No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SUSAN JOY JACOBSON,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARIZONA COURT OF APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX, A-1

State v. Jacobson, 244 Ariz. 187 (2017)

We've updated our Privacy Statement. Before you continue, please read our new Privacy Statement and familiarize yourself with the terms.

WESTLAW

244 Ariz. 187
Court of Appeals of Arizona,
Division 1.

State v. Jacobson
Court of Appeals of Arizona, Division 1. December 21, 2017 244 Ariz. 187 418 P.3d 960 780 Ariz. Adv. Rep. 4 *(Approx. 12 pages)*

STATE of Arizona, Appellee,

v.

Susan Joy JACOBSON, Appellant.

No. 1 CA-CR 16-0838
FILED 12/21/2017

Synopsis

Background: Defendant was convicted in the Superior Court, Coconino County, No. S0300CR201500613, Cathleen Brown Nichols, J., of first-degree murder for the shooting death of her live-in boyfriend. Defendant appealed conviction and sentence of life imprisonment.

Holdings: The Court of Appeals, Jones, J., held that:
1 expert testimony about defendant's Post Traumatic Stress Disorder (PTSD) diagnosis was inadmissible to show past acts of domestic abuse inflicted by victim;
2 expert testimony concerning defendant's PTSD diagnosis was inadmissible to show impulsivity;
3 "cold" expert testimony was inadmissible as diminished capacity evidence;
4 "cold" expert testimony regarding pregnancy hormone levels was irrelevant; and
5 trial court's preclusion of PTSD diagnosis did not violate due process right to complete defense.

Affirmed.

West Headnotes (12)

Change View

1 **Criminal Law** Subjects of Expert Testimony
"Cold expert" testimony educates the trier of fact about general principles but is not tied to the particular facts of the case.

1 Case that cites this headnote

2 **Homicide** Reasonableness of belief or apprehension
The modified reasonable person standard, for purposes of a self-defense claim by a victim of domestic violence, does not replace the objective perspective with a subjective perspective. Ariz. Rev. Stat. Ann. §§ 13-404(A), 13-415.

SELECTED TOPICS

Criminal Law

Evidence
Expert Testimony Regarding Symptoms and Characteristics of Sexually Abused Children

Secondary Sources

Admissibility of Expert Testimony on Child Sexual Abuse Accommodation Syndrome (CSAAS) in Criminal Case

85 A.L.R.5th 595 (Originally published in 2001)

...This annotation collects those cases in which the courts have discussed the permissibility or denial of expert testimony relating to child sexual abuse accommodation syndrome (CSAAS). Cases in which CS...

Corroboration of a Child's Sexual Abuse Allegation With Behavioral Evidence

25 Am. Jur. Proof of Facts 3d 189 (Originally published in 1994)

..."Child abuse is one of the most difficult crimes to detect and prosecute, in large part because there often are no witnesses except the victim." Because so many child sexual abuse cases involve childre...

Appendix A. Federal Rules of Evidence for the United States Courts

1 Ariz. Prac., Law Of Evidence Appendix A (4th ed.)

...1. That the rules hereinafter set forth, to be known as the Federal Rules of Evidence, be, and they hereby are, prescribed pursuant to Sections 3402, 3771, and 3772, Title 18, United **States** Code, and S...

See More Secondary Sources

Briefs

Appellant's Supplemental Brief

2014 WL 1765039
STATE OF ARIZONA, Appellee, **v.** [redacted] David SALAZAR-MERCADO, Appellant.
Supreme Court of Arizona
Mar. 04, 2014

...FN1. Frye **v.** United **States**, 293 F. 1013 (1923). FN2. Daubert **v.** Merrill Dow Pharmaceuticals, 509 U.S. 579 (1993). When this Court decided Lindsey in 1986, considerably less was known about child sexual...

Petition For Writ Of Certiorari

2011 WL 2581853
Michael SPICOLA, Petitioner, **v.** TH[redacted] PEOPLE OF THE **STATE** OF NEW YORK, Respondent.
Supreme Court of the United **States**
June 29, 2011

...The parties to this proceeding are the petitioner (and defendant), Michael Spicola and respondent (and plaintiff), the People of the **State** of New York. The petitioner Michael Spicola, laboring under co...

Brief in Opposition

2011 WL 4048812
Michael SPICOLA, Petitioner, **v.** TH[redacted] PEOPLE OF THE **STATE** OF NEW YORK, Respondent.

3 **Criminal Law** Credibility, Veracity, or Competency
Criminal Law Mental condition
Expert testimony regarding defendant's diagnosis of Post Traumatic Stress Disorder (PTSD) was inadmissible in first-degree murder prosecution to show past acts of domestic abuse by the victim, who was defendant's live-in boyfriend, in support of her self-defense claim; diagnosis impermissibly served to vouch for defendant's credibility in that the two experts, whose evaluations were conducted to address severing her parental rights to her two children following her arrest, based their PTSD diagnoses solely upon defendant's own post-arrest statements, did not consider any physical or conflicting evidence regarding abuse by the victim, and did not interview any other witnesses, and defendant did not disclose to experts that she had been the victim of previous sexual assaults, which could have been considered as an alternative cause of her PTSD. Ariz. Rev. Stat. Ann. §§ 13-404(A), 13-415; Ariz. R. Evid. 402, 702(b).

4 **Criminal Law** Mental condition or capacity
A Post Traumatic Stress Disorder (PTSD) diagnosis is not admissible to support a justification defense where it is not relevant, sufficiently probative, or a proper use of expert testimony. Ariz. R. Evid. 402, 702.

5 **Criminal Law** Mental condition or capacity
Criminal Law Intent
Expert testimony in first-degree murder prosecution regarding defendant's diagnosis of Post Traumatic Stress Disorder (PTSD), allegedly caused by domestic abuse, was inadmissible to show character trait of impulsivity to illustrate that defendant did not premeditate killing her live-in boyfriend; experts' testimony failed to support, and even contradicted, defendant's theory that domestic violence-induced PTSD sufferers were more likely to be impulsive, and absent such support, the admission of PTSD diagnosis might have impermissibly misled jurors to believe defendant suffered from diminished capacity due to mental defect. Ariz. R. Evid. 403.

6 **Homicide** Intent, Malice, Deliberation, and Premeditation
Homicide Capacity to Commit Crime
Although a defendant cannot present diminished-capacity evidence to negate the mens rea element of a first-degree murder offense, a defendant may present observational evidence about the defendant's tendency to think in a certain way and his behavior characteristics.

7 **Homicide** Deliberation and premeditation
A tendency to act impulsively in no way precludes a finding of legal premeditation required to prove first-degree murder.

Supreme Court of the United **States**
Aug. 24, 2011

...FN* Counsel of Record Petitioner was charged with six counts of sodomy in the first degree (N.Y. Penal Law § 130.50(2)), three counts of sexual abuse in the first degree (N.Y. Penal Law § 130.65(3)), a...

See More Briefs

Trial Court Documents

Gossmann v. Johari

2016 WL 8222756
Larissa GOSSMANN, **v.** Jay Kenned, JOHARI, et al.
Superior Court of Arizona.
Nov. 30, 2016

...The Court reviewed defendants' Motion to Exclude Opinions of Plaintiff's Expert Trinka Porrata, the response and the reply. The Court reviewed the expert opinions to be offered by Mr. Flaxmeyer and Ms....

Abad v. Wasatch Property Management, Inc.

2006 WL 6651749
April ABAD, et al., Plaintiffs, **v.** WASATCH PROPERTY MANAGEMENT, INC., et al., Defendants; Alicia Swiegart, et al, Plaintiffs, **v.** Wasatch Property Management, Inc., et al., Defendants.
Superior Court of Arizona.
July 13, 2006

...Currently pending before the court are: (1) Plaintiffs' attempt to file an amended complaint, (2) Plaintiffs' motion in limine to preclude Dr. Kelman from testifying about the "Rat study" citing Frye **v...**

Gong SITU, an individual, Plain Jenny WHITTEN and John Doe Whitten, wife and husband, Defendants.

2001 WL 35948663
Gong SITU, an individual, Plaintiff, **v.** Jenny WHITTEN and John Doe Whitten, wife and husband, Defendants.
Superior Court of Arizona.
Oct. 23, 2001

...JUDGE: HON. JANE L. EIKLEBERRY COURT REPORTER: NONE DATE: October 23, 2001 IN CHAMBERS UNDER ADVISEMENT: PLAINTIFF'S AND DEFENDANTS' MOTIONS IN LIMINE: The Court having reviewed the motions, opposition...

See More Trial Court Documents

8 **Criminal Law** Mental condition or capacity

A Post Traumatic Stress Disorder (PTSD) diagnosis is opinion testimony going to mental defect and its effect on the cognitive or moral capacities on which sanity depends, which, under the Arizona rules of evidence, is restricted. Ariz. R. Evid. 402.

9 **Criminal Law** Bodily condition

Criminal Law Intent

Proposed "cold" expert testimony, in defendant's first-degree murder prosecution for shooting her live-in boyfriend when she was nine months pregnant and for which she claimed self-defense against alleged domestic abuse, regarding increased cortisol levels and their effects in late stages of pregnancy, was inadmissible, as it amounted to an attempt to introduce diminished-capacity evidence to negate mens rea element of the crime; expert testified, in general, that hormonal changes during pregnancy could affect a woman's planning, thinking, mental **state**, judgment, insight, perception, and memory.

10 **Homicide** Reasonableness of belief or apprehension

Self-defense claims, other than those arising under modified standard for victims of domestic violence, are evaluated on a reasonable person standard. Ariz. Rev. Stat. Ann. § 13-415.

11 **Criminal Law** Bodily condition

Proposed "cold" expert testimony, in defendant's first-degree murder prosecution for shooting her live-in boyfriend when she was nine months pregnant and for which she claimed self-defense against alleged domestic abuse, regarding increased cortisol levels and their effects in late stages of pregnancy, was inadmissible as irrelevant to the self-defense claim; defendant's pregnancy was not relevant to either the reasonable person standard or standard for a reasonable victim of domestic violence, but instead was an individual characteristic entitled to no special consideration. Ariz. Rev. Stat. Ann. §§ 13-404(A), 13-415; Ariz. R. Evid. 402.

12 **Constitutional Law** Other particular kinds or items of evidence

Criminal Law Mental condition or capacity

Criminal Law Necessity and scope of proof

Trial court's preclusion of defendant's diagnosis of Post Traumatic Stress Disorder (PTSD) in murder prosecution for shooting her live-in boyfriend, for which she claimed self-defense against alleged domestic abuse he inflicted upon her, did not violate defendant's due process right to a complete defense; defendant presented testimony from her doctors to whom she had reported past acts of physical abuse by victim, victim's ex-wives testified that victim was emotionally abusive to them, expert testified about

the general attributes of domestic violence victims, and defendant had sufficient opportunity to present further evidence of victim's past acts of domestic abuse. U.S. Const. Amend. 14.

*962 Appeal from the Superior Court in Coconino County, No. S0300CR201500613, The Honorable Cathleen Brown Nichols, Judge.
AFFIRMED

Attorneys and Law Firms

Arizona Attorney General's Office, Phoenix, By Michael O'Toole, Counsel for Appellee

Coconino County Public Defender's Office, Flagstaff, By Brad Bransky, Counsel for Appellant

Presiding Judge Kenton D. Jones delivered the Opinion of the Court, in which Judge Jon W. Thompson and Judge Thomas C. Kleinschmidt [1] joined.

OPINION

JONES, Judge:

¶ 1 **Susan Jacobson** appeals her conviction and sentence for first-degree murder. **Jacobson** argues the trial court erred when it precluded two experts from testifying she suffered from post-traumatic stress disorder (PTSD) and a "cold" expert from testifying about the general hormonal effects of pregnancy. We hold the PTSD diagnoses and "cold" expert testimony were properly excluded and affirm the trial court's decisions.

FACTS [2] AND PROCEDURAL HISTORY

¶ 2 Late in the night of February 25, 2015, **Jacobson** fatally shot her live-in boyfriend, Marvin J., in the head while he was lying in bed. **Jacobson** then tried to clean up the scene, wrapped Marvin's body in a tarp, and moved it to a nearby window. **Jacobson** disposed of the bloody bed sheets and buried the gun before reporting the shooting to the police two days later. At the time, **Jacobson** was nine months' pregnant with Marvin's child.

¶ 3 When a deputy sheriff later interviewed **Jacobson**, she claimed she killed Marvin in self-defense. **Jacobson** said Marvin had been angry with her for a few days and, on the night of the shooting, he woke her up by kicking her in the stomach. **Jacobson** said Marvin yelled he was "sick of [her]," and did not want the baby. **Jacobson** said she left the bed, grabbed the gun, and shot Marvin believing "whoever [got] to the gun first [was] going to be saved." [3] **Jacobson** said Marvin had kicked her in the stomach during her prior pregnancy as well.

¶ 4 The **State** charged **Jacobson** with one count of first-degree murder and three counts of tampering with physical evidence. A few days after her arrest, **Jacobson** gave birth to her second child. The children were then taken into **State** custody and the **State** sought to sever her parental rights. A psychiatrist, Dr. Chris Linskey, and a psychologist, Dr. Patricia Rose, evaluated **Jacobson** for purposes of the severance hearing and diagnosed

her with PTSD. Both doctors then testified at the severance hearing and made clear that their opinions, consistent with the severance proceedings, related solely to **Jacobson's** ability to parent the two children. Throughout that process, and upon advice of counsel, **Jacobson** did not answer questions related to the shooting, and the doctors said they intentionally avoided discussing the events surrounding the shooting when evaluating **Jacobson**.

1 ¶ 5 Before trial, the court granted the **State's** motion to preclude testimony about **Jacobson's** PTSD diagnoses. The trial court also granted the **State's** motion to preclude testimony about the general hormonal effects associated with third-trimester pregnancies that **Jacobson** sought to introduce through a ***963** "cold" expert.[4] **Jacobson** was subsequently convicted on all counts, and sentenced to life in prison. **Jacobson** timely appealed,[5] and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1),[6] 13-4031, and -4033(A).

DISCUSSION

I. PTSD Diagnoses

¶ 6 **Jacobson** argues the trial court erred when it precluded testimony regarding her post-arrest PTSD diagnoses. At issue is: (1) whether the PTSD diagnoses were admissible to show past acts of domestic abuse, and (2) whether the PTSD diagnoses may be used to address the *mens rea* element of first-degree murder. We review a trial court's ruling on the admissibility of expert opinions for an abuse of discretion. ***State** v. Chappell*, 225 Ariz. 229, 235, ¶ 16, 236 P.3d 1176, 1182 (2010) (citing ***State** v. Chapple*, 135 Ariz. 281, 297, 660 P.2d 1208, 1224 (1983)). We review constitutional and legal issues *de novo*. ***State** v. Ellison*, 213 Ariz. 116, 129, ¶ 42, 140 P.3d 899, 912 (2006) (citing *Lilly v. Virginia*, 527 U.S. 116, 137, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999)).

¶ 7 As a preliminary matter, **Jacobson** argued before the trial court that ***State** v. Vogel*, 207 Ariz. 280, 85 P.3d 497 (App. 2004), supports admission of the PTSD diagnoses, and on appeal again directs the Court's attention to the factual recitation in *Vogel*. There, a psychiatrist diagnosed a defendant with PTSD and testified he believed the defendant was a victim of domestic violence. *Id.* at 282, ¶ 15, 85 P.3d at 499. However, the propriety of the admission of the PTSD diagnosis was never questioned or addressed by the Court of Appeals. Thus, *Vogel* does not support the introduction of a PTSD diagnosis as proof of prior acts of domestic violence.

A. Inadmissibility of PTSD Diagnoses as Proof of Prior Acts of Domestic Violence

2 3 ¶ 8 Typically, juries consider a self-defense claim from the perspective of a reasonable person, *see* A.R.S. §§ 13-404(A), -405(A), but by statute, a self-defense claim by a victim of domestic violence is considered from the modified perspective of "a reasonable person who has been a victim of those past acts of domestic violence," A.R.S. § 13-415. To apply this modified reasonable person standard, the jury must first determine whether the victim perpetrated past acts of domestic violence against the defendant, and, if so, then determine whether a reasonable person who had been subjected to those past acts of domestic violence would have used physical force in self-defense.[7]

¶ 9 Toward that end, a defendant may present evidence of the victim's past acts of domestic violence against the defendant to illustrate the application of A.R.S. § 13-415. She may also introduce a "cold" expert to explain the general characteristics and behavioral traits of people who have been abused in such a manner to assist the jury in understanding the modified standard.

¶ 10 Here, we consider whether a PTSD diagnosis may be used to prove that past acts of domestic violence occurred, such that the modified standard in A.R.S. § 13-415 would apply. Although no Arizona court has directly addressed this issue, another panel of this Court recently addressed the admissibility of ***964** a PTSD diagnosis in ***State** v. Richter*, 243 Ariz. 131, 402 P.3d 1016 (App. 2017).[8] There, the defendant sought to introduce expert testimony that she suffered from PTSD to support her claim she kidnapped and abused her children while under duress. *Id.* at 134–35, ¶¶ 7–8, 402 P.3d at 1019–20. The trial court precluded the PTSD testimony, evidence of prior acts of domestic violence, and the duress defense. *Id.* at ¶¶ 6, 9–10, 402 P.3d at 1019-20. The defendant was subsequently convicted. *Id.* at 134, ¶ 5, 402 P.3d at 1019. On appeal, the *Richter* court vacated the conviction, holding the PTSD testimony was not inadmissible diminished-capacity evidence, but was, instead, admissible in support of a duress defense. *Id.* at 140, ¶ 32, 402 P.3d at 1025.

¶ 11 *Richter* does not elaborate under which circumstances a PTSD diagnosis might be admissible in support of a justification defense. *See id.* at 137, ¶ 19, 402 P.3d at 1022 ("Thus, even assuming some of [the PTSD] testimony could have been construed as diminished-capacity evidence, which would be inadmissible ... it was nevertheless admissible to show that she committed the charged offenses under duress.") (citing ***State** v. Mott*, 187 Ariz. 536, 541, 931 P.2d 1046, 1051 (1997); A.R.S. § 13-412(A); and Ariz. R. Evid. 401). We do not interpret *Richter* to mean that a PTSD diagnosis is always admissible as part of a justification defense.

4 ¶ 12 A PTSD diagnosis is not admissible to support a justification defense where it is not relevant, sufficiently probative, or a proper use of expert testimony. *See* Ariz. R. Evid. 402 (providing for the admission of relevant evidence unless prohibited by constitution, statute, or rule), 403 (permitting the exclusion of relevant evidence "if its probative value is substantially outweighed by a danger of ... unfair prejudice, confusing the issues, [or] misleading the jury"), 702 (permitting experts to testify if it "will help the trier of fact to understand the evidence or to determine a fact in issue"). It has been long established that expert witnesses may not testify as to the credibility of another witness or defendant. *See **State** v. Lindsey*, 149 Ariz. 472, 475, 720 P.2d 73, 76 (1986) ("[W]e explicitly **state** at this time that trial courts should not admit direct expert testimony that quantifies the probabilities of the credibility of another witness.") (citing ***State** v. Buell*, 22 Ohio St.3d 124, 489 N.E.2d 795, 804 (1986)); ***State** v. Moran*, 151 Ariz. 378, 385–86, 728 P.2d 248, 255–56 (1986) (collecting cases). In this case, the PTSD diagnoses only served to vouch for **Jacobson's** credibility and should thus be excluded.

¶ 13 As previously addressed, Drs. Rose and Linskey evaluated **Jacobson** solely for issues attendant to a severance case initiated following her arrest. Dr. Rose's evaluation of **Jacobson** was conducted over two days and was

based primarily upon **Jacobson's** own statements that she was a victim of domestic violence. Parts of Dr. Rose's evaluation were self-administered, meaning **Jacobson** sat alone to answer the questions and had significant time to contemplate her answers before returning the questionnaire to Dr. Rose. Dr. Rose did not consider any physical evidence or third-party statements regarding **Jacobson's** otherwise unsubstantiated claims of having suffered domestic abuse. Based upon this information, Dr. Rose concluded in her report:

> [**Jacobson**] experiences PTSD, panic disorder, and an unspecified depressive disorder. Additionally, she has been the victim of psychological and physical spousal abuse, and has been exposed to extreme marital distress.

¶ 14 Dr. Linskey's evaluation lasted approximately an hour and a half, and his determinations were based solely upon **Jacobson's** own statements to him and the information contained within Dr. Rose's report. Limited to the identical information obtained and evaluated by Dr. Rose, Dr. Linskey diagnosed **Jacobson** with PTSD. As the **State** notes, both doctors took **Jacobson** at her word when she alleged to have been subjected to abuse from Marvin. ***965*** At the severance hearing, Dr. Linskey testified **Jacobson** "seemed to be honest in her answers" and seemed "sincere." Dr. Rose testified **Jacobson** was "cooperative," took the evaluation "seriously," was "forthcoming," and "wanted to answer the questions accurately."

¶ 15 No Arizona case law discusses the admissibility of a diagnosis based solely upon a defendant's statements. However, we find the analysis in ***State*** *v. Lupoli*, 348 Or. 346, 234 P.3d 117 (2010), to be highly persuasive. In *Lupoli*, the **state** sought to introduce an expert's diagnosis that a child was the victim of sexual abuse. *Id.* at 123–24. The expert reviewed no physical evidence and relied solely upon the child's statements to the expert. *Id.* at 124–25. The Oregon Supreme Court held the diagnosis inadmissible because it was solely based upon the expert's "assessment of the child's believability." *Id.* at 125. The court recognized that portions of the expert's testimony may have been admissible, but because those portions were "inextricably bound up with portions that constituted clear 'vouching,' " the entire diagnosis was inadmissible. *Id.*

¶ 16 In this case, both doctors based their PTSD diagnoses solely upon **Jacobson's** post-arrest statements. The doctors did not consider any physical evidence of, or conflicting evidence regarding, abuse by the victim; nor did they interview any other witnesses. Accordingly, we find the PTSD diagnoses in this case inherently vouch for **Jacobson's** credibility. As such, their admission would allow expert testimony to usurp the jury's role as factfinder. **Jacobson's** PTSD diagnoses are therefore inadmissible as evidence of past acts of domestic abuse having been perpetrated against **Jacobson** by Marvin.

¶ 17 Not only did the doctors rely solely upon **Jacobson's** statements, but **Jacobson** omitted key information in providing those statements relevant to the eventual PTSD diagnoses. An expert's testimony is not admissible if the testimony is based upon insufficient facts or data. *See* Ariz. R. Evid. 702(b). During interviews with detectives, **Jacobson** reported having been sexually assaulted by her mother's boyfriend. When **Jacobson** reported the assaults

to her mother, her mother did not believe her. **Jacobson** did not disclose anything having to do with this information to Drs. Rose and Linskey throughout the course of their evaluations, even when specifically asked to disclose any prior traumatic events. Thereafter, at the pretrial hearing, the **State** asked Dr. Linskey whether a PTSD diagnosis was necessarily associated with abuse stemming from a single relationship. Dr. Linskey, testified that unresolved prior traumatic events, *such as sexual assault*, could also cause PTSD. Given Dr. Linskey's testimony, and **Jacobson's** significant omission of clearly relevant traumatic history during the doctors' evaluations, the PTSD diagnoses were based upon insufficient facts or data to specifically attribute any PTSD **Jacobson** might suffer to the asserted abuse from Marvin. Accordingly, we find the trial court did not abuse its discretion when it precluded the PTSD diagnoses.

B. Inadmissibility of PTSD Diagnoses as Evidence of a Character Trait

5 6 7 ¶ 18 **Jacobson** argues that even if the diagnoses were not admissible to prove prior acts of domestic violence, they were still admissible to illustrate she did not premeditate killing Marvin because the chronic anxiety and hypervigilance "inherent in [her] PTSD diagnosis" show a character trait for impulsivity. *See* ***State*** *v. Buot*, 232 Ariz. 432, 434, ¶ 9, 306 P.3d 89, 91 (App. 2013) (explaining "a character trait of impulsivity" may cause a defendant "to act reflexively rather than upon reflection"). Although a defendant cannot present diminished-capacity evidence to negate the *mens rea* element of the offense, *see Mott*, 187 Ariz. at 541, 931 P.2d at 1051, a defendant may present "observational evidence" about the defendant's "tendency to think in a certain way and his behavior characteristics," *Clark v. Arizona*, 548 U.S. 735, 757, 760, 126 S.Ct. 2709, 165 L.Ed.2d 842 (2006) (interpreting *Mott*); *see also* ***State*** *v. Christensen*, 129 Ariz. 32, 35, 628 P.2d 580, 583 (1981) (concluding expert testimony that a defendant possessed a character trait for impulsivity would assist the jury in determining whether the defendant acted with premeditation). However, "a tendency to act impulsively in no way precludes a finding of ****966*** legal premeditation." ***State*** *v. Wood*, 180 Ariz. 53, 64, 881 P.2d 1158, 1169 (1994).

¶ 19 Contrary to her own proffered evidence, **Jacobson** equates chronic anxiety and hypervigilance with a character trait for impulsivity. But, as Dr. Rose testified in the pretrial hearing, persons who are "hypervigilant about perceived dangers" as a result of PTSD "don't generally act out." Instead, "they're more likely to withdraw to protect themselves." Additionally, **Jacobson's** "cold" expert, Dr. Geffner, testified regarding the dynamics of domestic violence and general character traits of people who suffer from PTSD. Nothing in Dr. Geffner's testimony indicates victims of domestic abuse are generally impulsive, further suggesting the PTSD diagnoses were not admissible to show impulsiveness.[9] In the absence of any testimonial support for the notion that a person with domestic violence-induced PTSD generally exhibits impulsivity, the PTSD diagnoses may have simply left jurors to believe **Jacobson** was suffering from diminished capacity and therefore was not capable of knowingly or intentionally committing the murder. *See Clark*, 548 U.S. at 775, 126 S.Ct. 2709 (noting that a mental health diagnosis may mislead jurors by suggesting that "a defendant suffering from a recognized mental disease lacks cognitive, moral, volitional,

or other capacity, when that may not be a sound conclusion at all"); *see also* Ariz. R. Evid. 403 (permitting the exclusion of evidence whose "probative value is substantially outweighed by a danger of ... confusing the issues").

8 ¶ 20 The *Richter* decision characterized PTSD testimony, including what appears to be a diagnosis, as "observational evidence" of a character trait, which is not precluded by *Mott*. *See Richter*, 243 Ariz. at 137, ¶ 20, 402 P.3d at 1022. We respectfully disagree. A PTSD diagnosis and testimony regarding an expert's observations of a person's character traits are not interchangeable. We hold that a PTSD diagnosis is "opinion testimony going to mental defect ... and its effect on the cognitive or moral capacities on which sanity depends," which, "under the Arizona rule, is restricted." *Clark*, 548 U.S. at 760, 126 S.Ct. 2709; *see also Mott,* 187 Ariz. at 544, 931 P.2d at 1054. Accordingly, we find no abuse of discretion in the rejection of this evidence.

II. Pregnancy Testimony

9 ¶ 21 **Jacobson** argues the trial court erred when it precluded Dr. Hibbert's "cold" expert testimony regarding the effect of increased cortisol levels in the late stages of pregnancy. The **State** contends Dr. Hibbert's testimony was merely an additional attempt to introduce inadmissible diminished-capacity evidence. In its ruling, the court **stated**:

> I do believe this would be improper expert testimony regarding the issues of hormonal changes when given that the defendant was about to give birth. ... Dr. Hibbert testified that there are hormonal changes during pregnancy that can affect cognition. And when she was asked to explain what she meant by that, that she said it could affect planning, thinking, mental **state**, judgment, insight, perception and memory. The Court believes that this ... would be improper evidence of potential diminished capacity.

We agree with the trial court's assessment; the proposed testimony amounted to diminished-capacity evidence. Dr. Hibbert's remarks about cognition illustrate that the only purpose of introducing the testimony was to suggest to the jury that **Jacobson** acted with cortisol-driven diminished capacity at the time of the murder, prohibited by *Mott*. *See supra* ¶ 18.

10 11 ¶ 22 Not only was the "cold" expert testimony inadmissible as diminished-capacity evidence, it was also not relevant to the self-defense claim. Self-defense claims, other than those arising under A.R.S. § 13-415, are evaluated on a "reasonable person" standard. *See* ***State*** *v. Oaks*, 209 Ariz. 432, 434, ¶ 9, 104 P.3d 163, 165 (App. 2005) ("By its very nature, the term ['reasonable person'] connotes an objective standard of conduct, not a subjective standard," which "does not take into account the individual characteristics of the accused.") (citing ****967 State*** *v. Serrano*, 145 Ariz. 498, 501, 702 P.2d 1343, 1346 (App. 1985), and then ***State*** *v. Tuzon*, 118 Ariz. 205, 209, 575 P.2d 1231, 1235 (1978)). **Jacobson's** pregnancy is not relevant to either the reasonable person standard, or the reasonable victim of domestic violence, but instead is an individual characteristic entitled to no special consideration. Accordingly, the trial court did not abuse its discretion when it precluded Dr. Hibbert's testimony.

III. Due Process

12 ¶ 23 Finally, **Jacobson** argues that by precluding the PTSD diagnoses, the trial court "left [her] with no vehicle to bolster her abuse claims," and thereby deprived her of a complete defense. It needs first be noted that it is not within the purview of the court to allow otherwise inadmissible evidence to "bolster" a defense. Further, the doctors, evaluating **Jacobson** solely for issues attendant to a severance proceeding, admitted having premised their diagnoses solely upon **Jacobson's** statements. Because **Jacobson** failed to provide essential, requested information to the doctors, she left them in the position of only being able to assess the incomplete history she provided, and such testimony would impermissibly vouch for **Jacobson's** credibility. *See supra* ¶¶ 16–17. Moreover, beyond anything the doctors were competent to contribute, **Jacobson** had sufficient opportunity to present further evidence of Marvin's past acts of domestic abuse. **Jacobson** presented testimony from her obstetrician and her family physician, who both testified **Jacobson** had reported physical abuse from Marvin before the shooting. **Jacobson** called both of Marvin's ex-wives, who testified he was emotionally abusive during their respective relationships with him. Finally, **Jacobson** called Dr. Geffner, to testify regarding the general attributes of domestic violence victims. Indeed, within her reply brief, **Jacobson** admits that she presented evidence to the jury that she was a victim of domestic abuse and that Marvin was the perpetrator of the abuse.

¶ 24 **Jacobson** had sufficient opportunity to prove Marvin committed acts of domestic violence against her, and the trial court gave the jury a detailed instruction related to the "reasonable victim of domestic violence" standard, including a list of what constituted past acts of domestic violence. Accordingly, we find no violation of **Jacobson's** due process rights to a complete defense.

CONCLUSION

¶ 25 **Jacobson's** conviction and sentence for first-degree murder are affirmed.

All Citations

244 Ariz. 187, 418 P.3d 960, 780 Ariz. Adv. Rep. 4

Footnotes

1 The Honorable Thomas C. Kleinschmidt, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article 6, Section 3, of the Arizona Constitution.

2 "We view the facts in the light most favorable to sustaining the jury's verdict." ***State*** *v. Randles*, 235 Ariz. 547, 548 n.1, ¶ 1, 334 P.3d 730, 731 (App. 2014) (citing ***State*** *v. Vandever*, 211 Ariz. 206, 207 n.2, ¶ 1, 119 P.3d 473, 474 (App. 2005)).

3 **Jacobson** later told a detective there was no struggle for the gun and even admitted Marvin's head was "on the pillow" after she fired the gun. At trial, the **State** presented evidence showing the gun was fired from only four inches away.

4 "Cold" expert testimony "educates the trier of fact about general principles but is not tied to the particular facts of the case." ***State*** *v. Salazar–Mercado*, 234 Ariz. 590, 595, ¶ 21, 325 P.3d 996, 1001 (2014) (noting that "expert testimony about general behavior patterns of child sexual abuse victims may help the jury to understand the evidence," including "possible reasons" for the victims' unusual behavior) (citations omitted).

5 **Jacobson** only appeals her conviction and sentence for first-degree murder and therefore waives any claim of error as to her convictions and sentences for tampering with physical evidence.

6 Absent material changes from the relevant date, we cite a statute's current version.

7 The modified reasonable person standard in A.R.S. § 13-415 is only available for claims of self-defense or defense of third persons. *See* A.R.S. § 13-415 (limiting standard to defenses arising under A.R.S. §§ 13-404, -405, and -406). Moreover, the modified reasonable person standard does not replace the objective perspective with a subjective perspective. *See Vogel*, 207 Ariz. at 285 n.4, ¶ 28, 85 P.3d at 502.

8 Although the *Richter* court consistently refers to the expert's testimony in more general terms as "PTSD testimony," the defendant there expected the expert to testify "that she suffers from ... PTSD ... based on 'the many months, if not years, of abuse she suffered at the hands of [her husband].' " *See Richter*, 243 Ariz. at 134, ¶ 8, 402 P.3d at 1019–20.

9 Although the trial court permitted **Jacobson** to call Drs. Rose and Linskey to testify regarding her general character traits at trial, she chose not to do so, and thus forfeited an opportunity to introduce the testimony she now argues was relevant to show she did not premeditate the killing.

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APPENDIX, A-2

Detective Curtis February 27th, 2015, Interview of Susan Jacobson

Unsworn Interview

of

SUSAN JACOBSON

Taken

Unknown

By

Deputy Curtis

State v. SUSAN JOY JACOBSON

Case No. CR 2015-00184

THE WITNESS: Well --

MR. CANEPA: Well -- okay. The -- the lady will tell you.

BY DEPUTY CURTIS:

Q. Okay.

MR. CANEPA: Okay.

THE WITNESS: So it would have been yesterday in the wee hours of the morning. In bed, I had woken up to a hostile situation and mad and getting kicked in my abdomen and a -- a life threat that this time didn't seem like it might be watch your back in the future, it seemed like it was going to be -- like, happen now. And I grabbed a gun and I shot him.

BY DEPUTY CURTIS:

Q. Huh?

A. I grabbed a gun and I shot him.

Q. Where is this at -- where did this happen?

A. At our home.

Q. Where is he now?

A. At our home.

Q. Have the paramedics been called?

A. No. He didn't survive.

Q. And this is the first time that you're reporting this?

A. Yeah.

Q. What -- what's the -- what's the address?

A. 9115 Blueridge Drive.

Q. And he's there now?

Okay. I'll be right back. Is it your husband, ex-husband? Who is it?

A. We called each other my husband, but we --

Q. What's his name?

A. Marvin James.

Q. What's his birthday?

A. 11/17/60.

Q. Okay. Where's the gun at?

A. I got rid of it.

Q. Where?

A. I never wanted to see it again. I took it out and I buried it in the forest.

Q. Where in the forest?

A. I went north of the house, and I went down a dirt road, and I buried it out there.

DEPUTY CURTIS: Hey, it's Curtis.

BY DEPUTY CURTIS:

Q. Okay. So describe to me what happened to -- for this situation to start the way that it did.

A. That escalated?

Q. Yeah.

A. His -- he had threat -- he has threatened me before. I've been in fear for my life for years. We have a son together. I fear for his life. That is why I don't leave. And I don't fear for his life. I fear for his -- more his emotional safety. He doesn't have any patience. There's a lot of things.

It happened. Things have just been escalating. There had been increasing violence last -- last year. It just started increasing.

Q. Mm-hmm.

A. Like, the whole pregnancy thing. It happened with the first. And this week in particular had just -- I don't know what angers him. He just gets mad. And it had been getting really bad all week.

And was the breaking point, I think, for him was our son -- he has been having a very hard time sleeping in his room for a while now. And he sleeps next to me in our bedroom on the floor, but he keeps getting up. And --

Q. Let me pause you real quick.

I apologize. Keep going.

A. Where was I?

Q. You were talking about things in the past and kind of what escalated to what happened yesterday morning?

A. Oh, my son. So I put him -- I said, If -- you know, if you continue to get up, then you're not going to sleep in this room. This room is for sleeping. It's bedtime.

And he got up again. So I said, you know -- and I don't make it a punishment in his room, but -- but I -- you know, you have to lie in there. He was terrified. And he hasn't slept in there in a long time.

And so I said, you know, I'll lie down in here with you for -- for a while, but not for the whole night.

And then what I did is I kept getting up. And I thought if I get up for -- you know, I'm going to go get a pillow. And if I kept getting up for longer and longer, maybe it would ease him back into sleeping.

Well, anyways, so I lied with him for a while. Marvin gets really mad if at bedtime I'm not in bed. So I -- I knew he was like shutting off the TV and -- and so I'm like, Okay. Well, I better get in there. And I turned -- like, I turned all the

night lights off and everything in Tyler's room. Because I figured, well, I'm here. He doesn't need them on. And he won't know when I sneak out.

Q. Mm-hmm.

A. So I went back and he was furious with me for -- for lying down with him and went to bed really mad. And I have really bad insomnia, and it's particularly bad this week, where I've only slept a few hours all week.

But I woke up to -- he was very mad and something like, I'm -- I'm tired of you. I'm beyond -- he doesn't want the baby. He's been mad about it. I'm beyond tired of this situation. I got a kick. And I'm -- he didn't come right out and say I'm going to kill you, but it was -- you knew -- I don't remember the exact words. I'm -- I'm ending you. I'm -- I'm -- I don't remember exactly what it was, but I knew -- I knew it was happen -- I knew it was happening now. And it wasn't watch your back for weeks --

Q. Mm-hmm.

A. -- or years to come.

So that's when I got -- grabbed the gun and -- he always likes to keep one in the room for safety and -- and then I shot him. I'm not sure

exactly where I shot, but I heard nothing after that.

Q. Did he -- was he on the bed or was he next to the bed?

A. Yeah, he was on the bed.

Q. Okay. And is your house two-story, one-story?

A. One-story.

Q. Okay. And where was your son at this time?

A. In his room.

Q. In his room. Did -- did he get woken up?

A. No.

Q. Okay. And --

A. No. I have sound makers. I have --

Q. Oh, okay.

A. -- like, an air purifier in our room. I have a rain -- like, a rain sound maker in his room. So he didn't hear anything.

And I -- we usually keep our door closed or almost closed so light doesn't come in and so he didn't.

Q. Okay. So -- are you absolutely positive that you did shoot him?

A. Yeah.

Q. Okay. So after you got your son and left,

where did you go?

A. I had to go -- I had to go to the doctor. And I was at the hospital all day yesterday. I was -- the baby was having problems.

Q. Okay. And how is the baby doing now?

A. Not great. I have to go back tomorrow, to the -- to FMC.

Q. Okay. So after you went and got checked out, where did you go from there?

A. To my mom's.

Q. To your mom's. And did you tell them right away what had happened?

A. I just told them today. I, like, didn't know how to tell them. I, actually, was more worried about my mom, telling her, because she's very fragile. And I thought -- I don't know. I'm, like, afraid she's going to have a heart attack or something if I tell her.

Q. Mm-hmm.

A. She's very emotional with other people's issues. And I'm just trying to stay calm too, because --

Q. I -- I understand.

A. -- we're not doing so good.

Q. Trust me. I have kids of my own. I

understand what stress -- and especially this type of stress can do to your baby. So, you know, got all the time. Just going to take a breath and we'll calm down for a few seconds. Okay.

So after you got your son, at what point did you leave to bury the gun?

A. I did that today.

Q. Today?

A. Mm-hmm.

Q. Okay. And -- so you went back to the area of the house?

A. Mm-hmm.

Q. Did you go in the house today?

A. Mm-hmm.

Q. Did you see him?

A. I've covered him up, so I can't see him. I don't ever want to see --

Q. Okay.

A. I can't ever -- I have to go in the room. I didn't ever (inaudible) see that side again.

Q. Okay. So you're saying north of the house, so that would be that Blueridge Drive right there; right? Or is it in the forest?

A. In the forest.

Q. Is it a path or a road, because --

A. A road.

Q. -- I'm trying to picture that road. I mean, I'm very familiar with the area, but we need to --

A. So I drove north, and I found a dirt road, and I drove down it. And I just -- I buried it out there.

Q. Okay. Anything in particular --

A. Like a forest.

Q. -- because we do -- we're going to need to find it.

A. Okay.

Q. And we need to know exactly where it's at.

A. I have no idea where. It was like -- like, hiking or I think you can, like, hike in a camp down there. It wasn't near any houses or anything.

Q. Is it back in like the Old Caves Crater Trails area?

A. No. It's the -- no. Like, the Cave Hill?

Q. Yeah. Because there's all those --

A. No. It's going the other way.

Q. Okay.

A. No. It's going the other way. Like going to Utah. Going towards -- what's that area? So if you just keep going past our house --

Q. Mm-hmm.

A. -- on the highway, it's down the highway.

Q. It's off to the side of the highway on a dirt road?

A. No. Like, down a -- like, Elden -- I think it's Elden Springs --

Q. Elden Springs?

A. -- Path, Elden Springs Road, Elden Springs Path.

Q. Okay.

A. Something --

Q. So when you went on 89, you were going north, and then you made that left onto Elden Springs?

A. Mm-hmm.

Q. How far back did you go?

A. I have no idea, because there was cars. So I just kept going.

Q. Did -- did you go past the -- the houses that are down Elden Springs Road?

A. I didn't see houses.

Q. There's some houses about a mile or two down that road.

A. Okay. I didn't see a house.

Q. Okay. Now, when you -- did you pull off

just to the side of the road?

A. Yeah, but I walked. I walked a little bit.

Q. Okay. How far, do you think?

A. I didn't want anybody to see me and wondering what I was doing, so.

Q. I hear you.

A. Not real far, though.

Q. Okay. So it wasn't too far off the 89?

A. Right.

Q. Could you see Highway 89 from where you were at?

A. No.

Q. So back to where we were at. You made the left onto the Elden Springs. You drove down a little ways.

Did you go to the left side of the road or the right side of the road on Elden Springs?

A. The right.

Q. To the right side. Okay.

Okay. And so did you park right there on Elden Springs Drive or Elden Springs and walk?

A. Mm-hmm.

Q. So you walked north into the forest?

A. Yes.

Q. Did you put any rocks on top of it or -- or

anything like? Something so that we know where to find it?

A. There is -- there is a rock. And there's rocks around too.

Q. Okay. But is it directly underneath a rock?

A. Yeah.

Q. And how deep did you bury it?

A. Not that deep.

Q. Do you know what kind of gun it was?

A. I don't. I'm not familiar. It's maybe that long.

Q. Okay. Do you know the caliber?

A. I don't.

Q. Okay.

MR. CANEPA: Give you quite a kick? Did it kick quite a bit?

THE WITNESS: Yeah. It seemed powerful.

BY DEPUTY CURTIS:

Q. Is there other ammo in the home that matches that weapon so we'll be able to kind of figure out what we're looking for?

A. I -- he does the gun thing.

Q. I hear you.

A. I don't even -- I take spiders out and -- I

don't -- I don't -- I've never (inaudible) guns.

Q. Excuse me.

DEPUTY CURTIS: Hello.

BY DEPUTY CURTIS:

Q. Kind of keep going. So when I -- when I looked you up, I didn't -- I didn't see a lot of reported issues. Do you guys -- have we been called out to your house many times?

A. I only called once, and it got really bad for me after that, and a lot of threats. And I -- I'm like, I can never call the police again.

He has friends. He has -- Jason's his employee. And it's -- from what he told me, he said, well, you know, I know about the highest ranking in town and his son's next in line and he's -- now he's in -- I convinced them all you're crazy. And if you ever talk to them again -- you know, he just -- I have to go to the bathroom soon. Threats. But also said I will lose my entire business if you call again, because they'll take -- I guess -- I don't know -- I don't -- yeah. I don't really know what to believe with him, because he lies chronically.

But they'll take my guns. And I can't ever use again. And I will lose my whole business.

And it just kind of went on.

Q. So what does he do?

A. He is an outfitter. So he kills animals.

MR. CANEPA: Hunting guide, sounds like.

THE WITNESS: Yeah.

MR. CANEPA: Hunting guide, yeah.

DEPUTY CURTIS: Okay.

MR. CANEPA: Yeah.

THE WITNESS: And then (inaudible) takes other people out too and finds animals to shoot for them.

BY DEPUTY CURTIS:

Q. Okay. So we're just -- we're waiting there at your house now. Okay?

DEPUTY CURTIS: So at what point did she come to you and talk to you?

MR. CANEPA: Well, it was about -- what? 2 o'clock this afternoon?

THE WITNESS: Yeah.

MR. CANEPA: About 2 o'clock this afternoon.

DEPUTY CURTIS: And then you guys basically -- you said you need to go over --

THE WITNESS: No. I had already decided --

DEPUTY CURTIS: Okay.

THE WITNESS: -- I'm going to go.

MR. CANEPA: Oh, yeah. We got to get --

THE WITNESS: But I wanted to talk to them first --

MR. CANEPA: Yeah.

THE WITNESS: -- before I came down here.

MR. CANEPA: So we let her -- yeah. Yeah.

DEPUTY CURTIS: And did you ever go over there to confirm that he was deceased?

MR. CANEPA: I went over to the house, and I saw it covered, but I didn't look.

DEPUTY CURTIS: You saw him covered?

MR. CANEPA: Mm-hmm.

DEPUTY CURTIS: Okay.

MR. CANEPA: Yeah. Well, I saw him covered, but I didn't know -- I didn't see any body, you know. I couldn't tell.

DEPUTY CURTIS: Sir, what's your name?

MR. CANEPA: Pardon?

DEPUTY CURTIS: What's your name?

MR. CANEPA: My name is Frank. And the last name is C-A-N-E-P-A, Canepa.

DEPUTY CURTIS: What's your birthday, sir?

MR. CANEPA: March -- March 20th, 1930.

BY DEPUTY CURTIS:

Q. Susan, what's your birthday?

A. 11/8/71.

Q. Okay. So anything else?

A. No. What's the procedure? They remove the body. They remove all the --

Q. Well, when we go in and confirm that he is actually deceased, then it will be a crime scene at that point, and it will -- it will be processed by our detectives. And then the body will go to our medical examiner's office. Okay. And then, you know, we need to go find the weapon and all that.

So we're just at the starting point. I'm definitely not going to be the first person that you talk to. So kind of just waiting. I guess our biggest concern is, you know, if he's not there, where would he be?

A. No. He's there.

Q. Okay.

MR. CANEPA: Any -- any more questions?

DEPUTY CURTIS: No. I'm just --

MR. CANEPA: Yeah.

DEPUTY CURTIS: Just trying to pick your guys' brain and see --

MR. CANEPA: Yeah.

DEPUTY CURTIS: -- what brought all this out. I mean, obviously, you know, you're here. You're telling us that there was a problem.

MR. CANEPA: Yeah.

DEPUTY CURTIS: And -- but, unfortunately, it ended not the way that --

MR. CANEPA: Yeah.

DEPUTY CURTIS: -- we like.

BY DEPUTY CURTIS:

Q. And, you know, it's sad to say that it got to that point with, you know, lack of calls and that you were that afraid that you had to put yourself --

A. I have been --

Q. -- in that position.

A. -- all around town, talking to people for quite a long time; counselors, victim witness, attorneys. I would have left a long time ago, if I felt I could have. It's not a situation I --

Q. Mm-hmm.

A. It was -- been a very difficult one, but I have a son.

Q. I understand.

A. And I don't want to leave my son alone with him. So I had to stay and protect my son as best I could. I didn't ever like my son to be alone with

him. If I had to go to town and I couldn't bring him, I would go at nap time.

Q. Mm-hmm.

A. But it has been a -- it's been hard for a while, but this time it -- the threats are scary. They're always scary. But this time it was more. It's was like, You're -- you're done. You're done now.

Q. Did he specifically say that?

A. Yeah.

Q. So in that instance when he was saying that -- I mean, obviously, you were scared, but what -- what were his actions to make you go to that measure?

A. The kick and -- I don't remember exactly. He had said a couple things. But it was the kick and right after that -- and his -- his anger and his -- whatever. He was letting me know I am -- I'm -- I'm finished.

Q. Mm-hmm. Was there any -- any other physical altercation, other than the kick?

A. No. I --

Q. From -- from either of you?

A. No. I don't hit.

Q. Okay.

A. But, no, I just got out of bed.

Q. Okay. So he kicked you while you were lying down in bed?

A. Yeah.

Q. Okay. And had you -- you guys had been arguing before that or you woke up to --

A. I don't really argue. I just listen to him, because he gets just -- you can't, you know. He just yells. He was -- he was -- he went to bed mad about -- like, really mad. Like, the littlest thing would set him off and -- he's been mad all week.

It got really worse when -- my car got hit. And I got it back from the body shop. It smells like fumes. He doesn't leave us a truck when he goes out of town. When he goes out of town -- hey, Jason.

JASON: Hey.

MR. CANEPA: How you doing? I think --

JASON: I'm all right.

MR. CANEPA: I think I met you one time before.

JASON: Yeah.

MR. CANEPA: Yeah.

JASON: Where's Tyler?

THE WITNESS: With my mom.

JASON: Okay.

THE WITNESS: I was just telling him about the week. It was -- it's just been about a week, and it just kind of escalated it. And his anger just grew and grew and grew and got out of control.

JASON: Let me tell those guys out there Tyler's all right. All right?

THE WITNESS: Okay. So because we're getting snow and I didn't want to get stuck -- we got -- Tyler -- we got stuck out there for like a week throughout our last big storm, doesn't leave us a truck.

So -- oh, well, this will work. I can't smell the fumes. I have asthma. I don't want to effect the baby. It's snowing. I'll leave my car at my mom's and switch with Frank. So I brought the truck home, and he was furious about it.

And what -- what are you doing with the truck? Are you packing your stuff out?

And it went on. It went on all week.

BY DEPUTY CURTIS:

Q. Mm-hmm.

A. And he's like, Tell them to come out here and pick it -- every day. It was -- like, it was

just an issue. And he's like -- and then he's just -- he's like, You're lying to me. I'm so sick of you lying. Like, why -- why don't you tell me the truth? Why do you have the truck?

And he's flipping out. And I'm like, What is there to lie about? I don't --

I said, We got stuck out here for a week. We couldn't even leave the house, because I cannot drive down that driveway.

And it just -- it just -- his anger just had escalated all week. And he just finally snapped.

Q. How long have you guys been married?

A. Almost five years. We actually --

Q. And you have two kids in common? The one on the way and -- and Tyler?

A. We actually -- we did a ceremony, but he was still married. His divorce took a lot longer to go through, so we did a ceremony, but it wasn't legal.

Q. Okay. How long have you guys been together, all together?

A. All together, five years.

Q. Okay. So five years?

A. Or close to it. Yeah, just about five

years.

MR. CANEPA: Did you know Marvin?

JASON: Mm-hmm.

MR. CANEPA: You did.

THE DEPUTY: That's what I -- all I got from her for right now.

JASON: Did you call his dad?

THE WITNESS: I haven't. I actually just told my mom and Frank this afternoon.

MR. CANEPA: Yeah.

THE WITNESS: And came down here.

JASON: What's his -- let me see your pen.

What's his dad's number? Do you got it on your phone?

THE WITNESS: I do.

JASON: Is he in Camp Verde right now?

THE WITNESS: He should be in Sedona.

Uh-oh. My next door neighbors -- oh. She's wondering if I'm okay.

JASON: Is that the Thornsleys?

THE WITNESS: Yeah.

JASON: Do they know anything about it?

THE WITNESS: No.

Yes. I'll tell you more later.

Okay. Dad's number.

MR. CANEPA: It's starting to snow again.

DEPUTY CURTIS: Yeah. It's been fluttering off and on all day.

MR. CANEPA: Yeah. Yeah.

THE WITNESS: Let's see here. (928) 300-1112.

JASON: Three ones and a two?

THE WITNESS: Yeah.

JASON: What's his address down there?

THE WITNESS: I don't know.

JASON: What's his first name?

THE WITNESS: Marvin.

JASON: Same?

THE WITNESS: Mm-hmm.

So are you waiting for confirmation from them?

DEPUTY CURTIS: Mm-hmm.

THE WITNESS: They check him? Is it the paramedics that go out?

DEPUTY CURTIS: Our deputies are out there with him. So far, I haven't heard anything.

JASON: It's confirmed.

DEPUTY CURTIS: Okay.

THE WITNESS: So now what's the next step?

DEPUTY CURTIS: We're going to get a little

bit better of an interview. As far as where that -- that gun's at, you know, we really need to find where that is.

MR. CANEPA: And maybe you might have to show them, Susan.

THE WITNESS: I don't know.

MR. CANEPA: Hmm?

THE WITNESS: I don't know if I could find it again.

MR. CANEPA: You don't know -- know?

THE WITNESS: No. I just put it in the forest.

BY DEPUTY CURTIS:

Q. So why -- why in the forest and not --

A. Well, I --

Q. -- at the home?

A. I just wanted it out of my life, and I didn't want anybody to find it and use it.

Q. If there's a will, there's a way. Somebody will find something in the forest. That's -- you know, we got a lot of hikers and stuff out there.

A. Well, that's why I buried it.

Q. Mm-hmm. Is it in a bag at all?

A. Mm-hmm.

Q. Or is it just the gun?

A. Mm-hmm.

MR. CANEPA: It's in a bag?

BY DEPUTY CURTIS:

Q. What type of bag is it?

A. Just a baggy.

Q. Like a clear plastic bag?

A. Yeah.

Q. Walmart bag?

A. Yeah.

Q. And are you absolutely positive that it's off of Elden Springs?

A. I'm not absolutely positive, but I know it was like a dirt road down there.

Q. Well, that -- that whole road's dirt once you make that turn, so.

A. Oh.

Q. And you're saying you didn't go to the housing. Because there is -- like I said, there's houses back there, so.

A. I didn't see houses.

Q. So you went down there a little ways. And you said you couldn't see 89 from where you parked your car?

A. Right.

Q. And you walked north into the forest?

A. Mm-hmm.

Q. Was there -- when you were walking into the forest, was there any roads or even paths, because there's a lot of people that walk dogs and hike?

A. I mean, I passed roads.

JASON: So, Susan, you know what's going to happen; right?

THE WITNESS: No, I don't.

JASON: Here?

THE WITNESS: I have no idea what's going to happen.

JASON: So you came in and told us this. We got to investigate it. So we got to interview you. Find out what happened. We're going to write a search warrant for the house. Since you have somewhat a standing in there, even though it's Marvin's house. So we're going to go over there. Do a search warrant. Confirm everything you say.

Right now you came in on your free will. You're not under arrest.

Did you read Miranda rights?

DEPUTY CURTIS: No, I didn't.

JASON: Okay. So you're here on your free will right now. You should probably know your Miranda rights at this point, because you have a

right to talk, you have the right to an attorney. And we can read them to you. But just to give you a heads up on that, because we got to do an investigation; right?

THE WITNESS: Mm-hmm.

JASON: And that's -- that's where we're at with that, so. So we'll -- we'll do it different. I've got a detective coming in right now that's going to interview you. We'll read your Miranda rights that way you know your rights. And you can talk to us if you want to talk to us. But what we know right now is that -- all I can get from him. Okay?

Is Tyler doing okay?

THE WITNESS: Yeah. He doesn't know. I have been -- always tried to hide my scared and my whatever emotions in front of him, because he's very susceptible to my emotions. I mean, he's seen me cry a little bit. So he's -- I've tried to go in another room when I have -- you know, and not show it, because he's very -- he's a very emotional little boy. And he plays off my emotions very strongly.

JASON: Matt, you got any other questions that you need for her?

DEPUTY CURTIS: No. I got nothing else.

JASON: Frank, Susan, you guys want to come upstairs?

THE WITNESS: Yeah.

MR. CANEPA: Yeah.

* * * * *

C E R T I F I C A T E

I, Keisha Heflin, transcriptionist for Performance Reporters, Inc., do hereby certify that I was provided a compact disc in the above-entitled matter with a request that I transcribe the same; that I listened to the compact disc and prepared a typewritten transcript of the contents of the tape to the best of my skill and ability. Further, that I am in no way affiliated with or related to any of the parties in this case.

DATED this day 16 of March, 2015.

_____

Keisha Heflin, CET-545

C E R T I F I C A T E

I, Keisha Heflin, transcriptionist for Performance Reporters, Inc., do hereby certify that I was provided a compact disc in the above-entitled matter with a request that I transcribe the same; that I listened to the compact disc and prepared a typewritten transcript of the contents of the tape to the best of my skill and ability. Further, that I am in no way affiliated with or related to any of the parties in this case.

DATED this day 22 of March, 2015.

_____

Keisha Heflin, CET-545

APPENDIX, A-3

Detective Barr February 27th, 2015, Interview of Susan Jacobson

Unsworn Interview

of

SUSAN JACOBSON

Taken

Unknown

By

Detective Barr

State v. SUSAN JOY JACOBSON

Case No. CR 2015-00184

BY DET. BARR:

Q. All right, Susan.

A. I'm going to need to bring my asthma inhaler too, so.

Q. Your asthma inhaler?

A. Yeah.

Q. Is it in your purse, because I couldn't find your purse.

A. Yeah. I don't like to leave without it.

Q. Do we know what happened? Give me a minute. I'll try and track it down.

A. Okay.

DET. BARR: Troy, why is Summer with it? She has an asthma inhaler. She's just going to have to go without it.

TROY: The house is right there by Elden Springs.

DET. BARR: She has it down there? I mean, she has one at the house maybe or something?

TROY: I don't know.

DET. BARR: I don't know.

TROY: She's got it in her -- I don't see her purse here. He must have put it in the till.

DET. BARR: Yeah. He's gone? We're just going to have to go without.

THE WITNESS: Got it?

DET. BARR:

Q. Well, so they're telling me that the detective that had it locked it up, because he didn't want to leave it out. And he hasn't been feeling well, so he left.

A. Oh, no.

Q. And he has the key.

A. That's creepy.

Q. Are we going to be okay for a little while without it?

A. I know --

Q. We'll get them back eventually.

A. I never know when I'm going to have an episode, but --

Q. Well, we'll -- you'll be with us and we'll take care of you. This is Pat.

A. Hi.

Q. He's one of our detectives here as well.

A. I need to zip up.

Q. Sure.

A. It's harder and harder to zip that.

Q. I hear you. You can't keep buying coats too, huh.

A. (Inaudible).

Q. Right here will be perfect. And I'll jump in on the other side there. We'll have Pat drive us around. Good?

A. Good.

Q. All right.

A. Do you -- do you want to get any names of people that are aware of some of the things that --

Q. Yeah. (Inaudible)

A. I'll give you some of their names.

Q. Absolutely. We'll end up -- so -- can you get that?

A. I'm having a hard time with it.

Q. See if we can give you some light.

A. I'm having a hard time turning.

Q. (Inaudible) and I'll drop some stuff down.

So your best guess was at Elden Springs; is that right?

A. I think so. I'm not (inaudible).

Q. Okay.

A. (Inaudible), you know.

Q. And what were some of those names that you were wanting to tell me about that can kind of give me some background?

A. My mom knows quite a bit.

Q. Okay.

A. Joyce Canepa. I don't tell Pam everything, because (inaudible), but I do tell her some things. Pam Erickson.

Q. Okay.

A. I've had to tell my doctors. So -- so my doctors are going to know -- know some stuff.

Q. And those are -- are they medical doctors or counsellors or --

A. Yeah.

Q. Those are your medical --

A. I just -- I seen counsellors too, but I -- the names are going to -- they were with victim witness. I went to -- I had to stay in a shelter once. So that was at -- you know, I'm not certain of the name of the shelter, but it was the one that is near 4th Street. So I stayed there.

And then I went to talk -- when I got pregnant, I got really scared, because that was when the abuse starting happening last time. And I never told my doctors anything the first time around; my osteopathic, because she was sensing something. And so she asked me about my family life. And I started telling her some things.

And she's like, Well, if you have a second one, you might expect his behavior and violence to

increase.

And so she gave me a name of a counsellor. So I went to see that counsellor at -- I think that was Hope Cottage. That was the one that's over by DES or -- I don't know if it's by DES. Like, by Walgreens warehouse and stuff so (inaudible).

Q. Like, the guidance center over there?

A. It's not the guidance center.

Q. Okay.

A. It's the -- it's a shelter.

Q. It's a shelter. Okay.

A. And she couldn't answer my questions, so she referred me and -- you know. And because of the things that were happening, she told me to go to victim witness. So I went there.

