

No. 20-7238

IN THE
SUPREME COURT OF THE UNITED STATES

ALBERTO JULIO GARCIA,
Petitioner

v.

STATE OF MISSISSIPPI,
Respondent

**On Petition for Writ of Certiorari
to the Mississippi Supreme Court**

CAPITAL CASE

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Petitioner was indicted for the capital murder of a five-year-old girl who he raped and then hanged from a pair of socks to die. When a question of petitioner's competency arose during pretrial proceedings, the Mississippi state trial court assessed the evidence of petitioner's competency and ruled that he was competent. In response to an expert's concern that petitioner's anxiety could affect petitioner once his trial was underway, the court allowed petitioner to be treated to avoid that possibility. After petitioner was treated and his expert testified that he was competent to stand trial, the trial court again ruled that petitioner was competent. Petitioner pleaded guilty and, after a three-day sentencing hearing, was sentenced to death. The Mississippi Supreme Court upheld that death sentence and all of the trial court's rulings that petitioner challenged, including the trial court's competency rulings.

The question presented is whether the Mississippi Supreme Court erred in upholding the trial court's fact-intensive rulings that petitioner was competent to stand trial for capital murder.

RELATED CASES

Mississippi has one addition to the petition's List of Related Cases:

Alberto Julio Garcia v. State of Mississippi, No. 2020-DR-01224-SCT: Post-conviction collateral-relief proceeding on petitioner's sentence. The Mississippi Supreme Court has not entered a judgment as of the time of this filing.

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The opinion of the Mississippi Supreme Court (Pet. App. A) is reported at 300 So. 3d 945. The order of the Mississippi Supreme Court denying rehearing (Pet. App. B) is unpublished.

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on May 14, 2020. The order denying rehearing was entered on September 10, 2020. The petition for a writ of certiorari was filed on February 8, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

INTRODUCTION

Police found the naked body of J.T., a five-year-old girl who had gone missing the night before, hanging by the neck from a pair of socks in an abandoned trailer 50 yards from her home. Pet. App. A 2 (¶¶ 4-5). J.T. had been anally and vaginally assaulted and then hanged while she was still alive. *Id.* at 2 (¶ 5).

Soon after police discovered her body, petitioner Alberto Julio Garcia approached police and made statements incriminating himself in J.T.'s rape and murder. *Id.* at 2 (¶ 6). In executing a search warrant for petitioner's apartment, police discovered that, in the days just before J.T.'s murder, internet searches had been made from petitioner's Xbox console for pedophilic pornography using terms like "virginravisher." *Id.* at 3 (¶ 8). Petitioner pleaded guilty to murdering J.T. *Id.* at 7 (¶ 35). He admitted to raping her, to helping his accomplice hang her from the neck while she was still alive, and to trying to conceal evidence of his crimes. *Id.* After accepting that plea and holding a three-day sentencing hearing, the trial court

sentenced petitioner to death. *Id.* at 8 (¶ 39); 9 (¶ 52). The Mississippi Supreme Court rejected petitioner's claims of error and upheld the death sentence. *Id.* at 24 (¶ 131).

Petitioner now asks this Court to intervene by granting certiorari on the question whether, as applied to his case, Mississippi's presumption of competency violates the Eighth and Fourteenth Amendments to the Constitution. Pet. i. Petitioner contends that he was incompetent to participate in pretrial proceedings, yet the trial court unconstitutionally relied on rulings made in those proceedings when it sentenced him to death. *Id.*

The petition should be denied for three reasons. First, there was no constitutional violation. The Mississippi Supreme Court correctly upheld the trial court's fact-intensive competency rulings. The trial court carefully assessed and probed the evidence of petitioner's competency and ruled that he was competent. Pet. App. A 4-5 (¶¶ 18-23); 6 (¶¶ 30-32). In response to an expert's concern that petitioner's anxiety could affect his ability to participate if the case went to trial, the court took care and allowed petitioner to be treated to avoid that possibility. *Id.* at 5 (¶ 22). After petitioner was treated and his expert testified that he was competent to stand trial, the trial court again ruled that petitioner was competent. *Id.* at 6 (¶¶ 30-32). The Mississippi Supreme Court upheld the trial court's competency determinations. *Id.* at 12 (¶ 62). And nothing about the state courts' competency rulings violates the Constitution.

Second, this case does not present the question set forth in the petition. For one thing, the Mississippi Supreme Court's ruling does not present a pure legal

question about Mississippi’s presumption of competency. Rather, that ruling turns on that court’s review of the evidence-based assessment the trial court made of the circumstances bearing on petitioner’s competency. Pet. App. A. 4-5 (¶¶ 18-23); 6 (¶¶ 30-32). In addressing that issue, neither the Mississippi Supreme Court nor the trial court “expanded” the presumption of competency “to allow” the sentencing court to rely on pretrial rulings when the defendant was incompetent. Pet. i. The trial court made a competency determination based on the evidence before it, and the state supreme court upheld that determination as reasonable. For another thing, the petition rests—heavily, yet without sound basis—on the proposition that petitioner was incompetent. *E.g.*, Pet. 3, 12, 15, 24. But the trial court twice ruled otherwise. Pet. App. A 5 (¶ 22); (6 ¶ 32). As the Mississippi Supreme Court made clear, the trial court never ruled that petitioner was incompetent, and the evidence did not compel it to do so. *Id.* at 12 (¶¶ 62, 66). This case accordingly does not provide a vehicle in which to address a situation when a trial court relied on proceedings that occurred when a defendant was established to be incompetent.

Third, no other consideration supports review. Petitioner does not claim that the question presented has divided the lower courts. He does not argue that the question presented is recurring. He does not even contend that the claimed factual scenario here—involving a sentencing court’s reliance on pretrial rulings that occurred when a defendant was incompetent—will arise again.

Further review is not warranted. The petition should be denied.

STATEMENT

1. On the last full day of her life, five-year-old J.T. was running in and out of her family's apartment, playing with a neighbor. Pet. App. A 2 (¶ 4). That evening, she was kidnapped. *Id.*

According to petitioner at his guilty-plea hearing, the following occurred that night: Petitioner's friend (and one of J.T.'s neighbors) Julian Casper Gray had kidnapped J.T. and taken her to an abandoned trailer about 50 yards from the apartment complex in which they all lived. *Id.* at 2 (¶¶ 4-5); 7 (¶ 35). Gray asked petitioner to join him in the trailer. *Id.* at 7 (¶ 35). Petitioner saw J.T. "bound by socks to a chair, face down." *Id.* Petitioner then anally raped J.T. and ejaculated on her body. *Id.* After raping J.T., petitioner thought she was dead but then realized that she was still alive. *Id.* "Because [petitioner] had not used a condom, he tried to clean [J.T.] off" by rinsing her body with water from a toilet tank. *Id.* With Gray's help, petitioner then hung J.T. "from her neck using the socks that had bound her to the chair." *Id.* Petitioner rinsed J.T.'s body more, then left her in the trailer where she died. *Id.* He showered and washed his clothes. *Id.* at 2 (¶ 7); 7 (¶ 35).

Police discovered J.T.'s dead body the next day. *Id.* at 1 (¶ 1). Based on a tip, police began investigating Gray. *Id.* at 2 (¶ 6). As police were searching Gray's apartment, petitioner voluntarily engaged the police commander in conversation. *Id.* Petitioner stated that they might discover his fingerprints and DNA in the trailer. *Id.* at 2 (¶ 7); 3 (¶ 11). He told police that he knew the trailer's former occupants and had been inside the dwelling the weekend before. *Id.* During that visit, he admitted to stealing "some items" and explained that "his semen may be in the trailer because

he had masturbated there while visiting the trailer's prior occupants." *Id.* at 2 (¶ 7). Petitioner also implicated himself in statements to his apartment manager. The night that J.T. was kidnapped, petitioner approached the manager to report that a child was missing. *Id.* at 8 (¶ 40). At the time, petitioner was "soaking wet, like he had just gotten out of the shower." *Id.*

Based on petitioner's incriminating statements, police obtained a search warrant for his apartment. *Id.* at 3 (¶ 8). They found an Xbox console in his bedroom from which internet searches had been made in the days before J.T.'s murder. *Id.* The search phrases included the terms "virginravisher," "toddler hentai," and other pedophilia-related search terms. *Id.*

Petitioner was arrested and later indicted for capital murder in the commission of felony sexual battery. *Id.* at 3 (¶ 9).

2. a. Before trial, the court appointed forensic psychologist Dr. Robert Storer to evaluate petitioner for a "possible competency issue." Pet. App. E 372. The competency issue was flagged after petitioner reported "suffer[ing] at least one panic attack while [in] court." Pet. App. A 4 (¶ 19).

After examining him, Dr. Storer testified that petitioner was not competent to stand trial because of an unmedicated anxiety disorder. Pet. App. E 378-79. Dr. Storer stated that petitioner's "intellectual functioning was fine" and that his anxiety "is not a severe and persistent mental illness of the type that would alter someone's perception of reality." Pet. App. A 4 (¶ 20); Pet. App. E 390. Dr. Storer stated that petitioner's anxiety merely "shuts him down" and makes it hard for him to engage with his surroundings. Pet. App. E 390. Dr. Storer could not say to a reasonable

degree of psychological certainty whether petitioner’s anxiety would affect his decision-making abilities. Pet. App. A 4 (¶ 21). Dr. Storer recommended that petitioner be medicated for thirty days, which, he believed, “would be enough for [him] to experience a ‘different outcome.’” *Id.* at 4 (¶ 19).

The trial court examined Dr. Storer about petitioner’s condition and engaged petitioner in a long conversation about his mental health. *Id.* at 4 (¶ 20); Pet. App. E 395-403. The court explored with Dr. Storer the impetus behind Garcia’s panic attacks, the state of his medication, and how best to manage Garcia’s anxiety disorder in a courtroom setting. Pet. App. E 387-94. The court also asked Dr. Storer about anxiety disorders generally—how they manifest, how they are treated, and how they may affect a criminal defendant’s logical perception of his circumstances. *Id.* From petitioner, the court learned that he had always been an anxious person who experiences physiological symptoms as a result of his anxiety. *Id.* at 394-403. Despite his anxiety disorder, petitioner admitted that he could communicate with his attorneys, that medication effectively curbed his symptoms, and that he likely could participate effectively in a courtroom setting once medicated. *Id.*

Based on its engagement with Dr. Storer and questioning of petitioner, the trial court found that petitioner was competent to stand trial:

[I]t does not appear to me that [petitioner] is in any manner incompetent in terms of intellectual functioning or his ability to understand and appreciate what is going on or in fact his ability to consult with his attorneys. . . . So at this point I find him competent but for that potential [anxiety] issue. . . . I think at this point he probably could make it through a trial, and he probably would do all right going through a trial.

Pet. App. E 404-05. The court recognized the “potential issue” of petitioner’s anxiety affecting his ability to “handle the courtroom setting *if the case went to trial.*” Pet. App. A 11(¶¶ 58-59) (emphasis in original). So although the court found petitioner competent to proceed, the court ordered that he be treated according to Dr. Storer’s recommendation and reevaluated in 30 days. Pet. App. E 405-06. Dr. Storer advised that he would not complete his full forensic report until the 30 days were complete. *Id.* at 4 ¶ 19.

During that 30-day period, the court held an omnibus hearing and a hearing on petitioner’s motion to exclude the Xbox searches. *Id.* at 5-6 (¶¶ 24-29). Defense counsel did not object to either hearing on competency grounds. *Id.* at 11 (¶ 59). At the omnibus hearing, the court asked defense counsel: “[A]t this point, . . . there’s no claim of incompetency to stand trial but for this anxiety issue we’ve already addressed, and that’s not really a competency issue so much as being able to pay attention and participate, right?” *Id.* at 6 (¶ 29). Petitioner’s counsel responded, “That’s correct, Your Honor.” *Id.*

After Dr. Storer’s recommended course of treatment, he concluded—and reported to the court—“that [petitioner was] currently competent to stand trial.” Resp. App. A 505 (Second Competency Hearing Transcript). He testified that he “reevaluated [petitioner] in front of [petitioner’s] entire legal team, plus a dozen officers, to create as close as possible the courtroom setting.” Pet. App. A 6 (¶ 31). He opined that treatment had been effective: “So in my opinion interventions have made a difference. And [petitioner] currently does not have any significant deficits in his competence related abilities.” Resp. App. A 505.

After Dr. Storer's testimony, the court found that petitioner was "fully competent and fully able to go forward in this matter." Resp. App. A 513. The court described its conclusions and reiterated its prior conclusions about his competency:

[A]t this point, clearly the court previously found that [petitioner] was competent with regard to his mental functioning, his intellectual abilities, et cetera. But there was some concern with not purely competence, but his ability to be in the courtroom and to fully participate in his defense, to communicate with his counsel, if he [chose] to do so, to be able to testify. . . . Based, though, on Dr. Storer's testimony as well as the court's observations of [petitioner], it appears that the matter has been fully addressed with regard to this new medication and perhaps these new interventions that Dr. Storer testified to. And so it appears to me that [petitioner] is fully competent and fully able to go forward in his matter, to make all necessary decisions with regard to assertion of his rights, waiver of his rights if he chooses to waive any, testifying if [he] chooses to testify, going to trial if that is his choice or entering a guilty plea if that is his choice.

Resp. App. A 512-13. The court added that Dr. Storer's treatment had "fully addressed" petitioner's anxiety so that he could communicate with counsel in the courtroom and participate in his defense. *Id.*

b. Petitioner then pleaded guilty to murder and waived his right to a sentencing jury. Pet. App. A 6-7 (¶¶ 33-34). He admitted to anally raping J.T., to hanging her from a pair socks while she was still alive, and to rinsing off her body to try to remove his DNA. *Id.* at 7 (¶ 35). Petitioner did not admit to the vaginal rape, though his DNA matched the swab from J.T.'s vaginal area. *Id.* at 9 (¶ 50).

After a three-day sentencing hearing, the court sentenced petitioner to death. The court found two aggravating factors in support of its sentencing decision: (1) J.T.'s murder occurred while petitioner was engaged in the commission of a sexual battery; and (2) J.T.'s murder was especially heinous, atrocious, and cruel. *Id.* (citing

Miss. Code Ann. § 99-19-101(5)(d), (i)). The court also heard and considered mitigating factors: (1) petitioner had no significant criminal history; (2) he was “a young person” at the time of the crimes; and (3) he had a “difficult childhood,” including having a mother with a substance-abuse problem, suffering violence in the home, and being removed from his home by social services. Resp. App. B 890-93 (Sentencing Hearing Transcript). The court found that this “mitigation with regard to his formative years” did not overcome the undisputed aggravating circumstances. *Id.* at 892. The court therefore imposed a death sentence. *Id.* at 893-94.

c. The Mississippi Supreme Court rejected petitioner’s eight assignments of error and affirmed his sentence. Pet. App. A 10-25 (¶¶ 53-131). (Petitioner’s guilty plea had waived any appeal on the guilt phase. Miss. Code Ann. § 99-35-101.) As relevant here, the Mississippi Supreme Court rejected petitioner’s argument that “his sentence must be vacated because the trial court unconstitutionally heard and decided pretrial motions material to the sentencing proceedings under review at a time when [petitioner] was incompetent to participate in the proceedings.” *Id.* at 10-11 (¶ 55) (internal quotation marks omitted).

To start, the state supreme court rejected the proposition that the trial court had ever ruled him incompetent. The supreme court observed that petitioner’s “argument principally rests on his presumption that the trial court adjudicated that [petitioner] was not competent” at the first competency hearing “and only found [petitioner] to be competent” at the second competency hearing, after petitioner had received treatment. *Id.* at 11 (¶ 56). Petitioner therefore argued, the state supreme

court stated, that “the trial court held important pretrial hearings and made rulings during a time” when petitioner “had been found incompetent.” *Id.*

The Mississippi Supreme Court emphasized that “the record does not support this premise.” *Id.* “Instead, the record shows the opposite—the trial court found [petitioner] to be competent during the entire trial-court proceedings.” *Id.* First, the supreme court explained that at petitioner’s first competency hearing, following Dr. Storer’s testimony, the trial court found that petitioner “met th[e] [competency] standard” set forth in *Dusky v. United States*, 362 U.S. 402, 402 (1960) (per curiam), and other cases. *Id.* at 11 (¶ 57). The judge “ruled, ‘based on the testimony, and of course [her] observances of [petitioner], it [did] not appear to [her] that he is any manner incompetent in terms of intellectual functioning or his ability to understand and appreciate what is going on or in fact in his ability to consult with his attorneys.’” *Id.* (most alterations in original).

But the trial court did “‘have some question’ about how [petitioner] would handle the courtroom setting *if the case went to trial.*” *Id.* at 11 (¶ 58) (state supreme court’s emphasis). The court determined that, because petitioner “appeared more relaxed when properly medicated,” “the better course [was] to try to treat [his anxiety] first and see where [things stood] in about thirty days.” *Id.* (state supreme court’s alterations). The trial judge did say that it found petitioner “competent but for that *potential* issue.” *Id.* (state supreme court’s emphasis). That last comment was not, the Mississippi Supreme Court explained, a finding that petitioner was incompetent. *Id.* The trial court “actually found” that petitioner was competent and also that he “‘probably could make it through a trial, and . . . probably would do all

right going through a trial.” *Id.* “But because ‘it would take a great deal of patience on his part and his attorney’s part,’ and to prevent [petitioner’s] anxiety from *potentially* escalating to a point that he could not participate at future trial, the judge ordered treatment and a reevaluation in thirty days.” *Id.* (state supreme court’s emphasis).

Second, the Mississippi Supreme Court then observed that, at the intervening omnibus hearing, petitioner’s counsel “never objected to the hearing based on [petitioner’s] competency.” *Id.* at 11 (¶ 59). “And when discussing the issue of competency, the judge asked [petitioner’s] counsel, ‘[A]t this point, . . . there’s no claim of incompetency to stand trial but for this anxiety issue we’ve already addressed, and *that’s not really a competency issue so much as a being able to pay attention and participate, right?*’” *Id.* (state supreme court’s emphasis and alterations). Petitioner’s counsel responded, “That’s correct.” *Id.*

And third, the Mississippi Supreme Court observed that at the second competency hearing, “the judge emphasized that she never found [petitioner] to be incompetent.” *Id.* at 11 (¶ 60). She said instead that “clearly the court previously found that [petitioner] was competent with regard to his mental functioning, his intellectual abilities, et cetera.” *Id.* “But the judge did note ‘there was some concern with not purely competence, but his ability to be in the courtroom and to fully participate in his defense, to communicate with his counsel, if he choose[s] to do so, to be able to testify.’” *Id.* The state supreme court emphasized that this was, again, not a finding of incompetence: “the judge never found” that petitioner “had met his burden to overcome the presumption that he possessed these abilities.” *Id.* “Rather,

the record shows [that] the judge was concerned about—and addressed—the possibility that [petitioner] might lose these abilities during a future jury trial if he was not properly medicated.” *Id.*

The court summarized petitioner’s threshold competency argument thus: “[T]he trial court never found what [petitioner] now asserts on appeal—that, from the time of his arraignment in October 2015 until Dr. Storer testified a second time in January 2017, [petitioner] had been incompetent to participate in the proceedings that took place during that time period.” *Id.* at 12 (¶ 61).

Having rejected, as “not support[ed]” by the record, the “premise” on which petitioner’s challenge to the competency rulings rest, *id.* at 11 (¶ 56), the Mississippi Supreme Court then upheld “the trial court’s actual finding—that [petitioner] was competent during the entire trial-court proceedings.” *Id.* at 12 (¶ 62). The state supreme court found “no abuse of discretion” in the trial court’s competency rulings. *Id.*

Although Dr. Storer testified at the first competency hearing that petitioner was incompetent, the Mississippi Supreme Court observed, “this testimony did not go ‘unrebutted.’” *Id.* at 12 (¶ 63) (internal quotation marks omitted). “Instead, the trial judge questioned Dr. Storer carefully about the bases of his opinion,” including whether Dr. Storer knew that petitioner had experienced an in-court panic attack when he had not been given his medication. *Id.* The trial court also questioned Dr. Storer on his “concern” about petitioner’s “initial stated preference for the death penalty over life without parole.” *Id.* at 12 (¶ 64). Although Dr. Storer “had testified” that “he was concerned” that petitioner’s “preference was evidence [that] his anxiety

disorder had impaired his decision-making ability,” when the trial court questioned Dr. Storer he “could not say that [petitioner’s] anxiety impaired his rational decision-making ability to a reasonable degree of psychological certainty.” *Id.* at 12 (¶ 64). Dr. Storer also agreed that petitioner’s “intellectual functioning was fine and that his anxiety disorder ‘is not severe and persistent mental illness of the type that would alter someone’s perception of reality.’” *Id.* at 12 (¶ 65). And although Dr. Storer “testified that [petitioner’s] anxiety ‘shuts him down to where he’s not paying attention and listening and processing information, and he’s not able to ask questions of his attorneys as appropriate or point things out,’” the state supreme court explained that the trial judge “balanced” that opinion against “the trial judge’s own observations of [petitioner] in court and her own careful questioning of [petitioner] at each hearing to ensure he understood what was going [on] and had a meaningful opportunity to communicate with his counsel.” *Id.*

The Mississippi Supreme Court summed up: “We have carefully reviewed these proceedings and find no evidence” that petitioner “had been unable to understand what was going on or consult with his counsel.” *Id.*; *see also id.* at 12 (¶ 66). Petitioner’s guilty plea is under review in an ongoing post-conviction-collateral-relief proceeding. Pet. 3 n.3.

ARGUMENT

The petition challenges the Mississippi Supreme Court’s decision upholding the trial court’s rulings that petitioner was competent to stand trial. In particular, petitioner faults the Mississippi courts’ application of the “presumption of

competency” in his case. Pet. i. The petition should be denied. The Mississippi Supreme Court correctly upheld the trial court’s rulings that petitioner was competent to stand trial. Those rulings rested on a careful, fact-intensive assessment of the evidence and do not raise a clean legal question that turns on a “presumption of competency.” The petition thus attacks a decision that is sound and asks this Court to resolve a question that is not presented in this case. None of the remaining traditional criteria for certiorari is satisfied. Further review is not warranted.

1. The Mississippi Supreme Court correctly upheld the trial court’s rulings on petitioner’s competency. To determine whether a criminal defendant is competent to stand trial, a court must assess “whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky*, 362 U.S. at 402. This Court has held that an incompetent defendant may not be tried, *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996), and that doing so would “deprive[] him of his due process right to a fair trial,” *Drope v. Missouri*, 420 U.S. 162, 172 (1975). As petitioner acknowledges, “a statutory presumption of competency does not necessarily violate procedural due process, even in a death penalty case.” Pet. 16; see *Medina v. California*, 505 U.S. 437, 449 (1992) (“Once a State provides a defendant access to procedures for making a competency evaluation, there is no basis for requiring it to assume the burden of vindicating the defendant’s constitutional right not to be tried while legally incompetent by persuading the trier of fact that the defendant is competent to stand trial.”). All that is required for a constitutionally

acceptable competency determination are “procedures adequate to protect a defendant’s right not to be tried or convicted while incompetent to stand trial.” *Drope*, 420 U.S. at 172.

Consistent with these principles and given a careful investigation of the facts, the trial court twice found petitioner competent to stand trial. At the first competency hearing, the trial court questioned both Dr. Storer about his diagnosis and petitioner about the past and present condition of his mental health. Pet. App. E 387-403. During Dr. Storer’s testimony, the trial court heard that petitioner had a “rational understanding of . . . the proceedings against him.” *Id.* at 379. From petitioner, the trial court learned that he “would be able to feel comfortable at least asking [his attorneys] questions and talking with them if [he] had [his] medicine.” *Id.* at 401. This alone satisfied *Dusky*’s standard.

But the trial court took further careful measures: It “ha[d] some question’ about how [petitioner] would handle the courtroom setting if the case went to trial.” Pet. App. A 11 (¶ 58) (state supreme court’s emphasis omitted). Because petitioner “appeared more relaxed when properly medicated,” the court determined that “the better course [was] to try to treat [his anxiety] first and see where [things stood] in about thirty days.” *Id.* (state supreme court’s alterations). In line with Dr. Storer’s recommendation, the court ordered that petitioner’s anxiety be medicated and that he be reevaluated in 30 days. *Id.* at 406. After a successful course of treatment, the court again found that petitioner was “fully competent and fully able to go forward in this matter.” Resp. App. A 513.

The trial court's rulings were well grounded. The trial court was an active participant in both competency hearings, receiving testimony from both Dr. Storer and petitioner on the factual issues relevant to petitioner's competency. The trial court also had the benefit of observing petitioner in court. The trial court thus evaluated the correct issues, assessed the evidence carefully, and justifiably rejected Dr. Storer's initial opinion on petitioner's competency. The court still took a cautious approach and accepted Dr. Storer's treatment recommendation. Pet. App. E 405-06. After that treatment, and in line with petitioner's expert's own view, Resp. App. A 505, the trial court reiterated its well-grounded conclusion that petitioner was competent, Resp. App. A 513.

As the Mississippi Supreme Court held, the trial court's careful, fact-intensive competency rulings were sound. In assessing the trial court's competency rulings, the Mississippi Supreme Court carefully summarized and evaluated the two competency hearings. Pet. App. A 11-12 (¶¶ 57-61). The state supreme court observed that the trial court "met" the competency standard in *Dusky*, 362 U.S. at 402, and other cases. *Id.* at 11 (¶ 57). The state supreme court found "no abuse of discretion" in the trial court's finding that petitioner "was competent during the entire trial-court proceedings." *Id.* at 12 (¶ 62). The state supreme court acknowledged Dr. Storer's testimony and opinion (*id.* at 12 (¶ 63)), but explained that "the trial judge questioned Dr. Storer carefully about the bases of his opinion" (*id.*), noted several aspects of the opinion that supported the trial court's ultimate competency finding (*id.* at 12 (¶¶ 63-65)), and ultimately itself concluded: "We have carefully reviewed these proceedings

and find no evidence” that petitioner “had been unable to understand what was going on or consult with counsel.” *Id.* at 12 (¶ 65).

The Mississippi Supreme Court’s decision reflects the Constitution and this Court’s precedent. The Constitution requires only that a criminal defendant have “sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and . . . a rational as well as factual understanding of the proceedings against him.” *Dusky*, 362 U.S. at 402. Here, the trial court evaluated that issue and concluded, based on the evidence, that petitioner was competent. Pet. App. E 387-403; Resp. App. A 513. The Mississippi Supreme Court also invoked the correct legal standard and, after a thorough review, reasonably upheld the trial court’s decision. Pet. App. A 12 (¶¶ 62, 66).

The process that the trial court used here also aligns with this Court’s precedent. In *Drope*, for example, this Court upheld against constitutional challenge Missouri’s competency-determination procedures that required a criminal have a psychiatric examination when there is “reasonable cause to believe that the accused has a mental disease or defect excluding fitness to proceed,” that the treating clinician must provide a report on competence, and that the court hold a hearing if the report’s contents are contested. 420 U.S. at 173. The trial court used the same approach here: it ordered that petitioner be examined once a competency question arose, appointed a psychologist to discharge that obligation, heard the psychologist’s opinion, and adopted his recommendation for treatment even though the court disagreed with his conclusion on competency.

In sum, the Mississippi Supreme Court and the trial court ruled correctly on the competency issues here. The petition’s lead argument for this Court’s review—that the lower courts erred and violated the Constitution—is unsound.

2. Besides arising from sound lower-court rulings, further review also is not warranted because this case also does not present a vehicle for resolving the question presented that the petition identifies. That is so for at least two reasons.

First, the Mississippi Supreme Court’s ruling presents no clean legal question about Mississippi’s presumption of competency. The Mississippi Supreme Court’s decision turns on its evidence-based assessment of the trial court’s finding on petitioner’s competency. *Id.* at 10-12 (¶¶ 55-66). In addressing that fact-intensive issue, neither the Mississippi Supreme Court nor the trial court “expanded” the presumption of competency “to allow” the sentencing court to rely on pretrial rulings when the defendant was incompetent. Pet. i. Again, the trial court reasonably and repeatedly concluded that petitioner was competent. Pet. App. A 11 (¶¶ 57, 60). And petitioner’s counsel conceded that the issue was not one of competence. The trial court specifically asked petitioner’s counsel, “[A]t this point, . . . there’s no claim of incompetency to stand trial but for this anxiety issue we’ve already addressed, and *that’s not really a competency issue so much as being able to pay attention and participate, right?*” Pet. App. A 11 (¶ 59) (state supreme court’s emphasis and alterations). Petitioner’s counsel responded, “That’s correct.” *Id.* The petition’s claim of an expansion of the presumption is unsound.

Nor does the petition present any legal issue about the standard governing competency more generally. Petitioner relies on *Dusky* as providing the governing standard by which competence should be measured. Pet. 6, 12, 16, 20. At bottom, he simply claims the Mississippi Supreme Court wrongly applied that standard. That is incorrect, as already explained, and does not present a question warranting this Court's review in any event.

Second, the petition rests on a view of the facts that lacks support. The petition relies—heavily, yet without sound basis—on the proposition that petitioner was incompetent. *E.g.*, Pet. 3, 12, 15, 24. As already explained, the trial court ruled otherwise and did so reasonably. Pet. App. E 387-403; Resp. App. A 513. And as the Mississippi Supreme Court went to lengths to make clear, Pet. App. A 11-12 (¶¶ 56-61), the trial court never ruled that petitioner was incompetent. *See supra* Statement part 3. The state supreme court summed up its assessment thus: “[T]he trial court never found what [petitioner] now asserts on appeal—that, from the time of his arraignment in October 2015 until Dr. Storer testified a second time in January 2017, [petitioner] had been incompetent to participate in the proceedings that took place during that time period.” *Id.* at 12 (¶ 61). The state supreme court therefore rejected, as “not support[ed]” by the record, the “premise” on which petitioner’s challenge to the competency rulings rest. *Id.* at 11 (¶ 56). The petition here rests on the same flawed premise, and this case accordingly does not provide a sound vehicle for resolving the question presented set forth in the petition.

3. No other consideration supports a grant of certiorari. Petitioner does not claim that the question presented has divided the lower courts. He does not argue that the question presented is recurring. Petitioner does suggest that “other jurisdictions [will] likewise erode this fundamental protection.” Pet. 17. As explained, there is no such erosion here, and petitioner does not provide support of the risk he claims. Indeed, petitioner does not even contend that the claimed factual scenario here—involving a sentencing court’s reliance on pretrial rulings that occurred when a defendant was incompetent—will arise again.

It bears noting, finally, that the evidence supporting petitioner’s death sentence was overwhelming. Putting aside his internet searches and his statements to police, petitioner admitted to his apartment manager “that he had been in th[e] trailer and that police would likely find his prints and accuse him of the crime” (Pet. App. A 8 (¶ 40)), J.T.’s vaginal and anal swabs matched petitioner’s DNA to the exclusion of the other suspect (*id.* at 8 (¶ 41)), a pathologist testified that J.T.’s “vagina and anus indicated injurious sexual penetration that would have caused [her] pain and trauma” (*id.* at 8 (¶ 45)), and the rape and murder of a five-year-old girl were self-evidently horrific. This Court’s intervention is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: April 23, 2021

Respectfully submitted,

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Attorney General of Mississippi

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Appendix A to
Respondent's Brief in Opposition
Second Competency Hearing Transcript

1 IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
2 FIRST JUDICIAL DISTRICT

3
4 STATE OF MISSISSIPPI

5
6 VERSUS CAUSE NO. 15-500

7
8 ALBERTO GARCIA DEFENDANT

9
10 -----
11
12 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE
13 STATUS OF THE ABOVE STYLED AND NUMBERED CAUSE, BEFORE
14 THE HONORABLE LISA DODSON, CIRCUIT COURT JUDGE OF THE
15 SECOND CIRCUIT COURT DISTRICT OF THE STATE OF
16 MISSISSIPPI, ON JANUARY 12, 2017.

17
18 -----
19 APPEARANCES:

20 Present and Representing the State:

21 HONORABLE W. CROSBY PARKER
22 District Attorney's Office
23 PO Box 1180
Gulfport MS 39502-1180

24 Present and Representing the Defendant:

25 HONORABLE ANGELA BROUN BLACKWELL
26 Office of Public Defender
27 PO Box CC
Gulfport MS 39502-0860

1 THE COURT: All right. This is Gulfport
2 Cause 15-500. State Versus Alberto Garcia.
3 And as I understand, the matter set for today
4 is to follow-up on Dr. Storer's earlier
5 testimony concerning the anxiety issue; is
6 that correct, Ms. Blackwell?

7 MS. BLACKWELL: That's correct, Your
8 Honor.

9 THE COURT: And that's also your
10 understanding, Mr. Parker?

11 MR. PARKER: Yes, Your Honor.

12 THE COURT: And I see Dr. Storer is
13 here. Will you come on up, doctor. If you
14 will, sir, stop right there for me and face
15 the clerk.

16 (OATH ADMINISTERED)

17 THE COURT: All right, sir. Come have a
18 seat for me. Tell me your name for the
19 record please, sir.

20 THE WITNESS: Robert M. Storer.
21 S-T-O-R-E-R.

22 THE COURT: And you are the same Robert
23 M. Storer who testified previously in this
24 case?

25 THE WITNESS: Yes, ma'am.

26 THE COURT: All right. And for the
27 record, sir, has your education, background
28 experience, licensing, any of that other than
29 the fact you've clearly practiced some

1 additional time changed since your last
2 testimony?

3 THE WITNESS: No, ma'am, nothing else
4 has changed.

5 THE COURT: All right. Any further need
6 to make any record concerning his status as
7 an expert?

8 MS. BLACKWELL: No, Your Honor. We
9 would tender him as an expert.

10 THE COURT: Mr. Parker.

11 MR. PARKER: No objection, your Honor.

12 THE COURT: Go ahead, Ms. Blackwell.

13 DR. ROBERT STORER

14 was thereupon called as a witness, and, having been
15 duly sworn, testified as follows:

16 EXAMINATION BY MS. BLACKWELL:

17 Q. Dr. Storer, back on November 22, 2016, you
18 testified you had concerns about Alberto Garcia's
19 anxiety.

20 A. Yes, ma'am. In regards to his competence
21 related ability specifically.

22 Q. Could you just, for the benefit of the
23 record, refresh our recollection on what those concerns
24 were.

25 A. I'd be glad to. During my evaluation of
26 Mr. Garcia, I've seen him on four separate occasions
27 for somewhere in the neighbor of 10 to 12 hours in
28 total.

29 I've conducted both psychological testing

1 and evaluations of him during that timeframe. And
2 until the last time prior to -- until the time prior to
3 November 22, I did not have any concerns about his
4 competence related abilities.

5 IQ testing revealed no deficits there.
6 Competence measure revealed no deficits of competence
7 related abilities. The only thing of any real
8 significance that had come about was that he seemed to
9 have an anxiety disorder that had been present since
10 early childhood at least.

11 In that last time that I interviewed him,
12 though, I also found out that that anxiety was giving
13 him difficulties, particularly during court
14 proceedings. When I asked him to rate his anxiety
15 level on a scale of one to ten, which is common
16 practice in assessing how much there is and how much
17 impairment is related to various levels, he told me
18 that his average anxiety level during court proceedings
19 was an eight on a scale of one to ten where a ten was a
20 full blown panic attack.

21 In addition to that, he advised me that he
22 had actually had a panic attack during proceedings at
23 one point. When I asked him how he dealt with his
24 anxiety during court proceedings, he told me that what
25 he does is he attempts to focus internally, tries to
26 block out whatever is going on around him.

27 And I asked him how he's able to follow
28 what's going on in the courtroom and how he's able to
29 consult with his attorney during those times. And his

1 response indicated to me that he actually is not able
2 to do so. So those things had me concerned. And
3 that's what I think I testified to on November 22nd.

4 Q. The plan at that point back in November was
5 to reevaluate him in 30 days.

6 A. Correct. The plan was that the -- my
7 understanding was that the jail would take a look at
8 him, possibly prescribe appropriate medications and
9 that after there had been a period of time for
10 medications to come up to a therapeutic level that I
11 would go ahead and reevaluate him, which I did.

12 Q. Are you aware of what sort of measures the
13 jail took to correct that or help solve that anxiety
14 problem?

15 A. I believe I am. What I've been told is
16 that Mr. Garcia was assessed both by the nurse
17 practitioner and by a physician who came in outside the
18 jail and that they initially prescribed him a drug
19 called Inderal which is a beta blocker and it is
20 commonly used to treat anxiety symptoms, at least the
21 physiological components of anxiety.

22 My understanding is he had some difficulty
23 with that. They added Paxil on top of that. In
24 addition, the jail staff also attempted to teach Mr.
25 Garcia some cognitive behavioral interventions, deep
26 breathing exercise, those kind of things.

27 Q. Based on -- did you reevaluate Mr. Garcia?

28 A. I did.

29 Q. When did that occur?

1 A. That occurred just last week. I believe it
2 was January 5th. Yes, January 5th. And I actually
3 asked to see him in this courtroom with as much of his
4 legal team present as possible as well as somewhere
5 around the neighborhood of 10 to 12 officers as well.

6 Certainly not a match to what happens
7 during court proceedings or that he'll face at trial or
8 sentencing, but as well as possible, I attempted to
9 mimic those conditions.

10 Q. And that occurred here in this very
11 courtroom?

12 A. That's correct.

13 Q. Has your professional opinion as to his
14 anxiety changed since November 22nd?

15 A. My opinion regarding his anxiety disorder
16 has not changed. I still believe he has an anxiety
17 disorder. I still believe that he has anxiety.
18 However, my opinion is that the interventions have been
19 effective in reducing his anxiety to a level that it is
20 now not significantly interfering with his competence
21 related abilities.

22 specifically, when I saw him on January 5th
23 with that number of people and with the defense team
24 counsel crowded around him at the table, he did not
25 demonstrate any deficits. In fact he -- in addition to
26 not showing deficits, he actually demonstrated a pretty
27 good ability to consult with counsel in talking about
28 plea bargains or defense strategies. And he described
29 his anxiety level at that time meeting with me in this

1 situation as a four on a scale of ten.

2 And even alone in the jail his anxiety
3 level had been higher than that and had interfered with
4 his ability to process things, answer questions,
5 problem solve. So in my opinion the interventions have
6 made a difference. And he currently does not have any
7 significant deficits in his competence related
8 abilities.

9 Q. So is it your professional opinion, your
10 expert opinion that he is competent to stand trial?

11 A. While recognizing that it's the court's
12 decision, yes, my opinion is that he's currently
13 competent to stand trial.

14 Q. Would it also be your professional opinion
15 that if he decided to enter a plea, he would be
16 competent to do that?

17 A. It is.

18 Q. Just to cover a few -- this goes to
19 something other than the anxiety. You did do
20 intelligence testing on Mr. Garcia?

21 A. I did.

22 Q. Does he suffer from any sort of
23 intellectual disability or what some of our statutes
24 call mental retardation?

25 A. He does not meet the prong of intellectual
26 deficits for that diagnosis.

27 Q. Okay. You were also asked to determine
28 whether or not Mr. Garcia had the capacity to
29 understand and intelligently waive or assert his

1 constitutional rights? Do you believe in your opinion
2 that he was able to do that?

3 A. In my opinion his capacity is unimpaired
4 currently.

5 MS. BLACKWELL: Your Honor, if I could
6 have just one moment, please?

7 THE COURT: Yes, ma'am.

8 MS. BLACKWELL: Nothing further, Your
9 Honor.

10 THE COURT: Okay. Mr. Parker, any
11 questions?

12 MR. PARKER: Just real briefly, Your
13 Honor.

14 BY MR. PARKER:

15 Q. Dr. Storer, you mentioned this. I just
16 want to make sure I'm clear for the record. Regarding
17 whether or not in your evaluation, and I understand
18 that you haven't finalized your report at this time?

19 A. Correct. It will be ready shortly.

20 Q. But your opinions have been finalized?

21 A. Yes, sir.

22 Q. Do you have an opinion on whether or not he
23 has sufficient present ability to consult with his
24 attorneys with a reasonable degree of rational
25 understanding in preparation of his defense and has a
26 rational as well as factual understanding of the nature
27 and object of the legal proceedings against him?

28 A. I do have an opinion on those topics, and
29 my opinion is that he currently does have a rational

1 and factual understanding of the nature and object of
2 the legal proceedings against him and that does have
3 the ability to consult with counsel with a reasonable
4 degree of rational understanding.

5 The proviso there is that prior to his
6 being treated for his anxiety symptoms, I felt that
7 there were impairments. Now I believe there are not.

8 Q. Yes, sir. My next question is, do you have
9 an opinion as to his mental state at the time of the
10 alleged offenses with respect to his ability to know
11 the nature and qualify of his alleged acts and to know
12 the difference between right and wrong in relation to
13 alleged acts at the time?

14 A. Although when I was originally retained by
15 defense counsel that was one of the questions that they
16 wanted, there was a change in the request for
17 evaluation. And therefore, mental state at the time of
18 the alleged offense was not evaluated. And therefore,
19 I do not have an opinion on that.

20 Q. Okay. As to any mitigating circumstances
21 whether the offense with the defendant was charged was
22 committed while under the influence of extreme mental
23 or emotional disturbance and whether his capacity to
24 appreciate the criminality of his conduct or conform
25 his conduct to the requirements of the law was
26 substantially impaired, do you have an opinion as to
27 that?

28 A. I do not. I was asked to assess for
29 mitigation. But given that those factors are statutory

1 mitigations that are directly tied to mental state at
2 the time of the alleged offense, I did not evaluate for
3 those components.

4 Q. Okay. But at this point, he has the
5 capacity to understand and to knowingly, intelligently,
6 and voluntary waive or assert any of his constitutional
7 rights.

8 A. In my opinion he does, yes.

9 MR. PARKER: With the Court's
10 indulgence. No further questions.

11 THE COURT: Ms. Blackwell, any
12 follow-up?

13 MS. BLACKWELL: No, Your Honor.

14 THE COURT: All right. So, Dr. Storer,
15 the gist of what I'm understanding is of
16 course the disorder is still there.

17 THE WITNESS: That's correct, ma'am.

18 THE COURT: And probably will be
19 forever.

20 THE WITNESS: I believe so.

21 THE COURT: All right. But with regard
22 now to the change in the treatment, you
23 believe that now Mr. Garcia can actually sit
24 at a trial if that becomes necessary, talk to
25 his lawyers, understand what's going on, in
26 other words to control that anxiety?

27 THE WITNESS: Yes, ma'am. I believe he
28 can at this time.

29 THE COURT: All right. And if he were

1 to decide to give up his rights and enter a
2 guilty plea, he would also have the ability
3 to understand those rights, intelligently
4 decide whether to waive those and understand
5 the potential consequences?

6 THE WITNESS: In my opinion, that is
7 true.

8 THE COURT: Okay. All right. Any
9 follow-up to that, Ms. Blackwell?

10 MS. BLACKWELL: No, ma'am.

11 THE COURT: Mr. Parker?

12 MR. PARKER: No, Your Honor.

13 THE COURT: Thank you, Doctor. You can
14 step down. All right. Ms. Blackwell, any
15 other witness or documentation you want to
16 submit?

17 MS. BLACKWELL: No, ma'am. Only to say
18 that as soon as I have Dr. Storer's complete
19 report, it is still in the works, it will be
20 submitted to the court, and as we intend to
21 call him as a mitigation witness, it will be
22 submitted to the state.

23 THE COURT: All right. And I think the
24 agreement was to do that by the 9th. But as
25 I understand, that just wasn't physically
26 possible, correct?

27 MS. BLACKWELL: It was not possible,
28 Your Honor. I did give the state what
29 information I had in an attempt to conform to

1 the court's order. I don't want to hide the
2 ball. I just don't have the complete report
3 yet.

4 THE COURT: Right. Okay. All right.
5 Mr. Garcia, would you stand up for me please,
6 sir?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: You heard what Dr. Storer
9 had to stay, correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Do you agree with him? You
12 think you feel better?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: All right. And you think
15 you're a little more comfortable when you're
16 in here now?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And I know some of that's
19 from coming in and getting used to it, true?

20 THE DEFENDANT: Yes, that's correct.
21 I'm trying to talk to the nurse practitioner
22 just to get one more increase so I can feel a
23 little bit better because like he stated, I
24 have like anxiety level before. But it
25 wasn't like a full trial room like it was
26 during my preliminary. So I believe if I get
27 a little more medication, I should be fine.
28 But I've been having trouble getting the
29 nurse practitioner as he's out sick.

1 THE COURT: Okay. And when you say a
2 little bit more medication, which one's
3 helping the best?

4 THE DEFENDANT: The Paxil. I just need
5 another increase on it, and I should be good,
6 ma'am.

7 THE COURT: All right. And you've been
8 able then to kind of feel more like you can
9 participate on your own. In other words, you
10 can pay attention and you can say, hey, I
11 want you to ask this or don't ask that, that
12 kind of thing?

13 THE DEFENDANT: Yes, ma'am. I can
14 communicate better now.

15 THE COURT: All right. Great. All
16 right, thank you, sir. You can have a seat.

17 MS. BLACKWELL: And, judge, just for the
18 record, I visited Mr. Garcia last week. And
19 he informed me about wanting an increase in
20 the Paxil.

21 I did email the staff at the jail, and
22 they informed me they were working on that.

23 THE COURT: All right. And he says the
24 nurse practitioner is out though. Is there
25 someone else who can address that?

26 MS. BLACKWELL: Kelly Moore, the social
27 worker that I've had routine contact with,
28 said that there was someone else. I don't
29 recall the name.

1 THE COURT: Is it Gloria something? I
2 ask that because there was a memo sent on
3 someone else's case about medication. Do you
4 guys know who I'm talking about, state,
5 Gloria something?

6 MR. PARKER: I'm sorry, Your Honor?

7 THE COURT: She was the director of
8 something out there. Ms. Blackwell, so you
9 may want to get with -- I believe it was
10 Mr. Crosby's client.

11 MS. BLACKWELL: Yes, Your Honor. I
12 will. Like I said, I've been in routine
13 contact with them about his medication and
14 things like that. And she assured me --
15 Kelly Moore assured me that she would have
16 someone come speak to him.

17 THE COURT: All right. Then at this
18 point, clearly the court previously found
19 that Mr. Garcia was competent with regard to
20 his mental functioning, his intellectual
21 abilities, et cetera.

22 But there was some concern with not
23 purely competence, but his ability to be in
24 the courtroom and to fully participate in his
25 defense, to communicate with his counsel, if
26 he choose to do so, to be able to testify.

27 And that was all tied to this anxiety
28 disorder and his feeling a heightened level
29 of anxiety in the courtroom. And as was

1 noted previously, virtually everybody feels a
2 heightened level of anxiety in the courtroom.

3 His was somewhat different, however,
4 because of the underlying disorder. Based,
5 though, on Dr. Storer's testimony as well as
6 the court's observations of Mr. Garcia, it
7 appears that that matter has been fully
8 addressed with regard to this new medication
9 and perhaps these new interventions that Dr.
10 Storer testified to.

11 And so it appears to me that Mr. Garcia
12 is fully competent and fully able to go
13 forward in his matter, to make all necessary
14 decisions with regard to assertion of his
15 rights, waiver of his rights if he chooses to
16 waive any, testifying if I chooses to
17 testify, going to trial if that is his choice
18 or entering a guilty plea if that is his
19 choice.

20 It appears under the case law as well
21 the rules that he can assist and consult with
22 his attorneys and he has a rational as well
23 as factual understanding of the nature and
24 the purpose of the proceedings.

25 He fully understands where he stands in
26 this case, what he is charged with, and has
27 the full and complete ability to go forward
28 as he chooses, of course, with the assistance
29 of his counsel in this matter.

1 All right. Defense, anything further we
2 need to put on the record today?

3 MS. BLACKWELL: No, Your Honor.

4 THE COURT: State?

5 MR. PARKER: No, Your Honor.

6 THE COURT: All right Mr. Garcia?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: As always, anything that you
9 want to put in this record?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: All right, sir. Any
12 questions that you have? And again I'll
13 remind you, I can't answer any questions
14 about facts or how you should proceed. But I
15 can certainly answer questions with regard to
16 procedures and what happens next.

17 THE DEFENDANT: I understand. No,
18 ma'am. I don't have any questions at the
19 moment, ma'am.

20 THE COURT: All right, sir. So at this
21 point we're still set for the 23rd. And we
22 would start early that morning, probably
23 bringing the jury in about 8:30 as things
24 currently stand. You understand that, sir?

25 THE DEFENDANT: Yes, ma'am.

26 THE COURT: All right, sir. If I don't
27 see you before then, I'll see you on the
28 23rd.

29 THE DEFENDANT: Yes, ma'am. I have one

1 question.

2 THE COURT: Sure.

3 THE DEFENDANT: I thought of it when you
4 mentioned jury. Will I be present for that,
5 the jury selection?

6 THE COURT: Absolutely?

7 THE DEFENDANT: Okay. I just wanted to
8 know.

9 THE COURT: You'll be present from the
10 minute we start to the minute we end.

11 THE DEFENDANT: Thank you, ma'am.

12 (END OF PROCEEDINGS)

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1 STATE OF MISSISSIPPI
2 COUNTY OF HARRISON

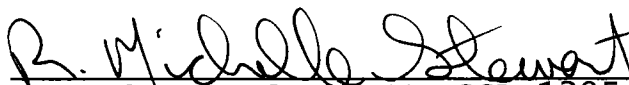
3 CERTIFICATE OF COURT REPORTER

4 I, R. Michelle Stewart, CCR 1305, Official Court
5 Reporter for the Second Circuit Court District of the
6 State of Mississippi, do hereby certify that the
7 foregoing 17 pages constitute, to the best of my skill
8 and ability, a true and correct transcript of my
9 stenographic notes of the STATUS had on the 12 day of
10 January, 2017, before the Honorable LISA DODSON,
11 Circuit Court Judge of the Second Circuit Court
12 District of the State of Mississippi, being a regular
13 day in the January Term of Harrison County Circuit
14 Court at Gulfport.

