

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

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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 call it, you know, my mom had a -- you know, if anything
2 just -- I mean, I don't know how to say it. Certain
3 things would just bring, you know, those emotions out.
4 You know, when they came out, I mean, she couldn't help
5 it.

6 Q But you could see it coming?

7 A Yeah. You could see when -- yeah. The best time was
8 when Reba--

9 Q -- what do you mean by that?

10 A Reba McEntire. Have you ever seen her.

11 Q Yes.

12 A If you came home and that was playing, she was
13 feeling it.

14 Q That meant that she had been drinking, you think?

15 A Well, no. It meant that she had, you know, some kind
16 of -- something reminded her of what the hell happened.
17 You know, she would go sort of in her own space.

18 Q Tell us --

19 A My mom wasn't trying to be abusive to us children.
20 Not like that, but she would -- you know, not knowingly,
21 she would go into episodes and I was -- I mean, it was
22 just -- I mean, she'd do it the next day and she wouldn't
23 even remember it. Not the drinking part of it, she just
24 sort of snapped.

25 Q Tell us about the time that you saved your mom from

1 killing herself. Take your time.

2 A This is when we were living in Oak Grove. And we
3 were staying with my uncle and my aunt, Carlson and
4 Shirley. And these are, my dad's sisters, and she just
5 felt like -- she was tired of fighting, I guess. You
6 know, had just sort of given up. And, of course, my aunt
7 said -- you know, going out there and stopping her or
8 something. They just let her go, you know. So I had to
9 go chase her out and, you know, try to find her.

10 Q So what was your understanding of what she'd done to
11 herself?

12 A She had took some pills. She tried to kill herself.
13 My aunt told me.

14 Q And how old were you, do you think?

15 A Nine or ten, maybe.

16 Q Okay. And how did you find her?

17 A I kept yelling for her and she finally came out.

18 Q Are there a lot of people in your family and in
19 Cindy's family, that you're aware of, that have mental
20 problems?

21 A Unfortunately.

22 Q How about drug and alcohol problems?

23 A Yes.

24 Q Do you think -- your sister, Elaine, she had some
25 problems with that, right, before she died.

1 A Yes, sir. Yeah.

2 Q What about --

3 A As a matter of fact, they would say that it
4 contributed to it. You know --

5 Q Yes, sir.

6 A So she didn't feel the pain. It was too late, by the
7 time she felt the pain.

8 Q And you mean the pain of her cancer?

9 A Yes, sir.

10 Q And then, your brother Larry, how about him?

11 A I don't know if any of you folks have ever had to
12 tell your parents that their baby was dead, but--

13 Q Yes, sir. He died in a motorcycle wreck?

14 A Yeah.

15 Q And suicides in her family?

16 A Yeah. My uncle Gene, my cousin Tammy, my Uncle
17 George. I mean, there's -- we can go on for a while, man.

18 Q And you're aware of some people in Cynthia's family
19 that killed themselves, as well?

20 A Yeah. Her brother and a couple of her cousins.

21 Q Later in your life, you saw your biological dad, Ted,
22 again, right?

23 A I did.

24 Q Where was that?

25 A That was in the trailer park over by where the plane

1 wrecked.

2 Q Okay.

3 A It was in the eighth grade, I want to say. Yeah. In
4 the eighth grade. I was going on to be a freshman.

5 Q And you hadn't seen him in a long time?

6 A I hadn't seen him since -- you know, since we left.

7 Q And so, what did you think about doing when you saw
8 him?

9 A I thought about a lot of different things, but my dad
10 told me to be cordial and I was.

11 Q Did you think about killing him?

12 A I'd like to. Yeah.

13 Q For what he did --

14 A I've thought about that many times.

15 Q For what he did to your mom?

16 A Yes.

17 Q And for what he did to you?

18 A My mom, more.

19 Q Yes, sir.

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

21 THE COURT: You may.

22 MR. SECOR: I think that's all I have for right now,
23 Your Honor.

24 THE COURT: Okay. All right. Are we ready to bring
25 the jury in?

1 MR. SECOR: Well, if the State wants to ask any
2 questions.

3 MR. HUBBARD: No questions.

4 THE COURT: All right. Mr. Jones, I'm going to let
5 you sit back down and they're going to call you back up
6 when the jury gets in here.

7 THE WITNESS: Okay.

8 MR. SECOR: Your Honor, I would just ask that, of
9 course, the testimony be allowed to be elicited in front
10 of the jury.

11 THE COURT: Whether I'm right or wrong, I'm sticking
12 with my ruling.

13 MR. SECOR: I understand. I just have to ask, but I
14 appreciate it and I just respectfully request that you
15 note our objection to the Court's ruling.

16 THE COURT: Sure.

17 (Whereupon, the jury came into open court at
18 approximately 2:10 p.m.)

19 THE COURT: We're ready to continue on. Call your
20 witness, please.

21 MR. SECOR: Yes, sir. The Defense calls Timothy
22 Jones, Sr.

23 TIMOTHY JONES, SR., being
24 first duly sworn, testified as follows:

25 MADAM CLERK: Have a seat, please, sir. Once you're

1 seated, state your full name, spelling your last.

2 THE WITNESS: Timothy Ray Jones. J-O-N-E-S.

3 MR. SECOR: May I approach the witness?

4 THE COURT: You may.

5 MR. SECOR: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 DIRECT EXAMINATION

8 By Mr. Secor:

9 Q Mr. Jones, I'm going to show you some pictures that I
10 want to show the jury and you just tell me if you
11 recognize. And these ones -- these first few are already
12 in evidence. That's Defense Exhibit 252, 251, 140 and
13 142. And then, these are the ones that I would offer, as
14 well. These have been marked for identification purposes
15 as 326, 327, 328, 332, 236, 238, 242, 247, 245 and 246.
16 Now, these all are pictures that you recognize as family
17 photos?

18 A Yes, sir.

19 MR. SECOR: I'd just like to show some of these
20 pictures, that list that I read off, Your Honor, into
21 evidence. The State has seen the photographs.

22 MR. HUBBARD: No objection.

23 THE COURT: All right. So I don't know all of the
24 numbers. I didn't write then down but those that you just
25 showed him, will be admitted without objection and I'll

1 rule on them on a number by number basis.

2 Q Okay. And, Mr. Jones, if you will, just sort of help
3 me sort of just tell the jury who these people are and
4 what period of time that the picture was taken and what
5 was going on in your lives at that point. Is that all
6 right with you?

7 A I'll do my best.

8 Q This is 326. Tell us, who's that (indicating)?

9 A That's my ex-wife, Cindy Granado, Timmy's mother.

10 Q All right. And do you remember about when that
11 picture would have been taken?

12 A That was pretty much when I first met her. So I was
13 15 or 16, 16.

14 Q You're saying that's how old you were, then?

15 A Yeah. I was 16 and she was 16.

16 Q And she was 16, as well? And this next picture is
17 327. Is that her, as well?

18 A Yes. That's -- I believe that's about 18.

19 Q Okay. And where did you all meet?

20 A A friend of mine introduced me in Raleigh, Illinois.

21 Q How long did you know each other before you all got
22 pregnant with Tim?

23 A A year and a half, maybe. A year.

24 Q And the jury's seen this picture. I believe this is
25 140. And who's that?

1 A That's me and Timmy when he was born.

2 Q Which was when?

3 A [REDACTED].

4 Q 1981?

5 A Uh-huh (affirmative response).

6 Q And where did you all -- where were you living at
7 that point?

8 A We were staying in my mother's basement.

9 Q In?

10 A Oak Grove, Illinois, Auburn Trail, I believe.

11 Q And how about that one?

12 A It's Cindy and Timmy. There again, 19 or 18. You
13 know, around 18 and a half, 19.

14 Q And I think we talked to the jury before, but there
15 was changes that you saw in Cindy before -- while she was
16 pregnant with Tim, Jr., and after he was born?

17 A Yeah. I mean, she was just -- she'd just do crazy
18 things like cut the clothes and then sit in the corner.
19 She just seemed like she was losing her mind.

20 Q Yes, sir. And we don't have to go back into it
21 again, but she eventually, I think, left you and Tim, Jr.,
22 right?

23 A Yes.

24 Q Or, I guess, she left with Tim, Jr., for a while?

25 A Yes.

1 Q But did you end up getting custody of Tim?

2 A In the long run, yes.

3 Q And who then becomes his sort of family after Cynthia
4 leaves?

5 A My mother and father and sisters.

6 Q And who are they again?

7 A Elaine and Roberta and Larry.

8 Q Okay.

9 A Larry was like his little brother.

10 Q And what were you doing for work during that period
11 of time when Tim was --

12 A I was a tool and knife maker.

13 Q Say again?

14 A Tool and knife maker.

15 Q Okay. In Illinois?

16 A Yes.

17 Q This is 142. Where's that taken?

18 A I want to say, this is Itasca. Itasca, Illinois and
19 I was working for Illinois Tool Works in that.

20 Q Were you living with your mom and Larry?

21 A No. This was -- it was -- I want to say, it was me
22 and Timmy.

23 Q Just the two of you?

24 A Yeah. I believe so.

25 Q And how about this, this is 328. What were you all

1 doing there?

2 A We were going to hit golf balls. I'm trying to
3 remember exactly where it was at. I think it was over by
4 -- I'm not sure. I can't tell, but I used to go and I'd
5 do, and we'd hit golf balls. Me and Timmy.

6 Q What other kind of stuff -- didn't you go bowling,
7 too?

8 A I'd do, you know, whatever he wanted to do. Bowling,
9 golf, football, baseball. You know, he turned eventually
10 liking wrestling and gymnastics more.

11 Q And this is a time in his life when you all spent
12 significant time together?

13 A Yes.

14 Q And who's that? That's 238.

15 A This is the--

16 Q -- is that just a school picture?

17 A I believe so. I want to say, East Middle School and
18 -- yeah. Timmy's in middle school. Not middle school--

19 Q -- and how -- was he interested in school back in
20 those days?

21 A Oh, yeah. He loved school and he excelled. He was a
22 good kid. I mean --

23 Q What kind of stuff did he like the most in school?

24 A Math.

25 Q Is that why you ended up getting him a computer?

1 A Yeah.

2 THE COURT: I'm going to name these off real quick.
3 326, 327 and 328 are in without objection. I believe, 141
4 and 42 are already in. If not, they're in now. And then,
5 236 and 238 have been discussed and they're in, also.
6 That's the pictures we just saw.

7 THE COURT REPORTER: I've got exactly what you have,
8 but I do have 142 in, but I'm not sure about 140. I'll
9 have to check on that.

10 THE COURT: But 140 is now in.

11 THE COURT REPORTER: But now is in. Okay. Yes, sir.
12 That's right.

13 THE COURT: Okay.

14 THE COURT REPORTER: Thank you.

15 (Whereupon, Defendant's Exhibit numbers 140, 141,
16 142, 236, 238, 326, 327 and 328 were admitted into
17 evidence).

18 Q Mr. Jones, tell us about what your grandchildren,
19 Merah, Eli, Nahtahn, Gabe and Elaine meant to you. I know
20 -- I don't think you and Julie ever had the chance to meet
21 Elaine.

22 A Unfortunately, we didn't.

23 Q But tell us -- tell the jury about what -- you called
24 them the babies, right?

25 A Yeah.

1 Q What did the babies mean to you and your family's
2 life?

3 A They meant everything to me. I mean, they were -- I
4 was--

5 Q -- say again?

6 A I was Papa.

7 Q That's what they called you?

8 A Yeah.

9 Q And what did they call Julie, your wife?

10 A They called her Grandma.

11 Q The summer of 2012, where did they live?

12 A You're talking about when they were -- Timmy and them
13 were splitting up?

14 Q Yeah. The summer of 2012, they lived with you in
15 Mississippi, right?

16 A Yeah. Yeah. I mean, I didn't know it was that far
17 away, but, yeah.

18 Q Okay. And what did they -- what was one of the
19 things that you made at your house for them that summer?

20 A I made all kinds of things for them. I mean, I built
21 a pool for them, you know, because none of them knew how
22 to swim. So I wanted to teach them how to swim. So we
23 put them in a pool. As a matter of fact, my son helped
24 me.

25 Q I'm going to show you some pictures that, I think,

1 are from around that time. I was just wondering if you
2 could tell us who's in the picture.

3 MR. SECOR: That's 247, Your Honor.

4 (Whereupon, Defendant's Exhibit 247 was admitted into
5 evidence).

6 A That's me and Nahtahn.

7 Q And was that pretty much a normal thing for you all
8 that summer?

9 A Yeah.

10 Q And you said none of the babies could swim at that
11 point?

12 A No. That's why you see floaties on them.

13 Q And that's 246. That's who?

14 A That's Merah.

15 Q And who is this? This is 245.

16 A That's Nahtahn, Eli and my nephew.

17 Q What nephew is that?

18 A That is -- but I can't think of his name off the top
19 of my head.

20 Q That's okay.

21 A He was just here visiting me. He'd be mad at me. He
22 probably is going to be mad at me.

23 Q Was this -- was your house a gathering place for lots
24 of family around this time?

25 A Yes.

1 Q And were the babies part of the reason why people
2 wanted to come around?

3 A Well, we was -- I mean, even before, you know, they
4 moved away. Like I said, they were at the house every
5 weekend. So, yeah. It was always me and a bunch of kids.

6 Q Yes, sir. And before that, before the summer they
7 lived with you, they would spend time there sometimes?

8 A His name was Blake, by the way.

9 Q Blake.

10 A Sorry, Bud.

11 Q The babies would spend time at your house before they
12 actually lived there sometimes, right? When they lived in
13 Mississippi.

14 A Yeah. I mean, when Timmy was in Mississippi State,
15 they were at our house every weekend.

16 Q Let me show you -- this is 332. Tell us, is that one
17 of those times?

18 A Yes, sir.

19 Q And who's in that picture?

20 A That's Eli, Merah, me and Gabriel. No. That isn't
21 Gabriel, is it? No. That's Nahtahn and Amber.

22 Q Is that at your house in Mississippi?

23 A Yes, sir.

24 Q And is cooking out something that you all did
25 regularly when you were there?

1 A Yeah. My wife don't cook.

2 Q This is 242. Who's in that picture?

3 A That's my wife, Nahtahn and me.

4 MR. SECOR: May I approach, Your Honor?

5 THE COURT: You may.

6 A He had a balloon, yeah.

7 Q Mr. Jones, I'm going to show you a -- I've got to get
8 it marked. I'm sorry.

9 (Whereupon, Defendant's Exhibit 361 was marked for
10 identification purposes).

11 Q I'm going to show you what's been marked for
12 identification purposes as Defendant's Exhibit 361. Is
13 this a flash drive that you saw at the scene before this?

14 A Yes, sir.

15 Q And there's a video on it of that --

16 A Yes.

17 Q -- in the pool?

18 A Yes, sir. Yes, sir.

19 MR. SECOR: And I would offer Defendant's Exhibit 361
20 into evidence. I request permission to publish it.

21 MR. HUBBARD: I'm not sure what it is.

22 MR. SECOR: It's the Court Exhibit, we gave it to you
23 guys.

24 THE COURT: I've already viewed that one time. Isn't
25 that the one minute video?

1 MR. SECOR: I believe so. Yes, sir.

2 MR. HUBBARD: I don't know what it is, Judge. No
3 objection.

4 THE COURT: It's similar to the pictures. So I'll
5 admit it. 361. If I remember right, it's about a minute
6 and 10 seconds.

7 (Whereupon, Defendant's Exhibit number 361 was
8 admitted into evidence).

9 (Whereupon, Defendant's Exhibit number 361 was
10 published to the jury).

11 Q Tell us who was in that.

12 A Merah, Nahtahn, me. I think I seen Jackie, here and
13 Amber. I'm sure we were probably all out there.

14 Q And tell us who Jackie --

15 A Jackie's my daughter.

16 Q Your step-daughter?

17 A Correct. Yes.

18 Q And tell us about Jackie's involvement in the babies'
19 lives.

20 A She was, basically, a little second mom to them. You
21 know, especially that summer, she was a mom to them. And
22 they took a vacation and went up north and we went ahead
23 and let Jackie watch them for the summer. That was the
24 summer before she was going off to college and she said
25 she would help keep an eye on them.

1 Q So did she sort of volunteer for that job that
2 summer?

3 A Yes.

4 Q But she lived there, right?

5 A Yes.

6 Q And these were -- you mean, she'd interact with them
7 like she was babysitting or like they were --

8 A Like they were her own kids. They would make
9 comments -- when they were up north at my cousin Paul's
10 house, Paul said, you'd think they were married.

11 Q Where did they all sleep at your house that summer?

12 A Well, I have three bedrooms. So we had plenty of
13 room.

14 Q Did they like sleep in --

15 A They'd all sleep with, you know, me and grandma.

16 Q Would they sometimes sleep with Jackie, too?

17 A Jackie. I mean, wherever you want to sleep.

18 Q Right. Yes, sir.

19 A Usually, we'd just try to run them down so they'd go
20 to sleep. They were a bunch, you know --

21 Q Yeah. Let me show you -- this is 251. Is that about
22 around that summer, as well?

23 A It is.

24 Q 2012, maybe --

25 A Yes.

1 Q -- at the pool. Is the pool still at your house?

2 A No. I took it down.

3 Q Why?

4 A I just couldn't have it up.

5 Q Because of the memories?

6 A It was too much.

7 Q I know this is brutal for you and I'm not trying to
8 hurt you --

9 A That's right.

10 Q -- but I want you to tell the jury what it's been
11 like to lose the babies.

12 A It's a living hell. I don't know how to explain it.
13 It just changed my whole world, you know. I don't sleep,
14 it's been really, been six years for me because, you know.

15 Q Yes, sir.

16 A Excuse me.

17 Q When -- you've told the jury already, when Tim was
18 arrested and you got a call from Smith County Sheriff's
19 Department, you went down there as quickly as you possibly
20 could, right?

21 A Yes, sir. Yes.

22 Q And I know the jury knows this and I'm not -- I don't
23 want to revisit like blow by blow, but what was your
24 purpose in going down there when you went -- when they
25 asked you to come?

1 A To see what was going on. Why he was there with no
2 children. You know, why we didn't know where they were.

3 Q And did you want to find the babies desperately?

4 A Yes.

5 Q Did you do everything that law enforcement asked of
6 you?

7 A Yes.

8 Q Did they even have to ask you to help?

9 A No.

10 Q Your -- the main people that you interacted with
11 there that you were trying to help was the Undersheriff,
12 Undersheriff Patterson, right?

13 A Yes.

14 Q And then, Sheriff Crumpton?

15 A Yes.

16 Q And I think -- Special Agent Johnson, I think, right?

17 A Yes.

18 Q And your decision to help them at that time --
19 because you wanted Timmy to tell them what happened,
20 right?

21 A Yes. Yeah.

22 Q And you stand by your decision to help them?

23 A I do.

24 Q Do you regret your decision to help them in any way?

25 A No. I don't.

1 Q And you're grateful to those in Mississippi for what
2 they did?

3 A And for South Carolina. Mr. Creech, as well.

4 Q And various people have come to you since that time
5 and asked you for your help, right?

6 A Yeah.

7 Q And that includes people from the Defense and from
8 the Prosecution?

9 A Yes.

10 Q Have you ever told anybody no?

11 A No.

12 Q Did you talk to Dr. Frierson when he was evaluating
13 Tim?

14 A Anybody who wanted to talk to me.

15 Q And you've talked to Mr. Hubbard from his office on a
16 couple of occasions?

17 A Yes. I've met Mr. Hubbard a couple of times.

18 Q Once here and once at your house, right?

19 A Yes.

20 Q And your decision to cooperate with everybody that's
21 asked for your help, do you regret that or do you stand by
22 it?

23 A I stand by it.

24 Q How have you memorialized the babies, personally, on
25 you?

1 A For me?

2 Q Yeah.

3 A Well, I just -- I think I feel more responsible than
4 anyone. I mean, what are you asking, exactly?

5 Q What did you do to memorialize the babies on you? On
6 your back.

7 A I got my back tattoo.

8 MR. SECOR: Your Honor, I ask permission for Mr.
9 Jones to be able to get down and show the jury the tattoos
10 of the babies.

11 THE COURT: Okay.

12 Q You can step down, Mr. Jones.

13 (Whereupon, the Witness stepped off the witness stand
14 and turned around to show his tattoos.)

15 Q Here, this is Merah up here on the upper left, right?

16 A Yes.

17 Q It looks like she's holding a puppy. Are these all
18 from pictures that you had of the babies?

19 A Yes.

20 Q And then, Elaine in the middle. And then, I think,
21 Gabe just to the right of Elaine. Eli, over here and
22 Nahtahn Nahtahn in the middle?

23 A Uh-huh (affirmative response).

24 Q And then, who's the left of Nahtahn?

25 A My brother.

1 Q Speak up just a little --

2 A My brother, Larry.

3 Q Larry. And is he the one that you told us died in
4 the motorcycle accident?

5 A Yes.

6 Q And then, to the right of Nahtahn, who's that?

7 A My sister, Elaine.

8 Q She's the one that died of cancer?

9 A Yes. Yes.

10 Q And when did you first start getting these tattoos?

11 A Just a few months after this happened.

12 Q Have you gone back to have them worked on again and
13 again?

14 A I have. It's getting a little harder, but, yeah.

15 I've still got more to do. It takes a little while.

16 Q Mr. Jones, do you want Tim to be put to death?

17 A No, sir. I don't. I love him so much. I don't want
18 to hurt no more. I mean, I've hurt enough. I mean, this
19 has destroyed my family.

20 Q Do you struggle with guilt?

21 A Every day.

22 Q And I want you to know that I'm not suggesting --

23 A I know.

24 Q But it's out of guilt for the babies?

25 A Yes. And my son, for that matter. I mean, it's more

1 for the babies, though.

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

3 Q This is -- Mr. Jones, this is 252. I think the
4 jury's seen this before.

5 A Yes, sir. This is me and Timmy when, the separation,
6 that year.

7 Q Yes, sir.

8 MR. SECOR: May I approach, Your Honor?

9 THE COURT: You may.

10 Q I'm just going to show you, Mr. Jones, what's been
11 marked as 329 and just ask you if you recognize that. Is
12 that a picture of the tattoos on your back that the jury
13 just saw?

14 A Yes, sir.

15 THE COURT: You said it's 329?

16 MR. SECOR: Yes, sir. I'd offer it into evidence. I
17 don't believe that there's any objection.

18 THE COURT: You have already more or less published
19 it, but put it back up there for --

20 MR. SECOR: Yes, sir.

21 THE COURT: -- the media. She is looking for the
22 picture. Okay, she wanted a picture of it.

23 MR. SECOR: I'm not sure how to get rid of the glare.
24 I'm sorry.

25 THE COURT: That's all right.

1 (Whereupon, Defendant's Exhibit number 329 was
2 admitted into evidence).

3 (Whereupon, Defendant's Exhibit 330 through 335 were
4 marked for identification only.)

5 MR. SECOR: Thank you, Mr. Jones.

6 THE WITNESS: Sure.

7 CROSS-EXAMINATION

8 By Mr. Hubbard:

9 Q Mr. Jones.

10 A Mr. Hubbard.

11 Q We've talked a lot about the care and love you raised
12 your son with, but you also mentioned there was a lot of
13 chaos in your house.

14 A Yeah.

15 Q But I think you've said, over and over, you did your
16 best to make sure your son knew, all the time, that you
17 loved him.

18 A I did.

19 Q You would even tell him you loved him?

20 A I did.

21 Q A lot of fathers --

22 A I do.

23 Q A lot of fathers can't even look at their sons and
24 say that, but you always did?

25 A I still do.

1 Q And when he was growing up, you always made sure he
2 had clothes on his back?

3 A Yes, sir.

4 Q He had food to eat?

5 A Yes, sir.

6 Q You always made sure he went to school?

7 A Yes, sir.

8 Q You took care of -- whatever's going on in your life,
9 you got him there on time?

10 A Yes, sir.

11 Q And made sure he did well and he did do well?

12 A I didn't have to help him with that part. He did
13 that--

14 Q -- he had a gift?

15 A He did. He does or he did.

16 Q And although you had work and he had school, you
17 spent as much time as you could with him?

18 A A little more, but yeah, I did.

19 Q You were involved in any activities that he was
20 involved in?

21 A I tried. Some things, I couldn't keep up with.

22 Q Special events, you made your best effort to be
23 there?

24 A I did.

25 Q So for whatever things were going on in that world,

1 Tim Jones, Jr., had a father that loved him and he knew
2 it?

3 A That was always a problem with Timmy. He always
4 didn't know it. He didn't think I loved him. Still, I
5 don't even know if this is going to prove it to him, but,
6 yes. I mean, yeah. He had love.

7 Q He didn't always reciprocate that love with you, did
8 he?

9 A Well, again, he just -- it just seemed like he didn't
10 believe me when he got a little older. I mean, when he
11 was younger, of course, all five, six, seven year old kids
12 love you to death. But as he got older, he just thought
13 that I didn't love him.

14 Q This issue with your ex-wife, Cindy, who we just saw
15 pictures of.

16 A Yes.

17 Q Did you ever tell your son when he was a little child
18 that his mama abandoned him?

19 A No.

20 Q Did you ever say, your mama doesn't love you?

21 A No.

22 Q That would be cruel, wouldn't it?

23 A It would be.

24 Q Did you assure him that you weren't going anywhere?

25 A Yes.

1 Q Did you let him know his mom was sick?

2 A I did when he was older. I mean, I told him. Yeah,
3 your mom's--

4 Q -- you didn't say anything bad about her?

5 A No, no.

6 Q As he got older, he started to challenge you more?

7 A A teenager.

8 Q And you've described -- I think you testified last
9 time, sometimes, dealing with him, when he got older, was
10 like walking on eggshells?

11 A Yes.

12 Q Any little thing could set him off?

13 A Yes.

14 Q He'd go to his room or he'd walk away and he wouldn't
15 talk to you?

16 A Sometimes. Yes.

17 Q He'd punish you?

18 A Pardon?

19 Q He'd punish you?

20 A I guess, I mean, I thought, yeah.

21 Q Your babies, grand-babies --

22 A Yeah.

23 Q -- you've said over and over how much they meant to
24 you.

25 A More than anything.

1 Q I don't think anybody is going to question that.

2 A Pardon?

3 Q I don't think anybody is going to question that.

4 A Okay. I hope not.

5 Q You drove all the way from your home down in Smith
6 County to help Marty Patterson and those other officers
7 find your babies?

8 A Yes.

9 Q And I believe you've told us, when you found out your
10 son and his kids were missing, you first thought was,
11 Timmy just drove them off a cliff.

12 A Well, that was later. My initial thought was that
13 he'd gotten back together with Amber and it's like, that's
14 fine. I mean, that's what I really thought, but, then,
15 when I realized what was going on, yes. When I talked to
16 Amber and that wasn't the case, I just thought that he
17 lost it.

18 Q You last saw them Christmas Eve of 2012?

19 A Yes, sir.

20 Q And that was the evening your son, Tim, Jr., --

21 A Yeah. 2014.

22 Q It was 2012, wasn't it?

23 A Oh, yeah.

24 Q I'm bad with dates, too. I've got to write them
25 down. December of 2012, Christmas Eve.

1 A Yeah.

2 Q He got upset with Jackie, your daughter,
3 step-daughter.

4 A It was all weekend.

5 Q I think you said he was ticked off at Linda at that
6 time.

7 A That's the way I took it. He was just upset because
8 he wasn't with his wife and family. I mean, he was with
9 his kids, but he missed Amber and he didn't have her, you
10 know. And I can understand because I went through a
11 divorce. So I know how he felt.

12 Q So he was -- I think you told us he was picking on
13 Jackie and he even started picking on Julie and got her
14 involved in it.

15 A Well, he didn't try to pick on Julie. But, yeah, he
16 was just nitpicking at Jackie. Just, you know, bugging
17 her and pestering her, you know.

18 Q And you intervened?

19 A Yes.

20 Q And he got upset?

21 A He did.

22 Q He always got upset if it looked like you were taking
23 someone else's side other than his?

24 A I mean, I guess, you could look at it that way.

25 Yeah.

1 Q Going all the way back when you got remarried. You
2 married -- is it Carolyn?

3 A Yes.

4 Q He got upset as a child --

5 A He was jealous.

6 Q -- that you picked a woman over him?

7 A That's the way he took it. Yes.

8 Q And that stayed with him?

9 A Yeah. I believe.

10 Q And when you married Julie, it's like, even though
11 he's older -- now, he helped you find Julie, but there
12 were times --

13 A Yeah. That's what it was.

14 Q On December of 2012, he packed his kids up and came
15 back to South Carolina?

16 A Yes, sir.

17 Q It was a year and eight months before you all talked
18 to one another? All of 2013 --

19 A Yeah. Whatever it is, that was--

20 Q -- all of 2013, there wasn't a single phone call?

21 A Well, but I knew what was going on. He was talking
22 to my parents.

23 Q And all the way into August of 2014, finally, you
24 picked up the phone and you made contact?

25 A Because of my father.

1 Q And you made plans to see him and the kids on Labor
2 Day?

3 A Yes.

4 Q And, obviously, your son killed your babies.

5 A He did.

6 Q If there was something going on in his life, he knew
7 he could always make sure those babies could stay with
8 you?

9 A Yes.

10 Q They loved you and they were happy being with you?

11 A Yes.

12 Q He knew that. You made sure he knew that?

13 A Well, I knew that. My family knows that. I just
14 don't know if Timmy knew that. I mean, again, he thought
15 that I chose everyone over him. You know, over him and
16 his children. That's the way he just sort of looked at
17 it. That's the way I looked at it, anyway.

18 Q And this one night in August of 2014, he made a
19 choice to take away all those babies from everybody,
20 including you.

21 A Yes.

22 Q To save himself?

23 A I don't know about that. I mean, to me, as I said
24 before he's a brilliant young man. And he snapped. I
25 don't know what caused it, but he snapped.

1 Q The bottom line is, the grief you feel --

2 A Yeah.

3 Q -- was inflicted by your son.

4 A That's right.

5 Q And he's the reason why your babies aren't here.

6 A I blame myself more than him.

7 Q I know you do, but you know, he's the one that killed
8 those babies.

9 A I know, if I had been there, maybe, this wouldn't
10 have happened.

11 Q I think a lot of people say that, but he didn't want
12 you there.

13 A He actually did want me there, you know. So I'm not
14 sure --

15 MR. HUBBARD: Thank you.

16 THE WITNESS: Yes, sir.

17 REDIRECT EXAMINATION

18 By Mr. Secor:

19 Q Did the Solicitor's Office ever reach out to you as
20 being a victim in this case?

21 MR. HUBBARD: Your Honor, I'm going --

22 A No, sir.

23 MR. HUBBARD: -- to object. I'm going to object.
24 We've already gone through this.

25 THE COURT: I thought his testimony was the

1 Solicitors office had been to his house.

2 MR. SECOR: That's different than being reached out
3 to as a victim by the Victim's Advocate.

4 THE COURT: The Solicitor himself went to his house.
5 I mean, you can ask the question. Go ahead, recross. Go
6 ahead.

7 Q Did the Solicitor's Office reach out to you as a
8 victim in this case?

9 A No.

10 Q Did they reach out to you to gather information about
11 your family?

12 A I think so. Yeah. I mean, we talked about what was
13 happening.

14 Q Did you help them?

15 A I told them -- I did, you know, everything they
16 asked. I told them.

17 Q You answered every question that they had?

18 A Yes.

19 Q Do you love Tim?

20 A More than anything.

21 THE COURT: Solicitor.

22 RECROSS-EXAMINATION

23 By Mr. Hubbard:

24 Q Mr. Jones, did I ever, at any time, or anybody in my
25 office treat you in any kind of -- way--

1 A -- no, sir.

2 Q You came to my office and you allowed me to come into
3 your home?

4 A Yes, sir.

5 MR. HUBBARD: Thank you.

6 THE COURT: You can step down.

7 (Whereupon, the witness stepped down from the witness
8 stand).

9 THE COURT: You all haven't been here for quite an
10 hour, but we've been here a little more than that. We're
11 going to take a break. Step in the jury room. We'll be
12 right back in. It shouldn't be a very long break.

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

14 THE COURT: Before we stand down. What are you all
15 -- you said about proffering some more, maybe, the social
16 historian, or are you going to do that tomorrow? Before
17 we take a break, what have you all got in mind? Because
18 you all are kind of running the --

19 MR. SECOR: We were thinking about beginning the
20 proffer of the social historian, Deborah Grey's testimony
21 to give Your Honor an idea of why we think it's necessary
22 to the story. The bulk of the first half of it is
23 information before Tim's birth. So I assume that the
24 Court's ruling would, obviously, be the same about that
25 not being presented to the jury unless, of course, Your

1 Honor would change his mind.

2 THE COURT: All right. How long are you expecting
3 the proffer to take, just for the benefit of the jury. I
4 mean, do we need to send them home or give them an
5 extended break after we take ours. That's kind of what
6 I'm asking. Time wise, how do I manage the jury. What
7 are you thinking because I have told you that one Juror
8 has a 5:00 o'clock commitment and it's a few minutes to
9 3:00. We can work as close to 5:00 as y'all like.

10 MR. SECOR: I would be surprised if I could get it
11 done in the amount of time. It would make sense to keep
12 the jury until 5:00. We've worked over the weekend to try
13 to shorten it the most effective way we possibly can, but
14 because of the magnitude of the information and the number
15 of people in the family with various issues, it just,
16 unfortunately, takes a while to get through.

17 THE COURT: All right. And likewise, the proffer in
18 the morning of Dr. Flores. How long with her?

19 MR. YOUNG: Your Honor, I think it would be probably
20 30 to 45 minutes.

21 THE COURT: Were you wanting to do her early?

22 MR. YOUNG: She can be here at 9:00.

23 THE COURT: All right. Well, let's think about it.
24 Mr. Secor, you're thinking we're going to take 45 minutes
25 to an hour with her proffer? I'm asking you. We're going

1 to take a couple of minutes and you get me an answer. If
2 we're talking an hour or more or an hour or less and let's
3 work off of that. It would be my hope that we could get
4 the proffer done and, maybe, some testimony. But if we
5 can only get the proffer done, then so be it. I'd like
6 Dr. Flores first, and then go into the social historian as
7 either follow-up or initial testimony for the jury.

8 MR. SECOR: I think that the proffer of Dr. -- of
9 Deborah Grey's testimony would take up the remainder of
10 the day.

11 MR. YOUNG: One other issue for the record, Your
12 Honor. We would request to present the audio tape of the
13 proffer of Bethany Yeiser at this point during this phase
14 of the case.

15 THE COURT: Is she the one from Cincinnati?

16 MR. YOUNG: Yes, sir.

17 THE COURT: From a videotaping?

18 MR. YOUNG: We did not videotape her. We just have
19 the audio tape from the Court Reporter.

20 THE COURT: I thought that, the media recorded it.
21 Let me ask, I don't know, we can find out. If we did, we
22 will put that in.

23 COURT REPORTER: That is the one that was proffered.

24 THE COURT: I know but the media may have recorded it
25 for us. I don't remember, I will ask them.

1 MR. YOUNG: I've inquired.

2 THE COURT: All right. We're going to take a couple
3 of minutes and I'll probably excuse the jury. I'll think
4 about it for a minute and let me know.

5 MR. SECOR: Yes, sir.

6 THE COURT: We will do the best we can because I
7 don't want to impose on them if we don't have to.

8 MR. HUBBARD: Is there any other like short witness
9 that we could fit in before we do the proffer because we
10 can stay late on a proffer. But get the jury while we've
11 got them.

12 THE COURT: Yeah. So you all answer that question.

13 (Whereupon, a short break was taken.)

14 THE COURT: Maybe, I misunderstood you, Mr. Young. I
15 thought you said you wanted to proffer -- replay the audio
16 of the young girl from Cincinnati. You want to play the
17 testimony for the jury?

18 MR. YOUNG: I want to play what was previously
19 offered as a proffer as evidence for the jury.

20 THE COURT: Okay. I misunderstood you at break.

21 MR. HUBBARD: I did not hear what he just said. I'm
22 sorry.

23 THE COURT: What he said was, he wants to present the
24 audio recording of the young lady from Cincinnati and her
25 testimony for the jury. I thought he was offering to

1 proffer in this portion.

2 MR. HUBBARD: I thought it was a proffer for this
3 phase outside of the jury.

4 MR. YOUNG: I want her testimony played for the jury
5 is what it was. What was previously taken as her proffer.

6 THE COURT: I understand and I think -- I don't see
7 the difference in proffering -- I mean, excuse me. I
8 don't see the difference in my ruling changing, as far as
9 mitigating factors, in this phase as to her presenting on
10 her history and schooling, onset of schizophrenia and the
11 four years of homelessness, living in the dorm in the
12 library and then the treatment, how is that relevant to
13 the mitigation?

14 MR. YOUNG: It's her dealing with auditory
15 hallucinations and how they presented themselves with her
16 and the different types of them and how she explains them.

17 THE COURT: Solicitor, do you want anything on the
18 record?

19 MR. HUBBARD: Your Honor, we still think it's not
20 relevant. In fact, under 403, even in this phase, it can
21 confuse more than it could help because you're talking
22 about a different individual. We've already had Dr.
23 Maddox say that schizophrenia affects people different
24 ways. Her life experience is very interesting, but it in
25 no way parallels the Defendant's. I think it just -- it

1 confuses the situation. So I think, under 403 and 801 --
2 I mean, under 401, it's just not relevant and it's
3 confusing and prejudicial.

4 THE COURT: I can't think of why -- I think this is
5 different now, Mr. Young. It wasn't guilt or innocence
6 under 403 -- but I think I ruled under 401, 402 and 403
7 that it was not relevant. First of all, for 401 and 2,
8 but if it was relevant, it was confusing and prejudicial
9 and I don't see that it would help the finder of fact
10 because it wasn't associated with Mr. Jones' behavior. It
11 was different. So it's confusing, if it was determined to
12 be relevant. I don't think it would be -- I think it
13 would be prejudicial and confusing if it were played or
14 presented during any phase. Also still now.

15 MR. HUBBARD: Additionally, Your Honor. It was
16 offered as a proffer. We didn't ask her any questions.
17 So in effect, it would be testimony without State cross
18 because we acted under the belief that it was just a
19 proffer.

20 THE COURT: Okay. And we don't need to replay that
21 as a proffer here?

22 MR. YOUNG: No, sir.

23 THE COURT: Okay. You can mark the testimony as an
24 Exhibit, which Joy already has, and republish it as a
25 proffer herein.

1 MR. YOUNG: Yes, sir.

2 THE COURT: Okay.

3 MR. YOUNG: We would object under State V. Mercer,
4 381 SC 149, that the application of Rule 403 should be
5 cautiously invoked against Capital Defendant in the
6 penalty phase especially in light of due process and of
7 the State when a Capital Defendant seeks to introduce
8 mitigation.

9 THE COURT: Okay. The record is protected.

10 MR. YOUNG: As far as -- the State chose not to cross
11 her. They certainly had an opportunity to do so and that
12 is part of the purpose of a proffer. It's not just --
13 it's for them to exercise their opportunity to cross if
14 they so choose and they chose not to.

15 THE COURT: Okay. That's fine. My analysis is not
16 on the State not having an opportunity to cross. It's
17 more of -- not taking the opportunity to cross. I still
18 think it's a relevance issue.

19 MR. HUBBARD: Your Honor, as to Deborah Grey. I'm
20 still not exactly sure what the basis is. They're not
21 even attempting to call her.

22 THE COURT: Yes, they are.

23 MR. HUBBARD: As a witness before the jury. Are
24 they?

25 THE COURT: Yeah. They're going to call her as a

1 witness before the jury. They just want to proffer before
2 they have her testimony.

3 MR. HUBBARD: Okay. Is that what we're doing?

4 THE COURT: No. That's what we're --

5 MR. HUBBARD: See, I'd been told --

6 THE COURT: Here's what I understood -- my question
7 beforehand was, how much of a proffer can we get done
8 today. What they basically said is we hope we can get all
9 of it today. And then tomorrow will be the testimony
10 she's going to present in front of the jury. Correct?

11 MR. HUBBARD: I'm sorry. I'd been told that we were
12 just going to put her up here and proffer her and that
13 we're sending the jury home.

14 THE COURT: Well, we are, but she's going to testify
15 tomorrow post-proffer.

16 MR. HUBBARD: Post-proffer.

17 THE COURT: I mean, '81 to now. Am I right?

18 MR. SECOR: That's my understanding. That's my
19 intention.

20 THE COURT: Okay.

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

23 THE COURT: All right, folks. I'm sorry for the
24 delay. I'm going to send you all right back out and send
25 you on home. Okay? I've got to listen to some issue on

1 the record and it may take closer to 4:30, 5:00 o'clock
2 that I've got to listen to. I'm not going to make you all
3 sit around for an hour, hour and a half. I'm going to
4 send you all home. Don't talk about the case. Leave
5 everything here. 9:00 o'clock tomorrow, 10:00 o'clock be
6 back in the jury room. I have got some stuff in the
7 morning. I'm trying to keep you all out of trouble, from
8 sitting in the jury room for an extended period of time.
9 So I'm sorry for keeping you back for fifteen minutes.
10 Anyway, see you all in the morning about 10:00.

11 (Whereupon, the jury was excused from the courtroom
12 for the day.)

13 MR. YOUNG: Whenever you're ready --

14 THE COURT: I've been waiting on you.

15 MR. YOUNG: Oh, I'm sorry.

16 THE COURT: I was about to leave. I thought we were
17 done.

18 MR. YOUNG: Thank you, sir. The Defense calls
19 Deborah Grey.

20 DEBORAH GREY, being
21 first duly sworn, testified as follows:

22 MADAM CLERK: Once you're seated, state your full
23 name, spelling your last.

24 THE WITNESS: Deborah T. Grey, G-R-E-Y.

25 THE COURT REPORTER: G-R-E -- and how do you spell

1 your first name?

2 THE WITNESS: D-E-B-O-R-A-H.

3 DIRECT EXAMINATION

4 By Mr. Secor:

5 Q Ms. Grey, if you would, just tell the Judge about
6 your background, please, and education.

7 A I went to Wake Forest University and attended
8 graduate school there, as well, graduating in 1973. I
9 then went to work for the Department of Social Services,
10 where I worked for a total of nine years doing adult
11 protective services and children and family counseling
12 with kids who had been abused and neglected and
13 adjudicated. I then went to graduate school in the middle
14 of that and continued at Social Services before I went to
15 work at a psychiatric hospital where I worked with
16 adolescents near families. Ultimately, I ended up in more
17 of a managerial position there, but I continued to do work
18 with adults primarily. I went into private practice with
19 a group of psychiatrists in about 1982 and I stayed there
20 until about four or five years ago. I saw, primarily,
21 individuals with mood disorders. I did initial
22 assessments for the physicians who would then see the
23 patients and often, prescribe medications. I also did
24 treatment. I saw, probably, 35 to 45 patients a week
25 during the time that I worked there. About 20 years ago,

1 I started working with -- in the legal system doing
2 complex psychosocial histories on individuals who had been
3 charged with fairly serious crimes. Oftentimes, Capital
4 murder.

5 Q And tell us how you create a social history and what
6 the purpose of it is.

7 A The shorthand for this is a social history. The
8 longhand is biopsychosocial history, which is kind of a
9 mouthful, but what it means is, there's a biological side
10 to that where we are looking at an individual's genetic
11 tendencies. What they may have inherited from their
12 family. We're looking at things like IQ, temperament,
13 medical illnesses, experienced mental illnesses, injuries,
14 head injuries, that sort of thing. On the psychological
15 side of that, we're looking at their cognitive and social
16 and emotional competence and how that has developed
17 overtime. Their ability to concentrate, their ability to
18 problem solve, their ability to regulate their emotions
19 and their ability to create and sustain in depth
20 relationships with people. And, finally, the social side
21 of that is, how are their relationships? How have they
22 related to people overtime? Do they have in depth
23 relationships with people? What sorts of things disturb
24 relationships for this individual? So that's a
25 biopsychosocial history and to do that, I meet with the

1 individual many, many times, I meet with as many of the
2 family members as I possibly can and I review records.
3 And then, I interview other people who've known the client
4 overtime.

5 Q And are these social -- I'm just going to say, social
6 history for brevity. But these are things that are relied
7 upon by experts in the fields that you've worked in?

8 A Yes. Historically -- when I first started out in
9 social work, they were relied upon primarily by
10 psychiatrists. In the legal world, they're oftentimes
11 relied upon by forensic psychiatrists and forensic
12 psychologists as a basis of their opinion.

13 Q And how many of these do you think you've done in
14 your career or have been involved in creating?

15 A In the psychiatric field, I would say, thousands. In
16 the legal venue, I would say, maybe, 100, 150.

17 Q So that's your role in this case?

18 A Correct.

19 Q Creating a social history for Tim and -- the social
20 history of Tim Jones, Jr.?

21 A Yes. And I should mention, when I talked about, what
22 do I do to gather this information. In addition to
23 reviewing records on the client, I review records on as
24 many of the family members as I can going back as far as I
25 can--

1 Q Yes, ma'am.

2 A -- so that it's an extended process and it's a deep
3 process.

4 Q Yes, ma'am. And just for purposes of the record, I
5 just want to -- you've looked at these notebooks -- these
6 notebooks are all the documents that you've reviewed and
7 you've looked at these notebooks to ensure that, right?

8 A I did. Yes. They are double sided.

9 Q Okay.

10 A The pages. And I will say that what I reviewed were
11 electronic documents. Not the paper documents.

12 MR. SECOR: And just for purposes of the record, Your
13 Honor, this is what's been marked for identification
14 purposes as Def?

15 A Defendant's Exhibit 353, 354, 355, 356, 357, 358,
16 359, 360.

17 Q And you mentioned, also, meeting with Tim --

18 A Yes.

19 Q -- is that right? And then, meeting with members of
20 his family and people that knew him?

21 A Correct.

22 Q And do you have an approximate number of the number
23 of people that you actually met with for purposes of
24 creating this? And it doesn't have to be exact.

25 A I'd say, probably close to 30.

1 Q Okay.

2 A I'd have to check. Some of the folks, I interviewed
3 more than once.

4 Q Yes, ma'am. You've been to five or six states, I
5 think?

6 A Yes. I started off in Mississippi where his family
7 now works. And then, I went up to Syracuse where I
8 interviewed his mother. And then, I went to Austin where
9 I interviewed several fellas from Intel. I went to
10 Chicago on two occasions to interview people that knew him
11 growing up in Chicago and some of the family that's still
12 in Chicago. I went to Toledo and interviewed Pastor
13 Sutton. I went to Alabama and interviewed a neighbor from
14 when he was growing up and I went back to Mississippi and
15 that covers it.

16 Q And you spent a bunch of time in South Carolina, as
17 well?

18 A And -- I did. Yes.

19 MR. SECOR: Your Honor, can I just ask Mr. Young
20 something, quickly?

21 THE COURT: Sure.

22 MR. SECOR: I think I've gone over your experience
23 and background and just for purposes of the record, I
24 would offer Ms. Grey as an expert at this point just for
25 the record, I guess.

1 THE COURT: Any voir dire of Ms. Grey?

2 MR. HUBBARD: No, sir, Your Honor.

3 THE COURT: She'll be an expert on biopsychosocial
4 history. Is it biopsychosocial historian?

5 THE WITNESS: Biopsychosocial history. I'm a
6 licensed clinical social worker.

7 THE COURT: So she's offered as an expert in that
8 field. Biopsychosocial --

9 THE WITNESS: -- history as a licensed clinical
10 social worker.

11 THE COURT: Okay.

12 MR. SECOR: Your Honor, if we may, I was going to
13 have Ms. Grey come down and one thing that she creates a
14 part of the social history is what's called a genogram,
15 which is an extraordinarily condensed version. And just
16 ask her to put it on the overhead and explain it to us.
17 Is that okay with you?

18 THE COURT: Yeah. Do you have a small one I can have
19 in my hand?

20 MR. SECOR: Yes, sir.

21 THE COURT: My eyes are clearer up close.

22 MR. SECOR: I've got the giant one.

23 (Whereupon, a sidebar was held).

24 MR. SECOR: Is it all right if she comes to the
25 overhead --

1 THE COURT: Sure. Sure.

2 MR. SECOR: -- so that she can point things out?

3 THE COURT: When she starts pointing stuff out, I can
4 read all the small text here.

5 MR. SECOR: There's two versions, Your Honor, and as
6 you can see -- I don't know why I'm talking. Ms. Grey
7 should be talking.

8 A This is what's called the genogram and it's something
9 that's used typically by social workers. But it's also
10 used by medical professionals to indicate a family
11 structure. And the key to that is that a circle
12 represents a female and a square represents a male. And
13 if you look up here (indicating), where the main dot is,
14 that line represents a union. And in this instance, it's
15 a marriage and down below, it would be the children. If
16 there's an X on a circle or a square it means that that
17 person is deceased. So that's how you read a genogram.
18 In this particular instance, this is a genogram that
19 covers his father's side of the family and over here
20 (indicating) is his mother's side of the family. Here is
21 Tim, Jr., and Amber and the children. His father, Tim,
22 Sr. Grandmother, Roberta. Great-grandmother and
23 great-grandfather and grandfather.

24 Q Now, this is --

25 THE COURT: That looks a lot different than the one

1 she's handing me.

2 MR. SECOR: Yes, sir.

3 THE WITNESS: It is.

4 MR. SECOR: I'm sorry.

5 Q And the reason why you're showing Judge Griffith this
6 version, Ms. Grey, is what?

7 A This is the bare bones. This is as I find out who
8 are all the people in this family and what is their
9 relationship to each other and what year were they born.
10 This is what I start out with and as you can tell in this
11 particular instance, there's some confusion and complexity
12 to it going back a couple of generations. And what Mr.
13 Secor is going to show you is what happens after I've
14 reviewed records, talked to people and put together what
15 the relationships are and what the inner-generational
16 patterns are in those.

17 MR. SECOR: Your Honor, that, I believe, is the one
18 that Your Honor has. But this is the same version and Ms.
19 Grey will --

20 THE COURT: Okay.

21 A Yeah. Okay. So when I put this together, what I was
22 looking for were patterns across generations of various
23 things. When people go to see the doctor these days, the
24 doctor will say, tell me if you have a family history of
25 diabetes or heart disease or seizure disorders. When you

1 go to see a social worker, they ask you, did your parents
2 have or did your grandparents have, what do you know about
3 what these folks had, as far as major illnesses. Yes, but
4 also, in terms of mental illness, which is heritable;
5 substance abuse, which is heritable; and also, behaviors
6 related to parenting, as well, as violence and domestic
7 violence and there are a number of reasons for that. When
8 I'm looking at an individual like Mr. Jones and I'm
9 looking at, say, his parenting patterns, I want to know if
10 the way that the parents has been the same all the way
11 through from when he first started having children until
12 he did not. But I also want to know, is that reflective
13 of the way that he was raised. Is it totally different
14 from how he was raised or is it a combination of how he
15 was raised and being totally different. If there are
16 parts of that that are part of how he was raised, then I
17 want to know how his father was raised because how his
18 father raised him had a whole lot to do with how he was
19 going to approach child rearing and relationships himself.
20 If there seem to be patterns there, then I want to go as
21 far up the ladder as I can to see what I can find out
22 about these family patterns and where they may have begun.
23 Patterns of violence, patterns of mood disorder, patterns
24 of a variety of things that I will go through with each of
25 these individuals, if that's okay, very quickly.

1 THE COURT: Yes, ma'am.

2 A Okay. We have, with his grandmother, Roberta and
3 I've reviewed a number of Roberta's medical records. But
4 I've also reviewed legal records from Ms. Thornsberry.
5 And so, when I'm going through these, what I'm going to be
6 talking about is what are the things that led me to put
7 these labels up here. Why are they there. So we'll start
8 with the grandma. Going back to 1986, charged with
9 reckless conduct, shooting at her husband. Another 1986
10 domestic dispute. In 1987, conviction for possession of
11 cannabis and cocaine. Another 1987 domestic dispute. In
12 1990, arrested for fighting. 1998, arrested for theft
13 with children present at the time. Psychiatric diagnoses
14 beginning in 2005 with major depression, single episode,
15 moderate, treated with Prozac. In 2006, anxiety and
16 depression, treated with Trazodone and Wellbutrin. In
17 2007, increased depression with anxiety, treated with
18 Lexapro, an antidepressant. Schizoaffective disorder,
19 treated with Lithium, a mood stabilizer; Seroquel, an
20 antipsychotic; and Remeron, antidepressant. Bi-polar two,
21 mixed type of history of psychosis, anxiety disorder. And
22 the other medicines that were also included were Klonopin,
23 which is an anti-anxiety medication; BuSpar, anti-anxiety;
24 Chantix, smoking; and Trazodone is an antidepressant
25 that's often given to help people with sleep. In 2008,

1 the diagnoses were bi-polar and ataxia, bi-polar disorder
2 or schizophrenia, mood disorder, generalized anxiety
3 disorder, histrionic or borderline traits, treated with
4 Depakote, a mood stabilizer; Trazodone, Mirtazapine, an
5 antidepressant; Wellbutrin, an antidepressant; and
6 Clonazepam, which is --

7 THE COURT REPORTER: I need you to slow down.

8 A -- an anti-anxiety medicine. I need to go slower?

9 THE COURT REPORTER: Yeah. There's a lot of
10 medicines involved.

11 A Okay.

12 THE COURT REPORTER: Yeah. If you don't mind.

13 A In 2006, anxiety and depression, treated with
14 Trazodone, T-R-A-Z-A-D-O-N-E, and Wellbutrin,
15 W-E-L-L-B-U-T-R-I-N. In 2007, depression with anxiety,
16 treated with Lexapro, L-E-X-A-P-R-O. Schizoaffective
17 disorder, treated with Lithium, Seroquel, S-E-R-O-Q-U-E-L,
18 and Remeron, R-E-M-E-R-O-N. Bi-polar two, mixed type,
19 with history of psychosis. Anxiety disorder, treated with
20 Remeron, Clonopin, C-L-O-N-O-P-I-N, Lithium, Seroquel,
21 S-E-R-O-Q-U-E-L, Lexapro, BuSpar, B-U-S-P-A-R, Chantix and
22 Trazodone, T-R-A-Z-A-D-O-N-E. 2008, bi-polar and ataxia,
23 A-T-E -- A-T-A-X-I-A, which just means restless movements
24 and are usually related to a psychiatric medication,
25 treated with Depakote, D-E-P-A-K-O-T-E, Trazodone and

1 Mirtazapine, M-I-R-T-A-Z-A-P-I-N-E. Bi-polar disorder or
2 schizophrenia with a question mark. Mood disorder NOS.
3 Generalized anxiety disorder. Histrionic or borderline
4 traits, treatment with Wellbutrin and Clonazepam. 2009,
5 depression NOS, rule out mood disorder. No recent
6 psychosis, two to three years. PTSD, GAD, histrionic and
7 borderline, history of alcohol abuse. 2017, depression,
8 bi-polar. Most recent episode, mixed with psychotic
9 behavior. Personal history of schizophrenia and child
10 sexual abuse, raped. Roberta's then treated with mood
11 stabilizers, antidepressants and anti-anxiety medications.
12 And so, up here (indicating), we have the diagnoses, just
13 the shorthand, or there are diagnoses there. Larry is her
14 husband and the only grandfather that Mr. Jones has known.
15 Not a blood relative, but what's significant would be his
16 legal record, which is short, but significant. In 1986,
17 harassment and domestic violence. In 1987, possession of
18 cannabis and cocaine. Larry Thornsberry, Jr., who is
19 Uncle Larry that we've heard talked about, had a record
20 for a protection order against him in 2000 and he was
21 reported as bi-polar by his mother and other family
22 members. Tim's aunt, Elaine Schrader, is known within the
23 family to have had problems with substance abuse
24 specifically, drug addiction. On this side over here
25 (indicating), also on the paternal side, there are two

1 suicides from cousins and both of those were reported. I
2 don't have documentation of that. I do have documentation
3 of the suicide of Roberta's brother, Eugene, and of her
4 sister, Carol. Eugene's suicide was at the age of 18.
5 Carol was 15 when she committed suicide. There is an
6 uncle -- two uncles up here who share the same
7 great-grandfather with Mr. Jones, only, he is their
8 father. And both of them have documented problems with
9 substance abuse. So that's the mother's side of the
10 family.

11 Q Yes, ma'am.

12 A Excuse me. The father's side of the family. This is
13 the mother's side of the family (indicating). So this is
14 our client's mom, Cynthia Jones, and she has an extremely
15 lengthy record. In 1982, battery, she was the victim.
16 1982, battery, she was the perpetrator. 1985, criminal
17 damage to property and disorderly conduct and I have a lot
18 of diagnoses--

19 MR. SECOR: Is it all right if Ms. Grey shows Ms. Joy
20 the sheet that she's reading from so that she doesn't have
21 to spell them out. Would that be easier?

22 THE COURT: If it would help Joy, it certainly will
23 help us.

24 THE WITNESS: I can't read it and show it to her at
25 the same time.

1 MR. SECOR: You can stand over here.

2 THE COURT REPORTER: Well, I mean --

3 THE WITNESS: Okay.

4 MR. SECOR: Would that help?

5 THE COURT REPORTER: No.

6 MR. SECOR: Okay.

7 THE COURT REPORTER: Just read slow.

8 MR. SECOR: Yes, ma'am.

9 A Okay. 1988, schizophrenia, disorganized, acute.

10 THE COURT: And I'll let you keep reading.

11 Everything that she's done thus far has been '81 forward
12 except for a few comments about --

13 MR. SECOR: Yes, sir.

14 THE COURT: We can keep presenting, but so far,
15 you're okay.

16 MR. SECOR: Yes, sir. We haven't begun the social
17 history. What she is demonstrating with the genogram is
18 the result of the social history shed -- to create this
19 picture and some of the things -- yeah. Some of the
20 diagnoses and some of the arrests are post-Tim's birth,
21 but I think that you'll hear, when she begins going
22 through the social history, it begins back with Ted
23 Montane.

24 THE COURT: I don't disagree with that. So far,
25 you're okay.

1 MR. SECOR: Okay.

2 THE COURT: I mean --

3 MR. SECOR: I understand. And I think the genogram
4 ultimately -- obviously, I believe that it's all relevant
5 and admissible. Obviously, that's up to Your Honor. I
6 think the genogram is probably admissible, but the story
7 behind the genogram, the social history, is what I believe
8 that the Court's ruling would prevent for purposes of
9 presentation in front of the jury prior to '81. If Your
10 Honor would prefer us to just do the stuff that you think
11 is likely to be inadmissible and save this for later, we
12 can do that, if you think it's more appropriate to address
13 that.

14 THE COURT: You know, the purpose of the proffer thus
15 far is to create the stuff you're trying to get in.

16 MR. SECOR: Yes, sir.

17 THE COURT: The fact that these folks have lengthy --
18 and she has a long list of things they have --

19 MR. SECOR: Yes, sir.

20 THE COURT: -- all of that is going to be allowed.
21 You don't have to proffer that.

22 MR. SECOR: Okay.

23 THE COURT: You can.

24 MR. SECOR: No. I'm just trying to -- as we say, out
25 of an abundance of caution. But if you want me to go

1 directly to what I believe to be excluded by Your Honor's
2 ruling, I'm happy to do that. If you think that makes
3 more sense. Whatever you would prefer. If you'd like us
4 to go right to the social history and begin on page one
5 and tell you all of the things that we think we need to
6 tell the jury in order for them to understand this
7 genogram, I'm happy to do that.

8 THE COURT: All right. Let's do this. Why don't we
9 skip the medical history of each one.

10 MR. SECOR: Yes, sir.

11 THE COURT: It's going to be allowed, if you want to
12 present it.

13 MR. SECOR: Yes, sir.

14 THE COURT: She's got it.

15 MR. SECOR: I understand. Thank you.

16 THE COURT: And, say, lengthy medical history and a
17 lot of mental illness diagnosis and so on. She can detail
18 them when she goes through it tomorrow.

19 MR. SECOR: Okay. Yeah.

20 THE COURT: How about --

21 MR. SECOR: She can do that in front of the jury.

22 THE COURT: How about, compress some of the stuff
23 that's not needed for me.

24 MR. SECOR: Yes, sir.

25 THE COURT: An extensive mental health history --

1 MR. SECOR: Yes, sir.

2 THE COURT: -- of Ms. Cynthia --

3 MR. SECOR: Yes, sir.

4 THE COURT: -- and keep moving.

5 MR. SECOR: That's fine. And we can -- it may make
6 more sense to go to the social history. Just specifically
7 discuss the information that I think will be in dispute
8 regarding its admissibility. Is that all right with Your
9 Honor?

10 THE COURT: Sure.

11 MR. SECOR: Okay.

12 Q All right, Ms. Grey. You've been here some days of
13 the trial and heard some of the testimony from various
14 witnesses. The only reason I bring that up is to say, the
15 Court is aware of some of the details of Roberta's history
16 and Tim, Sr's., history. So I don't want you to skip
17 that, but you can just sort of gloss over it because the
18 Judge heard it very recently. So if we just start with
19 Roberta and we'll go from Roberta's childhood up to Tim,
20 Jr's., birth. Okay?

21 A So I heard Ms. Thornsberry testify to how she went to
22 the orphanage when she was about three years old and the
23 story about being left on the Court House steps. And
24 going back to stay with her mother who had married Ted
25 Montane and how Mr. Montane then began to rape her within

1 a day of her coming back to the home at seven or eight
2 years old. And in addition to that, she observed him beat
3 and torture her mother over an extended period of time.
4 He also sexually abused her sisters and by age 11, Ms.
5 Thornsberry was pregnant by Mr. Montane. Her mother knew
6 that and rather than take action on that, her mother
7 threatened to send Ms. Thornsberry away as an
8 undisciplined child if she said or did anything about
9 that. She came out of school in the fifth grade and had
10 this baby. She was listed on the birth certificate as 16
11 years old, but, in fact -- she was listed on Tim, Sr's.,
12 birth certificate as 16 years old, but I have her birth
13 certificate that shows that she was actually 12. So they
14 represented her as 16 at the hospital rather than as being
15 12.

16 Q That's because you've looked at things like birth
17 certificates and you know that Roberta was born in '51?

18 A Correct.

19 Q And Senior in '64?

20 A Right.

21 Q Okay. All right. So Senior is born and he,
22 eventually has two siblings. Is that right?

23 A Correct. She is taken away from her family by Mr.
24 Montane and they are -- as you heard her say, she was on
25 the run with him for a number of years as a young

1 teenager. First, with a baby. And then, she had the
2 second child when she was 14 and the third child when she
3 was 16. At 16 years old, he forced her to marry him,
4 putting 22 years old on the marriage certificate when, in
5 fact, she was 16 and he was 39 years old. He engaged in a
6 variety of abusive behaviors with her that --

7 THE COURT: Tell me, what's her birthday? Ms.
8 Thornsberry.

9 THE WITNESS: Ms. Thornsberry was born in [REDACTED]
10 [REDACTED].

11 THE COURT: Okay.

12 A So Tim, Sr., who told us earlier that he worried for
13 his mom because of what he saw and she talked about a few
14 of the things that happened, but she's talked to me about
15 some additional things. Including how Ted Montane would
16 beat her with a hammer, that he tied her into a chair and
17 beat her until she passed out. And then threw cold water
18 on her to revive her and beat her some more, that he
19 choked her until she would pass out. And then revive her
20 and choke her some more, that he would tell her to take
21 all of her clothes off and lie down in the bathtub where
22 he would beat her because he could hose her off
23 afterwards. It was easier and she wouldn't leave blood
24 around the house. When I asked her why these things would
25 happen, sometimes, they would happen out of the blue. But

1 oftentimes, it was because he thought she looked at
2 someone. That she had looked at another man. She did
3 something that displeased him.

4 Q And what did he force her to do for purposes of
5 making money?

6 A She was still a teenager. Middle teenager. Fifteen,
7 16 years old when he forced her into prostitution.
8 Keeping the money, he would take her places to meet with
9 men. One of the things that she reported was that the men
10 he took her to, some of them were actually quite a bit
11 nicer to her than he was. He got wind of that and stopped
12 the prostitution and put her to work in a factory.

13 Q And how long is Roberta and Senior living under this
14 Ted Montane?

15 A Until she was about 17 years old and I think one of
16 the things, for the purposes of family history, that's
17 significant. She was so young and these children were so
18 young and that they knew absolutely everything that was
19 going on in these small houses or trailers or apartments
20 that they were living in. There were no secrets in this
21 family. Everything was shared. So if she was being
22 beaten, if she was being raped, if they were cursing at
23 each other, all of the children would be aware of that.
24 The other thing is, she was a child herself and there was
25 no way that she could protect her own children from seeing

1 what she was going through. So there was a lack of
2 protection there from her mother to her and from her to
3 her children.

4 Q And how does she -- how does Roberta eventually get
5 away from Ted Montane?

6 A Roberta reconnected with someone from Hazard,
7 Kentucky, where she had been raised. A man named Larry
8 Thornsberry and Larry was also 17 years old. Roberta was
9 17 with three small children, a one year old, a three year
10 old and a five year old. Larry had no children, but he
11 knew all about what Roberta had been through because it is
12 a small town and Larry had come from a family with a lot
13 of trauma himself. Larry's dad was in prison for killing
14 two men, Larry's father had molested all of his sisters,
15 fathered a child, I believe, with one of them and had
16 beaten his mother badly. And one of Larry's sister had
17 accidentally killed the other sister while playing with a
18 loaded shotgun. So he was no stranger to trauma and hard
19 times himself and he helped Roberta and the children to
20 escape.

21 Q Yes, ma'am. And when they escaped from Ted Montane,
22 I think both Roberta and Senior mentioned that they lived
23 sort of on the run in fear of him. Is that what your
24 social history shows?

25 A Yes. What I heard from both of them was that they

1 were constantly on the move, that Roberta was always in
2 fear, looking over her shoulder to see if Ted was
3 following them. Tim, Sr., said that he went to probably
4 eight or nine schools. They lived in various places
5 across the country. Tim, Sr., said that life for him was
6 like living in a cesspool. It was violent at home, it was
7 scary at home, but the neighborhoods that they lived in,
8 especially as he got older, had a lot of violence, as
9 well. And so, there was lack of safety, sometimes, going
10 to school where he feared being jumped and beaten to going
11 home when he feared his mom was going to be jumped and
12 beaten.

13 Q So this is when Senior is about five years old,
14 right?

15 A From five to about age 12.

16 Q Okay. But the violence that he's experiencing at
17 home now is what's going on between Roberta and Larry. Is
18 that right?

19 A Yes. Once Roberta got away from Ted, although she
20 maintained that fear for a number of years, she began
21 drinking. Described it as a self medication to try to
22 make the nightmares go away, to make the fear, to make the
23 anxiety go away. But when she would drink, she would get
24 angry and when she got angry, it was usually at her
25 husband, Larry, and there were a variety of real rampages

1 that would take place in the house when she would get
2 angry and when she would get upset.

3 Q And is that kind of thing, in your experience, the
4 substance abuse in reaction to your past, is that
5 something that you've experienced with the people that
6 you've worked with?

7 A Yes. A lot of people with mood disorders have a
8 tendency, especially if there's a family history, to self
9 medicate using alcohol or using something like marijuana.
10 Something that they think will take the edge off without
11 realizing it's actually, potentially, making things worse.

12 Q Yes, ma'am. So we've heard, then, that Roberta
13 leaves Larry for a period of time and he's involved -- and
14 she's involved in a brief marriage to Phillip Caliendo?

15 A A man named Phillip Caliendo and I think Tim, Sr.,
16 may have talked briefly about an event when she was
17 married to Caliendo and what he told me was, mom would go
18 on these rampages. I would come home from school and
19 every room in the house was destroyed, but Caliendo had
20 money. And so, what Tim, Sr., said -- is it okay to quote
21 the family and their language?

22 Q Yes. Your Honor knows that some of the language that
23 you've heard from the family can be a little bit salty and
24 --

25 A One of the things that I think is important about

1 using the language that's used in this family is, this
2 language was used around children and it was used around
3 children consistently, day in and day out. So the
4 language I'm using is similar to the language used in the
5 family and Tim, Sr., said of mom's married to Phillip
6 Caliendo, "We went from dirt fucking poor to holy shit
7 rich and back to dirt fucking poor again."

8 THE COURT REPORTER: Can I get you to spell that
9 name, please?

10 THE WITNESS: C-A-L-I-E-N-D-O, Caliendo.

11 Q Was Phillip Caliendo abusive to Roberta or her
12 children, according to what you found?

13 A No. I don't think so. I believe that Roberta was,
14 perhaps, abusive to Caliendo on occasion, as he told Tim,
15 Sr., that Roberta had given him a heart attack and that's
16 why he was in the hospital. I think it was a very
17 combative relationship.