Q. When did you go to victim witness?

A. That was -- it seems like it was several months ago.

Q. Several months ago?

A. Yeah. I told -- I -- a couple of Marvin's employees know a little bit. One is Brain Nogesek. N-O-G-E-S-E-K. And I have -- I have their numbers.

The other one is (inaudible). His name is Jeff. Jeff -- what's his last name? It's not coming to me right now.

Greg Horne. But the -- I think all of them know about the threats to my or -- I don't -- I don't know if I told them about the threats to my life, but they know about some of the verbal abuse, because he started (inaudible) at the -- at the lodge (inaudible) there, but they knew. And that was just (inaudible) like what -- what's his -- you know, do they see these other behaviors. And they're like, oh, absolutely. And one says he talks to a counsellor about Marvin.

Q. Oh, really?

A. Deal with -- help him deal with -- because Marvin, I guess -- I didn't know this, but I guess Marvin's super controlling with them too. Like, he'll -- he'll stand over my phone calls and has to know who I'm talking to. And he'll stand over. So I usually turn my phone off, because he has to know everything. And I guess he's like with -- at least with -- you know, a couple of them that -- you know, I don't know how he is with all of them, but for sure some said, oh, yeah, he has to know who we're talking to and he's really controlling too. I guess it's not just me.

Q. Okay.

A. But my mom might be able to give -- some of

the hunters tell -- said awful things that they've witnessed about Marvin and said Susan needs to get out of there. My mom knows too. So she's -- she's seen some things.

Q. So you said you stayed at a shelter?

A. Yeah.

Q. Was that like three years ago when you had the first --

A. Tyler was really little, but I --

Q. Was that after that last one that cops came to or --

A. I don't -- there's been a lot of events, so -- and (inaudible) was a -- really scaring me and I left. But Tyler was -- was he walking? He was little, I remember.

Q. Okay.

A. They made -- they made -- they have -- well, Marvin (inaudible) on a hunt that night anyways, so they made -- they made him leave for the night. But, actually, they did have to come back, because he's -- the cops said -- and Marvin gave him his word that he wouldn't return until the next day.

So my plan was to get my things out and get out of there and leave. I didn't sleep all night. And I was so, like, unfunctionable the next day, I

didn't hardly have anything packed. And Marvin came home early banging and knocking on the door. And I freaked out. But my mom stayed the night there with me at the house.

So I thought he might kill me. And I called the police again. Well, then when I saw he was even tempered, I'm like, oh, gosh, now if the police come out, he's going to really freak.

So I called the police back and I said, Can you please not come out. He's calm.

And they said, Well, once you call us, we have to come out.

And I said, Really? It's going to make it worse.

But they had to follow procedure and come out again. And so I don't -- I don't remember. I don't remember. There's been a lot of threats and stuff. I don't remember if it was -- it was one of those times though.

Q. And what was your lot -- what was the address out there at the residence?

A. 9115 Blueridge Drive.

So that's the only fast acting inhaler that I had on me. So can I, like, pick it up in the morning or how -- when can I get that?

Q. We'll make sure --

A. My other one is long -- long acting. It's --

Q. Okay.

A. You know, it doesn't take effect right away.

Q. Sounds good. We'll make sure you're taken care of. We'll figure out how to get it to you or at least get you -- get you good to go.

So your folks live out in this area?

A. Yeah.

Q. By the mall?

A. Yeah.

Q. So up here on the left somewhere?

A. Uh-huh.

Q. So you are -- are you from this area originally?

A. I lived most of my life here.

Q. Okay. And did you have -- were you married previous or is this --

A. No.

Q. -- your first marriage?

A. This is my first.

Q. Okay.

A. I was in school forever.

Q. Forever.

A. I just wanted to -- I wanted to get married or I just wanted -- I worked up at the school for -- a lot. I graduated with well over 200 credits. And I was just in college forever and ever.

Q. Is that right? And were you -- did you live alone? Did you live with your parents? Did you --

A. I lived alone.

Q. You just lived alone?

A. Yeah.

Q. Okay. No other long-term relationships or anything like that?

A. Yeah. I had long-term relationships.

Q. Okay.

A. But --

Q. No one you lived with or --

A. Yeah, I lived with.

Q. Okay.

A. But I lived by myself for quite a long time.

Q. Okay.

A. Do you want -- like, I can maybe give you just names of ex-boyfriends, because I don't have any -- you know. If you -- you know, there's a test

that said give person -- you know, to get my personality and all of that.

Q. Okay. So you're heading out this way, you're pretty sure you passed Silver Saddle?

A. Yeah.

Q. Or towns -- excuse me. Townsend Winona here. And then also Silver Saddle as well? Okay.

What was those boyfriends you wanted me to jot down?

A. My first long-term was Rob Bradshaw.

Q. Rob?

A. Yeah.

Q. Is that short for Robert?

A. Robert, yeah. His legal name is Robert. I doubt I even have his phone number. He lives -- he lives down in the valley somewhere. He's my age. August 20th, 19 -- wait. Yeah. August 20th, 1971, I think. I'm not certain.

And then Scott Warren. He lives -- I think he lives in town. He -- oh. And I don't know what he's doing, but he did own or owned American Computer Techs. He changed the name. I think he changed the name to Flagstaff Computers -- I don't know.

Greg Horne. (Inaudible).

Q. Greg Horne? You dated Greg Horne?
A. Yeah.
Q. And he also works for --
A. He's --
Q. He used to work for Marvin; right?
A. No, he's freelance for video -- video stuff.
Q. I just had his name written down as one of the employees?
A. Brian Nogesek.
Q. Brian then Jeff and Greg.
A. No.
Q. No?
A. Mm-mm.
Q. Okay.
A. You might want to call his ex-wives too. I know -- I know one of them had a lot of problems with him. I don't know -- I would imagine his other ones do too.
Q. Marvin's ex-wives?
A. Yeah.
Q. Did he have -- he had two ex-wives?
A. At least two. I think both of the girls names were Debby. Debby Goldenstien was his last one. I just can't imagine this -- like, I just -- I

can't imagine this behavior is something that just developed over the past couple years. I think it would be a long-term thing.

Q. So this looks like this is it?

A. I don't remember mailboxes.

Q. Okay.

A. No mailboxes.

Q. Let us know if you see something that starts looking familiar. All right?

A. This isn't the road that goes to -- no. It's not the road that goes to the inner base. That's a different road; right?

Q. Well, I don't know. What's the inner base?

A. Kind of where the big fire was.

Q. The Schultz -- Schultz Fire?

A. Yeah.

Q. No.

A. I know I've been -- it just kind of looks --

Q. There's a turnoff right here, like a road that cuts off. You just parked right on this main road?

A. Yeah.

Q. Okay.

A. Everything just looks the same to me.

Q. Did you have to park? Was there a good place to pull over or did you just park right --

A. I don't even remember if I saw a pullout or anything. I just -- just parked.

Q. You do a lot of hunting, don't you?

A. No. I scouted. I never --

Q. No? Just scout?

A. I liked the hiking part.

Q. So I'm sure you kind of get used to having to see stuff.

A. I hate it.

Q. And you pick stuff out so you can find your way back.

A. I hate guns in the house. I hate all of that. It's creepy. It's like some of the deer are so cute and then some of the other animals are creepy. And they creep Tyler out too.

I had to really work -- there's a big bear in the house. And I had to -- we had to really -- I had to work at them becoming friends. And so I said, We're going to go for a hike and we're going to go find berries and nuts for the bear. So we, you know, find rocks that look like strawberries and slowly -- you know. He liked to do that. Just slowly got better with the bear. I don't like the

bear either.

It looks the same.

Q. You remember driving this far out?

A. Well, I definitely didn't want to be spotted, so I keep --

Q. There's some --

A. I don't know how -- is that camping? It seems like I --

Q. It looks like a closed road. Did you pull in there?

A. No, I didn't pull in there.

Q. You're saying -- if you scout a lot, you usually get kind of a knack for understanding where you're at; that way if you have to get back, you find your way out.

A. When we were first out -- we when we were first dating, I -- I scouted more with him. Then he -- he got really secretive and he didn't like me to know --

Q. Sure.

A. -- where he was going in his spots. Yeah. But he would -- he would just go and just hike. We -- forever. Without a GPS.

Q. Right.

A. And I'm like, How in the world do you find

your way back?

Well, and I did get lost. I got lost twice, when I was cooking and I went on a hike and I panicked. We were help -- I was trying to help him look for sheaves and we got separated.

Q. Anything look -- anything look familiar?

A. No.

Q. So we're getting up into the houses. You --

A. I don't remember houses.

Q. Did you come by houses?

A. I don't remember seeing houses. It would probably be beautiful in the day.

Q. Do you think we've gone too far? Do you think we -- we went past all the houses?

A. I think I just -- you can probably see that house in the day; right? I don't remember seeing the house -- a house.

Q. I imagine you could see the gate and the for sale house there.

A. Yeah, I would see that. No.

Q. That would freak you out a little bit?

A. I just don't remember seeing a house.

Q. All right. I need you to try for us, Susan.

A. I'm trying.

Q. So we can try and find this.

A. I don't think I went this far though, because I think I would have seen the house and remembered it.

Q. Do you remember street signs and stuff like that?

A. (Inaudible).

Q. Do you think it was definitely before these houses?

A. Yeah. I don't remember the house.

Q. Okay. After you -- did you just turn straight around from where you got out or did you drive up the road into a turnaround spot or did you do a three-point turn?

A. I just drove a little bit. I don't know if I turned right around there or if I drove further.

Q. You definitely didn't turn down a road like that?

A. No.

Q. Or did you walk down a wash or anything?

A. I don't remember walking down like a -- like a dip?

Q. Well, they have these little drainage cutouts. Did you walk into something like that?

A. I don't -- I don't recall. If I did, it wasn't really deep, I don't think, because then I would have to jump and I --

Q. How far did you walk in? Like, far enough that we could see you if you were standing out there right now or further than that?

A. Yeah. Yeah. You'd be able to see me.

Q. See anything that looks close? Do you want to get out and walk?

A. Sure.

Q. Well, do you see anything that you think's it? I don't want to just walk, but if you see something --

A. I don't know if I would.

Q. Okay.

A. I don't know if I have -- if I would. It all looks the same. These all look like fresh -- I'm not really good with stuff -- like, Marvin would say, Oh, yeah. Somebody drove down this road today.

I'm like, How can you tell?

But it looks like -- that looks recent.

Q. You said you were worried about seeing cars?

A. Yeah.

Q. Wouldn't -- wouldn't it -- you know,

parking on the side of the road, wouldn't that draw attention to you? You didn't turn off on another road?

A. Well, I saw a car -- well, I figured if I go far enough and if I have -- if I have the truck, then, you know, I can -- I can -- well, maybe I'll like walk and just -- I just kept -- like watching around for vehicles.

Q. Mm-hmm.

A. And then I'm like, if a vehicle passes me, I just won't dig or I just won't do anything.

Do you want me to get out and look and see if it looks familiar?

Q. Well, let me just look real fast.

I didn't see it.

Could you have driven down in there?

A. No. Ironically, I don't even remember seeing that road. It's really weird. Like, if I -- you know, because maybe I would have thought to go off the beaten path or I don't -- you know, or unless -- maybe I saw cars and so I didn't consider it. I don't know.

DET. BARR: There's a tire up there.

DET. PAT: Mm-hmm. Lost it.

DET. BARR: Yeah. It was back there. It

looks like it comes out maybe right -- well -- just look real quick.

BY DET. BARR:

Q. Well, this looks like it, Susan.

A. Okay.

Q. Do you think you can walk us to it? Do you know how far you went out there?

A. I didn't walk that far. So let's take a look.

Q. Let me see if we can get some light for you. So it looks like you came down here. And then you -- you maybe took off this way.

A. I don't remember going over this.

Q. Well, you --

A. Maybe I did.

Q. You walked down it.

A. The drainage?

Q. Yup.

A. Would I be able to tell if it was a drainage in the day?

Q. I don't know.

A. If I -- if I could, then I wouldn't have realized it was a drainage.

Q. Well, from here it looks like you could have kept following this path.

A. Oh. It's a path. I didn't go down a path.

Q. Okay. This looks like you came from here. Did you start walking into the trees from here?

A. I never -- I never remember seeing the path.

Q. Okay.

A. So I went -- I went -- yeah. I wouldn't have followed a path.

Q. Okay.

A. But I know I went straight into the forest, because I remember trying to walk over (inaudible). I don't remember quite well. There was rocks around too.

Q. How far did you go out? You said you went out quite a little bit?

A. Yeah, but I did see some rocks.

Q. Did you go right under a tree or --

A. No. (Inaudible) you know, but I remember there were rocks. I don't -- I don't remember, like I said, (inaudible) going under --

Q. Right.

A. (Inaudible).

Q. All right. Did you leave that right there?

A. (Inaudible) big rocks, but they weren't -- you know. (Inaudible).

Q. That didn't have anything to do with you?
A. Pardon me?
Q. That's nothing from yours?
A. No.
Q. Watch your step.
A. I don't -- I didn't go this far.
Q. Didn't go this far?
A. No.
Q. All right.
A. And I didn't remember haystacks.
Q. Sure.
A. (Inaudible) out here. (Inaudible).
Q. Maybe let's -- since we walked in this way, maybe come down this way a little bit and see if we run across it. It's kind of hard in the dark, you know.

What kind -- what size was the rock you put on top of it?

A. It wasn't that big.
Q. Like a basketball or a softball?
A. A -- bigger than a softball, but smaller than a basketball.
Q. Okay. And there was a lot of them around?
A. It could have been the size of a softball. It could have been the size of a softball.

Q. Was it just that one rock or there was a few of them or --

A. Yeah. There was (inaudible).

Q. Sorry. He's got the keys.

And it was definitely this side?

A. Yeah.

Q. Thank you.

A. So now what?

Q. We'll have to just try it in the daytime, I think. You think -- you're pretty sure this is the road though?

A. I think so.

Q. Okay.

A. Are there more dirt roads before -- I don't remember that subdivision, because I didn't get to that subdivision out there.

Q. Okay. Not the Timberline stuff?

A. Yeah.

Q. I don't think so.

DET. BARR: Do you know any other roads, Pat? Is there maybe -- is there a gas line road or something, but --

BY MR. PAT:

Q. So, Susan, your house is just right here; correct?

A. Yes.

Q. Do you remember how far up the highway you drove?

A. Actually, I was driving -- I drove -- I drove -- kept -- I drove twice, because I was looking on the right side too. And then I remember there was a lot of cars, so I turned around. And then I went back home and then I came back.

Q. Well, this is the one dirt road after you -- I mean, after you leave your house, you think you turned up this one?

A. Well, at first I drove a little further. So I think this is what -- I think this is the one. But that's why I was wondering if -- if there's another dirt road, because I -- I didn't get to Timberline.

Q. Okay. Yeah. There's one more, but it's not as big as this.

So up on the right here is the landfill, around there. Did you go past that?

A. I don't recall.

BY DET. BARR:

Q. When you turned around, do you know where you turned around at?

A. That --

Q. Pull off on a road or the landfill there or --

MR. PAT: (Inaudible).

BY MR. PAT:

Q. Did you see that sign?

A. No.

MR. PAT: What would you like to do, Kelly?

DET. BARR: I think we'll just call it. Head back to the -- head back to the office. We'll try to come out maybe in the morning, sometime when there's some daytime -- daylight.

THE WITNESS: So am I able to get anything of mine, my phone or anything?

BY DET. BARR:

Q. There's a phone in the purse too?

A. Yeah.

Q. Well, it's all, like I said, locked up.

A. They took the phone first and then the purse.

Q. Okay.

A. Can you drop me off at my mom's on the way? It's right on the way.

Q. Well, we're going to go back to the office. I just want to make sure -- I'm going to have a few more questions for you.

A. Okay.

Q. Make sure we got everything squared away before we -- before we cut you loose.

And your stepdad dropped you off right, so you don't --

A. Yeah.

Q. You don't have a car?

A. They're in bed right now.

Q. Okay.

A. Well, normally they would be in bed.

Q. Yeah, maybe not tonight.

So you know what you're having?

A. No.

Q. You don't know?

A. (Inaudible) a surprise.

Q. Okay. Was Tyler a surprise too?

A. Yeah.

Q. You are due in March, so just around the corner?

A. Yeah.

Q. That's brave, because you don't know what kind of stuff you're going to need, huh?

A. I know everyone (inaudible).

Q. Huh?

A. People get mad at me. How do we shop? But

I had fun picking out Tyler's stuff. I just -- you know, I didn't -- for his -- you know. For his first few months, I just got all yellows and greens and cute little ducks and frogs, you know. Cute. Neutral colors are really cute too. But with this time I'm like, oh, look at that cute dress or, oh, that cute little -- you know.

Q. Right.

A. Then like, oh, sometimes I wish I knew, but it's worth it to (inaudible) for me.

Q. Yeah. I guess there's not too many surprises in life. So that could be one.

A. No.

Q. That could be one, right?

It would be tough though not to pick stuff, have to stay with those neutral colors. You already got all the boy stuff.

A. I know. I'm like it would be, you know, so then I would -- I'm like there is some blue on the -- you know, for the infant. I'm like that's okay. It's just an infant. It's going to be all layered anyway. So we'll do a onesie on the bottom and something else on top.

Q. Uh-huh.

A. And I figured, you know, maybe I can -- you

know, if it's a girl, she can wear a pink top or pink bottoms or something or -- you know. That way we can still use some of his clothes and just put -- mix a girly color in there with it.

Q. Yeah.

A. And just not put her in, like, a tractor or something, like that.

Q. I don't think the baby would mind what color it's wearing, I would assume.

A. I know. I'm thinking when it gets a little bit older.

Q. Yeah. You'll just have everyone calling your girl a boy, because it's all dressed up in blue.

A. I know. Nobody can tell in the beginning, so that's kind of how they -- you know. Well, everyone had to ask for Tyler too, because he was mutual colors. He had a few little things that were blues and --

Q. So you talked about insomnia. Is that something you've just always dealt with or is that something new?

A. It's just gotten worse. It's not something I've had my whole life, but I'm just a really, really light sleeper. But this insomnia thing is

just -- you know, it started with Marvin, but it's gotten just really -- it's gotten progressively worse. And then I feel the baby too will move. So that -- and that wakes me up.

Q. Oh. So is this -- it's not something that's just diagnosed? That's just something --

A. No. It's just --

Q. -- you just dealt with?

A. No. It's just -- it's not something I've had for a while. I think it's just stress. And I can't -- because I can't clear my mind.

Q. Your mind is running all the time, huh?

A. Yeah. I try not to let it go, but -- sometimes I just try to picture something very serene, just to go to sleep.

Q. Uh-huh.

A. I don't know how I'm functioning. I'm certainly absent minded. You know, like, I was passing -- you know. Driving and passing things yesterday, and today I'm like -- and I'm, you know, very forgetful.

I left without my purse earlier. I'm just super forgetful right now. And I know I'm not that forgetful, but lack of sleep probably just affects my -- my mind.

Q. Where's the snow at? It's supposed to be snowing; right?

A. I know.

Q. I thought we were going to be buried tonight, buried in snow.

A. It looks clear though. The sky looks clear.

Q. Yeah.

A. Well, it's normal (inaudible).

Q. Crash.

(Inaudible) told me his ex-wife is Debby; is that right?

A. Goldenstien.

Q. Goldenstien. They didn't have any children or anything?

A. She had children and -- but they didn't have any together.

Q. Okay.

A. But she also said her children hate Marvin.

Q. Okay.

A. She said if we ever go to court, she and her children would testify.

Q. Court for what?

A. Well, for custody and his -- and his mental state.

Q. Were you planning on leaving him or something?

A. I wanted to. The law -- the law states unless he's -- you know, according to my attorney and everyone, my counsellors, unless he's like -- like, putting Tyler in the ER, it has to be pretty severe for me to get sole custody. And I never wanted to leave Tyler alone with him.

Q. Did he say he was going to leave and take Tyler?

A. Oh. He told me he was going to leave and take Tyler to Mexico and hide out. And all my -- you know, like, things like that. But he didn't say he would leave me and take Tyler. He just always threatened that, you know, if you ever leave me, I will fight you for custody. (Inaudible).

Godfrey is Jeff's last name.

Q. Godfrey?

A. Yeah. I'll have to get his phone number though, because he's working for the -- like, secret, in the government. He's like hidden every -- like, he's always hidden, like -- whatever is the NSA or in the -- I don't know if I'm supposed to say that though.

Q. Oh. Really?

A. It's a secret or -- Marvin said, you know.

Q. He's like undercover?

A. I think he's retired, but I know they called him out to do something last year. I don't know (inaudible).

Q. That's fine. You need to use the restroom or anything?

A. No.

Q. All right. Just got -- I just got a few more questions and make sure we got everything.

A. That was tiring.

Q. I got to walk those stairs all day long. So it's a workout. And one second. I'll be back.

* * * * *

C E R T I F I C A T E

I, Keisha Heflin, transcriptionist for Performance Reporters, Inc., do hereby certify that I was provided a compact disc in the above-entitled matter with a request that I transcribe the same; that I listened to the compact disc and prepared a typewritten transcript of the contents of the tape to the best of my skill and ability. Further, that I am in no way affiliated with or related to any of the parties in this case.

DATED this day 22 of March, 2015.

_____

Keisha Heflin, CET-545

(3/23/15) :00237

Unsworn Interview

of

SUSAN JACOBSON

Taken

Unknown

By

Detective Barr

State v. SUSAN JOY JACOBSON

Case No. CR 2015-00184

THE WITNESS: When I got home, he immediately got on the defense. We have issues. His moods have been escalating, and he knows I'm not pleased about that. But I don't ever say I'm leaving. I can't say I'm leaving. He won't let me leave. He'll follow me. I've tried to leave before.

But as soon as I drove into the driveway, he instantly got on the defense and got mad and what -- what do you have the truck here for? Are you going to load it? Are you moving out? Started getting really mad.

No. I'm not moving out. And I explained why I have the truck. Didn't make a sense. He was angry.

So the next day I noticed that the tire was flat. Well, it's not the first time he's sabotaged so I can't leave. He doesn't like me to leave.

So he said, Well, have Frank bring your car out here and he can bring your truck back.

I said, The whole reason why I have this is because it's snowing and because my car smells of fumes.

Well, I've worked in the body shop forever. Just -- if you just leave the windows rolled down,

it will be gone in a day.

He was totally paranoid about me having the truck.

And so I said, Okay. Well, I'm going to bring it to Discount, you know.

He's like, okay. Well, I'll air up the tire. Have Frank meet you and bring -- get your car back.

And, I mean, it just wasn't -- the whole ride there he was angry at me, telling -- wanting me to bring my car, trade cars, and -- you know. A lot of times I give in, but I can't give in all the time. You know, it's my safety too. So -- and it went on for days. And every day this truck -- you know, it's something. It's always something.

The final straw was -- so I guess it had been Thursday night. My son keeps getting up out of bed. It's -- you know, I have to go potty. I have to go potty. I mean, I have to go -- it's -- so he used to sleep in his own room, but it's gotten -- it's fear of his room. So he's been sleeping in my room next to me.

BY DET. BARR:

Q. Okay.

A. But sometimes, when Marvin's out of town,

he does better. So I'll put him in his room. He gets a little more clingy when he's there. But, you know, I'm warning, warning if you get up again, you don't get up -- this is the room, and it's sleeping time now. If you can't sleep in here, you're going to need to go into your room.

And I really want to -- because I'm due very soon and it's going to be -- that's where I put the -- that's where I put him. That's the biggest -- there's one spot where the crib will fit. And so I'm thinking, What am I going to do with my son when the baby comes? You know, put him on the foot of the bed. I mean, we're all --

Q. Uh-huh.

A. So I'm trying to -- I'm like, this is going to be a good way if I could just try get him back in there again. He was terrified. And I'm like, well, I felt bad for him, because I know it's not good to sleep next to them, but I want to start weaning him back in the room.

So I said, I'll lie in her here with you for a while, but you have to close your eyes and go to sleep.

And, you know, I tried to make it all positive, but I knew I was going to sneak out. And

I did tell him I was going to be him -- in there with him for some of the night. I turned off all the nights. Because, normally, if I'm not in there, I'll leave his night light on.

And when Marvin went to bed, I'm like, I better get in there. He'll get really mad if I -- -- if I'm not in there at the time he goes to bed, it's a big issue. So I snuck out of Tyler's room and I went in there. And he was furious with me.

You should have spent that time -- I really wasn't in there for that long -- I think he watched like America -- he watched, like, one show. And, you know -- but he was furious. That's the time you should have spent with me. And it was irate. Yelling at me in bed.

And I tried -- I just really try not to argue with him, because it's just going to escalate. And these arguments, like, when he's mad about something, sometimes they can go on all night.

Q. All right.

A. They can go for hours. And I just -- I mean, and it -- he'll just say the same things over and over. He has a ton of energy. And so it didn't go for hours, but he was very mad. And he'd been mad all week. He's been mad for -- he's always mad.

But just escalating.

So I have really bad insomnia, and I've had it for a long time.

Q. Okay.

A. It's just been getting -- I think I get more nervous now with him. And so it's been going on for a long time, but I -- this whole week with his -- just mad, I probably gotten just a few hours of sleep all week. But I -- so I'll lie in bed for a long time and then -- you know. I had -- I had felt like I had just dozed off and I woke up to angry -- angry Marvin.

And I -- it was something like I'm -- I'm so sick of you. And I'm -- I'm beyond sick of this or -- he doesn't want the baby. I'm beyond sick of this situation. And he kicked me in the stomach. And I'm -- he didn't come right out -- he didn't say I'm going to kill you. He didn't say that, but he -- that's exactly what he -- it's not the first time he's threatening me, but the other threats were soon. It's like -- like, you better watch your back kind of thing.

This was an I'm done with it now. I can't remember exactly what he said. You are -- I don't remember. But I figured whoever gets to the gun

first is -- is going to be saved. So I ran and grabbed the gun and I shot him. I'm not sure exactly where I shot, but I heard nothing after that. And I had to -- it was dark in the room, but it -- I did see a -- I did see -- and I actually left the room.

I left the room and I came back. And, I mean -- there -- it was just -- it was messy. He didn't -- so I wrapped -- I wrapped him as best as I could, so I wouldn't ever have to look at it again, and just tried to cover everything. So I didn't have to see anything.

I have been in counseling. He has threatened me before. I always watch my back. I've been in fear of my life for a long time. I tell my mom, Hey, I think this person is trying to kill me. I think -- I think Marvin sent this person.

Because I don't -- I don't necessarily think he would do it. But that time he was -- he was going to do it. He had had it. He was at his breaking point.

I have been scared for a long time and I've been to counseling. I've had attorneys. And the only reason why I haven't left is because, like, my son. I don't ever like to leave my son alone with

him.

Q. Okay.

A. And everyone asks me why -- and they can't understand it. Why -- why would you stay?

Yeah, I stay. I'm scared. I'm in a relationship that's awful. I have never known anybody with this -- this disorder before, but I -- I don't have -- I have to stay. I'm like, I'm the only one that can protect my boy.

And everyone's like, You're crazy. Why would you -- you know, why --

I was put in a situation I should not have been in, because I wasn't as protected as -- maybe my mom should have been stronger and protected me. I'm not -- I'm not going to let that ever happen to my son.

I don't even like him to be alone with him for a few minutes. He's just a man with very, very different personalities. And he has many of them.

And even in counseling, I mean, he shows a different face. He threatened my life before, and I -- while we were in counseling -- not at that, but during a counseling. And I called the counsellor and I was like, This is getting out of hand.

I said, For one, he just threatened to kill

me, because he said if Tyler -- he says, Tyler's not my son. I'm -- you know, I'm going to kill you.

Well, Tyler is his son, but -- I don't know. It's been an issue. And then that on top of working for him for, like, out of town for an extended amount of time and having my son -- not -- because he won't go to bed. I mean, he's so attached to me. He's wherever I am.

Q. Right.

A. And if people are around, I have to hold him and cook all day from like six in the morning until -- at these camps. They're long, long hours.

And I said, I can't do that.

I said, I can do it one or two nights, but I can't put Tyler through that.

And he would not -- he lacks empathy. He lacks compassion. He lacks empathy. And he wouldn't do it. And I called the counsellor -- and he wouldn't go to a session. We hadn't been in weeks and he was refusing to go.

And I said -- you know, I told him it had happened. And I said, Can you just call him and ask him, Hey, you know, can -- do you want to come for a session? And I'll just bring it up.

If he knows I'm scared when he threatens

me, it will become a bigger deal. So when he threatens me, I just pretend to -- you know, I just act like it doesn't bother me, but inside I'm terrified.

And I just think the counsellor approached it the wrong way. And he -- and he approached him as if we -- because some things he would admit in counseling that he does. But if it -- if I brought it just up nonchalantly, like it didn't bother me, but -- you know, I didn't like this, that you said that, but -- but inside you didn't really know what it was doing to me, he might admit that. But the counsellor called him.

He said, I heard you threatened her life.

And he's like -- he instantly got on the defense.

Q. Defense.

A. Why -- I love her. I would never ever.

And then, you know, we'll go back and forth. And then he went in his office and locked the door, and when he -- I don't know what he said.

When he came back out, he said, You really need help. And you need to have some -- Bert agrees too that you need to have one-on-one sessions with Bert, that you somehow think that I said this, that

I would kill you.

I'm like, It's not the first time, you know.

And he's -- I -- he -- I think he had convinced the counsellor that I was crazy, that I somehow thought -- because I -- you know.

The counselor's like, Why don't you come in for a session.

And I'm like, he's -- he was that good at convincing people. And -- I don't know. But this -- it had been going on for a long time. I had talked to a lot of different counselors. I -- I felt -- my mom knew I fear -- for a long time --

Q. Oh, really.

A. -- that I've feared for my life. I don't want Frank -- 'cause my stepdad knows. Because a lot of times she doesn't tell him things, because he already doesn't like Marvin. And so I think she doesn't want to make it worse.

Q. All right.

A. But we were in New Mexico -- all these weird things, you know.

He'd say, like, Oh. Yeah. The -- so-and-so's coming over to -- to work in the yard.

And then -- I was always watching my back,

because I was -- thought he would hire somebody. I don't think he would do it himself.

Q. Okay.

A. And then randomly some guy -- some man in the day came to the house when I was there by myself, and I -- he had a gun and knocked at the door. And I'm like, this -- Marvin's -- you know. So I went to the window, and -- you know, to see who it was. And then that's when I saw his gun. Because I'm like, who's -- I'm always paranoid. I'm like, who's knocking out in the middle of nowhere?

That's our other house, out in the middle of nowhere. Out -- you know. And everyone's already gone, because they hunt. And that's -- you know, that's where I would cook and stuff.

And I'm like -- this guy, who has no teeth, and he looks like a meth addict and he has a gun on him and he's in a beat up car -- truck.

And he's like, Is this the -- the USA Outfitters?

We live on -- it was just a house. USA Outfitters has a big sign and there's cabins everywhere.

Q. Oh, really.

A. And it says -- you know. So I instantly

called my mom.

And I'm like, I think -- I think he's trying to have me killed.

And, you know, nothing made sense. And then normally when he'd come in the door, he -- Marvin would just come in the door. Well, that day he came in the door, he called, he said, Susan. And yelled, you know.

And I'm like, this is all just too -- there's too many signs of this. So I just felt like I was always watching my back. And I didn't -- you know, I was in constant fear, but this time it was different. It was like he was done and he's -- he's doing it. He's not -- you know. It was different.

Q. Okay. So after -- you said that after you shot him, you wrapped him up and then what --

A. Later, yeah. I actually --

Q. Tell me --

A. I saw him and I heard nothing and I just -- I left.

Q. You left. Okay.

A. And then --

Q. Tell me what happened after you left.

A. I don't remember if I went into the bathroom -- I was up all night -- or if I went out.

I don't know if I went into Tyler's room to see if Tyler woke up. I don't know what -- I don't remember where I went. I just remember I left.

Q. Okay.

A. And then I came -- and then I thought -- okay. I didn't hear anything. But, you know, maybe -- surely, I would think if he heard a loud gunshot, he would like, God, be startled or something if it didn't hit him. So I thought, well, maybe he thought, you know, somebody came in the room and maybe he's faking it. I don't know.

So then I went back in there, and I -- yeah. It was messy. And so I'm like -- I knew I shot him. And I'm like, oh. I have to get -- you know, I have to clean this up. This is awful and -- so I just tried to prevent any more -- you know. It seemed like it was bloody up at the top or -- I don't -- you know. And I don't know. So I just started wrapping -- wrapping him up.

Q. Okay. Take me -- what happened next after that?

A. That took a long time.

Q. Uh-huh.

A. That took me forever to -- to wrap him.

Q. Well, how long is forever? A couple hours?

A. It felt like -- it felt like hours.

Q. Hours?

A. Yeah, that's what it felt like.

Q. Okay.

A. And then my son did wake up and he kept coming and screaming. And I had the door locked.

And he's like, Let me in.

And I was like, You need to stay in your room.

And I would turn the light off, because I didn't want him to see anything. And I'd bring him up to bed. And he kept getting up. And, you know -- and finally he went back to sleep. And I was just up all night totally dehydrated and all I was doing is like drinking and drinking and just -- just walking around and --

Q. Okay. Let me -- so I just want to make sure I understand. So I'll kind of repeat back and make sure I understand.

Take me back -- you talked about kind of the start to all this was an accident. Do you think that was kind of the start of --

A. No.

Q. No?

A. This has been going on for years.

Q. Okay.

A. But that was like the --

Q. Let's -- let's start --

A. -- the final --

Q. Let's start -- how long have you and Marvin -- you guys were not legally married, but you've been together --

A. We weren't legally. We actually had planned to get married. And he was going through a divorce that was taking a long time.

Q. Okay.

A. And so we kept bumping our date. And then finally it -- I'm like, let's just -- let's just have it, you know. Let's just have a ceremony. That's what they did a hundred years ago. They didn't have -- they just -- didn't have paper and --

Q. Right.

A. -- a system they put it in. They just got married. So that's what we did.

Q. Okay. How -- when was that? What year was that?

A. Did we start dating in -- five years ago.

Q. Five years ago?

A. Yeah.

Q. Okay. So you've been together about five

years?

A. Yeah.

Q. And Tyler is your all biological child?

A. Mm-hmm.

Q. And what last name did he take?

A. Jacobson-James.

Q. Okay. How old is Tyler?

A. Three and a half.

Q. Okay.

A. And that's one of the -- some of the real, real strong issues first started when I got pregnant with Tyler. He wasn't happy about that.

Q. He wasn't happy about you getting pregnant?

A. No. And that's when the threats and the -- that's when I started seeing a real severe other side to him. And that's when some of the abuse started. And he would kick me, but I didn't think it was intentional. I thought it -- he would kick my stomach too when I was pregnant with Tyler.

Q. Okay.

A. Now, I thought he was doing it in his sleep. And I did tell somebody in front of him -- I was joking with his employee. I don't know if he would remember it. But I was joking, because he -- Marvin has long strong legs.

And I'd be like, Marvin's like donkey kicking me in his sleep, and so I have to like surround myself in pillows.

And it was later -- it was -- like, it was actually later that I realized those weren't -- those were intentional kicks.

Q. So it would happen when you guys were in bed?

A. It stopped when Tyler was born.

Q. Oh, okay.

A. Yeah.

Q. So when you guys would be in bed together, you'd start getting kicked in the stomach?

A. Yeah, but I thought he was just in his sleep and --

Q. And you thought he was sleeping?

A. -- he was just reacting in his sleep. And no words came out. It was just -- just kicking.

Q. Okay. So you talked about a long history of abuse. Have you ever called the police or made any reports?

A. Yeah. There -- he is incredibly controlling. I think my phone's hacked. I think my computer's hacked and only because I -- he knows things that I don't tell him.

Q. Okay.

A. He doesn't like me to leave the house. He gets -- he's incredibly controlling. And my family and I really -- they hadn't seen Tyler yet, and he was nine months. They had -- nobody had seen him in my family that lives out of town.

And so Marvin kept saying, Well, we'll go. We'll take a trip this day.

Then something would -- no. I have to do this. We'll go -- he -- he was a -- he lied every day. He was a -- he's a chronic liar. And good. Like, he wouldn't flinch. You -- I couldn't even tell when he was lying.

So I planned a date. And I said -- well, then he said spring or something. So I planned on spring. He don't want to go. I was going. And he was furious. And it went -- it -- irate for days and following me around the house. And if you leave, I'm getting a warrant. And you're -- like, and you're not -- and, I mean, just started -- furious.

And I'm like, what -- it doesn't make sense, you know. And I don't do anything. I never cheat. I never do anything like that. I've never done that. I -- he just didn't like me leaving the

house.

And so we went. But, you know, I -- but the -- it was getting really close to the date and it -- the following me around the house and screamed and eff you. And I emotionally like -- I'm like, I'm going to have a breakdown. I can't -- I can't handle this.

And I can't -- he won't let me be alone. And when he's yelling at me and I go in a room and lock the door -- Tyler knows now too -- he'll pick the lock. And I just need quiet. I just need quiet time. And he'll pick the lock and he can just go for hours and I -- and -- and the threats and then this -- and I'm -- but if he knows I called the police, he would freak.

So I was trying to -- I was actually trying to just call and hope they'd come out and put -- anyways, I'm like, Why aren't they coming out? I didn't know that -- they said, Oh. If you just dial 911 from your cell phone, we don't come out. We think it's like you butt dialed us or something.

So I finally had to, you know -- actually speak with them and get -- and get them out there. And it just got worse. You know, I told them what was happening.

Q. So did the police come that time?

A. Yeah, they came out.

Q. When was that -- was that here in --

A. That would have been three years ago.

Q. Three years ago. And where -- was that the Coconino County Sheriff's Office? Were you in the Flagstaff area?

A. Same address. Blueridge Drive. So the sheriff, I guess, would have come out.

Q. Same address. Okay. And you actually talked to them or you just dialed 911 --

A. Yeah, I talked to them.

Q. -- and hung up?

A. Yeah, they came out.

Q. Okay.

A. I -- yeah. He -- so -- and I was trying to -- I was even trying to like call -- I actually dialed 911 and just put him up there, but it didn't record anything. I'm like, God, if they could hear these threats. These are crazy.

Q. Okay.

A. But nothing. And I kept calling. I'm like, Did you get anything on recording?

And all they got -- the only thing they got was 911 -- the -- like, me talking.

Q. Okay.

A. But -- so they came out.

Q. Is that the only time you called the police?

A. Yeah, because --

Q. Just that one time?

A. Yeah. See, that's the only time I felt I could call, because it -- that made it way worse when I called. He doesn't want any -- anybody to know who he -- these other sides.

Q. Okay.

A. He paints a very different picture for a lot of people. A lot of people know how he -- his other sides too, but --

Q. So let's -- let's kind of jump ahead to the last few days. So you said you kind of slept with Tyler for a little while and then you went back to the bed and he was upset. What day was that?

A. It would have been Thursday night -- wait.

Q. So today's Friday.

A. It's the day -- I was in the hospital all day yesterday. So, yeah, it would have been Thursday night.

Q. So yesterday?

A. Yeah. Yesterday, early, early morning

or --

Q. Or late?

A. Or late, yeah.

Q. So you're talking around the midnight hour of --

A. Whenever I fell -- it seems like whenever I fell asleep -- and I just lie in bed for hours, so it's kind of hard to tell exactly, but I'm thinking maybe in the a.m. time.

Q. Late Wednesday or early Thursday morning?

A. Yeah. I think it was early Thursday.

Q. So you're saying you're laying in bed. Did you put Tyler down first? What time --

A. Oh. I put Tyler down.

Q. And you stayed with him for a little while?

A. At his bed. Yeah, just for a little while. I just lied --

Q. Okay.

A. But when I heard Marvin --

Q. And what time was that?

A. Like, when I saw the lights going off in the house and the TV off, I immediately went out.

Q. You scooted out. So what time was that?

A. I don't know.

Q. What's Tyler's bedtime?

A. I'm guessing 10:00.

Q. 10 o'clock?

A. Well, Tyler's bedtime is not 10:00. The only time he always falls asleep, but --

Q. Oh, yeah.

A. I don't know. I'm guessing maybe between 9:00 and 10:00. I don't know.

Q. Okay. So around 9:00 and 10:00. And then the lights go out, so you scoot over to your room and you meet Marvin in your room?

A. Yeah.

Q. Okay. And you said he was upset?

A. Yeah.

Q. Okay. So is that when all this took place or then you guys go to the bed?

A. No, then we --

Q. Okay. So --

A. Then we go to sleep.

Q. So after an argument, he's upset, you guys go to sleep. Okay. And then when does all this take someplace with -- so --

A. So during the -- during the middle of the night.

Q. So Wednesday night, early Thursday morning in the -- he wakes up. You wake up. Explain that.

A. Yeah. I wake up to him, I'm angry -- still angry and wants to talk and get it off -- like kind of like --

Q. Oh, really.

A. You know, like, I'm sick of -- I'm -- I don't know exactly what he said. Something to the fact like I'm -- I'm sick of this or I'm sick of you or and I'm even more sick of this situation.

And I think it's because of the baby and everything. And kick. And I'm -- it kind of all, like, seemed like it happened at the same time.

Q. So kick -- so when this happens, you two, you're laying in bed together?

A. Yeah.

Q. Okay. So he -- you're laying in bed. It's early morning. You guys had been sleeping. And out of the blue he kind of wakes up?

A. Yeah.

Q. And starts kind of chewing you?

A. Well, I don't know -- I don't know what he's doing.

Q. Okay.

A. I don't know if he ever fell asleep.

Q. Okay. You assumed you were -- he was asleep?

A. I just -- I think he fell asleep way before I do, because I --

Q. Sure. If you're laying there?

A. You know, I was laying there forever, but I don't know.

Q. Well, when --

A. He told me he hasn't been sleeping either lately, so.

Q. You can usually tell you if somebody's next to you sleeping though; right? I mean --

A. I -- sometimes.

Q. Okay.

A. He's not a snorer rarely. He has to be over --

Q. Yeah, but you can kind of hear the breathing?

A. Yeah.

Q. Okay. Either way. So he -- he's laying there and out of the blue he starts chewing you again, it sounds like.

A. Yeah.

Q. He's sick of you. He's sick of this. This situation. And both of you are laying in bed?

A. Yeah, we are both lying there.

Q. Okay. Tell me what happens next.

A. It -- it all kind of seemed to happen at the same time, but then I got -- and then I got kicked and --

Q. So how did he kick you? You guys are laying down.

A. Yeah, we're lying down.

Q. And so you felt a kick?

A. Yeah.

Q. Okay. And where did he kick you?

A. It seemed like it was right here, you know. But I have -- I do have a pillow.

Q. Just in your abdomen?

A. And -- yeah.

Q. Did you have a pillow between you and him?

A. Yeah. There's --

Q. Okay.

A. There's one pillow between.

Q. So he kind of kicked the pillow, which kicked --

A. Yeah, which went through.

Q. -- your abdomen?

A. Uh-huh.

Q. Okay. And then take it from there.

A. And then that's -- and then I can't remember exactly what he said. It was -- he didn't

say I'm going to kill you, but I knew that's what he meant. I'm -- I don't know if I can remember exactly that part. But I instantly, you know, like, whoa, like, I'm -- I don't remember exactly, but it was -- I would have to really try to think and really try to -- but it was very close to that -- those --

Q. What could it have been?

A. It was like saying the same thing, but in a different way. It's so hard to bring it up.

Q. Okay. Well, keep thinking about it.

What -- so after he said that, what happened next?

A. Then I instantly, like, panic. I went into panic mode.

Q. Panicky?

A. You know, first, I'm scared, because I know he's mad. And I always get scared when he starts yelling. But after that, it was -- it was pure, pure terror and panic. And is he going to run to the gun? Is he going to walk -- go get -- is he going to go get the gun right now? Is he -- what -- and not -- so I went and I got the gun and --

Q. So you get out of bed while he's still laying there?

A. I don't know what he's doing.
Q. Okay.
A. I'm in terror mode.
Q. So you don't know where he's at?
A. I don't know.
Q. Or if he moved at all?
A. I don't know what he did after he said that, I just --
Q. So you've done --
A. -- figured is he going to run? I don't know what -- I don't know what he's --
Q. Okay. So you have to leave. Where's the gun at?
A. It was in the room.
Q. In the bedroom?
A. Mm-hmm.
Q. Where at in the bedroom?
A. In the dresser.
Q. In the dresser?
A. Mm-hmm.
Q. Okay. So you go over to the dresser and you have to open the dresser?
A. Mm-hmm.
Q. Okay. And then what'd you do?
A. And then I got out, came over, and -- and I

shot him.

Q. Where was he when you shot him?

A. He was in bed.

Q. He was laying down?

A. Mm-hmm.

Q. Okay.

A. I don't know if he was lying down or up or what, but he was -- he was still in bed.

Q. He was still in bed?

A. Yeah. It was -- it's very dark in the room, but I could tell that he was --

Q. Did you hear him say anything while you were going to get the gun?

A. No.

Q. Nothing?

A. Mm-mm.

Q. Okay. So you grab the gun and then you walk over to his side. Could you see him?

A. It was dark, but I could -- I could make out --

Q. Okay. Were you able to aim at him?

A. I actually just saw him and just shot.

Q. Just shot?

A. Yeah.

Q. Okay. What kind of gun is it?

A. I don't know.

Q. It's a --

A. Everyone's asking me, but I'm so ignorant about guns. He does -- he does all gun stuff. I don't --

Q. Okay.

A. I just know it was like maybe that long.

Q. So a handgun pistol? Don't know?

A. I don't know.

Q. What color?

A. Brown and black.

Q. Brown and black. Okay. So when you -- when you go over and pull the trigger, he's still in bed.

A. Mm-hmm.

Q. And then what did you do next? You said you --

A. I just panic, and I --

Q. You just panic and then --

A. I went --

Q. Do you leave the room?

A. I left the room.

Q. Okay. What'd you do with the gun?

A. Right after that? I don't even know what I did with it.

Q. Okay.

A. I went and I put it out in the forest after that, but I don't -- right after -- immediately after that, I don't know what I did with the gun.

Q. In the forest. How many times did you -- did you pull the trigger?

A. Once.

Q. Just one time?

A. Mm-hmm.

Q. Okay. What was -- when you were taking that gun over to shoot him, what were your thoughts? To stop him? To kill him before he could kill you?

A. Yeah.

Q. You were planning on killing him before he could kill you?

A. Or stopping him somehow.

Q. Just stopping him. Okay. So you -- you're not sure what you did with the gun immediately?

A. No. I don't know.

Q. You don't know if you dropped it or took it with you?

A. I don't know what I did with it.

Q. Okay. And then you left the room?

A. Mm-hmm.

Q. And you said you weren't sure if you went

to the bathroom or somewhere else?

A. I don't know where I went, because I was just walking around.

Q. Okay.

A. For hours, it felt like.

Q. And then eventually you said you went back to the room and decided to wrap him up?

A. Yeah. I -- I didn't know --

Q. Can you tell me --

A. If I -- I didn't -- I mean, I heard nothing, but then I thought -- I don't know. Maybe he's -- maybe he -- maybe he's just faking it. Maybe -- I don't know what -- you know. So --

Q. Mm-hmm.

A. -- I didn't -- I just start -- started thinking that later. I'm like -- he was silent. And at first I thought I -- because I figured with a loud noise, he'd make some -- but then I thought, well, maybe -- maybe he's not dead. I don't know. Maybe -- I better go check on him and --

Q. Were you -- when you went back, were you going to see if he was okay? Were you scared that he could still hurt you?

A. I -- I -- yeah. I was still afraid he could hurt me.

Q. So did you take the gun back in with you?

A. Yeah, I did have it in there with me.

Q. So when you went back the second time, you brought the gun with you again?

A. Mm-hmm.

Q. And tell me what you saw.

A. Blood. And then I knew -- well, if there's blood and there's no sound, then I know he's dead.

Q. So where's -- so he's still -- was he just laying right there in his normal spot?

A. Mm-hmm.

Q. And there was blood?

A. Mm-hmm.

Q. So was his head on a pillow or was it on the --

A. Mm-hmm. Yeah, it was on the pillow.

Q. So there's blood -- you could see the blood soaking into the pillow?

A. Yeah.

Q. Okay. Could you tell where you had hit him?

A. Mm-mm. I did not turn on lights. I may have had like the bathroom light on. I didn't want to -- I didn't want to totally see.

Q. Okay. So tell me how you covered him.

A. Bags and a tarp, because I didn't want blood to be getting all over. And then I -- I -- and then I put a blanket, because I -- like, Tyler came in there, and I didn't want him to see a -- a shape of a body. So I'm like, well, if Tyler comes in, I don't want him to know what this is. So I just kind of put the blanket that would just look like a big blanket there and it's --

Q. Okay. Where did you go -- did you go get the tarp somewhere?

A. Mm-hmm. In the --

Q. Where was the tarp?

A. Next door. In the guest house.

Q. So you went next door?

A. Uh-huh.

Q. And all of this is during the early morning hours?

A. Uh-huh.

Q. Of Thursday. So you go next door and you get a tarp. And you get some plastic too?

A. I got bags, like garbage bags, because I wanted to try to stop the -- to get the blood from getting all over.

Q. Okay. So just like big garbage bags, like for your normal garbage?

A. There -- it seemed like I saw a lot of blood around, like, the top. So I got, like, a smaller ones on top and then bigger ones, because I'm like, well, I see blood down here too. So then the bigger to -- where it -- like the blood -- it seemed like it -- it just went --

Q. Everywhere.

A. Everywhere.

Q. Okay. So you put one tarp over the head and then a bigger one to try and get the blood -- cover his whole torso?

A. Yeah. Trying to stop -- yeah. And then I thought, well, maybe if I wrap him in a tarp, it will stop getting blood everywhere.

Q. So then you get the tarp. And did you wrap him up while he was still in the bed? Did you have to pull him onto the floor?

A. So I pushed him.

Q. You pushed him onto the floor.

A. I pushed -- I put -- I pushed tables up and then I put him -- because I don't want him on the floor. And then I just put him over there on the -- like, these little tables.

Q. Okay. So you moved some tables next to the bed?

A. Mm-hmm.

Q. Well, just one or two or three?

A. There's three.

Q. So three. What kind of -- like coffee tables type things?

A. Two end tables and then a file, kind of, that had nothing.

Q. Okay.

A. He -- I -- he would get into my file and break in and take my stuff, so I took everything out of the file, like stuff that I don't really care if he sees. And then I had to like bring else -- I have to bring important papers elsewhere, because he would take my -- and get my into my important papers. So there was really nothing in the file, but a couple -- a few light things. So I carried a file and I put that and then I put a tarp and pushed him.

Q. So you laid the tarp out on the tables?

A. Uh-huh.

Q. Got on the other side --

A. I think that's what I did.

Q. -- of the bed?

A. It's so hard to remember what I did, but I think that's what I did.

Q. Okay. So -- okay. This would be the table. You would lay the tarp down. Push him. Did you have to climb onto the bed, climb across, start pushing him off?

A. Mm-hmm.

Q. Okay. And then he fell onto the tables, which were covered in the --

A. The tarp.

Q. And you're doing all this by yourself?

A. Yeah.

Q. Okay. And then you wrap him up in a tarp?

A. Mm-hmm.

Q. And then you left him right there on the tables or did you --

A. Mm-mm.

Q. -- push him further? So he's --

A. No. I just left him there.

Q. So he's still on -- if we go find him now, he's going to be on those -- on those tables?

A. Yeah.

Q. Okay. And why were you doing that? Just to --

A. I was trying to clean up the area, and I -- and Tyler -- when the morning comes, he climbs up on the bed.

Q. Okay.

A. And so he's not going to climb up on a blanket, you know. But that's his thing. Every -- it's his ritual. Every morning he comes up and he snuggles with me every morning. That's our -- that's our -- and I didn't want -- like, what's Tyler going to do if he comes -- you know, comes up.

Q. If he comes up.

A. Because there's no way to prevent him from getting in the room.

Q. But -- but his body was still there, you threw a blanket over him so it didn't look like a body --

A. Yeah.

Q. -- in case Tyler came in?

A. I didn't want Tyler to be -- to -- you know.

Q. Okay.

A. So if he saw it, I figured he'd just think it was just a -- just a big blanket, you know.

Q. Okay. And did you try and clean the sheets so he didn't climb into the blood?

A. Yeah.

Q. So what'd you do with the sheets? Put them in the washer?

A. No, I threw them away.

Q. You throw them away?

A. Yeah.

Q. And then did you --

A. But the -- the -- there's still blood, like the top -- there's still blood on the top. And so I just put a tarp on that and I'm like, well, okay, if Tyler comes in -- but he probably won't, because -- but -- you know, and then I put -- if in the middle of night, if he -- if -- you know, I'm trying to lock it when I'm there, but I had to go next door too. And so I'm like, well, if he -- anyways. If he comes in, I don't want him to see anything that looks weird and start questioning me. So I put a tarp down. I don't want Tyler seeing blood.

Q. Mm-hmm.

A. And then I put, like, a crappy sheet over that.

Q. And where did the -- the dirty ones go? In the trash can?

A. Mm-hmm.

Q. Are they still in the trash can? Did you take it somewhere?

A. I -- yeah.

Q. Where'd you take it?

A. I -- I saw a big dumpster bin, and I threw it in there.

Q. Where is this big dumpster bin at?

A. By the hospital.

Q. By the hospital?

A. Mm-hmm.

Q. Okay. Okay. And then you -- so you had to bag them up and then you left, threw it all in your car, and then went on your way to the hospital. Kind of take me through what happens next.

A. When did I bring it? I don't know if I brought it -- because I was at the hospital -- I don't know if I packed it with me, because I was at the hospital the whole -- like, all day.

Q. Thursday?

A. I went to the doctor and they sent me to the hospital, because the baby wasn't doing well. So I was there all day yesterday. So I may have just did it -- like, I did it yesterday on my way to the hospital.

Q. Okay. So I understand you cover him in the tarp. You take the sheets off. Put them in the trash bag?

A. Mm-hmm.

Q. Like a white trash bag a black trash bag?

A. I don't even know.

Q. Don't know what color. And then you take another tarp and cover the blood that's soaked into the actual mattress so that --

A. I took --

Q. -- Tyler doesn't see it.

A. Yeah. I put one tarp on the bed and a sheet. And I think I just -- I think I just covered him in one tarp.

Q. Okay.

A. And bags.

Q. So when you put a sheet on, did you actually get a fitted sheet and put everything on or --

A. Mm-hmm.

Q. -- is it just thrown on there? Okay.

And then after you do all that, is it starting to be sunrise by now or what's going on? It takes you a couple of hours to do that, you said.

A. It takes a while to do that.

Q. Took a few hours. You had to go back and forth to the shed --

A. Uh-huh.

Q. -- and get stuff and -- okay.

A. And then --

Q. What's going on --

A. And then Tyler's -- and then Tyler was getting up and I wasn't done cleaning up. And so --

Q. Okay.

A. Like, he kept getting up. I'm like, he can't come in here now.

Q. And he's trying to get in the door?

A. Yeah. He's trying to get in. He's screaming and crying. So I have to keep getting up and putting him back. And he's, lie with me -- lie -- and, I'm like -- and then I -- it's pitch black. And then I'm like, Okay. But don't say anything. And if you talk, I'm not going to stay in here and -- you know. And then he keeps getting up.

And I'm like, How do you -- how do you know I'm not in there?

I just do.

And I'm like, he can't see. And so finally I put -- I'm like, I still have a mess. What am I going to do?

So I got two of his big stuffed animals and I put that on this -- because I had a blanket on the floor there. I put that so maybe he would get down and feel. That didn't work. He just kept getting up. And it -- and I had to -- so I had to go in

there and calm him down and lie with him and then miraculously he just fell asleep. It took a while.

Q. Okay. And then what'd you do next?

A. I kept trying to --

Q. Kept cleaning?

A. -- clean up.

Q. Did you have to spray?

A. No.

Q. You had to try and clean the spots up with spray?

A. I -- there was blood. And my hands kept getting -- so I was -- yeah. I had to clean that.

Q. Did you try and spray the mattress at all --

A. No.

Q. -- or anything?

A. Nothing.

Q. Just covered it up?

A. Yeah.

Q. How about the clothes you were wearing? Did -- did you have blood on them?

A. I don't know.

Q. Did you have to change or did you change?

A. I did change.

Q. What'd you do with those clothes?

A. Those are in the room still.
Q. They're still in the room?
A. Mm-hmm.
Q. Okay. And then after you finished trying to clean up, what'd you do next?
A. Then it's like time to get up and leave.
Q. Okay.
A. I got Tyler -- I got Tyler breakfast, but he was eating too slowly and I -- you know, I'm like, well, I have to go to the doctor. So I -- I packed up his breakfast.
Q. What'd you guys have for breakfast?
A. He -- I didn't have anything.
Q. Okay.
A. I made him oatmeal with blueberries.
Q. Okay.
A. And then I just put that in a container and we left.
Q. So you decided you needed to go to the doctor? And what was that? Like a --
A. I have -- yeah. I had -- I went to the doctor and --
Q. Was that a scheduled appointment?
A. That was scheduled.
Q. So you had a scheduled appointment that

morning?

A. Uh-huh. Yeah.

Q. Okay. So you were just trying to make that appointment?

A. Right.

Q. Okay. And that's just a -- I've kind of got the gist that you're pregnant; is that right?

A. Yeah.

Q. And how far along are you?

A. I'm due March 9th.

Q. March 9th. Okay. So you're --

A. So I went to my appointment. I told him I got kicked and -- and I was concerned, because I wasn't -- I wasn't feeling movement.

Q. Feeling him move?

A. And I was feeling pain. So --

Q. Who's your doctor?

A. Dr. Claxton. Claxton.

Q. Claxton?

A. Yeah.

Q. With a K?

A. With a C. But it's at North Country, and I really see any provider I can get into.

Q. Okay. North Country.

A. I don't always see her.

Q. But that's who you saw yesterday?
A. I saw Joyce Davidson.
Q. Joyce Davidson.
A. Yeah.
Q. Okay.
A. And then she sent me to the hospital and I -- it was a morning appointment, but they -- the hospital, they -- I -- they kept me there all day, because they're -- the baby was barely breathing and the heart rate had taken a few dips, which they don't like. That's concern -- they really wanted me to stay there overnight. And I was just having too much anxiety and wanting to -- I didn't want to be isolated and alone. And my son's very attached to me. I'm like, I need -- he's going to have a hard time too and --
Q. Okay.
A. So --
Q. What time was that doctor's appointment?
A. It was evening.
Q. What time was the first doctor's appointment?
A. Ten -- 10:30.
Q. 10:30. So did you not get any sleep that whole night? Were you up all night? Or did you get

a chance --

A. Yeah, I was up all night.

Q. -- to take a nap or anything? Okay.

A. Well, I mean, that's kind of how it's been, like, all week.

Q. And what time did Tyler get up? Where -- you know, where you're --

A. I went in his room --

Q. -- starting his breakfast and woke him?

A. -- because I'm like we have to get to the doctor appointment.

Q. Okay.

A. So I went in his room at like -- I don't know. Nine -- nine something.

Q. Okay.

A. It takes him a while to get up and wake up and get going.

Q. Sure.

A. But he takes a very long time, because he's --

Q. Okay. Did you get showered and ready and everything?

A. I didn't even shower.

Q. Okay. Just threw some clothes on?

A. Mm-hmm.

Q. Okay. So you get to North Country. You see Joyce Davidson.

A. Mm-hmm.

Q. They -- they send you to the hospital at that point?

A. Mm-hmm.

Q. Okay. What time -- so you go straight over to FMC?

A. Went straight to --

Q. Emergency room or labor and delivery?

A. Labor and delivery.

Q. Okay. So you go over to labor and delivery. And who did you see there? Who was your doctor there?

A. They put me on a monitor. And I saw a lot of doctors.

Q. Sure. Okay.

A. They put me on a monitor. And then they thought they'd better do an ultrasound. So they scheduled an ultrasound. That didn't look so good. So they put me back on the monitor and then my doctor at that point was Dr. Herrick. And she's my doctor -- I've seen her before at North Country too.

