These are
8 a little different. There's a little different ruling on
9 those. So let's hear your argument on those.

10 MR. MADSEN: Well, I mean, obviously, you looked at
11 those --

12 THE COURT: And I'm sorry. For the record, the
13 autopsy photos is another group and they are of similar
14 quality, character and condition, collectively, they are.

15 MR. MADSEN: And I don't think I'm going out of
16 bounds to describe those photos are the things of
17 nightmares. I mean, they're just the most horrific things
18 that I've seen in 22 years, having done, you know, from
19 both sides, hundreds of different murders. And there's no
20 way the jury is going to be able to see that and just
21 not -- or follow the law. It's just not going to happen.
22 It's nothing in issue -- I mean, we have been consistent.
23 The Solicitor seems to have adopted that, at least, in
24 their closing argument as to how the children were killed.
25 So it's not an issue. They don't need those to prove

1 anything in this case. They're just absolutely horrific,
2 they're unnecessary. There are head shots of Merah,
3 Nahtahn, Abigail. There are appendages that have been
4 eaten off by animals. I mean, they are just absolutely
5 not necessary. They go from bad to worse. And I don't
6 think that there's anything in there that Dr. Ross needs
7 to explain. I mean, she's already kind of testified
8 without them and so adding them in there, that is -- I
9 just think that that is extremely dangerous ground.

10 MR. HUBBARD: My response is in the guilt phase, they
11 tried to put in some of these same very photos. And at
12 that time, it was all about it's probative because it
13 shows our client is insane. Who would do this? They were
14 okay with it. I fought to keep them out because I don't
15 know any case that would allow this in guilt phase.
16 Because what these show, not so much the Y-incision
17 autopsy and going through different organs, except for
18 certain things with Eli and with Gabriel, they show the
19 actual condition of the bodies. The photos you just saw,
20 body recovery, you can see there is a body, you cannot see
21 what he did to that body. You cannot see how they're
22 placed in there or what's wrong with them. These photos
23 show exactly what he did. And they are graphic, but I've
24 limited them. I have 569 photos I plan to, at least, make
25 Court's Exhibits out of. I have hand selected just a few.

1 So if Your Honor wants to go through these and see just
2 how profoundly graphic the others are and how conservative
3 I was in choosing these for a very specific purpose. Most
4 of these, it's just two shots. Really, I'm going beyond
5 that with Eli and Gabriel and I'm not necessarily putting
6 in the other shots. I don't know what the doctor needs to
7 describe the hyoid bone break or the striation on the
8 neck. But this shows how he placed them in the bags, how
9 they were in the bags. That goes directly to the
10 circumstance of the crime and directly to his character,
11 absolutely directly to his character. Otherwise, without
12 these, there are no real body shots. The shots you just
13 shot from recovery, you just get a glimpse of a portion of
14 the body. And several of them, you can't even make out
15 what it is, it just looks like decomp of some sort. And
16 we're relying on the officers on the scene to say that is
17 a human body. You see that with the autopsy photos in the
18 actual condition. And my argument is it's not just how he
19 left them there that day, he left them there to decompose.
20 He left them there to do exactly what you see here. That
21 reveals his character, that's what he intended. No
22 burial. He left them there to bake in the sun, decay.
23 And he left them there -- you heard that video with the
24 bugs and the sounds. He left them there knowing it's
25 summertime and they're coming after his kids. So I think

1 it shows his character more than anything I've got. They
2 argued he was a loving father. Judge, I argue he is a man
3 who acted in the most evil way. And, again, the initial
4 photos, they were putting those in themselves. So they
5 say it's the worse thing they've ever seen, but they were
6 putting them in.

7 MR. MADSEN: Do you have the one that we offered?

8 THE COURT: Yes, we marked them.

9 COURT REPORTER: I have them.

10 THE COURT: There was five, one for each.

11 COURT REPORTER: So 109 through 113.

12 MR. HUBBARD: I would like Your Honor to compare what
13 they put in, 109, to what I've got. One, she's -- in A,
14 she's covered up except for her upper torso, head, and in
15 B, it's far less graphic. Who do you have next?

16 MR. YOUNG: Eli.

17 MR. HUBBARD: Okay. Which corresponds to --

18 THE COURT: Very close.

19 MR. HUBBARD: Very similar. It shows the body -- and
20 what they don't show is the animal activity. Our argument
21 is he left them for the animals. There's two bags that
22 were broken into, Merah's and Eli's. Everybody else's,
23 the bags were not broken into.

24 All right. That will be Nahtahn. The first one,
25 he's covered.

1 THE COURT: Same picture.

2 MR. HUBBARD: Very similar, may be the exact same
3 photo, Judge. I think it is.

4 THE COURT: Okay.

5 MR. HUBBARD: And then the last was his elbow, and
6 she talked about that.

7 All right. That is Gabriel. I think that's the
8 exact same photo as 2014A. The only thing I have after
9 that is what's found in the bag. Not prejudicial at all,
10 but showing why would he put stuff here. And then I just
11 had what I was going to talk to the doctor about --

12 THE COURT: As far as neck injury?

13 MR. HUBBARD: Yes, sir.

14 All right. And then Abigail, how she came, wrapped
15 up. Same photo, 2015B.

16 THE COURT: Okay.

17 MR. MADSEN: First of all, I understand what Rick is
18 trying to do. He balked because he didn't want them in
19 the first phase because he knows that they'll inflame the
20 passion in the second phase. And that's kind of the crux
21 of our argument. Depending -- there's certainly no reason
22 that if some of the photos do come in, they -- be in black
23 and white, kind of mute that passion.

24 MR. HUBBARD: My argument had nothing to do about --

25 MR. MADSEN: Especially if you need them for Dr.

1 Ross, you know, if they're going to point out this or
2 that. Black and white doesn't change that as opposed to
3 color.

4 MR. HUBBARD: My comeback to that is this, they were
5 putting color photos in in the guilt phase because they
6 thought it served their purpose for their client. And,
7 Judge, I fought to keep them out because I thought it was
8 inappropriate at that time because I think it goes to the
9 crime and to his character. So these are perfectly
10 appropriate here. It's not to inflame the passion. It's
11 to show what I think I'm actually not only entitled, but
12 what I have to show, the character of the Defendant and
13 his crime. That's what the argument is going to be. And
14 whatever argument they were going to make in that first
15 half using their photos, they're still entitled to make
16 that argument in the second half. It won't be that he's
17 not guilty, but that he has mental illness. They're going
18 to argue mental illness in the second phase. And so say
19 only use black and white, they weren't even willing to use
20 black and white.

21 MR. MADSEN: It just interjects that passion.

22 MR. HUBBARD: Which is what they were going to
23 interject. So, to me, it just makes no sense.

24 MR. YOUNG: We were trying to take the sting out of
25 it --

1 COURT REPORTER: Judge, I can't hear.

2 THE COURT: Boyd said we were trying to take the
3 sting out of it in the first phase and then he stopped.

4 MR. MADSEN: And there's a portion that we've got to
5 try to minimize what we potentially know is coming down
6 the pike. Like I said, jurors see those images -- I mean,
7 how can you not see that and not be inflamed?

8 MR. HUBBARD: My comeback to that is this. It was
9 strategy on their part and they were willing to risk
10 inflaming the jury at a time you can't, can't introduce
11 these. I have case law, as Your Honor sees. This
12 shows -- they're not opening these children up. This
13 shows the condition they were in. You can't tell when
14 they're in the bag, you have to take them out.

15 THE COURT: Okay. I got your argument.

16 MR. HUBBARD: Okay.

17 MR. YOUNG: We thought that these pictures should
18 have been shown to the jurors during voir dire, that
19 jurors should have the opportunity to see these pictures,
20 to know what they were getting into to decide whether or
21 not they were going to be too emotionally overcome based
22 on the graphic nature of the pictures, at voir dire to
23 answer whether or not they could still be fair and
24 impartial. We were denied that. We filed a motion where
25 we had black and white photos, one of each of the

1 autopsies that we thought were appropriate as a way to
2 show them. And yes, we got denied on that. We then had
3 the color copies that we offered at several different
4 points during the first phase of the case. We were denied
5 on that as well. At this point in time, if the State is
6 allowed to show photographs, in order to minimize the
7 overwhelming emotional nature of them, they should be in
8 black and white.

9 MR. HUBBARD: The problem with the black and white is
10 the evidence as far as striations, anything like that is
11 gone. You have to have texture. And they were going to
12 do that themselves, so -- I'm getting -- everybody is
13 getting redundant at this point. Your Honor, I will tell
14 you, in State V. Finkley, we put in a video showing a man
15 burned to death and bleed out. We have pictures of his
16 charred torso. Because it was circumstance of the crime,
17 it showed the character of the Defendant. He knew the man
18 was going to burn up when he poured gas on him and lit him
19 on fire.

20 THE COURT: I remember that case.

21 MR. HUBBARD: It was God awful because you actually
22 saw it happen. It came in, the video and the pictures.
23 And then not only that, we brought in a rack to put his
24 clothing on --

25 THE COURT: I read that case.

1 MR. HUBBARD: And it was affirmed.

2 MR. YOUNG: Your Honor, this is not what happened on
3 August 28th. This is a natural course of decomposition of
4 over two weeks during the summer in the South.

5 MR. HUBBARD: Which is our argument, that he intended
6 that.

7 THE COURT: I understand. I've got y'all's argument.
8 Let me study it a second. This is my first opportunity to
9 see all of them. So y'all have and I haven't. Give me a
10 minute. I understand y'all's argument very clearly. It's
11 easy. There's a big bright line right between y'all.

12 (Whereupon, a short break was taken.)

13 THE COURT: In the cases I've read, State versus
14 Diehl, talks about autopsy photos, as does Kornahrens,
15 it's K-O-R-N-A-H-R-E-N-S. State versus Powers and State
16 versus Johnson. And I understand the probative of the 403
17 analysis is a broader probative value standard in the
18 sentencing side of a Capital trial. All these talk about
19 what happened and how they described the nature of the
20 crime and the character of the Defendant and all the cases
21 talk about the unpleasantness. But the probative value --
22 him putting them out there in the bags, that was a much
23 easier call than these autopsy photos of the bag and then
24 the body in the bag on the table. In my understanding of
25 the case law, would be allow for the State to show what --

1 the character and the conduct of cramming the children in
2 the bags, that -- whatever that depicts, his, I'm going to
3 call it lack of respect for their bodies. I won't comment
4 that in front of the jury, but his conduct of packing the
5 children in bags and contorting the bodies in different
6 fashion, putting them out there in the woods, albeit it
7 very unpleasant. I think the State has a right to go into
8 that as to show what he did. And the pictures on the side
9 of the road don't show that. So Dr. Ross's picture of the
10 neck, Solicitor Hubbard did not say he was going to try to
11 use those unless Dr. Ross needed those to explain the
12 nature of the injuries. And that's not really before me
13 now, but I understand -- I was thinking so I could
14 probably rule on those after I hear whatever she -- we may
15 need to proffer for her. But I think, basically, it's two
16 photos per child except for several photos showing items
17 inside the bag maybe. Considering the case law I just
18 cited, 401, 402, 403, they are admissible, even though
19 very unpleasant.

20 MR. MADSEN: Your Honor, how about our request for
21 black and white?

22 THE COURT: You know --

23 MR. MADSEN: I mean, it shows the bodies then
24 contorted -- and I know Rick said that you can't get the
25 texture in that. But until you see them, you don't --

1 MR. HUBBARD: You also lose, you lose everything. I
2 mean, there's --

3 MR. MADSEN: You can tell by the pattern.

4 MR. HUBBARD: You can. And that's fine, you can
5 argue that. But to me, Judge, it just shows reality. I
6 mean, it just shows the reality and that's all this is
7 about.

8 MR. MADSEN: Well, I mean, none of those -- how -- I
9 mean, he's the one who told them. That's never been
10 contested and, obviously, he's not charged with unlawful
11 disposing of the bodies. I mean, it's just not relevant.

12 THE COURT: Can I see one of them in black and white?
13 Just to see it. That way I considered it. You got a
14 black and white? This is -- which child is that?

15 MR. MADSEN: This is Eli.

16 THE COURT: The color ones aren't any less graphic
17 than the black and white ones. A couple of the black and
18 whites almost look more graphic to me. Those are tough.
19 But under the circumstances of the case, they're
20 admissible.

21 MR. MADSEN: One more issue. So the jail ran out of
22 Tim's meds, so he got a half a dose of Geodon. They're
23 hoping to get more in --

24 THE COURT: And who wrote -- I'm sorry. Earlier, Dr.
25 Maddox, when she came, she issued a new prescription

1 because Captain Joyner got it and transmitted it to the
2 jail. I was part of a text message and told him to help
3 manage that and administer it and he did. And yet, we're
4 already out again.

5 MR. MADSEN: Well, he did not get a full dose
6 yesterday. And they're hoping that they come back in, but
7 he's not had a full dose of his Geodon. He's had a half
8 dose.

9 THE COURT: All right. We'll do our best.

10 MR. MADSEN: Your Honor, my understanding is that the
11 jail just ran out, not Tim specific.

12 THE COURT: Okay. Find out the status of the
13 refills.

14 (WHEREUPON, Court's Exhibit numbers 112 and 113 were
15 marked for identification only.)

16 THE COURT: 112 and 113 is a letter from Tim, Jr. to
17 Amber, that will be 112. 113, a letter to Rick Hubbard
18 from Tim, Jr. It is three or four lines. That is the
19 Amber letter right there, that is 112. Anything else?

20 MR. YOUNG: During my opening, I would intend to tell
21 the jurors that if one Juror decided that life was the
22 appropriate punishment, then the punishment would, in
23 fact, be life and the case would be over.

24 THE COURT: Consistent with my ruling, I have ruled
25 consistent on that. I think that is against case law,

1 what you are saying. I understand why you want to say.

2 MR. YOUNG: It is the law.

3 MR. HUBBARD: Not in America.

4 MR. YOUNG: In South Carolina, right here in
5 Lexington County. It is the law.

6 THE COURT: We will put that on the record.

7 MR. YOUNG: We can do it in the morning.

8 THE COURT: Let's put it right now while Joy is fresh
9 on it. I have ruled on it so he is just going to repeat
10 it and I will rule again. He wants to say in his
11 opening--

12 MR. YOUNG: During my opening I would intend to tell
13 the jurors that if one Juror decided that life was the
14 appropriate punishment then the punishment would, in fact,
15 be life and the case would be over.

16 THE COURT: And the Court is telling him not to argue
17 that. At closing, the Court will give a consistent
18 instruction used during jury qualifications, that a Juror
19 cannot be coerced into abandoning their moral position,
20 whatever that language was. I'm going to stick consistent
21 with that language that we -- I used during Juror
22 qualifications. All right. See y'all in the morning. We
23 will start at 9:00.

24 (Whereupon, the trial will resume the next morning at
25 9:00 a.m.)

June 6, 2019

(Whereupon, the jury came into open court at approximately 9:05 a.m.)

THE COURT: Good morning. Everybody have a nice break? Anybody have any issues going on outside? Anybody try to communicate with you, talk to you, influence you in any way? Everybody still confident they're living up to -- all right.

We've got just several days left before the case will be over with. So since the jury box was crowded and the jury room was crowded, I felt comfortable we'd get through with just two alternates, so I excused the four and that's why they're not here. So it's just 14 of us now. I make 15, the Judge and jury -- or jury and Judge. Nobody more important than you.

Anyway, we're about to begin the second half, phase two. They'll get an opportunity to speak, to summarize, to present to you what evidence they're going to present regarding aggravating and mitigating. So that's what we'll consider now. I'll give you instructions like I did last. We'll take breaks, same as before. So continue taking your notes. Now, I want to make certain that the notes for the jurors that were excused, if you see them, I want to preserve them and keep them because, like I told y'all, those are your notes. And I want to make certain

1 they get theirs if they want them or don't want them. If
2 they don't want them, that will be fine. If y'all see
3 them in the jury room and can identify they were one of
4 the four -- because y'all know each other. Y'all have
5 been together. So let me know or let the clerk know or
6 the bailiff know and we'll put them in the same box. We
7 got some. So with that, you're still under oath, the same
8 oath you took before, consider the case and the facts.
9 With that, I'm going to step down. Ms. Mayes.

10 MS. MAYES: Your Honor, may it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. MAYES: Time always reveals the truth, no matter
13 what effort he took to conceal it. Timothy Jones never
14 intended to be here to get caught. His plan was to
15 destroy the bodies of his children and to escape justice.
16 Then he threw them in trash bags and left them far away
17 from everyone and everything that they loved. You've
18 heard so much evidence. You've heard things that no one
19 should ever have to hear. But the most important words
20 are still left unspoken, who the children were, who they
21 could have been. A light they brought to all of those
22 around them. Five of the most beautiful souls. You heard
23 Amber's letter to Merah. You heard her begin this letter,
24 Merah, my sweet daughter. She wasn't able to finish that
25 letter, but you heard the desperation in her words as she

1 spoke to her. If she would have finished, Merah, you are
2 bright, beautiful and smart. You were an answered prayer
3 and I will always, always love you, Mommy. That beautiful
4 girl was strangled to death as she pleaded for her life.
5 She begged him, No, no, no. She looked him in the face
6 and said, Daddy, I love you. He took her life anyway.
7 And he put her in a trash bag, left her far from home for
8 the wild animals. When Merah was found, the animals had
9 taken away her hand. You also heard about Eli. When Eli
10 was found, he was wearing a tee-shirt from the school that
11 he loved, Saxe Gotha Elementary. And that shirt said,
12 Power of One. And you're going to hear more this week
13 about why that is so fitting. Because when those children
14 walked through the doors of that school every morning,
15 they knew they would be loved, cherished and they were
16 safe. You'll hear more about Gabriel and Abigail. They
17 were happy babies. They were adored by their siblings,
18 who would do anything and everything under the sun to make
19 those babies happy. Gabriel and Abigail, called Elaine,
20 just two and one, innocent, just learning to talk. He
21 didn't hesitate when he took that belt and choked the life
22 from them. You heard the reality of Nahtahn's life in
23 that home on South Lake Drive, how he could never seem to
24 please his father. Nahtahn was named after a warrior and
25 Nahtahn was a warrior until the end, but he never stood a

1 chance in that man's world. You heard about those final
2 moments of his life when Amber called. He must have felt
3 hopeless at that point, exhausted by the circumstances of
4 that life. You heard how small he was, 43 inches, that's
5 three feet, seven inches, defenseless. Yet, he kept
6 going. He kept going in that long agonizing fight to the
7 end. Nahtahn never gave up. He took his life anyway.
8 You've heard so much evidence and now you're going to hear
9 more. It's going to involve the character of the
10 Defendant. You'll hear from Nahtahn's teachers, who were
11 his protectors. You'll hear how they tried to intervene.
12 And for all of the children, you'll hear what's called
13 victim impact testimony. And under the law, that's
14 testimony that allows you to hear about their own unique
15 characteristics, those special qualities they had that
16 made them absolutely irreplaceable to those who loved him.
17 Remember these five children. It's taken much time to
18 arrive at this moment in this courtroom on this day. For
19 justice, it's not too late. It's never too late. Another
20 aspect of this phase that we call the sentencing phase is
21 what's called evidence in aggravation. And that's
22 evidence when there are certain circumstances that make it
23 a case where the State finds it fitting and appropriate to
24 seek the death penalty. In this case, there are two
25 aggravating circumstances which apply: The murder of a

1 child under eleven, and we know that's occurred because we
2 know that each of these children are under eleven, not
3 just one, but five. The second aggravating circumstance
4 under our law is what's called the murder of two or more
5 persons during one ongoing course of conduct. And in this
6 case, again, we know from evidence in the guilt phase that
7 that occurred. All of these children were killed on the
8 same night in the same place pursuant to one ongoing
9 course of conduct at his hands. These murders were all
10 interconnected and I submit those aggravating
11 circumstances have already been proven beyond a reasonable
12 doubt. Just as the State will present aggravating
13 circumstances, the Defendant will also present evidence in
14 mitigation, known as mitigating factors or mitigating
15 circumstances. And I echo what my colleague, Mr. Graham,
16 said to you earlier at the very outset of this trial, as
17 you listen to that evidence, ask yourselves whether that
18 evidence is meant as an explanation or is it an excuse?
19 When we talk about the character of the Defendant, which
20 is a certain aspect of this phase that we can only offer
21 now or would not have been able to offer in full in the
22 guilt phase, it's going to involve several things. It's
23 going to involve evidence about the crimes, the condition
24 in which he left those bodies, the bodies of his children.
25 You're going to hear more about that. But also when we

1 talk about the character of the Defendant, keep these
2 things in mind, some evidence that you've already heard.
3 We know that his anger and malice towards Nahtahn extended
4 even into death. We know he took that saw and cut him to
5 the bone because he blamed that child for the murder of
6 his siblings. That innocent child, he blamed. That was
7 the real Timothy Jones when you talk about character of
8 the Defendant. You heard how when Nahtahn stopped
9 breathing, he refused to call 911. All so he could save
10 himself. That's evidence of the character of the
11 Defendant and that's the real Timothy Jones. Throughout
12 that night, he made choice after choice after choice after
13 choice, four more times, to murder his children. We know
14 from his statement to law enforcement that Nahtahn was
15 killed and that Merah and Eli was both witnesses to that.
16 He talked about that. He spoke about that in that
17 statement that you heard. Merah and Eli knew exactly what
18 happened in that house. And Christina Ehlke lived just
19 next door, a stone's throw away. He wasn't going to leave
20 any witnesses alive. So think about that when you
21 consider the character of the Defendant. That's the real
22 Timothy Jones. It was all about buying him more time. It
23 was all about him escaping justice. It was him over those
24 precious children. As a jury, everyone in this room is
25 aware of the sacrifice and duty that you've been called to

1 bear. It's more than any county could ever ask of its
2 citizens. Each of you were qualified to serve because
3 during those initial qualifications, each of you testified
4 that you would consider aggravating circumstances and
5 mitigating and that in the appropriate case that each of
6 you could render a death verdict. So when we talk about
7 that, about why the State is seeking the death penalty, I
8 ask you to keep in mind it's not about vengeance. It's
9 about a punishment that truly fits this crime. An age-old
10 definition of justice is to render every man his due. And
11 now the question for you is what is his due? What is
12 Timothy Jones' due? Throughout this trial, you have heard
13 evidence that is so brutal, so callous and so vicious, it
14 can only be described as evil, a clear and unmistakable
15 evil. He bears sole responsibility for the murders of his
16 children. He alone is responsible for the murders of
17 Merah, Eli, Nahtahn, Gabriel and Abigail. He bears
18 responsibility for the suffering that's been inflicted for
19 the rest of the lives of everyone who loved them so
20 dearly. These wounds that he left, these wounds won't
21 heal. So now you will hear evidence as to why in this
22 case, the appropriate sentence is death. Thank you.

23 THE COURT: Mr. Young.

24 MR. YOUNG: You don't have to kill Tim Jones. You
25 don't kill people who are sick. We respect your verdict.

1 You took time. You were thoughtful. You were careful in
2 your deliberations and we appreciate that. By your
3 verdict, you have guaranteed that Tim Jones will never
4 walk free again, that one day he will die in a prison cell
5 much like that one. Each of you agree during voir dire
6 that in order to determine whether or not a person lived
7 or died that you would need to determine the value of the
8 life and that you would need to examine the whole life in
9 order to determine its value. That's what this phase of
10 the case is about. Each of you told us that you believed
11 that life with the possibility of parole was an
12 appropriate sentence for somebody who had been found
13 guilty beyond a reasonable doubt of the murder of five
14 children. You understood that any argument that says just
15 because he's been found guilty of the murder of five
16 children, he, therefore, deserves the death penalty is an
17 illegal argument. Law is always satisfied with life. In
18 this case, in any case, in the worst case you can imagine,
19 the law is always satisfied with life. Life means life
20 without the possibility of parole. It means that he will
21 die in prison. The way that this decision is made is
22 through what's called mitigation. Mitigation is any
23 reason that any one of you chooses to vote for a life
24 penalty. Mitigation is not an excuse or a justification.
25 No one can excuse or justify what happened and nobody is

1 asking you to excuse it, but it is up to each one of you
2 to decide whether or not there are mitigating factors and
3 what value you place on them. They can come from
4 anywhere. Mitigation doesn't have to be related to the
5 murders. They can be from his life, his family, his
6 individual human frailty. It can be anyone's reason to
7 vote for life. You, through your verdict, have already
8 found the existence of two aggravating circumstances. And
9 you did it as a group and you did it unanimously and you
10 did it beyond a reasonable doubt. Mitigation is
11 different. Mitigation is individual. Mitigation does not
12 have a burden of proof. Not every one of you has to agree
13 on whether or not something is mitigating. You have the
14 power to find mitigation for yourself. It could be
15 something that the defense presents. It can be something
16 that the State presents. It can be something that is
17 important to you in deciding whether or not Tim lives or
18 dies. You decide for yourself what is or is not
19 mitigating. Remember that whole exercise we went through
20 with each of you where one Juror could say I believe that
21 maybe he's mentally ill, maybe he has brain damage. While
22 it didn't rise to the level of a defense, it's still a
23 reason for me to vote for life. And another Juror could
24 say, I disagree, I -- but I think that Tim's family has
25 seen enough death and for me, that is reason to choose

1 life. That's okay. One Juror could say I think that he
2 confessed and he took the police to the children's bodies
3 and to me, that is mitigating. And another Juror could
4 say I disagree, but I think that he can be safely housed
5 in the Department of Corrections for the rest of his life
6 and for that reason, I choose to vote for life. That's
7 okay. Each of you don't have to agree. You're allowed to
8 give whatever value you want to any mitigation that you
9 find. You also understood in voir dire that you don't
10 have to have a reason. Each of you said that you could
11 respect the right of a Juror who's told you I don't have a
12 reason, I can't put it into words, but I feel that life is
13 appropriate for me. You said you would respect each
14 other's right to do that. You can also give life based on
15 your concept of mercy alone. Most of you agree that mercy
16 is not something that somebody earns. It's something
17 that's freely bestowed on another. It's grace. And the
18 law says that if you in your person, your own personal
19 moral choice decides to extend mercy, the law is satisfied
20 with a life vote for that reason. This decision about
21 whether or not a person lives or dies is an individual
22 moral judgment. It's an extremely personal choice that
23 each of you have to make. You all agreed to respect each
24 other's individual moral judgment even if you disagreed
25 with it. You all told us that if you saw somebody being

1 bullied or intimidated out of what they had arrived at as
2 their individual moral judgment or belittled for their
3 moral choice that you would put a stop to it. And if
4 necessary, you would send a note to the Judge. The law
5 anticipates that when 12 people are making an individual
6 moral judgment about whether or not a person lives or
7 dies, disagreement is okay. It's expected. Only if 12
8 people all arrive at the same individual moral judgment
9 for death will Tim be killed. Whatever your 12 individual
10 moral judgments are, the law will be satisfied and the
11 case will be over. Your oath is to meaningfully consider
12 the evidence, arrive at your own individual moral judgment
13 and have that individual moral judgment returned in court.
14 The State is going to present to you some truly horrific
15 images. They're going to show you images of the children
16 in the condition in which they were recovered by the
17 police. This loss and horror doesn't belong to the
18 Solicitor. These children were the great-grandchildren of
19 Roberta and the grandchildren of Tim and Julie, their the
20 nieces and nephews of Travis, Tyler and Jackie. They deal
21 with that loss and that horror every day. But if you can
22 see past that horror, if you cannot be pushed to death by
23 that horror, you can hear past it, you will hear lots of
24 reasons why Tim should get life. You will hear about
25 things that happened to Tim that weren't his fault. You

1 will hear about struggles and opportunities that Tim took
2 to overcome obstacles in his life. You will hear that
3 even in prison, his life has value and meaning to his
4 family. God can use people in dark places. Thank you.

5 THE COURT: I've got to address one thing real quick
6 before we get started. Y'all step in the jury room for a
7 couple minutes and we'll be right back out.

8 (WHEREUPON, the jury was excused from the courtroom.)

9 THE COURT: Y'all said y'all wanted a short break to
10 get rearranged.

11 (WHEREUPON, a short break was taken.)

12 THE COURT: Y'all ready?

13 MR. YOUNG: Yes, sir.

14 THE COURT: Bring them to me, Tommy.

15 MR. SECOR: No, I need to put one thing on the record
16 first.

17 THE COURT: They were close. Hang on, Tommy. Guys,
18 when you say yeah, they run quick.

19 MR. SECOR: Sorry.

20 MR. HUBBARD: I want to put one thing on too.

21 MR. SECOR: I'm doing this to try to prevent
22 requiring argument during the course of testimony
23 regarding admission of photographs of the recovery of the
24 children in Alabama. Just request permission to do so
25 now.

1 THE COURT: Okay.

2 MR. SECOR: My understanding from the Court yesterday
3 is that the photographs are admissible. I would just
4 reiterate that the Defense stipulates to all the
5 information that would come from the photographs. The
6 bags containing the remains, that each bag contained the
7 human remains of the child subsequently identified. And
8 just for the Court and the record, we are speaking about
9 photographs 207A and B, 208A and B, 209A, B, C, D, 210A
10 and B, 211A, B, C, D as well as the video that is marked
11 206. We would just reiterate our argument that because
12 the information is stipulated to, the admission of the
13 photographs brings an arbitrary factor in the proceedings
14 and causes substantial risk of inflamed passion and
15 prejudice of the jury. And for further authority, I cite
16 State v. Brazell, B-R-A-Z-E-L-L, 325 S.C. 65, as well as
17 State v. Torres, 390 S.C. 618 and State v. Waitus,
18 W-A-I-T-U-S, 224 S.C. 12. And just lastly would state the
19 admission of the photographs would violate Tim's right to
20 due process under the Fifth and Fourteenth Amendments as
21 well as Article 1, Section 314, South Carolina
22 Constitution, his right to a fair trial under the Sixth
23 and Fourteenth Amendments as well as Article 1, Section
24 14, South Carolina Constitution and a heightened
25 reliability and prohibition against cruel and unusual

1 punishment, the Eighth Amendment to the United States
2 Constitution, Article 1, Section 15, of the South Carolina
3 Constitution. And, Your Honor, I would just request a
4 final ruling on this at this point so that when the photos
5 are admitted, all that we have to do is say subject to
6 previous objection rather than stopping.

7 THE COURT: Yeah, because I don't want you to have to
8 keep doing that. And that's a very artful presentation.
9 Solicitor, let me hear from you real quick?

10 MR. HUBBARD: Your Honor, we went over all these
11 photos with Your Honor, with the Defense yesterday and
12 explained the reason why we're doing what we're doing. As
13 Your Honor recalls, every single photo from body recovery,
14 to the extent they are opened, it was just to see if they
15 was human remains. They were not pulled out in full, so
16 officers did what they had to do. This shows how they
17 found that crime scene, how they found the children and
18 the stuff they had to take -- where the Defendant had
19 closed the bag, they had to open the bag to identify what
20 they were taking.

21 THE COURT: The State's not required to accept a
22 stipulation as to an element.

23 MR. HUBBARD: That's correct.

24 MR. SECOR: Yes, sir.

25 THE COURT: So, respectfully, the photographs from

1 Alabama will be admitted subject to your objection and you
2 can renew that at the appropriate time.

3 MR. SECOR: Thank you, sir.

4 MR. HUBBARD: One final thing, Your Honor. I had
5 mentioned yesterday under 16-3-20, the State's now moving
6 to incorporate the first phase evidence and testimony into
7 the second phase, which I think is required by statute. I
8 know there was some dispute about Dr. Frierson and Dr.
9 Kruse. I'm moving all testimony per statute come forward
10 into this phase so that we don't have to reintroduce all
11 of this evidence and recall witnesses. And I think that's
12 the purpose of the statute.

13 THE COURT: Okay. Mr. Young.

14 MR. YOUNG: The testimony of Dr. Frierson and Dr.
15 Kruse were limited by court order for the specific purpose
16 of determining not guilty by reason of insanity. That
17 determination has been made by the jury and their
18 testimony is -- testimony of records, any -- all of it is
19 inadmissible for any other purpose and should not be
20 admitted in this case. I cite the Court to our motion and
21 our briefs and our arguments and incorporate all of those
22 records.

23 THE COURT: All right. They're all done. The
24 State's motion to incorporate everything will be done.
25 Whether or not I give a limiting instruction at the end

1 depends on how this phase goes because I want to be able
2 to consider what's been presented if I have to do that,
3 but I don't have to rule on that right now. But my
4 consideration will be toward the end once we hear whatever
5 y'all present. So I'm going to rule the same way as --
6 I'm kind of holding your motion to request a limiting
7 instruction to the very end.

8 MR. YOUNG: Well, Your Honor gave a limiting
9 instruction with regard to Dr. Frierson that his testimony
10 was only admissible for this phase.

11 THE COURT: All right. I am not going to rule on
12 that. Y'all made your motion to limit it. I'm not going
13 to grant that because I don't know what's coming from the
14 witness stand. It's hard for me to say competency and
15 criminal responsibility. And all those issues are so
16 intertwined in what may be presented now, so I don't know
17 that it is against the rules. You keep saying that, but
18 I'm not certain of that yet. I understand how you are
19 reading the order but I am not going to say motion granted
20 and then I'm hamstringing myself. I'm not going to do
21 that. I'm not ruling against you, I'm just not granting
22 your motion. But you're protected.

23 MR. YOUNG: Yes sir, thank you.

24 MR. HUBBARD: The State's ready.

25 MR. SECOR: One last thing, Your Honor. I'm sorry.

1 I just want to make sure that I comply with the Court's
2 order. At the conclusion of the ruling on my argument,
3 you said when the photos are introduced, you can renew
4 your objection. I prefer to not renew. I'd prefer to
5 just say subject to previous objection if that's okay with
6 you.

7 THE COURT: That's what I meant. That's fine. All
8 right. Y'all got all your law out of you? You got all
9 the law out?

10 MR. SECOR: Yes, sir.

11 THE COURT: Ask the Appellate lawyers, geez, y'all
12 are beating me down early.

13 MR. HUBBARD: The State's ready.

14 THE COURT: All right. Bring in the jury now.

15 (Whereupon, the jury came into open court at
16 approximately 9:45 a.m.)

17 THE COURT: Call your witness.

18 MR. HUBBARD: Thank you, Your Honor. The State calls
19 Dave Lawrence.

20 DAVE LAWRENCE, being
21 first duly sworn, testified as follows:

22 THE CLERK: Have a seat, please, sir. Once you're
23 seated, state your full name, spelling your last, please.

24 THE WITNESS: David, middle initial M, Lawrence,
25 L-A-W-R-E-N-C-E.

DIRECT EXAMINATION

BY MR. HUBBARD:

Q You used to be Lieutenant Lawrence?

A Yes, sir.

Q Are you retired now?

A I am.

Q If you would, what are you doing now in your retirement?

A I have a contract polygraph examination services I do for different entities.

Q Does that include Lexington?

A It does.

Q What law enforcement experience do you have?

A I started -- I grew up in a little small town, in Johnsonville, in Florence County where I was a dispatcher and a part-time police officer and emergency medical technician, EMT, with the local rescue squad. I later went to Richland County Sheriff's Department, spent about 13, 14 years with them. And then went to SLED in May of '99 and spent the rest of my career with SLED. I did retire, came back about four years. And then after that, also, I served as Interim Inspector General out at the South Carolina Department of Juvenile Justice.

Q Back in August of 2014, were you with SLED?

A I was.

1 Q What was your rank there and what did you do?

2 A I was the Lieutenant in our Midlands region, which is
3 investigation services.

4 Q As Lieutenant for the Midlands region, were you
5 called upon to become involved in a case involving Mr. Tim
6 Jones?

7 A Yes, sir, I was.

8 Q Do you recall going to Mississippi and Alabama on
9 this case?

10 A I do.

11 Q Who did you go with?

12 A I went with Lexington County Investigator Sergeant
13 Adam Creech and FBI Agent Dave Mackey.

14 Q When did y'all get to Mississippi?

15 A We got to Mississippi September the 8th.

16 Q September the 8th --

17 A Of 2014.

18 Q Yes, sir. On that day, was an interview conducted
19 with Mr. Jones?

20 A Yes, the interview was conducted by Agent Mackey and
21 Sergeant Creech.

22 Q And you were not involved -- directly involved in
23 that interview?

24 A I was not.

25 Q After that interview, what information was shared

1 with you about what the Defendant had said?

2 A I was briefed by Sergeant Creech who informed me that
3 Jones had admitted to killing his five children and had
4 agreed to try to help locate the bodies.

5 Q Now, when the interview on the 8th was conducted,
6 what time of day, roughly, was it?

7 A It was late that afternoon whenever we got there.
8 This was into the night. It had to be probably 8:00, 9:00
9 o'clock p.m., at least, or so. That would be central
10 standard time as well.

11 Q Was any effort made to travel to find the bodies that
12 night or did y'all wait till the next day?

13 A No. It was nighttime. And the information I had
14 received that the bodies were still quite aways, away from
15 where we were, so we decided obviously we needed to wait
16 until the daylight hours.

17 Q The next day, did y'all have a briefing before y'all
18 left?

19 A We did. Jones was brought over to like a conference
20 room there at the Court House, which was in the complex of
21 the sheriff's office and the detention center. And when
22 we did, several of us were there, myself, Agent Mackey,
23 Sergeant Creech, several other Mississippi State
24 investigators, they were there. And we were trying to
25 look at some maps and Google Earth search images and try

1 to get somewhat of a general idea of the vicinity of where
2 we were, you know, going.

3 Q And did y'all at some point get in y'all's various
4 vehicles and start heading towards Alabama?

5 A We did. There, obviously, was a caravan, so to
6 speak. I drove, Agent Mackey rode with me. We were
7 directly behind a marked patrol unit that had Jones and
8 Sergeant Creech in it. There were, at least, two other --
9 two or three other vehicles as well, too, that was with
10 the Mississippi State police officers as well as the
11 Sheriff of Smith County in Mississippi as well.

12 Q About how long a ride was this or about how far did
13 y'all have to go?

14 A It was quite aways. We traveled what I thought,
15 certainly, at the time between 175, maybe 200 miles away
16 from where the sheriff's office was, where we actually
17 started.

18 Q Did y'all make any stops along the way?

19 A We did. When we left the sheriff's office and got
20 out to I-20 at the interstate, we stopped at a convenience
21 store. Everybody wanted to make sure their vehicles were
22 gassed up. We didn't know how far we were going to be
23 going. And, also, during that time, I actually bought
24 Jones something to eat from Taco Bell.

25 Q That was for the ride?

1 A Yes, sir. It was -- that was around -- at that time,
2 it was around about 12, you know, 45 p.m. or so, again,
3 central standard time that we were there. That was at the
4 time that I had purchased him something to eat.

5 Q About what time did y'all actually get to where the
6 children's bodies were?

7 A It was closer between like 2:30 to 3:00 p.m. at that
8 time.

9 Q So it was several hours after you had made that stop
10 to get him some food?

11 A It was several hours. We went down I-20 east to
12 Meridian, Mississippi, and then took Highway 19 to Highway
13 10 and went quite a ways. Then we got to some area that
14 they refer to as Oakhill between Camden and Greenville,
15 Alabama.

16 Q How would you describe that area?

17 A It was very remote. We went for miles on end, you
18 know, without seeing houses, then maybe you may see one.
19 But it was an extreme rural area, more than what we have
20 here in Lexington County.

21 Q Did y'all at any time have to stop, turn around, make
22 any U-turns or do anything like that?

23 A Well, as we got on Highway 10 and, obviously, we were
24 quite a ways in, like I said, I was driving the vehicle
25 that was directly behind the patrol car that was carrying

1 Jones. They slowed down two or three times. Because we
2 were in an area -- if I could maybe try to describe it to
3 you, wooded area, two-lane highway and they had several
4 like dirt driveways, so to speak, off of it, as if you
5 were about to enter a hunting club is what it was and they
6 all looked the same. And the car slowed down a couple
7 times and we actually turned around and went into one of
8 them just for a brief moment. Nobody even got out it was
9 so brief. And then the patrol just got back on the
10 highway and proceeded on, so we said, obviously, this is
11 not where it is. It just -- again, we were letting him
12 try and direct us to where we were going.

13 Q Is that the only time y'all had to regroup and kind
14 of had a miscue?

15 A It was.

16 Q How did that strike you, sir?

17 A Well, I said I could understand, you know, this area
18 looks the same, but, obviously, you know, that wasn't
19 where we were supposed to go. So again, we were letting
20 him lead us to wherever we were going.

21 Q Prior to this, was all the information from him that
22 he had only been down that road one time before and that
23 was to dump the bodies of his children?

24 A As I recall, that is correct.

25 Q So now you're going in the opposite direction and he

1 was able to get you there?

2 A Yeah. And that's one -- something I was obviously
3 impressed with the fact that he was taking us to these
4 bodies in the reverse order from where he originated from
5 to where he had dumped them off. So, you know, we didn't
6 go back to where -- the original -- location was where,
7 apparently, the children were killed. We were going from
8 the location where he had gotten arrested back to the
9 bodies. So yeah, we were in reverse order trying to
10 locate these bodies.

11 Q You finally turned on the appropriate dirt road to
12 locate these bodies. How would you describe that road and
13 the drive in that area?

14 A The road, again, kind of looked similar to where we
15 actually turned around, but it was a -- again, a dirt,
16 kind of gravel road. Again, it looked as though that you
17 were going into an area that might be, you know,
18 somebody's hunting club. And we drove about 40 to 50
19 yards or so off of the highway until we got to -- which
20 was woods on both sides of the road. We got to an area
21 that was much more open. It appeared to be clear cut and
22 logged at one time, clay, dirt and we actually stopped the
23 vehicles. And whenever I saw the patrol car doors come
24 open, I thought oh, okay, we are -- we're actually going
25 to get out on foot and then look.

1 Q When you got out, about how far away were the bodies
2 of these children located?

3 A They were, at least, another hundred yards, maybe 150
4 yards away from where we actually stopped after driving
5 about 40 or 50 yards off the road.

6 Q Do you recall Mr. Jones at some point pointing out
7 the direction where those bodies are?

8 A I do.

9 Q About how far away was he from where the bags of
10 these children were actually located?

11 A You had to walk, you know, a ways, but whenever he
12 got out of the car, he -- he didn't wander around. He
13 just walked almost like directly to a location that was in
14 the brushy, again, kind of clear cut area and probably
15 as -- if I can try to illustrate something. Maybe about
16 as far as where you're standing, Mr. Hubbard, to the back
17 of the courtroom.

18 Q Once he did that, where did Tim Jones go?

19 A We made a decision then that he needed to leave the
20 scene. So Sergeant Creech and the officers who were in
21 the marked unit, they said go ahead and take him back.
22 And myself and Agent Mackey stayed at the location.

23 Q Let's talk about that for just a minute now. Who all
24 was at the scene at this point?

25 A It was Sergeant Creech, Jones, two uniform officers

1 from the Smith County Sheriff's Office, Sheriff Charlie
2 Crumpton, two agents from the Mississippi State Bureau of
3 Investigation, myself, Agent Mackey. And it was very
4 close to that time that an Alabama State Trooper came up.

5 Q Once an Alabama Trooper came up, did other officers
6 start arriving from local law enforcement?

7 A Yes.

8 Q Let's talk about that. Is there a lot of officers
9 showing up on that scene?

10 A There was a lot of officers who showed up after that.

11 Q Is that one of the reasons why Sheriff Crumpton
12 wanted to get Tim Jones out of that area before the crowd
13 came?

14 A Yes, and there was really no need for him to stay
15 there any longer at that point. He just needed to be
16 taken back to, you know, where we came from.

17 Q You mentioned Sergeant Creech went back with the
18 Defendant?

19 A That's right. He stayed with him the whole time.

20 Q As a SLED agent, Lieutenant, who was the Commanding
21 Officer on that scene?

22 A Well, at that time, I was.

23 Q What was your responsibility as far as those bags
24 that contained what we now know are the bodies of the
25 children and that whole scene?

1 A Like we just stated earlier, obviously, whenever we
2 discovered the bags there, the State Trooper that was
3 there with us notified a coroner's office. We ended up
4 notifying two coroner's offices because we weren't even
5 exactly sure what county we were even in. And then,
6 obviously, he called -- contacted his superiors. And then
7 yes, quite a few officials from the local sheriff's
8 office, the Alabama State Police came and next thing I
9 knew, there were two helicopters flying over us. They
10 were dropping off Alabama State Law Enforcement officials
11 in suits that were there. So, obviously, word had got out
12 that, you know, five dead bodies of children had been
13 located in this remote area of Alabama. So yes, quite a
14 few people showed up.

15 Q Now that all these other officials know that there's
16 dead bodies, dead children on Alabama soil, but you had
17 information from the confession from the day before the
18 murder happened in South Carolina, what was your role?

19 A My role then, you know, is this, yeah, this is a
20 situation where you're in somebody else's jurisdiction,
21 but that wasn't necessarily where the actual crime or the
22 killings actually took place. At that time, we had
23 information, we had reason to believe that the children,
24 you know, were killed in Lexington County. So we were
25 going to have to make a very methodical coordinated effort

1 with the local authorities and with us. And what I was
2 discussing with the Alabama State and the local
3 authorities there is that even though this is in your
4 jurisdiction, I would really prefer if our crime scene
5 from Lexington County Sheriff's Office and from SLED came
6 and participated in the initial processing of the crime
7 scene. So -- and as well as coordinating with the
8 coroner's office there and the coroner's office here and
9 coordinating with the prosecutor's office in that
10 jurisdiction and our prosecutor's office here because I
11 knew this was going to be, you know, a joint effort. And
12 yeah, we've got five dead bodies and I was just asking
13 everybody if we could just please -- can we cooperate,
14 let's put this thing together like we're supposed to.

15 Q Did that take you a while to make sure everybody
16 understood you needed to be running this scene?

17 A It did. We even had -- the actual acting Chief of
18 the Alabama State Bureau of Investigation was there. We
19 had to coordinate that. I actually contacted Mr. Hubbard,
20 who was Deputy Solicitor at that time and had him contact
21 the prosecutor in that jurisdiction to coordinate that.
22 We actually had the coroner, two coroners from that
23 jurisdiction contact the acting coroner here in Lexington
24 County to coordinate what we were going to transport, you
25 know, the bodies. So yeah, it was a rather sensitive

1 coordination effort there on everybody's behalf. And,
2 obviously, they were very eager themselves to process this
3 crime scene because, again, you know, you've got five dead
4 bodies that's in your jurisdiction. So yeah, it was quite
5 a coordinated effort.

6 Q About what time did you get on that scene now?

7 A We got there between maybe 2:30, 3:00 o'clock or so.

8 Q Now, SLED, CSI Brittany Burke, who we heard from
9 earlier, and CSI agent with Lexington County, about what
10 time did they get on the scene?