18 Q And it was Phillip Caliendo's house, I believe, that
19 Roberta one time tore apart --

20 A Yes.

21 Q -- is that correct?

22 A Correct.

23 Q And tell us about what your social history tells you
24 about that.

25 A That was the event that I was describing a second ago

1 --

2 Q I'm sorry.

3 A -- where Tim, Sr., came home and found the house to
4 be destroyed. It was a house in Oak Grove, Illinois.

5 Q Yes, ma'am. Sorry about that. All right. And then,
6 that relationship -- that marriage ends and what happens
7 after the end of Roberta's marriage to Phillip Caliendo?

8 A Roberta went back to Larry Thornsberry and a matter
9 of months later, Larry Thornsberry, Jr., was born. So
10 now, the household had Roberta, Larry, Jr., and Tim, Sr.,
11 who was 12, a 10 year old and an eight year old.

12 Q So Senior and his full siblings are all children of
13 Ted Montane. Is that correct?

14 A Yes. Larry Thornsberry, Jr., is the only child by
15 Larry Thornsberry that's not by Ted Montane.

16 Q Now, what is -- you described Larry and Roberta's
17 relationship before as being -- involving violence and
18 substance abuse, alcohol abuse. Tell us what happens --
19 does that continue when Roberta and Larry get remarried?

20 A It did and, again, I have a quote from Tim, Sr., that
21 describes what it was like. He said, "Her drinking was
22 always bad and got worse as she got older. She would take
23 it out on Larry and fuck up the house. She was an adult
24 prospect. My mom believes in this ghost shit. She
25 thought the house was haunted. Mom pulled a gun out,

1 pointed it at everyone and had a hair trigger and she said
2 she was going to kill all of you motherfuckers. She
3 claimed it was the spirits in her, and then busted up the
4 whole house again. They never arrested her. They just
5 let her go home. Our normal life was just constant shit.
6 You never knew what was coming next. You were always
7 alert and always watching to see what would happen. My
8 dad, Larry, tried to do the best that he could with that."

9 Q And is Ted Montane still sort of lurking in the back
10 of people's minds at this point?

11 A For the years that they were on the run, he was
12 definitely on their minds. And then, at some point,
13 Roberta became emboldened and let him know that she could
14 hurt him. She went outside his house and fired a gun and I
15 think, at that point, from what I understand, she felt
16 less fearful of him because she felt that she could hurt
17 him if she had to.

18 Q Now, we're getting close to 1980 and what is --
19 what's -- Tim, Sr., what's his life like at this point?

20 A Tim, Sr., has been through a lot at this point and
21 while his main job would be going to school. For all
22 intents and purposes, he appears to have stopped going in
23 about the eighth grade. In the ninth grade, he had about
24 40 absences -- 50 absences, which is the equivalent of 10
25 weeks, and only earned two credits for the entire year.

1 Nonetheless, they promoted him to tenth grade where he had
2 42 absences in the first semester, and then dropped out
3 for lack of interest. So he was about 16 at the time.

4 Q Did he ever return to school, based on what you've
5 found out?

6 A Not to high school. I'm not sure whether he's gotten
7 a GED. I know he's gotten professional training since
8 then.

9 Q Yes, ma'am. Now, is there anything that you feel
10 like the Judge needs to know before we introduce Cynthia
11 Granada?

12 A I think -- if you look at this chart, you can see
13 those red squiggly lines and the red squiggly lines mean a
14 pattern of violence and sexual molestation. And so, what
15 you see on both sides of this family is that there is a
16 pattern of sexual abuse by father-type figures both on
17 Cynthia's side, as well, as on Roberta's side. What you
18 see on Roberta's side of the family is this lack of
19 protection, that her mother didn't protect her from Ted
20 Montane. She felt unloved and unwanted and abandoned by
21 her mother. And then, her son comes along, Tim, Sr., when
22 she's 12 years old and being carted around the country by
23 a predator, and then trafficked by the predator for sex
24 and she couldn't -- didn't protect her children from that.
25 Because of her being 12 years old when she started having

1 children, there's a lack of awareness of child
2 development, there's a lack of awareness of appropriate
3 parent/child interactions and the boundaries that need to
4 exist between parents and children like you don't talk
5 about grownup business with children. In this family,
6 whatever grandma's business was, whatever Roberta's
7 business was, was the children's business, as well. So
8 there were no boundaries there and because of how she had
9 been raised -- these children, to the best of her
10 knowledge, were not being molested. These children were
11 not being beaten. They observed her molestation. They
12 observed terrible beatings of her, but in her mind, that
13 was better than what she went through. So there's a lack
14 of awareness of what constitutes healthy relationships for
15 children and what they need and that's what Tim, Sr., was
16 raised with. So by the time he came through and dropped
17 out of school at 16 years old, all that he had ever known
18 was what he had experienced with his mother. His 12 year
19 old mother who was now 28 years old when he dropped out of
20 school at age 16. So this is a family that has no
21 boundaries, that has a history of violence, that has a
22 history of predators, that has a history of not keeping
23 good boundaries with the children and poor parenting
24 practices.

25 Q And for the first five years of Senior's life, the

1 male role model in his life was Ted Montane?

2 A That's correct.

3 Q Who is, simultaneously, his biological father and
4 step-grandfather?

5 A That's right. His role model after that would have
6 been Larry who he is close to, but his model for a
7 relationship was Roberta and Larry's relationship and
8 there was a lot of love there, but there was also a lot of
9 ups and downs and violence.

10 THE COURT: How old is Larry?

11 THE WITNESS: The same age. Only about five months
12 different from Roberta.

13 THE COURT: And Tim, Sr., his birthday?

14 THE WITNESS: Tim, Sr., is [REDACTED].
15 [REDACTED].

16 Q So when Senior is about -- well, how old is he when
17 he meets Cynthia?

18 A He was about 16 years old.

19 Q And she was?

20 A About 16, also. She is a few months younger than he
21 is.

22 Q Okay. And I just want to stop for a second now and
23 go back in time because this is the first time that
24 Cynthia appears in the story. But let's go back and find
25 out what has happened in Cynthia's life and her social

1 history prior to the date that she meets Senior.

2 A Cynthia was born [REDACTED]. So about 10
3 months after Senior was born and she was the fifth of nine
4 children born to Domingo and Maggie Granada, born
5 initially in Wisconsin and came to Illinois for unknown
6 reasons. What I know about this side of the family comes
7 through her psychiatric records and it comes through
8 family members on the Jones side of the family who have
9 been close to people on the Granada side of the family.
10 With one exception, the people on this side of the family
11 declined to speak with me. So I don't know firsthand,
12 from them, what happened. I do know, from these other
13 sources, some information.

14 Q Just briefly, do you know some of the explanations
15 that have been given for why these people on Cynthia's
16 side of the family didn't want to talk?

17 A The sense for what I was told that it was too
18 painful. It was too difficult. They didn't want to go
19 digging back up in their family's secrets and their family
20 history.

21 Q Yes, ma'am. All right. I'm sorry. Please, continue
22 with Cynthia's background.

23 A So Cynthia is the fifth of nine and she later
24 reported to her psychiatrist that she was initially
25 sexually abused at age three by a stranger who was staying

1 in the house with the family. But from that time on, she
2 was routinely sexually abused by various adult males that
3 would come in and out of the house. More than that isn't
4 known. She did say, at some point, when they were trying
5 to help her with her indiscriminate sexual behaviors --
6 someone would say they wanted to have sex with her and she
7 felt like it was rude to say no. And so, her therapist
8 was trying to talk with her about that and she relayed a
9 story from when she was four years old. She said that she
10 used to wonder when she was four, after intercourse, was
11 it rude to roll over, suck your thumb and fall asleep,
12 what did the mommies do.

13 Q In the psychiatric records of Cynthia that you
14 reviewed, did her treating doctors, at various points,
15 surmise that something horrifically tragic had happened to
16 her around that age?

17 A They did. Yes. Cynthia's father also was into a
18 form of voodoo called Santeria and what she reported to
19 the Jones family was that he used to lock her in a dark
20 closet with dead chickens bleeding down on her while she
21 was huddled on the floor. She told her psychiatrists that
22 her father kept bottles with preserved fetuses and fingers
23 and dead animals in it, that he had human and animal
24 skulls and that he practiced some sort of rituals with
25 candles and that her mother knew about all of that, didn't

1 agree with it, but her mother didn't protect her or the
2 other children from this. Nor, did her mother protect her
3 from the sexual abuse that she was going through.

4 Q And this man is Domingo Granada that you're talking
5 about now, Domingo, Sr., right?

6 A Yes.

7 Q And he was back and forth to Texas a lot when she was
8 young. Is that right?

9 A Yes. It seemed like -- one of the psychiatrists said
10 that it looked to her like he was back and forth from
11 Texas, staying in town only long enough to get her
12 pregnant again before he would leave and the psychiatrist
13 noted how difficult life must have been for this family
14 with a growing number of children and a dad who was having
15 also a lot of legal problems related to substance abuse at
16 that time.

17 Q All right. Is there anything that I've neglected, up
18 to this point, before we sort of talk about the meeting of
19 Senior and Cynthia? I guess, it's important for the Judge
20 to understand what she comes into this relationship with.
21 What does Cynthia bring into this relationship with
22 Senior?

23 A What you see on Cynthia's side of the family is,
24 again, the sexual abuse, which means no parent/child
25 boundary, but there's also no protection. She is left

1 unprotected while these things are happening to her.

2 Also, there's a lack of good parenting practices in a
3 family where voodoo is being practiced as is sexual
4 molestation. So she comes into the family with little in
5 the way of parenting practices because of what she's been
6 through and what she has been through is a tremendous
7 amount of trauma.

8 Q And do we know how it was -- what does your social
9 history say about how she left her home?

10 A My understanding is that, gradually, she just started
11 staying at the Jones house and -- not the Jones house, at
12 that point. The Thornsberry house at that point and that
13 Roberta called her mother and said, your daughter is over
14 here, do you mind, and the mother said, basically, you can
15 have her. She was 16 years old at that point.

16 Q And you've spent time talking to Cynthia where she
17 lives now?

18 A I have.

19 Q And she's been able to give you some information
20 about that period of her life?

21 A Very limited.

22 Q Very limited. Yes, ma'am.

23 A Her remote memory. It's very poor.

24 Q Yes, ma'am. Now, for purposes of the information
25 that you've told the Judge about today. You, obviously,

1 rely on what people tell you for a social history?

2 A I do.

3 Q And what do you do with information that you receive
4 just in terms of self-reporting from various people?

5 A What I do is, partly, contained in these notebooks
6 here (indicating). And then, I look for anything in a
7 record that might substantiate or back up what someone is
8 telling me. For example, there was a story that I heard
9 floating around about Timmy, as a baby, being kidnapped by
10 his mother out of the house window and a police report
11 showed up that described exactly that. There were reports
12 about Roberta trying to shoot at Larry. A police report
13 showed up about that and gave contemporaneous descriptions
14 of what these police officers saw happening in this home.
15 So that's one way that I look. In medical records, also,
16 as well, as legal records, but also, when I'm talking to
17 other individuals, I'm looking for people who will
18 volunteer similar information to what I heard from the
19 other person. So if one person tells me about violence in
20 the house, say, when Timmy was growing up, I'd look to see
21 whether other people tell me similar things. If not the
22 same thing, similar things. And then, I also look for
23 information in future records that may retroactively
24 document something that someone told me about. For
25 example, there's something that Tim told me about from

1 when he was younger and there was reference to it in a
2 counseling record 10 years, 15 years, after the fact. So
3 I look for it in records and other corroborating sources.

4 Q Yes, ma'am. And I think you've told me before the
5 concept of the three legged stool.

6 A Yeah. What I look at is -- in order to have
7 something that's got some stability, you look at what the
8 individual that you're interviewing is telling you. And
9 then, you look at what the other people in the community
10 and their family are telling you. And then, you look at
11 what the records say because the records are usually time
12 specific to whatever certain events may have happened.

13 Q And these eight notebooks that we have here are the
14 records that you've -- that you reviewed, although, in the
15 electronic format?

16 A Correct.

17 Q So how old are Senior and Cynthia when they get
18 pregnant with Tim, Jr.?

19 A They are -- she's 16 and he's 17 when she gets
20 pregnant and if you backdate her pregnancy from when Tim,
21 Jr., was born, she would have gotten pregnant around March
22 of 1981 and they got married in August of 1981.

23 Q And how long had they known each other? Do you know?

24 A I think they had known each other a matter of weeks
25 before she got pregnant.

1 Q And do you have any information about her -- and,
2 obviously, you know now about her past up until -- up to
3 that point, which you, obviously, only learned as a
4 process of your social history, but does she -- is she
5 exhibiting the kinds of mental health problems that we
6 learn about at the time that Senior and Cynthia get
7 together? Are there hints of that or does she seem fine
8 at that point?

9 A She was 16 years old and there were behaviors going
10 on that struck Roberta as odd, but many 16 year olds are
11 odd. So she didn't quite know what to make of it. She
12 gave us an example. Finding her in the closet crying and
13 saying her father was coming to get her, but there was no
14 father in sight. That she had been charged with looking
15 after little Larry, but little Larry was outside with no
16 clothes on and Cynthia was nowhere to be found and the
17 other thing that she did was stand and stare at herself in
18 the mirror for extended periods of time, but none of the
19 bizarre kinds of behaviors towards other people that
20 subsequently came out later.

21 Q Before -- I wanted to show the Judge one other sort
22 of demonstrative that you created, but is there anything
23 -- if we just return to the genogram here, at this point,
24 and sort of try to view it through the lens of what was
25 occurring at the time that Senior and Cynthia get pregnant

1 with Tim, Jr. We have, obviously, a significant history of
2 problems on both sides of these families; is that right?

3 Going back --

4 A Right.

5 Q -- at least, two generations. Is that fair to say?

6 A Correct.

7 Q And so, from the perspective of social work, based on
8 your experience, what is -- what does that mean for the
9 parenting abilities of these two young people?

10 A These two people came together very young, 16 and 17,
11 bringing this baby into the world and all that they knew
12 were lives of abuse and neglect, abandonment, lack of
13 protection and inappropriate parenting. There was no
14 awareness of appropriate child development. Many of us
15 don't have that at the point that we start having
16 children, but for these folks, it was on the extreme level
17 because every child in their family had been exposed to
18 trauma. Every child had been made a little adult in some
19 ways by being exposed to adult business, adult fights,
20 adult abuse, adult language. So they entered into this
21 parenthood uniquely unprepared and beyond unprepared, they
22 were damaged by what they had been through in life.

23 Q And from the perspective of social work, are these
24 the types of life experiences that a person can shake off
25 just of sort of their own free will and decide, well,

1 these things that I've been through, I'm just going to not
2 allow them to affect?

3 A I think Tim, Jr., tried to do that. I think people
4 do try to do it and at that point, their success will
5 probably be based, in part, on their resilience, which can
6 be something that's internal and temperamental. A
7 sturdiness of spirit and it also probably has to do with
8 someone, other person who comes along and takes an
9 interest in that young person and sort of shepherds them
10 or fosters them along. I think one of the other things
11 that I need to mention about these patterns are the issues
12 around attachment in that Roberta did not feel attached to
13 her mother. She felt abandoned by her. She felt
14 neglected by her. She felt unwanted by her. Tim, Sr., I
15 believe felt attachment towards Roberta. She was a child
16 and incapable of doing certain things for him because she
17 was so young. Cynthia also had issues around not being
18 protected and around attachment. So when it comes to what
19 babies do in a healthy mother/child relationship, there
20 hasn't been much experience with that in this family.

21 Q If you are putting together a genogram or if you
22 looked at a genogram like this and you were to sort of
23 just look at, you know, one sort of level at a time and
24 you saw these patterns or these things that existed at the
25 top level, does your experience tell you that you're

1 likely to see those in the next level down?

2 A Not every child who is abused grows up to be an
3 abuser. There is a higher percentage of kids who've
4 experienced that who end up being abusive or becoming
5 abusive. So you would be aware of that. What I would
6 look at would be sorts of patterns as something that
7 relates to some studies that have been done recently
8 called The Adverse Childhood Experience studies that has
9 categorized adverse childhood experiences into 10
10 different categories. And the more adverse experiences
11 that you have in each of those categories, the more likely
12 you are in life to experience social and emotional
13 problems, as well, as employment problems, health problems
14 and ultimately, they had to phase out the study on the
15 older people in the study because those with a higher
16 number of adverse experiences were dying so much younger
17 than the people who had fewer adverse experiences. So
18 these people have all had a very, very high number of
19 adverse experiences in their childhoods, which has
20 affected their mental health, it's affected their physical
21 health and whatever genetic pre-dispositions they may have
22 had to mental illness or to addiction, those kinds of
23 adverse experiences will make it more likely that those
24 pre-dispositions will be expressed.

25 Q Yes, ma'am. And the adverse childhood experiences, I

1 think -- and correct me if I'm wrong, it's sort of a
2 checklist. Is it 10?

3 A It's -- there are 10 items. There are a number of
4 questions, but 10 different areas. Yes.

5 Q And the higher your number of having experienced an
6 adverse childhood experience, the greater the chances of a
7 negative life outcome for you?

8 A That's right. They start looking at, you know, the
9 greater possibility of negative outcome over four and
10 these folks would have well up into the seven, eight, nine
11 and 10, I think.

12 Q And will you explain to Judge Griffith the juggling
13 analogy for adverse childhood experiences?

14 A Well, it's like, some people, not me, might be able
15 to juggle two balls. And then, some people might learn --
16 you throw a third one in and they can still keep it going,
17 but once you thrown the fourth one in or the fifth one in
18 or the sixth one in or the seventh one in, very few people
19 can do that and in the adverse childhood area, very few
20 people can juggle that many adverse experiences without it
21 coming out in some form or fashion as they get older.

22 Q I mean, the one thing that's not accurate about the
23 juggling analogy is rather than juggling balls, you're
24 juggling violence in the household or having a parent in
25 prison or being sexually or physically abused?

1 A Seeing your mother beaten and tortured. Having --

2 Q Things that you see in both sides of this family?

3 A Yes.

4 THE COURT: Let's take a short break, Mr. Secor.

5 MR. SECOR: I'm sorry?

6 THE COURT: Let's take a short break.

7 MR. SECOR: Yes, sir.

8 (Whereupon, a short break was taken.)

9 MR. SECOR: Can Ms. Grey take the stand again, Your
10 Honor?

11 THE COURT: Yeah. Come on. All right. Mr. Secor,
12 continue on.

13 MR. SECOR: Yes, sir. Thank you. I don't have a
14 whole lot more. I just wanted to highlight a couple of
15 more thing, if I may.

16 CONTINUE DIRECT EXAMINATION

17 By Mr. Secor:

18 Q Ms. Grey, I wanted you to -- there's a couple of
19 other things that I think may be in dispute in terms of
20 admissibility that I'd want the Judge to have a chance to
21 think about is -- can you talk to the Judge about -- this
22 is way after Timmy's birth, but can you talk to the Judge
23 about Lydia and Donald who were, as you know, two of
24 Cynthia's other children and I just want you to talk to
25 the Judge about what happened to the two of them and,

1 obviously, the huge disparity in what happened to the two
2 of them. And from the perspective of social work, why it
3 is that you think that those different outcomes occurred.

4 A Okay. Cynthia went on to have two other children. I
5 think that Donald was born in 1990, if I'm remembering
6 correctly, and Donald was born with Cynthia as the mother
7 and another patient where she was in an out-patient
8 service as the father. The entire time that Cynthia was
9 pregnant, she never acknowledged that she was pregnant.
10 She had the baby and they expressed real concerns about --
11 she wouldn't make eye contact with the baby, she wouldn't
12 feed it, she wouldn't change its diapers. So the doctor
13 wrote a letter saying he was concerned that, were you to
14 have custody of this baby, it wouldn't be fed, it wouldn't
15 be changed, it wouldn't be cared for. And so, the child
16 went into foster care.

17 Q And for just one second that this would be Tim,
18 Jr's., half brother?

19 A Half brother. Right.

20 Q And the records that you reviewed about how Cynthia
21 reacted to Donald when he was born, are they similar to
22 the things that you learned about how she reacted to Timmy
23 when he was born?

24 A It's farther down the continuum, but, yes. It's very
25 similar.

1 Q Things like not acknowledging him and not feeding
2 him?

3 A No eye contact, a lack of interest, seeming cold,
4 seeming hollow.

5 Q Yes, ma'am.

6 A Seeming curiously detached.

7 Q Yes, ma'am.

8 A Not feeding, not changing and things like that were
9 very similar.

10 Q Okay. So tell us what happens to Donald.

11 A Donald was adopted and I had the opportunity to meet
12 Donald, as well, as to meet his adopted father. Donald is
13 28, I guess, at this point, and working in a local donut
14 shop on the midnight circuit. He goes in at about 2:00 or
15 3:00 in the morning and makes donuts and he's been doing
16 that for several years. I have Donald's school records
17 and it was apparent from the school records that he had
18 some school difficulties. They qualified them as learning
19 disabilities at some point, but they were pretty severe.
20 Severe enough that he was in special classes. He's still
21 living at home and the indication that we got from his dad
22 was that Donald probably does not have sufficient
23 independent living skills to be able to survive on his own
24 at this point. Nonetheless, Donald has had no problems
25 with the law and no experience with drugs and alcohol.

1 The family that Donald was adopted into was a couple and
2 the mother's mother was also living with them at the time
3 and all three of these people appeared to have been
4 extremely nurturing, very structured, very consistent
5 people who provided this little baby with a lot of love,
6 but a lot of consistency, a lack of chaos, a lack of
7 abuse, a lack of uproar and good parental boundaries. And
8 so, Donald is having problems living independently, but he
9 is not having problems with the law or with any sort of
10 personal violence or drug abuse that I know of.

11 Q And before, you were talking about people who have
12 experienced adverse childhood experiences. One of the
13 things that can potentially prevent them from a negative
14 outcome is resilient factors?

15 A Correct.

16 Q It can be internal, right? But, then, you also
17 talked about --

18 A Right.

19 Q -- it can be external?

20 A Well, these parents certainly represented something
21 in the way of resilience and the way that I look at it is,
22 we're all dealt a hand in life and that hand is the genes
23 that we come into the world with and the family that we're
24 born into, who our parents were. It's the family that
25 teaches you how to play that hand, your genetic hand that

1 you were given. You learn that through your family and
2 through your community on your day to day interactions
3 with those people. What happened for Donald, who had just
4 as much, if not worse, genetic loading than Tim Jones does
5 is that he went into a family that could give him a better
6 instruction book for life, if you will. They gave him the
7 opportunities to develop what he did have rather than the
8 stresses that would have -- could have lead those genetic
9 predispositions to addiction and to mental illness. Very
10 strong on both sides of this little boy's family. Those
11 were not expressed.

12 Q And he was -- Donald was taken away from Cynthia
13 immediately when he was -- when they went to the --

14 A A matter of days.

15 Q A matter of days.

16 A I think he was always -- if I remember right, they
17 kept him in the hospital so that he wouldn't be going home
18 with her and in the process of that, someone in the
19 hospital wrote a letter to child protective services and
20 said, something needs to be done here, this woman can't
21 care for this child.

22 Q And wasn't there a reference in the records that the
23 doctor was not only concerned about Cynthia's inability to
24 take care of Donald, but actually, to even take care of
25 herself?

1 A Correct. Yeah. The letter, I believe, said, she
2 can't even take care of herself. Much less, take care of
3 an infant.

4 Q So then, contrast Donald, who's taken from Cynthia
5 almost immediately upon his birth, with Lydia, another
6 child of Cynthia's who would be the half sister of Tim,
7 Jr.

8 A Lydia was born sometime around the same time as
9 Elias. Around 2007 and -- excuse me. Cynthia never knew
10 that she was pregnant with Lydia, if I remember correctly,
11 and I believe she was taking anti-psychotics at the time
12 and she didn't receive any sort of prenatal care. She
13 gave birth to both of these children at home on the
14 toilet. With Lydia, she was, I believe, taken immediately
15 and she was placed, I believe, with the father's sister as
16 a foster parent because it was acknowledged that Cynthia
17 couldn't take care of her, but Lydia died within a matter
18 of two or three weeks, I think, for undetermined reasons.

19 Q And based on your conversations with Cynthia, what
20 does Cynthia think might have contributed to Lydia's
21 death? Do you remember?

22 A I don't remember that.

23 Q And that would have been, I think -- and correct me
24 if I'm wrong, but Lydia's birth and death, which, as you
25 said, was a matter of weeks apart, coincided with the time

1 that Tim was very briefly reunited with Cynthia; is that
2 correct?

3 A Actually, Cynthia came down to Mississippi while her
4 daughter was in physical distress, having problems as an
5 infant, up in Syracuse and it was shortly after Cynthia
6 returned to Syracuse that her baby died.

7 Q So Cynthia left -- when the child was in distress and
8 in trouble, Cynthia left the child?

9 A The baby had already been placed elsewhere --

10 Q Yes, ma'am.

11 A -- but she did. Yes.

12 Q The other person I wanted you to tell Judge briefly
13 about because I think this is potentially an issue, the
14 admissibility of which is in dispute, is William and just
15 how that fits into the social history.

16 A William was Cynthia's second pregnancy while -- after
17 Tim, Jr., was born and she and Tim, Sr., and little Tim
18 went back to stay with Roberta while she was pregnant.
19 What Roberta describes is, Cynthia called her into the
20 bathroom where Cynthia was in the tub and she was laughing
21 hysterically and the room was covered with blood. Blood
22 everywhere. Cynthia went to the hospital and, I believe,
23 delivered a child or a dead child and I'm not sure how
24 many months old that child was because we weren't able to
25 find any records on that, but we've heard it described

1 from both Tim, Sr., and from Roberta that that happened
2 and both of them believed that Cynthia actually murdered
3 this child. The significance, in part, is that this is
4 part of family lore and it's part of what you hear about
5 when you talk about Cynthia and her bizarre behaviors.
6 This is one more of those bizarre behaviors.

7 Q And that -- Tim, Jr., would have been in the home
8 when that happened?

9 A He would have.

10 Q Under the age of two, maybe?

11 A Under the age of three.

12 MR. SECOR: Under the age of three. Just -- I guess,
13 the other thing that I wanted to show the Court, if I may,
14 Your Honor.

15 Q Ms. Grey explain to us what this (indicating)
16 demonstrates. This is just -- what this shows us. Can
17 you see it from there?

18 A Uh-huh, (affirmative response). This was something
19 that I put together, in part, because the genogram is so
20 confusing and it just simplifies it down to Tim Jones'
21 parents and I put his grandmother in there because she was
22 the defacto mother up until the time that Tim Jones, Sr.,
23 married Carolyn. So with the grandmother, you have a
24 woman who was abandoned as a child, raped as a child,
25 helpless and unprotected, pregnant by 11, kidnapped,

1 tortured, trafficked with a family history of mental
2 illness and the star by that is because anything that is
3 heritable, which can be a predisposition, can be
4 inherited. It has a star by it. And in adulthood, that
5 lead to substance abuse, verbal abuse, violence, threats,
6 obscenities and mental illness. For the father, he was
7 the child for a mother -- his -- he was witness to father
8 and grandfather's torture and I say father and grandfather
9 because he was both. Ted Montane. He was helpless and
10 unprotected. Exposed to mother's violence after she left
11 Ted Montane. Family history of substance abuse, family
12 history of mental illness and as an adult, he's had
13 problems with substance abuse, verbal abuse, violence,
14 threats and obscenities in the household. The mother
15 Cynthia, repeatedly raped as a child, helpless and
16 unprotected, a witness to domestic violence, a family
17 history of substance abuse and mental illness and as an
18 adult, had substance abuse and schizophrenia and these are
19 the people who were charged with taking care of Tim Jones,
20 Jr.

21 Q So this is just sort of a shorthand version of -- a
22 very, very shorthand version of what this family is --
23 what exists in this family at the time that Tim is born?

24 A Correct. It's a distillation of that great, big
25 genogram that we were looking at.

1 MR. SECOR: Yes, ma'am. Your Honor, the copy of the
2 genogram that you have, may I make it a Court's Exhibit?
3 Thank you, sir.

4 (Whereupon, Court's Exhibit number 121 was marked for
5 identification purposes).

6 MR. SECOR: And, Your Honor, that would be Court's
7 121. And I would like, just for the record, to
8 incorporate Ms. Grey's record notebooks, Defendant's
9 Exhibits for ID 353 through 360 for purposes of the
10 proffer. I don't know what -- I guess, Ms. Joy can tell
11 me what the best way to do that is. Should we make them
12 Court's Exhibits, as well?

13 THE COURT REPORTER: What are you wanting to do, now?
14 I've got them as ID for Defendant's.

15 MR. SECOR: Yes, ma'am.

16 THE COURT REPORTER: 353 through 360. Yeah.

17 MR. SECOR: Through 360.

18 THE COURT REPORTER: And you want --

19 MR. SECOR: I mean, I don't know whether they need to
20 be Court's Exhibits too?

21 THE COURT: Stay Defendant's Exhibits.

22 MR. SECOR: Okay.

23 THE COURT: Not introduced.

24 MR. SECOR: Yes, sir.

25

1 (Whereupon, Defendant's Exhibit 353 and 360 were
2 marked for identification only.)

3 Q Last couple of things, Ms. Grey. The social history
4 and genogram that you created on this family, you've -- is
5 this standard practice in your field to create these
6 documents and create the social history based on the
7 records that you reviewed and the interviews that you
8 conducted?

9 A Yes. As a part of being a social history, I include
10 a genogram and I also try to think of diagrams that would
11 show family relationships over time.

12 Q Yes, ma'am. And you've done this for Capital cases
13 in South Carolina in the past, right?

14 A I have.

15 Q And are these, one was heard in Richland County by
16 Judge G. Thomas Cooper; is that right?

17 A That's right.

18 MR. SECOR: Your Honor, may I have just a moment?
19 Thank you, Ms. Grey. I appreciate you coming.

20 MR. HUBBARD: I have no questions at this time, Your
21 Honor. Your Honor, I have been meeting with our group.
22 If there is anything out of here that we can agree on, I'd
23 be happy to do that.

24 THE COURT: All right. Well, I want to think of a
25 way and I suggest you all come up with a way for this lady

1 to say, this lady's summary of Ms. Thornsberry's mental
2 history, Ms. Jones -- Cynthia Jones' history, there's a
3 lot of information in there -- without going through every
4 single minute detail. But this has a lot of facts in it.
5 All of the social psychologists and psychiatrists said the
6 Jones family -- Tim Jones' came from a family, had a huge
7 bunch of illnesses, medical, suicides, physical abuse,
8 sexual abuse. I think she can say things like that without
9 saying the grandma was sexually abused 18 times by the
10 time she was six and how do you know that. Well, she told
11 me. You know, that's what I'm concerned about is the
12 details.

13 MR. HUBBARD: Your Honor, for me, that's also been
14 the big thing. I've wanted to talk with our group because
15 it is one thing if it is, here is what I got, as opposed
16 to hearsay -- what I would call just typical hearsay. So
17 and so tells me this. Here's what I was told. Here's
18 what they said. I think you can get the substance in,
19 show the patterns that have been discussed. Patterns of
20 abuse, whether it's sexual, alcohol, psychological or
21 whatever. I'm thinking I'm fine with that. It's just the
22 way it's couched with the long dialogue of so and so said,
23 so and so said and all the minute details.

24 THE COURT: Anyway, I think they should be allowed
25 some latitude presenting some of the family history with

1 all of the minutia, the specific things, with Tim, Jr.,
2 certainly, and most of the stuff with Ms. Thornsberry's
3 medical history has been post-birth. So I think that's
4 pretty well free game. I don't know if you want to give
5 all of that to the jury, but maybe you do. There's some
6 danger in it.

7 MR. SECOR: Yes, sir.

8 THE COURT: They're more prone to, you know, tune you
9 out. But, I mean, that's probably your biggest challenge
10 and it's just -- it's important to have heard everything.

11 MR. SECOR: And I understand --

12 THE COURT: I want to figure a way to allow you to
13 have some latitude of saying the Jones family -- Ms.
14 Roberta Jones, her family includes three cases of suicide,
15 several broken marriages. I don't know exactly how to
16 tell you to ask that. But all -- everybody who's
17 testified for both sides, I don't want to say they knew
18 all of this.

19 MR. SECOR: Yes, sir.

20 THE COURT: -- but they were allowed to interview and
21 ask for this family history.

22 MR. SECOR: Yes, sir.

23 THE COURT: They can get it if they wanted it.
24 Whether it was the first psychiatrist who testified
25 earlier or Dr. Maddox. Anybody in between could have had

1 all of this and they utilize that.

2 MR. SECOR: Yes, sir.

3 THE COURT: At least, I presume. I'm kind of
4 inclined to let you tell that Ms. Thornsberry had Tim,
5 Sr., at age 12. I'm kind of inclined to let you have
6 that. I'm not sure about how I like the word, tortured,
7 that certain verb.

8 MR. SECOR: Yes, sir.

9 THE COURT: I'm going to let you have some of that,
10 but I don't want -- too much is too much. I'm not sure
11 exactly how to tell you to try to pare it down.

12 MR. SECOR: Yeah.

13 THE COURT: This is a lot.

14 MR. SECOR: It is.

15 THE COURT: It's hugely -- almost, unbelievable.

16 MR. SECOR: And we've spent a tremendous amount of
17 time trying to make it as brief as possible without losing
18 sort of the compelling nature of the narrative because I
19 think Your Honor would agree that you could say that a
20 person has these diagnoses. But then, you say, and maybe,
21 the reason that she's been diagnosed with these things
22 later in life is because of these horrific events earlier
23 in her life. And then, it makes a lot more sense. You
24 know, I feel like the difference between somebody, you
25 know, describing the old man in the sea, saying an old man

1 went fishing, caught a marlin, and then things kind of
2 went badly or you can read the story and it's a lot more
3 compelling with the sharks attacking the marlin and the
4 old man beating the sharks with the oar from his boat and,
5 you know --

6 THE COURT: I'm going to hand that back to Joy.
7 Certain -- yeah. Right there. Certain aspects of it is
8 that Tim, Jr., -- if you go back to Roberta, there's
9 numerous suicides, substance abuse, mental health. Count
10 them out. There's five people within one generation. I
11 think that's fair but I think Ms. Thornsberry having Tim,
12 Sr., at age 12 and a half or whatever it was and she's not
13 a good mother for him because she hadn't been taught how
14 to be a mother yet. She wasn't grown yet herself.

15 MR. SECOR: Yes, sir.

16 THE COURT: It's interesting that her mother was
17 older than Montane by eight years.

18 MR. SECOR: Yes, sir.

19 THE COURT: So anyway, you all study that tonight and
20 we'll talk about it again in the morning.

21 MR. SECOR: Yes, sir. Thank you.

22 THE COURT: Just so we can talk about this in the
23 morning before the lady, Ms. Flores, comes, can we meet,
24 maybe -- I don't know. 8:30, 8:40, somewhere along in
25 there, to talk about kind of the gist of where we're going

1 to go on this?

2 MR. SECOR: Yes, sir.

3 THE COURT: Does that suit you, Mr. Hubbard?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: Okay. I'll be here at 8:30 and we'll try
6 to get together at 8:40ish.

7 MR. HUBBARD: Yes, sir.

8 (Whereupon, the trial will resume the next morning at
9 approximately 8:40 a.m.)

10 June 11, 2019

11 THE COURT: All right. We've got two things to take
12 up. One thing was the proffer of the social historian and
13 then where does she pick up in telling the social history,
14 that's one. Another thing is the psychologist from
15 Atlanta.

16 MR. HUBBARD: Your Honor, if I can jump in just
17 quickly --

18 THE COURT: Which order y'all want to do them in?

19 MR. HUBBARD: I'd like to do the psychologist, just
20 to go ahead and address that. And then with Ms. Grey, we
21 can go ahead -- it might even flow right into her
22 testimony once we do that.

23 THE COURT: Okay.

24 MR. HUBBARD: But I object strenuously to Dr. Flores
25 coming into this courtroom testifying and building a

1 record, basically, geared at destroying professional
2 credibility and personal integrity of Dr. Kimberly Kruse.
3 She comes out of nowhere, Ms. Flores, out of Georgia.
4 Nothing to do with this case, brought in by the Defense in
5 response to a first phase testimony by Dr. Kruse, but also
6 geared to keep her off the stand in this phase should that
7 have been necessary. Your Honor, this is so outlandish.
8 There is a threat of filing an ethical grievance with Dr.
9 Kruse. Dr. Kruse would then forward, therefore, have to
10 always, reveal she's had an ethical allegation against
11 her. It will be a permanent stain on her personal and
12 professional integrity.

13 THE COURT: I mean, what's going to prevent that?

14 MR. HUBBARD: Well, here's the thing -- and if this
15 woman chooses to do that, she can, but she can't come into
16 this courtroom and do that. Dr. Kruse has a right to have
17 legal counsel to cross-examine this. This is not the time
18 or place for that. We were told yesterday Dr. Flores was
19 going to come testify. We never heard of her.
20 Apparently, she's tied in with Dr. Dorney and others out
21 of Emory. They do work together. She has not touched a
22 single bit of this case, yet, she's going to come in and
23 pick apart Dr. Kruse without the benefit of all the notes
24 and things that Dr. Kruse used to justify her opinion.
25 She's going to professionally and personally destroy her.

1 And they're going to build this record for appellate
2 purposes and, also, to use against Dr. Kruse to ensure Dr.
3 Kruse never steps into a criminal courtroom again. That's
4 obscene. It's an obscene use of the court process. And,
5 Judge, frankly, it borders on intimidation of a witness.
6 Because that's what it's geared to do. Right now, Dr.
7 Kruse is not going to come into this courtroom even if I
8 needed her to. And if she came, she would need to have
9 personal counsel, private lawyer to protect her. I think
10 if this woman testifies, Dr. Kruse is entitled to a
11 private attorney and that's why it shouldn't happen. Dr.
12 Kruse should not have to go out and retain an attorney to
13 handle an accusation like this. If Dr. Flores truly feels
14 something bad happened, she can file her grievance, but
15 she doesn't need to be doing it in this courtroom.

16 THE COURT: Mr. Young.

17 MR. YOUNG: Your Honor, Dr. Flores is coming to
18 testify about the testing and the conclusions derived at
19 by Dr. Kruse. She does acknowledge in her affidavit that
20 she feels that she needs to talk to Dr. Kruse about her
21 testing, her testing manners and her interpretations. And
22 just like any lawyer who says well, if I see another
23 lawyer committing an ethical violation I'm duty bound to
24 report that. I mean, that's all she says.

25 THE COURT: I know, but do you have to always say

1 that. You know the rules.

2 MR. YOUNG: No, she doesn't have to always say it.
3 We have no intent --

4 THE COURT: So why did she put it in there?

5 MR. YOUNG: She was saying what her ethical
6 obligations were.

7 THE COURT: I know, but everybody's got ethical
8 obligations, why is that relevant to this affidavit?

9 MR. YOUNG: It's not.

10 THE COURT: Well, then, why is it in there?

11 MR. YOUNG: I don't know. She put it in there. I
12 didn't ask her for any of it. She contacted us after
13 reviewing the test and said this test is flawed. These
14 testing results are incorrect. The mannerism in which
15 these tests were conducted --

16 THE COURT: She contacted you, you didn't contact
17 her?

18 MR. YOUNG: Right.

19 THE COURT: Out of the blue?

20 MR. YOUNG: No, she had -- Dr. Dorney had her contact
21 me.

22 THE COURT: I mean, so you didn't reach out to her?

23 MR. YOUNG: Right. And in her 20 years of forensic
24 practice, she's never felt the need to contact a lawyer
25 saying what happened in your case, the testing that was

1 done in your case is flawed, so flawed that it shouldn't
2 have been admitted. And that's what she's going to
3 testify about, is the testing. She has the raw data.
4 She's reviewed the raw data. She's rescored the raw data
5 and that's what she's going to testify about, is Dr.
6 Kruse's testing and her conclusions based on that testing.
7 And while I know Dr. Flores wasn't on our witness list,
8 Dr. Kruse wasn't on the State's witness list either.

9 MR. HUBBARD: That's not true. She was.

10 MR. YOUNG: Court's 63. Your Honor can check it
11 right there. We had it pulled this morning.

12 THE COURT: Dr. Kruse has been known since Dr.
13 Frierson was asked to have neuropsychological testing
14 done. Didn't she -- I mean, didn't he?

15 MR. YOUNG: Yes.

16 THE COURT: And he said I can't do it, that's not
17 what I do. I have someone to do it and it will be Dr.
18 Kruse.

19 MR. YOUNG: Correct.

20 THE COURT: I mean, I've known that name.

21 MR. YOUNG: Right. But it wasn't on -- I mean,
22 yesterday, the State objected to us calling Dr. Flores and
23 the Court agreed because she's not on the witness list.
24 Dr. Kruse isn't on the witness list that was given to the
25 jury either.

1 THE COURT: Well, the Court's aware that Dr.
2 Frierson -- we had a preliminary, a pretrial hearing of
3 just about a whole day with Dr. Frierson, I need these
4 tests, I'm going to do a full evaluation. I'm going to
5 have Dr. Kruse do it. It went on and on and on. Dr.
6 Kruse was identified months ago by Dr. Frierson. I need
7 her help. This lady, Dr. Flores, I was under the
8 impression yesterday when I was handed this that Dr.
9 Flores was contacted by the Defense. And you're telling
10 me that's not the case.

11 MR. YOUNG: She contacted the Defense.

12 THE COURT: Hang on. We need to go off the record.
13 I want to see -- hang on one second. I'm going to come
14 back to y'all. I've got to step off for a second.

15 (WHEREUPON, a short recess was taken.)

16 THE COURT: All right. I've already ruled that Dr.
17 Flores' testimony will be proffered, but not introduced in
18 front of this jury. I was -- I guess I'm a little bit
19 unaware -- I was unaware this morning -- until this
20 morning that she contacted the Defense team and then the
21 Defense team sought funding to pay her yesterday. So that
22 was confusing to me. In any event, let's proffer her
23 testimony and get done with that.

24 MR. HUBBARD: May I move to have it sealed so that
25 when this goes before the high court that it's not

1 released to the public to protect the integrity of Dr.
2 Kruse, who is not here, nor is her Counsel here?

3 THE COURT: Any objection to that?

4 MR. YOUNG: Yes, sir.

5 THE COURT: I'm going to grant that motion because
6 it's kind of out of the blue. I mean, what's the harm if
7 the Appellate Court can see it, but the general public
8 can't?

9 MR. YOUNG: I don't understand why it would be
10 sealed. Dr. Kruse can stand on her testing or not. If
11 she didn't do anything wrong, there's nothing to worry
12 about.

13 THE COURT: I know, but here's the thing. If I make
14 an accusation to a lawyer and I say I think y'all
15 committed unethical conduct and I'm just -- I
16 misunderstood something, but I made that comment. And it
17 floats around out there that the Judge accused one of the
18 lawyers in the trial of unethical conduct, then that
19 lawyer has got to live with that red mark on his head. I
20 wonder if it was true or not? I mean, it's like, you
21 know, I heard so and so -- I mean, that's -- you're unable
22 to explain away something in the negative.

23 MR. YOUNG: I understand. It doesn't matter to me.

24 THE COURT: Okay. I'm going to seal it out of an
25 abundance of caution.

1 MR. YOUNG: And I would ask the Court to hear the
2 testimony from Dr. Flores before ruling on whether or not
3 the jury gets to hear it.

4 THE COURT: Call her up.

5 MR. HUBBARD: Your Honor, so it is clear, Dr. Kruse
6 was on the witness list. So I wanted to make sure -- and
7 I will pass that up for a Court's Exhibit just so we can
8 mark that.

9 MR. YOUNG: Did you date that one?

10 MR. HUBBARD: That is what I gave --

11 THE COURT: The witness list that I read to the jury
12 that Whitney just handed me has Dr. Kruse on it.

13 MR. HUBBARD: Yes, sir, thank you.

14 COURT REPORTER: The one that I have that's Court 63
15 does not have her name on it.

16 MR. HUBBARD: No, that's the Defense one. That one
17 is the one we gave the Court and that one does.

18 THE COURT: The one that I worked off with all the
19 jurors has Dr. Kruse on it. This is mine.

20 MR. HUBBARD: Yes, Your Honor.

21 THE COURT: And if you will mark that as an exhibit.

22 COURT REPORTER: That's what I was saying. I'll mark
23 this one. We'll have two of them in.

24 MR. HUBBARD: We'll use the Judge's, how about that?

25 COURT REPORTER: Okay, and I'll give you that one

1 back. So this will be Court's 125.

2 (WHEREUPON, Court's Exhibit No. 125 was marked for
3 identification.)

4 Andriana Flores, being
5 first duly sworn, testified as follows:

6 THE CLERK: Have a seat, please, ma'am. State your
7 full name, spelling your last, please.

8 THE WITNESS: My name is Dr. Adriana Flores,
9 A-D-R-I-A-N-A, last name, F, as in Frank, L-O-R-E-S.

10 PROFFERED DIRECT EXAMINATION

11 BY MR. YOUNG:

12 Q Good morning, Dr. Flores.

13 A Good morning.

14 Q Can you tell Judge Griffith a little bit about
15 yourself, your educational background, your training as a
16 forensic psychologist?

17 A Certainly. I have a Bachelors in Psychology from the
18 University of Wisconsin in Milwaukee. That was in 1990.
19 I went on to pursue a PhD in clinical psychology from
20 University of Ohio. And I have a Masters in 1996 and a
21 PhD in 2000. As part of PhD requirement in clinical
22 psychology, I had to complete a 2000 hour internship that
23 was American Psychological Association. So I went to
24 Emory University School of Medicine to complete an
25 internship. I completed that in the year 2000. I stayed

1 on one year, additional post-doctoral fellowship year at
2 Emory School of Medicine, completed that in 2001. I am
3 currently an Adjunct at Emory School of Medicine. They
4 have psychiatry in the law department and I have been
5 Adjunct -- Assistant Professor, sorry, there since 2012.
6 Part of my responsibilities are that I am one of three
7 primary supervisors of psychologists that are now seeking
8 to specialize in forensic psychology. So I train them and
9 supervise them on competency to stand trial and criminal
10 responsibility evaluations, in turn, insanity evaluations,
11 mitigation, assessing for malingering, assessing for
12 diagnostic purposes and other competencies, such as
13 competency to consent to sexual contact. And that's
14 education and professional. In terms of clinical
15 experience, I worked for the State of Georgia for ten
16 years. I worked at Georgia Regional Hospital at Atlanta,
17 and that is one of the State psychiatric hospitals. For
18 six years, I was the inpatient forensic psychologist on a
19 unit that had 42 individuals who had been adjudicated
20 either incompetent to stand trial or not guilty by reason
21 of insanity. I was responsible for one-hundred percent of
22 the evaluations that were required for diagnostic purposes
23 or to assess for malingering. Part of my responsibilities
24 were also to do psychotherapy groups and also to offer
25 testimony on my findings. Over the years, at Georgia

1 Regional, I probably -- I mean, I had contact with about
2 750 individuals who had either been adjudicated not guilty
3 by reason of insanity or incompetent to stand trial and
4 were there for restoration. So I was at Georgia Regional
5 from 2001 to 2011. Six of those years were as an
6 inpatient forensic psychologist. After six years, I was
7 promoted to be on the executive team of the hospital. So
8 I was responsible for developing programming for what was
9 then a 320-patient bed inpatient psychiatric hospital, but
10 at the time had two forensic units, three adult mental
11 health units and some developmental -- some units for
12 individuals with developmental disabilities.

13 Q Have you testified as an expert in forensic
14 psychology?

15 A I have.

16 Q And do you know how many times you've been declared
17 an expert in forensic psychology?

18 A I am about 90.

19 MR. YOUNG: Your Honor, at this time, the Defense
20 would offer Dr. Flores as an expert in forensic
21 psychology.

22 THE COURT: Any voir dire?

23 MR. HUBBARD: No voir dire, Your Honor.

24 THE COURT: All right. She will be so qualified.

25 Q Dr. Flores, have you testified for the State in death

1 penalty cases?

2 A I have.

3 Q Can you explain to the Court how it is that you came
4 to be involved in this case?

5 A Certainly. Dr. Julie Dorney and I worked at the
6 hospital, Georgia Regional Hospital, for -- we overlapped
7 for ten years. Six of those years, when I was the
8 inpatient forensic psychologist, she was the attending
9 physician at the same unit. So that's how we came to know
10 each other. I currently sublease an office from her
11 practice. My company is completely independent. We don't
12 overlap. I have my own patients, my own client referral
13 source. I was aware she was involved in this case, that
14 she was coming to South Carolina for the last number of
15 years. On the day that she finished her testimony, I
16 recall it was a Friday, she contacted me in the afternoon
17 and said that she was finished and next up would be Dr.
18 Kruse, who would be called, I believe, that Monday, that
19 she would be called. I believe she said -- I believe she
20 said that could I take a look at her testimony because --
21 and I believe what she said was that during some of the
22 testimony that had been offered so far, there had been
23 some indication toward malingering was coming out and that
24 this was actually not directly stated on Dr. Kruse's
25 report and yet, there had been some alluding to that. So

1 I said, Sure. I said, send me the report. So I believe
2 she contacted you all, got authorization, my understanding
3 was, to release the report. I received Dr. Kruse's report
4 and then I contacted her.

5 Q Why did you contact her after looking at Dr. Kruse's
6 report?

7 A What struck me the most, not having looked at the raw
8 data, I didn't know whether her findings were real, not
9 real, but what was readily apparent is that in the report,
10 there is a section that is -- she cut and pasted, which we
11 can, cutting and pasting is fine. The concern that I had
12 was that with regards to one specific instrument, it's
13 called PAI, Personality Assessment Inventory, it was
14 readily apparent to me, because I do this routinely, that
15 she had omitted a validity section on it. So let me
16 explain. This is a test that has what we call validity
17 and disease. It has an ability to assess an individual's
18 response style and determine whether the individual is
19 likely to be what we call underreporting problems. And by
20 that, I mean trying to make themselves look in a better
21 light or healthier than they may be. Or whether they are
22 overreporting problems, which means attempting to make
23 themselves look like they have more problems that they may
24 actually have. And that, typically, is what we would call
25 malingering. So it has these scales. And when you enter

1 the individual's responses onto the computer and you print
2 out the report, the report spits out, if you will, the
3 findings with response of what we call positive response
4 style, which is the, I'm trying to make myself look better
5 than I actually may be. Like we might see, for example,
6 in divorce, custody cases. And then followed up by that,
7 the next paragraph would address negative response style.
8 So you have positive response style and then it gives you
9 the negative. By negative, it would tell you whether
10 there was any indication of the person attempting to
11 portray themselves as worse off than they may actually be.
12 And then after that, it gives you additional information
13 with regards to scale findings and whatnot. But it always
14 gives those two response styles, the positive and the
15 negative and then the rest of the report. And what I saw
16 in Dr. Kruse's report is that she provided the paragraph,
17 if you will, that has the information with regards to
18 positive response style. But the next paragraph that she
19 would have cut and pasted was not there, which is the
20 negative response style. And then after that, then she
21 went ahead and provided more. So when I saw that that was
22 missing, it concerned me. It had the feeling that
23 something was being hidden from that report. So I
24 contacted Dr. Dorney and I said, this doesn't feel right.
25 I said, I think there's something that's not right here

1 that's being hidden, but I'm not sure. I would need -- I
2 mean, I was sure about that. I knew that should have been
3 there, but I didn't know what the response style -- what
4 the report would have said. So I said, let me look at the
5 raw data.

6 Q The paragraph that you're talking about that was
7 missing was with respect to negative impression
8 management. There is no evidence to suggest that the
9 respondent was motivated to portray himself in a more
10 negative or pathological light than the clinical picture
11 would want?

12 A Correct. And that would allude to potential
13 malinger. The other thing that I saw in the report
14 beyond that, but an issue that also concerned me, is her
15 interpretation of, I believe it was the L scale, the way
16 that she described the L scale on the MMPI. The L scale
17 is very similar to the positive response style indexing
18 the PAI. And by that, I mean it informs the evaluator as
19 to whether or not the individual attempted to portray
20 themselves in a better light. But her wording, the
21 wording she chose to use on the report, it didn't seem
22 like that's what it said. It seemed like there was -- I
23 would have to look at her report. If I may very quickly?

24 THE COURT: Just be careful not to pit the witnesses.

25 MR. YOUNG: Yes, sir.

1 THE COURT: Because that seems like where we're
2 getting. She can give her opinion, but you can't pit one
3 against the other.

4 MR. YOUNG: Yes, sir.

5 A Implying dishonest test taking or extreme
6 defensiveness. It does -- the L scale does, in fact,
7 indicate some defensiveness. But the dishonest test
8 taking in conjunction with the missing negative response
9 style concerned me in terms of the wording.

10 Q So what did you do after looking at that report?

11 A I asked for the raw data. And by raw data, I mean
12 the actual testing measures that were administered to Mr.
13 Jones, his responses, whatever he filled out and then,
14 also, any computerized printout reports. And so, I
15 received those.

16 Q Let me show you what's been marked for ID as Court's
17 number 124 and ask you if you recognize that?

18 A Some of this is what I received and some of this is
19 from my actual rescoring.

20 Q Okay. And these are your notes on the raw data?

21 A Correct.

22 MR. YOUNG: Your Honor, we would offer Court's 124 --

23 MR. HUBBARD: I object --

24 MR. YOUNG: -- as a Court's Exhibit.

25 MR. HUBBARD: I object to that coming in. She's

1 remarked and rescored it and I object to that. If they're
2 attacking Kruse and that's not what Kruse had, I object to
3 that. That's, basically, testifying through an exhibit.
4 I object to it.

5 MR. YOUNG: It's her notes on the raw data and
6 rescoring the raw data. It's not an attack on Kruse. The
7 data is what it is.

8 THE COURT: If she took the raw data and scored it
9 herself, that's rescoring the data. But if she's going to
10 testify to the mistakes Dr. Kruse made, that's pitting
11 witnesses. So characterize your question properly. Do
12 you understand?

13 MR. YOUNG: Yes, sir.

14 THE COURT: Okay. I'm not -- I don't understand that
15 document. Tell me again what it is.

16 MR. YOUNG: It's her notes on the raw data that she
17 used in preparation of her affidavit.

18 THE COURT: Is it notes of her, I'm going to
19 characterize it as criticism of Dr. Kruse's report, or is
20 it her restoring the data and coming up with her own
21 findings based upon the raw data. That's my question to
22 you.

23 Q Dr. Flores, is this your notes coming up with your
24 own findings or is this just criticizing what Dr. Kruse
25 did?

1 A So that packet, I believe, has a combination of
2 things. It has a combination of her actual raw data with
3 my comments of my concerns of misscoring.

4 THE COURT: All right. That, I won't allow. That's
5 pitting witnesses. Her misscoring is pitting a witness.
6 She can score herself independently and give her
7 professional opinion as to what she would take the raw
8 data and present. But I don't think it's proper for her
9 to come in and say Dr. Kruse misscored. I don't think
10 that's proper. So that document -- I mean, it can be a
11 Court's Exhibit, but I wouldn't allow it into evidence if
12 she were testifying.

13 MR. YOUNG: At this time, we're just offering it as a
14 Court's Exhibit.

15 THE COURT: Okay. Well, remember, I want to go
16 forward from this point forward with her opinion as
17 opposed to her pitting, criticisms. Okay?

18 MR. YOUNG: Yes, sir.

19 Q Dr. Flores, I'm going to move this forward. Once you
20 got the raw data and looked at that, the first test I want
21 to talk to you about is the SIMS test. Did you look at
22 the raw data for the SIMS, the SIRS and M-FAST?

23 A I did.

24 Q Now, can you tell the Court a little bit about these
25 test, what their purpose is and what the proper use of

1 them is?

2 A Sure. The M-FAST and the SIMS are both considered
3 screeners for malingering, for an individual overreporting
4 psychological problems that they may not have or
5 exaggerating the level of severity. So those are
6 screeners. By screeners, I mean, they're administered,
7 but you don't arrive at a conclusion of whether somebody
8 is malingering based on either one of those because
9 they're just screeners. If the individual, upon
10 completing either one of these measures, scores what we
11 call above the cut off, in other words, above the number
12 where other individuals have been classified as real
13 malingers or real dishonest people making themselves look
14 worse score, then protocol calls -- the actual measures
15 actually say then you should follow-up with a more
16 comprehensive measure of malingering, which is SIRS,
17 Structured Interview of Reporting Symptoms. And we are in
18 the second edition at this point. Beyond that, in order
19 to -- in order to -- and even if somebody scores high on
20 the SIRS, the SIRS manual says you don't just classify
21 them as malingering even then. You look at other data to
22 see if the clinical picture actually all matches. And
23 other data would include things such as the validity
24 indicators on the MMPI or the PAI and any other relevant
25 data that can inform the individual as to whether or not

1 the individual may or may not, in fact, be malingering.

2 Q Are these tests about whether somebody's malingering
3 today or are, do these tests tell you anything about how
4 somebody was doing on August the 28th of 2014?

5 A No. They are about the present. They are all --
6 when you look at the wording, the malingering, the three
7 malingering tests are all verbed in the present. You can
8 ask the person -- that when they answer these questions
9 ask about the last week or two or last maybe month. But,
10 certainly, they would not -- they were not normed on
11 identifying retrospectively whether somebody being
12 interviewed now with these measures is malingering
13 symptoms of the distant past. So the answer is, we don't
14 have any measures that we can use to prove whether
15 somebody is malingering, making up or exaggerating
16 symptoms that they are reporting occurred years ago. No
17 such measure exist.

18 Q So if somebody came to you, and in your expert
19 opinion, somebody said well, I don't experience -- I'm not
20 experiencing any symptoms right now, I'm on medications,
21 would it be appropriate to give these malingering
22 instruments?

23 A No, generally, I don't. If the person is saying I'm
24 not experiencing any problems, I don't have any problems,
25 unless I am going to diagnosis them with a condition,

1 there is no reason to give a malingering inventory.

2 Q Now, on the SIMS test, Mr. Jones, I believe, scored
3 as 12, is that right?

4 A That is correct.

5 Q And what is the cut off for determination of whether
6 or not somebody is malingering or how is it appropriately
7 phrased?

8 A Right. So the cut off is greater than 14. So a 14
9 would not necessarily indicate to the SIRS. A 15 is
10 where -- that's where kind of the red flag goes on, that's
11 a -- the cut is greater than 14. So anything 15 and above
12 is more suggestive of potentially malingering in this
13 particular screener.

14 Q Now, the SIMS has subscales on it, right? There's
15 like five different subscales on it?

16 A Correct. It has subscales that assess different
17 areas in which the individual may or may not be
18 overreporting symptoms. So, for example, it has an
19 amnesia, whether the individual is reporting some amnesic
20 symptoms that just may or may not make sense, depending on
21 how many points they get. Neurologic impairments. Low
22 intellectual functioning. Sometimes you have individuals
23 that are malingering or making up they actually have a
24 lower intelligence than they may actually have. And there
25 is also an affected one. So looking at whether somebody

1 is reporting mood symptoms, that would be atypical and
2 likely a malinger. And there is a psychotic scale and
3 that, obviously, is looking at things like paranoia and
4 hallucinations, those types of things.

5 Q So the fact Mr. Jones scored a six on the psychosis
6 scale, what does that tell you with regard to the SIMS and
7 whether or not he's malingering?

8 A Well, what it tells me is that the score is elevated
9 and that means that it is suspect for the individual
10 reporting on that particular subscale potentially some
11 symptoms that may not exactly be genuine with regards to
12 psychosis. However, just because a person elevates one,
13 again, A, it's a screener and two, if a person elevates
14 one, the error rates -- and I'll explain that in a second,
15 is too high to call somebody a malingerer. So the SIMS
16 manual actually states, it actually has some data, and it
17 indicates very clearly that the best indicator of a
18 potential malingering would be to look at the total score,
19 not at any individual scale. And it has some statistical
20 information. And the reason for that, it says, is because
21 when this test was developed and tested, what they found
22 is that if you use any one of the scales -- and it has
23 different statistics per subscale like psychotic or
24 effective, those have a higher error rate of
25 misclassifying an honest responder as a malingerer. So if

1 you go by one on any one of those scales, they're not
2 going to be as accurate as the cut off score of 14 or
3 higher than 14 in properly and adequately identifying a
4 true malingerer, a true faker.

5 Q Next, I want to talk about the M-FAST test. In the
6 M-FAST test, on that raw data, you actually -- you had --
7 Dr. Kruse had actually written down what Tim had told her?

8 A Correct.

9 Q Were there problems with the M-FAST test and the
10 M-FAST score?

11 A Yes, there were.

12 Q Okay. In what manner?

13 A Mr. Jones, for example, reported that he was not
14 experiencing voices, that they had improved with
15 medication. And so there were some scores that were
16 scored as a one. And a one means affirming the individual
17 is reporting this issue, but, in fact, he had -- his
18 response per what she wrote did not justify the one. He
19 was actually denying the problem, so it should have been
20 zero. And that occurred four times.

21 Q So after rescoring the M-FAST test, what was your
22 conclusion with regard to that score?

23 A So the cut off score for the M-FAST is six. Six and
24 higher is possible malingering. He scored an eight. When
25 I looked at his actual responses, it should have been a

1 four.

2 Q It should have been a four?

3 A It should have been a four.

4 Q Which would have been below the cut off?

5 A Which would have been below the cut off, right.

6 Typically, what you do with these tests is you give a
7 screener, like a SIMS, or you give the M-FAST because
8 those are two tests that you can actually score fairly
9 quickly on the spot. And if those scores are elevated,
10 then that is when you would then administer the more
11 comprehensive measure, which would be the SIRS. So based
12 on that score, I did not see a need to -- I mean, I see
13 why it was administered because it was an eight. So yes,
14 that would be suspect for potential malingering. But in
15 reality, it should have been a four, which means the SIRE
16 then would not have needed to be administered.

17 Q With regard to the ease of administration, is the
18 SIRS more or less difficult than the M-FAST to follow
19 instructions, do what you're supposed to do?

20 A It's more complex. It has different ways to
21 administer different portions. And so in training my
22 trainees, I have found that it definitely -- that they
23 catch onto the M-FAST really fast because it's pretty
24 self-explanatory. But with the SIRS, it's one of the
25 measures that I routinely will have them actually give to

1 each other and practice with each other and then we look
2 at the scoring to see if they, in fact, got it right.
3 Because you can get it wrong. You can get it wrong fairly
4 easily.

5 Q Did misscoring on the M-FAST cause you concerns about
6 the reliability of the scoring on the SIRS?

7 A It did. Given that the errors that I perceived on
8 the M-FAST, I was concerned about the validity of the SIRS
9 in terms of its administration scoring.

10 Q On the M-FAST where Mr. Jones' responses were
11 written, were they similarly written on the SIRS testing?

12 A No. So that's what made it difficult to discern
13 whether or not it had been accurately scored. Because the
14 SIRS, for example, has a number of two-prong questions.
15 So if a person says yes to the first question, then you
16 follow it up with a second. And what I do with my
17 protocols, for example, if a person says, yes, I will put
18 yes, and then I will follow it up with the follow-up
19 question and then I will put whether they said yes or no.
20 So if you have two yes's, then it's a yes, you give the
21 score. But if the person says no for the second question,
22 like, do you experience this problem. And then the next
23 is, was it only because you were on drugs and the person
24 says yes, right, then it's not a malinger problem. And so
25 it -- but those answers were not on Dr. Kruse's SIRS, so I

1 couldn't really tell whether or not she misscored or
2 didn't correctly score that test.

3 Q You talked about the other tests -- some of the
4 others tests that were given, the PAI and the MMPI, as
5 having their own validity scores. Can you tell the Court
6 about that and what was the result of those testing as to
7 whether or not Mr. Jones was malingering or not
8 malingering?

9 A Sure. So on both of those tests, they have -- as I
10 alluded to, I think, earlier, they have different indices
11 that inform the evaluator as to whether or not you can
12 really consider the individual's responses to be true of
13 how they actually are functioning. So both of them have a
14 way to discern whether the individual is actually being
15 more defensive in the way that they take the test. And by
16 this, I mean -- a really good example would be like if you
17 do the PAI and you give the MMPI to somebody going through
18 a custody battle, what we tend to see in those individuals
19 is that they want to present -- generally, they want to
20 present themselves as problem-free, as not having any
21 hallucinations, not having any personality issues, so you
22 tend to see -- in the PAI case, you tend to see what's
23 called the positive response style, you tend to see a
24 higher score there because they're trying to make
25 themselves look more positive, less problematic, more

1 problem-free than they actually may be. On the MMPI, you
2 have a similar scale, you have the L scale. It's called a
3 life scale, but the L scale, and that one is such an
4 individual in a custody battle, you would expect that one
5 to be a little elevated because they're trying to make
6 themselves seem like they're, perhaps, more fit and better
7 than they actually may be. You also have the opposite.
8 You have scales that inform you of whether an individual
9 is attempting to make themselves look worse than they are
10 in terms of problems. And so, the PAI scale, you have a
11 negative response and on MMPI scale, you have the S scale
12 and you have some other scales. And those are the ones
13 that in forensic criminal cases, we tend to focus more on
14 are we seeing those scores by way of the negative response
15 score and, for example, the F scale. You look for those
16 in cases in which there is some potential secondary gain,
17 criminal matters, civil lawsuits in which there's money to
18 be made, social security dependence in which they can make
19 more money if they are sick. And so it has these scales
20 in performance. Now, let me say this, those tests give
21 scores with regard to both scales. And what you're
22 looking for is which of those scales is tipped on one
23 direction and how much is it tipped. Because the greater
24 the elevation on whether it's the overreporting of
25 symptoms or the underreporting of symptoms, the greater

1 the number is the less likely that information that you
2 have is really accurate in terms of the person's true
3 presentation.

4 Q Overall, was the information that was perceived
5 through those tests accurate and consistent?

6 A Both of those tests had -- two different tests,
7 similar concepts, two different tests and they were fairly
8 mirror images. And by that, I mean that -- on the MMPI,
9 you had the F scale was fine. There was no indication of
10 overreporting or malingering of problems. The PAI, the
11 equivalent would be to look at the negative response style
12 and the paragraph that you read, in fact, there was no
13 indication that the respondent was making himself look
14 worse than we are. And then you also have -- on the
15 opposite scale, which would be the L scale on the MMPI and
16 that is the underreporting of symptoms. And was one of
17 74, so it was a little higher, but not so high that it
18 would invalidate the data. And on the PAI, we have
19 positive response. And as Dr -- as the report, I think,
20 indicated there was some indication of defensiveness. So
21 interpreting both of those, there is no indication of
22 malingering. And on the contrary, there's an indication
23 that the respondent was actually attempting to make
24 themselves look as less -- as having less problems as they
25 actually would. The other thing that was the same in both

1 scales is that -- in both tests, sorry, is that even these
2 are two different tests, they assess in similar
3 constructs. And both of them had the highest scores being
4 in the same two scales, which is schizophrenia and the
5 paranoia scale. So both of them have those scales and
6 both of those are where you see the higher scores.

7 Q Can you explain the statement that the L score is 74
8 -- and I think you just did, combined with his normal
9 limits TRIN score reflects a rather unsophisticated
10 pattern of faking good?

11 A Correct. Right. So you don't just look at the L
12 scale. You look at the L scale and see sort of the
13 pattern of how it was they arrived at raising up that
14 score. And that's exactly what it is. But there was an
15 attempt for the person to fake good. There's fake bad,
16 which is the F, and there's fake good, which is the L
17 scale. But that it was not a great attempt.

18 Q Does the F scale T score of 67, does that mean he's
19 malingering or not malingering?

20 A Not malingering. What you tend to see is somebody
21 that -- that is very clear malingering, you will see that
22 F in the 80s and the 90s. I've had people spike it up to
23 100. And that is when it's like okay, this person is
24 definitely reporting some stuff that is just not making
25 sense and is not the same -- is not information that's

1 being recorded by real people with those problems.

2 Q So across those tests, was there real evidence of
3 genuine evidence of mental illness?

4 A I believe there was. I believe that when you take
5 the MMPI and you take the PAI and you see that there were
6 some elevations in schizophrenia and paranoia scale. In
7 light of the fact -- well, in light of two facts and in
8 light of the fact that there was no indication of
9 malingering, it means that those are likely problems the
10 person has experienced at some point. And also in light
11 of the fact that there was some indication on the
12 reporting that it means, potentially, those scores could
13 actually really be a little higher.

14 Q One of the items that was omitted in the MMPI was the
15 question about how often you hear voices without knowing
16 where they come from, right? And what does that say to
17 you about the fact that he didn't answer true or false to
18 that question?

