

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Jul 30 2021

Appeal from Lexington County

S.C. SUPREME COURT

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001008

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

SUSAN B. HACKETT
Appellate Defender

DONALD J. ZELENKA
Deputy Attorney General

DAVID ALEXANDER
Appellate Defender

MELODY J. BROWN
Senior Assistant Deputy Attorney General

LARA M. CAUDY
Appellate Defender

TOMMY EVANS, JR.
Assistant Attorney General

TAYLOR D. GILLIAM
Appellate Defender

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

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

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

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR APPELLANT

INDEX**VOLUME I**

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

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

April 30, 2019

QUALIFYING OF JURORS INDIVIDUALLY

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

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

May 1, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL LONG (JUROR #256)	
Examination by the Court	370
Juror Disqualified by the Court.....	383

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

RENEWED MOTION FOR A CHANGE OF VENUE	447

COURT'S RULING DENYING MOTION	448

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

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

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

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

VOLUME II

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JAMES PRESCOTT (JUROR #339)	
Examination by the Court	501
Direct Examination by Mr. McGuire.....	521
Cross-examination by Ms. Mayes.....	533
Juror Qualified by the Court	535
MARTHA EDWARDS (JUROR #135)	
Examination by the Court	549
Juror Disqualified by the Court.....	562
KANDY THIVIERGE (JUROR #432)	
Examination by the Court	563
Juror Disqualified by the Court.....	574
ARTHUR CHAVIS (JUROR #91)	
Examination by the Court	575
Direct Examination by Mr. Young	592
Cross-examination by Mr. Graham.....	602
Juror Qualified by the Court	604
SARA RUSSO (JUROR #368)	
Examination by the Court	605
Juror Disqualified by the Court.....	617

May 2, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KRISTIANA MCGILL (JUROR #24)	
Examination by the Court	618
Direct Examination by Mr. Young	636
Cross-examination by Mr. Graham.....	653
Juror Disqualified by the Court.....	658
RENEWED MOTION TO INFORM JURY OF THE CONSEQUENCES OF A NOT GUILTY BY REASON OF INSANITY VERDICT	663
COURT'S RULING DENYING MOTION	664

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PAUL JENNINGS (JUROR #219)

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

TAMIKA SUMMERS (JUROR #421)

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

KEITH SHIREY (JUROR #393)

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

RENEWED MOTION FOR A CHANGE OF VENUE	723

COURT'S RULING DENYING MOTION	723

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

PHILLIP SMITH (JUROR #405)

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

CONRAD GORE (JUROR #166)

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

DANIEL HALL (JUROR #172)

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

LAURA NIELSON (JUROR #312)

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

KELLY STONE (JUROR #416)

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

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

May 3, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

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

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

VOLUME III

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

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

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

May 6, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

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

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

RACHNA PRASAD (JUROR #338)

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

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

RACHNA PRASAD (JUROR #338) CONTINUED

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

SHARON LINDLER (JUROR #249)

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

JEFFREY LONG (JUROR #254)

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

EMILY ATKINS (JUROR #19)

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

TOSHIA ADDISON (JUROR #241)

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

EDGARDO ALVIRA (JUROR #10)

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

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

May 7, 2019

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

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

VOLUME IV

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

JUDY NIXON (JUROR #314) (CONTINUED)

Juror Qualified by the Court	1501

TONI CLARK (JUROR #96)

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

NATHAN CHAPMAN (JUROR #89)

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

DORIS TAYLOR (JUROR #426)

Examination by the Court	1565
Juror Disqualified by the Court	1567

ZACHARY GANTT (JUROR #156)

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

BARBARA HOWELL-STEVENSON (JUROR #199)

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

RICHARD GENTLE (JUROR #159)

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

TONYA SASSER (JUROR #372)

Examination by the Court	1647
Juror Disqualified by the Court	1649

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

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

May 8, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KAREN PEREZ (JUROR #326) (CONTINUED)

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

JASON SMITH (JUROR #402)

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

LASHONDA ROBERTS (JUROR #355)

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

KAYLA BURGESS (JUROR #65)

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

DONNIE BLACKMON (JUROR #39)

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

DAWN APPEGATE (JUROR #14)

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

VOLUME V

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

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

DAWN APPEGATE (JUROR #14) (CONTINUED)

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

ROGER SANDY (JUROR #370)

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

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

WENDY ALLISON (JUROR #8)

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

LINDA SMITH (JUROR #403)

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

May 9, 2019

QUALIFYING OF JURORS INDIVIDUALLY (CONTINUED)

KIMBERLY HUGHES (JUROR #200)

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

CHRISTOPHER ROCKER (JUROR #357)

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

JOSEPH NEELEY (JUROR #305)

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

SUSAN WATSON (JUROR #461)

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

TIMOTHY BELAY (JUROR #34)

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

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

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

May 13, 2019

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

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

May 14, 2019

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

DR. TRAVIS SNYDER

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

VOLUME VI

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

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

DR. TRAVIS SNYDER

Re-direct Examination by Mr. Young	2507

TESTIMONY (IN CAMERA)

DR. TRAVIS SNYDER

Examination by Mr. Young	2512

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

DR. TRAVIS SNYDER

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

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

LT. JESSIE LAINTZ (IN CAMERA)

Direct Examination by Ms. Mayes	2519

ARGUMENT BY MR. SECOR 2526

ARGUMENT BY MS. MAYES.....2529

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

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

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

COURT’S RULING DENYING MOTION	2547

GUILT PHASE OF TRIAL

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

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

MOTION FOR A MISTRIAL	2573

COURT’S RULING DENYING MOTION	2573

May 15, 2019

TESTIMONY

JAN WISE

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

JANET RICARD

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

JIM MCCONNELL

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

CHRISTINA EHLKE

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

LIEUTENANT JESSE LAINTZ

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

LINDA WATKINS

Direct Examination by Mr. Hubbard	2723

CHARLES JOHNSON

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

JAMIE MCCLELLAN

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

MARTY PATTERSON

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

May 16, 2019

TESTIMONY CONTINUED

STACY JONES

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

ERIC JOHNSON

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

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

2973

PROFFERED TESTIMONY

ERIC JOHNSON (IN CAMERA)

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

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

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

May 17, 2019

TESTIMONY CONTINUED

CHARLIE CRUMPTON	
Direct Examination by Mr. Hubbard	2986

VOLUME VII

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

TESTIMONY CONTINUED

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

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

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

PROFFERED TESTIMONY

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

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

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

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

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

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

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

MARTY LONGSHORE	
Direct Examination by Ms. Mayes	3088

PROFFERED TESTIMONY

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

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

BRITTANY PICKLE	
Direct Examination by Mr. Graham	3146

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

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

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

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

TESTIMONY CONTINUED

DR. JANICE ROSS

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

SHELBY DERRICK

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

MOTION TO PROHIBIT THE STATE FROM MAKING
POTENTIAL PCR ISSUE ARGUMENTS

3275

COURT'S RULING DENYING MOTION	3276

TESTIMONY CONTINUED

SHELBY DERRICK (CONTINUED)

Cross-examination by Mr. Young (Continued)	3276

CANDY KYZER

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

BRITT DOVE

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

AMBER KYZER

Direct Examination by Ms. Mayes	3294

MOTION FOR A MISTRIAL	3334

COURT'S RULING DENYING MOTION	3337

RENEWED MOTION FOR A MISTRIAL	3342

COURT'S RULING DENYING MOTION	3342

TESTIMONY CONTINUED

AMBER KYZER (CONTINUED)

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

HEATHER CLARY

Direct Examination by Mr. Graham	3352

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

DR. JONATHAN LIPMAN

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

TESTIMONY (IN THE PRESENCE OF THE JURY)

CYNTHIA BOBE

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

VICKIE ROBERTS

Direct Examination by Mr. Graham	3461

JACKSON V. DENNO HEARING (IN CAMERA)

TESTIMONY

TRAVIS PRESSLEY

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

DEFENSE TESTIMONY

BENJAMIN BOYD

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

ARGUMENT BY MR. HUBBARD	3484

ARGUMENT BY MR. YOUNG.....	3484

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

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

VOLUME VIII

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

TESTIMONY CONTINUED

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

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

TESTIMONY CONTINUED

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

May 22, 2019

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

TESTIMONY CONTINUED

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

THE STATE RESTS	3612

MOTION FOR A DIRECTED VERDICT.....	3612

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

DEFENSE CASE

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

PROFFERED TESTIMONY

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

PROFFERED TESTIMONY

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

May 23, 2019

DEFENSE TESTIMONY CONTINUED

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

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

ERIC BRENTON SANDREAMELI

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

MICAH SUTTON

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

DR. APRIL HAMES

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

STATE'S MOTION TO EXCLUDE VIDEOTAPED

TESTIMONY OF CYNTHIA TURNER	3920

May 24, 2019

COURT'S RULING GRANTING STATE'S MOTION

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

DEFENSE TESTIMONY CONTINUED

DR. ERIN BIGLER

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

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	3978

ARGUMENTS ON PROPOSED LIMITATIONS

ON DEFENSE TESTIMONY	3991

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

COURT'S RULING LIMITING THE

TESTIMONY OF ROBERTA THORNSBERRY	4005

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY

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

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

COURT’S RULING GRANTING MOTION	4055

DEFENSE TESTIMONY CONTINUED

BRIAN TRAVIS

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

May 28, 2019

DEFENSE TESTIMONY CONTINUED

PRESENTATION OF PRE-RECORDED TESTIMONY

OF DR. JONATHAN LIPMAN	4101

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

COURT DEFERS RULING	4104

DEFENSE TESTIMONY CONTINUED

SHERRY HENRY

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

PROFFERED TESTIMONY

KIMBERLY FENDER (IN CAMERA)

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

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

KIMBERLY FENDER

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

BRANTLEY BROKAW

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

BRICE MANKOWSKI

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

TODD SCHELLING

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

JAIMEET ANEJA

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

May 29, 2019

DEFENSE TESTIMONY CONTINUED

JODIE DURNEY

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

RUBY DURNEY

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

CHRYSTAL BALLENTINE

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

SANDRA BLACK

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

JOY LORICK

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

CAROLYN WILLIFORD

Direct Examination by Mr. Secor	4325

PROFFERED TESTIMONY

CAROLYN WILLIFORD (IN CAMERA)

Direct Examination by Mr. Secor	4347

COURT'S RULING ALLOWING DEFENDANT'S
EXHIBIT #262, BUT DENYING ADMISSION OF

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

CAROLYN WILLIFORD (CONTINUED)

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

TIMOTHY JONES, SR.

Direct Examination by Mr. Secor	4363

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	4415

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR. (CONTINUED)

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

PROFFERED TESTIMONY

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

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

May 30, 2019

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

VOLUME X

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

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

STATE’S MOTION TO EXCLUDE TESTIMONY OF BETHANY YEISER	4505

PROFFERED TESTIMONY

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

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON Direct Examination by Mr. Young	4544

LIMITING INSTRUCTION BY COURT.....	4544

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

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

PROFFERED TESTIMONY

DR. RICHARD FRIERSON (IN CAMERA)

Direct Examination by Mr. Young 4602

MOTION FOR A MISTRIAL 4604

COURT'S RULING DENYING MOTION 4605

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. RICHARD FRIERSON (CONTINUED)

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

Re-direct Examination by Mr. Young 4705

MOTION TO RECONSIDER RULING TO

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

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

May 31, 2019

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. BEVERLY WOOD

Direct Examination by Mr. Young 4715

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

Re-direct Examination by Mr. Young 4753

DR. JULIE DORNEY

Direct Examination by Mr. Young 4755

PROFFERED TESTIMONY

DR. JULIE DORNEY (IN CAMERA)

Direct Examination by Mr. Young 4765

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

Re-direct Examination by Mr. Young 4770

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

DR. JULIE DORNEY (CONTINUED)

Direct Examination by Mr. Young (Continued) 4773

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

Re-direct Examination by Mr. Young 4888

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

June 3, 2019

REPLY TESTIMONY

DR. KIMBERLY KRUSE

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

VOLUME XI

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

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

COURT’S RULING DENYING REQUEST FOR JURY INSTRUCTION	5053

JURY CHARGE	5053

RENEWED OBJECTIONS TO REFUSAL TO GIVE REQUESTED JURY INSTRUCTIONS	5073

RENEWED DENIAL OF REQUEST TO CHARGE	5073

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

COLLOQUY REGARDING BLU-RAY PLAYER	5076

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

June 4, 2019

DEFENSE MOTION FOR A MISTRIAL	5083

COURT’S RULING DENYING MISTRIAL MOTION	5085

CONTINUED COLLOQUY PERTAINING TO EXHIBITS VIEWED DURING DELIBERATION	5086

RENEWED DEFENSE MOTION FOR A MISTRIAL	5095

COURT’S RULING DENYING RENEWED MISTRIAL MOTION	5095

JURY VERDICT	5097

POLLING OF THE JURY	5097

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

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

COURT EXPLAINS TWENTY-FOUR HOUR WAITING PERIOD TO JURY	5103

June 5, 2019

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

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

RESPONSE BY COUNSEL BUTLER	5111

COURT DEFERS RULING ON MOTION	5112

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

COURT DEFERS RULING	5125

DEFENSE MOTION TO EXCLUDE POST-MORTEM PHOTOGRAPHS OF VICTIMS	5126

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

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

RENEWED OBJECTION TO THE COURT’S RULING	5147

DEFENSE MOTION TO EXCLUDE AUTOPSY PHOTOGRAPHS	5148

COURT’S RULING ALLOWING AUTOPSY PHOTOGRAPHS	5156

June 6, 2019

PENALTY PHASE OF TRIAL

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

OPENING STATEMENT BY MR. YOUNG	5167

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

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

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

COURT’S RULING DENYING MOTION FOR A LIMITING INSTRUCTION	5176

TESTIMONY

DAVE LAWRENCE Direct Examination by Mr. Hubbard	5178

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

DISCUSSION OF JUROR’S REACTION TO PHOTOGRAPHS	5199

COURT’S RULING DENYING DEFENSE MOTION FOR A MISTRIAL	5204

TESTIMONY CONTINUED

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

SHELBY DERRICK Direct Examination by Mr. Graham	5213

DR. JANICE ROSS Direct Examination by Mr. Hubbard	5222

JANET RICARD Direct Examination by Ms. Mayes	5232

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

PROFFERED TESTIMONY

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

ARGUMENT PERTAINING TO PROFFERED TESTIMONY	5249

COURT’S RULING ALLOWING TESTIMONY	5251

TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

JANET RICARD CONTINUED

Direct Examination by Ms. Mayes (Continued)	5254
Cross-examination by Mr. Madsen	5264

JOY LORICK

Direct Examination by Ms. Mayes	5266
Cross-examination by Mr. Young	5274

JURY EXCUSED FOR THE DAY	5276

DEFENSE MOTION THAT AUTOPSY PHOTOGRAPHS BE VIEWED IN OPEN COURT	5276

STATE’S OPPOSITION TO THE DEFENSE MOTION	5277

COURT DEFERS RULING ON MOTION	5278

June 7, 2019

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

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

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

TESTIMONY CONTINUED

JACQUELYN MORAN

Direct Examination by Ms. Mayes	5281
Cross-examination by Mr. Madsen	5297

JOHNATHAN STONE

Direct Examination by Mr. Hubbard	5298

AMY SHEARER

Direct Examination by Ms. Mayes	5319

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

June 10, 2019

DEFENSE TESTIMONY CONTINUED

DR. DONNA MADDOX

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

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

DISCUSSION OF ROBERTA THORNSBERRY EVIDENCE	5431

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERT BRANNON

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

RONALD ROGERS

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

ROBERTA THORNSBERRY

Direct Examination by Mr. Secor	5452

PROFFERED TESTIMONY

ROBERTA THORNSBERRY (IN CAMERA)

Direct Examination by Mr. Secor	5453

ARGUMENTS PERTAINING TO LIMITATIONS ON THE TESTIMONY OF ROBERTA THORNSBERRY	5457

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

OBJECTION TO THE COURT’S RULING	5463

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

ROBERTA THORNSBERRY (CONTINUED)

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

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

PROFFERED TESTIMONY

TIMOTHY JONES, SR. (IN CAMERA)

Direct Examination by Mr. Secor	5493

VOLUME XII

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

DEFENSE TESTIMONY CONTINUED (IN THE PRESENCE OF THE JURY)

TIMOTHY JONES, SR.

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

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

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

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

PROFFERED TESTIMONY

DEBORAH GREY (IN CAMERA)

Direct Examination by Mr. Secor	5543

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

June 11, 2019

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

AMBER KYZER

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

DEBORAH GREY (CONTINUED)

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

June 12, 2019

DEFENSE TESTIMONY CONTINUED

DEBORAH GREY (CONTINUED)

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

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

COURT’S RULING EXCLUDING THE TESTIMONY OF CYNTHIA TURNER	5821

DEFENSE TESTIMONY CONTINUED

JULIE JONES

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

TYLER JONES

Direct Examination by Mr. Young	5850

TRAVIS JONES

Direct Examination by Mr. Secor	5859

JACKIE RANGEL

Direct Examination by Mr. Secor	5869

THE DEFENSE RESTS	5886

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

DEFENSE RENEWS ALL PREVIOUS MOTIONS	5889

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

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

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

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

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

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

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

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

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

PROFFERED TESTIMONY

DR. WANDA FOGLIA

Direct Examination by Mr. Young 6314

END OF PROFFERED TESTIMONY 6420

MOTION FOR DEFENDANT TO BE TRANSFERRED

TO LEXINGTON COUNTY DETENTION CENTER PENDING TRIAL 6421

COURT’S RULING GRANTING MOTION 6421

COURT’S RULING ON HOW IT WILL

PRODUCE A JURY QUESTIONNAIRE.....6426

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

TESTIMONY

DR. RICHARD FRIERSON

Examination by the Court 6437

COLLOQUY REGARDING DR. FRIERSON

EVALUATING DEFENDANT.....6439

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. RICHARD FRIERSON (CONTINUED)

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

Direct Examination by Mr. Young 6444

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

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

Re-direct Examination by Mr. Young 6454

COLLOQUY WITH DEFENDANT REGARDING

TESTIMONY OF DR. BRAWLEY 6458

TESTIMONY CONTINUED (WITHOUT DEFENDANT PRESENT)

DR. TORA BRAWLEY

Direct Examination by Mr. Young 6459

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

COURT’S RULING DECLINING TO

LIMIT TESTING BY DR. FRIERSON 6469

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

COURT’S RULING ON DISCLOSURE OF TESTING RESULTS	6480

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

COURT’S RULING GRANTING MOTION	6482

FURTHER DISCUSSION OF JURY QUESTIONNAIRE	6485

VOLUME XIV

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

MOTION FOR PERSONAL SERVICE ON ALL RETURNED JURY QUESTIONNAIRES	6512

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

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

COURT’S RULING DENYING MOTION	6516

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

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

MOTION THAT ALTERNATE JURORS NOT BE IDENTIFIED AS ALTERNATES	6519

COURT’S RULING GRANTING MOTION	6520

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

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

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

TESTIMONY CONTINUED

ROBERT WAYNE THOMPSON

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

MARTY PATTERSON

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

ARGUMENT BY MS. MAYES.....	6735

ARGUMENT BY MR. MCGUIRE.....	6738

ARGUMENT BY MR. HUBBARD.....	6743

REPLY ARGUMENT BY MR. MCGUIRE	6745

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

MOTION TO SUPPRESS USE OF DEFENDANT’S PERSONALITY TESTING	6753

COURT DEFERS RULING	6754

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

COURT DEFERS RULING	6758

March 12, 2019

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

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

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

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

TESTIMONY

JAMIE MCCLELLAN

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

ARGUMENT BY MR. YOUNG.....	6796

ARGUMENT BY MR. HUBBARD.....	6796

REPLY ARGUMENT BY MR. YOUNG	6802

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

TESTIMONY CONTINUED

MARTY PATTERSON

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

ERIC JOHNSON

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

THE STATE RESTS	6947

March 13, 2019

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

DEFENSE TESTIMONY

TIMOTHY JONES, SR. (CALLED OUT OF ORDER)

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

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

COURT’S RULING RENEWING HIS GRANT OF THE MOTION	6999

VOLUME XV

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

DEFENSE TESTIMONY CONTINUED

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

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

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

March 14, 2019

MOTION TO CHANGE VENUE DUE TO PRETRIAL PUBLICITY	7148

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

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

REPLY TESTIMONY

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

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

ADAM CREECH (RECALLED)

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

March 19, 2019

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

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

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

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

COURT'S RULING ADMITTING STATEMENT	7283

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

COURT'S RULING ADMITTING STATEMENT	7300

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

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

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

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

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

COURT'S RULING ADMITTING STATEMENT	7345

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

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

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

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

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

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

WRITTEN EXHIBITS, MOTIONS, AND DOCUMENTS

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

VOLUME XVI

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

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

VOLUME XVII

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

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

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

THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

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

1 hearings, it is not for all of the proceedings.

2 MR. MONK: Okay.

3 THE COURT: Once the trial commences and the jury
4 selection commences it is open hearing.

5 MR. MONK: How will we be notified for the next
6 opening hearing, open hearing to be held.

7 THE COURT: I believe jury's are being summoned on
8 the 29th and that is when everything commences.

9 MR. MONK: And is there a trial date that has been
10 set that is a matter of public record?

11 THE COURT: I am doing my best to manage the jury in
12 Lexington County. The more that is said the more it makes
13 that difficult. The 29th is when the jurors are suppose
14 to be here. If I can't get a jury from Lexington County
15 then we have got to do something else.

16 MR. MONK: That is the 29th of March?

17 THE COURT: April.

18 MR. MONK: April.

19 THE COURT: So it would be very helpful if those
20 jurors come in to court, I can't tell you what to do, it
21 sure would be helpful if all of them didn't get scared
22 that they may be put on the jury. I don't know their
23 names, I don't care their names, I want fair jurors. I
24 don't want jurors that have a inkling of anything across
25 the spectrum and that is my concern. I don't get

1 volunteers to be on jurors.

2 MR. MONK: Right.

3 THE COURT: They are involuntarily appearing.

4 MR. MONK: And with all respect and not to argue, I
5 will note that the voir dire is intended to take care of
6 locating prejudices of jurors.

7 THE COURT: Yes sir, but--

8 MR. MONK: --just noting that, Your Honor.

9 THE COURT: I am aware of everything and more.

10 MR. MONK: But do you wish me to leave, is that the
11 request of the prosecution also?

12 THE COURT: No the Defense ask for that. I granted
13 that motion.

14 MR. MONK: I don't see Mr. Hubbard to protest.

15 MR. HUBBARD: The Solicitor does not challenge the
16 Court.

17 MR. MONK: Thank you, sir.

18 MR. YOUNG: Judge, just to be consistent. I know
19 that there are other people in the courtroom who are not
20 subpoenaed witnesses. I don't know if they are, I don't
21 know if you are a member of the Solicitor's staff or not.

22 MR. HUBBARD: Everybody over here is law enforcement.
23 Everybody over here I am comfortable with as far as my
24 duty to the Court and to your client.

25 MR. YOUNG: They are all good, they are all under the

1 Gag order.

2 MR. HUBBARD: Everybody in the entire agency in
3 Lexington County is under the Gag order, everybody in this
4 courtroom is under the Gag order.

5 THE COURT: Is there anybody here who does not work
6 for Sheriff Koon or Sheriff Culbertson?

7 MR. HUBBARD: Yes sir, we have a FBI agent and of
8 course, Mr. Johnson who you met yesterday with MBI. And
9 that is it.

10 THE COURT: And Mr. Jones.

11 MR. HUBBARD: Yes, sir.

12 THE COURT: All right.

13 MR. HUBBARD: I do have one question. In light of
14 now he is going to write an article that the case is
15 coming up April 29th, it might behoove us to drop back and
16 think if we want to go forward on the 29th. And I know
17 that puts a world of work on Hope but at the same time
18 that is what the article is going to be tomorrow, Capital
19 cases.

20 THE COURT: I am hopeful that we can manage the
21 jurors who have responded. I think until we find out we
22 can't, we should go forward.

23 MR. HUBBARD: I understand we need to finish this up.
24 Based on what we see tomorrow would you be open to a
25 follow-up conversation.

1 THE COURT: I am not going to foreclose anything. I
2 did tell in-chambers and I would like it on the record
3 that I contacted Court Administration and Jennie Jones and
4 told her I was about to remind the parties that this
5 hearing was closed and the member of the media was
6 present. And that that likely would create publicity and
7 she is the, I am going to call it public relations arm for
8 Court Administration, to help with situations like this.
9 And she was considering reaching out to the media and
10 telling them, look, this is important. The trial is going
11 to be when publicity is more fair and less formable. And
12 so perhaps her reaching out to the media will minimize
13 what is published. Until we see it we won't see it. So
14 let's get done today, see what happens. Let's just do our
15 best but I am not foreclosing anything, if he writes
16 something that is published in the paper tomorrow or put
17 on the, tonight's news somewhere, who knows. I am not
18 going to say, without knowing, that I won't do that or I
19 will do that. I will absolutely listen.

20 MR. HUBBARD: Thank you, Your Honor.

21 THE COURT: Back on the record to finish Mr. Jones.
22 Mr. Secor, sorry I interrupted you and now you understand
23 why.

24 MR. SECOR: And I apologize that I said that I only
25 had one question. I didn't mean to--

1 THE COURT: You had your back to the media and I
2 don't think you knew.

3 MR. SECOR: I didn't.

4 THE COURT: I was well aware of that so no harm.

5 CONTINUE REDIRECT-EXAMINATION

6 By Mr. Secor:

7 Q Mr. Jones, I just want to follow-up with you a little
8 bit about the last thing that Mr. Hubbard was talking to
9 you about. Okay. And I want to ask you, what would you
10 not have done in order to protect your babies. Is there
11 anything that you would not have done to protect your
12 babies?

13 A No.

14 Q If you knew or thought seriously that Tim posed a
15 threat to your babies would you have killed him to save
16 your babies?

17 A Yes.

18 Q Would you kill Tim today if it meant that one of
19 those babies could be brought back from heaven?

20 A This is tough, I don't know, I don't know. I mean, I
21 love my son too, guys.

22 Q I know you do and I am not suggesting that you don't.
23 Do you think Tim needs to be punished for what happened?

24 A Yes.

25 Q And I want to make sure that your answer to this

1 question is very, very clear. Do you want the Solicitor's
2 office to seek the death penalty for Tim?

3 A No.

4 MR. HUBBARD: Obviously this is a hearing, I don't
5 mind him answering, Your Honor knows that. But it has
6 gone beyond.

7 MR. YOUNG: It is in direct response to Mr. Hubbard's
8 questions to Mr. Jones about their conversation where he
9 insinuated that Mr. Jones said, kill him, whatever, just
10 get it done.

11 MR. HUBBARD: That was a comment Mr. Jones made to
12 me--

13 THE COURT: The comment was, I want the case over
14 with so we can move forward, I want closure.

15 MR. HUBBARD: And he did say, kill, give him life, I
16 don't care, just end it. But that has nothing to do with
17 what his opinion is on the elements of the death penalty
18 and all of that. But, anyway, I understand, Your Honor
19 can handle it but I just want to register that. We are
20 going way beyond Denno at this point.

21 A I did tell you though, I don't think you can get the
22 death penalty.

23 THE COURT: That is fine.

24 MR. HUBBARD: He did and he also, one follow-up?

25 MR. JONES, SR.: Yes.

1 MR. HUBBARD: You also made it clear that was your
2 opinion long before your son killed your babies.

3 MR. JONES, SR.: Yes. No, I don't believe in it, no
4 way.

5 MR. HUBBARD: Okay.

6 MR. SECOR: May I have a minute, Your Honor?

7 THE COURT: Yes.

8 Q You helped get Tim to talk?

9 A I believe so, yes, I thought so.

10 Q And you said before, you think in your mind he
11 wouldn't have talked without you going there?

12 A I don't think so.

13 Q And it was your intention to get him to talk because
14 that is what you wanted him to do?

15 A Yes.

16 Q Because you wanted to find the babies no matter what?

17 A Yes.

18 Q And you also, during the course of this case, it has
19 gone on for years now, you also got Tim to sign an offer
20 to plead guilty to these charges, right?

21 A I did.

22 Q Thank you.

23 MR. HUBBARD: Nothing else, Your Honor.

24 THE COURT: You can step down. Hold on before y'all
25 call your next witness.

1 (Whereupon, a short break was taken.)

2 THE COURT: All right, Solicitor, are you ready to
3 call back your next witness?

4 MR. HUBBARD: Your Honor, I am wondering for your
5 sake, since we are still talking about the 7th and 8th,
6 the Defense has indicated that they would like to recall
7 Mr. Johnson, if you wanted to do that.

8 THE COURT: It makes no difference. I have got the
9 days squared away now.

10 MR. HUBBARD: That would be good if we could do that.

11 THE COURT: Okay. He is still under oath.

12 CLERK OF COURT: State your name again.

13 MR. ERIC JOHNSON: Eric Johnson.

14 MR. YOUNG: Is this being done out of order?

15 THE COURT: Yes, this is being done out of order.

16 MR. YOUNG: Can he leave pursuant to--

17 THE COURT: Mr. Young asked permission to lead since
18 he was an adverse witness to the Defense.

19 MR. HUBBARD: It is not a problem, Judge.

20 THE COURT: Not a problem, that is what I had already
21 said, consistent with that. Eric Johnson, Mississippi
22 Bureau of Investigations now with the Department of Social
23 Services of Mississippi.

24 MR. ERIC JOHNSON: Department of Human Services, yes,
25 Your Honor.

1 THE COURT: Mr. Young, your witness.

2 DIRECT EXAMINATION

3 By Mr. Young:

4 Q Lieutenant Johnson, I want to go back to something
5 you were talking about the other day and ask you to refer
6 to page 5 of 34 of your rough notes. And I believe these
7 are in evidence as a Court's exhibit.

8 THE COURT: The handwritten notes are exhibit 29.

9 Q Is that your notes?

10 A Yes sir, it is.

11 Q That is your writing?

12 A Yes sir, it is.

13 Q Towards the bottom of the page does it say that you
14 called Tim Jones, Sr. at 13:15, they are coming to
15 Raleigh?

16 A Yes, that is correct. It says I spoke with Jones,
17 Sr., 13:15 hours or 1:15 p.m. They are coming to Raleigh.

18 Q Does that refresh your recollection about who called?

19 A Yes.

20 Q And you requested that he come?

21 A I don't know that I requested but I think that Mr.
22 Jones, Sr. was coming. He was very concerned about the
23 situation. But he was welcome that he came, yes.

24 Q Let me ask you what is in as Court's exhibit number 3
25 and just ask you if you recognize that?

1 A I do, Counselor.

2 Q Is that the warehouse with all of this stuff laid out
3 on the tables?

4 A That is correct.

5 Q That you talked about yesterday?

6 A Different items out of the vehicle. That is correct,
7 sir.

8 Q And let me show you what is 31, 32 and 33, these are
9 in evidence. Is that how the vehicle looked when it was
10 first stopped with all the stuff in it?

11 A Yes, Counselor. This is a fair depiction of the
12 vehicle in the state that I saw it in. Yes, sir.

13 Q And let me show you, 35, 36 and 37, 38, 39 and 40. I
14 ask you if you recognize those?

15 A These are all fair and accurate depictions or
16 photographs of the state of the vehicle once the items
17 were taken out of it. And at some point during the
18 investigation I did see it like that, yes sir.

19 Q And that shows the blood, the bleach, the piece of
20 scalp?

21 A Yes, it does show the piece of scalp and it shows
22 other, looks like the vehicle had attempted to be cleaned.
23 Yes sir.

24 Q On the 8th, skipping ahead to the next day, after
25 Timmy had met with the South Carolina Law Enforcement

1 officials Tim, Sr. had come back during that time, right?

2 A Yes sir, he had.

3 Q And Tim, Sr. was allowed to meet with Timmy after
4 having met with South Carolina Law Enforcement. Is that
5 correct?

6 A That is correct, sir.

7 Q And you were present for that?

8 A I was in and out of the room but, yes, I was there
9 while Sr. was visiting with Tim, Jr.

10 Q You were there for portions of the meeting, not
11 necessarily the whole thing?

12 A You are correct, sir.

13 Q And you noted what happened during the portions when
14 you were there?

15 A Certainly, yes sir.

16 Q You noticed that Timmy apologized and told his dad
17 that he was sorry?

18 A Yes sir, he did.

19 Q And he told his dad that he had strangled the kids?

20 A He did.

21 Q And I think you made a special note about how well
22 Tim, Sr. handled hearing that information?

23 A I may have without referring to my notes, Your Honor.
24 But, yes, his father, Tim, Sr. was very supportive of his
25 son as a father would expect to be and he was very, they

1 had time together there to converse. To continue, I
2 remember the conversation being about finances and we will
3 get you an attorney and things of that nature that I
4 overheard.

5 Q Did they talk about a memorial service?

6 A Yes sir, they sure did. Yes sir, they sure did.

7 Q And they talked about getting Tim an attorney, they
8 talked about an attorney?

9 A Yes, sir.

10 Q They were making arrangements to have a lawyer?

11 A Yes sir, that is correct.

12 Q You were also present, skipping ahead to the next
13 day, you were present when Timmy took law enforcement to
14 the scene of where the babies were recovered in Alabama?

15 A That is correct, sir.

16 Q You noted the odor at that scene, although it was
17 outdoors you knew the odor as soon as you got up to the
18 top of that rise?

19 A Yes, Your Honor, I personally saw the black garbage
20 bags, part of tissue of what appeared to be a bone of an
21 arm or a leg out, animal activity had occurred. And you
22 could smell the decomposition. So, yes sir.

23 Q The smell very similar to how the car had smelled
24 when you had seen it?

25 A I would say it was in the advance states but similar,

1 yes.

2 Q And Timmy was visibly upset?

3 A Tim, Jr?

4 Q Yes.

5 A Yes sir, he was.

6 Q He was screaming?

7 A He did.

8 Q And crying?

9 A He was.

10 Q Thank you. That is all the questions that I have.

11 CROSS-EXAMINATION

12 By Mr. Graham:

13 Q Special Agent, Investigator Johnson, Lieutenant at
14 one time, right?

15 A It doesn't matter what you call me, I will answer.

16 Q Let me ask you a couple of questions and to be clear
17 we are talking about September 7th, 2014. Your notes
18 reflect that you made a phone call to Tim Jones, Sr.,
19 correct?

20 A I would say that is accurate, that I spoke with his
21 father, yes.

22 Q Do you remember the contents of that conversation?

23 A The contents of it as I recall, as best I recall,
24 Your Honor, would have been, you know, the 7th, that was
25 prior to the first interview, without referring to my

1 notes, is that correct.

2 Q My understanding is the phone call was at 1:15 on the
3 afternoon on the 7th?

4 A Which would have been prior to the interview that
5 evening at 18:00 or 6:00 p.m., 6:00 p.m.

6 Q Right.

7 A I would say the jest of that conversation was that,
8 yes, that Tim, Jr. was in custody in Raleigh and that the
9 children weren't with him, as best I recall, Your Honor.
10 And that, we were in the process of the investigation to
11 see where the children could possibly be and the condition
12 of the children, alive, dead, however they may be.

13 Q Do you remember, what if anything, you told him about
14 the condition of the vehicle?

15 A From an investigative standpoint and my experience,
16 at the very most, I would have probably revealed, since it
17 was an ongoing investigation, is the fact that there had
18 been maybe some blood in the vehicle. I would not have
19 expounded any further than that.

20 Q Do you remember whether you described the blood, the
21 amount of blood as a little amount?

22 A I don't recall saying that as far as determining, I
23 would not have said there was a large significant amount,
24 to my recollection, no.

25 Q In your description of however you described it to

1 Tim Jones, Jr., would you have done it for the purpose of
2 tricking him into thinking the children were still alive
3 as opposed to telling him that they were dead?

4 A No.

5 Q Because you didn't know the children--

6 A --I didn't know what condition the children were in
7 at that time. I would have given him information on a
8 need to know basis like that and I was, from my
9 standpoint, and I can't speak, I feel like I could speak
10 for the Sheriff and Under-Sheriff but from my personal
11 standpoint, Your Honor, I think Mr. Jones, Sr. and I were
12 on the same page as let's find out, you know, about these
13 children, about his grandchildren.

14 Q That was your concern?

15 A Yes.

16 Q And that was his concern?

17 A Yes.

18 Q That all of them or some of them might be alive?

19 A Yes. And he said, I am coming to Smith County. And
20 I said, come on. He was very concerned.

21 Q Prior to the interview that sounds like, do you know
22 whether you made or somebody else made, aware of the note
23 that was found in the vehicle that talks about day one,
24 day two, day three?

25 A I don't recall that. It could have been, it could

1 have been told then but I don't recall personally telling
2 him that.

3 Q Prior to your conversations with Tim Jones, Sr. and
4 prior to going into the interview did Mr. Jones, Sr. ever
5 ask to speak with his son alone?

6 A Not at that time, no, I never heard him say could I
7 speak with him alone. The only time that I think they
8 spoke alone was the subsequent day after South Carolina
9 authorities along with the FBI had came to Smith County
10 Mississippi and after their interview and talking with
11 Tim, Jr., Tim, Sr. and he were allowed to be together like
12 that.

13 Q You said allowed, did they ever ask to speak alone
14 though?

15 A No, sir.

16 Q And we will get to that, you actually overheard part
17 of that conversation, didn't you?

18 A I did, sir.

19 Q So going into the interview on the 7th when you read
20 Miranda to the Defendant, once you are in the Defendant's
21 presence did he ever ask to speak to his father alone?

22 A No, sir.

23 Q During that interview itself did Mr. Jones, Sr. ever
24 ask to speak to his son alone?

25 A No, sir.

1 Q Did either of them ask for an attorney during the
2 course of the interview?

3 A No, sir.

4 Q Did the Defendant ever say I don't want to talk
5 during that interview?

6 A No sir, he did not.

7 Q You had mentioned, well, in your direct testimony
8 regarding the 7th, at the conclusion of the interview you
9 had testified about the Defendant putting his hands to his
10 father's throat. Do you remember testifying to that?

11 A Yes sir, I do.

12 Q Do you remember whether that question, whether that
13 action was in response to a question?

14 A I think it was, his father had asked him something
15 about where my grandchildren, where are the children or
16 something of that nature.

17 Q Are you able to remember whether it was, where are
18 the children or what happened to the children?

19 A As I recall it was what happened to the children and
20 I think that, as I recall without having the photograph of
21 the room, but Tim, Jr. was sitting adjacent to me and at
22 that point when his father asked what happened to the
23 children he got up and come around me to, where his father
24 was sitting to my right on the couch, and that is when he
25 made that gesture with his hands.

1 Q And did you document that anywhere in your report or
2 notes?

3 A Without reviewing it, I mean is there a reference, is
4 there a reference that you have for me or do I need--

5 Q -- no, I couldn't find it anywhere.

6 A Okay.

7 Q Thank you.

8 REDIRECT EXAMINATION

9 By Mr. Young:

10 Q What evidence do you have, if any, that led you to
11 believe the babies were still alive?

12 A Are you asking--

13 Q You are saying that you believe that they were still
14 alive, one or all of them were still alive?

15 A I had no evidence, physical evidence that said they
16 were alive but I also had no physical evidence that
17 confirmed that they were dead.

18 Q You had no evidence that there was a deceased child,
19 that is your testimony? There is no evidence in this case
20 that a child was deceased?

21 A That's correct.

22 Q The piece of scalp, the blood, smell of the car, that
23 is not evidence that a child was deceased. So you would
24 be shocked if people said, the kids are probably dead?

25 A I wouldn't say I would be shocked based on my years

1 of experience and the things that I have seen in cases.
2 But I guess the best way to answer your question,
3 Counselor, we, I, since I am here testifying, I still had
4 hopes that maybe the children were still alive. I did not
5 know we were dealing with a death investigation without, a
6 lot of those forensics didn't come back, things of that
7 nature, the necessary amount of blood.

8 Q Notes about bodies, saws, muriatic acid?

9 A It was definitely, it was indicative of the fact that
10 someone had a plan. You know, I agree. Now whether that
11 plan was executed, I have no idea.

12 Q Thank you.

13 MR. GRAHAM: Nothing further, Your Honor.

14 THE COURT: You may step down.

15 MR. ERIC JOHNSON: Thank you, Your Honor.

16 MR. GRAHAM: Your Honor, the State would call Adam
17 Creech to the stand.

18 ADAM CREECH, being
19 first duly sworn, testified as follows:

20 CLERK OF COURT: Once you are seated state your full
21 name, spelling your last.

22 MR. CREECH: Sergeant Anthony Adam Creech, Creech is
23 spelled, C-R-E-E-C-H.

24 MR. MADSEN: Sergeant Creech is testifying, we would
25 ask Special Agent Mackey is here, I think a lot of what he

1 is going to testify, they are in a room together and we
2 would ask that he be sequestered for that.

3 MR. GRAHAM: Your Honor, they have left Mr. Jones in
4 here the whole time people were testifying. Now they are
5 asking us to sequester a witness about statements.

6 MR. HUBBARD: Judge, we have been planning this
7 gentlemen here and they want to sequester an FBI Agent, we
8 have all been talking to these guys, they all have been
9 listening and now just all of a sudden, midstream, they
10 want to change the rules. I think he is professional. I
11 think everything he is going to testify to is in reports
12 that have been given to them. And I think he can stay
13 here. He knows His Honor and his integrity as an agent
14 rests on what he says under oath and kicked out of the
15 courtroom at this point seems a little petty.

16 MR. MADSEN: With all due respect, that him being
17 with the FBI, I don't see him and his responsibility as an
18 FBI agent different than any sheriffs department or any
19 other police officer. But also you have got an FBI agent
20 that doesn't have a report, doesn't have any notes or at
21 least none have been provided to us at any point and time,
22 something that is five years ago. And certainly I
23 understand from their perspective they want him to refresh
24 his memory because Sergeant Creech has a report--

25 MR. HUBBARD: Now I am being told, this officer, I

1 want this officer to refresh an FBI agent's memory.
2 Judge, that is absolutely petty. Every other officer, he
3 just said they are no different from the other officers.
4 They have been allowed to sit in here. Judge, we are
5 trying to get through this thing.

6 THE COURT: I thought we had the Mississippi guys in
7 the back the whole time.

8 MR. HUBBARD: They ended up telling us they don't,
9 and they have already testified but they have said, we
10 don't want sequestration now so we have had them all
11 sitting out here. But now all of a sudden, this FBI agent
12 who they say is no different than any other officer, he
13 has got to walk out of the courtroom because he can't be
14 trusted. And to me that is just, we are trying to get
15 through this thing and this is just petty at this point
16 and we are almost done.

17 MR. MADSEN: And, Judge, I am certainly not saying
18 that he is a liar or anything like that. But there is a
19 reason for sequestration and I don't recall ever saying
20 that we weren't going to do it for Mr. Jones or Mr. Secor.

21 MR. HUBBARD: And Mr. Madsen hasn't said much of
22 anything in this area. It has been controlled by some
23 other attorneys. I tell you what, I will respectfully ask
24 an FBI agent that has never done anything wrong that I
25 know as a professional to please step out of the courtroom

1 so we can finish this hearing.

2 (Whereupon, one or more persons stepped out of the
3 courtroom.)

4 DIRECT EXAMINATION

5 By Mr. Graham:

6 Q Sergeant Creech, where are you employed.

7 A I am employed at the Lexington County Sheriffs
8 Department.

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

10 A Approximately nine and a half years.

11 Q Sergeant Creech, you said you had been with the
12 sheriffs department for approxiamtely nine and a half
13 years?

14 A That's correct.

15 Q Is that all of your time in law enforcement is with
16 the Lexington County Sheriffs Department?

17 A It is.

18 Q Can you tell the Court what you have done over the
19 course of your--

20 A Certainly. I began at the sheriffs department like
21 most deputies do as a--

22 THE COURT: I think it is too close.

23 (Whereupon, adjusting mike at witness stand.)

24 A I began as a patrol deputy like most deputies do. I
25 then progressed to become a field training officer, crisis

1 negotiator, a master deputy which would be an assistant
2 patrol shift supervisor.

3 THE COURT: It is too close.

4 (Whereupon, adjusting mike again.)

5 THE COURT: Mr. Graham, I don't know if he answered
6 your last question but you may reask it.

7 Q What positions have you had and what were your job
8 responsibilities in your nine and a half years?

9 A So the nine and a half years I have been there I
10 would say, patrol deputy for a period of time, I became a
11 field training officer, I became a certified crisis
12 negotiator as a collateral duty assignment I still do to
13 this day. As I was saying and then I was a master deputy
14 for a period of time which would be an assistant patrol
15 shift supervisor and then I became a major crimes
16 investigator in July of 2014. And then I currently serve
17 as the Sergeant in investigations in the major crimes unit
18 today.

19 Q At some point did you become involved with this case?

20 A I did.

21 Q Do you remember how that happened and when?

22 A Yes. I was assigned this report when it was a
23 missing person's case and I began working it on September
24 4th, 2014.

25 Q And your role at that time as the lead investigator

1 on the case?

2 A That would be correct, I was the lead investigator.

3 Q Let's jump forward and let me ask you a few
4 questions. Were you present in the Solicitor's office, in
5 Solicitor Hubbard's office for an interview between
6 himself and Tim Jones, Sr. on September, excuse me, on
7 January 29th of 2019?

8 A I was.

9 Q I am sorry. As far as the interview in his office
10 was September 29th of 2017?

11 A That sounds correct without looking at any paperwork.

12 Q Do you remember that Mr. Jones, Sr., when discussing
13 his son's condition on the interview in Mississippi on the
14 7th, to say that his son was on something?

15 A That did sound correct.

16 Q And do you remember whether or not he stated that the
17 first time he saw Cindy, which was Tim Jones, Jr.'s
18 mother, the first time he saw Cindy, then the Defendant
19 was not in Mississippi but in the Department of
20 Corrections?

21 A That's correct, after he had, started to receive
22 medications while in the Department of Corrections.

23 Q Were you also present on January 29th of 2019 when
24 the Solicitor and Tim Jones, Sr. met and had a
25 conversation at Tim Jones, Sr.'s house in Armory?

1 A I was.

2 Q And do you remember the Solicitor asking Tim Jones,
3 Sr. about the hands to the throat at the conclusion of the
4 September 7th, 2014 interview in Mississippi?

5 A Yes, I do remember us discussing that.

6 Q And do you remember whether or not that question, the
7 hands at the throat reaction was in response to Tim Jones,
8 Sr.'s question of where are the babies or what happened to
9 the babies?

10 A I believe it was in response to what happened to the
11 babies.

12 Q Moving back now to September of 2014 and you being
13 assigned to this case for the missing children, correct?

14 A That's correct.

15 Q At some point did you become, I guess as the children
16 were missing did you do background, try to gather some
17 background information about Tim Jones, Jr.?

18 A I did. I spoke with his supervisor at Intel at the
19 time, Mr. McConnell. I spoke with his father on the phone
20 at least once. And I spoke with an Investigator with
21 Intel named Ben Wine. And then I also spoke with
22 Timothy's ex-wife, Amber.

23 Q Were you able to determine his education level?

24 A I was. He was a college educated, I believe,
25 Mississippi State.

1 Q Were you able to tell where he worked and what he did
2 at that job?

3 A Yes, he worked with Intel with an engineer job that I
4 still to this day don't quite understand what they did. I
5 am fairly comfortable with computers but it is above my
6 head.

7 Q What, if any, information did you have at that time
8 which would be prior to going to Mississippi about any
9 history of alcohol or drug use?

10 A I had no knowledge of any alcohol or drug use.

11 Q As far as any mental health problems what, if any,
12 information did you have and those would have come from
13 conversations, I think, if I read your report correctly
14 you spoke with his boss and spoke with his ex-wife, Amber,
15 and I believe you spoke with his father?

16 A That's correct.

17 Q So what, if any, information did you have about
18 mental health issues?

19 A I will just kind of answer that question in order who
20 I spoke with. Initially I spoke with Jim McConnell,
21 Timothy's boss. He didn't really have anything to say
22 about any mental health issues. He said Timothy was
23 fairly normal, he just knew he had a lot going on in his
24 personal life and he referenced that being in reference to
25 him being a single father with five young children

1 otherwise he talked about him being a fairly good
2 employee. Mr. Wine didn't know Timothy directly, he was
3 just more on the Intel Company side of things and had
4 offered his resources. Mr. Timothy, Sr. and I spoke
5 probably the most at length about this issue. Mr. Jones
6 did tell me that, I specifically asked if his son had a
7 history of depression or any diagnosed mental health
8 issues. And his response immediately that his son was
9 very secretive about his personal life and rarely talked
10 about his emotions or personal feelings. He then told me
11 that Timothy was always very emotionally distant from
12 other people. He told me that Timothy had a good
13 relationship with his grandparents in Mississippi as well
14 as an Aunt and Uncle in Illinois. Regarding mental health
15 issues Mr. Jones did tell me about Timothy's biological
16 mother who he told lived in New York and had a history of
17 mental illness. He did tell me that at Timothy's age,
18 Timothy's mother disappeared one night and didn't come
19 back for almost two decades. Mr. Jones did say he
20 suspected Timothy could be following in his mother's
21 footsteps. He suspected or described his son as extremely
22 intelligent and if he had any mental health issues they
23 were undiagnosed. At that time he didn't give any
24 indication that there would have been any harm that would
25 have come to the children. I gave him my contact

1 information and told him to call me if he learned
2 anything, heard anything else. That would have been on
3 Thursday, September 4th. On September 5th which was the
4 following day, a Friday, I did speak to Amber Jones by
5 phone. She said, she didn't say anything about any mental
6 health issues at the time.

7 Q At some point then, as you are gathering background
8 information and your investigating the missing children,
9 do you learn that the Defendant was stopped at a traffic
10 stop in Mississippi?

11 A I did. On the night of September 6th, 2014 I
12 received a call from Sherry Fallow who was working the
13 front desk at the Lexington County Sheriffs Department at
14 the time and she told me there had been a NCIC hit sent in
15 reference to missing person's case and she had give me a
16 name and number for Under-Sheriff Marty Patterson with the
17 Smith County sheriffs Department, to call him in reference
18 to that.

19 Q After he was stopped the sheriffs department learned
20 that the children were not with him, did the sheriffs
21 department obtain a warrant for what, do you remember, was
22 it unlawful--

23 A Jumping ahead a little bit. On September 8th of 2014
24 I was informed by Lieutenant Fryer that an arrest warrant
25 for unlawful conduct toward a child had been obtained.

1 Q On the 8th when you learned that though, you were
2 already on your way to interview Mr. Jones or attempt to,
3 is that correct?

4 A Yes. In fact I think that was actually after we had
5 already spoken to him is when I learned about that arrest
6 warrant.

7 Q On the, when you were driving down on the 8th for the
8 purpose of attending the interview of the Defendant, were
9 you aware of an interview being conducted or attempted to
10 be conducted on the night of September 6th?

11 A I was not.

12 Q Were you aware that the Defendant had invoked his
13 right to remain silent?

14 A I was not aware of that, no.

15 Q Were you aware of the interview conducted on the 7th
16 with, by Special Agent Johnson, Sheriff Crumpton and with
17 the Defendant's father, Tim Jones, Sr. being present?

18 A I was aware of that interview, I was at the Lexington
19 County Sheriffs Department and privy to the results of
20 that interview that were given to us over a phone call be
21 speakerphone.

22 Q September 8th, 2014 when you were driving to South
23 Carolina who is with you?

24 A Special Agent David Mackey with the FBI and then
25 Lieutenant David Lawrence with the South Carolina Law

1 Enforcement Division.

2 Q And did you all have conversations about preparing to
3 try to interview Mr. Jones and how you would go about
4 doing it?

5 A We did.

6 Q And why was Special Agent Mackey brought in at that
7 time?

8 A He was brought in and his agency at the time because,
9 since we were crossing state lines and we still weren't
10 quite sure where this case was going to go
11 jurisdictionally, I think we had reasonable belief at that
12 time that if the crime had occurred in Lexington County
13 but until we definitively established, that David Mackey
14 was there as a support role for jurisdictional matters.

15 Q What was your understanding on the 8th, prior to the
16 interview, what was your belief of whether the children
17 were dead or the children were alive or we didn't know at
18 this point?

19 A My personal belief was that there was a better than
20 likely chance that they were dead. However, until we
21 could actually confirm that and locate their bodies we
22 couldn't be absolutory certain of that.

23 Q You were aware that Tim Jones, Sr. had been involved
24 with the interview on the 7th in Mississippi?

25 A I was aware of that, yes.

1 Q Did you and Agent Mackey and Agent Lawrence from SLED
2 discuss what, if any, Tim Jones, Sr.'s role would be in
3 your interview on the 8th?

4 A We did talk about the, we had no plans whatsoever to
5 use him in what we thought was at the time was the second
6 interview from our perspective because we weren't aware of
7 the interview from the night of the 6th. But we had no
8 plans for Mr. Jones to be a participant in that interview.
9 We did plan on meeting with him and his wife just to
10 discuss more background information that helped kind of
11 develop our understanding of Timothy before we spoke with
12 him.

13 Q Let's go to the first interaction with Timothy Jones,
14 Jr. Where were you at when you first encountered?

15 A We were, I believe it is the Court House building at
16 the Smith County Sheriffs Office complex at the time which
17 was at 200 Court House Square, I believe, in Raleigh,
18 Mississippi.

19 Q Was that in the second floor?

20 A Yes, it was on the second floor of the building.

21 Q And who all was present at that time?

22 A Myself, Special Agent Mackey and Sheriff Charlie
23 Crumpton.

24 Q And what, if any, conversation did you begin to have,
25 well, tell me, present in the room, what were your

1 observations of the Defendant at that time when you first
2 encountered him?

3 A Certainly. So he was obviously, he was restrained,
4 he was wearing standard ankle shackles, a belly chain and
5 handcuffs in the front. His demeanor and I am going to
6 try my best to describe this. He seemed very alert but he
7 was also kind of quick furtive movements, looking around,
8 kind of shaken a little bit, he seemed kind of nervous, on
9 edge to me.

10 Q Did you introduce yourself to him?

11 A I did. Myself and Special Agent Mackey both
12 introduced ourselves and who we were affiliated with.

13 Q And how was that interaction with you?

14 A He acknowledged each of us directly. We both shook
15 his hand.

16 Q Would you describe, if it is the same interview room,
17 there is a table?

18 A Mr. Jones was seated at the end of the table, on the
19 end of the room away from the door. I was seated to his
20 left at the end of this table. And Special Agent Mackey
21 was on the right and then Sheriff Crumpton was sitting at
22 the opposite end of the room, I believe on a couch maybe
23 near the doorway.

24 Q And did you advise Mr. Jones of his rights at that
25 time?

1 A We did. They were actually read to him by Special
2 Agent Mackey.

3 Q Do you actually have a copy of the rights that were
4 used in that case?

5 A I don't have one with me here on the stand but we did
6 have a written advise of rights form.

7 Q Let me show you a document and ask if that is a copy
8 of the advisement of rights form that you used on
9 September 8th of 2014?

10 A This would be the advise of rights form we used on
11 that date, yes.

12 MR. GRAHAM: Your Honor, we will make that a Court's
13 exhibit.

14 COURT REPORTER: Number 42.

15 THE COURT: 42.

16 (Whereupon, Court's Exhibit 42 was marked for
17 identification only.)

18 Q Referring to State's, excuse me, Court's exhibit 42.
19 Can you tell the Court what that document is?

20 A Yes. It is a Lexington County Sheriffs Department
21 advise of rights form.

22 Q And did you read those rights to Mr. Jones?

23 A Special Agent Mackey actually read the form to him.

24 Q And was it read, you observed Agent Mackey do it?

25 A I did.

1 Q And did he read the form in its entirety?

2 A He did.

3 Q Out loud?

4 A Correct.

5 Q Would you read it out loud to the Court as Agent
6 Mackey had read it to Mr. Jones on that day.

7 A Absolutely. So the form reads, before we ask you any
8 questions you must understand your rights. You have the
9 right to remain silent, anything you say can and will be
10 used against you in a court of law. You have the right to
11 talk to a lawyer for advise before we ask you any
12 questions to have him or her present with you during
13 questioning. If you have no money for lawyers the Court
14 will appoint one to represent you without cost if you
15 wish. If you decide to answer questions now without a
16 lawyer present you will still have the right to stop
17 answering questions at any time. You also have the right
18 to stop answering questions at any time until you talk
19 with a lawyer. I have this statement of my rights and I
20 understand what my rights are. And then at the bottom, it
21 says, wavier of rights. I am willing to make a statement
22 and answer questions. I do not want a lawyer at this
23 time. I understand and know what I am doing. No promises
24 or threats have been made to me and no pressure or
25 coercion of any kind has been used against me.

1 Q Initially the rights were read verbally by Agent
2 Mackey, correct?

3 A That's correct.

4 Q Then did Mr. Jones have any questions about those
5 rights that were read to him?

6 A He didn't. In fact, if I remember correctly, I think
7 he was holding the form afterwards and looking at it but
8 at the time didn't sign them but he did make the comment,
9 yes, yes, I know I am self-incriminating myself.

10 Q Later he did end up signing it?

11 A Yes, later in the interview he did take the form,
12 which we had in front of him as we were speaking with him,
13 and he did sign it.

14 Q At the time the interview began and you read it, did
15 he understand his rights?

16 A He appeared to, yes.

17 Q Any question that he didn't?

18 A No, he seemed pretty clear that he knew anything that
19 he had to say was against his best interest,
20 self-interest.

21 Q Did he ask for an attorney at that time or any time
22 during the interview?

23 A He did not. If there had been any indication we
24 would have stopped.

25 Q Did he ever say that he didn't want to talk at that

1 time?

2 A He did not.

3 Q Did he appear to be under the influence of alcohol or
4 drugs at the time you gave him his rights?

5 A No, he didn't. Like I said, he seemed kind of
6 nervous at the time but otherwise he seemed very coherent
7 and he seemed to understand us, we understood him, there
8 didn't appear to be any issues in my experience talking to
9 him that he was under the influence.

10 Q And his behavior at the time that he waived his
11 rights, did you have any concerns about his mental health,
12 him not understanding his rights?

13 A I did not.

14 Q Did you make any promises or did anybody make any
15 promises to him that if he cooperated that there would be
16 a reward?

17 A We did not.

18 Q Did you threaten him or did anyone else threaten him
19 to make him speak?

20 A Absolutely not.

21 Q Were you suppose, had you been told or directed to by
22 superior to record the interview?

23 A I had which was a little unusual. I had only been in
24 investigations two months when this case happened so I was
25 still kind of learning. You could say I was still very

1 green behind the ears. But even then it was not a normal
2 practice or procedure for us to audio or videorecorder
3 interviews in any capacity. We were at least half way
4 down, I think four or five or six hours into the drive
5 down to Mississippi when I was called and told that when
6 he tried to record the interview at the time, my county
7 issue phone was an old flip-phone so he wasn't capable of
8 doing any kind of recordings. So we actually had to stop
9 at Walmart close to our destination and buy a recorder.
10 They actually only had one left on the shelf and we bought
11 it right there and it was the first time we had ever used
12 it.

13 Q Did you attempt to began recording the waiver of
14 rights when you came into the room or when did you attempt
15 to begin recording?

16 A We would have attempted to start recording right
17 after the waiver of rights.

18 Q And at the time did you believe that you had started
19 the recorder?

20 A I thought I had, at an angle I thought the red
21 recording light was showing active.

22 Q Subsequently you found out that during the interview
23 that it had not recorded everything and you started it
24 later in the interview?

25 A Yes. Unfortunately to my embarrassment to this day

1 we did learn a couple of hours later that it had not been
2 recording.

3 Q Would you tell the Court where the interview began?

4 A Can you clarify the question.

5 Q How did you began you questioning.

6 A So we began the questioning, so even though I was
7 fairly new to investigations it was still our interview
8 strategies, I had had some training on that but I was also
9 relying on negotiation skills which I had had for a bit
10 longer than that. So rather than jump into what we
11 normally call problem solving mode in law enforcement, I
12 wasn't even going to begin talking about the children or
13 what we were there for. I was asking Mr. Jones about his
14 employment, just kind of personal things, we would call
15 that repoire building.

16 Q And what did you learn during that part of the
17 interview?

18 A So he had told us that, about his job at Intel. In
19 fact, when we started asking him about work he seemed to
20 calm down a bit. That certainly appeared to be a topic he
21 was more comfortable talking about. He had told us he had
22 quit the week before. We ask for clarification of why,
23 what he meant by quit. He explained that, "well, they
24 didn't know I was quitting, I just stopping going." He
25 tried to change the topic a little bit at that point but

1 we told him we wanted to hear about his job. He explained
2 what kind of work he did as I previously said, it is a bit
3 technical and a little over my head. He told us that he
4 made over \$80,000.00 dollars a year. As we continued to
5 speak he did appear to get engaged in the conversation,
6 talking about work, it was obviously that was something he
7 was enthusiastic about especially the more technical
8 aspects. We ask him why he would quit such a job and he
9 says that he was clearly qualified for it. I would think
10 not easily replaceable because the average person couldn't
11 do it. He told us the job had become, "boring", and he
12 didn't think, "challenging enough." He told us that he
13 had enrolled at St. James School of Medicine in the
14 Caribbean which he had planned on attending in the future.
15 Again, as he is telling us these things he is very
16 articulate, very clear, seemed very intelligent. Medical
17 school had also been referenced to Timmy by his
18 supervisor, Jim McConnell, had told me that he thought
19 Timothy had applied for that.

20 Q After you asked about his work did you go into
21 questions about his health?

22 A I did. So we started to talk about just his general
23 health. He told me took medications for what he believed
24 to be a stomach ulcer. And he said he suspected he may
25 also suffered from Crohn's disease. I felt that was

1 consistent with some of the over the counter medications
2 we had found in his vehicle. Again, he is continued to be
3 very clear and articulate while he was discussing these
4 issues. He went on to kind of, his health issues,
5 non-prescription drug use came up. Timothy was quick to
6 tell me that he didn't use spice, which is what the Smith
7 County deputies had charged him with possessing the night
8 before or two nights before. Timothy told me he used a
9 drug called Scooby Snax which he said could be purchased
10 legally. He went a pretty good length to explain how both
11 substances utilized an artificial chemical similar to THC
12 found in marijuana. And he talked about how THC found in
13 chemical receptors in the human brain and subsequently
14 influenced human behavior. It was a pretty in depth
15 discussion of drug effects, probably the most in depth
16 anybody has ever been with me talking about their own drug
17 use.

18 Q At that time was he, when he was explaining this to
19 you was he talking about how it affected him or how it
20 affected people in general?

21 A People in general, just how it interacted with the
22 human physiology.

23 Q Did he say where he bought those Scooby Snax from?

24 A He did. So we, I had only recently come off patrol
25 and I don't know if you could say I was fortunate or

1 unfortunate enough to be in patrol when we were having the
2 influx of spice and bath salts. So I was very familiar
3 with the topic and I knew that there was some local
4 businesses where you could purchase some of that legally
5 still. He went on to explain that he had bought what he
6 called, he referred to it as Scooby Snax that he purchased
7 from a business called Time warp in West Columbia. And
8 then he went on to tell me that he used the Scooby Snax as
9 a means of, "self-medicating", which he said he was self
10 medicating for what he referred to as the voices in my
11 head. And he said he used the Scooby Snax to level
12 himself out on a regular basis.

13 Q Did he say how long he had been using Scooby Snax?

14 A I don't believe he went into the length of the use at
15 that time, no.

16 Q So, what your report indicates that he spoke about
17 the voices in his head, did he also say other things?

18 A He did. He referenced the voices and he told us that
19 he often saw what he referred to as shapes in the air and
20 shapes around, as he is telling this he appeared to be
21 distinguishing what he claimed were hallucinations versus
22 what he knew was real. Even everything else, as he is
23 talking about this he is still very clear and articulate.
24 I had no indication that this was influencing his behavior
25 while he was speaking with us.

1 Q Did you ask him about his mental health history?

2 A We did. Similar to what his father told me. He went
3 into some detail about he believed he had inherited mental
4 health problems from his mother. He told us that he had
5 had a series of physiological breakdowns at his age. He
6 seemed to get upset talking about his mother, you could
7 tell this was a sensitive topic. He told us that if we
8 could find out what was going on with his mother, who I
9 believed he identified at some point as Cindy, that we
10 could find out what was wrong with him. During the later
11 portion of the interview he actually said, "I think I have
12 got some of what she has."

13 Q And was it about this time during the interview that
14 he actually signed the Miranda form?

15 A Correct. Around this time he took the form that was
16 sitting about this close in front of him and he did pull
17 it toward him and he signed it and this was witnessed by
18 myself, Special Agent Mackey and Sheriff Crumpton.

19 Q Again, at that time, did you inform him, when he
20 signed it again, that his conversation with you was
21 voluntary?

22 A Yes, we did. We reminded him very clearly that, you
23 know, he is speaking with us voluntarily. And he repeated
24 again, somewhere when we first started speaking that he
25 knew he was incriminating himself. He actually used the

1 word, incriminating.

2 Q At that point, after he signed the form, did you then
3 go into to ask him about his children?

4 A We did. We finally just came out with it, asked him
5 about his children, where they were--

6 THE COURT: Mr. Graham, at my instruction I gave
7 everyone in the courtroom an indication that if they
8 needed help or a break to raise their hand. And that
9 happened. So would it be appropriate for us to take a
10 break now for lunch and come back at quarter to 2:00. Is
11 that okay?

12 MR. GRAHAM: He is a very long witness.

13 THE COURT: That is what I figured. Be back at 1:45.

14 (Whereupon, a lunch break was taken.)

15 THE COURT: We will continue with Mr. Graham and your
16 witness.

17 CONTINUE DIRECT EXAMINATION

18 By Mr. Graham:

19 Q Sergeant Creech, when we left off we were just
20 getting ready to start with questioning about the
21 children, I believe. You had already gone through
22 Miranda, you had gone through his health history, mental
23 health history and he had actually just signed the
24 advisement of rights. At that point what did you begin to
25 question him about?

1 A At that point the interview, we did start to ask
2 Timothy directly about his children. I think I said this
3 earlier, similar to when we brought up a topic, the topic
4 of his mother came up. This topic about his children kind
5 of upset him. He started to, his voice kind of wavered
6 and he started to cry. Kind of a nervous behavior that
7 had subsided came back. He got really fidgety. He had
8 been very still prior to this, while talking about those
9 other topics. He told us that he was afraid of the
10 children and he told us that he had last picked up the
11 oldest three from school on Thursday, August 28th of 2014.
12 This was the last day he was at work as well. He said he
13 then picked up the two youngest children from his
14 neighbor, Christina's house. While at home later that
15 night Timothy told us that Nahtahn threatened him by
16 saying, when I grow up I am going to kill you. Nahtahn
17 was Timothy's middle child who was six years old. Timothy
18 then says his oldest son, Alias, told him he was going to,
19 "going to cut people up and feed them to dogs." Timothy
20 then told us that Nahtahn blew out several electrical
21 outlets in the home. Timothy said he believed Nahtahn was
22 up to something and possibly experimenting with this as a
23 means to electrocute him in his sleep. I ask him how his
24 children could pose a danger to him and he explained that
25 they were extremely intelligent and he referenced a prior

1 incident at this home in Lexington County where his
2 youngest son, Gabriel, was found by sheriffs department
3 deputies walking down the road on South Lake Drive.
4 Apparently he was allegedly left the babysitter's house
5 and was trying to go to the Saxe Gotha Elementary School
6 where his siblings went to school. He just started back.
7 Timothy said this wasn't, "normal behavior for a two year
8 old." He used that as an example about his, how
9 intelligent the children were. He said their intelligence
10 meant they posed a danger to them. He went on to say he
11 thought the children were inspiring to kill him on the
12 night of Thursday, August 28th of 2014. So he said he
13 loaded them up in his car and took them to a nearby
14 Walmart where he said he then abandoned in the parking lot
15 and drove away. I confronted Timothy at that point that I
16 didn't, I knew this story wasn't true siding my
17 familiarity with that area, particularly that Walmart. I
18 had worked in that area which was the West Regional Patrol
19 District of Lexington County, very heavily populated area,
20 lots of business cameras. So I knew that was just no way
21 something like that could have taken place without there
22 being somebody who would have called it in. Right after I
23 kind of dispelled this story Special Agent Mackey looked,
24 made direct contact with Timothy and very calmy he said, I
25 believe you killed those children.

1 Q What was his response to that accusation?

2 A Timothy appeared surprised and he kind of hesitated
3 before continuing to deny this. At this point his
4 behavior became more erratic, he was crying more, he was
5 raising his voice up and down. He was talking, I wouldn't
6 call it a yell but certainly above normal in loud voice
7 level, talking very loudly about how he is afraid of the
8 children. While saying this he also appeared to try and
9 change the topic, I don't remember what the topic was
10 because we kind of just ignored the topic change and
11 stayed on this line of questioning about the children. To
12 me at that time the behavior seemed the most likely what
13 they described his behavior the night before which they
14 described as very wild and erratic.

15 Q And how did y'all react to that?

16 A We just kind of ignored it. We stayed on topic, we
17 stayed calm.

18 Q Once you ignored his behavior what happened to his
19 behavior?

20 A It seemed like when it did not elicit a response from
21 us he kind of leveled back out and calmed down. Special
22 Agent Mackey then started to show him photographs of the
23 receipts that were located in Timothy's vehicle the day
24 before. Most notable he showed them a receipt from the
25 West Columbia Walmart dated Wednesday, September 3rd,

1 2014. He had him read a list of items on the receipt. I
2 don't have a list of these items on hand but it was the
3 saw, dust mask, pale, muriatic acid. Some of the times we
4 talked about, had been talked about in previous testimony.
5 Special Agent Mackey asked Timothy to explain what those
6 items would have been purchased for. And at the time he
7 told special Agent Mackey and myself that the jab saws
8 were for cutting limbs, referencing, you know, outdoor
9 tree limbs and doing yard work. And he said the muriatic
10 acid goggles and mask were for, "etching PVC." Special
11 Agent Mackey told him he didn't believe that was the
12 purpose of these items. Special Agent Mackey then began
13 to confront Timothy with photographs of the handwritten
14 notes that had been located in the vehicle the day before
15 as well.

16 MR. YOUNG: Objection, I apologize. Mr. Jones, Sr.
17 is stuck outside the courtroom. And just so everyone is
18 aware, my paralegal is a knew mother and has had to pump.
19 She is out in the parking lot pumping so she is going to
20 try to come back in if that is okay.

21 THE COURT: Sure. Absolutely.

22 MR. YOUNG: Sorry for the interruption.

23 (Whereupon, Mr. Jones, Sr. came into the courtroom.)

24 Q I think you had said he first was confronted with the
25 receipts and now he was asking about the photographs of

1 the handwritten notes.

2 A The handwritten notes, yes.

3 Q The Judge, I think, has seen a copy of that before.
4 That is the notes you are referring to or that says it is
5 day one, day two, day three?

6 A That is correct.

7 Q Okay.

8 A Timothy acknowledged, yes, that is my handwriting.
9 He then calmly and very clearly read the notes out loud to
10 us. I don't remember if that is something that we asked
11 him to do or if that was something he just did. Actually
12 come to think of, I think Special Agent Mackey may have
13 asked him to read those out loud. Timothy claimed he
14 didn't remember writing the notes but at that same time
15 when he was reading them out loud he didn't seem to be
16 surprised or shocked at what they detailed. Special Agent
17 Mackey then confronted Timothy and said he believed the
18 questions from the Walmart receipt would have been items
19 that could have been used for the dismemberment and
20 disposal of human remains.

21 Q Did you get any response from Mr. Jones when he was
22 confronted with that statement?

23 A Just kind of this, not really, he was continuing to
24 deny any implication of killing the children. We then
25 confronted him with the blood in the vehicle. I had been

1 told the night before that he attributed that to possibly
2 being from an animal. He repeated that again, he said it
3 was probably from an animal even though he couldn't say
4 what the animal would have been or why there would have
5 been blood in the vehicle. I then told him that there had
6 been laboratory tests that confirmed that the material was
7 human in origin. I had actually been told earlier in the
8 day that they had done a presumptive test at a bio lab in
9 Mississippi that confirmed this. Timothy accepted that,
10 didn't contest those results and then tried to claim that
11 the blood may have been from his own blood from a cut. He
12 similarly kind of shrugged this off because of the sheer
13 volume of what was found in the vehicle. Couldn't have
14 been accounted for from Timothy's blood level from a cut
15 and it didn't appear that he had any injuries that could
16 have explained that either.

17 Q When you were going down to do this interview, prior
18 to this interview, you said you had been an investigator
19 for two months I think at that time?

20 A That's correct.

21 Q In addition to having Agent Mackey with the FBI help,
22 did you also have other directions of other, from
23 superiors of yours on how to conduct this interview?

24 A We did. Because everybody wanted to weigh in with
25 their two cents with what we should do. But probably the

1 most notable person I spoke with was Bo Barton and I don't
2 know what his exact title would be but he was a profiler,
3 criminal profiler with SLED. But he had told us a number
4 of things, chiefly among them he said to offer
5 self-defense as an outlet for accounting for the deaths of
6 the children if Timothy wasn't going to admit to them
7 otherwise.

8 Q Did you do that?

9 A At that time I kind of offered it up.

10 Q How did you do that, do you remember?

11 A Certainly. I told him, again, we were telling him
12 that we believe that he had killed the children and that
13 we were just trying to understand why he had killed the
14 children even though he was still continuing to deny it at
15 this point. You know, I had explained that we had driven
16 eight hours from South Carolina to Mississippi because we
17 were certain he had killed the children. And I told him
18 that we had no doubts that he had done so. And we could
19 see this, if he generally felt they meant to harm him at
20 the time. And I even sort of paraphrased the protection
21 of persons and property act at the time. And he kind of
22 calmed down while I was explaining this and he almost kind
23 of got this sort of confused look. When I said the word,
24 self-defense, he looked at me and he just had this almost,
25 I wrote in my report, a disgusted look on his face and he

1 said, they are just kids. I then went on to explain that
2 I knew he had a bunch of significant life stressors
3 because that was one of the key things that certainly came
4 up every time we spoke with somebody having been a single
5 parent, divorced, the five young children. And I
6 explained that I could see how somebody with all of this
7 going on could feel overwhelmed.