15 This is to further certify that I have this date
16 filed the original and one copy of said transcript,
17 along with one CD in PDF language, for inclusion in the
18 record on appeal, with the Clerk of the Circuit Court
19 of Harrison County, Mississippi, and have notified the
20 attorneys of record and the Supreme Court of my actions
21 herein.

22 I do further certify that my certificate annexed
23 hereto applies only to the original and certified
24 transcript and electronic disks.

25 WITNESS MY SIGNATURE, May 4, 2017.

26 
27 R. MICHELLE STEWART, CCR 1305
28 Official Court Reporter

29 COURT REPORTER'S FEE: \$43.20

R. Michelle Stewart, CCR - Official Court Reporter

Appendix B to
Respondent's Brief in Opposition
Sentencing Hearing Transcript

1 (JANUARY 23, 2017)

2 (STATE'S EXHIBIT 1-18, 23-34 IN EVIDENCE)

3 (STATE'S EXHIBIT 19-22, 35-38 FOR IDENTIFICATION)

4 THE COURT: All right. We are here in
5 Gulfport Cause B2401-2015-500 for sentencing
6 trial. What's says the state?

7 MR. PARKER: Your Honor, the state is
8 ready to proceed.

9 THE COURT: And what says the Mr.
10 Garcia?

11 MS. BLACKWELL: Your Honor, we're ready.
12 All right.

13 THE COURT: Ms. Blackwell, let me ask
14 that you and Mr. Garcia stand and let's
15 address a matter we left out of the plea.

16 Mr. Garcia, I think Ms. Blackwell's
17 talked to you in the meantime about this.
18 But for reasons unclear to me, you are
19 required by statute to register as a sex
20 offender. Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Now, I'm not sure why
23 because regardless of how this comes out,
24 you'll never be released from custody. You
25 understand that?

26 THE DEFENDANT: Yes, ma'am.

27 THE COURT: But if by some strange thing
28 you are ever released, you would be required
29 to register and provide all of the

1 information required by the statute. You
2 understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And has she gone over the
5 form with you concerning that? Did you sign
6 a form about the requirements?

7 MS. BLACKWELL: Your Honor, he has not
8 signed the form. But we can do that.

9 THE COURT: Let's do that maybe during
10 the lunch break.

11 MS. BLACKWELL: Yes, ma'am.

12 THE COURT: And then we'll talk about it
13 some more, Mr. Garcia, but understanding
14 that, does that in any way change your mind
15 about the plea you've already entered?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. Thank you, sir.
18 All right. State, do you want to make any
19 opening?

20 MR. PARKER: Yes, Your Honor, we do.

21 THE COURT: All right, sir.

22 OPENING STATEMENTS BY MR. PARKER:

23 May it please the court, counsel
24 opposite. Your Honor, in just a moment as part of the
25 sentencing phase of this case, the State of Mississippi
26 will reintroduce all of the evidence and testimony from
27 this defendant's guilty plea last week.

28 As the court is aware, this is a
29 relatively simple act to do. But in his plea last

1 week, this defendant admitted to anally assaulting
2 five-year-old Ja'Naya Thompson and then hanging her and
3 leaving her body suspended by a sock tied around her
4 neck. He admitted to sexually assaulting and killing
5 her.

6 After we do that, Your Honor, we're
7 going to begin calling witnesses. They're going to
8 tell that you that on July 16, 2014, at the Palms
9 Apartments just north of Interstate 10 just off of
10 Three Rivers Road, five-year-old Ja'Naya was playing
11 outside her apartment. It was getting dark. Her mom
12 goes outside, can't find her.

13 After looking for approximately ten
14 minutes, she calls 911. You're going to hear that 911
15 call. Your Honor, the authorities searched through the
16 night, but they weren't able to find her. At
17 approximately 8:15 the next morning, Ja'Naya's body was
18 found.

19 It was found in an abandoned, roach
20 infested trailer just north of the Palms Apartments on
21 Whitney Drive. Her body was found. Two socks had been
22 tied together, tied around her neck, and she was hung
23 from a bathroom window suspended above a bathtub. She
24 was nude from the waist down and blood was trickling
25 down her leg.

26 Forensic pathologist Dr. Mark LeVaughn
27 is going to tell you that she was both vaginally and
28 anally sexually assaulted prior to her death.

29 Your Honor, you're going to hear from

1 two lay witnesses from the Palms Apartments who
2 assisted in the search for Ja'Naya. You'll hear there
3 were a lot of people outside once Ja'Naya was missing.
4 The two individuals you're going to hear from had
5 interaction with this defendant on July 16, 2014 after
6 he had sexually assaulted and hung her.

7 They're going to tell you about his
8 demeanor. They're going to tell you what he was
9 talking about. They're going to tell you about his
10 behavior.

11 You're also going to hear that after
12 Ja'Naya's body was found that the Gulfport Police
13 Department, in connection with the FBI, began the
14 investigation of this case. And during one of the
15 searches during this case, this defendant walked up in
16 the middle, and his behavior led to the Gulfport Police
17 Department wanting to speak to him.

18 You're going to see a video of his car
19 ride from the Palms Apartments to the Gulfport Police
20 Department, and you're going to be able to listen to
21 what he was talking about, the questions he was asking,
22 the information he was bringing up, to see his
23 demeanor.

24 You're going to hear from Jessie
25 Kendziorek. She was part of the crime scene
26 technician unit that arrived on scene. You're going to
27 see photographs of that trailer, that crime scene.
28 You're going to see photographs of how Ja'Naya was
29 found. You're going to hear testimony how it was

1 Jessica Kendziorek who had to put on that suit to help
2 remove her body to get it to the autopsy.

3 You're going to hear from Grant Koon who
4 is also part of that crime scene technician unit who
5 was there at the autopsy. You're going to hear from
6 Detective Chris Werner who took a statement from this
7 defendant on July 17, 2014, the next day. And you're
8 going to hear how the defendant's story changes, how
9 first he says, I don't know anything about Ja'Naya, but
10 my fingerprints will be in that trailer because I went
11 dumpster diving or burglarized it a couple of days
12 prior to her missing.

13 Then it changes to, oh, you'll find my
14 semen in that trailer also but that's because I
15 masturbated in that trailer when the prior tenants were
16 there a couple of weeks prior and they left me alone.
17 And then the story changes again to, I got home on
18 July 16, 2014. I was playing a video game, and then
19 the next thing I remember is coming to, and I have
20 someone else's feces on my penis.

21 Your Honor, you're going to hear that
22 statement. After that, the Gulfport Police Department
23 took buccal swabs of this defendant so that they could
24 test for DNA. You're going to hear from DNA expert
25 Shane Hoffmann with the FBI who tested the DNA in this
26 case at the Quantico laboratories up in Virginia.

27 They're going to tell you that this
28 defendant's DNA matched vaginal swabs taken from
29 Ja'Naya's body. They're going to tell you that this

1 defendant's DNA, his semen, was found on swabs taken
2 from Ja'Naya's anal cavity.

3 You're going to hear that this
4 defendant's DNA was found on swabs taken from her inner
5 thigh and vulva area. In addition to this defendant's
6 DNA being found on the swabs taken from inside of
7 Ja'Naya's body, you're going to hear that this
8 defendant's DNA matches DNA that was found inside one
9 of the socks that was used to hang Ja'Naya.

10 In addition to the DNA in this case, the
11 State of Mississippi is going to call forensic digital
12 examiner Wayne Mitchell with the FBI. When the
13 Gulfport Police Department and the FBI searched this
14 defendant's room, they found an Xbox hooked up to his
15 TV right there in his room that was only his room.

16 Wayne Mitchell is going to tell you
17 about his forensic examination of that Xbox, how in the
18 days just prior to July 16, 2014, that that Xbox, this
19 defendant's Xbox in his room was used to search terms
20 such as, very young, petit, tiny, tween, crying, rape,
21 anal, forced. Other terms such as young, teen, bound,
22 forced, anal. There's going to be a list of them, Your
23 Honor, and the state will show you that.

24 Finally you will hear from the forensic
25 pathologist, as I stated Dr. Mark LeVaughn, who is going
26 to tell you about the injuries she suffered and that
27 the cause of death was due to ligature strangulation
28 due to hanging.

29 Your Honor, as this court is aware, the

1 state is required to prove aggravating circumstances.
2 And we have to prove that to you in order for you to be
3 able to consider the death penalty under the laws of
4 the State of Mississippi.

5 The state expects to prove to you the
6 aggravating circumstances that this defendant committed
7 this crime in the course of a sexual assault. We also
8 anticipate proving to you that this crime was
9 especially heinous, atrocious or cruel. And you will
10 take those aggravating circumstances, and you'll weigh
11 them against whatever mitigating factors the defense
12 puts up, and at the close of this sentencing hearing,
13 the state the will come back before you, and we will
14 ask you based on the facts and circumstances of this
15 case, based on this defendant's guilty plea and all the
16 evidence you have before you to sentence this defendant
17 to the maximum punishment, to punish this defendant
18 with the death penalty. Thank you.

19 THE COURT: Thank you. Mr. Stage.

20 MR. STAGE: Judge, we're going to -- I
21 presume Your Honor is about to ask. We'd
22 like to reserve our opening.

23 THE COURT: All right. State, who is
24 your first witness?

25 MR. PARKER: Your Honor, at this time
26 the State of Mississippi calls Alyssa Taylor.

27 (OATH ADMINISTERED)

28 THE COURT: All right. Come have a seat
29 right here. All right. Go ahead.

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ALYSSA TAYLOR

was thereupon called as a witness for and on behalf of the State, and, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. PARKER:

Q. Ms. Taylor, will you please state your full name for the record.

A. Alyssa Taylor.

Q. And by whom are you employed?

A. Gulfport Police Department.

Q. What's your job title with the Gulfport Police Department?

A. I'm a 911 dispatcher.

Q. And were those your duties on July 16, 2014?

A. Yes, sir, to take that call.

Q. Well, and specifically, did you receive a phonecall at approximately 8:28 PM that evening?

A. Yes, sir.

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

THE COURT: Yes, sir.

BY MR. PARKER:

Q. Ms. Taylor, I'm showing you what's been entered into evidence as State's Exhibit 1. Do you recognize this?

A. Yes, sir.

Q. How do you recognize it?

A. It is the audio of that night.

1 Q. Is this an audio recording of your voice on
2 this?

3 A. It is.

4 Q. And is this a true and accurate recording
5 of the 911 call that you received at 8:28 PM?

6 A. Yes, sir.

7 Q. And have you had an opportunity to listen
8 to this?

9 A. Yes, sir.

10 Q. And are those yours initials?

11 A. Yes, sir.

12 MR. PARKER: Your Honor, at this time we
13 ask to publish State's Exhibit 1.

14 THE COURT: All right.

15 (TECHNICAL PROBLEM WITH AUDIO IN PLAYING
16 STATE'S EXHIBIT 1)

17 THE COURT: Mr. Parker, you have just a
18 good old fashion boom box somewhere?

19 MR. PARKER: I wish it was that easy,
20 Your Honor. I think maybe the best course of
21 action is to let them reboot. That's all the
22 questions I have for this witness, and we can
23 publish State's Exhibit 1 at the next
24 appropriate time.

25 THE COURT: All right.

26 MR. PARKER: We tender the witness.

27 MS. BLACKWELL: We have no questions,
28 Your Honor.

29 THE COURT: All right. You can step

1 down. Thank you, ma'am. Who would have
2 next, Mr. Parker.

3 MR. PARKER: Your Honor, the state calls
4 Margaret Drongowski.

5 (OATH ADMINISTERED)

6 THE COURT: Come on up and have a seat
7 there, ma'am. State, you may proceed.

8 MR. PARKER: Yes, Your Honor. Thank
9 you.

10 MARGARET DRONGOWSKI

11 was thereupon called as a witness for and on behalf of
12 the State, and, having been duly sworn, testified as
13 follows:

14 DIRECT EXAMINATION BY MR. PARKER:

15 Q. Ms. Drongowski, would you please state your
16 full name and spell your last name for the court.

17 A. Margaret Rose Drongowski.

18 D-R-O-N-G-O-W-S-K-I.

19 Q. And, ma'am, do you live here on the
20 Mississippi Gulf Coast?

21 A. I do.

22 Q. Approximately how long have you lived here
23 on the Mississippi Gulf Coast?

24 A. Approximately 35 years.

25 Q. Now, did you previously live at the Palms
26 Apartments here in Gulfport?

27 A. I did.

28 Q. When did you live at the Palms Apartment?

29 A. From December of 2005 to June of 2015.

1 Q. So obviously you lived at the Palms
2 Apartments in July of 2014?

3 A. I did.

4 Q. I want to ask you about Ja'Naya Thompson.
5 Did you know her?

6 A. Yes.

7 Q. Tell the court how you knew her?

8 A. She played with my granddaughters.

9 Q. Approximately where did you live in
10 relation to where Ja'Naya lived?

11 A. I lived digonal, just across the street
12 from her.

13 Q. Pretty close?

14 A. Pretty close.

15 Q. And how would you describe Ja'Naya?

16 A. She was a precocious, sweet little girl,
17 and she loved animals. Always very polite.

18 Q. Now, did you ever have the opportunity to
19 see Alberto Garcia in the apartment complex?

20 A. I did.

21 Q. And where would you see him?

22 A. He would be sitting in the front bedroom
23 apartment window of where I presumed he lived. Looked
24 like he was watching the playground or on his computer.
25 I thought he was watching kids.

26 Q. where did he live in relation to where you
27 lived?

28 A. Across the parking lot and just one over.
29 So we had a direct view.

1 Q. So Ja'Naya lived across the parking lot?

2 A. She did.

3 Q. And Alberto Garcia lived across the parking
4 lot?

5 A. He did. He lived in a different building.
6 We were kind of centered.

7 Q. Now, you stated you would see him in a
8 window. Did you see him more than once in that window?

9 A. Yes.

10 Q. Multiple times?

11 A. Many times. I thought he was watching his
12 kids. So I don't think much about it.

13 Q. I want to take you to July 16, 2014. Do
14 you remember the search for Ja'Naya?

15 A. I do.

16 Q. Please tell the court what you remember.

17 A. I remembered Ja'Naya's mother knocking on
18 our door asking if we had seen Ja'Naya. I told her no
19 because my granddaughters hadn't been over that day.
20 And I went outside and asked her if she called the
21 police. And she said she had. So we went around and
22 knocked on doors.

23 Q. Do you remember approximately what time
24 that was?

25 A. It was after 7:00. It wasn't all the way
26 dark yet so maybe about 7:30.

27 Q. Still somewhat dusk?

28 A. Yes.

29 Q. Do you remember having any interaction

1 with Alberto Garcia?

2 A. I do.

3 Q. Please tell the court what you specifically
4 remember.

5 A. I was out looking for Ja'Naya, and he
6 started walking with me.

7 Q. Was there any conversation?

8 A. He -- when he approached me and he was
9 walking with me, he offered that he had just taken a
10 shower, which I felt rather strange because I didn't
11 really know him.

12 Q. And just so I'm clear. So you're out
13 looking, and Alberto Garcia walks up to you, and you
14 said he offers up the fact that he had just taken a
15 shower?

16 A. He did.

17 Q. And why did you find that odd?

18 A. Because if he had taken a shower, he needed
19 to go take another one because he was sweaty and kind
20 of glistening. It didn't seem like he had just taken a
21 shower.

22 Q. Did you notice anything else about him?

23 A. He just didn't seem clean. He smelled a
24 little bit too like a body odor like had he been out
25 for awhile outside. It was hot.

26 Q. Now, after he shared this information with
27 you, how did your interaction with him finish? How did
28 it end?

29 A. He told me he didn't know why we were all

1 still looking for Ja'Naya because he had to get up in
2 the morning, and he was going to go home or sit down.

3 Q. And did he leave you at that point?

4 A. He did.

5 Q. About how long was your interaction with
6 him that evening?

7 A. Maybe 20, 30 minutes. Maybe a little
8 longer.

9 Q. Now, the Alberto Garcia that you had
10 interaction with on July 16, 2014, the individual that
11 you had seen sitting in that window, do you see him in
12 this courtroom?

13 A. I do.

14 Q. would you please point to him and tell the
15 court where he's sitting and what he's wearing?

16 A. He's sitting to the right of me. He's
17 wearing the red and white jumpsuit.

18 MR. PARKER: Your Honor, let the record
19 reflect a correct identification of the
20 defendant by this witness.

21 THE COURT: The record will so reflect.

22 MR. PARKER: With the court's
23 indulgence. Your Honor, we tender this
24 witness.

25 THE COURT: All right.

26 CROSS-EXAMINATION BY MS. COLLUMS:

27 Q. Ma'am, do you know if there were any
28 children that lived in the apartment where Mr. Garcia
29 stayed?

1 A. Yes, ma'am.

2 Q. Okay. Do you remember if you saw that
3 child on the playground that day at the time you're
4 talking about?

5 A. That he was watching? No, I don't remember
6 specifically.

7 Q. Okay. And did Mr. Garcia stay with you
8 that whole 20 or 30 minutes that you were walking
9 around the --

10 A. Yes, ma'am.

11 Q. Okay. Was it dark yet then?

12 A. It was dark by the time we went back
13 inside.

14 Q. When he left you, did you see the direction
15 that he left off in?

16 A. Yes, ma'am. He went back towards the front
17 of his apartment.

18 Q. And when you encountered him, did you see
19 him coming from any particular direction?

20 A. When we met?

21 Q. Yes, ma'am.

22 A. Actually he seemed to be coming from not
23 his apartment, but toward Ja'Naya's, coming from that
24 direction.

25 Q. Okay. You don't know where he had been
26 before that?

27 A. No, ma'am.

28 MS. COLLUMS: No other questions.

29 THE COURT: All right. Any follow up,

1 Mr. Parker?

2 MR. PARKER: No, Your Honor.

3 THE COURT: All right, ma'am. You can
4 step down. Who is your next witness, Mr.
5 Parker?

6 MR. PARKER: Your Honor, I think at this
7 time we're ready to publish State's Exhibit
8 1.

9 THE COURT: All right. Let's give it a
10 shot.

11 (STATE'S EXHIBIT 1 PLAYED IN OPEN COURT)

12 THE COURT: All right. Mr. Smith.

13 MR. SMITH: Your Honor, the state would
14 call Ruth King.

15 (OATH ADMINISTERED)

16 RUTH KING

17 was thereupon called as a witness for and on behalf of
18 the State, and, having been duly sworn, testified as
19 follows:

20 DIRECT EXAMINATION BY MR. SMITH:

21 Q. Ms. King, if you would, please state your
22 name for the record.

23 A. Ruth Lanell King.

24 Q. And, Ms. King, if you don't mind, during
25 the course of your testimony, make sure you speak into
26 the microphone so that's it's on.

27 A. Okay.

28 Q. Thank you, ma'am. Ms. King, what city do
29 you live in?

1 A. Oak Grove.

2 Q. And approximately how long have you lived
3 here on the Mississippi Coast?

4 A. About five years.

5 Q. And during that five years, have you had
6 the occasion to live at the Palms Apartments?

7 A. Yes.

8 Q. And did you live there with your husband?

9 A. Yes, I did.

10 Q. What's his name?

11 A. Phillip King.

12 Q. Phillip King. And was Phillip employed at
13 the Palms Apartments?

14 A. Yes.

15 Q. What was his job there?

16 A. Maintenance supervisor.

17 Q. Did you have additional family that lived
18 at the Palms Apartments?

19 A. Yes. My daughter and her son-in-law and
20 children.

21 Q. Okay. What was your daughter and
22 son-in-law's name?

23 A. Heather Fillipuzzi and Francisco
24 Fillipuzzi.

25 Q. And your grandchildren, how many did
26 Heather have?

27 A. Two.

28 Q. And what were their ages?

29 A. At the time I believe five and eight. I

1 might not be correct.

2 Q. Sure. But around five and eight years old?

3 A. Yes.

4 Q. So about the same age as Ja'Naya Thompson?

5 A. Yes.

6 Q. Did you know Ja'Naya Thompson when she
7 lived at the Palms Apartments?

8 A. Not really. I just seen her about.

9 Q. How would you see her about or how did you
10 know her?

11 A. Playing with other children.

12 Q. Okay.

13 A. with my granddaughter.

14 Q. And your granddaughter was around five at
15 the time?

16 A. Yeah. Maybe a little older, but, yeah.

17 Q. Did you also know Alberto Garcia on and
18 before July 16, 2014?

19 A. Yes.

20 Q. Generally tell us, how did you know him?

21 A. Just through my daughter and son-in-law.

22 Q. And tell us what was his relationship with
23 your daughter and son-in-law?

24 A. He lived with them.

25 Q. In their apartment?

26 A. Yes.

27 Q. Okay. Did he also work with your
28 son-in-law?

29 A. Yes.

1 Q. Approximately how long did he live with
2 them prior to July 16, 2014?

3 A. Only a few months.

4 Q. Okay. And you've been in their apartment,
5 correct?

6 A. Yes.

7 Q. Was your daughter Heather and her family,
8 were they in town on July 16, 2014?

9 A. No. They was in Florida.

10 Q. Okay. You said they were in Florida?

11 A. Yes.

12 Q. And what were they doing in Florida?

13 A. Vacation.

14 Q. About how long had they been on vacation in
15 Florida.

16 A. About a week.

17 Q. The person that lived with your family that
18 you know as Alberto Garcia or that lived with Heather,
19 is he in the courtroom today?

20 A. Yes, sir.

21 Q. If you could please, point to him and tell
22 us what he's wearing.

23 A. He's wearing a striped outfit.

24 MR. SMITH: Your Honor, we'd ask that
25 the record reflect a correct identification
26 of the defendant.

27 THE COURT: She's going to have to
28 clarify.

29 BY MR. SMITH:

1 Q. If you would point to him for us, ma'am.

2 A. Right there.

3 Q. Thank you. And, again, what color stripes?

4 A. Red and white.

5 Q. Okay.

6 THE COURT: Now the record will so
7 reflect.

8 MR. SMITH: Thank you, Your Honor.

9 Q. Ma'am, I want to discuss the day
10 surrounding the disappearance and the death of Ja'Naya
11 Thompson, July 16, 2014. You remember that day,
12 correct?

13 A. Yes.

14 Q. And did you have an opportunity to see
15 Alberto Garcia that day?

16 A. Yes. He came to my door.

17 Q. And about what time was it when he came to
18 your door?

19 A. It was just late that evening. I'm not
20 sure.

21 Q. Okay. Was it around dark?

22 A. Yeah. Just before dark.

23 Q. Where -- were you inside your apartment or
24 outside when he approached the door?

25 A. I was inside.

26 Q. Okay. Did you have a conversation with him
27 at the door?

28 A. Yes.

29 Q. And about how long did your interaction

1 with Mr. Garcia last?

2 A. Probably about five to eight minutes, maybe
3 ten.

4 Q. Okay. Tell us about that conversation.

5 A. He just came to the door. He said a little
6 girl was missing and --

7 Q. Did he tell you who told him that the
8 little girl was missing?

9 A. Dede, I believe. That's the only way I
10 know her is by Dede.

11 Q. And did he say where he was when Dede told
12 him this information?

13 A. He was in his apartment.

14 Q. What else did he tell you?

15 A. He said that Dede knocked on the door and
16 woke him up and said that she was missing.

17 Q. Okay. Did he tell you what he was doing
18 when Dede arrived at his apartment?

19 A. Sleeping.

20 Q. All right. And did you notice anything
21 about his physical appearance when he came to your
22 door?

23 A. He was really wet like he just got out of
24 the shower.

25 Q. And did he tell you if he had just taken a
26 shower?

27 A. No.

28 Q. Okay. But you noticed that he was really
29 wet?

1 A. Yes.

2 Q. Now, did he mention a specific location
3 that Dede told him the child may have gone?

4 A. Across the street to the school, said
5 something about a cheerleading competition or something
6 going on and that she wanted to go.

7 Q. And what school is it nearby there?

8 A. Bel Aire. I mean, Belleview.

9 Q. Okay. And is that an elementary school?

10 A. Yes.

11 Q. What was the defendant's demeanor during
12 your conversation with him that night at your door?

13 A. He was calm. Just as if nothing has
14 happened. I mean, not even for a little girl to be
15 missing. He was just calm.

16 Q. Thank you. After he left your door that
17 evening, did you see him anymore the rest of that
18 night?

19 A. I don't think so.

20 Q. After he left the door, did you relay the
21 information they he gave you to your husband?

22 A. Yes.

23 Q. Okay. Now, I want to move forward to the
24 next day, okay?

25 A. Okay.

26 Q. After the discovery of Ja'Naya Thompson's
27 body, did you again have an opportunity to speak to the
28 defendant?

29 A. Yes. He came back to my apartment.

1 Q. And about what time of day was that?

2 A. It was late in the evening.

3 Q. Late in the evening.

4 A. Yeah.

5 Q. And did you have a conversation with him at
6 your apartment again that day?

7 A. Yes.

8 Q. Was that inside your apartment or outside?

9 A. Outside.

10 Q. And about how long did that conversation
11 last?

12 A. Not that long, but just a few minutes.

13 Q. Tell us about that conversation?

14 A. Well, he said that he has been to that
15 trailer and that his prints was all over the trailer,
16 that he took some items from the trailer.

17 He said especially around the bathroom they
18 would find his fingerprints and that he would be
19 probably accused of it.

20 Q. Okay. This trailer that he said would have
21 his fingerprints in the bathroom, did you understand
22 that to be the same trailer Ja'Naya was found in?

23 A. Yes.

24 Q. After he made that comment to you, did he
25 leave the apartment?

26 A. Yes. I think that was about it. It was
27 wasn't much more after that I don't think was said.

28 Q. After the defendant made these comments to
29 you, did you see the police there at the apartment

1 complex?

2 A. Right after he left, I ran inside, I told
3 my husband that I felt like he's the one that might
4 have done this, and that I'm going to tell the police
5 what he told me. So I ran outside. And I saw a police
6 officer driving by, and I waived him down and told him.

7 Q. Okay. So you told the police department
8 about your conversation with the defendant?

9 A. Yes.

10 MR. SMITH: Begging the Court's
11 indulgence.

12 THE COURT: Yes, sir.

13 MR. SMITH: No further questions, Your
14 Honor.

15 THE COURT: All right. Ms. Collums.

16 CROSS-EXAMINATION BY MS. COLLUMS:

17 Q. Ms. King, did Mr. Garcia come to your
18 apartment and ask for help from your husband?

19 A. No.

20 Q. Was your husband home when he came to your
21 apartment?

22 A. Yes.

23 Q. Okay. You said late evening. Can you give
24 us like an hour maybe?

25 A. Not really because I would say around maybe
26 5, maybe 6.

27 Q. Okay. So it was kind of early evening
28 then?

29 A. Yeah.

1 Q. Was it starting to get dark then?

2 A. Yes.

3 Q. And you say he was wet?

4 A. Yes.

5 Q. Was it hot that day?

6 A. Well, I wasn't out that day so. No, I
7 don't think so.

8 Q. And you have grandchildren that lived at
9 the apartment with Mr. Garcia?

10 A. Yes.

11 Q. Okay. And how long had he been staying
12 there to your knowledge?

13 A. I want to say around four months, maybe
14 five. It might not have been that long.

15 MS. COLLUMS: No other questions, judge.

16 THE COURT: All right. Any follow up,
17 Mr. Smith?

18 MR. SMITH: No, Your Honor.

19 THE COURT: All right, ma'am, you can
20 step down. State, who's next?

21 MR. SMITH: Your Honor, the state would
22 call Lieutenant Heather Dailey.

23 (OATH ADMINISTERED)

24 THE COURT: Have a seat right over here.
25 Go ahead Mr. Smith.

26 MR. SMITH: Thank you, judge.

27 HEATHER DAILEY

28 was thereupon called as a witness for and on behalf of
29 the State, and, having been duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION BY MR. SMITH:

3 Q. Ma'am, please state your name for the
4 record.

5 A. Heather Dailey.

6 Q. And, Ms. Dailey, who do you currently work
7 for?

8 A. I work for the Gulfport Police Department.

9 Q. What's your job title and duties at the
10 police department?

11 A. I'm a lieutenant. My duties, I'm the
12 administrative services officer in charge.

13 Q. How long have you been employed by the
14 Gulfport Police Department?

15 A. About 18 and a half years.

16 Q. Were you employed in the same capacity with
17 the police department on July 17th of 2014?

18 A. Yes.

19 Q. On the morning of July 17th, did you
20 respond to a call from a detective regarding this case?

21 A. I did.

22 Q. Who did you receive a call from?

23 A. Lieutenant Adam Cooper.

24 Q. Approximately what time did Lieutenant
25 Cooper call you?

26 A. Approximately 7:30.

27 Q. And after receiving this call from
28 Lieutenant Cooper, did you travel to assist in the
29 investigation?

1 A. I did.

2 Q. where did you go first?

3 A. I went to the elementary school.

4 Q. And when you say the elementary school, are
5 you referring to Bel Aire Elementary?

6 A. Yes.

7 Q. why did you report to Bel Aire Elementary?

8 A. There was a command post up there.

9 Q. was that for this specific case?

10 A. Yes. For a missing child.

11 Q. when you arrived at the command post at Bel
12 Aire, what information did you receive there?

13 A. We received information that a child had
14 been missing from the night before, a five-year-old
15 little girl.

16 Q. And during this briefing, did anything else
17 occur?

18 A. There was radio traffic.

19 Q. Tell us about the radio traffic?

20 A. There was radio traffic from some firemen
21 stating that they had found something, requesting an
22 officer.

23 Q. And where were these firemen located who
24 called this radio traffic?

25 A. They were at 14475 Whitney Drive.

26 Q. And after hearing the radio traffic and
27 receiving the briefing, did you in fact travel to 14475
28 Whitney Drive?

29 A. I did.

1 Q. Ma'am, is that location in the First
2 Judicial District of Harrison County, Mississippi?

3 A. It is.

4 MR. SMITH: Your Honor, I ask permission
5 for the witness to step down.

6 THE COURT: Yes, ma'am. You can step
7 down. And what's the exhibit number, Mr.
8 Smith?

9 MR. SMITH: State's Exhibit 2, Your
10 Honor.

11 THE COURT: Thank you.

12 BY MR. SMITH:

13 Q. Ms. Dailey, I'm showing you what's been
14 previously entered into evidence by agreement as
15 State's Exhibit 2. Do you recognize this?

16 A. I do.

17 Q. And what is it?

18 A. It's a map of the area, a picture of the
19 area where I went to that day.

20 Q. Generally speaking, what area is this
21 location?

22 A. We refer to it as Orange Grove area.

23 Q. The Orange Grove area in the City of
24 Gulfport?

25 A. Yes.

26 Q. All right. And do you see on this aerial
27 photograph of the Orange Grove area in Gulfport the
28 location that you referred to as 14475 Whitney Drive?

29 A. I do.

1 Q. If you could please, point to that on the
2 aerial.

3 A. I believe it's this area here.

4 Q. In the center of the aerial.

5 A. Yes.

6 Q. Thank you. And do you also recognize the
7 area that's known as the Palms Apartments?

8 A. Yes.

9 Q. And where are those?

10 A. It's this area here.

11 Q. Okay. Towards the bottom of the aerial
12 photograph.

13 A. Yes.

14 Q. And then finally where would the command
15 post or Bel Aire Elementary be in relation to this
16 aerial photograph?

17 A. More over here.

18 Q. And you're indicating to the upper left
19 hand side of the aerial photograph.

20 A. Yes.

21 Q. Is it close by to both Whitney Drive and
22 the Palms Apartments?

23 A. It is.

24 Q. Okay. You may return to your seat. Now,
25 the location that you pointed to in the center of the
26 aerial photograph, 14475 Whitney Drive, what type of
27 residence that?

28 A. It's a trailer.

29 Q. And when you first responded to the trailer

1 on Whitney Drive, what were your first observations on
2 the exterior of the trailer?

3 A. There were some firemen there on scene.

4 Q. And were you briefed by these firemen?

5 A. I was told they believed they found her in
6 the trailer.

7 Q. Okay. After receiving this information
8 from the firemen, did you enter into the trailer at
9 14475 Whitney Drive?

10 A. I did.

11 Q. And, ma'am, if you could please, describe
12 for us what you observed as you entered into the
13 trailer.

14 A. When I entered the trailer, I entered into
15 what I would call the living room area. It was what I
16 would describe as very messy. The firemen then
17 directed me down a hallway. It was dark. I walked
18 down the hallway. And he had a gloved hand, and he
19 pushed the door open to a bathroom area.

20 Q. Okay. As you made -- before we move back
21 to the back of the trailer in the bathroom area, I want
22 to talk a little about bit about your observations
23 there at the entry. You indicated it was messy?

24 A. Yes.

25 Q. Did it also appear to be occupied to you?

26 A. It did not.

27 Q. And was electricity on in the trailer?

28 A. No.

29 Q. Tell us about the lighting as you entered

1 the trailer.

2 A. It was very dim. There were windows. But
3 it was dim lighting.

4 Q. Now, you used the term messy. What do you
5 mean by that?

6 A. There were items, various items strewn all
7 over the residence.

8 Q. What type of items were all over the
9 residence?

10 A. There were clothing, things of that nature.

11 Q. Were you able to later determine whether
12 anyone in fact occupied that trailer?

13 A. No one had lived there in several weeks.

14 Q. After first entering the living room as you
15 referred to it, you said you went to the back portions
16 of the bedroom area of the trailer.

17 A. I went to the bathroom area.

18 Q. Okay. When you got to this bathroom area,
19 tell us what you observed in the bathroom area.

20 A. I observed a young black female hanging in
21 the shower area of the bathroom.

22 Q. And you said that that was in the shower
23 area of the bathroom?

24 A. Yes.

25 Q. Lieutenant Dailey, if you could, tell us
26 what clothing you recall that the child had on.

27 A. She had on a blue or teal shirt, but there
28 was no clothing below the waist.

29 Q. Okay. In addition to not having any

1 clothing on from the waist down, did she have any shoes
2 on in the shower?

3 A. No.

4 Q. And describe for us the lighting in the
5 bathroom.

6 A. The lighting was dim. Above -- like behind
7 the shower area there was a window. So that was
8 illuminating the room.

9 Q. Did you approach the child as you observed
10 her in the bathroom?

11 A. No, I did not. When I observed her, I knew
12 that there was nothing we could do for her.

13 Q. So you did not touch or disturb the body in
14 any way?

15 A. No, I did not.

16 Q. In addition to recognizing that there was
17 nothing you could do for her, what other reason would
18 you have for not wanting to touch the child at that
19 time?

20 A. I did not want to disturb any evidence.

21 Q. Did you also give any instructions to the
22 first responders or firemen who were with you?

23 A. Yes. I told them do not touch anything.
24 And we were going to exit out exactly the way that we
25 came into the residence.

26 Q. And is that what y'all did?

27 A. It is what we did.

28 Q. After y'all exited the residence, did you
29 close and secure the trailer?

1 A. Yes.

2 Q. And was the outside part of the trailer
3 also secured?

4 A. Yes. And crime scene tape was put up all
5 around the exterior of the trailer.

6 Q. What's the purpose of securing the trailer
7 and placing crime scene tape?

8 A. To make sure no evidence there was
9 disturbed.

10 Q. Lieutenant Dailey, did you remain at the
11 scene until crime scene technicians arrived?

12 A. I did.

13 MR. SMITH: No further questions, Your
14 Honor.

15 THE COURT: All right. Defense.

16 MS. BLACKWELL: Your Honor, we have no
17 questions for this witness.

18 THE COURT: All right. Lieutenant, you
19 can step down. Thank you, ma'am. State, who
20 is next?

21 MR. PARKER: Your Honor, we would ask
22 for a brief recess. Our next witness,
23 there's going to be multiple exhibits that
24 we're going to want to publish on the
25 television, and I just want to ensure that
26 it's set up properly.

27 THE COURT: What do you think? Ten
28 minutes?

29 MR. PARKER: Ten should be plenty, Your

1 Honor.

2 THE COURT: All right. We'll be in
3 recess for ten minutes.

4 (PAUSE IN THE PROCEEDINGS)

5 THE COURT: All right. Mr. Parker, who
6 is your next witness?

7 MR. PARKER: Yes, Your Honor, before we
8 call Ms. Jessica Kendziorek, out of an
9 abundance of caution, the State of
10 Mississippi would just want to reurge that we
11 move to incorporate and reintroduce by way of
12 reference all testimony, evidence, and
13 exhibits from the guilt phase last week to
14 the sentencing phase.

15 THE COURT: All right. Defense, any
16 objection?

17 MS. BLACKWELL: None, Your Honor.

18 THE COURT: All right. Then that will
19 be incorporated into this record. All right.
20 And you're ready for Ms. Kendziorek?

21 MR. PARKER: Yes, Your Honor.

22 (OATH ADMINISTERED)

23 THE COURT: Ma'am, have a seat right up
24 here.

25 (OATH ADMINISTERED)

26 JESSICA KENDZIOREK

27 was thereupon called as a witness for and on behalf of
28 the State, and, having been duly sworn, testified as
29 follows:

1 DIRECT EXAMINATION BY MR. PARKER:

2 Q. Ms. Kendziorek, would you please state your
3 full name for the court.

4 A. Jessica Kendziorek, K-E-N-D-Z-I-O-R-E-K.

5 Q. And, Ms. Kendziorek, by whom are you
6 employed?

7 A. Gulfport Police Department.

8 Q. And what's your job title with the Gulfport
9 Police Department?

10 A. I'm a crime scene technician.

11 Q. And as a crime scene technician, what are
12 your duties?

13 A. I'm called out to process major crime
14 scenes, collect evidence, document the crime scenes,
15 and to keep chain of custody on evidence.

16 Q. And how long have you been employed in that
17 position with the Gulfport Police Department?

18 A. Ten years.

19 Q. Were you employed in such a position on
20 July 17, 2014?

21 A. I was.

22 Q. And I want to take you to that day. Did
23 you respond to a call that morning?

24 A. I did.

25 Q. What time were you contacted?

26 A. I was contacted about 8:50 in the morning.

27 Q. And that's on July 17, 2014?

28 A. Yes, sir.

29 Q. And what were you informed of at that time?

1 A. I was informed to come to a crime scene for
2 a missing child that had been located.

3 Q. And specifically what address did you go
4 to?

5 A. 14475 Whitney Drive.

6 Q. And that's here in Gulfport, Mississippi?

7 A. It is.

8 Q. And is that in the First Judicial District
9 of Harrison County?

10 A. It is.

11 MR. PARKER: Your Honor, may I approach
12 the witness?

13 THE COURT: Yes, sir.

14 MR. PARKER: And may I ask the witness
15 to step down?

16 THE COURT: Certainly.

17 BY MR. PARKER:

18 Q. Ms. Kendziorek, I'm showing you what's been
19 entered into evidence by agreement by both the
20 prosecution and the defense as State's Exhibit 3. Do
21 you recognize this overhead?

22 A. I do.

23 Q. How do you recognize it?

24 A. This is an overhead of the area of Whitney
25 Drive and the Palms Apartments.

26 Q. Could you please identify the residence or
27 trailer that you went to in the early morning of
28 July 17, 2014?

29 A. This trailer right here.

1 Q. Could you please point to where the Palms
2 Apartments is located in this photograph?

3 A. The Palms Apartments are located over here.

4 Q. Okay.

5 THE COURT: So for the record,
6 Mr. Crosby, the trailer, it looks like it's
7 in between two others?

8 MR. PARKER: Yes, Your Honor. It's
9 almost directly in the middle on the upper
10 part of the overhead in between two other
11 trailers, one of which is brown.

12 THE COURT: And then she's identifying
13 the Palms as being the buildings that are
14 kind of a V, V-ish formation?

15 MR. PARKER: Yes, Your Honor. On the
16 bottom half of the overhead.

17 THE COURT: Because the record is not
18 going to show what she's pointing to.

19 MR. PARKER: Yes, Your Honor.

20 Q. Ms. Kendziorek, you can be seated. Now,
21 please tell the court what you do when you process a
22 crime scene.

23 A. When I arrive on scene, I'm briefed on
24 scene by whoever the supervisor is, the detective or
25 the first officer. Once I am briefed, I then do a walk
26 around of the crime scene to see if there's anything on
27 the outside edge of crime scene I need to take care and
28 preserve. And then I'll do a work through of the
29 entire crime scene.

1 Q. Now, when you arrived at the trailer on
2 Whitney Drive, tell the court what you first did when
3 you got there.

4 A. Well, once I was briefed by Detective Sammy
5 Jewell, he stated that the evidence response team from
6 the FBI was going to come to assist. I completed an
7 exterior walk around of the crime scene and to wait on
8 them.

9 Q. So when you first got there, you didn't
10 immediately start processing the crime scene?

11 A. No, I did not.

12 Q. But you did do a walk around?

13 A. Yes, sir.

14 Q. Now, what time was the evidence response
15 team supposed to be there?

16 A. Approximately 12:00.

17 Q. Now, did you ever go inside of that trailer
18 before the evidence response team?

19 A. Yes, I did.

20 Q. Please tell the court why.

21 A. When we realized that the evidence response
22 team was going to be a little later in the day, myself
23 and Gary Hargrove decided that we needed to remove
24 Ms. Ja'Naya Thompson from the trailer due to the heat
25 of the day and the condition of the trailer.

26 Q. Was that to assist in evidence collection?

27 A. It was.

28 Q. Please tell the court what you did so that
29 you were able to remove her body.

1 A. I dressed in a Tyvek suit which is
2 basically full body suit to prevent any contamination
3 of the scene. I then entered the trailer, took
4 photographs inside the trailer down the hallway to
5 where the victim was located into the bathroom. Then
6 myself and Gary Hargrove removed the victim from the
7 bathtub.

8 Q. Were both of y'all covered in a Tyvek suit?

9 A. We were.

10 Q. Now, when you were in the bathroom itself,
11 what did you do?

12 A. Inside the bathroom I photographed it. We
13 tied a string on the sock that was located around the
14 victim's neck, and then cut the sock. And I lifted the
15 victim up to cut the sock for Harrison County Coroner
16 Gary Hargrove to cut the sock since he's taller.
17 Lifted her up, we took her down, and laid her down.

18 Q. Was her body removed from that trailer?

19 A. Yes, it was.

20 Q. And where was it taken?

21 A. Riemann's Funeral Home for an autopsy.

22 Q. Now, whenever the evidence response team
23 arrived in Gulfport, what did you do?

24 A. I briefed them on the scene, what we had
25 done prior to their arrival, and then I completed a
26 walk around with the evidence response team.

27 Q. And during this walk around -- you
28 mentioned that you had taken photographs earlier, but
29 during this walk around, were there also photographs

1 taken?

2 A. There were.

3 Q. And were you there for those photographs?

4 A. Yes, I was.

5 Q. I'm showing you what's been entered into
6 evidence by agreement by both the state and the defense
7 as State's Exhibit 4 through State's Exhibit 18. Would
8 you please take a moment and look through those.

9 A. (Witness complies).

10 Q. Are you familiar with those photographs?

11 A. I am.

12 Q. Did you take some of those photographs?

13 A. I did.

14 Q. And were you present when all of the
15 photographs were taken?

16 A. I was.

17 Q. And is this a true and accurate depiction
18 of the crime scene at Whitney Drive and the Palms
19 Apartments on July 17, 2014?

20 A. It is.

21 MR. PARKER: Your Honor, at this time I
22 would ask that Ms. Kendziorek be able to step
23 down to the television as we publish these
24 exhibits to Your Honor.

25 THE COURT: All right, ma'am, you can
26 step down.

27 BY MR. PARKER:

28 Q. Ms. Kendziorek, I'm showing you what we've
29 entered into evidence as State's Exhibit 4. Could you

1 please tell the court what State's Exhibit 4 is and
2 orient her as to where it's located.

3 A. State's Exhibit 4 is the back side of one
4 of Palms Apartments complex buildings. If I may, over
5 here?

6 THE COURT: Sure.

7 A. It is actually the back of this right side
8 v of the apartment complex taken in this direction.

9 MR. PARKER: And let the record reflect
10 that she's addressing State's Exhibit 3 in
11 relation to State's Exhibit 4.

12 THE COURT: All right.

13 BY MR. PARKER:

14 Q. And specifically where were you standing at
15 the point that this photograph was taken?

16 A. On State's Exhibit 3, I would have been
17 standing right about here.

18 Q. Right about in the middle?

19 A. Middle in between those two, yes.

20 THE COURT: So in the middle between the
21 two buildings with your back to the trailer?

22 THE WITNESS: That's correct, ma'am.

23 THE COURT: All right.

24 BY MR. PARKER:

25 Q. Now, I'm showing you State's Exhibit 5.
26 Please tell the court what we're looking at in this
27 photograph.

28 A. This is a trail that leads between the
29 Palms Apartments to the trailers on Whitney Drive.

1 Q. And this is how it appeared when you just
2 stated in the previous photographs, State's Exhibit 4,
3 you had your back to the trailer, is that where
4 approximately you were standing?

5 A. Yes. That is the reverse direction facing
6 back toward the trailers.

7 Q. Ms. Kendziorek, I'm showing you State's
8 Exhibit 6. What are we looking at in this photograph?

9 A. This is a makeshift bridge that I located
10 when I did my walk around of the original trailer.

11 Q. And this makeshift bridge on State's
12 Exhibit 3, it's between the trailers and the Palms
13 Apartment?

14 A. That's correct. It would be located right
15 about here.

16 MR. PARKER: Once again, Your Honor,
17 approximately in the middle of State's
18 Exhibit 3.

19 Q. Ms. Kendziorek, I'm showing you State's
20 Exhibit 7. What are we looking at in this photograph?

21 A. This is, I was standing at entrance of that
22 trail taking a photograph back toward the trailer at
23 1447 Whitney Drive.

24 Q. So in the trail that goes between the Palms
25 Apartments and the Whitney Drive trailer, that's at the
26 end of that trail looking at the Whitney Drive trailer?

27 A. That's correct.

28 Q. I'm showing you State's Exhibit 8. What
29 are we looking at in this photograph?

1 A. This is a photograph looking toward the
2 trail with my back to the trailer at 1447 Whitney
3 Drive.

4 Q. So approximately when you took this
5 photograph, your back was up against the trailer at
6 Whitney Drive?

7 A. Well, it was -- I was standing
8 approximately 10 or 15 feet off of the opposite
9 trailer, the west side trailer.

10 Q. Looking back at the path.

11 A. That is correct.

12 Q. I'm showing you State's Exhibit 9. Please
13 tell the court what we're looking at here.

14 A. That is the west side of the trailer
15 located at 1447 Whitney Drive.

16 Q. And on State's Exhibit 3, where were you
17 when you took this photograph?

18 A. I was approximately here.

19 Q. So just to the north of that trailer
20 looking back at its west side?

21 A. Yes.

22 Q. I'm showing you State's Exhibit 10. What
23 are we looking at in this photograph?

24 A. That is the north end of the trailer at
25 1447 Whitney Drive.

26 Q. And I'm showing you State's Exhibit 11.

27 A. That would be the east side of the trailer
28 at 1447 Whitney Drive.

29 Q. And specifically on State's Exhibit 11,

1 what does the mailbox state?

2 A. 14475, and it's missing a couple of letters
3 for Whitney.

4 Q. And is that all common procedure to take an
5 overview of the outside of the different crime scenes?

6 A. It is.

7 Q. Ms. Kendziorek, I want to show you State's
8 Exhibit 12. Specifically what are we looking at in
9 this photograph?

10 A. That is the photograph taken of just inside
11 the living room door facing to the south.

12 Q. And if you could show us on State's
13 Exhibit 3, specifically where were you standing when
14 you took this photograph?

15 A. Right inside the door, and I took the
16 photograph facing in a southern direction.

17 Q. And this is State's Exhibit 13. Please
18 tell the court what we're looking at in this
19 photograph.

20 A. This is facing in the same direction just
21 standing in the middle of the living room facing south
22 looking toward -- through the kitchen toward the master
23 bedroom.

24 Q. And when this photograph is taken in the
25 trailer, you're facing to the south when you're inside
26 the door?

27 A. That is correct.

28 Q. Now, Ms. Kendziorek, please describe for
29 the court what this trailer looked like.

1 A. The interior of the trailer, it had looked
2 a bunch of vagrants had lived there, people were coming
3 in and out. The floor was sticky. There was roaches
4 everywhere. It was open. No heat. No air. It was no
5 electricity, no water.

6 Q. Did it appear to be abandoned?

7 A. It did.

8 Q. And when you say roaches, were they
9 everywhere?

10 A. They were everywhere.

11 Q. And what was the odor of the trailer?

12 A. It had a horrible stench to the trailer as
13 like people had used it as a bathroom.

14 Q. I'm showing you State's Exhibit 14. where
15 was this photograph taken?

16 A. This photograph was taken just at the edge
17 of the master bedroom facing back toward the north.

18 Q. So when you first took your photograph
19 inside the trailer at State's Exhibit 12, you were
20 standing where in this photograph?

21 A. This is the open door of the trailer with
22 the door blocking the hallway. And I was standing just
23 inside in this doorway.

24 Q. Now, there appears to be something behind
25 that open door. what is that?

26 A. That's a hallway.

27 Q. That's a hallway that's headed?

28 A. North.

29 Q. To the north of the trailer?

1 A. Yes, north of the trailer.

2 Q. I'm showing you what we've entered into
3 evidence by agreement as State's Exhibit 15. Would you
4 please tell the court what we're looking at here.