19 A Well, I would expect malingers will tend to say to
20 that kind of question because that's just a very clear
21 symptom that individuals know that people who are
22 experiencing something like schizophrenia or just a
23 psychotic, in general, will endorse that. And so if
24 somebody is attempting to make themselves look like they
25 have psychosis, that's an easy one. The general public

1 knows that that question is one that a person who has a
2 real schizophrenia or a real psychosis will say yes, I
3 hear these voices. With Mr. Jones, he left that one
4 blank, which would be consistent with no malingering.

5 Q Do patients with traumatic brain injuries
6 generally -- how does that affect their reporting of
7 symptoms or whether or not they report strange or unusual
8 symptoms?

9 A There's a whole body of literature, of
10 neuropsychology literature that has found individuals with
11 traumatic brain injury, a couple of things, one, they are
12 at higher risk of experiencing psychosis. And two, when
13 they do experience hallucinations, they tend to be
14 hallucinations that are more what we call atypical, less
15 likely to be seen in individuals, for example, with
16 schizophrenia. So olfactory, tactile, visual
17 hallucinations. And that is because it's an organicity.
18 Those are similar symptoms that you tend to see the
19 hallucinations, olfactory, smelling things that are not
20 there, tactile, feeling things that are not real. Those
21 are hallucinations that we tend to see in organic brain
22 symptoms. So you see it more in traumatic brain injury,
23 you see it more in people with Parkinson's, people with
24 Alzheimer's. You don't see those as much in people with
25 schizophrenia. They do occur, but they're not as typical.

1 But they're not all that atypical in somebody with a
2 traumatic brain injury.

3 Q Your conclusion with regard to all the data across
4 the board, was Mr. Jones malingering or was he not?

5 A Just looking at the data, I don't think there's
6 enough information there to say that he was malingering.

7 Q Let me show you what's been marked for ID as Court's
8 number 122 and ask you if you recognize that?

9 A That is my CV.

10 Q And Court number 123 and ask you if you recognize
11 that?

12 A That is my affidavit that I submitted to you.

13 MR. YOUNG: Your Honor, at this time, I make Court's
14 Exhibits 122 and 123 part of the record. Dr. Flores,
15 please answer any questions the State may have.

16 MR. HUBBARD: Did that come in or not? I object to
17 it. I object --

18 THE COURT: This is Court's Exhibit, so, I mean --

19 MR. HUBBARD: If it's a Court's Exhibit, that's fine.

20 THE COURT: Yeah, it's coming in as a Court's
21 Exhibit, 122 and 123, and then the other lengthy thing,
22 was it, 121?

23 COURT REPORTER: 124.

24 THE COURT: 124?

25 COURT REPORTER: Yes, sir.

1 (WHEREUPON, Court's Exhibit numbers 122 through 124
2 were marked for identification.)

3 CROSS-EXAMINATION

4 BY MR. HUBBARD:

5 Q Dr. Flores, are you a neuropsychologist?

6 A I am not.

7 Q You're not. But we just heard you give a critique of
8 Dr. Kruse as to the traumatic brain injury. You know she
9 did testing on that as well?

10 MR. YOUNG: Objection, pitting.

11 THE COURT: No, no, he can ask her if she knows about
12 those tests.

13 A I did not give a critique about any of the
14 neuropsychological tests she did. That's outside my area
15 of expertise. I did not even look at the data.

16 Q Well, you mentioned traumatic brain injury. You know
17 that Dr. Kruse is a neuropsychologist and she tested to
18 see if there are any effects or deficits from traumatic
19 brain injury?

20 A Correct. And my understanding is that she didn't
21 find any more cognitive deficits.

22 Q And did you review Dr. Tora Brawley's report on the
23 same thing?

24 A I did not.

25 Q So you -- and you got involved in this case because

1 you say your friend and colleague, Dr. Dorney, the day
2 after she's testified and cross-examined by the State
3 contacts you and says hey, there may be some testimony
4 coming up about malingering?

5 A She had concerns that that may be stated when, in
6 fact, the report did not say anything about malingering.

7 Q Dr. Dorney had Dr. Kruse's report for some time. And
8 Dr. Kruse's report actually mentions possibility of
9 malingering in here, language, right?

10 A I don't recall seeing the word. I don't recall her
11 actually saying diagnostically she was finding he was
12 malingering.

13 Q It is very clear she's talking about he does not
14 present consistently with symptoms known -- of known
15 psychiatric conditions. But even Dr. Frierson, who is the
16 counterweight to Dr. Dorney, indicated that just reading
17 this alone, he knew there was indications of malingering.

18 A Okay.

19 Q So Dr. Dorney, she's qualified as a psychiatrist,
20 just like Dr. Frierson, right?

21 A Yes.

22 Q So if she had any real concerns, she could have
23 knocked on your door and said hey, we've worked together
24 before, I'd like you to review this, but she didn't before
25 she testified, did she?

1 A I don't recall she did before she testified, that's
2 correct.

3 Q You've told us that it didn't happen?

4 A Right. It happened after -- well, I know it happened
5 after her testimony.

6 Q Has anybody from the Defense, any attorney or anybody
7 working with them contacted you before Dr. Kruse
8 testified?

9 A No.

10 Q So your whole purpose in coming into this case was
11 your friend, who presented testimony, was cross-examined
12 by the State, said hey, there may be some malingering.
13 And then you took the bull by the horns and said let me
14 look at the report?

15 A No, that's not actually how it went. She didn't say
16 there may be some malingering. She said that she was
17 concerned that the other side was going to say malingering
18 when, in fact, that had not been really noted on the
19 report. And all of a sudden, they were coming up with the
20 word malingering. So there was an inconsistency in what
21 she saw versus what -- and certainly what she saw, I
22 believe, in Mr. Jones and she was concerned the testing,
23 perhaps, being misinterpreted.

24 Q And did Dr. Dorney contact Dr. Frierson and say hey,
25 what you've got in your report concerning the possibility

1 of malingering is inaccurate?

2 A I don't believe she has yet.

3 Q Yet?

4 A I don't know if she will.

5 Q But the bottom line is she had Dr. Frierson's report
6 before she issued her own?

7 A You said she had Dr. Frierson's. I don't know when
8 she had the report.

9 Q Because you weren't involved in any of this?

10 A I was not.

11 Q You were brought in when Dr. Dorney came back and
12 said hey, there's talk about malingering, I want you to
13 look at Dr. Kruse's tests and her report?

14 A Correct. Because there had been no mention of
15 malingering up until the trial.

16 Q And then you took Dr. Kruse's report and you said
17 there's certain things missing, certain things I don't
18 understand. So you asked for the raw data?

19 A Correct.

20 Q And then you took it on yourself to kind of rescore
21 based on your interpretation of the raw data, correct?

22 A So let me say why I rescored. I rescored because Dr.
23 Kruse had not provided the Defense with the entirety of
24 the PAI report. And so for that reason, I went ahead and
25 I just reentered the scores to see what parts she had cut

1 and pasted and what the negative response should have
2 been. It could have been -- for all I knew when I
3 reentered it, it could have been that the negative
4 response was elevated and she simply forgot to put it in
5 there. But I wanted to see what the entire report that
6 should have been submitted actually was. So that's where
7 I began.

8 Q One thing that would have made it real easy is to
9 pick up the phone and say hey, Dr. Kruse, I know I don't
10 know you. I'm reviewing this for Dr. Dorney, maybe the
11 Defense, can you explain what you did? And you didn't do
12 that?

13 A I didn't do this because this is an ongoing case.
14 After I saw it, I knew that I -- I will be contacting her.
15 I have to ethically.

16 Q Well, yeah, you've filed an affidavit, basically,
17 accusing her of unethical behavior and then you're going
18 to contact her and say hey, what did you mean by this?
19 And maybe she's got an explanation.

20 A If she has an explanation, then she has an
21 explanation. For me, I just want to make sure that she
22 understands that I had these concerns and that it wasn't
23 just one or two, that it was multiple concerns about
24 competence, about interpretational data, about not
25 submitting evidence that should have been submitted.

1 Q All the more reason to contact her?

2 A And I will be contacting her.

3 Q And you had notes and handwritten notes that she had
4 in her report and you didn't call her to say what does
5 this mean? What did you mean when you wrote this down?

6 A No, I did not.

7 Q That's going to be important to give -- to understand
8 her explanation of what she was doing. You can't read
9 somebody -- you're a psychologist, but you can't read
10 somebody's mind?

11 A Right. So if it was one or two questions, but as you
12 can see from my affidavit, it isn't one or two questions.
13 It's a lot of issues that there are. And there are -- the
14 issues are fairly excessive and concerning. And this is
15 not -- let me just put it to you this way. This is not a
16 conversation that I'm looking forward to having at all.

17 Q I bet not.

18 A No, not with all the concerns I have.

19 Q Because you might have a colleague, who you've never
20 before, somebody who's professional and say when I explain
21 this, you're absolutely wrong. But you filed an affidavit
22 challenging my credentials and my honesty. I bet that
23 will be a hard conversation.

24 A And she can take it on. It's just I have to do -- I
25 am here testifying because this is my area of expertise.

1 As you said, she is a neuropsychologist. This is my area
2 of expertise. These are the tests that I give on a
3 routine basis. These are the tests that I train my
4 post-docs and my -- well, my post-doctoral fellows on. On
5 methods that are correct, on what you should and shouldn't
6 do, certainly, on administering and scoring tests
7 correctly. So these are the measures that I use. If I
8 had administered neuropsychological testing and messed it
9 up, I would be expecting the same call from Dr. Kruse.

10 Q The difference --

11 A But I don't do neuropsychological testing because
12 that's not my area.

13 THE COURT: I don't want to pit witnesses. All
14 right?

15 MR. HUBBARD: Yes, sir.

16 Q She's got additional training you don't have, but
17 she's got your training. She does clinical work?

18 A She does clinical work. This is different. This is
19 forensic. This is beyond clinical. This is forensic
20 work.

21 Q And she was brought in by a forensic psychiatrist,
22 who had full faith in her to do this very work?

23 A Correct.

24 Q And do you understand that she also teaches at our
25 local university, much the same way that you do?

1 A And that's fine.

2 Q And so what you've done is you've come in here
3 without talking to her at all, you've challenged
4 everything that she put in her report --

5 A Not everything.

6 Q Just about everything, including her integrity?

7 A I did not touch the psychological piece. I am
8 concerned about integrity, yes, I am.

9 Q And instead of contacting her, you filed an affidavit
10 with the Defense and said please put me on the stand. And
11 oh, by the way, when it's all said and done, then I'll
12 talk to Dr. Kruse to see if I misunderstand something.

13 A I didn't say please put me on the stand. I said I
14 have some concerns.

15 Q You've been in this world long enough to know this
16 affidavit means they're going to put a subpoena in your
17 hands, pay for your travel to come up here and put you on
18 the stand.

19 A I figured it would be something that would likely
20 come up in appeal.

21 Q So if it doesn't touch the case now, it will touch it
22 later?

23 A It doesn't matter to me whether it touches it or not.
24 My concern is with regards to -- with what Dr. Kruse did,
25 yes, I do have some very serious concerns. Because as a

1 psychologist, we have an oath to pursue no harm. And I
2 believe that potential harm could be done in this case,
3 especially because it is a death penalty case.

4 Q Harm could be done. It could also be done to the
5 reputation of somebody who's done nothing wrong?

6 A It could.

7 Q Yeah. And that's just not your concern?

8 A I am more concerned about protecting the public than
9 I am about protecting her reputation.

10 Q Nobody's ever done this to you before, have they?

11 A Not that I know of. No, certainly, nobody has
12 contacted me.

13 Q And the actual -- even just filing an ethical
14 violation on somebody, even if it's unfounded, that's
15 something that stays on somebody's record?

16 A Now, let me explain how the process works because
17 this does not necessarily go to filing. I have not
18 contacted the Licensing Board. The ethical regulations
19 for psychologist state that first, I must contact Dr.
20 Kruse, inform her of my concerns. Depending on her
21 response, if her response is not satisfactory, the next
22 piece is then I would have to go and follow-up.

23 Q That's just it, it's whether it's satisfactory to
24 you.

25 MR. HUBBARD: I'm done.

1 THE COURT: Mr. Young?

2 MR. YOUNG: Nothing further, Your Honor.

3 THE COURT: You may step down, ma'am.

4 MR. HUBBARD: Your Honor, I ask that all those
5 Court's Exhibits be a part of the sealed record as well.
6 This is an area where Dr. Kruse wasn't present nor did she
7 have an attorney and if somebody's going to file something
8 on her, this is her career. So I'd ask that it be sealed,
9 part of the sealing.

10 THE COURT: Mr. Young?

11 MR. YOUNG: Your Honor, this is after-discovered
12 evidence that Dr. Kruse's testimony is unreliable under
13 Jones and Council. We would move for a motion for a new
14 trial on the guilt phase based on after-discovered
15 evidence at this time.

16 MR. HUBBARD: Your Honor, it's hard to say it's
17 after-discovered when they had the report, their
18 witnesses, their experts had the report and that their
19 expert only bothered to call the colleague the day after
20 she got grilled on the stand.

21 THE COURT: These are expert witnesses testifying to
22 their expert opinion on evaluations. I don't know that it
23 qualifies as after-discovered evidence. Mr. Jones has
24 been thoroughly tested, thoroughly examined, thoroughly
25 evaluated, thoroughly interviewed. Dr. Kruse has been

1 known since the hearing we had with Dr. Frierson when he
2 asked for the tests to be administered because he didn't
3 do them. He had to subcontract them out to a
4 psychologist, in this case, a neuropsychologist. We even
5 had hearings on the raw data, preserving it and not
6 allowing either side to single out questions to use them
7 in cross-examination of any witnesses, and that was not
8 done. I don't believe this is after-discovered evidence.
9 It's a newly-discovered expert witness that was presented
10 late, but I don't think it entitles Mr. Jones to a new
11 trial. Respectfully, I'll deny it.

12 MR. YOUNG: Your Honor, to the issue of the
13 admissibility of Dr. Flores' testimony at the penalty
14 phase of the case. Of course, the issue in the guilt
15 phase of the case was a very narrow mental health issue
16 about not guilty by reason of insanity or guilty but
17 mentally ill as it related to the crime. In the
18 sentencing phase where all mitigation evidence is
19 admissible and mental illness is a statutory mitigator,
20 the Eighth Amendment requires the admission of mitigating
21 evidence and a relaxation of the rules of evidence. Dr.
22 Kruse left the jury with a false impression that Mr. Jones
23 was malingering, which can be a devastating accusation in
24 a death case. Dr. Flores can show that that accusation
25 that carries over to the sentencing phase is false. It's

1 mitigating evidence for character, remorse and mental
2 illness. It should be allowed at this phase of the trial.

3 THE COURT: Y'all keep going back to malingering and
4 making it such a big issue. I don't remember the
5 witnesses -- Dr. Frierson certainly didn't. He discounted
6 it, the malingering. It's almost like y'all are fixed --
7 because the word malingering was said, it's not become
8 some gigantic issue. And it certainly didn't appear to me
9 throughout the entire trial that the accusation was, you
10 know, Mr. Jones has got us all fooled. He's malingering.
11 I don't think that's been presented at all. I think it's
12 a possibility with a symptom or two, but, overall,
13 malingering has been mentioned, but it's not been the
14 focus of the whole trial at all. It's been not. So I'm
15 kind of -- I'm confused by this malingering becoming in
16 all caps like that was the entire reason the jury, after
17 15 days of testimony, found him guilty. I don't feel it.

18 MR. YOUNG: Your Honor is correct in that's how Dr.
19 Frierson testified. And when I met with Dr. Kruse before
20 trial, she was emphatic that she was saying that he was
21 not malingering based on all of the data. However, when
22 she testified, what she said was he's consistently across
23 the board malingering. And that was what her testimony
24 was to the jury and that's the false impression that needs
25 to be corrected by Dr. Flores.

1 THE COURT: I don't remember it that way. The record
2 may prove me wrong, but I don't remember that she changed
3 from one to the other. I don't remember that. You may be
4 right.

5 MR. HUBBARD: Well, Your Honor, no cross was directed
6 about hey, you told us one thing. This is the first
7 anybody has ever said she said something to these
8 attorneys that differed from her cross. She was crossed
9 at length by Mr. Secor on the very issues that were
10 addressed here today. On about the SIRS testing, the SIMS
11 testing, the score on psychosis versus the total score,
12 all that was already brought forward in the cross, all of
13 it. And now, if she were to testify now, Ms. Flores were
14 to testify now, I don't have a witness. I can't reply
15 because mine's under a threat of an ethical violation.
16 She doesn't want to come back in this courtroom. Even
17 though she said she did nothing wrong and is mortified
18 that anybody would critique her using her notes and raw
19 data without picking up the phone saying hey, how did you
20 conduct this test. They could do this to any other
21 witness the State has. They could go back into another
22 first phase witness. Dr. Frierson may be next.

23 MR. YOUNG: All the hyperbolic language to the side,
24 this is the issue that's in front of the Court.

25 THE COURT: All right. Let me hear your motion one

1 more time because -- I'm going to take a break, but I want
2 to hear it one more time. I've heard enough. I want to
3 make sure I understand your specificity of what you're
4 asking for.

5 MR. YOUNG: Sure. Dr. Kruse left the jury with a
6 false impression that Mr. Jones was malingering. This is
7 a devastating accusation in a death case and Dr. Flores
8 can now show that that accusation, which carries over to
9 the sentencing phase, is false. It's mitigating evidence
10 for character, remorse and mental illness.

11 THE COURT: So you want to present Dr. Flores, she
12 rescored the test and her belief is that Mr. Jones is thus
13 and so?

14 MR. YOUNG: Not malingering in testing consistent
15 with people who have schizophrenia or a delusional
16 disorder, yes sir.

17 MR. HUBBARD: And I strongly object. Because here
18 comes a witness out of nowhere. I have no basis or --

19 THE COURT: I just want to make sure I know what he's
20 asking.

21 MR. HUBBARD: Yes, sir. I just want that --

22 THE COURT: A lot has been dumped in my lap this
23 morning and I'm trying to make sure I get it.

24 MR. HUBBARD: One final point, this is the reverse of
25 Inman. State v. Inman, Capital case up in the upstate,

1 where the State intimidated a witness so that she would
2 not testify, threat of arrest. This is pretty much the
3 reverse. They've brought in somebody out of the blue, no
4 notice to attack a witness from the first phase, even
5 though we're well -- almost done with the second phase.
6 Basically, put her in a position where she can't even come
7 in this courtroom and defend herself. And so, the State
8 now has no reply if Dr. Flores testifies. I have no reply
9 because they scared my witness off.

10 MR. YOUNG: Well, it would be improper to put Dr.
11 Kruse up to testify to the same thing again anyway.
12 Nobody has made any threats against Dr. Kruse.

13 THE COURT: I'm considering filing an ethical
14 violation is not a threat?

15 MR. YOUNG: No, sir. I mean, Judge, we all operate
16 under the threat if we do something unethical --

17 THE COURT: Oh, it's a threat.

18 MR. YOUNG: No. I mean, it's a fact of life. We all
19 operate --

20 THE COURT: You're telling me that the fact that
21 there's been a presentation that an ethical violation may
22 be coming down the pike wouldn't influence her somewhat?

23 MR. YOUNG: The fact that somebody says I think
24 there's problems with your testimony and if you did
25 something unethical, I'm duty bound to report it. No,

1 that's not a threat, that's a fact.

2 THE COURT: Sounds like a threat to me. I'm a little
3 older than you.

4 MR. YOUNG: I got grieved by the Supreme Court
5 yesterday -- not by the Supreme Court, I got grieved by a
6 client through the Supreme Court yesterday. But what I'm
7 not -- I'm not worried about it. I didn't do anything
8 wrong. I'm going to write my response. They'll deal with
9 it. That's not like, all of a sudden, my career is over,
10 I'm going to have to surrender my license because a client
11 grieved me. It happens.

12 MR. HUBBARD: It's very different from when an
13 attorney says you've done something wrong, threatens you
14 so that you don't continue a trial or you don't do what
15 you're supposed to do because you're under a threat of
16 being grieved. That's exactly what this is and it's her
17 livelihood.

18 THE COURT: All right. Let me think about. Let's go
19 off the record and take a break.

20 (Whereupon, a short break was taken.)

21 THE COURT: All right. After the brief break, we're
22 going to accept Dr. Flores' testimony by way of proffer
23 and not going to present it to the jury. It's been
24 proffered. The exhibits have been marked as a Court's
25 Exhibit. I'm not exactly sure how I want to

1 compartmentalize that, but I'm going to take that under
2 advisement as to whether I want to seal it where it can't
3 be reviewed except by the Appellate Courts or not. I'm
4 going to consider that. I'm not going to rule on that
5 right now because I don't have time to look up and see
6 whether I can do that or not. We can move on without
7 having to address that issue right now. So the motion to
8 present that evidence to the jury is respectfully denied.
9 Now, I reviewed when we -- right before that, the witness
10 list, State's and Defense's witness list, and I recollect
11 that the witness lists were combined for purposes of
12 qualifying the jury, which is Court's Exhibit 63. I am
13 certain the witness list handed by the State to the Court
14 listed Dr. Kruse as a witness. I'm certain of it because
15 it was presented to me prior to jury qualifications. The
16 Court's Exhibit number 63 doesn't have her name on there.
17 That was only presented to the jurors. That wasn't
18 presented to the lawyers. The lawyers knew Dr. Kruse was
19 coming because we had some extensive, lengthy, almost
20 nonending, still going on to this day hearing with Dr.
21 Frierson and his use of Dr. Kruse. We're still addressing
22 that issue. Dr. Kruse was not a surprise witness. She
23 was a witness. She's testified. Dr. Flores presented via
24 proffer and that's where it's going to end.

25 MR. HUBBARD: Your Honor, just for the record, that

1 particular list was the Defense's attempt to combine
2 witnesses, that's why we had another one with Dr. Kruse on
3 it.

4 THE COURT: It was a separate list.

5 MR. HUBBARD: Right.

6 THE COURT: The one the State presented was not a
7 combined list.

8 MR. HUBBARD: Right.

9 THE COURT: There was a Defense's list uncombined
10 also, that I also saw.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: Dr. Kruse was not a surprise witness.

13 MR. HUBBARD: Yes, sir.

14 THE COURT: And everybody had notice. The jury may
15 not have, but the jury need not have done that except for
16 purposes of having a connection. With regard to the
17 social historian -- that's the next witness, correct?

18 MR. SECOR: Yes, sir.

19 THE COURT: Or the first witness today.

20 MR. SECOR: Yes, sir.

21 THE COURT: All right. And we've proffered some of
22 her social history. I believe it will be proper. Now, I
23 think the Defense can present some limited facts from the
24 social historian. I'm going to give you a for example,
25 that Ms -- Tim, Sr.'s mother? I can't call her name.

1 MR. SECOR: Ms. Roberta.

2 THE COURT: I remember Roberta, I was trying to call
3 her by her last name.

4 MR. SECOR: Oh, Thornsberry, Your Honor.

5 THE COURT: Thornsberry, Ms. Thornsberry. I don't
6 find it improper under the little broader 403 rules to say
7 that she had Tim, Sr. when she was 12. I don't like all
8 the minute details -- you know, she grew up in an
9 orphanage, she came from a broken home. It sounds more
10 proper and easier to present to the jury as opposed to she
11 went to an orphanage at age three. She was, you know,
12 beaten and abused and picked on by the other kids. All
13 the details of that is -- I guess, use a broader brush
14 rather than a detailed brush. But that she had a child at
15 age 12 and it was Tim, Sr. and that there was emotional,
16 physical abuse and sexual abuse in her past. And the
17 details of that, we won't go into. Something along those
18 lines, to me, is pliable for mitigation purposes as
19 opposed to she was tortured and put in a bathtub by
20 Montaine and that he would keep her in there in cold
21 water. I mean, too much details is too much details. And
22 the jury, I don't think, needs all the details of her
23 childhood, but the fact that she had Tim, Sr. at age 12, I
24 think, is probative and not undue prejudicial to the
25 State. I'm not exactly sure how to tell you or caution

1 you on how to use the broader facts as opposed to the
2 minute facts, but we can present some mitigating facts
3 without becoming the Dr. Phil show. And that's what I
4 don't want to do is Dr. Phil, how did that make you feel
5 when you were beaten as a child or you were left on the
6 orphanage steps. That's what I want to stay away from.

7 MR. HUBBARD: Your Honor, it sounds like a lot of
8 what you're saying is anything that might be hearsay, that
9 so and so said this, so and so said that. You're just
10 saying if she says here is what I determined, I found that
11 she was born on this date, had this issue on this date,
12 blah, blah, blah as opposed to then the daddy said, the
13 mother said.

14 THE COURT: Yes.

15 MR. HUBBARD: Does that help?

16 THE COURT: Yes, that helps. Give the facts. All
17 the convictions and mental diagnoses, that stuff, I think
18 that's fair game, is she just giving me a list and
19 providing this family's been through a lot. There's been
20 several suicides, three or four on one side and two on
21 there. But we don't have to get into the details of each
22 suicide. He was, you know -- can you go by that, Mr.
23 Secor? Can you follow those? Put up some rails on the
24 alley where you don't go in the gutter. Can you handle
25 that?

1 MR. SECOR: My honest answer is I don't know. And
2 I'm not trying to be difficult. I just --

3 THE COURT: How about this, I'm going to allow you
4 some latitude and if I say, you know, just move on, that
5 means you've gotten too detailed.

6 MR. SECOR: Okay.

7 THE COURT: I understand that way, because you've got
8 eight volumes four inches thick. Look, there's so much
9 there. And if you want to show those books, I have them
10 over here, so be it. The jury doesn't need to go through
11 eight books.

12 MR. SECOR: No, sir. I mean, we will offer them into
13 evidence, obviously, but I understand the jury may not
14 read everything.

15 THE COURT: This lady has done a huge amount of
16 research, talked to a lot of people and found out a lot of
17 details.

18 MR. SECOR: Yes, sir.

19 THE COURT: Ms. Thornsberry's rearing is amazing, but
20 the trauma she experienced and every detail of that is not
21 presentable here. Some of the broad dates that she was --
22 grew up in an orphanage and her step-dad fathered a child
23 with her, that's a fact. That's --

24 MR. SECOR: I feel like I just need to try to explain
25 myself a little bit.

1 THE COURT: Okay.

2 MR. SECOR: And I spent a lot of time last night
3 thinking to myself and talking to other people on the
4 Defense team about Your Honor's request to try to figure
5 out a way to present it in a more, I guess -- and I'm not
6 putting words in the Court's mouth, but in a more
7 condensed or sanitized way. And, ultimately, the decision
8 that I came to in my position as an advocate in this case
9 is that for us to take a social history that is the end
10 result of three years of work by Ms. Grey and a tremendous
11 contribution from other Defense team members and people in
12 this family bearing their soul to us about things that
13 they are desperately trying to forget, I think that my
14 preemptively condensing it or sanitizing it would be
15 contrary to the spirit and purpose of the social history
16 and would be contrary to my obligations to Tim in being a
17 zealous advocate. And I understand Your Honor's desire
18 not to turn this proceeding into an episode of Dr. Phil.
19 And I hate that show and I hate shows like that, but I
20 think they're very popular for a reason is because people
21 say, I can't believe that person lived through that. And
22 that's sort of what is compelling. And so I'm not trying
23 to dramatize it or put these people on display. I am
24 trying to provide an unadulterated story to the jury. And
25 the jurors are free themselves to determine what matters.

1 And, frankly, the social history, there are some jurors
2 that it might make them angry. It might make them more
3 angry than they already are. My obligation to Tim in this
4 phase is to provide as much information to this jury for
5 them to decide, is there anything about him that is
6 redeemable? Is there anything about his past that makes
7 me consider mercy for him? And if his life has value to
8 people, is it worth my mercy to those people to not kill
9 him? So that's the purpose. And I don't mean to say that
10 I was -- or I want the Court to know that I put a lot of
11 thought into that and I felt like I couldn't preemptively
12 sanitize it or condense it without violating my obligation
13 to Tim. I will, of course, abide by whatever Your Honor
14 tells me to do. I just need to be ordered to do so
15 because, obviously --

16 THE COURT: I think I just did. I mean, I appreciate
17 what you're saying, but I think I gave you some
18 guidelines. If you get too detailed, I'm going to say
19 let's move on.

20 MR. SECOR: Okay.

21 THE COURT: And I'm going to say it in that tone of
22 voice.

23 MR. SECOR: Yes, sir.

24 THE COURT: Because I realize you've got a lot of
25 facts there, some of them this jury need not here. And if

1 they want to go watch Dr. Phil later, perhaps, this would
2 be a good episode. But it's not a popularity, we're not
3 -- certainly, we're being live streamed, but we're not
4 working as an audition for Dr. Phil. We're trying a
5 Capital case with five victims with Mr. Jones being
6 accused. Okay?

7 MR. HUBBARD: One quick thing before the jury comes
8 in. There is the eight notebooks. They say they're going
9 to move them into evidence. We've never seen any of that
10 information. We don't mind a Court's Exhibit or ID, but,
11 obviously, I don't want to have to object in front of the
12 jury on stuff I've never seen before, stuff we've never
13 been provided. I think it's inappropriate.

14 MR. YOUNG: Your Honor, we've turned all that
15 information over to both the State and Dr. Frierson.
16 Everything that's in those notebooks has been provided to
17 the State and to Dr. Frierson.

18 MR. HUBBARD: Then it's like a report and notes.
19 I've never laid eyes on it, but I would say, Judge, it's
20 just like putting somebody's reports and notes in. I
21 would object to that. She's here and she can testify
22 live. They can go through whatever they want to go
23 through in front of the jury, but I don't want to have to
24 object in front of the jury.

25 THE COURT: I don't think the notebooks as a whole

1 need to come into evidence. I think we can make them a
2 Court's Exhibit, but if she pulls out one page and says
3 this report was given to me and they want that marked,
4 sure. But eight notebooks four inches thick, no chance.
5 There's got to be too much hearsay in there for me not to
6 miss some of it.

7 MR. SECOR: Well, yeah, of course. We have tons of
8 records in there that would include statement by other
9 people, but, obviously, Ms. Grey as an expert can rely on
10 that.

11 THE COURT: Right. Right. She can rely on it, but
12 it need not come into evidence for the jury to start
13 thumbing through it. We'll have the same issue we had
14 with that CD that had all the computer records that
15 weren't testified to and, what in the world is all that
16 stuff. There may be some really bad stuff we don't want
17 the jury to see. There's no way in the world we can
18 finish this case by the end of the year if we have to go
19 through those eight notebooks. It took her three years.
20 We're not going to do that. So if she wants to testify to
21 certain parts of it, sure, but the eight notebooks aren't
22 coming in. That's too much for us to sort through today.

23 MR. SECOR: I will offer them just because I have to,
24 but I understand that the Court will deny it.

25 THE COURT: Well, some part of it -- I'm not

1 preempting you from doing some part, but eight notebooks?

2 MR. HUBBARD: If he could just say subject to the
3 Court's ruling and refer to them. My whole point is I
4 don't think I need to have -- be compelled to object in
5 front of the jury.

6 THE COURT: I agree. So I think we've addressed
7 that. Subject to the Court's ruling will be the way you
8 can offer them.

9 COURT REPORTER: Judge, I've got them already in as
10 ID Defendant's 353 through 360.

11 THE COURT: I remember we numbered them. It's
12 three -- there's eight of them. We numbered them
13 yesterday.

14 MR. SECOR: Yes, sir, 353 through 360.

15 THE COURT: 353 through 360.

16 MR. SECOR: With the Court's permission, I'd just
17 like to make an objection regarding the Court's ruling on
18 the social history testimony, if I may?

19 THE COURT: I thought you just did.

20 MR. SECOR: Well, I feel I just need to preserve the
21 record with the arguments that I made yesterday.

22 THE COURT: But you did. I mean, you've done that.

23 MR. SECOR: Okay. Well, the argument that I made
24 yesterday stands for today.

25 THE COURT: Sure. Because, I mean, I kind of took it

1 under advisement and issued my ruling today. I think your
2 record is now complete that I've now made my ruling.

3 MR. SECOR: Okay. The only question I have -- I'm
4 not trying to belabor the point, but if the Court tells me
5 to move on, I will have an objection to that, obviously.

6 THE COURT: At the end.

7 MR. SECOR: So every time you tell me to move on, you
8 accept that as an objection and response from me?

9 THE COURT: Sure.

10 MR. SECOR: Okay.

11 THE COURT: Sure.

12 MR. SECOR: And I'm not trying to be difficult, I
13 just need to make sure --

14 THE COURT: You've got a lot to get through.

15 MR. SECOR: Yes, sir.

16 THE COURT: So, just, we'll do our best.

17 MR. SECOR: Yes, sir.

18 THE COURT: Okay. We ready?

19 MR. HUBBARD: Yes, sir.

20 MR. SECOR: I believe so, yes, sir.

21 THE COURT: All right. Give me the jury.

22 (Whereupon, the jury came into open court at
23 approximately 10:45 a.m.)

24 THE COURT: Welcome back. I hope everything was good
25 yesterday evening. Anybody got any issues we need to

1 discuss? Anybody contact you, make any comments?

2 (WHEREUPON, jurors responded in the negative.)

3 THE COURT: All right. We got started this morning
4 about 8:30, worked on some issues trying to make things
5 more efficiently. I wanted to tell you, we didn't show up
6 at quarter till 10:00. I had y'all come in at 10:00,
7 sorry for the 45-minute delay, but we've been working
8 since 8:30 trying to get things done. And I think you'll
9 understand why. The next witness did a lot of work and as
10 we go, I may tell them to move on. That's part of what we
11 did this morning. I've heard more, but there's a lot.
12 When they call the witness, you'll understand. Thank
13 y'all for y'all's patience. Mr. Secor.

14 MR. SECOR: Thank you, sir. The Defense calls
15 Deborah Grey.

16 DEBORAH GREY, being
17 first duly sworn, testified as follows:

18 THE CLERK: Have a seat, please, ma'am. Once you're
19 seated, state your full name, spelling your last, please.

20 THE WITNESS: My name is Deborah Grey, D-E-B-O-R-A-H,
21 G-R-E-Y.

22 DIRECT EXAMINATION

23 BY MR. SECOR:

24 Q Ms. Grey, would you just tell the jury who you are
25 and a little bit about your background and education?

1 A My name is Deborah Grey. I'm a licensed clinical
2 social worker. I have an undergraduate and a graduate
3 degree in Communications from Wake Forest University in
4 Winston-Salem, North Carolina. From Wake Forest, I went
5 to work at the Department of Social Services. And I
6 worked there, not as a social worker to start with, I
7 worked taking food stamp applications, doing intake-type
8 things. But I started in graduate school in social work
9 while I was at DSS. And I did adult protective services
10 and I worked in a family counseling unit, and I did that
11 for about five years. In the course of that time, I was
12 working primarily with families where children had been
13 abused or neglected and I worked with parents and families
14 trying to deal with the issues that had been going on and
15 trying to keep families together, or if they couldn't stay
16 together, to help them to come apart in ways that were
17 best for the children. From there, I went to a private
18 psychiatric hospital and I worked with adolescents there,
19 kids who had been hospitalized because they were having
20 problems living in the community. So I worked with
21 teenagers and their families and, ultimately, I also
22 worked with adults there who were having psychiatric-type
23 problems. I left there after six years and went into
24 private practice with a group of psychiatrists,
25 psychologists and clinical social workers like myself. We

1 diagnosed and treated primarily mood disorders and anxiety
2 disorders, although we did have some thought disorders in
3 the practice, such as schizophrenia. Primarily, we dealt
4 with mood disorders. And my job there was to do
5 psychosocial histories on clients and make recommendations
6 and refer them on to the physicians for medication
7 evaluation. And in the process of doing that, I probably
8 did thousands of psychosocial histories during that time.
9 I also saw patients, 35 to 45 patients in the course of a
10 week. Primarily, working with people who had mood
11 disorders or anxiety disorders and, oftentimes, working
12 with their families. I had an area of specialization in
13 the clinic working with people who had had some form of
14 trauma in their life when they were younger or had had
15 substance abuse in their families when they were younger
16 and it was causing them problems in their adult life.
17 During the time that I was working there, I started
18 working with the licensing board for social work in North
19 Carolina and I worked as an investigator for them on
20 ethics complaints for about six years. And what that
21 meant was that anytime someone filed a complaint against a
22 social worker, a licensed social worker in North Carolina,
23 someone would go out and do an investigation to see what
24 was going on, what the findings and then testify in
25 hearings related to those complaints. I also started

1 working some with courts and working specifically with
2 attorneys with clients who had been charged with serious
3 charges, frequently, Capital murder where I would do
4 in-depth psychosocial histories and, oftentimes,
5 testified. I've worked with attorneys in the military, in
6 the Army, in the Air Force. I've worked in states all
7 across the country. I've testified in various courts and,
8 also, in front of the Department of Justice. And that's
9 what I've been doing in addition to my private practice
10 for about the past five years. I left my private practice
11 behind as we moved up to Southwestern North Carolina,
12 about 120 miles from here. My husband retired and I
13 continue to do some work doing psychosocial histories in
14 forensic cases.

15 Q And tell us what is a psychosocial history and how is
16 it done?

17 A A psychosocial history, the long phrase for that is a
18 bio-psychosocial history, but that's something that I
19 think is too much of a mouthful, so when I say social
20 history, you'll know I mean bio-psychosocial history. We
21 look at three different aspects of a person's life. We
22 look at the biological aspects, and that would include
23 their genetic predispositions, their medical history,
24 their neurological deficits, mental illness, mental
25 retardation, IQ, things like substance abuse, exposure to

1 toxins. And then we have to look at all of those issues
2 for every member of their family. And we do that by
3 requesting records, lots and lots of records. The bio
4 part of the bio-psycho-social history has to do with a
5 person's cognitive and emotional and social competencies,
6 how they internally navigate the world. It's their coping
7 skills, their problem-solving skills, their Defense
8 mechanisms, their social skills, their personality
9 structure and their developmental functioning. Are they
10 functioning like a 26-year-old or are they functioning
11 like an eight-year-old? We look at those sorts of things.
12 And finally, the social part of the bio-psycho-social
13 history has to do with their interactions with the world,
14 including the quality of that maternal bond when they were
15 little, the risk factors in early and mid-childhood,
16 family patterns of abandonment and abuse that may have
17 affected this person in the present, physical, emotional,
18 sexual abuse or neglect, family stability, economic,
19 emotional and residential school adjustment and
20 neighborhood demographics. We're also looking to see what
21 kind of relationships has this person had in the course of
22 their life? Have they been significant relationships?
23 Have they had people that they felt close to? So that's
24 the social side.

25 Q And what fields rely on social histories like this?

1 A I've been in the social services world and I've been
2 in the psychiatric world and both of those fields rely on
3 social histories. When I first started doing social
4 histories, it was to work with the district attorney's
5 office and the police department in presenting adult
6 protective services issues. And this, it was to present
7 child protective services issues in the courts. More
8 recently, it's been working with psychiatrist,
9 hand-in-hand, sometimes doing their treatment while they
10 provide the medications. A lot of communication there and
11 they rely on the social history. In the forensics
12 setting, oftentimes, the forensic psychiatrist and the
13 psychologist will rely on in-depth social history.
14 They're concerned about what happened at the time of the
15 crime, I'm concerned about everything that led up to that.
16 And this information that I've gathered gives them a sense
17 of this person's life history leading up to the day that
18 the crime happened.

19 Q And did you conduct a social history in this case on
20 Tim?

21 A Yes, I did.

22 Q And that's your role in this case?

23 A Yes, it is.

24 MR. SECOR: Your Honor, at this time, the Defense
25 would offer Ms. Grey as an expert in licensed clinical

1 social work.

2 THE COURT: Any voir dire?

3 MR. HUBBARD: No, sir, Your Honor.

4 THE COURT: All right. She is so qualified.

5 MR. SECOR: Thank you, sir.

6 Q Ms. Grey, you did a little bit of this, but tell the
7 jury in a little bit more detail, more specific to this
8 case the type of sources you use in creating your social
9 history.

10 A I look at gathering information to put together a
11 history as wanting to have the most stability that I can
12 in my data, so I think about it as being a three-legged
13 stool. And one of those legs is whatever the individual
14 who's been charged is telling me. Another leg is what the
15 family tells me, what the community tells me, what people
16 who knew this person tells me. And I try to see whether
17 there are correlations or confirmations between those
18 things. And the third leg is documents. I look to see if
19 there are documents out there that might confirm something
20 that I've been told, might even give more detail about
21 something that I've been told. So I'm constantly checking
22 things that I hear in the here and now with things that I
23 hear from other people as well as things that I read in
24 documents that I've gotten.

25 Q Ms. Grey, you've reviewed the Defense -- what's been

1 marked for identification purposes Defense Exhibits 353
2 through 360. Are these the records that you reviewed in
3 this case electronically?

4 A I did review them electronically. I did not have to
5 have paper copies of these.

6 Q Okay. And these records, you've looked at these
7 notebooks to know that these records are all -- every
8 record in here is double-sided, right?

9 A Yes, they are.

10 Q Okay. And these records pertain to people in Tim's
11 family to Tim?

12 A For every person that's got a genetic relationship to
13 Tim, I've tried to find whatever records I can that would
14 relate to their medical condition, their school history,
15 their mental health conditions, their legal history, their
16 substance abuse history. So whenever a person is
17 identified as being genetically related on either side,
18 I'm asking for and looking for records about that person
19 as well as records about Tim.

20 MR. SECOR: Your Honor, subject to the previous
21 objection, we'd offer Defense 353 through 360 for
22 evidence.

23 THE COURT: Consistent with my prior ruling, those
24 will not be allowed into evidence. Subparts may be
25 extracted, though.

1 MR. SECOR: Yes, sir. I just ask that --

2 THE COURT: We discussed that pretrial.

3 MR. SECOR: Yes, sir. Just ask that you note my
4 objection, please.

5 THE COURT: Noted.

6 MR. SECOR: Thank you.

7 (Whereupon, Defendant's Exhibits 353 through 360 were
8 marked for identification only.)

9 Q Now, the social history -- what's one of the, sort
10 of, instruments you use to represent the social history in
11 a single page or in a single image?

12 A One of the tools that social workers use is something
13 that's called a genogram. And a genogram is sort of a
14 fancy word for a family tree. Lots of people, probably on
15 the jury even have family trees. This is a family tree.
16 And it's a family tree for Mr. Jones, for Tim, that goes
17 back two or three generations. I put that together for
18 two reasons. One is as I'm coming to know the different
19 people in the family, it helps me to keep those
20 relationships straight because it gets very confusing.
21 But as I find out more information about each of these
22 people, over time, I'm adding things to that family tree
23 that show the types of problems or difficulties that
24 person might have had in the family. I'm looking for
25 patterns.

1 MR. SECOR: Your Honor, may I approach?

2 THE COURT: You may.

3 (WHEREUPON, Defendant's Exhibit numbers 362 and 363
4 were marked for identification.)

5 Q Ms. Grey, I just want to ask you if you recognize
6 what has been marked for identification purposes as
7 Defense 362 and 363?

8 A Yes, sir, I do.

9 Q Are these accurate representations of two versions of
10 the genogram for Tim?

11 A Yes, they are.

12 MR. SECOR: Your Honor, I would offer Defense Exhibit
13 362 and 363 into evidence and ask permission to publish
14 362 at this time for purposes --

15 THE COURT: Let me see them again. I saw them
16 earlier, but --

17 MR. SECOR: Yes, sir.

18 THE COURT: -- but there were two versions and I'm
19 not certain which one I saw. All right. 362 will be
20 admitted over State's objection.

21 MR. HUBBARD: No, Your Honor, I have no objection.

22 THE COURT: Withdrawn.

23 (WHEREUPON, Defendant's Exhibit number 362 was
24 admitted into evidence.)

25 Q Ms. Grey, I'm going to show you 362. And you see at

1 the top of it, it says Tim Jones. Now, is this the
2 genogram that you created sort of initially about Tim and
3 his family?

4 A Yes, it is.

5 Q I'm going to zoom in in hopes that we can see it a
6 little bit better, but will you tell the jury what some of
7 the -- how a person looks at these and what the key means?

8 A Is there any way I can have a laser printer [sic] so
9 that I can show them --

10 THE COURT: Right there. Push the button in the
11 middle and it should point.

12 A Okay. There is a key here and in the key, it tells
13 you that a circle represents a female, a square represents
14 a male and the line between them represents a marriage.
15 If someone has an X through their square or circle, it
16 means that they're deceased. So as you look up here in
17 this family, you have great-grandmother and then you
18 have -- that's Tim's great-grandmother. And then you have
19 the man who is his great-grandfather and he is also his
20 grandfather. You have his grandmother, Roberta. You have
21 his father, Tim, Sr. and then you have Tim right here,
22 Amber, and then the children. Over here is his mother,
23 Cynthia.

24 THE COURT: Mr. Secor?

25 MR. SECOR: Yes, sir.

1 THE COURT: I've got one of the jurors indicating to
2 me you may be standing in their way.

3 MR. SECOR: I'm sorry.

4 THE COURT: That's all right. So just be aware,
5 maybe stand over here closer in front of Joy.

6 MR. SECOR: Yes, sir.

7 THE COURT: Whichever.

8 MR. SECOR: Thank you.

9 THE COURT: Now, y'all realize, if you want to turn,
10 it's easier to see the monitor there or the details up
11 there, y'all go either way. Okay?

12 MR. SECOR: Thank you, sir.

13 Q Okay. So you just got done outlining some of the
14 main characters. And the other exhibit that we'll talk to
15 the jury about, at the end, how does that differ, is that
16 colored by the social history?

17 A Yes. At the conclusion of talking about the social
18 history, there will be a genogram that shows everything
19 that I found in the course of doing this investigation.

20 Q I guess the best thing to do is leave this up for
21 reference for now. Does that make sense to you?

22 A Yes, please.

23 Q That's about as good as I can do on the zooming. So
24 I guess we can sort of start now to tell the jury this
25 social history, this story of this family's life. Is

1 that -- unless I've forgotten to mention something that we
2 need to talk about?

3 A (Witness nods head.) No.

4 Q Okay. Well, let's start with Roberta. The jury's
5 heard some things about Roberta's life, but from your
6 perspective as a clinical social worker and in the realm
7 of social history, what does your social history reveal
8 that was important to you about Roberta and her young
9 life?

10 A I'll say a word about why the social history is
11 important to a clinical social worker and why we're going
12 to start with his grandmother and grandfather. And that
13 is when people go to the doctor, the doctor ask you what
14 your family history is or medical illnesses, like heart
15 disease or diabetes or seizure disorders. And they do
16 that because these are things that have a degree of
17 heritability to them. The tendency or the predisposition
18 can be inherited and they want to know what that is in
19 your background. They want to know that in part because
20 then they want to look at you and say what are the risk
21 factors that you have that could contribute to you
22 developing these conditions. For example, if they find
23 out you have heart disease, they may want to look at your
24 weight. They may want to look at your diet. They may
25 want to look at exercise. They may want to look at your

1 stress level. All of those are documented risk factors
2 for developing heart disease in somebody who has that
3 predisposition. I'm looking for other predispositions and
4 I'm looking for patterns. When someone goes to see a
5 clinical social worker, we say tell us not just about your
6 parents, but tell us about your grandparents and what you
7 know about how they were raised. And in particular, in
8 this family, it's important because Grandmother Roberta,
9 actually, at some point became a default mother for Tim.

10 So she's not just his grandmother, she's also in some ways
11 the person who took over his care around three years old.

12 Q And the risk factors you look for, do you also try to
13 look for whether or not people have, I think what you
14 call, resilient factors?

15 A I do.

16 Q And tell us what the resilient factors mean for your
17 purposes.

18 A Resilient factors are those things that will buffer
19 or protect somebody from developing a condition. For
20 example, let's go back to the heart disease issue. You're
21 protective factors in that would be keep your weight down.
22 You don't smoke cigarettes. You exercise regularly. You
23 manage your stress. Those are all protective factors. In
24 families, the protective factors would be, for example, a
25 loving and caring relationship with a primary caregiver.

1 It could be that you have adequate food and shelter and
2 clothing. It could be that there was a teacher somewhere
3 along the line that took special interest in you and
4 encouraged you along the way even though you were having
5 difficult times in your family. Those are examples of
6 some protective factors.

7 Q Okay. So when you look at Roberta's young life,
8 what's important to you for the purposes of social
9 history?

10 A We're looking at Roberta here, Tim's grandmother.
11 Roberta's mother had five children and Roberta was the
12 youngest. She was in a series of difficult relationships
13 and relinquished those five children, one of whom went to
14 live with one set of relatives, another went to live with
15 a different set of relatives and Roberta and the other two
16 went to live in an orphanage. Roberta was about three
17 years old when that happened. This is significant as a
18 social worker because what Roberta reports is that she
19 always felt that she was abandoned, that she was not
20 wanted. Coming out of that, there came a time when
21 Roberta was going home for Christmas with her father.
22 Father brought them back --

23 Q I just want to say, when -- going home for Christmas,
24 do you mean from the orphanage?

25 A From the orphanage. He picked her up at the

1 orphanage and was taking her home for Christmas. And when
2 he brought her back, the orphanage was closed. So he left
3 her and her little sister -- or her big sister on the
4 orphanage steps with a note pinned to their chest. They
5 were about five or six years old at the time.

6 Subsequently, Roberta's mom married a man named Ted
7 Montaine.

8 Q And that would be up there at the top of the
9 genogram, is that right?

10 A That's right. That's right. Roberta said in a form
11 that she completed, I believe, for the State's evaluation,
12 something called a mental health questionnaire, that Ted
13 Montaine used to throw boiling water on her mother, that
14 he threw her mother down the stairs, that he beat Roberta,
15 too --

16 THE COURT: This is some of the details I want to --

17 MR. SECOR: Okay.

18 THE COURT: Keep moving.

19 MR. SECOR: Yes, sir.

20 A Okay. And that he began having sex with her when she
21 was eight years old.

22 Q And that's Roberta?

23 A That's Roberta.

24 Q And she came home from the orphanage -- or her mother
25 brought her home from the orphanage around age --

1 A Correct.

2 Q -- eight? So the home that she comes back to is her
3 mother, Bernadine, and the new stepfather, Ted Montaine?

4 A That's right.

5 Q And he's the person that starts having sex with her?

6 A He started having sex with her and with her sisters.

7 Q Okay. How does his abuse of Roberta -- does it
8 continue or is it a one-time incident?

9 A It did continue. It continued with enough frequency
10 that age 11, he impregnated her. She got pregnant at age
11 11.

12 Q And Roberta got pregnant at age 11 with what child?

13 A Ted Montaine's child.

14 Q Right.

15 A Her stepfather's child.

16 Q And that child was to be?

17 A Tim Jones, Sr.

18 Q That would be Tim's dad?

19 A Tim's dad was born when his mom was 12 years old,
20 that's correct.

21 Q Was that the only child that Ted Montaine has through
22 the sexual abuse of Roberta?

23 A No. Roberta was taken out of school in the fifth
24 grade and Ted Montaine subsequently took her from her
25 home. She had a second child by him at age 14. She had a

1 third child by him at age 16. And at age 16, he forced
2 her to marry him. There's a wedding certificate that
3 shows Roberta as being 22 and Ted Montaine being 39. Ted
4 Montaine was 39, but Roberta was only 16, according to her
5 own birth certificate.

6 Q And is -- Roberta's mother, Bernadine, is she around
7 anymore or has Ted taken them away from her?

8 A Ted had taken them away from her mother and she
9 reports that nobody came to look for her. Her mother
10 didn't come to look for her reinforcing that idea of being
11 an unwanted child.

12 Q And what is life like -- just a couple of examples,
13 what is life like for Roberta and Tim, Sr.? Tim, Sr. is
14 an infant, I guess, at this point.

15 A Tim, Sr. was an infant to about age five while they
16 were all living together. And Tim, Sr. saw certain things
17 like Ted Montaine beating and choking his mother with some
18 frequency. The relationship between Roberta and Ted
19 Montaine was a very violent one. He frequently would beat
20 her, sometimes to the point of unconsciousness.

21 THE COURT: Keep moving.

22 MR. SECOR: Yes, sir.

23 Q And the other things he forced her into for the
24 purposes of him making money were what?

25 A He put Roberta into prostitution while she was still

1 a young teenager. She was only 17 when she managed to
2 finally get away from him. And so, it was before the age
3 of 17, probably around 15 or 16.

4 Q And these are the things that are happening before
5 Tim, Sr. reaches the age of five?

6 A That's right.

7 Q And the reason that the things involving Ted Montaine
8 stop when Tim, Sr. is five is because they get away from
9 him, is that right?

10 A They did manage to get away from them -- from him.

11 Q Once they got away from him, does he still play a
12 role in their lives even though they're not living with
13 him?

14 A He did. Roberta, as she phrases it, was rescued by
15 her knight in shining armor, her husband still today,
16 Larry, who was also only 17. So we have two 17-year-olds
17 with three small children, two still in diapers, who then
18 start running across the country trying to get away from
19 Ted Montaine because she's afraid that he will find her
20 and hurt her or take her back into his custody. So
21 they're on the move for a good part of Tim, Sr.'s
22 childhood.

23 Q And just as an example, from your social history,
24 what does it tell you about the number of schools that
25 Tim, Sr. went to as a child?

1 A Tim, Sr. describes going to eight or nine schools
2 before they finally settled down and he was in late middle
3 school. So he was on the move, at least, once a year, if
4 not more than once a year to various cities and various
5 states.

6 Q And will you point out to us where Larry Thornsberry
7 is, the person that Roberta married when she got away from
8 Ted?

9 A I'm --

10 Q Does your pointer not work?

11 A -- trying.

12 MR. SECOR: May I approach?

13 THE COURT: Yes.

14 A Wait, there we go. This is Larry, Sr. right over
15 here, a step-grandfather. And Larry, Sr. came to Tim, Sr.
16 as dad. So if you hear him talking about his dad, that's
17 who he's referring to. He's not referring to Ted
18 Montaine, who is his biological father and his
19 step-grandfather.

20 Q Now, the jury has heard some testimony about Larry
21 Thornsberry, Roberta's husband, and some of the issues
22 that they had in their family. But from the perspective
23 of social work, just describe some of the things that
24 happened in their relationship and what their home was
25 like and why, from the perspective of social work, that is

1 reflective of what had happened to Roberta before.

2 A Part of what Tim, Sr. says is that Roberta started
3 drinking and she started drinking a lot as a way to deal
4 with what she had been through, but he also reports that
5 when she would get triggered, she would go into these
6 rages, these rampages. Is it okay if I use certain
7 language here? There's a lot of profanity in this family
8 and the children were exposed to it.

9 THE COURT: A little bit. The jury has heard some
10 salty language. I presume that's what you're talking
11 about.

12 A I am.

13 Q And if it's convenient to use abbreviations, if
14 necessary, I believe everybody will probably know what you
15 mean.

16 A Okay. What Tim, Sr. said was her drinking was always
17 bad and it got worse as she got older. She would take out
18 on Larry. She would F the house up. She was in Mt.
19 Prospect. My mom believes in ghost shit. She thought the
20 house was haunted. Mom pulled a gun out and pointed it at
21 everyone. It had a hair trigger. And she said she was
22 going to kill all of your MFer's. She claimed it was the
23 spirits in her and then she busted up the whole house
24 again. But they never arrested her. They just -- the
25 police came and they let her go home. He said our normal

1 life was just constant shit. You never knew what was
2 going to happen next. I was always alert, always watching
3 to see what would happen. My dad did the best that he
4 could.

5 Q And when Senior was talking about his dad then, he
6 was talking about?

7 A Larry.

8 Q Okay. And Larry also had some difficult things in
9 his past that I think you raised in your social history?

10 A I did.

11 Q If we could just touch on a couple of those.

12 A Roberta married a man who came from trauma not unlike
13 her own. At the time she married him, Larry's father,
14 Buck, was in prison for killing two men. His father had
15 also had sex with his daughters. Larry's father had
16 beaten his mother. And one of Larry's sisters had
17 accidentally killed his other sister while playing with a
18 loaded shotgun. So he came from a lot of difficulties in
19 his life, too.

20 Q And Larry and Roberta are married for a few years and
21 then are divorced, is that right?

22 A Right.

23 Q And tell us who Roberta marries at that point?

24 A Roberta then married a man named Phillip Caliendo who
25 had a lot of money and had some alleged ties to the mob.

1 And so the family went from being family poor to having a
2 lot of resources. But the relationship between Roberta
3 and Phillip was also one that had a lot of fighting and a
4 lot of arguing in it.

5 Q And the descriptions that you got from Senior about
6 the drinking and the trashing the house and the
7 threatening with weapons and obscenities, does your social
8 history show that that continues, that behavior of
9 Roberta's continues while she's married to Phillip
10 Caliendo.

11 A Tim, Sr. said that while they were living in Oak
12 Grove, all hell broke loose. Mom would go on these
13 rampages --

14 MR. HUBBARD: Object to hearsay. She can describe
15 something --

16 THE COURT: Yeah, I think -- keep moving.

17 Q Just tell the jury in your own words what types of
18 things Senior found when he could come home during that
19 period of time.

20 A He would find -- and this is while she was married to
21 husband number three, Phillip Caliendo, that the house had
22 been trashed, that she had been on some sort of rampage.
23 And on one occasion when he came home, he heard that his
24 stepfather, Phillip, was in the hospital where he had had
25 a heart attack.

1 Q So that marriage last a very short period of time?

2 A It was short.

3 Q Okay. And why does it end?

4 A I'm not sure exactly why it ended. Roberta ended up
5 back with Larry.

6 Q Right.

7 A And I think -- the sense that I got was that despite
8 the financial advantages that she had to be with Mr.
9 Caliendo, her heart pulled her back to Larry Thornsberry.

10 Q At this point in the social history, what year are we
11 in approximately?

12 A It's about 1977, and that's the point when Ms.
13 Thornsberry came back together with Larry and Little Larry
14 was born, the only child of Larry Thornsberry and Roberta
15 Thornsberry. The other children are by Ted Montaine.

16 Q Okay. And Senior is -- Tim, Sr. is about how old?
17 He's a teenager at this point?

18 A He was about 12 when his little brother was born.

19 Q And the violence and the threats and the substance
20 abuse you described about Roberta and Larry's first
21 marriage, does that again appear in their second marriage?

22 A Yes, it does. It continues.

23 Q And Tim, Sr. lives with this as sort of somewhat his
24 normal life for --

25 A That's right. That is his normal.

1 Q And this goes on for another several years, is that
2 right?

3 A It goes on well into the birth of Tim, Jr. and then,
4 intermittently, from then on, yes.

5 Q Now, you have -- a part of what you've done is
6 interviewed people yourself in this case?

7 A I have.

8 Q And what have you noticed about this family?
9 Obviously, a lot of things that you're talking about are
10 upsetting, troubling things. But did you find that
11 there's a strong sense of love and commitment in this
12 family as well?

13 A There is a strong sense of love and commitment. And
14 I'm impressed by that every time that I'm around them.
15 They have been through a lot, but there is a lot of love
16 and a lot of caring there between these folks.

17 Q Tim, Sr., he leaves school at about age, I think, 16?

18 A Around 16.

19 Q All right. And can you just tell us what your social
20 history told you about why that happened?

21 A The records did not start to be available on Tim, Sr.
22 until he got into junior high and they showed him as
23 having some difficulties. He was being followed by a
24 school social worker for unknown reasons. And they noted
25 that he had times of just staring off into space. Then

1 when he got into the ninth grade, he had 50 absences,
2 which is about ten weeks of absences. They passed him,
3 nonetheless, and the next year, tenth grade, he had 40
4 absences within that first semester and then just stopped
5 going to school for lack of interest is what they said.

6 Q And is that -- based on his life experience at that
7 point, was that surprising to you that he was starting --

8 THE COURT: Keep moving.

9 MR. SECOR: Okay.

10 Q We'll go to Tim, Sr. and Cynthia, who the jury has
11 heard about a little bit. They're Tim's biological
12 parents, right?

13 A Correct.

14 Q And when did they meet approximately?

15 A They came together when they were both about 16 years
16 old. I think both of them had come out of school by then
17 and they met at a bar somewhere on the outskirts of
18 Chicago.

19 Q So that's 1980 when they come together and meet. I
20 just want to go back briefly and have you tell the jury
21 what your social history told you about what had happened
22 to Cynthia in her life from the time she was born to 1980
23 when she meets Senior and sort of use the genogram to help
24 us see that.

25 A I'm trying. There we go. So this is the mother,

1 Cynthia, here. And up here is her father, Domingo, and
2 her mother, Maggie. And as you can see, Cynthia is one of
3 nine children. The information that I received through
4 her psychiatric records, which give some history, is that
5 she was sexually molested for the first time at age three
6 by a stranger and then intermittently molested over the
7 years by other men, including her father. Her father
8 fathered a child with her oldest sister, up here. Her
9 father had a lifelong history of alcohol problems with
10 regularly getting intoxicated and becoming violent in the
11 home. He also was into a form of voodoo called Santeria.
12 And what she reported at some point was that he would put
13 her in a closet in the dark with a dead chicken bleeding
14 down on top of her as some sort of ritual. That he kept
15 skulls in the room, that he had jars with human fetuses
16 and fingers. To a little girl, anyway, that's what those
17 looked like. So she came from her own set of
18 difficulties.

19 Q Yes, ma'am. And her father, Domingo Renado, he was
20 not always in the home. He was back and forth to Texas.
21 Is that correct?

22 A One of her psychiatric records later said that it
23 seemed to the psychiatrist he only came back to town long
24 enough to impregnate the mother and then he would leave
25 again. And his substance-abuse-related charges are

1 largely from Texas showing that he spent a fair amount of
2 time there.

3 Q We'll go back later on and talk about what else in
4 Cynthia's records were particularly relevant to you. But
5 how is it that -- well, Cynthia ends up living in the
6 Jones -- or the Thornsberry home, I guess, is that right?

7 A There came a time where Cynthia started staying at
8 the Thornsberry house and Roberta thought that was kind of
9 strange. So they called Cynthia's mother and said your
10 daughter is over here and the mother said that's fine, she
11 can stay. And she did.

12 Q And she was how old at this point?

13 A She was 16.

14 Q As was Senior?

15 A More or less, yeah. They're about ten months apart.

16 Q And is this around the time when they get pregnant
17 with Tim, Jr.?

18 A Yes. They got pregnant some time around March of
19 1981.

20 Q And does your -- does your social history tell you
21 about how Cynthia was at that point, whether people saw
22 things about her that were odd?

23 A Roberta had seen a few things that struck her as
24 strange. Like, she would never eat with the family. She
25 would never be in the same room alone with Larry. She

1 would give things to the girls, to Tim's little sister,
2 and then steal them back again. Just things that struck
3 her as kind of strange.

4 Q And do those behaviors get -- or do they increase
5 once she gets pregnant with Little Tim?

6 A They did increase somewhat. Roberta found her one
7 time in the closet cuddled and crying and saying her
8 father was coming to get her. She found her standing and
9 staring at herself in front of the mirror and she couldn't
10 seem to tear herself away.

11 THE COURT: Let's keep moving.

12 MR. SECOR: Yes, sir.

13 Q And once Tim, Jr. is born to Cynthia and to Senior,
14 how does she react to this new baby?

15 A Within a couple of days of coming home from the
16 hospital, she told Roberta that she wished that baby would
17 just shut the F up. What family members noticed was that
18 she seemed kind of hollow and empty when she was around
19 the baby. She didn't seem to be very interested in the
20 baby. There were times that she would put the baby in a
21 locked room, leave the baby there screaming and crying and
22 wouldn't go take care of the baby, baby Tim, and wouldn't
23 let Roberta go take care or Tim take care of the baby
24 either. She refused to change his diapers at times and
25 refused to let Roberta do that, despite the fact that he

1 was crying. There were times that she refused to feed the
2 baby because she said she didn't want a fat baby. There
3 were times that she gave Little Tim laxatives because she
4 said she wanted to cleanse his soul. There were times
5 that she would put the baby in a bathtub with icy water
6 and then leave the baby there because she wanted him to
7 learn to listen. And then there were other times that she
8 would put the baby in winter clothing in the middle of a
9 hot Chicago summer saying that she didn't want the baby's
10 skin to see light. So her behaviors over time became
11 increasingly abusive and increasingly neglectful towards
12 the baby.

13 Q And you're saying baby, we're talking about Tim?

14 A The baby is Tim, yes.

15 Q You created some demonstratives with sort of
16 condensed versions of the information from different
17 periods of times that I'd like to use.

18 MR. SECOR: But I think I should probably approach
19 with the Solicitor, if I may?

20 (Whereupon, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 THE COURT: They're showing me some things pursuant
24 to my directions. There's eight volumes. They're trying
25 to condense it more efficiently. They prepared these

1 demonstrative evidence exhibits highlighting a lot of the
2 information in there. They're going to be shown to you on
3 the overhead, but they're not going to be introduced in
4 evidence, so you won't have them in evidence. It's just
5 to help streamline the testimony, that's all.

6 Q Ms. Grey, these demonstratives you made, I think they
7 represent the different homes that Timmy lived in and the
8 things that are relevant to you from the perspective of a
9 social worker about those homes, is that right?

10 A It represents what the people who raised him brought
11 to that raising as a result of what they had been through
12 in their lives, how were they prepared to parent this
13 infant when he came home from the hospital.

14 Q And the first one -- I think this is the first one,
15 yeah, this is the first one. That's a picture of the
16 actual home that Tim, Jr. came home to, right?

17 A Yes.

18 Q And where in that house were Tim, Sr. and Cynthia and
19 Tim, Jr. living?

20 A They were living in the basement of that house and
21 Roberta and Larry and the other children, the ones that
22 were still at home, were living in the upstairs of that
23 house.

24 Q And some of the things that you -- you've touched on
25 some of the things that are already up there, but any

1 others that we should discuss right now for purposes of
2 this timeframe?

3 A Yes. This was one of those instances where someone
4 had told me a story and I actually found a couple of
5 police reports that gave an even more complete story than
6 what I had been told. And the story was that when Tim was
7 about seven months old and in the house, this house, his
8 dad and mom got into an altercation that started off with
9 some pushing and then his dad choked his mom for several
10 seconds. When she broke loose, she went to run
11 downstairs, which she did, and came downstairs and the
12 pushing and shoving continued and then he pushed her in
13 the side of her face. She said at that point, she wanted
14 to take the baby and leave and they wouldn't let her take
15 the baby, so she left and went to her mother's house.
16 Police reports show that two days later, she came back to
17 the house with her sister demanding to get Little Tim and
18 was refused. In the house at that point were Tim, Sr.,
19 Roberta and, I believe, one of Tim, Sr.'s daughter -- one
20 of Roberta's other daughters. Cynthia, Tim's mother, got
21 into an altercation with Roberta and the daughter tried to
22 intervene and stop her from slapping and punching her
23 mother. At the same time, Timmy's aunt went downstairs
24 and climbed into the house through a basement window,
25 grabbed baby Timmy and then climbed out another window and

1 took off running, at which point, the police arrived and
2 started chasing them and apprehended her. So Timmy's mom
3 was charged with battery on the second account. His dad
4 was charged with battery on the first account and her
5 sister was charged with criminal trespassing on that
6 second account. So the first seven months of his life,
7 there's documented exposure of some of this physical
8 violence that's been described.

9 Q And this incident when the police came, this was
10 after Cynthia had started exhibiting all of these bizarre
11 behaviors and her neglect and abuse towards Timmy?

12 A It was just starting.

13 Q Okay.

14 A She was still with the family for another couple of
15 years after that, in and out.

16 Q Okay. Now, there are periods of time when Senior and
17 Cynthia are still married that she disappears with Tim,
18 Jr. for periods of time. Tell us what you know about
19 that.

20 A There were times when Cynthia would take off and
21 she'd be gone for days and they wouldn't know where she
22 was. It was a real concern to Little Tim's grandmother,
23 who told her son that she thought that Cynthia was
24 freaking nuts and that she shouldn't be allowed to be
25 alone with the baby and yet, she would disappear for

1 several days on end with the baby. I actually had the
2 opportunity to meet with Cynthia several months ago and
3 she told me that during this period of time, she was
4 prostituting and that her husband was aware of that. And
5 she also told me that --

6 MR. HUBBARD: Your Honor --

7 THE COURT: Keep moving.

8 A -- she was dancing at a strip club.

9 THE COURT: We're getting too detailed.

10 MR. SECOR: Okay.

11 Q Tim, Sr. and Cynthia, I believe you already said that
12 they stayed together, despite the problems that they're
13 having, right?