11 A They didn't get to us until almost 7:00 p.m., again
12 central standard time.

13 Q So you had to hold that scene until then?

14 A Correct.

15 Q While you're waiting, did y'all mark off the scene,
16 do any kind of crime scene tape?

17 A Yeah, the State Trooper from Alabama, Trooper Morgan,
18 he and I just put up some crime scene tape between two
19 trees. It was kind of like a little ways away, but then,
20 again, you know, we're in a big open area. And also
21 during that time, I had asked the Alabama State
22 authorities would they take some aerial photographs and
23 footage for us since they had two helicopters there. And
24 then the Alabama State Police Crime Scene, we asked if
25 they could participate in kind of like this outer

1 perimeter cursory search to see if we saw anything around
2 where we were, not in the immediate area where the bags
3 were, but like in the outer perimeter area during that
4 time.

5 Q Is there anything specifically you're looking for?

6 A We did have some information about the possibility of
7 some saws or saw blades on that information. We did look
8 for anything such as that or anything else that may be of
9 any kind of evidentiary value, but we did not locate
10 anything. We actually called asking one of the Alabama
11 State Crime Scene guys days after that would he send
12 another team out there, even after we left, and see if
13 they would just search again. And that turned out to be
14 with negative results as well.

15 Q You're there during the daylight hours. What's the
16 weather like and how's that like out there?

17 A Well, it was September. We were in Alabama, it was
18 hot. It was very hot. It was very dry, very hot.

19 Q I want to show you what's been previously marked as
20 State's ID 206 and see if you recognize this?

21 A I do.

22 Q How do you recognize it?

23 A This is a compact disk that I actually initialed just
24 a few days ago as well as viewed it a few days ago.

25 Q And what does this depict?

1 A It is a video of -- as if you were walking up to the
2 bags that were in the woods.

3 MR. HUBBARD: Your Honor, I move this into evidence.

4 MR. MADSEN: We would just renew our pretrial --

5 THE COURT: Pretrial objection is noted. It will be
6 admitted.

7 (WHEREUPON, State's Exhibit number 206 was admitted
8 into evidence.)

9 MR. HUBBARD: If I may publish?

10 THE COURT: You may.

11 (WHEREUPON, State's Exhibit number 206, a video, was
12 played for the jury.)

13 Q These bags weren't just on the side of the road or
14 just slightly off this road, they were way on up?

15 A Yes, sir.

16 Q Besides the visual senses you used to find these
17 bags, is there anything else?

18 A The smell.

19 Q How would you describe that?

20 A Describe the smell? Well, it is a smell of,
21 obviously, decomposed human remains. And there are
22 several, I guess, illustrations I could use to try to
23 relate it to you so you could, but it was -- it was
24 horrendous.

25 Q Now, when CSI got there, you said that was about 7:00

1 o'clock?

2 A Correct.

3 Q Was it getting dark or was it still daylight that
4 time of the year?

5 A It was beginning to get dusk and nearing dark.

6 Q What did you do -- what, if anything, did you do and
7 the other officers on the scene to assist CSI?

8 A Well, I'd ask the -- I knew it was going to take a
9 while, again, for our crime scene to get there. So I had
10 asked the Alabama State authorities would they try to get
11 us a light source because I knew we would be into the
12 night, you know, with these. Again, I knew we were going
13 to be there for a while. So they were able to provide
14 some light source, you know, for us, I think through the
15 local fire department. And then at that time, I -- we
16 wanted to, first of all, obviously make sure what was
17 actually inside of the bags without disturbing it no more
18 than what we had to. So one of the coroners, I asked him
19 would he provide some body bags for us, and they did. So
20 after a lot of photography and after Burke, Ms. Burke
21 wrote the labeling, you know, the bags in the immediate
22 area, that's whenever we started slowly taking each bag
23 one at a time, lifting it no more than what we had to and
24 putting it on the opened unzipped body bag. Because we
25 wanted to make sure -- we were trying to preserve

1 everything we could. We didn't want to try to lose
2 anything. And it was after we had placed it on the open
3 body bag that we cut or opened the bags as much as we
4 could to actually see what was actually inside.

5 Q Was it your intention to actually pull out the bodies
6 from the bags or just to identify it was human remains?

7 A No. We wanted to make sure what was in the bags, you
8 know, to begin with. So immediately, whenever we were
9 able to identify what appeared to be that of a human body,
10 that's where we stopped, zipped the body bags up and then
11 labeled them accordingly. And that's what we did actually
12 one by one on each one. So that's why I knew we were
13 going to be there for a while. And we were trying to
14 preserve everything that we possibly can, but, again, only
15 be able to do that enough so we could identify there was a
16 body in the bag.

17 Q Did you participate in lifting those bags up and
18 putting them on the body bags?

19 A I did.

20 Q Was it at your direction that the bags were opened?

21 A They were.

22 Q And were you there to see what the contents were?

23 A I did.

24 Q I'd like to show you some photographs.

25 A Okay.

1 Q Let's begin with State's ID 207. And as a reference
2 point, I'm going to use it's already in evidence State's
3 160.

4 A Okay.

5 Q These placards that are on these bags. Who put these
6 placards there?

7 A Ms. Burke did.

8 Q It's one, two, three, four, five. Does each number
9 stay with the child that's in that bag?

10 A It did.

11 Q All the way to autopsy?

12 A Correct.

13 Q So let's look at number 1 that we have since
14 identified as Elias Jones. And this bag that I've got
15 them in, is that your initial on this gold bag?

16 A It is.

17 Q I show you two photos, State's ID 207A and B. Do
18 these show bag one and the open contents?

19 A They do.

20 MR. HUBBARD: Your Honor, I offer these into
21 evidence.

22 THE COURT: Subject to your objection.

23 (WHEREUPON, State's Exhibit numbers 207A and 207B
24 were admitted into evidence.)

25 Q Looking at 207A and B, is 207A how the bag was found

1 and 207B when it's on the body bag?

2 A That's correct.

3 MR. HUBBARD: Your Honor, if I may publish it?

4 THE COURT: You may.

5 (WHEREUPON, State's Exhibit numbers 207, 207A and
6 207B were published to the jury.)

7 Q And again, sir, y'all didn't open the bags up
8 completely, did you?

9 A No sir, we did not.

10 Q Your purpose was simply to identify human remains at
11 that point?

12 A That's correct.

13 Q So number one as been identified as Elias Jones. I'd
14 like to look at number two and, again, referencing State's
15 160, placard number two. It's now identified as Merah
16 Jones. State's ID 208, two photographs, 208A and B. Does
17 this show the same process, how the bag was found and then
18 on the body bag?

19 A They do.

20 MR. HUBBARD: I offer these in evidence.

21 THE COURT: Over your objection.

22 (WHEREUPON, State's Exhibit numbers 208, 208A and
23 208B were admitted into evidence.)

24 MR. HUBBARD: If I may publish?

25 THE COURT: You may.

1 (WHEREUPON, State's Exhibit numbers 208A and 208B
2 were published for the jury.)

3 Q So A is how the bag is found and then B is the slight
4 opening so you can confirm the remains of Merah Jones?

5 A That's correct.

6 Q Number three has been identified as Gabriel Jones.
7 State's for ID 209, got four photographs. Do these depict
8 the bags -- or this bag as it makes its way to the body
9 bag and then the opening?

10 A They do.

11 Q Now, you've got four photographs. When you initially
12 opened the bag, did you see the body in the bag?

13 A You could not on this one. There was -- as you see,
14 there was -- appeared to be some type of bedding,
15 quilt-like there as you can see. So we actually had to
16 probe around just a little bit more to actually see what
17 was in that bag. And we actually did have to cut that one
18 open as opposed to you can see the previous two, but,
19 yeah, we actually did have to cut that one open.

20 MR. HUBBARD: Your Honor, I move these into evidence.

21 THE COURT: Subject to your objection.

22 (WHEREUPON, State's Exhibit numbers 209, 209A through
23 209D were admitted into evidence.)

24 Q Looking at A and B, this is just the bag -- unopened
25 bag as you found it and as it's now sitting on the body

1 bag?

2 A That's correct.

3 Q It's not opened at this point?

4 A It is not.

5 Q Now, looking at C and D, C is when you opened it and
6 saw the bedding and D is when you noticed -- or were able
7 to locate human remains?

8 A Correct.

9 Q This, again, would be Gabriel?

10 A That would be number three, Gabriel, yes.

11 Q We can move to number four, which has been identified
12 as Abigail Jones, State's ID 210, two photos A and B. A
13 show where it was found and then B, the open bag?

14 A That's correct.

15 MR. HUBBARD: Move these into evidence.

16 THE COURT: Subject to your objection.

17 (WHEREUPON, State's Exhibit numbers 210, 210A and
18 210B were admitted into evidence.)

19 Q Again, A is how it's found, B is the opened bag?

20 A Correct.

21 Q And finally, number five, been identified as Nahtahn
22 Jones. State's ID 211, again, you see your initials on
23 this bag?

24 A Correct.

25 Q Your initials are on every bag containing these

1 photographs, are they not?

2 A They are.

3 Q We've got 211A, B, C, then D. Again, this bag was
4 not opened by wildlife or animals?

5 A It was not.

6 Q Looking at A and B, is that how the bag is found and
7 then the bag on the body bag?

8 A That's correct.

9 Q C and D, when you opened the bag, could you see the
10 body?

11 A We could not. This one had some more bedding that
12 appeared to be some type of a quilt or sleeping bag type
13 item.

14 Q Then 211D for ID, in that one you see the child that
15 we now know is Nahtahn?

16 A That's correct.

17 MR. HUBBARD: Move these into evidence.

18 THE COURT: Over your objection.

19 (WHEREUPON, State's Exhibit numbers 211, 211A through
20 211D were admitted into evidence.)

21 Q A and B, A's how you found it and B's now the bag on
22 the body bag?

23 A Correct.

24 Q C and D, C is when you open it and see bedding, D is
25 when you see who we now believe is Nahtahn?

1 A That's correct.

2 (Whereupon, a Juror is crying.)

3 MR. HUBBARD: Your Honor, may we take a break at this
4 time?

5 THE COURT: You may. Step into the jury room for a
6 few minutes. Don't talk about the case.

7 (WHEREUPON, the jury exits the courtroom.)

8 THE COURT: We'll stand down for a few minutes.

9 MR. YOUNG: Your Honor, may we make a record real
10 quick?

11 THE COURT: You may.

12 MR. YOUNG: Your Honor, one of the jurors is clearly
13 unable to control herself emotionally. She's sobbing
14 uncontrollably, had to be escorted out of the courtroom.
15 We'd move for a mistrial at this time due to the emotional
16 impact that we were afraid of from these photographs.
17 And, of course, it obviously, happened. This can't be
18 cured when other jurors are seeing it and they are helping
19 her. It is absolutely manifest necessity to grant a
20 mistrial at this time.

21 MR. HUBBARD: Our response to that, it's an alternate
22 who's crying. She's not sobbing uncontrollably. There's
23 no wailing. There's no noise. She was being very quiet
24 about it. And yes, they are looking at her. And when I
25 saw it, I stopped and asked for a break.

1 THE COURT: The Court's observation is she was
2 turning to another Juror -- she's on the end. She was
3 turning toward the only Juror beside her. I couldn't hear
4 her sobbing. She's clearly not wanting to see the
5 pictures, and she is one of the alternates. I'm aware, so
6 I don't think it manifest the necessity at this time to
7 declare a mistrial based upon her emotional reaction,
8 which was quiet.

9 MR. YOUNG: While it was quiet, she had to be helped
10 from the courtroom.

11 THE COURT: I mean, you're describing it accurately,
12 but she wasn't wailing uncontrollably like you described.
13 I couldn't hear it. I noticed her quicker than the
14 Solicitor did. I made eye contact with the Juror beside
15 her and saw what was going on.

16 MR. HUBBARD: And, Your Honor, for the record,
17 everyone working this case has known there's going to be
18 emotions even from jurors. They are human beings. That's
19 not the issue of whether a trial can proceed. The issue
20 is whether they can be fair. And Your Honor, there is
21 nothing so far to indicate these jurors will not be fair
22 and impartial and continue forward in the task that you
23 warned them was going to be tough.

24 THE COURT: I'm going to hear back from one of my
25 detail members from SLED as to her condition and see

1 what's going on with her. So we'll stand down just for a
2 few minutes.

3 MR. HUBBARD: Thank you, Your Honor.

4 MR. YOUNG: Your Honor, that would be hearing from
5 the detail on the record as to her condition?

6 THE COURT: Pardon me?

7 MR. YOUNG: That would be hearing from the detail on
8 the record--

9 THE COURT: -- well, I mean, it will probably be
10 in-camera, but you'll be able to hear.

11 MR. YOUNG: Yes, sir.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: I spoke with Agent Remion. He reported
14 back to me that the Juror is ready to go again. They
15 stepped outside, the whole jury panel did, stretched their
16 legs and got some air and that she is ready to go forward.
17 She was involved in teaching preschool at some point some
18 time and that was the young kids and the nature of the
19 victims. I will inquire further if you like, but I feel
20 comfortable based upon what his relationship is with the
21 jurors because he knows them all by name now. This is the
22 lead agent. This is the one who sits in front who I was
23 talking to. If you want me to inquire any further, I
24 will.

25 MR. HUBBARD: Your Honor, I would say no. I think if

1 the jury, says she's fine, I think we've got to take it as
2 it is. Any more probing, she might feel like we're not
3 trusting her, might cause a problem.

4 MR. YOUNG: Your Honor, I would request that the
5 inquiry of the SLED agent be put on the record. It is our
6 understanding and belief that possibly one of the jurors,
7 and I don't know if it was that Juror or not, may have
8 thrown up in the jury room and that there were cleaning
9 crews sent in there. It might have been something else, I
10 don't know, but that is per the inquiry that was made.

11 THE COURT: Bring me Agent Remion.

12 BAILIFF: I am sorry?

13 THE COURT: Bring me Agent Remion please, Danny,
14 please.

15 MR. HUBBARD: Again, just for this record, the photos
16 I have shown, Your Honor has seen those. Far more graphic
17 photos in standard murder trials to the extent you can
18 call the murder standard have gone in of abused children,
19 dead bodies. This is just a glimpse inside a bag, but I
20 think the fact that they know it's children, that's the
21 emotional part. Just so Your Honor knows what I intend to
22 do when we get to the autopsy, I'm not going to publish.
23 I think they go in. This jury can look at them -- like
24 all evidence, they can view it as they see fit. But I
25 will not publish out of respect for the jury.

1 THE COURT: Fair enough.

2 MR. HUBBARD: And those kids.

3 MR. YOUNG: Even if she is an alternate, it was
4 witnessed by the other jurors --

5 THE COURT: All right. Go ahead. I'll inquire him
6 after I hear from you.

7 MR. YOUNG: It was witnessed by the other jurors.
8 It's not admissible evidence. This is emotional impact of
9 photographs, which is something that we were warned about
10 and we knew it was going to be bad. And the remaining
11 photos that the State has talked about, I understand
12 they're not intending to publish them, but those are a
13 hundreds times worse than anything they have seen so far.

14 THE COURT: I understand and we had to weigh that in
15 this case. The jurors were inquired extensively with
16 harsh, unpleasant, difficult. Those are the words the
17 Court used when we qualified this jury. I understand. We
18 all understood. I think everybody in the courtroom,
19 lawyers included, have reacted in some fashion to those
20 things. I can't prevent all that by declaring it so. So
21 I understand your concern and we'll do our best to get
22 through this.

23 MR. YOUNG: Yes, sir.

24 MR. HUBBARD: And Your Honor, just from our
25 standpoint, too, just for the record, many of the

1 photographs that I intend to show through Dr. Ross were
2 presented by the Defense. They wanted those same photos
3 in in the guilt phase.

4 MR. YOUNG: So that they didn't have the emotional
5 impact of causing a Juror to find for death for an
6 improper basis. That's why we tried to show them --

7 THE COURT: Well, I mean, you can say it that way
8 now. You tried to show it to them in voir dire as well as
9 during the guilt/innocence for another reason. That's
10 just what you do. You're still trying to show them. The
11 State's now showing them. Their impactful no matter how
12 you see them, when you see them. So no matter what the
13 motivation is to present for probative value -- you called
14 them probative in one fashion, the State's called them
15 probative in another fashion. They're graphic, period. I
16 mean, they are. So I've heard enough about the pictures.
17 We're going to do our best. They're emotional. Your
18 motion for a mistrial at this time is denied. I'm going
19 to hear from Agent Remion.

20 Agent, you're in charge of the detail for SLED. You
21 and I had a brief conversation in my chambers regarding
22 the Juror who was upset earlier. What's her condition
23 now?

24 AGENT REMION: She's fine.

25 THE COURT: Now, someone -- I'm not certain where the

1 information came from, said there was -- someone may have
2 become ill in the jury room. What is -- is there any
3 truth to that?

4 AGENT REMION: No sir, not that I know of.

5 THE COURT: All right. Somehow word got into the
6 lawyers that a cleaning crew was sent into the jury room
7 to clean up something. No one got ill or nauseated to --

8 AGENT REMION: No, sir, not to my knowledge at all.

9 THE COURT: All right.

10 AGENT REMION: And I'm standing right outside the
11 jury room.

12 THE COURT: I think you would know if something went
13 in there.

14 AGENT REMION: I would think I would.

15 THE COURT: Are you comfortable that the Juror can go
16 forward after your communication with her?

17 AGENT REMION: Yes, sir.

18 THE COURT: Anything further?

19 MR. YOUNG: No, Your Honor.

20 MR. HUBBARD: Thank you, Your Honor.

21 THE COURT: Thank you. Ready to go?

22 MR. HUBBARD: Yes, sir.

23 THE COURT: Bring in the jury.

24 (Whereupon, the jury came into open court at
25 approximately 10:55 a.m.)

1 THE COURT: All right. We're ready to continue.
2 There were some other pictures or other exhibits that
3 required Joy to mark. It took her a little longer. She
4 needed a break, too, so that's why the extended break. It
5 wasn't all y'all. It was a little bit for the court staff
6 and the people presenting. I think it will flow a little
7 better now. Solicitor, your witness.

8 MR. HUBBARD: Thank you, Your Honor.

9 CONTINUE DIRECT EXAMINATION

10 BY MR. HUBBARD:

11 Q Lieutenant, after y'all finished identifying the
12 remains of each and every bag, about what time did y'all
13 wrap up and you leave that scene?

14 A We ended up leaving about 10:30 p.m.

15 Q When did you get back to South Carolina?

16 A We stayed somewhere in Meridian, Mississippi and then
17 drove back the next day.

18 Q Lieutenant, in your 30 years, you ever had a case
19 where children were left by their killer in such a remote
20 area?

21 MR. MADSEN: Objection, Your Honor.

22 MR. HUBBARD: Character.

23 THE COURT: Recharacterize that, please.

24 Q Have you had a case where someone who has disposed of
25 bodies have left them in such a remote area, children?

1 A I have not.

2 Q In your 30 years, have you ever been called upon to
3 open garbage bags to identify the remains of children
4 until this case?

5 A I have not.

6 Q In your 30 years?

7 A And I've seen a lot of dead bodies.

8 MR. HUBBARD: Thank you, sir.

9 THE COURT: Mr. Madsen.

10 CROSS-EXAMINATION

11 BY MR. MADSEN:

12 Q Lieutenant Lawrence, you mentioned that, I guess, you
13 do polygraphs now or have a contract after retiring?

14 A I do.

15 Q And that was part of your job at SLED?

16 A A very small part of my job at SLED. I ran very few
17 polygraphs while I was there.

18 Q How long have you been a polygrapher?

19 A Since 1993.

20 Q And you took your polygrapher equipment with you to
21 Mississippi?

22 A I did.

23 Q Never used it, correct?

24 A Did not.

25 Q No one asked you to use it?

1 A Did not.

2 Q And once you got there, I think you had an initial
3 meeting on the 8th with the law enforcement there,
4 correct?

5 A That's correct.

6 Q And then you met with Tim, Sr. and Julie Jones?

7 A I did.

8 Q And that's Tim's father and his stepmother?

9 A That's correct.

10 Q And y'all discussed Tim?

11 A Yeah, that was very brief that we -- we just had a
12 conversation.

13 Q About Tim and, I guess, his family history?

14 A Some, yeah.

15 Q And this is all before you know that the children are
16 dead, correct?

17 A That was at the same time that Agent Creech -- or
18 Agent Mackey and Sergeant Creech were conducting an
19 interview with Mr. Jones.

20 Q And Tim, Sr. and Julie were obviously concerned?

21 A Well, they were there.

22 Q And they answered any question that you asked them?

23 A As I can recall.

24 Q And, in fact, they did everything that you had asked
25 them? You felt comfortable if you went back to them, they

1 would have answered anything that you wanted, correct?

2 A I don't know if I can say that. I can only say that
3 -- I mean, it was a very brief conversation that we had
4 and it was in general and it was smalltalk as well, too.
5 Obviously, I think even at that time, they were trying to
6 find out what was going on.

7 Q And so then on the 9th, I believe you were with Tim
8 when he was reviewing maps, maybe even Google Earth?

9 A I was in the conference room whenever that was going
10 on.

11 Q And he was cooperative?

12 A He was.

13 Q And I think the Solicitor had asked you about this
14 area in Alabama and you said that it was extremely rural?

15 A That's correct.

16 Q And that you went for miles without seeing any
17 houses?

18 A It was very sporadic. You know, I mean, we would see
19 one occasionally, but yeah, there was like miles on end
20 before you would see one.

21 Q And it would have been difficult to find those
22 children without Tim's help?

23 A Yes, it would.

24 MR. MADSEN: No further questions.

25 MR. HUBBARD: Nothing further, Your Honor.

1 THE COURT: You may step down.

2 MR. GRAHAM: Your Honor, at this time, the State is
3 going to introduce and publish Mr. Jones' convictions from
4 Illinois.

5 THE COURT: All right.

6 MR. GRAHAM: I have several Court Exhibits that have
7 been premarked and I'll put those in now for the record.
8 That's 114, 115, 116 and 117 as Court's Exhibits.

9 THE COURT: Those are the records from the State of
10 Illinois admitted.

11 (WHEREUPON, Court's Exhibit numbers 114 through 117
12 were marked for identification.)

13 MR. GRAHAM: I have one, two -- I have five certified
14 convictions, Your Honor, that have been premarked. 295,
15 Your Honor, is a conviction from McHenry County Clerk of
16 Circuit Court. We would move that into evidence and
17 publish. It would be 295, 292, 293, 291 and 294. Those
18 are all currently marked as State's ID and we move all of
19 those into evidence at this time.

20 MR. MADSEN: No objection.

21 THE COURT: No objection to those five. 291, 292,
22 293, 294, 295 are admitted, which are prior convictions
23 from the State of Illinois.

24 (WHEREUPON, State's Exhibits 291, 292, 293, 294, 295
25 were admitted into evidence.)

1 MR. GRAHAM: Permission to publish, Your Honor?

2 THE COURT: Sure.

3 MR. GRAHAM: 295 is a conviction for possession of
4 cocaine. The offense date was March 30th of 2001. The
5 disposition date was March 14th of 2002, a one-year
6 sentence. State's 292 is a conviction for burglary, an
7 offense date of September 3rd of 2001, a conviction date
8 of March 14th of 2002, a sentence of six years with
9 restitution and boot camp. 293, a conviction for forgery,
10 an offense date of September 13th of 2001, a conviction
11 date of March 14th of 2002, a fine, five-year sentence in
12 the Department of Corrections and boot camp. 291, a
13 conviction for receiving or possession of a stolen
14 vehicle, an offense date of September 15th of 2001, a
15 conviction date of March 14th of 2002, a six-year sentence
16 and boot camp. 294, a conviction for theft, an offense
17 date of September 15th of 2001, a disposition date of
18 March 14th of 2002, a sentence of six years and boot camp.

19 MR. YOUNG: Your Honor, may we approach real quick?

20 THE COURT: You may.

21 (Whereupon, a bench conference was held in the
22 presence of the jury but out of the hearing of the
23 jury.)

24 THE COURT: Solicitor, read the indictment so it's
25 clear as to the nature of the offenses. The reason I'm

1 doing this, Illinois may define something different than
2 South Carolina does. It's somewhat confusing. So the
3 indictment can outline the subject matter with a little
4 more detail so you can understand what it exactly did.

5 MR. GRAHAM: For all the indictments or just the one,
6 Your Honor.

7 THE COURT: Just the one.

8 MR. GRAHAM: Just that one?

9 THE COURT: Uh-huh.

10 MR. GRAHAM: State's 292 was a conviction for
11 burglary. The indictment reads that on or about September
12 3rd, 2001, in McHenry County, State of Illinois, Timothy
13 R. Jones committed the offense of burglary in that the
14 said Defendant without authority knowingly entered a 1987
15 Dodge automobile bearing Illinois registration number
16 J565521 located at 197 Northwest Highway, Carey, McHenry
17 County, Illinois with the intent to commit therein a
18 theft.

19 THE COURT: All right.

20 MR. GRAHAM: Continuing on, Your Honor.

21 THE COURT: Yes, sir.

22 MR. GRAHAM: The State would call Shelby Derrick to
23 the stand.

24 SHELBY DERRICK, being
25 first duly sworn, testified as follows:

1 THE CLERK: Please state your name, spelling your
2 last when you have a seat. You're still under oath.

3 COURT REPORTER: Your name again is?

4 THE WITNESS: Shelby Derrick, D-E-R-R-I-C-K.

5 THE COURT: She testified earlier.

6 Ms. Derrick, you're still under oath.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Ms. Derrick, back in 2014, you were working with the
10 crime scene with the Lexington County Sheriff's
11 Department, correct?

12 A Yes, sir.

13 Q And earlier, you had testified, I think, that on
14 September 8th of 2014 that you came into possession of
15 Amber Jones' phone and that you did an extraction on the
16 phone, is that correct?

17 A Um --

18 Q Or you came --

19 A I believe so. I'm not sure if I testified to that or
20 not. But I did come in contact with her cell phone, yes.

21 Q So you were asked to do an extraction on the phone?

22 A Yes, sir.

23 Q Which is where you pull off the information on there,
24 correct?

25 A Yes sir, when we extract data off the phone.

1 Q Let me show you several photographs and ask if you
2 recognize these as photographs that you pulled off of Ms.
3 Jones' -- Ms. Kyzer's phone?

4 A Yes, sir, they are.

5 MR. GRAHAM: Your Honor, the State has premarked
6 these. They're all marked for ID and they'll be published
7 with a later witness. But for the record, they're State's
8 222 for ID, State's 220 and 221, currently for ID, State's
9 219 for ID and State's 218 for ID.

10 (Whereupon, State's Exhibit 220, 221, 222, 218 and
11 219 were marked for identification only.)

12 THE COURT: Okay, those are ID only, been identified.

13 Q In addition to those photographs, let me show you two
14 disks, which have previously been marked as State's 188
15 for ID and 189 for ID, and ask if you've had an
16 opportunity to look at those disks and verify that those
17 video recordings came off of Amber Jones Kyzer's phone?

18 A Yes, sir, I did. And I have my initials on them.

19 MR. GRAHAM: Your Honor, the State would move 188 and
20 189 from ID into evidence at this time.

21 MR. YOUNG: No objection.

22 THE COURT: No objection, 188 and 189, the videos
23 from Ms. Kyzer's phone admitted without objection.

24 (WHEREUPON, State's Exhibit numbers 188 and 189 were
25 admitted into evidence.)

1 Q 188 was previously identified by Amber Kyzer as a
2 video clip containing her daughter, Merah, and also the
3 Defendant, Tim Jones, Jr. Are you aware from your
4 extraction of the phone the date or time that that video
5 -- what can you tell me about when that video was -- video
6 clip was created?

7 A The dates they were created or the dates I extracted
8 them?

9 Q Both. I mean, you can say both.

10 A On September 8th is when I actually did -- or started
11 the extractions. Sometimes it takes a little longer,
12 maybe a couple days, depending on the type of phone. We
13 hook it to a -- I believe y'all have heard about the
14 Cellebrite before in previous testimony. It was a Trac
15 phone, which is a type of cell phone. So I hooked it into
16 the system and it downloaded the extraction and took a
17 little time. So once I got all the data together, I
18 transferred it from the USB drive, the little disk that
19 comes with it, and placed them on the actual disks that
20 were placed into evidence. So that file transferred from
21 the Cellebrite to the disks was on September 11th.

22 Q And when you look at the properties of that file
23 which shows a modified date of June 16th of 2013, at 10:25
24 p.m., what does that mean?

25 A Usually -- I'm not sure if y'all are familiar with

1 computers, but usually when you pull up a property of a
2 photograph or a video, it will have the date you accessed
3 it or the date that you transferred it. It also has a
4 modified date or created date. That was the actual date
5 that the device itself either saved it or viewed it or
6 received it. Of course, there's a lot more data that goes
7 with that file that you have to have special programs to
8 read, but as far as the properties on the computer, it
9 says, I believe one is 6/21/2013. I'm not sure of the
10 actual -- I think they're written on the DVDs -- or
11 written on the DVDs.

12 Q The one for -- that's one of the properties printed
13 out and that's for Merah, which is 188. And that showed a
14 modified date of?

15 A It was viewed or on the device, either saved or last
16 viewed June 16th of 2013.

17 MR. GRAHAM: Permission to publish, Your Honor?

18 THE COURT: Sure.

19 (WHEREUPON, State's Exhibit number 188, a video clip,
20 was published for the jury.)

21 Q Ms. Derrick, were you able to determine whether that
22 -- how that clip came to be on Amber's phone?

23 A I believe it was sent via text message from another
24 cell phone.

25 Q Okay. State's 189 showed Elias and Tim Jones, Jr. as

1 well. Were you able to look at the properties on that
2 one?

3 A Yes. The created and access date are the same,
4 September 11th, as the one before because that's when I
5 put them -- or placed them on the disks, transferred them.
6 The actual date it was either saved or accessed on the
7 device itself being Amber's cell phone was June 7th of
8 2014.

9 MR. GRAHAM: Permission to publish this, Your Honor?

10 THE COURT: Yes, sir.

11 (WHEREUPON, State's Exhibit number 189, a video clip,
12 was published for the jury.

13 MR. GRAHAM: Thank you, Ms. Derrick.

14 MR. YOUNG: No questions, Your Honor.

15 THE COURT: You may step down.

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

19 THE COURT: I thought we were a little bit more
20 organized. One thing that the State was going to present,
21 the defense is reviewing it first. Y'all step in the jury
22 room. They'll review it. We'll bring y'all back in here
23 and present that. So don't discuss the case. Step in the
24 jury room. Bring you right back out there.

25 (WHEREUPON, the jury is excused from the courtroom.)

1 THE COURT: All right. We'll stand at ease.

2 (WHEREUPON, a short break was taken.)

3 MR. GRAHAM: Your Honor, previously State's 187 for
4 ID is a recorded jail phone call that was in the format of
5 Global Tel Link, which is the company that monitored and
6 recorded calls for SCDC. This is the entire call.

7 THE COURT: This is the one I listened to and had
8 trouble with the listening media --

9 MR. GRAHAM: Correct, Your Honor. Now, the State is
10 moving it from 187 ID to a Court's Exhibit so the Court
11 will be able to hear the entire call. That's now Court's
12 118 for ID.

13 THE COURT: I've already heard the entire call during
14 prior, previously.

15 MR. GRAHAM: State's 330, which we will introduce in
16 evidence when the jury comes back is a redacted version of
17 that Court's 118 for ID that takes out the part where Mr.
18 Jones talks about going to a mental hospital and being out
19 in a 120 days.

20 THE COURT: Consistent with your request.

21 MR. YOUNG: Yes, sir.

22 THE COURT: So former State's Exhibit is now Court's
23 Exhibit 118 and now this one is 3 --

24 MR. GRAHAM: 330.

25 COURT REPORTER: 330.

1 THE COURT: Which will be introduced momentarily.
2 That's the redacted version.

3 MR. GRAHAM: Yes, sir.

4 (WHEREUPON, Court's Exhibit number 118 was marked for
5 identification.)

6 THE COURT: Mr. Young, y'all ready?

7 MR. YOUNG: Yes, sir.

8 THE COURT: All right. Bring the jury, please.

9 (Whereupon, the jury came into open court at
10 approximately 11:40 a.m.)

11 THE COURT: All right. Good deal. Call your
12 witness, please.

13 MR. GRAHAM: Pursuant to South Carolina Code
14 19-5-520, we provided the Defense with notice, which is
15 really 289, which is business record affidavit stating
16 that the documents -- or in this case, the recording and
17 document are true and accurate copies. The State would
18 offer 289 into evidence, which is the affidavit from
19 Global Tel Link as to these records. It's currently
20 marked for ID and we would move it into evidence.

21 MR. YOUNG: No objection.

22 THE COURT: No objection.

23 (WHEREUPON, State's Exhibit number 289 was admitted
24 into evidence.)

25 MR. GRAHAM: State's 290, Your Honor, is a printout

1 of the screen related to this call showing that the call
2 occurred on November 26th of 2014 at 08 hours, 01 minutes
3 and 33 seconds. And the State would offer 290 into
4 evidence as well.

5 MR. YOUNG: No objection.

6 THE COURT: No objection, 290.

7 (WHEREUPON, State's Exhibit number 290 was admitted
8 into evidence.)

9 MR. GRAHAM: State's 330, Your Honor, is the
10 recording of that conversation. This was a recording
11 made, as I said, on November 26th, 2014. The voices have
12 been previously identified by Amber Kyzer as being the
13 Defendant, Tim, Jr., his father, Tim, Sr., his Aunt
14 Bernadine and also his cousin, Blake. Those are the
15 voices on this call. At this time, the State would move
16 330 into evidence.

17 MR. YOUNG: No objection.

18 (Whereupon, State's Exhibit 330 was admitted into
19 evidence.)

20 THE COURT: All right, folks, what they're doing,
21 there was a call made. A recording was made of it during
22 the call ahead of time. Those are the records that says
23 that's what happened, this is the recording. That's what
24 we're trying to get squared away.

25 MR. GRAHAM: Permission to publish, Your Honor?

1 THE COURT: Permission granted.

2 (WHEREUPON, State's Exhibit number 330, a recording,
3 was published for the jury starting at 11:45 a.m., ended
4 at 12:00 p.m.)

5 (Whereupon, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 THE COURT: All right. The next witness is going to
9 be about an hour, so let's go to lunch now. The
10 reservations are now. So hopefully they can take y'all
11 early. Don't talk about the case till you're back here.
12 When y'all get back, we'll be ready to go.

13 (WHEREUPON, the jury was excused from the courtroom
14 for a lunch break.)

15 THE COURT: All right. See you about 1:15, 1:30.

16 (WHEREUPON, a lunch break was taken.)

17 THE COURT: All right. You ready to go?

18 MR. HUBBARD: Yes, sir.

19 THE COURT: Call your witness.

20 MR. HUBBARD: Thank you, Your Honor. The State calls
21 Dr. Janice Ross.

22 JANICE ROSS, being
23 first duly sworn, testified as follows:

24 THE CLERK: Have a seat, Doctor. Once you're seated,
25 state your full name, spelling your last on the record,

1 please.

2 THE WITNESS: Janice Edward Ross, R-O-S-S.

3 DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q Dr. Ross, you've testified earlier on this matter and
6 I want to revisit the autopsies you performed on September
7 11th, 2014. I'd like to begin, did you document the
8 autopsy process and the initial -- your initial process
9 when you found -- or received the bodies of these
10 children? Did you photograph the condition the bodies
11 were in?

12 A Yes, I did.

13 MR. HUBBARD: If I may, Your Honor.

14 THE COURT: You may. I forgot, Dr. Ross, I remind
15 you you're under oath.

16 MR. HUBBARD: She just got sworn again, so she's
17 double sworn.

18 Q I want to show you what's been previously marked
19 State's ID 212 as to -- came in as bag number one, we now
20 know Elias Jones. I'm going to show you two photographs
21 and see if you can identify these -- or three photographs,
22 212A, B and C.

23 A Yes. Those are photographs of who we found out was
24 Elias Jones when they entered the morgue.

25 Q All right. As to 212A, does that photo depict the

1 way the bag appeared when it was on the autopsy table as
2 it was received by you?

3 A Yes. It was torn.

4 Q And you see animal activity in that torn portion?

5 A Yes, one of the limbs, I think it was the arm, had
6 some tissue loss.

7 Q 212B, State's ID, do you see clothing or a shirt worn
8 by Elias at that time?

9 A Yes. It has a logo for the elementary school Saxe
10 Gotha.

11 Q It says, The Power of One at Saxe Gotha Elementary?

12 A Yes.

13 Q And that's how he was clothed when he arrived?

14 A Yes.

15 Q And C, which is 212C for ID, is that the full body
16 with the clothing?

17 A Yes.

18 Q And does it show the left arm with animal activity?

19 A Yes.

20 MR. HUBBARD: Your Honor, I move these into evidence.

21 MR. YOUNG: Subject to previous objection.

22 THE COURT: Subject to objection.

23 (WHEREUPON, State's Exhibit numbers 212, 212A, 212B,
24 and 212C were admitted into evidence.)
25

1 (Whereupon, State's Exhibits 212D through 212I were
2 marked for identification only.)

3 Q We move to bag two, came into you as bag two, we now
4 know is Merah Jones?

5 A Yes.

6 Q I show you what's been marked as State's ID 213. And
7 I believe you've initialed each outer bag that I've got
8 these in?

9 A Yes.

10 Q Okay. I've got two photos, 213A and 213B. Do you
11 recognize these?

12 A Yes.

13 Q 213A, does that show who we now know is Merah Jones
14 as she was received once you pulled her out of the bag?

15 A Yes. She was in a sleeping bag, which had -- was
16 blue, but had different balls portrayed on it.

17 Q So it was some type of boy's bedding?

18 A It appeared to be, yes.

19 Q 213B for State's ID, does that show the decomp and
20 animal activity as to her left arm and the missing arm?

21 A Yes.

22 Q When you got the bedding off of her, did she have any
23 clothing on her?

24 A No.

25 Q And that's how she appeared when you got her?

1 A Correct.

2 MR. HUBBARD: Your Honor, I offer these into
3 evidence.

4 THE COURT: Subject to the objection.

5 (WHEREUPON, State's 213, 213A and 213B were admitted
6 into evidence.)

7 Q I'm going to show you what came to you as bag three,
8 we now know is Gabriel Jones, 214 State's ID. And you've
9 initialed this gold envelope as well?

10 A Yes.

11 Q I'm going to show you photo A, B, C, D, E and G. And
12 214A, is that how Gabriel Jones presented when you got him
13 out of the bag?

14 A Yes.

15 Q Can you describe his position in that particular
16 photo?

17 A He is face down with his knees underneath him, but
18 the right leg we noted had been disarticulated at the
19 knee, so the foot was coming the opposite direction as
20 normal.

21 Q And would that be because of him being in a bag as if
22 he's stuffed in a bag?

23 A Most likely, yes.

24 Q Now, looking at 214B ID, is that a shirt?

25 A Yes, that was in the bag with him. It looked like an

1 adult-sized shirt.

2 Q Is that the Three Fountains Chiropractic shirt, adult
3 large?

4 A Yes.

5 Q 214C for ID, is that a slipper, a girl's slipper in
6 that bag?

7 A Yes.

8 Q Now, Gabriel is a boy, but this is a girl's slipper?

9 A Correct.

10 Q 214D for ID, is that a Hello Kitty journal?

11 A Yes.

12 Q That was in Gabriel's bag as well?

13 A Yes.

14 Q 214E, is that a diaper that was in that same bag?

15 A Yes.

16 Q And then finally, 214G for ID, is this the close-up
17 of Gabriel's neck showing the ligature marks that you
18 described earlier in your testimony.

19 A Yes.

20 MR. HUBBARD: Your Honor, I move all these into
21 evidence.

22 THE COURT: Subject to the objection.

23 (WHEREUPON, State's Exhibit numbers 214, 214A, 214B,
24 214C, 214D, 214E, 214G were admitted into evidence.)
25

1 (Whereupon, State's Exhibit 214F and 214H were marked
2 for identification only.)

3 Q Dr. Ross, I want to move on to bag four, which was
4 Abigail Jones, State's ID 215. You've initialed this gold
5 envelope as well?

6 A Yes.

7 Q I'll show you two photos, A and B. Is 215A for ID,
8 is that how Abigail appeared when you pulled her out of
9 the bag?

10 A Yes.

11 Q How does she present in this photo?

12 A She's wrapped in a couple of sheets.

13 Q Her body is pretty much hidden there?

14 A Yes.

15 Q 215B, is that when you unwrap her?

16 A Yes.

17 Q What is she wearing?

18 A She is --

19 Q Is that a portion of a diaper?

20 A Yes, it's a little bit of a diaper.

21 Q Just a portion of one?

22 A Right.

23 MR. HUBBARD: Your Honor, I move these into evidence.

24 THE COURT: Subject to objection.

25 (WHEREUPON, State's Exhibit numbers 215, 215A and

1 215B were admitted into evidence.)

2 Q Finally, Dr. Ross, I want to move on to bag five,
3 which we now know is Nahtahn, State's ID 216. And you've
4 initialed this gold envelope as well?

5 A Yes.

6 Q I've got three photos, 216A, B and C. And 216A, is
7 that how Nahtahn presented when you pulled him out of the
8 bag?

9 A Yes.

10 Q And what is that wrapped around him?

11 A A comforter that had Ninja Turtles depicted on it.

12 Q 216B, is that when you removed the comforter?

13 A Yes.

14 Q What, if anything, is he wearing?

15 A Nothing.

16 Q And then 216C, is that the elbow that you described
17 in your previous testimony?

18 A Yes.

19 Q With the injury on that elbow?

20 A Yes.

21 Q Were you able to determine if that was pre or
22 post-mortem?

23 A No.

24 Q Okay. But you did note it because it was an injury?

25 A Correct.

1 Q And the bag, had it been torn into?

2 A No, it had not.

3 MR. HUBBARD: Your Honor, I move these into evidence.

4 THE COURT: Subject to objection, 216A, B and C.

5 (WHEREUPON, State's Exhibit numbers 216, 216A, 216B
6 and 216C were admitted into evidence.)

7 MR. HUBBARD: With the permission of the Court, I
8 will not publish these at this time.

9 THE COURT: Yes, sir.

10 Q Dr. Ross, I do have a few other things I'd like you
11 to look at. State's ID 337, 336, 335, 334, and 333. What
12 are these?

13 A Those are copies of the official certified death
14 certificates on these five children.

15 MR. HUBBARD: Your Honor, I move these into evidence.

16 MR. YOUNG: No objection.

17 THE COURT: No objection. Do the certificates have
18 the names of the children on each one of them
19 respectfully?

20 MR. HUBBARD: Yes, sir.

21 THE COURT: 333 -- go through them for Joy.

22 MR. HUBBARD: I'll go back through them.

23 COURT REPORTER: Yeah, we've got 333, 334, 335 --

24 MR. HUBBARD: All the way to 337.

25 THE COURT: All without objection.

1 (WHEREUPON, State's Exhibit numbers 333 through 337
2 were admitted into evidence.)

3 Q Dr. Ross, looking now what's been admitted into
4 evidence State's 333, is this a death certificate for
5 Elias Xavier Jones?

6 A Yes.

7 Q How old was he when he died?

8 A Seven.

9 Q And happened in Lexington County?

10 A Correct.

11 Q Cause of death?

12 A Asphyxia due to strangulation.

13 Q And again with Elias, was there also evidence of a
14 neck injury that you described earlier?

15 A Yes, the hyoid bone was fractured.

16 Q As to State's 334, it says Merah Gracie Jones?

17 A Yes.

18 Q How old is she?

19 A At that time, she was eight.

20 Q Eight years old. County of death was Lexington?

21 A Yes.

22 Q And cause of death?

23 A Homicidal violence.

24 Q All right. 335, Gabriel Asher Jones, how old was he?

25 A Two years.

1 Q And the county was?

2 A Lexington.

3 Q And the cause of death?

4 A Homicidal violence, probable strangulation.

5 Q And again, did you have evidence of striation marks
6 from a belt or some type of device to strangle him?

7 A Yes.

8 Q State's 336, Abigail Elizabeth Jones, how old was
9 she?

10 A One year.

11 Q And county of death?

12 A Lexington.

13 Q Cause of death?

14 A Homicidal violence.

15 Q And finally, Nahtahn Jones, I can't pronounce his
16 middle name, it's H-E-H-S-E-Y-D?

17 A Correct.

18 Q How old was Nahtahn?

19 A Six.

20 Q What county did he die in?

21 A Lexington.

22 Q And the cause of death?

23 A Homicidal violence.

24 Q Now, with Nahtahn, in the last phase of this case,
25 you also showed a photo to the jury of a knee. Do you

1 remember what the evidence was as to that knee?

2 A Yes, there was a wound in the bone, which was
3 exposed. It looked like it was caused by a sharp
4 instrument like a saw or a knife.

5 MR. HUBBARD: Okay. Dr. Ross. Thank you so much.

6 MR. YOUNG: No questions.

7 THE COURT: No questions. Dr. Ross, thank you very
8 much.

9 MS. MAYES: State calls Janet Ricard.

10 THE COURT: Ms. Ricard, you're still under oath.

11 JANET RICARD, being
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. MAYES:

15 Q Good afternoon.

16 A Good afternoon.

17 Q You testified previously in this case --

18 A Yes, ma'am.

19 Q -- can you give us a little information again about
20 yourself. Where are you currently employed?

21 A I am currently working as an Assistant Principal at
22 Pelion Elementary School.

23 Q I'm going to ask you to pull the microphone up a
24 little bit closer.

25 A Sure.

1 Q And a little bit forward.

2 A Is that better?

3 Q Yes.

4 A So just to elaborate on that. I worked at Saxe Gotha
5 Elementary for seven years prior to that. I have a degree
6 in Business and became certified to teach in 1998. I
7 taught first grade for 13 years. Got my Masters from
8 University of South Carolina in Educational Administration
9 and have been working as a School Administrator since that
10 time.

11 Q All right. And then in addition to the work that
12 you've done at Saxe Gotha and Pelion, what type of work
13 will you be doing in the upcoming school year next fall?

14 A I just learned recently that the upcoming school
15 year, I have been named Principal at Red Bank Elementary
16 School.

17 Q So another elementary school?

18 A Another elementary school.

19 Q Saxe Gotha, how long were you there?

20 A I was at Saxe Gotha for seven years as an AP.

21 Q All right. Take us through your experiences with the
22 Jones children, what you recall about them first coming
23 in, Merah being a first grader, all the way through 2014.

24 A Okay. And I apologize if I get a little emotional.
25 But when they came into us, Merah was going into first

1 grade and Eli was going into kindergarten. Very sweet
2 children, very loving child. Made friends very easily.
3 Merah was a little bit behind academically, so we
4 immediately began to put some interventions in place with
5 her to try to bring her up to where she needed. She was
6 behind in reading and early literacy, early math skills,
7 so we worked to bring her up to where she needed to be.
8 And then Elias started out in kindergarten. I called him
9 Eli, so I'll probably revert to that often because we were
10 -- we were very close. But both of them went through that
11 school year. And then the next school year as they
12 progressed on and Nahtahn came to us and entered
13 kindergarten. So got to know Nahtahn as well. They both
14 -- well, all three of them progressed on through the
15 grades and they were wonderful children, made friends
16 easily. Merah had her special friends. One little girl
17 that she was particularly fond of, that they played very
18 well together. And Eli loved making friends and just
19 really was a friend to everybody. He was a little
20 mischievous, brought a turtle to school, silly little
21 things like that, but nothing that was really major as far
22 as behavior goes. And those were just teachable moments
23 for us. And then Nahtahn, he was an active little thing,
24 very busy. Again, made friends well and did well in his
25 class.