8 Q What was his response to that?

9 A He seemed to be receptive of this and he began to cry
10 a little bit and it seemed to be an appropriately,
11 emotional response to that. I told him we weren't there
12 to judge him, we were simply there to try to understand
13 what had happened and to find the children because that
14 was really our big goal at that point. And I told him
15 that the children needed to be properly put to rest which
16 is what they deserved, that was certainly another talking
17 point that had been suggested by Mr. Martin.

18 Q And what happened next in the interview?

19 A Special Agent Mackey then started to show Timothy
20 photographs of his children, one by one. Once he started
21 doing this Timothy started to get really upset again. He
22 started to get very hysterical, started raising up and
23 started backing up out of his chair, particularly
24 standing. He was yelling, keep them away from me. One of
25 the photographs, one of the last ones we showed was of

1 Timothy in the picture and him smiling and holding his
2 youngest son, Gabriel. This was one of the pictures that
3 had Timothy at all in them and I showed him this picture
4 and we showed it to him last. And I told him and this is
5 quoted to myself, "Tim, you know what this picture shows
6 me. This shows me a man who obviously loves his children.
7 And if he killed them he did because he felt like he had
8 no other choice at the time."

9 Q Why did you say that to him?

10 A Again, kind of playing on that, sort of a concept of
11 minimization and offering him an out to explain what he
12 had done.

13 Q What happened next?

14 A So Special Agent Mackey, we kind of stayed on this
15 even though he had not admitted to anything just yet.
16 Special Agent Mackey showed him the Walmart receipts
17 again. Timothy was crying and then he suddenly stopped,
18 really quickly composed himself. And then just went from
19 crying and upset, he just very, then he very calmly said,
20 guys, let's just cut to the chase. We asked him what he
21 meant by this. And he very calmly, you are not going to
22 find them. Well, we asked him why. He just very, very
23 matter of factly said because they are deceased. Again,
24 we just, like his early behavior, we didn't want this to
25 alter our response. We stayed very calm and we asked him

1 how they had become deceased. And he initially said, I
2 only remember parts of what happened. And he almost
3 indicated like he really didn't want to talk about it.
4 But we told him we needed to understand what had happened
5 so we could find the children and make sure they received
6 a proper burial which I told him they deserved which they
7 absolutely did. We told him that anything he could
8 remember or even he couldn't remember everything would be
9 helpful.

10 Q And what happened after you told him these things.

11 A He then went on to tell us what had happened wasn't,
12 "this was not premeditated." And he told us what had
13 taken place beginning with the night of Thursday, August
14 28th, 2014. He went on to explain that he told us the
15 issue that he said started the whole thing. He said on
16 that night he confronted his middle child, Nahtahn, who is
17 the six-year-old over, several blown electrical outlets in
18 the home. He said he was suspicious that Nahtahn was, "up
19 to something". And after he confronted the child he said
20 Nahtahn, "wouldn't come off of it. So he, "PT'd his ass".
21 We asked Timothy what he meant by PT'd and he responded,
22 "you know, like push ups and squats." Later he would add
23 spanking and hitting on him to this as well. Timothy went
24 on to tell us that this went on for hours and he said, "I
25 pushed Nahtahn too far." He then said he sent Nahtahn to

1 bed following this punishment only to check on him a short
2 time later and find him deceased. Special Agent Mackey
3 asked Timothy why he went to check on Nathan and he said
4 because I pushed him too far. Timothy said the other
5 children, "knew something was up." And he, Alias, his
6 oldest boy knew something, "bad had happened". Timothy
7 then told us the voices in my head told me no one will
8 ever believe you, that you didn't murder him. Now you
9 need to kill the rest of the children and get out of town.
10 Again, like we had been, we stayed very calm in our
11 reaction to this. Special Agent Mackey than told Timothy
12 this was not about you being afraid of your children.
13 This is about Nahtahn not coming off of it to which
14 Timothy responded, yes. And then said, "this was because
15 Nahtahn would not come off of it." Timothy went on to
16 tell us that Nahtahn had been, "defiant". And that
17 Timothy had routinely PT'd the children in the past as a
18 common form of discipline in the home.

19 Q So Special Agent Mackey asked him, this is not about
20 you being afraid of your children, this is about Nahtahn
21 not coming off. And his answer was what?

22 A It was, yes.

23 Q And then in response to the question and his answer,
24 yes, did he continue to talk?

25 A He did.

1 Q And what did Mr. Jones say?

2 A He said this was all because Nahtahn would not come
3 off of it.

4 Q Did he then go on to talk about Nahtahn being
5 defiant?

6 A Yes, he did. And then he told us that if Nahtahn had
7 been truthful with him the children would still be alive
8 and he would eventually go on to say that one out of five
9 children would have grown up to do something bad, me
10 killing them prevented that. And that was another quote
11 of Mr. Jones. To me it was kind of a rationalization of
12 what happened.

13 Q You talked about Nahtahn and gave his explanation of
14 what happened to Nahtahn, did y'all ask him about the
15 other children?

16 A We did. We asked him what happened, if that is what
17 happened to Nahtahn, what happened to the other four. He
18 quickly told us that he had strangled them. He told us
19 initially that he went to his, first to his son, Alias,
20 his oldest son and second oldest child. He said he
21 manually strangled Alias to death with his hands. And
22 prior to killing Alias Timothy said Alias told him,
23 "daddy, I want to go with". Timothy then told us he
24 sought out his oldest child which is his daughter, Mera
25 Gracie and he said he also manually strangled her with his

1 hands.

2 Q Did he describe, later in the interview, did he
3 describe what Mera had said to him?

4 A Yes. He would tell us later on that she said, Daddy,
5 I love you, before he killed her.

6 I am sorry, give me a moment.

7 THE COURT: Let's take a break.

8 (Whereupon, a short break was taken.)

9 THE COURT: How certain are we about going tomorrow,
10 ninety percent or more?

11 MR. HUBBARD: I would say yes, Your Honor. In fact,
12 even if we were finished with all the testimony we
13 probably want to argue tomorrow anyway.

14 THE COURT: Whitney is going to start getting
15 tomorrow cleared up out of Newberry. All right.

16 CONTINUE DIRECT EXAMINATION

17 By Mr. Graham:

18 Q When we took a break, Sergeant Creech, he had
19 explained his story of Nahtahn, you had asked about the
20 other four children.

21 A That's correct.

22 Q He had discussed Alias, he had discussed Mera, can
23 you pick up from there as your conversation goes next
24 about the other children.

25 A Absolutely. So and I don't know if I finished with

1 this. He said Mera Gracie, she said, Daddy, I love you,
2 before he killed her. He initially told us he had
3 strangled the two youngest children, Gabriel and Elaine
4 and sometimes Elaine may be referred to as Abigail. He
5 initially said he had strangled them like the other two
6 but later on he clarified that he actually used a belt but
7 he said he couldn't identify what belt he had used. He
8 said, "I don't know, I have lots of belts." He had then
9 told us he had killed the children on Thursday, August
10 28th, 2014. He said this happened in the living room area
11 of his residence which was located at [REDACTED] Southlake
12 Drive which is in the Lexington County area. He said this
13 happened at approximately 11:00 p.m. Eastern Standard
14 time. As we continued to kind of ask about the general
15 circumstances and the time he maintained that he was
16 uncertain of what had happened with Nahtahn exactly. He
17 went as far as to say whether Nahtahn might have
18 electrocuted himself as a result of the issues with the
19 electrical outlets. Timothy said they may have, "sucked
20 all the electrolytes out of his body." I felt it a little
21 odd at the time that he openly admitted to how the other
22 four died but kind of withholding on Nahtahn. In
23 hindsight, with a little bit more investigative experience
24 I can see how that probably looked more normal now.

25 Q What happened next during the interview?

1 A I asked Timothy if his killing of the children was
2 why he had sent his father a message on Friday, August
3 29th, 2014 saying he couldn't come to Mississippi because
4 he had, "too much to do." This was something that his
5 father had previously told me over the phone when we were
6 still working on this as a missing person's case. Timothy
7 said, yes, to this question and he said that too much to
8 do revolved around his dilemma over what to do with the
9 children's bodies. He said this was also he hasn't come
10 back to work since that date. And he would go on to
11 explain that this is why he told his neighbor, Christina,
12 on Tuesday, September 2nd, 2014 that she couldn't say
13 goodbye to the children. During that conversation he told
14 her he was moving out of town with the children.

15 Q Then did the interview go back into talking about the
16 Scooby Snax?

17 A It did.

18 Q Was that something you all brought up or something
19 that he brought up or do you remember?

20 A I believe he brought it up but I am not sure, I
21 couldn't really say for sure. But he went on to tell us
22 that he had smoked some Scooby Snax which would be the
23 spice we had earlier talked about. And the said this was,
24 "calm the voices in his head following the deaths of the
25 children." We asked him, I think I specifically asked him

1 if he had used any drugs prior to killing the children.
2 And he was emphatic that he hadn't. He told us after
3 killing the children he wrapped the bodies up in bedsheets
4 and took them outside one by one and he said he stacked
5 them in the passenger floorboard of his vehicle. We asked
6 him what he was thinking at the time and he said, "I
7 wasn't thinking. I didn't care if I got caught." When
8 asked about all the blood in the vehicle he said he never
9 cut or intentionally mutilated any of the bodies once the
10 children were dead. But he did freely admit that he was,
11 "not very careful with them because they were already
12 dead."

13 THE COURT: Hang on. Where are you next week.

14 (Whereupon, conversations planning on next hearings
15 to be held in Laurens.)

16 Q I think the last thing that you had said was that he
17 was talking about he had admitted that he had not been
18 very careful with the children because they were already
19 dead as far as them being in the vehicle?

20 A That's correct.

21 Q What happened on the, next in the interview?

22 A Special Agent Mackey asked him, asked him what he
23 thought would happen to him now that this was all over and
24 he was, "no longer on the run". Timothy responded this by
25 saying, "I'm going to get the electric chair", which he

1 then followed by saying, "I would want the firing squad".
2 Special Agent Mackey asked again this question, asking him
3 what he thought should happen, not what he thought would
4 happen. With this clarification Timothy said, "I think I
5 need help". He went on to tell us this wasn't the first
6 time he had thought about harming the children. And we
7 asked him why he hadn't previously sought mental health
8 assistance. And Timothy said, I am sorry, why he didn't
9 seek any help with the children. Timothy went on to tell
10 us that the children's mother didn't want them. And he
11 said he had a bad relationship with his own father. I
12 think what we had meant was mental health assistance. And
13 he took it was help regarding the children, taking care of
14 them and their physical wellbeing.

15 Q He answered those questions thinking that you were
16 talking about help with the children. Did you go back and
17 clarify?

18 A We did. We clarified why he never sought
19 professional assistance for psychiatric issues. And he
20 said, "because I thought I could manage it on my own."
21 And he went on to tell us that numerous times over the
22 years, he had been told numerous over the years that he
23 needed psychiatric help. But he said the only time he had
24 ever seen a psychiatrist was briefly following his
25 divorce. But other than that he had said he had never

1 sought any professional help. We asked him about how he
2 felt about what had happened to the children and in
3 response he said, "part of me says I am their father and
4 no father should do this to his children. And part of me
5 says, fuck it, they are already dead."

6 Q What happened next in the interview.

7 A He told us that the children stayed in the vehicle
8 from the evening of August 28th, 2014 until, Saturday,
9 September 6th, 2014. He told us that he had driven around
10 in the vehicle all week, no matter where he went. To me
11 this was consistent with the physical state of the
12 vehicle. He said to cope with the odor of the bodies over
13 the course of the week he had sprayed air freshener all
14 over them which made sense because we found expended air
15 freshener in the vehicle. He said he didn't really
16 remember a whole lot about what happened on Friday, August
17 29th or the next two days after which would have been
18 Saturday, August 30th and Sunday, August 31st. He told us
19 he mostly sat around the house those three days,
20 particularly Saturday and Sunday claiming he didn't really
21 know what else to do. This made sense because we didn't
22 have any receipt activity on those dates or any indication
23 he had left to go anywhere. He told us that when he had
24 been traveling the following week starting on Monday,
25 September 1st that it had been mostly aimless. He said at

1 this time he had started formulating multiple plans on
2 what to do with the bodies. We confronted him with the
3 handwritten notes again. And he admitted that he did
4 purchase the items from Walmart on Wednesday, September
5 3rd, 2014 with the intention of using those things to
6 dispose of the bodies. He said what he had written down
7 on the notes was just stuff he had written down but he had
8 never brought himself to be able to carry out what he had
9 detailed. He said his original plan was to, "dispose of
10 the evidence", but he said he ultimately couldn't carry it
11 out. He said he finally did discard the children in one
12 location, each in garbage bags along with the bedsheets he
13 had initially wrapped them in. We asked him again, about
14 the condition of the bodies and he once more at this time
15 he hadn't dismembered, burned or otherwise intentionally
16 mutilated any of the children. He would go on to tell us
17 that the garbage bags in question he had purchased from
18 the Dollar General on Thursday, September 4th, 2014. We
19 had a receipt to reflect this which is why we specifically
20 asked about the garbage bags. He told us he had purchased
21 the bags for this purpose which he followed up quickly and
22 very matter of factly saying, "I had some of my own trash
23 to throw away too." He went on to tell us that he
24 generally slept in the drivers seat of the car all week
25 when he would be traveling despite the overwhelming smell.

1 I asked him how he tolerated that odor because it was
2 pretty considerable. And he said, "you learn how to
3 ignore it after a while."

4 Q What happened next in the interview?

5 A Again and this is something that, you know, really
6 came more from my Crisis Negotiations Training and
7 regardless who you are dealing with or what you are
8 dealing with them is about is to never judge because it is
9 not my place. And I told him what he did was terrible but
10 it wasn't my place to judge him for what he had done. You
11 know, our goal at that point was, not so much what
12 happened but finding the children because, I mean we
13 maintained that they really deserved better than being
14 discarded into some wooded property in garbage bags. But
15 we asked him to help us find those children so that we
16 could properly put them to rest. He agreed with us that
17 they deserved better. He appeared to become eager to help
18 us. I think he wanted us to find them. In reference to
19 where he had put the bodies out, he said, "I wanted to get
20 lost", and, "I didn't know where the bodies were so I
21 wouldn't have to lie about it later that I didn't know."
22 Around this time he asked for a cigarette. I deferred to
23 Sheriff Crumpton since we were effectively in his house
24 and he said he was the Sheriff and Timothy could smoke in
25 the room if he wanted to. So we got him some cigarettes.

1 I think we had offered him, we actually had to empty a
2 coke can to use as an ashtray. I want to say around this
3 time we probably offered some water as well but I can't
4 distinctly remember that.

5 Q So after he started smoking cigarettes where did the
6 interview go next.

7 A So he continued to tell us that all five of the
8 children were together. He said they were all in garbage
9 bags and they were in a wooded area where he left them on
10 the morning of Saturday, September 6th, 2014. There was,
11 he mentioned and this had come up in the interview on the
12 7th and I don't think anybody testified to this. But he
13 had told them the night before that, that Friday night,
14 September 5th he had been driving and got stuck in a ditch
15 on the side of the road in an unknown jurisdiction. We
16 don't know if it was Georgia or Alabama but he said that
17 he got stuck in a ditch and a local law enforcement
18 officer came up and interacted with him, suspicions that
19 he was possible DUI. That the neighbor had come out and
20 vouched for him and that they had talked roadside and that
21 ultimately he was allowed to just call a wrecker which he
22 paid cash to pull him out of the ditch. The reason I
23 bring that up is at this point of the interview he brought
24 that up again and mentioned it because he said the
25 children were still with him at that point. So he was

1 telling us that story to let us know that as of September
2 5th, 2014 the children were still in the vehicle. He told
3 us, "he should have been caught then." And regarding the
4 officer he dealt with, I think he was worried the guy
5 might get in some trouble at one point and I can see why
6 he might think that. He actually said, "that guy was nice
7 to me, I don't want you to do anything that will get him
8 in trouble." While we had this information we started
9 disseminating with the MBI officers in the next room to
10 see if they could kind of do some digging and figure out
11 where this might have been or what may have taken place
12 just to give us a general location. We then discussed
13 some receipt with Mr. Jones, with Timothy and those
14 receipts were Saturday, September 6th, 2014, Bypass
15 FoodMart in Greenville, Alabama at 8:18 a.m. And a
16 receipt from the same date at 1:06 p.m. from a Community
17 Neighbor Bank in Camden, Alabama. And then later that
18 same day at 6:09 p.m. at the Taco Bell in Laurel,
19 Mississippi. Looking at those receipts and kind of
20 creating a rough timeline for Timothy he was able to tell
21 us that he had disposed of the children some time between
22 the Bypass FoodMart and the Community Neighbor Bank which
23 told us they were between Greenville, Alabama and Camden,
24 Alabama. He told us at that point he had been planning
25 on, at the ATM he had withdrawn some cash and he had

1 planned on taking back roads to Las Vegas where he had
2 planned to have one last hoorah before he got caught. He
3 told us at that point that he had resigned himself to the
4 fact that he would eventually be caught.

5 Q So based on that did you begin to get an idea of
6 where he said the children were dropped off?

7 A We did. So based on this, knowing that we had kind
8 of fixed points A and B, we were able to realize that it
9 was a pretty straight shot, relatively speaking connecting
10 Greenville and Camden, Alabama through Highway 10. So we
11 assumed that was likely the route taken because it is kind
12 of the path resistance between the two. And Timothy at
13 this point, while we were discussing said he didn't want
14 to waste our time and kind of take us on a wild goose
15 chase because he felt like ultimately he would be able to
16 help us find the site. He described driving from
17 Greenville to Camden, he said it was a very rural area
18 during which time he took a right onto a long drive
19 consisting of gravel and red clay. He said it took him to
20 an area significantly higher elevation compared to the
21 roadway below. And he said that the area had appeared to
22 have been partially logged within the last few years. He
23 said when you are on the property which is raised above
24 the main roadway, you could observe traffic through the
25 trees on at least two sides of the property. He

1 repeatedly referred to this as unincorporated land. The
2 more we talked about it it was almost like it was jogging
3 his memory. He felt increasingly convinced that he would
4 be able to help us find this location. Initially he
5 thought he might be able to help us find it on a map. We
6 got an Ipad and brought it in the room and tried to look
7 up some stuff on Google Earth and some maps. I think he
8 got frustrated because he don't like Apple devices. He
9 was asking for a Windows or Android device. Ultimately
10 the problem we were having is he said, you know, that we
11 couldn't find anything that dealt with elevation because
12 he felt like the elevation was the key to identifying the
13 site where the bodies were.

14 Q So was he able to assist you with the Ipad or any
15 other devices?

16 A We ultimately weren't successful with this. He was
17 able to use the devices but we couldn't find the types of
18 maps that we were trying to get access to. Throughout
19 this he is very calm, articulate, he seemed very engaged
20 with trying to help us. He would occasionally be prone to
21 some outbursts of tears and, I mean, what I would consider
22 a valid emotional response to grief. We circulated the
23 information as it was described to local agencies in
24 Alabama to see if anybody could identify that location.
25 Right around this time in the interview is when we

1 unfortunately realized the digital recorder hadn't been
2 recording. We were going to check because I think we were
3 close to trying to resolve the interview at this point and
4 realized that it had not been on. I am going to blame
5 that on user error because we had never used it before,
6 just bought it. Kind of tunnel vision in the moment of
7 what we were dealing with and we thought it was on and it
8 wasn't.

9 Q So when you realized it wasn't on what happened?

10 A So all you can do when you make a mistake like that
11 is just strove it off. Timothy seemed to make light of it
12 and he agreed that he would keep speaking with us and we
13 could start the recording up and kind of go through a
14 summary of what we previously discussed. He had no issue
15 with this. So we went on to discuss again what happened
16 August 28th, 2014. I don't know if we want to go through
17 the statement or if we want to play the recording.

18 Q Do you actually have a copy of that recorded
19 interview?

20 A I do, I didn't think to bring it up here with me.
21 Would you like for me to go get it.

22 Q Let me see if I can get it for you.

23 A That would be it.

24 Q Sergeant Creech, I am showing and we will get this
25 marked as a Court's exhibit as well.

1 COURT REPORTER: Number 43.

2 THE COURT: Number 43.

3 Q Looking at State's or excuse me, Court's exhibit
4 number 43, this is a CD disk that contains actually
5 multiple interviews?

6 A Yes.

7 Q I think three, it will have three different separate
8 recorded statements. Is that correct?

9 A It should.

10 Q The first one that we are going to listen to will be
11 the intonation of what we just discussed from the 8th?

12 A That's correct.

13 MR. GRAHAM: Your Honor, we are going to get this
14 loaded and bring the right one up.

15 Q Additionally the FBI originally did a transcription
16 of this and gave that to you?

17 A Yes, they did and I made some corrections to it
18 because it had some inaccuracies.

19 Q And you have a copy of that transcription up there
20 with you?

21 A I do.

22 Q As well we have made a copy from a Court Reporter of
23 a transcription.

24 MR. GRAHAM: I will mark this as Court's exhibit 44
25 which is the certified Court Reporter's copy.

1 (Whereupon, Court's Exhibits 43 and 44 were marked
2 for identification only.)

3 MR. GRAHAM: I can provide you if Your Honor wants
4 another copy that will designate which officer is doing it
5 if you want that at a later time because the transcription
6 of the Certified Court Reporter knew it was an officer but
7 didn't know who so they didn't distinguish between
8 Sergeant Creech or Special Agent Mackey.

9 THE COURT: Okay.

10 MR. MADSEN: And, Judge, I would just say, even the
11 second transcript that was done by the Court Reporter,
12 there are some errors that we have found within that
13 transcription itself. Some of them is where it says
14 inaudible and we can hear what it is. Some of them are,
15 the words are placed, are not placed but there are a
16 number of errors in that transcript. They are certified
17 by a Registered Court Reporter.

18 THE COURT: Okay.

19 MR. GRAHAM: Would Your Honor like a copy of the
20 other transcript that was done by the FBI and Adam Creech
21 as well? I do have a copy here if you want.

22 THE COURT: Just, I will work off this one.

23 (Whereupon, a short break was taken.)

24 THE COURT: Okay, are we ready.

25 MR. GRAHAM: Judge, apparently the internal disk

1 drive on the computer worked yesterday and it didn't work
2 today so we got an external drive. What you are going to
3 hear is actually Court's exhibit 43 which was the first
4 disk that I did show Sergeant Creech as he walked up to
5 the stand.

6 THE COURT: I saw him identify it. Go ahead.

7 (Whereupon, a audio was played starting at 2:55 p.m.,
8 ended at 3:45 p.m.)

9 Q Sergeant Creech, was that the end of your interview
10 with the Defendant on September 8th of 2014?

11 A Yes, it was.

12 Q Do you, at what time did the interview start?

13 A I believe we had approxiamtely, 7:30 p.m., the
14 Miranda form, I know it is noted at the top.

15 Q Is that Eastern Standard time or Central time?

16 A I believe it was Central time to be honest, going
17 back and forth to the time zones gets a little convoluted.

18 Q And then what time did the interview end?

19 A We did end at 10:30 Central time is what I have noted
20 in my report.

21 Q So if it was in, if it is 7:30 Central time then that
22 would be three hours?

23 A That sounds about right.

24 Q During the recorded part, seemed like you had a list
25 of questions?

1 A I did.

2 Q Where did those come from?

3 A Those were given to me by Lieutenant Lawrence with
4 SLED and they were provided by Bo Barton. And that was
5 another thing that he had suggested, was to utilize those
6 questions and I can't remember what the ultimate
7 explanation was for it but I was handed that because the
8 profilers had asked those questions, I asked those
9 questions.

10 Q What was the purpose of asking those questions?

11 A It was something to do with some kind of mental
12 health assessment. They evidently predicted would occur
13 down the road.

14 Q Thank you, please answer any questions that they
15 have.

16 CROSS-EXAMINATION

17 By Mr. Madsen:

18 Q Now, Detective Creech, let me apologize, I have got
19 the memory of a gnat so if I ask you stuff again that you
20 have gone over I apologize, it is just, kind of keep up?

21 A As long as you can bear with me as I go back through
22 the paperwork.

23 Q So, it looks like you did a little over a three-page
24 report?

25 A That's correct.

1 Q And obviously you are trained through law enforcement
2 how to do reports and you try to be as thorough and
3 accurate and complete as possible?

4 A That's correct.

5 Q And in fact, I think at some point and time you kind
6 of told Tim that when he questioned or when y'all were
7 questioning him, hey, I generally try to do accurate or
8 thorough reports?

9 A I do believe us discussing that, yes.

10 Q And you became involved in September?

11 A That's correct.

12 Q That is when you were assigned this case and you
13 conducted a number of interviews based on that?

14 A Yes, I did.

15 Q And you had said you had just become a detective and
16 prior to that you were a slick sleeve?

17 A I was a Master Deputy just prior to becoming a
18 detective.

19 Q So you start as a slick sleeve which I guess means
20 you don't have any--

21 A Just regular old deputy with no say so.

22 Q So did you have a path or an area that you were
23 assigned to within the county?

24 A Yes, I did. I was in the West Region Patrol
25 District.

1 Q And during your patrol you would have interaction
2 with people on drugs or alcohol?

3 A Absolutely.

4 Q You would have interactions with people on, or that
5 had mental health problems or people that you would have
6 found out that had mental health problems.

7 A Of course.

8 Q Sometimes those interactions probably weren't great?

9 A Sometimes.

10 Q Sometimes those interactions might not have been as
11 bad or would be a little bit normal, just kind of depended
12 on how that person was at that point and time?

13 A Of course.

14 Q And once you get this case you sit down with other
15 law enforcement in Lexington to kind of talk about, hey,
16 this is what I have initially?

17 A No. So the way a case like this would work, it is
18 just, I mean I could have gone to somebody and said, hey,
19 what do you think. But in this case, I mean I got the
20 report and kind of went through, this wasn't the first
21 missing person's report I had had so I kind of knew the
22 basic steps to go ahead and start talking. But I didn't,
23 I didn't consult with anybody about what needed to be done
24 initially.

25 Q And so, but you all, you said you started talking to

1 or trying to find stuff out about Timmy's background?

2 A Yes, that is correct.

3 Q And you started with Jim McConnell who was his boss?

4 A That's correct.

5 Q And he did mention something about medical school in
6 the Caribbean?

7 A That's correct.

8 Q And you followed up on that and I guess, Tim, a few
9 months after his date was suppose to start there?

10 A I believe so.

11 Q And Jim had said something about that Tim was
12 involved in such flights-a-fancy (phonetic)?

13 A Yes, I do believe he used something along those
14 words.

15 Q And that he would change from moment to moment?

16 A Yes.

17 Q Did he expound upon that, what did he mean by he is--

18 A At that time he didn't. We have had a subsequent
19 interview with him where he kind of elaborated, medical
20 school was his big example. But that was just kind of an
21 out of the blue, on the spontaneous thing that Tim decided
22 to do. And he just felt that it was kind of crazy to take
23 a well paying job at Intel and just completely beat off
24 track to go to medical school in another Country.

25 Q When you talked with Jim McConnell at the first or

1 subsequent interview did Tim's kind of religious beliefs
2 ever come up?

3 A I don't remember that Jim discussed his religious
4 beliefs a whole lot because I don't think he knew Tim on
5 that level.

6 Q And you asked Jim about, you know, any personal
7 problems that Tim had and he mentioned the raising the
8 five kids?

9 A That's correct.

10 Q And he actually specifically told you that Tim loved
11 his kids and he used the words, Tim loved his children
12 immensely?

13 A Yes, he did.

14 Q Did he give you any examples or say, what he based
15 that off of?

16 A At the time where we were at, that particular, in the
17 particular investigation I just didn't have a reason to
18 press that further at the time.

19 Q Because you were just trying to get at least some
20 initial background?

21 A Of course.

22 Q And then you go to, and I don't want to say his name
23 wrong, is it Ben Wine?

24 A It is, Ben Wine called me.

25 Q He is the investigator from Intel?

1 A Yes, he is kind of like their, I guess you could call
2 him like an internal affairs type guy.

3 Q And I think your conversation with him is he is
4 former law enforcement, major crimes or homicide type of
5 detective?

6 A Correct.

7 Q And you asked him for some type of assistance
8 figuring out or trying to figure out, hey, check emails or
9 this or that?

10 A He offered, he said we can check all of his company
11 emails to see if there was any idea and he was kind of
12 concerned as well. And he said, we can check anything on
13 the Intel side of things and if there is anything that
14 might help tell you where he is at and how he is doing we
15 will let you know.

16 Q And he did that for you?

17 A He did.

18 Q And at some point and time, not right then but later
19 came back and said, hey, Little Tim had 12,000 emails or
20 something like that that he kind of looked through?

21 A Correct.

22 Q And he pointed out to you, the one interesting thing
23 out of that 12,000 emails is there wasn't any kind of
24 personal correspondence present?

25 A Correct. He thought it was really unusual that it

1 was just overwhelmingly work related. I guess because
2 other employees must use their work emails.

3 Q Doesn't everybody?

4 A Of course.

5 Q And then you also talked to Tim, Sr.

6 A I did.

7 Q And you were trying to get some background from,
8 about Little Tim?

9 A Correct. And Tim, Sr. was also one of the people who
10 had called in to kind of initiate this the night before.

11 Q We find out, I mean Amber had no clue whether or not
12 they were going to school or not?

13 A No. The impression that I got was she was not that
14 heavily involved.

15 Q I mean she hadn't seen him in months?

16 A I believe so, I know it had been some time but I
17 couldn't say it whether it was months or days or weeks.

18 Q And I think that you were asked, at some point in
19 time or at least initially about some stuff with Tim, Sr.
20 in the Solicitor's office about, you know, any mental
21 health with Little Tim. But at least at that initial time
22 that you talked with him, the Dad said something about,
23 you know, told you about mother having mental problems?

24 A Correct.

25 Q That he thought something about some undiagnosed

1 mental similar to Tim's mom or Little Tim?

2 A Yes, he did have that speculation.

3 Q And, in fact, said there is a fine line between
4 brilliance and insanity. Did he mention anything about
5 Tim's religious beliefs that you recall?

6 A I don't recall that he did. If he did it wasn't
7 anything notable or I would have documented it somehow. I
8 don't think he went into Tim's religious beliefs.

9 Q And then once you get done talking with him, at some
10 point you actually go out to the residence yourself and
11 kind of look around?

12 A Yes, I do.

13 Q You speak with Amber, the children's mother?

14 A Correct.

15 Q And she is like, you know, him being gone is not
16 unusual for him. That is, he can be kind of flighty or
17 weird like that, I guess.

18 A I don't remember if it was his father or Amber
19 mentioned that he just kind of up and gone out of town
20 with the kids before. So it wasn't necessarily something
21 out of the ordinary in this case.

22 Q And then I know you talk with her later but when you
23 talk with her later and you ask about any kind of mental
24 stuff she tells you something that, she thinks he has been
25 treated for bipolar.

1 MR. GRAHAM: Objection, relevance. We are talking
2 about Jackson v. Denno hearing. What he knew prior to
3 going to talk to him has nothing to do with this hearing.

4 MR. MADSEN: Well, I actually think that he got that
5 out and he testified but it is a subsequent conversation
6 before he actually goes for the interview.

7 THE COURT: This is preinterview investigation
8 conversations? I don't know the timing of it. I thought
9 he was investigating the missing children and spoke with
10 Tim, Sr.

11 MR. GRAHAM: Unless I am incorrect is, when he went
12 to interview him on September 8th, Mr. Madsen is now
13 asking him something that Sergeant Creech didn't know at
14 that time.

15 MR. MADSEN: And I might have misspoke, I think that
16 that might had been, that he had a subsequent conversation
17 afterwards when he followed up.

18 MR. CREECH: And I have read that somewhere today and
19 I know that I did, at some point have a conversation with
20 Amber when she mentioned that he may have been medicated
21 for Bipolar but without going through this whole thing I
22 couldn't tell you.

23 MR. MADSEN: And I apologize for being confusing.

24 THE COURT: To the extent it is after the interview
25 it would be sustained. To the extent it is preinterview

1 investigation and looking for the missing children then it
2 is overruled.

3 A Amber did mention that she had spoken to Tim, I
4 think, I don't know if she said exactly what day. I think
5 September 2nd, so it was that prior Tuesday and she said
6 that he had sounded kind of drunk and mentioned that he
7 was moving away. And I think Saturday, the 6th, they were
8 suppose to have a scheduled visitation.

9 Q And she shows up for that and he doesn't show up?

10 A Correct.

11 Q And at some point in time you get a call from the
12 Under-Sheriff in Mississippi?

13 A That's correct. Well, I was contacted by our front
14 desk, given his name and number and said, hey, give this
15 guy a call.

16 Q And he is out with Little Tim at that point and time?

17 A That's correct. He is out with Timothy.

18 Q And based on y'all's conversation you come to the
19 joint conclusion that this doesn't boast well for the
20 children?

21 A It certainly didn't look good.

22 Q And you suspected that they were deceased at that
23 point and time?

24 A It was my personal belief that they likely could have
25 been.

1 Q And in fact, once you get kind of done with that
2 conversation you call, was Sergeant Lance your superior?

3 A He wasn't. So I was actually off, it was a Saturday
4 night and being fairly new and clearly saying, realizing
5 that this had escalated tremendously from just a missing
6 person's case, he was the on-call major crime sergeant
7 that weekend. So I called him and let him know what was
8 going on in case there was any work that needed to be done
9 up here and he could kind of get that ball rolling the
10 next day. And I believe he did touch base with Marty
11 Patterson and made some arrangements.

12 Q And he is kind of higher up on that food chain?

13 A Yes.

14 Q For you at least?

15 A Yes.

16 Q And that is why you are relaying that information to
17 him?

18 A Correct. And because I wasn't working at the time.

19 Q Right. And I think you have a conversation with him
20 on the 7th?

21 A Correct.

22 Q Where he kind of, Sergeant Lance gets back with you
23 and says, hey, based on some -- a search warrant, we
24 believe that the kids have been killed in Lexington, just
25 to kind of keep you updated?

1 A Yes.

2 Q And I am assuming that is based on, found in the car,
3 receipts, the notes, things along those lines?

4 A Yes. And at that point the decision was made for me
5 to go ahead and come into work even though I wasn't
6 working that weekend. But since it is my case we were
7 thinking that if anything had of occurred it may have
8 occurred in Lexington. I needed to come in and go ahead
9 and start doing some more work on it.

10 Q And you have or someone has kind of a timeline done
11 with maybe with Intel that can kind of chart the receipts
12 and those kind of things?

13 A Yes, I don't know. I know Intel was involved at some
14 point, there were so many people in and out on this, that
15 Sunday. But they were roughly time lining everything
16 based on receipts and whatnot from the vehicle.

17 Q And at least from what you see on that timeline there
18 is no rhyme or reason, it is all over the place, isn't it?

19 A It struck me as being all over the place, yes.

20 Q And we know food purchases that you perceived to be
21 for just one individual at that point and time?

22 A Correct.

23 Q Additionally I think that you probably, didn't you
24 call around to Florence and some other places to kind of
25 match up those receipts and got some videos?

1 A Correct.

2 Q Or at least talked with other people who reviewed the
3 video for you indicating that in some of those places one,
4 or Tim is going in and out by himself. They are not
5 seeing any kids?

6 A That's correct.

7 Q And you had said you didn't know they had conducted a
8 first interview on the, I guess the night of the 6th?

9 A No, I wasn't aware of that.

10 Q But you do become aware of a second interview?

11 A Yes.

12 Q And that would have been, I believe on the 7th?

13 A That's correct.

14 Q And you received a briefing on that?

15 A Correct.

16 Q And you know that Big Tim was actually part of that
17 and was there to assist authorities?

18 A Correct. I was aware of that after the fact.

19 Q And did, as far as from that you are kind of told the
20 nearest thing to an admission is they asked him if he hurt
21 the kids and he says yes and then he says no?

22 A Correct.

23 Q And you have a conversation with the Under-Sheriff
24 where you are told that Tim had yet to invoke his Miranda
25 rights or Fifth Amendment and that he thought Little Tim

1 was willing to talk with y'all?

2 A Yes, based on the night of the 7th, that was my
3 understanding.

4 Q And since that point you have seen the video from the
5 6th?

6 A I have.

7 Q We know that is not true, is it?

8 A I know he did invoke his Fifth Amendment on the night
9 of the 6th.

10 Q And then you have gotten, I guess, Patterson's notes
11 from the 7th where he says, hey, I am taking the Fifth to
12 his dad?

13 A And I will be honest, I haven't really reviewed the
14 notes that was given to me and I put them in a file, I
15 wasn't part of that interview. I wasn't going to get too
16 nick-picky about the details of it.

17 Q But with all due respect to him, we know that that is
18 not true?

19 A It came up in prior testimony. Again, I hadn't seen
20 it in the notes so I don't want to speak on behalf of what
21 I haven't seen in writing.

22 Q And we know from the video that Tim said he didn't
23 want to talk?

24 A Correct.

25 Q Doesn't really seem to matter at that point and time.

1 I mean they keep talking.

2 MR. GRAHAM: Is he testifying or?

3 MR. MADSEN: I am asking a question.

4 MR. GRAHAM: He didn't know about the video at the
5 time before he went to go do an interview on the 8th, I
6 don't understand why this is relevant at all.

7 MR. MADSEN: Because I am asking him about what he is
8 told at that point and time and what he has learned since
9 then, he is the case officer, I am assuming.

10 A Correct.

11 THE COURT: But there were other interviews, there
12 was an interview on the 6th and an interview on the 7th.
13 He is not interviewed until the 8th, right?

14 A Correct.

15 THE COURT: And kind of mixing and matching the
16 interview on the 6th and the interview on the 7th.

17 MR. GRAHAM: I want to object on the whole line of
18 questioning. What he is doing, Your Honor, is not asking
19 questions, he is testifying to you.

20 THE COURT: I am trying to follow but ask questions
21 and be specific about which interviews prior to his that
22 he has knowledge of.

23 Q So Patterson tells you he hasn't invoked, you watched
24 the video from the 6th and you know that is not true?

25 A I saw the video only very recently.

1 MR. GRAHAM: Objection, it is true. He didn't invoke
2 on the 7th. He is mischaracterizing evidence now. He
3 didn't know about the 6th. He is trying to confuse the
4 whole situation and not asking the right questions, he is
5 testifying.

6 MR. MADSEN: I am asking about seeing the video since
7 then on the 6th. He gets information on, or from him that
8 he hasn't invoked.

9 THE COURT: Well, don't you think it is unfair that,
10 if you consider what Mr. Graham just said, on the 6th he
11 invoked and he was pressed and the interview fell apart.
12 On the 7th more people are in there, whole different
13 story, so telling him he invoked the Fifth and there is
14 two separate hearings and two separate groups, that is a
15 little bit unfair to say, you know it is not true. Well,
16 what is not true is where, you put him in a whole bunch of
17 facts. I am following you but I think it is a trap
18 question. He can't answer right no matter which way he
19 goes. And that is what Mr. Graham is objecting to, is
20 that you are testifying.

21 MR. MADSEN: And those are my favorite kind of
22 questions.

23 THE COURT: I know but this is a suppression hearing,
24 not a trap question hearing.

25 MR. MADSEN: I am just asking him what he, I am

1 trying to break it down, what he was told and then what he
2 has seen now as the case agent from what he sees on the
3 6th. I am trying to separate that out and then I can ask
4 a separate one on the 7th.

5 THE COURT: I am not sure that you have asked him the
6 question, what did the Under-Sheriff tell him about either
7 hearing. I just, I am not sure you have asked that.
8 Maybe you told him different things, I don't know.

9 Q So you have a conversation with the Under-Sheriff?

10 A Yes, he was on speakerphone and I can't remember if
11 the Sheriff and Lieutenant Johnson were also back and
12 forth on this conversation, I hadn't really met any of
13 these people before so I don't, there could have been some
14 bleed over and confusion because it was a speakerphone,
15 kind of conference call type deal. It was my
16 understanding though that the night of the 7th Timothy had
17 not invoked his rights during that interview and they
18 believed that he was still willing to speak with law
19 enforcement.

20 Q And so was that not your same thought about the 6th
21 also or had they not told you at that point and time
22 either about the 6th?

23 A I didn't know about the interview the night of the
24 6th until I saw the video about two months ago. But I
25 think it is documented in Marty's report but again, I got

1 a copy of that report and I just assumed the report was
2 reflecting the interview from the night of the 7th and I
3 filed it away and, because I didn't need it to do my
4 documentation since I was not involved in that interview.

5 Q And you found that Tim did take the Fifth on the 6th
6 too after you got that?

7 A In the video he says he was going to plead the Fifth.

8 Q Okay.

9 A But every action that I took on this case was with
10 what my knowledge was, what took place the night of the
11 7th.

12 Q And so, I am assuming to become an investigator and
13 hostage negotiator--

14 A Crisis negotiator.

15 Q Crisis negotiator. That I guess, will that include
16 hostages and you are talking people off of a suicide
17 ledge, I guess?

18 A It is all one in the same.

19 Q So it falls, and so you are taught with that
20 interviewing techniques?

21 A It is not so much interviewing techniques, they are
22 active listening skills and I have just found they are a
23 great tool for talking to people even if it is in an
24 interview type setting. It is just good tools for repaire
25 building and eliciting information without it necessarily

1 being completely interrogated.

2 Q And so are you taught then, as you come from a deputy
3 to a master deputy to an investigator, are you taught
4 differently then interviewing skills?

5 A There is all kinds of training you can do as an
6 investigator. When this case had occurred I think I had
7 recently finished the Reid Technique of Interviewing.
8 Good method but to me it is kind of rigid and it has got
9 great bits and pieces and, you know, but I think to this
10 day I have yet to do an interview one-hundred percent by
11 the Reid Technique. But a lot of this is just kind of
12 experience you learn as you conduct interviews. But I
13 have been to all kinds of different trainings and some of
14 it has involved interview techniques.

15 Q You have had a lot of training?

16 A I would say I have had a decent amount.

17 Q And so you are talking with someone and they say,
18 hey, I am taking the Fifth, what do you do?

19 A My understanding of taking the Fifth would be they
20 are not wanting to talk at that time and I would probably
21 stop talking to them and approach them at a later time and
22 ask them again if they would be willing to speak with me.

23 Q Did you know when you started to go there that they
24 had also had asked for blood, DNA and that kind of stuff
25 and he had refused?

1 A I knew that they had gotten search warrants for some
2 of that but I didn't know who, really the details on any
3 of that. Most of that logistical work was communicated
4 via Sergeant Lance. A lot of it I didn't hear the in's
5 and out's of it until we got there on the 8th and I just
6 knew that they had gotten search warrants for some of
7 that.

8 Q But you were not told that he had refused to give it
9 and that is why they got the search warrants?

10 A No, I was not.

11 Q But you know as a law enforcement or investigator
12 that if someone won't consent you could potentially try to
13 get, that is kind of the logical next step?

14 A Of course.

15 Q And at some point and time do you talk with Sheriff
16 Crumpton on your way down?

17 A On the way down?

18 Q Well, let me ask. At some point and time Sheriff
19 Crumpton tells you that he has never been in an interview
20 with anyone like Tim?

21 A I think that may have been during the, sort of
22 speaker conference call the night before because I do
23 remember that comment being made and I think that was part
24 of that kind of group discussion.

25 Q And it is about an eight-hour drive?

1 A Correct.

2 Q Lieutenant Lawrence is driving?

3 A Correct.

4 Q It is his car?

5 A It is his car.

6 Q And it is you, him and Mackey in the car?

7 A Correct.

8 Q What are y'all talking about on the way, the eight
9 hours down, are you staffing or kind of talking about the
10 case or what we are going to do or just anything?

11 A A little bit of both but it is an eight-hour drive.
12 So, I mean, to spend a full eight hours staffing a case is
13 probably a bit much. There was some discussion back and
14 forth of what we plan to do or not do during the interview
15 and we planned on participating in the interview. And a
16 lot of that was, for me, was just filling phone calls from
17 Lexington with different things coming up on the case and
18 answering questions.

19 Q Any phone calls from Mississippi or people bringing
20 you additional or you are getting additional information?

21 A I didn't speak with anybody from Mississippi while we
22 were on the way to Mississippi.

23 Q So once you get into Mississippi y'all stop and get a
24 recorder?

25 A Correct.

1 Q Although you say it is your department's policy not
2 to video or audio record an interview?

3 A It is not the policy not to but it wasn't the policy
4 at the time to do so, if that makes sense. So if you did
5 it wasn't necessarily wrong, they didn't teach us to do
6 that and it wasn't necessarily discouraged but it also
7 wasn't encouraged, if that makes sense. Nowadays it is
8 policy to at least audio record or video record
9 preferably, we are finally catching up with the times.
10 But back in 2014 that was not our standard practice.

11 Q Well, it would make sense, wouldn't it, that way no
12 one can argue about what is said if you can hear it or see
13 it?

14 A Agreed. Have been in both interviews recorded, not
15 recorded. It is, I agree, recording is better if
16 possible.

17 Q Because if it is not recorded we are not relying on
18 someone's interpretation?

19 A Correct.

20 Q So when you get there, to Mississippi, you just don't
21 immediately just go in there and start interviewing Little
22 Tim?

23 A No.

24 Q You actually do quite a bit beforehand?

25 A Correct.

1 Q I think part of that is, do you talk and y'all decide
2 to use, I guess, maybe a private CSI lab or you review the
3 evidence. You sit down with law enforcement and you kind
4 of run me through?

5 A We kind of have a big round table with all the local
6 Mississippi Bureau of Investigation and the Smith County
7 guys just kind of trade their notes, what everybody knows
8 about what is going on and what they have done. And a lot
9 of that involved them going over the crime scene
10 processing of the vehicle. And they did inform me that
11 they had sent some blood samples, I believe, to a local
12 lab for presumptive testing. And they said that was
13 pretty normal practice for them just because of the quick
14 turnaround compared to their State lab. I did go and
15 review the vehicle and the contents of the vehicle as
16 well.

17 Q And that is going to be, have you taken a look at all
18 of these, I don't know what the numbers are.

19 THE COURT: We are going to take a break. We will
20 take about ten minutes.

21 (Whereupon, a short break was taken.)

22 THE COURT: Are we going to get done, get done with
23 him, get Mississippi done.

24 MR. HUBBARD: As much as we can get done, obviously,
25 one thing, I think we are all aware that tomorrow the

1 media, is going to be a headline tomorrow.

2 THE COURT: Well, that is the, hope not but probably
3 so.

4 MR. HUBBARD: And there may be some banging on the
5 door saying let us in. And so we do have our
6 out-of-stater and we would love to get him done as soon as
7 we can. So it might be somebody we take out of order
8 tomorrow to finish that up.

9 THE COURT: How much more have we got, why can't we
10 do it today.

11 MR. HUBBARD: I think Mr. Madsen is probably through.

12 MR. GRAHAM: Just for clarification, Judge, there is
13 another interview on the 9th and there is another
14 interview on the 11th.

15 THE COURT: You are not near through then.

16 MR. GRAHAM: All I did was the 8th.

17 THE COURT: I got you.

18 MR. GRAHAM: The ones on the 9th and the 11th are
19 much shorter.

20 MR. HUBBARD: Our out-of-stater is due to leave
21 tomorrow so if we can do him in the morning that is fine.
22 Because he shouldn't be particularly long.

23 THE COURT: All right. Well, y'all apprise me of
24 this, Madsen being gone tomorrow, he has got to go address
25 an issue with his parents, we have talked about it several

1 times. Where does that leave y'all.

2 MR. YOUNG: We are just finishing up Eric Johnson and
3 Mackey. If we are doing more than that I would not feel
4 comfortable.

5 THE COURT: This is the detailed one, Mackey is more
6 of an assisting type and then Johnson we dealt with and it
7 can't be much left with him. But you handled him very
8 well. And y'all discussed that with Mr. Jones.

9 MR. YOUNG: Yes, for that limited purpose, yes sir.

10 THE COURT: For that limited purpose.

11 MR. GRAHAM: Just for clarification, Sergeant Creech
12 would be testifying tomorrow about the 9th and the 11th.

13 THE COURT: I would be more comfortable since Madsen
14 is gone, let's get him done today, let's get it done.
15 That way he is safe, it is his witness, I would rather
16 work later tonight and have it done right. And the media
17 won't be here tonight, not that he is saying anything
18 about the media, we are not being interrupted by anybody
19 asking to intervene or consider whatever, whatever the
20 media may do. Let's try to get Mr. Creech done today.

21 MR. MADSEN: Are we ready, Judge?

22 THE COURT: Yes, sir.

23 CONTINUE CROSS-EXAMINATION

24 By Mr. Madsen:

25 Q So you get there, you do other stuff, you get the

1 report back from the lab?

2 A I was told that they had gotten some and they were
3 like preliminary results but they had been notified by the
4 lab that the blood that they had sent over had been,
5 testing was presumption positive for human blood.

6 Q And you actually go out to that multi-purpose
7 building and see the car?

8 A That's correct.

9 Q And that is, I think that these are in order but
10 basically 30 through 40, I guess. And that is consistent
11 with what you saw with the vehicle of the multi-purpose
12 room?

13 A It is.

14 Q And 30, I guess, is some trash that were in the bags
15 from the Family Dollar something, but I guess he told you
16 he had purchased the bags and he had put, not only the
17 kids in but also some trash?

18 A Correct.

19 Q And that is born out and just kind of the car being
20 kind of dirty and a bunch of junk and stuff in there?

21 A And, of course, they had everything else in the
22 vehicle laid out on tables. I don't think there is a
23 picture of that.

24 Q There was a picture of that?

25 A Yes.

1 Q That is, really spread out of stuff. And I think
2 somewhere in your report talked about when you walked in
3 you could immediately kind of smell it?

4 A Oh, yes, almost knocked you down, it was such a bad
5 odor.

6 Q And someone had told you, hey, that is a lot better
7 than it even was?

8 A Correct.

9 Q And you make a decision that even though Tim, Sr. was
10 an active participant in that second interview that y'all
11 aren't going to let him be an active participant in the
12 second one, in your interview?

13 A Correct. We discussed that on the way down, that we
14 had no plans to utilize him like they had the night
15 before.

16 Q And yours is about 7:30 on the 8th?

17 A Correct.

18 Q And Tim does not initiate that meeting, and what I
19 mean is, Little Tim does not initiate that meeting with
20 you?

21 A He does not.

22 Q That is, y'all decide to do that?

23 A Correct.

24 Q And he is provided with an advise of rights?

25 A Correct.

1 Q And he took the form but he didn't sign it?

2 A No, but David read the form to him, Special Agent
3 Mackey read the form to him. He acknowledged and agreed
4 to speak with us.

5 Q Well, he doesn't say, hey, I am waiving the rights or
6 anything. You guys just kind of start talking, correct?

7 A Well, no, he agreed to speak with us and he even
8 said, yes, yes, I know I am incriminating myself when we
9 were explaining it to him.

10 Q But he doesn't sign the form at that point and time
11 saying he is waiving his rights?

12 A No, he doesn't sign the form at that time.

13 Q And he doesn't say, hey guys, I am waiving my rights.
14 That form just kind of sits there for a period of time?

15 A As much so as most Defendants when you read them
16 their Miranda rights and they say, yeah, we are good with
17 talking to you.

18 Q But there is a difference between knowing what their
19 rights are and waiving the rights?

20 A I would presume that him saying that he was willing
21 to speak with us was him voluntarily waiving his rights.

22 Q And you said something about you tried to start the
23 recorder after that point and time?

24 A If I had to guess and I am basing that on my
25 documentation because it shows where we did the rights and

1 then the recorder, if I had to guess, it was probably
2 because the recorder was such an afterthought because I
3 wasn't in the practice of using one.

4 Q And you said you didn't end up recording it because
5 of user error, what went wrong?

6 A I thought I had pushed the button and apparently I
7 didn't.

8 Q And we know that the first interview was videoed on
9 the 6th?

10 A I recently found that out, yes.

11 Q And the 7th was not audio or videoed?

12 A Correct.

13 Q And so you are trying to audio yours?

14 A Correct.

15 Q And you started with I guess what you call, with the
16 crisis negotiation repoire building?

17 A Correct.

18 Q And that is just, we are just trying to get him to
19 talk, to make him feel comfortable?

20 A Absolutely.

21 Q Kind of let him know us and we know him?

22 A Correct.

23 Q And started with work and he talked about all of that
24 stuff that you and Mr. Graham, talked about work?

25 A Correct.

1 Q And started talking about spice and y'all talked
2 about that. And you are familiar with where he got it
3 from Time Warp?

4 A Correct.

5 Q And when you are talking about that with Time Warp
6 with your, I guess being a road deputy, were you familiar
7 with spice?

8 A I was familiar with spice, we went through a period
9 of dealing with people on an almost nightly basis because
10 of it.

11 Q And I am going to guess that you probably have
12 received kind of law enforcement briefings on it. Hey,
13 this is the new kid on the block?

14 A Yes.

15 Q This is happening and knew that there was kind of
16 this, initially I guess it was suppose to be synthetic
17 marijuana?

18 A Yes.

19 Q And then they would make a component of it, illegal
20 and whoever would make this stuff would change the
21 components so it wouldn't be illegal and then the
22 Government would make that illegal and it would just kind
23 of keep going down the track?

24 A Correct.

25 Q And that was part of one of the things that he told

1 you was, hey, I bought it legally at a store?

2 A Correct.

3 Q And he told you he was using that to self-medicate
4 himself?

5 A He did.

6 Q And that it was to quell the voices in his head?

7 A That is what he said.

8 Q And to level himself out?

9 A Correct.

10 Q And he had told you about seeing people that didn't
11 exist?

12 A He did.

13 Q Shapes in the air, hallucinations, things along that?

14 A Yes.

15 Q None of that is recorded?

16 A No, it is not other than what he reiterated later
17 when we realized the mishap and recorded.

18 Q And talked about inheriting things or problems from
19 his mother, he thought. That she had breakdowns at his
20 age?

21 A Correct.

22 Q And the topic of his mother appeared to upset him?

23 A It did.

24 Q Was he crying?

25 A He was.

1 Q And I think you had a, "I think I have got some of
2 what she has."

3 A Correct, he did say that.

4 Q And that is talking about her psychiatric issues?

5 A I would presume so.

6 Q And at some point in time during your interview you
7 say, hey, I am probably going to follow-up on that?

8 A I did say that.

9 Q And did you end up following up on that?

10 A No, I will be honest with you, I haven't had the
11 opportunity to follow-up on that issue.

12 Q And you say then at some point and time he just takes
13 the advice of rights and then just all of a sudden signs
14 it without saying anything?

15 A Yes, he pulls it to himself and signs it right there
16 in front of us.

17 Q Give me an idea, how long are we into that interview,
18 I didn't see that in your notes.

19 A Maybe, I bet it is probably not more than 20, 30
20 minutes in, if that.

21 Q So y'all are talking 30 minutes before he signs his
22 advise of rights?

23 A Yes, probably closer to 20 but somewhere in between.

24 Q And when he signs it that is not on the recorder?

25 A No, it is not.

1 Q And at some point and time y'all start talking about
2 his children and that is, he starts to cry heavily?

3 A Correct.

4 Q How long does that go on, can you kind of tell me or
5 explain that to me. What is he doing?

6 A I mean that whole--

7 Q I mean, is he just crying, is he wailing, is he loud?

8 A It is just crying. I mean, more so than what I did
9 on the stand earlier but not, you know, he is not wailing.

10 Q He is not inconsolable?

11 A Yeah, you are not going to know he is crying from the
12 next room or anything.

13 Q But you are seeing tears?

14 A Yeah.

15 Q And he seems to be afraid of the kids or expresses to
16 y'all?

17 A He is expressing that to us, yes.

18 Q Now, I am going to jump ahead, listening to the audio
19 later in that where, when we are listening to that it
20 seems like he is kind of speaking fast, is that consistent
21 the entire time that when he is talking to you before you
22 start recording it, that kind of speech?

23 A Yes, I would say that was pretty normal with all of
24 my interactions with him.

25 Q And sometimes his speech could kind of be erratic

1 with what he says?

2 A Correct.

3 Q Sometimes he talks about or, it is kind of irrelevant
4 or at least he misconstrues some of your questions I think
5 that you note in your report?

6 A Yes, but you can see where the confusion was with
7 some of those questions.

8 Q And sometimes he is kind of tangential?

9 A Sometimes, sometimes he will get off of topic.

10 Q And I noticed at least a couple of times on the
11 recording he kind of, it seems like he stutters. Before
12 you recorded him was there some of that also?

13 A I recall his speech patterns on the recording being
14 pretty typical of his speech patterns prior to the
15 recording.

16 Q And he tells you about Nahtahn saying, hey, when I
17 grow up I am going to kill you?

18 A Correct.

19 Q And talked about Nahtahn blowing an outlet?

20 A Correct.

21 Q And we know, I don't see Matt Martin in here but we
22 know he is gone out there and there was apparently an
23 outlet blown or something along those lines at the house.
24 We have gone out there--

25 MR. GRAHAM: Your Honor, objection, what does this

1 have to do with our hearing. What he knew at the time of
2 the interview is the most important. Once we start going
3 outside we are just hearing something that doesn't matter
4 right now.

5 THE COURT: I agree with you. I sustain that.

6 Q He seems paranoid about the kids?

7 A Yes.

8 Q Kids are conspiring to kill him. But you challenged
9 him about these are kids, how are they a threat to Little
10 Tim, correct? I mean they are eight to one.

11 A I think I offered them being a threat early on and he
12 didn't seem to accept it at that point. He seemed to
13 think it was a bit of a ridiculous assumption. But now
14 there are points in the interview where he did claim to be
15 afraid of them.

16 Q At some point and time he tells you about how smart
17 they are?

18 A Correct.

19 Q And that is why they could be a threat to him. And I
20 think it is Agent Mackey who tells him that he thought he
21 killed the kids?

22 A Correct.

23 Q And you documented that his behavior became more
24 erratic, he raised his voice. That is all it says in your
25 report. Can you explain what that means, how so?

1 A So I guess, his octane is higher than me and you
2 speaking right now. He would rise up in his chair like
3 this, like he was trying to create distance, when we were
4 putting the pictures out. Kind of a little tricky to
5 answer because I feel like we are kind of going all over
6 the place in the statement. So I mean, again, not
7 yelling, you might would hear him if you weren't in the
8 room but probably not.

9 Q Crying?

10 A Some crying.

11 Q Wailing?

12 A I don't know if I would call it wailing.

13 Q And you document that that behavior is consistent
14 with what you have been told at the other interview?

15 A Yes. At those points of the interview that is what I
16 had imagined them describing the night before. Of course,
17 obviously having not been there I can only kind of make an
18 antinodal comparison.

19 Q And you were told by someone, I guess you said, to
20 emphasize self-defense because he had expressed, and I
21 don't know before that, but he had expressed some fear of
22 the children. But someone had told you to, you know, kind
23 of go with that and you said he just kind of appeared
24 disgusted by it?

25 A When I first offered that he appeared disgusted with

1 it, yes.

2 Q And said, but they are just kids?

3 A Correct.

4 Q Did that seem odd to you at that time?

5 A Well, I felt that was probably a very appropriate
6 response to that offer because they were just children.

7 Q And you talked to him about the life stressors?

8 A Correct.

9 Q Specifically what do you say to him?

10 A We talked about being a single parent, divorced,
11 having five young, very young children. I mean, that is
12 pretty insignificant on anybody. And, you know, also has
13 a potentially high stressed job on top of it. It is kind
14 of a, those are pretty significant.

15 Q In some point and time you are honest with him and
16 said, listen, we wouldn't have been driving eight hours
17 from South Carolina to Mississippi unless we were certain
18 that you killed your children?

19 A Correct. Because one of the things we were also told
20 was to be very, very firm and confrontational on the
21 notion that we believed he killed his children.

22 Q And that is all based on the info that you had
23 already kind of gathered from all the other sources?

24 A Yes. Including the interview the night before.

25 Q And the whole stressor thing you said kind of

1 resonated with Tim?

2 A I felt like it did.

3 Q And he was, you put down appropriately emotional?

4 A Yes. Cried a little bit and kind of head nodded and
5 seemed to agree with us.

6 Q And you talked about, hey, we need to find a proper
7 burial for these kids?

8 A Correct.

9 Q And that resonated with him?

10 A It did.

11 Q That seemed important to him?

12 A I think it was important to all of us.

13 Q And that was kind of a consistent topic that you
14 would kind of go back, we need to get these kids, you
15 know, put them to rest?

16 A Absolutely.

17 Q And at some point and time Agent Mackey brings out
18 the photos and I think you say, at some point and time he
19 genuinely seems to be scared when he is shown those
20 photos?

21 A Yes. Like I said, he rose up out of his seat and
22 tried to create some distance from them.

23 Q And I think you even put that he gets hysterical?

24 A Yes, I would say that that is probably the most you
25 could say he elevated during that interview.

1 Q And he is yelling, keep them away from me?

2 A Correct.

3 Q And the last one is him holding Gabriel?

4 A Correct.

5 Q And you told him that this tells that this is a guy,
6 if he killed his kids he felt that he had no other choice?

7 A Correct.

8 Q And he was sobbing heavily?

9 A Correct.

10 Q And at that point in time he says, hey, let's cut to
11 the chase. You guys, they are deceased?

12 A Yes. And he had a 180 in his demeanor when that
13 happened. It was like you had flipped a light switch.

14 Q But none of that is recorded?

15 A No, it is not.

16 Q You again reemphasize the burial?

17 A Correct.

18 Q That we need to find or we need to find them to get
19 them buried. At some point and time right after that he
20 talks about one out of five of them would grow up to do
21 something bad and me killing them prevented that.

22 A Correct.

23 Q Does that seem really, really odd to you to say that
24 about the kids?

25 A Well, of course.

1 Q And you took it to mean that he was implying that
2 they would have some type of mental illness also?

3 A Yes. I think that he may have indicated that a
4 little further but not enough that I was able to get the
5 exact quote.

6 Q But he really seemed to be, well, he told you then
7 about strangling the other kids?

8 A Correct.

9 Q But he really seemed to be uncertain about Nahtahn's
10 death?

11 A He maintained an uncertainty of what happened to
12 Nahtahn, correct.

13 Q And told you that after all of that he smoked a
14 Scooby Snax to calm the voices in his head?

15 A That is what he said.

16 Q No drugs beforehand according to him?

17 A That is what he said.

18 Q And that basically he didn't care if he got caught?

19 A That is what he said.

20 Q And y'all kept on hitting him, hey, did you mutilate
21 the bodies?

22 A Correct.

23 Q And he told you about trying to cut Nahtahn but
24 couldn't go through with it?

25 A Correct.

1 Q Didn't do it to any of the other ones?

2 A He did.

3 Q And you had asked the question about, hey, why didn't
4 you get help. You are talking about psychiatric help. He
5 answers about Amber and the dad.

6 A Yes, he interpreted it as help with the kids, I
7 guess, because that had been the focus of the conversation
8 at that point.

9 Q And you kind of follow-up to kind of steer him back
10 about what you are talking about. And he told you,
11 because I thought I could manage it on my own?

12 A Correct.

13 Q And none of that is recorded?

14 A None of that is recorded.

15 Q And we know, he has got the kids in the car, I guess,
16 nine days?

17 A Sounds about right.

18 Q The 28th to the 6th?

19 A Yes.

20 Q That is about nine, round about. And y'all again
21 talk about, hey, we need to find a proper burial, put them
22 to rest and he really at that point and time seems to be
23 extremely eager to try to help?

24 A Absolutely.

25 Q He explains to you at least how he has put the kids

1 out?

2 A Correct.

3 Q And he gets frustrated with the Ipad, wants Windows,
4 wants Android?

5 A Correct.

6 Q Because he is not an Apple guy?

7 A I can't blame him there.

8 Q And y'all try to figure out where in Alabama?

9 A Yes.

10 Q And it is right after that point, well, let me back
11 up. So he asked for a topographical map?

12 A Yes.

13 Q Of Alabama?

14 A He felt like if he had some kind of map that would
15 show terrain elevation he could zero in on the location.

16 Q Were you able to find that that night?

17 A We weren't.

18 Q Seems kind of a weird request, doesn't it?

19 A Yes. It was kind of, we were not able to locate on.

20 Q And so you learned the digital recorder was not
21 working, how far are we into the interview at that point
22 and time because we have got, what, two and a half hours
23 total.

24 A Probably an hour and forty-five minutes.

25 Q Because the audio portion of it is forty-five minutes

1 or close to it?

2 A Yes.

3 Q So that would make sense.

4 A And probably a half an hour or more at this point had
5 been going over maps.

6 Q And you give him that mental health or that South
7 Carolina, that mental health exam that, I think you said
8 Bo Barton, did he give it to you or did he give it to
9 Lawrence or Lawrence then gave it to you?

10 A It was sent to David Lawrence and Mr. Lawrence gave
11 it to me during the interview. We had already read those
12 questions once prior to learning that the recorder had not
13 been working.

14 Q And when you record it, you said that those answers
15 are pretty much identical, the second time?

16 A Yes. I would say any differences were
17 inconsequential.

18 Q And so, it is used to document someone's mental
19 state?

20 A I believe that may have been the explanation for it.

21 Q Y'all don't bring some type of report or, excuse me,
22 questions that for intoxication or field sobriety or
23 anything like that. That is a mental state exam?

24 A Yes. I guess, though, I was told that had something
25 to establishing mental state. I had never used it before

1 or since so I don't want to speak too much to it.

2 Q And when you start recording you get him to verbally
3 say, hey, I waive my Miranda rights, these are the rights
4 that I waive?

5 A No, we don't. But we were already hours into this
6 interview where he had already waived his rights. So, I
7 mean, I guess we could have gone over them again but it
8 didn't seem necessary.

9 Q And this wasn't one of these interview techniques
10 where we are going to get him to, you know, we are going
11 to talk to him, develop a repoire, get him to admit all of
12 this and then we will step back and just kind of shore it
13 all up with a recording now?

14 A No, our attempt from the beginning was to record this
15 and I wish we had because it certainly would make my
16 testimony a lot easier today. It was absolutely just a
17 rookie mistake.

18 Q And some of those questions, do you think it was
19 wrong, would you have done it, I think your thing was
20 elbow to elbow?

21 A Uh-huh. (Indicates in the affirmative.)

22 Q And his thing was, yes, he would have.

23 A And I am not going to get into interpreting the
24 answers to those questions because I know that they are
25 geared toward a particular purpose and I don't know how

1 they need to be interpreted.

2 Q And you asked him about it, if other people thought
3 his ideas or beliefs were crazy. And he told you that he
4 was a Freemason?

5 A It is on the recording we all heard, yes.

6 Q Does that sound weird, that wasn't an odd response?

7 A Not necessarily. I know people who are Freemason's
8 and I know people who think Freemason's are kind of odd.
9 So it didn't seem like an out of ordinary response for
10 that question.

11 Q And you basically, you have him rego over everything
12 at that point and time?

13 A Correct.

14 Q That is all the questions I have.

15 REDIRECT EXAMINATION

16 By Mr. Graham:

17 Q Sergeant Creech, do you have the Court's exhibit that
18 was the Miranda form for the 8th or is that somewhere
19 else?

20 A It has made it's way back to the Court's exhibit.

21 COURT REPORTER: Here it is.

22 MR. GRAHAM: Thank you, Ma'am.

23 Q Court's exhibit number 42, you testified to that that
24 was the Miranda form that you advised Mr. Jones of before
25 you began interviewing him when you first came into the

1 room. Is that correct?

2 A Correct.

3 Q This is a standard form by the Lexington County
4 Sheriffs Department and you were familiar with this?

5 A It is, it is a form that I have used many times.

6 Q And his rights were read out loud to him?

7 A They were.

8 Q After his rights were read out loud he didn't sign at
9 that time, correct?

10 A He did not.

11 Q Where his signature is there is a part called a
12 wavier of rights?

13 A Correct.

14 Q Can you read that out loud to the Judge.

15 A I am willing to make a statement and answer
16 questions. I do not want a lawyer at this time. I
17 understand and know what I am doing. No promises or
18 threats have been made to me and no pressures or coercions
19 of any kind have been used against me.

20 Q So when you first read his rights and you read his
21 rights and he wouldn't sign did you read that part out
22 loud about waiving his rights?

23 A Yes, we would have read the entire form.

24 Q And did he, in fact, waive his rights and agree to
25 speak with you from the very beginning?

1 A He did.

2 Q Later he signed the form?

3 A Correct.

4 Q Mr. Madsen asked you some questions about things that
5 were weird and ask for your verification of his answers.
6 One of them had to do with a topographical map. Do you
7 remember that question?

8 A Correct.

9 Q Later on when you found the bodies, is topography
10 important?

11 A It is. And we will go in to talk about this, it
12 draws a picture of the body site the next day and the day
13 we went and found the bodies. It is pretty accurate to
14 the location, all things considered and elevation is quite
15 a big key in the description.

16 Q In relation to the road, the spot where the
17 children's bodies were found, how would you describe that
18 in relation to the road?

19 A That was considerably elevated. You were effectively
20 looking down on the roadway.

21 Q Thank you, Sergeant.

22 MR. GRAHAM: Mr. Madsen indicates he doesn't have any
23 follow-up so I will start--

24 THE COURT: This is the statement, the first
25 statement that Creech took.

1 MR. GRAHAM: Right and that would be the end as far
2 as Sergeant Creech's testimony regarding the statement on
3 the 8th.

4 THE COURT: We are going on to the next statement of
5 the 9th.

6 MR. GRAHAM: The next day is the 9th.

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 By Mr. Graham:

10 Q September 9th, what was the plan to do at that time.
11 you had interviewed him, he confessed and I believe he
12 said he would try to help you find?

13 A So we met together first thing to kind of discuss
14 options and see if we could come to any kind of consensus
15 as to where the site could be located. At that point
16 Alabama authorities had been notified but nobody had
17 identified the location yet. We looked at a map, just a
18 regular map and discussed it and looked at that section of
19 Highway 10. Ultimately, well during this, let me back up
20 a little bit. Before we spoke to him again and I don't
21 believe this was absolutely necessary at this time but we
22 did it just out of the abundance of caution. Timothy was
23 read his Miranda rights again this time by Lieutenant
24 Johnson. I witnessed that. Special Agency Mackey signed
25 the form as a witness.

1 Q Let me show you a document and ask if you recognize
2 that?

3 A I do recognize this document.

4 Q Is that the Miranda form that Special Agent Johnson
5 used to Mirandize Mr. Jones on the 9th?

6 A It is.

7 MR. GRAHAM: Your Honor, the State would mark that as
8 a Court's exhibit as well.

9 THE COURT: Court's 45.

10 (Whereupon, Court's Exhibit 45 was marked for
11 identification only.)

12 A And just a comment on--

13 THE COURT: Hold on, let her mark this.

14 Q Sergeant, looking at 45, is that the Miranda form
15 that Special Agent Johnson used on the morning of the 9th?

16 A Correct.

17 Q And you wanted to make a comment about it.

18 A Yes. I was just gong to say that I even recall him
19 filling it out because I remember him, he mistakenly wrote
20 9/8/14 in here and I watched him scratch it out and put
21 the correct date which was 9/9, and you can see on the
22 date section.

23 Q And that is a different form, does that include the
24 same rights?

25 A It does include the same rights.

1 Q So those rights were read out to Mr. Jones?

2 A They were. And at that time he signed the form
3 immediately.

4 Q Okay. And he waived those rights?

5 A He did.

6 Q Any question of whether he understood the rights?

7 A No question at all.

8 Q Did he have any questions about his rights?

9 A He didn't, he did not.

10 Q Did his behavior, compared to what you had seen on
11 the 8th, how was his behavior?

12 A It was similar toward the end of the interview on the
13 night of the 8th, probably a little bit calmer. He
14 seemed, I would say enthusiastic to help us, he seemed
15 eager for us to get out there and find his children. He
16 seemed entirely willing to cooperate with what was
17 necessary at that point and help us find the children.

18 Q What time was it that you came back in contact, what
19 time was Miranda given to him?

20 A It was given at 11:13 that morning.

21 Q And do you remember where that was?

22 A Yes. It was in the room just down the hall from
23 where we had interviewed Mr. Jones the night before. It
24 was actually in the room we had briefed on with other law
25 enforcement personnel on the afternoon of the 8th.

1 Q And the purpose of re-Mirandizing and speaking to him
2 again was to attempt to locate the children?

3 A Correct. And he also briefly went over what occurred
4 on the night of August 28th again. Special Agent Mackey
5 prompted that and he gave a very similar accounting of
6 what happened to the children on that night. I will also
7 note that he also mentioned at that time that Nahtahn had
8 broken a pair of prescription glasses that night which he
9 said it cost several hundred dollars. And when we was
10 talking about this, he had been pretty calm and he got
11 kind of angry when he talked about this.

12 Q He had gotten angry when he talked about Nahtahn
13 breaking Nahtahn's glasses or Nahtahn breaking--

14 A The impression I had was a pair of Timothy's glasses.

15 Q And he had not mentioned that the night before?

16 A No, he had not.

17 Q After he said that, as far as conversations with him,
18 what happened next?

19 A So we then went over some maps and all in all this
20 was a pretty quick interaction, probably not more than
21 twenty minutes. We went over some maps, talked about the
22 description of the site again. He seemed pretty confident
23 that it was going to be somewhere outside of Camden,
24 Alabama. The decision was ultimately made, Timothy's
25 willingness that we would get in the car and we would

1 drive that route hoping that he would recognize something
2 along that route. While doing this is when he drew the
3 picture that I referred to earlier.

4 MR. GRAHAM: We will mark this.

5 COURT REPORTER: 46.

6 THE COURT: Court's 46.

7 (Whereupon, Court's Exhibit 46 was marked for
8 identification only.)