14 A That's right.

15 Q And do they get pregnant again with another child?

16 A They did.

17 Q And tell us what your social history and interviews
18 with various people -- or how has that informed you?

19 A They were living back in the home with Roberta at
20 that point. They were sort of in and out during these two
21 and a half years that they were together. And Cynthia was
22 fairly far along in her pregnancy. She was in the
23 bathroom taking a bath and called out. When Roberta went
24 into the bathroom, there was --

25 THE COURT: That's too much detail. That's really --

1 A She was taken to the hospital and she lost the baby.

2 Q Okay. And what does your social history say about
3 what people in the family that witnessed that, Roberta and
4 Tim, Sr., what did they think?

5 A They believed that she had self-aborted.

6 MR. HUBBARD: Your Honor, I object.

7 THE COURT: We're getting -- I had wanted to kind of
8 minimize that. Keep moving. Lost the baby. Please keep
9 moving.

10 Q We are about what year approximately, Ms. Grey, at
11 this point?

12 A Tim's parents were together until he was about two
13 and a half years old.

14 Q Okay. And how does the issue of custody get resolved
15 between Tim, Sr. and Cynthia over Tim, Jr.?

16 A There came a time when Cynthia and Little Tim just
17 disappeared. Tim, Sr. went home and the apartment that
18 they were sharing was empty and nothing was in there but a
19 cake in the middle of the floor. He didn't hear anything
20 from Cynthia until several weeks later when she called
21 from Florida asking if he would post her bail, didn't know
22 where Timmy was. Ultimately, found Tim, Jr. at the
23 maternal grandmother's house. And that's the point in
24 which he did a custody petition, an emergency custody
25 petition to take temporary custody.

1 Q And, ultimately, did he get custody?

2 A He did.

3 Q He did. And Tim was about how old at that point?

4 A Tim was close to three years old at that point.

5 Q And does -- what role, if any, does Cynthia have in
6 Tim, Jr.'s life from the age of three forward?

7 A Cynthia was not physically present in Tim's life for
8 his entire childhood. He didn't see her again until he
9 was in his 20's. She remained a constant issue for him in
10 terms of how he thought about her from that time on.

11 Q When he's three years old and Cynthia leaves, who
12 becomes his, sort of, default mother?

13 A Roberta does.

14 Q And is he living with Roberta still and Larry, Sr. at
15 this point?

16 A I think over the next several years, there's an
17 independence and back to dependence with Roberta and her
18 family. Tim's memory is that mostly he stayed with
19 Roberta, although there were times that Tim, Sr. had
20 housing of his own. Tim may have been there some on
21 weekends. It's also Tim's memory that his dad worked out
22 of town a lot. So he remembers Roberta as his mom and
23 called her mom.

24 Q Yes, ma'am. Around the ages of four and five when
25 Cynthia's gone, what do the reports, police reports tell

1 you about things that are going on in that home where he's
2 growing up? Just a couple of examples, if you can.

3 A When he was four years old, there's a police report
4 that shows Roberta, again, suspected of shooting at Larry
5 through the kitchen window. There is a police report from
6 when he is five years old where both Roberta and Larry
7 were arrested and convicted for possession of cannabis and
8 cocaine. And Tim, Sr. recalls that the police came to the
9 house to arrest them.

10 Q And do your interviews and things that you've
11 reviewed show you that there's still the violence and
12 obscenities and the threats going on inside that family?

13 A Yes. I talked to several family members who, on the
14 one hand, emphasize how much love there is in this family,
15 and on the other hand, emphasize how crazy it was at
16 times. There were a lot of descriptions of activities
17 that some of which were identical and some of which were
18 similar enough they may have happened at a somewhat
19 different time that went on in the family.

20 Q And is it appropriate to move on to the next
21 demonstrative that we have about Roberta's house
22 specifically?

23 A Yes.

24 THE COURT: I tell you what we will do. Let's take a
25 break right now.

1 MR. SECOR: Yes, sir.

2 THE COURT: This is a good place to stop for a few
3 minutes. Step back to the jury room. Don't discuss the
4 case.

5 (WHEREUPON, the jury was excused from the courtroom
6 for a break.)

7 THE COURT: Mr. Secor, the jury has got reservations
8 at 12:30, so that's when we're going to stop. I doubt
9 you'll be finished by then.

10 MR. SECOR: No, sir.

11 THE COURT: Okay. At 12:30, we're going to stop.

12 MR. HUBBARD: At 12:30?

13 THE COURT: Yeah. And then we'll pick it back up.

14 MR. SECOR: Yes, sir. But before you ask for the
15 jury to come in, I want to put something on the record.

16 THE COURT: Sure.

17 MR. SECOR: And I understand the Court is trying to
18 streamline the process and I understand that. I just want
19 to put on the record that the position that I feel like
20 I'm being put in because it makes me uncomfortable. I
21 feel like the presentation of social history on behalf of
22 Tim is being guided by Solicitor Hubbard's objections and
23 that what he is okay with is allowed to come in and when
24 something he doesn't like or that he thinks is
25 impactful -- I'm not speaking for him, but for whatever

1 reason he doesn't want the jury to hear it, there's an
2 objection and the Court tells me to move along. Which I
3 understand is what Your Honor said you would do
4 beforehand, but I feel like I'm being put in a position of
5 sort of like a puppet and I'm only presenting information
6 that the State is happy with the jury hearing. And I feel
7 like that is not advocacy, that that is not zealous
8 advocacy. And I believe just because I -- it's just
9 contrary to what I feel like I should be doing and need to
10 be doing. And I feel like my doing so is depriving Tim
11 the right to effective assistance of Counsel under the
12 Sixth Amendment to the United States Constitution and
13 corresponding South Carolina --

14 THE COURT: You don't have to go through all that.

15 MR. SECOR: Yes, sir.

16 THE COURT: You've made all those bases but trying to
17 streamline and trying to bring out every detail -- and Dr.
18 Grey wants to give examples and she gives two and three
19 when one will do is when you're getting detailed. I
20 didn't want the testimony that Tim and Roberta thought it
21 was self-aborted. I don't think that was necessary. She
22 lost the baby in the hospital. I mean, I just didn't find
23 that relevant to the facts here because Tim wasn't
24 apprized of any of that. I thought the brother and half
25 brother that was raised by the other people and the

1 nurturing he got and how different he was --

2 MR. SECOR: Yes, sir.

3 THE COURT: -- is a lot better example than losing a
4 baby in the hospital and what a poor mother they thought
5 Cindy was.

6 MR. SECOR: And this may be my fault, but the baby,
7 William, that Cynthia lost was lost in the home where Tim
8 was. Tim was alive at that point.

9 THE COURT: He was seven months old.

10 MR. SECOR: Yes, sir.

11 THE COURT: No, he couldn't have been seven.

12 MR. SECOR: No.

13 THE COURT: He had to be older than that.

14 MR. SECOR: Yeah, he was -- you know, I think they
15 would have been less than a year apart, so he was very
16 young. So, of course, having a -- you know, I couldn't
17 ask him to tell me about his memories of that. But it's
18 an event that occurs in the home where he is living, where
19 his biological mother, according to people who were
20 present, kills a baby inside of her. It's something
21 that's witnessed by Roberta and when Senior comes home.
22 And, obviously --

23 THE COURT: But the impact on Tim, Jr. is what? I
24 don't see the relevance of Cindy's -- you called it odd
25 behavior, it could be more graphic than that --

1 MR. SECOR: Yes, sir.

2 THE COURT: -- the really odd behavior, perhaps,
3 mental. Saying she lost a baby in the home is enough. I
4 just don't think the self-mutilation goes into it. It's
5 just -- that's getting a little too graphic for a social
6 history.

7 MR. SECOR: And I understand the Court's order and
8 understanding, I'm not trying to argue. I would just --
9 as a very sort of simplistic example, if you said, would
10 you want your infant child present for an event like that?
11 I think any rational reasonable person would say --

12 THE COURT: That's the question that needs to be
13 asking.

14 MR. SECOR: Of course not.

15 THE COURT: That question can be asked.

16 MR. SECOR: Of course, yeah. And I think that
17 that -- I think the fact that everyone's response in that
18 situation would be of course, I wouldn't want my infant
19 child present for that is because we know that even if a
20 person doesn't have a conscious memory of something, that
21 being around for horrific events can impact a person
22 directly, even if they can't remember it, and it certainly
23 affects the adults that are present at that time. When
24 the adults are present for things like that affect that
25 child's development going forward. So that's sort of, I

1 think, the spirit of the whole social history is that
2 these things, even if a person doesn't have a memory of
3 them, they're affecting the world in which they live. I'm
4 not trying to argue with the Court.

5 THE COURT: No, you're trying to teach a college
6 class now.

7 MR. SECOR: I'm trying to convey what I've learned
8 from Ms. Grey and other experts. I'm not trying to make
9 it difficult.

10 THE COURT: Well, you can ask her that question,
11 would events in the house that are traumatic and violent
12 affect a child's development. Yes, this is because. But
13 she doesn't need to give every single detail of the
14 violence he was exposed to and how that changed his
15 development, you know. That's how you can follow-up with
16 it and that's appropriate. I mean, because you've got
17 multitudes of examples of this. You've got eight volumes
18 full of it. She can come on back up.

19 MR. SECOR: Thank you.

20 THE COURT: Bring the jury.

21 MR. HUBBARD: And, Your Honor, just for the record,
22 too, my objections have been based on hearsay. And that
23 one graphic event, you ruled on yesterday.

24 THE COURT: I was trying to guide the limited -- she
25 can come back up here.

1 MR. SECOR: Oh, I'm sorry.

2 THE COURT: She's in the wrong seat.

3 MR. SECOR: Yes, sir.

4 THE COURT: This is her seat. I was trying to guide
5 the testimony, streamline it and that be the basis of why
6 I'm guiding it, not at the objections of the State. The
7 State knows I'm doing that, so I think they've been a
8 little more cautious in the objections they've done before
9 the --

10 MR. SECOR: I wanted the Court to understand the
11 position I felt like I was in.

12 THE COURT: And I put you in that position.

13 MR. SECOR: Yes, sir.

14 THE COURT: I did.

15 MR. SECOR: Yes, sir. Thank you.

16 (Whereupon, the jury came into open court at
17 approximately 12:00 p.m.)

18 THE COURT: All right. We had a short break. I
19 talked with the clerk. Roughly, between 12:25 and 12:30
20 -- y'all have got 12:30 lunch reservations, so I'm going
21 to stop some time right in there right where we are. Mr.
22 Secor, continue.

23 MR. SECOR: Thank you.

24 CONTINUE DIRECT EXAMINATION

25 BY MR. SECOR:

1 Q Ms. Grey, before we move on to the next home
2 environment in which Tim lived, I just want you to talk
3 about from the time of his birth until the time that we
4 ended, the first home that he lives in, Roberta and
5 Larry's home and Senior and Cynthia and Tim live in the
6 basement, things that exist on this demonstrative that you
7 put together, social worker, a social worker with your
8 experience, what does this mean for a child that's in this
9 environment?

10 A What I used to think when I was a young social worker
11 was what does it matter if they don't remember? It's the
12 ones who remember who are going to be affected by this.
13 But what I found out over time with developments in brain
14 science is that's far from true. What I found out is you
15 take a baby and you do something that seriously frightens
16 or scares that baby --

17 MR. HUBBARD: I'm going to object. I think this is
18 expert testimony. I understand she might have learned
19 this, but this is something where another expert would
20 draw from what she provided.

21 THE COURT: I understand your objection. I'm going
22 to allow the question. Let her answer.

23 MR. HUBBARD: Thank you, Your Honor.

24 A If a baby is subjected to being frightened,
25 traumatized, the baby will start to cry. And what happens

1 is the body secretes a stress hormone just like it would
2 if any of us were suddenly startled or afraid of
3 something. That stress hormone puts the body into that
4 fight or flight place. Typically, if there is a caregiver
5 around to pick that baby up and care for it, that stress
6 level will come down. But if there's no caregiver there
7 to pick the baby up and care for it, the stress level
8 doesn't come down and the body keeps, you know, sending
9 out these stress hormones to this infant. If this is
10 happening on a regular basis, it's being flooded by these
11 stress hormones on a regular basis. If you think about
12 for us as adults when we become afraid of something.
13 Like, you're driving down the highway and you suddenly see
14 a truck coming at you. You suddenly have this startled
15 response, time freezes, your blood pressure goes up, your
16 heart rate goes up. You might feel a little bit dizzy,
17 your hands might start to shake --

18 THE COURT: Now, I think we're getting in another
19 example --

20 A That would happen --

21 THE COURT: Total different than your question.

22 MR. SECOR: Okay.

23 A That's happening to a baby.

24 Q Okay.

25 A And when that happens to a baby over time, they get

1 sort of frozen in this fight or flight place. Their
2 little switch gets stuck. Fight, flight or freeze is what
3 human beings do in response to that kind of trauma. And
4 that what happens to an infant who's in this kind of
5 traumatic environment from early days on. Dr. Bigler said
6 between the time of birth and three years old, you go from
7 25 percent of your brain volume to 90 percent of your
8 brain volume. This is what's happening --

9 MR. HUBBARD: Your Honor --

10 A -- while his brain is growing --

11 MR. HUBBARD: Your Honor, I object. We're getting
12 into another expert's testimony.

13 THE COURT: Yeah, she is going back to another
14 expert's testimony because she's quoting another expert.

15 MR. SECOR: But accurately, though.

16 THE COURT: Ask your next question.

17 MR. SECOR: Okay.

18 Q We're going to go to the next home in which Tim lives
19 in, okay, and that is another one of Roberta's houses, is
20 that right?

21 A Yes.

22 Q And tell us about this period of time and the
23 environment in which Tim is in and his caregivers and the
24 condition of his caregivers and behavior of his
25 caregivers.

1 A This was a house that had a lot of alcohol and a lot
2 of drunken fights, a lot of swearing going on. We talked
3 about a moment ago the police report about grandma trying
4 to shoot grandpa. There are other descriptions of that
5 from other people. Grandma uses her car in repeated
6 attempts to ram or run over grandpa. The marijuana and
7 cocaine sold, people arrested. Things would get thrown,
8 smashed, threats, screams, guns waved about, police
9 called. One of the family stories I believe Tim was
10 present for was Roberta got angry with Tim's girlfriend
11 and so she beat her up, Tim, Sr.'s girlfriend. And then
12 when Tim, Sr. protested, she punched him in the nose. She
13 was driving a car one day attempting to ram grandpa's car,
14 she had Tim and Larry, Jr. in it, and wrecked the car. So
15 in this house, there were frequent occasions of cursing
16 and threats. Thanksgiving dinner, grandma stabbed grandpa
17 with a butter knife, stabbed him in the head with a pencil
18 while he was trying to paint the ceiling. What Tim
19 describes is when he would hear this gearing up -- we
20 talked a minute ago about fight or flight. He would
21 flight. He would go into his room. He would get under
22 the covers. He would pull the covers over his head and he
23 would try very hard to think about something else,
24 anything else. It was a small house. I've seen the
25 house. There's nowhere to get away from the noise and the

1 chaos of what's going on out there. But that was his
2 choice. And what the family reported during that period
3 of time was that the rest of them would get over this, but
4 Tim, Jr. didn't. You could look at him wrong and he would
5 start to cry. He wouldn't get over these fights. If
6 someone yelled at him, he didn't get over it. He was shy.
7 He was isolative. He was avoidant. He was meticulous.
8 He liked to alphabetize his little video games. He stayed
9 by himself. They don't remember him having friends into
10 this house. They don't remember him having friends
11 outside of the family at birthday parties. His world was,
12 basically, this house and school.

13 Q And what did you get from family members that were
14 not living in this home about their perception of whether
15 or not it was a good place for a child to be?

16 A He has an aunt who, at some point, when she had a
17 young baby and needed a place to stay and she came to stay
18 in the house. And within two weeks, she said this is too
19 crazy for my baby, I'm getting out of here. And she left.
20 And Tim, Jr. was still there.

21 Q Because that was his home, right?

22 A That was his home, yeah.

23 Q And what age are we at for Tim, Jr. approximately at
24 this point, do you think, or age range, rather?

25 A This would be from about age three until about age

1 ten, probably.

2 Q Okay. And what's the really significant thing that
3 occurs around age ten for his life?

4 A His dad met and married, for the third time, a woman
5 named Carolyn. And eventually, his dad moved in with
6 Carolyn and they had two children, Tyler and Travis, Irish
7 twins, born within about 11 months of each other. When
8 Tim was ten, 11 and 12.

9 Q All right. And I think -- I'll put up the
10 demonstrative that you created for the environment that
11 the social history shows existed with Tim and Carolyn's
12 house, is that right? Is that an actual picture of the
13 house?

14 A Yes.

15 Q And where is that?

16 A It's in Illinois, outside of Chicago.

17 Q All right.

18 A I think it's in Algonquin.

19 Q And if you would, tell us about what the social
20 history says about the conditions of that family and the
21 effects on the children in the family.

22 A Tim had the perception that he wasn't wanted by his
23 stepmother. He presented that to me and he presented it
24 to another counselor that he saw back in 2012, that she
25 told him that she wasn't wanted there. He felt unwanted,

1 regardless of what she told him. She was a young woman
2 with two small children and a budding adolescent for a
3 stepson. Tim became very preoccupied with the idea that
4 he wasn't wanted there. There was domestic violence in
5 this house. In 1995, when Tim was 13 years old, there's a
6 police report that shows that Tim, Sr. choked Carolyn and
7 punched her in the chest. She wanted to sign a complaint
8 saying this was an ongoing thing and once he was placed
9 into custody, he began pleading with her until the
10 complainant stated she wouldn't sign the complaint. But
11 the police said they would press charges and they told him
12 he couldn't go home for three days. And what Carolyn has
13 told me is there were times when things would get violent
14 between the two of them, she would call the police just to
15 have him removed from the home. There was another police
16 report just a year later that said that Tim, Sr. had
17 struck Carolyn on the back of her legs and then choked
18 her. And he was convicted of misdemeanor domestic battery
19 and placed on supervision. So the relationship between
20 Tim, Sr. and Carolyn had become one that had a lot of
21 tension, a lot of fighting, arguing, yelling, threatening.

22 Q And where would Tim, Jr. sometimes retreat to when
23 things were really rough at Tim and Carolyn's house?

24 A He would retreat to his bedroom if he could.
25 Sometimes, he would go over to Roberta's house, but that

1 had some issues. There were times at this point that he
2 had some friends that he skateboarded with who had an
3 opportunity to see Tim with his family and said that it
4 looked to him, the person that told me this, that Tim
5 looked like a scared puppy when he was around his dad.
6 But Tim also got into religion about that period of time
7 after his little brothers were born. He started going on
8 the weekends to a church all-day-type experience that he
9 really, really liked. And what he reported was that he
10 felt lost and abandoned by a mother, but he felt loved and
11 accepted by Jesus Christ. And so he was attending there
12 on a regular basis. His father saw him becoming kind of
13 extreme in his responses, that he was taking the Bible
14 very literally. And came home and said we can't go
15 swimming anymore because women are wearing bathing suits
16 there and I can't be around things that might promote
17 lust. He was critical of his stepmother for wearing
18 shorts or for wearing pants because women should wear
19 dresses and they shouldn't cut their hair and they
20 shouldn't wear makeup. His father continued to tell him
21 that he thought this was kind of warped and, eventually,
22 Tim, Jr. left, stopped going to church.

23 Q And he's about 12 at this age, Tim, Jr.?

24 A Yes.

25 Q And what's another -- from the perspective of a

1 social worker, what's another event around that same time
2 for Tim in his life?

3 A One of the things that happened for Tim, Jr. was that
4 he started hearing a voice inside his head that he called
5 an imaginary friend. This was a voice that was there
6 pretty frequently. He would talk to it. It would talk
7 back. Sometimes he would talk out loud, but not if he
8 knew there were people around. He knew on some level that
9 an imaginary friend was something that was normal for
10 little kids. But he wasn't a little kid anymore and so,
11 he knew it wasn't completely normal. And he worried that
12 maybe he was going to turn out like his mother and so he
13 didn't tell anybody and he kept that to himself. The
14 voice offered him comfort, offered him solace, offered
15 him, in a sense, friendship for a kid who didn't have or
16 feel like he had much of that going on on the outside. He
17 got to a place where he started crying a lot, couldn't
18 stop crying. Started ruminating, starting thinking about
19 not having a mother, about how horrible it was to not have
20 a mother. He started thinking that people could look at
21 him and tell that he didn't have a mother, that there was
22 something wrong with him that he didn't have a mother.
23 When his family talked about his mom, they talked about
24 her being crazy and so, he started wondering if maybe he
25 was such a bad child that he had driven his mother crazy,

1 that he had driven her away. This was on his mind a lot.
2 He had reached the point where he thought people could
3 look at him and tell he didn't have a mother because they
4 could read his thoughts, they could know that. Somewhere
5 about this time, he heard a voice. And this wasn't the
6 voice of the imaginary friend, it was a harsh voice, it
7 was a scary voice. It was something that scared him and
8 frightened him and it said just go ahead and kill
9 yourself.

10 Q Around that very time, he's also assaulted by
11 somebody in his neighborhood?

12 A He was. He was sexually assaulted by someone in the
13 neighborhood, a gentleman who coerced him into performing
14 oral sex on him, something that he felt ashamed of, that
15 he felt was dirty. And with everything else in his life,
16 he kept it a secret.

17 Q You talked about the violence going on in Tim and
18 Carolyn's household. Also, the family suffers a
19 significant loss around this same time. Tell us about
20 what the social history -- or why that's important to the
21 social history.

22 A In 1995, Tim's younger sister, Elaine, Roberta's
23 second child, died of cancer. She had had serious
24 problems with drugs prior to that. She didn't realize
25 until fairly late stage that she was ill and so she died

1 quickly. And that loss was terrible for this family,
2 terrible for Tim, Sr. and Roberta. Tim, Sr., who had been
3 having problems with alcohol and violence in the home, his
4 drinking increased. And, in fact, the second one of those
5 police reports that I told you about came after his
6 sister, Elaine, died. It was hard for Tim, too. He was
7 very close to his Aunt Elaine.

8 Q You've already said that Elaine's death has a major
9 impact on her brother, Tim, Sr. Does that have
10 ramifications for Tim and Carolyn's household and the
11 environment there for the kids?

12 A It did. Tim's relationship with his dad up to this
13 point has been described as increasingly angry. That when
14 Tim, Sr. would drink, he would become verbally abusive to
15 Tim, calling him names, calling him a little MF'er. He
16 would yell. He would say things like you think you're an
17 F'ing man and would start throwing things around the
18 house. One of the police reports we got reflects that he
19 was throwing things around the house. And Tim kept a very
20 low profile while that was happening. He tried to keep a
21 low profile. He knew there wasn't anything he could do to
22 stop it or to make it better. If he could get to his
23 room, he would get to his room. But, frequently, his dad
24 didn't want him to leave while this was going on. So
25 after Elaine's death, Tim started drinking more. He drank

1 Crown Royal. And the family knew if he showed up with
2 Crown that it could be a difficult night, that he'd be
3 drinking. Sometimes when he drank, he would get sad and
4 just sob. Other times when he would drink, he would get
5 angry and he would get violent. So it got worse for both
6 Carolyn and for Tim.

7 Q The things that Senior is doing, the behaviors that
8 Senior is exhibiting during this period of time, from the
9 perspective of a social worker, is this -- is it
10 surprising that he sometimes acts this way in what he,
11 Senior, has been through in his life?

12 A Not at all. If you think about it, this is a family
13 that has learned to self-medicate the pain that they have
14 as a result of what they've been through in their lives.
15 So he's drinking alcohol and he is violent, as his mom was
16 violent, as his dad was violent. He is not dealing with
17 his emotions in a way that is healthy. He's dealing with
18 them by acting out, by fighting, by taking it out on other
19 people.

20 Q So as a consequence of that, I think there's a period
21 of time around this time that Tim is living at Roberta's
22 to try to escape some of this, is that correct?

23 A He went to live with Roberta, I believe -- because
24 the family moved from Roberta's neighborhood to a
25 neighborhood one town over. And staying there with

1 Roberta allowed him to continue in the same school for a
2 year. So he stayed with Roberta during the course of that
3 year. And subsequently, he went to live in another town
4 and changed schools.

5 Q That's something that I think I may have
6 inadvertently skipped over. Up until this point in his
7 life, what does his social history, your investigation
8 tell you about Tim as a student and sort of his interest
9 in education?

10 A Tim had historically always done well in school, very
11 well in school, 70th, 80th percentile in yearend testing.
12 His grades were good. He was especially good in science
13 and in math. And as he went on into high school, he was
14 taking a lot of advanced placement classes, sometimes at
15 the local junior college. So school was a place where he
16 knew that he could excel. And also one of the things that
17 I should add that the family has said is that Tim had
18 always placed a very high importance on being right, on
19 being the authority and on attention. And that is
20 something that the family had noted from the time that he
21 was a little boy. I look at that and I think about the
22 fact that Tim was compromised socially, from the family's
23 description. He didn't have friends. He didn't
24 socialize. His currency, if you will, was his cognitive
25 currency, his intellect. That was the way that he felt

1 like maybe he could get respect, maybe he could interact
2 with people. That was important to him.

3 Q And his interest in school, sort of commitment to
4 education, was that a theme in the family or is that kind
5 of unique to Tim?

6 A In Tim's family, his grandmother had come out in
7 fifth grade and his dad pretty much stopped attending
8 after the eighth grade and his mom came out in ninth
9 grade. His family was so tied up in their own struggles
10 that they had not been able to focus on education.

11 Q And so around 15, the car accident that the jury has
12 heard about. And, obviously, we don't need to talk about
13 it a whole lot, but from your perspective, what's the
14 significance of that for the social history?

15 A Tim had two car accidents, each within a year of each
16 other. In the first one, he injured his leg severely
17 enough that he missed a lot of school, which is
18 significant. He also had a head injury that subsequently
19 was seen to be an old injury because it was caving in. If
20 you're close to Tim, what you can see is he has this dent
21 in his head and stitches run across it like a little
22 zipper almost from the second injury. So the second one,
23 same place, bashed the head once again and then he had
24 multiple stitches there. What's significant is that
25 nobody saw this as something that was needing treatment at

1 that point. And there may not have been anything that
2 could have been done at that point. What it caused in
3 terms of changes for him over the course of his lifetime
4 from then on is unknown. What the family says is that
5 they haven't observed changes, that he just became a
6 teenager. As he just became a teenager, he was somewhat
7 different from how he had been before.

8 MR. SECOR: Your Honor, do you want me to stop now?

9 THE COURT: That will be fine. I mean, if that's a
10 good place to stop.

11 MR. SECOR: Yes, sir.

12 THE COURT: All right. Y'all go and enjoy lunch.
13 See you back in a little over an hour, hour and 15. Don't
14 talk about the case. See you back in a little while.

15 (WHEREUPON, the jury was excused for a lunch break.)

16 THE COURT: 1:40, 1:45 be all right?

17 MR. SECOR: Yes, sir.

18 THE COURT: All right. See you then.

19 (WHEREUPON, a lunch break was taken.)

20 MR. HUBBARD: May we approach?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held.)

23 THE COURT: Bring the jury in.

24 (Whereupon, the jury came into open court at
25 approximately 2:27 p.m.)

1 THE COURT: They're going to call something out of
2 order.

3 Mr. Young.

4 MR. YOUNG: Your Honor, the Defense calls Amber
5 Kyzer.

6 AMBER KYZER, being
7 first duly sworn, testified as follows:

8 THE CLERK: Have a seat, please, ma'am. Once you're
9 seated, state your full name, spelling your last.

10 THE WITNESS: Amber Kyzer, K-Y-Z-E-R.

11 DIRECT EXAMINATION

12 BY MR. YOUNG:

13 Q Amber, who are you here for?

14 A I'm here for my babies.

15 Q Did your kids love their dad?

16 A Yes, they did.

17 Q Can you tell the jury a little bit about your and
18 Tim's relationship and how it was?

19 A In the beginning, Tim and I had a very strong
20 relationship. I think we found a lot in common. I wasn't
21 speaking to my family at the time and I'm not sure if he
22 was really speaking to his at the time when we first met.
23 And we just kind of latched onto each other. Later on,
24 any little thing would kind of spark an argument and our
25 relationship became volatile, not just on Tim's side, on

1 mine as well. It got aggressive at times, violent, but we
2 managed to stick through it because we had the children.
3 Towards the end of our marriage, I think I was thinking
4 the best interest for my children that it was not a good
5 environment, it was not something that children needed to
6 be seeing, so we separated ourselves. Tim initially left
7 me and turned my power off and stuff. And I found it
8 really hard because I just had nothing to offer my
9 children. I could not provide for them. I think as a
10 mother, I was making the best choice that I could. I
11 trusted my husband at the time because he gave me no
12 reason not to with my children. He was a good father
13 while we were married. He promised to take care of them.
14 We coparented pretty good towards the end. I think that's
15 what took me back a little bit. I'm really sorry that
16 everybody has to sit here for this. I don't think anybody
17 saw this coming. And I know between myself and members of
18 the Jones family themselves, I know if anybody had seen
19 anything that any of us, any one of us would have done
20 something about it so we wouldn't be in this position
21 today.

22 Q Did you love Tim?

23 A I did. I did. And I'd be lying if I sat here and
24 said that everything in our marriage was bad. Tim and I
25 had a lot of good times. Just becomes a point when things

1 are volatile that you just make a choice where young
2 children aren't seeing certain things. It's affecting
3 them at a point and you make a choice to separate yourself
4 from that person. And it's hard to separate yourself from
5 that person because that's all you've known. All I knew
6 from 19 was Tim.

7 Q Do you want Tim put to death?

8 A I personally, myself, can't bring myself to want
9 anybody to die. It's a really hard -- I hear what my kids
10 went through -- I'm just being honest. I hear what my
11 kids went through and what they endured -- I'm sorry. And
12 as a mother, if I could personally rip his face off, I
13 would. That's the mom in me. That's the momma bear in me
14 wanting to just make him feel everything they felt. I
15 don't personally feel like I have the right to put
16 anybody's life in my hands. I don't wish that upon
17 anybody. I don't wish the Jones family to feel what I
18 felt losing my sons. I do not wish that. I will never
19 have my grandbabies. I will never have any of those
20 things. They'll never get to see anything more of them.
21 I'm trying to, I guess, take a step back and try and put
22 myself in everybody's shoes because it has affected a lot
23 more than just myself. It's even affected you guys. And
24 you're just getting to know them. There's so much more
25 about them. It's affected more than just me. I pray for

1 Tim all the time. I pray for him often. I pray for his
2 family often. I pray for my family. They never had the
3 opportunity to know them. I can't bring myself to want
4 anybody to die. That's something that I say because I
5 have to be okay with what I say on this stand. This is
6 something I have to live with. There's been a lot of loss
7 on both sides of our families. Since kids have died, I've
8 lost 11 family members, if you include my children, within
9 the past five years. One being an aunt that died the
10 first day trial started of kidney failure. I've had many,
11 many losses in pregnancy. I had eight babies all together
12 with Tim, eight. I had five healthy, two miscarriages and
13 a stillborn daughter and now, I have none of them. That
14 is a lot of loss for a mother to feel. So I do sympathize
15 with Ms. Roberta, I do. I thank her and I connected on
16 that when I was involved with the Jones family.

17 Q Do you want mercy for Tim?

18 A I do. And I don't say it lightly. He did not show
19 my children mercy by any means. But my kids loved him and
20 if I'm speaking on behalf of my kids and not myself,
21 that's what I would have to say. I'm not here for me.
22 The mom in me just wants him to feel everything that I
23 feel, that my kids felt. Nothing justifies, nothing
24 justifies what you've done. There's nothing you could
25 possibly say that would justify what you've done to my

1 babies, but they loved you. I loved you. I thought if we
2 could reach a point to make things work for our children
3 that we could. And then we'd argue again and I'd say
4 there's the Tim, there's the Tim that I can't be with. It
5 wasn't a game. It was a legitimate back and forth fight
6 emotionally. I hope for mercy for you. I pray for you
7 often. And I say that without excusing what he's done. I
8 say that wholeheartedly from the depths of my soul. I
9 don't want anyone to feel any more -- there's been so much
10 loss, a lot of loss.

11 MR. YOUNG: Thank you, Amber. Please answer any
12 questions the State has.

13 CROSS-EXAMINATION

14 BY MS. MAYES:

15 Q Amber, you've been through so much. There's no
16 possible way you could ever put it into words, is there?

17 A No, ma'am.

18 Q You could sit here all day today and all day tomorrow
19 and still not spill out all of the contents of your heart?

20 A Yes, that's true.

21 Q Those five beautiful souls you had, they're
22 irreplaceable?

23 A They are. I have a three-year-old that looks
24 identical to Merah, identical, but she's not Merah.

25 Q She's not.

1 A No.

2 Q And you haven't been able to be in the courtroom, but
3 you've been watching all of this, haven't you, so that you
4 could keep up?

5 A I have. I have watched every bit of this unfold.

6 Q And all of those unique, special, undeniable
7 characteristics that you heard about the kids --

8 A Yes.

9 Q -- those are all true and more, aren't they?

10 A Oh, yes, and so much more about them. I think Tahn
11 made his presence known when Woody started talking.

12 Q You said a little while ago that the decisions you
13 made were because "I had nothing to offer my children".
14 And that might be true financially, but you had a lot more
15 to offer them, didn't you? Love?

16 A I did. I didn't have physical means, but I -- they
17 were very loved. And this is something I tell my kids
18 every night, I do. I told them -- I talked to them on the
19 phone and I mean it. My kids were wanted, they are loved
20 and they are important. They are loved, they are wanted
21 and they are important. Always. I've always wanted them,
22 I've always loved them. I never told them that I didn't
23 want them.

24 Q So when we talk about that love and care that you had
25 to offer them, that's eternal?

1 A Yes, it is.

2 Q And even when you physically left the residence, he
3 knew you still loved and cared for your children, didn't
4 he?

5 A He did. He did know.

6 Q He knew that on August 28th of 2014, didn't he?

7 A He did.

8 Q I want to talk with you a little about what led you
9 here today to testify in this phase. Of course, you
10 testified in the guilt phase because you had direct
11 knowledge of what happened on the night of August 28th?

12 A Yes, ma'am.

13 Q You were the last person to speak with Nahtahn?

14 A Yes.

15 Q But what led you here today is I think you got a
16 subpoena?

17 A Yeah, to be here. It was from yesterday. I was
18 called to be here.

19 Q And you were called by Tim's attorneys to be here?

20 A Uh-huh.

21 Q Really, to state what you've always felt. That you
22 don't want to be the one to decide what should happen to
23 someone?

24 A Yeah. That's why we have the jury.

25 Q And part of what goes into that, just making sure

1 that it's conveyed accurately, is in a case like this,
2 it's the jury that decides the sentence?

3 A It is.

4 MR. YOUNG: Objection, form of the question.

5 THE COURT: Rephrase your question.

6 Q The State has never asked you or requested you to
7 take a position on this, right?

8 A No. No.

9 Q And --

10 A And I need the Jones family to know that at the end,
11 this is not my choice. This is not my choice. And I
12 respect whatever choice you make. I need you guys to know
13 that.

14 Q So really, Amber, that's what I want to ask about a
15 little bit more. With the State seeking the death
16 penalty, the State has never asked you to take a position
17 one way or another, correct?

18 A No, you haven't.

19 Q And you respect the State's right to seek the death
20 penalty in this case?

21 MR. YOUNG: Objection,--

22 THE COURT: I'll allow that question. I sustained
23 the first one for the record. This one I'll allow.

24 Q You respect the State's right to seek the death
25 penalty in this case?

1 A I do. I just can't.

2 Q You don't want to be the one who would have to make
3 that decision?

4 A Right, I can't make that decision.

5 Q And we've never ask that of you, have we?

6 A No.

7 Q And I think you said a few moments ago that as a
8 mother, your feelings might be different when you think in
9 terms of being a mom?

10 A I think any mother would. I think any mother would
11 want to shred the face off of anybody who would harm her
12 children, absolutely. Yes, that would be the mom in me.

13 Q And the mom in you is part of you, will always be
14 part of you?

15 A Uh-huh.

16 Q The mom in you has had a lot of conflicted feelings
17 about what should happen to Tim?

18 A Yes. I spoke very openly about that. I didn't get
19 the chance just to kind of give a little -- I didn't have
20 the chance to hear everything that had happened to my
21 children, what literally happened to them or what happened
22 that night, the things that led up to this, I wasn't aware
23 of fully. So I was finding out along with you guys and
24 the world what had happened to my children. So in
25 retrospect, the mom in me was like fry him, fry him.

1 Absolutely. But from the beginning, I have maintained
2 that I -- I just -- I am not a death penalty -- I don't --
3 I'm a strong believer in no death penalty. But yes, I
4 have had conflicting, very conflicting opinions with that
5 with regards to what had happened to my children. Yes,
6 naturally.

7 Q You spoke a little bit a few moments ago about some
8 of the violence. There was an incident here in Lexington
9 County, I believe, that you actually reported to the
10 police?

11 A Would it be the 18-wheeler?

12 Q Uh-huh. Can you tell us about that?

13 A Tim and I were leaving Wal-Mart and we had gotten
14 into an argument and he said hey, let's just play chicken
15 then. You know, in a more stern, argumentative tone. And
16 I said, Tim, it's not funny, it's not F'ing funny. It's
17 not F'ing funny. We had the kids in the back seat. So an
18 18-wheeler was coming this way and Tim steered the car
19 where the 18-wheeler would hit me directly. And as we
20 were driving toward the 18-wheeler -- I mean, it wasn't
21 much of a distance at all and Tim jerked the car that way
22 and just started laughing about it like it was funny. And
23 I know he remembers that one. And I did report that. It
24 scared me. My children were in the car. Had that
25 18-wheeler hit, it would have killed -- it would have

1 killed everybody in the car.

2 Q Is that the only incident that happened during the
3 marriage?

4 A No.

5 Q Were there times he laid hands on you physically?

6 A Yes.

7 Q And you have since informed law enforcement about
8 those times as well, correct?

9 A I did. One incident, in particular, we were arguing.
10 I can't remember what it was about. But Tim grabbed me by
11 the side of my head and head butted me to the point where
12 I just blanked out. And when I got up, it was just kind
13 of what just happened. But I could feel my head kind of
14 jar -- my brain jar in my skull. Shortly after that, he
15 threw a phone at my face and broke my back teeth out.

16 Q How much of that did the children witness?

17 A You know, I'd like to say none of it. My daughter --
18 my oldest two probably witnessed the most. Merah
19 witnessed a lot of Tim spitting in my face. I was always
20 a whore. Spitting in my face. And I'm not talking about
21 (indicated), I'm talking like hocking loogies and spitting
22 them in my face. He would take me by the side of my hair
23 and smack my head as hard as he could off the car window.
24 Or while I was pregnant, we would be arguing in the car
25 and he would stomp the brake to where the belt would just

1 tighten around my stomach. He would -- the verbal abuse
2 was always that he would chop me up and feed me to the
3 pigs because pigs will eat everything on me but my teeth
4 and I'll never be found.

5 Q So what you just described, did that contribute to
6 you leaving the marriage?

7 A It did. You know, I think when you're in a
8 situation, when you're in a marriage -- and it was
9 volatile both ways. I'm not going to sit here and lie and
10 sugar coat it and pretend that I was this innocent woman.
11 When you're in a relationship and it's like a tornado and
12 hurricane and it's like a head-on collision, there's no
13 coming down from there. There just isn't. It escalated
14 more when we got here and I think losing the Jones -- we
15 would go the Jones family's residence, his dad's
16 residence, every Saturday, I believe, to have family
17 dinners. That was my break out of my home. And I would
18 vent to my mother-in-law or just have a moment and cry
19 because that's all I could do. When we got down here, we
20 didn't have that support to just run to. I don't think
21 either of us really knew what to do. I think -- I
22 couldn't get my kids out to go to a park if I wanted to.
23 I was stuck in a home for nine years all the time until we
24 went to his dad's house. And I've got to say, as a woman
25 speaking honestly, it will drive you nuts. It'll just

1 drive you nuts. It's like the homeschooling with Merah
2 and Elias, I'm not a certified teacher, so if my kids
3 weren't up to par with their grades, I just -- I'm not --
4 I'm not going to pretend to be.

5 Q The videos, you identified them originally, I
6 believe, in the first phase of this trial. And they have
7 since then been offered into evidence and have been
8 published to the jury. But what can you tell us, Amber,
9 about those videos that we saw that were sent to your
10 phone of Merah and Eli?

11 A At the time that I received those, you know, it
12 crushed my heart because these are my babies. And I had
13 even had a discussion with Tim about those recordings
14 after they were sent. I felt like he was using my kids to
15 manipulate me to come back home. The thing was with my
16 children is my children were still young and they didn't
17 quite grasp what was going on or the volatileness between
18 our marriage, as kids shouldn't. That shouldn't be
19 something that's flashed out to a child. That's something
20 that they should be sheltered from, period. It was
21 getting to a point where I couldn't shelter them from that
22 anymore. So him sending these, it was almost tormenting
23 me. It was like your kids are crying for you and you
24 still won't come back. Why are you making them sit down
25 and record themselves crying like this? Because you're

1 tormenting them, too. And just stop. It was tit for tat
2 back and forth like that constantly. And it was very
3 draining. I'm not going to sugar coat things to benefit
4 anybody here. I'm just -- that's my feeling on the
5 matter. I knew my kids -- I knew, at least, Merah and
6 Nahtahn wanted to be with me. I didn't miss my visits
7 with my children. I missed maybe two at the end, but I
8 was very adamant about seeing my kids. And when I had the
9 chance, I went to see my kids because Lord knows, I didn't
10 get to see them often. The pictures that you guys saw
11 with Tim holding Gabe, I took those. And it was the last
12 time I saw my children alive physically. I don't know how
13 anybody else sees them, but, to me, Tim was smiling,
14 Gabriel was smiling, all the kids were smiling. There was
15 nothing. I thought we were at a point where we were
16 coparenting just fine. We were meeting. We were
17 communicating. We had our volatile phone conversations
18 regularly, not every night, but it was regularly. On both
19 ends. I was stressed because I was managing at Wal-Mart.
20 He made the schedule and it was like, Tim, I can't get
21 there at this specific time, can you please schedule it
22 for another time? Well, instead of meeting me in
23 Lexington, he'd want me to find a way to get all the way
24 to Bush River Road, but didn't want my now mother-in-law
25 to drive me there knowing I didn't have a license. It was

1 just -- it was impossible. Nothing --

2 Q Did you feel like he was working with you to make
3 those visits happen?

4 A At times, he did. At times, he did. I'm not going
5 to lie. And, you know, I think his dad and his
6 grandmother would reiterate this, too, though, when you
7 make Tim mad, you make him mad. There's no working with
8 him. There's no in the middle. It's either this or
9 nothing at all. So it was rare that he would work with me
10 on something. I believe he did work with me on letting me
11 take them to Chuckie Cheese and treat them to that. That
12 was special to me because that's something I really wanted
13 to do. I paid for every visit.

14 Q So the videos that you received, your word earlier
15 was manipulate. You believe you received those to
16 manipulate you into coming back home?

17 A That's how I took it, yes. That's how I took it.

18 Q When we talk about the character of the Defendant,
19 the character of Timothy Jones, is manipulation a fair way
20 to describe him?

21 A Yeah, it can be. Tim knows how to manipulate. Tim
22 knows how to be stubborn and hard-headed and manipulative,
23 coercive.

24 Q About Nahtahn --

25 A I think a lot of what my kids may have said was

1 coerced, I really do, because that's not the relationship
2 I had with my children. When my children were with me,
3 there was no problem. There was no problem. My kids,
4 mommy, and ran to me with open arms. I am telling you my
5 kids were as stubborn with me and if they had an issue
6 with me, they wouldn't have ran to me.

7 Q I believe there is a Defense exhibit, 267, Defense
8 Exhibit 267, a statement from Chrystal Ballentine wherein
9 it's alleged that the Defendant would tell the children
10 that you didn't love them. Were you aware of that
11 behavior?

12 A I was not aware of that. I was not. So when I say,
13 I'm finding stuff out along with you guys, I truly am. I
14 was not aware that my kids felt like I didn't love them.
15 I was not -- because I showed it often. Any time -- I
16 believe as a parent when you are wrong for something, if
17 you expect your child to not lie and tell you the truth
18 and to make things right, I believe as a parent you should
19 do the same. And that has always been my thing with my
20 children. That's why the notes were written to them. I
21 wasn't the only failure in the marriage, but if I hurt my
22 children, and I did, then I need to apologize for it and
23 to address it. So no, I was not aware of them hearing
24 that. I always let them know you are loved, you are
25 wanted and you are important. And I expressed that to

1 them often. My fondest last memory of my son, Nahtahn,
2 was him running to me across -- Tim had just parked in a
3 parking space at Chick-Fil-A. And my son got out of the
4 car and he had a little checkered shirt, which I still
5 have to this day that I can't bring myself to wash because
6 it still smells like him. He had his arms open and just
7 took off in the parking lot saying, Mommy. I said, Whoa,
8 son, you're going to get hit by a car. The tight hug that
9 my son gave me just -- I try to hold onto that because if
10 they died thinking I didn't want them or love them, it's
11 just going to kill me. It just --

12 Q About Nahtahn, were you aware of any issues that
13 Timothy Jones had regarding Nahtahn?

14 A The two children -- out of all five of my children,
15 the two that I always defended the most, that I found
16 myself having to defend the most were Merah and Nahtahn.
17 Nahtahn, primarily. Tahn did not have a problem
18 expressing his feelings. He was very bold. If you did
19 something, he would very much let you know to your face.
20 You could have a zit and he would let you know that it was
21 ugly and to pop it. That's how upfront he was about his
22 feelings. I think there was some resentment there with
23 Tim. I think there was resentment with my daughter,
24 Merah, and my son, Nahtahn, wanting to be with me, I truly
25 do. I think every parent when you're in that situation

1 where your kids are separated and you're fighting for --
2 you're vying for attention and their love. You are pick
3 me, pick me. In that situation, I guess I didn't fight
4 hard enough. I didn't feel like putting my kids through
5 this tug of war was going to make it any better. I had my
6 feelings and my opinions of their dad and I felt like when
7 they got older, they'd figure it out for themselves. Tim
8 had other methods of it.

9 Q And that night, one of the sources of conflict that
10 last night was that you had defended Nahtahn?

11 A Yes, I did. Yes, I did. And he let me know it. Tim
12 let me know it.

13 Q Amber, his statements to you -- do you recall him
14 making statements that you would never have the children,
15 that they would never live with you?

16 A He had many times, numerous times.

17 Q He'd made that statement on more than one occasion?

18 A Yes. I would say, Tim, what have I done as a parent?
19 The Court didn't find anything wrong with me as a parent.
20 I had joint custody. I chose as a mother what I thought
21 was the most responsible thing with making him primary
22 custodial parent. I obtained a car. I obtained a
23 license. I got a management job and I got my high school
24 diploma. All to prove to the system that I was a good
25 enough parent. It just wasn't good enough for Tim and it

1 never was going to be good enough for Tim. I didn't have
2 anything to offer. He was very insistent on them not
3 being around Shawn.

4 Q Shawn being your --

5 A And then I found out about Chrystal.

6 Q Shawn being your husband?

7 A Uh-huh.

8 Q Your husband now?

9 A Yes. And he was 24 by the way. He was 24 when we
10 got together, I was 27.

11 Q When you said you found out about Chrystal, you had
12 not been aware --

13 A No, I was not aware of that. I was not even aware --
14 currently, I live about five minutes from Tim's old place.
15 And I was not aware that he had had that place set up and
16 had Chrystal living there at all. It was not until the
17 guardian ad litem stepped into the case. We were both
18 equally paying for her, I believe, for her services. And
19 she just -- I said, well, who's watching my kids? You
20 know, I'm a mom, I want to know who's watching my children
21 because this isn't right. You know, if I'm not working,
22 why can't you just drop them with me? I would be willing
23 to meet him and go there, whatever the case is, because
24 they're familiar with me. It gives me a little extra time
25 with them. That wasn't going to happen. That was a

1 problem. Well, that's when I found out about Chrystal and
2 her being involved with -- we were still weren't divorced,
3 so my husband -- and it hit me the wrong way. Here, I'm
4 being accused of sleeping with a 17-year-old boy and it's
5 him that's doing it. You know, I didn't jump into a
6 relationship with Shawn like everybody's proclaiming.
7 That's not how it happened at all. And it's unfair for
8 that to be put out there. Everything -- I feel like
9 everything I am accused of is quite opposite.

10 Q So the statement --

11 A To make me look like the bad parent.

12 Q The statements that you would never have the
13 children, Amber, he told you that on more than one
14 occasion?

15 A Yes, ma'am, he did.

16 MS. MAYES: Nothing further.

17 REDIRECT EXAMINATION

18 BY MR. YOUNG:

19 Q Despite everything that you've been through, do you
20 want Tim to be put to death?

21 MS. MAYES: Asked and answered, Your Honor.

22 THE COURT: I'll allow it.

23 A No.

24 MR. YOUNG: Thank you.

25 THE WITNESS: I'll respect whatever the jury decides.

RECROSS-EXAMINATION

BY MS. MAYES:

Q And Amber, just to follow-up on that. You're okay that you're not the one making that decision, aren't you?

A I am.

MS. MAYES: Nothing further, Your Honor.

THE COURT: You may step down.

MS. MAYES: Your Honor, at this time, may she be excused?

THE COURT: She may. All right. You're going to bring Ms. Grey back?

MR. SECOR: Yes, sir.

THE COURT: Ms. Grey, remind you you're still under oath. Mr. Secor.

MR. SECOR: Thank you, sir.

CONTINUED DIRECT EXAMINATION

BY MR. SECOR:

Q Ms. Grey, just to make sure we're on the same page in terms of timeframe. You talked about the death of Tim's Aunt Elaine and the effect that had on the family. And then you discussed the car accidents that Tim was in, right?

A Correct.

Q And the thing I'd like to get you to address now is that one of the things that starts in Tim's life at that

1 point is substance abuse?

2 A Correct.

3 Q And if you can just discuss with the jury how that
4 comes about or how that starts.

5 A Tim had experimented before he got involved with the
6 church with marijuana and with alcohol. The alcohol, he
7 tried at a family party. The marijuana, I believe that he
8 got from his dad's stash without his dad knowing it. What
9 he found with both of those was that almost immediately he
10 felt a decrease in the anxiety and agitation that was
11 pretty normal for him. He got involved with church and
12 that went by the wayside. But after he left the church,
13 he got involved with substances again, primarily, with
14 alcohol and with marijuana. And what he found was that it
15 came with a peer group, which was something that was kind
16 of a first for him. If he was around other kids that were
17 smoking or who were drinking, they didn't seem to notice
18 or care that he was different, that he didn't have a
19 mother or that he was socially quite awkward. It gave him
20 a built-in group of friends, something that he hadn't had
21 before. So he got involved drinking fairly heavily,
22 smoking a fair amount of marijuana. It did not affect his
23 grades until the point where one day he was at school and
24 he was a junior and he had some marijuana in a cigarette
25 case. The cigarette case fell by the wayside. It was

1 found, it had marijuana in it. It had marijuana that he
2 had taken from his father in it, unbeknownst to his
3 father, and he was arrested there at school and walked out
4 in handcuffs.

5 Q And is there -- at that point in his school career,
6 for the first time, I think, he starts to not do as well,
7 is that right?

8 A It was after that by a bit. This was the -- this was
9 the end of his junior year. And he was fined and sent to
10 treatment, which he completed, four or five months. And
11 then over the course of the next year, for the first time,
12 really, in his life, he failed a class and he got two or
13 three D's, which had never happened before and it's never
14 happened since.

15 Q During that time, did he also apply or begin the
16 enlistment process?

17 A He did. He enlisted in the Navy in the middle of his
18 senior year.

19 Q And does your social history indicate whether or not
20 he disclosed his drug use when he enlisted?

21 A Yes. He had a discussion with the recruitment people
22 that he had a conviction for marijuana. And there's
23 evidence in the record that they had a conference on that
24 and they decided to give him a waiver because at that
25 point, he had completed treatment and he was no longer

1 using substances.

2 Q And the jurors heard about him going into the Navy
3 and the reasons for coming out. Just briefly, anything
4 that you found particularly relevant about that for
5 purposes of his social history?

6 A A couple of things. One was that this also
7 corresponded with the end of a relationship that he had in
8 high school. And when that relationship was ended by the
9 female, he experienced that as a real loss. Also, he had
10 a dream of being a Navy Seal and that was going to be a
11 source of positive identity for him. So when he lost
12 that, that was another loss. And the doctors there who
13 diagnosed him with depressive disorder NOS, not otherwise
14 specified, and alcohol and marijuana dependence also said
15 that he had started off and on since 14 feeling depressed.
16 At least, half of the time over the past four years, it
17 had been greater and he felt like he didn't belong with
18 others. All of which relates to what I talked about
19 earlier in terms of looking for records that sort of back
20 up what people tell me. Tim had told me that he first
21 started having problems when he was a young adolescent
22 with his thinking and with feelings of depression and
23 here's a record that documents him telling someone that
24 when he was 18 years old.

25 Q Now, after he washes out of the Navy, the home that

1 he comes back to is the one that -- we've already had this
2 up here, but this is the home of Tim, Sr. and Carolyn and
3 the issues that existed in that home. And is this the
4 home that he comes to after his --

5 A Yes, it was.

6 Q And that is in, I believe, 2001, is that correct?

7 A I think it was in the summer of 2000 that he came out
8 of the Navy.

9 Q Okay. What's his life like after the failure of --
10 his failure of trying to get into the Navy?

11 A He came home to live with his dad and Carolyn, who
12 were having a tough time at that point. Tim, Sr. was
13 still drinking a fair amount. And what Tim, Sr. said was
14 that Tim didn't seem like himself. He was, you know,
15 talking out of his head. And he had begun to use drugs
16 and alcohol again. He was smoking marijuana. He tried a
17 variety of drugs, including heroin and cocaine. He
18 started not getting along with his family, so he would
19 sleep sometimes out in the woods and come into the house
20 at night to get food. And then he started having problems
21 with getting arrested.

22 Q And did his interactions with Tim, Sr. change in
23 terms of how he approached that relationship?

24 A His interactions with Tim, Sr. had changed back in
25 high school, sometime maybe around his junior year.

1 Instead of being on the flight side of fight or flight, he
2 became more confrontative with his dad. He became more
3 unpleasant with his dad. He would say things to his dad,
4 like, go ahead, dad, why don't you just have another
5 drink. Instead of trying to be consolatory and trying to
6 get himself out of the room, he became more confrontative,
7 which did not make things any better.

8 Q Yes, ma'am. The family then suffers another
9 significant loss. Tell us about that.

10 A They did. Tim had come out of the Navy, was living
11 off and on at home, had been arrested for driving above
12 the speed limit on a couple of occasions and had been
13 arrested for possession of a controlled substance. And it
14 was after that arrest, a couple of months after that
15 arrest that his Uncle Larry died. Larry is four years
16 older than Tim was. Died in a motorcycle accident. It
17 was very sudden, very unexpected and absolutely devastated
18 this family.

19 Q The jury's heard about the sort of lead up at that
20 point to the things that he was arrested for and convicted
21 of and sentenced to a prison term in Illinois, so -- I
22 don't want to skip that period of time, but because the
23 jury's heard about that, can you just tell us anything
24 about that period of time that is particularly relevant
25 for you to point out for purposes of the social history?

1 A Tim ended up being incarcerated for about a 16-month
2 period. First, he was in the county jail and then he went
3 to a boot camp. And it was in the boot camp that he got
4 involved with a pastor there and religious movement and he
5 made a commitment to turn his life around. So boot camp
6 for him was a place where he saw the need to make some
7 serious changes in his life.

8 Q And is that commitment that he seems to have made in
9 prison, does that seem to be how he lives his life when he
10 first gets out?

11 A Yes, it did. I should also mention while he was in
12 prison that he was seen by mental health there and
13 diagnosed with poly-substance abuse, rule out personality
14 disorder with narcissistic traits, so one more diagnosis
15 for him. He came out of prison and one of the first
16 things that he did was to try to find a church that went
17 along with the beliefs and values of the church that he
18 experienced while he was in prison.

19 Q And that church that he first found was the church
20 with Pastor Sutton, who the jury heard from?

21 A That's correct, Center Point Apostolic Pentecostal
22 Church.

23 Q And he's -- I just want to make sure my dates are
24 right. It's about 2003 when he gets out of prison, is
25 that right?

1 A He was about 21 years old when that happened. He
2 came out and was completing another substance abuse
3 program as a part of parole, which he completed. And by
4 the end of it, about a year after he had come out, his
5 substance abuse counselor gave him an excellent prognosis.
6 He was attending church and by then, he was married.

7 Q And so it was at that church or during that period of
8 time when he meets Amber, right?

9 A It was. And I should mention about the church there.
10 There were -- I talked to Pastor Sutton in his home
11 several months ago and there were three things that he
12 said that I thought were significant for the social
13 history. One was that Tim's passion and his faith were
14 real and that his desire to live his life by the scripture
15 was real in his opinion --

16 MR. HUBBARD: I object. He's already testified to
17 all this. And it's hearsay.

18 THE COURT: It is hearsay and the fact that he
19 testified. So rephrase your question so we can continue
20 on.

21 MR. SECOR: Okay.

22 THE COURT: Rephrase your question, how about that?

23 MR. SECOR: Yes, sir.

24 THE COURT: She can get to the point what she thinks
25 is special about something. How about rephrase it.

1 MR. SECOR: Yes, sir.

2 Q You talked to Pastor Sutton and you talked to other
3 people about that period of time in Tim's life?

4 A I did.

5 Q And I think that you had gotten consistent
6 information from people, but despite his devotions and
7 attempts at being a good Christian at this point in his
8 life, does his social history show that he's struggling
9 with it at this point in some ways as well?

10 A Yes, it does. And there are a couple of areas where
11 that's the case. One is that people observed, including
12 Pastor Sutton, that Tim took the Bible absolutely
13 literally and he took it as a guidebook for how he should
14 be living his life. His grandmother said to him at some
15 point, Son, this is just a guideline for you. And he
16 said, no, it's the literal truth. It's what I need to be
17 doing. And then he started telling other people in the
18 family what they needed to be doing according to his
19 beliefs. And told his grandmother that his little niece,
20 who was three years old, had been demon possessed. He
21 could see it in her eyes and his grandmother needed to get
22 her out of there or out of his presence. He told another
23 family member, more than one family member that if they
24 didn't go to a church like his and speak in tongues that
25 they would go to hell. His beliefs were very strong and

1 sometimes, he would jump up and, according to various
2 family members, start speaking in tongues in the living
3 room, which they all thought was very strange. He took
4 one of his brothers to him to his church at some point and
5 the brother said that Tim jumped up and was running around
6 the church speaking in tongues. And he didn't understand
7 that and it was kind of embarrassing to him. So his
8 beliefs were outside of what his family was familiar with
9 and it also seemed to be something that they saw him as
10 heavily invested in and imposing on them at times.

11 Q At this point, Tim is -- at this point in the social
12 history, Tim is sort of on the cusp of beginning his own
13 family. He has met and married Amber. And if we look
14 back at this point in terms of who Tim is and what is Tim
15 bringing into a marriage and what is Tim bringing into his
16 soon-to-be fatherhood based on your social history?

17 A There are a number of things that happen to
18 individuals that are raised with a lot of chaos, with a
19 lot of substance abuse, with a lot of trauma. And in the
20 individuals that I used to treat, these are the things
21 that I would commonly see. They had problems with
22 attachment, problems with relationships and boundaries,
23 difficulty with lack of trust, with socialization, not
24 being able to make good friends, perceiving and having --
25 having difficulty understanding and perceiving other

1 people's emotional states, empathy, difficulty identifying
2 and expressing emotions of their own, problems with low
3 self-esteem and shame and feelings of not belonging. So
4 given what he had been through, that was part of the
5 baggage that Tim would bring into any relationship. But
6 that's also compounded by -- if you think about what we
7 talked about earlier, there was a total lack of role
8 models there for a healthy relationship. There was a
9 total lack of role models there for healthy parenting or
10 for protecting children. He took what he now had in the
11 Bible and he used that to tell him how to parent and used
12 that to tell him how to have a relationship.

13 Q And shortly after the marriage of Tim and Amber,
14 Merah is born in Pennsylvania, is that right?

15 A Couple of years later, yes.

16 Q Couple of years later. And then they move from
17 Pennsylvania to where?

18 A By this time, I believe that Tim's grandmother and
19 father and soon-to-be new stepmother had moved to
20 Mississippi. And so when he and Amber left Pennsylvania
21 with Merah, they moved to Mississippi to be near his
22 family.

23 Q And Tim is continuing his education at that point,
24 right?

25 A He had. He had started with a community college

1 where he took a total of about 80 hours and got a 4.0 in
2 all of his hours and he was working towards being able to
3 get himself into Mississippi State.

4 Q And what -- he eventually succeeds in doing that.
5 What --

6 A He did.

7 Q What year was that approximately?

8 A By 2008, he was at Mississippi State. He was 26
9 years old at that point.

10 Q And I jumped ahead a little bit, but Merah and Eli
11 are born. Eli is born in Mississippi, is that correct?

12 A Eli was born 11 months after Merah in 2007.

13 Q Okay. And I want to talk about the -- Cynthia
14 reemerges very briefly. If you could just tell the jury
15 about how that -- how she comes back momentarily. And
16 then after that, we want to find out what you found out
17 about where she has been since Tim was three. Is that
18 okay?

19 A Tim had continued to think about, worry about his
20 mother, not having a mother. It was a topic of
21 conversation in his family on many occasions. Where is
22 she? Why don't I know how she's doing? I think it was
23 Roberta who took it on herself to find Cynthia and she
24 arranged for Cynthia to come to Mississippi and to visit.
25 And so, for the first time at about age 25, Tim met his

1 mother.

2 Q And this is in Mississippi?

3 A It was in Mississippi. And all of his family that
4 was present at the time met his mother. I thought his
5 brother, Tyler, had -- his reaction to that, which was
6 that Cynthia was crazy as a ball bat. She was talking to
7 herself. No soul, just blank eyes. That it was like
8 hugging a ghost when he went around her. Tim saw his
9 mother and others did, too, fighting with her dead mother
10 in the back yard. It was not a positive experience for
11 him. I think it scared him. He looked at that and
12 thought is this my future.

13 Q Now, what -- based on the social history and your
14 investigation, what can we tell the jury that is most
15 important from your perspective regarding where Cynthia
16 has been and what has happened to her since, I guess, what
17 is it, 1984 is when she disappeared?

18 A She left the family in 1984.

19 Q Okay.

20 A And we don't have any records to indicate really
21 where she was from 1984 until she resurfaced in --

22 Q Which was in 2008 --

23 A -- Syracuse, New York in 2008 -- excuse me, in 1988,
24 after she disappeared.

25 Q Okay. I meant 2008 meaning when she comes to

1 Mississippi, right?

2 A Yes, that was 2007.

3 Q 2007, I'm sorry. So when she arrives in Syracuse,
4 what do people know about her and the people that she
5 interacts with when she arrives there?

6 A She arrived in Syracuse and she couldn't tell people
7 who she was, where she had come from. She said that her
8 name was Eve Jones, not Cynthia Jones. Was very confused,
9 appeared to have amnesia and what they later described as
10 a fugue state, which is a kind of amnesia state that
11 someone goes into, oftentimes, when they have dissociative
12 personality, which is one of the things she was
13 subsequently diagnosed with. That began in 1988, a
14 psychiatric history that has continued to this day that's
15 encompassed many, many hospitalizations and an inability
16 to ever live independently for any sustained period of
17 time.

18 Q There's one record in particular from a place that
19 she was treated in New York that I think -- well, I know
20 that you included in your social history. And I think
21 it's something that you wanted to show the jury
22 specifically. And it's part of the records.

23 MR. SECOR: And I would just ask permission to
24 publish it, if I may, on the overhead.

25 THE COURT: Let's take a break.

1 MR. SECOR: Oh, I'm sorry.

2 THE COURT: That's okay. Step back. We'll have you
3 back here shortly.

4 (WHEREUPON, the jury was excused from open court for
5 a break.)

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

7 MR. SECOR: Yes, sir.

8 (WHEREUPON, a short break was taken.)

9 THE COURT: Y'all ready to get the jury?

10 MR. SECOR: Yes, sir.

11 THE COURT: Bring them back.

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

14 THE COURT: Continue on, Mr. Secor.

15 MR. SECOR: Yes, sir. Thank you. Your Honor, with
16 the Court's permission, I wanted Ms. Grey to be able to
17 refer and quote an updated evaluation by a doctor that was
18 treating Ms. Granado in New York. And the reason I ask
19 that she be able to quote some of it is it really
20 encapsulates the condition Cynthia was sort of found in
21 when she arrived in Syracuse. I know the State objects to
22 Ms. Grey actually reading somebody else's report, but I
23 would ask in this instance to try to shorten it that this
24 is the quickest way to do it.

25 THE COURT: I'll allow it. That will be fine.

1 MR. SECOR: Thank you.

2 Q So Ms. Grey, this is -- the letter you referred to is
3 about 1990, is that right?

4 A Correct.

5 Q And that's around the time -- she had been in New
6 York for a little while at that point?

7 A She had been in New York since 1988. And in 1990,
8 she gave birth to a son named Donald. The hospital
9 records note that throughout the entire pregnancy, she
10 never acknowledged that she was pregnant. And after she
11 gave birth to the baby, she never acknowledged that she
12 had a baby. And so what Mr. Secor is talking about is a
13 section of a letter from an evaluation that was done, a
14 mental letter that was written to child protective
15 services following that. The letter says -- the
16 evaluation says: What follows is the meager results of a
17 90-minute attempt to interview this lady. She is a
18 26-year-old fairly well-groomed, gravelly-voiced lady who
19 lives in a Kafkaesque world in which both events and
20 people are meaningless and exist in a timeless void. She
21 was, at times, cooperative as she could possibly be, but
22 exhibited throughout an air of pained puzzlement that only
23 changed in degree. This accords with her thought content,
24 which she relates, but does not understand. She doesn't
25 understand her role in these events. Skipping forward,

1 she had a son, whom she had left with his father,
2 apparently, without a qualm or regret. I can only
3 speculate about what happened in this family in which an
4 overworked, harassed mother had eight children, a drunken
5 husband, who was in and out of the hospital, going to
6 Texas and staying home only long enough to get her
7 pregnant again. She is not aware of the time, numbers of
8 pregnancies, where her children or if they are and could
9 not maintain eye contact with the baby. By history, she
10 is not aware of having this child. I fear she will not
11 feed the child, buy food for the child, clean the child or
12 hear the baby cry. She has had no visible interaction
13 with the child during the stay as noted by myself or staff
14 and I have concerns about the patient caring for herself,
15 much less the child."

16 THE COURT: Are you going to repeat the whole letter?

17 A That's it.

18 MR. SECOR: That is it, sir.

19 THE COURT: Okay.

20 MR. SECOR: Thank you.

21 Q And then there are diagnostic impressions by that
22 doctor on that letter, is that right?

23 A I believe that it was paranoid schizophrenia.

24 Q Yes, ma'am. Now, does that information line up with
25 your investigation in terms of Cynthia's response to when

1 Tim was born in some ways?

2 A If you think about what we were talking about when
3 Tim was a baby is here on the spectrum and Cynthia just
4 kept moving in this direction in terms of disengagement
5 from her infant. Now, she's at the point where she's not
6 even acknowledging that she had an infant, where she
7 acknowledged she had had Tim. She was verbal about
8 choosing not to feed him, choosing not to change him,
9 choosing not to attend to him. Now, she doesn't even seem
10 to notice. So she's just kept going in that direction.

11 Q Does this description of Cynthia in 1990, does it
12 sort of line up with your interactions with Cynthia that
13 you'd had in the last three years?

14 A Yes. I've met with her only once in the past three
15 years. And what I found was she was in better condition
16 than this letter describes her being in. She has
17 certainly had her ups and downs from reviewing her medical
18 records. At this point, she is not drinking or doing any
19 kind of drugs as a requisite of the partial -- the
20 assisted living facility that she's in. So she's sober
21 and she's supervised in taking her medication. She's very
22 flat in her affect and has difficulty giving information.
23 Oftentimes, says I don't remember.

24 Q If you would now talk to the jury about Donald and
25 Lydia. You've mentioned Donald already, who was the child

1 that Cynthia had in -- I guess, it was in 1990, right?