1 Q I just want to ask you about Merah. And you had the
2 chance to know her from first grade all the way through?

3 A Yes, ma'am.

4 Q What do you remember about Merah as a child? What
5 type of child was she?

6 A She was always dressed like a little lady, always had
7 on a skirt or a dress, usually had her hair pulled back in
8 a pony tail. Just very sweet. Typically, quiet, but
9 always smiling, always happy. As I said before, she
10 enjoyed making friends with others and she had certain
11 children that she preferred to play with. Friendly and
12 outgoing.

13 Q Okay.

14 MS. MAYES: And Your Honor, I believe this is already
15 marked as Defendant's 9.

16 A That's Merah.

17 Q I'm going to show you these items and ask you whether
18 or not you recognize them. This will be marked as State's
19 255, 278.

20 A Okay.

21 Q And then one more, 223.

22 A All right. So these items, this is Eli's leadership
23 notebook. This is Nahtahn's leadership notebook and
24 Merah's leadership notebook. And each child at Saxe Gotha
25 had what we called a leadership notebook and that was just

1 -- that was used to track throughout their elementary
2 career. We kept items in it, their mission, their goals,
3 data, leadership roles that they held, any celebrations.
4 And it was part of our leader in, initiative. But the
5 leadership notebook followed them from year to year, so it
6 was a cumulative record of their academic performance. So
7 it went from one homeroom to the next homeroom and they
8 kept collecting their artifacts and just filled them in
9 this notebook.

10 Q And after the murders, what role did you play in
11 collecting these materials, these notebooks and providing
12 them to agents from the State Law Enforcement Division?

13 A Well, it had a lot of their academic data in it. And
14 we would -- you know, typically, if they got some type of
15 award, we would make a copy of the award. We would send
16 the original home, but we would keep a copy in here. So
17 we collected all of this and turned it over to SLED in
18 those early days after everything happened.

19 MS. MAYES: And, Your Honor, we offer all of these
20 items as evidence at this time.

21 MR. MADSEN: May I see them? No objection to any of
22 them.

23 THE COURT: What are the numbers, Joy?

24 COURT REPORTER: It was State's 223, 255 and 278.

25 THE COURT: 223, 255, and 278, all without objection.

1 (WHEREUPON, State's Exhibit numbers 223, 255 and 278
2 were admitted into evidence.)

3 (Whereupon, State's Exhibits 279, 282, 283, 284, 286,
4 287 were marked for identification only.)

5 Q So when we talk about Merah, what do you remember
6 about her first grade year? Who was her teacher that
7 year?

8 A She had Ms. Fran Lee for first grade. When she came
9 in, like I said earlier, she was a little bit behind, so,
10 of course, Ms. Lee was concerned about the fact that she
11 was not quite at the level of her same age peers. So we
12 made sure that we started with RTI interventions to try to
13 bring her up to where she needed to be.

14 Q All right. I'm going to show you these items and I'm
15 going to call out the numbers and see if you can tell us
16 if you recognize them. This will be State's 247, 244,
17 245, 251, 253, 246, 248, 249, 252.

18 A You want me to just kind of go through these?

19 Q Well, I was going to ask you if you recognize them --

20 A Sure.

21 Q -- and if you do, we'll offer them into evidence.

22 A I do. So this was a reading award that she received
23 for making great gains in reading. That was for second
24 grade.

25 Q Let me ask it this way. Do you recognize them all?

1 A Oh, yes.

2 Q And then, also, these photographs. I'm going to call
3 out these numbers briefly.

4 A Okay.

5 Q 242, 243, 241, you recognize all of those?

6 A All of those, yes ma'am.

7 Q These are a fair and accurate representations of
8 Merah?

9 A Yes, ma'am.

10 MS. MAYES: Your Honor, all of these items would be
11 for evidence at this time.

12 A And those as well.

13 Q 238, 240 and 239, you recognize those from the
14 school?

15 A Yes, ma'am.

16 MS. MAYES: Those items offered as well at this time,
17 Your Honor.

18 MR. MADSEN: No objection.

19 THE COURT: For the record, State's Exhibits 239 --
20 I'm sorry, 238, 239, 240, 242 -- 241, 242, 243, 244, 245,
21 246, 247, 248, 249, 251, 252, 253 all admitted without
22 objection.

23 (WHEREUPON, State's Exhibit numbers 238 through 249
24 and 251, 252 and 253 were admitted into evidence.)
25

1 (Whereupon, State's Exhibit 250 was marked for
2 identification only.)

3 Q Now, Ms. Ricard, I believe you were telling us about
4 Merah's first grade year when she had Ms. Lee?

5 A Yes ma'am, that was Ms. Lee and that's Merah on the
6 bottom row to the far right.

7 Q All right. And then second grade, let me show you
8 some photographs. We've got 243.

9 A Yes, ma'am. She was in Ms. Kestner's second grade
10 class that year.

11 Q And also, do you take pictures more than once a year?

12 A We do. We, typically, do a fall picture. And then,
13 you know, our photography company, they like to try to
14 sell some more. So they'll come back out and they'll take
15 a group picture like the one that you saw from Merah's
16 first grade year and they'll come out and do a spring
17 picture with a pretty background. So that was her second
18 grade spring picture, I believe.

19 Q In terms of her school class, she was there for first
20 grade, I believe, with Ms. Lee?

21 A Yes, ma'am. That was her first grade class and her
22 teacher.

23 Q And second grade?

24 A Yes, second grade with Ms. Kestner.

25 Q Were the children able to be photographed for a third

1 grade photo?

2 A They were not for third grade. Eli for second. No,
3 ma'am, those had not been taken yet.

4 Q The murders happened prior to the photographs?

5 A Yes, ma'am, they did. Very early in the school year.

6 Q And then where did Eli attend kindergarten?

7 A Eli was at kindergarten at Saxe Gotha. He was in Ms.
8 Still's kindergarten class. That's him in the third row
9 second from the left.

10 Q And you mentioned some awards that Merah received.
11 Are you often someone who signs off on the awards?

12 A I did. We had multiple things that we would
13 recognize our students for, whether it was academic gains,
14 whether it was some type of celebration or leadership
15 award. And oftentimes, I did sign off on those.

16 Q You mentioned that when Merah first arrived in first
17 grade, she was a little bit behind?

18 A Uh-huh.

19 Q How did she progress through that first grade year
20 and into second grade?

21 A Well, Ms. Lee worked very hard with her and she did
22 -- we did get her further academic assistance through RTI
23 interventions. And she really did -- she made very good
24 progress. And I think one of those certificates was for
25 the growth that she showed over that year. She continued

1 to grow and made great progress in second grade as well.

2 Q Between first grade and second grade, there was a
3 significant change?

4 A Oh yes, ma'am.

5 Q This one, 247, is dated May 27th of 2014. So it
6 would be the spring of her second grade year?

7 A Right. That would have been the end of second grade.
8 And I'm not sure what measure was used to track that,
9 whether it was MAP or whether it was her reading level,
10 but that just showed her growth over time. And she had,
11 obviously, made great growth. She was named the brightest
12 rising star, so it was a most improved category.

13 Q The brightest rising star in the field of reading?

14 A Uh-huh.

15 Q I'm going to show you what is 244, it's black and
16 white, but it is dated from June of 2013. So this would
17 have been at the very end of first grade?

18 A Very end of first grade and that was with Ms. Lee.
19 And that was based on a measure called MAP and it stands
20 for measure of academic progress. And it's just one of
21 those -- just a benchmark too that we use to track student
22 growth over time. So that showed she had made the highest
23 MAP gain over that first grade year in reading, which was
24 excellent.

25 Q All right. I'm going to show you another award,

1 also, from the last day of school in first grade with Ms.
2 Lee. And this is State's 245, called the Kit Kat award.

3 A Oftentimes, teachers would do just like little
4 individualized awards to recognize their students for hard
5 work, and that was one of those that Ms. Lee gave out.
6 Now, I imagine, if I'm not mistaken, she probably not only
7 got the certificate, but she probably got an actual Kit
8 Kat, too, because that was pretty typical. So that was
9 just to award her for all of her hard work that school
10 year.

11 Q All right. I'm going to show you what is also dated
12 October of 2013, so, roughly, the fall of her second grade
13 year.

14 A So being a leader in ME school and PBIS school, we
15 worked very hard to give our students recognition
16 throughout the school year, not just at the end of the
17 year. So our teachers, including our related arts folks,
18 any other people in our building could choose to give
19 awards like this to a student. So that came from Ms.
20 Marsh, who was our music teacher for related arts. And
21 she would recognize students periodically for doing a
22 really good job in the classroom and she would often give
23 them a certificate. So that's what that was for.

24 Q All right. Another is going to be 251. And tell us
25 what this award is for Merah?

1 A So we did monthly lead rallies and one of our
2 partners with our leader in ME initiative was Bojangles.
3 They were a big supporter. And they would bring
4 certificates to us that kind of reflected the work that we
5 were doing with the seven habits. And they would give us
6 the certificates that might be presented to a child for
7 something that they had done a really good job at, in this
8 case, for being respectful. Then on the other side, that
9 was the real treat, they got to go to Bojangles to get
10 either a biscuit, a french fry, a kids meal, that type
11 thing. So that was something that she had received for
12 being respectful.

13 Q All right. And then what is meant -- what was meant
14 at Saxe Gotha Elementary by the term Starbucks?

15 A Starbucks, so that was kind of our school-wide
16 currency that we used. We -- as I said before, we used
17 leader in me and we're also a PBIS school, Positive
18 Behavior Interventions and Supports. But Starbucks were
19 kind of our daily currency or our daily reward that we
20 would give to students for seeing them modeling good
21 behavior, making good choices, following school rules and
22 expectations.

23 Q All right. So in addition to what we see in State's
24 246, did Merah also receive those Starbucks for --

25 A Yes, she did.

1 Q -- 248 and 449 --

2 A Yes, ma'am.

3 Q -- on multiple occasions?

4 A She sure did.

5 Q Tell us a little bit about the timeframe of all this
6 2014 and how you as an Assistant Principal, along with
7 Principal Houck and other Administrators, how did you go
8 about with the murders of three of your students in terms
9 of a school community?

10 MR. MADSEN: Judge, I would object. I believe that
11 that's outside of the appropriate testimony.

12 MS. MAYES: I can rephrase that, Your Honor.

13 THE COURT: Rephrase it.

14 Q Within Saxe Gotha, classmates, faculty, are you a
15 community?

16 A We are, absolutely.

17 Q Did the murders of Nahtahn, Eli and Merah impact that
18 community?

19 MR. MADSEN: Judge, I object. That is inappropriate.
20 I believe it's Spelling vs. State.

21 THE COURT: Let me see your case.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 MS. MAYES: And, Your Honor, if we may approach one

1 more time?

2 THE COURT: Okay.

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

6 THE COURT: Ms. Mayes, rephrase your question.

7 Q Ms. Ricard, there at Saxe Gotha, in August of 2014,
8 once the murders occurred, were you working at the school
9 at that time?

10 A Yes, ma'am.

11 Q And is that something that you had to deal with as an
12 Administrator there at the school?

13 A Yes ma'am, it was.

14 Q Ultimately, what actions did the school take to
15 memorialize the Jones children?

16 A Well, obviously, we had a lot of community members,
17 law enforcement, parents, faculty, staff, a lot of people
18 wanted to do something to memorialize the children. We
19 knew that at the end of the year, we would have some type
20 of tribute to them in our yearbook and that was done, but
21 we also began to get questions about being able to make,
22 like, monetary donations and that type thing. So through
23 the Lexington Foundation, it's the Lexington School
24 District One Foundation, Education Foundation, they
25 established a fund where --

1 MR. MADSEN: Judge, may we approach?

2 THE COURT: Well, let's take a break. Y'all step in
3 the jury room so I can sort this out and make a record of
4 it. Don't talk about the case.

5 (WHEREUPON, the jury was excused from the courtroom
6 for a break.)

7 THE COURT: All right. Mr. Madsen.

8 MR. MADSEN: Judge, that's right out of Stone. I
9 mean, that was where people donated for a golf tournament.
10 I mean, that is straight out -- and I think we e-mailed
11 Whitney and copied State vs. Stone. But in that case, it
12 was a police officer's death. They talked about in that
13 that there was a golf tournament to pay for college for
14 children of officers killed in the line of duty. That
15 case was ineffective for not objecting. I mean, while the
16 jury's out, upon reconsideration, I think the mural would
17 be the same thing. That's what the Solicitor said
18 initially she was going to go in the mural and then that
19 is not what the testimony was eliciting. So we would
20 object to any line of questioning on that. We would
21 object to photographs of the mural. I mean, that gets
22 beyond the appropriate scope in this portion of the trial.

23 THE COURT: Ms. Mayes.

24 MS. MAYES: Yes, sir, Your Honor. I believe the
25 photographs of the mural, which are a tribute at the

1 school inside the library, I believe that would be
2 directly related to impact on the community that was
3 allowable under State vs. Bixby in terms of showing a
4 funeral. This is not a funeral, but it's a tribute. It's
5 not -- I don't anticipate it going beyond that. And then
6 as she testified, there is also a yearbook tribute. And
7 the mural and the yearbook tribute are specifically for
8 these three children, Your Honor. It's not for other
9 people related to the case, it's specifically for these
10 children.

11 THE COURT: All right, Mr. Madsen, one more time.

12 MR. MADSEN: Judge, if you look at State vs. Stone,
13 the Court found both examples, talking about the golf
14 tournament to pay for college proceeds and also taking
15 recruits to the grave. The Court, both examples were more
16 demonstrative of the general impact of the victim's death
17 on the community and less about the showing -- less about
18 showing the victims' unique qualities or specific harm
19 caused by the death. They found that had that been
20 objected to would likely have been excluded, that it was
21 err. It was ineffective not to object.

22 THE COURT: All right.

23 MR. MADSEN: I mean, she's even using in her
24 questions those words community. I mean, that's kind of a
25 tip off that it's --

1 THE COURT: Well, let me hear one more question.

2 Ms. Mayes, proffer another question or two to your
3 end where you're headed and let me see.

4 PROFFER EXAMINATION

5 BY MS. MAYES:

6 Q Ms. Ricard, was there a tribute to the children that
7 was specific to the children and their unique qualities?

8 A Yes, ma'am.

9 Q In fact, was it so unique that it actually
10 acknowledged something regarding Eli?

11 A Yes ma'am, it certainly did.

12 Q And what was that?

13 A I mentioned on both occasions that Eli had a habit of
14 being a little mischievous and one of the things that he
15 did was bring a little silver dollar turtle to school in
16 his pocket. So when the tribute, the mural was developed
17 and painted in the learning commons, the animal that was
18 chosen to represent the children was a turtle. So each
19 child had a turtle that had its -- had the name of the
20 child underneath.

21 Q And what was the general theme of the mural? Where
22 did --

23 A It was a beautiful seascape, a beach scene because
24 they loved -- they talked about going to the beach a lot
25 and how much they enjoyed it.

1 Q And what was the name of the beach?

2 A We had a sign, part of the mural, the painting that
3 the artist, who was actually one of our teachers, one of
4 their teachers, she had named it Jones Beach.

5 Q And did it also contain footprints on the beach?

6 A It does. It had five sets of footprints that were
7 very reflective of five different ages of children to
8 represent each one of the five.

9 Q So that mural was specific and unique to the Jones
10 children?

11 A Yes, ma'am.

12 MS. MAYES: That would be the extent of the testimony
13 on the photographs. Now, they have seen the photographs
14 and we would be offering them as well. I believe
15 originally there was no objection.

16 MR. MADSEN: Judge, we believe under State vs. Stone
17 that that is not appropriate.

18 THE COURT: Maybe I missed it. I didn't see that
19 Stone. Point me out -- Stone is very long. I was reading
20 the failure to object portions of it, but is it somewhere
21 else, also?

22 MR. MADSEN: Judge, if you go to 385, almost to 386.
23 And then the paragraph before 386 starts, "on the other
24 hand".

25 THE COURT: This is different. Both these cases,

1 both Bixby and Stone involve victims of police officers,
2 correct?

3 MR. MADSEN: Yes, sir.

4 THE COURT: So that makes it kind of similar. And
5 these being children -- and this paragraph you're talking
6 about was golf tournament was made to be a fund raiser and
7 what they're using the fund raiser for as opposed to a
8 mural of five kids.

9 MR. MADSEN: She started off talking about fund
10 raising, community.

11 THE COURT: I thought she was talking about how it
12 got paid for by a grant from Lexington School One that she
13 described for the, something. And schools are all the
14 time looking for money, but there's a source of funds for
15 -- as I understood it.

16 THE WITNESS: May I --

17 THE COURT: Yes, ma'am.

18 THE WITNESS: -- say something to that? That was
19 just to say that people wanted to do something to honor
20 these children. And in the school district, we are not
21 allowed just to take in funds at our school. It had to go
22 through the foundation. That's what I was implying.

23 THE COURT: Okay. So you --

24 THE WITNESS: So the funds were coming in --

25 THE COURT: So you were worried about your fund

1 raising or not, he's worried about how it's described.

2 So, okay.

3 MR. MADSEN: Your Honor understands --

4 THE COURT: I think she describes it as the school,
5 regardless of where the monies came from and don't worry
6 about where the money came from. The school paid a
7 tribute by doing a mural. The mural depicted thus and
8 such. I think that's appropriate. I think that's
9 allowed. I agree with the fund raising. But she was
10 trying not to, as a School Administrator, project any
11 ideas that their school raised money for a particular
12 purpose for donations and violated some kind of nonprofit
13 versus public school.

14 MR. MADSEN: And I understand that, but I don't know
15 if that needs to be explained here --

16 THE COURT: I don't think it does either, but she was
17 doing that because she's an Administrator, not because
18 she's doing anything else.

19 MR. MADSEN: She was also asked questions about it.

20 THE COURT: No, I don't think Ms. Mayes asked her
21 where did the money come from, she volunteered --

22 THE WITNESS: I volunteered that.

23 THE COURT: I don't need your comment. School
24 Administrators have particular qualities and they're
25 always looking for money to do things and to do more

1 things and the leader in me has to be funded. I have
2 personal knowledge of that. If we can just leave out
3 where the money is coming from, from the sources, I think
4 the project is perfectly acceptable and appropriate. The
5 fund raising, I agree with you.

6 MR. MADSEN: If you would just note our objection.

7 THE COURT: Yes, sir.

8 MS. MAYES: Mr. Madsen, if you want to take a look at
9 these additional items so that we can go ahead and offer
10 them at this time and maybe save some time. 338, the
11 mural photos, and 224.

12 THE COURT: We'll stand at ease for about five
13 minutes. Joy and I are taking a break.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: All right. We ready?

16 MS. MAYES: We are, Your Honor. Right before the
17 break, the State had the witness identify 224, 226, 227,
18 228, 229, 230, 231, 232, 233, 234, 235, and 236. And we
19 offer those into evidence at this time.

20 COURT REPORTER: Suzanne, I hate to tell you this,
21 but I need you to read those numbers again.

22 MS. MAYES: Okay.

23 THE COURT: Can we do that in front of the jury?

24 MS. MAYES: We can, Your Honor. I just wanted the
25 record to be clear that she has identified these and we're

1 offering them, and 338.

2 MR. MADSEN: Judge, the only ones that we had the
3 objection to would be the ones of the murals. There's
4 some other ones in there that were schoolwork or -- I
5 think it's kind of schoolwork that we don't have an
6 objection to.

7 THE COURT: I didn't hear those numbers read in the
8 record. Apparently -- let me get them down again.

9 MS. MAYES: 224, 226, 227, 228, 229, 230, 231, 232,
10 233, 234, 235 and 236. And then in addition, we have 338.

11 THE COURT: Which one is the ones y'all are objecting
12 to, the murals?

13 MS. MAYES: Yes sir, Your Honor --

14 MR. MADSEN: 226 to 236, right?

15 MS. MAYES: Uh-huh.

16 MR. MADSEN: 226 to 236, which are the murals.

17 THE COURT: 233 is not in there?

18 COURT REPORTER: Yes, it is. Yes, sir.

19 THE COURT: It is in there.

20 COURT REPORTER: The one I don't have that's not in
21 that you didn't read before was 250. That's the only one.

22 THE COURT: I also have 250 was not read or
23 mentioned. I noticed 250's omission. Mr. Madsen, 226
24 through 236, inclusive, you object to -- the Court will
25 allow in over your objection because of the relevance of

1 these children in that school, but no mention of any
2 fundraising activity outside of school. So the age of the
3 children that's representative of that impact.

4 (Whereupon, State's Exhibit 224 through 236, 338 were
5 admitted into evidence.)

6 MR. MADSEN: Well, I think any talk about the
7 community in general is outside that scope.

8 THE COURT: All right. You ready, Ms. Mayes?

9 MS. MAYES: Yes sir, Your Honor.

10 THE COURT: Bring the jury, please.

11 (Whereupon, the jury came into open court at
12 approximately 2:25 p.m.)

13 THE COURT: Ms. Mayes, you may continue.

14 MS. MAYES: Yes, sir, Your Honor.

15 CONTINUE DIRECT EXAMINATION

16 BY MS. MAYES:

17 Q And Ms. Ricard, just to continue, I believe there's
18 one that I neglected to ask you about and that's Defense
19 Exhibit 39 regarding Merah.

20 A Yes, ma'am. That was for math and that is the same
21 measure that I spoke of earlier of MAP where it's measured
22 academic progress. And that shows she actually had the
23 highest MAP gain for math as well in first grade.

24 Q And that June 3rd, 2013, would be the last day --

25 A That would have been --

1 Q -- of that first grade school year?

2 A Yes, ma'am, the end of her year with Ms. Lee.

3 Q And you also identified what is State's 224, which is
4 now in evidence. I'm going to ask you what is shown in
5 this photograph and what this is from?

6 A That was included in our yearbook for the school year
7 14/15. That was just a tribute to all three of the Jones
8 children that we could include so that all of our students
9 would have a memory of them. It just really kind of
10 reflects each one of them. We didn't -- from what I
11 remember, I don't think we had another photograph of
12 Nahtahn because it was so early in the school year that
13 year. You can see Merah with a very special friend of
14 hers, a child that she enjoyed playing with an awful lot.
15 And then Eli with a classmate, and that was just his
16 personality. He was always explaining something. I'm
17 sure he was telling her all about something. And then I
18 think the little -- the other inset is probably something,
19 a piece of work that Nahtahn had completed and we included
20 since we didn't have another photograph. Just a memory, a
21 tribute to those students in our yearbook so that all of
22 our students could remember them.

23 Q All right. And in addition to this tribute, can you
24 tell us whether or not there was a unique tribute for the
25 Jones children inside of your school?

1 A We did. One of our teachers, Ms. Carolyn Still, who
2 actually taught Eli in kindergarten, she was also a
3 wonderful artist. So it became a goal of ours to create a
4 space in our school where we could memorialize the
5 children. So because they had a great fondness and love
6 for the beach, we decided to go with a beach theme. And
7 she created a mural that pretty much encompassed the
8 entire learning commons throughout especially one unique
9 area. We called it Jones Beach, had a little sign that
10 said Jones Beach, and several other spaces that made it a
11 very comfortable spot for our students to get a book and
12 go read and reflect.

13 Q In the library. I'm going to show you those
14 photographs now, Ms. Ricard, and ask you if you can take
15 us through what we're looking at. This is State's 226.

16 A That was the sign that Ms. Still created, it just
17 said Welcome to Jones Beach and then it has -- I think it
18 says Seven Habits Lane, if I can read that from here.

19 Q Seven Habits Lane, why is that unique to your school?

20 A Well, because we a leader in me school and the seven
21 habits just really drives the culture and the climate at
22 the school. We use seven habits language throughout the
23 day with the students to help them achieve their
24 leadership traits and hopefully push them forward.

25 Q I'm going to show you what is State's 227.

1 A It's a very sentimental and special quote that Ms.
2 Still chose to include on the wall. And then you can see
3 along the bottom of the wall, along the walkway, there are
4 five sets of footsteps that represent each one of the
5 Jones children.

6 Q 228?

7 A And that's the quote that I was speaking of. It was
8 a quote that we chose to represent the memories that we
9 have of the children.

10 Q 229?

11 A That was one of the areas that we used, just kind of
12 a little reading nook for our students to go in --

13 Q I'm going to show you 230 at the same time.

14 A Yeah, books were purchased and donated in memory of
15 the students so they could go in and climb up in a boat
16 and read books there or sit along the beach and read
17 books.

18 Q 231?

19 A That was another little beachy area. They could
20 climb up in the lifeguard chair and read a book or sit
21 along, again, the ocean area, I guess you would say.

22 Q And why was the beach theme selected for this mural
23 of the Jones children?

24 A They always talked about loving the beach and going
25 to the beach. When the turtle in the pocket incident

1 happened, Eli told me he had got the turtle from the
2 beach. So we just knew they seemed to enjoy going to the
3 beach, so that was why that theme was selected.

4 Q 232?

5 A That particular part of the mural was where we had
6 decided that we would have a space to designate for the
7 children and because we had had such a good memory of Eli
8 and his turtle, we chose turtles to represent the
9 children. So each one of the children were represented
10 with a turtle and Ms. Still named each one of the turtles
11 by one of the children's name.

12 Q Gabriel, Eli. 234?

13 A I can't read it from here. My eyes are not that
14 grand, but again, one of the turtles were one of the
15 children.

16 Q 235?

17 A The same.

18 Q 236?

19 A That looks like Nahtahn.

20 Q Having identified what is 223, being the leadership
21 notebook of Merah Jones that in evidence, Ms. Ricard,
22 having been familiar with Merah for those three years, I'm
23 going to ask you to step down and show us some of the
24 contents of this notebook. I'm just going to ask you to
25 keep your voice up for Joy to hear you.

1 A Okay. So this was from second grade and this is one
2 of her writings. It says, Once upon a time, there was a
3 little zebra who lived in a beautiful castle. So I feel
4 sure that was just the beginning of one of her writing
5 pieces. And then her third grade year, which was the very
6 beginning of the school year 2014/15, she had a teacher by
7 the name of Ms. Nettles. She had begun a letter to her.
8 It says, Dear Ms. Nettles, I am an intelligent little girl
9 and I am scared of ghosts.

10 Q And Ms. Ricard, you spoke of the change in Merah
11 academically between that first grade and second grade.
12 I'm going to show you this document and ask you to share
13 it with us.

14 A So that looks like it was what we called wildly
15 important goals. They had -- we called it their WIG and
16 it was just what they identified as being their goals,
17 academic or personal goals. So you can kind of see what
18 that looked like. And then to show her growth --

19 Q And did she say what she wanted to do?

20 A It says that her wildly important goal was,
21 obviously, to be a ballerina. She said, I like ballet
22 because it is important to me. It's fun.

23 Q And then how did that change between that first grade
24 year to her second grade year?

25 A I think you can obviously see that there was great

1 growth in writing, not only in the neatness of it, but in
2 the volume. So for her second grade personal mission
3 statement, which was a part of what they did in their
4 leadership notebooks, it says, I will be a fantastic
5 daughter. I will be a helpful sister. I will be a super
6 student. Everyday I will do my work and make good grades.
7 When I grow up, I want to be a nurse.

8 Q Are you familiar with the bucket filler?

9 A So her second grade teacher, a lot of what she talked
10 about was how they could fill each other's buckets, saying
11 kind things, being helpful to one another. So she was a
12 bucket filler because she was loving, she was nice, she
13 used nice words, she gave lots of hugs and she was always
14 helping. And that describes her.

15 Q Ms. Ricard, are there special booklets that the
16 children do as part of their first grade year?

17 A Most of the time, teachers would have like a first
18 grade booklet or something that they could kind of
19 remember those first few days of school or put together at
20 the end of the year. That looks like it was one that Ms.
21 Lee made that was probably a compilation of work over her
22 first grade year.

23 Q So this would be State's 338 in evidence. And if you
24 could take us through this.

25 A So that was from the first day of school. She did a

1 picture of each of her children. So that was Merah on her
2 first day of school and then a little poem that went along
3 with it. She included writings.

4 Q Can you tell us whether what you have seen in terms
5 of what Merah has expressed truly represents her unique
6 characteristics?

7 A Uh-huh, absolutely.

8 Q Thank you, Ms. Ricard. You may return.

9 (Witness returns to witness stand.)

10 Q Ms. Ricard, can you tell us about your bond with Eli
11 Jones?

12 A I got to know Eli when he was in kindergarten. He
13 had just a few little hiccups, just little things that we
14 needed to work on behaviorally. He was a special little
15 fellow and really just wanted to please, worked hard to
16 make friends, everybody loved him. We did -- we worked on
17 a few little things. Sometimes he'd put things in his
18 pockets that didn't belong to him, but we always tried to
19 turn those into teachable moments. Whenever he was in
20 first grade, I had begun to do some Read to Succeed course
21 work. So for one of my courses, we were asked to choose a
22 student that would be a focus student. And I knew that
23 was going to be difficult for me being that I was not a
24 classroom teacher, I was an administrator, but I knew I
25 had to fill the requirements. So I went to Ms. Muran, who

1 was his kindergarten teacher. I had spent a lot of time
2 in her classroom that year and I knew that Eli was having
3 some difficulties with his reading. And since I already
4 had such a strong relationship with him and a bond, I
5 thought that he would be a student that I could easily
6 work with because we would already have that rapport with
7 one another. And I also -- I chose him because I knew
8 that he was in a home where there were five children and I
9 felt like he probably did not get as much help at home as
10 he could have and I knew it was a single parent situation
11 as well and that there was no mother in the home. So I
12 had hoped that I could fill a little bit of that material
13 void as well. So he and I worked together that semester.
14 We worked on strategies that he could use in his reading
15 and just try to go look at his reading process, what he
16 was doing well, what he still needed to work on, what his
17 strengths were. It was a wonderful experience and I have
18 precious memories.

19 Q I'm going to show you an item and ask you if you
20 recognize it. It's State's 237.

21 A Yes, ma'am.

22 Q Does it bear your initials?

23 A Yes, ma'am.

24 MS. MAYES: This would be 237 for evidence.

25 MR. MADSEN: No objection.

1 THE COURT: 237 without objection.

2 (WHEREUPON, State's Exhibit number 237 was admitted
3 into evidence.)

4 Q And Ms. Muran, was she first grade?

5 A Ms. Muran was first grade, yes, ma'am.

6 Q And did you have occasion to work one-on-one with Eli
7 as part of that project you just mentioned?

8 A I did. And that was part of what the course work
9 required. Multiple times, I had to remove him from the
10 classroom and we would go either out into the hallway or
11 sometimes to my office or to another space just so we
12 could have some quiet workspace. And he would sometimes
13 choose books to bring to read. Sometimes it might be a
14 situation where I just asked him questions about reading
15 and about how he felt about reading, if he thought he was
16 a good reader. So, really, just taking the time to get to
17 know him as a reader and where he was in his reading
18 process and how he was developing as a reader. And I got
19 to know a lot about him personally, too.

20 Q Did he appear to enjoy that time?

21 A Oh, he loved it. He looked forward to it. And it
22 was -- he always lit up when I would come to the door to
23 get him. We both looked forward to it.

24 (WHEREUPON, video played for the jury starting at
25 3:00 p.m. and ended at 3:05 p.m.)

1 Q Ms. Ricard, did that video adequately depict the
2 unique characteristics of Eli Jones?

3 A Yes.

4 Q My last question to you is about you personally.
5 Being someone who had a direct relationship with the
6 children, how did these crimes impact you personally?

7 A They still impact me.

8 MS. MAYES: Thank you, Ms. Ricard.

9 CROSS-EXAMINATION

10 BY MR. MADSEN:

11 Q Ms. Ricard, I want to show you what's been marked as
12 Defense for ID 301, 302, 303 and 304. Take a look at
13 that. Would that have been at school?

14 A Yes, this was in Fran's classroom whenever Merah was
15 in first grade. And then this would have been -- this was
16 actually right out at the crosswalk. I'm assuming that
17 would have been when Nahtahn was in kindergarten, but I'm
18 not positive. But they were, obviously, already in
19 school. That's Nahtahn and Mr. Jones. That would have
20 been at a school function, obviously, around Thanksgiving.
21 They always do the Thanksgiving play, so that would have
22 been kindergarten year. And then this -- this could have
23 been a family night. I'm not positive. It looks like it
24 was in Ms. Muran's room, so it would have been when -- it
25 would have been when Eli was in first grade. I recognize

1 some of the other students, so that would have been first
2 grade year for Eli.

3 MR. MADSEN: Judge, we would move Defendant's 301
4 through 304 into evidence.

5 MS. MAYES: No objection.

6 THE COURT: 301, 302, 303, 304 for the defense, all
7 without objection.

8 (WHEREUPON, Defendant's Exhibit numbers 301 through
9 304 were admitted into evidence.)

10 Q Okay. 301 is, I think you said Ms. Lee?

11 A That was Ms. Lee with Merah, so that would have been
12 at some point during Merah's first grade year.

13 Q And 302 are the children in kind of, I guess, the
14 crosswalk?

15 A Right, right at the front of the school. And like I
16 said, it's either Nahtahn's kindergarten year or may have
17 been prior to him being in kindergarten. That one's a
18 little bit difficult for me to tell as far as his age.

19 Q 303 is Tim and Nahtahn?

20 A That is Mr. Jones and Nahtahn. And that would have
21 been Nahtahn's kindergarten year. The little turkey hats,
22 kind of a give away. They always did a kindergarten play.

23 Q And then 304?

24 A That looks like it's Ms. Muran's classroom. And like
25 I said, I recognize some of the other folks and students

1 in there. I'm not sure if that was some type of family
2 night, but that was in Eli's first grade year.

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

4 THE COURT: Anything else, Ms. Mayes?

5 MS. MAYES: No, sir, Your Honor.

6 THE COURT: You may step down.

7 MS. MAYES: The State calls Joy Lorick.

8 JOY LORICK, being
9 first duly sworn, testified as follows:

10 THE CLERK: Is she still under oath, Your Honor?

11 THE COURT: Yes, ma'am. Come on around. You were
12 sworn when you testified earlier, you're still under oath,
13 okay?

14 THE WITNESS: Yes, sir.

15 THE COURT: Make yourself comfortable. Remember to
16 speak in the microphone.

17 THE WITNESS: Okay.

18 DIRECT EXAMINATION

19 BY MS. MAYES:

20 Q Good afternoon, Ms. Lorick.

21 A How you doing?

22 Q We know you. We saw you earlier.

23 A Yes.

24 Q Tell us a little bit about yourself. Where are you
25 currently employed?

1 A I work at Publix in Chapin.

2 Q Now, Ms. Lorick, before you were at Publix, you
3 worked child care?

4 A Oh, yes.

5 Q A job you loved a lot?

6 A Yes.

7 Q You worked with the Jones children in the summer of
8 2014?

9 A Yes, ma'am.

10 Q And that last summer, I believe, it was roughly late
11 June through July?

12 A July, yes, ma'am.

13 Q That you had the Jones children?

14 A Yes.

15 Q And then Christina Ehlke, who also was a babysitter
16 for the Jones children after you?

17 A Yes, ma'am.

18 Q And lived next door?

19 A Yes.

20 Q She's a friend of yours?

21 A Oh, yes.

22 Q So did you have an opportunity to still see the Jones
23 children if you wanted to at any point in time?

24 A Yeah. Yes.

25 Q I'm going to ask you a little bit about Gabriel and

1 Abigail, Elaine.

2 A Yes.

3 Q They were too young to be in school?

4 A Yes.

5 Q So that summer, who did they spend all day with?

6 A Me.

7 Q Tell us about them.

8 A Gabe, oh, my goodness, he had a smile that would
9 light up a room. Always wanted to be held all the time,
10 so I would do nothing but hold him. And he just wanted to
11 do everything his older brothers and sisters did.

12 Whatever they did, he wanted to do it. Just a very sweet
13 child, very sweet. Elaine, you know, she was very bubbly,
14 very bubbly, sweet baby, wanted to be held, too. Just --

15 Q Can you tell us about the role of the siblings with
16 those babies?

17 A Merah was my little helper. She always wanted to
18 help with the youngest kids, regardless if it was
19 changing, like she always wanted to be like I'll help you
20 change Elaine. I want to help feed her. Eli was like
21 that, too. She always wanted to help me cook, just
22 anything. So I would call her my little helper. Eli was
23 very overprotective, especially of Elaine. Very
24 overprotective of his baby sister. And they were referred
25 to her as baby. They would say it's okay, baby, it's

1 okay.

2 Q How did Elaine like being around the older siblings?

3 A Oh, she loved it, especially the attention they
4 showed her. They -- Eli had this thing where he would
5 like go get frogs, bugs and frogs. Nahtahn, same thing
6 with his brother, go and get bugs and frogs. And I
7 remember they would say, Ms. Joy, we going to catch you a
8 frog. And I'd say, Yeah, go catch me a frog. Don't bring
9 it near me, but just go catch me a frog. Just very --
10 just to know these kids and have a -- they would have an
11 impact. No matter if you having a bad day, just being
12 around them.

13 Q Okay. About Elaine, was she a happy baby?

14 A Oh, yes, all the time. All the time.

15 Q And Gabe?

16 A Gabe, too.

17 Q Were they learning to talk yet?

18 A Yes. Yeah. Oh, yes.

19 Q You've seen some pictures before and I'm going to
20 have you identify them.

21 A Okay.

22 Q This would be State's 220, 221.

23 A Gabe.

24 Q 219?

25 A Gabe. Eli and Nahtahn.

1 Q 218?

2 A Eli.

3 Q 217?

4 A Merah with a friend.

5 Q All right. Give me just one moment.

6 A Okay.

7 Q If you could just to yourself, look over these
8 photographs and I'm going to ask you about those as well.

9 This would be 303, 304, 305 and 306. And you recognize --
10 do you recognize 303, 304 and 305?

11 A Yes.

12 Q And well as 367, 308 --

13 A Yes.

14 Q -- and 310?

15 A Yes.

16 Q Let me show you 311, 312, 313, 314, 317, 318, 319,
17 320, 321, 322, 323, 324, 325. Are those photographs also
18 a fair and accurate representation of the children?

19 A Yes.

20 MS. MAYES: These will be for evidence at this time,
21 Your Honor.

22 MR. YOUNG: No objection.

23 THE COURT: I missed the first four. It was 317, 18,
24 19 or was it 217 --

25 MS. MAYES: 217, Your Honor.

1 THE COURT: 217, 218, 219, 220.

2 COURT REPORTER: 221.

3 MS. MAYES: Yes, sir, Your Honor.

4 THE COURT: All admitted. 303 through 306 without
5 objection. I think 308, 310, 311, 312, 313, 314, 318,
6 319, 320, 321, 322, 323, 324, 325 and 367.

7 COURT REPORTER: You didn't have 317. I thought I
8 heard 317.

9 Was it 367 or 307? I don't have a 367 yet.

10 MS. MAYES: Okay, should be 307.

11 THE COURT: That would fit better in the numbering
12 between 306 and 308.

13 (WHEREUPON, State's Exhibit numbers 217 through 221,
14 297, 303 through 308, 310 through 314, 318 through 325
15 were admitted into evidence.)

16 (Whereupon, State's Exhibit 296, 298-302, 306 and
17 308, 309, 315, 316, 326-329, 331 marked for
18 identification only.)

19 Q Ms. Lorick.

20 A Yes, ma'am.

21 Q You told us about Gabe?

22 A Yes.

23 Q I'm going to show you some photographs.

24 A That's Gabe. Gabe.

25 Q You mentioned Merah's role with her younger siblings?

1 A Yes. That was Merah, Elaine and Gabe.

2 Q 318?

3 A That's Merah and Gabe.

4 Q 221?

5 A Gabe.

6 Q That summer, was Elaine walking?

7 A Yes.

8 Q 321?

9 A That's Elaine. I don't know who has her hand, but
10 that's Elaine. That's Merah and Elaine.

11 Q Ms. Lorick, this photograph here of Merah and Elaine,
12 can you tell us whether or not it accurately depicts the
13 relationship you observed between the two of them?

14 A Yes. That's Merah and Elaine.

15 Q 322. 323?

16 A That is Merah and Elaine and I think Nahtahn.

17 Q 324?

18 A Merah and Elaine.

19 Q Ms. Lorick, was there ever a day that you spent with
20 them that you didn't see Merah holding Elaine?

21 A No. Elaine. Nahtahn.

22 Q 311?

23 A That is Nahtahn, Eli and Merah.

24 Q 367?

25 A That is Eli.

1 COURT REPORTER: 307?

2 MS. MAYES: 367.

3 COURT REPORTER: Oh, okay.

4 MS. MAYES: It could be 307.

5 COURT REPORTER: I think it's 307.

6 THE COURT: It fits in 307 where it came in order.

7 MS. MAYES: 307, Your Honor, correct.

8 Q 310?

9 A That is Eli with some friends.

10 Q And 217?

11 A And Merah with a friend.

12 Q Ms. Lorick --

13 A Yes.

14 Q -- is it possible for you to tell us, having known
15 each of these children individually as a caregiver --

16 A Yes.

17 Q -- how these murders have impacted you personally?

18 A Yes. I lost sleep. Right after this, I couldn't
19 sleep. I would stay up all night just pacing and walking
20 the floors.

21 Q Do you remember when you got that call?

22 A Yes. I just fell in the ground.

23 MS. MAYES: Nothing further, Your Honor.

24 MR. YOUNG: Your Honor, we would offer 305 through
25 323 into evidence.

1 MS. MAYES: No objection.

2 THE COURT: 305 through 323 inclusive, all admitted
3 without objection.

4 (WHEREUPON, Defendant's Exhibit numbers 305 through
5 323 were admitted into evidence.)

6 CROSS-EXAMINATION

7 BY MR. YOUNG:

8 Q Ms. Lorick, I'm just going to put up some pictures
9 and you just tell me if you recognize anybody in the
10 pictures, okay?

11 A Yes, sir. That's Mr. Jones and Gabe. Mr. Jones and
12 Merah. I can't really tell.

13 Q It's a little dark on the projector. Let me see.
14 This is Defense 307. Can you tell better?

15 A Mr. Jones and it looks like Gabe.

16 Q 308?

17 A That looks like Nahtahn, yes. That is Merah, Gabe,
18 Nahtahn, Elaine and Eli. Mr. Jones and Elaine. Mr. Jones
19 and Elaine. That looks like Gabe, I'm not too sure.

20 Q Do you know what's all over his face?

21 A Yeah, I can't really tell. I want to say that's
22 Gabe. Mr. Jones and it looks like Elaine. Mr. Jones and
23 I can't tell who that is.

24 Q This is Defense 314. I'll bring it up to you.

25 A Elaine. That is Merah, Elaine and could be possibly

1 Nahtahn in the back. That's Elaine.

2 Q Is that Gabe right here?

3 A I can't really tell because the face is turned, so I
4 don't know if it's Elaine or Gabe.

5 Q Well, I think there's two, right? There's Elaine and
6 there's Gabe?

7 A Well, I really can't tell.

8 Q Okay.

9 A Mr. Jones and Elaine. Mr. Jones and Elaine. Eli.

10 Q And what's Eli got in his hand?

11 A I can't really tell. Frog.

12 Q And what's he standing next to? Do you know what
13 that is?

14 A No.

15 Q Okay.

16 A Mr. Jones, it looks like Nahtahn. I can't really
17 tell. The picture's blurry. That looks like Eli, Mr.
18 Jones, Eli and I think Elaine. I can't really tell.

19 Q Is that Gabe with the batman mask?

20 A That could be Gabe. Yeah, I can't. That is Eli,
21 Nahtahn and Merah.

22 Q And then do you know where that picture is taken?

23 A No, sir. That is Merah, Nahtahn and Eli. Mr. Jones
24 and Elaine. Mr. Jones and Nahtahn.

25 MR. YOUNG: Thank you, Ms. Lorick. That's all the

1 questions I have.

2 THE COURT: All right. You may step down, ma'am.

3 MS. MAYES: Due to the previous scheduling
4 conference, Your Honor.

5 THE COURT: Okay. So it's a good time to stop. All
6 right. I'm anticipating a shorter day tomorrow because of
7 witnesses. We'll have several witnesses and the State
8 should finish up. The Defense will call some of theirs.
9 The State's moving on quicker than they thought. So we're
10 going to stop here today. I understand somebody on the
11 jury's got a scheduling conflict, so we'll make that. Put
12 your stuff in the jury room. See you back in the morning,
13 9:00 o'clock. Don't talk about the case. Leave your
14 books here.

15 (Whereupon, the jury was excused for the day.)

16 THE COURT: We need to put anything on the record
17 before we adjourn for the day? You good?

18 MR. YOUNG: Yes, sir. I need to complete the record
19 about the photographs that the State -- the autopsy
20 photographs that the State used with Dr. Ross. I know
21 those were in over Defense objection and that the State
22 intends to have them go back to the jury room so they can
23 see them if they want to. We would object to that
24 procedure and request that the Court keep those
25 photographs in court so that any Juror who wants to see

1 those photographs can come into court and see the
2 photographs so that the record can be made about the
3 emotional impact and nature of those photographs at the
4 time that they're viewing. And that way the jurors can't
5 improperly use those photographs in the jury room to
6 possibly to intimidate other jurors or in any way harass
7 other jurors through the use of those photographs.

8 THE COURT: I'll consider that, but I don't want to
9 rule right now.

10 MR. HUBBARD: Your Honor, I absolutely object. I
11 could have published them. If that's going to be the
12 thing, I would. But to me, that's just outrageous. They
13 can consider that with everything else. The insinuation
14 that the jurors are going to use evidence improperly or
15 intimidate one another. There's no evidence of that. I
16 think it's absolutely outrageous and I absolutely oppose
17 that.

18 THE COURT: All right. See y'all in the morning.
19 Anything else?

20 MR. YOUNG: No, sir. I think I may need to add to
21 the record, that they intended to use -- needed the
22 photographs to show Dr. Ross in testimony and they were
23 not used for that purpose, which enhances the fact that
24 they're just being used to create an emotional impact.

25 THE COURT: Okay. I understand. There's been enough

1 record on that. I told you I haven't made a decision on
2 that. I'll decide it later. It's a good time to adjourn
3 for the day for me.

4 (Whereupon, the trial will resume the next morning at
5 9:00 a.m.)

6 June 7, 2019

7 THE COURT: Y'all ready to get started?

8 MR. HUBBARD: Got a couple of things. Yesterday, I
9 don't know that it was actually on the record, but I moved
10 in as a Court's Exhibit two big notebooks full of the
11 autopsy photos. There's 569 autopsy photos. That Court's
12 Exhibit is 119A and B. And those were in two big
13 notebooks, separate notebooks. I wanted to make that
14 clear. And also, I just wanted to pick up on yesterday,
15 the Defense's motion to restrict jurors on those photos,
16 Your Honor. If Your Honor --

17 THE COURT: I'm not going to restrict the jurors.

18 MR. HUBBARD: Thank you, Your Honor. Then I won't
19 argue.

20 (Whereupon, Court's Exhibit 119A and 119B were marked
21 for identification only.)