9 Q Exhibit number 46, is that the hand drawn map that
10 you were referring to?

11 A That is.

12 Q Can you tell the Court what it is?

13 A So it is, it is the map that Timothy drew trying to
14 describe the location we were looking for. He uses each
15 one to show elevation differences and he kind of shows
16 this path coming off the roadway, leading to an elevated
17 area that is higher than the roadway which he shows it at
18 a lower elevation.

19 Q After he drew the map and you all got in the car to
20 start your driving?

21 A Correct. We grabbed lunch on the way, well, actually
22 he smoked a cigarette first. And we talked a little bit
23 about how he believed that we would be able to find the
24 children and he believed that, "travel knowledge" with
25 local law enforcement in Alabama would be able to locate

1 the site based on the description. And he told me during
2 this interaction that he knew we couldn't charge him with,
3 charge him for murder without bodies but he was going to
4 try to take us to them anyways. And, of course, I told
5 him that wasn't entirely true, but it was still the right
6 thing to do to help us find the children.

7 Q What happened next as far as your interactions with
8 him?

9 A We discussed his interactions again with law
10 enforcement on the night of the 7th. I was kind of
11 curious after some of the things he had said during the
12 interview the night before. And he explained that, part
13 of it was, you know, why be so open with us or me in
14 particular because he kind of decided that Special Agent
15 Mackey was an intimidating fed. Timothy explained that he
16 thought I had a, "high IQ". I asked him what this meant.
17 And he explained that it was a term used for emotional
18 intelligence and he said, "for example, I have a high IQ
19 and a really low EQ. I think you have a high EQ." And he
20 went on to explain that he feels like he possessed a
21 fairly high level of intelligence but he had a lot of
22 difficulty relating to other people. But he felt like in
23 light of this that he felt comfortable speaking with me
24 because of what he attributed to a high EQ.

25 Q Did he explain what EQ was, I am sorry.

1 A Yes, he said it was a term for emotional
2 intelligence.

3 Q Okay.

4 A And then after that we got in the backseat of a
5 marked Smith County patrol car and grabbed lunch at Taco
6 Bell and ate it on the way to Highway 10.

7 Q Did you, at that point did you continue to have a
8 conversation with him?

9 A It was mostly small talk. Books, TV, we talked a
10 little bit about his interest in foreign languages,
11 particularly Hebrew and Greek. And just whatever to pad
12 the conversation, it was about a two or three hour drive.
13 It wasn't a short distance. And I think he and I were
14 probably equally a little bit burned out about talking
15 about what we talked about the night before. Once we got
16 inside, in Camden, Alabama he told me that the terrain and
17 geography was starting to look familiar. He repeated
18 several times at this point, he said, "I know I am
19 prosecuting myself here but I want to do the right thing."
20 He was worried at one point that we would stop being
21 professional with him once we found the bodies. And I
22 assured him that that wasn't the case. Because it was
23 like I said to him the night before, I am not there to
24 judge him and I am not going to punish him for doing,
25 doing what he should do which, you know, he was doing of

1 his own free will. We were driving, approaching Camden
2 and he passed, we passed a driveway that he thought looked
3 familiar. We turned around to check on it and as we
4 started to go down it we realized it was a residential
5 driveway and there was a house at the end of it. He very
6 quickly said, "I don't want you guys to think I am wasting
7 your time." He seemed a little upset that he had picked
8 the wrong driveway. I told him it wasn't a big deal
9 because Lord knows, to me, every red clay driveway we
10 passed looked the same. At this point he started to
11 mention how, it was probably about noon when he had
12 disposed of the children's bodies on the 5th, I am sorry,
13 the 6th. This was the first time he had given sort of an
14 approximate time period other than it is between this and
15 this. Just past the City of Camden we passed a red clay
16 driveway to the left. There is a blink and you miss type
17 of thing. But he happened to catch it, got really excited
18 and told us to turn around. We turned around, began to
19 drive up the driveway. He got really excited, not
20 emotional, well, somewhat emotional but mostly excited to
21 where this is it, this is it, this is it. He then began
22 crying heavily the further up the driveway we got. He had
23 warned me earlier that this would probably be a very
24 emotional moment for him and understandably so. We had
25 been driving approxiamtely three hours. We found

1 ourselves on the location of Highway 10 in Wilcox County,
2 Alabama. The GPS locations were 31554 North and 8747
3 West. The approximate address of 10755 Alabama 10 which
4 is in Pine Apple, Alabama.

5 Q Did you find, once you pulled off on that location
6 did you, in fact, find the bodies of the five children?

7 A We did. So it was, we pulled up into a clearcut
8 area. You can kind of see the roadway on all sides, it
9 was just like he had described. The terrain was very
10 elevated from the roadway as he described. I noticed that
11 getting out of the vehicle the odor, there was a, just a
12 foul odor that you could immediately detect. I don't
13 remember which Deputy did, I tink it was Deputy Garner
14 with Smith County Sheriffs Office who had been driving the
15 car gets Timothy out of the vehicle. I had walked ahead a
16 little bit because of the smell and had kind of doubled
17 back because it was kind of a dead-end and I could see
18 them walking parallel to me and Timothy was, I would say,
19 you would probably say he was hysterical. He is pointing
20 with his hands which are handcuffed in the front. And he
21 is saying, they are over there. And he is, I would say he
22 is highly hysterical at that point. And we go to that
23 direction and in an area in just kind of slight depression
24 to the left and I believed past a down log there were five
25 garbage bags clustered together. One looked like it had

1 been partially torn open and it looked like some kind of
2 mangled appendage sticking out of the bag along with some
3 kind of blanket or comforter. It looked like animal
4 activity is what it struck us as. Tons of maggot activity
5 and just the smell, the closer you got it just, if we
6 thought the car was bad, the bags would just knock you
7 over and you wouldn't get back up.

8 Q Once you found the children's bodies was a decision
9 made to take Mr. Jones away from there?

10 A Yes. So I noticed Lieutenant Fryer, we kind of
11 already talked about this, that whatever we found, if we
12 found the bodies I would probably ride back with Tim or we
13 had some kind of discussion with him afterwards about it.
14 We initially were going to, I think remain on scene a
15 little bit longer than we actually ended up doing. Law
16 enforcement started to show up in droves from various
17 Alabama divisions and Sheriff Crumpton was concerned about
18 keeping Timothy on the scene any longer than possible. We
19 were initially going to let him get a cigarette and we
20 actually had started a second recording with the intent
21 into rolling into that interview. And in doing so we got
22 cut kind of short.

23 Q Let me stop you right there. State's, excuse Court's
24 43, which was the CD that we played earlier has three
25 different tracks on it. The first one was the recorded

1 interview that we had heard or the partial interview from
2 the 8th?

3 A Correct.

4 Q The second track on here is actually this
5 conversation you are talking about now which was still
6 near the bodies where you hadn't driven back yet and you
7 thought about starting an interview then?

8 A Correct.

9 Q And that is track two?

10 A Yes.

11 MR. GRAHAM: Your Honor, there is a transcript that
12 goes along with that that I will pass up to you and we
13 will go ahead and play it, it is very short.

14 THE COURT: Sure. Let's mark this, this will be 47.
15 (Whereupon, Court's Exhibit 47 was marked as
16 identification only.)

17 (Whereupon, a CD was played starting at 5:15 p.m.,
18 ended at 5:18 p.m.)

19 Q The decision was made during the course of the
20 cigarette, I guess, to stop--

21 A Yes, Sheriff Crumpton didn't even want to keep him
22 there long enough to get a cigarette. I guess he had some
23 safety concerns and specially there were a lot of law
24 enforcement personnel that we had no control over. And
25 they were clearly having their own, kind of emotional

1 reactions as to what was going on. So he wanted to go
2 ahead and get us on the road sooner rather than later.

3 Q So did you go ahead and get him in the car and return
4 him back to Smith County?

5 A Correct.

6 Q During your return trip to, in the car, from, after
7 discovery of the children's bodies, going back to Smith
8 County can you tell the Court what happened next?

9 A Yes. So we started the recorder again.

10 Q And that is the third track.

11 A The third track.

12 Q Court's 43.

13 A I assume it would be just easier if we just listened
14 to it.

15 MR. GRAHAM: Your Honor, I have another transcription
16 of that.

17 THE COURT: Let's take a break real quick. My son is
18 calling me, he has had a little fender bender.

19 (Whereupon, a short break was taken.)

20 MR. GRAHAM: Judge, there is a transcript of the
21 third right there in front of you, it has been marked.
22 When you are ready.

23 (Whereupon, Court's Exhibit 48 was marked for
24 identification only.)

25 THE COURT: All right.

1 (Whereupon, a CD was played starting at 5:20 p.m,
2 ended at 5:51 p.m.)

3 Q Sergeant Creech, how long of a drive was it or is it
4 from, that day, approxiamtely where the children were
5 discovered back to Smith County?

6 A It is a pretty lengthy drive. It was, I remember the
7 drive from Smith County to the site in Alabama being about
8 three hours but we were at a pretty good clip then. The
9 trip back was a bit longer because I think we were driving
10 a bit slower.

11 Q The recording that you made up there and you didn't
12 record the whole trip back?

13 A No because most of that would have just been dead
14 silence with us sitting in the back of the car together.

15 Q What we heard was actually at the beginning of the
16 trip back, is that correct?

17 A Correct.

18 Q Who all was in the car with you?

19 A It myself and Robert Garner with Smith County and I
20 believe Charles Johnson with Smith County.

21 Q In addition to what we heard so far on the drive back
22 were there also some statements made by Mr. Jones?

23 A There were.

24 Q Could you tell the Court about that?

25 A Certainly if you will give me just one second to find

1 in my report. So, we had stopped recording but there was
2 some points where he would kind of get my attention and
3 make some statements. Obviously they weren't recorded
4 because, when you want to make a quick statement to me, I
5 don't know what it is about, I am not going to say, hold
6 on until we start this again. So I, I asked him what he
7 wanted to say. The one notable comment after we had been
8 sitting in silence for a while. He had gotten my
9 attention and he said, "you know the thought that there
10 are people in the world that can take another human life
11 and not feel any remorse about it. That scares me. Those
12 kind of people scare me." After he said that he then
13 asked me, "do those kinds of people scare you too." We
14 continued to kind of talk on and off. A lot of it was
15 small talk, similar to the trip, most of the trip up. At
16 one point he did tell me that the reason he drove around
17 with the children in the car between Thursday, August 28th
18 and Saturday, September 6th, rather than disposing of the
19 children earlier or when it would have been more
20 convenient was because he was not ready to say goodbye to
21 them forever. He continued to at least express remorse
22 for what had happened. And he repeatedly told me that the
23 children deserved better. We had talked about this
24 previously at good length but again, I had asked if there
25 had been any circumstances with, which contributed to the

1 deaths of the children like the recent DSS investigation
2 or the possibility of Amber taking him to Family Court
3 over custody and he gave me kind of what, he seemed pretty
4 surprised at this and said, no. He indicated to me that
5 those weren't even remote concerns for him. And I think
6 this may had been on the recording as well. I asked him
7 again at one point why he tried to cut Nahtahn's leg or
8 whether this was intentional or random and he said he was,
9 because he still held Nahtahn responsible for, "starting
10 all of this." He made some inquiries about what happened,
11 what would happen to him in prison and where he would be
12 in prison at. And, of course, those are things that I
13 couldn't answer. And I was honest with him because it is
14 the truth, those are issues that can only be addressed if
15 he was found guilty of a crime and sentenced accordingly.
16 Of course, he felt this was kind of ridiculous as he had
17 already confessed to killing the children but I explained
18 that he still had due process. He asked these questions
19 about prison a few times during the return trip. And once
20 we got to the sheriffs department we parted ways and I
21 think he was taken to Simpson County jail.

22 Q What was his questions about prison?

23 A I don't remember what the exact ones were. I think
24 it was general questions like what prison he would be in
25 and what would happen to him in prison and I mean things I

1 couldn't even remotely answer.

2 Q In the transcript there was a reference about having
3 a target on his back, about being in prison. Do you
4 remember that?

5 A I think I do, yes.

6 Q Were any of the conversations that you had that
7 aren't recorded have to do with him being afraid of going
8 to prison?

9 A I couldn't say. If I didn't document it in any more
10 detail I didn't take more specific notes.

11 Q Anything else stand out about the conversation which
12 would be on the ride back?

13 A No. It is just kind of retread a lot of things we
14 had already discussed.

15 Q Once you got back to Smith County then you were
16 separated from Mr. Jones?

17 A Correct.

18 Q That would have been the end of your contact with him
19 on September 9th of 2014?

20 A It was.

21 Q Obviously there is some other investigative work that
22 you are doing. Did you then have contact with him on
23 September 11th, 2014?

24 A I did.

25 Q And can you tell the Court about when and where that

1 happened and who was present.

2 A I can. So the morning of September 11th we had the
3 autopsies which I attended along with Special Agent
4 Mackey. Kind of simultaneous to this or kind of parallel
5 to this Timothy was being, undergoing extradition, he was
6 being brought to Lexington County Detention Center, I
7 believe it was by Sergeant Sowards and Detective Miller,
8 if I remember correctly. Once we had finished the
9 autopsies and he was in the detention center we went to
10 the detention center because we figured we would try to do
11 another interview now that we had had the autopsies. Told
12 him we had a few more questions we would like to ask him
13 if he still wished to talk to us. I had contact lenses in
14 my possession of his, these had been something that had
15 come up earlier. But we went and collected those the
16 morning of the 9th from his vehicle because he didn't have
17 glasses or anything to try to help out. So I gave those
18 to him at that time because I had no purpose of keeping
19 them. He didn't invoke his rights again during this
20 interaction.

21 Q Let me ask you a question about that. Did you
22 re-Mirandize him?

23 A I don't think we gave a full Miranda at that point.
24 I think it was just, we weren't even that far in the
25 conversation. I think we were just feeling him out to see

1 if we could even have an interview at this point. But as
2 we are talking to him he didn't say anything about his
3 rights. He did say that he was, "tired of talking about
4 this stuff for now." Prior to that he had told us that he
5 didn't have legal counsel at the time. But when we told
6 us he was tired of talking about this tuff we respected
7 the decision and we didn't push it. He didn't want to
8 talk to us we weren't going to force the issue by any
9 means. He did ask me what Nahtahn's cause of death was
10 and I told him it had been ruled as unknown homicide at
11 the time which it had been by Dr. Ross. He looked at me,
12 made eye contact, shrugged his shoulders and said, see, I
13 told you, I don't know how he died. Kind of became a
14 little emotional at this point which is very typical in
15 kind of the peaks and valleys of the emotions that you
16 have heard on the recordings. You know, I didn't have to
17 do this but I tried to reassure him at that moment that I
18 felt like he did the right thing. He looked at me once
19 more and said, what do you mean I did the right thing. I
20 killed my fucking kids. You know, I clarified. I said,
21 you did the right thing by helping us finding the children
22 so that we could get them a proper, properly put to rest
23 because I still felt like that was important. I reminded
24 him that that wasn't anything that he had to do, that he
25 did it anyways. He had wanted to make a call to his dad,

1 we got permission with jail staff to try to facilitate
2 that but we weren't able to get his dad on the phone prior
3 to his transfer to SCDC because they were going to be
4 sending him to SCDC and not keeping him in the Lexington
5 County. I gave him my contact information and told him I
6 was willing to talk to him at any point if he wanted to
7 speak with me and that was the last interaction we had.

8 Q Thank you, Sergeant, please answer any questions Mr.
9 Madsen has.

10 RECROSS-EXAMINATION

11 By Mr. Madsen:

12 Q A few questions, Sergeant Creech. So you would
13 interview with him on the 9th, Tim did not initiate that,
14 correct?

15 A He did not.

16 Q And you choose to not record that?

17 A You are talking about that morning?

18 Q Yes, the morning.

19 A Yes, I didn't record that because it was kind of, it
20 was very quick and fast paced and there was so many people
21 involved it didn't seem practical to record that.

22 Q Redundant?

23 A A little of it seemed redundant as well because we
24 had already been over all of that.

25 Q And then at that meeting you kind of give him maps or

1 did y'all get a topographical?

2 A No, it was just a regular map and I don't remember
3 where it came from or who had it, it was just a massive
4 map of Alabama.

5 Q Was he able to kind of focus that once you gave him
6 that task, did he try to do or figure out stuff?

7 A Yes and no. He was able to circle pretty close
8 vicinity to Camden, Alabama. And I believe it actually
9 ended up encompassing where we ended up. I don't know
10 what happened to that map so I am just kind of going from
11 memory.

12 Q And as you said, he talked about local law
13 enforcement tribal knowledge?

14 A Yeah and I thought that was interesting because I
15 have a background of anthropology so tribal knowledge was
16 something I was familiar with so I just thought it was a
17 unique way of referring to that but accurate.

18 Q So what did you, enlighten me, what did you take the
19 tribal knowledge to mean?

20 A Local knowledge, local familiarity with the terrain.

21 Q And then y'all discussed the high IQ, EQ, had you
22 ever heard someone refer to it?

23 A In passing it sounded a little familiar but not
24 something I was well versed in at all.

25 Q But it made kind of sense with him as far as,

1 according to him, his low EQ?

2 A Yeah, I kind of understood where he was coming from.
3 I mean, if anything, it kind of reminded of some people I
4 was friends with growing up, kind of had some fringe
5 friends and high emotional intelligence, high IQ's and low
6 emotional intelligence was common among those guys.

7 Q And then you didn't record when you headed to Alabama
8 but y'all talked about this interest in learning
9 languages?

10 A Mostly small talk.

11 Q Once you get to Alabama talks about he is, you know,
12 he had warned you on the way down, I am going to be really
13 emotional?

14 A He did.

15 Q But once he kind of gets to that point and gets there
16 he is very excited that he has found it for you?

17 A Yes.

18 Q Part of that is because the idea of getting them a
19 proper burial and putting them to rest, seems to be very
20 important to him.

21 A Absolutely.

22 Q And that is something y'all talked about a bunch?

23 A Yes.

24 Q Once he got there he kind of, was hysterical?

25 A Understandingly so, yes.

1 Q And then one thing, I don't know if I heard you say
2 it, let me just ask. So once he gets there he points out
3 the kids and that kind of stuff. Sheriff Crumpton wants
4 you to get him out of there, is there, is it a lynch mob?

5 A No, I think he was just being, he was acting in an
6 abundance of caution. There was nobody who had done
7 anything surprising but you know there is probably 30 or
8 40 law enforcement officers out of Alabama who had shown
9 up that we don't know who they are, we don't know what
10 their temperaments are like and certainly considering what
11 we were dealing with nobody wanted to risk that somebody
12 was going to react very badly to five dead children and go
13 off as a vigilante.

14 Q And I know we taped about 25 minutes of that entire
15 trip which would have been six hours total?

16 A Correct.

17 Q Do you recall at some point and time a conversation
18 about him not wanting the kids to basically go through
19 what he had to go through as far as upbringing?

20 A Let me look because I don't want to misspeak since we
21 have gone through a lot of material today. Without going
22 through the interview transcript it is hard to say.

23 Q That is not something that you recall, it wouldn't
24 have been in the interview transcript?

25 A I can't say I specifically recall. I am not saying

1 it couldn't have been something that we may have discussed
2 or not but I can't distinctly recall that right now.

3 Q And in your impression when you asked him about DSS
4 or Amber that is not even, was not even a remote concern?

5 A Yes, he didn't seem, I would have understood if those
6 had been concerns but he didn't seem to think those were
7 worries.

8 Q At any point and time that you talked with him in
9 this interview or any other, did you ever say anything or
10 ask him, you know, did you kill the kids with malice. Did
11 that ever come up?

12 A I can't say that I have ever asked the Defendant
13 that.

14 Q And you said you attended the autopsies?

15 A I did.

16 Q And that's, at least with Nahtahn there is a small
17 mark or cut on a leg.

18 A Correct.

19 Q But we know, as far as, because you kept on asking,
20 well, hey, did you mutilate the bodies or we know he was
21 truthful about this?

22 A Yes, he was.

23 Q His Miranda on what you recorded, that is on that
24 trip, you don't go through every single one of those
25 rights. I mean, it is kind of a fast dirty version?

1 A Well, it was kind of redundant because we were still
2 operating under the written advisement of Miranda from
3 that morning. So I offered, you know, if you want us to
4 go over it again we absolutely can. And I think at this
5 point he had been beaten over the head with it and he just
6 didn't want to hear it again.

7 Q At that point and time it is going to be at least
8 three or four hours since you had given it to him
9 beforehand, correct?

10 A Correct. But we had been in his constant presence
11 since then.

12 Q And I think it was the 11th that you saw him again?

13 A Correct.

14 Q No Miranda there, just kind of that conversation real
15 quick?

16 A Yes, I think we were just feeling out whether or not
17 we would even get to that point of, hey, do you want to
18 talk to us. And when he said, I don't want to talk to you
19 we didn't even press that.

20 Q Did you end up, you didn't come back from Mississippi
21 with Tim?

22 A I did not.

23 Q Did you come back with Lawrence and Mackey or did
24 they leave you?

25 A No, I didn't. It is a convoluted story but

1 ultimately we ended up together again.

2 Q So there is a period of time that you are not with
3 Tim when you come back, it is a day or two before you see
4 him again and interaction, I guess, at the jail?

5 A And that was a brief interaction. I would be shocked
6 that we spent more than ten minutes with each other.

7 Q And then you had said that was the last time that you
8 saw him but in one of our court proceedings didn't you and
9 he have a conversation where he asked about prosecuting
10 Amber?

11 A Yes, I realized that after I said that. Yes, we did
12 have that interaction in court that one day.

13 Q Can you just tell me about that?

14 A Yes and I don't have the dates so I can't really go
15 into that specifically. But it was the day we were doing
16 the buccal swabs, they had been court ordered--

17 Q In Newberry?

18 A I believe we were, I thought we were here but again--

19 Q It doesn't matter.

20 A It may have been. I am just doing this purely from
21 memory.

22 Q Sure.

23 A But I do remember he got my attention and he actually
24 used my name and he said, hey Adam, I have got a question
25 for you. I may be roughly paraphrasing.

1 Q That is fine.

2 A And I said, what is that, Tim. Because if he tries
3 to talk to me I am not going to be a jerk. And he said, I
4 need you to investigate something for me. And I thought
5 that was kind of odd. And I said, what do you mean and he
6 said, food stamp fraud, I think. And I asked him what he
7 meant. And he said, well, Amber collecting food stamps on
8 the children. And I asked him, I think I said something,
9 I doubt she is collecting food stamps on them any more.
10 And I think he referred to, no, back when they were alive
11 and he had custody, she was collecting food stamps on them
12 was his allegation. I believe at that point you and Mr.
13 Young piped up and heard what he was talking about and
14 told him that that was not the place or time to go over
15 that issue. So that would be my last interaction with
16 him.

17 Q Okay. That is all the questions I have.

18 REDIRECT EXAMINATION

19 By Mr. Graham:

20 Q One of the questions was, did you initiate the
21 meeting with him on the 9th. And I think your answer was,
22 no, that he didn't initiate it. Right, that was your
23 answer?

24 A Correct. He did not initiate it.

25 Q Let me back up. When you ended the interview on the

1 8th what was the understanding and what did he want to do?

2 A Well, it was still this ongoing understanding that we
3 were going to work together to find his children.

4 Q He wanted to help you find the children?

5 A Yes, absolutely.

6 Q He expected to have you get in contact with him on
7 the 9th?

8 A Yes, it was not out of the blue that we would have
9 been seeking him out on the 9th to go over that again.

10 Q Is it fair to say that he wanted to help and he was
11 expecting you to come get him the next day to take him to
12 go find the children?

13 A Absolutely, I think at that point he was willing to
14 do whatever it took.

15 Q And then on the ride back on the 9th, after the
16 discovery of the body, during that time did you indicate
17 that you might want to talk to him again?

18 A Yes, I did.

19 Q What was his response about you coming to see him
20 again?

21 A He seemed open to it and very receptive.

22 Q Thank you.

23 THE COURT: Anything else?

24 MR. MADSEN: No, sir.

25 THE COURT: You may step down.

1 MR. CREECH: Thank you, sir.

2 THE COURT: What is the last issue with Mississippi
3 Bureau.

4 MR. GRAHAM: We still have two witnesses, Your Honor.
5 We have the FBI agent and then we have Eric Johnson. The
6 Mississippi officer has two parts. One, he gave Miranda I
7 believe the morning of the 9th. And secondly he came into
8 the room after Agent Mackey with the FBI and Adam Creech
9 with the sheriffs department finished their interview on
10 the 8th and overheard the conversation between the
11 Defendant and his father.

12 THE COURT: All right. So we want to do that in the
13 morning?

14 MR. HUBBARD: Yes, sir.

15 THE COURT: Okay.

16 MR. YOUNG: I have talked to Mr. Jones about Mr.
17 Madsen not being able to be here in the morning and he is
18 okay with it.

19 THE COURT: Mr. Jones, good afternoon. You got two
20 more witnesses, we have not heard from one but we have
21 heard partially from Mr. Johnson. Are you okay with
22 finishing this preliminary in-camera hearing on the
23 suppression of your statements, waiver of rights and all
24 of those issues that are consistent, you okay with us
25 finishing in the morning in spite of the fact that Mr.

1 Madsen has some personal business in Ohio dealing with his
2 parents tomorrow.

3 MR. JONES, JR.: Yes, Your Honor.

4 THE COURT: You okay with that?

5 MR. JONES, JR.: Yes, Your Honor.

6 THE COURT: You understand that you want to put it
7 off until one day next week I will do that or we can do it
8 tomorrow.

9 MR. JONES, JR.: We will do it tomorrow.

10 THE COURT: Do it tomorrow, fair enough. All right,
11 9:30 suit everybody.

12 MR. YOUNG: Your Honor, one thing, I have a copy of
13 the article. I know everybody knows it is out there and
14 also wrote it on NPR.

15 THE COURT: Wonderful.

16 MR. YOUNG: The article isn't a real surprise and I
17 am happy to take the hit on the secret hearings. But the
18 article also contains, the on-line version of the article
19 also contains a slide show which is very concerning to me,
20 it is misleading.

21 THE COURT: Let's make it an exhibit tomorrow. I
22 haven't had a chance to review the slide show. Until, we
23 are not going to know whether it is harmful to us until we
24 ask jurors.

25 MR. HUBBARD: That is my concern, is that, I think if

1 we gear to that process right now it will be a, I think
2 anybody working here in this county for any length of time
3 already knows there is already going to be a train wreck.
4 I would like to see how this article plays out tomorrow
5 but then if Your Honor is willing to sit down and have a
6 serious conversation. My preference is going to be to
7 move the trial by about a month just to regroup and just
8 say other things have come up so we go back into quite
9 mode. And I think I can address it a little bit more
10 tomorrow.

11 THE COURT: Let's address it tomorrow and see what
12 happens.

13 MR. HUBBARD: My concern is we may be adding a lot of
14 time to this case if we don't address it real quick.

15 THE COURT: I agree.

16 MR. YOUNG: Our position is that we need to move the
17 trial, period, out of Lexington.

18 MR. HUBBARD: That would be way out of bounds. Trial
19 date will be a whole different story because then we go
20 back into secure mode, where we were until Mr. Monk walked
21 into that door. So there is an actual process for venue.
22 I am not talking about that, that is why I am thinking I
23 would like Your Honor to think about we just move it one
24 month, one month and we will get this thing done. Now
25 everybody it has been continued but then they only know

1 once Your Honor releases it and says, we are in trial
2 mode. And so you and you only announce it as opposed to a
3 reporter stumbling in because this was probably the
4 hearing that, it was like the light that the moth comes to
5 and one of them flew in and now God and the world knows.
6 If they don't they are going to by tomorrow morning, it is
7 going to be on the headline. And, Judge, I just know how
8 Lexington is and I think every juror right now holding
9 that jury summons that says April 29th is already making
10 up their mind and that is exactly what we have worked so
11 hard to avoid.

12 THE COURT: I think everybody has.

13 MR. HUBBARD: And I think if we get with Ms. Hope and
14 make sure how much of a problem that would be to regroup
15 and shoot for one more month, we are still going to be
16 able to get it done and it might give us some time to make
17 sure all of the other preliminary stuff is really in
18 order. We have done a lot and the last two days. And,
19 Judge, I hate to lose it.

20 THE COURT: I am not going to preclude us doing
21 anything on this. Does everybody agree that we can finish
22 this in-camera hearing on the evidence and the
23 suppressions issues tomorrow and get testimony in. And we
24 get back together on Monday with everybody, argue and
25 discuss what you are doing. Because certainly it is not

1 going to be fair and said, okay, let's draw another jury
2 and Hope get it ready. She can't do that. Is Monday
3 okay, Tuesday, we all get back in town. That is my
4 thinking and we can probably do that.

5 MR. YOUNG: One more thing for the record, Your
6 Honor, I know I have spoken with Ms. Zmroczek who was an
7 attorney for Mr. Jones. And I explained that situation to
8 Your Honor and how that came to me. In fact, when Mr.
9 Hubbard thought she was the source of the notice of Mr.
10 Monk and she is not the source. I told her I believe she
11 is subject to the Gag order. And she is not the source,
12 so I just wanted to relay that on her behalf. She didn't
13 have anything to do with it.

14 MR. HUBBARD: And I got a very angry text message
15 from her and that is fine. She is the one who stuck her
16 head in here. But I did not do it on the record so I
17 didn't know there was going to be a whole talk about
18 turning into something else. I wasn't coming in on the
19 record formerly accusing somebody. But I do know who
20 stuck their head in and the next thing you know Mr. Monk
21 is there. So, here we are.

22 THE COURT: Okay. We will address the rest of the
23 testimony in the morning and get it done and then we are
24 going to reconvene next week, Tuesday morning. I am going
25 to try my best to get Joy with us Tuesday. She has been

1 assigned because her availability, lack of vacation, her
2 vacation request are consistent with mine. I didn't
3 realize Court Administration looks at that but they did
4 because she and I have discussed it since. Court
5 Administration has asked her to take this trial. I like
6 that selection by them because I purposely did not tell
7 Court Administration, please give me a particular Court
8 Reporter because then I alienate all the rest of them.
9 They made the selection, it would have been my selection.
10 Ms. Frick is very much glad it is her because of their
11 very focused on the exhibits that y'all have noticed.
12 That is why I like to try to get her back here Tuesday.
13 Off the record.

14 March 14, 2019

15 THE COURT: What are we going to start with this
16 morning?

17 MR. GRAHAM: We will start with Eric Johnson, Your
18 Honor.

19 THE COURT: All right.

20 MR. JOHNSON: Am I still under oath?

21 THE COURT: Still under oath.

22 MR. JOHNSON: Shall I state my name?

23 COURT REPORTER: Yes.

24 MR. JOHNSON: Eric Johnson; E-R-I-C, J-O-H-N-S-O-N.

25 THE COURT: Mr. Graham.

1 MR. GRAHAM: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 By Mr. Graham:

4 Q Agent Johnson, I have two quick matters I want to
5 talk to you about. Back on September 8th of 2014 there
6 was an interview by the Lexington County Sheriffs
7 Department and FBI of the Defendant, Mr. Jones?

8 A Yes, sir.

9 Q I don't believe you were present in the room that day
10 during the course of the interview itself but after the
11 interview do you come in contact with Mr. Jones?

12 A I did, sir.

13 Q And I believe at that time the interview had
14 concluded and they were, there were maps on the table and
15 you all were trying to determine where the children, the
16 bodies were going to be found. Is that correct?

17 A That's correct, Counselor.

18 Q Would you tell the Court about the conversation that
19 you overheard between the Defendant and his father at that
20 time?

21 A Yes, sir.

22 MR. JOHNSON: Your Honor, may I refer to my notes?

23 THE COURT: Sure.

24 MR. JOHNSON: Thank you.

25 A As you had stated, Counselor, the South Carolina Law

1 Enforcement Officers along with FBI had conducted that
2 interview. And once their interview was complete Mr.
3 Jones, Jr. had asked to speak to his father, Tim, Sr. in
4 the same room where the interview had been conducted. And
5 the door was open and at that time we, along with your
6 agents that were assisting in the case were back and forth
7 in the room reviewing maps of Alabama trying to narrow
8 down the possible location of the children's bodies. I
9 happened to be in the room at one point and Jones, Jr. had
10 stated to his father, and if I may refer here to my notes,
11 that he was sorry for what he had done to the children and
12 there was no way his father could love him now. Jones,
13 Jr. indicated he had strangled the children at his
14 residence in South Carolina on or about the 28th of
15 August, 2014. Jones, Sr. maintained his composure, his
16 father maintained his composure and was able to
17 communicate with his son. They discussed a memorial
18 service for the children; Jones, Jr.'s financial
19 situation, referring to the need of hiring an attorney.

20 Q You had indicated in your report and just testified
21 to that Jones, Jr. indicated that he strangled the
22 children. Can you expound on that and my question really
23 has to do with whether there was a differentiation between
24 Nahtahn and his other four children?

25 A I heard no differentiation, it was more of a generic

1 phrase that he made to his father. But no differentiation
2 as far as was one a strangulation, was one a different
3 manner, nothing like that.

4 Q Moving on to, well, while you were in the room did
5 they request privacy, either the father or the Defendant,
6 himself, ask you to not be in the room when they were
7 talking?

8 A No, sir. The door in fact remained open during that
9 time, naturally he was there in the interview room but it
10 remained opened and no privacy. There was different
11 agents back and forth talking.

12 Q The next morning, September 9th of 2014, I believe
13 that is when you all were gathering to actually go out and
14 try to find the bodies. Is that correct?

15 A Yes, sir. We had communicated with multiple Alabama
16 Sheriffs Departments, I had been in contact with the
17 Alabama Bureau of Investigations and we were coordinating
18 about a general area to look.

19 Q At some point, as you were all, that morning getting
20 ready to go out, did you come in contact with the
21 Defendant again?

22 A I did.

23 Q And did you go ahead and re-Mirandize him again?

24 A I did.

25 Q Let me show you Court's exhibit number 45 and ask if

1 you recognize this document?

2 A I do, Counselor. This is my handwriting. This is
3 one of our Miranda forms that we use.

4 Q Do you recognize that as being the form that you used
5 the morning of September 9th of 2014?

6 A I do, sir.

7 Q Would you explain to the Court how you Mirandized Mr.
8 Jones that morning and his responses?

9 A I would have read the Miranda.

10 MR. JOHNSON: And if I need to, Your Honor, just let
11 me know, this is the same Miranda form that I used before.

12 A Should I read it?

13 Q Yeah, go ahead and go over it, this is how you would
14 have administered it that day.

15 A At the top I had filled out Mr. Timothy Ray Jones,
16 Jr.'s information. It says Criminal Investigation Bureau,
17 Interrogation Advise of Rights. Your rights and this was
18 conducted at the Smith County Sheriffs Department. And in
19 reference to exhibit 45 you will notice the date has a
20 single line drawn through it. I had initially written
21 down 09/08/2014 but realized I had incorrectly written
22 that date, I drew a single line through it and corrected
23 it with 09/09/2014. The time was at 11:13 hours, prior to
24 our departure from the Smith County Sheriffs Department.
25 I advised Timothy Ray Jones, before we ask you any

1 questions you must understand your rights. You have the
2 right to remain silent, anything you say can be used
3 against you in court. You have the right to talk to a
4 lawyer for advice before we ask you any questions and have
5 a lawyer with you during questioning. If you cannot
6 afford a lawyer one will be appointed for you before any
7 questioning, if you wish. If you decide to answer
8 questions now without a lawyer present you still have the
9 right to stop answering at any time. You also have the
10 right to stop answering at any time until you talk to a
11 lawyer. Below that is our waiver of rights. I have read
12 this statement of my rights, or in this case I had read it
13 to him, and I understand what my rights are. I am willing
14 to make a statement and answer questions. I do not want a
15 lawyer at this time. I understand and know what I am
16 doing. No promises or threats have been made to me, no
17 pressure or coercion of any kind has been used against me.
18 Mr. Jones, Jr. signed it, I signed where it was read by.
19 And then I believe it was witnessed by Special Agent Dave
20 Mackey with the FBI. Time dated at the bottom, or
21 timestamped at the bottom. I wrote 11:14. So it took
22 about one minute.

23 Q That was given prior to you all going into the cars
24 and driving?

25 A That is correct.

1 Q Any question of whether he understood each of his
2 rights?

3 A No, sir.

4 Q Any question that he freely and voluntarily waived
5 his rights?

6 A No, sir.

7 Q His behavior that morning and his demeanor and how he
8 was acting, where there a difference between then, I
9 guess, you had seen him on the 8th as well or just on--

10 A I had seen him on the 8th, yes sir.

11 Q So you had seen him on the 7th when you interviewed
12 on the 8th and also the 9th?

13 A Yes, sir.

14 Q You testified earlier that on the 7th when you
15 interviewed him, you have a different form, same form,
16 different day?

17 A Yes, sir.

18 Q That you had read his rights and he understood his
19 rights then. We talked about his demeanor then and how he
20 was behaving. This morning, on the 9th, any question
21 that, what was the difference, I guess, that you noticed?

22 A It was a completely different behavior. As I had
23 stated before on the 7th, had not seen anyone act in such
24 a manner of his sweating and frothing and outbursts aloud,
25 up and down. And the 8th and the 9th rolled around and he

1 was a completely different person. He had a calmer
2 demeanor, he would speak calmly, he was cooperative,
3 completely different person in his manner, the way he was
4 acting.

5 Q Any question of whether he was under the influence of
6 any type of drug--

7 MR. YOUNG: Objection, speculation.

8 THE COURT: I will let him give his observation.

9 MR. YOUNG: The question was, any question that he
10 was under the influence of--

11 THE COURT: You are right, I agree with that, the way
12 he characterized the question. Reform the question.

13 Q From your experience with him on the 7th, 8th and
14 9th, talking about the 9th, what, if anything, did you
15 notice about his physical appearance or behavior regarding
16 drugs being present in his system or having an effect on
17 him. Did you notice anything like that?

18 A If, in fact, and like I said, I haven't seen a
19 toxicology report nor am I a toxicologist or a doctor.
20 But just on my personal observation, if, in fact, he was
21 under the influence or whatever he was under the influence
22 of on the initial day that I had contact with him which
23 would have been the 7th, I believe, it was a completely
24 different person. There was no sweating, there was no
25 frothing, there was no outbursts, there was no extreme

1 agitation and yelling, you know, speaking calmly and no
2 talking about voices in the head, nothing like that. It
3 was just as if we are talking.

4 Q On the morning of the 9th and reading the rights, did
5 you or anybody around you threaten him in any way to get
6 him to talk?

7 A No, sir.

8 Q Did you or anybody that you are aware of promise him
9 anything if he talked?

10 A No, sir.

11 Q Thank you, Agent Johnson, please answer any
12 questions.

13 CROSS-EXAMINATION

14 By Mr. Young:

15 Q Just a couple of follow-up's. I understand you
16 weren't in there on the day after your interview. Your
17 interview was on the 7th, right?

18 A Yes sir, you are correct.

19 Q And where you noticed that Tim was talking fast?

20 A Yes, yes.

21 Q Outburst?

22 A Yes, sir.

23 Q It was hard to keep him focused, he would switch
24 topics?

25 A Yes.

1 Q He mentioned voices?

2 A He did.

3 Q He mentioned stuff about his kids trying to kill him
4 with the electricity?

5 A He did.

6 Q And you have heard testimony about the interview with
7 Mr. Creech and FBI Agent Mackey?

8 A I am sorry, explain, I did not stay in here yesterday
9 for Mr. Creech's statements.

10 Q Sure.

11 MR. GRAHAM: Objection, for the record they had
12 requested that they be sequestered so he was not in here.

13 THE COURT: Rephrase your question.

14 Q You said on the 8th he didn't mention the voices?

15 A That's correct.

16 Q But you weren't in there?

17 A No, with the interaction that I had with him I never
18 heard him say that. That is correct, you are right.

19 Q You don't know if he told other people during his
20 interview about the voices?

21 A You are correct, Counselor.

22 Q You don't know if he told other people during his
23 interview about his delusions?

24 A That is correct, sir.

25 Q Kids trying to kill him?

1 A Referring to the 8th, yes sir, you are correct.

2 Q And you don't know if he, his speech was fast or not?

3 A Correct. Only when I was around him, yes sir.

4 Q Thank you, that is all I have.

5 A Yes, sir.

6 MR. GRAHAM: Nothing else, Your Honor.

7 THE COURT: You may step down.

8 MR. JOHNSON: Am I gone, am I done, am I released?

9 THE COURT: Solicitor, is Mr. Johnson able to be
10 released?

11 MR. HUBBARD: He may be released unless the Defense
12 has anything else.

13 MR. YOUNG: Have a safe trip.

14 MR. JOHNSON: Thank you, sir.

15 MR. HUBBARD: Thank you so much.

16 MR. JOHNSON: Your Honor, thank you very much.

17 Everyone has been very kind over here.

18 THE COURT: You are welcome. See you when we see
19 you.

20 MS. MAYES: The State calls Agent David Mackey.

21 DAVID MACKEY, being

22 first duly sworn, testified as follows:

23 CLERK OF COURT: Have a seat, please, sir. Once you
24 are seated state your full name, spelling your last.

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

DIRECT EXAMINATION

1

2 By Ms. Mayes:

3 Q Tell us a little bit about yourself, Agent Mackey,
4 where are you currently employed?

5 A With the Federal Bureau of Investigation.

6 Q Tell us about your educational background and
7 training that led you to become or to have a career in law
8 enforcement?

9 A So I have a college degree in Criminal Justice, I was
10 a police officer for approximately nine years. I have
11 been with the FBI for approximately 17 years.

12 Q And tell us about your current assignment and job
13 responsibilities with the Columbia Division of the FBI?

14 A So currently I am the Supervisory Special Agent of
15 our Domestic Terrorism Squad.

16 Q And how long have you been in the South Carolina
17 jurisdiction?

18 A I arrived in 2008, several times I was deployed
19 elsewhere during that timeframe.

20 Q And do you have any pending assignments with the FBI?

21 A I do.

22 Q And what is that?

23 A I will be the Deputy Legal Attache', Deputy FBI Agent
24 in London.

25 Q Is it possible for you to estimate how many

1 interviews you have conducted in your FBI career?

2 A Certainly thousands.

3 Q How is that you became involved in this investigation
4 regarding the Defendant, Timothy Jones, Jr.

5 A I was initially contacted by a supervisor who had
6 heard from Lexington County regarding this particular
7 matter. At that time what was known the Defendant,
8 Timothy Jones was stopped at a checkpoint in Mississippi.
9 The whereabouts of the children were unknown at that time.
10 So the FBI was contacted. At that point I went to the
11 Lexington County Sheriffs Office and met with Detective
12 Creech amongst a number of other law enforcement
13 officials.

14 Q And when you say the FBI was contacted, how does the
15 FBI become involved when there is a possible crime that
16 crosses State lines?

17 A So we could have Federal Jurisdiction if there is any
18 type of kidnapping, if the; if something happened to the
19 children over State lines. So that is ultimately why we
20 were contacted. There are other instances where we assist
21 either our State and local partners and offer them
22 resources. In this particular case, at that time we were
23 not certain what happened to the children and if a crime
24 was committed where that may have been.

25 Q So jurisdiction is still unknown at this point?

1 A That's correct.

2 Q I want to take you to the date of September 8th,
3 2014. Were you involved with a trip to the State of
4 Mississippi along with some South Carolina authorities?

5 A Yes, I had driven there with Detective Creech and
6 also a SLED Investigator, David Lawrence.

7 Q All right. And what was the purpose of this trip?

8 A We were going with the intentions of interviewing Mr.
9 Jones.

10 Q What type of background information was obtained
11 pursuant to beginning this investigation or at least
12 portion of the investigation which would be an interview
13 in Mississippi.

14 A Well, we knew several things. We knew that, at that
15 time some background was done on Mr. Jones' financial
16 transaction. So we saw some receipts alone the way of
17 items that he had been purchasing. We were certainly
18 aware that some notes were found in his vehicle. And on
19 the day we were traveling there we knew about an interview
20 that had been conducted of Mr. Jones.

21 Q Can you tell us whether or not it is routine to
22 gather background information from other persons who may
23 know a suspect such as family members, coworkers, persons
24 of that nature?

25 A Yes.

1 Q And was that done in this case as well?

2 A It was.

3 Q Now what type of guidelines or safety measures were
4 put in place regarding your interview and how you wanted
5 to approach it?

6 A Yes. In route to Mississippi the three of us inside
7 the vehicle had discussed what was going to occur, who was
8 going to conduct the interview. At that time Dave
9 Lawrence with SLED was a polygrapher. So we knew he was
10 going to stay outside of the interview. Detective Creech
11 and myself were going to conduct the interview. That was
12 ultimately what was decided and that is what happened.

13 Q Did you harbor any thoughts or plans about having the
14 Defendant's father, Timothy Jones, Sr. participate in your
15 interview?

16 A Yes, we knew he had been part of an interview the day
17 prior. We knew, we did not intend on bringing him into
18 the interview.

19 Q And why or why not?

20 A Because basically I felt that we had evidence
21 indicating that something had occurred. We wanted to talk
22 to the Defendant. Having his father there, we didn't know
23 how that would go. So we did not expect to bring him in
24 and that was a plan that we were going to talk to Timothy
25 ourselves.

1 Q So upon arrival in the State of Mississippi,
2 specifically at the Smith County Sheriffs Department, how
3 did you go about making initial contact with the Defendant
4 in order for you and Detective Creech to conduct your
5 interview on September 8th?

6 A So we were in a room and while we are inside that
7 room they had brought Timothy inside, this particular room
8 and we had greeted him.

9 Q And who was actually present for this interview?

10 A So during the interview Detective Creech, myself,
11 certainly the Defendant and then the Sheriff, Charlie
12 Crumpton, he observed the interview. He sat towards the
13 rear of the office that we were in.

14 Q And other than observing the interview, was he an
15 active participant in any way in the interview?

16 A No. There may have been times later in the
17 interview, he got maps or stepped out but he was not an
18 active participant in the interview itself.

19 Q All right. The participants would have been you and
20 Detective Creech?

21 A That's correct.

22 Q I want to have you to take a look at what is State's
23 exhibit 42 and ask you whether or not you recognize this
24 document?

25 A I do.

1 Q And how so.

2 A This is the advice of rights that we provided Timothy
3 Jones. It has, it is a copy, it has my signature and
4 Detective Creech's signature along with Timothy Jones.

5 Q And who actually read the Miranda rights to Timothy
6 Jones, Jr. on this date of September 8th?

7 A I did.

8 Q I want to ask you to start there at the beginning of
9 the form and read aloud into the record exactly what you
10 advised Mr. Jones of on September 8th?

11 A Yes. Before we ask you any questions you must
12 understand your rights. You have the right to remain
13 silent. At that point I did pause and asked him if he
14 understood as such. His next right, anything you say can
15 and will be used against you in a court of law. Again,
16 stopped to make sure he understood as such. You have the
17 right to talk to a lawyer for advice before we ask you any
18 questions and to have him or her present with you during
19 questioning. Again, paused and to make sure he understood
20 that. If you have no money for lawyer fees the Court will
21 appoint one to represent you without cost to you if you
22 wish. If you decide to answer questions now without a
23 lawyer present you will still have the right to stop
24 answering questions at any time. You will also have the
25 right to stop answering questions at any time until you

1 talk with a lawyer. At that point we asked Mr. Jones if
2 he understood his rights. He indicated that he did. We
3 had, I further read, I have read this statement of my
4 rights and I understand what my rights are. Mr. Jones did
5 not sign this initially. He indicated that he understood
6 his rights. He further stated that he knew he would be
7 self-incriminating himself. He had ultimately signed,
8 when Detective Creech and I began asking background
9 questions just about his educational background, his
10 general health, his mental health. During that timeframe
11 we left the sheet in front of him and he signed this form.

12 Q And what is the date or time reflected on that form?

13 A The date is September 8th, 2014. And the time is
14 7:30 p.m., 19:30 p.m., Central time.

15 Q And when you say Central time, you noted the Central
16 time as opposed to Eastern Standard time?

17 A That is correct.

18 Q Central time was in effect in Mississippi?

19 A In Mississippi.

20 Q Now, you mentioned that he did not initially sign it.
21 He acknowledged the understanding of each of these rights?

22 A He did.

23 Q Did he verbally waive those rights to continue in the
24 interview with you?

25 A Yes.

1 Q So the initial waiver was verbal in nature?

2 A That's correct.

3 Q And then ultimately he signed the form acknowledging
4 his understanding of the rights as well?

5 A That's correct.

6 Q Is there any doubt in your mind that he gave an
7 initial verbal waiver to continue with that interview?

8 A None. In fact, even when he did sign he further
9 acknowledged that he knew he was self-incriminating
10 himself.

11 Q Did the Defendant appear to understand your questions
12 and the advise of rights as they were provided to him?

13 A Yes.

14 Q Was his speech coherent?

15 A It was.

16 Q Did you promise him anything in exchange for making a
17 statement or participating in an interview with you and
18 Detective Creech?

19 A No, neither of us, no.

20 Q Did you coerce him in any way to participate in that
21 interview?

22 A No.

23 Q To the best of your knowledge did it appear to be a
24 free and voluntary waiver of his rights?

25 A Yes.

1 Q At any point and time did he request an attorney?

2 A He did not.

3 Q At any point did he request that the interview stop?

4 A He did not.

5 Q Give us your best description of his demeanor or
6 overall behavior on this date?

7 A For the most part during the interview he was
8 certainly lucid. He answered the questions that we posed
9 to him.

10 Q And in that regard were his answers appropriate and
11 responsive to the questions that you posed?

12 A They were.

13 Q And that, in sense, did he appear to be rationale?

14 A Yes.

15 Q And aware of his surroundings?

16 A Yes.

17 Q Was he offered water, bathroom breaks, things of that
18 nature if he were to need them?

19 A Yes. We let him know that any time he needed to use
20 the bathroom, something to eat, to drink, just to let us
21 know. And there was a time in the interview he did ask to
22 smoke a cigarette and the Sheriff allowed that. And he
23 was provided water and offered an opportunity to use the
24 bathroom but he did not during the interview.

25 Q Based on your interaction with him how would you

1 describe his level of intelligence?

2 A I would say he is intelligent, he is a bright person,
3 he is college educated. He was a computer engineer of a
4 company of Intel where he was making approxiamtely
5 \$80,000.00 dollars a year. He had plans to take, to
6 attend medical school. And certainly seemed very
7 articulate.

8 Q And that information about his plans to attend
9 medical school and his career as a computer engineer, was
10 that actually relayed to you during the course of the
11 interview with him?

12 A That is what he told us.

13 Q And based on all of those observations, his speech,
14 his ability to communicate, how would you describe his
15 level of mental awareness throughout this interview?

16 A I believe he was very aware.

17 Q Now, regarding the interview itself, was there
18 originally a plan to record it in its entirety?

19 A Yes.

20 Q And what occurred?

21 A During the course of the interview, actually a point
22 where we began, we are going to look at some maps to
23 locate the children's bodies. At that point we noticed
24 that the tape recorder was not recording.

25 Q So I want to focus on the portion of the interview

1 then where you were under the belief it was being recorded
2 but in actuality it was not.

3 A Okay.

4 Q And that would, for purposes of this hearing, be
5 verbal statements made by the Defendant.

6 A Okay.

7 Q And do you have a recollection of that interview here
8 today?

9 A I do.

10 Q As well as statements made by Mr. Jones throughout
11 the course of that interview including the verbal portions
12 that ultimately were unrecorded?

13 A Yes.

14 Q In reflected upon that interview was he truthful with
15 you about the children's whereabouts when he was initially
16 questioned?

17 A No.

18 Q What do you mean by that?

19 A Initially he had told us that he dropped his children
20 off at the Walmart parking lot in Lexington.

21 Q And to what extent did he maintain those lies about
22 the whereabouts of his children being back in Lexington or
23 having been dropped off at Walmart, things of that nature?

24 A He stated he did not know where his children were.

25 It was at that point, he was telling us that he was afraid

1 of his children. He had dropped them off and he had left
2 to get away from them, he thought they were conspiring to
3 kill him.

4 Q All right. So he is telling you that he left his
5 children in Lexington County at a Walmart?

6 A Yes.

7 Q How, if at all, did you confront him further about
8 your, well, let me ask you this. Did you believe or
9 disbelieve that story about the children being at a
10 Walmart in Lexington?

11 A We disbelieved that.

12 Q And how did you confront him about your disbelief of
13 that false story?

14 A We continued to let him know we were just there for
15 the truth, that that was not plausible. At that point I
16 began showing him receipts of a purchase at a Walmart and
17 asked him to read off to me the items that he purchased.
18 He acknowledged that he purchased these items. He read
19 off the muriatic acid, the goggles, the saws that he had
20 purchased. We ask him, what are you purchasing these for.

21 Q And what was his response?

22 A To cut tree limbs, to etch PCB, (phonetic). Just not
23 truthful answers. So we continued on with the notes that
24 were in the car. I asked him if this, in fact, was his
25 handwriting. He acknowledged it was. I had him read off

1 to me what his notes said. And he did so. On those notes
2 he is talking about sanding down bones and discarding
3 these bodies. I asked him what that was about. And he
4 denied knowing at that time what it was about. He did not
5 remember writing those notes.

6 Q Let me show you State's exhibit 27. Court's exhibit
7 27. Do you recognize that document?

8 A I do.

9 Q Is that among the documents that you were familiar
10 with and you confronted Timothy Jones, Jr. with on the
11 date of September 8th?

12 A Yes.

13 Q Did he acknowledge that it was his handwriting on the
14 notes that you confronted him with?

15 A Yes.

16 Q And you actually had physical copies of those notes
17 that you obtained from Mississippi authorities?

18 A Yes. I had actual photographs of different portions
19 of this and that is what I used in the interview that day.

20 Q After acknowledging that it was his handwriting did
21 you ask him what the purpose was of those handwritten
22 notes?

23 A I did.

24 Q And what was his response?

25 A He did not remember writing the notes.

1 Q His statement to you was that he did not remember
2 writing the notes?

3 A At that time that is what he told us.

4 Q And what, if anything, did you do next in the form of
5 a confrontation regarding your belief?

6 A I went on to talk to him about the evidence found in
7 his vehicle and the blood found in the vehicle. He
8 initially thought it was from an animal. We told him--

9 Q Let me stop you right there. So you confront him
10 that there is blood in the vehicle and you are referring
11 to his vehicle, the Cadillac Escalade?

12 A That's correct.

13 Q And what was his statement to you in the form of an
14 explanation for the blood in his Cadillac Escalade?

15 A He initially talked about this being from an animal.
16 He ultimately, when we told him this was human blood found
17 in his vehicle he talks about it being from a cut, from
18 himself.

19 Q So he tells you he had cut himself?

20 A Yes.

21 Q So you have confronted him about numerous aspects of
22 the investigation including forensic evidence receipts,
23 handwritten notes found in the vehicle. And he has
24 continued to give you, what you believe to be false
25 explanations for that evidence?

1 A That's correct.

2 Q And what did you do next?

3 A At that point both Detective Creech and I let him
4 know that these answers were not plausible, that the
5 children were not dropped off at the Walmart. We were
6 there to locate these children. I told him that I
7 believed these children were dead. We repeatedly told
8 him, it is our responsibility, we need to locate the
9 children. Again, we went through the evidence, I had him
10 read off the receipt from Walmart, go through his notes
11 again. And Mr. Jones ultimately told us, guys, let's cut
12 to the chase. And he said we are not going to find those
13 children. He let us know that they were deceased, that
14 they were all deceased.

15 Q Describe his demeanor at this stage in the interview,
16 once you have had the confrontation and he is ultimately
17 stated now, let's just cut to the chase, they are
18 deceased.

19 A In my opinion it appeared a weight was lifted off his
20 shoulders. He certainly was calm in telling us what his
21 actions were because we began walking him through, what
22 happened to each child and what led to those events. And
23 he did that in a logical fashion.

24 Q And did his speech remain articulate and responsive
25 to the questions following this portion of the interview?

1 A Yes.

2 Q And we are still talking about the portion of the
3 interview that is unrecorded and would be verbal
4 statements, correct?

5 A That's correct.

6 Q At some point in time, you testified previously that
7 he had expressed fear about the children?

8 A Yes, he did.

9 Q At some point in time did you confront him directly
10 about whether his actions were based on fear or whether it
11 was based on anger at his son, Nahtahn?

12 A I did.

13 Q Tell us exactly what you recall about that portion of
14 the interview when you confronted him directly?

15 A So he had walked us through, what had happened, on
16 the 28th, on that Thursday and he began talking about
17 electrical outlets being blown at the house. That he
18 suspected his son, Nahtahn, was responsible for. He
19 talked about what he did to Nahtahn to get Nahtahn to tell
20 him that he was responsible for this. In the course of
21 doing that and then laying out for us what he did to other
22 children, he reiterated to us that the reason that this
23 had happened is because Nahtahn would not come off of it.
24 And this is what led to the murders of his children, not
25 to the fear, he acknowledged that to us.

1 MR. YOUNG: Objection to the phrase of murders.

2 THE COURT: Sustained.

3 MS. MAYES: We will use the word, homicide.

4 Q And I am going to ask you to back up and start where
5 you were in reference to your questioning him about the
6 homicides.

7 A Yes. So just, again, he mentioned that Nahtahn was
8 the one that ultimately led to the homicides of the other
9 children.

10 Q And what did you say to him exactly?

11 A And I -- is what you mean, is this the portion when
12 we were talking about him basically stating that this was
13 not out of fear?

14 Q Right.

15 A So I had asked him specifically, was this out of fear
16 or was this due to his son's actions. He stated that it
17 was because of Nahtahn's actions that day that ultimately
18 led to the deaths of both Nahtahn and the other children.

19 Q All right. And do you remember exactly how he worded
20 that and I am going to ask you whether or not you are
21 familiar with the documentations that were made by
22 Detective Creech?

23 A I am.

24 Q And in regards to these documentations made by
25 Detective Creech regarding the verbal statements that were

1 made by Timothy Jones, Jr. did you have a chance to review
2 these prior to this report being submitted?

3 A I did.

4 Q Can you tell us whether or not it is a fair and
5 accurate representation of the statements made by Timothy
6 Jones, Jr. on that day?

7 A It is.

8 Q Including the verbal statements?

9 A Yes.

10 Q I will refer you to page 135.

11 A Okay.

12 Q And what do you recall the response of Timothy Jones,
13 Jr. being when you questioned him, whether his actions
14 were based on fear or about Nahtahn not coming off of it?

15 A I ask him, this was not about you being afraid of
16 your children, this is about Nahtahn not coming off of it.
17 Timothy said yes to this question. He said this was all
18 because Nahtahn would not come off of it. He said Nahtahn
19 had been very defiant. He does go on to say that in the
20 past he had PT'd his son and his son would then be
21 truthful with him.

22 Q Based upon your observations during this course of
23 this interview, did it appear that the Defendant blamed
24 Nahtahn for the subsequent deaths of all of his children?

25 A Yes.

1 Q And ultimately did he state what he did to the other
2 four children after Nahtahn was deceased?

3 A Yes.

4 Q What did he state?

5 A So he walked through with us what he says had
6 happened to Nahtahn. He initially talked about PT'g his
7 son. I specifically asked him, did you lay any hands on
8 him, did you hit him at all. He admitted that he said he
9 had spanked him and hit on his child. But he was not
10 certain what led to Nahtahn's death. He sent his son to
11 bed is what he states. He went in to check on his son and
12 found his son deceased.

13 Q And just to clarify, before this, before he alleges
14 he found Nahtahn deceased, he has verbally admitted to you
15 to not only spanking him but hitting on Nahtahn?

16 A Yes.

17 Q Laying hands on Nahtahn?

18 A Yes.

19 Q All right. And what did he state occurred with the
20 other four children, Elias, Merah, Abigail and Gabriel?

21 A He talks about the older two children, both Merah and
22 Elias, that he had used his hands to strangle them. He
23 talked about statements that the children had made to him
24 and the fact that they had struggled with him when he had
25 strangled them and did acknowledge that certainly Elias

1 knew something was coming. And then he talked about
2 using, initially he stated the younger children he had
3 strangled as well but then he said he had actually used a
4 belt to use on the younger two children, to place around
5 their necks and then he had pulled the belt. He was
6 showing us the hand motion of using the belt around them
7 to kill the children.

8 Q Referring to Gabriel and Abigail?

9 A That's correct.

10 Q Following those admissions and we are still in the
11 verbal portion of this interview what, if anything, did he
12 state regarding his efforts to conceal evidence or to
13 dispose of evidence?

14 A He stated that after this was done, we asked him
15 where in the house. He stated in the living room of the
16 home. That he had wrapped the children's bodies,
17 basically, in their bedsheets. And at that point he had
18 brought them out to the Cadillac's escalade and had placed
19 the bodies in the back of the vehicle on the floorboard in
20 the back, backseat.

21 Q And ultimately does he admit to the disposal of the
22 bodies?

23 A Yes.

24 Q And was he able to describe a general location of
25 where the bodies were placed and in what type of, what

1 type of packaging?

2 A Yes. At that time he was not certain, he was telling
3 us where he disposed of the bodies. He let us know that he
4 really wanted to get lost because he didn't want to know
5 where they would be disposed. We had receipts with us and
6 I gave him a receipt of the day he said he disposed of the
7 bodies which would have been the Saturday, I believe which
8 would have been the 6th. And I had those receipts for
9 him. We had a receipt from that morning at approximately
10 8:00 in Greenville, Alabama. And we had an ATM receipt in
11 Camden, Alabama that was at approxiamtely, I believe, 1:00
12 o'clock. He knew between that timeframe, somewhere
13 between then he knew he had disposed the bodies. Upon
14 questioning him more he was certain it would have been
15 Route 10. We began bringing maps in just to aid us and to
16 help him. He talked about rural area on Route 10 that was
17 essentially like a logging trail. He knew the topography
18 of this particular area. He said at that location and he
19 had been to several but on this location where he decided
20 to dispose of the bodies he had placed them in garbage
21 bags. He told us they were all together and they would be
22 left at one area. At least that is how he had left it.

23 Q Did you question again, we are still referring to the
24 verbal portion of this interview. Did you question him
25 about his use of a substance known as spice?

1 A Yes.

2 Q And was he questioned specifically about the
3 timeframe in which he had used spice in relation to these
4 events?

5 A Yes. Mr. Jones talked about Scooby Snax and that
6 using them, my understanding is a variant of spice. But
7 the day of he denies that he was under the influence.

8 Q And you are referring to the date of, the date of the
9 murders, the day of the homicides?

10 A Yes.

11 Q He states he was not using spice at all?

12 A Yes.

13 Q All right. When did he say he began to use spice?

14 A The next day he stated he was using the spice to
15 level himself off, to calm the voices in his head.

16 Q Right. Now we are still in the verbal portion of the
17 interview that was determined to be unrecorded. But at
18 one point in the interview he referenced him, saying that
19 there were voices. Did he report seeing anything else?

20 A I know at one point in the interview he did talk
21 about seeing shapes.

22 Q All right. So in reference to him telling you that
23 he heard voices or saw shapes. Other than him telling you
24 this did you see any physical manifestation that he was
25 hallucinating during your interview?

1 A I did not.

2 Q Did he ever appear engaging in conversation with any
3 voices?

4 A No.

5 Q Other than yourself and Detective Creech?

6 A No.

7 Q Did he ever appear to be engaging in conversation
8 with any person's that you could not see?

9 A No.

10 Q So other than him making that statement about voices
11 and shapes, was there any other evidence of that during
12 the interview?

13 A No.

14 Q Now, you referenced once he made an admission to
15 disposal of the bodies that he was willing to assist in
16 locating them. What would you describe as his level of
17 cooperation or willingness to assist in that regard?

18 A I felt he was very willing, he was cooperative, he
19 truly wanted us, in my opinion, to find his children. He
20 was doing everything to help assist us. We had gotten
21 maps, we had gotten computers for him.

22 Q Describe that process. You get computers to assist
23 in him locating the children. To what extent was he able
24 to navigate those devices?

25 A So initially, I believe it was an Apple Ipad we gave

1 to him. He was much more familiar with a Mac, we were
2 able to get a Mac laptop. He was able to access the
3 Google maps. We were zoning in on the area that he
4 thought the children were left. And he could not get the
5 topography to come up on this portion of the Google maps.

6 Q Throughout this process did he appear to exercise a
7 mental awareness and proper skills to navigate those
8 devices?

9 A Yes.

10 Q And was he able to provide a detailed description of
11 that location. I know you indicated it was a rural
12 location in Alabama. Was he able to describe the general
13 type of landing?

14 A He did. He talked about it being an unincorporated
15 area. He could describe the road leading up to where he
16 had left the children and he was doing so to the best of
17 his knowledge.

18 Q Did he report whether or not there was an elevated
19 area at that location?

20 A Yes.

21 Q So moving on to the point where you determine that
22 the recorder was not, in fact, working. What efforts, if
23 at all, did you and Detective Creech take to now record
24 these statements or at least summarize the statements that
25 had been made during the course of the verbal interview?

1 A Maybe to use your own words, that is certainly what
2 we tried to do is just to summarize what we had talked
3 about that day. And we do that on the tape, to go through
4 and just establish where the deaths had occurred, the
5 jurisdiction, the fact that all of the children were dead.
6 And then ultimately there is a questionnaire that
7 Detective Creech goes through with him and asked him a
8 series of questions.

9 Q And throughout this recorded portion of the interview
10 did it appear to you that it was freely and voluntarily
11 given by the Defendant?

12 A Yes.

13 Q And you have heard that audio-recording of September
14 8th, 2014?

15 A Yes, I have.

16 Q Based upon your listening to that recording is that a
17 true and accurate reflection of the interview that was
18 conducted by yourself and Detective Creech on September
19 8th?

20 A Yes.

21 Q So once that physical recording ends tell us how the
22 interview, as a whole, ended and what efforts were made
23 leading into the next day to continue these, the recovery
24 of the bodies?

25 A So at the conclusion of the interview Mr. Jones was

1 very cooperative with us. Knew at that point what we
2 really wanted to do is locate the children, to give them
3 this proper burial and that subsequently led us talking
4 him, talking to him again the following day.

5 Q When you ended that interview on September 8th what
6 was his attitude or level of cooperation as to extending
7 into the next day or later efforts to recover the
8 children?

9 A Yes. So he was ultimately willing to accompanying us
10 to find the children. And we established at the, the very
11 next day he agrees to go with us. He did not want to
12 waste our time, he was one-hundred percent positive but he
13 thought if we took him back to that area he could
14 potentially identify the area.

15 Q So it was understood at the end of the interview on
16 the 8th that there would be a follow-up interview?

17 A Yes.

18 Q And he appeared willing and cooperative in that
19 regard?

20 A He did.

21 Q I want to refer you to what is State's 45, I am
22 sorry, Court's 45 and then Court's 46 and ask you whether
23 or not you are familiar with these documents?

24 A Yes, I am.

25 Q How so?

1 A So exhibit 45 is the advice of rights that was
2 provided to him by the MBI Lieutenant Eric Johnson, that
3 he had signed, I had signed and Mr. Jones had signed as
4 well. He was read his rights that morning as well.

5 Q So as to Court's 45 you were a witness to a reading
6 of those rights on September 9th?

7 A Yes.

8 Q And what is the time reflected on that Miranda form?

9 A 11, at the bottom it is 11:14.

10 Q And that is the Miranda form that was administered by
11 Eric Johnson but in your presence?

12 A Yes.

13 Q Do you recall whether or not Detective Creech was
14 also present when those Miranda rights were administered?

15 A Yes, he was.

16 Q Can you tell us whether or not the form was
17 administered in its entirety?

18 A Yes, it was.

19 Q Read aloud by Agent Eric Johnson with the MBI?

20 A Yes.

21 Q Based upon your observations did it appear that the
22 Defendant once again understood each of those rights?

23 A Yes.

24 Q Were any promises made in exchange for his
25 participation in a follow-up interview on September 9th?

1 A No.

2 Q Was any coercion used by yourself, Agent Johnson,
3 Detective Creech or any other officer in your presence?

4 A No.

5 Q At any point and time did he request an attorney?

6 A No, he did not.

7 Q At any point and time did he ask for the interview or
8 his participation of recovery of the bodies terminate?

9 A No.

10 Q Based upon all of those factors did it appear that
11 that wavier on the 9th was freely and voluntarily given by
12 the Defendant?

13 A Yes.

14 Q How would you describe his demeanor on that day in
15 terms of his ability to communicate?

16 A He was articulate, logical, cooperative. He
17 certainly understood everything that was going on and
18 knew, the purpose that day was we were there to locate the
19 children.

20 Q All right. At the outset of that interview did he
21 provide any new information regarding his son, Nahtahn?

22 A Yes.

23 Q What was that?

24 A He had mentioned something new we did not know, he
25 mentioned that the day that the deaths of the children

1 occurred, Nahtahn had broke his glasses, Timothy Jones'
2 glasses.

3 Q Can you describe his tone of voice when he was
4 discussing this event with Nahtahn?

5 A Yes. He still appeared angered at his son.

6 Q Now in terms in leading you to the bodies what did he
7 do to demonstrate or reflect that location?

8 A We did have maps there and Detective Creech had
9 actually provided him a sheet of paper that he actually
10 drew a sketch on to try to identify this area for us.

11 Q And you recognize that document?

12 A I do.

13 Q And that is Court's exhibit 46?

14 A That's correct.

15 Q Is that a fair and accurate representation of the
16 sketch drawn by the Defendant, Timothy Jones, Jr?

17 A Yes.

18 Q Regarding their mission to recover the bodies,
19 describe the distance from where you were in Mississippi
20 to that rural site in Alabama?

21 A I believe it was approximately 200 miles away from
22 our location.

23 Q You went there yourself as part of the mission to
24 recover the bodies?

25 A I did.

1 Q And based upon your interview with Mr. Jones was it
2 an area that he was previously familiar with or was he
3 unfamiliar with this location?

4 A He was unfamiliar.

5 Q So given those factors, what degree of mental
6 awareness would be necessary to lead law enforcement back
7 to this site in a rural area of another State that he was
8 not familiar with?

9 MR. YOUNG: Objection, speculation.

10 MS. MAYES: I can rephrase that, Your Honor.

11 THE COURT: And make it a little bit shorter, that
12 was a long question. I am just trying, it sounded like a
13 speculation question as long as it was.

14 Q So this area in Alabama, based on the statements of
15 Timothy Jones, Jr., was an area he was unfamiliar with?

16 A Yes, he was unfamiliar.

17 Q Also a rural area?

18 A It was.

19 Q Heavily wooded?

20 A Yes.

21 Q He was able to lead you to that location?

22 A He was.

23 Q Take us through that process.

24 A Yes. At that time he was riding in a patrol car, in
25 the backseat with Detective Creech. I was following

1 behind with Dave Lawrence from SLED. We did stop
2 initially at one place prior. Upon pulling into the
3 logging trail I was on the phone with Detective Creech and
4 Detective Creech told me that this was not the area, that
5 Tim did not feel that this was it. We continued further
6 on, Route 10, my recollection we actually just passed the
7 logging trail initially and the police cars brake lights
8 went on. Got on the phone again with Detective Creech and
9 he had mentioned that Tim thought that this was it. And
10 we remained on the phone and as we are pulling up I could
11 hear both Detective Creech and Mr. Jones stating, this was
12 it.

13 Q And this area off the Highway, were there any
14 landmarks around it?

15 A No, it was just the logging trail going up.

16 Q All right. And this entire stretch of Highway 10,
17 where you initially stopped and then you moved to the
18 second location which turns out to be the correct
19 location, was that in the area of a city, in the area of
20 homes or completely rural based on your observations?

21 A I would describe it as rural.

22 Q And this second location that he leads you to, the
23 turnoff off of Highway 10, ultimately were the children
24 recovered there?

25 A Yes, they were.

1 Q Did he remain cooperative throughout that process of
2 recovering the bodies on September 9th?

3 A He did. Upon getting out of the vehicle, could
4 certainly smell the children, he did point for us the
5 direction that the bodies were left in. Mr. Jones was
6 certainly devastated at the time, it appeared to me he was
7 crying heavily at that time. And the decision was made to
8 return Mr. Jones back.

9 Q And was he provided food on this date?

10 A My understanding, yes. I was not present for it but,
11 yes.

12 Q Also cigarettes, appropriate comfort items, bathroom
13 breaks, things of that nature that he may need?

14 A Yes. So on the route there I was following behind
15 but he was accompanied by Detective Creech but I was not
16 following back, I remained at the crime scene.

17 Q And based upon your observations, even at the end of
18 that recovery effort, did he appear cooperative to talk
19 with law enforcement in the future?

20 A Yes.

21 Q Agent Mackey, was his father, Tim, Sr., directly
22 involved in any of your interviews with his son?

23 A He did not participate in any of the interviews. We
24 did talk to him prior to our interview but he was never
25 directly involved.

1 Q All right. And that includes your interview
2 conducted on September 8th?

3 A Yes.

4 Q As well as all of your involvement with the Defendant
5 in September 9th?

6 A Yes.

7 Q Was Timothy Jones, Sr. present for any of those
8 interviews or even in the room during those recovery
9 efforts?

10 A No.

11 MS. MAYES: Beg the Court's indulgence. Nothing
12 further for Agent Mackey at this time.

13 THE COURT: Okay. It is time for a break. We will
14 stand down for a few minutes and you can stand down too.

15 (Whereupon, a short break was taken.)

16 THE COURT: All right, Mr. Young, when you are ready.

17 CROSS-EXAMINATION

18 By Mr. Young:

19 Q Special Agent Mackey, I am going to jump around a
20 little bit. I will apologize ahead of time, okay.

21 A Sure.

22 Q I am not trying to confuse you. If anything becomes
23 confusing let me know and we will clear it up.

24 A Sure.

25 Q The stuff that you have in front of you, those are

1 the Court exhibits that you have, the maps and stuff,
2 right?

