

No. 23-5147

In the Supreme Court of the United States

JOHNNY JOHNSON, PETITIONER

v.

PAUL BLAIR, RESPONDENT

*On Petition for a Writ of Certiorari
to the Supreme Court of Missouri*

**RESPONDENT'S APPENDIX TO BRIEF IN OPPOSITION
VOLUME ONE**

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IN THE SUPREME COURT OF MISSOURI

State of Missouri ex rel.)	
JOHNNY A. JOHNSON,)	
)	
<i>Petitioner,</i>)	No. _____
)	
v.)	
)	THIS IS A CAPITAL CASE
DAVID VANDERGRIFF,)	
Superintendent,)	
Potosi Correctional Center,)	
)	
<i>Respondent.</i>)	

PETITION FOR WRIT OF HABEAS CORPUS

Comes now Johnny A. Johnson, by and through undersigned counsel, and petitions this Court, under Rule 91, for a Writ of Habeas Corpus granting him relief from his conviction and death sentence.

INTRODUCTION

Petitioner Johnny A. Johnson is an inmate housed in Potosi Correctional Center in Mineral Point, Missouri. Respondent David Vandergriff is the Warden of Potosi Correctional Center. For the reasons explained below, newly discovered evidence regarding the State’s expert witnesses, which calls into question their credibility, was suppressed by the prosecution at the time of trial and by the Attorney General when appearing before this Court. Because this evidence was concealed from Mr. Johnson by the prosecution and was only recently discovered by Mr.

Johnson's counsel, Mr. Johnson previously has not sought relief in any state court on the claims contained in this petition.

In 2005, Mr. Johnson was convicted of first-degree murder and other charges involving the July 26, 2002 murder of Casey Williamson and was sentenced to death. At trial, the only disputed issue before the jury was whether at the time of the offense Mr. Johnson deliberated as required for first-degree murder, or whether, due to his well-documented severe mental illness, a reasonable doubt existed as to whether he formed the requisite mental state for first-degree murder. Mr. Johnson presented a trial defense that he was not guilty of first-degree murder because, due to his schizophrenia and active auditory command hallucinations, a reasonable doubt existed as to whether he formed the required mental state to commit first-degree murder. The defense asserted that the jury instead should convict him of second-degree murder.

Prior to trial, the court appointed two psychologists, Stephen Becker and Byron English,¹ to evaluate Mr. Johnson, first to determine his competency to stand trial and again when his attorneys indicated they might present a defense of not guilty by reason of insanity ("NGRI"). His attorneys ultimately did not pursue an NGRI defense; instead they presented a diminished capacity defense. The testimony of Dr.

¹ Mr. Johnson does not refer to the State's experts as "Dr." because neither Becker nor English have a valid Missouri license to practice psychology. Both lost their licenses for reasons suppressed from Mr. Johnson.

Delany Dean, a psychologist, supported this defense. Dr. Dean evaluated Mr. Johnson and determined that he was responding to command hallucinations when the offense was committed. After Dr. Dean's testimony, the State called English to counteract the defense case and the expert testimony upon which it relied.

English had not conducted the two court-ordered evaluations of Mr. Johnson unrelated to the diminished capacity defense. Rather, the evaluations had been conducted by Becker under English's supervision. English's pretrial deposition disclosed that Becker had done the psychological testing and evaluation of Mr. Johnson in both instances and had written both reports. English only reviewed those materials. English and Becker did not dispute that Mr. Johnson suffered from a form of schizophrenia and experienced hallucinations. However, English disputed Mr. Johnson's defense and testified that Mr. Johnson could and did deliberate at the time of the offense. *State v. Johnson*, 207 S.W.3d 24, 34 (Mo. banc 2006) (noting that the only disputed issue at trial was whether Mr. Johnson deliberated as required for first-degree murder and that the State's expert rebutted this defense).

Later, in state post-conviction proceedings before Judge Mark Seigel, who had also presided over Mr. Johnson's trial, the defense presented additional expert witnesses. Dr. Pablo Stewart and Dr. Craig Beaver disputed English and Becker's claims regarding the nature of Mr. Johnson's hallucinations and their effect on his commission of the offense. Crediting the evaluations conducted by Becker and

English's testimony, Judge Seigel denied Mr. Johnson's post-conviction motion. On appeal from the state post-conviction proceedings, this Court also deferred to the evaluations and reports by Becker and English's testimony based on those evaluations in affirming the denial of Mr. Johnson's post-conviction motion. *Johnson v. State*, 388 S.W.3d 159, 164 (Mo. banc 2012).

Newly discovered evidence reveals that, due to illegal and unethical conduct of both expert witnesses the State, the jury, Judge Seigel, and this Court relied on, the State of Missouri stripped both English and Becker of their professional licenses. The State revoked Becker's license due to a series of DWI convictions, at least one of which took place before Mr. Johnson's trial and was not disclosed to his trial attorneys. English was forced to relinquish his license for (1) misusing state resources by conducting unsanctioned pre-surgical evaluations of co-workers while at work and (2) sexually harassing a co-worker over a period of years.

The only disputed issue in Mr. Johnson's case dealt with his mental state at the time of the offense. The basis for the State's position on that question rested on the evaluations, reports, and testimony of Becker and English. Given that level of importance, the prosecution's withholding of critical impeachment information regarding its mental health experts deprived Mr. Johnson of due process and a fair trial and rendered his conviction and death sentence invalid. On proof of his allegations that a *Brady* violation occurred, Mr. Johnson is entitled to a new trial,

sentencing, or post-conviction proceeding free of the corruption of the process that invaded his case thus far. Therefore, this Court should order a new trial or in the alternative a new post-conviction proceeding based on the evidence Mr. Johnson has uncovered. To the extent that additional factual development is necessary for a proper resolution of this claim, this Court should appoint a special master and order an evidentiary hearing to assess the evidence in support of Mr. Johnson's *Brady* claim and his claim that he was deprived of a fair and meaningful post-conviction process by the judge's simultaneous role in his case and the criminal case of the State's expert, Becker.

JURISDICTIONAL STATEMENT

This Court has original jurisdiction over this petition because it involves a prisoner under a sentence of death. Rule 91.02(b). "Habeas corpus is the last judicial inquiry into the validity of a criminal conviction and serves as 'a bulwark against convictions that violate fundamental fairness.'" *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 545 (Mo. banc 2003) (quoting *Engle v. Isaac*, 456 U.S. 107, 126 (1982)). Habeas relief may issue when the prisoner's conviction or sentence violates the constitution or laws of Missouri or the United States. *State ex rel. Nixon v. Jaynes*, 63 S.W.3d 210, 214 (Mo. banc 2001).

This Court may grant habeas relief on claims that were not asserted on direct appeal or in post-conviction proceedings pursuant to Rule 29.15 if the petitioner

demonstrates a manifest injustice, cause and prejudice, or a jurisdictional defect. *Jaynes*, 63 S.W.3d at 215; *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 125 (Mo. banc 2010).

“Cause” exists when “there is a factor at issue external to the defense or beyond its responsibilities” that caused the delayed revelation of the claim. *Engel*, 304 S.W.3d at 125. A petitioner must establish that the grounds for relief were not known to him during his direct appeal or post-conviction case. *Id.* at 126. In the context of a *Brady* claim resting on new evidence unknown to the petitioner during his direct appeal or post-conviction case, “prejudice is identical to” that necessary to warrant relief under *Brady*. *Id.* Similarly, where a judicial appearance of impropriety claim rests on new evidence previously unknown to the petitioner, the prejudice standard is identical that necessary to warrant relief under the appearance of impropriety standard. *See id.*; *Anderson v. State*, 402 S.W.3d 86, 92 (Mo. banc 2013) (explaining that the prejudice “burden does not require a movant to prove that the motion court was actually biased or prejudiced but rather that a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court.”).

As shown below, Mr. Johnson raises a *Brady* claim involving impeachment evidence regarding the State’s mental health experts, which was not disclosed to Mr. Johnson during his trial, direct appeal, post-conviction, or federal habeas

proceedings. Because the prosecution did not disclose at any point during any prior court proceedings, and because the post-conviction court did not disclose it during Mr. Johnson's post-conviction proceedings, it was unknown to Mr. Johnson, and Mr. Johnson's inability to raise this claim previously arises from reasons "external to the defense." Furthermore, in light of the importance of the experts' conclusions to the State's theory and Mr. Johnson's defense, Mr. Johnson readily meets the *Brady* prejudice standard.

The State's suppression of the impeachment evidence regarding Becker also prevented Mr. Johnson from raising potentially meritorious claims in post-conviction and deprived him of a fair and meaningful post-conviction process. The post-conviction judge's simultaneous role in Becker's criminal case, which took place during Mr. Johnson's Rule 29.15 proceedings, and the judge's reliance on Becker's credibility and conclusions without disclosure to Mr. Johnson of Becker's criminal convictions, created an appearance of impropriety. Because Becker's criminal convictions were never disclosed to Mr. Johnson, he had no prior opportunity to challenge the fairness of his post-conviction process and, in light of the post-conviction court's heavy reliance on the State's experts in denying Mr. Johnson relief, he meets the prejudice standard with regard to that claim.

STATEMENT OF THE CASE

A. Trial and Post-Conviction Facts

This Court previously recognized the only disputed guilt-phase question before the jury was whether Mr. Johnson formed the requisite mental state for first-degree murder. *See Johnson*, 207 S.W.3d at 34. Mr. Johnson’s defense asserted that, due to his severe mental illness and the auditory command hallucinations he was experiencing at the time of the offense, a reasonable doubt existed as to whether he coolly deliberated as required for first-degree murder and he was therefore guilty of second-degree murder instead. The prosecution agreed Mr. Johnson’s mental state was the sole disputed issue. In so doing, the State relied exclusively on the conclusions of Becker and English to assert Mr. Johnson did form the required mental state to commit first-degree murder.

Before trial, on October 1, 2002, defense counsel filed a motion for discovery requesting “[t]he criminal records and any list or summary reflecting criminal records of all persons the State intends to call as witnesses at a hearing or trial.” Ex. 1 [First Discovery Motion], p. 2. On October 8, 2004, Mr. Johnson’s trial counsel filed a motion for arrest and conviction records of the State’s anticipated witnesses and a motion for disclosure of impeachment information regarding the State’s anticipated witnesses. Ex. 2 [Motion for Arrest and Conviction Reports], pp. 1-2; Ex. 3 [Motion for Disclosure of Impeaching Information], pp. 1-3. The motions

specifically requested arrest, charging, and conviction records of the State's anticipated witnesses. Ex. 2, pp. 1-2; Ex. 3, pp. 1-3; Ex. 4 [Kerry Affidavit], p. 2; Ex. 5 [Beimbiak Affidavit], p. 2. The court denied the defense request for arrest records but granted the motion as to conviction records. 12/10/2004 Hrg. Tr. 31-33. The court also denied, with leave to renew, the request for impeachment information such as personnel records, explaining that it would entertain the motion later if specific allegations arose warranting the disclosure of such records. 12/10/2004 Hrg. Tr. 35-38. Nevertheless, the prosecution failed to disclose any conviction or personnel records related to Becker or English. Indeed, the prosecution did not turn over any impeachment information to defense counsel related to either of the two expert witnesses. Ex. 4, p. 2; Ex. 5, p. 3.

At trial, the defense presented Dr. Delany Dean, a psychologist who evaluated Mr. Johnson over the course of four visits. Dr. Dean, consistent with English and Becker, found Mr. Johnson to be suffering from a form of schizophrenia. Mr. Johnson's longstanding schizophrenia produced active command hallucinations. Mr. Johnson experienced those at the time of the crime, and thus, Dr. Dean concluded that he did not coolly deliberate when he committed the offense. Tr. 1579, 1636-37.

Pretrial, the State had endorsed both Becker and English as witnesses. Ex. 20 [State's Endorsement of Witnesses], p. 4. After the defense rested, the prosecutor

announced he was only calling English to testify in rebuttal. The State offered no explanation as to why it chose not to call Becker, who had primarily conducted the evaluations and written the reports. Tr. 1793. English had admitted at his prior deposition that Becker was the one who interviewed and evaluated Mr. Johnson, reviewed the majority of the records, and wrote the reports. Ex. 6 [English Deposition], p. 11-12, 17, 22. At trial, however, English testified he and Becker “collaborated totally.” Tr. 1806. English opined that Mr. Johnson did deliberate, refuting his diminished capacity defense. Tr. 1843-45. Thus, the State was able to avoid any possible cross-examination of Becker about his first DWI.²

The jury convicted Mr. Johnson of first-degree murder. After the trial was over, a juror approached the defense attorneys and explained that he believed Mr. Johnson suffered from a mental illness, but he believed the State’s experts’ conclusions regarding Mr. Johnson’s hallucinations being caused by prior drug use and about his culpability in the case. Ex. 4, p. 3. Another juror spoke to a documentarian in November 2016 and explained that he felt the defense expert’s conclusion about Mr. Johnson’s auditory hallucinations “was offset by the prosecution’s expert witnesses,” leading the jury to conclude that he “planned it out”

² While bad faith is not a component of the *Brady* standard, the State’s failure to also call Becker certainly creates an inference of knowledge of the DWI.

and coolly deliberated as required for first-degree murder. Ex. 8 [November 2016 Juror Interview, “The Worst Crime”].

During Mr. Johnson’s state post-conviction proceedings pursuant to Rule 29.15, as part of the obligation to raise all potentially meritorious constitutional issues that provided a basis for attacking Mr. Johnson’s conviction and sentence, the defense again filed a request for discovery, including any prior criminal convictions of any person the State intended to call or called as witnesses at a hearing or trial. Ex. 9 [Movant’s Request for Production], p. 2-3; Ex. 10 [Lundt Affidavit], p. 1; Ex. 11 [Hamilton Affidavit], p. 1. Again, the prosecution did not turn over any criminal or other impeachment information related to either Becker or English. Ex. 10, p. 2; Ex. 11, p. 1.

The post-conviction hearing in Mr. Johnson’s case was before Judge Seigel. It began on November 30, 2009, and continued through December 2, 2009. The remainder of the hearing took place on July 23, 2010. Judge Seigel issued his decision denying Mr. Johnson post-conviction relief on April 5, 2011. In so doing, Judge Seigel relied heavily on the evaluations and reports by Becker and on English’s testimony regarding those evaluations, emphasizing the credentials of both psychologists. The court dismissed the conclusions of the post-conviction defense expert, Dr. Pablo Stewart, who found that English and Becker’s claims related to

Mr. Johnson's hallucinations being caused by his drug use rather than his mental illness were erroneous. Ex. 12 [Rule 29.15 Denial], pp. 2, 11-13, 19-20, 32-34.

B. Newly Discovered Evidence

In the course of investigating Mr. Johnson's case, counsel discovered in early 2023 that Becker and English both faced professional discipline and lost their licenses to practice psychology due to their histories of misconduct and criminal behavior. Counsel further learned that Becker's criminal behavior started at least as early as 1999, but as mentioned above, Becker's 1999 convictions were never disclosed to trial counsel despite trial counsel's specific pretrial request for such information.³ Ex. 13 [Franklin County Records], p. 1; *see also* Ex. 15 [St. Louis County Records], p. 14. Becker now has at least six additional DWI convictions, including at least three felonies. Ex. 14 [St. Francois County Records], pp. 6-7; Ex. 15, p. 14; Ex. 16 [Butler County Records], p. 1. The State Administrative Hearing Commission held a hearing in March 2012—almost exactly six months before oral argument in this Court on Mr. Johnson's appeal from his Rule 29.15 denial—at which the Committee of Psychologists was represented by the Attorney General's Office. Ex. 18 [*State Comm. of Psychologists v. Becker*, Case No. 12-0407 PS (May

³ It is not clear from the records how many 1999 cases Becker had or what their ultimate dispositions were, but subsequent prosecutions list a 1999 DWI conviction. Case.net lists a 1999 conviction for failure to dim lights.

3, 2013)], p. 3. In May 2013, as a result of that hearing, Becker was stripped of his professional license. Ex. 18, p. 3.

English was investigated by the Department of Mental Health and the Missouri State Committee of Psychologists and was found to have misused State resources by conducting pre-surgical mental health evaluations at work for colleagues who were seeking gastric bypass surgery, which was outside his expertise and not part of his job duties. Ex. 19 [English Settlement Agreement], p. 4. He also was found to have sexually harassed a coworker over a period of about two years. Ex. 19, p. 4. After the Department of Mental Health and the Committee of Psychologists found the allegations against him to be substantiated, English entered into a settlement agreement with the Committee in 2018 in which he agreed to relinquish his professional license. Ex. 19, p. 7.

The State has failed to disclose any of this important impeachment information to Mr. Johnson's counsel at every stage of litigation throughout this case. The State's suppression violated due process and prevented the jury from considering the impeaching information as part of their credibility assessment of the State's experts; it deprived Mr. Johnson of his due process right to a fair post-conviction proceeding in light of Judge Seigel's involvement in Becker's criminal case; and it has precluded Mr. Johnson from raising this claim in prior stages of litigation. Even before this Court, the Attorney General asked this Court to credit

Becker's testimony over that of a non-persistently impaired defense expert, while simultaneously seeking to take Becker's license in another forum.

1. Becker's Many DWI Convictions

Despite trial counsel's specific request for impeaching information concerning the State's witnesses and the State's pre-trial assurances that it would disclose prior convictions, the State never provided any information related to Becker's 1999 convictions. Moreover, at no point during Mr. Johnson's Rule 29.15 proceedings did the prosecution disclose that, in addition to Becker's undisclosed 1999 convictions, the St. Louis County Prosecutor's Office—the same office that prosecuted Mr. Johnson at trial and in post-conviction—was prosecuting Becker for felony DWI as a persistent offender. Ex. 15, p. 14. Neither the prosecution nor Judge Seigel ever acknowledged that Becker's St. Louis County felony DWI case was before Judge Seigel himself and took place while Mr. Johnson's post-conviction proceedings were ongoing. Ex. 10, pp. 3-4; Ex. 11, p. 2. Becker pleaded guilty to felony DWI as a persistent offender on April 1, 2010—**after Mr. Johnson's post-conviction hearing began but before it was concluded**—and Judge Seigel sentenced Becker to four years in prison, concurrent with his prison sentence in yet another felony DWI case in Butler County. Ex. 15, pp. 3, 6-7; Ex. 16, p. 1.

In addition to the 1999 convictions and the 2009 felony DWI case in St. Louis County, Becker had at least three other DWI convictions by the time of the hearing on the Rule 29.15 motion.

Jurisdiction	Charge	Date of Crime	Date of Conviction
St. Francois County	DWI	November 21, 2005	June 8, 2006
St. Francois County	DWI	June 23, 2007	November 13, 2007
St. Francois County	DWI	August 1, 2007	July 11, 2008

Ex. 14, pp. 6-7.

On top of the above malfeasance and at the time of the Rule 29.15 hearing, Becker faced at least three pending cases. One, charging him as a persistent offender, was before Judge Seigel, demonstrating that both Judge Seigel and the prosecutor's office knew of Becker's prior DWI convictions. Ex. 15, p. 3.

Jurisdiction	Charge	Date of Crime	Date of Conviction
St. Louis County (Judge Seigel)	Felony DWI/ persistent offender	September 28, 2008	April 1, 2010 (4 years)
St. Francois County	Felony DWI/ chronic offender	October 9, 2008	August 4, 2010 (5 years)
Butler County	Felony DWI/ persistent offender	October 19, 2008	April 13, 2010 (4 years)

Ex. 14, pp. 6-7; Ex. 15, p. 3; Ex. 16, p. 1.

While the three felony cases were pending in Missouri, Becker was arrested for another DWI on May 21, 2009, in Navajo County, Arizona and was later indicted for felony DWI in that case for driving with a blood alcohol content of over .20% and with a suspended or revoked license.⁴ Ex. 17 [Navajo County, Arizona Records], pp. 4-5. He was extradited to Missouri from Arizona on a fugitive warrant to face the three pending felony cases in June 2009. Ex. 17.

Like the trial and post-conviction prosecutor and post-conviction court, the Attorney General also was aware of the impeaching information about Becker. The records of Becker's St. Louis County and St. Francois County felony cases reveal that they were both provided to the Attorney General's Office, likely in connection

⁴ The Arizona case was dismissed without prejudice in 2014. Ex. 17, p. 6.

with the Missouri State Committee of Psychologists' professional discipline case against him. Ex. 14, p. 3; Ex. 15, p. 4. The St. Louis County Clerk transferred the certified record of that case to the Attorney General's Office on July 14, 2010, and the St. Francois County Clerk sent the certified record of that case to the Attorney General's Office on February 22, 2012. Ex. 14, p. 3; Ex. 15, p. 4. One month later, the Missouri State Committee of Psychologists, represented by Assistant Attorney General Ronald Smith, held a hearing to determine whether to revoke Becker's professional license because of Becker's numerous DWI convictions. Ex. 18, pp. 1-2, 9-11. Becker's license was revoked by the Committee on May 3, 2013. Ex. 18, pp. 3-4.

While the Committee, represented by the Attorney General's Office, was pursuing professional discipline against Becker, that office simultaneously relied on Becker's evaluations and conclusions about Mr. Johnson's mental state to defend his conviction and death sentence before this Court in a brief filed four short months after seeking to revoke Becker's license. *See* Response, Case 13-CV-00278-HEA, at 14-15.⁵ And although counsel was appointed in early 2013 to represent Mr.

⁵ In that brief, the Attorney General specifically argued against the credibility of a defense expert on the basis of licensure. *See* Response, Case 13-CV-00278-HEA, p. 88 n. 10. Notably omitted is any reference to the Attorney General seeking to revoke the license of their key expert. Undersigned counsel listened to the post-conviction argument to this Court. At no point during oral argument did the Attorney General disclose their pursuit of Becker's license.

Johnson in federal habeas proceedings, at no point between then and the present time has either the St. Louis County Prosecutor's Office or the Attorney General's Office disclosed to Mr. Johnson's counsel Becker's lengthy criminal record, including his pre-trial convictions, or the fact that he was stripped of his professional license by the State of Missouri.⁶

2. English's Misconduct

The State also never disclosed to Mr. Johnson's counsel at any point that Byron English, its other expert witness and the individual the State called to testify—even though Becker had primarily conducted the evaluations—was investigated for various types of professional misconduct. Like Becker, English also faced professional discipline by the Missouri State Committee of Psychologists, and he ultimately agreed to relinquish his license to practice psychology. Ex. 19, p. 7.

In December 2017, while Mr. Johnson's federal habeas petition was pending, the Committee began an investigation into English's conduct while employed at the Southeast Missouri Mental Health Center. The Center had received reports that English had been sexually harassing a secretary there for about two years, and that he had misused State resources by conducting personal psychological evaluations at work for colleagues who wanted to undergo gastric bypass surgery—even though he

⁶ The St. Louis County Prosecutor's Office recently has permitted counsel to review its files upon counsel's request.

had never done pre-surgical evaluations as part of his psychological practice—and was using State resources to complete them. Ex. 19, pp. 2-5. English wrote letters to his coworkers’ surgeons claiming to have evaluated them, but he was unaware of the guidelines providers were to follow in conducting such evaluations, which were not part of his job duties. Ex. 19, p. 3. His evaluations consisted only of administering a personality test (the MMPI) and interviewing his colleagues “to see if there was ‘any symptomology present’” and he “didn’t have to go any farther than that.” Ex. 19, p. 3. He had his secretary at Southeast Missouri Mental Health Center type the reports he sent to his colleagues’ surgeons. Ex. 19, p. 3. In addition to the misuse of state resources, English had made inappropriate sexual comments to a female coworker, had touched her in a way that made her uncomfortable, and gave her unwanted gifts. Ex. 19, p. 4. He sent her inappropriate emails and left sexually harassing messages on transcription tapes, as well as the suggestive comments he made in person. Ex. 19, p. 4.

The Committee’s investigation revealed that the Department of Mental Health had already conducted its own investigation and found the allegations against English substantiated. Ex. 19, p. 4. In September 2018, the Committee determined there was cause to discipline English and it entered into a settlement agreement with him in which he agreed to relinquish his professional license in lieu of discipline. Ex. 19, p. 6-7.

3. The State's Reliance on Disgraced Experts

Despite the serious credibility concerns surrounding both Becker and English, the State has continually relied on their findings and conclusions about Mr. Johnson's mental state at the time of the crime. Moreover, the State has repeatedly urged this Court as well as the federal courts that have reviewed Mr. Johnson's conviction and death sentence to do the same. However, the State has done so without ever disclosing to Mr. Johnson's counsel or this Court the important impeachment information related to Becker and English.

Because of this continued failure to disclose, Mr. Johnson has never been able to present his *Brady* or judicial appearance of impropriety claims to any prior court. Furthermore, as to the claims Mr. Johnson was able to raise despite the State's suppression, the suppression has prevented this Court and others from evaluating Mr. Johnson's history of hallucinations and his capacity for cool deliberation at the time of the offense in their full context, one that includes the dubious credibility of the State's experts' conclusions.

REASONS THE WRIT SHOULD BE GRANTED

Claim I: Mr. Johnson's conviction was secured in violation of his right to due process of law because the State, contrary to its obligations under *Brady* and Rule 25.03, failed to disclose important impeachment information concerning its experts' conclusions regarding the only disputed issue in the case.

In *Brady v. Maryland*, the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. 83, 87 (1963). “Impeachment evidence . . . falls within the *Brady* rule.” *United States v. Bagley*, 473 U.S. 667, 676 (1985). Accordingly, this Court has recognized that “[p]rosecutors must disclose, even without a request, exculpatory evidence, including evidence that may be used to impeach a government witness.” *State v. Robinson*, 835 S.W.2d 303, 306 (Mo. banc 1992) (citing *Bagley*, 473 U.S. at 674-77; *Brady*, 373 U.S. at 86-89; Mo. Sup. Ct. R. 25.03(A)(9)). This duty rests, in part, on the unique role of prosecutors in the criminal justice system. Indeed, this Court has recognized that a prosecutor is “the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” *Engel*, 304 S.W.3d at 127-28 (internal quotations omitted); *Banks v. Dretke*, 540 U.S. 668, 696 (2004) (“We have several times underscored the special role played by the American prosecutor in the search for truth in criminal trials.”) (internal quotations omitted); *see also Robinson*, 835 S.W.2d at 306 (citing *Bagley*, 473 U.S. at 675 & n.6).

A *Brady* violation has three components: “The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999). Under *Brady*, “[e]vidence qualifies as material when there is any reasonable likelihood it could have affected the judgment of the jury.” *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (internal quotations omitted). A petitioner “need not show that he ‘more likely than not’ would have been acquitted had the new evidence been admitted.” *Id.* (citing *Smith v. Cain*, 565 U.S. 73, 75 (2012)). Rather, “[h]e must show only that the new evidence is sufficient to ‘undermine confidence’ in the verdict.” *Id.* As this Court has explained, “[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial . . . resulting in a verdict worthy of confidence.” *State ex rel. Koster v. Green*, 388 S.W.3d 603, 608 (Mo. banc 2012) (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

Like the due process requirements of the *Brady* line of cases, Missouri Rule 25.03 requires the prosecution, upon written request of defendant's counsel, to disclose exculpatory evidence to the accused prior to trial. This rule “imposes an affirmative requirement of diligence and good faith on the state to locate records not

only in its own possession or control but in the control of other government personnel.” *Merriweather v. State*, 294 S.W.3d 52, 55 (Mo. banc 2009).

Even when the suppressed evidence does not come to light until after the conclusion of a defendant’s federal habeas corpus proceedings, the defendant may pursue a state habeas action asserting a *Brady* claim. *Engel*, 304 S.W.3d at 124-25. In *Engel*, the petitioner did not learn of the suppressed evidence until after the conclusion of his federal habeas proceedings and “nearly 26 years after the alleged crimes for which he was convicted.” *Id.* If the defendant can establish that (1) the grounds for relief were not known to him during his direct appeal or post-conviction proceedings and (2) the suppression of the evidence prejudiced him, then he is entitled to vacatur of his conviction(s). *Id.* at 126.

A. The State Suppressed the Impeachment Evidence from Mr. Johnson, Precluding His Knowledge of the Grounds for Relief During his Direct Appeal or Post-Conviction Proceedings

As explained above, the prosecutor had a duty to disclose impeaching information even without a request, and despite the motions filed by trial and post-conviction counsel requesting that the State disclose any prior convictions or impeachment information regarding its witnesses, the State did not provide to any of Mr. Johnson’s current or former attorneys such information related to English or Becker. Remaining mum when impeachment evidence exists violated the State’s constitutional and statutory duties.

In *Merriweather*, this Court held that the prosecution’s failure to disclose the victim’s out-of-state conviction was an issue of “fundamental fairness” violating both Rule 25.03 and the defendant’s due process rights. *Merriweather*, 294 S.W.3d at 55. Likewise, in this case, the State’s failure to disclose Becker’s criminal conviction before trial deprived Mr. Johnson of a meaningful opportunity to challenge the credibility of the State’s experts, which was of the utmost importance in light of the main issue in the case—Mr. Johnson’s mental state at the time of the crime. Although English ultimately testified for the State, it was Becker who primarily interviewed Mr. Johnson, conducted the evaluation, wrote the reports, reviewed the records, and reached an opinion. Ex. 6, pp. 10-12, 17, 22; Ex. 7 [Becker Deposition], p. 7. English “collaborated” with Becker, reviewed the reports, and gave feedback on Becker’s conclusions. Ex. 6, p. 12; Ex. 7, p. 7.

Both experts were endorsed by the State as potential witnesses, and it was not until the State called English to the stand that Mr. Johnson’s attorneys knew it would be he, and not Becker, who would ultimately testify. Ex. 5, pp. 3-4; Ex. 20, p. 4. Although the prosecution provided information regarding the prior convictions of other witnesses it had endorsed, it never provided any such information with regard to Becker or English, including the fact that Becker had been convicted of at least one criminal offense in 1999. Ex. 4, pp. 2-3; Ex. 5, pp. 3-5. The State’s decision

not to also call Becker certainly creates an inference of knowledge about the DWI and an attempt to insulate their rebuttal witness from attack on cross-examination.

Had Mr. Johnson's trial attorneys known about Becker's convictions, they would have used the information to cast doubt on the credibility of English and Becker and their conclusions as to Mr. Johnson's mental state at the time of the offense. Ex. 4, p. 3; Ex. 5, p. 5. Trial counsel attempted to employ this strategy in cross-examining English by questioning him about discarding his notes and the lack of experience both he and Becker had with diminished capacity, as well as in the defense closing arguments where counsel again highlighted those deficiencies. Tr. 1869-70, 1874-75, 1935-36. But had they been equipped with the much more significant impeachment information that was withheld regarding Becker's criminal history, their strategy of discrediting the State's experts would have been considerably more effective. *See Engel*, 304 S.W.3d at 128 ("In determining whether the suppressed impeachment evidence was material, the reviewing court must evaluate not only the ways that the witness *was* impeached, but also the ways that he was *not* impeached that would have been available had the *Brady* claim evidence been disclosed.") (internal citations and brackets omitted).

Trial counsel also could have called into question the State's choice to call English to testify rather than Becker, especially given that Becker was the one who primarily conducted the evaluations and wrote the reports. Even if Becker's only

1999 conviction was for failure to dim lights, Mr. Johnson’s attorneys would have known to look more deeply into that case since that would have been a “red flag” suggesting that the case originated as something more serious—and it was. Ex. 4, p. 2. Because the withheld information would have allowed trial counsel to call into question the credibility of the State’s experts, it was impeachment evidence that was required to be disclosed under *Brady* and its progeny.⁷ *Bagley*, 473 U.S. at 676 (“Impeachment evidence, . . . as well as exculpatory evidence, falls within the *Brady* rule”); *Strickler*, 527 U.S. at 280; *Engel*, 304 S.W.3d at 126.

Seriously compounding this *Brady* violation, during post-conviction, the prosecution also suppressed the fact that, while Mr. Johnson’s Rule 29.15 proceedings were pending, their office was simultaneously prosecuting Becker for felony DWI as a persistent offender after he had accrued at least three other DWI convictions on top of the 1999 case. Ex. 15, p. 14. Post-conviction counsel’s motion for discovery included a request for criminal information regarding the State’s witnesses, including trial witnesses, but counsel did not receive any such information in response. Ex. 10, pp. 1-2; Ex. 11, p. 1. Becker’s plea and sentencing hearing was held on April 1, 2010, sandwiched in the middle of Mr. Johnson’s post-conviction

⁷ The State’s use of a peremptory strike to dismiss a prospective juror with prior DWI convictions further demonstrates the impeaching nature of such criminal history. Tr. 751-53, 766. If, in the State’s estimation, an individual is not qualified to serve as a juror with a DWI history, one cannot credibly premise a first-degree murder conviction and death sentence on a similarly impaired expert’s opinion.

proceedings. Ex. 15, p. 4. Yet neither the prosecutor's office nor Judge Seigel informed counsel that Judge Seigel had sentenced Becker to four years in prison for a felony at the same time that Judge Seigel was relying on Becker's evaluations of Mr. Johnson to deny him relief in his Rule 29.15 proceedings. Ex. 10, pp. 3-5.

This important impeachment information was never turned over to Mr. Johnson's attorneys at any stage. A review of the trial and post-conviction files from the Missouri State Public Defender's Office reveals no mention at all of Becker's criminal cases. In interviews with trial counsel, they each affirmed that they were never informed of any impeachment information related to Becker or English, including Becker's 1999 convictions. Ex. 4, p. 2; Ex. 5, p. 5. Post-conviction counsel likewise was never provided Becker's 1999 convictions or the numerous subsequent DWI cases in which he was arrested and convicted, including the St. Louis County case. Ex. 10, pp. 2, 4; Ex. 11, pp. 2-3.

If counsel had learned of this impeachment information during the post-conviction proceedings, not only would they have been able to cast doubt on the credibility of the State's trial experts during the post-conviction hearing, but they also would have had the opportunity to raise a *Brady* claim due to the State's suppression of the information before trial. Ex. 10, p. 4; Ex. 11, p. 3. And had post-conviction counsel been informed of Becker's pending case before Judge Seigel at that very same time, counsel could have moved to recuse Judge Seigel and argued

that the post-conviction court's reliance on Becker's evaluations and conclusions while also presiding over his criminal case created an appearance of impropriety. Ex. 10, pp. 4-5. *See, e.g., Anderson*, 402 S.W.3d at 94 (finding in a post-conviction case that recusal is required when a reasonable person would have factual grounds to find an appearance of impropriety).

Moreover, despite its ongoing obligations to turn over such information, the State never disclosed to any of Mr. Johnson's attorneys the professional disciplinary actions taken by the State Committee of Psychologists against both Becker and English, which resulted in both men being stripped of their professional licenses. Ex. 4, pp. 2-3; Ex. 5, p. 5; Ex. 10, p. 3; Ex. 11, p. 2. This violation is particularly notable in light of the fact that the Attorney General's Office represented the State Committee of Psychologists in taking such disciplinary action against Becker, and was likely involved in the case against English as well.⁸ Ex. 18, p. 2. The records of Becker's St. Francois County and St. Louis County felony convictions reveal that the Attorney General's Office was aware and in possession of Becker's criminal history information and was provided with his criminal records in 2010 and 2012. Ex. 14, p. 3; Ex. 15, p. 5. English's settlement agreement shows that the State

⁸ It is not entirely clear from the records whether the Attorney General's Office was directly involved in the disciplinary action against English because the parties in his case waived a hearing and entered into a settlement agreement. Ex. 19, p. 1.

Committee of Psychologists, a state agency represented by the Attorney General's Office, was aware of at least some of English's misconduct by 2017, if not before. Ex. 19, p. 2.

Yet simultaneously, the Attorney General's Office was urging this Court and the Federal District Court to uphold Mr. Johnson's conviction and death sentence, relying in part on the testimony of the two State's experts, despite the fact that it knew or should have known of their credibility issues, and without disclosing that important information to Mr. Johnson's counsel.⁹ The Supreme Court of California recently held that a state Attorney General has an obligation to comply with *Brady* in a case with similar circumstances. *In re Jasmine Jenkins*, No. S267391, at 25-26 (Cal. Mar. 27, 2023). There, the defendant was not informed that the victim and a key prosecution witness had a prior juvenile conviction. In state habeas proceedings, the California Supreme Court affirmed that the State's duty under *Brady* to disclose

⁹ Only through independent investigation, including a review of the local prosecutor file, has Mr. Johnson's counsel become aware of the State's violation of its obligations under *Brady* and Rule 25.03 and of the underlying impeachment information that has been withheld from the defense. Having made this discovery in February 2023, counsel has only been able to discover a sliver of the existing impeachment information about Becker and English. Mr. Johnson's legal team has been continually requesting and reviewing records and speaking with witnesses about these matters, but still likely has not uncovered all the relevant information. For this reason, Mr. Johnson is also filing a request for discovery before this Court and requesting to fully litigate this issue before a special master in an evidentiary hearing.

impeachment information extends beyond trial to the postconviction and habeas context:

[W]here a habeas corpus petitioner claims not to have received a fair trial because a trial prosecutor failed to disclose material evidence in violation of *Brady*—and where the Attorney General has knowledge of, or is in actual or constructive possession of, evidence that the trial prosecutor suppressed in violation of *Brady*—the Attorney General has a constitutional duty under *Brady* to disclose the evidence.

Jenkins, No. S267391 at 25-26; *see also Banks*, 540 U.S. at 696 (“A rule . . . declaring ‘prosecutor may hide, defendant must seek’ is not tenable in a system constitutionally bound to accord defendants due process”) (quoting *Bracy v. Gramley*, 520 U.S. 899, 909 (1997)). This ruling is entirely consistent with this Court’s jurisprudence.

Under all these circumstances, Mr. Johnson has demonstrated cause for his inability to raise this *Brady* claim on direct appeal or post-conviction, since it is based on information suppressed by the State. *Engel*, 304 S.W.3d at 126 (claims “rest on a collection of new evidence . . . unknown or unavailable when [petitioner] previously sought relief”).

1. The State also Violated its Obligations Under Rule 25.03

Rule 25.03 imposes an affirmative duty on the prosecution to seek out and disclose criminal information that is in the control of other governmental entities, not just information that is actually known by the prosecutor. In *Merriweather*, this

Court found that the prosecution violated its duty to disclose impeachment information when it failed to obtain criminal conviction information from Illinois, even though it was from out of state. *Merriweather*, 294 S.W.3d at 55-56. Because Missouri officials had access to the Illinois records through the NCIC database, they had a duty to discover and disclose that information to the defense.

Here, the majority of Becker's DWI cases were prosecuted in Missouri, and one case was prosecuted by the very same office that prosecuted Mr. Johnson, in front of the very same judge. While Becker's cases were from a number of different counties, Missouri officials clearly knew of them because Becker was charged as a persistent—and later a chronic—offender due to the number of prior convictions he had, which were listed in the Felony Complaints and Informations filed by the prosecution. Ex. 14, pp. 6-7; Ex. 15, p. 14. Even Becker's Arizona arrest was undoubtedly within the Missouri officials' knowledge, including the St. Louis County Prosecutor's Office, as Becker was extradited back to Missouri on a fugitive warrant upon his arrest in Arizona for a separate felony DWI committed there. Ex. 17.

Finally, the Attorney General had knowledge of, or was in actual or constructive possession of, evidence that the trial and post-conviction prosecutor suppressed in violation of *Brady*. But the Attorney General took no corrective action before this Court.

Thus, in addition to violating its *Brady* obligations by failing to disclose Becker’s criminal information to Mr. Johnson’s counsel, the State also failed to abide by its duties under Rule 25.03 to diligently seek out and disclose such information to the defense.

B. The Suppression of Important Impeachment Information Prejudiced Mr. Johnson

The only disputed question at trial was whether Mr. Johnson formed the required mental state to commit first-degree murder, or whether he was instead guilty of second-degree murder due to his severe mental illness and related auditory hallucinations. The opinions of the mental health experts involved in assessing Mr. Johnson before trial were paramount in this case, and their credibility was therefore a key issue. All parties and this Court agreed and acknowledged the seminal nature of this dispute.

In *Merriweather*, this Court faced a similar circumstance and explained that where the case “hinged on which witness—[the victim] or Merriweather—the jury chose to believe,” and thus the victim’s prior Illinois conviction was important impeachment information relevant to the jury’s determination of her credibility. 294 S.W.3d at 57; *see also Wearry*, 577 U.S. at 392-93 (2016) (finding prejudice due to the suppression of impeaching evidence when the State’s case was “built on the jury crediting [the State’s witness’s] account rather than [the defense account.]”). Likewise, in Mr. Johnson’s case, the jury’s determination hinged on whether to

believe the defense witness, Dr. Dean, whose evaluation of Mr. Johnson concluded that he did not coolly deliberate because of the command hallucinations he was experiencing as a result of his schizophrenia; or the State's experts, Becker and English, who concluded that Mr. Johnson's hallucinations were caused by his prior drug use and not his schizophrenia and that he formed the required intent for first-degree murder.

It was clear from the very beginning of the trial that both the State and the defense considered Mr. Johnson's mental state and the expert witnesses' conclusions in that regard to be the main question before the jury. In voir dire, the prosecutor asked prospective jurors whether they would be able to consider mental health-related evidence and emphasized that the jury was to determine the credibility of all the witnesses, including the psychologists and "mental health people" who would be called to testify. Tr. 562-63, 603-04, 674, 678, 683, 737, 756. He asked one prospective juror whether he would be able to listen to the mental health experts and assess their backgrounds, training, and experience "and decide if you believe them" and whether they have any bias or prejudice "regarding what their test results may be." Tr. 737.

In opening statements, defense counsel explained to the jury that "[t]he question you as jurors will have to answer is whether what [Mr. Johnson] did was murder in the first degree, whether he coolly reflected on his actions, whether Johnny

Johnson was capable of coolly reflecting on his actions.” Tr. 803. Counsel concluded her opening by explaining the defense case: “We’ll ask you to find Johnny Johnson guilty but to find him guilty of the crime he committed and that is murder in the second degree,” based on the evaluation and conclusion of Dr. Dean. Tr. 819.

The State made clear at the end of the guilt phase trial that the question of Mr. Johnson’s mental state, and the experts’ conclusions in that regard, was the main issue for the jury to consider. In his closing argument, the prosecutor told the jury, “**The key in this case**, of course, and what you’ve heard an awful lot about, is distinguishing the elements between murder first degree and murder second degree.” Tr. 1910 (emphasis added). He went on to note the difference: “that the defendant did so after deliberation, which means cool reflection upon the matter for any length of time no matter how brief.” Tr. 1910. The prosecutor later again explained that the difference between first- and second-degree murder is “the distinguishing characteristics of cool reflection, the deliberation,” and said the jury did not need to consider second-degree murder if it believed there was “deliberation involved in this case.” Tr. 1912. Later, after explaining the other charges, the prosecutor again stated, “Now, we’re talking solely about deliberation.” Tr. 1916. In concluding his initial closing argument, the prosecutor argued that “everything he did is deliberation. . . . We’re talking about the process of cool reflection, not necessarily the emotional status or state of the individual involved.” Tr. 1921-22.

In his rebuttal argument, the prosecutor again summed up the case by explaining, “What the issue is, is he able to coolly reflect.” Tr. 1946. He also emphasized the importance of considering the credibility of the witnesses, including expert witnesses, asking whether the jury believed Dr. Dean, the defense expert, and stating that “one of the few honest things she told you, she was completely honest when she told you, she knows if you get him out of the deliberation, he’s out of the death penalty range” and “if you knock out cool reflection, you knock out deliberation, you knock out death.” Tr. 1947-48. After noting that the jury should consider the criminal convictions of one of the State’s witnesses, the prosecutor urged the jury to “consider the interest, bias and prejudice” of Dr. Dean and “her anti-death penalty stance, her hundred and seventy-five bucks an hour, her cooking of her report.” Tr. 1906-07. In fact, the prosecutor accused Dr. Dean of “cooking” her report six times in his rebuttal argument, further illustrating the importance of the jury’s determination of the experts’ credibility. Tr. 1907, 1947-48, 1956. The prosecutor reiterated that the question before the jury was whether Mr. Johnson’s mental illness “prevent[ed] him from deliberating, did it prevent him from coolly reflecting on the matter before he did it.” Tr. 1955-56.

Defense counsel’s closing argument also reflected the importance of the question of Mr. Johnson’s mental state and the conclusions of the experts in that regard: “It all boils down to this: Was this act an intentional act but an act done

without cool reflection. . . . That’s the difference between murder in the first degree and murder in the second degree.” Tr. 1939. She went on to conclude that Mr. Johnson’s “mental illness, his hallucinations, his delusions, his disorganized speech, his disorganized behavior prevented him from coolly reflecting,” and “[t]he voices prevented Johnny from coolly reflecting. He did not coolly reflect. He could not coolly reflect.” Tr. 1940-41. She attempted to cast doubt on English’s credibility by reminding the jury that he had destroyed his notes, had never before found that someone was unable to coolly reflect, and was not experienced in determining whether a defendant suffered from diminished capacity. Tr. 1935-36. Had defense counsel known about the even more serious credibility issues surrounding Becker and English, her argument would have been considerably more effective.

The jurors themselves recognized that the question before them was whether to believe the defense expert or the State’s experts with regard to Mr. Johnson’s mental state, as evidenced by the feedback trial counsel received from the juror who approached them after trial to say that although he believed Mr. Johnson was mentally ill, he believed the conclusions reached by the State’s experts with regard to Mr. Johnson’s mental state and the cause of his actions. Ex. 4, p. 3. Another juror spoke to a documentarian in November 2016 and explained that the case was “unique, I think, in the fact that [Mr. Johnson] admitted his guilt. He admitted he did it. So that really wasn’t on the table. It was just the cool deliberation of

premeditation to determine the first degree charge.” Ex. 8, p. 3. The deliberations centered around “[m]aking sure everybody was on the same page as far as the first degree murder.” Ex. 8, p. 3. Even in the penalty phase, the jurors were swayed by the impression that Mr. Johnson “planned it out.” Ex. 8, p. 5. With regard to the expert testimony in the case, the juror explained that the defense expert’s conclusion about Mr. Johnson’s auditory hallucinations “was offset by the prosecution’s expert witnesses.” Ex. 8, p. 6.

The question of Mr. Johnson’s mental state and the credibility of the experts was central on appeal, in post-conviction, and in federal habeas proceedings as well. On direct appeal, this Court detailed English’s testimony “that Johnson was capable of deliberation and any hallucinations that he may have had were due to methamphetamine intoxication, not psychosis.” *Johnson*, 207 S.W.3d at 34. The Court also acknowledged that Mr. Johnson’s “true defense” was diminished capacity and, in discussing whether the death sentence was appropriate, held that “the jury rejected Johnson’s mental illness defenses.” *Id.* at 43, 51.

In his opinion rejecting Mr. Johnson’s Rule 29.15 motion, Judge Seigel noted that the trial expert witnesses generally agreed that Mr. Johnson had schizophrenia or schizoaffective disorder, and that they only disagreed “as to the effect on his mental state.” Ex. 12, p. 19. Judge Seigel emphasized Becker and English’s credentials and experience, weighing heavily their professional qualifications and

conclusions that Mr. Johnson’s “mental illness did not diminish or excuse his conduct.” Ex. 12, p. 13. Of course, Judge Seigel utterly failed to reconcile this with Becker’s multiple DWIs and the four-years in prison to which Judge Seigel sentenced Becker, concurrent to the prison sentences on his other persistent and chronic offender charges.

In contrast to this favorable view of English and Becker, whom he had just sentenced to four years in prison, Judge Seigel was highly critical of the defense experts who testified in post-conviction, dismissing their conclusions as less reasonable than those of Dr. Dean to the extent that her “diagnosis was consistent with that of Becker, English,” and other mental health professionals who had evaluated Mr. Johnson prior to the offense. Ex. 12, p. 34. On appeal, this Court concluded that “the jury was apprised fully of [Mr. Johnson’s] mental condition.” *Johnson*, 388 S.W.3d at 167.

In federal habeas proceedings, the federal court recognized that “the point of [Dr. Dean’s] testimony was that Petitioner could not deliberate which was a function of his mental illness rather than drug use” and that English’s testimony rebutted that defense. *Johnson v. Steele*, 2020 WL 978039, at *28 (E.D. Mo. Feb. 28, 2020). The court cited approvingly the post-conviction court’s reliance on Becker and English’s conclusions and denied Mr. Johnson relief. *Id.* at *26-28.

Contrary to the findings by each of these Courts that the jury fully assessed and rejected Mr. Johnson’s mental health defense at trial, the jury in fact was deprived of the opportunity to adequately assess the question of Mr. Johnson’s mental state and the credibility of the experts who evaluated his mental health because of the State’s failure to disclose important impeachment information about its experts. Had the jury been aware of the credibility issues surrounding both of the State’s expert witnesses regarding Mr. Johnson’s diminished capacity defense, it would have cast Mr. Johnson’s defense and the testimony of the experts in that regard in a different light—one more favorable to Mr. Johnson. *See Banks*, 540 U.S. at 701-702 (finding suppressed impeachment information relevant to the reliability of the jury’s verdict); *Engel*, 304 S.W.3d at 128 (“In determining whether the suppressed impeachment evidence was material, the reviewing court must evaluate not only the ways that the witness *was* impeached, but also the ways that he was *not* impeached that would have been available had the *Brady* claim evidence been disclosed.”) (internal citations and brackets omitted).

The fact that the jury was unaware of this important impeachment information—when it assessed the experts’ credibility and considered the diverging conclusions of the State’s and defense experts on the question of Mr. Johnson’s mental state—renders its verdict on the primary issue in the case unworthy of confidence. *Kyles*, 514 U.S. at 434 (the question regarding materiality is whether,

in the absence of the suppressed evidence, the defendant “received a fair trial, understood as a trial resulting in a verdict worthy of confidence”); *Wearry*, 577 U.S. at 392-93 (finding in a witness credibility case that the newly revealed evidence undermined confidence in the defendant’s conviction); *Koster*, 388 S.W.3d at 632 (“the undisclosed evidence would have allowed defense counsel to greatly undercut the credibility” of a witness whose testimony involved “a critical issue in the jury’s assessment”); *Engel*, 304 S.W.3d at 128 (nondisclosure of impeachment evidence caused the verdict to be “not worthy of confidence”). Under the circumstances of the case, the State’s suppression of impeachment information about its two trial experts prejudiced Mr. Johnson and deprived him of his due process right to a fair trial.

Claim II: Mr. Johnson was deprived of his right to a fair and meaningful post-conviction process by the post-conviction judge’s simultaneous role in Mr. Johnson’s case and the felony case involving the State’s expert, and by the judge’s continued reliance on the expert without disclosing his criminal record to Mr. Johnson.

In addition to being deprived of due process at trial, Mr. Johnson was also deprived of his right to a fair and meaningful post-conviction process. *See Case v. Nebraska*, 381 U.S. 336, 346 (1965) (Brennan, J., concurring) (discussing the need for fair and meaningful state post-conviction proceedings). Neither the State nor Judge Seigel disclosed to Mr. Johnson’s post-conviction counsel that Becker’s 2009 St. Louis County felony DWI case was before Judge Seigel himself, nor that it took

place in the middle of Mr. Johnson's post-conviction proceedings. Yet despite having the information before him that Becker had been convicted of enough DWIs to be charged with a felony as a persistent offender in the St. Louis County case, Judge Seigel still relied on Becker's evaluations and reports in denying Mr. Johnson's Rule 29.15 motion. And because of the State's suppression of Becker's criminal history information, Mr. Johnson never had the chance in post-conviction to challenge Becker's credibility or seek Judge Seigel's recusal due to his involvement in both cases. This, on top of the State's failure to comply with its *Brady* obligations and its responsibility pursuant to Rule 25.03, further deprived Mr. Johnson of his right to due process.

Due process requires a fair post-conviction hearing with an unbiased judge. *See Case*, 381 U.S. at 346 (Brennan, J., concurring); *Anderson*, 402 S.W.3d at 91 (“a judge shall recuse himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned”); *see also Thomas v. State*, 808 S.W.2d 364, 367 (Mo. banc 1991) (“due process concerns permit any litigant to remove a biased judge,” including in proceedings pursuant to Rule 29.15). The test for whether a judge must recuse him- or herself is “whether a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court.” *Anderson*, 402 S.W.3d at 93 (quoting *State v. Smulls*, 935 S.W.2d 9, 17 (Mo. banc 1996)); *see also Aetna Life Co. v. Lavoie*, 475 U.S. 813, 825 (1986)

(holding that due process required judge’s recusal because “justice must satisfy the appearance of justice”). The benefit of any doubt is accorded to the litigant, and the defendant’s burden is only to show that there was an appearance of impropriety, not that the judge was actually unfair. *Anderson*, 402 S.W.3d at 93; *Smulls*, 935 S.W.2d at 26-27.

Here, a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court. Judge Seigel presided over Becker’s St. Louis County felony DWI case while at the same time presiding over Mr. Johnson’s post-conviction proceedings, at which Becker’s credibility and conclusions were essential factors. While the responsibility to disclose Becker’s criminal history rested with the State, the judge’s failure to inform Mr. Johnson that one of the State’s key experts in the case had an ongoing felony case and enough prior DWI convictions to render him a persistent offender creates an appearance of impropriety. Had the judge informed Mr. Johnson’s post-conviction counsel of Becker’s case, counsel would have been able to raise a *Brady* issue for the State’s failure to disclose the 1999 conviction and could also have moved to recuse Judge Seigel in light of his role in both cases. But by failing to disclose the information about Becker and continuing to rely on Becker’s conclusions and credibility in denying Mr. Johnson’s Rule 29.15 motion, Judge Seigel deprived him of an opportunity to raise potentially meritorious claims in post-conviction and of a fair

and meaningful post-conviction proceeding. *Case*, 381 U.S. at 346 (Brennan, J., concurring); *Anderson*, 402 S.W.3d at 91; *Smulls*, 935 S.W.2d at 17; *Thomas*, 808 S.W.2d at 367.

Like his *Brady* claim, Mr. Johnson was precluded from raising this claim at prior stages of litigation by factors external to him, as the State never disclosed Becker's ongoing St. Louis County felony DWI case and the fact that Judge Seigel presided over that case while also presiding over Mr. Johnson's Rule 29.15 proceedings. Nor did the State disclose any of Becker's other criminal convictions. Thus, for the same reasons Mr. Johnson has met the requirement to show cause for his inability to raise his *Brady* claim at prior stages, he also has met his burden to show cause for not raising his claim regarding the fairness of his post-conviction process at prior stages. *See Engel*, 304 S.W.3d at 125-26.

In light of the importance of Becker's evaluations and conclusions to the State's case against Mr. Johnson, and Judge Seigel's heavy reliance on Becker and English's credibility in denying Mr. Johnson post-conviction relief, as demonstrated above, Mr. Johnson has met his burden of showing that he was prejudiced by both the State's suppression of the impeachment information and by Judge Seigel's failure to disclose that information while continuing to rely on Becker's credibility in Mr. Johnson's post-conviction proceedings. *Engel*, 304 S.W.3d at 128; *Anderson*, 402 S.W.3d at 93.

Finally, the Attorney General has trampled upon the decorum and integrity of this Court. The Attorney General had knowledge of, and was in actual or constructive possession of, evidence that the trial and post-conviction prosecutor suppressed in violation of *Brady*. But the Attorney General took no corrective action before this Court. Proceedings before this Court must not lose their integrity by the State's failure to disclose evidence. *See Jenkins*, No. S267391 at 25-26; *see also Banks*, 540 U.S. at 696 (“A rule . . . declaring ‘prosecutor may hide, defendant must seek’ is not tenable in a system constitutionally bound to accord defendants due process.”) (citing *Bracy*, 520 U.S. at 909).

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner Johnny A. Johnson respectfully requests that this Court, after examining the evidence and the applicable law, issue a writ of habeas corpus vacating his conviction and death sentence and grant him a new trial. In the alternative, Petitioner requests that the Court appoint a Special Master to take evidence of the claim raised here and grant such other and further relief as the Court deems fair, just, and equitable under the circumstances. Petitioner further requests that this Court deny the State's motion to set the execution date in *State v. Johnson*, SC86689 (Mo.) in order for his *Brady* and judicial appearance of impropriety claims to be fully and properly adjudicated.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of March 2023, the foregoing was filed via the Case.net system and was sent via email to Gregory Goodwin at gregory.goodwin@ago.mo.gov.

/s/ Kent E. Gipson
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IN THE SUPREME COURT OF MISSOURI

STATE EX REL. JOHNNY JOHNSON,)	
)	
Petitioner,)	
)	
v.)	Case No. SC100023
)	
DAVID VANDERGRIFF,)	
)	
Respondent.)	

Suggestions in Opposition to Petition for Habeas Corpus

Johnny Johnson kidnapped six-year-old Casey Williamson, took her to a pit in the old glass factory in St. Louis County, and attempted to forcibly rape her. When she resisted, Johnson beat her with a brick and then crushed her skull with a boulder. *Johnson v. State*, 388 S.W.3d 159, 162 (Mo. 2012). Now, Johnson has petitioned for habeas corpus relief alleging due process violations.

Johnson’s claims are meritless. Johnson’s first claim is centered on the State’s non-disclosure of a 1999 suspended imposition of sentence and an infraction received by non-testifying expert. Because the expert did not testify, and because infractions cannot be used for impeachment, there was no due process violation. The remainder of the first claim involves non-disclosure of events that happened entirely after trial. Due process does not require the State to see into the future to disclose information that does not exist at the time of trial.

Johnson’s second claim is that his due process rights were violated when the State did not disclose that the same judge was presiding over his post-conviction relief hearing and the criminal prosecution of a non-testifying expert. But Johnson identifies no provision of law that required such a disclosure, and Johnson fails to identify any appearance of impropriety that could result from a judge knowing that a non-testifying State’s expert has criminal charges stemming from events that occurred after trial.

Johnson’s meritless claims do not warrant further judicial proceedings. The writ should be denied.

Summary of the Case

On a Thursday evening in July 2002, six-year-old Cassandra “Casey” Williamson, her mother and father, and some family friends in the neighborhood were having a cookout when they saw Johnny Johnson walking down the street. Tr. 821, 871–72.¹ Casey’s mother had known Johnson since Johnson was three years old, and Johnson had done nothing that caused Casey’s mother to suspect that Johnson was suffering from mental illness. Tr. 869–70. While at the picnic, Casey’s mother and others spoke with Johnson, and none of Johnson’s conduct suggested that he was mentally ill. Tr. 869–70. Casey’s mother had a “nice conversation” with Johnson where there was no

¹ The transcript is Respondent’s Exhibit B, and Respondent cites it as Tr. ____.

sign Johnson was mentally ill, unstable, or seeing things. Tr. 860–63. Johnson ended up spending the night on a couch in Casey’s father’s house. Tr. 827.

On Friday morning, Casey’s father’s alarm clock woke up Casey and her father. Tr. 826. Casey’s father went downstairs to get ready before finding Casey something to eat, and Casey’s father saw Johnson on the couch. Tr. 827. After spending 15 minutes in the bathroom getting ready, Casey’s father came out and started looking for Casey. Tr. 827–28. Casey and Johnson were gone. Tr. 828.

That Friday morning, a neighbor saw Johnson carrying a little girl on his back while walking across a parking lot. Tr. 936–37. At about the same time, a motorist also saw a man—later identified as Johnson—carrying a little girl—later identified as Casey—on his back. Tr. 951, 953, 956–57. Johnson was smiling. Tr. 951. Johnson took Casey to an abandoned glass factory.² In the glass factory, after dropping down into a pit, Johnson asked Casey if she wanted to see his penis. Tr. 1290. Even though Casey said no, Johnson pulled down his shorts and exposed his penis. Tr. 1291, 1377–78. Johnson then asked Casey to pull down her panties so he could see her vagina. Tr. 1378. When she

² The glass factory was an abandoned, torn down factory surrounded by a wooded area with trails that was a popular place for teenagers and children to play. Tr. 834, 969–70, 972–73. The factory itself consisted of “the foundation, a few tunnels, a few like ground structures. . . .” Tr. 970.

said no, Johnson grabbed Casey's underwear, tearing it off her and forcing her to the ground. Tr. 1379.

Johnson then got on top of Casey, pinned her to the ground with his chest, and rubbed his penis on her leg to try to get an erection. Tr. 1379. Casey fought back, scratching Johnson's chest. Tr. 1379. Johnson got up and abandoned his attempts to rape Casey, choosing to murder her instead. Tr. 1379. Johnson grabbed a brick and hit Casey in the head at least six times. Tr. 1379, 1432–35. Casey ran around the pit, leaving a trail of blood. Tr. 1136–37, 1156–59, 1195–98, 1228–30. After more blows from Johnson, Casey could not run so she tried to crawl away. Tr. 1291. Johnson continued to strike Casey with the brick, eventually fracturing her skull. Tr. 1291. Because Casey would not stop moving, Johnson lifted a “rather large boulder” over his head and brought it down on Casey's head and neck, breaking her skull. Tr. 1291, 1424–25, 1430). Johnson wiped blood off Casey's face with her underwear, threw them in another opening in the wall, and started burying the victim with rocks, leaves, and other debris in the pit. Tr. 1054–55, 1116–17, 1136, 1140, 1291–92, 1380. Johnson then climbed out of the pit, went back through the tunnel, and headed down to the nearby Meramec River to wash the victim's blood and other trace evidence from his body. Tr. 1291–92, 1380. A construction worker saw Johnson, shirtless, walking up from the bottom of a boat ramp on the Meramec

River that same Friday morning with a hateful look on his face. Tr. 962, 966, 970–71.

That morning, officers found Johnson near Casey’s home and asked Johnson if he would speak with them. Tr. 1014–15. Johnson agreed. Tr. 1015. Johnson spontaneously stated that he “wouldn’t hurt little kids” because he “had one of his own.” Tr. 1015. Johnson told officers that he had been swimming in the river that morning, but he denied going to the glass factory. Tr. 1016. The officer found this odd because traveling through the glass factory was the most direct route for Johnson to get to the river. Tr. 1017. Johnson eventually confessed his crimes to the officers over the course of multiple interviews on the same day.

Meanwhile, a searcher found Casey’s foot underneath a pile of rocks inside a five-foot-deep concrete chamber that was only accessible by crawling through a tunnel. Tr. 1054–57. There was “a piece of concrete that probably weighed a hundred pounds right up where [Casey’s] head would be.” Tr. 1057.

At trial, Johnson called eight witnesses at trial designed to present a defense that Johnson could not deliberate because of his alleged mental illness. Tr. 1446–1793. In rebuttal, the State called Dr. English to testify that Johnson’s mental illness did not prohibit him from deliberating. Tr. 1797–1783. The jury convicted Johnson. During the sentencing phase, the State presented victim impact evidence and evidence of Johnson’s convictions for

seven criminal offenses and two ordinance violations, including convictions for second-degree burglary, felony and misdemeanor stealing, property damage, and “indecent act.” Tr. 1986–2032. Johnson called seventeen witnesses to present evidence of Johnson’s personal and family history and evidence of Johnson’s alleged mental health issues. Tr. 2033–2265. The jury found all three of the submitted statutory aggravating circumstances: that the murder was outrageously wanton and vile, that the murder was committed while committing the offense of kidnapping, and that the murder was committed while committing the offense of attempted forcible rape. The jury, through its verdict, also found that the mitigating circumstances did not outweigh the aggravating circumstances and that Johnson was not deserving of mercy.