5 A. This is photograph of that same master
6 bedroom, but it's taken from the south side looking
7 toward the north.

8 Q. Are you standing at the farthest point on
9 the south side of that trailer looking back?

10 A. Yes.

11 Q. And could you please shows us on State's
12 Exhibit 3 approximately where you're standing.

13 A. We were standing approximately here facing
14 back toward the north.

15 Q. And I'm showing you State's Exhibit 16.
16 What are we looking at in this photograph?

17 A. This is a photograph of part of the master
18 bedroom. It shows in the north of the -- southern most
19 part where there's a bathroom and a little laundry
20 area, I guess, right there, and then just all of the
21 stuff that was located inside of that bedroom.

22 Q. And then in the bottom right of State's
23 Exhibit 16, what is that?

24 A. That's a set two box springs that were
25 located in that bedroom.

26 Q. And I'm showing you State's Exhibit 17.
27 Please tell the court what we're looking at in this
28 photograph.

29 A. That is the two box springs that were

1 located in that bedroom. One had been in a layed down
2 position while the other had been sitting up on its
3 side.

4 while searching, we laid the box spring
5 down and located a pair of child's flip-flops, pajama
6 pants and underwear rolled up inside of each other.

7 Q. Let me address that real quick. You said
8 that in the earlier photographs when you first got
9 there, one of the box springs was laying vertical. It
10 wasn't laying down on the ground?

11 A. Correct. It was on its side so you could
12 see the bottom part of the box springs.

13 Q. And where was that in relation to that
14 master bedroom?

15 A. It blocked the entrance view of the
16 bedroom.

17 Q. So could you see anything inside that
18 bedroom down below?

19 A. Not until you walked in.

20 Q. And then as part of the search process,
21 y'all laid down one of the box springs?

22 A. That is correct.

23 Q. And this is the clothing that you found?

24 A. That is correct.

25 Q. And was this clothing collected?

26 A. It was.

27 Q. I'm showing you what we've entered into
28 evidence as State's Exhibit 18. What photograph are we
29 looking at or what are we looking at in this

1 photograph?

2 A. That is a photograph facing north down the
3 hallway behind the east entrance into that residence.

4 Q. And on State's Exhibit 3, where is this
5 hallway located?

6 A. This hallway is located in this direction.

7 Q. The southern part of the trailer?

8 A. The northern.

9 Q. Or northern part.

10 A. Of the trailer.

11 Q. Now, when we look at State's Exhibit 18, I
12 see multiple doors. I want to talk about the first
13 door we see walking down the hallway. What is in that
14 door?

15 A. That is a bedroom.

16 Q. Was anything of evidentiary value found in
17 that bedroom?

18 A. No, there was not.

19 Q. What is the second door as we head in that
20 photograph as we go down the hallway?

21 A. As you go down the hall, you see the air
22 intake, and then the next door is the bathroom doorway
23 to the hallway.

24 Q. And the bathroom, is that where Ja'Naya was
25 found?

26 A. It is.

27 Q. Now, the final doorway in this photograph,
28 what does that go to?

29 A. It goes to another bedroom.

1 Q. Was anything of evidentiary value found in
2 that bedroom?

3 A. No, there was not.

4 Q. You can be seated. If you would, please,
5 look at State's Exhibit 19 through State's Exhibit 22.
6 Are you familiar with those photographs?

7 A. I am.

8 Q. How are you familiar with those
9 photographs?

10 A. I took those photographs.

11 Q. Did you take those photographs on
12 July 17, 2014?

13 A. I did.

14 Q. And are those true and accurate depictions
15 of what you saw on that date when you went into the
16 bathroom on the trailer on Whitney Drive?

17 A. They are.

18 MR. PARKER: Your Honor, at this time
19 the state would offer State's Exhibit 19
20 through State's Exhibit 22 into evidence.

21 THE COURT: So those have not been
22 agreed to yet?

23 MR. PARKER: They have not, Your Honor.

24 THE COURT: All right. Defense.

25 MS. BLACKWELL: Your Honor, these are
26 the photographs of the victim's body there in
27 that bathroom.

28 we would object. They are more
29 prejudicial than probative. However, if Your

1 Honor does allow them into evidence, we would
2 ask that they be sealed and never made
3 public.

4 THE COURT: Mr. Parker.

5 MR. PARKER: Yes, Your Honor. And, Your
6 Honor, the state would cite to Woods v. State
7 at 14 So. 3d 767, a Mississippi Court of
8 Appeals case from 2009 that also cited to
9 Chamberlin v. State 989 So. 2d case 320 from
10 the Mississippi Supreme Court 2008 in which
11 the courts have routinely held that as long
12 as a photo has probative value and its
13 introduction serves a meaningful evidentiary
14 purpose, it may still be admissible despite
15 being gruesome, grisly, unpleasant or even
16 inflammatory.

17 The case law states that a photograph
18 has evidentiary purpose when it aids in
19 describing the circumstances of the killing,
20 it describes the location of the body or the
21 cause of death, or supplements or clarifies
22 witnesses' testimony.

23 In this case, Your Honor, the
24 photographs do all three. It shows Ja'Naya
25 Thompson's body as she was found as this
26 defendant left her.

27 It goes toward where she was left, how
28 she was left, the manner of death, and would
29 assist in clarifying this witness's testimony

1 regarding what she saw.

2 THE COURT: And they're four different
3 photos?

4 MR. PARKER: Yes, Your Honor.

5 THE COURT: All right. Well, since
6 there's no jury, it's going to be difficult
7 for me to look at them and then say I can't
8 see them. So you're going to have to show
9 them to me, and let me make that decision.

10 MR. PARKER: Yes, Your Honor.

11 THE COURT: All right. They are in fact
12 four separate photographs. They do each
13 appear to show something different. One
14 being at a distance, one being close up, and
15 the other two showing basically the socks as
16 I understand it.

17 MR. PARKER: Yes, Your Honor.

18 THE COURT: They do not appear to the
19 court, while they're not pleasant to look at,
20 to be unduly prejudicial or to be unduly
21 gruesome such that our case law would require
22 that they not be admitted in this case.

23 They do also appear to be of the scene
24 as this officer saw it on the day that Ms.
25 Thompson's body was discovered. And so it
26 appears to the court that they would be
27 relevant and that their prejudicial value, if
28 any, would not significantly outweigh their
29 probative value. So they will be marked into

1 evidence.

2 (STATE'S EXHIBIT 19 THROUGH 22 IN EVIDENCE)

3 THE COURT: Now then, Mr. Parker, what's
4 your position with regard to sealing those?

5 MR. PARKER: Your Honor, the state would
6 move to seal any photographs, and
7 specifically with 19 through 22, photographs
8 of Ja'Naya Thompson's body.

9 we feel that in this case it would serve
10 no purpose if they were not sealed.

11 THE COURT: So you agree with Ms.
12 Blackwell then?

13 MR. PARKER: Yes, Your Honor.

14 THE COURT: All right. So State's 19,
15 20, 21, and 22 will be sealed in this record
16 and can be opened only for purposes of
17 appeal. An appropriate order would be
18 entered if there is any appeal or only on
19 further order of this court.

20 MR. PARKER: Thank you, Your Honor.

21 Q. Ms. Kendziorek, I'm showing you what has
22 been entered into evidence as State's Exhibit 19.
23 Please orient the court of where this photograph was
24 taken.

25 A. This photograph was taken of the hallway
26 bathroom looking into it facing in a western direction.

27 Q. And there, you were in the hallway as you
28 took this photograph?

29 A. Yes, I was.

1 Q. And this is how it appeared on
2 July 17, 2014?

3 A. It is.

4 Q. I'm showing you what we have entered into
5 evidence as State's Exhibit 20. Please orient the
6 court as to what we're looking at here.

7 A. This is a closer view showing the manner of
8 death of the victim.

9 Q. Does this show the position of how she was
10 located as far as her neck and where the socks were
11 tied?

12 A. It does.

13 Q. I'm showing you what's been entered as
14 State's Exhibit 21.

15 A. This shows the knot that was located right
16 up next to the victim's neck.

17 Q. So the evidentiary value of this is to show
18 where the socks were tied and how they were tied around
19 Ja'Naya's neck?

20 A. It is.

21 MR. PARKER: And, Your Honor, we're
22 showing Ms. Kendziorek State's Exhibit 22.

23 A. This is where the second sock was tied
24 together for use of hanging.

25 Q. Now, you mentioned earlier that you and
26 coroner Gary Hargrove removed Ja'Naya's body. Now,
27 whenever Mr. Hargrove cut the sock, what did he do
28 prior to cutting it?

29 A. We tied a string on both ends where it was

1 going to be cut so that -- you tie the strings so that
2 you can know which ends was cut from evidence purposes
3 versus somebody else tying something and cutting it.

4 Q. And once the socks were cut, did they
5 remain with Ja'Naya as she went to have her autopsy
6 completed?

7 A. They did.

8 Q. I'm showing you what we've entered into, by
9 agreement with the defense, State's Exhibit 23. Please
10 tell the court what we're looking at.

11 A. That is the rod for the rollout window with
12 the sock wrapped around and the knot at the end of the
13 sock.

14 Q. And is this how it was secured to the
15 window in the bathroom?

16 A. It is.

17 Q. Ms. Kendziorek, once the evidence response
18 team arrived at the trailer on Whitney Drive, did you
19 assist in the search and collection of evidentiary
20 items in that trailer?

21 A. I did.

22 Q. Now, how did that day end as far as with
23 the evidence that had been collected?

24 A. All the evidence collected by the FBI was
25 maintained in FBI control and anything collected by
26 Gulfport Police Department, we transferred custody at
27 the end of day to the FBI.

28 Q. So at the end of the day on July 17, 2014,
29 whatever evidence was collected would be in the custody

1 and control of the FBI.

2 A. That is correct.

3 Q. Now, I want to take you to July 18, 2014,
4 the next day. Did you engage or assist the FBI in a
5 search of any other residence?

6 A. Yes, I did.

7 Q. Please tell the court what you did.

8 A. We conducted a search on apartment 173 at
9 the Palms Apartments.

10 Q. Okay. And when you say apartment 173 at
11 the Palms Apartments, was there a specific area that
12 you searched in that apartment?

13 A. We searched the whole apartment plus the
14 main bedroom of the suspect.

15 Q. Okay. And Alberto Garcia to your
16 knowledge?

17 A. Yes.

18 Q. And I would ask you to be able to step
19 down.

20 MR. PARKER: Your Honor, may the witness
21 step down?

22 THE COURT: Certainly.

23 BY MR. PARKER:

24 Q. Could you please show on State's Exhibit
25 S-3 where apartment 173 was located.

26 A. Apartment 173 is going to the bottom
27 apartment on the left side of the V on this side of
28 this driveway or walkway.

29 THE COURT: So generally there's like a

1 white car parked there in the picture?

2 THE WITNESS: Yes. There's a white car
3 and a black car with the sidewalk in between.
4 It's going to be just to the left side of
5 that, the apartments right there.

6 THE COURT: Is that accurate so far as
7 the record?

8 MR. PARKER: Yes, Your Honor.

9 THE COURT: All right.

10 BY MR. PARKER:

11 Q. You can be seated. And I'm showing you
12 what's been entered into evidence by agreement between
13 the state and the defense as State's Exhibit 24 through
14 State's Exhibit 32. Please take a moment and look
15 through those.

16 A. (Witness complies).

17 Q. Ms. Kendziorek, how are you familiar with
18 those photographs?

19 A. I was present when they were taken.

20 Q. And those photographs, State's Exhibit 24
21 through State's Exhibit 32, are those true and accurate
22 depictions of the apartment 173 that you searched on
23 July 18, 2014?

24 A. They are.

25 MR. PARKER: Your Honor, at this time
26 I'd ask that the witness be able to step down
27 as I publish those exhibits.

28 THE COURT: All right. Go ahead, ma'am.

29 BY MR. PARKER:

1 Q. Ms. Kendziorek, I'm showing you State's
2 Exhibit 24. Please tell -- orient the court as to
3 where this photograph was taken and what it's a
4 photograph of.

5 A. This photograph was taken showing the porch
6 area of apartment 173. It is facing -- if I can step
7 over to State's Exhibit 73. It's facing in a
8 northeastern direction.

9 Q. So once again on State's Exhibit 3, when we
10 mention the white car and the black car and the walkway
11 between, approximately where was it located on that?

12 A. You stand almost in front of the white car.

13 Q. Okay. And I'm showing you State's
14 Exhibit 25. What are we looking at in this exhibit?

15 A. That's the apartment door of 173.

16 Q. Now, in this photograph on the right side I
17 see a green grass area over here. Where is that green
18 grass area located on State's Exhibit 3?

19 A. On State's Exhibit 3, it's located to the
20 northeast of the apartments. There's a walk through
21 where this sidewalk is. It goes completely through to
22 the other side.

23 Q. So from apartment 173, you can walk
24 directly to the pathway that leads to the Whitney Drive
25 trailer.

26 A. Yes, you could.

27 Q. I'm showing you what we've entered into
28 evidence as State's Exhibit 26. Specifically what are
29 we looking at in this photograph?

1 A. This is a photograph taken inside the
2 doorway of the bedroom belonging to Mr. Garcia. It
3 shows the window, the bed, and all of his stuff on
4 the -- it's going to be the east wall.

5 Q. On the east wall? And is this pretty much
6 a view from the doorway into his room?

7 A. It is.

8 Q. And I'm showing you what we've entered into
9 evidence as State's Exhibit 27. What are we looking at
10 in this photograph?

11 A. This photograph is taken from the same
12 location right inside the door. And it shows a picture
13 of a headboard, a chair right next to the window of
14 that bedroom.

15 Q. So in this photograph the chair is right
16 next to that window?

17 A. It is.

18 Q. And when you state the window, how big is
19 that window?

20 A. It's a big window. I believe those are
21 two, 36 inches, 6-foot windows, double windows.

22 Q. In the middle I see -- of this photograph,
23 I see what looks like some type of blackout curtains.
24 Do those blackout curtains, do they cover that window?

25 A. They cover all but a corner of the window.

26 Q. And is that how you found it on
27 July 18, 2014?

28 A. It is.

29 Q. I'm showing you what we've introduced into

1 evidence as State's Exhibit 28. Please tell the court
2 what we're looking at in this photograph.

3 A. That is an Xbox that was located just under
4 the TV that was in the bedroom of Mr. Garcia.

5 Q. And once again, on the right side of that
6 photograph; those are the blackout curtains by the
7 window?

8 A. That is correct.

9 Q. And the Xbox that was hooked up to the TV,
10 was it seized?

11 A. It was.

12 Q. I'm showing you what we've entered into
13 evidence as State's Exhibit 29. What are we looking at
14 in this photograph?

15 A. That photograph shows the chair that's
16 right next to the window and an Xbox controller lying
17 in the chair.

18 Q. Now, in addition to that Xbox controller
19 being found in that chair, was anything else found
20 around that chair?

21 A. Yes. Just to the -- in the photograph, the
22 right side of the photograph there was a pair of
23 binoculars found stuffed down in between the chair and
24 the bed.

25 Q. And I'm showing you what we've introduced
26 into evidence as State's Exhibit 30. What are we
27 looking at in this photograph?

28 A. That's a photograph of those binoculars.

29 Q. So obviously in this photograph they are

1 obscured or covered up by the actual chair itself?

2 A. The chair and the bed, yes.

3 Q. Were they removed to take a clearer
4 photograph?

5 A. They were.

6 Q. I'm showing you State's Exhibit 31. What
7 are we looking at in this photograph?

8 A. That is the same binoculars removed and
9 placed where you could take a better photograph of
10 them.

11 Q. I'm showing you what's been introduced into
12 evidence as State's Exhibit 32. What are we looking at
13 in this photograph?

14 A. This is a photograph looking out the window
15 if you were sitting in that chair.

16 Q. Okay. And I see in the distance of that
17 photograph, what is this back here?

18 A. That is a playground.

19 Q. So from that window in the defendant's room
20 from that chair you could see a playground?

21 A. Yes, you can.

22 Q. You can be seated. Ms. Kendziorek, after
23 the room in apartment 173 was searched, once again with
24 the FBI, was there any transferring of evidence?

25 A. We did transfer some other evidence to them
26 that was recovered the previous morning from the
27 suspect.

28 Q. Once again, any evidence that was in
29 Gulfport's control was transferred to the FBI?

1 A. Yes, it was.

2 Q. Now, after July 18, 2014, did you have an
3 opportunity to ever go back to the trailer on Whitney
4 Drive?

5 A. I did.

6 Q. And why was that?

7 A. It was with statements given, we were told
8 to respond back to the trailer to recover two chairs
9 that had been located in the trailer.

10 Q. And did you collect those two chairs?

11 A. I did.

12 Q. And did you collect anything else while you
13 were there?

14 A. Yes. I collected a small pink cup and
15 yellow cup while we were there.

16 Q. And what did you do with those items?

17 A. Those items were maintained and then taken
18 and transferred custody up to the FBI.

19 Q. So those were also turned over to the FBI?

20 A. They were.

21 MR. PARKER: With the court's
22 indulgence?

23 BY MR. PARKER:

24 Q. And did that conclude your part of the
25 investigation of this case?

26 A. It did.

27 MR. PARKER: Your Honor, we tender the
28 witness.

29 THE COURT: Defense.

1 MS. BLACKWELL: We have no questions for
2 this witness.

3 THE COURT: All right, ma'am, you can
4 step down. State, who will you have next?

5 MR. SMITH: Your Honor, the state would
6 call Officer Grant Koon.

7 (OATH ADMINISTERED)

8 GRANT KOON

9 was thereupon called as a witness for and on behalf of
10 the State, and, having been duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION BY MR. SMITH:

13 Q. Officer, please state your name for the
14 record.

15 A. Grant Koon.

16 Q. And who do you currently work for?

17 A. Gulfport Police Department.

18 Q. In what capacity?

19 A. Currently I am a police officer.

20 Q. All right. And what is the job of a crime
21 scene technician at the Gulfport Police Department?

22 A. We respond to crime scenes that we get
23 called out to. We collect evidence, photograph the
24 scene, and then we also submit that evidence into the
25 Crime Lab.

26 Q. Were you employed as a crime scene
27 technician by the Gulfport Police Department on July 17
28 of 2014?

29 A. Yes.

1 Q. As part of your duties with the police
2 department, early that morning did you respond to a
3 call in this case?

4 A. Yes.

5 Q. Approximately what time were you contacted?

6 A. Approximately 8:50 AM.

7 Q. When you received that call, where did you
8 go?

9 A. I went to 14475 Whitney Drive.

10 Q. And is that address located within the
11 First Judicial District of Harrison County,
12 Mississippi?

13 A. Yes.

14 Q. Were you briefed on the case when you
15 arrived at the trailer?

16 A. Yes.

17 Q. During the course of that day, were you
18 asked to attend the autopsy of Ms. Ja'Naya Thompson?

19 A. Yes.

20 Q. Approximately what time was that?

21 A. I'm unaware of what time exactly.

22 Q. What was the location of the autopsy?

23 A. On Three Rivers Road at Riemann's Family
24 Funeral Home.

25 Q. Who else was present when the autopsy was
26 conducted?

27 A. Myself, two members of the FBI evidence
28 response team, Dr. McGarry, the coroner, and Dr.
29 McGarry's nurse assistant.

1 Q. Now, during the autopsy, did you observe
2 Dr. McGarry to draw blood from the victim's body?

3 A. Yes.

4 Q. And was this done for use in comparison and
5 testing?

6 A. Yes.

7 Q. Did he turn that blood over to you after it
8 was packaged, sealed, and marked with the victim's
9 name?

10 A. Yes, sir.

11 Q. Tell us what you did with that blood sample
12 from the time that you received it from Dr. McGarry.

13 A. I secured it in my Gulfport Police
14 Department issued crime scene vehicle.

15 Q. Now, after you secured it in your vehicle,
16 did it remain in your care, custody, and control that
17 day?

18 A. Yes, sir.

19 Q. And later did you turn that over to the FBI
20 for comparison and testing?

21 A. Yes, sir.

22 Q. Had it been altered or damaged in any way
23 at that time?

24 A. No, sir.

25 Q. During the autopsy, did you also have the
26 opportunity to observe Dr. McGarry to obtain swabs from
27 individual parts of the victim's body?

28 A. Yes, sir.

29 Q. Okay. I want to talk about several of

1 those swabs. First, did you have the opportunity to
2 observe him take what is called a vaginal swab?

3 A. Yes.

4 Q. And, secondly, did you observe him to take
5 a separate swab that's called an anal swab?

6 A. Yes.

7 Q. Then did you have the opportunity to
8 observe him to take an inner thigh and vulva swab?

9 A. Yes.

10 Q. And then finally, did you have the
11 opportunity to observe him to take a rectum swab?

12 A. Yes.

13 Q. Are you familiar with the appropriate
14 proceed to follow in taking a swab of this nature?

15 A. Yes.

16 Q. Was the procedure followed in this case?

17 A. Yes, sir.

18 Q. If you would, just describe to us how that
19 procedure is conducted.

20 A. Okay. You have usually two swabs. You
21 swab the area you would like to collect the sample
22 from. You secure each swab in their own little swab
23 boxes. You indicate where they were from and also put
24 your name on them. And then you put them in a -- their
25 own envelope. You again write where you got them from,
26 your name, and then you seal the envelope.

27 Q. Okay. You describe that after you take the
28 swab, they're placed back into the container, correct?

29 A. Yes.

1 Q. Now, are these all packaged within the same
2 container?

3 A. Every single swab from all these?

4 Q. Right.

5 A. No. They're all separate.

6 Q. Why do you package all of these swabs
7 separately?

8 A. To prevent cross-contamination.

9 Q. And you mentioned earlier that they're each
10 labeled; is that correct?

11 A. Yes.

12 Q. And are they labeled with respect to the
13 particular location on the body that they're taken?

14 A. Yes.

15 Q. And were each of the four in this case
16 labeled as listed earlier?

17 A. Yes.

18 Q. After they were individually enclosed in
19 these sealed container, you mentioned that they're then
20 placed in the larger envelop, correct?

21 A. Uh-huh.

22 Q. And is that also --

23 THE COURT: Wait a minute. You can't
24 say uh-huh.

25 THE WITNESS: I'm sorry. Yes.

26 THE COURT: Thank you.

27 BY MR. SMITH:

28 Q. And is this larger envelope also sealed?

29 A. Yes.

1 Q. And was that done in this case?

2 A. Yes.

3 Q. After obtaining the described DNA swab of
4 the victim's body from Dr. McGarry, what did you do
5 with this -- with these swabs after you received them?

6 A. I secured them in my Gulfport Police
7 Department issued crime scene vehicle.

8 Q. And did they remain in your custody and
9 control from the time that you received them from Dr.
10 McGarry until you placed them into the crime scene
11 vehicle?

12 A. Yes.

13 Q. Later that day did you turn those over to
14 the FBI for comparison and testing?

15 A. Yes.

16 Q. And when you did that, had they been
17 altered or tampered in any way?

18 A. No.

19 Q. Officer Koon, during the autopsy, did you
20 also observe Dr. McGarry remove any items of evidence
21 from the victim's body.

22 A. Yes.

23 Q. Specifically did you observe him to remove
24 socks from the neck of the victim?

25 A. Yes.

26 MR. SMITH: May I approach the witness,
27 Your Honor?

28 THE COURT: Yes, sir.

29 BY MR. SMITH:

1 Q. Officer Koon, I'm showing you what's been
2 marked into evidence as State's Exhibit 33. Do you
3 recognize this exhibit?

4 A. Yes.

5 Q. How do you recognize it?

6 A. I recognize it because I witnessed Dr.
7 McGarry remove this from the victim's neck area and
8 also it has his signature, which I'm trying to find,
9 over on where he actually cut in.

10 Q. Now, were these the actual socks that Dr.
11 McGarry removed from the neck of the victim?

12 A. Yes.

13 Q. And after he removed them and placed them
14 in the packaging, was it turned over to you?

15 A. Yes.

16 Q. Were they sealed?

17 A. Yes.

18 Q. Were they also marked with the proper
19 identifying characteristics?

20 A. Yes, sir.

21 Q. Tell us what you did after you received
22 this sock from Dr. McGarry?

23 A. I secured it in my Gulfport Police
24 Department crime scene vehicle.

25 Q. And from the time you received it from him
26 until the time you turned it into the vehicle, were
27 they in your care, custody, and control?

28 A. Yes.

29 Q. And were they materially altered or changed

1 in any way?

2 A. No.

3 Q. Did you have an opportunity later to turn
4 those over to the FBI for comparison and testing?

5 A. Yes.

6 MR. SMITH: May I approach the witness
7 again, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. SMITH:

10 Q. Officer Koon, next I am showing you what's
11 been entered into evidence as State's Exhibit 34. Do
12 you recognize this exhibit?

13 A. Yes.

14 Q. Tell us how you recognize it.

15 A. This is the victim's shirt that was removed
16 by Dr. McGarry.

17 Q. And is -- that shirt, was it removed during
18 autopsy?

19 A. Yes.

20 Q. What portion of the victim's body was that
21 removed from?

22 A. The torso.

23 Q. After Dr. McGarry removed it from the body,
24 was it packaged?

25 A. Yes.

26 Q. And was it sealed?

27 A. Yes.

28 Q. And were the identifying characteristics
29 placed on the package?

1 A. Yes.

2 Q. After you received it from Dr. McGarry,
3 what did you do with this shirt?

4 A. I secured it in my Gulfport Police
5 Department crime scene vehicle.

6 Q. And did you also turn this over later to
7 the FBI for testing?

8 A. Yes.

9 Q. During the entire time that it was your
10 care, was it materially altered or changed in any way?

11 A. No.

12 Q. Thank you, officer. Officer, next I'm
13 handing you what's been marked for identification
14 purposes as State's Exhibits 35 through 38. During the
15 autopsy did you have an opportunity to photograph
16 various parts of the victim's body?

17 A. Yes.

18 Q. And was that taken to assist in the
19 investigation of her death?

20 A. Yes.

21 Q. And is that true as it relates to each of
22 the four photographs before you?

23 A. Yes.

24 Q. If you would take a quick look at each of
25 those photographs and tell me if you recognize them and
26 how you can identify them.

27 A. Okay. These are -- each one of these are
28 specific areas of the victim's neck area and vaginal
29 area.

1 Q. And are these fair and accurate depictions
2 of the victim as you observed her during the autopsy?

3 A. Yes.

4 MR. SMITH: Your Honor, at this time we
5 would offer them into evidence as State's
6 Exhibit 35 through 38.

7 MS. BLACKWELL: Your Honor, we make the
8 same objection we made earlier, that they are
9 more prejudicial than probative.

10 If Your Honor does admit them into
11 evidence, we would ask that they be sealed
12 and never made public.

13 THE COURT: All right. Mr. Smith, same
14 response?

15 MR. SMITH: We would, Your Honor. The
16 same response as earlier relying on the
17 Chamberlin and woods cases. We believe that
18 they are probative. Specifically they would
19 assist Dr. LeVaughn, when he testifies later,
20 in his description of the injuries that
21 caused the victim's death and also the
22 injuries that she received.

23 THE COURT: All right. Again, I'll have
24 to see those to make a determination.

25 MR. SMITH: May I approach the bench,
26 Your Honor?

27 THE COURT: Yes, sir. All right. It
28 appears to be two photographs of each of the
29 areas that the officer's testified to. And,

1 again, while they are not pleasant to look
2 at, they certainly do appear to have some
3 probative value in this case with regard to
4 the injuries received, and as I'm
5 understanding, it will relate to the cause of
6 death in this matter as well.

7 And it does not appear that any
8 prejudice, if any, and, frankly, I don't see
9 any prejudice in these, would outweigh the
10 probative value.

11 And so, therefore, they will also be
12 admitted into evidence. And, Mr. Smith, is
13 your position the same with regard to the
14 sealing?

15 MR. SMITH: It is, Your Honor.

16 THE COURT: So State's 35, 36, 37, and
17 38 will also be sealed in this record under
18 the same conditions as the prior photographs
19 were sealed.

20 (STATE'S EXHIBIT 35 THROUGH 38 IN
21 EVIDENCE)

22 BY MR. SMITH:

23 Q. Officer Koon, the following morning after
24 the autopsy, July 19, were you asked to execute a
25 search warrant to obtain DNA swabs from Alberto Garcia?

26 A. Yes.

27 Q. Is the person that you obtained swabs from
28 that morning in the courtroom today?

29 A. Yes.

1 Q. Please point to him and tell us what he's
2 wearing.

3 A. That man right there wearing the red
4 striped shirt.

5 MR. SMITH: Your Honor, we would ask
6 that the record reflect a correct ID of the
7 defendant.

8 THE COURT: The record will so reflect.

9 BY MR. SMITH:

10 Q. Upon becoming a crime scene technician, are
11 you trained in how to obtain swabs from a defendant?

12 A. Yes.

13 Q. And is it consistent with the procedure that
14 you described earlier that was utilized by Dr. McGarry?

15 A. Yes.

16 Q. Approximately how many times have you
17 personally obtained swabs from a defendant?

18 A. Upwards about a hundred times.

19 Q. And did you follow these procedures with
20 regard to Alberto Garcia on that date?

21 A. Yes.

22 Q. Did this take place at the Gulfport Police
23 Department?

24 A. Yes.

25 Q. From where on his body did you obtain
26 swabs?

27 A. From his cheeks, inner cheeks area.

28 Q. After obtaining DNA swabs from the
29 defendant, what did you do with them?

1 A. I secured them in their own little boxes
2 and also sealed the bag that they were in as well.

3 Q. And did you mark those?

4 A. Yes.

5 Q. And were they labeled with his name and
6 identifying information?

7 A. Yes.

8 Q. Did they remain in your sole custody and
9 control from the time that you took them until you
10 placed them into evidence?

11 A. Yes.

12 Q. And were they materially altered or changed
13 in any way during that time?

14 A. No.

15 Q. And did you later turn those swabs over to
16 the FBI for testing and comparison?

17 A. Yes.

18 Q. And when you turned them over, were they in
19 the same condition as when you first took them?

20 A. Yes.

21 Q. Did you also obtain DNA swabs from another
22 person in this case?

23 A. Yes.

24 Q. Who was that?

25 A. Casper Gray.

26 Q. When did you take those swabs?

27 A. The night before.

28 Q. And where was this conducted?

29 A. Gulfport Police Department.

1 Q. where on his body did you take swabs from?

2 A. The same area, the buccal swabs from the
3 inner mouth area.

4 Q. Did you follow the same procedure that you
5 followed with the defendant when you obtained swabs
6 from Mr. Gray?

7 A. Yes.

8 Q. Did you later also turn those over to the
9 FBI evidence team for testing?

10 A. Yes.

11 Q. When you turned them over, were they in the
12 same condition as when you first collected them from
13 Mr. Gray?

14 A. Yes.

15 Q. And were each of the items that you have
16 described here today turned over to the FBI for
17 forensic testing in this case?

18 A. Yes, sir.

19 MR. SMITH: Beg the court's indulgence?

20 THE COURT: Yes, sir.

21 MR. SMITH: No further questions, Your
22 Honor.

23 THE COURT: Ms. Blackwell.

24 MS. BLACKWELL: Your Honor, just one
25 question.

26 CROSS-EXAMINATION BY MS. BLACKWELL:

27 Q. Mr. Koon, why did you take swabs from
28 Julian Casper Gray?

29 A. well, during the course of the

1 investigation, he was a person of interest at the time.
2 As a crime scene technician you cast a wide net of
3 everywhere. And just anybody that could possibly be
4 just more than a suspect or person of interest.

5 Q. would it be fair to categorize him as the
6 initial suspect in this case?

7 A. Just at the time we were just told that he
8 was a person of interest.

9 MS. BLACKWELL: That's all I have,
10 judge. Thank you.

11 THE COURT: Any follow up to that,
12 Mr. Smith?

13 MR. SMITH: No, Your Honor.

14 THE COURT: All right, sir. You can
15 step down. Thank you. All right, state, who
16 is next your witness?

17 MR. PARKER: Your Honor, once again we
18 would ask for a brief recess just so that we
19 can ensure that our audio equipment, we won't
20 have any delays. Our next witnesses, we're
21 going to play some audiotapes through them.

22 THE COURT: All right. We think this
23 time it will really only be ten minutes?

24 MR. PARKER: Correct, Your Honor.

25 THE COURT: So we'll be in recess for
26 about ten minutes.

27 (STATE'S EXHIBIT 39 AND 40 FOR
28 IDENTIFICATION)

29 THE COURT: All right. State, who do

1 you have?

2 MR. SMITH: Commander Ken Brown.

3 (OATH ADMINISTERED)

4 THE COURT: All right. Sir, if you
5 could have a seat right there. All right,
6 Mr. Smith.

7 MR. SMITH: Thank you judge.

8 KEN BROWN

9 was thereupon called as a witness for and on behalf of
10 the State, and, having been duly sworn, testified as
11 follows:

12 DIRECT EXAMINATION BY MR. SMITH:

13 Q. Please state your name for the record.

14 A. Ken, K-E-N, Brown.

15 Q. And, Mr. Brown, who do you work for?

16 A. The Gulfport Police Department.

17 Q. What's your job title with the Gulfport
18 Police Department?

19 A. I am the commander of the operations
20 bureau.

21 Q. As the commander of the operations bureau,
22 what are your general duties for the department?

23 A. Basically the operations bureau commander
24 is mostly an administrative function which answers
25 directly to the Chief of Police. I'm ultimately
26 responsible for the day-to-day operations of numerous
27 enforcement units within the bureau.

28 Q. And were those your duties on July 17
29 of 2014?

1 A. Yes, they were.

2 Q. I want to go back to that day. Were you
3 present during the execution of a search warrant at the
4 Palms Apartments?

5 A. Yes, I was.

6 Q. And was that apartment 170?

7 A. Yes.

8 Q. Approximately what time was this search
9 warrant executed?

10 A. Approximately 8:00 PM.

11 Q. Who was the resident of that apartment?

12 A. Mr. Julian Gray.

13 Q. And how were you involved in the execution
14 of that search warrant?

15 A. On this particular day, I was out of the
16 office in the field at the apartment complex ensuring
17 that adequate personnel and resources were available
18 relevant to this investigation.

19 Q. And so you weren't actually inside the
20 apartment assisting with the search?

21 A. No, sir, I was not.

22 Q. Where did you locate yourself as it related
23 to the apartment?

24 A. I was standing in the breezeway of the
25 apartment of Mr. Julian Gray.

26 Q. And while the search warrant was being
27 executed, did a civilian approach you?

28 A. Yes, sir.

29 Q. Tell us what happened when that person came

1 up to you.

2 A. A gentlemen exited his residence and
3 approached me and inquired as to what was going on and
4 why all the law enforcement personnel were on scene.

5 Q. Okay. And do you remember anything else
6 specific about your conversation with him?

7 A. He just inquired as to why law enforcement
8 personnel were on scene and what was going on. I did
9 find it odd.

10 Q. When you say you find it odd, why is that?

11 A. Odd but not unusual. Odd that somebody
12 would exit their residence and inquire with police as
13 to what's going on, but not unusual. I've seen it in
14 my 23 year law enforcement career.

15 Q. Probably seen it a lot.

16 A. Yes, sir.

17 Q. How did you respond when he came up and
18 inquired about what was going on?

19 A. I simply told Mr. Garcia that it was a law
20 enforcement matter, an ongoing investigation, and to --
21 the best thing for him time do at that point in time
22 was to stay out of the law enforcement personnel's way,
23 meaning not to impede their investigation.

24 Q. Was he detained at that time?

25 A. No, sir, he was not.

26 Q. Had you ever seen this individual before
27 that night?

28 A. No, sir.

29 Q. Did you know who he was?

1 A. No, sir, I did not.

2 Q. So he was not a suspect at that time?

3 A. No, sir.

4 Q. Tell us what you did after he returned or
5 moved away from you?

6 A. Shortly thereafter I met with Captain Craig
7 Petersen who was on scene and advised him on the basis
8 of my contact with Mr. Garcia and not knowing if a --
9 Mr. Garcia had been contacted during the initial
10 canvass of the apartment complex. I advised that he
11 may or may not want a detective to talk with him.

12 Q. And did you advise him of where Mr. Garcia
13 left or went to?

14 A. I simply told him he went back to his
15 residence.

16 Q. Did you have any further involvement with
17 the individual who you had that conversation with that
18 night?

19 A. No, sir, I did not.

20 Q. Do you see the person in the courtroom that
21 came up to you at the execution of that search warrant?

22 A. Yes, sir, I do.

23 Q. If you would, please, point to him and tell
24 us what he's wearing.

25 A. The gentlemen sitting directly to the front
26 of me, slightly to the right wearing a red and white
27 orange county jumpsuit.

28 MR. SMITH: Your Honor, we'd ask the
29 record reflect a correct identification of

1 the defendant.

2 THE COURT: The record will so reflect.

3 MR. SMITH: No further questions, Your
4 Honor.

5 THE COURT: Defense, any questions?

6 MR. STAGE: Yes, judge.

7 CROSS-EXAMINATION BY MR. STAGE:

8 Q. Good morning, commander.

9 A. How are you doing, sir?

10 Q. I'm very well. Thank you. During the time
11 that you first became or first were introduced to
12 Mr. Alberto Garcia, you testified that you were at
13 Julian Casper Gray's apartment?

14 A. No, I was not. I was standing in the
15 breezeway.

16 Q. In the breezeway of that apartment?

17 A. Of Mr. Gray's apartment?

18 Q. Yes.

19 A. Yes.

20 Q. And Gulfport Police Department was
21 conducting a search warrant on Mr. Gray's apartment?

22 A. Not the Gulfport Police Department.

23 Q. Was it the FBI or which agency was it?

24 A. The Federal Bureau of Investigation.

25 Q. So while this search warrant was being
26 conducted at apartment 70, correct? At apartment 70?

27 A. 170.

28 Q. 170. That is where Mr. Gray lives, right?

29 A. Yes.

1 Q. Would it be fair to say that Mr. Gray was a
2 suspect prior to law enforcement knowing of the
3 existence of Alberto Garcia?

4 A. I can tell you that at the point in time
5 when I was on scene, I was aware that Mr. Julian Gray
6 was a person of interest.

7 Q. Okay.

8 MR. STAGE: That's all the question we
9 have, judge.

10 THE COURT: All right. Any follow-up to
11 that?

12 MR. SMITH: No, Your Honor.

13 THE COURT: All right. Commander, you
14 can step down. Thank you, sir.

15 All right, state, who is your next
16 witness?

17 MR. SMITH: Detective Clay Fulks.

18 THE COURT: All right.

19 (OATH ADMINISTERED)

20 CLAY FULKS

21 was thereupon called as a witness for and on behalf of
22 the State, and, having been duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION BY MR. SMITH:

25 Q. Please state your full name for the record.

26 A. Clayton Davis Fulks.

27 Q. And how are you employed?

28 A. I'll a detective with the Gulfport Police
29 Department.

1 Q. How long have you been a detective with the
2 police department?

3 A. About going on three years.

4 Q. And were you employed as a detective with
5 the police department on July 17, 2014?

6 A. Is was. I was transitioning to that job.

7 Q. were you involved on that date in the
8 investigation of the death of a child, Ms. Ja'Naya
9 Thompson?

10 A. Yes.

11 Q. Tell us about your duties on that day as it
12 related to the investigation.

13 A. I was answering phones, transporting
14 witnesses, just assisting the case detectives.

15 Q. As part of those duties, were you directed
16 to report to the Palms Apartments that evening?

17 A. Yes.

18 Q. who directed you to report there?

19 A. Captain Craig Petersen.

20 Q. when you arrived at the apartments, did you
21 make contact what Captain Petersen.

22 A. I did.

23 Q. what information did you receive at that
24 time?

25 A. He told me that Mr. Garcia was volunteering
26 some type of information and asked me to offer him a
27 ride to the police department.

28 Q. Did he advise you of the location of the
29 that he wanted you to make contact with?

1 A. He did.

2 Q. And where was that person?

3 A. Inside of that apartment or his apartment.

4 Q. After receiving this information from
5 Captain Petersen, where did you go?

6 A. To the apartment.

7 Q. When you first got to the apartment, what
8 did you do?

9 A. Knocked on the door.

10 Q. And tell us, did the defendant answer the
11 door?

12 A. He did.

13 Q. Had you ever seen this individual before?

14 A. Not to my knowledge.

15 Q. At that point was he considered a person of
16 interest?

17 A. No.

18 Q. What did you do when he answered the door?

19 A. I told him I heard that he may have some
20 information and offered him a ride to the police
21 department.

22 Q. Was he willing to go with you to the police
23 department?

24 A. Yes.

25 Q. And did you restrain him in handcuffs at
26 that time?

27 A. No.

28 Q. Did he accept your ride in your vehicle to
29 the police department?

1 A. Yes.

2 Q. And was he restrained or handcuffed in your
3 vehicle?

4 A. No.

5 Q. Tell us about what happened when you got
6 into your vehicle.

7 A. He sat in my vehicle, and I took him to the
8 station, and he began to speak to me on the way.

9 Q. And was there a recording of this
10 conversation?

11 A. Yes.

12 Q. What was the general conversation about?

13 A. It was a variety of things, his job, where
14 he worked, lived, even video games, just very random
15 conversation.

16 Q. Kind of a random general conversation.

17 A. Yes.

18 Q. Who did most of the talking during the car
19 ride?

20 A. He did.

21 Q. During the car ride, did he mention
22 anything about fingerprints?

23 A. Yes, he did.

24 Q. Tell us about that.

25 A. He said his fingerprints may be found in
26 the trailer where the little girl was found.

27 Q. Did he have an explanation for why his
28 fingerprints would be in the trailer where the little
29 girl was found?

1 A. Yes, he did. He almost immediately said
2 because he had been there before and knew the people.

3 Q. That he had been in the trailer where she
4 was found before.

5 A. Yes. That he known the prior occupants.

6 Q. The prior occupants of the trailer?

7 A. Yes, sir.

8 Q. About how long was your ride to the police
9 department?

10 A. A little under 20 minutes.

11 MR. SMITH: May I approach the witness,
12 Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. SMITH:

15 Q. Detective, I'm showing you what's been
16 marked for identification as State's Exhibit 39. Do
17 you recognize that?

18 A. I do.

19 Q. How do you recognize it?

20 A. It's a disk containing the video of the car
21 ride.

22 Q. Have you had an opportunity to listen to
23 this disk before today's proceeding?

24 A. I have.

25 Q. And is it a fair and accurate recording of
26 your conversation with him that night?

27 A. Yes, it is.

28 MR. SMITH: Your Honor, we ask that it
29 be admitted as State's Exhibit 39.

1 THE COURT: Ms. Blackwell, Mr. Stage?

2 MR. STAGE: Judge, we just reurge our
3 prior motion concerning this piece of
4 evidence.

5 THE COURT: All right. And the ruling
6 will be the same as on the prior hearing.
7 All right. It will be marked as State's 39.

8 (STATE'S EXHIBIT 39 IN EVIDENCE)

9 MR. SMITH: Your Honor, we would ask to
10 publish and play the recording at this time.

11 THE COURT: All right.

12 (STATE'S EXHIBIT 39 PLAYED IN OPEN
13 COURT)

14 BY MR. SMITH:

15 Q. Detective, was that a complete copy of your
16 recording with the defendant?

17 A. Yes, it was.

18 Q. And is the individual whose conversation
19 with you was recorded July 17 of 2014 in the courtroom
20 today?

21 A. Yes.

22 Q. Please point to him and describe what he's
23 wearing.

24 A. Sitting to my right wearing red and white
25 stripes.

26 MR. SMITH: Your Honor, we'd ask that
27 the record reflect a correct ID of the
28 defendant.

29 THE COURT: The record will so reflect.

1 MR. SMITH: No further questions, judge.

2 THE COURT: Defense.

3 CROSS-EXAMINATION BY MR. STAGE:

4 Q. Detective, obviously that was at night,
5 correct?

6 A. Yes.

7 Q. Did you work earlier in the day on
8 July 17, 2014?

9 A. Yes.

10 Q. On that day, did you have the opportunity
11 to speak with a Ms. Heather Hobby?

12 A. I did. I'm not sure of the dates. But I'm
13 imagining that sounds correct.

14 Q. How did you come to speak with Ms. Hobby?

15 A. She originally had called in by phone
16 wishing to speak.

17 Q. Okay. And for what purpose did she want to
18 speak to the police?

19 MR. SMITH: Objection, Your Honor,
20 hearsay.

21 THE COURT: Mr. Stage.

22 MR. STAGE: I didn't ask what she said.
23 I just asked for what purpose. And, judge, I
24 just -- this is a sentencing hearing.

25 THE COURT: It is. But the rules of
26 evidence still apply. Was it with regard to
27 this case, officer?

28 THE WITNESS: Yes, judge.

29 THE COURT: All right. Go ahead Mr.

1 Stage.

2 BY MR. STAGE:

3 Q. Did that conversation with Ms. Hobby
4 produce any information that the police followed up on?

5 A. Which conversation?

6 Q. With Ms. Hobby.

7 A. I'm not sure which conversation you're
8 referring to.

9 Q. The conversation on July 17, 2014, at
10 roughly 8:25 AM.

11 A. Was that -- I'm not sure which conversation
12 that was at this point.

13 Q. Okay. You testified just a moment ago that
14 you spoke with Ms. Heather Hobby on July 17, 2014,
15 correct?

16 A. I can't -- at this point I don't recall
17 which day that was that I spoke to her regarding this
18 incident. I did speak to her on at least two
19 occasions. I believe it was once by phone, once during
20 a face-to-face.

21 Q. Okay. Well, let's talk about the one by
22 telephone. What was the purpose of that conversation?

23 A. She called in to -- at this stage we were
24 still receiving phone tips about this case, and she
25 called in to offer a tip.

26 Q. And based on that tip, did you develop a
27 person of interest?

28 A. Yes. One was developed based off her
29 information.

1 Q. Were there criminal allegations made about
2 this person?

3 A. By whom?

4 Q. By Ms. Heather Hobby.

5 A. She didn't have knowledge specific. It was
6 more of a general tip.

7 Q. Okay.

8 A. That it was someone maybe we should be
9 interested in.

10 Q. And who was that person?

11 A. Julian Gray.

12 Q. Okay. Did you get the sense that she was
13 concerned he might be involved?

14 A. Yes.

15 MR. SMITH: Your Honor, I'm going to
16 make the same objection. At this point we're
17 clearly getting into a statement that was now
18 made by another party. It's clear hearsay,
19 and it's not proper for it to be received
20 through this witness.

21 THE COURT: It will be sustained as to
22 hearsay. He can testify what he did in
23 response to the information. But he can't
24 testify about the information itself.

25 BY MR. STAGE:

26 Q. And based upon that particular telephone
27 call, what did you do with that information?

28 A. I notified Captain Petersen of the
29 phonecall.

1 Q. Okay.

2 MR. STAGE: That's all the questions we
3 have, judge.

4 THE COURT: Mr. Smith, any follow up?

5 MR. SMITH: No, Your Honor.

6 THE COURT: All right, sir. You can
7 step down. Thank you.

8 THE WITNESS: Thank you, judge.

9 THE COURT: All right. Attorneys, come
10 up just a moment.

11 (BENCH CONFERENCE NOT REPORTED)

12 THE COURT: All right. For the record,
13 the conference at the bench was merely with
14 regard to the time and the time of the break.

15 There is one other matter we do need to
16 put in this record. And that is that this
17 morning prior to the beginning of court, some
18 unknown person delivered a folder to the
19 clerk's office with the request that it be
20 provided to the court.

21 The court has not reviewed it and does
22 not intend to review it because apparently it
23 is intended in some manner to sway this court
24 one way or the other with regard to
25 sentencing in this case.

26 The attorneys were made aware of that
27 prior to trial beginning this morning. I
28 don't know that they've seen it. But
29 certainly it's available to them if they

1 choose to look at it.

2 And, for the record, the court does not
3 appreciate at all whatever this attempt was,
4 and specifically has asked that the state
5 look into it to determine if in fact there
6 was any ill motive.

7 It may very well be that this person did
8 not understand that this would be a full
9 trial even though that has been in the media,
10 both print and broadcast, and thought that
11 perhaps they were simply submitting something
12 for sentencing.

13 But either way so the record is clear,
14 it is in the clerk's office. It will be part
15 of this record. But it will not be something
16 that this court will review at this time or
17 at any another time.

18 State, anything you want to say with
19 regard to that?

20 MR. PARKER: Your Honor, just that we
21 believe the court has taken the appropriate
22 steps in handling this issue.

23 THE COURT: Defense, any record you want
24 to make?

25 MS. BLACKWELL: Your Honor, I have not
26 seen it. I was made aware that it's
27 apparently some sort of petition to have Mr.
28 Garcia sentenced to death.

29 I would ask that it be made a part of

1 the record, not for this hearing or anything
2 like that, but just for the purposes of any
3 appeal.

4 THE COURT: Well, as I said, it will be.
5 But it is not something that I will review at
6 any time. So at this point whatever purpose
7 it was intended to serve, it has not served
8 it other than to, quite frankly, irritate the
9 court.

10 All right. State, anything else that we
11 need to put in the record before we break for
12 lunch?

13 MR. PARKER: No, Your Honor.

14 THE COURT: Defense, anything else?

15 MS. BLACKWELL: No, ma'am.

16 THE COURT: And I think the attorneys
17 have agreed to an hour and a half for lunch.
18 So roughly an hour and a half, it's ten
19 minutes after 12. So it would be 1:40. So
20 we'll be in recess until 1:40.