3 A Yes.

4 Q And then you have a copy of Detective Creech's
5 report?

6 A Yes.

7 Q And you have the transcript of the statements?

8 A Yes.

9 Q From the tapes. You don't have any of your own
10 notes?

11 A No.

12 Q You don't have your own report?

13 A No, sir.

14 Q You never made one?

15 A No. Customarily with us we go into an interview.
16 You have someone who will take the notes. This is what we
17 do in all interviews. One person will do that
18 investigative report. In this particular case, going in
19 we knew Detective Creech would be taking the notes and
20 ultimately during the course of that interview we
21 understood where jurisdiction was going to be. At that
22 point we had collaborated on his report, we had plenty of
23 time to discuss the interview in question. And that
24 interview, our interview report that he conducted and
25 completed is essentially our interview.

1 Q I understand. You were doing the questioning?

2 A We both were doing the questioning.

3 Q And he was doing the note-taking and questioning?

4 A At times.

5 Q But the plan, you went in there, you know that, I
6 mean Detective Creech had told you on the way there that
7 he was sort of green?

8 A He was newer to the position, yes.

9 Q And he had recently become a Detective?

10 A Yes.

11 Q And this was his first homicide case?

12 A I don't know, that could be true.

13 Q Okay. I am not saying, I don't mean first. He
14 hadn't had a lot of experience dealing with homicide
15 cases?

16 A He was new to this position.

17 Q And you had another SLED agent with you who was Agent
18 Lawrence, is that right?

19 A That's correct.

20 Q I am sorry, you have to say yes for the Court
21 Reporter?

22 A Yes.

23 Q And he was a polygrapher?

24 A Yes.

25 Q He had his equipment with him?

1 A He did.

2 Q You had that there with you?

3 A Yes.

4 Q And that is an investigative tool, right?

5 A It is.

6 Q A polygraph?

7 A Yes.

8 Q And you didn't use it in this case?

9 A No.

10 Q You didn't feel that Tim was holding out on you?

11 A No.

12 Q At the end when he gave a summary of what all
13 happened you felt he was being truthful?

14 A Yes.

15 Q And you didn't need to polygraph?

16 A Correct.

17 Q You said that you had listened to the tapes of the
18 interviews in addition to reviewing the transcript you
19 have in front of you?

20 A Yes.

21 Q Tim's speech on the recorded portion, there are times
22 where he talks fast?

23 A Yes.

24 Q There are times he is a little bit erratic?

25 A Yes.

1 Q There are times where he talks about irrelevant
2 things?

3 A Perhaps.

4 Q There are times he is a little bit tangential, where
5 you ask him about one thing and he starts talking about
6 another thing?

7 A In my opinion he was following along with the line of
8 questioning.

9 Q Sure. For instance when he said, you were talking
10 about and this is all in the recorded interview but when
11 you were talking about bleach, right, you were talking
12 about the bleach to cover up the blood. And Tim would
13 say, yeah, is to cover up the blood and I also like
14 bleach, I carry bleach around, I like the smell of bleach.
15 He would go off on other tangents, right, he would talk
16 more than just bleach is about covering up the blood?

17 A Correct.

18 Q There was a time, sort of later in the interview
19 where you said, you were asking him, well, why didn't you
20 get help, why, you had all of these mental problems, you
21 say you had these mental problems, why weren't you getting
22 help? And he would say something like, well, the kids
23 were trying to get DSS involved, they lied to DSS, she
24 would come tell you that they lied to DSS. I mean he went
25 off on this other story?

1 A He did talk about DSS. Yes, he did.

2 Q Specifically you ask him why he didn't get help and
3 his story was the kids, they lied to DSS, they tried to
4 get DSS involved, she would tell you that she investigated
5 it, she knew that they had lied, they were trying to get
6 out of the house?

7 A Yes.

8 Q And the other conspiracy is like that?

9 A Well, I think he believes that DSS was involved and
10 should not be involved with the situation with his
11 children. I don't know if that was a conspiracy. He also
12 had mentioned another reason he didn't get help is he did
13 not have a good relationship with his wife. And at that
14 time he had a strange relationship with his father.

15 Q Okay. Special Agent, at times he would get loud
16 during your interview?

17 A Yes.

18 Q And one point and time, I will show you what has been
19 marked as 50 through 55 and ask if you recognize those?

20 (Whereupon, Court's Exhibits 50 through 55 were
21 admitted into evidence.)

22 A I do, yes.

23 Q And you had those pictures with you in the interview?

24 A I did, these are copies, yes.

25 Q Right. And, Special Agent Mackey, you confronted Tim

1 with those pictures at one point during the interview?

2 A I did.

3 Q And his reaction was to stand up, back up, yell, keep
4 them away from me?

5 A Yes.

6 Q Special Agent Mackey, at points during your interview
7 he would stutter?

8 A Perhaps a little, I don't recall a major stuttering
9 problem.

10 Q Right. But there are a couple of points in time
11 where he did like, dada, dada, da, da and then answer the
12 question?

13 A That is possible.

14 Q Okay. Sorry, I am jumping around again. At one
15 point on direct examination you were referring to page
16 135, Detective Creech's report?

17 A Yes, sir.

18 Q And you read about half of the paragraph that was,
19 you know, the next to the last paragraph?

20 A Yes.

21 Q And this is, you said, Timothy said, yes, this is all
22 because Nahtahn would not come off of it, right?

23 A That's right.

24 Q And in response to your question about, you weren't
25 afraid of your children?

1 A Correct.

2 Q Now, in the recording portion of the interview you
3 addressed that again, right?

4 A Yes.

5 Q And he says, I felt like Nahtahn was standing there
6 with a loaded gun?

7 A Yes, he did.

8 Q He said, I know it is crazy but that is how I felt,
9 right?

10 A Yes.

11 Q You didn't say, well, wait a minute, you told me you
12 weren't afraid of the kids?

13 A No, I did not.

14 Q You didn't say, that is inconsistent with what you
15 told us in the past?

16 A Correct.

17 Q And that is what he was telling you when you were
18 saying, you are telling the truth, we believe you. And he
19 is saying, I felt like Nahtahn was standing there with a
20 gun?

21 A Yes.

22 Q And the rest of that paragraph, I guess it says, much
23 later in the confession. Timothy also said one of the
24 five would have grown up to do something bad, me killing
25 them prevented death, right?

1 A Yes.

2 Q And that was another, sort of, what he attributed to
3 his motivations?

4 A That's correct.

5 Q Now, Special Agent Mackey, in your thousands of
6 investigations or thousands of interrogations, sorry, and
7 your 17 years as an FBI agent you have never had
8 somebody's father come in with you to an interrogation?

9 A I have not.

10 Q And you have been to law school?

11 A No, I have not.

12 Q I am sorry, TV FBI, right. You have training on
13 interrogation and confessions and defendant's statements?

14 A I have.

15 Q And what the law is surrounding them, those issues?

16 A That can vary from place to place, but, yes.

17 Q In general it is sort of constitutional law, right?

18 A Yes.

19 Q And in the Fifth Amendment we know what we are
20 talking about when we say, Fifth Amendment?

21 A Sure.

22 Q And you said you were aware of the previous
23 interviews of Timothy Jones, Jr. on your way there?

24 A I was aware of the interview that had happened the
25 night prior to us arriving.

1 Q So you were aware that he had been interviewed on the
2 7th?

3 A That's correct.

4 Q With his Dad in the room?

5 A Yes.

6 Q And you knew that that was a problem?

7 A I didn't know it was a problem. I had heard the
8 explanation from the Sheriff and the Lieutenant from MBI
9 and understood what they thought may help in that
10 interview. So that I did know, yes.

11 Q Okay. And they didn't tell you about the three times
12 that he had said he was taking the Fifth. The two times,
13 no, I don't want to talk to you and the two times he had
14 said, no, in answer to will you answer my questions on the
15 night of the 6th. You didn't know about that?

16 A I did not.

17 Q And you didn't know early on the 7th that he had
18 refused to give blood, hair and DNA?

19 A I did not.

20 Q It sounded to me like times during the interview
21 where you were working to get Timmy back on track?

22 A I would describe it, I was working to try to get him
23 to tell us the truth. I felt he was certainly lying about
24 his actions so this is about to tell us what really
25 happened.

1 Q And he did?

2 A He made admissions. I don't know if any of us really
3 know what really happened except for Tim Jones.

4 Q Okay. On the taped portion of the interview Timmy is
5 explaining what he meant by if Nahtahn had come off it and
6 told me what he had done with the electrical outlets, none
7 of this would have happened, right?

8 A He does address that on the tape.

9 Q And he goes further to explain what he meant when, if
10 Nahtahn had come off of it, if Nahtahn had told me what he
11 had done, that would have gotten him the appropriate help,
12 none of this would have happened.

13 A Correct.

14 Q And he explains that when Nahtahn passed, when he
15 found Nahtahn dead the voices in his head exploded?

16 A Yes.

17 Q Let me show you Court's exhibit 49.

18 MS. MAYES: I am not sure what this document is or
19 whether the witness is familiar with it so I will reserve
20 an objection until I hear the question.

21 Q Have you ever seen any documenting, a Suspect's State
22 of Mind, the Mental State Interview Protocol?

23 A Not prior to that interview. I believe this was
24 something that was provided to Detective Creech but I am
25 not certain.

1 Q By Agent Lawrence?

2 A Yes.

3 Q Well, if you flip to the MSIP questions. Do you
4 recognize those questions?

5 A Yes. There was a questionnaire that Detective Creech
6 was provided that he had read through, he does that prior
7 to the taping. But he also goes over that questionnaire
8 on the tape recorder itself.

9 Q Right and the answers are basically the same?

10 A Yes. There are sensually consistent.

11 Q And the design of this questionnaire is what it says,
12 is to prevent defendants to making up a mental health
13 defense later before they have a chance to get with other
14 defendants, before they have a chance to read stuff, it
15 doesn't say before they get with their defense attorney
16 but if you read between the lines that is what it means,
17 right?

18 A I can take your word, I truly don't know that, I have
19 never--

20 Q You have never seen it before?

21 A No, I haven't.

22 Q It is not something that you regularly use?

23 A It is not.

24 Q It is not some FBI hand tool?

25 A That's correct.

1 Q Leave that up there for one second. Detective Creech
2 did go through it with Mr. Jones, right?

3 A Yes, he did.

4 Q And you heard his, you heard him ask questions, you
5 have heard the responses?

6 A Yes.

7 Q And they are noted in the tape and in the report?

8 A Yes.

9 Q I am going to skip down some. But could you flip to
10 question 16, I think.

11 A Would you like for me to read the question?

12 Q The Judge can read it. I mean, what kind of person
13 do you think the victim, say the victim's name was when
14 you committed the crime, is to confirm the suspect knew
15 the victim was human, right?

16 MS. MAYES: If we can get a clarification at this
17 point, Your Honor, is this item, I know it has got a
18 Court's exhibit marking on it. Has it been admitted as a
19 Court's exhibit?

20 MR. YOUNG: I would ask to admit it as a Court's
21 exhibit.

22 MS. MAYES: Well, it hasn't been properly identified
23 at this point and we don't know if the document, as it is
24 marked, is the extent of the questioning that was posed.
25 We have a transcript in the record, Your Honor, where the

1 questions are posed and they are answered. This document,
2 if this witness is not familiar with it cannot be properly
3 identified.

4 MR. YOUNG: Judge, Detective Creech had it, I mean
5 they are the ones that gave it to me.

6 THE COURT: I understand. It is marked as a Court's
7 exhibit and we can consider it. But as I understood in
8 Creech's testimony and he just stepped out, it looks like
9 he had a nose bleed or something, just moments ago. So he
10 is not in the courtroom right now. But as I understood
11 his questions and answers and the transcript is, he used
12 some of it, I don't know whether he used all of it and I
13 am not comparing one with the other. But I don't think he
14 trapped the question with questions. So to the extent he
15 did, he did, I mean the questions are in there, are in the
16 transcript as part of the Court record too.

17 MR. YOUNG: He did. I mean he asked all the
18 questions in order and they are in the transcript.

19 THE COURT: Okay. Well, so since he asked the
20 questions why does Agent Mackey know why he asked them.

21 MR. YOUNG: Well, this is part of the transcript, it
22 is part of the interrogation. I want to go through some
23 of the questions and what Mr. Jones' answers were.

24 MS. MAYES: Your Honor, I would ask that we refer
25 directly to the transcript.

1 MR. YOUNG: I don't know where it is in the
2 transcript.

3 THE COURT: I know there is a transcript of this, as
4 a Court's exhibit of the interview, the recorded portion.

5 MR. YOUNG: Sure.

6 THE COURT: It seems like it was the high 40's.

7 MR. YOUNG: I don't know which transcript, do you
8 have the more recent transcript or do you have the older
9 transcript.

10 MR. GRAHAM: For clarification there was only one
11 Court's exhibit. Your Honor only accepted the official
12 transcript from the Court Reporter, there is a second
13 transcript that was initially transcribed by the FBI and
14 then reviewed and corrected by Sergeant Creech. Your
15 Honor doesn't have that one as a Court's exhibit and I
16 don't know what page Mackey has in front of him.

17 THE COURT: Is that the one that is 47. The one over
18 there, the big clip.

19 MS. MAYES: State's exhibit 44, Your Honor.

20 MR. YOUNG: All right, I have got it.

21 Q Flip to page 43, I think about the middle of the page
22 it says, I guess the last, Investigator, we are going to
23 run through these questions.

24 A Yes.

25 Q And that is where Detective Creech pulled out the

1 question and answer form?

2 A Yes.

3 Q And started going through it?

4 A Yes.

5 Q And you were present for that?

6 A I was.

7 Q And you heard the questions and you heard Timmy's
8 responses?

9 A I did.

10 Q And he was asked, you know, do you know where you
11 are?

12 A Yes.

13 Q And that's question one of the MSIP questions, right?

14 A Yes.

15 Q And question two is, do you know who I am?

16 A Yes.

17 Q And the next question on here is--

18 A He asked him his date of birth.

19 Q Date of birth. Where are you, do you know why we
20 have been talking to you. And then it says, number three
21 on here, do you know why we have been talking to you?

22 A That's correct, yes.

23 Q So it looks like he left off question number two. Do
24 you know who I am.

25 A Well, he says, do you know who you are. And Mr.

1 Jones says, Tim Jones. The Investigator then says,
2 Detective Creech. He says, Tim Jones, what is your date
3 of birth, Tim. And Mr. Jones replies to that.

4 Q Okay. And when the next question is, do you know why
5 we have been talking to you?

6 A That's correct.

7 Q And that is question number three on here?

8 A Yes.

9 Q And then the next question on here, do you understand
10 that you confessed to a crime, right?

11 A Yes.

12 Q That is the next question that Detective Creech asked
13 him. What is question four on the MSIP questions?

14 A Do you understand that you have just confessed to a
15 crime.

16 Q And the same question?

17 A Yes.

18 Q The next question is, do you understand your
19 confession will be used against you in court. What is
20 number five on the MSIP?

21 A Do you understand that your confession will be used
22 against you in court.

23 Q Okay. It appears that Detective Creech is reading
24 these questions, right?

25 A Yes, he is going chronological it appears.

1 Q One, two, three, four?

2 A Yes, yes.

3 Q At the bottom of page 45, we get to question number
4 12 which is, did you commit the crime?

5 A Yes.

6 Q And Timmy says, no, Nahtahn was an accident.

7 A That's correct.

8 Q But he goes on to explain that?

9 A Yes.

10 Q And there is some discussion there, he wouldn't tell
11 me, I don't know if he was messing with stuff, PT'd him
12 over the edge and all of that stuff. Nahtahn was an
13 accident. And then, Detective Creech says, Nahtahn was an
14 accident but you murdered the other four children?

15 A Yes.

16 Q And you and Detective Creech did talk to Tim about
17 what homicide means versus what murder means?

18 A We did not.

19 Q And that is a term that a lot of people use and don't
20 understand it, right?

21 A Yes.

22 Q Because not all killings are murder, right?

23 A Correct.

24 Q You can kill somebody in self-defense, that is not
25 murder, right?

1 A Correct.

2 Q You can kill somebody and it is an accident, that is
3 not murder?

4 A Correct.

5 Q And he and Detective Creech talk about the voices
6 that started kicking in, you better do something, you are
7 fucked now, Tim, right? That is at the top of page 47?

8 A Yes.

9 Q And then you get to question number 13, what were you
10 trying to accomplish by doing this crime, right?

11 A Yes.

12 Q And Tim just starts talking about flight, right. He
13 doesn't talk about, I am just trying to save myself from
14 the children or the children were holding me back from
15 medical school. He doesn't talk about any of that, right?

16 A Yes. He was trying to flee because he knew his time
17 was short, he knew he was going to get in trouble anyway.

18 Q So he is not even talking about how Nahtahn died or
19 why he strangled the other children. He is talking about
20 his flight, right?

21 A Yes, I believe he was referring to after the children
22 were dead he is going to get away because he knows he is
23 going to get in trouble.

24 Q And the question was why are you trying, what are you
25 trying to accomplish with this crime?

1 A That's correct.

2 Q And then they asked him, when did you decide to do
3 it. And he talks about after Nahtahn is gone is when he
4 decided to, the voices told him to kill the other kids?

5 A Yes.

6 Q And then instead of saying what kind of person do you
7 think the victim's name was when you committed the crime,
8 he is asked, what do you think about your children just in
9 general. Right?

10 A Yes.

11 Q And his response is, I think they are going to have
12 issues like me. I think they come from a broken home, I
13 think there is genetic diseases. He doesn't know about my
14 mom. I guess he was talking about Detective Creech or
15 you. You don't know about his mom, is that what he is
16 talking about?

17 A I think he was telling me, at the time Detective
18 Creech but essentially both of us that we didn't know
19 about his mother.

20 Q Detective Creech asked him again, what did you think
21 about the children when you committed the crime. I
22 understand this is a weird question but we have to ask it.
23 And he says, I think they were conspiring.

24 A Yes.

25 Q And Detective Creech asked, to clarify, do you think

1 they were conspiring against you. And he says,
2 definitely. That makes the most sense to me. Right?

3 A Yes.

4 Q That is not saying, well, I just had to kill them to
5 leave or I wasn't really afraid of them. I just killed
6 them because I was angry. He says they were conspiring
7 against me?

8 A Yes, that is what he states. It seems to make the
9 most sense to him.

10 Q They went on to ask him, when you did this do you
11 think your actions could hurt the victims. And he said, I
12 was trying to protect myself.

13 A Yes.

14 Q Was it to harm them or take their lives. And he says
15 it was to protect myself. Right?

16 A Correct.

17 Q He says I know that that sounds fucking pathetic.
18 Right?

19 A Yes.

20 Q When you did this crime did you know it was wrong.
21 That was the next question. That is question number 18 on
22 the MSIP questions, right?

23 A Yes.

24 Q And his response is, I didn't think any of it was
25 wrong. Right?

1 A At the time he didn't think any of it was wrong. It
2 happened and just, fuck, on happenstance and let me finish
3 it up now.

4 Q Okay. And then they asked, when you committed the
5 crime did you know it was against the law. Right?

6 A Yes.

7 Q And Tim said, I didn't even think about the law so I
8 am going to say, no. Right?

9 A That is what he said, yes.

10 Q The Investigator then asked, like, at some point he
11 asked like, even if the law enforcement officer were
12 standing right next to you, elbow to elbow, would you
13 still have done it. Right?

14 A Yes.

15 Q And Tim says, yes?

16 A Yes.

17 Q He knew he was going to get caught. What did you do
18 to protect yourself from getting caught. I guess, I am
19 sorry, I skipped ahead to question 24. Would you have
20 done this if a uniformed officer had been standing next to
21 you. That is where he talks about he felt Nahtahn had a
22 gun pointed at him.

23 A Yes.

24 Q The way he looked at it, not literally thought
25 Nahtahn had a gun but he looked at it as if Nahtahn had a

1 loaded gun?

2 A That's correct. -

3 Q It is the middle of page 52, I am sorry. At that
4 point and time I didn't care because I saw myself as a
5 damn target. I saw him as having the gun in his hand, if
6 you would. I know he was a kid but that is how I saw it.
7 I was like, shit, he's, I am just saying. That is his
8 response?

9 A Yes.

10 Q And then he was asked, like, did you know that
11 society would condemn your actions. And he said, I didn't
12 care.

13 A I am not tracking that on here but that certainly
14 sounds accurate.

15 Q I am sorry, I skipped one. I should have started
16 with 25 which is, to confirm the voices in your head are
17 not God. Right?

18 A Yes.

19 Q And he says, no, this is not Isaac and Abraham.
20 Right?

21 A Yes.

22 Q That God wasn't telling him to do it but other voices
23 were. Right?

24 A Correct. He said he had heard voices.

25 Q And then the question is, when you did this did you

1 know that society would condemn our actions even if they
2 do everything that you know. Right? And his response
3 was, I mean at the time I sort of didn't care.

4 A Correct?

5 Q And then they go on and talk about did you hear
6 voices. He says that he did hear voices. Did you have
7 any strange experiences. He says, yes. Have you think
8 things like this before. And they start talking about his
9 mental health history. Is that right?

10 A Yes.

11 Q The questions like, do you have any beliefs or other,
12 that other people think are crazy. And his response to
13 that is like, I am a Freemason. That people might think
14 that that is crazy?

15 A Yes.

16 Q Are you a Freemason?

17 A I am not.

18 Q Okay. Does that sound crazy to you that somebody
19 would be a Freemason?

20 A Not crazy.

21 Q That he thinks people should exercise and take care
22 of themselves. Does that sound to you like something, do
23 you think that is crazy, people should exercise and take
24 care of themselves?

25 A No.

1 Q And then he talks about spanking, right. He has the
2 ideas about spankings and kids are going to schools and
3 killing teachers because they are not getting spanked.

4 A Correct.

5 Q And you talked on direct some that he said he had hit
6 Nahtahn. He never said he did anything other than crack
7 Nahtahn's butt?

8 A Yes. He said he spanked him and hit on him but he
9 did not, I specifically asked him if he struck him in the
10 head. And when Nahtahn was in the bed if he had placed a
11 pillow over his head or strangled him. He denied all of
12 that.

13 Q Right. He never said he did anything other than
14 spank him or hit him or crack him on the butt?

15 A And PT'd his ass.

16 Q And PT'd his ass?

17 A Yes.

18 Q I guess, I don't know, can you confirm that the rest
19 of these questions were all asked, these MSIP questions?

20 A I would have to go through one by one to do that.

21 Q Okay.

22 A It certainly appears it was, again, going
23 chronologically and the questions were being asked in that
24 particular order.

25 Q And there is 38 questions in total on here, is that

1 right?

2 A Yes.

3 Q And I am going to jump ahead again.

4 A Sure.

5 Q If you flip to the other page it is just talking
6 about how they deal with people who claim amnesia?

7 A Yes.

8 Q And that wasn't Tim?

9 A No.

10 Q There, how to deal with people who continue to deny,
11 how the questionnaire still might be helpful?

12 A Yes.

13 Q And how they interpret the results of these
14 questions?

15 A Correct.

16 Q And then the advantage of using these questions?

17 A Yes.

18 Q And then one of the advantages is, including these
19 questions and original interviews by law enforcement
20 ensures that a suspect will be answering them before he
21 has had an opportunity to list the aid of, cellmates,
22 publications, family, friends. Right?

23 A That is what it says, yes.

24 Q And it said in construing the mental defense of being
25 coached on the way to phrases, answers, to feign mental

1 illness or a mental defense, right?

2 A That is what it says.

3 Q So the answers these questions are before he has been
4 coached to feign a mental illness, right? That it says to
5 ask these in your interrogation, right?

6 A That is what it appears, yes.

7 MR. YOUNG: Your Honor, at this time I would again
8 offer Court's exhibit 49.

9 MS. MAYES: The State objects, Your Honor, it is
10 clear that those final portions of that document were not
11 part of the interview and have not been identified by the
12 Agent that is something he is familiar with personally.

13 MR. YOUNG: Detective Creech is here, we can just, I
14 mean this is a pretrial hearing, this is what was provided
15 to me in discovery--

16 THE COURT: It is a Court's exhibit, it will come in
17 as a Court's exhibit. Both witnesses did not testify
18 anything about the use of them, both of them testified
19 that they weren't familiar with the questions, that they
20 were just told to ask them. And that was about it. I
21 mean, I didn't get this was a technique they use at all.
22 It is a Court's exhibit. How much weight it is given to
23 y'all's argument is up to y'all.

24 (Whereupon, Court's Exhibit 49 was marked for
25 identification only.)

1 MR. YOUNG: Okay.

2 THE COURT: I didn't hear any of the Creech's
3 testimony that says, well, then I went back and evaluated
4 his answers and thus and so. I made a determination, he
5 didn't say that.

6 MR. YOUNG: Okay.

7 THE COURT: I mean, if you want to call him and see
8 if he does that is up to you.

9 MR. YOUNG: Okay.

10 Q Special Agent Mackey, earlier you mentioned that you
11 had talked to the Sheriff and he had explained to you why
12 they had brought Tim's dad into the interview. Is that
13 correct?

14 A I don't recall specifically who we talked to. It
15 might have been the Lieutenant with MBI who actually might
16 have mentioned that they had brought Mr. Jones, Sr. into
17 the interview and we heard the outcome of that particular
18 interview of what was discussed.

19 Q Your prior testimony was that they told you why they
20 did it?

21 A Yes.

22 Q What did they tell you as to why they did it?

23 A They brought him in thinking that having the father
24 there might help the son, Tim Jones, Jr., tell his father
25 what actually happened with the children.

1 Q I mean it was to get Tim to stop saying the Fifth,
2 right?

3 A That was never discussed.

4 Q That wasn't talked about?

5 A Never.

6 Q Because you didn't know he had said that?

7 A I did not.

8 Q But they thought the presence of his dad would get
9 him to talk?

10 A I think they thought it would help, yes.

11 Q One moment. Special Agent Mackey, you were there for
12 three days, the 8th, 9th and 10th. Is that right?

13 A Trying to recall where we slept the night of the 9th,
14 I believe it was somewhere in Alabama. And then the
15 following day we returned back to South Carolina.

16 Q Okay. So you drove down on the 8th in the morning,
17 right?

18 A Yes.

19 Q You did some investigation and you interviewed Timmy
20 that night, right?

21 A Yes.

22 Q And y'all controlled when to have that interview, you
23 decided to have it when you were ready?

24 A To some extent. Clearly, I think we would have
25 preferred maybe something earlier in the day but we needed

1 to drive down that day. Once we got there and we were
2 organized, certainly that is when we conducted the
3 interview.

4 Q You didn't conduct the, you weren't going to do it
5 before you were ready to do it?

6 A Correct.

7 Q And you picked the time of day to do the interview?

8 A Yes.

9 Q And then you were around on the 9th, is when you went
10 to recover the children's bodies?

11 A Yes.

12 Q You went back to Raleigh after that?

13 A Again, I would have to check but we may have stayed
14 in Alabama that night. Actually I think we did return
15 back to Raleigh that night but I am not one-hundred
16 percent certain as I sit here.

17 Q You didn't ride back with Tim?

18 A No, I did not.

19 Q He left, you stayed at the scene for a period of
20 time?

21 A Yes.

22 Q You had been driven there, was Agent Lawrence
23 driving, y'all rode in his car?

24 A That's correct.

25 Q Okay. I understand. You were around working on the

1 case on the 9th, right?

2 A Certainly in the morning and once we got out to the
3 crime scene itself the FBI was not to be part of that, in
4 handling the crime scene. But that was my involvement
5 that day.

6 Q Okay. And then on the 10th is when you returned to
7 South Carolina?

8 A I believe so.

9 Q So that is about, do you know what time you got back
10 to South Carolina, morning, evening?

11 A I think towards the evening.

12 Q Okay. So about three days of work on the
13 investigation?

14 A Yes.

15 Q And there is no piece of paper other than a rights
16 affidavit that has your name on it, right?

17 A That's correct.

18 Q No notes, no report, no nothing, just those couple of
19 rights forms, right?

20 A Yes. Any investigative activity was always done in
21 the presence of Detective Creech. We certainly knew they
22 had jurisdiction, Lexington County did.

23 Q Well you knew that after Timmy told you that he had
24 killed them in Lexington?

25 A That's correct. And I had taken no independent

1 investigative activity for me to generate my own report.
2 I certainly would have if that would have been the case.
3 If I would have had interaction with Tim one-on-one or
4 took some type of other investigative activity that
5 Lexington County would approve of. So had I done that I
6 would have done the report.

7 Q And so since you didn't do it there aren't reports of
8 any other pieces of paper with your name on it?

9 A That's correct. All of the investigative activity
10 was done right beside Detective Creech.

11 Q All right. Thank you, Special Agent.

12 REDIRECT EXAMINATION

13 By Ms. Mayes:

14 Q So in addition to the audio recording you have the
15 supplemental report prepared by Detective Creech?

16 A Yes.

17 Q To the best of your knowledge, Agent Mackey, are the
18 statements attributed to the Defendant in that
19 supplemental report true and accurate?

20 A Yes, they are.

21 Q As well as his notations about the Defendant's
22 demeanor during the course of the interview and his level
23 of cooperation?

24 A Yes.

25 Q And willingness to speak with yourself and Detective

1 Creech?

2 A Yes.

3 Q So I want to ask you specifically about some of these
4 issues raised by Mr. Young regarding these voices that the
5 Defendant claimed during the course of the interview that
6 he had heard?

7 A Yes.

8 Q First of all I want to ask you, in response to his
9 question that after Nahtahn was found dead that the voices
10 just exploded?

11 A Okay.

12 Q You are familiar with the transcript of your audio
13 interview?

14 A I am.

15 Q As well as what was relayed to you verbally?

16 A Yes.

17 Q Do you recall that the voices he said he heard
18 actually were, your fucked, Tim?

19 A Yes. That was his words.

20 Q And that is because Nahtahn had been found dead in
21 his home?

22 A Yes.

23 Q Were you also aware that there was a DSS safety plan
24 that he could not use any corporal punishment on that
25 child, Nahtahn?

1 A Yes. I will say Detective Creech was more familiar
2 with that than I but I had some knowledge of that, yes.

3 Q So how concerned was he in his verbal interview with
4 you as well as in the recorded interview about the fact
5 that this safety plan was in effect and Nahtahn is now
6 dead following some type of event where he spanked him,
7 according to his admission to you, hit him, PT'd his ass
8 and now he is dead. How concerned was he about that when
9 he spoke with you?

10 MR. YOUNG: Objection, speculation.

11 Q What did you observe?

12 THE COURT: He can answer that question, what did you
13 observe. The other question, I agree, sustained.

14 A What I observed is exactly what the Defendant said,
15 that he was fucked.

16 Q So the voice he reported hearing was, Tim, you are
17 fucked?

18 A Yes.

19 Q And his statement to you, reflected in that
20 transcript, is that he then followed suit with the other
21 four?

22 A Yes, he did.

23 Q And he stated that he followed suit with the other
24 four because no one would believe Nahtahn's death was an
25 accident?

1 A That is what he said.

2 Q He also stated, do you recall during the course of
3 the interview, whether or not he stated that Alias was
4 aware that something bad had happened to his brother,
5 Nahtahn?

6 A Yes, I do.

7 Q So his admission then is that he killed Alias after
8 he was aware that something bad had happened with Nahtahn?

9 A Yes.

10 Q To your knowledge, all four of those children were
11 present in the home and were witnesses to those events
12 with Nahtahn prior to them being murdered?

13 A That is what he told us.

14 MR. YOUNG: Objection, murdered.

15 Q Prior to them being killed at his hands when he
16 placed, according to him, his hands on their throats?

17 A That's correct or the belt.

18 THE COURT: Sustained as to your characterization but
19 she rephrased.

20 Q Now, one of the things that Mr. Young was asking you
21 about was during the early part of the interview there
22 were repeated instances where he gave you false
23 explanations for the evidence in the vehicle?

24 A Yes.

25 Q For the whereabouts of the children?

1 A Yes.

2 Q For the tools that he had purchased at Walmart?

3 A Yes.

4 Q And during the course of that portion of the verbal
5 interview you are confronting him with receipts. You also
6 confront him with something else, what is that?

7 A His handwritten notes and also what we knew of the
8 forensic evidence at the time. And I also let him know,
9 we were going to find the children and based off of what,
10 when he ultimately tells us, is the pathologist going to
11 affirm what he is saying. So we went through all of that.

12 Q And during this portion of the interview where he
13 repeatedly gives you false explanations, where the
14 children are and how the evidence ended up in his vehicle,
15 do you confront him with those photographs of the children
16 that Mr. Young marked as Court's exhibits?

17 A I did.

18 Q And did you observe a reaction on his part to those
19 photographs?

20 A Yes, when I first placed them down. Yes, I did.

21 Q How did that reaction that you observed differ from
22 his demeanor when he ultimately made the statement to you,
23 let's just cut to the chase, the children are dead?

24 A So that reaction happened prior. And before he had
25 seen the photographs of his children he was certainly

1 answering us in a logical manner. He certainly acted
2 erratic and he claimed upon seeing the photos of his
3 children that he was afraid of these children. He got
4 very emotional, got very loud. And then continued to lie
5 about his activities.

6 Q So that reaction you saw to the photographs you
7 showed on the children was contemporaneous with all the
8 other lies he was telling you during the course of that
9 interview?

10 A Yes.

11 Q About where the children were and the evidence in the
12 vehicle?

13 A Yes.

14 Q And then ultimately when he made that statement,
15 guys, let's just cut to the chase, the children are dead.

16 A Yes.

17 Q How, if at all, did his demeanor change at that
18 point?

19 A He was very matter of fact.

20 Q Did you still see the same antics and reaction to the
21 photos of the children?

22 A No, he was calm at the time. He appeared to be
23 remorseful and we began discussing the manner in which he
24 had killed the children.

25 Q And ultimately, can you tell us what stage of the

1 interview it was that you confronted him with, was it fear
2 or was it that Nahtahn wasn't coming off of it?

3 A Yes. So when he talked about killing the children I
4 had confronted him, I said, this was not about fear. This
5 was because your son would not come off of what he had
6 done. And Tim acknowledged that that was absolutely
7 correct. He stated that had Nahtahn told the truth and
8 just admitted what he had done none of this would have
9 happened.

10 Q Now the questions that Mr. Boyd Young offered as a
11 Court's exhibit and then ultimately was asking you about,
12 are those questions that you chose or selected to be
13 utilized during the course of this interview?

14 A No.

15 Q Had you ever used them before?

16 A No.

17 Q Would you have used them at all?

18 A No.

19 Q That was something, that choice was made by another
20 participant in the interview?

21 A My understanding, those questions were handed to
22 Detective Creech. We discussed this later, Detective
23 Creech did not have time to review this prior, they were
24 given to him during the course of the interview.

25 Q Another question that Mr. Young posed was about a

1 potential polygraph and whether you believed that the
2 Defendant was being truthful. So I am going to follow-up
3 on that and ask you, were there aspects of the interview
4 that even at the end of the interview you did not feel he
5 was truly or fully forthcoming about?

6 A Yes.

7 Q You were also questioned about the interviews
8 conducted by Mississippi authorities before your
9 involvement?

10 A Yes.

11 Q Do you have any personal knowledge as to those
12 interviews?

13 A Not until recently.

14 Q You weren't present for them obviously?

15 A No, I wasn't.

16 Q You weren't part of the strategies or discussions
17 about how those interviews would be conducted?

18 A Correct.

19 Q For purposes of your interviews on both the 8th and
20 the 9th, Tim, Sr. was not a part of any of those
21 interviews?

22 A No.

23 Q Was the information he provided a central part that
24 influenced your interviews?

25 A No.

1 Q Were your interviews that were conducted on September
2 8th and September 9th completely free and separate from
3 any previous interviews conducted by Mississippi
4 authorities?

5 A Yes.

6 MS. MAYES: I beg the Court's indulgence. Nothing
7 further.

8 RECROSS-EXAMINATION

9 By Mr. Young:

10 Q Agent Mackey, we talked about, we listened to the
11 recorded section of the interrogation, right, and that has
12 been played. You have listened to it?

13 A Yes, not in the courtroom but previously, yes sir.

14 Q And that entire recording takes place after Tim has
15 told you that he has killed the children?

16 A Yes.

17 Q All of the stuff about the lying, they are out at the
18 Walmart, making up reasons as to buying the stuff, all of
19 that stuff on the unrecorded portion?

20 A That's correct.

21 Q The weight coming off of Tim's chest was before it
22 was recorded?

23 A Yes.

24 Q But what we hear in the recorded portion is him with
25 that weight lifted. This is when his demeanor is changed,

1 according to you, right?

2 A Yes.

3 Q And in that recording there are times where he talks
4 fast?

5 A Yes.

6 Q And there is time where his speech is a little
7 erratic?

8 A Yes.

9 Q Sometimes he discussed irrelevant stuff?

10 A Correct.

11 Q And he goes off on tangents sometimes?

12 A Yes, that is fair. Yes, again, I think he was
13 following logically but yes.

14 Q He sometimes got loud?

15 A Yes.

16 Q And there was a couple of times where he had a
17 stutter?

18 A Again, I don't remember a large studdering problem.

19 Q But there were a couple of times where he was trying
20 to get his answer out and he just stuttered?

21 A That would be accurate.

22 Q He told you about delusions?

23 A He talked about, yes, that he had saw shapes in the
24 room.

25 Q Well, I was going to get to the delusion. You know

1 what a delusion is?

2 A I believe so but if you want to fill me in.

3 Q Sure, would you agree with me that a delusion is a
4 fixed false belief?

5 A Sure.

6 Q My six-year-old son has rewired the electrical
7 outlets to kill me, being an example of a delusion. And
8 he told you about that?

9 A He did.

10 Q And he told you about hallucinations?

11 A Yes.

12 Q Both the shapes that changed, permentation changed,
13 he told you about that?

14 A That's what he stated.

15 Q And he told you auditory hallucinations too, voices?

16 A That is what he stated.

17 Q And he explained that there were way more than one,
18 they were saying all kinds of things, right?

19 A At times he stated that, yes.

20 Q I mean at one point one would be saying cut him up,
21 one would be saying feed him to hogs. One would be saying
22 burn them. I mean he described it as voices saying all
23 kinds of things, right?

24 A He did talk about several ideas going through his
25 mind of what he was going to do, dismember and dispose of

1 the bodies in the manner in which he was going to carry
2 those out so he had several different ideas as to how to
3 do that. He did state that there were voices telling him
4 to do this, yes.

5 Q They were telling him all kinds of things?

6 A Yes, at times he stated that.

7 Q Thank you, Special Agent.

8 THE COURT: Anything else?

9 MS. MAYES: Nothing further, Your Honor.

10 THE COURT: You may step down. You need a break?

11 MR. YOUNG: Well, I know Detective Creech is in here,
12 can we just call him to get this Court, talk about this
13 Court number 49. I don't think it will take a couple of
14 minutes, Judge.

15 THE COURT: I have heard that before. Y'all both
16 have been long. Y'all have anybody else left?

17 MR. HUBBARD: No, sir.

18 THE COURT: Mr. Young would like to recall Creech
19 momentarily.

20 MR. HUBBARD: What are we going into now?

21 THE COURT: This document that is the questionnaire
22 that was passed along.

23 MR. HUBBARD: Your Honor, let me ask you something.
24 This is a Denno, you are the decider, you have already let
25 both sides know you understand exactly what Detective

1 Creech used, you have got it in a transcript.

2 THE COURT: Read along with it when it is played.

3 MR. HUBBARD: It is already abundantly clear to you,
4 you are not a jury, you know, like some people off the
5 street. It is abundantly clear to you that it was handed
6 to him, he is not schooled on this. Is this going to help
7 you or can we just stop. I think you have got the
8 information, you pretty much made it clear to everybody,
9 you got the drift, why do we need to beat this horse
10 again.

11 THE COURT: I think Mr. Young wants to take a few
12 more swings at it and I am going to let him. I don't
13 disagree with you but he can recall him and ask him a
14 little bit about it. Call him back up and remind him he
15 is still under oath.

16 MR. YOUNG: The Defense calls Detective Creech.

17 CLERK OF COURT: State your name again.

18 MR. CREECH: Sergeant Anthony Adam Creech, spelled,
19 Creech spelled, C-R-E-E-C-H.

20 DIRECT EXAMINATION

21 By Mr. Young:

22 Q Sergeant Creech, I keep calling you a Detective, you
23 were a Detective at the time of this case and you are now
24 a Sergeant, is that right?

25 A Correct but either one is fine.

1 Q Okay. I want to show you what has been admitted as
2 Court's exhibit number 49 and ask you if you recognize
3 that?

4 A I do.

5 Q Is that the form that Agent Lawrence handed you?

6 A It is. I think the copy he handed me had four slides
7 per page but it looks like it is probably the same, power
8 point.

9 Q Is that the form that you had with you in the
10 interview?

11 A I do believe it is an accurate representation of the
12 form. Like I said, the way it was printed I think is
13 different but these look like the same questions.

14 Q And you looked at those, I mean those are the same 38
15 questions that you went through twice with Mr. Jones,
16 right?

17 A Correct.

18 Q And it explains the purpose of them and why you asked
19 him and how they might help you?

20 A Well, I noted, I assume that it is there because you
21 guys were just talking about it. I don't recall anything
22 past the questions so I don't know that was something that
23 was given to me. I think I was just given the questions.

24 Q So you think you just had three pages of questions?

25 A Or how many pages it printed out to be. But, yeah, I

1 don't have any recollection of them, the explanations that
2 you guys were just discussing.

3 Q Let me ask you, what is this piece of paper?

4 A This would be a lead assignment worksheet that is
5 sometimes used in a complex case like this.

6 Q Okay. And that is a lead assignment to who?

7 A This would be detailing my involvement, it is
8 understood by Lieutenant Fryer, I believe he is probably
9 who filled this out.

10 Q Okay. And do you know how the documenting suspect's
11 state-of-mind got attached to?

12 A Sure, we would have included this in the file somehow
13 because it had been used. Sure, the original power point
14 was probably emailed to somebody and that is probably why
15 it got printed this way.

16 Q Because it says law enforcement report and page
17 number is at the bottom of it, right?

18 A Yes, I mean lead sheets or kind of more an
19 organizational tool. I don't know that they are always
20 completely clear with the correlation between what is on
21 the lead sheet and what goes, I mean ideally it would be
22 clear but I didn't put the lead sheet together so I don't
23 really want to answer too many questions about why this
24 ended up in the folder with the lead sheet, if that makes
25 sense.

1 Q Sure.

2 A Okay.

3 Q This is a power point about documenting a suspect's
4 state-of-mind?

5 A Yes.

6 Q And it includes a list of 38 questions?

7 A Correct.

8 Q It includes reasons as to why it asked them?

9 A This exhibit does include that, yes.

10 Q And interpretations of what their answers might mean?

11 A I do see that, it is included here.

12 Q And you used those 38 questions?

13 A I did use the questions, correct.

14 Q Multiple times?

15 A Twice.

16 Q With Timmy?

17 A Correct.

18 Q Thank you. That is all.

19 THE COURT: Do y'all have anything with him.

20 MR. GRAHAM: I have a few questions, Your Honor.

21 THE COURT: All right.

22 CROSS-EXAMINATION

23 By Mr. Graham:

24 Q You used the questions twice?

25 A That's correct.

1 Q One time in the unrecorded part and then again on the
2 recorded part that we played?

3 A Correct. If we had of recorded the first time we
4 probably would have stuck with the one reading.

5 Q Chronologically in the part that was not recorded, do
6 you remember when in the interview you went to those
7 questions?

8 A It would have been towards the very end.

9 Q So referring to your notes what would have happened
10 prior, do you have your notes with you?

11 A I didn't bring them up.

12 Q Do you have them today in here?

13 A If I can step down and get them if that would be
14 okay.

15 Q I will get them for you. .

16 A And of course I didn't put this real clearly in here
17 chronologically. And I think why I didn't go into a whole
18 lot of detail about the documentation of the questions the
19 first time because the answers were so similar. But it
20 would have been before we got involved in the map issue,
21 going over maps. Because at that point, kind of the
22 structure side of the initial interview we had kind of
23 concluded.

24 Q So the report you wrote, you wrote in the order in
25 which your conversation with him occurred, correct?

1 A Correct.

2 Q So you would have done repoire building already?

3 A Yeah, we would have been past all of that.

4 Q You would have talked about his health issues?

5 A Correct.

6 Q You would have talked about his use of spice?

7 A Correct.

8 Q You would have talked about his mental health
9 history?

10 A Correct?

11 Q And that is when he signed the Miranda form, I think,
12 just after that, correct?

13 A Yes.

14 Q You then began to talk to him about his children and
15 did he get upset and his behavior changed. Correct?

16 A Correct.

17 Q He became nervous and fidgety?

18 A Yes.

19 MR. YOUNG: Your Honor, I am going to object, beyond
20 the scope.

21 THE COURT: Continue on.

22 Q Do you remember all the talk about being afraid of
23 his children?

24 A Correct.

25 Q You confronted him with how the children could pose a

1 danger to him and he said they were very smart?

2 A That's correct.

3 Q Then he talks about Gabriel running away from a
4 babysitter and attempting to go to--

5 A That's correct.

6 Q And he then began to tell you about the children
7 conspiring against him?

8 A That's correct.

9 Q And then at that time he talked about, dropping them
10 off, what later determined a lie, dropping them off at
11 Walmart, correct?

12 A That's correct.

13 Q And that is when Special Agent Mackey confronted him
14 and said, I believe he killed those children?

15 A Correct?

16 Q At that time his behavior changed and he tried to get
17 you off topic?

18 A It did appear that way, yes.

19 Q He then was pressed further by showing him the
20 photographs of the children, or excuse me, the photographs
21 of the receipts and asking about what the items purchased
22 from the Walmart, the dust mask, the goggles and what
23 those were used for?

24 A That's correct.

25 Q Then was confronted with the photographs of the

1 handwritten notes?

2 A Correct.

3 Q Still we haven't gone into those questions yet,
4 correct?

5 A Correct.

6 Q Then you talked about what was found in the car?

7 A Yeah.

8 Q He still hadn't confessed at this point, correct?

9 A He had not.

10 Q And you threw out the option of self-defense to try
11 to continue the conversation?

12 A I did.

13 Q And his response to self-defense was what, about the
14 children?

15 A But they are just kids.

16 Q Then you began to talk about him being stressed and
17 overwhelmed?

18 A I did.

19 Q Then Agent Mackey placed the photographs of the
20 children in front of him?

21 A He did and that is when we got a very strong response
22 from Timothy.

23 Q And he said, keep them away from me, I believe.

24 A Correct.

25 Q So do you know whether he was afraid of the children

1 or he didn't want to see the pictures.

2 MR. YOUNG: Objection, speculation.

3 MR. GRAHAM: I asked if he knew.

4 THE COURT: If he knows.

5 A I think at the time you could see-

6 MR. YOUNG: Objection, he said I think.

7 THE COURT: Objection is noted, he can answer it.

8 A You could see how that can be interpreted either way.

9 Q He was then confronted with a Walmart receipt now and
10 at that point that is when he said, let's cut to the
11 chase?

12 A Correct.

13 Q And at that point he told you the children were dead?

14 A That's correct.

15 Q And you still haven't used the questions?

16 A Still have not used that questionnaire yet.

17 Q He then said I only remember part about what happened
18 when you all pressed him about how the children became
19 deceased?

20 A Correct.

21 Q Which turned out not to be true, correct?

22 A Yes. Because then he goes on to give us quite a bit
23 of detail.

24 Q He then tells you how the night began on the 28th and
25 that he was confronting Nahtahn, overblown about the

1 outlets?

2 A That's correct.

3 Q He said he thought Nahtahn was up to something?

4 A Yes.

5 Q After he confronted the child Nahtahn wouldn't come
6 off of it so he PT'd his ass?

7 A Correct.

8 Q He didn't say he was PT'g Nahtahn because he was
9 afraid of Nahtahn?

10 A No, he didn't. He said it was effectively punishment
11 over the outlet issue.

12 Q And you still haven't asked him questions yet, have
13 you?

14 A We have not.

15 Q And then go on and he continues to say, Timothy told
16 us this went on for hours, I had pushed Nahtahn too far.
17 Correct?

18 A Correct.

19 Q Nothing about being afraid of the children?

20 A Nothing about being afraid of the children.

21 Q He then said he sent Nahtahn to bed, only to check on
22 him a short time later and found him deceased?

23 A That's correct.

24 Q He then asked, why you went to check on him and he
25 said, because I pushed him so far. Is that correct?

1 A That's correct.

2 Q He then said, not that I am afraid of the other
3 children but the other children knew something was up.
4 Correct?

5 A That's correct.

6 Q He said, Alias, not that I was afraid of Alias but
7 Alias knew something bad had happened. Correct?

8 A Yes, referring to Nahtahn.

9 Q He then said the voices in my head said, "nobody will
10 ever believe you didn't murder him." Referring to
11 Nahtahn, correct?

12 A That's correct.

13 Q Now you need to kill the rest of the children and get
14 out of town?

15 A That would be correct.

16 Q Nothing about killing the children out of fear?

17 A Not at all.

18 Q Nothing about pushing Nahtahn, PT'g him that caused
19 his death, done out of fear?

20 A No.

21 Q In fact, Agent Mackey confronted him right then and
22 there and said, this was not about you being afraid of
23 your children. This is about Nahtahn not coming off of
24 it. Correct?

25 A That's correct.

1 Q And he had a chance to deny that but what did Mr.
2 Jones say?

3 A He said, yes, followed by, this was all because
4 Nahtahn would not come off of it.

5 Q Then you moved into asking him what happened to the
6 other four children?

7 A Correct.

8 Q Have you moved into those questions, the mental
9 health questions or are you still interviewing him?

10 A Still not moved into the mental health questions yet.

11 Q He tells you about killing the other four children,
12 correct?

13 A Correct?

14 Q He talks about strangling them with his hand and
15 using a belt?

16 A Correct?

17 Q He then goes back to talk about being uncertain about
18 what Nahtahn actually died of, correct?

19 A He does.

20 Q Then you go on to talk about him communicating with
21 other people and why he was lying to other people about
22 why he wouldn't be coming to town or why the neighbor
23 wouldn't see the children?

24 A Yes, we have talked about some of the prior
25 statements to the neighbor and his father.

1 Q He then talked about using the Scooby Snax to calm
2 the voices in his head, correct?

3 A That's correct.

4 Q That is following him killing his children?

5 A After he killed the children, yes.

6 Q Then Agent Mackey asked him questions about what
7 should happen to him. You still haven't ask those
8 questions yet?

9 A We still have not.

10 Q And then he talks about why he never sought help for
11 psychiatric issues?

12 A He does.

13 Q He then talks about having the children remain in the
14 vehicle with them during the time until he disposed of the
15 bodies, correct?

16 A Correct.

17 Q You then tried to establish a timeline of what
18 happened the night of the 28th into the 29th, 30th and
19 31st?

20 A We did.

21 Q Then you went into his travels?

22 A We did.

23 Q None of this has anything to do with him being afraid
24 of the children, correct, he never brings that up again?

25 A It doesn't come up at this point, no.

1 Q He talks about purchasing the Dollar General, trash
2 bags from the Dollar General on the 4th?

3 A He does.

4 Q He then starts talking a little bit about where the
5 children were and what condition their bodies would be in,
6 correct?

7 A He did.

8 Q He then goes on to tell you about running into a
9 ditch and a tow truck driver and a police officer
10 somewhere along the way?

11 A He did. He said he should have been caught then. He
12 talked about how the police officer was a nice guy and he
13 didn't want him to get in trouble.

14 Q Have you talked about the mental health questions
15 yet?

16 A We had not.

17 Q Then you move into the receipts on the day of the
18 6th, to attempt to help find the bodies, correct?

19 A Correct.

20 Q And you helped narrow that down by his answers?

21 A We do.

22 Q And then it goes onto actually bringing in an Ipad
23 and trying to help him use a map and try to locate where
24 the bodies are, correct?

25 A Correct.

1 Q And you still haven't asked those questions yet?

2 A So it would have been right around this time. I
3 believe and I wished I had noted this better, I think in
4 just the wealth of information we were trying to document,
5 we would have, I would have gone through those questions
6 before we started to bring out maps and we would be prone
7 to interruptions and whatnot. But at that time the
8 structure of the interview would have become a little bit
9 looser and it would have been a good time to introduce
10 that stuff later.

11 Q So he was, at the beginning of the interview, with
12 all of the denials and the lies and then confrontation,
13 the part that he mentioned talking about hallucinating,
14 seeing people, all of that was before he said, let's cut
15 to the chase?

16 A Correct.

17 Q The part about being afraid of the children was
18 before that time?

19 A Before that.

20 Q When you went through the questions verbally from the
21 mental health exam that you were handed, told to use and
22 didn't know anything about, right.

23 MR. YOUNG: Objection, object to, you didn't know
24 anything about that.

25 Q What, if anything, did you know about the document

1 that was handed to you to use during the investigation
2 regarding mental health issues?

3 A It had been mentioned at some point while we were
4 driving down there that there may be some questions they
5 would give us to go over. An opportunity arose, might not
6 had seen those questions until they were given to me by
7 David Lawrence during the interview, probably around this
8 point.

9 Q What were you told the purpose of them were?

10 A I was told that they had some involvement with
11 documenting a suspect's mental health at the time. But I
12 wasn't given a detailed explanation of how they would be
13 used or what that analysis would entail.

14 Q You were given questions, you were not told how to
15 use them?

16 A I was just told to ask the questions.

17 Q Were you told to follow-up on any questions,
18 depending on the answers?

19 A I was not.

20 Q And did you, during the course of using them during
21 the verbal part and the other part follow-up on things or
22 did you just go down the list and ask, one, two, three,
23 four, five.

24 A I think I mostly just asked it and I think the second
25 time around I may have actually skipped a question early

1 on. Occasionally maybe some, asking the questions might
2 have led to some additional dialogue. I think I haven't
3 heard the recording, I don't know if it was just, I think
4 some of the answers got expounded upon a little bit but
5 without going through the actual questionnaire with the
6 transcript and the recording it is hard to say.

7 Q After you have done the interview and now you are
8 moving to these questions and looking back at the way he
9 had responded to the questions do you have an opinion
10 about whether using those questions at the time, Mr. Young
11 talked about, I think referring to one of the last ones
12 that talks about being coached later.

13 A Yes.

14 Q You would agree that using those questions now could
15 be--

16 MR. YOUNG: Objection, leading.

17 Q It could be either the truth of how he was really
18 feeling or it could have been an opportunity for him to
19 take advantage of the questions you asked and come up with
20 a defense at the time.

21 THE COURT: That is not a fair question. None of
22 these guys were familiar with these questions, they were
23 told to ask them, that is what y'all have said and that is
24 what everybody has been consistent on. They just weren't
25 familiar with them. It wasn't, they were asked. The

1 answer was given, they are in the transcript. It is very
2 clear, here, ask these questions too, it may be helpful
3 and that is about what it is, it may be helpful. I have
4 got it. He is not qualified to interpret them yet. It
5 may be trained up between now and then, I don't know.

6 Q Just a few questions about the actual part that is
7 recorded and transcribed?

8 A Certainly.

9 Q And I don't know the Court's exhibit number but the
10 one that is the recording number one.

11 THE COURT: Number 44, the sort of longer one?

12 MR. GRAHAM: Yes, Your Honor. And I think you have a
13 copy of that in there.

14 Q If you could go to page 46, line 20. One of the two
15 of you asked or actually made a statement, Nahtahn was an
16 accident you choose and you murdered the other four
17 children.

18 A That's correct. I made that statement.

19 Q And his answer was, yes?

20 A Correct.

21 Q And the question following, why did you do that. We
22 talked about this earlier?

23 A Correct?

24 Q The voices started, I am sorry, the answer then on 47
25 is, the voices started kicking saying you better do

1 something, you are fucked now.

2 A Correct.

3 Q He is following up on, he murdered the other four
4 children, correct?

5 A Correct.

6 Q The next question is, okay, what were you trying to
7 accomplish by doing this crime, referring, I guess to the
8 murder of the four children. Correct?

9 A Correct.

10 MR. YOUNG: He already has the transcript, we have
11 been through this. This is asked and answered.

12 MR. GRAHAM: Well, he knows what he meant when he
13 asked the question.

14 THE COURT: I have read it, I listened to it, I heard
15 his voice. I thought the Jackson v. Denno was
16 voluntariness.

17 MR. GRAHAM: What I am trying to follow up on is, Mr.
18 Young's saying the questions and answers weren't
19 responsive. This is one of the areas he pointed out to as
20 not being responsive.

21 Q The question you asked was, what were you trying to
22 accomplish by doing this crime, referring to the murder of
23 the four children.

24 A Correct.

25 Q And what was his answer. If you would read lines, 6,

1 7, 8 and 9.

2 A He said I was just trying to flee because I knew my
3 time was short. I was going to get in trouble anyway. I
4 am not good at being bad, I am not a good criminal.

5 Q So from your conversation with him, was that
6 responsive to the question of why, what he was trying to
7 accomplish. Did it answer your question of why he
8 murdered the other four children?

9 A Yes.

10 MR. YOUNG: Objection, murder.

11 THE COURT: It is in the question. I mean,--

12 MR. YOUNG: Mr. Graham said, your question why he
13 murdered the other four children. His question was, what
14 do you hope to accomplish with this crime. His response
15 was, trying to get away, us fleeing. And then Mr. Graham
16 said, well, isn't that responsive to your question of why
17 you murdered the other four children. That was the
18 question, there was a question in there, at the time
19 Detective Creech used that word. Obviously, that is in
20 there.

21 THE COURT: Okay.

22 Q My question that I wanted answered and I am not sure
23 that is what the objection to it was. Was his response,
24 responsive to your statement?

25 A It was a response to the question that I asked, yes.

1 Q And you thought it was a valid response?

2 A Yes.

3 Q It did not need to be clarified?

4 A I was tracking with what he said, if that makes
5 sense.

6 Q Thank you.

7 THE COURT: You can step down.

8 MR. HUBBARD: We are done, Your Honor.

9 MR. YOUNG: I have a couple of issues to address with
10 the Court.

11 MR. HUBBARD: With our presence.

12 MR. YOUNG: No, this is funding stuff.

13 THE COURT: Let's have a off the record discussion on
14 when we are going to reconvene.

15 MR. GRAHAM: We still have one exhibit let.

16 MR. YOUNG: Detective Creech's report.

17 THE COURT: They said they were going to get it and
18 once they get it we will number it and we will put it in
19 as a Court's exhibit. About half way through his
20 testimony, I said are y'all going to have one, they said
21 we will get one and put it in. It was about half way
22 through his discussion.

23 (Whereupon, Court's Exhibit 56 was admitted into
24 evidence.)

25

1 March 19, 2019 (Laurens)

2 THE COURT: Joy was telling me that there was another
3 exhibit, that somebody had one. We are just going to add
4 it to the number of the hearings, roadblock, Jackson v.
5 Denno hearings, just the next number and then we will
6 close that hearing after we rule. Does that suit y'all.
7 For the purposes of the record I think that will be
8 simpler for her. Thank y'all for coming up here. That is
9 exhibit number 57.

10 (Whereupon, Court's Exhibit 57 was marked for
11 identification only.)

12 MR. HUBBARD: Your Honor, just so you know, an
13 outline of the statements, not even an outline, bullet
14 point of what the State is trying to get in, what we
15 covered.

16 THE COURT: Mr. Graham.

17 MR. GRAHAM: Your Honor, I have a suggestion for the
18 Court on how to do this so we don't get lost.

19 THE COURT: Okay.

20 MR. GRAHAM: We have passed up and I think we have
21 provided Defense Counsel with a copy of this. We have
22 typed up the seven statements that we dealt with during
23 Jackson V. Denno. And my suggestion would be is that we
24 go statement by statement, back and forth as opposed to
25 addressing all seven statements because there are

1 different legal arguments.

2 THE COURT: I agree. I think it is easier. Y'all
3 compartmentalized them for me, I like that. I don't like
4 to put them all together because then it gets confusing to
5 me. That is easier for me to understand.

6 MR. GRAHAM: The first statement, Your Honor, would
7 be the statement to Deputy Jamie McClellan when he asked
8 Mr. Jones on the side of the road at the traffic stop on
9 the back of a car about where his children were. And I
10 think he said first, I have zero children and then I have
11 three. This is a summary of it. I think Solicitor
12 Hubbard is going to address that.

13 MR. HUBBARD: Your Honor, we argued this to some
14 extent last week and what we may end up doing, hopefully
15 Your Honor stands, basically we will swap off certain
16 issues as we argue. But the case that we cited was New
17 York versus Quarles, public safety exception. The case
18 dates back to 1984, U.S. Supreme Court case. Your Honor,
19 I have got a copy of that. I think I passed one up last
20 week but I have got another one if you need it.

21 THE COURT: Okay.

22 MR. HUBBARD: If you will recall, that was a case
23 where a woman approaches law enforcement, says she had
24 just been sexually assaulted, she gave a very descriptive
25 description of the guy that assaulted her. They saw him,

1 she said he went into an A&P Grocery Store, that he had a
2 gun on him. So they go there and they meet the guy or see
3 the guy that meets that description and he tries to run,
4 they apprehend him. They had lost sight of him just
5 briefly and when they got him they noticed he had a
6 holster with no gun. So immediately their concern is holy
7 cow, we have got a grocery store with citizens, private
8 people in there, men, women and children, there may even
9 be another suspect and we have got a live gun. They ask
10 the guy after they put him in cuffs and arrested him,
11 where is the gun. He ends up pointing it out to them.
12 They go to trial in New York, the trial Judge threw it
13 out. Said y'all didn't read Miranda, you have got a
14 statement that incriminated him, they threw the gun out.
15 Well, actually he let it in. It goes up to the New York
16 Appellate level and they suppressed it and said you can't
17 do that, it violates Miranda. The U.S. Supreme Court
18 said, no, Miranda has got to yield to public safety. So
19 this case became known as a public safety exception. And
20 the concern of the Court was, these officers are doing
21 exactly what we want law enforcement to do. They are
22 protecting public safety. And what a position you would
23 put all of these officers in if they had to make a split
24 second decision, do I honor this guy's Miranda rights,
25 meanwhile while I am trying to do that someone else gets

1 hurt or killed, or do I abandon my case on this guy and
2 try to keep the public safe. The Supreme Court said we
3 will never put law enforcement in that position, that
4 would absolutely be improper.

5 Some of their language in that case, we conclude that
6 the need for answers to questions in a situation posing a
7 threat to the public safety outweighs the need for the
8 prophylactic rule protecting the Fifth Amendment's
9 privilege against self-incrimination. We decline to place
10 officers such as Officer Kraft in the untenable position
11 of having to consider, often in a matter of seconds,
12 whether it best serves society for them to ask the
13 necessary questions without the Miranda warnings and
14 render whatever probative evidence they uncover
15 inadmissible or for them to give the warning in order to
16 preserve the admissibility of evidence that they might
17 uncover but possibly damage or destroy their ability to
18 obtain that evidence and neutralize the violative
19 situation confronting them.

20 They didn't want to do that. So, Your Honor, what
21 they did is they said, that gun was perfectly admissible,
22 that statement was admissible. What we have in this case
23 and Your Honor remembers, they stopped Mr. Jones at the
24 checkpoint, they smelled the marijuana, what appeared to
25 be marijuana, they find the Scooby Snax which is spice but

1 in their mind--

2 THE COURT: What about the statements right there.
3 Yeah, that stuff I bought it at a store, it is potpourri
4 or spice. It is lawful and the chemical composition is
5 this and this and this.

6 MR. HUBBARD: You ruled on that last week.

7 THE COURT: Okay.

8 MR. HUBBARD: You said that is admissible.

9 THE COURT: I mean, are we going back through that or
10 not?

11 MR. HUBBARD: No, sir. I was going, we had just
12 gotten past all of that, he had made those statements.

13 THE COURT: Do y'all want to argue that still?

14 MR. SECOR: May I speak to Mr. Young for a second.

15 THE COURT: Okay. That was kind of when the guy
16 walked to the window to search the car, not the other one
17 that walked back and forth after he was already on the
18 side of the road.

19 MR. HUBBARD: And in fairness, Your Honor, we did
20 bring our case law on that just assuming that argument was
21 closed.

22 MR. YOUNG: Your Honor, my understanding is, is that
23 was part of the roadblock. You have ruled on the
24 roadblock, we did challenge those statements as part of
25 the roadblock and you have ruled on those and we do object

1 to them as part of the roadblock. And once Mr. Jones is
2 placed in the back of the car that is where--

3 THE COURT: And the record is complete regarding the
4 statements made out there before he is placed in the
5 patrol car. Because the statements now are, Deputy and
6 between Patterson, go ask him again. That conversation is
7 what we are talking about. Everything before that, before
8 he is placed in the patrol car I have already ruled on
9 part and partial of the roadblock.

10 MR. YOUNG: Yes, sir.

11 THE COURT: Okay, good.

12 MR. YOUNG: And have protected us on our objection to
13 those.

14 THE COURT: Yes. And it is like Mr. McGuire said,
15 can we have a continuing objection and not have to renew
16 it and yes.

17 MR. YOUNG: Here is the thing. Like say one piece of
18 paper comes in from the car, we don't object to that one
19 piece of paper and then we loose the ability to challenge
20 anything which is why we asked for the objection and the
21 Court granted it.

22 THE COURT: Yes. Whatever comes out of the car,
23 subject to the roadblock, I ruled on. Your objection is
24 noted continuous.

25 MR. HUBBARD: That was my understanding as well.

1 THE COURT: Okay.

2 MR. HUBBARD: Your Honor, obviously I know you
3 remember this, we argued this last week and you had live
4 testimony. These two offices on the scene, Wayne Thompson
5 and Charles Johnson, they had placed him under arrest, he
6 was now sitting in the patrol car of Jamie McClellan and
7 Under-Sheriff Marty Patterson showed up and smelled what
8 he thought was blood and death. And he was informed of
9 the NCIC hit for the welfare check on the fact that a dad
10 was missing with his five kids. And he was informed of
11 that and at some point Your Honor heard Marty Patterson
12 say he actually got on the phone with Lexington County and
13 spoke, I think it was with Sergeant Jessie Lance in
14 Lexington County about the kids, what the situation was
15 about. And he understood the desperate nature of what was
16 going on. This father had possession of these children,
17 he had a mother and family wondering where in the world
18 these kids are back in South Carolina. No one knew where
19 they were, Lexington had been unable to uncover them
20 anywhere. By all counts and purposes they had been with
21 their father and now he is in a car by himself, he appears
22 to be high or DUI and he is sitting in the patrol car.
23 Marty Patterson directs Jamie McClellan, ask Mr. Jones
24 where those kids are. He is not charged with anything
25 with those kids, he is charged with DUI, he is charged

1 with spice and drug paraphernalia. They put the question
2 to him and he says, I don't have any kids. They get that
3 relayed after Marty Patterson, he talks to Jessie Lance in
4 Lexington a little bit more and he goes, ask him again,
5 where are those kids. And his response is, I only have
6 three kids and they are with the mother. That is the
7 extent to what we want to get in, Your Honor. Obviously
8 Marty Patterson made it clear, he didn't care about the
9 marijuana charge or the spice charge, he didn't care about
10 the DUI, he didn't care about any of that. The safety of
11 those kids is paramount. That is the first statement we
12 want in. We believe that New York versus Quarles would
13 control and for the record that is at 467 US 649, a 1984
14 case. We believe that is sufficient to get that in, Your
15 Honor.

16 THE COURT: And factually he was in handcuffs in the
17 back of a patrol car.

18 MR. HUBBARD: Yes, sir. No question he is in custody
19 and he is being asked a question from law enforcement.
20 The difference with Quarles, it is not about what he is
21 being detained for. In Quarles he is actually prosecuted
22 on the pistol.

23 THE COURT: All right. Mr. Secor.

24 MR. SECOR: Yes, sir.

25 MR. HUBBARD: And, Your Honor, just so, you know

1 Quarles, he was already cuffed up to, same situation.

2 THE COURT: Okay.

3 MR. SECOR: Your Honor, regarding the Court's
4 reliance on Quarles, I would just, as an initial matter
5 point out that Quarles pertained to a prosecution for a
6 gun possession, not a prosecution for five counts of
7 Capital murder where the State is seeking to execute Mr.
8 Jones. So I would suggest from the outset that the
9 analysis of that case is not persuasive when it comes to
10 the circumstances we have here because of the heightened
11 rights that Mr. Jones has as a consequence of the State
12 seeking to execute him. The linchpin of the Quarles
13 opinion is the immediate and real threat that was posed to
14 the public safety at the time that the officer failed to
15 Mirandize the suspect. And the Court harps heavily on the
16 fact that it was asked pre-Miranda, the question, where is
17 the gun was asked pre-Miranda because the officer needed
18 to know at that very particular moment where, what he
19 suspected, was a loaded firearm and it ended up being a
20 loaded firearm. And the Court relies heavily on the fact
21 that there was, in fact, a loaded .38 caliber pistol
22 discovered in a public space. And a great deal of their
23 ruling is depending on the fact that there, again, existed
24 a real and immediate threat which justified the officer's
25 asking of that question. And it was the exigency of the

1 timeframe that necessitated asking the question without
2 Miranda. And also the Court points out that there was a
3 single question asked of this Defendant tailored
4 specifically to the exigency which existed which is where
5 is the gun. And the Court justified the officer not
6 providing Miranda because he simply didn't have time to
7 Mirandize the Defendant and eliminate the threat that
8 exist. The Court also says this is an extremely narrow
9 exception to the Miranda rule that is tailored
10 specifically to the facts that were presented in the
11 Quarles opinion. The Quarles Court also cites Orozco v.
12 Texas as a case where the public safety exception to
13 Miranda was found to have not existed. And the Orozco v.
14 Texas citation is 394 U.S. 324, 1969. And in that case,
15 hours after a murder had been committed officers
16 interrogated the Defendant without Mirandizing him and he
17 showed them where the murder weapon was. In that case the
18 Court held that the Defendant's statement should have been
19 suppressed because the questions about the gun were
20 clearly investigatory. They did not in any way relate to
21 an objectively reasonable need to protect the police or
22 the public from any immediate danger associated with the
23 weapon. In short, there was no exigency requiring
24 immediate action by the officers beyond the normal need
25 expeditiously to solve a serious crime. The facts of

1 Orozco are far more analogous to the facts in Jones
2 because the questions posed by Deputy McClellan were
3 clearly investigatory in nature. There unfortunately was
4 no exigent circumstances at the roadside. And in Quarles
5 there was, the Court said there was, had to be a split
6 second decision for them to not Mirandize the Defendant.
7 In Jones, he had been stopped at the checkpoint, he had
8 been asked for his license and his insurance. He had been
9 asked to step out of the car due to suspicion of DUI. He
10 had been asked for consent to search his car which he
11 gave. Officers began searching his car, Mr. Jones walked
12 back and forth between his car and the patrol car on two
13 different occasions and had to be told to stand still.
14 Another deputy came over and stood next to him as the
15 other officer was searching the car. Under-Sheriff
16 Patterson was called on the phone who arrived on scene and
17 immediately detected the overwhelming smell of death. He
18 discussed the situation with Deputy McClellan, they ran
19 information through a data base where they discovered that
20 there was a welfare check needed on the children, that
21 they were missing along with Mr. Jones. And then Deputy
22 McClellan was instructed to go and ask Mr. Jones--

23 THE COURT: All right, you don't have to go through
24 every fact.

25 MR. SECOR: I know, you were there.

1 THE COURT: I was.

2 MR. SECOR: What I am trying to do is impress upon
3 the Court that there was far more than a matter of seconds
4 that occurred from the time he came into contact with the
5 police to the time that he was asked questions by Deputy
6 McClellan.

7 THE COURT: Well, would you agree with me on this.
8 There was just a matter of seconds from the time they
9 realized there was missing children. I mean everything
10 that you described beforehand, the deputies on the scene
11 don't know of the NCIC BOLO from Lexington County.

12 MR. SECOR: I would not agree there was only a matter
13 of seconds. Based on the reports and the evidence I
14 believe that--

15 THE COURT: Would you agree that it wasn't the entire
16 time you are describing?

17 MR. SECOR: No, certainly some things happened before
18 they found that out. But I do think that they, I do
19 believe that the deputies discovered the welfare check
20 before Under-Sheriff Patterson arrived on the scene. That
21 is at least my understanding. So there was definitely a
22 period of time that went by. But in any event, it
23 certainly would have far exceeded the matter, the split
24 second decision that was relied upon in Quarles to justify
25 the fact that the Defendant was not Mirandized. If Deputy

1 McClellan had the time to walk back and forth between his
2 vehicle and Under-Sheriff Patterson's vehicle to ask two
3 questions instead of the one that was asked in Quarles,
4 certainly he could have Mirandized Mr. Jones under those
5 circumstances. Also Solicitor Hubbard mentioned it, very
6 briefly, in his argument and in reading the State's
7 memoranda that was submitted to the Court, their argument
8 about Quarles and the recitation of facts about the
9 checkpoint situation does not mention the smell of death
10 in the car. Mr. Hubbard did mention it once when he was
11 talking to Your Honor. But that was the hallmark of that
12 entire situation. What alarmed those deputies initially
13 was the overwhelming odor coming out of the vehicle. And
14 I agree that Deputy Thompson and Deputy Johnson testified
15 that they didn't know what it was. But when Under-Sheriff
16 Patterson got there he knew exactly what it was. He saw
17 blood inside of that vehicle, he saw bleach inside of that
18 vehicle, he saw muriatic acid inside that vehicle, he saw
19 lighter fluid, garbage bags. And as he testified, to him
20 that meant death. And there was nothing about what they
21 knew at that point that indicated that any of the Jones'
22 children would still be alive. Based on their failure to
23 Mirandize Mr. Jones, under those circumstances and because
24 there was no exigent circumstance justifying a public
25 safety exception to Miranda--

1 THE COURT: What about the statement, it must have
2 been just before this, what is that smell from the initial
3 deputy, that is trash. Is that coming in too, I have
4 already ruled on that?

5 MR. HUBBARD: Yes, sir. My understanding is that
6 everything that was said at that stop comes in.

7 THE COURT: Okay. Are you good'with that. I mean
8 you objected to it but is that consistent with your
9 recollection?

10 MR. SECOR: I believe so, sir. My recollection is
11 that he had not been taken into custody at that point but
12 we would, of course, yes, object based on the arguments
13 regarding the roadblock.