After his conviction, Johnson brought a direct appeal, which this Court denied. *State v. Johnson*, 207 S.W.3d 24 (Mo. 2006). The United States Supreme Court denied certiorari review. *Johnson v. Missouri*, 550 U.S. 971 (2007). Johnson then sought post-conviction relief, which the motion court denied. This Court affirmed the denial of post-conviction relief. *Johnson*, 388 S.W.3d at 159. Then Johnson petitioned for federal habeas relief, which the district court denied without issuing a certificate of appealability. Johnson requested a certificate of appealability from the Eighth Circuit, which was denied. Johnson sought certiorari review by the United States Supreme Court, which was denied. *Johnson v. Blair*, 143 S. Ct. 430 (Nov. 14, 2022).

*Summary of the Petition*³

Dr. English and Dr. Becker were endorsed by the State to be witnesses at Johnson's trial. The State presented testimony from Dr. English during rebuttal. The State never presented testimony from Dr. Becker. Johnson alleges that the State violated due process when it did not disclose Dr. Becker's 1999 suspended imposition of sentence for driving while intoxicated and his 1999 ticket for failure to dim headlights. Rule 25.03 did not require disclosure of either, and the rule of *Brady v. Maryland*, 373 U.S. 83 (1963) only applies to information that is exculpatory or that could impeach witnesses who testify at trial. Johnson also alleges the State violated his due process rights by not disclosing Dr. English's misconduct that occurred in 2015 before Johnson's 2005 trial. Johnson cites no case that requires the State to produce impeachment material that does not exist at the time of trial. There is none.

³ Johnson's petition neglects to mention the testimony of Dr. Rabun. Dr. Rabun, Johnson's expert witness at trial, testified that a person with mental illness could take "a young child from a house, walk[] that child over a mile into a very secluded area where no one can hear that child if that child were to scream, and carry the child for a major part of that way, [take] that child into a very secluded and isolated area within a very secluded and isolated area and attempt[] to rape that child and beat that child with a brick and rock" unrelated to and unaffected by their mental illness. Tr. 1482–83. When Dr. Rabun evaluated Johnson months before the murder, Dr. Rabun determined Johnson had the ability to "deliberate" and to "coolly reflect[] on something he was about to do." Tr. 1513–14.

Finally, Johnson alleges there was a due process violation when the post-conviction relief court presided over both the post-conviction relief action and a criminal prosecution of Dr. Becker for events that occurred after Johnson's trial. But Johnson cites no cases that require such disclosure, and a reasonable person with knowledge of all the facts and circumstances would not find an appearance of impropriety.

Neither of Johnson's claims have merit. Johnson is not entitled to relief.

I. Johnson's claims are procedurally defaulted.

State habeas is not a forum for duplicative and unending challenges to the finality of a conviction. *State ex rel. Strong v. Griffith*, 462 S.W.3d 732, 734 (Mo. 2015). A claim is procedurally defaulted when the defendant could have raised the claims at trial, on direct appeal, or during post-conviction relief, but failed to do so for reasons internal to the defense. *Id.* Portions of Johnson's first claim are procedurally defaulted, and his entire second claim is procedurally defaulted because those arguments are based on information that was publicly available to Johnson on Missouri Case.net and from the Committee on Professional Registration, including its website.

Johnson contends that he can avoid the procedural default of his claims because he can pass through the cause and prejudice gateway. Pet. 6. Johnson is wrong for two reasons. *First*, Johnson's claims are not meritorious, as set forth below, so he cannot meet the prejudice standard.

And *second*, Johnson cannot meet his burden to show “not merely that errors at his trial created possibility of prejudice, but that they ‘worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.’” *In re: Lincoln v. Cassady*, 517 S.W.3d 11, 17 (Mo. App. 2016). None of the non-disclosed information would have been admissible at trial: Dr. Becker did not testify, and Dr. English did not commit the misconduct until after trial, direct appeal, post-conviction review, and post-conviction relief appeal were complete. Johnson has not, and cannot, show how the State’s failure to disclose inadmissible evidence rendered his trial unfair. Likewise, Johnson has not, and cannot, show how his trial was unfair when the State did not disclose evidence of things that happened *after* trial. And finally, Johnson never pleads that his post-conviction relief hearing would have resulted in a different outcome if it had been assigned to a different judge. Pet. 40–44. Johnson’s failure to plead that fact means he cannot show prejudice on claim two.

Because he cannot satisfy cause and prejudice, his claims are procedurally defaulted and he is not entitled to relief.

II. Johnson’s due process rights were not violated by any failure to disclose Dr. Becker’s 1999 suspended imposition of sentence or his infraction.

In his first claim for relief, Johnson alleges “the prosecution failed to disclose any conviction or personnel records related to Becker or English. Indeed, the prosecution did not turn over any impeachment information to defense counsel related to either of the two expert witnesses.” Pet. 9. Johnson admits that Dr. Becker did not testify at trial. Pet. 10.

A. There was no *Brady* violation.

The due process rights announced by *Brady* are rights designed to ensure the defendant receives a fair trial. *Id.* at 87. *Brady*, therefore, protects trial rights. *Id.*; *District Attorney’s Office for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). That is why, for instance, disclosure during trial does not violate *Brady*. See *State v. Salter*, 250 S.W.3d 705, 714 (Mo. 2008).

Brady is “violated when the prosecutor suppresses evidence that is favorable to the defendant and material to either guilt or punishment.” *Salter*, 250 S.W.3d at 714 (citing *Anderson v. State*, 196 S.W.3d 28, 36 (Mo. 2006)). “Evidence is material only when there is a reasonable probability that the result of the proceeding would have been different if the evidence had been disclosed to the defense.” *Id.* at 714. *Brady* extends to impeachment material. *State v. Moore*, 411 S.W.3d 848, 854 (Mo. App. 2013). But where a person does

not testify, they cannot be impeached with their criminal convictions. *Salter*, 250 S.W.3d at 713; *see also* § 491.050.

When determining whether there has been a *Brady* violation, the defendant must establish three things: (1) the State failed to disclose evidence that is favorable to the accused because it is either exculpatory or impeaching; (2) the State suppressed the evidence, either intentionally or inadvertently; and (3) the undisclosed evidence was prejudicial. *Moore*, 411 S.W.3d at 854.

Johnson's claim fails because he cannot prove prejudice from the State's non-disclosure of Dr. Becker's 1999 SIS. Under *Brady*, prejudice means that, if the suppressed evidence had been disclosed to the defense, then there is a reasonable probability that the outcome would have been different. *State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 78 (Mo. 2015). Johnson has conceded that "the only disputed question at trial was whether Mr. Johnson formed the required mental state to commit first-degree murder" Pet. 32.

Johnson cannot establish prejudice for at least three reasons. *First*, because Dr. Becker did not testify, his 1999 SIS was not admissible evidence, and therefore it could not have changed the outcome of the proceeding. *Second*, Dr. Becker's infraction was not admissible impeachment evidence even if he had testified. And *third*, even if the fact that Dr. Becker received an SIS in 1999 was introduced at trial, there was overwhelming evidence that Johnson deliberated before murdering his victim.

1. Dr. Becker’s SIS and infraction were not admissible evidence because Dr. Becker did not testify.

Not all undisclosed information is *Brady* material; *Brady* only applies to admissible evidence. *Ferguson v. State*, 325 S.W.3d 400, 413 (Mo. App. 2010) (citing *Wood v. Bartholomew*, 516 U.S. 1, 6 (1995)) (“When the undisclosed material in question is inadmissible at trial, a Brady violation cannot occur in light of the fact that the material in question could have had no direct effect on the outcome of trial . . .”).

Dr. Becker’s 1999 SIS for driving while intoxicated is not independently admissible. Under Missouri law, “findings of guilty may be proved to affect [a witness]’ credibility in a criminal case.”⁴ § 491.050. But Dr. Becker did not testify. Johnson has offered no other rationale under which Dr. Becker’s SIS could be admissible. That ends the inquiry; Johnson’s claim must fail. *Ferguson*, 325 S.W.3d at 413; *Wood*, 516 U.S. at 6.

2. Dr. Becker’s infraction was not admissible evidence because an infraction cannot be used for impeachment.

This Court has held that § 491.050 “applies only to criminal convictions, i.e., convictions of misdemeanors or felonies, not violations of municipal ordinances.” *State v. Nathan*, 404 S.W.3d 253, 262 (Mo. 2013). Dr. Becker’s

⁴ Dr. Becker entered a plea under *North Carolina v. Alford*, 400 U.S. 25 (1970). Resp. Ex. A, p. 5 (“I believe myself to be innocent, but I am aware of a very strong preponderance of evidence which could be used against me at trial, and I freely and voluntarily choose to plead guilty now.”).

infraction for failing to dim headlights is not a misdemeanor or felony because it is an infraction. Pet. Ex. 13; *see also* § 307.070.2. Under state law at the time of Johnson’s trial (and now), an infraction is not “a crime and conviction of an infraction shall not give rise to any disability or legal disadvantage based on conviction of a crime.” § 556.021 (1979).

Under *Nathan*, § 491.050 and § 556.021, Dr. Becker’s infraction for failing to dim headlights is not admissible. Its non-disclosure was, therefore, not a *Brady* violation.⁵ *Ferguson*, 325 S.W.3d at 413; *Wood*, 516 U.S. at 6.

3. There was overwhelming evidence of deliberation.

Even if Dr. Becker’s SIS were admissible—which it was not—then Johnson would still not be entitled to relief because admission of Dr. Becker’s SIS does not create a reasonable probability of a different result given the overwhelming evidence of deliberation.⁶ Deliberation, as relevant here, is a moment of cool reflection for any length of time, no matter how brief. *Tisius v. State*, 183 S.W.3d 207, 213 n.1 (Mo. 2006) (citing § 565.002(3)). When reviewing

⁵ Because they are not crimes, infractions are not entered into the MULES database for convictions, and Becker’s 1999 infraction is no exception. Pet. Ex. 13, p. 3 (“OCN#: Not Required”).

⁶ In his petition, Johnson relies on what he claims is a post-trial interview with a juror. Pet. 11 (citing Pet. Ex. 8). The exhibit is a type written document with no authentication, and is, therefore, not admissible. Even if the document were authenticated, statements from a juror are not admissible to impeach a verdict. *Williams v. Daus*, 114 S.W.3d 351 364 (Mo. App. 2003) (S.D. en banc). Respondent requests that the Court strike the exhibit.

evidence of deliberation to determine whether the defendant can prove prejudice, this Court merely looks for evidence of deliberation in the record. *Id.* at 217. It does not engage in a comparative analysis of the evidence in the context of first-degree and second-degree murder. *Johnson*, 599 S.W.3d at 229 (citing *Tisius*, 183 S.W.3d at 217).

In this case, evidence of deliberation comes from Johnson's confession, from the multiple injuries Johnson inflicted on Williamson, from Johnson's flight from the crime scene and his refusal to call for medical assistance, and from Johnson's efforts to hide the body. *State v. Cole*, 71 S.W.3d 163, 169 (Mo. 2002) ("deliberation may be proved from the circumstances surrounding the crime.").

Johnson at first lied to the police before confessing to the crime. *See, e.g.*, Tr. 1248. Initial lies to the police are evidence of deliberation. *State v. Strong*, 142 S.W.3d 702, 178 (Mo. 2004). Moreover, as this Court found on direct appeal, Johnson eventually admitted to the police that Johnson "intended to take Casey for the purpose of having sex with her and then kill her. He admitted to taking Casey to an isolated location, burying her body, and attempting to wash evidence from his body." *Johnson*, 207 S.W.3d at 43. Johnson's confession included statements that he struck Casey with a brick, dazed her, then struck her with a brick a second time, and then crushed her with a boulder. Tr. 1291. Johnson's statements that he dazed Casey and then

continued the attack before switching weapons shows that he had an opportunity to break off the attack, and that Johnson continued to attack Casey after she no longer resisted. This Court has found that those pieces of evidence are “sufficient evidence” of deliberation “beyond a reasonable doubt.” *State v. Cole*, 71 S.W.3d 163, 169 (Mo. 2002).

The medical testimony supports Johnson’s confession. Dr. Graham, the medical examiner, testified that six-year-old Casey Williamson had “several injuries.” Tr. 1412–13. On the left side of Casey’s head, there were “little tears and a large tear, with fragmented bones. Tr. 1416. In some instances, the skull was “fragmented and actually pushed inward.” Tr. 1425. When Dr. Graham performed the autopsy, he observed multiple, independent blows to the back and the front left side of Casey’s skull. Tr. 1429–30. Dr. Graham determined that there were “at least six separate impacts” to Casey’s head. Tr. 1432. Three of those injuries caused scalp fractures. Tr. 1435.

There were also injuries on the right side of Casey’s head including scrapes and tears, some of which were consistent with Casey being struck by a brick like State’s Exhibit 72. Tr. 1417–18. There were also “separate clusters of injuries” on the back of Casey’s head. Tr. 1419. Casey also had injuries to her forearm, which “probably happened after she died.” Tr. 1420. Other post-mortem injuries included scrapes on Casey’s thigh. Tr. 1421. There was also a v-shaped injury on Casey’s back, which was consistent with a broken brick or

rock. Tr. 1422. Dr. Graham testified that the V-shaped injury could have been caused by either Casey falling down on top of the rock, or an adult body pressing down on top of Casey while she was on top of the rock. Tr. 1423. If a defendant inflicts multiple injuries on the victim, then that is evidence of deliberation. *Johnson*, 599 S.W.3d at 229.

After he murdered Casey, Johnson fled the crime scene and did not call for medical assistance. Instead, he went to the river to wash Casey's blood off his legs. Tr. 1291–92. Flight from the crime scene and the refusal to call for medical assistance are evidence of deliberation. *Johnson*, 599 S.W.3d at 229; *State v. Carter*, 600 S.W.3d 309, 312 (Mo. App. 2020) (refusal to call for medical assistance is evidence of deliberation).

And finally, Johnson attempted to hide Williamson's body while it was still in the pit. Johnson admitted to the police that he covered the body with dirt, sticks, and leaves to conceal the body. Tr. 1291. The person who discovered Williamson's body did so only because he saw a foot sticking out from a "pile of rocks stacked up, leaves, trash throughout that area." Tr. 1116–17. Johnson's efforts to conceal Williamson's body is evidence of deliberation. *State v. Ellison*, 980 S.W.2d 97, 102 (Mo. App. 1998).

In sum, there was overwhelming evidence of deliberation. Johnson lied to the police initially, then confessed that he took Casey to the pit to rape and kill her. Johnson inflicted multiple blows with multiple weapons. Johnson

continued his attack even after he dazed Casey and had time to stop. Johnson concealed the body. Johnson fled from the scene, washed blood off his legs, and refused to call for medical assistance.

Against this strong evidence of deliberation, Johnson offers a weak argument: that the question of deliberation was resolved by dueling experts. Pet. 32. As demonstrated above, that is not true. Further, even the opinions of Johnson’s experts provided evidence that Johnson deliberated. Dr. Rabun, Johnson’s expert witness at trial, testified that a person with mental illness could take “a young child from a house, walk[] that child over a mile into a very secluded area where no one can hear that child if that child were to scream, and carry the child for a major part of that way, [take] that child into a very secluded and isolated area within a very secluded and isolated area and attempt[] to rape that child and beat that child with a brick and rock” unrelated to and unaffected by their mental illness. Tr. 1482–83. When Dr. Rabun evaluated Johnson months before the murder, Dr. Rabun determined Johnson had the ability to “deliberate” and to “coolly reflect[] on something he was about to do.” Tr. 1513–14.

The State’s case was based on facts—not competing experts. In closing argument, the State never even mentioned its rebuttal expert, Dr. English. Tr. 1902–1922. Instead, the State offered this:

I want you to keep in mind all of that, where he went from there, everything that he did, the adjustments that he made in the plan, all of that, every bit of it is deliberation, every blow that he struck against her in that pet, it's deliberation, everything he did is deliberation. You don't have to – even Dr. Dean, Dr. Delaney Dean told you, it doesn't mean you sit down and calmly reflect upon things. We're talking about the process of cool reflection, not necessarily the emotional status or state of the individual involved.

Tr. 1921–22. Johnson's efforts to impeach Dr. English with Dr. Becker's 1999 SIS for driving while intoxicated would not have created a reasonable probability that the outcome would have been different. Therefore, Johnson cannot prove prejudice, and his *Brady* claim fails.

B. There was no Rule 25.03 violation.

As an alternative theory, Johnson argues that the State violated the discovery rules by failing to disclose Dr. Becker's 1999 SIS and his infraction for failing to dim headlights. Pet. 30–32. But Missouri law is clear that Rule 25.03 does not require the State to produce an SIS to a defendant because an SIS is not a conviction under Missouri law. *See, e.g., Moore*, 411 S.W.3d at 853. Likewise, Rule 25.03 does not require the State to disclose an infraction because the rule, by its terms applies only to “criminal convictions, i.e., convictions of misdemeanors or felonies. . . .” *See Nathan*, 404 S.W.3d at 262. True, the *Nathan* Court was considering municipal ordinance violations. *Id.* But under state law at the time of Johnson's trial, an infraction did “not constitute a crime and conviction of an infraction shall not give rise to any

disability or legal disadvantage based on conviction of a crime.” § 556.021 (1979). So neither municipal ordinance violations nor infractions are “convictions of misdemeanors or felonies.” *Nathan*, 404 S.W.3d at 262.

There was, therefore, no requirement under Rule 25.03 for the State to disclose either Dr. Becker’s SIS or his ticket for failure to dim his headlights.

III. Events that occur *after* trial cannot be the basis for a *Brady* claim.

A. *Brady* protects the right to a fair trial.

Johnson implausibly suggests that the Due Process Clause imposes on the State an obligation to disclose impeachment material after his conviction. But the United States Supreme Court rejected that argument in *Osborne*, 557 U.S. at 68. In that case, the Court held *Brady* confers no right or obligation after trial, writing, “A criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man. At trial, the defendant is presumed innocent and may demand that the government prove its case beyond reasonable doubt.” *Id.* at 68–69. “But [o]nce a defendant has been afforded a fair trial and convicted of the offense for which he was charged, the presumption of innocence disappears.” *Id.* at 69 (quoting *Herrera v. Collins*, 506 U.S. 390, 399 (1993)). “Given a valid conviction, the criminal defendant has been constitutionally deprived of his liberty.” *Id.* at 69 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 464 (1981)). The Court noted that

“*Brady* is the wrong framework” for a court to apply after a defendant has been convicted. *Brady* announced a trial right and a trial obligation concerned with the fairness of *the trial* and nothing more. See *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

B. This Court has held that the State does not violate *Brady* when it does not disclose events that happen *after* trial.

Johnson implies that *Brady* requires disclosure of events that occur after conviction. Pet. 23. But this Court has been clear: “*Brady*, however, only applies in situations where the defense discovers information after trial that had been known to the *prosecution at trial*. *Salter*, 250 S.W.3d at 714 (citing *State v. Myers*, 997 S.W.2d 26, 33 (Mo. App. 1999) (emphasis added)). Johnson does not acknowledge *Salter*, and instead cites *State ex rel. Engel v. Dormire*, 304 S.W.3d 120, 126 (Mo. 2010). Pet. 23. But *Engel* does not help Johnson because *Engel* also holds that the non-disclosed facts must have existed at trial for an obligation to attach under *Brady*. *Engel*, 304 S.W.3d at 127. In *Engel*, the Court found there was a deal between the State’s investigators and a witness before and during trial. *Id.* The deal was not disclosed to the defense. *Id.* After trial, documents concerning the deal were created. *Id.* The Court found that *Brady* required disclosing information about the deal because the deal existed *before* trial, even though the documents memorializing the deal were created after trial. *Id.*

C. Because Dr. English’s misconduct and Dr. Becker’s post-1999 driving while intoxicated offenses occurred after trial, there was no obligation to disclose them.

Engel, by its own terms, does not support Johnson’s claim. In this case, Johnson’s trial took place in 2005. Dr. English’s 2015 misconduct was not discovered until a 2017 investigation. Pet. Ex. 19, p. 5. That is years after Johnson’s conviction, unlike the deal in *Engel*. *Engel*, 304 S.W.3d at 127. The same is true for Dr. Becker’s post-1999 driving while intoxicated offenses.⁷ Pet. Ex. 14; 15; 16. As this Court has held, “*Brady*, however, only applies in situations where the defense discovers information after trial that had been known to the *prosecution at trial*. *Salter*, 250 S.W.3d at 714 (citing *Myers*, 997 S.W.2d at 33 (emphasis added)). Johnson cannot allege that the State knew of Dr. English’s future misconduct or Dr. Becker’s future driving while intoxicated years *before* they took place. Johnson’s complaints about Dr. English’s misconduct and Dr. Becker’s post-trial offenses fail to state a basis for relief under *Brady*.

IV. There is no due process right to knowledge that the post-conviction relief court is presiding over a criminal prosecution of a non-testifying witness.

In his final claim for relief, Johnson asserts that his due process rights were violated when the post-conviction relief court presided over his post-

⁷ As discussed *supra*, *Brady* does not apply to Dr. English’s convictions because he did not testify at trial.

conviction relief proceeding while also presiding over the prosecution of Dr. Becker, who did not testify at Johnson’s trial. Pet. 40–44. Johnson identifies no case law to support his broad claim. Instead, he relies on a concurring opinion in *Case v. Nebraska*, 381 U.S. 336 (1965); the Court’s opinion in *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813 (1986); and this Court’s opinions in *Thomas v. State*, 808 S.W.2d 364 (Mo. 1991); *Anderson v. State*, 402 S.W.3d 86 (Mo. 2013), and *State v. Smulls*, 935 S.W.2d 9 (Mo. 1996). Pet. 40–44. None of these opinions help Johnson.

In *Case v. Nebraska*, Justice Brennan’s concurrence—joined by no other justices—explained his view that states should provide “fair and just procedures” so that state court prisoners could minimize their use of federal habeas corpus review. *Id.* at 344.

In *Aetna Life Ins. Co.*, this Court merely reaffirmed that the constitution prohibited a judge from presiding over a case in which the judge had “a direct, personal, substantial, pecuniary interest in reaching a conclusion against” a party. *Aetna Life Ins. Co.*, 475 U.S. at 822–825. Johnson has never alleged that the post-conviction relief court had a “direct, personal, substantial, pecuniary interest in reaching a conclusion against” him.

In *Anderson v. State*, 402 S.W.3d 86 (Mo. 2013), this Court held that a judge must recuse when “a reasonable person would have factual grounds to

find an appearance of impropriety and doubt the impartiality of the court.” *Id.* at 91 (quoting *Smulls*, 935 S.W.2d at 17).

The only “factual grounds” that Johnson can identify is that the judge presided over Johnson’s post-conviction relief hearing and that Dr. Becker’s pending driving while intoxicated was concurrently pending before the judge. Pet. 42. Johnson then argues for a *per se* rule, where disqualification is required every time the same judge presides over a pending criminal matter involving a person who did not testify while presiding over a pending post-conviction relief case. That *per se* rule is not only unworkable, it says nothing about why a reasonable person with knowledge of all the facts and circumstances would have a reason to doubt the judge’s fairness. In fact, it seems the opposite would be true. Dr. Becker was on the State’s side of the case, not Johnson’s, so pending criminal charges against Dr. Becker could not hurt Johnson’s arguments.

In addition, Johnson’s argument that the post-conviction relief court relied heavily on Dr. Becker’s “credibility and conclusions” is misplaced. The post-conviction relief court consistently referred to the information provided by Drs. Dean, English, Becker, and Rabun. *See, e.g.*, Pet. Ex. 12 at 4. And this Court did the same on post-conviction relief appeal: it referred to all four doctors collectively. *Johnson v. State*, 388 S.W.3d 159, 164 (Mo. 2012) (“The motion court further summarized the extensive trial testimony and reports

filed by Drs. Dean, English, Becker, and Rabun.”). And in fact, Dr. Rabun testified that he believed that Johnson could deliberate seven months before the crime, when Dr. Rabun examined Johnson. Pet. Ex. 12 at 8. When the post-conviction relief court referred to the work performed by Dr. Becker, it always referred to Dr. English’s involvement as well. *See, e.g.*, Pet. Ex. 12 at 13, 19–20.

A reasonable person with knowledge of all the facts and circumstances would not find any appearance of impropriety. Johnson never articulates what gives rise to the appearance of impropriety. Pet. 40–44. Nor can he. What Johnson is complaining about is that one of the non-testifying experts who was adverse to his position was being prosecuted in front of the same judge that presided over the post-conviction relief court. Johnson’s claim amounts to an argument that a criminal defendant cannot receive a fair hearing when the judge presiding over the hearing is also presiding over a criminal prosecution of an expert associated with the State. That argument does not merit relief.

Conclusion

The Court should deny the writ without further judicial proceedings, and the Court should grant the motion to set an execution date filed in *State v. Johnson*, SC86689.⁸

Respectfully submitted,

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Certificate of Service

I certify that I filed this document using the Missouri Case Net electronic filing system on April 10, 2023. All other parties will receive electronic service.

/s/ Gregory M. Goodwin
Assistant Attorney General

⁸ In his petition, Johnson asserts that he is “filing a request for discovery before this Court” Pet. 29 n. 9. To date, Johnson has filed no such request. Any such request should be denied.

IN THE SUPREME COURT OF MISSOURI

State of Missouri ex rel.)	
JOHNNY A. JOHNSON)	
)	
<i>Petitioner,</i>)	No. SC100023
)	
v.)	
)	THIS IS A CAPITAL CASE
DAVID VANDERGRIFF, Warden,)	
Potosi Correctional Center,)	
)	
<i>Respondent.</i>)	

**REPLY SUGGESTIONS IN SUPPORT OF
PETITION FOR HABEAS CORPUS**

There can be no dispute that a terrible tragedy occurred when Casey Williamson lost her life. The State’s recounting of those facts does not detract from the evidence that this tragedy occurred while Mr. Johnson was in the throes of a struggle with mental illness. Rather, it highlights the need for an accurate consideration the role mental illness played.

All parties throughout all the proceedings agree that the mental health evidence is the critical piece of the puzzle related to the why or how this could have happened. The parties also agree that impeachment evidence must be disclosed. The dispute is why the prosecution and the Attorney General never turned it over.

Petitioner Johnny A. Johnson’s state habeas action raises two claims based on newly discovered impeachment evidence regarding the State’s expert witnesses, Stephen Becker and Byron English, that the State failed to disclose to Mr. Johnson at any point during Mr. Johnson’s capital case. The first is a *Brady* claim. The second is the

appearance of judicial impropriety created by the post-conviction judge's awareness of the impeaching information due to his role in Becker's persistent DWI case and the judge's simultaneous reliance on Becker in Mr. Johnson's post-conviction proceedings despite knowing that the impeaching evidence had not been disclosed to Mr. Johnson.

In his Suggestions in Opposition to Mr. Johnson's habeas, the Attorney General ignores and distorts Mr. Johnson's arguments in an effort to distract from the State's—and the Attorney General's—failure to comply with its duties under *Brady*. Contrary to the Attorney General's contentions, however, the State was required to disclose Becker's 1999 DWI pursuant to the trial court's order, having endorsed Becker as an expert witness before and during trial, relying on his expertise, evaluations, and reports to fuel English's testimony. The local prosecutor's office attempted to skirt, and now the Attorney General is attempting to minimize, its *Brady* obligations by claiming Becker was not a witness because of a last-minute decision not to put Becker on the stand. But the State may not evade its constitutional duties by such manipulations of the trial proceedings. The Attorney General also attempts to inflate the materiality standard of *Brady* and diminish the importance of the sole question at trial, Mr. Johnson's ability to coolly deliberate. However, the record belies the Attorney General's attempt to rewrite the narrative and demonstrates the centrality of the State's expert opinions to the case.

Rather than acknowledge the State's—and its own—ongoing obligation under *Brady*, the Attorney General mischaracterizes Mr. Johnson's claim as one that relies on the State to see into the future and disclose impeachment behavior that occurred after trial. But Mr. Johnson makes no such argument. Rather, he argues, consistent with

relevant law, that the State's duty to disclose extends throughout the litigation. Because the impeachment evidence Mr. Johnson has now begun to uncover was in the State's possession before and during trial, direct appeal, post-conviction, and federal habeas proceedings, the State had numerous opportunities to disclose it to Mr. Johnson but never did.

Finally, the Attorney General attempts to distract from the fact that the local prosecutor's office, the post-conviction court, and the Attorney General's Office itself suppressed impeachment evidence while at the same time relying on the opinions, testimony, and reports of the two disgraced experts to maintain Mr. Johnson's conviction and death sentence before this Court and the federal habeas court. In addition to the State's dereliction of its duties under *Brady* and the Constitution, the post-conviction judge had firsthand knowledge of Becker's criminal history but still relied on his conclusions and credibility in denying Mr. Johnson post-conviction relief, without disclosing or requiring the State to disclose the suppressed information. This created the appearance of judicial impropriety and cast doubt on Judge Seigel's impartiality.

Mr. Johnson now timely files his suggestions in reply of his habeas petition.

I. The State's suppression of Becker's 1999 DWI violated Mr. Johnson's right to due process under *Brady v. Maryland*

A. Becker's 1999 DWI was impeachment information the State was required to disclose under *Brady*

In contending that the State's failure to disclose Becker's 1999 DWI did not violate *Brady* because Becker did not testify, the Attorney General ignores Mr. Johnson's

key point: although English testified at trial, Becker was the psychologist who actually conducted the evaluations of Mr. Johnson and wrote the reports, and English relied on Becker's evaluations and reports in his testimony. Thus, evidence impeaching Becker's credibility also could have been used to impeach English's credibility. Furthermore, the State endorsed both English and Becker as witnesses—and it therefore had a duty to disclose impeachment information, including Becker's DWI, regarding **both** endorsed witnesses. The fact that the State decided to call only English to rebut the defense expert, Dr. Dean, does not mean that it no longer had a duty to disclose impeaching information. By calling only English—who relied on Becker—the State thereby bolstered its rebuttal case with the imprimatur of two expert witnesses, and because the State did not disclose the impeaching information, neither expert was subject to impeachment with the non-disclosed evidence. *See Bullcoming v. New Mexico*, 564 U.S. 647 (2011).

Contrary to the Attorney General's arguments, the State may not evade its duties under *Brady* by having an alternate witness testify about evaluations primarily conducted by someone else. English's testimony was based on the evaluations and reports **Becker** conducted and wrote, so Becker's credibility was relevant and material despite the State's last-minute decision not to call him to testify. The State's *Brady* violation is not somehow negated by its manipulation of the trial proceedings to avoid scrutiny of Becker, the psychologist who was primarily responsible for developing the information about which English testified. *See, e.g., Ferguson v. Dormire*, 413 S.W.3d 40, 69 (Mo. Ct. App. 2013) (the State cannot avoid its duty of disclosure of evidence favorable to the defense and pertaining to an endorsed witness).

The Attorney General argues against himself when he later contends in his Response that there can be no prejudice because four different experts were relied upon, including Becker. Sugg. in Opp. at 23. Nothing could more demonstrate the fallacious and circular nature of his argument: Becker did not testify so there was no prejudice, and there can be no prejudice because the trial court and other courts relied upon Becker. The fact that the trial court (and jury) and other courts relied on Becker—in combination with the fact that the central defense was disputed by Becker—shows that the suppression of the impeaching information was material.

The Attorney General also attempts to distract from the suppression of Becker’s 1999 DWI by arguing that the infraction listed as failing to dim headlights could not have been used as impeachment. Sugg. in Opp. at 12-13.¹ But Mr. Johnson does not argue that he should have been able to use an infraction for impeachment purposes. It is the 1999 DWI—a misdemeanor offense—which **was** valid impeachment evidence that was required to be disclosed under *Brady*. *State v. Moore*, 411 S.W.3d 848, 854 (Mo. App. 2013); *see also State v. Lynch*, 679 S.W.2d 858, 861 (Mo. banc 1984) (“Thus, a suspended imposition of sentence now carries with it the stain of certain undesirable attributes of a conviction, such as use for . . . impeachment . . .”) (abrogated on other grounds); *State v. Urban*, 798 S.W.2d 507, 514 (Mo. App. W.D. 1990) (impeachment of a witness with an SIS is permissible) (overruled on other grounds); R.S.Mo. § 491.050

¹ Mr. Johnson refers to the Attorney General’s Suggestions in Opposition to his Petition for Habeas Corpus as “Sugg. in Opp. at ___” and to the Attorney General’s Response to his Motion for Leave to file a Reply as “Resp. to Mtn. at ___”.

(“any prior criminal convictions may be proved to affect his credibility in a civil or criminal case and, further, any prior pleas of guilty, pleas of nolo contendere, and findings of guilty may be proved to affect his credibility in a criminal case.”).

Impeachment evidence includes criminal convictions of the State’s witnesses as well as any prior pleas of guilty, pleas of nolo contendere, and findings of guilty—including an SIS. Impeachment inquiry regarding an SIS is permissible even though the witness has not been convicted of a crime. *Lynch*, 679 S.W.2d at 861.

In his response to Mr. Johnson’s motion for leave to file a reply, the Attorney General cites *Moore*, 411 S.W.3d at 853, to suggest that the State did not have a responsibility to disclose an SIS to the defense. Resp. to Mtn. at 2. But the *Moore* court held that the State **did** have a duty to disclose the witness’s SIS to the defense under *Brady*, even though it was not required to do so under Missouri’s discovery rules. 411 S.W.3d at 854 (“the State was . . . constitutionally obligated, pursuant to *Brady*, to search, find and disclose” the witness’s SIS).²

The Attorney General’s reliance on *Ferguson v. State*, 325 S.W.3d 400, 413 (Mo. App. 2010), is also misplaced. In that case, the court held the “newly discovered

² Mr. Johnson’s access to criminal information, such as the records of Becker’s 1999 DWI, is far more limited than that of the Attorney General’s Office. Resp. Mot. for Leave to File Under Seal and Mot. for Protective Order; Resp. Ex. A. Although Mr. Johnson requested Becker’s 1999 records from Franklin County, he received only a printout of the information available on Case.net, which does not include the DWI or the fact that Becker received an SIS. *Contrast* Pet. Ex. 13 [Franklin County Records] with Resp. Ex. A. Even at this stage, Mr. Johnson cannot fully understand and accurately plead the facts regarding his *Brady* claim without discovery, as he contends in the Motion for Discovery filed concurrently with this reply.

evidence” on which the *Brady* claim was based was unreliable and incredible, and therefore any potential investigative leads that could have resulted from the undisclosed information would have been futile. Contrary to the Attorney General’s suggestion, however, evidence need not be independently admissible in order to be valid fodder for impeachment and required to be disclosed under *Brady*. See *Wood v. Bartholomew*, 516 U.S. 1, 5 (1995) (explaining the application of *Brady* depends on whether there exists a “reasonable probability” the evidence would affect the outcome of trial); see also *Dennis v. Sec’y, Pa. Dep’t of Corr.*, 834 F.3d 263, 279 (3d Cir. 2016) (clarifying that *Wood* did not create a bright line rule attaching admissibility requirement to *Brady* evidence).

The Attorney General does not and cannot contest that English could be questioned regarding his reliance on Becker. Thus, if the impeachment information had been disclosed, trial counsel could have asked pointed questions related to his awareness of a drinking problem and possible DWIs. This could have led to questioning regarding whether it was a reasonable standard of practice to rely on someone with the red flags of a drinking problem.

Since the filing of the habeas petition, Mr. Johnson has secured Becker’s driving license record. It reflects that Becker lost his license during the 1999 offense when he refused a breathalyzer. Pet. Ex. 24 [Becker Dep’t of Revenue Record].³ Trial counsel could have asked questions regarding the importance of developing a full factual record

³ Again, this demonstrates the need for compulsory process. Mr. Johnson has successfully gathered evidence – but will only be able to obtain the full extent of the evidence with compulsory process.

to determine a legal question. When English would have agreed, he could then have been crossed regarding his awareness of Becker's refusal to allow the collection of evidence for his own self-interest. To echo the prosecutor's closing to this jury, this would have shown how Becker "cooked" the evidence in his favor in his case.

The Attorney General errs in his cramped reading of *Brady*. First, English could have been asked about Becker because English was relying on Becker's work. Trial counsel could have tried to demonstrate a "garbage in-, garbage-out" argument via the reliance on a compromised, non-testifying expert. Second, if disclosed, trial counsel could have investigated and uncovered Becker's obstruction regarding the collection of evidence for his own self-interest.

B. The suppression of Becker's 1999 DWI prejudiced Mr. Johnson

The Attorney General attempts to discount the importance of the State's rebuttal case. The core question at trial was Mr. Johnson's mental state at the time of the offense, and the State's experts rebutted the central defense: that Mr. Johnson did not deliberate as required for first-degree murder. In sum, the Attorney General arguments relate to a sufficiency of the evidence test.

The materiality inquiry under *Brady*, however, "is not just a matter of determining whether, after discounting the inculpatory evidence in light of the undisclosed evidence, the remaining evidence is sufficient to support the jury's conclusions." *Strickler v. Greene*, 527 U.S. 263, 290 (1999). Rather, the inquiry before this Court is whether the suppressed evidence "undermine[s] confidence in the verdict." *Id.* As the Supreme Court put it in *Kyles v. Whitley*, "[t]he question is not whether the defendant would more

likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” 514 U.S. 419, 434 (1995); *see also State ex rel. Koster v. Green*, 388 S.W.3d 603, 608 (Mo. banc 2012) (citing *Kyles*). The Attorney General attempts to heighten this inquiry by discussing “overwhelming evidence” of deliberation, but the only psychological evidence presented at trial regarding Mr. Johnson’s mental state at the time of the offense was the testimony and reports of the expert witnesses who evaluated him—Becker and English for the State, and Dr. Dean for the defense.⁴ This Court should resist the Attorney General’s invitation to elevate the *Brady* materiality inquiry into

⁴ The Attorney General claims that Dr. Rabun’s trial testimony supported the conclusions of Becker and English, but Dr. Rabun did not evaluate Mr. Johnson after he committed the instant offense, and he offered no opinion about whether Mr. Johnson coolly deliberated, or had the capacity to do so, in committing the instant crime. Rather, Dr. Rabun’s evaluation, which related to an earlier probation violation, took place in December 2001, more than seven months before Mr. Johnson committed the instant offense, and the purpose of that evaluation was to determine “the presence of a mental disease or defect; capacity to proceed at trial; factors which suggest an increased risk for harm to self or others; and, capacity to meet the conditions of probation.” Pet. Ex. 21 [Rabun Report]. Dr. Rabun did not render an opinion about Mr. Johnson’s responsibility for his actions with regard to the probation violation. Tr. 1471. Nor did he render such an opinion with regard to Mr. Johnson’s responsibility in the instant case. Tr. 1513. It was only upon the prosecutor’s questioning that Dr. Rabun agreed that, hypothetically, “There is nothing about mental disorder per se that categorially means they cannot coolly reflect or deliberate.” Tr. 1494. While Dr. Rabun believed that, at the time he saw Mr. Johnson in 2001, he was capable of deliberation, Dr. Rabun stated that he could not make such an assessment with regard to the instant case “within a reasonable degree of medical certainty because it’s seven months later.” Tr. 1515. The Attorney General’s suggestion that Dr. Rabun’s testimony “provided evidence that Johnson deliberated” or was in accordance with the conclusions of Becker and English is therefore inaccurate and misleading. *See Sugg. in Opp.* at 17. This Court should strike from the pleading this argument.

something akin to a sufficiency of the evidence analysis, contrary to the Supreme Court's clear guidance in *Kyles* and *Strickler*.⁵

While this Court has held that evidence such as the number of wounds inflicted or the weapon used can give rise to an inference that a crime was committed with deliberation depending upon the circumstances, the Court has also held that such facts "are not conclusive on the question of deliberation." *State v. Cole*, 71 S.W.3d 163, 169 (Mo. banc 2002). Nothing in the litany of evidence the Attorney General highlights precludes a finding that, under the circumstances of Mr. Johnson's case, due to his active auditory hallucinations, he did not coolly deliberate when he committed the offense. In this case, evidence regarding Mr. Johnson's mental state at the time of the crime was essential for determining whether he coolly deliberated or whether, as the defense contended, he lacked the capacity to do so because of his active auditory hallucinations. Contrary to the Attorney General's suggestions, that evidence did indeed stem from the conclusions of the psychologists on both sides who evaluated him.

The importance of the expert evaluations was clear from the prosecutor's questions about mental health evidence during voir dire; from the defense opening statement and closing argument; from the prosecutor's closing argument; and from the statements of jurors after trial.⁶ Indeed, while the prosecutor did not mention English's

⁵ While Mr. Johnson opposes the implementation of a sufficiency standard, if this Court were to engage in such an evaluation, it should only occur after a full and meaningful hearing before a special master.

⁶ This Court should deny the Attorney General's request to strike the transcript of the interview with the juror, which was prepared by the documentarian who conducted the

name in his closing argument, he extensively discussed the question of cool deliberation and called into question the credibility of the defense expert—implicitly but clearly contrasting her alleged anti-death penalty bias and “cooking” of her report with the credibility of the State’s experts, Becker and English. Tr. 1906-07, 1910-12, 1916, 1921-22, 1946, 1947-48, 1955-56.

Moreover, the fact that the State called English to testify in rebuttal at all demonstrates the importance of the psychological evaluations and conclusions to the State’s case. He was the only witness the State called in rebuttal, and the question English was called to address was whether Mr. Johnson’s mental illness and auditory hallucinations prevented him from being able to coolly deliberate at the time of the offense. The trial court even introduced English to the jury by explaining, “Ladies and gentlemen, the next witness to testify is Dr. Byron English. He will testify concerning the mental condition of the defendant at the time of the alleged offense.” Tr. 1797.

English’s rebuttal testimony was the last piece of evidence heard by the jury on the subject of Mr. Johnson’s mental state. The State possessed the advantage of recency, and the State’s failure to disclose insulated this testimony from an available avenue of

interview, an edited version of which is publicly available in the documentary film “The Worst Crime.” Should the Court wish, Mr. Johnson can provide the Court with the full video-taped interview with the juror. To the extent that there is a disputed issue of fact with respect the content of this interview, Mr. Johnson requests the opportunity for evidentiary development before a special master.

Furthermore, Mr. Johnson does not rely on the juror’s statements to impeach the verdict, as the Attorney General suggests, but to demonstrate the importance of the expert opinions to the case and the deliberations, which goes to the materiality of the suppressed impeachment information.

impeachment. If the impeachment had occurred, a reasonable juror would have found the State's position lacking and credited Mr. Johnson's mental health evidence. Notably, the Attorney General does not challenge the statements by Mr. Johnson's trial and post-conviction counsel regarding the importance the suppressed impeachment evidence would have had at both the trial and post-conviction stages, or the way counsel at each stage would have used such evidence—and the fact the State had suppressed it—in Mr. Johnson's case. Those undisputed accounts by Mr. Johnson's counsel regarding the prejudicial effect of the State's suppression must be credited by this Court. At a minimum, the statements by Mr. Johnson's counsel, along with the other evidence of materiality, establish a prima facie case that the State's violation of its duties under *Brady* prejudiced him. A special master should be appointed to examine all the evidence regarding prejudice.

Under all the circumstances, the suppression of Becker's 1999 DWI—critical impeachment evidence regarding the psychologist who evaluated Mr. Johnson and wrote the reports upon which English's testimony was based—undermines confidence in the jury's verdict on the primary question before it, Mr. Johnson's mental state at the time of the offense.

- C. The State's continual reliance on its disgraced experts without disclosing its misconduct to Mr. Johnson continued to violate Mr. Johnson's right to due process

In arguing that the State had no duty to disclose future misconduct that had not yet happened at the time of trial, the Attorney General ignores Mr. Johnson's central point—that the State, represented first by the St. Louis County Prosecutor's Office and later by

the Attorney General's Office, improperly and continually relied on—and urged this Court to rely on—witnesses it knew were discredited and whose opinions had gone unchallenged due to the State's failure to disclose impeaching evidence. In fact, it was the Attorney General's Office who represented the Committee in taking away Becker's license to practice psychology, a process that began in May 2009, even earlier than Mr. Johnson was previously aware and **before** his Rule 29.15 hearing. Pet. Ex. 22 [Becker Licensing Records], p. 1.

On May 21, 2009, the Committee referred Becker's case to the Central Investigations Unit after learning of warrants against him for DWI offenses, which were reported by Becker's former boss. Pet. Ex. 22, p. 1. On March 16, 2012, the Committee, represented by the Attorney General's Office, filed a complaint with the Administrative Hearing Commission seeking disciplinary action against Becker for his numerous DWI convictions. Pet. Ex. 22, pp. 98-102. On July 20, 2012, the Committee, by Assistant Attorney General Ronald Smith, moved for summary judgment; after Becker responded, contending that he had voluntarily relinquished his license years earlier, the Assistant Attorney General filed a reply disputing Becker's claims and casting doubt on his credibility. Pet. Ex. 22, pp. 104-113, 116-119. On December 4, 2012, the Administrative Hearing Commission granted the Committee's request for summary judgment and stripped Becker of his license. Pet. Ex. 22, pp. 129-135.

Meanwhile, Mr. Johnson filed his brief before this Court in the appeal from the Rule 29.15 denial on March 15, 2012—the day before the Attorney General's Office filed its complaint against Becker. *See* Missouri Supreme Court Docket SC91787. On July

16, 2012, four days before moving for summary judgment against Becker, the Attorney General’s Office filed its response before this Court in Mr. Johnson’s case. *See* Missouri Supreme Court Docket SC91787. Oral argument was held before this Court on September 19, 2012.⁷

Thus, at the same time it was seeking to strip Becker of his license and were questioning his credibility in one forum, the State—represented by the same Attorney General’s Office that was seeking affirmance of Mr. Johnson’s conviction and death sentence—was relying on his and English’s credibility in support of its arguments in Mr. Johnson’s case before this very Court.⁸ However, the State knew that due to its suppression of impeaching evidence, Mr. Johnson had not had a proper opportunity to challenge the witnesses’ credibility.

⁷ Notably, even this Court’s description of Mr. Johnson’s trial reflects the importance of the expert witnesses to the key issue of Mr. Johnson’s mental state: “At trial, Johnson denied that he had deliberated killing the girl. Trial counsel argued Johnson’s diminished capacity due to mental illness – specifically schizoaffective disorder – caused command hallucinations. The state’s expert witness testified that Johnson was capable of deliberation and that any hallucinations may have been caused instead by methamphetamine.” Case Summary for September 19, 2012, Supreme Court of Missouri, <https://www.courts.mo.gov/SUP/index.nsf/fe8feff4659e0b7b8625699f0079eddf/c4763db796a45e3186257a3a006ac9ee?OpenDocument>.

⁸ The Missouri Attorney General’s statement that they do not represent the State of Missouri is nonsensical. The warden is the respondent in this case because it is a habeas case, and he happens to be the individual holding Mr. Johnson in custody. But Mr. Johnson’s contentions in this petition for habeas corpus are about the fairness of his trial and his conviction, which is under the authority of the State of Missouri. The Missouri Attorney General represents the interests of the State of Missouri, even though the respondent in a habeas case is the warden holding Mr. Johnson in custody—and their arguments to the contrary are specious and irrelevant.

Likewise, the Attorney General's Office continued to rely on Becker's evaluations and English's testimony even after English was investigated by the Committee and ultimately relinquished his license due to his own misconduct. The records from the Committee of Psychologists reveal that the Committee did not find English credible when he appeared before the Committee in December 2017 and denied having committed misconduct, as the Committee determined there was cause to discipline his license after that meeting. Pet. Ex. 23 [English Licensing Records], pp. 15-41, 79-80.⁹ Moreover, the reason English's supervisor at Southeast Missouri Mental Health Center, Dr. Moll, filed a formal complaint against him in the first place was because he was dishonest with the Committee when instructed to self-report his misconduct. Pet. Ex. 23, p. 11. While the misconduct on which the professional discipline against English was premised occurred after trial, the Attorney General's continued reliance on English's testimony in spite of the credibility issues it knew or should have known he had, was disingenuous at best and violated due process.

The Attorney General here urges, in effect, that the State may argue one thing before this Court but not disclose to this Court the problems with the evidence on which they are relying. But the Supreme Court has resoundingly rejected this concept. *Banks v. Dretke*, 540 U.S. 668, 696 (2004) ("A rule thus declaring, 'prosecutor may hide,

⁹ It also bears noting that in correspondence with the Committee, English claimed he had been a psychologist in Illinois since 1970. Pet. Ex. 23, p. 48. However, when an investigator working with Mr. Johnson's counsel contacted the Illinois licensing board, they had no record of English ever being licensed in that state.

defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.”). This Court should be able to “presume that public officials have properly discharged their official duties.” *Bracy v. Gramley*, 520 U.S. 899, 909 (1997) (quoting *United States v. Chem. Found., Inc.*, 272 U.S.1, 14-25 (1926)). That did not occur at the trial or post-conviction stages of this case, **and it did not happen in the proceedings before this Court.**

Importantly, the records from the Committee of Psychologists indicate that English’s post-trial misconduct was not isolated and that he had engaged in similar sexual harassment against at least one other co-worker 20 years earlier—before Mr. Johnson’s trial. Pet. Ex. 23, p. 54. These allegations of English’s pretrial misconduct further reflect the need for discovery and a hearing on Mr. Johnson’s petition for habeas corpus. The State has access to records and materials Mr. Johnson does not have the ability to obtain, including personnel records of former State employees. In order for this Court to fully assess whether Mr. Johnson’s due process rights were violated by the State’s suppression of impeachment evidence that existed before trial—including pretrial misconduct by English—Mr. Johnson should be given the opportunity to obtain such records and present his claims to a special master at a hearing.

In spite of having an opportunity, the Attorney General fails to even defend his actions and arguments before this Court during the post-conviction appeal. This constitutes a noticeable omission and should be construed as an admission that a due process error occurred before this Court.

D. Mr. Johnson has demonstrated cause and prejudice

As explained in his petition for habeas corpus and above, Mr. Johnson has met the cause and prejudice requirements to raise his *Brady* claim before this Court: due to the State's suppression, Mr. Johnson was previously unaware of the impeachment information regarding Becker and English, and Mr. Johnson was prejudiced by this suppression because the credibility of the State's experts was central to the key issue at trial, Mr. Johnson's mental state at the time of the offense.

The Attorney General now claims that Mr. Johnson's arguments are based on information that was available on Case.net and the Committee on Professional Registration's website, and therefore could have been raised earlier. *See Sugg. in Opp.* at 8. However, the correct legal standard the United States Supreme Court and this Court employ imposes a duty to disclose impeachment information on the state, and defense counsel does not even have to request *Brady* evidence to trigger the state's duty to disclose. *Kyles*, 514 U.S. at 433-34; *State v. Robinson*, 835 S.W.2d 303, 306 (Mo. banc 1992).

Setting aside the Attorney General's false premise, Becker's 1999 DWI does not appear on the Case.net system because it was an SIS, as revealed by the exhibit filed by the Attorney General. *See Resp. Ex. A.* Nor are personnel records available on the Committee on Professional Registration's website. Only the State had or has access to records about Becker's 1999 DWI or any other SIS he may have had prior to trial, and only the State has access to English's and Becker's personnel records from the Department of Mental Health and the Southeast Missouri Mental Health Center. Under

Brady, the State had and has a duty to disclose these and other impeachment information regarding its expert witnesses, and the State has continually violated that duty throughout every stage of Mr. Johnson’s case by failing to disclose such information.

Moreover, Mr. Johnson “cannot be faulted for failing to raise the nondisclosure of evidence that he did not know about.” *Ferguson*, 413 S.W.3d at 58-59 (quoting *Buck v. State*, 70 S.W.3d 440, 445 (Mo. Ct. App. 2000)). As the Supreme Court made clear in *Banks*, 540 U.S. at 695, “[o]ur decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material.”

Even now, Mr. Johnson does not know the full extent of the State’s non-disclosure, and based on the records he has recently been able to obtain, Mr. Johnson has reason to believe additional impeaching information regarding Becker and English may exist. For this reason, Mr. Johnson requests that this Court appoint a special master and order discovery so that Mr. Johnson’s claims for relief may be fully developed and adjudicated. *See, e.g., State ex rel. Woodworth v. Denny*, 396 S.W.3d 330, 333 (Mo. banc 2013) (appointment of a special master under Rule 68.03 to take evidence and issue findings of fact and conclusions of law in state habeas action asserting a *Brady* violation).

Furthermore, the Attorney General cannot explain how he can take one position before this Court while simultaneously and adversely pursuing the revocation of Becker’s license. None of that was public; even now, the extent of it remains uniquely in the possession of the Attorney General and remains undisclosed.

II. Judge Seigel's reliance on Becker's evaluations of Mr. Johnson in spite of the pending criminal case against him created an appearance of impropriety

Contrary to the Attorney General's contention, Mr. Johnson does not argue for a *per se* rule regarding his claim of the appearance of judicial impropriety. *See* Sugg. in Opp. at 23. Rather, under the circumstances of Mr. Johnson's specific case, Judge Seigel's reliance on the credibility and conclusions of Becker and English in post-conviction proceedings, despite knowing of Becker's series of DWIs and without disclosing that information to the defense (or instructing the State to do so), created an appearance of impropriety. Despite knowing Becker had so many DWIs that he was being prosecuted as a persistent offender in a felony DWI case, Judge Seigel still highlighted his and English's credentials and endorsed their conclusions in denying the Rule 29.15. Pet. Ex. 12, pp. 11-13.

While Judge Seigel at times referred to Becker and English collectively with Drs. Dean and Rabun, the trial testimony and Judge Seigel's decision make clear that Becker and English came to a different conclusion than Dr. Dean regarding Mr. Johnson's mental state at the time of the offense. Pet. Ex. 12, p. 11 ("Dr. Dean determined that this condition rendered [Mr. Johnson] incapable of deliberation in that he did not have the capacity or ability to coolly reflect on the killing of Casey Williamson."). The trial testimony and Judge Seigel's decision also make clear that Dr. Rabun offered no conclusion whatsoever on the issue of Mr. Johnson's ability to coolly deliberate at the time of the offense. Pet. Ex. 12, p. 8 ("[Dr. Rabun] offered no opinion as to [Mr. Johnson's] responsibility or ability to deliberate at the time of the murder."). And the

fact that Judge Seigel consistently referred to Becker and English together shows that evidence impeaching Becker similarly would have been relevant to English's credibility.

Thus, despite Judge Seigel's tendency to list the four experts collectively at times, the substance of the decision itself reflects his reliance on the conclusions of Becker and English, not Drs. Dean or Rabun. That reliance on a discredited expert, especially without disclosing Becker's DWI history to the defense, created the appearance of impropriety and deprived Mr. Johnson of a fair and meaningful post-conviction process. *Anderson v. State*, 402 S.W.3d 86, 91, 93 (Mo. banc 2013); *State v. Smulls*, 935 S.W.2d 9, 17 (Mo. banc 1996); *Thomas v. State*, 808 S.W.2d 364, 367 (Mo. banc 1991).

The Attorney General again attempts to elevate the standard for demonstrating prejudice, but this Court has made clear that the defendant does not bear the burden of proving the judge was actually unfair. *Smulls*, 935 S.W.2d at 26 ("The standard by which we determine the question is not whether the [] judge is actually prejudiced."); *Anderson*, 402 S.W.3d at 92 (burden on defendant "does not require a movant to prove that the motion court was actually biased or prejudiced"). Rather, the question is whether a "reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the court." *Anderson*, 402 S.W.3d at 92; *Smulls*, 935 S.W.2d at 26 ("the standard is whether there is an objective basis upon which a reasonable person could base a doubt about the . . . impartiality" of the court.).

Mr. Johnson has satisfied that burden here, where Judge Seigel's reliance on the conclusions of a discredited expert to deny Mr. Johnson relief, without disclosure of Becker's criminal history, including the 1999 DWI, deprived Mr. Johnson of the

opportunity to raise his *Brady* claim in Judge Seigel’s court or to move to recuse Judge Seigel—potentially meritorious claims he was precluded from raising in post-conviction. Under these circumstances, a reasonable person would have factual grounds to find an appearance of impropriety and doubt the impartiality of the post-conviction court.

The Attorney General seems to forget that finality is neither the legal nor ethical polestar of his pursuit. Rather, the Attorney General is supposed to be tethered to truth and fairness and must seek a just result. The United States Supreme Court has expressed with fortitude again (and again) the “special role played by the American prosecutor in the search for truth in criminal trials.” *Strickler*, 527 U.S. at 281; *accord. Kyles*, 514 U.S. at 439-440; *United States v. Bagley*, 473 U.S. 667, 675 n.6 (1985); *Berger v. United States*, 295 U.S. 78, 88 (1935). Courts, litigants, and juries properly anticipate that “obligations [to refrain from improper methods to secure a conviction] . . . plainly rest[ing] upon the prosecuting attorney, will be faithfully observed.” *Berger*, 295 U.S. at 88. Prosecutors’ dishonest conduct or failure to comply with their constitutional obligations should attract no judicial approbation. *See Kyles*, 514 U.S. at 440 (“The prudence of the careful prosecutor should not . . . be discouraged.”).

CONCLUSION

WHEREFORE, for all the foregoing reasons as well as those in his petition for habeas corpus, Petitioner Johnny A. Johnson respectfully requests that this Court issue a writ of habeas corpus vacating his conviction and death sentence and grant him a new trial. In the alternative, Petitioner requests that the Court appoint a special master to take evidence of the claims raised here and grant such other and further relief as the Court

deems fair, just, and equitable under the circumstances. Petitioner further requests that this Court deny the State's motion to set the execution date in *State v. Johnson*, SC86689, in order for his *Brady* and judicial appearance of impropriety claims to be fully and properly adjudicated.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 2023, the foregoing was filed via the Case.net system and was sent via email to Gregory Goodwin at gregory.goodwin@ago.mo.gov.

/s/ Laurence E. Komp
Counsel for Appellant

No. 23-5147

In the Supreme Court of the United States

JOHNNY JOHNSON, PETITIONER

v.

PAUL BLAIR, RESPONDENT

*On Petition for a Writ of Certiorari
to the Supreme Court of Missouri*

**RESPONDENT'S APPENDIX TO BRIEF IN OPPOSITION
VOLUME TWO**

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IN THE SUPREME COURT OF THE STATE OF MISSOURI

JOHNNY A. JOHNSON,)
)
Appellant,)
)
vs.) Appeal No. SC91787
)
STATE OF MISSOURI,)
)
Respondent.)

=====

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION NUMBER THREE
Honorable Mark D. Seigel
Volume I

JOHNNY A. JOHNSON,)
)
Movant,)
vs.) Cause No: 2107CC-001303
)
STATE OF MISSOURI,)
)
Respondent.)

TRANSCRIPT ON APPEAL
November 30, 2009
December 1-2, 2009
July 23, 2010

=====

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November 30, 2009

THE COURT: This is Johnny Johnson versus the State of Missouri, Cause Number 2107CC-01303. Let the record reflect that petitioner -- excuse me -- plaintiff is not present in person however his attorneys are present, that would be Mr. Robert Lundt and Ms. Loyce Hamilton.

MR. LUNDT: That's right, your Honor.

MS. HAMILTON: That's right.

THE COURT: For the State is Mr. Dean Waldemer.

It's my understanding that -- you may proceed Mr. Lundt.

MR. LUNDT: Your Honor, first, your Honor, I would ask that the Court take judicial notice of the underlying case here today, State of Missouri versus Johnny A. Johnson, Cause Number 02CR-3834 and additionally I would like the court to take judicial notice of the appeal, Supreme Court Number SC86689.

THE COURT: The Court will take judicial notice of both those matters.

MR. LUNDT: Then movant calls Dr. Pablo Stewart to the stand.

PABLO STEWART, M.D.

being produced and sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. LUNDT:

3 Q. All right. Dr. Stewart --

4 MR. WALDEMER: Judge, before we begin, if
5 there are any witnesses present in the courtroom that
6 might be called, the State would ask that they be
7 excluded from the courtroom during Dr. Stewart's
8 testimony or any other witness' testimony.

9 MR. LUNDT: There are no witnesses in the
10 courtroom at this time and I will instruct them not to
11 come into the courtroom during each others testimony.

12 THE COURT: Very well.

13 MR. WALDEMER: Thank you.

14 Q. (By Mr. Lundt) Could you state your name for
15 the record, sir?

16 A. My name is Dr. Pablo Stewart.

17 Q. And how are you employed?

18 A. I'm a psychiatrist.

19 Q. And where are you employed?

20 A. I'm employed by the University of California
21 at San Francisco as well as I have my own private,
22 consulting practice.

23 Q. Okay. And what do you do for the university?

24 A. I am a clinical professor in the department of
25 psychiatry in the school of medicine and in that

1 capacity, I'm currently an assigning member of
2 psychiatric trainees and I supervise over a given
3 period of time.

4 Right now I have eight psychiatric residents
5 who I supervise.

6 Q. If I could direct your attention to Movant's
7 Exhibit 11 page 3027 --

8 THE COURT: I'm sorry. What exhibit was that?

9 MR. LUNDT: 11, your Honor.

10 THE COURT: Okay.

11 MR. LUNDT: Did I give you an exhibit list?

12 THE COURT: No. Thank you.

13 Q. (By Mr. Lundt) Okay. So, Movant's
14 Exhibit 11, page 3027 to 3047 is that your CV?

15 A. Yes, it is.

16 Q. All right. Let's go into your education.
17 Where did you graduate from medical school?

18 A. I graduated from the University of California
19 in San Francisco School of Medicine in 1982.

20 Q. And prior to that you were a chemistry major;
21 is that correct?

22 A. My undergraduate degree is in chemistry, yes.

23 Q. And that's from the United States Naval
24 Academy in Annapolis?

25 A. Yes.

1 Q. Where are you currently licensed to practice
2 medicine?

3 A. I'm licensed to practice medicine in the state
4 of California and the state of Hawaii.

5 Q. And you talked about your current
6 professorship. Do you also have previous academic
7 appointments?

8 A. I've been at the university since I completed
9 my psychiatric residency program in 1986 and I have
10 basically worked my way up the ranks starting as
11 clinical instructor into assistant professor and
12 associate professor and then now a full clinical
13 professor.

14 Q. Okay. And how long -- I didn't get into this.
15 How long did it take you to specialize in psychiatry?

16 A. Well, when I graduated from medical school in
17 1982 I had my MD degree then after that I completed a
18 four-year psychiatry residency program again at the
19 University of California.

20 Q. Okay. Now, going back to previous
21 employments, what were you doing from January of '97 to
22 September of '98?

23 A. I was director of Clinical Service for the San
24 Francisco Targeted Cities Project.

25 Q. And what was that?

1 A. The Target Cities Project was a national
2 project that -- hence the name Targeted Cities, areas
3 of the country that had exceeding high levels of drug
4 and alcohol abuse and we set up programs for the
5 treatment of individuals suffering from those
6 conditions.