21 (PAUSE FOR LUNCH BREAK)

22 THE COURT: All right. State, who is
23 your next witness?

24 MR. PARKER: Your Honor, the State of
25 Mississippi calls Detective Chris Werner.

26 (OATH ADMINISTERED)

27 THE COURT: Come and have a seat please,
28 sir.

29 CHRIS WERNER

1 was thereupon called as a witness for and on behalf of
2 the State, and, having been duly sworn, testified as
3 follows:

4 DIRECT EXAMINATION BY MR. PARKER:

5 Q. Detective werner, would you please state
6 your full name for the court.

7 A. Detective Sergeant Christopher werner.

8 Q. And with whom are you employed?

9 A. The Gulfport Police Department.

10 Q. How long have you worked with the Gulfport
11 Police Department?

12 A. Over eight years.

13 Q. What are your present duties?

14 A. I'm a detective supervisor.

15 Q. Were you a detective on July 17, 2014?

16 A. I was.

17 Q. And what were you doing on that date?

18 A. Assisting in the investigation to the
19 disappearance of Ja'Naya Thompson.

20 Q. And how were you assisting?

21 A. I was conducting interviews.

22 Q. Were there a lot of people being
23 interviewed that day?

24 A. They were.

25 Q. Now, on that evening, did you have an
26 opportunity to come in contact with an Alberto Garcia?

27 A. I did.

28 Q. And do you see the person you came in
29 contact with that you knew as Alberto Garcia in this

1 courtroom today?

2 A. I do.

3 Q. would you please point to him and tell the
4 court exactly what he's hearing?

5 A. He's seated at the defense table in a red
6 and white jumpsuit.

7 MR. PARKER: Your Honor, let the record
8 reflect a correct identification of the
9 defendant by this witness.

10 THE COURT: The record will so reflect.

11 BY MR. PARKER:

12 Q. How did you come into contact with the
13 defendant?

14 A. I was advised that he was at the police
15 department to give a voluntary statement.

16 Q. Do you know who brought the defendant to
17 the station?

18 A. Officer Clay Fulks.

19 Q. Did Officer Fulks tell you anything prior
20 to you speaking with the defendant?

21 A. He did.

22 Q. what did he tell you?

23 A. He stated that during the car ride from Mr.
24 Garcia's --

25 MR. STAGE: Judge, we're going to object
26 to the hearsay.

27 THE COURT: It will be sustained as to
28 hearsay.

29 MR. PARKER: Yes, Your Honor.

1 Q. Now, prior to you meeting with the
2 defendant, was he a suspect in this case?

3 A. He was not.

4 Q. Did you Mirandize him before you spoke with
5 him?

6 A. I did.

7 Q. And why is that?

8 A. Just out of an abundance of caution.

9 Q. Did you speak with the defendant?

10 A. I did.

11 Q. How long did you speak with him?

12 A. Our interview lasted approximately three
13 hours.

14 Q. Now, of that three hours, were you talking
15 the whole three hours?

16 A. No, if you condense the conversation or the
17 interview, I would say a little over two hours of
18 conversation. The video lasts approximately three
19 hours.

20 Q. I'm showing you what we've marked as
21 State's Exhibit 40 for identification. Do you
22 recognize this?

23 A. I do.

24 Q. How do you recognize it?

25 A. This is the compact disk which contains the
26 audio video recorded interview of myself and Mr.
27 Garcia.

28 Q. And is this a full copy recording of that
29 interview?

1 A. It is.

2 Q. Have you had an opportunity to watch it?

3 A. I did. And I initialed after I viewed it.

4 Q. Okay. And this is a true and correct copy
5 of that?

6 A. It is.

7 MR. PARKER: Your Honor, at this time we
8 offer State's Exhibit 40 into evidence.

9 THE COURT: Defense, any objection?

10 MR. STAGE: No, objection, judge.

11 THE COURT: All right. It will be
12 marked as State's 40.

13 (STATE'S EXHIBIT 40 IN EVIDENCE)

14 (STATE'S EXHIBIT 41 FOR IDENTIFICATION)

15 BY MR. PARKER:

16 Q. Detective Werner, I'm showing you what
17 we've marked as State's Exhibit 41 for identification.
18 It's a transcript Bates stamped from 4213 to 4404. Do
19 you recognize it?

20 A. I do.

21 Q. And how do you recognize it?

22 A. This is a verbatim transcript of the
23 interview between myself and Mr. Garcia from the 17th.

24 Q. Did you have an opportunity to review this
25 transcript as you were watching State's Exhibit 40?

26 A. I did.

27 Q. And is it an accurate transcription of that
28 interview?

29 A. It is.

1 MR. PARKER: And, Your Honor, this is a
2 transcript as you heard from the witness.
3 It's been marked for ID purposes. We would
4 like to publish to the court the interview
5 that's already been introduced into evidence
6 and for Your Honor to have a copy to follow
7 along with it.

8 THE COURT: All right. Any objection to
9 that, defense?

10 MR. STAGE: No, judge.

11 THE COURT: Okay.

12 MR. PARKER: Your Honor, may I approach?

13 THE COURT: Yes.

14 (STATE'S EXHIBIT 40 PLAYED IN OPEN
15 COURT).

16 MR. PARKER: Your Honor, at this time
17 I'd like to move us to when Detective Werner
18 come backs in.

19 THE COURT: All right.

20 (STATE'S EXHIBIT 40 CONTINUES)

21 MR. PARKER: Your Honor, we're going to
22 move it.

23 MS. BLACKWELL: Your Honor, is there any
24 way we can take a short bathroom break?

25 There's a little bit more left of this audio.
26 Is there any way we could take a short break?

27 THE COURT: Give me some idea how much
28 longer. There's quite a few pages left.
29 We've been about an hour and 40 minutes.

1 MR. PARKER: It's about two hours long,
2 the talking part is. So about another 20, 30
3 minutes.

4 THE COURT: Let's go ahead and take
5 about 15 minutes. Give everybody a chance to
6 stretch their legs. Don't move it from here,
7 though.

8 MR. PARKER: Yes, Your Honor.

9 (PAUSE IN THE PROCEEDINGS)

10 THE COURT: All right. We're back on
11 the record. Go ahead.

12 MR. PARKER: Yes, Your Honor.

13 (STATE'S EXHIBIT 40 CONTINUES)

14 MR. PARKER: Your Honor, at this time
15 we'd like to move all the way to the last
16 part of the speaking of this exhibit.

17 THE COURT: All right.

18 (STATE'S EXHIBIT 40 CONCLUDES)

19 BY MR. PARKER:

20 Q. Detective Werner, was that your full
21 interview with the defendant on July 17, 2014?

22 A. Yes, sir.

23 Q. Now, after you took that interview, what
24 did you do next?

25 A. I prepared a search warrant for his
26 residence.

27 Q. And who did you take that to?

28 A. Justice Court Judge Brandon Ladner.

29 Q. Was it signed?

1 A. It was.

2 Q. And was that search warrant executed?

3 A. It was.

4 Q. At the time of your interview of the
5 defendant, how old was he?

6 A. Twenty-nine.

7 Q. What was his education level?

8 A. A GED.

9 Q. And do you know whether or not he was
10 employed?

11 A. He stated he was.

12 Q. Do you know where?

13 A. At the airport.

14 MR. PARKER: With the court's
15 indulgence.

16 THE COURT: Yes, sir.

17 MR. PARKER: Your Honor, we tender the
18 witness.

19 THE COURT: All right. Defense.

20 CROSS-EXAMINATION BY MR. STAGE:

21 Q. Good afternoon, Detective Werner.

22 A. Good afternoon, sir.

23 Q. So at conclusion of that interview on
24 July 17, 2014, you took Mr. Garcia into custody,
25 correct?

26 A. Correct.

27 Q. Okay. And what, if any, criminal history
28 did you determine that Mr. Garcia had?

29 A. To that point, there was none.

1 Q. Okay.

2 A. No, felony criminal history.

3 Q. Okay. And in that interview that we just
4 watched, there was parts where Mr. Garcia indicated
5 that I guess it's Mr. Gray telling him that he likes to
6 tie girls up or that he found the ropes. Do you
7 remember that portion?

8 A. He referenced a conversation he had had.

9 Q. Correct. Did you find any other evidence
10 that might corroborate that statement?

11 A. Personally I did not.

12 Q. Okay. Now, that interview we just watched
13 was on July 17, 2014. Did you do a subsequent
14 interview with Mr. Garcia?

15 A. I was present during one.

16 Q. Okay. So there was one that was done?

17 A. A second interview, yes.

18 Q. Okay. And do you know what preempted that
19 second interview?

20 A. The lead detective received a note from Mr.
21 Garcia stating he wished to have another interview.

22 Q. Okay. And was there actually in fact a
23 second interview done?

24 A. There was.

25 Q. And where was that conducted at?

26 A. The Gulfport Police Department.

27 Q. Was it in the same room that we just
28 watched?

29 A. I believe it was.

1 Q. Okay. And was that video recorded with
2 audio and video?

3 A. It was.

4 Q. Was it using the same equipment that was
5 used for this first interview?

6 A. It would be the same type. There's
7 multiple recording devices. I couldn't tell you which
8 one it was recorded on.

9 Q. Do you know if that interview was
10 transferred to a digital video disk or DVD?

11 A. I wouldn't know the answer to that.

12 Q. Do you know if it was provided to the
13 district attorney's office as part of the case file?

14 A. Again, I wasn't the lead detective. I
15 didn't take part in preparing one.

16 Q. But you were present for the second
17 interview, correct?

18 A. Correct.

19 Q. Okay. Now, we saw Mr. Garcia's demeanor in
20 this first interview. Would you agree he's pretty
21 talkative?

22 A. He makes statements. I'm not sure whether
23 you call it talkative. He speaks. He does speak.

24 Q. What was Mr. Garcia's demeanor during the
25 second interview?

26 A. He spoke as well. He was calm at some
27 points, crying at others.

28 Q. Do you think he was more emotional in the
29 second one than the first one?

1 A. It would be speculation to say what his
2 emotions were.

3 Q. Just your opinion on it.

4 A. I believe he was emotional in both.

5 Q. Okay. Would you say he cried more in the
6 second one than the first one?

7 A. Again, I couldn't say more crying or less
8 crying in either one. He cried in both.

9 MR. STAGE: Court's indulgence for just
10 a minute?

11 THE COURT: All right.

12 MR. STAGE: Judge, that's all the
13 questions that we'll have for this witness.

14 However, we do have a copy of the second
15 interview that was done that was provided to
16 us during discovery. Discussing the matter
17 with the state, they would have no objection,
18 and we would ask to have it admitted as a
19 defense exhibit to this hearing.

20 THE COURT: Into evidence?

21 MR. STAGE: Yes.

22 THE COURT: State?

23 MR. PARKER: Yes, Your Honor. And
24 although we questioned its admissibility as
25 self-serving hearsay, out of an abundance of
26 caution, the state would have no objection to
27 the court receiving the second statement.

28 THE COURT: All right. Are we going to
29 listen to it now?

1 MR. STAGE: We're actually, judge, not
2 requesting it be published. It's quite
3 lengthy. We would just like to have this
4 part of the record.

5 THE COURT: Well, if it's part of the
6 record, the fact finder has to hear it. That
7 would be me. So how do y'all propose to do
8 this? How long is it if you guys know?

9 MR. STAGE: It's about two and a half
10 hours, judge.

11 THE COURT: All right. Does it have
12 skips in it like this one did, might actually
13 whittle it down to two hours like the three
14 hour one was reduced at least a few minutes?

15 MR. STAGE: Judge, that would probably
16 be correct.

17 MR. PARKER: Yes, Your Honor.
18 Approximately the same in length as that.

19 THE COURT: As the last one?

20 MR. PARKER: Yes, Your Honor.

21 THE COURT: All right. So which really
22 was longer than I think two hours.

23 MR. PARKER: Yes, Your Honor.

24 THE COURT: So what do y'all want to do?
25 Before anybody answers, we're not listening
26 to it tonight here in the courtroom. It's
27 ten minutes to five.

28 MR. PARKER: Yes, Your Honor. Your
29 Honor, we could also provide the court with a

1 transcript of it. I don't know that it would
2 be worth, as you stated, listening to it
3 tonight if I court --

4 THE COURT: I didn't say that it wasn't
5 worth it. I said we weren't going to do it.

6 MR. PARKER: Yes, Your Honor.

7 THE COURT: There's a difference.

8 MR. PARKER: We could provide the court
9 with a transcript of it, and as part of
10 deliberations, be able to look through it.

11 THE COURT: Well, in fairness, I looked
12 through the transcript you guys had of the
13 first statement, and it's not entirely
14 accurate.

15 MR. PARKER: Yes, Your Honor.

16 THE COURT: So in fairness we're going
17 to watch the video if it's in evidence. It's
18 just a matter of choose your poison when you
19 guys want to do that.

20 MR. PARKER: Your Honor, based on the
21 defense asking about this just today this
22 afternoon, we would ask the court to reserve
23 ruling because we think there are some
24 objectionable admissibility issues because it
25 is rank hearsay. And there's case law that
26 doesn't allow it.

27 Based on everything that's gone on and
28 us getting the information this late in the
29 afternoon, we'd ask to be able to argue that

1 to the court.

2 THE COURT: All right. Let's do this.
3 Defense, give me whatever case law you have
4 that would say it is admissible. State, you
5 give me whatever case law you have that says
6 it is not. And then we'll cross that bridge
7 tomorrow with regard to when or if we'll
8 listen to it. Fair enough?

9 MR. PARKER: Yes, Your Honor.

10 THE COURT: All right. Now, in
11 particular, let me point out to you guys one
12 thing. The transcript is marked only for ID.

13 But in particular on page 4376 there are
14 statements attributed to Detective Werner
15 that clearly were made by Mr. Garcia during
16 the course of the video.

17 So the record is clear, it starts at the
18 bottom of 4376 and continues to the top of
19 4377. And there are other areas that are not
20 as egregious, but where words appear to me to
21 be different. And some words were left out.
22 The meaning generally is here except for that
23 one place.

24 It's clearly the wrong speaker. So you
25 guys verify that. Make sure that it wasn't
26 just me because it was a good bit into the
27 statement, and let's make sure the record is
28 clear in the morning about that.

29 MR. PARKER: Yes, Your Honor.

1 THE COURT: All right. So, defense,
2 it's your motion to admit. How long for you
3 to get me the case law? Can you do it this
4 evening or you want to try to do it first
5 thing in the morning?

6 MR. STAGE: If we could do it first
7 thing in the morning, that would be great.

8 THE COURT: All right. State, what
9 about you? Same?

10 MR. PARKER: Yes, Your Honor. We have
11 the case right here that we'd ask the court
12 to rely on.

13 THE COURT: All right. Well, get me a
14 copy of it. And if I can have everybody's
15 case by 8:30 in the morning, that will give
16 me time to -- hopefully, they're not very
17 long. Give me time to look over them.

18 MS. BLACKWELL: Should I send it to
19 Constance, judge?

20 THE COURT: You can.

21 MR. STAGE: Should I go ahead and make
22 this --

23 THE COURT: Let her go ahead and mark it
24 for ID.

25 (DEFENDANT'S EXHIBIT 1 FOR
26 IDENTIFICATION)

27 THE COURT: Mr. Parker, any follow up?

28 MR. PARKER: No, Your Honor.

29 THE COURT: All right. Detective, you

1 can step down. State, clearly you're not
2 going to get anyone on the stand and off the
3 stand in the next seven minutes.

4 I'm willing to stay a little bit late,
5 but I'm assuming your next witness is going
6 to be fairly lengthy.

7 MR. SMITH: Approximately 20 minutes,
8 Your Honor.

9 THE COURT: All right. Everybody's good
10 to go for 20 minutes? All right. Who is it?

11 MR. SMITH: FBI agent Tye Breedlove.

12 THE COURT: All right.

13 (OATH ADMINISTERED)

14 MR. SMITH: Your Honor, before we begin
15 testimony, it's my understanding from the
16 defense that they have no objection to the
17 following three exhibits being marked and
18 entered into evidence.

19 THE COURT: Is that correct, defense?

20 MS. BLACKWELL: It is, Your Honor. I'll
21 let Mr. Smith go through the numbers if you
22 want to go ahead and mark them.

23 THE COURT: All right.

24 MR. SMITH: S-42, Your Honor, would be
25 clothing items that were retrieved from the
26 trailer.

27 THE COURT: All right.

28 MR. SMITH: S-43 would be a pair of
29 child's flip-flops that were also retrieved

1 from the trailer.

2 THE COURT: All right.

3 MR. SMITH: And S-44 would be an Xbox
4 360.

5 THE COURT: Okay.

6 (STATE'S EXHIBIT 42, 43, 44 IN EVIDENCE)

7 THE COURT: All right, Ms. Blackwell, so
8 with those three now being identified,
9 there's no objection to their being admitted
10 in evidence?

11 MS. BLACKWELL: None, Your Honor.

12 THE COURT: All right. Go ahead, Mr.
13 Smith.

14 MR. SMITH: Thank you, judge.

15 TYE BREEDLOVE

16 was thereupon called as a witness for and on behalf of
17 the State, and, having been duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION BY MR. SMITH:

20 Q. Please state your name for the record.

21 A. Tye Breedlove.

22 Q. And, Mr. Breedlove, who are you employed
23 by?

24 A. I'm a special agent with the FBI up in
25 Jackson.

26 Q. And as part of your duties as a special
27 agent with the FBI, are you also assigned to the FBI
28 evidence response team?

29 A. Yes.

1 Q. Generally what are the roles and duties
2 that are taken up by the evidence response team?

3 A. When we go out and conduct searches on
4 white color cases, violent crime cases, sometimes we
5 participate in the body recoveries, and also we assist
6 local law enforcement when we're called in to process
7 crime scenes.

8 Q. How long have you been assigned to the
9 evidence response team?

10 A. Approximately nine years.

11 Q. And how long have you been an agent with
12 the FBI?

13 A. Fourteen years.

14 Q. On July 17 of 2014, did you respond to a
15 call here in Gulfport.

16 A. Yes.

17 Q. Approximately what time were you first
18 contacted?

19 A. We first heard about it around 10:30 that
20 morning.

21 Q. And were you in Jackson at that time?

22 A. Yes, sir.

23 Q. When you got the call, where did you travel
24 to?

25 A. We went back to the office, got our stuff
26 and then we came down here and arrived at the trailer
27 at Whitney Avenue at approximately 4:00 PM.

28 Q. And that's Whitney Drive, correct?

29 A. Yes.

1 Q. And when you arrived at Whitney Drive, were
2 you briefed by the Gulfport Police Department?

3 A. Yes.

4 Q. After receiving that briefing, did you
5 enter the crime scene?

6 A. Yes.

7 Q. Tell us about your observations of the
8 interior of that trailer immediately as you entered.

9 A. It was an abandoned trailer full of broken
10 furniture and broken glass. You know, like I said,
11 I've been doing this for eight or nine years. It was
12 one of the most disgusting crime scene that we've been
13 to. Full of cockroaches and rat feces and rotted food
14 and the smell stuck with us for a good two or three
15 weeks.

16 Q. Upon entering the trailer, did you make
17 your way to the back bedrooms?

18 A. Yes, sir.

19 Q. And when you got back there, did you search
20 the rear bedroom of the trailer?

21 A. Yes.

22 Q. If you would, describe for us that bedroom
23 as you searched it that day.

24 A. That bedroom had broken furniture, old
25 clothes, two box springs on the floor. And I think
26 there was a dresser that was -- I think every drawer in
27 there was broken as well.

28 Q. Were you able to locate and identify any
29 items of evidentiary value in the room?

1 A. Yes.

2 Q. What did you find in that room?

3 A. We found a pair of pajama bottoms, a pair
4 of little girl's panties.

5 Q. And tell us about the pajama bottoms and
6 panties, how they were positioned when you first found
7 them.

8 A. They were entangled together between the
9 two -- laying on the floor between the two box springs.

10 Q. You said they were entangled together?

11 A. Yes.

12 MR. SMITH: May I approach the witness,
13 Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. SMITH:

16 Q. Agent Breedlove, I'm showing you what's
17 been entered into evidence as State's Exhibit 42. Do
18 you recognize this exhibit?

19 A. Yes.

20 Q. Tell us how you recognize it?

21 A. Well, it has our bag that we place the
22 items in. Also the pajamas, I remember the rainbows on
23 them because those were the pajamas that we were
24 briefed about with the Gulfport PD.

25 Q. Are these in fact the pajamas and the
26 panties that you located in the rear bedroom of the
27 trailer?

28 A. Yes.

29 Q. What did you do with these two items after

1 you collected them?

2 A. We placed them in this brown paper bag and
3 sealed it up and put it -- wrote on the outside of the
4 bag and put it with the rest of our evidence with
5 our -- according to our policies.

6 Q. Okay. And was FBI protocol followed as it
7 pertains to the packaging, sealing, and marking of that
8 exhibit?

9 A. Yes.

10 Q. Did it remain in the custody of the FBI
11 from the time that you collected it in that rear
12 bedroom until the time that you turned it over for
13 testing?

14 A. Yes.

15 Q. You describe these items as being, I think,
16 intertwined or tangled together. And obviously they're
17 not today, correct?

18 A. Correct.

19 Q. How was the positioning of those items
20 relevant to your investigation on that day?

21 A. It just showed that they were removed from
22 the child at the same time.

23 Q. Thank you. Agent, next I'm showing you
24 what's been previously entered into evidence as State's
25 Exhibit 43. Do you recognize these?

26 A. Yes.

27 Q. And how do you recognize them?

28 A. Again, it has our brown bag that they were
29 originally placed in. But those are the flip-flops

1 that were described to us by the Gulfport PD when we
2 got our briefing.

3 Q. And when you located this exhibit, was it
4 in the same bedroom with the panties and the pants?

5 A. Yes. It was approximately a foot away from
6 the pajamas.

7 Q. And when you collected these flip-flops
8 what did you do with them?

9 A. We placed them in the brown bag and took it
10 into our custody.

11 Q. And was this item packaged, sealed, and
12 marked also pursuant to FBI protocol?

13 A. Yes.

14 Q. And did it remain in your custody or the
15 custody of the FBI from the time you collected it until
16 it was delivered to the laboratory?

17 A. Yes.

18 Q. And, again, Agent Breedlove, how were these
19 flip-flops and that evidence relevant to the
20 information that you had when you searched the trailer?

21 A. Well, based on the briefing we received
22 from Gulfport PD, we knew that Ja'Naya was naked from
23 the waist down, and she wasn't -- she no longer had her
24 flip-flops with her. So we knew immediately that those
25 were going to be the items.

26 Q. Agent, next I'm showing you go what's been
27 previously entered into evidence as State's Exhibit 17.
28 Do you recognize the contents of this photograph?

29 A. Yes, I do.

1 Q. And is it a fair and accurate depiction of
2 the bedroom of the trailer as you observed them that
3 day?

4 A. Yes.

5 Q. If you could, point to on the photograph
6 and show us where the pants, the pajama pants, the
7 panties and the flip-flops are.

8 A. Okay. They're in the center of the
9 photograph. And the placard with the one by it is for
10 the pajamas. And the placard with the four by it is
11 for the flip-flops.

12 Q. And is that the positioning of those items
13 at the time that you collected or before they were
14 collected?

15 A. Yes.

16 Q. The following day, did you also execute a
17 search warrant on the apartment of Alberto Garcia?

18 A. Yes.

19 Q. And would that be apartment 173 at the
20 Palms Apartments?

21 A. That's correct.

22 Q. Were there other members of the FBI
23 evidence response team present and participating in
24 this search?

25 A. Yes.

26 Q. Upon entering the apartment of the
27 defendant, did you search the bedroom that belonged
28 to Alberto Garcia?

29 A. Yes, I did.

1 Q. Generally describe that bedroom as you
2 searched it on that day.

3 A. It was overcrowded with furniture and
4 DVD's, electronics, and just kind of a mess.

5 Q. Were you able to locate and identify any
6 items of evidentiary value in that bedroom?

7 A. Yes.

8 Q. Specifically what items were you able to
9 locate in the defendant's bedroom?

10 A. The xbox.

11 Q. Okay. I'm showing you what's been
12 previously entered into evidence as State's Exhibit 44.
13 Do you recognize this exhibit?

14 A. Yes.

15 Q. And what's contained inside that brown bag?

16 A. That would be the Xbox 360 we removed from
17 Garcia's room.

18 Q. When you removed the Xbox 360 from his
19 room, was it connected to the TV?

20 A. Yes.

21 Q. And did you have to disconnect it in order
22 to remove it and collect for your crime scene?

23 A. Yes.

24 Q. After collecting the Xbox 360, was it
25 packaged, sealed, and marked pursuant to FBI protocol?

26 A. That's correct.

27 Q. And did it remain in the custody of the FBI
28 although it was sent for analysis?

29 A. Yes, it did.

1 Q. Thank you.

2 MR. SMITH: May I approach again, Your
3 Honor?

4 THE COURT: Yes, sir.

5 BY MR. SMITH:

6 Q. Agent, I'm showing you first what's been
7 entered into evidence as State's Exhibit 26. Do you
8 recognize the contents of this photograph?

9 A. Yes.

10 Q. What's depicted in the photograph here?

11 A. That would be Garcia's room with the
12 television and the Xbox underneath it near the foot of
13 his bed.

14 Q. And is that located in the center of this
15 photograph?

16 A. Yes.

17 Q. And the Xbox 360 that's depicted in the
18 photograph, is that the same one that you collected?

19 A. Yes.

20 Q. And you mentioned earlier that there was a
21 chair in this room. Obviously it's not depicted in the
22 photograph. But where is it in relation to that
23 television?

24 A. I can see, actually, part of the chair
25 right there in the lower right-hand corner. But it's
26 right by Garcia's window.

27 Q. And that would be on the right edge of the
28 photograph?

29 A. Correct, yes.

1 Q. Thank you, sir. And then finally, I'm
2 showing you what's been previously entered into
3 evidence as State's Exhibit 27. Is this also a fair
4 and accurate depiction of the defendant's bedroom from
5 that day?

6 A. Yes.

7 Q. And do you see the chair as it was located
8 in this photograph?

9 A. Yes. It's in the lower right-hand corner
10 of the photograph near the window.

11 Q. Okay. And when you searched the
12 defendant's room, tell us about that chair and why it
13 was of interest to you.

14 A. It was by an open window, and we found a
15 pair of binoculars in the chair. On one side of the
16 chair tucked into the cushion was a pair of binoculars.
17 On the other side of the chair was a bottle of lotion,
18 and the window was open.

19 He had a big fast-food drink right there
20 and some other things. So I actually sat in the chair
21 and looked out the window to see what his view would be
22 from there.

23 Q. And what was the viewpoint from that chair?

24 A. He could see the playground for the
25 apartment complex from that chair.

26 MR. SMITH: Begging the court's
27 indulgence?

28 THE COURT: Yes, sir.

29 MR. SMITH: No further questions, Your

1 Honor.

2 THE COURT: Defense.

3 MS. BLACKWELL: Just very briefly.

4 CROSS-EXAMINATION BY MS. BLACKWELL:

5 Q. Is it Agent Breedlove?

6 A. Yes.

7 Q. Agent, you mentioned that when you
8 recovered the pants and the panties that they were
9 rolled up together as if they were taken off together?

10 A. Correct.

11 Q. Do you know who took them off together?

12 A. No.

13 MS. BLACKWELL: Nothing further, judge.

14 THE COURT: All right. State.

15 MR. SMITH: No further questions, Your
16 Honor.

17 THE COURT: All right. Thank you, sir.
18 You can step down. So, state, it appears
19 this is a good time to take our evening
20 break, correct?

21 MR. PARKER: Yes, Your Honor.

22 THE COURT: Defense, any objection to
23 that?

24 MS. BLACKWELL: No, ma'am.

25 THE COURT: All right. Then we will be
26 in recess until 9:00 in the morning. Except
27 that I need to get the cases by 8:30, and
28 then we'll make a short record with regard to
29 the DVD.

1 All right. I'll see everybody in the
2 morning. Attorneys at 8:30. Everybody in
3 the courtroom at 9:00. we'll be in recess
4 until the morning.

5 (RECESS FOR THE EVENING)

6 (PROCEEDINGS RESUME ON JANUARY 24, 2017)

7 THE COURT: Good morning. Take your
8 seats, please. All right. Mr. Garcia, if
9 you will, sir, stand, raise your right hand
10 and take the oath.

11 (OATH ADMINISTERED)

12 THE COURT: All right. Mr. Garcia, this
13 is solely to address the issue with regard to
14 the registration requirement.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: So that's the only answers I
17 need, okay. All right. Now then, as I
18 explained to you briefly, I believe on
19 yesterday, the statute requires that you
20 register as a sex offender.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: AS I also told you, I'm
23 little bit confused caused as to why that
24 would be since regardless of the verdict
25 here, you would not be released from custody
26 at a time. But since the statute does
27 require it, I need to know that you've been
28 over those requirements.

29 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And did you talk to your
2 attorney about those?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And did they answer any
5 questions that you had?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right, sir. Do you
8 think you fully understand those
9 requirements?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: All right, sir. You should
12 have a form there. Did you go over that form
13 in particular with regard to the
14 requirements?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: All right, sir. If you're
17 telling me that you understand those
18 requirements and that it does not change your
19 mind at all about the plea you previously
20 entered, I need you to sign that form for me.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right, sir, any
23 questions about that?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: All right, sir, you can have
26 a seat. And, Ms. Blackwell, just for the
27 record, you also signed the form.

28 MS. BLACKWELL: I did.

29 THE COURT: All right. Now then, when

1 we left yesterday afternoon, we still had the
2 issue of the second statement. I guess it's
3 technically the third statement made to law
4 enforcement but the second formal statement
5 made to law enforcement.

6 The parties did provide the court with
7 some additional authority as well as I
8 managed to dig out an old folder that I had
9 with regard to defendant statements. So for
10 the record the state has provided Simmons
11 Versus State 805 So. 2d 452, a 2001 Supreme
12 Court decision. The defense is relying on
13 Mississippi Rules of Evidence 101 and 1101,
14 Burgess Versus State 178 So. 3d 1266. Cox
15 Versus State 183 So. 3d 36. Wilson Versus
16 State 21 So. 3d 572. And Randall Versus
17 State 806 So. 2d 185. They also provided an
18 additional citation to Mr. Simmons's PCR at
19 942 So. 2d 802.

20 And the court has briefly reviewed all
21 of those. And in particular let me note that
22 I am aware that Rules 101 and 1101 provide
23 that the Rules of Evidence do not apply in
24 sentencing hearings.

25 But I am also aware of the fact that
26 they can be applied and have in fact been
27 employed in capital murder cases. And it is,
28 frankly, this court's opinion that that is
29 the better course because of the severity of

1 the potential punishment in cases such as
2 that.

3 However, it also appears that those
4 rules can be relaxed and can be basically not
5 applied at all should that be determined by
6 the presiding court.

7 So that being the case, Ms. Blackwell, I
8 don't know if you or Mr. Stage wants was to
9 argue because he was the one that submitted
10 the statement. You're the one that gave me
11 the authorities. So whichever one of you.
12 It doesn't matter to me.

13 MS. BLACKWELL: Your Honor, I will be
14 arguing. It is Mr. -- Detective Werner is
15 Mr. Stage's witness.

16 THE COURT: Okay.

17 MS. BLACKWELL: So if there is any other
18 questioning, he will be questioning him.

19 THE COURT: Okay.

20 MS. BLACKWELL: Can I argue from here,
21 Your Honor?

22 THE COURT: Yes, ma'am.

23 MS. BLACKWELL: Your Honor, most
24 specifically we would call the court's
25 attention to that Cox v. State case, the one
26 that Your Honor did cite. This is a 2015
27 death penalty case. I believe it's from
28 Pontotoc County up in the northern part of
29 the state.

1 I find this case similar to ours because
2 Mr. Cox, like Mr. Garcia, pled guilty, which
3 is unusual, for lack of a better word, in
4 capital murder proceedings.

5 Mr. Cox, unlike Mr. Garcia, did have a
6 jury for sentencing. He did not waive that
7 right. At that time Mr. Cox's attorneys
8 objected to, I believe it was a young child
9 victim who survived. She was not the
10 decedent in the case. It was her mother.

11 That child did a forensic interview like
12 most cases where there is some form of sexual
13 abuse. There was an interview done. The
14 state intended to put it into evidence. The
15 defense objected saying it was hearsay. That
16 trial court issued an order recognizing that
17 the Rules of Evidence did not apply under the
18 Rules of Evidence 1101 (B)(3) but, did out of
19 an abundance of caution, deem it admissible
20 pursuant to 80325 which is the tender years
21 doctrine.

22 Again, paragraph 18 the Supreme Court
23 says neither party argued that the Rules of
24 Evidence applied to the proceeding which was
25 just a sentencing hearing. They discussed
26 evidence Rule 101 and 1101 (B)(3) and said
27 that the trial court acknowledged this during
28 pretrial arguments, however, given that Cox's
29 sentence was to be decided by a jury, that

1 trial court correctly held that the court
2 would proceed under the rules.

3 In this case we don't have a jury
4 present. So I find that this case is in some
5 slight way distinguishable from Mr. Garcia's
6 case because Your Honor is the judge of the
7 law and the judge of the facts in this case.

8 We would also cite Your Honor to Randall
9 which I find very interesting because it was
10 issued -- the opinion was issued the same time
11 Mr. Simmons's. It was issued in 2001 which
12 was the same year that Gary Simmons's case
13 came down. That was a case out of Jackson
14 County.

15 In Mr. Simmons's case, he created a
16 video of himself. He personally created it
17 after killing a man, dismembering him, and
18 dumping him in a bayou.

19 He attempted pretrial to keep the state
20 from ever gaining access to that video. The
21 state filed a motion to compel which was
22 granted. The state ended up with that video
23 in their possession.

24 He thought the state might play it in
25 their case in chief because he made
26 admissions as to his culpability in killing
27 this victim and chopping them up. The state
28 did not elect to play that. And his attorney
29 sought to introduce it. And the court said

1 no, it is self-serving.

2 It's unclear to me necessarily from the
3 opinion whether they again attempted to
4 introduce it during a sentencing phase under
5 the relaxation, I guess, of the rules of
6 evidence for sentencing proceedings, but in
7 his PCR which was filed in 2000 or the
8 opinion came down in 2006, the court does
9 address that basically it was a little too
10 late to make that argument. That they found
11 that the statement was self-serving, not
12 admissible.

13 And I think in this case Mr. Garcia's
14 statement is different. He didn't create the
15 statement. The statement was created by
16 Gulfport police, generated on their
17 surveillance in their interview rooms. This
18 is not something that he created.

19 THE COURT: I thought the testimony was
20 that he asked to make this further statement.

21 MS. BLACKWELL: He did ask to make this
22 further statement. I think it would come
23 through in testimony, possibly through
24 Detective Werner, that he wanted to make the
25 statement after he had made contact with his
26 mother. And I do think that that would come
27 out in testimony and maybe even through the
28 video itself if it were allowed into
29 evidence.

1 Your Honor, we would cite to Randall and
2 Wilson. Particularly in wilson, the court --
3 I'm sorry judge. It's in Burgess which is I
4 believe is the first case Your Honor cited.
5 It's a 2015 case from the Supreme Court where
6 the defendant objected to basically letters,
7 victim impact statements because they were
8 hearsay. And the court said as to the issue
9 of hearsay, the rules of evidence do not
10 apply in sentencing hearings.

11 In this case, Your Honor, I believe
12 yesterday one of -- it might've been
13 Mr. Smith. I'm not sure. It might've been
14 Mr. Parker said that this was rank hearsay.
15 And the court has held in the past that
16 hearsay is admissible in sentencing hearings.

17 Finally, Your Honor, I do just want to
18 point out, point to the court's attention
19 yesterday the state had no objection to
20 putting this in as long as it was not
21 published.

22 If the first statement is admissible,
23 would argue this statement should be as well
24 especially as it goes to what I believe are
25 mitigating factors in that if Your Honor were
26 to watch this video and somehow say that
27 Mr. Garcia, that lends credibility to him as
28 being honest during his plea colloquy with
29 you. I do believe that Your Honor could take

1 his honesty into consideration possibly
2 during sentencing. And that's completely in
3 your discretion. That's up to you. I'm just
4 making the argument that I do believe it has
5 mitigating value, and we're entitled to put
6 in mitigating evidence.

7 THE COURT: All right.

8 MS. BLACKWELL: Thank you, Your Honor.

9 THE COURT: All right. State.

10 MR. PARKER: Yes, Your Honor. And as
11 the court just pointed out, it was five days
12 after the second statement that this
13 defendant contacted the Gulfport Police
14 Department to come and give a statement of
15 which were talking about today.

16 In the Simmons case they addressed this
17 exact issue. Where on appeal the defendant
18 argued that the denial of his videotape
19 statement after the crime, which is exactly
20 what we have here, was appropriate mitigation
21 evidence.

22 Now, Your Honor, we understand that the
23 rules can be relaxed. But throughout the
24 rules and throughout the case law it says
25 that the evidence must be relevant. And in
26 Simmons, the court held under 402 that the
27 self-serving hearsay statement was irrelevant
28 and therefore inadmissible.

29 Later on it cites to wilson, in that

1 case saying that a declaration made by a
2 defendant and in his own favor there is
3 nothing to guarantee his trustworthiness.
4 And this is very interesting when you compare
5 it to the Cox case that the defense was just
6 talking about.

7 In that case they were talking about a
8 statement of a child under tender years. The
9 rule in and of itself says a child under a
10 certain age, there is a guarantee of
11 trustworthiness to it. So that case is
12 completely distinguishable from what we have
13 here which is a defendant offering
14 self-serving hearsay.

15 And, Your Honor, I think that's
16 important because in this case the logical
17 conclusion to this is that a defendant can
18 just keep giving statements and then at
19 sentencing hearing, provide them to the court
20 or the fact finder.

21 Your Honor, that can be what the rules
22 allow. It still has to be relevant. And I
23 believe this other case law that says there's
24 other information that just because the
25 defense wants to put it into mitigation, it
26 still has to be relevant.

27 And there's case law that finds that
28 when dealing with the bad conduct of a
29 codefendant just like it deals with the rank

1 hearsay that was laid out in Simmons that the
2 defense is trying to do here.

3 THE COURT: So, Mr. Parker, even though
4 Ms. Blackwell argues that it may go to
5 mitigation, you think it does not?

6 MR. PARKER: Your Honor, when I look at
7 the statutory mitigating factors, I don't
8 know specifically which one this goes to.

9 We understand that there's a catchall
10 that can bring that in but still it must be
11 relevant. There must be some indicia of
12 trustworthiness for it to be relevant for the
13 court.

14 We have case law that says a
15 self-serving hearsay statement by the
16 defendant after the crime is not relevant.

17 THE COURT: All right. Ms. Blackwell.

18 MS. BLACKWELL: Your Honor, just very
19 briefly. As far as the relevance, if the
20 first statement is relevant, I certainly
21 think that the second statement is relevant.

22 In this statement, Your Honor,
23 Mr. Garcia makes numerous inculpatory
24 statements. He admits to participating in
25 the hanging of Ja'Naya Thompson, which we
26 know lead to her death.

27 He admits to placing his fingers inside
28 of her, which, under our statute, could
29 qualify as a sexual battery. It's clearly

1 not the sexual battery he described during
2 his plea colloquy, but it qualifies as a
3 sexual battery.

4 There are numerous inculpatory
5 statements. This is not a self-serving
6 statement, I didn't do it, it was John Doe,
7 it was somebody else. This is not a purely
8 self-serving statement. And as far as
9 relevance, Your Honor, I would point out in
10 Randall, which was provided to the court,
11 that Randall asserted under 403 his prior
12 convictions were relevant and still required
13 exclusion.

14 But the state argued in that case that
15 Rule 101 and 1101 (3)(B) said that the rules
16 of evidence didn't apply. And the court
17 agreed with the state saying 403 doesn't
18 apply; they're relevant. Even if they
19 weren't relevant, they can still come in.

20 And so, Your Honor, I would argue, I
21 contend that this statement should be played.
22 It has mitigating value. We're entitled to
23 put forth mitigation for our client. He's on
24 trial for his life.

25 THE COURT: Let me ask this,
26 Ms. Blackwell. Mr. Stage indicated or at
27 least to me in some of the questions he was
28 asking that perhaps Mr. Garcia's demeanor was
29 different between the two statements. Is

1 that correct?

2 MS. BLACKWELL: It is.

3 THE COURT: Is that in fact different?

4 MS. BLACKWELL: It is, Your Honor.

5 There is moments in the second statement
6 where there is -- I hate to -- almost
7 inconsolable crying. Deep sobbing. There is
8 him asking for his mother. Dr. Storer
9 reviewed this video and basically --

10 THE COURT: As part of his opinion,
11 reaching his opinion?

12 MS. BLACKWELL: He did. He did. He
13 viewed all of the statements of the
14 defendant. He viewed a lot of evidence that
15 we had in this case. And the state
16 previously said that I can ask him about it.

17 But if it's hearsay in the video, how is
18 it not hearsay for me to ask Dr. Storer about
19 it? And he has said to me that he doesn't
20 believe that he can adequately convey what's
21 in the video. And I believe him. He's an
22 expert. If he says he can't convey what's in
23 the video, I think video is the best
24 evidence.

25 THE COURT: All right. One last
26 question, Mr. Parker. On yesterday the state
27 originally agree to the admission of the
28 disk. And then withdrew that admission. Why
29 did you initially agree to it?

1 MR. PARKER: And, Your Honor, they
2 brought us the fact that they were going to
3 introduce that. It had never been discussed
4 previously. It was in the middle of
5 testimony and the state was caught offguard.
6 We had concerns right from the very beginning
7 of that, but we haven't had an opportunity to
8 truly process that information.

9 THE COURT: And you've practiced long
10 enough to know you don't agree to something
11 until you've had that opportunity.

12 MR. PARKER: Absolutely, Your Honor.

13 THE COURT: All right. With regard to
14 the video, clearly the rules do not apply to
15 sentencing unless of course the parties and
16 the court determine that they do. And thus
17 far we have been applying those rules because
18 there have been a number of objections made
19 pursuant to those rules.

20 However, with regard specifically to the
21 statement, there are several differences
22 there even in applying the rules with regard
23 to the case law. The case law is and has
24 been for many, many years that the defendant
25 is not entitled to admit his own statement
26 because it is self-serving unless and until
27 he testifies, and then there are certain
28 determinations that have to be made.

29 Simmons is very clear on that as are a

1 number of other cases. Tigner at 478 So. 2d
2 293. Jones, which was a death penalty case,
3 at 342 So. 2d 735. Moffett 49 So. 3d 1073,
4 et cetera. Cases go well back. There is
5 Ward out of this very jurisdiction. Ward
6 Versus State 935 So. 2d 1047. The case that
7 I have quite a bit of familiarity with.

8 And so on that basis, the statement
9 would not be admissible. Now, not having
10 seen the statement and not knowing if in fact
11 it is totally self-serving, it does appear
12 that it is a statement that Mr. Garcia
13 requested to make, and so there can be some
14 indication that perhaps it is self-serving to
15 some extent. So based on those cases and
16 that analysis, the statement is not
17 admissible.

18 However, this is a sentencing on a
19 capital murder case. There are statutory
20 mitigating factors, but as the state has
21 noted as well, there is a catchall on those
22 mitigation factors.

23 And basically our case law is to the
24 effect that virtually anything relevant and
25 that might assist the finder of fact is
26 admissible as a mitigating factor.

27 And one of the things of the court does
28 have to take into consideration is the
29 demeanor of the defendant with regard to his

1 behavior throughout this case.

2 So even applying the rules of evidence
3 and even considering the fact that
4 self-serving statements are not generally
5 admissible, and I do note Ms. Blackwell's
6 argument that there's not a jury present and
7 that is a little bit of a different analysis
8 versus the court being the fact finder. But
9 the rules are the rules whether it's a jury
10 or not.

11 So whether we are applying the rules or
12 not, it would appear to me that if in fact
13 the statement has any mitigating value of any
14 kind and in particular the argument is with
15 regard to the demeanor of the defendant in
16 making the statements and whether in fact
17 those statements in fact fit with this
18 testimony under oath before this court in his
19 plea, it appears to me that the statement
20 would be admissible for those purposes. So
21 at this point it will be marked as D-1 in
22 evidence.

23 (DEFENDANT'S EXHIBIT 1 IN EVIDENCE)

24 THE COURT: All right. Now, that being
25 the case, do we want to watch it now?

26 MR. PARKER: Yes, Your Honor, I would
27 suggest.

28 THE COURT: Do we have the means to do
29 that now?

1 MR. PARKER: Yes, Your Honor.

2 THE COURT: All right. Everyone settle
3 in. This is two and half hours, you said?

4 MR. PARKER: Yes, Your Honor.

5 THE COURT: Let me ask, is there any way
6 to skip parts of it? Like are there parts
7 were no one is saying anything like before?
8 Or no.

9 MR. PARKER: Not the same as the last
10 one, Your Honor.

11 THE COURT: All right. Is there a way
12 to take a break in the middle of it.

13 MR. PARKER: Whenever the court or
14 counsel request, we can pause it.

15 THE COURT: Okay. I need to know the
16 counsel is ready to sit through an extended
17 period of time as well as the defendant, the
18 court reporter, and the clerk. Everybody's
19 good to go?

20 MR. STAGE: Just one moment, judge. We
21 do have a transcript that was provided to the
22 defense. The same manner as a transcript of
23 the first one. We ask that it be marked as
24 D-2 for identification for Your Honor to
25 review.

26 THE COURT: Was it prepared by the same
27 person or the same entity?

28 MR. STAGE: It was, judge.

29 THE COURT: All right.

1 (DEFENDANT'S EXHIBIT 2 FOR
2 IDENTIFICATION)

3 MS. BLACKWELL: Your Honor, may I run to
4 the bathroom very quickly?

5 THE COURT: That's why I was asking. So
6 while -- investigator, it's going to take you
7 a few minutes to get it together. So let's
8 take about ten minutes. Anybody that needs
9 to stand, stretch, whatever, let's do that
10 now.

11 (PAUSE IN THE PROCEEDINGS)

12 THE COURT: All right. Now, then folks,
13 in light of what happened yesterday with
14 regard to the length of the statement, and
15 I'm speaking to the audience as well, if you
16 feel the need to get up and leave, that's
17 fine.

18 But if you don't want to leave and you
19 still feel like you need to stand up, I'll
20 have to ask that you move toward the side and
21 toward the back so that it's not distracting.

22 If you feel like you need to stand,
23 stand kind of over in the back corner so you
24 are not distracting anyone and there's not
25 any issues with regard to maybe you needing
26 some attention of any kind.

27 All right. Attorneys, same thing, if
28 you guys will move to one side or the other
29 if you need to stand up and move around.

1 Same thing with you, Mr. Garcia. If
2 you'll just move to the side. All right.
3 we're ready to start?

4 MR. PARKER: Yes, Your Honor.

5 (DEFENDANT'S EXHIBIT 1 PLAYED IN OPEN
6 COURT)

7 THE COURT: All right. We're going to
8 pause the video at this point and take about
9 a 15 minute break. Give everybody a chance
10 to move around, go to the restroom before we
11 complete the video.

12 (PAUSE IN THE PROCEEDINGS)

13 THE COURT: All right, state.

14 MR. PARKER: Yes, Your Honor.

15 (DEFENDANT'S EXHIBIT 1 CONTINUES)

16 MR. PARKER: Your Honor, it looks like
17 there's a break until 21153. We ask just to
18 be able to move it to that point.

19 THE COURT: All right.

20 (DEFENDANT'S EXHIBIT 1 CONTINUES)

21 MR. PARKER: Your Honor, at this time
22 would like to move it up to 22014.

23 THE COURT: All right.

24 (DEFENDANT'S EXHIBIT 1 CONTINUES).

25 THE COURT: All right. It's ten minutes
26 after 12. So we'll take the same lunch break
27 we did yesterday. Will be at lunch until
28 1:40. So we'll be in recess until 1:40.

29 (RECESS FOR LUNCH)

1 (PROCEEDINGS RESUME)

2 (STATE'S EXHIBIT 45, 46, 47 IN EVIDENCE)

3 THE COURT: All right. State, I
4 understand some documents or items have been
5 premarked. Have they been agree to or are
6 they just marked for ID?

7 MS. BLACKWELL: Your Honor, we would
8 reurge -- these are the Xbox issues that we
9 previously had a motion on. We would reurge
10 that. If Your Honor denies that motion as
11 you did before, we know that they come in.

12 THE COURT: All right. Well, the ruling
13 will be the same with regard to the search of
14 the Xbox and concerning the items found
15 there.

16 So with that then, there's no objection.
17 Although you don't concede your position on
18 the Xbox search, there's no objection to the
19 items be marked into evidence.

20 MS. BLACKWELL: No, ma'am. We just
21 don't concede the position.

22 THE COURT: All right. So state, it's
23 states what? What if you'll tell me for the
24 record.

25 MR. PARKER: Yes, Your Honor, S-45 is
26 the CV of Mr. Wayne Mitchell. State's 46 are
27 search terms, nine separate search terms and
28 a video, name of the video that was found on
29 the Xbox.

1 THE COURT: Okay.

2 MR. PARKER: And S-47 is also one parse
3 search query that was found on the xbox.

4 THE COURT: All right. Thank you, sir.
5 So who's the next witness?

6 MR. PARKER: Mr. Wayne Mitchell.

7 THE COURT: All right. Come on up, sir.
8 (OATH ADMINISTERED)

9 WAYNE MITCHELL

10 was thereupon called as a witness for and on behalf of
11 the State, and, having been duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION BY MR. PARKER:

14 Q. would you please state your full name?

15 A. Wayne Bullard Mitchell.

16 Q. And by whom are you employed?

17 A. The Federal Bureau of Investigation.

18 Q. What is your position with the FBI?

19 A. I am a digital forensic examiner.

20 Q. What type of work do you do as a digital
21 forensic examiner?

22 A. I examine visual items looking for
23 evidence.

24 Q. Does that include computers?

25 A. Yes.

26 Q. Does that include Xboxes?

27 A. Yes.

28 Q. Does that include other electronics?

29 A. Yes.

1 Q. Please tell the court where you attend
2 college?

3 A. I have a bachelor of science degree in
4 electronics management from the southern Illinois
5 University at Carbondale.