Q. Okay.

A. And then things are still not looking good,

so I have to go back tomorrow morning, because the baby was barely breathing. But between that and the decrease in heart rates, they -- you know, they want to see if --

Q. They want to see again --

A. -- the baby will start breathing more. And so --

Q. Okay.

A. -- they said wait until Sunday.

Q. So how long -- how long were you at FMC?

A. I left after five.

Q. After five?

A. Yeah.

Q. Okay. Was Tyler with you the whole time?

A. No. No. I had my mom come and pick him up.

Q. From FMC?

A. From FMC.

Q. So what time did you have him? Just right when you got there type thing?

A. Pretty much.

Q. Okay. And what's your mom's name?

A. Joyce Houseman Canepa.

Q. Spell that.

A. C-A-N-E-P-A. She goes by both.

Q. C-A-N --

A. E-P-A.

Q. E-P-A. Okay. Okay. So she comes and gets Tyler.

A. And all I tell her at that point -- my mom's very sensitive and emotional. And I didn't know how to tell her anything. And I couldn't tell her anything in front of Tyler, but all I told her was I got kicked.

Q. Okay.

A. That's all I said. And I spell everything, because I don't want Tyler to know anything, you know. And that's all she knew. And I was just thinking, How am I -- how am I going to tell my mom? She's going to, like, have a heart attack.

Q. Yeah.

A. So that was like the hard -- like, what to do. So I told -- I told her and her husband today.

Q. Okay. So after five, what -- where do you go after five when you get released?

A. Straight to my mom's.

Q. Straight to your mom's house?

A. Actually, I had to -- I had to go pick up my prescription first. So I went and got --

Q. Where'd you get your prescription at?

A. At North Country.

Q. Okay. Is that their pharmacy there?

A. Mm-hmm.

Q. Okay. And you talked about dropping the stuff in the trash. Was that on the way to North Country or from North Country going to FMC?

A. That -- that was -- was it on the way to? No. I think it was on -- I think it was on the way to the hospital.

Q. So when you left North Country on your way to Flagstaff Medical?

A. Actually -- yeah. I think so. It's all kind of fuzzy.

Q. And do you have any idea where exactly? What street you're on or what dumpster that was?

A. I don't know what street. I just saw a big dumpster. And I'm like, Okay. Well, I'm going to dump these in there.

Q. What -- so when you left North Country, what route to did you take?

A. Took Cedar.

Q. So you took Cedar up over?

A. Mm-hmm.

Q. Okay. So was it -- coming out of North Country, you go up 4th Street. Go down Cedar. Did

you stop by the Safeway there? To the dumpsters there?

A. No. It was up -- up over the hill.

Q. So you went over the hill. And there's really nothing up there. Did you turn off by, like, Buffalo Park somewhere?

A. It was past Buffalo Park.

Q. And you started going down the hill?

A. Yeah.

Q. Okay. And then you get into some buildings on some sides?

A. Yeah.

Q. Where did you see a dumpster there?

A. The right side.

Q. On the right side, if you're going down Cedar?

A. Then turn right.

Q. Turn right at the first one? Like, going towards the ski -- what is or -- the ice skating ring?

A. I don't know if it was the first street or not. But, actually, I have a friend that said he's going to be, like, moving in that area.

Q. Okay.

A. But I -- I'd never been to his house. And

so I actually was trying to look for his car to tell him what was going on, just driving to find his car. I'm like, there's a dumpster. Because his car is like a bright yellow. And he didn't even know his address. He's living with friends right now.

Q. So you did see his bright yellow car?

A. No. I was looking for it.

Q. Oh. Okay.

A. Thinking I -- you know, I just wanted to tell him what was going on. And --

Q. And you just found a dumpster up there?

A. Yeah.

Q. Was it in like an apartment kind of complex?

A. Mm-hmm.

Q. Was it --

A. Mm-hmm.

Q. It was an apartment type thing?

A. Mm-hmm.

Q. Okay. What all did you throw away there?

A. Just the -- like, I think just the bedding stuff.

Q. Only the bedding? Anything else?

A. I don't remember anything else.

Q. The gun or --

A. I didn't throw away the gun.
Q. -- clothing?
A. No. Because my clothes are still -- I don't think I threw away any of my clothing.
Q. No. Okay. Okay. So at five you get off. You go back to North Country. Get a prescription?
A. No. I just -- oh. After the hospital?
Q. Yeah.
A. Yeah. And I pick up my script.
Q. Picked up your script. And then you head over to your mom's house?
A. Yeah.
Q. And where does she live?
A. She is on Hamblin.
Q. Hamblin.
A. Which is right by the mall.
Q. Right by the mall somewhere?
A. Yeah.
Q. Okay. So -- okay. Take it from there. What -- do you end up telling them? Or what happens when you get there?
A. Well, when I get -- no. I didn't -- I didn't say anything.
Q. Okay.
A. It was getting late, actually. And I

didn't say anything. And Tyler woke up. And we talked a little bit, my mom and I. But I didn't -- you know, I just told her about my appointment a little bit and -- did she help me get stuff out? Because I brought some stuff over too. I packed up some stuff when I left. I don't remember. It's all so hazy and fuzzy.

Q. So you packed up kind of an overnight bags for the two of you or something?

A. Yeah.

Q. Okay.

A. Because I knew -- yeah. And I knew Tyler would be staying the night there. So -- and then went to bed.

Q. Okay. You went to bed at your mom's house?

A. Yeah.

Q. You and Tyler. Didn't tell your mom or your stepfather at all?

A. No.

Q. Okay. What happened next? Did you go anywhere?

A. Oh. I was -- I went to bed and then --

Q. Just to bed.

A. I thought I was in labor in the middle of the night.

Q. Oh, okay.

A. I had horrible, horrible pains. Felt just like when I was in labor with Tyler. It was that excruciating. And so I called the hospital and I said I think I'm in labor. And I -- and I'm -- it like -- I waited a little bit. You know, like, what's -- first, I have -- was having really weird symptoms. Like, what is going on? Like, my body was just burning. Everything was burning. And I'm like, well, maybe the jell. But then why am I burning here in my back and why is that burning and then -- and then I have horrible pains.

And so I get up and -- and I -- I never take medicine. But I'm, like, this is -- this is the time when I need to take Tylenol, because this is unbearable. And I took -- you know, I took some Tylenol. And I called and -- and after talking on the phone, I'm like, well, wait. Oh. It started to -- it started to subside. And it didn't just subside like that when I was -- I had to get in the shower to get some relief with my first son. And so I said, well, maybe -- I don't know what this is, but it's subsiding, so. And it was -- at that point, it was like two in the morning. And I'm like, I don't want to wake up my mom and have her

bring me over there.

So I'm like, well, if it subsides, then I'll just wait it out. And it subsided, but it still -- this persistent pain all night, but enough that I -- I knew I wasn't going to have -- be having the baby right then.

Q. Okay.

A. And then morning came and we had breakfast. And --

Q. So, I mean, in the -- did you have to call your mom to come pick up -- how -- did you call anyone?

A. To pick up Tyler?

Q. Yeah. Did you call her from the hospital, come pick up Tyler?

A. I called her at my -- at North Country. And I said, They're sending me over to the hospital.

Q. Okay.

A. And then -- you know, then she's like, Well, we'll meet you at the hospital.

Q. Okay. Did you try and call your friend? You said earlier that you were trying to find your friend's house. Did you call your friend's --

A. Yeah. My -- it was my best friend and he's going on like -- I don't know. He moved out. And,

no, I didn't call. I --

Q. You didn't call?

A. He's -- he's male. And even though it's somebody like I rarely ever -- but he was my -- my best friend. And I don't have that much contact with him, because if Marvin knew, he'd be angry. So -- but he told me, Hey, he's going -- he's living over by the hospital somewhere.

Q. So you just called your mom from -- from the hospital. And that was on your phone?

A. Mm-hmm.

Q. Okay. What's -- I'm sorry. What's your phone number?

A. (928) 607-6242.

Q. 6242. And what's your mom's phone number?

A. (928) 310-6168.

Q. 6168. Okay.

All right. So you made it through the night. It sounds like you had a rough night there. And then he woke up and take it from there.

A. This morning?

Q. Yeah.

A. So this morning, get up, and Tyler and I snuggle and then we have breakfast. And, you know, just trying to make things seem as normal as

possible.

Q. Okay.

A. And then I went to get some more -- because I don't know what they do when this happens. I have no idea. I'm like, Are they going to lock me up? Are they going to put ribbons around the house and I can't get in? I'm like, Tyler has no clothes. So I'm like, I need to go to the house and I need to get some -- so Frank -- and then Frank came with me too later, because I'm like -- I got some food, I got some clothes. And I got some stuff for the baby, because if -- I'm like, The baby can be born at any moment. So I got some diapers.

Q. So you -- you said he came with you later. Did you go a couple times?

A. Yeah. I went -- I went --

Q. Tell me about the first time. What time did you first go back to the house?

A. After -- it was probably really late morning. I went out and I got a load.

Q. Really late morning, like eleven?

A. Yeah. Maybe eleven.

Q. Okay.

A. I got a load. I brought it back. And then I needed Frank to help me get like the heavier

stuff. So then I -- and then I'm like, Okay. I need to -- before I tell -- before I tell the police, I need to -- because I don't know what's going to happen, I need to tell my mom and Frank. And my mom had to go to work.

So I'm like, okay. Well, I need to wait for my mom to get back from work so I can tell her. And then I figured at that point -- I'm like, well, I'll call my friend and have -- see if she can watch Tyler for a little bit while I -- while I tell them and then let like -- you know. And then --

Q. So did you call your friend?

A. Yeah. I called -- I think I just texted her, because sometimes I get real emotional and I cry --

Q. Who's your --

A. -- and nobody can understand me. Pam.

Q. What friend did you text?

A. Pam.

Q. So you texted Pam?

A. I texted Pam and just asked if she could watch Tyler for like an hour or so. And I was trying to -- I was trying to do it early, because I want -- I didn't know what's going to happen. I wanted to get down here and just do it.

And -- but I -- sometimes I move really slow. And I can -- I have to sit down. And I have to -- so it took a while. And then I looked at the clock, and I was like well Tyler should be napping. So I'm like -- I can just tell them while he's napping. So that's what I did.

Q. What time was that? What time did he nap?

A. Well, he got down for a late nap today. It was -- it was after two.

Q. Okay. After two. 2:00, 2:30?

A. Maybe so.

Q. And that's when he napped. And you -- that's --

A. So then I brought --

Q. Your mom was home by that point?

A. Yeah.

Q. What time did she get home?

A. I don't know. She was there -- I left and I did a load. And I got a load --

Q. At eleven.

A. -- while she was at work.

Q. That was the first time you went there?

A. Mm-hmm.

Q. Okay. At eleven you went there.

A. And when I got back, she was -- she was

back. And then -- and then I brought them and I told them.

Q. Okay. So you sit Frank down and Joyce down and you tell them?

A. Mm-hmm.

Q. And you told them you shot Marvin?

A. Mm-hmm.

Q. Okay. And how did they react? What -- what happened next?

A. Well, I told her in the day, because she said after work she was going to go shopping. And I -- I start breaking down.

But I said, Can you -- can you -- I really need to talk to you about something. And can you -- unless you really need to go, can you come home after work?

And she said she would. And so I -- my mom is, like, incredibly sensitive. And I really -- I'm like, If you were to get awful news -- and she reacts from other people. My sister will get a speeding ticket and she'll cry. Like, she's really sensitive.

And I -- I was trying to -- like, I don't know how to -- you know, I'm like, If you were to get horrible news and it's going to be like awful

for you and Frank, would you prefer I tell you by yourself, because you might be feeding off of Frank's negative -- you know, his reaction to or should -- or would you like me to tell you together?

And, like, I had been crying and crying and telling every -- you know, like something's -- I need to tell you something. And so she -- you know.

And I said, This is going to, like, be the most awful news you'll ever have.

And she's like, Did somebody -- is somebody dead?

You know, she -- like, she just said -- you know. So -- and then I told her what -- you know. I told her.

And then she's like, Well, I'll go get Frank and you can tell Frank.

Q. So you told her by herself?

A. Yeah.

Q. And that was at her house?

A. Mm-hmm.

Q. Okay. And Frank was in the other room?

A. Frank was outside.

Q. Outside. And then you tell Frank?

A. Yeah.

Q. And then you guys decide you need to go get

more stuff? Or what happens next?

A. Well, yeah. So my thought was -- because I don't know what they're going to do. And, like, I don't have any of the baby's stuff at that point, because it was all -- so I need Frank to help me get the heavier -- so she thought -- you know, we agreed that before I come down here, we better -- because they're going to tape everything off, and we're not going to have anything for the baby, so we better get some, like, necessities out. So he came and helped me get, like, the heavier stuff.

Q. Okay. So he saw -- he must have saw -- did he go in the bedroom or anything like that?

A. I didn't see him go in there.

Q. Uh-huh.

A. But he told me he went in there.

Q. He did go in and look?

A. Mm-hmm.

Q. Did you guys move -- did he help you move him or anything?

A. Oh. No. He didn't -- I -- he just said he opened it and looked. And I'm surprised though, because I -- you know. I had no idea he opened -- because I had the door closed, and I just have it closed off.

Q. Okay. What kind of stuff were you taking? Just clothes?

A. I took a -- because I have a dresser and I have a whole -- like the whole baby stuff in one dresser.

Q. Right.

A. So we got a dresser. We got, like, the bath seat.

Q. Took a dresser?

A. Yeah. The bouncy thing. A bunch of diapers. And then I got some -- some like some food too.

Q. Okay.

A. And Tyler didn't hardly have any clothes, so I just got a box, and I just put some clothes for Tyler.

Q. Okay. And then you took it back to your mom's house?

A. Mm-hmm.

Q. Did you guys stop anywhere? Go anywhere else?

A. Mm-mm.

Q. Now, you told me earlier that you took this gun somewhere. When did you take this thing?

A. So I did that on my first trip.

Q. Okay. So when you left at eleven on the way back to the house, you did?

A. Uh-huh.

Q. Or -- okay.

A. Yeah, that first trip.

Q. So you had the gun with you the whole time?

A. Mm-hmm.

Q. In your car?

A. Yeah. It was in -- yeah. Frank's truck.

Q. And what -- Frank's. And what car were you driving the whole time?

A. Frank's truck.

Q. Frank's truck?

A. Mm-hmm.

Q. And what kind of truck is Frank's truck?

A. I don't know what kind it is. It's a -- I think it's a Dodge. I'm not even certain if it's a Dodge, but I think it's a Dodge.

Q. What color is it?

A. Greenish.

Q. A green?

A. Yeah.

Q. Maybe a Dodge?

A. Yeah.

Q. And is there anything special about it?

Does it have, like, four doors? Does it have --

A. It has two doors.

Q. Just the two regular cab pickup truck?

A. Yeah, but it has -- like, wood in the back.

Q. In the bed area?

A. Yeah.

Q. Kind of like a shell, but it's made out of wood?

A. Like, it goes up. Like maybe four bars of wood.

Q. Okay. So it doesn't enclose?

A. No.

Q. It's just on the side. And that's to hold stuff and things like that?

A. I guess.

Q. So it's got wood siding?

A. Yeah.

Q. Okay. And is it a small truck, a big truck? Is it an old truck?

A. It's old.

Q. It's a big old truck?

A. Yeah.

Q. Okay. And it's -- it's Frank's. What's Frank's last name?

A. Canepa.

Q. Canepa as well?

A. Mm-hmm.

Q. Okay. So you had the gun with you in the truck and then you also had the -- you know, the trash that you ended up throwing away, the -- the blankets and things like that, the sheets?

A. I didn't have -- yeah. But I didn't have that then.

Q. Okay. You didn't --

A. I just had the -- the gun.

Q. You're right. But what -- when you left the house, the first time you and Tyler left, you were in that truck as well?

A. Mm-hmm.

Q. Or another vehicle? Okay.

A. Yeah, in the truck.

Q. In the truck. Okay. So you take the gun, you leave your parents' house and you decide you needed to -- to take the gun somewhere?

A. Yeah.

Q. So where'd you go?

A. I wanted to get rid of it.

Q. You wanted to get rid of it?

A. Yeah. I just went down a dirt road. I'm not even -- because I didn't want anybody to see me.

I didn't want to ever see it again. I didn't want anybody to find it.

Q. To find it.

A. I didn't want, you know, kids or somebody that might not do good things with the gun. So -- so I drove until I saw a dirt road. And then there were cars. And so I'm like, well, if I keep driving, I probably won't see more cars. And then I'm like, this is -- I'm like, okay. I can't see any more cars. This is probably far enough. And I pulled over and I dug a hole and I buried it.

Q. Okay. So kind of in the general direction, I want to make sure no one -- you know, no kids find this as well, so --

A. No kids will find it, because it was like in the middle of the forest.

Q. Okay. But it's -- it's just not safe having a gun out there. So I'd like to try and -- if we're -- were you driving out on 89 or --

A. Mm-hmm.

Q. Okay. So did you go past Silver Saddle?

A. Mm-hmm.

Q. Do you know what road -- the name of the dirt road was?

A. I'm not certain, but it could be Elden

Springs.

Q. Elden Springs.

A. But I know it was a dirt road.

Q. Okay. So you end up turning -- if you're heading out of town towards Page on 89 --

A. Mm-hmm.

Q. -- you see Elden Springs. Must be on your left?

A. It's on the left. I see a dirt road on the left, yeah. I was looking everywhere for a dirt road.

Q. Okay.

A. And I'm like, okay. There is --

Q. So you turn left and you -- do you have to go over a cattle guard, if you remember, probably?

A. I don't remember a cattle guard.

Q. Maybe some mailboxes or anything? Okay. How far up the dirt road did you start turning?

A. Well, there were cars --

Q. There were cars driving?

A. -- so I kept driving. Yeah.

Q. Did you see any houses?

A. I didn't.

Q. Okay. And then when you got out of the truck, did you go to your left or --

A. I went to the -- I went to the right.

Q. You went to your right. So you had to walk around your truck?

A. Yeah.

Q. Okay. Get on the shoulder. How far off the road did you walk?

A. Not real far. I took a little -- a little walk, because I didn't want it to be -- I didn't want it to be near the road, because I don't know if -- you know. You never know.

Q. Water erosion or something?

A. Yeah, water erosion.

Q. Okay. So you walk out in the woods a little bit?

A. Yeah.

Q. It's a wooded area?

A. Mm-hmm.

Q. Okay. And you just dig a hole with your hands, with your feet? Do you have a shovel?

A. I have a shovel.

Q. You brought a shovel?

A. I brought a shovel.

Q. So would the shovel happen to be in the car or did you have to get the shovel?

A. No, I grabbed --

Q. You grabbed it out of your house, your dad's house?

A. Yeah.

Q. Okay.

A. Out of the shed from my house.

Q. So you were planning on shoveling it?

A. Yeah.

Q. Okay. So you grabbed the shovel when you left the house the first time with Tyler?

A. Uh-huh.

Q. Okay. And then -- so you're planning on driving out there?

A. Well, I don't -- I don't know the first -- but I had it. I brought it to -- for the --

Q. You brought it specifically to dig a hole?

A. For the gun.

Q. Okay.

A. Yeah.

Q. How far deep did you dig?

A. I don't feel like I dug --

Q. Not very far?

A. Yeah. I don't feel like I dug that deep, but far enough that an animal, you know, or nobody will -- it won't erode or nothing.

Q. Mm-hmm.

A. You know, far enough -- I'm like, I don't want it to melt and run and then show.

Q. Okay. And did you put rocks or anything over it?

A. Yeah.

Q. You put rocks over it?

A. A rock.

Q. Just one big rock?

A. Yeah. There was all kinds of rocks in the area and I grabbed and I put it there too.

Q. Okay. Okay. And then you leave that area after that?

A. Mm-hmm.

Q. And you head back to the house?

A. Yeah.

Q. Did you -- did you go to --

A. Oh. I don't -- I -- I went to my -- I -- I -- did I pack up stuff? It seems like after -- I did -- I was seeing too many cars down the dirt road the first time. So I came and I went and I loaded and then I went back down the dirt road.

Q. Okay. So you had to go twice?

A. Yeah.

Q. So you go down -- you go up -- there's too many cars, you decide this time. So you decide to

go to the house first?

A. So -- yeah. So I think I'll get a load of stuff.

Q. Okay. So you go to the house.

A. And then maybe it will be cleared out and then --

Q. Okay. So you go to the house, get your stuff, a few essentials. Any -- I mean, just clothes again and foods --

A. Just --

Q. Stuff like that?

A. That's all I got, clothes and food.

Q. Did you go see Marvin at all?

A. I had to go in the room to get a few things.

Q. Okay.

A. But -- yeah.

Q. Did you move him -- you didn't move him or do anything else?

A. No, I didn't touch him.

Q. Did you clean up any more or take any --

A. No. Mm-mm.

Q. Okay. Just get some essentials. And then you leave and go back to the Elden Springs this time again?

A. Mm-hmm.

Q. Okay. And this time there's not as many cars?

A. Right.

Q. Okay. So you're able to just walk off to your right, just a few -- few yards, a few hundred yards? I mean --

A. You know, I didn't -- I didn't hike like way -- you know, I'm like no one's going to -- you know, no one's going to find it.

Q. Okay.

A. That was my thought. No one's going to run into it and -- you know.

Q. Okay.

A. I just don't want -- you know. I just don't want somebody getting it in the wrong hands or --

Q. Sure. Okay. Then you head back to the house and that's when you kind of text Pam, trying to get the babysitter, and things of that nature?

A. Mm-hmm.

Q. Okay. Did you text or call anybody else?

A. I texted her. No.

Q. Just Pam. What's Pam's last name?

A. Erickson.

Q. Erickson. Where's she living at?

A. She lives by the hospital.

Q. Okay. Did she ever respond to you?

A. Yeah. But I didn't --

Q. Didn't need her?

A. I'm not a huge phone person. And I actually didn't even see it.

Q. See that she responded?

A. Yeah.

Q. Okay. So then you went -- eventually, you tell your folks. You and Frank run back to the house, get some more things. And then you go back to your mom's house. And then what happens?

A. So -- so I went to -- I didn't hear that. So I'm just going to tell you what I did.

Q. Okay.

A. I went -- so the first thing I wanted to do was get rid of the gun. Too many -- too many cars. So I went to the house, got a load, went and got rid of the gun. And then at that point I noticed then too, well, it's Tyler -- he's probably napping. So I don't need -- you know. I won't need to have Pam watch him. So then I texted her that he should be napping. But she knows something's going on, but -- but I wanted to tell my mom and Frank and the police

before I tell her. But she knew I was having some issues with the baby, and she could sense -- I'm like, How does she -- you know. She knows something's going on. But I don't know. I -- you know. I'm like, first, I need to -- you know, I have to wait to tell her. And so -- so then I went home and right -- and then I told them --

Q. When you say home, you went --

A. Over to my mom's house.

Q. Your mom's house. Okay.

A. I went to my mom's house, told them. We got -- Frank and I got another load. And my mom stayed with Tyler, because he's napping. And then -- then we came -- we unloaded what we could in the back. And then we, like, wanted to get here as soon as possible, so I had my mom finish unloading the stuff in the front, and -- and Frank and I came down here.

Q. And Frank gave you a ride here?

A. Mm-hmm.

Q. Okay. Did they -- did they tell you to come turn yourself in?

A. No. I already told them I was going -- going to do it.

Q. Okay.

A. But I wanted to tell them first.

Q. Okay. And that's when you came into the lobby?

A. Mm-hmm.

Q. Okay. I'm just going to use the little boy's room real fast.

A. I'm going to --

Q. Are you okay?

A. I'm going to need to --

Q. You need to as well?

A. Yeah.

Q. Let's do that and then we'll meet right back. It's right this way.

A. Okay.

Q. If I -- you just want to have a seat right there. We'll be -- I didn't get a chance to go. So I'm going to --

A. Okay.

Q. -- go real quick.

A. I might fill my water bottle up.

Q. Yeah.

A. It's almost out.

Q. There is a -- I'll walk you back there and show you.

You good? I'll be back in just a minute.

All right?

A. Okay.

Q. Hanging in there?

A. Yeah.

Q. So, Susan, here's what we want to do. We want to take a ride out and see if we can figure out where this gun is.

A. I don't know if I'll recognize it, but we can try.

Q. Well, we can do the best we can do.

A. Yeah, we can try.

Q. Okay. So we'll go get a car warmed up here and we'll come get you in a little bit and --

A. Can I get my -- my fruit -- my snacks in my purse?

Q. Did you -- you know what? I think one of the other detectives might have your purse. And I don't know where -- if I come across it, I'll run it in here.

A. Sounds good. Okay.

Q. Okay.

* * * * *

C E R T I F I C A T E

I, Keisha Heflin, transcriptionist for Performance Reporters, Inc., do hereby certify that I was provided a compact disc in the above-entitled matter with a request that I transcribe the same; that I listened to the compact disc and prepared a typewritten transcript of the contents of the tape to the best of my skill and ability. Further, that I am in no way affiliated with or related to any of the parties in this case.

DATED this day 22 of March, 2015.

_____

Keisha Heflin, CET-545

Unsworn Interview

of

SUSAN JACOBSON

Taken

Unknown

By

Detective Barr

State v. SUSAN JOY JACOBSON

Case No. CR 2015-00184

BY DET. BARR:

Q. All right. Better? Got some sugar in you?

So just want to kind of make sure we got everything, all our bases covered.

In your room, you said the gun was in the dresser. So the way your bed's set up, where's -- is there dressers all over? Is there --

A. Mm-hmm.

Q. How many dressers do you have in there?

A. Four.

Q. Four dressers. Oh. Wow. So or -- do you got a square bedroom?

A. Mm-hmm.

Q. Is that the best way to describe? And where would the --

A. Across.

Q. Let's say -- let's say north. Where's the --

A. This the door?

Q. Yeah.

A. So the bed's here. And it's across from the bed.

Q. So does the bed come out, like, foot of the bed here?

A. Mm-hmm.

Q. And head of the bed here, north?
A. Mm-hmm.
Q. Okay. And then this is where the dresser is?
A. Mm-hmm.
Q. And can you describe it?
A. Yeah.
Q. Is it a tall dresser?
A. It's an entertainment center dresser.
Q. Is it where -- the TV on top of there or anything?
A. Mm-hmm.
Q. Okay. TV. So which drawer --
A. The --
Q. -- was the gun at?
A. -- top drawer.
Q. Okay. The top drawer. Top right, top left?
A. Top left.
Q. Okay. Is that something you know is there? Is that, like, for your protection? Is that where he keeps the gun?
A. He always wants to keep a gun.
Q. There's always one around?
A. I don't know. In case somebody breaks in

or something.

Q. Sure.

A. I don't know.

Q. So you know -- I mean, you guys are familiar there's a gun in there. It's not a it's a secret. Obviously, you know it's -- that's where you keep your protective gun.

A. Mm-hmm.

Q. When you grab it, did you have to -- I'm sorry. What side of the bed do you sleep on? And where's the -- the door?

A. Door's here.

Q. Okay.

A. I sleep here.

Q. You sleep on that side?

A. Mm-hmm.

Q. Okay. He's on this side, obviously.

A. Mm-hmm.

Q. Okay. So hang on one second. I lost my train of thought. Do -- does he keep a magazine? Do you have to load the gun?

A. Mm-mm.

Q. Gun's loaded?

A. Mm-hmm.

Q. Okay. So you know it's loaded. He always

keeps it loaded? Okay. Is it his gun or your gun?

A. It's his gun.

Q. Okay. You ever -- are you familiar with guns? Do you go out and target --

A. No.

Q. -- shoot or anything?

A. No.

Q. So you've never shot that gun before or anything?

A. He showed me how to shoot it once.

Q. Showed you. Okay. It's usually --

A. It was a long time ago.

Q. Okay. So he showed you how to shoot it. You didn't have to load it?

A. Mm-mm.

Q. How about the safety? You know how to work the safety?

A. Taking it off?

Q. Yeah. And putting one in the chamber. Did you have to put one in the chamber?

A. No.

Q. Okay. Because sometimes when there's kids in the house, they -- they don't --

A. I don't know if it has -- I don't even know how to work the safety. I don't know -- I don't --

Q. So you didn't have to manipulate the safety or anything?

A. No. No, it wasn't on safety. I just shot --

Q. You have to cock it?

A. Yeah. I guess I don't know the safety, because I don't know how to do it.

Q. Did you have to pull anything or do anything other than pull the trigger?

A. Mm-mm.

Q. No. Just -- just point and shoot?

A. Uh-huh.

Q. Okay. Okay. So I kind of got an idea. So you were able to --

A. I mean, I have to put it back, so I can't just -- I think I had to put it --

Q. Cock something? Like, in the back?

A. I don't remember now --

Q. Sometime --

A. -- what I did. But I didn't have to fiddle with the -- I don't know. What is safe besides?

Q. Sometimes there's a little switch that just turns the safety switch on?

A. Oh. I don't know if it has that.

Q. But you had to cock something with your

thumb there in the back?

A. I think so.

Q. Okay.

A. I'm not sure now. I don't even remember, but I know it has something that -- up on top that you can pull back.

Q. Okay. When you -- so you say you guys -- you're in Tyler -- I just want to make sure I understand, so I repeat myself a lot, that way there's no confusion.

You're in Tyler's room kind of getting him to bed for the night, because he feels comfortable with you in there. You kind of tell Marvin's getting ready for bed, because the light's going off and the TV's going off.

A. Mm-hmm.

Q. So you head to the bedroom. He's already in the bedroom?

A. He's in there already. Mm-hmm.

Q. And the lights are on in the bedroom getting ready for bed?

A. Did he leave them on when he -- I don't remember if they were on or off when I -- when I --

Q. And you had to -- I mean, did you have to get dressed for bed in your normal bed wear and he

had to get --

A. I -- I was probably already in my stuff, if I --

Q. Okay. And you sleep in just pajamas type jammies?

A. I usually sleep in nothing, but I've been so cold that I've been wearing pajamas lately.

Q. Okay.

A. Or sweats or something.

Q. Okay. How about Marvin? What's he normally -- is he a boxer guy? Is he a --

A. Mm-hmm.

Q. Just the boxer only?

A. He's like -- he's like a boxer brief guy.

Q. With just -- that's all he's wearing to bed?

A. Mm-hmm.

Q. So is he already undressed and ready for bed?

A. He's getting in -- he's either getting into bed or was already in bed when I got in there.

Q. When you first got in there?

A. Yeah.

Q. Okay. And then what happened? That's when --

A. And then I like -- and then -- while I was getting in bed that's when he went off on a rampage.

Q. Okay. But that was the --

A. It didn't last for as long as it normally does. Like, normally -- sometimes it can go for hours.

Q. And that's when you were saying he was mad that you were putting the baby to bed. Put Tyler down and you --

A. That I was lying with Tyler.

Q. Okay. So there's a little argument about that. And then you say you don't go to sleep, because you don't sleep well?

A. Yeah. I didn't go -- I didn't just like fall asleep right away.

Q. Okay. So you're laying down?

A. But I did fall asleep during.

Q. At some point you fell asleep then?

A. Yeah.

Q. And he's laying in bed?

A. Mm-hmm.

Q. And then you're awake and he's awake at some point in the middle of the night, early morning?

A. He wakes me up.

Q. He woke you up?

A. Yeah.

Q. And just by -- he just started talking. That woke you up?

A. Yeah.

Q. Okay. So then he starts saying he's sick of this. Sick of this situation?

A. Yeah.

Q. Okay. And -- I'm sorry. Did you feel the -- the kick before he woke you up?

A. It's all -- it almost all happened simultaneously.

Q. So, like, you felt a kick --

A. I mean, I heard the words and a kick, you know. I didn't wake up to a kick. It seemed like I woke up all -- to every -- kind of things going on at once, but he's --

Q. And what was his tone? I mean, was he just talking?

A. Angry.

Q. But was it a talking angry? Was he screaming, like waking up --

A. He was yelling.

Q. -- the neighbors and stuff?

A. I don't think we could wake up the

neighbors, because they're so far.

Q. Okay. So he's -- he's elevated kind of?

A. I can't see. I don't --

Q. No. Elevated, as far as his voice?

A. Yeah.

Q. He's mad?

A. Yeah.

Q. Okay. And that's when he's saying he's sick -- sick of this and sick of that. Okay.

And then you said it clicked in your mind that he was serious this time.

A. Mm-hmm.

Q. And I believe you said the first one -- something about the first one to the gun.

A. I -- that's what went through my mind, you know, was who -- whoever's the first one to the gun is going to be saved tonight.

Q. Did he say anything about the gun or that's just what you were thinking?

A. He didn't say gun, but he --

Q. Okay.

A. He insinuated he was going to kill me, but not --

Q. He didn't say that?

A. -- say I'm going to kill you, but it was

very similar.

Q. Okay. So you get up, grab it out of this, and then you walk to this side?

A. No. And then I come back over here.

Q. Come back to this side?

A. Yeah. I came back up here and I shot him.

Q. And you said that you kind of weren't sure -- you thought he was laying down. Was he -- could you see his face or could you see the back of his head or what did you see?

A. It was -- it was so dark. And I had even -- sometimes I even will cover the clock radio, so -- you know, because the light bothers me.

Q. Mm-hmm.

A. It was so dark, but I could -- I could make out like a -- you know.

Q. His shoulders. And what did you see when you made out his shoulders? Was he looking -- was he, like, on his side, like, looking that way?

A. I just saw, like, a head.

Q. Or was he looking this way?

A. I could see a figure, but I couldn't see him very well.

Q. Okay. Was the figure -- you couldn't tell if he was looking at you or looking the other way?

A. I -- I don't know.

Q. Okay. And he was laying down though?

A. I'm not sure if he was lying down or sitting up, because I could -- you know. If he was partially -- but I could tell -- you -- you know. I could tell he wasn't --

Q. He was (inaudible)?

A. He wasn't -- he wasn't totally up.

Q. Okay. So he could have been laying down or he could have been kind of upwards?

A. Somewhat upright.

Q. Okay. And then you said he hadn't said anything at that point and then you just pointed towards what you saw was him?

A. Mm-hmm.

Q. And then you fire one shot?

A. One shot.

Q. One shot. And what'd you hear when you fired that shot? You just didn't hear --

A. I heard silence.

Q. Just silence.

A. And so I just crept -- just creeped out and just left.

Q. Okay. So just -- you touched on something earlier about when you were talking about Tyler

about how your mom didn't protect you.

A. Yeah.

Q. Can you tell me a little about that? Is that something to do with your real dad or stepdad or something?

A. I -- it was a man he was -- she was dating.

Q. Okay.

A. And there was issues going on and he sexually assaulted me.

Q. Oh. Really?

A. And I was -- luckily, I was very fit and very strong and working out all the time. And I was able to get away. And I told her and she didn't believe me. I'm like, I -- I've never been a bad kid. I've never lied. I've never been one of those kids. And she didn't believe me and I was distraught. And I couldn't stand the guy to begin with, because he was a little bit violent towards her.

And then -- and then he came after me again one night, like, physically came after me. And I -- I went and lived with my grandmother after that. And I'm like -- and it really dampened our relationship. It took a long time for us to heal. And he did end up sexual assaulting my cousin and

his -- his grand -- grandchildren -- and his grandchildren. And all that came out later.

And she's like, I'm -- you know. I'm sorry.

I think -- I think she was -- when my parents divorced, my mom was an emotional wreck, like, cried every night. And I just think she couldn't accept or somehow didn't want to believe and convinced herself that it couldn't ever happen. I don't know what the deal with that was, but she later realized that he was a really bad man. And she was glad that she left him when she finally left him.

Q. Okay. What were you planning on doing with -- with Marvin's body? (Inaudible)

A. I have no idea. I just wanted to clean it up and then -- you know. I was going to call, but I didn't know when and how. And I was panicked. And I'm like, what -- are they going to throw me in jail? I don't know the law or anything. So --

Q. Yeah. Speaking of that, I mean, why didn't you call the police right off the bat?

A. I panicked. I didn't know if they would throw me in jail. I don't know what --

Q. Okay.

A. I didn't know what to do. But then I was like, I have to tell them. I can't -- you know.

Q. I mean, did -- you said at first you weren't even sure if you hit him or anything like that. Didn't it dawn on you that maybe he's alive and you could help him and --

A. Well, that's what I wondered.

Q. -- call?

A. So that's why I came back to check on him.

Q. Okay.

A. And at that point if I had just injured him, I would have called the police. Like, if I injured him enough where he couldn't come after -- you know. If he -- if he wasn't coming after me, I would have probably stayed right there where I could see him, hold the gun, because I didn't know if he would come after me, and call the police. That would have been my plan. But if he was -- if he was still alive.

Q. Okay. And then it didn't -- once you found --

A. But if he was faking it and still could -- because he has so many guns. And -- but I'm like, well, he could -- he could be faking and get a gun.

Q. Well, wouldn't you call the police in case

you thought he was going to get a gun and hurt you or hurt Tyler or --

A. It --

Q. Didn't it dawn on you to call?

A. No, it didn't even dawn on me. My thought was --

Q. I mean, if you were scared that he could not be dead in there and he could potentially harm -- hurt or anything like that --

A. Yeah. I didn't -- right -- it didn't even dawn on me right then. Because I figured when I left, he could have gotten a gun and -- you know. So my thought -- come back. He could -- I -- either he's dead or he was faking it and could have a gun.

Q. And when he was dead, you didn't think that maybe you should call the police and tell them what happened?

A. No. I just panicked. I didn't know what to do.

Q. Okay. All right. And were you going to move -- were you going to take -- were you going to try and move him anywhere other than the house? What was your plan?

A. I didn't know what to do with it.

Q. Did you think about taking him and burying

him or --

A. I thought about it.

Q. You did think about it. Okay.

A. I didn't know what to do. I --

Q. And, I mean, if you buried him, what would you -- what was your plan going to be?

A. I -- I don't know. I can't --

Q. You don't know? Hadn't thought that far?

A. Right.

Q. But it -- you had thought, Maybe I should bury him. Take him out of here.

A. Yeah, thought about it.

Q. Okay. Just to try and hide it. Get -- you know, get rid of it kind of thing?

A. Yeah. I really didn't know what to do.

Q. Okay.

A. I was kind of in panic mode.

Q. Okay.

A. And once my head cleared and -- I mean, I can't -- that's not what I should do, even though I don't all agree with everything with the law. But I see innocent people going to prison on the news. And I see innocent people going there for 40 years. And I'm like, what -- you know. I don't think I did anything wrong, but the law might view things

differently than myself.

Q. Okay. Susan, here's what I think happened. I don't think Marvin was awake. I think he was in bed. Okay. And I think you knew he was asleep. And I think you walked over to that -- and I think you had this planned out. And you shot him in the head while he was sleeping.

A. No.

Q. And you knew what you were doing, because you went and got a tarp. You got trash bags.

A. Yeah, but I got that all after.

Q. You went and -- you even tried to make a ramp to the window. And I know you were going to back a truck up to that window.

A. Yeah. After I --

Q. And you were going to pull his body out into that truck.

A. I thought about it.

Q. I know you did. And you were going to bury him somewhere or you were going to do something with him. You were going to get rid of that body, weren't you?

A. I considered it.

Q. Absolutely. And I think -- you know, what you're telling me just isn't adding up. Okay.

A. I am totally telling the truth.

Q. I -- you are. And what you're telling me is not adding up --

A. I don't understand.

Q. -- to what you're saying. You're saying -- you're talking about how you were being abused and this, but I think Marvin was sleeping at the time.

A. He was not sleeping.

Q. And he was laying in the bed and you grabbed that gun and you walked over and you murdered him.

A. That is not true.

Q. How is that not true? That's -- that is what happened.

A. That's not what happened.

Q. You cannot tell me that you didn't --

A. I couldn't just grab a gun and kill him in his sleep.

Q. That's what you just explained to me you did.

A. No. He --

Q. He was laying in bed and you went and picked up that gun and you went back and you murdered him.

A. I did not.

Q. You did.

A. I did not.

Q. You need to start thinking about --

A. This is why -- this is why I was afraid, because I see this happening to people that -- on the news, that the innocent people get sent to prison.

Q. Innocent people don't wrap the body in a tarp and trash bags after you just killed your husband and then stack tables up and try to make a ramp to a window so you can load him into the back of the vehicle. Clean up the mess. Bag up the sheets.

A. I considered it. I was -- I was in a -- a state of mind where I didn't know what to do.

Q. And the reason you didn't call the police is because you knew that what you did was wrong.

A. That's not true.

Q. You knew --

A. I panicked.

Q. -- that you murdered him.

A. That's not true.

Q. How long have you been thinking about this?

A. I haven't been thinking about it.

Q. Susan --

A. I've been fearing for my life.

Q. Susan, it's -- it's time to stop the charades. It's time to just --

A. This is -- I don't understand. I -- I've never done anything wrong in my life. I was protecting myself. And I felt I was protecting my kid -- my baby.

Q. Maybe you think you were protecting your kid, but that doesn't change the fact, you know. That night, I think, he was asleep. Okay.

A. He wasn't asleep.

Q. And maybe you were afraid. Maybe you were afraid from, you know, the torment, but I -- you know, your -- your story's not adding up about him waking up in the middle of the night and --

A. I don't --

Q. -- saying these things to you and then you feeling that you have to race to this gun. That doesn't add up.

A. I don't know how it doesn't add up. I don't. That's what happened. I'm only -- I'm only saying what happened. I don't under -- I don't understand anything else. I'm only telling you what happened.

Q. I understand you're telling me exactly what

happened. What you're telling me is that, to me, that you murdered him.

A. I was fearing for my life.

Q. I understand you may have been fearing -- you're talking about in the past he's been -- emotionally. I understand that. People will understand that.

A. Yeah, but it I was different this time. It's not -- it's not like watch your back kind of thing. I'm -- I'm -- you know. It was like it was I'm -- I'm doing this now.

Q. So in the middle of the night he's telling you to watch your back?

A. No. He doesn't -- no.

Q. At midnight, at one o'clock in the morning?

A. He didn't tell me to watch my back. That's how -- like, when he would threaten to kill me, it wouldn't -- it's like he's not going to do it right now.

Q. Was he -- was he getting ready to leave you?

A. I -- I don't know. He was mad because he thought I was going to leave, that's why I had the truck.

Q. Did he -- was he planning on leaving you?

A. I don't know.

Q. You and the babies?

A. Well, he didn't never said he was going to leave.

Q. Did you fear he was leaving?

A. No. We -- we have problems. We've always had problems, but he doesn't let me leave. He -- that's why he got mad about the truck, because he didn't -- he was mad that I was going to pack up my things.

Q. So that's why you killed him?

A. Because he thought I was going to leave?

Q. Yeah, because he -- he doesn't let you leave.

A. That's not why I killed him. He wouldn't -- he hasn't let me leave for years. I was --

Q. Right.

A. I was fearing for my life at that moment. I think he had his breaking point.

Q. I -- he's telling you he's sick of this. He's sick of the situation. Was he sick of you? Did he want out? Was he saying it's time to end this relationship?

A. He said -- it came across to me that he was

mad, because I didn't -- he was mad because I wasn't following his rules or his -- I wasn't there with him during the night to watch TV. He was tired of the kid situation, because he didn't want either one of these kids. And -- and I'm going to kill you, but not in so -- not -- not directly he said I'm going to kill you, but that's exactly what he meant.

Q. You're talking about what he meant, but --

A. It was -- it was clear that I'm going to kill you.

Q. So --

A. And it was very --

Q. -- in the middle of the night he wakes up and he starts just threatening you with I'm sick of this. I'm sick of the situation?

A. Yeah.

Q. And that says, all right, I got to race to this gun. I got to --

A. He told me --

Q. -- pick it up, walk over, and shoot him?

A. He didn't just say I'm sick of this and I'm sick of this situation. I can't remember the exact words. I'm going to kill you. There's different ways of saying it, but he's -- that's what he said.

Q. Susan, I'm sure as hell -- if I just

murdered someone for what they said, I would remember exactly what they said.

A. I -- I'm trying.

Q. If I --

A. (Inaudible).

Q. If I got so damn scared that I said, you know what? I'm going to end this man's life right here, I'm going for this gun. It's over. You think I would remember exactly what he said when he threatened me.

A. Maybe I would, if I -- if I hadn't just woken up out of -- but I knew exactly -- I felt --

Q. So you just woke up, so you might have heard something wrong, even, you're telling me. Nothing was clear?

A. In my mind, he was going to kill me right then. That's -- that's what I interpreted.

Q. Yet, he didn't -- yet, he didn't even move out of that bed. Yet, he was still laying in that bed. And he was such a threat to kill you --

A. My --

Q. -- he hadn't even stepped foot on the floor?

A. I don't know if he ever got out of bed, but he was --

Q. He didn't say anything to you?

A. My mind was, Let me grab a gun, and -- I don't --

Q. And murder -- you killed him.

A. I -- I did, but --

Q. While he's -- he was still in bed, hadn't even stepped a foot on the ground.

A. But I felt -- I honestly felt he was -- he was going to kill me that night. I don't know what else to say.

Q. I just want the truth.

A. I'm telling you the truth.

Q. I want you to say the truth, nothing but the truth?

A. I'm telling the total truth.

Q. Okay.

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

Q. Well, I think you're sugarcoating it, because I don't think -- I think you knew exactly what you were doing as you were doing it. And that it was planned out. And after you did it, you knew what you did was wrong. You -- I mean, you go and get tarps. You clean up while your own son's knocking on the door. You don't call for help. Because if it was -- if it was an immediate threat

and you defended yourself, you know you could have -- you could have called, but you knew that's not what happened. So you start wrapping him up.

A. But, see what's -- what's happening now?

Q. You start wrapping him up. You even try -- I mean, you even plan to pull a truck up and load him in the back of a truck. Okay. You -- you get a shovel -- you drive up and down a dirt road.

A. Well, I can't -- I don't get a shovel to dig -- I could have never dig a hole --

Q. Got a shovel and drove up and down roads to bury a gun?

A. No -- for a gun.

Q. Absolutely.

A. There's no way I could bury him. There's -- and there's no way -- I could not dig a -- a hole that deep.

Q. You -- I'm not -- I'm saying you go and you try and bury the gun.

A. Yeah.

Q. Why would a person do that? Why would a person bag up the body --

A. If I throw it away --

Q. -- and get ready to load it in the back of a truck, why would they wake up, eat breakfast, go

to an appointment, stay all day in a hospital, okay, if they didn't have this planned out? Okay. They knew --

A. I didn't have it planned out.

Q. -- this --

A. I just didn't know what else to do.

Q. And maybe at that second you didn't have it planned out, but after he was dead you knew what you were doing. You knew it was time to cover this up.

A. I didn't know what I should do. I didn't know if I should take him out. I was in panic mode. And then I realized I better --

Q. I don't know anyone that panics to the point where they -- they're going to and from the house. They're getting tarps. They're cleaning. They're loading up.

A. Well, I didn't want blood all over the house. And I didn't want my son to see it. I can't just --

Q. You left your son in a house where the body of his dad was laying there instead of calling the police and trying to get somebody to come help him. And if not, at least get him out of the house. Get him to a safe spot. And if he was in there -- you know, you're so in fear for your life that you just

killed this man, but you don't even -- you told me you didn't even know what was going on in the room. He could have been getting more guns. He could have been alive, faking it. But you stayed in the house and you kept your son in the house?

A. I came -- I went out, but I came back in to check on him. As soon as I saw him, I -- I panicked.

Q. And you saw he wasn't a threat to you. And it didn't dawn on you, okay, let's call 911.

A. I --

Q. Let's get some help here.

A. No. I --

Q. Let's get help for him. Let's get help from me.

A. There was no sound. I knew --

Q. Get help for my -- for my son.

A. There was no sound and there was blood and I knew he was dead.

Q. You knew he was dead. How do you know he was dead?

A. Because he didn't make a sound when I -- after I shot him. If you heard a loud noise, you'd probably make an, ah, startled sound or something.

Q. Yeah. It doesn't mean he's dead. I mean,

it could be anything; right? You could just -- if you have a bullet wound, maybe you can't talk. I mean, did you point it right at his head?

A. I don't know.

Q. How close were you?

A. I was pretty close. But I --

Q. How close?

A. I couldn't see.

Q. If -- on Marvin, how close were you?

A. I was pretty close, but I couldn't see very well.

Q. Show me how close. You keep saying pretty close.

A. Maybe right there.

Q. Right there? Okay.

If it's pitch black in here, and I'm this close to you, I sure as hell know if you're sitting up or laying down.

A. He was propped up and so I can't tell --

Q. Propped up on a pillow?

A. Yeah.

Q. Okay. So he was laying on his pillow?

A. Yeah.

Q. Face up?

A. I -- I can't tell.

Q. You're this far away. You're this far away.

A. I could see a vision. It was so --

Q. I don't care how dark it is. You're this far away.

A. I couldn't tell.

Q. His eyes were closed. He didn't say -- you think if you walked up -- if you were awake and you just got in a fight and he had just threatened to kill you, according to you, that you take a gun and you put it in his face like this, he's not going to say a word? You said he didn't say a word.

A. It was so dark in the room. I could barely see him.

Q. You're -- you're just covering -- it's just lie after lie. It's time to -- it's --

A. I am.

Q. Tell us what happened.

A. I am. I don't know what else to do.

Q. Marvin's dead. It's time to just come to Jesus right now.

A. I know.

Q. And tell us what happened.

A. I'm telling you the best --

Q. Well, it's a lie. Because there's no way a

man who just threatened you is going to let you, while he's sleeping or -- supposedly he's awake. He's going to let you walk up and put a gun, what's that, a foot from his face and pull the trigger.

A. I got it. I ran up in the bed and I shot.

Q. And you said you ran to your side of the bed?

A. Yeah.

Q. And climbed over the bed?

A. Yeah. I ran up -- I ran up on the bed.

Q. You jumped -- you were running on the bed? Like, feet up on the bed?

A. Well, no. I wasn't feet up, but I hurried up. And then I -- and it all happened so fast. I don't know. I'm telling you -- I'm just -- I'm telling you what happened.

Q. And your thought is to clean up, wrap him up, get rid of the body, get rid of the gun?

A. Well, I didn't know what to do. My first thought was get this cleaned up so Tyler doesn't see.

Q. That doesn't make sense. I don't want Tyler to wake up in hours from now and see his dad dead. He didn't have to see that at all. You call the police, and the police come. He doesn't have to

see that. Or you call the police, you jump in your car, take him somewhere safe, if you're so scared. You don't stay in the house. You don't lock him out of the room. You don't try and pull his dad into a tarp and pull him through a window and out into a truck.

A. Well, I --

Q. People don't do that.

A. Well, I considered it, but I didn't know what to do.

Q. Consider -- you did more than consider it. A consider is just think about it. You literally did all that, other than put him in the back of that truck. And I don't know if you just decided this is too much. He's too big. I can't get him out. I don't know what happened. But you said, well, this isn't going to work. Plan A did not work. Let's try plan B.

Plan B, I'm a battered wife. He mentally abuses me. He's been tormenting me. He won't let me go. That'll -- that'll work. Let's try that.

Let's come in two days later and say I was just a distraught -- you know, I've been abused so much that, you know, I wrapped my dead husband up in tarps and trash bags and buried guns out in the

woods and threw stuff in the trash across town.

I mean, it's -- it's bullshit. It's bullshit.

A. I'm telling you what happened. I don't --

Q. You're telling me --

A. I mean, I would call friends to help me get him out or something, if that were --

Q. No, you wouldn't. Why would you call friends?

A. To help -- if I really wanted him out, I would call --

Q. Wouldn't a friend go, Holy shit. I better call 911. There's a dead person.

Why would you call a friend?

A. To help me get him out, if I couldn't.

Q. You have a friend in the world that would come help you move your husband's dead body if you asked?

A. People know me and people know Marvin.

Q. Is this something you've done before? I mean, I -- that's --

A. No, but I --

Q. That's insane to me that you can say you can call somebody.

A. I've never hurt anybody in my life. I

would never -- I would never hurt anyone in my life, unless I was -- unless I was in fear for my life.

Q. Susan, come on. You know that's not true.

A. It's the truth.

Q. I --

A. You're seeing it differently than I am.

Q. No. It's -- I think you're telling me --

A. Yeah. I think I was scared, but -- and I honestly didn't know what to do until my panic wore down.

Q. It's more than a panic. I mean, that was thought out, as far as, you know, the after events. But leading up to it, I mean, it -- it's not adding up.

A. I told you everything that I can tell you.

Q. A man is lying in bed with his head on his pillow.

A. I'm not saying his head was on his pillow. I couldn't tell. I could see his body, but I couldn't see him well.

Q. Okay. So you felt so threatened by someone you couldn't even see, who's laying in bed?

A. He just threatened my life.

Q. Okay. So he didn't even move out of the bed --

A. I don't know if he moved out of the bed, but I saw his body there in the bed.

Q. Yeah. He was still -- he was still laying in bed. I mean, we both know that.

A. I -- I'm not certain if he was.

Q. Oh. We both know he was laying in the bed.

A. I mean, you're --

Q. Everything I'm seeing will show us that he was lying in the bed. Okay. When you have a pool of blood on the bed -- okay. Everything there is going to show us what happened.

A. (Inaudible) happen, but I'm telling you what I saw from my perspective.

Q. It's just not adding up, Susan.

A. I mean, I don't -- I don't get -- I don't get it. I don't get why innocent people go to prison. And -- and I feel like this is -- I don't know what else to tell you. I can't tell you something else. This -- that is -- that is my recollection.

Q. That's your recollection?

A. Of the whole night.

Q. Okay.

A. I mean, I could say the same things over, but I can't --

Q. Well, I think -- I think you're giving me recollections of the night. I think you're just -- what happened at the moment that you grabbed that gun and you murdered Marvin, I think that's -- that's where you're trying to kind of move yourself out of it a little bit and say, no, I was in fear for my life. I had to do it.

A. I mean, I had -- I had major issues yesterday from the kick that kept me at the hospital. I mean, I was there almost all day. It was until after five.

Q. The kick that you were laying in bed with a pillow between the two of you?

A. Yeah, but it was the pressure. I don't -- I guess. I don't know. I'm not an expert. But I've been to the doctor so many times, and the baby's never had an issue. And the baby's having issues this time.

Q. Okay. Well, I -- I mean, that's just -- again, that kick that you're talking about with a pillow, you've said it yourself that he's done it in the past and you thought it was when he sleeps he does that.

A. With Tyler, I thought it was at that time.

Q. Well, you're the only one that thinks it's

not as well.

A. And --

Q. You came up with that on your own accord.

A. What?

Q. That, oh, maybe that wasn't on purpose or maybe that wasn't while he was sleeping or on accident.

A. I thought -- at the time that he was kicking me, I thought it was in his sleep and it wasn't intentional.

Q. Sure.

A. I later thought -- after it stopped, when Tyler was born and it was later, then it dawned on me that because he didn't want Tyler and he didn't want this one that it was intention -- it was --

Q. That's cocka -- that's just not even feasible. You're just thinking, oh, now I don't think -- you know, it was definitely when he was sleeping, but now I think he was doing it because of that one time.

A. Now, see, I don't under -- I didn't even tell him I was pregnant, because I was scared. I didn't tell him for a long time. I don't know why nothing's adding up. I am telling you the truth. I don't know if you can -- you can talk to people I

know that I've told these things to over the years.

I told Brian -- I don't know if he'll remember. I told --

Q. So it's things over the years. Again, you're telling me about things over the years. You're coming in -- you're emotionally -- you know, gone through this relationship that's worn on you.

A. Yes, but this was different. This time it was different.

Q. I -- it's -- no. I don't see how it's different. You haven't told me anything about this time --

A. Because this was -- this wasn't just like -- I just felt like this was it. I sensed -- I got -- his anger and whatever he said made me think that this was -- this was it.

Q. So whatever he said. So it was his words that made you --

A. His words and his tone.

Q. Okay. Well, those are the tones in the words. Even though he didn't -- he -- he never grabbed the gun first. He didn't get up and grab a gun. Nothing like that.

A. I didn't look at him as soon as he said it. I hopped out of bed and I grabbed a gun.

Q. You knew right where you were heading. Right for the gun.

A. (Inaudible).

Q. Oh. Okay. (Inaudible)

THE WITNESS: I'm going to the bathroom.

DET. BARR: What's that? Still going? You all right?

THE WITNESS: Yeah.

MALE VOICE: Is she all right?

DET. BARR: I can hear the toilet paper. She says she's all right.

Yeah. Is that her meds?

MALE VOICE: Her mom gave her some meds. (Inaudible).

THE WITNESS: (Inaudible)

DET. BARR: All right.

THE WITNESS: I would never hurt (inaudible). I thought my life was in danger.

BY DET. BARR:

Q. Okay.

A. I would say take a poll of my childhood friends, my whole life, teachers. I've always -- I've never -- I've never hurt anyone. I've never been bad to anyone. I'm not that person. I'm telling you exactly what I -- what I felt. What I

thought. What I can recall.

Q. Okay. So I -- I understand you're telling me that you felt threatened. Okay. And if you felt threatened -- I mean, that's what you're telling me. And it sounds like from the things he was saying that night, you said it was different, right? You kind of explained it as being different.

And I got the sense that you knew at that point that, you know, you felt threatened. It might have not been that night or the next day or the next week, but you knew something was coming and you felt like you had to do something about it. Does that sound about right?

A. His mood was escalating. I've been in fear from him for a long time, but his mood had been escalating. And that week it was escalating quickly.

Q. Okay.

A. And that night, in particular, I felt that this is the end.

Q. This is the end. So you felt like -- I mean, it was -- it was coming -- it was coming soon?

A. That night I felt like he was -- he was taking me out that night.

Q. That night?

A. Yeah. Right then or I'm -- I'm done. I felt -- I felt like he might go run to a gun.

Q. You felt like he might have run to a gun. Okay.

A. I felt -- his behavior when he said -- I felt like he -- he might -- he would, like, right then and there, he would go after a gun and take me out.

Q. That he could have, just by what he was saying?

A. By what he was saying and his tone.

Q. Okay. And -- and that was the he's sick of this, that stuff?

A. It was the -- yeah.

Q. Okay. Okay. And that -- you know. So make sure I understand. So his tone right then and everything it kind of escalated. So you felt, you know, you were getting down to -- to where he might try and hurt you at that time.

A. Yeah.

Q. Okay. It seems to me like, you know, you were kind of thinking, you know, it's going to happen now or it's going to happen -- it's imminent. It's either going to happen now, you know, when I wake up. You know, it's coming. You know, it might

not -- he might not get me now. But it seems like your wheels are spinning. You're saying, you know, who knows what tomorrow's going to bring. And if it's already getting bad, it's going to get worse. So --

A. Yeah. I don't think tomorrow even. I didn't think tomorrow would -- I didn't think I was going to see the next day.

Q. Okay. Just by the words he was saying?

A. Yeah.

Q. Okay. So, I mean, what's your understanding of, like, self-defense and things like that?

A. I don't know.

Q. You don't know much about it?

A. I mean, if I -- if I think somebody's going to kill me -- I've been scared for a long time, but I didn't feel like it was coming that day, you know.

Q. Right.

A. I -- when we would get in an argument, I would certainly watch my back, because I didn't know if he would choke me. I would never -- I would never turned my back on him, because I didn't -- I never knew what he would do.

Q. Okay.

A. That kind of thing. And I was always in fear. But this is like -- it's he's going to do it. He's not going to hire anybody. You know, I always felt like -- for a long time I felt like more he would hire someone.

Q. Okay.

A. I felt like he could do it himself, but I always -- but by the little -- these little things like so-and-so is coming to work out in the yard and then they would never show up. And then my thought would be, well, Marvin probably tried to get a hit man and then he backed out. Little -- just the little things.

And it happened a few times where I think by what he was saying things were weird about this man doing this out here. And I'm like, why would that man do that? And then my thought would be like, That's probably a hit man. You know, and then that man wouldn't show up. And -- and that -- then I would think, I bet that was -- he tried to get somebody to kill me. Like, my -- you know.

And I would tell -- I told my mom some of these things. It's not -- but this was different. Like, this was he -- he was going to do it. He's doing it now.

Q. Okay. Did it ever -- I mean, why didn't you just -- just get out of there?

A. I had gotten out there, but my fear was -- and I know my counsellor was like I don't -- you know. And everyone asks me, but I feared for Tyler. I felt like I was the only one that could stay and protect Tyler. Even though I was in fear for my life and the situation was scary, I didn't -- I feared for Tyler. And I felt like I was the only one that -- and I didn't feel like he would always just take me out, but every time if I was out and isolated or whatever, I was always watching my back.