7 Q. And was this something that you were appointed
8 to?

9 A. It was something I had to apply to and was
10 hired.

11 Q. Okay. And you were hired on as director of
12 that, correct?

13 A. The Director of Clinical Services. I wasn't
14 the overall director of the program.

15 Q. Okay. All right. So what were your
16 responsibilities there?

17 A. Well, we had two major aspects of that
18 program. We had a community intake program, which
19 provided a centralized intake for anyone seeking drug
20 and alcohol services in the city and county of San
21 Francisco and whether or not we were able to place
22 people in various programs.

23 we also had our own treatment program while
24 people were waiting to be placed. In addition to that
25 we ran a drug court in San Francisco. I oversaw both

1 of those.

2 Q. Okay. Now, from November of '96 to February
3 of '96 (sic) you were the Medical Director of the
4 Comprehensive Homeless Centers For Veterans' Affairs.
5 Can you tell us a little bit about that; what you were
6 doing there as medical director?

7 A. Well, at the Comprehensive Homeless Centers
8 run by the veterans, San Francisco has a very high
9 homeless population and a large number of homeless
10 former military veterans so we set up a comprehensive
11 center in an area that was populated by homeless people
12 and we had comprehensive services, hence, the name.
13 Medical evaluations, psychiatric evaluations, drug and
14 alcohol evaluations, social services evaluations and we
15 actually ran a sheltered workshop also.

16 Q. And from March of 1995 to January of 1996, you
17 were the chief of the Intensive Psychiatric Community
18 Care Program.

19 Can you tell us a little bit about that?

20 A. That overlapped from the homeless center. It
21 was what was called an Aggressive Case Management
22 Program. We identified a number of high utilizers,
23 people who spent a lot of time in the hospital, this is
24 psychiatric patients, and we were given the task to try
25 to keep these folks out of the hospital and so we did a

1 lot of services in the community and I was the
2 psychiatric director for that.

3 Q. And from April of '91 to February of '95,
4 would you tell us about that employment?

5 A. I was the chief of the substance abuse
6 in-patient unit, again of the Veteran's Administration
7 Hospital in San Francisco. We had at that time an
8 in-patient drug and alcohol treatment program and it
9 was during that time that we made that program, dual
10 diagnosis program, one that treated both people with
11 substance abuse problems and mental health issues and I
12 was the chief for that program.

13 Q. And from September of '90 to March of '91?

14 A. Prior to becoming chief I worked in that unit.

15 Q. Okay. All right. And August of '88 to
16 December of '89, how about then?

17 A. Briefly the jail services in San Francisco
18 were at that time under a federal consent decree, Stone
19 versus the City and County of San Francisco and part of
20 the consent decree was around mental health services
21 for the in-patient population and so we had both an
22 in-patient component and what we called an out-patient
23 service for the jail and I started out working in the
24 in-patient unit and then I eventually was appointed to
25 oversee the services in the jail as well as the

1 in-patient unit.

2 Q. Okay. And prior to that you were attending at
3 San Francisco General?

4 A. Prior to that, that's where I ran the
5 in-patient unit and then the directorship included
6 overseeing the in-patient unit as well as overseeing
7 the services provided.

8 Q. And so that was from '86 to '90 and you were
9 basically in charge of the maximum security psychiatric
10 ward?

11 A. We had a dedicated ward in the county hospital
12 that served the in-patient population. The inmate
13 population -- excuse me -- of San Francisco. So if
14 someone in the jail needed psychiatric services, that's
15 where it came from.

16 Q. Would I be correct in saying that with a
17 12-bed maximum, that you basically saw quite a bit of
18 the worst of mental health people serving time?

19 A. Well, yes, but I think the better way to
20 characterize that would be in jails there is a pretty
21 high tolerance for mental illness and you can be pretty
22 mentally ill and it would be okay to be in the jail
23 because of the restricted nature of just being in a
24 jail. So we got the people that couldn't even be
25 maintained in the jail so they were the most mentally

1 ill.

2 Q. Okay. Okay. Can you tell us about July of
3 '85 through June of '86?

4 A. That was the last year of my psychiatric
5 residency program and that's when I was a chief
6 resident for the department of psychiatry at San
7 Francisco General Hospital. In that capacity I was in
8 charge of Spanish-speaking treatment team, in-patient
9 psychiatric ward that just dealt with Spanish-speaking
10 patients. I supervised the psychiatric residents at
11 the hospital and I also ran the medical students
12 training program.

13 Q. And from July of '84 to March of '87?

14 A. Yes. The next three actually were, if you
15 want to call them moonlighting jobs that I did during
16 my psychiatric residency, the first one was at the
17 Crisis Center of San Francisco. There was two public
18 crisis centers and one was The West Side and the other
19 one was Mission Mental Health and I was the
20 psychiatrist for both of those.

21 Q. And you saw patients with not only psychiatric
22 issues but with drug issues as well?

23 A. Yes. And during this whole time, I didn't
24 note, I started, during my residency program, but I was
25 a psychiatrist at Haight Ashbury free clinic for the

1 after-care program. I did that from 1983 until 2006
2 and in that capacity we saw out-patients, drug and
3 alcohol patients as well as mentally ill.

4 Q. So the point is it was a bit of dual-diagnosis
5 patients?

6 A. A hundred percent dual-diagnosis patients.

7 Q. Okay. All right. And you did your residency
8 at the University of California in San Francisco?

9 A. Yes.

10 Q. And when you were in the Marine Corps that
11 didn't involve psychiatric work; is that correct?

12 A. Some people would say that my -- is not
13 formal. I was assigned in the infantry and I was in a
14 couple different battalions during that period of time.

15 Q. Page 3030 of Movant's Exhibit 11, lists your
16 honors and awards. I'm not going into each of these
17 but are there specific ones that you think you should
18 highlight at this point?

19 A. Well, a couple, again it's difficult to talk
20 about a person's own awards, but I was elected to the
21 Medical Honor Society, Alpha Omega Alpha, which I'm
22 very proud that that happened. That was in May of
23 1993.

24 In addition, I was fortunate enough to enjoy
25 reasonable degree of success as a -- as a teacher

1 because as a faculty member of the university, at least
2 in my medical school, you have three jobs you're
3 supposed to do. You're supposed to teach, you're
4 supposed to provide direct patient care and then also
5 you are expected to participate in the larger
6 university community, that is serve on committees,
7 different projects that you're department chair of that
8 that the chancellor or the dean of the medical school
9 assigned you. So in regards to teaching activities, I
10 was awarded a number of teaching awards.

11 Q. Okay. Now, as far as memberships are
12 concerned, you are currently a member of the California
13 Association of Drug Court Professionals?

14 A. I might have let that expire but at the time
15 of this version of my CV I was a member.

16 Q. Okay. And -- and the reason that you were a
17 member of that was because you were involved in drug
18 court yourself?

19 A. I was involved in drug court in San Francisco
20 and I also was involved in the drug court in Hawaii,
21 that's Honolulu drug court and they refer to it as
22 Hawaii drug court and I was at a national level with
23 the drug court movement.

24 Q. You talked about being a member of the
25 faculty. From July of '97 to June of '98 you were

1 president of the Alumni Faculty Association at the
2 School of Medicine?

3 A. Yes. See, this is one of those -- that
4 three-prong roles, the community service where I had
5 been drafted to be a member of the alumni faculty
6 executive committee. We took our turn to be president.
7 That was extracurricular activities, if you will, if
8 you will.

9 Q. Okay. As far as your public service is
10 concerned, most of these have to do with psychiatric
11 and drug court type of things; is that correct?

12 A. In the most general sense. I've been living
13 in San Francisco since I went to medical school there
14 in 1978 and, you know, I'm pretty engaged in the
15 community so I have an ongoing consultation with the
16 San Francisco Police Department, for example. For a
17 while I was also consulting with the San Francisco
18 Sheriff's Department and it was mainly around the
19 proper identification and how to deal with people who
20 are mentally ill and drug abusing people the police and
21 sheriffs encounter on the streets.

22 In addition I would be consulting to them for
23 their own employee assistance programs and I was
24 involved in a variety of other local activities and
25 since -- excuse me -- since 2004 I've been a member of

1 Human Services Commission and president for the last
2 three years and we oversee basically the welfare
3 department and -- and they have a \$600,000,000.00
4 budget that we oversee.

5 Q. And you have quite a bit of university service
6 as well. Let's go on to your teaching
7 responsibilities. Can you give me an idea of how much
8 of your week is taken up with teaching
9 responsibilities?

10 A. Right now, I would say it's about dedicated to
11 one full day a week -- we dedicate it only to teaching.

12 Q. And what about private practice?

13 A. And then the private practice, I have other
14 things I do at the university besides teaching, but my
15 consulting work takes up, you know, the remainder of
16 the time including Saturdays and Sundays.

17 Q. All right. Now, I noticed that from September
18 2001 to June of 2003, you are the supervisors of the
19 San Mateo County Psychiatric Residency Program?

20 A. San Mateo County is a county by itself of San
21 Francisco and they have their own independent
22 psychiatric residency program and they will send their
23 residents to me at Haight Ashbury free clinic and they
24 will assign me two full-time residents to work with me
25 there in seeing patients and I'll supervise their

1 clinical care.

2 Q. Okay. Now, you mentioned that the Haight
3 Ashbury free clinic, is that something you are
4 currently employed --

5 A. No. The clinic that came out went out of
6 existence in 2003 unfortunately, in the long run, it
7 finally went out.

8 Q. Was that because of budgetary issues?

9 A. It was basically because we didn't have any
10 money. We had already run out of shoe strings and
11 finally it all ran out.

12 Q. Now, a number of your teaching
13 responsibilities have to do with drug and alcohol
14 abuse, chemical dependency. Has that been a part of
15 your focus of a psychiatric practice for pretty much
16 most of you practice, professional life?

17 A. Yes. I was unfortunate to be at this
18 university during a time when there started to be a
19 recognition among psychiatrists, because prior to this
20 time there was a real divide between people who dealt
21 with drug and alcohol patients and people who dealt
22 with, quote, unquote, mentally ill patients, but at the
23 time near the earlier eighties, we were starting a
24 movement that both conditions existed in the same
25 person and they interacted with each other. So if

1 persons with their mental illness would interact with
2 their substance abuse, their substance abuse would
3 interact with their mental illness, hence the term dual
4 diagnosis, meaning you have a mental illness and a
5 substance abuse problem. So during my psychiatric
6 residency training this was sort of a new thing, if you
7 will, not that it's the first time that people had
8 these conditions, but it started to finally be
9 recognized, after years of being ignored and so, my
10 professional life was one where there was recognition
11 of these conditions so at the Haight Ashbury free
12 clinic and at follow-up at jail psychiatric services
13 the San Francisco Veteran's Administration we ran and
14 completed programs where we didn't separate out people
15 with mental health problems from those with drug and
16 alcohol problems. We found that, in fact, they were
17 the same person in the majority of the cases. So we
18 had this dual diagnosis. It's been with me my whole
19 career.

20 Q. Okay. Let's talk a little bit about -- I know
21 you probably touched on this before, from October of
22 '96 to July of '97, you were the psychiatric expert for
23 the U.S. Federal Court in the case of Madrid versus
24 Gomez.

25 Is that what you were talking about with the

1 consent order?

2 A. No, that was a different consent decree. The
3 consent decree that I talked about was for the City and
4 County of San Francisco and that was Stone versus City
5 and County.

6 Q. Okay.

7 A. The Madrid case had to do with the California
8 Super Max, which is at Pelican Bay and there was a
9 separate consent decree regarding the provision of
10 psychiatric services and I was one of the psychiatric
11 experts.

12 Q. Okay. And then from April of '90 onto January
13 of 2000, you were psychiatric expert with the Federal
14 Court in the case of Gates versus Duke Magin?

15 A. Duke Magin our former governor.

16 Q. Tell us about that?

17 A. Again that was a particular prison called the
18 California Medical Facility and it was in Vacaville,
19 California, V-a-c-a-v-i-l-l-e, where, again, it was
20 regarding the provisions of psychiatric services to the
21 inmate population and I was appointed by the Federal
22 Court and I reported directly to the special master in
23 those cases.

24 Q. You have a number of presentations listed on
25 your CV here -- I'm sorry -- you have an of

1 presentations listed here, looks like totalling around
2 forty-one.

3 Does that sound about right?

4 A. At the time that this version of the CV was
5 created that was correct.

6 Q. Okay. Many of these involve the field of dual
7 diagnosis; is that correct?

8 A. I would think the majority of them certainly
9 were involved in dual diagnosis, yes.

10 Q. And treatment issues of -- involving people
11 with both mental health problems and substance abuse
12 problems?

13 A. Yes.

14 Q. All right. Also you have a number of
15 publications, at least at the time of this CV?

16 A. Yes.

17 Q. And you have listed twelve of them; is that
18 correct?

19 A. Yes.

20 Q. Okay. Number one is entitled Content and
21 Outcome of Short Term Therapy Groups for Schizophrenic
22 Out Patients?

23 A. Yes.

24 Q. Also number two deals with schizophrenics?

25 A. Yes.

1 Q. Tell us a little bit about those.

2 A. Those groups were designed with the particular
3 goal there, this was right at the onset of the whole
4 managed care unit and schizophrenia is a chronic
5 condition, so once you've got it, you've got it --
6 you've got it your whole life and the implication was
7 that the treatment necessarily be chronic but as
8 resources were drying up, we were trying to think of
9 other ways we could be more interventive with
10 schizophrenics and so we did short term group therapy
11 with schizophrenics. Short term meaning twelve
12 sessions and then we did measurements, we did objective
13 measurements before, during and after the group to see
14 if in fact people improved in certain clinical
15 parameters and we found that short term groups almost
16 seemed antithetical in dealing with schizophrenic
17 patients, did have some lasting positive effects for
18 that so that was the whole purpose of that.

19 Q. And then number three deals with psychotic
20 conditions and substance abuse; is that right?

21 A. Yes. It basically talked about the proper use
22 of -- of antipsychotic medication in people that have
23 psychotic conditions and substance abuse because again
24 prior to this time, that was in 1991, there was a real
25 sense in the field that you shouldn't use drugs to

1 treat people with substance abuse because some how
2 there was mixed notion that they would become drug
3 addicts where, in fact, they already were, didn't make
4 any difference. So we were just talking about the
5 proper use of psychiatric medications in a substance
6 abuse problem.

7 Q. You -- Let's talk a little bit about the
8 places and the venues that you've testified in court.

9 A. Okay.

10 Q. What state courts have you testified in?

11 A. I've been qualified as expert in state courts
12 in Washington state, Idaho, California, Arizona,
13 Georgia, Pennsylvania.

14 Q. Okay. And what about federal court?

15 A. And in federal courts I've been qualified as
16 an expert in district courts in San Francisco,
17 Honolulu, Santa Anna, Los Angeles, Phoenix and Fort
18 Smith, Arkansas, just off the top my head.

19 Q. Okay. And have these all been criminal cases?

20 A. Yes.

21 Q. And involving criminal cases?

22 A. Yes.

23 Q. Have any of them been involving the death
24 penalty?

25 A. I want to say all of them or the overwhelming

1 majority were -- excuse me -- not all of them because
2 in federal court in Hawaii, although the defendant had
3 originally been charged in a capital crime, the death
4 penalty had been removed so it wasn't capital by the
5 time we came to trial. Most of them were capital
6 cases.

7 Q. Can you give me any idea, ball park, how many
8 times you've been accepted by the court as an expert?

9 A. A rough estimate would be fifty to a hundred
10 times.

11 MR. LUNDT: Your Honor, at this time I would
12 offer Dr. Pablo Stewart as expert in the field of
13 psychiatry.

14 MR. WALDEMER: No objection to the foundation
15 for this proceeding, your Honor.

16 THE COURT: The Court will accept him as an
17 expert.

18 MR. LUNDT: Thank you, your Honor.

19 Q. (By Mr. Lundt) Now, on this case we
20 contacted you in late 2006, early 2007?

21 A. Yes.

22 Q. Is that about right. And we asked you to take
23 a look at Johnny Johnson and obviously in your private
24 practice --

25 THE COURT: Let me interrupt for a minute. Is

1 there a witness in the back there?

2 MR. LUNDT: No.

3 THE COURT: Go ahead.

4 Q. (By Mr. Lundt) In your private practice you
5 get paid for your time and your expertise; is that
6 correct?

7 A. Yes.

8 Q. And can you give the court an idea of your fee
9 schedule?

10 A. My fee schedule is pretty much dictated by the
11 courts that give a certain range that they will pay for
12 public defender work. Most of my work is for public
13 defender agencies of one type or another. So my range
14 is zero up until this case, a high of around \$300 an
15 hour.

16 Q. Okay. Have you ever testified for the
17 prosecution?

18 A. I've testified one time for the U.S.
19 Attorney's Office in San Francisco on a sentencing
20 matter. In other matters for the U.S. Attorneys, one
21 out of the San Francisco office and one out of Oakland,
22 both was in California. I submitted reports regarding
23 competency and there wasn't a hearing so I didn't have
24 to testify.

25 Q. Okay. Now, did we -- did we ask you to reach

1 a particular conclusion in this case?

2 A. No.

3 Q. We asked you to take a look at Johnny Johnson,
4 correct?

5 A. Yes.

6 Q. Okay. And right next to you there is a number
7 of volumes that we sent to you; is that correct?

8 A. Yes.

9 Q. And you've had a chance to look at these
10 fourteen volumes?

11 A. I certainly reviewed them. I would be
12 misleading the Court if I told you I had all of them
13 committed to memory.

14 Q. Okay. So there are thousands of pages there.
15 You haven't memorized each and every page, correct?

16 A. I have not.

17 Q. But in general you took those records into
18 account as far as coming to your diagnosis; is that
19 correct?

20 A. Yes.

21 Q. And each of those fourteen volumes we did send
22 to you and you did review those, correct?

23 A. Yes.

24 Q. All right.

25 MR. LUNDT: This is Exhibit 15. Now, for the

1 power point presentation I prepared in this, your
2 Honor, is designated Movant's Exhibit 15 and each slide
3 actually has a letter associated with it and it goes
4 15A through 15CCC.

5 Q. (By Mr. Lundt) Now, Dr. Stewart, we'll get to
6 the actual time that you talked with Johnny and did
7 your evaluation with him later.

8 What I wanted to go through, some of the
9 records themselves and give the Court an idea of
10 Johnny's historical -- the gravity of the history as
11 far as Johnny's mental health is concerned. Okay.

12 MR. LUNDT: This slide we have, just for the
13 Court, we have the date, and event and in this case I
14 put head injury.

15 THE COURT: Let me interrupt you. If you
16 would, identify what page they are in the exhibit, 15A
17 say 15A.

18 MR. LUNDT: Thank you, your Honor.

19 Q. (By Mr. Lundt) 15A is what we are looking at
20 right now and just to describe to the Court, the date
21 has not only the date but Johnny's age in that column.

22 A. Yes.

23 MR. WALDEMER: Excuse me. At this point are
24 we offering 15A into evidence or are we displaying it
25 to the Court as a fact finder before it's been admitted

1 into evidence; is that correct?

2 THE COURT: I don't know. Mr. Lundt?

3 MR. WALDEMER: I guess my concern, and I was
4 just presented with this power point, I was not given
5 -- given this before this morning. As I look at this
6 power point, it clearly includes things which are
7 opinion and not fact and not necessarily something
8 which there is a record of.

9 The question, for instance, whether an
10 individual was an abuser or whether an individual
11 attempted to drown someone, those are questions for the
12 fact finder, those are not questions for this witness
13 to draw a conclusion or state it is in fact.

14 If he reviewed a record or statement, that's
15 one thing, but I would object to this being offered
16 into evidence because it's clearly an item prepared for
17 trial and contains opinions, which are not admissible
18 so I would initially object on that basis. We also
19 have 14 volumes which have been provided to the Court
20 and provided to me prior to this hearing. Those
21 volumes contain records and if the records have
22 appropriate certificates and are relevant, I'm not
23 going to have an objection to the foundation certainly
24 because they will be records of whatever institution,
25 however, there are also records compiled in there and

1 mixed in between there which are not business records,
2 which do not contain anything other than hearsay,
3 records which were summaries and other things like that
4 prepared by investigators and paralegals for this
5 hearing and I'm going to object to their admissibility.
6 As we get into this, I didn't want to keep jumping up
7 and down, I wanted to express these concerns I have.
8 If the doctor wants to talk about records, I'm not
9 going to object to that certainly, but the fact that we
10 are not going to offer any demonstrative exhibit which
11 contains writings to admissible hearsay and also
12 inadmissible opinion testimony, I'm going to object on
13 that basis.

14 THE COURT: I agree unless there is some
15 foundation for the exhibit.

16 MR. LUNDT: Yes, your Honor. As you can see
17 here on the exhibit we point to the records, the record
18 column to the far right there has a -- at least when
19 referring to the first slide here, which is 15A, that
20 column to the far right has where in the record this
21 particular record is found.

22 For example, Volume 6, which is Movant's
23 Exhibit 6, is the first number there and then 1413 is
24 the page number and each of these -- these records
25 have, they have been -- they have -- we have business

1 records affidavits included in the volumes for most of
2 these, if the Court would like us to go through those
3 first, we can do that or we could do that at the break,
4 does not matter to me.

5 THE COURT: I don't know that that removes the
6 hearsay objection necessarily.

7 MR. WALDEMER: Your Honor, here's my concern
8 and there's one thing I don't have a problem with,
9 Robert, certainly, for instance, the first one up
10 there, that is based on a medical record, which I
11 imagine this witness has reviewed and that medical
12 record states there was a head injury and stitches were
13 received at the clinic and they were at Meacham Clinic,
14 I assume that Robert is accurate where he says, and
15 tell me if I'm wrong, that that's Volume 6 and page
16 1413.

17 MR. LUNDT: Correct.

18 MR. WALDEMER: And that's something I would
19 not have an objection to because I believe there is a
20 record of that, it has been provided to me and the
21 doctor was free to look at that and draw whatever
22 conclusion he may.

23 where I have a concern, for instance, the
24 third item, 1981, three years, dad walked out. who? I
25 assume his father Robert Johnson and then location

1 within a volume. That is not, in fact, part of an
2 official record and that is a fact which is a matter of
3 opinion and actually within the records with the
4 statements they provided to me, there's a difference of
5 opinion depending on who you talk to whether dad walked
6 out or mom told dad to get out and I'm not going to
7 belabor that point for the hearing because I don't
8 particularly care but my concern that that is now an
9 exhibit being offered to this Court, which is a
10 conclusion, the same with dad, mom, being an abuser for
11 ten years off and on. That again, that is not a fact,
12 that may be an opinion, it may be an opinion of
13 witnesses who have given statements to Mr. Lundt's
14 attorneys but it is not a fact which -- or is it a fact
15 of an official record. He's not being found guilty of
16 abusing anyone, he has not been convicted of any crime,
17 so that's the kind of thing -- this is my concern, and
18 I'm not, believe me, anticipating what we have here
19 today, tomorrow and the next day, I'm not trying to
20 belabor this at all, I just object to that type of
21 thing being in this exhibit which is now being offered
22 to this Court. I assume you will be offering it to the
23 Appellate Court, we would contest that and so that's my
24 objection, but the medical records I don't have a
25 problem with, the official institution records, I don't

1 have a problem with, but the opinion in this exhibit
2 contains a mixture of both and I have this problem.

3 THE COURT: I agree, that is a problem.

4 MR. LUNDT: Your Honor, we'll go through each
5 of these records individually and as far as the event
6 being contained, a conclusion as to the abuser, we can
7 take that out. I have no problem with that. To the
8 best of my ability I have put in the event category
9 what the -- what the records state.

10 That's all I can tell you right now.

11 THE COURT: Those items in the event category,
12 however, not all of them, but the ones that are medical
13 records, I agree they are fine. It's the others, for
14 example, mom dates abuser, for example, 1981. If there
15 is a record that somehow it lays a foundation for that,
16 I'd be interested in seeing it but in my opinion that
17 is certainly an opinion, I would think.

18 MR. LUNDT: Well, your Honor, to the best of
19 my ability, I did put in what the record said.

20 THE COURT: What record --

21 MR. LUNDT: If I may have a minute, your
22 Honor. Many of these conclusions, for example, abuser,
23 they come out of psycho-social history. For example,
24 Exhibit 5, page 931 through 932, we have -- we have
25 psycho-social assessments, which deals with some of the

1 --

2 THE COURT: From where, who performed it?

3 MR. LUNDT: Julie Bertrand ACSWLCSW from 11-26
4 of 1993, that's Volume 5, pages 931 and 932. These are
5 all records that the doctor did, in fact, read in
6 considering -- in coming to his conclusion.

7 Now, if the Court wants me to take out the
8 term abuser, I would be happy to do so but I think that
9 we should probably go through the records first and
10 then revisit the State's objection.

11 MR. WALDEMER: What I want -- my concern, what
12 Mr. Lundt is reading from, and again the medical
13 records are the medical records, but this medical
14 record gives a report from Johnny Johnson that in his
15 treatment at St. John's that he felt that this
16 individual was abusive to him. That does not in any
17 way establish the fact that that person was an abuser.
18 It is a claim by the defendant and, believe me, we
19 certainly attack his ability to report these incidents
20 accurately, but that's my concern.

21 He can say this guy was an abuser but that
22 doesn't establish a fact, and put it in as a conclusion
23 in an exhibit. He may feel this guy attempted to drown
24 him in 1993.

25 THE COURT: That's the problem I have with

1 this as an exhibit. If the doctor relied on these
2 documents to form his opinion, that's okay, but I have
3 a problem -- I have a problem with admitting them as an
4 exhibit with -- under the event column particularly
5 that says -- does present it as a fact. I think that
6 is inappropriate. I don't think that --

7 MR. LUNDT: Well, your Honor, we'll go through
8 it, we'll go through sections where the State wants a
9 word or two taken out, I'll be trying, to the best of
10 my ability, with the space provided, I had to distill
11 some of this information down and we can go through the
12 actual record itself with the witness.

13 THE COURT: I think that's what you're going
14 to have to do.

15 MR. LUNDT: Okay. All right.

16 THE COURT: I don't recall whether you
17 actually offered this into evidence or not.

18 MR. WALDEMER: I just assumed if he was going
19 to talk about it with the doctor, he was going to offer
20 it into evidence but --

21 MR. LUNDT: Your Honor, at this time I'll
22 offer the parts of the record that's in front of you
23 through -- volumes 1 through 14 that have business
24 record affidavits and that are the records of Johnny's
25 past social security, schooling and mostly mental

1 health records. I'll offer all those into evidence at
2 this time.

3 MR. WALDEMER: Again, Judge, my problem is
4 that I can say if it's a record that has been provided
5 to me and it has an affidavit from an institution, I'm
6 not sure we all understand what I mean by that but I
7 would say a hospital, an agency that, you know, an
8 agency -- a penitentiary, my problem is mixed in these
9 14 volumes are letters that are hearsay or opinions or
10 compilations and summaries by people who work for the
11 public defender's office, and those things I have a
12 strong objection to and the records themselves, I'm not
13 going to object to anything from an institution that is
14 considered a bona fide business record of that
15 institution.

16 THE COURT: I'm going to reserve ruling on
17 your request to admit those exhibits at this time. We
18 are going to have to deal with them as they come up.

19 MR. LUNDT: Okay. That's fine, your Honor.

20 MR. WALDEMER: Judge, I would also state for
21 the record a number of these have already been admitted
22 during the underlying trial itself, during testimony of
23 Dr. Delaney Dean and during the testimony of Wanda
24 Draper.

25 MR. LUNDT: Yes, your Honor, some of them

1 have.

2 THE COURT: Okay.

3 Q. (By Mr. Lundt) All right. Dr. Stewart, this
4 might be a little unwieldy, but we're going to have to
5 go through volumes. Okay. Let's go to Volume 6, which
6 is Movant's Exhibit 6, page 1413.

7 A. Yes.

8 Q. Okay. Can you tell us -- this is from Johnny
9 Johnson's Meacham Park --

10 THE COURT: Let me interrupt. Can we have an
11 agreement that if they are medical records that merely
12 are documents, treatments at the hospital that -- or by
13 a treating -- treatment provider, that he doesn't have
14 to go through each of those documents?

15 MR. WALDEMER: As far as foundation, your
16 Honor, absolutely.

17 THE COURT: Okay.

18 MR. LUNDT: Okay.

19 MR. WALDEMER: And if he wants to offer in the
20 Meacham Park Clinic records based upon the affidavit
21 attached, I have no objection to their admittance and
22 whatever the doctor wants to say about them. That's my
23 --

24 THE COURT: So we don't waste time doing
25 something that nobody has an objection to.

1 MR. LUNDT: Right, I understand, your Honor.
2 Then I will offer the Meacham Park Records.

3 THE COURT: Is there an exhibit number?

4 MR. LUNDT: That is Exhibit 6, pages 1412
5 through 1441.

6 THE COURT: 1441?

7 MR. LUNDT: That's correct, your Honor. Your
8 Honor, for the Court's convenience, I've got an index.

9 THE COURT: Thank you.

10 Q. (By Mr. Lundt) Okay. Going back to Movant's
11 Exhibit 6, page 1413. What was important on 1-24 of
12 '80?

13 A. In that page 1413, it talks about -- that he
14 had stitches in his head, in his scalp.

15 Q. How is that important?

16 A. Well, it just implies he had a head injury.

17 Q. Okay. Going to Movant's Exhibit 12, 3215.
18 Okay. Now, Movant's Exhibit 12, these are -- this is
19 3214 is from a memo to case file, it's -- his mother
20 talked about him hitting his head on a concrete step in
21 that one.

22 A. In 3215 there is several references to when
23 Mr. Johnson had head injuries that resulted in his
24 needing stitches. Talked about one occurred when he
25 was 18 months, another one occurred when he was three

1 or four.

2 Q. Okay.

3 MR. WALDEMER: I'm sorry to interrupt. I'm
4 trying to streamline this and not delay it. I have to
5 object. I'm not sure we're offering in the pages 3215
6 -- My problem is this: The last exhibit, which he's
7 referring to, is a memorandum completed by their
8 investigator or paralegal or mitigation specialist. I
9 object to the admission into evidence based on hearsay.
10 If the witness relied upon that information as an
11 expert, I have no objection to him relying upon it. I
12 object to it being admitted into evidence and submitted
13 into evidence as an exhibit.

14 If that makes it clear, that's what my
15 objection has been all along. If the doctor wants to
16 talk about it, I don't have a problem. I think they're
17 opinions and renditions and it's hearsay.

18 THE COURT: I understand. If that is the
19 case, it will not be admitted into evidence.

20 Q. (By Mr. Lundt) Dr. Stewart, did you rely on
21 this in part in reaching your conclusions in this
22 matter?

23 A. Yes.

24 Q. Now, that those particular occurrences were
25 also discussed at the trial level; isn't that correct,

1 by Dr. Wanda Draper?

2 A. I believe so, yes.

3 Q. And her evidence was admitted at trial; is
4 that correct, her time line of life events; do you
5 recall that?

6 A. I'm not aware.

7 MR. WALDEMER: I'll stipulate for the record
8 her time line did come in. It's in the record in the
9 underlying conviction.

10 MR. LUNDT: And it's also a part of the --
11 part of the records that you reviewed in this case and
12 let me find those to make sure --

13 A. I believe it's volume 11, 2981.

14 Q. (By Mr. Lundt) I'll show you that briefly.
15 Yes, that's it. Do you recall reviewing that record as
16 well that was admitted into evidence in the underlying
17 case; is that correct?

18 A. Well, I reviewed volume 11 starting on page
19 2981, this is Developmental Life Path by Johnny A.
20 Johnson that was prepared by Dr. Draper. I did read
21 that.

22 Q. And her report as well?

23 A. And her report as well.

24 Q. Okay. So when we're talking about several
25 head injuries as a child, how does that impact Johnny?

1 A. Well, it's just important to note that I
2 believe by the time he was five years old he's already
3 had 35 stitches or thereabouts, the exact number I'm
4 not exactly sure. On -- he had multiple episodes of
5 needing stitches in his head, which is something to
6 note at that point. You don't know what to make of it,
7 but that certainly was notable that as a child he had
8 multiple times when he needed to be taken to the ER and
9 get sewn up.

10 Q. Okay. Okay. Now, let me show you Volume 6,
11 let's go to page 1533. Now, this is from the Comtrea
12 or Comtrea records?

13 A. Yes, the Community Treatment Incorporated and
14 I'm not sure how to pronounce that.

15 MR. LUNDT: And on page -- Movant's Exhibit 6,
16 1525, you've got an affidavit, business record
17 affidavit for Johnny Johnson Comtrea records. Your
18 Honor, I offer those into evidence at this time.

19 MR. WALDEMER: No objection to what's listed
20 in the index as Comtrea records, page 1525 through page
21 1539.

22 THE COURT: All right. They'll be admitted.

23 Q. (By Mr. Lundt) All right. Now, looking at
24 1533, this is part of a psychiatric evaluation from
25 1996; is that correct?

1 A. Yes, it is.

2 Q. Okay. 1532 through 1534, is that a particular
3 -- particular evaluation?

4 A. Yes.

5 Q. And in that they discuss his family history;
6 is that correct?

7 A. There is a section on the evaluation listed as
8 family and social history.

9 Q. Okay. And that states in there that his
10 father walked out when he was three?

11 A. Yes, he does.

12 Q. Okay. Now, in -- now, you're not saying that
13 as far as reporting is concerned, you're not making a
14 judgment as to whether Johnny's mom, his grandmother or
15 Johnny himself was correct in that fact, are you, as
16 far as when it happened?

17 A. No. In all of these records I'm looking at
18 the information generally contained in them so he's
19 stated here that his father -- they use the term walked
20 out when he was three, he being Johnny. Again, that's
21 just the fact I'm holding in my brain as I'm going
22 through the whole evaluation to see if and to what
23 extent, it may have had an impact on his overall
24 psycho-social development. That's one of many facts
25 that I'm holding.

1 Q. Okay. So does it matter to you if Johnny's
2 father walked out when he was two and a half or when he
3 was five?

4 A. Well, I think the age is important because it
5 does capture where he was in his own developmental
6 sequence at that time.

7 Q. Okay.

8 A. And so overall I'm not going to knit-pick
9 between two and a half or three and a half.

10 Q. All right. Let's go to Volume 5, pages 911
11 and this is from Johnny Johnson's St. John's Mercy
12 Medical Record and those are from 910 through 1309 in
13 Volume 5.

14 MR. LUNDT: Your Honor, I would ask for the
15 admission of those records at this time.

16 MR. WALDEMER: I have no objection to the
17 admission of those records based on the affidavit as
18 far as they pertain to the doctor's evaluation and
19 eventual conclusion.

20 THE COURT: What are the page numbers again?
21 910 to what?

22 MR. LUNDT: 1309.

23 THE COURT: Okay.

24 Q. (By Mr. Lundt) Okay. What about the family
25 history is important in your --

1 A. There are a lot of things that are important
2 there again it talks about the parents that had been
3 divorced, again mentions parents separated when
4 Mr. Johnson was three years old. Talks about he's
5 always having school problems, being diagnosed with
6 having learning disabilities and his being in special
7 education classes.

8 It also notes that the patient has had traumas
9 with several of his mother's past boyfriends and they
10 had reported to be abusive to him and been a source of
11 his -- of some of his depression in the past.

12 Q. Now, when you say they reported to have been
13 abusive to him, is that what's -- what's in that
14 record?

15 A. That's what the record states.

16 Q. Okay. And is this, as far as them talking
17 about traumas, is this important in your diagnosis
18 later on?

19 A. Well, again, as you're going through these
20 records, you know, I'm not holding on to any one
21 particular item to then link to a diagnosis later. I'm
22 just looking at all this information and trying to take
23 into the totality of what it is. This is an important
24 piece of information that could possibly affect what
25 ultimate conclusions that I have and, in fact, it did,

1 this was part of it.

2 Q. Okay. So when we go through these records
3 with you, you're taking into account all the records
4 but we are highlighting specific parts that you think
5 were important in this matter; is that correct?

6 A. Yes, for a lot of reasons. We mentioned,
7 talks about learning disabilities and one of my
8 opinions is that he does suffer from learning
9 disabilities and that he has cognitive impairment.

10 Another one of my opinions is that he suffers from
11 post-traumatic stress disorder and this piece of
12 information about -- that the mother's boyfriends have
13 been reported to be abusive to him, I'm not saying this
14 is the one event that gave him PTSD, but it's certainly
15 one I've considered.

16 Q. Let's go to the 1536, Exhibit 6.

17 A. Yes.

18 Q. Okay. And we also talk about as far as his
19 past medical history here, these are also Comtrea
20 records, talks about being fearful, 1536.

21 A. Well, in this record they talk about the
22 reason for contact so I understand that is the reason
23 why he sought treatment at that time. He had been
24 hospitalized following a suicide attempt and depression
25 and that the record states that Mr. Johnson stated that

1 he attempted suicide because he was fearful about his
2 mother's boyfriend who had moved into the home in
3 February of '92, and that he had become very depressed
4 thinking about the boyfriend continuing to live with
5 him.

6 Q. Right. And as far as Johnny's report in 1992,
7 would it be correct to say that you're not making any
8 judgment about the truthfulness of that particular
9 statement?

10 A. Of which particular statement?

11 Q. About whether his -- whether the mother's
12 boyfriend who lived in their home in February of 1992?

13 A. No. Again, how I do a mental health
14 evaluation is, I review all the available materials and
15 then I interview the person that I'm doing the
16 evaluation on and then come to a synthesis later on so,
17 again, this is one more piece of information out of the
18 -- in the many, many I used to base my ultimate
19 opinions on.

20 Q. Okay. Now, let me ask you if you have
21 Movant's Exhibit 6, 1441. Now, 1441 is the end of
22 Meacham Park Clinic records so it was part of the --
23 something that's already been admitted into evidence,
24 however, it says that it was the St. John's Mercy
25 Medical Center records?

1 A. Yes.

2 Q. And it indicates what?

3 A. That he had a skull x-ray because of a
4 laceration that he had in the back of his head.

5 Q. Okay. And this record also was important in
6 your final analysis?

7 A. Again, it was one of the ones that I talked
8 about Mr. Johnson receiving a number of insults to his
9 head at a very, very early ago.

10 Q. Let's go to Movant's Exhibit 5, 1990. Now,
11 this is also in the St. John's Mercy medical records,
12 which I believe has already been admitted into evidence
13 and this one is hard to read, but in the center of that
14 page it says: when patient was five years old --
15 they're saying mother's boyfriend did try to drown him
16 -- something -- intoxicated on alcohol?

17 A. Yes, sir. My copy is pretty bad so if you
18 could point out exactly where that is. I can't make it
19 out from this (indicating).

20 Q. All right.

21 A. Okay. So again, say maybe two-thirds of the
22 way down the page, the record does say that when the
23 patient was five years old, this same mother's
24 boyfriend did try to drown him when he was intoxicated
25 on alcohol, yes.

1 Q. Okay. And let's go to the next line, which
2 would be Movant's Exhibit 15B. Okay. We'll go to the
3 record that supports these things, Volume 6, 1533,
4 again. Now, this is also from the Comtrea records and
5 although this is an evaluation from 1996, they talk
6 about sexual abuse; is that correct?

7 A. Yes.

8 Q. What about sexual abuse is important to you?

9 A. Well, the record states that apparently he was
10 molested at the age of six by a 13-year-old boy.

11 Q. Okay.

12 A. Again, it's one more piece of evidence that
13 I'm holding to use, potentially use in my final
14 assessment.

15 Q. All right. And Volume 5, Movant's Exhibit 5,
16 997 also talks about this sexual abuse, correct?

17 THE WITNESS: Your Honor, is it okay if I
18 stand up?

19 THE COURT: Yes.

20 A. Yes, in volume 5, 997, again, in -- the record
21 talks about his being sexually abused by a Germaine at
22 age five.

23 Q. (By Mr. Lundt) And it also talks about the
24 boyfriend -- mother's boyfriend in the past tried to
25 drown him?

1 A. It does mention that also, yes.

2 Q. All right. Let's go to Volume 1, page 100.

3 MR. LUNDT: Now, your Honor, this comes from
4 Movant's Exhibit 1. This is the Special School
5 District records and there is an affidavit on page
6 three of Movant's Exhibit 1 and I would offer the
7 St. Louis County Special School District records at
8 this time.

9 MR. WALDEMER: I have no objection to the
10 Special School District record, pages one through 218
11 in Volume 1 or I guess -- or I guess that's Exhibit
12 Number 1.

13 THE COURT: Very well. Exhibit 1, pages 1
14 through 218 will be admitted.

15 Q. (By Mr. Lundt) And going to page 100. Okay.
16 Now, this is a Special School District evaluation
17 report?

18 A. Yes.

19 Q. That they made May 29, 1984?

20 A. Yes.

21 Q. And this is when Johnny is in kindergarten?

22 A. Yes, it does.

23 Q. Okay. That record indicates that he's being
24 retained in kindergarten, correct?

25 A. Yes.

1 Q. What else about that particular page is there
2 that is important to you?

3 A. Well, the report reflects that Mr. Johnson has
4 received over 35 stitches in his head resulting from
5 several accidents so it further verifies the -- or
6 further lists that Mr. Johnson suffered a number of
7 head injuries as a child and it goes on to report that
8 he has significant neurologic delays in gross and fine
9 motor delays.

10 He is unable to dress, he doesn't -- he can't
11 identify right and left. He seems clumsy and awkward
12 to most motor activities.

13 Further it also notes that Mr. Johnson had
14 some neurologic difficulties at that time.

15 Q. And it also says that the -- in the
16 pre-evaluation date, pre-evaluation conference date,
17 May 7th, 1984, that lists that Ms. Connie Johnson as
18 attending that? Would that be correct?

19 A. Yes, it does.

20 Q. In the center?

21 A. It does.

22 Q. All right. So, you would assume at that point
23 that the -- that Ms. Johnson's memory would have been
24 better at the time that -- at or near the time that it
25 happened or could you make that assessment?

1 A. I can't speak to that. It certainly says that
2 she attended a conference on May 7th, which was -- what
3 is that, three weeks before the Special School District
4 Evaluation Center report.

5 Q. Okay. All right. Go back to Volume 6, page
6 1416.

7 A. Yes.

8 Q. Okay. Now, this is also from sometime in
9 1985; is that correct?

10 A. Yeah. The date and the month is removed here
11 but the year still says 1985.

12 Q. Okay. And it talked about -- toward the
13 bottom of that page, enuresis. Can you tell us what
14 that is?

15 A. Enuresis is having accidents with your urine
16 and they talk about a recent onset of daytime wetting.

17 Q. And so in 1985 at six and a half years,
18 according to that record, he had a recent onset of
19 daytime wetting himself?

20 A. The record states that prior to this visit
21 there had been about a three or four week history of
22 urinating on himself during the day.

23 Q. And it has some rule-out diagnosis?

24 A. Also says that he's always wet himself at
25 night so this was a new thing.

1 Q. Okay. So -- rule out UTI?

2 A. The rule out says -- meaning the diagnosis
3 they are considering are urinary tract infection, some
4 sort of bladder dysfunction, which further documents
5 neurologic problems that Mr. Johnson could have been
6 having that contributed to this and also note that the
7 enuresis could be explained by what they list as
8 emotional factors.

9 Q. All right. And just while we are here on page
10 1416, about halfway down the page it says plus blood?

11 A. Yes. They found there was blood in the urine.

12 Q. All right. And then --

13 A. And I think that's important because -- it's
14 not pathognomonic, meaning it doesn't absolutely
15 confirm the fact that he's being sexually abused, but
16 it's very suggestive of the fact that Mr. Johnson is
17 being sexually abused. He was ending up with
18 asymptomatic hematuria. So it wasn't as if it was a
19 result of infection or some sort systematic illness
20 that was going on but having blood in his urine without
21 any other apparent symptoms and a common cause, not the
22 only cause, certainly, is sexual abuse.

23 Q. Then on 1417 they talk about asymptomatic
24 hematuria; is that right, at the bottom of that page?

25 A. I'm sorry my -- I see where it says

1 asymptomatic hematuria, yes.

2 Q. Okay. Okay.

3 MR. LUNDT: This is in the ADAPT record, your
4 Honor, in Volume 6, Movant's Exhibit 6. The ADAPT
5 records go from 1442, which is the previous record
6 affidavit, to 1524 and I would offer those at this
7 time.

8 MR. WALDEMER: I have no objection to their
9 foundational admission as far as they've been
10 considered by the witness.

11 THE COURT: Very well. They'll be admitted.

12 Q. (By Mr. Lundt) Okay. And at 1449 we have
13 another mental health assessment which actually starts
14 on 1448 and goes to 1452?

15 A. Yes.

16 Q. On page 1449 at this time he -- they discuss
17 sexual abuse in that; is that correct?

18 A. Yes.

19 Q. And they actually give an individual at the
20 bottom of that page. Mr. Johnson reported that a
21 16-year-old neighborhood molested him when he was seven
22 years old, which mother did not deny in this record,
23 charges were never brought against the perpetrator as
24 he did not tell -- as he did not tell the family about
25 the incident until many years later?

1 A. Yes, that's what the record says.

2 Q. And again, this is in February of '02, that's
3 when this record was made, correct -- or actually, I'm
4 sorry, looks like January 23rd of '02?

5 A. It was made -- the last page in one signature
6 was January 30th it was signed off on and then followed
7 up by a signature on February 1st. So it certainly was
8 in January of '02.

9 Q. Okay. Okay. Let's go to Volume 14, page
10 3638, 3668. I'm sorry.

11 A. Volume 14. The page number 3668?

12 Q. Correct. And this is from a memo to file from
13 the trial mitigation specialist Lisa McCulloch and her
14 last name is spelled, M-c-C-u-l-l-o-c-h.

15 MR. WALDEMER: Again, I object to the
16 admission of this exhibit, it is hearsay and there is
17 no exception to the hearsay rule as an admission to a
18 business record.

19 MR. LUNDT: Your Honor, at this time I'm going
20 to ask the witness if he took this into account in
21 making his diagnosis and also Lisa McCulloch will be in
22 later this week.

23 THE COURT: You may do that. I'm not going to
24 admit it as a record.

25 MR. WALDEMER: Just so we are clear, my

1 concern is that -- and he may call Lisa McCulloch and
2 we'll deal with her when she comes in, but my concern
3 is the admission of these records is improper and
4 they're included in these massive volumes that have
5 been submitted to the Court. I want to make sure if
6 this goes up on appeal that these records are not
7 admitted and removed before they are offered to any
8 appellate court for their consideration.

9 THE COURT: I understand. These records will
10 not be admitted.

11 Q. (By Mr. Lundt) Now, Johnny's brother Eric
12 actually gave a name for one of the assailants for
13 Johnny's molestation?

14 A. Yes, he did.

15 Q. Okay. Did you take that into account in
16 coming to your diagnosis?

17 A. Again, I certainly noted this, that this is
18 one -- one more reference to the fact that Mr. Johnson
19 may have been sexually molested at two different
20 periods of his growing up and that's the extent to
21 which I understand it.

22 Q. And let's go to slide C, 15C.

23 MR. LUNDT: Volume 14 again, 3663, again a
24 memo to case file from Beverly Beimdiek and we're are
25 not offering this record for the truth of the matter

1 asserted, your Honor.

2 Q. (By Mr. Lundt) In that particular record
3 Beverly Beimdiek, in 2003, spoke with Connie Kemp and
4 Katie Johnson and she discussed that with those two
5 ladies, his grandfather Jim Owens died and Johnny
6 witnessed this death, which was by heart attack?

7 A. Yes. They go on to mention that at least --

8 MR. WALDEMER: Object, this is not responsive
9 to the question. It's also hearsay.

10 THE COURT: Sustained.

11 Q. (By Mr. Lundt) They said that he was fairly
12 normal up until age thirteen when he started acting
13 funny; is that correct?

14 A. Correct.

15 Q. And it was their opinion at least his
16 personality changed?

17 A. They noted there was a change and they linked
18 it to Johnny's witnessing his grandfather dying.

19 Q. And they linked it also to the molestation?

20 A. And they also said that the molestation
21 occurred around that same time.

22 Q. Okay. Let's go to Volume 5, 1161. Okay. On
23 this page they talk -- in the St. John's Mercy Medical
24 Center -- about the reason for his admission?

25 A. Yes.

1 Q. -- for Johnny's admission, and this was around
2 4-23 of '92. Does that sound right?

3 A. Well, the discharge summary, which this record
4 is referring to, is dated 5-2 of '92.

5 Q. Okay. So he was discharged from the hospital,
6 that's on 5-2 '92. Okay. So he was 14 years old at
7 the time?

8 A. Yes.

9 Q. And what is important about this record?

10 A. Well, it said there was a suicide attempt and
11 by cutting his wrist and they stated that the apparent
12 precipitant was breaking up with his girlfriend but
13 what also is notable to me is that he was diagnosed as
14 suffering from depression and he was also diagnosed
15 with attention deficit disorder with dyslexia so their
16 further -- this further reference to his having some
17 neurocognitive difficulties and the doctor felt that
18 the depression was of significant -- sufficient
19 severity to initiate treatment with an antidepressant.
20 So he was given medication.

21 Q. And that was what?

22 A. Tofranil, 50 milligrams.

23 Q. All right. Let's go to Movant's Exhibit 5,
24 1163. This is from that same Dr. Albert Soto?

25 A. Yes, Alberto Soto.

1 Q. Okay. And this is where we get the first
2 preliminary diagnosis on Johnny?

3 A. Yes. The diagnosis that I read previously was
4 the diagnosis of discharge. That was depression,
5 attention deficit disorder with dyslexia. When he
6 first presented to the hospital the doctor diagnosed
7 depression and ADD with dyslexia.

8 Q. Okay. In 1992 that's where we get the first
9 at least preliminary diagnosis on Johnny; is that
10 right?

11 A. There are a lot of records here, but my
12 understanding of the records is that this is where he's
13 first officially diagnosed with a psychiatric
14 condition.

15 Q. Okay. All right. Let's go to 1080. Okay
16 now, this is also from St. John's Mercy dated 5-10 of
17 '92 at the top?

18 A. Yes.

19 Q. What's important about that record?

20 A. Well, he's -- this is two weeks approximately
21 from his last hospitalization. He was readmitted to
22 the psychiatric unit because of his overdosing on the
23 medication that Dr. Soto prescribed.

24 Q. And they talk about Imipramine?

25 A. Yes. That was the medication that Dr. Soto

1 had prescribed.

2 Q. And that is an antidepressant?

3 A. That is a what they call a tricyclic
4 antidepressant. It's actually a very serious
5 medication to overdose.

6 Q. And it looks like he took 25, 50 milligram
7 tablets?

8 A. 25, 50 milligram tablets, yes.

9 Q. Okay. And they give a discharge diagnosis?

10 A. Discharge diagnosis is Imipramine ingestion
11 and they also give the diagnosis of depression.
12 There's a diagnosis of hypocalcemia that was secondary
13 to the Imipramine ingestion.

14 Q. All right. So then two weeks later we have
15 another diagnosis on Johnny?

16 A. Two weeks later --

17 Q. After the distal slashing of the wrist.

18 A. After the slashing of the wrists, which was
19 his diagnosis, depression, attention deficit disorder,
20 dyslexia, then there was further, another diagnosis of
21 depression, yes.

22 Q. Okay. All right. Let's go to the next slide
23 which is 15B. Okay. Again Volume 5, 998 -- 988 sorry.

24 A. Yes.

25 Q. And this record is from Dr. Khawla Khan?

1 A. Yes, Dr. Khan, K-h-a-n.

2 Q. And it has admission date of 5-13 of '92 and
3 discharge 5-29 of '92 at the top of that, correct?

4 A. Yes.

5 Q. And this again is talking about his depression
6 and Imipramine attempt of overdosing, correct?

7 A. Yes. Dr. Kahn had the final diagnosis of
8 major depression, single episode, severe but not
9 psychotic features. She also diagnosed him with a
10 learning disability and states that the medical problem
11 was overdose with Imipramine and then at that point
12 they removed the Imipramine treatment and changed him
13 to Prozac.

14 Q. Okay. And again there they talk about the
15 mother's alcoholic boyfriend, correct, under the
16 hospital course?

17 A. I'm not seeing where you are referring to.

18 Q. On page 988, top, second sentence?

19 A. Yes. Mother's boyfriend was an alcoholic,
20 came back to live with the family in February.

21 Q. And at the bottom of that page, about four
22 lines up, they talk about -- he acts a lot younger than
23 his age, very concrete in his thinking. Is that
24 important?

25 A. well, and again, you know, there is so many

1 pieces of information that went into my final
2 assessment. This is just one other piece where he is
3 acting younger than his age, very concrete in his
4 thinking. Now, concrete in thinking is a code word
5 amongst psychiatrists that there's a question of
6 whether or not the person is psychotic when they have
7 very concrete thinking and that can imply a psychotic
8 condition and it also can imply cognitive impairment.

9 Q. Okay. And again in that same batch of records
10 on page 995, they talk about long-term goal, projected
11 discharge date, do you see that one there?

12 A. Yes.

13 Q. And they talk about nightmares there?

14 A. They talk about what the goal should be in
15 that, the goal is -- no longer depressed, no longer
16 wishing to die and that he will not have nightmares
17 which frightened him.

18 Q. Okay. All right. Let's go to 15B. Okay.
19 Volume 6, 1423-24. This is also in '92, correct?

20 A. Yes.

21 Q. And by -- on 1424 by 9-14 of 1992 they talk
22 about diagnosis again, correct?

23 A. Yes, and the diagnoses that they've listed on
24 1424 is history of major depression, attention deficit
25 hyperactivity disorder.

1 Q. And they plan to continue him on Prozac at
2 that point?

3 A. And the medication treatment was Prozac, yes.

4 Q. All right. On 1535 of that same Exhibit 6,
5 again in the Comtrea records?

6 A. Yes.

7 Q. We have a community follow-up of Johnny as far
8 as his mental health is concerned with his Comtrea,
9 correct?

10 A. Yes.

11 Q. Okay. And this Therese Booth was a therapist,
12 on 1535, discusses his diagnoses on the discharge
13 summary?

14 A. Yes.

15 Q. And again depression, suicidal urges.

16 A. Okay. That actual diagnosis was major
17 depression, single episode in partial remission, yes.

18 Q. All right. So Volume 5, 931, this is the
19 psycho-social assessment done by Julie Bertrand?

20 A. Yes.

21 Q. Okay. Now, he discussed, at least in part
22 there, he talks about -- the presenting problem,
23 patient admitted to the hospital because of thoughts of
24 suicide?

25 A. Yes.

1 Q. And again this is 11-19 of '93. He told the
2 teacher that he was going to kill himself; is that
3 right?

4 A. Yes, he did.

5 Q. He states he had been having problems at
6 school with a teacher and because of that he was
7 feeling suicidal?

8 A. Yes.

9 Q. What about that record is important to you?

10 A. Well, it talks about his having a learning
11 disability, it talks about having experienced traumas
12 with several of mother's past boyfriends that were
13 reported to be abusive to him and it just further
14 confirms his recent hospitalization for depression and
15 that he becomes suicidal easily.

16 Q. And 932 they talk about -- he has a learning
17 disability, attends special classes and currently has
18 straight F's?

19 A. It does mention again on 9-31 it mentions
20 about the learning disabilities, but here it
21 specifically states that he did special classes and he
22 is getting straight F's.

23 Q. And this is -- he's in eighth grade here,
24 correct, according to that record?

25 A. He's 15 and he repeated two grades, so I think

1 you're right.

2 Q. And it says on page 932, patient 8th grade,
3 North Jefferson Middle.

4 Now, later on Johnny talks about feeling
5 suicidal in the past from -- after getting caught
6 stealing from a teacher.

7 could this be that particular -- could it have
8 been a reference to this record?

9 A. It very well could have been. I'm not
10 actually sure because he had so many admissions because
11 of suicidality. I know there was one related to his
12 grandfather's death. There were several references to
13 the fact that he had been -- that the mother's abusive
14 boyfriend had moved back into the home and also was
15 aware that he's got problems at school and he'd gotten
16 into trouble because he did steal from a teacher once
17 and all those contributed, but I don't know if this
18 particular one is because of that.

19 Q. All right. 927-28, we have date of discharge
20 being 11-23 looks like or 11-25 of '93?

21 A. Yes.

22 Q. And Dr. Narendir Soorya?

23 A. Yes.

24 Q. Gave him a discharge diagnosis, correct, page
25 927 of volume 5?

1 A. Yes, and it's major depression recurrent type.

2 Q. Let's go to 15F. All right, 1257, this is
3 under St. John's record, 1257 and 58, that's also the
4 St. John's Mercy Medical Center record?

5 A. Yes, it is.

6 Q. Okay. In -- on 1257 in social history they
7 discussed being expelled from school in December for
8 carrying a knife?

9 A. Yes.

10 Q. The year prior to this becomes upset with the
11 teacher who apparently caught him stealing and becomes
12 suicidal?

13 A. Yes, that was the last one we were talking
14 about.

15 Q. Then the patient's mother reports that he's
16 become more reclusive recently, has a ten, fifteen
17 pound weight loss, difficulty sleeping, discusses
18 further anger and irritability.

19 what about that is important?

20 A. Well, each one of those is a potentially
21 significant psychiatric symptoms, more reclusive,
22 weight loss, sleep problems, anger, that could be
23 associated with any number of psychiatric disorders
24 given his particular history that I understand up to
25 this point, that would strongly suggest an ongoing

1 depressive condition as well as his -- intensely
2 suffering from the post-traumatic stress disorder
3 because of some of the traumas that he's experienced up
4 to that point.

5 Q. Okay. And this was in 1994, correct?

6 A. Now, the date that I'm looking at on the next
7 page says 6-6-95.

8 Q. Okay. Okay. Now, this is one of the first
9 times where substance comes into play, substance abuse
10 comes into play; is that correct, under the social
11 history there?

12 A. I believe this is where -- one of the first
13 references where it talks about his drinking alcohol.

14 Q. Okay. And it says however he would not answer
15 as to what extent and he denies other illicit substance
16 abuse.

17 A. Yes.

18 Q. All right. So on 1258 Dr. Arthur Smith gives
19 him another diagnosis; is that correct?

20 A. The diagnoses that Dr. Smith listed were
21 rule-out major depression, rule out personality
22 disorder and then he also talks about Mr. Johnson
23 having a number of self-inflicted lacerations and burns
24 to his arms.

25 Q. Is the -- are the self-inflicted lacerations

1 important -- 1257 they discuss that under extremities?

2 A. I'm sorry.

3 Q. Under extremities of the examination?

4 A. Yes.

5 Q. Under extremities, they discussed it.

6 A. That he had burn marks consistent to cigarette
7 burns on the dorsal, that's the back, of his forearms.

8 Q. And they also talk about self-induced tattoos?

9 A. Yes.

10 Q. And there is no mention there that this was
11 done by anybody other than Johnny to himself, correct?

12 A. Correct.

13 Q. All right. Let's go to 1427-28. Now, this is
14 in the Meacham Park records that have already been
15 admitted.

16 A. Yes.

17 Q. Looks like 6-5 of '95 when he's about 17 years
18 old?

19 A. Yes.

20 Q. They talk about his history here at the top?

21 A. Yes.

22 Q. Anything about that record that --

23 A. Well, I think it's important to note that we
24 are getting these individual snapshots of him up to
25 this point and that, although the records are generally

1 consistent with the depression part, the main
2 diagnosis, we're starting to see in the previous record
3 that we showed and in this one, they are starting to
4 diagnose him with a personality disorder, in this case
5 borderline personality disorder.

6 Now, if -- that's problematic for a lot of
7 reasons. One of them, as you mentioned, he's just 17
8 here so he's still in the throes of his adolescence and
9 one cannot diagnose a personality disorder for an
10 adolescent because their personality is not formed yet.
11 So you can't have a personality disorder if your
12 personality isn't formed. So we avoid diagnosing
13 personality disorders. He is starting to be more
14 involved with his chronic self-mutilation. Now, that's
15 bothersome on a lot of levels. It speaks to the
16 severity of his underlying depression, it also speaks
17 to his cognitive dysfunction in that self-mutilation is
18 considered, and this sounds very weird, but it is
19 considered a coping skill that the person who
20 self-mutilates gets themselves worked up to a state
21 where they don't have any other means of discharging
22 their anxiety or aggravation and they find that
23 self-mutilation, either cigarette burns or cutting
24 yourself, at least temporarily relieves this anxiety
25 state, but it really is indicative of a very primitive

1 individual, one that doesn't have very well developed
2 coping skills.

3 Q. Is self-mutilation in a class completely
4 different from suicidal thoughts?

5 A. Yes. Sometimes a person accidentally commits
6 suicide through self-mutilation or this self-mutilation
7 or the self-mutilation is interpreted as a suicide
8 attempt, but if you listen to the person who
9 self-mutilates, they'll tell you a story, it's like a
10 build-up of anxiety and they get to a point and they
11 have no other means to address their agitation and
12 anxiety, you know, as a more well-developed,
13 psychologically more sophisticated individual, we have
14 any number of coping skills, humor, rationalization,
15 whatever one that we all have to get by on a day-to-day
16 basis, but a person who hasn't been able to develop a
17 degree of psychological sophistication, results in
18 these, what I call, primitive coping mechanisms.

19 Q. And as far as the diagnosis, does chronic
20 self-mutilation then feed into a diagnosis of
21 depression at this point? Is that -- is that an
22 example of depression?

23 A. Self-mutilation is not the link to any one
24 particular diagnosis. It can be related to anxiety
25 disorder, such as post-trauma stress. It can be

1 related to mood disorder, such as depression or it
2 could be part of other types of disorders so I'm
3 hesitant to say, well, self-mutilation means he's
4 depressed. No, there's commonly known where a person
5 is depressed they self-mutilate, but it's not a one
6 equals the other all the time.

7 Q. Okay. All right. Let's go to Volume 3, page
8 532.

9 MR. LUNDT: Your Honor, this is in the
10 psychiatric records, Johnny Johnson's St. Louis
11 Psychiatric Rehabilitation records, the second and this
12 is from 482 to 662 and I would offer those at this
13 time.

14 MR. WALDEMER: No objection as to foundation
15 and the doctor's consideration in these records.

16 THE COURT: Mr. Lundt, I think after you
17 finish with this one entry, then we will take a lunch
18 break.

19 MR. LUNDT: Okay. Thank you, your Honor.

20 Q. (By Mr. Lundt) So here on page 532,
21 Exhibit 3, we have noted the problem, mental illness at
22 the top?

23 A. Yes.

24 Q. And he talks about in here, he doesn't
25 remember hearing voices until he took a large quantity

1 of LSD when he was about 17.