2 A Correct.

3 Q Okay. Just talk to them about what happened to
4 Donald and Lydia and the circumstances of those two lives.

5 A First to talk about Donald, the baby that I was just
6 discussing, was placed in foster care very shortly after
7 he was born and, ultimately, he was adopted. And I had
8 the opportunity to meet Donald and to meet his adoptive
9 dad up in -- outside of Syracuse. Donald is like 27 or 28
10 years old now. He's still living at home. He makes
11 doughnuts on the midnight shift at the local grocery
12 store. He had a series of difficulties in school coming
13 along, but he's never had any drug involvement, he's never
14 had any legal involvement. And the significance for that,
15 if you think about it, we talked about risk factors
16 earlier. Here's a kid that he's got -- his mom is
17 paranoid schizophrenic, fully diagnosed at this point.
18 His father is -- her boyfriend, diagnosis unknown. And he
19 is adopted into this family. It's a two-parent family
20 that also has a grandmother living in the home that
21 assisted in providing care for him, so he had a lot of
22 structure. He had a lot of support. There was no
23 substance abuse in the home. It was not a family that
24 ended up divorcing. There is no evidence of domestic
25 violence. He had some problems, but the protective family

1 -- protective elements in this family were really
2 significant compared to what Tim Jones had.

3 Q So Donald would be Tim's half brother on the Granado
4 side?

5 A That's right.

6 Q And then if you would, contrast Donald's life outcome
7 thus far with Lydia's life.

8 A Lydia was born in 2007. In fact, she was born
9 shortly before Cynthia came to visit. So Lydia was the
10 product of a -- not a full pregnancy. Cynthia did not
11 know she was pregnant. She was still drinking while she
12 was pregnant. She was taking monthly psychiatric
13 injections while she was pregnant. And she gave birth at
14 home on the toilet, which is how she gave birth to Donald
15 as well. Both children were born at home. She didn't
16 recognize she was going into labor. Lydia was born four
17 pounds and 13 ounces with microcephaly, which means her
18 head was too small. She had problems from the very start
19 and was pretty immediately placed with Ms. Granado's new
20 husband's sister, so the child's maternal aunt. That's
21 where she went as a baby. Cynthia came down to
22 Mississippi to meet Tim, went back home. And what the
23 records show is that the aunt dropped Lydia off at
24 Cynthia's house and went to work. Couple of hours later,
25 Cynthia called her and told her that Lydia wasn't

1 breathing. Lydia went to the hospital and two days later,
2 she died. The cause of death was listed as
3 cardiopulmonary arrest with a possibility of sudden infant
4 death syndrome.

5 Q We will talk about the numerous diagnoses of people
6 in this family, but is there anything else about -- before
7 we return to sort of where Tim is at this point, is there
8 anything else about Cynthia and records that you reviewed
9 about her from being treated in New York that you feel we
10 need to know about right now?

11 A A couple of things. One is what we talked about just
12 a minute ago in terms of the progression of going from
13 being abusive and neglective to being totally oblivious
14 and unaware of a child's needs. That would be one. The
15 other is what the records tend to show is that at times
16 when she was abusing substances, alcohol or drugs, her
17 psychiatric condition became much, much worse and she
18 became physically violent. When they would get her back
19 into the hospital away from substances, over a period of
20 time, she tended to clear and with medication, she could
21 settle down somewhat. But this woman has had a very, very
22 rough life.

23 Q We'll return to Tim and Amber's life now. I guess
24 we're at 2007 approximately, which is the year before
25 Nahtahn is born. And before we get to -- I guess he's at

1 Mississippi State now. So tell us about -- tell us about
2 their lives in -- I guess they're in Starkville now.

3 A They were living in Starkville and they had regular
4 contact with the Jones family on the weekends. Tim was a
5 full-time student. He was also working to bring income
6 in. He also had student loans. Amber stayed home and
7 took care of the children. During the summer, Tim's
8 sister, stepsister, Jackie, would come and visit for a
9 couple of weeks at a time to help take care of the
10 children, saw how they were living. Described how they
11 were living in a very Christian household, that Tim would
12 come home and the children would crawl all over him and
13 then they would sit and have prayer time. And then they
14 would have dinner and then they would have some more
15 prayer time and some Bible instruction. And then the
16 children would go to bed and Tim would leave to go do more
17 studying. So he was there. She said he barely missed a
18 meal in the time that she was there and very involved and
19 engaged with the children, as was Amber.

20 Q And Tim, Sr. is married to who at this point?

21 A Tim, Sr. had married Julie by this time. And Julie
22 came with three children of her own.

23 Q And based on your investigation, is that marriage of
24 Tim, Sr. and Julie something that Tim, Jr. was happy
25 about?

1 A Yes.

2 Q Do you know that Tim introduced them, Tim, Jr.
3 introduced them?

4 A I think I remember hearing a story about some online
5 dating encouragement there that maybe that was how he
6 ended up getting them together in some form or fashion.
7 He and Julie and his dad have had a good and close
8 relationship.

9 Q And as you said, that was a significant -- or they
10 played a significant role in Tim and Amber's life while
11 they were in Mississippi?

12 A Very much.

13 Q Tim's -- his work at Mississippi State, he did well
14 there, right?

15 A He did extremely well. He was always on the Dean's
16 List or a Presidential Scholar. He graduated Summa Cum
17 Laude, that's how it's pronounced, with a 3.81 average.
18 His professors subsequently wrote letters of
19 recommendation for him that talked about he was a student
20 -- good student, good person to have in class. What
21 Jackie reported was that she never saw any friends. She
22 never saw him have friends over to the house or Amber, for
23 that matter, and she never knew of him to go out with
24 friends. So he was still on the socially isolated side.
25 Family would be the main people who would know what was

1 going on in that family.

2 Q And this -- his graduation from Mississippi State,
3 particularly with how well he did, this is a first for his
4 family, is that right?

5 A Yes.

6 Q And that would be as far as you know a first for both
7 sides of the family?

8 A I think so, yes.

9 Q And then as the jury knows, his time at Mississippi
10 State leads into his applying for Intel, right?

11 A Correct.

12 Q And unless you feel like there's something else that
13 we need to say, I was going to put up the demonstrative
14 that you created about Tim and Amber's house that they
15 move into -- or that they have when they first move to
16 South Carolina. Is that --

17 A Right.

18 Q Is that good?

19 A That's fine.

20 Q And if you could just walk us through what your
21 investigation tells you about their arrival there and sort
22 of the issues that arise as a consequence of what Tim has
23 experienced in life thus far?

24 A The home is still structured around a strict and
25 literal interpretation of the Bible. Tim found this

1 20-year-old mobile home and he saw it as a fixer-upper.
2 This was how it looked several months after they had moved
3 in still. His intention was to renovate it, but very
4 shortly after they got there, he went to work at Intel.
5 His father came down and Julie and took one look at the
6 trailer and were appalled and said that the outside of it
7 looked like a trash dump and that it wasn't safe for the
8 children. And the dad said the inside wasn't a whole lot
9 better. So Tim, Sr. set about using his contracting
10 skills to put in sinks and toilets and things like that on
11 the inside to make it more habitable. Tim said and the
12 family said Amber was disappointed and upset with where
13 they were living. They had been in student housing all
14 this time. And this particular mobile home was in a
15 somewhat isolated area. Amber didn't have a license and
16 she didn't drive. Tim's enthusiasm was that he was going
17 to homestead, so he bought 30 chickens, three goats, two
18 turkeys, three rabbits, four geese, two beagles, an
19 unknown number of cats. They had a lot of animals. And,
20 of course, he was gone most of the time. So Amber was at
21 home with all of these critters and three small children
22 and by now, she was also pregnant with Gabe. Amber's job
23 was to homeschool Merah. And as she said earlier, it was
24 something she didn't feel qualified to do, but it was
25 something Tim urged her to do.

1 Q And they weren't here in South Carolina long before
2 DSS gets involved?

3 A That's correct.

4 Q And I know that the jury has heard about some of
5 these DSS investigations, so all I want you to do is just
6 touch on what you think is particularly relevant to your
7 social history from that first DSS investigation, what it
8 tells you about what's going on in the home.

9 A Social services came out and this is -- these are
10 actually their pictures from where they came out. That's
11 a picture of the trailer as they saw it and that's a
12 picture of one of the rooms inside that they noted was so
13 filled with dirty laundry that you could not get into the
14 room. And the rest of the house looked not that different
15 from what that one picture looked like, according to the
16 pictures that they took. They made a total of seven
17 visits and, ultimately, substantiated this case for
18 substantial risk of physical injury. The physical injury
19 was only due to the facility where they were living, the
20 place that they were living. They found the children to
21 be free of any marks and bruises and they found adequate
22 food in the home and the children were clean and appeared
23 to be well cared for. It was the environment that they
24 were concerned about. So after they made the
25 substantiation, they referred the case to what's called a

1 treatment unit. The treatment unit social worker would
2 make unannounced visits to the home about once a month
3 from that time on. But it appeared that the treatment
4 worker, from her dictation, didn't offer so much
5 treatment, never saw any indication of treatment as she
6 showed up to make sure that the house was still clean.
7 And part of what, as a social worker, is somewhat
8 concerning is you have a mom here who would clearly be in
9 distress, who's got now, once she treatment unit is
10 involved, she has a baby and three small children. She's
11 living in the middle of nowhere without a car, without a
12 driver's license, with all these animals and a husband
13 who's gone all the time. And it didn't appear that there
14 was an exploration for what can we do to get you more
15 socially connected in the world? What can we do to help
16 you get a driver's license? What can we do to deal with
17 some of this isolation? It was more like clean the house,
18 keep it clean. We're going to come by and check to make
19 sure that it is, and it was. It was okay. And on each of
20 these visits, they would check the children and check the
21 food. And the children were okay and the food was okay.

22 Q And not a whole lot of time goes by before Tim and
23 Amber's marriage starts to deteriorate. I mean, they've
24 been married for a while at this point, but the move to
25 South Carolina seems to have been sort of the beginning of

1 problems, is that fair to say?

2 A I think that there were problems there before and the
3 move to South Carolina and this kind of isolation, social
4 isolation and also isolation from the Jones family, which
5 was an outlet for Amber, I think all of that combined to
6 push this family over the edge in terms of their
7 relationship and it seemed to get more and more
8 argumentative.

9 Q And the jury has heard about this period of time and
10 has heard from Amber about things that were going on in
11 their marriage and their relationship and what was
12 contributing to that. But from your perspective, the sort
13 of -- the ensuing end of the marriage does what to Tim?
14 In terms of him seeing that this marriage is failing, what
15 does that do to him at this point?

16 A One of the things that happened as things were
17 beginning to go badly in the marriage was Tim's
18 relationship with the imaginary friend changed. His
19 perception was that it was still the imaginary friend, but
20 now, the imaginary friend had turned into a monster. And
21 it's a monster that he mentioned in the records with Dr.
22 Hames as well. The monster was at him constantly,
23 according to his description, telling him that he was a
24 loser, that she was going to leave him, that he was going
25 to lose the children, he was going to lose everything.

1 And it was so much so that he was having trouble
2 concentrating at work. He went to the EAP trying to get
3 help, hoping that Amber would go with him, but she didn't.
4 And he went to counseling for a number of times by
5 himself. What I found significant about that was the very
6 first thing that he went in and talked about and started
7 crying about was his mother and said he had mommy issues,
8 despite the fact that he had only ever met his mother on
9 one occasion. And that was something that came up
10 periodically in his treatment with Dr. Hames, who saw his
11 issues as being largely related to attachment and problems
12 in attachment with his mother. He talked about his own
13 mommy issues, but he also talked about his fear that his
14 children would grow up without a mother and that's what he
15 had experienced.

16 Q We're in 2012 now, correct? Because they arrived in
17 South Carolina the summer of 2011.

18 A Correct.

19 Q And the DSS investigation sort of comes up
20 periodically throughout the remainder of that year and
21 into 2012?

22 A It came up through the spring. And then DSS lost
23 track of them until they closed the case in the fall.

24 Q And how is it that DSS loses track of them?

25 A There came a time when Tim took first the three

1 children and then the four children to South Carolina and
2 he left them --

3 Q Tim --

4 A Not to South Carolina. Tim, Sr. [sic] took the
5 children to Mississippi for his parents to take care of,
6 and they did for the course of the summer.

7 Q And that's the summer that the jury has heard a lot
8 about, the summer of 2012 when they lived there with Tim,
9 Sr. and Julie, is that right?

10 A Right. Tim, Jr. first took the three of them to his
11 folks and then he turned around and went back and picked
12 up Gabe and took Gabe back to his parents as well. And
13 his sister, Jackie, helped to look after the children in
14 the course of that summer.

15 Q His performance at Intel -- we've heard a lot from
16 people at Intel. But that seems to be an area where he's
17 still able to sort of succeed, is that right?

18 A It was. One of the people that I talked with who has
19 children, but has a partner, a wife, said he never really
20 stopped to think about it, but he didn't know what he
21 would do if he was on his own and he only has two
22 children. How in the world would he cope if he had five
23 children on his own? Tim's kids were with his parents
24 that summer. He would leave Intel after work on Friday,
25 drive all night to get there by Saturday morning when they

1 would wake up. He would spend Saturday, Sunday, tuck them
2 into bed, drive all night and show up at Intel first thing
3 in the morning on Monday. He was sharing an apartment
4 with someone the jury may have met, a man named Jaimeet.
5 And Jaimeet said -- told me that Tim was never there and
6 when he was there, he was in the back bedroom. And he was
7 very impressed by Tim's dedication to his children, that
8 he would leave every weekend and spend two nights driving
9 to spend time with his children. Ultimately, his dad told
10 him, this is killing you. You really need to cut this
11 back to every other week. And I think he cut it back a
12 little bit, but he continued to go.

13 Q And then at the end of that summer, Tim, Jr., he
14 brings the kids from Mississippi back to South Carolina,
15 right?

16 A That's correct.

17 Q And I think that part of the reason that DSS lost
18 track of them because Tim's no longer living at the
19 original house where he and Amber lived, right?

20 A Neither he nor Amber were at the original property
21 any longer and they lost touch with them. They sent a
22 letter to Mississippi Social Services, but never got a
23 response and they closed the case.

24 Q Is it okay to move on now to the --

25 A Yes.

1 Q Tim's house.

2 MR. SECOR: Is that all right, Your Honor?

3 THE COURT: Oh, yeah. Please.

4 MR. SECOR: Thank you.

5 Q And if you would just sort of walk us through from
6 the time that they moved in there, which, I guess, is fall
7 of 2012, is that right, approximately?

8 A Yes.

9 Q Okay. And --

10 A This --

11 Q I'm sorry, go ahead.

12 A This is also a picture that DSS took. It's a picture
13 not from 2012, it's a picture from one of the subsequent
14 investigations that you heard about when they went out.
15 So this was how this trailer looked when they came out.
16 And Tim, at this point, is a single dad with five -- four
17 children. He's working full time. Amber is pregnant
18 again, due to deliver in December of 2012. So school year
19 2012/2013 is the first year that Merah and Eli go to
20 school. So he's got two children at home, Nahtahn and
21 Gabe, and two that are going to school at this point.

22 Q And the jury's heard a lot about this being a period
23 of time where things seemed to start to deteriorate more
24 and more for the family. And we've heard about the DSS
25 investigations. And, I guess, I want -- I don't want to

1 go through it too exhaustively because I think the jury
2 has heard some of it, but I do want to give you the
3 opportunity to tell us, during this period of time, what
4 does your social history tell you about the family and how
5 they are doing?

6 A I've looked at this and tried to put my finger on
7 when things began to change, when Tim went from somebody
8 who was described as very Christian in his orientation,
9 very strictly according to the Bible, literal translation
10 as far as his discipline with the children. But as best I
11 could tell from what other people have told me, initially,
12 while they may not have agreed with it, they saw him as
13 doing that in a way of moderation. That he didn't spank
14 when he was angry, he didn't curse when he spanked. He
15 would pray before and after with the children. He would
16 talk with them about what they had done. And this would
17 be the first three children. And that would be during the
18 time that he and Amber were still together. During the
19 time that he wasn't drinking or doing any kind of drugs.
20 But one of the things that happened when Amber left was,
21 after nine years of sobriety, he started drinking again
22 and started drinking Crown Royal, his dad's drink of
23 choice, and he started drinking to excess at times.
24 Hadn't been drinking, hadn't smoked a cigarette, hadn't
25 done any weed since 2001 when he went into prison. So

1 this was a very dramatic change for him to revert back to
2 that. Also, at the same time, you've heard people talk
3 about his relationship with Chrystal Ballentine. For Tim,
4 that was something that was morally wrong and he knew it
5 was morally wrong. It was having sex outside of marriage,
6 which his religious beliefs told him was wrong. So he's
7 smoking, he's drinking, he's living with somebody. That
8 somebody said that that fall, anyway, Tim was still a
9 pretty good dad, that he was engaged with the children.
10 He would come home and play with them, would pray with
11 them. She didn't have concerns or problems with how he
12 was doing at that point. But something happened that
13 Christmas when he went home. And my understanding of what
14 happened is that he arrived with the children, they hadn't
15 been there since the summer. And he started picking on
16 his stepsister, Jackie. When he arrived, one of the
17 brothers said it was like the Grinch came home to
18 Christmas. It was not the Tim that they had last seen
19 that past summer. He was grouchy. He was irritable. He
20 was on edge. And when Tim, Sr. told him to cut it out and
21 leave his stepsister alone, Tim says that what happened
22 was a whole cascade of thoughts, like here we go again.
23 And for him, in the moment, it was as if he was back to
24 being a teenager again where his dad was choosing to side
25 with somebody over him, Carolyn or Julie or one of the

1 brothers. And he had this whole cascade of thoughts, this
2 is going to be awful, we're going to get into this fight,
3 it's just terrible. His dad went to sleep. He packed up
4 the children and he left. And that was the last time he
5 saw Tim, Sr. and Julie was that Christmas.

6 Q And that's the last time that anybody in the family
7 other than Larry and Roberta --

8 A Correct.

9 Q -- saw any of the children?

10 A Correct.

11 Q So at this -- from the end of -- and I guess, we, of
12 course, should mention that even before that Christmas
13 that Elaine had been born, right? She was born 12/12/12.

14 A Elaine was born, I think, on the 12th of December and
15 Tim learned on the [REDACTED] his birthday, that she had been
16 born. She had learned that Amber had given birth right
17 before he went to South Carolina -- to Mississippi to be
18 with his family that Christmas. He didn't know whether
19 this baby was his or not given all that had gone on, so
20 there was going to be the possibility of some DNA testing
21 done before he would know whether that baby was his. So
22 he knew that, but he didn't tell his family. They didn't
23 know that she had been born yet.

24 Q So we're into 2013 now. And from your social
25 history, there are some things that you discover about the

1 children at school and their sort of -- their readiness
2 for school when they started going to school. And just if
3 you would tell us about sort of concerns from the
4 perspective of a social worker about those things.

5 A Well, to start with, in the 2012/2013 school year
6 when the kids first started and that Christmas comes right
7 in the middle of that, when Merah and Eli went to school,
8 he learned that they were both behind their grade level.
9 Merah tested out in the first and third percentile at the
10 start of the year and Eli tested out at the first and
11 fourth percentile in math and the 18th to 37th percentile
12 in reading. By the end of the year, both of them had
13 improved, but they still weren't working at grade level.
14 Merah, in particular, was still -- she was in the 20 to
15 35th percentile as far as how she was doing. Eli had
16 taken a variety of small items at school and was getting
17 into some trouble for that. And then one day in the midst
18 of that, he came to school with a pocketknife and it was
19 Tim's pocketknife. And he brought it into the school,
20 basically, for show and tell. And there's a zero
21 tolerance policy for things like that, even if you're a
22 kindergartener, so they took him in and they suspended
23 him. And they told Tim that their recommendation was
24 going to be that he be expelled, permanently expelled for
25 the year because he had brought this pocketknife in.

1 There was a hearing and Tim went to the hearing and they
2 were able to revert it back to just a suspension and Eli
3 was able to finish his kindergarten year. But that was a
4 major to-do and probably the first big school stress for
5 Tim as a single dad.

6 Q It's during this time that Tim is going to therapy
7 for himself, is that right?

8 A Yes. He's still seeing Dr. Hames on occasion. And I
9 believe it was after that Christmas that he also took the
10 children in. He took Merah and Eli in for counseling.

11 Q Okay. But based on this sort of condensed version of
12 your social history during this period of time, it
13 certainly appears that things are going off the rails in
14 terms of how Tim perceived how his life was going to go or
15 how he was going to live his life, is that --

16 A He was no longer living his life according to the
17 plan. We had talked about how the Bible gave him the
18 instruction for how to be a dad, how to be a husband, how
19 to live this life and he wasn't doing that anymore. In
20 addition to that, he was using substances that he hadn't
21 used in a long time, substances that he had a genetic
22 predisposition towards having problems with. Alcoholism
23 and drug addiction run in his family. He knew that, but
24 he was using substances, basically, to kill the pain, to
25 deal with his anxiety. His church attendance had fallen

1 off. He had stopped his tithing with the church. So
2 things just weren't going the way that he had envisioned
3 and lived his life. I think one of the things that occurs
4 to me is that the lack of alcohol, the lack of marijuana,
5 the lack of cigarettes, the fidelity in the marriage, all
6 of those things served as protective factors for Tim. We
7 talked about that earlier. And now, virtually, all of
8 those were gone and he didn't have those kinds of
9 protective factors in his life. What he had was Intel.
10 Things were still going well at Intel. He could speak the
11 language at Intel. He was no longer speaking the language
12 of relationships or parenting very well. And Chrystal
13 Ballentine noted a change around this period of time.

14 Q And other things that are sort of new behaviors is
15 that he begins to get sort of reckless with money, is that
16 right?

17 A That actually happened more into the spring of 2014.

18 Q Okay.

19 A So he went through the summer of 2013 and, unlike
20 previous summers, he didn't go visit his family. So this
21 gentleman, who has no outside work friends to speak of at
22 this point, is no longer going to church, no longer has a
23 family that's laying eyes on him and his kids to see how
24 they're doing. He is living in a rural area with a few
25 trailers spotted around him. He's very socially isolated

1 at this point. And what's significant to that for me is
2 nobody is seeing him to know what's going on, but, also,
3 that he has nobody else at this point to bounce things off
4 of. He has no support. The only support he has are paid
5 babysitters, who are not what I would call professional
6 babysitters. They are ladies or girls in the neighborhood
7 who are willing to sit for him. They might refer to them
8 as nannies, but they're not nannies in the sense they have
9 a childcare degree or a child -- they have childcare
10 experience is what they appear to have.

11 Q Okay. There's -- the application to -- or we've
12 heard from some other witnesses, Jim McConnell, some other
13 witnesses that he starts thinking about different ways to
14 try to improve his life, like applying to new jobs and
15 some other things. If you could just tell us a little bit
16 about that.

17 A He seemed to become restless at Intel. He had a
18 belief that Intel was going to cut jobs. And
19 periodically, I've seen it in the newspaper as I look back
20 historically that there would be newspaper articles about
21 Intel planning to cut jobs. He hadn't been there all that
22 long. He feared on the one hand that he would get cut and
23 he would have no income on which to support his children.
24 But he also feared, on the other hand, if he didn't get
25 cut, what was it going to mean to his work load. And

1 those of us who have worked places where folks have gone
2 know what it's like to pick up the work load that's now
3 being done by you and used to be done by two or three
4 people. So he had fears on both sides of that in terms of
5 what would happen to him. He applied to an online program
6 at Georgia Tech. He was accepted. But when he called the
7 Georgia Tech people to iron out some things about some
8 forms that he had going on there, he didn't like the way
9 that they talked to him and said well, he wasn't going to
10 go there because nobody should talk to someone the way
11 that they had just spoken to him. So he withdrew his
12 application. Over time, he had a variety of ideas. More
13 of those in the spring of 2014, I think. Some involved
14 going to Korea, saying his children spoke English well
15 enough that they could teach English as a second language.
16 He developed an idea of medical school. He looked into
17 doing certain things online to make money. He did a
18 variety of things to try to explore increasing his income.

19 Q Although it seems like he had the intention of
20 increasing his income, the result of what he was doing is
21 the opposite, is that right?

22 A Ultimately, it was. He saw something on the internet
23 or on television that said if you want to be a
24 millionaire, this is how you do it and there was a link to
25 that and he followed the link. And the link said that

1 they had a program that would teach you how to become a
2 day trader and how to do things, among other things, to
3 trade currency pairs. They had a program that would teach
4 people how to do that and it was \$4,000. He contacted
5 them and said he didn't have \$4,000, but he'd like to do
6 it and they agreed to draft it out of his checking account
7 on a regular basis. Over the next several months, he took
8 out and sent in, I think, something like maybe \$18,000 to
9 this day trading organization. Ultimately, he took back a
10 large percentage of that. It was hard to interpret that
11 from the financial records. But one of the things that
12 became significant, I think, is that he started running an
13 overdraft. This is a numbers guy. So he's running an
14 overdraft and every time he runs an overdraft, he incurs a
15 \$25 charge. He's writing checks for \$2.76, for \$5.50 all
16 over town. And by the end of a finite period of months,
17 he's got \$700 in overdraft fees for writing checks like
18 that. So he's handling money in ways that would not
19 appear to be wise and they would appear to be impulsive
20 and not guided by what he's certainly intelligent enough
21 to know.

22 Q And this sort of behavior that you see, does it come
23 up before the period of time your social history shows
24 that he starts buying spice?

25 A I think that it comes up somewhat before that and

1 continues during it. He also had been having ongoing
2 stresses with his children during the course of the school
3 year 2013/2014. Now, he's got three children in school
4 and each of them were having their own level of not
5 abnormal difficulties, but having difficulties.

6 Q By the spring of 2014, which I think is where we are
7 now, is when the second DSS investigation begins, right?

8 A That's right, that began May 5th, 2014.

9 Q And that case, ultimately, I think DSS determined
10 there was substantial risk of physical abuse, but the case
11 was closed with no services. Is that your understanding?

12 A That's correct.

13 Q And just tell us what you know about that
14 investigation, what they found and whether or not you
15 think that finding by DSS and their involvement in the
16 family and the family's life at that point was
17 appropriate?

18 A DSS got involved very appropriately when the school
19 called and told them that Nahtahn had said that his dad
20 had choked him and held him up against the wall. And DSS
21 came out as soon as they got that complaint, interviewed
22 the child, interviewed the father, went out to the home,
23 saw the child the next day. You guys have heard most all
24 of that, I believe. They followed up with the family.
25 Dad and the kids were having cupcakes for Merah's

1 birthday. Their visit to the family was unannounced, as
2 they mostly are. And then they followed up with the
3 babysitter, who said that everything was fine. There are
4 two things that struck me in this. And that is, we know
5 from the teachers -- and I didn't interview the teachers,
6 but I've read their statements to the police. The
7 teachers saw things as being far from fine at school.
8 They had noted problems. They had noted difficulties.
9 The DSS record indicates that when they went out there,
10 there was a guidance counselor and a teaching assistant
11 there when they interviewed Nahtahn and then when they saw
12 Merah and Eli and Nahtahn and yet, there's no indication
13 that DSS interviewed the teachers to say how are these
14 children getting along in general. I don't see any
15 dication about that. Also, both Elaine and Gabe had been
16 having some difficulties that are noted in the pediatric
17 records. Gabriel had been diagnosed as developmentally
18 delayed with his gross motor skills as well as his -- that
19 would be walking, crawling, creeping and his talking. And
20 the doctor had referred him for further evaluation and for
21 treatment and Tim did not follow through with that.

22 Q Did your investigation sort of give you an indication
23 as to why he didn't follow through on that?

24 A It was a reason that didn't make sense. He told the
25 doctor that there was something else that had to be taken

1 care of first. And the doctor asked what he was referring
2 to and he would not explain. If he asked if it was a
3 billing issue and he said yes. And dad was told that this
4 referral had nothing to do with the billing, but he still
5 would not take Gabe for an evaluation. He said the other
6 issue needed to be fixed first. The doctor checked into
7 it and there wasn't a balance owed at that point. Elaine
8 was having problems with weight gain. And the same
9 pediatrician said she's having problems with weight gain.
10 I think there might not be enough milk, there might not be
11 enough calories. Made some suggestions and said if dad
12 doesn't follow through with these suggestions, I may want
13 to consider a call to DSS. So not only were things not
14 fine at school, things were also not fine in the
15 pediatrician's office. And social services did not check
16 with the pediatrician also to see how these children were
17 doing. So there was knowledge in the community in an
18 uneasy sort of way that things were not quite right, but
19 nobody in this larger community came together to pull
20 those concerns together at the point of the second
21 referral. And the final piece of that was what the
22 babysitter told the DSS was that the kids were fine and
23 the kids were a good dad, but what they told the police
24 was something different. They said that Tim was afraid he
25 was going to turn out like his mother, that Merah had a

1 made up imaginary friend and she was afraid she was going
2 to turn out -- he was afraid she was going to turn out
3 like his mother. Ms. Dockery said she didn't get very
4 close to Tim because she, quote, thinks this man is shit
5 house crazy. Tim often threatened the kids with foster
6 care and being separated if they didn't behave and stop
7 telling lies. During the last couple of months that they
8 watched Mr. Jones' children, he kept forgetting things.
9 Sometime after June 5th, Mr. Jones --

10 THE COURT: All right.

11 A Mr. Jones called --

12 THE COURT: I'm not sure where this is coming from.
13 She can talk about her investigation, but I don't want her
14 to read the police investigation. The police have been
15 called.

16 MR. SECOR: Yes, sir.

17 Q The event that you discovered about Tim not knowing
18 where the kids were one night?

19 A Correct. He apparently called the babysitter and
20 said he was so sorry he had forgotten to pick them up.
21 And she said, you already did, go check the bedroom. And
22 he did. So, clearly, there were things that were not
23 quite right there that social services was not aware of.

24 Q I think that your -- the social history shows that
25 that second DSS investigation was a result of the bruise

1 on Nahtahn and what Nahtahn said Tim did?

2 A That's correct.

3 Q The findings by DSS are contradictory in terms of
4 that case, right?

5 A They find it both founded and unfounded. And what it
6 looks like is the unfounded was, perhaps, a typographical
7 error or an error of some sort. They found it for
8 substantial risk of physical abuse, but they saw it as a
9 one-time thing and it was closed with no services.

10 Q So this is the summer of 2014 now. And we've heard
11 from some witnesses about some of the web searching that
12 Tim is doing about that period of time, about concerns
13 about Amber being prostituted and that she's being
14 betrayed by -- researching betrayal by your children. I
15 wanted you before we -- before we sort of try to wrap this
16 up, but looking at the genogram again, I just wanted you
17 to address the third DSS investigation and what that tells
18 you about what's happening with the family. This is --
19 that was, I guess, August of 2014, early August 2014,
20 right?

21 A August 7th, yes. And the complainant was a Ms.
22 Tanner. And the complaint states Tim beats Elias leaving
23 extensive bruising, does not feed the children adequately.

24 Q Yes, ma'am. And that is, obviously, investigated by
25 DSS?

1 A It was.

2 Q And their ultimate finding on that.

3 A They found adequate food in the house. They said
4 that dad seems to be overwhelmed and he's unable to
5 maintain the home, keep it clean, but the children appear
6 to be clean, groomed and appropriately dressed. They had
7 not taken any sort of action on this case. They still had
8 time to do that. But when they did have their seven-day
9 staffing, August 13th, they said there weren't any
10 concerns of impending safety concerns at the time.

11 Q You have copies of the genograms up there, Ms. Grey,
12 do you?

13 A I do.

14 Q I'm just going to put up here Defense 362 again,
15 which is the one that we looked at before.

16 THE COURT: That one was admitted?

17 MR. SECOR: Yes, sir.

18 Q Ma'am, this is what we can describe as just a bare
19 bones structure?

20 A That's the bare bones genogram, that's correct.

21 Q And you've already authenticated, identified Defense
22 363, which is the one that's --

23 MR. SECOR: If I haven't moved this into evidence,
24 now, I'd offer it.

25 THE COURT: Without objection.

1 (WHEREUPON, Defendant's Exhibit number 363 was
2 admitted into evidence.)

3 MR. SECOR: May I approach?

4 THE COURT: Sure.

5 Q And this is obviously the same structure behind all
6 this information, but it's filled in with the information
7 that is drawn out from your review of all this and your
8 investigation. If you could just help us understand what
9 the genogram means to you after the social history is
10 complete.

11 A So we talked before about how the squares were male
12 and the circles were female. The line represents a
13 marriage and children. The squiggly lines represent
14 sexual abuse. So you see that going from Ted Montaine
15 towards the girls in this family and from Domingo down
16 towards Tim's mom, Cynthia. The colors represent
17 different things. The blue represents someone who's been
18 abused, neglected or molested. And I'm having a hard time
19 reading that, so I'm sure you guys are, too. The pink
20 represents a psychiatric diagnosis. The red is a suicide
21 attempt and the brown is substance abuse. And what I did
22 was, the majority of this is documented and I have records
23 to go along with it. If I don't, instead of just being
24 noted or having a D by it, it has an R by it and that
25 means it's been reported to me by, at least, two people.

1 Q Can I stop you for just a second?

2 MR. SECOR: Your Honor, may I use the demonstrative
3 that's a replica of this to put in front of the jury since
4 they're having a hard time reading it.

5 THE COURT: It's so small, it's going to be hard to
6 read on that. You need to hold it in your hand to read
7 it. I don't think that's going to help a whole lot to be
8 honest with you. I've studied it. It's very small
9 writing. You need to hold it. They are seeing it. I
10 mean, it's a summary of her testimony.

11 MR. SECOR: Yes, sir.

12 Q I'm sorry, I didn't mean to interrupt you.

13 A What I can do is tell the jury the essence of what
14 these various diagnoses are that these family members
15 have. You can tell from looking at this that on each
16 generation, there are problems that are shown. And we'll
17 start with Tim Jones, Sr. And what I also have on here
18 are legal difficulties because -- if the legal difficulty
19 relates to substance abuse or if it relates to domestic
20 violence. So Tim Jones, Sr., we have 1982, domestic
21 violence, choking and striking his wife. 1995, battery,
22 breaking furniture, choking and punching his wife.

23 THE COURT: We've already been through all that.
24 She's testified to all that.

25 A Not on the genogram.

1 THE COURT: Not on the genogram, but she's already
2 testified to it.

3 MR. SECOR: Yes, sir.

4 THE COURT: The jury has heard it. Certainly, we can
5 read it. It may be time for a break. It's getting close
6 to the end of the day. But they've heard this testimony a
7 lot. This is a great summery.

8 MR. SECOR: Yes, sir. I want to -- the last thing I
9 want to do is allow Ms. Grey to tell the jury about the
10 actual diagnosis from various family members. But if you
11 want to take a break and get some copies of it made so
12 that we don't have to just -- she doesn't just have to
13 read it out, I'm happy to do that.

14 MR. HUBBARD: Your Honor, if she'll just stick with
15 the diagnoses and that does it.

16 THE COURT: Okay. That's fine. But the legal
17 trouble and stuff, she testified to that. Not off this
18 document, but off the other documents. You know, it's
19 been testified to.

20 MR. SECOR: Yes, sir.

21 THE COURT: That's fine. Go through the diagnoses.

22 A Okay. So with Roberta, there are a variety of legal
23 troubles that we've talked about. Her psychiatric
24 diagnoses start in 2005 with major depression; 2006,
25 anxiety and depression; 2007, increased depression with

1 anxiety, rule out schizo-affective disorder, bipolar II,
2 mixed type with history of psychosis and anxiety disorder;
3 2008, bipolar, bipolar or schizophrenia, question mark;
4 mood disorder not otherwise specified; generalized anxiety
5 disorder; histrionic or borderline traits; 2009,
6 depression, not otherwise specified, rule out mood
7 disorder, no psychosis for past two to three years,
8 posttraumatic stress disorder, generalized anxiety
9 disorder, history of alcohol abuse; 2017, depression,
10 bipolar, most recent episode mixed with psychotic
11 behaviors, personal history of schizophrenia and child
12 sexual abuse; history of alcoholism and history of suicide
13 attempts.

14 Q And that was all Roberta Thornsberry?

15 A That was all Roberta. We heard about Larry
16 Thornsberry's legal difficulties. Larry Thornsberry, Jr.
17 had been diagnosed according to his mother and others as
18 bipolar and had a series of legal difficulties as well
19 starting while Tim was living in the home. Aunt Elaine
20 has been reported as a drug addict. Patrick Rooney,
21 cousin, reported as a suicide. Tammy Montaine reported as
22 a suicide. Eugene Combs, great uncle, documented as a
23 suicide at age 18. Carol Chapman, great aunt, documented
24 as a suicide in 2005. And two uncles, Teddy and Ira
25 Montaine, as having problems with the law related to

1 substance abuse. Cynthia Granado, we've heard about her
2 legal problems. And her diagnoses start in 1988 with
3 schizophrenia, disorganized, acute, rule out organic
4 causes for the current psychosis, history of bipolar
5 mania, psychotic disorder, atypical psychosis; 1990,
6 schizophrenia, chronic, undifferentiated, paranoid type.
7 This was the year that she gave birth to a child at home.
8 1991, diagnoses, schizophrenia, paranoid type, chronic
9 paranoid schizophrenia, schizo-affective disorder,
10 depressed, somatization disorder, hypochondriasis, cocaine
11 abuse in remission, alcohol abuse in remission,
12 personality disorder, psychotic disorder; 1994, suicide
13 attempt, homeless, more schizophrenia diagnoses, more
14 schizo-affective diagnoses, organic disorder, bipolar
15 manic. I'm now moving to diagnoses you haven't heard
16 previously, eating disorder, not otherwise specified, rule
17 out dissociative disorder. And then finally, she is
18 diagnosed with dissociative disorder as well as
19 schizo-affect, somatization and borderline intellectual
20 functioning and borderline personality disorder. 2002,
21 still diagnosed with paranoid schizophrenia; 2004, chronic
22 schizophrenia, psychotic disorder, alcohol dependence,
23 borderline personality and chronic mental illness with
24 noncompliance of treatment; 2008, psychotic disorder;
25 2012, the diagnoses are all schizophrenia or psychotic

1 disorder and 2013 and 2014, they're still schizophrenia,
2 paranoid-type. I alluded to Domingo Grenado having some
3 difficulties. He had a series of DWIs. Domingo Grenado,
4 Jr., this is on Cynthia's side, reportedly suicided in
5 2016. Uncle Arthur Grenado reportedly suicided. Uncle
6 Edward Grenado was court ordered to a substance abuse
7 treatment program. Uncle Christopher Grenado was noted to
8 be incompetent or unfit to stand trial and was diagnosed
9 as schizophrenia, paranoia-type, with a history of suicide
10 attempts. Ambrose Grenado was also found incompetent to
11 stand trial, can't understand the charges against him or
12 communicate with counsel. Cousin Walter Rays was
13 aggravated driving under the influence in 1997 as well as
14 a possession charge in 1998. And then his brother, Donald
15 Alexander, who was his half brother, has no legal charges,
16 but has had some learning difficulties in school. And
17 that's a summary of what's on that chart.

18 Q And that's all things that you have confirmed through
19 documentation or --

20 A I've either confirmed it through documentation or if
21 it's been reported to me, I mentioned that it was
22 reported.

23 Q Is there anything that I've forgotten that you feel
24 that the jury should know further about the social
25 history?

1 A Not that I know of.

2 MR. SECOR: I appreciate it. I know that it was long.
3 I'm sorry if I made it more difficult than it was, but I
4 appreciate your time. Thank you.

5 THE COURT: How long you think it's going to be?

6 MR. HUBBARD: Your Honor, I know nobody wants to be
7 here long. I don't have a whole lot, but I don't want to
8 rush the clock if the folks are just worn out. If they're
9 fine, I'm fine.

10 THE COURT: Let's stop for the day. I think that
11 would probably be best.

12 MR. HUBBARD: I'll do whatever, Judge.

13 THE COURT: Let's start back in the morning. I don't
14 have anything to delay tomorrow because I had some things
15 to do this morning. 9:00 o'clock we'll get started, so
16 y'all be here about 8:45. We'll start court at nine
17 o'clock sharp. Don't talk about the case. See you in the
18 morning.

19 (Whereupon, the jury was excused from the courtroom
20 for the day.)

21 June 12, 2019.

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

23 (Whereupon, the jury came into open court at
24 approximately 9:00 a.m.)

25 THE COURT: All right. I got a note this morning.

1 I'll read it. It's news for y'all. I'm told, the lawyers
2 all agree, we're going to finish testimony today. We're
3 going to do the summaries and instructions tomorrow. So
4 we'll be done by the weekend. We'll start deliberating
5 for the weekend. I wanted y'all to know that because now
6 we can see the light at the end of the tunnel. So with
7 that in mind, Doctor, you're still under oath.

8 Solicitor, your witness.

9 MR. HUBBARD: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. HUBBARD:

12 Q Ms. Grey, I'm going to be real short. How much you
13 getting paid?

14 A \$125 an hour.

15 Q And how many hours?

16 A The last time that I invoiced, I was about 500 hours.

17 Q All the work you've done has been to assist the
18 Defense experts, their psychiatrists, their other experts
19 in forming their opinions?

20 A I was asked to complete a psychosocial history and it
21 was for the Defense team to decide who they would pass it
22 on to.

23 Q But, of course, psychiatrists, as you know in your
24 experience, they rely on the type of work you do?

25 A Yes, they do.

1 Q Now, let's talk about his childhood, Mr. Jones'
2 childhood. All the work you did finding this unstable
3 home life, he excelled in school?

4 A Yes, he did.

5 Q There's no evidence that home life was so bad that he
6 felt compelled at any time to drop out of school like his
7 daddy?

8 A That's right.

9 Q Or like his grandmother, or mother, Roberta?

10 A She was taken out of school, but, yes.

11 Q That never happened to him?

12 A It did not.

13 Q He did well?

14 A He did.

15 Q Did you talk to his teachers?

16 A I did not.

17 Q That would have been a good clue as to how life was
18 for him, wouldn't it?

19 A I did talk with one of his substitute teachers, who
20 was also a neighbor, and she talked about seeing him at
21 the school. She saw him as a loner, saw him as not having
22 friends. And she knew some of his other teachers.

23 Q A substitute teacher?

24 A Yes.

25 Q No evidence he's come to school late?

1 A No.

2 Q No evidence that he is missing long time -- long
3 periods of school?

4 A There were some periods of lengthy absences related
5 to medical illness. And then his final year when he
6 didn't do very well, he had several absences.

7 Q That's his choices there?

8 A Not the medical absences.

9 Q Not the medical call. His dad, his family made sure
10 he got to school?

11 A He got to school, yes.

12 Q There's no evidence he ever came to school with
13 bruises from that violent home life he was living in? No
14 bruises on his face or his arms?

15 A The substitute, who gave him rides to school, noticed
16 bruising on him and asked him where it came from and he
17 said his father.

18 Q And he also told you, Tim, Jr. told you that never
19 happened, he was never physically abused by his father,
20 correct?

21 A That is what he told me, yes.

22 Q His father took the stand and under oath said he
23 never abused his son?

24 A Correct.

25 Q No other family member, no other witness, but this

1 substitute teacher said anything about him being abused at
2 home?

3 A Correct.

4 Q There is no police report. All the times the police
5 were out there, they never showed up and said my God, this
6 child has got bruises?

7 A That's right.

8 Q DSS, child protective services never had to intervene
9 in this family with Tim Jones, Jr.?

10 A Correct.

11 Q So there's no pattern that developed of physical
12 abuse towards him as a child?

13 A There was not physical abuse towards him in his home.

14 Q His mommy issues, the abandonment thoughts that he
15 had, you ended up concluding, intellectually, he
16 understood his mom, Cynthia, never left him, that she was
17 mentally ill?

18 A Eventually, he came to that point, yes.

19 Q She is so ill right now, she is institutionalized and
20 she's not even allowed to leave that institution even with
21 a guardian, is she?

22 A I think she can leave during the day. She's in a
23 group home living situation. It would be very difficult
24 for her to leave town, I believe.

25 Q Were you aware they would not let her come here?

1 A Okay. Yes, I was aware of that.

2 Q That's how sick she is, right?

3 A Correct, she's a very sick lady.

4 Q He knows intellectually his mom never abandoned him?

5 It was illness.

6 A Intellectually, yes.

7 Q He also knows intellectually, his mother was
8 absolutely incapable of caring for him?

9 A There came a time when he was intellectually aware of
10 that, yes.

11 Q Even knowing that, he still chooses to view his
12 history, his life as one of abandonment, beginning with
13 his mom, she left me?

14 A I don't see that as a choice.

15 Q Well, ma'am, you just said he understands it?

16 A He does.

17 Q All right. His dad never told him your mother
18 doesn't love you?

19 A Correct.

20 Q His dad never told him your momma left you?

21 A Correct.

22 Q His dad never, ever belittled his mother in front of
23 him?

24 A The family talked about how she was crazy.

25 Q She was sick.

1 A They talked about how she was crazy.

2 Q And that's their way of talking about how she was
3 sick?

4 A That's correct.

5 Q But are you aware Tim Jones, Jr. talked to his kids
6 and told them your mommy doesn't love you?

7 A I am, yes.

8 Q That your momma's never coming back?

9 A Correct.

10 Q She wants nothing to do with you?

11 A Yes.

12 Q He didn't experience that growing up, did he?

13 A Not that I know of.

14 Q And you've done a lot to find out whether that
15 happened?

16 A I have.

17 Q Let's talk about his imaginary friend. He told
18 you -- and at this point he's incarcerated, waiting for
19 this trial?

20 A Correct.

21 Q That's when you got to see him and meet him. He
22 tells you, when I was about ten years old, I developed an
23 imaginary friend. And I think you said -- or you have him
24 saying, I knew I was talking to myself, it felt real, but
25 I knew it wasn't real. Does that sound right?

1 A It does.

2 Q And he said he kept this imaginary friend through
3 adolescence on into adulthood because it gave him a sense
4 of comfort and peace to be able to talk to the imaginary
5 friend?

6 A I'm not sure whether he intentionally kept it or
7 whether it was there. I can't comment on that.

8 Q Well, you wouldn't know, right?

9 A I don't know.

10 Q But he never told anyone prior to being arrested for
11 murdering his five kids, he never told anyone prior to
12 that, prior to being in jail I have an imaginary friend,
13 right?

14 A He never used those words that I know of, no.

15 Q But we do know in May of 2014, before he ever killed
16 his kids, that he was concerned for his daughter, Merah,
17 because she had an imaginary friend. We know that,
18 correct?

19 A Correct.

20 Q We know he was so concerned, he started looking up on
21 the internet signs of schizophrenia?

22 A Correct.

23 Q We know he texted his ex-wife, Amber, hey, we got to
24 talk, something's wrong with her, correct?

25 A Correct.

1 Q So before these murders, in his mind, imaginary
2 friend equates to schizophrenia and now he's arrested and
3 he's talking about an imaginary friend he's never talked
4 about before, right?

5 A He did start talking about an imaginary friend.

6 Q All of it self-reported?

7 A Correct.

8 Q It's self-report when he talks about a voice that's
9 not the imaginary friend, this mean, gravelly voice, that
10 threatening voice?

11 A Correct.

12 Q He hadn't told anybody before he got arrested, right?

13 A Not to the best of my knowledge.

14 Q He didn't tell anybody about allegedly being sexually
15 assaulted when he was 14 or so by a neighbor?

16 A Not to the best of my knowledge.

17 Q Do you believe he's a reliable historian?

18 A One of the things I mentioned earlier was how I tried
19 to corroborate information from various sources. And
20 there are some times that I cannot corroborate information
21 from other sources. And you just mentioned a couple of
22 those times. Is he reliable about that? I can't say.
23 All I can say is what he told me.

24 Q Right. And those are pretty significant things he
25 told you?

1 A They are.

2 Q You talked about a monster. We heard that or saw
3 that on the board yesterday. Something about the monster
4 was this voice that he described to Dr. Hames?

5 A Correct.

6 Q Were you aware Dr. Hames sat in that same chair and
7 said that monster had nothing to do with voices? That
8 monster was and always was just his indication of jealousy
9 with his wife?

10 A I'm aware she said that, yes.

11 Q You chose not to believe her?

12 A I reported what he told me. I also reported in my
13 social history what Dr. Hames said.

14 Q But it's interesting yesterday, you didn't mention
15 what she said, you just mentioned what he said?

16 A The jury has heard what she said.

17 Q So you had to give a counterpoint.

18 A Excuse me?

19 Q You didn't mention anything about what the doctor
20 concluded?

21 A I did not.

22 Q Okay. Did -- since we're talking about imaginary
23 friends, did he ever mention anything about being
24 tripolar?

25 A Tripolar?

1 Q Tripolar.

2 A I have not heard that word.

3 Q Neither have I, that's why I was asking you.

4 September 18th, 2014, he's newly in SCDC, he tells Dr.

5 Wood, I'm tripolar. I have three personalities. That

6 doesn't ring a bell?

7 A I didn't review any records after the time of his

8 arrest, so.

9 Q Well, he made some pretty interesting statements, so

10 I just -- let me run this by and see if anything jogs a

11 memory in all your conversations.

12 MR. SECOR: Objection. May we approach?

13 (WHEREUPON, a bench conference was held as stated

14 below.

15 MR. SECOR: She is being cross-examined, the witness,

16 on documents which specifically she has no knowledge of.

17 She has never reviewed them. If they want to provide her

18 the records she can review them all. That's fine.

19 THE COURT: He can ask her, if she doesn't know she

20 doesn't know.

21 MR. SECOR: It is improper impeachment, it is

22 intended to embarrass and harass the witness and it is

23 information that she has never heard before. It is

24 absolutely improper. She just said her evaluation ended

25 as is appropriate at the time of the crime. That is all

1 there is to it.

2 MR. HUBBARD: I want to see if it dovetails with
3 imaginary friendly voice.

4 MR. SECOR: She can review on the records. You have
5 to give her an opportunity to do so.

6 THE COURT: No, he can ask her the question. If she
7 doesn't know that is when it stops.)

8 BY MR. HUBBARD:

9 Q This tripolar, three personalities, just to see if it
10 dovetails with anything you've heard about an imaginary
11 friend or voice. Number one, the top of the triangle of
12 these personalities, he described as the all truistic
13 caring self. Did he ever talk about that?

14 A No.

15 Q Number two and --

16 MR. SECOR: She's already said she doesn't know.

17 Q Number two --

18 THE COURT: Let him ask the question. You can't
19 object before he ask the question.

20 MR. SECOR: He's going through a series of questions
21 from the same report, how can she know the second one if
22 she doesn't know the first?

23 THE COURT: I got your objection. Let him ask the
24 question.

25 Q In talking about an imaginary friend or voice, did

1 any of it mention as what he described earlier as number
2 two, a judgmental or manipulative side?

3 A No.

4 Q And then the third personality he talked about with
5 Dr. Wood, I want to see if there's any correlation to what
6 you heard from him when he's talking about the voice or
7 his imaginary friend, where he talks about -- number three
8 is the voice that wants him to do harm to others and that
9 he's triggered quickly. Does he say anything about that?

10 A Not except for the voice that he heard when he was
11 around ten that told him to kill himself.

12 Q So that's the only time he talked about it?

13 A I didn't talk with Mr. Jones about the time of the
14 crime, the evening of the crime or anything that happened
15 after that day. So anything that he may have told other
16 people, those aren't things that he's told me.

17 Q Did he ever tell you or complain to you about the
18 fact that while he was in jail waiting -- and that's when
19 you got to meet him, when he was waiting for this trial,
20 that he was upset that people outside were giving his
21 ex-wife a pity party, but they're looking at him like a
22 monster?

23 A I don't think that I heard that, no.

24 Q Now, I've got to ask you something that just -- it
25 just struck me because it's in your report, Page 10, and I

1 want to know where this comes from. You have Cynthia
2 reporting that she married Tim, Sr. at the age of 18, not
3 knowing that her mother-in-law, Roberta Thornsberry, ran a
4 prostitution ring. And she said after her son, Tim, Jr.,
5 was born, her husband encouraged her to prostitute and her
6 mother-in-law became her employer. What's the source of
7 all that?

8 A Hutchings Psychiatric Center.

9 Q So you didn't get it from Cynthia because she's,
10 obviously, not reliable at this stage?

11 A No. It came from her Hutchings Psychiatric records
12 on Page 4050.

13 Q Okay. Do you know when she made that or when that
14 was?

15 A It was in 1995 --

16 Q So it was a good long while ago.

17 A -- that she said that.

18 Q Well, the reason why I asked it is because on Page 4,
19 you talk about when Roberta Thornsberry married Phillip
20 Caliendo, 1976?

21 A Correct.

22 Q And that Phillip and his Uncle Vedo, were involved in
23 organized crime?

24 A Correct.

25 Q In fact, he's prosecuted by the feds for

1 racketeering, for running prostitution rings in Chicago?

2 A Correct.

3 Q And that investigation went from like '78 to '82 or
4 so?

5 A I think it was after the time that he and Roberta
6 were together, but, yes.

7 Q But he was running those rings even then?

8 A I don't know that. I know he was investigated
9 subsequently to that and included that in my report.

10 Q And he got six years for running prostitution rings?

11 A He did get some time, yes.

12 Q We would call that trafficking today, wouldn't we?

13 A Prostitution rings? In some instances, yes.

14 Q Did you follow up with anybody to determine if Ms.
15 Thornsberry had any knowledge?

16 A I talked with Ms. Thornsberry about her
17 father/husband and having prostituted her. I did not talk
18 with her about prostitution subsequent to that. I did
19 talk with Cynthia about it.

20 Q Well, this would be really important because on the
21 one hand, you have information Ms. Roberta Thornsberry was
22 a victim. But now there's some insinuation or an
23 accusation that she was actually assisting in running a
24 prostitution ring. So let me ask you, did you talk to any
25 federal investigators or federal prosecutors to see who

1 might have been involved besides just Mr. Caliendo and his
2 Uncle Vedo?

3 A I did research the legal documents related to that
4 case and I could find no mention of her.

5 Q You didn't talk to any law enforcement?

6 A No, I didn't.

7 Q And you didn't talk to any law enforcement in this
8 case to see how Mr. Jones appeared at or about the time of
9 this crime?

10 A I wasn't researching things at the time of the crime
11 and after. I did read police reports that were written
12 about virtually every witness that I could find who had
13 known him prior to that time. I reviewed about 35 law
14 enforcement statements for that.

15 Q But you never called them and talked to them to see
16 if there's something more to the statement?

17 A No, sir, I didn't.

18 Q Did you talk to any of the teachers of these
19 children?

20 A My understanding was they were not willing to talk
21 with us, with me. So I reviewed their statements to law
22 enforcement, both proximate to this trial and also from
23 previous and I incorporated those into my social history.

24 Q Did you ever try to reach out to any of them, Ms.
25 Houck, the principal, or Janet Ricard, the vice-principal,

1 did you ever reach out --

2 MR. SECOR: Asked and answered.

3 THE COURT: No, it has not been answered.

4 MR. SECOR: He asked if she ever reached out to the
5 teachers and she said her understanding --

6 THE COURT: No, no, no, no, that wasn't the question.
7 He can ask that. That wasn't the first question. She
8 said that in her response, but he didn't ask if she'd
9 reached out.

10 A My experience, historically, has been when I've tried
11 to interview teachers that it has to be arranged through
12 the attorneys. And I asked whether that was something
13 that was possible and was told that the school department
14 wasn't interested in doing that.

15 Q Told by Mr. Jones' attorneys that?

16 A Yes.

17 Q Okay. Well, let's talk about pattern of choices,
18 both good and bad. Tim Jones, Jr. chose to go to school,
19 stay in school and apply himself in school?

20 A Yes, he did.

21 Q He chose to get a degree and go on to college and get
22 a degree there?

23 A Yes.

24 Q No one in his family had ever done it?

25 A Correct.

1 Q That was his willpower and his choice?

2 A Correct.

3 Q He got married, chose to have children. Those were
4 his choices?

5 A Yes.

6 Q In and of itself, that's fine. It did bring him
7 stability, that choice did. He controlled them, but he
8 never drank, smoked, did drugs that entire period he was
9 married, correct?

10 A That is correct.

11 Q So he chose to stay sober during that period of time,
12 almost nine years?

13 A He did.

14 Q And when that marriage fell apart, he chose to reach
15 out and get help. He went to Dr. Hames?

16 A Correct.

17 Q He went multiple times to get counseling?

18 A Correct.

19 Q He chose to get help for his kids?

20 A Yes.

21 Q But he also chose not to take medication that would
22 help him with his anxiety and depression going through
23 that divorce?

24 A That's correct. He was prescribed medication. I'm
25 not clear whether he ever took it.

1 Q It was his choice whether to take it or not and he
2 didn't, right?

3 A It was.

4 Q He chose to start self-medicating with illegal drugs
5 and with spice?

6 A He did, yes.

7 Q He chose not to talk to his own father for one year
8 and eight months?

9 A That's correct.

10 Q He chose to wait for his father to come to him before
11 he went to his father?

12 A Correct.

13 Q And with all his troubles, he chose not to turn to
14 his family, who had always been there for him?

15 A Correct.

16 Q He chose to hang onto his children when that family
17 could have helped him?

18 A Correct.

19 Q He chose to inflict a lifetime of pain on his own
20 family?

21 A Through his actions, his family is in a lifetime of
22 pain, correct.

23 Q A lot of people are by his choices?

24 A A lot of people are.

25 Q He chose to ignore the pleas for mercy from his own

1 children as he strangled them?

2 A That was not part of my investigation.

3 Q But, clearly, he made that choice? Yes, ma'am?

4 A That was not a part of my investigation. I haven't
5 talked to him about that.

6 Q And, clearly, he chose to murder his five babies?

7 A He did, yes.

8 Q That's the only pattern I needed to talk to you
9 about. Thank you.

10 THE COURT: Mr. Secor.

11 REDIRECT EXAMINATION

12 BY MR. SECOR:

13 Q Ms. Grey, how old was Roberta when she started being
14 sexually molested by her stepfather?

15 A She was around seven or eight years old.

16 Q And that continued for how long?

17 A Continued until the time she was able to get away
18 from him at age 17.

19 Q And how many children had she fathered by him at that
20 point?

21 A She had three children by her stepfather.

22 Q And the terror that he inflicted in her life
23 continued after she was able to get away from him?

24 MR. HUBBARD: Your Honor, object, beyond the scope.

25 THE COURT: The last question, I believe, does go

1 beyond the scope, so rephrase.

2 MR. SECOR: Can we approach?

3 THE COURT: Yes.

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

7 Q The pattern of abuse of Roberta as a child, did that
8 continue into her life later on?

9 A It continued, yes, all the way through her
10 adolescence into young adulthood.

11 Q And then did other people in her family suffer as a
12 consequence of that abuse of Roberta?

13 A Yes, they did.

14 Q Is that unfortunate pattern something that you see in
15 your work?

16 A Yes, it is. It's something that can be
17 intergenerational. And that's one of the issues that we
18 looked at in the genogram that we had up the other day was
19 how some of these patterns have been passed down through
20 the generations in this family.

21 Q Does this family, in terms of the time that you've
22 spent with them, do they -- do they define abuse in the
23 way that you would as a social worker?

24 MR. HUBBARD: Your Honor, I object. This is going
25 way beyond, way beyond the scope.

1 MR. SECOR: It's specifically on point on the
2 question of --

3 THE COURT: I'll let her answer.

4 MR. HUBBARD: Thank you, Your Honor.

5 A It does, yes. They do not define abuse the same way
6 that we do -- that I do.

7 Q And what's different about the way that they view it?

8 A I asked one of the brothers, for example, about
9 growing up in this household. And what he said first was,
10 I have nothing but happy memories. And then he talked
11 about grandma trying to shoot grandpa --

12 MR. HUBBARD: Your Honor, I have to object to hearsay
13 at this point. I didn't talk anything about brothers.

14 MR. SECOR: It's an example of how she knows what she
15 knows.

16 THE COURT: I'm going to allow the answer. But we've
17 got to tie this together real quick. It's getting on the
18 edge of the relevance.

19 A He talked about various things that had happened in
20 the household that involved a lot of violence and threats.
21 And that would constitute a form of abuse to a social
22 worker, but in this family, they did not.

23 MR. SECOR: Thank you, ma'am.

24 MR. HUBBARD: No further questions.

25 THE COURT: You may step down.

1 MR. YOUNG: Your Honor, at this time, the Defense
2 request to publish the video of Cynthia Turner.

3 MR. HUBBARD: Your Honor has already ruled on that
4 unless there's a hearing that I missed, I may have stepped
5 out. We object to relevance.

6 THE COURT: I thought we had already dealt with that.

7 MR. YOUNG: I thought we dealt with it in the -- as
8 relevant to the prior --

9 THE COURT: Y'all step in the jury room.

10 (WHEREUPON, the jury was excused from open court.)

11 THE COURT: I thought that video was ruled off
12 limits.

13 MR. YOUNG: I understood it was ruled to be by the
14 Court over our objection to not be relevant to the
15 determination of not guilty by reason of insanity or
16 guilty but mentally ill. This is penalty. It is relevant
17 to Tim's state of mind and whether or not he has mental
18 illness and it's mitigating.

19 THE COURT: She didn't know how many children he had.

20 MR. YOUNG: Right.

21 THE COURT: How is that relevant to his state of mind
22 looking at her? Everybody said she's horribly mentally
23 ill, institutionalized. I mean, nobody has challenged
24 that. How is that relevant to what's going on in this
25 trial seeing the condition she's in in that interview?

1 MR. YOUNG: The jury's left with the impression that
2 she's just tied up in a straightjacket drooling on
3 herself. That's not what severe mental illness looks
4 like. And we have a video that shows an accurate
5 portrayal of what severe mental illness looks like. Not
6 only what severe mental illness looks like, what Tim's
7 mother looks like severely mentally ill. Everybody who
8 has testified has talked about this strong genetic link
9 between mental illness, especially where a parent has
10 severe mental illness.

11 THE COURT: Right. Why is that relevant to
12 mitigating factors for him in this case? I don't
13 understand it.

14 MR. YOUNG: It's his mother's condition. It's his
15 mother. It is relevant to him in mitigation.

16 THE COURT: How? She's in a terrible state. How is
17 that interview of her talking about -- the things she
18 talked about, as I remember, were very general.

19 Can y'all sit down? Quit moving around?

20 A bunch of people have come in while you've been
21 talking, Mr. Young. Not your fault. There was eight or
22 ten people that came in against my desires.

23 I don't understand the relevance of showing that
24 video.

25 MR. YOUNG: Judge, it's his mother, his mother who is

1 diagnosed with schizophrenia, in which a number of other
2 people have diagnosed Tim with, and what condition Tim
3 could end up in. A lot of people say --

4 THE COURT: How has that got to do with --

5 MR. YOUNG: It's his future.

6 THE COURT: Why didn't y'all ask -- I appreciate the
7 heads up. I'm really frustrated you did it in front of
8 the jury. I really appreciate that. Who has testified
9 that Tim, Jr.'s condition is declining like his mother's?

10 MR. YOUNG: Dr. Maddox.

11 THE COURT: She did not.

12 MR. YOUNG: She testified that schizophrenia is a
13 brain disease that gets worse.

14 THE COURT: No --

15 MR. YOUNG: -- and that --

16 THE COURT: That is not what she testified to. She
17 said there are three types. It either gets worse, or
18 stays about the same or you don't have it. And he's
19 maintained his condition, so. I assume that meant he was
20 the -- he's maintaining.

21 MR. YOUNG: I think she said that his condition has
22 gotten worse over time. And she ordered neuropsych
23 testing, that she saw the decline in functioning.

24 THE COURT: Solicitor?

25 MR. HUBBARD: Your Honor, I think it's not just

1 relevance, it's 403. Even under a broader, more relaxed
2 403 in this case, there's been no contesting the mother's
3 ill. She's institutionalized. No one has said she's in a
4 straightjacket. The witness he put up just now said she's
5 able to walk outside to go out for the day. She just
6 isn't able to travel. Nobody is contesting this. I don't
7 know what the probative value is because everybody has
8 talked about the genetic link. You've let that in and
9 that's fine. We haven't contested it. But what does this
10 show? I think it just becomes extremely prejudicial. It
11 inflames the passion saying look, here's mom, this is
12 going to be Tim. And that's their element of approach,
13 but it's inflammatory. Experts are the ones that make
14 that call, not a video of mom and her very different life
15 experiences. So I think it's just -- under 403, Judge, it
16 falls.

17 MR. YOUNG: Your Honor, how many cases out of
18 Lexington County have to be reversed for excluding
19 mitigation evidence before we let in what is -- it's his
20 mother. This is his mother. To not allow the jury to see
21 the short interview with his mother --

22 THE COURT: All right. What else you got coming down
23 the pike after, what other surprises you got?

24 MR. YOUNG: Several family members testifying. I
25 believe that's it.

1 MR. HUBBARD: Your Honor, it might be a good time if
2 we ask if there's any videos we haven't seen or maybe
3 y'all provided them and we just make sure we watch them
4 right now before the jury comes back in. Is there
5 anything else we need to --

6 MR. YOUNG: I gave them to up.

7 MR. HUBBARD: Okay. All right. Any photos or
8 anything y'all might need to -- since they're out, Your
9 Honor, maybe we just need to take care of that real quick.

10 THE COURT: Y'all take care of that. I'm going to
11 step off for a minute.

12 MR. SECOR: Your Honor, when you return, can I have
13 permission to put my objection to the limitations on --

14 THE COURT: Put them on now.

15 MR. SECOR: Yes, sir.

16 MR. GRAHAM: Judge, I don't know whether you want to
17 address the Dickerson case that I passed up to you
18 yesterday about asking family members what the effect of
19 his death sentence would mean to them?

20 THE COURT: No, I don't want to address that right
21 now. I want to hear Mr. Secor make his record of the
22 limitations.

23 MR. SECOR: Yes, sir. Thank you. I just want to
24 point out that a great deal of information that we
25 elicited or attempted to elicit through Ms. Grey, the

1 social historian, this morning is information that we
2 intended to elicit through lay witnesses, including Ms.
3 Thornsberry and Timothy Jones, Sr. And Ms. Grey was able
4 to get in some of the information that Tim, Sr. and
5 Roberta were not allowed to get into, but still some of
6 that very personal information was restricted by order of
7 the Court subsequent to objections by the State. We would
8 renew our objection on any limitation on social history as
9 being a limitation on presentation of mitigation.
10 Obviously, the definition of mitigation is extremely broad
11 and includes anything that the State, I am sorry, anything
12 that the Defense offers to the jury to support a sentence
13 of less than death. A right to present mitigation is
14 reiterated numerous times by the United States Supreme
15 Court from *Rompilla v. Beard*, *Wiggins v. Smith*, *Williams*
16 *v. Taylor*, *Porter v. McCollum*, *Eddings versus Oklahoma* and
17 *Abdul Kabir versus Quaterman*. And that last case, *Abdul*
18 *Kabir versus Quarterman* specifically talks about how
19 juries not --

20 THE COURT: All right, that's an appellate argument
21 now. You made a case cite. I don't need to hear what the
22 case said.

23 MR. SECOR: Okay. And the only reason I note that,
24 Your Honor, is because you have to be able to give effect
25 to it. And part of giving effect to it is I believe

1 receiving it in an effective way.

2 THE COURT: And I gave you a lot of leeway with Dr.
3 Grey.

4 MR. SECOR: Well, respectfully, Your Honor --

5 THE COURT: If I gave the leeway you were asking for,
6 we'd be here through next month.

7 MR. SECOR: Your Honor, I just -- I'm not trying to
8 argue with Your Honor, but part of the reason why Ms.
9 Grey's testimony was lengthy was because we were unable to
10 get that information out of lay witnesses originally. The
11 idea is that a social historian does not tell the entire
12 story for the very reason that you don't want somebody to
13 testify on and on. And so, we attempted to present this
14 information to the jury in an effective way and I believe
15 the effectiveness was not as strong as it could have been
16 because of the Court's ruling. And I do think at times
17 when I was presenting the information, trying to present
18 it as best I could to this jury that the State's
19 objections and the Court instructed me to move on, I think
20 the risk exist that the jury could have interpreted that
21 as me having -- me doing something wrong because of the
22 power of the Court in these cases. And that's a concern
23 for me, that if the jury thinks that I'm doing something
24 wrong because the Court has to keep telling me to move on
25 that their assumption is that I'm somehow incompetent --

1 THE COURT: No. The Court and you and everybody laid
2 out eight volumes four inches thick across that table and
3 there were thousands of pages, 500 hours of her work.
4 There was a reason for the moving on, not your competence,
5 not your professionalism, not at all. It was explained
6 and demonstrated there's a huge family history and we
7 couldn't tell every minute detail of it. That was the
8 reason for it. And I gave that instruction to the jury
9 twice.