Q. So that night, I mean, why didn't you just -- why didn't you just get out of there? Why didn't you get up and get out?

A. Because I didn't know what he was going to do. I didn't know if he was going to run to a gun. I didn't know what he was going to do right then and there, if it was, you know, run and get a gun or -- I didn't know.

Q. I mean, you could have just run out the door and run?

A. No. No. I know -- we both know that that gun's right there and it's loaded. There's no way.

Q. But if you just kept running --

A. I wouldn't be able to run from him.

Q. Okay. You couldn't have just gone straight out that door?

A. No. He'd be able to grab that and get me before I got out, before I could find my keys or anything. There's --

Q. Well, you could have -- even if you just ran outside?

A. I wouldn't have made it. There was no way.

Q. I mean, why couldn't you leave?

A. Because he could have run, because he's --

Q. He could have done a lot of things.

A. He has long fast legs. He could have been to that gun in like -- quickly.

Q. Well, he didn't beat you to it.

A. No, he didn't beat me to it, but I didn't know if he was going to run, walk, do it. I -- I didn't know.

Q. Or sit there. I mean, you really didn't know what he was going to do, it sounds like.

A. But --

Q. I mean, he could -- he could have stayed there. He could have ran after you, you're telling me. He -- I mean, he could have gone for the gun. You're right. I mean, he could have done a lot of

things; right?

A. Yeah. My in -- my immediate thought was he might go to the gun right at this instant. I -- you know. I just was flushed with panic. And so I went and got it.

Q. So, I mean, if you just bypass the gun, you ran outside, you'd be in the woods; right?

A. Well, no. I'd have to run -- I don't even think I could make it that -- if he -- he would probably beat me, because he has long legs.

Q. Sure. If you guys were racing, yeah. But he -- we know he didn't get out of that bed. So if you -- you know, looking back now, you could have just went out the door; right?

A. No. I would have to go -- there's no way. I would -- he could have been there in seconds. I would have to go through --

Q. He could have, yes.

A. -- here and then out the sliding glass door or --

Q. You're saying a lot of what he could have dones, not that he was doing.

A. I don't -- wouldn't think that I would even be able to get halfway through the house without him getting me.

Q. He could have is what you're telling me?
A. Yeah.
Q. But he also could of stayed in that bed and not moved one inch, couldn't he of? I mean, you don't know.
A. Yeah, but I would have --
Q. It's a serious question. We don't know what he could have done or would have done or did. We're just -- you're just playing hypothetically if I tried to run outside, he could have gone to the gun. He could have ran here. He could have tackled me. He could have done lots of things; right?
A. Yeah. I don't think I would be able to get outside and get away. He's a lot faster than I am.
Q. Yeah. You're saying if he chased you, he's a lot faster than you.
A. Yeah.
Q. But we don't know if he would have chased. We'll never know; right?
A. Right. But that was my thought when -- after his words.
Q. Okay. So you know just -- you thought he might chase you?
A. Yeah.
Q. Okay. You thought he might go get the gun?

A. Yeah.

Q. Okay.

A. I thought he was going to get it.

Q. But he never did chase you?

A. He didn't -- he didn't chase me.

Q. He didn't chase you.

A. But I didn't know if it would happen. If he would run and get it, if he was going -- if he was going to do it in my sleep.

Q. So (inaudible).

A. I didn't know when.

Q. Okay.

A. I just panicked.

Q. That makes sense. So he -- you figured he could have done it while you were sleeping later?

A. Yeah.

Q. Went and got the gun? Okay. And like I said, even if he didn't do it that night, it seemed like you felt like it was imminently going to happen.

A. It was coming.

Q. Whether it be you asleep later or the next day or a week later when you least expect it type thing, huh?

A. I thought it was happening soon.

Q. Okay. All right. Let me just make sure I'm not missing anything. And you're good on water? I'll be right back.

Okay. So you're -- you got released from the hospital. You went to North Country to get your meds. Did you go anywhere -- did you go back to the house that night at all?

A. No.

Q. So after you left that morning to go back to the doctor you never went back to the house?

A. I didn't go back to the house.

Q. To your house?

A. I didn't go back to the house.

Q. Okay. So it wasn't until the next day?

A. Right. I did go -- I did go for a little drive, but I didn't go to the house.

Q. Okay. So you did leave after you went to your mom's house? You then --

A. No, I didn't leave there. Well, I only left there this morning. I haven't gone back.

Q. Okay.

A. I haven't gone back to the house (inaudible).

Q. So after you got released from the hospital, did you go anywhere that night besides

North Country?

A. I went for a little drive, but I didn't go to the house. I wanted to just further relax.

Q. Where -- did you just drive around town type thing?

A. Yeah.

Q. And the whole time you're driving that green pickup truck?

A. Yeah.

Q. Okay. So what happened when your mom found the gun on the laundry? What did you tell her about it?

A. She didn't say anything to me.

Q. She didn't say anything to you?

A. No.

Q. Did you know that she found the gun?

A. I didn't know until I told her -- until I told her what happened and then she said she saw a gun there.

Q. So did -- so you took it in the house at some point, put it on the washer?

A. Yeah. I didn't know what to do with it. I wanted to get rid of it, but I didn't know what to -- what to do with it.

Q. So it was in the house, but then you -- so

it's not still at their house, and we're not going to find it in their house?

A. No. I -- no.

Q. It's buried out there, apparently?

A. Yeah. I wanted to just get rid of it.

Q. Okay. All right. Well, Susan --

A. But I don't think you're supposed to throw a gun in the garbage and so -- you know.

Q. Well, you're not supposed to bury a murder weapon either?

A. Well, I didn't know that. I just thought --

Q. You didn't know that?

A. No. I just thought you weren't supposed to throw it away, because somebody could find it. I just thought -- you know. Find it and use it.

Q. Okay. Most people would just call the police and leave it where it's at, but, I mean, that's not what you did.

A. No.

Q. Right? I mean, you would expect someone to call the police usually; right?

A. I -- I -- my head's in a fog. I just didn't know what to do.

Q. All right. Well, at this point -- I asked

you earlier if you understood the laws of self-defense and things like that, and the reason I asked that is because the scenario that you've explained to me over and over does not fit.

A. You know what? I'm sorry it was so fuzzy, but I didn't go to the house last -- that night. I'm trying to remember if I did go back to the house that night. Because I had been back so many times to get things and then I don't remember (inaudible) I went back. I may have went back that night.

I know I drove and drove around. And I may have got -- I may have went back to get a load, but I didn't -- I know I didn't go in the room. Everything's just gets hazy, but I may have been back that night.

Q. Okay.

A. Because I know I've been back. (Inaudible).

Q. Is there anything else that -- that's going to be in the house that you tried to hide or bury or anything like that? Around the house or anywhere else?

A. Mm-mm.

Q. Did you throw anything else in the trash?

A. No.

Q. Nothing. What about the bullets or like

the casings or any of that? Where's the casing for the bullet that you fired?

A. What do you mean, the casing?

Q. Well, when you fire a bullet through a gun, there's a -- you leave a -- you know, the bullet when it fires.

A. You leave a bullet that fires?

Q. Yeah, depending on what kind of gun it is.

A. No.

Q. From what you're explaining to me, it sounds like it might be --

A. You mean, the -- like the --

Q. The brass.

A. After you fire it?

Q. Yeah.

A. Well, I picked up a bunch of stuff and I threw it away. There was clothes and other stuff on the floor that I just picked up and -- because it looked like (inaudible) --

Q. You threw it in the trash just there in the house?

A. No. I just put everything, the bedding and anything that looked like it had blood or there was some clothes on the floor that I -- that I picked up.

Q. So it could have been in there then?

A. He -- he usually leaves his -- well, he doesn't always put his clothes in the hamper. He leaves them around the floor.

Q. Did you leave the bullets and everything in the gun just how it was?

A. Mm-hmm.

Q. I mean, did you do anything to make it safe so you didn't shoot yourself or when you left it on the dryer that your son didn't get a hold of it?

A. I'm not real familiar with how to open that up and get that -- and get that out.

Q. So there was potentially a gun that your son could have grabbed and -- if he gets up there --

A. That's why I put it up high. And I had -- I had covered it up.

Q. Just wrapped in some rags?

A. Dirty laundry that I picked up and put over it.

Q. Okay. All right. Well, I was starting to explain that the -- you know, the way Arizona laws are written and self-defense and things like that, your scenario just isn't going to -- just isn't going to work for that. So you're --

A. Well, I guess I don't know the laws,

because I thought if -- if you thought you're going to -- your life was -- I mean, if your life is in danger --

Q. Sure.

A. -- then I thought that is self-defense.

Q. Well, your -- you're not -- I'm going to go home tonight. You're going to go to jail. Okay. And you're going to be charged with homicide at this point. Okay. So at this point, we're just going to escort you over there to the jail, okay, where you'll be booked in on -- on homicide. Okay. And you'll see a judge tomorrow.

A. I do have -- I am supposed to go to -- back to FMC, because the baby wasn't doing well at nine in the morning.

Q. So we have a nurse over there and we're going to give them all your information and make sure they're well aware of what's going on. Okay.

A. Okay. Can they get me monitored? Can they monitor the baby?

Q. That's --

A. That was what FMC --

Q. That's -- that's (inaudible) talking about. Okay.

A. Okay.

Q. I mean, obviously, they did let you (inaudible). You're not in jail. But, you know, we'll talk to the nurses and they will be answering your questions as best they can and stuff like that.

A. So I don't know the difference in -- I don't understand the difference in -- for when -- when you think your life is going to end, I don't -- I thought that was self-defense. I don't understand why --

Q. I understand that's what you think and that's what you -- because that's the way you explained it to me the whole time.

A. So I don't understand what I did differently than what would -- I don't understand how I didn't act in self-defense.

Q. Because there is, you know, nothing imminent that was going on at that point. When we talk self-defense, that means someone's actively trying to kill you or hurt you or harm you or harm somebody else. Okay.

You've explained to me what he told you and you felt scared and you felt threatened. And he said some words. Okay.

A. Yeah. Well, I thought I was going to --

Q. I understand.

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A. I thought I was going to die and I didn't know that he actually had to be pointing a gun at me to or -- to protect myself. I had no idea.

Q. Sure. I'm not saying he had to be pointing a gun at you, but you haven't explained anything other than him saying some words that you felt -- felt you were -- you were scared and things of that nature. All right.

A. Well, I don't (inaudible). I just feel like this is not happening. I truly felt I didn't do anything wrong. Can I use the restroom?

Q. We're going to take the (inaudible).

BY MALE VOICE:

Q. (Inaudible.) Were you seeing somebody from victim witness? Who was -- who was that?

A. She was -- I don't remember her name, but she was (inaudible).

Q. (Inaudible) and then you guys had (inaudible) in 2012?

A. It was after that, because there had been multiple threats and --

Q. Okay. I just don't see any reports from us with you guys. Did you file any reports with us and I'm not finding them or --

A. The police came out twice.

Q. Really? The sheriff's office did?

A. Yeah.

Q. Okay. Since 2012?

A. (Inaudible) it might have been since 2011.

Q. Okay. And you were seeing -- was it a Holly from victim's witness; do you know? Do you know what she looked like? Kind of punky spiky black hair or --

A. No. It wasn't spiky.

Q. Could have -- sorry. Could have been somebody else at the time then. (Inaudible) trying to let them know what's going on. So I want to get somebody over there to go talk to your mom and dad, so they can help them out too and, you know, figure this whole thing out. And let them know what happened. Okey-doke.

A. Mm-hmm.

Q. Thank you for talking with us. If you want to take (inaudible) and I noticed you were saying you had some prenatal stuff and --

DET. BARR: One second.

BY MALE VOICE:

Q. (Inaudible). Let them know. And see if we can get back out there -- we're going to go back out there to your house tonight. So we got some guys

out there now and then I'll be swinging back by your mom and dad's probably at some time.

A. There's a -- I think all my stuff is in a bag, white. Just a white --

Q. White bag?

A. White canvas bag.

Q. Okay. Okay. Thank you.

BY DET. BARR:

Q. Watch your step. Grab onto that. Straight across this walkway.

A. Straight?

Q. Yeah. The -- the water bottle, we're just going to have to go ahead and pour that out. They won't take anything --

A. Are you serious? I get dehydrated like that quick.

Q. Yeah. There's stuff for you to drink in there, but we can't take any liquids --

A. (Inaudible).

Q. Can't take any liquids in there. Let's go right through here. Watch out. There's going to be a car coming out. Let's go ahead and pour that drink out.

A. Okay.

Q. Just on the ground. Right through here.

Why don't you just wait right here for one second.

FEMALE VOICE: ID?

DET. BARR: R-56.

FEMALE VOICE: Okay. Do you have a booking?

DET. BARR: Yes.

We'll have to have you sit down, please.

Can I have a pair of cuffs? And, Lois, can you do a pat for me? Can you do a pat down on a 101 for me?

THE WITNESS: Can I take my coat off?

DET. BARR: No. They're going to take it right off --

THE WITNESS: Because it would be easy --

DET. BARR: -- so you might as well just leave it off. But I do need to have you put your hands out in front of you. It's policy that we have to have these on to walk through that door, so.

She hasn't been patted down. I don't know if you want her to come.

FEMALE VOICE: Right this way.

MALE VOICE: (Inaudible) too?

DET. BARR: What's that?

MALE VOICE: This one too?

DET. BARR: Yeah. She's got some meds and

a (inaudible).

MALE VOICE: Hey, Yates. Can I get more 72 forms?

DET. BARR: I don't know if she has an ID or not.

MALE VOICE: What is her charge?

DET. BARR: Homicide.

MALE VOICE: Okay. Susan Jacobson is the name?

DET. BARR: Yeah.

MALE VOICE: Hey, I need -- (inaudible) now. Are they going to be training you to be a sniper?

DET. BARR: Not yet.

MALE VOICE: Oh, yeah. Was -- was that the plan?

DET. BARR: I was hoping to, but I got to wait a little while. You got to have some on before they'll let me.

MALE VOICE: Oh. Okay.

DET. BARR: Do you know someone who can get a camera?

FEMALE VOICE: Okay.

DET. BARR: And I'm going to take some photographs of injuries and things like that.

FEMALE VOICE: (Inaudible).

DET. BARR: R-56.

Hey, I got a -- a tape on.

MALE VOICE: Okay.

MALE VOICE: Susan, for our medical staff, I need you to blow on this for about ten seconds for me. Okay.

THE WITNESS: Okay.

MALE VOICE: Okay. No. No. No. Like, put your mouth on it and blow --

THE WITNESS: Oh.

MALE VOICE: Blow as hard as you can. Okay. Keep going. Keep going. Keep going. Keep going. Keep going. Keep going. Okay. Very good. Thank you.

FEMALE VOICE: (Inaudible) okay. Go ahead and take that blue one off.

DET. BARR: Did you get a good one?

FEMALE VOICE: I did. Antonio of PD.

MALE VOICE: All right. Susan, I just got to ask you a couple more questions. Okay. Do you have any health issues, diabetes, high blood pressure, (inaudible) or any other medical issues? Asthma?

While you're in our facility, do you plan

to commit suicide (inaudible)? Have you ever attempted suicide before?

Do you have any allergies to food or medicines? What -- what are your allergies too?

THE WITNESS: I have a potato allergy. When the potato is just right and very, very different (inaudible) dextrose and dextrin (inaudible) dextrin anymore. I have allergies to gluten.

MALE VOICE: Do you have celiac disease?

THE WITNESS: No.

MALE VOICE: You just have a gluten intolerance?

THE WITNESS: Intolerance. And I can't have fruit with sugar within four hours of each other. And I don't eat soy.

DET. BARR: That's her jacket.

MALE VOICE: In the past few months have you (inaudible) night sweats? Cough? Cough up blood? Have you had unintentional weight loss? Due to, like, diet and exercise? What?

THE WITNESS: I had a little bit of weight loss, but I think it was due to stress.

MALE VOICE: Stress. And have you or anyone in your family ever been treated for

tuberculosis?

THE WITNESS: (Inaudible).

FEMALE VOICE: Okay. Go ahead and take your necklace off for me.

THE WITNESS: This is a therapeutic necklace. It's amber.

FEMALE VOICE: Do you have any other jewelry on?

MALE VOICE: Susan, are you pregnant?

THE WITNESS: Yeah.

MALE VOICE: Intake.

DET. BARR: She's got some problems too, so. Like --

FEMALE VOICE: Huh?

DET. BARR: She's had some problems with pregnancy and she (inaudible)

THE WITNESS: I was at the hospital yesterday.

MALE VOICE: I'm going to have you stand up.

DET. BARR: Okay. Put your arms out. Do you have any injuries?

THE WITNESS: Do I have injuries?

DET. BARR: Yeah.

THE WITNESS: I think so.

DET. BARR: Can you hold your left hand out real quick.

THE WITNESS: I wear my amber necklace, because I have a chronic, like, neck and -- I have some neck and shoulder --

DET. BARR: Turn your hand over. Palm up. So no injuries that you need to tell me about?

THE WITNESS: I seen an osteopath for my -- I've seen an osteopath, because, like, I have some, like, bone and --

DET. BARR: Is that normal redness on your --

THE WITNESS: No. I don't -- no. It's like a rash. I think I have a rash.

DET. BARR: Is that a little cut on your -- a little cut on your knuckle?

THE WITNESS: Yeah. But it looks like I have a little bit of a rash going on or something.

DET. BARR: Okay. I understand you have a rash, but what's the cut on your knuckle?

THE WITNESS: Oh. I don't know.

DET. BARR: Okay. You don't know how you got that?

THE WITNESS: (Inaudible)

DET. BARR: Let me just take a photo. And

your palm.

THE WITNESS: (Inaudible).

DET. BARR: Any other injuries that we have? Bruising or anything like that?

THE WITNESS: Not that I know of.

DET. BARR: Okay.

FEMALE VOICE: We're going to ask you to take your shoes and socks off for me.

MALE VOICE: Did you guys already send over the booking?

DET. BARR: No.

MALE VOICE: No.

DET. BARR: I'm trying to decide if I'm going to send it down or just go back to the house.

MALE VOICE: Was this today?

DET. BARR: Early hours yesterday. Yesterday, because it's after midnight. You know, two days later.

MALE VOICE: What did nightshift really think about that?

DET. BARR: Yeah. I haven't seen midnight in a long time.

MALE VOICE: I've been on -- this is my 4th rotation.

DET. BARR: God. (Inaudible)

MALE VOICE: I put in three (inaudible).

DET. BARR: Well, I guess I'll know by (inaudible).

MALE VOICE: You need a gown, Serge?

MALE VOICE: I think we have a gown in here. We just need -- don't have small jumpsuits.

THE WITNESS: Are there blankets or a sweater or something?

MALE VOICE: We'll give you a blanket when you go --

THE WITNESS: I'm really cold.

MALE VOICE: Yeah. We'll give you a blanket when you go in the cell.

THE WITNESS: I'll probably need a few, if I could.

MALE VOICE: We'll have to talk -- you'll have to ask the nurse about a few.

THE WITNESS: I'm freezing.

MALE VOICE: That's her call.

DET. BARR: Who's the (inaudible).

MALE VOICE: What's that?

DET. BARR: Who's the DSS?

MALE VOICE: Well, right now, Yates is, because Sheryl's off.

DET. BARR: Is that Yates?

MALE VOICE: Yeah.

DET. BARR: So it's her door?

MALE VOICE: Yeah.

FEMALE VOICE: Is somebody in there?

MALE VOICE: There shouldn't be, but Brittany's here.

DET. BARR: Hey, Yates.

YATES: Yes.

DET. BARR: Hey, I'm going to (inaudible).

YATES: As long as that tape's the interview, I guess so.

MALE VOICE: Put everything in here.

DET. BARR: What's that?

FEMALE VOICE: (Inaudible).

DET. BARR: I can't hear you.

How long (inaudible).

FEMALE VOICE: All right. Is this (inaudible).

MALE VOICE: (Inaudible). Well, that's what I'm saying.

DET. BARR: What's that?

MALE VOICE: (Inaudible).

DET. BARR: Oh. I thought it was because it was suspended.

MALE VOICE: No. Because it's Ag, it's

suspended (inaudible).

DET. BARR: So it doesn't matter that (inaudible).

FEMALE VOICE: Hello. How you doing? When are you due?

THE WITNESS: March.

FEMALE VOICE: Oh. So you got a little bit to go. No. Wait. Wait.

THE WITNESS: No, it's soon.

DET. BARR: No. March is like --

FEMALE VOICE: Oh, it's March. Oh, my goodness. Where'd this month go? Okay. So March 9th. And who is your OB?

THE WITNESS: Dr. Claxton.

FEMALE VOICE: Okay. And you're supposed to have a (inaudible) --

THE WITNESS: Yeah. It wasn't doing so well yesterday, so.

FEMALE VOICE: What's not doing so well?

THE WITNESS: They kept me at the hospital all day. The baby wasn't --

FEMALE VOICE: But you had an incident though; right? Like --

THE WITNESS: Yeah. An incident and after that they --

FEMALE VOICE: Clarkston?

THE WITNESS: Claxton.

DET. BARR: How do you spell that?

THE WITNESS: C-L-A-X-T-O-N.

FEMALE VOICE: Got it. When was this incident?

THE WITNESS: It happened (inaudible).

FEMALE VOICE: And what happened?

THE WITNESS: I was kicked.

FEMALE VOICE: Where were you kicked?

THE WITNESS: In the abdomen.

FEMALE VOICE: But you were saw at the hospital and cleared?

THE WITNESS: They --

FEMALE VOICE: On what day?

THE WITNESS: I had -- they didn't want to leave -- let me leave. So they told me --

FEMALE VOICE: So what day were you --

THE WITNESS: So that was Thursday.

FEMALE VOICE: So Thursday you were at FMC?

THE WITNESS: Oh. Wait. Yeah. Yeah. That was Thursday.

FEMALE VOICE: Why did you insist on leaving?

THE WITNESS: Because I wanted -- I was

having anxiety and I felt I would just be better at my mom's than stay there. There was no -- there was no current threat at the time.

FEMALE VOICE: Okay. So you were cleared, obviously, because they let you leave?

THE WITNESS: Yeah.

FEMALE VOICE: Okay.

THE WITNESS: But I'm supposed to go back tomorrow morning.

FEMALE VOICE: Go back where?

THE WITNESS: To FMC.

FEMALE VOICE: To see who?

THE WITNESS: Anybody. They're going to do more -- they're going to test the baby's breathing, the heart rate. It had dropped a few times.

FEMALE VOICE: Mm-hmm.

THE WITNESS: So they need to test it.

FEMALE VOICE: Barr?

DET. BARR: Yeah.

FEMALE VOICE: What I'm going to do is I'm going to -- I'm going to go ahead and do -- make an assessment. And then I'm going to go ahead and call the nurse practitioner, just to let her know.

DET. BARR: Okay.

FEMALE VOICE: And I'll be right back.

Just to bounce it off of her and see what she wants to do.

MALE VOICE: (Inaudible).

FEMALE VOICE: Yeah, let me just --

MALE VOICE: She said hold on.

* * * * *

03/24/15) :88392

APPENDIX, A-4

Motion to Preclude Defense Experts (Perinatal/Pregnancy & Domestic Violence)

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VALERIE [illegible] CLERK
2015 JUL 29 PM 3:03
FILED

IN THE SUPERIOR COURT, THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff, vs. SUSAN JOY JACOBSON, Defendant.	Superior Court CR2015-00613 **MOTION TO PRECLUDE DEFENSE EXPERTS (PERINATAL/PREGNANCY & PARTNER VIOLENCE)** Honorable Cathleen Brown-Nichols, Div. 5

The State of Arizona, by and through the undersigned Deputy County Attorney, hereby moves to preclude two of Defendant's listed "experts" in the areas of perinatal/pregnancy and partner violence pursuant to Rules 401, 403, and 702-704, and controlling case law. The State understands this Motion comes after the motions deadline set by the Court. However, at the last hearing, the State indicated that it had not yet interviewed the defense witnesses in the case, and that some motion work may be outstanding. ***At the time of this filing, the State still has not had the opportunity to interview the defense witnesses***. Despite this, the State feels it must file this motion to outline areas of concern regarding the anticipated expert testimony. The State asks leave of the Court to supplement this filing once interviews have been completed. This filing is accompanied by the following Memorandum of Points and Authorities.

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RESPECTFULLY SUBMITTED this 29 day of July, 2016.

DAVID W. ROZEMA
COCONINO COUNTY ATTORNEY

By _____
Ammon D. Barker
Deputy County Attorney

COPY of the foregoing
mailed/delivered this
29th day of July, 2016,
to:

The Honorable Cathleen Brown-Nichols
Superior Court, Division 5
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Bruce Griffen
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Defendant murdered the victim in this case by shooting him at close range through the head. She then disposed of evidence in the case and attempted to hide the body. It took her two days to talk to the police about what happened, and only after she was prompted by friends and family members. When she finally did talk to the police she claimed the victim was physically abusive (no such evidence exists) and threatened to kill her that night (no such evidence exists aside from her self-serving statement). At the time she murdered the victim, she was 9 months pregnant and days away from her due date.

On June 30, 2016, the defense noticed four "experts." One in the area of toxicology, one in the area of ballistics, one in the area of (as the defense puts it) "perinatal, pregnancy and postpartum mental health/emotional considerations", and one in the area of "relationship/intimate partner violence, abuse and trauma. The State has no contention with the experts in the areas of toxicology and ballistics, assuming they have the requisite qualifications and experience. The State does have a contention with the remaining listed experts.

II. LAW AND ARGUMENT

A. Diminished Capacity

"Arizona does not recognize a "diminished capacity" defense, and (absent a guilty except insane defense) a defendant may not present evidence of a mental disease or defect alleged to have rendered him incapable of forming the requisite *mens rea*." *State v. Lopez*, 234 Ariz. 465 (App. 2014) citing *State v. Mott*, 187 Ariz. 536, 539-45 (1997). Defendant has not noticed an insanity defense. Thus, any testimony supporting an

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argument that Defendant could not form the *mens rea* of murder in this case is inadmissible and improper evidence.

Here is a quick survey of Arizona case law on this subject:

State v. Mott, 187 Ariz. 536 (1997): the defense tried to introduce psychiatric testimony that the defendant could not form the *mens rea* element of the crime because she was a battered woman. ***This evidence was properly precluded.***

State v. Lopez, 234 Ariz. 465 (App. 2014): the defense attempted to introduce evidence that the defendant suffered a brain injury and that he acted impulsively under stress without being aware of the consequences of the actions. *Id.* at 469. ***This evidence was properly precluded.***

State v. Buot, 232 Ariz. 432 (App. 2013): the defense attempted to introduce expert testimony about the defendant's character trait for impulsivity at the time of the murder. ***This evidence was properly precluded.***

State v. Wright, 214 Ariz. 540 (App. 2007): the defense tried to introduce testimony that the defendant had a low IQ and lacked common sense, and claimed that the defendant was a not incapable of forming the requisite intent but had a lower capacity to do so. ***This evidence was properly precluded.***

The State anticipates the defense's proffered expert will say, based on their alleged expertise, that Defendant killed the victim because of some type of emotional state based on her pregnancy. This type of evidence is akin to the evidence precluded in *Mott*, *supra*. There, the defense argued that the defendant had impulse control issues, and thus he was incapable of controlling himself. It appears the defense is seeking to produce the

same argument under the guise of pregnancy impulse control issues. This is strictly forbidden under Arizona law.

B. Rules 401, 403, 702 – 704

Before any evidence can be admitted it must be relevant. Rule 401. It is not relevant that Defendant may or may not have been emotional, mentally ill, etc. at the time of the murder. At any rate, any minimal relevance derived from such testimony is substantially outweighed by the danger of unfair prejudice and confusion of the issues. Rule 403.

This argument also applies to "expert" testimony on partner violence. The State is aware that Defendant will attempt to claim self-defense because she believed the victim would harm her and that such belief was derived from prior incidents of abuse. If that is the case, then what would be the relevance of the expert's testimony about general DV issues? There is also a danger that such testimony will cross over into "battered woman syndrome," which forms the basis for a "diminished capacity" defense. See *Mott*, *supra*.

Both experts' testimonies must comply with Rules 702-704. The State is unaware of any expertise these witnesses may have. The State is also unaware how the expert may testify, if they are "cold experts," what type of information they will rely on, and what opinions they may provide. It is unclear how any of the proposed testimony will "help the trier of fact to understand the evidence.

III. CONCLUSION

Based on the foregoing, the State moves this Court to preclude these two experts and requests a hearing on this issue.

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RESPECTFULLY SUBMITTED this 29 day of July, 2016.

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COCONINO COUNTY ATTORNEY

By _____

Ammon D. Barker
Deputy County Attorney

COPY of the foregoing
mailed/delivered this
29th day of July, 2016,
to:

The Honorable Cathleen Brown-Nichols
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Bruce Griffen
Attorney for Defendant

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APPENDIX, A-5

Response to Motion to Preclude Defense Experts (Perinatal/Pregnancy & Domestic Violence)

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff, vs. SUSAN JOY JACOBSON, Defendant.	No. CR2015-00613 **RESPONSE TO STATE'S MOTION TO PRECLUDE DEFENSE EXPERTS (PERINATAL/ PREGNANCY AND PARTNER VIOLENCE)** (Oral Argument Requested)

GRIFFEN & STEVENS
LAW FIRM, PLLC

I. BACKGROUND.

After being threatened, in the middle of the night, with death and further, after having been physically assaulted, defendant, in fear for her life and the life of her fetus, shot her assailant with his gun. Fearful that their three-year-old son would see the blood and dead body, Jacobson, then nine months pregnant, spent the next several hours trying to clean up and neutralize the scene. She wound up, in the morning hours, with pregnancy complications, resulting in her hospitalization for the remainder of the day. The next day, she turned herself in and described what happened.

To properly present her theory of the case and her defense, she has noticed experts in perinatal pregnancy and relationship/intimate partner violence.

The State, by its motion, seeks to preclude the testimony of those experts. Because the testimony is legally permissible, factually relevant and the experts well-qualified, the State's motion must be denied.[1]

II. THE STATE MISUNDERSTANDS THE PURPOSE OF THE TESTIMONY

The State contends the testimony is impermissible as it concerns presentation of "diminished capacity" defense. Jacobson has not noticed an insanity defense, let alone a diminished capacity defense. Jacobson has no such intention. However, the state of mind of a defendant is an issue when justification defense is asserted. See Rule 405(A), *State v. Griffin*, 99 Ariz. 43, 406 P.2d 397 (1965); *Mendez v. State*, 27 ARIZ 82, 229P. 1032 (1924); *State v. Birdsall*, 116 Ariz. 196, 568 P.2d 1094 (App. 1977); *United States V Kaiser*, 57 F.3d 847, 855 (9th Cir. 1995). Jacobson's previous victimization by domestic violence, and her immediately pregnant status, are relevant considerations when determining her state of mind. She was not, as the evidence will show, the first aggressor.

III. USE OF "COLD EXPERT" TESTIMONY

The state does not dispute, nor could it, that introduction of cold expert witness expert witness testimony is procedurally permissible. See *State v. Ortiz*, 238 Ariz. 329 (2015); *State v. Salazar – Mercado*, 234 Ariz. 590, 325 P.3d (2014).

IV. APPLICATION OF RULES 401, 403 and 702

As previously noted, Jacobson does not claim diminished capacity. Defendant agrees such would not be relevant. However, as a general precept, it is submitted that the average juror is not familiar with the behavioral characteristics of victims of domestic violence.

[1] Defendant has, by separate motion, sought permission to introduce prior acts of domestic violence committed by the deceased against her.

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Knowledge of such characteristics may well aid the jury in weighing the testimony of Jacobson.

Likewise, it is submitted that the that there can be no assumption that the average juror is familiar with the behavioral characteristics of a woman in the ninth month of pregnancy. Knowledge of the effects of pregnancy may well aid the jury in weighing the testimony of the then very pregnant Jacobson.

At the requested evidentiary hearing, evidence will be presented as to the unique circumstances associated with domestic violence victims. Evidence will be presented as to the unique circumstances associated with a nine-month pregnant woman.

A. ARE 402

All relevant evidence is admissible. Jacobson was pregnant. That fact is admissible. If there are behavioral and physiological effects of late stage pregnancy, on the decision-making,reaction and analysis of/by the mother, then that evidence would likewise be admissible.

Jacobson was the victim of chronic domestic violence. That evidence, and its effect, has been determined admissible. See *State v Vogel*, 207 Ariz. 280, 85 P.3d 497 (Ariz. Ct. App. 2004); A.R.S. §13-415.

B. ARE 702

Rule 702 governs the admissibility of expert testimony. Properly applied, it permits the court to determine in advance of trial whether proposed testimony is sufficiently reliable to justify its admission as evidence. Under ARE 702 and 703, experts are commonly allowed

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to testify regarding unique areas such as psychiatric and physiological study. The proposed testimony of an experts in perinatal psychology and domestic violence represents such areas.

ARE 702 provides that a "witness who is qualified as an expert by knowledge, skill, experience, training or education may testify in the form of an opinion if: a) the expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or determine a fact in issue; b) the testimony is based upon sufficient facts or data; c) the testimony is the product of reliable principles and methods; d) the expert has reliably apply the principles and methods to the facts of the case." Here, the experts' knowledge and experience, on the topics in question, is significant. Their presentations are not within the experience of the average juror. The explanations to be provided by the experts, will be helpful.

C. ARE 403

The State cannot say, certainly at this point, that the cold testimony of experts in "partner violence" and "perinatal psychology" will be too prejudicial. Nor can it be said that this is junk science. Nor can it be said that the experts are unqualified. While the evidence may adversely affect the state's position, it cannot be said that the evidence would be unfairly prejudicial: it will inform jurors regarding the realities of late-stage pregnancy and domestic violence. It will allow the jurors to fairly judge the evidence.

Finally, neither expert's testimony will improperly invade the province of the jury. Defendant will be careful to not go beyond the description of general considerations associated with pregnancy and domestic violence. The experts will not offer opinions about the "accuracy, reliability or credibility of a particular witness in the case being tried...[or] of

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the type under consideration." *State v. Lindsey*, 149 Ariz. 472 (1986); *State v Moran*, 151 Ariz. 382, 728 P.2d 252 (1986).

V. CONCLUSION

Jacobson, suffering from chronic PTSD (as a result of long-term domestic violence), and while nine-months pregnant, was required to defend herself, and her fetus, against the threats and acts of her partner. Her conditions were unique. Her conditions, and the effects of the same, are not generally known to the public. The jury will be benefited by expert explanation.

As a result, the testimony of Dr. Geffner and Dr. Hibbert must be admissible.[2]

DATED this 12 day of August, 2016.

GRIFFEN & STEVENS LAW FIRM, PLLC

By _____
Bruce S. Griffen
Attorney for Defendant

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LAW FIRM, PLLC

COPY of the foregoing delivered August 12, 2016 to:

Coconino County Attorney
Deputy Ammon Barker

_____

[2] For the Court's benefit, the experts' resumes are attached.

APPENDIX, A-6

Motion to Preclude Defense Experts Linskey and Rose

(Including Linskey and Rose Transcripts from Severance Proceeding)

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FILED
2016 AUG 17 AM 10: 38

IN THE SUPERIOR COURT, THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA,

Plaintiff,

vs.

SUSAN JOY JACOBSON,

Defendant.

Superior Court CR2015-00613

MOTION TO PRECLUDE IRRELEVANT AND PREJUDICIAL TESTIMONY BY DR. LINSKEY AND DR. ROSE

Honorable Cathleen Brown-Nichols, Div. 5

The State of Arizona, by and through the undersigned Deputy County Attorney, hereby moves to preclude irrelevant and prejudicial testimony by Dr. Chris Linskey and Dr. Patricia Rose, pursuant to Rules 401, 402, 403, 801, and accompanying case law. This Motion is supported by the attached Memorandum.

RESPECTFULLY SUBMITTED this 16 day of August, 2016.

DAVID W. ROZEMA
COCONINO COUNTY ATTORNEY

By _____
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17th day of August, 2016,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Defendant, Susan Jacobson, murdered her husband, Marvin James, because she believed he was not fit to be the father of her children, and she wished to raise her children without his interference. For years, she had demonstrated an unyielding parenting style and would not submit to correction or criticism, especially from Marvin James. At the time of the murder, she was 9 months pregnant, and just days away from giving birth to their second child. It was during that time period that Susan Jacobson decided she'd had enough—she would not let Marvin James interfere with the parenting of their second child like he had the first. So, she murdered him.

Sometime in the evening of February 25th or the early morning hours of February 26th, Defendant shot Marvin James at close range through his head with a revolver she had retrieved from the bedroom dresser. Marvin James was in a prone position, lying in bed when he was shot through his left temple. Defendant then meticulously cleaned the murder scene and disposed of evidence. She wrapped Marvin's body in a combination of bags, blankets and tarps, and rolled and pushed his body toward the window where she planned to unload it into the back of a truck. Due to her pregnant state and small stature, however, she was unable to move the body out the window. So, Defendant left the victim's body in that position, while Defendant ran errands over next couple days. One of those errands was the disposal of the murder weapon deep in the forest.

Defendant made no efforts to talk to the police during those two days. But she did talk to others. She spoke to an old boyfriend, Greg Horn, about what she'd done and portrayed herself as the victim of an abusive relationship. She told her parents, Joyce and

Frank, and they prompted her to talk to the police. She attempted to justify her actions, still nobody offered to help her dispose of the body. Out of options, Susan Jacobson finally admitted what she had done to the police.

During her lengthy statements to the police, she indicated that she had killed Marvin James out of self-defense. However, there was no evidence that Susan's life was in imminent danger at the time she shot Marvin James. In fact, even Defendant's statement indicated that Marvin James was lying or partially propped up in bed when she shot him in his left temple at close range. There was no evidence of struggle, and no injuries to Defendant's body that were consistent with her account. Defendant did not even provide an explanation of a physical fight.

Following her admission and subsequent arrest, Susan gave birth to her (and Marvin's) second child. The two children were quickly taken into state custody while Defendant remained in jail pending the resolution of these charges. The state sought to sever her parenting rights and the court in that matter heard several days of testimony. Dr. Patricia Rose, psychologist, and Dr. Chris Linskey, psychiatrist, both testified at the proceeding. Both made it clear that they were offering an opinion as to Defendant's capacity to parent the two children based on separate evaluations of Defendant. Both indicated that their evaluations were based on Defendant's own statements, i.e. self-report. And both doctors indicated that they intentionally stayed away from the events surrounding the murder. This was easier said than done. As Dr. Linskey noted, it was the elephant in the room. In fact, Defendant did make a statement to Dr. Linskey related to the events leading up to the murder. The following is an excerpt of Dr. Linskey's testimony on this issue:

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Q: Did she say why she was concerned for her safety?

LINSKEY: She had indicated that she was particularly worried that, given how the partner, who I believe is named Marvin—

Q: Mr. James. Marvin James.

LINSKEY: Thank you. Marvin James' behavior changed after the birth of the first child, how his behavior might further intensify or worsen after the birth of the second child, and I think that was leading to a lot of anticipatory anxiety as I think her due date was just several days away prior to Mr. James' death.

Q: So there weren't actually any new behaviors that were being displayed by Mr. James; it was just the anticipation of potential changes in behavior. Is that right?

LINSKEY: That is my recollection, yes.

See Transcript of Dr. Linskey Testimony, 35:10-36:1, attached as Exhibit A.

During conversations with defense counsel, it has become clear that the defense intends on introducing other aspects of the testimony from Dr. Linskey and Dr. Rose. Upon information and belief, it is anticipated that Defendant will attempt to introduce the diagnosis of PTSD (Post-Traumatic Stress Disorder) and other information related to the reported abuse by the victim, Marvin James. The State has attached both transcripts for the Court's perusal. Dr. Linskey's testimony transcript is labeled Exhibit A, and Dr. Rose's testimony transcript is labeled Exhibit B. A review of both transcripts will reveal that neither Dr. Linskey nor Dr. Rose ever indicate that Defendant's diagnosis of PTSD was associated to any alleged abuse she may have suffered at the hands of Marvin James. The only conclusion they make is that her PTSD is chronic, and therefore the symptoms must have arisen at least two years prior to their evaluations. The transcripts also reveal that

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Defendant's own statements were the only source of information available to them for the evaluations.

The State has noticed Dr. Linskey as a witness in the State's case. The defense interview has already been completed. The sole reason for calling Dr. Linskey is to introduce the statement he made, *supra*, which indicates that Susan Jacobson told him there was no change to Marvin James's behavior but that she was merely anxious about how his behavior might change after the baby was born. The relevance of this statement is two-fold. One, it bolsters the State's theory of the case that Susan Jacobson murdered Marvin James based on the continual conflict surrounding the parenting of their children. Two, it rebuts Defendant's claim that she acted out of self-defense, when it is clear by her own statement she was considering how this birth might affect their relationship well before that night. The State does not intend on eliciting any information about Defendant's mental health, PTSD diagnosis, parenting ability, or anything else related to the evaluations. The State's position is that no other aspect of these evaluations is relevant to this case since they relate specifically to her parenting rights.

II. LAW AND ARGUMENT

A. Rule 401: Defendant's diagnosis of PTSD is not relevant to this case.

The State challenges the defense to find a single Arizona case that supports the introduction of a PTSD diagnosis outside the context of sentencing mitigation. The State is confident that none exist. And it is quite obvious why. Defendant's PTSD does not explain why she murdered Marvin James. It also does not justify her behavior. And there is no other relevant basis for its introduction. Thus, pursuant to Rules 401 and 402, it must be precluded.

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B. Rule 403: Even if relevant, the probative value of this extraneous testimony is substantially outweighed by the danger of unfair prejudice and confusion of the issues.

The defense may believe it has some relevance to support her allegation about prior abuse. But this is also problematic because neither doctor indicates that the PTSD occurred because of what she alleges Mr. James did to her. In fact, there is some indication that the PTSD originated from a past issue of *sexual* abuse. Notably, Defendant had already reported to the police that years before, she had been sexually assaulted by someone (*not* Marvin James) and that her mother did not believe the allegation. Who is to say that this episode was not the direct cause of her PTSD? There is a high likelihood that such testimony could confuse the issues.

Additionally, this type of testimony may improperly invite the jury to believe Defendant acted with a diminished capacity. In other words, because Defendant was mentally ill and was vulnerable to impulsive behavior, she could not reflect upon her actions before she killed Marvin James. As noted in the State's previously filed Motion to Preclude Defense Experts (Perinatal/Pregnancy & Partner Violence), a diminished capacity defense is prohibited by Arizona law.

The other issue with introducing this type of testimony is that it is based entirely on Defendant's self-serving statements. She knew at the time of the evaluations that she faced a murder charge, and that her parenting rights were in jeopardy. Therefore, her report is highly suspect. Indeed, Dr. Rose indicated the scores measuring Defendant's dishonesty and defensiveness were "elevated." This is simply a backdoor for the defense to introduce hearsay statements by Defendant without subjecting her to the rigors of cross-

examination. A defendant's out-of-court statement is hearsay and not admissible if introduced by the defendant. *State v. Wooten*, 193 Ariz. 357, 366, 972 P.2d 993 (Ariz.App.1998); see also *State v. Machado*, 224 Ariz. 343, 230 P.3d 1158, 1178 (App. 2010) (A murder defendant's proffered out-of-court statement was "self-serving hearsay for which there is no exception"), *aff'd on other grounds*, 226 Ariz. 281, 246 P.3d 632 (2011). Thus, introducing this type of testimony would unfairly prejudice the State, and infuse the trial with unreliable, rank hearsay.

C. This information is also not admissible under Rule 106.

The defense may argue that if the State introduces one statement made to Dr. Linskey, that all statements must be admitted pursuant to Rule 106. However, this is not the intended use of Rule 106. The rule states:

> If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part--or any other writing or recorded statement--that in fairness ought to be considered at the same time.

However, "[r]ule 106 does not create a rule of blanket admission for all exculpatory statements simply because an inculpatory statement was also made." *State v. Cruz*, 218 Ariz. 149, 162 (2008). "Under the rule of completeness . . . only the portion of a statement "necessary to qualify, explain or place into context the portion already introduced" need be admitted." *Id.* citing *State v. Prasertphong*, 210 Ariz. 496, 499 (2005).

Defendant's statement to Dr. Linskey that the State intends to admit at trial is self-contained and self-explanatory. There is nothing in the statement that would require the introduction of additional statements. Certainly, there is no reason that PTSD ought to be

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mentioned in this context since it is not the subject of the statement. Rule 106 simply does not apply.

III. CONCLUSION

Based on the foregoing, the State moves this Court to preclude the introduction of any extraneous statements by Dr. Linskey and Dr. Rose, including but not limited to a discussion of the PTSD diagnosis.

RESPECTFULLY SUBMITTED this 16 day of August, 2016.

DAVID W. ROZEMA
COCONINO COUNTY ATTORNEY

By _____
Ammon D. Barker
Deputy County Attorney

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COPY of the foregoing
mailed/delivered this
_____ day of August, 2016,
to:

The Honorable Cathleen Brown-Nichols
Superior Court, Division 5
Coconino County Courthouse
Flagstaff, AZ 86001

Bruce Griffen
Attorney for Defendant

By: _____

Exhibit A

please state your full name for the record.

THE WITNESS: Christopher Linskey.

THE COURT: Go ahead.

* * * * *

C H R I S T O P H E R L I N S K E Y, M. D.

called as a witness herein, having first been duly sworn, was examined and testified as follows:

* * * * *

D I R E C T E X A M I N A T I O N

10:49 o'clock a.m.

* * * * *

BY MS. DIEHL:

Q. Good morning, Dr. Linskey.

A. Good morning.

Q. Can you tell the Court your occupation.

A. I work as a psychiatrist at the Guidance Center.

Q. And as -- well, in leading up to that occupation, can you give us a brief background of your education.

A. I went to undergraduate programming at the University of Texas, and then followed up with a medical degree at the University of Texas Medical Branch at Galveston, graduating with an MD in 1990.

After that, I went to the University of

New Mexico at Albuquerque for a one-year internship, followed by a three-year residency in psychiatry.

Q. Where are you currently employed? You said the Guidance Center?

A. Correct.

Q. Have you had any other employment?

A. Yes.

Q. Where?

A. I also work at an agency that is currently called Encompass. It is a community mental health center in Page. I've worked there since 1996. I also work for a nursing home in Payson called Rim Country Health.

Q. What are your duties in the course of your employment?

A. Typically at the Guidance Center I evaluate people as outpatients and occasionally inpatients, and follow individuals who are on medications for medication management. I also am the primary contractor with the Court through the Guidance Center for psychiatric evaluations of the type of a Rule 11, preliminary Rule 37, and Rule 26.5s, as well as juvenile competency evaluations. I do that for Coconino, Mohave, Apache, and Navajo Counties.

Q. Are you familiar with Susan Jacobson?

A. Yes.

Q. How did you become acquainted with her?

A. She was referred to the Guidance Center by your office for the request of a psychiatric evaluation, which I completed on December 3rd of 2015.

Q. Would it surprise you to find out she was actually referred to you by the Department of Child Safety?

A. That would not necessarily surprise me. It would just mean I was wrong, which is not necessarily a surprise.

Q. Do you usually see the referral paperwork?

A. I do not, no. Sometimes I do. I try to see it, but frequently the actual referral paperwork does not come through. I just remember having discussions with you indicating she was being referred, and I erroneously thought that your office was referring, but I know agencies work together, so it doesn't surprise me that the technical referral came from an office other than yours.

Q. Were you provided any materials to review prior to your evaluation?

A. Just the psychological evaluation prepared by Dr. Patricia Rose from October.

Q. Okay, and no other paperwork, or reports, or

anything?

A. Correct.

Q. Do you know why you were asked to do the evaluation?

A. It was my understanding that there was consideration or a petition to have severance of paternal (sic) rights in the context of the criminal case that is pending against Ms. Jacobson.

Q. Do the reasons that you do psychiatric evaluations change? Are there varied reasons?

A. Yes.

Q. Is this unusual for you to do a psychiatric evaluation in a case such as this?

A. Yes.

Q. Really?

A. Really.

Q. Why is that?

A. Well, frankly, I -- my understanding of the case was that based on her -- on the charges against her, there was consideration again of severance, and I -- I've been here 22 years now, and I honestly had never heard of that. So I don't think it's ever been referred to me to see someone for an evaluation because of the possibility of severance of rights based on criminal allegations. So that was a first

for me. I've never seen that before.

Q. Do you routinely do psychiatric evaluations pretrial in criminal cases?

A. Yes.

Q. Are there any special rules that apply to those evaluations?

A. Well, the important ones for the court-ordered or the court-involved cases typically are the fact that the normal confines of physician/client confidentiality can't be strictly adhered to due to concerns that the individual needs to know that the information shared will likely be shared with an attorney at least, or with the Court at most, and testimony may be involved, as well, so that the individual does not share information which they feel cannot be discovered later.

So that would be the big difference in that need to prepare a report for the Court and have the individual informed that this could be shared with a legal context.

Q. Do you believe that you were given adequate instruction before you conducted this psychiatric evaluation?

A. I would say yes.

Q. Were you given any instruction?

A. The instructions, again, as I understood it, and I'm going from my recollection and what I had documented was largely based on conversations that you and I had, were that the request had been for a psychiatric evaluation as was related to the dependency case, and so the request was basically to document and present any psychiatric pathology that may become present during the course of a psychiatric evaluation with the records from Dr. Rose present, as well.

Q. Did you have any conversations with DCS?

A. I do not believe I did, no. My best of my recollection is no.

Q. What does your evaluation entail?

A. A typical psychiatric evaluation is the kind that Ms. Jacobson and I did. It is what is called a structured psychiatric evaluation. So typically it means following a series of questions and answers based on eliciting a history from the individual with a knowledge of histories provided in other contexts.

So it would typically mean gathering a review of systems and symptoms associated with psychiatric problems, past psychiatric history, substance use history, developmental, trauma history, and then the mental status exam typically is a series

of questions asking about emotional state, psychotic experiences, a general sense of memory and cognitive functioning. So it does not involve any formal testing such as writing things down. It is all a question-and-answer type session.

Q. Where did you conduct your evaluation?

A. It was at the Guidance Center here in Flagstaff.

Q. So this was after Susan had been released from jail?

A. I believe she had been released two days prior.

Q. Were the conditions appropriate to do your evaluation?

A. Yes. It is in an individual office. No recording was made. We were seated in chairs, in a pretty typical office-y looking place.

Q. How long did it take you to do it?

A. An hour and a half.

Q. Is that average, normal?

A. Typical. The short end would probably be 45 minutes. If there is someone who is perhaps having a little bit hard time with the evaluation, the long end would probably be a couple hours. Probably a -- one hour 15 to one hour 30 is a pretty common time frame

for a psychiatric evaluation to be completed.

Q. Do you believe that this evaluation is valid?

A. Yes.

Q. And there were no barriers to your conducting this evaluation?

A. No. There were no interruptions throughout the evaluation. Ms. Jacobson seemed to be very engaged, appropriate, forthcoming in her answers. She didn't seem to be guarded or hesitant in terms of sharing information.

Q. Was there anything else that you felt that you could have used to help you do this evaluation?

A. It is hard to know relative to the past to not know what is available. I mean, the majority of the information came from Ms. Jacobson. It was corroborated by information presented to Dr. Rose. There weren't any inconsistencies as I saw them.

She did share that she had not had any significant psychiatric history in the past, other than the interactions with Dr. Rose, I believe, and so, I mean, if were there evaluations that I didn't know about, those would be helpful, but to the best of my knowledge, there was not anything that was missing.

Q. Did Susan appear to have any substance abuse

issues?

A. No. I was not able to elicit any information supporting that.

Q. You have already testified she was cooperative and forthcoming?

A. Yes.

Q. Did she take your evaluation seriously?

A. Yes, I think so. She seemed to be honest in her answers relative to the consistency. The answers that she gave me were very consistent with Dr. Rose's.

There was one period where she became tearful in discussing her past, which seemed a sincere and normal emotional response to the things we were discussing, and there did not seem to be any evidence that would support that she was taking this lightly or in some way frivolously.

Q. What is your diagnostic impression?

A. On working with her, it appeared that the diagnostic criterion would be consistent with post-traumatic stress disorder, which would be consistent, I believe, with one of the diagnoses given to her by Dr. Rose.

I believe Dr. Rose had included the diagnosis of panic and a depressive disorder. Though when talking with Ms. Jacobson, I was not able to meet

the diagnostic criterion to support that. She did have some anxiety and sadness associated with the events in her life related to the legal charges and being separated from her kids, but that, in my review of systems, would not meet the criterion for panic or depressive disorder.

Q. Do you think that there were relevant questions that should have been asked that weren't?

A. Relative to the topic at hand, which was presenting the DCS or CPS with a psychiatric diagnosis, I would say not.

I did clarify at the beginning with her that there was an awareness that I had that she had significant criminal charges, and I said, "That's not what this is about. This isn't about talking about your criminal charges."

The reason for that was to set -- I guess in my brain with her to set a boundary in terms of the appropriateness of the discussion, because we were not looking necessarily at what the allegations were against her, but rather to what her symptoms were from a psychiatric standpoint, not a criminal standpoint, and I guess I had a concern that in the event that those issues were discussed, they could potentially be discoverable relative to her criminal

case, which seemed outside the scope of the request as I understood it to be.

MS. DIEHL: And, Your Honor, for the record, Dr. Linskey does have a copy of his evaluation. I think it is Exhibit Number 13.

THE WITNESS: I have Exhibit 5 here, just for what it is worth.

THE COURT: Ignore the blue sticky.

MS. DIEHL: Ignore the blue sticky.

THE WITNESS: You're correct. Exhibit Number 13.

THE COURT: And it was previously admitted.

THE WITNESS: Okay.

BY MS. DIEHL:

Q. Do you feel that Susan would have talked to you more about the criminal charges if you had allowed her to?

A. Yes. She seemed open that to and willing to do that, but I set that limit as opposed to her setting that limit, and she didn't seem to object to it when I explained why, and perhaps being in this courtroom is one of the reasons. If she had discussed it, theoretically some of the things that she had shared could be discoverable, which may or may not assist her in her criminal case, which was again

outside the scope of the request.

Q. Did you make any recommendations?

A. We discussed some treatment options because of the diagnosis of post-traumatic stress disorder. Typically post-traumatic stress disorder can respond to medications, counseling, or a combination thereof.

Given the severity of her situation being deemed relatively moderate, she would be someone that medications could be considered optional. There is some people with severe post-traumatic stress disorder that I would be very inclined to strongly suggest medications. She as an individual was not in favor of medications, but would prefer counseling, which is reasonable with this level of severity.

With moderate PTSD, counseling or therapy is generally the primary treatment modality, and medications can be seen as an adjunct or addition, which she was opposed to, which is reasonable.

Q. Are there side effects to medication?

A. There can be. Typically, they are not too bad, but there can be side effects.

Q. As a result of your evaluation and your findings, do you believe a person that presents with this moderate PTSD is a danger to their children?

A. I would not have any evidence to support

that they would be a danger to their kids based on that diagnosis, no.

Q. Do any of your diagnoses or your findings in your psychiatric evaluation indicate to you that she would be unable to parent a child?

A. No.

Q. Did she present as a loving parent during your evaluation?

A. Yes. She expressed concerns about the welfare of her children. She discussed concerns in her previous relationship that she felt she was the -- in the role of a protector, as it were, to ensure that that the child's needs were met.

She expressed what appeared to be a very sincere desire to reunite with her kids and have contact with them; in the event that she was not given custody, that she would at least have some degree of visitation to maintain the relationship and, again, her presentation was very consistent with a loving parent.

Q. Did you note any kind of a pattern of dangerousness?

A. No. In the review, again, from the documents from Dr. Rose, as well as what Ms. Jacobson had shared with me, there does not appear to be any

pattern of dangerous or threatening speech or behavior that I was able to find.

Q. Is it your diagnostic impression that the underlying case for which she's here was perhaps based on a unique event or --

A. I understand what you're saying. If -- the alleged offense, if it were something that she had committed, would stand out as a unique offense in her life course, as there do not appear to be any other similar allegations or events consistent with the charges.

MS. DIEHL: Nothing further, Your Honor.

THE COURT: Ms. Brennan?

* * * * *

C R O S S E X A M I N A T I O N

11:05 o'clock a.m.

* * * * *

BY MS. BRENNAN:

Q. Thank you. Good morning, Doctor.

A. Good morning.

Q. Just for your information, my name is Consuelo Brennan. I represent the child in this matter, and I just have a few follow-up questions from Ms. Diehl.

A. Of course.

Q. You stated that it was your understanding of the case that Ms. -- correct me if I'm wrong, but I think you said it was your understanding of the case that Ms. Jacobson's rights were being -- that the Court was being asked to terminate her rights based on the underlying criminal charge?

A. Yes. That was my understanding.

Q. Okay. So is it safe for me to assume that you did not have a copy of the petition or you weren't told what the grounds were for the termination?

A. That would be correct. I did not have a petition or I was not told what the grounds were beyond what I thought I understood from Ms. Diehl.

Q. And from your testimony, I'm gathering from that that in fact Ms. Diehl was the only person you spoke to in regard to Ms. Jacobson's eval?

A. Correct.

Q. So you weren't able to speak with her caseworker or anyone from DCS?

A. I did not, and in all fairness, I did not make an attempt to contact them.

Q. Okay. Then you stated when you do these sessions, this type of session that you described to us, that you get a history of the individual in a sort of question-and-answer fashion.

A. Yes, ma'am.

Q. So the history for Ms. Jacobson, you obtained strictly from her, herself, along with Dr. Rose's?

A. Correct. Those were my only two sources of information.

Q. Okay, and were you aware or do you know at that point where Dr. Rose or the other evaluating professional gets their information?

A. I would -- typically in these reports, and I'm going from memory here, Ms. Brennan -- bear with me -- but typically in the report, the evaluator would say "additional source of information."

So my sense would be that in her report Dr. Rose likely put that in, but I can't testify with absolute certainly she did. That would be pretty much the standard. So I likely knew where she got her information from, though I do not recall at this point what that might have said, and I apologize.

Q. Okay, and you made a statement that it would be hard for you to know if any more information could have been more helpful to you.

A. That is correct.

Q. And that is sort of a given; we never know.

A. Yes.

Q. If you had had more information, would you have been able to assess more closely her mental state?

A. At the time of the evaluation, probably not, only because mental state is sort of like doing a physical exam on someone in that moment. So what you see is what you get. I think I would have maybe, if there was other information or background, perhaps been able to incorporate that into a larger picture of her history, but I don't think necessarily would have changed her presentation in that moment. Does that make sense?

Q. So you're assessing her at that very moment during that one, one and a half hours?

A. Yes, ma'am.

Q. And you did state that you did not discuss any of the criminal charges. Correct?

A. Correct.

Q. So given that -- you know, what you just said, that the more information would give you the big picture, I'm assuming you weren't then able to assess any of her -- any of the behavior surrounding those criminal charges.

A. To the extent I may comment, she did share with me her thinking in the days leading up to the

alleged offense, and so she did discuss the maybe three or four days before the alleged offense, but when it came to the actual day when the death occurred, I was clear that that was not an issue that we needed to be discussing or really should be discussing, but she did discuss her days prior to that, and perhaps after the death, but not the actual event of the alleged offense.

Q. Okay. So you weren't able to assess anything like what might have triggered behavior during the incident?

A. Correct.

MS. BRENNAN: Thank you. I have no further questions.

THE WITNESS: Of course.

THE COURT: Mr. Sherman?

MR. SHERMAN: Thank you, Your Honor.

* * * * *

C R O S S E X A M I N A T I O N

11:09 o'clock a.m.

* * * * *

BY MR. SHERMAN:

Q. Good morning, sir.

A. Good morning.

Q. So I think you've testified now twice that

your understanding was that we were proceeding on termination of parental rights based on criminal allegations. Correct?

A. That is correct.

Q. And you did not discuss with her the criminal allegations; correct?

A. Only to the extent that I have shared with the Court, but the actual criminal allegation in that as it relates to her involvement in the death, no, we did not.

Q. So I'm a little unclear as to what extent you actually talked to her about the alleged --

A. Well, it was sort of a bit of an elephant in the room, as it were. So it was hard to not acknowledge that there was this death and that she was a suspect in this death and that she had some stressors leading up to the death.