2 Now, the record that we just looked at did not
3 make mention of -- of LSD; is that correct?

4 A. Not that I'm aware of.

5 Q. Okay. And the closest thing we have is in
6 volume 6, Movant's Exhibit 6, 1396, a tox screen of
7 10-23 of '96?

8 A. What page was that in volume 6?

9 Q. 1396. That's from when he was 18?

10 A. Yes.

11 Q. And what do you glean from that tox screen of
12 10-23 of '96?

13 A. From his tox screen on 10-23-96, it shows that
14 he had evidence that he's smoked marijuana sometime
15 prior to the test.

16 Q. Okay.

17 A. All the rest of the drugs were not detected.

18 Q. So that's the closest tox screen that we have
19 to that statement that he took LSD when he was 17,
20 right?

21 A. Yes. And throughout the records there is a
22 real -- I'm trying to think of the right term -- lack
23 of objective confirmation of his drug use.

24 There is a lot of statements made about his
25 using substances that are attributed to him, but

1 they're -- there have rarely been objective
2 confirmation about what substances he has ever used and
3 this one tox screen, you know, shows that he had been
4 smoking marijuana. There is nothing in the record that
5 suggests that he ever took LSD other than, I believe,
6 self-report.

7 MR. WALDEMER: May I ask a question. Are we
8 talking about page 1396, a tox screen in October of
9 1996 when he's 18 years old?

10 MR. LUNDT: Yes.

11 MR. WALDEMER: So we went from the report when
12 he was 17 and now he's 18?

13 MR. LUNDT: Right. That's the closest tox
14 screen --

15 MR. WALDEMER: I just wanted to make sure we
16 had the right page.

17 THE COURT: Would this be a good time to
18 break?

19 MR. LUNDT: Yes, your Honor, sure.

20 THE COURT: We'll break for lunch now and
21 resume at 1:30.

22 (The noon recess was taken. Proceedings
23 continued.)

24 THE COURT: Dr. Stewart, if you would please
25 take the witness stand.

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THE WITNESS: Thank you, your Honor.

Q. (By Mr. Lundt) All right. Going onto to slide 15G, let's go to Volume 5, 1257-1258 now in -- again, this is the St. John's Mercy Medical records of Dr. Arthur Smith and that is the June 5th of 1995, if I'm not mistaken --

A. I believe it's June 6th.

Q. And he makes a diagnosis on page 1258, correct?

A. Yes, he does.

Q. And that is?

A. Rule out major depression and borderline personality disorder and status post lacerations and burns, self-inflicted to the arms. Healing without evidence of infection.

Q. And this is when he is 17 years old?

A. Yes.

Q. In that record we already dealt with his lacerations on his extremities, but he talks at some point about -- okay. On page 1258, he likes being in the hospital due to it being comfortable and an escape from being home?

A. Yes.

Q. And then his -- he had an ex-girlfriend on the unit. Is that -- did you take that into account at all

1 in your assessment of Johnny?

2 A. What part in particular?

3 Q. Well, the fact that he liked being in the
4 hospital, does that tell you anything?

5 A. It certainly gives an idea, gives me at least
6 one other idea of what it was like for his home life.

7 Q. Okay. All right. And being around a female
8 adolescent, did that cause you any problem at all?

9 A. No. I didn't know what to make of that part
10 of it.

11 Q. Okay. In Volume 5, 1269 to 71 this is a
12 social service -- social history done by Vito Bono,
13 LCSW?

14 A. Yes.

15 Q. That's on 1271 and that's from June 6th and
16 7th of 1995?

17 A. Yes.

18 Q. Okay. Again, he goes over the present family
19 dynamics, but he talks about -- there is a period of
20 time this year when Johnny returned to live with his
21 father, but it was apparently a very bad experience?

22 A. Yes.

23 Q. His mother felt he can no longer stay at home
24 with him, the father, I assume, after the incident of a
25 knife at school. So he went to live with his father in

1 an attempt to get him enrolled in a Potosi school.

2 Did that section at all cause you any problems
3 in this case?

4 A. well, it confirms the difficulties that he had
5 in school that led up to this move to live with his
6 father and --

7 Q. And we know that his father at one point
8 became quite ill; is that correct?

9 A. This history goes onto state that his dad,
10 Mr. Johnson's father, had brain damage and that -- I
11 don't know if it states it in here or other words I
12 read about his father that he suffered a very, very
13 severe form of diabetes that lead to a series of
14 amputations. so it sort of speaks to the challenging
15 situation that Mr. Johnson had. His mother didn't work
16 and he couldn't be in school with his mom so he went to
17 his father who had brain damage and severe medical
18 problems so I took that into consideration.

19 Q. when the record talks about functions at a low
20 level, what did you take that as?

21 A. That he had difficulty caring for himself.

22 Q. So Johnny himself felt like he was the
23 caretaker of his father?

24 A. That's what the record says. He, meaning
25 Mr. Johnson, felt he was more of a caretaker than a

1 child.

2 Q. Now, here we deal with chemical dependency
3 towards the bottom there in that section on that.

4 Did you take this into account as well in your
5 assessment of Johnny?

6 A. Yes. It -- again, it states that he was using
7 alcohol and that he smoked marijuana, and that was the
8 extent of his drug use at least listed here in the
9 psycho-social history.

10 Q. And then in this record they discuss that he
11 was -- prior to the knife being brought to school, he
12 was suspended for a brief time after having been found
13 stealing money from one of the teachers?

14 A. Yes.

15 Q. Did that -- did you take that into account as
16 far as later on in determining whether Johnny had a
17 personality disorder of any kind?

18 A. The fact that he brought a knife to school and
19 that he stole from this teacher?

20 Q. Yes.

21 A. Yes. One could look at that overt behavior
22 and use it to potentially justify a personality
23 disorder down the road, so I certainly noted that and
24 tried to understand that in the context of where all of
25 this was heading.

1 Q. And -- and then as far as the problems that
2 Vito Bono alluded to here, that he's got recurrent
3 depression and been treated since he was an early teen,
4 how did -- how did that section --

5 A. Well, Mr. Bono talks about the chronicity of
6 Mr. Johnson's problems. In an earlier section under
7 psychiatric history, he reviews the fact that he had
8 had four psychiatric hospitalizations prior this point.

9 Q. Right.

10 A. He talks about the dysfunctional -- or as he
11 calls it -- he lives in a family where there is
12 considerable conflict in relationships and then he goes
13 on to state, a point that I think carries over as we
14 move forward, that historically his family has not been
15 very active in keeping him involved in treatment or
16 aftercare.

17 Q. Why is that important?

18 A. Well, your depression just doesn't end when
19 you leave the hospital and you are prescribed
20 medication, you are expected to take them and you're
21 expected to continue with follow-up counseling and Mr.
22 Bono describes that the family was not very involved in
23 assuring that and that Mr. Johnson had difficulties in
24 keeping involved in out-patient treatment, which we see
25 later on in the record also.

1 Q. And he states up there under impression and
2 recommendations that he does appear to come from a
3 rather dysfunctional family at the time of assessment
4 and was not communicating too well?

5 A. Yes.

6 Q. All right. Let's move on to slide H -- 15H,
7 Volume 6, 1403?

8 A. Yes.

9 Q. Okay. And this is Dr. Percival Tiongson?

10 A. Yes, Tiongson.

11 Q. Okay. So what we're looking at here is
12 Missouri -- State of Missouri Department of Mental
13 Health Medical and Psychiatric Assessment from 6-19-96?

14 A. Yes.

15 MR. LUNDT: And this is contained within
16 Johnny Johnson's Southeast Missouri Mental Health
17 Center records starting 1996 and I offer those at this
18 time.

19 MR. WALDEMER: Is that following the
20 psychiatric records?

21 MR. LUNDT: These would be under --

22 MR. WALDEMER: Or Southeast?

23 MR. LUNDT: Under Southeast.

24 MR. WALDEMER: No objection.

25 THE COURT: What tab did you say?

1 MR. WALDEMER: Tab six.

2 MR. LUNDT: : Number 6, 1397 through 1411.

3 THE COURT: Got it. It will be admitted.

4 Q. (By Mr. Lundt) Now, at this point Johnny is
5 18 years old, right?

6 A. Yes.

7 Q. And he's admitted to the Southeast Missouri
8 Mental Health Center voluntarily and taken by his
9 grandmother?

10 A. Yes.

11 Q. Okay. The presenting problem here, it says:
12 He had a blackout, hearing voices, seeing his dead
13 friends telling him to kill himself, low intellect and
14 self-esteem.

15 Is there anything about that that you found
16 important?

17 A. well, this is the first documented incident of
18 his reported psychotic symptoms where he reports
19 hearing voices, seeing dead friends telling him to kill
20 himself.

21 Q. Okay. Now, down in the alcohol/substance
22 abuse it says: As noted above he has a long history
23 here of extensive and heavy drug use including
24 marijuana, crank, cocaine, beer, whiskey and IV heroin.

25 How does that play into blackouts, hearing

1 voices and seeing dead friends telling him to kill
2 himself?

3 A. well, again, before I could answer that
4 question, I really would need to know what the basis of
5 this doctor saying that he was using -- if you go up to
6 the history of present illness, he talks about crank,
7 cocaine, acid, etcetera --

8 Q. Uh-huh.

9 A. -- including alcohol, whiskey and beer. what
10 is the basis of that?

11 Q. He says he admitted to doing these things.

12 A. So this is the self-report of Mr. Johnson
13 that's saying this stuff and this is the same
14 Mr. Johnson who's reporting seeing his dead friends
15 telling him to kill himself and this is the same Mr.
16 Johnson that's reporting about hearing voices.

17 so unless there is some toxicology or some
18 other way that the doctor can explain what the basis of
19 his -- assuming that this is all correct, then I don't
20 know that it's true.

21 Q. It says in here that Johnny told him that he
22 wanted to die to join his friends Mike and Jim who were
23 both drug dealers and committed suicide and that he'd
24 done the drugs with those friends Mike and Jim.

25 A. All right. Where is the objective evidence,

1 where is his grandmother saying, yeah, you know, he
2 smoked crack all day at my house and that's why I
3 brought him down here and where is anything, where is
4 the police report, where is the toxicology, any sort of
5 objective evidence of his using these drugs and then I
6 can -- if I have -- otherwise I've just been conjecting
7 about the relationship between this supposed drug use
8 and these supposed symptoms because there are too many
9 variables.

10 Q. As far as -- as acid is concerned, would it be
11 consistent to hear voices and see dead friends telling
12 you to kill yourself if you are using acid or LSD?

13 A. well, that's theoretically possible, you know,
14 it's the same as methamphetamine use or crank, which is
15 methamphetamine, it's possible to hallucinate, the same
16 with cocaine, it's possible to hallucinate but before
17 you can say that the hallucinations were real, you'd
18 have to know if the drug use is real and then if it
19 were, you'd have to make a longer assessment, is he
20 suffering from any other psychiatric condition that is
21 a more reasonable explanation to these psychotic
22 symptoms that he's reporting.

23 So, again, there's too many moving parts on
24 this for me to make any firm assessments.

25 Q. Now, as far as the medical history is

1 concerned down there at 1402, he said there is no
2 report of any surgeries or head injuries or seizure
3 disorder and we know that's not true, correct, or as
4 far as the head injuries?

5 A. well, we certainly know that he had multiple
6 incidents needing to get his head sewn up when he was a
7 child, a total of 35 stiches, I believe, was what the
8 report said but he did have a history of head injuries.

9 Q. And Dr. Tiongson goes ahead and makes at least
10 a preliminary diagnosis?

11 A. well, he makes a diagnosis. I don't know if
12 it's preliminary or not.

13 Q. okay.

14 A. After just one diagnosis he says there's no
15 mental illness, which is interesting to me how he
16 arrived at that given the documented history that Mr.
17 Johnson had and the hospitalizations that he had prior
18 to that point and then he ascribes all the behaviors to
19 adolescent, anti-social behaviors and poly-substance
20 abuse and again without any objective verification that
21 he was using drugs except self-report.

22 Q. And then he starts him on Thorazine on page 14
23 after that.

24 A. Yes. That's very interesting. In the page
25 before he says there is no mental illness, but yet in

1 the page afterwards he's prescribing Thorazine.

2 Q. And recommends a referral to a drug and
3 alcohol rehab program, right?

4 A. Right. I think that point about, prescribing
5 Thorazine where he clearly states in his own report
6 that there no mental illness, you know, that's grounds
7 for malpractice, to say I'm going to give Thorazine to
8 someone without mental illness, that's not the
9 indication for the use of a antipsychotic Thorazine.
10 So he either -- there is no mental illness involved or
11 either the Thorazine is wrong or they're both wrong,
12 but this record brings up a lot of serious concerns.

13 Q. So then let's go to page 1398 through 1400,
14 actually 1401, Dr. Tiongson, by his discharge summary
15 here, changes his diagnosis; is that correct?

16 A. Yes. And now he's calling him major
17 depression recurrent, psychotic disorder not otherwise
18 specified and then he has in parenthesis there, related
19 to periods when withdrawing from drugs and
20 poly-substance dependence by history and he was treated
21 with an antidepressant. So by the time he was
22 discharged from the hospital, the doctor acknowledged
23 that, in fact, Mr. Johnson was psychotic by giving him
24 a psychotic disorder NOS, but then you see he again
25 ascribes a psychosis, by the record here related to

1 periods when withdrawing from drugs, that we never knew
2 for sure that he was taking anyway, but the one thing
3 to look at that, the he didn't think he was psychotic.

4 Q. All right. Let's go to 15I at 1350, also
5 within the Metropolitan St. Louis Psychiatric Records,
6 we have a medical and psychiatric assessment from
7 10-13-96?

8 A. Yes.

9 Q. That goes on through 1351A?

10 A. Yes.

11 Q. And we have John Rogakos and William Riedesel
12 for the psychiatrists involved in that?

13 A. Yes.

14 Q. Okay. So at this point Johnny is about
15 18 years old, correct?

16 A. He's about 18 and a half.

17 Q. Okay. And he comes in: The chief complaint,
18 I want to cut my jugular so that I can die?

19 A. Yes.

20 Q. As far as the history present illness, what's
21 important in that section?

22 A. Well, they start off with, this is an 18-year
23 old white male with conduct disorder, borderline traits
24 and a history of marijuana and alcohol dependence as
25 well as LSD, amphetamines and crack -- I think that's

1 crack abuse.

2 You know, that goes back to what I've been
3 saying and as we go through these records you can see
4 how this stuff becomes a self-fulfilling prophecy, that
5 somebody told you in the records, self-reported that he
6 uses drugs, again without any objective verification
7 and then it becomes some how, you know, written in
8 stone in the records that everybody seeing him
9 subsequently then just immediately jumps on that,
10 again, without any basis.

11 No one has given any basis for his having a
12 conduct disorder, borderline traits and certainly there
13 is no objective evidence of his using LSD, amphetamines
14 or crack, he may have used those, but again it's
15 without any objective evidence that these things get in
16 the record and then they take on a life of their own.

17 Q. Throughout these records we have in several
18 different tox screens and we see ethanol and marijuana
19 in those; is that correct?

20 MR. WALDEMER: Judge, I'm going to object to
21 what he's -- the question is vague unless he's
22 referring to a specific tox screen admitted into
23 evidence.

24 THE COURT: Sustained.

25 Q. (By Mr. Lundt) Okay. Well, let's go to the

1 tox screen on 1396?

2 A. In Volume 6?

3 Q. Volume 6.

4 A. Okay.

5 Q. We have cannabinoids, correct?

6 A. Yes.

7 Q. Canna --

8 A. Cannabinoids.

9 Q. Okay.

10 A. Marijuana.

11 Q. And that's the tox screen from 10-13-96?

12 A. Yes, it is -- that should be 10-23-96.

13 Q. I'm sorry. 10-23-96.

14 MR. LUNDT: We have -- we have in Johnny
15 Johnson's St. Louis County Health Records also in that
16 volume, Johnny Johnson's St. Louis County Health
17 records from 1540 through 1581. I move for the
18 admission of those records at this time.

19 MR. WALDEMER: No objection.

20 THE COURT: Be admitted.

21 Q. (By Mr. Lundt) We have a tox screen of 7-29
22 of '02; is that correct, on 1574?

23 A. 1574 there is a tox screen.

24 Q. And what does that tell you? Actually it's
25 1574 through 1577 -- 78. This is from 7-29 of '02; is

1 that correct?

2 A. Yes.

3 Q. Okay. Is that right after the crime itself?

4 MR. WALDEMER: Judge, I'm going to object to
5 the term "right after". It's three days after Casey
6 Williamson was killed.

7 MR. LUNDT: Three days after.

8 A. See, this one I'm not sure how to read this
9 because it is somewhat confusing. It says: Initial
10 test -- cut off -- then confirmed test -- cut off. It
11 doesn't say which ones are -- that are confirmed.

12 Q. (By Mr. Lundt) But we know on 1576 that he
13 tested positive for marijuana, cannabinoids?

14 A. Okay. So then -- I'm sorry. They didn't have
15 the results until a couple pages later and yes, the
16 only thing that was positive was marijuana.

17 These other numbers that they gave on 1574 was
18 their -- the laboratory set up was and then based on
19 that they found that the only thing that was positive
20 was marijuana and that was on the 29th, this was within
21 three days and see, you would expect that a person
22 using methamphetamine, it would still be positive in
23 three days. A person using cocaine, it would be
24 positive in three days.

25 Q. Let's go to Volume 3 of Johnny Johnson's

1 St. Louis Psych Rehab records.

2 MR. LUNDT: I'm not sure whether I offered
3 these into evidence, but I will do so at this time, the
4 second part of them and it goes from -- in Volume 3,
5 482 through 662, offer those into evidence at this
6 time.

7 MR. WALDEMER: I have them as previously
8 admitted.

9 THE COURT: They have been previously
10 admitted.

11 Q. (By Mr. Lundt) Page 660?

12 A. Yes.

13 Q. And 660 through 662 looks like blood from
14 Biotech Laboratories?

15 A. Yes.

16 Q. And does that have a tox screen dated 10-17 of
17 '01?

18 A. It has a tox screen at page 660, the date of
19 10-17 2001.

20 Q. What did that show?

21 A. Showed that he was negative for amphetamines
22 and negative for all other drugs that the test -- the
23 test was sensitive to amphetamines, barbiturates,
24 benzodiazepines, cannabinoids, cocaine, methadone,
25 opiates, phencyclidine and propoxyphene, all those were

1 negative.

2 Q. Okay. All right. Let's go Movant's 15J,
3 again, Volume 6. Look at 1532.

4 A. Yes.

5 Q. Here again in the Comtrea records, meaning
6 Community Treatment Incorporated, we have a record from
7 Dr. M. Carrera, staff psychiatrist?

8 A. Yes.

9 Q. They talk about flashback here.

10 A. Yes.

11 Q. Can you tell us a little bit about what you
12 found that was important in this entry 1532?

13 A. Well, again, I think it's important to put the
14 things in their context. Is that -- right before he
15 talks about flashback, he talks about living with his
16 mother and was taking drugs daily, crystal and
17 marijuana use. So methamphetamine and marijuana by
18 this report, although there was no tox screen
19 associated with it. He stole in order to get drugs.
20 Beside the effects of drugs, he was also having
21 flashbacks about a satanic cult that he was involved in
22 since age 16.

23 Let's assume he's actually having flashbacks,
24 and we also, just for discussion assume that he's --
25 this is accurate about the methamphetamine and

1 marijuana, although there is no tox screen associated
2 with it, these are the types of drugs that are not
3 associated with flashback. So if, in fact, he's using
4 these drugs, which I don't know for sure, and if, in
5 fact, he's having flashbacks, the flashbacks are not
6 related to his drug use because methamphetamine and
7 marijuana don't cause flashbacks. So if, in fact, he's
8 having flashbacks while -- when he reports to the
9 satanic cult and if that experience is valid, then we
10 need to think about another reason to explain why he
11 might be having flashbacks and again, the flashbacks at
12 that point, since they're not related to drugs, it
13 would be more than likely related to a traumatic
14 disorder, traumatic condition such as post-traumatic
15 stress disorder, where it's fairly common to have
16 flashbacks and, in fact, with Dr. Carrera diagnosing
17 post-traumatic stress disorder.

18 Q. Now, he talked about killing animals like dogs
19 and goats and drinking the blood of animals. Is that
20 -- does that jive in your mind with what follows that
21 is also small, superficial cuts on his body and
22 superficial scars on his chest, abdomen and arms.

23 A. Again, this is a big assumption, whether or
24 not he's actually killing the animals and drinking
25 their blood, but the superficial cuts on his body and

1 scars on his chest, abdomen and arms are related to
2 what we referred to earlier, self-mutilation, that
3 typically you get people that self-mutilate, you get
4 these superficial cuts in their arms and they also can
5 be known to slash their chest, and abdomen, so that's
6 separate from whatever went before that and again, this
7 self-mutilation we talked about earlier is -- is a
8 primitive defense mechanism more than likely related to
9 the severe anxiety disorder such as post-traumatic
10 stress disorder or a mood disorder like depression.

11 Q. In the next page, 1533, the doctor said he'd
12 been in the Metropolitan Psych Center for two weeks and
13 was prescribed Haldol with relatively good results with
14 these flashbacks?

15 A. Yes.

16 Q. And again, down in the middle, status of the
17 exam, the doctor makes actual visual description of
18 him, correct, he talks slowly, occasional eye contact,
19 restless, concerned about lack of sleep and flashbacks?

20 A. Yes.

21 Q. He also, on 1534, notes problems with
22 concentration and memory deficits. Can you tell me
23 what that is?

24 A. Again, you've talked about a lot of stuff
25 here. Concentration and memory deficits, you know,

1 there's a lot of reasons why Mr. Johnson would have
2 concentration and memory problems. The head injuries
3 he suffered, the post-trauma stress disorder, the mood
4 disorder and now we're talking about psychotic
5 symptoms. All of these factor into concentration and
6 memory, and also you were mentioning about his respond
7 to Haldol for the flashbacks. Haldol is a very potent
8 antipsychotic medication. So the doctors all report
9 that he had good results with the so-called flashbacks
10 and responded to Haldol implying that the quote unquote
11 flashbacks were psychotic in nature. So further it
12 indicates to me it shows that Mr. Johnson at this point
13 is having psychotic symptomology and it's interesting
14 that they don't diagnose it, but they are using
15 antipsychotics to treat these symptoms and they
16 reported it had a good -- good results.

17 Q. Okay. But then you recommend he discontinue
18 Haldol, give him Mellaril and Visarfil.

19 A. Well, they discontinued the Haldol but they
20 substituted it with another antipsychotic. So Haldol
21 is what they call a high potency antipsychotic,
22 Mellaril is low potency. They both are antipsychotic
23 and having treated a young man at this age, there are a
24 series of side effects that Haldol tends to induce;
25 muscle rigidity that can be very uncomfortable and

1 Mellaril is much less likely to cause those side
2 effects so if you are treating a young psychotic, 18,
3 19 year old, I can see them using Mellaril.

4 Q. Now, that side effect that -- of causing
5 muscle problems in Haldol, could that be described
6 later on by someone who had taken it as an allergy
7 instead of a side effect?

8 A. I've had plenty of patients report to me that
9 they had an allergy and then when you have to insert
10 antipsychotics and in fact when you ask the question
11 about it, it turns out not to be allergies but actually
12 they had side effects, like the muscle rigidity, like
13 the drooling, all these other sorts of symptoms you can
14 get from the antipsychotic medications.

15 Q. Now, Dr. Carrera makes -- makes certain
16 diagnoses as well, doesn't he?

17 A. Yes, he does.

18 Q. And those are?

19 A. Post-traumatic stress disorder, polysubstance
20 abuse, and then antisocial personality disorder with
21 borderline features.

22 Q. And this is the first time post-traumatic
23 stress disorder actually shows up as a diagnosis; isn't
24 that correct?

25 A. To the best of my recollection it is, yes.

1 Q. All right. Let's go to Volume 6, 1529. Okay.
2 This is the discharge sheet from the program
3 coordinator Gerald Waggoner?

4 A. Yes.

5 Q. Is that -- and that goes from 1529 to 1531?

6 A. Yes.

7 Q. Now, in their disposition and justification on
8 1531 what did you find was of importance there?

9 A. Well, again, I just don't understand how they
10 went from the one we just finished reading about the
11 diagnosis of post-traumatic stress disorder to this
12 next diagnosis where they're just saying cocaine,
13 alcohol and Cannabis dependant at the same time that
14 they say -- there is an actual sentence in this record
15 that I find amazing, that Johnny has experienced severe
16 and pervasive losses due to drug and alcohol use. He
17 seems to want help. Okay. So I won't argue with that
18 up to that point but then after that he says:
19 Providing that his depression and flashbacks are not
20 too intrusive, I recommend he complete 30 to 45 days of
21 residential treatment but yet, although they're
22 acknowledging that he has had depression and
23 flashbacks, there is no diagnosis made to justify what
24 they just said. So I find it very confusing.

25 Q. Okay. So in that record he was, on 1529, he

1 was admitted into residential treatment on 10/29/96 and
2 discharged for medical reasons on 11/7 of '06.

3 A. Yes.

4 Q. He was in residential treatment for only nine
5 days, correct?

6 A. Yes.

7 Q. All right. Then let's go to 1315 after --
8 after Gerald Waggoner discharges him, then we get on
9 page 1315 an admission to Metro St. Louis Psychiatric
10 Center.

11 A. Yes.

12 Q. And that's 11-13 of '96 -- actually 11/7?

13 A. He's admitted on the 8th and he's discharged
14 on the 13th.

15 Q. Okay. All right. So he's admitted on the
16 8th. Okay. All right. So, he's admitted back to the
17 St. Louis Psych Center at 18 years of age and this is
18 the staff signature down there, looks like Dr. William
19 Riedesel?

20 A. Yes.

21 Q. Did you compare that to 1317, it looks like
22 the same signature, correct?

23 A. Yes.

24 Q. That's the first time Dr. John Rabun's name
25 appears in the record at all, correct?

1 A. Now where is that?

2 Q. It's in typed: Admitting provisional
3 diagnosis, unspecified mental disorder on the left?

4 A. Yes.

5 Q. That's the typed part?

6 A. Yes.

7 Q. And the typed signature is Rabun, M.D.?

8 A. Yes.

9 Q. And then below that we have what appears to be
10 Dr. Riedesel's handwriting?

11 A. Yes.

12 Q. And what is he thinking it is?

13 A. He's thinking it is psycho-stimulant
14 dependence, probable malingering and antisocial
15 personality disorder.

16 Q. Then we'll go to the discharge summary,
17 thirteen -- 1314, 1316, 1317. They talk again about
18 the flashbacks, correct?

19 A. Correct.

20 Q. He indicates there on 1316 under history of
21 present illness: Two episodes of aggressive acting out
22 requiring sedation and restraint were attributed to
23 possible drug flashbacks?

24 A. Yes.

25 Q. And then he says he spoke with the director

1 and the patient did not adapt well to programming and
2 seemed to use flashbacks and thoughts of self-harm as a
3 means to not deal with chemical dependency issues.

4 A. That's what it says, yes.

5 Q. Okay. And then he talks about Johnny not
6 liking either Haldol or Mellaril, correct?

7 A. He talked about -- he was given both the
8 Haldol and Mellaril together which caused him to be
9 overly sedated.

10 Q. Okay. And he was seen in the emergency room
11 when he struck a door and required an involuntary
12 admission, correct?

13 A. Yes.

14 Q. And then on 1316A he discussed having an
15 interview with the patient on 11/12 of '96?

16 A. Yes.

17 Q. Talks about the flashbacks?

18 A. Yes.

19 Q. Talks about past history of truancy,
20 suspension and compulsion from school?

21 A. Yes.

22 Q. Fighting while in common areas to achieve his
23 goal?

24 A. Yes.

25 Q. And then as noted the patient endorsed many

1 things consistent with the diagnosis of antisocial
2 personality disorder, correct?

3 A. Yes.

4 Q. So then when Dr. Riedesel comes up with a
5 discharge diagnosis, he says, psychostimulant
6 dependence -- on 1317, psychostimulant dependence,
7 probable malingering and antisocial personality
8 disorder?

9 A. Yes.

10 Q. And I believe that's the same -- first one on
11 the slide, 15A. Let's go to the second one, psych
12 referral, 4/26 of '97 and that is in number 7, 1656.

13 MR. LUNDT: Your Honor, at this time I would
14 offer volume 7 into evidence. That's Johnny Johnson's
15 St. Louis County Justice Services records, medical
16 service records and medical correction records.

17 THE COURT: Any objection?

18 MR. WALDEMER: Again, your Honor, assuming
19 that is the extent to what's in volume 7, I have no
20 objection.

21 THE COURT: All right. It will be admitted.

22 Q. (By Mr. Lundt) Here we just have a psych
23 referral to Dr. Alan Crazhoff; is that correct?

24 A. Yes.

25 Q. And he talks about, there at the bottom, I

1 recommend he be designated as having suicidal potential
2 and be observed for possible threat?

3 A. Yes, he told him that Mr. Johnson stated that
4 he always wanted to kill himself, and promised not to
5 make an attempt when he was here.

6 Q. And then he cut his left wrist with a razor,
7 correct?

8 A. I'm not sure where you are seeing that.

9 Q. Just above that?

10 A. Cuts left wrist with a razor and then also he
11 punched his right fist through the window and received
12 sutures in his hand, yes.

13 Q. Dr. Crazhoff recommends he see another doctor,
14 correct?

15 A. Referring to the doctor here -- I can't make
16 the name out, yes.

17 Q. Okay. This is slide 15L. Also in Volume 7,
18 1648, this says: Corrections social worker's Sherice
19 Myers' records; is that correct, on 4/27 of '97?

20 A. Yes.

21 Q. And under medical problems: Mental health --
22 medical problems/health status, we have sutures in ring
23 finger and he claims to have blackouts that last about
24 five seconds, in reality five minutes to an hour?

25 A. Yes.

1 Q. They talk about him being manic depressive, is
2 not on medication?

3 A. Says patient is manic depressive, yes.

4 Q. So at the bottom he asked to see Dr. K;
5 correct?

6 A. Yes, because it says: A manic depressive.

7 Q. All right. And then on 1645 they talk about
8 him being highly suicidal under psych history,
9 suicidal?

10 A. Yes.

11 Q. Okay. That is another social worker's
12 assessment, correct?

13 A. It's an intake classification form filled out
14 by the corrections social worker, yes.

15 Q. All right. Then we go to another social
16 worker on 1639; is that correct?

17 A. Yes.

18 Q. Okay. And that's from December 3rd of 1997?

19 A. December 3rd, 1997, yes.

20 Q. That states he's having problems with
21 depression and states he has memory lapses?

22 A. Memory lapses and that he had incident of
23 banging his head on the wall and puncturing himself
24 with a piece of plastic. Goes on to say that he gets
25 overwhelmed but states currently not suicidal although

1 he has extensive suicidal history.

2 Q. All right. And then 1628, 29 -- this is
3 actually before that -- no, it is after. This is from
4 12/10 of '97; is that correct?

5 A. Yes.

6 Q. And that's an inmate incident report?

7 A. Yes.

8 Q. And they talk about him observed attempting to
9 do bodily harm to himself?

10 A. Yes, says beating his head against the wall
11 and he was also observed holding a pencil to his head
12 threatening to puncture himself.

13 Q. And then on the next page, about picking a
14 hole in his skin on his wrist; climbing on the sink
15 threatening to jump; climbing up about the light
16 fixture threatening to find something blunt to hurt
17 himself with?

18 A. Yes. And then it states that his voices were
19 telling him to kill himself.

20 Q. And is this the first incident where we see
21 what we might call command hallucinations?

22 A. This is not the first incident of auditory
23 hallucinations but this is the first incident where the
24 voices are specifically instructing him to do
25 something, in this case, telling him to kill himself,

1 yes.

2 Q. Is that consistent with a hallucination
3 brought on by drugs or alcohol?

4 A. A hallucination is a hallucination. So drugs
5 -- drugs more likely than alcohol but alcohol could do
6 it also, but the drugs, say like cocaine or
7 methamphetamine, certainly can bring on a hallucination
8 like this and also permit an underlying psychotic
9 disorder and one cannot distinguish the etiology by the
10 type of symptom. So he's got a command hallucination.

11 Q. He is in the Department of Justice Services of
12 St. Louis County at this point, correct?

13 A. Yes.

14 Q. Okay. Let's go to 15M. Okay. We will start
15 with Volume 4 then it goes to six.

16 MR. LUNDT: And your Honor, volume 4 is also
17 the Department of Corrections Medical Health record in
18 its entirety, 663 to 909 and I would offer this exhibit
19 into evidence.

20 MR. WALDEMER: No objection.

21 THE COURT: Be admitted.

22 Q. (By Mr. Lundt) Okay. Here on 3/24 of 1998,
23 he's a 20-year-old single white male, page 906?

24 A. Yes.

25 Q. Okay. He's complaining of depression and

1 hearing voices, which he finds intrusive.

2 A. And then he describes these voices as being --
3 making derogatory statements about himself, you're not
4 worth nothing, kill yourself or hurt others.

5 Q. He says that -- he says that Thorazine helps
6 him a lot better than Haldol?

7 A. Yes.

8 Q. Is that at all important?

9 A. Well, it's important that he's reporting
10 psychotic symptoms and both Haldol and Thorazine are
11 antipsychotics.

12 Thorazine is extremely more sedating than
13 Haldol and some patients prefer it over Haldol
14 especially young men because they tend to have greater
15 side effects of Haldol. So I can understand that this
16 is actually about his reporting on his part.

17 Q. He goes on to say that on one occasion he
18 acted out on the command of the voices and slashed his
19 wrists about three years ago?

20 A. Yes.

21 Q. At one point another doctor says command
22 hallucinations must be acted on immediately.

23 would you agree with that statement?

24 A. No, not at all.

25 Q. Why not?

1 A. Because that's not the nature of command
2 hallucinations. I have patients that experience
3 command hallucinations over a number of years and an
4 overwhelming majority of the time they can control it.

5 Sometimes under periods of distress or
6 decompensation of their mental illness, it's more
7 difficult to resist a command.

8 Q. And this doctor is Dr. Ahsan Syed; is that
9 right?

10 A. Yes.

11 Q. 906, 907 and on 6/27 and his diagnostic
12 impression at the bottom of the line.

13 A. His diagnostic impression is major depression
14 with psychotic features, cannabis abuse by history and
15 alcohol abuse by history.

16 Q. And he recommends that Johnny Johnson receive
17 Thorazine?

18 A. His treatment recommendation included both an
19 antipsychotic Thorazine as well as an antidepressant
20 Paxil.

21 Q. Let's go to Volume 8.

22 THE COURT: What was it?

23 MR. LUNDT: 1838.

24 Q. (By Mr. Lundt) Okay. So this is a nurse
25 report at the bottom and also on 3/24 of '98?

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A. Yes.

Q. It's a record from a nurse named Dorothy Lauberth?

A. Lauberth, yes.

Q. And she also talks about him hearing voices?

A. She talks about him complaining of depression as well as hearing voices.

Q. Volume 9, 2289.

MR. LUNDT: Again, your Honor, I haven't offered these medical records from the Department of Corrections. I will offer them at this time.

THE COURT: 8 and 9?

MR. LUNDT: Correct.

THE COURT: Mr. Waldemer.

MR. WALDEMER: As long as that's all that's in those two volumes, I don't have any objection to the records themselves.

MR. LUNDT: I believe that's all that's in these two volumes, your Honor.

THE COURT: All right. 8 and 9 will be admitted.

Q. (By Mr. Lundt) Do you have 2289?

A. Yes.

Q. Actually that's the same record we just referred to in Number 4.

1 Go to 2291. Okay. Here at 2291 is -- they
2 were wanting to refer him to a psychiatrist?

3 A. Yes.

4 Q. Okay. He would like to change his medication
5 to decrease the hallucinations, correct?

6 A. Right. He was complaining of both auditory
7 and visual hallucinations.

8 Q. Okay. The -- this Rosalie Breese makes a
9 statement about what she saw, correct? Or at least why
10 he was put on suicide watch?

11 A. Yes. She said that he was crying frequently
12 and stated that he was having auditory and visual
13 hallucinations.

14 Q. And at that date he was doing better?

15 A. On the day she saw him she reported he was
16 doing better but he would still like to change his
17 medication to decrease the hallucinations.

18 Q. Okay. Let's go to 15N, again involving 498,
19 499 -- let's just talk about 989. This is a record
20 actually looks like it's from 3/19, that's before the
21 other record, complaining of auditory and visual
22 hallucinations, correct?

23 A. Yes.

24 Q. They discuss Haldol?

25 A. They discuss and that the last psychotropic he

1 has taken was Haldol, which he took for about three and
2 a half months in jail, but that he stopped about four
3 weeks ago because of nausea and he then -- he went on
4 to state that the Thorazine works better for him and he
5 wants to be back on Thorazine.

6 Q. All right. Now, on 150, Volume 2, page 358.

7 THE COURT: What page?

8 MR. LUNDT: 358. Your Honor, Volume 2
9 contains Johnny Johnson's St. Louis Psychiatric
10 Rehabilitation Center records. I believe they have
11 already been admitted. Johnny Johnson's DesPeres
12 Hospital records from 343 to 461 and Johnny Johnson's
13 St. Louis County -- Department of Health records from
14 461A to 481. I will offer those into evidence.

15 MR. WALDEMER: No objection.

16 THE COURT: They will be admitted.

17 Q. (By Mr. Lundt) Okay. Here we have emergency
18 department at Deaconess Health Care System record?

19 A. Yes.

20 Q. Chief complaints: Hearing voices and suicidal
21 ideation?

22 A. Yes.

23 Q. And again, here he's talking about command
24 hallucinations, correct?

25 A. He talks about hearing voices beginning today,

1 which tell him to hurt himself, which are command
2 hallucinations, yes.

3 Q. He states he had been drinking today and had a
4 hit off a joint.

5 A. Yes.

6 Q. History of voices since 14 years old?

7 A. Talks here, the voices began after
8 grandfather's death when he was 14.

9 Q. And then they make a diagnosis down at the
10 bottom of the page, looks like physician Christine
11 Heffner, perhaps?

12 A. Perhaps, yes. It looks like, suicidal
13 ideation and the second is auditory hallucinations,
14 possibly history of schizophrenia and the last
15 diagnosis was the alcohol abuse.

16 Q. Okay. Now, is this the first time that his
17 voices have been, at least, determined that they could
18 possibly be related to schizophrenia?

19 A. Again, we have all gone through these records
20 today. This is the first point, I believe, that the
21 word schizophrenia appears in any of the diagnosis.

22 Q. Okay. Let's go to 399.

23 A. Yes.

24 Q. Where we have individual master treatment plan
25 cover sheet?

1 A. Yes.

2 Q. And it looks like they have signatures from
3 the treatment coordinator, a registered nurse and a
4 therapist?

5 A. Correct.

6 Q. And that's from 9/2 of '98, correct?

7 A. Yes.

8 Q. Okay. And diagnosis is there?

9 A. The diagnosis is major depression, rule out
10 schizophrenia.

11 Q. Let's go to slide 15P and in Volume 2, page
12 355, again with the Deaconess Health System?

13 A. Correct.

14 Q. This is a psychosocial assessment done by,
15 looks like, Nigel Darvell and Tim Peterson?

16 A. I believe so, yes.

17 Q. And he was referred by Dr. William Clendenin?

18 A. Yes.

19 Q. And the presenting problem here?

20 A. Presenting problem as listed here is
21 schizophrenia.

22 Q. And the circumstances leading to his
23 admission?

24 A. Hearing voices, fear and alcohol and drug use.

25 Q. They make some observation of him in

1 presentation, correct?

2 A. Yes.

3 Q. Are those consistent with schizophrenia?

4 A. Well, they are not inconsistent with
5 schizophrenia. They're certainly consistent with any
6 number of things.

7 Q. They go down and they talk about his alcohol
8 history in there?

9 A. Yes.

10 Q. His drinking beer and smoking pot prior to
11 admission. Would hearing voices and fear, generalized
12 fear, be consistent with that?

13 A. I can't answer your question the way it's
14 presented because drinking and smoking pot certainly
15 are conceivable. Some people get paranoid when they
16 smoke pot so they could have fear and then hearing
17 voices is probably not related to the consumption of
18 those substances.

19 Again, you have to step back from his
20 diagnosis in this particular presentation and start
21 looking at his overall history of diagnoses and we've
22 seen over the course of the today how the diagnoses
23 themselves have changed. They have certainly become
24 more clarified and seem to become more of a psychotic
25 level diagnosis. They started off with just being

1 depression and now they've moved into, one, being
2 psychotic and also it should be noted now he's --
3 what's the date of this?

4 Q. Date of admission: 8/31/98.

5 A. So he's 20.

6 Q. Twenty years old.

7 A. And I believe I testified earlier that it's
8 not uncommon for an adolescent diagnoses to change over
9 time because adolescents are changing over time.
10 They're not standing still. They're going through
11 their own psychological development and so people seen
12 at different points in time, they present one
13 particular diagnosis, like flash point, like flash
14 player, flash picture and then you have to step back
15 from all of that to get the sense of what's going on
16 and in the -- the Correction Department that they're
17 having a more consistent observation of him and they're
18 ascribing this to schizophrenia. So that's why the
19 long answer to your question here but -- it's my
20 opinion right now, that his substance use reported to
21 here was not the primary cause of the symptoms that
22 they are discussing at this hospitalization.

23 Q. And you make that determination from, not only
24 this particular record, but from looking at all the
25 records combined, correct?

1 A. Looking at the totality of the records we've
2 looked at so far and the important part of that is,
3 again, we have talked about this, the absence of urine
4 toxicologies. I find it amazing that people rush to
5 make that diagnoses of substance abuse in the absence
6 of urine toxicology.

7 Q. And just based on the -- the hearing voices,
8 the paranoia and the hallucinations, these indicators
9 come up time and again throughout these records; is
10 that correct?

11 A. I think we have seen that, yes.

12 Q. Okay. Okay. Let's go to Volume 2, page 378.

13 A. Yes.

14 Q. This is Dr. William Clendenin that was
15 referred to in the last record; is that correct?

16 A. Yes.

17 Q. Okay. And he gives a discharge diagnosis:
18 After him being in Deaconess Health System for about
19 ten days?

20 A. Correct.

21 Q. We have date of admission of 8/31 of '98 and
22 date of discharge 9/9 or '98?

23 A. Yes.

24 Q. Okay. And what's important about this record?

25 A. What's important about this record is his

1 presented complaint was he was brought in by police
2 complaining of hearing voices and the voices were of a
3 command nature telling him to do such things as jumping
4 in front of a train.

5 The doctor notes that he was markedly
6 psychotic and needed hospital treatment and that his
7 mental status was consistent with a paranoid psychosis
8 and it talked about hospital course, that he was
9 treated with both neuroleptic medication and
10 psychotherapy and that he improved greatly.

11 Due to his seemingly retardation -- now there
12 they talked about mental retardation, and severe
13 psychotic symptoms, was felt that he belonged in a
14 boarding home. So evidently Mr. Johnson was presenting
15 as pretty impaired at that point and he was diagnosed
16 with a diagnosis of schizoaffective disorder and again
17 this is the first time that I remember this diagnosis
18 appearing in the record and it's important to know that
19 schizoaffective disorder is a diagnosis that assumes
20 both a chronic psychotic condition, like schizophrenia,
21 and also with the superimposed mood condition and as we
22 have seen from the records up to this point, there's
23 been a variety of mood disorder diagnoses, depression,
24 major depression, major depression with psychotic
25 features and then over the course of time the diagnosis

1 changed to schizophrenia.

2 So now this doctor -- it appears to be kind of
3 taking a step back and looking at this in a broader
4 prospective and he's saying maybe there's a connection
5 between the mood and the psychotic disorders and so
6 he's diagnosed him with schizoaffective disorder.

7 Q. And backing up to page 347.

8 A. Yes.

9 Q. Again on 9/8 of '98, the diagnosis upon
10 discharge schizoaffective?

11 A. Right. Dr. Clendenin again is confirming his
12 original diagnosis.

13 Q. And as far as the mild mental retardation,
14 that could be just what the doctor is seeing at the
15 time?

16 A. Well, again, going by what Dr. Clendenin
17 reported on 378, that he has seeming retardation, to me
18 what that implies is that he was displaying significant
19 cognitive impairment at the point.

20 Q. But he's not talking about that from a
21 prospective of having done testing that you know of?

22 A. It doesn't appear that way. So I can't assume
23 what Dr. Clendenin was seeing, but to me in
24 interpreting this it appears that he was seeing some
25 significant cognitive impairment on the part of Mr.

1 Johnson.

2 THE COURT: We are going to take another
3 15-minute break.

4 MR. LUNDT: Okay.

5 (Whereupon a recess was taken. Proceedings
6 continued as follows:)

7 (By Mr. Lundt) All right. We're going to be
8 moving to 15Q. Okay. Volume 3. This is in the
9 St. Louis Psych Rehab records, page 504 through 510.

10 A. Yes.

11 Q. So this is the nurse admission statement from
12 10/17 of '01; is that correct?

13 A. Yes.

14 Q. And he's 23 years old in the record on 504?

15 A. Yes.

16 Q. Okay. Did you make note of the number of
17 tattoos that he has on page 504, correct?

18 A. Yes.

19 Q. On arm -- left arm and legs and a scar on the
20 back of his head?

21 A. Yes.

22 Q. Okay. So the reason for the hospitalization
23 in the center of that page --

24 A. -- is: I hear voices, I've heard voices for
25 over two years since I did acid.

1 Q. And on the next page 505, he talks about those
2 voices, correct?

3 A. Yes.

4 Q. And hears -- most of the time hears the voices
5 and they're at a mumble?

6 A. Yes.

7 Q. And is that consistent with schizophrenia?

8 A. Hearing voices most of the time, that are at a
9 mumble, certainly can be consistent with schizophrenia.

10 Q. Okay.

11 A. Also consistent with other psychotic
12 illnesses?

13 Q. He talks about -- he knows that they're not
14 real, gets frustrated and scared because they come all
15 at once. Is that typical for schizophrenic patients
16 that you have dealt with?

17 A. It's typical for people that are psychotic
18 that they have varying degrees of insight into their
19 mental illness. The fact that he says they're not
20 real, that's certainly consistent with schizophrenia, I
21 get frustrated and scared because they come all at
22 once.

23 Remember we are talking about psychotic
24 symptomology and psychotic symptomology is symptoms
25 that aren't based in reality. So there is any number

1 of reported communications that patients report but
2 these are also people that are experiencing psychosis
3 so this is absolutely consistent with a psychotic
4 illness.

5 Q. Okay. And on page 509 he talks about problems
6 with sleeping, correct?

7 A. Yes.

8 Q. All right. Let's go to Volume 3, 488 to 501.

9 A. Yes.

10 Q. Again this is in Johnny Johnson's St. Louis
11 Psychiatric Rehab Center record?

12 MR. LUNDT: Your Honor, if I haven't offered
13 Volume 3 --

14 THE COURT: You have.

15 MR. LUNDT: Okay.

16 THE COURT: It's been admitted.

17 Q. (By Mr. Lundt) Let's talk about Dr. Mallya's
18 report here. He does a medical and psychiatric
19 assessment of Johnny, correct?

20 A. Correct.

21 Q. And says that he's committed by St. Louis
22 County Court for a pre-sentence evaluation, correct?

23 A. Correct.

24 Q. And the doctor notes because of history of
25 mental illness his probation officer requested a

1 pre-sentence psychiatric evaluation?

2 A. Yes.

3 Q. And again in past psychiatric history, on page
4 499, it discusses: Started using alcohol, LSD, which I
5 assume is LSD, and psychostimulants and he developed
6 hallucinations from LSD.

7 Visual somatic and auditory -- auditory in
8 nature.

9 A. Yes.

10 Q. Would you explain what those terms are?

11 A. Well, visual hallucinations, you see things
12 that's aren't really there. A somatic hallucination is
13 a hallucination that is involved with something of the
14 body. A very common somatic hallucination is when
15 people feel that they're creatures inside of them, that
16 their guts are rotting, my intestines are really a
17 snake, things like that.

18 Q. Or perhaps bugs underneath their skin?

19 A. Or bugs underneath their skin is a somatic --
20 an example of a somatic hallucination and auditory
21 hallucination is hearing voices or hearing things that
22 are not real.

23 Q. They talk again about his hospitalization for
24 suicide attempts and then they discuss the five years
25 of probation he got in 1996, correct?

1 A. Correct.

2 Q. Going to the diagnosis on page 501 --

3 A. Yes.

4 Q. Explain what the doctor found there.

5 A. The doctor found a diagnosis of schizophrenia,
6 paranoid type. Now, doctor -- I don't know if it's he
7 or she -- also put down: Rule out drug induced
8 psychosis. Now, the best I can understand from the
9 assessment is that the doctor is referring to LSD. In
10 the past psychiatric history section it stated that
11 even when he, Mr. Johnson, stopped using LSD these
12 hallucinations continued and these hallucinations being
13 visual somatic and auditory. That's very unlikely that
14 a continuation of these hallucinations were due to the
15 LSD that he allegedly took.

16 Q. Why is that?

17 A. Well, when people are acutely intoxicated on
18 LSD they certainly can hallucinate and hallucinate in
19 any number of areas, visual, auditory or somatic, but
20 if a person is going to have continuing problems from
21 LSD ingestion, there is a diagnosis called
22 hallucinogenic persistent perceptual disorder. Now,
23 this is where a person doesn't come down from LSD and
24 they're continuing to have distortions in their reality
25 and usually these are more of visual in nature that

1 will continue to trip, quite frankly, over periods of
2 time and I've treated patients that have had a lot of
3 LSD ingestion have resulted in their being high on LSD
4 for extended periods of time. It isn't usual that you
5 would get persistent visual somatic and auditory
6 hallucinations from LSD ingestion.

7 Q. That's more common with schizophrenics?

8 A. Well, it's certainly not common with LSD. You
9 can see it with other drugs potentially but given the
10 history included in this report this is most consistent
11 with the onset of schizophrenia and what's interesting
12 to me is that this is consistent with a number of young
13 schizophrenics. You remember schizophrenia is the
14 young person's illness. It has its onset during
15 adolescence. Often times a person will have what we
16 called insidious onset of psychotic symptoms. Usually
17 auditory hallucinations that they don't share with
18 anybody and they don't know what's going on. They're
19 not afraid of these things, they keep them to
20 themselves, and then something happens. The people --

21 MR. WALDEMER: Judge, at this point I have to
22 object to the narrative.

23 THE COURT: Sustained.

24 MR. WALDEMER: I don't remember the question.

25 THE COURT: Sustained.

1 Q. (By Mr. Lundt) well, as far as the etiology
2 of the disease, of the psychosis -- well, the symptoms
3 of psychosis in somebody who is schizophrenic, is it
4 typical that they -- that they have more than one type
5 of hallucination or delusion?

6 A. You certainly can see that in schizophrenia.

7 Q. And as far as the development of the disease
8 over time, isn't it true that an individual will try to
9 -- try to figure out a specific pinpoint in time, this
10 caused my hallucinations to start?

11 A. It's very common. What I'm saying is that
12 this is an adolescent illness, that people will look to
13 their external environment for a marker that, oh, ever
14 since this happened, I started to hallucinate and it's
15 very common.

16 Q. You've worked with people who've had military
17 experience in the past. Is it typical for somebody to
18 develop schizophrenia to say, Oh, it was when I went to
19 Vietnam, Korea.

20 MR. WALDEMER: Judge, at this point I would
21 object to the relevance. We are here talking about
22 Johnny Johnson and what he's trying to do is make a
23 point about his LSD.

24 THE COURT: Sustained unless you can somehow
25 link it to this case.

1 Q. (By Mr. Lundt) Would it be typical for
2 somebody to say, well, I pinpointed the time when my
3 hallucinations started to the use of a drug?

4 A. It's very common that people will look to some
5 marker in their life and then attribute it to the onset
6 of psychotic symptoms. So assuming that he did do LSD,
7 the symptoms he describes are not consistent with LSD
8 ingestion but I can understand that he would ascribe to
9 the onset of his symptoms to his LSD because LSD is
10 associated with a psychosis.

11 Q. And then Dr. Mallya goes on to say that: The
12 assets, number three there, that he has a history of
13 abstinence from all drugs except for cannabis?

14 A. Yes.

15 Q. That kind of does not jive with what he wrote
16 in the past psychiatric history, right?

17 A. The past psychiatric history they talk about
18 Mr. Johnson's supposed extensive use of drugs but then
19 in the assets portion of this diagnosis it says there
20 is a history of abstinence from drugs except for
21 cannabis. You're right, so there is an inconsistency
22 there.

23 Q. And that was -- the date was 10/18 of 2001,
24 correct?

25 A. Yes.

1 Q. Okay. So looking at Volume 3, 660, I believe
2 it's the last page in that volume or last couple pages
3 in that volume.

4 A. Yes.

5 Q. We went over this before. The tox screening
6 that, apparently that the doctor ordered, came out
7 negative, correct?

8 A. Correct.

9 Q. All right. Let's talk about 15R, let's talk
10 about Dr. Rabun's report that is in Volume 1, it's in
11 Volume 1, 284 to 292, his report is in Volume 1, 284 to
12 292.

13 MR. LUNDT: Your Honor, at this time I move
14 the admission of that particular record although
15 probably don't need to since it came before Judge Drum
16 in Division 4 of this building in 2001.

17 THE COURT: Give me the page numbers.

18 MR. LUNDT: 284 to 292.

19 THE COURT: Any objection?

20 MR. WALDEMER: And we are talking about
21 Rabun's report?

22 THE COURT: Yes.

23 MR. WALDEMER: No objection, no objection.

24 THE COURT: It's admitted.

25 Q. (By Mr. Lundt) Now, Dr. Rabun, he was the one

1 who did this report to determine whether -- to assist
2 the Court in determining whether Johnny should be
3 released on probation, correct?

4 A. Yes.

5 Q. And as far as the probation violation was
6 concerned, page 285, it's a question about his behavior
7 of being -- minor in possession of intoxicating liquor,
8 possession of drug paraphernalia and an indecent act
9 and admitted to using marijuana and he failed to
10 complete the dual diagnosis program at Deaconess
11 Health?

12 A. Yes.

13 Q. All right. As far as personal history is
14 concerned, Dr. Rabun found that his father died from
15 diabetes?

16 A. Yes.

17 Q. That his brother suffers from mental
18 retardation and a psychotic illness?

19 A. Yes.

20 Q. Now, is that typical that a psychotic illness
21 would run in families?

22 A. It's not typical that it runs in families, but
23 when one family member has a psychotic illness it's
24 more likely that another member would have a psychotic
25 illness.

1 Q. Okay. Dr. Rabun goes on to note that Johnny
2 has a learning disorder, did not complete high school
3 and talks about being bullied when he quit in the 9th
4 grade?

5 A. Yes.

6 Q. Dr. Rabun goes on to talk about behavioral
7 history, attention problems, concentration problems?

8 A. Yes.

9 Q. Hyperactivity. He admitted to being engaged
10 in shoplifting and stealing?

11 A. Well, in the hyperactivity it says that he did
12 not provide any symptoms.

13 Q. Okay. He did not -- I'm sorry. I misread
14 that. Thank you. Then he goes on to talk about
15 admitted engaging in shoplifting and stealing and being
16 placed on probation?

17 A. Yes.

18 Q. Then he talks about taking a knife to school?

19 A. Yes.

20 Q. And being expelled. And Mr. Johnson has not
21 described any other features that would suggest a
22 conduct disorder?

23 A. Correct.

24 Q. He talks about his legal difficulties and then
25 goes on to the drug and alcohol history, correct?

1 A. Correct.

2 Q. It talks about, first -- this is reporting
3 from Johnny, correct?

4 A. Yes, it is.

5 Q. First, drank alcohol at the age of 16, stopped
6 by the age of 21 after having a child, prior to the age
7 of 21 admitting to drinking everyday, approximately a
8 bottle of hard liquor every day.

9 A. Yes.

10 Q. He did not experience any withdrawal symptoms.
11 when he was questioned about illegal substances, he
12 said he huffed gasoline at work?

13 A. Yes.

14 Q. He stopped doing that because of headaches?

15 A. Correct.

16 Q. He also stated he used LSD, crack cocaine and
17 marijuana and last used marijuana in 2001?

18 A. Yes.

19 Q. And he noted that he stopped using other
20 illegal substances in 1999?

21 A. Correct.

22 Q. Then on page 287 it talks about being on
23 Zyprexa, an antipsychotic?

24 A. Correct.

25 Q. Then under psychiatric history, he apparently

1 did not give Dr. Rabun a full accounting of his
2 psychiatric history and so Dr. Rabun went to the
3 records, correct?

4 A. Yes.

5 Q. And it talks about the second -- Johnny's
6 second hospitalization characterized by psychotic
7 symptoms specifically auditory hallucinations
8 threatening to harm him and telling him to harm
9 himself?

10 A. Correct.

11 Q. Then it goes all the way to 2001 and it states
12 that Mr. Johnson is presently diagnosed with
13 schizoaffective disorder?

14 A. Is presently diagnosed with schizoaffective
15 disorder.

16 Q. Schizoaffective disorder. Okay. And then on
17 289 he discusses his diagnosis, diagnoses?

18 A. Yes, but in 288, the bottom of the page, Dr.
19 Rabun does quit a good analysis of his psychotic
20 symptoms.

21 Q. Okay. As far as the voices are concerned?

22 A. Yes.

23 Q. Okay. How does he analyze those?

24 A. Well, he really -- this is the first time in
25 the record where I saw someone took the time to attempt

1 to analyze whether or not these reported psychotic
2 symptoms were valid or if he was making them up or
3 anything like this. So he went through and described
4 what they were and -- and based on his, what I call
5 thoughtful analysis of psychotic symptoms, he did
6 arrive at the diagnosis of schizophrenia.

7 Q. Okay. And so within a reasonable degree of
8 medical certainty he found that Mr. Johnson was
9 effected by a mental disease, correct?

10 A. Yes. It shows features of a psychotic illness
11 and a constellation of Mr. Johnson's symptoms suggest
12 he's effected by schizophrenia.

13 Q. And then on 290 under assessment, number one
14 at the bottom it gives a warning of what -- what will
15 happen if he's not compliant with his medication?

16 A. Yes. He says his psychotic illness will
17 emerge and that in the past he's heard command voices
18 and he goes on to state that due to his command
19 hallucinations and his paranoid delusions, that if
20 Mr. Johnson is not compliant with treatment, he poses
21 an increased risk to himself and others.

22 Q. And then on 291, under number two it says: If
23 he uses drugs, that will exacerbate the problem?

24 A. He uses the term his risk to himself and
25 others is significantly increased.

1 Q. All right. Then on page 291 under number
2 five, the paragraph that says accordingly.

3 A. Yes.

4 Q. What do you think about that paragraph?

5 A. Well, again, I have to say that this is a very
6 thoughtful evaluation especially when he went through
7 the type of psychotic symptoms then went through point
8 by point about what the basis of his opinions were so
9 his summary of opinions on reading this last paragraph
10 it says: The examiner is of the opinion with a
11 reasonable medical certainty that Mr. Johnson poses an
12 unacceptable risks for violence in the following
13 situations: If he's off his medication and acutely
14 ill, if he's living on the streets or an unstable
15 situation, if he's using alcohol and/or drugs, if he
16 has significant idle time, since idle time means a
17 person has a greater opportunity to develop
18 inappropriate social contacts and/or engage in illegal
19 activities.

20 Q. All right. Now, is it important that there is
21 no diagnosis under Axis II by Dr. Rabun?

22 A. It's notable in that Dr. Rabun, again, I can
23 imply by this that Dr. Rabun understands the criteria
24 for antisocial personality disorder and antisocial
25 personality disorder has a rule out in this criteria

1 that says that if the behavior exists during a period
2 of schizophrenia or words to that affect, then the
3 person -- you cannot attribute that to an antisocial
4 personality disorder and Dr. Rabun diagnosed
5 schizophrenia so that -- that ruled out the presence of
6 antisocial personality disorder and so he takes it one
7 step further and just doesn't say rule out antisocial
8 personality disorder, he makes an affirmative statement
9 saying there is no personality disorder.

10 Q. All right. And then page 488 of Volume 3 -- I
11 mean 484 of Volume 3 that's when Johnny is released or
12 discharged by Dr. Mallya?

13 A. Yes. On page 488?

14 Q. 484.

15 A. Yes.

16 Q. And again on 488 he makes a final diagnosis,
17 correct, Dr. Ashok Mallya?

18 A. Yes.

19 Q. And again there is no diagnosis under Axis II?

20 A. There is no diagnosis.

21 Q. And Axis I we have schizoaffective disorder in
22 remission?

23 A. Correct.

24 Q. Polysubstance dependence?

25 A. Yes.

1 Q. Okay. 15S. Okay. Now, we are getting into
2 2002, volume 6, 1471 to 1472?

3 A. Correct.

4 Q. Okay. At that time he's on ten milligrams of
5 Zyprexa?

6 A. Yes.

7 Q. Trazodone 100 milligrams and Paxil of 20
8 milligrams?

9 A. Correct.

10 Q. And this -- this is from January 23rd of 2002?

11 A. Yes.

12 Q. And Dr. Patel is seeing Johnny through the
13 ADAPT Program?

14 A. Yes.

15 Q. All right. And what was her diagnosis on 1471
16 and 72?

17 A. On 1471, that's in January 23rd of '02, she
18 diagnosed him as schizophrenia paranoid type and then
19 on the next page, on 1472, that is April 23rd, '02 and
20 she diagnosed him again as schizophrenia paranoid type.

21 Q. Okay. Additionally there are no Axis II
22 diagnosis on either of those, correct?

23 A. Correct.

24 Q. Now, 4/23 of '02 it says: Is client
25 medication non-compliant and that's circled yes?

1 A. Yes.

2 Q. So I guess that's a way of saying he's not
3 taking medication?

4 A. Yes. That's kind of an awkward statement. I
5 understand that the person is not compliant with the
6 medication, meaning not taking medication as
7 prescribed.

8 Q. All right. Now, going to 1464, to 1466, these
9 are also records from Dr. Patel; is that correct?

10 A. Correct.

11 Q. Okay. Again she makes her diagnosis of
12 schizoaffective disorder?

13 A. On 4/10 '02 the diagnosis is listed as
14 schizoaffective disorder and marijuana abuse in full
15 remission.

16 Q. Okay. So look at 1466. This is Dr. Patel's
17 record of seeing Johnny?

18 A. Yes, that's what it is.

19 Q. And it looks like some time in '02, I assume
20 that since it's chronological on that, then it was
21 prior to 6/5 of '02.

22 MR. WALDEMER: Let me object to the
23 speculation.

24 THE COURT: Sustained.

25 MR. WALDEMER: For that matter, the doctor's

1 anticipated speculation.

2 THE COURT: Sustained.

3 Q. (By Mr. Lundt) Okay. Starting at the bottom
4 there we have -- let's start at the top. Sometime in
5 '02 he was seen for 25 minutes by Dr. Patel?