6 MR. PARKER: Your Honor, may I approach
7 witness?

8 THE COURT: Yes, sir.

9 BY MR. PARKER:

10 Q. Mr. Mitchell, I'm showing you what's been
11 entered into evidence as S-45. Do recognize it?

12 A. Yes, I do.

13 Q. How do you recognize it?

14 A. That's my curriculum vitae.

15 Q. And is this a true and accurate reflection
16 of your studies and your professional experience?

17 A. It is.

18 Q. How long have you worked as a digital
19 forensic examiner?

20 A. Over 18 years.

21 Q. And have you been qualified as an expert in
22 the field of digital forensic examination prior to this
23 date?

24 A. Yes, sir.

25 Q. Have you ever testified in court before?

26 A. Yes, sir. Approximately 15 to 20 times.

27 MR. PARKER: Your Honor, at this time
28 the state moves that Wayne Mitchell be
29 declared an expert in the field of digital

1 forensic examinations.

2 MS. BLACKWELL: We have no objections.

3 THE COURT: All right. He'll be
4 accepted as an expert in that field.

5 BY MR. PARKER:

6 Q. Now, Mr. Mitchell, let's just start off
7 broadly. Before you're going to forensically examine a
8 computer or other electronic device, what do you do
9 first?

10 A. Where possible we obtain a forensic image
11 which would be an exact duplicate of the evidence.

12 Q. Do you alter the original evidence at all?

13 A. No.

14 Q. And how can you be certain that you've made
15 a duplicate or mirror image?

16 A. We use an algorithm called Message Digest
17 Version Five or MD5. It's basically the digital
18 fingerprint that we take of the original, compare that
19 to the exact duplicate. And it matches.

20 Q. And did you do that in this case?

21 A. Yes.

22 Q. Now, we're talking about an Xbox in this
23 case. We want to make sure that we're clear about the
24 similarities between an Xbox and the computer. Does an
25 Xbox have a hard drive?

26 A. Yes.

27 Q. Can it connect to the internet?

28 A. Yes.

29 Q. Can the user use the Xbox if it's connected

1 to the internet to do internet searches?

2 A. Yes. The Xbox uses the software to go out
3 on the internet, conduct searches.

4 Q. I want to show you what's been entered into
5 evidence as State's Exhibit 44. Please examine that.
6 Are you familiar with that exhibit?

7 A. Yes, I am.

8 Q. How are you familiar with it?

9 A. It's the Xbox that I examined.

10 Q. And is this the Xbox 360 serial number
11 410066400605?

12 A. Yes, sir.

13 Q. Now, when you examine this exhibit, tell
14 the court what program you use.

15 A. Initially I use a program called Internet
16 Evidence Finder or IEF to examine the Xbox.

17 Q. And Internet Evidence Finder this IEF, what
18 does this program do?

19 A. It's a software suite that's capable of
20 going through the entire hard drive. It's getting or
21 looking for different types of software that's internet
22 activity based like e-mail or pictures, browser
23 history.

24 Q. And just so I'm clear, so this IEF program
25 goes into a hard drive or in this specific case goes
26 into the Xbox hard drive and it locates records that it
27 can recognize such as internet browsing history?

28 A. That's, correct. In this case it found
29 Internet Explorer browser history.

1 Q. And what does it do with that internet
2 history browser?

3 A. It parses it or interprets the data and
4 presents it back to me in a human readable format.
5 Typically like a spreadsheet.

6 Q. Like a spreadsheet?

7 A. Right.

8 Q. Does the program at all alternate the
9 records that are found on the Xbox?

10 A. No.

11 Q. Now, what is a parsed search query?

12 A. It's a search query conducted by internet
13 evidence that excuse me -- by Internet Explorer. And
14 IEF parses that record or interprets it.

15 Q. And specifically in this case, were you
16 able to find any parsed search queries on this Xbox.

17 A. Yes. I believe IEF reported 1023.

18 Q. And generally speaking, what do these
19 search queries deal with?

20 A. Pornography.

21 Q. Now, whenever IEF shows you these parsed
22 search queries, can you individually and specifically
23 go out and validate that IEF is bringing you accurate
24 information?

25 A. Yes. IEF reports the source sector. And I
26 was able to use a secondary tool called FTK Imager to
27 go to that sector and validate that the data in the
28 record is accurate.

29 Q. So you're able to take the parsed search

1 queries that IEF gives you and then go out with another
2 tool and verify that that information is correct?

3 A. That's correct.

4 Q. And that's by locating physically on the
5 hard drive?

6 A. Physically. The physical sectors, yes.

7 Q. Now, are you able to verify the date and
8 time of the parsed search queries?

9 A. Yes, I am. Again, I go to the sector, use
10 an FTK imager and locate the dates and times and verify
11 that what IEF has reported is accurate.

12 Q. In the specific case, when you're talking
13 about the date and time, how is it found?

14 A. Inside the actual Internet Explorer record.

15 Q. So when you say inside the actual Internet
16 Explorer record, why is that important?

17 A. It's not a property of a file. So it's
18 inside the record itself. So it can't necessarily be
19 altered by a layperson.

20 Q. Now, Mr. Mitchell, I want to show you what
21 has been entered into evidence as State's Exhibit 46.
22 Do you recognize this exhibit?

23 A. Yes, sir.

24 Q. How do you recognize it?

25 A. The nine parsed search queries that came
26 from the original 1023. And then at the bottom is a
27 Internet Explorer main history cache record.

28 Q. So just to be clear, the first nine rows
29 deal with parsed search queries?

1 A. That's correct.

2 Q. And then the final row record, what does
3 that deal with?

4 A. It's Internet Explorer cache record.

5 Q. Let's first talk about the nine parsed
6 search queries. Now, the specific parsed search
7 queries, did you go out specifically validate that they
8 are also found on the hard drive of this Xbox?

9 A. Yes, I did.

10 Q. And is this the type of format -- when you
11 state a spreadsheet, is this how it is shown to you by
12 IEF?

13 A. Yes.

14 MR. PARKER: Your Honor, may the witness
15 step down?

16 THE COURT: Yes.

17 BY MR. PARKER:

18 Q. Mr. Mitchell, I want to talk about that
19 first column that says record. What is that column
20 telling us?

21 A. That's a unique number that IEF presents to
22 each record that it finds on the hard drive.

23 Q. So that's something that IEF creates?

24 A. Correct.

25 Q. Now, on the second column at the very top
26 it says search terms. So specifically let's talk about
27 record 706. What search terms does it state?

28 A. It reads toddler hentai.

29 Q. And are you familiar with the term hentai?

1 A. Yes. It's stands for sexually explicit
2 anime or cartoons.

3 Q. So it says toddler hentai under the search
4 terms. what does that mean?

5 A. That means those two words are searched by
6 this box against the search engine Bing.

7 Q. So because they showed up in that search
8 term, you can testify that it was -- this Xbox was used
9 to search those terms?

10 A. That's correct.

11 Q. Now, let's go to record 1011. And what
12 search term's used here?

13 A. The terms are, very young, petit, tiny,
14 tween, crying, rape, anal, forced.

15 Q. And once again, like the previous record,
16 706, what can you say about those search terms?

17 A. Again, the same terminology. The same
18 terms were these terms were searched in the Bing.com
19 searches.

20 Q. So this Xbox was used to search those
21 terms?

22 A. That's correct.

23 Q. And you were pointing at the URL column.
24 Please explain to the court what the URL column -- how
25 that assists you?

26 A. URL stands for uniform resource locator.
27 And it's basically the web address that was requested
28 from this Xbox to the internet to present data back to
29 the Xbox.

1 Q. And I want to go back and talk about record
2 1011. Let's go to the date time column for that row.
3 What date and time were the search terms used or were
4 the search terms searched on this Xbox?

5 A. It reads July 14, 2014, at 8:05:11 AM. UTC
6 time.

7 Q. And let's talk about that. What does UTC
8 mean?

9 A. It stands for Coordinated Universal Time.
10 It's a standard time that all computers use. It's kind
11 of like GMT, the human readable format.

12 Q. How would that time differ in, let's say,
13 central time?

14 A. Well, in July we were under daylight
15 saving. So that would have been a minus six hours. So
16 8:05 AM would be 2:05 AM here.

17 Q. Once again, we were talking about the date
18 and time stamp. Where is it found?

19 A. Inside the Internet Explorer record.

20 Q. And as you said this is important because?

21 A. It cannot be altered by a layperson.

22 Q. So for all these nine parsed search terms,
23 you can testify that this Xbox was used to search these
24 terms?

25 A. That's correct.

26 Q. On the given dates in the column under date
27 time.

28 A. That's correct.

29 Q. I want to talk to you about the last row,

1 row record 573. How is that different than the parsed
2 search terms?

3 A. It's not a query for individual keywords.
4 It's a request for a specific file. In this case the
5 file titled, poor little thing, kidnapped and raped,
6 virginravisher Gmail.com was requested from
7 www.xvideo.com.

8 Q. So with that, are you able to testify that
9 this Xbox requested the video, poor little thing,
10 kidnapped and raped, virginravisher Gmail.com?

11 A. Yes.

12 Q. Specifically what date was the Xbox used to
13 request that?

14 A. July 11, 2014, at 8:38:37 AM.

15 Q. You can be seated, Mr. Mitchell. I have
16 one other, State's Exhibit 47 I would like to show you.
17 It has been entered into evidence as S-47. Are you
18 familiar with that?

19 A. Yes.

20 Q. What is that?

21 A. That is another parsed search query.

22 Q. And so we were talking about State's
23 Exhibit 46. What is the date range of those searches?

24 A. The date range of these nine are July 11,
25 2014, through July 15, 2014.

26 Q. Now, the one you have in S-47, is there a
27 date time stamp on that one?

28 A. Yes. July 4, 2014 at 7:27:53 PM.

29 Q. And what was the search term that was

1 searched on that date?

2 A. Young girl, brutally forced.

3 Q. And once again, Mr. Mitchell, were you able
4 to go out specifically validate that IEF found that on
5 this Xbox?

6 A. Yes.

7 MR. PARKER: With the court's
8 indulgence?

9 THE COURT: All right.

10 MR. PARKER: Your Honor, we tender the
11 witness.

12 THE COURT: Defense.

13 MS. BLACKWELL: Thank you, judge.

14 CROSS-EXAMINATION BY MS. BLACKWELL:

15 Q. How are you, Mr. Mitchell?

16 A. Well. Thank you.

17 Q. For the first nine lines, the parsed search
18 query, does that just show those items were searched?

19 A. Yes.

20 Q. Does it show whether anything was viewed?

21 A. Those queries, no.

22 Q. Okay. The only thing that shows a video
23 link, for lack of a better technical term, is that
24 bottom one, correct?

25 A. Correct.

26 Q. Okay. Do you know who typed these search
27 terms in?

28 A. No, ma'am.

29 Q. Do you know who had access to this

1 particular Xbox?

2 A. No, ma'am.

3 Q. Based on what you were able to recover with
4 IEF, are you able to determine where this Xbox was
5 plugged in when these items were typed in?

6 A. No, ma'am.

7 Q. Were you able to tell what kind of internet
8 connection was used to search for these items?

9 A. No, ma'am.

10 Q. I believe you testified earlier in a
11 previous hearing that these queries were found under a
12 profile labeled dummy; is that correct?

13 A. That's correct.

14 Q. And it was not password protected. Is that
15 also correct?

16 A. That's correct.

17 Q. Was an SD card ever removed from that Xbox?

18 A. No. Not by me.

19 Q. So if it had one, it was not removed by
20 you?

21 A. Correct.

22 Q. So you wouldn't have any personal knowledge
23 about an SD card being searched?

24 A. I believe there was a secondary piece of
25 evidence, an SD card, that I did examine, yes.

26 Q. Was anything relevant found on that?

27 A. Same type of information as this.

28 Q. This what you mean?

29 A. The same type of Xbox information.

1 Q. Fair enough. Okay. So IEF would have
2 pulled the exact same information; is that correct?

3 A. The same type of information. The same
4 physical type of information.

5 Q. Okay. So not necessarily these search
6 terms?

7 A. Correct.

8 Q. Okay. I'll leave it at that.

9 MS. BLACKWELL: Court's indulgence just
10 a moment.

11 THE COURT: Yes, ma'am.

12 BY MS. BLACKWELL:

13 Q. Just one last question. Through your
14 search of that Xbox, did you find any child
15 pornography?

16 A. No.

17 MS. BLACKWELL: That's all I have,
18 judge. Thank you.

19 THE COURT: State, any follow-up?

20 MR. PARKER: No, Your Honor.

21 THE COURT: All right. Thank you, sir,
22 you can step down. All right. State, who is
23 your next witness.

24 MR. PARKER: Your Honor, the state calls
25 Mr. Shane Hoffmann.

26 (STATE'S EXHIBIT 48 IN EVIDENCE)

27 MR. PARKER: And Your Honor by agreement
28 S-48, the CV of Shane Hoffmann has been
29 agreed to be put into evidence.

1 THE COURT: All right.

2 (OATH ADMINISTERED)

3 SHANE HOFFMANN

4 was thereupon called as a witness for and on behalf of
5 the State, and, having been duly sworn, testified as
6 follows:

7 DIRECT EXAMINATION BY MR. PARKER:

8 Q. Mr. Hoffmann, please state your full name
9 for the record?

10 A. Shane Hoffmann. Spelled S-H-A-N-E,
11 H-O-F-F-M-A-N-N.

12 Q. By whom are you employed?

13 A. I'm currently employed by the federal
14 Bureau of investigation as a special agent in the
15 Milwaukee division in Wisconsin.

16 Q. You said a special agent. Have you held
17 any previous positions in the FBI?

18 A. Yes, I have. Prior to becoming a special
19 agent, I worked for about five and a half years in the
20 laboratory division of the FBI in the forensic lab
21 located in Quantico, Virginia. There I was assigned to
22 the DNA case work unit as a forensic examiner.

23 Q. Could you please tell the court what your
24 duties were as a forensic examiner.

25 A. As a forensic examiner, it was my job to
26 review cases that were submitted to the FBI lab for
27 forensic analysis, specifically DNA analysis. In
28 reviewing the cases, I would make decisions as to what
29 items of evidence to analyze and what examinations to

1 conduct on those items of evidence. I would then pass
2 along that information to a team of biologists that,
3 under my direction and supervision, would conduct that
4 work.

5 At the completion of the work, I review all
6 the results. And I would report those results in a
7 report and testify as needed.

8 Q. So specifically you were the forensic
9 examiner in charge of the DNA testing in this case?

10 A. Yes, I was.

11 Q. Now, do you have any previous experience
12 working in a forensic science laboratory?

13 A. Before starting as a forensic scientist at
14 the FBI lab, I worked for approximately a year and a
15 half with Michigan State Police. Pretty much in the
16 same capacity as a forensic scientist in their DNA
17 biology unit in a lab just outside of Detroit Michigan.

18 Q. Now, Mr. Hoffmann, could you please tell
19 the court what your educational background is.

20 A. I have a bachelor of science with a major
21 in biology and a minor in chemistry from St. Norbert
22 College which is located just outside of Green Bay
23 Wisconsin. In addition, I have a master of science in
24 forensic science from Michigan State University.

25 Q. Please tell the court what training you
26 have received in the areas of serology and forensic DNA
27 analysis.

28 A. When I first started my employment with the
29 Michigan State police and the FBI lab, I had to undergo

1 an approximately 12 month training program under the
2 guidance and direction of a trained and experienced
3 forensic scientist. During these training programs, I
4 had to pass a series of written and oral examinations
5 to show that I was competent in the area of DNA
6 analysis.

7 Q. Now, Mr. Hoffmann, I want to show you
8 what's been entered into evidence as S-48. Are you
9 familiar with this document?

10 A. Yes, I am.

11 Q. What is this document?

12 A. This document is a CV or my resume
13 outlining my professional work experience, training,
14 and education.

15 Q. And this is a true and accurate reflection
16 of your education and professional experience?

17 A. Yes, it is.

18 Q. Now, Mr. Hoffmann, are you qualified to
19 give an opinion as to the standard operating procedures
20 used at the FBI testing facility where this DNA was
21 tested in this case?

22 A. Yes, I am.

23 Q. And have you ever been qualified as an
24 expert in the field of serology and DNA analysis?

25 A. Yes, I have.

26 Q. Have you ever testified as such?

27 A. Yes, I have.

28 Q. How many times?

29 A. Approximately 15.

1 MR. PARKER: Your Honor, at this time
2 the state would ask that Shane Hoffmann be
3 declared an expert in the field of serology
4 and forensic DNA analysis.

5 MS. COLLUMS: No objection.

6 THE COURT: All right. He'll be
7 accepted as an expert in that area.

8 BY MR. PARKER:

9 Q. And Mr. Hoffmann, please explain, what is
10 serology?

11 A. Simply stated serology is identification of
12 body fluids.

13 Q. What bodily fluids does the FBI test for?

14 A. The FBI tests for two body fluids. Those
15 being blood and semen.

16 Q. And as part of your testing, are you able
17 to differentiate between the two?

18 A. Yes, I am.

19 Q. What does DNA stand for?

20 A. DNA stands for deoxyribonucleic acid.

21 Often referred to as the blueprint of life as it makes
22 a person who they are.

23 DNA is inherited, and what I mean by that
24 is a person gets half of their DNA from their mother
25 and half from their father. This makes each
26 individual's DNA individual to themselves. The one
27 exception would be that of identical twins.

28 Q. Now, where is DNA found in humans?

29 A. DNA is found in cells. More specifically,

1 it's found in the nucleus of cells. And if you think
2 of a cell as an egg, the nucleus would be the yolk of
3 that egg. And it's within the nucleus of that DNA is
4 found.

5 Q. Now, does every cell in an individual
6 contain the same DNA?

7 A. Yes, it does. And what I mean by that is
8 it doesn't matter if it's a blood cell, a skin cell,
9 semen cell. All cells from an individual have the same
10 DNA.

11 THE COURT: Can I ask, are you doing
12 this for my benefit or for the benefit of the
13 record?

14 MR. PARKER: For the record, judge.

15 THE COURT: Okay. Go ahead.

16 BY MR. PARKER:

17 Q. Now, what type of DNA analysis was
18 performed in the laboratory?

19 A. At the laboratory we have the option to
20 perform a couple of different types of DNA analysis.
21 One being described as autosomal DNA analysis and an
22 additional analysis referred to as Y-STR analysis.

23 Q. Now, what's the difference between the two?

24 A. The Y-STR DNA analysis looks for DNA
25 specific to males, DNA specifically on the Y chromosome
26 which is only found in males.

27 Q. And why would it be -- when is Y-STR in
28 your experience, when is that important to test?

29 A. Y-STR testing is a very sensitive DNA test

1 and is often most utilized in situations where a sample
2 may have an abundance of female DNA and a minor amount
3 of male DNA.

4 what can happen in those situations is DNA
5 testing using the autosomal DNA testing may mask any
6 male DNA and you may not see it. So we go and do DNA
7 testing specific for that male DNA so that only that Y
8 DNA is seen during that testing.

9 Q. what happens when you get a match?

10 A. So when I do DNA testing, we usually end up
11 idea situations that we get a profile from an item of
12 evidence. Once we get this profile from an item of
13 evidence, I will go ahead and make comparisons to known
14 reference samples.

15 Those reference samples are usually a
16 buccal sample or a cheek swab from an individual or a
17 blood sample. when I make these comparisons, I can
18 have three outcomes. Those being an exclusion, meaning
19 that they don't match. They match, meaning that there
20 the same. Or inconclusive.

21 If I get a match, I have to provide some
22 type of weight or support to that match, and I do this
23 by calculating a statistic called the random match
24 probability.

25 Q. Now, in this specific case did you prepare
26 a report in connection with your testing?

27 A. Yes, I did.

28 Q. And before getting to the results of this
29 test, I want to talk about some of the items that were

1 submitted to you. Did you receive known DNA profiles?

2 A. Yes, I did.

3 Q. And where were those?

4 A. I received three DNA profiles from
5 individuals in this case. Those profiles were given,
6 the first profile or DNA sample I received was given
7 FBI item number 34, which was a buccal sample from
8 Alberto Garcia.

9 The second profile we received was given
10 FBI item number 41, which was a buccal sample from
11 Julian Gray, III. And we also received a known blood
12 sample from Ja'Naya Thompson which was given FBI item
13 number 43.

14 Q. In the specific case, were vaginal swabs
15 taken from Ja'Naya Thompson, and were they tested.

16 A. Yes, they were.

17 Q. What type of fluid was detected?

18 A. On the vaginal swabs, those tested, there
19 were four vaginal swabs which were given FBI item
20 number one. Those tested positive for the presence of
21 blood. And we tested those for semen. However, semen
22 was not detected on the vaginal swabs.

23 Q. But blood was detected, correct?

24 A. Yes, it was.

25 Q. Now, you previously described two separate
26 type of testing, autosomal and Y-STR. In this specific
27 case, what type of testing did you do, and what were
28 the results?

29 A. For the vaginal swabs, I performed both

1 autosomal and Y-STR testing. And for the autosomal
2 results, no DNA foreign to Ja'Naya Thompson was found.
3 And what I mean by that is since it was an intimate
4 swab, that taken from the vagina of Ja'Naya Thompson,
5 it's expected that her DNA would be on those swabs. I
6 did not see any other autosomal DNA in that sample.

7 And then I went ahead and did Y-STR
8 testing. And, Your Honor, if I may refresh my memory
9 by looking at my report?

10 THE COURT: Certainly.

11 A. The Y-STR typing results from the vaginal
12 swabs and the DNA results from Garcia are the same.
13 Therefore, Garcia is a potential male contributor of
14 the DNA obtained from item one.

15 Because I declare that they're the same and
16 that they match, I have to provide statistics to
17 support that claim. Since it was Y DNA testing, the
18 statistics that are provided are known as the
19 likelihood ratio of the match probability. And I'll
20 give those numbers. I calculated those statistics for
21 three populations, and those numbers are 1464 in the
22 African-American population, 1648 in the Caucasian
23 population, and 1201 in the Hispanic population.

24 And what those numbers describe, assuming a
25 single source DNA profile, is how much more likely the
26 DNA match is to occur if Garcia is the source of the
27 DNA as opposed to a randomly selected individual from
28 that population group.

29 Q. Just so I'm clear, Mr. Hoffmann, so on the

1 vaginal swabs, the DNA was a match with the submission
2 of the buccal swabs from Garcia, correct?

3 A. For the Y-STR results.

4 Q. For the Y-STR results. And because of
5 that, it's 1201 times more likely that the DNA match is
6 to occur if the defendant is a contributor as opposed
7 to some randomly selected individual from that same
8 population?

9 A. Yes. That was the number for the Hispanic
10 population.

11 Q. Now, was anybody excluded from those
12 vaginal swabs?

13 A. Yes. The known sample from item 41, Julian
14 Gray, was excluded as a potential contributor of the
15 DNA from the vaginal swabs.

16 Q. In this case were anal swabs taken from
17 Ja'Naya Thompson tested?

18 A. Yes, they were.

19 Q. What type of fluid was detected during the
20 testing?

21 A. There were two anal swabs that were labeled
22 as being collected from Ja'Naya Thompson. Those were
23 given FBI item number four. Those were tested for both
24 blood and semen. And both blood and semen were
25 identified on the anal swabs collected from Ja'Naya
26 Thompson.

27 Q. Now once again, what type of testing was
28 performed and what were the results?

29 A. For the anal swabs I performed only

1 autosomal testing. And based on those results, I
2 obtained a mixture of male and female DNA. The DNA
3 profile foreign to Ja'Naya Thompson obtained from the
4 anal swabs matched Garcia.

5 Because I have a match, once again I
6 calculated statistics to give weight or support to that
7 match. In this case because it was autosomal DNA
8 testing, I calculated the random match probability
9 which signified the probability that a random unrelated
10 individual from the population would have the same DNA
11 profile as that observed in the evidence. I did that
12 for four population groups.

13 And those statistics are, the random match
14 probability for the African-American population was one
15 in 180 trillion. For the Caucasian population, it was
16 one in 26 trillion. For the southeast Hispanic
17 population, it was one in 1.4 billion. For the
18 Southwest Hispanic population, it was one in
19 9.7 trillion.

20 And to state it another way, using for
21 example the southeast Hispanic population, that random
22 match probability was one in 1.4 billion. So on
23 average if I had 1.4 billion southeast Hispanic
24 individuals, I would expect one of them to have that
25 same DNA profile.

26 Q. And in that case, that DNA profile matched
27 the submission of Garcia?

28 A. Yes.

29 Q. Once again, on the anal swabs, was anyone

1 excluded?

2 A. I also did a comparison of DNA profile from
3 Julian Gray. And he was excluded as being a potential
4 contributor to the DNA from the anal swabs.

5 Q. Mr. Hoffmann, in this case were rectal
6 swabs taken from Ja'Naya Thompson tested?

7 A. Yes, they were.

8 Q. What type of fluid was detected in that
9 test?

10 A. There was one swab, a rectal swab, given
11 FBI item number six submitted from Ja'Naya Thompson.
12 That's was tested for both blood and semen. A chemical
13 test for the possible presence of blood was positive.
14 However, but could not be confirmed -- the presence of
15 blood could not be confirmed on that rectal swab.
16 Semen was identified on the rectal swab.

17 Q. Once again, what type of testing did you
18 perform those swabs and what were the results?

19 A. On the rectal swab I performed both
20 autosomal and Y-STR testing. And to start with the
21 autosomal results, there was a limited amount of DNA,
22 autosomal DNA obtained from the rectal swabs.
23 Therefore, I could not match anyone to them because
24 they were so limited.

25 However, I could still make comparisons.
26 However, the results of those comparisons would be
27 limited to excluded or inconclusive. I could not use
28 those results for matching, definitive matching
29 purposes.

1 So for the autosomal typing results for the
2 rectal swab, both Garcia and Gray were excluded as
3 potential contributors of the DNA. And then the
4 comparison information or inconclusive for the
5 comparison to Ja'Naya Thompson.

6 Q. Did you do any further testing on the
7 rectum swabs?

8 A. I then went on and performed Y-STR testing.
9 And the Y-STR typing results obtained from the rectal
10 swab and the results obtained from Garcia are the same.
11 Again, therefore, it signifies Garcia is a potential
12 male contributor of the DNA obtained from the rectal
13 swab.

14 I went on and calculated the statistics.
15 Again, the statistics for the Y-STR match are the
16 likelihood ratios of the match from the probabilities.
17 And those are, four for the African-American
18 population, two in the Caucasian population, and three
19 in the Hispanic population.

20 Then once again, those numbers represent,
21 assuming a single source profile, how much more likely
22 the DNA match is to occur if Garcia is a contributor of
23 the DNA as opposed to a randomly selected individual
24 from the same population.

25 Q. Mr. Hoffmann, I want to take and ask you
26 whether or not inner thigh and vulva swabs taken from
27 Ja'Naya Thompson were tested?

28 A. Yes, they were. And just to conclude on
29 the rectal swab, I was able to exclude Julian Gray as a

1 potential contributor of that male DNA.

2 So yes, I did go on and test inner thigh
3 and vulva swab. That was given FBI item number nine.
4 And those were two inner thigh and vulva swabs that
5 were collected from Ja'Naya Thompson.

6 Q. What type of fluid was detected during your
7 testing?

8 A. Those items were tested for both blood and
9 semen. A chemical test for the possible presence of
10 blood was positive. However, the presence of blood was
11 not confirmed. And semen was identified on the inner
12 thigh and vulva swabs.

13 Q. What type of testing did you do, and what
14 were the results for the inner thigh and vulva swabs?

15 A. On those swabs I performed both again
16 autosomal and Y-STR testing. Autosomal results show
17 that no autosomal DNA foreign to Ja'Naya Thompson was
18 obtained from the inner thigh and vulva swabs.

19 Q. Did you do any further testing?

20 A. Yes, I did. I performed the Y-STR typing.
21 In the Y-STR typing results obtained from the inner
22 thigh and vulva swabs and those results obtained from
23 Garcia are the same. Therefore, Garcia is a potential
24 male contributor of the DNA obtained from the inner
25 thigh and vulva swabs.

26 And the statistics for that match were 1776
27 in the African-American population, 2054 in the
28 Caucasian population, and 1403 in the Hispanic
29 population. And again, those numbers represent how

1 much more likely the DNA match is to occur if Garcia is
2 a contributor as opposed to a randomly selected
3 individual from the same population.

4 Q. So once again, in the Hispanic population,
5 it's 1403 times more likely to be a match if this
6 defendant or if Garcia is a contributor?

7 A. As opposed to a randomly selected
8 individual, yes.

9 Q. Now, were you able to exclude anyone?

10 A. Julian Gray was excluded as a potential
11 contributor to the male DNA obtained from the inner
12 thigh and vulva swabs.

13 Q. Mr. Hoffmann, I want to ask you if you were
14 able to do any DNA testing on socks?

15 A. Yes, I was.

16 Q. Could you please tell the court first why
17 was the testing done on the socks and what type of
18 testing did you perform?

19 A. So information that I had received upon the
20 submission of the evidence to the FBI lab indicated
21 that these socks were found around the neck of Ja'Naya
22 Thompson. Therefore, it was of interest to see if
23 there was any DNA that could be recovered from the
24 socks that would be foreign to that of Ja'Naya
25 Thompson.

26 The socks were submitted. They were
27 submitted tied together. It looked like at least two
28 socks that were knotted together in a couple of areas.
29 So I went ahead and performed a number of DNA tests to

1 try to determine any foreign to DNA to Ja'Naya
2 Thompson. And these socks were given FBI item number
3 15.

4 Q. Now, specifically where did you test on the
5 socks?

6 A. So the first sample that I took from the
7 socks was to swab -- there were two knotted portions on
8 the socks. I swabbed the knotted portions and the
9 areas immediately adjacent to both of those knots. And
10 that was in hopes of recovering any DNA from the person
11 who may have tied those socks together.

12 If you think about it, when you make a
13 knot, as in the case of the socks, it's possible that
14 you could shed skin cells onto that material when the
15 knot's tied.

16 So that first sample I did it was
17 identified as 15 parentheses one. And that was the
18 swabbing of the knotted areas prior to the separation
19 of the socks.

20 For that sample I performed Y-STR typing.
21 I did not perform autosomal typing on that sample. And
22 I obtained a mixture of DNA. In the mixture it
23 indicated there was DNA from at least two male
24 individuals.

25 Q. Now, what were you able to do with that
26 information?

27 A. These results also did not lend themselves
28 to making any matching -- being able to match anyone
29 to, however, I could do comparisons. However, the

1 results of my comparisons would either be an exclusion
2 or inconclusive.

3 Based on those comparisons, Julian Gray was
4 excluded as a potential male contributor to the mixture
5 of DNA obtained from that sample. And then the
6 comparison of the DNA from Garcia to that sample was
7 inconclusive.

8 Q. So based on your swabbing of the knots of
9 the sock, you were able -- you found a mixture of two
10 males?

11 A. At least two males, yes.

12 Q. But you were able to exclude Gray as a
13 contributor?

14 A. Yes, I was.

15 Q. And what about Garcia?

16 A. He was inconclusive.

17 Q. Did you do any further testing of the sock?

18 A. Yes. I then received permission to unknot
19 or untie the socks. And I went ahead, and it resulted
20 from two -- it resulted in two pieces of what appeared
21 to be two socks. So I then went ahead and tested the
22 inside of those socks to try and determine or
23 potentially collect DNA from anyone who may have either
24 touched or may have worn the socks.

25 Again, anytime skin comes into contact with
26 material -- there's a chance that skin cells could be
27 shed on to that material, and I could recover those.
28 So I went ahead and the sample which I identified as 15
29 parentheses 2 was a swabbing of the inside surface of

1 the socks that were more white. They didn't have any
2 gray in them.

3 Q. And what were the results of that testing?

4 A. The Y-STR typing results obtained from that
5 sample and the DNA results from Garcia were the same.
6 Therefore, Garcia is a potential male contributor of
7 the DNA obtained from the swabbing of the inside
8 surface of that sock.

9 Because I had a match, I went ahead and
10 calculated the likelihood ratio of the match
11 probability. And those probabilities or those
12 likelihood ratios are 61 in the African-American
13 population, 31 in the Caucasian population, and 61 in
14 the Hispanic population.

15 And then just one more time, those numbers
16 represent, assuming a single source profile, how much
17 more likely the DNA match is to occur if Garcia is a
18 contributor of the DNA as opposed to randomly selected
19 individual from the population group.

20 Q. Now, were you able to exclude anyone from
21 the inside swabbings?

22 A. Yes. Item 41 the known DNA sample from
23 Julian Gray was excluded as a potential contributor to
24 the male DNA from that sample.

25 MR. PARKER: With the court's
26 indulgence. We tender the witness, Your
27 Honor.

28 THE COURT: All right. Defense.

29 CROSS-EXAMINATION BY MS. COLLUMS:

1 Q. Mr. Hoffmann, on your report, and I'm
2 specifically looking at page three just for a start, on
3 your testing of item one you talked about where you
4 gave the likelihood of ratios and population?

5 A. Yes.

6 Q. And just so that we're clear, when you got
7 like on the first line you've got 1464 in the
8 African-American population, does that mean that
9 percentage-wise you can find the test result that you
10 found in 1464 African-American males or people?

11 A. No. What that number represents as stated
12 in the report is just how much more likely that DNA
13 match is to occur if Garcia was a contributor of that
14 DNA as opposed to a randomly selected individual from
15 that population group.

16 Q. Okay. Then explained for me, if you would
17 please, at the back of your report on the items that
18 you were just talking about, all the socks, on page
19 five, item 15 parentheses 2, swabbing of inside
20 surface, that paragraph?

21 A. Yes.

22 Q. And then on your statistics you have an
23 equal number for African-American population and
24 Hispanic population; is that correct?

25 A. Yes.

26 Q. So does that mean, according to the way you
27 phrase that, that you have an equal chance of it being
28 one or the other?

29 A. The likelihood ratio for those two

1 population groups are the same.

2 Q. Okay. So that means there's an equal
3 chance of it coming from either one of those
4 populations?

5 A. According to those likelihood ratios, yes.

6 Q. Now, on item one, you found blood but no
7 semen; is that correct?

8 A. That is correct.

9 Q. And then on the Y-STR typing results that
10 you had listed, when you had Garcia as listed as a
11 potential male contributor, with that then, if that was
12 in fact his DNA, would that have been by touch transfer
13 DNA?

14 A. That is a possibility, yes.

15 Q. And you found no semen at all on items two,
16 three, five, and seven, right?

17 A. No. I did not find any semen. And just
18 for the record, item two was a cervical swab. Item
19 three was of vulva swab. Item five was an oral swab.
20 And item seven was a left cheek swab. And no semen was
21 found on any of those items.

22 Q. Now on item six, you found DNA but not
23 semen, correct?

24 A. On item six, the rectal swab?

25 Q. Yes.

26 A. Semen was identified on item six.

27 Q. Oh, I'm sorry. I missed that. I was
28 looking at -- okay. On the Y-STR profile, is it
29 correct when your report says that you observed that

1 same profile in roughly 9500 persons?

2 A. Are we talking about item six still?

3 Q. Yes.

4 A. So the way Y-STR's work is that Y-STR's are
5 inherited along a paternal lineage. And what that
6 means is that an individual inherits their Y-STR DNA
7 from their father who inherited it from their father.
8 So it's passed down what we call a paternal lineage.
9 So Y-STR profiles within that paternal lineage will be
10 the same. And that's what these numbers in the
11 database also reflect.

12 The fact that these likelihood ratios of
13 the match probabilities in the case, they were four for
14 the African-American population, two in the Caucasian
15 population, and three in the Hispanic population as
16 well as the fact that 9521 times that profile was seen
17 in our databases, that reflects the fact that that was
18 a very minor amount of DNA.

19 So it really wasn't that good of a DNA
20 profile. But regardless, it still matched Garcia. But
21 the statistics were not that high because it wasn't a
22 very good profile.

23 Q. It could have also matched other people in
24 his lineage also then, correct?

25 A. Potentially, yes.

26 Q. I think if you go back to item 15, and
27 specifically 15 were you have parentheses one, you've
28 got the possibility of the DNA coming from two or more
29 males; is that correct?

1 A. Yes.

2 MS. COLLUMS: One minute, judge.

3 THE COURT: All right.

4 MS. COLLUMS: No more questions.

5 THE COURT: All right. State, any
6 follow-up?

7 MR. PARKER: No, Your Honor.

8 THE COURT: All right. Thank you, sir,
9 you can step down. All right. State, who is
10 your next witness?

11 MR. PARKER: Your Honor, our next
12 witness is going to be Dr. Mark LeVaughn.

13 But if we could have a brief five-minute
14 recess so we can adjust the TV and ensure
15 that we're ready to go when he takes the
16 witness stand.

17 THE COURT: Well, in light of past
18 history with the TV, let's take about 15. So
19 we'll be on break for about 15 minutes.

20 (PAUSE IN THE PROCEEDINGS)

21 THE COURT: All right. State, your next
22 witness.

23 MR. PARKER: Yes, Your Honor. The State
24 of Mississippi calls Dr. Mark LeVaughn.

25 (OATH ADMINISTERED)

26 DR. MARK LEVAUGHN

27 was thereupon called as a witness for and on behalf of
28 the State, and, having been duly sworn, testified as
29 follows:

1 DIRECT EXAMINATION BY MR. PARKER:

2 Q. Dr. LeVaughn, please state your full name
3 for the record.

4 A. Mark Mitchell LeVaughn.

5 Q. And what city do you currently reside?

6 A. Brandon, Mississippi.

7 Q. Are you a licensed physician?

8 A. Yes, sir.

9 Q. In what states?

10 A. Mississippi and Indiana.

11 Q. How long have you been licensed to practice
12 in your profession?

13 A. Approximately 31 years.

14 Q. Please tell the court what your current
15 duties are.

16 A. My current duties are chief medical
17 examiner of the State of Mississippi. I am the
18 supervisor of the office. I supervise the performance
19 of all the autopsies and medical investigations in that
20 office, and I also perform autopsies myself.

21 MR. PARKER: Your Honor, at this time
22 the State of Mississippi offers Dr. Mark
23 LeVaughn as an expert in the field of
24 forensic pathology.

25 MS. BLACKWELL: We have no objection,
26 judge.

27 THE COURT: All right. And for the
28 record, Dr. LeVaughn has testified before
29 this court previously in unrelated matters as

1 an expert. And I'm assuming that's why
2 you've not provided his CV as you did with
3 the others.

4 MR. PARKER: Yes, Your Honor. That's
5 exactly why.

6 THE COURT: And of course, Ms.
7 Blackwell, you don't have any objection to
8 that?

9 MS. BLACKWELL: No, Your Honor. We're
10 very familiar with Dr. LeVaughn, Your Honor.

11 THE COURT: All right. He'll be
12 accepted as an expert in this area. All
13 right. Go ahead, Mr. Parker.

14 MR. PARKER: Yes, Your Honor.

15 Q. As the chief medical examiner, do you
16 oversee all autopsies in the State of Mississippi?

17 A. Yes, sir, I do.

18 Q. Have you reviewed the facts and
19 circumstances regarding the autopsy of Ja'Naya
20 Thompson?

21 A. Yes, sir, I have.

22 Q. And did you review a previous autopsy
23 report?

24 A. Yes, I did.

25 Q. Have you reviewed photographs taken from
26 the autopsy?

27 A. Yes, sir, I did.

28 Q. And have you reviewed other photographs
29 related to the death of Ja'Naya Thompson?

1 A. Yes, I have.

2 Q. Have you had an opportunity to review and
3 assess the injuries in her manner of death?

4 A. Yes, I have.

5 Q. And have you been able to form your own
6 separate opinions regarding the injuries and the cause
7 of death of Ja'Naya Thompson?

8 A. Yes, sir, I have.

9 Q. And are those opinions based on a
10 reasonable degree of medical certainty?

11 A. Absolutely.

12 Q. Now, Doctor, in the autopsy of Ja'Naya
13 Thompson, was an external examination of the body
14 performed?

15 A. Yes.

16 Q. Could you please tell the court
17 approximately what was the size of Ja'Naya?

18 A. The measured and documented stature is
19 4-foot 2 inches tall. And she weighed 50 pounds.

20 Q. Was she a proper size for a normal five
21 year old female child?

22 A. In my opinion, yes, sir.

23 Q. Had she gone through any puberty type
24 stages?

25 A. No, sir.

26 Q. Were you able to -- well, I want to talk
27 about the external review of Ja'Naya. And I want to
28 first talk about the genital area. Could you please
29 describe what your findings were of Ja'Naya's genital

1 area?

2 A. The -- let me qualify. Are we talking
3 about genital or --

4 Q. Vaginal area.

5 A. Okay. The external genital exam showed
6 lacerations, bruising, and swelling of the hymen and
7 the opening area, the vulvar area of the opening of the
8 vagina.

9 Q. Doctor, would it assist you if you were
10 able to see a picture of the autopsy from her vaginal
11 area?

12 A. Absolutely.

13 MR. PARKER: Your Honor, at this time
14 I'd like the doctor to step down and I will
15 publish to the court State's Exhibit 35.

16 THE COURT: All right. And you have
17 that turned where -- is it going to be seen
18 by the audience?

19 MR. PARKER: No, Your Honor.

20 THE COURT: All right. Ms. Blackwell,
21 you can see though, correct?

22 MS. BLACKWELL: I can, Your Honor. I'm
23 fine.

24 THE COURT: All right. Tell me again
25 the number. I'm sorry, Mr. Parker.

26 MR. PARKER: That's State's Exhibit 35,
27 Your Honor.

28 Q. Dr. LeVaughn, I'm showing you State's
29 Exhibit 35. Could you please tell the court what you

1 assessed from this photograph.

2 A. The photograph depicts the vaginal area and
3 the vulva area. The skin where the gloves are, those
4 are the labia. This is all the vulva area. Labia
5 majora, labia minora, and the opening of the vagina.
6 There's a small rim of web like tissue, thin membrane
7 tissue at the opening of the vaginal opening, and
8 that's the hymen.

9 The hymen shows several pathologic
10 findings. There's -- it's lacerated or torn. The top
11 of the photo. The top of the photo is anterior and the
12 bottom of the photo is posterior. The posterior part
13 of the hymen and the vaginal opening is torn.

14 The anterior superior area in the area of
15 the urethra is severely bruised or contused. And this
16 tissue also shows significant swelling.

17 Q. Now, Doctor, what would a normal hymen of a
18 five year old look like? How is it different from what
19 this photograph shows?

20 A. Well, the anatomy of the hymen varies. It
21 can have one opening, multiple openings. And the size
22 of the opening can vary. But it's a membrane that
23 covers the -- it separates the outside from the inside
24 of the vaginal canal.

25 The normal hymen would be pink. It
26 would -- it would usually be intact to the whole
27 circumference of the vaginal opening. And it certainly
28 would not show any evidence of laceration, bruising or
29 swelling.

1 Q. And in this photograph, you're able -- you
2 pointed to laceration. Where specifically were you
3 pointing at the anterior part of the vaginal opening?

4 A. The laceration of the hymen is in the
5 inferior or the 6:00 portion right here.

6 Q. And you had mentioned discoloration. Could
7 you please point to the court where the discoloration,
8 where you can see that in this photograph.

9 A. It's circumferential. It's all around.
10 The most significant discoloration is the dark purple
11 area. That's bruising or contusion. The remainder
12 shows redness or erythema which is a reaction to a
13 trauma or injury. So the entire hymen is a
14 traumatized.

15 Q. What would cause this type of trauma?

16 A. Blunt penetrating injury.

17 Q. Now, are you able to tell from these
18 injuries whether or not Ja'Naya was alive when they
19 occurred?

20 A. Absolutely.

21 Q. Please tell the court how you're able to do
22 that and what your opinion is?

23 A. The living body has reactions to injury and
24 trauma, and we classified it as vital reactions. And
25 briefly a vital reaction is hemorrhage, erythema,
26 redness and swelling.

27 And you see all the characteristics of a
28 vital reaction in this photograph. There's certainly
29 hemorrhage in this area. There's swelling. This

1 margin to me is swollen. And certainly
2 there's erythema or redness in the right lateral side
3 of the hymen.

4 Q. So this is able to tell you that she was
5 alive when these injuries occurred?

6 A. In my opinion, absolutely, yes.

7 Q. What type of symptoms would accompany this
8 type of trauma?

9 A. In my opinion, it would be pain and terror.

10 Q. Doctor, I'm showing you what's been entered
11 into evidence as State's Exhibit 36. Please tell the
12 court what the focus of that photograph is.

13 A. It's a similar photograph, but the central
14 portion of the photograph, the area of interest in this
15 photo is the anal rectal area. The anal skin of the
16 anal opening shows similar changes to the hymen and
17 vaginal skin.

18 Q. There's -- this darker area is hemorrhage.
19 There's hemorrhage on the left lateral 3:00 area.
20 There's appears to some laceration on the inferior
21 area, abrasion on the right lateral area. And
22 certainly erythema of all this tissue. And it looks to
23 be -- it looks like there's hemorrhage in the opening.

24 Q. Once again, similar to the vaginal area, is
25 this all the way around circumference of the injury?

26 A. Yes.

27 Q. Now, what type of action would cause these
28 type of injuries?

29 A. It would be a similar trauma as the vagina

1 injury. Blunt penetrating trauma.

2 Q. And, Doctor, the anal sphincter, it's
3 somewhat elastic?

4 A. Yes. It's a circular muscle.

5 Q. And so what happens when it's stretched
6 past that elasticity?

7 A. There's injury. And it's depicted in this
8 photograph of tearing or laceration, erythema,
9 swelling, and bleeding.

10 Q. Now, Doctor, are you able to tell from
11 these injuries if Ja'Naya was alive when the injuries
12 were inflicted?

13 A. Yes.

14 Q. Was she?

15 A. In my opinion, yes, for the same reason.
16 There's evidence of a vital reaction, which is living
17 reaction. There's hemorrhage, laceration where the
18 laceration causes the vital reactions. There's
19 hemorrhage, swelling, and erythema.

20 Q. And that means once the injury occurs, the
21 blood's still pumping. It's going to that area to show
22 the bruising and the hemorrhaging?

23 A. Absolutely.

24 Q. And once again, Doctor, what is the symptom
25 that accompanies this type of trauma?

26 A. Again, in my opinion, it would be pain and
27 terror.

28 Q. Doctor, I want to talk about the neck and
29 head area. And I'm showing you what's been introduced

1 into evidence as State's Exhibit 37. Please tell the
2 court what we're looking at in this photograph.

3 A. The photograph is the lateral right view of
4 the neck. The photograph demonstrates two types of
5 injuries. There is abrasion on the interior and
6 lateral area of the neck in what I call a ligature
7 abrasion. And there is some abrasion below the injury
8 on the lateral base of the neck. Small, irregular
9 abrasions.

10 Q. Okay. And I'm showing you what's been
11 introduced into evidence as State's Exhibit 38. Please
12 tell the court what we're looking at in this
13 photograph.

14 A. Exhibit 38 is a photograph of the lateral
15 left neck. The ligature abrasion in this photograph
16 appears -- you can't tell if it's circumferential. But
17 it covers the entire surface of the neck under the
18 mandible. And then below the ear on the side of the
19 face, the cheek, there are several other small linear
20 abrasions.

21 Q. Doctor, as part of review of this autopsy
22 photograph, I'm showing you what we've marked as
23 State's Exhibit 20 that has been introduced into
24 evidence. Did you have an opportunity to review this
25 photograph as part of your assessing the injuries and
26 the death of Ja'Naya Thompson?

27 A. Yes, sir, I did.

28 Q. And based on your review and what you were
29 able to look at, the pictures, the autopsy, and the

1 photograph from the crime scene, have you been able to
2 form an opinion as to the cause of death of Ja'Naya
3 Thompson?

4 A. The cause, yes, I have.

5 Q. And what is that?

6 A. The cause of death of Ja'Naya Thompson is
7 ligature strangulation or hanging.

8 Q. Now, Doctor, in State's Exhibit 38 when
9 you're looking just under the ear area, what do you see
10 in that photograph?

11 A. Below the left ear there are several
12 superficial irregular abrasions that appear to be
13 scratches.

14 Q. Okay. And when you say scratches, why
15 would the scratches be up near the ear area?

16 A. In my opinion, the -- and I've seen this
17 before. When someone is hanged or choked or strangled,
18 they try to free the ligature, or whatever the object
19 is, from the neck. So they claw at the object. And
20 they leave scratch marks on the face or neck above
21 and/or below the ligature.

22 Q. Doctor, you can be seated.

23 MR. PARKER: Your Honor, we tender the
24 witness.

25 THE COURT: All right. Defense.

26 CROSS-EXAMINATION BY MS. BLACKWELL:

27 Q. How are you, Dr. LeVaughn?

28 A. I'm fine. Thank you.

29 Q. You've had an opportunity to review Dr.

1 McGarry's autopsy report; is that correct?

2 A. Yes, ma'am.

3 Q. And that's what you're, in part, basing
4 your forensic opinion on; is that correct?

5 A. That's correct.

6 Q. Do you recall whether or not there were any
7 indications of reddening or swelling of the arms?

8 A. There -- there's descriptions of bruises of
9 the legs. I'd have to look at the report briefly to
10 see if there's any description of the upper
11 extremities.

12 Q. Do you have the report with you?

13 A. I do.

14 Q. I'm just going to draw your attention to
15 page two near the bottom. I'm looking eight lines from
16 the very bottom starting with, there is reddening.

17 A. I'm sorry. I want to make sure we're
18 looking at the -- page two is where it starts with
19 external exam or the next page?

20 Q. Page two. It is part of the external
21 examination. It is right after -- it's in the second
22 paragraph.

23 A. Okay.

24 Q. And it's right after -- it begins right
25 after the word, frenula.

26 A. Can you point that out again?

27 THE COURT: Ms. Blackwell, if you want
28 to come up and show him where you're talking
29 about.

1 MS. BLACKWELL: May I approach, judge?

2 THE COURT: Yes, ma'am.

3 BY MS. BLACKWELL:

4 Q. I'm sorry, Doctor.

5 A. That's all right.

6 Q. If that refreshes your recollection at all,

7 was there any -- did Dr. McGarry make any note that

8 there was reddening or swelling of the arm?