So I guess to the extent that it was -- trying to understand what her life was like before and after the death would be reasonable, but when it came to what may have occurred in terms of her movement and timing associated with the alleged offense, we did not discuss that at all, but it was hard to not discuss it to some degree.

So I apologize for being a bit vague,

but -- so she did discuss, for example, what her life was like before the death, and then following which led to her being in jail.

Q. Okay. So in those three or four days prior to Ms. Jacobson killing her husband, what did she describe to you as her situation at that time?

A. She said that she felt very afraid and overwhelmed. She recalls feeling concerned for her safety and the safety of her children.

Q. Okay. Did she say why she was concerned for her safety?

A. She had indicated that she was particularly worried that, given how the partner, who I believe is named Marvin --

Q. Mr. James. Marvin James.

A. Thank you. Marvin James' behavior changed after the birth of the first child, how his behavior might further intensify or worsen after the birth of the second child, and I think that was leading to a lot of anticipatory anxiety as I think her due date was just several days away prior to Mr. James' death.

Q. So there weren't actually any new behaviors that were being displayed by Mr. James; it was just the anticipation of potential changes in behavior. Is that right?

A. That is my recollection, yes.

Q. Okay. I note in your evaluation on page 3 that Ms. Jacobson said she would frequently -- or that -- I'm sorry -- that Mr. James would put on a good show in front of friends. Is that correct?

A. Yes. That is correct. At the top of the page.

Q. What did she say exactly about that?

A. Well, my recollection is that she would say when family members would come over typically, or friends, he would present as a very active and involved father where he would show concern and nurturance of the children, but as soon as the individual left, who was typically a family member or friend, he would show little or no regard for -- there was only one child at the time, so I believe he was four at the time -- ish -- so that -- for the toddler at the time, and that his behavior as an involved father only occurred when there were others outside the family to witness it.

Q. Okay. Have you conducted psychological evaluations for individuals accused of murder before?

A. Again, just splitting hairs, I'm not a psychologist. As a psychiatrist, I've done the psychiatric evaluations, but I'm not trained in

psychology.

Q. Understood. It is an important distinction, though; isn't it?

A. It is a common mistake that my wife makes all the time, too. So don't worry about it.

Q. But have you done psychiatric evaluations --

A. Yes.

Q. -- for individuals accused of murder before?

A. Yes, sir.

Q. And have they exhibited symptoms of PTSD?

A. Yes.

Q. Were there -- were the previous evaluations that you've done -- I think I'm just realizing that I may have said "psychology" before and not "psychiatry". I apologize.

A. You know, I probably missed it, too. I'm so bad myself. I'm sorry.

Q. Were Ms. Jacobson's behaviors consistent with others that you've evaluated?

A. Sadly, PTSD is such a common diagnosis, I would have to say yes. Her symptoms were similar to other individuals that have been charged with many different kinds of crimes, including murder.

Q. Okay. Did you not think it would be important to discuss the specifics of the criminal

allegations if we were proceeding forward on termination because of criminal allegations?

A. I did wrestle with that. I decided against it largely because being here on the stand, I did not necessarily want to have information that could lead to her incriminating herself without due process. I was afraid if she had told me what allegedly occurred, and you asked me did she admit to doing this, and I would have to testify, that would not be affording her the best rights of counsel.

Q. But you did notify her that this was an evaluation that would be made public to others?

A. Correct.

Q. And so she did know that anything that she would have said, would have been available information for other folks?

A. Correct.

Q. And you chose on your own, then, to not discuss with her her criminal allegations?

A. That is correct, and I may have been in error and I apologize, but it just didn't seem fair to her as an individual meeting with a doctor for a diagnosis, to ask questions that could lead to potential incrimination.

Q. Towards the end of your evaluation, you

referenced different axes of diagnosis. Is that correct?

A. That is correct, sir, yes.

Q. What is the difference between those various --

A. Well, the DSM criteria typically is split up, for better or for worse, into different axes of information. The first one lists primary mental health conditions such as schizophrenia, bipolar, panic, post-traumatic stress.

Axis II typically lists cognitive disabilities, what used to be referred to as mental retardation, as well as personality disorders.

Axis III typically lists medical conditions. Admittedly, there is a great blurring of all three of those, so it's a little arbitrary.

Axis IV is intended to list stressors as it relates to what someone has going on in their life. For example, death of a spouse, unemployment. In this case, the legal charges and separation from children.

Axis V is a somewhat subjective with objective criterion scale from zero to a hundred that documents the severity of impairment from a psychiatric condition.

Q. What would be a normal range for a score on

Axis V?

A. Typically for an individual that were not experiencing any symptoms, you would like to see a score between 75 and 85 with the acknowledgement that most people have a degree of concern or worry that keeps them from being fully functional. In fact, up until this most recent DSM, they would not allow a score above 90 even though they gave you a hundred. So admittedly, it is not a perfect system, but supposedly everyone has something wrong with us.

Q. That's what we have to work with, anyway. Right?

A. Yes, sir.

Q. So going more toward -- the closer you get to zero, the more stress --

A. The worse off you are. For example, someone who might be hearing voices that are telling them to kill themselves and kill others would have a score of, say, ten, whereas as someone who is walking the enlightened path of Buddha might be 91.

Q. Is there one axis that is more significant than the other?

A. Typically in the profession that I work with, we look at Axis I and Axis II as the primary areas of concern. That is usually the place where a

clinician would document mental health or emotional health or cognitive issues.

Q. Okay. What are the consequences of an individual being diagnosed with post-traumatic stress disorder?

A. It is an acknowledgement of a history of trauma that has a lasting impact on the individual's functioning. It can have different levels of implication. The hope would be that by acknowledging the cluster of systems, the individual hopefully can feel somewhat justified or empowered to feel that it is okay to receive services.

For example, I guess an analogy might be if someone had a cough, and you went to the doctor and he said, "Hey, you have pneumonia," you still have the same cough you had before, but now we sort of know what it is, which implies a potential treatment plan. So he'll say, "Okay. Well, you need antibiotics, you need a nebulizer and rest."

Post-traumatic stress disorder doesn't change her as a person. It just says this cluster of systems that you're experiencing would fit under this little bracket that we call PTSD which typically would respond to counseling and potentially medications.

Q. You know specifically that the

post-traumatic stress disorder is chronic rather than acute. Right?

A. It is a classification within the DSM. If the symptoms have persisted for more than two years, it is classified as chronic.

Q. Okay. So what, then, were the post-traumatic stress disorder symptoms that would be considered chronic?

A. In this case, based on the history as presented to me, if I may reference my report just for a moment -- make sure I get it right -- flashbacks, intrusive memories, avoidance, triggers to intrusive memories, a heightened chronic anxiety with insomnia. So those would be the diagnostic classifiers that you would look for in the DSM to try and support that diagnosis, or rule it out.

Q. Did you discuss intrusive memories?

A. Yes, I did with her. Yes, we did discuss the intrusive memories.

Q. What were they?

A. What she had shared with me were memories -- there was one episode of physical abuse, and there was a pattern of sexual abuse that was described by her that were memories that would return to her that she found very troublesome in terms of recalling what she

remembered had happened.

Q. So an individual with intrusive memories or flashbacks -- let me rephrase my question. Would intrusive memories or flashbacks then be triggers for behaviors?

A. With some people, they can. Frequently the behaviors that would be triggered by those would include avoidance, isolation, and the symptoms that could be seen as consistent with like panic-type symptoms. Those would be the most common things that could be triggered by intrusive memories.

If one were to perhaps think of the analogy of a soldier who might have a, quote, flashback or intrusive memory of a battle scene, they would be more likely to isolate and separate themselves from society because of fear or anxiety.

Q. They could also act out on those symptoms?

A. You could. Sometimes there are people that can be triggered based on those symptoms. That is true. In terms of a violent outcome, that would be more common with someone who was in a combat-type situation.

Q. How reliable is a report that only includes self-disclosures?

A. I don't have any research to back that up.

I'm sorry. I can't comment. That is probably the most common source of information, is self-disclosure, but I don't have a gold standard with which to compare it to.

There are individuals that will lie and malinger, certainly, and it is typically supportive evidence that would add to the reliability of a self-report. So I apologize. I can't answer that question any better than that.

Q. That's fine. So you wouldn't go so far as to say that the PTSD alone would be an indication that an individual would be a danger to themselves or others. Correct?

A. That is correct.

Q. But when you combine it with anxiety and flashbacks and intrusive memories and insomnia, then these things start to become more concerning as they're grouped together. Isn't that correct?

A. Those would be the symptoms that would actually make the foundation of PTSD. It would be like the cough and the fever make the foundation of pneumonia. It is not like they're separate. They're all sort of together, I guess.

Q. But the more symptoms you present with, would indicate more severity of the --

A. Arguably that would be true. The greater number of symptoms and the relative severity of each of those symptoms, would make for a probably more intense case of PTSD, in the same way the higher the fever, the more intense the cough, the higher the white count, the more severity -- the greater severity of the pneumonia, for example, I guess would be an analogy that would hold up.

Q. But ultimately you wouldn't diagnose Ms. Jacobson with significant mental health concerns?

A. I would say -- yeah, I think that gets to be somewhat subjective, and I guess based on the population I'm used to working with, I would agree. Relative to the severity of the PTSD, relative to the population that I commonly work with, I would say it would not certainly rise to the severity of the average person that I see in the evaluations.

Q. No need for her to be hospitalized?

A. Correct.

Q. No threat to herself at least at the time that you evaluated her?

A. Correct. That is correct.

Q. And at the time you evaluated her, did you have any reason to believe that you needed to make any reports to anyone other than the report that you --

A. No. I did not see -- yeah, I understand. There was no duty to warn type issues at all that were raised.

Q. And a score of 60 on the Axis V, you wouldn't say is abnormally high?

A. No.

Q. Or low, as the case may be?

A. No.

MR. SHERMAN: Thank you, Your Honor. That's all I have.

THE WITNESS: Thank you, Mr. Sherman.

THE COURT: Redirect?

MS. DIEHL: Thank you, Your Honor.

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R E D I R E C T E X A M I N A T I O N

11:25 o'clock a.m.

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BY MS. DIEHL:

Q. Dr. Linskey, was Susan in jail when you first were trying to make arrangements to do her evaluation?

A. Yes.

Q. Did anyone else attempt to contact you, to your knowledge, prior to her evaluation?

A. I have no memory of anyone trying to contact

me. I could say with a reasonable degree of certainty no one tried to.

Q. So DCS, to your knowledge, did not contact you to give you guidance?

A. I'm always reluctant to be certain of a negative, but I could just tell you, I don't remember if -- I hope there's not a voicemail hiding someplace on my system someplace, but I promise I have no memory of anyone trying to contact me.

Q. And it is your testimony today that Susan tried to give you more information, but you drew a line in the sand there somewhere?

A. That is correct.

Q. Now, there was some discussion about that global assessment of functioning, that GAF score of 60?

A. Yes.

Q. And I might have missed this. You may have testified to this already, but is 50 average?

A. Average -- what we typically see is individuals that are diagnosed within the Arizona system of SMI, serious mental illness, typically would have a GAF of about 45 to 50.

Individuals that are being seen on an outpatient basis, not meeting the threshold of SMI or

seriously mentally ill, would have a GAF score of 55 to 70. Individuals without any psychiatric pathology, typically have GAF scores 75 or above.

So her GAF score would be consistent with someone who is being seen as an outpatient, not meeting the State threshold for serious mental illness.

Q. Do you often see people with a GAF score of 75 or above?

A. No. Typically, it's like someone -- it's like an oncologist typically doesn't see people without cancer. A psychiatrist typically doesn't see people that are functioning pretty well or without any pathology. There is usually not a reason to make a referral.

Q. And you're saying, so in this area, this range, these folks generally, are they doing counseling?

A. Typically, this -- again, looking at the GAF in and of itself, a score of 60 would be an individual who may benefit from medications, but has the option to proceed with only counseling. There is some individuals who would be very averse to counseling. Either financially or maybe interpersonally they feel threatened by it, and they might say, "I would prefer

to be on a low dose," of maybe a medication such as Sertraline, which is indicated for the treatment of PTSD.

So some people might opt for medications, but it is probably fifty-fifty. Individuals, again, are very -- it would be very normal for an individual to say, "I'd rather just work with a counselor to talk through these feelings, to learn some cognitive behavioral coping strategies for anxiety and flashbacks and not deal with medications. I don't feel comfortable putting medications in my body." That would not be unusual. Especially in Flagstaff, we tend to have a population that is a little more averse to medicines, which is probably a good thing.

Q. So people with that range of GAF score are considered to be safe in the public?

A. Generally. Relative from a mental health standpoint. I mean, having the high GAF does not eliminate the possibility of the potential for risk as would predictability of other types of behaviors, but in the context of a mental health condition, there wouldn't be evidence on a GAF to say this person is at risk.

Typically in the GAF, subjective rating

-- objective rating scales, an individual who is at imminent risk to self or others is going to get a score of 10 or less.

Q. Now, we talked a little bit about your report. That relies heavily on self-disclosure, but did you look at history, also?

A. If available, but admittedly probably half the time I see people, there is no history at all. It is just what the individual is telling me. So when history is available, it is very helpful in terms of corroborating what an individual is sharing with me, and so having, for example, Dr. Rose's report was very helpful.

Q. So knowing that Susan has no criminal record, did that help you at all when you did your evaluation?

A. It would -- again, in several ways. One would be that it would help corroborate the truthfulness of her report as it relates to criminal history and, two, an individual who does not have a legal history, you could rule out certain diagnostic likelihoods. Typically that rules out substance use issues of concern, because usually people with substance use issues by age 42 will have had some kind of legal issue.

Antisocial personality disorder, conduct disorder, are typically not at all likely without a legal history, because usually those individuals have run afoul of the law in some way or form or fashion. So that would also support her report that there was no previous history of significant violence or aggressions.

Because a lot of times, again, not all the time, but many times the presence of a criminal history would support such things as assaultive personality traits or impulse control, intermittent explosive disorder, things like that.

Q. And I think you mentioned the age of 42. Is the age a factor that you look at?

A. Well, I think it's part of it. I guess I'm thinking in terms of a criminal history. By the time in our society people are in their 40s, I mean, we've had a lot of time to get caught, so if we're going to be doing something that is going to be violent, aggressive, impulsive, we have had societal exposure as an adult for 24 years, and the likelihood of a criminal charge presenting itself would be much greater than at a younger age.

So if someone is 22, they may not have a criminal history only because they haven't gotten

caught, yet. If someone is 42 and they have a pattern of violence or substance-related issues, then they've had a long time to be exposed to the likelihood of charges.

Q. Do the diagnoses that you gave to Susan indicate that she would in any way be a threat to anyone?

A. No.

Q. What about her kids? Would she be a threat to her children with that diagnosis or those diagnoses?

A. No.

Q. There was a little bit of discussion about intrusive memories and flashbacks. Is there any -- well, can you explain that to me a little bit? If someone has an intrusive memory to the level that you diagnosed them with PTSD, is this directed? For instance, you're talking about in combat. If there is some kind of a behavior, an acting-out behavior as a result of PTSD, does the person -- how does the person act, or is there any way to qualify that or quantify that?

A. Well, I suppose, again, it depends on the memory that the person is experiencing relative to the severity of it, the violent nature of it. Again, most

individuals that I have worked with, and I worked with the VA for about four years with people with PTSD there, they would usually regress and just isolate and just get by themselves and that was -- again, typically that was back in the Eighties. That was with people that had -- or early Nineties, I guess. That was with people that had combat exposure in Vietnam, typically.

Individuals that had a history of, for example, sexual trauma -- I'm trying to think -- I've never heard of anyone acting upon those intrusive memories in a violent way or aggressive way. Typically it is marked fear and isolation and withdrawal.

Q. And is it your testimony today that a people -- that a person with the diagnoses that you've set forth in that report, be a loving parent?

A. The diagnosis in and of itself I don't think could be used as a predictor of being loving or being cold. I think it is independent.

I certainly again have worked with many individuals who have had post-traumatic stress disorder that have consistently evidenced good parenting skills and a loving interactional style with their kids.

MS. DIEHL: Nothing further, Your Honor.

THE COURT: I have a couple questions. Normally I wouldn't ask questions, but you -- when you met with Ms. Jacobson, she was -- had just turned 44 years old. Correct?

THE WITNESS: I thought it was 42. Am I mistaken?

THE COURT: I think she was born in '71. Is that correct; november of '71?

THE WITNESS: Then I'm wrong. She must have just turned 44 by the math. I'm sorry.

THE COURT: According to your report, she had been in a relationship with Mr. James --

THE WITNESS: I believe it was five years.

THE COURT: Five years prior to you meeting with her?

THE WITNESS: I think it was prior to his death. They had been in a relationship for five years.

THE COURT: Prior to March or --

THE WITNESS: March of 2015. That was my understanding.

THE COURT: I'm not sure when he died.

THE WITNESS: I think it was the end of February, actually, 2015, when he passed away.

THE COURT: So approximately 2010.

THE WITNESS: Correct.

THE COURT: So at that time she would have been about 39?

THE WITNESS: 39; correct.

THE COURT: When you're looking at -- there's two questions I have. First of all, according to your recommendation, would it be fair to say -- and maybe I shouldn't ask you leading questions. Were there any services that were not being offered to Ms. Jacobson at the time that you made your recommendation, that you thought should be in place for her? Should there be -- was there something that you thought, based upon your diagnosis and your recommendation, that should be available to her that hadn't already been offered to her, counseling or anything?

THE WITNESS: I think she had just gotten out of jail two days prior. So one of the gateways to getting better services is to get on AHCCCS. So I don't know if she was on AHCCCS at that time, because typically when you go to jail for more than 30 days, you loose your AHCCCS. So at that time she probably did not have AHCCCS, though I would speculate, based on what she had told me, she wasn't be eligible for

it.

So at that time she probably didn't have AHCCCS and that would be potentially a barrier or a service that she would need to apply for, and most people getting mental health services would need to go either to the Guidance Center or Southwest Behavioral Health and get the AHCCCS application completed and get those services enrolled. So technically those services weren't yet available to her, but they could have been made available in the coming seven to ten days after the evaluation.

She would have had to, for example, make an appointment, get all the paperwork together, bring it in, get on AHCCCS, get a referral for services. So she was at the beginning point of doing that.

THE COURT: Okay, and based upon your reporting and your testimony today, you believe that her desire to treat her PTSD with therapy in the manner that she was doing so, is appropriate?

THE WITNESS: As she had discussed her plans, yes.

THE COURT: Okay. So you're not recommending at this point in time that more services be put in place for her?

THE WITNESS: Again, I don't know what

services she's received in the last two months, so I don't know what is available. But let's assume, if we could, that she followed through with counseling that she had planned, that typically would be a reasonable treatment recommendation for moderate PTSD.

THE COURT: And what should the emphasis of that counseling be on?

THE WITNESS: Most PTSD counseling addresses symptom management as related to what's called cognitive behavioral approaches. Cognitive behavior is a psychologic term that I'm not trained in, but familiar with to the extent that it is recognizing triggers or thoughts that lead to maladaptive or anxiety-provoking behaviors, and typically by identifying, eliminating, the symptoms lessen and the overall functionality of the individual improves relative to subjective distress.

I can't believe the words I'm using. I'm sorry. It just means that people get better if they stop doing things that hurt them. That's probably an easier, but a less fancy way of saying it.

THE COURT: All right, and the second question, and forgive me. Some of my ignorance is PTSD from a judicial standpoint. I hear different levels, as you've indicated, of PTSD, and different

ways of coming to the conclusion that somebody is suffering from PTSD, whether it was one traumatic event a long time ago, or a series of events.

I think you said, according to your analysis, that you would had to have found two years --

THE WITNESS: The symptoms would have had to have persisted for two years to meet the threshold of being considered chronic.

THE COURT: Okay. All right. Because at the time that she started the relationship with Mr. James, she was approximately 39 years old --

THE WITNESS: Correct.

THE COURT: -- according to our calculation, and I don't know exactly. We're guessing. Do you have any -- how far back did you go in the information that you gleaned from Ms. Jacobson to determine if there were other traumas or something else that had occurred that should be addressed in counseling that could have been a basis for PTSD?

THE WITNESS: Again, based on the self-report and the corroboration for Dr. Rose's report, the previous -- I believe she had -- I want to say three previous long-term relationships, and those had not, per her report, had any abusive elements that

would be considered likely to cause PTSD.

She indicated initially in her relationship with Mr. James, it was very positive and healthy, and it was only after her pregnancy that his attitude and behavior significantly changed to an abusive style.

THE COURT: Okay. All right. I don't know if you were told when you were given the referral for the evaluation that there is two pieces to the process. There is two children. They're on different tracks, if you will, and so part of the mandate is to determine if we're offering the services that should be in place, the counseling, or any other types of therapies for Ms. Jacobson. That's why I'm asking you these questions.

THE WITNESS: Thank you.

THE COURT: So is there anything else that you forgot to tell us or is there something else that you think we should be looking at? Because she does have her son Tyler, and we are looking to see if there's something, based upon your evaluation, that you think should be in place. That's why I'm asking you these questions.

THE WITNESS: Nothing would come to mind. Again, I don't have the data of what her follow-up has

been since I have seen her.

THE COURT: Okay. All right. Because I have asked you questions, and normally I don't, I'm going to ask counsel if anybody wants to have a follow-up opportunity. I'm going to start with Ms. Brennan.

MS. BRENNAN: I do not, Your Honor. Thank you.

THE COURT: Mr. Sherman, do you have any follow-up questions based on the Court's questions? Not Ms. Diehl's questions, just the Court's questions.

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F U R T H E R E X A M I N A T I O N

11:41 o'clock a.m.

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BY MR. SHERMAN:

Q. Right, and the Court asked about the history of domestic violence and sexual abuse. That was what you testified was the chronic PTSD?

A. Yes. Correct.

Q. So that would have been going back two years?

A. I believe, yes. It is the minimum of two years the symptoms had to have been present.

Q. And in the same relationship?

A. Not necessarily, no. It wouldn't have to be the same. It could be, for example, if someone -- just to think of an example, like let's say if someone were sexually assaulted 10 years ago, and they had an onset of symptoms, and it was a one-time event and has continued, then that would be considered chronic PTSD. But if someone were sexually assaulted a year and a half ago, and the symptoms of PTSD continued, you couldn't technically refer to it as chronic PTSD.

However, if someone were sexually assaulted 10 years ago and they had flashbacks for a year and then sought therapy and were resolved, then it would not be an issue now. It just has to do with time frame.

Q. So it is fair to say it has to be a recent time frame, within the last two years?

A. No. It has to be greater than two years.

Q. Greater than two years without any kind of intervening treatment?

A. Yes.

MR. SHERMAN: Thank you.

THE COURT: Ms. Diehl?

MS. DIEHL: Just a couple, Your Honor, kind of a follow-up from Mr. Sherman there.

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FURTHER EXAMINATION

11:42 o'clock a.m.

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BY MS. DIEHL:

Q. So we're talking about looking back, then, at Ms. Jacobson's life, and you indicated chronic because you see these symptoms for greater than two years?

A. Correct.

Q. Can the severity of the symptoms change?

A. Yes. The hope would be that things would improve over time. There are some individuals where things get worse in ongoing type of relationships, but certainly it is a fluid event. So, yes. The severity can change, wax and wane as it were, over the years.

Q. And you said people get better if they stop doing things that hurt them, which I like. I'm going to put that on my mirror. So if you are out of an abusive relationship, would the PTSD symptoms -- would that have any effect on them?

A. Typically they get better. You know, when you get out of situations that propagate the underlying anxiety and depression, people usually establish other relationships that are seen as more

emotionally healthy, hopefully, and those are the type of relationships that can be seen as somewhat corrective.

You know, when something bad happens, we look for something good to counter-balance it, I suppose, and so, yeah, to remove yourself from a situation where you're being traumatized or hurt, typically correlates with an improvement. Not every time, though. There are some people that have been hurt, and they get into a much better situation, yet for whatever variety of reasons, whether personal or neurobiological, they just can't release themself from the previous traumas, but that's the minority. Most people get better once the ongoing trauma is removed.

Q. And the understanding is that counseling usually can help with that?

A. Typically, yes, in terms of helping identify the person to be more mindful of situations that strengthen their symptoms or intensify them, and situations that improve them, and helping the person to make healthier choices about what kind of relationships to be in, what kind of behaviors to engage in, and what kind of thoughts they have relative to the trauma. How do you frame something bad that happens. Because something happens bad to

all of us, and we have to figure out ways to cope with it and deal with it without being impaired for the rest of our lives.

Q. I just have one more question, and that is -- you were talking to the Court about her history, her relationship history.

A. Yes.

Q. You had indicated there were three previous long-term relationships, none of which were abusive?

A. Per her report, that's correct.

Q. Per her report, and then you indicated how she felt about being in this abusive, for want of a better word, relationship.

A. I believe, without the report in front of me, I think she had used the word "ashamed".

Q. Is that typical?

A. That would be a very common sentiment people would share with me, yes.

MS. DIEHL: Nothing further.

THE COURT: May this witness be excused?

MR. SHERMAN: Yes, Your Honor.

MS. BRENNAN: Yes, Your Honor.

THE COURT: Thank you for testifying. You are excused.

THE WITNESS: I appreciate you having me

here.

THE COURT: Do you want to recall Ms. Michels?

MS. DIEHL: Yes, Your Honor, and at some point, too, I want to talk a little bit about our next setting, so if we can conference for a few minutes and do that. I know the Court set aside next Thursday afternoon, but it is my understanding that Dr. Claxton is going to be gone all next week, and she is one I had subpoenaed also, and we're not going to finish with Sue, but maybe I'll subpoena her for next week, because otherwise she is going to be gone for next week.

I'm just thinking, and I'm going to let the Court know, we're going to need more than next Thursday, because --

THE COURT: How much -- okay.

MS. DIEHL: I didn't know when you wanted to talk about that, but I thought at some point --

THE COURT: All right. When is Ms. Claxton available?

MS. DIEHL: She is just gone for the week starting Sunday and she will be back the following week. I anticipate, hopefully, finishing with everyone else.

Exhibit B

MS. DIEHL: Your Honor, my next witness will be Dr. Rose.

THE COURT: Dr. Rose, please come forward to the witness stand. You have previously been sworn.

THE WITNESS: (Witness complies.)

THE COURT: Let us know when you're ready.

THE WITNESS: (Witness complies.)

THE COURT: Please state your full name.

THE WITNESS: Patricia M. Rose.

THE COURT: Go ahead.

DIRECT EXAMINATION

BY MS. DIEHL:

Q. Dr. Rose, could you tell the Court your occupation.

A. I'm a psychologist.

Q. And what is your education?

A. I have a Bachelor's Degree in Psychology; a Master's Degree in Rehabilitation Counseling, and a Doctoral Degree in Educational Psychology with an emphasis in Counseling.

Q. Have you partaken in any particular training?

A. I've done quite of bit of evaluations, received training in that. And of course, all sorts of training throughout the years for CE's, Continuing Education.

Q. Let's talk briefly about your employment

history. What are you employed doing at this time?

A. I'm employed as a psychologist in private practice.

Q. What do you do as a psychologist in private practice?

A. I do some counseling, but primary I do evaluations, psychological evaluations for various state agencies.

Q. Have you previously completed psychological evaluations for the Department of Child Safety?

A. Yes. I've done them for about 20 years.

Q. Who hired you to do the evaluation in this case?

A. Department of Child Safety here in Flagstaff.

Q. Were you given any particular instructions when you were hired to do this evaluation on Susan?

A. No. Usually the way it works, they just send a referral form, and then they may call me as well. They send a referral form with a list of questions they want answered. And then they did inform me, of course, that she was incarcerated at that time, so I would need to see her at the county jail.

Q. Did they give you any other background information?

A. I'm trying to recall our phone conversation.

They -- I believe they did tell me that she -- well, they sent me records, so I'm not sure if they told me this or if I got it off the records that said she was incarcerated being accused of having killed her husband.

Q. You indicated that DCS sent you records. Can you remember what those records were?

A. They were mostly DCS's records with regard to their interactions with her. Basically as the case had proceeded so far, thus far to the point they had called me.

Q. Were there reports in those records?

A. No psychological reports, no. Mostly just like case records and any proceeding up to that point.

Q. So you had a bit of background?

A. Yes.

Q. And obviously today you're familiar with Susan Jacobson.

A. Yes.

Q. Had you met her prior to doing the evaluation?

A. No.

Q. Your sole contact with her then has been for purposes of completing the psychological evaluation?

A. Yes.

Q. Do you believe that you were given appropriate instruction before you did the evaluation?

A. Yes.

Q. Can you explain to the Court what your evaluation entail?

A. Psychological evaluations usually for the Department of Child Safety involves reading the background information that they send me. They're usually wanting to know specific things, such as, if a person has any specific psychopathology. They'll sometimes ask -- let me back up and explain this a little bit.

They have a checklist of questions, and then they will go through that list and just check the ones they want answered. And so each evaluation can be a little bit different given each case.

But in this case, they'd asked if she had mental illness; a personal disorder; substance abuse, that's a common question for them to ask; if she has a mental deficiency, a mental retardation. The other questions was if there were reasonable grounds to believe that conditions --

THE COURT: I'm sorry, doctor, are you reading from something?

THE WITNESS: Yes.

THE COURT: Is it your evaluation?

THE WITNESS: Yes.

THE COURT: Do you want the actual evaluation.

We have it already admitted.

THE WITNESS: I'd actually rather use mine because I have my notes on it.

THE COURT: Well, generally when someone is testifying, any notes that they have, have to be faced down and only referenced their notes if they need to refresh their recollection. So, as a general rule, witnesses don't testify from their own notes unless they've asked for permission, and then everyone can look at your notes if they wish. So, just a little heads up.

If you need to have your notes, that's certainly fine. We do have your evaluation that we can give you, and then if you need to supplement it with your notes, that's also fine. You just need to let us know when you're using your notes.

THE WITNESS: Okay.

THE COURT: So the evaluation, which is exhibit -- is it 12?

MR. SHERMAN: It is 12, your Honor.

THE WITNESS: Yes.

THE COURT: So, Dr. Rose, has been given Exhibit 12. Okay, I think we stopped her in the middle.

THE WITNESS: Shall I continue?

BY MS. DIEHL:

Q. Yes, please.

THE COURT: Go ahead.

THE WITNESS: Some of the questions they asked were should she be referred to a psychiatric evaluation; what was the quality of the child/parent relationship; the parent/parental capacity of domestic violence. And this is another typical question to be asked: if there is any particular psychopathology; if that is something that I think can continue for an extended period of time.

BY MS. DIEHL:

Q. Can you explain to me the various items you use in order to complete a psychological evaluation; and by that I mean, interviews, tests, that type of thing.

A. Sure. It's varies from eval to eval. In Susan's case, I used intellectual testing. And that's not always used, but it's often used in cases where I may have some concern that maybe the person's intellect is deficient and they maybe didn't understand the things that were going on in the case.

Also she was given testing for post-traumatic stress disorder for depression for generalized anxiety. She was also given MMPI, which is the general tool used to test for psychopathology. She was given a substance

abuse, particularly for alcohol screening; and then, of course, there is the record that I had mentioned.

Q. And you interviewed her as well.

A. Yes, of course. I'm sorry -- I should have clarified that: With DCS evaluations, there is often much more extended clinical review than would say, for example, a vocational rehabilitation interview, and it can often take 2 hours, sometimes longer.

Q. Let me rephrase: Was the information that Susan gave you consistent with the information that you had received from the Department of Child Safety in regard to --

A. In regard to why she was there?

Q. Un-huh (affirmative).

A. Yes.

Q. How did you choose the tools that you used to do this evaluation?

A. Those are just usually based on reading the report and seeing what I think may be issues, may not, given what allegedly occurred. Again, they are different with each person, but there is a great deal of overlap. If you were to take 10 DCS's evals, you're going to find very similar testing in many of them. But usually --

I've done these for, like I said, 20 years. And what I've seen a lot is depression and anxiety. And

so those are tools that I normally use because they are usually something I need to rule out, and they can be mitigating factors in terms of why the person allegedly did whatever they did.

Substance abuse is often an issue. But when I interviewed her, she had no history of either, but I often use, at least, an alcohol screening test if I think that could be a problem at all, or if there is alcohol in the house. That was one of the reasons I used that.

I use an IQ test to measure her intelligence so that I can get a measure of whether I thought she understood what was happening versus, let's say, for example, she ended up with an IQ of 65, then I would argue that it's a very, very different client than somebody with an IQ of 100.

Q. Was her IQ appropriate to participate in the evaluation?

A. Yes.

Q. Where was it conducted?

A. At the Coconino County Jail.

Q. Were the conditions appropriate?

A. Yes.

Q. How long do the evaluations take?

A. It was lengthy. Let's see, her's was about 13 hours total, and that includes the report writing time.

Q. I believe I saw -- I heard actually over two days?

A. Yes.

Q. Is that unusual?

A. Yes.

Q. And why was that?

A. Susan had some questions on the MMPI which is something that is generally self-administered. It's done, of course, in a private situation. She just can't sit with other people and do it because it covers test materials. But she was allowed to take it and return it to me, and the court -- excuse me, the jail was given an envelope to put it in, and I was arranged to pick it up. But she had a number of questions on the MMPI that she wanted clarified so that she understood what she was being asked. So I met with her a second time to help her go through that.

Q. Do you believe the results of your testing are valid?

A. Yes.

Q. Does that condition of her having to finish it that way, is that unusual to have to do it that way?

A. It's unusual in the sense that she wanted more clarification, but I have had that before. It's not completely uncommon.

Q. Do you feel that as a result of the evaluation, you were properly and able to answer the department's questions?

A. Yes.

Q. Did Susan appear to have any substance abuse issues?

A. No.

Q. Was she cooperative?

A. Yes.

Q. Did she seem to take the evaluation seriously?

A. Yes.

Q. Were you able to have an extensive interview with her?

A. Yes.

Q. Did you talk about the event which lead to incarceration?

A. No, not -- let me clarify: Yes, in the sense she was able to talk to me about her life prior to incarceration. But she had told me that her criminal defense attorney would not allow her to discuss any details about what her criminal charges were in terms of anything that occurred about that. So whenever I asked a question that was related to her criminal case, she was not allowed to answer it.

Q. Did she in other ways offer you more

information than you thought that she would?

A. I wouldn't say, "more." I think that she was forthcoming. She seemed cooperative. I got the impression that there were things that she might have wanted to tell me about the criminal case, but didn't because she'd been instructed not to.

Q. What was your impression of her?

A. She was cooperative. She seemed invested in doing the evaluation and being forthright with it. She did not seem oppositional. She did not seem to have any sort of negative attitude. Having done these evaluations for 20 years, that's often what I see. So it was a little unusual in that regard.

Q. So the normal person that comes in subjected to DCS referral is not too happy to be there.

A. Not usually. They often feel wronged and they often feel that DCS is working against them. They often feel that they've did nothing wrong for the children to have been taken away. So, they often are defensive.

Q. Did you see any of that from Susan?

A. No.

Q. What were your diagnostic impressions?

A. Post-traumatic stress disorder and partial remission; unspecified depressive disorder; panic disorder and partial remission. I think that was all of them.

Spousal abuse and spousal violence; relationship distress with spouse; and high expressed emotional level in the family.

Q. And I'd like to just briefly go through your answers to the department's questions.

A. Okay.

Q. So, first of all, that first question was does Susan suffer from a mental illness, personality disorder, psych disorders, signs of psychosis, substance abuse disorder, mental deficiency, retardation, et cetera, per the DSM-V: And what was your answer to that question?

A. That she does experience PTSD, panic disorder and depressive disorder. And then I pointed out that she's experienced spousal abuse and exposed to extreme marital distress.

Q. Does a person with that diagnosis, are they able to parent?

A. Yes.

Q. I note in your paragraph also that you mentioned that it's likely that having her children returned to her care would reduce her depressive symptoms and improve her anxiety, is that correct?

A. Yes.

Q. Why is that?

A. It was really clear to me throughout the

interview and the entire evaluation that she misses her children greatly. That -- and this is my impression, and I don't mean to speculate -- but, my impression that she -- well, not my impression, she reported that she did much better mentally and emotionally when she could spend time with her oldest son. And so it just, it seems to me that if her children were with her, she would experience a reduction in her depression and anxiety.

Q. The second question was: Are there reasonable grounds to believe that the conditions will continue for a prolonged, into a permanent experience: And what was your answer to that?

A. I spoke about EMDR in this particular area that it's a commonly used and an effective tool for PTSD. But, the effect of trauma are generally long lasting, so even if you are working with a very skilled therapist, which I hoped, you know, that that might be available to her, those are not things that don't go away easily. You can ask a Vietnam Veteran. The trauma still doesn't abate overnight. So my advise is, yes, those symptoms can be long lasting.

Q. Will they get better?

A. I would think so. Oftentimes when a person is removed from a trauma or are able to remove themselves such as coming home from combat, there is usually a

reduction, not completely, but obviously a reduction in their -- stress levels they're experiencing.

Q. Is the EMDR available in Flagstaff?

A. Yes.

Q. Do you know if it's been -- or were you able to refer anyone to an EMDR provider?

A. Well, I haven't been asked that by DCS at this point. The EMDR, I can make recommendation to Ron Paul. He is a licensed clinical social worker.

Q. Your third question was in regard to a psychiatric evaluation. And you did refer her to -- for a psychiatric evaluation, correct?

A. Yes.

Q. And what would be the purpose of that?

A. That if she, you know she does appear to be experiencing depression, trauma symptoms, and anxiety, and medications could help with that in the short term; in the long term, too. I know that she is not one who cares to take medication, she's told me that. But it can really help a person to cope when they are dealing with significant stressors.

Q. Do you believe that some of that stress, depression, and anxiety are because she is separated from her children?

A. Yes.

Q. Do you believe that it would be reduced if she were reunified with them?

A. Yes.

Q. The fourth question was, based on the interview and evaluation with the parent, what's the quality of the child/parent relationship. Were you able to answer that question?

A. Somewhat. It was more of an opinion because I did not -- and I pointed this out in the report that I did not observe her with her children, and nor have I met her children. Oftentimes what DCS will request in those situations is called a home-study. And there are very few therapists or psychologists in Flagstaff that will do them.

Q. And you were not asked to do a home-study?

A. No.

Q. What was your impression based upon your testing and your interaction with Susan?

A. She was able to, let's say, hold it together; in other words, there is a woman sitting in jail, kids are separated from her, pretty emotional, difficult time. But when she would speak of her kids, I noticed her trying not the cry, trying to contain her emotions. She spoke about time with her older son, Tyler. That that was very, very enjoyable for her.

My impression from what she told me and from her clinical presentation was that she is bonded with her children, at least her oldest son. Her youngest son I assume she would be as well, but she's had no time with him. He's been virtually not in her life since --

Q. What is Susan's parental capacity?

A. Well, she obviously can't take care of her children at this point because she is separated from them, but I think she could take care of them, and she has the capacity to be a good parent if they were with her.

Q. Did you experience any red flags in regard to her children being safe around her?

A. No.

Q. The last question was in regard to domestic violence, and it indicates or asks, what is the parent's history of domestic violence victim or perpetrator; what was your answer to that?

A. I'm sorry, could you repeat the question.

Q. What is the parent's history of domestic violence: victim or perpetrator?

A. From my interview with her my understanding is that she has been a victim of domestic violence, and she told me that she did not perpetrate domestic violence against her children or her husband.

Q. Were there other relevant questions that you

believe you should have been asked?

A. That I should have been asked?

Q. Un-huh.

A. By DCS you mean?

Q. Yes.

A. No.

Q. Okay. Do you feel that there is any other information about Susan that you learned during your evaluation that would help the department with her case?

A. I think it would be helpful to the department to know what kind of a parent she was before this occurred. And she's got no prior CPS contacts, and so they would have had no reason to gather that information.

Q. You made recommendations for the psychiatric evaluation, and I believe psychotherapy or counseling?

A. Yes.

Q. Were there any other recommendations that you made?

A. Not that I recall.

Q. Is it your opinion that Susan is able to parent?

A. Yes.

Q. Is she likely to be a diligent and responsive mother?

A. I believe so.

Q. Has the department asked you to do any follow-up with Susan?

A. Yes.

Q. And what would that be?

A. They've asked me to provide her psychotherapy.

Q. And are you able to do that?

A. Yes.

Q. No barriers?

A. There were, but they had nothing to do with her.

Q. And you're talking about contracts with the state --

A. Right --

Q. -- and insurance.

A. -- we just went through a new contracting process with the state. And it was, I think, a long story short, the contract was supposed to have been initiated January 1, but they were -- I was just given approval to begin the new contract as of yesterday.

Q. Are you willing to do psychotherapy with Susan?

A. Yes.

Q. Do you know if she is willing to do it with you?

A. No, I don't.

Q. Is this common to provide services after you're

done with your evaluation?

A. Yes.

Q. Do you know anything about attachment disorders?

A. Yes.

Q. Do persons that are unable to form attachments become sociopaths?

MR. SHERMAN: Objection, your Honor. I like more foundation laid about her qualifications on attachment disorders before testimony is offered.

MS. DIEHL: I can do that, your Honor.

THE COURT: Yes, I think we need a lot more foundation about that.

Go ahead.

BY MS. DIEHL:

Q. Dr. Rosen (sic), in your education and training to be a psychologist, are you educated on certain diagnoses within the DSM-V?

A. Yes.

Q. Are you trained to recognize those?

A. Yes.

Q. Are you trained to diagnose the fallout from having certain diagnoses?

A. Yes.

Q. Is attachment disorder a common diagnosis?

A. To say it's common, you know, comparing them to depression, anxiety and HDHD, so compared to those three, no. But is it common for a child to be diagnosed with it that comes from, say, a dysfunctional family, it wouldn't be uncommon.

Q. Have you diagnosed children with attachment disorder during the course of your 20 years of doing evaluations for DCS?

A. Yes.

Q. And as a result of that, are you familiar with attachment disorder?

A. Yes.

Q. Is it common for a person with an attachment disorder to become a sociopath?

MR. SHERMAN: Your Honor, I don't believe an appropriate foundation has been laid. If I can voir dire the witness.

THE COURT: I'm assuming that this testimony you're bringing out is as a result of Ms. Wright's testimony.

MS. DIEHL: It is, your Honor. It's rebuttal to Ms. Wright's testimony.

THE COURT: She wasn't testifying as an expert in that area, correct?

MR. SHERMAN: That is correct, your Honor.

THE COURT: So, I'm looking at the disclosures to see if this witness was to be called as an expert in this area.

MR. SHERMAN: That is correct, your Honor.

MS. DIEHL: I did not list her as an expert in this area. As I said, your Honor, it's my intent just to call her as a rebuttal witness for that issue only.

THE COURT: Let me just see exactly what Ms. Wright testified to. I don't have a transcript, I just have my notes. I'm not sure she was making a specific judgment to this case. I think she was talking in generalities. They were talking about the clinical definition. She was just merely talking about the clinical definition under the DSM. She said it really fast and I didn't write down everything, but I know her testimony was as to the clinical definition, not as to a specific person in this case; is that your recollection?

MR. SHERMAN: That is my recollection, your Honor.

THE COURT: In my notes she said that the clinical definition of a sociopath --

MR. SHERMAN: Yes.

THE COURT: -- was unable to form attachments

to anyone. Like I said, I didn't write the whole thing down. She was talking fast.

Was there something else that she actually brought that up as, Ms. Diehl?

MS. DIEHL: Your Honor, my notes indicate that we were talking about -- she had testified as to her belief that the children would possibly have an attachment disorder if they were removed from their placement at this time. And then her testimony came down to, and I have in quotes, "People that are not able to form attachments become sociopaths."

THE COURT: And then she further explained under cross-examination, it was your cross-examination, as to why she said that, that that was the definition, "unable to form attachments to anyone." I'm not sure how it's even relevant to this Severance Petition, Ms. Diehl.

MS. DIEHL: Your Honor, my understanding was this was something to bolster her testimony that she believed it was in the best interest of the infant to have his mother's parental rights severed. And part of that relied, in part, upon the fact that, if the baby was removed from the foster parents at this time, it would possibly result in an attachment disorder, and then she made the statement about

sociopath, which to me --

THE COURT: Okay.

MS. DIEHL: And I don't know how the Court interpreted that.

MR. SHERMAN: Your Honor, even if it is relevant, the witness hasn't testified to any training, qualifications or expertise in attachment disorders, only that there have been some trainings in that she has some familiarity with attachment disorders. It's not enough foundation for a witness to say anything really about that.

THE COURT: Okay. Let me just try and be clear on the record before Dr. Rose is on the record, it is the Court's understanding that Ms. Wright does not qualify as an expert to make a determination of whether or not there would be an attachment disorder, or there would be a resulting emotional trauma to the child if it were removed.

My understanding is that she was speaking in generalities of an attachment disorder that could occur, and the result of that would be a sociopath. I don't have any evaluation; I don't have any expert testimony as to that particular issue as it relates to Sean.

MS. DIEHL: Okay.

THE COURT: So the Court isn't weighing her comment such that she's an expert, that she's made a determination after an assessment and evaluation as an expert would that Sean would suffer an attachment disorder if he was moved.

Does everyone understand and following the Court?

MR. SHERMAN: Yes.

THE COURT: Therefore, and I don't know if you can lay a foundation with Dr. Rose, but I don't believe that it is necessary to even attempt to rebut that testimony because that was Ms. Wright's testimony based upon her understanding of what the DSM says for "attachment disorders" or attachment -- I have to go back and look at my -- unable to form an attachment, so, it's not even an attachment disorder.

MR. SHERMAN: That's correct, judge.

THE COURT: I don't have a transcript.

MS. DIEHL: I don't either.

THE COURT: I'm just looking at my notes.

All right. So, I'm going to sustained the objection. I don't think you can lay a foundation. I don't think it's -- I think it's beyond this expert's testimony, or this witness' testimony in the area for which she has been called as to her

psychological evaluation which has been admitted.

BY MS. DIEHL:

Q. Dr. Rose, do you believe that Ms. Jacobson can remedy the reason for which her children came into care?

A. To remedy the reason to which they came into care? The reason that they came into care is because she was incarcerated. So the remedy to incarceration is that she is found not guilty. So, I'm sorry, I don't, I'm not sure I follow the logic.

Q. I'll rephrase.

A. Okay.

Q. Your diagnoses were PTSD, depression, and anxiety?

A. Correct.

Q. Can those diagnoses be remedied, or can those --

A. Those disorders --

Q. -- be treated, yes.

A. Yes, they can.

Q. And can people that have those diagnoses parent their children?

A. Yes.

Q. Are they capable of forming bonds with their children?

A. Yes.

Q. Protecting their children?

A. Yes.

Q. Was Ms. Jacobson's age a factor in your evaluation?

A. No.

MS. DIEHL: No further questions, your Honor.

THE COURT: Ms. Brennan.

MS. BRENNAN: Your Honor, I don't have any questions for that witness. Thank you.

THE COURT: Mr. Sherman.

CROSS-EXAMINATION

BY MR. SHERMAN:

Q. Dr. Rose, you testified earlier that most of your evaluations are conducted inside one sitting; is that correct?

A. Yes.

Q. Is it important that they be conducted in one setting?

A. No.

Q. Why not?

A. There is no reason that an evaluation couldn't be done over a two-day period. I've done them.

Q. So why are they generally conducted in one long evaluation?

A. Keep in mind, 13 hours is an entire evaluation,

including the report, so it's not the client's 13 hours, but to answer your question, usually it's because it's easier for me to schedule them one day versus two. It's a better use of my time.

Q. So there is no clinical reason, just a practical reason?

A. Un-huh. Yes.

Q. And you testified that Susan -- or Ms. Jacobson had some questions about MMPI, correct?

A. Yes.

Q. And what does MMPI stand for?

A. Minnesota Multiphasic Personality Inventory, 2nd Edition.

Q. And the goal of that evaluation, or that inventory is what?

A. Is to measure or to assess for psychopathology.

Q. You noted in your report that Ms. Jacobson took longer than normal to answer all of those questions; is that correct?

A. Yes.

Q. Why was that significant to you?

A. It wasn't particularly significant, it just took longer because it required me go back to the jail a second time.

Q. You testified before that Ms. Jacobson was not

the perpetrator of domestic violence, correct?

A. To my knowledge.

Q. And your knowledge consists of her self report, correct?

A. Yes.

Q. Do you know why she was incarcerated?

A. Yes.

Q. Why was she incarcerated?

A. She was incarcerated because she is accused of killing her husband.

Q. Do you know whether or not she did, in fact, kill her husband?

A. I do not know if she did or did not.

Q. If she did, would you consider that an act of domestic violence?

A. Yes.

Q. And so she would then be a perpetrator of domestic violence as well, correct?

A. You could argue that.

Q. Why do you quantify it that way?

A. Domestic violence is often, with many women is often defending themselves. It can happen with men, too, of course, but I have interviewed many women who have been charged with domestic violence who are defending themselves.

Q. So you wouldn't say that an act of self defense is domestic violence?

A. Technically, domestic violence is when there are two people in the home, and either of them have been involved in any sort of violence, technically.

Q. So then it is an act of domestic violence, correct?

A. I assume that the authorities would call it that.

Q. But you don't?

A. I didn't say that.

Q. Do you?

A. I'm saying that two people can be in -- or it could be more than two -- in some sort of physical squabble in their home, and I've known many situations where both of them are arrested.

Q. So my question to you is, is murder an act of domestic violence?

A. It can be.

Q. And the perpetrator of that crime would be a perpetrator of domestic violence, correct?

A. Possibly, but it could also be a person defending themselves. So if you shot somebody who was in your home, you'd have to ask yourself if that was domestic violence or were you defending yourself.

Q. Generally a person invading my home, wouldn't be a residence of that home.

A. Maybe, maybe not.

Q. But if two people are in a home that live together, and one of them kills the other, that most likely would be considered an act of domestic violence, correct?

MS. DIEHL: Objection, your Honor. Asked and answered.

MR. SHERMAN: Well, I don't think she's actually answered the question.

THE COURT: I think every answer has been kind of a conditional answer. And so, if it's a "yes" or "no" question, if you can answer "yes" or "no," then, you just need to tell him.

THE WITNESS: Could you state the question again, please.

BY MR. SHERMAN:

Q. If there are two individuals living together in a relationship in a home and one kills the other, would you classify that as domestic violence?

A. Again, possibly. I'm sorry to give a conditional response, but there are situations where that would not be the case.

Q. Well, you noted a number of times in your

evaluation and in your testimony today, that Ms. Jacobson has fond and affectionate feelings for her children.

A. Yes.

Q. And that she misses them, correct?

A. That seems to be my impression based on my evaluation with them.

Q. Your testimony, if I recall correctly, is that she would tear up when talking about her children?

A. Yes.

Q. Was it your impression that she loves her children?

A. Was it my impression that she loves her children did you say?

Q. Yes.

A. Yes.

Q. Did she ever express that she missed her husband?

A. No.

Q. Did she ever express any fond or affectionate feelings towards him?

MS. DIEHL: Objection, your Honor, relevance.

MR. SHERMAN: Your Honor, it's relevant to the underlying reason that the children came into care, which is that Ms. Jacobson is accused of killing her husband which is a violent act. And that violent

act, I believe, is to determine whether or not that is, in fact, in the children's best interest to have someone willing and able to commit that kind of a crime around children is in the best interest, but I'm also going to speak to you the reason that the children are in care, and should continue to remain in care.

THE COURT: It's a stretch. It has some relevance.

MR. SHERMAN: Thank you, your Honor.

I'm sorry, could I have the last question read back.

(Last question read.)

THE WITNESS: She told me that when they were first dating, she indicated that their relationship was better at that time and that he seemed to be more happy-go-lucky, but it's changed.

BY MR. SHERMAN:

Q. When did you conduct your evaluation?

A. October 8th and October 22nd of 2015.

Q. Were you contracted with the State of Arizona to provide these kinds of evaluations during 2015?

A. Yes.

Q. Throughout the entire year?

A. Yes.

Q. So, just so I'm clear, from January of 2015 to December of 2015 you were under contract?

A. Yes.

Q. During that year, were you available to go into the county detention facility to conduct this kind of evaluation?

A. Well, I did, yes.

Q. But even before October, would you have been available to conduct the same evaluation in the same location?

A. Yes.

Q. The recent contractual issues that you've been experiencing since the first of the year, were not at all related to last year's contract, correct?

A. No, they were not.

Q. I believe you put in your report that Ms. Jacobson didn't talk in any specifics about the crime; is that correct?

A. Yes, that's correct.

Q. Would that information -- that information would have been helpful to you in your evaluation, correct?

A. Possibly.

Q. And you don't know whether or not it would be helpful to you because you didn't talk about it, correct?

A. Because I don't have it, right.

Q. So there could be underlying psychosis or psycho -- I'm sorry, forgive me --

A. Psychopathology.

Q. -- psychopathologic issues that are present, but just hasn't been uncovered; is that correct?

A. No, I wouldn't say that's correct.

Q. Why is that?

A. Because the information I gathered from her was sufficient to determine the diagnosis that were made. It may have provided more information regarding the crime, obviously, it would have if she had been able to talk about it, but I don't think it would have changed the diagnoses that I arrived at.

Q. You conducted a stress evaluation; is that correct?

A. Post-traumatic stress disorder, is that what you mean?

Q. Yes. Okay. In your evaluation you had some total scores you said that regarding -- and this is on page 12 of your evaluation -- regarding the 30 days prior to incarceration, there was an average total score of 2.22. Now, can you explain for us a little bit better of what that average score is and how you came to that score.

A. It would be easier to explain if I can use my

own notes.

THE COURT: No objection?

MS. DIEHL: No.

MR. SHERMAN: No.

THE COURT: You may look at your notes.

THE WITNESS: So the severity of post-traumatic symptoms is on basically a Likert scale with a score of, Zero, on any test item, meaning that, not at all, if she was not having symptoms at all during the 30 days; a number 1 would be a little bit; 2, moderately; 3, quite a bit; and 4 extreme.

So, we arrived at a score, at a total score, average score of 2.22 which means that she was endorsing symptoms that on average more moderate and slightly above that; so between 2 and 3 would be moderate and quite a bit.

BY MR. SHERMAN:

Q. Okay. And then later down that page you said in the most recent 30 days prior to this evaluation, she was incarcerated during that time, correct?

A. Right.

Q. That her average total score of 1.22, a full point lower, correct?

A. Right.

Q. What does that suggest to you?

A. It suggests that her trauma symptoms reduced from prior to her incarceration to after her incarceration that they decreased during that time period.

Q. So is it fair to say that she got rid of the source of the stress, correct?

A. Not necessarily. Could just mean -- it could mean that. A person could have reduced symptoms maybe based on, say, they had therapy or if they've come to better grips with what's going on -- it could be a number of reasons depending on why those are reduced. But, the reduction in source argued that she did have a reduction in symptoms.

Q. So in order to have a reduction of symptoms, whatever is causing those symptoms, has to be gone, correct?

A. Not gone.

Q. Well at least certainly mitigated?

A. Abated somewhat, but, yes.

Q. So then what we're to understand from your evaluation is that being incarcerated, after having killed her husband, was less stressful than living with him?

A. Are we assuming that she killed him?

Q. She testified earlier that she did, yes.

A. So can you ask me that question again please?

Q. My question was, that we're to understand from your report that being incarcerated and deprived of freedom, being separated from her children, and facing very serious criminal charges, was less stressful to her than living in the house with her husband and her children, correct?

A. It would seem that her symptoms decreased based on not having the constant threat that she spoke to me about of bodily injury or injury to her children, of that threat having been abated.

Q. Okay. Did she disclose that her husband had ever hurt her children?

A. She -- not that I recall. In terms of hurting them physically, again, this will be referring to Tyler?

Q. Right.

A. But she did say that emotionally he was threatening to her son, to their son.

Q. I'd like to go back and talk about the MMPI for a moment. You said on page 14 of your report that her validity score involving the L-F-K scales were mildly elevated; what were elevated towards the L-F and -K scales?

A. What are elevated scores?

Q. Well, first of all, what are the L-F and -K scores.

A. The L-F and -K --

The L score, if it's significantly elevated, indicate, tends to indicate that a person is being dishonest about having mental illness or symptoms of mental illness.

With the F scale, if it's significantly elevated, it is usually an indicator of a person who is trying to appear mentally ill; such as, a person who is -- well, for any number of reasons people would tend to do that.

The K scale is a measure of defensiveness. And it is very common for a person if they are under duress to have an elevated K scale. We also see it with people who the K scales tend to be a little bit higher with people who are college educated, than if somebody who is less sophisticated.

But the 3 taken together are what we call the validity scale, and it tells us whether or not we can trust the other scores, the clinical scores. So there are 3 validity scores, and there are 10 clinical scales.

Q. So you noted that the L and K scores for dishonesty or defensiveness were elevated here, correct?

A. Mildly elevated.

Q. Why did you make a note of them if they were only mildly elevated?

A. Because it's common to do that with any MMPI interpretation, so what you're telling the reader is that this has already been considered, so that we can either trust the clinical scores or we cannot. There are cases when an MMPI profile would be considered invalid and would not be used.

Q. What was Ms. Jacobson's IQ score?

A. Her scores were all on the average range. Her full scale IQ was 94; verbal IQ, we call it a verbal comprehension index, 93; perception and reasoning index was 94; working memory was 92; and processing speed was 102.

THE COURT: Do you have quite a few more questions?

MR. SHERMAN: I have several more questions, your Honor. I'm okay to break at at this point if the Court would like to do that.

THE COURT: Okay, why don't we take about a 15 minute break in the afternoon. We'll take a 15 minute break for the afternoon.

You may step down.

(Witness steps down.)

THE COURT: If you would leave the exhibit up there or over here. Take your notes.

We're in recess.

(Whereupon, the afternoon break was taken.)

THE COURT: We are back on record in JD 2015-00011, in re the Matter of Sean Jacobson. All right please come forward.

(Witness complies.)

THE COURT: Please state your name again.

THE WITNESS: Patricia Rose.

THE COURT: Mr. Sherman.

BY MR. SHERMAN:

Q. How many questions, Dr. Rose, is the MMPI?

A. Five hundred and sixty seven.

Q. And are they just general questions or do they ask you specifically about your feelings, or what do they address?

A. Let's see, typical items under MMPI would be questions that refer to depressive symptoms, anxiety symptoms. This is -- actually, I can -- some of these are in the report under the Critical Items listing, some typical items are, "I wake up fresh and rested most mornings," person's response is either true or false to each question -- this is on page 15.

Q. Yes.

A. "My sleep is fitful and disturbed," true or false, and so on. Those are some of the actual questions.

Q. And you testified that Ms. Jacobson was able to

take those questions with her after your first meeting, correct?

A. She was table to -- I was able to leave that in a package there at the Coconino County Jail, and then they kept it in a safe place for her to take in a private room by herself.

Q. So she did -- she did have them between the time that you first met with her and the second time that you met with her?

A. No. She did not have them.

Q. So they were -- do you know how long she was given to complete the questioning?

A. I don't know how long the jail gave her to do it.

Q. How long are folks normally given to complete that?

A. There isn't really any particular time, you know a cutoff for that, but most people finish it in about two hours.

Q. So it's not a situation where you have to finish it within this much time?

A. It's not a times test, no.

Q. So, you don't know whether or not she had time to sit down and look at all of the questions and analyze what her responses might mean if she answered one way or

another to those questions, correct?

A. I don't know how much time that they gave her initially, but she did not complete quite a few of them, actually I can't tell you how many, and that's when I met with her a second time, and we went over the ones that she wanted clarification on.

Q. Okay. Does the fact that she didn't complete it mean anything to you?

A. No, just that she wanted to clarify what the questions meant.

Q. How many questions do you have to answer to get a valid profile?

A. All of them.

Q. So without answering all of the questions, you can't have a valid profile?

A. I can't score it. It's computer scored.

Q. Okay. So she did complete all of the questions?

A. Yes.

Q. And except for those that she had additional questions for you when she met with you the second time, correct?

A. Yes. She finished a portion of the test and then finished the rest of it when I was there.

Q. So she could have then had time to analyze how

she should answer these questions and make careful decision about how she answered them?