10 MR. SECOR: Yes, sir, and I'm not saying that Your
11 Honor was in any way intending to do that, I just -- I
12 have to think about what is best from Tim's perspective.
13 And I, obviously, have a strong concern that if anything
14 happens, if the jury thinks that I'm somehow not
15 trustworthy that that could affect what they decide.

16 THE COURT: You've made your record on that.

17 MR. SECOR: And I would just cite the State vs.
18 Davis, a 2006, South Carolina Court of Appeals for that
19 proposition. Thank you.

20 MR. HUBBARD: Your Honor, you're in a unique
21 position, unlike the Appellate Court, where you can
22 actually watch the tenure of what's going on in the
23 courtroom, including the jurors. And sometimes the longer
24 a witness goes on, the more it actually undercuts the
25 purpose. Your Honor, you limited my objections, which was

1 fine. But this jury -- I think you've got to gauge how
2 much is too much for this jury as well. That will never
3 appear on an Appellate record, that's why you're here
4 where you are managing the court time. And, Your Honor,
5 it is just so happened, managed right to the end of the
6 day and they didn't want anymore, they made that clear.

7 THE COURT: And the jury made a noticeable reaction
8 when that second genogram was put up and Dr. Grey was
9 going to read all the details of it. And I said, let's
10 don't read all the details of it, and we read the criminal
11 past. Very -- reaction that they had enough and they
12 wanted to conclude.

13 MR. HUBBARD: Yes, sir. And that evidence is in
14 should they want to go back and review it, whatever.

15 THE COURT: Sure. Sure. Sure.

16 MR. HUBBARD: Thank you, Your Honor.

17 THE COURT: All right. Let's take a couple minutes.
18 Y'all look at the pictures.

19 MR. HUBBARD: We looked at them, Your Honor. We
20 don't have any objection to what they've shown us.

21 (WHEREUPON, a short break was taken.)

22 THE COURT: All right. Mr. Young, let me hear you
23 one more time on this video. Why is it relevant to the
24 issue -- Mr. Jones' future medical treatment may be like
25 his mother's, how is that relevant to what the jury has

1 got to decide? Wouldn't his future medical problems be
2 his own issue?

3 MR. YOUNG: They have to decide about his future,
4 whether or not he's allowed to live or be put to death.
5 And they're entitled to know what that life could be like.

6 THE COURT: I just -- I do not believe that video --
7 I think it's inflammatory and prejudicial. The State
8 can't cross-examine a video. When we had a earlier
9 hearing, you said something to the effect the State could
10 have gone to New York or wherever -- upstate New York
11 somewhere, if I remember right.

12 MR. YOUNG: We asked the State to participate either
13 in person or offered them an opportunity to be present by
14 a video link or submit questions that we would ask. They
15 chose not to participate in any way.

16 MR. HUBBARD: Your Honor, we were during the jury
17 selection at that time.

18 THE COURT: It was the middle -- first week in, I
19 believe.

20 MR. HUBBARD: Yes, sir, it was. There were some
21 other issues, too. She has diagnoses that have never been
22 associated with Mr. Jones. So how much of what we're
23 seeing is from schizophrenia, how much is from the
24 dissociative disorder she has or these other disorders?
25 How much is medication? We don't know. There's not an

1 expert reviewing that saying here's what you're seeing.
2 The jury would be left to speculate about what they're
3 seeing and hearing. And that's why it's really -- under
4 403, it's just such a problem.

5 MR. YOUNG: Your Honor issued a material witness
6 warrant for her. We went to effect that warrant. We were
7 told that we were not going to be allowed to have her
8 transported pursuant to this Court's order. It was then
9 ordered that her testimony be videotaped. We informed the
10 State that's what we intended to do.

11 THE COURT: What's this probative of? Are you going
12 to argue you saw Tim's mom in that video, that's what
13 Tim's going to look like in five years? If you're going
14 to argue that, then I think it's hugely awkward for
15 everybody because we don't have any of her -- none of her
16 doctors have testified here that treated her. Maybe it's
17 on her medical records --

18 MR. YOUNG: None of them have treated her, but they
19 have viewed the video and talked about viewing the video.
20 And there have been numerous witnesses that talked about
21 the look that they see in Tim now is the look that they
22 saw in Cynthia.

23 THE COURT: Nobody's contesting that, I don't think.

24 MR. YOUNG: Except for the jury is not allowed to
25 look at the look of Cynthia to see what it is they're

1 talking about.

2 MR. HUBBARD: Again, that's my objection. We don't
3 know what we're looking at. We don't know what -- how
4 much medication and she's got those other disorders she's
5 been diagnosed with that no one has said Mr. Jones has.
6 So what are we looking at? No expert can walk us through
7 it. The jury would be left to speculate. That's the last
8 thing they need to do. And I wouldn't be able to probe
9 it. So under 403, I think it's a train wreck.

10 MR. YOUNG: Mitigation is any reason not to give
11 death. The fact that his own mother couldn't come to his
12 trial is likely a reason for a Juror not to give death.

13 THE COURT: How are you prevented from arguing that
14 right now?

15 MR. YOUNG: I'm not.

16 THE COURT: How are you prevented from arguing that
17 right now?

18 MR. YOUNG: I'm not.

19 THE COURT: All right. I'm not letting it in then.
20 You talked me into it.

21 MR. YOUNG: We object under State vs. Mercer and that
22 relevant mitigation should be admitted and 403 shouldn't
23 be used to exclude mitigation evidence.

24 THE COURT: It's a broader 403. That video was done
25 late, it was done during jury selection. There's too many

1 things that are unknown with her medical condition. And
2 the State has not challenged whatsoever that she has
3 severe mental challenges, issues, is institutionalized.
4 All that's free game for you to argue that she couldn't
5 come for those reasons. She was not allowed to come. So
6 you are certainly welcome to argue that. I think it's
7 inflammatory and I don't think that it's a proper video to
8 be introduced in this phase of the case. So I'm not going
9 to allow it.

10 MR. YOUNG: Your Honor, I'd just incorporate all my
11 arguments by reference to Court's number 90 for ID.

12 (WHEREUPON, Court's Exhibit number 90 was marked for
13 identification.)

14 THE COURT: All right. Are we ready for the next
15 witness? I know, Mr. Graham, you want to have some sort
16 of limitation on the questioning of the impact of the
17 death sentence on the members of the Jones' family,
18 whether they can plead for mercy.

19 MR. GRAHAM: Your Honor, my understanding after
20 reading Dickerson, the Supreme Court says that a plea for
21 mercy is appropriate. Actually asking about life without
22 parole or a death sentence is not appropriate. And for
23 sure, it clearly says that the Judge was correct in
24 preventing a witness from testifying as to what the effect
25 of an execution of the Defendant would have on themselves

1 or other members of the family. It's inappropriate.

2 THE COURT: Y'all plan on asking that question?

3 MR. YOUNG: No, sir.

4 THE COURT: No? Fair enough.

5 MR. YOUNG: We haven't been asking that question. We
6 specifically asked can you still have a relationship with
7 him from prison, which is an appropriate question. Nobody
8 has said, how's Tim's execution going to impact -- how is
9 that going to impact.

10 THE COURT: Well, I know during Ms. Thornsberry's
11 testimony, she did make the statement of my family has
12 suffered enough, we've had enough loss, that kind of
13 thing. I think that was the tenure of what Mr. Graham was
14 objecting to preliminarily for these future witnesses.
15 All right, he's not going to ask it. Bring in the jury.

16 (Whereupon, the jury came into open court at
17 approximately 10:00 a.m.)

18 THE COURT: Call your witness.

19 MR. SECOR: Thank you, Your Honor. The Defense calls
20 Julie Jones.

21 JULIE JONES, being
22 first duly sworn, testified as follows:

23 THE CLERK: If you'll have a seat, please. If you'll
24 state your name, spelling your last for the record,
25 please.

1 THE WITNESS: Julie Jones, J-O-N-E-S.

2 DIRECT EXAMINATION

3 BY MR. SECOR:

4 Q Ms. Jones, who are you married to?

5 A I am married to Tim Jones, Sr.

6 Q And how did you all meet?

7 A Well, a little over 15 years ago, we might have been
8 one of those first Match.com people. Timmy, actually, put
9 a post up and I had not had a lot of luck working and
10 dating, so I put a profile up. And I was actually
11 conversing with Timmy, Jr. and his dad. So Timmy was
12 typing and -- typing rather quickly, because you know that
13 he has a computer background. And then one day, I saw
14 that Tim, Sr. was online and I typed him and he's hen
15 pecking, you know, really slow getting back. So you've
16 got to remember this is back in the age before we had all
17 that instant messaging. And I was like, what is going on?
18 You're taking forever. And he kept saying call me, call
19 me. Well, I didn't want to call, but I got tired of
20 waiting 20 minutes just to hear a hello or a how are you.
21 And I called him and the rest is history. We're here
22 today.

23 Q And how many children do you have?

24 A I have three children. I had four, I lost a child,
25 but I have three living right now.

1 Q And who are they?

2 A I have Chad Sinkowski, he's my oldest. He's 27. I
3 have Jacqueline, she's my middle child and she's 25. And
4 then my baby is another Tyler, so we have a big Tyler and
5 a little Tyler. And little Tyler is 23.

6 Q When you and Tim, Sr. got together, that was when?
7 What year?

8 A I'm trying to think, maybe about 2002, 2003,
9 somewhere in there.

10 Q And that was right after Tim had gotten out of the
11 boot camp program?

12 A Yes, that was -- Tim was out of boot camp program and
13 living with his father. His father had already been
14 separated.

15 Q Did Tim, Jr. ever help take care of your kids at that
16 point when they were younger?

17 A Yes, he did. And, you know, you've heard us talk
18 about Sheldon and how we always kind of made fun of Timmy
19 being really bright. And one of the other things is his
20 sarcasm. So I had a job that I had to work one weekend a
21 month and I asked Timmy to watch my kids. He had stayed
22 with me, been with my kids. It was no big deal. And they
23 were a little bit rambunctious. And he called me and he's
24 like, when are you coming home? And I said, I've got two
25 more appointments, I must do these. These are top

1 clients. I'll be there -- you know, give me 45 minutes
2 and a half hour to get home. You know, you're just going
3 to have to, you know, handle it, you know. And he said,
4 well, what if I can't handle it? I said, I don't know,
5 call the police. Well, about an hour later, he calls back
6 to say, I called the police and they're not going to come
7 do anything. When are you going to be home? So he
8 just -- you know, we had a lot of fun and funny memories
9 about that. Because he was just happy watching the kids
10 and they were happy to be with him, but when they got a
11 little rambunctious, he wanted, you know, them to play
12 with him and have fun and they didn't necessarily want to
13 go outside and play basketball and things like that. So
14 you've got to remember I had a girl and she was used to
15 five brothers, so she could be a handful.

16 Q Did Tim, Jr. seem happy about your union with Tim,
17 Sr.?

18 A Yes, very happy. You know, Timmy needed a mom and a
19 female figure in his life. So when I came in, he was at a
20 crossroads. And we were able to talk, we were able to
21 build a relationship and become friends. And a parent
22 role as well.

23 Q Yes, ma'am.

24 MR. SECOR: Your Honor, may I approach?

25 THE COURT: You may.

1 Q Ms. Jones, I'm going to show you what's been marked
2 for identification purposes as Defense 341, 340 339, 241,
3 342. Do you recognize those?

4 A Yes, I do.

5 Q Are those family pictures?

6 A Yes, they are.

7 Q And have you seen this what's been marked -- this
8 flash drive that's been marked as Defendant's 365 before?

9 A Yes.

10 Q And it has a video on it that you've seen --

11 A Yes.

12 Q -- from family at the time? Ms. Jones, I'm going to
13 put some of these pictures with the Court's permission up
14 on the overhead.

15 (WHEREUPON, Defendant's Exhibit number 368 was marked
16 for identification.)

17 Q Last one I want to show you, Ms. Jones, is what's
18 been marked as 386. Do you recognize that?

19 A Yes, I do.

20 MR. SECOR: Your Honor, I'd move Defense 368, 341,
21 340, 339, 241, 342 and 365 into evidence.

22 MR. GRAHAM: Without objection.

23 THE COURT: I wrote down 341, 339, 343, 241, 342 and
24 then the video was 365. Did you name two more pictures?

25 MR. SECOR: Yes, sir. May I approach?

1 THE COURT: 365 is the video?

2 MR. SECOR: Yes, sir.

3 THE COURT: Any objection?

4 MR. GRAHAM: I think those are the ones we've looked
5 at, Your Honor.

6 THE COURT: Okay. Without objection, 340, 341, 342,
7 339, 365, 368 and 241 without objection.

8 MR. SECOR: Thank you, sir.

9 (WHEREUPON, Defendant's Exhibit numbers 241, 339
10 through 342, 365 and 368 were admitted into evidence.)

11 MR. SECOR: Permission to publish? Your Honor, may I
12 publish?

13 THE COURT: Yeah, sure.

14 MR. SECOR: Thank you.

15 Q If you'd just tell us, Ms. Jones, who's in these
16 pictures and what was going on at this time in y'all's
17 lives?

18 A This picture was taken -- this is Merah in the
19 picture and it was taken in Pennsylvania. So when Merah
20 was born, Amber, she was having, you know, a lot of those
21 Braxton-Hicks contractions. So they lived 19 hours from
22 us. And we didn't know whether to come, not come. She
23 had already had two or maybe even three visits to the
24 hospital and they were false alarms. So we waited
25 until -- Tim suggested just wait until because he didn't

1 want to -- you know, we would be there two weeks if she
2 didn't have the baby. And so as soon as Tim called, we
3 got in the car and drove. You know, Google says 19 hours,
4 we made it in 19 hours with our stops all the way. And
5 that's me holding her. She's still in the hospital
6 blanket and that's -- that was our first grandbaby. It
7 was -- I can't tell you how special it was. And you can
8 kind of see in the background that -- this was also Timmy
9 and Amber's first -- it was a small cottage. It was
10 adorable, this little place. And they really just had a
11 bassinet for the baby. So Tim and I, we went and bought a
12 crib and a changing table and we just decked out that
13 nursery for her. It was -- it was just incredible to have
14 her in our life. That's where big Tim fell in love and
15 calls her Merah Gracie. Her middle name was Gracie and he
16 liked Gracie. He thought it was so delicate like her.

17 Q Next one I want to show you is 340. Tell us --
18 that's 340. Tell us --

19 A That's Tim and I. And, again -- so now, Timmy and
20 Amber are in Mississippi. And this is when he was born,
21 Elias. And Tim and I again were there. Now, this was
22 taken in the hospital. So we got to be there for the
23 birth of our grandbaby, which was exciting. And again, we
24 held her -- him the first time. You know, we were there.
25 It's just --

1 Q Next one I want to show you is 339.

2 A This was our backyard. This is Nahtahn. And this
3 was coming home from the hospital. So we were there
4 again. Nahtahn was born in Mississippi. So when he was
5 born, I was there. And then when they came home from the
6 hospital -- the babies were born in Tupelo and they had to
7 go through us to get home, so they would come. That was
8 his first day home from the hospital. And you have to
9 remember that Amber -- we never met Amber's family. She
10 didn't have any family and Timmy's mom wasn't there, so I
11 got to play the grandma role and I also got to help Amber
12 with the babies and be there after you give birth. It's a
13 tough time for a mother to have children and be giving
14 birth. So I got to -- I got to hold her -- well, him.
15 This is Nahtahn. And that's our backyard.

16 Q And one more of a birth time. This is 241. Who's
17 this?

18 A That's Nahtahn at the hospital. So as I said, we
19 were at the hospital. And you can tell, Amber just
20 literally had him. And we put them all together and took
21 their new family photo. And that's what you're seeing.
22 You're seeing the new addition and the family photo, all
23 of them.

24 Q Were you and Senior present there as well?

25 A Yes, we were there. I believe Tim took the picture

1 or I could have taken the picture. So yeah, we were there
2 and it was the first family photo with the new baby.

3 Q Did you enjoy being a grandmother?

4 A I loved being a grandmother. When they came and we
5 got a chance to spoil them and have Christmas and do
6 everything with them, it was so special. Timmy was going
7 through school and they were building their family. And
8 every weekend, we would have a cookout and the kids would
9 come over. So for most of their lives, up until the last
10 year, every weekend, I spent with those grandchildren.
11 We'd go to the park. We'd do Easter egg hunts on Easter.
12 We did everything together. I was very much a part of
13 their life. I never ever did not feel like their
14 grandmother. I changed diapers. I changed clothes and
15 fed them cake on their birthday. And just had a wonderful
16 time with them. I can't -- I can't tell you how beautiful
17 it was. And I promised I wasn't going to cry because I
18 bumble when I cry, but I want you to know that I wouldn't
19 trade that for anything in the world.

20 Q And did you call them the babies like Senior did?

21 A We always called them the babies. You know, when it
22 was just Merah, we were kind of like Merah or Gracie. And
23 then when Elias came along, we kind of, you know, Merah or
24 E or Elias, but then when Nahtahn came, all of a sudden,
25 it was like okay, where are the babies? It became kind of

1 a group. And they're very close in age and it's kind of
2 like momma duck. When they would walk, they would kind of
3 all be behind you in a little line. So they were always
4 together. And so we just referred to them as the babies.

5 Q And what did they call you?

6 A They called me grandma.

7 MR. SECOR: Your Honor, I'd like to publish 365, if I
8 could, which is a video representing one of the cookout
9 times that Ms. Jones has mentioned.

10 THE COURT: It's in, you can publish it.

11 (WHEREUPON, Defendant's Exhibit number 365 was
12 published for the jury.)

13 Q Do you remember that day?

14 A Yes.

15 Q Can you just tell us a little bit about it?

16 A It was a joint birthday party for all three of the
17 kids. And they didn't know -- you know, they'd come over
18 every weekend. They had no idea we were going to throw a
19 birthday party for all three of them. And we literally
20 got a bike for each child. And we put them on the dining
21 room table with balloons and confetti all around the room.
22 So when you walked into the front door, that's the first
23 room that you saw. And I will never forget their little
24 faces and the amazement of ah, are those for us? And they
25 were just so excited. And they kept singing happy

1 birthday to themselves that day. Nahtahn was looking for
2 his Spiderman bike, so he had Spiderman. It was with the
3 webs and everything. So that's what that was about. And
4 you can see -- I mean, in Mississippi, you have to do
5 cookouts. I just wanted you -- it's so hot, you can't
6 really turn the oven on, so we always did that. It was
7 part of being outside and playing with the kids. You can
8 see the pool in the background that we talk about. So if
9 you're running around and you get hot, we'd jump in, cool
10 off and back to running around. We have just shy of an
11 acre, so they had plenty of room to run and play.

12 Q And that summer of 2012 that we've heard about --

13 MR. SECOR: Your Honor, this is 342.

14 Q You think this might be from that summer? Does that
15 seem right?

16 A I think it is from that summer. Matter of fact, I
17 know it was from that summer, yes. And that's -- like I
18 said, they're in their bathing suits. And we just would
19 cook out, go swimming, ride the bikes and just have fun.

20 Q In terms of your life experience, does that summer
21 rank pretty high?

22 A I think that was really the best summer that we had.
23 Everybody wanted to kind of chip in and help out. Timmy
24 was going through a rough patch, so it brought the family
25 together. So my other two stepsons lived up north at the

1 time, so they would try to come down. So when they came
2 down, all the relatives would come over. So it was always
3 a busy time with a lot of people coming and going and we
4 were always doing. It was -- you know, you can tell, they
5 were having fun. We enjoyed it. That was a swing that
6 turned into a bed that you could lay down. So a lot of
7 times, we would kind of just lay it down and rock them to
8 sleep because I -- the children's always wanted to be part
9 of everything, so sometimes on the weekends, even if it
10 was a little late, they didn't want to go in and go to
11 bed, so we would take it and lay that down and just kind
12 of rock them. And they would still get to be part of the
13 activities when the adults were sitting around and
14 talking.

15 Q I want you to talk a little bit -- the jury's heard
16 about it, some of it, but when you and Senior got the call
17 from the Smyth County Sheriff's Department to come to
18 Raleigh, Raleigh, Mississippi after the babies were
19 missing and Tim was missing. I know that you were there
20 and you were part of that process of desperately trying to
21 find the babies. And I want you to just tell the jury
22 about what you did, your sort of role at that time.

23 A So Big Tim -- I work at home and Big Tim came and
24 asked me for the Bible. It's a book that we have with
25 everybody in the family, their phone number, kids' social

1 security number and everything. So when he asked me for
2 that, I knew something was wrong. And I didn't know what
3 was wrong. So he came and got the Bible and then he came
4 back and he said, Hang up the phone, come with me. And
5 that was when Timmy was missing with the children. And so
6 time waits and your mind plays all kinds of tricks and
7 we're waiting and we're waiting. So it was about 11
8 o'clock at night. And I don't know about you, but
9 sometimes you have a moment in your life that changes on a
10 dime. When that phone rang at 11 o'clock, my life changed
11 on a dime. They told Tim -- Tim answered the phone and he
12 was in the hallway. And I could hear him say, You have
13 Timmy? And I immediately stopped, went to him and I could
14 hear him say, But we don't have the children. And I hit
15 the ground on my knees, Dear God. And we're here today.
16 You know the story. I've been with you watching it. And
17 that's what happened when they contacted us. Then Tim and
18 I immediately, we just -- I just -- he picked me up and we
19 held each other. And he said all right. And we were
20 dressed. I grabbed my purse, we got in the car, we
21 started driving. We were driving for maybe 20 minutes and
22 we were calling the -- to let them know that we were
23 coming and they told us don't come, we're not going to let
24 you see him, you know. And Tim's like, Well, I'm coming.
25 And they were like, Well, you're just going to sit

1 outside. So we turned around and we went back. And then
2 we called his mom and let her know that they had found
3 Timmy, but they didn't have the babies. And we called
4 Amber and let her know what was happening. And then they
5 told us that we could come about 1:00 o'clock. And we
6 were there at 1:00 o'clock in Smyth County.

7 Q Yes, ma'am. And the jury's heard about how you and
8 Senior were there because you wanted to help, is that
9 right?

10 A Oh, yes. We wanted to help. I'm nervous and I'm
11 scared and I hurt and I want you to know how much these
12 babies were my world. And I would have done anything to
13 find them and I know that my husband was. We were united.
14 We often had to sit and talk over the last four, almost
15 five years about that event. We wouldn't change a thing.
16 We were there. We helped them find those babies. And I
17 worked with Creech, Lieutenant Creech. Tim and I went
18 through pictures together. He laid out pictures and I
19 told him, I said, you know, that's Merah. Don't call her
20 Merah, call her Merah Gracie. And I told him what she was
21 doing in the picture. And he laid out a picture of Elias
22 and I said -- at first, we said, Well, we really call
23 Elias E. And then he laid out a picture and Elias was in
24 a little suit and that was when they went to church and
25 they had the children dedicated. So I said, No, this

1 picture, you've got to call him Elias Xavier Jones. And
2 we put that emphasis on his full name. And then Nahtahn,
3 they had a picture of Nahtahn. Nahtahn has this adorable
4 little smile. And he had -- I don't know how he picked it
5 up, if it was from a movie or something, but he would take
6 a glass and if you put it here without a plate, he would
7 just say, you know, cup of water. But when you would put
8 it on a saucer, he would go, Cup of tea, Grandma, cup of
9 tea. And so I told him to say cup of tea and give it a
10 little English accent just like Nahtahn did in order to
11 help us find them. And then Gabriel --

12 Q Oh, I'm sorry, go ahead.

13 A Well, and Gabriel, I just said Gabriel's got the
14 cutest little smile, he doesn't do too much. So, you
15 know, there's not really too much I can say. And then he
16 pulled out a picture of Elaine. And I had never held
17 Elaine, I didn't get to see her or meet her. And it
18 just -- it hurt, it hurt.

19 Q And are you grateful for the Smyth County Sheriff's
20 Department for what they were doing?

21 A Oh, I am so grateful to them. They -- they helped us
22 find the babies. They brought them home. They did what
23 we asked. They brought them home.

24 Q Are you grateful for the Lexington County Sheriff's
25 Department as well?

1 A Yes.

2 Q There's something at your home in Mississippi that
3 you at one point in the past, almost five years, as you
4 said, but you asked us to take away from your home. And I
5 was just hoping you could tell the jury the reason why you
6 wanted us to take those things from your home.

7 A So we had a memorial for the children in Mississippi.
8 They were very much a part of our community. Amy,
9 Mississippi is a small town. And we live on a corner, so
10 a lot of people had seen the children playing in the yard.
11 So we held a memorial and we had put five wreaths and we
12 had blown up pictures put inside of each wreath. And
13 after the memorial, we put the pictures up in Tim's
14 office. Tim's office had all family pictures. That's
15 what he used as his pictures on his wall, was just
16 eight-by-tens of different photos of the whole family.
17 And he kind of took some down and made a space for these
18 pictures. Well, I put the wreaths -- we have a door, a
19 French door at the foot of our bed, so I had lined the
20 wreaths. And my sister, she helped me because she said I
21 know you're grieving, but -- so each day, she would call
22 me and I would take a flower from the wreaths until
23 eventually there was no more flowers. And then I took the
24 bows and then I took the balloons. I can't tell you how
25 long those silver balloons last because they still were

1 floating. And it helped me to grieve. And then with Big
2 Tim, he would go in his office and he would just sit in
3 front of those pictures and cry for hours on hours on
4 hours day after day. And I couldn't help him. And I had
5 to get rid of the pictures. So I asked Casey, Please take
6 the pictures. I don't know what else to do. I can't get
7 them out of the office. And he's been crying every day
8 for the last three weeks. And then he'll have one day
9 where he doesn't cry and then he's back to three weeks of
10 crying again. He had talked about suicide and joining the
11 babies. And I was afraid. I was -- I was losing
12 everything.

13 Q And in that room, did you also have some of the
14 babies ashes as well?

15 A We had -- we had their ashes. We had an urn. So
16 their urn was there. And then they went to Disney World,
17 so we had their Disney hats that they wore in the picture
18 with the urns. And we had a couple of little items that
19 they had made at school. Different craft projects that
20 you do at school with your kids, we had those. And they
21 were -- you know, Merah wrote her name on the back. They
22 are very special to us. So they're still there. And I
23 moved -- the ashes are in the living room. They're not in
24 his office.

25 Q Despite everything you've been through from what Tim

1 did, do you still love him?

2 A Oh, I love Tim. I love him very, very much. I do.

3 Q Do you want --

4 A He's my son. I don't know when it happened or how,
5 but somewhere along the line, there is no step. He's my
6 son.

7 Q Ms. Jones, do you want Tim put to death?

8 A Oh, God, no, no. I want mercy. I don't want him put
9 to death. I think Tim -- you know, he's smart. He's
10 brilliant. We've told you about that over and over again.
11 He can pay a debt to society. This man -- I have two
12 other children who have graduated college. He taught them
13 how to learn and to do the math. He tutored when he was
14 in college. He can -- he can pay a debt society by giving
15 all these GEDs. You know, our community talks about, you
16 know, rehabilitating the inmates. Timmy has that ability.
17 Think of how many people he could get GEDs for over the
18 next 40 years and they could become productive members of
19 society. He still has a lot to give. He has so much to
20 give to me. I love him.

21 Q Would you and Senior continue to have a relationship
22 with him?

23 A Oh, definitely. I have -- my daughter,
24 unfortunately, when we had the memorial service for the
25 grandbabies, she didn't know she was pregnant. So about

1 three weeks after, she found out she was pregnant. And
2 that pregnancy was very hard. I have a four-year-old
3 granddaughter. And the other day when I was visiting with
4 Timmy, she said, Grandma, you tell Uncle Tim that I want
5 my granny and papaw back. Because we were here with him.
6 He's very much a part of the family. We all know him and
7 share stories and talk with him and keep him a part of our
8 life. I've been waiting for this trial to conclude so
9 that we could have a relationship. We've been talking
10 about moving to South Carolina. It's beautiful here. I
11 love it. And we want to be near him. We want him in our
12 life.

13 Q You've been a part of the Jones family now for some
14 time?

15 A A little over 15 years, yeah.

16 Q Yes, ma'am. And I know that you've told us before
17 that you've been around some difficult times in the Jones
18 family?

19 A Oh, yeah. When you have six children with three are
20 his and three are mine and we've got ex-wives and
21 ex-husbands and we've got this grandmother and that
22 grandmother or great-grandmother to the grandbabies,
23 there's a lot of confusion and stuff. And the Jones
24 family -- I come from a small family. I have one brother
25 and one sister and we don't have a lot of cousins or

1 anything like that. And the Jones, I mean, they've got so
2 many cousins and -- I mean, it's a national debt when we
3 have a family outing to, you know, to feed everybody. But
4 with all that, there's conflict and there's love.

5 Q Have you seen the family coming together and rallying
6 around Tim at this time?

7 A Yes. One of the things that he has done is he's made
8 us closer. He's made us so much closer. We are open and
9 we talk about our feelings. We share our feelings. The
10 five, we all -- the five children, Timmy's brothers and
11 sister, all have memories that they want to share and they
12 want to talk about. And they have bad days and they have
13 good days and they've reached to each other to get them
14 through those days. Carolyn and I, Tim's ex-wife,
15 everybody thought we were sisters. You know, we have a
16 mission to -- you know, we both took on the mission to
17 raise Timmy because he didn't have a mom, then we took on
18 the mission to raise the other five children together,
19 united. United we stand, united we fall. And this family
20 is united.

21 MR. SECOR: Thank you, Ms. Jones.

22 THE COURT: Mr. Graham.

23 MR. GRAHAM: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. GRAHAM:

1 Q Ms. Jones, how long did Amber and Tim and any of the
2 children live in Mississippi?

3 A So they moved to Mississippi when Merah was about --
4 oh, let's see, she was less than a year, so I want to say
5 maybe about ten months. So they had started the
6 relationship in Chicago and we moved to Mississippi
7 shortly after. So they got married in the summer or --
8 no, they would have got married in June. So they got
9 married in June and that fall, we moved to Mississippi,
10 Tim, Sr. and I. And then they went down to Mississippi
11 and were with family. They didn't live with us at that
12 time. And then they left and went up to Pennsylvania and
13 they were maybe in Pennsylvania for a year, at most. And
14 then after they had Merah and it was -- you know, we were
15 trying to -- you know, you've got to think back to that
16 age. It wasn't where you just press a button on your
17 phone. You had to do Facetime and the computer and you
18 got to get a camera and you attached it to your computer
19 and all that to kind of talk to each other. And we would
20 talk to each other. And then, eventually, they just came
21 down. And Timmy was realizing -- and I think every young
22 man when they become a father realizes that he needed to
23 get back to college, that he needed that degree to better
24 himself. So that's when they came back to Mississippi.
25 So they were there, they left, they came back.

1 Q When they came back, do you remember when it was?

2 A So I'm trying to think when Merah was born and then
3 they came back -- it was cold, so I'm going to say January
4 or February.

5 Q What year was it?

6 A Okay, I'm trying to think of the year. So Merah
7 would be 13. We're in '19. Okay, my brain is just -- so
8 it would be 13 years ago.

9 Q How long did they stay in Mississippi before they
10 came to South Carolina?

11 A They never left Mississippi until they went to South
12 Carolina, so that whole time.

13 Q How long were they in Mississippi before they moved
14 to South Carolina?

15 A Eleven years.

16 Q And how long did they live with you?

17 A When they first came down with Merah, they lived with
18 us for, oh, maybe three months or so. And then they went
19 -- and Timmy went to Itawamba Community College.

20 Q And then they came back and that's when Tim went to
21 Mississippi State?

22 A No, he graduated Itawamba College and then after he
23 graduated, he went straight to Mississippi State.

24 Q And how far away -- they didn't live with you then.
25 They were in student housing, right?

1 A Okay, so Itawamba College would be about 25 minutes
2 this way. We were here and Starkville would be about 45
3 minutes to an hour this way. Is that what you were
4 asking?

5 Q No. I'm not asking my questions very well. I guess
6 I was trying to get a feel for after Merah, Eli and
7 Nahtahn, after they were born, during that timeframe, how
8 much time did you have with Amber and Tim?

9 A Oh, every weekend. I mean, that was when -- so, as I
10 said before, Amber didn't have a mom here and Timmy was
11 going to school and Jackie and -- Jackie and Amber were
12 almost like sisters. So every weekend, they would come
13 over. We would see the babies. And my husband's business
14 brought him into Starkville probably four times a week, at
15 least, and he would stop by and see them during the week.

16 Q You would agree with me if I said that your house was
17 an oasis for Amber to come?

18 A Yes. Yes. I think she liked to come there. You
19 know, she'd come in and I'd be like give me that baby, you
20 know, what are we doing here. And we all would like to
21 play with the kids.

22 Q And then when Tim took the job at Intel, all that
23 changed because they weren't able to see you all every
24 week?

25 A No, we -- it was hard. So we went to them when he

1 took the job at Intel. So we were going back and forth to
2 them at that point.

3 Q And then the summer that you kept the children, that
4 would have been the summer of 2012?

5 A '12, yes.

6 Q And you have how many children?

7 A How many children?

8 Q Yeah, I mean, four or five, how many did you have at
9 that time?

10 A We had -- we started out with three -- actually, we
11 started out with none, if you want the whole story. We
12 started out with no children. Then Timmy -- Timmy was --
13 he was upset that Amber was leaving the three older ones
14 alone at night, so he went and got them with Travis and we
15 had them for about three or four weeks. And then Big Tim
16 couldn't believe that she was leaving the baby, when we
17 got that phone call, and he went out there. I know you've
18 heard his story. And so he changed his mind because he
19 was going to have Amber keep Gabriel. And you've got to
20 remember, she's also pregnant at this time with a child
21 that we don't know if it's our grandchild. And then we
22 got Gabriel and we had the four of them. But we didn't
23 get them all at once.

24 Q The summer of 2012, I think, if I remember correctly,
25 didn't you all even enroll the three oldest in school?

1 Was there a plan to keep them there?

2 A There was a plan to keep them there. Timmy was still
3 back and forth. We were hoping that we would be able to
4 have him work remotely. In the beginning, he was allowed
5 to work remotely. And then it's my understanding that he
6 was kind of new at the job and if he got to work remotely,
7 a lot of other people wanted to work remotely, so the
8 remotely was taken away. And we were hoping that he was
9 establishing himself and would be able to work remotely.

10 Q You were hoping that he would be able to come to
11 Mississippi --

12 A Yeah, come back and do what he had done in the
13 beginning, yes.

14 Q And the grandkids could be with you?

15 A Uh-huh, and we would be with the grandkids, be able
16 to enjoy them.

17 Q That didn't work out?

18 A No, it did not work out.

19 Q Christmas of 2012, Tim brought the children up for
20 Christmas?

21 A Yes.

22 Q And then my understanding is he got into an argument
23 when his father called him down about the way that he was
24 treating the women in the house, is that right?

25 A He was picking on his sister. So you've got to

1 remember that Timmy and Jackie were very close, so that
2 whole summer they were together, Jackie was in college.
3 So Timmy had basically asked her to be full-time nanny
4 during the week and then on the weekends, they would do
5 things together. They even took a vacation for two weeks
6 up north and spent time together. So they bickered and
7 bantered back and forth. And they were bickering and
8 bantering and Big Tim was like, Stop that, you guys, you
9 know, you're worse than the kids, you know. And --

10 Q And after that, that's when Tim packed up the kids
11 and --

12 A Tim packed up the kids --

13 Q Christmas Eve?

14 A -- and went back to Mississippi and then --

15 Q And that was the last time that you saw Tim or the
16 grandkids?

17 A Yes.

18 Q You were not aware of any of the DSS involvement in
19 South Carolina with the children?

20 A No, I was not aware of any of it. We had tried to
21 come out at Thanksgiving and it fell through. But I was
22 not aware of any of it, no.

23 Q It fell through because?

24 A Well, it was Thanksgiving when he was still together
25 with Amber, so it would be -- I think that's -- I'm not

1 sure if there was stuff back then.

2 Q Tim didn't want you to come?

3 A No, it was Amber who didn't want us to come.

4 Q Okay. You weren't aware of the spice use and/or
5 abuse that was going on with him?

6 A No. No. I had seen him -- so the first time he came
7 alone, he came alone and that was the first time I ever
8 saw him have a drink. He also had a cigarette. I was
9 like, Tim, what is going on? First alcohol and now you're
10 smoking? Because he had never -- never. I mean, he
11 stayed with me often. I just never saw it. It was a new
12 what's happening. And then that lasted maybe two more
13 visits, he came and was smoking. And then he said that's
14 it. He wasn't smoking and he wasn't drinking. And then
15 that whole summer, he was back to how he was before.

16 Q Then after December of 2012, he cut off contact
17 with --

18 A Yes.

19 Q -- you and Tim, Sr.?

20 A Yes. Then we -- you know, Tim -- Big Tim wanted to,
21 you know, hear an apology and it didn't happen. Well, it
22 hadn't -- it's happened by now, but it hadn't at that
23 point.

24 Q The only way it happened then is when Tim, Sr. called
25 Tim, Jr.?

1 A Uh-huh.

2 Q And he apologized?

3 A Yes. It was mutual. That day that he called Tim was
4 our wedding anniversary and Tim had called him when we
5 were having dinner. And they were laughing and getting
6 ready for him to come and visit us. We were all excited.

7 Q After Tim, Sr. called him and apologized?

8 A Uh-huh, yes.

9 Q If at any time Tim, Jr. would have called you and
10 asked for your help, you would have run there, wouldn't
11 you?

12 A Yes, I would have.

13 MR. GRAHAM: Thank you, ma'am.

14 MR. SECOR: May I approach?

15 THE COURT: Yes, sir.

16 MR. YOUNG: The State calls Tyler Jones.

17 TYLER JONES, being
18 first duly sworn, testified as follows:

19 THE CLERK: If you'll have a seat over there, please.
20 State your name and spell your last for the record.

21 THE WITNESS: Tyler Jones, J-O-N-E-S.

22 DIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q Tyler, can you tell the jury a little bit about who
25 you are and your relationship to Tim?

1 A I am the half brother of Tim. I've been -- you know,
2 I've been involved with Timmy my whole life, since I've
3 been little. You know, he got locked up and he went away
4 for a little bit, you know, we lost touch, but when he got
5 out, we got in touch together again.

6 Q You're Carolyn's son, right?

7 A Yes, sir.

8 Q So that was Tim's stepmom?

9 A Yeah.

10 Q And y'all were with Tim from the time that you were
11 born and growing up, right?

12 A Yes, sir. Yes, sir.

13 Q Was Tim kind of like a father figure to you?

14 A Yeah, yeah, in a sense that, you know, he always --
15 when I got to the age that I was able to learn and
16 everything, Tim always guided me in the right direction.
17 You know, always influenced me to do better, to just
18 further my knowledge.

19 Q About how much older was Tim than you?

20 A I would say like Timmy was nine when they had me. I
21 would say about nine years, nine years older.

22 Q I'm going to show you what's in evidence as Defense
23 Exhibit 262 and ask you if you recognize that photo and
24 tell us a little bit about it.

25 A Yes, sir. At that time, we always had family

1 Christmases. You know, we always -- you know, it was just
2 us five at that time and we always spent as much time as
3 we could with each other. I mean, Timmy was older, of
4 course, but, you know, for the most part, it was me and my
5 brother, Trav, and then there was Timmy.

6 Q Let me show you what's been marked for ID as Defense
7 266.

8 MR. YOUNG: And ask that be admitted at this time.

9 MR. GRAHAM: No objection.

10 THE COURT: 266 is in.

11 (WHEREUPON, Defendant's Exhibit number 266 was
12 admitted into evidence.)

13 Q Is this a picture when y'all were a little bit older?

14 A Yeah. Of course, we got a little bit older, but it
15 was still the same family Christmas every year. It didn't
16 matter what holiday it was, Fourth of July, we were always
17 all together having a cookout, always hanging out.

18 Q Was there something that Tim was sort of good at in
19 the neighborhood in entertaining the kids?

20 A Skateboarding. I will never forget it.

21 Skateboarding. Skateboarding, yeah, skateboarding, he was
22 always good, yeah. I remember there was this one time
23 there was a recycling bin, an old recycling bin that they
24 had back in the day, and it was sitting there out in front
25 of the driveway. And I remember he was like -- he ran

1 into the garage, grabbed his skateboard and came back out.
2 And, you know, at that time, it was a different -- you
3 know, the whole neighborhood hung out. You know,
4 everybody's kids all hung out. It was a good time for
5 everybody. And he brought out that skateboard and he --
6 -- and everybody was just like, oh, my gosh, Timmy, wow,
7 man, what. So I always -- I took on skateboarding after
8 that.

9 Q How about one more picture. This is 366 for ID.

10 MR. YOUNG: And move it into evidence.

11 MR. GRAHAM: No objection.

12 THE COURT: 266 just came in, this is 366?

13 MR. YOUNG: 366, yes, sir.

14 THE COURT: Okay, it's in, also.

15 (WHEREUPON, Defendant's Exhibit number 366 was
16 admitted into evidence.)

17 Q Can you tell the jury who that is?

18 A That's my brother, Timmy.

19 Q Is that how you remember him?

20 A Yes, sir.

21 Q Did Tim encourage you in any way about your education
22 and what he thought you should do?

23 A Architecture. After I got to a certain age -- after
24 I got to a certain age, you know, me and Timmy were
25 talking a lot on the phone. And I did a lot of

1 architecture in high school, vocational architecture and
2 stuff like that. He saw that I had a very good interest
3 in it and he always influenced me, man, go to college. Go
4 get you a book, go to college. And he saw that I really
5 enjoyed it. And that was something that we could bond
6 over, you know. I wasn't the smartest person in the
7 world, but he was, so, you know, we always -- you know,
8 every time, it was like man, you're just so smart. How do
9 I even hold a conversation with you right now?

10 Q Let me show you one more picture. It's 367 for ID.

11 MR. YOUNG: In without objection?

12 MR. GRAHAM: No objection.

13 THE COURT: 367 without objection.

14 (WHEREUPON, Defendant's Exhibit number 367 was
15 admitted into evidence.)

16 Q Is that the five of y'all?

17 A Yes, sir.

18 Q Now, you talk about -- at one point in time, were you
19 there when Tim's mom, Cynthia, came for a visit?

20 A I was. I was. And I remember it, it was in the back
21 of grandma's -- they were in the back of grandma's house
22 at the time. And my dad always raised us up to be good
23 boys. And she was just standing out there and I remember
24 just, you know, not to make it awkward, you know, or break
25 the ice, so I ended up giving her a hug. But it was very,

1 very strange, you know. I gave her that hug and I walked
2 back inside. And she was just sitting there talking to
3 the air, talking to nobody, fighting with somebody that
4 wasn't there. And it was like hugging a ghost.

5 Q Do you recognize that in Tim when you look at him
6 now?

7 A I do.

8 Q There was a period of time where you were sort of
9 separated from your family and pushed everybody away. Can
10 you tell the jury about what was going on with you?

11 A Yeah. I, unfortunately, got hooked on the spice for
12 about two years and I burned a lot of bridges with my
13 family. And it hurt me. It not only hurt my brothers, it
14 hurt my whole family. And I regret it to this day, but
15 I'm glad we're all here now. And my mom and my brother
16 tried so hard -- and my dad tried so hard to get me off of
17 it and there was nothing they could do. It was all on me.
18 And I, unfortunately -- well, not unfortunately, but
19 fortunately, was able to stop after two years because my
20 buddy's mom ended up hanging herself over it.

21 Q Did Tim tell you that he had tried spice?

22 A Yes. I remember that phone call vividly. I remember
23 talking to him on the phone. And he was like, you know,
24 what are you doing? I was like, you know, I'm working
25 night shift. Doing the same thing my dad was doing. And

1 I was sitting there talking to him and he was like, you
2 know, marijuana just ain't doing the same. I was like,
3 What are you talking about? He was like, Well, they've
4 got this new thing out. I was like, What is it? He said,
5 Spice. And I just got off maybe three months, two --
6 yeah, three, four months, I had just gotten off of spice.
7 And chills just instantly went down my whole body. I
8 said, Tim, you got to stop. You have to stop. I've been
9 down that road. You don't know what that drug is.

10 Q You mentioned while you were working nights, you were
11 getting a chance to talk to Tim during those nights. Did
12 you also get a chance to talk to your nieces and nephews?

13 A Oh, absolutely. Absolutely. I remember all the
14 time, Timmy would call because, you know, I'd be working
15 night shift. And Timmy would always put the kids down
16 about 9:00 o'clock and he's always say goodnight to the
17 kids, you know, and I got to talk to the kids and tell
18 them I love them and, you know, I'll talk to you guys
19 tomorrow.

20 Q Were y'all -- were you making plans -- was Tim
21 talking to you about moving down to help him with the
22 kids?

23 A Yeah. This was about the end of it. And he just --
24 he called me up and he was like, Man, how do you feel
25 about going to Caribbean? I said, Well, you know, I'm

1 working a night shift job. I'm 20 years old and I don't
2 like working nights. So come on, let's go. He said, I
3 need someone to take care of my -- help me raise my kids.
4 I said, No problem, man. I'll drop everything I got right
5 now and come with you.

6 Q And you were up in Illinois at that time?

7 A Yes, sir.

8 Q And then after the kids' deaths, did you move back to
9 Mississippi?

10 A Yes, sir.

11 Q And why?

12 A I moved back to Mississippi to be with my dad because
13 my dad -- I got a phone call from my grandma and my
14 grandma said, One of you boys need -- one of you boys need
15 to come down here and help your dad because he's going
16 down a rough road. So I ended up moving down there and
17 I've been stuck in Mississippi for three years.

18 Q You still live there and work with him?

19 A Yes, sir.

20 Q Do you want Tim to be put to death?

21 A I do not. I know what he did was horrible. He took
22 five of our family members. Don't take no more from us.
23 This family can't take it.

24 Q Would you stay in touch with Tim in prison and talk
25 to him?

1 A I would love to. I would love to. Any day, any
2 minute, I would talk to him. He's my brother. I love him
3 so much, you know. Just like anybody else has a brother
4 or a sister, even though they did something super wrong,
5 at the end of the day, you love your family and you love
6 your brother and your sister, no matter what they do.

7 MR. YOUNG: Thank you, Tyler. Please answer any
8 questions the State may have.

9 MR. GRAHAM: No questions.

10 THE COURT: How long is the next witness?

11 MR. SECOR: Probably just about as long.

12 THE COURT: Y'all want a break? You guys got to nod.
13 Yeah, you need a break. So we'll take a short break.
14 We'll bring you back in here.

15 (Whereupon, the jury was excused from open court for
16 a break.)

17 THE COURT: We'll take about ten minutes.

18 (WHEREUPON, a short break was taken.)

19 THE COURT: Bring the jury in.

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

22 MR. GRAHAM: Your Honor, may we approach?

23 THE COURT: Sure.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Joy, let's put this on the record.

1 COURT REPORTER: Yes, sir.

2 THE COURT: At the sidebar the Defense Counsel said
3 he would continue asking questions elicited through Sapp.
4 All right, are you ready to continue on? Call your
5 witness.

6 THE COURT: Continue on. Call your witness.

7 MR. SECOR: Thank you, sir. The Defense calls Travis
8 Jones.

9 TRAVIS JONES, being
10 first duly sworn, testified as follows:

11 THE CLERK: If you'll have a seat, please, and state
12 your name, spelling your last.

13 THE WITNESS: My name is Travis Jones, last name
14 Jones, J-O-N-E-S.

15 DIRECT EXAMINATION

16 BY MR. SECOR:

17 Q Travis, how are you related to Tim?

18 A Tim is my older brother. I don't believe in calling
19 him my half brother because he has been in my life since I
20 was born and I don't know anything outside of him.

21 Q So who are your parents?

22 A My parents are Tim Jones and Carolyn Williford now,
23 formerly was Jones.

24 Q Yes, sir. Tell us about your first memories of Tim.

25 A So the first memories that I can remember having of

1 my brother are, basically, the first memories I have as a
2 child. Birthday parties were a big thing for us when we
3 were kids because me and Tyler were only 11 months apart.
4 Our parents would throw a birthday party for us together.
5 And I remember Timmy would always just come and grab us
6 and he'd take us to the cotton candy machines that we'd
7 have there and take us to the little bounce houses and
8 stuff. We were just always around each other and always
9 tried being a part of his life. I mean, he's my big
10 brother.

11 Q When -- you were pretty young when Tim was sent away
12 from the convictions that he had for stealing the car and
13 stuff like that in Illinois. Do you remember going to
14 visit him in prison with your dad?

15 A I do.

16 Q Can you tell us about that?

17 A I remember going with my father to go see Timmy when
18 he was locked up. And I remember when we were sitting
19 there, my dad was talking to Timmy and said something
20 along the lines of I want you to talk to your brothers,
21 you know, basically, trying to get a point across to Tim
22 that what you've done is what you've done and you're going
23 to see a consequence for it. And when I sat up there and
24 talked to Timmy, he looked at me and he was like -- I
25 almost can say this exact quote. He looked at me and he

1 was like, Little Brother, where I am right now, I never
2 want to see you here. And I've done everything in my life
3 to make sure that never happens. I try to be the best man
4 I can because I know that's what he wants of me and my
5 father, too.

6 Q When he got released, were your parents divorced at
7 that point?

8 A By the time that Tim was released, yeah, I believe my
9 parents were separated by then. Because I remember Timmy
10 living out in Bensonville with my father. They had an
11 apartment with one of my dad's friends that he worked
12 with.

13 Q And what was your -- what was your life like at that
14 point with Tim? What role did he play in your life?

15 A So after Tim had gone and gotten in trouble and when
16 he finally had gotten out, he became a lot more to me than
17 what he was originally, which was just a brother. He
18 became almost like a father figure to me. Because shortly
19 thereafter, which we'll probably get to it, he ended up
20 moving -- my father moved on to Mississippi. And I stayed
21 very close to Tim. I stayed very connected with Tim. And
22 he just took me under his wing. He saw I was having a
23 hard time dealing with my parents' divorce. He saw that I
24 was having a hard time in school. And there was a couple
25 of other personal problems that I was dealing with, too,

1 and he helped me through every one of them.

2 MR. SECOR: Your Honor, may I approach?

3 THE COURT: You may.

4 Q Mr. Jones, I just want to ask if you recognize these
5 three photographs marked for identification purposes,
6 Defense 338, 337 and 336?

7 A Yes.

8 Q Are these pictures with you in them?

9 A Yes, sir.

10 MR. SECOR: Your Honor, I would offer these into
11 evidence and ask for permission to publish them.

12 MR. GRAHAM: No objection.

13 THE COURT: All admitted without objection. Make
14 sure you get the numbers.

15 MR. SECOR: Yes, sir.

16 (WHEREUPON, Defendant's Exhibit numbers 336 through
17 338 were admitted into evidence.)

18 Q I'm just going to put these pictures on the overhead.
19 If you would just tell us about what's going on in these
20 pictures. This is 338. Just tell us who's in that
21 picture.

22 A So that's me. Obviously, I'm being baptized. And
23 that's my brother, Tim, with his arms up, beyond excited
24 and thrilled for me. And I was excited, too, and I was
25 beyond thrilled. In my eyes, that was probably the

1 proudest moment that my brother had with me.

2 Q Was this at a church in Illinois?

3 A Yes, yes, it was. It was at a church in -- I think
4 it was in Bensonville. I'm not too certain exactly the
5 name or where it was at this point. It's been quite some
6 time.

7 Q And did Tim -- is this something that Tim wanted for
8 you? Did he encourage you to get involved in church at
9 this point?

10 A Yeah, he had encouraged me to do because, like I
11 said, he had seen that I had a lot of my own problems
12 dealing with my parents' divorce. You know, when Timmy
13 had gone to jail, it was hard for me because, like I said,
14 he's my big brother, you know. We spent every morning
15 together eating cereal, watching cartoons and stuff before
16 my mom would come pick us up after he had been to jail.
17 We'd sit there and watch Ed, Edd and Eddy. We even named
18 each other after the characters.

19 Q Take your time.

20 A So we named each other after this little cartoon. I
21 don't know if any of you have probably heard of it. It's
22 called Ed, Edd and Eddy. It was about these three
23 neighborhood boys, basically, like brothers that grew up
24 in this little cul-de-sac together. And Tim was double D
25 because he was smarter than anybody I've ever met. And

1 T-Bone was always just trying to find a way to get his
2 hands on a little bit of money, no matter it was, if he
3 found change in the couch or whatever, he was always
4 trying to collect as much coins as he could. And I was
5 the bigger one of the group. I was always clumsy and a
6 little bit slower than the rest of them. And so I was Big
7 Ed and he was kind of the dummy of the group, for lack of
8 a better term.

9 Q And how old were you about that time?

10 A I want to say I was probably about -- what year did
11 Tim get sent away? I'm sorry, I can't remember off the
12 top of my head.

13 Q I think he came out around 2003 and you were born in
14 --

15 A So it was probably almost immediately after that that
16 started. Because once Tim was out -- once he was at my
17 dad's, it was really good brotherhood. He was the best.
18 Still is. I know he did what he did, but the man who did
19 that is not the man who's sitting right here right now.
20 I'm sorry, Tim, but I can sit here and look at you and
21 tell you that you're not all there anymore, brother. I'm
22 sorry that you have to go through this, too.

23 Q Travis, I know you spent a lot of time around your
24 nieces and nephews?

25 A Yes, I did. Yes, I did. I spent as much time as I

1 could. It's kind of hard being states away, but we always
2 made a way.

3 Q Yes, sir. Let me show you 336. If you would, tell
4 the jury who's in this picture.

5 A That's my little Merah Gracie. It was -- I think it
6 was the Christmas after she had been born and we were all
7 just sitting down at my dad's. Actually, that's taken on
8 a camera that Amber and Timmy had gotten me, I believe,
9 for that Christmas. It was just a little, small, black
10 camera they had gotten me, but I had never had one before.
11 And they knew how I always wanted pictures of the kids
12 every time they would come down, so that's what they gave
13 me.

14 Q Was Merah the niece that you felt the closest to?

15 A Yeah, because I got to spend a little bit more time
16 with her than the rest of them. Obviously, when she was
17 the only one, you kind of get that connection of just
18 having the only child, so they get all the extra attention
19 being my first niece and she got all the extra little
20 attention that all those babies eventually got, but I got
21 a year with her before the rest came.

22 Q I have one last picture I want you to discuss or tell
23 us about. This is 337.

24 A That's Merah and I in my dad's pool, the one that he
25 has down -- he had down in Mississippi. It was -- I

1 believe that was the summer we had taught them how to
2 swim. I had come down and stayed two weeks with a good
3 friend of mine. We stayed down there two weeks. I
4 believe this is the summer of 20 -- no, no, this is before
5 that. I'm sorry. This is when I had just gone down on
6 vacation by myself, but I had prior -- I had gone down on
7 vacation for two weeks and stayed with my brother and my
8 dad.

9 Q Did you spend time there that summer of 2012 when
10 they were --

11 A Yes, I did.

12 Q They all lived there?

13 A Yes, I did.

14 Q Is that a special time for you?

15 A In a couple of ways, but yes. Yeah. It was
16 arguably, the 26 years I've lived, that was probably the
17 favorite two weeks out of my life that I've ever lived. I
18 got to spend all the time in the world that I wanted with
19 them little kids.

20 Q You mentioned his -- Tim encouraging you to go to
21 church with him in Illinois. Has he encouraged you in
22 other aspects of your life?

23 A Timmy always encouraged nothing but positive things
24 about my life. He always wanted me to go to school, which
25 I always promised him I would. And this year, in January,

1 I enrolled at Elgin Community College to start my -- to
2 start my welding certifications. And I'm working my way
3 to get an Associate's in science.

4 Q Is it important to you to try to make Tim proud of
5 you?

6 A It's probably the highest ranking thing on my list,
7 right next to my dad and my mom and my brothers and my
8 sisters.

9 Q Tell us about times in your life when you've been
10 upset about something and what Tim has been able to do for
11 you when you're upset.

12 A I don't want to get too much into the details, but my
13 mom had a boyfriend that she was with for around ten
14 years. And Eric and I, we didn't really see eye-to-eye
15 too well. We had a lot of our own difficulties and it
16 caused a lot of tension and stress in my household that I
17 grew up in without Tim being there, but with Tyler and my
18 mom and I and Eric. And I remember one night just calling
19 Tim, I was so mad that I could have just put my fist
20 through any wall next to me. I was just so frustrated. I
21 couldn't calm myself down. And for some reason, the only
22 thought that I had was you know what, I'm going to call my
23 brother. So I walked outside and I called Tim. And the
24 way I would explain it is I was -- you know, everyone has
25 seen what the ocean looks like. You've seen how high

1 those waves can get. I was that when I talked to him. By
2 the time I hung up that phone, in a matter of ten, 20, 30
3 minutes, I was no wake. I was in a no wake zone. I was
4 completely calm. He just knew how to talk to me. He knew
5 how to get through to me. He always has.

6 Q Is it important to you to have Tim in your life even
7 though he's going to be in prison?

8 A Yes, it is. It's the most important to me. That's
9 why I'm here because I do not want to see him lose his
10 life. I've already lost so many people in my life. I
11 lost my favorite uncle when I was a kid. I lost my Aunt
12 Elaine when I was a kid. Now, I have to live with this
13 constant fear that I'm going to lose my brother after I've
14 already lost my nephews and nieces. Please, please don't
15 do that to me. Don't make my family have to endure this.

16 MR. SECOR: Thank you, Travis.

17 THE WITNESS: Thank you, Casey.

18 MR. GRAHAM: No questions.

19 THE COURT: You may step down.

20 MR. SECOR: The Defense calls Jackie Rangel.

21 JACKIE RANGEL, being
22 first duly sworn, testified as follows:

23 THE CLERK: If you'll have a seat over there, please.
24 If you'll state and spell your last name for the record.

25 THE WITNESS: Jacqueline Rangel, R-A-N-G-E-L.

DIRECT EXAMINATION

BY MR. SECOR:

Q Is it okay if I call your Jackie?

A Yes.

MR. SECOR: Your Honor, may I approach?

THE COURT: You may.

Q I just want to show you some pictures that have been marked Defense 347, 351, 350, 349, 348, 346, 345, 344, and 343. Do you recognize these as family pictures?

A Yes.

Q And I also want this flash drive marked as 364. Have you seen the video on here?

A Yes.

Q And that's the memorial that we've talked about?

A Yes.

MR. SECOR: Your Honor, I'd move those items into evidence and request permission to publish them as I'm speaking with Jackie.

THE COURT: Any objection?

MR. HUBBARD: No objection, Your Honor.

THE COURT: All right. I like to give them in order, 343, 344, 345, 346, 347, 348, 349, 350 and 364 without objection.

MR. SECOR: Thank you, sir.

COURT REPORTER: And I have 351, also. See if you've

1 got 351.

2 MR. SECOR: Yes, ma'am, I do.

3 THE COURT: And 351?

4 COURT REPORTER: Yes, sir.

5 THE COURT: Those are admitted.

6 (WHEREUPON, Defendant's Exhibit numbers 343 through
7 351 and 364 were admitted into evidence.)

8 Q Jackie, what's your relationship with Tim?

9 A He's my brother.

10 Q He's your brother?

11 A Yes, he's my older brother.

12 Q So you're -- just try to speak into that microphone
13 so everybody can hear you. Thank you. Your mom is who?

14 A She's my biological mother.

15 Q That's Julie?

16 A Julie Jones, yes.

17 Q Julie, okay. So how old were you when your mom
18 married Senior?

19 A When they officially married, I was in middle school.
20 They -- he's been in my life since I've been about seven
21 or eight years old. He's the only father I've ever known.
22 He's the -- he's my father figure to me, Tim Jones, Sr.
23 When people ask who my dad is, that's who I refer to.
24 Just like my brothers, I don't -- there is no step.
25 They're my brothers. You know, I grew up with them my

1 entire life. It's all I know.

2 Q Yes, ma'am. You have spent a bunch of time with your
3 nieces and nephews?

4 A Yes.

5 Q Well, tell us about the first time that you really
6 spent significant time with them when they were living in
7 Starkville.

8 A Yes. When he started college in Starkville,
9 basically, any time that we had like a four-day weekend or
10 a break, I would always go to his house. And even in the
11 summers, I would spend the majority of my summer with him
12 and Amber. You know, we would wake up, play with the
13 kids, take them to this park or that park. You know,
14 Timmy would drive us to a park, you know, down the way if
15 me and Amber didn't feel like walking that day. We'd all
16 have lunch together. And then -- you know, then we would
17 put the kids for a nap. And even dinnertime, you know, he
18 would come in, have dinner with us and, you know, me and
19 Amber, we would go on our nightly walk together. Just me
20 and her as kind of our, you know, break away from
21 everything. And, you know, the tribe of boys, you know, I
22 grew -- me and her grew closer to -- you know, I'm even
23 comfortable saying that, you know, she's like a sister to
24 me. We had a very good relationship, you know. Some
25 nights we would just stay up, you know, giggling like

1 middle school girls, you know. She would always help me
2 with my hair or what to do or if I had a question about a
3 boy, she would always be there. Or, you know, if I was
4 not supposed to be dating someone at the time, she would
5 help sneak that and keep it from my father and let me call
6 and have a conversation with them or, you know, she was
7 someone that I shared secrets with and confided with.
8 And, you know, looked to just, basically, anything with
9 both of them. With schooling, I'd go to him, with
10 questions about anything else, I'd go to her.

11 Q When they moved from Mississippi to South Carolina,
12 was that tough for you?

13 A It was. I would talk to my mom, but it's like I had
14 to find like a new norm and try to, you know, get a
15 different life and make more friends, so I kept myself
16 busy. Because I looked forward to that time. You know,
17 in a way, I always felt like I was like their second mom.
18 You know, when they fell, I picked them up. When they
19 were sick, I gave them soup. When their tummy hurt, I'd
20 rub it till it went away. And, you know, I cared for them
21 and I loved them wholeheartedly like they were my own.
22 And it was tough when they left because I just -- it was
23 like a part of me was voided and I didn't know how to fill
24 it. I just felt a little empty inside.

25 Q And at that point, it was the oldest three children,

1 right, Merah, Eli and Nahtahn?

2 A Yes.

3 Q What's the next time where you get the opportunity to
4 really spend a lot of time with them?

5 A The next time I got opportunity to spend with them
6 was the summer of 2012. My brother was going through some
7 hard times with his wife and he brought Merah, Eli and
8 Nahtahn first. And it was like okay, mom and dad really
9 couldn't wholeheartedly looked after them, you know, all
10 day because they both worked. And I was like, well, I can
11 do it, you know. And if I need something, you guys are
12 right there, you know. So if I'm screwing up, you can
13 tell me. So I had them. And then a little while later, I
14 got Gabriel. And I laugh with my mom because I had more
15 of a schedule with them than I do with my own daughter.
16 She goes kind of like by a guideline. But we would wake
17 up and we'd have breakfast the same time. I knew what
18 hairdo they were going to do before they even asked.
19 Merah, we -- every night, we had to do a braid because
20 brushing that in the morning was just a mess. And either
21 she was going to do Rapunzel hair, because that was her
22 favorite princess at the time, or she was going to do a
23 princess bun. And we would -- sometimes we would go --
24 and my mom, she had a rose garden. She would get so mad
25 sometimes because they were just now where she could grow

1 some. And we would pick them and we would put them in her
2 hair. And Elias, it was always -- there was always a
3 debate whether or not he was going to have part of his
4 hair spiked or just full on spiked hair everywhere. And
5 Nahtahn wanted a mohawk, but for some reason, he couldn't
6 say it and it was silent, so he called it like a mawk.
7 And that's what he wanted everyday. So after breakfast,
8 they all got ready. We would go to a park for a splash
9 pad or we would just do some outdoor activity. Then we
10 would come, have lunch. And then after lunch, we either
11 would curl up all in the living room, I would make a spot
12 on the floor, or we would go into papaw's bed and watch TV
13 in his bed while it was, you know, naptime, quiet time.
14 You know, if they fell asleep, they fell asleep, but if
15 they didn't, I didn't pressure them to take a nap. Even
16 afterwards, when nap was over, it was time to take them to
17 -- our local library does different programs during the
18 summer. And they had an event every Tuesday and every
19 Thursday. So we went every Tuesday, every Thursday to
20 them. Or it was some outdoor activity, again, that we
21 would do. We'd come back, dinner, you know, with our
22 nightly routine, brush teeth, wash face. We would pray
23 and, you know, we would all curl up in my bed. You know,
24 Merah would be on my left. And she was just a wiggle worm
25 at night. And Elias would be on my right. And he would

1 never let go no matter how much sweat he was sweating.

2 And there was never a morning that went by that Nahtahn

3 didn't wake up with, at least, a handful of my hair from

4 just holding onto it. Because he would sleep -- I moved

5 down on my bed to where my feet dangled off and Nahtahn

6 would sleep at the head. And Gabriel, we set him up in

7 our dining room. So that way, it was between mom and me,

8 so that way, you know -- of course, I wasn't used to a

9 baby crying in the middle of the night. So if he got up,

10 you know, one of them could tend to him or -- you know, if

11 they heard him first or whether or not it was I. And

12 that's what I did my entire summer.

13 Q I want to show you some pictures and ask you to just

14 tell us what's going on. I think that they are about what

15 you were just talking about. This is 347.

16 A This is during the summer of 2012. Like I said, this

17 is right before naptime because Tahn is wearing his Woody

18 pj's and I've got Merah's hair up with the headband. We

19 would all just curl up. Even if you look closely on his

20 wrist, you can see we made -- we made friendship

21 bracelets. Merah loved to make things and do different

22 things. And we all made some at the beginning of summer

23 and they wore it all summer long. And, you know, we would

24 just -- we would have like a few silly moments, get our

25 last bundle of energy out and, you know, curl up together

1 and we -- you know, it was always a debate on what movie
2 to watch, but Merah always won out. So nine times out of
3 ten, we were watching Rapunzel -- or Tangled, excuse me.

4 Q This is 349. I think you can see the bracelet that
5 you were describing there, is that right?

6 A Yes. That's a little bit after -- like I said,
7 during naptime, we would just have our last bit of sillies
8 and energy. And he always loved to do this like little
9 piggy face and he would make those little grunting noises.
10 Actually, you can see closer the bracelet that I was
11 talking about.

12 Q This is 350, I think, from the same day, I think.

13 A This is me and Merah, the same day, same time. And,
14 you know, just smiling. You can't hear it, but those -- I
15 think it was the loudest cheese she ever gave.

16 Q And then this is 351.

17 A Yes, that's Elias. I always called him -- he was my
18 little cuddle bug. You know, there wasn't -- there wasn't
19 really ever a time where if you saw me, Eli was, you know,
20 sure to follow. And even with Gabriel, you know, we were
21 pretty much always joined at the hip, you know.

22 Q And I think 348 is Gabe, you said that he was in the
23 --

24 A Yes. This is him right before naptime. I was
25 actually -- you couldn't tell, but I was tickling his

1 feet. And he was, literally, just the happiest little
2 baby ever. Quiet, you know, content. Anything and
3 everything would satisfy him or make him laugh.