14 THE COURT: I just want to make sure I am not missing
15 a statement. That one was ruled on per the safety
16 checkpoint.

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

18 THE COURT: Okay.

19 MR. HUBBARD: Your Honor, just a few responses. Your
20 Honor, we hear that Quarles applies when there is an
21 immediate real threat. Dear God, how can it be any bigger
22 here. In Quarles they know there is, they believe there
23 is a live gun, they know there is at least a gun in a
24 grocery store. That is immediate. They act on it when
25 they find that information, they find that information

1 when they pat the guy down and he has got an empty
2 holster. In the case we have got, the first two officers,
3 they don't identify what the smell is at the road stop.
4 It is not until we have Marty Patterson that says, boys,
5 what you have got here is blood and death, decomp. That
6 is when he is on the phone with Lexington because he is
7 doing exactly what he is suppose to do. What is this
8 situation, following up on the NCIC, five kids are suppose
9 to be in that car. He is acting on it properly. This
10 isn't hours later. And then he sends an officer over to
11 direct Jamie McClellan to ask those questions, where are
12 the kids. I don't have any kids. Where are the kids.
13 Well, I have three kids, they are with the mama. That is
14 it, that is it. And the smell, yeah, that is the exigent
15 circumstances. You just heard the Defense say, there were
16 no exigent circumstances, that is it. He sees blood, he
17 has the smell. And Marty Patterson said any officer that
18 would not pursue this with the presumption that kids are
19 alive or one or more are alive ain't a cop. You heard him
20 say on the stand, I am a father, I am a grandfather, any
21 officer who wouldn't push to find out where those kids
22 were needs to take that badge off.

23 THE COURT: I remember that.

24 MR. HUBBARD: And also what became apparent to him,
25 these weren't like 13, 14, 16-year-old kids. These five

1 kids were ages 8 all the way down to one-year-old. And
2 for all of these officers knew, they could be down the
3 road in the woods, there may be three that are alive,
4 there may be four that are alive, five alive, they don't
5 know. For them to stop right there, my god, I think
6 everybody would say, y'all didn't do your job.

7 THE COURT: All right. Anything else from Mr. Secor
8 on this?

9 MR. SECOR: Just briefly. Regarding the timeframe.
10 Mr. Hubbard said it wasn't hours later but of course it
11 wasn't hours later. But the crux of Quarles is that it
12 was a split second and the facts of Jones are far more
13 than a split second decision. Also I have agreed that a
14 law enforcement officer who wouldn't pursue the issue
15 would not be doing his job. No one is suggesting that
16 they would stop doing their job. But part of their job,
17 under the circumstances, is to provide Miranda warnings to
18 a suspect in custody when they are making an interrogation
19 of him about what they suspect to be the killing of
20 children.

21 THE COURT: I kind of disagree with you there. They
22 are not investigating the killing of children. They
23 walked up on something that they never, two or the three
24 officers have never seen before, only the experienced guy
25 had an idea of what it was. I think you are

1 mischaracterizing the facts that those officers had out
2 there on the scene. They, both of them had about two
3 years experience.

4 MR. SECOR: I am not sure.

5 THE COURT: The two officers running the safety
6 checkpoint, they were, compared to Patterson they were
7 rookies, a couple of year, they hadn't been around long.
8 So I don't think that is a fair characterization of the
9 facts. They were out there, they were alert and they
10 found stuff in the car, got him out thinking he was DUI
11 and then they see stuff that looks like a meth lab, come
12 out here and help. They didn't know what it was. So
13 again, my take on the facts, inexperience, it looks like a
14 meth lab, they knew that, that is what they were looking
15 for I guess. Patterson comes out there and goes, oh, this
16 is not good and talks to Lexington and says, there is this
17 guy and five kids, where are the kids. That seems exigent
18 to me. It seems exigent to me when Patterson gets out
19 there and knows Lexington is looking for a guy and five
20 children. And so I would allow those two statements to
21 come in. The don't have any and I have three but they are
22 with their mother. I think that was the sum and substance
23 of the two statements.

24 MR. SECOR: Thank you. And, Your Honor, obviously we
25 object. I don't know if I need to ask for the objection

1 to be noted for the record.

2 THE COURT: No, it is in the record. That is why I
3 came back to you the second time. You are protected.

4 MR. SECOR: Appreciate it.

5 MR. HUBBARD: Your Honor, the next statement is when
6 Under-Sheriff Marty Patterson is walking Mr. Jones through
7 booking and what he does, he does not, there is no
8 interrogation but he says, we are going to be going
9 upstairs so we can talk to you. And the response from Mr.
10 Jones is something to the effect, everything you need to
11 know is in the SUV. So it is a non-responsive response to
12 something that wasn't even a question. So I don't even
13 believe Miranda applies. Officers every day let inmates
14 know or whoever they have in custody what they are doing,
15 makes them a little easier to cooperate and when you get a
16 response like that that is just, that is a voluntary
17 response. So we believe that comes in as well, Your
18 Honor.

19 THE COURT: Okay. Now, as I understand it, that was
20 at the booking desk prior to going into any interview
21 room.

22 MR. HUBBARD: Absolutely.

23 THE COURT: Okay.

24 MR. HUBBARD: I believe he, for the record, he said
25 it was on the first floor of the sheriffs department, they

1 were taking him to the second floor where the interview
2 room was.

3 THE COURT: All right. Mr. Secor, is it still you?

4 MR. SECOR: Yes, sir.

5 THE COURT: All right.

6 MR. SECOR: Your Honor, if you review Under-Sheriff
7 Patterson's typed report of that incident he makes it
8 absolutely crystal clear that the first thing that Mr.
9 Jones said to him, when he said he wanted to talk to Mr.
10 Jones is that Mr. Jones said, I plead the Fifth. That is
11 absolutely unmistakably clear from his typed report, that
12 that was the sequence of events and that then there was a
13 statement by Mr. Jones about everything law enforcement
14 needs was in the SUV. Based on--

15 THE COURT: All right, how about that. Let's, he
16 says it at the booking desk and he goes upstairs and says
17 I plead the Fifth, everything you need is in the truck.
18 He said it twice, once he enters, once upstairs.

19 MR. SECOR: Right.

20 THE COURT: If he says I plead the Fifth and
21 volunteers it and they haven't ask him any questions how
22 do you keep that second one out. I mean it is basically
23 the same statement, what, ten minutes later. So how, what
24 is your argument on that one. He says I plead the Fifth
25 and they just have to ignore what he says?

1 MR. SECOR: My argument is that when somebody makes a
2 clear and unambiguous invocation of Miranda, all
3 communication, contact and interaction with law
4 enforcement must cease unequivocally at that moment. And
5 that is not what happened when Mr. Jones invoked his Fifth
6 Amendment right. The testimony and the typed reports from
7 that date clearly establish that Mr. Jones said, he
8 invoked his Fifth Amendment right and then rather than
9 scrupulously honoring his invocation and immediately
10 ceasing interrogation, he was then taken to an
11 interrogation room and confronted by the presence of no
12 more than three and maybe up to five uniformed police
13 officers where a formal interrogation began.

14 THE COURT: So stop there.

15 MR. SECOR: Yes, sir.

16 THE COURT: That is another argument. Walking to the
17 formal interrogation where the body cam comes in. I am
18 claiming the Fifth Amendment rights, everything he needs
19 is in the car. He hasn't been interrogated yet, in either
20 situation. He is at the booking desk or either just going
21 in the interview room and he says it twice, downstairs,
22 upstairs. Supposedly I say, okay, you are right. The
23 interview after that is suppressed because he really
24 doesn't say anything, kind of rambles around and Patterson
25 says, we weren't getting anywhere. So they terminated the

1 interview. Supposedly that interview doesn't come in, but
2 the statement, one of the two. How is that not, I mean,
3 if I buy your argument that after he says I take the
4 Fifth, everything you need is in the car and then they
5 say, we haven't asked you any questions. Because that was
6 said in the testimony. Then, so from I haven't asked you
7 any questions to before. How do you keep that out?

8 MR. SECOR: Well, Your Honor, if you look at
9 Under-Sheriff Patterson's report that was obviously made
10 long before his testimony, he makes it clear that Mr.
11 Jones invokes his Fifth Amendment right and then
12 Under-Sheriff Patterson says to him, I haven't even asked
13 you anything yet. And then Mr. Jones makes a statement
14 about the SUV. The statement by Under-Sheriff Patterson,
15 I haven't even asked you anything yet should never had
16 been made. As soon as Mr. Jones invoked his Fifth
17 Amendment right it should have been scrupulously honored
18 and there should have been no communication whatsoever
19 between law enforcement and Mr. Jones after that point.

20 THE COURT: All right. The one at the booking desk
21 then. If I am going to buy your argument, how do you lose
22 the booking desk?

23 MR. SECOR: Well, again, any interaction, I mean my
24 understanding is he had already been booked in to the
25 jail. I think that that is what the testimony was too,

1 after he had been booked in he had an interaction with
2 Under-Sheriff Patterson where, what we just talked about
3 happened. And after that incident happened he was
4 immediately taken into an interrogation room. So I
5 believe him invoking -- I am sorry.

6 THE COURT: You are not answering my question. You
7 keep going back to this, when he says the Fifth and then
8 you want, give that scrupulously argument honored, that
9 argument that you keep making.

10 MR. SECOR: Yes, sir.

11 THE COURT: He said, the testimony was and I haven't
12 read the incident report because I wanted testimony, that
13 is what the jury gets to hear. I can't, I mean y'all have
14 got the incident report to cross-examine people with.
15 Walking in the door he says it twice per Patterson's
16 testimony, somewhere near the booking desk on the first
17 floor, goes upstairs to somewhere in there before they get
18 all sat down, I am going to invoke the Fifth or claim the
19 Fifth, whatever his words were, Fifth Amendment was used.
20 I haven't asked you any questions but the statement,
21 everything you need is in the truck was made twice,
22 somewhere along in there, before they sit down in the
23 interview. That is what I want you to focus on and not
24 what they should have done. I can't, how can I ignore the
25 testimony of Patterson when he says, the statement was

1 voluntary before they sat down. How do I get past that.

2 MR. SECOR: Well, and--

3 THE COURT: I am kind of buying your argument about
4 the interview upstairs. That was a mess, there is not
5 much to it. The statement walking in and out, I have not
6 ruled on that but it is just, that gives me more problems
7 looking back and thinking about the testimony before I
8 came in, that one worried me a little bit.

9 MR. SECOR: And I want, I just want to say, I am
10 really not trying to avoid answering Your Honor's
11 question. I am trying to make sure that I understand
12 because my recollection of the testimony was that the
13 first thing that was said by Mr. Jones when he is booked
14 into the jail and there is nothing said prior to him being
15 booked into the jail. And then he is booked into the jail
16 and then Under-Sheriff Patterson says to him, I want to
17 talk to you. And Mr. Jones' response is, I plead the
18 Fifth. And then Under-Sheriff Patterson says, I haven't
19 asked you anything yet. And then the statements about the
20 SUV are made. Is that not Your Honor's recollection?

21 THE COURT: Here is my notes. We took a fifteen
22 minute break. Patterson was on the stand, we came back
23 and he talked about, and I quoted it, "All you need is in
24 my SUV." And that was at the booking desk. And then we
25 got into the body cam viewing of Charles Johnson and the

1 quote, "I plead the Fifth", was on that body cam.
2 Everything you need is in the SUV. And then, I haven't
3 asked you anything. That is how I have got it written
4 down, in that order.

5 MR. HUBBARD: And not to cut Mr. Secor off, that is
6 exactly what Under-Sheriff Marty Patterson testified to.
7 He said there were two instances where that statement
8 about everything you need to know or everything you need
9 is in the SUV. When he walked him through booking which
10 is not recorded anywhere, there is no video there. And
11 then later upstairs Your Honor sees and hears it on video.
12 So there is two different times and what we are talking
13 about is when he is walking him through booking and there
14 is no question, it is just a response.

15 THE COURT: And actually Patterson went through it
16 again, I have got it written down. Mr. Secor, tell me, is
17 it Secor or Secer?

18 MR. SECOR: Secor but either one is fine.

19 THE COURT: Secor, I want to call you properly. When
20 you started cross-examining him, you asked him some
21 questions about the odor. And his answer was, it told him
22 and he quoted death. And he hesitated, something was
23 terribly wrong. Those were his words in that
24 cross-examination. But in the station being booked in,
25 statement one, what you need is in the SUV. And they went

1 upstairs to the interview room, they advised him of
2 Miranda. He wouldn't sign the form, I plead the Fifth. I
3 haven't asked you anything yet. And then he said,
4 everything you need is in the SUV, again. That was in
5 your cross-examination. Those were the answers of
6 Patterson.

7 MR. SECOR: Okay.

8 THE COURT: And so I am, I don't like saying, well if
9 I give you one you lose the other one. How do you keep
10 both of those out. Either one of them is the same thing.

11 MR. SECOR: I understand. I don't mean to repeat
12 myself but I would just reiterate the argument that I
13 believe that the report that Under-Sheriff Patterson made,
14 closer in time to the incident date, is more reliable than
15 his recollection on the stand. So I would argue that he
16 plead, Mr. Jones plead the Fifth and then he was
17 interrogated after that from Patterson asking him a
18 question, rather than scrupulously honoring his invocation
19 of rights. However, based on the series of events as just
20 stated by Your Honor I would say, my argument would be he
21 had still not been Mirandized. He had been subjected to a
22 custodial interrogation from the checkpoint to the jail
23 and interrogation does not have to be actual words, it can
24 be the functional equivalent thereof. He had been
25 detained at the checkpoint, transported to the jail, was

1 being booked into the jail without being Mirandized. And
2 the subject that was going to be talked about was clearly
3 the status of his children. So my argument about that is
4 he had still not been properly Mirandized at that point.

5 MR. HUBBARD: I know you have already heard it.
6 There was no question asked to him, it is just telling
7 them what he was going to do. So that is, that little bit
8 is all I am trying to get in right there, Your Honor.

9 THE COURT: Okay. Based upon the testimony presented
10 to me, downstairs in the booking area and then upstairs
11 before the interview, but I plead the Fifth, haven't ask
12 you anything yet and everything you need is in the SUV.
13 The one downstairs clearly is a voluntary statement and
14 they are going to the interview but they are sitting there
15 at the booking desk. I don't, I find that that is a
16 voluntary statement. That statement, what you need, words
17 to the effect, what you need is in the SUV. That was made
18 downstairs prior to going to the interview room. That is
19 a voluntary statement so that will be allowed. All right,
20 now, compartmentalizing the thing, I will allow the
21 statement downstairs on the booking level, what you need
22 is in the SUV volunteered. We want to argue the body cam
23 interview?

24 MR. HUBBARD: Your Honor, like I put on the record
25 last week, we are not going to introduce that. Although I

1 think I could make a very strong argument under Quarles
2 but this being the big difference. In Quarles, no Miranda
3 was given and there was a question, do you want to waste
4 your time to give Miranda before you find a gun. Here
5 they gave Miranda but the exigent circumstances are still
6 real, still powerful. All they cared about was whether
7 the kids were alive and or if the kids could be located.
8 And as Your Honor knows, it is like Marty Patterson said,
9 they had to assume they are alive, even if one is dead.
10 My god, there could be others alive. But due to the fact
11 that this is a Capital case and we have all of these
12 issues, we don't want to muddy the waters. So, and as
13 Your Honor also noted, that little sequence of questioning
14 took all of eight minutes, nothing was really gained. We
15 would rather just say, we are not going to introduce it
16 and move on and so we won't even make reference that there
17 was questioning that night. We will forego all of that
18 and forego the arguments if we think that would allow it
19 to come in.

20 THE COURT: Well, that kind of makes my ruling
21 easier. The statements made at the booking desk and then
22 no interview, y'all are not going into it. So if y'all
23 want that interview and that body cam that is up to y'all.

24 MR. HUBBARD: Now if the Defense wants it, obviously,
25 that is a different story.

1 THE COURT: If you are not going to, tell me what
2 y'all's understanding of what Solicitor Hubbard says. As
3 I understand it, the State does not intend to utilize the
4 statement past the booking desk, anything that is upstairs
5 that night, the body cam, I invoke the Fifth. If y'all
6 want that it is up to y'all.

7 MR. SECOR: Your Honor, I would just state that what
8 happened during the video recorded interrogation is highly
9 relevant to the events that followed. So I understand
10 that the State isn't going to offer it but if the issue of
11 voluntariness becomes an issue that we have to present to
12 the jury then that video will certainly be relevant to our
13 argument about why the subsequent statements were also
14 involuntary. So I just want to state that.

15 THE COURT: Well, now for legal argument. The next
16 morning or next afternoon when, it is the next afternoon
17 when Jones, Sr. comes late in the afternoon, 18, 20 hours
18 later. He comes and he, the Sheriff, Patterson--

19 MR. SECOR: Special Agent Johnson.

20 THE COURT: --Johnson, the Bureau Investigation, the
21 SLED guy from Mississippi and they are upstairs in the big
22 room on the second floor of the Court House. All right,
23 that is the statement we are on now.

24 MR. HUBBARD: Yes, sir.

25 MR. SECOR: Yes, sir.

1 THE COURT: And, Mr. Secor, I don't disagree with
2 anything you said about it, if you want the video body
3 cam, certainly, I have heard it but the State is not going
4 to utilize it so I am not ruling. They are not going into
5 it so I don't have to rule whether to suppress it or not.
6 It was giving me concerns because he said that so the
7 State is staying clear of it. Now, we are on the next
8 afternoon.

9 MR. HUBBARD: And, Your Honor, and I will say this as
10 to that. As a matter of strategy they feel they need to
11 go into it to better position them with the jury on
12 attacking the other statements I am fine with that. I
13 understand both sides have their strategy. We may at some
14 point, if they actually get to that point and choose to do
15 that ask for an in-camera matter just so that Mr. Jones
16 knows what his team is doing. Even though strategy is for
17 lawyers, just so, because it is a Capital case, so he can
18 articulate that he understands what they are doing.

19 THE COURT: Okay, that is fair enough.

20 MR. HUBBARD: And I believe Mr. Graham is going to
21 have the next argument.

22 MR. GRAHAM: Just one second, Your Honor.

23 THE COURT: Okay. Was it 4:00 o'clock in the
24 afternoon.

25 MR. HUBBARD: Just wait one second. Your Honor, on

1 the next one, Mr. Graham and I have worked together on
2 this. He is going to speak and then there may be a few
3 points I address at the very end if Your Honor is okay
4 with that. I know there is no jury, you just want the
5 information.

6 THE COURT: Yes. The jury, there is going to be one
7 lawyer, one issue. But for purposes of today, y'all do
8 whatever you want. I will hear from anybody and
9 everybody.

10 MR. HUBBARD: Thank you, Your Honor.

11 MR. GRAHAM: Your Honor, I think, as the
12 conversations and time flow and my understanding of the
13 Defense's argument here I believe they are going to say
14 that the violation that is seen on the videotape of him, I
15 think it was approxiamtely a eight minute tape, of him
16 saying that he didn't want to talk and the police
17 continued to ask questions. I believe the argument is
18 going to be that because that occurred that no more
19 interviewing can happen, period. So before we jump into
20 that I wanted to address that.

21 THE COURT: Okay. I think that is a good point
22 because I kind of caught a hint of that last week.

23 MR. GRAHAM: The State would point Your Honor to
24 Michigan versus Mosley which is 423 U.S. 96, a 1975 U.S.
25 Supreme Court case. The fact that a suspect previously

1 invoked his right to remain silent is not a permanent bar
2 for police reinitiating contact with the suspect. And in
3 Mosley they had, the Court found that a two-hour time was
4 sufficient and it gave a test of some factors to consider
5 to determine whether the question, whether the question
6 was scrupulously honored. And I don't believe they are
7 talking about the question at the initial time, they are
8 talking about in general. Was the Defendant Mirandized at
9 the first interrogation, whether the police immediately
10 ceased questioning when the Defendant indicated he didn't
11 want to answer questions, whether the police resumed
12 questioning only after the passage of the significant
13 period of time, whether the police again Mirandized the
14 Defendant and whether the second interrogation was
15 restricted to a crime that had not been a subject of the
16 earlier interrogation. He was Mirandized during the taped
17 interview but obviously he multiple times invoked his
18 right to remain silence over that eight minute period.
19 Did they immediately cease questioning when they indicated
20 that he didn't want to answer questions. They did not and
21 the State, the Defense would want you to say that Miranda
22 rights, he says he wants to remain silent and they can
23 stop. Now, obviously that is not what happened in this
24 case and the State would go again, rely on Quarles at
25 least for the argument we are talking here, that they were

1 still concerned about the safety of the children, they
2 needed to find the children and see whether any or all of
3 them might still be alive. They were unlocated and that
4 is what was present in the police mind. It is not the
5 fact that they are trying to violate his rights
6 intentionally but they do to the extent that they are
7 trying to find the children. Whether the police resumed
8 questioning after the passage of significant period of
9 time, in Mosley it was two hours which found to be
10 acceptable. In this case it is approxiamtely 20 hours.
11 Whether the police, again, Mirandized the Defendant, this
12 time they didn't Mirandize him, moving into all of the
13 subsequent statements he was Mirandized and he actually
14 waived and said that he understood his rights in all of
15 those. And then the fifth element of Mosley, whether the
16 second interrogation was restricted to a crime that has
17 not been a subject of an earlier interrogation. In this
18 case it was not, it was the same set of facts that they
19 were looking on. However if you look at State versus
20 Benjamin which is a South Carolina case, that is 549 SC 2d
21 258, South Carolina Supreme Court, 2001. It goes on to
22 say that the factors are not exclusively controlling and
23 that they should not be applied woodenly. And it says, in
24 State versus Benjamin, that the second interview can
25 involve the same subject matter as the first. That a

1 second interrogation is not rendered unconstitutional just
2 because the same subject matter was discussed. And it
3 explicitly noted that the Mosley factors are not
4 exclusively controlling or do they establish a test which
5 must be woodenly implied. There are guidelines for the
6 Court in determining whether conduct, whether you can
7 reinitiate conduct. I would point out to the Court that
8 if it is still good law there is also a case called Lyons,
9 L-Y-O-N-S versus the State of Oklahoma which is a U.S.
10 Supreme Court case. And it is pre-Miranda and it is a
11 1944. And in that case the Defendant, at two separate
12 times was probably manhandled, beaten, pushed around.
13 Approxiamtely 20 hours after the last beating, I think
14 that is what it is and I don't have a copy to pass up of
15 that one, it is 12 hours separated so they found that the
16 third and final confession was admissible, that it was
17 voluntary. And it says, the Court goes on to say things
18 like, if the relation between the early and the later
19 confession is not so close that one must say the facts of
20 one controlled the character of the other. The inference
21 is for the trier of the facts and the conclusion that the
22 confession should be admitted voluntary and that is not
23 deniable in due process. It talks about the events that
24 other facilities do not lead and would be inescapably to
25 the conclusion that the later, that McAlester State

1 Penitentiary confession was brought about by the earlier
2 mistreatments. The last confession was separated from the
3 early morning statements by a full 12 hours, here we have
4 20. It followed the prisoner's transfer from the control
5 of the sheriff to the prison. In this case the sheriffs
6 department still has him. But it goes on to point out
7 that only one person who had been present when the abuse
8 happened at the other facility was present in this one.
9 But it was not one who was charged with abusing the person
10 so actually had one officer who was in when he was
11 physically abused and one who was involved in the second,
12 when his confession came it was admitted. In this case
13 you have a whole different cast of characters. You have
14 Marty Patterson is obviously believed in what is on the
15 video camera and that was not any kind of physical force
16 like was used in Lyons. In this case you have Eric
17 Johnson who is entirely now a State agent from MBI coming
18 in so it is not just the local sheriffs department any
19 more. You also have the sheriff who was not present at
20 the night before and you also have his father who was
21 there. So you have a whole new group of people coming in,
22 a significant lapse of time to argue that even whether it
23 was physical abuse before they found it voluntary and not
24 a product of coercion. Before we move into any other
25 statements I don't know whether the Defense wants to

1 address the argument or Solicitor Hubbard looks like he
2 has something he would like to add.

3 MR. HUBBARD: Your Honor, just a very practical
4 thing. There is always that question, if somebody asserts
5 their Fifth can we re-approach. As long as it is about
6 silence the answer is yes because of Mosley. And, Your
7 Honor, you haven't really heard the facts in Mosley but it
8 is real interesting, they wanted to question him about
9 what he was actually charged with, not about kids that he
10 is not charged with. Mr. Mosley was charged initially
11 with thefts, armed robberies. So he is questioned and
12 this is downtown Detroit, he is questioned by the theft
13 division. Well, he pleads the Fifth, says I don't want to
14 talk. They send him back to the jail, two hours later a
15 homicide detective, not knowing he has already been
16 questioned, he goes and gets him and questions him about a
17 homicide and he confesses. They give him Miranda, he
18 confesses. The information used by both detectives comes
19 from the same CI. The information that the homicide
20 detective used, he kind of frankly lied to Mr. Mosley and
21 said, your co-partner there confessed. It wasn't true.
22 They used that tactic and the Supreme Court says that is
23 still fine, it is just two hours later. South Carolina
24 and they made a big point in Mosley saying, well, they are
25 asking about something different. So then our question

1 became, well, can you ask about the same thing later after
2 somebody invokes their Fifth and the answer is yes. South
3 Carolina, State versus Benjamin, I will pass that up.
4 Again, you have got somebody who is suspected of armed
5 robbery and a local deputy tries to interrogate the
6 Defendant and Mr. Benjamin says, I don't want to talk, the
7 right to remain silent. One hour later a SLED agent comes
8 and reads him Miranda and they get a confession. So you
9 can do that, you can re-approach. And as Your Honor has
10 already noted there is right at 20 hours. Remember the
11 video, all the Defendant asked for was, I don't want to
12 talk, I just want to go to sleep, I just want to sleep and
13 a cigarette. But I want to sleep. You heard Marty
14 Patterson tell him, we are going to give you a place to
15 rest. They waited almost 20 hours, they gave him exactly
16 what he wanted, brought him back and then Your Honor is
17 aware what happened the 7th. But that is where we are on
18 this.

19 THE COURT: All right. Mr. Secor.

20 MR. SECOR: Yes, sir. Are we, are we talking about
21 how we arrive at the September 7th interrogation and not
22 that interrogation itself, we are just talking about how
23 we arrived there?

24 MR. HUBBARD: That is correct. What we are doing
25 right now is establishing the legal foundation for even

1 being able to have a second interview. Not going into
2 that interview yet, but we plan to.

3 THE COURT: So could they lawfully re-approach.

4 MR. SECOR: Right, I understand.

5 THE COURT: To conduct the second interview.

6 MR. SECOR: Your Honor, when you review Benjamin and
7 its reliance on Mosley, the holding in Benjamin that the
8 statements were admissible against the Defendant, hang on
9 one absolutely clear fact of what occurred in the case.
10 And that is that when the Defendant was approached by the
11 first officer and the Defendant invoked his right to
12 remain silent that officer immediately ceased questioning
13 and scrupulously honored the Defendant's invocation of
14 rights. The only thing that justified the second officer
15 approaching the Defendant, after that point, was that the
16 initial invocation of rights had been scrupulously
17 honored. The whole idea, the whole legal justification
18 for officers to be able to re-approach a person who has
19 asserted their Fifth Amendment rights is if their Fifth
20 Amendment rights have been scrupulously honored from the
21 getgo. If law enforcement does not scrupulously honor a
22 Defendant's invocation of rights they have waived their
23 right to reinitiate communication after the fact. At that
24 point the only person that can reinitiate communication
25 between the Defendant and the police is the Defendant.

1 Mr. Graham discussed the fact that there was a 20 hour
2 period of time, which I agree is longer than that
3 discussed in Benjamin and/or Mosley. But it was 20 hours
4 during which he was interrogated and his rights were
5 ignored and he was told he wasn't going anywhere until he
6 told them what happened to the children and then placed in
7 the suicide watch cell and monitored every fifteen
8 minutes. And also a timeframe during which he was
9 approached and asked to consent to providing samples of
10 his DNA, blood and hair which he refused which is
11 perfectly consistent according to Under-Sheriff
12 Patterson's testimony, perfectly consistent with his
13 invocation of rights on the night of September 6th. So
14 his refusal to consent to the samples was yet another
15 invocation of his rights in addition to the six
16 invocations of his rights that he had made on the night of
17 September 6th which are captured on the video, none of
18 which are scrupulously honored and questioning is not cut
19 off as it should have been. So the State's reliance on
20 Benjamin, I think, is misplaced because Benjamin hangs on
21 the fact that the Defendant's initial invocation was
22 immediately scrupulously honored. And that is the only
23 thing that justified the second officer later
24 re-approaching him.

25 MR. HUBBARD: Your Honor, just very quickly. The

1 State versus Benjamin, South Carolina case that we have
2 passed up which is at 345 or 549 S.C. 2d, 258, 2001
3 Supreme Court case. Our Court addressed the factors, one
4 of which is the scrupulously honoring somebody's assertion
5 of their Fifth Amendment rights. The Court explained,
6 quote, "The Mosley factors are not exclusively controlling
7 nor do they establish a test which must be woodenly
8 applied." Your Honor, what our Courts seems to understand
9 and I believe our Supreme Court does is that we talk about
10 scrupulously observing someone's rights. There is little
11 interpretation there. I would argue, we would argue that
12 that was done. We got nothing from the Defendant during
13 that eight minute conversation. We honored his right to
14 remain silent. Your Honor, he was being asked about
15 something that they didn't know if it would incriminate
16 them or not, those kids may have just been with some
17 friends, he didn't want to tell anybody about because of a
18 custody matter. The officers didn't know. The matter
19 might have been resolved, no criminal charges. They
20 simply did what they were suppose to do, using the line of
21 Quarles, that same notion of, you have got to try to do
22 something. But they honored his rights, Your Honor.
23 There is some other cases, in fact Mosley points out a
24 case. Your Honor, they differentiate another case they
25 referenced in their opinion, just want to let Your Honor

1 know where that is. It is a case called Westover,
2 Westover versus United States at 384 U.S. 436. That is a
3 case that happened about the same time as Miranda. What
4 happened there is, they interviewed a guy all night long,
5 local cops. They beat up on that guy just verbally. He
6 kept saying, I don't want to talk, I don't want to talk, I
7 don't want to talk, and they kept accosting him saying
8 about what he was charged with, we want to know. They
9 went from 9:30 at night to noon the next day and the FBI
10 showed up. FBI read Miranda or read him his warnings and
11 they interviewed him for another two hours and got him to
12 confess. The Supreme Court threw all of that out. That
13 is what they are concerned about, where they are just
14 ruthlessly peppering somebody with these questions and
15 somebody is constantly throwing their hands up and it was
16 on the charge he is charged with. So any answer would
17 clearly be self-incriminating. You don't have that here,
18 you just don't have it. And Your Honor can observe the
19 police conduct in the video, Your Honor can make that
20 decision for yourself. But to suggest that what happened
21 on the night of the 6th means no statements come in? Your
22 Honor, it is to punish officers for doing what good
23 officers should have done.

24 THE COURT: Anything further, Mr. Secor?

25 MR. SECOR: I would just state that six invocations

1 of the Fifth Amendment, that are not scrupulously honored
2 the night of the 6th and rather than being scrupulously
3 honored, questioning on the status of the Jones' children
4 continues. And when Mr. Jones persists in maintaining his
5 Fifth Amendment rights the interview concludes by
6 Under-Sheriff Patterson telling him, you are going to be
7 here until you tell us what happened to the children.
8 That is a threat, it is improper coercion, it is improper
9 influence and it is contrary to Fifth Amendment
10 jurisprudence regarding what is suppose to happen to a
11 criminal suspect, a Defendant when they clearly and
12 unambiguously invoke their right to remain silent.

13 MR. HUBBARD: On the threat, since that is new.
14 Marty Patterson testified, they had a 48 hour window on
15 their Mississippi law to bring any charge, Your Honor
16 remembers that. Also, they pretty much knew that if,
17 basically whether the kids are alive or not, Lexington
18 County is getting a warrant, they know that is coming. He
19 was letting him know what is happening and they sent him,
20 they gave him what he asked for. There is no threat, that
21 was a statement of reality.

22 MR. SECOR: Your Honor, just to point out that it is
23 absolutely clear on the video, Under-Sheriff Patterson
24 does not state you will be here for 48 hours before we
25 have to bring you before a Judge. He says, you will be

1 here with us until you tell us what happened to the
2 children so make yourself comfortable.

3 MR. HUBBARD: One of two things happens. We find the
4 kids, you let us know where they are and give us that
5 information. He didn't have to tell him about the 48
6 hours. That is reality. It is not a threat and Your
7 Honor saw the tone, Your Honor can make that decision
8 having watched that. He talks about it twice. And also,
9 Your Honor was also told, he is under the influence. Your
10 Honor can see that on the video. They can't let him go,
11 if they wanted to what would they do, turn him over and
12 give him back his car and let him go. They know the car
13 subject to Lexington County's questions about the kids.
14 But this man is so impaired what are they going to do.
15 They have got to hold him, it was a liability issue too.
16 All of that I believe Marty Patterson touched on, they
17 didn't have to convey all of that to the Defendant. They
18 just told him the reality, you are not going anywhere
19 because he kept saying, just let me go. If y'all want to
20 talk to me about something else just let me go. That is
21 not going to happen, Mr. Jones. That is all that was.

22 THE COURT: All right, as I recollect the testimony
23 of all of the witnesses, particularly Under-Sheriff
24 Patterson because he was the one that was leading the
25 conversation on the first night, I mean he was.

1 Considering the factors in State versus Benjamin which
2 analyzed the factors in Mosley and also the language in
3 Benjamin, I mean the five factors are there to consider
4 and I note that Benjamin says that the totality of the
5 circumstances. The locating of those children was, which
6 Under-Sheriff Patterson's belief was his duty as a good
7 police officer and he was really focused on that and I
8 watched the video. But considering the five factors
9 outlined in Mosley there was a significant amount of time
10 passage, more than 20 hours because the next interview was
11 Saturday, Sunday afternoon, didn't start until about 6:00
12 p.m. And Saturday night were, I don't know, 8:00, 9:00,
13 10:00 o'clock, along in there and the roadblock to the
14 time he got in jail and booked in. Considering all the
15 factors, the ceasing of the interrogation, significant
16 time of, period of time past, walked him through Miranda,
17 the second interrogation was, you know, certainly it ended
18 up being the murder charges but at the time it was, or
19 they say for not also, and that was a huge impact on
20 Patterson's motivation to find out where they were, to try
21 to find them and see if they were safe. And that impacted
22 his eight minute conversation with Mr. Jones. I am just,
23 considering all the circumstances, everything put
24 together, he was not held for an extended period of time,
25 eight minutes from beginning to end, I don't find that is

1 unreasonable. And it wasn't extended, they resumed
2 questioning the next day, significant amount of time had
3 passed, new set of Miranda. I think it is okay, I think
4 it passes the muster of Benjamin and Mosley factors
5 considering all the circumstances together particularly
6 the motivation to try to locate those children or not.
7 The factor that everybody is very worried, the worse may
8 be possible, they didn't know that. It was certainly a
9 huge concern to them. But based upon the Mosley factors,
10 Benjamin factors and Mosley, I think the second interview
11 is allowed in light of the argument on whether it happened
12 or not because I think that was the first issue, that is
13 the issue that y'all have asked me to consider right now.

14 MR. HUBBARD: Thank you, Your Honor.

15 THE COURT: All right. Before we get to the next one
16 I would like a bathroom break.

17 MR. HUBBARD: That will be fine.

18 THE COURT: So we will start with the interview--

19 MR. HUBBARD: On the 7th.

20 THE COURT: Sunday afternoon with the four people.

21 MR. HUBBARD: Yes sir. Thank you, Your Honor.

22 (Whereupon, a short break was taken.)

23 THE COURT: All right, now back to the statement at
24 6:00 p.m. Sunday afternoon with the four gentlemen and Mr.
25 Jones.

1 MR. GRAHAM: Correct, Your Honor. To give some
2 factual background to remind Your Honor, when MBI Agent
3 Eric Johnson testified, he said that he had made contact
4 with the Defendant's father in the afternoon. I think, if
5 I remember right, from his notes on maybe cross by the
6 Defense, I think it was like 3:25 or something like that
7 in the afternoon on that Sunday that he had a conversation
8 with his father. He explained the Defendant was in
9 custody, he was found without the kids. The kids hadn't
10 been located and wasn't in the car. At that point, I
11 think the father was aware of maybe, from the previous
12 night, that he had already been in custody. The father
13 testified that he was concerned for his kids. I believe
14 he testified that he feared that they were dead but that
15 he both hoped and prayed that they were alive. So he
16 wanted to, I think he expressed regardless of what law
17 enforcement was doing or wanted to do, he wanted to come
18 and talk to his son and found out what happened.

19 THE COURT: I think it is clear. The Mississippi
20 officials called him and he wanted to come and would have
21 come earlier but was told to turn around and come back, go
22 back home until the next day.

23 MR. GRAHAM: And I bring that up, I guess, to say
24 that the, any type of argument that said that he was
25 recruited or he was a state agent, he wasn't. He wanted

1 to do this for his own reasons. His reasons and law
2 enforcement's were the same reason, doesn't mean that he
3 was recruited. He is not a paid informant, he wasn't
4 convinced that he needed to do these things. He wanted to
5 do them of his own accord. Both he and Agent Johnson did
6 agree that they thought him coming down would actually
7 assist in the interview. But he wasn't recruited, he
8 wasn't necessarily, as an argument may be, an agent of the
9 State. There was a little dispute about, the testimony
10 about he was told there was a little bit of blood versus
11 there actually being a substantial amount. But even with
12 the little bit of blood it was my memory of the testimony
13 that he said that he feared they were dead but hoped and
14 prayed that some were alive and that he wanted to find out
15 what happened and where the children were. Testimony from
16 Agent Johnson, from Marty Patterson and also from the
17 Defendant's father is consistent with the fact that he was
18 brought into the room and he was allowed a very brief
19 opportunity to speak with his father at the back. Marty
20 Patterson stated that he overheard the Defendant say to
21 his father that he was pleading the Fifth and had
22 previously plead the Fifth the night before. There was no
23 statement out loud either that the father, I wouldn't know
24 that the father testified to that fact, that was just from
25 Marty Patterson himself. But Agent Johnson and his father

1 and Marty Patterson, nobody said that he invoked his Fifth
2 in that room for the purpose of that interview. His
3 rights were read to him and actually, Your Honor, this is
4 where, if you remember Agent Johnson's testimony, after he
5 was read the rights the Defendant grabbed the form from
6 him and he read them out loud in a loud voice, waiving his
7 rights to speak. And that is a Court's exhibit from the
8 prior hearing saying that he waived his rights. So
9 present in the room at the time, Your Honor, is you have
10 his father, you have Sheriff Crumpton who is basically an
11 observer and you have Agent Johnson who did the
12 questioning.

13 THE COURT: And the Under-Sheriff.

14 MR. GRAHAM: And the Under-Sheriff was present as
15 well in an observing capacity. But there is no allegation
16 from any testimony before Your Honor that he didn't
17 understand his rights or that he invoked his rights at
18 that time. The argument, from what I understand and
19 expect the Defense to argue is that because his father was
20 present in the room and his father was the one that lead
21 the interview and asked him questions that that somehow
22 negates the interview and invalidates it and makes it
23 inadmissible. In no case that I could find, Your Honor,
24 and I think even the case that the Defense cited, it
25 doesn't reflect any type of situation where once the

1 officers, as Your Honor ruled, have been able to go back
2 and approach or go back and reinterview somebody, that
3 when a valid waiver occurs that the presence for
4 questioning by a parent or a family member or friend
5 invalidates that waiver. There just isn't a case that
6 says that. The Defense's case, Your Honor, is about a
7 Sixth Amendment. The Defendant in that case had invoked
8 his right to counsel, clearly saying he wanted counsel.
9 We don't have that in this situation. We have, I don't
10 want to talk, I want to remain silent. The Fifth
11 Amendment, or another clear indication of the Sixth
12 Amendment and the Court in the case that they cite talks
13 about that it was not voluntary initiated. That the
14 contact wasn't initiated by the Defendant in that case.
15 It is also a State case out of Iowa, I think, from 1989.
16 Specifically for Your Honor though, I would point Your
17 Honor's attention to State versus Parker which is a South
18 Carolina Court of Appeals case which I passed up and I
19 apologize, I realize when I passed it up I am missing the
20 last couple of pages of the opinion but you have the
21 start, Your Honor. 671 S.E. 2d, 619. It is the Court of
22 Appeals in South Carolina in 2008. There is no, there was
23 no direct appeal in that case so the Supreme Court either
24 denied cert nor wasn't heard. What you have in that case,
25 Your Honor, was a juvenile actually, which juveniles are

1 actually afforded more rights than adults when you look at
2 the totality of the circumstances. But I think it was a
3 armed robbery in a murder case. He was brought in, and in
4 that case and like this case, he was read his rights and
5 he waived his rights and he was questioned for about
6 twenty minutes by officers. At that point the father came
7 into the room and said, what happened. And in his
8 father's presence and the question of what happened he
9 initially confessed. And the Court found that that was a
10 valid statement that should be admissible. He was read
11 his rights, he waived his rights and even the fact that he
12 was a juvenile didn't change the totality of the
13 circumstances in making it admissible. The Court in
14 Parker, Your honor, did refer to another case which I
15 passed up which is the Supreme Court, the Supreme Court of
16 Kentucky. It was Atkins versus the Commonwealth of
17 Kentucky and that is at 2003 case in Kentucky that Parker
18 referenced. In the Atkins case that Parker discussed they
19 had a Defendant who invoked his Miranda rights. A brother
20 came up and told law enforcement that they thought that he
21 could go talk to his brother and get a confession. They
22 let the brother go talk to him and he got a confession.
23 The Court went on to say that the confession was not
24 caused by police conduct and the officer was not required
25 to bar the jailhouse door, meaning you didn't have to

1 ignore the confession just because they knew that a member
2 of the family intended to induce him to confess. In this
3 case they, in our case at hand in Jones, Your Honor, the
4 police reinitiated contact, they read him his rights, he
5 waived his rights so that is even further down the road in
6 this case because in Parker's discussion of Atkins, and
7 Atkins doesn't even have a new reading of rights and
8 invocation of those rights. The brother just says, I want
9 to go to talk to him on my own and I am going to get him
10 to confess and then he passes the information on. The
11 presence of the father in our current case and his
12 questioning does not render the statements involuntary or
13 inadmissible under South Carolina law. His interest and
14 law enforcements are the same, they want to find the
15 children. And there is no South Carolina case cited by
16 the Defense that says otherwise. Looking at Federal law,
17 Your Honor, the Fourth Circuit Court of Appeals had a
18 similar matter and that is U.S. versus Kimbrough. The
19 cite on that is 477 F.3d 144, Fourth Circuit, 2007. In
20 that one, Your Honor, law enforcement had done a search
21 warrant at Ms. Kimbrough's house who also had her son
22 living there. They had detained them upstairs and when
23 they searched the house they actually found drugs in the
24 basement. They took the mother downstairs, showed her the
25 drugs in the basement. She seemed like she was shocked

1 and surprised and just like here, she asked to speak to
2 her son just like Mr. Jones said, I want to speak to my
3 son. As soon as the confrontation occurred between the
4 mother and the son the officer quickly attempted to throw
5 in Miranda. And then when the mother began asking
6 questions the Defendant responded. The Court ruled, Your
7 Honor, citing Oregon versus Elstad, that the Fifth
8 Amendment is not concerned with moral and psychological
9 pressures to confess emanating from sources other than the
10 official coercion. So the fact that the mother asked the
11 question, the fact that that may have put moral and
12 psychological pressure on the Defendant to confess doesn't
13 make that police conduct, it was conduct by another
14 person. And the Court says that the Fifth Amendment isn't
15 interested in that, it is talking about State action,
16 State coercion. Next, Your Honor, I would point you to
17 Snethen which is S-N-E-T-H-E-N, versus Nix. That is the
18 Eight Circuit Court of Appeals. The cite on that is 855
19 F2d 456, and it is a 1989 case. The Defendant in that
20 case, Your Honor, had already been advised of his Miranda
21 and similar to all the cases I have found on this, it is
22 talking not about the Fifth Amendment right to remain
23 silent, it is talking about the Sixth Amendment right to
24 counsel and he had invoked his right to counsel. In that
25 case, Your Honor, the mother of the Defendant said, let me

1 speak to my son and if he did this he will tell me. They
2 allowed her to speak to him, even though that they had
3 invoked his right to counsel, and while the officer was
4 present the mother obtained a confession. So the Court
5 said that no evidence of Miranda violation, stated that it
6 was coercion by the mother led to Snethen's inculpatory
7 remarks, not by the police. So even though the police
8 were present and allowed the mother to ask questions where
9 they couldn't be in violation of, request for an attorney
10 under the Fifth Amendment, the Court said that was an
11 admissible statement. I also point Your Honor to Graham
12 versus U.S. which is 950 A.2d, 717, D.C. Court of Appeals.
13 Again, we had a Defendant and his mother. The Court held
14 that a Defendant's statement to his mother who remained
15 and questioned the Defendant after he had invoked his
16 right to counsel and who confessed with officers present
17 was admissible and was not in violation of Miranda or
18 Edwards. The mother's private question of the Defendant
19 was not State action subject to the Fifth Amendment. The
20 Court went on to state that only State action implicates a
21 Defendant's rights under the Fifth Amendment. The sole
22 concern of the Fifth Amendment, on which Miranda is based,
23 is governmental coercion and not pressure from other
24 sources. In summary, Your Honor, I guess I would just say
25 that the fact that his, I mean, they read his rights. He

1 waived his rights and he understood his right, he read
2 them himself. That puts us leaps and bounds ahead of any
3 of these cases. These are cases where the Defendant
4 invoked his rights and they allowed questioning and an
5 officer present. And Parker was more similar to us where
6 the rights were read and they let it. There is no case
7 that says that when a valid waiver of the Fifth Amendment
8 of your Miranda rights and a valid waiver of the Miranda
9 rights have been given that a family member that is
10 present doing the questioning makes it inadmissible.

11 THE COURT: Mr. Secor.

12 MR. SECOR: Yes, sir. I know we have been over this
13 but I feel like I need to reiterate this point before I
14 make my argument further. Mr. Graham's position is that
15 the circumstances in Mr. Jones' case are different from
16 the case that is cited and therefore better from the
17 perspective of the State because of the fact that on
18 September 7th there was a waiver obtained by Mr. Jones.
19 And I, of course, can see that there is a waiver form
20 signed by Mr. Jones on that date. But that does not
21 matter and should not play the role in its course of
22 analysis because of the fact that law enforcement did not
23 have the right to reinitiate communication with Mr. Jones
24 on September 7th. They had abandoned that right by having
25 repeatedly failed to cease interrogating him when he

1 invoked his Fifth Amendment rights numerous times on the
2 night of September 6th as well as the morning of September
3 7th when he refused to consent to the DNA, hair and blood
4 samples the State wished to obtain from him.

5 THE COURT: You are protected on that, I have already
6 ruled on that.

7 MR. SECOR: Yes, sir.

8 THE COURT: Yes, you are protected so basically if I
9 am in error in that ruling and you are correct then
10 everything would be suppressed from that point forward in
11 time.

12 MR. SECOR: Yes, sir. And I just felt like I needed
13 to repeat because that is obviously the crux of my ongoing
14 argument.

15 THE COURT: Okay.

16 MR. SECOR: But more specifically to the issue raised
17 by the State on this, on the circumstances of this
18 interrogation. The State relied, at least in part, on the
19 Snethen case, Eighth Circuit opinion. And what, the
20 crucial distinction between Snethen and the facts of this
21 case is that in Snethen the Court found that the officers
22 did not, "arrange the confrontation between the family
23 members and Defendant." And that is the crux of our
24 argument regarding the improper coercion, improper
25 influence of Mr. Jones, Sr.'s presence in the

1 interrogation on September 7th. He came to Raleigh,
2 Mississippi at the request of Special Agent Johnson. He
3 had wanted to come the night before, September 6th, and I
4 think that if police really believed that some of the
5 children were still alive they would have told him to come
6 on in September 6th but, of course, they did not. They
7 called him back at 1:00 in the afternoon, 1:15 p.m. on the
8 7th and asked him to come to Raleigh which he did. He
9 then met with Under-Sheriff Patterson, Sheriff Crumpton,
10 Special Agent Johnson, according to testimony, they
11 planned, they strategized about how to talk to Tim because
12 he had invoked his Fifth Amendment rights. And it was
13 clear from Mr. Jones, Sr.'s testimony that everybody was
14 aware of that fact and it was their goal and intention to
15 figure out a way to get him to abandon the rights that he
16 had so clearly invoked. Your Honor, in a case entitled In
17 the Interest of A.T.S., citation is 451 N.W. 2d 37, 1989
18 involves a case where the Defendant's mother was involved
19 and questioning by police after he had been provided and
20 validly waived his rights. But despite the fact that he
21 had validly waived his rights the Court found that the
22 Mother's involvement was improper because her placement in
23 the interrogation was calculated to, expected to or likely
24 to invoke admissions by her son, the Defendant, which it
25 clearly did.

1 THE COURT: I think it is clear from Jones, Sr.'s
2 testimony, he worked reasonably, he worked aggressively,
3 he tried different tactics himself without being trained
4 in the interrogation.

5 MR. SECOR: No sir, he wasn't trained in the
6 interrogation but he unequivocally met with the officers
7 and planned and strategized beforehand about what to do
8 knowing that Mr. Jones, Jr. had invoked his Fifth
9 Amendment right. Mr. Jones, Sr. testified that he knew
10 that he had invoked his Fifth Amendment right, he didn't
11 care and he was not going to take no for an answer when he
12 spoke to his son.

13 THE COURT: And that was Jones, Sr. saying those
14 things, not the police saying, look, get in there and do
15 this or else. Jones, Sr. wasn't threatened in any way.

16 MR. SECOR: I am sorry?

17 THE COURT: Jones, Sr. was not threatened in any way.

18 MR. SECOR: No, I am not alleging that by any means.

19 THE COURT: Okay. If I remember what his tone of
20 voice was, he didn't need coaching, he wanted to know
21 where his babies were, that was his goal.

22 MR. SECOR: Yes, Your Honor. But the Constitutional
23 violation occurred by Mr. Jones, Sr. being brought into
24 the interrogation.

25 THE COURT: Why?

1 MR. SECOR: Special Agent Johnson testified that the
2 reason that Jones, Sr. was brought into the interrogation
3 was for the purpose of emotional stimulus, emotional
4 stimulus to get him to abandon the Constitutional
5 protection that he had invoked on previous, the previous
6 day on numerous occasions and also earlier on the 7th when
7 they ask him to submit to the samples. And he refused to
8 consent to those.

9 THE COURT: Tell me this. How is it their
10 interrogation techniques, I mean, the case that Judge
11 Anderson wrote, Parker, he discussed in some language the
12 good guy, bad guy technique, it was mentioned earlier in
13 another case. Police officers are allowed to give false
14 information, even lies, your co-defendant told us
15 everything so go ahead and get it off of your chest. They
16 can say just about anything, the Supreme Court has upheld
17 it. How is bringing his dad in worse than lying to him
18 about something, a factor that is not, they can't prove.
19 I mean, I can't think of a great example of the police
20 using, I have read cases, they are allowed to do that.

21 MR. SECOR: I think Your Honor is entirely correct
22 about that, that they are permitted to lie to suspects in
23 an attempt to elicit incriminating statements. I am not
24 contesting that at all. But what we are dealing with here
25 is of a very different nature than lying to a suspect. In

1 this situation you were confronting Mr. Jones, Jr., not
2 only with his own father but also the grandfather of five
3 minor children who everybody believes have been killed by
4 Mr. Jones, Jr. at that point. And there is no question
5 that that emotional stimulus, as testified by Special
6 Agent Johnson, was intentional and targeted for the
7 purposes of breaking Mr. Jones' will, overbearing his will
8 to the point that he would abandon his rights. And it was
9 arranged by law enforcement and although they took a
10 somewhat non-active role at the beginning of the
11 interrogation, it does not matter because their act of
12 bringing Mr. Jones, Sr. into the room is the functional
13 equivalent of expressed question because it is conduct
14 that the police should know is reasonably likely to elicit
15 an incriminating statement from the suspect.

16 THE COURT: I thought it was the other way around.

17 MR. SECOR: I am sorry?

18 THE COURT: I thought it was the other way around. I
19 thought the police didn't let them come in because they
20 would say, don't say anything and keep your mouth shut and
21 it helped them invoke their rights. I thought that was
22 the old play.

23 MR. SECOR: I am sorry.

24 THE COURT: The next set of interrogators, the South
25 Carolina guys, SLED and FBI, particularly FBI guys, they

1 never let a family member come in there for fear of them
2 encouraging the accused for invoking their rights, shut
3 them up.

4 MR. SECOR: That's right.

5 THE COURT: So, this is not like the oldest play in
6 the book, it is get his dad in there so he will confess.
7 It is hardly ever played.

8 MR. SECOR: Because they knew his father's position
9 ahead of time. They met with and they planned with and
10 they strategized with him about the goal that they all
11 had. And the goal that they all had and it wasn't just a
12 tacit understanding, it was a discussion and they planned,
13 they all knew he had invoked his Fifth Amendment rights
14 and they all were in agreement that they wanted him to
15 abandon those rights. And they knew the presence of
16 Jones, Sr. was going to be an overwhelming emotional
17 stimulus to Jones, Jr., which it was and against not
18 only--

19 THE COURT: The way you described it just then is, it
20 is like Jones, Sr. is in there, all right, look son, we
21 need to find the babies, you need to give up your rights,
22 you need to do this and give up your rights. He wasn't
23 involved in the initial part of the conversation.
24 Johnson, the MBI guy started out, look, we want to talk to
25 you, here are your rights, go over them and started such

1 as that. I mean, the way you are describing it is the
2 converse.

3 MR. SECOR: Well, Your Honor, my recollection of the
4 testimony from not only Jones, Sr. but also Under-Sheriff
5 Patterson and Special Agent Johnson is that when they went
6 into that room on September 7th, Jones, Sr. took the lead
7 in speaking to Jones, Jr. and did the vast majority of the
8 talking.

9 THE COURT: After Miranda had been signed. You have
10 been arguing as if that conversation took place, they sat
11 there and ease dropped in the presence of the room with
12 common conversations, oh, let's clean this up and sign
13 Miranda. That didn't happen.

14 MR. SECOR: I am not trying to suggest that and if I
15 insinuated that I did not mean to. Clearly there is an
16 advise of rights form that is signed at, I believe, 6:08
17 p.m. on September 7th which was very early on in the
18 interview.

19 THE COURT: But then I will agree with you. After
20 that Jones, Sr. did most of the talking.

21 MR. SECOR: I agree. But according to the testimony
22 we have, the first thing that is said when those gentlemen
23 entered the interview room with Jones, Jr. is something
24 about Jones, Jr. invoking his rights. That was the first
25 thing that came up which is interesting because it was

1 also the first thing that came up every other time law
2 enforcement had reinitiated communication with Jones, Jr.
3 previously. When they tried to take swabs from him he
4 invoked, the night of the 6th when they repeatedly tried
5 to get him to give them information he invoked over and
6 over and over again. So this meeting on the 7th, again,
7 began with the discussion, mentioned statement about Fifth
8 Amendment Rights, subsequently there was a waiver signed
9 but I would argue that obviously my position is that the
10 contact never should have happened. After it did happen
11 any waiver at that point, any statement or involuntary,
12 particularly in light of the coercive and improper
13 pressure, psychological pressure and the psychological
14 ploy that was utilized by law enforcement intentionally
15 after meeting with Jones, Sr., for the purpose of getting
16 Jones, Jr. to abandon the rights that he had invoked. And
17 the Kimbrough case that the State relies on, the decision
18 in that case hung specifically on the fact that the mother
19 spontaneously asked questions without direction or even a
20 tacit understanding with the police officers.

21 THE COURT: Now, I can't follow that logic.
22 Everybody involved was asking the exact same question.
23 One question, where are the children, where are the
24 children. That didn't have to be suggestive. No coaching
25 was needed on Tim, Sr. Said, look, we are looking for the

1 kids. No joke, I am too. I mean everybody is looking for
2 the kids. So I don't think that is a fair thing to say
3 the police coached up Jones, all right, look here, here is
4 what we need you to find out. That wasn't said.

5 MR. SECOR: No, Your Honor. But they did, Jones, Sr.
6 unequivocally confronted Jones, Jr. about the blood found
7 in the vehicle and asked Jones, Jr. about whether or not
8 the blood in the vehicle would be tested and whether the
9 DNA testing of the blood would come back to any of his
10 children which is information he had to have received from
11 law enforcement because he hadn't viewed the car. So
12 clearly law enforcement had given him--

13 THE COURT: All right. I am going to interrupt you.
14 Give me the timing on the statement of, it is going to
15 come back to an animal. Where did that statement come
16 from?

17 MR. SECOR: I think that was in the September 8th
18 statement to Creech and Mackey.

19 THE COURT: The following statement, okay.

20 MR. SECOR: Yes, sir.

21 THE COURT: Now when were the DNA, its human blood,
22 when was that information known to law enforcement since I
23 don't quite remember that fact?

24 MR. SECOR: They knew that it tested positive for
25 blood either on the night of the 6th or early on the

1 morning of the 7th.

2 THE COURT: Okay. So continue your argument
3 understanding that I didn't remember that it was
4 presumptively proven that it was human blood in the
5 suburban and Tim, Sr. knew that while he was talking to
6 his son. I am not sure that is a fact.

7 MR. SECOR: To be honest with you, I can't stand here
8 and tell you that I know that is a fact either.

9 THE COURT: I am not certain it was distinguished.

10 MR. SECOR: Right. I do know that Jones, Sr. had
11 been told that there was blood in the car and that when he
12 confronted Jones, Jr. about that on September 7th and did
13 not get the response that Jones, Sr. and law enforcement
14 were hoping for Special Agent Johnson interjected and
15 said, no, there is a substantial amount of blood in the
16 car which was a surprise to Jones, Sr. And he felt, I
17 think, somewhat diked by the fact that law enforcement had
18 given him some information used to confront Jones, Jr. but
19 not all of the information that they have.

20 THE COURT: So he gave, Jones, Sr. had less
21 inflammatory facts.

22 MR. SECOR: But he still had been fed information
23 about the evidence by law enforcement and law enforcement
24 was bringing him in specifically for the emotional
25 stimulus. Special Agent Johnson testified that he had

1 never before had a family member of a Defendant in an
2 interrogation. I didn't ask him this but I probably
3 should have, would you ever bring the, a family member of
4 the victims of a homicide into a interrogation. I am sure
5 he would say, absolutely not, that would be crazy.
6 Sergeant Creech testified that he specifically did not use
7 Jones, Sr. in subsequent interrogation because he thought
8 it could be problematic.

9 THE COURT: And see the whole thing is turning on
10 everybody was suspicious, nobody was suspicious the
11 children weren't there. The children weren't there, Tim
12 wasn't saying. The suspicion was, are they deceased or
13 not at that time and definitively nobody knew. Y'all
14 painted the picture, sure they did, it was ninety-five
15 percent certain. The State has presented, you know, until
16 we know for certain we have got to continue pursuing it.
17 That is kind of the picture that has been painted for the
18 Court. Fair enough?

19 MR. SECOR: That the officers thought that they may
20 still be alive?

21 THE COURT: Yes.

22 MR. SECOR: Yes. I mean, of course I don't contest
23 the fact that there is testimony about that. However, if
24 you review, from Sergeant Creech's testimony and from his
25 report, it is clear that on the night of the 6th he had a

1 conversation, Under-Sheriff Patterson and he reduces to
2 writing in his report that based on his conversations with
3 Under-Sheriff Patterson on September 6th he fears that the
4 children are dead.

5 THE COURT: Everybody is fearing that but Creech
6 wasn't involved in the conversation on the 7th.

7 MR. SECOR: No, I understand. I am just saying, what
8 law enforcement knew. Okay. Creech actually reduced to
9 writing on the 6th that after his conversation with
10 Patterson, who is on the ground in Raleigh, he thinks that
11 all the children are dead. And the following day when he
12 speaks on the phone to the people in Smith County again, I
13 don't remember the exact quote but it is something on the
14 lines of the prevailing belief was that the children were
15 dead.

16 THE COURT: But definitively that is not known yet.

17 MR. SECOR: Until they see the bodies.

18 THE COURT: Yes.

19 MR. SECOR: I agree with you.

20 THE COURT: Okay. Everybody's worse fear hadn't been
21 confirmed but everybody enjoyed, didn't enjoy, everybody
22 consistently believed their worse fears were true.

23 MR. SECOR: Of course.

24 THE COURT: Unfortunately they did find that to be
25 the case.

1 MR. SECOR: I was in South Carolina at the time and
2 when I remember hearing about the children being missing I
3 had the same exact hope. I remember thinking how badly I
4 hoped that they were going to find these children alive or
5 any of them alive. But even, you know, what I saw on the
6 news, I remember thinking, it doesn't look good and I
7 didn't know anything about it other than what I saw on WIS
8 TV.

9 THE COURT: I did not mean to interrupt your train of
10 thought.

11 MR. SECOR: No, no, you are helping me, I appreciate
12 it. I would just conclude, Your Honor, that in State v.
13 Register, South Carolina Supreme Court, 323 SC 471, 1996.
14 The Supreme Court of South Carolina said a statement may
15 be held involuntary if induced by threats or violence or
16 obtained by any direct or implied promises or if obtained
17 by the assertion of improper influence. I am not
18 suggesting that during the September 7th interview there
19 was any threat or violence. And regarding a direct or
20 implied promise, I am not asserting that either for that
21 interview but I am asserting that there was the exertion
22 of improper influence as stated in State v. Register by
23 the presence of Jones, Sr. who again is not only Jones,
24 Jr.'s father but also the victim, I mean the grandfather
25 of these five victims. Also, stating or citing State

1 versus Marshall Hill, 425, SC 374, just quoting Missouri
2 v. Seibert, 542 U.S. 600 from 2004. In that case the
3 Court of Appeals said that Miranda warnings were designed
4 to insure one being interrogated while in police custody
5 is not only informed of his rights but informed under
6 circumstances allowing for a real choice between talking
7 and remaining silent. From the time that he was arrested
8 on the 6th the conduct of law enforcement towards Jones,
9 Jr. was calculated to send a message to him that his
10 invocations of his rights are not going to be scrupulously
11 honored. They were going to be ignored, he was going to
12 stay in jail until he told them what they wanted to know.
13 And when he persisted in not telling them what they wanted
14 to know they brought in his father. And his father begged
15 and pleaded with him to tell law enforcement the
16 information that they wanted to know and the result of
17 that was that incriminating statements were made during
18 the course of September 7th statement. And my ongoing
19 argument is that the circumstances that were orchestrated
20 by law enforcement did not give Mr. Jones a real choice
21 between talking and remaining silent because they were
22 calculated, for his will to be overborn. And, again,
23 these are veteran homicide investigators who had met with
24 Jones, Sr. beforehand and brought him into the
25 interrogation for purposes of emotional stimulus. Thank

1 you.

2 THE COURT: All right. I think that analyzing
3 everything, the waiver of the rights and whether it was a
4 voluntary statements or not and some of the factors which
5 have been shown in, Judge Anderson's order, Parker, relate
6 back to State versus Childs. And also Supreme Court,
7 United States, Withrow versus Williams. They talk about
8 the totality of circumstances and the factors to look at
9 in addition to the voluntariness. But background
10 experience, conduct with the accused, age, length of
11 custody, any misrepresentation of the police, isolation of
12 a minor which is not the case here, threats of violence
13 don't appear to be present here and promise of leniency, I
14 don't believe are here either. This is an exceptional
15 case and very, very factually unique of five missing kids
16 and a grandfather who is motivated to protect his
17 grandchildren and everyone involved feared that they were
18 already passed away. Anyway, considering all the factors
19 outlined under the Parker and the conduct of the
20 interrogation, but particularly the waiver, the waiver of
21 rights was presented to Mr. Jones, he read them himself in
22 the midst of the advising from MBI Agent Johnson. And the
23 unique fact that Jones, Sr. was present during the
24 interrogation and conversations that he had with his son
25 is a unique factor to this case. But it appears to me

1 that Jones, Jr., the Defendant here, voluntarily waived
2 his rights and agreed to talk with Johnson, the Sheriff
3 was present, Under-Sheriff Patterson as well as Tim, Sr.
4 And everyone was asking the same question, where are the
5 children, where are my babies, questions to that effect.
6 They were trying to hold out hope that the children were
7 still alive, unfortunately they were not and that was the
8 worse fear of everyone in that room. So considering the
9 voluntariness under Jackson v. Denno I find that the
10 statements made on the afternoon, Sunday afternoon the
11 7th, I think I am correct on that. Those statements that
12 Jones, Jr. provided to the room with men, including his
13 father and Detective Eric Johnson would be allowed and
14 found as voluntary under all of the totality of
15 circumstances present in this case. All right. Next one.

16 MR. HUBBARD: Your Honor, the next one is on the
17 statement that was made September 8th with Sergeant Creech
18 and Agent Mackey. Again, Your Honor heard all of their
19 testimony, it is not so much the substance of it but they
20 begin by giving Miranda again. They said the context was
21 a little different although they had been in contact with
22 the folks in Missouri and in South Carolina in transit and
23 they certainly talked to everybody to kind of get a feel
24 for what had been done. They went in there with their own
25 strategy and that was for just those two to really handle

1 this interrogation, they didn't want the father in there.
2 But the Sheriff sat in there, he didn't really
3 participate, he was just there. And but it all started
4 off with the Miranda form and I think that FBI Agent David
5 Mackey was the one that went through his rights and they
6 were, right off the bat he wanted to talk to them.
7 Initially, as Your Honor knows, that what was said at that
8 point that he hemmed and hawed about what happened with
9 the kids and I dropped them off at Walmart, I dropped them
10 off near my house, all of these other things and then
11 finally has that emotional moment that kind of crescendo
12 when they put those photos in front of him and he said get
13 them away from me. You remember Agent Mackey saying he,
14 about the whole attitude and so he confronts him again and
15 says, look, we know the kids are dead. At that point he
16 says, cut the, let's just cut to the chase and the
17 Defendant actually uses those words. All right, let's
18 just cut to the chase, he got calm and he said the kids
19 are dead. And then he talked about what happened and then
20 he agreed about, I will help you find where they are. We
21 would certainly argue and I believe the facts support,
22 Miranda was properly given, there is no undue influence or
23 threats that were made and that ultimately Tim Jones
24 talked because he wanted to talk, knowing his rights. I
25 think the testimony, Your Honor, and you probably have it

1 in your notes, is that, at this point he was very
2 cooperative and was willing to assist and showed every
3 sign of wanting to assist.

4 THE COURT: That is when the conversation came and he
5 was a little more calm. But they brought the maps out and
6 started trying to figure about where they were located and
7 locating general areas and wrote it down.

8 MR. HUBBARD: Right. Yes sir, and you recall there
9 was no indication, on the 7th there was that issue of you
10 are so emotional and all, emotional on this date. He
11 started out emotional, I think it was Agent Mackey said,
12 we just didn't play into that, we just stayed calm and
13 then it just stopped after that crescendo with the photos,
14 it just stopped. That is when the real conversation
15 begin.

16 THE COURT: Okay. Still you, Mr. Secor?

17 MR. SECOR: Yes, sir.

18 THE COURT: All right.

19 MR. SECOR: Regarding the interview of Jones, Jr. by
20 Sergeant Creech and Special Agent Mackey on September 8th,
21 again I would just reiterate the fact that these officers
22 have no legal right to reinitiate communication.

23 THE COURT: The Saturday night invoking of his
24 rights.

25 MR. SECOR: Yes sir, the night of the 6th, yes sir.

1 And also on the 7th when they tried to get the swabs from
2 him.

3 THE COURT: Okay.

4 MR. SECOR: And I would point out that Special Agent
5 Mackey's testimony regarding not involving Jones, Sr. in
6 the September 8th interview was, and I can't remember his
7 exact words, but he considered it eventually problematic
8 to use the suspect's father in an interrogation. And I
9 would suspect that the problems that he thinks can arise
10 from utilizing a suspect's father in an interrogation or
11 probably many of the same things that we are discussing
12 here today. So I do think it is noteworthy that this FBI
13 Agent who has conducted thousands of interrogations has
14 never used a Defendant's family member and thinks that it
15 is problematic to do so and that is why he did not use Tim
16 Jones, Sr. for this interview. He did, however, meet with
17 Jones, Sr. prior to the interview as did Sergeant Creech
18 and other law enforcement officers. And that meeting was
19 specifically for the purposes of finding out things about
20 Tim that would be useful in eliciting incriminating
21 information from him. Sergeant Creech, even before he got
22 to Raleigh knew that there was a history of family, that
23 there was a family history of mental illness in the Jones'
24 family. He had spoken to Jones, Sr. on the phone when he
25 was still investigating the missing children and had found

1 out that Jones, Jr.'s biological mother had severe mental
2 illness. And so he went to Mississippi with that
3 knowledge. I do think that that is, it goes to the
4 totality of the circumstances of voluntariness given the
5 fact that Sergeant Creech went into this interview knowing
6 that he was dealing with somebody who has a, at the very
7 least, has a family history of mental illness. Also based
8 on the information that you have from other law
9 enforcement, there was clearly a suspicion that he had
10 also been using synthetic marijuana. Despite that
11 information that the officers have they continued with
12 this interrogation. Now they say that Mr. Jones, Jr.
13 voluntarily acknowledged and waived his rights verbally,
14 that is what they said. Unfortunately that wasn't audio
15 recorded. As Sergeant Creech testified, he intended to
16 audio record it but he failed to.

17 THE COURT: He pressed the button but it didn't
18 record.

19 MR. SECOR: Yes, sir.

20 THE COURT: I remember because it was--

21 MR. SECOR: And I think his word for that, this
22 doesn't strike as the kind of case where they were
23 pretending to record because they thought it would
24 somehow--

25 THE COURT: No, it was a mistake.

1 MR. SECOR: I think, yes, it seemed to be a real
2 mistake. The problem is, of course Your Honor, is that
3 with the audio recording we would have had an objective
4 independent record exactly how things went during the
5 advisement of rights portion. The reason why it is an
6 issue is because, as Sergeant Creech testified, the actual
7 form was not signed at the time that he, they say he
8 waived, they say that he waived or I think they said, the
9 specific language that they say, he acknowledged his
10 rights but did not invoke them which is, I know, maybe
11 sounds like I am splitting hairs. But there is a
12 difference between acknowledging and not invoking and
13 waiving. And the waiver occurs, according to Sergeant
14 Creech, in terms of documentary waiver at least twenty
15 minutes into the interrogation.

16 THE COURT: And then he signs it twenty minutes in.

17 MR. SECOR: Yes, sir.

18 THE COURT: Yeah.

19 MR. SECOR: So I do think that there is an issue
20 regarding the pressure that was placed on Jones, Jr. in
21 that period of time. And it is not explicit, I am not, I
22 am certainly not saying that they were in there, you know,
23 beating with the phone book, that is a stretch of the
24 imagination. But there was certainly a discussion of
25 rights and a period of time passed before the waiver of

1 rights form was actually signed. And this was after, of
2 course, Jones, Sr. had been subjected to the coercive and
3 improper influence of the presence of his father and a
4 grandfather of the victims in this case the day before.
5 My arguments regarding the September 8th interview are
6 essentially the same so I don't feel as though I need to
7 necessarily go through them again but I would add to my
8 argument, Your Honor, that the September 8th, the
9 circumstances and nature of the September 8th interview
10 while being, based on my previous arguments, in and of
11 themselves improper. Did the circumstances in nature of
12 that interrogation were compounded by the additional
13 factor that Sergeant Creech, according to his testimony,
14 spoke with Jones, Jr.--

15 THE COURT: Jones, Sr.

16 MR. SECOR: Jones, Jr. I am sorry, did I say Jones,
17 Sr.

18 THE COURT: No, I did. I thought you were
19 referencing the fact that the two interrogators talked
20 with Jones, Sr. prior to going in and getting more
21 information--

22 MR. SECOR: They did, yes sir.

23 THE COURT: I thought that is where you were going.

24 MR. SECOR: And I think during that, during that,
25 during that meeting between Jones, Sr. and the officer

1 before the interrogation, obviously they were seeking
2 information about Jones, Jr. And I believe there was
3 testimony about the fact that there was a discussion about
4 his religious faith, that he was a religious person
5 because they were trying to find information about him.

6 THE COURT: I am not sure I remember that in our
7 hearings. I have heard that before because there was some
8 discovery issues about the family Bible he had.

9 MR. SECOR: Okay. And my recollection is that I
10 asked and I can't remember who it was, about whether or
11 not they knew that he was religious. I believe that that
12 came out at the hearing.