22 THE COURT: We've had enough on those autopsy photos.
23 Both sides have taken inconsistent positions. Y'all have
24 traded positions. They've been admitted into evidence.
25 They're going to stay in evidence.

1 MR. HUBBARD: Thank you.

2 THE COURT: Everybody is protected on their rules and
3 their rulings and their fairness and their constitutional
4 issues. Everything they mentioned yesterday, I considered
5 last night. They're in, they're going to stay in.
6 They're not going to be restricted. They can stay in
7 envelopes. I think that's the proper way to handle it.

8 MR. HUBBARD: Thank you.

9 MR. YOUNG: And I think I just need to put for the
10 record, briefly, our rationale in attempting to show the
11 photographs in voir dire was to gauge jurors abilities to
12 handle the emotional nature of them. And our attempts to
13 show them during the first phase of the trial was for that
14 same reason, to make sure they wouldn't be overcome by
15 their emotions and decide the penalty consistent with our
16 motions and the social science that we've attached to it.

17 THE COURT: All right. Everybody is protected.
18 They're in. They'll stay in the envelopes. The jurors
19 can look at them if they so choose.

20 MR. HUBBARD: Yes, sir.

21 THE COURT: And we'll move on from there.

22 MR. HUBBARD: Thank you.

23 MS. MAYES: And Judge, it may speed things along.
24 Our first witness is Jacquelyn Moran from Saxe Gotha. She
25 was Eli's teacher. We had provided the photographs

1 pursuant to discovery, but if Defense wants to go ahead
2 and take a look at them now and that way, we know they're
3 in evidence and we can speed things along.

4 MR. YOUNG: I understand the Court's ruling and I'm
5 not trying to bring it up again, we would renew our motion
6 to strike photographs as not being part of Dr. Ross's
7 testimony. We understand the Court's ruling, just needed
8 to make the record clear.

9 THE COURT: You've got the clearest record ever.
10 Bring the jury in. I don't know how Dr. Ross didn't
11 testify to them when she handled each of them, identified
12 each of them, called them by name and number. I mean,
13 your record is protected, but she touched each photograph.

14 (Whereupon, a break while marking exhibits.)

15 (WHEREUPON, the jury entered the courtroom.)

16 THE COURT: All right. Ready to go? Everything good
17 last night? Anybody communicated, any communication
18 efforts? Okay. We'll continue on. Madam Solicitor.

19 MS. MAYES: May it please the Court, the State calls
20 Jacquelyn Moran.

21 JACQUELYN MORAN, being
22 first duly sworn, testified as follows:

23 THE CLERK: Have a seat over there, please. If you
24 will state your name, spell your last for the record.

25 THE WITNESS: Jacquelyn Moran, M-O-R-A-N.

1 THE COURT: How do you spell your first?

2 THE WITNESS: J-A-C-Q-U-E-L-Y-N.

3 THE COURT: Okay.

4 DIRECT EXAMINATION

5 BY MS. MAYES:

6 Q Good morning, Ms. Moran.

7 A Good morning.

8 Q I'm going to start by asking you to tell us a little
9 bit about yourself.

10 A I work at Saxe Gotha Elementary School. I'm
11 currently a kindergarten teacher. This is my first year
12 in kindergarten. I've been there for seven years. And
13 before I was in kindergarten, I taught first grade.

14 Q All right. Tell us a little bit about your
15 educational training that led you to become a public
16 school teacher?

17 A I attended the University of South Carolina and got a
18 degree in early childhood education. I did my internship
19 at Saxe Gotha Elementary and couldn't leave.

20 Q Okay. Ms. Moran, how is it that you knew Eli Jones?

21 A Eli was in my first grade class in 2013.

22 Q All right. And you had him the whole school year?

23 A Yes, ma'am.

24 Q Take us through that. Tell us a little bit about Eli
25 as a child.

1 A Eli was all boy. He was sweet. He loved superheros.
2 But what I remember about Eli was he was everybody's
3 friend. Everyone loved to be friends with Eli. He was
4 the kid that would play with anyone who needed someone to
5 play with. I'm sorry. He was curious. He loved to
6 learn. He loved school because he loved to learn. He was
7 my little buddy.

8 Q And when you say "he was my little buddy", can you
9 tell us a little bit about your actual relationship with
10 him?

11 A Yeah. Eli and I were very, very close. That was my
12 second year of teaching and I became very close with him.
13 He would gravitate to the front of the carpet. He was
14 smaller, so he, at the beginning of the year, was at the
15 front of the carpet so he could see. But as the year
16 progressed, he wanted to stay. Oftentimes, when I would
17 teach at the front, he'd be right in front of me. He was
18 one of the kids that would want to sit with me at lunch.
19 He was special.

20 Q And Ms. Moran, were you aware that he didn't have a
21 mother in his home?

22 A Yes, ma'am, I was. And I did, you know, take on part
23 of that role for him. You know, morning hugs and we ate
24 breakfast together a lot.

25 Q I'm going to show you some photographs.

1 A Okay.

2 MS. MAYES: I believe all of these are going to be
3 entered in evidence without objection, Your Honor.

4 MR. MADSEN: Yes, Your Honor.

5 THE COURT: All right.

6 Q First grade school year. This is 256, that would be
7 the school year of 2013 to 2014, so that would be the fall
8 and the spring before the murder?

9 A Yes, ma'am. And he is in the front row right there
10 in the green shirt. And that was me a couple of years
11 ago.

12 Q All right. Let me show you 297.

13 A That would have been his yearbook photo. They would
14 come and take pictures in the fall. That actually would
15 have been taken before the class picture.

16 Q Now, one of the things that you did as a teacher is
17 you documented certain aspects of daily classroom
18 activity?

19 A They were my babies. I took a lot of pictures.

20 Q Let me show you some of those photographs now. And
21 if you could, just kind of take us through what you
22 remember about these particular days and what's happening.
23 I'm going to start with 266 here.

24 A This was a day when we had careers come and this was
25 a firefighter, a real life hero, who came to visit the

1 classroom. Let me see if I can use this. This is Eli
2 right here right at the front. You can see, you know,
3 where he's sitting. This is usually the spot he chose
4 because I would be at the front teaching at the board. So
5 watching all of that, real firefighter.

6 Q And you mentioned he liked superheros?

7 A Yes.

8 Q Is it surprising to you that he's standing there --
9 or he's sitting there with the firefighter?

10 A Not at all. Not at all.

11 Q I'm going to show you what is State's 267.

12 A We had an initiative at school, Esteem, and it was
13 incorporating engineering and mathematics. And we had a
14 robotics team come into the classroom just to give that
15 experience to kids. And he's right here. I don't know if
16 you can zoom into his face, but he is in awe of that
17 robot. It would have been like remote controlled. Yeah.

18 Q All right. Now, let me show you what is 268.

19 A One thing that we do at school is a time where they
20 don't just read to themselves, they read, you know, with a
21 friend. So you can see in this picture -- and he's right
22 here in this green shirt. He's reading with a buddy
23 during read to partner time. I like the way that he's
24 like pointing to the words and trying to show his friend,
25 trying to help. That's what he did. He was a friend. He

1 would try to help anyone who needed it.

2 Q And when you say that he was a friend, tell us about
3 that in terms of the rest of the class.

4 A Everyone loved Eli. He was a popular selection. At
5 reading time when they would pick a buddy, he usually was
6 in charge of the shadow tag game that they would play.
7 That was the year that they loved to play tag, but, you
8 know, at school, you don't touch. So they would play
9 shadow tag and he was definitely a ring leader in that.
10 He actually was a really good artist and one of the things
11 that he did as a friend is he would try to teach other
12 people how to draw like him. All right. Well, there he
13 is. That's his -- that's his classic -- that's a classic
14 Eli grin. That's usually -- when you were teaching,
15 that's usually what you were getting. That was the sweet
16 smile. That's the one I remember. And this would have
17 been a buddy time. On that table, that's a leadership
18 notebook. And we had what was called leadership buddies.
19 Y'all have heard about the leadership notebooks some. And
20 their buddies would come and help them with their
21 leadership notebook because they were barely reading,
22 barely writing. They would come and help them learn how
23 to present them to people or add things to their folder.
24 And he actually -- I always had to correct him. He would
25 call his leadership buddy his big brother.

1 Q Even when you corrected him, did he continue to call
2 him --

3 A Yeah. Yeah. He was stuck on that. He would tell
4 me, No, that's my big brother.

5 Q 270?

6 A This is him right here. This was a group project we
7 actually did with another class. A fifth grade class came
8 down and they were doing like an animal research project.
9 And they were turning it into like an IMovie, learning
10 about technology and how to use Ipads. And they each had
11 a group and they had a group of fifth graders that were
12 helping them learn how to do that. We did a lot of group
13 work with classes outside of my class. People that
14 were -- or kids that were older or kids that had skills
15 they didn't have. Our school is a whole community.

16 Q Let me show what is 271, and you take us through what
17 is happening in this photo. You're taking all of these
18 photos?

19 A Yes. This was either Red Ribbon week or Dr. Suess
20 week. Those weeks, we always do a crazy sock day. So
21 this would have been a crazy sock day. And this is a
22 classic teacher picture for crazy sock day when they all
23 put their feet in. He's right there on the corner.

24 Q All right. And then 272 that goes along with this?

25 A This is the exact same moment, but I went to the

1 other side of the room because you couldn't see all of
2 their faces. So he's actually down here in this corner
3 smiling back at the camera with his crazy socks. At the
4 front of the room.

5 Q 273?

6 A A moment ago when I talked about group work, this is
7 also that same project they were working on. I like to
8 document their lives and what they do and send it -- send
9 it home so everyone knows what we're working on. You can
10 see him right here. He's diligently working on whatever
11 part was his.

12 Q 274?

13 A He's up here in the corner. I really don't remember
14 what they're doing in that picture, but they're definitely
15 working together on something.

16 Q 275?

17 A When I talk about him being curious, this is what I'm
18 talking about. He just wanted to know stuff. Those are
19 lima beans. This is another classic teacher thing. If
20 you soak them long enough and you pop them open, you can
21 see the sprouts on the inside and you can -- you can see
22 him here investigating with his magnifying glass the
23 inside of those lima beans.

24 Q Is this the Eli you remember?

25 A Yes -- yes, ma'am. These are all my classroom. He's

1 laying on the floor and who's know what they're working
2 on. Oh, it was probably the same day. One thing we teach
3 in first grade is about measurement. And they had cut out
4 an item that was the same size as their foot and we were
5 talking about how small foots take more and big foots take
6 less. And there he is measuring the length of the room.

7 Q By foot? By his foot?

8 A By his foot. And he had -- he would have had a small
9 foot. So his foot would have probably been half of the
10 kid next to him.

11 Q Do you see anything else in this photo of Eli that
12 you recognize?

13 A I believe that back here -- he loved superheros.
14 It's hard to remember back that far, but, likely, this was
15 his book bag at the time. He loved Spiderman. He loved
16 Batman. Yeah.

17 Q The last photo is 277.

18 A I talked to you about read to partner time, but it
19 doesn't always work out perfectly because we have odd
20 numbers. So this would have been a lot of groups of two.
21 And there's a picture, it's very hard to see, but he's
22 over here. And this is actually a group of three. And he
23 was everyone's friend. Eli would have been the person
24 that if there was a kid left out, he would have said hey,
25 come read with us. He didn't want anyone to feel left

1 out. He included all. So down here, you can see he's
2 reading with two other kids as a group of three.

3 Q It's supposed to be a group of two?

4 A Yes, ma'am.

5 Q But if there was an extra student --

6 A Yeah.

7 Q -- it would be Eli that would --

8 A Oh, he would always volunteer. He was everyone's
9 friend, so he could get along no matter what with who it
10 was.

11 Q I'm going to show you for identification what is
12 already in evidence as Defendant's 13 and ask you if you
13 recognize that notebook?

14 A Yes, ma'am. This is our writing notebook that they
15 keep at school that we do during writing time. This was
16 his writing notebook the year I had him as a first grader.

17 Q Do you recognize his handwriting as well?

18 A Yes, ma'am. This is his handwriting.

19 Q For ID only, I'm going to show you what is State's
20 265 and ask you if that's a duplicate of that same item?

21 A Yes, ma'am.

22 Q Okay.

23 A Would you like for me to read what's here or you
24 going to put it up?

25 Q I'm going to see if we can get this on the overhead

1 here. And what do the -- what do the kids do with the
2 writing notebooks?

3 A We, you know, teach during writing time different
4 components, informational stories. I see the top of this
5 page is "All About". And that is a unit we do in first
6 grade, we do All About. So I would teach them a lesson on
7 whatever our topic was and then they would have some
8 private reflection time that they would take their idea I
9 gave them and go write. So he would have taken an All
10 About lesson that I modeled and then gone back to his
11 writing time and done this. They do this independently.

12 Q What does it say?

13 A At the top, it says, All About My Brother. And
14 there's a little boy saying, Can I have it? And the other
15 one says, Yes. And at the bottom, it says: I love Tahn
16 because he gives me things to play with and he gives stuff
17 that I want. God, thank you for making my brother -- or
18 thank you for my brother. Thank you. Thank you. Thank
19 you. You did a wonderful job making my brother. I love
20 God.

21 Q So that writing was about Nahtahn?

22 A Yes.

23 Q I'm going to ask you to take a moment.

24 A Yes, thank you.

25 Q And then when you're ready, if you can, tell us a

1 little bit more about the leadership notebook.

2 A Okay. The leadership notebook is something that
3 every student has at our school. And we really try to
4 include things in there that are personal to them,
5 celebrations that they had, goals that they're trying to
6 achieve. It's something that they do that is them. They
7 have what they want to be. How they feel about, you know,
8 certain aspects of school. I mean, we keep a lot of data
9 in them so that they can go back and reflect on how much
10 they've grown through the year.

11 MS. MAYES: And Your Honor, if Ms. Moran may step
12 down?

13 THE COURT: You may.

14 Q Just take us through some of the contents of Eli's
15 notebook. Do you recognize it as Eli's?

16 A Yes, ma'am.

17 Q This will be State's 255.

18 A This is one of Eli's superheros that he would have
19 wanted to have taught other kids. That's his mission
20 statement. So their mission statement is something they
21 come up with of what they want to be. And he says, I will
22 do my best all the time. They have goals that they would
23 set for themselves, the things that they wanted to work
24 on. He wanted to work on tally marks.

25 Q And what are tally marks?

1 A In math class, it's the ones where you have sticks of
2 five with the cross over. And that's the first grade
3 standard. His personal goal was, I work on my homework.
4 These were different -- we would sit in a circle often and
5 do what's called a seminar, where they kind of talk to
6 each other about something that we've discussed. So
7 that's all data on things like that.

8 Q Okay. Take us through this leadership roles I've had
9 through the year. And I see a lot of different activities
10 here for Eli. Take us through what these different
11 activities are.

12 A Okay. So they have to sign up for jobs they think
13 they would be good at, and I make them tell me why. And
14 then I select each week who's going to do what. He's got
15 that he was the line leader, so that's the coveted
16 position. They all want to be first. The door holder,
17 holding the door when we got out. The caboose, which
18 would have been the last person at the end of the line.
19 The messenger, the teacher's assistant. We've got room
20 inspector, the class blogger, which would have kept track
21 of everything we did that day.

22 Q There are dates beside all of these that Eli served
23 that role in your class?

24 A Yes. If it is colored and the date's beside it,
25 that's the week that he got to do it.

1 Q What else do you see?

2 A Water counter. That was another favorite. This was
3 his favorite. I am the line leader because I do hip and
4 lip everyday, and there he is doing hip and lip.

5 Q Okay.

6 A That's this. This is how the kindergarten and first
7 graders walk down the hallway.

8 Q That's what's meant by hip and lip. We're going to
9 take a look here at some of his celebrations. If you
10 could tell us a little bit about that.

11 A This would have been -- Ms. Ricard signed this for
12 engaging respectfully. And it was in March of 2013. He
13 would have gotten that at a lead rally. Being recognized
14 for doing something that was respectful. This is given at
15 the end of his kindergarten year. This is his
16 kindergarten award. He got the Mr. Goodbar award for
17 always being a friend. And then this one is -- I gave him
18 this one at the end of the year. This would have been the
19 last week of school. And it was the M&M award for being
20 marvelous and mighty.

21 Q State's 264 and 263. I'm going to ask you about
22 this. It's already in evidence as a Defense Exhibit.
23 This is Defense 13. It's called All About Me, Myself and
24 I. And if you recognize Eli's writing in some of these
25 contents?

1 A That's Eli's writing, yes. My favorite game is a DS
2 because it is fun. It's got my favorite book is Batman
3 because it is cool. I am cute and super because I am
4 working hard. I'm fast because I run fast.

5 Q So it's to describe three things about yourself?

6 A Uh-huh. This would have been like, you know, the
7 beginning of the school year trying to understand, you
8 know, who you are, get to know each other. That would
9 have been him as a baby.

10 Q Do you recognize Eli's writing on this? This is
11 Defendant's Exhibit 42.

12 A Yes. And I actually remember him sharing that with
13 me.

14 Q He brought this to you to show it to you?

15 A Yeah. We had a share time at the end of the day,
16 that's one of the things he shared. Because I remember
17 the string, it was so interesting.

18 Q Can you take us through that?

19 A Yeah. It says, God is happy. Oh, I've got them out
20 of order. Okay. Page 1. I like the Lord because he is
21 not mean. He is sweet. He is almighty. The Maker. Page
22 2 says, He made the moon after the earth. He made the sun
23 after the moon. Do you love God?

24 Q I'll show you a kindergarten item with 5K on it from
25 Eli. He went to kindergarten at Saxe Gotha before he came

1 to you?

2 A Yes, ma'am.

3 Q Take us through this.

4 A All right. Well, there's his little picture. He was
5 a great artist. Obviously, he loved his field day. Okay.
6 It says, I like to play in my box. I like to read in
7 school all day. I like to learn the seven habits, which
8 is part of our leader in me. I like to learn the seven
9 habits all day. The butterfly lands on my finger at
10 school and it loves me. I like PE and I like my teacher.
11 The end.

12 Q This will be State's 288. My Year in First. Your
13 class?

14 A Yes. We did that at the end of the year together
15 just to help them remember their whole year. So if you go
16 through it, it will just have different things like what
17 his first grade favorites are, who he liked to eat lunch
18 with, what he liked to eat, all about his school.

19 Q What does he say about his lunch?

20 A My favorite lunch in first grade is pizza. And then
21 he's got his little lunch buddies down here. It's his
22 little group of friends, Noah and Conner and Sebastian.
23 And you can see his cute little --

24 Q Drawing.

25 A Yeah. He was so great at drawing.

1 Q And in the picture of them at lunch, did he draw
2 pizza?

3 A He did. They're all holding pizza and looking happy.

4 Q All right. My teacher.

5 A Well, there we are. We're holding hands.

6 Q He drew a picture of the two of you holdings hands?

7 A My first grade teacher's name is Ms. Moran. One
8 thing I'll never forget about Ms. Moran -- I'm sorry -- is
9 she's the best teacher ever. I wish I had Ms. Moran to
10 teach next year. My teacher made me smile by the door
11 when we would be shaking hands.

12 Q Is that something you recall every morning with him?

13 A Yeah. I greet my students at the door.

14 Q Thank you. You may return to your seat.

15 (Witness returns to the witness stand.)

16 Q Ms. Moran, did he talk about his favorite subjects
17 and what he wanted to do when he grew up in that first
18 grade?

19 A He did. Can I read it?

20 Q Yes.

21 A Okay. It says, My favorite subject is health because
22 we can be a doctor and we can fix people.

23 Q And State's 310?

24 A That's in my classroom. The kids who he said he
25 liked to eat lunch with in his book are actually the kids

1 in this picture. This is him on the end. That was -- I
2 see parents in the room, flowers in the background, I'm
3 guessing that was about the last day of school probably.
4 That was probably the day of our celebration.

5 Q Ms. Moran, given your relationship with Eli, is it
6 possible to express how this crime has impacted you
7 personally?

8 A This is something that I struggle with, I struggle
9 daily. I see his friends. It's hard. Some days are
10 easier, but he's always there. It's hard for me to put
11 into words.

12 MS. MAYES: Thank you, Ms. Moran.

13 (Whereupon, State's Exhibit numbers 255, 256, 262
14 through 269, 270-277, 288, 310, 332 were admitted
15 into evidence.)

16 (Whereupon, State's Exhibits 254, 257 through 261
17 were marked for identification only.)

18 CROSS-EXAMINATION

19 BY MR. MADSEN:

20 Q Ms. Moran, just a few questions.

21 A Yes, sir.

22 Q Tim came to Open House parent nights?

23 A I recall him coming to like a family night, but I
24 don't remember the others.

25 Q On the nights that he came, though, Eli called those

1 special Eli nights, didn't he?

2 A There was a night that he came by himself with his
3 dad. I do remember him saying he was excited because he
4 felt like it was very special to have that special time
5 with just him.

6 Q With five kids, it's hard to get kind of one-on-one
7 time?

8 A I'm sure.

9 Q And, in fact, Eli liked it because, I guess, they
10 went out to eat beforehand?

11 A I believe he said something like that, that he got to
12 eat with him by himself.

13 Q And Eli loved that?

14 A Yeah.

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

16 THE COURT: You may step down.

17 MR. HUBBARD: The State would call Johnathan Stone.

18 THE CLERK: Have a seat, please. If you'll state
19 your name and spell your last name for the record.

20 THE WITNESS: Johnathan Stone, S-T-O-N-E.

21 DIRECT EXAMINATION

22 BY MR. HUBBARD:

23 Q Mr. Stone, where do you work?

24 A Currently, at Saxe Gotha Elementary. I'm actually
25 transferring to Gilbert Primary School the beginning of

1 next school year.

2 Q How long have you been teaching?

3 A This will be my fourteenth year.

4 Q And how long have you been at Saxe Gotha?

5 A A decade, ten years.

6 Q What do you teach, or what grade do you teach at Saxe
7 Gotha?

8 A Started off in third grade and I taught several
9 years, in kindergarten for six years and this year, I'm
10 actually teaching second grade.

11 Q The year of 2013 and 2014, what grade were you
12 teaching?

13 A I was teaching kindergarten.

14 Q Do you remember a student by the name of Nahtahn?

15 A Yes, sir, I do.

16 Q Nahtahn Jones?

17 A Yes, sir. We called him Tahn.

18 Q Can you describe Nahtahn?

19 A He was a quiet kid, but everyone loved him. He
20 seemed to light up the world when he walked into the
21 classroom. He had the biggest smile on his face. And
22 everyday when he walked in, you couldn't help but not have
23 a smile on your face because when you saw him, he was very
24 loveable and very approachable. He was quiet often and he
25 just wanted sometimes to come to you and give you a big

1 old hug because he loved everyone.

2 Q In the course of your year with him, did you start
3 developing a special relationship with him?

4 A Sure. It was one of those relationships like I have
5 with most of my students. Those kids are with me seven
6 and a half hours a day, five days a week and it's kind of
7 hard not to develop a relationship. But with him, it was
8 a very special relationship because he seemed to need a
9 little more support than others. Very caring and
10 sometimes emotional. So I would sometimes just call him
11 up and give him a hug and say it's going to be okay,
12 buddy, if he was having a bad day when he walked in in the
13 morning.

14 Q As his K5 teacher, did you have much in the way of
15 communication with his father, Tim Jones?

16 A At the beginning of the school year, yes, sir, I had
17 a little communication. But towards the end of the year,
18 I kind of ceased and desist, there was no communication.

19 Q The little communication, how would you try to
20 communicate with Mr. Jones?

21 A We had e-mails. We sent home a newsletter and
22 everyday, we had a parent communication folder, which went
23 home everyday, Monday through Friday, even the weekends,
24 where we would send newsletters or any important things or
25 even if we needed to get in touch with the parent, that

1 was out go-to. So we would send them home everyday. The
2 first thing in the morning, my assistant would actually
3 check it to see if there was anything, any notes or
4 anything that we needed to address or I needed to call or
5 e-mail about.

6 Q Who was your assistant?

7 A Amy Shearer.

8 Q Did you have many in the way of one-on-one meetings
9 with Mr. Jones?

10 A Not that I recall, no, sir.

11 Q Is it unusual for a parent not to be a little bit
12 more communicative with you with a student in K5?

13 A Typically, in K5 is the first year for a lot of the
14 students and parents are really involved. Parents come to
15 most everything that we have if they're available and
16 they're not working. It was very typical for a parent to
17 come in and to call or to send e-mails if something was
18 going on just to keep up with their son's or daughter's
19 behavior and academics. So it was something that for
20 first-year parents, especially students who were in
21 kindergarten, would often do.

22 Q On those few occasions that you did see Mr. Jones,
23 did you see him with Nahtahn?

24 A Yes.

25 Q Did he ever in your presence praise his son, Nahtahn?

1 A No, not that I recall.

2 Q Did he ever ask or inquire about what Nahtahn might
3 need in order to be a better student or to learn more?

4 A No, sir, never.

5 Q Did he make any inquiries at all about his son?

6 A No, sir.

7 Q As you got to know Nahtahn -- you mentioned something
8 about emotional needs. What, if anything, were you
9 detecting with Nahtahn?

10 A Nahtahn was the type of person that would always
11 smile, but towards the middle of the school year, I sensed
12 that sometimes he would smile, but he was not actually
13 happy. He would just put on that smile because he wanted
14 people to think that he was happy. Very emotional.
15 Sometimes, like I said, he would come in and you would
16 just have to give him a hug and you would have to reassure
17 him that there was a safe place to be and he was at school
18 and he was loved by me and everyone else and that he would
19 have a good day.

20 Q Did you try to fill that male role in his life?

21 A Sure. I have a seven-year-old now that was a
22 two-year-old and I'm a father. And as a father, you know
23 when you have to fill that role. And as a father, I felt
24 like there was something missing in his life --

25 MR. YOUNG: Objection --

1 THE WITNESS: -- and I wanted to fill it.

2 MR. YOUNG: -- outside the scope.

3 THE COURT: Rephrase your question. Keep going.

4 MR. HUBBARD: I'll just move on, Your Honor.

5 THE COURT: Okay.

6 Q Did you ever get a sense from Nahtahn about his home
7 life and what you were getting when he would come to
8 school? You said he was emotional. What were you
9 detecting from him?

10 A That it may not have been a good environment.
11 Considering the other students in the classroom, his
12 emotional state was sometimes a little erratic. He didn't
13 always come in happy even though we sensed that he had a
14 smile on his face. Then sometimes, he was just upset.
15 And that comforting role that me and my assistant played
16 was very important.

17 Q Did he ever describe punishment in his house?

18 A Yes, sir, he did.

19 Q What did you learn about punishment in the Jones
20 house with Nahtahn?

21 A It had a lot to do with physical punishment. Not
22 beating per se, but physical activity.

23 Q What activity?

24 A He stated that -- Nahtahn stated that when he got in
25 trouble that he would often have to do burpees or run in

1 place.

2 Q What are burpees?

3 A Burpees are something that you are -- is a very
4 physical thing where you actually drop on the floor, you
5 do a push-up, jump back into the air and you repeatedly do
6 that while you're in place. It was kind of odd because
7 during that time, I was actually into cross-fit and that's
8 something that people in cross-fit normally do and he was
9 actually able to show me exactly how to do that burpee one
10 morning. And it was pretty shocking because a
11 five-year-old doing a burpee is something that most normal
12 adults don't do either.

13 Q Did he actually demonstrate it for you?

14 A Yes, sir, he did.

15 Q Did you get a sense from him whether he was always
16 getting in trouble?

17 A I felt like he was always getting in trouble, yes,
18 sir.

19 Q Based on that, what did you and Amy Shearer do as far
20 as his work that would go home?

21 A His work that would go home, we actually had a parent
22 communication folder and in there, we kept a daily
23 behavioral log. And in that behavior log, we would
24 actually give him a smiley face or something that would
25 happen during that day that was maybe not a major

1 infraction, but a minor infraction, like he may not have
2 had a good day and may have been talking in class
3 repeatedly, we would either put a smiley face or put what
4 that problem was so mom and dad would know and would be
5 able to address the issue at home. Towards the middle,
6 end of the school year, we noticed that when he may have
7 gotten a frowny face or something in his communication,
8 that the next day, he would come in and he would be very
9 emotional. And that is when I told my assistant to just
10 put smiley faces in there because of the behavior and we
11 dealt with his behaviors in class. Because we felt like
12 if that was the case at home, we wanted to address it at
13 school so it wouldn't spill over into the household, into
14 the home life. So that's what we -- what I actually told
15 my assistant to do.

16 Q You mentioned earlier safe place. What did you mean
17 by that?

18 A I felt like school was a safe place for him. When he
19 came to school, it was one of those places where he was
20 loved and he was cared for and he got everything he
21 needed. I wasn't positive whether he did or did not get
22 that at home.

23 Q Now, aside from all this, was he a little boy like
24 all the other students in your class in so many other
25 ways?

1 A Yes, sir.

2 Q Did he enjoy the activities that all the other
3 students enjoyed?

4 A Yes, sir. He did everything everyone else did. He
5 loved his classmates. He loved learning. He loved
6 interacting and playing on the playground. He loved
7 everything about school.

8 Q Was there a special character, he had a Disney
9 character that he especially liked?

10 A He was particularly fond of Woody in Toy Story. He
11 often wrote about Woody and Woody was one of his favorite
12 characters. He just loved Woody. And there was something
13 I remember because I remember growing up and I remember
14 Woody and I remember pulling -- in the video, the movie
15 pulling his string. And when he showed me some of the
16 pictures, it was very detailed and I could tell that was
17 something he really cared about and loved.

18 Q I'm going to show you something, State's ID 339. Is
19 this something he wrote and a picture he drew involving
20 Woody?

21 A Yes, sir, he did.

22 MR. HUBBARD: We're offering this into evidence.

23 MR. YOUNG: No objection.

24 THE COURT: What's the number?

25 MR. HUBBARD: 339, Your Honor.

1 THE COURT: 339 without objection.

2 (WHEREUPON, State's Exhibit number 339 was admitted
3 into evidence.)

4 Q And I see, looks like writing on top of writing. Who
5 would that be?

6 A That would be my assistant's writing. We often do
7 writing in school. And especially in kindergarten, that's
8 when they develop their writing and start to write for the
9 first time. And that's something we do to help them
10 progress in writing. And that would be Ms. Shearer's
11 writing, my assistant, helping him out with his writing
12 and fixing his mistakes.

13 Q Will you read what Nahtahn wrote?

14 A I love Woody because he is my favorite TV show
15 because he is goofy.

16 Q And who drew that picture of Woody?

17 A That would be Nahtahn.

18 Q Aside from all the things that you were concerned
19 about, was he just a little boy like so many other little
20 kids in that class?

21 A Yes, sir, he was.

22 Q Were you trying to fill a special role for him?

23 A Yes, sir, I was.

24 Q What were you trying to do?

25 A I was trying to make him feel loved and wanted and

1 try to make him have a normal life. When he walked into
2 that school, I wanted him to be a part of a family. I
3 wanted him to leave the school knowing that if he had
4 problems at home, when he came back the next day, he was
5 still part of a family.

6 Q Were you ever concerned about Nahtahn not eating
7 enough?

8 A All the time.

9 Q Tell us why.

10 A He would often come to school with a piece of pizza
11 or he would come to school with a piece of bread and
12 grapes. He would also come to school with those meals --
13 and towards the middle of the school year, he actually had
14 a water bottle that broke. And after the water bottle
15 broke, he didn't have anything to drink, so me and Ms.
16 Shearer would always get him a cup and fill it up with
17 water so he would, at least, have something to drink.
18 Also, during snack time and even breakfast if he was
19 hungry, we would always be willing to give him extra food.
20 Because he would often say, But I'm hungry, Mr. Stone or
21 I'm hungry, Ms. Shearer. And we would go to the cabinet
22 and get him food so he would be able to eat and have that
23 food in case he didn't get it at home.

24 Q Did you ever notice anything about his weight?

25 A Yes. There was one instance towards the end of the

1 school year where he was very emotional one day and he was
2 just on the floor and he was crying. So that day, I
3 picked him up to try and comfort him and I noticed that he
4 was very, very light. I had a two-year-old at the time
5 and he was the same weight as my two-year-old.

6 Q At this time, Nahtahn was five?

7 A Yes, sir, he was.

8 Q Were you aware on May 5th of 2014 of the DSS
9 complaint filed concerning Nahtahn?

10 A Yes, I did become aware of that.

11 Q Who first brought to your attention there may be
12 something wrong with Nahtahn?

13 A My assistant, Ms. Shearer.

14 Q And did you look at Nahtahn?

15 A Yes, I did, that morning.

16 Q When you looked at him, what, if anything, did you
17 observe about Nahtahn?

18 A I observed around his neck, it looked to be a
19 handprint. It looked to be a thumb on one side of his
20 neck and on the other side, I could also see the other
21 four fingers where there was an impression. It looked
22 like it was bruised and even red.

23 Q Did it appear to be a child's hand or an adult hand?

24 A Oh, it was definitely not a child's hand. It was a
25 lot bigger, like an adult's hand.

1 Q There's some photographs already in evidence.
2 Defense Exhibit 104, kind of hard to see, but is that on
3 the occasion when y'all were documenting the bruising?

4 A Yes, sir, it was.

5 Q Is that one of the bruises you see on his chin or
6 neck?

7 A Yes, sir, that was.

8 Q And this is Nahtahn in State's -- the first one was
9 State's 104, this is State's 105. Looking at his arms,
10 State's 106, do you see bruising?

11 A Yes, sir, I do.

12 Q And again on 107?

13 A Yes, sir.

14 Q Finally, 108?

15 A Yes, sir.

16 Q And did you ask Nahtahn about the bruises he had on
17 his face, chin and on his arms?

18 A Yes, sir, I did.

19 Q Did he feel comfortable talking to you?

20 A No, sir.

21 Q But did he talk to you?

22 A Yes, sir, he did.

23 Q How did he appear when he was talking to you?

24 A Quite afraid.

25 Q Was he afraid of you?

1 A No, sir, he wasn't.

2 Q Were you aware -- well, you mentioned you were aware
3 of the DSS report. Did that come from the school?

4 A Yes, sir.

5 Q Were you aware of the allegation?

6 A Yes, sir, I was.

7 Q I'm going to show you Defense Exhibit 15, South
8 Carolina Department of Social Services safety plan. Is
9 this the allegation concerning Nahtahn in this plan?

10 A Yes, sir, it is.

11 Q If you can, can you make it out and read what that
12 allegation is?

13 A Timothy Jones got upset with Nahtahn. He choked him
14 around the neck and pushed him against the wall as he held
15 him there. The child has a bruise on his neck that
16 resembles a thumb and a fingerprint.

17 Q When you talked to Nahtahn, did he give you any story
18 that differed at all with this?

19 A No, sir, it was the exact same.

20 Q Who did he say did it?

21 A His father.

22 Q When he told this, what did you tell him?

23 A All I could tell him was, I'm sorry.

24 Q The next day when Nahtahn came to school -- did you
25 know the day this allegation was made, he goes home to his

1 dad?

2 A Yes, sir, he did.

3 Q How was Nahtahn that next day?

4 A He was very distant. He didn't want to say too much
5 to anyone. He came in very quiet and sat down and ate his
6 breakfast.

7 Q Did you attempt to talk to him?

8 A Yes, I did. Like I do with every other student every
9 morning they come in, I greet them and tell them hello and
10 ask them how their day's been and try to be inviting.

11 Q Did he indicate why he couldn't talk to you?

12 A Yes, he did.

13 Q Was it his father?

14 A Yes, it was.

15 Q Following this incident, this DSS allegation, did you
16 see any change in the Defendant, Tim Jones, communication
17 or reaction with the school or with you specifically?

18 A Yes, I did.

19 Q What did you see?

20 A The communication I had kind of ceased and desist.
21 There was no more communication from that point forward.

22 Q At the end of the school day, did you send homework
23 home with the students to get signed?

24 A Yes, sir, we did.

25 Q Did you do that for Nahtahn as well?

1 A Yes, sir, we did.

2 Q Following this incident with DSS, was Nahtahn ever
3 able to bring back something signed by his father?

4 A No, never.

5 Q Was there an occasion where Nahtahn brought his
6 homework back and something had happened to it?

7 A Yes, sir, there was.

8 Q Please tell me about that -- tell us about that.

9 A We, actually, over the weekend -- we got the homework
10 folder back that Monday morning and it was ripped. These
11 folders are not normal typical folders, they're made out
12 of heavy plastic because the students have accidents. The
13 folder was ripped in two.

14 Q So it wasn't just ripped, it was ripped in two?

15 A Yes, sir.

16 Q Did you ask Nahtahn what happened to his homework?

17 A Yes, I did.

18 Q And he told you?

19 A Yes, sir, he did.

20 Q And he says Tim Jones?

21 A Yes.

22 Q What did you say to Nahtahn?

23 A All I could say was, I'm sorry, buddy, it will be
24 okay.

25 Q Do kindergarteners have a graduation at the end of

1 the year?

2 A Yes, sir, they do.

3 Q Do all the parents get notice of that?

4 A Yes, sir, they do.

5 Q Is it common for parents to show up, take pictures
6 and be with their child?

7 A Of course. It's kindergarten. That's the first year
8 that their kids graduate. It's something that's special.
9 I mean, it's the first year they're in school and it's
10 something very important. So, typically, all the parents
11 do show up that day.

12 Q Do the kids even wear caps and gowns?

13 A Yes, sir, they do.

14 Q On that day, did Nahtahn Jones have anybody show
15 up --

16 MR. YOUNG: Your Honor, I'm going to object. It's
17 outside the scope.

18 MR. HUBBARD: Character.

19 THE COURT: I'll allow it. Overruled.

20 Q Did Tim Jones show up for his son's graduation?

21 A No, sir, he did not.

22 Q Was anybody there for that child?

23 A No, sir, they were not.

24 Q I'm going to show you what's marked as State's ID
25 340. What is this?

1 A It's a graduation diploma for Nahtahn Jones.

2 MR. HUBBARD: I offer this into evidence.

3 MR. YOUNG: No objection.

4 THE COURT: 340?

5 MR. HUBBARD: Yes, sir, Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit number 340 was admitted
8 into evidence.)

9 Q Is this Nahtahn's diploma?

10 A Yes, sir, it is.

11 Q There's a handwritten word on there in large -- looks
12 like good?

13 A Yes, sir, I believe that is correct.

14 Q Who wrote that?

15 A It appears to be Nahtahn Jones' handwriting.

16 Q The good that's written over on the other corner, do
17 you know whose writing that is?

18 A I believe it's also Nahtahn's.

19 Q I show you what's marked State's 341 ID. What is
20 this?

21 A It's something that we give our kids as a graduation
22 announcement to parents, but it also is given to them on
23 the day of their graduation so they can take home so moms
24 and dads can remember their first year in school.

25 Q It's kind of a keepsake?

1 A Yes, sir, it is.

2 MR. HUBBARD: Offer this into evidence.

3 MR. YOUNG: No objection.

4 THE COURT: 341 without objection.

5 (WHEREUPON, State's Exhibit number 341 was admitted
6 into evidence.)

7 Q And it's titled Kindergarten Graduation June 2, 2014,
8 has a picture. And that's Nahtahn?

9 A Yes, sir, that's a picture of Nahtahn in his cap and
10 gown.

11 Q Will you please read what this says?

12 A Here I come, get ready, get set because here I go.
13 I'm ready to show all you that I know. I've graduated
14 kindergarten and now I'm done. I laughed and learned and
15 it's been fun. First grade, first grade ready, set, go.
16 I'm ready to show you all I know. Get ready first grade
17 because I'm on my way. I've graduated kindergarten, hip,
18 hip, hooray.

19 Q Thank you, sir. I'll just put this up here so the
20 jury can see it. Although his father was not present, did
21 Nahtahn seemed excited about graduation?

22 A Yes, sir, he did.

23 Q Mr. Stone, Nahtahn has a summer and starts first
24 grade at Saxe Gotha. Do you remember getting the news
25 that he had been murdered along with his siblings by his

1 father?

2 A Yes, sir.

3 Q What did you do?

4 A I broke down, like any other father or any other
5 teacher would do. I remember going up to the front office
6 and our director of elementary education was up there at
7 the time and I looked at her and I said, Ms. Shealy, I
8 need to go home. And she said, Okay. At that time, I had
9 a two-year-old. He was with grandpa because grandpa is
10 the babysitter. And I went straight from the school,
11 picked him up and just grabbed him and held him. And that
12 afternoon, me, my wife and my son just were together and
13 how thankful he was alive.

14 Q Have you ever gotten over his death?

15 A Yes and no. After the initial response to what
16 happened, kind of was hush-hush for a while and I kind of
17 got over it. But then when everything came back, it just
18 hit me like a brick, a brick wall.

19 Q Do you walk the halls of Saxe Gotha?

20 A Yes, sir.

21 Q What, if anything, do you feel or see?

22 A I see him everyday in his little white tee-shirt with
23 his little pizza stains on it. I see him walking in the
24 kindergarten hall and I look and he's there one minute and
25 the next minute he's gone.

1 Q Why are you leaving Saxe Gotha?

2 MR. YOUNG: Objection, outside the scope.

3 MR. HUBBARD: It's impact.

4 THE COURT: I'm going to allow it. Overruled.

5 A Because of him. Because I can't stand to be at that
6 school and see him in the halls everyday. I need a change
7 and that change is something that's going to allow me to
8 move on with my life, hopefully, because it's really
9 affected it.

10 MR. HUBBARD: Mr. Stone, thank you so much. Thank
11 you.

12 MR. YOUNG: I have no questions.

13 THE COURT: No questions?

14 MR. HUBBARD: All right, Mr. Stone --

15 THE COURT: You're good. Thank you, sir. Let's take
16 a short break. Y'all step back in the jury room. Have
17 you back in about 15 minutes.

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

20 (WHEREUPON, a short break was taken.)

21 THE COURT: Ready for the jury?

22 MS. MAYES: Yes, sir, Your Honor.

23 THE COURT: Go get them for me.

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

1 THE COURT: Call your witness.

2 MS. MAYES: May it please the Court, the State calls
3 Amy Shearer.

4 AMY SHEARER, being
5 first duly sworn, testified as follows:

6 THE CLERK: If you'll have a seat over there, please,
7 ma'am. If you'll state your name and spell your last for
8 the record.

9 THE WITNESS: Amy Shearer, S-H-E-A-R-E-R.

10 DIRECT EXAMINATION

11 BY MS. MAYES:

12 Q And Ms. Shearer, I'm just going to pull this
13 microphone a little bit closer to you. Ms. Shearer, where
14 are you currently employed?

15 A Saxe Gotha Elementary School.

16 Q And what is your job description there?

17 A Currently, I am a parent liaison.

18 MS. MAYES: And, Your Honor, I'm not sure if the
19 microphone is on.

20 THE COURT: It should be.

21 THE WITNESS: Louder, is that better?

22 Q And your current job responsibilities?

23 A I work with families, parents and students, to help
24 get them resources and stuff if they need to work at home
25 on their education.

1 Q All right. Tell us a little bit about your
2 educational background that led you to become a teacher.

3 A I don't have any. I just took a paraprofessional
4 test to become an instructional assistant.

5 Q And when you say instructional assistant, tell us how
6 your role assist the teachers in the classroom.

7 A I would help with the teacher, with students. I
8 would do a lot of the communication and homework folders.

9 Q Are you in the classroom with the teacher throughout
10 the day?

11 A Yes, ma'am.

12 Q At Saxe Gotha, what roles have you played in
13 assisting teachers in the classroom?

14 A Like how many classes? I was originally started in
15 the kindergarten class with another teacher and then I
16 moved to a different position and came back with Mr. Stone
17 as his assistant.

18 Q All right. And Mr. Stone is who we heard from just a
19 few moments ago, having been a kindergarten teacher there
20 at Saxe Gotha in the school year that we've been -- fall
21 of 2013 through spring 2014?

22 A Yes, ma'am.

23 Q Ms. Shearer, were you working as teacher's assistant
24 in that kindergarten classroom throughout that whole
25 school year?

1 A Yes, ma'am.

2 Q Tell us, Ms. Shearer, how it is that you knew Nahtahn
3 Jones.

4 A He was one of our students.

5 Q Take your time. Ms. Shearer, that school year
6 started in August, ran all the way through -- I think you
7 saw the graduation photo a few moments ago, ran all the
8 way through June?

9 A Yes, ma'am. I worked with him --

10 Q Over --

11 A -- over the course of the year, especially in writing
12 is where I worked a lot with him, and math. When they
13 would be learning and they would have to sit on the carpet
14 in front of the classroom, I was always on the carpet with
15 the kids. I was always interacting.

16 Q Is it possible for you to describe to us the
17 relationship that you developed over the course of that
18 kindergarten year with Nahtahn, that you called Tahn?

19 A He became one of my children like they all do. He
20 was the sweetest, always had a smile. Everyday, I got a
21 hug.

22 Q What are some your favorite memories of Tahn?

23 A His smile. He had these little gray and black shoes.
24 I remember them because my youngest son had the exact same
25 pair. And his shoelaces were never, ever tied. Usually,

1 after Christmas, teachers will stop tying them because of
2 the germs. I just can't do it and I still can't do it and
3 I will tie them. But by the end of the year, you couldn't
4 even tie them.

5 Q What do you mean when you say that by the end of the
6 year, you couldn't tie his shoes?

7 A His shoelaces were never replaced and he wore the
8 same shoes the whole school year.

9 Q What did the shoelaces look like in the end of that
10 school year?

11 A Ratty, they just hung out of the hole. I don't even
12 remember if it was the top hole.

13 Q Nothing there to tie?

14 A No.

15 Q About Nahtahn, there's been testimony about some
16 bruising. Who was the first person to see that bruising
17 on Nahtahn Jones?

18 A Me.

19 Q Can you tell us what you remember?

20 A My desk work area was in the back of the room and
21 every morning, they would come and they would turn in
22 their homework folder. And he came and I'm almost
23 positive it was just him that was in the room at the time.
24 And he walked back and I noticed the bruising on his neck.
25 So I had asked him what happened and he said that his dad

1 had grabbed him by the throat and slammed him against the
2 wall because he broke Eli's track. And I made him repeat
3 it again because I couldn't believe that that's what he
4 was telling me. I instantly just ran out of the room to
5 go get one of our counselors.

6 Q Did Nahtahn show you what happened?

7 A Yes.

8 Q How did he show that to you?

9 A You want me to show you?

10 Q Yes.

11 A He said his dad went like this and slammed him
12 against the wall.

13 Q You've seen some photographs prior to this trial,
14 which are currently in evidence as defense exhibits. I
15 show you what is 104 and 106. Do those photographs
16 adequately depict what you could see with the naked eye?

17 A No.

18 Q How is it -- describe to us what you saw with the
19 naked eye?

20 A The one mark over here was more bruised like the
21 blackish-purple. The three or four over here were -- I
22 don't know the technical term. They looked like blood
23 vessels popped, like the red, the red spots and you could
24 tell that they were fingerprints.