6 A. Correct.

7 Q. And she said that he was doing fine and he
8 denied having auditory hallucinations and no suicidal
9 ideation?

10 A. Right and she said that he will return in a
11 month for follow-up.

12 Q. And at that point he's on ten milligrams of
13 Zyprexa?

14 A. Correct.

15 Q. And that is once again a drug to control
16 hallucinations and delusions?

17 A. Zyprexa is an antipsychotic so it is
18 prescribed for psychotic symptoms.

19 Q. Okay. So then let's go to 15T, Volume 10,
20 pages 2604 and 05.

21 A. Yes.

22 Q. Now, this is from the Department of Probation
23 and Parole records?

24 A. Correct.

25 MR. LUNDT: At this time, your Honor, I move

1 for the admission of the Missouri Department of
2 Probation and Parole records in Movant's Exhibit 10
3 pages 2594 to 2615.

4 MR. WALDEMER: No objection.

5 THE COURT: They will be admitted.

6 Q. (By Mr. Lundt) So now this is a probation
7 violation report from Carol Giardina, also known as
8 Carol Giardina-Wright; is that correct?

9 A. Mine says Carol Giardina.

10 Q. Right. And 2611 she signed Carol
11 Girondena-Wright, right?

12 A. Yes.

13 Q. Just to make sure we are talking about the
14 same person?

15 A. Right.

16 Q. On page 2604, she talks about -- 5/15/02 urine
17 test?

18 A. Yes.

19 Q. That he tested positive for marijuana?

20 A. Correct.

21 Q. And then she talks about seeing Johnny and his
22 girl friend at Grant's Grill in Kirkwood and two
23 glasses of beer in front of them?

24 A. Yes.

25 Q. Okay. And that she saw Johnny on -- in that

1 bar on 5/18/02?

2 A. That's what it says.

3 Q. So 5/15/02 tests positive for marijuana,
4 5/18/02 seen in a bar?

5 A. Yes.

6 Q. Now, back to page -- Volume 6 page 1466.

7 A. Yes.

8 Q. 6-5-02 Dr. Patel says he missed an
9 appointment, correct?

10 A. Correct.

11 Q. Then on page 1486, Dahley Dugbatey, who was
12 his community social worker.

13 A. Community social worker, yes.

14 Q. She makes an entry there on 1486 dated
15 June 10th of '02?

16 A. Yes. It's signed June 10th of '02.

17 Q. Okay. Okay. Actually it can be up in the
18 date where it says 5/30 of '02.

19 A. Yes.

20 Q. So that could have been when the record was
21 made. He stated that he was medication compliant,
22 denied any side effects from his medication?

23 A. Correct.

24 Q. When she met him at Einstein's Bagels.

25 A. Yes.

1 Q. And Dahley Dugbatey is the community social
2 worker for ADAPT?

3 A. Yes.

4 Q. Back in 1466 Johnny missed an appointment
5 June 24th of '02 with Jitendra Patel?

6 A. Correct.

7 Q. And then again on 1466 June 28th of '02, Dr.
8 Patel actually had a meeting with Johnny, correct?

9 A. Yes.

10 MR. LUNDT: I'm sorry, your Honor, I'm now on
11 slide 15U.

12 Q. (By Mr. Lundt) Okay. And there it doesn't
13 indicate how long she talked with him?

14 A. It does not.

15 Q. But he -- she notes that he was pleasant,
16 cooperative, thought logical and goal directed,
17 coherent, no auditory hallucinations, no suicidal
18 ideations?

19 A. That's correct.

20 Q. And she says she gave him insight about his
21 illness and he needs to take his medication regularly?

22 A. Yes.

23 Q. And the need to come for follow-up
24 appointments regularly?

25 A. Correct.

1 Q. And he agreed to continue the ten milligram
2 dosage of Zyprexa; is that correct?

3 A. Correct.

4 Q. So then further down on July 23rd of '02 he
5 missed another appointment, correct, with Dr. Patel?

6 A. Yes.

7 Q. That's on page 1466?

8 A. Correct.

9 Q. And now we are on 15P. Okay. Then we go to
10 volume 10, 2608. She makes a large paragraph there on
11 page 2608, this is Carol Giardina, about how he's been
12 doing on his reporting, correct?

13 A. Yes.

14 Q. And it was pretty poor?

15 A. Yes.

16 Q. She states she gave him a reporting schedule
17 on 7/10 of '02 and told him to report on 7/17 and 7/24
18 of '02?

19 A. Correct.

20 Q. He didn't report on 7/17?

21 A. Correct.

22 Q. Then she calls his grandmother Lilly Owens?

23 A. Correct.

24 Q. She called Johnny to the phone, decided to
25 wake him alert and he told her that he'd lost his

1 wallet?

2 A. Yes.

3 Q. He said he would come in today but upon
4 discussion he said that he would have to miss work if
5 he came in?

6 A. Yes.

7 Q. So she told him to come in on 7/24?

8 A. Correct.

9 Q. And that he didn't report on 7/24?

10 A. Yes.

11 Q. And at 8:00 a.m. on 7/25 she called Lilly
12 Owens again?

13 A. Yes.

14 Q. The grandmother. And she stated that he just
15 left to go to 711?

16 A. Yes.

17 Q. Back in a short period of time. Ms. Owens
18 stated sometimes he leaves the house and is gone for
19 the day. Ms. Owens further stated things had not been
20 going well and thought Johnson maybe stopped taking his
21 medication?

22 A. That's what Ms. Owens told her, yes.

23 Q. Okay. I forgot something on 15U. Okay. Back
24 to 15U for a second. We talked about Dahley Dugbatey,
25 her indicating on page -- 5/6, 1482, that Johnny was

1 doing fine, correct?

2 A. Correct.

3 Q. And yet when she testified she testified to
4 quite a different thing; is that correct?

5 A. That's my understanding.

6 Q. Okay. And you've read Dahley Dugbatey's
7 testimony in trial?

8 A. Correct.

9 Q. And this is transcript page 1527?

10 A. I do not have that up here.

11 Q. Okay. I'll hand that to you. 1527,
12 transcript, 1527 to 28, if you could just go over that
13 briefly?

14 A. Yes.

15 Q. Okay. And she talks about some symptoms that
16 she noticed; is that correct?

17 A. She talks about speaking with him about that
18 incident when they were observed, he and his girl
19 friend, that he had the beer in front of him at that
20 Grant's Grill and then she goes on to talk about that
21 after this particular period of time our conversations
22 became different. He, in my opinion, his reality
23 seemed to be off a little bit about it. He had alien,
24 not alien registration card --

25 MR. WALDEMER: Well, your Honor, I'm going to

1 object at this point to the narrative reading of the
2 transcript. The transcript is the transcript. I think
3 it's irrelevant, other than what the doctor took from
4 this lady's testimony, that I have no objection to, but
5 reading the transcript --

6 THE COURT: Sustained with the exception that
7 he can certainly read that portion which he relied on
8 in forming his opinions.

9 Q. (By Mr. Lundt) What portion did you rely on
10 in determining whether he was experiencing
11 hallucinations?

12 A. Well, she, who knew him, mentioned that his
13 reality seemed to be off a little which implies that
14 she was seeing some psychotic symptoms. I also noted
15 that this whole conversation about aliens and that she
16 mentioned about these tattoos on his hands, it was odd,
17 it was just off. So she noted he was off and I think
18 that's important to know.

19 Q. Okay. Then back to 15B. So we discussed he
20 missed his appointment with Dr. Patel then on the 24th,
21 he missed an appointment with his probation officer,
22 Carol Giardina and then on 7/25 of '02, Lisa Mabe
23 testified in the trial about what she -- she saw at
24 that time.

25 A. Correct.

1 Q. And what do you recall about that?

2 A. I would have to glance at the transcript to
3 remind myself.

4 Q. I'm showing you the transcript page 1552 and
5 1553.

6 A. She described -- she also described Mr.
7 Johnson's acting bizarre. She used the word paranoid
8 fashion, in acting in a way that, to my reading of the
9 testimony, and it implied Mr. Johnson was psychotic at
10 the time she saw him.

11 Q. And then again we already went over transcript
12 volume 10 -- Movant's volume 10 where the probation
13 officer discussed with Lilly Owens' reference, correct?

14 A. That she thought, that Lilly Owens thought
15 that Mr. Johnson had not been taking his medication
16 around that time.

17 Q. Okay. Then 7/26 of '02 was the murder,
18 correct?

19 A. Yes.

20 Q. And then go -- go to 15W. Okay. Going to
21 volume 7, page 1598.

22 A. Yes.

23 Q. Okay. This is from the St. Louis County
24 Department of Justice Services and basically he was
25 placed on suicide watch, the day after the incident,

1 after being arrested?

2 A. Yes.

3 Q. 1597 he was lowered to an immediate risk
4 suicide?

5 A. Yes.

6 Q. And that was on August 11th of '02?

7 A. Yes.

8 Q. And then by, on page 1599, Dr. Willigor felt
9 he should not come off of PC status?

10 A. Yes.

11 Q. Because he doesn't understand the
12 ramifications of it?

13 A. Yes.

14 Q. Going to volume 7, 1585.

15 A. Okay.

16 Q. And that's -- looks like November 6th of 2002?

17 A. Correct.

18 Q. suicidal again, thinking about what he did?

19 A. Yes.

20 Q. And that's from Officer Pinkard. Okay. Going
21 to volume 4, page 664 through 666, that indicates a --
22 a number of encounters, but page 665 through 66 is the
23 encounter with Dr. Ajans?

24 A. Ajans, yes.

25 Q. They talk about, on page 665 at the top, he

1 had command hallucinations, always telling him he's bad
2 and not good, reports seeing demons, but not on meds.

3 A. Correct.

4 Q. And that's not actually from Dr. Ajans it's
5 from Molly Shuman?

6 A. Yes.

7 Q. And that's a health technician?

8 A. I'm not exactly sure what her role is but, I
9 believe you're correct.

10 Q. And then February 28, 2003, doctor encounter,
11 that is Dr. Ajans' diagnosis basically starts, correct?

12 A. Correct.

13 Q. Then he talks about in the past that Johnny
14 was diagnosed with many different things, correct?
15 Under number of diagnostic impressions also because of
16 prolonged history of depression, hallucinations and the
17 episodes of nightmares?

18 A. Correct.

19 Q. And in here he next talks about the onset of
20 nightmares?

21 A. Yes.

22 Q. Again indicating that the mother's boyfriend
23 tried to drown him at one point?

24 A. That's what the records state. It also goes
25 on and says that he was a victim of sexual abuse by a

1 neighbor when he was nine.

2 Q. He also talked about the grandfather dying in
3 a suicide attempt, correct?

4 A. Yes.

5 Q. Further down it shows some discussion of what
6 he sees: His speech was characterized by hesitancy and
7 fear?

8 A. Yes: His speech was characterized by
9 hesitancy and fear. Right above that it is talking
10 about the long history of hallucinations.

11 Q. Correct. And the voices telling him to kill,
12 kill, kill but he has no desire to hurt anyone?

13 A. Correct.

14 Q. And then his assessment was what?

15 A. Well, one other part in here that you failed
16 to mention was about Dr. Ajans talks about the variety
17 of antipsychotic medications that Mr. Johnson had been
18 treated with, yet the diagnosis that he arrived at, he
19 or she arrived at, was major depression with psychotic
20 features, by history, schizoaffective disorder
21 suspected, polysubstance abuse, post-traumatic stress
22 disorder suspected, and they defer any diagnosis on
23 Axis II.

24 Q. And then he talks about what Johnny is going
25 to be taking after that, correct?

1 A. Yes. They talked about the antidepressant
2 Elavil and also the antipsychotic Loxitane.

3 Q. And they continue him on Cogentin?

4 A. Yes.

5 Q. All right. Moving on to 15I, volume 4, 667.
6 This is a tec/MH encounter from 3/17?

7 A. Yes.

8 Q. This slide is off. 3/17 of '03, talking about
9 nightmares regarding his mother's boyfriend trying to
10 drown him?

11 A. Well, actually to be a hundred percent
12 correct, that is 3/13.

13 MR. WALDEMER: Yes.

14 Q. (By Mr. Lundt) Oh, okay, 3/13.

15 A. But you're right, they do report nightmares
16 regarding his mother's boyfriend trying to drown him
17 and having groups of nightmares about this for nineteen
18 years and his diagnosis was major depression with
19 psychotic features by history, schizoaffective
20 disorder, suspected. And the medications include an
21 antidepressant and an antipsychotic.

22 Q. And again that was from the tech/MH?

23 A. Yes.

24 Q. And next page 668 we have the beginning of the
25 doctor encounter with Dr. Mia Galimoto on page 670?

1 A. Yes.

2 Q. And that is from May 14th, 2003?

3 A. Yes, it is.

4 Q. An her diagnosis on page 669.

5 A. Her diagnostic assessment is: Schizoaffective
6 disorder, mood disorder secondary to poly substances,
7 polysubstance dependent.

8 Q. And at this time he's been incarcerated since
9 basically 7/26 of '02?

10 A. Correct.

11 Q. She also talks on 669 about him hearing
12 mumbling all the time and seeing things melt?

13 A. Correct.

14 Q. Toward the top of that page?

15 A. Correct.

16 Q. And again he's still on Loxapine at this time?

17 A. He's still being treated with an
18 antipsychotic. Actually he's had a different
19 antipsychotic added. He's taking perphenazine and he's
20 also taking Loxapine, so he's now on two antipsychotics
21 he's being treated with.

22 Q. Let's go to 15Z, Volume 8, 1854.

23 A. Yes.

24 Q. And this is from June 9th, 2003.

25 A. June 7th, I believe.

1 Q. Okay. It says, wants to harm himself and he's
2 been ingesting a tube of toothpaste?

3 A. Correct.

4 Q. On 1856 Sheila Carter, who is a nurse, notes
5 he scratches himself?

6 A. Several scratches on his arms bilaterally.

7 Q. And he states that he wants to harm himself a
8 little?

9 A. A little is in quotes, yes.

10 Q. Asked offender if he would like to talk to MH
11 about things bothering him. Offender asked when he'd
12 come by. He was placed on suicide watch, correct?

13 A. Correct.

14 Q. Go to volume 4, 670, that again is talking
15 about the toothpaste, correct?

16 A. Yes.

17 Q. Okay. That's from June 9th, 2003?

18 A. Yes, that's June 9th.

19 Q. And this is technician MH, mental health
20 technician Glen Marsey, again?

21 A. Yes.

22 Q. And on 671 he talks about offender being raped
23 about two weeks ago and working through some of his
24 pain?

25 A. Yes.

1 Q. Then we go to Volume 8, 1857.

2 A. Yes.

3 Q. And that's from June 10th, 2003, the nurse,
4 Katherine Barton, gave him his medication?

5 A. Yes.

6 Q. And he abruptly turned around and went to the
7 corner of the cell and she noted feces on the wall?

8 A. She noted feces on the wall of the cell.

9 Q. Is that important?

10 A. Well, in the jail setting sometimes you see
11 people that are really decompensating smearing feces on
12 the wall.

13 Q. Okay. And on 1859 again Katherine Barton
14 describes feces all over the walls, correct?

15 A. Yes.

16 Q. And then Linda Larimore describes urine all
17 over the floor?

18 A. She talks about urine, correct.

19 Q. Okay. And then back to 4, 672?

20 A. Yes.

21 Q. That same date the mental health technician
22 Glen Marsey says: Offender could be faking good,
23 faking bad. Also the offender is showing some
24 emotional coloring because hygiene is becoming an
25 issue. Offender has been urinating on the floor, still

1 hears voices but not suicidal?

2 A. Correct.

3 Q. Okay. 15A, again in volume 4, 673, okay, 673,
4 Glen Marsey talks about the voices, correct?

5 A. Correct.

6 Q. And then 673 -- 673 is when he had his last
7 doctor's appointment on June 16, 2003?

8 A. Yes.

9 Q. And here he complains about voices getting so
10 loud that they were screaming?

11 A. They're screaming at me, he says, yes.

12 Q. Also talks about sleeping poorly cause voices
13 wake him up, still has nightmares?

14 A. Correct.

15 Q. Then inmates in neighboring cells are making
16 fun of him and tell him voices will kill him and he
17 would be dead by morning?

18 A. Correct.

19 Q. And then it says down here at the bottom
20 hallucinations are worse, he would like to try meds for
21 hallucinations?

22 A. Correct.

23 Q. So we can assume from that that he has not
24 been taking medication?

25 A. If you look up further in that note it says he

1 is able to communicate and realizes he is on
2 medications for hallucinations.

3 Q. Okay.

4 A. But then down here he said he would like to
5 try meds for the hallucinations.

6 Q. And again this is Dr. Mia Galimoto?

7 A. Correct.

8 Q. The same name appears on page 674 and she
9 again makes her assessment of his current psychological
10 diagnoses?

11 A. Her diagnoses are the same as they were
12 before, major depressive disorder with psychotic
13 features, mood disorder induced by substance abuse and
14 polysubstance dependant.

15 Q. And again there he's been in custody for quite
16 a period of time, correct?

17 A. He's been in custody for almost eleven months
18 at that point. If you follow over on 674 it does state
19 that he's being treated with two different
20 antipsychotics.

21 Q. And that's the perphenazine?

22 A. Correct.

23 Q. And the other one chlorpromazine?

24 A. Right. I looked at that myself. He was on
25 perphenazine and then they're going to stop that and

1 they were adding chlorpromazine after this visit and
2 chlorpromazine is Thorazine.

3 Q. That's what she said on the very last line
4 there, start Thorazine?

5 A. Yes.

6 Q. Okay. Volume 8, 1864, here we have nurse
7 Sheila Carter, on 1865 her name appears, making some
8 observations of Johnny?

9 A. Correct.

10 Q. Paper in his ears. What is the significance
11 of that, if any?

12 A. In this particular case she's saying that he
13 has rolled up paper and stuck them in both ears and he
14 reports he was trying to plug my ears, he was tired of
15 hearing the voices. This is something that you
16 routinely see in someone with severe auditory
17 hallucinations. They'll jam things in their ears and
18 attempt to stop the voices and they actually -- the
19 patients report that it helps but I'm not exactly sure
20 of the mechanism. A lot of times they wear earphones
21 or play music real loud.

22 Q. And also they talk about scratching.
23 scratches because voices are driving him crazy. Two
24 five-inch scratches noted to the forearm?

25 A. Again, that's an example of self-mutilation.

1 Q. Again they put him on suicide watch?

2 A. Correct.

3 Q. And in Volume 4, 676, mental health technician
4 Glen Marsey makes an entry on the same date, correct,
5 that's 6/23?

6 A. Yes.

7 Q. And the scratches he -- he basically states
8 the offender could be faking good or faking bad because
9 this clinician believes the offender is acting out
10 because he was raped several weeks ago?

11 A. He does state that.

12 Q. Is paper in the ears consistent with someone
13 being raped?

14 A. Paper in the ear is not necessarily related to
15 the rape. It's related more to the auditory
16 hallucinations.

17 Q. What about the scratches?

18 A. Again, we talked about self-mutilation is
19 being his primitive way of dealing with agitation and
20 so he's getting himself worked up for whatever reason,
21 rape is something that certainly could get you worked
22 up. That makes sense that he might return to
23 self-mutilation.

24 Q. Let's go to slide 15V, again on volume 4, 677
25 and 78, he has a doctor's appointment with a doctor

1 that we haven't seen for a while Dr. Percival Tiongson?

2 A. Yes.

3 Q. Okay. And this is from July 17th of '03,
4 correct?

5 A. Yes.

6 Q. Says: Initial psychiatric eval new provider?

7 A. Correct.

8 Q. They talk a great deal about doctor -- Johnson
9 talks about -- a great deal about the medication that
10 he's been on including Prozac, Paxil, Ativan, Zyprexa,
11 Loxapine, Trilafon?

12 A. Correct.

13 Q. The last time he was seen the Trilafon was
14 shifted to Thorazine?

15 A. Yes.

16 Q. His Elavil is not helping enough at this time?

17 A. That's what he states.

18 Q. But otherwise he's pleased with the current
19 medicine?

20 A. Yes.

21 Q. Okay. And 678 he makes an assessment?

22 A. Major depression -- major depressive disorder
23 with psychotic features and polysubstance dependence by
24 history.

25 Q. And his new plan is to change the medications,

1 correct, except for continuing the Thorazine and
2 vistaril?

3 A. He increased the dose of the Elavil or the
4 amitriptyline, which is a-m-i-t-r-i-p-t-y-l-i-n-e, to a
5 hundred, milligrams at night.

6 Q. Okay. Then going to volume 4, 680, we have on
7 October 6th, initial mental health evaluation provider,
8 correct?

9 A. Correct.

10 Q. That's the mental health technician, Teri
11 Kluesner?

12 A. Yes.

13 Q. And she talks about, among a number of
14 different things, head injuries, attempted suicide,
15 positive history for drug abuse but listing his current
16 problem is he's having anxiety on page 682?

17 A. She does state that but her final diagnosis is
18 schizoaffective disorder.

19 Q. Right. She also reports other symptoms as
20 follows: Hallucinations, poor sleep, waking nights,
21 racing thoughts, feelings of paranoia, correct?

22 A. Correct.

23 Q. All right. All right. 15CC. Okay volume 11.

24 MR. LUNDT: At this time I will offer into
25 evidence volume 11, the court-ordered psychological

1 evaluation of Johnny Johnson and that starts at 2924
2 going to 2950?

3 THE COURT: Any objection to that?

4 MR. WALDEMER: No, your Honor. They are
5 admitted in the underlying trial.

6 THE COURT: They'll be admitted.

7 MR. LUNDT: Also defendant's evaluation from
8 the trial 2951 through 2989.

9 MR. WALDEMER: No objection.

10 THE COURT: Be admitted.

11 MR. LUNDT: I don't believe I've offered the
12 CV of Dr. Stewart, 3027 to 3047.

13 MR. WALDEMER: No objection.

14 THE COURT: Admitted.

15 Q. (By Mr. Lundt) Let's go to 2924. This is the
16 pretrial certificate done by Dr. Byron English and Dr.
17 Steven Becker?

18 A. Yes.

19 Q. And this, if I'm not mistaken, is the
20 competency evaluation?

21 A. It just states here: That the following
22 report of mental evaluation conducted pursuant to
23 provisions of Chapter 552 of the Revised Statutes of
24 Missouri. So I'm not sure what the exact reason that
25 this evaluation was done.

1 Q. Okay. Well, turning to 2932, under the
2 findings and issues related to competency to proceed,
3 correct?

4 A. Yes, that is correct.

5 MR. WALDEMER: Judge, if it would help speed
6 things along, I'll stipulate this is the competency
7 evaluation under 552.020 you ordered.

8 THE COURT: Is that agreeable?

9 MR. LUNDT: Yes.

10 THE COURT: Very well.

11 Q. (By Mr. Lundt) Okay. All right. The doctors
12 deal with history and on 2931 they made a diagnosis of
13 mental disease and defect?

14 A. Correct.

15 Q. And what are their diagnosis there?

16 A. They make the diagnosis of major depressive
17 disorder recurrent severe with psychotic features, in
18 partial remission, polysubstance dependence in
19 remission within a controlled environment. They also
20 diagnosed anti-social personality disorder and
21 borderline intellectual functioning.

22 Q. Now, is there anything about that particular
23 report that you want to talk about in addition to just
24 the diagnosis?

25 MR. WALDEMER: Judge, I object to the form of

1 the question. I think it's open-ended and requesting a
2 narrative.

3 THE COURT: Sustained.

4 Q. (By Mr. Lundt) Is -- Okay. As far as the
5 major depressive disorder recurrent with psychotic
6 features in partial remission, based upon what you have
7 seen in the records, by the this report is done on
8 November 19th of 2003, would you agree with that
9 diagnosis?

10 A. Well, I think we have seen over the course of
11 today that, as Mr. Johnson had gone through his history
12 with the relationship with the mental health system --

13 THE COURT: Let me interrupt. I think that's
14 a yes or no answer, do you agree with it or don't you
15 agree with it, then you can explain your answer.

16 A. I don't agree with it, your Honor.

17 Q. (By Mr. Lundt) Okay. Why?

18 A. As we saw today that he has a history of his
19 diagnoses developing over time and to then ignore the
20 fact that multiple clinicians who've had a lot more
21 time observing him than these two clinicians did --

22 MR. WALDEMER: Well, Judge, let me object now.
23 I don't think this is responsive to the question asked.
24 He can indicate why he disagrees with it because he has
25 a different diagnosis, I have no objection but at this

1 point to criticize the other clinicians I think is
2 argumentative and I will object.

3 THE COURT: Sustained.

4 MR. LUNDT: Your Honor, he's explaining why
5 his diagnosis is different from these doctors.

6 MR. WALDEMER: What he's doing is attacking
7 the credibility of other clinicians by accusing them of
8 ignoring and doing other things, I think that's
9 argumentative.

10 THE COURT: Sustained. I do too and I don't
11 think it's permissible.

12 Doctor, if you disagree with the diagnosis,
13 you can certainly elaborate on why you disagree with
14 it.

15 Q. (By Mr. Lundt) All right. They also find
16 anti-personality disorder and borderline functioning.
17 Do you have a problem with either of those diagnoses --
18 do you disagree?

19 A. I disagree and my disagreement begins with an
20 inaccurate AXIS I diagnosis and then that carries over
21 into my disagreement about Axis II diagnosis.

22 Q. How so?

23 A. In my discussion about Dr. Rabun's diagnosis
24 he stated that it was his opinion that Mr. Johnson
25 suffered from schizophrenia and that there was no

1 diagnosis on Axis II because the criteria for
2 anti-personality disorder states that if your behavior
3 occurs in the context of schizophrenia, then you can
4 not be -- he can not be diagnosed with anti-social
5 personality disorder. So the diagnoses that appear on
6 2931, in my opinion, ignore this rich history of
7 diagnostic assessments of Mr. Johnson having a more
8 chronic and ignoring the psychotic condition of whether
9 it's schizophrenia or schizoaffective disorder or in my
10 case, psychotic disorder not otherwise specified, it
11 appears to me they ignored that history and those
12 records.

13 Q. okay.

14 THE COURT: We are going to call it a day. We
15 will resume tomorrow morning at 9 o'clock.

16 (Court was adjourned for the day.)

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December 1, 2009

THE COURT: All right. Mr. Lundt, you may proceed.

MR. LUNDT: Thank you, Your Honor.

THE COURT: Dr. Stewart, I'll remind you you are still under oath.

THE WITNESS: Yes, your Honor.

CONTINUED DIRECT EXAMINATION BY MR. LUNDT:

Q. Okay. Dr. Stewart, let's go to volume 11, page 2951.

A. Yes.

Q. Now, this is the -- the CV of Dr. Delaney Dean, Ph.D.?

A. Yes.

Q. And you've reviewed this document from 2951 through 2954?

A. Yes, I have.

Q. And does her CV show you that she has experience in co-morbid psychiatrics and substance abuse disorders?

A. In reviewing her CV I didn't find any evidence of her having any experience in dealing in substance abuse in particular or in the co-morbid, meaning the coexistence of a mental illness and substance abuse, there was an absence of any experience.

1 MR. WALDEMER: Well, Judge, let me object to
2 him speculating on what her experience would be beyond
3 her CV. Her CV speaks for itself and was admitted
4 during the trial and I certainly have no objection for
5 it being admitted here. For him to speak to what it
6 does not include, I think that calls for speculation on
7 the part of this witness.

8 THE COURT: Sustained.

9 MR. LUNDT: Your Honor, as he just said, the
10 CV speaks for itself and he can testify to reviewing
11 the CV itself.

12 THE COURT: Well, he can testify to reviewing
13 the CV but, he certainly can't speculate as to what Dr.
14 Delaney's inclusive background might be.

15 MR. LUNDT: Okay.

16 THE COURT: I think the CV does speak for
17 itself and it is what it is.

18 MR. LUNDT: Okay --

19 THE COURT: So the objection it still
20 sustained.

21 Q. (By Mr. Lundt) Did you see in the CV that
22 Delaney Dean reported any experience in her CV with
23 co-morbid co-Axial psychiatric and substance abuse
24 disorders?

25 MR. WALDEMER: Judge, at this time, let me

1 object to the leading form of the question. I also
2 object, again, the CV says what says. What's not in
3 there is not in there and for him to speculate or infer
4 that she does not have certain training is speculative.

5 THE COURT: Well, he can answer whether or not
6 -- whether or not it includes that. Overruled.

7 A. The CV does not include any experience in
8 dealing with co-morbid psychiatric and substance abuse
9 conditions.

10 Q. (By Mr. Lundt) Okay. We're now at slide 15DD
11 and this is referencing Delaney Dean's psychological
12 evaluation in volume 11, 2955 through 2966?

13 A. Yes.

14 Q. And you reviewed this document; is that
15 correct?

16 A. Yes, I have.

17 Q. Okay. And going to the diagnoses that Dr.
18 Dean made in February of '04, that would be on page
19 2964; is that correct?

20 A. Yes.

21 Q. Okay. Did you take into account these
22 diagnoses?

23 A. In arriving at my opinion?

24 Q. Yes.

25 A. Yes.

1 Q. Okay. And what were her diagnoses?

2 A. Her diagnoses are schizoaffective disorder,
3 polysubstance dependence and personality disorder not
4 otherwise specified with anti-social or borderline
5 features.

6 Q. Okay. Now, did you have any problems with
7 those particular diagnoses as far as your testing --
8 your evaluation was concerned?

9 A. Based on my evaluation of Mr. Johnson, it is
10 unclear to me how she could arrive at a personality
11 disorder diagnosis.

12 Q. Okay. And why is that?

13 A. In the DSM IV 2R, which is the current version
14 of the psychiatric diagnostic manual, it says in the
15 personality disorder section that you cannot make a
16 personality disorder diagnosis unless the condition --
17 excuse me -- if the condition is better explained by
18 another psychiatric diagnosis and it goes on to say
19 especially with regard to anti-social personality
20 disorder, that if the behavior existed in the context
21 of schizophrenia, then you cannot make that diagnosis.

22 Q. Then -- and going to 2965, mental state at the
23 time of the offense, did you have problems with her
24 findings -- did you have a different opinion from her
25 findings of the mental state at the time of the event?

1 A. Yes.

2 Q. And how so?

3 A. Well, she states in that portion of her report
4 that he, Mr. Johnson, had been using stimulant drugs,
5 methamphetamine or crack cocaine for three days. His
6 resulting drug intoxication withdrawal, slash,
7 withdrawal triggered or induced a severe psychotic
8 episode during which he experienced intense
9 hallucinations that significantly interfered with his
10 capacity to engage in rational thought and normal
11 decision-making.

12 well, I believe I testified yesterday, there
13 is no objective evidence that Mr. Johnson was using
14 methamphetamine or crack cocaine in the days leading up
15 to -- to the homicide and therefore, I don't know what
16 she is basing her statement on that he had been using
17 stimulant drugs for three days.

18 Q. Okay. And that objective evidence being the
19 tox screening we talked about yesterday?

20 A. Yes.

21 Q. And that was from -- okay -- and going to
22 volume 6, 1573, the -- here we have the collection date
23 of being 7/29, 2002, correct?

24 A. Yes.

25 Q. okay.

1 A. At six in the morning.

2 Q. At six in the morning. Now, he was arrested
3 on 7/26 of 2002?

4 A. Correct.

5 Q. Or actually in the afternoon of 7/26 of 2002.
6 Now, if he had been ingesting methamphetamine or crack
7 cocaine for three days, would you expect, as a
8 physician, that that would still be in his system?

9 A. Well, let me correct that a little bit that in
10 fact the drug would not be in his system but it would
11 be in his urine, I guess that's being in his system,
12 that cocaine metabolites are present in the urine for
13 up to three, four, five days after ingestion,
14 especially after heavy ingestion and the same with
15 methamphetamine, you would find evidence that
16 methamphetamine metabolized in the urine certainly
17 within three days and if not longer than that.

18 There is no evidence that any methamphetamine
19 or cocaine was in his urine at a period of time around
20 72 hours after he allegedly had been doing drugs for
21 three days.

22 Q. So, the hallucinations at the time of the
23 event can be better explained by what?

24 A. Well, again following what Dr. Dean said that
25 he experienced intense hallucinations that

1 significantly interfered with his capacity to engage in
2 rational thought and normal decision-making, well, they
3 certainly weren't due to drugs because there's no
4 evidence that Mr. Johnson had been using drugs. If
5 there were, then that would be a reasonable explanation
6 but there is no objective evidence of that. So, then
7 we not default but you consider what his primary
8 psychiatric diagnosis is and she diagnoses him with
9 schizoaffective disorder which as she says in her
10 report is a combination disorder that includes elements
11 of schizophrenia and the schizo part and in the
12 affective part contains the elements of a mood
13 disorder. So, then you would state that it would be
14 reasonable to suspect that the psychotic symptoms that
15 she describes were more explained by his primary
16 psychiatric disorder as opposed to any drug induced
17 psychotic disorder.

18 Q. Now, I want to take you to Volume 5 of page
19 1096?

20 A. Yes.

21 Q. Now, this is -- this actually is going back in
22 time. This is something that I skipped yesterday.
23 This is from his Imipramine overdose, correct?

24 A. Yes.

25 Q. And this is another tox screen, correct?

1 A. This is a urine toxicology for drugs, yes.

2 Q. And when was that taken?

3 A. It was taken 5/11 of '92.

4 Q. Okay. And that would have been when he was
5 about 14; is that right?

6 A. Yes.

7 Q. And what does that show?

8 A. It shows that the only drugs that were
9 detected in his urine were the antidepressants that he
10 had overdosed on.

11 Q. That's the Imipramine?

12 A. Imipramine and Desipramine. And Desipramine
13 is a metabolite by-product of Imipramine so you would
14 expect to see both of those.

15 Q. Okay. Let's go to 15EE, Volume 4, 692 and
16 again we're in the Department of Corrections records,
17 this is -- doctor encounter, dated March 19th of '04?

18 A. Yes.

19 Q. And we have again Dr. Percival Tiongson?

20 A. Yes.

21 Q. And his name is listed on page 693. Did you
22 take this particular document into account?

23 A. Yes.

24 Q. Okay. He's talking about that Johnny's
25 apparently complaining of having pain and being

1 light-headed?

2 A. Correct.

3 Q. Okay. And he indicates that that has
4 something to do with anxiety perhaps?

5 A. well, the doctor reports that Mr. Johnson
6 indicated feeling anxious.

7 Q. Okay. All right. And he assesses him again,
8 he gives a diagnosis at the bottom of 692, correct?

9 A. Correct.

10 Q. And that was?

11 A. Major depressive disorder with psychotic
12 features, polysubstance dependence by history and then
13 apparent recurrent flashbacks with substance abuse and
14 -- and anxiety disorder not otherwise specified.

15 Q. All right. And on 693 they list his
16 medication, correct?

17 A. Correct.

18 Q. And is he on an antipsychotic at that point?

19 A. At that point he's being treated with the
20 antipsychotic Thorazine, total of 700 milligrams over
21 the course of a day and he takes 300 in the morning and
22 an additional 400 milligrams at night time.

23 Q. And is that a fairly large dose?

24 A. It's -- 700 milligrams of Thorazine is a
25 pretty substantial dose, yes.

1 Q. But he's still having the flashbacks, correct?

2 A. Well, he's having some sort of symptoms that
3 the doctor refers to as flashback from substance abuse.

4 Q. Okay. All right. Movant's Exhibit 15FF.

5 Okay. Let's go to Volume 11, 2934.

6 MR. LUNDT: Your Honor, I just want to make
7 sure -- I believe I did --

8 THE COURT: They're already in evidence.

9 MR. LUNDT: Okay. Thank you.

10 MR. WALDEMER: Judge, I, just for general
11 purposes, I don't know that he offered the CV of
12 Delaney Dean or the psychological evaluation of Delaney
13 Dean.

14 THE COURT: Actually he did not.

15 MR. LUNDT: All right. Then I will offer --

16 THE COURT: I take that back. According to my
17 records he did.

18 MR. LUNDT: Okay.

19 MR. WALDEMER: I did not have those but I
20 don't have objection.

21 THE COURT: According to my records they've
22 already been admitted.

23 MR. LUNDT: All right. Thank you.

24 MR. WALDEMER: I also didn't have, for
25 bookkeeping, the evaluations, the two of Dr. English,

1 volume 11, I don't have objection if those are going to
2 be offered.

3 THE COURT: He's not offered Becker and who
4 was the other one?

5 MR. LUNDT: English. I'll offer those at this
6 time, this is in volume 11, 2924 through 2932, that's
7 the pretrial certificate dated November 19th and then
8 2933 --

9 THE COURT: I'm sorry. You have offered
10 those.

11 MR. LUNDT: All right.

12 THE COURT: But not offered the deposition of
13 Steven Becker.

14 MR. LUNDT: Okay.

15 THE COURT: Or the deposition of William
16 Barrett.

17 MR. LUNDT: Right. I believe I've offer to
18 the Court up to 2987; is that's correct?

19 THE COURT: Yes and in addition to that the CV
20 of Dr. Stewart.

21 MR. LUNDT: Okay. Thank you.

22 Q. (By Mr. Lundt) Okay. Referring you to 2934,
23 this is the pretrial certificate of Dr. Steven Becker
24 and Byron English?

25 A. Yes.

1 Q. Dated June 4th of 2004?

2 A. June 7th.

3 Q. I'm sorry, June 7th of 2004. And this was
4 submitted to the Court, correct, as far as you know?

5 A. Yes.

6 Q. Let's go to the diagnoses. Now -- now
7 comparing the diagnoses from 2947, page 2947, to the
8 diagnoses of 2931, the doctors actually changed their
9 diagnoses somewhat?

10 A. Yes, they aren't exactly the same.

11 Q. How are they different?

12 A. On 2947 they have added methamphetamine
13 intoxication with perceptual disturbances. They have
14 kept the same polysubstance dependence in remission.
15 They have changed major depressive disorder recurrent,
16 which appears in 2931, to schizoaffective disorder to
17 depressive-type in remission with medication
18 compliance.

19 They have added a diagnosis of malingering,
20 partial, they have added the diagnosis history of
21 learning disorder not otherwise specified.

22 Q. And that's different from on 2931, the
23 borderline intellectual functioning?

24 A. Yes. They kept antisocial personality
25 disorder.

1 Q. Okay. Now, again, here on 2974, would you
2 disagree with their AXIS II diagnosis?

3 A. On what page again please?

4 Q. 2947.

5 A. 2947?

6 Q. Yes. In the -- their second report where they
7 defined the antisocial personality disorder.

8 A. In arriving at their antisocial personality
9 disorder, as I testified earlier, one needs to rule out
10 the contributions to what I described as antisocial
11 behavior from other conditions, from other psychiatric
12 disorders or from substance use. And also the DSM IV
13 TR is very clear that you cannot arrive at antisocial
14 personality disorder in the context of schizophrenia
15 and they use schizoaffective disorder, as we testified
16 early, it assumes elements of schizophrenia and
17 schizoaffective disorder so I'm not sure how they're
18 justifying that diagnosis.

19 Q. Do you have a problem with there Axis I
20 diagnosis of methamphetamine intoxication with
21 perceptual disturbances, do you differ from them on
22 that?

23 A. well, my difference with them is again in the
24 absence of any objective evidence that Mr. Johnson was
25 using methamphetamine that resulted in his being

1 intoxicated at the time of the murder, so they're
2 saying he was methamphetamine intoxicated with
3 perceptual disturbances. Now, this is a very
4 interesting diagnosis and it differs from
5 methamphetamine induced psychotic disorder in that this
6 one implies that the person is having psychotic
7 symptoms and yet he's aware that they are induced by
8 the drug but, again you can't have perceptual
9 disturbances behind methamphetamine unless you use
10 methamphetamine and there's no evidence in the record
11 that he used methamphetamine. So I think that
12 diagnosis just falls out and then if they're saying he
13 has perceptual disturbances then the perceptual
14 disturbances would be more likely explained why his
15 schizoaffective disorder, which they claim was in
16 remission, but you have to have some reason to explain
17 the ongoing psychotic symptoms because you can't use
18 drugs to explain it because there's no drugs on board
19 so those are the problems I have with it.

20 Q. Okay. Let's go to 2945, the discussion parts
21 of the report.

22 A. Yes.

23 Q. Now, they said from the discussion with
24 Mr. Johnson regarding his version of events the evening
25 before the alleged crime he decided to intravenously

1 inject methamphetamine and consume alcohol and I assume
2 you have a problem with that statement?

3 A. I have a problem with it in that there is
4 nothing to back that statement up. I've read in the
5 record, I forget if it's a police report from this
6 (indicating) that document that alleges that Mr.
7 Johnson injected methamphetamine right before the
8 murder and, again, in the absence of a positive drug
9 screening then there is no evidence to support it.

10 Q. And so then go -- go down to the line about as
11 a consequence, second line from the bottom?

12 A. Yes.

13 Q. Okay. Can you tell me what you think about
14 that line in their findings?

15 A. As a consequence it appears Mr. Johnson was
16 aware that the hallucinations induced by the
17 methamphetamine and alcohol mixture and did not
18 represent an external reality, again, in the absence of
19 methamphetamine then you can't say that because there
20 is no methamphetamine and in drinking alcohol, although
21 theoretically can cause some psychotic symptoms in a
22 person who is a chronic drinker over a period of time
23 is not something you normally see from people becoming
24 intoxicated on alcohol so there is no justification for
25 their saying this.

1 Q. So, if Johnny says, yeah, I knew there were
2 voices, are they -- strike that. The fact that Johnny
3 would know that there are voices, does that change your
4 opinion at all about where the voices would come from?

5 A. If he knew that they were voices?

6 Q. Yes. And I assume from, let's say that he
7 knew that they were -- that they were not real, does
8 that change your opinion?

9 A. About the?

10 Q. The schizoaffective disorder?

11 A. No, not at all.

12 Q. Or psychotic symptoms?

13 A. No, not at all.

14 Q. The fact that Johnny told them that he decided
15 to inject methamphetamine with alcohol, does that
16 change your opinion at all?

17 A. No.

18 Q. Why not?

19 A. You have to remember that Mr. Johnson, again,
20 based on the records that I reviewed and have gone over
21 here for the last couple days, suffers from a chronic
22 psychotic disorder, possibly with a mood disorder
23 thrown in there with it, so he is seriously mentally
24 ill and he has demonstrated significant cognitive
25 deficits, we have a psychotic person with significant

1 cognitive deficits who's making statements about using
2 drugs that aren't true.

3 Q. So when you're saying cognitive mental
4 deficits, are you talking about his intellectual
5 functioning, his ability to think?

6 A. His intellectual functioning, yes, including
7 his memory.

8 Q. Okay. So, are you saying that he's lying
9 here?

10 A. No, I'm not saying that he's lying. I'm
11 saying that he is a psychotic individual that has
12 impaired cognitions who -- who says things that aren't
13 necessarily based in reality because that's what the
14 definition of psychosis is, his thoughts are not based
15 in reality. So when he's saying stuff about drug use
16 and then it's not verified, I don't think he's lying, I
17 think that he's psychotic and with cognitive impairment
18 with bad memory.

19 Q. And on 2946, it says at the top of that page,
20 Drs. English and Becker make a special note up there,
21 that Johnny mentioned at one point in the interview, I
22 wanted to use drugs to hallucinate, does that change
23 your opinion?

24 A. No.

25 Q. Why not?

1 A. well, again that's -- they're reporting that
2 at one point in the interview Mr. Johnson allegedly
3 said that to them. In my interactions with
4 Mr. Johnson, I didn't get any -- elicit any answers to
5 questions about wanting to hallucinate or using drugs
6 for the purpose of hallucinations. Quite the contrary.
7 He was quite plagued by his hallucinations and wished
8 that they would stop. So I don't know what to make of
9 that. Quite frankly, it doesn't change my opinions.

10 Q. All right. So, they go to talk about the
11 polysubstance dependence in remission within a
12 controlled environment and then they say although
13 defendant is bringing specific stuff it is difficult to
14 ascertain, Mr. Johnson seems to have been chronically
15 using many drugs repeatedly his entire adolescence?

16 A. well, first of all, dependent has a very
17 specific medical psychiatric definition. Dependence
18 implies when you cease using a drug you go into
19 withdrawal syndrome and it also implies that you need
20 more and more of the drug to get the same type of
21 affect so it implies withdrawal and tolerance. Now,
22 those elements can certainly be ascertained. If you
23 take a good history, an objective history to see if he
24 had evidence of withdrawal, he had the evidence of
25 tolerance to drug use. So, one, I disagree that it's

1 difficult to ascertain, but if they're saying it's
2 difficult for them to ascertain but if you go on and
3 you state a diagnosis then again, I sort of question
4 the basis of their being able to say that.

5 Q. And then they go on to discuss the number of
6 different diagnoses that Johnny's had over the years,
7 until they get down to the nonetheless paragraph?

8 A. Yes.

9 Q. Okay. And they found that the schizoaffective
10 disorder is in remission at the very bottom?

11 A. Right.

12 Q. Do you differ from them on that?

13 A. They leave out a whole bunch of steps in their
14 thinking. So I could only speculate, I don't want to
15 do that, how they arrived at this "in remission"
16 because they list a variety of diagnoses in the
17 paragraph above and then in the small paragraph they
18 say: Nonetheless that since he's been in correctional
19 settings, points in the direction of a movement towards
20 more schizophrenic process along with major depressive
21 episodes and the schizoaffective disorder diagnosis but
22 they just sort of say and then therefore --

23 MR. WALDEMER: Let me object at this point to
24 the narrative and I don't want the doctor to speculate
25 either.

1 THE COURT: Sustained.

2 Q. (By Mr. Lundt:) So, schizoaffective disorder
3 in remission, basically you don't know how they got to
4 that?

5 A. There is nothing in their report that states
6 how they base that term in remission.

7 Q. And they just say it's in remission with
8 medication compliance?

9 A. That's what they said without any explanation
10 of how or why.

11 Q. Okay. All right. Let's go to Volume 4, 701.

12 A. Yes.

13 Q. Here we have a June 30th, 2004 note by Mental
14 Health Technician Sue Tucker; is that right?

15 A. Yes.

16 Q. And in talking to Johnny she says that he
17 still hears voices but does not seem to be bothered by
18 them?

19 A. That's what she says, yes.

20 Q. Okay. And she says that he enjoys where they
21 take him; is that right?

22 A. That's what she says, yes.

23 Q. Okay. And then she says he's not motivated to
24 take his antipsychotics?

25 A. Correct, that's what the note says.

1 Q. Did you take this into account that perhaps
2 Johnny just enjoys being psychotic?

3 A. I certainly noted that.

4 Q. So at that point on 6/30 of '04, we know that
5 he's got some psychotic symptoms?

6 A. Yes.

7 Q. Okay. All right. So then on 7/12, 15GG,
8 Doctor, I'm going to destroy this poor man's name,
9 Airarakudy Alias, A-i-r-a-r-a-k-u-d-y, A-l-i-a-s?

10 A. Yes.

11 Q. He sees him on 8/10 of '04, correct?

12 A. Well, on 702 the note that I have says 8/25.

13 Q. Okay. And above that -- maybe you are right.
14 Somewhere between 8/10 and 8/25?

15 A. You're right, the 8/10 appears there too.

16 Q. So somewhere between 8/10 and 8/25 he sees Dr.
17 Alias?

18 A. Correct.

19 Q. And it indicates that he's only taking lithium
20 at this time?

21 A. Correct.

22 Q. What does lithium do for an individual?

23 A. Lithium is used for a variety of things. With
24 Mr. Johnson's particular diagnoses, the lithium is used
25 as a mood stabilizer, primarily addressing his

1 depression and the doctor points out that he also was
2 taking Thorazine, but that he didn't want it so he
3 stopped the Thorazine.

4 Q. Okay. So -- and then he indicates that Dr.
5 Alias indicates that he sees evidence of psychosis?

6 A. Yes.

7 Q. And what's he talking about there?

8 A. He says that Mr. Johnson said he sees demons
9 and that he hears voices, that he admitted about not
10 wanting to take any antipsychotic and he says, quote,
11 I'm not from this dimension. I was born in this world
12 but my soul is from a different world and then he goes
13 on to state I can't leave my army of demons.

14 Q. And under plan there, the doctor strongly
15 suggests that he take his antipsychotic?

16 A. Correct.

17 Q. Now, let's go to page 703 and entry by
18 Elizabeth Bennett from -- looks like October 29th of
19 2004 at the bottom.

20 A. The dates are difficult to ascertain. I think
21 the date is more September 20th, 2004.

22 Q. All right. But at that point she talks about
23 visualizing psychotic symptoms with Johnny, correct?

24 A. She states that he appears to be responding to
25 internal stimuli. That means that Mr. Johnson was

1 displaying psychotic -- the signs of psychosis as
2 opposed to symptoms which she noted there.

3 Q. And then on the next page, 704 she goes on to
4 list the schizophrenic diagnosis per the psychiatrist,
5 correct?

6 A. She lists schizoaffective disorder diagnosis.

7 Q. Okay. Is that typical that that statement of
8 the mental health professional saying: He seems to be
9 responding to internal stimuli. Is that typical with
10 people who are having a psychotic episode?

11 A. I don't know about typical, but it's certainly
12 something that we see fairly frequently in someone who
13 is significantly psychotic because psychotic symptoms
14 are subjective in nature, so they're going on
15 internally, you can't see them necessarily. All the
16 time when the psychotic symptoms are fairly severe the
17 person will demonstrate it so you do see that and
18 that's what she records there, was responding to
19 external stimuli, it appears he was having this
20 conversation with people that only he could hear.

21 Q. Have you seen this before in patients?

22 A. Oh, absolutely.

23 Q. Have you seen this with Johnny?

24 A. I certainly saw that in my time with him.

25 Q. Let's go to page 75 and slide 15HH. Here

1 again the medical health technician Jerry Diez talks
2 about -- on November 2nd of '04, some of Johnny's
3 symptoms, his psychotic symptoms. Correct?

4 A. Yes.

5 Q. He was wearing a hooded sweat shirt?

6 A. And he goes on to state -- he states it helps
7 muffle out the noises.

8 Q. Okay. He's been having trouble sleeping --
9 or, no, it says his sleep is good. His current meds
10 are Doxepin, lithium?

11 A. Yes.

12 Q. And Navane?

13 A. And Navane, which is an antipsychotic, yes.

14 Q. And again that muffling, attempting to muffle
15 voices, is that something that you have seen with
16 people who have psychotic problems?

17 A. It's something that you regularly see with
18 people who are hearing, experiencing auditory
19 hallucinations that they try to muffle out the sounds
20 through various mechanisms using headphones or music,
21 wearing a hooded sweat shirt and caps over their ears
22 and we saw Mr. Johnson who was stuffing paper in his
23 ears.

24 Q. All right. And on November 11th, we see that
25 he's -- on page 706, with -- I'm sorry -- yes, 706,

1 Jerry Diez on 11/4/04, he still -- he's still -- still
2 experiences PTSD like experiences; correct?

3 A. Yes, that's been recorded.

4 Q. And the assessment there is?

5 A. Anxiety, enuresis, altered thought processes.

6 Q. Does it rule out altered thought processes?

7 A. I imagine that R/O on there was also R/T,
8 which I don't know what that means. There is another
9 R/T underlining the mental illness.

10 Q. Then Jerry Diez wants him to see the doctor
11 again, correct?

12 A. He said keep the appointment with psychiatrist
13 to evaluate enuresis treatment.

14 Q. All right. Let's go to 15II. Okay. So --
15 okay. We have another visit with Dr. Percival Tiongson
16 on 706 to 707?

17 A. Yes.

18 Q. And again here he's describing that Johnny's
19 still hearing things although they are less. Is it
20 your opinion that he was -- at that time that his
21 medication -- that he's being more medication
22 compliant?

23 A. Again based on what the doctor wrote in the
24 note he said that Mr. Johnson feels his Navane dose
25 should be increased, which implies he is taking his

1 current Navane dose.

2 Q. Okay. And on 707, he says that Johnny is
3 denying hearing the command hallucinations, correct?

4 A. Correct.

5 Q. Again the assessment here?

6 A. The assessment is major depressive disorder
7 recurrent with psychotic features, rule out
8 schizoaffective disorder.

9 Q. Okay. Let's go to volume 4, 723.

10 A. Yes.

11 Q. Okay. Here on March 20th of '05 he's cut
12 himself with a razor, according to Angela O'Neill the
13 health tech?

14 A. Yes.

15 Q. Okay. And she also lists schizoaffective
16 disorder?

17 A. Correct.

18 Q. And then go -- go down that page, she talks
19 about what -- what's going on with Johnny?

20 A. Correct.

21 Q. And again he's feeling at this point feeling
22 very distressed, correct?

23 A. He reports feeling very distressed and that he
24 said he's feeling -- hearing voices telling him to cut
25 his arm off.

1 Q. And she notes that he's extremely agitated at
2 that time, correct?

3 A. Yes.

4 Q. And again the assessment is schizoaffective
5 disorder?

6 A. Correct.

7 Q. All right. Let's go to 725 to 27. Now,
8 they -- on 726, Linda, nurse Linda Penburthy notes that
9 he's in the corner of his cell crying and holding his
10 hands over his ears?

11 A. Yes.

12 MR. WALDEMER: Is that page 726 or the date of
13 7/26?

14 MR. LUNDT: Page 726.

15 MR. WALDEMER: The date was?

16 MR. LUNDT: Date was 3/29/05.

17 Q. (By Mr. Lundt) So, she sees him crying
18 holding his hands over his ears and snot dripping from
19 his nose?

20 A. That's what she describes.

21 Q. What did you get from that?

22 A. Well, knowing his history up to that point, I
23 would take that as meaning that he's continuing to hear
24 voices that are bothering him.

25 Q. And he's making statements of paranoia,

1 correct, states that no one can keep him safe from
2 himself here?

3 A. Yes.

4 Q. And thoughts of suicide, correct?

5 A. Correct.

6 Q. On 7/27 she lists that there are -- the word
7 die was written in feces on the wall in his cell?

8 A. Correct.

9 Q. And he'd also written were dead on the wall
10 with feces?

11 A. Correct.

12 Q. In addition he has some self-mutilating
13 behavior here?

14 A. Well, he had had a self-mutilating behavior a
15 few notes back. What this note says, he tore the
16 steri-strips off his laceration and then smeared feces
17 all over it.

18 Q. And again she lists the schizoaffective
19 disorder?

20 A. Correct.

21 Q. And then in the suicide intervention from that
22 same date she notes there is blood and feces on the
23 window of the cell?

24 A. Correct.

25 Q. Now, there is also evidence of Johnny

1 swallowing things; is that correct, that you remember?

2 A. If you can point that out remind me, please.

3 Q. Okay. All right. Go to page 749.

4 A. Yes.

5 Q. On 7/13 2006 he swallowed some razor blades?

6 A. Correct.

7 Q. Did you take that into account also in
8 reaching a diagnosis?

9 A. Yes.

10 Q. And what did that tell you?

11 A. As bizarre as it sounds this is something that
12 we see fairly frequently with severely mentally ill
13 patients and a form of self-mutilation where they
14 swallow any number of objects like razor blades,
15 scissors, screw drivers. Again, this is one more piece
16 of data to me that implies how serious his underlying
17 mental disorder is.

18 Q. Let's go to slide 15JJ. Okay. Now, when you
19 evaluated Johnny, you did that on April 27th of '09; is
20 that right?

21 A. Correct -- not '09.

22 Q. You're right, it wasn't '09.

23 A. '07.

24 Q. Let's go to Volume 13, 3631. Now, these are
25 the notes that you took during your evaluation of

1 Johnny Johnson, correct?

2 A. Correct.

3 Q. And 330 is the fact that you did so that we
4 could turn it over to the state in this case?

5 A. Correct, 3630.

6 Q. Okay.

7 MR. LUNDT: Your Honor, at this time I will
8 move for the admission of 3631 through 3645, the notes
9 of Dr. Stewart.

10 MR. WALDEMER: Judge, I object to the notes of
11 the doctor being admitted into evidence. One, I don't
12 know if they are readable, but they're also his notes,
13 they're self-serving, they're not reported in line with
14 Chapter 552 and I object to it.

15 THE COURT: Sustained. I don't think they are
16 admissible.

17 Q. (By Mr. Lundt:) When you talked to Johnny
18 Johnson you talked to him in the Potosi Correctional
19 Center?

20 A. Correct.

21 Q. Can you tell us a little bit about your
22 evaluation?

23 A. I went out to Potosi on the 29 -- the 27th of
24 April, 2007. I spent a little over four hours with
25 him. It was in a private room, there was no barriers

1 between us, we were sitting across the table speaking
2 with each other. I don't remember as I'm sitting here
3 today whether or not he was restrained or not, I just
4 don't remember, but there was no glass between us so I
5 had a fairly good access to him and could observe him
6 very closely.

7 Q. And do you know what Johnny was taking at the
8 time?

9 A. At the time he reported to me that he was
10 taking Geodon, which is an antipsychotic and he was
11 taking it twice a day although he was unclear what the
12 dose was.

13 Q. Did you note anything about his appearance?

14 A. I noted a lot of things about Mr. Johnson
15 during the course of our interview. His appearance,
16 let me get to my notes before I address that, he was
17 sitting there cooperating with my interview. He was
18 wearing prison-issue clothes, his hygiene was not the
19 best, multiple tattoos on his arms and hands that I
20 could see. He sat there and had a very slow speech in
21 responding to my questions, and during the course of
22 our interview he displayed signs of being psychotic. I
23 saw at various times where he would be responding to
24 internal stimuli.

25 Q. How did you note that?

1 A. well, you watch him, you watch very closely to
2 the individual and then they will start talking to
3 someone else in the room that's not there, not visible
4 to me certainly, what was obviously visible to
5 Mr. Johnson or audible to Mr. Johnson. He had on-going
6 conversations.

7 I didn't perform any formal cognitive testing
8 at that point but based on my observations with him
9 over the course of our interview, he was -- he was what
10 I would say was slow although again I didn't administer
11 any formal objective measures to -- measures of
12 cognitive testing.

13 He reported auditory hallucinations and at
14 various times during the interview he displayed
15 dissociative flashbacks especially when we were talking
16 about some trauma related themes. He would
17 disassociate right there in front of me. He also
18 talked about a variety of delusions during the course
19 of our time together.

20 Q. And you talked to him about his understanding
21 of his disease?

22 A. Yes, to answer your question. During the
23 course of our interview he appeared very distressed
24 especially when he's talking about the voices and when
25 talking about certain themes he would become more

1 psychotic right in front of me. Although I was not the
2 treating physician, I tried to explain to him the
3 relationship of the voices and his illness and that it
4 was an illness and he should take his medicines and
5 even after I talked to him about that he still told me
6 that he thought the voices were real people, he wasn't
7 able to distinguish them as being a symptom of his
8 illness.

9 Q. And did -- what did that mean to you?

10 A. It meant that, one, he's seriously mentally
11 ill. At the time I saw him he was overly psychotic and
12 and had little -- little insight into his mental
13 illness. Even very psychotic people can have insight
14 to their mental illness, meaning that they'll
15 understand that the illness is a part of the illness.
16 Mr. Johnson wasn't able to display that to me.

17 Q. Did you make any decision on your diagnosis
18 based on Johnny's self-reporting?

19 A. Not on the self-reporting.

20 Q. Why not?

21 A. Well, as I said earlier, he is a chronically
22 psychotic cognitively impaired individual and that
23 self-report is suspect to me for the reason that I said
24 earlier about when he reported his drug use, that was
25 not verifiable. So given the wealth of collateral

1 information that I have in this case, I didn't have to
2 rely on self-report and I don't know if I have that
3 luxury that in this case there was enough collateral
4 information that verified the symptoms that in fact he
5 was reporting to me but I didn't rely on his
6 self-report, no.

7 Q. Now, let's go to volume 9, page 2574.

8 A. What number please?

9 Q. 2574.

10 A. Yes.

11 Q. Now, this is another tox screen; is that
12 correct?

13 A. Yes, it's the toxicology.

14 Q. And the date of when it was collected?

15 A. Was July 14th, 2006.

16 Q. And this is while he was in -- in custody,
17 correct?

18 A. It -- yes, he's in custody during that time
19 but the actual form says Washington County Memorial
20 Hospital.

21 Q. And then under location down there?

22 A. Location: Potosi Correctional Center.

23 Q. Okay. And what does that drug screen show
24 you.

25 A. The screen shows it was negative for all drugs

1 including cocaine, amphetamine, marijuana.

2 Q. Okay. And did you take this into account at
3 all in your diagnosis?

4 A. Yes. One more thing about the tox screen, it
5 did show that he was being prescribed an
6 antidepressant.

7 Q. Okay. Can you as a mental health professional
8 differentiate between hallucinations caused by drugs
9 and hallucinations caused by an underlying psychotic
10 illness?

11 A. No.

12 Q. Why not?

13 A. Well, because psychotic symptoms are psychotic
14 symptoms and they present the same regardless of
15 etiology, so if you have psychotic symptoms that are
16 caused by schizophrenia, schizoaffective disorder or
17 major depressive disorder not otherwise specified, they
18 can be similar in nature to psychotic symptoms and
19 caused by drugs.

20 Q. And you have significant experience in dual
21 diagnosis clinic work, correct?

22 A. Yes. I've been doing that pretty much all my
23 career.

24 Q. Okay. Let's go to Slide 15AAA. Okay. Now,
25 what was your diagnosis of Johnny within a reasonable

1 degree of medical certainty?

2 A. Based on all of the materials that I reviewed
3 and as well as my interview with Mr. Johnson, I felt
4 that he was suffering from chronic psychotic disorder
5 that had elements of schizophrenia, schizoaffective
6 disorder. So to be on the more conservative side I
7 called it chronic psychotic disorder not otherwise
8 specified.

9 Q. And you arrived at that diagnosis not only
10 from your evaluation of Johnny but from the long
11 history of his -- of the reports of his mental illness,
12 correct?

13 A. Yes. As I said earlier, I didn't rely on his
14 self-reporting to arrive at my diagnoses because of the
15 questionable nature of his ability to self-report. So
16 based on the records, which again we have all these
17 volumes of documented mental health records over an
18 extended period of time, it was clear to me that he
19 suffers from chronic psychotic disorder.

20 Q. Okay.

21 A. In addition, his record is -- excuse me -- his
22 record is replete with diagnoses of depression,
23 depression with psychotic features, and so I also felt
24 that he was suffering from some sort of chronic mood
25 disorder and, again, it didn't necessarily meet all the

1 criteria for major depressive disorder so I called it
2 mood disorder not otherwise specified.

3 Q. And then you deal with polysubstance abuse?

4 A. Polysubstance abuse and again from the
5 totality of the records, it certainly appears that Mr.
6 Johnson at various times in his life had both abused
7 substances and had been dependent on substances,
8 meaning he's displayed evidence of withdrawal and
9 tolerance. The next diagnosis is post-traumatic stress
10 disorder.

11 Q. How did you arrive at that?

12 A. Well, post-traumatic stress disorder has a
13 variety of criteria that need to be fulfilled in order
14 to meet the diagnostic requirements and the first one
15 is that fact that he was exposed to a trauma and trauma
16 for our purposes here is life threatening trauma either
17 to himself or witnessing in other people and he
18 certainly had various examples of that from the records
19 including his attempt to drown him, sexual abuse, and
20 then he goes on to talk about his having to show
21 evidence of reexperiencing the trauma through
22 nightmares, through what the manual calls for unwanted
23 intrusive thoughts of the trauma, dissociative
24 flashback and he displayed -- he displayed dissociative
25 flashbacks with me so I feel that he met that criteria.