A. Anybody could who takes this test.

Q. And if you did that, would you be able to, for lack of a better word, defeat the L-F-K scores?

A. It's doubtful.

Q. Why is that?

A. The test was developed to guard against that, that's why we have those full 3 scales.

Q. With regard to PTSD, and I'm referring to page 17 if you need to look at them, you stated she may find like many suffers of PTSD do --

A. Can you say that again?

Q. Yes. In your response to question on page 17, you said she may, Ms. Jacobson may find like many sufferers of PTSD do, have a tendency to be hypervigilant about perceived dangers to herself and her children.

What does it mean for someone to be hypervigilant?

A. On guard, cautious.

Q. More so than anyone else?

A. Yes.

Q. In what ways?

A. People who are hypervigilant will often report things like not wanting to go in a restaurant. It's very

common to hear Veterans of PTSD that they will sit only with their back to a wall in public places so that they can watch the entrance. They are on guard. They feel like they could be harmed.

Q. And you said hypervigilance is certainly about "perceived dangers," meaning real dangers or dangers that don't exist, correct?

A. Yes.

Q. And that that can develop a tendency to be over protective, correct?

A. Over protective of self.

Q. What about children?

A. That could be as well.

Q. So if someone is hypervigilant about perceived dangers, meaning real dangers or dangers that they only think exist, and if someone is also over protective, they might act out in ways that are irrational; is that correct?

A. They don't generally act out. In my experience they're more likely to withdraw to protect themselves, protect them from their families, and they do things such as locking doors, frequently locking doors throughout the night. They're on guard. They feel like they could be in danger.

Q. So it's not impossible for someone to act out

on those feelings?

A. It's not impossible.

MR. SHERMAN: Those are all the questions I have, your Honor. Thank you.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. DIEHL:

MS. DIEHL: Dr. Rose, what does an MMPI measure?

A. Psychopathology.

Q. Is that personality disorders?

A. I can include them.

Q. Did you see any evidence of any type of psychopathology with Ms. Jacobson?

A. Well as I mentioned that the trauma symptoms, trauma and depression and anxiety, those are considered psychopathology. If you think of psychopathology, the word itself, is very poorly understood by the general public.

Q. Anything else besides those three main things?

A. No. I mean, in the diagnoses I mentioned other codes, such as, spousal abuse and stress in the family and that kind of thing. But the MMPI basically measures depression, anxiety, hypochondriasis, and psychopathic deviate traits: Let's see, anxiety, psychosis, bi-polar

disorder, social isolation, or bi-polar symptoms and social isolation.

Q. And you didn't see any of those other things, those other things?

A. No.

Q. Isn't it true that you had to finish or stop the first day of testing because Susan had to go to court?

A. Yes.

Q. Did that affect the testing at all?

A. Yes, because I had hoped to actually finish everything the first day.

Q. Do you think it affected her scores or just the timing of them?

A. No, it was just an inconvenience for the both of us.

Q. Was it your impression that Susan wanted to answer the questions accurately?

A. Yes.

Q. There were a few questions asked of you in regard to domestic violence. Do you believe that killing someone to defend yourself is domestic violence?

A. No.

Q. Do you know if Susan participated in counseling while she was in the jail?

A. I don't know.

Q. Now, there were other questions asked of you regarding her PTSD scores, both 30 days before incarceration as well as current. And it's my understanding that her scores dropped while she was in custody; is that correct?

A. Yes.

Q. Were they still elevated?

A. They were only very mildly -- let me go back to that page -- and you're referring to her severity measures for PTSD?

Q. Yes.

A. Her score was at 1.22 on the severity; Post-traumatic symptoms on this measurement score of 1 indicate a little bit of that symptom over the 30 days. That's actually -- that's not my wording, that's the wording on the test; so 1.22 would be slightly above a little bit. So between 1 and 2 which would be little bit immoderately, and the score approached more towards 1 verses towards 2, so it's to say that, very mild symptoms.

Q. Did you think that was significant?

A. I thought what was significant was that her score was a full point lower than prior to being incarcerated.

Q. What would that say to you?

A. That she was under a great deal more stress

prior to being incarcerated than after she was.

Q. You also talked about on the MMPI the validity scale. Is it your testimony today that they were not elevated enough to render the test invalid?

A. Yes, it is.

Q. Is it uncommon to have the scales mildly elevated?

A. No. I see it frequently.

Q. Is it possible to, for want of a better term, cheat on the MMPI?

A. It's probably possible to cheat the MMPI or most any test, but the MMPI was developed to try to prevent that which is why we have those three scales. So those are the first things when an MMPI and MMPI profile is interpreted, that we go to those three scales and see where those scores are at. Generally if you saw a score, say a validity score of 90 to 100, probably would not use that information.

Q. And these scales were not elevated to that level?

A. No.

Q. Is there any way to know how your questions will be scored on an MMPI?

A. That would be very difficult to do because there are 567 test items, and they break down into factors

which then break down into those various diagnostic areas. It used to be that we use to hand-score the test. As complicated as it is, we computer score it. So I think it would be pretty difficult for someone to try to outsmart the test. People do try, but it will usually show up on the validity scales if they did.

Q. And your testimony today is that Susan did complete every question on that MMPI?

A. Yes, she would have had to, or I couldn't have scored it.

Q. What happens if you don't?

A. The computer simply won't score it, so it becomes a real headache for psychologist because then you have to try to score it some other way, maybe the old-hand method. But I always tell people when they take this, if you're not sure of which direction you're interested in going, you should go with the one that's most accurate.

Q. Do you go over it with the client afterwards just to make sure all the bubbles are marked?

A. Yes, usually. Especially if they live out of town.

Q. Is the person with PTSD more likely to act out more than any other person?

A. Relative to other psychiatric diagnoses, psychological diagnoses, or people just in general?

Q. People in general; someone on the street.

A. I don't know that I'd say they would act out. A person with PTSD, I guess you could say, yes, to the extent a person with PTSD could have episodes of rage, they can have episodes of anger.

Q. What is the normal reaction of people with PTSD?

A. They tend to push others away from them, not physically, but -- well, I suppose that could happen, too, but, they tend to kind of social isolate even in their own marriage and in their own families. They will have nightmares. They will have flashbacks. They are very cautious. As I mentioned earlier they can be very hypervigilant. They can have episodes of anger. They often have feelings of short-sighted futures, as if something bad may happen to them.

Q. So it's your testimony today that EMDR and therapy would help people with PTSD.

A. Yes.

Q. And are there people in society functioning well with PTSD?

A. Yes, and there is actually a good deal of evidence that EMDR helps Veterans quite a bit.

Q. I think you testified as to hypervigilance, would a person that had hypervigilant symptoms be more

likely to protect themselves and their family?

A. Probably.

Q. At the bottom of the main paragraph on page 4 when you were talking about your interview with Susan, could you read that last paragraph, not the last paragraph, the last sentence.

A. On, let see, page 4, after she learned she was with child?

Q. No. The big paragraph. The last sentence in that big paragraph.

A. Oh sure. She said that her thought the day of the alleged crime were to protect herself and Tyler, and she felt threaten and said, "I didn't think we were going to make it."

Q. Would this be something that would be a typical symptom of someone who was hypervigilant?

A. Yes.

Q. Did you ever ask her any questions specifically about her feelings towards Marvin, her significant other?

A. Not that I recall.

Q. Did you ever ask her if she had love and affection towards him specifically?

A. No.

Q. And I just want to make sure I have this clear and it's clear for the Court, you didn't find any

significant psychopathology, such as, mental illness; is that correct?

A. I found what is classified as mental illness, PTSD and other diagnoses. But what I was referring to was a chronic history of psychopathology and a chronic history of psychiatric disorders. This is something that we usually want to know in any sort of psychological evaluation, and if this person has come to the attention of psychological care in the past.

Q. And I would just point you to the bottom of page 16, can you read that bottom paragraph.

A. Susan presented with no impairment in her cognitive-slash-intellectual functioning; her ability to remember was not impaired; she demonstrated good short-term memory. Her attention to concentration skills were not impaired, and she easily stayed on track with the evaluation questions. She presented as articulate, intelligent and pragmatic.

Her WAIS-IV profile argues she had the cognitive and intellectual ability to make good decisions when not exposed to undue stress. She responded to test items with a thoroughness that this examiner has seldom seen with psychological testing, and it was clear she wanted to fully understand what the test items were asking and respond accurately relative to her experiences. She

did not appear to attempt to fail tests, to appear mentally ill nor were there any attempts evident to deny problems to appear favorably.

Q. Do you want to complete the paragraph?

A. Oh --

THE COURT: I don't think she needs to read it. It's in evidence, unless you have a specific question.

MS. DIEHL: No, your Honor. I'm just fortifying what she did find.

Q. Do you have any reason to change your opinion today of Ms. Jacobson?

A. No.

MS. DIEHL: Nothing further, your Honor.

THE COURT: May this witness be excused.

MR. SHERMAN: Yes.

THE COURT: All right. Thank you very much, you are excused, and you're free to leave.

You may call your next witness.

MS. DIEHL: Your Honor, I would call Pat Horn.

THE COURT: All right, Ms. Horn, please come forward. You have been previously sworn. Have a seat please. Just bend the microphone down and pull it towards you.

Before we start, I just want to mention that I

APPENDIX, A-7

Response to Motion to Preclude Defense Experts Linskey and Rose

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FILED

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA, Plaintiff, vs. SUSAN JOY JACOBSON, Defendant.	No. CR2015-00613 **RESPONSE TO STATE'S MOTION TO PRECLUDE IRRELEVANT AND PREJUDICIAL TESTIMONY BY DR. LINSKEY AND DR. ROSE** (Oral Argument Requested)

GRIFFEN & STEVENS
LAW FIRM, PLLC

I. BACKGROUND.

Contrary to the State's accusation, Jacobson did not "murder" Marvin James. While she did kill him, it was in self-defense, in defense of her fetus and to prevent his commission of crime (he had just assaulted her and threatened to kill her).

Contrary to the State's accusation, Jacobson did not clean up the scene or try to get rid of the body, to avoid detection for the incident. Rather, she was fearful that the couples' three-year-old son, who was present in the next bedroom, would see the blood and the body. Accordingly, she spent several hours trying to clean up and neutralize the scene. She wound up, later that morning, with pregnancy complications resulting in her hospitalization for the remainder of the day. Uncertain how to proceed, she sought the advice of an old friend and thereafter, from her parents. They recommended that she turn herself in. She did so. She confirmed, to the police, that she acted in self-defense.

After her arrest and while awaiting trial, she was subjected to evaluations by Dr. Patricia Rose and Dr. Chris Linskey. After the parties jointly moved that those evaluations (and their testimony at the separate dependency case) be released, their request was recently granted and the parties secured those records.

II. THE ISSUE

After the evaluations (and related testimony) were released, the State listed Dr. Linskey as a witness. He was then interviewed. At the conclusion of the interview, defense counsel verbally confirmed to the State, that the Defendant would be listing both Dr. Rose and Dr. Linskey as witnesses and would be seeking to admit their evaluations as well as their conclusions, including the finding that Jacobson suffered from chronic PTSD. [1] The State responded that it would seek to admit only one portion of Dr. Linskey's report and seek to prevent any other information from being admitted. The State said then, as it says now, that there is no authority to admit the evaluations for, the diagnostic conclusion.

Accordingly, the issue now raised by the State's pleading, and the Defendant's contrary position, is quite clear: Can the doctors testify as to their evaluations, protocol and findings, including the conclusion that Jacobson suffered, prior to the shooting, from PTSD as chronically inflicted by her partner.

III. ADMISSIBILITY

In its motion the state boldly indicated: "the state challenges the defense to find a single Arizona case that supports the introduction of a PTSD diagnosis outside the context of sentencing mitigation. The state is confident that none exist."

[1] A fair reading of both evaluations confirms that the PTSD was as a result of chronic domestic violence inflicted by the victim.

GRIFFEN & STEVENS
LAW FIRM, PLLC

The state is, at a minimum, overconfident. Actually, the State is simply dead wrong. See *State v Vogel*, 207 Ariz. 280, 805 P.3d 497 (Ariz. Ct. App. 2004). A copy of this case is attached as "Exhibit A."

This case has also been cited/analyzed in the Defendant's separately filed Motion in Limine (to permit evidence of intimate partner violence). That analysis will not be restated herein, but that Motion is incorporated herein by this reference.

IV. CONCLUSION

The evaluations were conducted in using normal diagnostic techniques, tests and procedures. The test scores are valid. The evaluations are relevant and the doctors well-qualified.

As demonstrated, all the above evidence is admissible. Accordingly, the State can introduce the sliver of information it wanted. Further, the court will not need to resort to ARE 106 as the entirety of the process, reports, qualifications the doctors and diagnostic conclusions, are also admissible.

DATED this 22 day of August, 2016.

GRIFFEN & STEVENS LAW FIRM, PLLC

By _____
Bruce S. Griffen
Attorney for Defendant

COPY of the foregoing delivered
August 22 2016 to:

Coconino County Attorney
Deputy Ammon Barker

_____

GRIFFEN & STEVENS
LAW FIRM, PLLC

APPENDIX, A-8

Dr. Linskey Report

THE Guidance CENTER

PSYCHIATRIC EVALUATION

Date of Evaluation:	December 3, 2015
Date of Dictation:	December 3, 2015
Evaluator:	Christopher Linskey, M.D.
Client Name:	Susan Jacobson
Date of Birth:	November 8, 1971

Coconino County Public Defender
Attn: Sandra Diehl

Flagstaff. AZ 86001

Dear Ms. Diehl,

Please be informed that in response to a request from your office and as referred by the psychological evaluation performed by Dr. Patricia Rose on October 8, 2015, a psychiatric evaluation was completed on your client, Ms. Susan Jacobson.

CONDITION OF THE EXAMINATION:

The examination was completed at The Guidance Center in Flagstaff. Only myself and Ms. Jacobson were present for the course of the evaluation which took one hour, 30 minutes. No recording was made of the evaluation.

STATEMENT OF NONCONFIDENTIALITY:

I reviewed with Ms. Jacobson the purpose of this evaluation as it was related to a request from her attorney's office. I further indicated that the scope of this interview would be limited to her child dependency needs in the context of treatment recommendations and I would not be addressing criminal issues that she may be facing at this time. Ms. Jacobson indicated a good understanding of the purpose of this evaluation and a willingness to proceed with the evaluation.

42 CFR 2.32 § 2.32 Prohibition on redisclosure. Notice to accompany disclosure.
This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient.

QUALIFICATIONS OF THE EXAMINER:

Dr. Chris Linskey is a board certified psychiatrist who has been completing competency assessments in northern Arizona for the last 21 years.

SOURCES OF INFORMATION IN ADDITION TO THE EVALUATION:

I had an opportunity to review the psychological evaluation prepared by Dr. Patricia Rose based on the evaluation of October 8, 2015. I also had an opportunity to have two conversations with you regarding this case, as it related to the child dependency issues.

HISTORY OF PRESENTING ISSUES:

Ms. Jacobson is a 41 year-old white female who was seen this day for a psychiatric evaluation and a referral based on Dr. Patricia Rose's evaluation of October 8, 2015. Dr. Rose had diagnosed Ms. Jacobson with a cluster of symptoms associated with depression and anxiety that largely seem tied to her current situational stress, as well as a history of apparent posttraumatic stress disorder from emotional and physical as well as sexual abuse from a recent relationship. It should be noted that Ms. Jacobson is currently facing significant criminal charges, and had been incarcerated for 9 months at Coconino County Detention Center. According to the client's attorney, child protective services is considering terminating parental rights and the client is working with her attorney in order to maintain custody of her children. The children, ages 7 months and 4 years, are currently in the custody of the client's sister, who resides in Washington State. The client was released from jail two days prior to this evaluation after having been bonded out on a $500,000 bond. The client at the time of the evaluation this day is very pleasant, appropriate and engaging. She has a very positive outlook on life and indicates that she is very hopeful about not only her custody situation but her criminal case in general. The client indicates that she is currently residing with her mother and stepfather and she views both of these individuals as very supportive people in her life. On review of the evaluation per Dr. Rose, the client meets diagnostic criterion for posttraumatic stress disorder associated with years of abuse from her common law husband.

On review of her history, the client indicates that she started seeing her common law husband romantically approximately five years ago and she indicates that "he treated me really well until I got pregnant." The client indicates that when she became pregnant with her first child (who is now four years old) her partner (Marvin) became increasingly abusive in terms of emotional abuse associated with bullying and controlling her. She indicates that there was one episode of physical abuse while she was pregnant with her child. She indicates that after the birth of the child the emotional abuse worsened and the physical abuse intensified as well. She indicates as well that there were patterns of sexual abuse that, while not classifying strictly as rape, would be classified as coercive, and she indicated a desire to not delve into those to any great extent, which seems appropriate. She indicates that Marvin was not actively involved in parenting as a father of her child.

She indicates that frequently "he would put on a good show" in front of friends or family members, but when it was just the two of them "I had to do everything." From abuse standpoints she indicates that the physical abuse was relatively infrequent, but the emotional abuse in the form of controlling, bullying and being verbally abusive intensified as the years progressed. She reports that Marvin was a very jealous individual, and could be very controlling and manipulative with money as well. On one occasion the client tells me that she went to a domestic violence shelter approximately three years ago due to fears for her own safety. She indicates that she had been threatened by him and she had called the police in the past but no arrests were ever made. When I asked more about the domestic violence shelter she indicates that she only spent one night there. When I discussed with her why she did not leave this situation, she indicated that she was concerned for her physical and legal safety if she left. She indicated further that she had concerns for the safety of her child in that Marvin would likely want some form of custody and she indicated that she did not feel safe leaving her child with him in an unsupervised fashion.

When I ask about her history prior to Marvin, she indicates that she had been in three previous long term relationships and none of them were abusive, indicating "Marvin wasn't like this until I got pregnant." The client indicates that she feels "ashamed" of having been in a relationship with him and felt very trapped from an emotional standpoint relative to his controlling nature.

When I ask for a review of symptoms associated with posttraumatic stress disorder from these events the client indicates that while she will not have frequent flashbacks, she will occasionally ~~have intrusive memories~~ when triggered by outside events, though she works hard to avoid memories. She reports that she will be triggered to have intrusive memories when ~~she hears a female~~ yelling or a child in distress. She does endorse avoidance in trying not to think about the things that Marvin had done to her. She denies any clear increase in her startle response, but she does endorse chronic heightened anxiety with insomnia due to her history of abuse. The client endorses nightmares, including nightmares of Marvin harming her and trying to kill her. It should be noted that Dr. Rose also mentioned diagnostic concerns associated with panic and depression, though on meeting with the client this day she denies any significant panic disorder symptoms, though earlier in her life she had a history of panic issues. Relative to depression the client does endorse some situational sadness associated with her current legal concerns and missing her children.

PAST PSYCHIATRIC HISTORY:

The client denies a history of any psychiatric medications, though she indicates that she is ~~planning to see a counselor through CPES for posttraumatic stress disorder issues~~.

SUBSTANCE USE HISTORY:

The client denies a history of any substance use problems or concerns and there is no evidence that she has a history of these issues.

MEDICAL HISTORY:

The client endorses a history of asthma, which is currently not presenting as much of an issue at this time.

MENTAL STATUS AT THE TIME OF EVALUATION:

Ms. Jacobson presents as a 43 year-old white female appearing younger than her stated age. She is a small, thin woman in no apparent distress. Her speech is normal rate and volume and her motor activity and gait are within normal limits. Her mood is described as "trying to stay positive" and her affect for the most part is pleasant and engaging, though there was one episode of tearfulness when discussing her history of reported abuse by Marvin. She denies any suicidal or violent ideation. She denies any auditory or visual hallucinations and there is no evidence of any delusional thought content. Her thoughts are linear and goal-directed. Her memory and cognition are not formally tested but grossly appear to be within normal limits as evidenced by age appropriate vocabulary, word usage and general fund of knowledge. It should be noted that in Dr. Rose's report she came up with an IQ of 94, which seems consistent with the presentation this day. The client's thoughts are linear and goal-directed and her judgment and insights seem adequate for consent to care as well as activities of daily living.

ASSESSMENT:

Ms. Jacobson is a 43 year-old white female with an apparent four year history of involvement in an abusive relationship with a common law husband. The form of the abuse was largely centered around emotional issues, though there were also reports of verbal, physical and sexual abuse. The client meets diagnostic criteria for posttraumatic stress disorder as evidenced by avoidance of triggers, intrusive memories, difficulty sleeping associated with nightmares, increased vigilance and attempts to not think about the past.

DSM-IV-TR DIAGNOSES:

Axis I: Posttraumatic Stress Disorder, chronic.

Axis II: No diagnosis.

Axis III: Asthma.

Axis IV: Stressors at this time include legal charges and separation from children.

Axis V: GAF = 60 at the time of this evaluation, with best in the past year around 60.

RECOMMENDATIONS FOR CARE:

On meeting with Ms. Jacobson I discussed the risks and benefits of treatment options typically associated with posttraumatic stress disorder. In my opinion, Ms. Jacobson does not meet a threshold necessarily to be considered a candidate for medications for posttraumatic stress disorder, though we nonetheless discussed it. The client indicates that she in not necessarily interested in being on medications at this time, but was very interested in working with a counselor to address her anxiety issues associated with PTSD. After reviewing the risks and benefits I supported this issue as it related to her plan for treatment and I support the current plan for treatment as involving the CPES counselor. I indicated that follow up with a psychiatrist could be done on an as-needed basis and in the event she needed services she could either attempt to get services through The Guidance Center or Southwest Behavioral Health as the most likely and most accessible treatment venues. Ms. Jacobson indicated a good understanding of her care options, and follow-up with a psychiatrist will be on an as-needed basis only.

I hope my thoughts are helpful to the Court, and I will remain available to the Court for testimony or clarification as indicated.

Respectfully submitted,

Christopher Linskey, M.D.
Diplomate, American Board of Psychiatry and Neurology

CL/ksj

APPENDIX, A-9

Dr. Rose Report

Patricia M. Rose, Ed.D.
Licensed Psychologist
Licensed Independent Substance Abuse Counselor

711 N. Beaver St.
Flagstaff, AZ 86001
Phone: 928-779-3783, Ext. 3
Fax: 928-773-1150

Psychological Evaluation

Examinee: Susan Jacobson AGE: 43 DCS PARTICIPANT ID#: 3095206
DATE OF BIRTH: 11/08/71 DCS CASE ID#: 492404
DCS SPECIALIST: Kelly Wells EXAMINER: Patricia M. Rose, Ed.D.
DATE ASSESSED: 10/08/2015; 10/22/15 DATE OF REPORT: 11/02/2015

REASON FOR REFERRAL

Susan Jacobson is a 43 year-old, Caucasian female who was referred for a Psychological Evaluation by the Department of Child Safety (DCS) secondary to the death of her husband, Susan being taken into custody by the Coconino County Sheriff's Office after turning herself in, and her children being taken into DCS custody and subsequently placed with relatives. Susan has been incarcerated in the Coconino County (CC) Jail since March 4, 2015, charged with the death of her husband, Marvin James, Jr., the father of her two sons, Tyler (age 4) and Sean (age 7 months). Both boys are currently in the care of Susan's sister in Washington state. Susan was evaluated at the CC jail and was seen on two occasions, Oct. 8 and Oct. 22, 2015. She described herself to be 5' 1" tall and weighing 100 pounds. She wore a gray pull-over sweatshirt, black Jail issue pants, and slip on sandals; her grooming appeared good. Overall, her hygiene appeared good; she was not malodorous. She wore glasses and denied any hearing impairments. She denied any ambulation impairments. She said she completed a psychological evaluation in college but she could not recall what it was for, nor the test results. She thought it was part of her Psychology class. It may have been for instructional purposes. She denied ever having any reports made about her to DCS prior to this case.

Susan was referred for evaluation by DCS to answer the following questions which are addressed at the end of this report:

1. **Does the parent suffer from a mental illness/personality disorder/thought disorder/signs of psychosis/substance abuse disorder/mental**

deficiency/retardation etc. per the DSM-V? Is so, how does this impact his ability to parent at this time?

2. **Are there reasonable grounds to believe that the conditions will continue for a prolonged, indeterminate period of time?**

3. **Should this parent be referred for a psychiatric evaluation?**

4. **Based on your interview/evaluation with the parent, what is the quality of the child/parent relationship?**

5. **What is the parent's parental capacity?**

6. **What is the parent's history of domestic violence (victim or perpetrator)?**

INFORMANT:

Susan provided her own history. Her report of historical information appears to be reliable and valid. Additionally, information provided by DCS records is included in this report.

SPECIFIC CASE BACKGROUND INFORMATION:

When asked about what occurred that resulted in her incarceration and subsequent inability to parent her children, Susan indicated, "I was alleged of doing something, of committing a crime." She has been in jail for about seven months since her incarceration in March. She said, "law enforcement is claiming that I murdered my husband. There was a history, not about me, but of me, domestic violence and physical and emotional abuse. She was married to her husband for 5 years, and they met at the Downtown Café. They had two sons together, and she has no other children by any other relationships. Susan was never married before. She said that DCS said if she is released from incarceration, they will work to reunite her with her sons. But she said that she knows she is up against deadlines and said, "I know I need to get out soon." She said that since her youngest son is under three, and has been in foster care for more than six months, severance is often pursued. She appeared concerned and stressed about this possibility.

MEDICAL HISTORY:

Susan reported she receives medical treatment as necessary with whoever is available at North Country Health Care. She had AHCCCS benefits prior to incarceration. She has never applied for or received Disability benefits through Social Security. She reported she is prescribed the following medications: Advair and she previously took Albuterol. She was born with

an asthmatic condition and still has it. She uses her medication with only severe asthmatic attacks. Prior to workout routines she would take Advair ahead of time.

Activities of Daily Living:

Susan stated she is able to care for her personal hygiene independently. She reported she has difficulty with none of it. She reported she is able to administer her medications as prescribed but in the jail, takes them when allowed. She has traditionally arranged all of her medical appointments. She reported she is able to utilize a phone directory in order to look up numbers. She reported she is able to cook simple meals. Susan reported she was able to maintain the cleanliness of her household without assistance. She reported her ability to complete shopping tasks was unlimited and she did not require assistance. The activities described by Susan are consistent with the observations of this examiner. What she reported suggests she was able to function independently regarding activities of daily living (ADLs) prior to being incarcerated. Regarding social functioning, Susan reported she was not able to maintain social relationships with friends when she was married and that her husband attempted to keep her at home, isolated from family and friends.

FAMILY HISTORY:

Susan Jacobson was born in Princeton, MN in 1971. Throughout her life, she resided in Minnesota til age 3 or 4, Flagstaff, Prescott, Phoenix, Salt Lake City, Red Bluff, CA, Salinas, CA, then back to Red Bluff. She's been living in Flagstaff since 1987. She has two older sisters, in Gilbert, AZ, and Washington state. She also has three half-siblings on her father's side. Her primary support system was her husband's job and she also worked part-time cleaning. However, she had her own income, and said, "I never relied on him for anything. Things were always very separate for us...I supported myself through college and that's what I was used to, and that's how we kept things when we entered the relationship." She acknowledged that the situation was unusual. She said "that was his thing too and it just kinda worked." She had money saved up her whole life, and said she worked "so much" all through college, and never wanted to be in debt. She said she is really good with money and knows how to shop to find good deals. She said she is wise with money and conservative, and frugal with certain things. She was asked about the $350,000 referenced in her DCS case records dated 03/26/2015 that police found in her room at her parents' home, but declined to talk about it. She said she has created a Trust for her sons for college, and her sons cannot access it until they are adults, and no one else can access it either. She has an attorney, Bruce Griffen, who is setting up the Trust for her. But she said

the police seized the money and accused her and her parents of theft. She stated her parents have no criminal record.

Susan has been married one time and has two children. She reported an early bond with her son Sean and felt he had it too. She said she felt bonded with Tyler too. She said the alleged crime occurred the 26th or 27th of February, but Susan was not sure. She spent the night at her mother's before being incarcerated, and was pregnant at the time. Her youngest son, Sean, was born March 2nd, 2015, after her incarceration. She was experiencing fetal distress during incarceration and was not experiencing movement of the baby at night, and she became very concerned. She was made to wait until morning and became very stressed. She was taken to FMC the next day and it was discovered that she had ruptured membranes, and there was a leak in her water. She was kept at FMC and they tried to induce labor but it did not work. Sean was eventually born and was in distress, with a reduced heart rate. She said he was not very active, not real engaged, not very responsive. She said he used to be more responsive and she last saw him Oct. 7 via video conference. He and Tyler are living with her oldest sister, Laurie in Wash State. DCS records indicate Tyler being smaller than normal and Susan was asked about this. Susan said Tyler has a good appetite, like her, but has always been small. At one point she was measuring all he ate and drank and she was concerned and brought it up to his pediatrician, and as an infant he had little interest in food, but when she brought her concerns to medical professionals and a dietician, she was told it was normal, that he would progress. She also said he had a very strong gag reflex. Susan appeared genuinely concerned about her sons and said she took them to doctors as needed, and was concerned about Tyler's eating and health. It appears, based on what she reported, that she has read up a lot regarding developmental issues with children. She also expressed concern about an overactive thyroid with Tyler. She was asked on a scale of 0-10, with 10 being the most bonded, how close she feels to her children. Susan said she feels it is a 10. She expressed a tremendous love and bonding for Sean and with Tyler, and said she feels having children has brought her so much joy. She said Tyler brought her joy and love, and she has been "so impressed with him on every level." She feels her sons are a blessing, and being away from them has been very difficult for her. She said that her thoughts the day of the alleged crime were to protect herself and Tyler, and she felt threatened, and said, "I didn't think we were going to make it."

Susan discussed her early years with her husband, Marvin. They dated for about a year and during that time he was going through a divorce. He would become quick tempered but blamed it on the divorce, then apologized. She said at first, when they were dating, he was "happy-go-lucky" but his behavior changed. After she learned she was with child, she thought his behavior changes may have

been because she was pregnant. She said she feels he was a "pathological liar." He wasn't pleased she was pregnant but she said she was excited, and said his attitude, "it was hurtful." Susan said she's always wanted children. She explained that as their relationship continued he would follow her around the house and go on and on about things that bothered him. She would either become silent, or she would respond, and either made him angry. She tried to leave him and he would become angry and threaten her. She stayed in a women's shelter for a while with Tyler, but she returned to Marvin because of his threats. She said that she recalls that she probably called him to tell him she was ok, or due to seeing that he'd called many times and she thought she better pick up the phone. Susan explained that she stayed with her husband thinking it would be the "safest path." She stated that she feared he would hire someone to kill her if she left, or if he believed that Tyler wasn't his son, or as he told her, "if you don't shape up." Susan and her husband attended counseling together. She said they also went through an ordeal about changing Tyler's name, stating that she named him Tyler Neil Jacobson-James.

Susan said that at times when she was gone from their home, he demanded that she get home and threatened to call his attorney. She escaped to her parents sometimes because she couldn't get away from him. She endured threats and bullying, but didn't want anyone to know what was going on. She said her husband was different with her parents than with her. She would eventually return home as he made it clear that if she did not return home he'd make things much worse. She said that wherever she went to escape her husband, she always took Tyler with her. She reached a point where she felt there was no way to get away from him, not through divorce, not through separation. She said, "he made it clear to me if I ever left, it would be way worse." Susan said she was afraid emotionally for Tyler because her husband's personality was so strong. She stated, "Tyler and I together, the atmosphere was so different, it was very positive and happy, peaceful...it was a good, wholesome environment." She added that when just she and Tyler were together, "it was great." She emphasized that she enjoyed motherhood and having Tyler with her. She said her and her husband's parenting styles were quite different. She parented with love and understanding, and her husband was controlling, and would threaten Tyler to make him do things. She said the consequences her husband applied to parent Tyler were "out of line, huge," that the punishment didn't fit the crime. She argued with her husband about parenting. Susan said that she did not act violently toward Marvin, but that she was a victim of an "unfortunate relationship" and that he perpetrated domestic violence against her. She said they knew each other a total of about five years and domestic violence occurred during part of their relationship, but not the entire duration of their relationship and marriage. Susan

was asked if her husband had a drug and/or alcohol problem, but she did not know.

EDUCATIONAL HISTORY:

Susan completed high school and then a Bachelors degree from NAU in Health Promotion and Education. She has minors in Chemistry and Physical Science. She reported her grades in high school were "good, about a 3.4 gpa." In college she graduated with a 3.5 GPA. She denied any history of special education services in school. She denied any history of being retained in school. She denied any history of military service. She denied any history of receiving Vocational Rehabilitation services. Her most recent employment ended in Feb. 2015. She worked as a self employed small business owner of her own cleaning business for a period of 11 years. She had some helpers, but said they were not employees. Her business was declining after her oldest son was born. Prior to incarceration she did some part-time work for her husband who ran a hunting guide business. She reported previously, she had been employed waitressing, worked with children, and she babysat, and also worked as a nanny. She provided individual tutoring and educational help for children in schools. She also ran an after-school program at Mount Elden Middle School, substitute taught, coached cheer-leading at Coconino High School, did respite care, and was a teacher and taught health and physical education. She was certified to teach K-12 grades, but if she returned to teaching she would have to recertify. She also worked for a physician to provide patients nutritional counseling and help with weight management.

LEGAL HISTORY:

Susan denied any legal history prior to her current legal troubles. Susan denied any prior history of legal problems, such as felony convictions, misdemeanor convictions, DUIs, incarcerations, or charges (against her) of domestic violence.

Susan denied using alcohol currently and any history of alcohol abuse, and denied the use of illicit drugs. Additionally, Susan denied smoking.

MENTAL HEALTH BACKGROUND:

Susan is a 43 year-old Caucasian female who appeared to be shorter than average, and thin and petite. Throughout the assessment, her facial expression was generally calm and appropriate. Her posture was casual. No difficulties with ambulation were observed. No signs of psychomotor retardation or agitation were present. She displayed no restless motor activity. Inspection of the quality of motor behavior did not reveal limitations in gross or fine motor coordination.

Susan's level of cooperation was appropriate. There was no display of negativism toward the examiner. She readily answered questions, but declined to answer some she felt were directly related to her criminal case. She explained that her criminal defense attorney would not allow her to discuss the charges against her, or the surrounding circumstances or events, with this examiner.

The quality of Susan's speech was appropriate, characterized by adequate inflection, normal speed, and appropriate volume. Her pronunciation of words was clear. Her organization of speech responses was coherent and logical. Overall, Susan has a good command of the English language.

Thought Process/Perceptual Abnormalities:
Susan did not exhibit evidence of a thought disorder. There was no looseness of association, circumstantiality, or tangentiality. She denied ever having auditory, visual, tactile, or olfactory hallucinations. She denied a history of delusions of persecution, paranoia, grandeur, self-reference, thought insertion, or control. Susan denied any history of feelings related to detachment or a sense of unreality. Susan denied having any fears or phobias. She denied obsessional ideation. She denied compulsive/ritualistic patterns of behavior.

Anxiety and Trauma:
She has experienced anxiety attacks since she was young and shortness of breath, but they became less frequent as she grew older. She also experienced shaking, felt like she was dying, tremble, would sit down and her parents would try to calm her, and they would pray with her. She said she guesses that back then when she experienced the panic, it was related to moving a lot, and meeting new people and changing schools. "I just didn't like moving so much, especially right in the middle of the school year. I was not comfortable with that, going to a new area so frequently." She said her father was transferred frequently and he worked in the dental equipment business, then later started his own business. She said she is a religious person but said the church she attended when younger changed a lot when she was in college, but she doesn't know what the church is about now, and was "getting a negative vibe" when she was told not to associate with people who left her church.

Susan has never required inpatient care for a psychiatric illness. She has received outpatient mental health therapy services and sought out

advice on what she called a difficult household situation, which she defined as "my husband." She said prior to her incarceration she felt in fear of her life, and this went on a long time. She said when she was pregnant with her oldest son, Tyler, things changed quite a bit. She said her husband's behavior was getting worse and their relationship was deteriorating. She would not say if he was physically abusive to her, but did say she was afraid of him, but would not provide other information about him. Prior to being incarcerated she said she experienced traumatic events, but would not comment on what they were. She was asked about trauma symptoms and said she has experienced intrusive memories and nightmares, but not about specific events. She has been hypervigilant, but denied episodes of rage. She could not answer whether she had fears of her life being foreshortened and said she does not startle easily. She has never taken psychiatric medications in the past, nor currently.

There were no indicators of somatic preoccupations or concerns with bodily ailments. Statements related to illness or injury appeared to be reality-based.

Depression and Suicidal Intent:
She denied ever feeling so bad that she no longer wanted to live. She denied a history of suicidal planning or intent. She denied any history of homicidal planning or intent. She denied any current intentions of harm to herself or others. She reported no history of major depression.

Mood and Affect:
Susan described her mood the first day of this evaluation as, "anxious when I woke up," but said she walks and reads, and those things help keep her from getting too anxious or nervous, or having any of those negative feelings. Her affect during the assessment was curious and somewhat anxious, and she was tearful at times. She said she has always been an optimist, and has tried to look at the bright side. She said "I think it's just my disposition, I can be in a difficult situation and I can cope most of the time." She provided an example of years ago when she and her sisters were in a motor vehicle accident and she first made sure everyone was alright, while her sister Laurie was upset and angry. Susan said while her sister was being emotional, that she maintained her composure and remained calm. She sees herself as a logical, rational person.

Sensorium and Cognition:

Evaluation of her cognitive processes revealed her to be alert and oriented to person, place, and time. Susan maintained adequate flexibility in moving from topic to topic. Overall, clarity of consciousness was unimpaired. She became tearful at times when talking about her children, but was able to regain her composure.

Working Memory:
Susan was able to recall her age, birth date, SSN. She was able to recall the President and the most recent past President, but not the President during the Civil War. Upon recall, she was able to remember the items presented to her earlier in the examination (house, boat, car remembered as "house, boat, car"). Immediate recall for items was intact.

Concentration:
She was able to count backward from 20 to 0 quickly and accurately. She was able to spell WORLD forward and backward. She was able to follow instructions; for example, she took a seat in the meeting room where suggested by this examiner, and she folded a paper in half and returned it to this examiner.

Judgment and Insight:
Susan's awareness of her emotional functioning seems good. She appears to accurately estimate her emotional functioning in light of her adaptive behavior, social skills, and performance during this evaluation. Her abstract verbal reasoning and ability to make simple decisions did not seem impaired. She indicated that if her house were on fire, she would " if cell phone easily right there, grab my cell phone, grab Tyler, and run out" and said if Sean had been born at that point, she would grab both boys and run out. She indicated that if she found a sealed, addressed, stamped envelope lying on the sidewalk, she would put it in the mailbox. When asked "what does strike while the iron is hot mean?" she responded, "I guess, go do something while you need to do it, don't wait, don't procrastinate."

EVALUATION INSTRUMENTS:

Clinical Interview
Formal Mental Status Examination
Wechsler Adult Intelligence Scale-IV (WAIS-IV)
Severity Measure for Generalized Anxiety Disorder (SMGAD)
Severity Measure for Depression-Adult (SMD-A)
Severity of Posttraumatic Stress Symptoms-Adult (SPSS-A)

Alcohol Use Disorder Inventory Test (AUDIT)
Parent Stress Index (PSI)
Minnesota Multiphasic Personality Inventory-II (MMPI-II)
Behavioral Observations
Record Review

TESTING RESULTS

WECHSLER ADULT INTELLIGENCE SCALE-FOURTH EDITION (WAIS-IV)

Scale	Composite Score	%ile	Qualitative Description
Verbal Comprehension	93	32	Average
Perceptual Reasoning	94	34	Average
Working Memory	92	30	Average
Processing Speed	102	55	Average
Full Scale IQ	94	34	Average

Susan demonstrated Average intellectual functioning, overall. Her verbal skills are fairly well developed, with a VCI of 93, in the Average range. She performed well with verbal abstract reasoning, with a Similarities score of 10 (mean = 10), and demonstrated mildly low informational knowledge with a subtest score of 7.

Her verbal and language skills were reasonably well developed, and her non-verbal skills were nearly equivalent. Susan obtained a PRI score of 94, also in the Average range. She struggled with visual-perceptual skills with a Block Design score of 6 (mean = 10), but obtained an above average subtest score of 12 with Matrix Reasoning indicating well developed non-verbal abstract reasoning abilities.

Her Working Memory is average, and she obtained subtest scores of 10 and 7 with Digit Span and Arithmetic, respectively. Her Processing Speed score of 102 is also Average, but slightly higher than her other areas of functioning. She obtained a Full Scale IQ of 94 at the lower end of the Average range. Her overall intellectual/cognitive profile is good, revealing fairly well developed skills

in all areas tested. Implications for her intellectual functioning will be discussed further in the Summary and Impressions section.

SEVERITY MEASURE FOR GENERALIZED ANXIETY DISORDER

Susan was requested to complete the SMGAD two ways, first responding to test items based on her symptoms 30 days prior to incarceration (prior to the death of her husband), and second, in regard to the 30 days prior to this evaluation.

Regarding 30 days prior to incarceration consisting of most of the month of February, 2015, she obtained an average Total score of 2.4 indicating she experienced generalized anxiety symptoms, on average, between half the month and most of the time. These included feeling moments of sudden terror or fright, feeling anxious and worried, having thoughts that bad things might happen, experiencing a racing heart, trouble breathing, or being faint or shaky, feeling tense muscles, being on edge or restless, and having sleep problems. She additionally indicated that she avoided situations that would make her worry, left situations early due to worries, spent a lot of time making decisions, and needed help to cope with anxiety. For example, she wrote that during that time, Tyler helped her through the anxiety by her time spent with him. She said she so "tremendously enjoyed" time with him, and could focus positive energy on him, and this helped to reduce her anxiety. She further said she exercised, prayed, read the Bible, talked to her son, and her parents helped her too.

In regard to the most recent 30 days prior to this evaluation, she obtained an average score of 1.4, indicating she experienced only occasional symptoms - to about half the time. These included fear, anxiety, nervousness, physical stress symptoms, occasionally avoiding stressful situations, mild difficulty making decisions, seeking reassurance from others, and needing help to cope with anxiety. Her score dropped significantly between the time just before the alleged crime in March, to October, approximately 7 months later. Implications for her emotional functioning will be discussed further in the Summary and Impressions section.

SEVERITY MEASURE FOR DEPRESSION

Susan was requested to complete the SMD two ways, first responding to test items based on her symptoms 30 days prior to incarceration (prior to the death of her husband), and second, in regard to the 30 days prior to this evaluation.

Regarding 30 days prior to incarceration consisting of most of the month of February she obtained a Total average score of 7, in the Mild Depression range (5-9). She endorsed symptoms including feeling down or hopeless for several

days, having sleep problems nearly every day, feeling bad about herself for several days, or feeling she had let her family down.

In regard to the most recent 30 days prior to this evaluation, she obtained an average score of 4, indicating no significant depression. The symptoms she endorsed indicated feeling down or hopeless for several days, sleep problems, poor energy, and feeling bad about herself, or feeling she had let her family down.

Neither her score reflecting her symptoms in February, or her score reflecting the 30 days prior to this evaluation (while incarcerated) indicated a clinically significant level of depression. Indeed, Susan said that depression has not been a major issue in her life. Implications for her emotional functioning will be discussed further in the Summary and Impressions section.

SEVERITY OF POSTTRAUMATIC STRESS SYMPTOMS – ADULT

Susan was requested to complete the SPSS-A two ways, first responding to test items based on her symptoms 30 days prior to incarceration (prior to the death of her husband), and second, in regard to the 30 days prior to this evaluation.

Regarding 30 days prior to incarceration consisting of most of the month of February she obtained an Average Total score of 2.22, indicating she experienced symptoms either Moderately, or Quite a Bit during that time, including flashbacks, feeling emotionally upset, trying to avoid thoughts or feelings, or physical sensations that reminded her of a stressful experience, experiencing a very negative emotional state, being "super alert," and constantly being on the lookout for danger. She also endorsed experiencing some symptoms only a little, such as thinking that a stressful event happened due to something she or someone else did wrong, or due to something about her, and feeling jumpy or easily startled when she would hear an unexpected noise.

In regard to the most recent 30 days prior to this evaluation, she obtained an Average Total score of 1.22, indicating moderately experiencing flashbacks and feeling emotionally upset, but trying to avoid thoughts or feelings, or physical sensations that reminded her of a stressful experience, and experiencing a negative emotional state Quite a Bit. Otherwise, for this time period, she endorsed thinking a little bit that a stressful event happened due to something she or someone else did wrong, or due to something about her.

Her scores differed by a full point between the time prior to incarceration, and the month prior to this evaluation indicating she was experiencing stress

symptoms of a greater magnitude prior to her incarceration than she has been recently. Implications for her emotional functioning will be discussed further in the Summary and Impressions section.

ALCOHOL USE DISORDER INVENTORY TEST (AUDIT)

Susan was administered the AUDIT to assess for any alcohol abuse or dependence problems. She obtained a Total score of 1 indicating alcohol abuse is not a problem for her. When interviewed, she additionally denied any history of illicit drug abuse or addiction. Substance abuse does not appear to be a mental health concern for Susan.

PARENT STRESS INDEX

Susan completed the PSI questionnaire. Her responses revealed a non-defensive response style with a score of 44 on the Defensive Responding Index (defensive responding is indicated by a score of 24 or lower). Her PSI profile revealed a significantly high Life Stress Index of 18, at the 92nd percentile. *"The Life Stress scale provides a measure of the amount of stress outside the parent-child relationship that the parent is currently experiencing (Adamakos et al., 1986; Dubow, 1988). High Life Stress scores tend to intensify the total stress the patient is experiencing."**

Susan's Total Stress score was 210, within normal limits (scores above 250 are considered significant). "The Total Stress index is designed to be an instrument in which the primary value would be to identify parent-child systems that are under stress and at risk for the development of dysfunctional parenting behaviors or behavior problems in the child involved. If a parent's Health subscale score is above the raw score of 16, the need for referral (for counseling or other services) is further intensified, despite the fact that the Total Stress score may be near normal (250). "* Susan's Health subscale raw score was 15. The PSI includes the Child Domain profile and the Parent Domain profile. The Child Domain includes subscales which indicate characteristics of the child (or children) which can cause parenting stress. These include Distractibility/Hyperactivity, Adaptability, Reinforces Parent, Demandingness, Mood, and Acceptability. Susan's PSI index for the Child Domain was 83, at the 22nd percentile, revealing no significant elevations, suggesting her parenting stress is not a direct result of problems with her children's behavior.

The Parent Domain includes the subscales of Competence, Isolation, Attachment, Health, Role Restriction, Depression, and Spouse. Susan's PSI Parent Domain revealed one significantly elevated score with the Spouse index (above the 99th percentile). Her raw score was 30 indicating a very elevated percentile rank. Additionally, she obtained a score of 15 on the Health subscale

which corresponds to a percentile rank of 80. Subscale percentiles higher than 85 are considered significant but this elevation, near the significance range, suggests a deterioration in her health that may have been the result of stress in her relationship with her husband. This is concluded based on her extremely elevated Spouse stress score. *"Parents who earn high scores on this subscale indicate those who are lacking the emotional and active support of the other parent in the area of child management (Russ, 1988; Webster-Stratton, 1989)."* *

The most likely explanation for Susan's high score on the Spouse subscale is that the relationship between her and her father's children, Marvin James, was poor, negative, and lacked mutual support. Thus, her parenting stress appears to be related to her own health concerns and relationship concerns with her children's father rather than to characteristics of her children, or her relationship with them. She also indicated she was pregnant and not feeling well at the time, would feel "super weak" at times, and lost sleep when nursing due to setting her alarm to wake herself every two hours. Susan's PSI profile reveals primarily stress that existed in her marital relationship, and moderate health concerns which may have been related to her relationship stress. Implications for her emotional functioning will be discussed further in the Summary and Impressions section.

* PSI, 3rd Edition Professional Manual, Richard R. Abidin, Ed.D.

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-II:

Susan completed the MMPI-II, but in an unusually slow fashion due to having numerous questions regarding the meaning of many of the items. Her inquiries were discussed in a subsequent interview while completing the test items in question so she could be assured that her item responses were accurate relative to how she perceived each question. Her validity scores involving the L and K scales were mildly elevated but not so much as to suggest an invalid profile. While defensiveness with the MMPI-II suggests an attempt to present favorably, a certain level of defensiveness would be expected with any person being evaluated while facing pending criminal charges. Susan appeared concerned that she might not understand what the questions were asking and respond in a way that was not true about her. She was instructed to respond to the test items relative to her life prior to incarceration. Had she responded relative to her current situation, her responses would have reflected her jailed status more so than her mental status prior to the alleged crime and the loss of custody of her children.

Her clinical profile reveals no elevations at the threshold of a T-score of 70 or higher. Her clinical profile revealed sub-threshold elevations just below a T-score of 70 on scales 1, 3, 4, and 8 (T= 69, 68, 68, & 65, respectively) indicating she endorsed some items that suggested minor concerns. These are only mild elevations and indicate health concerns, family and relationship problems, reaction to stress through the development of physical symptoms, and feelings of alienation from others.

To illustrate, Susan's Critical Items Listing provides further clarification regarding areas of mild concern for her. Much of what she endorsed suggests she has been experiencing physical distress likely related to emotional worry and tension. She responded to the items below as follows:

I wake up fresh and rested most mornings (false).
I am easily awakened by noise (true).
My sex life is satisfactory (false). [Susan explained that her husband forced her to participate in sex acts with him which made her feel uncomfortable].
At times I have very much wanted to leave home (true).
I am bothered by upset stomach several times a week (true).
I have had very peculiar and strange experiences (true). [Susan said these occurred with her husband].
Sometimes when I was young I stole things (true).
My sleep is fitful and disturbed (true).
Parts of my body often have feelings like burning, tingling, crawling, or like "going to sleep" (true).
I hardly ever feel pain in the back of my neck (false).
I am troubled by discomfort in the pit of my stomach every few days or oftener (true).
I believe that my home life is as pleasant as that of most people I know (false).
I believe I am being plotted against (true). [Susan reported she often felt in harm's way in her relationship with her husband].
I seldom or never have dizzy spells (false).
I am worried about sex (true). [Susan explained that her husband forced her to participate in sex acts with him which made her feel uncomfortable].
I don't blame people for trying to grab everything they can in this world (true).
I have numbness in one or more places on my skin (true).
I have very few fears compared with my friends (false).
Life is a strain for me much of the time (true).
I have never been paralyzed or had any unusual weakness of any of my muscles (false).
I feel anxiety about something or someone almost all of the time (true).
I have no enemies who really wish to harm me (false). [Susan explained she had been abused and physically threatened by her husband].
I sometimes feel that I am about to go to pieces (true).

Overall, Susan's clinical profile is not indicative of any significant psychopathology such as serious mental illness. Implications for her emotional functioning will be discussed further in the Summary and Impressions section.

SUMMARY AND IMPRESSIONS:

Susan Jacobson is a 43 year-old Caucasian female who has been incarcerated since March 2015 charged with allegedly causing the death of her husband. She reported struggling with anxiety and fear prior to the event, and her testing and reported history substantiates trauma symptoms resulting in PTSD, panic disorder, and depression. These appear to be the result of psychological abuse, high levels of stress in her marriage and in her family, and physical abuse which resulted in her fleeing her home with her son Tyler to stay at a women's shelter. She described a relatively normal life prior to meeting her husband, Marvin James, stating that she has always been good with money, has been self-employed, has been independent, and always wanted children. She sees her marriage to her deceased husband as an "unfortunate relationship" and she stated that he perpetrated domestic violence against her. She indicated that his physical and emotional abuse led her to become hypervigilant, that she tried to appease him by being home earlier than necessary, and she has experienced significant trauma symptoms including flashbacks, emotional upset, avoidance of cues that reminded her of stressful events, feeling that stressful events happened due to her wrongdoing, or that of someone else, feeling a negative emotional state after stressful events, and feeling jumpy or easily startled. Her responses to the MMPI-II added further substantiation of the stress her marital relationship caused her, particularly health concerns, sleep problems, and fear of being harmed. Susan could benefit from EMDR therapy (Eye Movement Desensitization Reprocessing) to process the traumas she has experienced. Likewise, she reported experiencing symptoms of panic disorder, suggesting overlap between her feelings of panic, and her trauma symptoms. She has experienced depressive symptoms as well, but has no history of chronic depression. Weekly psychotherapy is recommended to address these emotional difficulties and provide Susan a confidential, supportive environment in which to process all that has happened to her.

Susan presented with no impairment in her cognitive/intellectual functioning and her ability to remember was not impaired. She demonstrated good short-term memory. Her attention and concentration skills were not impaired and she easily stayed on track with evaluation questions. She presented as articulate, intelligent, and pragmatic. Her WAIS-IV profile argues she has the cognitive/intellectual ability to make good decisions if she is not exposed to undue stress. She responded to test items with a thoroughness this examiner has seldom seen with psychological testing, and it was clear she wanted to fully understand what the test items were asking, and to respond accurately relative to her experiences. She did not appear to attempt to "fail" the tests to appear mentally ill, nor were any attempts evident to deny problems to

appear favorably. She was cooperative and polite, and readily answered questions. She did not appear clinically depressed or significantly anxious at the time of the evaluation, but reported some mild anxiety with the evaluation process. However, she became emotional when discussing her sons and it was apparent she misses them, and worries about their welfare. There was nothing about Susan's clinical presentation or reported developmental years as to suggest any history of oppositional behavior, conduct disorder, or antisocial tendencies. She presented as genuine, forthright, and truly regretful of the situation in which she now finds herself. She is likely to benefit from whatever mental health services are offered her to help her cope with her family disruption, being separated from her sons, and confronting her legal charges. Provision of effective mental health services with a clinician specializing in EMDR therapy could help considerably in any family reunification attempts made by DCS. Please see Diagnostic Impressions and responses to specific DCS questions below for further conclusions and recommendations.

DIAGNOSTIC IMPRESSIONS:

309.81 – Posttraumatic Stress Disorder, in current partial remission
311 – Unspecified Depressive Disorder, in current partial remission
300.01 – Panic Disorder, in current partial remission
995.82 – Spouse Abuse, Psychological (victim)
995.81 – Spouse Violence, Physical (victim)
V61.10 – Relationship Distress with Spouse
V61.8 – High Expressed Emotion Level Within Family

RESPONSES TO SPECIFIC DCS QUESTIONS/RECOMMENDATIONS:

1. **Does the parent suffer from a mental illness/personality disorder/thought disorder/signs of psychosis/substance abuse disorder/mental deficiency/retardation etc. per the DSM-V? is so, how does this impact her ability to parent at this time?**

   Yes, Susan experiences PTSD, panic disorder, and an unspecified depressive disorder. Additionally, she has been the victim of psychological and physical spousal abuse, and has been exposed to extreme marital distress, and high levels of emotionality in her home life. She may find, like many sufferers of PTSD do, a tendency to be hypervigilant about perceived dangers to herself and her children, and could develop a tendency to become overprotective. In contrast, it is likely that having her children returned to her care, if this occurs, will reduce her depressive symptoms and sooth her anxiety as well.

2. **Are there reasonable grounds to believe that the conditions will continue for a prolonged, indeterminate period of time?**
Yes, although EMDR is a potent therapy for PTSD, and psychotherapy is likely to provide Susan healing for her anxiety and depression, the effects of trauma are often long-lasting. This is not to say that Susan will not, or does not, have the capacity to improve her mental status, but healing from stressful trauma often takes time and numerous counseling sessions to effect improved emotional functioning. But many psychotherapy/EMDR clients report experiencing relief and improvement in just a few sessions.

3. **Should this parent be referred for a psychiatric evaluation?**
Yes, a psychiatric consultation could help determine if Susan could benefit from medications to relieve anxiety and depression. She said she is not generally one to rely on medications if she can avoid them, but antidepressant and anti-anxiety medications can be quite useful in dealing with stress, depression, and anxiety if even for temporary periods of time for situational relief.

4. **Based on your interview/evaluation with the parent, what is the quality of the child/parent relationship?**
This examiner interviewed and tested Susan only, and her two sons were not evaluated by this examiner. This examiner did not see them interact. But based on the interview with Susan and information she felt free to share with this examiner, it appears that she was emotionally bonded to Tyler and her worry about him causes her great distress. What she reported, and the emotions she exuded when she spoke of him and Sean suggested she loved spending time with Tyler and felt the need to protect him from his father. She appears as a mother who loves being a Mom, and spending time with her son Tyler (Sean has not been in her care virtually all his life). As stated earlier, Susan presented as a pragmatic, task driven person who has strived to do things right in her life, and for the most part, she was able to endure the lengthy evaluation without any emotional break-downs, which, given her current situation, suggests fortitude. But when she spoke of her children, she had to visibly attempt to control her grief and sadness of not having them with her. Regardless of what alleged crimes with which she has been charged, and what any person might conclude about those charges, she nonetheless presented a loving parent who is greatly missing her children.

5. **What is the parent's parental capacity?**
At this point, due to her incarceration, she is not able to parent her sons. But given the opportunity to live her life with them again, her reported

history and clinical presentation suggest is probably a capable mother, wanting what is best for her sons. This examiner cannot predict the future or how Susan may cope as a single parent if she is reunited with her sons, but all indicators from this evaluation are that she would likely be a diligent and responsive mother.