13 THE COURT: It may have, it wasn't a big part of the
14 testimony, was it?

15 MR. SECOR: No sir, it was not. But I believe it was
16 information that was in the possession of law enforcement.
17 And the reason that I bring it up is that during the
18 course of the September 8th interview by Creech and
19 Mackey, the issue of a proper burial for the Jones'
20 children is raised and used as part of the interrogation.
21 And the case that I would cite for why that is improper is
22 United States Supreme Court case of Brewer v. Williams,
23 430 U.S. 387 from 1977. And this is, of course, the
24 famous Christian burial case where a Defendant had invoked
25 his Fifth Amendment rights, he is being transported by law

1 enforcement. The victim of the homicide body had not been
2 recovered. While transporting the Defendant the officer
3 driving the vehicle knows the Defendant has mental
4 illness, knows that the Defendant is very religious and
5 gives the Defendant a speech about how the family of the
6 victim deserves to have her body brought home for a proper
7 christian burial. As a consequence of that speech, that
8 intentional psychological ploy to use the Defendant's
9 religiosity to get him to lead them to the body, he folds
10 and leads them to the body. And the statements that he
11 made directing them to the body and the body, of course,
12 are admitted at the trial against him. And the United
13 States Supreme Court reversed saying that that was
14 improper. And in doing so they say, "There can be no
15 serious doubt that the officer deliberately and designed
16 to be set out to elicit information from the Defendant
17 just as clearly as and perhaps more effectively than if he
18 had formerly interrogated him. The statements were
19 obtained only after the officer's use of psychology on a
20 person he knew to be deeply religious and an escapee from
21 a mental hospital with the specific intent to elicit
22 incrimination statements." Your Honor, eventually, as you
23 know, the audio recording, the audio recorder is turned on
24 in the September 8th interview and they ask Mr. Jones, Jr.
25 to repeat what he has just told us. And you hear Special

1 Agent Mackey say to Jones, Jr., you haven't been
2 threatened. Isn't that right. Tim says, yes. He says,
3 and you haven't been promised anything. And Tim says, no,
4 actually you guys said that you would get a burial for my
5 children if I helped you. So I would suggest to Your
6 Honor that the facts of this case are very similar to
7 Brewer v. Williams regarding the proper Christian burial
8 of, in both cases, child victims who have not been
9 recovered and also retained specifically to the issue of
10 the Williams Defendant and Mr. Jones' mental health
11 history and religious faith that was utilized by law
12 enforcement in both cases to obtain the information that
13 they wanted from the Defendant, specifically by leading
14 them to the bodies of the victims.

15 THE COURT: All right.

16 MR. HUBBARD: Just real quick, Your Honor. Obviously
17 we have officers that acted in good faith with their
18 strategy. There is zero evidence these officers used that
19 religious argument to break Tim Jones. Everything in
20 their testimony was that they let him do his astrionics,
21 they knew that, you know, that the crime, the emotion, I
22 left them at Walmart. They let him go through all of that
23 before he got to the point of let's cut to the chase.

24 THE COURT: And my notes say right there, he gave his
25 version and that is not consistent with what the evidence

1 is in the truck and other evidence. Okay, let's cut to
2 the chase. Somewhere along in there.

3 MR. HUBBARD: And that is what broke it. And then
4 what, it is not on the tape recorder because they, you
5 know, they bought a Walmart special. But what they say is
6 that the one concern he had, once he is like, all right,
7 once it is off his chest, what happened, where are they.
8 Mr. Jones wants his kids to have a good proper burial.
9 They take that and say, you know what, we will make sure
10 it happens and they did. It was not something that made
11 him talk, it wasn't something and say like, all right, you
12 know, like in Brewer there is an assertion of a right to
13 an attorney. So the guys in the backseat in the squad car
14 and they sit there and play mind games with him knowing
15 that he has religious beliefs. It is going to break him
16 and make him talk. That was already done, already done so
17 it doesn't even apply in that case. And in fact I think
18 that was a Sixth Amendment issue, not the Fifth Amendment
19 issue that we are talking about here. So that case, that
20 old classic law school case, Brewer, has nothing to do
21 with this case. Officers did nothing to get him to talk
22 other than confront him with evidence and that Tim Jones,
23 himself, said let's cut to the chase and then only after
24 that did, after he started telling him what he did and
25 where they were, I find them, did he indicate what he

1 wanted and they said, you know what, we can do that.

2 There is nothing improper there.

3 THE COURT: The same factors for the voluntariness of
4 this statement also, likewise, the Court is going to
5 utilize in its ruling, already referenced. The tape
6 recorder was placed on the table and was attempted to be
7 cut on, whatever reason it didn't cut on they realized it
8 some time into the interview and then reengaged it.
9 Basically one of them said, just a second time. That is
10 not going, that is not challenged, that is not a tape
11 recorder dead. Interestingly they went over their waiver
12 of rights form and both officers testified that Mr. Jones
13 appeared to understand everything but he didn't sign it,
14 he didn't sign it until about, according to my notes,
15 about 7:30 p.m. Central time which was well into the
16 interview. I am not exactly sure at what point that it
17 was signed but initially explained, read to him, appeared
18 to understand, both officers were asked about was he
19 promised anything, was he coerced, did he freely and
20 voluntarily waive his rights and request a lawyer and
21 request an interview to stop. He appeared lucid, the
22 answer to responses of his questions, he was rationale,
23 aware of his surroundings, he was given water, allowed to
24 smoke. Again, it appears to the Court that the statements
25 provided by Mr. Jones were voluntary, albeit the waiver of

1 rights were given orally and then signed secondarily. The
2 statements given regarding the children and my notes
3 indicate that the demeanor changed dramatically upon the
4 questioning going from, look, the evidence is not
5 consistent with what you are telling us about all of this
6 other stuff. All right, let's cut to the chase, the
7 children are deceased. At that point forward the
8 motivation of Mr. Jones changes to, it is off his chest,
9 he has finally gotten that done, so to speak. But then
10 from then on it is, the burial, proper burial for the
11 children was discussed during the hearing a lot. That was
12 discussed the next morning when they are going to go look
13 for them. On the way, the three hour drive, looking for
14 the spot, everything, the map, that was said a lot, let's
15 give these children a proper burial. And, you know, I
16 guess one distinguishing factor for the Court is that the
17 other case where this family, the victim deserves a proper
18 burial, they weren't kin to the Defendant in that case,
19 were they? In this case they are.

20 MR. SECOR: No, the Defendant killed a little girl
21 they abducted from a YMCA.

22 THE COURT: So a stranger?

23 MR. SECOR: Yes, sir.

24 THE COURT: Okay. In this case Mr. Jones is
25 motivated because they are his children, give them a

1 proper burial also in addition to I think Defendant
2 Brewer, that family deserves a proper burial of their
3 children and their loss of a loved one. That kind of
4 thing. So the statements provided on the 8th to Mackey
5 and Creech in the presence of the sheriff, the sheriff did
6 not testify regarding anything in that hearing, I don't
7 believe. But Mackey and Creech both testified
8 consistently with one another that this statement was
9 voluntary. The Court finds thus so under Jackson v.
10 Denno.

11 MR. SECOR: Your Honor, may I add one thing to the
12 record.

13 THE COURT: Sure.

14 MR. SECOR: The only reason I bring it up now is
15 because this occurred, it occurred at the conclusion of
16 the interview but I think it would be relevant. I just
17 want to bring it to the Court's attention. Despite the
18 fact that Special Agent Mackey testified that he did not
19 use Jones, Sr. in the interview because he thinks that
20 doing so is problematic. They did bring Jones, Sr. in
21 after the interview to speak with Jones, Jr. to, any
22 effort to ensure Jones, Jr.'s compliance with leading law
23 enforcement to the bodies. And Jones, Sr. testified that
24 in that interaction with Jones, Jr. he said to him, that
25 the babies are in the woods, cold and alone and need to be

1 brought home. That is what he said as his father and also
2 as the grandfather of the five victims. But I do think
3 that that is relevant to the Court's consideration of
4 Brewer v. Williams because it is not until the following
5 day that they actually go and look for the children. I
6 just wanted to add that. Thank you.

7 THE COURT: Well, and that also, was that the same
8 time the conversation occurred between Jones, Jr. and Sr.,
9 I don't know the timing of it, but Jones, Jr. didn't want
10 his dad to go with the search party.

11 MR. SECOR: That's right.

12 MR. HUBBARD: That's correct.

13 THE COURT: He declined, he would rather not.

14 MR. HUBBARD: That brings us to the next statement we
15 would like to get in. It was at the conclusion of the
16 interview that you just ruled on when they basically
17 allowed Tim Jones, Sr. to go in and see his son. And you
18 had Agent Eric Johnson was right there as well. He hears
19 the father ask his son, what happened to the kids because
20 he hasn't heard the confession. And he said he had
21 strangled them. And what was significant is that he
22 didn't say I strangled four of them, I don't know what
23 happened to Tom, he just said I strangled them. That, of
24 course, becomes an issue, what he meant before a jury.
25 But what we would like to be able to get in and what we

1 believe is admissible at that point is a conversation
2 between a father and son, what happened to the kids, I
3 strangled them. We do believe no Miranda was necessary
4 and there was no law enforcement conduct. There had
5 already been a confession, this is just a grandfather that
6 wanted to know and he asked his son. So we think that is
7 admissible as well, Your Honor.

8 THE COURT: Now, that was the morning of the 9th or
9 the afternoon of the 10th, the 8th?

10 MR. HUBBARD: And, Your Honor, I was just reminded
11 too, that at no time on this day or the day before did
12 either father and son ask for a moment to speak alone.
13 There is nothing in the record about that. But what I am
14 bringing up is on the 8th, it is after Creech and Mackey
15 have concluded their interview.

16 THE COURT: All right. Mr. Secor.

17 MR. SECOR: Yes, sir. I don't think I need to
18 reiterate, all of my arguments about I strangled them
19 would be the same ones that I have already made. I won't
20 repeat them unless Your Honor thinks that I need to.

21 THE COURT: You are protected as far as the sequence
22 of events and the sequence of the advisement of rights and
23 of Mr. Jones', invoking him on the night of the Friday and
24 then the following morning on the test for the DNA, blood
25 samples.

1 MR. SECOR: The Solicitor argued that there was no
2 law enforcement conduct in Jones, Sr., going into the
3 interview room after the September 8th statement. I would
4 suggest that the evidence is directly to the contrary.
5 That he was asked to go in there for the purposes of
6 insuring that Jones, Jr. would follow through on his
7 stated indication that he would assist law enforcement in
8 locating the bodies. So sending Jones, Sr. into the
9 interview room after Jones, Jr. had made his confession
10 was unequivocally police conduct. And it is tantamount to
11 custodial interrogation because it is conduct orchestrated
12 by and arranged by veteran law enforcement officers with
13 the specific purpose of eliciting information from a
14 suspect when they are investigating for murder. So I
15 think the suggestion that that was just some voluntary
16 statement made by Tim to his dad is a mischaracterization
17 of what happened. I think that Jones, Sr. was sent in
18 there specifically to, again, provide an emotional
19 stimulus to Tim and to ensure that he would assist in
20 finding the bodies. Thank you.

21 MR. HUBBARD: And, Your Honor, of course there is no
22 testimony at all that they put their heads together and
23 say, Tim, Sr., we need you to go in there and kind of redo
24 what we have done and ensure this man is going to, your
25 son is going to help find the kids. It is none of that.

1 Of course, it has nothing to do with the question the dad
2 asked, son, what happened to the kids. I strangled them.
3 That is all we are trying to get in. That is all we are
4 trying to get. Law enforcement already knew that and as
5 far as this kind of collusion between daddy, both Creech
6 and Mackey made it clear, they didn't like that, they took
7 a whole different approach and it wasn't because that was
8 never articulated, they have got some question about some
9 legal issue. That is just generally not what law
10 enforcement does because generally a family member,
11 remember what dad said on the stand. He had always told
12 his kids when they get in trouble, don't talk. So the day
13 before they really rolled the dice by taking dad in.
14 Mackey and Creech were taking a different approach, didn't
15 need daddy. When the interview is over daddy goes in
16 there, asked what any dad would, where are the grandkids,
17 what did you do to them. He said I strangled them. The
18 first time the son tells daddy what happened to the kids.
19 No Miranda is necessary.

20 THE COURT: And law enforcement already knew all of
21 that.

22 MR. HUBBARD: Yes, sir.

23 THE COURT: Creech and Mackey were already apprized
24 of that.

25 MR. HUBBARD: Yes, sir. And, Your Honor, what we are

1 doing here too, obviously Miranda had already been given.
2 But we are looking at what is admissible. We are going to
3 go back and say, what do we actually present. Both sides
4 have to look at that.

5 THE COURT: Yes.

6 MR. HUBBARD: But we believe this is admissible, this
7 is on the table.

8 THE COURT: It is on the table?

9 MR. HUBBARD: It should be on the table to be
10 considered.

11 THE COURT: Oh, I thought you meant it was on the
12 audio tape.

13 MR. HUBBARD: No sir, no sir. So that is all this
14 is. So now from this statement on there is little tidbit
15 statements following up so we are just doing our due
16 diligence, we need to bring everything before Your Honor's
17 attention in Jackson v. Denno hearings. And we believe
18 everything is consistent with the law under Jackson v.
19 Denno and whether they are used or not, they are certainly
20 admissible. And in this case certainly voluntarily made.

21 MR. SECOR: Your Honor, if I could just add. The
22 State wants that statement, I strangled them, in to
23 provide them what they consider to be a confession to the
24 intentional malicious strangling of Nahtahn Jones. Is
25 they do not have any other evidence that that occurred.

1 And that is the reason that they want it in. Despite the
2 fact that all the other evidence contradicts it.

3 MR. HUBBARD: That is a jury issue, it is a jury
4 issue and if we overplay our hand a jury will spank us.
5 So that is why, the only issue before Your Honor is, is it
6 admissible not whether it is wise to use or not. Is it
7 admissible, it is voluntary.

8 THE COURT: The statement is voluntary and I, y'all
9 obviously see the risk but it is a very general question,
10 what happened to the kids. It is not about what happened
11 to anyone by name. It always concerns me when the
12 overplay happens because, y'all know, y'all are lawyers,
13 y'all do what you want to do. But it is hard to undo a
14 poorly couched extrapolation said Judge Anderson.

15 MR. HUBBARD: Yes, sir. And, Your Honor, jury's have
16 let us know that in the past too so it is one of those
17 things. But right now it is just a statement so we just
18 wanted that ruling.

19 THE COURT: All right. Down to the next morning
20 which would be Tuesday after Labor Day, correct? This is
21 the Tuesday after Labor Day on the trip to Alabama.

22 MR. SECOR: Yes, sir. I think, Your Honor, I think
23 Labor Day had been the weekend before. Not that it
24 matters.

25 MR. HUBBARD: But it is that Tuesday, yes sir.

1 MR. SECOR: It would be the second Tuesday after
2 Labor Day.

3 THE COURT: You are the first one that said that so I
4 have been going the whole time in my head, Labor Day
5 weekend. You are right. Shame on all of you for not
6 telling me that earlier because I have been saying Labor
7 Day weekend, Saturday, Sunday, Monday and everybody has
8 let me--

9 MR. YOUNG: Labor Day weekend was the weekend they
10 went missing.

11 MR. HUBBARD: Your Honor, I was also operating under
12 that and I think it was late in the game when Mr. Secor
13 brought that out and mentioned that to me but we had
14 already pretty much gotten deep in to it and passed by
15 that.

16 THE COURT: I want the record to reflect that
17 everyone mislead me as to Labor Day weekend but I have got
18 it corrected, it was a Saturday, Sunday, Monday, Tuesday
19 sequence of days. I have not wavered from that after
20 y'all corrected me on the Friday night start. Because
21 initially I was Friday, Saturday, Sunday, bodies were
22 found on a Monday. I was one day off. It was a Saturday,
23 Sunday, Monday, Tuesday, locate the bodies sequence of
24 days, correct?

25 MR. HUBBARD: Yes, sir.

1 THE COURT: The weekend after Labor Day. I am tuned
2 in now. None of my rulings change because of Labor Day
3 weekend. I find it amusing that I was a day off and then
4 I am a weekend off.

5 MR. YOUNG: It gets confusing because it is hard to
6 understand that he had the children in the car, he drove
7 around with them, around the Southeast for nine days. So
8 it is a week plus.

9 THE COURT: Okay. I am learning. Ms. Mayes, you
10 have got the day of the driving to Alabama statement.

11 MS. MAYES: Yes sir, Your Honor, on the 9th. And you
12 may recall that the testimony of both Agent Mackey and
13 Sergeant Creech was that the way they left things on the
14 night of the 8th, that Miranda was given at 7:30 p.m. on
15 September 8th. And that is where ultimately he made the
16 confession. After he made the confession both Agents
17 described him as being cooperative and willing to assist
18 in the location of where the body site may be. So they
19 made this effort to assist him by maps, he was given
20 several devices to try and utilize.

21 THE COURT: And he didn't like the device.

22 MS. MAYES: Exactly and that shows the extent of his
23 cooperation. He was actually navigating the device and
24 doing everything he could to utilize the topographical
25 maps. Ultimately they left that interview on the night of

1 the 8th with him willing to assist in their investigation.
2 And there was no limitation on that. It was with the
3 understanding that they would continue and have follow-up
4 discussions. At no point on the 8th did he request an
5 attorney or request for questioning to stop. And so they
6 ended there on the night of the 8th with the understanding
7 that there would certainly be follow-up communications if
8 necessary. So on the morning of the 9th at 11:13 a.m. is
9 when there is the new waiver of rights. And this waiver
10 of rights is administered by Eric Johnson but in the
11 presence of both Agent Mackey and Sergeant Creech. Once
12 again, Your Honor, there was unequivocal testimony on the
13 record that each right was read, he acknowledged those
14 rights, he initialed those rights and then they have this
15 verbal communication. During the course of the verbal
16 communication he is still very cooperative, he is calm, he
17 is lucid, by all of their discussion, that being both
18 Creech and Mackey. He remembers something that he had not
19 told them the night before and so he brings that to their
20 attention and points that out. And that is that on the
21 night of this incident, when the children were killed, he
22 reported that Nahtahn had broken his glasses. And so
23 Sergeant Creech had made a note of that and that was all
24 part of that verbal communication. And then there was
25 very detailed testimony from Agent Mackey about trying to

1 locate this area in Alabama and how difficult it was going
2 to be because it was so far away, it is over 200 miles
3 away. Not only is it a rural area, but it is a rural area
4 that Mr. Jones is not even familiar with. And so after
5 attempting to locate that location on maps, by use of a
6 device, ultimately they just decide, can you take us to
7 it. And he said, yeah, I think I can. And so there was
8 testimony--

9 THE COURT: All right. Well, what statements are we
10 looking for. I remember him being animated when they
11 found the bodies. What are you looking for. So far I am
12 consistent with you.

13 MS. MAYES: We have got the verbal statements about
14 Nahtahn breaking his glasses and then the continued
15 communications that are going on about his willingness to
16 assist and his ability to locate that area. So there are
17 statements that were testified to on the record where he
18 is pointing out, I think, one location first. He was
19 mistaken and says I am sorry, I am not trying to waste
20 your time, that is not it, give me another chance and I
21 think I can get you to it. And then it is that second
22 location that he identifies and that is, in fact, that
23 location.

24 THE COURT: That is what you are looking for?

25 MS. MAYES: Yes sir, Your Honor, those are all verbal

1 statements and then there at the scene he is heard and I
2 think the testimony came from Eric Johnson that he points
3 to the areas as they are over there. And then following
4 that is when we have the recorded statement when he is
5 transported away from that location in Alabama. We have
6 the recorded statement by Adam Creech and you heard that
7 recording as well. That is the recording that was made on
8 September 9th where Creech goes over the rights to the
9 extent that he says you are familiar with your rights and
10 he also noted in his supplemental report and his testimony
11 that Mr. Jones did not require a full reading of those
12 rights.

13 THE COURT: What statements were made then, I am kind
14 of missing that one.

15 MS. MAYES: So Sergeant Creech, in his testimony,
16 described what lead up to those statements made during the
17 course of the transport and then the transport itself when
18 he is questioning him again about Nahtahn and he talks
19 about, talks about cutting Nahtahn's leg with a saw.

20 THE COURT: And then also, why did he drive around so
21 long?

22 MS. MAYES: Yes, sir.

23 THE COURT: Because he was not ready to tell the
24 children goodbye, something along those lines. That is
25 the statement you are talking about?

1 MS. MAYES: Yes, sir.

2 THE COURT: So basically two groups of statements.
3 His willingness to help, pointing out areas, being
4 cooperative with, because it seems to me, if I remember
5 right, he was in the car with Creech and Officer Lawrence
6 and Mackey were in yet another car.

7 MS. MAYES: Right.

8 THE COURT: And so most of this was Creech's
9 interaction with Mr. Jones and what was going to happen to
10 me now, was I got to go back and do the paperwork. That
11 recording?

12 MS. MAYES: Yes sir, Your Honor. And that recording
13 was marked as a Court's exhibit. That recording, again,
14 would be offered in its entirety as well as the statement,
15 one more statement we want to make clear, that is when
16 they first start that interview back in Mississippi at the
17 sheriffs department before they even leave and it is
18 around 11:13 a.m. after waiver of Miranda rights. He goes
19 over several points with Sergeant Creech that he detailed
20 during his testimony but included the event where Nahtahn
21 had broken his glasses. So all of those communications on
22 the night. And, Your Honor, once again we have the same
23 issues as before with Michigan v. Mosley as well as State
24 v. Benjamin, where there had been a significance lapse of
25 time but here it is even more cooperation on the

1 defendant's part because they had left it the night before
2 with the understanding that he would certainly be willing
3 to assist further.

4 THE COURT: Okay. Mr. Secor.

5 MR. SECOR: Yes, sir. As an initial matter, Your
6 Honor, the lapse of time is irrelevant because law
7 enforcement had abandoned their right to reinitiate
8 communications with Mr. Jones, the consequence of not
9 scrupulously honoring implications of the Fifth Amendment
10 Rights on September 6th as well as on September 7th. Your
11 Honor, clearly the primary motivating factor for his
12 cooperation with law enforcement on the 9th was for
13 purposes of locating and recovering the bodies of his five
14 children because as it is indicated on the audio recording
15 on September 8th, he had been promised a good burial
16 during the interrogation by Sergeant Creech and Agent
17 Mackey if he cooperated, which he did. As a consequence
18 of that promise, under the ruling for the Williams we
19 would argue, all statements made on that date were
20 involuntary and therefore inadmissible and would
21 incorporate the arguments that I made about previous
22 statements. And in our position that those are
23 involuntary statements.

24 THE COURT: All right. I am going to continue to
25 consistently rule. I may be wrong on that first

1 invocation of rights, it was never backed off. I may be
2 wrong on that but consistent with my ruling saying they
3 reinitiated and they could consider the totality of
4 circumstances. The morning of Tuesday, the 9th, rights
5 signed again and all the comments to Creech on the way up
6 at the scene, those are fair game, they were voluntarily
7 given and certainly the comments were made. But all the
8 witnesses talked about proper burial for the kids and that
9 was a big motivation to get them. That was said numerous
10 times, that wasn't a singular statement, it was said
11 numerous times, which it was. And so those statements are
12 allowed. Now, Mr. Secor, address the statements after the
13 fact, after the location of the bodies because once they
14 were located Jones was taken away.

15 MR. SECOR: Yes, sir.

16 THE COURT: He didn't remain there on the scene while
17 they processed that area, he was taken away by Creech and
18 those are the secondary statements that Ms. Mayes was
19 talking about I believe, as to why did you ride around,
20 why did you do this and those sort of things. Talk about
21 those.

22 MR. SECOR: I am sorry, why did he drive around with
23 the kids in the car before he was arrested?

24 THE COURT: Right. He made the statement, I wasn't
25 ready to say goodbye. That statement, those groups of

1 statements that he made back to Creech after the bodies
2 were located.

3 MR. SECOR: Yes, sir. Well, I would, in addition,
4 again, my previous arguments on all of the statements. I
5 would say that the cooperation that he provided on the 9th
6 was consistent with the cooperation he said that he would
7 give in exchange for the promise of a proper burial. So I
8 would say they would stem from that same improper
9 influence, that being the promise of a proper burial for
10 his children. And, again, as it is very similar to the
11 facts of Brewer v. Williams, this is Sergeant Creech, an
12 officer who has been investigating this case since the
13 children's disappearance, well before Mr. Jones' arrest.
14 He has spoken to Mr. Jones' father, he has spoken to Mr.
15 Jones' ex-wife, he is aware of the fact that Mr. Jones'
16 biological mother suffers from severe mental illness. And
17 he has gone to Raleigh, Mississippi and consulted with law
18 enforcement on the ground there as well as with Jones, Sr.
19 in person and discovered more information about Jones, Jr.
20 that he hopes to use in eliciting information from Jones,
21 Jr. which includes information about his past and his
22 lifestyle which includes information about his past and
23 his lifestyle and, which includes his religion which is a
24 big part of his life. And during the course of those
25 statements made on September 9th, coming back from Alabama

1 Creech is, Sergeant Creech is saying to Tim that he is
2 doing the right thing and encouraging him to continue to
3 cooperate and to continue to speak, continue talking. And
4 I would just argue that that is akin to the, to the speech
5 that was given in Brewer v. Williams to elicit that
6 information even after the discovery of the bodies.

7 THE COURT: Okay. I understand your argument, I
8 can't, I am going to rule consistently rather than
9 inconsistently, give you an A and a B, I am going to stick
10 with the A ruling. The initial ruling of, I don't believe
11 he was improperly influenced, the statement was voluntary
12 and all of the other statements are consistently voluntary
13 after advising him of his rights. So I don't believe the
14 proper burial was a promise that so overwhelmed his
15 ability to not give a statement. I don't find that, I
16 understand your argument but I am going to rule
17 consistently, that way I won't--

18 MR. SECOR: One thing that I just want to make sure
19 that I have made clear and I think I said this. But it is
20 my unequivocal contention that from the time of his being
21 stopped at the checkpoint and taken into custody through
22 when he is returned to South Carolina is a continuing
23 custodial interrogation either direct through questioning
24 or being locked in a suicide cell or being forced to
25 submit to samples that he doesn't consent to or being

1 confronted with his father or being shown photographs of
2 his children or evidence from the car, that there never
3 was a break in the intentional pressure being applied to
4 him. And law enforcement abandoned that right to
5 communicate with him because they had a scrupulously
6 honored dis-invocation.

7 THE COURT: You have consistently made that argument
8 and from the Saturday night interview invoking his rights,
9 not wanting to talk anymore and scrupulously protecting
10 that by not reinitiating questioning, you are protected
11 all the back to South Carolina. I disagree with you but
12 you are protected.

13 MR. SECOR: And I understand your ruling and I don't
14 mean to be a pain, I just want to make sure that--

15 THE COURT: No offense taken, I appreciate y'all
16 making a good record. I think it will make things easier
17 down the road to place the arguments like that and that
18 way you are not put in the position as the Defense,
19 resaying it, resaying it, resaying it and looking like you
20 are repeating the same thing and approach the jury and you
21 don't need to be in that position. You are protected.

22 MR. SECOR: Thank you.

23 THE COURT: All right. Have we addressed them all.

24 MR. HUBBARD: Your Honor, I think there is one other
25 statement we are looking at getting into and that is from

1 September 11th. And yet this is, I am not saying we are
2 going to use it or not but it was a statement made by the
3 Defendant so we just want a ruling on the voluntariness of
4 it. It is when Adam Creech went and saw the Defendant at
5 the sheriffs department and I will let Mr. Graham handle
6 it.

7 MR. GRAHAM: We are now talking about Thursday,
8 September 11th, back in Lexington, South Carolina. Agent
9 Mackey and Sergeant Creech go to the sheriffs department
10 and they meet him there and I think Sergeant Creech also
11 had a pair of contacts that he was returning to him. They
12 spoke to him, they said they had a few more questions to
13 ask him, if he still wishes to speak. They gave him his
14 contact lens back, together, placed them in jail property.
15 He once more, according to testimony, did not invoke his
16 right to silence so they did not re-Mirandize him. They
17 ask him, they had more questions, if it was okay. He
18 didn't say I want to not talk about the particular moment
19 or I want an attorney. And then he included and said
20 actually I don't have an attorney yet. He told them that,
21 he offered them that. And then he changed his mind and
22 said that he was tired of talking about this stuff right
23 now. And said there wasn't any more questioning but the
24 Defendant then continued the conversation. Well, let me
25 back up. We respected the decision and simply spoke with

1 him for a moment after questioning. The Defendant asked,
2 if they had gone to the autopsy of the children and I told
3 them that, Sergeant Creech said that he did. He asked
4 about the cause of death. Sergeant Creech told him that
5 Abigail, also known as Elaine; Gabriel, Elias and Merah
6 Grace showed signs consistent with strangulation. Then he
7 asked what was Nahtahn's cause of death. And Sergeant
8 Creech answered, it was ruled as an unknown homicide. And
9 he goes, see, I told you, I don't know how he died.
10 Creech noted that he became very emotional while they were
11 speaking. And he, Sergeant Creech told him he did the
12 right thing and that is when the Defendant looked at him
13 and said, what do you mean I did the right thing, I killed
14 my, for the record, that is what he said, my fucking kids.
15 That is the statement that we would be talking about where
16 the Defendant said, what do you mean, I did the right
17 thing, I killed my fucking kids. They didn't ask any more
18 questioning. They did continue conversations and actually
19 were answering questions of the Defendant.

20 THE COURT: I remember that presentation.

21 MR. GRAHAM: The State's position, Your Honor, that
22 it is not a response to a question or wasn't a custodial,
23 I mean it was a custodial situation, it was not an
24 interrogating question, it wasn't a question of fact, it
25 was just a comment, not elicit a response that said, I

1 think you did the right thing.

2 THE COURT: Meaning telling where the children were.

3 MR. GRAHAM: Telling where the kids are. And the
4 response that we are interested in is the, what do you
5 mean I did the right thing, I killed my fucking kids.

6 THE COURT: All right. Mr. Secor, are you on that
7 one also?

8 MR. SECOR: Yes, sir. Your Honor, this is the 11th.

9 THE COURT: The Thursday.

10 MR. SECOR: And the last time that Sergeant Creech
11 saw Tim, I believe it was on the 9th, after they returned
12 to Raleigh from Canton. And Sergeant Creech testified and
13 the State concedes that there was no Miranda warnings
14 provided to Mr. Jones on September 11th, during this
15 interview. That hearing before Your Honor, Creech
16 testified that the reason that he did not re-Mirandize Tim
17 on September the 11th is that he felt we were operating
18 under the previous waiver. Now, I don't know how law
19 enforcement or the State could argue you were operating
20 under a previous waiver. Let's say that Tim can't operate
21 under the numerous previous invocations that he made. And
22 the suggestion that it was or what Tim said was non,
23 somehow non-responsive. It was directly in response to
24 what Sergeant Creech said to him. He misunderstood but
25 that is not his fault, it is not Creech's fault but it is

1 a custodial interrogation. He is being asked questions by
2 the lead homicide investigator, having been charged with
3 five counts of murder and the officer decides to not
4 Mirandize him and in not Mirandizing him decides to
5 reinitiate communication with him which I won't go into
6 again but obviously, I think that is improper. But it is
7 additionally, and exceptionally improper to reinitiate
8 communication with a suspect and then just decide to not
9 Mirandize him and engage in a conversation with them about
10 the subject of the dead children. Thank you.

11 MR. GRAHAM: For the record I would point Your Honor
12 to State v. Rochester which is South Carolina Supreme
13 Court 391, S.E. 2d, 244 and also State v. Belcher, 685,
14 S.E. 2d, 802, 2009. South Carolina Supreme Court case as
15 well. Follow-up interviews and subsequent contact with
16 the Defendant would not require a waiver of rights to be
17 administered in each setting. It is well established law
18 that once a voluntary and intelligent waiver of Miranda
19 rights is made the waiver continues until the accused
20 indicates that he wants to revoke the waiver and remain
21 silent. They didn't need to re-Mirandize him when they
22 started contact with him again because he had waived
23 voluntarily on the 8th and 9th, both. So when they began
24 their contact with him they were operating under that
25 Miranda. When he says he doesn't want to talk anymore

1 there is no testimony, I think there was a cross of
2 Sergeant Creech implying that he was trying to continue
3 it. I think Sergeant Creech, you saw his testimony and
4 demeanor and you get to judge his credibility. He made
5 that comment, honestly try to, told him he did the right
6 thing. He wasn't trying to get any more statements out of
7 him. The fact that he made a statement is his choice.

8 THE COURT: I want to read that case. I am going to
9 sit on that one. That is a very narrow thing, it is the
10 only one in Lexington. I am going to think about that
11 one. So not ruling on that one.

12 MR. SECOR: Just add to the argument. If the State
13 believes that law enforcement can obtain a Miranda wavier
14 and just proceed and not have to worry about getting
15 another one then why was law enforcement in Raleigh
16 constantly trying to get additional waivers from Mr. Jones
17 throughout the course of the days that he was there.

18 THE COURT: All right. I am going to think on that
19 one, that is the only one of the ones that y'all presented
20 that was not outside the State, it is inside the State.

21 MR. HUBBARD: Yes, sir. Your Honor, those are the
22 statements. I do have a couple of matters. Before we
23 leave Jackson v. Denno, Your Honor, obviously there is
24 evidence that would indicate he had taken spice the night
25 of the 6th and obviously there is a defense of insanity

1 right now. None of that has been brought up so I don't
2 know, you know, during the questioning all last week there
3 was never a mental health expert put on the stand to say
4 at the time of any of these statements we believe he was,
5 didn't have the mental capacity to know what he was doing.
6 I just want the record to reflect that and I am assuming
7 there is some strategy involved and may be that to the
8 extent mental health experts are going to make an argument
9 at all, it is really pertaining to what happened probably,
10 was it August 28th, the night that these killings
11 occurred. But I want to put that on the record so that if
12 there is anything else, we need to explore this issue some
13 more, we are prepared to go forward. There is ample case
14 law talking about addressing whether somebody had, when
15 there is an allegation in a murder case whether somebody
16 had sufficient mental awareness because they are coming
17 down off of drugs. That would be State v. Crawley at 562
18 S.E 2d 683. That is from 2002, Supreme Court Case. Again
19 a murder case. The Supreme Court says, it all goes to the
20 same factors you have been going through on the
21 voluntariness.

22 THE COURT: The issue came up, State v. Alexander as
23 well as the codefendant case here in Laurens County.

24 MR. HUBBARD: Yes sir, a death penalty case.

25 THE COURT: No, no. It was, what is the name of it.

1 Alexander was the backseat, front seat driver where the
2 girl got killed in the front seat. They had been drinking
3 and arguing on all night. The order of arguments in the
4 closing arguments, what is that case. Closing arguments,
5 who goes first, who has to open, that case. Beatty.
6 Alexander was the non-testifying codefendant that wouldn't
7 testify but they were under the influence, lots of
8 alcohol, lots of drugs. And those issues were discussed
9 as to the ability to give a proper statement and have a
10 bad memory and all of that. Beatty and Alexander,
11 particularly Alexander because he was the one that was
12 under the influence of a lot.

13 MR. HUBBARD: Yes, sir. There is a case, State v.
14 Doby on whether there is a lack of mental capacity to
15 understand how to give a waiver. That is at 258 S.E 2d
16 896. That is also a murder case from 1979. And, Your
17 Honor, there is State v. Saxon and I don't have the exact
18 cite but it is from 2001 as well about statements by
19 Defendants under the influence. It could be voluntarily
20 if the Defendant is responsive to questioning in a
21 reasonable, rationale matter. I just want that on the
22 record should that become an issue later, that we have
23 laid that out there, we are doing our due diligence to
24 make sure we have addressed those. Obviously, from
25 strategic purposes they may choose not to address them

1 right now or at all. It may take a different legal tact
2 on these cases. So I don't know if they have anything on
3 what I have just raised.

4 MR. SECOR: Your Honor, I can tell you that we never
5 discussed having a mental health expert testify at the
6 Denno hearing.

7 THE COURT: If y'all want to bring up the issue of
8 intoxication, influence and how that affects. The State
9 is aware that is a possibility. If you are going to make
10 it you get to make it.

11 MR. SECOR: And I would just say that the aspect of
12 mental health obviously goes to the totality of the
13 circumstances under Your Honor's voluntariness assessment.
14 And it is my understanding that that would be largely what
15 law enforcement knew at the time because it goes to
16 whether or not this was somebody that they perceived as a
17 person that they should be talking to based on the
18 person's condition. I would argue that there was evidence
19 of mental health elicited during the testimony before Your
20 Honor. Sergeant Creech knew from his talks with Tim, Sr.
21 that there is a history of mental illness and the family,
22 Tim's mother had been institutionalized. Tim, Sr.
23 testified about the same information, said that he had
24 told Creech that Tim had always been somewhere between
25 brilliant and insane. Under-Sheriff Patterson testified

1 that he had never seen anything like Tim, the way he was
2 acting when they were interrogating him.

3 THE COURT: I am talking about the swelling and the
4 hair and emotional and up and down. All of that was
5 presented but since y'all want to challenge it on
6 intoxication or mental ability, that is really not been
7 presented by another witness. And if you do consider it
8 but the State was just asking that so whatever.

9 MR. HUBBARD: And, Your honor, just to be clear, I
10 would ask, based on what you have now because all that was
11 presented. We brought it out, the profuse sweating on the
12 7th. We would ask, based on what you have ruled on now,
13 what you have heard the testimony occurred, that under the
14 totality of the circumstances your ruling stands and
15 obviously you have taken that one statement under
16 advisement. You are going to think about that one but I
17 would just ask that you renew your ruling under the
18 totality of the circumstances.

19 THE COURT: Okay. Anything else?

20 MR. GRAHAM: I do have something else, Your Honor.

21 THE COURT: Does anybody need a break because we have
22 been going for a while. What is the something else
23 because we are imposing on the Laurens County Court.

24 MR. GRAHAM: If Your Honor wants to deal with it at
25 this time. In doing my research, once we saw the video

1 .and saw the rights being read and the refusal to honor
2 those rights. I have started doing some research about
3 whether, what can be used in mental health insanity type
4 defenses. And I came across a split in the circuits among
5 what is going on.

6 THE COURT: Can we deal with that later, that is a
7 whole different issue I think. I am not going to cut you
8 off so you can't argue that. But just as far as the
9 statements go, we have done the Jackson/Denno hearings.
10 Mr. Young?

11 MR. YOUNG: I just want to make it clear that there
12 is no offer by the State to, of any statements made by Mr.
13 Jones. When we were in Court in Newberry he and Mr.
14 Creech had a conversation, that there would be no offer of
15 any of those statements for any purpose.

16 THE COURT: The statements in Newberry, no. I don't
17 think that would be fair game. That is a very brief
18 conversation about how you been or something.

19 MR. YOUNG: It was like can I get Amber prosecuted
20 for food stamp.

21 THE COURT: I don't think that is a proper, of use of
22 the statement in the courtroom. I remember somebody
23 mentioning that earlier.

24 MR. YOUNG: Counsel was there, we were meeting
25 in-chambers.

1 THE COURT: Y'all are not going to try to use that?

2 MR. HUBBARD: No, sir. What we are here today on is
3 the testimony of the statements that we have presented to
4 Your Honor last week.

5 THE COURT: If something comes up and y'all want to
6 try to use that statement I think that would be very
7 difficult to deal with.

8 MR. HUBBARD: What we will explore, we do believe
9 there is some other statements that weren't made in
10 Newberry but two officials at SCDC while in prison.

11 THE COURT: We are not going to address any of that
12 today.

13 MR. HUBBARD: Right, right.

14 THE COURT: Okay.

15 MR. HUBBARD: So if we can take a quick break and we
16 can take up this one other matter. And it is for us for
17 clarification on how we proceed, to help us.

18 THE COURT: Okay.

19 MR. YOUNG: We have about 20 outstanding motions and
20 I believe 5 other motions in limine that we can get
21 scheduled. We can't do any of them today.

22 THE COURT: The good news is I have got a lot of
23 court time coming available. I have civil court the next
24 week and the following week is getting looser and looser.
25 Let's stand down.

1 COURT REPORTER: I will tell Judge Addy to go to
2 lunch.

3 THE COURT: Tell him to go on to lunch. That will be
4 fine because we are done here now. They have got one
5 small issue but we are not going to be long doing it so
6 you can tell them to go eat lunch and we are done.

7 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 March 11th through 14th and March
15 19, 2019.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819 April 15, 2019
2021 *Joy Holston*
22

23 Joy E. Holston, Court Reporter

24 My Commission expires: May 2, 2026
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)

April 11, 2019
 Lexington, 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:

Solicitor Rick Hubbard
 Deputy Solicitor Suzanne Mayes
 Deputy Solicitor Shawn Graham
 Attorneys for the State

Boyd Young, Esq.
 Robert Madsen, Esq.
 Bill McGuire, Esq.
 Casey Secor, Esq.
 Attorneys for the Defendant

Joy E. Holston
 Official Court Reporter

E X H I B I T SCourt's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
61	Tim Jones Affidavit	X		19

1 THE COURT: Where are we starting from.

2 MR. YOUNG: Your Honor, I want to clean up the
3 record, if I can, a little bit and I hope I don't confuse
4 anybody and the State will correct me if I am wrong about
5 this. But I know that Tara and my paralegal, Claedrika,
6 have gotten together and compared notes on what is
7 outstanding, what has been heard, what's not been heard.

8 THE COURT: Have y'all got Claedrika way back there
9 in the corner because she has been bad?

10 MR. YOUNG: I think she is back there because she
11 didn't want anybody, her computer to bother anybody and
12 she had the printer back there to set up.

13 THE COURT: Claedrika, can you hear?

14 MS. CHATRIEKA: Yes.

15 THE COURT: Okay.

16 MR. YOUNG: So I know that we have been continually
17 addressing discovery and the Prosecution has been
18 continually providing discovery, we got new discovery
19 yesterday as they talk to witnesses. I don't know if they
20 can certify that it is all done. Now I would ask them if
21 it is all done now as we are approxiamtely two weeks out
22 from trial. If it is not done now then we will have to
23 address it.

24 MR. HUBBARD: Your Honor, I always hear these motions
25 about can we certify. I don't know any case law that

1 says, Solicitor or the Prosecution has to certify
2 anything. I answer to Your Honor, not to an attorney.
3 Our job is to provide discovery as we get it, that is what
4 we are doing. As we continue to talk to witnesses and
5 prepare for a case we are turning stuff over we are not
6 even obliged to turn over. So we are going over and above
7 what we think we need to do. We are going to continue to
8 do that as long as we are working on the case. We also
9 know that discovery never really stops. If we find
10 something in the middle of the trial we have to turn it
11 over. We find something after the trial we have to turn
12 it over. Solicitors, Prosecutors can never certify that
13 it is done, that is a myth.

14 THE COURT: All right. You are representing to the
15 Court that what you have to date you have given them.

16 MR. HUBBARD: Yes, sir.

17 THE COURT: And I understand the certification or
18 representation and all of that. To date they have given
19 you everything, as they find out more and it comes up and
20 they hand it to you, certainly that is always a issue for
21 the Court to say, when did you find this out, where did it
22 come from, what's it source, whether we can use it or not,
23 either side. It can be beneficial either way. The State
24 represents that as of today, Thursday the 11th, discovery
25 is up-to-date.

1 MR. YOUNG: Yes, sir. And the only thing that I am
2 aware of that we are still working on is the neuropsych
3 testing that was done by Dr. Kruse. My understanding is
4 that that information has been provided to Dr. Brawley and
5 waiting on Dr. Brawley to independently evaluate the
6 results of that testing so that Dr. Dorney can have that
7 information, so that she can finish her report which I
8 have planned to have by Monday.

9 THE COURT: Okay. And they have given you what your
10 people needs so you are not waiting on them, you are
11 waiting on others.

12 MR. YOUNG: I am waiting on, DMH has provided Dr.
13 Brawley the information that she needs. Yes, sir.

14 MR. HUBBARD: Your Honor, that information stuff we
15 never had, that is the underlying information that,
16 remember we never got. So I don't know what they have.
17 But anyway, I do know this. There is a lot stuff,
18 probably some of the stuff we are going to talk about
19 today, we haven't settled on what we are doing, where we
20 are going, we are still talking to some people for the
21 first time, others for second, third, fourth time.

22 THE COURT: Okay.

23 MR. YOUNG: Your Honor had directed that the State
24 provide written notice of evidence of prior bad acts
25 before trial which they have done. And I will tell the

1 Court that we don't have an independent motion filed today
2 to address their notice of intent, of prior bad acts. I
3 would just state for the record that their notice of prior
4 bad acts pursuant to Lyle says that they are introducing
5 acts to show propensity and conformity therewith which, of
6 course, would be a direct violation of 404 and Lyle.

7 There are not specific acts mentioned in their notice, it
8 is all just, well, anything bad that he has ever done. We
9 do have an objection notice, we will get that objection
10 probably filed in the morning. But that is probably
11 something that we are going to need to hear at a later
12 time.

13 THE COURT: Okay.

14 MR. HUBBARD: Just to clarify that. Ours, we didn't
15 just do it for guilt phase, it is also penalty. And a lot
16 of the stuff that would be absolutely objectionable in
17 penalty, guilt phase is wide open in penalty phase. So we
18 just did it in one bell slope. So they might want to
19 consider that when they are doing a motion and we are
20 arguing all of this.

21 THE COURT: Well, I mean certainly prior bad acts
22 under Lyle, guilt is not allowed so we know the rule.
23 Your objection is noted. Motion in limine, if they try
24 that and you don't like it so we will be alert to it. But
25 whatever motion filed additionally--

1 MR. YOUNG: Anything that they intend to offer we
2 need to be on notice of and it needs to be, and Your Honor
3 needs to have a hearing on it to determine whether or not
4 the State can meet its burden for clear and convincing
5 evidence and accepted purpose under Lyle under one of the
6 five allowances for 404(b) type testimony. We just have
7 no notice of anything pursuant to what the State has filed.

8 MR. HUBBARD: Your Honor, obviously we have given
9 them that. They can look at it, they are on notice of
10 what to look for if it comes up in the guilt phase.

11 THE COURT: All right. You are going to file an
12 additional motion if needed?

13 MR. YOUNG: Yes, sir.

14 THE COURT: All right.

15 MR. YOUNG: Your Honor, just to make sure the record
16 is clear. I am skipping down to motion number 34 which I
17 believe Your Honor has a copy of up there. We discussed
18 this motion in the past, this is a challenge to a lethal
19 injection procedure which we tabled and said it wouldn't
20 be right until and unless Mr. Jones received the death
21 penalty. Just for the record I think that status remains
22 the same.

23 THE COURT: I think it does. So that will be brought
24 up if necessary at the appropriate time.

25 MR. YOUNG: Your Honor, we addressed victim impact

1 testimony in Defense motion number 35 to exclude victim
2 impact testimony. A number of times in hearings, I know
3 that the State maintains that there is no requirement in
4 South Carolina that they have to preview any victim impact
5 testimony. My understanding from the State's notices and
6 can read between the lines here is they intend to call a
7 number of teachers as victim impact type witnesses despite
8 the fact that they are not victims under the Statute.
9 Everybody who is a victim under the Statute has requested
10 that the State not seek the death penalty. So we would
11 object to those witnesses. And here is the problem, Your
12 Honor. If a witness takes the stand and gone all the way
13 through the case, begin the penalty phase and a teacher
14 takes the stand. One of the teacher's has already been
15 dismissed from the school for improper involvement in the
16 case in not letting it go. If she says something that is
17 prohibited you can't take that back once it is out in
18 front of the jury. And the only way to know what she is
19 going to say and the only way to prevent me from having to
20 object during a particular witness' testimony is for the
21 Court to have a preview of what they are going to say.
22 Okay, this is allowed, this is not allowed, you can say
23 this, you can't say that. It protects the witness, it
24 protects the State and it protects the Defendant. And
25 that is, that is what we are asking for when we are

1 talking about excluding victim impact testimony.

2 MR. HUBBARD: Your Honor, in fairness, we were put on
3 notice what motions we are going to argue today. This
4 wasn't one of them. And, you know, I can argue off a cuff
5 but we were noticed for motion 40, 53, 54, 55, 56, 63, 70,
6 71, 76, 78, 80, 81, 82, 83, 88 and 89. He is going all
7 the way back to 34 now and, Judge, I mean I can argue it
8 off the fly but I don't know why I need to be doing this.
9 When he puts us on notice, here is what we want to argue
10 today so we do our due diligence, prepare for today and
11 now we are arguing motions, he is picking randomly. We
12 are on number 34 out of, god knows how many we have got
13 here. That is not really fair. I would just say, let's
14 reserve for another day so we can have proper notice what
15 we need to prepare for so Your Honor won't have to have us
16 hem and haw over what we are doing. You can have a clear
17 coach argument.

18 MR. YOUNG: Sure and I guess, my understanding, Your
19 Honor, from the, between the list from the State and the
20 Defense is that motions 17, 19, 25, 34, 35, 36, 37 and 38
21 have not been resolved. I was trying to see if we could
22 get those resolved if we can.

23 THE COURT: Let's move those to the back-end.

24 MR. YOUNG: Sure.

25 THE COURT: That way we maximize the use of our time.

1 MR. HUBBARD: Okay. I will tell you this too. The
2 ones that he just listed, you actually made a ruling on
3 motion 34, that if it becomes ripe it will be heard at
4 that time.

5 THE COURT: Right.

6 MR. HUBBARD: But, anyway--

7 THE COURT: I mean that's a ruling or, it is like a
8 motion in limine. When that comes up we will deal with
9 it.

10 MR. HUBBARD: Right, right. So you have already
11 passed judgment on that to that extent on when you want to
12 handle it.

13 THE COURT: It has not been ruled on. I am going to
14 allow it to be argued at the appropriate time.

15 MR. HUBBARD: Yes, sir.

16 MR. YOUNG: Your Honor, I will skip ahead to number
17 40 and 40a, motion to suppress autopsy photographs and
18 suppress body recovery photographs. I have passed up and
19 I guess I would request that it be marked as Court's
20 exhibit 61. And I think the best way to do would be just
21 mark the whole notebook.

22 THE COURT: Okay.

23 MR. HUBBARD: Your Honor, I have no idea what he has
24 passed up. Are we going to go through these one by one.
25 I have no idea what, exactly how they want to do this.

1 And I would just say, just before we even get into this
2 motion, maybe this will cut more to the chase. I don't
3 know what photographs we are putting in in sentencing
4 versus, I mean guilt versus sentencing. I have no idea
5 right now. We are still going over all of that. And Your
6 Honor knows there is two very different standards for
7 guilt phase, what you can and can't put in. Penalty is
8 very different. Right now I don't know. I mean I think
9 it is one of those things that, again, I am kind of
10 arguing in the dark. I know what we have got but do we
11 put in. And we are also very mindful of the fact, we
12 don't want to try this a second time. And so we are
13 keeping all of that in mind. I would suggest that we
14 preserve this argument and this notebook for when it
15 becomes ripe, when we get to that point. And when we get
16 to that point, Solicitor, have you decided what photos you
17 are putting in, you are going to put in, whatever you are
18 doing. Sentencing phase, I need to see those. We can
19 save that, since they know everything we have. It is not
20 like we are keeping them in the dark. And they have got
21 their arguments ready. We will just take it up at that
22 time and then Your Honor will know. You won't have to
23 rule on it, 300 or 500 photographs. You will just be
24 ruling on exactly what we are trying to put in and you
25 will hear why.

1 THE COURT: According to the general rule, you have
2 got a lot of photographs. You don't want to inflame the
3 jury, overwhelm them with too many photographs. So let's
4 pick a representative few and those are the ones you kind
5 of really evaluate. But it is always a problem for both
6 sides. If you put in 50 photographs when 7 would do, 10
7 would do. They are representative of. That is not a
8 ruling, that is just an example. That is a huge notebook,
9 what three inches of paper in there of photographed
10 copies. So that will take a long time. And I would be
11 surprised if either of you wanted that many photographs
12 in.

13 MR. HUBBARD: I will state, as lawyer 101, although
14 jurors might want a broad framework of photos, Solicitors
15 or Prosecutors or whoever carries the burden focuses on
16 what they want. But in the case law, or even approach
17 with some sense, tremendous sense of care because we don't
18 want to cross any lines. So it is something that we
19 navigate very carefully through. Certainly every time we
20 try, you know, a murder case where death isn't on the
21 table but even more so in a case like this. Just right
22 now, Judge, I think it is premature. We all know what we
23 have got to do and I think it is, it is really asking too
24 much for Your Honor to make a ruling on every photograph
25 right now. You don't even know the context I might even

1 be putting it up or when a witness may say I need this to
2 explain to the Court.

3 THE COURT: And I made this comment in numerous
4 trials. It is so much easier to rule once you get the
5 flavor of what is going on and the tenor of the case than
6 it is from way far back, kind of getting that flavor of
7 everything going on of what the trial is going on and then
8 what is appropriate and what is not appropriate. It is so
9 much easier to rule then with a lot more context going on.

10 MR. HUBBARD: Your Honor, whatever we offer has to be
11 in a particular context and so right now I am not even at
12 that point so Your Honor would have the ability to make a
13 cogent ruling.

14 THE COURT: All right. What do you think?

15 MR. YOUNG: None of these photographs are relevant,
16 they don't show anything that is a fact in issue in the
17 case and they should all be excluded under the balancing
18 test that Your Honor needs to conduct pursuant to Torres
19 and Collins and that line of cases. They don't even
20 include the penalty phase, they still have to be relevant.
21 You just can't show the pictures--

22 THE COURT: How are pictures of the victims not
23 relevant to a murder prosecution. I mean, how do you
24 separate that?

25 MR. YOUNG: Because he admits that he killed them,

1 nobody is arguing that they are not dead.

2 THE COURT: He really hasn't. Legally he said I am
3 going to plead not guilty by reason of insanity. He
4 hasn't said, I am admitting to killing them yet. You are
5 a little ahead on that for me. I haven't heard those
6 words.

7 MR. YOUNG: He has admitted it numerous times in
8 regard to taking statements and statements to law
9 enforcement, statements to the Court's expert, statements
10 that have been disclosed to the State. It was never
11 denied that he killed the kids. Your Honor, these
12 photographs and I understand the State's position and if
13 they don't want to argue it today that is fine. But what
14 the State should not be allowed to do is to ambush the
15 Defense and sandbag the Defense and shock the conscious of
16 the jury by saying, oh, well, look at these photographs
17 that we didn't show you during the first phase of the
18 trial because they are too shocking. I mean the words,
19 horrific and gruesome do not do these pictures justice. I
20 mean they are shocking to the conscious. And as we
21 pointed out in our memo that we passed up today along with
22 the scientific studies that are attached to it, anybody
23 who sees these pictures is not going to be able to think
24 rationally about the case. The decision about the penalty
25 is an emotional decision as to what the appropriate

1 penalty is and if the jury is shown these pictures and if
2 the State is allowed to hold these pictures until the
3 penalty phase of the case then the jury just rigs for
4 death.

5 MR. HUBBARD: Your Honor, my response is as far as
6 gruesome and shocking, I could say that about just the
7 actions of Mr. Jones excluding photographs. I think in my
8 almost 30 years, I have never seen anything like this.
9 But when we got to the photos, Your Honor has no context
10 to what we are trying to, what, if anything, we are
11 offering in the context we are offering it. But finally,
12 if they question whether a jury, any jury can hear this.
13 Well, Your Honor, they have an option and that is you.
14 And I am here waiting to hear what they want to do. But I
15 am ready for a jury trial otherwise. We will figure out
16 what we want, we will provide it to Your Honor out of the
17 presence of the jury, we will have all of these arguments
18 and you will know why we want it and the context. You
19 will have something to rule on at that point.

20 THE COURT: I think you are both right. Gruesome,
21 inflaming the jury, I agree. I think he is right,
22 depending on what they are trying to prove and what they
23 are showing, the context helps me immensely and that is
24 kind of what I was saying earlier. I don't want to tell
25 you that certainly any picture they present up that I am

1 going to say, okay, that is fine. That is not going to
2 happen. It is easier for me to rule then with everybody
3 an opportunity to be heard before they start pitching
4 things out there. So, I mean, I can tell the State now, I
5 mean y'all have raised a lot of different issues,
6 testimony of potential school teachers and victims, the
7 gruesome photographs. Y'all know the case, y'all have
8 researched it and worked it. I have never looked at the
9 pictures yet so I am not familiar with them now at all.
10 Y'all are, y'all are warm to the facts and pictures. I am
11 just now getting into the water and getting use to the
12 temperature so to speak. If the State knows they are
13 getting somewhere close to something that you are going to
14 object to they are on notice that I want to know about it
15 ahead of time. Judge, I think this may be an issue, heads
16 up. All right, let's talk about it first. I don't like,
17 I don't like being ambushed with an issue, oh, we didn't
18 realize they were going to be surprised by that. No, that
19 is not fair.

20 MR. HUBBARD: Any photos, we know to bring them up.
21 So we are on notice of that. You know, clearly it is not
22 ambushing because they have got them all. But we will
23 bring up to Your Honor specifically at what we are looking
24 at doing and it will be out of the presence of the jury.
25 I think that is the best way to handle it.

1 THE COURT: Well, you know, for all these issues, for
2 both sides. Y'all have done a real good job thus far of
3 moving deliberately with your discovery, with the
4 evaluations, with everything and I think the way we select
5 the jury and try the case needs to be deliberate, not
6 fast, not in a hurry. I mean, we are going to conduct a
7 trial as far as possible for the State, for the State's
8 side but also in particular for Mr. Jones and his side
9 because it ain't going to be perfect. We have already
10 both, I mean the Court, the State and the Defense has had
11 a few bobbles as it were already. It is not going to be a
12 perfect trial. It is going to be a fair trial if I can
13 help it. So I am going to encourage both sides to keep
14 moving deliberately even if we go a little slower,
15 deliberate, steady, good pace, we are going to get through
16 it. So that is kind of what I have sensed thus far, we
17 have been very deliberate of how we have handled things,
18 keeping things on schedule. Y'all have done a wonderful
19 job of having status conferences with me about everything
20 and phone conferences or whatnot. So I kind of expect
21 that to continue on because as we go further this is going
22 to happen more and more. But we don't have the audience
23 yet in here, thankfully we have been able to operate
24 without that. That has made things easier on everybody,
25 the State and the Defense team. I would rather wait on

1 those until they get ready but telling the State, any
2 photographs that they intend to introduce of any victims,
3 before those come up we need a break. We need to talk
4 about it and if we have got to do stuff in-camera we will
5 do it in-camera.

6 MR. YOUNG: And it is come upon us as Defense
7 Counsel, like if a juror says I can't be fair after seeing
8 that picture we need to know that before they are
9 selected.

10 MR. HUBBARD: I am not sure what that means. I am
11 certainly not going to preview photos to jurors.

12 THE COURT: What I have done in past on, using for
13 instance a sexual abuse case. This case is going to
14 involve testimony regarding a sexual assault, this, that
15 and the other. Some of the testimony and photographs may
16 be more graphic in nature to that end. Is speaking about,
17 hearing about, considering subject-matter, that sort. I
18 am going to think that type of question will be
19 appropriate considering what you are telling me is in that
20 notebook.

21 MR. YOUNG: Okay.

22 THE COURT: So I think that would be certainly
23 reasonable for us to explore with jurors. I mean, someone
24 with a queasy stomach needs, we need to know about that
25 queasy stomach first.

1 MR. YOUNG: Yes, sir. I agree.

2 THE COURT: Okay.

3 MR. YOUNG: I would like to go ahead and make these a
4 part of the Court's record.

5 THE COURT: Make it 61.

6 (Whereupon, Court's Exhibit 61 was marked for
7 identification only.)

8 MR. YOUNG: And then, of course, I have given the
9 State and the Court copies of--

10 THE COURT: Now, so I know too, so Joy knows. 61 is
11 now the whole notebook. If we pull out ten photographs
12 and have an in-camera hearing later, Court's exhibit,
13 whatever numbers those are, they will be duplicated
14 individually but that notebook will stay together as 61.

15 MR. YOUNG: It is about 415 pictures. It is not
16 every picture involved in the case. But it is every
17 picture that involves a picture of the remains.

18 THE COURT: So if we pull out 10, 20, whatever
19 pictures those will be numbered sequentially for a
20 hearing, Court's exhibit, whatever the numbers are then.
21 61 will keep those 415 pages as 415 pages.

22 MR. HUBBARD: That would have been my plan. In fact,
23 Judge, what we were going to do in our presentation, it
24 might make it easier, we were actually making a notebook
25 just like this one. It may be a little different but what

1 we would be able to do is say, when we pull one out we can
2 reference Your Honor where it is, the big notebook. That
3 is part of the context. And then what we are offering.
4 So I think that works. Thank you.

5 THE COURT: Does that suit you, Joy?

6 COURT REPORTER: Yes, sir.

7 THE COURT: Okay. All right, so those two motions
8 which is 40 and 41.

9 MR. YOUNG: It is 40 and 40a, Your Honor.

10 THE COURT: Those are motions in limine and the State
11 has been made aware they need to give the Court a heads up
12 we are dealing with the photos, any of the photos that
13 came out of Court's exhibit 61.

14 MR. YOUNG: I know that the State is not on notice to
15 hear this motion today but I just wanted to make sure that
16 it is an issue on the radar. We have got a statement, I
17 think it was on Tuesday of this week, regarding
18 identification by a woman named Linda Owens. We had filed
19 a motion back in April of 2018 to have a Biggers hearing.
20 We had said as we got closer to trial we would address it.
21 We weren't able to address it when we did the other
22 special motions. But I am putting everybody on notice
23 that there seems to be an identification, an out-of-court
24 identification made by a witness that would need to be
25 addressed before that testimony came into court.

1 MR. HUBBARD: For clarification, that evidence was
2 turned over in the original discovery way back in 2014.
3 It is something that was right out of the original
4 investigation, like a little 7-Eleven type shop, a woman
5 working there. It is all on video, all of that is turned
6 over. What we did is we just reinterviewed her and turned
7 that over, that is what we turned over last Tuesday. So
8 if they want to have a hearing on that it is fine. Just
9 so Your Honor knows, that was something, it is not brand
10 spanking new.

11 MR. YOUNG: We never could find her. And she would
12 never speak to us.

13 THE COURT: If she is going to be called by the State
14 we will have a Biggers hearing on that issue. If she is
15 not going to be called we won't worry about it.

16 MR. YOUNG: Yes, sir.

17 THE COURT: So, Ms. Owens, Linda Owens?

18 MR. HUBBARD: Yes, sir.

19 THE COURT: Oaky. I can remember the name.

20 MR. YOUNG: Your Honor, the next motion that I have
21 to address today would be number 53 which would be a
22 motion to prevent the death qualification of the jury.

23 THE COURT: Mr. Madsen, your turn.

24 MR. MADSEN: It is. So Judge, 53 is our motion to
25 prevent death qualification of the jury. We are asking

1 the Court to enter an order that prospective jurors will
2 not be disqualified from service because of their
3 conscientious objection to the death penalty. That is
4 based on the United States Supreme Court, the Fourth, the
5 Fifth, the Sixth, the Eighth and the Fourteenth Amendments
6 and also to the State Supreme Court, Article 1, Section 3,
7 9, 10, 11, 12, 14 and 15. Obviously Your Honor needs, the
8 Court needs to take every reasonable step to make sure
9 that there are no structural defects in the trial process.
10 Obviously that includes also a constitution of a jury that
11 is predisposed to death against Tim. We believe,
12 obviously, keeping out non-death penalty, you are not only
13 produced a biased but quite honestly it produces a
14 prosecution prone guilty type of jury when you are taking
15 out those individual jury's or those individual jurors and
16 we believe that deprives Tim of his right to a fair and
17 impartial jury. Obviously the jury should be drawn from a
18 fair cross section of the community. The death
19 qualification process produces a jury that is simply just
20 more likely to convict, less likely to listen to types of
21 any defenses. And our position is that unconstitutionally
22 impairs the purpose and the functioning of the jury and
23 that it violates the rights of Mr. Jones for the jury to
24 be drawn from a representative cross section of the
25 community. And it does not complete with due process and

1 or the fair trial guarantees to Mr. Jones. Obviously
2 anti-death penalty, people who are anti-death penalty are
3 not only excluded from the sentencing portion but they are
4 also excluded from the guilt portion. And like I said,
5 those jurors, the jurors that you elect with are less
6 neutral, less defective as a tribunal, less representative
7 of a community than a non-death penalty juror. So in
8 other words, the process that we are going through is
9 different than just the picking of a jury considering the
10 guilt or innocence of an individual. And therefore it is
11 our position that the death qualification increases the
12 risk of conviction to a Defendant. Like I said, because
13 of their different attitudes towards the criminal justice
14 system due to the lack of representativeness of the
15 community as a whole and quite frankly, belief in their
16 different credibility standards. As you will see in the
17 motion, there are different things that we talk about but
18 basically, you know, the death penalty qualification, the
19 way to bring that out is obviously through voir dire and
20 that there are obviously problems with that. And I think
21 some of our other motions will get into that. But
22 obviously you are starting with us all kind of telling the
23 jury this fantasy that, hey, you know we are assuming that
24 we are going to get past the guilt phase when we are
25 qualifying these jurors. Obviously, first Judge, the

1 death qualification procedure may very well suggest a
2 prospective juror, that we as the trial participants, you,
3 me, the Solicitor's office all believe that Tim is guilty.
4 And obviously, the fact that we are focusing so much on
5 the penalty strengthens the unarticulated premises that
6 guilt is already assumed. Second, asking prospective
7 jurors to assume guilt is likely to increase their
8 estimate that such a verdict will occur.

9 THE COURT: Let me ask you this. We talked about it
10 a moment ago. By tendering a plea of not guilty by reason
11 of insanity is admitting I performed the act in essence,
12 as to what Mr. Young was saying. Understanding that that
13 is not done, this type of defense is not presented as much
14 as, more or less an plain vanilla, I am not guilty
15 proceeding into trial. Certainly we may be, have to be
16 made aware of that when we are selecting this jury,
17 wouldn't we?

18 MR. MADSEN: NGRI?

19 THE COURT: Yes.

20 MR. MADSEN: Yes, sir.

21 THE COURT: And that is going to kind of add a
22 different wrinkle than all of these questions we are
23 presuming we are getting past the guilt phase as if he is
24 guilty. He is admitting, are y'all going to--

25 MR. MADSEN: In fact, I believe our position is going

1 to be that we are going to ask for a formal arraignment in
2 front of the jury.

3 MR. HUBBARD: We would object to that, that is not a
4 jury matter, that is strictly for the Court. Arraignments
5 are, because you tell the jury he is presumed innocent and
6 the State has the burden of proof. To me it is in
7 flagrant violation for him to come in so they can hear him
8 say it. If he wants to say that he can take the stand and
9 say that and would be subject to cross otherwise it is
10 pure show, it is to persuade the jury and it is absolutely
11 improper, absolutely.

12 THE COURT: I want to be certain that we are aware in
13 managing the selection of the jury, understanding what is
14 coming at them, this is not a plain vanilla trial of
15 guilt, innocence, sentencing phase. A little bit
16 different wrinkle with the tendering of the mental issues.
17 Big difference.

18 MR. MADSEN: And, Judge, our third position is that
19 obviously the extended discussion of the death penalty may
20 taint the desensitized jurors to the tremendous nature of
21 their past. I mean we have kind of talked about that a
22 little bit with the photos or at least that is kind of the
23 same idea. The fourth is that potential jurors may become
24 aware that those who are opposed to the death penalty, all
25 of a sudden they are getting excluded from the jury and

1 that kind of suggests to them that, hey, the law or the
2 Court or someone kind of disapproves of those people when
3 all of a sudden they are just gone. And then finally,
4 death qualified jurors must publicly affirm under their
5 oath their ability and the willingness to oppose the death
6 penalty. And obviously I think when you do that that
7 increases their likelihood in them doing so. And so we
8 just believe for those reasons, Your Honor, that all of
9 those things impact the education process during voir dire
10 that results in the jurors being more likely to vote
11 guilty and obviously to recommend the death penalty than
12 they normally would be through a general process.

13 MR. YOUNG: I will just sum up a little bit. The
14 death penalty qualification process produces a jury more
15 likely to convict than it otherwise would be. The fact
16 that a plea of not guilty by reason of insanity enhances
17 the prejudice of that processing effect. And which is why
18 the Defense moved to exclude any death penalty
19 qualification of any juror. And if we tried the case to a
20 jury that is not death penalty qualified and if and when
21 we need to go to the penalty and we pick another jury that
22 would be qualified appropriately. Or in the alternate the
23 other suggestion that I have seen is that we had two
24 jury's, one is going to determine the culpability phase
25 and the second one is going to determine the penalty

1 phase, they can hear the testimony at the same time and
2 then they would deliberate at different times. That way
3 the jury hearing the culpability phase would not be
4 tainted by the processing effect of the death penalty
5 qualification.

6 MR. HUBBARD: Judge, that one just baffles me but if
7 Mr. Madsen is through I will be happy to address it. I
8 don't want to cut him off. Your Honor, this is just
9 another way of saying, we don't like the death penalty, it
10 is really unconstitutional. You can't get a fair jury and
11 you have already ruled on that. But specifically, setting
12 aside the defense, the jury is going to be made aware from
13 day one, this is different, this is a Capital case. They
14 are going to be made aware that they are actually, should
15 they find him guilty they are going to be the sentencing
16 judge as well in this case, unlike any other case. And
17 what our State has done, we set up the three categories
18 Your Honor is very familiar with. And our Court has ruled
19 repeatedly that is the proper process to ensure both sides
20 get a fair trial. If you look at State versus Robert
21 South, that was tried here in Lexington County. An
22 officer that was, I believe shot and killed in West
23 Columbia. That is at 331 SE 2nd 775, 1985 case. They
24 brought up the same objection to how Your Honor qualifies
25 a jury. And here is what the Court said. During voir

1 dire the trial Judge asked each perspective juror whether
2 they would, A, always vote for the death penalty; B,
3 always vote for life imprisonment; or C, vote for either
4 depending on the evidence. Appellate claims inquiry
5 improperly steered the jurors. This contention is without
6 merit. That has been the Court's position, the 1985, that
7 has not changed. Both sides are entitled to a fair trial.
8 I think it is pure conjecture and just pure argument that
9 somehow a jury is going to be pro-death. We can pick up
10 this case and go somewhere else and I can be arguing it is
11 pro-life somewhere else. No one picked where Mr. Tim
12 Jones decided to kill these kids. He picked that, he
13 picked them here. I didn't go looking for him, he knocked
14 on my door in that sense. I am making my argument. So I,
15 this is on my doorstep, we are seeking death but we are
16 seeking the system that is used everywhere regardless of
17 where you are, whether it is in Lexington, Allendale, they
18 use the same system in other states because it is fair.
19 And no one can conclude that a jury will always give
20 death. We have had life sentences here in this County
21 before with jury's. State v. Hollis, I was on that one,
22 Mr. Graham was on that one. They came back life, every
23 juror was crying when they did it. The sense that we have
24 got a bunch of wild, rednecks who just want to hang
25 somebody is a myth. I have never seen a jury come back

1 with life or death where grown men aren't crying. And I
2 have no doubt that people in this County can be fair,
3 listen to both sides. In fact, I would say that they are
4 more demanding on me and this office because they expect a
5 lot of us, if we just go in there and make argument
6 without giving them evidence, Your Honor has seen it, they
7 will send us home empty handed.

8 MR. YOUNG: You Honor, this motion is not about the
9 penalty that may or may not be imposed. This motion is
10 about whether or not Mr. Jones can get a fair jury in
11 determining whether or not he is guilty, guilty but
12 mentally ill or not guilty by reason of insanity. The
13 contention of the motion is that putting jurors through
14 the death qualification process prejudices their ability
15 to decide guilty, guilty by reason, guilty but mentally
16 ill or not guilty by reason of insanity. And I would
17 refer back to the evidence and testimony offered by the
18 Defense with regard to Capital Jury Project and the social
19 science involved in that research and that was the nature
20 of the testimony is that putting jurors through the death
21 qualification process inhibits their ability to fairly
22 decide culpability. That is what this motion is about,
23 not talking about whether or not we can get a life
24 sentence in Lexington County. It doesn't have anything to
25 do with anything. This is about how to get a jury to

1 fairly decide culpability.

2 MR. HUBBARD: But it is going right back, it all
3 rests on that study of, you can't get a fair jury in a
4 Capital case. So, Judge, you have already ruled on that.
5 I think Your Honor has heard, I can sit here and argue all
6 day about it. But, Your Honor, case law is clear, and
7 there is no reason to believe that jurors can't consider
8 all of the options that you give them.

9 MR. YOUNG: And, Judge, I would just say. All the
10 stuff that we had proffered earlier, obviously that is
11 done by very smart people. To me it comes down to, you
12 know, to just kind of break it down. You don't get
13 someone who comes in and says, hey, or you get people to
14 come in and say, I am for the death penalty but I can
15 listen and give a life sentence afterwards. You don't get
16 anyone that comes in and says, I am against the death
17 penalty but you know what, under the right circumstances I
18 will give it anyway. And I guess that is kind of a
19 problem you run into with this.

20 MR. HUBBARD: Actually, Your Honor, in qualifying
21 jurors in the many death penalty cases I know that I have
22 been involved in, Mr. Graham and Suzanne Mayes has been
23 involved in. We have had plenty of jurors whose initial
24 answer is they can't do it. But when they are questioned
25 because the Defense always want to inquire, can we save

1 this person. They save quite a few of them and we have
2 had to strike them. So it cuts both ways. But there is
3 no reason to believe that we can't trust jurors to do what
4 you tell them to do otherwise why are we wasting our time
5 with a jury trial. If they truly believe that a jury can
6 handle this they have an option. You are it.

7 MR. YOUNG: And we move for that.

8 MR. HUBBARD: If they want to plead as charged--

9 THE COURT: The State is okay with a straight plea
10 but not a plea under certain conditions.

11 MR. HUBBARD: In fact they have, I believe Mr. Jones
12 has a right to come in and plead as charged. He does not
13 have a right to come in and say, I will plead but here is
14 my condition of pleading. He doesn't have a right to do
15 that. So if they want to go to that next step, plead as
16 they have been talking about. It is clear that he did and
17 all of this, I understand the mental health stuff. But
18 they keep saying also that a jury won't buy that. So if
19 they want to come in here and plead him guilty--

20 THE COURT: No, what you heard him to say that a jury
21 won't buy that. What I am hearing is that, we want a fair
22 jury as we can get. That is what I am hearing.