1 The next is avoidance of the trauma and he
2 certainly displayed that with me and finally was
3 evidenced by me, hyperarousal, usually around
4 difficulty in sleeping so his record is full of those
5 examples so I felt that he certainly met the criteria
6 for post-traumatic stress disorder.

7 Now, the last three diagnoses listed up there
8 aren't necessarily DSN-IV TR diagnoses. Those last
9 three would be assumed under diagnosis of cognitive
10 disorder not otherwise specified. It implies cognitive
11 impairments that are from due to a variety of etiology
12 or are unclear of the exact etiology.

13 Q. Now, in Missouri 552.030 it says that a
14 person -- and this 15BBB: A person is not responsible
15 for his criminal conduct if at the time of such conduct
16 is the result of mental disease or defect, such person
17 was incapable of knowing and or appreciating the nature
18 or quality or wrongfulness of his conduct.

19 In your opinion, does Johnny fit within those
20 parameters?

21 A. Yes.

22 Q. And that's within a reasonable degree of
23 medical certainty?

24 A. Yes.

25 Q. And also in Missouri, slide 15CCC, there are

1 statutory mitigating circumstances if the murder was
2 committed while the defendant was under the influence
3 of extreme mental and emotional disturbance or the
4 capacity of the defendant to appreciate the criminality
5 of his conduct or to conform his conduct to the
6 requirements of law substantially impaired, does John
7 fit those criteria in your medical opinion?

8 A. Yes, he does.

9 MR. LUNDT: Thank you. I have no further.

10 THE COURT: Before we begin the
11 cross-examination I think we will take about a
12 ten-minute break or so here.

13 Doctor, you may step down.

14 THE WITNESS: Thank you.

15 (A recess was taken. Proceedings continued as
16 follows:)

17 THE COURT: Mr. Waldemer, you may proceed.

18 MR. WALDEMER: Thank you, Judge. He asked me
19 to wait for Loyce to come back in.

20 THE COURT: Where is she?

21 MR. LUNDT: She was right here.

22 THE COURT: If she's not here in 30 seconds --
23 if she's not here, we are proceeding.

24 MR. LUNDT: Thank you, your Honor.

25 THE COURT: You may proceed, Mr. Waldemer.

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MR. WALDEMER: Thank you, Judge.

CROSS-EXAMINATION

BY MR. WALDEMER:

Q. (By Mr. Waldemer) Dr. Stewart, just to start off, it's my understanding, what you are looking for, based upon how you finished your testimony, is you are looking for objective evidence when you make a -- reach a conclusion or make a diagnosis; is that correct?

A. That's the best way.

Q. Okay. But isn't it true almost everything in psychiatry or psychology is subjective?

A. No, that's not true.

Q. Isn't everything he tells you about his hallucinations subjective in nature?

A. Yes.

Q. Okay.

A. And that's why I'm not relying on them.

Q. But aren't all these volumes and volumes of medical health records, all of those are other people writing down what he's reporting to them?

A. As we went over the records there were some examples where the symptoms that were recorded they stated in the note itself Mr. Johnson reports or he reports, yes.

Q. Or they look at one of his actions and they

1 reach some sort of conclusion based upon one of his
2 actions, right?

3 A. Yes, that would be objective then.

4 Q. But the action may be objective but the
5 motivation for the action is subjective and what I mean
6 by that is in his mind it's not out there for everybody
7 to see?

8 A. Correct.

9 Q. If he says a voice told me to slap myself in
10 the face, we see the slap in the face but we don't hear
11 the voice?

12 A. Correct.

13 Q. We have to believe that the voice is in his
14 head but he could be lying to us?

15 A. Theoretically, he could.

16 Q. Well, I mean, theoretically he could be lying?

17 A. Theoretically he could. Also it's important
18 to note, if there were one example of that, we had how
19 many years of records that reported similar stuff over
20 all these years.

21 Q. So my question was was that he could be lying
22 to us, was your answer yes?

23 A. Theoretically he could be.

24 Q. Okay. So that's yes?

25 A. Theoretically he could be lying, yes.

1 Q. Now, you were hired in this case back in 2007;
2 is that correct?

3 A. I think I was first contacted by Mr. Lundt's
4 office at the end of 2006 and I first came out here in
5 2007.

6 Q. okay. would I be correct in that all the
7 information we've been going over the last few days I
8 think is 14 volumes; is that correct?

9 A. Correct.

10 Q. And all of that was provided to you by Mr.
11 Lundt and his office?

12 A. Correct.

13 Q. You do no independent investigation in this
14 case other than to come to meet with Johnny Johnson?

15 A. And I spoke with one other person.

16 Q. And who was that?

17 A. Ms. Strothkamp.

18 Q. Strothkamp?

19 A. Yes.

20 Q. His six-grade teacher?

21 A. Yes.

22 Q. And did you speak by phone or in person?

23 A. By phone.

24 Q. Did you take notes of that conversation?

25 A. As I'm sitting here today, I don't know, I

1 don't remember.

2 Q. If I didn't receive notes of that
3 conversation, would it be safe to say that you did not
4 take any or would it be that I didn't receive them?

5 A. I can't state why you may not have received
6 notes. I may have not taken any. I don't remember.

7 Q. Now, you indicated on direct examination
8 you've testified in criminal cases as many as one
9 hundred times?

10 A. Approximately.

11 Q. And you don't know whether it was a hundred
12 give or take but you said approximately a hundred
13 times?

14 A. Yes.

15 Q. It's my understanding that in those one
16 hundred testimonies, other than one testimony given in
17 the sentencing phase for a San Francisco U.S. attorney,
18 all the rest of them were for defendants?

19 A. Correct.

20 Q. And did I understand on direct examination
21 that all of those cases were capital cases?

22 A. The majority of them were capital cases.

23 Q. Okay. You can't say all of them were?

24 A. Correct.

25 Q. I was just unclear whether all of them were or

1 just a majority. Okay. In ninety-nine out of a
2 hundred times you testified for the defendant.

3 A. Approximately, yes.

4 Q. Okay. You are currently employed as a
5 psychiatric consultant as well as a clinical professor
6 of psychology, correct?

7 A. Psychiatry, clinical professor of psychiatry
8 at the University of California, San Francisco and I
9 also have my own consulting practice.

10 Q. Is that consulting practice involved in the
11 treatment of patients?

12 A. The consulting practice does involve the
13 treatment of patients at times.

14 Q. But you don't regularly treat patients as a
15 consultant?

16 A. Not a consultant.

17 Q. As the clinical professor of psychiatry you
18 testified on direct that you supervised eight students?

19 A. Eight psychiatric residents, yes.

20 Q. Okay. I guess residents are not students any
21 more, they are residents?

22 A. This group I'm working with now are in the
23 third year or post medical school. They are all
24 licensed physicians but --

25 Q. But that's still part of their schooling?

1 A. Yes.

2 Q. And they're in the active practice of treating
3 individuals?

4 A. Right.

5 Q. And you supervise them?

6 A. Yes.

7 Q. Now, you -- you stated on direct that you have
8 various rates that you are paid; is that correct?

9 A. Correct.

10 Q. And that sometimes you are paid three hundred
11 dollars an hour?

12 A. Correct.

13 Q. Were you saying you were paid three hundred
14 dollars an hour in this case?

15 A. Yes.

16 Q. And tell me what that three hundred dollars an
17 hour, what was incurred in that, what I mean, how were
18 you paid the three hundred dollars an hour, is that for
19 review of documents?

20 A. All work related to the case involving
21 reviewing documents, consultation with attorneys.

22 Q. Telephone calls?

23 A. Yes, exactly.

24 Q. You travelled to Potosi on that one date in
25 April of 2007?

1 A. Yes.

2 Q. And your travel was paid for?

3 A. My travel to St. Louis was paid for, yes.

4 Q. And I assume you stayed overnight?

5 A. Yes.

6 Q. And that was paid for?

7 A. Yes.

8 Q. Where did you stay?

9 A. Drury Inn, I believe.

10 Q. Here in St. Louis?

11 A. Yes.

12 Q. Here in St. Louis or closer to Potosi?

13 A. St. Louis.

14 Q. And did you fly business class or first class?

15 A. I know I didn't fly business or first class.

16 Q. Can you tell me as of, let's say yesterday

17 before your testimony began, what you had been paid so

18 far in this case?

19 A. I've been paid -- I worked a total of around

20 40 hours up until yesterday.

21 Q. Okay. Have you been paid for those 40 hours?

22 A. I've been paid for most of that.

23 Q. So I'm going to take a risk, I'm going to do

24 high school math, 40 hours at three hundred bucks an

25 hour?

1 A. Correct.

2 Q. That doesn't include your travel, that's paid
3 for on top of that?

4 A. My travel expenses?

5 Q. Yes.

6 A. Right. I don't pay for airfare or the hotel.

7 Q. Airfare, hotel, meals, that's all paid for by
8 the agency?

9 A. I don't work for meals. I know airfare and
10 hotel.

11 Q. Mr. Lundt buy you lunch yesterday, I hope?

12 A. Actually he didn't.

13 Q. Are you going to submit that as an expense?

14 A. I probably wouldn't.

15 Q. So up until yesterday it's about \$12,000 plus
16 travel expenses and things like that. I tried to
17 figure out, I think when I started my examination you
18 testified for about seven and a half hours on direct;
19 is that right?

20 A. Yes. I was pretty much here all day, yes.

21 Q. Okay and another hour and a half this morning
22 on direct?

23 A. Approximately.

24 Q. So about seven and a half hours so we'll round
25 it back to that -- that's another \$2,100?

1 A. Right.

2 Q. Okay. And I'm assuming you are charging them
3 for the time I'm talking to you?

4 A. Yes, unless you want to pay me.

5 Q. I'm not going to pay you and I'll try to be
6 much quicker than seven and a half hours, I can
7 guarantee that.

8 Now, when you were initially contacted and
9 went to see him, that was about four and a half years
10 after the day he killed Casey Williamson?

11 A. It was yes -- almost five years.

12 Q. Almost five years. And we are not here today
13 -- you are not in any way saying that he didn't kill
14 Casey Williamson?

15 A. I've never said that.

16 Q. He is the one who killed Casey and the jury
17 found him guilty of that in 2005, correct?

18 A. Yes.

19 Q. Now, when you did see him you saw him in 2007,
20 that was about two and a half years after the jury
21 found him guilty actually?

22 A. Yes.

23 Q. And some of those records that you talked
24 about right at the end in March of 2005 when he was
25 upset and crying in his cell?

1 A. Correct.

2 Q. Those were about a month after he'd been
3 sentenced to death by Judge Seigel?

4 A. I'd have to take your word for it. I don't
5 know the exact date of the trial or the sentencing.

6 Q. Let's do this, Dr. Stewart, if I represent to
7 you that he -- the Court's record in this case, he was
8 sentenced to death in January of 2005, I'll give you an
9 exact date in a moment here, January 17th he was found
10 guilty and the jury recommended the death penalty.

11 A. Okay.

12 Q. And on March the 7th, Judge Seigel, 2005,
13 Judge Seigel sentenced him to death?

14 A. Okay.

15 Q. Assuming that those two dates are correct, one
16 of the last things you talked about this morning was
17 him in his cell down in Potosi at the end of March
18 crying in his cell?

19 A. Correct.

20 Q. Could that have had something to do with the
21 fact that just a few weeks before he'd been sentenced
22 to death?

23 A. It certainly could have.

24 Q. And the fact like he was writing things on the
25 wall like we're dead, could that have had something to

1 do with the fact that he had just been sentenced to the
2 death?

3 A. You certainly cannot rule out the contribution
4 of the fact that you were just condemned to death as
5 resulting in some of his behaviors.

6 Q. That kind of thing could make a guy depressed?

7 A. Theoretically, yes, it could.

8 Q. And he's shown many signs of depression while
9 he's been in jail?

10 A. Well, but he certainly showed many signs of
11 depression prior to January of 2005.

12 Q. I'll agree with that but my question was, if
13 you're confused with my question, while he's been in
14 jail he's shown signs of depression?

15 A. While he's been in jail he's certainly shown
16 signs of depression.

17 Q. And depression among inmates, especially
18 inmates on death row, is not unusual?

19 A. I don't have enough information to answer that
20 question.

21 Q. Despite your close to a hundred testimonies in
22 death penalty cases, you don't have enough information?

23 A. I've never seen an objective study of people
24 on death row, whether or not -- what mental illnesses
25 they may have suffered from.

1 Q. Would you just as a layman, just common sense,
2 people in prison on death row might be subjected to
3 depression?

4 A. No. You know, it's interesting in my work.

5 Q. Doctor, you either would think so or you
6 wouldn't think so?

7 A. Not necessarily.

8 Q. Okay. I'm happy with that. Now, had you ever
9 been to Potosi, Missouri before?

10 A. No.

11 Q. Home of the Trojans? You didn't see the sign
12 on the way in?

13 A. I saw a lot of signs but I don't remember that
14 one.

15 Q. Who did you go to Potosi with?

16 A. I think Ms. Hamilton drove me.

17 Q. Okay. I won't ask you anything about Ms.
18 Hamilton's driving. When you went to see him were you
19 aware that Dr. Beaver had seen him a couple weeks
20 before?

21 A. I don't remember right now whether I was aware
22 of that at the time.

23 Q. Okay. When you went to see him were you aware
24 you were at least the sixth private mental health
25 professional -- I'm sorry -- the sixth forensic

1 examiner to go see him since he killed Casey
2 williamson?

3 A. I wasn't aware of the number. I certainly was
4 aware that he had been seen by a variety of people.

5 Q. Now, when you went in to Potosi did Ms.
6 Hamilton go with you?

7 A. She went into the area where we interviewed
8 him and she actually, if I remember correctly,
9 introduced me to Mr. Johnson and then left the room.

10 Q. So she wasn't present the entire time you were
11 there?

12 A. She was not present during any of the
13 interview except for the introduction part.

14 Q. Did you audio or videotape your meeting with
15 the defendant on April 27th, 2007?

16 A. No.

17 Q. I'm sorry, April 29th, 2007.

18 A. I did not.

19 Q. You indicated it was over four hours on direct
20 examination?

21 A. Approximately, yes.

22 Q. Okay. If I showed you your visitor request
23 and told you that it was three hours and fifteen
24 minutes, would you argue with that?

25 A. No, not necessarily.

1 Q. Okay. So, you were -- you signed in at 10:10,
2 okay, and that would be out in the reception area at
3 Potosi?

4 A. I think that's where the sign-in is, yes.

5 Q. And then you proceeded into the institution?

6 A. Yes.

7 Q. And how far into the institution did you go?

8 A. I don't know. It seems like it was pretty
9 close to where we first entered.

10 Q. Was he there waiting for you when you saw him?
11 I mean Johnny Johnson.

12 A. I don't remember. I know I didn't have to
13 wait around for them. Either he was there already or
14 he came right when I got there.

15 Q. Now, you didn't see him at any other times
16 other than this three-hour interview on April 29th,
17 correct?

18 A. Three hour and fifteen minute interview, yes,
19 I did not see him any other time.

20 Q. Three hours and fifteen minutes from when you
21 signed in and signed out?

22 A. Okay.

23 Q. Now, he knew you were coming to visit him? Do
24 you know if he knew you were coming?

25 A. I don't remember.

1 Q. She introduced you to him?

2 A. Yes.

3 Q. Did she indicate to him that she had hired you
4 to talk to him that day?

5 A. My memory of that interaction was that she
6 introduced me as a doctor who was working on his case.

7 Q. On behalf of her?

8 A. Yes.

9 Q. So he knew that his attorney had hired you in
10 the hopes of getting him a new trial?

11 MR. LUNDT: Your Honor, I'm going to object,
12 that's asking for speculation.

13 MR. WALDEMER: I'm only asking if the doctor
14 knew. If he didn't know, he can tell me no.

15 THE COURT: Overruled. If you know, you can
16 answer it. Otherwise --

17 A. I don't know.

18 Q. (By Mr. Waldemer) But he knew that his
19 attorney hired you to talk to him?

20 A. What I do know is what occurred with Ms.
21 Hamilton and I and Mr. Johnson is about, literally, one
22 or two minutes, if that, introduction, or words to that
23 effect, this is the doctor that is working on your case
24 and that he should be straight forward and tell me
25 everything, answer all my questions. That was the

1 extent of it and she walked out.

2 Q. Okay. If you were the sixth doctor to come
3 see him, don't you think he knew you were there to
4 render an opinion which was going to have an influence
5 over whether he would get a new trial or not?

6 MR. LUNDT: Objection. Calls for
7 speculations.

8 THE COURT: Sustained.

9 Q. (By Mr. Waldemer) Did you give him an
10 informed consent like the other doctors did?

11 A. I always start by explaining what my role is.

12 Q. Can -- can you tell us what you explained to
13 him?

14 A. I explained to him that I was here working
15 with Ms. Hamilton and her team and that I would be
16 doing a psychiatric evaluation and that I was not to be
17 his treating physician and that anything he told me was
18 potentially going to be reported in some manner to the
19 court.

20 Q. To the Court and to the State?

21 A. Yes.

22 Q. To the prosecutor?

23 A. Yes.

24 Q. Similar to the warnings he was given by the
25 other doctors?

1 A. I'm not sure what was given by the other
2 doctors.

3 Q. You didn't see the informed consent?

4 A. I reviewed them. I didn't memorize what their
5 purpose was.

6 Q. You saw each one gave the informed consent?

7 A. Correct.

8 Q. That's standard practice in the forensic
9 field?

10 A. Correct.

11 Q. Or probably in the medical practice everywhere
12 under HIPPA?

13 A. I don't have information to answer that.

14 Q. Now, Ms. Hamilton left the room?

15 A. Yes.

16 Q. And was anyone else present besides you and
17 the defendant?

18 A. No.

19 Q. And I think I asked you but if I didn't, other
20 than taking notes, you made no other records of your
21 interview of him?

22 A. Correct.

23 Q. No audio tape, no video?

24 A. Correct.

25 Q. Now, did you write a report in this case?

1 A. I did not.

2 Q. Mr. Lundt read you a Statute 565.032 there and
3 he also read you Chapter 552.030?

4 A. Correct.

5 Q. Both Missouri Statutes?

6 A. Yes.

7 Q. Have you read Chapter 552.030 before today?

8 A. Before today?

9 Q. Yes, sir.

10 A. Yes, sir.

11 Q. You reviewed it in your preparation of your
12 testimony?

13 A. And I -- yes, and I believe I reviewed it at
14 around the time I evaluated Mr. Johnson.

15 Q. Okay. So you noticed in that Statute 552.030
16 where for a mental disease or defect that written
17 reports are to be turned into the Court?

18 A. I don't know that.

19 Q. Okay. So you don't know that and you didn't
20 see that in there?

21 A. I don't remember that.

22 Q. Okay. But you didn't write any kind of report
23 indicating that you'd found him with a mental disease
24 or defect and what you based that on?

25 A. I did not.

1 Q. We have your notes and your testimony and
2 that's it?

3 A. Yes.

4 Q. Okay. Is there an extra charge for writing
5 that report if you wrote one?

6 A. Not extra charge, that would be part of my
7 work on the case.

8 Q. Have you ever written a report to the Court
9 regarding a defendant that you examined?

10 A. Absolutely.

11 Q. But you didn't do so in this case?

12 A. Correct.

13 Q. Now, would I be fair in saying that you do not
14 agree with every mental health expert who has evaluated
15 the defendant in this case?

16 A. That's a pretty general statement.

17 Q. Then if you can't answer it, let me narrow it
18 down then. We had reports by Drs. Becker and English?

19 A. Correct.

20 Q. They did two reports. Dr. Delaney Dean and
21 Dr. John Rabun and Dr. Wanda Draper?

22 A. Correct.

23 Q. And all five of those doctors filed written
24 reports, correct?

25 A. I believe so.

1 Q. And you reviewed all five of those reports?

2 A. Yes.

3 Q. Now, those five reports, would I be correct in
4 saying that you do not agree with all of their
5 diagnoses in all five of those reports, just in
6 general, I'm not asking specifically if there was an
7 agreement but are there parts of all of those that you
8 disagree with them?

9 A. There are parts of the diagnoses of Dr.
10 English and Becker that I disagree with as I've
11 testified here. There are parts of the diagnoses of
12 Dr. Delaney Dean that I disagreed with. I don't
13 remember, as I'm sitting here, the diagnoses of Dr.
14 Rabun or Dr. Draper arrived at, so I can't answer that
15 question.

16 Q. And I remember back in 2005 when we tried this
17 case, counting up about 17 different diagnoses of this
18 guy dating back to 1992 and I'm not going to ask you if
19 you agree to my seventeen but would you agree there
20 were multiple diagnoses of him from '92 through the
21 crime and his trial in 2005?

22 A. Absolutely.

23 Q. And would I be correct in saying that all, not
24 all of those diagnoses were consistent?

25 A. In the most literal sense, they obviously were

1 not identical. Each time he was seen and given a
2 diagnoses, the diagnoses varied a little bit but there
3 was, if you step back and look at all those diagnoses
4 mentioned, there is a pattern of diagnoses that I think
5 rings true.

6 Q. Each clinician who made a diagnosis did their
7 best to evaluate him and came up with a conclusion at
8 that time they diagnosed him, correct?

9 A. I can't answer that. I don't know if they did
10 their best.

11 Q. Okay. Then they did something that they felt
12 was, I'm assuming, medically acceptable because they
13 are -- are medical and mental health professionals?

14 MR. LUNDT: Your Honor, I'm going to object,
15 this is speculation.

16 THE COURT: well, sustained.

17 Q. (By Mr. Waldemer) All of these records that
18 you looked at, Dr. Stewart, they were all records from
19 hospitals and mental health facilities, correct?

20 A. And correctional facilities.

21 Q. Correctional facilities?

22 A. Yes.

23 Q. And for your evaluation when a record would
24 say, and there were many of them you've been shown in
25 the last day and a half, would say doctor so and so,

1 would you assume for your evaluation that he was a bona
2 fide licensed doctor or she?

3 MR. LUNDT: Judge, I'm going to -- that calls
4 for speculation.

5 MR. WALDEMER: I'm asking --

6 THE COURT: Overruled. This is
7 cross-examination.

8 Q. (By Mr. Waldemer) Just for your purposes of
9 reviewing these documents to reach your conclusion, did
10 you assume that those were all professional, licensed
11 medical health professionals?

12 A. I did not assume that.

13 Q. So when you were quoting earlier from the
14 records, you don't know who those people were and what
15 their qualifications were?

16 A. I do not.

17 Q. But you used their observations of the
18 defendant in order to reach your conclusion?

19 A. I used, as I believe I testified to, the
20 overall breadth of the diagnoses that were present in
21 the record and I took all of those into consideration.
22 I don't know if I looked at one in particular saying,
23 ah-hah, this person has it right, but looking at the
24 totality of the record to help me arrive at my
25 diagnosis.

1 Q. So you looked at their diagnoses to take into
2 consideration and used it for your opinion?

3 A. I took it into consideration certainly.

4 Q. And their diagnoses were based on their
5 opinions at the time?

6 MR. LUNDT: Objection, calls for speculation
7 again.

8 THE COURT: Well, overruled. If you can't
9 answer it, then he can't answer it.

10 A. Yes, I don't know what they were based on.

11 Q. (By Mr. Waldemer) Okay. But you relied on
12 them to the extent to reach your conclusion, but you
13 don't know what they were based on?

14 A. Well, that's sort of twisting that around a
15 little bit. I do know in some of the cases what it
16 wasn't based on and so, therefore, I can say that I
17 knew what it was based on.

18 Q. Would I be correct in saying that the fields
19 of psychiatry and psychology, they are not an exact
20 science, correct?

21 A. I think that's the image that psychiatry has.
22 I can't speak to psychology. That's the image that
23 psychiatry has and psychiatry actually is a medical
24 subspeciality that is based on data and based on, you
25 know, evidence, it's not based on speculation.

1 Q. In your opinion is it an exact science?

2 A. It is not an absolute, exact science.

3 Q. And there is no blood test or urine test to
4 tell you somebody is schizophrenic?

5 A. No, but there is -- there is other tests that
6 you do to help you determine that.

7 Q. Now, in order for you to come to your
8 conclusions, did you rely on statements he gave to
9 other medical and mental health professionals?

10 A. I didn't rely on any of his self-reporting.

11 Q. None of his self-reporting at any time in any
12 of these records?

13 A. No.

14 Q. You just considered him to be unreliable?

15 A. I considered him, again, I certainly noted his
16 self-reporting. It isn't that I ignored it, I noted it
17 and then again in looking at the totality of the
18 records and saw that there was enough objective
19 evidence that I didn't need to rely on him because
20 clearly over the course of time, that he is a psychotic
21 individual with significant cognitive impairment so
22 that I didn't rely on self-reporting.

23 Q. Now many of those impairments that he had were
24 based upon what he reported to medical health
25 professionals?

1 A. As we talked about already, he did in some of
2 the notes that we looked at in the court here, showed
3 that he reported. The notes reported that Mr. Johnson
4 said, that Mr. Johnson reported, yes, so -- but then I
5 don't know, you can't tell from the note itself to what
6 extent that particular clinician based his or her
7 ultimate diagnostic assessment on Mr. Johnson's
8 self-reporting. So I don't know.

9 Q. Well, now the self-reporting that he's done
10 over the years of his hallucinations?

11 A. Yes.

12 Q. That's also self-reporting, right?

13 A. Correct.

14 Q. And that has lead to numerous diagnosis
15 concerning his hallucinations; either it has or hasn't?

16 A. Okay. It has contributed to the diagnosis
17 because the record is also clear that he has -- he's
18 displayed objective evidence of psychosis that then has
19 been used to make the diagnosis.

20 Q. And his self-reporting of his drug abuse has
21 been extensive over the years?

22 A. Yes.

23 Q. And his self-reporting of his drug abuse has
24 lead to numerous diagnosis of various substance abuse
25 disorders?

1 A. Correct.

2 Q. Am I correct in saying that you did not take
3 any of his self-reporting of his drug abuse into
4 consideration in reaching conclusions?

5 A. I did not. I certainly noted it but it was
6 clear that Mr. Johnson is an unreliable historian.

7 Q. And you base that upon --

8 A. Base that upon the fact that, for example,
9 that he told, I believe it was a police investigator
10 and may have repeated it to Dr. English and Dr. Becker
11 that he did IV methamphetamine the night before the
12 murder and there is no objective evidence there is
13 methamphetamine in his system, for example, that one
14 example.

15 Q. Okay. Let's talk about that. Now, you're
16 basing that upon a tox screen that was done from a
17 urine drop on July 29th of 2002?

18 A. Correct.

19 Q. Yes. And are you a toxicologist?

20 A. I certainly have extensive experience in
21 toxicology.

22 Q. And the level of, let's say for instance,
23 methamphetamine, in an individual's system?

24 A. Yes.

25 Q. There are variables that are involved in

1 determining how much of that is in somebody's system at
2 any given time? Let me ask it this way: Depending
3 upon how that methamphetamine has been cut, in other
4 words, its purity, can that influence how much is in an
5 individual's system at any time?

6 A. Correct.

7 Q. So how much they took, that influences how
8 much is in an individual's system at any given time?

9 A. Yes.

10 Q. The quantity, the quality?

11 A. Yes.

12 Q. What was it cut with?

13 A. What it was cut with doesn't necessarily
14 affect the level of the methamphetamine.

15 Q. Well, if it's cut with something, doesn't that
16 dilute the methamphetamine?

17 A. You're not worried about the dilution, you are
18 worried about the absolute amount of methamphetamine.
19 So if it was 99% junk and 1% methamphetamine, it would
20 still measure 1% methamphetamine.

21 Q. Okay. And in a 24-hour period, would I be
22 right in saying that approximately 43% of the
23 methamphetamine is discharged through urine in the
24 first 24 hours after ingestion?

25 A. That's an approximation that you could say

1 that the half life of methamphetamine may be as long as
2 24 hours.

3 Q. And what is a half life?

4 A. A half life is the amount of time it takes for
5 half the drug to leave your system.

6 Q. And the half life of methamphetamine, is that
7 6 to 15 hours?

8 A. You know, it varies, it can be anywhere from
9 12 to 24.

10 Q. Now, a methamphetamine half life, would I be
11 correct in saying, that 75 hours after ingestion of
12 methamphetamine, virtually all of it would be gone from
13 an individual's system?

14 A. Not necessarily and -- see the point that we
15 haven't talked about is you're talking about in the
16 system so it's in the blood but then gets excreted into
17 the urine so if we look at the half lives, that it
18 takes approximately five half lives, approximation, to
19 have a drug leave your blood stream. Okay. But in a
20 case of cocaine and methamphetamine then it's pooled in
21 the urine so that's why if you've got that blood test
22 at 72 hours, I would be saying you can't determine
23 anything from blood tests in 72 hours because more than
24 like most of the stuff is going to be gone. You'd be
25 lucky to catch any at that time but we are looking at

1 urine so it's excreted into the urine and it's
2 collected in the urine.

3 Q. Doctor, based upon your experience in
4 toxicology, would you agree that methamphetamine would
5 be out of his urine screening at approximately 75 hours
6 after ingestion, would you agree or disagree?

7 A. I would disagree.

8 Q. Okay. You would agree though that by his
9 report, he last ingested methamphetamine in the early
10 morning hours of July 26th, the day of the murder?

11 A. Correct.

12 Q. And he was police custody that day at
13 approximately 8:30 in the morning?

14 A. Yes.

15 Q. So we can assume that while he was in police
16 custody he didn't ingest any methamphetamine?

17 A. I think that's a fair assumption.

18 Q. And there was testimony at trial that at
19 7 o'clock in the morning he was asleep on the couch in
20 the home on Bedford?

21 A. Yes.

22 Q. And so we can assume that he didn't ingest any
23 methamphetamine at 7 o'clock in the morning when he was
24 asleep on the couch?

25 A. Or if he did ingest methamphetamine on the day

1 leading up to the 7 o'clock in the morning because he
2 was sleeping.

3 Q. well, all the testimony we have is that at
4 7 o'clock in the morning he was asleep on the couch,
5 right?

6 A. Okay. But your question was then can we
7 assume that he was using methamphetamine at 7 in the
8 morning and the answer is no and also we need to back
9 track. If he was using methamphetamine in the early
10 morning hours of that same day, let's say, one, two
11 o'clock in the morning, that's five hours before he was
12 observed asleep, that goes against his using
13 methamphetamine.

14 Q. well, if he ingested methamphetamine and let's
15 say it's midnight on July 26th and then had a urine
16 test on the 29th at 6 a.m., that would be about 78
17 hours after he ingested it?

18 A. Yes.

19 Q. If he used it at 3 o'clock in the morning on
20 that date, on the 26th and then had a urine test on the
21 29th, that would be about 75 hours?

22 A. Correct.

23 Q. But you would disagree with the fact that
24 between 75 hours there wouldn't be any methamphetamine
25 in his urine?

1 A. 75 hours, my testimony is, you'd be able to
2 detect methamphetamine in his urine.

3 Q. At what level would you expect to detect that
4 methamphetamine?

5 MR. LUNDT: Judge, it calls for speculation.

6 THE COURT: Overruled.

7 MR. LUNDT: Your Honor, there is no foundation
8 for how much was allegedly ingested.

9 THE COURT: Well, if he can't answer the
10 question, I'm sure he'll say he can't answer the
11 question. The questions is -- the objection is
12 overruled.

13 THE WITNESS: Can you restate that question?

14 Q. (By Mr. Waldemer) At what level, 75 hours
15 after ingestion of methamphetamine, would you expect it
16 to be in an individual's urine screen?

17 A. There are too many variables involved for me
18 to predict and I don't know how much he allegedly
19 ingested and --

20 Q. Now, what's 300 nanograms per milliliter; can
21 you tell the Court what that is?

22 A. 300 nanograms per milliliter is an acceptable
23 cut off limit for a qualitative urine toxicology. So
24 that means that you need to have at least 300 nanograms
25 per milliliter of a drug in order for it to show

1 positive on a qualitative test.

2 Q. If the -- the qualitative cut-off was at 2,000
3 nanograms per milliliter, what does that mean in
4 comparison?

5 A. That means you would need to have a larger
6 amount in your urine in order to have a positive
7 qualitative test.

8 Q. Now, you did see that tox screen indicated
9 that it was done just for a medical test, correct?

10 A. Which tox screen are you referring to?

11 Q. The tox screen of July 29th, 2002.

12 A. If I could look at that again.

13 Q. Sure. If you could read that paragraph there.

14 MR. LUNDT: What -- where in the volumes are
15 we?

16 MR. WALDEMER: You know, I don't have a volume
17 page for you. I can tell you it's the tox screen of
18 July 29th of 2006.

19 THE WITNESS: That's 1573.

20 THE COURT: Just a minute.

21 MR. LUNDT: Okay. 1573 of volume 6.

22 Q. (By Mr. Waldemer) Do you see that paragraph
23 in the middle of the page?

24 A. Yes.

25 Q. Would you read that for the Court.

1 A. Specimen analysis was performed without chain
2 of custody -- chain of custody handling, these results
3 should be used for medical purposes only and not for
4 legal or employment evaluated purposes.

5 Q. Okay. Thank you. Now, you talked about a
6 couple other tox screens that you saw in the record as
7 not having any evidence, or objective evidence, I
8 believe was your language, of amphetamine ingestion?

9 A. Correct.

10 Q. Okay. And one of them was back in his
11 Metropolitan Psych Records on page 1396, dated October
12 23rd, 1996?

13 A. What volume is that, sir?

14 Q. Page 1396. Perhaps Mr. Lundt can help me on
15 what volume that is.

16 MR. LUNDT: Looks like volume 6, the very back
17 of volume 6.

18 THE WITNESS: Which number? I'm sorry.

19 MR. WALDEMER: 1396.

20 MR. LUNDT: 1396. I'm sorry.

21 A. Okay.

22 Q. (By Mr. Waldemer) okay. Now, that tox screen
23 was on October 23rd, 1996, correct?

24 A. Correct.

25 Q. And were you aware that he'd been in the

1 hospital for more than ten days prior to that?

2 A. I notice this is in relationship to a hospital
3 stay, yes.

4 Q. Okay. Well, if I submitted to you that he was
5 admitted to the hospital at that time on October 13th,
6 requesting alcohol and drug treatment, would you
7 quarrel with that?

8 A. No.

9 Q. And if he had been locked down for ten days
10 prior to that tox screen, would you quarrel with that?

11 A. No.

12 Q. Okay. So that doesn't mean that he had been
13 doing the drugs that he reported prior to going in on
14 that hospitalization?

15 A. Correct. It means at the time of this tox
16 screen, he had no evidence of drug use.

17 Q. Which shouldn't be surprising after being
18 locked up in a psych ward for ten days?

19 A. Well, again, we have to be careful and not
20 just make a blanket statement about it because he was
21 positive for marijuana and marijuana can hang around
22 for a pretty long time.

23 Q. It can hang around for ten days, can't it?

24 A. Well, it's obvious he didn't use it unless
25 he's smoking in the hospital.

1 Q. And you saw nothing in the records to indicate
2 that he'd gotten out of the hospital or had been caught
3 with marijuana in the hospital?

4 A. I was not aware of any of that occurring.

5 Q. Okay. Let's look at another one that you
6 talked about, it's on page 660, from the Metropolitan
7 Psychiatric records.

8 MR. LUNDT: That would be in volume 3.

9 A. Yes.

10 Q. (By Mr. Waldemer) And that one is dated
11 October the 17th, 2001?

12 A. Correct.

13 Q. And you indicated that that showed negative
14 for amphetamines?

15 A. Correct.

16 Q. And that based on that you wouldn't believe
17 his self-reporting that he had been doing
18 methamphetamines?

19 A. I don't know if that was my testimony. I said
20 there was no objective evidence that he was using
21 methamphetamines.

22 Q. Well, Doctor, if I submitted to you that in
23 the St. Louis County records it would show that he'd
24 been in jail since August the 15th of 2001, would that
25 cause you to have any kind of surprise that he tested

1 negative in October?

2 A. No.

3 Q. Would the fact that he'd been in jail for
4 three months pretty much makes it a sure thing that
5 nothing is going to be in his blood stream?

6 A. Well, that's the hope.

7 Q. So these objective findings of no amphetamine
8 in his system, do you think those are enough to doubt
9 his self-reporting of his methamphetamine use?

10 A. They are one of the factors that I certainly
11 looked at, is there was no -- his record is silent
12 about a positive toxicology of methamphetamine. Given
13 all of his hospitalizations, given all of his contacts
14 with the legal system, there was not one positive tox
15 screen and so that, including the fact that at the end
16 of the day or at the end of this period of observation
17 that goes from '92 until 2005 is clear that he's
18 suffering from chronic psychotic illness and that he is
19 suffering from cognitive impairment. I used all of
20 that data, I didn't trust the self-reporting on
21 anything, his drug use or anything else.

22 Q. But you did find him to be suffering from
23 polysubstance abuse and polysubstance dependence?

24 A. Yes.

25 Q. So at some point, at some level you believed

1 his reports of drug use?

2 A. No. There were records talking about his
3 grandmother saying he's drinking a lot more now.
4 There's records of people saying about how he would
5 drink and use drugs and he had a positive marijuana
6 toxicology so at least we knew that he was doing
7 marijuana.

8 Q. And is that what you base your polysubstance
9 abuse on, is his positive tox screen for marijuana?

10 A. That's one of them.

11 Q. He's been very, very consistent over the years
12 that he has abused a ton of drugs?

13 A. He certainly reported that.

14 Q. He's reported that all along, his drug use has
15 been heroin, cocaine, LSD, methamphetamine, to name
16 just a few.

17 A. He's reported that but again the only positive
18 test we know marijuana and alcohol.

19 Q. So you don't believe his drug history as he
20 reports it?

21 A. I seriously question it.

22 Q. Okay. Can you define for me what your
23 definition is of reasonable degree of psychiatric
24 certainty?

25 A. Is that given the information that I have

1 available to me, I feel confident that this is
2 accurate.

3 Q. When you are interviewing a defendant, someone
4 who is charged with a crime?

5 A. Yes.

6 Q. Let's say a capital crime, is malingering a
7 concern of yours?

8 A. Always.

9 Q. And didn't you see throughout his records
10 individuals who saw signs that they believed were
11 malingering in his records?

12 A. There was a couple of references. It wasn't
13 -- it wasn't as if every time he came to the contact
14 with mental health that he was -- that he was found to
15 be malingering, but there were some, yes.

16 Q. Now, some of the records that you went
17 through, I'm just going to ask you if you remember
18 these things and if you don't, that's fine. I'm not
19 going to take time to go through and pick out the
20 pages. We have the records that are in evidence so we
21 can assume that the Court can look at them.

22 His first hospitalization, as I recall, was
23 back in April of 1992; is that correct?

24 A. In that time frame, yes.

25 Q. And that was for a suicide attempt?

1 A. Correct.

2 Q. And do you recall the St. John's records of
3 doctors referring to those superficial cuts on his left
4 arm?

5 A. I don't remember that, no.

6 Q. And what he indicated to them was he was upset
7 because his peers called him the word faggot and that
8 he had beat some of them up. Do you recall that in the
9 record?

10 A. And also I believe that was -- that
11 hospitalization was partially caused by his concern of
12 the death of his grandfather.

13 Q. The death of his grandfather. He was
14 depressed.

15 A. He was certainly effected by the death of his
16 grandfather.

17 Q. Then about a month later in May he was again
18 in the hospital because he overdosed on drugs that they
19 had given him from that first hospitalization?

20 A. Correct.

21 Q. And that showed up in the tox screen?

22 A. Yes.

23 Q. Would that be because they did the tox screen
24 right upon his admission?

25 A. That -- well, certainly timing of the tox

1 screen is important and also the type of drug. Every
2 drug has a different half life. So a particular drug
3 Imipramine has a fairly long half life so that would be
4 detectable longer than other drugs.

5 Q. Do those records indicate that he told his
6 mother what he'd done was because he was upset with his
7 mother and her boyfriend; do you recall that in those
8 records?

9 A. I don't recall that. I recall that his mother
10 noted that he was sleeping at odd hours of the day and
11 he was somnolent and that she was concerned and that
12 later came up because he was concerned about this
13 boyfriend that had attempted to drown him when he was
14 younger.

15 Q. You know we keep hearing attempted to drown
16 him. Who told you that the boyfriend attempted to
17 drown him?

18 A. It's in a variety of the records.

19 Q. Okay. But this is being self-reported by
20 Johnny Johnson?

21 A. Certainly that was part of it, but I
22 believe --

23 Q. Let me ask you this, Doctor: Do you recall
24 his mother's version of that attempt drowning that
25 you've referred to?

1 A. Not as I'm sitting here right now?

2 Q. Do you recall reading some of the documents
3 that you were given, specifically interviews of
4 relatives by the public defender investigators and/or
5 mitigation specialist?

6 A. Yes.

7 Q. Okay. And do you recall Connie Kemp
8 describing to Ms. Luebbering of the Public Defender's
9 office the fact the family were at the Meramec River,
10 all the children and that her boyfriend was picking up
11 all of the children and throwing them into the Meramec
12 River, everyone was in the water. When she threw
13 Johnny in it frightened Johnny, but the water was not
14 above his head.

15 Do you recall Johnny Johnson's mother's
16 version as I just read to you?

17 A. I do not.

18 Q. But you wouldn't dispute it's somewhere in the
19 records that you reviewed?

20 A. More than likely it is, yes.

21 Q. Okay. If you'd like me to, I can pull it up
22 for you.

23 A. If you wanted to, I just don't have an
24 independent memory.

25 Q. So as a young child he thought he was being

1 drown, right?

2 A. It appears that way, yes.

3 Q. That's how he reports it?

4 A. Yes.

5 Q. But his mother in that statement is not in any
6 way reporting that this man named Mickey was trying to
7 drown her son?

8 A. See, it doesn't make any difference what
9 Mickey was trying or not trying to do, even though his
10 mom might have said he wasn't trying to drown my son,
11 but his experience of it was he was being drown, that's
12 the determining factor.

13 Q. Okay. So what I'm asking you about is, it's
14 not what it seems like to him, that's why I asked you
15 first, to a six-year-old it may have seemed like that
16 maybe he was trying to drown him, right?

17 A. Evidently.

18 Q. Okay. To an adult it did not seem that he was
19 trying to drown him.

20 MR. LUNDT: Your Honor, this is -- all calls
21 for speculation.

22 THE COURT: Overruled.

23 Q. (By Mr. Waldemer) But we keep talking about
24 an attempt drowning and what I'm trying to clarify for
25 the record, Doctor, those are Johnny Johnson's words,

1 correct?

2 A. He certainly characterized it as attempted
3 drowning, yes.

4 Q. But that's not his mother's words that you
5 recall?

6 A. I don't recall his mother's words right here.

7 Q. In the St. John's hospitalization in May and
8 then June of 1995, you talked about those as suicide
9 attempts, correct?

10 A. Correct.

11 Q. Did you notice in the medical record of May
12 26th, 1995, that the defendant told the doctor, Dr.
13 Cabrerrie Campbell, that he was playing with a razor
14 and it slipped and he cut his wrist and that he was not
15 trying to commit suicide?

16 A. I'm aware that he said that.

17 Q. Okay. And then in that same hospitalization
18 in the notes he apparently was trying to get on the
19 ward with a certain girl.

20 Do you recall that in the records?

21 A. I remember that there was a hospitalization
22 where there was a girl that he had known prior. I
23 don't know if it was this one where he allegedly was
24 playing with a razor and cut himself.

25 Q. well, do you recall a discharge summary and

1 this was actually on -- in Volume 5, pages 916 and 917,
2 where he denied having known that his girlfriend was on
3 the unit, however, the girlfriend's family had stated
4 that he had called and specifically asked her if she
5 was on the unit prior to being admitted.

6 That's a note by Dr. Arthur Smith.

7 A. What page was that again?

8 Q. Page 916 and 917 in the discharge summary by
9 Dr. Arthur Smith?

10 A. Because my 915 and 916 isn't a discharge
11 summary by Dr. Smith.

12 Q. Okay. Well, Doctor, I don't want to belabor
13 the point, my records were provided to me by trial
14 counsel not by Mr. Lundt and I've tried to work with
15 this table of contents I got yesterday and I've tried
16 and the records I have -- but let's move on.

17 The hospitalization that took place down in
18 Potosi -- oh, I'm sorry, in Farmington, when he'd been
19 living with his grandmother in Potosi.

20 Do you recall that one?

21 A. Again, there's a whole bunch of
22 hospitalizations.

23 Q. I'm just asking if you remember it. If you
24 don't remember, say you don't. Do you remember when he
25 was living with his grandmother for a couple of weeks

1 and she took him to the Health -- Southeast Missouri
2 Mental Health Center in Farmington?

3 A. I'm generally familiar with that, yes.

4 Q. Okay. And do you recall at that time he
5 talked about his drug history. Do you recall that?

6 A. I can't quote back every hospitalization and
7 what the particular complaints were so I can't answer
8 that question.

9 Q. Okay. So you don't recall him in noting a
10 long history of extensive and heavy drug use including
11 marijuana, crank, cocaine, beer, whiskey and
12 interavenous heroin.

13 You don't remember him telling the hospital
14 personnel?

15 A. I remember that particular one because he
16 talked about interavenous heroin and he misspelled
17 heroin, yes.

18 Q. Right. Spelled with the female version of a
19 hero?

20 A. Yes.

21 Q. You recall that too. Do you recall the
22 medical psychiatric assessment that talks about -- at
23 this time his behavior is considered to be most
24 consistent with that of an adolescent anti-social
25 behavior, complicated by the polysubstance abuse?

1 A. Again, sir, I'm not trying to be difficult but
2 really all the different hospitalizations and I don't
3 remember exactly what it was.

4 Q. Okay. Do you recall a social service
5 assessment of June 20th, 1996, where it says: "The
6 patient's diagnosis is no mental illness, anti-social
7 behavior and polysubstance abuse. The practitioner
8 noted that throughout the interview that he was evasive
9 and his behavior was somewhat childlike. He requested
10 to be transferred to another ward because he would like
11 to be on the same ward of a female patient he
12 previously met.

13 Do you remember that social service
14 assessment?

15 A. Generally.

16 Q. Okay. They transferred him from Farmington up
17 to the Missouri Psychiatric Center.

18 Do you recall that in 1996?

19 A. I do not.

20 Q. And when he came up to the -- that ward they
21 diagnosed him with psycho stimulant dependence,
22 probable malingering and antisocial personality
23 disorder.

24 Do you recall that?

25 A. No.

1 Q. Do you recall the medical psychiatric
2 assessment of November 8, 1996 where it says that:
3 During the course of his admission, he was agitated and
4 required restraints and sedative medication on two
5 occasions. This was attributable to possible drug
6 flashbacks although it may also, in retrospect, be
7 attributable to a rage reaction, typical in a
8 sociopath.

9 Do you recall that?

10 A. I remember that interview, yes.

11 Q. Do you recall during that same hospitalization
12 he was told that suicidal patients are not allowed to
13 have privileges, which other patients have, he again
14 became angry and demanding and stated, Oh, then, I'll
15 just leave?

16 A. I don't remember that.

17 Q. Do you remember the progress note that the --
18 on November 8th, 1996, when he was interviewed, he
19 reported to be suicidal and homicidal saying I will
20 kill myself -- kill myself if you put me out. I have
21 no place to go, I'll be on the streets, so I will kill
22 myself and the practitioner said that he was very
23 manipulative and dramatic and he was grinning in a
24 sardonic fashion throughout the interview.

25 Do you recall that?

1 A. I do not recall that.

2 Q. In the October -- October 13th, medical and
3 psychiatric assessment during that hospitalization at
4 MDC, do you recall him telling the clinician that he
5 had missed spending significant amounts of time trying
6 to obtain control substances and still had to steal
7 money from his mother as well as pawning her personal
8 items to pay for the drugs, that he was recently kicked
9 out of his home because of that activity?

10 A. I'm not aware of that.

11 Q. Do you recall the same medical and psychiatric
12 assessment that he had multiple self-inflicted
13 cigarette burns marks on his arms and that he told the
14 clinician he enjoys the pain because it makes him feel
15 alive?

16 A. Yes.

17 Q. You do recall that?

18 A. I do recall that.

19 Q. That was in the same medical assessment but
20 you don't recall the first part?

21 A. No. I remember about the burns because that's
22 indicative of how seriously mentally ill he is.

23 Q. Do you remember in that same assessment saying
24 his intellect appears to be average to above average?

25 A. I don't remember.

1 Q. Do you recall in the October 13, 1996 social
2 services assessments where Johnny Johnson admitted he
3 would lie even when not being threatened with physical
4 abuse. He admitted that he set fires beginning at the
5 age of seven but apparently did not get caught. He
6 also admitted he killed or tortured animals on at least
7 three occasions beginning at the age of fifteen.

8 Do you recall that?

9 A. No, I do not recall that.

10 Q. Do you recall in that same social services
11 assessment that he stated that his favorite activity is
12 watching the video called "Faces of Death" and that
13 he's always been fascinated with death beginning at the
14 age of nine when he used to go to the graveyard and
15 help the gravediggers.

16 Do you recall that?

17 MR. LUNDT: Your Honor, I'm going to object.
18 The state can hand him the records that are in front of
19 him.

20 MR. WALDEMER: He either recalls --

21 THE COURT: Overruled.

22 Q. (By Mr. Waldemer) Do you recall that?

23 A. I don't recall that.

24 Q. And again on that same social services
25 assessment do you recall the clinician pointing out

1 that he was also quick to point the finger blaming his
2 family members and others and not even once taking any
3 responsibility for his problems.

4 Given his own history, he certainly has a
5 strong juvenile history as well as borderline
6 personality traits. He reported avoiding using alcohol
7 and drugs while on psychiatric medications but then he
8 acknowledged to no meaningful sobriety with the
9 exception of the thirty-day program in Southeast
10 Missouri. He was likely motivated not to use
11 psychiatric medication because of his desire instead to
12 use street drugs.

13 Do you recall that one?

14 A. No.

15 Q. Do you recall during that hospitalization that
16 they tested him and he had a full-scale IQ of 93?

17 A. I do not recall.

18 Q. Do you recall the social services assessment
19 that I was talking about on October 13, 1996, where he
20 reported to someone his self-mutilation is related to
21 practicing the religions of Satan worshipping?

22 A. I do remember an entry about Satan worship,
23 yes.

24 Q. Did you talk to him at all about his religion?

25 A. I don't believe so.

1 Q. Were you aware that he's asked the Department
2 of Corrections to change his religious affiliation to
3 that of Wicken?

4 A. Yes, I'm aware of that.

5 Q. He did that in 2006?

6 A. I'm not sure when but I'm aware that he wanted
7 to be known as a Wicken.

8 Q. What is a Wicken?

9 A. My understanding of Wicken is sort of an old
10 type of pre-Christian religion associated with
11 Stonehedge and people of that ilk that tend to worship
12 nature and believe in witches and demons and these
13 sorts of things.

14 Q. And that's a religion he's endorsed?

15 A. A religion that at least from the record that
16 I saw, he wishes to be categorized as a Wicken.

17 Q. Now, I want to move on to the Missouri
18 Psychiatric Center hospitalization in November of 1996.

19 Do you recall reading those records?

20 A. I certainly have but it would be helpful if
21 you told me where they are in the record and I could
22 follow you.

23 Q. I have page 1316 and 1317 but I can not claim
24 that that's accurate.

25 MR. LUNDT: Volume 6, 1316 and 1317.

1 THE COURT: Mr. Waldemer, would this be a good
2 place to break for lunch?

3 MR. WALDEMER: Sure.

4 THE COURT: Why don't we do that and pick up
5 at 1:30.

6 MR. LUNDT: 1:30, your Honor?

7 THE COURT: 1:30.

8 (Whereupon a recess was taken. Proceedings
9 continued as follows:)

10 THE COURT: Mr. Waldemer.

11 MR. WALDEMER: Thank you, Judge.

12 Q. (By Mr. Waldemer) Doctor, I know you were
13 probably hoping I forgot where I was and I think I did
14 too. I'm going to pick up as close as I can to where I
15 was.

16 I think we were talking about some records in
17 1996, was where we left off and, specifically, I think
18 we had talked about the Farmington hospitalization; is
19 that correct?

20 A. I'm not sure where you left off.

21 Q. The one where he went from his grandmother's
22 to the Department of Mental Health, Southeast Missouri
23 Mental Health?

24 A. Yes, we talked about that one.

25 Q. Okay. And do you recall the psychological

1 evaluation of June 21st, 1996 by either Lawrence
2 Michael or Michael Lawrence?

3 A. No. I think before the break you'd given me a
4 page number.

5 Q. I'm seeing at the bottom of this page 1409 and
6 1408. I don't know if that helps you find --

7 A. Yes.

8 Q. That's the one. At the top he's 18 years old
9 at this time?

10 A. Correct.

11 Q. Okay. And so this is some six years before
12 Casey Williamson is killed by Johnny Johnson, right?

13 A. Yes.

14 Q. Okay. On the second page of that do you
15 recall where these two psychologists say that:
16 Johnny's performance appears to suggest that he can be
17 manipulative. He certainly appears to understand
18 antecedents and consequences, characteristic of the
19 street-smart adolescent. His digit span subtest scaled
20 score of seven suggests a significant impairment in his
21 auditory short term memory/concentration ability but
22 despite his weakness in verbal skill areas, he appears
23 to have compensated through his psychomotor skills.

24 Do you recall that?

25 A. Yes, I'm aware of that.

1 Q. Okay. And you took that into consideration in
2 your evaluation of him and in reaching your opinion?

3 A. Yes.

4 Q. Next one, move on, if I can, to some of the
5 reports of Comtrea. He went to Comtrea in October of
6 1996; is that correct?

7 A. I know he was in Comtrea several times. If
8 you can point out exactly in the record where you are
9 headed, I can follow along with you.

10 Q. Okay. And again, my records were not paged.
11 I have the original records from trial counsel. This
12 one I think may be on page 1552. It's a psychiatric
13 evaluation from October the 30th, 1996?

14 A. 1552?

15 MR. LUNDT: Volume 6.

16 Q. (By Mr. Waldemer) 1552 is what -- I've got it
17 down, but I can't claim to have the same recall of Mr.
18 Lundt's pagination as he does.

19 A. Yeah. That page does not correspond to an
20 evaluation.

21 Can you tell me who did it?

22 Q. Actually I don't have marked in my notes who
23 did it but let me ask you if you recall that October
24 30th, '96: Besides the effect of drugs he was also
25 having flashbacks about his Satanic cult that he was

1 involved in since age 16. He would get together with
2 other young people or kill animals like goats and dogs
3 while using drugs. The last incident of this order was
4 one month ago, Johnny indicated he does like these
5 flashbacks of drinking the blood of animals and was
6 also the subject of small, superficial cuts on his
7 body.

8 Do you recall reading that?

9 A. Yes.

10 Q. In that particular Comtrea discharge they gave
11 him a diagnosis of post-traumatic stress disorder in
12 relation to the Satanic cult flashbacks; is that
13 correct?

14 A. Well, they do give him a diagnosis of
15 post-traumatic stress disorder. They don't specify
16 what is the exact basis of that diagnosis from the
17 record.

18 Q. Okay. But the records indicate that was the
19 flashback that he discussed with them was that of a
20 Satanic cult and drinking the blood of animals they had
21 killed?

22 A. The record does reflect that, yes.

23 Q. An antisocial personality disorder with
24 borderline features?

25 A. Yes.

1 Q. About a month after -- I'm sorry -- about a
2 week after that he was sent back from the Metropolitan
3 Psychiatric Center to Comtrea on November 7th, 1996.
4 They indicated that he came back from the Metropolitan
5 Psychiatric Center, he'd been admitted there due to his
6 suicidal threats after his mother confronted him
7 regarding his continued drinking and drug use.

8 Do you recall that in the records of Comtrea?

9 A. I see where he was readmitted to Metropolitan
10 Psychiatric Center and the records I am looking at says
11 that he was -- he was readmitted to Metropolitan
12 Psychiatric Center due to continued active suicidal
13 ideation.

14 Q. So when he went to the psychiatric center and
15 I have -- I think these may be page 1316 on through
16 1317, I'm talking about a discharge summary of November
17 13th, 1996.

18 Do you recall the entry where he indicated he
19 was monitored carefully at the time and found not to
20 have any other problems besides psychostimulant
21 dependence, however, two episodes of aggressive acting
22 out required sedation and restraint and they were
23 attributed to possible drug flashbacks and he was to be
24 sent to the Athena program?

25 A. Correct.

1 Q. Do you recall where they indicated that while
2 at Missouri Psychiatric Center that he didn't adapt
3 well to the program and seemed to use the flashbacks
4 and thoughts of harm to himself as a means of not
5 really dealing with his chemical dependency issues and
6 the need to change?

7 A. I'm aware that the records did reflect that,
8 yes.

9 Q. Okay. It also reflected that he came in as a
10 voluntary patient and when told his privileges would be
11 restricted because of threats of harm to himself or
12 others that at that time he became violent, he struck
13 the door in the emergency room and required involuntary
14 admission at that time?

15 A. Correct.

16 Q. Continued in the discharge summary, however,
17 did you recall where it said: As noted the patient was
18 admitted because of threats of harming himself but
19 immediately upon getting to the floor, however, he
20 reverted to a perfectly normal mood.

21 Do you recall that?

22 A. You know I remember vaguely right now. The
23 discharge summary I'm looking at may not be from the
24 same one. This is from Comtrea?

25 Q. No. This would be from the Missouri

1 Psychiatric Center on November 13, 1996?

2 MR. LUNDT: Page 1316, Volume 6.

3 A. Yes.

4 Q. (By Mr. Waldemer) Also in that discharge
5 summary he admitted to the past history of truancy,
6 suspension and expulsion from school, fighting, lying
7 and conning others to achieve his ends. The patient
8 remained sincere in his claim that he wanted to harm
9 himself or others but grinned when asked if he felt
10 comfortable in the less challenging situations here.

11 Do you recall those records?

12 A. I recall generally that from these records. I
13 just can't find it now as I'm relooking at it.

14 Q. Okay. Now, you also reviewed records and I'm
15 trying to go in as much chronological order as I can,
16 from the Department of Justice Services at various
17 times, did you not?

18 A. Correct.

19 Q. And a couple of them I want to talk about in
20 1997, specifically, in December of 1997, and I have
21 those, I'll look again, I can't guarantee to that page,
22 page 1625, 6 and 7. I think that would be Volume 7.

23 MR. LUNDT: Yes, that would be volume 7.

24 A. I'm sorry, 16 --

25 Q. (By Mr. Waldemer) 1625, 26 and 27.

1 A. Yes.

2 Q. Okay. The first one I think you talked about
3 yesterday talked about the December 10th, 1997 inmate
4 incident report where he was hitting his head on the
5 wall and holding a pencil to his head threatening to
6 puncture himself?

7 A. The December 10th, 1997 incident report that I
8 have here on 1627 says that: Johnson was hearing
9 voices and that they moved him to a different part of
10 the prison.

11 Q. He got out of the area he was in on December
12 10th and was moved to a different area?

13 A. Yes. And then on 1628 it does talk about his
14 hitting his head against the wall and holding a pencil
15 to his head and threatening to puncture himself, yes.

16 Q. Another one on December 27th, 1997 where they
17 were discussing the defendant being involved with
18 another inmate in a sexual incident in the toilet area
19 of the pod where they were.

20 Do you recall that in the record?

21 A. I don't remember it as I'm sitting here right
22 now and I'm looking in the record. I'm not exactly
23 sure where that is.

24 Q. Okay. In any event, do you recall in that
25 record also that on December 29th because of the

1 difficulties with the defendant they did move him to a
2 cell where he had no cellmate?

3 A. Yes, they moved him to max 3.

4 Q. So he no longer had to share a cell with
5 anyone because of that move?

6 A. Yes.

7 Q. Okay. Now, that was in 1997. In 1998 he went
8 to prison; is that correct?

9 A. I believe so.

10 Q. Okay. That was the first time he'd ever been
11 in prison? He'd been in jail before but he had never
12 been in a penitentiary until 1998; is that correct? As
13 you recall it, if not --

14 A. Yes.

15 Q. Okay. I want to refer you to, I think these
16 are in Exhibit 4 and the first one I believe is around
17 874.

18 A. Yes.

19 Q. And is that a psychological evaluation dated
20 May 20th, 1998?

21 A. Yes, it is.

22 Q. Do you recall in there where Dr. Amrod said:
23 Because I find no evidence of psychotic thought or
24 dysfunctional -- dysfunctional anxiety levels when he
25 was seen on May 13th and May 20, therefore, no

1 psychiatric referral will be made at this time as I
2 suspect malingering.

3 A. That is there in the recommendation to the
4 summary.

5 Q. So at that time at least Dr. Amrod suspected
6 that he was malingering psychiatric symptoms?

7 A. Yes. He based it on this one
8 neuropsychological test, CPS scale, and it's unclear
9 how he uses that. So that was the basis of his saying
10 that. He had provided some scale that he reported here
11 in the section right above the recommendation and
12 summary section.

13 Q. Does it also indicate that he met with the
14 defendant?

15 A. Yes. He saw the defendant and he administered
16 the scale.

17 Q. So it's quite possible that in addition to
18 that scale, based upon his personal interaction with
19 the defendant, he believed he was malingering?

20 MR. LUNDT: I object, calls for speculation.

21 THE COURT: He's been speculating all along.
22 It's overruled.

23 A. I have no way to know that from the record.

24 Q. (By Mr. Waldemer) From the record. Now, I
25 want to touch -- after he was released from prison, he

1 was put back on probation, correct?

2 A. Correct.

3 Q. And in August of 1998, I know you talked about
4 this yesterday, he was arrested by the police and sent
5 to DesPeres Hospital.

6 Do you recall that? I think you may have also
7 been referred to in the records at Deaconess West?

8 A. Yes.

9 Q. Okay. Do you recall what he was arrested for
10 that caused him to be sent to the hospital?

11 A. I do not.

12 Q. So you don't recall it being a minor in
13 possession of intoxicating liquor?

14 A. As I'm sitting here right now, I don't
15 remember the exact reason why.

16 Q. Now, he was evaluated -- let me go back.

17 In August of 2001, he was arrested on a
18 probation violation.

19 Do you recall that?

20 A. I don't know exact date but I know he was
21 arrested on a probation violation.

22 Q. And he remained in the St. Louis County Jail
23 until October 17th, when he was sent down to St. Louis
24 Psychiatric Rehabilitation for a mental status
25 examination?

1 A. Yes.

2 Q. And he spent October, November, December and
3 the first part of January of 2002 in that center,
4 correct?

5 A. Again, sir, I appreciate what you're saying
6 but I have certainly reviewed those records but as I'm
7 sitting here right now, I don't have an independent
8 memory of all the details you're providing.