6. **What is the parent's history of domestic violence (victim or perpetrator)?** *Susan said that she did not perpetrate domestic violence in her marriage against her husband. But she said that her husband perpetrated domestic violence upon her, both physical and psychological. It seems she has endured years of threats, attempts by her husband to control her, to isolate her from her friends and family, to keep her at home, and to dominate her through psychological propaganda. Whatever mistakes Susan has made, instigating violence against her husband doesn't seem to have been a pattern in her marriage. She indicated feeling the need to protect herself and her son.*

Respectfully Submitted,

Patricia M. Rose, Ed.D.
Licensed Psychologist, AZ#: 3220

11/02/2015
Date

PSI Profile

Susan Jacobson 10-08-15

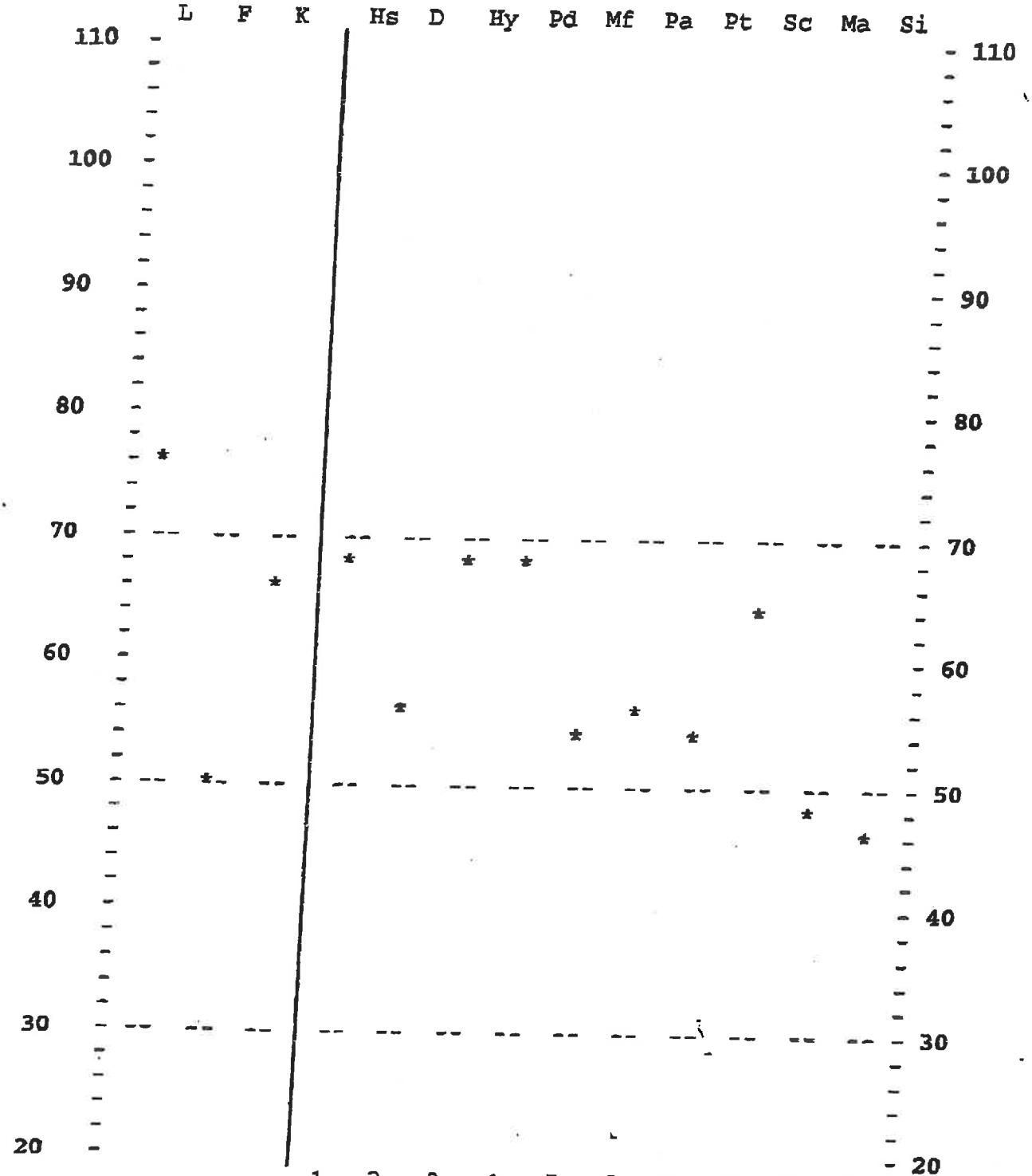
%ile	Child domain							Parent domain								
	DI	AD	RE	DE	MO	AC		CO	IS	AT	HE	RO	DP	SP		
Raw scores																
99+	36	38	18	31	18	21	145	45	22	22	21	32	36	26	188	320
95	33	33	15	25	14	18	130	40	20	18	19	29	30	26	169	294
90	31	31	14	24	13	17	122	37	18	17	17	26	27	23	153	267
85	29	30	12	22	12	16	116	35	17	16	16	24	26	22	148	258
80	28	28	11			15	114	34	16	15	15	23	24	21	142	252
75	27			21	11		111	33	15	14	14	22	23	20	137	244
70		27		20		14	108	32	14		13	21	22	19	132	239
65	26	26	10	19			105	31		13	12	20		18	129	234
60	25				10	13	102	30	13				21		125	228
55	24	25	9	18			100	29				19		17	123	224
50		24				12	99		12	12	11		20	16	121	222
45	23		8	17			97	28				18	19		118	217
40		23				11	95	27				17		15	115	214
35	22	22		16	8		93	26	11	11	10		18	14	112	208
30			7			10	89	25				16	16		110	201
25	21	21		15	7		87	24	10	10		15		13	107	195
20	20	20		14		9	82	23			9	14	15	12	102	188
15	19	19	6	13	6	8	78	22	9	9	8	13	13	11	99	180
10	18	17		12		7	75	21	8	8	8	12	13	10	92	170
5	16	15					66	18	7		7	11	12	8	82	159
1	9	11	5	9	5		50	15	6	7	5	8	9	7	69	131

	DI	AD	RE	DE	MO	AC		CO	IS	AT	HE	RO	DP	SP			
Raw score	16	26	6	18	9	8	83	21	15	8	15	21	15	30	127	210	18

Distractibility/Hyperactivity
Adaptability
Reinforces Parent
Demandingness
Mood
Acceptability
Child Domain
Competence
Isolation
Attachment
Health
Role Restriction
Depression
Spouse
Parent Domain
Total Stress
Life Stress

Record Number: 212 Sex: F Code: (1348-2657/90: L'F/K-)
Name: Susan Jacobson

MMPI-2 Interpretations



	L	F	K	1 Hs	2 D	3 Hy	4 Pd	5 Mf	6 Pa	7 Pt	8 Sc	9 Ma	0 Si
Raw	9	4	23	22	24	30	30	34	12	30	35	19	24
Tscore	76	51	67	69	57	68	68	55	56	55	65	49	46

APPENDIX, A-10

Defendant's Motion In Limine

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VALERIE WYANT, CLERK
16 AUG 22 PM 4:49

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

STATE OF ARIZONA,

Plaintiff,

vs.

SUSAN JOY JACOBSON,

Defendant.

No. CR2015-00613

MOTION IN LIMINE (To Permit Evidence of Intimate Partner Violence)

(Oral Argument/Evidentiary Hearing Requested)
(Div. 5)

GRIFFEN & STEVENS
LAW FIRM, PLLC

I. BACKGROUND

Jacobson stands indicted for numerous felony offenses, primary of which is first-degree murder. At trial, she will assert justification defenses including self-defense, defense of third parties and crime prevention. To effectively present her defenses, she seeks this court's permission to introduce the following forms of evidence:

A. Prior acts of domestic violence committed by the deceased against her.

B. "Cold" expert testimony by Dr Robert Geffner regarding intimate partner domestic violence.

C. Defendant's psychological evaluations, by Dr. Rose and Dr. Linskey, detailing the history of chronic domestic violence and the conclusion, that the defendant suffers from PTSD.

D. Evidence of specific acts of violence, by the victim, against third parties.

E. Opinion and reputation evidence re: the victim's character for violence.

This motion presents only law and argument in favor of permitting evidence of domestic violence. Separate pleadings will address the request to admit "cold" expert testimony, the psychological evaluations (and supporting information therein), violent acts against third parties and opinion/ reputation evidence re: character for violence.

II. FUNDAMENTAL RIGHT TO PRESENT DEFENSE

Jacobson has a fundamental right to present a full defense, pursuant to the due process clauses of the fifth and 14th amendments to the United States Constitution. Jacobson has a fundamental right to present a full defense, pursuant to the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution and Art. 2, Sec. IV of the Arizona Constitution. See *State v. Gilfillan*, 196 Ariz. 396, 998 P.2d 1069 (App. 2000) due process clause of Constitution guarantees a criminal defendant a meaningful opportunity to present a complete defense); *California v. Trombetta*, 467 U.S. 479 (1984) (same); see also *State v. Melendez*, 172 Ariz 68, 834 P.2d 154 (1992) (touchstone of due process under both State and Federal Constitutions is fundamental fairness). "Implicit within this assurance is the right to offer the testimony of witnesses and to compel their attendance in order to present to the jury the defendant's

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as well as the prosecutions' version of the facts so that the jury may determine the truth." *Gilfillan*, 196 Ariz. at 402, 998 P.2d 1075 (citing *Washington v. Texas*, 388 U.S. 14 (1967)). Thus, just as a criminal defendant has a right to cross-examine the State's witnesses, he had the right to present his own witnesses. Id. See also *Davis v. Alaska*, 415 U.S.308 (1974); *Ferguson v. Georgia*, 365 U.S. 570 (1961).

Jacobson's right to present a complete defense would be seriously and erroneously undermined if this court fails to admit all evidence of domestic violence as well as the other forms of evidence additionally requested.

III. JUSTIFICATION AND DOMESTIC VIOLENCE

While the state desperately asserts the contrary, there can be no dispute that evidence of domestic violence must be admissible in this trial. Indeed, Arizona law expressly so permits.

A.R.S. §13–415 provides as follows:

> [I]f there have been past acts of domestic violence as defined in §13-3601(A) against the defendant by the victim, the state of mind of a reasonable person under §13–404, §13-405 and §13–406 shall be determined from the perspective of a reasonable person who has been a victim of those past acts of domestic violence.

Case law discussing this statute makes clear that the jury must consider the relevant history of domestic violence in determining whether a defendant reasonably believed the victim's acts and statements justified the use of deadly force. And it's not just the victim's acts and statements immediately preceding the incident, but rather the entire history of domestic violence between the defendant and the victim.

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In *State v Vogel*, 207 Ariz. 280, 85 P.3d 497 (Ariz. Ct. App. 2004) the court concluded that §13-415 was an appropriate jury instruction, that the entire history of domestic violence including acts, threats, possession of weapons, isolation, sexual abuse, and all of defendant's responsive behavior (including fear, shame, depression, anxiety, etc) were admissible. Further, the court permitted expert testimony on the general dynamics of domestic violence. The court further permitted expert testimony as to the specific violence, and consequences of domestic violence, experienced by the defendant. That included a conclusion that the defendant suffered from post dramatic stress disorder.

All the above was deemed admissible based upon the defendant's claim, at trial, that she reasonably believed she was in imminent danger for her life. There, as in this case, defendant will assert that based upon her past victimization by domestic violence, she reasonably believed that deadly physical force was necessary to protect herself, and her fetus, against the victim's assault and death threats.

IV. CONCLUSION

Defendant can establish, at trial, that she was the victim of past acts of domestic violence inflicted by the victim. By this motion, Jacobson seeks this court's permission to produce evidence of those acts at trial. *Vogel, supra,* authorizes such a presentation. Of course, A.R.S. §13–415 contemplates that such evidence must be permitted in the context of this case. Further, the jury must be given A.R.S.§13–415 as an instruction.

. . .

GRIFFEN & STEVENS — LAW FIRM, PLLC —

DATED this 22 day of August, 2016.

GRIFFEN & STEVENS LAW FIRM, PLLC

By _____
Bruce S. Griffen
Attorney for Defendant

COPY of the foregoing delivered
22, 2016, to:

Coconino County Attorney
Deputy Ammon Barker

By: _____

GRIFFEN & STEVENS
LAW FIRM, PLLC

APPENDIX, A-11

Testimony of Dr. Christina Hibbert

August 30th, 2016, Pre-trial Testimony

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE STATE OF ARIZONA,

Plaintiff,

vs.

SUSAN JOY JACOBSON,

Defendant.

Coconino County
Superior Court
Cause No. CR2015-00613

EXCERPT TESTIMONY OF CHRISTINA HIBBERT

STATE'S MOTION TO PRECLUDE DEFENSE EXPERTS

Tuesday, August 30, 2016

Flagstaff, Arizona

BEFORE: The Honorable Cathleen Brown Nichols
Judge of the Superior Court

Amanda J. Willey, RPR
Arizona Certificate No. 50890
928-679-7559

APPEARANCES:

COCONINO COUNTY ATTORNEY'S OFFICE
By: AMMON BARKER, Deputy County Attorney
ERIC RUCHENSKY, Deputy County Attorney
110 E. Cherry, Third Floor
Flagstaff, Arizona 86001
Appearing on behalf of the State.

GRIFFEN & STEVENS LAW FIRM, PLLC
By: BRUCE S. GRIFFEN
609 N. Humphreys Street
Flagstaff, Arizona 86001
Appearing on behalf of Susan Jacobson.

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By: Mr. Barker	- Cross	39

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ADMITTED PAGE
Defendant's 2	Christina Hibbert's CV	6
Defendant's 3	Christina Hibbert's Interview	20
Defendant's 4	Dr. Geffner's CV	59

(Previous Motions Covered by Other Reporter.)

P R O C E E D I N G S

EXCERPT TESTIMONY OF CHRISTINA HIBBERT

THE COURT: Thank you, very much. Please be seated.

Back on the record. Record will reflect the presence of counsel and the defendant.

Are you ready to call your next witness that we were waiting for?

MR. GRIFFEN: We are, Judge.

THE COURT: Go ahead, Mr. Griffen.

MR. GRIFFEN: We would call Christina Hibbert, please.

(The witness entered the proceedings.)

CHRISTINA HIBBERT,

called as a witness herein, first having been duly sworn, was examined and testified as follows:

THE WITNESS: I do.

DIRECT EXAMINATION BY ATTORNEY GRIFFEN

Q. Thank you. Could you tell us your full name, please?

A. Christina Gramp Hibbert.

Q. Spell your last name for us.

A. H-I-B-B-E-R-T.

Q. All right. And, um, you go by Doctor or

what's the best way to refer to you?

A. Dr. Hibbert. Christina.

Q. Okay. That's fine. So, Doctor, I want to, um, outline some areas that I want to cover with you this morning -- but if I can back up for a moment, um, and just ask you generally, do you understand that you've been, um, promoted by the defense to serve as an expert witness in this case?

A. I do.

Q. All right. And do you understand that the State is objecting to your being able to serve in that capacity?

A. Yes.

Q. All right. And do you understand that their contentions are twofold: Number one, that you're not qualified and that, number two, the topic matter that you would address is not relevant for purposes of the trial? Do you understand those two contentions?

A. Yes, I do.

Q. I want to address with you, um, first, the issue of qualifications. Um, the State -- excuse me. The Court has your, um, CV, your resume --

MR. GRIFFEN: If I can inquire, um, to the Court?

Judge, do you have that? It was attached as an exhibit to our response.

THE COURT: I believe so. Yes, I'm looking right at it.

MR. GRIFFEN: All right. Thank you.

I want -- with the Court's indulgence, I'd ask that that be accepted as an exhibit to the case if there's no objection from the State.

MR. BARKER: No objection.

THE COURT: All right. So we'll -- what -- just so we have a clear record, what exhibit will that be? Defendant's 2. What has been marked as Defendant's 2 will be admitted. Go ahead.

MR. GRIFFEN: We're having a little technical difficulty.

THE COURT: On the break, I'm sure Mr. Griffen can make arrangements to --

MR. GRIFFEN: I can provide a copy to fulfill the -- put a sticker on it. That's fine.

THE COURT: Okay.

BY MR. GRIFFEN:

Q. So, I want to go over, just for a moment, some of your qualifications regarding the anticipated topic matter.

Um, if you could tell me a little bit about

your educational background?

A. I have a Doctorate in Clinical Psychology from California School of Professional Psychology with an emphasis in Health Psychology, um, Bachelor's in Psychology from Brigham Young University.

Q. What was your -- in your Ph.D., what was your dissertation?

A. My dissertation was on postpartum couples. I actually produced a video along with a dissertation that I wrote. Um, and --

Q. Do you have a Master's Degree, as well?

A. I have a Master's Degree in Clinical Psychology, as well, from the same school I got my Doctorate.

Q. So, from a topic matter, um, perspective, is your educational background, including your B.S. Degree, your Master's Degree and your Ph.D. Degree in an area that relates to pregnancy?

A. Yes.

Q. All right. And, um, in taking that a step further, um, in talking about your experience, could you tell us a little bit about whether you're privately employed?

A. I am in private practice, currently.

Q. All right. And what does your private practice consist of?

A. Um, counseling, psychotherapy for women and families and couples, primarily.

Q. Is there an emphasis within that --

A. Yes.

Q. -- where you spend most of your time on perinatal or postpartum issues?

A. Yes. I used to run the postpartum support group through FMC here in town and I have been emphasized -- I focus my practice on pregnancy and postpartum issues, as well as grief and loss and family and couples.

Q. We sometimes, in our motion practice, refer to this topic area as perinatal, um --

A. Yes.

Q. -- psychology.

Would you define that for me?

A. We call it perinatal mental health, perinatal psychology. That would just be understanding the workings of the brain, the emotions, behaviors during pregnancy and postpartum, which would include preconception through at least 12 months after a baby is born.

Q. All right. Now, I know that you've

written several books; is that correct?

A. Three, yes.

Q. Do any of those specifically address the issue of what you just outlined, the psychological, physiological, um, behavioral changes that developed through pregnancy?

A. Yes.

Q. All right. Now, you've also, in addition to being an author, um, you have hosted talk shows; is that correct?

A. Yes. I currently am.

Q. And tell me a little something about that. How does that go?

A. Um, the show is called Motherhood. It's on -- it was on WebTalk radio and now I'm hosting it on my own. It's online. It's like a Podcast and videos that go on YouTube. We talk about all kinds of issues related to motherhood from pregnancy through postpartum, through empty nest and beyond. So...

Q. Now, in addition to, um, handling that and writing, do you also teach, um, in any capacity?

A. I do.

Q. Tell us about that.

A. I've been teaching for many years in

different ways. I founded the Arizona Postpartum Wellness Coalition, and a big part of that has been education, providing education to families on pregnancy and postpartum, emotional, mental, physical health, as well as creating a two-day training that we've done now for 11 years here in Arizona. We've trained over 1,000 providers, mental and physical -- or medical and mental health providers here in Arizona alone, and we still get asked to re-do that training two days every year on pregnancy and postpartum emotional health and --

Q. Let me stop you --

A. Um-hm.

Q. Let me stop you right there.

THE COURT: I've got to stop both of you for a second.

THE WITNESS: Sure.

THE COURT: There's a lot of talk over.

THE WITNESS: Okay.

THE COURT: So if you could do me a favor and wait until the attorneys finish their question --

THE WITNESS: Sure.

THE COURT: -- before you respond? Just pause for a moment. That would be really helpful.

THE WITNESS: Thank you.

THE COURT: Go ahead, Mr. Griffen.

BY MR. GRIFFEN:

Q. I want to go back to the issue of your, um -- the two day, um, instruction that you provide.

Um, are you providing that to -- um, to lay people? Professionals? Be a little bit more specific.

A. That specifically is for professionals. Some lay people come who are volunteers who want to -- we have a warm line, so they might volunteer on the warm line, talking to mothers or families who are going through pregnancy and postpartum.

But, primarily, it's for medical and mental health providers of all different types, including, um, doctors, psychiatrists, counselors, nurses, um, doulas, you name it. Anybody that works with a pregnant or postpartum woman can come and benefit.

Q. And we're going to get to this in terms of the need for this type of education, but, um, essentially, are you saying that even professionals in the area that you're dealing with, um, need, um, instruction and education about the, um, consequences and effects of pregnancy?

A. Very much so.

Q. All right.

A. In fact, it's a continuing education course that we've created.

Q. All right. Now --

A. Yes.

Q. -- in addition to that, um, do you also, um, teach to or handle instruction or information to people who are going to be parents who don't understand the topic and want to know more?

A. Yes, in a variety of ways. Obviously, with my clients, I would do education in that way, doing the support group that I used to do. Sometimes I consult with the now support group that's run through North Country here in Flagstaff.

I also do consultation and education through webinars, seminars. I'm a public speaker. I speak a couple of times a month on, well, usually on this topic, but on other topics, as well, and educate anybody from -- you know, I might be a keynote presenter at a home visitors' conference or I might just be talking to a mom's group or a church group about pregnancy and postpartum. It really varies. I've done numerous presentations over the years. You can see some of them listed in my CV.

Q. All right. And we have that and I won't

go into all of that, but a lot of that touches on perinatal mood disorders, those kinds of things that you specifically have education on; is that correct?

A. Yes. I would say that's the main topic I teach and speak about.

Q. All right. I want to go back and ask you just as a general -- um, I guess a general inquiry, um, do you also testify as an expert witness?

A. I have been involved in a couple of cases but I have not had to testify yet.

Q. All right. So you've prepped for testimony, you've been nominated as an expert witness, but for one reason or another, those didn't include testimony at trial?

A. Right. As I mentioned in our interview, I have an upcoming trial that we've been working on for seven years. I've been the expert evaluator on that case, so I will be going to trial for that case, finally. Um, and then another case that I was prepped for testimony, it settled the day before I was supposed to testify. So...

And then I have been invited as an expert witness on other cases, but, honestly, I'm very busy. I have six children. I have a practice. I speak. I'm writing books, and so I often referred

those off to other people when they don't fit in my schedule and my time.

Q. I want to -- I want to raise to you a couple of questions. The State, in a pleading, filed a response to, um, this situation, indicated that you have not published any articles on the subject of perinatal pregnancy.

Do you agree or disagree?

A. I agree. I've not published any research articles.

Q. Does that mean that you don't speak, talk and teach about the topic?

A. No.

Q. All right. Do you do all of the above; is that correct?

A. I do all of the above.

Q. All right. Is publication, um, a major part of your professional diet?

A. It's not. I don't work in a university. My degree's a clinical degree. It's working with people, educating, teaching, helping, healing, that kind of thing, versus working in a school setting where you might be focused more on research.

Q. The State, in addition to saying, well, there hasn't been published articles by you, said

that you have done, quote, Zero studies on this subject.

Could you respond to that?

A. Well, that would be true if you're talking about in a lab, a clinical study, in that setting. I have not done that type of research on this topic. But, I don't know. I think there's a whole lot of research and study that goes into writing books on the topic. There's a whole lot of research and study that goes into creating programs, educational programs, continuing education courses and all of that. So...

Q. Would it be fair to say that your entire, um, collegiate, post-collegiate Ph.D. study and involvement has been on this subject?

A. I would say a -- the majority of it has been. I have taken the most continuing education courses, done the most individual research, been involved the most in every way, shape and form in this topic, although I am an expert on a couple of other topics like grief and loss and exercise and mental health and things like that.

Q. Can you distinguish the difference between being an educator, as you may be, as opposed to a researcher, a clinical researcher?

A. I would describe that as a clinical researcher is involved in research projects in -- usually in the educational system in a university or associated university or some kind of funding. And what I do as an educator is I work directly with -- I take the research that other people do, I learn it all, I compile it, I understand it, and then I try to relay it to the lay people that it might involve, um, and help, and to the professionals and providers that need the information so that they can improve their -- either their lives, their family or their practice, whatever it may be.

Q. Um, do you believe, as a person who's an educator with your, um, experience and background that you possess unique knowledge and understanding of perinatal pregnancy?

A. I do.

Q. Um, and, in that regard, do you believe that the topic of perinatal pregnancy and issues associated with pregnancy are well understood by the public?

A. No, not in a sense of what I -- what I know and what I teach, no.

Q. All right. And, um, explain that in some additional degree for the Court.

A. Well, I believe the public knows what it looks like to be pregnant. There's obviously many women that have had babies before. They know what it feels like. Their spouses or partners may know what it looks like and feels like, but that's different than understanding what's actually happening in your body and in your brain and to your emotions and to your behavior.

I find that not only do women who've been through this, women who've already, you know, had several babies and are older, or women who are just starting out having babies, young women, do not understand how hormones impact their brain, do not understand how their brain impacts their emotions, their psychology, these kinds of things. And those -- that's one specific area that I think, um, really most women don't understand and were never taught, and I know that because when I go and teach them, they always say, why was I never taught this.

And this -- the lay people, but also providers and professionals. And I've seen, over the years, just too many tragic consequences happen, because a doctor, a psychiatrist, a psychologist, whoever it may be, doesn't understand one side of the coin. So you might have a physician who -- like an

obstetrician, who really understands the physiology of pregnancy and postpartum, but if they don't also understand the emotional, psychological, cognitive changes and impact of those physiological changes, which many don't because it's sort of considered outside of their realm of expertise, some say -- um, I would argue against that -- then you're going to have problems.

So we have women who get misdiagnosed with, um, mental health concerns like psychosis when really, they had something like obsessive compulsive disorder, which isn't a psychotic disorder, their baby's taken away, they're put into a hospital for a month and put on antipsychotics when that isn't even what was happening.

And then, on the flip side, we have, you know, mental health providers who don't understand the physiology and they don't take the time -- I feel lucky because I did an internship in neuropsychology so I understand the brain very well. And, also, I have done personal studies, research and courses on hormones and physiological processes because of my degree in health psychology.

So most mental health providers don't have that kind of training. So you find this kind of with

providers, this kind of, it's not my realm; it's their realm. The mental health is their realm and the physical health is their realm and so you get this split. So I've seen that over and over and that's -- what we do as a coalition is try to educate providers and help them to see that we need both sides of the coin.

Q. Do you think you're qualified to educate a jury in this case regarding the unique effects of late-term pregnancy on an individual's behavior, perceptions, reactions, those kinds of things?

A. Absolutely, that's what I do.

Q. All right.

A. Yeah.

Q. Now I want to bring up one other comment by counsel and that's a quote, and it reads, There's no difference between this witness's qualifications to testify on this subject and someone who has read a couple of articles on the subject, end quote.

Um, how many years have you spent studying this topic?

A. I mean, technically 20, but 15, professionally.

Q. All right. And, um, do you think that that's a fair representation of your skill and

qualifications in this area?

A. No.

Q. All right. And when -- when we're trying to minimize your experience, um, are you aware of anyone that's any better situated, um, with knowledge about perinatal pregnancy and those kinds of issues than yourself?

A. No.

Q. All right.

MR. GRIFFEN: So, I want to go on to, um, a little bit of discussion, and I'd also ask the Court to accept, if counsel agrees, um, that her interview could be accepted by this Court, um, as Exhibit 3. Um, it's been submitted in connection with the materials in the State's reply, um, and I'll provide a separate copy of that to the Court.

MR. BARKER: No objection. Thank you.

THE COURT: All right. A copy of this witness's witness interview which would be marked as Defendant's 3 is admitted. A copy will be provided to the clerk by defense counsel.

MR. GRIFFEN: All right. In -- um, and I know the Court always prepares coming into this, but I'd like to take a moment to summarize some of the comments that are in that interview, um, just to

keep them fresh.

BY MR. GRIFFEN:

Q. Um, in that -- um, in that interview, you made clear that as an expert witness, you can educate the jury and the Court on what it's like to be in late-stage pregnancy; is that correct?

A. Yes.

Q. All right. And does that include physiologically?

A. Yes.

Q. All right. Does that include psychologically?

A. Yes.

Q. Chemically?

A. Yes.

Q. Neurologically?

A. Yes.

Q. Behaviorally?

A. Yes.

Q. All right. And are all of those things that you think are important for a person to appreciate about someone in a late-stage pregnancy?

A. Yes, I do.

Q. All right. And is it a specifically important area when we're talking about someone who

has undergone a stressful event who may have been nine-months pregnant to relay all of those considerations to the way that a person would deal with that?

A. Yes.

Q. If I said to you, um, do sometimes people simply ignore or take for granted someone's pregnancy without really appreciating how it can affect someone, is that a common perception or common reaction?

A. I believe it is.

Q. If I said to you this morning that we just did a full, um, voluntariness hearing about Ms. Jacobson giving statements to law enforcement over a period of approximately eight hours --

MR. BARKER: I'm sorry. Is this a cold expert, Judge? Are we going to give her facts of the case, now?

THE COURT: So what's the objection?

MR. BARKER: I'm just asking for clarification from counsel on that.

MR. GRIFFEN: If I finish the question, I think it will become clear.

THE COURT: Go ahead. Finish your questions.

BY MR. GRIFFEN:

Q. So we just did a full review of a situation that took approximately eight hours of questioning of someone, um, they're nine-months pregnant and not one word was ever said about the effects of pregnancy during an eight-hour situation like that.

Do you think that's representative, sometimes, of misunderstandings that people have?

A. I do.

Q. All right. Now, I want to go through and outline just for a moment -- you indicated in your interview, um, in addition to some of your qualifications that we've already reviewed, that, um, there were physiological changes, and I'm going to skip over those for a minute, because I think they can be very well digested by the Court.

I want to get to your summary, just for a moment, of some of the psychological changes, um, that involve hormone, um, situations.

All right?

A. Um-hm, yes.

Q. Can you, just generally, what's a hormone? What does it do? How does it affect someone?

A. It's a chemical that's released by the

limbic area of the brain that -- well, direct -- to put it sort of simply, it directly impacts the brain chemistry. It can change the way that the brain neurotransmitters fire or don't fire, which can then directly impact emotions. It also has -- it can impact physiological changes. I mean, depending on which kind of hormone we're talking about, it has different kinds of, um -- um, purposes --

Q. All right.

A. -- that might change the body or the brain or the mind or the emotions.

Q. When you talk about the dynamics of perinatal pregnancy, um, are there increases in hormonal situation as the pregnancy goes on?

A. Yes.

Q. And can you represent to the Court, just generally, um, the type of change from, um, the beginning of a pregnancy to what the situation is, what the level of hormone is, um, in late-stage, say nine-month situation?

A. Generally, we say that hormones are about 20 to 30 times greater right before birth than they are any other time in a woman's life. Then they plummet dramatically, go down below normal, and then it takes time to get back to normal and that

obviously has to do with whether they're breast-feeding and all kinds of other issues. But, in general, that's what I would say.

Q. Can you just generally explain how hormones affect brain chemistry and the relationship of stress to that equation?

A. Yes. So there are different types of hormones.

Would you like me to just pick one and explain --

Q. Just generally. I just want you to talk generally and then I'll have you review maybe the top five.

A. Okay. So, in general, different hormones are going to affect the brain in different ways. But, in general, what happens is that the hormones, like estrogen, let's say, that would be a precursor to the neurotransmitters of the brain.

So, what happens is, when there is a shift in a -- or a change in the level of a hormone, that directly changes the level of a neurotransmitter in the brain. And the neurotransmitters are the chemicals of the brain that make us feel well. Or when they're not there in the right degree, that can lead to mental illness, depression, stress, these

kinds of things.

So, in general, there is this direct link between the level or the change in hormones and the change in brain chemistry which then, obviously, can affect a woman's psychological, cognitive, emotional, behavioral, um, experience.

Q. Right. Now -- and that's especially so in the late third trimester; is that right?

A. Yes, because the hormone levels are the highest then.

Q. All right. Now, I want you to just quickly outline for me, um, some of the, um, chemical, um, developments, um, the hormonal developments in late-stage pregnancy.

And let's start with -- you said estrogen?

A. Right.

Q. What -- what's going on with estrogen in a pregnant person at nine months?

A. Estrogen is steadily increasing throughout pregnancy. It's at its highest peak right before birth. It is -- do you mind if I turn to my notes or do you just care --

MR. GRIFFEN: It's up to the Court. If you need them to refresh your testimony, that's fine.

THE WITNESS: I don't know. I just want to make sure that I say the most important part.

MR. BARKER: I have no objection.

THE WITNESS: Is that okay? Okay.

So, estrogen's job is to maintain healthy firing rates of neurotransmitters. So when you have a higher estrogen, it's actually kind of the feel-good hormone in most women, but some women are sensitive to the shifts in the hormones.

So, for instance in pregnancy, during the menstrual cycle in perimenopausal, some women are sensitive to when a hormone level might fall or rise again, which happens, in pregnancy -- it can kind of -- estrogen sort of steadily rises. It can dip. It can kind of come up and then it will be at its highest point near the end.

But in general, estrogen is directly linked to serotonin, and these neurotransmitters of the brain that make you feel well -- and its job is to keep those healthy firing rates of those neurotransmitters, meaning that you don't have dips in those chemicals that will then make you have these kinds of emotional psychological symptoms.

Then you have progesterone, which is sort of the antiestrogen. Its job is actually to

dismantle the estrogen receptor sites. So it goes around kind of breaking down what estrogen has done. It can change the level of estrogen. And progesterone tends to rise in pregnancy, as well, and be at its highest level, um, at the end of pregnancy, right before child birth. Its job is basically to dismantle nerve connections that estrogen is making.

And then we have, um, cortisol, which is the stress hormone. I mean, there's several different stress hormones. I only talk about cortisol because they all kind of do a similar thing. But cortisol levels also rise -- at the beginning of the first trimesters, cortisol levels actually double in a pregnant woman. And then if we look at the third trimester, those cortisol levels are three times greater than normal.

And we know that cortisol is a stress hormone. It's great for a short time because it helps us to get ready to fight or flight if we're faced with a bear or something. But when we have that prolonged exposure to cortisol, it leads to -- it can lead to emotional distress, physical symptoms and -- and the like, which obviously can happen in pregnancy.

In fact, cortisol has been considered a

naturally-induced state of what we call HPA axis dysregulation, and that's a fancy term for what happens when we're stressed, is this part of our brain called the HPA axis gets dysregulated. And cortisol is primarily responsible for that.

So you have high levels of cortisol and that would mean that a woman is feeling under stress even -- no matter what's going on in the outside, but when you add in environmental factors, that can feel even greater.

Then you have prolactin, which is just basically responsible for, um, you know, the changes in a body that gets a woman ready to breast-feed and lactation, but it's also been associated in other stages of women's life because -- I made this point in the interview the other day -- it's tough to measure these hormones in general, because it's more about the shift in the hormone.

You can have two women with the exact same levels of a hormone, but for one woman, that level is low for her and for the other one, it's high. So it's hard to measure and to say exactly this woman has this hormonal problem or this. It's more about the sensitivity to these shifts and changes.

So, with prolactin, in other times, they've

shown that prolactin changes are associated with ignorant irritability and those kinds of emotional symptoms.

Then you have, finally, oxytocin, which is at its highest point in women, in their whole life, it will be at its highest point during right before childbirth and, also, they tend to stay higher in women who breast-feed and during lactation.

And from the first to third trimester, um, that oxytocin tends to just kind of gradually keep rising and then will be at its highest right before birth. Oxytocin does a number of things. It prepares your body for labor and delivery. It actually is what gets you ready to give birth and also promotes bonding and attachment. It's the chemical that is responsible for mother love, as you might call it.

Um, it's also been shown to ease stress. And, in women who have higher levels of oxytocin in general, um, some feel that, um, that ability to feel less stress because of it, which can also relate back to the maternal bonding instinct.

And it's also been shown to be part of a protective instinct of a woman in pregnancy and postpartum. Um, and, yeah, I think that about sums it up.

Q. I want to talk about -- you phrased it as the protective instinct, for a moment.

A. Yes.

Q. Does that include, um, the fight/flight/defend, all of those kinds of things that we would commonly think of when we think of when we talk about defensive?

A. Right. Yes.

Q. And can you talk about, again, is it oxytocin and cortisol that both touch on -- or add to that equation?

A. To that equation, as far as feeling the need to protect?

Q. Correct.

A. I would say, yes. Obviously, you have to have -- cortisol would make you feel more stressed, in general. Some pregnancy, there's greater stress levels and that would obviously be increased depending on what's going on in the environment and what's happening in her life, as well.

But then you have oxytocin levels which are going to make you feel like you want to protect yourself, obviously the fetus, and yourself carrying the fetus in pregnancy, and then beyond. Um, it's also been shown to be kind of linked to that

maternal instinct to want to protect your baby once the baby is born.

Q. All right. Now, you mentioned in your interview, um, the concept of defensive aggression.

Do you recall that?

A. Yes, I do.

Q. Can you clarify a little bit for us as to how either oxytocin or cortisol, um, contribute to the concept of defensive aggression?

A. Right. That was, um, one term that I, um, took from one particular study which was actually on men in oxytocin which is interesting, and showing that higher levels of oxytocin, um, in that study were linked with what they called, um, defensive aggression toward competing outgroups. And, so, you know, again, we kind of take that -- well, they also -- let me back up a second. Sorry.

They also, um, use the term tend and defend. And I've heard of tend and befriend when it comes to this oxytocin, but tend and defend is a good way to put it. That's kind of technically what oxytocin does at high levels. And if you can see that in a man, where he's never going to have as high a level of oxytocin as a woman will in pregnancy, especially right before childbirth, then, um, the same would

apply to a woman, especially with that protective instinct and the bonding and the maternal, um, connection with her fetus or baby.

Q. So -- thank you.

A. Yes.

Q. Let me clarify a couple of additional points.

So, um, these hormones in late-stage pregnancy can affect, um, cognition and behavior; is that fair?

A. Yes.

Q. All right. So when I say cognition, what does that mean to you?

A. That means -- thinking mental state. Sometimes, um, kind of how you're thinking, how -- and then, to me, I think cognition focuses mostly on your thought process and then you have your emotional separate.

Q. So it could include perception?

A. Perception, yes. Sorry. Memory. Let me just expand. Cognitive meaning thinking, meaning, um, judgment, incite, memory. Um, frontal lobe thinking is all about executive functioning. It's about planning. It's about understanding your world, organizing things. So there's lots of

different ways when we're talking about cognition, it could mean a lot of different things.

Q. So -- and, again, the hormone changes can affect the cognitive process?

A. Yes.

Q. All right. And that it can include all of the behaviors that you just indicated?

A. It could, yes.

Q. Okay. And, generally, um, could you, in that state of late-term pregnancy, with those hormonal effects and on the cognition, could a person feel an elevated sense of threat?

A. Yes.

Q. Can a person feel an elevated sense of need to defend?

A. Yes.

Q. Could they feel more protective than perhaps, um, somebody who's not pregnant at the ninth month?

A. Yes.

Q. Can you distinguish the difference between um -- um, the effects of pregnancy on cognition and distinguish that from diminished capacity, meaning some sort of mental defect?

A. Right. To me, they're not the same thing.

What I'm talking about is just describing in general what, um, hormones or changes in the brain chemistry because of hormones or physiological changes might do to influence or change your cognition, your emotions, your behavior, versus making a statement like diminished capacity or something like that, to me, involves having to evaluate somebody to understand if they have mental illness going on. To me, that's a whole different -- that's me evaluating somebody, doing some kind of psychological evaluation or assessment which this, to me, what I'm talking about, here is education.

Q. You were asked about -- in your interview, you were asked about the concept of a pregnant woman being considered hypervigilant.

A. Um-hm.

Q. Do you recall that?

A. Yes.

Q. Could you explain whether you agree or disagree whether that's an application?

A. That is definitely part of being pregnant, for most women, is feeling hypervigilant, being, um, on guard, sort of watching for threats and feeling maybe more ramped up, especially with those cortisol levels.

You'll find pretty much anybody that has high levels of cortisol will be hypervigilant. They'll have a -- more of a startle response, maybe, um, little bit higher blood pressure, these kinds of things.

Q. Does pregnancy have an affect on fear and worry?

A. It certainly can for some women, yes.

Q. How is that?

A. Well, in general, in the beginning stages of pregnancy, most of the fear and worry has to do with just ensuring that this baby is going to live.

So, fear of miscarriage, fear of what I'm eating, in order to make sure that my body is healthy enough to ensure that my child will survive. During second trimester, those fears and worries tend to kind of diminish a little bit more, although you might start thinking more about preparing for when the baby comes, what kind of parent am I going to be, these kinds of things might creep in.

But second trimester is generally known as kind of the more emotionally, um -- I don't know... You'll feel more emotionally well during the second trimester than you would at the first or the third.

And then at the third trimester, those fears

and worries tend to focus on things like, will we be able to handle this. Is my partner going to be really there for me? How are we going to do our -- you know, divvy up our roles and responsibilities? Um, am I going to be able to be a good parent? And then, obviously, the fear and worry about the actual labor and delivery process and the pain of that, and will the baby survive, and those kinds of threats, as well.

Q. All right. Um, including externals threats?

A. Absolutely. If there are external threats coming in, then that would influence, obviously, the psychology of what the woman might be worried or fearing.

Q. The -- if I had, um, two women subjected to a dangerous situation, one of them being nine-months pregnant, one of them not being pregnant at all, nothing else different, um, what is the concern about a nine month pregnant woman versus, um, a nonpregnant woman, from your perspective?

A. I'd say one of the main concerns is that she is already under incredible duress, stress, and those things are already going to be in -- in whatever way it is for her individually, because I'm

not saying that it's exactly the same for every pregnant woman -- but at nine-months pregnant, you are in a different state then you would be completely not pregnant. And if you look on the life stress chart, having a baby is up there in the top, top five, I believe. And -- that's how stressful it is.

So when you're living under that kind of stress, you're not sleeping. We didn't even talk about sleep. You know, you're not getting enough sleep. Your body's not feeling well. Your mind is feeling confused or maybe, um, burdened with all of these cares and worries and fears. Then, to me, I think there's a big difference that could be occurring in those -- in that situation.

Q. And one final area, just to summarize, um, we've proposed you and promoted you as a cold expert.

Um, can you understand or describe what that means to you?

A. Yes. I believe it means that I don't know any facts about the case other than a little bit about, this is a murder trial, that the woman was 40. She gave birth shortly after, um, the incident occurred and that's about it.

Q. You've never met this lady before?
A. No. In fact, I wasn't even sure if that was who that was. I assumed.
Q. All right. You never studied any materials in connection with her case?
A. Never heard of it until you called me.
Q. All right. And haven't since. Correct?
A. Haven't since. You haven't showed me any paperwork or anything from the case, so...
MR. GRIFFEN: All right. I have no further questions. Thank you.
THE COURT: Mr. Barker?
MR. BARKER: Thank you.

CROSS-EXAMINATION BY ATTORNEY BARKER

Q. Doctor, um, good to see you again.
A. Good to see you.
Q. Um, are you aware of who the defendant is alleged to have killed?
A. No.
Q. Are you --
A. I mean, do you mean name or just in general?
Q. Just in general.
A. Either a partner or spouse.
Q. Okay. That was made known to you at some

point?

A. That's -- yes, I know that.

Q. Okay. Are you aware what the defense is alleging as their defense?

A. I do not know fully what that is. I know there may have been involved some domestic violence. That's about all I know.

Q. Okay. So that was made known to you, as well?

A. Yes.

Q. All right. You talked about this study on defensive aggression.

That was -- involved a study with men only?

A. That specific study, yes, and --

Q. Okay. Are you aware of any study on defensive aggression with women?

A. There are plenty of studies about oxytocin and I don't -- I can't say that that specific term would be used in another study, but, um, I took it from that study because I thought the term was easy to understand and sort of -- I -- I thought it was a good term to use. But there are many other studies on the benefit -- or the effects of oxytocin, as far as protectiveness in women, as a whole.

Q. Oxytocin, isn't it also a feel-good

chemical?

A. Yeah.

Q. A hormone?

A. It can be.

Q. Okay. Do you agree that women, in general, have different hormones or hormone levels than men?

A. Yes.

Q. Do you believe that expert testimony would be required to explain the difference between women and men, generally?

A. I guess it depends on what you're talking about, but probably not. I mean, most of us know the difference between a woman and a man. Depends on what you're talking about, though.

Q. Would most of us know the difference between a pregnant woman and a nonpregnant woman?

A. In general, yes. If you're talking about seeing one and knowing what they are, yes.

Q. Okay. I mean, would you agree that most of us, if not all of us, have had -- either been pregnant or been exposed to a pregnant woman in their lifetime?

A. Yes.

Q. And would most of us be able to recognize

the physical changes in a pregnant woman, especially at late stage?

A. I think the outward physical changes, yes.

Q. Okay. And recognize different behaviors in a pregnant woman?

A. Yes. Some of those, that's why we have some of the myths of pregnancy that I discussed in our interview.

Q. Okay. And those -- let me talk about those myths a little bit because the myths -- well, could you outline what myths you believe there are out there floating around?

A. Well, there are many.

Um, you know, that a pregnant woman is crazy, that she's hormonal, that she's, um, I don't know, moody, these kinds of things. And I say myths because, really, it's that they are true, but there are reasons why they're true. So the myth is that they're just crazy when, in fact, there's all of these physiological, psychological processes going on that contribute to that. So that's what I believe.

I believe people understand that picture of a pregnant woman, but very few people really understand what's going on in the body and the

brain.

Q. Okay. But the behaviors you described are things that most of us would be, um, familiar with?

A. I would think, yes, as far as those go, yes.

Q. If I can just clarify...

So the myth you're talking about is that they just happen, but there's actually a chemical or a hormonal activity under the surface.

That's what you're speaking to; is that correct?

A. Yes. I think that's fair to say.

Q. Okay. You agree that a pregnant woman can have a wide range of physiological effects?

A. Yes.

Q. Okay. And decision-making ability can vary from person to person?

A. Yes.

Q. Moods will vary on the person?

A. Yes.

Q. The mental affects of a pregnancy will change person to person?

A. Yep.

Q. Is there any real way to say all pregnant women are going to experience this type of mood or

this type of mental affect or this cognition issue?

A. No. We can only say, in general, this is what most women might experience.

Q. Okay. What are all of the hormones that, if you can name them off, that affect pregnancy that you -- that you were speaking to?

A. The five -- the five main hormones I've been speaking to are estrogen, progesterone. Um, prolactin, I just kind of threw in there. That's not as big as oxytocin and cortisol.

Q. Do they affect everyone the same?

A. No.

Q. Do the levels increase the same?

A. No. They increase. But the actual amount wouldn't be exactly the same in -- from woman to woman, if that's what you're asking.

Q. Yes.

If you were to testify in this case, would you feel comfortable testifying without referring to your notes?

A. Yes, because I would be ready to go.

Q. Okay. Um, explain to me how your testimony would aid the jury to understand what happened in this case.

A. How will it aid the jury to understand?

Q. Yeah.

A. Um, as far as I understand, I'm here to educate the jury just on what it's like to be nine-months pregnant, and I do believe that that is a circumstance or a situation that's unique. And I also 100 percent believe that the average person doesn't understand a lot of these things that I've been talking about: The brain, hormones, how these things affect a mental/emotional health. As I said, if actual providers who have gone to medical school don't understand some of these things, then I think it would be tough to find a jury that really understood what it's like to be nine-months pregnant, on that level.

Q. Okay. Except women that have been pregnant full terms?

A. Not necessarily, no. That's what I meant when I said earlier that a lot of what I do is educate women on their own bodies and brains and why it is and how it is happening the way it's happening and what's causing them to feel the way they feel or what's causing them to have the changes that they're having, so...

Q. And let me make a distinction.

A. Right.

Q. They would experience those behaviors or those moods.

Right?

A. Who?

Q. The pregnant women, full-term, late-stage pregnant women?

A. They would experience whatever their experience is, yes.

Q. So what you're talking about is more specifically hormonal changes, mood shifts, that they might not understand themselves, but they are experiencing.

Correct?

A. Yes.

Q. So those women on the jury that have had that experience would already know what the behaviors are that you're speaking to; is that correct?

A. I don't -- I wouldn't exactly say that, because they would know for themselves. But, in general, they would not know. So you could have a woman who -- some women are completely -- they -- they go into pregnancy with mental illness and they get pregnant and they're better mentally than they ever have been psychologically, emotionally, and

then they have a baby and they're worse than they ever have been. So, you just have a wide range of that.

So you might have someone who had that experience and she would think that it's a whole different scenario than someone who, let's say, had something like mental illness and pregnancy.

Q. So I guess my question is: If it's such a wide-ranging thing, how would testimony about wide-ranging things that really can't -- can vary from person to person help in this case where we're speaking about one individual?

A. Because I think it's just in general saying, this is what's going on in a woman's body and could be going on in her brain. These hormonal changes tend to do this. It's sort of just sharing the research that is out there and saying, this is what a nine-month pregnant person might be going through.

I do think it's relevant that the stress and the duress and the incredible change that you're going through at the stage of pregnancy, so that's -- I believe it's relevant that way.

Q. So if the person -- the defendant in this case, got up and said, I was pregnant and I felt

these things, um, wouldn't that do the same thing as your testimony would be doing?

A. No. Because she wouldn't be able to explain why she felt that way, what was really happening, what was going on in her body.

Most women do not understand. They know what they feel. They know what they experience, but again, that's only our experience. It's not -- it's like saying you have cancer and we all know what cancer is, but you don't understand your type of cancer, what's really going on with the physiological process of that, you know, that kind of thing.

Or it's like saying, we all know what getting old is like, but do we really understand cognitive decline and what's happening in the brain and what happens in the body and what happens emotionally? Most of us probably don't, unless we've been educated on that.

Q. But everyone would understand that experience that's gone through it.

Correct?

A. They would understand that experience as far as they have experienced it.

Q. Okay. So, let's go back again.

So, is it -- does it vary so widely that, um, that your experience or your expertise would aid the jury in understanding what this particular person would do or behave -- or how they would behave?

A. I'm not saying that it varies so widely. What I'm saying is, I'm trying to present, this is kind of the norm. This is sort of what, in general, a nine-month pregnant woman might be like, and then it can vary according to individual, according to circumstances, according to stressors and pre-history, sensitivity issues and hormones, those kinds of things. So those are the factors that can make it vary.

But, in general, this is -- you know, I'm talking about, like, the norm. If we're talking about a bell curve, we can have people on either side of that bell curve, but I'm talking about the bell curve right in the middle.

Q. Perfect. So we're talking about bell curve. I understand that concept.

So, um, you would agree then that if we had 100 people in here, 50 of them have been pregnant, late-stage pregnancy, full-term, that a majority of them would understand these things already, having experienced them themselves?

A. They would understand the experience and maybe some of the behaviors and maybe some of the feelings, but they still would not know about the brain chemistry, the hormones, underlying processes that go on.

Q. Right. And let's go to that. So, I mean, all of us understand what it means to either be a man or a woman. Maybe we don't understand all of the chemical differences, right, but we understand the experience; isn't that fair?

A. We understand our experience, yes.

Q. And there is a bell curve in that regard, as well.

Right?

A. Yes.

Q. Okay. How many articles have you relied on to give your testimony today and, um, during the interview we did with you?

A. I can't say. I did look up a few, but most of my education is from courses and continuing education and advanced courses on this topic. So, um, I looked up a few articles just to kind of refresh my memory in certain areas, but I would say a dozen or so that I looked up just specifically, recently.

Q. Okay. Um, what -- you mentioned being an expert witness in a case that was lasting seven years?

A. Yes.

Q. What is that case about?

A. This is a woman who was sentenced to 40 years in prison for four counts of child abuse and was never evaluated for mental health concerns. And so they pulled me in -- she had already been serving 13 years when I was pulled in to kind of evaluate what had happened, based on the records and interviews and testimony and things like that, and, um, discovered that she most likely had postpartum psychosis. And there's new research out, so that's why they're having a new trial now, finally, to try to help her -- help her out.

Q. Okay. And you're being asked to testify for the defense in that case?

A. Yes.

Q. And so the topic area would be postpartum depression or psychosis?

A. Right.

Q. You talked about your dissertation. It was on postpartum issues; is that right?

A. Yes.

Q. Okay. Books you've written.

There are three, if I understand correctly?

A. Right.

Q. And, um, what specifically about perinatal, um, issues are in those books?

A. Like I said before, my -- um, my first book is a memoir, so that's more of a personal experience. I had just given birth and I was writing about the time after, what it was like, so that's more personal experience with some education in there on pregnancy and postpartum, because I kind of go back and forth between sort of like a self-help book and a personal experience.

But my second book has nothing to do with it.

My third book that was just released, Eight Keys to Mental Health Through Exercise, there is a segment in there on pregnancy and postpartum, um, mental health, and then there's also a component in there about the hormone, brain, life experience connection, so how those three things combine to create our emotional health.

And, again, to me, that's one of the things that most people do not understand that's been one of the most helpful things for people to learn about their emotional wellbeing. So that's in the book,

too.

MR. BARKER: May I have a moment, Judge?

THE COURT: You may.

MR. BARKER: That's all I have.

Thank you, Judge.

THE COURT: Mr. Griffen?

MR. GRIFFEN: I have no follow-up. Thank you.

THE COURT: May this witness be excused?

MR. GRIFFEN: Please.

THE COURT: You may be excused, ma'am.

THE WITNESS: Thank you.

(The witness was excused.)

THE COURT: Any further witnesses?

MR. GRIFFEN: I have no further witnesses on this motion. Thank you.

THE COURT: All right. So are we ready to argue it?

MR. GRIFFEN: We are.

THE COURT: Go ahead.

MR. GRIFFEN: Judge, I want to dwell first on -- focus first on, um, because it's fresh, on the issue of perinatal psychology and, um, Ms. Hibbert. Just fortunate that, um, Dr. Hibbert resides in Flagstaff and is such a great resource for this

topic and is available to provide this insight to the jury.

Um, there are two major legs, um, that -- involved in this case: One is the issue of pregnancy. It's a huge issue because the representation by Ms. Jacobson is that she was struck in the abdomen, in addition to being verbally threatened at the time that she reacted and defended herself and her fetus and shot, um, the deceased. That's a huge issue.

The second issue that's been brought up by the State is that, because she was in late-stage pregnancy, um, Mr. -- um, Mr. Marvin James, the deceased, was concerned there could be, um, issues that would relate to his having to stay or leave the relationship. That's another huge situation.

There will be testimony as to all of those factors that are going to come before the jury. There will be a need, as you can appreciate, given those two fundamental situations: Her pregnancy and the second being domestic violence. Those are going to be major components of the trial about which the jury is going to be tested, innodated and, ultimately, having to decide the case in -- including those significant factors. Um, the two

issues before you concern the domestic violence expert and the perinatal expert.

I want to talk just first about Ms. Hibbert. If the State is contending that she's not qualified, um, there is no one, as she indicated, that has more experience educating anyone, whether it be professionals or lay people from seminars to Webinars to any process than she is. She is, um, an expert absolutely, um, about the issue of perinatal pregnancy, as well as postpartum issues. She's a pregnancy expert. She educates about pregnancy.

She has training, Ph.D., 20 years, 15 specifically in dealing with this topic. She lectures on it, she speaks on it, she lives it. That's what she does. She practices that. She has unique knowledge about the effect of pregnancy when it comes to stress, reaction, appreciation, perception, defensiveness. Um, all of those factors are things that she understands and can relate.

And so her expertise is unparallel. The issue, then -- the second issue would be in addition to her expertise as an educator. She's not a clinician. She doesn't do that kind of research. She doesn't write that kind of paper. She is, as

you've heard, an educator in the field.

What better person to educate the jury than an educator about pregnancy? The question then becomes, why do we need that? We need that, as she repeatedly explained, because we don't understand it. We see pregnant people and make assumptions that things are going on but we don't understand them. In this case, it's not enough just to know that Susan Jacobson was nine-months pregnant and gave birth two days later, um, to a child. That's not enough to know. It's important for the jury to know the experience, the hormonal effects and the entire affect on her cognition, behavior, perceptions, that are caused by pregnancy.

The State would say, well, half the population knows that if they've had the children. Well, the answer to that is, no. That's not true. They don't understand the underpinnings and circumstances, specifically, that -- that explain the process and explain the difference that exists.

The difference is she said between a pregnant person at nine months and a nonpregnant female is night and day. And she can educate you as to the differences and she can put it in lay terms as well as scientific terms. The point is that it's

not correct to say that 50 percent because they're female, understand this. They don't understand it. She can make it understandable to everyone.

She's, in part, necessary to level the playing field because men don't have that information. They don't have that perception sensation. They've never been pregnant. They may have been associated with a female that was pregnant, but they don't have broad-based experience about that. So she can equalize all of that.

There will be a need in voir dire to carefully examine jurors as to their perceptions about pregnancy, effective pregnancy, concerns about pregnancy, um, myths about pregnancy. That is a topic that she is a perfect person from both sides to explain the situation and put everyone on a level playing field.

So, is she qualified? She's extremely qualified. Now, is it an area that will help the jury understand the fact or, um, an issue of the case? Absolutely. You cannot deal with this case without absolutely confronting the issue and the effects of pregnancy. It's a -- it's just absolutely front and center to the case. She's entitled to present, Ms. Jacobson, her case, her

theories of the case and to try to analyze this case without expert testimony as to the affects of pregnancy and the circumstances connected with pregnancy would be to -- um, to undo the due process necessary for her presentation.

So we submit that, um, Dr. Hibbert is extremely qualified, extremely confident on the area and that it's an area that is necessary to present it to the jury to have full appreciation, not just as to perceptions and the need for defense and, um, where, you know, defensive aggression, and those kinds of considerations, though they be very relevant, but to explain all of the hormonal affects and how they're involuntary and they're not something that can be controlled and they are a fact of the person that we're dealing with that has to be appreciated.

So for all of those reasons, we submit that, um, Dr. Hibbert is necessary to educate the jury about that.

Now, the topics which -- to Dr. Geffner -- and, again, I would offer Dr. Geffner's resume. We'll mark it and present it during the break, and also Dr. Geffner's interview, which has been submitted in connection with the State's pleading,

I'll mark both of those.

Is that acceptable to counsel?

MR. BARKER: Yes. No objection. Thank you.

MR. GRIFFEN: Judge, I would offer those and mark those if that's acceptable?

THE COURT: Um, all right. So, you don't have the exhibit right at the moment, so it will be marked, I believe, as Defendant's 4.

So, um, no objection to those being admitted and considered by the Court?

MR. BARKER: No objection.

THE COURT: What, um, defense counsel has offered, that will be marked over the break as Defendant's Exhibit Number 4 is admitted.

Go ahead.

MR. GRIFFEN: Regarding Dr. Geffner, Dr. Geffner's questions, qualifications, credentials are unparalleled. He is, um, you know, well-known regionally and nationally in the area of domestic violence. Um, in his resume, you will see, um, I mean, it just goes on forever, his qualifications in this field. That's his entire life's work is in the area of intimate partner violence and domestic violence and those considerations.

The State doesn't raise any question about his qualifications. The State raises concerns in its pleading that while he may -- he may indeed be admissible, there are areas that could be sensitive and should be more carefully screened by the Court.

Um, as a backdrop, I just want to remind the Court that in the -- in a case of domestic violence, if we establish that there has been domestic violence, A.R.S. 13-415 comes into play. You know that statute. You know that that statute requires that the jury examine the case from a reasonable person who's been the subject of domestic violence. It's clearly admissible. It is clearly coming in.

Her experience and her domestic violence, um, mandated by the Vogel case, that it is admissible and so that information is going to come in. And then the question is, um, of what importance is that and can -- what assistance can an expert provide in making that understandable?

Um, and in this situation, again, as a cold witness, Dr. Geffner can explain the process of domestic violence, intimate partner violence and make it understandable to the jury as to all aspects of that and how it affects a person's perception,

um, the cycle that's involved, all of those considerations.

Um, the State only indicates its concern that, although Dr. Geffner would be qualified, they indicate a concern that, again, as a cold witness, that -- um, that the jury may believe that somehow, this is a diminished capacity situation.

Um, Dr. Hibbert already explained that it's not a diminished capacity issue. Dr. Geffner explained that it's not a diminished capacity issue. The State's raising concerns under Lindsay that somehow this could be vouching. It's not vouching any more than using someone in a -- in a child abuse accommodation or in child abuse scenarios is vouching. Vouching is impermissible. It doesn't prevent, um, expert testimony to assist the jury in understanding the topic matter of domestic violence.

And so the State again indicates that, um, its concern that the PTSD component of understanding and explaining domestic violence can somehow be a substitute impermissibly for Battered Women Syndrome. We don't offer it for that. We're not doing it for that. The fact of the matter is that chronic domestic violence frequently results in PTSD. It's an inescapable part of the understanding

of the process and it's material, again, in the Vogel case, diagnosis of PTSD, which is something we'll argue about later on, was permissibly given to the jury, so we'll deal with that.

But for all of those reasons, we would submit that as to both experts on these two topics, that this case cannot be tried in a vacuum, that understanding domestic violence and the consequences of it, domestic violence, are fundamental to due process.

Understanding pregnancy and the effect of pregnancy at nine months; and we're not talking just barely nine months. We're talking nine months and ready to bust -- are huge topics that must be given to the jury to educate them about the circumstances of the case. Both experts are imminently qualified to do that.

Thank you.

THE COURT: Thank you, Mr. Griffen.

Mr. Barker?

MR. BARKER: Thank you, Judge. I'll address the domestic violence issue first because I think this is the simpler issue.

The State certainly does not, um, contest that Dr. Geffner's not qualified. Um, we believe he

is qualified to testify about these matters in a general sense. I understand that he will be a cold expert in this case to talk generally about domestic violence issues.

The issue or the concern the State has is if he were to go into statistics, um, about how often it is that victims may lie or tell the truth or that they're more likely to tell the truth. This is the type of stuff that Lindsay talks about, um, when it says to give opinions with respect to the accuracy, reliability or truthfulness of witnesses of the type under consideration is prohibited. So, that's the only concern. As long as we're staying away from that type of testimony, I don't think we'll have a problem with Dr. Geffner testifying in this case.

And so the State does not oppose, um, his testimony at this time having -- and I should just clarify, Judge, at the time of our motion, we had not been able to interview him and we didn't have any information from the defense exactly about what he would be testifying to. So, we feel fairly comfortable that he would be, um, an okay expert witness in this case for the reasons the defense is talking about today.

Now, the issue of Dr. Hibbert's testimony in this case, we do have problems with, and let me just talk about some of those.

First, um, I'll let the Court decide if she's qualified or not. Um, the State's position is that she's not qualified to testify about this specific area of perinatal, um, pregnancy. Um, specifically, she has not testified in a criminal case before and I think that is interesting because, certainly, um, if -- if this had come up before, there might have been some case law about it, there might have been some kind of statute or something about it.

The DV statute is pretty clear, 415, referenced by defense that is an issue in this case. There is no case law. There's no statute that says pregnancy somehow -- um, something we need to talk about in a criminal case, um, where the defendant is alleged to have committed an act of violence. So, there is no case law or no statute that talks about why this testimony should be admissible. The defense does not suggest one or cite to one.

Um, so as far as the qualifications, I'll let the Court decide that, but she has not testified in a criminal case, relies only on other research,

um, she's often looking at her notes to figure out the terms she's supposed to be describing.

Um, I -- it gives me pain to talk about it like this because I know her personally, Dr. Hibbert. I think the Court may have received the transcript from our interview with her. Um, I think she's a wonderful person, but that's neither here nor there. As far as her expertise, we do have a problem with that.