9 A. Yes.

10 Q. Do you have any idea what caused that?

11 A. No. Reddening and swelling is a very broad

12 description. I mean, it would be appear to be some

13 type of antemortem injury because the reddening and the

14 swelling is again, a vital reaction.

15 Q. So before death?

16 A. Yes.

17 Q. Is that what you're saying?

18 A. Yes.

19 Q. There's a notation that it says with
20 abrasions of the posterior aspect and a contusion.

21 A. Correct.

22 Q. Is there any -- it is possible that that
23 abrasion or contusion on that arm was caused by being
24 tied up or tied to something?

25 A. would you repeat the question, please?

26 Q. Could that possibly be consistent, that
27 injury, consistent with being tied to something or
28 being tied up?

29 A. I guess it could, yes.

1 Q. We just don't know, I guess is my better
2 point.

3 A. That's correct.

4 Q. Okay.

5 MS. BLACKWELL: That's all I have, Your
6 Honor. Thank you, Doctor.

7 THE COURT: All right. Mr. Parker,
8 anything else?

9 MR. PARKER: No, Your Honor.

10 THE COURT: All right. Thank you,
11 Doctor. You can step down.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: All right. State, who is
14 your next witness?

15 MR. PARKER: Your Honor, the state
16 rests.

17 THE COURT: All right. Ms. Blackwell,
18 the state having rested, it's my
19 understanding there's a matter we need to
20 take up at this point with regard to the
21 potential or two potential witnesses?

22 MS. BLACKWELL: There is, Your Honor.

23 THE COURT: All right. You want to make
24 your record on that?

25 MS. BLACKWELL: Yes, Your Honor. Your
26 Honor, may it please the court.

27 THE COURT: Yes, ma'am.

28 MS. BLACKWELL: As part of this capital
29 murder case, our office was given leave to

1 hire experts in the field of mitigation,
2 which we have utilized.

3 That mitigation expert, in particular
4 Ms. Donna Murray, spoke with Alberto's best
5 friend from his youth in Florida. His name
6 is Alvah Raymond. Also spoke with his
7 parents. Also Alvah and Jane Raymond. He
8 goes by Buster Raymond.

9 These individuals, the mother and the
10 father, Alberto lived with them for a time in
11 Florida. They expressed a willingness to
12 come potentially testify. They are a little
13 apprehensive at the publicity that this case
14 has received.

15 Perhaps I didn't prepare them for that,
16 that this case has received notoriety in the
17 community. Also Mr. Garcia himself has told
18 me that he does not wish for these two people
19 to testify.

20 And I would like for him to state into
21 the record his reasoning and his reasons for
22 making that decision.

23 THE COURT: All right. So let me
24 understand. These two people are here.

25 MS. BLACKWELL: They are here, Your
26 Honor. They may be in the hallway.

27 THE COURT: All right. But they're
28 present here at the courthouse. And they are
29 available.

1 MS. BLACKWELL: Yes, ma'am.

2 THE COURT: Okay. And they've traveled
3 here from another state?

4 MS. BLACKWELL: They have. I believe
5 they came from Homestead, Florida near Miami.

6 THE COURT: All right. But Mr. Garcia
7 does not want to call them.

8 MS. BLACKWELL: He does not.

9 THE COURT: And they would be presented
10 on his behalf to provide some sort of
11 mitigation in this case?

12 MS. BLACKWELL: They would, Your Honor.
13 Alberto lived with them. They're very
14 familiar with him. They care very much for
15 him. He and their son were very close
16 friends. They went to high school together,
17 have known each other for a very long time in
18 that south Florida region.

19 we anticipate that they could testify
20 regarding their experiences with him, his
21 character, what kind of friend he was to
22 their son, what kind of friend he was to
23 their family.

24 But Mr. Garcia does not -- either
25 doesn't want to put them through this or he
26 has his own reasons.

27 THE COURT: All right. Mr. Garcia, let
28 me ask you to stand again, please, sir.

29 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And you were placed under
2 oath this morning. So understand you're
3 still under oath, correct?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Mr. Garcia,
6 without going too much into any details about
7 these particular people, is Ms. Blackwell
8 correct in telling me that you do not want
9 them called as witnesses on your behalf?

10 THE DEFENDANT: That's correct, ma'am.

11 THE COURT: All right. And is it
12 because you think they won't come in here and
13 testify?

14 THE DEFENDANT: No, ma'am. I believe
15 they would easily. It's I do not wish for
16 them to have this burden upon them.

17 THE COURT: Okay. well, let me explain
18 to you, and I know you already know this
19 because we've talked a little bit about
20 during your plea your right to call
21 witnesses, and we talked about at the hearing
22 prior to that. You understand that you have
23 the right to make them come in here and
24 testify?

25 THE DEFENDANT: Yes, ma'am. I
26 understand that.

27 THE COURT: All right. But you also
28 understand, just like your other rights, if
29 you give up that right, you've basically

1 waived any objection to that. In other
2 words, you've given that up for good. If you
3 give it up now, you've given it up for good
4 in this case.

5 THE DEFENDANT: Yes, ma'am, I
6 understand.

7 THE COURT: And you understand that I
8 would never hear what they have to say, good
9 or bad.

10 THE DEFENDANT: I understand, ma'am.

11 THE COURT: All right. And you've
12 thought about all that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And do you think you know in
15 your own mind what they might say on your
16 behalf?

17 THE DEFENDANT: In my own mind, yes,
18 ma'am, I do.

19 THE COURT: Do you think it would be
20 good or bad?

21 THE DEFENDANT: Good. I've known them
22 for a very long time, ma'am.

23 THE COURT: And the purpose for my
24 asking you that is, you think they'd come in
25 here and tell me something good, something in
26 your favor, but even knowing that, you do not
27 want your attorneys to put them on the stand
28 and have them testify in your behalf?

29 THE DEFENDANT: No, ma'am.

1 THE COURT: Are you sure of that?

2 THE DEFENDANT: I'm positive, ma'am.

3 THE COURT: And have you consulted with
4 your attorneys in that regard?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right, sir. As I
7 explained to you, and I know they have, this
8 is your case because you're the one that's on
9 the line here, not the attorneys.

10 THE DEFENDANT: Yes, ma'am. I
11 understand.

12 THE COURT: And clearly they have tried
13 to get these folks here to, in some way, aid
14 you.

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Okay. And knowing all that,
17 you don't want to call them?

18 THE DEFENDANT: No, ma'am. This is my
19 problem. I do not wish to have them burdened
20 with it, ma'am.

21 THE COURT: All right. Ms. Blackwell,
22 any other record you want to make on that?

23 MS. BLACKWELL: Not on this subject. We
24 do have the other issue with the witness.

25 THE COURT: All right. We'll take that
26 up in a moment. Mr. Parker, any record you
27 want to make in this regard or Mr. Smith,
28 whichever one?

29 MR. PARKER: No, Your Honor.

1 THE COURT: All right. Mr. Garcia, any
2 questions about that?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: All right. So if Ms.
5 Blackwell goes out and tells them they can go
6 back home to Florida, you're going to be
7 happy with that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right. Then, Ms.
10 Blackwell, at this point, it appears he's
11 made his decision.

12 MS. BLACKWELL: Yes, Your Honor.

13 THE COURT: You can have a seat, Mr.
14 Garcia. All right. Ms. Blackwell, there was
15 another witness.

16 MS. BLACKWELL: Yes, Your Honor. I'm
17 sorry.

18 THE COURT: There was another witness
19 that there was a potential issue with. But I
20 think that was the state's objection to one
21 of your witnesses.

22 MS. BLACKWELL: I believe they have some
23 objections to some of our witness's potential
24 testimony.

25 MR. PARKER: Yes, Your Honor. But at
26 this time, we would ask, the defense does
27 have a witness here and they're ready to put
28 them on.

29 I would ask that we just be able to

1 bring that up once we conclude testimony for
2 today because I think they have one or two.

3 THE COURT: Before you get to this
4 witness that there's an issue about?

5 MR. PARKER: Yes, Your Honor.

6 THE COURT: Is that okay with you, Ms.
7 Blackwell?

8 MS. BLACKWELL: That's fine, Your Honor.

9 THE COURT: So then, Ms. Blackwell, who
10 would be your first witness.

11 MS. BLACKWELL: At this time, Your
12 Honor, Mr. Stage would like to make a short
13 opening statement.

14 THE COURT: All right. Mr. Stage.

15 MS. BLACKWELL: We did reserve.

16 THE COURT: You did.

17 MR. STAGE: May I proceed, judge?

18 THE COURT: Yes, sir.

19 OPENING STATEMENTS BY MR. STAGE:

20 Your Honor, by virtue of this guilty
21 plea last week, Alberto Garcia has already admitted
22 that he does not deserve to live among us in this
23 society. Judge, he'll never again be a free man.

24 The only question here going forward is,
25 does he deserve to live at all. And, judge, we are
26 tasked with telling Alberto's story. We anticipate
27 Your Honor will hear testimony from Dr. Robert Storer.
28 He's a forensic psychologist that has had many
29 communications with Alberto Garcia.

1 And we believe that his testimony will
2 paint the most complete picture of Alberta that we have
3 available today. You will hear details about his
4 upbringing. You'll hear about the neglect, abuse,
5 dysfunction that he endured growing up.

6 You will hear that Alberto was admitted
7 to the Miami Children's Hospital when he was eight
8 years old. The clinicians there at the Miami
9 Children's Hospital recommended that he be committed
10 permanently to a residential treatment facility.
11 However, his mother removed him from that hospital
12 against medical advice.

13 From there, he and many of his siblings
14 went sent from foster home to foster home, and as a
15 result, Alberto never received continuous treatment for
16 his mental health problems. Instead he did what many
17 people do that do not have access to adequate medical
18 treatment. He self-medicated and abused narcotics.

19 You will hear how he became fixated with
20 sex to the point that his sexual desires became
21 compulsions. We anticipate that Your Honor will hear
22 testimony from Heather Hobby. Ms. Hobby knew Alberto
23 Garcia from her time living at the Palms Apartments
24 where she resided with her ex-boyfriend, Julian Gray.

25 We anticipate you will hear testimony
26 about the initial tip that she called in to the
27 Gulfport Police Department. And that tip is what led
28 to where we are today.

29 Finally, and as Your Honor heard last

1 week, you will hear that Alberto Garcia has taken
2 responsibility for his participation in the rape and
3 murder of Ja'Naya Thompson. He is here today owning
4 the consequences of his actions. He is sorry. He is
5 ashamed. And he understands that he will never again
6 be a free man walking in this society. For these
7 reasons, Your Honor, at the end we will come back to
8 this podium and ask Your Honor to spare his life.
9 Thank you.

10 THE COURT: Thank you, Mr. Stage. All
11 right. Ms. Blackwell.

12 MS. BLACKWELL: Your Honor, at this time
13 we would call Dr. Robert Storer.

14 THE COURT: Doctor, come on up, sir.

15 (OATH ADMINISTERED)

16 MS. BLACKWELL: Your Honor, at this
17 time, before I begin questioning Dr. Storer,
18 I would like to enter into evidence, I don't
19 believe the state has an objection, Dr.
20 Storer's current curriculum vitae.

21 MR. SMITH: No objection, Your Honor.

22 THE COURT: All right. So it will be
23 marked as Exhibit D-3.

24 (DEFENDANT'S EXHIBIT 3 IN EVIDENCE)

25 THE COURT: All right. Ms. Blackwell.

26 DR. ROBERT STORER

27 was thereupon called as a witness for and on behalf of
28 the Defense, and, having been duly sworn, testified as
29 follows:

1 DIRECT EXAMINATION BY MS. BLACKWELL:

2 Q. would you please state your name for the
3 record?

4 A. Robert M. Storer. S-T-O-R-E-R.

5 Q. And what is your occupation?

6 A. I'm a clinical and forensic psychologist in
7 private practice licensed both in Louisiana and
8 Mississippi.

9 Q. would you give the court the benefit of
10 your professional education and experience?

11 A. I have a bachelor's degree from Old
12 Dominion University with a major in counseling. I have
13 a master's degree from Old Dominion University with a
14 major in psychology and a minor in counseling. I have
15 a doctorate degree from Jackson State University in
16 clinical psychology.

17 I completed a one-year internship at
18 Mississippi State Hospital followed by a one-year
19 postdoctoral experience at the forensic services unit
20 in Mississippi State Hospital.

21 From there I went to Louisiana, was
22 employed by the State of Louisiana and ended my time
23 with the state hospital there as the chief psychologist
24 for the maximum-security unit there in Jackson,
25 Louisiana, and since then have been in private practice
26 solely.

27 Q. Approximately how many times have you
28 testified as an expert in the field of forensic
29 psychology?

1 A. I believe that essentially all of my expert
2 testimony experience is listed on my CV. If I were to
3 guess at the number, I would say somewhere between 30
4 and 50 times.

5 MR. SMITH: Your Honor, if I may
6 interject, the state would stipulate as to
7 the expertise of Dr. Storer. I know that the
8 court as well as the state is very familiar
9 with his experience and his testimony in this
10 court.

11 THE COURT: Is that acceptable,
12 Ms. Blackwell?

13 MS. BLACKWELL: That is, Your Honor. I
14 was just this close to being done.

15 THE COURT: All right. He'll be
16 accepted as an expert in the field of
17 clinical and forensic psychology.

18 BY MS. BLACKWELL:

19 Q. Dr. Storer, were you retained by the
20 defense to conduct a psychological evaluation of
21 Alberto Garcia?

22 A. I was.

23 Q. Have you had the opportunity to interview
24 Mr. Garcia?

25 A. I have on multiple occasions.

26 Q. How many times?

27 A. I believe I've had formal interviews with
28 him on four occasions. Those being July 12,
29 August 5th, November 10th, all of those in 2016

1 obviously. And January 5, 2017. For a total of
2 somewhere around 14 or 15 hours.

3 Q. Do you see Mr. Garcia in the courtroom
4 today?

5 A. I do.

6 Q. And is he the same Alberto Garcia that you
7 see each time?

8 A. He is.

9 Q. Could you point to him and tell me what
10 he's wearing?

11 A. Sure. He is actually seated at the defense
12 table between Mr. Stage and Ms. Collums wearing the
13 jail issued red and white jumpsuit.

14 MS. BLACKWELL: Your Honor, if the
15 record could reflect he has identified
16 Mr. Garcia.

17 THE COURT: The record will so reflect.

18 BY MS. BLACKWELL:

19 Q. Did you prepare a report as a part of your
20 psychological evaluation?

21 A. I did.

22 Q. Has that previously been entered into the
23 record in this case?

24 A. I don't know.

25 MS. BLACKWELL: Your Honor, if there's
26 anyway we could have the court take judicial
27 notice that has been entered.

28 THE COURT: I believe it was sealed by
29 order of January 17. But I could be wrong.

1 Let me see if I can find that order. Yes,
2 that was an order entered of January 17. And
3 it is part of the record.

4 MS. BLACKWELL: Thank you, Your Honor.

5 Q. Dr. Storer, I'm going to jump forward and
6 ask, did you have the opportunity to speak to any
7 collateral informants on Mr. Garcia's behalf?

8 A. I did. Not as many as I attempted to. But
9 I did speak to a number of them.

10 Q. Did some of those people that you attempted
11 to contact simply never answer the phone?

12 A. That's, correct. Some of them I had
13 difficulty locating. Some of them I left messages for.
14 There was at least one person I contacted who said they
15 simply did not want to be interviewed for the
16 evaluation.

17 Q. And was that Mr. Fillipuzzi?

18 A. That was.

19 Q. And he was Mr. Garcia's roommate at the
20 time of this crime occurred; is that correct?

21 A. That was my understanding.

22 Q. Okay. How many of the collateral
23 informants you spoke to are Mr. Garcia's family
24 members?

25 A. well, they're listed on page three of my
26 report. Mr. David Santana was his brother. Miss
27 Yanelly Santana was an older sister. Ms. Julie Lopez is
28 a younger sister. Ms. Evelyn Lopez was a younger
29 sister. Ms. Irasema Cabanas was described as his

1 godmother but I believe was his aunt. Ms. Olga Morales
2 was also a maternal aunt. So all of those folks were
3 relatives.

4 Q. Did those family members give you
5 statements about Mr. Garcia and his childhood?

6 A. They did.

7 Q. Were those statements consistent with one
8 another?

9 A. To a large degree, they were not.

10 Q. Okay. Based on those interviews, could you
11 describe to the court what Mr. Garcia's childhood was
12 like?

13 A. I can. Or at least I think I can do a
14 reasonably reliable presentation. And I say that
15 because there was a great deal of inconsistency in the
16 reporting and not just of the family members but also I
17 have a couple of other folks that I spoke with.

18 I think that the best source of information
19 in my evaluation actually comes from the Miami
20 Children's Hospital records, which were quite
21 voluminous, that I reviewed in detail and had provided
22 quotes from that can be found in the mental health
23 section of my report.

24 Because of the inconsistency of the
25 reporting, of course, in a forensic evaluation I look
26 for converging data. I do my best not to rely on any
27 single source of information. And as I did that, as I
28 tried to determine where there was consistency and
29 where there was not, it was very easy to get confused.

1 And so what I had done is gone through my
2 report, and I believe that the best way to organize it
3 to make it understandable is to talk about it in the
4 framework of what's called adverse childhood
5 experiences. This is a frequently used construct.
6 There's actually a measure that was developed by the
7 Center for Disease Controls called the adverse
8 childhood experience.

9 There've been numerous studies using these
10 items in looking at the connection between childhood
11 events and adult functioning.

12 Q. And what are those three things?

13 A. well, they're divided into three
14 categories. There are actually nine discrete events
15 that are looked at as adverse childhood experiences.
16 The first category is simply dysfunctional home
17 environment. And that includes unmarried parents,
18 domestic violence, substance abuse, and mental illness.

19 The second category is neglect. And that
20 considers both emotional neglect and physical neglect.
21 And the third category is abuse, which it considers
22 emotional abuse, physical abuse, and sexual abuse.

23 Q. Could you explain to the court what
24 portions of Alberto's childhood you looked at to
25 determine whether or not that dysfunction was met.

26 A. Certainly. I did my best to do a
27 comprehensive evaluation. That is everyone that I
28 interviewed I asked them when they first came into
29 contact with Mr. Garcia, how much time did they spend

1 around him, were they living with him, were they just
2 in infrequent contact, where was the source of
3 information.

4 And I asked them about his functioning at
5 birth, immediately after birth, during childhood in
6 school, as well as following school. So I tried to get
7 a longitudinal representation of data from everyone
8 that I interviewed.

9 Q. Okay. Did Mr. Garcia have unmarried
10 parents?

11 A. He did.

12 Q. He did?

13 A. He did.

14 Q. Okay.

15 A. Well, even that is inconsistent. Several
16 reported said that his parents were never married.
17 Mr. Garcia reported that they were married. And I
18 think one of the relatives said that they were married.
19 But in addition to that, Mr. Garcia's mother and father
20 did separate. He stayed with his mother, and she had
21 multiple relationships after that.

22 Q. Was there any domestic violence that was
23 reported to you?

24 A. There was. And, again, if I might, it may
25 be helpful for me to just refer to my report and
26 mention those items as they're documented. For
27 example, in the category of dysfunctional environment
28 concerning unmarried parents, domestic violence,
29 substance abuse, and mental illness.

1 On page nine, Olga Morales, Mr. Garcia's
2 aunt, reported that Mr. Garcia's mother actually had
3 nine kids in total, that one of the daughters was
4 raised by Ms. Morales's sister. And she said, quote,
5 it was because she couldn't take care of the kids she
6 had. There were simply too many.

7 She talked about being one of the
8 caretakers for the children when Mr. Garcia's mother
9 was not there, which you will hear happened fairly
10 often. She stated that she was 12 or 13 when she
11 started taking care of them. That sounds like a
12 reasonable age for somebody to go out for a couple of
13 hours. But as you'll hear in the report, Mr. Garcia's
14 mother actually disappeared for days at a time.

15 On page ten she talked about the day that
16 her daughter was born, the one that she adopted from
17 Mr. Garcia's mother, that Mr. Garcia's mother did an
18 ounce of cocaine, and talked about that she was also
19 doing cocaine while she was pregnant with that
20 daughter, talked about Mr. Garcia's mother using a
21 great deal of cocaine, and also commented, quote, my
22 sister-in-law would go out for two or three days and
23 Olga would take care of them.

24 Also at the bottom of the page, Mr. David
25 Santana, Mr. Garcia's oldest brother, talked about the
26 living circumstances saying that they lived with an
27 aunt, two of them. And one stayed. One left. Maria
28 had her three daughters with her. My mom used to drink
29 every day. They would put us on the living room

1 fighting for their amusement. It started off with my
2 sisters fighting me and my cousin.

3 And then he starts talking about the
4 relationship after Mr. Garcia's mother and father split
5 up. A man named Sergio, and said he was an alcoholic
6 and, quote, he beat the hell out of my mom.

7 On page 11 Ms. Evelyn Lopez with one of
8 Mr. Garcia's younger sisters talk about her mother not
9 being with Mr. Garcia's father, being with her father.
10 And said, I remember being at one point eight of us
11 from four different fathers in the picture. Seven were
12 at home because one was adopted and one was in New
13 Jersey.

14 In addition just down from that, again on
15 page 11, Ms. Evelyn Lopez talked about her mom being in
16 an abusive relationship with her last partner Sergio.
17 He would hit my mom a lot. He was mostly drunk at the
18 time. Ms. Morales, asking her whether the children
19 were ever mistreated or abused, said she didn't think
20 that that happened because of her being there to take
21 care of them but then she added that her sister, quote,
22 would leave. Happened quite a bit. Doing drugs. And
23 just on her little rampage for days at a time. Once I
24 was there, she would just disappear for days at a time.

25 Ms. Morales described how she would show up
26 to visit, and suddenly Mr. Garcia's mother would
27 disappear, and she would not return for a couple of
28 days without any warning.

29 On page -- well, also on page 11 Ms. Evelyn

1 Lopez when asked whether the children were ever
2 mistreated, started talking about that they were
3 mentally abused by being around. And she said, seeing
4 your mom get hurt, scary. She said, I moved out at the
5 age of 14, moved in with my boyfriend's family. We
6 were at a shelter when I was 12 or 13 years old.

7 when she tried to leave when she had to go
8 to the shelter, she tried to kill herself. My aunt had
9 to stay with us for a while, and then when her mother
10 decided to go back with him, she said, no, and moved in
11 with a boyfriend's family.

12 On page 12 of the report at the bottom,
13 Mr. Garcia talked about somebody named Diki. I'm not
14 sure where that person was in the lineup of men
15 involved as stepfathers. But he talked about him being
16 a drug dealer at the time and finding bricks of cocaine
17 under the bed.

18 On page 13, Mr. Garcia was asked about his
19 mother's religious beliefs. And he talked about her
20 being a, quote, hard Catholic. And then said, but she
21 was also into witchcraft and stuff like that. He said,
22 my uncle told me that's all witchcraft stuff, don't
23 touch it. I wasn't allowed to whistle in the house.
24 She said it made the angels leave and her little shrine
25 cry.

26 So apparently there were some odd religious
27 beliefs as well. On page 16 -- and again this is just
28 in the category of dysfunctional home environment. On
29 page 16 towards the top of the page, Ms. Cabanas the

1 godmother and aunt said, my sister-in-law was having
2 problems with drugs, always had issues with drugs.

3 Down on the next paragraph she said, asked
4 if substance abuse was a part of the reason the
5 children were taken away. And as you'll hear, they
6 were taken by the foster care and placed in the foster
7 care system. She said, I don't know. She has alcohol
8 problems, drinks a lot, in Naples she did drugs, she
9 used to smoke pot a lot. And, again said, left them
10 alone in the house to do what she wanted to do, drugs.

11 On page 18 towards the top of the page when
12 asking Mr. Garcia's younger sister Ms. Evelyn Lopez
13 whether she had any knowledge of his having been
14 sexually abused, she said, I don't know, but I do know
15 that my mom's brothers were kind of like pedophiles.

16 On page 19 at the bottom of the page, I
17 spoke with Mr. Alvah Raymond, and when I was asking him
18 if he knew anything about Mr. Garcia's family, he
19 mentioned that Mr. Garcia's mother was smoking weed and
20 stuff, quote, unquote.

21 On page 24, and now we're in substance use
22 history in particular, Mr. Garcia's older sister talked
23 about his mother being addicted to cocaine and stated
24 that she, quote, claimed her incompetent to care for
25 herself and got her into rehab.

26 The older brother, Mr. David Santana, when
27 asked about his mother's substance abuse identified her
28 as an alcoholic and went on to say she would buy 12
29 packs, kill them within hours, and then go buy more,

1 smoking marijuana since I can remember.

2 On page 25, at the bottom of the page, this
3 is the section on mental health history, Ms. Julie
4 Lopez, asked if her mother had mental illness, said, I
5 know she does, she's been diagnosed, she's been Baker
6 acted. And Baker acted in Florida refers to somebody
7 being involuntarily committed for a psychiatric reason.

8 Towards the bottom of the paragraph I asked
9 Ms. Lopez if she knew what kind of mental illness her
10 mother had. She said quote, I know for sure she's
11 schizophrenic, I had to pick her up and doctors talked
12 to us.

13 So those are -- there are, or course, some
14 more examples in the report regarding dysfunctional
15 home environment and in particular those four issues,
16 but those are some of the more obvious ones.

17 Q. Did you uncover any incidences, speaking to
18 family members, any incidences of neglect, emotional
19 and physical neglect?

20 A. I did. And I'd also like to mention that
21 all of these categories sound like they're nice and
22 clearcut. There is some overlap. You can certainly
23 consider some cases of neglect part of the home
24 environment problem.

25 For example, all of those incidences that I
26 just read where mom reportedly disappeared for days at
27 a time, I think it's easy to say that that does
28 constitute both physical and emotional neglect. But in
29 addition to that, on page ten for example, Ms. Cabanas

1 was asked about Mr. Garcia's home environment.

2 And she said, quote, my sister-in-law, she
3 was better off with men than with kids. She has nine
4 kids. She only raised seven. I adopted one. She gave
5 my daughter when she was 48 hours old -- gave me my
6 daughter -- excuse me -- when she was 48 hours old.

7 On page 11 in the middle of the page, Ms.
8 Morales was asked if the children were ever mistreated
9 or abused. And again she's talking about, my sister
10 would leave, happened quite a bit. She would disappear
11 for days at a time. I think we also mentioned that.
12 But that also comes under neglect.

13 On page 12, in talking to Mr. Garcia about
14 his parents divorce, Mr. Garcia said, my mom has
15 multiple fathers. It's like I have a lot of step-dads
16 basically because they're the fathers of my brothers
17 and sisters. But I was never actually sure why they
18 split up. And then he said, referring to his own
19 father, he said, he was never there in the general
20 sense so I never really cared.

21 On page 16, again towards the top, and I
22 want to mention, this has to do with the foster care
23 system and Mr. Garcia being placed in the foster care
24 system. And I just need to underline the fact that,
25 you know, the information that I got from the
26 collateral informants was inconsistent.

27 It really would have been nice to have had
28 the records from the foster care system. And for some
29 reason, those were never available. And so that is a

1 limitation on some of the information that I have about
2 what happens with the foster care system.

3 That being said, regarding neglect, both
4 emotional and physical, at the top of the page
5 Ms. Cabanas was asked about them being placed in foster
6 care. And she first said that her sister-in-law was
7 having problems with drugs. We already talked about
8 that.

9 She said, hasn't been the best home living.
10 In Naples there was some kind of abuse. But towards
11 neglect the bottom of that paragraph, said she had to
12 go to some kind of classes and she only got the girls
13 back. The boys were left to foster care. She only
14 fought for the girls.

15 In the next paragraph, Ms. Cabanas talks
16 about the children being left alone in the house while
17 she was doing what she wanted to do, quote, unquote.
18 She says that that was drugs.

19 On page 18, Mr. Garcia had mentioned that
20 he was living with his uncle at age 13. And I asked
21 him why that was. He was asked to explain that. He
22 said quote, because mom kicked me out, actually it
23 wasn't my mom, it was my step-dad because I got into a
24 fight with my sister, and he wanted me out of the
25 house. He told my mom that if he didn't believe I was
26 going to leave, then he was going to leave, and he was
27 the one paying the bills. I went to my grandmother's
28 house. They said I couldn't stay there. And finally
29 he ends up staying with an uncle.

1 After living with his uncle, he goes to
2 live with his father. And he says in the very next
3 paragraph, quote, I got kicked out of my dad's house.
4 I skipped school. His girlfriend came back from work.
5 She got, quote, pissed off because I was skipping,
6 tried to hit me with a paddle, took the paddle away.
7 She told my dad I was trying to hit her. Mom didn't
8 want me at the time. I was living in the streets for
9 about two weeks. And then I found an abandoned house,
10 and I was there for about six months.

11 Now, again, this is I think an overlapping.
12 To me clearly that represents neglect both physical and
13 emotional, and I think that also borders into the area
14 of abuse when a 13-year-old child is left to fend for
15 themselves in that way.

16 On page 30 of the report there's an entry
17 from Miami Children's Hospital dated July 6 which
18 states that Mr. Garcia, after acting up, and we'll talk
19 about that in a second, says quote, he was tearful from
20 being left behind and not having been approached by his
21 mother to say goodbye.

22 what had happened was his mother had come
23 to collect his older brother who was also inpatient
24 there at the hospital. They took him home but not
25 Mr. Garcia. And apparently, according to this note,
26 apparently the mom didn't even bother talking to him
27 when she came to pick up the older brother.

28 Finally on page 34 of the report there's
29 another note from Miami Children's Hospital dated

1 August 7, and it states, quote, patient stated he was
2 very angry at mom because she wanted David home but not
3 him.

4 So, and again, there are more
5 representations of both emotional and physical neglect
6 found throughout the report. But I think those are
7 representative of that construct.

8 Q. Dr. Storer, just before we move forward
9 with the next thing, I did want to -- you mentioned
10 that the foster care records from the state of Florida?

11 A. I did.

12 Q. Are you aware that we attempted to get
13 those records?

14 A. I know.

15 Q. And we tried very hard, and we were told
16 they didn't exist, not anymore.

17 A. I wasn't aware that you were told that they
18 didn't exist or at least I don't recall that. I knew
19 that the defense team had been trying to get those
20 records and they simply had been unable to.

21 Q. All right. Moving forward to the last one,
22 abuse, emotional, sexual, and physical abuse, did you
23 find any evidence of that in anything that his family
24 had to say?

25 A. I did. On page 13 of my report, and,
26 again, this is in reference to their -- Mr. Garcia and
27 his siblings being placed in foster care. Mr. Garcia
28 mentioned that they had considered his mother unfit.

29 And when I asked him why his mother was

1 determined to be unfit, Mr. Garcia stated, quote, I
2 think it's because at the time she was doing a lot of
3 drugs and a lot of abuse was happening. He said, we
4 were getting hit all the time. We would go to school
5 with bruises on us. Child services was called. And
6 they took us all away.

7 On page 14 at the bottom of the page when I
8 was speaking with Mr. David Santana, and I don't think
9 that I -- and did I mention -- I think I mentioned this
10 already. This was another area where you can say that
11 this was abuse, but I think you could also argue that
12 it goes into neglect.

13 Mr. Garcia's older brother, Mr. David
14 Santana, stated that although his mother worked hard to
15 get the daughters back in the home, she did not try to
16 get the boys back. When I asked him how he knew that,
17 he stated quote, I asked her, why haven't you asked for
18 us back. She told me, I did ask for you, and they told
19 me no. He said, I asked my social worker, and she told
20 me, no, she just wanted to get the girls back, didn't
21 want anything to do with me and my brother.

22 On page 16 in the bottom half of the page,
23 asked specifically if he was ever mistreated by anyone
24 growing up, Mr. Garcia said, I've been hit with
25 baseball bats, chairs, switches. My mom was always
26 quick to hit us.

27 On page 17, asked how often he was hit with
28 chairs and baseball bats, Mr. Garcia replied, at least
29 two to three times a week. When I talked again with

1 Mr. Garcia's older brother, Mr. David Santana, he
2 talked about the fighting, the parents having the
3 children fight each other.

4 And when I asked him to expound on that, he
5 said, there was always conflicts between my cousins,
6 bickering about the stupidest things. Finally it was
7 my mom who said, okay, you guys are fighting, come out
8 in the living room and settle it.

9 We ended up with bruises, black eyes. One
10 of my cousins kicked me and my brother -- and I
11 apologize, this is a quotation. Kicked me and my
12 brother in the nuts. Hurt so bad. And my mom and my
13 Aunt Maria, they found it amusing. They would watch.
14 They were sitting there laughing the entire time.

15 On page -- I'm sorry. There's more on
16 there. Regarding sexual abuse in particular, when
17 Mr. Garcia was asked if he was ever sexually abused, he
18 said, when I was older between the ages of 12 and 13, I
19 had an incident with my uncle. He went on to say, he
20 would hide the money in his pants and I would have to
21 go in there and grab it.

22 Interestingly Mr. Garcia followed that
23 statement by saying, but he's never actually done
24 anything. Obviously, that act alone does qualify as
25 sexual abuse. Asked how often that had happened with
26 his uncle, he said it only happened once.

27 And then he talked about having been kicked
28 out of his uncle's house due to -- and I can only
29 report what he told me on this. He said there was a

1 phonecall from a phone sex line where the phone sex
2 workers called the uncle's phone number. He answered
3 it. He said he was talking to the lady for like an
4 hour and a half. He said this was not a sexual content
5 call, but they charged his uncle for the call, and they
6 kicked him out of the house for that. And that was at
7 age 13.

8 Page 18, Ms. Yanelly Santana, asked if
9 Mr. Garcia had ever been mistreated or abused to her
10 knowledge, said that her older brother David talked
11 about both of them that, quote, when they were in the
12 foster home together they tried to molest them. And
13 I've already read to you the incident of being kicked
14 out of the house and having to live on the streets for
15 two weeks in an abandoned house for three months.

16 Page 22, Mr. Garcia reported that he
17 attempted to go to college at one point. But he ended
18 up getting a letter denying financial aid because, I
19 had horrible credit, and then stated that, quote, I
20 found out my mom had opened up credit cards under my
21 name and abused them.

22 On page 26 of the report, Ms. Julie Lopez,
23 the younger sister talked about, quote, my mom would
24 tell us about him, referring to Mr. Garcia, growing up.
25 set us down and talked to us. Crazy things he would
26 do. Said that when he was about six years old she
27 found him cutting on himself and speaking in tongues.

28 To give that kind of information to
29 siblings when it appears to be untrue, I think would be

1 considered by people to be abusive, and as you'll hear
2 in the Miami Children's Hospital records, although
3 there were allegations of mental illness symptoms
4 throughout very detailed records, none of those
5 symptoms were ever present during his hospitalization.

6 Q. Okay. Let's go to the Miami children's
7 records. When Mr. Garcia was admitted, he was eight
8 years old; is that correct?

9 A. That's correct.

10 Q. And he was admitted, and his mother said
11 that he was psychotic.

12 A. That's the summary of it, yes. Actually
13 his mother made several specific statements of what
14 Mr. Garcia was doing.

15 Q. And can you tell us about those when you
16 find them. I think they're on page 28.

17 A. I think you're right. Page 28. The
18 records from Miami Children's Hospital document that he
19 was admitted there on June 10, 1993, at age eight. And
20 the admission note says, quote, admit to psychiatry
21 eight-year-old patient, and I can't make out the
22 doctor's name off of the records, with diagnosis of
23 psychotic disorder NOS.

24 This is a Hispanic male living with mother,
25 mother's boyfriend, seven of mother's children, one
26 sister and her two children, another sister and her one
27 child. HRS workers -- so child protective services
28 were already involved at that point. HRS workers
29 accompanied the family. HRS became involved after

1 reports of physical abuse by uncles occurred when
2 patient's sister lived with paternal aunt.

3 And here is the report from the mom to the
4 hospital apparently. Patient becomes aggressive, talks
5 to the devil, admits to auditory and visual
6 hallucinations, has command hallucinations telling him
7 to hurt himself and others. Mother stated patient has
8 no remorse, involving himself in satanic rituals,
9 attempted to drown his cousin. HRS workers states he
10 has eight razor blades under the bed.

11 In all of the Miami Children's Hospital
12 records, those records are replete with behavioral
13 problems. Those records are replete with Mr. Garcia
14 being defiant at eight years old, and kicking the
15 staff, throwing things, even urinating in seclusion
16 rooms on the floor laughing at staff while he's doing
17 that.

18 But that is not a symptom of mental
19 illness, per se. Throughout these records the hallmark
20 symptoms of genuine mental illness and of a psychosis
21 are hallucinations, delusions, disorganized behavior.
22 Nowhere in the records are there hallucinations,
23 delusions, or disorganized behavior documented by
24 Mr. Garcia.

25 Q. In those Miami Children's Hospital records,
26 is there any incidences where staff members saw him
27 talking to the devil?

28 A. No, there are not.

29 Q. Is there any mention of auditory or visual

1 hallucinations?

2 A. No, there are not.

3 Q. Nothing. No external stimuli that he's
4 imaginary -- imagining and responding to?

5 A. No. You know, it's not unusual for
6 children to sometimes have imaginary friends and to
7 talk to imaginary friends, and in fact there are a
8 couple of people who talked about Mr. Garcia having an
9 imaginary friend that he spoke to as a child. But even
10 that is not documented anywhere in the Miami Children's
11 Hospital records.

12 Q. Is there any information in the Miami
13 Children's Hospital records, any further information
14 other than this allegation that he had attempted to
15 drown his cousin?

16 A. He did talk about that in the group therapy
17 sessions in the Children's Hospital. And when he
18 talked about it on a couple of occasions, he did so,
19 and they noted in the notes, with a smiling affect.
20 Laughing about it.

21 There's a little bit of inconsistency in
22 that. In some places it says that it was his cousin.
23 During group therapy, he talked about it being his
24 brother. I don't know what to make of that.

25 Q. Did Mr. Garcia tell the staff there that at
26 eight years old he had an alcohol history?

27 A. I believe that he did. I believe that at
28 eight years old, yes, he was saying that he had an
29 alcohol history.

1 Q. Can you tell us in general what about --
2 you said his behavior was defiant. Can you talk about
3 some instances of his defiance?

4 A. I can point to many instances,
5 unfortunately, of defiant behavior on the part of
6 Mr. Garcia while he was in the hospital.

7 Beginning on page 28 -- no I'm sorry that's
8 from the admission note. It was page 29. Right at the
9 very top on June 14 the notes say, patient having
10 frequent minor verbal altercations with his siblings.
11 Spoke frequently in group therapy of killing himself
12 and death general.

13 Then down toward the bottom on June 28,
14 patient had to leave group due to his disruptive
15 behavior, kicking chairs, banging on walls. The very
16 next day, patient refused to be cooperative during the
17 time out. Placed in isolation where he escalated.
18 Patient urinated on the floor and laughed about it.

19 On page 30 July 2, patient is to continue
20 staying in isolation. In the morning patient threw a
21 chair and dresser showing aggression, and this says and
22 psychosis. But I would argue that throwing a chair and
23 a dresser in anger is not a demonstration of psychosis.

24 On July 6th MCH note says, patient very
25 upset about brother's discharge. Patient drew a
26 picture of himself with head cut off and blood
27 dripping.

28 On July 7th became angry during lunch.
29 Began to scream, cross arms, and isolate himself. On

1 page 31, July 15, throwing beanbag toy at peer. Given
2 time out. Patient begin to kick chair, scream, and
3 cry. July 17, hard time responding to redirection.
4 Laughing, talking about killing brother.

5 At the bottom of the page a note dated
6 July 21 during group therapy patient discussed how he
7 attempted to strangle and drown his brother. Appeared
8 to take great pleasure in describing how brother was
9 not breathing.

10 On page 32 on June 22, patient ran climbing
11 on furniture running away from staff screaming, I want
12 to get out, I want to get out. Patient became
13 combative on entering the client area. He was
14 restrained by staff. Patient tried to bite staff
15 screaming, I want to get out of here. Trying to kick
16 staff. Trying to bang head on wall. The Miami
17 Children's Hospital records are replete with these
18 kinds of entries.

19 Q. And he is eight years old?

20 A. At eight years old.

21 Q. Based on your professional experience,
22 looking at these records, what is your opinion of this?

23 A. well, I would first say that someone who
24 specializes in child psychology would probably have a
25 more robust understanding and ability to describe it,
26 but with my general knowledge as a clinical
27 psychologist, I was say this is an extremely disturbed
28 child.

29 And I would think -- there's no way to

1 prove this, but I would think that this is a direct
2 result of those adverse childhood experiences that
3 we've described that were reported by collaterals going
4 on at the home, the disruptive family environment, the
5 absence of parental supervision, the neglect, the abuse
6 that was occurring, all of those things.

7 Q. As far as his, for lack of a better word,
8 prognosis, were there recommendations long-term for
9 Alberto at the age of eight?

10 A. There were.

11 Q. Could you tell us about those, please?

12 A. Certainly. And going through those
13 records, it appeared that for several weeks prior to
14 discharge, the hospital was trying to coordinate with
15 the HRS.

16 There was not enough information in the
17 records that I had to be able to say much about the
18 content other than the fact that they repeatedly said,
19 tried to contact HRS. Trying to talk about discharge
20 planning.

21 When Mr. Garcia was discharged from Miami
22 Children's Hospital, I'm trying to find the exact
23 entry. Is on page 40. The discharge planning form is
24 dated October the 8th. And it says to return home with
25 family waiting for residential placement. All
26 outpatient residential placement is scheduled through
27 David Lawrence center. And they talked about no
28 residential placement available at the time of
29 discharge.

1 Patient returning to mother pending
2 available residential placement. So he was supposed to
3 go to some kind of a residential setting after that.
4 Found no indication that he never went to another
5 residential setting. He may or may not have gone back
6 into the foster care system.

7 Again, there are inconsistent reports. One
8 of the sisters talks about having been placed in the
9 foster care system at least twice. An older sister
10 says, no, they were only placed in foster care system
11 once and that was only for a year. Without those
12 records, I just don't know.

13 Q. But there's no evidence we have that he
14 ever was put in any sort of permanent residential
15 treatment?

16 A. That's correct.

17 Q. An eight-year-old child, wouldn't that be
18 your parent's responsibility?

19 A. I'm sorry. A parent's responsibility for?

20 Q. For them to get their child into treatment.
21 He wouldn't walk in by himself?

22 A. No, he wouldn't. He should have been set
23 up by the hospital. And it appears that they made
24 attempts to do so. Why he was discharged to his
25 parents -- I don't know how much of the home history
26 the hospital had at the time.

27 I would think that with HRS involvement,
28 that by today's standards at least -- and to be fair I
29 don't know what the standards were back then in 1993

1 when Mr. Garcia was in the hospital. I believe that by
2 today's standards a hospital in this kind of
3 circumstance with HRS involvement probably would not
4 have been allowed to release the child back to the
5 parents. They probably would have had to have the
6 residential placement set up.

7 But that wasn't the case here. Here he was
8 allowed to be discharged to his mother awaiting
9 residential placement.

10 Q. Do you have any idea what happened to him
11 after that?

12 A. From the perspective of mental health
13 treatment, no, I don't. Up until he shows up in
14 Mississippi at the hospital at Garden Park I want to
15 say. Yeah, Garden Park Medical Center. That is the
16 next record that I have of any kind of mental health
17 contact.

18 Q. Were you able to determine anything about
19 his schooling?

20 A. Well, I mean, what I was able to determine
21 about his schooling from the collateral informants was
22 that he had a great deal of difficulty, not because of
23 the intellectual problems but because of emotional
24 difficulties. Difficulty regulating his behavior,
25 regulating his emotions.

26 He was described as having an EH ruling, an
27 emotionally handicapped ruling, and being involved in
28 special education. His aunt Ms. Morales told me that.
29 His brother also told me that, and I believe that he

1 told me that as well.

2 I had the opportunity to speak with one of
3 the foster parents who had Mr. Garcia for about a year.
4 Mr. Edgerton. Mr. Edgerton reported that Mr. Garcia
5 had a great deal of difficulty in school, that he was
6 constantly getting in trouble. Mr. Edgerton described
7 him as having no filter, being very impulsive, never
8 thinking about consequences, just doing whatever came
9 to his mind. And that caused a lot of difficulty for
10 him.

11 Q. Do you know what age he stayed with
12 Mr. Edgerton? Was it after the age of eight?

13 A. It was after the age of eight. It was
14 after he had been in the hospital I believe. To go
15 back to the original content of your question about
16 schooling, I want to mention that according to
17 Mr. Garcia, he left school at the age of 16. And that
18 seems to connect with a period of time that he was
19 homeless as well.

20 His reasoning for not wanting to go back to
21 school was that he just wasn't comfortable around
22 people, and in fact his being anxious and
23 uncomfortable, wanting to be by himself is another
24 factor that's seen throughout the reports from multiple
25 informants. That this is someone who wanted to be on
26 their own. If you left him alone, you were okay. If
27 you didn't, it was going to be trouble.

28 Q. Did he graduate from high school? You said
29 he dropped out.

1 A. My understanding is he dropped out at age
2 16. He went into the job corps program. And
3 apparently -- and, again, I don't have records from job
4 corps unfortunately. But by the report, he obtained
5 his GED while he was in the job corps. And he was in
6 that for a good period of time. For a couple of years.

7 Q. Did you learn anything about his employment
8 history?

9 A. I did. His employment history has been
10 reported to be very sporadic. I was very surprised to
11 hear that he was employed in the fast food industry for
12 a period of time. And to hear him say that he actually
13 enjoyed that, that was surprising given what I knew
14 already about his social anxiety and his
15 uncomfortableness and being around people.

16 He mentioned that one of the things that
17 made it okay for him was that he was smoking marijuana
18 all the time as a way to deal with his anxiety. His
19 job performance has been -- let's put it this way, he
20 seemed to get laid off or fired fairly often.

21 He didn't stay in jobs for a long period of
22 time. And his difficulty with jobs I'm told by him in
23 his self-report also tie into what I would describe as
24 obsessive and compulsive sexual behavior.

25 Q. All right. Well, moving forward into that
26 behavior, is there any connection between these adverse
27 childhood experiences and how they manifest themselves
28 in adulthood?

29 A. There is. There's a -- you know, in

1 preparation for this hearing, I did my best to try and
2 do a review of literature. And one of the articles
3 that I found that I thought might be helpful is one by
4 Levinson and Gray published in 2016 in the Traumatology
5 Journal. The title of which is, the Influence of
6 Childhood Trauma and Sexual violence and Sexual
7 obedience in Adulthood.

8 The gist of this article is that there is
9 quite a bit of evidence that not only do these adverse
10 childhood experiences correlate to people having
11 difficulty, but it seems to do so in a dose type
12 response pattern.

13 That is to say, the more adverse childhood
14 events and the more severe the events, the more
15 difficulty somebody has. Some of the surprising
16 findings include the fact that this also seems to --
17 seems to be correlated with sexual -- what we call
18 sexual deviance, unusual sexual activities, bondage,
19 discipline, sadomasochism, those kinds of things.

20 Q. You mentioned that it appeared from his
21 self-reporting I guess, that Alberto lost jobs because
22 of obsessive-compulsive sexual behavior. What did he
23 describe that to be to you?

24 A. Well, I think the only way to really
25 describe this is to tell you exactly what he told me.
26 And first I want to also mention that in my first three
27 interviews with Mr. Garcia, he never mentioned
28 obsessive-compulsive sexual behavior.

29 It was only after I was notified that there

1 had been an Xbox found and that the search of the Xbox
2 found quite a bit of pornography searches on it that I
3 went to Mr. Garcia and said, hey, what's the deal here.
4 So it was only after that discovery that Mr. Garcia
5 told me about his sexual history.

6 And his sexual history begins on page 20 of
7 my report. And Mr. Garcia reported to me that he began
8 masturbating beginning around age ten which is unusual
9 in that most males, I'm not as up on this as I would
10 like to be, there has been a lowering of the age at
11 which children reach puberty. But it's unusual for
12 males to be pubescent at age ten. And usually you
13 don't get self-stimulation and sexual activity and
14 masturbation until after puberty.

15 But Mr. Garcia began masturbating at age
16 ten. And he reported to me that he did this, quote,
17 obsessively, every chance I could do it literally.
18 Every day, more than once a day if I could do it. And
19 when I asked him about the impact of that activity on
20 his functioning, he said that the only time it really
21 caused -- that it did cause him problems, but the only
22 time it caused external kinds of problems, he said he
23 was living with someone, got caught masturbating in the
24 shower using a sex toy.

25 Now, this is also, I think, noteworthy
26 because even if a child reaches puberty young and
27 begins masturbation, it seems very unusual that a child
28 that age would have access to and be using sex toys.

29 He also talked about skipping school in

1 order to masturbate. He talked about gaining access to
2 pornographic material beginning around age 13, that he
3 got more access to it obviously when he got a computer
4 and he came back from the job corps.

5 I asked about his sexual preference. He
6 said that he's had sex with both men and women, but
7 that as he got older, it started being more of a
8 preference for men. He said he's visited pornographic
9 theaters as he got older a lot.

10 He said that his role in sexual
11 relationships was that he would typically be a bottom
12 and not a top. That's a quote. In male male sexual
13 relationships, a bottom is a submissive person, the
14 person who generally receives anal sex rather than
15 gives.

16 He talked about his sexual interest going
17 toward bondage and discipline and sadomasochism around
18 age 18. He talked about one woman in particular, a
19 woman named Jessica who worked at the theater, that she
20 had tied him up for the first time and that he enjoyed
21 that and continued it. He talked about them recording
22 their interaction.