9 Q. Would you agree this is the time Dr. Rabun did
10 his examination of the defendant?

11 A. I think Dr. Rabun did see him during the time
12 he was being evaluated on a probation violation.

13 Q. And Dr. Rabun gave the Court a risk assessment
14 as to what might happen if the defendant was put back
15 on probation versus having his probation revoked,
16 correct?

17 A. I know he gave a risk assessment. I don't
18 know the exact manner in which it was given, if it was
19 exactly as you said or not.

20 Q. Well, the determination was going to be made
21 by the judge whether to leave him on probation or
22 revoke his probation based on various violations that
23 had been alleged at that time.

24 Do you recall that?

25 A. Yes.

1 Q. And Dr. Rabun's report was sent to the Court
2 to assist the Court in making that determination?

3 A. Yes.

4 Q. Okay. You referred to Dr. Rabun's report as a
5 good report yesterday or words to that effect?

6 A. It was thoughtful, especially, in his
7 description around Mr. Johnson's experience of auditory
8 hallucinations.

9 Q. And that included in that report as well as
10 those records that the defendant repeated that he did
11 not recall having any hallucinations before he took a
12 large quantity of LSD?

13 A. Sir, I don't know exactly the exact content of
14 Dr. Rabun's report. I can certainly refresh my memory
15 if I could find it.

16 Q. You don't recall that statement being made in
17 the records, that he doesn't remember having
18 hallucinations until he abused LSD when he was 17?

19 A. It very likely says that but I just right now
20 would like to refresh my memory because with all the
21 records here it's hard to keep everything --

22 MR. LUNDT: It's volume 1, page 2784.

23 A. Okay. Now, the point about his hallucinations
24 beginning with his use of LSD?

25 Q. (By Mr. Waldemer) Yes, that was the report

1 that Mr. Johnson gave while he was confined on that
2 evaluation in 2001 and early 2002.

3 Do you recall that?

4 A. Sir, I certainly see on page 287 of volume 1
5 in the section labeled alcohol and drug history, it
6 says that: He, meaning Johnny Johnson, also has used
7 LSD, crack cocaine and marijuana and there are
8 certainly other references regarding auditory
9 hallucinations, seeing dead friends telling him to kill
10 himself.

11 I'm just not finding that one you're
12 referencing about LSD.

13 Q. Okay. Now, is it your understanding, Dr.
14 Stewart, he was released then from jail and put back on
15 probation with certain conditions regarding what he had
16 to do while he was out?

17 A. Yes.

18 Q. And that was in January of 2002?

19 A. I believe so.

20 Q. And as part of that he was referred to a
21 institution called ADAPT.

22 Do you recall that?

23 A. Correct.

24 Q. And you reviewed the ADAPT records?

25 A. Yes.

1 Q. And I think the ADAPT records can be found in
2 Volume 6 starting at page 1442.

3 A. Yes.

4 Q. Now, I want to direct your attention to the
5 mental health assessment of January the 30th, 2002. I
6 believe that starts on page 1448 and goes on from
7 there.

8 A. Okay.

9 Q. Okay. And this was a document that was
10 prepared to essentially plan what he was going to be
11 doing on probation; is that correct?

12 A. I don't see a particular title or reference to
13 the point that you just made but looking at this it
14 certainly has recommendations that tell them what his
15 strengths and weaknesses are.

16 Q. It's -- it's -- and you know, if you disagree
17 with my assessment, I thought it looked like a plan of
18 how they were going to make sure how he stayed on
19 probation, but let me ask you some specific questions
20 about it, if I can.

21 First of all, it indicates that this
22 assessment information comes from a face-to-face
23 interview with Johnson, whose reliability is good, and
24 other information obtained from SLPRC records and that
25 information was considered to be reliable?

1 A. Correct.

2 Q. Okay. It talks about legal information, talks
3 about his criminal history beginning in Northwest High
4 school when he brought a knife to school, being sent to
5 juvenile court, sent to live with his father in Potosi,
6 being sent back to live with his mother at age 17,
7 being found guilty of stealing a stereo the next year
8 and completing probation.

9 Do you see that there on 1448?

10 A. Yes.

11 Q. Okay. And then it goes on in the next
12 paragraph, talks about his felony convictions in 1998
13 for stealing, burglary, stealing firearms and -- and
14 all of those things.

15 Do you see that paragraph?

16 A. Well, I don't know what all of those things --

17 Q. Well, if you'd like, if you want to read the
18 entire paragraph, I was -- was skipping through but --
19 I wanted to know if you were aware of all of those
20 indications of his prior felony convictions and other
21 violations of the law.

22 A. Yes. I reviewed this document and was aware
23 generally of the legal information that's contained
24 here.

25 Q. Okay. And I think you may have talked about

1 this on direct but on the next page, 1449, he indicated
2 that his common symptoms are hearing a mumbly man's
3 voice, whispering and telling me that I'm worthless. I
4 also get depressed and have trouble sleeping and that's
5 about it.

6 A. That's what the records state, yes.

7 Q. Okay. The additional symptoms included
8 suicidal ideation, tearfulness, enuresis and auditory
9 and visual hallucinations. Mr. Johnson admitted to
10 tying a cat to a tree and setting it on fire to kill it
11 after it had scratched him approximately five years
12 before.

13 A. Yes, the record does say that.

14 Q. He admitted to setting trees on fire when he
15 was eight years old. Claimed he'd never had homicidal
16 thoughts but records indicate his tendency to
17 experience intense psychotic episodes when he began to
18 experience exacerbation of symptoms.

19 He went on to claim that his last
20 decompensation occurred during his stay at the St.
21 Louis Psychiatric Rehabilitation Center and he stated
22 when he is around a lot of commotion or loud noises he
23 becomes agitated, but he reported if he stays compliant
24 with medication, he rarely decomposes -- decompensates.

25 A. It does say that. I want to correct a couple

1 of things that you said, I think they're just
2 mispronunciations and it may mislead someone who would
3 read this later.

4 His additional symptoms, as you said, include
5 suicidal ideations, tearfulness and enuresis.

6 Q. That's the one I mispronounced, enuresis?

7 A. Enuresis, that was one of them.

8 Q. That's where he wets himself?

9 A. That's where he is unable -- he has -- wets
10 himself both when he's awake and when he's asleep and
11 also it indicates that he tends to experience intense
12 psychotic episodes when he begins to experience
13 exacerbation, e-x-a-c-e-r-b-a-t-i-o-n, of symptoms and
14 that Mr. Johnson claimed his last decompensation
15 occurred during his stay at SLPRC.

16 Q. Okay. Other than mispronouncing two words I
17 read, I read everything that you did, correct?

18 A. Yes.

19 Q. Now, continuing on in this ADAPT record on the
20 next page, let's see, it goes into his substance abuse
21 history; is that correct?

22 A. Correct.

23 Q. And he claimed he had an extensive drug
24 history, that he began smoking marijuana at age 14,
25 claimed smoking every other day. At 15 he reported

1 drinking bourbon, at age 17 he began using LSD. He
2 claimed to do up to ten hits at a time and reported
3 this is when he began having auditory hallucinations.
4 It is during this time that he attended Aquinas
5 Community Treatment Center in Farmington, Missouri?

6 A. That's what it says.

7 Q. And you reviewed that in coming to your
8 conclusion?

9 A. Yes.

10 Q. Further down in that same paragraph, Mr.
11 Johnson stated that crack cocaine caused major problems
12 for him as he felt the need to steal more -- to steal
13 to get more. Subsequently he was arrested and it says:
14 See legal information?

15 A. Correct.

16 Q. Denied ever overdosing on drugs and denied
17 experiencing alcohol DT's?

18 A. Correct.

19 Q. And that's withdrawal from alcohol, correct?

20 A. Yes, it's a real severe form of alcohol
21 withdrawal, yes.

22 Q. Further down on that page it talks about
23 independent living capacity?

24 A. Yes.

25 Q. And it says Mr. Johnson is able to access

1 almost all community resources independently, as he is
2 able to ride the bus, uses the Yellow Pages and is
3 resourceful and he would like to have a valid driver's
4 license someday.

5 A. Yes, it does say that.

6 Q. It goes on: Mr. Johnson's awareness of his
7 personal safety is good. He was aware of the
8 importance of having a smoke alarm and reported that
9 there are working smoke detectors in his grandmother's
10 house where he resides. He was aware of the importance
11 of locking doors and windows when not at home and he
12 had an understanding of what to do in emergency
13 situations.

14 He claimed he felt safe in the Kirkwood area.
15 He stated he always walks in well-lit areas at night.
16 Mr. Johnson is aware of how to contact community
17 emergency services, i.e., dialing 911, and to call his
18 mother or his ADAPT worker, case social worker, CSW, I
19 imagine -- correct --

20 A. Yes.

21 Q. -- if he is in need of assistance while in the
22 community. Mr. Johnson claimed to be aware of safe sex
23 practices, specifically mentioning condoms, and stated
24 that he uses them. Mr. Johnson does not present as
25 vulnerable and easily taken advantage of, although

1 records indicate that he was influenced by peer
2 pressure to take part in illegal activities, such as
3 doing drugs?

4 A. The record does say that, yes.

5 Q. And then on the last page: Impressions and
6 recommendations. The first one, Mr. Johnson's
7 strengths include his motivation to socialize and
8 acquire a job or go to college, his supportive family,
9 his motivation to improve his mental and physical
10 health and his friendly nature?

11 A. That's what it says.

12 Q. The next paragraph: Mr. Johnson's abilities
13 include the ability to express his needs and the
14 motivation to improve his mental and physical health,
15 as well as, the mental ability to do so. Mr. Johnson
16 is literate, fully ambulatory and knows how to navigate
17 his community via public transportation. Mr. Johnson
18 has the ability to keep appointments and succeed in
19 medication adherence.

20 A. Yes, that's what it says.

21 Q. And that was in January of 2002?

22 A. Correct.

23 Q. It's my understanding he continues to see a
24 Dr. Patel with ADAPT, correct?

25 A. Correct.

1 Q. And he last saw Dr. Patel on June 28th, 2002.
2 Do you recall that? Go to page 1466, the volume you
3 are in.

4 A. Saw Dr. Patel on June 28th, 2002, correct.

5 Q. And at that time the doctor indicates that the
6 patient missed his last appointment but says he's doing
7 fine, living with girlfriend, her children and her
8 mother and denied having any problems?

9 A. Correct.

10 Q. He was pleasant, cooperative, spoke coherent
11 thoughts, logical goal directed, no auditory
12 hallucinations, no suicidal ideation. Patient was
13 given insight about his illness and he needs to take
14 medication regularly and the need to come for follow-up
15 regularly.

16 He agreed to continue his medications Zyprexa
17 and the patient will remain under ADAPT case management
18 and will come for a follow-up in a month.

19 Correct?

20 A. It does say that.

21 Q. And then it appears that he set up his
22 follow-up for July 23rd but that he didn't show up.

23 A. Correct.

24 Q. So as far as Dr. Patel was concerned on
25 June 28th, 2002, he was doing pretty well?

1 A. Based on this very short note, yes.

2 Q. Now, mental illness, Doctor, you agree with me
3 that mental illness waxes and wanes?

4 Do you know what I mean by that?

5 A. Well, what do you mean by that?

6 Q. Okay. Some mental health people have told me,
7 so I was hoping you'd know. It means there can be good
8 days and there can be bad days, that the illness can be
9 prominent on one day and not apparent on another day.

10 Would you agree with that?

11 A. That's a very broad statement, but in the most
12 general sense, that people -- the two things we need to
13 sort of break down from that statement. One is, people
14 with mental illness can have good days and bad days,
15 just like people with alcohol illness can have good
16 days and bad days.

17 People with mental illness also can have a
18 fluctuation of the severity of the mental illness at a
19 given time. Sometimes it can be, as we say, waxes and
20 wanes. It can be more severe at given times and less
21 severe at other times. So that is correct.

22 Q. And than would be true with Johnny Johnson?

23 A. It certainly could be true of Mr. Johnson,
24 yes.

25 Q. Does it appear that Johnny Johnson had

1 hallucinations on every day?

2 A. Based on the records and by what he reported,
3 the answer to that is, no.

4 Q. Again, that's what he reported?

5 A. Right and based on the nature of his illness,
6 the answer to that would be, yes, that he was
7 chronically psychotic.

8 Q. Now, when he would say he wasn't having those
9 hallucinations on a particular day, would he be lying?

10 A. Well, I'm not trying to give you a hard time
11 here, but I would ask you to define --

12 Q. You can either say yes or no.

13 A. No, but to answer that question correctly, I
14 need to know what you mean by lying.

15 Q. Okay. You indicated that certain days he
16 reported not having hallucinations?

17 A. Correct.

18 Q. And I asked you if that can be true and my
19 understanding was, correct me if I'm wrong, that you
20 said, no, you don't believe that was true?

21 A. Over the course of his entire mental health
22 records that we looked at?

23 Q. Let's say from the year 2001 on.

24 A. Okay.

25 Q. That was a year before this murder?

1 A. Yes.

2 Q. And if he said I'm not having hallucinations
3 every day, is that a statement that you believe?

4 A. I question the validity of his statements in
5 general. So I would question the validity of that
6 statement.

7 Q. Okay. But you will agree with me he reports
8 that on some days zero hallucinations?

9 A. Correct.

10 Q. But you don't believe that?

11 A. No, I just said I questioned the validity of
12 his statements in general.

13 Q. And he also said that when he is under stress
14 that that can sometimes contribute to his
15 hallucinations?

16 A. I don't really see that exact connection that
17 he made, that under stress I had more voices. It's
18 certainly common that people under stress might have a
19 experience, a worsening of their psychotic symptoms. I
20 just don't know where that is in the record
21 particularly with Mr. Johnson.

22 Q. Okay. Now, you looked through a lot of
23 penitentiary records, Missouri Department of
24 Corrections?

25 A. Yes.

1 Q. And he was in the penitentiary in 1998 for a
2 hundred and twenty days?

3 A. I believe around that time, yes.

4 Q. And then he returned to the penitentiary in
5 the year 2003 after his probation had been revoked for
6 murdering Casey Williamson?

7 A. Correct.

8 Q. So all those records that you talked about
9 this morning, from 2003 to 2005, when he was in the
10 penitentiary, those records would have been while this
11 case was pending for the murder of Casey Williamson?

12 A. Correct.

13 Q. And at that time he knew that he was awaiting
14 trial in that case, the murder of Casey Williamson?

15 A. I don't know what he knew about the case but
16 he certainly was in the time frame that you described.

17 Q. Okay. So, he's awaiting trial during this
18 time of 2003 to 2005?

19 A. Yes.

20 Q. He's in the penitentiary?

21 A. Yes.

22 Q. He's being evaluated at different times by Dr.
23 English, Dr. Becker and Dr. Dean; is that correct?

24 A. Correct.

25 Q. Okay. And he had knowledge of each one of

1 them coming to see him, correct?

2 A. That I don't know.

3 Q. Now, you've had defendants lie to you during
4 your evaluations in your career, haven't you, Doctor?

5 A. I've certainly had people misrepresent things
6 to me and I've had people lie to me, yes.

7 Q. Okay. And Johnny Johnson, at least
8 intellectually, he's capable of lying.

9 A. How do you mean intellectually he's capable of
10 lying?

11 Q. He's smart enough to know when he's lying and
12 when he's telling the truth.

13 A. Now, that, I don't know how you could say that
14 because his cognitive impairments as well as his
15 chronic psychotic illness, he may not be aware that in
16 fact he's misrepresenting the facts.

17 Q. And that's because of these cognitive
18 disabilities?

19 A. Cognitive impairments especially on memory and
20 the fact that he suffers from chronic psychotic
21 illness.

22 Q. So you don't think he's intellectually capable
23 of lying then?

24 A. I don't know -- I would be misrepresenting my
25 expertise if I told you I know exactly what degree of

1 cognitive functioning a person needs to be able to lie.
2 what I do know about Mr. Johnson is that he suffers
3 from a chronic psychotic illness.

4 Q. Doctor, if you can't say that then your answer
5 would have been no, right?

6 A. Okay.

7 Q. Okay. That's all I was looking for, a yes or
8 a no and if you didn't understand my question, you
9 won't be the first to point that out to me.

10 I want to hand you a letter out of the records
11 of Johnny Johnson from, I believe it's June of 2005 and
12 ask you if you did review that letter as we find it in
13 the records but I apologize because I can't find you a
14 page.

15 Take a look at that for me, Doctor.

16 A. Okay.

17 Q. Do you recognize that as being something you
18 would have reviewed in these records?

19 A. You know, as I'm sitting here right now, I
20 don't remember seeing this letter before. I very
21 possibly have but I just don't remember.

22 Q. would you agree with me that's a letter or
23 appears to be a letter that Johnny Johnson wrote to a
24 Ms. Dix?

25 A. Yes.

1 Q. And what's the subject matter of that letter?

2 A. Generally it's his expressing fear to Ms. Dix
3 that there are people that are going to harm him and
4 that he needs to be in protective custody.

5 Q. And does that letter appear to be organized in
6 its thinking?

7 A. Generally, yes.

8 Q. Does it appear to be clear in its goal
9 orientation of what it is he would like from Ms. Dix?

10 A. Yes. He does say how he'd like to be placed
11 in PC after my AdSeg.

12 Q. Do you know what AdSeg is?

13 A. Yes.

14 Q. Administration segregation?

15 A. Yes.

16 Q. That's where they put prisoners when they're
17 bad?

18 A. Well, there are a lot of reasons you go to
19 AdSeg, that's one them.

20 Q. Would you agree with me that letter shows a
21 certain amount of intelligence and the ability to
22 communicate on his part?

23 A. Again if this Johnny Johnson wrote this
24 letter, which I don't know for a fact, this letter is
25 fairly well organized and it does express particular

1 need and it's generally coherent and understandable,
2 yes, I agree.

3 MR. WALDEMER: Judge, I'd offer this letter
4 in. I don't know that I've marked any exhibits as of
5 yet.

6 MR. LUNDT: Your Honor, I object. I don't
7 know where that came from. I don't recall ever seeing
8 that letter, if we could get a copy of that.

9 MR. WALDEMER: I'd be happy to give you this
10 copy. Judge, I'd offer that into evidence as State's
11 Exhibit A.

12 MR. LUNDT: No objection, at this point, your
13 Honor.

14 THE COURT: It will be admitted.

15 Q. (By Mr. Waldemer) Doctor, could I ask you to
16 read that into evidence for me, please.

17 A. There is a number in the right-hand corner,
18 that's 534534.

19 Q. Do you recognize that number at all?

20 A. No. There is some writing in the middle of
21 the top that -- there is a word that I can't understand
22 and then it is dated 6/28/05 to C.C.A., Dix, D-i-x and
23 then the salutation portion, it says:

24 Ms. Dix: I'm sending you some names of
25 inmates that pose a threat to me. Some are connected

1 to my victim's family and others know and have very
2 deep hatred towards me about my case. My case had
3 heavy media around it. I am Johnny Johnson, number
4 534534. I'm sure you know about my case. The only way
5 I would feel safe is by your PC unit. I don't really
6 know what to do. My family is in great fear for me. I
7 would like to go to PC after my AdSeg is up. The
8 inmates I want to list as enemies: Donald Steingruber,
9 Damon Huff, Tim O'Hara, Brandon Hutchinson, Dave
10 Barnett and probably more.

11 There is a, quote, hit on my head in the
12 population, amount of money unknown. I have been told
13 by an outside source, quote, friend of family, which
14 overheard the mother of my victim on the phone with
15 Steingruber's mother. The, quote, friend of the
16 family, reported more about the matter in some detail,
17 whoever does the task, which task is unknown, will
18 receive money on their books by Western Union.

19 Can you please help. Thank you and have a
20 wonderful day. Sincerely, Johnny Johnson.

21 Q. Doctor, I want to hand you another document
22 marked State's Exhibit B. I believe that's a
23 three-page document. Do you recall reviewing that
24 document in Johnny Johnson's Missouri Department of
25 Corrections records?

1 A. I do not remember reviewing this document.

2 MR. WALDEMER: Judge, that's out of certified
3 records. I'd offer State's Exhibit B into evidence.

4 THE COURT: Can you identify it.

5 MR. WALDEMER: On the record it is a
6 three-page document beginning with a typewritten page,
7 staff to offender, correspondence to Johnny Johnson and
8 it is from Ian Wallace, Superintendent 1, dated January
9 11th, 2006 and then what appears to be a handwritten
10 letter from Johnny Johnson and a classification hearing
11 document dated November 9th, 2005.

12 The letter from Mr. Johnson appears to be --
13 constituent service office, date January 4, of '06,
14 attention Larry Crawford or Steve Long, PC.

15 MR. LUNDT: I don't have any objection.

16 THE COURT: It will be admitted.

17 Q. (By Mr. Waldemer) Doctor, what I wanted you
18 to read or look at was the second page, another
19 handwritten letter from Mr. Johnson and I will ask you
20 kind of the same questions and if you need a moment to
21 read it, please take a moment.

22 A. Yes.

23 Q. Okay. Does that letter again appear to be
24 goal directed?

25 A. Yes, generally.

1 Q. Organized?

2 A. Yes, in a general sense, yes.

3 Q. Clear in what he wants?

4 A. From my reading of it, he's able to get his
5 wishes expressed.

6 Q. It shows a level of intelligence and ability
7 to communicate?

8 A. It's an organized note about his wanting to go
9 to PC and he's complaining about being stuck in AdSeg.

10 Q. Doctor, I'd ask you to read that letter into
11 evidence, please.

12 A. Okay. Dated 1/4/06 attention Larry Crawford
13 or Steve Long, PC.

14 Sir, my name is Johnny Allen Johnson, Number
15 534534. May I draw your attention to some problems me
16 and some others are having here at Potosi Correctional
17 Center. I was placed in AdSeg and was not able to have
18 protective custody. I was placed on bed space to be
19 released to protective custody housing unit of 11/9/05.
20 Today is 12/21/05 and I am still in AdSeg unit waiting
21 for bed space. That has been 28 working days awaiting
22 on bed space but that is not the only thing we are
23 going through here. The people in AdSeg unit that are
24 waiting for bed space in general population have been
25 waiting for some time.

1 I would also like to bring to your attention,
2 I'm a capital punishment offender and in a case with
3 wide publicized. I have a child murder case and I've
4 got a numerous amount of enemies all over. I am
5 sending my copy of my classification hearing. There is
6 no need for us to wait to be placed in protective
7 custody or to go to the general population. That shows
8 neglect in the rotation they use here.

9 Your time is greatly appreciated in this
10 matter not with just me but also other offenders here
11 at Potosi Correctional Center.

12 Have a wonderful day. Sincerely, Johnny
13 Johnson.

14 Q. Thank you, Doctor. Is there a -- in your
15 opinion, is there any psychotic thinking or hints of
16 psychosis in that document?

17 A. There's no apparent psychotic thinking
18 expressed in that document.

19 Q. That document appears to be free of delusions?

20 A. The document appears to be free of delusion.

21 Q. Now, you went to see him in April of 2007?

22 A. Correct.

23 Q. And at that time he was taking antipsychotic
24 medication?

25 A. By his report.

1 Q. By his report. Did you see medical records
2 which verify that he was taking any kind of
3 antipsychotic medication?

4 A. No, I never actually did see the medication
5 records.

6 Q. So other than him reporting to you he was
7 taking that medication, you don't know one way or
8 another?

9 A. Correct.

10 Q. You don't know if he's on mood stabilizers?

11 A. I know what he reported to me, yes.

12 Q. What's the difference between antipsychotic
13 medication and a mood stabilizer?

14 A. Well, briefly, an antipsychotic medication is
15 exactly as the name applies. It's prescribed for a
16 person who has been experiencing psychotic symptoms.
17 There's a number of diagnoses.

18 A mood stabilizer is a term that generally
19 applies to medications that are used to treat manic
20 depressive illness or chronic depressive illness. It
21 helps someone stabilize their mood.

22 Q. Somebody who's way down, help them bring them
23 up to hopefully, I'll call it a level, up to a more
24 normal level?

25 A. And or if their mood is too high, it will

1 bring them down.

2 Q. Bring them down to a normal level?

3 A. Yes.

4 Q. And he reported to you he was on both mood
5 stabilizers and antipsychotic medication by his report
6 only; is that correct?

7 A. Well, when I saw him in April of '07, he
8 reported he was on Geodon, which is an antipsychotic.

9 Q. Antipsychotic. So he didn't report to you any
10 mood stabilizers?

11 A. Not at that time.

12 Q. And you didn't see any records that indicated
13 he was on anything?

14 A. Right, I didn't see any records.

15 Q. Now, you've described him and when you
16 interviewed him in April of 2007, he would have been
17 29 years old?

18 A. Yes.

19 Q. He was 24 when he killed Casey Williamson?

20 A. He was born in 1978.

21 Q. So -- and you said about five years had lapsed
22 between the time the murder occurred and when you saw
23 him?

24 A. 2002 to 2007.

25 Q. Okay. So my math is 24 to 29; is that

1 correct?

2 A. Close enough.

3 Q. And you're describing him as being psychotic
4 when you saw him in 2007?

5 A. Yes.

6 Q. And psychotic, you define that, correct me if
7 I'm wrong, as being out of touch with reality?

8 A. That's a general definition to psychosis, yes.

9 Q. Did he recognize you as being you as far as
10 you know?

11 A. Well, knowing that this was the first time I
12 ever saw him, so there was nothing during the course of
13 the interview that made me think I was someone other
14 than who I had represented myself to be.

15 Q. He thought you were a doctor there to
16 interview him?

17 A. Yes.

18 Q. And he gave no indication of believing you
19 were someone else at the time during the interview of
20 him?

21 A. Right.

22 Q. He didn't treat you as if you were, I don't
23 know, an alien or anything like that?

24 A. Correct.

25 Q. So when you say he wasn't in touch with

1 reality, he was in touch with reality at least as far
2 as knowing your role and who you were for purposes of
3 that interview?

4 A. There was nothing to indicate that he didn't
5 understand my role, but there were also, he and I after
6 our initial discussion about why I was there, I didn't
7 keep going back to him and say, okay, Mr. Johnson, do
8 you remember who I am, do you remember why I'm here. I
9 didn't revisit those questions with him.

10 Q. Did he give you any indication that he didn't
11 know who you were and why you were there?

12 A. No.

13 Q. Now, you took notes of this interview,
14 correct?

15 A. Correct.

16 Q. And that's the only record we have, is your, I
17 think, 14 pages of notes?

18 A. Fifteen.

19 Q. And in looking at the notes, I see at one
20 point you had written down PTSD?

21 A. Where are you looking?

22 Q. I'm going to say in -- I'm not sure if you are
23 looking in the binder?

24 A. I have no notes here.

25 Q. It's 3633?

1 A. Correct.

2 Q. And that's your PTSD, post-traumatic stress
3 disorder, correct?

4 A. Correct.

5 Q. That's just a heading of that paragraph?

6 A. Correct.

7 Q. Did you inform him at that time that you were
8 going to ask him questions about PTSD or is that --

9 A. During the course of a psychiatric interview,
10 at least the way that I do it, I generally ask the
11 person for their life story, and life history up to the
12 point and if any particular thing, like this case I
13 talked to him about the actual event.

14 Q. So the answer would be no to my question, you
15 didn't say, I'm going to talk to you now on PTSD?

16 A. Then -- I don't then say, now, we're going to
17 discuss your schizophrenia, or now we're going to
18 discuss this. During the course of obtaining the
19 history I will be alerted to particular things that may
20 exist that I want to follow up on and during the course
21 of our interview up to that point, there was sufficient
22 amount of indication that there might be a condition
23 that he suffers from.

24 Q. Now, was your focus of his conditions, those
25 conditions he suffered from on April 29th, of 2007 or

1 those conditions he suffered from on July 26, 2002?

2 A. well, I was seeing him on April 29th, 2007, so
3 I could only assess him on what he had or how he was
4 presenting to me at that point.

5 Then again I will have to extrapolate whether
6 or not these conditions may have been present at a
7 different time of his life.

8 Q. Did Johnny Johnson or anyone ever tell you
9 that Johnny Johnson was experiencing flashbacks to any
10 of the events that you listed in your notes at the time
11 that he murdered Casey Williamson?

12 A. That he was experiencing flashbacks to any of
13 --

14 Q. Let me ask it this way. You listed a couple
15 of traumatic events in your notes there.

16 A. Correct.

17 Q. And those were traumatic events that he talked
18 to you about?

19 A. Correct.

20 Q. Some sexual abuse?

21 A. Yes.

22 Q. The Meramec River incident with Mickey?

23 A. well, I had it down as beatings.

24 Q. Beatings, just generalized beatings?

25 A. Yes. Some beatings that he had had growing up

1 at home from his mother and also I referenced the
2 incident with Mickey.

3 Q. Now, did you get from him or anyone else any
4 indication that on July 26th, 2002, when he was in the
5 process of beating Casey Williamson to death with a
6 brick, that he was experiencing a flashback to any of
7 those comments that you listed there in your notes?

8 A. At the actual time of the murder?

9 Q. Yes.

10 A. I'm not aware that he was experiencing a
11 flashback at the actual time of the murder.

12 Q. So nothing that this little girl did triggered
13 a flashback to one of these traumas for him on July
14 26th, 2002?

15 A. Again, I think what the question was, did I
16 see anything in the record that indicated that I saw
17 something in the record that indicated he was
18 experiencing a flashback at the time of the murder.

19 Q. At the time of the murder did the
20 post-traumatic stress disorder cause him to kill this
21 little girl?

22 A. Now, at the time of the murder he experienced
23 some post-traumatic stress disorder and that certainly
24 was a factor involved.

25 Q. She reminded him of some trauma?

1 A. No, see -- the question you asked was: Did it
2 cause and then I would say he was suffering from PTSD
3 at the time of the murder so it was a contributing
4 factor to his behavior that day as it was a
5 contributing factor the day afterwards.

6 Q. What about this little girl caused the
7 post-traumatic stress disorder to contribute to her
8 death?

9 A. That I don't have information to say.

10 Q. His previous diagnosis of post-traumatic
11 stress disorder involved the satanic cult, correct?

12 A. Well, that was what was listed in that note
13 that it was somehow involved to the satanic cult.

14 Q. Right.

15 A. And that -- there was no documentation about
16 some of the other traumatic events that I've
17 subsequently learned.

18 Q. But in that event it was the one where he
19 liked sacrificing animals and enjoyed drinking their
20 blood, with that diagnosis in 1996?

21 A. Well, with that diagnosis was -- in that same
22 note where that was listed.

23 Q. Now, you talked to him about his substance
24 abuse?

25 A. Yes.

1 Q. And he told you that he started taking sips of
2 alcohol when he was nine or ten and really started to
3 drink when he was 16?

4 A. Yes.

5 Q. He told you he preferred marijuana over
6 alcohol and then he told you that he was a binge
7 drinker and would drink for days on end always to
8 intoxication?

9 A. Yes.

10 Q. But he developed a tolerance to alcohol so he
11 would take some time off because it didn't do for him
12 what it used to?

13 A. Well, I don't know -- I don't see in here --
14 excuse me -- he would drink for about a week at a time
15 and then he'd take some time off, period. He would
16 always drink to intoxication, development of tolerance
17 of withdrawal.

18 Q. So there was tolerance here?

19 A. By his report.

20 Q. By his report. Okay. He told you that
21 marijuana was his drug of choice and that he was a --
22 he used it when he was twelve or thirteen, he was a
23 regular user at sixteen, and he smoked every chance
24 that he got?

25 A. Yes.

1 Q. He told you that he started using LSD at the
2 age of sixteen and he continued until he was
3 twenty-one?

4 A. Correct.

5 Q. He told you he used cocaine, both powder and
6 crack cocaine, when he was eighteen?

7 A. Correct.

8 Q. And that's when he began and continued until
9 he was incarcerated?

10 A. It didn't say anything about that he continued
11 until the time he was incarcerated.

12 Q. Did he tell you of any time when he quit
13 cocaine?

14 A. He didn't mention when he would quit cocaine.

15 Q. He indicated that he -- he introduced himself
16 to cocaine?

17 A. No. Says introduced to cocaine by his
18 siblings.

19 Q. His siblings. I apologize. That's your
20 handwriting and my poor eyesight.

21 He indicated to you that he basically would
22 use cocaine like he did with alcohol, he'd go on a run,
23 I think, like seven days, was the way he put it; is
24 that correct?

25 A. He would do -- He'd go on a run. The longest

1 run was seven days but also he said that there would be
2 long periods of time, long periods of refraining from
3 the use of the drug, i.e., months to years.

4 Q. Okay. He told you about his methamphetamine
5 use beginning at age seventeen?

6 A. That's what he said.

7 Q. He told you that he started off snorting it,
8 progressed to smoking it and then began to shoot it up?

9 A. That's what he reported.

10 Q. He talked to you about huffing?

11 A. Yes.

12 Q. What is huffing?

13 A. Huffing is using what you call, you know,
14 volatile inhalants like gasoline or a propellant from
15 spray cans and some people report by inhaling that they
16 get a -- what we call a minor tranquilizer-type high so
17 they get drunk from it.

18 Q. And they can also hallucinate from it, can't
19 they?

20 A. Not really hallucinations. People -- huffing
21 is related to more what we call minor tranquilizer
22 high.

23 Q. And he indicated to you that he used gasoline
24 to huff?

25 A. Yes.

1 Q. And he used Freon?

2 A. Yes.

3 Q. That's the refrigerant that is used to be
4 allowed to be put into automotive air conditioning?

5 A. I know Freon is a refrigerant.

6 Q. Right. He also said he used spray paint?

7 A. Yes.

8 Q. Butane?

9 A. And Dustoff.

10 Q. And Dustoff is that aerosol you use to clean
11 off your computer keyboard?

12 A. Yes.

13 Q. And then lastly he talked to you about his
14 heroin use and I think he told you he used it a few
15 times when he was nineteen or twenty, but he said he
16 didn't like it?

17 A. He said only a couple of times, yes.

18 Q. Now, Doctor, huffing of these substances we
19 talked about, they can cause brain damage, can't they?

20 A. Absolutely.

21 Q. And long term drug use or drug abuse can cause
22 brain damage?

23 A. Correct.

24 Q. Now, his, I'll call it a rendition, of his
25 drug history to you, was similar to that which he gave

1 to other doctors throughout his records?

2 A. He gave various versions of this but in
3 general he talked about the same category of drugs,
4 yes.

5 Q. For instance, in the Becker and English
6 reports, he may have gotten the years wrong, but he
7 talked about using marijuana, alcohol, heroin, LSD,
8 methamphetamine, cocaine?

9 A. Correct.

10 Q. But the doctors, Becker and English, at least
11 in his first evaluation, he claimed that he stopped
12 everything in 1999 because he became a father?

13 A. Yes.

14 Q. But later he admitted to them that that wasn't
15 true, that he continued to do drugs but he just
16 couldn't count the number of times he smoked weed.

17 A. I know the first fact that you said about his
18 reporting that he stopped drugs when he became a
19 father, I'm not -- I just don't know off hand if in
20 fact he said the second thing.

21 Q. But it would be in the report that he admitted
22 that he lied, if it's in there, right? In Becker and
23 English's second report, they listed that he said that
24 he lied the first time when he talked to them, that he
25 really didn't quit in 1999 like he told them?

1 Do you dispute that's in their report?

2 A. Again, I don't have the report memorized.

3 Q. Now, then you talked to him about his drug use
4 the night of the murder, correct?

5 A. Yes.

6 Q. And he told you that he used marijuana the
7 night before?

8 A. Yes.

9 Q. And he told you that he used alcohol the night
10 before?

11 A. Correct.

12 Q. He told you that he used methamphetamine and
13 his last use was at 6 p.m. the night before?

14 A. The day prior, yes.

15 Q. Now, if he'd used methamphetamine at 6 p.m.
16 that date prior, that tox screen on the 29th, would
17 that methamphetamine have shown up in your opinion, it
18 would be about 86 hours?

19 A. If in fact that he had used it then, then it
20 would be questionable whether or not it would come up
21 at that point. It would still be likely that it would
22 come up, but I couldn't say absolutely.

23 Q. If he used methamphetamine at 6 o'clock on the
24 26th, would it still be influencing him twelve hours
25 later?

1 A. Absolutely.

2 Q. It would be?

3 A. Oh, yeah.

4 Q. So by his report to you that he used it at 6
5 o'clock, that might not be on the tox screen, but that
6 might very well be true?

7 A. Well, there was nothing else -- Okay. To
8 answer your question, it's likely that would have been
9 the tox screen, but now we are starting to get over
10 closer to the limit where it may not be present. Okay.
11 But the report of people that he's sleeping the next
12 morning, is inconsistent with his using methamphetamine
13 the afternoon or the evening before.

14 Q. Okay. Now, he also indicated to you that he'd
15 been off his medication for approximately three months?

16 A. That's what he reported.

17 Q. Okay. And we know from the ADAPT records that
18 Dr. Patel was reporting as recently as June 28, 2002,
19 that he was still medication compliant?

20 A. Did she say that or did she say that he looked
21 pretty good on that last visit. I don't know if she --

22 Q. June 28th, she said medication complaint. Do
23 you recall that record? You just read it about fifteen
24 minutes ago.

25 A. No. I remember reading it about fifteen

1 minutes ago.

2 MR. LUNDT: Volume 6, 1466.

3 A. That June 28th entry doesn't say anything
4 about medical compliance.

5 Q. (By Mr. Waldemer) Doesn't it indicate he
6 agreed to continue Zyprexa?

7 A. He agreed to continue Zyprexa, yes, but it
8 doesn't indicate that, in fact, in her opinion that
9 he'd been taking his medication on a regular basis.

10 Q. Well, wouldn't it -- if she had believed he
11 had been taking his medication, wouldn't she most
12 likely say, he agrees to continue taking Zyprexa again?

13 MR. LUNDT: Objection, calls for speculation.

14 MR. WALDEMER: He can speculate on what he
15 continued to do.

16 THE COURT: Overruled.

17 Q. (By Mr. Waldemer) Doctor, doesn't the word
18 continue mean an ongoing pattern of something; isn't
19 that what the word continue means?

20 A. Right, sir, but he -- in the most general
21 sense, yes, but she says he agreed to continue with
22 Zyprexa. So maybe he hadn't been taking his medicine,
23 but he -- that's what he was prescribed before so he'd
24 be continued to be prescribed that.

25 It doesn't -- it doesn't particularly state

1 whether or not he was medical compliant. That's all.
2 And your question was whether or not this record -- it
3 reflects medical compliant and in my opinion, it
4 doesn't.

5 Q. So that doesn't reflect medical compliant?

6 A. I don't believe so.

7 Q. In that situation, if you were the reporting
8 doctor and you believed he was off his meds, would you
9 put that in his medical notes?

10 A. I would probably write it a little
11 differently.

12 Q. Don't you think any reasonable professional
13 medical provider would write a note if they believed
14 that an on-going mental health patient had stopped
15 taking his medicine?

16 A. I can't speak to what Dr. Patel was thinking
17 there.

18 Q. I didn't ask about Dr. Patel, I asked: would
19 it be reasonable for a mental health professional, who
20 had been treating this man since January, if that
21 mental health professional believed that for the first
22 time in six months he was off his medication, that that
23 would be put in the medical records?

24 A. You would hope that it would be in there, yes.

25 Q. I certainly would hope, but it's not in there?

1 A. No.

2 Q. Just to continue Zyprexa is all that's in
3 there?

4 A. Correct.

5 Q. Okay. Now, did you review Dr. Beaver's notes?

6 A. I didn't review Dr. Beaver's notes.

7 Q. Did Dr. Beaver write a report?

8 A. I don't know.

9 Q. What information were you provided by Dr.
10 Beaver?

11 A. I had several consultations with Dr. Beaver.

12 Q. Did you take notes during those consultations?

13 A. I did not.

14 Q. You committed to memory everything Dr. Beaver
15 told you?

16 A. Generally, generally.

17 Q. So did you and Dr. Beaver compare notes of
18 what Johnny Johnson told Dr. Beaver about his drug use
19 that night?

20 A. No.

21 Q. Did you compare Johnny Johnson's claims of
22 drug abuse that night that he made to you with his
23 claims of drug use to Dr. Beaver?

24 A. What's that question?

25 Q. Did you compare what Johnny Johnson said to

1 you about his drug abuse the night before he murdered
2 Casey Williamson with what he told Dr. Beaver?

3 A. I don't believe I did.

4 Q. Did you compare what Johnny Johnson told you
5 about his drug abuse with those that he reported to Dr.
6 Becker and English?

7 A. Did I discuss that with Dr. Beaver?

8 Q. No. Did you compare what he said to you with
9 what he said to English and Becker?

10 A. Yes.

11 Q. It was a little different?

12 A. Yes.

13 Q. Now, with regard to his drug abuse that night,
14 did you review the records in volume 12 prepared by the
15 public defender investigator and mitigation specialist?

16 A. Volume 12?

17 Q. Yes.

18 A. Okay. I have volume 12 here so where are we
19 referring?

20 Q. I'm just waiting until you sit down. Let's go
21 to page 3221.

22 A. Okay.

23 Q. Do you see the paragraph that starts with: J
24 spoke of how he spends his time, he enjoys reading, and
25 has ordered a book written in Egyptian hieroglyphics?

1 A. Yes.

2 Q. He's copying Latin from a library book and is
3 going to translate the hieroglyphics into Latin and
4 then into English?

5 A. Correct.

6 Q. Now, skipping down further in the paragraph,
7 do you see where he talks about the week where Casey
8 was killed?

9 A. Yes.

10 Q. And do you see where he indicates that he'd
11 been very upset with his girlfriend because she was
12 messing around on him and he had never messed around on
13 her?

14 A. Yes.

15 Q. And then went on to say that he was hurt and
16 spending time in Valley Park trying to clear his head?

17 A. Correct.

18 Q. Now, the next sentence is what I wanted to ask
19 you about. He tells the investigator that he was
20 spending time with friends there and ended up doing
21 lots of drugs. He recalls having shot up 1/4 gram of
22 meth in the early morning hours the day of the crime.
23 He was also shooting up Everclear because he believes
24 that helps break down the meth in his system and he
25 spoke of doing meth up to three times per day that week

1 of the crime.

2 A. That's what it says.

3 Q. And that's different than what he told you?

4 A. Yes.

5 Q. Okay. That certainly is a much heavier usage
6 of methamphetamine than what he told you?

7 A. Correct.

8 Q. Heavier than actually what he told Becker and
9 English, correct?

10 A. Correct.

11 Q. Okay. I want to direct your attention now to
12 page 3266 of that same volume.

13 A. Okay.

14 Q. And about the fifth paragraph down, second
15 sentence, the investigator inquires about his drug use
16 close in time to the crime.

17 Do you see that?

18 A. Yes.

19 Q. And at the time he indicated that he'd been
20 popping his Paxil about three months before the crime
21 until he ran out. He'd take four pills at a time and
22 it had a geek effect on him?

23 A. Yes.

24 Q. He was doing this about three times a day and
25 using other drugs during this time as well as drinking.

1 He'd have to smoke a joint to be able to sleep.

2 That's not something he told you to about?

3 A. No.

4 Q. He talked about his drinking, that he drank
5 this entire time, that he started drinking about 8
6 o'clock in the morning drinking Jim Beam or
7 Jagemeister, beer. He was living with his grandmother
8 at that time but he wanted to find his own apartment.

9 A. Yes, that's what it says.

10 Q. He told the investigator that he didn't like
11 shooting up in front of other people or in front of
12 others and stated that he would jump into a dumpster if
13 he had to avoid being seen shooting up. That he would
14 use Everclear to break down the meth crystals before
15 injecting it.

16 A. Correct.

17 Q. He stated he was using lithium strips off
18 batteries, he was using Drano and Heet during this
19 period of time and he referred to those substances as
20 bathroom crank.

21 A. That's what it says.

22 Q. It goes on to say in twenty-four hours -- the
23 twenty-four-hour period before the crime, Johnny stated
24 he shot up with almost an entire eight-ball of meth
25 himself. He started using the meth after he saw Bob at

1 8 p.m., it was in powder form and he shot it up alone.
2 He also got a bottle of whiskey and talked with Eddie
3 Barrett. Eddie was smoking weed. They put in video
4 games and Johnny did the meth and smoked a joint.
5 There was probably one gram of meth left over. Johnny
6 and Ernie Williamson drank Jim Beam together. Didn't
7 sound like Johnny slept during the night, or if he did,
8 it was very little sleep.

9 A. Yes, that's what's reported.

10 Q. And that's certainly different than what he
11 reported to you?

12 A. Yes.

13 Q. And different than what he reported to Dr.
14 English?

15 A. Correct.

16 Q. Different than what he reported to Delaney
17 Dean?

18 A. Correct.

19 Q. Now, he's apparently lying to somebody about
20 drugs he used that night. Can you tell, as a
21 psychiatrist, who he's lying to?

22 A. Well, I can intuit how he, or deduce who he's
23 being less truthful with because if he's saying that he
24 shot up two grams of methamphetamine at 8 p.m. the day
25 before the crime, his urine toxicology would have been

1 positive, he would have been seeping the next day
2 shooting up two grams of methamphetamine.

3 Q. And that's your opinion based upon your
4 toxicological experience, correct?

5 A. That's my understanding as being a
6 psychiatrist experienced in drug and alcohol use for
7 almost thirty years, that two grams of methamphetamine
8 injected, that's a lot of methamphetamine.

9 Q. Now, if he had done that, and I understand,
10 Doctor, that you, for your purposes of your opinion,
11 don't believe him, but if he had done that, could that
12 produce hallucinations?

13 A. That amount of methamphetamine is an amount
14 that certainly can produce -- could produce
15 hallucinations.

16 Q. would that be worthy of a diagnosis of
17 methamphetamine intoxication?

18 A. Again, you can't necessarily base it on just
19 the amount. Again, I answered your question because a
20 gram, two grams of methamphetamine is a pretty big dose
21 and that certainly can be associated with
22 hallucinations and certain people develop a tolerance,
23 they don't necessarily hallucinate with that level.
24 So --

25 Q. You don't believe Johnny does meth, right?

1 A. No, I didn't say -- I said that based on the
2 toxicology that was obtained within 72 hours or
3 thereabouts, after he was supposedly ingesting all this
4 methamphetamine, is negative and there was no finding
5 of any methamphetamine in his urine. So that's what
6 I'm basing it on.

7 Q. Because it is your belief that there would
8 have to be methamphetamine still in his system after 72
9 hours?

10 A. That he would have evidence of methamphetamine
11 in his urine.

12 Q. His urine.

13 A. After seventy-two hours, absolutely, there's
14 no question.

15 Q. And that he would have had methamphetamine
16 still in his urine after seventy-five hours?

17 A. At seventy-five hours, yes.

18 Q. And he would still have methamphetamine in his
19 system after eighty hours, in his urine after eighty
20 hours, in his urine. I'm sorry. I keep missing that
21 part, in his urine. It would be your testimony that he
22 would have it in his urine after eighty hours?

23 A. That's possible because we get further out,
24 then it's going to be less likely.

25 Q. Okay. From 6 a.m. on the 26th to 6 a.m. on

1 the 27th, would you agree is seventy-two hours?

2 A. Yes.

3 Q. And you say all the way up to eighty hours you
4 would not -- would expect to see amphetamine in his
5 urine?

6 A. Yes, and --

7 Q. Okay. That's all I want, yes or no.

8 A. Yes.

9 Q. Let me change gears for just one second. Now,
10 you indicated earlier that you had a problem with the
11 Axis II diagnosis of antisocial personality disorder on
12 Dr. Becker and English's evaluation; is that correct?

13 A. Yes, based on the fact that they didn't follow
14 DSN-IV criteria.

15 Q. Okay. And you said that's because the, unless
16 there is another -- I thought I wrote it down, but I
17 don't see it now -- unless there is another reason for
18 it to be conduct outside this disorder, in this case
19 schizoaffective disorder, they shouldn't list an Axis
20 II personality disorder; is that correct?

21 A. Well, you almost have it right.

22 Q. I was close?

23 A. You were close. The personality disorder
24 section states that you have certain behaviors and if
25 the behaviors are better explained by another

1 psychiatric disorder, including substance use, then you
2 can't use a personality disorder diagnosis and also,
3 you can't use a personality disorder diagnosis if the
4 behavior has occurred during the course of
5 schizophrenia.

6 Q. Okay. I want to show you or hand you page
7 2931, and it appears somebody highlighted there, but
8 the last sentence deals with why Drs. Becker and
9 English found antisocial personality disorder.

10 could you read that for us.

11 A. It says: Moreover, he has demonstrated
12 adolescent misconduct, (fire starting, torture and
13 killing of an animal, truancy, etc., repeated arrests,
14 impulsivity, irresponsibility and a disregard for
15 safety, which is consistent with an adult antisocial
16 personality.

17 Q. Are they saying that some of his conduct is
18 not caused by his schizoaffective disorder?

19 A. They attributed that conduct to antisocial
20 personality disorder.

21 Q. Okay. And all of his prior arrests, and I'm
22 going to call it antisocial conduct, for lack of a
23 better term --

24 A. -- antisocial behavior, yes.

25 Q. Okay -- antisocial behavior, do you attribute

1 that to his mental illness alone?

2 A. I attribute it to his mental illness, his use
3 of substances, certainly those two contributed to it.

4 Q. And did he also contribute to it being the
5 person he is?

6 A. That's a possibility.

7 Q. Just a possibility?

8 A. Well, it's a possibility.

9 Q. I mean when he talks about committing crimes
10 to get money for drugs, that's antisocial behavior,
11 correct?

12 A. That's antisocial behavior, but again, from
13 the DSN-IV TR says that if the antisocial -- if the
14 behavior occurs during the context of someone's
15 substance abuse, you cannot make the diagnosis of
16 antisocial behavior -- antisocial disorder.

17 Q. But if you're of the opinion that his
18 antisocial behavior is caused by something other than
19 his mental illness, you can't make that diagnosis, can
20 you?

21 A. No, you can't if it occurs -- Okay. You can
22 have a mental illness -- this is where these guys got
23 into trouble with this.

24 Q. Doctor, let me ask you this:

25 THE COURT: Hold it. Wait a minute. One

1 person speaks at a time.

2 Q. (By Mr. Waldemer) Doctor --

3 MR. WALDEMER: I would object, Judge, that his
4 answer is not responsive. I asked a yes or no question
5 and he can tell me if he can't answer it yes or no or,
6 you know, I'll ask another question. I object to his
7 narrative, which is not responsive to the question.

8 MR. LUNDT: I object to him badgering the
9 witness.

10 THE COURT: I don't think it's badgering.
11 Doctor, can you answer that question, yes or no? I
12 think you did, actually.

13 THE WITNESS: If I can have the question
14 repeated, I'll do my best, your Honor.

15 Q. (By Mr. Waldemer) I certainly doubt I'll be
16 able to do that.

17 Drs. Becker and English, by that paragraph
18 that you just read, found in their opinion that certain
19 aspects of his antisocial behavior were attributable to
20 something other than his mental illness; is that
21 correct?

22 A. Yes.

23 Q. Okay. And my understanding of DSN, tell me if
24 I'm wrong, is that if it's conduct outside of the
25 diagnosed mental illness, schizophrenia, for instance,

1 that you can have antisocial personality disorder if
2 that's conduct outside of the mental illness,
3 attributable to something other than mental illness; is
4 that true or not true?

5 A. That is not true.

6 Q. Okay. Now, in looking at your notes --

7 A. Yes.

8 Q. He talked to you a little bit about that
9 night?

10 A. Correct.

11 Q. And he told you that he was hearing multiple
12 voices like being at a party?

13 A. Correct.

14 Q. I did not see in your notes what he was told
15 to do by those voices?

16 A. You're absolutely correct, I did not do that
17 because during the course of my questioning him about
18 that, he became increasingly psychotic and
19 disorganized.

20 Q. Was he able to tell you during this interview
21 you conducted on April 9th, 2007, what those voices
22 were telling him?

23 A. No.

24 Q. That's not what he told other examiners?

25 A. Correct.

1 Q. He told you that he remembered holding Casey
2 after she was dead hoping that she was alive?

3 A. In my notes I stated he remembers holding the
4 girl after she was dead hoping that she was alive.

5 Q. Did he tell you at that point that after he
6 had struck her and she was dying or dead that he
7 masturbated in that pit?

8 A. I don't have that in my notes and I don't
9 remember his telling me that.

10 Q. Do you recall Dr. Delaney Dean's testimony
11 where, in fact, he told her that as she lay dying,
12 Casey that is, that he masturbated?

13 A. I remember reading about masturbating, I don't
14 remember who he reported that to.

15 Q. You don't argue with it if that's in their
16 testimony?

17 A. I -- I don't argue with it. If it's there,
18 it's there.

19 Q. He doesn't remember burying her, covering her
20 body?

21 A. He told me that he remembered.

22 Q. Did you compare what he told Dr. Beaver with
23 what he told you?

24 A. No.

25 Q. Did you compare what he told you with what he

1 told Dr. Dean?

2 A. I don't remember right now.

3 Q. Did you compare what he told you with what he
4 told the police in his taped statement?

5 A. Yes.

6 Q. Now, Dr. Dean testified that Johnny Johnson
7 told her that when he woke up that Casey came in and
8 asked where her father was, where her dad is and he
9 told her that he must be at work and then he said,
10 maybe I can take you to see him.

11 Do you recall that in Dr. Dean's testimony?

12 A. I do not have an independent recollection
13 right now.

14 Q. Let's say then if he did tell Dr. Dean that
15 and she testified to that effect -- okay?

16 A. Okay.

17 Q. -- and that Johnny Johnson then took her to
18 the glass factory where he murdered her, he knew her
19 father didn't work at the glass factory, correct?

20 A. I don't know what he knew or didn't know about
21 where her father worked.

22 Q. Well, let me ask you this: Do you have any
23 knowledge about what the glass factory is?

24 A. I did see the video.

25 Q. You did see the video?

1 A. The video of the sheriff's deputy taking the
2 rocks off the body. So I'm familiar with it.

3 Q. Did you see the part of the video that --
4 where the detectives were walking in through the woods
5 to get to the location where her body was?

6 A. If it's contained in that same video, then I
7 saw that.

8 Q. And did you see anything that appeared to be a
9 working business of any kind in there?

10 A. No.

11 Q. Where employment could be had?

12 A. No.

13 Q. So would it be a safe bet that Johnny Johnson
14 knew that Ernie Williamson didn't work in the glass
15 factory?

16 A. Again, I don't know what he knew about Mr.
17 Williamson's employment.

18 Q. Johnny Johnson was very familiar with the
19 glass factory?

20 A. Apparently.

21 Q. I mean you refer to it in your notes as his
22 sanctuary?

23 A. Yes.

24 Q. That was your word?

25 A. Correct.

1 Q. Now, he told police that he wanted -- that
2 Casey asked him where he was going and he told her the
3 glass factory, it's fun down there, or words to that
4 effect and would you like to go and she said yes?

5 A. I'm aware that he told that to the police.

6 Q. That's different than I'll take you to your
7 father?

8 A. Correct.

9 Q. One of them is a lie?

10 A. They're not the same for sure.

11 Q. They're not the same. Okay. And if he knows
12 Casey's father is not at the glass factory and he's
13 lying to her to get her to go with him to the glass
14 factory, isn't that an indication of a plan to take her
15 away from her home?

16 A. Those are a lot of if's so -- I can't answer
17 that.

18 Q. You can't answer that. Now, you did review
19 that crime scene video?

20 A. Correct.

21 Q. And would you agree with me if what you saw in
22 the crime scene video, the glass factory is not a place
23 for a little girl?

24 A. It certainly appeared to be some old shut down
25 factory of some sort of old buildings and it wouldn't

1 be a place for kids to play necessarily, yes.

2 Q. Let me hand you a series of photographs that
3 were introduced in the underlying trial and I think
4 these are State's Exhibits 26 through 29.

5 Do those look like photographs of what you saw
6 in the video?

7 A. Generally, yes.

8 Q. Okay. There's lots of downed trees?

9 A. Yes.

10 Q. Sharp metal?

11 A. Correct.

12 Q. Broken concrete?

13 A. Yes.

14 Q. The video showed dumping areas for trash?

15 A. Yes.

16 Q. There was testimony during trial that there
17 were caves down there and sink holes?

18 A. I'm not aware of that, but these pictures
19 imply that.

20 Q. And you did read the transcript, right?

21 A. Whose transcript?

22 Q. The trial transcript, the transcript of all
23 the witnesses who testified at trial?

24 A. I can't represent that I read the entire
25 transcript of every witness. I certainly read the

1 transcript of certain witnesses.

2 Q. So, you'd agree this appears to be no place to
3 take a six-year-old girl?

4 A. It's not necessarily a place where a child
5 should be.

6 Q. And if he told her he was taking her to see
7 her father, wouldn't that be a plan to take her away
8 from her home?

9 A. If he said that.

10 Q. And that's what he told Dr. Delaney Dean?

11 A. If -- again, I can't go by his self-reporting
12 of things because of his mental illness and because of
13 his impairments.

14 Q. Doctor, hold on. Haven't you been going by
15 his reporting that he was experiencing hallucinations
16 of some sort on July 26 of 2002?

17 A. I didn't use his self-report to arrive at my
18 final diagnosis or my final opinion.

19 Q. So you don't believe him that he was
20 hallucinating on that day?

21 A. No, I didn't say that. I said I didn't take
22 -- I don't take into account his self-reporting because
23 of his history of being a notoriously unreliable
24 historian.

25 Q. Now, the police testified that he never told

1 them, even when they specifically asked him, that he
2 was hearing voices that day.

3 Do you recall that testimony?

4 A. Generally.

5 Q. That's pretty important that he denied hearing
6 voices to the police officers?

7 A. Again, if you're going to put stock into his
8 self-reporting --

9 Q. You're not accusing the police officers of
10 lying about that, are you?

11 A. I'm not accusing the police officers of lying.
12 What I'm saying is that Mr. Johnson's ability to
13 self-report is seriously in question. It's very common
14 for a psychotic person to give various versions of the
15 same event to different people when asked at different
16 times.

17 Q. Okay. So on July 26, 2002, he tells the
18 police I'm not hearing voices. You understand that to
19 be the testimony?

20 A. Yes.

21 Q. And you don't believe that testimony?

22 A. No. I said I question all of his
23 self-reporting.

24 Q. Isn't your conclusion based upon the fact that
25 he was hallucinating on the day he killed Casey

1 Williamson?

2 A. My conclusion is based on the fact that he was
3 suffering chronic psychotic illness that predated the
4 crime and postdated the crime and not based on anything
5 particularly that he reported about his symptoms on the
6 day of the crime.

7 Q. If he wasn't hallucinating on the day of the
8 crime, if he was hearing no voices on the day of the
9 crime, would he know killing this little girl was
10 wrong?

11 A. Not necessarily.

12 Q. His hallucinations -- he indicated that to Dr.
13 Delaney Dean that he masturbated over this little girl
14 after she died, correct?

15 A. I believe that's what she reported.

16 Q. Well, the hallucinations that he's reported
17 prior to this time, prior to July 26, 2002, were any of
18 those hallucinations of a sexual nature?

19 A. You mean in his entire history leading up to
20 the crime?

21 Q. Yes.

22 A. Well, I would say that I don't know the exact
23 content of all of his auditory hallucinations that
24 occurred in the ten years or so that he was psychotic
25 prior to the crime. I'm not aware of one as I'm

1 sitting here right now of any being of a sexual nature.

2 Q. So you can't point out any sexual
3 hallucination in any of the records that you recall
4 right now?

5 A. Not that I can recall at this very moment.

6 Q. Now, he told Delaney Dean and Byron English
7 that these voices he was hearing told him to expose his
8 penis to this young six-year-old girl, correct?

9 A. Correct.

10 Q. And that's the first time he ever had a sexual
11 hallucination as far as you know?

12 A. As far as I know from the record that's the
13 first time.

14 Q. Wouldn't that suggest to you that he's making
15 up that hallucination?

16 A. Sir, I've stated for the last almost two days
17 now --

18 Q. Doctor, would that suggest to you that he's
19 making it up, yes or no? I'm good with either way you
20 want to go, just yes or no?

21 A. Not necessarily.

22 Q. So that's a no, right?

23 A. Okay. Remind me the way you ask the question,
24 I want to make sure you know it expresses the way I
25 feel.

1 Q. I'm expecting you tell me if you don't
2 understand my question.

3 A. Okay. I don't understand the question.

4 Q. Now, the fact that he claims to have a
5 hallucination that tells him to show his penis to this
6 six-year-old girl, we have agreed that's the first
7 hallucination with sexual content that you can recall
8 in any of the records --

9 A. Correct.

10 Q. Okay -- the fact that that is the first time
11 he's had that hallucination or he's claimed to have
12 that hallucination, does that suggest to you that he's
13 making that hallucination up?

14 A. Not necessarily, no.

15 Q. Is it possible?

16 A. It is possible.

17 Q. Is it possible he didn't have any
18 hallucinations on July 26, 2002?

19 A. That's very unlikely.

20 Q. Now, the police testified under oath that he
21 denied having hallucinations on that date?

22 A. Correct.

23 Q. Dr. Cotton-Willigor, three days later, a
24 psychologist in the jail who interviewed him --

25 Do you recall those records?

1 A. Not offhand.

2 Q. If I told you that Dr. Cotton-Willigor
3 testified at trial and her records were admitted into
4 evidence, that showed that on July 29th, 2002, that's
5 three days after he killed Casey, that he denied
6 hearing any hallucinations around the time of the
7 crime, would you consider that accurate?

8 A. Again, another one of his self-reporting.

9 Q. The fact he told Dr. Cotton-Willigor three
10 days later that he was thinking clearly, did you
11 consider that in your rendering your opinion?

12 A. As I'm sitting here right now, sir, I don't
13 remember that exact -- that whole transcript for that
14 particular doctor so I don't want to say that
15 absolutely. If it's there in the record, I did see it
16 in the record. I don't remember right now.

17 Q. Sir, she testified at trial and her records
18 have been admitted into evidence, but you don't recall
19 them right now?

20 A. As I sit here right now, I don't have an
21 independent memory of that.

22 Q. So you don't recall that he told her that his
23 mental illness had nothing to do with the crime?

24 A. Again --

25 Q. But, let's assume for a moment that he did

1 tell her these things. You consider it a bad report?

2 A. I put that in a whole big basket of his
3 reporting stuff over the course of the ten years that
4 he's been mentally ill prior to the murder and to
5 consider that among all the other things that he said
6 that in fact weren't true.

7 Q. Now, were you aware he told his probation
8 officer, Carol Reese, that he wasn't hearing voices at
9 the time he committed the murder?

10 A. I'm not familiar with that.

11 Q. Now, to your knowledge, did he ever claim that
12 the voices told him to take her to the location he did
13 in the glass factory?

14 A. Not that I recorded in my notes.

15 Q. That was a choice he made then, was to take
16 her to the glass factory?

17 MR. LUNDT: Objection, calls for speculation.

18 THE COURT: Sustained.

19 A. I can't answer that.

20 Q. (By Mr. Waldemer) Now, you looked at the
21 testimony of the trial, right?

22 A. Yes.

23 Q. And you looked at his or listened to his taped
24 statement or did you -- were you provided with the
25 taped statements?