Um, the bigger issue is that, um, under 401, the relevancy of this testimony, I didn't hear the defense actually explain why this is specifically relevant to this case and why it would help their self-defense claim in a way that would not be a Trojan Horse diminished capacity defense. And let me get into that a little bit.

Why would the effects of a pregnancy be important in this case? And Dr. Hibbert conceded there's a bell curve. There's a norm for pregnancy, and she conceded that those people, those women who have been pregnant before would understand that norm and so there would be no need for expert testimony in that regard.

But why is it -- why is the process, as the defense suggests is so important to talk about?

Why is the process, why are the hormones -- so the chemical issues -- important to talk about in this case if we're just talking about behavior, which is something, as Dr. Hibbert concedes, that most women would understand?

Um, what is the expertise -- well, let me put it this way. Would we need -- because there are differences, as Dr. Hibbert concedes, differences between men and women -- would we need an expert to come in here and talk about to the men, um, women have different hormones? They have chemical things that are different than men.

Is that the type of expert testimony we're going to allow in every case now? Because that's exactly what the defense is suggesting, that somehow, we need an expert to come in here and talk about a very common human experience. And the State disagrees that there's any kind of precedent for that.

Um, I was really concerned to hear defense counsel say the word involuntary. Let me say that again. He said the word, involuntary, that these things are involuntary in a person. That's exactly what diminished capacity is talking about, that someone cannot reflect, that they cannot have the

mental, um, the mens rea element, that that cannot be met, because these effects are involuntary.

That is a problem and that is the problem that the State, um, set forth or outlined in Section E of our response regarding Rule 403. The defense can say all day long this is not a diminished capacity defense, that we're not going to get into diminished capacity. The expert may even say, this is not diminished capacity. But if the jury is thinking, diminished capacity, that's a problem. That's the confusion and it misleads the jury.

Oh, these things are involuntary, the effects of pregnancy make someone do things that they wouldn't do. She had no, um, capability to form the mental requisite intent. That is a problem in this case.

And so the State would urge the Court to deny the Defendant's Motion -- or, I guess it's our Motion, um, Admit -- to Admit Dr. Hibbert's Testimony. It's not in dispute that defendant was pregnant. Um, certainly, that will be an issue in this case as far as, it's a fact that she was pregnant. Um, she was nine-months pregnant. We're not contesting that.

But how does it aid the jury to understand

the effects of a pregnancy in a general sense? It does not.

Judge, as far as the DV expert, as I noted, we have no problem with that, but we do have a problem with Dr. Hibbert testifying, so we'd ask the Court to preclude her. Thank you.

THE COURT: Thank you.

Mr. Griffen?

MR. GRIFFEN: Judge, just very briefly.

Going back to Dr. Geffner, um, with the issue of domestic violence, the State made mention of Lindsay and statistical quantifications of who's lying and who's not. I mean, the Lindsay Moran line of cases all say that. We all know that. The only stat that I'm aware of that Dr. Geffner even referred to was on the issue of -- and I'm on page 26. It's Bates 2952 -- where he said, um, there was a question asked about a perception and he said that it wouldn't affect the determination because we know from the research that anywhere from 60 to 75 percent of victims of domestic violence do not disclose until something may happen.

And so, that's the only stat that he quoted. Um, and that's frequently in the area that's discussed by domestic violence experts in

criminal trials about the fact of secrecy and why there is no disclosure, the intimidation, the isolation factors that apply that break down the myth as to why somebody wouldn't disclose that to somebody else, um, until there was a stunning event.

So that's the only stat that I'm aware of. We have no intention of using Dr. Geffner to codify lying, um, vouching or doing any of those concerns. So I'd just like to eliminate that.

Two additional comments, one on the -- that -- that, um, somehow, either Geffner -- and I don't think the State's specifically saying that, um, with the issue of domestic violence is somehow a, um, diminished capacity issue and somehow, PTSD is diminished capacity issue, and these are the Trojan Horses along with pregnancy that -- um, that we're going to ride into and fool the jury.

A, that's, um, completely not true. Um, B, the State can get an instruction that says that diminished capacity is not relevant to the decision-making process of the jury should it choose. And, C, there's a great difference between educating a jury about relevant issues and then trying to say that somehow, we dishonor that education by claiming that we're trying to backdoor

diminished capacity.

Um, this is standardly, when we deal with domestic violence, um, and whether it be child cases, this kind of a case or other cases, it's standardly brought in to educate the jurors about mistakes and understanding the process of child abuse, domestic violence, those kinds of considerations.

Um, if you always claim that it's a backdoor way to get in something that's improper, it would never be allowed and it's allowed all of the time. And so it's very important that the Court understand that, um, as to the issue of involuntary, I use the word because the issue -- the point that I was making is that you cannot control your hormones. They simply react. It's an involuntary. I can't say I need more cortisol right now. It's not controllable.

That's different than saying that the actions that came from a person are involuntary or voluntary. I was talking about the chemical process within the body. So the State, um, misperceives that and adopts it in an improper way.

The last thing that I want to talk about is that, if you say that everybody understands the

hormonal, psychological, behavioral, cognitive changes that are caused by pregnancy, the expert just told you that it isn't so and they have no one to indicate that to the contrary. It just isn't so. And we need somebody to come in here and clarify to the jury, um, that it's not -- that it's not diminished capacity, that its affect on the bodily process by the -- by the, um, process of pregnancy. And that needs to be carefully explained to the jury so they don't get mislead and misunderstand the situation.

But what the ultimate the expert said, was that comparing a nine-month, about-to-give-birth-to-a-child pregnant person, to someone who is not pregnant is a relevant consideration because of the chemical and behavioral changes that are ongoing. It is relevant for that reason and it's misunderstood and not understood and we're asking the Court permission to do just that.

Two important parts of this case are pregnancy and domestic violence, and both of them have to be dealt with head on. Thank you.

THE COURT: Mr. Griffen, before I rule, I mean, how do you get around the fact -- and the State's made the argument, um, and I think it's a

compelling argument that -- well, they haven't made the argument quite this way, but -- so let me back up.

We all know the justification defense 13-404 talks about reasonable person. It's a reasonable person's standard. We also know that there is a separate statute that addresses justification and domestic violence, which you cited in your -- in your argument today to this Court 13-415.

So, the State made this argument. Um, and how do you get around the fact that, I assume there's no case law that supports your position because you would have cited it to me, I think, and you didn't cite any case law whatsoever in your motion to allow this expert testimony. That's the first issue.

Second issue, I've looked at the annotations under 13-404. I find no case law that would support this kind of testimony.

And, thirdly, we have a statute that specifically addresses justification and domestic violence, but we don't have a statute that addresses, um, that the Court should consider, um, the kind of testimony you're asking the Court to

consider, because 13-404 says reasonable person.

So do you want to address those concerns of the Court?

MR. GRIFFEN: I do.

THE COURT: Go ahead.

MR. GRIFFEN: The fact that -- I think it's -- frankly, I think it's remarkable, um, that many practitioners, many courts, many lawyers, many prosecutors don't even know the existance of 13-415. They don't even know that that exists. It is a unique piece of legislation that was passed because of the circumstances that were so universal regarding domestic violence. And so it's a unique, um, legislative reaction to that scenario.

The fact that there isn't a specific statute that says that the jury has to view the situation from the eyes of a pregnant person doesn't do justice to the concept, because we all know that it's an objective reasonable standard for self-defense.

And so what we're saying to the Court is: Are you going to eliminate education to the jury about this person being nine-months pregnant and understanding the jury -- have the jury understand what it's like to be in that situation. What are

the -- again, the cognitive behavioral, um, psychological effects that are produced by that?

The fact that there is no case that litigates whether or not, um, Christy Hibbert could come in and be an expert, does not mean that it's not impermissible any more than there's no case that says that someone could come in as a cold expert in a child accommodation case and be permissible in that regard. I mean, it's just not legislative codified. But, we all know that when we deal with the issue of premeditation, that the state of mind and circumstances associated with a person's behavior are relevant. They're relevant. It's inescapable that it's relevant.

It's also important for the Court to consider in terms of defensive behavior. The whole point is self-defense. What affects self-defense? Well, pregnancy affects self-defense. How do we know that? We know that because Dr. Hibbert can explain it in a way that other people don't understand.

So, the very fact that we have a nine-month pregnant woman under this circumstance who's been kicked in the fetus and has been threatened with death, it's crucial -- crucial that

that be able to be explained to the jury in terms of her perception as to the need to defend her reaction, whether she was the first aggressor. All of those factors are relevant to come in. Um, and it's unfair to the jury; it's unfair to Jacobson not to be able to explain that.

The absence of a case does not mean that it's impermissible. Um, if it hasn't been litigated, um, I can assure you that there will be case law after this case, I suppose. But that's how it gets built on disagreement, um, in specific unique case circumstances.

Um, name another case that specifically involves this scenario? Don't know of one right now. We can go at lunch time and see if we can find one, but I'm not aware of any case that specifically calls, at least in Arizona, for this need of having an expert witness. Experts are determined on a case-by-case basis.

The unique facts of this case demand education on this topic. If you eliminate it, then you leave all of that to speculation to a jury. You leave some of the jury knowing more about pregnancy than others. You leave some that are completely uneducated, when everyone should be on the

well-educated playing field that will be left by Dr. Hibbert's testimony.

The State had the right to get an expert and come in and say something different. They have no such expert. Um, the only expert that's been promoted is Dr. Hibbert, who is well-qualified to do that.

If you make a judicial determination that the jury doesn't need this because everybody knows it or because there's no case that says it's permissible, it does injustice to the unique facts of this case. They are unique. Um, you don't have this kind of situation where, in the middle of the night, somebody kicks a pregnant woman who's nine-months pregnant, threatens to kill them and then we're going to trial without educating the jury as to the effect of pregnancy.

We just need to know that. I think that that's self-evident. It's not a topic that puts anybody at a disadvantage. It puts everybody on an equal playing field.

THE COURT: But how does this help the jury when there is no such thing as a diminished capacity defense in Arizona and this particular -- this doctor, um, has done no research of her own?

As I understand it, all she's done is attended courses in this subject matter, um, has apparently, as I understand it, taught some of these courses and she's reviewed the literature, but she's done no independent research of her own.

So what I'm trying to figure out is, even if the Court allows this testimony, how is it going to be helpful to the jury?

I think the State has a valid point. It would be difficult for me to believe that you're not going to seat a jury -- we are not going to seat a jury that hasn't been touched by pregnancy, either by women that have been pregnant or, um, males that have had a partner, spouse or partner pregnant that haven't -- um, you know, or relatives that are pregnant.

As I'm understanding the -- Dr. Hibbert's testimony, is pregnant women -- well, I'm not even sure she's actually said this -- but it seems common sense to me from someone who's been pregnant twice -- actually three times -- um, that women can react differently to the hormones.

I'm not actually sure that she actually even said that, but I would think that, um -- I'm not sure that she actually said that, which is

troublesome to me a bit, I think because, um, any of us that have life experience, either being pregnant or having a friend that's pregnant or partner that's pregnant, women can have all different kinds of pregnancies.

Some women feel the best they've ever felt when they're pregnant; some don't. So, I'm just -- I'm just really concerned about allowing this testimony when, one, I'm not -- I'm not sure that I'm convinced that this doctor is qualified as an expert because she's done no independent research of her own, never testified before. As I understand it, all she's done is reviewed articles, um, on the subject.

Two, there is no such thing as a diminished capacity defense. I think it could confuse the jury regarding the issues that, um, Dr. Hibbert has indicated that she believes, um, are relevant regarding cognition.

I mean, I was concerned about the fact that when she was questioned -- and I'm trying -- doesn't matter which attorney asked her this -- but there was a question asked of her is -- um, hormonal changes during pregnancy, she testified can affect cognition and behavior.

And she said when asked to explain what she means by affecting cognition, she said, planning, thinking, mental state, judgment, insight, perception. Um, that sure seems to me to go to the defendant's mental state. And diminished capacity is not -- defense is not allowed by -- in the State of Arizona.

And, again, 13-404 states a reasonable person. So, um, if you have any additional argument to make to me, but those are my concerns right now about allowing Dr. Hibbert to testify.

MR. GRIFFEN: Let me just comment in the following ways:

Um, you say, and I'm quoting, using your words, All she's done is study this topic for her entire adult educated life. She's an expert in that regard. Um, if you look at 702, in terms of what expertise is necessary, she clearly fulfills that standard.

And if you're excluding her because you don't think that she has the qualifications, um, I think a fair reading of 702 would say she has stellar qualifications. She teaches it. She researches it. She digests it. She presents it. She is an educator. And she should not be compared

to somebody who is a researcher. She's not a researcher. She's -- she condenses, as she said, all of the research to make effective presentation on what is known about the effect of pregnancy.

And, specifically, late-stage pregnancy on all of those things that you just talked about and all of those considerations in terms of perception, fear, behavior, are all in this package of this trial, in the middle of the night, being kicked under those circumstances, being kicked like that and having to deal with that.

And what we're trying to do is explain to the jury how the pregnancy aspect fine tunes that, makes that more sharp, makes it more understandable as to why she would need to feel the need to defend herself. To take that out of the equation takes out part of the case that's absolutely, without dispute, that that's what she says.

You said that, um, you think that it will confuse regarding diminished capacity. It is not impermissible to bring in and, in fact, I would submit that it's error to fail to bring in everything that's relevant to her thought process, in terms of what she perceived the threat to be, how she reacted to the threat and, again, pregnancy

affects her threat perception, her defensive reaction. It affects that.

It doesn't mean, as we clearly said, not everybody that's nine-months pregnant has diminished capacity. The whole point is that there are, um, uncontrollable, hormonal effects that are relevant to a person's perceptions and we want to explain that to the jury. If you don't, you leave it to every person to think, well, I just don't really know or maybe, I remember Sally reacted one time when I saw this or whatever. It just leads to rank speculation.

What we're saying is, we bring her in to clarify the effects, not leaving it to somebody's random acts to a pregnant person and how they think they reacted. Um, it's just absolutely helpful to the jury to understand that process.

And, again, I'd finally like to say that there is no statute or there's no case law that says that this would be relevant in a case, um, should not control your analysis of the facts that are presented here. The facts here, um, are unique and they involve this consideration. Um, it's absolutely blended into the case and it's inescapable that it's front and center to the

defense position.

And, again, to eliminate, um, the ability to present that to the jury because it's too common place... As the doctor said, everybody knows what a pregnant person looks like. Nobody understands with any scientific precision how it affects behavior and reaction. That's what she's going to do for us that nobody else is going to do.

And given the unique circumstances, due process would demand that she can, in the determination of premeditation, and the determination of first aggressor, and the determination of whether her force was reasonable, this is a relevant consideration.

And if we just say, hey, she's pregnant, we're not going to tell you how it might affect her or what it does, um, then we do a disservice to the jury. So, we're just simply trying to say, we can even that and put that to rest so that everybody is better for it, everybody's on the same foot.

THE COURT: Did you finish your argument?

MR. GRIFFEN: I did.

THE COURT: But how do you rationalize that with the Court's holding in State v. Mott where the defense tried to introduce psychiatric testimony

that the defendant could not form the mens rea element of the crime because she was a battered woman? Seems to me what you're really trying to do here is say -- is have this expert, um, testify that the defendant's state of pregnancy and where she was in her pregnancy, just about to give birth, um, that it affected her hormones, the changes in her hormones affected, um, her mental state.

And I just don't see how that's allowed when -- and if you -- if you look at the State v. Mott case, how can that be allowed when we don't have diminished capacity defense and it seems to me you're trying to introduce testimony to show that the defendant's mental state was affected because of the hormonal changes going on in her body due to her pregnancy?

MR. GRIFFEN: There's -- I'm going to answer it this way, and I think a fair reading of Mott makes super clear that we're not talking about anything other than a mental disease or defect. That's what was brought up in Mott. That's what was testified to in Mott and that was what was excluded in Mott.

And what this expert has just said is that this isn't a mental disease or defect, this is just

physiological, psychological change to brain chemistry as a result of being pregnant. It doesn't mean that you have diminished capacity. We're trying to make that distinction to the jury. Otherwise, no one will do that. And she can do that for us.

It's completely distinguishable from Mott. Mott was a direct frontal attack on somebody who had mental illness. No one, not one person, is going to say that Susan Jacobson suffered from mental illness. No one's going to say that. That's not the point. Mott's completely, um, opposite the facts of this case.

THE COURT: Well, let me ask you this, then: So why is it relevant to the jury? Why is it relevant to the jury to know about the hormonal changes going on in the defendant's body at the time that she shot the victim?

MR. GRIFFEN: Because an objective, reasonable person needs to know, in terms of judging her reaction and whether it was justified and reasonable, needs to know how she's perceiving things, given that she's pregnant. They need to know that. That's not impermissible. That's consistent with the analysis that 404 requires. It

requires that reasonable component.

And all we're saying is you -- you know, their position is, we're going to study in a vacuum. We're not going to present this information to a jury. We're saying, it is not impermissible to give unique life circumstances of a person at the moment they're confronted with death. That's all we're saying.

And it's completely necessary for a due process analysis of justification to let the jury know the affect of that on the person. Otherwise, you exclude that from the -- from the situation. The jury is better off knowing what the hormonal effects are on the brain chemistry of a pregnant person than without that. But it's not justification for purposes of saying she has diminished capacity. That does a disservice to that concept.

Diminished capacity was outlawed because it was a mental issue attack on the insanity defense in Arizona. The -- insanity has nothing to do with this case. It's not noticed. It's never been promoted. It's never been an issue, ever. The only issues have been the domestic violence and pregnancy. Those are the issues.

Um, it has nothing to do with insanity or diminished mental capacity. It's a physiological behavioral/psychological reaction to being pregnant. It's different.

THE COURT: Thank you. State have any additional argument?

MR. BARKER: Sure.

Judge, just real quick, listen, we can talk about this all day and Mr. Griffen's never going to convince me; I'll probably never convince him of our positions.

Um, so let me just say this, just in closing, there is no separate standard for pregnant women, just like there's no separate standard for justification for, um, women in general or people who are voluntarily intoxicated. Um, we just don't have any standard for that.

We have a specific standard for domestic violence and that we can agree on, and expertise in that area would be helpful. It is something that, um, people don't understand that haven't been in domestic violence relationships. That's not common human experience. Pregnancy is. So we're going to have a fair amount of people on the jury already understand these issues.

The defense can say, and I believe this is what he thinks, that it's not a diminished capacity defense. The problem is, what's the affect on the jury getting this information? It's not what the defense is trying to promote, it's what the affect on the jury is going to be. And that's the 403 analysis that the Court needs to do. If there's any -- if there's going to be a real, um, confusion of the issues by the jury based on this testimony that, um, pregnant women are not going to be able to, um, have the same cognitive issues as -- or the same cognitive abilities as someone who is not pregnant, someone who is pregnant won't -- is not going to make voluntary decisions is not going -- their behavior is going to be drastically different because of hormonal issues, that's a problem. That's going to be misleading and confusing to the jury.

So the State stands by its Motion. We'd ask the Court to preclude, um, this expert testimony. Of course, the Court knows that there's not going to -- that this is solely in the Court's discretion. It's not going to be overturned absent an abuse of discretion. We'd ask the Court to find that she's not -- that she be precluded. Thank you.

THE COURT: Thank you.

MR. GRIFFEN: Can I add one additional comment?

THE COURT: Sure.

MR. GRIFFEN: Just on the issue of confusing versus clarifying the jury and the two concepts that we're dealing with, domestic violence and pregnancy. Um, domestic violence, um, the State raised in their response how somehow the fact of domestic violence and the concepts of how it affects, um, reaction and perception could be confused as diminished capacity. They said the exact same thing about domestic violence.

But domestic violence has been codified under 415. So you have a problem because you can't preclude that under the Vogel case. So the situation here is that, again, they're using the same argument, again, Trojan Horse argument, that we're somehow trying to bring in diminished capacity. They can't keep it out with domestic violence and they're saying that because there's no statute that permits it that we're going to be able to keep it out for pregnancy.

I just am wanting the Court to be quite clear that you're precluding -- if you prevent this

testimony, you're precluding the jury from understanding the process and the hormonal effects of pregnancy on a person that has nothing to do with diminished capacity and has everything to do with a person's perception, in terms of the need to defend, the reaction and the circumstances that are involved with that. And you're taking that away from the jury and leaving them without that knowledge which we think is crucial to understanding the case. Thank you.

THE COURT: Thank you.

First of all, let me just rule that Dr. Geffner, given what the defense has offered with respect to what they expect him to testify to, I'm not sure, really, the State does have any objection, given that clarification.

Do you?

MR. BARKER: We don't, Judge. Um, I believe there's going to be no issue on that. Thank you.

THE COURT: So, with respect to the State's Motion to Preclude Defense Experts, with respect to Dr. Geffner, that motion is denied. Dr. Geffner is allowed to testify, um, consistent with what defense counsel has offered him up.

APPENDIX, A-12

Trial Court's Ruling Excluding Dr. Hibbert Testimony

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE STATE OF ARIZONA,

Plaintiff,

vs.

Coconino County
Case No. CR 2015-00613

SUSAN JOY JACOBSON,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMPREHENSIVE PRETRIAL CONFERENCE

FLAGSTAFF, ARIZONA
August 30, 2016
9:04 o'clock a.m.

BEFORE: HONORABLE CATHLEEN BROWN NICHOLS
Judge of Superior Court

PREPARED FOR: BRAD BRANSKY, ESQ. (Certified Copy)

Jonna E. Baker, RPR
Certified Reporter
Certificate Number: 50480
Official Reporter

or not.

MR. GRIFFEN: Judge, I don't see her yet. Excuse me. She is set to be here at 10:15 and it's before 10:15.

THE COURT: All right. So here would be my thought. I guess I should check with Jonna. But I typically give Amanda, my court reporter, about a 15-minute break in the morning. So what we could do is just go ahead and take our break right now.

MR. GRIFFEN: That's fine.

THE COURT: Okay. So we're going to take our break. We're off the record.

(Proceedings in recess at 10:17 a.m.)

* * * * *

(Session from 10:30 a.m. to 12:00 p.m. was reported by Amanda Willey.)

* * * * *

(Proceedings in session at 1:34 p.m.)

THE COURT: Back on the record on State of Arizona versus Susan Joy Jacobson. Record will reflect the presence of counsel and the defendant.

I'm going to go ahead and make my ruling on that last motion at this time because I gave it thought -- some more thought and consideration over the lunch hour.

Given the record the Court's already made, I do believe this would be improper expert testimony regarding the issues of hormonal changes when given that the defendant was about to give birth. Again, for the reasons I placed on the record earlier, I mentioned the fact that Dr. Hibbert testified that there are hormonal changes during pregnancy that can affect cognition. And when she was asked to explain what she meant by that, that she said it could affect planning, thinking, mental state, judgment, insight, perception and memory. The Court believes that this -- if the Court were to allow this type of testimony, it would be improper evidence of potential diminished capacity. Diminished capacity is not a defense that is allowed in the State of Arizona. So for those reasons, the Court grants the state's motion in limine to preclude the expert witness offered by the defense regarding pregnancy and perinatal issues.

All right. Ready to argue the next motion?

MR. BARKER: Yes, Judge.

MR. GRIFFEN: Judge, could I make one inquiry just for purposes of the record?

THE COURT: Sure.

MR. GRIFFEN: Could I ask the Court whether you would clarify whether you also ruled that Dr. Hibbert was

APPENDIX, A-13

Partial Transcript, Defense Counsel's Argument in Support of Linskey/Rose Testimony Admission

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE STATE OF ARIZONA,

Plaintiff,

vs.

Coconino County
Case No. CR 2015-00613

SUSAN JOY JACOBSON,

Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMPREHENSIVE PRETRIAL CONFERENCE

FLAGSTAFF, ARIZONA
August 30, 2016
9:04 o'clock a.m.

BEFORE: HONORABLE CATHLEEN BROWN NICHOLS
Judge of Superior Court

PREPARED FOR: BRAD BRANSKY, ESQ. (Certified Copy)

Jonna E. Baker, RPR
Certified Reporter
Certificate Number: 50480
Official Reporter

to bring in the fact that she was examined, determined to have chronic PTSD as a result of the domestic violence incidents that she identified.

The state is saying that that is improper because under Carlson, and if you -- if you sandwich in there Lyndsie, somehow that that's improper vouching. But there is no case that says that a diagnosis of PTSD in a domestic violence case where the issue is the reasonableness of the person's perception as to the need to defend herself or defend her fetus, that that chronic abuse and those issues cannot come in and be indicated.

What we could have done here, and we didn't for reasons that will become apparent, but what we could have done is not have detective -- not have Dr. Geffner be cold but beyond. And we could have had Dr. Geffner do all of the same testing that was done here by Dr. Rose and Dr. Linskey and find the same conclusion and then brought it in through Dr. Geffner. But when we looked at -- after we found what was done in the companion factually related but completely different legal matter in the severance proceedings in Division 4, we found, after we were able to get the records from that, that there had been complete and thorough evaluations done not by one but by two doctors, used normal protocol, used objective metric testing to

determine not whether just because she had said it so, there are objective tests that were attached to Dr. Rose's materials that are commonly used, and the state has not indicated otherwise, these are all -- the batteries of tests that were administered are all the tests that are administered to determine a diagnosis of PTSD in this circumstance.

PTSD is not prohibited in a domestic violence case because it's akin to battered women syndrome. Nobody said that. There is no case that said that. That's not an accurate statement. PTSD is admissible because in this case it backs up and corroborates what she is saying in terms of her concerns about the need for self defense and the need to protect her fetus.

Those are all statements that Vogel allows to come in. You know, Vogel is allowed to come in not only her entire history which came in through various means, but we've agreed that it could come in through Jacobson, but that the doctor not only testified to cold type stuff as to general patterns and specifics, but the doctor testified to the specific conclusion that she was suffering from PTSD and, further, the specific conclusion that she was a victim of domestic violence. We're not going that far. And we don't have any need to admit

psychological evaluations.

What we want to do is to be able to bring in Doctors Rose and Linskey, doctors who were hired by the State of Arizona, paid by the State of Arizona, who independently, objectively, using normal protocol and testing, came to the conclusion that she suffered from PTSD.

If the state wants to bring in a doctor to say that's BS or that's not right or that was based upon, you know, what she said as opposed to objective testing, they can do that to a tack. But it's not a question of admissibility. It may go to the question of weight. But it is relevant under 415 and Vogel to establish that the reason she acted the way she did was in part because of the history that she had sustained, which is going to come in in verse and line from Jacobson if she testifies.

So it corroborates, it's admissible, Vogel stands for that, 415 stands for that. We're not asking that the jury get the evaluations. We're asking that the jury hear from the doctors and hear their conclusions about whether she suffered from chronic PTSD, PTSD which is required to have been incurred a period of over two years prior to the event in order to be determined chronic.

I have both the evaluations by Dr. Rose

APPENDIX, A-14

Trial Court's Ruling Excluding Linskey/RoseTestimony

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

THE STATE OF ARIZONA,

Plaintiff,

vs.

SUSAN JOY JACOBSON,

Defendant.

Coconino County
Superior Court
Cause No. CR2015-00613

STATUS CONFERENCE

TRIAL MANAGEMENT CONFERENCE

PROCEEDINGS

Wednesday, September 7, 2016

Flagstaff, Arizona

BEFORE: The Honorable Cathleen Brown Nichols
Judge of the Superior Court

Amanda J. Willey, RPR
Arizona Certificate No. 50890
928-679-7559

as, um, the transcripts, um, that were provided to the Court, um, of Dr. Linskey and Dr., um, Rose, testimony.

The Court, um, does find that the Vogel case does not support the introduction of post-traumatic stress diagnosis. Um, that, um, the Court is aware that a doctor in that case did testify that the defendant in that case did suffer from, um, several different, um, issues, including post-traumatic stress but, um, the Court does not believe the Vogel case supports the introduction of the proposed testimony by Dr. Linskey and Dr. Rose. Um, this Court's also aware that any statements the defendant made to those doctors would be hearsay, um, as well.

The -- defense counsel hasn't -- this Court doesn't believe that defense counsel has cited any authority for the introduction of post-traumatic stress disorder testimony in this case. Um, I know they cited the Vogel case, but the Court doesn't believe the Vogel case supports the, um, defendant's position in this case.

The Court is -- again, reiterates it's aware of the holding in State v. Mott, um, where the Arizona Supreme Court stated that Arizona does not

allow evidence of a defendant's mental disorder, short of insanity, either as an affirmative defense or to negate the mens rea element of a crime.

In that case, um, the defense was precluded from using psychological testimony to show that the defendant had Battered Woman Syndrome. Um, I know that the, um, Court in that case also cited State v. Wright.

And the Court's also aware of, um, the holding -- the Arizona Supreme Court's holding in State v. Lindsay, which this Court believes also supports, um, its decision to grant the State's Motion to Preclude the Testimony of, um, Dr. Linskey and Dr. Rose -- or what I should say, to Preclude the Irrelevant and Prejudicial Testimony as the State refers to it.

All right. Anything further on that particular motion before we address jury instructions -- not jury instructions. I apologize. Proposed voir dire? Sorry about that.

MR. BARKER: Nothing from the State, Judge, thank you.

THE COURT: All right. Okay. Um, well let me just find out -- let me get to those.

MR. GRIFFEN: Judge, can I address

something while you're moving on to the next topic?

THE COURT: Sure.

MR. GRIFFEN: I'd like to orally move at this point that the Court stay the trial so that we can pursue the special action of your decision regarding denial of the ability to present what we think is clearly relevant, clearly material information from the psychologists and psychiatrist regarding the diagnosis of Susan Jacobson.

We specifically believe that it's pertinent, um, and admissible pursuant to A.R.S. 13-415. Um, and it's behavioral evidence that's admissible that I believe the Court confuses the distinction between behavioral evidence and diminished capacity. This evidence is not submitted for purposes of diminished capacity.

So, again, we'd ask the stay. We suspect that you would immediately deny that. That would facilitate my ability to pursue the special action today. Thank you.

THE COURT: Thank you.

State have a position or a response?

MR. BARKER: Yeah. The State opposes that. Thank you.

THE COURT: All right. That motion is

APPENDIX, A-15

Excerpt of Petitioner's Opening Brief to Arizona Court of Appeals with Citations to Trial Record Regarding Contested Issue of Decedent's Abuse of Petitioner

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. SUSAN JOY JACOBSON, Appellant.	)	No. 1 CA-CR 16-0838 Coconino County Superior Court No. CR 2015-00613

APPELLANT'S OPENING BRIEF

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After taking the matter under advisement, the court, citing ***State v. Mott, infra,*** granted the state's motion to preclude both Drs. Linskey and Rose from testifying to Appellant's PTSD diagnosis. **(RT, September 7th, p. 5-6.)** Appellant argued, to no avail, that the PTSD diagnosis was "admissible pursuant to A.R.S. 13-415. . . Um, and it's behavioral evidence that's admissible that I believe the Court confuses the distinction between behavioral evidence and diminished capacity. The evidence is not submitted for purposes of diminished capacity." **(*Id.*, p. 7.)**

During trial, Appellant offered evidence of her good character for peacefulness, abusive behavior of Mr. James against her and Mr. James character for abusiveness.

Invariably, witnesses who knew Appellant well testified as to her good character for peacefulness. Appellant's mother, Joyce Hausmann, testified that she had never seen Appellant even "come close" to fighting or hitting someone. She additionally described Appellant as passive and non-confrontational. **(RT, September 16th, 2016, p. 52-53.)** "My daughter is a very sweet little girl. She's a gentle girl. She is not violent." **(*Id.*, p. 52.)** ". . . Susan's the type of person that , you know, she wouldn't hurt a fly" or spiders which she simply took outside. **(*Id.*, p. 57-58.)**

"She's always been a very gentle person. . . I've never seen her as aggressive.

Um, she's always been a helpful person. She's always doing what she can to help out everybody." (***Id.*, p. 170, Testimony of Ex-Boyfriend Greg Horn.**) "You know, I've been around Susan now - - I never seen a violent - - any violence in her whatsoever. She's a very gentle person. Very gentle. Um, very quiet. . . .She's very comfortable to be around." **(RT, September, 20th, p. 183, Testimony of Stepfather Frank Canepa.)**

Neighbor, Lucinda Thornsley, described Appellant as "Very noncombative. Always wanting everything to be smooth. . . Very peaceful person. **(RT, September 23rd, p. 92.)** Robert Bradshaw, who dated Appellant for ten years, told the jury Appellant's character is non-confrontational, resolution seeking, good spirited and nice. (***Id.*, p. 107.**) "She's a very peaceful person, . . . never known her to be angry or violent towards really anybody. Um, and a lot of the times, she was more . . .my anchor to keep me calm or peaceful. (***Id.*)** "She's an extremely peaceful person . . . Um, she's a joyful person. Someone who is caring, loving. She's kind, generous. . . extremely nonconfrontational." (***Id.*, p. 119, Testimony of old friend Alisa Baddenhorst.)**

In speaking of Appellant , who nannied her children, Pamela Erickson related that Appellant is "Very peaceful. . . . She wouldn't even kill bugs. It's just her nature. She was not a violent person at all." (***Id.*, p. 153.) (Accord: Testimony of Pat**

Horn, *Id.*, p. 169; Testimony of Louise Miller, *Id.*, p. 174; Testimony of Cheryl Troberg, p. 127-129.)

In contrast to Appellant's character, Appellant presented evidence that Mr. James was abusive towards her and his two previous wives. Joyce Hausmann testified that "After a time with Marvin, she [Appellant] became very timid. . . and withdrawn and very quiet." (***Id.*, p. 52.**) Mr. James was very controlling over Appellant and required her to accompany him on command. (***Id.*, p. 55, 57.**)(**Accord: Testimony of Lucinda Thornsley, p. 90.**) Mrs. Hausmann observed that Appellant feared Mr. James and saw Mr. James shove Appellant on one occasion. (***Id.*, p. 69, 81.**)

Consistent with Appellant's narrative of Mr. James perpetration of her abuse beginning with her first pregnancy, Appellant presented evidence from various medical professionals who treated her over the years. On her September 18th, 2014, prenatal visit with Dr. Claire Herrick, Dr. Herrick became concerned with the emotional abuse Appellant had described to Dr. Claxton and the physical abuse Appellant related on that date. (***Id.*, September 27th, p. 25-26.**) Upon assessing Appellant's chart, and speaking with Appellant about the abuse escalation, (***Id.*, p. 29**), Dr. Herrick, concerned about the abuse, consequently increased the frequency of doctor visits and referred Appellant to counseling. (***Id.*, p. 28-30.**)

Following the incident at bar, on February 26th, 2015, Dr. Herrick noted Appellant's "lower abdomen was sore and tender to the touch, with mild redness and no bruises", (***Id.*, p. 38.**) which was consistent with Appellant's description that Mr. James kicked her.

At Appellant's visit with Dr. Barbara Polstein, in August, 2014, Appellant reported suffering verbal abuse, controlling behaviors and physical abuse at the hands of Mr. James, including an incident where Mr. James attempted to strangle her nine months prior. **(RT, September 27th, p. 119, 123.)** Due to the abuse, Appellant had spent a night in the shelter and had been referred to a domestic violence advocate and Victim Witness Services. **(*Id.*, p. 119, 121, 122.)**

Dr. Claxton noted similar concerns of emotional abuse, death threats and physical abuse. **(*Id.*, p. 148, 149, 153.)** Dr. Claxton also noted bruising exhibited by Appellant on February 28th, 2015. **(*Id.*, p. 164, 165.) (Accord: Testimony of Corporal Dennis McCabe, *Id*, p. 42, 45.)**

North Country Health Start social worker, Catherine Vaquera, described how scared Appellant became in November, 2014, at the prospect of Mr. James discovering Appellant talking to Ms. Vaquera at Appellant's home. **(RT, September 23rd, p. 142-143.)** Ms. Vaquera was concerned for Appellant's safety commencing with her initial domestic violence assessment of Appellant. **(*Id.*, p. 147.)**

Both Mr. James's ex-wives testified in general that Mr. James abused them. (***Id.*, p. 199, 207, 209, 211.**) Appellant's sister, Cheryl Troberg, testified that based on her discussions with Appellant over the years Ms. Troberg "absolutely" became concerned about Appellant's relationship with Mr. James that she traveled to Arizona to "move her out. To help her get away." (***Id.*, p. 222-223, 225.**)

Throughout the trial, the state attempted to negate any evidence of Mr. James's abuse of Appellant. The state attempted to present evidence that Mr. James was not killed in self defense due to Appellant's reasonable perception based on her domestic violence victimization; but rather, Appellant shot Mr. James to acquire complete control of the couple's children.

The state elicited testimony from various witnesses that they had never seen Mr. James hit Appellant or observed injuries on Appellant. The state continually attempted to discount evidence of abuse perpetrated on Appellant. (**Exs: Testimony of Joyce Hausmann, RT, September 16th, p. 62; Testimony of Laurie Myer, RT, September 20th, p. 232; Testimony of Ellen Seaborn, RT, September 22nd, p. 137; Testimony of Dr. Claire Herrick, RT September 27th, p. 47, 51; Testimony of Dr. Barbara Polstein, *Id.*, p. 126; Testimony of Dr. Ellen Claxton, *Id.*, p. 170, 173, 179; Testimony of Cathy Vaquera, RT, September 23rd, p. 146; Testimony of Pamela Erickson, *Id.*, p 157; Testimony of Cheryl Troberg, *Id.*, p. 230-231.**)

The state, while attempting to discredit evidence of abuse, presented evidence suggesting Appellant's actual motive to kill Mr. James was her desire to solely parent her children. (**Testimony of Laurie Myer, RT, September 20th, p. 206, 209, 229; Testimony of Marvin James, Sr., RT, September 22nd, p. 230, 233, 234; Testimony of Dr. Barbara Polstein, RT, September 27th, p. 128; Testimony of Dr. Ellen Claxton, *Id.*, p. 171; Testimony of Pam Erickson, RT, September 23rd, p. 157, 160.**)

In conjunction with the state's motive theory, the state elicited testimony as to Mr. James's peaceful character. "My opinion is that Marvin was a very gentle, kind man, very honest man, very sensitive person." (**Testimony of Ellen Seaborne, RT September 22nd, p. 145.**) "He [Mr. James] was certainly a - - a very peaceful person. . . he was a good boy." (**Testimony of Marvin James Sr., *Id.*, p. 224.**) (**Accord: Testimony of Tony Valencia, RT, September 27th, p. 197; Testimony of Jason Bond, *Id.*, p. 211.**)

Evidence in Appellant's case closed on September 27th, 2016. The jury returned guilty verdicts on all counts on September 30th, 2016, (**Minutes and Instruments, 177**), triggering Appellant's natural life sentence as described above.

APPENDIX, A-16

Petition for Review to Arizona Supreme Court

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IN THE SUPREME COURT

STATE OF ARIZONA

STATE OF ARIZONA, Plaintiff/Appellee, v. SUSAN JOY JACOBSON, Defendant/Appellant.	No. COURT OF APPEALS NO. 1 CA-CR 16-0838 Coconino County No. CR-2015-00613 PETITION FOR REVIEW TO ARIZONA SUPREME COURT

Appellant, by and through counsel, petitions for review from the published decision of the Court of Appeals entered on December 21st, 2017.

RESPECTFULLY SUBMITTED this 25th day of January, 2018.

COCONINO COUNTY PUBLIC DEFENDER

By_____/s/_____
Brad Bransky

MEMORANDUM

I. Issues presented for review.

A. *Under what circumstances should a court admit expert testimony diagnosing a defendant with Posttraumatic Stress Disorder, (PTSD), to support a justification defense?*

B. *Does "cold" expert testimony explaining the general psychological effects of the hormone cortisol constitute inadmissible diminished capacity evidence? Additionally, is such evidence relevant in evaluating an accused citizen's self-defense claim vis-à-vis the actions of a "reasonable person."*

C. *Should general evidence of hormonal changes during pregnancy be admitted as lack of premeditation evidence in a first degree murder case?*

II. Facts material to the issues presented.

This Petition for Review presents an unsettled issue of statewide concern regarding expert testimony admissibility parameters of a defendant's PTSD diagnosis as such diagnosis relates to a justification defense. Additionally, this petition posits an issue of statewide concern on whether "cold" expert testimony explaining the general behavioral effects of cortisol in late stage pregnancy is relevant to a justification defense. In a more global sense, Petitioner believes that trial and appellate courts

preclude such evidence under an unduly circumscribed definition of "reasonable person". In other words, the issue is: which aspects of the actor's situation are material when assessing her or his behavior under a "reasonable person" standard?

Finally, Appellant avers that cortisol evidence should have been allowed as integral impulsivity evidence to negate a showing of premeditation. ***State v. Christensen*, 129 Ariz. 32, 628 P.2d 580 (1981).**

On July 23rd, 2015, the state secured an indictment charging Petitioner with Premeditated First Degree Murder. [1] In summary, the state claimed that late in the night on February 26th, 2015, Appellant fatally shot her live-in boyfriend, Marvin James, in the head as he was on the couple's bed at their Doney Park residence.

Petitioner, who was nine months pregnant at the time of the incident, asserted three justification defenses to the homicide charge as to herself, her unborn fetus and crime prevention. The issues in this petition relate to the court's preclusion of three proffered defense experts that were crucial to Appellant's justification defenses and lack of premeditation defense.

On February 27th, 2015, Coconino County Sheriff's Deputy, Curtis, was informed that Petitioner had entered the Sheriff's Office lobby to report a domestic abuse situation against her. **(RT, September 15th, 2016, p. 130.)** Petitioner reported

1 Appellant was also indicted for evidence tampering counts not at issue

that she had shot Marvin James, her live in companion, to prevent the immediate loss of her own life. **(Trial Exhibit 171, taped conversation between Curtis and Petitioner.)**

In speaking with Curtis, Petitioner elucidated that she acted in self-defense in shooting James, and in doing so described suffering years of emotional, psychological and physical abuse at the decedent's hand. **(Appendix 1 to Opening Brief.)**

Petitioner was next interviewed by Detective Barr. During this interview, Petitioner described abuse at the hands of James. Petitioner additionally described her justification for shooting James both in terms of her own self- defense and in defense of her unborn nine month old fetus just as she explained the event to Curtis.[2]

Prior to trial, in support of her justification defenses, Petitioner noticed her intent to call psychiatrist Dr. Chris Linskey, psychologist Dr. Patricia Rose and Dr. Christina Hibbert. **(Minutes and Instruments, 95 and 65.)** Petitioner sought to call Drs. Linskey and Rose to testify that they diagnosed Appellant with Post Traumatic Stress Disorder (PTSD). Dr. Hibbert was a potential "cold expert" whom Appellant proffered would offer general evidence "re: perinatal, pregnancy and postpartum mental health/emotional considerations." **(Minutes and Instruments, 65.)**

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herein.

2 Appellant's taped interview is part of the record on appeal - Exhibit 152A. Additionally, the interview is attached as Appendix 2 to Petitioner's opening brief.

In July, 2016, the state filed a Motion to Preclude regarding Dr. Hibbert's testimony. (**Minutes and Instruments, 74.**) The state claimed that Dr. Hibbert's testimony would constitute inadmissible "diminished capacity" evidence. (***Id.***)

Petitioner responded, emphasizing she was not attempting to assert diminished capacity, but wished to present evidence of the unique "behavioral characteristics of a woman in the ninth month of pregnancy." (**Minutes and Instruments, 89.**)

In August , 2016, the state filed an additional Motion to Preclude Irrelevant and Prejudicial Testimony by Drs. Linskey and Rose. (**Minutes and Instruments, 79.**) In its motion, the state claimed that Petitioner's PTSD diagnosis "may improperly invite the jury to believe Defendant acted with a diminished capacity. In other words, because Defendant was mentally ill and was vulnerable to impulsive behavior, she could not reflect upon her actions before she killed Marvin James." (***Id.*, p. 7.**)

In her response to the motion to preclude Drs. Linskey and Rose, Appellant averred the court should allow the doctors to testify as to her PTSD diagnosis "as chronically inflicted by her partner." (**Minutes and Instruments, 86, p. 2.**) Appellant correctly noted that "a fair reading of both evaluations confirms that the PTSD was as a result of chronic domestic violence inflicted by the victim." (***Id.*, fn 1.**)[3] Additionally, in responding to the state's motion to preclude, Petitioner incorporated

3 The reports of Drs. Linskey and Rose are part of the record as Exhibits 7

her Motion in Limine **(Minutes and Instruments, 82.)** In that motion, Petitioner noted she "has a fundamental right to present a full defense, pursuant to the due process clauses of the Fifth and Fourteenth amendments to the United States Constitution and Art. 2, Sec. IV of the Arizona Constitution." (***Id.*, p. 2.**)

The trial court held a hearing on the state's two motions to preclude Appellant's defense experts. Doctor Hibbert testified that levels of the stress hormone, cortisol, triple during the third trimester of pregnancy.[4] Dr. Hibbert explained "we know cortisol is a stress hormone. It's great for a short time because it helps us to get ready to fight or flight if we're faced with a bear or something. . . So you have high levels of cortisol and that would mean that a woman is feeling under stress even - - no matter what's going on in the outside, but when you add in environmental factors, that can feel even greater." **(RT, August 30th, Willey Transcript, 2016, p. 28 - 29.)** Hibbert testified that due to increased hormone levels, a woman in late stage pregnancy could feel elevated senses of threat, need to defend and protective instincts. (***Id.*, p. 34.**) "Part of being pregnant for most women, is feeling hypervigilant, being, um, on guard, sort of watching for threats and feeling maybe more ramped up, especially with those cortisol levels. You'll find pretty much anybody that has high levels of cortisol will be

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and 8 admitted during the October 30th, 2016, motions hearing. **(RT, October 30th, 2016, p. 124.)**

4 Appellant gave birth to her full term baby on February 28th, 2015, approximately two days following the incident at bar. **(RT, September 27th,**

hypervigilant. They'll have a - -more of a startle response . . .." (***Id.*, Hibbert Testimony, p. 35-36.**)

Following Dr. Hibbert's testimony, defense counsel argued, "we all know that when we deal with the issue of premeditation, that the state of mind and circumstances associated with a person's behavior are relevant . . .. It's also important for the Court to consider in terms of defensive behavior . . . What affects self-defense? Well, pregnancy affects self-defense. How do we know that? We know that because Dr. Hibbert can explain it in a way that other people don't understand." (***Id.*, p. 74.**) Counsel continued – "You said that, um, you think that it will confuse regarding diminished capacity. It is not impermissible to bring in and, in fact, I would submit that it's error to fail to bring in everything that's relevant to her thought process, in terms of what she perceived the threat to be, how she reacted to the threat and, again, pregnancy affects her threat perception, her defensive reaction." (***Id.*, p. 81.**) "[I]t's completely necessary for a due process analysis of justification to let the jury know the affect of that [pregnancy hormones] on the person. . . .But it's not justification for purposes of saying she has diminished capacity. That does a disservice to that concept." (***Id.*, p. 85.**) " . . [I]f you prevent this testimony, you're precluding the jury from understanding the process and the hormonal effects of pregnancy on a person that has

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2016, p. 42.)

nothing to do with diminished capacity and has everything to do with a person's perception, in terms of the need to defend, the reaction and the circumstances that are involved with that." (***Id.*, p. 89.**)

In granting the state's motion to preclude , the court stated: "I mentioned the fact that Dr. Hibbert testified that there are hormonal changes during pregnancy that can affect cognition. . . The Court believes that this - - if the Court were to allow this type of testimony, it would be improper evidence of potential diminished capacity. Diminished capacity is not a defense that is allowed in the State of Arizona." (**RT, August 30th, 2016, Baker Transcript, p. 61.)**

The parties also argued the state's motion to preclude Drs. Linskey and Ross from presenting evidence of Appellant's PTSD diagnosis. The court had before it transcripts of both doctors' testimony on the PTSD issue prepared during the severance trial, relating to Appellant's children, previously held in the Coconino County Juvenile Court, (**Minutes and Instruments, 79, Exhibits A and B; RT, August 30th, Exhibits 8 and 9**), evaluations of Appellant prepared by each doctor, (**RT, August 30th, Jonna Baker Transcript, Exhibits 6 and 7**) and the pleadings.

Drs. Linskey and Rose diagnosed Appellant with PTSD. (***Id.***) The severance transcript reveals that PTSD "is an **acknowledgement of a history of trauma** that has a lasting impact on the individual's functioning." (**Minutes and Instruments 79,**

Exhibit A, Testimony of Dr. Linskey, p. 41; RT, August 30th, Exhibit 8, p. 41) (emphasis supplied.) Appellant exhibited symptoms of "chronic" PTSD – meaning the symptoms have persisted for more than two years – "including flashbacks, intrusive memories, avoidance, triggers to intrusive memories, a heightened chronic anxiety with insomnia." (**Minutes and Instruments 79, Exhibit A, Testimony of Dr. Linskey, p. 41; RT, August 30th, Exhibit 8, p. 41.**)

Dr. Rose, in addition to interviewing Petitioner, observing her behavior and reviewing records, administered a battery of clinically appropriate standardized psychometric tests to Petitioner, including: Formal Mental Status Examination; Wechsler Adult Intelligence Scale-IV; Severity Measure for Generalized Anxiety Disorder; Severity Measure for Depression-Adult; Severity of Posttraumatic Stress Symptoms; Alcohol Use Disorder Inventory Test; Parent Stress Index; and the Minnesota Multiphasic Personality Inventory. (**Minutes and Instruments 79, Exhibit B, Testimony of Dr. Rose, p. 45-47; RT, August 30th, 2016, Exhibit 7, Psychological Report of Dr. Rose, p. 9-10.**)

The evaluation lasted thirteen hours over two days. (**Minutes and Instruments 79, Exhibit B, p. 47-48; RT, August 30th, Exhibit 9, p. 47-48.**) Significantly, the severity of Petitioner's PTSD scores went down substantially during her incarceration following James's death. Her PTSD scores were a full point higher

during most of February, 2015, while exposed to the chronic torment at James's hands. **(RT, October 30th, 2016, Exhibit 7 , Psychological Report of Dr. Rose, p. 12.)**

In arguing against the preclusion of Drs. Linskey and Rose, defense counsel emphasized "that there had been complete and thorough evaluations done not by one but by two doctors, used normal protocol, used objective metric testing. . . . [T]he battery of tests that were administered are all the tests that are administered to determine a diagnosis of PTSD. . ." **(RT, August 30th, p. 122.)** Counsel averred "PTSD is admissible because in this case it **backs up and corroborates** what she is saying in terms of her concerns about the need for self- defense and the need to protect her fetus." (***Id.*, p. 122**) (emphasis supplied.) "What we want to do is to be able to bring in Doctors Rose and Linskey . . . who independently, objectively, using normal protocol and testing, came to the conclusion that she suffered from PTSD." **(*Id.*, p. 23.)**

The court, citing ***State v. Mott*, 187 Ariz. 536, 931 P. 2d 1046(1997)**, granted the state's motion to preclude both Drs. Linskey and Rose from testifying to Petitioner's PTSD diagnosis. **(RT, September 7th, p. 5-6.)** Petitioner argued that the PTSD diagnosis was "admissible pursuant to A.R.S. 13-415. . . Um, and it's behavioral evidence that's admissible that I believe the Court confuses the distinction between

behavioral evidence and diminished capacity. The evidence is not submitted for purposes of diminished capacity." (***Id.*, p. 7.**)

During trial, Petitioner offered substantial evidence of her good character for peacefulness, abusive behavior of Mr. James against her and Mr. James character for abusiveness.[5]

The state attempted to negate any evidence of James's abuse of Petitioner. The state presented evidence that James was not killed in self -defense due to Petitioner's reasonable perception based on her domestic violence victimization; but rather, Petitioner shot James to acquire control of the couple's children. The state elicited testimony from various witnesses that they had never seen James hit Petitioner or observed injuries on Petitioner.[6] Whether James abused Petitioner constituted a major issue.

On Appeal, Petitioner argued that the trial court erred in precluding her proffered expert witnesses . The Appellate Court disagreed, affirming Petitioner's convictions. ***State v. Jacobson*, CA-CR 16-0838, (Div. 1, 12-21-2017.)**

III. Reasons for granting review.

This matter is of statewide importance. Currently, ***State v. Jacobson, Id.,*** and ***State v. Richter*, 243 Ariz. 141, 402 P.3d 1016 (Div. 2, 8-25-17, 2017)**, contain

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5 Specific references to this testimony are found in Petitioner's Opening

conflicting rulings on the admissibility of PTSD evidence. A comprehensive ruling is necessary clarifying under what circumstances PTSD evidence is admissible. Additionally, what aspects of an actor's makeup may be assessed in determining reasonableness and impulsivity requires elucidation.

Our justification laws mandate that Appellant's actions be judged against the standard of how a reasonable person **in Appellant's situation** would react. ***State v. Barker*, 94 Ariz. 383, 387, 385 P. 2d 516, 519 (1963).** Specifically, "read together, §§13-404(A) and -415 require that the reasonableness of defendant's *belief* regarding the necessity of using physical force in self-defense be considered from the perspective of a reasonable person who has suffered the same past acts of domestic violence." ***State v. Vogel*, 207 Ariz. 280, ¶27, 85 P.3d 497 (App. 2004).**

A.R.S. §13-415 mandates that "if there have been past acts of domestic violence . . . against the defendant by the victim, the state of mind of a reasonable person . . . shall be determined from the perspective of a reasonable person who has been a victim of those acts of domestic violence." Accordingly, proof of past acts of domestic violence perpetrated against a defendant constitutes the crucial cornerstone to a defendant's assertion of an adequate §13-415 justification defense.

Whether the accused can prove past acts of violence against her necessarily

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Brief pages 18-22.

changes the perspective of reasonableness necessary for justification under either A.R.S. 13-§415 or the other justification statutes. Such proof directly effects the reasonableness of defensive actions measured against a person's perspective **in the accused's situation.** If a citizen accused of homicide cannot prove past abuse, the difficulty in asserting the reasonableness of causing the death of her abuser diminishes significantly.

The state vigorously contested Petitioner's evidence of abuse. Most domestic abuse occurs behind closed doors making proof of contested abuse extremely problematic. Doctors Linskey's and Rose's PTSD diagnosis served as a vehicle to corroborate Appellant's assertions of abuse. Precluding the diagnosis left Appellant with no corroboration of her abuse claims, thus negating her justification defense.[7]

The trial court incorrectly applied ***State v. Mott,* 187 Ariz. 536, 931 P. 2d 1046 (1997)** to Petitioner's matter. ***Mott*** prohibits evidence of "diminished capacity" to "negate the *mens rea* element of a crime." ***Mott*, 540.** In other words, an accused's diagnosis is inadmissible to show **lack of capacity** to form a requisite criminal intent. ***Id.*, 541, 544.**

Petitioner never suggested she lacked capacity to form knowledge or specific

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6 Please see citations to record, Opening Brief, p. 22-23.
7 Interestingly, the expert in ***State v. Vogle, supra,*** ¶15, presented evidence that defendant suffered from domestic abuse related PTSD. The Court, however, never addressed that topic as an issue in the ***Vogle*** case.

intent. Petitioner sought to present corroborative evidence of abuse to prove her victimization to the jury. A reasonable jury could find the etiology of Appellant's PTSD diagnosis was the abuse perpetrated upon her by the deceased. Without such relevant evidence, it was impossible to present adequate proof of abuse. Evidence preclusion prevented the jury from assessing the reasonableness of Appellant's actions from the perspective of a person **in her situation.** Consequently, her A.R.S. §13-415 defense was unconstitutionally gutted.

State v. Christensen, **(supra)**, provides an additional basis for PTSD admissibility. ***Christensen,*** allows expert testimony that a defendant possesses a character trait for impulsivity, which the jury may then consider in assessing whether a defendant in a first degree homicide case acted with premeditation. The chronic anxiety and hypervigilance reactions to stress situations inherent in Appellant's PTSD diagnosis. **(RT, August 30th, Exhinits 6, 7, 8 and 9)**, shows a character trait for impulsivity. In precluding the Linskey and Rose testimony, the court barred Petitioner's relevant evidence negating premeditation.

Dr. Hibbert's proffered testimony on the general effects of cortisol associated with third trimester pregnancies – hypervigilance, enhanced protective instincts and a heightened startle response – evidence impulsivity. This constitutes general behavioral evidence of impulsiveness in stressful situations, which the jurors could utilize to

assess whether Appellant acted with premeditation at the time of the shooting. Appellant never suggested that her hormone levels rendered her incapable of forming any requisite state of mind for any crime.

Additionally, admission of the Hibbert evidence was essential for an adequate assessment of the reasonableness of Petitioner's actions from the perspective of a person in her shoes, to wit – a woman a couple days shy of giving birth with extremely high levels of cortisol raging through her body. Exclusion of the Hibbert testimony prevented the jury from assessing both Petitioner's action vis-à-vis a justification defense and negated a defense against a premeditation.

The ***Jacobson, supra,*** court noted ***Richter, supra,*** "does not elaborate under which circumstances a PTSD diagnosis might be admissible in support of a justification defense." **¶11**. Language in ***Jacobsen*, ¶ 20,** although included under the "character trait" topic, suggests that the court would never allow such testimony. "We hold that a PTSD diagnosis is 'opinion testimony going to mental defect . . . and its effect on the cognitive or moral capacities on which sanity depends,' which, ' under the Arizona rule, is restricted.'" Citing ***Mott, supra*** , and ***Clark v. Arizona,* 548 U.S. at 760**. The ***Jacobson*** court, ¶ **20**, expressly rejected the ***Richter*, ¶ 20**, characterization of PTSD testimony, including diagnosis, as observational evidence of a character trait not precluded by ***Mott*** or ***Clark.***

The ***Jacobson*** court additionally ruled that since the PTSD evaluations were supposedly premised only on Petitioner's self-report, they constituted impermissible vouching. **¶s 12-16.** This blatantly incorrect analysis belies the fact that the 13 hour Ross evaluation included numerous standardized psychometric testing tools, utilizing accepted protocol. Requiring third party corroboration of past abuse –often unavailable due to the secretive nature of spousal abuse – would result in the preclusion of PTSD testimony in virtually every domestic abuse self-defense case. What the ***Jacobson*** court deemed as faulty evaluations, including Petitioner's supposed "omission of clearly relevant traumatic history", **¶ 17,** would go to the weight of the evidence – not its admissibility.

The ***Jacobson*** court also erred in characterizing the Hibbert testimony as improper "diminished capacity" evidence. **¶ 21.** Jacobson never sought to present evidence her hormone level rendered her incapable of forming the requisite intent for any crime. She sought to have cortisol effects described to the jury as evidence of impulsivity and for consideration of the reasonableness of her actions in support of justification.

IV. Conclusion

In precluding PTSD and cortisol expert testimony, the court deprived Petitioner of her federal and state due process rights to present a defense. Petitioner requests this

Court accept jurisdiction and remand her case for a new trial.

Petitioner asserts that where, as here, foundational requirements under Arizona Rule of Evidence, 702, have been met, courts should allow expert evidence of a defendant's PTSD diagnosis to corroborate A.R.S. §13-415 evidence of past abuse.

Petitioner further requests that general evidence of pregnancy induced hormonal changes go before the jury in deciding whether a reasonable person in petitioner's situation would feel deadly physical force was necessary to protect herself. An adequate evaluation of reasonableness must include an assessment of inherent common hormonal effects present in a defendant. Petitioner asserts this general testimony does not cross over into an impermissible subjective evaluation.

Finally, Petitioner requests that a PTSD diagnosis and evidence of cortisol effects be allowed to show a character trait for impulsiveness.

Respectively submitted this 25th day of January, 2018.

COCONINO COUNTY PUBLIC DEFENDER

By_____/s/_____
Brad Bransky

APPENDIX, A-17

Arizona Supreme Court Denial of Review

SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

Supreme Court

STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231

TELEPHONE: (602) 452-3396

May 9, 2018

RE: STATE OF ARIZONA v SUSAN J JACOBSON
Arizona Supreme Court No. CR-18-0047-PR
Court of Appeals, Division One No. 1 CA-CR 16-0838
Coconino County Superior Court No. CR2015-00613

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 8, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review to Arizona Supreme Court = DENIED.

Janet Johnson, Clerk

TO:
Joseph T Maziarz
Michael O'Toole
Brad Bransky
Susan Joy Jacobson, ADOC 314848, Arizona State Prison,
Perryville - Lumley/San Juan Unit
Amy M Wood
David J Euchner
Nathan Benedict
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