23 And he said that somewhere along the way
24 would go into pornographic theaters and that men would
25 come up and tie him up and that he would offer himself
26 up to be used in this way and that this was enjoyable
27 to him. Asked about his injuries with those
28 activities. He said, yes, he had been cut a couple of
29 times.

1 He said this one time someone tied him up.
2 He was blindfolded, and he got smashed on the side of
3 the head. I asked him about how he made arrangements
4 for these encounters, and he said he would just go
5 inside the theater and wait for somebody. So
6 completely anonymous. No relationship involvement,
7 just sexual activity.

8 Said he would spend a lot of time there in
9 the pornographic theater. Whenever I wasn't at work, I
10 was in there. Sometimes I would call out of work in
11 order to go there.

12 I asked him, you know, normal sexual human
13 behavior involves arousal, climax, and then a quiescent
14 period, and the quiescent period might vary a little
15 bit from one person to another.

16 But I asked Mr. Garcia about that cycle,
17 about what that was like for him. And he said, I
18 wouldn't have a cycle. He said, when I was in Florida,
19 I used my money to go over there and have sex, and then
20 when I was at work, I was thinking about it. I don't
21 think I ever had a quiet period.

22 I asked him if he thought that there was a
23 problem with his sexual activity, whether he considered
24 it abnormal or not. He said that it had led to a lot
25 of difficulties with work, that he had lost jobs as a
26 result of it. He said that his move to New Jersey was
27 actually an attempt to change that pattern and to get
28 some control over his sexual acting out.

29 And he described his time in New Jersey as

1 successful in that way, that he wasn't as obsessed with
2 sexual activity, but that his mom called him from
3 Miami, said that she needed him to come back and help
4 her. That as soon as he got back into the Miami area,
5 back into the Florida area that he went back right to
6 the same pattern again.

7 Q. Let's talk about the search terms because
8 you mentioned that Ms. Garcia did not come forward with
9 this compulsive sexual behavior until you confronted
10 him. Is that a fair statement?

11 A. That is a fair statement.

12 Q. Have you had an opportunity to view those
13 search terms?

14 A. I have.

15 Q. What about them made you think, I should
16 ask him about this?

17 A. Just the number of them. I mean, let's
18 face it, the pornography industry on the internet is
19 one of the biggest moneymaking things there is. Sex is
20 hugely important to us as human beings. We all engage
21 in it, and nobody wants to talk about it.

22 But even that being the case, the number of
23 searches over the timeframe on the Xbox suggested that
24 Mr. Garcia was, for hours, and hours, and hours,
25 involved in viewing pornography. That is extremely
26 unusual.

27 Q. So that, in your mind, would that be
28 abnormal?

29 A. Yes. That represents obsession and

1 compulsion with sexual activity.

2 Q. Do you believe in your professional opinion
3 that Mr. Garcia has any sort of disorder, psychological
4 disorder?

5 A. I do.

6 Q. Can you tell us -- tell the court a little
7 bit about that and why you think that?

8 A. Sure. And I'll apologize that, you know, I
9 don't include clinical diagnoses in my forensic
10 reports. In my experience a clinical diagnoses doesn't
11 do much to answer the court questions whatever they
12 are, whatever the question is that I've been asked to
13 evaluate. And they are often confused without --
14 without additional explanation. So that's why there
15 are no diagnoses listed in the report.

16 In my opinion, Mr. Garcia probably has
17 several diagnoses. One is an anxiety disorder. That's
18 probably a social anxiety disorder. It's represented
19 by his avoidance of social situations, and by his
20 experiencing panic attacks at times.

21 In fact, he has been medicated for that
22 recently. It seems to be doing better with that under
23 the medication. But I think that that is a genuine
24 illness that he has and that he's had it for a good
25 deal of time.

26 I also believe that Mr. Garcia has probably
27 a diagnosis of both -- probably for sure masochistic
28 paraphilic disorder. That is a sexual paraphilia that
29 primarily revolves around wanting to be involved in

1 masochistic sexual activity.

2 He may also have a sadistic sexual
3 paraphilic disorder. I don't have enough information
4 to say for certain on that. When I've asked Mr. Garcia
5 about his preferences, he has described his primary
6 interest in being in the masochistic role. It
7 certainly has interfered with his functioning, caused
8 him all kinds of difficulties, and actually interfered
9 with his interpersonal relationships with others.

10 Q. And just in layman's terms, what does
11 masochism entail?

12 A. Masochism -- any time there's a paraphilic
13 disorder it's -- somebody can have a paraphilia, an
14 interest in something relatively unusual, voyeurism,
15 exhibitionism, frotteurism.

16 In this case masochism. And in masochism
17 people get sexual arousal and pleasure out of being
18 tied up, controlled, denigrated in some way, shape, or
19 form. And it's one thing if you have a paraphilia.

20 There are some reference to a study in the
21 article that I mentioned that said that in one survey
22 50 percent of men endorsed some interest in those kind
23 of -- not that they acted on them, but some interest
24 anyway.

25 But a paraphilic disorder is involved when
26 those desires and activities actually get in the way
27 of, quote, unquote, normal sexual activity.

28 Q. And what in layman's terms is sadism?

29 A. Sadism is -- in layman's terms it is the

1 controlling, the domination, the infliction of pain on
2 someone else for sexual satisfaction.

3 Q. Okay. Did you diagnose Alberto Garcia with
4 antisocial personality disorder?

5 A. I did not.

6 Q. He's not a sociopath?

7 A. In my opinion, he is not. In order for
8 someone -- there's a little bit of a difference between
9 antisocial personality disorder and psychopathy.
10 Antisocial personality disorder is primarily diagnosed
11 based upon behavior.

12 we talk about antisocial behavior, we talk
13 about criminal behavior, lack of concern for others
14 wellbeing. Psychopathy, on the other hand, is a little
15 bit more severe. It involves personality
16 characteristics, a lack of empathy for others, an
17 inability to care for others almost.

18 One of my favorite examples of antisocial
19 personality disorder and psychopathy was a study where
20 they took some people with antisocial personality
21 disorder and some people without it, they put them in
22 front of a rigged gambling machine, slot machine, and
23 they gave them a set amount of money, and said, these
24 machines will pay off up to a certain point, and after
25 that they will not pay off anymore.

26 The folks who did not have antisocial
27 personality disorder, when the machine stopped paying
28 off, when they started losing more than they were
29 winning, they pocketed their money and walked out

1 happily. The people with antisocial personality
2 disorder kept putting the money in until every penny
3 was gone.

4 Persons was antisocial personality
5 disorder, and psychopathy in particular, are not afraid
6 of punishment. They go after rewards. Punishments do
7 not bother them in the least. And Mr. Garcia has
8 clearly demonstrated fear of consequences and a desire
9 to avoid negative situations. That's not at all
10 consistent with someone who has psychopathy.

11 Q. Dr. Storer, my last question I believe to
12 you is Mr. Garcia being medicated right now?

13 A. I believe he is.

14 Q. Do you know what kind of medication he
15 takes?

16 A. I did. I would have to refer to my report.
17 I can't tell you off the top of my head.

18 Q. would you please refer to it?

19 A. Sure. Do you happen to recall?

20 Q. And I'm looking at pages 48 and 49.

21 A. And I thought I had more recent information
22 a little bit later than that. He's been on a couple of
23 different medication since he spent in the jail. Most
24 recently he was started on Inderal specifically for his
25 anxiety. And Paxil. And I know that they increased
26 the Paxil recently although I'm not sure what the
27 dosage is.

28 In addition to that he's also taking
29 hydroxyzine which is Vistaril for short-term anxiety

1 reasons. And I believe he's on mirtazapine as well,
2 which is an antidepressant medication.

3 Q. Since you brought up his incarceration, are
4 you aware of any behavioral problems he's exhibited in
5 the jail?

6 A. Not real -- well, behavioral problems
7 meaning difficulties in regards to rule violations,
8 being disruptive at the jail, no, there's been no
9 report of that. Behavioral problems in at least two
10 suicide attempts while he's been at the jail, yes.

11 Early on, I want to say just about two or
12 three weeks after his initial arrest, he was found with
13 a sheet tied up in a knot around his neck. And in a
14 court appearance, he asked to use the restroom, went
15 into the restroom, wadded up and wetted a bunch of
16 tissue paper and put it in his throat in a suicide
17 attempt. Since then, I don't know of any other suicide
18 attempts.

19 Q. Do you think it would be a fair assessment
20 to say that his time in the Harrison County Adult
21 Detention Center may be the most stable environment
22 he's known?

23 A. I think that probably is fair to say.

24 MS. BLACKWELL: Your Honor, if I could
25 just one moment, please.

26 THE COURT: Yes, ma'am.

27 MS. BLACKWELL: That's all I have of Dr.
28 Storer. Thank you, sir.

29 THE COURT: State.

1 MR. SMITH: Thank you, judge.

2 CROSS-EXAMINATION BY MR. SMITH:

3 Q. Doctor.

4 A. Mr. Smith.

5 Q. You discussed at great length towards the
6 end of your testimony multiple psychological disorders,
7 some of which I cannot even pronounce. Sadomasochistic
8 disorder?

9 A. Paraphilic disorder.

10 Q. Paraphilic disorder. Sadistic?

11 A. You combine the sadomasochism. Masochistic
12 paraphilic disorder having to do with an intense focus
13 much to the exclusion of, quote, unquote, normal sexual
14 activity on masochistic sexual activity.

15 Q. Now, those various psychological disorders,
16 I recognize that you don't include those in your
17 report. However, were any discussed with the defense
18 that you would be testifying to those today?

19 A. I think I did mention that I thought that
20 he did have those diagnoses, yes.

21 Q. Okay. Thank you, Doctor. You also
22 mentioned in your testimony, they asked about his
23 behavior at the jail and what that indicated to you,
24 correct?

25 A. They did.

26 Q. would it affect your opinion if you knew
27 that the defendant was in isolation for the entirety of
28 his time at the jail?

29 A. well, I do know that actually. He has been

1 kept in isolation. He's only been allowed out of his
2 cell to go into the dayroom for rec time, and sometimes
3 he's refused that. My understanding that's been
4 because of his anxiety even though he's in isolation.

5 Q. And would you agree that that isolation can
6 limit his ability to have behavioral problems as it
7 related to other individuals in the jail?

8 A. Certainly.

9 Q. Okay. You spoke early in your testimony
10 about getting multiple inconsistent, I guess, answers
11 or stories from the collateral sources, correct?

12 A. I did.

13 Q. And tell us why that makes it difficult for
14 you to be able to make your evaluation?

15 A. It makes it difficult because, you know,
16 we're talking about asking people about the
17 circumstances 20 to 30 years ago. You know, we all
18 have memory deficits. Memory is reconstructive. We
19 try to put things together the best we can. But that
20 doesn't make them reliable.

21 Probably one of the best examples I have of
22 that is when you go home for Christmas or for
23 thanksgiving for the first as an adult. And you walk
24 in and say, I don't remember this being this way. And
25 that happens for all of us.

26 So I rely on convergent reports to
27 establish reliability and validity and veracity of
28 those circumstances, and when I don't get it, I have to
29 consider that I just don't know for certain.

1 Q. And so of these times when you get these
2 inconsistent sources is part of that because, as you
3 mentioned, different people remember things different
4 ways, correct?

5 A. That's correct.

6 Q. And so the best way for you to be able to
7 formulate, I guess, a solid or comfortable opinion
8 would be to have the benefit of records to substantiate
9 those statements, correct?

10 A. Absolutely.

11 Q. And so in a case like this, for instance,
12 it would be much helpful or it would be very helpful
13 for you to be able to make statements about the
14 difficulty in the home or the dysfunctional home
15 environment if you had the benefit of some records that
16 could substantiate the various statements that you've
17 been given, correct?

18 A. Certainly. And the records that I had
19 substantiate some of it, but certainly not all of it.

20 Q. And the same would go for, say, school
21 records. As it related to his schooling and his
22 education, instead of having to rely on Mr. Edgerton or
23 the defendant, it would be more beneficial to you if
24 you had looked at the records to determine exactly when
25 he dropped out.

26 A. Absolutely.

27 Q. And the type of grades that he made during
28 school.

29 A. And the type of special education ruling he

1 had and what kind of IED he had, and who he responded
2 to those things. Absolutely. And those are things
3 that I typically look for. I got to tell, though, it's
4 not unusual to contact a school when someone's been out
5 of school for 10 to 15 years and have them say, sorry,
6 those records have been destroyed.

7 Q. And when those records are not available,
8 you're simply left at the mercy of the memory, as you
9 said, of people from a decade ago, whether it's this
10 defendant who stands trial or the people who knew him
11 ten years ago, correct?

12 A. That's correct.

13 Q. And that would also go as to his employment
14 records, correct?

15 A. That is correct.

16 Q. As to whether he was terminated from a job
17 for one reason or whether he succeeded at another job
18 for another reason.

19 A. Correct.

20 Q. Okay. One of the sources that you require
21 or, I guess, rely on in your testing in gathering this
22 history is the defendant himself, isn't it?

23 A. Unfortunately, it is.

24 Q. And you say unfortunately because he's
25 aware of the fact that that's going to impact his case,
26 isn't he?

27 A. I say unfortunately because the defendant
28 typically is aware and because in this case, there were
29 specific concerns in that Mr. Garcia was initially

1 saying he wanted the death penalty. He didn't even
2 want life in prison, and therefore, there were concerns
3 about how open and honest he was going to be about
4 these circumstances and mitigation in particular.

5 Q. And your concerns about whether or not he
6 would be truthful in this case, as you said, began
7 early, correct?

8 A. They did.

9 Q. And I want to talk just a little bit about
10 that. As far as it relates to the truthfulness of the
11 defendant. Is there -- are there tests that you can do
12 to determine malingering?

13 A. There are.

14 Q. And if you could, first tell us what
15 malingering is.

16 A. Malingering as defined by the Diagnostic
17 and Statistical Manual of Mental Disorders is the
18 exaggeration and/or fabrication of psychiatric or
19 psychological symptoms for some external secondary
20 gain.

21 Q. And so in a case like this one where the
22 defense is hopeful that mitigation can help in his
23 case, is malingering of significant concern to you?

24 A. Malingering is a concern to me in any
25 forensic evaluation.

26 Q. Every evaluation?

27 A. Every evaluation, yes, sir.

28 Q. You described I know in previous testimony
29 and also in your report in this case, a test called the

1 SIMS test that assists with malingering.

2 A. I have.

3 Q. Tell us about the SIMS test.

4 A. Sure. The SIMS test is the Structured
5 Inventory of Malingered Symptomatology. It is reported
6 on page 49 of my report. It's a 75 item self-report
7 measure that purports to assess the truthfulness of
8 someone in regards to several factors.

9 There is a Neurological Impairment scale.
10 There's an Amnesic Disorder scale, Low Intelligence
11 scale, Affective Disorders scale, and a total score
12 that is obtained from combining all of those scales.

13 And if someone gets an elevated score on
14 any single scale, it suggests that they may be
15 exaggerating or fabricating symptoms in that one area.

16 Q. As it relates in this case to the defendant
17 being one of the sources for the history obtained, tell
18 us about his results on the Amnesic Disorders portion
19 and what that's designed to tell you.

20 A. I would be glad to. But I prefer to give
21 you the results for all of those scales.

22 Q. Absolutely.

23 A. And the reason that I say that is because
24 the reliability of any individual scale is much less
25 than the reliability for the total scale itself.

26 So with that being said, there's a
27 Psychosis scale. Mr. Garcia obtained a score of zero
28 on that scale where a score greater than one suggests
29 malingering. So there was no indication that he was

1 exaggerating, fabricating, or malingering on that
2 scale.

3 Neurologic Impairment scale he obtained a
4 score of two where a score of greater than two suggests
5 malingering. So that did not indicate any malingering
6 on neurologic impairment.

7 On the Amnestic Disorders scale, he
8 obtained a three where a score of greater than two does
9 suggest malingering, exaggeration, or fabrication of
10 memory difficulties, memory loss in particular.

11 On the Low Intelligence scale, he obtained
12 a score of two where a score of greater than two
13 suggests malingering. So there was no indication of
14 malingering there.

15 And on the Affective Disorders scale, he
16 obtained a score of four where a score of greater than
17 five suggests malingering. So there was no indication
18 of malingering there.

19 So there was on one scale, the Amnestic
20 Disorders scale, the score of three where two suggests
21 malingering. So on that scale it suggested that he may
22 be exaggerating, fabricating memory difficulties.

23 But on the total scale for this measure,
24 his score was 11 which is below the cut of 14 which
25 would suggest malingering.

26 Q. Thank you, Doctor. Now, when you discussed
27 the portion of the test where you saw evidence of
28 malingering or exaggeration by this defendant, you said
29 it was called the Amnestic Disorders portion?

1 A. Well, let me just clarify. The measure
2 indicated that he may be exaggerating or fabricating on
3 memory. If you ask me what I saw, what I observed, I'm
4 going to say something a little bit different.

5 I'm going to say that in my opinion
6 Mr. Garcia demonstrated some memory difficulties and
7 some difficulty in organizing his thoughts. He's very
8 circumstantial, as I'm sure has been seen on some of
9 the videos of his questioning. He goes all over the
10 place. In my opinion, that is primarily due to
11 anxiety.

12 Q. Now, when a test such as the SIMS test
13 gives you a result like this one that suggests
14 malingering or exaggeration by the defendant, how is
15 that important to you in your analysis of this
16 defendant overall?

17 A. It's important to me in that, well, first
18 this is a screening measure. It's not comprehensive.
19 But it's important to me because when I see an
20 indication that the person may be exaggerating or
21 fabricating, number one, I'm going to tailor my
22 clinical interview to try and amplify that to find out
23 whether there is any other indication that the person
24 is exaggerating fabricating.

25 If I find evidence that there is, then I'm
26 going to be questioning any information along those
27 lines. So when, on this scale, on the Amnestic
28 Disorders scale he, quote, unquote, dings, if you will,
29 on that, then I start to question when he tells me that

1 he can't remember something.

2 I start pushing and saying, why don't you
3 remember that, tell me more about it. I start trying
4 to give him cues, wondering whether he really has
5 memory loss for that time or whether he just doesn't
6 want to talk about that issue.

7 Q. And in a case like this one where there is
8 such a lack of records from his childhood does the fact
9 that he has a SIMS test finding of an Amnestic Disorder
10 affect you in your evaluation of him?

11 A. If I was only relying on his self-report,
12 it would concern me. And in fact I would probably have
13 followed up with additional testing to assess for
14 memory difficulties.

15 But in this case most, if not all, of those
16 adverse childhood experiences were endorsed to me by
17 collateral informants and not just by Mr. Garcia.

18 Q. Yes, sir. And some of those collateral
19 informants, in fact, contradict the status of the home
20 or the upbringing as opposed to those that claim that
21 it was dysfunctional, correct?

22 A. They did. Particularly the youngest
23 sister.

24 Q. For instance Ms. Yanelly Santana?

25 A. No. Ms. Yanelly Santana is the oldest
26 sister. She had a different perspective as well.

27 Q. She did. She in fact stated that they had
28 an okay home upbringing, correct?

29 A. She did.

1 Q. And the younger sister also corroborated
2 that story, didn't she?

3 A. The younger sister was interesting. On the
4 one hand she said that it was okay, but on the other
5 hand she talked about mom being verbally abusive and
6 that that had a role in their being placed in foster
7 care.

8 And when I asked her whether she thought
9 that the verbal abuse was coming from substance abuse
10 or was her mom just mean or what was going on with
11 that, she said, I really don't want to talk about that,
12 I try not to think about that.

13 Q. And as it refers to Ms. Evelyn Lopez and
14 her statement, she indicated that one of the reasons
15 that they went to foster care was because the defendant
16 Alberto hit their mom in the mouth and she lost teeth
17 from that, didn't she?

18 A. She did say that. Unfortunately, it wasn't
19 corroborated by records. In fact what was corroborated
20 by the records was that there was an incident that
21 occurred while Mr. Garcia was at Miami Children's
22 Hospital and that it was in response to his brother
23 David being discharged from the hospital while he had
24 to remain.

25 Q. And so yet another example of the
26 inconsistency based on the historical answers that you
27 had to work with?

28 A. That's exactly correct.

29 Q. Now, moving forward, you conducted some

1 achievement testing and cognitive testing on the
2 defendant?

3 A. I did.

4 Q. I believe on page 51 you discuss the IQ
5 test of the defendant?

6 A. Thank you, yes.

7 Q. And you told us that he had 101 total IQ?

8 A. Full-scale IQ of 101, yes, sir.

9 Q. Tell us about the Perceptual Reasoning
10 Index of the IQ test and what that is.

11 A. IQ testing has advanced. In the old days
12 we talked about verbal and performance, what's people's
13 verbal skills versus their problem-solving kind of
14 fluid intelligence on the fly.

15 Now we have divided it up and found that
16 there are four large areas regarding the intelligence
17 testing that we use. One is verbal comprehension which
18 has to do greatly with education.

19 Perceptual Reasoning Index is the ability
20 to perceive patterns and to be able to problem solve
21 things visually. Working memory refers to somebody's
22 ability to hold information and manipulate it.
23 Processing speed is the ability to make rapid decisions
24 and act on those.

25 Mr. Garcia's perceptual reasoning index was
26 the highest of his four index scores. It was a 111.
27 Since there's a 15 point standard deviation, that means
28 that he was two thirds of one standard deviation above
29 the mean of 100 in that area.

1 Q. So he had a relatively high score as it
2 pertains to the Perceptual Reasoning Index of the IQ
3 tests?

4 A. He did.

5 Q. I want to move forward to the personality
6 diagnostic measures that you conducted, the MMPI-2.
7 We're going to use the shortened version of that. Tell
8 us about what the MMPI-2 is.

9 A. The MMPI-2 is the Minnesota Multiphasic
10 Personality Inventory, Second Edition. MMPI was one of
11 the first really good comprehensive assessments of
12 personality, and it really has been used over time in
13 two ways. One, diagnostic clarification. And, two, in
14 simply assessing personality functioning.

15 So diagnostically what's the most likely
16 diagnosis for this person and assessment of personality
17 to identify specific areas of difficulty for treatment.

18 Q. Tell us about this defendant's results from
19 the test.

20 A. I cannot.

21 Q. Tell us why.

22 A. Because the MMPI-2, like most psychological
23 measures, includes validity scales, ways to assess
24 whether the person is being honest on the measure,
25 whether they're being consistent in their responses,
26 whether they're over endorsing things on there.

27 And when I administered the MMPI-2 on
28 July 12 to Mr. Garcia, the validity scales were
29 elevated to the point that it was uninterpretable.

1 In particular the F and the FB and the FP,
2 which are measures of infrequent endorsement.
3 Sometimes those scales get elevated with people that
4 are genuinely mentally ill. Sometimes those scales get
5 elevated because people are over endorsing things and a
6 cry for help.

7 Sometimes those scales get over endorsed in
8 an attempt to exaggerate or fabricate. The F scale was
9 the first one, and that's the one with the most
10 overlap. But the FB has to do with items on the back
11 half. And the FP is one that was developed
12 specifically to try and separate out people that are
13 genuinely ill from people that are answering oddly and
14 are probably over endorsing things.

15 And that's the one that really made
16 Mr. Garcia's scores uninterpretable on that. He was
17 over endorsing items.

18 Q. What does that mean when you say over
19 endorsing?

20 A. Well, it's not possible to interpret
21 somebody's intent. And so it may have been his intent
22 to exaggerate things or it may have been his intent to
23 make sure that his difficulties and his problems were
24 noticed.

25 It's a little bit like -- I'm going to come
26 up with a ridiculous example if I try to do this. It's
27 a little bit like somebody going to the doctor's office
28 with a toothache where they've called a couple of
29 times, and they've gotten the bum's rush and gotten

1 ignored. They're going to come in and say this is
2 really, really, really killing me. This is -- on a
3 scale of one to ten, this is a 12, when it's actually
4 only a seven.

5 It's not that they're completely
6 fabricating, but they're over endorsing to try and get
7 the doctor's attention to say, please help me with
8 this. There's no way to know what the intent was. But
9 just the fact that those skills were elevated made the
10 scores uninterpretable.

11 Q. Thank you, Doctor. Now, in your report you
12 reference various statements that were made by the
13 defendant in the police reports, correct?

14 A. I don't remember doing that. Did I?

15 Q. Yes, sir. In reference to the items that
16 you reviewed in preparation of your --

17 A. Oh, in the sources of information. Yes, I
18 did review all of that material. I don't think I
19 mentioned it in any place in the report because I was
20 asked only to -- well, yes, I did. In the competence
21 section I did. I apologize. You're right.

22 Q. That okay. And as you're aware, he made
23 multiple statements to the police, correct?

24 A. I am aware of that.

25 Q. In fact you have the benefit of being in
26 court and watching at least two of the statements that
27 he's made to authorities, correct?

28 A. I did.

29 Q. And would you agree that even in the two

1 that were presented in court, he's inconsistent even
2 within each of those statements, correct?

3 A. I would agree with that.

4 Q. And would you agree that the other
5 statements that he made to law enforcement and to the
6 residence of the Palms Apartments all prior to his
7 arrest were inconsistent statements about his
8 involvement with this crime?

9 A. I think that's fair.

10 Q. And, Doctor, how does that impact your
11 evaluation of a defendant when you're helping him or
12 when you're evaluating him in preparation for his
13 defense?

14 A. If I was evaluating a defendant as far as
15 their mental state at the time of an alleged offense,
16 those would be things that I would look at very closely
17 and that I would ask them about.

18 In this particular case, I was not asked to
19 evaluate his mental state at the time of the alleged
20 offense. And, therefore, I did not ask him any
21 questions about that. And so my ability to interpret
22 that is probably no better than yours.

23 Q. Thank you, Doctor. Now, you indicated you
24 met with this defendant four times for lengthy
25 interviews?

26 A. That's correct.

27 Q. And I believe on direct you stated it was
28 over 14 hours total?

29 A. I think that's about right.

1 Q. And those started this past July and
2 continued until this month?

3 A. That's correct.

4 Q. Now, obviously those interviews help you
5 formulate some of the opinions that you've given us
6 today, don't they?

7 A. They did.

8 Q. And --

9 A. My hesitation is because I really -- I
10 don't know that I've -- when I talk about opinions, I'm
11 usually talking about competence or mental state. And
12 in this evaluation, what I'm really doing is I'm trying
13 to identify potentially mitigating circumstances.

14 Q. Perfect. That's exactly where I was going
15 to go next. At the end of your report you list some 14
16 factors of mitigation as it relates to this defendant,
17 don't you?

18 A. That's correct.

19 Q. And part of how you compile that mitigation
20 is based on your interviews with the defendant, isn't
21 it?

22 A. That's correct.

23 Q. Yet nowhere in any of those 14 factors of
24 mitigation is the name Julian Gray mentioned, is it?

25 A. No. I wasn't asked to evaluate Julian
26 Gray.

27 Q. You also list multiple episodes of
28 unprovoked physical violence by this defendant as a
29 child, correct?

1 A. That's correct.

2 Q. You discussed on direct the attempt to
3 drown a cousin?

4 A. That he spoke of at the Miami Children's
5 Hospital, yes, sir.

6 Q. And then there were also attacks on school
7 personnel.

8 A. That were reported by his brother and I
9 think by his aunt, yes, sir.

10 Q. And did this include stabbing a teacher in
11 the hand and a bus driver in the neck?

12 A. They did.

13 Q. would you agree with me that there were
14 over 20 episodes of unprovoked attacks alone while he
15 was at the Children's Hospital?

16 A. There were quite a few. If you've counted
17 them up and come up with 20, I'll defer to your
18 counting ability on that.

19 Q. And are you also aware, as described in
20 your report, of an attack on his sister who was
21 sweeping and hit his video game?

22 A. I am.

23 Q. And those are just the acts of physical
24 unprovoked violence that were documented, aren't they?

25 A. That's correct.

26 Q. His acts of violence were not just limited
27 to humans, were they?

28 A. There were reports of animal cruelty as a
29 child as well.

1 Q. what types of animals were involved in
2 that?

3 A. In particular cats although there were
4 reports from the mother of killing lizards. The
5 biggest thing though was cats.

6 Q. Multiple cats, correct?

7 A. That's correct.

8 Q. And they weren't just injured, they were
9 killed by the defendant, correct?

10 A. That's correct.

11 Q. And all of these acts of aggression and
12 violence occurred well before the defendant came to the
13 State of Mississippi, didn't they?

14 A. That's correct.

15 Q. In your professional occupation, why is it
16 important or relevant for you to know that someone
17 would take pleasure in killing animals or would have
18 unprovoked episodes of violence?

19 A. Well, those are two different things. Let
20 me try to handle them one at a time if I can.

21 Someone's involvement in animal cruelty or in killing
22 animals is particularly concerning.

23 It could be an indication of antisocial
24 personality disorder. It could be indicative of
25 psychopathy. But even if it's not indicative of either
26 of those, it suggests someone -- and in this case we're
27 talking about a child -- it suggests someone who really
28 has not developed empathy, has not developed the
29 ability to have care and concern for other forms of

1 life and possibly other people.

2 You know, those impulses to lash out we
3 typically learn to control sometime around age two or
4 three years old. We talk about the terrible twos all
5 the time. Those are times when kids automatically do
6 whatever they want and mom or dad have to step in and
7 put boundaries in place and say, no, you don't do this.

8 These are not internal controls to start
9 with. They become internal but only because of the
10 limits that are placed on us from parents. And I don't
11 know that I'm doing a good job of explaining this, but
12 to have a child injure and kill animals suggests that
13 that somehow that has not taken place.

14 Q. And then the second part of that was the
15 unprovoked episodes of violence.

16 A. And I cringe a little bit at the word
17 unprovoked because sometimes they're described as
18 unprovoked in the Miami Children's Hospital records
19 meaning. There was no warning.

20 But, again, that's relying on what we
21 consider normal behavior. When you get mad at someone,
22 you say, hey, I'm mad at you. If you continue to be
23 angry, you say, I'm really mad at you. Fights
24 generally don't break out at a split second.

25 There's workup a period. There's an
26 escalation that occurs which generally allows people to
27 back off, run away, get prepared, whatever it is that's
28 going to happen.

29 In Mr. Garcia's case, there didn't seem to

1 be any noticeable escalation period. He simply acted
2 in a violent way without any noticeable workup. That
3 doesn't mean that there wasn't a workup internally for
4 him. But it also suggests that he's never learned how
5 to engage in any kind of negotiation and how to control
6 his anger up to that point.

7 Q. Doctor, the last subject that I want to
8 talk about were these factors of mitigation, the 14
9 they were listed at the end of your report.

10 when you're listing factors of mitigation,
11 like in this case, the 14, how do you determine what
12 order to put them in?

13 A. I generally try to put them in
14 chronological order as to when they occur. I try to do
15 that. We could certainly argue about whether one comes
16 in front of the other. And I'm glad to say that you
17 noticed that there are 14 not 15. There was a double
18 entry there. I'm sorry.

19 Q. I did. So the order that they are listed
20 is not an indication of the strength of your opinion as
21 to these factors?

22 A. No, they're not.

23 Q. And you're not necessarily vouching for the
24 concrete presence of all of these factors simply
25 because they are listed, are you?

26 A. Everything that is listed I believe that
27 there is adequate evidence for me to have reasonable
28 reliability that they occurred.

29 Q. And because of that, it's important for you

1 to list them regardless of the strength or the weight
2 of those factors?

3 A. As far as their importance in potential
4 impact on his development, correct.

5 Q. Yes, sir. Now, I want to spend a minute
6 just talking about the first one that's listed.
7 Chaotic family environment. I know you discussed that
8 at great length on direct.

9 But then the next three or four, maternal
10 neglect or abuse, maternal mental health, maternal and
11 fraternal substance abuse or alcohol abuse, would you
12 agree that all of those relate to or contribute to a
13 chaotic family environment?

14 A. Certainly. I list those individually
15 because most of the research around adverse childhood
16 experiences have divided those out as individual
17 factors.

18 Q. And unfortunately those items that were
19 listed, maternal or fraternal substance abuse or
20 alcohol abuse or a chaotic family environment, they're
21 pretty common in society today, aren't they?

22 A. They are. I believe that in the article
23 that I cited for you, some 50 percent of a 17,000
24 person study endorsed at least one. What's unusual is
25 the higher number of these events in any one
26 individual's background.

27 Q. And, Doctor, would you agree that the vast
28 majority of people in society who grow up in a chaotic
29 family environment do not commit capital murder?

1 A. Absolutely I would agree with that.

2 Q. Fortunately. Another point of potential
3 mitigation that was referenced was homelessness,
4 correct?

5 A. Correct.

6 Q. How many years was this defendant homeless?

7 A. That's unclear. There were multiple
8 reports that the mother was homeless at various points,
9 that they were bouncing from one household to another.

10 In addition to that, when they were in a
11 home of their, they often times had other relatives
12 coming in and out. But I can't come up with a concrete
13 number of months or years that that occurred.

14 Q. And homelessness is also a tragic
15 circumstance that's endured by many people in society,
16 isn't it?

17 A. It is.

18 Q. In fact there are homeless people who live
19 that way, unfortunately, for year after year, don't
20 they?

21 A. That's true.

22 Q. And would you agree with me that the vast
23 majority of those people also do not commit capital
24 murder?

25 A. I would.

26 Q. One of the other items that was listed as
27 potential mitigation was that he was a victim of sexual
28 abuse, wasn't it?

29 A. Yes.

1 Q. How many times did this defendant say that
2 he was sexually abused as a child?

3 A. This particular victim, Mr. Garcia,
4 downplayed the importance of any sexual abuse. He
5 actually said that there was only one occurrence from
6 his uncle having him reach his hands down his pants on
7 one occasion and then said that he never did anything
8 to him directly.

9 Q. As part of his discussion of this one
10 incidence with his uncle, did he describe that there
11 was sexual penetration akin to what has happened in the
12 case before us?

13 A. No.

14 Q. What did he describe?

15 A. Just what I have already said. I'll be
16 glad to just read it.

17 Q. Just that the uncle asked him to stick his
18 hands down his pants?

19 A. It was something about asking for money and
20 the uncle telling him, if you want money, you're going
21 to have to go get, and having put the money down inside
22 of his pants.

23 Q. The final point of the mitigation that I
24 want to discuss with you is the anxiety disorder. We
25 spent a lot of time on it today and also in previous
26 hearings discussing the defendant's anxiety disorder,
27 correct?

28 A. Correct.

29 Q. Under what circumstances does this

1 defendant's anxiety disorder typically manifests
2 itself?

3 A. Large groups of people. Social
4 interactions.

5 Q. So just to be clear, it's not your
6 testimony here today that this defendant had an episode
7 of his anxiety disorder on July 16, 2014, causing him
8 to rape and murder this child?

9 A. No.

10 Q. Okay.

11 MR. SMITH: No further questions, Your
12 Honor.

13 THE COURT: Ms. Blackwell, any
14 follow-up?

15 MS. BLACKWELL: Just extremely briefly,
16 judge. I know it's getting late.

17 REDIRECT EXAMINATION BY MS. BLACKWELL:

18 Q. Just so everything is above board, Dr.
19 Storer, when did you tell me about the paraphilic
20 diagnoses?

21 A. I think it might have actually been just
22 last evening after hearing some of the testimony and
23 thinking that I may be asked about that. I believe
24 that's when I mentioned to you that he probably does
25 have that disorder.

26 Q. And that would've been maybe around
27 7:00 PM?

28 A. That's correct.

29 Q. Mr. Smith mentioned that Mr. Garcia is

1 secluded while he's in custody.

2 A. Correct.

3 Q. Is that by his choice?

4 A. No.

5 Q. He's secluded for his protection?

6 A. That's correct.

7 Q. Not to protect other people from him?

8 A. That's correct.

9 Q. And that has to do with this charge. would
10 that be fair?

11 A. That's what I've been told.

12 Q. Mr. Smith also pointed out there was an
13 inconsistency with the sisters speaking about the home
14 life. And they said it wasn't maybe that bad.

15 A. Correct.

16 Q. Could that be attributed to the fact that
17 multiple sources says the mom fought for them?

18 A. I think it could be attributed to many
19 things. One of the most likely issues is that the
20 oldest sister suggested that they were returned to the
21 home fairly quickly, that their being removed from the
22 home wasn't that disruptive.

23 And it may be because she was the oldest
24 and was in a position where she had more say-so in what
25 would happen. Also in the fact that when she was
26 placed in foster care, she was only in foster care for
27 a relatively short period of time, a couple of months,
28 before she was then placed with one of the family
29 aunt's. So at least she was in the home environment.

1 But, you know, that is speculation on my
2 part. I really can't say why, from her perspective, it
3 didn't seem as bad. I can't say really why from the
4 youngest sister some aspects of the home life didn't
5 seem as bad.

6 But I do know that from the other
7 collateral reportings and from what's in the Miami
8 Children's Hospital and the fact that the children were
9 taken from the home by social services, things have to
10 be pretty bad before kids are taken out of the home.

11 MS. BLACKWELL: That's all I have, Your
12 Honor. Thank you, Dr. Storer.

13 THE COURT: All right. Thank you, Dr.
14 Storer. You can step down.

15 It's 5:44. So clearly we're going to
16 recess for the day today. Any problem with
17 starting at 9:00 in the morning? Everybody
18 will be good to go at 9:00?

19 MR. PARKER: Yes, Your Honor, that's
20 fine.

21 THE COURT: All right. Now, let me ask.
22 At nine are we going to start with a witness
23 or are you guys going to have this hearing
24 with regard to the issue on the Heather --
25 I'm sorry, I can't remember her last name.

26 MS. BLACKWELL: That's okay. We can
27 start that at nine, judge, and try to hear
28 that quickly.

29 THE COURT: That's what I'm asking, if

1 you want to do that hearing at nine.

2 MR. PARKER: Yes, Your Honor.

3 MS. BLACKWELL: Yes, Your Honor, please.

4 THE COURT: All right. Then we'll be in
5 recess until nine in the morning.

6 MS. BLACKWELL: Just before we recess,
7 judge, could the attorneys approach on a
8 matter?

9 THE COURT: Do we need to keep Michelle
10 here so we can put it on the record? Is it a
11 scheduling matter only?

12 MS. BLACKWELL: It's an authorization
13 for Mr. Garcia to have a noncontact visit
14 with those people after everyone is gone.

15 THE COURT: Do we need to make a record
16 on that, state? I think that's a problem for
17 the jail.

18 MR. PARKER: It is, but the state would
19 also object.

20 MS. BLACKWELL: They're not going to
21 testify.

22 THE COURT: All right. well, anybody in
23 the audience who wants to stay, have a seat.
24 If you want to go, go ahead and go.
25 Ms. Blackwell.

26 MS. BLACKWELL: Your Honor, when
27 everybody was gone. That was the security
28 issue is to clear the courtroom and have just
29 jail staff and the attorneys and him speak

1 with these people. Not to have a courtroom
2 full of people but rather than try to get --
3 does this make sense?

4 THE COURT: No. Because what I'm
5 telling you, if they want to stay and have
6 you make the record and they want to hear
7 that, they're welcome to stay. If they
8 don't, they can go so that everything can get
9 quiet and you can make your record.

10 MS. BLACKWELL: Fair enough, judge.
11 We'll wait for them to leave.

12 THE COURT: All right. So,
13 Ms. Blackwell, exactly now what is the
14 request?

15 MS. BLACKWELL: Your Honor, the request
16 is only that once the courtroom is cleared,
17 only jail personnel in here, if those -- the
18 Raymonds that we spoke about earlier could
19 have an opportunity to speak to Mr. Garcia
20 noncontact.

21 They could sit somewhere in the gallery.
22 We could sit here at the table and just give
23 him an opportunity to at least speak to them
24 while they're here. That's the only request.

25 THE COURT: All right.

26 MR. SMITH: Your Honor, our objection
27 would be based on the fact that the jail has
28 certain parameters that are set up as far as
29 when visits occur and how they occur with

1 inmates. And so we would ask that they not
2 be required to depart from that.

3 THE COURT: All right. So, Captain,
4 what's the Sheriff's Department's policy?

5 CAPTIAN PITTS: I would have to defer to
6 the warden because there is visitation
7 policies. But they have deviated somewhat on
8 occasion. So I have to defer to him to get
9 the sheriff's ruling on it.

10 THE COURT: Okay. All right. We'll be
11 in recess until we hear.

12 (PAUSE IN THE PROCEEDINGS)

13 THE COURT: All right, Captain, what did
14 you find out?

15 CAPTIAN PITTS: The sheriff says it's
16 outside the scope due to security reasons,
17 and he said, no.

18 THE COURT: All right. And is it
19 because they're not family members?

20 CAPTIAN PITTS: Correct. Not family
21 members, and it's outside the scope of the
22 policy for visitation.

23 THE COURT: All right. Ms. Blackwell,
24 any other record you want to make?

25 MS. BLACKWELL: No, Your Honor.

26 THE COURT: State.

27 MR. SMITH: No, Your Honor.

28 THE COURT: All right. Security is left
29 to the Sheriff's Department. It is their

1 responsibility. And I generally follow their
2 rules unless there is some very, very serious
3 reason not to do so.

4 In fact, I don't think I found one yet
5 since I've been on the bench. We have
6 allowed some defendants to visit with family
7 members because the Sheriff's Department does
8 permit that when it can be done when there is
9 sufficient personnel. And so even that is
10 not done on a routine basis.

11 So at this point I'll have to defer to
12 the sheriff's decision with regard to the
13 security issue and deny the request.

14 MS. BLACKWELL: We respect the sheriff.

15 THE COURT: All right. Anything else we
16 need to put on the record?

17 MR. PARKER: No, Your Honor.

18 THE COURT: All right. Then so I will
19 still see you guys at 9:00 o'clock in the
20 morning.

21 MR. PARKER: Yes, ma'am.

22 (RECESS FOR THE EVENING)

23 (PROCEEDINGS RESUME ON JANUARY 25, 2017)

24 THE COURT: All right. As I understand
25 from the attorneys, the issue with regard to
26 Ms. Hobby has not been resolved, and we still
27 need to hear that matter, correct.

28 MR. PARKER: Yes, Your Honor.

29 MS. BLACKWELL: Yes, ma'am.

1 THE COURT: All right. Ms. Blackwell.

2 MS. BLACKWELL: Your Honor, I don't know
3 how you'd like to proceed. If we could just
4 go on argument at this time as to what I
5 anticipate her testimony would be, and then
6 the state can argue against that or we can
7 hear from her, whatever Your Honor thinks is
8 must efficient.

9 THE COURT: Well, I actually think the
10 most efficient thing is going to be to hear
11 from the state first since it is their
12 objection.

13 MS. BLACKWELL: Yes, ma'am.

14 MR. PARKER: Yes, Your Honor. Your
15 Honor, the defense -- may I stay at the
16 table?

17 THE COURT: Certainly.

18 MR. PARKER: Your Honor, the defense has
19 informed the state that they intend to call
20 Heather Hobby as part of its mitigation case.

21 They have proffered that part of that
22 testimony will relate directly to this
23 defendant, Alberto Garcia.

24 But also Ms. Hobby will make statements
25 in an attempt to elicit alleged prior bad
26 acts and alleged prior statements made by
27 Julian Gray that do not relate to this
28 defendant or Ja'Naya Thompson.

29 we bring that to the court's attention

1 because the state objects to those statements
2 as not being relevant and they do not go to
3 any statutory mitigating factor under
4 99-19-101(c).

5 This is similar to what the defense
6 attempted to do to Chase v. State at 645 So.
7 2d 829, a Mississippi Supreme Court case from
8 1994.

9 In Chase during the sentencing phase of
10 a capital murder, the defendant repeatedly
11 attempted to elicit the bad character of a
12 codefendant which the prosecution continually
13 objected to for relevance and the trial court
14 sustained as the relevancy.

15 The Mississippi Supreme Court affirmed
16 the trial court stating that defendants are
17 given broad latitude introducing mitigating
18 circumstances but it restricted that the
19 evidence must be relevant.

20 The court held that the defense in that
21 case was confused regarding the nature of
22 mitigating evidence. The alleged character
23 of another is not the same as mitigation for
24 the specific defendant.

25 That is particularly true in this case,
26 Your Honor, where the defendant has already
27 pled guilty and admits his crimes.

28 THE COURT: All right. Ms. Blackwell.

29 MS. BLACKWELL: Your Honor, we do

1 attempt or we plan to attempt to elicit from
2 Ms. Hobby the contents of her initial tip to
3 Detective Clay Fulks with Gulfport PD.

4 He was working the, I guess we call it
5 hotline, taking leads from the community
6 about Ja'Naya's disappearance at the time.

7 Ms. Hobby, we anticipate, will say that
8 based on her experiences living with Julian
9 Gray and things that he had related to her,
10 she felt so moved by that that she called and
11 left a tip that directed the police to
12 potentially look at him as a person of
13 interest, which we know now led to Mr. Garcia
14 interjecting himself into the investigation,
15 if you will. And basically, Mr. Hobby's tip
16 broke this case wide open.

17 Your Honor, while there is some -- there
18 will be I think at least -- we'll try to
19 limit it, some statements about prior bad
20 acts of Julian Gray, we believe that it is
21 relevant to tell the entire story of how we
22 got here. And we wouldn't be here without
23 Heather Hobby and her tip.

24 THE COURT: How does that, though,
25 mitigate with regard to Mr. Garcia?
26 Regardless of if Mr. Gray was a terrible,
27 horrible, awful person, if that's what she's
28 going to say or he did terrible things,
29 whatever it is she's going to say about that,

1 how does that mitigate anything with regard
2 to what Mr. Garcia is accused of doing in
3 this and has admitted to doing in this case?

4 MS. BLACKWELL: Yes, Your Honor. I want
5 to point the court's attention to the Supreme
6 Court case of Lockett v. Ohio. That's 438 US
7 586 at page 604. That's from 1978 where the
8 US Supreme Court reiterated that the
9 sentencer must be allowed to consider in
10 mitigation any aspect of a defendant's
11 character or record and any of the
12 circumstances of the offense that the
13 defendant proffers as a basis for a sentence
14 less than death.

15 In this case, Your Honor, we believe
16 that this limited information, like I
17 explained, I don't want to get into every bad
18 thing Julian Gray has possibly ever done.
19 We're not interested in that. We're not here
20 today on that.

21 But this tip especially is important
22 because in some ways depending on -- in
23 some ways it substantiates portions of Mr.
24 Garcia's colloquy with Your Honor at the
25 plea.

26 And, again, we believe that a mitigating
27 factor is his character, and if Your Honor
28 believes that he was truthful with you at his
29 plea during his explanation of the facts of

1 this case, then you can consider that when
2 considering potentially a sentence less than
3 death.

4 And we believe that in itself is
5 mitigating.

6 THE COURT: So something she's going to
7 testify to is going to support what he told
8 me he did in this case, what he told me
9 happened in this case?

10 MS. BLACKWELL: I believe so, Yes,
11 ma'am.

12 THE COURT: Okay.

13 MS. BLACKWELL: As far as -- I want to
14 point the court's attention to Edwards v.
15 State which 737 So. 2d 275. That is a death
16 penalty case from Mississippi from -- it
17 looks like 1999 where the court said that the
18 use of mitigating evidence is unlimited with
19 the only restriction being that it should be
20 relevant.

21 And I've previously explained why I
22 think that potential, the tip is relevant to
23 this case to mitigation. In the Edwards case
24 the court did not allow, sustained the
25 state's objection as to relevance on a
26 particular issue of mitigation that it dealt
27 with the defendant's brothers testifying
28 about their experience in a hospital.

29 And the court said that that was not

1 proper. It should have been allowed as
2 mitigation evidence and actually reversed the
3 death sentence in that case. So that's how
4 important we believe this position to be.

5 THE COURT: All right. Without knowing
6 what she is going to say, it's a little
7 difficult to rule at this point. But clearly
8 she could testify with regard to her own
9 actions in terms of making the call, what she
10 told law enforcement, et cetera. So with
11 that understanding, Mr. Parker, you have any
12 response?

13 MR. PARKER: Just briefly, Your Honor.
14 The state anticipates they want to get out
15 allegations from the this tip. The tip is
16 Heather Hobby called the police and said that
17 she had seen Julian Gray looking at child
18 pornography, that she had alleged abuse of
19 Gray of another child, things that don't have
20 anything to do with this offense.

21 when the defense was talking about
22 Lockett, that has to do with the sentencer
23 knowing facts of the offense. I don't see
24 how those are relevant. They don't have
25 anything to do with the mitigation of this
26 defendant.

27 MS. BLACKWELL: And, judge, just
28 briefly, another portion of the tip, at least
29 as reported in Detective Sergeant Jewell's

1 narrative is that Ms. Hobby informed law
2 enforcement that it was -- that Mr. Gray had
3 told her that he was resisting the urge to
4 snatch a child, to kidnap a child.

5 And in this case, Your Honor, Mr. Garcia
6 has previously stated to you in his colloquy
7 and also during his second statement with
8 Detective Sergeant Werner that it was Gray
9 who was the abductor.

10 And we believe that that lends
11 credibility to his statements during his plea
12 colloquy which if Your Honor believes are
13 honest, you could consider that when
14 contemplating or deliberating a sentence less
15 than death.

16 THE COURT: All right. Well, I think
17 the best thing to do is get Ms. Hobby, let
18 her start her testimony. And, state, if at
19 any point it goes into these areas, you'll
20 have to object at that point because at this
21 point it appears to me that her phonecall is
22 at least relevant as to what occurred in this
23 case, whether it's true or not, it's clearly
24 hearsay that she's passing on to law
25 enforcement.

26 But she can certainly testify to what
27 she told them, and then the court will just
28 have to weigh it at that time. And then if
29 it goes into other items that you still

1 believe are not relevant, you can object at
2 that time, and I'll have a better basis on
3 which to make a ruling.