25 Q What was your physical reaction to him showing you

1 this and telling you what happened?

2 A I started shaking. I immediately wanted to cry, but
3 I knew that I couldn't, that I had to stay strong.

4 Q What did you do next?

5 A Went to one of our guidance counselors and told them
6 what he had said.

7 Q That day, that very same day, there's been testimony
8 about what is in Defense Exhibit 15, which is a DSS
9 report, DSS safety plan. I'm going to show you that
10 Defendant's 15, the allegations set forth here. Ms.
11 Shearer, who made that report to DSS?

12 A I did.

13 Q And the allegations that Nahtahn was choked, is that
14 what you reported to DSS?

15 A Yes, ma'am.

16 Q Were you there with Nahtahn when the DSS worker came
17 to the school?

18 A Yes, ma'am.

19 Q The same allegations that are in writing, did you
20 verbally make that DSS case worker aware of those
21 allegations?

22 A Yes, ma'am, I did.

23 Q Also, that day, the parent, the parent, being Timothy
24 Jones, being notified of the DSS report, what, if any,
25 change did you see in Nahtahn the next day?

1 A He was withdrawn.

2 Q You observed that yourself?

3 A Yes, ma'am.

4 Q Do you recall the DSS worker coming back to the
5 school that next day?

6 A Yes, I knew they came to pull him to talk to her.

7 Q What, if anything, did you personally observe about
8 that set of circumstances?

9 A When Nahtahn went, he didn't want to go. He just
10 wanted to stay in the classroom.

11 Q And did you press further to find out why?

12 A I did.

13 Q Did he tell you why?

14 A He did.

15 Q Did he indicate that there had been any instructions
16 given to him at home?

17 A Yes, ma'am.

18 Q Now, that would have been May 5th, 2014, the end of
19 the current school year, with graduation just about a
20 month away. What, if anything, did you observe as the
21 teacher's assistant about the cooperation level between
22 Timothy Jones and your classroom?

23 A There was none. No communication whatsoever.

24 Q Is it normal for you to send papers home for the
25 children to have signed by a parent?

1 A Yes, ma'am.

2 Q Were any parent signatures on Nahtahn's paperwork
3 after that DSS report was made?

4 A No, ma'am.

5 Q What, if anything, else do you recall about the
6 paperwork Nahtahn returned to the school?

7 A Maybe some of his homework was done, probably not a
8 lot.

9 Q Now, what kind of notebook or workbook are they given
10 to take home?

11 A They'll get two. They'll get one that they take home
12 daily and that has their behavior calender in it or chart
13 and their homework. And then there's a weekly one that
14 goes home every Tuesday.

15 Q All right. I'm going to ask you a little bit about
16 that. Who normally fills out the behavior chart?

17 A I do.

18 Q All right. And tell us a little bit about that, how
19 you indicate to a parent how a child's behaving in the
20 classroom.

21 A Usually, I would put a smiley face in it if they had
22 a good day. If they had an okay day, maybe they were
23 talking a lot or weren't following directions, we had to
24 redirect them a couple of times, they'd get a little
25 smiley face. And if it was something more serious, we

1 would write in there what exactly happened.

2 Q How, if at all, did you change your tactics regarding
3 Nahtahn after that DSS report was made?

4 A I always sent him home with a smiley face.

5 Q Do you remember his workbook being returned one day
6 after that DSS report?

7 A Yes, ma'am.

8 Q What was its condition?

9 A It was ripped in half.

10 Q That workbook, is it something that a child can rip
11 in half?

12 A No, ma'am.

13 Q Did you ask him what happened to the workbook?

14 A Yes, ma'am.

15 Q And he told you?

16 A Yes.

17 Q Did that increase your concerns?

18 A Yes.

19 Q Graduation, you're there with the kids on K5
20 graduation day?

21 A Yes, ma'am.

22 Q Were you there with Nahtahn?

23 A I was.

24 Q What do you remember about that day?

25 A He was so excited.

1 Q We saw this earlier, it's in evidence, it's State's
2 Exhibit 339. Whose handwriting on there along with
3 Nahtahn?

4 A It's Nahtahn's and mine.

5 Q How often did he talk with you about Woody?

6 A All the time. All the time.

7 Q What are some of your favorite memories of Nahtahn?

8 A His smile. He always wore this I Love New York shirt
9 and he had said to me on numerous occasions that he wanted
10 to go to New York.

11 Q I show you a photograph that's already in evidence,
12 State's 311. Do you recognize that tee-shirt?

13 A I do.

14 Q How often did you see Nahtahn wear that?

15 A Probably once a week.

16 Q What did he say about wanting to go to New York?

17 A He just wanted to go. He was excited to go to New
18 York.

19 Q I'm going to show you what is State's 280 and 281 for
20 identification. Do you recognize it?

21 A Yes, ma'am.

22 MS. MAYES: Class pictures of Nahtahn, 280 and 281
23 for evidence.

24 MR. YOUNG: No objection.

25 THE COURT: 280 and 281 in without objection.

1 (WHEREUPON, State's Exhibit numbers 280 and 281 were
2 admitted into evidence.)

3 Q Mr. Stone's class picture. So it was a small class?

4 A Yes, it was.

5 Q You had a chance to develop personal relationships
6 with the students?

7 A Yes.

8 Q And then State's 280. Is that the Nahtahn you
9 remember?

10 A Yep, and he always -- always had that smile.

11 Q The leadership notebook, State's 278, already in
12 evidence, what role do you play in helping the kids work
13 through these?

14 A There's some data in there that we collect in
15 kindergarten. A lot of times, they can't do it by
16 themselves, so I would assist in helping them.

17 Q I'm going to ask you to step down if you can and tell
18 us a little bit about Nahtahn's notebook. I'm going to
19 start with the tab that's called mission.

20 A This is what his mission statement was and he would
21 draw a picture.

22 COURT REPORTER: Oh, I can't hear her.

23 THE WITNESS: Oh, I'm sorry.

24 Q I'm going to move around and that way, you can look
25 at the Court Reporter and keep your voice up.

1 A This is his mission statement and you could always
2 tell it was Nahtahn's drawings because he always had the
3 head and then just two long legs. And his mission
4 statement was I want to share with my friends. Then he
5 made another mission statement that he wanted to count to
6 100 and there's his picture. You can tell this was later
7 because he could write better and his drawings were
8 getting a little better.

9 Q And who keeps up with all the goals and the calendar
10 events for the children?

11 A We would do it together.

12 Q This is taking us through words?

13 A Yes, they're sight words that kindergartener's need
14 to be able to memorize to help with their reading. So we
15 would test every, like, first nine weeks, second nine
16 weeks, third nine weeks and four nine weeks and we would
17 color it in by how and when they learned those words.

18 Q And how does Nahtahn progress over that K5 year?

19 A He passed. He was very, very bright.

20 Q Leadership roles. These are things that he does in
21 the classroom?

22 A Yes.

23 Q All right. Tell us about this. What's listed here?

24 A There's tons here. Messenger, library monitor, line
25 leader, just all the things that all the kids liked to do.

1 Q And what do you remember about his role that's listed
2 here?

3 A He had the greeter. So anytime, we would have a
4 visitor to the classroom, he would meet them at the door
5 and give them a handshake and walk them to our classroom.

6 Q All right. And here, we see some more leadership
7 roles. Tell us about what you remember about Nahtahn
8 having each of these roles, Ms. Shearer.

9 A Water counter was very popular, especially after we
10 were outside at recess. They would come in and they would
11 stand at the water fountain and count to five, so that's
12 how long the kids had before we had to move to the next
13 one. He also did the weather man where they would go to
14 the window in the classroom and look out and tell us what
15 the weather looked like, whether it was sunny, rainy.

16 Q So you have a window in the classroom?

17 A Yes, ma'am, we had two windows.

18 Q And his job is to go and determine the weather?

19 A Correct.

20 Q How did he embrace that role?

21 A Loved it. He would get so excited.

22 Q And then I see one more. Whose handwriting is that?

23 A That would be mine. He was a library helper, so when
24 it was our library day, he would take all the books down
25 to the library and return them at the beginning of the

1 day, so when it was our time to go, we knew who could and
2 could not check out books.

3 Q And then celebrations. Nahtahn has a lot of these?

4 A He does.

5 Q All right. Move down just a little bit away from the
6 Court Reporter and have you tell us about all these
7 different awards and celebrations that Nahtahn received in
8 that K5 year.

9 A How we did it was we just made a spreadsheet list and
10 sent home the originals, but he -- obviously, he got
11 awesome artist for art. Computer lab leader, which was a
12 lot, there's quite a bit on there, so he did a very good
13 job in computer. Lead home challenge. That year for our
14 seven habits, we would send home a paper that they would
15 do, that they would have to discuss something that they
16 did or felt about the seven habits. And he had done it
17 that month, so he got that. And then he got a good note
18 from our music teacher.

19 Q And he has five individual computer awards throughout
20 the course of that K5 year?

21 A Yes, ma'am.

22 Q Ms. Shearer, you may return.

23 (Witness returns to the witness stand.)

24 Q How would you describe the change in Nahtahn that you
25 saw from the beginning of the school year on towards the

1 end of that school year, Ms. Shearer?

2 A He became a little bit more quiet. He still smiled.
3 I don't really know that it was a genuine smile. I'd say
4 probably about the middle of the year till the end of the
5 year, he -- I don't want to say withdrawn, things would
6 upset him more easily.

7 Q And then by May 6th, 2014, the day after that report,
8 what did you observe about his face, his eyes? How did he
9 appear to you that day?

10 A Tired.

11 Q Ms. Shearer, did Nahtahn ever give you anything?

12 A He did.

13 Q Tell us about that.

14 A It was a Monday morning, he came in so excited
15 because he had made me a necklace at church.

16 Q I show you State's 285 and ask you whether or not you
17 recognize what's depicted here?

18 A Yes, ma'am.

19 MS. MAYES: If no objection, Your Honor, this would
20 be State's 285.

21 THE COURT: No objection?

22 MR. YOUNG: No objection.

23 THE COURT: Admitted without objection.

24 (WHEREUPON, State's Exhibit number 285 was admitted
25 into evidence.)

1 Q Were you aware that Nahtahn didn't have a mom in his
2 home?

3 A Yes, ma'am.

4 Q How, if at all, did that affect your relationship
5 with him?

6 A I loved him just a little bit harder.

7 Q Where is that necklace today, Ms. Shearer?

8 A Right here.

9 Q Is it possible for you to describe the impact of
10 Nahtahn's murder on you personally?

11 A After it happened, it was months before I didn't wake
12 up in the middle of the night screaming from a nightmare.
13 And to this day, I feel guilty.

14 Q When you say you feel guilty, what do you mean by
15 that?

16 A That I saw the bruises and I made a report and he's
17 not here today.

18 MS. MAYES: Thank you, Ms. Shearer.

19 MR. YOUNG: No questions.

20 THE COURT: You may step down.

21 MR. HUBBARD: Your Honor, I have three separate items
22 I'd like to enter into evidence, without objection, I
23 believe. One are the birth certificates of the children.
24 They're currently marked as State's ID 344, 345, 346, 347,
25 348.

1 THE COURT: Without objection?

2 MR. YOUNG: Without objection.

3 THE COURT: Without objection, they're in.

4 (WHEREUPON, State's Exhibit numbers 344 through 348
5 were admitted into evidence.)

6 MR. HUBBARD: Your Honor, I would also like to enter
7 into evidence State's 343, which is for ID at this point,
8 but it's the five indictments on this case for murder. I
9 believe without objection.

10 MR. YOUNG: Without objection.

11 THE COURT: Without objection, 343, all five
12 indictments inclusive, correct?

13 MR. HUBBARD: Yes, sir. These indictments are
14 2015-GS-32-188, pertaining to Merah Gracie Jones; 189 as
15 to Elias Jones; 190 as to Abigail Jones; 191 as to Gabriel
16 Jones; 195 as to Nahtahn Jones. And finally, I'd like to
17 enter into evidence State's ID 342, which is the guilty
18 verdict on this case for all five children on each and
19 every indictment. I believe without objection.

20 MR. YOUNG: Without objection.

21 THE COURT: 342 is the verdict form from the first
22 phase?

23 MR. HUBBARD: Yes, sir.

24 THE COURT: Without objection.

25 (WHEREUPON, State's Exhibit numbers 342 and 343 were

1 admitted into evidence.)

2 MR. HUBBARD: Your Honor, at this time, the State
3 rests.

4 THE COURT: All right. I've got to put some things
5 on the record, so y'all step in the jury room. I'll give
6 you a short break. There's required -- some things I've
7 got to put on the record when the State has stopped.
8 Don't discuss the case.

9 (WHEREUPON, the jury was excused from the courtroom.)

10 MR. YOUNG: Your Honor, at this time, the Defense
11 would renew all pretrial motions, all objections, all
12 mistrial motions, motions for directed verdict, motions
13 for a new trial. I would state for the record that the
14 cumulative effect of the denial of the Defense's
15 objections and motions has denied Mr. Jones his right to
16 due process under the Fifth and Fourteenth Amendments to
17 the United States Constitution and Article One, Section 3
18 and 14 of the South Carolina Constitution, his right to a
19 fair trial under the Sixth and Fourteenth Amendments and
20 Article One, Section 14 of the South Carolina Constitution
21 and the prohibition, against cruel and unusual punishment
22 under the Eighth Amendment and Article One, Section 15 of
23 the South Carolina Constitution.

24 THE COURT: The State has put forth ample evidence
25 for the directed verdicts of the punishment phase to go

1 forward to the jury. All your pretrial motions, directed
2 verdict motions, motion for a new trial, motions for
3 mistrial, consistent with the rulings I made before,
4 respectfully denied as to those motions.

5 MR. YOUNG: At this time, the Defense would move in
6 all the evidence offered by the Defense during the first
7 phase of the case.

8 THE COURT: As it was with the State. How long y'all
9 need? The jury's only been out two minutes.

10 MR. GRAHAM: One matter we'd like the Court to
11 address, it's my understanding they plan on calling Barry
12 Sowards with the sheriff's department. Our conversations
13 with Sergeant Sowards, there appears to be several areas
14 they plan to go into that I don't think is admissible, so
15 I would ask to proffer his testimony.

16 THE COURT: All right. You want to do that?

17 MR. MADSEN: No, sir.

18 THE COURT: All right. Do you want to proffer his
19 testimony?

20 MR. MADSEN: No, sir.

21 THE COURT: I'm not sure I can hear you, yes or no?

22 MR. MADSEN: No, sir. I don't think there's any -- I
23 mean, they think that there's something, but -- I mean,
24 they can certainly put that on there. But they don't have
25 a right to preview the testimony just because they don't

1 like potentially what he's going to say.

2 THE COURT: What's the nature of your objection?

3 MR. GRAHAM: Relevance and it has nothing to do with
4 the Defendant's character. There are two -- at least, two
5 things that I know that they plan on going into -- or my
6 opinion would be. One of them is when Sergeant Sowards
7 was transporting Mr. Jones back after his arrest to South
8 Carolina that there was a time when Sergeant Sowards was
9 alone with Mr. Jones and Sergeant Sowards had an automatic
10 weapon lying across his lap. And, apparently, Mr. Jones
11 made the comment you don't need it for me. And the reply
12 by Sergeant Sowards was, It's not out of any concern for
13 fear of you, it's because people want to kill you. I
14 don't think that's relevant or admissible. It has nothing
15 to do with the Defendant's character.

16 MR. MADSEN: I think it does go to his character.
17 Saying that you don't need an automatic weapon, in other
18 words, I'm no type of threat. And then Sergeant Sowards
19 explains to him, that's not why I have the weapon. I have
20 it to protect you against other people. But I certainly
21 think that that goes to character.

22 THE COURT: How does Sergeant Sowards' opinion as to
23 his job relevant to Mr. Jones' character?

24 MR. MADSEN: Well, I think the important part is that
25 Mr. Jones asking him -- or telling him that question,

1 making that statement.

2 THE COURT: I think the statement is fine, I think
3 the reply is probably not.

4 MR. MADSEN: Well, I think it goes in to show the
5 fact that they are taking him back, that he's not any type
6 of threat to them, that that is their protection. We
7 believe that that's relevant evidence, certainly.

8 THE COURT: I mean, explain to me how it's relevant
9 to Mr. Jones, Mr. Sowards' opinion as to what people in
10 the general public think about him. How is that relevant?
11 I mean, that's what people in the general public think,
12 perhaps.

13 MR. MADSEN: Well, I think if you take it all into
14 context, I think that the response is important also.

15 THE COURT: How is it harmful to the State?

16 MR. GRAHAM: We don't think Sergeant Sowards'
17 response is relevant to anything to do with the
18 Defendant's character or this case. Your Honor said it
19 yourself, what the public thinks what might think, that
20 doesn't have anything to do with the Defendant.

21 MR. MADSEN: Judge, we believe that the Supreme Court
22 has consistently said that anything can be mitigation and
23 we think that that testimony would go towards mitigation.

24 MR. GRAHAM: Your Honor, trying to impose what the
25 public might or might not think as being relevant to

1 mitigation, it has no place in the courtroom. The jury's
2 decision is based on things that have to do with the
3 Defendant, not things outside this courtroom.

4 MR. MADSEN: Judge, we have already heard testimony
5 about the rape video.

6 THE COURT: About what?

7 MR. MADSEN: The rape video, the American History X,
8 assuming they're going to watch, about stuff of the public
9 and their perception of that. That type of testimony has
10 already come in.

11 THE COURT: All right. What else?

12 MR. GRAHAM: The second issue that I'm aware of, Your
13 Honor, is that during the course of this trial, at one
14 point, apparently they plan on eliciting testimony that
15 Mr. Jones told Sergeant Sowards that he was hearing voices
16 again and asking, I think, for his medication to be
17 increased. And also trying to elicit that Sergeant
18 Sowards -- I don't know exactly what he would say, but
19 something about Mr. Jones' facial expressions that day.
20 What his facial expressions were and whether he said he
21 was hearing voices, again, it's not relevant. It has
22 nothing to do with mitigation. If they want to put up an
23 expert to talk about his mental health and him saying he's
24 hearing voices again, that's fine. But those are just his
25 words.

1 MR. MADSEN: Judge, first of all, that's inaccurate.
2 That is not what happened. What happened is Sergeant
3 Sowards asked -- I'm going to call him Tim's handler since
4 he's here. But he noticed something different with Tim.
5 Not Tim coming to him, he noticed something different with
6 Tim when they were in the back. He approached Tim and
7 said hey, is there anything going on? He pretty much had
8 to draw -- or Tim said, well, I need to talk to medical.
9 He said, hey, if there's something going on, you need to
10 let me know. Tim, at that point in time, after he kind of
11 dragged it out of him told him about hearing voices.
12 Sergeant Sowards then contacted medical about that and
13 they ended up raising his Geodon. But that's not
14 something that Tim said hey, this is what I want, this is
15 what I need, this is what I'm doing. He noticed a
16 difference in the way that Tim was acting. And he
17 approached Tim and, like I said, basically, had to drag it
18 out of him. So with all due respect, I mean, the way he
19 characterized it is incorrect. Judge, I would say this,
20 in Capital cases, the sentence may consider as mitigating,
21 as a mitigating factor any aspect of the Defendant's
22 character or record and any of, and any of the
23 circumstances that the Defense, that the Defendant
24 proffers as a basis for a sentence less than death. That
25 cites Eddings vs. Oklahoma, 455 U.S. 104; Lockett vs.

1 Ohio, 438 U.S. 586; Skipper vs. South Carolina, 476 U.S.

2 1. The sentence may not be precluded from considering any
3 relevant mitigating evidence. Again, that is Eddings and
4 Skipper.

5 THE COURT: One case I read had the 403 analysis, was
6 the probative value or enlarged or spread a little bit
7 more in the sentencing portion of Capital cases, a little
8 more latitude could be given is what I recollected the
9 case law being. I understand your objection, Mr. Graham.
10 I'm going to allow them to do that. I don't want them
11 going down the road -- too much further off the road with
12 Detective Sowards. I understand your objection. I'm
13 going to allow it. The directive from the Supreme Court
14 is to allow a broader range of probative versus
15 prejudicial effect, so I'll allow it.

16 MR. GRAHAM: Does that apply to both?

17 THE COURT: Both.

18 MR. GRAHAM: Are you going to allow them to elicit
19 the response from Sergeant Sowards about it's not for you,
20 it's for the public?

21 THE COURT: I'm going to allow that.

22 MR. GRAHAM: Well, Your Honor, we would like --
23 before the jury comes back, we would like to do a Jackson
24 V. Denno hearing on the statement with Sergeant Sowards on
25 the statement that the Defendant made to him in a

1 Schmerber hearing earlier. This is a statement where he's
2 in custody, but he's not being questioned. And Mr. Jones,
3 on his own, inquires into Sergeant Sowards about -- he
4 requested Sergeant Sowards go investigate Amber for food
5 stamp fraud.

6 THE COURT: All right. I need a break, things are
7 coming unraveled. I understand. One thing is leading to
8 five others. Y'all put it back together. I don't think
9 you need that, it's my humble opinion. You're wearing the
10 jury down and the Judge down. All right. We'll take five
11 minutes.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: All right.

14 MR. GRAHAM: Just a few things, Your Honor. If I
15 understand your ruling, for the record, on what was
16 admissible or not. I would just share the State's concern
17 that by allowing them going into Sergeant Sowards response
18 about people out there wanting to kill Mr. Jones, that
19 that's injecting an arbitrary factor, what society wants
20 to have happen in this case.

21 THE COURT: I tend to agree with you. I tend to
22 agree with you.

23 MR. GRAHAM: By them assuming to do that, I'm
24 assuming that it's a tactical decision on their part to
25 interject that into this case.

1 THE COURT: Why do you want that, really? To me,
2 it's senseless. It's almost like an intentional PCR.

3 MR. MADSEN: We think it goes to character, it goes
4 to mitigation.

5 THE COURT: It's Mr. Sowards opinion as to what the
6 general public thinks, not what Mr. Jones thinks.

7 MR. MADSEN: He's telling him why he has the
8 automatic weapon.

9 THE COURT: I know. That has nothing to do with Mr.
10 Jones character.

11 MR. MADSEN: I understand. Are you reconsidering?

12 THE COURT: I think I am. That answer is not a good
13 answer to put in there as to why he said that. I just
14 don't think that's relevant to Mr. Jones character at all,
15 now that I think about it.

16 MR. MADSEN: If Your Honor orders me not to ask that
17 question, I will not. I think I've probably got to
18 proffer it.

19 THE COURT: All right. If you need to proffer, let's
20 do it. I think you've probably proffered it enough given
21 the sum and substance of it.

22 MR. MADSEN: If Your Honor thinks that that's okay,
23 the substance of that without being proffered, might not
24 proffer it.

25 THE COURT: Okay. I'll find that the proffer was the

1 responsive comment from Sowards would be something along
2 the lines, I don't have it because I'm fearful of you
3 escaping, the general public may want to cause you harm
4 for murder.

5 MR. MADSEN: I understand. The Appellate Defense
6 tells me it's got to be proffered.

7 THE COURT: I disagree with you.

8 MR. MADSEN: I understand.

9 THE COURT: And I disagree with Counsel. Proffer it
10 anyway, though. I feel like I'm fighting ten different
11 lawyers. I bet when you all get to the Supreme Court, one
12 lawyer gets to talk to five Judges, not one Judge to five
13 lawyers. Place him under oath, please.

14 BARRY SOWARDS, being
15 first duly sworn, testified as follows:

16 THE CLERK: Have a seat, please. State your name,
17 spell your last for the record.

18 THE WITNESS: My name is Barry Sowards. Last name is
19 spelled S-O-W-A-R-D-S.

20 PROFFER DIRECT EXAMINATION

21 BY MR. MADSEN:

22 Q Sergeant Sowards, were you one of the members of the
23 team that extradited Tim back from Mississippi?

24 A I was.

25 Q Did you all stop for food at Krystals?

1 A We did. We stopped at two places --

2 THE COURT: Ask him the question, you don't have to
3 talk about what he ate.

4 Q Did you have a conversation with Tim about your
5 automatic weapon?

6 A I did.

7 Q Can you tell the Court about that, please?

8 A We were stopped at a location for a rest stop. Two
9 of my detectives went inside the business. I stayed
10 inside the vehicle. I had a weapon on my lap. It was a
11 H&K UMP 45. It's an automatic weapon. Mr. Jones looked
12 at me when the other two exited the vehicle and he said to
13 me, you guys don't need automatic weapons for me. I'm not
14 going to hurt you. And I replied to him and said, these
15 weapons are not for you, in particular, it's for everyone
16 trying to kill you.

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

18 THE COURT: That's a good proffer. Still won't allow
19 it. Step down.

20 MR. GRAHAM: In support of your ruling, they have
21 cited, I believe, Lockett vs. Ohio, 438 U.S. 586 at U.S.
22 Supreme Court. Footnote 12 on that case says nothing in
23 this opinion limits the traditional authority for the
24 Court to exclude as irrelevant evidence not bearing on the
25 Defendant's character, prior record or the circumstances

1 of his offense.

2 MR. MADSEN: Judge, our position would be that it's
3 mitigation evidence and it goes to the circumstances of
4 the offense that is the basis for something less than
5 death, that Tim will have to spend the rest of his life in
6 prison in protective custody because of the type of
7 offense in the other prisoners opinion.

8 THE COURT: All right. Bring in the jury.

9 MR. MADSEN: Just for clarification, Tim's question
10 is allowed, just not the response, Your Honor?

11 THE COURT: You can get Tim's response in, but
12 Detective Sowards response, to me, is his personal opinion
13 and not relevant to Mr. Jones character in any way. I
14 think it goes to Mr. Sowards training as an officer,
15 that's his job to protect him, it is Mr. Sowards
16 character.

17 MR. MADSEN: If Your Honor would just note our
18 objection.

19 THE COURT: It's noted.

20 (Whereupon, the jury came into open court at
21 approximately 11:22 a.m.)

22 THE COURT: Call your witness, please.

23 MR. YOUNG: The Defense calls Kerry Breen.

24 KERRY BREEN, being
25 first duly sworn, testified as follows:

1 THE CLERK: If you'll have a seat over there, please.
2 If you'll state your name and spell your last for the
3 record.

4 THE WITNESS: My name is Kerry Breen, last name is
5 B-R-E-E-N.

6 DIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q Pastor Breen, can you tell the jury a little bit
9 about yourself and a little bit about your background and
10 how you came to be a pastor?

11 A I'm an ordained Assemblies of God minister. I came
12 to South Carolina in 1994 to pastor a Central Assembly of
13 God and stayed there until I retired. I left pastoral
14 ministry in December of 2016, December 31st, 2016. During
15 that time, my church was involved in ex-offenders. We
16 started a substance abuse program that became probably one
17 of the biggest substance -- faith-based substance abuse
18 programs in Columbia. And was involved in helping people
19 that had experienced problems in their lives. I became
20 acquainted with Casey Secor because I was providing
21 residential substance abuse treatment for men. And
22 Richland County Public Defender's Office and the
23 Solicitor's Office would place men that had substance
24 abuse problems in my program. So that's kind of how I
25 came to South Carolina, or my history.

1 Q How did you come to be a pastor? What was your
2 background that led you into the ministry?

3 A I was a teenager and then I joined the Marine Corp in
4 1976, stayed with the Marine Corp for four years. During
5 that time, I became a Christian and started attending the
6 Assemblies of God church and felt called to the ministry.
7 In 1980, I went to Bible College in Florida at
8 Southeastern University and in 1983, I was ordained as a
9 Pastor in Assemblies of God. I've pastored three churches
10 in my career.

11 Q And were you contacted by my office in 2015 in
12 relation to Tim Jones case and can you tell the jury what
13 was going on?

14 A I was contacted by Mr. Young to see if I would
15 consider providing spiritual support for Tim. And so I
16 spent some time thinking about it. I had heard what had
17 happened and I spent some time thinking about it and
18 praying about it. And I felt like as a minister in
19 Columbia that I had a responsibility to minister not just
20 to people who didn't have problems, but people who did
21 have problems. So I did make a commitment to visit Tim
22 and provide spiritual support for Tim.

23 Q Is this after Tim had tried to commit suicide at the
24 prison?

25 A Right.

1 Q Did you go meet with Tim?

2 A I did.

3 Q How many times did you meet with him?

4 A I can't remember exactly how many times, but it was
5 between -- it was between, at least, 10 and 20 times that
6 I met with Tim. I met with him at Kirkland and then I met
7 with him at Lee County. So I met with him somewhere in
8 that number.

9 Q And can you tell the jury about your meetings with
10 Tim? What was that like? What did y'all do?

11 A Well, when I first -- when I first met Tim, he asked
12 me, did you know what I did? And I said, yes, I did. And
13 he said, will that affect you ministering to me? And I
14 said, no, it won't. And I really -- honest, to tell you
15 the truth, I did not spend a lot of time talking with Tim
16 about the case. I felt it was my job to provide spiritual
17 support for Tim, so I dwelt on -- what we did was we would
18 read the scripture together. We would talk about the
19 scripture. I taught Tim some Christian songs and we would
20 sing them together. And we would end our meeting with
21 prayer. And that really was the context of our meetings.
22 There was one time where Tim did talk with me about what
23 had happened, again, in a potential way and I did lead him
24 in a prayer of forgiveness. But I did not make it my
25 intention to focus on the case or what had happened, but

1 to help him spiritually.

2 Q When you and Tim talked about his faith, did y'all
3 talk about things like sparing the rod and women's place
4 in the home or in the religion? Did those discussions
5 come up?

6 A I can't say that we had a discussion about that per
7 se. I do know that from talking with Tim, he had a very
8 literal interpretation of the scripture. I did notice
9 that it was black or white, there wasn't any gray area in
10 between for Tim, which I think was a problem for his
11 Christian life. Because I don't think we can approach --
12 first of all, I don't think we can approach the scripture
13 with a literal interpretation. Jesus said a lot of things
14 we can't literally apply. Jesus poke out your eye and cut
15 off your hand. Well, if you do that, we'll all be blind
16 and limbless. So that's a parable. So you can't take
17 that as a literal. And as far as black and white thinking
18 goes, I mean, people make mistakes. It's not yes or no.
19 We make mistakes as human beings. And I think that did
20 cause Tim problems in his life.

21 Q Are those beliefs that he espoused to, are those part
22 of the Pentecostal faith?

23 A No. No. I'm part of the Assemblies of God. It's
24 the largest Pentecostal denomination in the world with
25 over 70 million adherents. One in four Christians in the

1 world are Pentecostal. The Assemblies of God is second to
2 the Catholic Church in adherents. And Assemblies of God
3 does not believe in violence or extreme punishments of
4 children. For the most part, we've been a nonviolent
5 movement, so it's not a part of the Pentecostal Church.
6 But there may be Pentecostals that have views like that.

7 Q Is Tim's faith real?

8 MR. HUBBARD: Objection, Your Honor. That would be
9 speculation. I think anybody can answer--

10 THE COURT: -- rephrase it. You can ask something
11 similar, but rephrase your question.

12 Q How did Tim express your faith? What did you think
13 about it?

14 A I think that Tim had a real faith, but I think it was
15 based in externals and not in internals. And I think that
16 that's the failure of any kind of a religion. When it's
17 only based in the externals and not in the internals, then
18 we miss the truth of what faith is about. But I do think
19 he had a very real experience and tried to -- tried to go
20 to church and live out that faith.

21 Q Does Tim believe that he will be reunited or can be
22 reunited with his children?

23 A Well, the Pentecostal religion believes that people
24 can be forgiven and redeemed in heaven. I'm not
25 necessarily -- I'm just talking about heaven, so Tim does

1 believe that he's going to be reunited with his children.

2 And I think the Bible does teach that.

3 Q Can Tim have a positive impact on other people in
4 prison?

5 A I think he can. I think we've seen many men who have
6 committed things -- done horrible things experience
7 redemption. And they may not ever be able to be in
8 society again, but they can be -- they can have a
9 beneficial influence on other men that have committed
10 crimes or acts that are considered to be horrible.

11 MR. YOUNG: One second.

12 Q Thank you, Pastor Breen. Please answer any questions
13 the State has.

14 CROSS-EXAMINATION

15 BY MR. HUBBARD:

16 Q Pastor, I understand you said that faith as you teach
17 it and as you discussed it with Mr. Jones, there's nothing
18 in your faith, the Christian faith as you know it that
19 allows the mistreatment, brutal beatings or even killings
20 of children, is that correct?

21 A Yes sir, I do not believe in that kind of behavior.

22 Q That a man should honor and love his wife, is that
23 right?

24 A Yes, sir.

25 Q That children have a special place?

1 A I do believe that.

2 MR. HUBBARD: Thank you, sir.

3 REDIRECT EXAMINATION

4 BY MR. YOUNG:

5 Q Pastor Breen, do things that happen to children
6 matter or affect them later in life?

7 MR. HUBBARD: Objection, beyond my scope, beyond the
8 scope of what I asked.

9 MR. YOUNG: He asked if children --

10 THE COURT: Beyond the scope.

11 MR. YOUNG: Thank you.

12 THE COURT: You may step down.

13 MR. MADSEN: We call Sergeant Barry Sowards.

14 BARRY SOWARDS, being
15 first duly sworn, testified as follows:

16 THE CLERK: If you'll have a seat, please. State
17 your name, spelling your last for the record.

18 THE WITNESS: My name is Barry Sowards. Last name is
19 spelled S-O-W-A-R-D-S.

20 DIRECT EXAMINATION

21 BY MR. MADSEN:

22 Q Sergeant Sowards, where are you employed?

23 A I'm employed with the Lexington County Sheriff's
24 Department.

25 Q And how long have you been employed with them?

1 A Nineteen years, 19, 20.

2 Q Is that your entire law enforcement experience?

3 A No.

4 Q Can you tell me about what you did prior to coming to
5 Lexington County?

6 A Prior to that, I worked four years on street patrol
7 at Columbia Police Department. Then prior to that, I did
8 a five-year stint in the United States Air Force.

9 Q And since you've -- you said you've been at Lexington
10 County 19 to 20 years, all with the Sheriff's Department,
11 correct?

12 A Yes, that's correct.

13 Q Can you tell me, when you started off there, what was
14 your job?

15 A When I first started Lexington County Sheriff's
16 Department, I was hired to be a school resource officer.
17 I worked in that capacity for approximately six years. I
18 was promoted to the rank of sergeant, where I was a patrol
19 sergeant in the west and south region of Lexington County.
20 And then in late 2009, I was lateral transferred to my
21 current position, which is the fugitive task force
22 sergeant for Lexington County.

23 Q Can you tell me what the sergeant for the fugitive
24 task force, what do you do?

25 A So we locate -- we go after folks who have warrants

1 and it's our job to locate those folks who have warrants
2 and then bring them back to Lexington County so that they
3 can stand trial for the crimes they are accused of.

4 Q And as part of that job, have you been in court or
5 transporting Tim?

6 A Yes, I have. I've been with him pretty much the
7 entirety from the time he was originally picked up.

8 Q Coming around almost five years?

9 A Yes.

10 Q And is it fair to say then that you've got extensive
11 experience dealing with inmates and/or defendants in your
12 job?

13 A Yes.

14 Q Have those individuals been rude to you before?

15 A Yes.

16 Q Gotten physical with you?

17 A Absolutely.

18 Q Tried to fight you?

19 A Yes.

20 Q I mean, unfortunately, that's kind of a common thing
21 in your job, correct?

22 A It is.

23 Q And can you just describe to the jury during, I
24 guess, the last six to seven weeks, including the picking
25 of the jury, what has your job kind of been?

1 A So my superiors have put me in charge of, basically,
2 being Mr. Jones' handler for the duration of the trial,
3 either myself or my team members, in which we'll go to the
4 jail every morning, pick up Mr. Jones, make sure he's on
5 time, that he's properly dressed and that he makes all of
6 his court dates during this trial through its entirety.

7 Q And were you part of the team that extradited Tim
8 from Mississippi?

9 A I was.

10 Q Kind of give the jury an idea, how long of a drive
11 was that?

12 A My recollection is somewhere in the area of maybe
13 nine hours.

14 Q During that time, did Tim give you any problems with
15 the transport?

16 A No.

17 Q Was he compliant to you?

18 A Yes.

19 Q Was he courteous?

20 A He was.

21 Q Did he ever do anything in the transport that made
22 you as a law enforcement officer feel uncomfortable?

23 A I never felt uncomfortable. Of course, transporting
24 someone with those charges, you know, obviously, have a
25 heightened level of security more so than most. But he

1 never did anything while I transported him that raised my
2 suspicion.

3 Q At some point in time, I guess, during the transport,
4 you stopped to get food. Did Tim ask you something or say
5 something to you at that point in time?

6 A He did. We had stopped at a restaurant. Two of my
7 detectives went inside to get some food. I stayed inside
8 the vehicle with Mr. Jones. I had a H&K UMP automatic
9 weapon on my lap. And Mr. Jones looked at me and said,
10 you guys don't need an automatic weapon for me. I'm not
11 going to hurt you.

12 Q And after you ended up bringing Tim back to South
13 Carolina, did you have more interactions with him?

14 A I did. Most every time he was transported, it was
15 done by either myself accompanied with other team members
16 pretty much for the last five years.

17 Q So any court hearings, any appointments, you were
18 part of that transport team of Tim?

19 A Yes, that's correct.

20 Q Can you give me an idea of how many times you think
21 that might have been?

22 A I don't know the exact number, I would assume
23 somewhere in the area of maybe 14 times. And each time
24 consisted of, at least, an eight-hour day.

25 Q So you were with him that entire time?

1 A Yes.

2 Q And, initially, he was housed at MSU at Kirkland.
3 What is that?

4 A It's the maximum security unit at Kirkland. It's the
5 highest level of security in a prison that we have here in
6 South Carolina. It's reserved for safe-keepers or
7 individuals that have been charged with a violent, pretty
8 violent crime.

9 Q So that's over off of Broad River Road?

10 A Yes.

11 Q And the maximum security, I mean, that's where
12 generally people who have gotten in trouble at other
13 institutions within SCDC go, correct?

14 A Yeah, that's one of the reasons that they're there.

15 Q And then you had also mentioned safe-keepers. And I
16 guess you said that that's what Tim was, was a
17 safe-keeper?

18 A He was labeled a safe-keeper by the State Department
19 of Corrections.

20 Q And what is that?

21 A Safe-keepers are individuals that they keep away from
22 every other inmate in the Department of Corrections no
23 matter where they're housed. In the Department of
24 Corrections, there's a number of prisons throughout the
25 state. They are labeled with a special uniform that they

1 wear where they're easily identified who they are and
2 they're not to have any contact with any other prison
3 inmate whatsoever within the facility.

4 Q And so Lexington County made that designation and
5 sent him to MSU, correct?

6 A It was Lexington County that made the decision to
7 transfer him to the state prison, yes.

8 Q And at some point in time, I guess, MSU at Kirkland
9 went away and Tim was placed somewhere else. Where was
10 that?

11 A He was transferred from MSU or supermax to the Lee
12 County Correctional Institution, which is also governed by
13 the State Department of Corrections in South Carolina.

14 Q And is that in Bishopville?

15 A Yes, it is.

16 Q So down I-20?

17 A About an hour and 15 minutes.

18 Q And during those times that you would transport Tim
19 back to appointments or court appearances, did he give you
20 any problems?

21 A No, he didn't.

22 Q Was he always compliant?

23 A He did what I asked him.

24 Q Was he courteous?

25 A He was.

1 Q Did he do anything during those transports that made
2 you feel uncomfortable?

3 A No. At the time -- during that time at Lee County,
4 he was on quite a bit of medication at that point, so he
5 was pretty sedated.

6 Q And I think as you mentioned early on, you've been
7 basically security over Tim at the trial?

8 A Yes.

9 Q Is it fair to say that you've been with him almost
10 times 12 hours a day, five days a week?

11 A That would be accurate.

12 Q I guess we're in either week six or seven?

13 A Correct.

14 Q During the time that you've been bringing him here,
15 been with him here, has he given you any problems?

16 A He has not.

17 Q Has he been compliant with you?

18 A He's been compliant, yes.

19 Q Has he been courteous?

20 A Yes.

21 Q Has he done anything to make you feel uncomfortable?

22 A No. There were a couple times he stepped over the
23 line where I asked him to be, but that was a mental
24 mistake more than him just not complying with what I asked
25 him.

1 Q Nothing intentional that made you think he was trying
2 to do anything?

3 A I don't believe so.

4 Q And at some point in time during the trial, did you
5 notice something different going on with Tim?

6 A Probably the second or third day of when the trial
7 began, I noticed Mr. Jones had a couple different facial
8 expressions that I was not used to. He was turning around
9 really quick looking to the back of the courtroom, which
10 initially raised my concern and then I realized what he
11 was trying to do was look at the clock and see what time
12 it was. After court was over, we went to the back. I
13 noticed he was pretty quiet. Usually, since he's been off
14 his medication, he's a little chatty. And he was quiet
15 that day. And I said, Hey, what's wrong with you? I
16 said, Are you okay? And I thought it was just, you know,
17 he was down about the trial. And he said, I'm okay. I
18 said, Well, if you're not okay, you need to let me know so
19 that I can facilitate whatever you need since I've
20 basically been put in that position to look -- be his
21 overwatch, basically. And he was reluctant when he told
22 me, he said, I'm hearing voices. I need to talk to a
23 doctor. So it was at that point when I got him back to
24 the jail. I notified the staff in the jail for his care
25 so they could sit down and talk with him about whatever's

1 going on.

2 Q And did they change his medication after that?

3 A To my knowledge, the staff did say they changed his
4 Geodon. I think it went from 40 to 60 milligrams of
5 Geodon.

6 Q And once they did that, did you notice a change back
7 to kind of Tim's baseline?

8 A He did, yes. He wavered from day to day, depending
9 on how the trial was going, but yeah, I did see a
10 difference in him.

11 Q And so this was something that you talked with Tim
12 about, he didn't come to you with it?

13 A Yeah, I initially confronted him about it because he
14 was quiet that day.

15 Q During this almost five-year period, have you and Tim
16 had non-job-related conversations?

17 A Yes.

18 Q At some point during the trial, did y'all have a
19 conversation about a banana?

20 A Yes. It was probably maybe the second week in the
21 trial, he was eating a banana in the morning time. He
22 made an odd comment about, you know gorillas or monkeys
23 eat bananas the opposite of how we eat them. And I asked
24 him, I said, What are you talking about? So he had the
25 banana in his hand before he peeled and he turned it

1 upside down and he started peeling the banana from the
2 bottom, what we would consider the bottom, rather than the
3 top. I said, Well, that's kind of neat. You taught me
4 something. I didn't know that.

5 Q I noticed yesterday that Tim did not -- or had not
6 shaved. Can you tell me why or tell the jury why?

7 A Yesterday?

8 Q Yes, sir.

9 A He -- when he came out of his holding area, I usually
10 handcuff him and, you know, belly belt and get him ready
11 for transport to bring in and I noticed he -- he had like
12 a day's worth of growth on his face. And I asked him, I
13 said, Hey, did you not shave? Why did you not shave? He
14 said, Well, they gave me the opportunity to shave. He
15 said, But I knew I was going to be running late and I
16 didn't want to make anybody late, so I just went ahead and
17 here I am.

18 Q So he didn't want to make the transport team late
19 getting here?

20 A That's what he said.

21 Q In Lexington, it's customary for the litigants of
22 both tables to kind of stand up when the jury is coming in
23 and out as a show of respect for the jury. Has that
24 seemed important to Tim?

25 A Oh, yeah, it has.

1 Q Oftentimes, myself and the other attorneys might be
2 working on something or preparing to get ready for a
3 witness, what would Tim do if we were standing up when
4 they started to come in?

5 A He would make a point to tell everybody to stand up.
6 In fact, it has become an internal joke about that.

7 Q And what was that internal joke that someone should
8 do to Tim?

9 A The suggestion was made that one of the attorneys
10 hold his shirttail down so he can't get up.

11 Q And you perceive that would have upset him?

12 A Yes.

13 Q And as part of your job as kind of his handler, you
14 keep an eye on him the entire trial?

15 A I do.

16 Q Have you seen him crying?

17 A Yes.

18 Q Do you believe that those are crocodile tears?

19 MR. GRAHAM: Objection, Your Honor, speculation.

20 THE COURT: I sustain the objection.

21 Q When you've seen him crying, do you believe that his
22 remorse is real?

23 MR. GRAHAM: Objection, speculation.

24 THE COURT: Sustained.

25 Q During the entire time, this five years that you've

1 been with Tim, has he given you any problems?

2 A No.

3 Q Has he been compliant with you?

4 A He has.

5 Q Has he been courteous?

6 A He has.

7 Q Has he made you feel uncomfortable?

8 A It's difficult to answer. In one point, he has not
9 particularly made me uncomfortable. The level or the
10 heightened sense of the charges is what makes me
11 uncomfortable on a daily basis. Not necessarily with him,
12 but the level of charges, what I deal with.

13 Q Sure. So you're always on watch for that, but he
14 hasn't done anything within the job that's made you feel
15 uncomfortable?

16 A That's correct.

17 Q Fair to say that Tim has been a model inmate?

18 A He has with me.

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

20 THE COURT: Mr. Graham?

21 MR. GRAHAM: No questions, Your Honor.

22 THE WITNESS: Thank you.

23 (Whereupon, a bench conference was held in the
24 presence of the jury but out of the hearing of the
25 jury.)

1 THE COURT: All right. We're done for the day, so
2 y'all eat lunch wherever you like. Here's the reason, the
3 State's witnesses went a little quicker than they
4 anticipated. The Defense lining their witnesses up not
5 knowing that, their witnesses are lined up for Monday
6 morning. These two were available to call them. We're
7 done for the weekend. So Monday morning 9:00 o'clock
8 we'll start again. Leave it here. Don't discuss the
9 case. Don't do any research. Don't let anybody influence
10 you about your decision on what's going on. Don't talk
11 about the case with anyone. See you Monday morning.

12 (WHEREUPON, the jury is excused from the courtroom
13 for the day.)

14 THE COURT: All right. When we were talking about
15 Monday witnesses lined up. There's a couple things we
16 need to put on the record about --

17 MR. MADSEN: I can do mine first, Judge.

18 THE COURT: Okay.

19 MR. MADSEN: Your Honor sustained objections to me
20 asking about crocodile tears and a show of remorse. We
21 believe that that does go to mitigation under Eddings and
22 Skipper. Obviously, a portion of their case has been kind
23 of that he's all about -- or Tim's all about himself or
24 that he is kind of a narcissist. To not allow those
25 questions is denying Tim his due process rights, fair

1 trial rights and we also believe it comes under cruel and
2 unusual punishment.

3 THE COURT: All right, Mr. Graham, you objected.

4 MR. GRAHAM: Yes, speculation on his part about --

5 THE COURT: As speculation. I sustained it as to
6 speculation. I understand your objection. So your record
7 is protected. Anything else?