4 Q Did you -- if you mentioned this, I'm sorry, but did
5 you take the kids to church that summer?

6 A Yes. We never missed a sermon, Sunday morning,
7 Sunday afternoon, Wednesday evening. If our churches had
8 any other functions, we were there. Even with VBS, we
9 were there from the moment it started to we were the last
10 ones to leave. We went to my churches VBS and our sister
11 churches VBS. And even then, it was a different
12 denomination, you know, than what Timmy believed, but he
13 never corrected me on to take them to an apostolic or
14 however you pronounce it church or, you know, was angry
15 that I took them to my church. And, you know, they would
16 sit and -- you know, they were perfect little kids. One
17 time, I want to say it was John 3:16, because we always
18 talked about -- Timmy always talked about that verse with
19 them. But our preacher was starting to recite it and
20 Merah actually jumped up and finished it. And it's like,
21 you know, it was a cute moment and she felt so shy and
22 embarrassed. And it was just nice because the whole
23 congregation just let out this little aah. Of course, she
24 -- I've never seen her so red and she put her hands in her
25 mouth and just kind of like recited in herself what did I

1 -- I didn't mean to, I'm sorry. And I said, no, no, no,
2 that's good. It's good. And they just -- they just sat
3 there quietly for the rest of the time. You know, they
4 were a part of our church family. There's not a member at
5 my church that didn't know them. There's hardly any
6 members of our community that didn't know them. If there
7 was a community function, we were there. Like I said, our
8 church is very involved with, you know, a lot of different
9 things that go on. Even the mayor of the town attends our
10 church, you know. So they were very much involved in my
11 life as well as the community. I don't think there was
12 ever really a time that, unless it -- not even when it was
13 raining outside because we would strap on our boots and go
14 jump in puddles, even in the rain. We were -- there
15 wasn't a day that was spent indoors. Timmy and I, we
16 actually took a vacation that summer, too. And that's
17 probably my -- where I made my most fondest memories of
18 them. You know, on the way up there, I was asking Timmy
19 -- you know, we just talked like brother and sister,
20 debated on where to stop for food and, you know, whether
21 it was going to be chicken, beef, fast food or sit-down.
22 You know, he let me pick where to go and researched
23 different places to go. And I want to say it's called the
24 DuPage County Museum, I believe it's called. We went and
25 I think that's my favorite memory. I couldn't find the

1 photo to bring to you, but the photo just shows them as a
2 family as a whole. There was like a bubble stand that you
3 would stand in the center and Nahtahn would kind of always
4 stand behind Timmy's leg and he was holding Gabriel and
5 Merah and Eli stood together. And it was tight-knit, so
6 you had to be close. And you would pull a lever inside.
7 And, you know, Timmy would start to pull it and get
8 halfway, you would see the excitement building in Merah's
9 face and then Eli would just boop (indicated) and pop it.
10 And Timmy would be like, okay, and he'd start up again and
11 Eli would do the same, boop (indicated) and pop it. And
12 he did that like three more times. You know, Merah just
13 finally let out just this grunting huff in aggravation.
14 You know, Timmy was like, Son, stop doing that to your
15 sister. You know, and that's the exact moment when I have
16 the picture of them. And, you know, and I told Timmy, I
17 was like, okay, just one more chance and we're forming a
18 line, you know. We can't -- we have to share. We don't
19 want angry moms on us. Even when we went places, you
20 know, no one -- it was just always happy, you know. I
21 guess the brother I know was loving and caring, you know.
22 He didn't yell. He didn't swear. I've never seen him
23 drink. I've never seen him smoke a cigarette. You know,
24 I've never seen him do anything bad. You know, my brother
25 is kind and he's gentle, you know, and I love him for it.

1 And that's why it's hard for me to be here because it just
2 -- it hurts because I just -- I'm angry because he missed
3 out on important moments of my life, you know, like my
4 wedding. The main thing that I wanted was to dance with
5 all my brothers and he wasn't there. The birth of my
6 child, you know, he wasn't there. And, you know, as the
7 only girl, it's like, you know, you put your foot down and
8 you want your way. Even now, it's -- I still see my
9 brother and I just -- it's hard because I want to go and
10 hug him and I can't. I can't touch him. I can't do
11 anything.

12 Q How has what happened to your nieces and your nephews
13 affected you as a mother?

14 A It affected me a lot. When it happened, we wanted to
15 do a memorial service, but no one was strong enough to
16 step up and do it. And, you know, I kind of swallowed it,
17 put it in a box and I stepped up and I did it. And I did
18 it to the best of my abilities. I went through thousands
19 of photos of them, you know, which ones to pick, what to
20 pick, where to put them? What picture am I going to use
21 for the wreath, what color are they going to be, what
22 theme on the wreaths, how big, what flowers? You know,
23 what song will I play? Who will speak? When? The order?
24 Even the balloon release. Down to the dress code. You
25 know, I didn't want anyone wearing black. You know, I

1 wanted it like Sunday dress, fun, bright colors. And, you
2 know, at the time, I didn't know I was pregnant. And when
3 I found out, it was hard -- it was hard because --
4 especially when the doctors told me my conception date.
5 My conception date is the day they died. And going
6 through all of that, it was hard to tell my parents who
7 just lost the title of grandma, grandpa, that it's not
8 true, you know. So it was hard for them to be happy for
9 me. And I didn't know how to tell them, so I left and I
10 went to be with my now husband and it was weeks before I
11 told them. And even then, it was months before I came
12 around just because it was hard. And I would talk to my
13 mom often and we would talk about how it made it a little
14 easier for her when people would ask how they are, you
15 know, how's your grandchildren and she could say oh, the
16 baby's doing okay. And even though she knew who they were
17 referring to, it lessened the blow a little bit for them.
18 And, you know, even with my daughter, I had a very hard
19 pregnancy. I wasn't near my parents just because I didn't
20 want them to feel bad or have bad memories. And even when
21 my daughter was born, it was hard because all I thought
22 about was Gabriel and holding him and loving him and --
23 you know, even now, she's got long curly hair and I have
24 to brush it and braid it every night before bed. And it's
25 like I just feel broken or angry because, you know, I

1 think of Merah. And the way she -- her attitude is
2 sometimes I think of Nahtahn. And, you know, my daughter
3 always wants to look the best, be the best. You know, she
4 doesn't ever want to be in her play clothes when it's
5 play. She wants the prettiest, sparkliest, poofiest thing
6 out there. And it makes me think of Eli. He would always
7 prefer, you know, a button-up and collar than a tee-shirt
8 and shorts. And, you know, even now as a mom, I literally
9 live in my parents' backyard just in fear that I can't let
10 anything happen to my daughter. Because, you know, God
11 forbid if something did, it would crush my dad. I know he
12 won't take it. I won't be able to take it. And, you
13 know, it's -- being here is hard because she's so far away
14 and I just have, you know, this anxiety, this restlessness
15 that something's going to go wrong and I'm not there, that
16 I can't get to her fast enough, you know. And she knows
17 where I am. She knows who her Uncle Timmy is and tells me
18 all the time that Timmy needs to give you back, but she
19 can't understand. And even with that, with everything
20 that's happened with Timmy, you know -- and I love my
21 parents, but inadvertently, they worry about every
22 decision I make. Or, you know, sometimes they overanalyze
23 every step that I take with her just because we had no
24 warning and they don't want the same thing with her. You
25 know, they make sure 20, 30 minutes every single day, they

1 take her and they literally have to kick me out of their
2 house and keep her and, you know, spend time with her just
3 that way, I -- they know I get some down time, that I have
4 a break. You know, my daughter has the best relationship
5 with her papaw and will be with him every day. She tells
6 me all the time that she's going to go live with papaw and
7 just visit mommy. Or I get onto her for something, she
8 tells me, I'm going to tell papaw on you. And just little
9 things like that that she does.

10 Q I want to show you Defense Exhibit 344. And just
11 tell us about this picture.

12 A This is the day that I moved into my dorm. This
13 would be the beginning of August of 2012. Merah -- we
14 would take Merah shopping for all of my stuff. And she
15 kind of -- she helped me decorate it. On the bed is two
16 Build-A-Bears, one she made, one I made. And, actually,
17 you can't really tell, it's blacked out, but that's
18 Gabriel in between us. And Merah, she gave me a stuffed
19 animal elephant that I used throughout the summer to tell
20 them that -- you know, his name was Mr. Stuffalupakus, we
21 had all named him together. And I told them, I was like,
22 Okay, well, he's going to be here to watch over us and
23 keep us safe. And she gave him to me and she told me it
24 was my turn to be safe since I was going to be away. And
25 she helped me move in. And even Timmy, it was kind of

1 like a thank you for helping me with the kids. I didn't
2 want money. He's my brother, you know, I don't need
3 anything from him. I just, you know -- he had bought me,
4 actually, the latest and best laptop there was. And, oh,
5 God, it had to be like 20 inches wide or something. It
6 was so big that it was literally the only thing that I
7 could ever fit on my school desk. And, you know, it had
8 all, I guess, the bells and whistles that went along with
9 it and the best processor and memory. I actually used
10 that throughout college for everything. And even then, it
11 was hard sometimes because a couple months later, we lost
12 touch. And I'm big on my promises. If you promise me,
13 hold up to it. And he'd always promised that he'd help me
14 with work, help me with my schooling. And it's -- you
15 know, I did it all on my -- I had to do it on my own. He
16 was there for the beginning and then we had our falling
17 out and then was gone for the middle. And, you know, he
18 was always just a phone call away and then he wasn't. And
19 a part of that is just we were both stubborn. And you
20 couldn't tell neither of us that we were wrong. We always
21 were right.

22 Q I'd like to play the video of the memorial service
23 that you planned and organized.

24 A Uh-huh.

25 MR. SECOR: Is that all right, Your Honor?

1 THE COURT: Yeah, sure.

2 (WHEREUPON, a video was played for the jury starting
3 at 12:03 p.m, ended at 12:05 p.m.)

4 Q It seems like an unfathomable amount of pain caused
5 your family by what Tim did?

6 A It hurts. And that's what I told my parents, I had
7 to be strong because we had to find a new middle. And so
8 a lot through all the past years, I just -- I've kept it
9 inside. I can't let myself feel it sometimes because I
10 don't understand. And even when I look at him, it's I'm
11 more mad that he didn't ever call me because I feel like
12 I've failed him as a sister. Because he's always been
13 there for me and when he needed me, I wasn't. And I
14 failed because I didn't let him know that it was okay to
15 call me, that I would be there. And that's what I told
16 him, I'm not mad at you and, you know, I even forgive you.
17 Because the Timmy I know isn't capable. You know, the
18 Timmy I know is full of love and compassion and, you know,
19 doesn't even -- doesn't even yell or scream or any of it.
20 So to hear everything, you know, that other people
21 witnessed or endured, you know, I -- it's just unthinkable
22 and, you know, even what people say about him. You know,
23 everyone's entitled to their opinion, that's okay, but
24 nothing's going to change my mind about him. He's my
25 brother. I love him. He's never stopped being my

1 brother. I've never once shown or hid away from the fact
2 that he is my brother. And, you know -- and I've already
3 lost him, you know, I'm not getting him back. I will
4 never be able to bring him home for Christmas dinner so he
5 can meet his niece or let him hold her or anything. And I
6 just can't lose him completely.

7 Q Do you want him to be put to death?

8 A No. No, I don't.

9 MR. SECOR: Thank you, Jackie.

10 THE COURT: Solicitor.

11 MR. GRAHAM: No questions.

12 MR. YOUNG: The Defense rests.

13 MR. HUBBARD: Your Honor, there is a matter we
14 obviously need to take up.

15 THE COURT: You want the jury to take a break?

16 MR. HUBBARD: Yes, sir.

17 THE COURT: Step in the jury room. Have you back in
18 here in a few minutes.

19 (WHEREUPON, the jury is excused from the courtroom.)

20 MR. HUBBARD: Your Honor, the Defendant has not been
21 asked if he wished to speak to the jury and allocate. I
22 thought we were going to do that before they officially
23 rested, but, regardless, this would be a good time.

24 THE COURT: Okay. I agree.

25 Mr. Jones, we -- go ahead and talk to him, Mr. Young,

1 go ahead. Does the State intend to reply anything?

2 MR. HUBBARD: No, sir.

3 THE COURT: I didn't think so. Mr. Young, you've
4 advised your client, as well as the other lawyers, y'all
5 have advised Mr. Jones he has a right to speak with the
6 jury directly?

7 MR. YOUNG: Yes, sir.

8 THE COURT: Y'all have advised him of that?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Has he indicated how he wishes to proceed
11 to that end?

12 MR. YOUNG: He does not wish to address the jury.

13 THE COURT: Mr. Jones, I'll direct it to you. As the
14 Court Officer here, the presiding Judge, advising you you
15 have the absolute right to speak to this jury, to allocute
16 and to ask the jury for mercy. Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you wish to speak to them?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: You're going to allow your lawyers to
21 speak on your behalf?

22 THE DEFENDANT: Yes.

23 THE COURT: If you change your mind, will you let me
24 know?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had enough time to think about
2 the decision of whether or not to speak to the jury in the
3 sentencing phase?

4 THE DEFENDANT: I've had plenty of time, Your Honor.

5 THE COURT: And you're freely -- you're making that
6 decision of your own free choice, not influenced by
7 anybody?

8 THE DEFENDANT: I am.

9 THE COURT: It's your decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You've had enough opportunity to speak
12 with all three of your lawyers regarding that decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Is that sufficient?

15 MR. HUBBARD: May we also ask if he wishes to
16 testify? I know that sounds kind of redundant, but it's
17 different between speaking to the jury and testifying as
18 well.

19 THE COURT: Okay. Let's do that one, too. You have
20 the right to come and testify. Do you understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Would you like to testify?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Once the Defense rests, your opportunity
25 then will end. During closing, you have the right to

1 speak at that time, also. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Would you like to testify?

4 THE DEFENDANT: I do not wish to testify.

5 THE COURT: All right. We'll discuss again tomorrow
6 regarding closing to make certain you have not changed
7 your mind. All right.

8 MR. HUBBARD: Thank you, Your Honor.

9 THE COURT: Okay. Do we need the jury back in here?

10 MR. HUBBARD: I don't believe so unless the Defense
11 has something.

12 MR. YOUNG: I just think I need to renew all of our
13 --

14 THE COURT: I know. We're going to discuss the
15 instructions and everything for tomorrow. What time do
16 y'all want to start? 9:00 o'clock, same time we've been
17 starting?

18 MR. HUBBARD: Yes, sir, I think that would be fine.

19 THE COURT: Go get me the jury. You can make your
20 motions now.

21 MR. YOUNG: Your Honor, the Defense would renew all
22 of its motions the Defense has made during the guilt and
23 penalty phases of the trial for the purposes of record,
24 relying on all the arguments and citations along with the
25 briefs that we filed to go along with them.

1 THE COURT: And, respectfully, there's enough to go
2 to the jury on all the issues of guilt or innocence have
3 already been done, as well as hearing the penalty phase.
4 Respectfully, denying your motion.

5 (Whereupon, the jury came into open court at
6 approximately 12:12 p.m.)

7 THE COURT: All right, folks, the Defense has rested.
8 The State has an opportunity to reply. They will not.
9 We've heard everything we're going to hear. The lawyers
10 will this afternoon kind of prepare for tomorrow. Get
11 back together tomorrow at 9:00. Until that time, still,
12 just like we did in the first phase, don't discuss the
13 case yet. We'll resume at 9:00 o'clock in the morning.
14 Give the attorneys an opportunity to summarize what's
15 going on, their belief. I'll give you my instructions and
16 y'all will deliberate. Until that time, don't talk about
17 the case, don't let anything influence you about the case.
18 Don't take in any information or do any research. I'll
19 instruct you to be consistent with that. With that, see
20 you in the morning.

21 (Whereupon, the jury was excused from the courtroom
22 for the day.)

23 THE COURT: We will take a lunch break to about 1:15.
24 See y'all in about an hour.

25 (Whereupon, a lunch break was taken.)

1 (Whereupon, the Court and Attorneys had in-camera
2 discussions on jury charge.)

3 (Whereupon, the trial will resume the next day at
4 9:00 a.m.)

5 June 13, 2019

6 THE COURT: Good morning. Solicitor, you ready?

7 MR. HUBBARD: Yes, sir.

8 THE COURT: Mr. Secor, you ready?

9 MR. SECOR: Yes, sir.

10 THE COURT: All right. I'm going to bring the jury
11 in, give them a few statements and tell them we're going
12 to probably take a break between, break between, discuss
13 the instructions and make a record of that. So that's how
14 we'll proceed, State, break, Defense, break, Judge, break.
15 All right. Bring in the jury.

16 (Whereupon, the jury came into open court at
17 approximately 9:51 a.m.)

18 THE COURT: All right, folks, kind of give y'all a
19 roadmap on what to expect. The States goes first.
20 They'll summarize, take a break. The Defense will get
21 their opportunity to summarize, we'll take a break. I'll
22 give my instructions, then y'all deliberate. Didn't mean
23 for that to rhyme. So that's how it's going to proceed,
24 State, break, Defense, break, then me, then y'all go to
25 work. We've ordered lunch. Our lunch will be here. And

1 we'll do it the same way, work through lunch. So I'm
2 going to ask the lawyers if they move around to speak
3 loudly so that Joy can pick them up because some of this
4 stuff may be trickier, but we'll move this microphone here
5 because it's only going to be presentation of lawyers
6 moving about here, no more witness testimony. So with
7 that, I'll sit down. Solicitor.

8 MR. HUBBARD: Thank you, Your Honor. Ladies and
9 gentlemen, let the punishment fit the crime. We're
10 searching for a punishment that fits this crime. Have you
11 heard any crime more horrendous than what you've heard
12 when you came into this courtroom. Let the punishment fit
13 this crime. When each of you were selected as jurors, you
14 sat on the witness stand, you were questioned, can you
15 give life. All of you said yes, depending on those facts.
16 You were asked, can you give death. Each and every one of
17 you said yes, under the right circumstances. The
18 punishment has to fit the crime. The Defense asked you
19 when you were jurors up there, perspective jurors, before
20 you were sworn in, would you reserve death for the worst
21 of the worst. Yes. All of you knew that's the big
22 penalty. My question is, isn't he the worst of the worst.
23 Tim Jones, a man who brutally murdered his five children.
24 You're going to have those two options, life and death.
25 The Judge is going to tell you the process you've got to

1 go through before you can give either sentence. The law
2 is going to be a little different this time. You've heard
3 about statutory aggravating circumstances that I've got to
4 prove, the State has to prove beyond a reasonable doubt.
5 There's only two that were presented. We have to prove
6 one. And I'm going to tell you, we already have. It's a
7 unique case. By the time you reached a verdict of murder
8 of those five kids, you had already established we had
9 proven these two aggravating circumstances. First, two or
10 more persons were murdered by the Defendant by one act
11 pursuant to one scheme or course of conduct. That fits.
12 You're going to be asked that for every child. And yes,
13 each one of them falls into that category beyond any
14 reasonable doubt. And the second one is even easier, the
15 murder of a child 11 years of age or under. The oldest
16 child in this case was eight years old, Merah. We've
17 proven it. You have their birth certificates. You have
18 their death certificates. You have their ages. And you
19 know what we put in, it sounds really strange, we put your
20 verdict form, the indictments showing what you have done.
21 We have proven it. We've proven it to you. So what does
22 it mean. You've got two aggravating circumstances. We
23 only had to prove one. Is death automatic, no. The Judge
24 told you, that's not how it works, and that's good.
25 Because he's going to tell you, there's other things you

1 need to listen for. And you were already told this,
2 mitigating circumstances. Some are going to be statutory
3 that he'll read off. Some are nonstatutory. And he's
4 going to explain that, things that aren't in a code book
5 you can consider. And there's no burden of proof.
6 There's no beyond a reasonable doubt. He will even tell
7 you, you can have mercy and give life for no reason at
8 all, without stating a reason. You have that power if you
9 think that fits this case. And say you find a mitigating
10 circumstance, does that mean life is automatic, no. You
11 can find both, aggravating and mitigating circumstances,
12 and give death. The law allows that. You can find both
13 and give death. He's going to tell you there's other
14 evidence. We generally call it character evidence.
15 Evidence about that man over there, what kind of person he
16 is. Bad stuff. That doesn't replace or be used for
17 aggravating circumstances. But you get that, you've
18 already found aggravating circumstances. It's going to be
19 character evidence. What kind of man is Tim Jones, Jr.?
20 You got a good glimpse in the first phase, but you've
21 heard a lot in the last few days. What kind of human
22 being he is. What kind of person he is. You also got to
23 get a glimpse of who those little children were. You had
24 seen their faces, you had heard their names, but you got
25 to know a little bit about them. That's victim impact

1 evidence. So who is Tim Jones, Jr., who is this man.
2 Well, you know right out of the gate as you sit here he is
3 a murderer. He murdered his five kids. He is a mass
4 murderer. He committed the most heinous crime a human
5 being can commit. He not only took a life, he took the
6 life of a child. Five children, who had trusted him.
7 They called him daddy. Is there any crime, any crime
8 worse than that, he betrayed their trust. He chose
9 himself over them and they paid with their lives. That is
10 who he is. And you heard all about his life story,
11 growing up as a child, such a hard home, bad home.
12 There's violence, there's drugs, there's cursing, there's
13 swearing. And you know what, it wasn't ideal. Did you
14 hear from his family. You know what they did. They
15 insulated him. They recognized he was special. He was
16 bright. He had a gift that no one else in that family
17 had. They found he had something that doesn't come along
18 often. He had brilliance. He was a bright child, a
19 gifted child, a child that could do anything he wants to
20 do. They protected -- daddy, who loves him. There's no
21 question Tim, Sr. loves his son. And whatever faults you
22 see in him, he loves his son. He protected him. He
23 spoiled him. Did you hear his grandmother. Yeah, Tim
24 Jones is a selfish man. That's her grandbaby on trial for
25 his life, but she knew that's the truth. He's selfish.

1 Tim Jones, Jr. grew up knowing, he grew up knowing that he
2 could manipulate his family. He grew up knowing that if
3 he got mad and walked away, they'd come to him. That's
4 who he is. He grew up knowing that. And maybe, maybe you
5 can say, well, he had such a hard life. But, folks, he
6 had the opportunity, he had the gifts to be something so
7 much more. His life is all about choice. It wasn't
8 predetermined. He chose to be what he is. He chose to be
9 a murderer. Everything about him is me, me, me. As a
10 kid, his dad felt the heartbreak of a marriage that fell
11 apart. Who doesn't feel that when your marriage falls
12 apart. And he sought a new wife, Carolyn. Timmy punished
13 his dad. Never accepted Carolyn, said she rejected him.
14 We know he rejected her and he was jealous. He wanted his
15 dad all to myself. It's about me, I will not be shared.
16 I want one-hundred percent of whatever you have. I demand
17 it, give it to me. And he grew up into a man and he
18 overcame so much. He got a college degree, the first, and
19 maybe the only one in that family. And not only that,
20 Summa Cum Laude. He was top of the top at Mississippi
21 State University in computer engineering. He's brilliant.
22 And he did it while married, while with kids. Who can do
23 that, that man can. Folks, he's thrown it all away. His
24 selfishness, his greed, his demand to be the center of it
25 all has eaten him up. He punishes those that reject him.

1 And it got worse as he got older. That Christmas Eve 2012
2 when he takes his kids to see a family, a family that
3 wanted to see those kids. He comes with an attitude.
4 Yeah, he's going through a divorce. And folks, maybe
5 there is going to be a confrontation, maybe he is going
6 through things, but his reaction is classic Tim, Jr. When
7 dad, the head of that house, steps in and says son, this
8 is enough. Tim, Sr. was doing what any man of the house
9 should do. Stop this. That's all it was, stop it. And
10 Junior, you're rejecting me. You're choosing Jackie over
11 me. A grown man acting like -- you heard daddy say he
12 acts like a baby. When he's 26, he was going on 16. He's
13 a baby. He's a brat. And he packed his kids up on
14 Christmas Eve. He deprived not only his family, but his
15 children a family love on Christmas Eve. And he sat in
16 the car with them and drove all the way from Mississippi
17 to South Carolina. How selfish is that, but he's making a
18 statement. And he never reached out to his dad. One year
19 and eight months go by in the lives of the children and
20 his life, he never once says dad, dad, I'm sorry. And
21 yeah, his dad -- his dad is stubborn, too. But, folks, no
22 one compares to Tim, Jr. How does this go. He marries
23 Amber. He makes choices for her. They have multiple
24 kids. He expects her to take care of all of them. He
25 works. All right. All right. But it gets worse. That

1 stillborn child, that devastated her. And listen, you can
2 think of Amber whatever you want. She never had anything.
3 She finds a man that's brilliant, that shows some
4 affection to her, but you can think whatever. This isn't
5 about her. But what he did and her pain that any woman
6 would go through burying a dead child. How do you get
7 over that. And his cure was get her pregnant again.
8 Let's do it again. That one didn't take, we'll have
9 another. And then opportunity comes, Intel, incredible
10 job. A job that he ended up making over \$80,000 on. No
11 one in that family had ever done that. And Tim, Sr., I
12 bet, was the most proud man in the world what his son had
13 accomplished. Opportunity to rise above, to be different,
14 to get out of all the past that had haunted that family.
15 It's there. And Amber, wow, we have a chance. We, a
16 family, have a chance. He doesn't consult her dream. He
17 doesn't care about her dream. In his world, it's me. And
18 he chooses an old mobile home, dad said looked like
19 something off the set of Green Acres. Couldn't even fix
20 the bath -- it took about a week to fix the bathroom. And
21 Amber, without a driver's license, without an education,
22 without a car was supposed to sit in that house with a
23 newborn and other kids, oh, and by the way, Tim, Jr.
24 decided we're going to have a bunch of animals and you can
25 take care of those, too, Amber. No one will ever excuse

1 her choice to leave or how she left, but can anybody
2 really question why. Tim, Jr. was so offended at her
3 choice, left for the kid next door, he says. What does he
4 do. He pulls in a girl who just turned 17, barely out of
5 16, with a child, come into my family, live with me, have
6 relations with me like a wife in the presence of my kids
7 in my home. This is a man who says I am Mr. Christian.
8 Here's how life really worked. You heard his pastor in
9 the last phase say he used scripture for control, and he
10 sure did. The Bibles were bricks. He would beat them
11 over the head with them, his kids, you will do right. You
12 shall have no other love for anyone other than me, said
13 Tim. I will not be shared with anyone. I will have your
14 full devotion or you shall feel my wrath. The word
15 according to Tim. And when that beating came, it ended
16 with here as the lesson. That's the word according to
17 Tim. And you've seen it, you've seen it and it culminates
18 in what happens in August 2014. Folks, go all the way
19 back, that episode in May with Nahtahn. You're probably
20 all wondering what is it about that little boy, that
21 little tiny child that made him such a target. Amber,
22 when the Defense put her on the stand, Amber told you,
23 he's a momma's boy. This little boy had enough love for
24 both parents. What child doesn't? Children don't think
25 in terms of absolute, I've got to love you and no one

1 else. So when he would see his mom in a parking lot, he
2 ran to her with reckless abandon, oblivious to cars. It's
3 mommy, mommy. And is that bad? It is to Tim, Jr. You
4 choose her over me. And he saw it in Merah, too. She
5 wanted to go live with her mom. Do you wonder why? It's
6 not hatred on the part of these kids. They're yearning
7 for love and they're not getting it. And as this man's
8 life is spiraling out of control -- look, he knows where
9 to get help. He's done it before. He chooses not to get
10 help. He chooses not to have medication that can assist
11 him. He chooses to self-medicate. He embraces spice.
12 And no one had better warning than this man. He knows
13 every chemical in that thing, that substance. He knows
14 what it does to your body. No one can say they ever took
15 that drug and had a better clear-headed idea of what it
16 does to you. But he also had this, his young brother,
17 who's heart is absolutely torn apart. Y'all heard him.
18 It was painful. He said, when my big brother told me he
19 was using spice, no, no, don't go down that road, I've
20 been there. He had his own addiction to spice. His own
21 hell with that drug. He knew what it did. Tim, Jr. knows
22 better. No one tells him what to do. He embraced that
23 drug. He brought it into the house. He married spice and
24 every child in that house felt it. When his son, Nahtahn,
25 was playing with Eli and apparently messed up a railroad

1 track or something, what was the Biblical correction this
2 man gave his son. He took that hand, grabbed that child
3 by the neck, lifted him off the ground and shoved him
4 against the wall. Is this a case for mercy, is this life.
5 Then he drops him down, hard enough, you see the bruises
6 on this child's arms. And even the bad photos, bruises on
7 the face. Those teachers, those incredible teachers, who
8 are here today, saw those bruises and were mortified.
9 They did exactly -- Amy Shearer did exactly what she had
10 to do. What did she say. Sometimes I love them a little
11 too much. Jonathan Stone. Who was the real father figure
12 for this little boy. It sure wasn't the man sitting at
13 this table over here. I tell you what, the blood family,
14 I'm not going to question whether they love or not, I'm
15 really not when it comes to these kids. But we know this,
16 they weren't involved in the lives of those children for a
17 year and eight months. Those teachers were. Everyday
18 those kids came into their classroom. They tended to
19 them. They saw their gifts, how unique they were. They
20 loved them. Any parent sending kids to that school with
21 these teachers should feel confident, my kids are safe.
22 But shouldn't a child be safe at home too. He cuts off
23 all communication with those teachers, won't sign
24 homework, won't return calls. And he singles out Nahtahn,
25 the middle child. He's not one of the older ones with

1 extra responsibility because daddy trust him. He's not
2 the babies that get away with everything. He's the middle
3 and he's got a bulls eye on him. From May to August, his
4 life was hell. His dad punished him. You hear Mr. Stone
5 say, this child would come to school and -- and I bent
6 down to pick him up one day and this five-year-old child,
7 I was like, my God, my two-year-old baby weighs more than
8 this child. We know there's food in the home. When DSS
9 went in that home, that's one thing there was. This man
10 used it for punishment. And what would Nahtahn bring to
11 school, a piece of bread, some grapes. That's abuse. Who
12 is that man, he is the worst of the worst. And Nahtahn
13 was feeling the full brunt of it. Tim, Jr. punished his
14 dad, he punished Amber, he punished Nahtahn. Everyone was
15 on notice, don't cross me. August 28th, 2014, y'all have
16 heard about that, but now, it makes more sense. Nahtahn,
17 the inquisitive child, interested in electronics. Do you
18 think he's got some of his father's curiosity? He
19 probably hears about electricity with computers, circuit
20 boards, how things work. It's a teachable moment, but not
21 for that man. It's a criminal investigation,
22 interrogation. He brutally makes this child do these
23 exercises that dad couldn't do. Dad washed -- he wanted
24 to be in the Navy Seals. Please. He couldn't make it
25 through basic training. He couldn't even pass screening

1 to get in. But oh, my kids, I expect more of them. It's
2 okay if I fail. And Nahtahn paid heavily. And what
3 happens. Amber calls, she calls. Thank God, I know
4 Nahtahn must be thinking, it's mom. It's my mom. And
5 he's not told his dad a thing. And why should he? He's
6 going to get punished either way. That's how it works
7 with Tim, Jr. You're either lying to me or you did it and
8 now you're going to pay. Momma gets on the phone and the
9 first words out of his mouth, mommy, mommy, I didn't mean
10 to. I didn't mean to do it. That's his little cry for
11 help. Mommy, help me, save me. And she tries to step in,
12 trying to calm Tim, Jr. down, calm him down. She hears
13 him in the background, Son, you could have -- not killed
14 me, you could have killed yourself. She tries to calm him
15 down. You've heard her voice messages. She's calm. She
16 knows how to talk to this man when he gets riled up. He
17 was hearing nothing. Because when he heard his little boy
18 confess to his mother, it's all over. And when she tried
19 to intervene, he said, you're always taking up for the
20 kids. And when she tried to speak again, he said, shut
21 the F up and killed that call. Nahtahn didn't die of
22 overexertion, folks. He met white hot rage at that point.
23 We'll never know the cause, but it wasn't punishment at
24 that point, it was absolute rage. And Merah, he had also
25 singled her out. He knew she wanted to go live with her

1 mom. What a sin. That night when he brutally murders his
2 children, when he goes through and brutally murders every
3 child -- and you've heard the story. You've heard the
4 story. He kills Nahtahn. And what's his first thought?
5 My life is over. Tim, you're F'd. He consciously decides
6 not to call 911. He downloads a movie clip while his son
7 is dead and watches a gang rape scene in prison because he
8 knows that's my lot. And what does he do with Merah? He
9 takes her to go get cigarettes. He's got to think. I got
10 to think. I got to think. What am I doing? I've got a
11 dead child. My life's over. Where is this going? Why
12 did he take Merah? Because that little girl would have
13 gone for help. Eli, scared to death, but, daddy, I'm on
14 your side. He leaves that little seven-year-old with his
15 dead brother and two little infants. What kind of man is
16 that? What kind of man is that? Is he the worst of the
17 worst or do you hear the word mercy coming up to the
18 surface? And he comes home and he comes to Eli. Dad's
19 made the decision. He's done what you folks are going to
20 have to do. He deliberated. I'm a one-man jury and I
21 have before me life and death. And he sentenced his kids
22 to death. And as the judge, the sole judge in that house,
23 he entered that decree and then he became the executioner.
24 He comes to Eli, Eli, who's been loyal. And what are
25 Eli's words? Dad, take me with, is that how he spoke or

1 are those hands already on that child's neck. He's
2 pleading. Dad, I haven't abandoned -- I'm choosing you.
3 Take me with you. Dad's already entered the decree,
4 death. He squeezes that child's neck so hard, it breaks
5 that hyoid bone. Three to five minutes, he had to hold
6 that while Merah, oh, my God, watched her second brother
7 die. And then he had to chase her down. And she screams,
8 No, no, no. What horror is going through her? Think of
9 the horror in the house. Don't you know those other kids
10 are crying. There's loud screaming, there's crying,
11 there's agony. You know how kids are, particularly little
12 ones. They don't know what's going on. Everybody's in
13 distress. What do they do? They cry. And oh, my gosh,
14 the distress in that house. He grabs Merah. No, no, no.
15 He looks at her in the eyes. Does he give her mercy? She
16 makes one final appeal trying to find the dad inside the
17 beast that has his hands on her throat. Daddy, I love
18 you. He's asking for mercy and he hears that and he
19 crushes her neck. He chokes her, holds her until she is
20 dead. Mercy? And then why? All right. These kids could
21 speak. They could say what happened. Why the two younger
22 ones? Why Gabe? He's not going to talk to the police.
23 And Abigail, my gosh, she's just a year. No one else gets
24 my dream. If I can't have these kids, no one will. No
25 Amber, not my parents, no one. This is mine. And if I'm

1 on the run, by God, I'm burning this down and he took
2 their lives too. Gabe, that same hand, it was too big for
3 that child's neck. That means he tried it. And so he
4 took that belt, that belt of discipline and wrapped around
5 their necks and pulled it tight while those children died,
6 including Abigail. She has just begun to taste life. And
7 on the 6th of September, he gets stopped in Mississippi.
8 You heard Marty Patterson. He's out there. Shows up to
9 the scene, he's on the phone with law enforcement in
10 Lexington County. And he tells his deputy, go over there
11 to Tim Jones, who's sitting in the back of the squad car,
12 go over there and ask him where his kids are. We know
13 he's got five kids. Where are the kids? Marty Patterson,
14 a good cop, where are those five kids? The response comes
15 back from that man, I don't have any kids. Marty
16 Patterson is not having any of that. Go back over there
17 and ask that man where his five kids are. And the
18 response comes back from this man, Tim Jones, Jr., I've
19 got three kids. You know why it's three? He disowned
20 two. Who wanted to go with momma? Nahtahn and Merah.
21 Even in death, he had just dumped their bodies off that
22 day, that's what's in his heart. Is he the worst of the
23 worst, is this a man that merits mercy. Officers go to
24 that scene, they find those bodies. And oh, they want to
25 say well, he led them there. Well, after he confessed on

1 the 8th about killing them, what did he have to lose.
2 He's a good guy, have mercy on him. He led them to the
3 bags he put the bodies of his kids in. But what do they
4 find there on the 9th? They find each child is placed in
5 garbage bags and dumped out in the wilderness. Y'all saw
6 that video clip during the daylight. Did you see how hard
7 -- if but for the smell, you could walk right by it. But
8 there was something else about that clip. Did you hear
9 the bug life. It's September, it's blistering hot. It's
10 Alabama, a lot like South Carolina. They're in black
11 bags. There are bugs. There are wild animals. That's
12 where he left his kids. What does that tell you about
13 this man? What does it tell you about a man who takes a
14 precious family portrait with some of the most beautiful
15 kids you'll ever see who wanted nothing more than to be
16 loved by their dad, by their mom. They had the capacity
17 to love both, they had the capacity to love one another.
18 Look at them. They're not fighting and bickering over
19 where they're going to sit. They're okay piling on top of
20 one another. This is a beautiful family. But that man
21 couldn't see. He took that picture and turned into this.
22 Black garbage bags with police placards on them. They no
23 longer have names. They're one, two, three, four and
24 five. That man, the minute, the second life left
25 Nahtahn's body, he no longer has the right to be called

1 dad. No father does that to his children. He even said
2 as much. But you remember his response, but on the other
3 hand, they're already dead, so F it. Mercy? You heard so
4 much about his family, so much of where he came from. You
5 heard Ms. Grey get up here and talk about patterns. It's
6 his DNA. It's his bad violent past. It's his broken
7 homes. Look, all of that's bad, but the suggestion is, my
8 gosh, you mix all that together, of course, he's going to
9 be a murderer. Even though the other kids haven't done
10 that. Even though dad, who's life was harder, didn't
11 become a murderer. And Roberta, who sounds like she had
12 the hardest life of all, she killed no one. She committed
13 to her mistakes. What is Junior's excuse? The only
14 pattern we really see are choices. He's not the product
15 of a bad DNA milkshake that sprung out of Tim and you
16 instantly have a murderer. This is a guy who gifts, he
17 had gifts. And he had give beautiful treasures. He never
18 lacked for attention. His dad went to all his events.
19 His dad went to his graduations. It's a pattern of
20 choices and he has chosen, chosen to be what he is today,
21 which is a murderer. There is no excuse around -- there
22 is no it was -- it was just written in the stars. He
23 chose it. He had risen above the mire and that family was
24 so proud of him. They helped him. He chose to be what he
25 is. The pattern that you see is choices, it's just

1 choices. There were some good ones and a whole string of
2 bad ones. And the worse led him right there in that chair
3 because that's who he is. And you heard from the family.
4 I'm not going to pass any judgment on a family who's been
5 through what they've been through. But they've said
6 they've rallied around Tim. It's brought their family
7 closer together. Maybe they're straining for a silver
8 lining, folks, maybe to cope. Maybe they have to
9 absolutely embrace the notion that he is sick, that he is
10 insane. How else does that family deal with that kind of
11 pain? Do they just feel the heartache that someone they
12 love committed the most horrendous crime so they hate him
13 and mourn for their kids. What's left for the family.
14 They're straining. Tim's sick. Timmy, he's no longer
15 Tim, he's Timmy. They rally around him. And who
16 absolutely indulges in that, Tim, Timmy. He's fine
17 spending all day in a room, y'all heard that, as a child.
18 You heard that from his Intel coworkers. He's okay being
19 in a room, but he craves that attention. And he's got
20 every family member checking on Timmy. How you doing?
21 Are you good? And for him, it's not his fault. And he
22 can never admit it's his fault to his family. I'm sick.
23 You heard that phone call. And we played it and everybody
24 was going holy cow, what is this? I can't even hear it.
25 And then you started hearing a little bit more and a

1 little bit more. You play in the back room and listen to
2 it a little bit more. This phone call is just three
3 months, three months, two days shy of three months of him
4 murdering his five kids. Three months. And you hear it,
5 it's his Dad, his Aunt Bernadine and his cousin, Blake.
6 They talk about divorce and dad, the divorce he went
7 through, his marriage to Carolyn. Do you remember Aunt
8 Bernadine? There's always somebody that hurts and there's
9 always an asshole. The implication was Amber, Amber's the
10 asshole. Remember hearing that and they all kind of
11 laugh. And you remember his response, you got that right,
12 Auntie. And they talk about all the sickness in the
13 family and they're kind of laughing. Tim Jones going
14 yeah, they think I'm crazy in here and they all kind of
15 chuckle. And he goes, I can tell I'm with good company.
16 Then you start getting down to the gist of it. He says --
17 and they get quiet. How do you respond to this? I feel
18 like I went insane. Not that I am, I went insane. To go
19 insane, there has to be a catalyst and the catalyst is
20 Nahtahn. Dad, don't you remember -- here's the
21 manipulation. Don't you remember how I always wanted my
22 mom and she wasn't there? Justifying it to his dad. I
23 saw that in Nahtahn. I didn't want that for him. Is he
24 caring for Nahtahn? No. He says he lost it because that
25 night Nahtahn wanted to be with him mommy. Don't you know

1 after mommy hung up or got shut off from that phone he was
2 crying for mom. Mom, mom, mom. There was nowhere to
3 hear -- no one to hear, except his siblings. What he
4 faced was not punishment at that point, it was rage. He
5 says I snapped. I lost it. He tells you that. And then
6 he makes the most incredible statement of all. So you
7 see, you can put this one on Amber. Because if she had
8 been home instead of next door, bopping the boy next door,
9 none of this would have happened. Three months after he's
10 killed his kids, that's the words of this man. Do you
11 think a life sentence is going to have a Tim Jones, Jr.
12 sitting in a cell thinking about what he did? Do you
13 think that's what he does sitting in that room? He blames
14 Cindy. She's in my head. He blames Nahtahn. He blames
15 Amber. But I'm insane, so whatever I did, I get a pass.
16 And you heard in this phase Timmy, Timmy, Timmy. Why was
17 that? Why do you think you kept hearing Timmy? Ms. Grey,
18 who supposedly chronicled his whole life, but she seemed
19 to leave out anything good. Don't you know he got all
20 kinds of accolades in school. Did you hear a single one
21 of those? You weren't supposed to. Her job was to find
22 all the darkness in that family, expound upon it and feed
23 it to the experts who were trying to tell you there's
24 something wrong with Tim, including Dr. Maddox, who
25 testified, oh, he's schizophrenic. I could tell he was

1 psychotic day one. You didn't hear much of an evaluation,
2 did you? Nothing like what Frierson did, the multiple
3 meetings trying to figure out who is this guy. Does he
4 really have a problem? You've been down that road. And
5 so the plea seems to be he's just a child. He's just a
6 little child. Why are they doing that? So you will
7 forget these kids. And the punishment is just send Timmy
8 to his room. He can think about what he's done. If you
9 think that's the fit punishment for this case, do it.
10 But, folks, it is that man manipulating his family, their
11 love and their pain, the pain he inflicted on them. He's
12 using it. He's twisting it. He's gearing it and putting
13 them on the stand and he's reaching for you. Feel bad,
14 feel guilty for me. And you heard, there was a pastor
15 saying every man can have a purpose. He can have a
16 purpose in life. Yeah. You can't give it to him. A jury
17 can't give a man purpose. It is up to the individual to
18 determine what purpose you're going to have. If he wants
19 a purpose, he doesn't need to ask you. He doesn't need to
20 put that on you. That's not really sincerely asking,
21 that's a guilt trip. A dying man, a dying man can have a
22 purpose. But I will tell you something, your verdict,
23 your judgment, if you speak death, if you believe what
24 fits this crime, this God awful crime, maybe, maybe, as
25 it's cast out across the media in its headlines and it's

1 on TV, maybe somebody will hear. Maybe there's another
2 dad --

3 MR. SECOR: Your Honor, I object.

4 THE COURT: Noted.

5 MR. HUBBARD: Maybe some other father will go my God,
6 that's me, maybe he'll stop and get off that track that
7 Tim Jones took. Maybe. But your real purpose, your real
8 purpose here, what punishment fits this crime? Now,
9 you've heard about Tim Jones, but you've heard about the
10 children, too, who they are. We needed to show you that,
11 folks. They deserve us to present to you they're not just
12 kids, they're not just beautiful pictures, they're human
13 beings. And we had to turn to teachers because they knew
14 so much about these kids. They were so invested in these
15 kids. They loved them. We turned to Joy Lorick, who knew
16 the two youngers ones, but she knew all of them. A woman
17 who wept for these little kids that she cherished. And
18 each of these kids, they all had their dreams, their
19 unique gifts, their characteristics that they offered.
20 Merah, full of life, full of love. And what did she love
21 to do? She loved the mommy role that was missing. Taking
22 care of Abigail, holding this small child who loved to be
23 held. She loved being a big sister. She loved playing
24 with Gabe and Abigail. You can't ask for a better
25 daughter than this. This is a gift. Look at the love.

1 This is love. And notice something, it's love among the
2 siblings. How do these little children have that kind of
3 love? Where does it come from? But it's there. And she
4 had dreams. You heard how the school keeps track and how
5 Merah was behind, but oh, she got much further ahead after
6 she started working. With all of the care these teachers
7 gave her. My personal mission statement, I will be a
8 fantastic daughter. That's number one, a fantastic
9 daughter for that man. That is love. I will be a helpful
10 sister. I will be a super student. Every day I will do
11 my work and make good grades. When I grow up, I want to
12 be a nurse. When I grow up. The book was closed on her
13 by that man over there who called himself daddy. And Eli,
14 seven years old when he died. Did you hear what his
15 teachers said? His teachers who knew him. If there was a
16 child in the room who didn't have a friend, Eli would seek
17 them out. If they're working on a project and somebody
18 was left out, she didn't have to tell somebody to go
19 partner with that child, it was Eli. That was one of his
20 gifts. And in that home, that brutal, ugly home, he
21 reached out to his brother, Nahtahn. It's here. I won't
22 try to read it. All about my brother by Elias Jones. He
23 draws two pictures. One boy saying, can I have it? And
24 the other one saying, yes. He's handing him a toy. I
25 love Tahn. He gives me things to play with and he gives

1 me stuff that I want. God, thank you for my brother.
2 Thank you. Thank you. Thank you. You did a wonderful --
3 you did wonderful, God, making my brother. I love you,
4 God. That was within this family. All the rage and
5 hatred, they were taking care of one another. And
6 Nahtahn, left on his own, just wanted a hero, Woody. He
7 loved Woody and his dad knew it. Another way to inflict
8 pain on this child. This is the night of the murder,
9 folks. Nahtahn graduates kindergarten, his dad's not
10 there. He reassures himself by writing good on his
11 diploma. I don't know who wrote this other one. Was it a
12 sibling? It sure wasn't dad. But good. And that
13 kindergarten graduation, look how proud he is. He's in a
14 cap and gown and there is no one next to him because that
15 man punished that child and refused to go. Gabriel, who
16 always smiled, who always wanted to be like his big
17 siblings. You heard Joy Lorick, if they were involved in
18 something, he tried to get into. He couldn't wait to get
19 older and he loved the attention they gave. And Abigail,
20 she had barely begun to taste life. How do you put a belt
21 around this child's neck and kill her. Look, she was
22 loved. She knew it. All her siblings doted on her.
23 You're back to dad. Dad, the man who murdered them. So
24 who is he? What does he merit? What's the appropriate
25 sentence? Well, I'm going to tell you, folks, if you want

1 to know what he thought of Merah, you're going to need to
2 look in bag two just like those officers did. You haven't
3 seen these photos. You got a glimpse in the body recovery
4 photos, but when you see these photos, you'll know the
5 condition he left these children in. He left them for the
6 wild. He left them to rot. He abandoned his children
7 after he murdered them. You want to know what he thought
8 of Merah, open the bag. Do what Dave Lawrence and those
9 officers did, open the bag. If you want to know what he
10 did to bag one, Elias. This child was found with his Saxe
11 Gotha shirt, the power of One. Look, open the bag. If
12 you have any doubt, any doubt about the appropriate
13 sentence for that man, look in the bag. Gabriel, that
14 little boy crammed in a bag, crammed in a bag. Look if
15 you have any doubt what's appropriate, what fits this
16 crime. And Abigail, why? Look, look in the bag. Look
17 what he did to that little child. And, please, folks,
18 don't forget Nahtahn, who's crammed in a bag with Ninja
19 Turtle bedding, crammed in that bag. And you're going to
20 notice something, both Nahtahn and Merah, no clothes.
21 There's nothing sexual here, but it's his dad's hatred.
22 Who was he going to chop up first? Nahtahn. He was going
23 to chop them up. It's not because he had a change of
24 heart. You don't buy a saw that you use to cut sheetrock
25 to cut bodies up with, that's why. And muriatic acid

1 won't eat up a body, but you'll find that bottle's empty.
2 But two people are stripped down, I want to tell you, it's
3 to be destroyed, so he can destroy them. But you have any
4 doubt, look in the bags. If you have any doubt about what
5 is appropriate, what this monstrous crime deserves, if you
6 have any inkling that there might be a doubt in your mind
7 and your heart, just look in these bags and you'll find
8 the answer.

9 THE COURT: All right. Let's take a few minutes.
10 Step in the jury room. You can't discuss the case yet.
11 We'll have you back out here in a few.

12 (Whereupon, a short break was taken.)

13 THE COURT: Before we break, Mr. Graham, you wanted
14 to -- you had a motion regarding closing. Let's hear it
15 before Mr. Secor's got to start his argument.

16 MR. GRAHAM: You want to do this here, Your Honor, or
17 back in chambers?

18 THE COURT: I think, perhaps, chambers may be better.
19 Can you do that, Joy?

20 COURT REPORTER: Yes.

21 THE COURT: All right. Let's do that.

22 MR. SECOR: Can I put my objection on the record
23 then, Your Honor?

24 THE COURT: Oh yes, you may.

25 MR. SECOR: It's in reference to Solicitor Hubbard

1 discussing with the jury what they might think is the
2 appropriate punishment. And, specifically, when he was
3 discussing with them whether they think the life without
4 parole is an appropriate punishment in this case. He then
5 began to say that the sentence of life without parole --
6 or the argument was, essentially, that a sentence of life
7 without parole could mean that other children will be
8 killed because it won't send the message that, in cases
9 like this, the death penalty is the appropriate
10 punishment. And I think that the argument, essentially,
11 can be boiled down to the fact that if the jury -- or that
12 the jury needs to kill Tim in order to save other innocent
13 children to deter people who would harm their children.
14 And I would argue that that deprives Tim's right to due
15 process to a fair trial, impartial jury and the right to
16 be free from cruel and unusual punishment pursuant to the
17 Fifth and Fourteenth Amendments of the United States
18 Constitution as well as the Sixth and Eighth Amendments to
19 the United States Constitution and Article 1, Section 3
20 and 14 of the South Carolina Constitution as well as --

21 THE COURT: All that's on there. We can get all
22 that. Your objection was noted. I heard your objection.
23 I said noted. Solicitor Hubbard moved on from there.

24 MR. HUBBARD: And I rely on State v. Allen. But,
25 also, Your Honor, the objection was made on words I didn't

1 say. They put in evidence a purpose, that's what I
2 responded to. And it was after their verdict was made,
3 not that they have to be driven by anything else. I've
4 made it clear the whole time it's the evidence, evidence,
5 evidence. So that's what my argument was based on.

6 MR. SECOR: I just want to put two cases on the
7 record, if I may?

8 THE COURT: You may.

9 MR. SECOR: State v. Shuler, S-H-U-L-E-R, 353 S.C.
10 176, as well as State v. Northco. Thank you.

11 THE COURT: Okay. All right, let's go to chambers.
12 Joy can bring whatever she needs to bring to put it on the
13 record. We'll discuss the in-limine motion.

14 (WHEREUPON, motions were held in-chambers.)

15 THE COURT: What's your motion in-limine?

16 MR. GRAHAM: Judge, I'm hesitant to do this, but an
17 attorney in our office went through the Earnest Daise case
18 ending up with a verdict, unanimous verdict, I believe.
19 Mr. Secor delivered the closing arguments in that. And
20 when we reviewed -- when we reviewed that closing
21 argument, it became apparent to us, in our opinion, that
22 Mr. Secor is a very zealous advocate for his client. And
23 I respect him for doing that. But there are multiple
24 areas where he uses phrase of words and arguments in Daise
25 that I think are objectionable and inappropriate. And if

1 they're repeated here and not dealt with beforehand, the
2 Solicitor has no choice but to continually object, which
3 looks terrible in front of a jury, or to let it pass. The
4 first thing that was noticed in closing argument he uses
5 the word, kill, for what the jury is being asked to do.
6 Don't kill the Defendant. Don't kill -- in this case, it
7 would be don't kill Tim. You don't have to kill Tim.
8 Just various, multiple combinations on that. That was
9 objected to by the State and Judge Mullen allowed it and
10 they stopped objecting. It's our opinion and belief that
11 in characterizing -- I mean, it's not the language used in
12 the statute. I believe in the statute, during voir dire,
13 we never asked are you able to kill. It's are you able to
14 give a sentence of death. Their decision will be carried
15 out, but they're not the ones killing. The law allows for
16 a death sentence. And I think it's an improper use of the
17 word solely as an attempt to place guilt on the action of
18 the jurors.

19 THE COURT: All right. Mr. Secor, you plan on doing
20 that?

21 MR. SECOR: Yes, sir. I would just point out that in
22 voir dire, the State did refer to sentence of death as
23 being a death warrant when they were trying to impress
24 upon the jury the fact that their sentence will be carried
25 out and the Defendant will be killed. And I find in these

1 cases that they want to hard sell it in voir dire to try
2 to get rid of jurors who would hesitate to do so. And
3 then when it gets to closing, they want to try to force me
4 to soft sell the death verdict to make it more palpable
5 and easier for people to sign the death verdict. And I
6 think that that -- and I mean no disrespect, but I think
7 it's intellectually dishonest for them to try to hard sell
8 it in voir dire and then want me to soft sell it for them
9 in closing argument. It would -- I also think the jury is
10 certainly entitled to understand the magnitude of the
11 decision they have to make pursuant to Caldwell versus
12 Mississippi --

13 THE COURT: Well, how does sentence to death not
14 impactful to understand their duty, kill versus sentence
15 to death. I mean, why is that -- it's different words,
16 the result is the same, you are not living anymore.

17 MR. YOUNG: Before we go through and address each one
18 of these issues, I think it's outlandish and outrageous
19 that the State gets to object or preemptively object to a
20 Defense closing prior to it being made. The Defense is
21 not limited in the same way in which the State is making
22 their closing argument. You're allowed to argue whatever
23 you want to to impress upon the jury all of the reasons
24 that they should give a life sentence. And to allow the
25 State to come in and say well, this is the word you can

1 use, you can't use this other word. They've had their
2 opportunity with the jury. They've made their argument.
3 The Defense is entitled to do the same without
4 interference or interruption from the State and they
5 shouldn't even be allowed to make this motion.

6 THE COURT: The State can't object?

7 MR. YOUNG: Sure, they can object. If something is
8 improper, they can object. When something improper
9 happens, then Your Honor can make the ruling on it, just
10 like we did. But to allow the State to say well, these
11 are the words I'm going to allow you to use and these are
12 the words I'm not going to allow you to use, that's
13 improper. And this whole thing is improper and Your Honor
14 shouldn't even entertain this motion.

15 MR. GRAHAM: Your Honor, I think they made motions --
16 they filed, at least, two of them trying to attempt to
17 limit what --

18 MR. YOUNG: We filed a number of motions about what
19 are categories of improper arguments that have been made
20 by the State in the past. We didn't say here's an
21 argument from Rick Hubbard and he can't use this word,
22 this word, this word. We said these are arguments that
23 the South Carolina Supreme Court has said you guys stay
24 away from and we're putting you on notice. They made one
25 of those arguments that they were on notice for.

1 THE COURT: Y'all have been put on notice.

2 MR. YOUNG: This is not -- this is not putting on
3 notice about categories of argument. This is like you
4 can't use the word, kill, in a death penalty.

5 THE COURT: Well, you're on notice that the State
6 will object to it. How about that?

7 MR. YOUNG: That's fine.

8 THE COURT: Well, that's what you get.

9 MR. YOUNG: Okay.

10 THE COURT: Do it that way. I'd rather it go
11 smoothly for the jury's sake. If you don't want it to,
12 then the Solicitor will just have to make -- they'll have
13 to make their judgment call on when to object. If he's
14 going to go pushing the envelope out there like they're
15 suggesting.

16 MR. YOUNG: Nobody's saying they can't object. They
17 can do what they want to do.

18 MR. HUBBARD: Since you've chimed in, I will. It is
19 I have to object. I don't want to break up Casey's flow.
20 I think it's disrespectful to him, but to say that is
21 disrespectful of the jury. It's a moral judgment on their
22 choice of a death sentence. Kill, somehow that equates it
23 to the act of the Defendant. And yes, we have to bring it
24 up. We're on notice about it. This is the time to
25 address it, not in the courtroom when Casey's speaking.

1 THE COURT: Y'all both have, I think, politely said
2 heads up. Here's what we find objectionable, can we
3 address it ahead of time? And I would appreciate that if
4 I were a lawyer arguing. Either way, either side. Y'all
5 are both passionate about this, I mean, no question. Here
6 is what we will do. The State's filed its motion kind of
7 letting you know if you go in these areas, they're going
8 to note an objection. I'll rule on it. So if you don't,
9 then, you know, it goes on further. So just beware,
10 they're telling you they think that would be
11 objectionable. Is that okay?

12 MR. YOUNG: Of course.

13 THE COURT: Okay. So the State has made its motion.
14 I'll consider objections made -- if there are any
15 objections made, I'll rule on them and we'll go from
16 there.

17 MR. SECOR: May I just have some time -- I just want
18 to add a couple things --

19 THE COURT: No, you've had enough time. Go ahead.
20 I'm ready to keep rolling. You always ask -- you're the
21 only one that's asked for extra time every time.

22 (WHEREUPON, in-chambers motion concluded.)

23 MR. MADSEN: Judge, I just wanted to renew our
24 objection on the use of the autopsy photographs, which I
25 believe are State's number 212 to 216. That despite the

1 State's argument, we know that Dr. Ross did not need the
2 photographs to corroborate or explain her opinions. The
3 State simply had her introduce the photographs into
4 evidence. Furthermore, the State published to the jury
5 photographs of the bags and the contents from the scene.
6 This caused a Juror to break down and the Court to have to
7 take a recess. The State decided not to publish the
8 photos knowing that the autopsy photographs are a hundred
9 times worse. This effectively eliminated the ability to
10 have an appellate review because the first time the jurors
11 are going to see those photographs will be in the jury
12 room and, obviously, no one is going to know their
13 reaction back there. We believe that that was a conscious
14 decision on the part of the State so that there was -- to
15 deny Tim appellate review. The Solicitor's argument to
16 look in the bags, look in the bags is basically an
17 argument on the inflammatory nature of those and a
18 recognition by the State of the inflammatory nature of 212
19 to 216. And it violates Tim's due process rights to a
20 fair trial and cruel and unusual punishment under the
21 Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments.

22 MR. HUBBARD: Your Honor, of course, I did nothing
23 inappropriate. This is about the most conservatively
24 tried case involving photographs. The ones that I
25 actually published in front of the jury were from the body

1 recovery where you just get a glimpse into the bags. One
2 alternate cried and she immediately recovered. She didn't
3 throw up in the bathroom like was alleged. And then with
4 the other ones, I handled those photos with respect. Your
5 Honor ruled. They're appropriate. The color was actually
6 less inflammatory than black and white and most of them,
7 or a lot of them are duplicates of what the Defense tried
8 to put in in the first phase.

9 THE COURT: I ruled on that.

10 MR. HUBBARD: Yes, sir.

11 THE COURT: I'm not going to change my ruling.

12 MR. MADSEN: Yes, sir, I understand. I just felt --

13 MR. HUBBARD: And so the record shows, I did not even
14 open the bags up in front of the jury in closing.

15 THE COURT: You didn't.

16 MR. HUBBARD: Yes, sir.

17 MR. MADSEN: And that's part of my position.

18 THE COURT: The final instruction is coming y'all's
19 way during the closing.

20 All right. Bring in the jury.

21 (Whereupon, the jury came into open court at
22 approximately 11:10 a.m.)

23 THE COURT: All right. Ready to continue? It will
24 be the opportunity for the Defense to summarize. Mr.
25 Secor.

1 MR. SECOR: Yes, sir. How much more death does the
2 Jones family have to endure. How many more funerals does
3 this family have to go to. How many more tears do they
4 have to shed. How much more heartache do they have to
5 endure. Each one of you will decide that. Each one of
6 you individually will decide that. I think for a lot of
7 us, one of the scariest things in life is that we do
8 something that causes tremendous pain and suffering to
9 people that we love. And I think that the reason why that
10 feels so scary is that we worry that we will somehow make
11 ourselves unloved. The people that loved us and supported
12 us in the past will turn away from us. And that's a
13 terrifying thought. When I was growing up, my grandmother
14 is somebody that always felt guilty with things that
15 happened in our family even if it had absolutely nothing
16 to do with her. And I always wanted to protect her from
17 feeling that guilt. I wanted to tell her that it wasn't
18 her fault. And as I got older, people in my family did
19 things to her -- not necessarily to her, but they did
20 things that I knew were going to devastate her, that I
21 knew that she was going to feel guilty about it because it
22 was somebody in the family. And I got to the point in my
23 life where when things like that happened, I wanted to be
24 the person that brought terrible news to her just so that
25 I could be there and tell her it's not your fault. You

1 don't have to feel guilty for this. And there was one
2 time that I remember specifically because I had to tell
3 her something over the phone. And I knew that she was
4 going to be devastated and I knew that she was going to
5 blame herself. And I called her and I told her and there
6 was this long silence. And then the sound of her heart
7 breaking. And I will never forget that sound and how much
8 I wanted to protect her from that. I wanted to tell her
9 this is not your fault. And I wasn't even the person who
10 had done the thing that had upset her so much. And I
11 thought to myself how glad I was that I wasn't the one
12 that had hurt her. And I can't imagine being in Tim's
13 position after what he did, the amount of pain and
14 suffering he has inflicted on these people that he loves.
15 Because if I were him, I'd be terrified that I had become
16 unlovable. These people that supported me were going to
17 turn their backs on me because of what I did and I
18 wouldn't be able to fault them if I did. And Tim is so
19 fortunate that that's not the case for him. He's so
20 fortunate that he has this family that are standing by him
21 despite the absolute horror that he has inflicted on this
22 family. And so under these horrible circumstances, how do
23 you punish severely while showing compassion and mercy for
24 people who still love Tim, for people who loved Merah,
25 Eli, Nahtahn, Gabe and Elaine. How do we punish severely

1 when punishment, severe punishment is necessary, but show
2 compassion for the family of these children. Tim, Sr.,
3 you know, before Tim's arrest and when the babies, as Tim,
4 Sr. called them, when they were missing from South
5 Carolina, he was on the phone with law enforcement
6 desperately trying to help, trying to find his babies,
7 trying to find Tim. And when Tim was arrested in
8 Mississippi, Tim, Sr. and Julie, they went down to
9 Raleigh, Mississippi, to the Smyth County Sheriff's
10 Department and they did everything that they could because
11 they wanted to. And when Sheriff Crumpton, Under-Sheriff
12 Patterson, asked things of them, they did them eagerly and
13 with passion because they wanted to know what happened to
14 their babies. And Sheriff Crumpton told you about how
15 much progress was made in talking to Tim once Tim, Sr. got
16 involved. And the Sheriff told you that he gave Tim, Sr.
17 credit for that. And he said that Tim, Sr. and Julie
18 showed a lot of strength for their grandbabies and for Tim
19 in that difficult situation. And even when the terrible
20 truth about what had happened came out, Tim, Sr. and
21 Julie, they still helped. They asked -- they answered any
22 questions that were asked of them. When law enforcement
23 from South Carolina arrived, they gave them any
24 information that they possibly could. And Tim, Sr. made
25 sure that Tim, Jr. was going to bring law enforcement to

1 the bodies of these children. At every point, Tim, Sr.
2 and Julie did the right thing. And we can punish Tim
3 severely, but also thank them for doing the right thing.
4 We can thank them by not putting Tim to death, by
5 sentencing him to life without parole so that they don't
6 have to suffer any more than they already have. Tim, Sr.
7 and Julie, so much has been asked of them, even since that
8 day. Investigators from the Defense and from the
9 Solicitor's office have come and talked to them in their
10 home. Lawyers from both sides have come and talked to
11 them. And they have talked to experts from both sides of
12 this case. And they have never turned anybody away. They
13 have answered every question about Tim and about their
14 family. Some things that are very embarrassing, things
15 that they would like to forget, but they cooperated with
16 everybody. And we can thank them for that and still
17 punish Tim severely by sentencing him to life without
18 parole. I think you can see when Tim, Sr. was on the
19 stand how much guilt he carries, how much he blames
20 himself. How can we tell him it's not your fault? We can
21 tell him it's not his fault by sentencing his son to life
22 without parole so that he doesn't have to suffer another
23 loss. Roberta Thornsberry, Tim's grandmother. The life
24 that she has been through is beyond comprehension. And
25 she came here and she told you things that she is

1 desperate to forget, that anybody would be desperate to
2 forget that happened to them throughout their life, things
3 that are humiliating and embarrassing, horrific and
4 tragic. But she did that because she has the faith that
5 you will understand that what happened in her life matters
6 to judging Tim, Jr. And just like Tim, Sr., I think you
7 could see that Roberta carries tremendous guilt. She
8 blames herself because that weekend in Atlanta when she
9 saw or knew or felt that something was wrong with Tim, Jr.
10 that she should have done more. And you can tell her it's
11 not her fault, you can relieve some of that blame by not
12 causing her to suffer any more loss. You can punish her
13 grandson severely, but allow her to still love him even
14 through the bars of prison. You heard from Travis and
15 Tyler and Jackie, who all love their brother so much. And
16 they loved their nieces and nephews so much as well.
17 Tyler and Travis told you that there was periods of time
18 when Tim, Jr. has been like a father in their life. When
19 he encouraged them to do as good as they possibly could in
20 life to try to excel academically. And that making Tim
21 proud of them motivates them and makes them want to be
22 better people. And that can continue. You can punish Tim
23 severely, but that encouragement of those two innocent
24 brothers can continue. And Jackie, the relationship that
25 she had with her nieces and nephews is, obviously,

1 something that I think everyone is grateful for. Grateful
2 for the love that she showed those children and made them
3 feel loved and safe and comforted that summer in
4 Mississippi. And you can thank her for that and thank her
5 for all the love that she brought to those children's
6 lives by sentencing her brother to life without parole and
7 not forcing her to suffer any more loss. The Jones family
8 has come together in an incredible show of unity and
9 solidarity, despite horrific tragedy in their family
10 history. And they've shared all these things with the
11 good, the bad, the violent, the horrific, everything, but
12 they've done it with a desperate hope that you will
13 understand what has made them able to persevere through
14 all the loss they have suffered, which is that despite all
15 the things that happened in this family, they still love
16 one another, they are committed to one another. And Tim,
17 Jr. is a part of that family and they do not want to lose
18 him even though they are horrified and full of anguish in
19 what he did to the children. And Amber came here and
20 asked you for mercy for Tim on behalf of the children, who
21 loved him. And you can honor that and punish Tim severely
22 by sentencing him to life without parole. Your decision
23 in the first phase of this case was a group factual
24 decision, one that you all made together by examining the
25 evidence that was proven to you beyond a reasonable doubt.

1 And we respect that decision. By that decision, you have
2 determined Tim will never leave prison. You have
3 announced that these are horrific murders and that he
4 alone is responsible for them. In this second phase,
5 though, it is no longer a group factual decision. It
6 is --

7 MR. HUBBARD: Your Honor, I'm going to object. I
8 think it's misstating the law.

9 THE COURT: I'll instruct you how to make your
10 decision, how to evaluate things. Mr. Secor, he'll
11 continue to argue.

12 MR. SECOR: Thank you, sir.

13 THE COURT: Sustained as to the law. Explain it both
14 ways.

15 MR. SECOR: The decision in the deliberation of the
16 penalty phase is an individual, moral decision that each
17 person makes based on their own sense of morality, their
18 own walk in life, their own life experience. And the
19 diversity of all of your life experiences is what makes
20 this work. And each one of your unique life experiences
21 is valued and honored by the law and it is what you base
22 your decision off of.

23 MR. HUBBARD: Your Honor, I'm going to object. It's
24 on the evidence.

25 THE COURT: Yes. Y'all got to evaluate the evidence

1 consistent with everything and my instruction. Continue,
2 Mr. Secor.

3 MR. SECOR: Of course, you look at the evidence. And
4 the evidence in this phase is the aggravating
5 circumstances and the mitigating circumstances. I'm not
6 telling you to disregard that, but I'm telling you the
7 decision that you make based on your examination of the
8 evidence is based on your individual moral judgment. The
9 law does not tell you what decision to make. In the first
10 phase, once you found the elements were proven beyond a
11 reasonable doubt, you had to convict, as you should. But
12 in the second phase, there is not a required sentence
13 based on your finding. And each one of you has tremendous
14 power. And the principles of law that guide you are that
15 the death penalty is never required in any case. Not in
16 this case, not in any case, not the worst case that you
17 can possibly imagine. That means that no Juror is ever
18 required to vote for death. And that is because the law
19 is satisfied with a sentence of life without parole, in
20 any case, in this case, or the worst case you can possibly
21 imagine. There is no such thing as an automatic death
22 sentence. And as I said to you, obviously, you're going
23 to examine the aggravating circumstances and the
24 mitigating circumstances. And the aggravating
25 circumstances, I agree with Solicitor Hubbard, are proved.

1 And they were proven by your verdict in the first phase.
2 And we agree they are proven and we agree that these are
3 horrific crimes. But that finding that he's guilty and
4 that the aggravating circumstances exist does not mean
5 that you then sentence Tim to death. It means that death
6 is an option that you may consider going forward. And the
7 other consideration that you have to make is, of course,
8 the mitigation, the mitigating circumstances. And they
9 are not in any way an excuse or a justification for
10 anything that happened. What happened to these children
11 could never be excused or justified in any way, shape or
12 form. Mitigation is any reason that you decide, you
13 individually decide is a reason to sentence Tim to life
14 without parole or any reason that you think is sufficient
15 for you to not sentence him to death. You each decide
16 what is mitigating to you. No one else can tell you what
17 is mitigating. No one else can tell you what is not
18 mitigating. There's no burden of proof. You find it for
19 yourself and it doesn't matter if everybody else on the
20 jury disagrees with you. If you find that something is
21 mitigating, you give it the value that you think that it
22 warrants. As we talked about in the jury selection, the
23 law gives each of you the power to sentence Tim to life
24 for any reason, no reason or based on mercy alone. And
25 when we talk about any reason, it means just that, any

1 reason. It could be a reason that was presented to you
2 during the trial, but it doesn't have to be. It could be
3 something that you just saw, even if no one else saw it.
4 Something that you felt, even if no one else felt it.
5 Something that you identify that you think is mitigating,
6 you think warrants a sentence of life.