4 MR. PARKER: Yes, Your Honor.

5 THE COURT: All right.

6 MS. BLACKWELL: Your Honor, we would
7 call Ms. Heather Hobby.

8 THE COURT: Come all the way up here,
9 please, ma'am.

10 (OATH ADMINISTERED)

11 HEATHER HOBBY

12 was thereupon called as a witness for and on behalf of
13 the Defense, and, having been duly sworn, testified as
14 follows:

15 DIRECT EXAMINATION BY MS. BLACKWELL:

16 Q. Ms. Hobby, could you state your name,
17 please?

18 A. My full name Heather Lacey Hobby.

19 Q. Okay. Just make sure you lean into that
20 microphone. You're kind of soft spoken. I just want
21 to make sure that the judge and everybody can hear what
22 you say, okay?

23 A. Okay.

24 Q. All right. Do you reside on the
25 Mississippi Gulf Coast?

26 A. Yes, ma'am. I live in Gautier.

27 Q. How long have you lived down here in this
28 area?

29 A. Since about June of last year.

1 Q. How old are you today?

2 A. Twenty-seven.

3 Q. How do you know Alberto Garcia?

4 A. He was my ex-boyfriend's friend and
5 neighbor.

6 Q. And who is your ex-boyfriend?

7 A. Julian Casper Gray.

8 Q. And do you see Alberto Garcia in the
9 courtroom today?

10 A. I do.

11 Q. Could you just point to him and tell us all
12 what he's wearing?

13 A. The prison uniform.

14 Q. What color is it?

15 A. It looks orange and white and orange shoes.

16 MS. BLACKWELL: Your Honor, if the
17 record would reflect she's identified Mr.
18 Garcia.

19 THE COURT: The record will. I guess
20 it's kind of orange.

21 MS. BLACKWELL: It's a little faded
22 today.

23 Q. I'm going to take you back to July of 2014.

24 A. Okay.

25 Q. Did you ever make a phonecall to the
26 Gulfport Police Department?

27 A. I did.

28 Q. Was it in reference to what?

29 A. My ex-boyfriend, Julian Casper Gray.

1 Q. Okay. why did you make that call? what
2 prompted you to call law enforcement?

3 A. I knew he had a past of child pornography.

4 MR. PARKER: Your Honor, I'm going to
5 object.

6 THE COURT: It will be overred at this
7 point.

8 A. I knew had he a past of child pornography,
9 an attraction to children. And I felt that after I saw
10 the little girl from the Palms missing, I should
11 contact the police.

12 Q. Do you know now the name of the little girl
13 that had been missing?

14 A. I do.

15 Q. what's her name?

16 A. Ja'Naya Thompson.

17 Q. Did you ever see Ms. Thompson at the Palms?

18 A. No. I never interacted with her or saw
19 her.

20 Q. Do you recall telling law enforcement that?

21 MR. PARKER: Objection, Your Honor,
22 leading.

23 THE COURT: Sustained.

24 BY MS. BLACKWELL:

25 Q. Is there anything else that you told law
26 enforcement besides the child pornography issue with
27 Mr. Gray that you felt was important?

28 A. Just how he treated me. I went through a
29 lot of sex abuse.

1 MR. PARKER: I'm going to object, Your
2 Honor.

3 THE COURT: Sustained.

4 A. Okay.

5 BY MS. BLACKWELL:

6 Q. Okay. You don't have to finish answering
7 that question. Is there anything else without talking
8 about that?

9 A. That I told law enforcement?

10 Q. Yes.

11 A. I don't know if I can say it.

12 Q. Just say it, and if he, Mr. Parker, stands
13 up and objects, just stop talking until Judge Dodson
14 makes her ruling.

15 A. I just basically told law enforcement that
16 I think he needed to be investigated, and just my
17 personal history with him.

18 Q. How long had you lived with Mr. Gray at the
19 Palms?

20 A. At that -- we had been dating previously.
21 But at that point, I only lived there about nine
22 months.

23 Q. When did you move out?

24 A. It was June of 2014.

25 Q. Did you ever have an opportunity to see
26 Alberto Garcia at the Palms Apartments?

27 A. I did.

28 Q. Can you tell us what that was like?

29 A. He was Julian's friend. I never had a

1 negative experience with him. He was, you know, just I
2 thought a normal nice guy. And that was about it. I
3 mean, I saw him almost every day at my apartment. He
4 would come up and visit and play video games and stuff.

5 Q. Can you describe Mr. Garcia's interactions
6 that you observed with Mr. Gray?

7 A. Very odd. I thought it was kind of odd
8 that he didn't have a job or family or friends. And he
9 was just always there. I thought -- I just thought it
10 was odd, past a friendship, their relationship.

11 They seemed like a married couple to me.
12 But I don't know if that's an opinion or fact. So...

13 Q. Did you ever -- what was Mr. Gray's
14 attitude towards Mr. Garcia?

15 A. I felt like he mistreated him. I felt like
16 he kind of had -- he just did whatever he wanted him to
17 do, and I felt like he took advantage of that.

18 Q. That he took advantage of Mr. Garcia?

19 A. Yeah, I always felt that way.

20 MS. BLACKWELL: Your Honor, could I have
21 just a moment, please?

22 THE COURT: Yes, ma'am.

23 BY MS. BLACKWELL:

24 Q. Just one last question, Ms. Hobby.

25 A. Okay.

26 Q. Could you explain what you mean when you
27 say they acted like a married couple?

28 A. Pretty much -- I called Julian Casper. I
29 just thought it was odd if he told him to bring up

1 groceries or cook something for him. There was even
2 times when he cleaned up the apartment. I thought it
3 was very odd that he didn't ask. He just told him to
4 do it, and he did it.

5 But that's how Julian was. You know,
6 everyone that he was around, he was very -- I don't
7 know how to say it like, I guess, in charge, and I
8 just -- I didn't think it was a healthy friendship.

9 Q. Thank you, Ms. Hobby.

10 MS. BLACKWELL: Judge, that's all the
11 questions I have.

12 THE COURT: State.

13 MR. PARKER: Yes, Your Honor.

14 CROSS-EXAMINATION BY MR. PARKER:

15 Q. Ms. Hobby, when did you first meet the
16 defendant?

17 A. I believe it was around November of 2013.

18 Q. November of 2013?

19 A. Uh-huh.

20 Q. Is that a yes?

21 A. Yes.

22 Q. Would it surprise you to know that he
23 didn't move to Mississippi until 2014?

24 A. I didn't know that.

25 Q. Now, you stated that the defendant didn't
26 have a job, correct?

27 A. When I knew him, he didn't.

28 Q. So he didn't work at Gateway America?

29 A. I don't know what Gateway America is.

1 Q. Okay. But you didn't know that he had a
2 job?

3 A. I was told that he didn't.

4 Q. So you were told that. You didn't know one
5 way or the other.

6 A. I was told by him and Julian. So I just
7 know what they told me.

8 Q. Let's talk about where you lived during
9 this timeframe.

10 A. Okay.

11 Q. You moved from the Palms Apartments in June
12 of 2014, correct?

13 A. Yes.

14 Q. Now, you didn't move to the Palms
15 Apartments until January, February of 2014; isn't that
16 correct?

17 A. Yeah, that's correct. Julian and I were
18 dating around September, October, but I didn't move in.
19 I had visited there, but I didn't move until about
20 January.

21 Q. Okay. So --

22 A. Yes, that's correct.

23 Q. So January 2014 you didn't move to the
24 Palms Apartments. So you didn't meet Alberto Garcia,
25 this defendant, in 2013, did you?

26 A. I believe I did. I believe he was there
27 when I was visited and stuff. I could be wrong with
28 the time, but I think he was there.

29 Q. In 2014 you lived at the Palms Apartments

1 from January to June?

2 A. Yeah, until about the middle of June.

3 Q. And you stated that while you lived there,
4 that the defendant was over at your apartment every
5 day, correct?

6 A. Yes.

7 Q. So you'd be surprised if he stated that he
8 would hang out with Gray on Saturday and Sunday and
9 occasionally hang out for maybe 10, 20 minutes during
10 the weekday?

11 A. Very surprised. He was there daily, and
12 almost every night that Julian got off work, he was
13 there.

14 Q. And you would also be surprised, I guess,
15 to know that he told police that he met Gray in March
16 of 2014?

17 A. Very surprised. I remember him being there
18 the entire time that I lived there.

19 Q. Now, you're aware that he's pled guilty to
20 the sexual assault of Ja'Naya Thompson?

21 A. Yes.

22 Q. And you're also aware that he pled guilty
23 to killing her?

24 A. Yes.

25 Q. Okay. But you're here to tell the court
26 that he was a nice guy for the five months you knew
27 him?

28 A. Yeah. He never gave me any suspicion that
29 he was a bad person.

1 Q. All right. He didn't kill anybody in front
2 of you?

3 A. No.

4 Q. Okay.

5 MR. PARKER: No further questions, Your
6 Honor.

7 THE COURT: Ms. Blackwell.

8 REDIRECT EXAMINATION BY MS. BLACKWELL:

9 Q. Ms. Hobby --

10 MS. BLACKWELL: Just briefly, Your
11 Honor.

12 Q. How did you meet Alberto Garcia?

13 A. He came to our apartment, and they both
14 told me that they had met at the bottom of the stairs
15 and what started their friendship was Dragons and
16 Dungeons or the role playing game.

17 Q. And that's -- who is other person you're
18 talking about?

19 A. Julian.

20 Q. Julian Gray?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. BLACKWELL: Judge, that's all I
26 have.

27 THE COURT: All right, ma'am, you can
28 step down. Thank you. All right. Ms.
29 Blackwell, who's your next witness?

1 MS. BLACKWELL: Your Honor, at this time
2 we have no further witnesses unless Mr.
3 Garcia would like to testify.

4 THE COURT: All right. I'll talk to Mr.
5 Garcia about that. There's no family members
6 or others? I'm aware there have been some
7 interviews. That's why I'm asking.

8 MS. BLACKWELL: Yes, Your Honor, we have
9 interviewed, through our mitigation expert
10 and through myself and Mr. Stage, probably
11 close to about 16 people.

12 Most of those have been done in south
13 Florida. Those people, his family members,
14 his brothers and sisters did not wish to take
15 part in any way in these proceedings.

16 His mother is currently in the hospital,
17 we are told. And his godmother, Ms. Irasema
18 Cabanes, she's recently had surgery and is
19 under doctor's order not to the travel this
20 length of way to Mississippi.

21 Your Honor, we have -- we have looked
22 into everybody who knew Mr. Garcia here that
23 we're are allowed to talk to. We've, of
24 course, not ever spoken to Mr. Gray. For
25 reasons that are legal, we can't speak to
26 him.

27 We've tried to get these people to come,
28 and like I said, due to the notoriety, the
29 facts of the case, a lot of folks just don't

1 want to be involved. But I do believe we
2 have done quite a mitigation investigation
3 for him.

4 THE COURT: All right. Mr. Garcia, if
5 you'll stand for me please, sir.

6 All right. Mr. Garcia, I know you know
7 what I'm about to tell you. But I'm going to
8 tell you again, and I need you to listen to
9 me very carefully.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You have the absolute right
12 to testify in this sentencing trial. You
13 understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And no one can keep you from
16 doing so if you choose to do that. You
17 understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. You also have
20 the absolute right not to testify during this
21 sentencing trial if you choose not to. You
22 understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And no one can force you to
25 do so if you don't want to do so. You
26 understand?

27 THE DEFENDANT: Yes, ma'am, I do.

28 THE COURT: All right. Now, I need you
29 to know also that if you do decide to

1 testify, your attorneys, of course, will ask
2 you questions first.

3 But then the state will have the
4 opportunity to cross-examine you. In other
5 words, to ask you questions just like has
6 happened with all of the other witnesses.
7 You understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: All right, sir. So even if
10 your attorneys just put you on the stand and
11 asked your name and sat down, you understand
12 then the state could ask you any questions
13 that are legally permissible?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: All right. Now, have you
16 spoken with your attorneys or had sufficient
17 time to speak with your attorneys concerning
18 whether they feel you should testify or not
19 and to have them answer any questions you
20 have so that you can make your own decision?

21 THE DEFENDANT: I have, ma'am, spoken to
22 them, but I'm still in the air about that at
23 the moment.

24 THE COURT: All right. So you think you
25 need some additional time to speak with them
26 and to be able to make up your mind?

27 THE DEFENDANT: Yes, ma'am.

28 THE COURT: All right. Because I want
29 you to understand, I want you get to their

1 advice. I want them to answer any questions
2 you have. But ultimately, the decision has
3 to be yours and yours alone. And you have to
4 do that freely and voluntarily. You
5 understand?

6 THE DEFENDANT: Yes, ma'am, I do.

7 THE COURT: All right. So how long you
8 think it's going to take you for them to talk
9 to you and for you to decide, because as I
10 understand, if you testify, you would be the
11 last witness, and if you don't, you'll be
12 resting.

13 THE DEFENDANT: I understand, ma'am.

14 THE COURT: All right. You need what,
15 15, 20 or you think longer?

16 THE DEFENDANT: Fifteen minutes should
17 be fine, ma'am.

18 THE COURT: All right, then, we will
19 break for about 15 minutes. If for some
20 reason, Ms. Blackwell, he feels like he needs
21 longer than that, let the bailiff or one of
22 the deputies know just so they can let me
23 know.

24 MS. BLACKWELL: Yes, Your Honor.

25 THE COURT: So, Mr. Garcia, I don't want
26 you to feel rushed. But I do need for you to
27 be able to make up your mind so we can
28 proceed.

29 THE DEFENDANT: I understand, ma'am.

1 Thank you.

2 THE COURT: There's no set time on it.
3 But it does have to happen this morning.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. So we'll be in
6 recess until we hear further.

7 (PAUSE IN THE PROCEEDINGS)

8 THE COURT: All right. Mr. Garcia, I'll
9 ask you to stand again for me.

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Have you had enough time to
12 speak with your attorneys?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And have they answered any
15 questions that you had?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And have they answered those
18 to your satisfaction?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: All right, sir. Have you
21 also had time to think about what you want to
22 do with regard to testifying?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right, sir. And what is
25 that decision?

26 THE DEFENDANT: I refuse to testify,
27 ma'am.

28 THE COURT: You don't have to refuse.
29 You just choose not to.

1 THE DEFENDANT: Oh, I'm sorry.

2 THE COURT: That's all right. Thank
3 you. You can have a seat.

4 THE DEFENDANT: Thank you, ma'am.

5 THE COURT: All right. So, Ms.
6 Blackwell, with that, the defense rests?

7 MS. BLACKWELL: Your Honor, the defense
8 rests.

9 THE COURT: All right. State, any
10 rebuttal of any kind?

11 MR. PARKER: No, Your Honor. The state
12 finally rests.

13 THE COURT: All right. At this point
14 the parties have the opportunity to make
15 their closing or final arguments.

16 with regard to the omnibus order that
17 was entered on January 6th of this year,
18 state, it appears you will be proceeding on
19 aggravated circumstances, first, that the
20 capital offense was committed while the
21 defendant was engaged or was an accomplice in
22 the commission of or attempt to commit or
23 flight after committing or attempting to
24 commit a sexual battery, and, secondly, that
25 the capital offense was especially heinous,
26 atrocious or cruel. Is that correct?

27 MR. PARKER: Yes, Your Honor.

28 THE COURT: And then, defense, your
29 mitigating circumstances would be, first,

1 that the defendant has no significant history
2 of prior criminal activity.

3 Second, that the offense was committed
4 while the defendant was under the influence
5 of extreme mental or emotional disturbance.
6 And, third, the age of the defendant at the
7 time of the crime. Is that correct?

8 MS. BLACKWELL: Yes, Your Honor, those
9 are the statutory mitigators.

10 THE COURT: All right. Will there be
11 others?

12 MS. BLACKWELL: Only through argument
13 that you heard from. Not that are in the
14 statute.

15 THE COURT: Okay. But there will be
16 some others.

17 MS. BLACKWELL: Absolutely, judge. Yes,
18 ma'am.

19 THE COURT: All right, state.

20 MR. PARKER: Yes, Your Honor. May I set
21 up the courtroom?

22 THE COURT: Certainly.

23 CLOSING ARGUMENTS BY MR. PARKER:

24 May it please the court. Your Honor, on
25 July 16, 2014, five year old Ja'Naya Thompson was
26 approximately 50 inches and weighed 50 pounds. She was
27 all little girl. On that day she woke up, she had on
28 her princess underwear, her PJ pants, her flip-flops,
29 and she had on a shirt that just said fabulous on it.

1 This defendant has already admitted to
2 this court that he sexually assaulted her, and then he
3 took those socks, and he hung her in a bathroom in an
4 abandoned trailer.

5 Over the last two days we have listened
6 to over four hours of this defendant changing his story
7 over, and over, and over, and over again, because
8 that's what the defendant did when he got caught.
9 Every time the police would stop one of his stories, he
10 would change it still minimizing his horrific criminal
11 act.

12 And, Your Honor, although he pled guilty
13 last week, that does not free him from the punishment
14 that he deserves for the crime that he committed.
15 Justice is accountability and punishment. And the
16 State of Mississippi is asking you to punish the
17 defendant with the death penalty.

18 Your Honor, we are not here because of
19 his upbringing or his childhood. We're here because of
20 what he did to Ja'Naya. And, Your Honor, they
21 wanted -- the defense wanted you to listen to that
22 second statement because they said it showed remorse.
23 And, Your Honor, just because he cried to the police
24 does not lessen what he did. And when he was crying,
25 when we listened to that statement, not once did he say
26 he was sorry, and not once did he say he was sad for
27 what happened to Ja'Naya. He was crying asking for his
28 mom and not wanting to go to prison. That's not
29 remorse for the crime he committed. That's regret at

1 getting caught.

2 Now, Your Honor, in order for you to
3 return the death penalty, the state had to put on
4 evidence and prove to you that this defendant did
5 actually kill Ja'Naya Thompson, and that goes hand in
6 hand with our aggravating factor that the capital
7 offense was committed while in the commission of a
8 sexual assault.

9 Your Honor, first and foremost, this
10 defendant told this court last week that he sexually
11 assaulted Ja'Naya. He said that he inserted his penis
12 rectally, and in his own words, told you he climaxed.
13 After that he told this court, Your Honor, that he took
14 those socks and he hung her in that bathroom.

15 Now, the State of Mississippi has also
16 put on evidence. You listened to three experts
17 yesterday. Digital examiner Wayne Mitchell told you
18 what was found on this defendant's Xbox found in his
19 room. DNA expert Shane Hoffmann told you that this
20 defendant's DNA and semen were found in Ja'Naya's body,
21 his DNA found in the socks that he used to hang her.

22 You also heard from Dr. Mark LeVaughn
23 who told you as he's described the injuries to
24 Ja'Naya's body, that they were caused while she was
25 still alive and that her cause of death, ligature
26 strangulation due to hanging.

27 Your Honor, we have proven to you that
28 this defendant did actually kill Ja'Naya Thompson and
29 that he killed her while in the commission of a sexual

1 battery.

2 The next aggravating factor the state
3 has put on evidence of is that the capital offense was
4 especially heinous, atrocious, and cruel. And, Your
5 Honor, I'll talk about that one in just a moment. But
6 you'll take those aggravating factors and you'll weigh
7 them against whatever mitigation the defense says they
8 have put forth and argued.

9 But, Your Honor, nothing put forth by
10 the defense mitigates what this defendant did to
11 Ja'Naya. A 29 year old man crying to police officers
12 because he doesn't want to go to jail and wants to see
13 his mom does not show empathy for a five year old girl
14 he sexually assaulted and left in that abandoned
15 trailer.

16 And, Your Honor, I want to talk about
17 some of the facts of this case because let's look at
18 the defendant before July 16, 2014. You know he moved
19 here, in his own statements, in January, February
20 of 2014. He lived with the Fillipuzzis. He had his
21 own room. And we know that that room, it had a view.
22 You've seen a picture of his room with a chair right by
23 that window where he could look out at the playground.
24 You know that he had binoculars right by that chair.

25 And not only did that chair have a view
26 to the outside, he had his TV and his xbox right in
27 front. And you know what he was into. You know what
28 he was looking at. He was doing internet searches for
29 toddler hentai, for brutal, barely legal, raped,

1 violated, forced, bondage, anal. That's what he was
2 looking up. Very young, petit, tiny, tween, crying,
3 raped, and anal, forced.

4 That's what excited him. That's what he
5 was into. That's what he was looking at just days
6 before he came into contact with Ja'Naya. And then he
7 acted. And after her sexual assault and then hanging
8 her, look at what he did next. He runs home, washes
9 his clothes. He cleans up. And then he runs out in
10 that apartment complex and pretends to be looking,
11 pretends to be helping even though he knows that he
12 left her body not 50 yards away in that trailer.

13 And that's when the stories start to
14 change. After they find Ja'Naya's body, they start
15 questioning him. He starts off with, I don't know, I'm
16 just trying to help. To, oh, you'll find my
17 fingerprints. To, oh, yes, you'll find my semen in
18 there. To, I must have had a blackout. I mean, the
19 stories go on, and on, and on. His stories change, but
20 the facts don't. The search terms don't change. The
21 DNA doesn't change.

22 Your Honor, in this trial the state has
23 submitted photographs. words, they don't do justice to
24 it. Heinous, atrocious, and cruel, that's a starting
25 place. The court knows the definition of heinous,
26 atrocious, and cruel. That's something they routinely
27 have to advise jurors on.

28 Enjoyment of the suffering of others.
29 Your Honor, this defendant used five year old Ja'Naya

1 Thompson's body for his own sexual gratification. When
2 you talk about five year olds, you tell them to go in
3 another room. If it's dark, they don't like it. In
4 this case Ja'Naya was in an abandoned, smelly,
5 disgusting, roach-infested trailer.

6 That's where she would spend her last
7 moments of her life. And that's where this defendant
8 choose to sexually assault her. And after he finished,
9 left his semen inside of her, he doesn't take her and
10 put her on the couch in there. He doesn't throw
11 clothes over her. Instead he takes socks, and he hangs
12 her up to be found.

13 Your Honor, you have those photographs
14 in front of you. Your Honor, the State of Mississippi
15 stands before you, and we ask you to give this
16 defendant the maximum punishment. We ask you to give
17 this defendant the death penalty. And it's not just
18 because the State of Mississippi, the laws allow for
19 it, but it's because this case and these facts, they
20 call for it. Thank you, Your Honor.

21 THE COURT: Ms. Blackwell.

22 MS. BLACKWELL: Thank you, judge. May
23 it please the court, judge?

24 THE COURT: Yes, ma'am.

25 CLOSING ARGUMENTS BY MS. BLACKWELL:

26 Your Honor, the only thing standing
27 between Alberto Garcia and a date with the death
28 chamber is you. I know I don't need to tell you what
29 an awesome responsibility it is to hold the life of

1 another person in your hands. You already know. You
2 know what's at stake here.

3 Your Honor, for the death penalty to
4 serve any purpose at all, it has to be two things. It
5 has to be swift, and it has to be certain. And in this
6 day and age, Your Honor, it's neither of those things.

7 The average length of time an inmate
8 spends on death row in this country is nearly 20 years.
9 Death penalty litigation has become so complicated and
10 full of procedures and appeals that the leading cause
11 of death of inmates on death row is natural causes.
12 It's not even execution.

13 Since 1976 in the beginning of the death
14 penalty's modern era, the State of Mississippi has only
15 executed 21 people. There are 47 inmates on death row
16 right now still awaiting execution. And that means
17 that our current rate of execution, it would take over
18 80 years for us to just finish executing the people we
19 already have on death row without adding a single
20 person.

21 Right now in this state with federal
22 litigation pending over which drugs can even be used
23 during executions, Mississippi hasn't executed a single
24 inmate in nearly five years. In essence, a death
25 sentence has become more of a life sentence with the
26 possibility of an execution.

27 Country after country and state after
28 state are abolishing capital punishment altogether
29 because the death penalty is dying. Statistics have

1 shown repeatedly that the death penalty does not deter
2 crime. It does not rehabilitate offenders. It
3 disproportionately affects men, the poor, and people of
4 color, not to mention it costs an absolute fortune.

5 In Mississippi today we spend more money
6 incarcerating people than we do on sending them to
7 college. And here we are today. And the State of
8 Mississippi says that's good policy. Your Honor, the
9 next time Alberto Garcia is free, outside, with no
10 chains and no shackles on him, he will be in a pine
11 box. Regardless of your decision, Alberto's going to
12 die in prison. Society is safe, and there's no need to
13 execute him.

14 I've heard the state's argument. I'm
15 sure Mr. Smith will be just as eloquent as Mr. Parker.
16 And I've heard the voices of the people in this
17 community calling for nothing short of Alberto's head
18 on a silver platter. I've felt their hostility. I've
19 been told Alberto deserves to burn in hell, and so do
20 I. I'm sorry, judge.

21 THE COURT: Take your time.

22 MR. STAGE: Judge, with the court's
23 permission, if I could take over.

24 THE COURT: If you want to or we could
25 take a few moments. What's your preference,
26 Ms. Blackwell?

27 MS. BLACKWELL: If Mr. Stage can.

28 THE COURT: All right.

29 MR. STAGE: May I proceed, judge?

1 THE COURT: All right, Mr. Stage, you
2 feel fully prepared to complete this?

3 MR. STAGE: Yes, judge.

4 THE COURT: All right. Go ahead, sir.

5 CLOSING ARGUMENTS BY MR. STAGE:

6 To continue with the closing, judge, we
7 firmly believe the best kind of retribution, judge, is
8 not to become like your enemies. More will be achieved
9 in this world through acts of mercy than through acts
10 of revenge.

11 And that's what the death penalty really
12 is. It serves no other purpose than society's revenge
13 on an individual. If it truly were justice, then I
14 believe every murder would be eligible for the death
15 penalty. But that's not our system as it is today.

16 If we did that kind of retribution,
17 judge, the rapists would be sentenced to being raped.
18 We would steal from the thief. But we don't do those
19 things because they are not justice. It's simply the
20 manifestation of man's lowest instinct.

21 Judge, we're asking you to show mercy
22 to Alberto Garcia not because he deserves it, but when
23 we show mercy to those who don't necessarily deserve
24 it, it makes us nobler. It makes us better than him.
25 We don't have to become Alberto Garcia to
26 punish Alberto Garcia.

27 Judge, when we first saw these
28 photographs, and as Your Honor has seen them as well,
29 judge, there's no words.

1 THE COURT: Let me say, Mr. Stage, to
2 both you and Ms. Blackwell, and Ms. Collums,
3 it is extremely difficult to stand where you
4 are standing.

5 MR. STAGE: Yes, judge.

6 THE COURT: Because of the bond that you
7 have now with Mr. Garcia and because of the
8 position that you are in as well as, as Ms.
9 Blackwell just noted, some animosity directed
10 toward the attorneys, which, quite frankly,
11 is unfounded and inexcusable.

12 And so if you feel like you need to take
13 some time, I would like for you guys to do
14 that so that you can make a proper argument,
15 not that you're not making one. But it is
16 very emotional for both sides. And it is, in
17 my opinion, more emotional from the defense
18 side because of this severity of the
19 punishment.

20 So if you feel like you need a few
21 moments, I just need you guys to tell me
22 that. I'm more than happy to give it to you.

23 MR. STAGE: Judge, we'll take advantage
24 of that.

25 THE COURT: All right. Let's take about
26 15 minutes. And you guys let me know if you
27 need longer.

28 (PAUSE IN THE PROCEEDINGS)

29 THE COURT: All right. Mr. Stage, are

1 you going to resume?

2 MR. STAGE: I will, judge.

3 THE COURT: All right, sir, come on up.

4 MR. STAGE: Judge, I'm not sure where we
5 are on time.

6 THE COURT: I didn't actually give you
7 guys any time. So go ahead and tell me what
8 you need to tell me, and certainly the break
9 didn't count against you guys away.

10 MR. STAGE: Thank you, judge.

11 CLOSING ARGUMENT CONTINUES:

12 Judge, here the evidence is what it is.
13 I have no doubt that Your Honor will recall each and
14 every witness, each piece of evidence, and every
15 argument made.

16 Judge, finally I want you to remember
17 the hours and hours of video interviews that were
18 reviewed and played in this case. One statement that
19 stands out truest, most poignant is during his second
20 interview with Alberto Garcia, Detective Sergeant Chris
21 Werner says, when we're all gone and finally the day
22 comes, I believe that we've got to be able to say for
23 even the bad things we did, we stood up and did right,
24 we made good for the bad we did in our lives.

25 Judge, the state will argue, actually
26 they have argued that Mr. Garcia did not show any
27 remorse, that he did not apologize during that second
28 interview. I would submit a different way of looking
29 at that process is that it is a process that started

1 from his interview. It continued all the way to his
2 plea last week in front of Your Honor. That maybe he
3 did not turn around and confess and repent as maybe we
4 would have. Maybe he did it in his way.

5 I would say that there is a trajectory,
6 if you will, of Mr. Garcia starting with the first
7 statement that he made, the stories of the blackout,
8 the misstating of times and actions that took place, to
9 opening up with more truth about what he did.

10 Personally, after all of our
11 investigation, research, time that we've spent on this
12 case, I just don't know that I doubt Alberto's story as
13 it ended up.

14 Judge, you've heard about his past.
15 You've heard about his upbringing. To reiterate on Ms.
16 Blackwell's argument about the death penalty, Your
17 Honor now stands between the past and the future. Your
18 Honor may sentence Alberto to be executed. But in
19 doing so, you will turn towards the past.

20 The state asks you to look backwards
21 toward that past, arguing that my client should be
22 executed and eradicated from the face of this earth.
23 They'll ask you to look towards a so-called justice
24 that exists now only in countries like Somalia and
25 Syria.

26 The death penalty is nothing more than a
27 relic of a barbarous past which has far outlived its
28 usefulness or intended purpose. Instead I ask you to
29 impose the sentence that's already accepted and

1 mandated by the rest of civilized world. I ask you to
2 look forward to a future when lawyers like us do not
3 have to the stand in front of a jury or judges like you
4 to plead for someone's life.

5 I ask you to look forward to a future
6 where we answer cruelty with forgiveness. I look
7 forward to a future where we can all learn by reason,
8 judgment, understanding, and faith that all life is
9 valuable and that all life is worth saving.

10 No man is as bad as the worst things
11 he's ever done. And that includes Mr. Garcia. We ask
12 you to look forward to a future, judge, because the
13 future is on our side. Thank you.

14 THE COURT: All right. State.

15 MR. SMITH: Thank you, judge. May it
16 please the court?

17 THE COURT: Yes, sir.

18 CLOSING ARGUMENTS BY MR. SMITH:

19 Your Honor, the State of Mississippi is
20 not here today for revenge. The State of Mississippi
21 is not here today to review legislation about the death
22 penalty or to talk about policies and procedures. The
23 State of Mississippi is here today seeking one thing,
24 and that's justice. Complete justice.

25 This defendant from the first day of
26 this case way back in 2014 has done everything he can
27 to distract and build smoke screens and to deter people
28 from looking at what really brought us here. And what
29 brought us here, Your Honor, are the actions and the

1 choices of Alberto Garcia when he choose to rape and
2 murder Ja'Naya Thompson.

3 From the beginning, he wanted to focus
4 on other things and other people. In court he has
5 asked you to focus on his childhood and his upbringing.
6 A difficult childhood cannot excuse what he did to
7 Ja'Naya Thompson.

8 He wants to point fingers at other
9 people from July 16th hoping that somehow that
10 distracting can lessen his accountability from what he
11 admits to have done. It's his hope, Your Honor, that
12 his smoke screens in this case from the first night
13 that it happened could somehow help him to avoid
14 accountability in this case.

15 The problem for this defendant, though,
16 is that the mountain of evidence before the court
17 paints a perfect picture. Regardless of whether we
18 take his fifth or his sixth version of inconsistent
19 events as true, even if we ignore all the times where
20 he changed his story, the mountain of evidence gives us
21 complete insight into his mind-set.

22 And, Your Honor, when we look at his
23 mind-set in the immediate aftermath of this crime, it
24 is so telling. And it is so telling not just from that
25 moment, but from where we are here today and how we've
26 gotten through this part of the process.

27 His mind-set is first shown within
28 minutes of committing this crime against this five year
29 old child. He is at the front door of Ruth King for

1 one reason and one reason alone, to plant an alibi
2 within minutes.

3 Quickly thereafter, he meets up with
4 Margaret Drongowski, and she told us how he helped,
5 oddly enough, in the search of this child that he knew
6 was hanging just 50 yards away in a trailer because of
7 his choices and his desires.

8 And then as time goes by, the next night
9 as he begins to see the swarm of officers who gather
10 all through the Palms Apartments and who he realizes
11 that evening that those officers would not rest, that
12 they would continue their search and their
13 investigation, and he began to panic.

14 And it was that night when he first told
15 Detective Fulks that his fingerprints would be in that
16 trailer. Even in his next statement to Detective
17 Werner after he had denied participation with Fulks and
18 denied for an hour with Detective Werner, it was at
19 that time at the end of the tape when he had come up
20 with this latest version of a blackout and waking up
21 with someone else's feces on him in the apartment.

22 As Detective Werner comes in and right
23 before the tape concludes, and I want to read what he
24 exactly told him. Sergeant Werner said:

25 "Your apartment is going to be searched.
26 They are going to look for clothing. They are going to
27 look for fibers, and they're going to look for any DNA
28 evidence. Everything that is found is going to be sent
29 to Quantico for the FBI, and it is going to searched

1 and processed in their lab.

2 These are the best people in the world.
3 They are going to pour over each piece of evidence that
4 we find from your house. They are going to answer the
5 question that you cannot answer here about what
6 happened to that little girl."

7 And in the silence and the peace of that
8 moment, the defendant knew, and he knew that he was
9 caught. So that's why we end up five days later with
10 another version. And we end up with an even different
11 version here in court today because this defendant upon
12 those words fully and finally realized that he was
13 caught and that his DNA would be found inside of those
14 socks that he used to hang a five year old child and
15 that his semen would be found inside of that child.

16 His alleged remorse does not deserve the
17 sympathy of this court. Nothing he said two years ago
18 and nothing he said last week can justify less
19 accountability for the torture and murder of the child.

20 The evidence in this case is crystal
21 clear. And when we look at the desires, the intent,
22 the preparation, and the choices made by this defendant
23 leading up to the crime, it is equally as clear that he
24 chose to commit this crime, not on the spur of the
25 moment, not as a crime of chance of opportunity. He
26 made that decision because of the proximity, the
27 timing, and the location to build up and to progress
28 toward the choice that he made to commit this crime.

29 The proximity, as Mr. Parker talked

1 about, less than 50 yards from his apartment to the
2 trailer. This defendant moved into that bedroom some
3 six months prior with a window view of the playground
4 where children played, and where Ja'Naya,
5 unfortunately, played like most children with the
6 neighborhood kids. The proximity unfortunately placed
7 her squarely in the path of this defendant.

8 The second part of that we look at is
9 the timing. The Fillipuzzis were out of town on
10 vacation in Florida. We heard that from the witness
11 stand. A solid week for no one to determine the
12 whereabouts or the travel of this defendant.
13 Unfortunately, the perfect timing for him to choose to
14 commit this crime.

15 And then finally we look at the
16 location. He knew the residence of that abandoned
17 trailer. He knew they had moved out. He knew no one
18 was there. He also knew that he could get there in a
19 back path through the woods, that he would not have to
20 cross any busy streets where neighbors could see.

21 He also knew that he would not have to
22 pass any businesses where surveillance cameras could
23 catch a glimpse of him committing this awful act. This
24 proximity, time, and location evidence shows that this
25 crime was intentional and it was chosen by this
26 defendant.

27 The last piece of evidence that I want
28 to talk about, Your Honor, is the Xbox that was found
29 in his bedroom because it is the perfect evidence of

1 the premeditation of this defendant because when we
2 look at all of the searches that were found on his
3 personal xbox, it paints a picture of his mind-set.

4 And last week, again, pointing fingers
5 at somebody else, he tried to tell us that he let
6 somebody use this Xbox. And even if you take his word
7 as true, he admits that he got it back on Monday, which
8 was the 14th. And because of that, the final five
9 searches, he admits at least all of those were his.

10 He specifically referred to the one
11 yesterday or last week when he said, I did the search
12 that said tween, I meant to say teen. But let's talk
13 about the rest of the words in that search. Very
14 young, petit, tiny, tween, crying, rape, anal, forced.
15 Typed with his hands and searched by this defendant
16 less than 48 hours before he would choose to commit
17 almost the exact same crime.

18 The same day he searches brutal, forced,
19 anal, abduction. And then the following day young,
20 teen, bound, forced, anal. He searches that twice just
21 24 hours before the crime. Almost exact in
22 descriptions.

23 And then on July 16th his internet world
24 went silent, and there are no more searches on
25 July 16th. And we all know why that is, because this
26 defendant made the choice and the decision to bring it
27 out of the internet world and to bring his desires into
28 the life of Ja'Naya Thompson.

29 So many times at this proceedings amidst

1 all the discussion of the defendant and the death
2 penalty, the victim is lost or forgotten. A five year
3 old girl, a daughter, a granddaughter, Ja'Naya was
4 described from this witness stand as a precocious and
5 sweet little girl. She loved animals and was always
6 polite.

7 Your Honor, I know I don't need to
8 recount that brutal death. I know none of us will ever
9 forget it. But what a horrific ending to have to
10 endure at the age of five. But, Your Honor, we're not
11 here for revenge.

12 We're here because the state allows this
13 court to return a verdict imposing the highest penalty.
14 This court is not obligated to give the death penalty,
15 but the law gives this court the ability to impose
16 complete justice for Ja'Naya Thompson. The law allows
17 it, and the facts in this case don't just call for it,
18 they cry out for it. I ask this court to give complete
19 justice in this case.

20 THE COURT: All right. The court will
21 be in recess. I'll review the testimony as
22 well as the exhibits. They'll be brought
23 back to chambers. And I will let you guys
24 know when I have a decision. So we'll be in
25 recess until that time.

26 (RECESS FOR JUDGE'S DELIBERATION AT
27 11:25 AM)

28 (JUDGE'S DECISION AT 1:23 PM)

29 THE COURT: All right. The court has

1 reviewed the testimony as well as the
2 arguments of counsel, looked back over the
3 exhibits.

4 And basically it is the court's opinion
5 that it would have to make the same findings
6 or use the same process that a jury would use
7 in this case. However, because this is a
8 court only trial, I do think it's appropriate
9 for the court make some further findings in
10 this record beyond what a jury might do or in
11 fact what a jury generally does.

12 First of all, with regard to the
13 arguments concerning the death penalty
14 itself, this court as every circuit judge in
15 this state, holds people's lives in their
16 hands every day. That is part of the job.

17 That doesn't change what happens in a
18 death penalty case. And so that argument
19 doesn't carry any weight with this court.

20 The fact that the death penalty may be
21 questioned in some quarters, that it is not
22 swift and certain in this day and time
23 because of the rights of the defendant,
24 frankly, and that there are places that are
25 no longer using the death penalty is also
26 neither here nor there.

27 It is permissible under the laws of our
28 state in the appropriate case, and it is
29 still an option in the appropriate case. So

1 the fact that others don't use it also does
2 not impact on the court's decision.

3 Now, I note with regard to the facts in
4 this case that Mr. Garcia, in my opinion,
5 still has not been totally truthful with this
6 court. I accept what he said at the plea,
7 and I think that part is truthful. But I
8 don't think he has still told the whole
9 story.

10 His story changed as time went on, and
11 has continued to change up to the time of his
12 plea where he did take responsibility for the
13 sexual battery and killing of Ja'Naya
14 Thompson.

15 So regardless of whether the other part
16 is as he says it is, regardless of whether
17 Mr. Gray was involved, Mr. Garcia's
18 responsible for his own actions. He is
19 responsible for that sexual battery, and he
20 is responsible for that death.

21 what he did was inexcusable. It can
22 never been excused. Nor can it be excused
23 that he has, quite frankly, never shown
24 remorse. He has never one time made a
25 statement with regard to the fact that this
26 was a horrible thing that happened, even at
27 the time that he was crying and upset and
28 saying that someone else did all of this and
29 he simply helped to cover it up.

1 A normal person, an average person would
2 have said, this is a terrible thing. He
3 never did. And so I take that into
4 consideration as well.

5 with regard to this case, and as I
6 advised Mr. Garcia, this court's seen many
7 cases and read many others. And in comparing
8 this case to those others, I have to say this
9 is one the worst in terms of what happened to
10 this child and her ensuing death.

11 In this case, the court finds beyond a
12 reasonable doubt pursuant to section
13 99-19-101(7)(a) that Mr. Garcia did actually
14 kill Ja'Naya Thompson. This is fully
15 established by his own statements under oath
16 at the time of his plea as well as the
17 testimony of Dr. Mark LeVaughn.

18 The court further finds beyond a
19 reasonable doubt pursuant to Mississippi Code
20 Annotated Section 99-19-101(5) that there are
21 in fact aggravating circumstances.

22 Specifically, the court finds beyond a
23 reasonable doubt that the killing of Ja'Naya
24 Thompson was committed while Mr. Garcia was
25 engaged in the commission of the crime of
26 sexual battery. That's pursuant to
27 subsection (5)(d) of that code section.

28 Mr. Garcia admitted during his plea
29 hearing that he had in fact committed a

1 sexual battery on Ja'Naya and that he then
2 hung her by the neck with socks which he
3 attached to part of a bathroom window.

4 This hanging followed his attempt to
5 wash away any evidence of the sexual battery.
6 Dr. LeVaughn specifically testified to the
7 vaginal and anal injuries to Ja'Naya, that
8 the same were caused by blunt, penetrating
9 trauma. He further testified that her cause
10 of death was ligature strangulation caused by
11 or as a result of hanging.

12 Further, the court finds beyond a
13 reasonable doubt that this capital offense is
14 especially heinous, atrocious, and cruel as
15 defined by Mississippi case law as well as
16 the Statute 99-19-101.

17 Based on Mr. Garcia's own statements at
18 the time of the plea as well as the evidence
19 that the court has heard in this case, that
20 finding is based on Ja'Naya's age, her size,
21 the injuries she suffered, and the pain and
22 suffering she underwent.

23 She was five years of age at the time,
24 4 feet 2 inches tall, and weighed only 50
25 pounds. Mr. Garcia was a heavy set, 29 year
26 old grown male. Ja'Naya had no means by
27 which she could have resisted Mr. Garcia or
28 defended herself from any actions he chose to
29 take based on her size and age.

1 Further, she was placed facedown, tied
2 to a chair with her head stuffed into the
3 seat and turned to the side. This restraint
4 occurred prior to any sexual assault
5 occurring in this case further restricting
6 her ability to protect herself or to avoid
7 what was about to happen to her.

8 Clearly at that time she would have
9 recognized and been aware of what was
10 occurring, that she was in danger, and that
11 something terrible was about to occur.

12 Moreover, this assault occurred in a
13 place that was admittedly and without dispute
14 a filthy trailer with roaches running rampant
15 all over the trailer and a terrible stench.

16 Ja'Naya was certainly able to see and
17 know of these conditions before being bound
18 to that chair. She was then penetrated both
19 vaginally and anally while she was still
20 alive and while she was tied to that chair.

21 Mr. Garcia admits only to the anal
22 penetration, which he says caused her to
23 defecate. The undisputed evidence, however,
24 is that the DNA match was found to his DNA on
25 all of the swabs, specifically the vaginal
26 swab, and that the person that Mr. Garcia
27 claims committed that vaginal penetration was
28 excluded concerning that DNA.

29 Further, his DNA was a match on the

1 other swabs, the anal swab, the rectum swab,
2 the inner thigh and vulva swabs, as well as
3 being inside the socks.

4 That is in particular of note to this
5 court because it was not found on the knots,
6 but between the knots inside the sock which
7 means that someone, in this case Mr. Garcia,
8 had to touch the inside of those socks before
9 they were ever used to bind Ja'Naya.

10 There's every reason to believe that
11 Ja'Naya was conscious during at least some
12 portion of the sexual assault. The length of
13 time she was tied to the chair is unknown in
14 this record, but it clearly had to be
15 sufficient time for both the vaginal as well
16 as the anal assault.

17 Even accepting Mr. Garcia's testimony,
18 the anal assault followed the vaginal
19 assault. So there was a period of time
20 there. Further Dr. LeVaughn testified to the
21 serious injuries inflicted in both of those
22 areas.

23 Those injuries included the entire
24 circumference of the area as well as internal
25 injuries in those areas. And he testified
26 that those assaults would have caused her
27 pain and in his word, terror.

28 It is clear also from this record that
29 her death by hanging was not instantaneous.

1 There is in fact evidence that she may have
2 scratched herself at some point trying to
3 remove the ligatures there being scratches to
4 her left face and jaw area. Dr. LeVaughn
5 testified that those scratches are consistent
6 with someone attempting to free themselves
7 from a ligature.

8 It appears to this court that Ja'Naya
9 suffered significant physical and mental pain
10 and suffering before her death and that the
11 sexual battery and killing of Ja'Naya was
12 brutal, cold, and tortuous.

13 The court does find that there some
14 mitigating factors shown also pursuant to
15 Section 99-19-101, this being subpart six.

16 First, Mr. Garcia does have, by his own
17 statement, some criminal history of arrest.
18 These occurred as a juvenile. And he has no
19 felony convictions as an adult and thus has
20 no significant criminal history.

21 Next, he was 29 years of age at the time
22 of the crime. And so he is still considered
23 a young person by any standards. He does
24 submit that this offense was committed while
25 he was under the influence of extreme mental
26 or emotional disturbance, however, there's no
27 evidence of that in this record. And the
28 court does not find that to be a mitigating
29 circumstance.

1 Further, he has provided substantive and
2 substantial information concerning his
3 childhood years. Any by that I include his
4 teen years, as well as his family dynamics.

5 There's also information concerning the
6 extensive psychological evaluation and
7 testing performed by Dr. Storer. It is not
8 disputed that Mr. Garcia suffers from an
9 anxiety disorder.

10 But it is also not disputed in this
11 record that that had nothing to do with the
12 crime he committed or his behavior or actions
13 following that crime including during the
14 time of making his statements to law
15 enforcement.

16 It is also not disputed, however, that
17 he had what can at least be described as a
18 difficult childhood including a mother who
19 had a substance abuse problem. There was
20 violence in the home. He was removed from
21 the home by child services. He was homeless
22 at some point. And basically he had no good,
23 stable family or home life for substantial
24 periods of his childhood.

25 It is also clear that he had
26 difficulties following the rules and had
27 violent tendencies even as a young child.
28 Those violent tendencies were directed both
29 to animals, killing cats in particular, and

1 to human beings, there being statements
2 concerning assaults on both his brother and
3 his mother as well as others while he was
4 hospitalized.

5 He apparently, at some point, also had
6 an obsession concerning sex. However, the
7 court notes he was able to overcome that by
8 leaving the environment in which he was
9 living. I believe the testimony was he went
10 to New Jersey for a period of time.

11 Unfortunately, he returned to the
12 environment he had been in as a young adult
13 and apparently resumed whatever that
14 obsession was.

15 There is clearly indication he should
16 have had ongoing mental health care and did
17 not receive it. However, he's now
18 sufficiently old enough, and at the time of
19 the crime was 29 and was fully able to seek
20 that help on his own should he have needed
21 it.

22 So in sum, it appears there was some
23 mitigation with regard to his formative
24 years. In spite of this argument, however,
25 concerning how terrible his mother was and
26 how terrible his upbringing was, it is also
27 clear that he has reconciled or forgiven
28 whatever occurred there because he appears to
29 be very close to his mother.

1 It was his mother who drew him back to
2 Florida by requesting that he return. It is
3 also his mother who prompted him to make the
4 second formal statement to law enforcement,
5 and the crying and sobbing, quite frankly, in
6 the interview was predominately as a result
7 of the fact that he did not think he was
8 going to be able to see his mother again in
9 the free world before something happened to
10 her.

11 He did become somewhat emotional when
12 speaking of the crime, but, again, at that
13 time stated his only involvement in the crime
14 was to help another in the final moments of
15 cleaning up what had occurred.

16 In sum, the court finds that the
17 aggravating circumstances above existed
18 beyond a reasonable doubt and that they are
19 sufficient to impose the death penalty.

20 The court further finds that there are
21 insufficient mitigating circumstances to
22 outweigh the aggravating circumstances.
23 Pursuant to Sections 99-19-101(2)(c) and
24 (3)(c).

25 The court therefore finds, Mr. Garcia,
26 that you should suffer the death penalty.
27 I'll ask that you and your attorneys come to
28 the podium, sir.

29 All right. Mr. Garcia, just as during

1 the trial, you have the right to say
2 something if you choose to. And you have the
3 right to say nothing if you choose to. Is
4 there anything you would like to tell me
5 before I pronounce the sentence?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Mr. Garcia, I know you don't
8 believe in the bible, but the bible generally
9 teaches us that mercy is shown to those who
10 show mercy. You understand that.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You didn't show any in this
13 case.

14 THE DEFENDANT: I understand.

15 THE COURT: All right. Mr. Garcia,
16 based on the findings of the court, the
17 evidence presented before this court, you
18 will be sentenced to serve the penalty of
19 death. Any questions?

20 THE DEFENDANT: No, ma'am. Thank you,
21 ma'am.

22 THE COURT: All right, sir. I will see
23 you again, I'm sure, on the post-trial
24 motions. And we'll speak further about your
25 right to appeal at that time.

26 THE DEFENDANT: Yes, ma'am. Thank you.

27 THE COURT: All right. Everyone remain
28 in place, except the attorneys for Mr.
29 Garcia. You can go back with him if you'd

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like.
All right. State, anything further on
this record?
MR. PARKER: No, Your Honor.
THE COURT: Defense. Nothing,
Mr. Stage?
MR. STAGE: No, Your Honor.
THE COURT: All right. Then we will be
in recess.
(END OF PROCEEDINGS)