8 All right, Mr. Young, you said something about a
9 witness coming?

10 MR. YOUNG: Yes, Your Honor. We've had a discussion
11 about the admissibility of Frierson and Dr. Kruse and
12 whether or not the State could get into anything depending
13 on what the Defense presented. We've offered to present
14 Dr. Maddox for a limited purpose of what she did in
15 response to serious mental health concerns and her
16 treatment at that time without going into her report or
17 diagnosis. And we request that the Court let me know
18 whether or not the Court felt like that limited testimony
19 would open the door to Frierson and Kruse.

20 THE COURT: So, basically, she's going to testify to
21 what she did during the trial?

22 MR. YOUNG: Yes, sir.

23 THE COURT: As a result of the conversation we just
24 heard about?

25 MR. YOUNG: Yes, sir.

1 MR. HUBBARD: The way it was presented is hey, if
2 y'all will agree to this, we'll pull back her testimony.
3 I haven't even had a chance to talk to our folks, but,
4 obviously, Judge, I don't know what she's going to testify
5 to. And if it's about she's treating voices and things
6 like that, that does open up the door. It's something I'm
7 going to explore. So I just need -- I'm not real clear on
8 what they want to present. If it's just I'm giving him
9 meds. But I suspect they're going to focus on symptoms,
10 symptoms that correlate to psychosis. If that's the case,
11 I can't just not question her. And the only expert
12 opinions I have are not just Frierson, but Kruse. So I
13 just -- we don't really know exactly what they're limiting
14 Dr. Maddox to.

15 THE COURT: As I understand what Mr. Young has said,
16 is the third or fourth day in, the detective noticed
17 something and so there was concern about Jones' condition.

18 MR. YOUNG: Right.

19 THE COURT: Immediately, Dr. Maddox was contacted and
20 she drove down, I think the next morning. And came to
21 court and had some brief examination, talk, and in fact,
22 wrote a prescription that was transmitted to the sheriff's
23 department through the captain that changed his dosage,
24 very close -- maybe that evening.

25 MR. YOUNG: That was the second--

1 THE COURT: -- all right.

2 MR. HUBBARD: Is that going to be the entirety of it?
3 If it is -- I mean if they're not going to get into the
4 past five years she's been the treating doctor for him,
5 that as early as September of 2014, she was seeing him and
6 giving him medication.

7 THE COURT: Well, I think what he just said was
8 regarding that treatment, she's been treating him, but she
9 was called for that particular reason and that --

10 MR. YOUNG: -- that would be our offer. And what
11 we're looking for is if -- I mean, if the Court says that
12 that opens the door to Dr. Kruse and Dr. Frierson, then it
13 does and we'll deal with it accordingly.

14 THE COURT: I think just from that limited amount,
15 that probably would not. If it gets expanded broader than
16 what you represented, then, perhaps. I think that's going
17 to be on a wait and see. But just that limited coming in,
18 examined him, changed his prescription, I'd say probably
19 not. But again, haven't proffered it yet.

20 MR. YOUNG: Yes, sir.

21 MR. HUBBARD: And we'll wait and see and see what we
22 need to go into, Judge. I mean, that would be fine if we
23 shorten it.

24 THE COURT: Okay. Anything else? All right, we'll
25 be here early Monday.

1 MR. MADSEN: One more thing?

2 THE COURT: Yes, sir.

3 MR. MADSEN: I just thought of something that jumped
4 back to my questions and they're talking about
5 speculation. They elicited testimony from someone about
6 that Nahtahn was smiling, but they don't think it was a
7 real smile. And I don't quite under -- thinking about it,
8 how is that any different?

9 MR. HUBBARD: I didn't hear an objection, that's the
10 biggest difference.

11 MR. MADSEN: Okay.

12 THE COURT: That's what I heard, too.

13 MR. HUBBARD: But I will say, ultimately, compared to
14 what the rest of the testimony was, it ended up being
15 cumulative in the sense of what the child was doing.

16 MR. MADSEN: We believe the evidentiary rights--

17 THE COURT: -- okay.

18 (Whereupon, the trial will resume the next Monday at
19 9:00 a.m.)

20 June 10, 2019

21 THE COURT: All right. How's everybody this morning?

22 MR. YOUNG: Good.

23 THE COURT: Ready to go?

24 MR. YOUNG: Yes, sir.

25 THE COURT: All right. I've got a note from one of

1 the jurors and she is involved in a big group of churches
2 that does an evening, like, a Sunday -- a Bible School
3 type thing and wanted to know if she could -- we could
4 stop at 5:00 o'clock each evening this week. And so, my
5 thing is that's about what we've been doing anyway. We'll
6 try to honor that, except if we start deliberations and
7 that may be a reason to tell her no. Any objection to
8 that? I'm not going to address her directly, but --

9 MR. HUBBARD: No sir, Your Honor. I guess I'd ask
10 just also for planning today, how long does, is the
11 Defense will go? Think we'll finish it tomorrow?

12 MR. YOUNG: I doubt we'll finish it tomorrow. It'll
13 be probably Wednesday.

14 MR. HUBBARD: How far into Wednesday? Are we going
15 to be doing closings and charge? That's what I'm trying
16 to get at is we're not going to be doing that, like, after
17 lunch, or are we going --

18 THE COURT: If we get done Wednesday, maybe we can do
19 everything Thursday. That way we won't run into having to
20 come back the next day. I'll do whatever the jury wants
21 to do. I'm kind of going to manage them like I've done
22 before is you all work until you want to break and then
23 stop. And they pick -- they did that really well, I
24 thought, the way they managed their time last -- last
25 week. So, all right, bring the jury, please.

1 THE BAILIFF: Yes, sir.

2 (Whereupon, the jury came into open court at
3 approximately 9:05 a.m.)

4 THE COURT: Thank you, all. Everybody's weekend
5 good?

6 MADAM FORELADY: Yes.

7 THE COURT: Any issues with anything, anybody
8 communicating with, interrogating, inquiring?

9 MADAM FORELADY: No.

10 THE COURT: No issues for the Court to take up? Like
11 I said, we can do it in-camera. Okay, good enough. Ready
12 to continue on. Call your witness.

13 MR. YOUNG: Your Honor, the State -- the Defense
14 calls Dr. Donna Maddox.

15 DR. DONNA MADDOX, being
16 first duly sworn, testified as follows:

17 MADAM CLERK: Have a seat on the stand. Once you're
18 seated, state your full name, spelling your last.

19 THE WITNESS: Good morning. Donna, middle name
20 Schwartz, S-C-H-W-A-R-T-Z, last name Maddox, M-A-D-D-O-X.

21 DIRECT EXAMINATION

22 By Mr. Young:

23 Q Good morning, Dr. Maddox.

24 A Good morning.

25 Q Can you tell the ladies and gentlemen of the jury a

1 little bit about yourself, who are you, what your work
2 history is, your education and experience?

3 A Sure. I'm originally -- well, raised in Columbia for
4 50 years. I went to Lower Richland High School. I went
5 to college at Furman University and I graduated in 1985
6 with a Bachelor of Arts Degree in psychology. Then I went
7 to medical school at the University of South Carolina
8 School of Medicine here in Columbia -- well, next door in
9 Columbia, and I graduated from there in 1989. Then I did
10 a four-year residency in general psychiatry, and I
11 finished -- that was -- at that time it was run by the
12 Department of Mental Health and the University of South
13 Carolina. So I finished that program in four years. Then
14 I took an additional year of training in forensic
15 psychiatry, which is a one-year Fellowship, and I finished
16 that in 1994. I'm licensed to practice medicine in South
17 Carolina and Georgia. After I finished residency I worked
18 for a number of years at the Department of Mental Health
19 and while I was there I conducted Court ordered
20 evaluations, similar to Dr. Friarson's, looking at peoples
21 competency to stand trial and criminal responsibility.
22 Then I went over to USC and worked at the Medical School
23 for 17 years, and there I basically did forensic work. I
24 worked in the prison. I worked at the Department of
25 Juvenile Justice. Just various areas. And I also

1 performed evaluations similar to what I've done today.
2 And then after that I finally retired. I spent the last
3 eight years of my career working at the Department of
4 Mental Health, and I was an inpatient psychiatrist there.
5 So for four years I worked at Bryan Psychiatric Hospital,
6 and that's the hospital in Columbia. I'm the acute --
7 hospital when people are civilly committed from the
8 emergency room they go into treatment there. So I work
9 there. And then I remarried and moved to Anderson, South
10 Carolina six years ago and I worked for four years at
11 Patrick Harris Hospital, which is the sister hospital to
12 Bryan. So Patrick Harris Hospital is the acute
13 psychiatric inpatient unit for the Upstate. And there I
14 was -- I was a Psychiatric Service Chief and I ran a 40
15 bed unit of females who are acutely mentally ill. So I
16 retired from the State. I had my 28 years of service, so
17 I retired from the State two years ago. And since then
18 I've been engaged in the full-time practice of private
19 forensic psychiatry.

20 Q Have you been qualified as an expert in forensic
21 psychiatry in the State of South Carolina?

22 A I have.

23 Q Do you know about how many times?

24 A Over 800.

25 Q Have you been retained by both the State and the

1 Defense -- not the same case, but in different cases over
2 your years of service in South Carolina?

3 A I have.

4 MR. YOUNG: Your Honor, at this time the Defense
5 would offer Dr. Maddox as an expert in forensic
6 psychiatry.

7 MR. HUBBARD: No objection.

8 THE COURT: All right. Dr. Maddox is offered as an
9 expert in the field of forensic psychiatry. She can offer
10 her opinions to that end.

11 Q Dr. Maddox, can you tell the jury a little bit about
12 the difference between treating patients, clinically
13 seeing patients versus evaluating patients?

14 A Yes. In forensic psychiatry -- the focus is a little
15 different in forensics, because there's a legal issue
16 involved. You're evaluating someone, number one, to
17 determine a diagnosis. That's important, because you
18 can't make -- you can't advise the Court or lawyers in
19 legal decisions if you don't understand what's going on
20 with the patient. And then you have very specific focuses
21 that you're looking for. You're answering legal
22 questions. And when you treat -- so let me back up. So
23 when you're a forensic psychiatrist you are advocating for
24 an opinion. You're not on -- forensic psychiatrists are
25 not on anybody's side. They're looking for a diagnosis in

1 trying to answer a legal question. When you treat
2 patients, you're their advocate. So if you're an
3 inpatient in a psychiatric hospital and you're my patient,
4 I'm going to do everything I can to help you. I'm going
5 to prescribe medications. I'm going to make sure that
6 you're safe, that you're not a danger to anybody, and
7 we'll help you with discharge. So when you treat patients
8 you see them in a different context. You're with them for
9 a longer period of time. So, for example, at Patrick
10 Harris the average length of stay of a patient was usually
11 two weeks. And so, every day I would round on that
12 patient. You would have inpatient, you would have
13 inpatient evaluations. You would read the nurse's notes
14 everyday. So you get a little bit -- you know your
15 patient in a different way. You observe them more
16 frequently because you're on the unit, so you have more
17 interactions with them. So the focus is different, one is
18 for treatment and to help and to cure. In forensics, it's
19 just to render an opinion that would hopefully assist a
20 jury or Judge in making a decision.

21 Q And can you tell the jury what your role was in the
22 Tim Jones case?

23 A Yes. Mr. Young called me, I believe, the day after
24 Mr. Jones was sent to the Department of Corrections, and
25 he was -- he called me and I came down -- I believe it was

1 a Saturday actually. I was a day off. But I drove to
2 Columbia at the time from Anderson and I evaluated Mr.
3 Jones at the -- at the Kirkland Prison where he was being
4 housed. And so, it was my opinion at that time he was
5 clearly psychotic. There was no question in my mind. You
6 know, the cause we didn't know yet, but there was no
7 question that he was psychotic. And what happened over
8 the course of time, I was involved in a very big case. I
9 would not have had the time to be the forensic expert in
10 this case, because that takes a lot of work and a lot of
11 hours. And so, Mr. Young used me as a consultant over the
12 last few years. So since 2014 -- I saw Mr. Jones on
13 September 13th, 2014. So I have seen him almost every
14 year. I didn't see him in 2018. But I would go by once a
15 year, check on him, see his progress. I was keeping up
16 with this treatment. What -- what kinds of treatments he
17 was receiving. So I've been a consultant in this case
18 where I've come a few times since the trial has started
19 and have done some evaluations. So my role is not then to
20 render an opinion about whether he was criminally
21 responsible, as you saw in the first phase, but my job has
22 been to just be a consultant, order tests when needed,
23 oversee treatment, those sorts of -- sorts of things.

24 Q Over the course of time in that role, have you come
25 to a diagnosis of Mr. Jones?

1 A I have.

2 Q And can tell the jury what that is and how you came
3 to that conclusion?

4 A Yes. Mr. Jones meets the diagnostic criteria for
5 schizophrenia, and I based that on my evaluations of him
6 from 2014 until the present. And I do agree -- we
7 certainly know that he was using synthetic cannabis, and
8 that can cause psychosis in somebody, and that certainly
9 may have contributed to what I saw on September 13th,
10 2014. But what the issue is, is usually people that have
11 substance induced psychosis -- I've treated them -- I
12 spent the last seven, eight years doing that. They
13 usually clear up within a month. You can bring them into
14 the hospital. You give them medications. They clear up,
15 and then they're no longer psychotic. You can eventually
16 take them off their medications and they're fine. If they
17 use these kinds of substances again, they will get sick
18 again. But in this case I have followed him since 2014
19 and in my opinion he continues to have symptoms of
20 psychosis. And so, based on that, the diagnostic criteria
21 for schizophrenia says that you had to have symptoms for
22 six months. Well, we know he's been confined since
23 September of 2014. This is five years later, four and
24 half years later. He still has symptoms of psychosis. So
25 he diagnostically, he's had the criteria for more than six

1 months. In my opinion, he's had delusions in the past.
2 The last time I saw him I did not consider him delusional.
3 He had delusions about his son. He's continued to report
4 hallucinations off and on. Even despite being on
5 medications the entire time that he's been confined he
6 still has those symptoms. And then mainly, the main thing
7 you see in schizophrenia which differentiates it from a
8 substance induced psychoses, is you see a deterioration of
9 function. That's one of the hallmarks of schizophrenia.
10 It's someone that was doing well, then they got sick and
11 their function has continued to decrease. So he went from
12 being a father, a full-time worker, going to -- wanting to
13 go to school at some point, or go to medical school, to
14 the point where he's murdered his children. He's in --
15 been confined. He had a suicide attempt. So his function
16 continues to deteriorate. In my opinion, he's also had
17 what's called cognitive decline. Cognition is just your
18 -- it's about six things that your brain does. Paying
19 attention to things, your ability to concentrate, your
20 ability to make decisions. Those sort of things. He's
21 had a decline in that, that as well over -- over a period
22 of time. And in the old days we recognize that. They
23 used to call schizophrenia dementia praecox before they
24 really knew what schizophrenia was. They realized that
25 there was some cognitive dysfunction that you have with

1 that as you continue to have it over time. So based on
2 those things, he's had delusions, hallucinations, a
3 deterioration of function. And he also has what's called
4 negative symptoms of schizophrenia. There's two kinds of
5 symptoms you see in schizophrenia. Positive means your
6 brain's doing something it's not supposed to do. It's
7 making up things. It's making you believe things that
8 aren't true, or it's making hallucinations. Negative
9 symptoms is your brain stops doing some of the things that
10 it normally does. And the main negative symptom he has
11 it's what's called a flat affect. If I took a picture of
12 his emotions, how -- you know, you see me. I'm talking, I
13 use my hands, my voice has a lot of intonation. If I'm
14 happy you would be able to tell. Persons with
15 schizophrenia, they're outside expression of emotion
16 flattens out. And so, you don't see him very animated.
17 There's times that he may be, but overall he's not a very
18 emotionally expressive person now. And that's called a
19 negative symptom of schizophrenia. So since September
20 14th, 13th when I saw him in 2014 he was psychotic. 2015
21 he'd gotten a little bit better. He was on medications.
22 But he still was having symptoms. 2016 he was still much
23 better. He was getting medications. But he had tried to
24 kill himself and had a little bit of -- much more negative
25 symptoms then. So initially what I saw is the positive

1 symptoms early on, and then as he remained treated on all
2 of his medications he's developing more negative symptoms
3 now, which is consistent with that illness.

4 Q Does schizophrenia always present the same? I mean,
5 would you say, all right, because schizophrenia is always
6 exactly like this?

7 A No. It's just like every other medical illness.
8 There's always going to be outliers, or there's always
9 going to be somebody that's not textbook, that we see that
10 all the time. In fact, I've got a case right now, the
11 person got the symptoms in their 40s, and that's usually
12 very late for the onset of schizophrenia, but it happens.
13 I had patients in the hospital -- I had one woman, she had
14 retired from a job and got schizophrenia in her late 40s.
15 So there's -- all illnesses in medicine work that way.
16 Not everybody is a textbook case. And so, that's the
17 question. How do you piece together that this is
18 schizophrenia and not just from substance. And I think
19 one of the most important things that I also considered in
20 that is the family history. You know, we know that his
21 mother was institutionalized. And I try to look at the
22 most recent research. If you look at our DSM, which is a
23 book that's lets us diagnose schizophrenia, they report
24 that if you have a parent with schizophrenia you may have
25 about one in one-hundred chance. Well, the most recent

1 articles that I looked up said you have a one in three
2 chance as a child of a schizophrenic. You have a one in
3 three chance of getting a major mental illness. You have
4 a one in two chance of just having mental illness. And
5 so, based on his family history, that's a strong genetic
6 component. He did do the drugs, which I think contributed
7 to him having the symptoms. But you have to take it at
8 the point of 2014 on he still has those symptoms, and he
9 clearly meets the diagnostic criteria for schizophrenia.

10 Q Now, I think you talked about your evaluation of him
11 on September the 13th, 2014. That was the day after he
12 was admitted to Kirkland?

13 A Yes.

14 Q And then you saw him in June 24th, 2015. This was
15 prior to his suicide attempt?

16 A Yes.

17 Q And how was he doing at that point in time?

18 A At that point he was only on one medication for
19 psychosis. He was on the Geodon. They had him on Prozac,
20 an antidepressant. They had him on a medicine called
21 Inderal, and that's a medicine for side-effects. You can
22 get tremors from some of the medicines, or you can have
23 problems where you can't sit still. That medicine helps.
24 He was on Geodon, which is an antipsychotic. He was on a
25 medicine for nightmares. He was on another antidepressant

1 for sleep, and then a medicine for his stomach. He
2 reported at that time -- he looked much better than when I
3 saw him in 2014. It was night and day. There was
4 improvement in him, but he was still having some symptoms.
5 But he said his -- he felt like his thinking had cleared
6 up. He said it had been a while since he had had any
7 hallucinations. And he -- he was definitely in a much
8 better place. He was having a lot of issues about his
9 crime. Thinking back about his children and what he had
10 done.

11 Q What did he say about the lack of auditory
12 hallucinations?

13 A He said part -- he felt like part of him was gone
14 because he no longer heard them. He said, "I got along
15 with them for years." The main symptom -- so he didn't
16 have positive symptoms of schizophrenia. That point that
17 he had the flat affect, that's the first time I noticed
18 that he definitely was getting some of the negative
19 symptoms that you see with schizophrenia.

20 Q Is that an odd thing for somebody to say, that they
21 tried to fake mental illness?

22 A No, and it's not -- I have a lot of people with
23 schizophrenia that say that. Most of the times with
24 schizophrenia the voices -- they don't say nice things.
25 They -- they're just horrible. They say awful things.

1 When you're trying to concentrate on a task. It's when
2 you're nervous is when the symptoms will come a lot of
3 times. So say if you're in a crowded room and you're
4 scared, that's when the voices will come, and they usually
5 say not nice things to people. And that's because it's
6 coming from their own brain. You know, their brain is
7 what's making those hallucinations, so they know just what
8 to say to usually harm you. They're very good at that.
9 Sometimes people are lucky and some of them will have
10 voices that, say, maybe tell them jokes. In my hospital
11 it wouldn't be uncommon. You might see a lady in the
12 corner just laughing because she's responded to
13 hallucinations. Sometimes they're pleasant, but mostly
14 they're not. And they -- they make running commentaries
15 about what you're doing. They -- you know, they may say
16 things like you're ugly, you're a bad person, you know,
17 that person hates you. Look at everybody looking at you.
18 They -- they don't say very good things.

19 Q Did you think that he was -- that that was indication
20 that he was malingering or was it indication that he was
21 not?

22 A To me it's an indication he wasn't malingering. What
23 happens is people are so used to living with those voices
24 they learn how to cope with them. They might have
25 strategies. And so, when they're gone it's kind of like

1 I'm getting a free day off. You kind of -- you didn't
2 plan on it, so you don't know what to do. You have to
3 fill the time. Or I think a better example would be
4 somebody that's in chronic pain. You know, when they're
5 pain's relieved, they've spent so much time trying to
6 learn how to deal with the pain that it's kind of at a
7 loss for a little period of time. So that's certain -- I
8 have a lot of patients on the inpatient unit that have
9 said they feel like part of them is -- they're different
10 and they have to readjust.

11 Q The next time you saw Tim was on April the 18th of
12 2016. This was after his suicide attempt. What did you
13 notice about him at that point?

14 A Well, at that point he was on two antipsychotic
15 medications and you could tell. He definitely was having
16 side-effects from the medications. The first thing I
17 noticed is he had what's called Parkinsonian features.
18 His facial muscles were not moving. These medications can
19 cause side-effects that look like Parkinson's. And so, he
20 wasn't blinking his eyes very much. And so, he looked --
21 even though last time I'd seen him I called him a flat
22 affect. You know, he didn't have a lot of emotional
23 expression. Well, it was even worse with him being on the
24 medication. So he didn't have a lot of movements of his
25 muscles and those sorts of things. He was on a much

1 stronger medication. He was still on the Geodon, but Dr.
2 Wood added Prolixin which was one of the older -- these
3 are -- those are old drugs since the '80s that we used to
4 use. There's a lot newer medicines now, but it's still a
5 very good medication. So she had added a second
6 antipsychotic medication. So I saw that he was having a
7 lot of side-effects from his medications. He said it
8 stated the voices were gone. But he told me that he had
9 hallucinated and the voices were telling him to hang
10 himself, which was how his suicide attempt came about.

11 Q Did you notice a change in his cognitive level --

12 A Yes.

13 Q -- during that evaluation?

14 A Yes. One of the things I do, when I do an exam I'll
15 -- I do -- I try to assess cognition. And there's
16 different tests that psychiatrists use. But you're
17 looking -- one of the tests that I did on him when I would
18 see him, it's called a Test of Verbal Fluency. And you'll
19 probably practice this at home tonight. I practiced all
20 these tests on my husband. But you -- it's a frontal lobe
21 function. It's a part of your brain that you're trying to
22 measure, like, how quickly are people thinking, how rapid
23 are they able to come up with placing objects in
24 categories. And so, the test I usually will give, I'll
25 give you a minute, and I'll say name every word you can

1 think of that starts with the letter D, and then you have
2 a person. If you get 11 then you pass. Sometimes I might
3 make it a category test. I'll say name every fruit you
4 can think of in the next minute. So the first time I saw
5 Mr. Jones he scored -- and I try to do that. I try to
6 assess cognition as I go along. The first time I did the
7 test he got 23 words in a minute. That is -- that's one
8 of the highest scores I had ever seen. He did one thing
9 that was interesting though. He had what's called
10 perseveration. And what that means is his brain came up
11 with the same word twice. And sometimes peoples brain
12 will do that on it's own, but usually it can mean that
13 there's a dysfunction there. So the example would be if
14 you're given words that start with the letter D, they may
15 say the word dog twice. They'll say, "Did I say that?"
16 It's like their brain is going back to the same pattern.
17 It's trying to come up with information using the same
18 strategy. So you can see perseveration in people with
19 dementia or people with certain kinds of brain trauma. So
20 we did 23. So he scored excellently. I saw him -- the
21 evaluation in April he got six. So he went from doing
22 superior -- superior performance on that test to below
23 average when I gave it to him in April.

24 Q And did you order neuro-psych testing as a result of
25 that?

1 A Yes. And -- I did. I recommended neuro-psych
2 testing at that point, because that was a decline in
3 function and I didn't know what was causing it. Sometime
4 schizophrenia can do that. Again, they used to call it
5 dementia praecox because it attacks the chemical system of
6 your brain, but it still affects how your brain functions.
7 And then I would -- also the first time I had evaluated
8 him I did not see -- he had hair when I saw him, so I did
9 not appreciate the skull depression that he had. His hair
10 covered that up. But I'd learned from speaking with one
11 of the Department of Corrections that he had had the
12 automobile accident. So because of those two things, the
13 decrease in his function and the history of the head
14 injury, I recommended that you all get neuropsychological
15 testing.

16 Q And is that the Dr. Brawley testing that was ordered
17 by you?

18 A Yes.

19 Q After that testing did you then order imaging?

20 A Yes. He had some abnormalities on his neuro-psych
21 testing. Some of them were probably secondary to
22 medication side-effects. He was having motor symptoms.
23 So part of the neuro-psych testing is you have to look at
24 motor function. But the functioning that I was concerned
25 of was the frontal lobe issues. And so, yes, Dr. Brawley

1 recommended further workup, and then at that point I
2 ordered the MRI.

3 Q I'm going to skip forward a little bit to the time of
4 the trial. Did you get a call about May 8th this year to
5 come in and see Mr. Jones? What was called about and what
6 did you see and what happened?

7 A Yes, I did. I think this was during jury selection.
8 I don't know if you all had started yet, and you may have
9 already been in trial. He had had -- he had been
10 reporting some hallucinations, and that was kind of new
11 for him. So what had happened -- I'll fast-forward a
12 little bit but put it into context. When he was at the
13 Department of Corrections he was held as a safekeeper.
14 And so, Dr. Beverly Wood, whom I know -- I've worked with.
15 I used to work at the Department of Corrections. I was
16 one of her contract psychiatrists when I was here in
17 Columbia. She -- he had been on a very high dose,
18 probably the highest dose of Geodon I've ever seen. I
19 think he was on 320 milligrams at one time. I've used 240
20 before, but I'm not that brave. But he was on very high
21 doses of Geodon in the prison. And what happened is by
22 the time he had got back here to Lexington, he was only on
23 40 milligrams. So his dose had gone from a very, very
24 high dose to a very low dose. And so, some of his
25 symptoms were returning, which could be expected. If you

1 have somebody with schizophrenia and their symptoms are
2 controlled and they come with a lot of stress, it's just
3 like any other medical illness. You have hypertension,
4 and you're not sleeping well and you're getting up real
5 early everyday, and even though you're taking your
6 medicines you may have symptoms. And so, it's just like
7 any other illness. So at that point I recommended that
8 his medication be increased to 60 milligrams a day to
9 prevent any further hallucinations for him.

10 Q And then did you get another call on May the 22nd
11 during the trial?

12 A I did.

13 Q And who called you on the 22nd?

14 A Officer Salis, (phonetic), called me at 7:00 o'clock
15 in the morning.

16 Q And what did he tell you and what did you do in
17 response to that?

18 A He was concerned. He reported that the night before
19 when he had -- Mr. Jones had come back from the trial,
20 that when he dropped him off at the jail that night that
21 they put him on suicide watch. He reported that Mr. Jones
22 had not been sleeping and that he was very concerned about
23 his mental state. That he wasn't the same. That he was
24 more withdrawn, more quiet, and he had noticed some
25 symptoms. So I came down here and evaluated him. He was

1 having some symptoms, so I wanted to increase is
2 medications again to a dose of 80 milligrams. So what
3 started at that point is I called Dr. Woods at the
4 Department of Corrections to figure out -- there was some
5 concern about why his medication had been decreased and
6 that he needed. And she told me directly that what had
7 happened, when he was at where he was being held at Lee
8 County and Kirkland to get his medicines, with Geodon you
9 have to have 320 calories with that medicine or else it's
10 not as effective. So what they did in the Department of
11 Corrections, they would give it to him with a teaspoon of
12 peanut butter and he would take his medication at night.
13 And what happened at Lee County, he was not getting his
14 medications regularly, and there were nights when they
15 were not giving him a snack. And so, he asked for
16 tapering the medication because he wasn't able to take it
17 as prescribed, and she noticed. She reported that she saw
18 a slow decline in his functioning with him not being on
19 that medication. The other problem that happened is the
20 Prolixin he was on, which is a very good medication. She
21 had to change that to another medicine. What happened in
22 the United States, there was a shortage of Prolixin. So
23 normally that's a very cheap drug. It's about five cent a
24 pill. When it went up it was absorbent in cost. And so,
25 the Department of Corrections couldn't afford that

1 medication. Plus, there was even a shortage at our
2 hospital. We had to take all the patients off of Proxilin
3 for a period of time. And so, he had -- she had started
4 him on another antipsychotic called perphenazine, which
5 it's an older one but it's very effective as well. So
6 what happened is I asked to increase his medications to 80
7 milligrams. I got a call from the jail that night from
8 the jail nurse. I had spoke with them earlier as well and
9 they complied with that. I had to write a prescription
10 because their psychiatric nurse practitioner was on
11 vacation that week, so I wrote a prescription and they
12 called in. My understanding was they raised his dose.

13 Q Did you -- I think you've already talked about this a
14 little bit, but can you explain to the jury a little bit
15 further about your consideration of whether or not this
16 was drug induced psychosis and how you arrived at the
17 conclusion that -- or what was your conclusion regarding
18 that?

19 A Sure. Drugs definitely played a part in it, as it
20 does with many mental illness. If you look, one of our
21 areas of training is called dual diagnosis. It is not
22 uncommon at all. Many are people with major mental
23 illness are using drugs. Some -- some are
24 self-medicating. Some are just abusing drugs. That's
25 very common in the mentally ill population. So I think

1 the -- the synthetic marijuana definitely contributed to
2 forming his symptoms, but he meets the criteria for
3 schizophrenia. The criteria says for six months you have
4 to have these symptoms. He's had them for five years
5 without any drugs, and being medicated. So in my opinion,
6 even though the substance has certainly contributed --
7 which it does many times. You can have somebody who's got
8 a genetic predisposition to schizophrenia and they develop
9 the symptoms when they're using marijuana, or they'll
10 develop the symptoms under the guise of their drug. So it
11 contributes, but it doesn't cause it.

12 Q Did you consider the possibility that he was faking
13 or malingering?

14 A Yes.

15 Q And what did you conclude with regard to that?

16 A He under reports. If anything, he under reports
17 symptoms. For example, the hallucinations that he would
18 generally report, he would say they were just vague.
19 Well, the reason they're vague is they say little things
20 like get up now, move now. They're not anything
21 contextually that -- you know, they're not telling him to
22 go shoot the President. You know, if you heard a voice
23 like that you would remember something like that. But
24 they comment on things that he's doing. So they're --
25 they're -- the content of them is not something that's

1 memorable. So if you asked him last week what did they
2 say, if he didn't write them down he's not going to
3 remember the content of them. He's never -- I saw him on
4 the first visit. You can't malingering the -- he's so
5 labile. He had a lot of emotion about -- I mean,
6 screaming, crying, cursing. It was clear that he was
7 responding to things. What I see lasting now that I don't
8 think he's faking -- so, for example, if you ask him what
9 your illness is he can tell you all the symptoms,
10 delusions, hallucinations. But just like every other
11 schizophrenic patient I have, he lacks insight. He can't
12 tell when he's having symptoms. So, for example, last
13 week when I saw him, the other week, he was very paranoid.
14 I've not seen him like that since probably his first
15 visit. And when I went in to see him about his mental
16 state he's like, "Who told you I was up all night singing
17 Twinkle Twinkle Little Star?" Well, nobody told me that.
18 Nobody told me that. And he goes, "I wasn't doing that."
19 So when he's having his own symptoms he can't recognize
20 them even though -- even though he can tell you what the
21 symptoms are. And that's the way most patients are with
22 schizophrenia. They know something's wrong with them, but
23 when they're having the symptoms they're not able to
24 identify those things. And so, in my opinion he's -- I've
25 not seen him intentionally fake his symptoms. I've seen

1 him under report and not tell everything that's going on
2 with him. And so, I think what he's more consistent with
3 is not being forthcoming with all the symptoms that he's
4 having.

5 Q Does the South Carolina Department of Corrections
6 medicate people just to pacify the population?

7 A Oh, no. They've done studies -- epidemiological
8 studies in the Department of Corrections. Thirty-three
9 percent of women usually have mental illness in the
10 Department of Corrections. Seventeen percent of males
11 have mental illness in the Department of Corrections,
12 generally across the United States. In South Carolina
13 when we worked at the Department of Corrections, they were
14 only identifying about eight to 10 percent of the males,
15 so we were missing half the males that were mentally ill.
16 And one of the reasons that happened is they're usually
17 quiet. A lot of people with schizophrenia are not out
18 there raising Cain. They are in their cells. They don't
19 go outside. So they don't always come to the attention of
20 the mental health professionals unless you ask questions
21 specifically or something happens. So they're under
22 represented, first of all, in the South Carolina
23 Department of Corrections. I gave that lecture. We went
24 there to the Department of Corrections to talk about those
25 things to -- when Osmond was the Director. But what

1 happens is -- so most of them are not getting attention.
2 And there are so many people that are in need of mental
3 health treatment. It certainly was not my practice to
4 treat people that need it. When they came in, these
5 clients were usually quite sick and they were in need of
6 psychiatric treatment. You do have some. Every -- every
7 hospital has them, every prison has them. You have a
8 group of people that are drug-seeking. But people don't
9 drug-seek for Geodon or perphenazine. Those are not the
10 kinds of drugs you would want to be on. They sedate you.
11 They -- they make your muscles feel heavy. They put you
12 at risk for a permanent mood disorder called tardive
13 dyskinesia. These are not the drugs that have any street
14 value. You can't -- there's one antipsychotic called
15 Seroquel you can sell in the prison and make \$10 a pill
16 because it helps people sleep. But all these other ones,
17 they don't have those effects and they are not a drug that
18 you would see prescribed to a drug-seeker.

19 MR. YOUNG: Your Honor, at this time the Defense
20 would offer for a Court's exhibit a copy of Dr. Maddox's
21 report.

22 MR. HUBBARD: Your Honor, we object. She's testified
23 with what's going on.

24 THE COURT: We've done that with all the experts.
25 The reason the reports don't come in is she's right here.

1 She can testify to everything she knows and be
2 cross-examined. The report can't be cross-examined.
3 She's here. So --

4 MR. YOUNG: If I misspoke. I was offering it as a
5 Court's exhibit at this time.

6 THE COURT: Oh, okay. Yeah, I'll accept it as a
7 Court's exhibit.

8 MR. HUBBARD: And I don't have any problem with that.

9 THE COURT: Yeah, okay.

10 MR. YOUNG: If I misspoke, I apologize. I meant to
11 offer it as a Court's exhibit.

12 THE COURT: Okay. We've gone through this same
13 scenario each time with the CV and the reports.

14 MR. YOUNG: Yes, sir.

15 THE COURT: Perfect. So we're on the same page. I
16 may have misunderstood.

17 (Whereupon, Court's Exhibit number 120 was marked for
18 identification.)

19 MR. YOUNG: Thank you. Please answer any questions
20 that the State may have.

21 THE WITNESS: Certainly.

22 CROSS-EXAMINATION

23 By Mr. Hubbard:

24 Q Doctor, good to see you again.

25 A You, too.

1 Q Now, you were hired in this case basically pretty
2 much like you were in -- what case was that in 2014?
3 Ricky Lee Blackwell, Spartanburg death penalty case with
4 Mr. Young --

5 MR. YOUNG: I would object.

6 A No, that was a little bit different.

7 THE COURT: How she got hired.

8 A It was different. In the Ricky Blackwell case it was
9 a sentencing issue, and actually I -- you are correct in
10 the sense I was treating him. I believe I was prescribing
11 his -- Mr. Blackwell's medications. I might be wrong, Mr.
12 Hubbard, but I think I was actually doing some of the
13 prescribing. But I did -- yes, I was hired early on to
14 oversee his treatment, and then I think I got called in
15 the sentencing phase. It's sort of similar but I think I
16 actually treated Mr. Blackwell.

17 Q You got called in the sentencing phase to offer a
18 diagnosis?

19 A Of depression. That's right.

20 Q So it's very similar?

21 A Yes, actually it is. Yeah.

22 Q You say your first meeting was just a day after the
23 Defendant gets to the Department of Corrections, on
24 September 13th?

25 A Yes, sir.

1 Q And you've reached a diagnosis of schizophrenia,
2 continuous type, and an unspecified neuro-cognitive
3 disorder --

4 A Yes.

5 Q -- is that correct? Now, you've had the opportunity
6 to review the reports by all the various experts, both by
7 the Defendants and the Court appointed?

8 A I think I reviewed most of them, yes. I put the ones
9 in that I used in the report. But yes, I'm aware of kind
10 of what both sides have been saying.

11 Q And although you make your own opinion, you
12 definitely would consider what these other folks have
13 said, they're observations, because they're professionals
14 as well?

15 A Sure.

16 Q And I think you would agree that sometimes experts
17 disagree?

18 A Sure. Even doctors disagree. Not only does experts,
19 but in medicine sometimes you'll get second opinions.
20 That's right.

21 Q So you mentioned Dr. Tora Brawley. You've done a lot
22 of work with her in the past?

23 A Yes.

24 Q Including on a number of death penalty cases?

25 A Yes.

1 Q You've called her in to look at somebody because you
2 think there's some neuro-cognitive deficits, so you want
3 her to run tests. And you did that in this case?

4 A That's correct. It depends. Sometimes I'll be
5 allowed -- if I recommend neuro-psych testing I can
6 recommend somebody, but sometimes it's the lawyers rule --
7 have someone else in mind. So if there's no one else I
8 would recommend her because I know that she -- I trust her
9 methodology.

10 Q Trust her methodology. She was brought into this
11 case at your recommendation?

12 A Yes.

13 Q She did testing that was back in -- when was that?
14 April 19th of 2016.

15 A I think so. I've got her report. I'll be glad to
16 look at that.

17 Q Only testing you asked her to do was neuro-cognitive
18 testing?

19 A Yeah, that's what she does, neuropsychological
20 testing. Neuropsychological testing, you can have an MRI
21 that shows the structure of your brain, but it doesn't
22 tell you what the brain is doing. So it's the gold
23 standard. If you want to see how someone's brain is
24 functioning, you want a neuropsychological testing. So
25 that's her -- that's what she did her fellowship in.

1 That's her speciality.

2 Q Sure. And it has since come to light that while she
3 was doing that testing the Defendant was on 320 milligrams
4 of Geodon --

5 A Yes.

6 Q -- which I think you made a comment that you're not
7 brave enough to prescribe that much to anyone, but Dr.
8 Wood was?

9 A Yes.

10 Q And you're aware that the Defendant himself, when he
11 later saw Dr. Kruse for the same type of testing, said I
12 couldn't think straight because of all the Geodon?

13 A Yes, I'm aware he said that.

14 Q And he was so smart, so alert, he was able to tell
15 the actual dosage, the dosage per pound, and a breakdown,
16 almost like a doctor talking about Geodon?

17 A I would not be surprised. I wasn't aware that he
18 knew all the breakdowns with me. Some of the times he
19 didn't know the doses. He always knew his medication, but
20 there was sometimes where he may not have known the exact
21 doses. But some of the times when I saw him his
22 medications were being titrated.

23 Q And Dr. Brawley concluded with that testing that he
24 had a low IQ, about an 89, 87, somewhere in that range,
25 and he scored the first percentile on a whole host of

1 tests testing various parts of his brain, correct?

2 A Yes, that's fair.

3 Q And that's the lowest you get. I mean, anything
4 lower you're pretty much dead, agree?

5 A No.

6 Q What percentile is as low as you get?

7 A It's as low as you can go. But believe it or not,
8 even with one percentile, a lot of demented patients may
9 show up and they can -- they can still -- they can do some
10 rudimentary things. But yes, that's as low as you can go.
11 If you line 100 people up, he would be at the back of the
12 line.

13 Q In February of this year when Dr. Kruse tested him
14 and gave him a similar array of tests, he was in the 70,
15 80 and even 90 percentile. A huge difference, correct?

16 A Sure.

17 Q I noticed in your report you say that you considered
18 and rely on Dr. Brawley.

19 A Absolutely.

20 Q That her testing is what you relied on. You didn't
21 even mention, even when you -- let's specify. The first
22 report we got from you, you went and you updated it,
23 because the first one we got was in March 19th of this
24 year, and you've got an update from last month, May 29th.

25 A That's correct, because I saw him the two times and I

1 felt that would be unfair to you not to memorialize what
2 my findings were. So I updated it so you all would have
3 my most current observations.

4 Q And in updating it you had Dr. Kruse's information
5 and you discounted it because that's nowhere -- it did not
6 affect your opinion on his cognitive issues at all. You
7 made no change.

8 A That's correct.

9 Q You went with Dr. Brawley over Kruse as far as the
10 assessment?

11 A No, not at all. That's not -- that's not how it
12 works. To diagnose -- first of all, there's three
13 different kinds of cognitive disorders if you diagnose if
14 you look in our book. One is called a major
15 neuro-cognitive disorder, and that means you think
16 somebody has dementia. That means it's very serious.
17 They have impairments, for whatever the cost. There's
18 about eight different causes of dementia. But when you
19 diagnose a major neuro-cognitive deficit, you think that
20 they have dementia. There's also a diagnosis called minor
21 neuro-cognitive impairment, which means they have some
22 impairments, usually one global area of cognitive
23 function, sometimes more than one, but for dementia you
24 have to have four. I made the lowest diagnosis there is,
25 and unspecified means that I know that there's something

1 wrong with his cognition. But it's not -- I'm not saying
2 that it's at the level that it's a dementia or a severe
3 impairment. But I'm just recognizing that there's been
4 some cognitive impairment. You can have that level of
5 cognitive impairment from schizophrenia. He could have
6 that level of cognitive impairment from an abnormal -- you
7 know, from a head injury. But what happened in the DSM-5,
8 they want us to base it -- psychiatrists, you have to have
9 a test or some kind of basis for that. I could have based
10 it on the MRI. But at that time it doesn't matter that he
11 scored better when Dr. Kruse saw him. It mattered that he
12 had the cognitive deficit when he was tested by Dr.
13 Brawley. And so, that -- that diagnosis attribute -- it
14 doesn't matter. If he's schizophrenic and he's on 320
15 milligrams of Geodon, he's got a cognitive deficit.

16 Q Well, Doctor, that brings in a whole issue of its
17 harder to diagnose schizophrenia when somebody's high on
18 drugs. And that would be the issue you'd be dealing with,
19 with that same test. If he's on 320 milligrams of Geodon,
20 which is supposed to help with schizophrenia, how in the
21 world do you get a schizophrenia diagnosis when somebody
22 is that high? How do you know that the effects you're
23 seeing aren't from the drugs?

24 A That's a great question. And that really is, that's
25 the question. What I did -- I'm lucky because I've had

1 the five year sense. And so, I base my diagnosis on the
2 fact that he -- even on medicine -- we know he's not using
3 the drugs anymore, and five years later, in my opinion, he
4 still meets the criteria. He still has symptoms.

5 Q Right. But the last -- the most recent cognitive
6 test was this year and he did great.

7 A Sure.

8 Q Even if he had schizophrenia, he did great.

9 A Sure.

10 Q Right?

11 A Sure.

12 Q And that's not in your report.

13 A But he still meets the criteria for a neuro-cognitive
14 disorder. Whether he did well or not, he still has
15 impairments. And it could -- I don't know what it's from.
16 It could have been the head injury, it could be drugs. It
17 could be the medication side-effects. All I'm saying is
18 there's something there. I don't know the cause. There's
19 too many questions about it.

20 Q With schizophrenia you diagnosed -- you made a
21 diagnosis of that. Now, schizophrenia, you would agree
22 with me, is one of the most debilitating mental illnesses
23 we know?

24 A It can be, yes. For people with schizophrenia we
25 call it the rule of threes. Thirty percent get better,

1 thirty percent stay the same, and thirty percent have a
2 continuing deteriorating course even with medication.

3 Q They get better without medication?

4 A No. No. You must have medications for this illness.

5 Q That's the point.

6 A Yes.

7 Q It's a debilitating disease. If it's not treated it
8 just gets worse and worse?

9 A Absolutely. And even some people that do get
10 medication, they get worse, too.

11 Q People with schizophrenia have commonly experienced
12 social and functional deficits such as social --
13 difficulty obtaining and maintaining employment,
14 challenges to independent living that significantly impact
15 your quality of life?

16 A Yes.

17 Q Now, up until really the day of this murder, or these
18 murders, he was working at Intel, had just gotten a
19 promotion four months before.

20 A Yes.

21 Q Was living, maintaining his life, sending his kids to
22 school, dressing his kids, doing all the things that
23 you're supposed to do, and going to work at a very high
24 stress --

25 A Yes.

1 Q -- really challenging job? He was doing it?

2 A Yes.

3 Q And you mentioned that in diagnosing him he's kind of
4 an atypical patient if he, in fact, had schizophrenia,
5 because most of them get it in their late teens, early
6 20s, right?

7 A Yes.

8 Q So he would be atypical if, in fact, he has this
9 disease?

10 A Yes. In my opinion, he's -- he reported in his
11 history he had had some hallucinations, but I considered
12 that to be his first psychotic break, that's correct. And
13 I believe he would have been in his 30s, which is much
14 older than you would normally see.

15 Q Usually when there's an onset of psychosis it's
16 proceeded by a month, or even years of prior disturbances?

17 A Yes, it's called a prodrome. Sometimes -- and it's
18 just like any other illness. Before your hypertension
19 gets diagnosed you might not be feeling well for a few
20 weeks. Something doesn't feel right. You can tell
21 something's wrong with you and it's not until somebody
22 measures your blood pressure and you realize what your
23 symptom is. So that's right, normally there's a prodrome.
24 You can see a slow deterioration in function. Some people
25 it's really fast, and some people it's insidious.

1 Q So there should be a very physical history of a slow
2 breakdown of this man over a period of time, both at his
3 job, in his relations, and just how he lived on a daily
4 basis, absent drugs?

5 A Correct.

6 Q And you think you see that with Mr. Jones?

7 A Well, my diagnosis is based on my observations from
8 2014 through now. But yes, I would beg to differ. He was
9 getting in trouble with DSS. He lost his marriage. So he
10 had a deterioration in his personal relationships, and he
11 was getting into some legal situations with his children,
12 which had not -- as far as I know, had not been his
13 history. So I would say that there was some decline.

14 Q A breakdown of his marriage. While he was married,
15 that was actually the most stable period of his life. Was
16 it nine years, no drugs, no alcohol, no arrests.

17 A That's correct. And I don't think DSS had been
18 called during that period of time while they were
19 together.

20 Q So that's when it was -- DSS was involved.

21 A Right.

22 Q It was because how he controlled that family --

23 A Right.

24 Q -- and how he ran that house?

25 A Correct.

1 Q But he was continuing to do well at work, make money?

2 A Yes.

3 Q Get promotions?

4 A Yes.

5 Q He was high functioning?

6 A Yes.

7 Q It didn't affect his daily life?

8 A Not that I -- not his daily function in terms of
9 vocation and earning a living and finances. That's
10 correct.

11 Q Now, again, we go back to a number of experts and
12 look at the same information, the same case. And experts
13 differ?