7 MR. HUBBARD: Your Honor, I'm going to object at this
8 point. It's the individual, the individual, the
9 individual.

10 THE COURT: I'm going to instruct you on the law and
11 y'all are going to be able to evaluate the aggravating
12 factors, the mitigating factors. Mitigating factors can
13 be anything, for no reason, for mercy alone. That's what
14 my instruction will be. I think Mr. Secor is trying to
15 refer to that. So continue on with -- but that's y'all's
16 decision. Continue on, Mr. Secor.

17 MR. SECOR: It is your decision and that's what I'm
18 trying to impress you, that it is your decision, each of
19 you. And the reasons I think in this case that exist to
20 sentence Tim to life without parole are limitless. He's
21 the grandson of a woman who was raped when she was 11
22 years old by her stepfather, the man that was supposed to
23 be protecting her. He was born to a terribly sick and
24 traumatized woman, who abandoned him when he was three
25 years old as schizophrenia highjacked her brain. He found

1 God when he was barely a teenager because he was trying to
2 find a way to navigate what was a scary world to him.
3 He's brain damaged and mentally ill and has been treated
4 as such by the Department of Corrections for almost five
5 years. He can be safely housed in prison without ever
6 hurting anybody again. His family loves him. In the
7 recordings of his confessions when he was in the car with
8 Sergeant Creech, you could hear the anguish and the
9 remorse in his voice as he begged God for forgiveness for
10 what he had done. No reason is another way that you can
11 vote for life. You don't need a reason. You can say I've
12 considered everything. I agree that the aggravating
13 circumstances have been proven and there is mitigation.
14 And I don't know why, I can't put my finger on it, but,
15 for me, in this case, a sentence of life without parole is
16 the correct sentence. And if someone says to you well,
17 what's your reason? You can say, well, I don't need a
18 reason. The law gives me the power to say I'm voting for
19 life and I don't need a reason. And, finally, mercy
20 alone. The law empowers you to vote for life for mercy
21 alone, which means that you could find that all the
22 aggravation has been proven, which it has. And you could
23 say I've heard everything that was presented and to me,
24 there's nothing mitigating, nothing that I feel about Tim
25 and his family, but I have decided that for me, life is

1 the appropriate punishment. I am going to vote for life
2 based on my individual sense of mercy because I think it's
3 right in this case. The law requires 12 individual moral
4 judgments from 12 individuals. And the only way a
5 sentence of death is imposed is if each one of you arrives
6 at your own individual moral judgment and that individual
7 moral judgment is death. That's the only way that it
8 happens. But whatever your 12 individual moral judgments
9 are, the law will be satisfied and the case will end with
10 you. There is no requirement or expectation that people
11 will all arrive at the same individual moral judgment on a
12 question of this magnitude because it's a question as
13 profound as the faith that you choose for yourself, your
14 value system, things in your life that make you proud to
15 be who you are. And you all agreed you would be able to
16 do this. And it's a difficult thing being asked of you,
17 but you could do this and demand respect of your
18 individual moral judgment and respect the individual moral
19 judgment of your fellow jurors. And that once you arrived
20 at your individual moral judgment, you would not allow
21 yourself to be bullied or pressured or belittled out of
22 it. And you wouldn't allow anybody else to be bullied or
23 pressured or belittled out of their individual moral
24 judgment even if you disagreed with it. Some of you may
25 decide that Tim is not worth your mercy, but ask yourself

1 if the family of these innocent children, if they are
2 worth your mercy. Because bestowing mercy upon Tim in
3 this case is bestowing mercy upon the people who loved
4 these children, who suffer their loss every day. When the
5 Solicitor was talking to Pastor Sutton in the first phase
6 of this case, he asked Pastor Sutton whether Tim knew or
7 understood the most important tenant of all, Thou shall
8 not kill. And you, of course, understand that. But you
9 also understand that blessed are the peacemakers and
10 blessed are the merciful. See that justice is done, but
11 let mercy be your first concern. You can punish Tim
12 severely with a sentence of life imprisonment without the
13 possibility of parole while being merciful to the people
14 who love him and loved these children, who mourn them
15 everyday. The heartbreak of this family is unfathomable.
16 There do not have to be any more deaths. There do not
17 have to be any more funerals. Every member of these
18 children's families have come here and asked you for mercy
19 for Tim, which is mercy for them. This family is carrying
20 too much sorrow already.

21 THE COURT: All right. We'll take a few minutes.
22 Bring you back in here, do my instructions and we'll go
23 from there. All right. Step back in the jury room.

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

25 MR. HUBBARD: Your Honor, we do have one objection

1 just to put on the record about the very final bit. It's
2 repeated often, but State vs. Dickerson on death penalty
3 impact. I think it crosses the line. I didn't object
4 again, but, Your Honor, I think it was absolutely improper
5 under State V. Dickerson.

6 THE COURT: I'll try to -- I've given y'all my
7 instructions. Are you asking for a curative instruction
8 for a following of Dickerson or you want to leave it alone
9 understanding what my instructions are going to be. I
10 understand y'all are going to argue Dickerson, but I think
11 my instructions kind of, as a whole, is touched to both of
12 y'all's challenges y'all face.

13 MR. HUBBARD: I would suggest if we could just add a
14 phrase in your instructions to the jury and handle it that
15 way so you don't have to do it twice.

16 THE COURT: Okay.

17 MR. YOUNG: We would object. That's not the holding
18 in Dickerson. Dickerson said it wasn't. It was abusive
19 discretion to limit one witness in talking about other
20 deaths in their family. That is not what has happened in
21 this case. That's not the evidence that's in this case.

22 THE COURT: I think the jury is going to consider
23 what was presented in testimony and evidence, that's what
24 they're going to consider. I mean, whether in violation
25 of Dickerson or not, they heard it.

1 MR. YOUNG: To add to the Court's instruction about
2 you can't consider the impact that the execution may have
3 on other people would be a comment on the facts.

4 THE COURT: When we've had both charge conferences,
5 I've been asked to make certain suggestions or comments.
6 And I declined, out of an abundance of caution, to comment
7 on facts from both sides.

8 MR. YOUNG: Yes, sir.

9 THE COURT: In the initial phase and in this phase.
10 So I'm kind of inclined to leave my charge alone. All
11 right. Just, in general, the charge itself that I emailed
12 out, is that fairly consistent with the discussions we
13 had?

14 MR. YOUNG: I haven't gotten an email.

15 MS. MAYES: Judge, we had someone print it out and
16 slide it under the door, so we're looking over it now.
17 But I'm sure Whitney made all the changes we discussed.

18 THE COURT: She did.

19 MR. HUBBARD: What I would suggest is that in
20 sentencing, they consider the characteristics of -- both
21 character of the Defendant and the characteristics of the
22 crime. That that's what their focus is. It's not on
23 placating anybody else.

24 THE COURT: We sent it when Mr. Secor started.

25 MR. YOUNG: And I'm sorry, I don't have my computer

1 up or anything. It hasn't come through my phone yet.

2 THE COURT: Whitney sent it to the same group email
3 we've been using, so everybody should have gotten it.

4 MR. YOUNG: Right, I know. It's probably just my
5 phone doesn't get service in here.

6 THE COURT: Before the jury comes back in, I want to
7 put the objections to what the Court did not add to the
8 charge or take out of the charge. Start with the Defense
9 and I'll come to the State.

10 MR. YOUNG: Just a couple, Your Honor. On Page 7,
11 we'd renew our objection to the language that describes
12 statutory aggravating circumstance. And I'm looking at
13 the middle of the page. It is something that is deemed by
14 the law to increase the enormity of the crime, make it
15 worse or add to its injurious consequences. We had
16 requested that that just be changed to a factor that would
17 make somebody eligible for consideration for the death
18 penalty.

19 THE COURT: I understand your objection. It's noted.

20 MR. YOUNG: All right. Page 10, the first full
21 paragraph, the sentence reads, A mitigating circumstances
22 are neither a justification nor excuse for the murder: it
23 simply lessens the degree of one's guilt, that is makes
24 the Defendant less blameworthy or less culpable. We would
25 object to that language under Lockhead and Eddington,

1 limiting mitigation. And we request instead of a colon,
2 it just be a period and the rest of the sentence should be
3 struck.

4 THE COURT: I understand. The objection is noted.

5 MR. YOUNG: And then right before the final
6 instruction on Page 15, we would request an instruction
7 that the jury be reminded that no Juror should ever give
8 up their conscientiously held belief merely for the sake
9 of forming unanimity.

10 THE COURT: And my comment in-chambers was that I'm
11 going to decline to put that here. But if an Allen charge
12 comes around, then certainly that would be a portion of
13 that, that jurors resolve their differences, listen openly
14 and not abandon their moral belief if that's their choice.
15 I'm not going to give it here.

16 MR. YOUNG: I understand. And we had requested a
17 couple of additional instructions, that were not included,
18 which was an instruction regarding the ability of lay
19 witnesses to give opinions under Rule 701. We had
20 requested that nonstatutory mitigators be defined with the
21 eight categories that we had passed up to the Court and
22 the Court elected not to include in their instruction.

23 THE COURT: And my comment to that was, I thought it
24 was commenting on facts, so I didn't want to do that.

25 MR. YOUNG: Yes, sir. And we had requested an

1 instruction with regard to victim impact evidence as not
2 being aggravation, which the Court elected not to include
3 as well.

4 THE COURT: And, again, commenting on types of
5 evidence, to me, is commenting on the facts also. They
6 heard all the evidence. Whether it be direct,
7 circumstantial, character, aggravating, you don't have to
8 define all of them for the jury to consider all of them.
9 So, respectfully, I decline your recommendations and
10 changes.

11 MR. YOUNG: Thank you, Your Honor.

12 THE COURT: Mr. Graham?

13 MR. GRAHAM: One that we talked about during the
14 brief recess, Page 3 at the end of your jury charge, the
15 credibility of the witnesses, we asked for Your Honor to
16 include at the end, you must weigh the evidence using your
17 good judgment and commonsense. We would like the language
18 added in, your consideration of the character of the
19 Defendant and the circumstances of the crime that was
20 presented to you. And that's in response to the language
21 -- or the testimony that came in from the family members
22 about the effects on themselves. That's inappropriate
23 under Dickerson. We objected to it. It came in. And
24 that was a large part of the Defense argument. In
25 addition, Your Honor, I didn't have a chance to tell Your

1 Honor, up there on Page 10, this is going to be for the
2 same -- the exact same reason. This language comes out of
3 the jury charge from Judge Couch, I believe, in State v.
4 Cantrell, I think it's in Blackwell as well. We would ask
5 that in the first full sentence on Page 10, it is a
6 circumstance recognized under the law of South Carolina,
7 is one which in fairness and mercy on behalf of the
8 Defendant that may be considered. We asked for the
9 inclusion of on behalf of the Defendant, to limit the
10 words, mercy, is to be shown. In addition, on the bottom
11 of Page 12 --

12 THE COURT: Wait, wait, one more time. Go back to
13 10. The last sentence is --

14 MR. GRAHAM: The last sentence is --

15 THE COURT: We okay with that or not?

16 MR. GRAHAM: I was at the top of Page 10 in the first
17 paragraph that continues over.

18 THE COURT: Okay.

19 MR. GRAHAM: Is a circumstance recognized under the
20 laws of South Carolina as one which in fairness and mercy,
21 we would ask that you add on behalf of the Defendant, in
22 describing mercy. If the jury wants to consider -- and I
23 don't think it limits the improper Dickerson evidence that
24 came in. The jury can consider that as a mitigating
25 factor, the effect on the family. We objected to it

1 coming in, but it came in. But mercy is for the Defendant
2 and we'd like that clarified in your instructions.

3 THE COURT: So you want to say in fairness and mercy
4 to the Defendant or it may be considered?

5 MR. GRAHAM: We would like to add --

6 THE COURT: -- reference in the phrase.

7 MR. GRAHAM: -- the Defendant's mercy. And we'd ask
8 that you add on behalf of the Defendant, in describing
9 what mercy is.

10 THE COURT: Do y'all object to that?

11 MR. YOUNG: Yes.

12 THE COURT: That wasn't discussed at the table?

13 MR. YOUNG: It wasn't, and we would object to it.
14 Nothing improper came in and that's not what Dickerson
15 says.

16 THE COURT: I'm kind of inclined to leave it alone
17 because -- I understand the State's suggestion to it and
18 their concern over Dickerson testimony. I'm kind of
19 inclined to leave it alone. Leave it like it is.

20 MR. YOUNG: The holding in Dickerson was, it was not
21 an abuse of discretion to limit this particular question.
22 There's no holding about what's proper and what's
23 improper.

24 THE COURT: I'm going to leave my instruction like I
25 got it.

1 MR. GRAHAM: I understand Your Honor's ruling. I
2 would ask -- I understand you ruled against it, but the
3 same language on behalf of the Defendant being put into
4 the description of mercy on the bottom of Page 12.

5 THE COURT: I think reading that sentence as a whole,
6 the act of mercy is only to the Defendant. I mean, that's
7 what it suggest. So I'm going to leave it like that. The
8 objection is noted, the suggestions are noted. I'm going
9 to leave it like I got it. All right. We ready?

10 MR. YOUNG: Yes, sir.

11 THE COURT: All right. Bring in the jury.

12 (Whereupon, the jury came into open court at
13 approximately 12:00 p.m.)

14 THE COURT: All right, folks, lunch will be here
15 shortly. It may be already here, I don't know. Anyway,
16 let me give you my instructions, then like we did in the
17 first phase, I'll ask you to step in the jury room, all 14
18 of you. I'll ask the lawyers any exceptions and if
19 they're okay with. Joy and Whitney have a little more of
20 the evidence to organize. We've got to move that. So it
21 may be a good time after I send y'all back to start
22 eating, I don't know.

23 Ms. Miller, and ladies and gentlemen of the jury, it
24 now becomes your duty to decide what sentence that the
25 Court should impose upon the Defendant, Timothy R. Jones,

1 Jr. There are two verdicts for you to consider. One is
2 the death penalty and the other is life imprisonment
3 without the possibility of parole. Now, please understand
4 that I've got to discuss both verdicts with you and that
5 there's no indication from the Court which one that I
6 would decide. I've got to talk about both of them, so
7 there's no indication from me that I talk about one before
8 the other that I have any -- it's your decision. I have
9 to tell you about both of them.

10 Now, I'm going to give you a copy of these charges
11 just like I did in the first. So during your
12 deliberations you can refer to your instructions to guide
13 your decision making. You consider the instructions as a
14 whole and don't follow some of the instructions and ignore
15 others.

16 The Constitution of law makes you, the jury, as the
17 finders of facts and evidence, makes me as the Judge, the
18 sole and only instructor of the law. You must accept as
19 correct the law which I instruct and apply it to the
20 evidence as you find it and reach a verdict. If you have
21 a different understanding of what the law is, you must set
22 that aside and accept the law as I am now instructing you.
23 And in that regard, I tell you that neither you nor I
24 should be concerned about what we believe or what we think
25 the law ought to be, but only concern ourselves with the

1 law as I'm instructing it with what the facts to be at
2 this time.

3 Now, I want to explain to you exactly what the effect
4 of your sentence recommendation. Because the verdict form
5 will say the recommendation, will be for the Defendant,
6 Timothy Jones. I tell you that one possible sentence is
7 life without parole. And I mean exactly that, life
8 without parole. He will never be eligible for parole and
9 he will not be released from prison until his death.

10 Second, whatever sentence you recommend to the Court, it
11 is the sentence that I will impose. Because our statute
12 refers to your decision as a recommendation, I want to be
13 very clear. It is not a recommendation, but you normally
14 use that word, but y'all's recommendation will be carried
15 out. So whatever sentence you recommend, whether it be
16 life imprisonment without the possibility of parole or the
17 death penalty, will be followed by this Court.

18 Now, under the Constitution of the laws of South
19 Carolina, you, as a group, are the sole fact finders in
20 this case. And as such, as I instructed you in the first
21 phase, you're the judges of the credibility or the
22 believability of the witnesses who testified in the case.
23 As the only fact finders in this case, you should have
24 listened closely to the evidence presented. Weighing
25 evidence is entirely a mental process. You weigh the

1 evidence using your good judgment and your commonsense.

2 Again, you must determine the credibility of the
3 witnesses who have testified during this phase of the
4 case. Credibility is believability. It becomes your duty
5 as jurors to analyze and to evaluate the evidence and to
6 determine which evidence convinces you of its truth. So
7 in determining the believability of witnesses who have
8 testified, you can believe one witness over several,
9 several witnesses over one. You can believe part of a
10 witness' testimony and reject the remaining portion. You
11 can believe the testimony of a witness in its entirety or
12 you may reject the testimony of a witness in its entirety.
13 You may consider whether any witness has exhibited to you
14 any interest, bias, prejudice or another motive in this
15 case. You can also consider the manner and appearance of
16 a witness while on the witness stand.

17 As I instructed you in the first phase, there are two
18 types of evidence which are generally presented during
19 trials, direct evidence and circumstantial evidence.
20 Direct evidence proves the existence of a fact and does
21 not require any deduction. Circumstantial evidence is
22 proof of a chain of facts and circumstances indicating the
23 existence of another fact. Our law makes no distinction
24 to the weight or value to be given to either direct or
25 circumstantial evidence. You consider all the evidence

1 that's been presented to you, consider it into making your
2 verdict.

3 I remind you there are witnesses who testified in
4 this phase of the trial who were qualified as experts.
5 Our rules of evidence normally do not allow people --
6 permit witnesses to testify as to opinions and
7 conclusions. An exception to that rule is for witnesses
8 we call expert witnesses. They, by cause of education and
9 experience, have become an expert in art or science,
10 profession may give opinions as to the subject matter they
11 claim to be an expert opinion in that field. They may
12 also give their reasons for these opinions. So you should
13 consider any expert opinion given by any expert witness,
14 and like any other evidence, give it the weight you deem
15 appropriate and you believe it deserves. If you decide
16 that an expert witness' opinion is not based -- I'm sorry,
17 if you decide the reasons given in support of the opinion
18 are not sound or the opinion is outweighed by other
19 evidence, you may disregard the opinion entirely. An
20 expert witness' testimony is to be given no greater weight
21 than that of other witnesses simply because the witness is
22 an expert. You do not have to accept an expert's opinion
23 even though it's not contradicted.

24 Now, I instruct you that a vital and basic rule -- I
25 instructed you in the first phase of this exact thing

1 again. The person who is on trial in a criminal case is
2 not required to testify in their own behalf. Furthermore,
3 it's not a factor which may be considered by any one of
4 you in any way, shape or form or fashion during your
5 deliberations. It must not be considered by any one of
6 you in any manner whatsoever in determining whether life
7 imprisonment without parole or the death penalty is the
8 appropriate punishment. It is not even proper for any one
9 of you to mention the fact that Mr. Jones chose to not
10 testify or present during the sentencing phase of this
11 case, just as it wasn't proper for you to discuss it
12 during the first phase.

13 You've also heard testimony and a stipulation
14 regarding the prior record of Mr. Jones. You're not to
15 consider that prior record in any way in your
16 determination as to whether an aggravating factor has been
17 proven by the State. The State must prove independently
18 that the Defendant has committed an aggravating factor
19 beyond a reasonable doubt. And the fact that Mr. Jones
20 has a prior conviction should not be considered in your
21 deliberations as to whether the State has proven the
22 statutory aggravator beyond a reasonable doubt. It may be
23 considered only as a part of the Defendant's
24 characteristics.

25 Now, as members of the jury, first decision y'all

1 have got to make, kind of steps to go through. As you
2 begin your deliberations, you've got to determine whether
3 Timothy Jones is eligible to be sentenced to death. So
4 according to our law, the Defendant is eligible to be
5 sentenced to death only if you unanimously find the State
6 has presented evidence sufficient to prove beyond a
7 reasonable doubt the existence of a statutory aggravating
8 factor. So that means, before you can consider the
9 appropriate punishment, life or death, you must decide
10 first whether the State's proven a statutory aggravating
11 factor circumstance beyond a reasonable doubt.

12 I define for you that a statutory aggravating factor
13 is a fact, an incident, a detail or an occurrence that our
14 State legislature has declared to be a circumstance that
15 makes worse or aggravates the offense of murder. It is
16 something that is deemed by law to increase the enormity
17 of the crime, to make it worse and add or adds to the
18 injurious consequences of the offense of murder.

19 The statutory aggravating circumstances propounded by
20 the State for you to consider in this case are one: Two
21 or more persons were murdered by the Defendant by one act,
22 pursuant to one scheme or course of conduct. The other is
23 the murder of a child 11 years or younger.

24 Now, I must emphasize that these are the only
25 circumstances you can consider as aggravating factors in

1 this case. If you cannot unanimously agree that the State
2 has proven at least one of those aggravating circumstances
3 beyond a reasonable doubt, you would proceed no further in
4 your deliberations. That's because the Defendant may not
5 be sentenced to death unless a jury unanimously decides
6 the State has proven beyond a reasonable doubt that an
7 aggravating circumstance exist.

8 I remind you, the term beyond a reasonable doubt
9 means the kind of doubt that would cause a reasonable
10 person to hesitate to act. I also tell you that
11 reasonable doubt may arise from evidence which is in the
12 case or from the lack or absence of evidence in this case.
13 Reasonable doubt is a doubt which one can assign a reason
14 if the assignment can be done reasonably, firmly and
15 convincingly. A reasonable doubt is the kind of doubt
16 that would make a reasonable, conscientious and honest
17 person hesitate to act in a matter important to his or her
18 own affairs. If you unanimously decide that the State has
19 proven at least one of the statutory aggravating
20 circumstances beyond a reasonable doubt, then and only
21 then may you proceed with your deliberations to consider
22 whether a life without parole sentence is appropriate or a
23 death sentence is the most appropriate punishment for Mr.
24 Jones.

25 Now, if you determine an aggravating factor has been

1 proven by the State beyond a reasonable doubt, you may
2 proceed to decide whether to recommend that Timothy Jones
3 is to receive a life without the possibility of parole
4 sentence or the death sentence. I instruct you that even
5 if you find the presence of at least one statutory
6 aggravating circumstance, you must remain openminded as to
7 the appropriate punishment to impose. And that the
8 finding of an aggravating circumstance does not create the
9 presumption that you should impose the death penalty. The
10 death penalty is only an option. It is not a requirement.
11 It is never mandatory for you to impose that sentence.
12 Our law requires that you give meaningful consideration
13 not only to the aggravating circumstances but also to
14 mitigating circumstances which the evidence shows.

15 I instruct you that in a Capital murder case, you
16 must consider mitigating circumstances. There are two
17 types of mitigating circumstances. There are statutory
18 mitigating circumstances and nonstatutory mitigating
19 circumstances. A statutory mitigating circumstance is a
20 fact, an incident, a detail or an occurrence which the
21 South Carolina Legislature has declared by statute would
22 reduce the severity of the offense of murder. It is a
23 circumstance recognized under the laws of South Carolina
24 as one, which in fairness and mercy, may be considered by
25 the jury to determine the sentence. A mitigating

1 circumstance is neither a justification nor an excuse for
2 the murder. It simply lessens the degree of one's guilt,
3 that is makes the Defendant less blameworthy or less
4 culpable.

5 The list of statutory mitigating factors enacted by
6 the General Assembly under our Code of Law appropriate in
7 this case are as follows: One, the murder was committed
8 while the Defendant was under the influence of mental or
9 emotional disturbance; two, the capacity of the Defendant
10 to appreciate the criminality of his conduct or to conform
11 his conduct to the requirements of the law was
12 substantially impaired; the age or mentality of the
13 Defendant at the time of the crime; four, the Defendant
14 has no significant history of prior criminal conviction
15 involving the use of violence against another person.

16 You must also consider any nonstatutory mitigating
17 circumstances. A nonstatutory mitigating circumstance is
18 one which is not provided for by statute, but is one which
19 serves the same purpose. And that is a fact or
20 circumstance of the crime or any aspect of the character
21 or history of the Defendant that tends to show that he
22 should be sentenced to life imprisonment without the
23 possibility of parole rather than death.

24 A mitigating factor can be anything, any single
25 factor that you, any Juror, determined to be a mitigating

1 circumstance. I remind you, also, it's not necessary for
2 you to find the existence of any mitigating circumstances
3 unanimously nor beyond a reasonable doubt. Each of you
4 are free to find the existence of mitigating circumstances
5 based upon any evidence that has been presented to you
6 during this trial, even if no one mentioned that a certain
7 fact amounted to a mitigating circumstance.

8 I instruct you that Mr. Jones does not bear the
9 burden of proving any mitigating evidence or factors.
10 Because I remind you, the jury does not have to
11 unanimously agree on any mitigating circumstances or
12 factors. The jurors are allowed and can find separate
13 mitigating factors. Each Juror is free to give whatever
14 weight he or she feels appropriate to any aggravating or
15 mitigating circumstances.

16 In considering these factors, you simply don't count
17 the number of aggravating factors and then count the
18 number of mitigating factors like a math question. It is
19 not that. Our law requires each individual Juror to
20 decide, based upon his or her own life experiences whether
21 life imprisonment or the death penalty is the appropriate
22 punishment in that juror's own mind. Each Juror is free
23 to give such consideration as he or she deems appropriate
24 to all of the circumstances in the case.

25 I also instruct you that the existence of a statutory

1 or nonstatutory mitigating circumstance or both is not an
2 automatic ban to the imposition of the death penalty. It
3 is for you to consider in your determination of the
4 appropriate sentence for Mr. Jones. It is also
5 permissible for a Juror to decide that life without parole
6 is the appropriate punishment for any reason or for no
7 reason at all. You're not required to make a finding that
8 the mitigating factors outnumber the aggravating factors.
9 You are free to impose a sentence of life without parole
10 for absolutely no reason, even if you find the existence
11 of aggravating circumstances and find no mitigating
12 circumstances. This is what's traditionally been referred
13 to as a sentence based upon mercy. In other words, you
14 may choose to recommend a life imprisonment without the
15 possibility of parole if you find a statutory or
16 nonstatutory circumstances or you choose to recommend life
17 of imprisonment as an act of mercy.

18 I remind you, also, that -- y'all have taken notes
19 during the trial and your notes are the same, allowed in
20 this case as they were in the earlier phase. Your notes
21 should be used only to aid your memory. They should not
22 be allowed to take precedence over any other independent
23 memory of facts or testimony. The notes are only for the
24 juror's personal use in refreshing his or her recollection
25 of the evidence. When in deliberations, commence shortly,

1 do not rely on the recollection of a Juror who took notes
2 about the testimony solely because that Juror took notes.
3 You should not be unduly influenced by the notes of any
4 other jurors. Sometimes notes can be wrong. Notes are
5 not entitled to any greater weight than each juror's
6 memory of the evidence or testimony presented. Those
7 jurors who did not take notes should rely on their
8 independent recollection of the evidence and not be
9 influenced by any other factors of other jurors who may
10 have taken notes. A note taker's notes do not trump a
11 good listener's memory. Every Juror, whether they're a
12 note taker or whether a listener, has a separate vote to
13 the verdict.

14 Now, we've got the verdict forms, I'll show you. And
15 the first one deals with the resolution or consideration
16 of the statutory aggravating factor first. That's form
17 one. That will be considered first. You must unanimously
18 conclude that one or more of the aggravating circumstances
19 has been proven beyond a reasonable doubt. Then you
20 designate which circumstance, or aggravating circumstances
21 were found. There's a couple of lines there to write
22 those. So if the jury unanimously decides an aggravating
23 factor has been proven beyond a reasonable doubt, you will
24 write that aggravating factor there. If you find
25 unanimously that an aggravating factor was not proven,

1 that will be where you check that box. If you don't
2 resolve whether an aggravating factor was found or not,
3 you will check that box. Now, if you find that one of the
4 statutory aggravating circumstances was proven by the
5 State, you move to the next page. And there are two
6 pages. And that's which punishment you conclude to be the
7 most appropriate, life without parole or the death
8 penalty. If you unanimously decide that life imprisonment
9 without the possibility of parole is the proper sentence,
10 then the Foreperson will sign that form. If you find that
11 -- that form is signed, your deliberations come to an end
12 upon reaching that finding. However, if you unanimously
13 decide that the death penalty is the proper sentence, then
14 that form designating that recommendation should be signed
15 by each Juror. That form should only be signed if the
16 jury unanimously finds that the punishment of the death
17 penalty should be handed down and recommended to the
18 Court. Now, I, again, remind you there's no significance
19 to the order which I've presented the two verdict forms.
20 You'll have both of them if you find the aggravating
21 factor.

22 Now, in considering whether to recommend whether the
23 Defendant should be sentenced to death or life, I charge
24 you that as jurors that you must decide the issue involved
25 in this proceeding without bias, without prejudice to

1 either party, to any party. Y'all have been elected and
2 selected as fair and impartial jurors, sworn to
3 impartially try and determine the facts in this case. And
4 when you comply with that oath to do that, no one will
5 have the right to criticize your verdict. You will have
6 fully discharged your duty as jurors by doing so. You're
7 to decide this case according to the testimony that you
8 have heard from the sworn witnesses, along with the other
9 evidence which has been introduced during this trial. You
10 cannot allow yourself to be governed by prejudice,
11 passion, public opinion or any other arbitrary factors.
12 As I told, you during the jury qualification, I want
13 y'all, as a group, to make your decision based on what you
14 hear in here and not outside influences. Now, the State
15 and the Defense both have the right to expect that each of
16 you will carefully and impartially consider all the
17 evidence in this case and you will follow the law as I
18 have instructed it.

19 All right. I want y'all to step in the jury room,
20 all 14 of you. I'm going to make certain the evidence is
21 consistent, discuss my instructions with the lawyers. You
22 cannot begin discussing the case until we bring the
23 verdict forms to you and the evidence to you. If lunch is
24 here and y'all want to start eating, all 14 of you, you
25 may do so. But once the deliberations begin, I will pull

1 the two alternates out. So y'all step in the jury room.
2 If I need you back in here, I'll call you back in here for
3 further instructions.

4 (WHEREUPON, the jury was excused from the courtroom
5 at approximately 12:24 p.m.)

6 THE COURT: All right, any exceptions to the
7 instructions. What was printed, removed about the
8 expert's opinion and sufficient education and experience,
9 I didn't read that. I didn't read it in the first phase.
10 I wanted to delete it before I used this form because that
11 was not presented. I don't want that on my copy, it was
12 struck through. That is one change I made while reading
13 it. Other than that, what else do you have, Mr. Young?

14 MR. YOUNG: Just the same previous objections.

15 THE COURT: Mr. Graham?

16 MR. GRAHAM: When you were describing the statutory
17 aggravating circumstances, how to fill out the form. It
18 doesn't address the three options, it only talks about
19 two.

20 THE COURT: I did, didn't I?

21 MR. GRAHAM: You did orally, but you're going to pass
22 these back to them.

23 THE COURT: Oh, okay.

24 MR. YOUNG: I think it's self-explanatory.

25 THE COURT: I kind of think it is, too, but if they

1 need further instructions --

2 MR. GRAHAM: I was just bringing it to the Court's
3 attention.

4 THE COURT: Okay. I did forget to tell them if they
5 had any questions to write them down.

6 MR. GRAHAM: The only other thing I would add is back
7 in-chambers, number 15, it says you cannot allow yourself
8 to be governed by prejudice, by passion, by public opinion
9 or any other arbitrary factors. Sympathy was in there and
10 the Defense requested that that be removed and you
11 complied with that request.

12 THE COURT: Yes, I did. Sympathy was not in there.
13 All right. Those objections are noted. I'm going to
14 leave them alone. Whitney, if you will take that sentence
15 out and reprint it.

16 MR. YOUNG: Your Honor, may I add just our shortened
17 categories to what we made a Court's Exhibit of our
18 request to charge, which included the 221 specifics. We
19 shortened it to eight categories. We would like to attach
20 the eight categories to --

21 THE COURT: -- your request to charge?

22 MR. YOUNG: -- our request to charge.

23 THE COURT: Sure. We can do that.

24 MR. MADSEN: Can we go ahead and start --

25 THE COURT: Yeah, you can give it a look. All right.

1 We'll stand at ease.

2 (WHEREUPON, a short recess was taken while Attorneys
3 and Court Reporter go over the exhibits.)

4 (WHEREUPON, the jury begins deliberations at
5 approximately 1:00 p.m.)

6 (Whereupon, at approxiamtely 1:15 the Jury sent out a
7 note stating, Can we please have the computer to
8 listen to the phone conversation.)

9 (Whereupon, a lunch break was taken while the Jury
10 deliberated.)

11 THE COURT: The jury sent a note that says they've
12 reached a verdict, it's unanimous. I'm going to bring
13 them in here momentarily. I want everybody, both sides,
14 the entire courtroom to be aware, this Jury has a lot to
15 decide, very important decision to make. I don't want any
16 show of emotions, good or bad, in favor or against to
17 insult or offend these jurors. If you're not going to be
18 able to maintain yourself calmly and appropriately, please
19 step out now. There's no reason for us to disrespect this
20 jury in any fashion whatsoever because we made them come
21 in here and make this decision in this trial. They were
22 not volunteers. So if anybody can't maintain their
23 composure and respect this jury for the decision they had
24 to make, please step out now. Everybody going to be able
25 to behave? All right. Bring in the jury, please.

1 (WHEREUPON, the jury came into the courtroom with the
2 verdict at approximately 3:03 p.m.)

3 THE COURT: Ms. Miller, has the jury reached a
4 verdict?

5 THE FOREPERSON: Yes.

6 THE COURT: Your note indicated it was unanimous.
7 Was it unanimous?

8 THE FOREPERSON: Yes.

9 THE COURT: Will you please hand it to Agent Remion.
10 The verdict forms appear to be signed consistent with my
11 instructions. Madam Clerk.

12 THE CLERK: As to indictment 2015-GS-32-0188, 0189,
13 0190, 0191, 0195, the State vs. Timothy Ray Jones, Jr.
14 We, the jury, unanimously agree on the existence of an
15 aggravating circumstance. Two or more persons were
16 murdered by the Defendant by act or pursuant to one scheme
17 or course of conduct in the murder of a small child under
18 the age of eleven or younger. It is so signed by the
19 Foreperson.

20 We, the jury, in the above entitled case have found
21 beyond a reasonable doubt the existence of the following
22 statutory aggravating circumstances, to-wit: Two or more
23 persons were murdered by the Defendant by an act or
24 pursuant to one scheme or course of conduct in the murder
25 of five children eleven years of age or younger.

1 Now recommend to the Court that the Defendant,
2 Timothy R. Jones, Jr., be sentenced to death. It is
3 signed by the Foreperson and all Jurors this 13th day of
4 June, 2019.

5 THE COURT: I'd ask that the mics be cut off. I
6 don't want any publication of the jurors. So Madam Clerk,
7 will you so inquire of the jurors?

8 THE CLERK: Juror No. 473, Whitten, is this your
9 sentence?

10 THE JUROR: Yes, ma'am.

11 THE CLERK: Is this still your sentence?

12 THE JUROR: Yes, ma'am.

13 THE CLERK: Juror 339, Prescott, is this your
14 sentence?

15 THE JUROR: Yes.

16 THE CLERK: Is this still your sentence?

17 THE JUROR: Yes.

18 THE CLERK: 166, Gore, is this your sentence?

19 THE JUROR: Yes.

20 THE CLERK: Is this still your sentence?

21 THE JUROR: Yes.

22 THE CLERK: 231, Kent, is this your sentence?

23 THE JUROR: Yes.

24 THE CLERK: Is this still your sentence?

25 THE JUROR: Yes.

1 THE CLERK: 293, Miller --
2 THE JUROR: Yes.
3 THE CLERK: Is this your sentence?
4 THE JUROR: Yes.
5 THE CLERK: Is this still your sentence?
6 THE JUROR: Yes.
7 THE CLERK: 247, Lewis, is this your sentence?
8 THE JUROR: Yes.
9 THE CLERK: Is this still your sentence?
10 THE JUROR: Yes.
11 THE CLERK: 272, Mason, is this your sentence?
12 THE JUROR: Yes.
13 THE CLERK: Is this still your sentence?
14 THE JUROR: Yes.
15 THE CLERK: 329, Pham, is this your sentence?
16 THE JUROR: Yes.
17 THE CLERK: Is this still your sentence?
18 THE JUROR: Yes.
19 THE CLERK: 241, Addison --
20 THE JUROR: Yes.
21 THE CLERK: Is this your sentence?
22 THE JUROR: Yes.
23 THE CLERK: Is this still your sentence?
24 THE JUROR: Yes.
25 THE CLERK: 314, Nixon, is this your sentence?

1 THE JUROR: Yes.

2 THE CLERK: Is this still your sentence?

3 THE JUROR: Yes.

4 THE CLERK: 96, Clark, is this your sentence?

5 THE JUROR: Yes.

6 THE CLERK: Is this still your sentence?

7 THE JUROR: Yes.

8 THE CLERK: 156, Gantt, is this your sentence?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Is this still your sentence?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: All the jurors are polled.

13 THE COURT: Very well. Any further issues for the
14 jury?

15 MR. YOUNG: No, Your Honor.

16 THE COURT: I want everybody to remain here. I want
17 to excuse the jury. I'd like to speak to them
18 momentarily. And I'll be back in the courtroom in just a
19 few minutes. Stand at ease.

20 (WHEREUPON, the jury is excused from the courtroom at
21 approximately 3:10 p.m.)

22 (WHEREUPON, a break was taken.)

23 THE COURT: Mr. Young, do you want to make your
24 motions now and wait on the publication of the sentence or
25 do you want to wait until after?

1 MR. YOUNG: I'm happy to make them now.

2 THE COURT: Okay.

3 MR. YOUNG: Your Honor, we'd move to set aside the
4 verdict, not an exclusive list, but including based on the
5 fact that we believe that the jury was overcome by passion
6 off the record by the use of the autopsy photographs in
7 the jury room as evidenced by the penalty phase verdict in
8 less than two hours after five weeks of testimony. We
9 would also move to set aside the verdict based on the
10 unconstitutional limitations of mitigation evidence,
11 including but not exclusively excluding the testimony of
12 remorse from Mr. Sowards regarding whether or not he could
13 see tears on Mr. Jones; excluding the testimony of Dr.
14 Flores; allowing the State to use Dr. Frierson and Dr.
15 Kruse outside of the determination of criminal
16 responsibility; not granting the motion of a new trial
17 based on the errors revealed in Dr. Kruse's testing; not
18 allowing witnesses to fully testify about their life
19 history. We would renew all previous motions and
20 objections.

21 THE COURT: You want me to rule on those individually
22 or can I do them as a group? And you know as well as I
23 do, setting aside a jury verdict is almost -- a unanimous
24 verdict in any phase, Courts are very reluctant to set
25 aside any verdict unanimously reached by a jury. I

1 understand all your grounds, but I respectfully deny your
2 motion for a new trial. I'll rule on them individually if
3 you'd like.

4 MR. YOUNG: No, sir.

5 THE COURT: All right. Anything else?

6 MR. YOUNG: I apologize, Your Honor. I would request
7 individual rulings on our grounds.

8 THE COURT: All right. Will you hand them up to me?

9 MR. YOUNG: Yes, sir.

10 THE COURT: All right. Regarding the Defense motion
11 for a new trial, the introduction of autopsy photographs
12 to the jury, the Court respectfully denies that motion for
13 a new trial. Regarding the unconstitutional limitations
14 placed on mitigation evidence, respectfully, the Court
15 would deny that motion for a new trial. Regarding the
16 exclusion of certain testimony of remorse and tears from
17 Deputy Sowards, the Court likewise, denies that motion for
18 a new trial. Regarding exclusion of testimony of Dr.
19 Flores, which would be encounter to Dr. Kruse's testimony,
20 the Court would respectfully deny that motion for a new
21 trial. Regarding the State's use of Dr. Frierson and Dr.
22 Kruse's reports in the determination of criminal
23 responsibility and in the sentencing phase, the Court
24 would respectfully deny that motion for a new trial. And
25 regarding the alleged errors in Dr. Kruse's testimony, the

1 Court would respectfully deny a motion for a new trial to
2 that end. Regarding not allowing witnesses testify to a
3 full mitigation evidence of a life history of the family,
4 the Court will respectfully deny that motion on that
5 basis. All other previous motions are also consistently
6 ruled again as denied. Are y'all ready for the sentence?

7 MR. YOUNG: Yes, sir.

8 THE COURT: The Defendant, Timothy R. Jones, has been
9 found guilty by a jury of his peers of the offense of
10 murder. The jury has recommended the Defendant should be
11 sentenced to death. It is therefore the judgment, the law
12 and the sentence of the Court, the Defendant, Timothy R.
13 Jones, Jr., be taken to the South Carolina Department of
14 Corrections, henceforth, to be kept in close and safe
15 confinement until the 30th day of November 2019, upon
16 which date between the hours of 6:00 p.m. and 6:00 a.m. or
17 upon an order of execution issued by the State Supreme
18 Court of South Carolina, the Defendant, Timothy R. Jones,
19 shall suffer death by electrocution or by lethal injection
20 in a manner consistent as provided for by the law of South
21 Carolina. Signed today by me, Eugene Griffith, Jr., as
22 presiding Judge, June 13th, 2019.

23 (WHEREUPON, a bench conference was held.)

24 THE COURT: There's another supplemental report the
25 lawyers have made me aware that we need to sign and

1 publish, likewise. We will do that momentarily.

2 (Whereupon, a short break was taken.)

3 (Whereupon, a bench conference was held with the
4 Court and Court Reporter as stated below.)

5 THE COURT: The Court put on the record that there
6 were no less than three lawyers presenting the case during
7 the trial, no less than three lawyers presenting the case
8 from the Defense. Most days during the trial, there was
9 additional lawyers, particularly on the Defense side,
10 including an additional lawyer at trial Counsel table as
11 well as one to two lawyers from the Office of Appellate
12 Defense. The State, upon realizing that, also asked for a
13 lawyer from the Attorney General Appellate review. So
14 during the majority of the trial, there were an average of
15 seven to eight lawyers at both Counsel -- not at both
16 Counsel -- between each Counsel table presenting to the
17 Court throughout the trial. It seemed like a lot to me.

18 (Whereupon, a short break was taken.)

19 THE COURT: This is a form I'm reading off of my law
20 Clerk's report that's being printed momentarily. I'll
21 sign it. It's entitled, Death Penalty Sentencing Report.
22 It shows trial Judge being Eugene C. Griffith, Jr. The
23 Defendant being Timothy R. Jones, Jr. Defense attorneys,
24 Boyd Young, Rob Madsen, Casey Secor. Date of sentence,
25 June 13th, 2019. The aggravating circumstances found were

1 attached to the verdict form; also, two or more persons
2 murdered by the Defendant in an act pursuant to one common
3 scheme, and he murdered five children, ages eleven years
4 or younger. I will sign that and date it today. Now,
5 that's on the record and that's the additional report.

6 If there's another report we have to sign, certainly,
7 we can reconvene and do that at either side's request.
8 I'm not certain there's anything else. Anybody is aware
9 of something after we adjourn today, please advise me as
10 promptly as you can. As soon as that's printed off, I
11 will sign it. Anything else?

12 MR. YOUNG: No, sir.

13 THE COURT: All right. The record is closed.

14 MR. HUBBARD: I didn't know if there's anything you
15 need to say about no arbitrary facts or anything like
16 that?

17 THE COURT: I don't think I do.

18 MR. HUBBARD: Okay. Can we, at least, have that on
19 the record?

20 THE COURT: Sure. If the Court is required to make a
21 finding. The Court will make a finding that the verdict
22 of the jury was not a result of any arbitrary or
23 capricious facts, evidence or otherwise. The verdict was
24 unanimous and consistent with the instructions of the
25 Court. All twelve jurors signed the verdict forms and

1 reaffirmed their verdicts orally.

2 MR. HUBBARD: One other thing I would ask is that
3 it's nor disproportionate to other sentences, it's not
4 disproportionate to the offense.

5 THE COURT: Consistent with the fact, the Court would
6 make a finding it's not disproportionate to the
7 convictions found by the jury in the guilt/innocence phase
8 of five deaths.

9 MR. HUBBARD: Thank you, Judge.

10 THE COURT: All right. Now, the record is closed.

11 (Whereupon, Court's Exhibits 77, 81, 82, 86, 107, 126
12 through 130 were marked for identification only.)

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Lexington, South
14 Carolina on the days of April 29th through June 13, 2019.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 February 17, 2020
1920 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

State of South Carolina)
) Court of General Sessions
County of Lexington)

2015-GS-32-0188, 0189,
0190, 0191, 0195

State of South Carolina)
 vs.) Transcript of Record
)
Timothy Ray Jones, Jr.)
)
 Defendant)

December 13, 2017
Newberry, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

A P P E A R A N C E S:

Deputy Solicitor Suzanne Mayes
Deputy Solicitor Shawn Graham
Attorneys for the State

Boyd Young, Esq.
Robert Madsen, Esq.
Attorneys for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

(IC) - Denotes In Camera
(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Adam Creech

Direct examination by Ms. Mayes:	7
Cross-examination by Mr. Madsen:	20
Cross-examination by Mr. Young:	30
Redirect examination by Ms. Mayes:	33
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(SW) Gaile Heath

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E X H I B I T SCourt's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Affidavit	X		11
2	Photo Handwriting	X		35
3	Search Warrant	X		42

1 THE COURT: Okay y'all, the attorneys, talked yet
2 about who, which motions would be the most sufficient for
3 us to hear first, second. Have y'all discussed that?

4 MR. YOUNG: Yes, sir.

5 THE COURT: Okay.

6 MR. GRAHAM: Your Honor, if you have no purposes then
7 we were going to start with the Schmerber motion. We have
8 two witnesses here on that. And then after that we would
9 like to do the motion regarding, let's see, the second and
10 third which has to do with searches of the cell at the
11 jail. We have Christy Bigelow and Deputy, General Counsel
12 with the SCDC. And that way we can at least get them back
13 on the road and out of here.

14 THE COURT: Okay. That sound sufficient for y'all?

15 MR. MADSEN: Yes, sir.

16 THE COURT: Okay.

17 MR. MADSEN: And I don't know what they are talking
18 about, the jail cell search motion other than a--

19 MS. MAYES: I am sorry?

20 THE COURT: They are not aware of what the jail cell
21 search issue is.

22 MR. GRAHAM: Their second and third motion has to do
23 with, the way I interpret it and I guess part of the
24 problem is we don't know exactly what they are looking for
25 on those.

1 THE COURT: It's y'all's motion.

2 (Whereupon, the Court approaches Mr. Jones.)

3 THE COURT: Before we get started I want you to know,
4 my name is Eugene Griffith and I was assigned by the Chief
5 Justice to hear your case. So it is assigned to me and I
6 want to introduce myself to you. I have met everybody
7 else but you so good morning and we will get started.

8 (Whereupon, the Court is seated at the Bench.)

9 THE COURT: So y'all know the conversations that I
10 had with law enforcement with Newberry County and from
11 Lexington County. We discussed in-chambers last week the
12 shackles and/or the belt that Mr. Jones will be allowed,
13 not be allowed or required to wear. And I always defer to
14 law enforcement, depending on what they deem appropriate.
15 And I am informed that Mr. Jones behaved very peacefully
16 throughout his incarceration, did not give anybody any
17 trouble. And I expect him to continue to do that. It is
18 my understanding that law enforcement, supervisors are
19 comfortable with the belt that is underneath the clothing,
20 they can accommodate further hearings with the presence of
21 that, that he would be allowed to have his feet not
22 shackled. And so it would be my hope that we could make
23 arrangements for that best to kind of follow us in here
24 and in Lexington, have it there. And if there is any
25 other hearing in Newberry, if that happens, or where ever,

1 we would make that accommodation if at all possible. I
2 spoke to the Lieutenant about that, and I spoke to the
3 Captain about that, for today's hearing we are going to
4 leave the shackles on him. On further hearings we will
5 try to accommodate with the belt. I am familiar with it.
6 Y'all might remember, we had some case that was not a
7 Capital case and my Law Clerk tried the belt on and it was
8 quite comical. He thought they were going to get him but
9 it was very, a very comfortable thing and you could not
10 see it under the clothes. And I think it is a very
11 appropriate security device. Everybody know Ms. Joy
12 Holston, she is my Court Reporter. She is generally
13 assigned to me, I don't think she is going to be with us
14 at trial, probably get somebody from Lexington. But if
15 you need something from Joy she will be glad to get it but
16 if y'all start talking over one another you are on your
17 own. Fair enough. All right. First motion, Ms. Mayes,
18 it looks like you are standing up.

19 MS. MAYES: May it please the Court, Your Honor. We
20 don't have a copy of the Lexington Clerk of Court's file
21 here in this courtroom. That is, of course, with the
22 Clerk of Court there. So I am going to resubmit to both
23 Your Honor and your Law Clerk a copy of the State's motion
24 for collection of suspect standards. If I may approach.

25 THE COURT: I have an electronic copy of it.

1 MS. MAYES: Your Honor, the State is prepared to call
2 our first witness on this matter. That would be Sergeant
3 Adam Creech.

4 THE COURT: Come forward and I will place you under
5 oath.

6 Adam Creech, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Ms. Mayes:

10 Q Sergeant Creech, we will need you to speak up. Let
11 me start by asking you, where are you employed and in what
12 capacity?

13 A I am employed with the Lexington County Sheriffs
14 Department as a Major Crime Sergeant.

15 Q All right. And specifically what is your role in
16 this investigation, the State of South Carolina versus
17 Timothy Ray Jones, Jr.?

18 A The lead investigator and case officer in this
19 investigation.

20 Q When did you first become involved in this case, that
21 originally involved five missing children?

22 A I was first assigned the missing person's report for
23 this case, I believe it was September 4th or September
24 5th, 2014.

25 Q And ultimately were you notified when the Defendant,

1 Timothy Ray Jones, was located in the State of Mississippi
2 pursuant to a traffic stop?

3 A I was. I was contacted in reference to the NCIC
4 located on him and I made phone contact with Sheriff Marty
5 Patterson who was out at the traffic stop.

6 Q And what was that date?

7 A That was September 6th, 2014.

8 Q And did you travel to the State of Mississippi as a
9 result of getting that notification that he had been
10 detained?

11 A I did.

12 Q And what was the date in which you arrived in
13 Mississippi?

14 A I arrived on the evening of September 8th, 2014.

15 Q Ultimately, Sergeant Creech, were you present when
16 the bodies of the five child victims in this case were
17 recovered?

18 A I was.

19 Q And that was in what State?

20 A It was in the State of Alabama.

21 Q And ultimately who lead you to the location of the
22 children's bodies?

23 A The Defendant, Timothy Ray Jones, Jr., did.

24 Q You were present with that?

25 A I was.

1 Q Can you tell us whether or not you personally
2 observed the Cadillac Escalade registered to the
3 Defendant?

4 A I did.

5 Q And in what State did you first or originally observe
6 that SUV, Cadillac Escalade?

7 A I first saw it the evening of September 8th, 2014,
8 where it was stored in Mississippi. And it was after he
9 had been processed by the Mississippi Bureau of
10 Investigations. But it was still consistent with its
11 condition when they first got out with the vehicle on
12 September 6th.

13 Q All right. And when you say, consistent with its
14 condition, were you close enough to the vehicle to observe
15 any type of odor?

16 A I was.

17 Q And what, if anything, did you observe about that?

18 A It was a very, very strong odor consistent with
19 decomposition.

20 Q And do you know whether or not there were any
21 suspicious types of fluids located in that vehicle?

22 A There were. They had removed a number of cuttings
23 from the vehicle but there was still quite a bit of stains
24 readily visible throughout the vehicle.

25 Q Sergeant Creech, did you prepare an affidavit in this

1 case?

2 A I did.

3 Q And that affidavit was prepared in support of the
4 State's motion here for collection of suspect standard
5 from the Defendant, Timothy Ray Jones, Jr.?

6 A It was.

7 Q Does that include his oral swab or buccal swab for
8 the purposes of DNA analysis?

9 A It does.

10 Q Does that include a motion for handwriting samples
11 from Mr. Jones?

12 A It does.

13 Q Do you have a copy of that with you?

14 A I do.

15 Q Let me show you an item and ask you whether or not
16 you recognize it?

17 A I do recognize this as the affidavit in question.

18 Q All right. And whose signature is on the affidavit?

19 A That would be my signature.

20 Q And to the best of your knowledge, Sergeant Creech,
21 are the facts or assertions in this affidavit true and
22 correct?

23 A They are.

24 Q Does it contain any attachments along with your
25 motion, with your affidavit in support of this motion?

1 A It does.

2 Q And specifically what are those attachments?

3 A Number of SLED DNA reports, and documents in
4 reference to the handwriting analysis.

5 Q And which divisions within the State Law Enforcement
6 Division are these reports generated, from which division?

7 A The Forensics Services Laboratory and, I believe they
8 both would be Forensics Services Laboratory.

9 Q All right. Can you tell us whether or not any items
10 were submitted for handwriting analysis to the Question
11 Document Division?

12 A They were.

13 Q And for analysis at serology and DNA?

14 A They were.

15 Q Have you received a report from the State Law
16 Enforcement Division from those departments within the
17 State Law Enforcement Division?

18 A I have received reports from both of the departments.

19 MS. MAYES: Your Honor, at this time we would have
20 Sergeant Creech's affidavit and the attached SLED report
21 marked as a Court's exhibit.

22 THE COURT: For this hearing it will be marked a
23 Court's exhibit.

24 (Whereupon, Court's Exhibit 1 was marked for
25 identification only.)

1 MS. MAYES: Your Honor, if I may approach.

2 THE COURT: You may.

3 Q Sergeant Creech, the items that you have with you,
4 are they a fair and accurate representation both of your
5 affidavit and those SLED reports from the Question
6 Documents Division?

7 A They are.

8 Q And from the Serology Analysis Division?

9 A They are.

10 Q And from the DNA Department at SLED?

11 A They are.

12 Q I am going to start, Sergeant Creech, by asking you
13 to read your affidavit into the record. And I ask that
14 you read slowly so that the Court Reporter can document
15 your testimony.

16 A That Timothy Ray Jones, Jr., was arrested on
17 September 11th, 2014 for the crimes of murder, five counts
18 involving the deaths of his five minor children. Merah
19 Jones, age 8; Elias Jones, age 7; Nahtahn Jones, age 6;
20 Gabriel Jones, age 2; and Abigail Jones, age 1. The
21 children resided at the family home of the Defendant
22 located at [REDACTED] South Lake Drive in the Lexington County,
23 in Lexington County, South Carolina. The children were
24 last known to be alive while in the care of the Defendant
25 at this address. That Timothy Ray Jones, Jr., was

1 lawfully detained by law enforcement authorities on
2 September 6th, 2014 at the safety checkpoint in Smith
3 County Mississippi on suspicion of DUI, narcotics
4 violations. The Defendant subsequently provided consent
5 searches to his Cadillac Escalade Sport Utility vehicle.
6 Law enforcement officers located drug paraphernalia and a
7 green leafy substance inside the vehicle.

8 Q I need you to slow down.

9 A Okay, sorry.

10 COURT REPORTER: Go back to the Escalade.

11 THE COURT: You want a copy to follow along. Do
12 y'all have an extra copy for the Court Reporter to follow
13 along?

14 MS. MAYES: Yes, we do, Your Honor.

15 A The Defendant subsequently provided consent to search
16 his Cadillac Escalade Sport Utility vehicle. Law
17 enforcement officers located drug paraphernalia and a
18 green leafy substance inside the vehicle. Law enforcement
19 officers at the scene also noted a strong foul odor
20 emanating from the vehicle. The search of the vehicle
21 resulted in the observation, what appeared to be blood
22 stains and bleach spots in the black, back floorboard
23 area. Once detained Timothy Ray Jones, Jr., waived his
24 Miranda rights and voluntarily participated in an
25 interview on September 8th, 2014 with law enforcement

1 authorities including Lexington County Sheriffs
2 Departement; Detective Adam Creech. Timothy Ray Jones,
3 Jr., ultimately admitted to strangulation of the four
4 child victims. The Defendant stated that all five
5 children died in Lexington County and that he subsequently
6 stored their bodies in his Cadillac Escalade vehicle as he
7 left South Carolina and traveled to the State of Alabama.
8 The Defendant ultimately assisted law enforcement
9 authorities in the location and recovery of the bodies of
10 all five children in Wilcox County, Alabama. During a
11 lawful search and inventory of the contents of the
12 Defendant's vehicle by the Mississippi Bureau of
13 Investigation, MBI, a handwritten note was found in which
14 details of the murders were addressed. Specifically the
15 handwritten document contains notations such as melt
16 bodies, sand bones to dust and dissolve and discard. The
17 aforementioned handwritten note was recovered as evidence
18 from the Defendant's vehicle and submitted to the South
19 Carolina Law Enforcement Division, SLED Lab number 1, SLED
20 Lab number, L14-11541 for handwriting analysis. SLED
21 Forensic Scientist, Gaile Heath subsequently requested
22 exact text known standards from Timothy Ray Jones, Jr., in
23 order to complete the handwriting analysis on this case.
24 That a buccal swab, oral swab was collected from Timothy
25 Ray Jones, Jr., on or about September 7th, 2014 pursuant

1 to a search warrant executed by law enforcement officers
2 in Smith County, Mississippi. The buccal swab standards
3 of Timothy Ray Jones, Jr., were submitted to the South
4 Carolina Law Enforcement Division, SLED Lab Number
5 L1411541 for comparison analysis to blood and DNA evidence
6 recovered from the vehicle, the crime scene and autopsies
7 of all five victims. The results of the aforementioned
8 DNA testing are documented in SLED reports previously
9 issued by SLED DNA Forensic Scientist, Stephanie Stanley.
10 The buccal swab of Timothy Ray Jones, Jr. is material and
11 necessary in the prosecution of this case to establish the
12 identity of the five children, child victims and to
13 accurately identify the contributors of multiple blood
14 stains and DNA evidence recovered in this case. The
15 findings of SLED DNA Analyst including Stephanie Stanley
16 and Forensic Serologist, Berrona Herrara are material and
17 probative in establishing proof of these crimes.
18 Furthermore, SLED DNA report, L1411541 dated March 21st,
19 2017 confirms that evidence recovered from the Defendant's
20 vehicle consistent with blood or biological matter are DNA
21 match to multiple child victims in this case. The buccal
22 swab of Timothy Ray Jones, Jr., was collected by officers
23 in the State of Mississippi and ultimately the requisite
24 chain-of-custody will involve law enforcement officers
25 from out-of-state who must travel to South Carolina for

1 the trial of this case. The reasons including judicial
2 economy, the State requests that additional buccal swabs
3 be collected from the Defendant by a local law enforcement
4 officer who will be available as a witness at trial
5 without the unduly burdensome expense of travel,
6 scheduling arrangements and accommodations. The method
7 used to secure the aforementioned oral swab from the
8 Defendant are medically safe and reliable in the taking of
9 said samples are reasonable and justifiable and not overly
10 intrusive.

11 Q And the last paragraph?

12 A I hereby affirm that the aforementioned assertions of
13 fact are true and correct to the best of my knowledge.

14 Q Now, you mentioned items that have been submitted to
15 the State Law enforcement Division, do you know if that
16 Cadillac Escalade belonging to Mr. Jones was processed for
17 evidence?

18 A It was.

19 Q Were evidence items recovered and submitted to the
20 State Lab?

21 A Yes. The vehicle itself was not processed by SLED
22 but material removed from the vehicle was sent to SLED.
23 The original material such as cuttings from the vehicle
24 were first collected by the Mississippi Bureau of
25 Investigation.

1 Q And in addition, can you tell us whether or not the
2 body bags in which the children were found also contained
3 evidence items?

4 A They did.

5 Q And have those evidence items also been submitted to
6 the State Lab?

7 A Those have been sent to SLED.

8 Q Now, for purposes of today's hearing who would
9 actually collect the oral swab from Mr. Jones?

10 A I would collect that oral swab.

11 Q And are you familiar with the process?

12 A I am.

13 Q Can you tell us if it is medically safe?

14 A It is entirely safe.

15 Q Can you tell us if it is scientifically reliable, in
16 other words, whether DNA can be obtained from the cheek
17 area?

18 A It can.

19 Q Can you tell us if it is generally non-invasive?

20 A It is very non-invasive.

21 Q Do you expect it to result in any type of medical
22 injury to Mr. Jones?

23 A I do not.

24 Q And then are you already intended to be a witness in
25 this case as the lead investigator, Sergeant Creech?

1 A I will be.

2 Q So you are a witness who is already intending and
3 scheduled to testify in the potential trial?

4 A That is correct.

5 Q Other than yourself and someone affiliated with the
6 Lexington County Sheriffs Department evidence room, do you
7 expect any additional witnesses to be in this
8 chain-of-custody?

9 A I do not.

10 Q Other than witnesses inside the lab at the State Law
11 Enforcement Division?

12 A That is correct.

13 Q Do you live in Lexington County?

14 A I do.

15 Q Now, in addition to that are you familiar with the
16 process of selecting handwriting samples?

17 A Broadly, yes.

18 Q Okay. Is that safe and reliable to your knowledge?

19 A It is.

20 MR. MADSEN: They put two different sections in the
21 same motion. One dealing with the DNA, one dealing with
22 the exemplars. Our intent is that I would end up handling
23 the DNA because it is a separate issue. And Mr. Young
24 will end up handling the handwriting samples. It might be
25 easier, since she is apparently done with the DNA, if I

1 can complete my cross-examination now.

2 THE COURT: Do you have a problem with that, Ms.
3 Mayes?

4 MS. MAYES: I don't think I am going much further in
5 this area, but I am still under direct with Sergeant
6 Creech. There are a few more items that we need to
7 address.

8 THE COURT: Okay. You don't mind, normally it is one
9 lawyer, one lawyer. They want to make certain you are
10 aware that they didn't anticipate having the items
11 combined. They want to make certain they have the ability
12 to handle those issues separately.

13 MS. MAYES: Absolutely, no objection.

14 THE COURT: Okay.

15 MR. MADSEN: Okay.

16 Q Approximately how many items have already been tested
17 by the State Law Enforcement Division, Sergeant Creech?

18 A I don't recall the exact number but it is well over
19 one-hundred items.

20 Q Well over one-hundred items. Now, in addition to
21 those, are there still several, four or five still
22 undergoing analysis?

23 A That is correct.

24 Q And can you tell us whether or not parentage, meaning
25 paternity, of the children, is that something that the

1 State Law Enforcement Division can determine?

2 A They can.

3 Q Can you tell us whether or not a buccal swab from
4 Timothy Jones would lead to the determination of
5 parentage?

6 A It would.

7 Q Can you tell us whether or not it would assist in
8 either including him or excluding him as a contributor of
9 the blood identified in this case?

10 A It would be able to do so.

11 Q Multiple items of blood, whether from the vehicle or
12 from the body bag?

13 A Yes.

14 Q Or from clothing or bedding?

15 A Exactly, that's correct.

16 Q And just to clarify, in a case like this where there
17 may be a mixture of blood or a mixture of DNA, does the
18 buccal swab from the Defendant aid in that type of
19 situation?

20 A It does.

21 Q Either including or excluding?

22 A It does.

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

24 THE COURT: Mr. Madsen.

25 CROSS-EXAMINATION

1 By Mr. Madsen:

2 Q Detective Creech, you signed the affidavit for the
3 hearing today, for this hearing, correct, that you read
4 in?

5 A That is correct.

6 Q And you did that on Tuesday?

7 A That is correct.

8 Q And you testified that you prepared it?

9 A That is correct.

10 Q Did you write it?

11 A I was assisted by Assistant Solicitor Mayes in
12 preparing the document.

13 Q Did she write it or did you write it?

14 A She wrote it with my input.

15 Q Did you type it up or did she type it up?

16 A She typed it up.

17 Q So basically all you did was sign it?

18 A Well, I signed it but I was consulted on the details
19 in the affidavit as well.

20 Q And then all of the stuff that you have testified
21 that you want to get from Tim you already have, that
22 testing has already been done by SLED, correct?

23 A It has.

24 Q And so are you already in the chain-of-custody?

25 A Not with the existing buccal swabs, I am not.

1 Q Not with the existing buccal swabs but with the
2 evidence that it was tested against, are you in the
3 chain-of-custody for that?

4 A No, I am not in the chain-of-custody for those items.

5 Q So someone brought that back from Mississippi to
6 Lexington County?

7 A That is correct.

8 Q And who was that?

9 A Depending on the items, there is a number of, our
10 former crime scene investigators are involved. Former CSI
11 Glen Ross was involved; former CSI with SLED, Brittany
12 Burke was involved; and then former CSI who is still
13 employed with Lexington County, Keith Sprinkle was
14 involved in collecting some of those items.

15 Q So they went with you to Mississippi and brought
16 those items back?

17 A Yes.

18 Q Did they collect those items in Mississippi or did
19 officers or someone associated with law enforcement in
20 Mississippi collect those items?

21 A Kind of a complex question I will try to address.
22 So, items, the vehicles and the items from the vehicle
23 were initially collected by authorities in Mississippi.
24 The Mississippi Bureau of Investigation handled all of the
25 initial processing of the vehicle. The body, the bags the

1 bodies were located and the bodies themselves were
2 recovered jointly by CSI Ross and CSI Burke with SLED.

3 Q So there is a number of items that you are going to
4 have to have witnesses from Mississippi come back for
5 anyway to try to introduce those items, correct?

6 A That is correct.

7 Q And as the case agent on this, you have a full
8 chain-of-custody of all the pieces of evidence?

9 A That is correct.

10 Q There was a buccal swab collected from Tim, I
11 believe, September 7th of 2014 in Mississippi by
12 Mississippi law enforcement?

13 A That is correct.

14 Q Who was that collected by?

15 A I don't have that information with me today, I would
16 have to consult the file.

17 Q Do you know who received the search warrant that led
18 to the collection of that buccal swab?

19 A I know the search warrant is in the file but it is
20 information I didn't review prior to today's hearing so I
21 don't want to misspeak on behalf of what is in that file.

22 Q Do you know in Mississippi who is involved in that
23 chain-of-custody for that buccal swab?

24 A Again, I would have to review the search because it
25 was, the Smith County Sheriffs Department and the

1 Mississippi Bureau of Investigation working hand-in-hand
2 and I don't want to misspeak and say one or the other did
3 it. But they were working together.

4 Q But as far as you know it could be just one person
5 that has to come back that has collected that--

6 A --it could be but I don't know that it is the same
7 person who may have been involved, the evidence collection
8 down there.

9 Q Well, I guess that kind of confuses me because your
10 affidavit said it would be unduly burdensome and you have
11 no idea what the chain-of-custody is or who it is, but yet
12 somehow that is unduly burdensome. I guess that confuses
13 me, could you explain that?

14 A Well, there were, almost the entire Smith County
15 Sheriffs Department had some involvement in this case and
16 about six of their members of the Mississippi Bureau of
17 Investigations, so obviously we know there are certain
18 members of those respective agencies that have got to come
19 up. But obviously we don't want to bring three or four
20 people to have to testify to the exact same thing. One
21 person can fulfill that need and if the buccal swab is
22 something that we can redo up here, obviously it would
23 prevent us, whoever is in that chain-of-custody for that
24 buccal swab. And if it is just one person we don't have
25 to bring that one person up for the buccal swab.

1 Q But you have no idea if it is just person or multiple
2 people so you have no idea how tough it is to bring that
3 one person back or if it is several people?

4 A Without looking in the file I can't answer that
5 question.

6 Q So you have no idea what the expense of travel is
7 going to be. You have no idea how difficult the
8 scheduling arrangements would be or the getting of
9 accommodations for that person, do you?

10 A No, not offhand, no, I do not.

11 Q Give me an idea, roundabout, how many sheriffs office
12 employees are there in Lexington?

13 A In Lexington, total employees?

14 Q For the sheriffs department.

15 A If I had to guess, probably about 400, 450.

16 Q So hundreds of people?

17 A Yes.

18 Q A budget I am going to guess in the millions of
19 dollars?

20 A Budgetary, I would assume so.

21 Q And y'all have had to secure out-of-state witnesses
22 before, have you not?

23 A I would assume we have, this would be the first time
24 I have encountered this in a case I was involved with.

25 Q And someone has made the scheduling arrangements or