23 MR. HUBBARD: And what I have been arguing is, I
24 think they will get that.

25 THE COURT: Well it is my job to try to give them

1 that and give the State that also, not one side or the
2 other. All right. I think the voir dire, selection of
3 the jury will dictate, present to us what we have. This
4 kind of reminds me of an argument I heard one time. It
5 was a civil case but it was in the summertime, June or so
6 and the lawyers said, Judge, we can't get a fair trial,
7 there is too many school teachers here because they have
8 all been transferred to the summer months while on
9 vacation and school teachers are smart and they are
10 responsible and they read people because they teach
11 school. Do you have a constitutional right to have a jury
12 free of school teachers who are smart, responsible. Well,
13 I just don't want them because they might see through the
14 case I am presenting. Anyway, I want a fair jury, the
15 State wants a fair jury, the Defense wants a fair jury,
16 nobody wants a biased jury. We are going to do our best
17 to pick that. Now, how do y'all suggest I rule on this
18 other than waiting until we pick a jury and determine it
19 is fair. I mean, there is no way to pick a fair jury
20 until we try. Isn't that kind of what I am stuck with.

21 MR. YOUNG: What you could say, all right, we are not
22 going to death qualify the jury, we will have a trial to
23 determine culpability. And if he is eligible for the
24 death penalty after the trial the culpability will impanel
25 another jury to determine punishment.

1 THE COURT: That is me saying the South is wrong and
2 that you can give the three options and we all listen to
3 the answers.

4 MR. YOUNG: It is not responsive to the South. I
5 understand the South Carolina preferred procedure for
6 death qualification. My motion is that process should not
7 happen until a jury determines culpability. That we would
8 have a trial, he would plead not guilty by reason of
9 insanity, Your Honor would do the standard voir dire.
10 Nobody would ever mention punishment, we would have a
11 trial to determine culpability. If he was found guilty or
12 guilty but mentally ill after the trial the culpability,
13 we would then bring another jury in, we would death
14 qualify that jury with the understanding that he had
15 already been found culpable.

16 THE COURT: I understand your motion now. So I am
17 going to death qualify this jury as fairly as possible
18 under our law.

19 MR. YOUNG: I understand.

20 THE COURT: Okay.

21 MR. GRAHAM: The motion is denied?

22 THE COURT: Yes. All right, I am going to get some
23 coffee so let's take a couple of minutes. What are we
24 going to argue next?

25 MR. YOUNG: Insure that the jury understands life

1 means life.

2 THE COURT: That is not a problem. That is done
3 period. That motion will be granted.

4 MR. YOUNG: That is a first.

5 THE COURT: Yes, you win. That is not a problem,
6 life does mean life.

7 MR. YOUNG: I have specific language for the charge
8 suggested.

9 MR. HUBBARD: That might be where the rub is but we
10 will be happy to look at it.

11 THE COURT: Let's stand down for a few minutes.

12 (Whereupon, a short break was taken.)

13 THE COURT: Okay, right before we left the Defense
14 said life means life. And I said life means life. And
15 the State said we may have a rub there so does the State
16 want to continue to be heard on that or not.

17 MR. HUBBARD: Not on that. They said they were going
18 to have some other stuff so I don't know exactly what they
19 are getting into now. We do know, we were just looking at
20 one of their proposed jury charges. So we are looking at
21 that but I didn't want to consent to something and then
22 all of a sudden, holy cow, what is that.

23 THE COURT: Okay. Certainly the instruction, life
24 means life, those are simple words. I am pretty confident
25 that is allowed.

1 MR. HUBBARD: Right.

2 THE COURT: Mr. Young, what do you have next.

3 MR. YOUNG: Your Honor, specifically our request is
4 that Your Honor charge the jury that life in prison means
5 until the death of Timothy Ray Jones, Jr. without the
6 possibility of parole. Not, that life means life is not
7 sufficient, it has to be life means life without the
8 possibility of parole and he would never be out of prison.

9 MR. HUBBARD: I don't have any problem with that.

10 THE COURT: Yeah. The balance of the life means no
11 eligibility of parole. Certainly, those two things. That
12 is allowable, proper.

13 MR. HUBBARD: And, Judge, I had one on death but I
14 think they got into the matter which could change tomorrow
15 on that.

16 THE COURT: The Bill is submitted.

17 MR. HUBBARD: And who knows what they will have next
18 year when they are haggling over it. I think the jury
19 just needs to know, the most important thing that I have
20 always understood is, that if you give death, that is not
21 a recommendation, it is death and it will be carried out.
22 So that that jury knows, they are just not recommending it
23 to you, death means exactly what it says and that is how
24 it is submitted. And I think your charge is probably
25 going to cover that based on all the many cases we have

1 had.

2 THE COURT: Okay.

3 MR. YOUNG: Number 55, motion to ensure that
4 mitigating circumstances receive due weight and attention
5 from the jury.

6 THE COURT: Isn't this y'all's job? Isn't this
7 y'all's duty or responsibility in the trial to make
8 certain you present the mitigating factors you want the
9 jury to consider?

10 MR. MADSEN: We just want to make sure that we are
11 allowed to do that.

12 THE COURT: Why wouldn't you be?

13 MR. HUBBARD: Judge, I would be upset if they didn't
14 because then we'll be retrying it again.

15 MR. MADSEN: Judge, obviously through voir dire that
16 we need to be able to present the mitigating
17 circumstances. You know, the problem with it is and we
18 laid this out in the motion, is that jurors don't really
19 understand the meaning and the importance of mitigation
20 evidence. And so, we want to make sure that during the
21 voir dire that they understand what the mitigating
22 categories are. In other words, we can't get up there and
23 say, hey, you know, we got this, and if you got, or if you
24 hear this, you give life and the Solicitor certainly can't
25 do it. But we do need to be able to go through the

1 categories. And under the Supreme Court there are very
2 few exceptions affirmed that we are basically allowed to
3 present any, any aspect of his life, his character, his
4 background. Obviously there are numerous examples that we
5 have placed in the motion. And absolutely, the Eighth
6 absolutely forbids a situation where the sentencing jury
7 is unaware of what it needs to consider in reaching its
8 decision. The Supreme Court has mandated that Your Honor
9 clearly instruct the jury on what mitigating circumstances
10 are and those need to be comprehensive instructions. And
11 the failure to do that or to ensure that mitigating
12 circumstances receive their due weight and attention would
13 deprive Tim of his Constitutional rights as the --

14 THE COURT: So far everything that you have said I
15 totally agree with. That is y'all's job to present it and
16 my job to make sure the jury considers everything
17 presented.

18 MR. MADSEN: Well, obviously through voir dire's.

19 MR. HUBBARD: Well, we object to specific mitigating
20 questions, which you've already ruled on in the context of
21 the mental health. Judge, I will refer Your Honor to
22 State v. Hill, which is 331 South Carolina 94. I don't
23 have the Southeastern cite in front of me, a 1998 South
24 Carolina death penalty case. The Defendant was not
25 allowed to ask jurors questions on voir dire whether they

1 would consider what he, that he did not have a significant
2 criminal history. Instead, the Judge allowed the Counsel
3 to ask general questions whether the juror would consider
4 mitigating circumstances as presented by the Defense and
5 instructed by the Court. And the Supreme Court said that
6 the trial Court's refusal to allow questioning of jurors
7 about specific mitigating factors was not an abuse of
8 discretion. Your Honor, it's also been referred to
9 earlier in the previous motion, State vs. Stanko, 376
10 South Carolina 571, 2008 death penalty case in South
11 Carolina. And again, trial Court allowed the Defendant to
12 explore issues of affirmative defenses during voir dire
13 and permitted either side to ask more questions more case
14 specific. It said permitting either side to ask more case
15 specific questions would have veered close to allowing the
16 parties to stake-out the jury. So basically, you can ask
17 about mitigating circumstances. You don't have to go
18 through everything, or nothing, but the best practice by
19 Hill was just saying, look, there are going to be some
20 good things about this man, maybe about his character,
21 about his work habits or maybe some things that we would
22 like you to consider that he suffers from, whether it's
23 physical or mental health issues. You need to consider
24 all of those. Can you consider those. Yes. You are also
25 going to hear some maybe, you might hear some bad things.

1 Would you consider those as well. That's all we're going
2 to be asking. That's usually the safe way to do it. And
3 it preps the jury to know there's going to be some stuff
4 they need to be on lookout for. Things about Mr. Jones
5 that would not normally not come up in a trial, that they
6 will be on alert to hear, but you don't go into the
7 specifics.

8 MR. MADSEN: It was more just categories, obviously.
9 Specifics would be staking-out and that would be
10 inappropriate or to get a commitment, hey, if you heard
11 this, you do this. But the categories, you know, you got
12 to make sure that the jurors, they get set, basically
13 mitigation impaired. In other words, if I hear something
14 about substance abuse the jurors basically say, you know
15 what, I don't care about that. I wouldn't consider that
16 whatsoever. That would not make them qualified. But we
17 can't say, hey, he's --

18 THE COURT: Y'all are saying the same thing. Y'all
19 are on the same page.

20 MR. HUBBARD: What I just want to avoid, Your Honor,
21 is making sure once we get into the courtroom with a
22 particular juror on the stand, that we start getting, if
23 you hear he has a substance abuse problem, would that
24 affect, we're going to offer something that he's got
25 mental health issues. Is that going to have an effect on

1 your ability to be fair and impartial. I want to avoid
2 that. I think it's very good practice to say you're going
3 to hear some things, some good things about him and some
4 things we would like you to consider.

5 THE COURT: You all are saying the same thing.

6 MR. HUBBARD: As long as we do it like that, I'm
7 fine.

8 THE COURT: Y'all are, y'all are both saying the same
9 thing in different ways. And yes, mitigation will be
10 presented to voir dire in general categories without
11 staking-out.

12 MR. YOUNG: One thing before you put that away, Your
13 Honor, is the, when jurors hear mitigating circumstances
14 they think sort of nexus mitigation. And the Court often
15 defines it as some way lessening the culpability of the
16 crime. And that is not what the case law holds as what is
17 mitigating. And the jurors need to be told and made aware
18 that any one juror can find any one mitigating factor as a
19 reason to vote for life for them, it doesn't have to be in
20 any way tied to the crime. It doesn't have to in any way
21 lessen the moral outrage about the crime. It could be a
22 mental health issue. It could be a bad childhood. It
23 could be a substance abuse problem. And the jurors have
24 to understand that they don't just consider it. They have
25 to give meaningful consideration or consideration and

1 effect to mitigating circumstances. And that was part of
2 the explanation from Dr. Foglia with regard to the Capital
3 Jury Project, that oftentimes jurors fail to understand
4 exactly what is meant by mitigating circumstances. And
5 worse than that is a lot of jurors, when presented with
6 evidence in mitigation like substance abuse, often
7 consider it aggravating. Not only can they not give it
8 meaningful consideration and effect in determining what
9 the appropriate punishment is, and I'm not saying that
10 we're allowed to ask them if he has substance abuse
11 problems, doesn't that mean that you're going to vote for
12 life. We shouldn't be allowed to ask that. I understand
13 that that's why that's a problem. But we have to know if
14 a juror says, well, I think substance abuse is an
15 aggravating circumstance. So if we, and if you present
16 evidence of a substance abuse problem then I am more
17 inclined to vote for the death penalty. That juror would
18 not be qualified because they could not give meaningful
19 consideration and effect to the statutory mitigating
20 circumstance of the substance abuse problem. And that is
21 what I'm trying to get through, what we are trying to get
22 through with this motion is that Your Honor recognizes the
23 problems with jurors dealing with mitigating
24 circumstances, charges them and allows appropriate voir
25 dire to avoid those vices which were delineated in the

1 Capital Jury Project in which jurors just have. And the
2 only way to figure out whether or not somebody can
3 consider and give effect to a bad childhood as a potential
4 mitigating circumstance is to ask them. Can you give
5 consideration and effect to a bad childhood in determining
6 the appropriate penalty or for you it's guilty, game over.
7 I don't care about his childhood. A lot of people had bad
8 childhoods and don't kill people. What jurors say, those
9 jurors are not appropriately qualified.

10 MR. HUBBARD: And, Judge, now we're back to
11 specifics. Here's my suggestion. Your Honor, because
12 we're talking about, certainly on the front end you can
13 say, you can even have a list, just say this is an
14 exhaustive list. Here's some examples of things that
15 could be brought up. I don't know anything about this
16 case but here's some things that could come up and be
17 brought up. And whether it has anything to do with the
18 actual alleged or not really doesn't matter. But it's
19 things about the Defendant and his character and who he is
20 and I'm asking you to be willing to consider these things.
21 But once you go down into this road of, we need to
22 basically know what the individual juror thinks about a
23 specific mitigating circumstance and whether it would be
24 something that would hurt them and they might think of it
25 as more aggravating that's exactly what our case law says,

1 you don't need to be doing that. That's staking-out and I
2 object to that. That's Stanko, that's right on point with
3 Stanko. You can just take out the mental health and
4 insert whatever else you want there, drug addiction or
5 anything else and you are back in Stanko. So that's my
6 suggestion, I think that's fair. And then what happens is
7 the process doesn't stop. As Your Honor knows, your
8 charge is going to be pretty exhaustive. At the end when
9 this jury actually has to consider something, you are
10 going to tell them they can give life for any reason or no
11 reason whatsoever. They don't have to give a reason.
12 They can vote life, walk out of this courtroom and not
13 answer to anybody for what they did.

14 MR. YOUNG: Your Honor just heard from me extensively
15 regarding what the definition of the stake-out is. We've
16 provided a number of cases regarding that and the
17 stake-out question is a question which ask a juror to
18 commit to a certain choice or vote a certain way if a
19 particular circumstance is found. Which in South Carolina
20 there are a number of cases that say if he's, Longworth
21 and Davis, if he's intellectually disabled will you agree
22 to vote for life. Yes, I will, if he's intellectually
23 disabled. If he's not the trigger man, will you agree to
24 vote for life. Yes, I'll agree to vote for life. Those
25 questions were asked by the State and they were

1 appropriate and the Supreme Court found that they were
2 appropriate when asked by the State. This is the same
3 thing in reverse. It's not the same thing because we're
4 not asking a jury to commit to a vote. We're asking can
5 they give consideration and effect to categories of
6 mitigating and--

7 THE COURT: And I agree with you. I think it's a
8 method of the presentation is what you're saying. So I
9 agree with. The State's got an idea and y'all have an
10 idea. I think you are right. We need to have some
11 assurance that a juror understands mitigating factors
12 include many things. Can they consider all the things,
13 good and bad in reaching their decision rather than
14 focusing on any one particular or not, or ignoring one in
15 particular. That's kind of what y'all are saying in a
16 nutshell.

17 MR. HUBBARD: It's what I'm saying.

18 THE COURT: And I think that's what Mr. Young is
19 saying.

20 MR. HUBBARD: I'm just concerned it's not. I'm
21 concerned that he wants to have that individual juror and
22 say, you might hear about drug addiction as a mitigating
23 circumstance. Can you consider that, that's improper. I
24 think that is absolutely improper at that point because
25 now we've focused in on something, they haven't heard

1 anything about the case. We're trying to lock the jury
2 in. It gets close to also a hypothetical question because
3 they don't have any facts. I think it's improper. And I
4 don't know what other Solicitors or Prosecutors have done.
5 There's plenty of them that have done things I think are
6 wrong-headed. But we're not approaching it that way. I
7 think we're approaching it pursuant to the case law. And,
8 Judge, I think it's the only way you get a fair jury.

9 MR. YOUNG: The question is, is exactly why we are
10 talking about it. If you ask a juror, can you give
11 consideration and effect to substance abuse as a
12 mitigating circumstance. And the juror says no, that
13 juror cannot follow the law. That juror is impaired in
14 their ability to follow the law. The Statute in South
15 Carolina finds that to be a statutory mitigating
16 circumstance. And a juror who says to me I can't consider
17 it, it doesn't move me in any way, I can't factor that
18 into my decision, is absolutely not qualified to serve.
19 And that's the point. And you don't know whether or not,
20 you can't seat people and then figure out whether or not
21 they are qualified. You have to ask them questions, and
22 that's the whole purpose.

23 THE COURT: What y'all are doing to me is, Judge, do
24 you promise and try to do your best to follow the law, and
25 my answer is absolutely yes. And then y'all are giving

1 hypothetical suggestions, what if this happens. Well, we
2 are going to do them in small groups, aren't we? If we
3 ask a question that he's done wrong and you think so or
4 you have done wrong and y'all are staking-out, we are
5 going to address it. But I agree with both of you.
6 You're not allowed to stake-out. But jurors have to
7 consider all the passes of mitigating issues, good and
8 bad.

9 MR. HUBBARD: Right. And that's ultimately what I'm
10 arguing, Judge, is I think the divide between us, he wants
11 to ask specifics. I don't think the law supports him in
12 that. I want to keep it broad where Your Honor can even
13 list out any number of things including the specifics they
14 want but it doesn't become highlighted.

15 THE COURT: Yeah.

16 MR. HUBBARD: Then I'm all right. And it covers,
17 then a juror can say, you know, the first seven things I'm
18 fine with but that eighth thing, I can't be fair. He's
19 got what he wants but it hadn't been highlighted. It's
20 not specific. I think Your Honor, it's easier for Your
21 Honor. You can do it the same way every time.

22 THE COURT: I think y'all both are on, y'all both
23 understand the risk. But we are going to allow enough
24 voir dire to get indications of their willingness to
25 understand, appreciate and consider mitigating factors.

1 That's what they're supposed to do and that's what we are
2 going to seek out. All right. So yes, we can do as you
3 say but there's nothing specific yet written down that I
4 will ask this question or not ask that question. I'm not
5 saying that right now. But to the extent y'all's motion
6 asked, I read on the last page, allowing a voir dire so as
7 to appreciate and understanding of mitigation efforts by
8 the jurors. Yes. We're going to do that, without
9 staking. All right. What's your next one.

10 MR. YOUNG: Your Honor, motion number 56, motion for
11 constitutionally adequate voir dire is a motion in regards
12 to the standards appropriate for the Court in determining
13 whether or not a juror is substantially impaired in their
14 ability to follow the law. And obviously in Wainwright
15 and Witt and a long line of cases from the United States
16 Supreme Court had said that the goal, the dividing line
17 for the Court on when a juror is impaired or non-impaired
18 and when a juror is substantially impaired is for Your
19 Honor to determine. But the line has never been and it
20 always seems to be in these cases, jurors who often lean
21 one way or the other and there is different cases that say
22 leaning is not a problem. It's whether or not had they
23 gotten leaning so far that they are substantially
24 impaired. I think those line of cases is incorrect and
25 that Your Honor needs to be firmly convinced that a juror

1 has no bias towards any particular penalty or any
2 particular piece of evidence. And if Your Honor has any
3 reasonable doubt about a particular juror's ability to
4 render an impartial verdict then that juror should be
5 removed by Your Honor for cause. I don't know where the
6 line is for any particular person on, well, that's
7 substantially impaired and this is really close to
8 substantially impaired but maybe not. And I think that
9 the Court needs to recognize that and the Court needs to
10 be very cautious. Because one juror, one improperly
11 qualified juror means that you have to redo the whole
12 thing. One improperly unqualified juror, one
13 substantially impaired juror is qualified and sat, then
14 even if we have to use a strike on them and they were
15 improperly qualified that case has to get done again and
16 the appropriate remedy for that would be reversal. The
17 questions that the State obviously keeps suggesting, will
18 you follow the law, won't you agree to follow the law,
19 won't you sit and listen to this, won't you consider
20 anything that the State or the Defense brings you. Those
21 questions are not proper questions. Those questions do
22 not ferret out whether or not a person is biased. And the
23 United States Supreme Court in the case of Morgan vs.
24 Illinois has said that that question doesn't tell you
25 anything about whether or not a juror is substantially

1 impaired. That question, jurors will answer that question
2 the way that the Court wants them to answer it. Won't you
3 put that aside and not consider it and follow the law as I
4 charge it. And a juror is going to say yes without
5 knowing that they are biased, and we don't get to their
6 bias where that is what the standard for voir dire is.
7 Regarding the issues of law, the Judge's explanation of
8 the legal principle and the jurors promise under oath to
9 accept and follow the law is only one step on inquiry.
10 The jurors need to truly understand legal principle issues
11 and Counsel should always have the opportunity to ensure
12 that a potential juror understands the vital legal
13 principles of the case.

14 THE COURT: Am I'm missing something that once we get
15 into the voir dire y'all are going to pare down, I
16 presume, maybe I shouldn't presume. Your voir dire
17 questions and have them in general, I don't know how many
18 you're going to ask them, 8 or 10, whatever, however many
19 you are going to ask and then there's a follow-up
20 question. Isn't that where you are getting into what you
21 are going to object to or they are going to object to is
22 the follow-up question.

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay. Well, isn't that appropriate right
25 then?

1 MR. YOUNG: Well, I think we need to have --

2 THE COURT: -- ground rules.

3 MR. YOUNG: Some ground rules before we get to that
4 question. And the State has consistently, on all the
5 hearings on this case, particularly with regard to
6 publicity, is that the appropriate response is always,
7 well, can you put that aside and be fair and impartial and
8 follow the law in your oath as a juror as I charge you.
9 And their yes response to that, under United States
10 Supreme Court case law, is meaningless. And our position
11 is that those questions, those types of questions should
12 not even be asked. How does it affect you, what do you
13 think, do you form an opinion, are there appropriate
14 questions. But just like, just tell me you will set it
15 aside, don't tell us what you heard, don't tell us how you
16 felt, don't tell us what your opinion is, won't you agree
17 to set it aside and be fair and impartial is not a valid
18 question to develop bias. And what we're trying to do is
19 figure out whether or not we have a biased juror. And the
20 only way to get to that is to ask them open and honest
21 questions and presume that they are going to give us open
22 and honest answers. Just because, obviously just because
23 somebody heard about the case does not disqualify anyone.
24 And that's the point.

25 THE COURT: Would it not be easier for us to, y'all

1 present your list of voir dire questions or what you, I
2 mean, I said 8 or 10. I don't know how many questions
3 y'all are going to ask aside from the ones I ask.
4 Certainly you are going to have a focus of questions and
5 they are going to be repetitive because we are going to do
6 this over and over and over. So you are not going to
7 start over every time and go, all right, give me the list
8 of questions for panel number three and they will be
9 totally different from panel number one. They are all
10 going to be the same, very similar. Wouldn't it be easier
11 to, I think I was correct, is the follow-up question that
12 everybody is worried about suggesting this or hemming the
13 jury in. Why don't we have the perspective 8 or 10
14 questions the State's going to ask and the 8 or 10
15 questions Defense is going to ask so we can kind of
16 anticipate the follow-up questions and say, okay, this is
17 what the State's going to ask and this is what the
18 Defense, why aren't we doing that.

19 MR. HUBBARD: I will tell you in the past, Your
20 Honor, we've been very limited on what we ask, just
21 because, here is our goals, really fall into the set mold
22 that has already been established. You don't have to
23 create a new process here. We would argue that the ground
24 rules are important. It begins with Lockhart v. McCree,
25 which is 476 U.S. 162, it is a 1986 case. And you're

1 looking at whether somebody's views would substantially
2 impair their ability to vote life or death. And when you
3 look more specifically at South Carolina, what does that
4 mean. More specifically you can look at State v. Plath,
5 the second trial on Plath, which is at 313 S.E.2d 619, it
6 is a '84 case. And they said the appropriate testing is
7 can the juror actually vote for death, not just consider
8 death. And you can flip that around. Can you actually
9 vote for life, not just consider life. Those are
10 appropriate questions for us when we have got a juror on
11 there. All right, you have heard, can you consider life,
12 can you consider death, can you actually vote for life,
13 can you vote for death. That's the specific. They also
14 said in State vs. Woods, a South Carolina case, 607 S.E.2d
15 57, 2004 case. A juror's opposition to the death penalty
16 will disqualify him if those views would prevent or
17 substantially impair his ability to perform his duties as
18 a jury in accordance with his oath. So we've taken a
19 federal standard by the U.S. Supreme Court and applied it
20 in our cases. Ultimately it comes down to Your Honor.
21 And what I am hearing from this juror, does it sound like
22 his views would substantially impair his ability to do his
23 job for both the State and the Defense. That's it. We
24 don't really need to get into rule specifics because we're
25 not going to know. There may be something a juror, a

1 perspective juror says that triggers some questions that,
2 you know, we want to follow-up on. Maybe activities a
3 juror is involved in or something like that. But I will
4 tell you from our perspective, from the State's side, we
5 are usually fairly limited in how far we delve in. We
6 just want to know, can they actually do it.

7 THE COURT: All right. Mr. Young, you want to
8 respond to that?

9 MR. YOUNG: Nothing, Your Honor, as long as they, the
10 question is whether they can actually do it in context,
11 and that if after a conviction for murder and the proving
12 of a statutory aggravated circumstance.

13 MR. HUBBARD: Sure. We agree. We are not going to
14 ask them to put somebody to death without saying follow
15 the law.

16 THE COURT: Okay. And certainly we are going to, and
17 to the extent your motion asks for, to allow the State and
18 Defense to engage in adequate voir dire, I can grant that.

19 But when you get down to the specifics is when I deem it
20 not in discretion as adequate. That's overly adequate
21 maybe. That's where we are going to get into those
22 problems when we get to that particular question, and we
23 will get to those.

24 MR. YOUNG: We will deal with it when we deal with
25 it.

1 THE COURT: Yeah, okay. So to the extent you are
2 allowed adequate voir dire is granted.

3 MR. YOUNG: Your Honor, I'm going to withdraw Defense
4 motion number 58. I understand what it's asking for, or
5 what I was asking for at the time that I filed it, to
6 preserve, you know, historical Batson challenge and what
7 the State's practices have been in the past has certainly
8 been an issue before the Supreme Court in a number of
9 cases. Including most recently, I think, in the United
10 States Supreme Court where they tried a death penalty case
11 for the sixth time in which the issue was the State had
12 systematically excluded African Americans from the jury in
13 the previous five trials. I don't have the historical
14 information for the State and at this point in time, I
15 don't have time to get it and do the research on it so I'm
16 withdrawing that motion.

17 THE COURT: Okay, withdrawn.

18 MR. MADSEN: Next one, Your Honor, would be motion
19 number 63. We are asking, I guess, I'll let Your Honor
20 grab it.

21 THE COURT: I got it.

22 MR. MADSEN: I guess the initial question and it
23 could be kind of short, is if Your Honor is going to allow
24 the jurors to take notes. If Your Honor is not going to
25 allow the jurors to take notes then this is an extremely

1 short motion and --

2 THE COURT: I'm going to allow them to take notes,
3 because I always do. That's been my practice to let them
4 take notes. I've never had this request. But I allow
5 jurors to take notes.

6 MR. MADSEN: And, Judge, so obviously if you're going
7 to allow them to take notes, we ask obviously an
8 instruction on those notes, but also that those notes be
9 made a part of the record. Obviously with notes, Your
10 Honor is looking at those jurors, those notes are for a
11 person's independent recollection. Our worry is that if
12 you have four or five good note-takers that they almost
13 kind of become scribes for the entire jury. That those
14 notes are used to pull back or to show, using their notes
15 to persuade and/or admonish other jurors. Obviously we
16 are looking for 12 individual jurors with their individual
17 recollection of testimony. And like I said, not five or
18 six of the best note-takers that can influence. And we
19 just believe that those need to be part of the record,
20 Your Honor, when the case is over.

21 MR. HUBBARD: Your Honor, I have no objection to the
22 jury taking notes pursuant to a directive from you on the
23 ground rules for that. Your Honor has done that before.
24 I think that works fine. I have a very strenuous
25 objection to preserving their notes. I think that invades

1 the province of the jury. It's kind of a window into what
2 happened behind closed doors. We're not allowed to go
3 there. That's like the holy of holies in the legal
4 system. And what I think happens, or can happen, I have
5 certainly seen it in Capital cases. Years later they find
6 a juror. They start asking what happened behind closed
7 days and then we face motions for new trials. If you take
8 somebody's notes and you take them out of context, that
9 jury, there may be some notes there where somebody
10 expresses an opinion and that jury discounted it, and all
11 12 people, including the person that took the note said,
12 you know, when I wrote that that's how I felt but I
13 understand now, I am now with the jury. You won't know
14 that. So those notes can be extremely misleading but it's
15 invading the province of the jury. You're going into the
16 holy of holies. I think it's improper. I think the
17 standard practice has been because of that their notes are
18 destroyed, they don't get to take them home, the Court
19 keeps them, the Court shreds them, they are gone. Their
20 statement is not what's on a piece of paper, it is what is
21 on that verdict form. So it's either going to be one
22 verdict for life, or 12 signatures for death should we get
23 to the penalty phrase and one signature for guilty or not
24 guilty, or guilty by, not guilty by reason of insanity or
25 whatever other options there are. That's it. That's the

1 only thing we get to see in handwriting from the jury.

2 THE COURT: All right.

3 MR. MADSEN: Again, just obviously we want to make
4 sure that their verdict is based, or is appropriate. And
5 so we do believe that the notes should be made a part of
6 the record, Your Honor. We think that that is extremely
7 important.

8 THE COURT: Well, I tend to lean with the State, but
9 not knowing how the trial's going to go I'm going to sit
10 on that. And if I, something comes up and I may change my
11 mind. But I'm not going to say they will be destroyed or
12 they will be made a part of the record. The jurors will
13 be allowed to take notes and I'll decide at the end what
14 I'm going to do with them.

15 MR. HUBBARD: One final, and just a follow-up, they
16 want to just make sure the jury followed the law and did
17 what was proper. That means you are going to look at
18 notes and try to interpret what they did in the back room.
19 That's why I think it's forbidden.

20 THE COURT: Yeah. I'm going to allow jurors to take
21 notes and I'm going to give my standard instruction in a
22 nutshell for the Defense team since the State's been
23 around, Mr. Madsen's been in the courtroom numerous times
24 with the other two. I give the instruction, in this trial
25 it will be mostly likely long enough, something along the

1 lines of, if you would like a notepad, get one, if you
2 want to doodle on it or whatever. I take notes. I'm
3 required to as the Court. You may take notes. You don't
4 have to. But a note-taker's notes do not trump a
5 listener, an auditory learner's recollection of what they
6 heard. Everybody has an equal vote no matter what,
7 period. That's kind of the gist of what I explain to them
8 about notes. Notes don't trump memory. Memory doesn't
9 trump notes. Kind of what I explain to them, so y'all
10 know. All right. So jurors are going to be allowed to
11 take notes. I'll decide what to do with the notes at the
12 end. All right. What's next.

13 MR. YOUNG: Judge, next is motion number 70. A
14 motion for procedures to ensure that most challenged
15 questions of perspective jurors complies with the
16 Defendant's State and Federal Constitutional guarantee of
17 a fair and impartial trial. So when a juror gives a
18 response that would be the basis for a Court caused
19 challenge. I don't know how the Court wants to deal with
20 this. I have a number of guidelines and suggestions as
21 part of the motion. Please understand, I'm not suggesting
22 that the Court would, in any way, do anything improper.
23 I've never tried a murder case, Your Honor. I can't
24 imagine that you would start yelling at me during jury
25 selection and --

1 THE COURT: Yeah, that's my nature.

2 MR. YOUNG: And calling me out or doing anything that
3 would in any way suggest that I was doing something
4 improper to the jurors or any of those type things. But
5 what often comes up in dealing with rehabilitation, which
6 it would be our position that rehabilitation would just be
7 improper. That if a juror says, you know what, at the end
8 of the day for me, I can't vote for life. Then that
9 should be the end of the inquiry and that juror should be
10 excused. This thing about, well, the State can get back
11 up and say, well, you know, won't you consider. And get
12 the jury to say, well, you know, yeah, maybe I will
13 consider it. That process is a back and forth process
14 where we can take, you know, an hour on a juror where both
15 sides ask questions that the juror can give different
16 responses to. And Your Honor, of course, has to make the
17 decision about how, when Your Honor is satisfied that they
18 have given a response which Your Honor believes
19 substantially impairs their ability to follow the law. I
20 don't know what the best suggestion would be. I think
21 that questions about, particularly from the Court about,
22 well, won't you put aside your feelings about that and
23 decide the case on what you hear here are improper and
24 those types of magic questions don't, they don't
25 rehabilitate a juror's bias when they have already

1 demonstrated a bias. And that the procedure that the
2 Defense would suggest would be that when a juror gives a
3 disqualifying response that, or the Court feels that a
4 juror may be substantially impaired, rather than the Court
5 attempting to rehabilitate the juror or going back and
6 forth between the State and the Defense on a particular
7 juror, that the juror should be excused. The Court should
8 address your concerns with the State and Defense and
9 decide whether or not a follow-up question or two is
10 necessary as to the issue that substantially impaired the
11 juror. It would help things move faster because once a
12 juror gives an answer that does substantially impair them,
13 that juror can go ahead and be excused and we can move on
14 rather than wasting a lot of time trying to rehabilitate
15 jurors when really that's not the goal and the purpose of
16 voir dire is to find impartial jurors.

17 THE COURT: Well, is it a common practice to, on
18 something like that, if they give an answer which would
19 maybe disqualify them. I guess what I could envision is
20 first you ask the question and it's disqualified one way
21 or the other. I mean, you are going to fall on one side
22 of the fence or the other in your answers. The person's
23 side wants to rehabilitate it, it's kind of like when you
24 get a witness on the stand, are you sure what you saw.
25 Yes. Well, are you really sure you saw, it was kind of

1 dark. Well, you know, it was kind of dark. And they go
2 back and forth one more question, one more question. Once
3 that starts, then we kind of start spinning our wheels and
4 every side tries to one up the last question. That seems
5 like that would be a better time for the Court to come in
6 and inquire briefly and make the determination whether
7 that qualification is not going, is that kind of how it
8 works.

9 MR. HUBBARD: It is. And that's why I think this
10 motion, I guess it's motion 71. I thought we were going
11 on motion 70. But motion 71, that you should somehow
12 restrict yourself ahead of time, before we even get into
13 this process on rehabilitation is extremely problematic.

14 MR. YOUNG: I'm discussing motion number 70.

15 MR. HUBBARD: Well, I thought it was --

16 THE COURT: It sounds like the motion we had, and I.

17 MR. YOUNG: They are very similar.

18 THE COURT: I can't remember the numbers. Y'all keep
19 quoting the numbers. Every question I have dealt with
20 thus is voir dire.

21 MR. HUBBARD: Right. And there's a world of them.
22 So like 70 was styled as motion to ensure any
23 post-challenge questioning of perspective jurors complies
24 with Defendant's State and Federal constitutional
25 guarantee of fair and impartial jurors. 71 says, motion

1 to restrict judicial rehabilitation of potential jurors
2 regarding death and life qualification.

3 THE COURT: Yeah.

4 MR. HUBBARD: Judge, here's the thing as I see.
5 You're the gatekeeper. You've got to hear what's going
6 on. You know when to shut it off. But I will give you an
7 example from a case where the initial response from a
8 juror would have made that juror disqualified. It's in
9 State vs. King at 377 S.E.2d 556, 1988, a Supreme Court
10 case. A juror, jurors come in here. They don't know
11 anything about our system. A juror said mitigating
12 factors of age and background would not make any different
13 to her. But when examined in context of the entire
14 record, she said she could be fair and impartial to both
15 sides and would accept and follow the law as charged and
16 could vote for either life or death. She ended up being
17 qualified. We will have people who bring their
18 conceptions of, misconceptions of law, maybe even of the
19 facts of this case. If we just take their initial
20 response, we've done them no good service and we've done a
21 disservice to both the Defendant and the State. The whole
22 process is, can you set that aside and follow you. The
23 law is you get to judge. So that's all we are asking. I
24 think to put cuffs on you now will really hamstring your
25 ability to be the good gatekeeper that you need to be.

1 THE COURT: All right. I pulled back the motion.
2 Motion 56, motion for constitutional adequate voir dire.
3 I said we're going to allow adequate voir dire. Now we
4 are going to, what's excessive voir dire, I think, is more
5 or less what you're talking about now. Why didn't y'all
6 make all of this in one motion.

7 MR. MADSEN: Judge, the crux of the problem, I think,
8 is that you ultimately are asking a jury to be able to
9 self-assess their own biases which they might not even
10 realize they have. And I think that that's kind of the
11 problem. And those motions are similar. But you get in
12 there and you ask kind of that magic question, can you be
13 fair and impartial and put everything, you know,
14 essentially and acceptable and sure. I'm someone who can
15 do that. Now obviously through a portion of the voir dire
16 we try to figure out that. But I think that that just
17 makes it extremely dangerous when someone gives, on the
18 record, certain answers and then we kind of jump back and
19 say, hey, can you do that, because we're asking them to
20 self-assess their own biases.

21 THE COURT: I mean, I've not gone through a Capital
22 jury selection yet. I've had three cases and not this
23 yet. But isn't it done, can't we have this, I mean, after
24 someone gives an answer that perhaps presents them in a
25 position of one of these factors. And they are asking a

1 follow-up question, can you set aside and still be fair
2 and impartial, consider everything, all of that. No
3 question it seemed to be unfair to either side of somebody
4 who is very far, high or low, left or right, whichever
5 side you want to call it on, to try to pull them back in
6 the middle and say you're really in the middle, aren't
7 you. And talk them into an answer they are not really
8 comfortable giving. That's what neither side really wants
9 to get into. But you want to have a better idea if that's
10 going to be the question in case they are qualified so you
11 can strike them. And you all are trying to get to know
12 these folks. And now, Mr. Madsen, you are pointing out
13 that maybe the folks need to know themselves also that
14 they are not aware of. I can understand that. But isn't
15 there an opportunity before, I mean after the panel, for
16 y'all to argue, say, Judge, those answers and the
17 follow-up questions then present a problem for us because
18 of these same reasons. Isn't there kind of a, after we
19 voir dire them in panels to say, I've got a problem with
20 juror number 12, you did this. The State asked this
21 question, we asked the follow-up question and, Court, you
22 did this and you did that. And this is exactly what we
23 are talking about. Isn't that still there for me? Okay.
24 I wanted to make sure that I wasn't flying blind in this
25 thing. I thought it was. Okay. I'm more comfortable

1 with this now.

2 MR. YOUNG: And here's what I am trying to avoid and
3 what I think the Court should consider is that when a
4 juror gives an answer that's problematic, to allow a
5 follow-up question on that specific thing to see whether
6 or not they are impaired might be appropriate. But I
7 don't want to have a juror who says, you know what, I'm
8 going to give the death penalty all the time, somebody
9 convicted of murder, statutory aggravated circumstances
10 proven. And I say, fine, thank you very much. Now, I
11 have another ten minutes of voir dire that I could do
12 about different other things that that same juror would
13 say, background, doesn't matter to me, mitigation doesn't
14 matter to me, I can't consider mercy, I don't think life
15 is a substantial, is a substantial punishment, I'm not
16 okay with how the burden of proof works or the presumption
17 of innocence or presuming somebody guilty. I mean, there
18 are a number of impairments that a juror can have and we
19 would just like to be able to say the juror said, they are
20 on that death penalty, let's get them out of here and move
21 on rather than me doing another ten minutes of different
22 impairments that they also have.

23 MR. HUBBARD: Judge, I know there's going to be a
24 point where you're going to go, it's obvious. But here's
25 the one thing I want to avoid. I've done a number of

1 these where I've had jurors who are both prone to life or
2 death. That's their personal beliefs. They come in and
3 they'll say, well, I'm uncomfortable with the death
4 penalty, I don't think I can give the death penalty.
5 Well, generally we don't leave it at that. Sometimes on
6 those answers I'd like to. But I'll ask, well, do you
7 understand the law says in order to sit on a jury you need
8 to be able to not just consider the death penalty, you
9 have to actually be able to give it should you feel that's
10 appropriate. And life, could you actually give life. You
11 have to go beyond their belief or their prejudices and ask
12 them what you ask every juror. Can you set that aside.
13 You have to be able to do that. If you don't, then we are
14 bringing jurors in who have no clue what our system is or
15 what their obligations are. And we are just going off of
16 their street knowledge which is absolutely inappropriate.
17 But once we get to that, I tell you what. I'll give you
18 an example. I had a fellow, very prominent in the Jewish
19 community took the stand and said I'm against the death
20 penalty. The Judge followed up. It was Marc Westbrook.
21 He said in every circumstance, he goes you know I'm
22 Jewish. If Adolph Hitler were on trial for his life, I
23 could not give him death. That was pretty solid. We
24 didn't ask any questions. The Judge cleared it up right
25 there and we moved on. But sometimes you get those

1 wafflers who are like, you know, I guess I really could
2 consider that based on that evidence. A lot of people
3 don't think about this.

4 THE COURT: Educating jurors as to what the law is
5 not is one of my biggest jobs.

6 MR. HUBBARD: Yes, sir.

7 THE COURT: I do it all the time. The law is not
8 this, because that's on TV. I mean, every case on TV is
9 tried inside two hours from crime to the conviction.
10 Never happens. All right. On these two, motion 70, are
11 we on 71 already or not because we're kind of discussing
12 everything together.

13 MR. HUBBARD: Yeah. I think that was the same thing,
14 Judge.

15 MR. YOUNG: I think we would like to be heard some
16 more on 71 though.

17 THE COURT: All right. Well, let's hear some more.
18 But I would like kind of a framework of the questions that
19 both sides are going to ask. Certainly I think that would
20 be more efficient. And the example Mr. Young gave, very
21 similar to the example the Solicitor gave. It's obvious,
22 you know, we are kicking and moving them. If it's not
23 obvious, then we'll delve reasonably. So that is kind of
24 my feeling and not an absolute ruling. I think it's just
25 going to be dependent on the answers. So let's hear more

1 on 71.

2 MR. MADSEN: And obviously, Judge, 71 ask for a
3 restriction on the judicial rehabilitation. And let me
4 just kind of give you a basis for that. It's obviously
5 Your Honor is in a position of authority and inherently
6 you command respect, as you should, within the courtroom.
7 And our worry is that when the Judge rehabs a juror with
8 kind of vague language that's kind of leading to, hey,
9 what's the desired answer, that the jurors answers cannot
10 be considered valid or trustworthy in a Capital case. In
11 other words, if we are forced to use a peremptory strike,
12 it's just that is err to basically rely on a juror's
13 assurances of impartiality, when the record shows from the
14 questioning that they have a bias that would substantially
15 impair them. And we believe that Your Honor should err on
16 the side of caution by dismissing rather than trying to
17 rehabilitate a biased juror. Obviously you are the only
18 person in this courtroom whose primary concern or primary
19 duty is the selection of a fair and impartial jury. And
20 we believe that it would be an abusive of discretion by
21 asking rehabilitative questions that are more of
22 instruction on what the desired answer should be. They
23 are just kind of a neutral attempt to determine that
24 juror's impartiality.

25 THE COURT: And to that end, the backside questions,

1 once we're talking about a particular juror or disqualify
2 them because of those biases, that's on the, what I just
3 asked a moment ago. Absolutely. I agree with you. If
4 I've suggested an answer in my questions and there is
5 still an issue there, certainly I would understand your
6 argument. Consider that is, Judge, we asked this and
7 these were his answers, he appeared bias. The questions
8 you then ask, he followed your lead and went in the
9 direction and I understand that.

10 MR. MADSEN: And that's our worry.

11 THE COURT: Right. And I don't think that should, I
12 think that's a valid motion. But I hope I do a better job
13 than that.

14 MR. HUBBARD: I think you will. And, Judge, the
15 other, the flip side of the concern is that I've heard
16 from the Defense before in other cases is, Judge, we were
17 cut off. We wanted to try to rehabilitate that juror.
18 That juror just stated their opinion or their gut feeling
19 and we didn't get to explore. So it all falls back on
20 you, Judge. So I think to restrict yourself now would be
21 improper. I think you've already said you're not going to
22 do that. You're going to hear what they have to say, and
23 then we'll --

24 THE COURT: No, I'm not, and I'm going to do my best
25 to let everybody get a fair shake, adequate, including the

1 jurors. Let them understand their, perhaps not aware of
2 their predilections. All right. What's next, 76.

3 MR. MADSEN: Judge, we would just ask to preclude the
4 State from any testimony as to the privilege of someone
5 who is a, who is to receive a life sentence without parole
6 would receive, in other words, access to the yard, word
7 conditions, things along those lines. We just believe
8 that that injects an arbitrary factor into the jury's
9 sentencing. Obviously they've got to make a decision
10 between life and death, if we get to that point.

11 THE COURT: Y'all intend to submit testimony in that?

12 MR. HUBBARD: In the history of this office I don't
13 think we've ever gone into that. But we have after the
14 Defense as brought up adaptability, and they've usually
15 put up a prison expert for years. It was Mr. Aiken. He
16 just traveled the whole circuit, so we saw him all the
17 time. Donny Myers questioned him. It's usually, it's
18 your testimony today, saying you've testified, the umpteen
19 million times you've testified and his answer was always
20 yep. That's about how long it took.

21 THE COURT: You wouldn't anticipate calling anybody
22 other than rebuttal if they bring it up.

23 MR. HUBBARD: Correct, Your Honor.

24 THE COURT: Good enough. So, no, they are not going
25 to do that. That was easy.

1 MR. MADSEN: That's why they give it to me.

2 MR. YOUNG: Your Honor, number 78 is a motion to
3 allow, well, allow the Defense or requiring the Court to
4 instruct the jury as to the result of a non-unanimous
5 penalty phase verdict. Of course, South Carolina law is
6 clear that when the jury, good faith and deliberates and
7 is unable to arrive at a unanimous verdict, then the Judge
8 just takes the case and sentences to life. The juror
9 needs to be made aware of that information in determining
10 the appropriate punishment. The law is that jurors are
11 allowed to give mitigating factors any value that they
12 want. They can give any one mitigating factor the value
13 of life if they so choose. The decision about whether or
14 not to kill another person is an individual moral judgment
15 which you're going to instruct them that they never have
16 to give up. But when jurors come back and they say, well,
17 we're not unanimous. We've decided about it, we've talked
18 about it, we've heard everybody out about it. My
19 individual moral judgment is different than theirs, the
20 jury needs to know that that is not a failure. It doesn't
21 end in a hung jury. And that's, their fear is always,
22 well, they don't agree now. They are going to speculate
23 as to what's going to happen and they shouldn't be
24 required to speculate as to what's going to happen. Just
25 tell them. Look, the Judge is going to take the case and

1 sentence.

2 THE COURT: All right. I understand your motion.

3 MR. HUBBARD: And I think the danger in that is a
4 PCR. Because here is the argument. The Judge let us,
5 told us that if we weren't unanimous and if we got hung up
6 that he's going to give life. So we need to reach some
7 kind of verdict. And if they come back death, that
8 question is going to be, oh my gosh, was it because the
9 Judge told them the consequences of what would happen if
10 they couldn't reach a verdict. So eleven jurors beat down
11 that one juror who's thinking he's holding out. I think
12 it's a can of worms. I think what I would ask you to do
13 is what every other Judge in South Carolina has done. You
14 let them know if they give life, that's exactly what life,
15 what it means, that person will serve life until they die
16 in prison. And if they give death, they need to know that
17 person, the Defendant, will be put to death, period. And
18 if they can't reach a decision, you do your charge and see
19 if all of them have been satisfied and then it ends right
20 there, because I think that adds a burden into that jury
21 room that should they give a death sentence, after they
22 were struggling, that now there might be a PCR issue
23 because you told them what would happen. And so, now
24 eleven jurors beat down that one and see, and they use
25 that as leverage. So I think there's a danger there. And

1 I don't know any other Court that has gone that far.

2 There may have been but I don't of it.

3 MR. YOUNG: I am happy to provide the Court jury
4 instructions that are in this line that have been given in
5 Capital cases in South Carolina. A number of Courts have
6 told the jurors what happens in a non-unanimous penalty
7 phase verdict. And jurors' misrepresentation and
8 uncertainty about the result, inevitably push a jury
9 towards the death sentence. It's not a PCR issue to tell
10 them what the law is. We just want them to know the truth
11 and to know what the law is. And as the sentencer they
12 are entitled to know the consequences of their verdict.
13 And for them to get back there and beat each other up,
14 well, it's going to be a hung jury. Somebody's going to
15 have to do it again, that's not true. That's not what the
16 law is. The law is the Court will take the case and
17 sentence. I think you usually tell them and sentence to
18 life. But if that's an issue for the State, then you can
19 say and sentence. But the issue is the jurors needs to be
20 told that once they arrive at what is for them, their
21 individual moral judgment about who ought to live and who
22 ought to die, they are entitled to that belief, that
23 belief is entitled to respect. They don't have to give up
24 that belief. And the failure of everybody to agree as to
25 what their individual moral judgment is, is not a failure.

1 It's not a hung jury. The case doesn't have to get tried
2 again. The Court takes the case or the Court sentences
3 pursuant to the statute.

4 MR. HUBBARD: Tell you what, Your Honor, how about
5 this. We're kind of speculating there's going to be a
6 second half. When we address it at the conclusion of the
7 sentencing phase you can see specific language that the
8 Defense wants to propose for a jury charge.

9 THE COURT: Yeah, I would like that, I would like to
10 see a jury charge and I'll decide that then.

11 MR. HUBBARD: Yeah, let's just handle it then.

12 THE COURT: That's not a bad resolution. I'll
13 consider your charge. Let's see it then.

14 MR. YOUNG: The jury has to address it in voir dire,
15 because they have to be, they are asked, are you going to
16 give up your sincerely individual moral held belief just
17 for the sake of getting anonymity.

18 THE COURT: Well, see, you just changed your motion.
19 You just switched gears on me. You were talking about
20 what I'm going to tell the jury in my instructions and now
21 you're going to voir dire.

22 MR. YOUNG: Well, the voir dire is based on what you
23 are going to instruct them, what the law is, here is what
24 the law, all the voir dire is, here's what the law is.
25 Can you follow that law or are you biased in your, or

1 substantially impaired in your ability to follow that law.
2 I mean, that's all of voir dire.

3 THE COURT: No, that's a different question. I mean,
4 it is and it isn't. You've changed gears on me.

5 MR. HUBBARD: In fact, it would run afoul in State v.
6 Bennett which is the 1997 Johnny Bennett case at 328 S.C.
7 251. It's all about, would you vote with the majority.
8 Going to that question about if you, you can't ask a
9 perspective juror about holding out. And that's the only
10 way this would even come up. So it is way premature. You
11 can't do it in voir dire.

12 MR. YOUNG: But Bennett was in voir dire where a
13 juror said he would give up his vote in order to go with
14 the majority is improperly qualified and the case got
15 reversed.

16 MR. HUBBARD: What happened is, no. The Court said
17 you can't ask jurors would you vote with the majority.
18 That was, in voir dire they kept saying, you know, would
19 you give up your position and vote with the majority or
20 would you hold out. Would you hold out. And you can't do
21 that. A jury charge is where you handle it. In voir dire
22 it's a no-no. And that's case law.

23 MR. YOUNG: And just, I would like the Court to hold
24 it and read it.

25 THE COURT: I think I want to pull that and read it.

1 What you are asking me is what I consider instructing the
2 jury on this law. I understood it to be the jury of the
3 people who are going to decide the case after they have
4 been selected. And then you said, no, I want to ask that
5 during voir dire too. That's two separate questions.

6 MR. YOUNG: I respectfully disagree. I think that
7 that's the appropriate law. The jury needs to be charged
8 and --

9 THE COURT: But charging it, charging it and voir
10 diring is where I'm distinguishing your argument. You're
11 saying charging it. I'm thinking I'm instructing the jury
12 and that's what I see. Voir dire is when you tell the
13 perspective juror this is the law and can you follow it,
14 do you understand it, that's a different question for me.

15 MR. YOUNG: I understand.

16 THE COURT: And I want, I'm not ruling on this. I'll
17 read Bennett.

18 MR. HUBBARD: And I think I misconstrued it a little
19 bit, got it backwards. But it was where a juror said I
20 believe I would have to go with the majority of the jury
21 and they got qualified. That was improper. But the whole
22 point was coming to them if you're holding out.

23 THE COURT: Right. So I'm not going to rule on that
24 one. I'm going to read Bennett and then we can readdress
25 it again. I need another break. So about 10 minutes.

1 MR. HUBBARD: There may be another case on that
2 issue, too, if that's all right.

3 THE COURT: I'll consider whatever y'all got on that.
4 We'll come back in here straight up noon.

5 (Whereupon, a short break was taken.)

6 THE COURT: What else for today, are we trying to get
7 done. What we got left, so that we can either plan for
8 lunch or plan on not for lunch. I'm planning on not
9 missing lunch. So where do we stand, either side.

10 MR. YOUNG: I think there is 12 left.

11 MR. HUBBARD: We were noticed for three more motions
12 here, 80, 81 and 82.

13 MR. YOUNG: Sorry.

14 MR. HUBBARD: Well, apparently there's more. I'm
15 sorry. And, Your Honor, going back to the last motion we
16 argued. If Your Honor is fine, we'll just at some point
17 maybe send your law clerk some law.

18 THE COURT: Okay. That's fine.

19 MR. HUBBARD: And that way you don't have to rule
20 now.

21 THE COURT: So what are we going to do. We're going
22 to get these last few done and then adjourn, or what you
23 all think. We're going to work to lunch and stop at 1:00,
24 is that, we are going to get the last few done.

25 MR. YOUNG: I think we can get them, do them by 1:00.

1 THE COURT: Okay. Let's go then, call your next one.

2 MR. YOUNG: Your Honor, the next motion is motion to
3 enjoin death qualification of the jury based on Hobby
4 Lobby. The title of the motion is a little bit bogus.
5 Here's the crux of the motion. The United States Supreme
6 Court in a case, Barrow vs. Hobby Lobby. Burwell vs.
7 Hobby Lobby, 134 Supreme Court 2751, it's a 2014 case,
8 decided that the Corporation's religious rights were
9 infringed upon when they were forced, if they were forced
10 by the Federal Government to provide contraception as part
11 of their health care. I understand this a little bit over
12 there. But here's the thing, the Corporation had a
13 religious right to not participate in the government
14 program. That, in my motion and what I'm trying to equate
15 is that jurors who have a religious objection to the death
16 penalty should not be disqualified from sitting in a death
17 penalty case. If a juror comes in there and says I'm not
18 going to vote for the death penalty, it is against my
19 faith to consider killing somebody, then that juror should
20 still nevertheless be qualified because the United States
21 Government and this Court should not require a juror to
22 affirmatively disavow their religious beliefs in order to
23 be qualified to serve. And the cases of Wainwright and
24 Witt are improper, those were decided before the Hobby
25 Lobby decision. And that those cases where jurors who had

1 a religious scruple against the death penalty should
2 nevertheless be qualified to serve. They can't be
3 required to give up their religious belief. And that's
4 why the State has peremptory strikes. They can remove
5 those people through the use of their peremptory strikes.
6 But you should, you can't require the juror to give up
7 their religious beliefs in order to exercise their right
8 to serve as a juror.

9 THE COURT: I'm not sure I follow that.

10 MR. GRAHAM: What it is, Your Honor, is the restating
11 of motion 53 that we started with today. Because, I
12 think, Mr. Madsen called it conscientious objectors. So
13 what I believe Mr. Young is saying is, just because Hobby
14 Lobby stands for the principle, that is what Mr. Madsen is
15 arguing. Hobby Lobby for the principle that an individual
16 who, because of their religious beliefs could not give a
17 death penalty and give life, should be allowed to be on
18 the jury and we should have to use a strike, a peremptory
19 challenge as opposed to striking for cause. State vs.
20 Tucker, 334 South Carolina 1, 1999 of the South Carolina
21 Supreme Court. Religious beliefs would prevent jurors
22 from considering judgment of another person would prevent
23 or impair performance of the duties of the jury. So State
24 v. Tucker stands for the proposition that that person is
25 not a proper juror. You've already ruled on the fact that

1 we're not going to change South Carolina law and have two
2 different juries. We're not going to have a guilt and
3 then a penalty jury. We're going to follow whether they
4 are, that is a death qualification, I mean, that they
5 have. So the State would be opposed to allowing or
6 requiring us to use a strike and saying, when somebody
7 comes in and says, because of my religious beliefs I could
8 not give death, I would give life. That's a strike for
9 Your Honor to rule that they are not a juror because they
10 cannot be, that would substantially impact their ability
11 to be fair and impartial. The Defense wants us to have to
12 use a challenge to strike that person and that's not what,
13 that's not what the case law says.

14 THE COURT: Explain that one more time, because
15 that's kind of how I'm hearing it is, y'all don't want
16 people who are bias toward, steer toward imposing the
17 death penalty and having to take strikes from those that
18 are predisposed, even though they can set aside under
19 some, it sounds like the mirror image question of, we
20 don't want to have to use our peremptory strikes but we
21 want them to use theirs. That's kind of what it sounds
22 like to me.

23 MR. YOUNG: It is what it is.

24 THE COURT: Okay.

25 MR. YOUNG: I mean, I believe that the ruling that

1 the Unites States Supreme Court has set up to exempt
2 Corporations based on their religious beliefs should be
3 applied to jurors who have a religious belief or
4 conscientious objector to the death penalty. But that
5 should not disqualify them from serving. And then, you
6 know, if somebody has a religious belief against the death
7 penalty the State is made aware of that. The State can
8 use a peremptory strike for it but it shouldn't disqualify
9 them from serving.

10 THE COURT: All right. And you are not asking me to
11 distinguish between a religious belief and a moral belief.
12 I mean, that's more or less the same thing, isn't it?

13 MR. YOUNG: I believe so.

14 THE COURT: I would think so.

15 MR. YOUNG: But that was what the Supreme Court did.

16 THE COURT: All right. Well --

17 MR. YOUNG: This would be an issue of first
18 impressions.

19 THE COURT: I don't believe I can do it both ways.
20 Either they are qualified and can consider everything or
21 they can't. If they have a preconceived notion one way or
22 the other, we can't rehabilitate them and put them in the
23 middle, they are out and that is my decision on a juror by
24 juror basis, right?

25 MR. YOUNG: Yes, sir.

1 THE COURT: That's what I'm going to do. I'm not
2 going to kick them in if they can't be in the middle.

3 MR. YOUNG: Yes, sir.

4 THE COURT: All right. So, to that extent, the
5 motion's denied.

6 MR. YOUNG: Thank you.

7 THE COURT: All right.

8 MR. YOUNG: Your Honor, I know we've brought up this
9 motion a couple times. This is the motion to allow jurors
10 to submit written questions to witnesses at the trial.
11 There is a procedure outlined in South Carolina to allow
12 for juror questioning of witnesses. That procedure is
13 outlined in, it is Day vs. Kilgore. It's 314 South
14 Carolina 365, it is a 1994 case. And State v. Farrow, 332
15 South Carolina 190, a 1998 case. The procedure and the
16 concerns laid out in those cases for when jurors can
17 submit questions to witnesses are easily remedied by the
18 Court. If Your Honor were to allow the jurors, as they
19 are listening to testimony and they are taking notes they
20 could, on their own, not consult with each other. And the
21 testimony's finished, if they have a question that they
22 think didn't get answered, they could write that question
23 down, pass it to the Bailiff, the Bailiff collects them,
24 you review them, determine whether or not they are
25 appropriate or not appropriate. Were they asked and

1 answered and the jurors weren't paying attention or is it
2 something that we're not allowed to go into. If
3 appropriate, Your Honor reads the witness the question.
4 The witness gives the answer.

5 THE COURT: Doesn't that kind of put me in a position
6 of having to rule on bias questions. Like, you can't
7 answer, I can't let you ask that or the Court can't ask
8 it. The lawyers were smart to not answer that, not ask
9 that because that's not allowed in the rules.

10 MR. YOUNG: Well, yeah. You just told them that, I
11 am not asking that. I mean, it is no different than a
12 standard objection to a question.

13 THE COURT: I don't like that idea. I like the idea
14 of the jurors asking questions but I don't like the idea
15 of having to tell them, I can't answer your question and I
16 can't tell you why.

17 MR. YOUNG: I would disallow that question.

18 THE COURT: I wonder why the Judge won't let us ask
19 that question. It seems so obvious. That's what I don't
20 want that thought going through their head. Is that not,
21 am I wrong on that?

22 MS. MAYES: Judge, I am going to pass up cases that
23 he mentioned. He cited Day v. Kilgore. I'm going to go
24 ahead and pass that up for the Court. It is strongly
25 discouraged. It's clear in Day v. Kilgore. There is a

1 follow-up case as well. State vs. Farrow, a criminal case
2 in which the Supreme Court states they strongly echo the
3 Court's discouragement of any question proposed by jurors.

4 THE COURT: I mean, just the things that are coming
5 to mind now, is jurors, untrained jurors that aren't
6 lawyers don't understand the rules of evidence and the
7 biases and stuff. They're going, I wonder why, and have
8 that, wonder why.

9 MR. YOUNG: The wonder why is already there.

10 THE COURT: I know, but the fact that I got to --

11 MR. YOUNG: I wonder why the lawyer didn't ask that
12 question. That is already there. All we're saying is
13 that if the juror still has a question, write it down and
14 send it to us. We might ask it. We might be able to
15 clarify it. These jurors are going to be asked,
16 potentially asked to kill another human being. If they
17 have an unanswered question, we should at least attempt to
18 be able to answer it. If we can't answer it, that's fine,
19 but if they have a question then they should be allowed to
20 ask.

21 THE COURT: I don't think I'm comfortable with that.
22 I'm going to read these cases. But my gut feeling is
23 that's a can of worms that gets poured out and they go
24 everywhere. I don't think so. I don't like reading
25 questions from jurors. I'm always curious, I wonder what

1 jurors would like to write down. But I'm always fearful
2 of all the --

3 MR. YOUNG: It just helps everybody get to the truth
4 and so the jurors have all the information that they need
5 to decide whether or not to kill somebody.

6 MS. MAYES: Judge, the Court's opinion in State v.
7 Farrow is very clear. Your Honor, they reinforced that
8 our Supreme Court strongly discourages the submission of
9 any questions. There is a procedure outlined in Day. Day
10 was a civil case, Your Honor. A car accident. State v.
11 Farrow was controlling law.

12 THE COURT: I'm going to deny the motion. I'll read
13 these cases. If I change my mind, I'll come back and say,
14 okay, I'm going to allow a limited number but I don't
15 think I will but I understand.

16 MS. YONGUE: I've got to get all this back from you.

17 THE COURT: Yeah. You can do that. We should have
18 them, shouldn't we? We should, they should have been
19 given to us. I mean, if we can get them.

20 MR. YOUNG: What's that?

21 THE COURT: All the motions.

22 MS. YONGUE: Copies of the motions.

23 THE COURT: We're using the Court's copies right now.
24 That's where I'm getting it from. I thought I had most of
25 them, but that's okay.

1 MR. YOUNG: Your Honor, next motion number 82. The
2 motion to preclude the State from pursuing the death
3 penalty due to severe mental illness. Obviously, the
4 State's, or the Court's expert diagnosis was substance
5 abuse psychosis, whereas the number of Defense experts
6 said, diagnosed Mr. Jones with being schizophrenia. And,
7 of course, the diagnosis from the psychiatrist at the
8 Department of Corrections, schizo-affective disorder. All
9 of these are major mental illnesses. And based on the
10 reasoning in Atkins and Broker, we believe that under the
11 Eighth Amendment the State should be precluded from
12 seeking the death penalty of people who are severely
13 mentally ill. And other than that I will stand on our
14 previous, unless the Court wants to hear anything further.

15 THE COURT: I don't. All right. Ms. Mayes?

16 MS. MAYES: Factual issue for the jury, Your Honor.
17 You have received a copy of Dr. Frierson's report, as has
18 the Defense, as has the State. It is clearly outlined in
19 his report that what his findings are would not be the
20 definition of a severe mental illness. It's a factual
21 issue for the jury at this point, Your Honor.

22 THE COURT: I think it's a factual question for the
23 jury on the front end. Then perhaps on the sentencing
24 side depending on what's presented. But considering what
25 I know right now, then it is a factual question. So that

1 motion is denied. The State can proceed as a fact
2 question to be answered by the jury, as I understand it
3 right now. All right. What's next?

4 MR. YOUNG: Judge, for some reason, I think my
5 records are wrong on this, but I had motion number 85
6 having it has not been decided. But we have, you have
7 granted the motion for independent testing. We have those
8 results back.

9 THE COURT: Yeah. Okay. I thought we agreed to do
10 that. They got a sample and, that kind of thing?

11 MR. YOUNG: Yes.

12 THE COURT: We resolved that. I remember that.

13 MR. YOUNG: Yes, sir.

14 THE COURT: So that motion has already been granted.

15 MR. YOUNG: And completed, yes sir.

16 THE COURT: Right. Okay. Not an issue. But 85 is
17 not a pending motion anymore. It was granted. I think
18 the caveat was providing there's enough sample for
19 everybody to be able to test and we still preserve the
20 evidence or something along those lines.

21 MR. MADSEN: There was and they were actually able to
22 send back to evidence, Lexington County, the portions that
23 they did not use. I think they sent about a half of gram
24 of each sample. I don't know how many they sent back, but
25 Sergeant Novak has confirmed with me that they did receive

1 them back from the lab.

2 THE COURT: So 85 is resolved.

3 MR. YOUNG: Yes, sir.

4 THE COURT: Okay. Good.

5 MR. YOUNG: Your Honor, number 88, the motion for the
6 Court allowing Defendant's offer to plead guilty and be
7 sentenced, admitted into evidence at the penalty phase of
8 the trial. This is more of a notice pleading that the
9 Defense will be attempting, we will offer a letter from
10 Mr. Jones offering to plead guilty but mentally ill if
11 he's sentenced to reference to life in prison without the
12 possibility of parole as evidence in mitigation at the
13 appropriate time. I don't know if the Court wants to
14 decide that today or wait until it's offered to decide
15 that.

16 THE COURT: I think I'll wait until it's offered.
17 That's the time to consider it. 89.

18 MR. MADSEN: And, Judge, the Solicitor had mentioned
19 that he wasn't sure, but I think that these are relatively
20 simple motions. I want to make sure that they're okay
21 with handling those today.

22 MR. HUBBARD: Are we going to knock out whatever you
23 got.

24 MR. MADSEN: Well, 89, Your Honor, is just a motion
25 in limine to bar the introduction of Tim's tattoos, Your

1 Honor. He has numerous tattoos on his body. We do not
2 believe that those are, in any way, relevant in this case.
3 And we believe that the State trying to introduce those
4 would certainly violate his First, Fifth, Sixth, Eighth
5 and Fourteenth Amendment rights.

6 THE COURT: And you, Mr. Graham?

7 MR. GRAHAM: Judge, our intention at the moment is
8 not to talk about them. If we decide we want to try to
9 talk about them, then we will bring it up with Your Honor
10 before bringing it in front of the jury.

11 THE COURT: All right. You all stay away from them.
12 If you want to get into them, we'll readdress this. So,
13 yes. You're correct to not go into them without telling
14 us ahead of time. Okay?

15 MR. MADSEN: Judge, 90 is a motion to exclude
16 testimony about postmortem rape kits that were conducted
17 on the children, Your Honor. We just don't believe that
18 that is relevant. There is nothing that they found of
19 those. Certainly, there is no evidence that we've been
20 provided for any type of sexual assault and we don't
21 believe that those should come in.

22 MR. GRAHAM: Again, at this time, we don't plan on
23 introducing, if it changes we will let Your Honor know.

24 THE COURT: All right. Knowing they're saying stay
25 away from it, if you plan to try to go into it, I'll need

1 to know way ahead of time. Not with the, before the
2 witness is called.

3 MR. MADSEN: Judge, motion 91. There were some
4 information that we had been provided by teachers at Merah
5 Jones school indicating that while she was a student there
6 that her, "crotch hurt at times". Again, we move that
7 those statements be excluded under 401, 402 and 403.
8 Obviously, we don't think that under 404 it can become
9 clear and convincing or even under 801, as far as a
10 hearsay. You know, our fear is just, obviously, there's
11 no evidence of any type of sexual assault and if you get
12 into something like that --

13 THE COURT: That's the same as the, yeah. They are
14 staying away from it. That's kind of what I figured. If
15 you can't have the secondary testing, you shouldn't have
16 the complaints.

17 MR. MADSEN: And the same thing as motion number 92.
18 All the children were in a different state of undress.
19 Merah Jones was nude. Again, it's basically the same
20 grounds that we don't want any type of injection of any
21 type of, hey, she's nude, so there's some type of sexual
22 assault.

23 THE COURT: Wasn't there statements, maybe I'm
24 reading it wrong, during some of the questioning that the
25 children were in different stages of going to bed or

1 getting into bed clothes or pajamas and that kind of
2 thing?

3 MR. GRAHAM: Judge, I think, so no. We object to
4 this one. We do plan on using this information. It will
5 be relevant. How they were found and how he left them
6 goes to the way the crime was committed and how he left
7 the bodies. What inferences we draw from that are
8 arguments we make for the jury, but it's relevant and it's
9 allowable under the law. There's no, there is not going
10 to be argument by the State that he, in any way, sexually
11 molested his daughter. That's not where that argument
12 goes from. But it is relevant to show how he treated and
13 left the bodies of each of his children and what that
14 means.

15 THE COURT: All right.

16 MR. GRAHAM: Because there was, there was another.
17 Merah was not the only one who was not clothed.

18 MR. MADSEN: Judge, we just move under 403, we
19 certainly think that is more prejudicial than probative.
20 Also under, well, we just don't believe that it should
21 come in.

22 THE COURT: All right. That's a motion in limine. I
23 want to wait until we get there. If they are going to try
24 to go in there, I will consider arguments when we get
25 there, to that spot of the testimony. So that won't be

1 going into the opening arguments. Okay.

2 MR. MADSEN: Yes, sir.

3 THE COURT: Good enough. All right.

4 MR. MADSEN: Judge, 93 is a motion to prohibit, there
5 was some internet searches and/or use, I believe, that
6 came off of Tim's either computer or phone that indicated
7 he had searched some adult dating websites. I don't,
8 frankly, remember the name of it.

9 THE COURT: Like Tinder or Match.com or something.
10 Is that what you're talking about?

11 MR. MADSEN: More like GetNaughty.com or
12 NaughtyAmerica.com. We would just move that those be,
13 reference to those be excluded.

14 MS. MAYES: Your Honor, we're not getting into any
15 specific websites, we're not offering evidence of that.
16 But the fact that he was involved in internet
17 relationships is certainly relevant in response to what we
18 anticipate they will offer during the course of their
19 mental health testimony. We've seen some reports where
20 they are referencing his inability to have interpersonal
21 relationships, his isolation, et cetera. So to that
22 extent, it certainly may be admissible that he was
23 involved in relationships or pursuing relationships
24 online. The specifics of that as far as adult websites or
25 the content of those websites, the State is not pursuing.

1 THE COURT: Fair enough. Okay. Yeah. That seems
2 appropriate. And so, if we get in specifics, I guess,
3 that depends on if the door gets opened.

4 MR. MADSEN: Judge, motion 94. We have been
5 provided, or provided some information that maybe a former
6 neighbor of Tim's, Jonathan Hyder alleged that Tim had
7 used a racial epitaph at some point in time. For the
8 Court's information, we've talked with him and he denies
9 ever hearing Tim say that, but we would just move that
10 that be excluded.

11 MR. GRAHAM: We don't have any intent at this time to
12 use it. If we do, we will let Your Honor know.

13 THE COURT: It's not going to happen. Okay. Not
14 intended to go there.

15 MR. MADSEN: And, Judge, 95. The last one. We
16 really didn't think, we weren't really going to bring this
17 up. There is some indication, at some point in time, that
18 a butterfly knife was found behind Tim's house. We didn't
19 think much about it, but it made it into Dr. Frierson's
20 report. For some reason, that's one of the things that he
21 took a look at. And so, we just move and it doesn't have
22 any relevance to anything, but we just move that it be
23 excluded.

24 MS. MAYES: In our case-in-chief, we have no interest
25 in introducing the butterfly knife. If it comes up and

1 it's important with Dr. Frierson, then I would argue at
2 that point it becomes relevant and it is important.

3 MR. MADSEN: Like I said, we didn't think anything of
4 it and it ended up, for some reason, in his report. And
5 so, as in, out of an abundance of caution.

6 THE COURT: It sounds to me like perhaps, and this is
7 just a guess, Dr. Frierson put it in because he noticed it
8 and put it in there out of an abundance of caution. Y'all
9 don't plan on using it in your case-in-chief. If it comes
10 up, we'll address it then. So y'all are going to stay
11 away from it because y'all didn't notice its importance.
12 And I haven't read anything or heard anything thus far in
13 the facts that a butterfly knife was involved in anything.
14 Okay.

15 MR. MADSEN: We are not aware either.

16 THE COURT: Okay.

17 MR. MADSEN: I think that's it.

18 THE COURT: Okay. Now, where do we stand now. We
19 are looking at two weeks from Monday, correct? What else
20 do we have to do pretrial. Because here's, I'll just tell
21 you my plans. I've got vacation next week. I'm planning
22 on going out of town Monday and Tuesday. I'll be around
23 and can move my vacation to the following week, but I have
24 an administrative week before this trial. So there's
25 Wednesday, Thursday, Friday, the entire week of

1 administrative before the 29th that I'm available to do
2 any other pretrial stuff you need, if you all need it. So
3 next Wednesday and Thursday. On Good Friday the Court
4 House is closed. So we're not going to do that Good
5 Friday, we are going to steer clear of that.

6 CLERK OF COURT: The County is open --

7 THE COURT: Really?

8 CLERK OF COURT: We used to be closed, it used to be
9 a County holiday, but it's not anymore.

10 THE COURT: Newberry's not.

11 MR. HUBBARD: Edgefield, McCormick and Saluda, I
12 think, still recognizes it.

13 THE COURT: So is there other issues we need to
14 address. And I applaud y'all for we have been very able
15 to utilize time when we've had it available. The entire
16 week of administrative week, we can schedule something
17 that week. It's easier to schedule something Thursday or
18 Friday because Court Reporters are more available then,
19 Joy's been with me all week and it's been very easy to
20 manage this. So what else do we have to do that we may
21 have to perhaps schedule before we start in with Monday
22 jury, jurors coming in.