14 A Sure.

15 Q Obviously you know Dr. Frierson. You've known him
16 for many years?

17 A Yes, and respect him greatly. We were colleagues at
18 USC for a number of years. He was a year ahead of me in
19 medical school. So we've known each other since 1985.

20 Q He's exceptionally well thought of.

21 A Oh, absolutely. Certainly by me.

22 Q And we've heard from Dr. Dorney out of Georgia.

23 A Yeah, I don't know her.

24 Q I didn't either. And then, of course, Dr. Wood --

25 A Yes.

1 Q -- from SCDC.

2 A And I hold her in very high esteem as well.

3 Q None of them came up with the assessment of
4 schizophrenia. Frierson obviously said it's not there.
5 Dr. Dorney has schizoaffective, and then Dr. Wood, she
6 changed her diagnosis multiple times. One time
7 schizoaffective, then maybe she's got undiagnosed
8 psychosis. She's all over the place. But you would agree
9 experts can disagree?

10 A Yes. But I would like to -- if I can answer that.
11 Schizoaffective disorder and schizophrenia, if you read
12 the DSM, you can change that diagnosis. I've done that.
13 I had a certain patient of mine, there was a period of
14 time she was very manic. I added a mood stabilizer
15 through an antipsychotic, and then she remained psychotic.
16 So you -- actually, the DSM, you can see that diagnosis
17 change. So what happens is, if you think somebody has
18 schizoaffective disorder, which is schizophrenia plus a
19 mood disorder, if you treat the mood disorder and they
20 remain psychotic for a period of -- it's predominantly
21 psychosis, you can change a diagnosis back. So changing
22 that is not necessarily meaning that peoples' opinions
23 differ. It means the patient has changed over time.
24 They're clinical symptoms. So I think what's more
25 important is the fact that, I think, every one of the

1 experts has agreed he's been psychotic. I think people
2 are just not -- they're attributing different causes for
3 psychosis.

4 Q To the extent it was Dr. Frierson, there was no
5 organic psychotic disorder that he found, it was simply
6 when he chose to take drugs and got high, right?

7 A I wouldn't -- I think he diagnosed a synthetic
8 cannabis induced psychosis.

9 Q And then as far as what his job was, he didn't say he
10 was psychotic that night? You're aware of that? He was
11 paranoid. Didn't reach the level of psychosis.

12 A Okay. I would not -- I trust you and would not
13 disagree with that.

14 Q Now, schizoaffective, typically to get to that you
15 have to rule out schizophrenia as being a sole independent
16 stand alone mental health issue; right?

17 A Right.

18 Q So --

19 A But I can show you -- they're interchangeable.

20 Q Sure.

21 A You can -- clinically you can change them. So say,
22 for example, when I saw Mr. Jones he was much more
23 psychotic than him having any mental disorder. When I
24 first saw him I didn't pick up any depression in him. He
25 was psychotic. So when I saw him the following year and

1 he was on an antidepressant I was a little surprised.
2 But, of course, I had not seen him in a year. So their
3 presentations, you can get comorbid illnesses with
4 schizophrenia. And so, that's not -- it's just the course
5 of the illness. People have different -- different
6 outcomes or different prognoses.

7 Q Both you and Dr. Frierson would agree that
8 schizoaffective just wasn't in this case, right?

9 A I have not seen it. That's why each of the data
10 points -- I've got one, two, three, four, five, six data
11 points for him since 2014. I have not in any of those
12 evaluations appreciated a significant mood component.
13 Now, also keep in mind, he's been on antidepressants. So
14 maybe having not been on those I would see more, but I
15 have not appreciated -- appreciated mood symptoms in him.

16 Q He had not sustained euphoria or manic episodes?

17 A No. In my opinion, not.

18 Q No significant symptoms of depression outside of his
19 separation force?

20 A He's had a few symptoms, but not enough to meet the
21 criteria for a major mood disorder, in my opinion.

22 Q And he would often describe his mood, I guess, as I'm
23 happy one minute, I'm sad the next. That's clearly not
24 bipolar?

25 A No. In my opinion, I do not diagnose him with

1 bipolar disorder.

2 Q But it would all show a trait, and you would agree
3 with this, wouldn't you, of borderline?

4 A Sure, it could. Borderline personality disorder --
5 personality disorders are different from mental illness.
6 They don't -- some of them, they don't usually have
7 genetic components. It's the way that you adapt to the
8 world. And usually you have to have things that go on in
9 your childhood, in your upbringing. So people with
10 borderline personality disorders, I didn't diagnose him
11 with that, but they'll have rapid shifts in their mood.
12 In their mood, based on things -- maybe they're -- maybe
13 you're really happy, and then all of a sudden you start
14 thinking badly about yourself and your mood decreases. So
15 it's not uncommon for them to have mood shifts all during
16 the day. You can also get a psychosis with that kind of
17 personality disorder if they're under enough stress. But
18 certainly you can cause someone with frequent suicidal
19 ideation, intense unstable relationships, reckless
20 behavior and frequent mood shifts, they would meet the
21 criteria of borderline personality.

22 Q Borderline would include also things like frantic
23 efforts to avoid real or imagined abandonment?

24 A Oh, absolutely. Those people that, if you break up
25 with them, they might stalk you. They're trying to get

1 you back. They could resort to all kinds of behaviors to
2 maintain a relationship.

3 Q Chronic feelings of emptiness or no one loves me?

4 A The emptiness, I mean, is emptiness. I don't think
5 it's no one loves me. It's just they don't feel anything.
6 They're just empty.

7 Q Unlovable?

8 A They can believe that at times, sure.

9 Q Which is, of course, going back to Frierson and
10 Kruse. They both found elements of that, or traits of
11 that?

12 A I would not argue with that. It's certainly -- that
13 personality trait is most common in people that have been
14 abused or have been exposed to abuse. You get that
15 disorder from witnessing trauma or being a victim of
16 trauma, and my understanding that he had some traumatic
17 experiences in childhood. So that would certainly be
18 consistent with his history.

19 Q Let's talk a little bit about his history, because
20 there's never a point in time in his history where DSS or
21 some from of social services had to enter the house and
22 threaten his dad and his parents or his grandmother, they
23 were going to take him and remove him from the home?

24 A That's correct.

25 Q Although there is law enforcement out there on

1 multiple occasions, no one ever said this child's in
2 danger?

3 A Correct.

4 Q There was never a time when he as a child went to
5 school and the school said, oh, my gosh, this child's not
6 eating?

7 A That's right.

8 Q He's being underfed?

9 A Not that I'm aware of.

10 Q He never got to school with, say, a piece of bread
11 and some grapes?

12 A Not that I'm aware of.

13 Q He was being taken care of. There was never a time
14 when anybody ever made an allegation he was being
15 physically abused?

16 A Not that I'm aware of.

17 Q In fact, he absolutely adamantly denies any physical
18 abuse growing up?

19 A He certainly minimized, I think, some of his traumas,
20 but that's correct.

21 Q He never came to school with bruises on his arms, his
22 face, his neck where the school said, oh, my gosh, we've
23 got to look into this?

24 A Not that I'm aware of. I didn't see any reports
25 indicating that.

1 Q Safe to say we would know by now, wouldn't we?

2 A Sure. Sure.

3 Q So it's not there?

4 A Well, it's not reported, or it's not like -- I can't
5 answer that.

6 Q And regardless of what kind of life he had growing
7 up, his father always tried to be there, go to his events,
8 do all those things that dads are supposed to do. He
9 showed up for big events?

10 A I don't have that specific knowledge because I've
11 just kind of been overseeing his treatment, but I wouldn't
12 disagree with you. If you say it, I'm sure it's been
13 presumed.

14 Q He didn't fail to show up for, like, sports events
15 or, say, a graduation?

16 A No. I'm going to take your word for it.

17 Q Now, you never ordered or asked for any type of
18 testing from a psychologist, a neuropsychologist for -- to
19 see if he had any form of psychosis or personality
20 disorder, correct?

21 A I didn't need one. I've been doing this for 29
22 years. I'm pretty good at picking psychotic patients,
23 making the diagnosis. You would use that testing in
24 someone if you weren't sure of their diagnosis, but I
25 didn't feel that was indicated. I certainly would have if

1 I needed it.

2 Q But Frierson did?

3 A Yes. But -- and that's different. He's -- he was
4 doing the forensic evaluation. Had I been doing an
5 evaluation for that purpose, I may have. But when you're
6 clinically overseeing someone or following them along, his
7 diagnosis was clear to me. I didn't need an extra test to
8 help me figure that out.

9 Q If you want a forensic evaluation, first you have to
10 basically do what you would say is a clinical evaluation.
11 You have to see if he has a psychosis?

12 A That's correct.

13 Q So that was step one, and that testing dealt with
14 step one?

15 A Yes, but I saw him psychotic. On September 2014
16 there is no question. I was absolutely certain. With my
17 observations, clinical training and experience, there was
18 no question in my mind he was psychotic. The issue was
19 what was the cause.

20 Q And having had available Dr. Kruse's scientific
21 objective data saying that there was no psychosis but
22 signs of malingering as to the testing specifically for
23 psychosis, you discounted that because you felt
24 comfortable with your opinion?

25 A I discounted that because it was five years later. I

1 saw him closer to decline than on those. I saw him at
2 that point. It was -- I had no doubt -- if she says he's
3 malingering, perhaps he was malingering, but that was five
4 years later. When I saw him he was not malingering.

5 Q But, Doctor, if he had schizophrenia and you saw him
6 in 2014, then he has schizophrenia now?

7 A Yes. In my opinion he does.

8 Q So what does five years later matter?

9 A Five years later he doesn't have acute positive
10 symptoms. He's got hallucinations. He doesn't have the
11 delusions anymore. He's got the negative symptoms you see
12 in schizophrenia and the hallucinations. But he's on
13 medication. He's been medicated now for five years, so
14 there's a big difference.

15 Q What's his delusion?

16 A The delusion involved his son.

17 Q And that's gone now because the son's gone?

18 A He still had it the third -- the third visit. He
19 still believed that the -- his son was meaning him harm.

20 Q His son was doing what?

21 A The intent. The son had blown out the electrical
22 outlets to perhaps harm him to -- in retaliation for them
23 divorcing.

24 Q Did you not listen to a phone call he had with his
25 dad, his aunt, just -- it was November of 2014 where he

1 doesn't mention any of that. He says the entire event was
2 because Nahtahn was a catalyst. Nahtahn wanted to go back
3 to his mom. He lost it. Basically, between the lines, he
4 killed his son for that reason, and it was Amber's fault.
5 Not his son's fault. You can put this one on Amber. If
6 she had been here instead of next door bopping the boy
7 next door, this wouldn't have happened. Are you aware of
8 that phone call?

9 A Yes. But that's still -- in my opinion, that's still
10 months later after medication. At the time I saw him he
11 had -- I think he'd gotten one dose of medication. And
12 so, I have that data point before anyone else saw him and
13 before he had been medicated and he was very clear at that
14 time. He was very focused on his son's behavior and was
15 very focused on the electrical sockets being burned out
16 and believed that this child somehow was responsible for
17 wiring the house to try to kill him, which is absolutely
18 not true. So I consider that a delusion.

19 Q While he was at SCDC and he was complaining of
20 hallucinations, Tishiro Inabinet--

21 A Yes.

22 Q -- were those folks that I think you said looked at
23 what Tishiro Inabinet had to say.

24 A Yes. He was his case manager as soon as he went into
25 Supermax. And so, I met with -- the day that I met Mr.

1 Jones, I consoled with Mr. Inabinet.

2 Q Part of his job was to keep his eyes on Mr. Jones to
3 see how he was acting?

4 A Absolutely, yes.

5 Q And he said although he complained of hearing voices,
6 he was never observed to be responding to internal stimuli
7 as if he was hallucinating. He was never disorganized in
8 his thinking or behavior.

9 A I agree with both of those. I have not seen him
10 actively hallucinating and, no, I agree with both of
11 those. And even when he was psychotic acutely, his affect
12 was very labile, but he was generally able to stay on
13 task.

14 Q Dr. Wood basically said she accepted he was psychotic
15 because he kept talking about he was hallucinating, but he
16 never displayed disorganized thinking or behavior while he
17 was at SCDC?

18 A I wouldn't disagree with that. That would be
19 consistent with my observations as well.

20 Q Basically you've had an opportunity to observe him,
21 and a lot of which you've based your opinion on are your
22 observations with him?

23 A Yes.

24 Q It was also based on his self-report. What he's
25 telling you.

1 A Certainly.

2 Q And that he's hearing voices or seeing things. And
3 then you -- you address that when he -- when he says that?

4 A Yes, I assess it.

5 Q May 8th, 2019, when you saw him, he was going through
6 jury selection as you said, right?

7 A Yes.

8 Q So you had upped his Geodon. He was getting nervous.

9 A Yes.

10 Q May 22nd of this year, this happened to be the day, I
11 believe, or right at the time we had Dave Mackey from the
12 FBI testify, Amber Kyzer testify. I think we had Mike
13 Phipps.

14 A Yes. That was a very emotional day in Court, yes.

15 Q And he wasn't suicidal, but he was demanding more
16 Geodon?

17 A That's correct.

18 Q And they put him in a -- basically what he called a
19 skirt, a robe --

20 A A turtle suit.

21 Q -- a turtle suit, and he was all upset because men
22 don't wear dresses and skirts. Men wear pants. So he
23 showed out?

24 A That's fair to say. He certainly -- I think he
25 stayed naked. He did not -- he refused to wear the turtle

1 suit.

2 Q He asserted control?

3 A I call it a preoccupation with religion and some of
4 -- that I had not seen before. I actually considered that
5 a symptom of his illness. And all the other interviews
6 that I had, because I've never had him at that level, and
7 he was very religiously preoccupied, talking about the
8 clothes people are supposed to wear, and that wearing a
9 turtle suit was against his religious belief. And I don't
10 know any religious belief that would be consistent with
11 that. I consider that a religious preoccupation that I
12 have not seen in him in any of the other times I
13 interviewed him. That's what concerned me, because that
14 was a change in his thinking.

15 Q When you first saw him in September of 2014 that was
16 seven days after Daily--

17 A -- yes.

18 Q And you said he was psychotic?

19 A Yes.

20 Q And then as to that jail call from November of 2014,
21 based on what you're saying, that delusion about his son
22 was still -- still going on?

23 A All I can tell you is the data points I have, and he
24 still had it later when I saw him. Now, I certainly --
25 your call would make you wonder whether he was being

1 accurate in reporting it or not, and I can't say.

2 Q And that get's us down to, I guess, this point. He
3 has lied about so many things at different times. You
4 would not consider him for a minute to be an accurate
5 historian?

6 A No, not at all. And it depends on the context.
7 Certainly there's people that have criminal charges.
8 That's one of the things we're trained for. You know,
9 they may fabricate symptoms to get out of punishments, or
10 they may fabricate symptoms to be able to get financial
11 rewards or things like that. Part of my whole private
12 practice as an outpatient doctor at USC is I took care of
13 Workers' Comp patients. And, you know, there's a lot of
14 times there was malinger there because they were out of
15 work and needed money. So yeah, no, you have to take
16 those things into account.

17 Q As far as delusions, he's not having delusions
18 anymore, is he?

19 A No, not -- he certainly was paranoid the other week
20 when I saw him, which also caused me to increase the
21 medicine. Again, the -- you know, "Who said I was up all
22 night singing Twinkle Twinkle Little Star," and he was
23 upset about that. So he had some paranoia. But I don't
24 think it was a delusion. I agree with you.

25 Q Well, reporting Twinkle Twinkle Little Star is not

1 diagnostic schizophrenia? That's just being scared?

2 A No, that's paranoid ideation.

3 Q Paranoia?

4 A Yes.

5 Q So even Dr. Frierson says he suffers from a level of
6 paranoia, most of it was drug induced. He's wanting more
7 drugs, Geodon at that time.

8 A Geodon is not a drug you ask for. It has no street
9 value. It does not get you high. Geodon decreases your
10 dopamine which makes you non-hallucinate. It does not --
11 any kind of medication that would have any street value at
12 all.

13 Q It calms him down?

14 A Right. It calms schizophrenics down.

15 Q And it's been used for other types of --

16 A Psychosis.

17 Q And anger issues, things like that?

18 A I don't do that, but I've seen other clinicians --
19 there's certainly -- there's clinicians of people who are
20 having posttraumatic stress disorder and they have
21 paranoid ideation from that, but it's in much lower doses.
22 But yeah, you can use it for -- I don't use it for
23 behavior. I use it for symptoms, but it can happen.

24 Q Bottom line as far as delusions is concerned, he's
25 not having -- you would say it's because he's being

1 properly medicated?

2 A Yes. And he's not -- and he's not doing drugs. And
3 he's not using synthetic marijuana. Both of those matter.

4 Q But it's also true that the delusion he complained
5 about, that his little boy was conniving, going to hurt
6 him trying to get back to mom, that little boy's gone, so
7 there's no one to be delusional about?

8 A Yes and no. Sometimes it doesn't work that -- I've
9 seen -- certainly seen cases where the person's death,
10 that the patient can continue to have delusions. He
11 doesn't. So I don't -- I would say it's because he's
12 medicated and he's not using drugs.

13 Q Well, when he killed his son and his other children,
14 he was just taking care of the matter himself?

15 A I'm sorry?

16 Q He was just taking care of the matter himself?

17 A He certainly took it into his own hands.

18 Q Going back -- I see in your report, this goes to him
19 being a reliable historian. You mentioned that Eli had
20 threatened to cut his mother up and feed her to the dog?

21 A Yes.

22 Q Do you realize that he ended up saying later--

23 A -- I would not be surprised. Can you tell me what
24 date that was.

25 Q It's in your report.

1 A Yes.

2 Q It's on page two of your report.

3 A Thank you.

4 MR. HUBBARD: Thank you, Dr. Maddox.

5 THE WITNESS: You are very welcome.

6 THE COURT: Mr. Young.

7 REDIRECT EXAMINATION

8 By Mr. Young:

9 Q Dr. Maddox, have you ever been hired by Dr. Hubbard's
10 office?

11 A I have.

12 Q Have you been hired by Mr. Hubbard's office in a case
13 in the case of Clinton Northcutt?

14 A Yes, but Mr. Donny Myers was the Solicitor then. I
15 believe he was -- I think it was Mr. Myers, and Deyton
16 Riddle who hired me on that case.

17 Q That was a death penalty case here in Lexington?

18 A It was.

19 Q And that was a case that you were retained and worked
20 for the State in that case?

21 A Yes.

22 MR. YOUNG: Thank you, Mr. Maddox. That's all I
23 have.

24 THE WITNESS: Thank you.

25 MR. HUBBARD: No more questions.

1 THE COURT: We're due for a break. Head to the jury
2 room. Don't talk about the case.

3 (Whereupon, the jury was excused from the courtroom.)

4 THE COURT: We'll stand at ease for a few minutes.

5 MR. YOUNG: Judge, there's one thing that -- for the
6 record real quick.

7 THE COURT: Okay.

8 MR. YOUNG: The Defense would intend to offer
9 Defendant's Exhibit number 123, an affidavit from Amber
10 Jones, for ID into evidence. Just offering the State an
11 opportunity if they want to be heard about that.

12 MR. HUBBARD: I do. We object. Amber Kyzer is
13 available. They can call her as a witness. I can't
14 cross-examine an affidavit. I don't know the
15 circumstances behind this affidavit. It purportedly says
16 she doesn't want the death penalty. That she's never
17 believed in it. I've never talked to her about it,
18 haven't questioned her about it, and I think I can't cross
19 an affidavit.

20 MR. YOUNG: Ms. Kyzer identified the affidavit when
21 she was in Court. The State certainly had an opportunity
22 to ask her about it at that time. They didn't. This is
23 no different than any of the number of exhibits that the
24 State had her identify and then later moved into evidence
25 in the penalty phase in this trial, which included the

1 videos the State played during their case--

2 MR. HUBBARD: -- of course, I couldn't cross her on
3 that because we were in guilt phase, and to say how do you
4 feel about the death penalty, you probably would have been
5 stopping me before Mr. Young.

6 THE COURT: I think I would have. If she's
7 available, she's gone. I'm not going to allow it. She's
8 an available witness. She lives locally. You all both
9 can call her. Either of you can call her.

10 MR. YOUNG: You already know what Ms. Kyzer went
11 through and what it took for her to testify. We in good
12 faith asked her to sign an affidavit if she wanted to. If
13 she wanted to request mercy on Mr. Jones' behalf, which
14 she did in affidavit form. To cross-examine, and to bar
15 the Defense from presenting that affidavit that she's
16 identified and authenticated as her own would be a denial
17 of Defendant's right to present relevant litigation and a
18 violation of his constitutional rights.

19 THE COURT: No. You can call her. You can call her.
20 The case isn't over, you can get her here. So if you want
21 her to testify, get her here.

22 MR. HUBBARD: And just for the record --

23 THE COURT: If you need help getting her here I will
24 help you.

25 MR. HUBBARD: And just for the record, Your Honor, I

1 know at one time she had told us she was for it. So we
2 basically left her alone on that issue.

3 THE COURT: I understand. She's not far away. She's
4 local. She can be brought in. I'll help you get her if
5 you need to. Anything else before we take a short break?

6 MR. YOUNG: No, sir.

7 THE COURT: All right.

8 (Whereupon, a short break was taken.)

9 MR. GRAHAM: Your Honor, I don't know if it's the
10 next witness, but the Defense counsel has notified us that
11 they plan on recalling Roberta Thornsberry, the
12 Defendant's grandmother, and they plan on publishing a
13 video. We haven't -- we didn't receive the video in
14 discovery. They showed it to us this morning. We have
15 looked at it. It shows Tim, Sr., walking with one of his
16 grandchildren. I don't know the date and they don't know
17 the date. The Defendant is not in the video and we would
18 object to its introduction. It has nothing to do with the
19 Defendant's character. Whatever Tim, Sr's., relationship
20 is with his grandchildren or Roberta Thornsberry's with
21 her great-grandchildren has nothing to do with the
22 character of the Defendant.

23 THE COURT: All right. Mr. Secor.

24 MR. SECOR: Yes, sir. Just so that I can address --
25 my understanding is its relevance?

1 THE COURT: You heard what he said.

2 MR. SECOR: I am trying to narrow it down.

3 THE COURT: I think relevance to Jones, Jr's.,
4 character. I think that was how he -- he didn't say those
5 exact words, but that was the substance of his argument.

6 MR. SECOR: Okay. Ms. Thornsberry is Tim's
7 grandmother and the great-grandmother to the five victims
8 in this case. Her relationship with her
9 great-grandchildren is not only relevant to Tim's
10 character and background as being a part of his family,
11 immediate family and extended family. The video
12 information about Ms. Thornsberry's relationship with her
13 great-grandchildren is specifically relevant to the loss
14 that she suffered, the consequence of the admission of
15 these murders. She is both a mitigation witness and a
16 victim impact witness because she was one of the people to
17 be most significantly impacted by these crimes. She's not
18 being called by the State because she doesn't want Tim to
19 die. And so, they have chosen to disregard her as a
20 victim in this case. We have a right to present that
21 information, for her to express to this jury the extent of
22 her loss and be able to demonstrate that and explain that
23 and have it corroborated with video evidence that shows
24 that relationship, things that happened at her house in
25 Mississippi. And for purposes of a relevance objection,

1 there are numerous United States Supreme Court cases that
2 discuss how mitigation is potentially, the South Carolina
3 Supreme Court in State vs Mercer 381 SC 149 took a very
4 critical view of objecting under evidentiary grounds to
5 constitutionally permissible mitigation of evidence
6 offered by the Defense in a Capital case. Green v.
7 Georgia 442 U.S. 95, 1979, United States Supreme Court
8 says evidence rules may not be imposed to bar otherwise
9 relevant to mitigating evidence. Specifically, in
10 reference to State v. Mercer, the South Carolina Supreme
11 Court, application of rule 403 should be cautiously
12 invoked against a Capital Defendant in a penalty case.
13 Especially, in light of the due process implications at
14 stake when a Capital Defense seeks to introduce mitigation
15 evidence.

16 THE COURT: Summarize -- tell me about the video.
17 How long is it and what's really depicted? Have I seen it
18 already?

19 MR. SECOR: It's, approximately a minute.

20 THE COURT: I previewed several videos earlier. Does
21 this happen to be one of those?

22 MR. SECOR: I don't believe so, but I can certainly
23 provide Your Honor a copy of it if you want, right now if
24 you would like. Ms. Thornsberry is not the next witness.

25 THE COURT: Okay. If she's not, then let's just keep

1 on moving.

2 MR. SECOR: She will be shortly, though.

3 THE COURT: Okay.

4 MR. HUBBARD: I do have one quick thing. If there is
5 family or anybody -- since we have not really addressed
6 this, I'm not exactly sure how they will phrase the
7 question. It may not be a problem at all. Of course, we
8 would object to any witness being called by the Defense
9 who says they don't want the Defendant to get the death
10 penalty or they want a life sentence. That goes to the
11 ultimate issue of the jury. We do believe family and
12 others can say they want mercy and they would like him to
13 live. I know it seems like semantics, but that would be
14 in line with State v. Wise and I've got a copy of that for
15 Your Honor.

16 THE COURT: That's going to be the tenor of y'all's
17 questions, those rules. But all the cases seem to suggest
18 that.

19 MR. SECOR: Questions will be tailored specifically
20 to the outline of State v. Sapp.

21 THE COURT: So the answer to my question is yes or
22 no? You know all of the rules about case name, I know
23 there is another rule, not by case name.

24 MR. SECOR: Yes, sir.

25 THE COURT: Will the questions be tailored towards --

1 MR. SECOR: I'm sorry. I didn't mean to interrupt
2 Your Honor.

3 THE COURT: The mercy for him to live? I mean, is
4 that --

5 MR. SECOR: Do you want him to die for what he did.

6 THE COURT: I thought that was not allowed.

7 MR. SECOR: State v. Sapp specifically allows it and
8 may I approach with a copy?

9 THE COURT REPORTER: Is that S-A-P-P or S-A-A-P?

10 MR. SECOR: S-A-P-P.

11 THE COURT: Yeah.

12 THE COURT REPORTER: What did he say? S-A-P-P.

13 THE COURT: All right. What was the question going
14 to be again?

15 MR. SECOR: Do you want him to die for what he did.

16 MR. HUBBARD: I think they can ask, do you want him
17 to die or do you want him to live, but not for what he
18 did. It is going back to what this jury's got to decide.
19 I think that's just another way of say, do you want the
20 death penalty. I think that's the whole tenor of these
21 cases saying a witness can't substitute for what the jury
22 -- or go to the ultimate issue. The jury's got to decide.
23 Do you want him to live. Do you want him to die.

24 MR. SECOR: On page six of this, the Court points
25 out, the mother testified at the sentencing. "I'm begging

1 you, please don't take my son's life. Please, if you kill
2 my son, you're going to devastate the community again,
3 more and more families. Please, don't do it. Please,
4 don't kill him."

5 MR. HUBBARD: That's different than for what he did.
6 I mean, it's not going to the ultimate issue. So, I mean
7 --

8 THE COURT: It's very semantic and I kind of agree
9 with you both. That was the question that was asked, but
10 do you want to see him die for what he did. For what he
11 did, I think, is suggested that it's not allowed.

12 MR. SECOR: Well, I don't think that that is telling
13 them what decision to arrive at, but I think that the
14 suggestion that there's anything different between do you
15 want him to die or do you want him to die for what he did
16 --

17 THE COURT: There's a difference. I mean, they--

18 MR. SECOR: Well --

19 THE COURT: If you were on the other side, you would
20 be arguing vigorously that there's a huge difference. I
21 agree with you, there's a small difference.

22 MR. SECOR: I think that to ask somebody who is a
23 family member, another person, do you want them to die. I
24 would hope, in most situations, would be no, we don't want
25 anybody in your family to die, knowing that they will, of

1 course, eventually, at some point. But there's a
2 difference between, do you want him to die for what he
3 did. Do you want him to die for murdering your five
4 great-grandchildren. That is a significant difference.
5 Of course, there's one, but the State doesn't want the
6 jury to know because it's powerful and impactful, but it
7 is relevant mitigation, it's relevant victim impact
8 testimony, it is how Ms. Thornsberry feels.

9 MR. HUBBARD: Your Honor, my response is, they will
10 go not just to that issue at that point. The jury has got
11 to ask. If they do that, it's also going to be highly
12 inflammatory. It's going to -- it's intended to inflame
13 the passions of the jury for their side and we're
14 restrained from that. We've played by those rules. I
15 think they can just ask, do you want him to live, do you
16 want him to die. They're going to talk about how much
17 they love him. The jury knows.

18 THE COURT: I think we need to stay away from, for
19 what he did or for behavior in his case. That end clause,
20 do you want him to live, do you want him to not die, sure.
21 But certainly, the jury knows. The suggestion is, for
22 what he did, for what he has done. But the cases seen
23 tell us to steer away from that because it goes too close
24 to the ultimate issue.

25 MR. SECOR: Well, I would just, again, reiterate that

1 paragraph on the last page of Sapp where the Court, the
2 defendant's mother saying, "I'm begging you, please don't
3 take my son's life." Which seems to me to be a pretty
4 strong way of telling them what to do and I'm not asking
5 to do that.

6 THE COURT: I know, but her response is not your
7 question.

8 MR. SECOR: No. You're right. That's true.

9 THE COURT: So ask the question without the, for what
10 he did, for what he has done. Leave that out. I don't
11 think that's in here. I think these things say stay away
12 from that.

13 MR. SECOR: About that quote, Your Honor, I would
14 just point out that the Court says, under Johnson and
15 Wise, two other cases, should have been permitted to ask
16 the question as to whether she would like to see Sapp put
17 to death. To me that, I want to--

18 THE COURT: If that's the question, do you want to
19 see him put to death, do you want to see him die. I mean,
20 that's very close -- closely worded with put to death for
21 what he has done. It's the, for what he has done, is
22 where we're -- you and I are disagreeing, I think, on what
23 this case allows.

24 MR. HUBBARD: And if you read it with Wise, I think
25 that the germane question for every witness, if they want

1 to elicit that is, do you want to see him live, do you
2 want to see him die. They're going to talk about their
3 emotional attachment. That's clear.

4 THE COURT: I mean, what else are they talking about?

5 MR. HUBBARD: Right. So, I mean, it's clear. I
6 mean, they give what they want, but without telling the
7 jury what to do. One quick follow-up, too, Judge. I know
8 we just got that video. We'd like to know, is there any
9 other videos that they've got or anything we need to be
10 looking at? We also got notice this morning that there's
11 a witness that was never on the witness list that's going
12 to be testifying tomorrow, an expert. We just kind of
13 need to know so we don't have to keep stopping the Court
14 and that's why I'm using the downtime as time to bring
15 that up.

16 THE COURT: All right, fair inquiry. All right. You
17 got one more thing to say about the--

18 MR. SECOR: I would just say that, I think, the
19 distinction that is attempted to be drawn by cases
20 regarding this issue is, that a witness is allowed to say
21 what they wish to have occurred, but not to tell the jury
22 what they ought to do.

23 THE COURT: Okay.

24 MR. SECOR: I believe that that's the distinction.

25 THE COURT: I think you may be right. But just so

1 that I'm more comfortable with your questions, don't tag
2 for what he has done or for what he's done to his
3 grandkids. I want that left off.

4 MR. SECOR: Yes, sir.

5 THE COURT: I don't think that's prejudicial to you
6 to leave that off.

7 MR. SECOR: And I'd just respectfully ask --
8 respectfully request that you note my objection to that
9 ruling.

10 THE COURT: Okay.

11 MR. HUBBARD: And, Your Honor, just for my
12 clarification. Is he going to be asking, do you want him
13 put to death or do you just want him to die?

14 THE COURT: I think he's going to ask, put to death.

15 MR. HUBBARD: I think that's the jury's -- that's
16 their call. That's why I would object to that. I think,
17 do you want him to die, they know exactly what's being
18 asked of them. But they are the ones who have been
19 charged with that task. So I would just ask Your Honor,
20 if we can just stop at that point, I won't object and I
21 know they've got plenty of witnesses that will express
22 that opinion.

23 THE COURT: I like the characterization of showing
24 mercy. But it appears that the Sapp, Johnson would allow
25 that question to be answered. Johnson, Wise and Sapp. So

1 the characterization -- that's an awful question. Whether
2 you would like to see someone die or put to death. It's
3 almost a leading question.

4 MR. SECOR: My characterization of the question is,
5 obviously, I consider the interpretation of the question
6 to the Court fairly as authorized.

7 THE COURT: It appears it's allowed. Apparently,
8 that whether the witness would like to see the Defendant
9 put to death appears to be allowed on page six under the
10 Johnson and Wise analysis.

11 MR. HUBBARD: That's fine, Your Honor.

12 THE COURT: It sure seems leading to me.

13 MR. HUBBARD: Sure.

14 THE COURT: So we'll allow that to that extent.
15 Let's go. Bring the jury, please.

16 (Whereupon, the jury came into open court at
17 approximately 11:05 a.m.)

18 THE COURT: All right. Call your witness.

19 MR. MADSEN: The Defense calls Robert Brannon.

20 ROBERT BRANNON, being
21 first duly sworn, testified as follows:

22 MADAM CLERK: Have a seat right up there, sir. Once
23 you're seated, state your full name, spelling the last,
24 please.

25 THE WITNESS: My name is Robert L. Brannon,

1 B-R-A-N-N-O-N.

2 DIRECT EXAMINATION

3 By Mr. Madsen:

4 Q Officer Brannon, where are you employed?

5 A Kirkland Correctional.

6 Q And how -- so you're employed with SCDC?

7 A Yes, sir.

8 Q How long have you been with SCDC?

9 A Approximately, going on 14 years.

10 Q Out there, they generally don't call you Officer
11 Brannon. What is your nickname there?

12 A No, sir. My nickname is Six Nine.

13 Q Has to do with your height?

14 A Yes, sir.

15 Q And you said that you're at Kirkland. What is your
16 job now?

17 A My job now, I'm at BMU.

18 Q What is BMU?

19 A BMU is assessment for at risk inmates.

20 Q In 2014, were you stationed at a different place in
21 Kirkland?

22 A Yes, sir.

23 Q Where was that?

24 A Maximum security.

25 Q Is that MSU?

1 A MSU.

2 Q And that's no longer at Kirkland, is it?

3 A It's still there right now.

4 Q Is it still there right now? And is that the most
5 restrictive housing unit in all of SCDC? MSU.

6 A Yes, sir.

7 Q Is that generally where the inmates who have gotten
8 in trouble in other areas of SCDC are housed?

9 A Yes, sir.

10 Q So inmates who have already been sentenced, but have
11 assaulted other inmates or staff or someone like that,
12 they can go to MSU if they qualify?

13 A Yes, sir.

14 Q Tim was not one of those people, he was a safe
15 keeper?

16 A Yes, sir.

17 Q So he was placed there, I guess, by Lexington County
18 pre-trial?

19 A Yes, sir.

20 Q Is that unusual there?

21 A Yes, sir.

22 Q And when Tim was placed there, he was on 24 hour
23 surveillance initially, correct?

24 A Correct.

25 Q And so, someone basically sat outside of his cell?

1 A Yes, sir.

2 Q What shift did you work out there?

3 A The day shift.

4 Q So what does the day shift mean?

5 A The day shift is like, we deal with every day
6 activities there.

7 Q What are your general hours?

8 A My general hours are from 6:00 to 6:00.

9 Q So 6:00 a.m. to 6:00 p.m?

10 A Yes, sir.

11 Q And as an officer out there at MSU, was being yelled
12 at or assaulted or attempted assault, was that kind of a
13 daily occurrence for you?

14 A Yes, sir.

15 Q Did you ever have any of those problems with Tim?

16 A No, sir.

17 Q Was Tim quiet while he was there?

18 A Yes, sir.

19 Q Did he keep to himself?

20 A Yes, sir.

21 Q Generally, was your only interaction with Tim when he
22 asked for either his prescribed medication or his food?

23 A Yes, sir.

24 Q Would Tim come out of his cell other than for the
25 nurse, the doctor or a lawyer visit?

1 A No, sir.

2 Q Do you ever remember Tim trying -- Tim ever getting
3 angry or aggressive with you?

4 A No, sir.

5 Q Was he always respectful to you?

6 A Yes, sir.

7 Q Was he always compliant with you?

8 A Yes, sir.

9 Q Was he courteous to you?

10 A Yes, sir.

11 Q As an experienced correctional officer, do you have
12 any concerns about Tim when he is permanently placed in
13 SCDC?

14 A No, sir.

15 Q Do you believe that he would be a threat to other
16 inmates or staff?

17 A No, sir.

18 Q Fair to say he was a model inmate while he was there
19 with you?

20 A Yes, sir.

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

22 CROSS-EXAMINATION

23 By Mr. Graham:

24 Q Good morning, Officer Brannon. How are you?

25 A I'm fine.

1 Q Did you volunteer to come here today or were you
2 subpoenaed by the Defense?

3 A Subpoenaed.

4 Q You were subpoenaed. How much time, 2014 to how
5 long, did you spend with Mr. Jones?

6 A Say that again. Say that again.

7 Q How long, years-wise?

8 A About three years.

9 Q About three years. You see him daily?

10 A Yes, sir.

11 Q A safe keeper in MSU, the maximum security unit,
12 they're in a cell by themselves?

13 A Yes, sir.

14 Q How many hours a day back then in 2014?

15 A Back then, 23 out of 24.

16 Q Twenty-two out of 24?

17 A Twenty-three.

18 Q Twenty-three out of 24.

19 A They usually go out for one hour of rec.

20 Q When he did his hour of the rec, he was by himself?

21 A He'd never go out for rec. I was just telling you
22 the average time.

23 Q So he never had contact with other inmates?

24 A No, sir.

25 Q When he was brought out of his cell, was he brought

1 out of his cell for rec?

2 A No. He never went to it.

3 Q He never went to rec. So his hour out of the cell,
4 what did he do?

5 A He never came out.

6 Q He just stayed in there 24 hours --

7 A Yes.

8 Q -- a day, then?

9 A Yes. Stayed in there 24 hours.

10 Q So the only time that he really had contact with
11 guards or staff would be when he was brought out of his
12 cell, then, correct?

13 A Correct.

14 Q If he was being transported somewhere?

15 A Yes, sir.

16 Q Which was rare, wasn't it?

17 A Yes, sir.

18 Q Were you working the day that he missed his doses of
19 Geodon, and then the attempted suicide?

20 A Yes, sir.

21 Q And you're aware that he didn't like being told what
22 to do and that that's the reason that he didn't get his
23 medication?

24 A No. I wasn't aware of that.

25 Q The rules at that time though were that you had to

1 back far away from the door to stop inmates from throwing
2 bodily fluids on the techs who were delivering the
3 medicine. Isn't that correct?

4 A Yes, sir.

5 MR. GRAHAM: Thanks, Officer.

6 REDIRECT EXAMINATION

7 By Mr. Madsen:

8 Q Officer Graham, sadly, the throwing urine and that, I
9 mean, that's sadly a normal occurrence out there at MSU,
10 wasn't it?

11 A Yes, sir.

12 Q Never had any problems like that with Tim, did you?

13 A No, sir.

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

15 THE COURT: You may step down.

16 MR. MADSEN: Defense calls Ronald Rogers.

17 RONALD ROGERS, being
18 first duly sworn, testified as follows:

19 MADAM CLERK: Once you're seated, state your full
20 name, spelling your last, please.

21 MR. ROGERS: Ronald Rogers, R-O-G-E-R-S.

22 DIRECT EXAMINATION

23 By Mr. Madsen:

24 Q Officer Rogers, where are you employed?

25 A Kirkland Correctional.

1 Q And how long have you been with SCDC?

2 A Approximately, eight years.

3 Q And what facility are you employed at?

4 A Kirkland.

5 Q Kirkland. Have you spent the entire time there at
6 Kirkland?

7 A Yes.

8 Q And back in 2014, did you end up going to kind of a
9 special area of Kirkland?

10 A It was self behavior -- self injury behavior unit.

11 Q The MSU?

12 A No. It was a different program.

13 Q Okay.

14 A It was inmates that self mutilated.

15 Q That's where you were back then?

16 A When he came through, yes. It was a new program.

17 Q And you're a trained CIT officer --

18 A Yes.

19 Q -- correct?

20 A Crisis intervention training.

21 Q And I think we've heard a little bit about that. Did
22 you -- well, your general shift is what?

23 A 6:00 p.m. to 6:00 a.m. I work the overnight shift.

24 Q And you're the night shift?

25 A Yes.

1 Q And as a CIT officer, were you one of the officers
2 who had to sit outside of Tim's cell?

3 A Yes.

4 Q So he had --

5 A That was a requirement. They wanted -- yes.

6 Q Go ahead. I'm sorry.

7 A That was a requirement. They wanted a CIT officer to
8 sit in front of the cell.

9 Q Was that unusual to have a CIT officer sit outside of
10 an inmate's cell?

11 A At the time, we were saying it was -- you know, it
12 was a new program. So they thought it was probably
13 beneficial, since we went through the crisis intervention
14 training, for one of us to sit in front of it.

15 Q And was Tim quiet while you were there?

16 A He was quiet.

17 Q Did he keep to himself?

18 A Yes, he did.

19 Q I would imagine there's not a lot of rec and that
20 going on from that night shift?

21 A No.

22 Q Not a lot of doctor's visits?

23 A No.

24 Q Attorney's visits usually?

25 A No.

1 Q So he was just basically in the cell?

2 A In the cell.

3 Q Now, when he came in there, there was quite a bit of
4 publicity about his case, correct?

5 A Yes. It was a high profile case, you know, on news,
6 media. So a lot of inmates knew what had happened.

7 Q Did the other inmates call out to him or threaten
8 him?

9 A They were saying some derogatory stuff.

10 Q Did he ever engage back with them?

11 A I told him, don't entertain that.

12 Q And he did not?

13 A No.

14 Q While you were there, did he ever give you any
15 problems?

16 A No. He was very polite.

17 Q He was respectful to you?

18 A Very respectful.

19 Q Was he compliant with you?

20 A Yes. He was.

21 Q Was he courteous?

22 A Yes.

23 Q As an experienced correctional officer, do you have
24 any concerns about when Tim is permanently placed in SCDC?

25 A Well, the fact that this crime is dealing with

1 children, that's highly looked down on in prison
2 population.

3 Q So nothing with him, just -- not with him being a
4 predator? More --

5 A No.

6 Q -- of him being prey?

7 A Yeah.

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

9 MR. YOUNG: No questions, Your Honor.

10 THE COURT: You may step down. Thank you, sir.

11 MR. MADSEN: Your Honor, may they both be excused?

12 THE COURT: They certainly may.

13 MR. SECOR: Your Honor, may I approach?

14 THE COURT: You may.

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

18 THE COURT: All right. Call your witness.

19 MR. SECOR: Thank you, sir. The Defense calls
20 Roberta Thornsberry.

21 ROBERTA THORNSBERRY, being
22 first duly sworn, testified as follows:

23 MADAM CLERK: Once you're seated, state your full
24 name, spelling your last.

25 THE WITNESS: Roberta Thornsberry,

1 T-H-O-R-N-S-B-E-R-R-Y.

2 DIRECT EXAMINATION

3 By Mr. Secor:

4 Q Good morning, Ms. Thornsberry. You've talked to this
5 jury before in the first phase of the trial. A lot of the
6 things about your life and your family's life. But when
7 you testified before, we sort of started at Tim, Jr's.,
8 birth and went forward from there. Okay?

9 A Yes.

10 Q You remember that?

11 A Yes.

12 Q I just want to make sure your microphone is on. So I
13 want to touch on some things about -- excuse me, your life
14 before Tim, Jr., was born and we've talked about them
15 before and I know that some of them are difficult. So I'm
16 not going to ask you to go into detail, but I just want to
17 make sure that the jury hears some of these things from
18 you. Is that all right with you?

19 A Yes.

20 MR. GRAHAM: Objection, Your Honor. If I could
21 approach.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: I've got to put something on the record.

1 So you all step in the jury room and I'll have you back
2 here in a few minutes. Don't discuss the case.

3 (Whereupon, the jury was excused from the courtroom.)

4 THE COURT: All right. The issue discussed at
5 sidebar was, again, the social history of the family and
6 the Court consistently, in guilt/innocence side of the
7 case directed the Defense to only ask questions from Tim,
8 Jr's. birth forward. So that's about 1981, I think, from
9 the records. Mr. Secor, I'll hear you on why you think
10 that, in mitigation, you believe the Defense should be
11 able to go back further than that.

12 MR. SECOR: Yes, sir. May I just run through these
13 points of fact?

14 THE COURT: You may.

15 MR. SECOR: Thank you, sir.

16 Q Ms. Thornsberry, I'm just going to run through these
17 things quickly just because I want the Judge to understand
18 that these are things from your life rather than hearing
19 them from me. Okay?

20 A Okay.

21 Q You were from Kentucky originally, right?

22 A Yes.

23 Q Born in 1951?

24 A Yes.

25 Q Your mother was Bernadine, right?

1 A Correct.

2 Q And at age three, your mother, Bernadine, brought you
3 to an orphanage. Is that right?

4 A She didn't bring us. She had already left. The
5 State just kind of moved in and they're the ones that put
6 us there.

7 Q Okay. But at age three, you and two of your siblings
8 began living in an orphanage. Is that right?

9 A Yes.

10 Q And the whole time that you spent there was about how
11 many years? About four or five?

12 A Three, four.

13 Q Okay.

14 A I think I was like four when I went in. Four or
15 five.

16 Q And, at least, at one point during those years that
17 you were in the orphanage, your dad came and brought you
18 and your siblings home for Christmas, right?

19 A Yes.

20 Q And then, after Christmas, returned you to the
21 orphanage?

22 A The orphanage was closed. So he left us on the Court
23 House steps with a note saying that he couldn't wait. We
24 had to go back.

25 Q Yes, ma'am. And you would have been somewhere around

1 five years old or so?

2 A Five or six.

3 Q And your siblings, the two that were with you, were
4 they older or younger?

5 A Older.

6 Q Eventually, your mom brought you and your siblings
7 home from the orphanage because she had gotten divorced
8 from your dad and married another man, right?

9 A Right.

10 Q And that man's name was Ted Montane, correct?

11 A Right.

12 Q And you were eight years old when you came home from
13 the orphanage to your mother and her new husband, Ted
14 Montane?

15 A Right.

16 Q And how many days -- from the day that you came home
17 from the orphanage, how many days went by before he
18 started molesting you?

19 A The very next day.

20 Q And how long did his sexual molestation of you
21 continue?

22 A Until I became pregnant. And then, after I had the
23 baby, when he talked me into leaving. And then I just
24 became like his little prisoner until I was 17.

25 Q So how old were you when he raped you and impregnated

1 you?

2 A Eleven.

3 Q And the child that you gave birth to at age 12 was
4 who?

5 A Timothy Ray, Jr., Sr.; I'm sorry.

6 Q Senior. Tim, Sr. Tim's dad, right?

7 A Yes.

8 Q What was your -- when Ted Montane took you and Senior
9 as an infant away from the protection of your mother, what
10 was your life like? How did he treat you?

11 A It was like hell. He was very abusive. I was --

12 Q Did he beat you?

13 A Yes. I was petrified of him. I literally thought he
14 could read my mind.

15 Q And you stopped going to school, right?

16 A Yes.

17 Q And that was -- the fifth grade was the last grade
18 you ever went to?

19 A That was it.

20 Q And Ted Montane impregnated you two more times. Is
21 that right?

22 A Correct.

23 Q And he forced you into occupations that he could
24 benefit financially from, right?

25 A Yes.

1 Q Exploited you and your body, right?

2 A Yes.

3 Q And did he move you and your children around to try
4 to keep --

5 A Everywhere.

6 Q -- people away from you? And you lived as far away
7 as Florida, California, Arizona and Maryland?

8 A Yes.

9 MR. SECOR: Thank you. I know that's not easy, but
10 it's important for the Judge to hear it from you. Okay?
11 I don't know if the State has any questions.

12 MR. GRAHAM: We don't have any questions, Your Honor.

13 MR. SECOR: May I just have a moment to get my
14 thoughts together?

15 THE COURT: Okay.

16 MR. SECOR: All right. As an initial matter, the
17 Defense has an obligation under the guidelines that have
18 been created by the American Bar Association to conduct a
19 thorough investigation of Capital Defendant's life history
20 and it specifically requires that we go back, at least,
21 two generations. The purpose, of course, being that we
22 know that people are a consequence of where they come
23 from. In large degree, that the patterns that exist in
24 families and the events that occur within families can be
25 extraordinarily impactful on the lives of other family

1 members and can carry on and we see that in both, of
2 course, positive and negative ways. What happened to Ms.
3 Thornsberry is directly and specifically relevant to Tim,
4 Jr., because she is not only his grandmother, but she
5 became the person who was his default mother, to a degree,
6 in his life when Cynthia abandoned him. And it's
7 particularly relevant for the jury to know the traumas and
8 frailties of the people who Tim came from and how a child
9 would have been affected by being raised by people like
10 this. And I don't mean that in a condescending way
11 because I am incredibility impressed with Ms. Thornsberry.
12 The fact that she's still alive after everything she's
13 been through is amazing to me and she is a representative
14 of his family who has been through horrific tragedies,
15 horrific abuse and she would agree that some of that
16 horrific abuse has affected her. At points in her life,
17 she was harmful and abusive to people in her family. Part
18 of that is a consequence to the fact that she was raped by
19 somebody who was supposed to protect her, her step-father,
20 beginning when she was eight years old through the age of
21 11, getting pregnant, and then kidnapped her and her son
22 and took them away from anybody who cared about them and
23 protected them and she somehow persevered. But she went
24 into motherhood of Tim, Sr., as a 12-year-old, as a child,
25 and that's something that's going to affect somebody who

1 was raised by somebody who is, in effect, a child at the
2 time that they gave birth and that carries over to Tim
3 because when he is born, he is abused and neglected by a
4 horrifically mentally ill mother who then abandons him and
5 he is left in the care of Tim, Sr., and Ms. Thornsberry.
6 The bare history, the bare past, what has shaped them and
7 shaped their positive and their negative traits because
8 they both have admitted to being abusive to people in
9 their family at various times. Those two people were
10 Tim's parental figures beginning at age three, but even
11 before, from zero to three, he had the additional
12 compounding factor of having a schizophrenic mother who
13 neglected him. The definition of mitigation under the
14 United States Supreme Court Law is, anything the Defense
15 offers as a reason to give the Defendant life or to not
16 give him death and they can look to his family history.
17 We can look to people like Ms. Thornsberry, seeing what
18 she's gone through, and they can say Tim's death is not
19 something that this family deserves. They can bestow
20 mercy upon Tim. Even if they don't think that he's worthy
21 of it himself, but they can say his life has value. His
22 life has value to Ms. Thornsberry, somebody who was
23 victimized in a way that no person ever should be. And I
24 understand that Tim's kids were killed and he did it. I'm
25 not trying to excuse that or say that it's any less than

1 it is. It's horrific, but what happened to Ms.
2 Thornsberry was horrific, as well, and it would be
3 ineffective for me to not investigate it and present it as
4 strong as I possibly can and I understand that Your Honor
5 is not preventing me from investigating it. But I cannot
6 fathom how it can be alleged that this information is not
7 relevant. I mean, I come from a family of lawyers and I'm
8 a lawyer. Sometimes, I'm not particularly proud of that,
9 but I think part of the reason I'm a lawyer is because of
10 other lawyers in my family. I also have issues that I'm
11 not particularly proud of. But I know people in my family
12 have struggled with them and I just -- I think that the
13 testimony from experts in this case about the crucial
14 period of time from age zero to three when the brain grows
15 almost seventy-five, your entire lifetime during those
16 three years. It's particularly important to look at
17 because it's during those three years -- those first three
18 years that he has -- Tim has so many different influences
19 and those influences are coming from people like Ms.
20 Thornsberry who loved him and still love him desperately.
21 She would admit that what she went through was horrific
22 and that her trauma that I think she's been through in her
23 life affected other people and one of those people would
24 be Tim. And I'm not -- no one's going to blame her for
25 the deaths of these children. That's not what this is

1 about. Tim has already been blamed and he will be blamed,
2 but I'm trying to tell this jury the whole picture, which
3 is what the United States Supreme Court has required us to
4 do in these cases. And I think that a person's family
5 history, where they come from, what makes them up, not
6 only genetically, but also the people that create the
7 environment in which you grow is the essence of
8 mitigation.

9 THE COURT: All right. I understand your argument.
10 Let me hear from Mr. Graham.

11 MR. GRAHAM: Your Honor, in the guilt phase, Mr.
12 Secor, I think, asked the question, did you have a
13 traumatic childhood and we went into that. While what
14 happened to her was terrible, what we're talking about is
15 Tim Jones. So how -- we've already talked about -- they
16 already put testimony in the guilt phase about Cynthia and
17 all of the terrible things that Ms. Thornsberry observed
18 and how she was crazy and the things that Tim endured.
19 And, I guess, we're going to go back into that again and
20 she already talked about things happening in her house.
21 And, I guess, we're going to go back into that again, but
22 regardless of what Your Honor let's that, or says that
23 it's cumulative, what happened to her isn't the issue.
24 She's not the Defendant in this case. We don't -- her
25 characteristics and why those characteristics happen are

1 important. As far as the characteristics and how they
2 affect Tim, maybe, they are. If she wants to say that she
3 wasn't a good parent to Tim -- Tim, Jr., that's relevant
4 to Tim, Jr. But what happened to her before is not and
5 all it's doing is creating sympathy for the witness and
6 injecting another arbitrary factor in here, which has
7 nothing to do with the penalty and the decision the jury
8 has to reach as far as the Defendant.

9 THE COURT: All right. Mr. Secor, anything else?

10 MR. SECOR: If a witness can say that they did
11 something and if they take responsibility for something
12 because they feel guilty for something, how could they not
13 explain why or how could I not be allowed to listen to the
14 reasons why that may have been. The reasons why -- during
15 Ms. Thornsberry's life, there's periods of times when she
16 was violent and threatening to people that she loved and
17 she would sometimes scream at them and threaten them even
18 with weapons. Well, maybe, because she was raped by her
19 step-father, somebody that was supposed to take care and
20 the example that was set for her was that example. So she
21 struggled to fight her way out of that, but those things
22 come up in our lives. We all fight our past. And so, she
23 shouldn't have to just sit up there and say, I did these
24 terrible things, without the context of, here's why.
25 Here's what happened to me. Here's what I did to other

1 people in my family. Maybe, this is why or part of the
2 reason why they've gone on to hurt other people, as well.

3 THE COURT: I understand your argument, but I don't
4 believe that her childhood and her step-father's behavior
5 around her -- certainly, it impacted her. But I just
6 don't believe that's relevant to the jury's side and the
7 issue that's before them. I think it creates a whole
8 other issue, then there's another issue behind it. Her
9 helping get the care, raise, rear, being a grandparent,
10 mother figure, all of that's relevant to this case. But
11 her being dropped off at an orphanage and her dad and
12 mother and step-father, I just think that creates a whole
13 other layer of facts that aren't relevant to Tim, Jr.
14 Certainly, they impacted him to some degree, but Tim,
15 Jr's., life forward. I don't think we start at Ms.
16 Thornsberry's three year old, dropped off at the
17 orphanage. I don't. I think that's not relevant. I
18 think it confuses things.

19 MR. SECOR: Of course, permission to be able to -- my
20 argument on the record.

21 THE COURT: We know.

22 MR. SECOR: And I need to read that. I don't mean
23 any disrespect by looking down, but I just need to make
24 sure that I listed the cases correctly.

25 THE COURT: You didn't put them all in a minute ago?

1 MR. SECOR: No, sir.

2 THE COURT: Can you give them to Joy so she doesn't
3 have to try to keep up with your reading?

4 MR. SECOR: Yes, sir.

5 THE COURT: I mean, it helps her.

6 MR. SECOR: Yes, sir.

7 THE COURT: All right. Go ahead.

8 MR. SECOR: Thank you, Your Honor. I believe they
9 are not permitted, but required from some of this
10 information is *Rompilla v. Beard*, that is a Supreme Court
11 case which specifically discussed the American Bar
12 Association's standards for the appointment and
13 performance of the Defense Counsel and how those standards
14 are a reasonable guide for Defense Counsel. And this
15 guide specifically say that we should investigate and
16 present social history information going back three
17 generations. Also *Wiggins versus Smith*, also a United
18 States Supreme Court case. *Williams v. Taylor and Porter*
19 *v. McCollum*. And I would just add, Your Honor, that the
20 Court's ruling preventing us from presenting this relevant
21 mitigation would deprive Tim of his due process rights
22 under the Fifth and Fourteenth Amendments, as well as
23 Article One, section 314 of the South Carolina
24 Constitution, his right to a fair trial through the Sixth
25 and Fourteenth Amendments to the United States

1 Constitution, Article one, Section 14 of the South
2 Carolina Constitution. Heightened reliability of the
3 prohibition against cruel and unusual punishment pursuant
4 to the Eighth Amendment to the United States Constitution
5 and Article one, Section 15 of the South Carolina
6 Constitution as well as his right to effective assistance
7 of Counsel under the Sixth Amendment of the United States
8 Constitution and Article One, Section 14, of the South
9 Carolina Constitution, as well as the Eighth and
10 Fourteenth rights to individualized sentencing in these
11 cases. Thank you, sir.

12 THE COURT: All right. And for the record, the
13 requirements you -- at least, three generations. The
14 Court will notice that you've done that thoroughly. That
15 doesn't require the Court to admit everything about their
16 social history three generations back. My concern is the
17 relevance. The trauma she's respectively suffered creates
18 confusion in this case. So I will allow you to say, your
19 childhood from a broken home and traumatic history, and
20 then come forward from there. The details of that is not
21 relevant here.

22 MR. SECOR: All right. And just in addition, I would
23 ask or I would say the State versus Mercer, 381 SC 149,
24 for the proposition that we discussed before. In that
25 case, the South Carolina Supreme Court said, application

1 of Rule 403 should be cautiously invoked against a Capital
2 Defendant in the penalty phase. Especially, in light of
3 the due process implications at stake when Capital
4 Defendant seeks to introduce mitigation evidence. Thank
5 you.

6 THE COURT: Yes, sir. All right.

7 MR. SECOR: Can I just, I know this is taking time
8 and I don't mean to, I just need to rework my notes for
9 the purposes of speaking to Ms. Thornsberry.

10 (Whereupon, a short break was taken.)

11 THE COURT: All right. Ready?

12 MR. SECOR: Yes, sir.

13 THE COURT: All right. Let's have the jury, please.

14 (Whereupon, the jury came into open court at
15 approximately 11:53 a.m.)

16 THE COURT: All right. Mr. Secor.

17 MR. SECOR: Thank you, sir.

18 CONTINUE DIRECT EXAMINATION

19 By Mr. Secor:

20 Q Ms. Thornsberry, we're not going to go into the
21 details of your life before Tim was born. Okay?

22 A Okay.

23 Q But I just want to know whether you agree that your
24 life before Tim was born was very difficult at times?

25 A Very difficult.

1 Q Where you suffered trauma and abuse?

2 A On many occasions.

3 Q Yes, ma'am. And that loss didn't stop after Tim was
4 born because you lost two of your children since Tim, Jr.
5 was born, right?

6 A Yes.

7 Q And just help remind the jury of those two children,
8 if you would.

9 A Elaine, she died at 29 of cancer. Larry, Jr., died
10 at 23 in an accident.

11 Q Yes, ma'am. And you also lost your
12 great-grandchildren?

13 A Yes.

14 Q Merah, Eli, Nahtahn, Gabe and Elaine?

15 A Yes. I also lost another grandchild.

16 Q Yes, ma'am.

17 A Elaine's daughter.

18 Q Yes, ma'am.

19 MR. SECOR: May I approach, Your Honor?

20 THE COURT: Yes. You may.

21 Q Ms. Thornsberry, I'm going to show you some photos
22 that have already been introduced into evidence, which
23 would be Defendant's Exhibit 144, 162 and 164. And then,
24 another photograph that has been marked for identification
25 purposes as Defendant's 324. Just look at them and just

1 tell me if you recognize those.

2 A I do.

3 Q And are these family --

4 A Family pictures --

5 Q -- pictures?

6 MR. GRAHAM: No objection.

7 MR. SECOR: And that was in reference, Your Honor, to
8 Defendant's -- what's been marked for ID 324. So we would
9 offer that into evidence.

10 THE COURT: 324 is in evidence.

11 MR. SECOR: Yes, sir.

12 THE COURT: It's in, without objection.

13 (Whereupon, Defendant's Exhibit number 324 and 325
14 were admitted into evidence).

15 Q Ms. Thornsberry, I just have a few pictures. I know
16 you've talked to the jury about some other pictures and we
17 might look at those again. But I think this is one that
18 you haven't seen before and I'm hoping that you can just
19 tell us about this photo.

20 A That's Elaine holding little Tim on her feet and
21 that's Larry, Jr., in the background.

22 Q So Elaine, that's the daughter that died of cancer?

23 A Elaine is deceased and so is Larry, Jr.

24 Q And where was this picture taken?

25 A It was at my house.

1 Q Whereabouts?

2 A In Palatine, (phonetic, Illinois.

3 Q Okay. And I'm just hoping that this picture can sort
4 of help you tell the jury about your memories of Tim, Jr.,
5 as a kid and whether this is the type of scene that you
6 would see around your house when he was that age.

7 A It was. He was a very happy little boy. I mean, he
8 had his moments, but for the most part, he was a happy
9 little boy.

10 Q What did he call you?

11 A He called me mom.

12 Q Mom. Is that after Cynthia left that he started
13 calling you mom?

14 A Yes.

15 Q And do you remember the types of things that he liked
16 to do with his dad, Tim, Sr., the most when he was young?

17 A He loved to think he was Spiderman. He would climb
18 the door casing. He would take two chairs and use what's
19 on the chairs, and then he would just jump. He loved to
20 swim, loved to go to the park, loved to dress up and go
21 with his dad.

22 Q Did he want to be with his dad as much as he could?

23 A Yes.

24 Q What about camping trips? Did you all go on --

25 A We did go camping. He loved to go camping.

1 Q Where would you go?

2 A We would go to Whitewater, Wisconsin --

3 Q Yes, ma'am.

4 A And we would use tents and we would get on their
5 boats and he totally enjoyed it.

6 Q I'm going to put up on the screen what's Defendant's
7 Exhibit 144. I think the jury may have seen this one
8 before, but this -- who's that?

9 A That's Tim, Jr., and myself and that was on a boat in
10 Whitewater, Wisconsin.

11 Q Where you went --

12 A Yes.

13 Q -- where you went camping? There's periods of time
14 that Tim, Jr., gave you a hard time when he was growing
15 up?

16 A He went through his little spells, but, yeah. That
17 was just being a kid, I thought.

18 Q Yes, ma'am. What was your communication with him
19 like when he did that stint in prison in Illinois?

20 A When he went to prison?

21 Q Yes, ma'am.

22 A I wrote him a letter every day that he was there. I
23 visited him and talked to him two times a week. As much
24 as I could afford and if I was out of town, I would hurry
25 back to get back to get his calls.

1 Q Yes, ma'am.

2 A That was every Sunday and every day, a letter.

3 Q And what did you -- what would you do when you had
4 written him so much that you couldn't think of anything
5 else to say?

6 A I started buying cards and just put them little
7 smiley faces on them and I love you. Old religious cards
8 and things.

9 Q Just because you wanted --

10 A Just so we communicated. I wanted to make sure he
11 got something every day.

12 Q Yes, ma'am. I believe the jury's seen these pictures
13 before, but I just wanted to remind them again of these
14 pictures. Tell us, who's in that picture?

15 A That's my husband and all of my great-grand babies
16 and my son.

17 Q And this was in --

18 A That's Atlanta, Georgia.

19 Q And this is the last time --

20 A That's the last time I saw them.

21 Q I think that you said that that was the morning that
22 you all left?

23 A That's the morning we left.

24 Q Now, can you tell the jury about -- and I know that
25 it's difficult, but tell them about what it's like to have

1 lost your great-grandchildren.

2 A It's devastating. I mean, I can't explain it.
3 Unless you've lost a child or a grandchild, you wouldn't
4 know the feeling. It's an emptiness that never goes away.
5 They never leave your mind. I think about them daily.
6 You see little things that just constantly remind you that
7 you had them and they're not there anymore. It's
8 horrible. It's a part of you that's taken away that you
9 can't get back.

10 Q Do you feel things like guilt that you should --

11 A I feel sunken, I just wish there was something I
12 could have done. I wish there was something I could have
13 seen. I mean, I should have tuned into this kind of
14 thing, but I didn't and I feel totally guilty that I
15 wasn't there to help him because he needed help. He was
16 devastated with taking care of the kids. I seen that when
17 I was in Atlanta and I knew something was wrong, but I
18 didn't know what. He was trying to go home with them that
19 day and I didn't know what to do.

20 Q And if you'd thought that your great-grand babies
21 were in danger --

22 A I would have walked there.

23 Q Yes, ma'am. Ms. Thornsberry, before court today, we
24 showed you --

25 MR. SECOR: May I approach, Your Honor?

1 THE COURT: Yes. You may.

2 (Whereupon, Defendant's Exhibit number 352 was marked
3 for identification purposes).

4 Q I'm going to show you this flash drive that's been
5 marked as Defendant's Exhibit, for ID purposes, 352. We
6 showed you that flash drive beforehand --

7 A Yes.

8 Q -- with the video on it?

9 A Yes.

10 Q And do you --

11 A It's a video of my backyard.

12 MR. SECOR: Your Honor, we'd move to admit
13 Defendant's Exhibit 352 into evidence.

14 THE COURT: Subject to State's objection, it'll be
15 admitted.

16 (Whereupon, Defendant's Exhibit number 352 was
17 admitted into evidence).

18 MR. SECOR: Permission to publish it, please.

19 THE COURT: Sure.

20 Q And just before we play it, Ms. Thornsberry, tell the
21 jury where this is.

22 A It's in my backyard.

23 Q Who's that with the American flag shirt on?

24 A That's my son, Tim, Sr., and that's Eli.

25 (Whereupon, Defendant's Exhibit number 352 was

1 published to the jury starting at 12:09 p.m. and
2 ended at 12:10 p.m.)

3 Q Ms. Thornsberry, who was that that was feeding Eli
4 there?

5 A That was Jackie, my granddaughter.

6 Q And that's Senior's stepdaughter, I guess --

7 A Yes.

8 Q -- right? The daughter of Julia?

9 A Yes.

10 Q I know it's been tough on you and I'm sorry and I'm
11 almost done. I just -- I want the jury to hear from you
12 about the tremendous decision put before them. So I want
13 to ask you, do you want Tim, Tim, Jr., put to death?

14 A No. God, no. I love him. Our family's been through
15 enough. I just don't think we can take anymore. This has
16 broke us so bad and that, I think, would just be the final
17 nail in the coffin. I just don't think I can take
18 anymore.

19 Q Do you still love Tim?

20 A Oh, God. I love him with all of my heart. I don't
21 think, when you love someone, it never goes away.

22 MR. SECOR: Yes, ma'am. I appreciate you talking to
23 us today.

24 CROSS-EXAMINATION

25 By Mr. Graham:

1 Q Ms. Thornsberry, the first time that you learned that
2 something was wrong in September or, I guess, at the end
3 of August, your grandson was supposed to bring the
4 grandchildren in for a visit?

5 A Yes.

6 Q And he didn't show?

7 A Right.

8 Q And then, I think, over the next several days, you
9 began to call and text?

10 A Right.

11 Q And he just ignored you --

12 A Yes.

13 Q -- and never answered? And then, at some point, you
14 received a phone call from, I believe, the Principal or
15 Vice-Principal from Eli, Merah and Nahtahn's school --

16 A Yes.

17 Q -- saying they hadn't showed up for school?

18 A Right.

19 Q And you told your son, Tim, Sr., and then he called
20 the police?

21 A Yes.

22 Q December of 2012. I believe that was the last time
23 -- except for the aquarium visit. So prior to the
24 aquarium visit, 2012 in December was the last time that
25 time, your grandson, brought the grandchildren. Is that

1 correct?

2 A Correct.

3 Q And he and his dad got into an argument about the way
4 Tim, Jr., was treating the women in the house. Isn't that
5 correct?

6 A I'm not really sure what it was about. I wasn't
7 there. I just know that he left that night.

8 Q He grabbed his children up and he drove back to South
9 Carolina and he never came back again?

10 A Never came back again.

11 Q And he never -- except for the aquarium visit with
12 you, he never let -- nobody else in the family ever went
13 to South Carolina to see your great-grandchildren, did
14 they?

15 A No. Not to my knowledge.

16 Q The Atlanta trip at the -- supposed to go to the
17 aquarium. You didn't actually go, right?

18 A Right.

19 Q It was a one night visit?

20 A One night visit.

21 Q And you said you could tell that he was stressed out,
22 I think, is how you described it?

23 A Very much.

24 Q And you offered to take the babies since they were
25 out of school?

1 A Right. I would take the ones that weren't in school
2 home with me until he came in. And he said, I can't live
3 without my babies, Grandma.

4 Q And now, you're aware that he submitted that he was
5 addicted to spice and was smoking spice up to five times a
6 day during that time period?

7 A I am aware of that now. Yes.

8 Q Did you have any knowledge that there was a May of
9 2014 DSS report involving Nahtahn?

10 A No.

11 Q You didn't have any knowledge of the safety plan that
12 he was not supposed to use any kind of physical punishment
13 on the children?

14 A No.

15 Q You were not aware of the August of 2014 DSS report?

16 A No.

17 Q And his agreement not to use physical punishment?

18 A I knew nothing of any of that.

19 Q In the Atlanta trip, did he use physical punishment
20 on any of the children?

21 A He didn't discipline the children then. I mean, they
22 were basically with their Grandpa and I and I knew
23 something was wrong. He didn't look right. He looked all
24 wet. He was sweaty. He was just -- you know, he had lost
25 weight since I had seen him. Something wasn't right and I

1 didn't know what it was and he was drinking, which I was
2 -- Tim was drinking, smoking cigarettes. I wasn't
3 accustomed to that.

4 Q And you had testified before that your grandson, Tim,
5 Jr., was selfish, correct?

6 A Yes.

7 Q And you said that was probably because he was an only
8 child and his dad spoiled him?

9 A Right.

10 Q And he was stubborn, too, wasn't he?

11 A He kind of was. Yeah.

12 Q In fact, other than maintaining a relationship with
13 you, he cut off his father after that December of 2012
14 incident, didn't he?

15 A Yes.

16 Q And, in fact, the only reason that he was coming down
17 for a visit is because you told, I believe, Tim, Sr., to
18 call and apologize. Is that correct?

19 A My husband had them communicate.

20 Q Your husband did. The two of you talked about it?

21 A Yes.

22 Q So your grandson would not have come other than for
23 the fact -- planned to come other than for the fact that
24 your son called and apologized?

25 A I'm not sure how it went down, but I do know they

1 talked.

2 Q Did you ever notice whether he was harder on Nahtahn
3 than the other children?

4 A No.

5 Q Were you aware that Nahtahn wanted to be with Amber?

6 A No.

7 Q Were you aware that Merah wanted to be with Amber?

8 A I know when they first split up and everything, Merah
9 had said that. But then, after that, Merah said she
10 wasn't leaving her daddy because she was going to help
11 take care of the children. She was a good girl. And the
12 kids did ask me why didn't their mom come to see them.
13 They would go to the place where they were supposed to
14 meet her and she wouldn't show up and the kids would be
15 very upset and talk to me.

16 Q You have heard that when your grandson killed Eli,
17 that Eli said, daddy, can I come with you?

18 A I've heard that.

19 Q And we know that Tim was so selfish that he killed
20 Eli. Isn't that true?

21 A I know he killed Eli.

22 Q We know that Merah was begging for her life, no, no,
23 no, and that your grandson was so selfish, he killed her.
24 Isn't that true?

25 A Yes.

1 MR. GRAHAM: Thank you.

2 REDIRECT EXAMINATION

3 By Mr. Secor:

4 Q Ms. Thornsberry, when you got the call from Saxe
5 Gotha that the kids hadn't been in school, what did you
6 do?

7 A I called my son. I knew something was wrong because
8 even the Principal said, this is just -- it's way out of
9 the ordinary.

10 Q Yes, ma'am. And what did you do -- what did you and
11 Senior do?

12 A We went to Kentucky to my daughter's house so we
13 could be closer. In case something happened, we could get
14 there sooner.

15 Q Were you talking to various people?

16 A I talked to everybody.

17 Q And was -- do you know whether Tim, Sr., was in
18 contact with law enforcement?

19 A Yes, he was.

20 Q And did he call other people in South Carolina?

21 A Yes.

22 Q And were you all trying to --

23 A Desperately to find where they were at.

24 Q And when you got asked questions by people, did you
25 give them all the information that you could?

1 A Yes.

2 Q Since Tim was arrested, you've been asked to
3 cooperate with various people involved in this case,
4 right?

5 A Yes.

6 Q And have you always done that?

7 A Yes.

8 Q And that included talking to, I think, Dr. Frierson,
9 right?

10 A Yes.

11 Q And has anybody in this case asked you to do anything
12 that you've refused to do?

13 A No.

14 Q Has the Solicitor's Office ever reached out to you as
15 a victim in this case?

16 A Who?

17 Q The Solicitor's Office. The Prosecution, have they
18 ever reached out to as --

19 A No.

20 Q Mr. Graham was talking to you about the fact that Tim
21 was using spice. You know that now?

22 A I do.

23 Q And he talked to you about things that Tim did in his
24 life. You said that you described him as selfish when he
25 was younger?

1 A Selfish. He was an only child.

2 Q Yes, ma'am. There are people in your family -- a
3 number of people in your family who have suffered from
4 various problems, right?

5 A Yes.

6 Q And that would include people who had really serious
7 problems with drugs and alcohol?

8 A Yes.

9 Q And would that include you at some times?

10 MR. GRAHAM: Your Honor, objection. Beyond the
11 scope.

12 MR. SECOR: He specifically asked about these things,
13 traits.

14 THE COURT: I'll let her answer the question.

15 Q That's something that runs in your family, right?

16 A Yes.

17 Q That's the kind of thing that Tim, Jr., was around
18 when he was a young kid?

19 A When he was very young. Yes.

20 Q That's the kind of thing that Tim, Sr., was around
21 when he was a kid, too, right?

22 A Yes.

23 MR. SECOR: Thank you, ma'am.

24 MR. GRAHAM: Nothing else.

25 THE COURT: Ms. Thornsberry, you may step down.

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

3 THE COURT: All right. I'm going to send you all to
4 the jury room. Don't talk about the case. Step in the
5 jury room. It'll probably be 1:40 or so before we start
6 back. So we'll have plenty of time. All right.

7 (Whereupon, the jury was excused from the courtroom.)

8 MR. SECOR: I just wanted to add one case to my
9 argument about not being allowed to present Ms.
10 Thornsberry's social history as it is also Tim's social
11 history. And I would just add to that argument, Eddings
12 versus Oklahoma 455 U.S. 104 from 1982. Specifically
13 addressing the relevance of family history and it being
14 kept from the censors consideration. Thank you, sir.

15 THE COURT: Okay. All right. We're going to stand
16 down for about an hour and 15.

17 (Whereupon, a lunch break was taken.)

18 MR. HUBBARD: Your Honor, I, this morning, was handed
19 an affidavit from a Dr. Andriana L. Flores. She's a PHD
20 psychologist from Georgia. The affidavit she has is a
21 total of 12 pages. It, basically, is geared as an attack
22 on Dr. Kruse. I made a copy for you so Your Honor could
23 see it. I've been told that this particular Doctor, who's
24 not on the witness list, is supposed to be here tomorrow
25 to testify. Everything in this affidavit is geared at

1 attacking both the professional credentials and, really,
2 the personal integrity of Dr. Kimberly Kruse. And,
3 frankly, it's outrageous. Dr. Kruse has seen a copy of
4 it. She's concerned about whether she can even come back
5 and right now, Judge, after Dr. Maddox's testimony, I
6 wasn't planning on calling anybody else. But for them to
7 call this lady out of Georgia who has not been involved in
8 this case to attack the character of a witness who
9 testified in the first phase and, basically, has
10 intimidated her. Dr. Kruse sent me something saying, I
11 don't think I can testify. It borders on witness
12 tampering, threatening a witness. I've never seen
13 anything in my career quite like it. I understand
14 differing from another doctor, just like Dr. Maddox
15 differed with Frierson. She was very polite about it.
16 Very professional about it. This is a personal attack and
17 it ends with a threat that she feels, under the APA
18 Ethical Guidelines, she has to directly contact Dr. Kruse,
19 confront her about all of her errors and mistakes and
20 potentially report her for ethical violations. It's
21 outrageous. I've never seen this in 29 years of practice.
22 I don't know how she would even be relevant. She's not on
23 a witness list and right now, Dr. Kruse, I don't have a
24 plan to bring her back, but if I did, this threat is
25 obscene.

1 THE COURT: All right. Mr. Young.

2 MR. YOUNG: Your Honor, Dr. Flores is anticipating
3 testifying regarding errors and incorrect conclusions
4 regarding the testimony of Dr. Kruse. Obviously, to
5 comment on her character would not be appropriate and we
6 don't intend to offer any of that. She hasn't had time to
7 do a report and hasn't done a report. She has an
8 affidavit regarding her review of Dr. Kruse's testing.
9 She believes that there are significant problems, errors
10 and misreports with regard to Dr. Kruse's testing. She
11 put those, her conclusions and her concerns in an
12 affidavit. She will be calling her to testify as to what
13 she found to be erroneous about Dr. Kruse's testing and
14 report and it's completely appropriate.

15 THE COURT: If Dr. Kruse isn't testifying, how is
16 this relevant to this portion of the case as opposed to
17 how it would have been relevant if she were called in
18 response to Dr. Kruse?

19 MR. YOUNG: The State's continued to rely on Dr.
20 Kruse's testing to say that Tim is not schizophrenic, that
21 he doesn't have schizophrenia, that he is a liar. And
22 that's, in our view and in Dr. Flores' view, not reflected
23 in Dr. Kruse's testing.

24 MR. HUBBARD: The position is -- with us, then, is
25 that I couldn't call a reply witness. Dr. Kruse is now

1 concerned there is a threat on her career and her license
2 to testify. She feels like she'd have to bring a lawyer.
3 I'd have to compel her. It would be ridiculous.

4 THE COURT: Well, my concern, is several fold is, she
5 wasn't on the witness list. We've been getting ready for
6 a year and a half, close to two years. Since we've put
7 this thing on the trial docket, we have continued it
8 twice. I mean, there's a multitude of experts who've
9 testified for the Defense and several for the State. Two
10 or three from the State and more from the Defense. I
11 mean, where does it end. If this lady comes to testify,
12 then the State finds someone else that's not on the
13 witness list, you know, to respond to this, to respond to
14 that and to respond to this. We've got to draw the line
15 somewhere. My belief is that she's not on the witness
16 list. Therefore, she shouldn't be allowed to testify
17 because we're six weeks into the trial. I mean, we've got
18 to draw the line somewhere. And it seems like, when we
19 started either phase of the case it ought to be drawn.
20 And we've already started the second phase and the witness
21 isn't identified. So it's almost two trials in.

22 MR. YOUNG: Obviously, this is information that the
23 Defense didn't have until this weekend and that's when we
24 got it. As soon as we got the information and were made
25 aware of the concerns, we contacted Dr. Flores. I asked

1 her to prepare an affidavit, outlined what her concerns
2 were. She did that and I turned it over this morning. I
3 don't -- if my memory serves me correctly, I believe that
4 the State called somebody that wasn't on the witness list
5 and the Court just said, hey, this person wasn't on the
6 witness list, but you're getting called now, does anybody
7 know him. It wasn't a big deal.

8 THE COURT: What witness was that?

9 MR. YOUNG: I don't recall.

10 MR. HUBBARD: I think he's talking about a chain
11 witness who took item A and gave it to one person to
12 another. Something like that. Somebody that did not know
13 anything about the case.

14 THE COURT: I'm not recollecting what she was, but a
15 chain witness.

16 MR. HUBBARD: There's no substance.

17 THE COURT: Yeah.

18 MR. YOUNG: They called an expert at the roadblock
19 area without any notice to the Defense. They called an AG
20 from Mississippi to opine about Mississippi law without
21 any notice.

22 THE COURT: That was in pretrial.

23 MR. YOUNG: It was.

24 THE COURT: That was in pretrial. I've got to draw
25 the line somewhere and I don't believe Dr. Flores would be

1 allowed to testify. We're too far in the game to call in
2 new players. I presume you'll have to proffer her, but I
3 don't think she should be allowed to testify.

4 MR. YOUNG: Well, I'm proffering her in the morning,
5 Your Honor.

6 THE COURT: Okay. We'll do it.

7 MR. YOUNG: And I'd request some time to make a more
8 extensive record as to why I think we should be allowed to
9 call her.

10 THE COURT: We'll do that in the morning. I mean --

11 MR. YOUNG: Sure. Your Honor, with respect to this
12 afternoon, I know we'll call Tim Jones, Sr. We'll do the
13 proffer with regard to the history prior to Tim Jones'
14 birth so that the record's clear and consistent with the
15 Court's ruling. Our other witnesses are flying in this
16 afternoon. Based on the Court's ruling, we sort of
17 shortened what we had available for this afternoon. But I
18 do think that we've also had a social historian who we
19 anticipate testifying regarding a lot of that information.
20 I think it would helpful if we could spend, probably, most
21 of the afternoon proffering her social history so that
22 tomorrow we can just get through it, what the Court
23 allows.

24 MR. HUBBARD: Your Honor, her report is already in as
25 a Court's Exhibit. Now, it's a redacted one. I'm

1 purposing putting in a completely unredacted report that
2 we initially got. She's not testifying. All of the
3 contents of that report would be in. If there's something
4 in addition to that report, I don't know what it is. If
5 she goes into the background, several generations back, as
6 they've been discussing. So I don't know -- we haven't
7 objected to it. So I don't know -- objecting to her
8 getting up and testifying. I don't know what, exactly,
9 she would go into. I would object to certain things, but
10 that's already in as a Court's Exhibit. So I'm not sure
11 why we need to spend all afternoon on a witness that
12 they're just deciding not to call.

13 THE COURT: You're not going to call her and you're
14 wanting to --

15 MR. YOUNG: We are going to call her.

16 THE COURT: Right. Why can't the entire report as a
17 Court's Exhibit stand for the proffered portions?

18 MR. YOUNG: Well, I think that there's a lot more to
19 it than just what's in the report from her testing. Now,
20 I'll let Mr. Secor --

21 MR. SECOR: Your Honor, I believe that we're required
22 to proffer it for her to -- we're talking about Ms. Grey,
23 Deborah Grey. For Ms. Grey to be able to testify to this
24 information in the social history and to explain it from
25 the perspective of social work and child development to

1 help explain why the events that exist and are outlined in
2 the social history are relevant for the purposes of this
3 case. How a social history is designed to illuminate
4 patterns, events in families and sort of the spirit of the
5 whole thing is that you go several generations back as a
6 way of helping to understand where a person, in the
7 subject of the social history, finds themselves in the
8 future. I don't think that the report itself can do that
9 in the way that Ms. Grey can and she has some
10 demonstratives to help produce some of that information.
11 At least, it's been extremely helpful to me and helped me
12 recognize those issues. And I think that in order for
13 Your Honor to make a proper ruling on the admissibility of
14 it for the jury, that the only way would be that -- you
15 know, I'd say close to half of it is probably pre-1981.
16 That's sort of, you know, the essence of the social
17 history is you're going back to past generations to try to
18 understand future events. And the report -- the Solicitor
19 said it was a redacted version. I don't believe it's a
20 redacted version. I don't -- I've never seen a redacted
21 version.

22 THE COURT: Maybe it's the whole report. I don't
23 know.

24 MR. HUBBARD: What we noticed -- they gave us a copy
25 of what they made a Court's Exhibit of and there were a

1 number of things removed from the original document.

2 That's what I meant. I don't mind making an exhibit of --
3 Court's Exhibit of the entirety of what I initially got.
4 It's 137 pages long.

5 THE COURT: Well, I don't have the Court's Exhibit to
6 compare it to. If you all say it's different, it's
7 different. If it's not, it's not.

8 MR. SECOR: No. I'm just saying that the one that
9 was put in her report. There were some changes made to it
10 before and a copy was given to the State because we were
11 speaking to witnesses and as a consequence of
12 communication with witnesses some things were removed, but
13 we told the State about that. The report that's in that
14 was made a Court's Exhibit is her report.

15 THE COURT: Okay. Well, that's the report.

16 MR. HUBBARD: Okay. And I certainly don't mind
17 putting what was excised out as a State's ID or something
18 like that just so there's -- if anybody has a question
19 about what's in or out.

20 THE COURT: We're proffering proffers. I mean --

21 MR. HUBBARD: Right.

22 THE COURT: -- it's like pleas up in Newberry. They
23 try it in-chambers, and then come back out and do the
24 whole thing a second time. You've heard it twice. You
25 all are proffering your proffer. Let's get going doing

1 something other than proffering proffers because you all
2 are saying what you're going to tell me later and what
3 she's going to say. And then, she's going to tell you
4 this. I mean, if you can tell me, tell me. If she's got
5 to tell me, let her tell me. That way you don't have to
6 do it three times.

7 MR. SECOR: Yes, sir. And we're not trying to
8 frustrate Your Honor.

9 THE COURT: I know. You're not, but you are. And
10 I've got a smile on my face.

11 MR. SECOR: I'm not accusing you of anything. I just
12 want you to know, we're not trying to --

13 THE COURT: I know.

14 MR. SECOR: We're not trying to bog the trial down.

15 THE COURT: Yeah, that was a joke. Y'all are doing
16 your jobs and I respect that.

17 MR. SECOR: I'm sure this is just going to add -- but
18 we need to proffer some testimony from Senior before the
19 jury comes in.

20 THE COURT: Well, let's get Senior up here if he's
21 going to be the next witness.

22 MR. SECOR: Yes, sir. The Defense calls Tim Jones,
23 Sr.

24 TIM JONES, SR., being
25 first duly sworn, testified as follows:

1 WITNESS: Timothy Ray Jones, J-O-N-E-S.

2 PROFFER DIRECT EXAMINATION

3 By Mr. Secor:

4 Q Mr. Jones, we're going to -- I'm just going to ask
5 you a few questions about your childhood. I think we
6 talked about it when you testified the first time around
7 outside of the presence of the jury. But I just want to
8 go over some of that stuff again. Is that all right?

9 A Sure.

10 Q All right. Your mother is?

11 A Roberta Thornsberry.

12 Q Yes, sir. And your dad -- your biological dad was
13 who?

14 A Theodore Montane.

15 Q And in addition to being your dad, Ted Montane was
16 also what?

17 A Grandfather.

18 Q Step-grandfather?

19 A Yeah.

20 Q You were born in what year?

21 A '64.

22 Q How old was your mother, Roberta, when you were born?

23 A Twelve.

24 Q How do you feel about Ted Montane?

25 A I don't care for him.

1 Q Do you -- tell us about your memories of him beating
2 your mother.

3 A I have quite a few memories of it and the most vivid
4 was when she forget the keys once and he shoved her right
5 through the wall. He'd beat her with a hammer and throw
6 water in her face, you know. I mean, he'd knock her out,
7 and then throw water in her face to bring her back. But,
8 at least, he was nice enough to put a little rag on the
9 hammer so it wouldn't bust her head open.

10 Q And these were things that you saw yourself?

11 A Yeah.

12 Q Where did you all live when you were growing up with
13 Ted and your mom?

14 A I really don't -- I mean, we were all over the place.
15 We moved all the time. I don't really remember where we
16 lived. I just remember, you know, the houses.

17 Q Yeah. Do you remember why or what was -- at the
18 time, why did you think you were moving so much?

19 A Well, you know, I'd like to say I really remember
20 exactly. But, you know, I learned when I got older that,
21 I knew because he was just running. He was running from
22 the law.

23 Q Okay. What was your -- what was normal, every day
24 life for you? Did you feel safe and secure in your home
25 life?

1 A No.

2 Q Did you feel -- were you scared all the time?

3 A Definitely. And I was scared for my mom.

4 Q Eventually, I think your mother was able to get away
5 from Ted. Is that right?

6 A Yes.

7 Q And do you remember that period of time?

8 A I do.

9 Q How old were you, do you think, approximately?

10 A I want to say, probably about five.

11 Q And when you got away from Ted, was that the end of
12 his --

13 A No.

14 Q -- effect on your lives?

15 A No.

16 Q Why?

17 A For years, you know, we seemed to be running from him
18 up until I was in, into my teens.

19 Q And your mom, she got married to --

20 A Larry.

21 Q -- Larry and that's --

22 A My dad.

23 Q That's the guy that you call your dad?

24 A Yes.

25 Q Now, your mom and Larry, they're still married, I

1 know, and love each other very much. But they had some
2 problems in their marriage when you were young?

3 A Well, I wouldn't call it problems in their marriage.
4 I'd call it problems where my mom was abused all those
5 years.

6 Q Okay. And tell us about that. Tell us about the
7 types of things -- and she's told us some of that, too.

8 A Well, I mean, she would just have, you know, violent
9 episodes, you know, and my dad loved her. He loved her
10 with all his heart. So he just, you know, helped her to
11 try get through it.

12 Q She was also very loving to you, right?

13 A Oh, yeah. Yeah.

14 Q But there were times that she was abusive to you,
15 too, right?

16 A Well, I mean, I guess, you could say she was a little
17 too hard here and there.

18 Q And where were you living at this point?

19 A We lived -- probably, Illinois.

20 Q And then, I know you said before that your mom
21 divorced Larry briefly and married another guy.

22 A Yes. It was Phillip Caliendo.

23 Q Yes, sir. And was she -- did she continue to have
24 her violent episodes?

25 A It actually got worse.

1 Q It got worse?

2 A Yeah.

3 Q What kind of things would you find when you came home
4 from school during that period of time?

5 A Well, one time, I came home and she had just
6 destroyed -- I mean, just busted the whole house up. And
7 somehow, for some reason, I ended up at the hospital where
8 her new husband, Phillip, was laying there, a heart
9 attack.

10 Q And then, she left Phillip and got remarried to Larry
11 again, right?

12 A Yes.

13 Q And where did you all live when she got remarried to
14 Larry?

15 A We moved to, (inaudible), I believe.

16 Q Okay. That's near the O'Hare Airport?

17 A Yes, sir.

18 Q Okay. And tell us about the plane crash.

19 A In '79, there was a -- there was this -- I mean, we
20 used to ride our dirt bikes there. I mean, right there.
21 You know, I knew that place real well. My mom was real
22 scared because I'd skip school occasionally and I would
23 take my bike, you know. So she knew if my bike was
24 missing, then I was more than likely in that field. And I
25 left my bike at my friend's, you know, and as soon as I

1 came around the corner with my other friend -- you know, I
2 can't really tell if I felt the explosion first or seen it
3 because it was so close. You know, we were like right at
4 the corner of Tuley, (phonetic), and York Road. Maybe, a
5 mile, half a mile, and by the time it hit, it was wild.
6 So we -- of course, as kids, you know, we ran over there
7 to see what was going on and there was just, you didn't
8 want to see. That's for sure.

9 Q Did you see dead bodies?

10 A I saw body parts. I didn't see no whole body
11 nowhere.

12 Q Okay.

13 A There were body parts everywhere.

14 Q How old were you at this point?

15 A I was thirteen, fourteen, maybe.

16 Q Around that time, there were some people in your
17 family that were involved in selling marijuana, right?

18 A A few.

19 Q Okay. And at that young age, when you were just --
20 before you turned a teenager -- became a teenager, did
21 they get you involved in working in that?

22 A I guess, you could say that. Yeah. I mean, I dried
23 some in dryers in the apartment complex.

24 Q Dried what?

25 A Marijuana.

1 Q Okay. How would it get to your house?

2 A My dad and a couple of cousins, I believe.

3 Q And we're talking about like small amounts or large
4 amounts?

5 A I think it was -- I want to say, it was three pillow
6 cases full.

7 Q And that's -- you were helping them with that when
8 you were about how old?

9 A No more than 12 on that one, 11 or 12.

10 Q Tell us about the types of things that would happen
11 in your home with your mom and Larry when your mom would
12 be drinking. The periods of time when she would be
13 drinking.

14 A Well, I mean, again, I could tell that she was
15 having, you know, what I call, Ted flashbacks. And you
16 could just see it in her. I mean, she was just -- she
17 wanted so bad to fight this man back. You know, she was
18 terrified of him --

19 Q Yeah.

20 A -- and Larry was -- my dad would do anything. So he
21 didn't care. He'd just -- you know, he'd just let her go
22 through her little stage and, you know.

23 Q Did she ever threaten people with weapons?

24 A Yeah. She's threatened us with guns and, you know --
25 I mean, all kinds of things. That was when -- you know,

1 it was just a bad time for her. I mean, I just knew --
2 you know, I'm her son. So I grew up as almost a friend
3 too.

4 Q Yes, sir.

5 A So I could really understand, you know, the pain she
6 went through. I mean, I seen it.

7 Q And what types of things would she say when she was
8 threatening people?

9 A Just -- I'll just kill everybody and get it over with
10 so I don't have to worry about this. Stuff like that.

11 Q Did the police sometimes come?

12 A They did a few times.

13 Q Did you ever ask them to take her?

14 A Well, there was one time -- actually, that's what
15 caused her to quit drinking, I think. Well, I mean, that
16 wasn't what caused, but she had an incident where she had
17 the children with her and it scared her pretty straight,
18 but, of course, she had said this before. So I didn't
19 believe. So I sort of told the cops, you know, you need
20 to arrest and, of course, she held onto me like crazy.
21 They didn't arrest her. They looked at me like I was a
22 fool.

23 Q So these episodes of violence that would occur, were
24 they pretty normal, a routine part of your life?

25 A Well, I wouldn't call it a routine. I would just