23 MR. YOUNG: Your Honor, I have some proposed pre-voir
24 dire jury instructions to the panel that I'd like to be
25 heard on. I'd like to be heard on the, I know that the

1 State has submitted their version of the three categories
2 of jurors and I'd like to be heard on that. And I'll
3 submit to the Court an alternative version. And then
4 we'll argue about which one is more appropriate and Your
5 Honor will decide that. The State has proposed bringing
6 in jurors in panels of five every hour. Judge, that ends
7 up with us being here until 2:00 o'clock in the morning.
8 It always ends up with us being here until 2:00 o'clock in
9 the morning. I would propose that the Court consider
10 starting with panels of twelve. One in the morning, a
11 panel of twelve in the afternoon. Let's see how we're
12 doing on going through them before you start, because once
13 you start stacking people up, you can't undo it. You
14 can't call the 1:00 o'clock panel and bounce them to 2:00
15 and the 2:00 o'clock panel and bounce them to 3:00, and
16 then everybody just ends up sitting back there at one
17 time. You can say, you're the morning group. We're going
18 to get through the morning group. We're going to break
19 for lunch. You're the afternoon group. We're going to
20 get through the afternoon group. If you increase it to,
21 if we are going through it and we're fine on time and we
22 can increase it to 15 in the groups, that's fine. That
23 still puts us, if we had to go through all 218 jurors,
24 that still puts us done in like seven days of individual
25 voir dire, which is well short of where I think we'll be.

1 Even if you only did panels of twelve, it's about nine
2 days of voir dire to go through 218 people. I don't think
3 we're going to have to go through 218 people to figure out
4 whether or not we're going to be able to seat the jury or
5 not. The State has proposed and, I think, the Court has
6 decided to do six alternates, roughly, putting the
7 required panel at around 47 jurors, what's 27 and 24, 51.
8 So putting the required number of qualified jurors to
9 strike from at 51, meaning you've got to qualify, roughly,
10 one out of four jurors. We'll know pretty soon into this
11 whether or not we're going to be able to hit that target
12 number. So my proposal would be that we do panels of 12.
13 You're the morning panel, you're the afternoon panel. We
14 get 24 done a day. Even if we were doing 15, that's 30 a
15 day. We can do some general voir dire and Your Honor can
16 do some general voir dire in the panel, as opposed to
17 having to do them individually on individual's request for
18 voir dire. Just not having to repeat a bunch of stuff,
19 and that way we can really just focus on the jurors views
20 about punishment during the individual sequestering stuff
21 and we can do the questionnaire follow-up's.

22 MR. HUBBARD: Your Honor, I know we've done this
23 many, many times, but there's probably no one in the
24 courtroom who has done it more than our Deputy Clerk of
25 Court, Ms. Hope Frick. She's seen what's worked and what

1 hasn't. Your Honor, I would refer to her just because,
2 ultimately, it's going to fall on her schedule. You know,
3 and I'd just give a lot of deference to her and obviously,
4 Your Honor has full discretion on this.

5 THE COURT: All right. I'll think about that after I
6 talk with Ms. Frick so I don't put her out here to
7 testify, but I was already planning on talking to her.
8 She is my lean-on and I don't want to be here until 2:00
9 o'clock, nor does anyone else. So I want to be efficient
10 and deliver it and that's what we're going to do. And I
11 like your math. If we do it in that fashion, in those
12 blocks, seven or eight days may be long, but that doesn't
13 sound bad. It doesn't sound good, but it sounds
14 reasonable. It's going to take the time it takes. But I
15 do not want a crowd of people sitting outside wondering
16 when they're getting in. I don't want that at all. So
17 we're going to figure a way to not have that. I
18 wholeheartedly agree that no one, prospective jurors,
19 needs to be sitting in a holding room, waiting their turn
20 to come in. They don't need that. I want to minimize
21 that inconvenience because that's, we're not supposed to
22 inconvenience anymore than we have to. And we may pick
23 away and try and it may not work and we adjust on the fly
24 the next day. I don't know. Again, I'm going to lean on
25 the Clerk of Court staff on that to impose on these jurors

1 minimally. All right. So I'm not saying no and I'm not
2 saying yes. We're not going to box ourselves in. And as
3 far as your, the framework of questions and the voir dire
4 for you and the State, obviously, we're going to look at
5 sitting down Thursday, whatever that Thursday, before the
6 29th, 25th, 23rd, 24th.

7 MR. YOUNG: Mr. Jones, he has a doctor's appointment
8 that day. Is that the liver test or --

9 THE COURT: Whichever. I mean, we'll go Wednesday,
10 do it Friday. I'm picking a day.

11 COURT REPORTER: I will be in Newberry that week.

12 THE COURT: What I would do, I would lean on Tiffany
13 very heavily, if we need you on Thursday or Friday to put
14 somebody else in there and bring you out of that. I think
15 I can get that done. I mean, think about it. I don't
16 need it done right now. What Joy told me, she is in court
17 in Newberry. I am informed that they're not going to try
18 a long case that week. Maybe a short one. They may try
19 to get pleas. The last term of court they had a jury
20 trial and they didn't get any pleas done and Judge Sprouse
21 is coming and I think they're going to move cases. So Joy
22 will be doing pleas in Newberry. I will not be presiding.
23 I'm on administrative, but I'll be around. But I think
24 Court Administration will allow me to pray upon Joy to
25 come do this, whenever that is, and substitute a Court

1 Reporter in Newberry.

2 MR. YOUNG: The 19th is Good Friday, right?

3 THE COURT: Yeah. I was suggesting not Good Friday.

4 I was suggesting some other time.

5 MR. HUBBARD: So you're looking at the week before
6 the trial.

7 THE COURT: Yeah.

8 MR. HUBBARD: Before the jury qualifications begins.

9 THE COURT: Yeah.

10 MR. HUBBARD: So I think you were looking at
11 Thursday, the 25th.

12 THE COURT: Is that the day of the appointment for
13 Mr. Jones?

14 MR. YOUNG: Yes, sir. That's the day of his doctor's
15 appointment.

16 THE COURT: We can go Wednesday or Friday or, we can
17 go Friday that week.

18 MR. HUBBARD: We could always try Wednesday. That
19 way, if you need another day, you've got Friday as well.

20 THE COURT: Okay.

21 MR. YOUNG: Sure.

22 THE COURT: Let's shoot for the Wednesday, the 18th.

23 MR. YOUNG: 24th.

24 THE COURT: 24th. All right. We'll shoot for
25 Wednesday the 24th.

1 MR. YOUNG: Yes, sir. All right. One other issue,
2 and this is, I mean, The State doesn't need to be here for
3 this. Mr. Jones had a pair of glasses. The Department of
4 Corrections had provided a pair of glasses.

5 THE COURT: I've never seen no glasses before.

6 MR. YOUNG: They were broken. We had them taped
7 together for a little while and they broke again.
8 Lexington is attempting to get him a pair of glasses. We
9 hope to have them before the trial. I think, we've tried,
10 we've also tried to order glasses online, just putting in
11 the prescription. Mr. Jones' vision is about 22/20. So
12 we just need to make sure that he gets some glasses before
13 we get started at trial. But I know that when the Court
14 encourages people to get things done, they seem to happen.

15 THE COURT: I understand that predicament because my,
16 well, my sight's gotten better as I've gotten older, but
17 it's not good. I don't get out of the bed very far
18 without my corrective lenses. And so, I have these in my
19 hand or my contacts in. If you need some encouragement to
20 someone to get the glasses to you this week, I'll be glad
21 to help you.

22 MR. YOUNG: Thank you.

23 THE COURT: I don't mind that a bit. All right. Is
24 that everything for our motions?

25 MR. YOUNG: Yes, sir.

|

1 THE COURT: All right. We're off the record.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

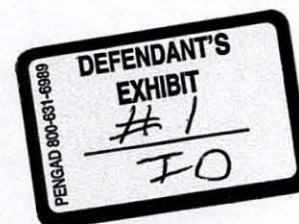
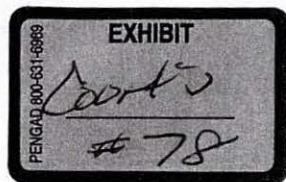
24

25

1
2
3
4 CERTIFICATE OF REPORTER5 State of South Carolina)
6)
7 County of Newberry)8 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 11th day of April, 2019.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
1718 April 24, 2019
1920 *Joy Holston*
21

22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25



Travis Snyder DO

Curriculum Vitae

11/14/2018

Personal Data:

Birth Date: [REDACTED]
 Birth Place: Santa Barbara CA
 Citizenship: United States

Education:

Undergraduate	Florida State University	Psychology, Biology, Chemistry, 2003
Medical School	Touro University Osteopathic Medical School NV	DO, 2009
Internship	Michigan State University	McLaren Macomb 2009-2010
Radiology Residency	Michigan State University	McLaren Macomb 2009-2014
Neuroradiology Fellow	University of Miami/Jackson Hospital	2014-2015

Licenses and Certifications:

State of Michigan Medical License	2009 (No. 5101018335)
State of Florida Medical License	2013 (No. OS 12448)
State of Nevada Medical License	2014 (No. DO 1831)
State of Arizona Medical License	2015 (No. 006637)
State of California Medical License	2015 (No. 20a 13840)
State of Colorado Medical License	2017 (No. DR.0059522)
State of New Mexico Medical License	2018 (No. A-2154-18)
Board Certified Radiologist, AOBR	2014 (No. 1329)
CAQ Certified Neuroradiology	2015 (No. 1329)

Professional Experience:

Wellington Hospital, Florida, Jan 2015 –Summer 2015 (part time)
 - General hospital and Emergency Room Radiologist

Nevada Imaging Center, Las Vegas, Jun 2015 - Jan 2016
 - Diagnostic Radiologist
 - MRI specialist

SimonMed Radiology Las Vegas, Feb 2016- Present
 - Diagnostic Radiologist
 - Neuroradiologist

Academic Appointments:

Clinical Instructor, Michigan State University 2009-Present

Adjunct Assistant Professor of Neuroradiology, Touro University Nevada College of Osteopathic Medicine 4/1/16-Present

Adjunct Assistant Professor of Neuroradiology, Touro University California College of Osteopathic Medicine 11/1/16-Present

Cleveland Clinic Center for Brain Health Interdisciplinary Clinical Neuroscience Seminar Faculty member 12/06/2017-Present

Clinical Assistant Professor of Radiology UNLV School of Medicine 12/14/2017- Present

Adjunct Assistant Professor of Radiology University of Nevada Reno 10/01/2017-Present

Touro University 3rd and 4th year curriculum advisory board member

Memberships and Affiliations:

American Osteopathic Association (AOA)

American Board of Radiology (AOBR)

American Osteopathic College of Radiology (AOCR)

Florida Osteopathic Medical Association (FOMA)

The American Society of Functional Neuroradiology (ASFNR)

American Society of Radiology (ACR)

Radiologic Society of North America (RSNA)

Titles and Awards:

Vice President/Chief Financial Officer DO09 class Touro University NV (2005-6)

Parliamentarian, OMSGATouro University NV (2006-7)

3rd place Best Oral Presentation, 'Case Study: Limbus Vertebra in a Contortionist', Touro University Research Day 3/5/07.

National Director of Political Affairs, Student Osteopathic Medical Association: 2008-2009

3rd place Best Oral Presentation 'Three Level Bilateral Spondylolysis in a Contortionist', Touro University Research Day, 4/7/08.

Chief Radiology Resident, McLaren Macomb 2013-14

Dorthy V Kraft Scholarship, McLaren Macomb 2014

SimonMed Nevada Radiation Safety Officer

SimonMed Nevada Registered Laboratory Director

Alumni Generosity Award, Touro University NV 10/14/18

Benefactor William Werner Orison, Jr., M.D. Post-Doc Neuroimaging Research Fund UNLV

Presentations/Lectures:

- Snyder T, Perkins TG, Mueller T, Hanson EH, Orrison WW Jr, People RR, and Powell J. Case Study: Limbus Vertebral in a Contortionist. Proceedings: Touro University Nevada Research Day, Las Vegas NV March 5, 2007
- Snyder T, Perkins TG, Mueller T, Hanson EH, Orrison WW Jr, People RR, and Powell J. 'Three Level Bilateral Spondylolysis in a Contortionist', Touro University Research Day, 4/7/08.
- Radiology and the Match 4/21/09 Radiology Interest Group Touro U, NV
- Snyder T, Interns on call, Radiology for Interns McLaren Macomb, 7/10/10
- Snyder T, Interns on call, Radiology for Interns McLaren Macomb, 7/15/2011
- Snyder T, Gastrointestinal Imaging, how to and cases McLaren Macomb, 8/10/11
- Snyder T, Extramedullary hematopoiesis, Michigan State University, 11/23/11
- Snyder T, Interns on call, Radiology for Interns McLaren Macomb, 7/9/2012
- Snyder T, Gallbladder carcinoma Michigan State University, 10/7/12
- Snyder T, Pediatric call preparation series McLaren Macomb, 11/12
- Snyder T, Call Preparation Series for new residents McLaren Macomb Part I, II, III summer 2012
- Snyder T, Perkins T, Mueller T, Hanson E, Orrison W, Peoples R, Powell J. Case Study: 3 Level Spondylolysis in a Contortionist. Poster presented at the American Osteopathic College of Radiology national meeting April 22-26 2013, Fort Lauderdale, Florida.
- Snyder T, Interns on call, Radiology for Interns McLaren Macomb, 7/9/2013
- Snyder T, Call Preparation Series for new residents McLaren Macomb Part I, II, III summer 2013
- Snyder T, Genital Urinary Imaging with Ultrasound, Department of Urology, McLaren Macomb, MI 3/27/14
- Snyder T, Sinus Normal Variations, Sabers health Trachea, Neuroradiology Department, Jackson Hospital Miami, 7/16/14
- Snyder T, Atretic Parietal Encephalocele, Dural Sinus Thrombosis and ICH, Neuroradiology Department, Jackson Hospital Miami, 7/29/14
- Snyder T, Neuromyelitis Optica, Slow Flow Venous Malformation, MRI appearance of the Venous Pterygoid Plexus, Neuroradiology Department, Jackson Hospital Miami, 8/29/14
- Snyder T, Perimesencephalic subarachnoid hemorrhage, IG4 hypertrophic pachymeningitis of the frontal lobe and other differential extra axial lesions, Neuroradiology Department, Jackson Hospital Miami, 9/24/14
- Snyder T, Spinal Astrocytoma in a patient with TB, PNET, Neuroradiology Department, Jackson Hospital Miami, 10/1/14
- Snyder T, Retinoblastoma, Mucocoele, CNS Amoeba infection, Neuroradiology Department, Jackson Hospital Miami, 10/27/14
- Snyder T, Approach to Spine Imaging, Department of Anesthesia, Division of Pain, University of Miami Miller School of Medicine, 10/31/14

- Snyder T, Ventral Spinal Cord Herniation, Synovial Cysts, Neuroradiology Department, Jackson Hospital Miami, 11/16/14
- Snyder T, Pediatric Midline Tumors, Neuroradiology Department, Jackson Hospital Miami, 11/18/14
- Snyder T, Ischemic Stroke in AVM, Ischemic DVA, Amyloid Angiopathy Superficial Siderosis, Neuroradiology Department, Jackson Hospital Miami, 11/24/14
- Snyder T, Scaphocephaly, Trigocephaly, Neuroradiology Department, Jackson Hospital Miami, 12/8/14
- Snyder T, Neuroradiology Oral Board Review, Part I, II, III Larkin Hospital Fl, 2/4/15
- Snyder T, 3rd Ventriculostomy MRI appearance, Tuberous Sclerosis, Neuroradiology Department, Jackson Hospital Miami, 4/6/15
- Snyder T, Pediatric Neuroradiology Cases, Neuroradiology Department, Jackson Hospital Miami, 10/17/15
- Snyder T, Allergic Fungal Sinusitis, Invasive sinusitis, 5th Ventricle, Panopaque Contrast, Neuroradiology Department, Jackson Hospital Miami, 10/11/15
- Snyder T, Epidermoid Cysts, Neuroradiology Department, Jackson Hospital Miami, 12/10/15
- Snyder T, Hypoglossal Schwannoma, CNS lymphoma, Severe Encephalomeningitis, Neuroradiology Department, Jackson Hospital Miami, 12/15/15
- Snyder T, Pediatric Neuroradiology Cases, Neuroradiology Department, Jackson Hospital Miami, 2/1/15
- Snyder T, Pediatric Neuroradiology Cases, Neuroradiology Department, Jackson Hospital Miami, 3/15/15
- Snyder T, Progressive Multifocal Leukoencephalopathy, 3/10/2016
- Snyder T, Cavernous Sinus Thrombosis, Neuro-Bechets, Chondrosarcoma, Parathyroid Adenoma, Neuroradiology Department, Jackson Hospital Miami, 6/3/15
- Razenberger LR, Snyder THW, Weaver LK, Deru K, Orrison JJ, Cartwright PE and Orrison WW
Prevalence of pineal cyst in carbon monoxide-poisoned patients with on-going symptoms after poisoning 49th Undersea & Hyperbaric Medical Society Annual Scientific Meeting, Las Vegas Nevada June 10, 2016
- Snyder T, Intro to Radiology - Touro University NV Las Vegas NV, 8/2/16
- Snyder T Introduction to Neuroradiology - Valley Hospital internal medicine conference, Las Vegas NV, 9/16/2016
- Snyder T Approach to Brain Imaging Part I - Valley Hospital Neurology Conference, 2/7/17
- Snyder T Approach to Brain Imaging Part II - Valley Hospital Neurology Conference, 2/8/17
- Snyder T Call for Interns, Radiology - Valley Hospital Internal medicine conference, 4/13/17
- Snyder T Approach to Spine Imaging - Valley Hospital Family Medicine conference, 5/11/17
- Suncoast Hotel and Casino NOMA Annual Convention 05/04/2018
- Snyder T Imaging Findings in Multiple Sclerosis and White Matter Mimics Cleveland Clinic Advancing Therapeutics for Multiple Sclerosis Medical Education Conference, 12/09/2017

Snyder T Imaging Findings in Multiple Sclerosis and White Matter Mimics Cleveland Clinic Center for Brain Health Interdisciplinary Clinical Neuroscience Seminar, 12/21/2017

Snyder T Ordering Radiology Exams and cases Nevada Osteopathic Medical Association, 4/18/18

Snyder T Neuro Imaging Introduction Touro University NV, 5/9/18

Snyder T Radiation Safety in Imaging Touro University NV, 5/9/18

Journal Articles:

Peoples RR, Perkins TG, Powell, JW, Hanson EH, Snyder TH, Mueller TL, Orrison WW. Whole-spine dynamic magnetic resonance study of contortionists: anatomy and pathology J Neurosurgery Spine 8 501-509 2008.

Other Articles:

T Snyder Acute Trauma: An Imaging Perspective
Las Vegas Legal Magazine Summer 2017

T Snyder Imaging Manifestations in Traumatic Brain Injury
Las Vegas Legal Magazine Winter 2017

Abstracts:

T. Snyder, A. Sneider, J. Proveda, N. Nagornaya IgG4-Related Hypertrophic Pachymeningitis: A Rare Extra-axial Mass Lesion American Society of Neuroradiology, Chicago 4/28/27

Razenberger LR, Snyder THW, Weaver LK, Deru K, Orrison JJ, Cartwright PE and Orrison WW Prevalence of pineal cyst in carbon monoxide-poisoned patients with on-going symptoms after poisoning 49th Undersea & Hyperbaric Medical Society Annual Scientific Meeting, Las Vegas Nevada June 10, 2016

Reviewer for Peer Reviewed Medical Journals:

Undersea and Hyperbaric Medicine

Cureus

Stat Pearls

Previous Research Experience:

Eye tracking reflective of subconscious psychological states, Florida State Department of Psychology, Michael Kaschak PhD, 2003

Schizophrenia typical and atypical drug effects brain volumetric voxel analysis. University of North Carolina department of psychiatry Robert McClure, MD, 2004

Pantothenate kinase-associated neurodegeneration (PKAN), formerly Hallervorden-Spatz syndrome, Nevada Imaging Centers, William Orrison MD, Eric Hanson MD, 2005

MRSA, Nevada Imaging Centers, Rob Rowley MD, 2006

Empty Sella, Nevada Imaging Centers, William Orrison MD, Eric Hanson MD, 2006

Hypsarrhythmia (in a 7-year-old p-8 syndrome), Neurology Specialists, Donald Johns MD, 2008

Neuropsych, MRI, and Neurologic findings on 18 patients with CO Monoxide poisoning, Nevada Imaging Centers, 2009 with William Orrison MD, Eric Hanson MD

Spinal and brain anaplastic ganglioglioma, grade III, case report. Clinical Neurology Specialists, Lydia Estanislau MD, 2009

Current Research:

Lead DTI researcher: Department of Defense Brain injury and mechanisms of action randomized trial of HBO2 and mild TBI (BIMA)

fMRI researcher: Department of Defense Brain injury and mechanisms of action randomized trial of HBO2 and mild TBI (BIMA)

Principal Investigator: 350 Traumatic Brain injury cases, Advanced imaging and clinical findings SimonMed Las Vegas NV00 DTI, fMRI, Perfusion, NeuroQuant, Cavum Septum, Empty Sella

Principal Investigator: DTI trauma versus control comparison

Principal Investigator: Investigational pulse sequences (GE, Siemens and SimonMed nationally)

Principal Investigator: Razenberger LR, Snyder THW, Orrison JJ, Cartwright PE and Orrison WW No-Brainer – Radiation doses with and without a lead lined cap

Carbon Monoxide, 170 imaging cases SimonMed Las Vegas NV

Carbon Monoxide, imaging findings over time SimonMed Las Vegas NV

Biceps tendon sheath injection on arthrogram: a case report SimonMed Las Vegas NV

Vacuum phenomena in an elite athlete: a case report SimonMed Las Vegas NV

Razenberger LR, Snyder THW, Weaver LK, Deru K, Orrison JJ, Cartwright PE and Orrison WW Prevalence of pineal cyst in carbon monoxide-poisoned patients

Three Level Bilateral Spondylolysis in a Contortionist – A Case Report and Three-Dimensional Medical Scale Modeling SimonMed Imaging, Julia R. Schneider B.S., Travis Snyder D.O., Eric H. Hanson M.D., Randal R. Peoples M.D., Janette Powell M.H.Sc., PT, Thomas G. Perkins Ph.D., Timothy Mueller, and William W. Orrison Jr, M.D. SimonMed Las Vegas NV

Imgen Neuroradiology Research Fellows:

Alan Rodriguez, MD 8/1/18 – Present

Shaunaq Parikh, DO 9/1/18 – Present

Imgen Summer Radiology Research Internship Program - Medical Students:

2016 – Summer

Logan Razenberger

2017 – Summer

Trisha Pandey

Duong, Dennis	09/01/2017 – 10/01/2017 - 479543
Westfall, Mathew	09/01/2017 – 10/01/2017 - 461448
Trani, Marvin	08/01/2017 – 08/25/2017 - 451055
Lara, Daniel	08/01/2017 – 08/31/2017 - 463368
Franko, Julian	07/03/2017 – 07/31/2017 - 462059
Choi, Kevin	07/03/2017 – 07/30/2017 - 467807
Tahsin, Faris	05/01/2017 – 05/31/2017 - 416923
Lempa, Brian	04/03/2017 – 04/30/2017 - 412530
Sabatini, Colin	03/01/2017 – 04/02/2017 - 450803
Razenberger, Logan	02/01/2017 – 02/28/2017 - 446146
Maynard, Mathew	02/01/2017 – 02/28/2017 - 450444
Estanilla, Jennifer	12/01/2016 – 12/31/2016 - 450597
Matza, Stephanie	11/01/2016 – 11/30/2016 - 445430
Tidwell, Robert	10/03/2016 – 10/31/2016 - 454517
Rocks, Daniel	09/01/2016 – 10/02/2016 - 450787
Gonzalez, Christopher	08/01/2016 – 08/31/2016 - 479998
Mahderekal, Mussie	07/01/2016 – 07/31/2016 - 391485

Touro California Students:

Orlovic, Matea	10/23/2017-11/05/2017
Orlovic, Matea	01/23/2017-02/19/2017

University NV Reno SOM:

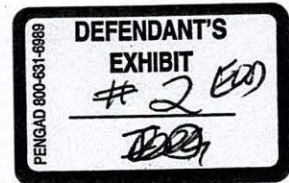
Capannolo, Lorenzo	Summer 2016

Media:

Las Vegas Heals, Affordable Medical Imaging with SimonMed Imaging 07/05/2018

IMGEN

Medical Imaging Expert Services



Review of Medical Imaging Examination on Timothy Jones

September 20, 2018

Submitted to: **Boyd Young**
Capital Defenders
1330 Lady Street, Suite 401
Columbia, SC 29201

Prepared by: **Travis Snyder D.O.**
Neuroradiologist and Radiologist
SimonMed Imaging and Imgen, LLC
5495 S. Rainbow Blvd., Suite 201
Las Vegas, NV 89118
(DO NOT send correspondence or deliveries to this address)

September 20, 2018

Boyd Young

Capital Defenders
1330 Lady Street, Suite 401
Columbia, SC 29201

RE Medical Imaging Review on Timothy Jones

Dear Mr. Young:

Summary

As you requested, I have reviewed the following medical imaging study on Timothy Jones: Brain MRI-4/20/18. My evaluation demonstrates findings consistent with the following:

1. Large Left Frontal Depressed Skull Fracture
2. Hemorrhagic diffuse axonal Injury
3. Left Frontal focal cortical thinning and scarring secondary to contusion
4. Right hippocampal Atrophy, Right fornix Atrophy

These findings are consistent with Traumatic Brain Injury. Correlate for symptoms regarding the lobar injuries as described.

In addition, there is thinning and irregularity of the corpus callosum, prominence of right temporal horn and right hippocampal atrophy. These findings have been described in schizophrenia and schizophrenia spectrum disorders and clinical correlation is suggested.

Qualifications of Travis Snyder, DO

Please see the attached curriculum vitae (180126_TravisHSnyderDO-CV.pdf) for a comprehensive list of my employment, research projects, and publications.

Past Medical History

According to the history provided, Timothy Jones has a history of traumatic brain injury and also clinical findings concerning for schizoaffective or schizophrenia type disorder.

Studies Reviewed

Brain MRI - 4/20/18

Review of the Diagnostic Imaging Examination

I have identified my findings on the attached presentation file (Jones_Snyder_Presentation.pdf).

The following are my findings on the MRI study on Timothy Jones of 4/20/18:

Large Left Frontal Depressed Skull Fracture: This involves a majority of the left frontal lobe anteriorly and measured 5.2 cm in total dimension; the skull is depressed approximately 1 cm. (Slide 1)

Hemorrhagic diffuse axonal Injury: There are at least 3 foci of hemosiderin deposits consistent with prior hemorrhage involving the cortex and subcortical region in the anterior left frontal lobe just under the area of depressed fracture. **(Slide 2)** There are likely additional foci present. These are identified on the high resolution dedicated SWI (susceptibility weighted) sequences.

Left Frontal focal cortical thinning and scarring secondary to contusion: There is focal decreased T2 signal and loss of normal grey white matter differentiation involving an 8 mm segment of the left frontal lobe peripherally and anteriorly, just under the depressed skull fracture and adjacent to the described hemorrhage. This is best seen on coronal image 9, series 50, but also see on coronal image 67 series 104 and coronal image 88, series 19. **(Slide 3)** This finding is consistent with scarring and gliosis/encephalomalacia and cortical thinning and sequelae of contusion.

Right hippocampal Atrophy, Right fornix Atrophy: There is prominence to the right temporal horn and atrophy of the right hippocampus, best seen on coronal image 24/50.

(Slide 5) At least moderate right hippocampal atrophy is present; there is also associated atrophy of the fornix, a common associated finding. This is best seen on coronal image 30-31, series 18. **(Slide 6)**

All of these findings above are consistent with Traumatic Brain Injury.

In addition, there is thinning and irregularity of the body of the corpus callosum (sagittal image 78/160) **(Slide 8)**, prominence of right temporal horn and right hippocampal atrophy and fornix atrophy. These findings have been described in schizophrenia and schizophrenia spectrum disorders and clinical correlation is suggested.

Peer-Reviewed Literature Citations

The MRI findings consistent with changes secondary to brain injury listed above are described with reference to peer-reviewed medical literature as follows:

1. Skull fracture

The depressed left frontal skull fracture **(Slide 1)** indicates a very high likelihood of traumatic brain injury with worse clinical outcomes and increased morbidity and mortality. There is increased incidence of other TBI findings in patients with skull fractures. (Tseng, Shih et al. 2011)

2. Hemorrhage Shearing

The Imaging finding of hemorrhagic shearing (diffuse axonal injury) **(Slide 2)** is consistent with changes secondary to traumatic brain injury in the peer-reviewed medical literature:

Intraparenchymal Hemorrhage

The importance of the detection and localization of even small intracranial hemorrhages in the treatment and management of patients with traumatic brain injury is well known, as they signify worse clinical outcomes. It is also well established that susceptibility weighted imaging dramatically improves the ability

to detect intracranial hemorrhage as compared to conventional MR sequences. Susceptibility weighted imaging will identify significantly more small hemorrhagic lesions than does conventional MR imaging and therefore improves the diagnosis of hemorrhagic shearing (diffuse axonal) injuries. The finding of a hemorrhagic shearing injury on the susceptibility weighted images in Mr. Jones not identified on the other routine imaging demonstrates the improved diagnostic capability of this technique (Tong, Ashwal et al. 2003, Sehgal, Delproposto et al. 2005, Tong, Ashwal et al. 2008, Kou, Wu et al. 2010, Hunter, Wilde et al. 2012).

Shearing (diffuse axonal) injury

Shearing (diffuse axonal) injuries are the hallmark of mild and moderate TBI. These brain injuries are the result of rapid tension and shear deformations in the white matter of the brain, and are believed to be present in all mild traumatic brain injuries accompanied by a loss of consciousness (Gupta and Przekwas 2013).

Traumatic brain injuries are known to cause rotational forces that result in shearing (diffuse axonal) injuries frequently occurring at the gray-white matter interface but may also be found in deeper structures such as the septum pellucidum, corpus callosum, centrum semiovale, basal ganglia, brain stem and/or cerebellum. (Gentry, Godersky et al. 1988, Gentry 1994, Parizel, Ozsarlak et al. 1998, Voller, Benke et al. 1999, Paterakis, Karantanas et al. 2000, Hammoud and Wasserman 2002, Scheid, Preul et al. 2003, Parizel, Van Goethem et al. 2005) The scientific literature is abundant regarding the presence of shearing injury or diffuse axonal injury (DAI) following head trauma (Gentry, Godersky et al. 1988, Gentry 1994, Parizel, Ozsarlak et al. 1998, Voller, Benke et al. 1999, Paterakis, Karantanas et al. 2000, Hammoud and Wasserman 2002, Scheid, Preul et al. 2003, Parizel, Van Goethem et al. 2005).

The term "shearing injury" is often used interchangeably with "diffuse axonal injury" and emphasizes the causative shearing forces (Parizel, Ozsarlak et al. 1998). Diffuse axonal (shearing) injury lesions are found in three major anatomical areas: 1) the subcortical white matter (as in the case of Mr. Jones), 2)

the corpus callosum, and 3) the upper brainstem. These locations are often referred to as the “triad” associated with shearing injuries. Diffuse axonal (shearing) injury lesions most commonly occur at the junction between gray matter and subcortical white matter in the cerebral hemispheres (67% of shearing - diffuse axonal - injury lesions), as seen in Mr. Jones’s MRI study with hemorrhagic shearing (diffuse axonal) injury (Parizel, Ozsarlak et al. 1998). When portions of the accelerating and rotating brain lag behind adjacent faster moving areas, shear strains develop between tissues. The axons are stretched and subsequently transect, leading to axonal retraction balls, which represent death of the proximal stump of the axon with subsequent death of the distal axonal segment (Fitzpatrick, Maxwell et al. 1998). This happens in the in the bulky and independently mobile cerebral hemispheres that are connected by the less mobile corpus callosum (Parizel, Ozsarlak et al. 1998).

Hemorrhagic DAI is an unusual finding in head trauma and indicates severe injury. In a 2009 study, 100 MRI Examination of professional unarmed combatants not a single subject demonstrated a hemorrhagic lesion. (Orrison, Hanson et al. 2009).

It is likely the MRI on Timothy Jones’s underestimates the extent of the hemorrhagic DAI as 28% of hemorrhagic DAI lesions seen on the initial MRI resolve on follow-up Examination with smaller volumes of those still seen. (Liu, Soderlund et al. 2016)

3. Contusion and Cortical thinning

There is a left anterior frontal contusion and focal cortical thinning and encephalomalacia and gliosis (**Slide 3**). Contusions indicate a more severe traumatic brain injury and are unusual and indicate worse clinical prognosis and outcome. These are often adjacent skull fractures and the site of impact as in the case of Mr. Jones. In a study on of 100 unarmed combatants (i.e., mixed martial artists and boxers) (Orrison, Hanson et al. 2009). Only 2% of the unarmed combatants had findings consistent with prior contusions, defined as an area of

damage located within the brain cortex or subcortical white matter and measuring ≥ 6 mm in diameter, demonstrating an increase in signal intensity on FLAIR and T2-weighted sequences, and consisting of prior hemorrhage, infarction, necrosis, or edema (Bailes and Hudson 2001). The diameter of the contusions in this study varied from 6 mm to 1 cm and none of the subjects demonstrated findings of hemosiderin deposition related to prior hemorrhage, unlike Mr. Jones.

Cortical thinning and decreased cortical volumes following traumatic brain injury is well described in the literature and are associated with contusions and the area of impact and other findings from TBI, as is the case of Mr. Jones. (Govindarajan, Narayana et al. 2016, Chong, Berisha et al. 2018)

4. Hippocampal atrophy

The MRI study on Timothy Jones performed on 4/20/18 demonstrates moderate right hippocampal atrophy. (Slide 5) This finding is consistent with post-traumatic change (**Slide 5**). There is associated atrophy of the right fornix (**Slide 6**).

This finding is consistent with post-traumatic change and the hippocampus is a region with one of the highest rates of atrophy post-injury (Handratta, Hsu et al. 2010, Warner, Youn et al. 2010, Silk, Beare et al. 2013). (**Slide 7**)

Based on animal models there appears to be a rapid loss of hippocampal neurons following traumatic brain injury (TBI). Of an estimated 156,000 neurons in the CA3 region of the hippocampus in controls the cell population in the brain following trauma decreased to 93,000 neurons only one hour after cortical contusion indicating a very rapid cell loss following TBI (Baldwin, Gibson et al. 1997). Another animal study demonstrated an ongoing remodeling process that included a decrease in total numbers of neurons, stationary numbers of astrocytes and oligodendrocytes, and increasing numbers of microglial cells after brain injury with findings suggesting that underlying cellular processes continued for weeks following TBI (Grady, Charleston et al. 2003). A continued loss of cortical tissue, shrinkage of hippocampal pyramidal cell layer, reactive astrocytosis in regions of atrophy, and progressive bilateral death of neurons in

the dentate hilus have also been observed for at least a year following TBI (Smith, Chen et al. 1997).

Similar findings have been reported in human studies with hippocampal neuronal loss occurring in 94% of the hippocampal brain tissue specimens removed during surgery in patients undergoing temporal lobectomies for epilepsy with only trauma as a risk factor. The hilar region of the dentate gyrus was most commonly involved with cell loss ranging from mild to severe (Swartz, Houser et al. 2006).

A morphometric analysis used to quantify hippocampal volume following sub-acute TBI found a 9% loss of total hippocampal volume compared with controls (Bigler, Blatter et al. 1997). The detrimental effect of childhood TBI on hippocampal volume has been shown to extend into adulthood with 93% of the variation in right hippocampal volume accounted for by factors related to severity of TBI (Tasker, Salmond et al. 2005).

Changes in hippocampal volume are best identified on coronal MRI studies. This has long been established in the MRI literature, and MRI protocols that are intended to evaluate the hippocampus for both volume and signal change include special coronal sequences (Bronen 1992, Lee, Gao et al. 1998, Phal, Usmanov et al. 2008). When assessing the brain for hippocampal atrophy as is routinely done in cases of epilepsy coronal sequences have been well established to be required, and high resolution 3 Tesla T2-weighted sequences of the hippocampal region are preferred (Phal, Usmanov et al. 2008, Orrison, Hanson et al. 2009, Chow, Hwang et al. 2015).

Head trauma has been shown to produce disproportionate white matter loss associated with increased temporal horn and sulcal cerebrospinal fluid (CSF) volumes; as well as substantial hippocampal atrophy that has been related to memory impairment (Bigler, Anderson et al. 2002). Brain trauma results in hippocampal atrophy with the degree of atrophy related to severity of injury (Tate and Bigler 2000). Analysis of the relative volume loss between the hippocampus, amygdala, and globus pallidus against five cortical areas (ventromedial frontal,

superomedial frontal, lateral frontal, temporal, and parieto-occipital) has revealed that the hippocampus is the most vulnerable structure following TBI (Wilde, Bigler et al. 2007).

Findings on MRI of a direct injury to the hippocampus are rarely present in hippocampal atrophy related to mild or moderate traumatic brain injury (TBI).

“Although often not directly mechanically injured by the head injury, in the weeks to months following TBI, the hippocampus undergoes atrophy and exhibits deficits in long-term potentiation...” (Atkins 2011)

5. Significance of Frontal Lobe injury (Slide 10)

The frontal lobes of the brain are the most commonly reported location for traumatic brain injury (Levin, Amparo et al. 1987). It is well established that patients suffering even mild traumatic brain injury may suffer from a variety of symptoms including lower intelligence scores (Konigs, Engenhorst et al. 2016) and lower IQ (Stuss, Ely et al. 1985). The frontal lobes are involved in a wide variety of important functions with reported deficits including frontal lobe injury including: motor function (Kuypers 1981, Leonard, Jones et al. 1988), memory (Levin, Amparo et al. 1987, Kim, Kim et al. 2009), executive functions and personality (Blumer 1975), risk taking (Miller 1985, Miller 1992), disinhibition (Jarvie 1954) and behavioral spontaneity. (Milner 1964).

In conclusion, the frontal lobes are an eloquent region of the brain with a wide variety of functions. Deficits following frontal lobe trauma is well documented in the literature as described. If Mr. Jones demonstrates low IQ, disinhibition, risk taking, difficulties with executive functions, behavioral spontaneity, memory problems or motor deficits, it would certainly be consistent with his described injuries; however clinical correlation is recommended to confirm this.

6. MR findings of schizophrenia and schizoaffective spectrum

There is thinning and irregularity of the body of the corpus callosum. **(Slide 8)**

This finding is well described in multiple peer reviewed articles on schizophrenia. (Bachmann, Pantel et al. 2003, Arnone, McIntosh et al. 2008, Rao, Venkatasubramanian et al. 2011)

In addition, the hippocampal atrophy, temporal horn prominence, temporal lobe asymmetry, and temporal and frontal volume loss as seen in Mr. Jones has also been widely reported in the schizophrenia literature. (Turetsky, Cowell et al. 1995, Roy, Zipursky et al. 1998, Shenton, Dickey et al. 2001, Haukvik, Hartberg et al. 2013)

MRI findings of schizophrenia also include focal cortical volume loss and cortical thinning, a finding present in Mr. Jones in the left frontal lobe. (Vita, De Peri et al. 2012, van Erp, Walton et al. 2018)

These findings required clinical correlation as some of the above findings are also found in traumatic brain injury.

It is noted, the lateral ventricle and third ventricle volumes appear to be within normal limits for Mr. Jones.

Conclusion:

As you requested, I have reviewed the following medical imaging study on Timothy Jones: Brain MRI-4/20/18. My evaluation demonstrates findings consistent with the following:

1. Large Left Frontal Depressed Skull Fracture
2. Hemorrhagic diffuse axonal Injury
3. Left Frontal focal cortical thinning and scarring secondary to contusion
4. Right hippocampal Atrophy, Right fornix Atrophy

These findings are consistent with Traumatic Brain Injury. Correlate for symptoms regarding the lobar injuries as described. Specifically, deficits following frontal lobe trauma is well documented in the literature as described. If Mr. Jones demonstrates low IQ, disinhibition, risk taking, difficulties with executive functions, behavioral spontaneity, memory problems or motor deficits, it would certainly be consistent with his described injuries; however clinical correlation is recommended to confirm this.

In addition, there is thinning and irregularity of the corpus callosum, prominence of right temporal horn and right hippocampal atrophy. These findings have been described in schizophrenia and schizophrenia spectrum disorders and clinical correlation is suggested.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,



Travis Snyder, DO
Neuroradiologist and Radiologist

Attachments:

1. 180126_TravisHSnyderDO-CV.pdf.pdf
2. Jones_Snyder_Presentation.pdf

References:

- Arnone, D., A. McIntosh, G. Tan and K. Ebmeier (2008). "Meta-analysis of magnetic resonance imaging studies of the corpus callosum in schizophrenia." *Schizophrenia research* **101**(1-3): 124-132.
- Atkins, C. M. (2011). "Decoding hippocampal signaling deficits after traumatic brain injury." *Transl Stroke Res* **2**(4): 546-555.
- Bachmann, S., J. Pantel, A. Flender, C. Bottmer, M. Essig and J. Schröder (2003). "Corpus callosum in first-episode patients with schizophrenia—A magnetic resonance imaging study." *Psychological medicine* **33**(6): 1019-1027.
- Bailes, J. E. and V. Hudson (2001). "Classification of Sport-Related Head Trauma: A Spectrum of Mild to Severe Injury." *J Athl Train* **36**(3): 236-243.
- Baldwin, S. A., T. Gibson, C. T. Callihan, P. G. Sullivan, E. Palmer and S. W. Scheff (1997). "Neuronal cell loss in the CA3 subfield of the hippocampus following cortical contusion utilizing the optical disector method for cell counting." *J Neurotrauma* **14**(6): 385-398.
- Bigler, E. D., C. V. Anderson and D. D. Blatter (2002). "Temporal lobe morphology in normal aging and traumatic brain injury." *AJNR Am J Neuroradiol* **23**(2): 255-266.
- Bigler, E. D., D. D. Blatter, C. V. Anderson, S. C. Johnson, S. D. Gale, R. O. Hopkins and B. Burnett (1997). "Hippocampal volume in normal aging and traumatic brain injury." *AJNR Am J Neuroradiol* **18**(1): 11-23.
- Bronen, R. A. (1992). "Epilepsy: the role of MR imaging." *AJR Am J Roentgenol* **159**(6): 1165-1174.
- Chong, C. D., V. Berisha, C. C. Chiang, K. Ross and T. J. Schwedt (2018). "Less Cortical Thickness in Patients With Persistent Post-Traumatic Headache Compared With Healthy Controls: An MRI Study." *Headache* **58**(1): 53-61.
- Chow, N., K. S. Hwang, S. Hurtz, A. E. Green, J. H. Somme, P. M. Thompson, D. A. Elashoff, C. R. Jack, M. Weiner, L. G. Apostolova and I. Alzheimer's Disease Neuroimaging (2015). "Comparing 3T and 1.5T MRI for mapping hippocampal atrophy in the Alzheimer's Disease Neuroimaging Initiative." *AJNR Am J Neuroradiol* **36**(4): 653-660.
- Fitzpatrick, M. O., W. L. Maxwell and D. I. Graham (1998). "The role of the axolemma in the initiation of traumatically induced axonal injury." *J Neurol Neurosurg Psychiatry* **64**(3): 285-287.
- Gentry, L. R. (1994). "Imaging of closed head injury." *Radiology* **191**(1): 1-17.
- Gentry, L. R., J. C. Godersky and B. Thompson (1988). "MR imaging of head trauma: review of the distribution and radiopathologic features of traumatic lesions." *AJR Am J Roentgenol* **150**(3): 663-672.
- Govindarajan, K. A., P. A. Narayana, K. M. Hasan, E. A. Wilde, H. S. Levin, J. V. Hunter, E. R. Miller, V. K. Patel, C. S. Robertson and J. J. McCarthy (2016). "Cortical Thickness in Mild Traumatic Brain Injury." *J Neurotrauma* **33**(20): 1809-1817.
- Grady, M. S., J. S. Charleston, D. Maris, B. M. Witgen and J. Lifshitz (2003). "Neuronal and glial cell number in the hippocampus after experimental traumatic brain injury: analysis by stereological estimation." *J Neurotrauma* **20**(10): 929-941.

- Gupta, R. K. and A. Przekwas (2013). "Mathematical Models of Blast-Induced TBI: Current Status, Challenges, and Prospects." Front Neurol **4**: 59.
- Hammoud, D. A. and B. A. Wasserman (2002). "Diffuse axonal injuries: pathophysiology and imaging." Neuroimaging Clin N Am **12**(2): 205-216.
- Handratta, V., E. Hsu, J. Vento, C. Yang and K. Tanev (2010). "Neuroimaging findings and brain-behavioral correlates in a former boxer with chronic traumatic brain injury." Neurocase **16**(2): 125-134.
- Haukvik, U., C. Hartberg and I. Agartz (2013). "Schizophrenia--what does structural MRI show?" Tidsskrift for den Norske laegeforening: tidsskrift for praktisk medicin, ny raekke **133**(8): 850-853.
- Hunter, J. V., E. A. Wilde, K. A. Tong and B. A. Holshouser (2012). "Emerging imaging tools for use with traumatic brain injury research." J Neurotrauma **29**(4): 654-671.
- Kou, Z., Z. Wu, K. A. Tong, B. Holshouser, R. R. Benson, J. Hu and E. M. Haacke (2010). "The role of advanced MR imaging findings as biomarkers of traumatic brain injury." J Head Trauma Rehabil **25**(4): 267-282.
- Lee, D. H., F. Q. Gao, J. M. Rogers, I. Gulka, I. R. Mackenzie, A. G. Parrent, C. S. Kubu, D. G. Munoz, R. S. McLachlan, W. T. Blume and J. P. Girvin (1998). "MR in temporal lobe epilepsy: analysis with pathologic confirmation." AJNR Am J Neuroradiol **19**(1): 19-27.
- Liu, W., K. Soderlund, J. S. Senseney, D. Joy, P. H. Yeh, J. Ollinger, E. B. Sham, T. Liu, Y. Wang, T. R. Oakes and G. Riedy (2016). "Imaging Cerebral Microhemorrhages in Military Service Members with Chronic Traumatic Brain Injury." Radiology **278**(2): 536-545.
- Orrison, W. W., E. H. Hanson, T. Alamo, D. Watson, M. Sharma, T. G. Perkins and R. D. Tandy (2009). "Traumatic brain injury: a review and high-field MRI findings in 100 unarmed combatants using a literature-based checklist approach." J Neurotrauma **26**(5): 689-701.
- Parizel, P. M., O. Ozsarlak, J. W. Van Goethem, L. van den Hauwe, C. Dillen, J. Verlooy, P. Cosyns and A. M. De Schepper (1998). "Imaging findings in diffuse axonal injury after closed head trauma." Eur Radiol **8**(6): 960-965.
- Parizel, P. M., J. W. Van Goethem, O. Ozsarlak, M. Maes and C. D. Phillips (2005). "New developments in the neuroradiological diagnosis of craniocerebral trauma." Eur Radiol **15**(3): 569-581.
- Paterakis, K., A. H. Karantanas, A. Komnos and Z. Volikas (2000). "Outcome of patients with diffuse axonal injury: the significance and prognostic value of MRI in the acute phase." J Trauma **49**(6): 1071-1075.
- Phal, P. M., A. Usmanov, G. M. Nesbit, J. C. Anderson, D. Spencer, P. Wang, J. A. Helwig, C. Roberts and B. E. Hamilton (2008). "Qualitative comparison of 3-T and 1.5-T MRI in the evaluation of epilepsy." AJR Am J Roentgenol **191**(3): 890-895.
- Rao, N. P., G. Venkatasubramanian, R. Arasappa and B. N. Gangadhar (2011). "Relationship between corpus callosum abnormalities and schneiderian first-rank symptoms in antipsychotic-naïve schizophrenia patients." The Journal of neuropsychiatry and clinical neurosciences **23**(2): 155-162.
- Roy, P. D., R. B. Zipursky, J. A. Saint-Cyr, A. Bury, R. Langevin and M. V. Seeman (1998). "Temporal horn enlargement is present in schizophrenia and bipolar disorder." Biol Psychiatry **44**(6): 418-422.

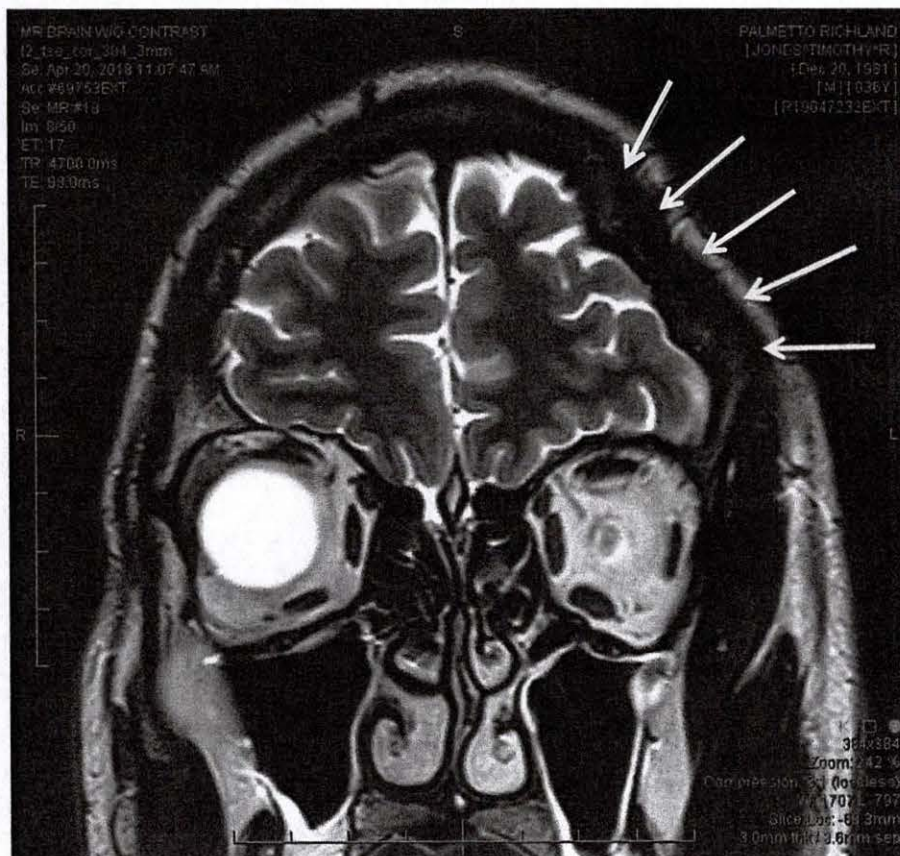
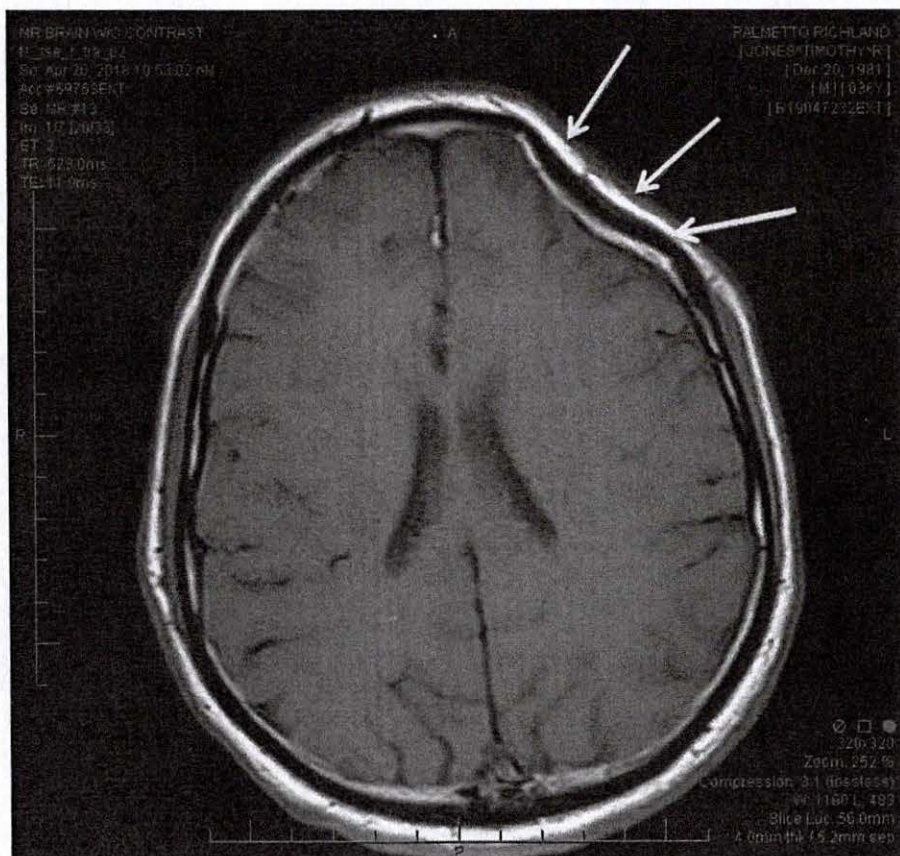
- Scheid, R., C. Preul, O. Gruber, C. Wiggins and D. Y. von Cramon (2003). "Diffuse axonal injury associated with chronic traumatic brain injury: evidence from T2*-weighted gradient-echo imaging at 3 T." AJNR Am J Neuroradiol **24**(6): 1049-1056.
- Sehgal, V., Z. Delproposto, E. M. Haacke, K. A. Tong, N. Wycliffe, D. K. Kido, Y. Xu, J. Neelavalli, D. Haddar and J. R. Reichenbach (2005). "Clinical applications of neuroimaging with susceptibility-weighted imaging." J Magn Reson Imaging **22**(4): 439-450.
- Shenton, M. E., C. C. Dickey, M. Frumin and R. W. McCarley (2001). "A review of MRI findings in schizophrenia." Schizophrenia research **49**(1-2): 1-52.
- Silk, T., R. Beare, L. Crossley, K. Rogers, L. Emsell, C. Catroppa, M. Beauchamp and V. Anderson (2013). "Cavum septum pellucidum in pediatric traumatic brain injury." Psychiatry Res **213**(3): 186-192.
- Smith, D. H., X. H. Chen, J. E. Pierce, J. A. Wolf, J. Q. Trojanowski, D. I. Graham and T. K. McIntosh (1997). "Progressive atrophy and neuron death for one year following brain trauma in the rat." J Neurotrauma **14**(10): 715-727.
- Swartz, B. E., C. R. Houser, U. Tomiyasu, G. O. Walsh, A. DeSalles, J. R. Rich and A. Delgado-Escueta (2006). "Hippocampal cell loss in posttraumatic human epilepsy." Epilepsia **47**(8): 1373-1382.
- Tasker, R. C., C. H. Salmond, A. G. Westland, A. Pena, J. H. Gillard, B. J. Sahakian and J. D. Pickard (2005). "Head circumference and brain and hippocampal volume after severe traumatic brain injury in childhood." Pediatr Res **58**(2): 302-308.
- Tate, D. F. and E. D. Bigler (2000). "Fornix and hippocampal atrophy in traumatic brain injury." Learn Mem **7**(6): 442-446.
- Tong, K. A., S. Ashwal, B. A. Holshouser, L. A. Shutter, G. Herigault, E. M. Haacke and D. K. Kido (2003). "Hemorrhagic shearing lesions in children and adolescents with posttraumatic diffuse axonal injury: improved detection and initial results." Radiology **227**(2): 332-339.
- Tong, K. A., S. Ashwal, A. Obenaus, J. P. Nickerson, D. Kido and E. M. Haacke (2008). "Susceptibility-weighted MR imaging: a review of clinical applications in children." AJNR Am J Neuroradiol **29**(1): 9-17.
- Tseng, W. C., H. M. Shih, Y. C. Su, H. W. Chen, K. Y. Hsiao and I. C. Chen (2011). "The association between skull bone fractures and outcomes in patients with severe traumatic brain injury." J Trauma **71**(6): 1611-1614; discussion 1614.
- Turetsky, B., P. E. Cowell, R. C. Gur, R. I. Grossman, D. L. Shtasel and R. E. Gur (1995). "Frontal and temporal lobe brain volumes in schizophrenia: relationship to symptoms and clinical subtype." Archives of general psychiatry **52**(12): 1061-1070.
- van Erp, T. G., E. Walton, D. P. Hibar, L. Schmaal, W. Jiang, D. C. Glahn, G. D. Pearlson, N. Yao, M. Fukunaga and R. Hashimoto (2018). "Cortical brain abnormalities in 4474 individuals with schizophrenia and 5098 controls via the ENIGMA consortium." Biological Psychiatry.
- Vita, A., L. De Peri, G. Deste and E. Sacchetti (2012). "Progressive loss of cortical gray matter in schizophrenia: a meta-analysis and meta-regression of longitudinal MRI studies." Translational psychiatry **2**(11): e190.
- Voller, B., T. Benke, K. Benedetto, P. Schnider, E. Auff and F. Aichner (1999). "Neuropsychological, MRI and EEG findings after very mild traumatic brain injury." Brain Inj **13**(10): 821-827.

- Warner, M. A., T. S. Youn, T. Davis, A. Chandra, C. Marquez de la Plata, C. Moore, C. Harper, C. J. Madden, J. Spence, R. McColl, M. Devous, R. D. King and R. Diaz-Arrastia (2010). "Regionally selective atrophy after traumatic axonal injury." Arch Neurol **67**(11): 1336-1344.
- Wilde, E. A., E. D. Bigler, J. V. Hunter, M. A. Fearing, R. S. Scheibel, M. R. Newsome, J. L. Johnson, J. Bachevalier, X. Li and H. S. Levin (2007). "Hippocampus, amygdala, and basal ganglia morphometrics in children after moderate-to-severe traumatic brain injury." Dev Med Child Neurol **49**(4): 294-299.

Timothy Jones

Large Left Frontal Depressed Skull Fracture

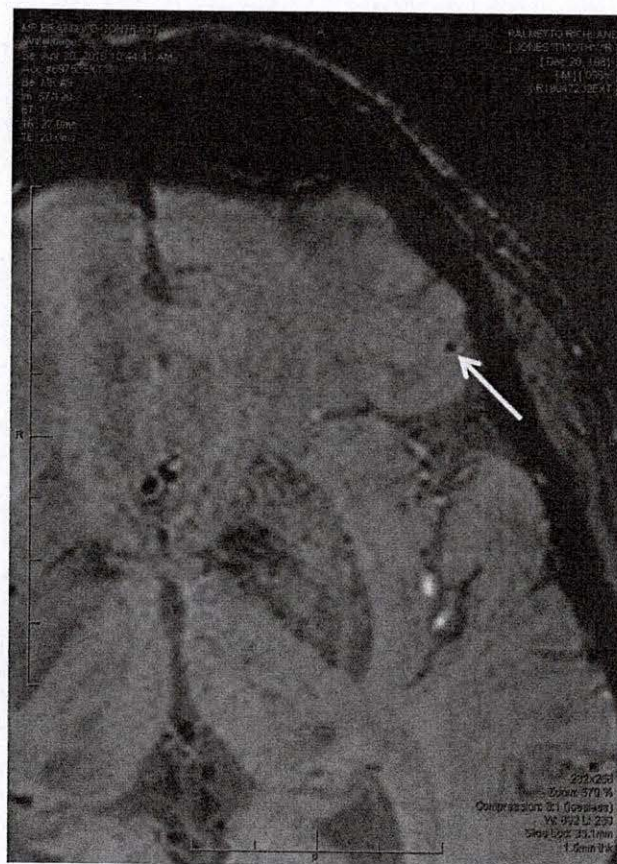
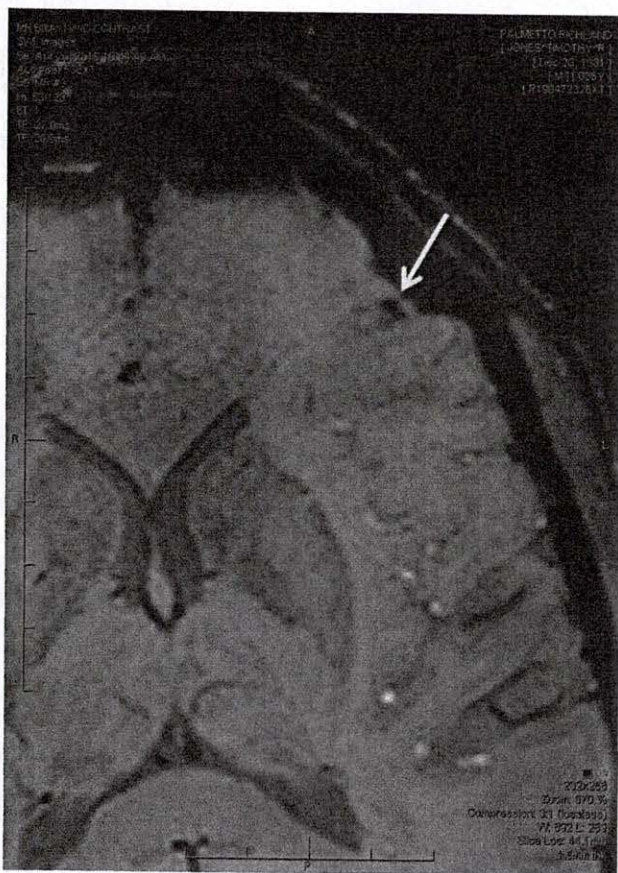
Brain MRI 4/20/18



Timothy Jones

Hemorrhagic DAI (Diffuse Axonal Injury)

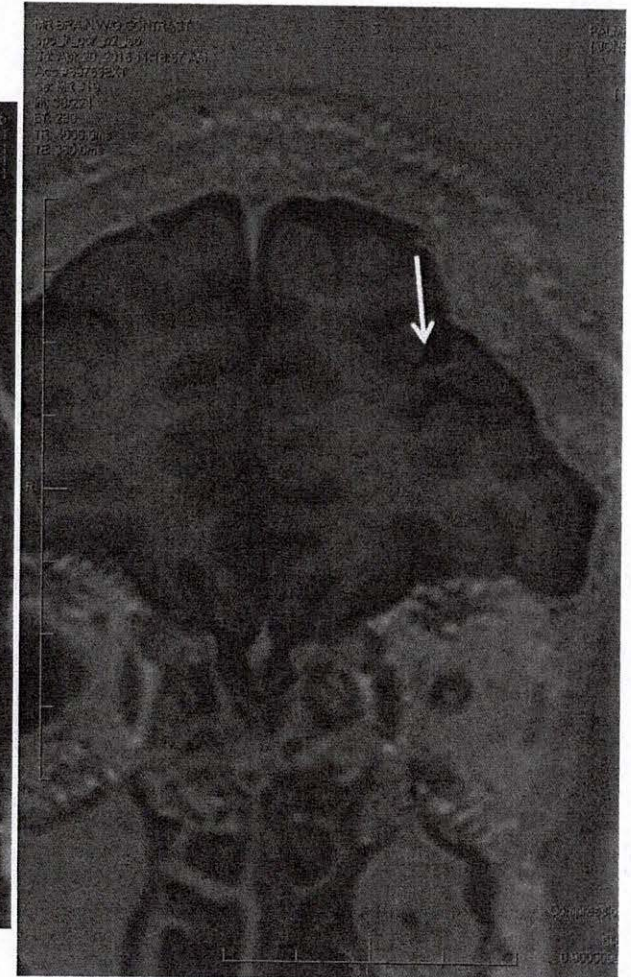
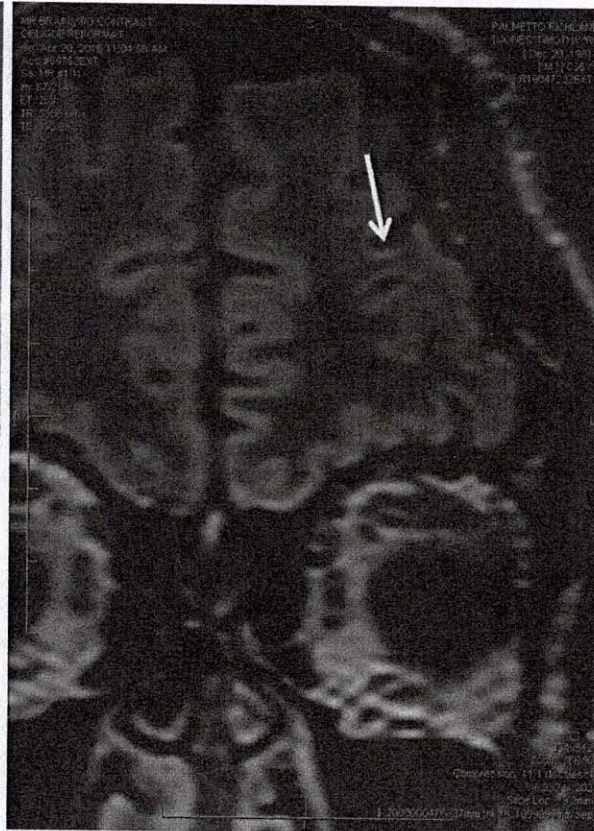
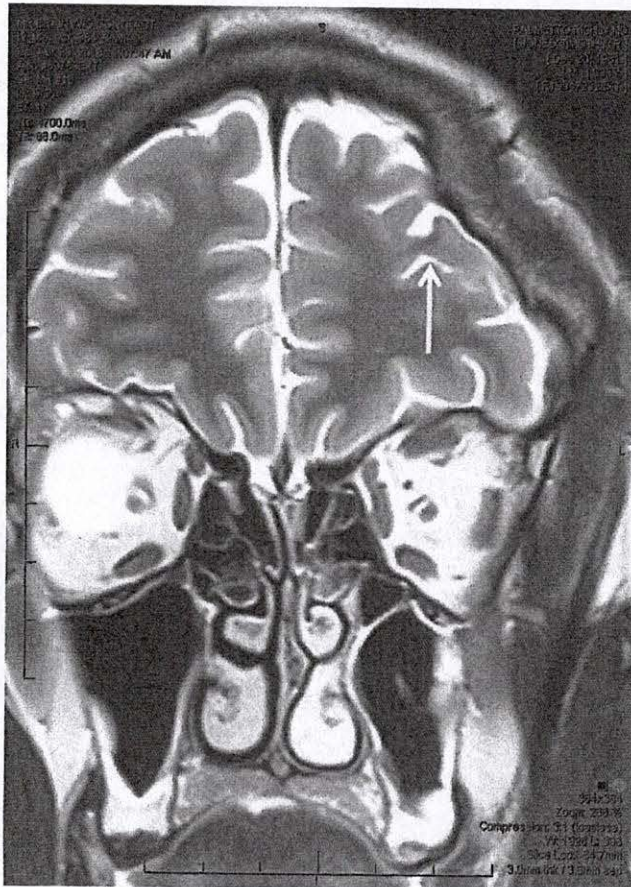
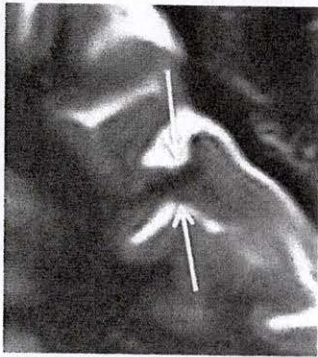
Brain MRI 4/20/18



Timothy Jones

Focal Cortical thinning and scarring (Contusion)

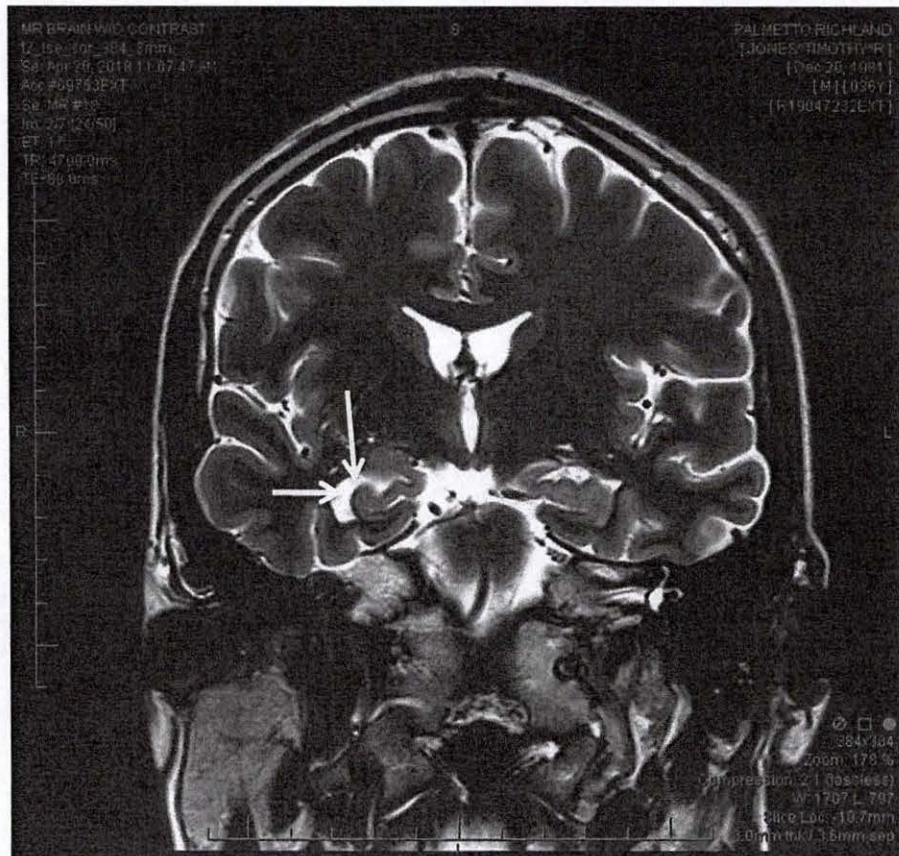
Brain MRI 4/20/18



Timothy Jones

Right Hippocampal Atrophy

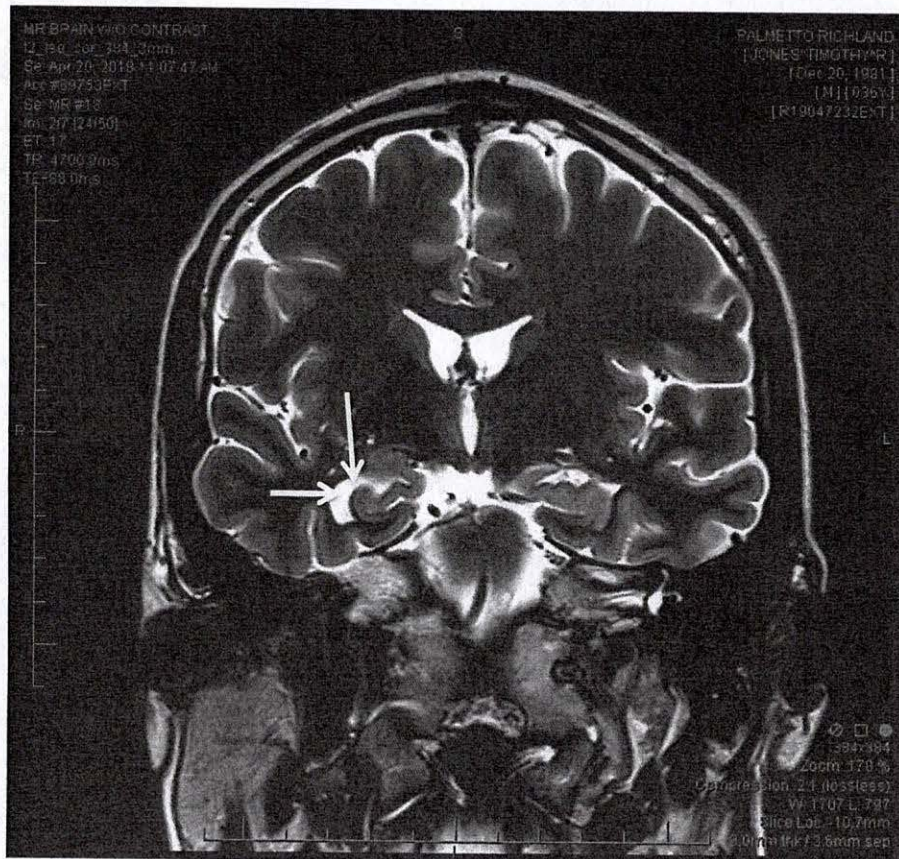
Brain MRI 4/20/18



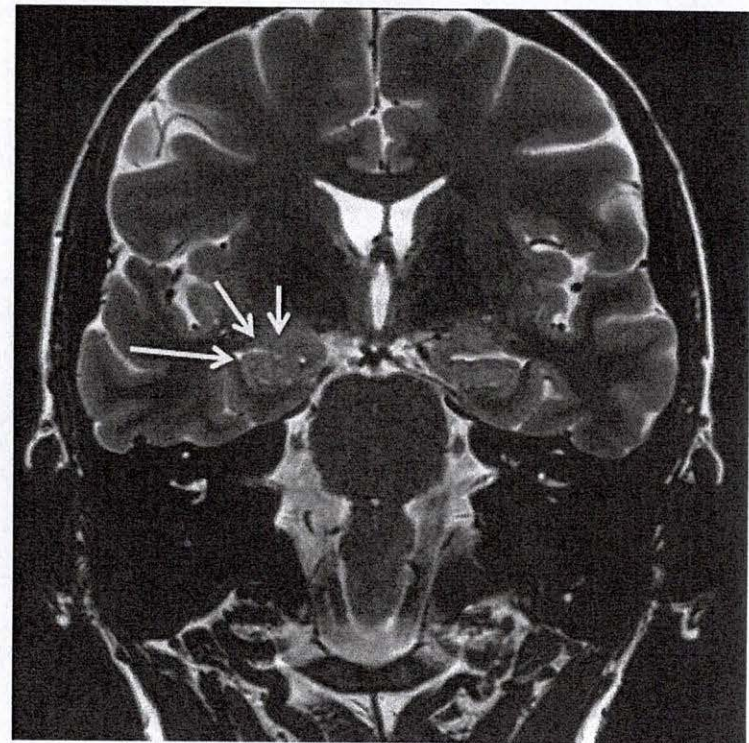
Timothy Jones

Right Hippocampal Atrophy

Brain MRI 4/20/18



Normal



Timothy Jones

Right Fornix Atrophy

Brain MRI 4/20/18