1 A. I looked at the transcripts of the statements.

2 Q. So you're aware of the fact that he took her
3 more than a mile away from her home?

4 A. I'm aware that the glass factory is somewhat
5 removed from where he was staying, yes.

6 Q. And you saw that he took her down some back
7 alleys to get there?

8 A. I don't know the route.

9 Q. Would the route be important?

10 A. Well, potentially, but I do know that he
11 walked across an area and was seen by witnesses, he was
12 out in the open.

13 Q. He had to cross a main road; is that your
14 understanding?

15 A. I don't know about the road, but I know there
16 was a person in an auto repair facility that had seen
17 him carrying a little girl on his back.

18 Q. Doctor, I want to hand you what I just marked
19 as State's Exhibit C.

20 Have you seen that before.

21 A. I don't remember if I've seen this before.

22 Q. I'll represent to you that that's an aerial
23 photograph that was admitted into evidence in Mr.
24 Johnson's trial, I believe, as State's Exhibit 21.

25 Do you see where on that exhibit it's marked

1 810 Benton Avenue?

2 A. Yes.

3 Q. And is it your understanding that 810 Benton
4 Avenue is where Casey was taken from?

5 A. Yes.

6 MR. LUNDT: Your Honor, just for the record
7 I'd like the record to reflect that the defense does
8 not have the State's exhibits, that -- even though that
9 they were part of the record, that would be not
10 something that the doctor would have reviewed.

11 THE COURT: That's not the issue, whether he
12 reviewed them or not. I thought your objection was you
13 didn't have the records.

14 MR. LUNDT: We don't have the State's
15 exhibits.

16 THE COURT: I understand but these are
17 exhibits that were admitted at the trial, they are part
18 of the record.

19 MR. LUNDT: They are part of the record. I
20 will agree with that.

21 MR. WALDEMER: I'll state for the record I'm
22 aware of the fact all of the photographs in State's
23 Exhibit were supplied to trial counsel Beimdiek and
24 Kerry, including all the photographs and they purchased
25 their own set and I know that would be in the trial

1 file, which is my understanding is in the possession of
2 Mr. Lundt and Ms. Hamilton.

3 THE COURT: Very well.

4 Q. (By Mr. Waldemer) Doctor, for the purposes of
5 this proceeding though, you see where it's also marked
6 as 615 St. Louis Avenue?

7 A. Yes.

8 Q. And then you see the big grassy area down here
9 to the left?

10 A. Correct.

11 Q. And is it your understanding that this grassy
12 area or what appears to the forested area is the glass
13 factory?

14 A. That's my understanding.

15 Q. And the 615 St. Louis Avenue, is it your
16 understanding, that's where these witnesses observed
17 him carrying Casey?

18 A. I don't know that, sir, certainly could be.

19 Q. Doctor, do you recall in the statement the
20 defendant gave to the police, he talked about going
21 down back alleys and then behind the store and then
22 going across St. Louis Avenue?

23 A. I don't recall exactly what he told the police
24 on that.

25 Q. If he's going down back alleys and staying

1 behind the store, does that indicate he's trying to
2 conceal what he's doing?

3 A. Not necessarily.

4 Q. But it can?

5 A. It could.

6 Q. And if he crossed one main street and one main
7 street only, does that indicate that he's not trying to
8 conceal himself?

9 A. If he crossed one main street only, and one
10 main street only, does that imply he's not trying to
11 conceal himself?

12 Q. Do you feel that's trying to be out in the
13 open with what he's doing?

14 A. It can go both ways.

15 Q. Okay. He has to cross St. Louis Avenue in
16 order to get to his destination, the glass factory?

17 A. Correct.

18 Q. Now, you looked at the video of the glass
19 factory and I think we've already talked about the
20 rugged nature of that area?

21 A. Correct.

22 Q. And you're aware he took her into a -- what he
23 referred to as a silo, but in reality it was an old
24 glass factory?

25 A. Yes.

1 Q. From your review of the video, you do
2 recognize he doesn't take her to the first silo or
3 oven?

4 A. I don't know that.

5 Q. Do you recall the testimony that they passed
6 at least three of these ovens before they got to the
7 one where he said that they walked into where she was
8 found?

9 A. I guess. I don't know exactly that testimony.

10 Q. It's your understanding from his statement
11 that he chose the pit that they went into?

12 A. I believe so.

13 Q. You saw nothing in there where he said that
14 the voices told him to take her into the glass factory,
15 right?

16 A. During my interview with him?

17 Q. Yes.

18 A. I didn't record that he told me that, right.

19 Q. The voices didn't tell him which pit to take
20 her into?

21 A. Not based on my interview because when I was
22 asking him about the crime itself, he became
23 exceedingly psychotic and disorganized and was unable
24 to tell me much about it.

25 Q. Let me hand you State trial Exhibit 22. Have

1 you seen that photograph before?

2 A. No.

3 Q. I'll represent to you that that's a photograph
4 of the glass factory after some of the wooded area had
5 been taken down.

6 Does it appear to be that area?

7 A. Yes.

8 Q. You see these holes in the ground?

9 A. Correct.

10 Q. And they're multiple holes?

11 A. Correct.

12 Q. And I'll represent to you that he entered the
13 woods, according to his statement, on the far right
14 side of the picture and that he brought her all the way
15 down to the pit in the center of the picture.

16 A. Okay.

17 Q. That's not the first one of those pits that he
18 went to?

19 A. Correct.

20 Q. And it's your understanding from what he told
21 the police that he chose which pit they would go into?

22 A. Yes.

23 Q. And he chose the one, by that photograph,
24 that's the one that's one of the farthest ones away
25 from the entrance to the woods?

1 A. It was certainly not at entrance point but
2 there seem to be pits even further away.

3 Q. And the further you go into the woods, the
4 less likely people are going to be able to hear your
5 voice?

6 A. See, I can't tell that from that picture
7 because things have been cleared out.

8 Q. How about the picture before they were cleared
9 out when it was just about 60 acres of woods?

10 A. And the question?

11 Q. Would you agree the pit he chose to put her
12 into was far enough away that people wouldn't hear
13 their voices?

14 A. It certainly was not close to that open area.

15 Q. It's less likely that someone could hear her
16 scream where he took her as opposed to the ones at the
17 opening of the woods?

18 A. Yes.

19 Q. And he took her to that one and he helped her
20 in there; is that your understanding of his statement?

21 A. Yes.

22 Q. She ended up inside that pit?

23 A. Correct.

24 Q. Now, did you see the autopsy?

25 A. I did not.

1 Q. If I told you that Casey was three feet eight
2 inches tall, would you quarrel with that?

3 A. No.

4 Q. A little six-year-old, weight about 43 pounds?

5 A. Okay.

6 Q. How big is the defendant?

7 A. The defendant is about 5'7, 5'8.

8 Q. Now, were you aware that the defendant chose
9 the pit to put her into that had an entrance that was
10 nearly four feet off the ground?

11 I'll show you what was marked state's trial
12 Exhibit 31.

13 Do you see that photograph?

14 A. Yes.

15 Q. Does that appear to be the entrance that you
16 saw in the crime scene video?

17 A. It could be, sir.

18 Q. Okay. If I represent to you that the
19 testimony at trial was that that was the entrance to
20 the oven that he took her into, would us disagree?

21 A. Not necessarily.

22 Q. The testimony at trial showed that entrance
23 was three feet eleven inches high off the ground, would
24 you quarrel with that.

25 A. I really can't tell heights from this picture

1 but I really can't quarrel with it.

2 Q. If the crime scene detective that went out
3 there and measured that entrance, told -- testified
4 that that's what it was, you wouldn't quarrel with it?

5 A. No.

6 Q. And Casey, being three foot, eight inches
7 tall, would it be a fair assessment, seeing that she
8 could not climb out of that hole as it was three inches
9 taller than the top of her head --

10 MR. LUNDT: I'm going to object, that's based
11 on speculation here.

12 THE COURT: Overruled. If he can't answer it,
13 he can say so.

14 A. I don't know, sir.

15 Q. (By Mr. Waldemer) The glass factory, the
16 testimony at trial was that Casey had never been to the
17 glass factory; is that your understanding?

18 A. Yes.

19 Q. But that Johnny Johnson was very familiar with
20 it and he chose the one oven that was fully intact that
21 she couldn't get out of; did you understand that to be
22 the testimony?

23 A. I understand that it was -- again, taking your
24 word that that's the oven where the crime scene
25 occurred then -- your question was?

1 Q. The one that he took her into was the one she
2 couldn't get out of?

3 A. I don't know that for a fact.

4 Q. But you understand the testimony to be that he
5 chose where he was -- was going to take her that was
6 his statement to the police, he picked out the oven,
7 not her?

8 A. That's what the statement says, yes.

9 Q. Does that indicate to you that this man would
10 pick the one oven in this area that this little girl
11 couldn't get out of, does it indicate to you a certain
12 planning of what he was going to do when he got inside
13 that oven?

14 A. Not necessarily.

15 Q. The fact that he took her to an oven where her
16 screams couldn't be heard outside, does that indicate
17 some planning to you?

18 A. Not necessarily.

19 Q. Does that indicate to you, Doctor, that he
20 didn't want people to know where he was?

21 A. Not necessarily.

22 Q. Does that indicate to you, Doctor, that he
23 didn't want people to hear her screams?

24 A. Not necessarily.

25 Q. If that's why he did that, Doctor, would that

1 indicate that he knew what he was doing to this little
2 girl was wrong?

3 A. Again, the whole series of if's that you
4 provided and if he weren't mentally ill, then I might
5 agree with you, but there's too many if's that --

6 Q. Well, let's do this, Doctor: Do you recall
7 his statement to the Detective Newsham?

8 A. I don't have it memorized.

9 Q. That was the second statement taken where he
10 indicated to Detective Newsham, among other things, if
11 he wanted to have sex with this little girl, vaginal
12 sex, that he'd been watching her for three days and
13 that he knew that he was going to take her there and
14 try to have sex with her and that he was going to have
15 to kill her?

16 Do you recall that statement?

17 A. I recall that being reported to someone.

18 Q. Do you recall reading a transcript to that
19 effect?

20 A. Or a report, yes.

21 Q. Now, Doctor, if that statement, which makes no
22 mention of hearing voices or anything else, if that
23 statement is true, is he responsible for his crime?

24 A. Not necessarily.

25 Q. Now --

1 THE COURT: Mr. Waldemer, would this be a good
2 time to take a break here?

3 MR. WALDEMER: Yes.

4 THE COURT: We'll take about a fifteen-minute
5 break here.

6 (Whereupon a recess was taken. Proceedings
7 continued as follows:)

8 THE COURT: You may proceed, Mr. Waldemer.

9 MR. WALDEMER: Thank you.

10 Q. Doctor, is it fair that -- to say that Johnny
11 Johnson, in your meeting with him on April 2, 2007, was
12 unable to give specific details about what his thought
13 process was on July 26th of 2002?

14 A. He was unable to give me details, yes, because
15 of his degree of psychosis at that date.

16 Q. And so your conclusions as to his mental state
17 to that date are derived from his statements to other
18 examiners?

19 A. No.

20 Q. Are they derived from his statements to the
21 police department?

22 A. No.

23 Q. Are they derived from his actions on that
24 date?

25 A. No.

1 Q. Let's talk a little bit more about his actions
2 then. If he tricked Casey Williamson into going with
3 him by telling her that he was taking her to see his
4 (sic) father, would that be an indication of he knew
5 what he was about to do was wrong?

6 A. Not necessarily.

7 Q. If he took Casey Williamson to an area away
8 from her family without their knowledge, would that be
9 an indication that he knew it was wrong?

10 A. Not necessarily.

11 Q. If he took her into a wooded area where
12 outside individuals could not hear her screams from
13 what he was going to do to her, would that be an
14 indication he knew what he was doing was wrong?

15 A. Not necessarily.

16 Q. If he took her into the only pit in that area
17 where it was absolutely impossible for her to get away
18 from him, would that be an indication that he knew what
19 he was doing was wrong?

20 A. Not necessarily.

21 Q. If he's lying to his other examiners about
22 having hallucinations on that date, is he responsible
23 for his crime?

24 A. If he's lying about his hallucinations?

25 Q. If he was experiencing no hallucinations on

1 that date, is he responsible for his crime?

2 A. And I'll answer that by saying, this is a big
3 if, if he weren't experiencing hallucinations on that
4 date, he still would be suffering from a psychotic
5 illness manifested by other psychotic symptoms, which
6 would affect his ability on that date. So, the answer
7 is --

8 Q. If he was experiencing no psychotic symptoms
9 whatsoever on that date, is he responsible for his
10 conduct?

11 A. I can't answer that because of the nature of
12 his illness. He has chronic illness so he's
13 chronically psychotic. So you're asking me something
14 that is not based on reality.

15 Q. Are you saying that, in your opinion, he is
16 psychotic each and every day?

17 A. Correct.

18 Q. So on that dates where other individuals who
19 indicated that his thinking appeared to be completely
20 normal, in your opinion he was psychotic on that date?

21 A. Correct.

22 Q. It's your opinion that he's psychotic on each
23 and every day?

24 A. Correct.

25 Q. Any crime he would commit, he would not be

1 responsible for?

2 A. Not necessarily.

3 Q. If he wanted to have sex with this little
4 girl, if that's what he wanted to do, was to have sex
5 with her and then kill her, that was his intention, he
6 is responsible for his crime?

7 A. Too many if's in that statement for me to
8 answer.

9 Q. If he wanted to have sex with this little
10 girl, would he be responsible for the crime of forcible
11 rape?

12 A. Not necessarily.

13 Q. If he wanted to murder this girl to prevent
14 her from telling what he had done, is he responsible
15 for his crime?

16 A. Again, not necessarily.

17 Q. If he murdered her because he did not want her
18 to turn him into the police, does that not indicate
19 that he knew what he was doing was wrong?

20 A. Not necessarily.

21 Q. Can schizophrenics lie?

22 A. I've never seen scientific literature that
23 talks about that one particular question so it would
24 just be speculation on my part.

25 Q. Now, he told the police and Dr. Dean that

1 while in this pit or oven that he exposed himself to
2 Casey Williamson.

3 Is that your understanding of the testimony?

4 A. That's my understanding.

5 Q. That he asked to see her vagina; is that your
6 understanding?

7 A. Of the testimony, yes.

8 Q. And that she told him, no?

9 A. Yes, that's what I understand.

10 Q. And that at that time he ripped her underpants
11 off?

12 A. I understand that's what the testimony was.

13 Q. That she screamed and cried?

14 A. Yes.

15 Q. And that she told him that she was going to
16 tell her parents?

17 A. I understand that's what the testimony was,
18 yes.

19 Q. And it was at that time when she told him that
20 she was going to tell her parents what he'd done that
21 he hit her in the head with a brick.

22 Is that your understanding?

23 A. That's my understanding of the testimony, yes.

24 Q. Okay. Doctor, is it not an indication that he
25 knew what he had done was wrong that at the very moment

1 she said she was going to tell on him he tried to kill
2 her?

3 A. Not necessarily.

4 Q. He will only be afraid of being caught if he
5 realized what he did was wrong.

6 would you agree with that?

7 A. Say that again, please.

8 Q. If he didn't think he had done anything wrong,
9 why would he be concerned that she was going to tell
10 her parents?

11 A. It's hard understanding what a psychotic
12 person was thinking at that very moment.

13 Q. Is it possible that he didn't want to go back
14 to jail?

15 A. That's a possibility, certainly.

16 Q. Is it possible that he knew he would go to
17 jail for exposing himself to this little girl?

18 A. That's a possibility.

19 Q. Is it possible he knew he would go to jail if
20 he killed this little girl?

21 A. Again, that's a possibility.

22 Q. Now, he told Dr. Dean that after he struck
23 this little girl in the head with a brick that he knew
24 it was wrong at that time.

25 Do you recall her testimony to that fact?

1 A. I actually don't.

2 Q. Okay. He indicated to Dr. Dean that he began
3 to cry in the pit because he knew what he had done was
4 wrong.

5 Do you recall that testimony?

6 A. I understand that he began to cry.

7 Q. Don't you believe that his crying in the pit
8 is an indication that he knows what he did was wrong?

9 A. Not necessarily.

10 Q. Don't you believe that that is significant to
11 indicate that he believed he was in trouble for what he
12 had just done?

13 A. Not necessarily.

14 Q. He did not run and get this little girl help,
15 did he?

16 A. Not that I'm aware of.

17 Q. He was capable of doing so?

18 A. He was physically capable, yes.

19 Q. But he did not do so?

20 A. That's my understanding.

21 Q. He did not render first aid to her, did he?

22 A. That I don't know.

23 Q. But he was capable of doing so?

24 A. Physically capable, yes.

25 Q. He could have called 911, right?

1 A. Theoretically.

2 Q. That's what a department record said he was

3 capable of doing?

4 A. They did mention he knew what 911 was.

5 Q. But he didn't do that?

6 A. No, he did not.

7 Q. Instead he masturbated over her?

8 A. Again, that's in the testimony.

9 Q. Well, you weren't in the pit so you have no

10 way of disputing that?

11 A. I have no way of confirming it either.

12 Q. What he did do was he made sure she was dead,

13 correct?

14 A. How do you mean?

15 Q. He continued to strike her with a rock until

16 she heaved her last breath, was what he said in his

17 statement to the police?

18 A. I don't remember that exact phrase, but I'm

19 aware that she died from being hit with a rock.

20 Q. You don't recall him saying in his statement

21 to the police that he watched her take her last breath?

22 A. I don't remember that exact phrase.

23 Q. You don't recall the medical examiner

24 describing how that would be accurate in how the little

25 girl died?

1 A. I'm not challenging that. I just don't
2 remember that.

3 Q. And so what he did, rather than get her help,
4 is he covered her body with rocks, and stones and dirt?

5 A. Correct.

6 Q. The fact that he covered up her body, does
7 that indicate to you that he didn't want her body to be
8 found?

9 A. Again, not necessarily.

10 Q. Did it indicate to you that he knew what he
11 had done was wrong and he wanted to conceal what he had
12 done?

13 A. Not necessarily.

14 Q. Did covering up that body indicate to you that
15 he wanted to conceal that body?

16 A. I don't know what his exact thought process
17 was, why he decided to cover that body.

18 Q. You did see the testimony from Dr. Dean that
19 he did say he covered that body so he wouldn't get
20 caught.

21 Did you see that testimony?

22 A. I saw her testimony but I didn't memorize it,
23 sir, so I -- I don't know.

24 Q. Well, these are facts which came out in the
25 testimony that he was concealing his offense, correct?

1 A. That I don't know.

2 Q. Well, did you see -- you said you saw the
3 crime scene video?

4 A. Correct.

5 Q. In that video he covered the body up?

6 A. Correct.

7 Q. And you saw the rocks being taken off?

8 A. Correct.

9 Q. So I can show you all these photographs and
10 you've basically seen the crime scene?

11 A. Yes.

12 Q. Okay. He did cover up this little girl?

13 A. Correct.

14 Q. And the only thing sticking out was a couple
15 of toes?

16 A. Correct.

17 Q. And he threw her underwear back in a tunnel
18 under some rocks?

19 A. I understand that he threw it away somewhere.

20 Q. Okay. I show you what was marked at trial as
21 Exhibit 38 and 37.

22 Did you see the underwear in those
23 photographs?

24 A. Are you referring to this (indicating) over
25 here, sir?

1 Q. Yes. Number nine and there?

2 A. Okay.

3 Q. Do you recognize those photographs of being --
4 of the underwear that you saw in the crime scene video?

5 A. It very well likely is.

6 Q. The fact that he would throw the underwear up
7 one of these little caves several feet and cover it
8 with rocks, does that indicate that he knew what he had
9 done was wrong?

10 A. Not necessarily.

11 Q. Does that indicate that he's attempting to
12 cover up his crime?

13 A. Not necessarily.

14 Q. When a person conceals evidence and gets rid
15 of evidence, is -- is that an indication that he
16 appreciates what they've done is wrong?

17 A. Not if you're psychotic.

18 Q. Does it indicate to you that they believe that
19 they're going to be in trouble or will be punished if
20 what they've done is found out?

21 A. Again, not if -- if the individual is
22 psychotic.

23 Q. There might be a reason why someone would
24 destroy evidence or cover that evidence up?

25 A. Yes.

1 Q. Is that what you're telling me?
2 A. Might be some psychotic reason.
3 Q. It is possible because they knew what they did
4 was wrong?
5 A. It's a possibility.
6 Q. It's certainly a possibility that they knew
7 what they'd done was wrong so they attempted to hide
8 what they've done?
9 A. That's a possibility.
10 Q. So after he covered her up, did he run for
11 help at that point?
12 A. Not that I'm aware of.
13 Q. But he was able to?
14 A. Yes.
15 Q. And he chose not to?
16 A. He didn't.
17 Q. So quite clearly he chose not to?
18 A. Correct.
19 Q. As a matter of fact, he went the opposite
20 direction in the woods from back home?
21 A. I don't know which direction he took from the
22 woods.
23 Q. Did you hear or read the testimony that he
24 went back through the woods down a path that he knew to
25 the Meramec River?

1 A. I understood that he went to the river. I'm
2 not familiar with what path or if he knew the path or
3 who knew the path.

4 Q. So you don't recall the part of going down the
5 path he knew in the opposite direction?

6 A. I don't remember.

7 Q. Okay. So what he did is he went down to the
8 river and he washed himself off?

9 A. Correct.

10 Q. He washed the blood off?

11 A. He washed himself.

12 Q. Do you recall his statement where he said I
13 washed the blood off?

14 A. Yes.

15 Q. Do you recall the testimony about the
16 statement that he said he washed Casey Williamson's
17 blood off him?

18 A. I don't remember the testimony of that
19 statement. I remember his reporting that.

20 Q. Would you agree with me washing blood off is
21 concealing evidence?

22 A. It certainly can be construed that way.
23 Again, we don't know what a psychotic individual was
24 thinking at that time.

25 Q. We don't know that he was psychotic that day?

1 A. We do.

2 Q. Do we have objective evidence that he was
3 psychotic?

4 A. We have objective evidence that he was
5 psychotic for years prior to that and following that.

6 Q. And the objective evidence you are referring
7 to is all the volumes there in front of you, his
8 medical records and history?

9 A. Correct.

10 Q. Okay. Now, all those volumes that are there,
11 those are based on him -- him saying I'm experiencing
12 these symptoms, these hallucinations?

13 A. No.

14 MR. LUNDT: I'm going to object. This has
15 been asked and answered.

16 THE COURT: Overruled.

17 Q. (By Mr. Waldemer) Doctor, is there any way to
18 tell if an individual is having a hallucination?

19 A. Yes.

20 Q. Other than telling you?

21 A. Yes.

22 Q. What?

23 A. By observing them.

24 Q. By observing them. Can't they fake
25 hallucinations?

1 A. Certainly could.

2 Q. Okay. So it's possible they can fake them?

3 A. It's possible.

4 Q. Okay. And these fake hallucinations have been
5 documented in his records before?

6 A. Not that I'm aware of.

7 Q. You don't recall in all the times that I've
8 read it to you this morning where they thought he was
9 malingering?

10 A. There was times about malingering but it
11 didn't -- it wasn't clear to me that he was faking
12 hallucinations.

13 Q. It's possible that he's faking hallucinations?

14 A. Anything is possible.

15 Q. Though, when he washed Casey's blood off of
16 him, does that show a conscious sense of guilt?

17 A. Not necessarily.

18 Q. Does that show he knows it was wrong?

19 A. No.

20 Q. Destroying evidence of the crime he just
21 committed doesn't show he knows it was wrong?

22 A. No, not necessarily.

23 MR. LUNDT: I object. This has all been asked
24 and answered.

25 THE COURT: Overruled.

1 Q. (By Mr. Waldemer) Now, you saw the testimony
2 that despite him washing himself and his clothes off,
3 Casey's DNA was found in blood on his shirt, did you
4 not?

5 A. Correct.

6 Q. But he tried to wash that off, right?

7 A. Well, he went to the river to wash off.

8 Q. He said to wash the blood?

9 A. Yes.

10 Q. That's what he said, that was his intent, to
11 wash the blood off?

12 A. That's what I understand he reported.

13 Q. Okay. Is that a psychotic thought, I'm going
14 to wash the blood off this little girl, is that a
15 psychotic thought?

16 A. It could be based in psychotic thought, yes.

17 Q. Could it be based in reality too?

18 A. It certainly could.

19 Q. He seemed to recognize that it was Casey
20 Williamson's blood, did he not?

21 A. Yes.

22 Q. He knew he had just killed Casey Williamson?

23 A. It's unclear what he knew at that time.

24 Q. He told Dr. Dean, Dr. Becker and Dr. English
25 that he knew that he had killed her?

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A. Yes.

Q. Do you recall that?

A. Yes.

Q. And you don't believe it?

A. No. I did say it's unclear what he was thinking at that time.

Q. But he told them that he was thinking I just just killed this little girl?

A. Okay and it didn't change my response.

Q. And he told them that he knew it was wrong?

A. I don't know that.

Q. You don't remember reading that?

A. I don't remember that, yes.

Q. Okay. But you haven't committed all this transcript to memory?

A. No, sir, I haven't.

Q. That would be important if that was in there, wouldn't it?

A. Again, it would be one more self-reporting incident of his overall career of -- by this time it was twelve years or ten years of self-reported incidents.

Q. Sir, I'm not talking about self-reporting incidents. I'm talking about the murder of Casey Williamson, did he tell Dr. Dean and did she testify to

1 the fact that he knew it was wrong after he had hit her
2 in the head?

3 A. I answered that by saying I don't remember
4 that part of the testimony.

5 Q. You don't remember that. If that's what she
6 testified to, isn't that important?

7 A. That?

8 Q. That he knew he was there in the pit with a
9 dying girl that he'd done something wrong?

10 A. It would be important to look at certainly,
11 but in his particular example, in his particular
12 context, he has a history of being very unreliable in
13 his reporting his own experiences. That's all that I'm
14 saying about that.

15 Q. Okay. So you don't believe him when he says I
16 know it was wrong?

17 A. I question that.

18 MR. LUNDT: Judge, that's been asked and
19 answered. Now, we've gone on like five times.

20 THE COURT: Overruled.

21 Q. (By Mr. Waldemer) Do you remember the
22 question?

23 A. No.

24 Q. You do not believe him when he says I knew it
25 was wrong?

1 A. Not necessarily.

2 Q. It's possible he knew it was wrong?

3 A. I said anything is possible.

4 Q. Okay. But you just stated, you didn't say no,
5 you said not necessarily. By that are you saying it's
6 possible he knew what he had done was wrong?

7 A. Again, not necessarily.

8 Q. I'm having a hard time, Doctor, with not
9 necessarily. Is it possible he knew what he'd done was
10 wrong?

11 A. And my answer remains, not necessarily.

12 Q. So it's impossible, in your opinion, that he
13 knew what he had done was wrong?

14 A. Sir, I -- no one can understand the exact
15 thought processes that were going on with him at that
16 time. So to say it's impossible or not impossible,
17 it's -- I'm unable to answer that.

18 Q. Well, you've said, in your opinion, you don't
19 think he knew what he had done was wrong?

20 A. Correct.

21 Q. Have you, in fact, answered that question,
22 then in your opinion?

23 A. You asked me a slightly different question.

24 Q. My question is: Is it possible he knew
25 abducting, sexually assaulting and killing Casey

1 Williamson was wrong; is that possible?

2 A. No.

3 Q. Okay. Not necessarily, no, right?

4 A. Yes.

5 Q. Okay. Now, looking at State's Exhibit C, you
6 see the river at the bottom of the picture?

7 A. Yes.

8 Q. And is it your understanding that's where he
9 went to wash himself off?

10 A. Correct.

11 Q. What he said was washing the blood of Casey
12 Williamson off of him?

13 A. Yes.

14 Q. And you understand the route that he took to
15 get down there based on that exhibit?

16 A. Generally.

17 Q. Okay. But what he told the police were back
18 alleys and side streets, right?

19 A. Yes.

20 Q. Do you recall the testimony that his route
21 back to where he was arrested didn't go back the same
22 way?

23 A. I think you mentioned that to me earlier.
24 Again, I'm not aware of the exact route that he took.

25 Q. Okay. If the testimony was that he took this

1 river road at the bottom, going off the photograph and
2 came all the way around a different direction, do you
3 recall that testimony?

4 A. No.

5 Q. Well, if the testimony was that he took a
6 different route back, can that be an indication that he
7 wanted to distance himself from the murder of Casey
8 Williamson?

9 A. Not necessarily.

10 Q. Could it? Is it possible that he wanted to
11 come back a different way so not to cast suspicion on
12 himself?

13 A. Again I say, not necessarily.

14 Q. Okay. Do you recall the testimony that he
15 came upon a couple of young girls, one of them named
16 Angel, who asked him had he seen Casey.

17 Do you recall that testimony?

18 A. I do not recall that testimony.

19 Q. Let's assume that that was the testimony and
20 that he lied to them and said I haven't seen Casey.
21 Would that lie to these little girls inquiring about
22 Casey be an indication that he knew what he had done
23 was wrong?

24 A. Not necessarily.

25 Q. He didn't tell them I just killed her, she's

1 in the glass factory?

2 A. Correct.

3 Q. He had that knowledge though that he'd just
4 killed her and that she was in the glass factory -- at
5 the time he ran into these little girls coming back
6 from the river where he had been washing off the blood,
7 did he know that he killed Casey Williamson?

8 A. That's unclear when exactly he knew about
9 that.

10 Q. You do realize he told the police in the
11 statement he knew Casey was dead?

12 A. Yes.

13 Q. And that he covered her up because he knew she
14 was dead?

15 A. Yes.

16 Q. You don't think he knew when he talked to
17 these little girls that she was dead?

18 A. No, I think -- to answer your question, did he
19 -- necessarily knew that, I can't be sure of what he
20 absolutely knew.

21 Q. He just covered her up a few minutes before.
22 Are you saying he could have forgotten then between the
23 going to the river and washing the blood off and
24 meeting these little girls on his way back to get his
25 cigarettes and soda, that he could have forgotten that

1 he had killed her?

2 A. If I remembered your question, you said, did
3 he know that he killed her and he reported that he knew
4 she was dead and that he covered her up. Again, I
5 don't know exactly what he knew about her death at that
6 moment when he answered those girls that question.

7 Q. well, he -- he later told the police that he
8 knew she was dead, didn't he?

9 A. Correct.

10 Q. And he told Dr. Dean that he knew she was
11 dead?

12 A. Correct.

13 Q. And he told Dr. English and Dr. Becker he knew
14 she was dead?

15 A. Correct.

16 Q. Now, are doubting that he knew she was dead?

17 A. No. You didn't ask if he knew she was dead,
18 you asked if he knew he'd killed her.

19 Q. Oh, that's different. Did he know she was
20 dead when he lied to the little girl?

21 A. That based on the testimony and based on the
22 fact that he covered her up, yes.

23 Q. And do you recall him saying that he hit her
24 repeatedly with bricks and rocks, do you recall that
25 testimony?

1 A. Yes.

2 Q. And his statement that he had done so?

3 A. Yes.

4 Q. And that he knew he watched her die?

5 A. Yes.

6 Q. Okay. So did he know that he killed her?

7 A. Again, sir, I don't know what exactly he knew.

8 From what you all described, it certainly can be an

9 assumption that he knew that he had killed this girl,

10 that he had been involved in ending her life.

11 Q. Okay. So when he came upon these little girls

12 on the street and they inquired about their friend

13 Casey, he lied to them, right? He said, I don't know

14 where she is, right?

15 A. He certainly knew he had just left where he

16 had buried her, yes.

17 Q. Okay. So he lied to her, he lied to Angel

18 telling her I don't know where Casey is?

19 A. Correct.

20 Q. I haven't seen her is what he told her?

21 A. Correct.

22 Q. The fact that he lied to this little girl,

23 doesn't that indicate he knew what he had done was

24 wrong?

25 A. Not necessarily.

1 Q. Doesn't that indicate that he didn't want to
2 be caught?

3 A. Not necessarily.

4 Q. Doesn't withholding information to Angel
5 indicate he didn't want Casey' body to be found?

6 A. Not necessarily.

7 Q. He then went with the police right after that,
8 did he not? They stopped him on the street?

9 A. Yes.

10 Q. And they took him back to the police
11 substation?

12 A. Correct.

13 Q. It was about 8:15 in the morning, 8:30.
14 Do you recall that?

15 A. Yes.

16 Q. And at that time they advised him of his
17 rights and he denied knowing anything about Casey's
18 disappearance, correct?

19 A. Correct.

20 Q. And that was a lie?

21 A. It wasn't the truth, yes.

22 Q. An untruth? It was a lie, right, he knew
23 where she was?

24 A. Yes.

25 Q. He knew he'd taken her out of the house,

1 right?

2 A. Again, sir, I don't know exactly what he knew
3 or how he understood it due to his mental illness.

4 Okay.

5 Q. He later told the police that he'd killed her,
6 right?

7 A. Yes.

8 Q. And he told the police that what he told them
9 earlier was not true?

10 A. Correct.

11 Q. So at least at that time he knew he lied to
12 the police?

13 A. Correct.

14 Q. Isn't lying to the police an indication of
15 consciousness of guilt?

16 A. Not necessarily.

17 Q. Isn't lying to the police an indication that
18 you know what you did was wrong?

19 A. Not necessarily.

20 Q. Isn't lying to the police an indication that
21 you know if you tell them the truth you're going to be
22 in trouble?

23 A. Not necessarily.

24 Q. Now, in his statement to the police he said he
25 had gotten up and gone to the corner to wait to go to

1 work.

2 Do you recall that?

3 A. Yes.

4 Q. And isn't it a fact that he -- he hadn't
5 worked in months?

6 A. My understanding is he had sort of a part-time
7 thing at a country club where he was involved in
8 maintenance of some sort.

9 Q. Do you recall when that was?

10 A. It was in the time leading up to the murder.

11 Q. Leading up to the murder; are you sure of
12 that?

13 A. That was my understanding.

14 Q. Was he supposed to go to the country club that
15 day?

16 A. I don't know.

17 Q. Was he supposed to go to work that day?

18 A. I don't know.

19 Q. If he wasn't supposed to go to work that day
20 and told the police he was, was that a lie?

21 A. Yes.

22 Q. And in lying to police is he attempting to
23 cover up his crime?

24 A. Not necessarily.

25 Q. Isn't that an indication that he knew what he

1 was doing was wrong?

2 A. Not necessarily.

3 Q. That he knew that he had committed a crime
4 that was wrong?

5 A. Not necessarily.

6 Q. So he also told the police that he'd gone down
7 to the corner store.

8 Do you recall that?

9 A. No.

10 Q. If he told the police that he'd gone down to
11 the corner store and that wasn't true, was that a lie?

12 A. Yes.

13 Q. And was that his way of covering up where he
14 had actually been?

15 A. I don't know what his motivation was for
16 telling that to the police.

17 Q. Would that be an indication he knew what he
18 had done to Casey Williamson was wrong?

19 A. Not necessarily.

20 Q. But it is your testimony today that you
21 believe that he was going to the St. Louis Country Club
22 to go to work?

23 A. No, that wasn't my testimony today. My
24 testimony was that you asked me: He hadn't worked for
25 months and I said: My understanding was that he had

1 worked at this country club in maintenance through a
2 relative or something like that and that he had been
3 working leading up to the time of the murder.

4 Q. Doctor, I'm not going to mark this, but I'll
5 identify it for the record as a report given to me by
6 the trial attorneys prior to the trial of 2005 in a
7 file labeled St. Louis Country Club employment records,
8 16 pages and I'd ask if you'd look at that for me, if
9 you could.

10 A. Okay.

11 Q. Okay. Still think he was working at St. Louis
12 country club in 2002?

13 A. No, he wasn't working in 2002, based on this
14 (indicating).

15 Q. He worked for a couple of weeks in 1998,
16 according to those records?

17 A. He worked in '99, absolutely.

18 Q. And that was for just a couple of weeks?

19 A. Yes.

20 Q. Okay. So he wasn't working at St. Louis
21 country club in 2001?

22 A. Correct.

23 Q. So he didn't have to go to work that day?

24 A. Correct.

25 Q. And so when he told the police that he had

1 gone down to wait for his boss to pick him up for work
2 that was a lie?

3 A. Correct.

4 Q. In fact, he's lying where he was, doesn't that
5 indicate that he knows what he had done was wrong?

6 A. Not necessarily.

7 Q. Doesn't that indicate that he knows if he told
8 them I wasn't going to work, I was down in the glass
9 factory killing Casey Williamson, that he was wrong?

10 A. Not necessarily.

11 Q. Now, the police talked to him from about 8:30
12 to about 2 o'clock, correct?

13 A. I know the police talked to him for a pretty
14 long time.

15 Q. Okay. And it wasn't until about 2 o'clock in
16 the afternoon that he admitted that he, in fact, had
17 killed Casey?

18 A. I don't know exactly what time he admitted
19 that.

20 Q. If the testimony of Detective Paul Neske was
21 it was about 2 o'clock in the afternoon, would you
22 quarrel with that?

23 A. No.

24 Q. So he's there from 8:30, 9:30, 10:30, 11:30,
25 12:30, 1:30, five and a half hours he denied knowing

1 anything about Casey Williamson's disappearance; is
2 that your understanding?

3 A. Correct.

4 Q. And five hours of denials of what he knew he
5 had done, isn't that an indication that he knew what he
6 had done was wrong?

7 A. Not necessarily.

8 Q. If he didn't think it was wrong, wouldn't he
9 have just told them right where Casey was?

10 A. Not necessarily.

11 Q. Now, initially he told them that he'd
12 accidentally, in trying to jump out of the pit, had
13 knocked a rock off the wall which hit her in the head?

14 A. Correct.

15 Q. Now, that wasn't true, was it?

16 A. Correct.

17 Q. So that was a lie?

18 A. Yes.

19 Q. That was his attempt to minimize what he had
20 done?

21 A. I don't know what he was attempting to do by
22 telling that.

23 Q. Don't you think that saying it was an accident
24 minimizes a deliberate murder?

25 A. Again, I don't know -- I don't know what his

1 intentions were by telling the police that.

2 Q. Do you think it could have been his intentions
3 to minimize what he'd done was wrong?

4 A. Not necessarily.

5 Q. So saying it was an accident when it really
6 wasn't, you agree that was a lie, but that's not an
7 indication he knew what he had done was wrong?

8 A. Correct.

9 Q. That's not consciousness of guilt?

10 A. Correct.

11 Q. Now, after the police went to the scene and
12 located Casey's body, they came back and talked to him
13 again, right?

14 A. I'm not sure of the exact sequence there at
15 that time.

16 Q. Well, Detective Neske testified that once he
17 was in the pit and saw that the walls were 12 feet tall
18 all the way around and there were no rocks on the tops
19 of the wall, he knew that Johnny Johnson had lied to
20 them when he said it was an accident.

21 Do you recall that testimony?

22 A. I remember testimony about there was no
23 evidence of any rocks, bricks falling off the wall.

24 Q. And at that time Johnny Johnson admitted that
25 he'd exposed himself to Casey, that she screamed, he

1 panicked and he hit her.

2 Do you recall that?

3 MR. LUNDT: Objection. Asked and answered
4 again.

5 THE COURT: Overruled.

6 A. I don't know the exact sequence of when he was
7 admitting all these different things. I know we've
8 talked about that before and I just don't know the
9 sequence.

10 Q. He told them he was just going to masturbate
11 on the side, he wasn't going to rape her.

12 Do you recall that?

13 A. I don't recall that.

14 Q. If that's what he said and he really intended
15 to rape her, as he said later, that is a lie?

16 A. Yes. I don't know what to make of all these
17 different statements.

18 Q. It's possible he's telling the truth, isn't
19 it?

20 A. Theoretically it is.

21 Q. In reality it's possible he was telling the
22 truth?

23 A. Right, that's what I said, theoretically
24 possible.

25 Q. I just want to make sure we are in reality as

1 opposed to just theory. In reality he could have been
2 telling the truth?

3 A. Yes.

4 Q. If he admitted that he killed her because she
5 was going to tell on him, that would be an indication
6 that he knew what he'd done was wrong?

7 MR. LUNDT: Objection. Again, asked and
8 answered.

9 THE COURT: Overruled.

10 A. Not necessarily.

11 Q. (By Mr. Waldemer) Now, he later made a second
12 taped-statement.

13 Do you remember that one?

14 A. I know there were several taped-statements.

15 Q. Okay. You just read the transcripts, you
16 didn't listen to the tapes?

17 A. I don't believe so.

18 Q. And in that second tape he indicated to
19 Detective Newsham that he woke up in the morning, that
20 he'd been watching Casey for several days and he wanted
21 to sleep with her, but what he meant by that, he wanted
22 to have vaginal sex with her and after he had sex with
23 her he knew he'd have to kill her.

24 Do you recall that statement?

25 A. Yes.

1 Q. If he told the truth in that statement, did he
2 know what he had done was wrong?

3 A. Not necessarily.

4 Q. Now, Dr. Dean didn't believe that statement?

5 MR. LUNDT: Objection. Calls for speculation.

6 Q. (By Mr. Waldemer) In her testimony Dr. Dean
7 indicated she didn't believe that statement.

8 Do you recall that?

9 A. I do not recall that.

10 Q. Instead she said she believed the defendant,
11 that that's not what he intended on doing.

12 Do you recall that testimony?

13 A. Again, I don't have Dr. Dean's testimony all
14 in my head right now.

15 Q. For your opinion that he didn't know what he'd
16 done was wrong, you have to ignore both of his
17 confessions where he indicated that he knew what he had
18 done was wrong, correct?

19 A. I have to put them in the context of his
20 mental illness, yes.

21 Q. Okay. If he was telling the truth that he
22 knew it was wrong when he confessed to trying to rape
23 and kill Casey Williamson, if he was telling the truth,
24 is he responsible for his crime?

25 A. Not necessarily.

1 Q. Doctor, every one of his diagnoses or
2 diagnoses --

3 A. Diagnoses.

4 Q. Thank you -- include some support of substance
5 abuse, don't they?

6 A. Most of them have that included, yes.

7 Q. His mental condition, whatever it may be,
8 because there's a lot of opinions out there, aren't
9 there, as to his mental condition?

10 A. At what time?

11 Q. Throughout his adult life. Would you agree?

12 A. Well, in his adult life the opinions start
13 becoming much more focused and much more consistent.
14 It's in his adolescent years that there tends to be a
15 little wide variation, but they're all -- they all tend
16 to be around psychosis and depression.

17 Q. Is it your testimony that his mental condition
18 makes it impossible for him to be responsible for his
19 crime?

20 A. Not necessarily just by his mental condition.
21 Tell me that question again, please.

22 Q. Let's ask another question. Are there others
23 out there in this world who have his same mental
24 conditions?

25 A. Not the exact constellation that he would

1 have.

2 Q. similar?

3 A. Generally similar, yes.

4 Q. How many of those that you're aware of are
5 child murderers?

6 A. Based on the people that I evaluate, a
7 significant number.

8 Q. Now, of all the voices that he has claimed to
9 have heard these hallucinations --

10 A. Correct.

11 Q. Only once -- well, let me ask you this way:
12 Not one of those voices that he's heard or reported all
13 these years, caused him to hurt anyone but Casey?

14 A. Not that I'm aware of, except himself.

15 Q. Okay. And he's never severely injured himself
16 to the point where death was imminent, has he?

17 A. Well, he certainly cut himself up pretty good
18 which required suturing, which required medical care.

19 Q. Did you hear my question. He's never injured
20 himself to the point where death was imminent, correct?

21 A. Not based on the record I saw.

22 Q. Not based on anything that you've seeing,
23 right?

24 A. Correct.

25 MR. WALDEMER: Judge, I don't think I have

1 anything further.

2 THE COURT: Redirect.

3 MR. LUNDT: Thank you, your Honor.

4 REDIRECT EXAMINATION

5 BY MR. LUNDT:

6 Q. Dr. Stewart, first, we did not ask you to
7 write a report in this case, correct?

8 A. Correct.

9 Q. And we talked about -- the State went over
10 many, many different records?

11 A. Correct.

12 Q. After I had gone over many, many different
13 records?

14 A. Correct.

15 Q. Now, you don't have a photographic memory of
16 all these records, do you?

17 A. No, I don't.

18 Q. Okay. And what you're looking for in making a
19 diagnosis is a pattern of how this individual is
20 presenting over a long period of time; isn't that
21 correct?

22 A. Well, ideally when you make a diagnosis you're
23 able to observe and have documentation of a person's
24 behavior over an extended period of time, yes.

25 Q. Okay. And even Becker and English agree at

1 the end that he's got a psychotic disorder; isn't that
2 right?

3 A. Correct.

4 Q. Do you think that -- you also diagnosed, along
5 with another doctor, that he has significant cognitive
6 problems?

7 A. Correct.

8 Q. For lack of a better term.

9 A. Correct.

10 Q. Do you think that when he slashed his wrists
11 in '92 is that -- was that an elaborate plot to somehow
12 prevent himself from being jailed?

13 A. No.

14 Q. When he's talked to all these different
15 doctors, Dr. Alberta Soto, Dr. Elizabeth Oakley, Dr.
16 Khawla Khan, Dr. Narendir Soorya, Dr. Arthur Smith, Dr.
17 Percival Tiongson, Dr. William Riedesel, Dr. J.
18 Rogocos, Dr. M. Carrera, Dr. Alan Craznof, Dr. Ahsan
19 Syed, Dr. William Clendenin, Dr. Ashok Mallya, Dr.
20 John Rabun, Dr. Jitendra Patel, is this a gentleman who
21 is able to pull the wool over all these people's eyes?

22 A. No, not at all.

23 Q. Now, the State went over in Volume 6, 1449, a
24 document where -- where they talked about his last
25 decompensation, that he rarely decompensates when he

1 complies to his -- when he complies with his
2 medication. Is decompensation a word that Johnny
3 Johnson would use?

4 A. No. I doubt it very seriously that's a word
5 that he would use.

6 Q. Okay. So when these people who wrote this
7 report said these things that he rarely decompensates,
8 is he lying to them?

9 A. This word lying has come up a lot in the last
10 couple days. He is a psychotic individual with
11 cognitive impairment and so he gives various versions
12 of his reality at different times and one can't
13 necessarily say that he's constantly trying to tell
14 people a mistruth because his reality is not the same
15 as our reality.

16 Q. And earlier on in his stages of his illness
17 and/or his illnesses, the doctors are confused as to
18 whether it's depression, whether it's a suicide
19 attempt?

20 MR. WALDEMER: Judge, I object to the leading
21 form of the question. It is also speculation as to
22 witnesses who have not appeared here as to their mental
23 statements.

24 THE COURT: Why don't you clarify that
25 question.

1 Q. (By Mr. Lundt) Based on your reading of the
2 records, how can you see Johnny's, I think you called
3 it the premorbid stage, how do see before he got
4 full-on psychotic -- during his adolescents; how do you
5 see those?

6 A. Well, in this particular case from a clinical
7 psychiatric standpoint, this is a very elaborate case
8 study in a development of a chronic psychotic disorder
9 and impaired an adolescent and doesn't really declare
10 itself until his 20 -- early twenties. This is exactly
11 what the DSN-IV talks about that during what we call
12 the premorbid stage, that's defined as the stage of the
13 illness prior to the onset of psychotic symptoms, that
14 the person is going to present as learning impaired,
15 he's going to present as -- he's going to be a greater
16 risk to abuse substances, very much as we see in this
17 case is going to be a variety of diagnoses including
18 personality disorder diagnoses, that's very common to
19 see in the premorbid phase until finally, unfortunately
20 for him, when he's in a custody situation where he has
21 some consistency in observation, he's able to stay off
22 substances that would be further confusing the
23 diagnoses and he has some consistency of treatment
24 where the diagnoses now is more accurately reflected to
25 the chronic psychotic nature of his illness.

1 Q. Okay. And so during his adult life, all those
2 records we went over, doesn't everybody pretty much
3 agree that he's got a psychotic disorder?

4 A. They don't start agreeing on that until later
5 in his late adolescence. Earlier to that there are
6 various evaluators that diagnose him with psychosis,
7 major depressive disorder with psychotic features.
8 We've seen that several times prior to the first
9 appearance of the schizophrenia diagnosis. So other
10 people prior to that noted that he was psychotic.

11 Q. So when -- when Johnny talks about using
12 different drugs at different times, he has never been
13 consistent in this -- all of these records, is he?

14 A. His story is always a little different.

15 Q. In fact, his story is always different in just
16 about everything, isn't it?

17 A. There are some general consistencies, but
18 overall it varies with a different presentation.

19 Q. Okay. And does that mean that he's been lying
20 for his whole life?

21 A. I don't believe that means that at all.

22 Q. With people who have psychotic disorder at
23 some time in their -- in the attempt to treat them,
24 don't they find out, aren't they explained that these
25 psychotic symptoms are not real?

1 A. That was documented many times in his records
2 that part of the treatment is psychoeducation, meaning
3 informing him about his illness. That's what I
4 attempted to do with my time with him also or at least
5 part of the time I was with him.

6 Q. Okay. So people during -- in all of these
7 records, there are many, many times there were people
8 who tried to explain to Johnny what the reality of his
9 illness is; isn't that right?

10 A. Correct.

11 Q. Okay. And he has, at least at the time you
12 talked to him, he was still unable to really understand
13 the depth of his illness?

14 A. Correct. He displayed minimally of any
15 insight into the nature of his illness.

16 Q. And people who are chronically psychotic,
17 aren't they often times ashamed that their way of
18 seeing the world is different from what you and I would
19 say is normal?

20 A. Well, I wouldn't necessarily say it was a
21 shame, but certainly there is an overwhelming
22 reluctance on the part of psychotic people to share
23 their psychotic symptoms.

24 Q. And why is that?

25 A. Well, part of it is shame, part of it is out

1 of fear, part of it is of not knowing what's going on
2 with them. They feel that this is something that they
3 can't -- are afraid to tell people and it's just
4 something, I see, I have seen throughout my career and
5 I don't really have a real explanation for it.

6 Q. Is it often the case that sometimes people
7 prefer to do -- people who are psychotic prefer street
8 drugs to their medications?

9 A. There are a couple of things to answer that
10 question. Yes, first of all to answer your question,
11 is, yes. People that are psychotic often use a variety
12 of medications or drugs that they use to self-medicate
13 their symptoms and I think we have seen that throughout
14 his case, his history and also there is another factor
15 that which is untreated or partially treated mental
16 illness is a risk factor for substance abuse so you
17 often see concurrent substance abuse with people that
18 are chronically mentally ill.

19 Q. Again, these people are often times taking
20 substances in order to somehow effect the
21 hallucinations or delusions; isn't that right?

22 A. Correct.

23 Q. It effects their illness?

24 A. Correct.

25 Q. when you saw him he was on Geodon, correct?

1 A. Correct.

2 Q. And he still had evidence of psychosis?

3 A. He still had overt signs of psychosis, yes.

4 Q. And then he was with Dr. Patel, he was taking
5 10 milligrams of Zyprexa?

6 A. Correct.

7 Q. In your medical opinion, is that a large
8 amount of psychotropic drugs -- I'm sorry -- of drugs
9 that would help his psychotic state or is that a small
10 amount?

11 A. It tends to be, if I could put it this way,
12 it's about a -- about a third of the way up to the max
13 dose. So it's not even -- it's to the limit of a
14 medium dose.

15 Q. Okay. Okay. We talked about those records
16 yesterday at length, they kept upping his dose of
17 Thorazine while he was in the Department of
18 Corrections, right?

19 A. Correct.

20 Q. And they still talked about hallucinations and
21 things of that nature?

22 A. Right. He was up to 700 milligrams of
23 Thorazine.

24 Q. And is that a large dose?

25 A. I think I testified yesterday, that's a

1 significant dose.

2 Q. Now, you talked -- the State brought up about,
3 well, in 2003 to 2005, he knew that his trial was
4 coming up.

5 Is that right; that's what the State said,
6 right?

7 A. Correct.

8 Q. While he was in -- obviously while he was in
9 the penitentiary from 2003 to late 2004, his trial was
10 approaching?

11 A. Correct.

12 Q. Okay. Is Johnny -- sophisticated enough to be
13 able to dup all these people that saw him, in your
14 opinion?

15 A. To dup them as far as?

16 Q. As reporting hallucinations?

17 A. I don't believe so.

18 Q. When -- if the statement says is it -- is a
19 person who has psychosis intellectually capable of
20 lying, that's a very broad statement, isn't it?

21 A. I think it is, yes.

22 Q. And that's almost impossible to answer, isn't
23 it?

24 A. That's why I was having a hard time addressing
25 those questions.

1 Q. why is that so hard to answer?

2 A. Because when a person is psychotic their
3 reality is different and as we talked about earlier
4 today, I believe it is today, it seems like -- I'm not
5 sure when it was -- whatever, when we talked about the
6 illness waxing and waning, sometimes the psychosis is
7 worse than others. And so a person will go through any
8 -- I don't know what a psychotic person's reality is.
9 If you catch them at that moment and you report
10 something and you catch them later on and report
11 something different, it may be at both times they are
12 reporting what they understood to be true.

13 Q. so what we know is that -- that the person's
14 got psychosis, that's what we know?

15 A. Yes.

16 Q. But we don't know how they are seeing reality
17 and we can't from what they say interpret what their
18 reality is?

19 A. Not necessarily, absolutely.

20 Q. okay. All right. Now, the State showed you
21 that letter from Johnny, that's State's Exhibit A, and
22 claim that it was goal oriented, clear and organized;
23 is that right?

24 A. Words to that effect.

25 Q. Now, you've worked in many different

1 departments of corrections, correct?

2 A. Yes.

3 Q. And there are a lot of different people to --
4 to help inmates, aren't there?

5 A. Yes.

6 Q. They've got social workers, they've got --
7 obviously they've got these medical technicians and --

8 A. And they have other inmates.

9 Q. And the other inmates are everywhere and other
10 inmates have a lot of opinions about how to do things,
11 don't they?

12 A. That's my experience.

13 Q. And for, whether it's out of the goodness of
14 another inmates' heart or whether there's some
15 underlying, you know, payment of some kind, oftentimes
16 people get help when they're trying to do something in
17 prison.

18 MR. WALDEMER: Let me object to him asking
19 this doctor to speculate as to the interactions between
20 any inmate much less the inmate in this case.

21 THE COURT: Why don't you lay a better
22 foundation, if you can.

23 Q. (By Mr. Lundt) When -- in your experience, do
24 inmates get help with making, filing requests to their
25 -- to the prison itself?

1 MR. WALDEMER: Judge, again object unless he's
2 asking for his personal knowledge and experience.

3 MR. LUNDT: I'm asking for his experience,
4 knowledge and experience.

5 THE COURT: Sustained. This is speculative.
6 No one knows. If he's going to testify, yeah, another
7 inmate could have helped him write it --

8 THE WITNESS: It's shear speculation.

9 Q. (By Mr. Lundt) Can you say, can you say that
10 State's Exhibit A and State's Exhibit B, were written
11 by Johnny Johnson without any help?

12 MR. WALDEMER: Judge, again, I'm going to
13 object. That's all speculation.

14 THE COURT: Sustained.

15 Q. (By Mr. Lundt) Can you even say that those
16 were written by Johnny Johnson?

17 A. They were presented that way. I don't know
18 who wrote them.

19 Q. Okay. The signature looks similar to Johnny
20 Johnson, correct?

21 A. Yes.

22 Q. And, in fact, you've seen letters by Johnny
23 Johnson where he clearly presents himself as psychotic,
24 right?

25 A. I don't recall right now.

1 Q. Do you remember seeing the picture that Johnny
2 drew?

3 A. I've seen the picture that he drew, yes.

4 Q. All right. Volume 6, 3633.

5 A. Okay.

6 Q. I'm sorry. Volume 6, 1466. He -- this is
7 when he was -- right before the crime, and he was
8 seeing Dr. Patel?

9 A. Correct.

10 Q. We talked about and he was also seeing the
11 community social worker, Dahley Dugbatey?

12 A. Correct.

13 Q. And you remember her testifying that she had
14 seen him and that he showed signs of psychosis when she
15 saw him?

16 A. Correct.

17 Q. Okay. And that -- showing signs of psychosis
18 she might remember that independently, correct?

19 A. She remembered independently?

20 Q. Yes. She testified to that.

21 A. Yes.

22 Q. Now, on 1486 she did not make an ADAPT record
23 of seeing that, correct?

24 A. She talks about meeting the client at
25 Einstein's Bagels, yes.

1 Q. She remembered that he was having psychotic
2 symptoms at that time?

3 A. Correct.

4 Q. Does Johnny Johnson's psychotic condition go
5 away if he is using drugs?

6 A. Does it go away?

7 Q. Yes.

8 A. No.

9 Q. Does it go away if he's using Drano?

10 A. No.

11 Q. The State talked about conduct outside of his
12 mental illness. Is -- from the presentation that
13 Johnny had over these periods of years, did Johnny on
14 the day of the murder of Casey have any conduct that
15 would be outside of his mental illness?

16 A. No.

17 Q. In your opinion?

18 A. No.

19 Q. Okay. Nothing he did, no matter whether it
20 was cover up the body, wash off the blood, nothing was
21 outside of his mental illness?

22 A. Correct.

23 Q. Can a person have -- when a person is in a
24 state of psychosis, does every single thought that they
25 have have to be bizarre?

1 A. Not necessarily.

2 Q. Why not?

3 A. Well, that's the nature of psychosis. In some
4 cases every thought is bizarre, but in most cases
5 people psychotic, you couldn't necessarily tell they
6 are psychotic by just looking at them.

7 Q. Okay. The State went on and on about his
8 different points if he knew actions, was he guilty.
9 Can you say within a reasonable degree of medical
10 certainty that he was psychotic during that whole time?

11 A. Yes.

12 Q. So -- so let me just ask you this: If he was
13 not psychotic, if he had no mental illness, whatsoever,
14 he'd be guilty of a crime, correct?

15 If he was not psychotic and no mental
16 illnesses, he would be guilty of a crime because he
17 killed Casey?

18 A. Yes.

19 Q. But trying to pick apart each and every action
20 that Johnny did on that day, is that a logical way of
21 looking at his illness?

22 A. Well, it's false -- false, you know,
23 separations of his illness, trying to look at each one
24 particular thing and this gentleman had a chronic
25 illness that overrides everything that he does.

1 Q. Okay. Okay. The state made an issue out of
2 whether the -- the -- Mickey Miller stuff, his mom's
3 boyfriend, whether the drowning was true.

4 she made several different statements about
5 that?

6 A. That's my understanding.

7 Q. At some point she said, yeah, he did try to
8 drown Johnny, right?

9 A. That I don't know.

10 Q. So he also -- is there consistent reports of
11 at least several times of sexual abuse when he was a
12 kid?

13 A. Correct.

14 Q. Okay. The fact that several different people,
15 several different mental health professionals diagnosed
16 post-traumatic stress disorder, does it make a
17 difference whether Mickey tried to drown him or not in
18 your opinion?

19 A. If we talk about drowning out of the equation,
20 he still would be diagnosed with post-traumatic stress
21 disorder based on other traumatic events he's
22 experienced.

23 Q. And the fact of the matter is, we don't know
24 what happened in that pit, correct?

25 A. We don't, I don't.

1 Q. Well, we do know that Johnny is psychotic?

2 A. Yes.

3 MR. LUNDT: Okay. Nothing further.

4 THE COURT: Any recross?

5 MR. WALDEMER: Just a couple, I promise.

6 RECCROSS-EXAMINATION

7 BY MR. WALDEMER:

8 Q. Actually to follow right up on that, Doctor,
9 you know he was psychotic on July 26th, 2002, that's
10 your opinion.

11 A. Yes.

12 Q. But you just told Mr. Lundt that if he was not
13 psychotic that day, he's guilty and he's responsible.

14 Is that what you just told Mr. Lundt?

15 A. That's what I just told him.

16 Q. Okay. So, what you're saying is that his
17 concealing of evidence, his lying to the police, his
18 confessing multiple times and giving his explanation of
19 what he did, his denying that he was hearing voices at
20 all on that day, that is all part of his psychosis in
21 your opinion?

22 A. Everything he did on that day and everyday
23 that he's done since that day has been colored by his
24 psychosis.

25 Q. Okay. And his diagnosis, as I understand it

1 by your definition, is not being in touch with reality?

2 A. That's the most general definition, yes.

3 Q. Okay. So when he's covering up his lying,
4 he's lying to the police, he's concealing evidence,
5 he's confessing, he's minimizing what he did, all of
6 that is being out of touch with reality?

7 A. All of his behaviors that day are influenced
8 by his chronic psychotic condition.

9 Q. All of his actions he took are part of his
10 psychosis?

11 A. Everything that he does is part of his
12 psychosis.

13 Q. When you are in jail or in prison and you've
14 done a lot of work with prisons?

15 A. Yes.

16 Q. Pelican Bay sounds a lot nicer than Potosi,
17 doesn't it?

18 A. No.

19 Q. Okay. It sounds nice, but when you are in
20 prison and you would complain about your mental health,
21 I'm hearing voices and things like that, several things
22 happen, don't they, you're sent to the infirmary,
23 right?

24 A. Not necessarily.

25 Q. Have there been multiple times where Johnny

1 Johnson was sent to the infirmary in regard to his
2 complaints about his mental illness?

3 A. Yes.

4 Q. And when you're sent to the infirmary, that's
5 a nicer place than the general population?

6 A. Not necessarily.

7 Q. If you're afraid for your life and your
8 safety, as indicated in those letters, isn't the
9 infirmary a better place to be?

10 A. You can't make that general statement because
11 the infirmary actually is where a lot of the hits take
12 place because people are coming in and there's less
13 security in the infirmaries.

14 Q. Now, when you complain about your mental
15 health and your mental illness, you're given drugs,
16 right?

17 A. Not always.

18 Q. In Johnny Johnson's case hasn't he been given
19 drugs?

20 A. He's been given psychiatric medications.

21 Q. And he's been given mood stabilizers?

22 A. He's been treated with lithium. That's the
23 only mood stabilizer I'm aware of.

24 Q. Okay. And lithium is enjoyable for some
25 people taking it?

1 A. Absolutely not. Lithium is a very unpleasant
2 drug to take. By the reports of patients I've treated
3 they describe it as like wearing a led suit.

4 Q. And if you complain about your mental health,
5 like Johnny Johnson did, quite often you are sent to a
6 single cell, you don't have to share a cell with
7 another inmate?

8 A. I don't know how Potosi works.

9 Q. Was he in a single cell when you saw him?

10 A. I don't know.

11 Q. Was he in protective custody?

12 A. In reviewing several notes he was attempting
13 to get in protective custody. I don't know where he's
14 housed now.

15 Q. You don't know if he is in protective custody?

16 A. Correct.

17 Q. If I told you that he's been in protective
18 custody since complaining about his mental illness, you
19 don't have any records to agree or disagree with that
20 statement?

21 A. Correct.

22 Q. So there is certain secondary gains that can
23 be happening by complaining about your mental illness;
24 isn't there?

25 A. If you can consider being a PC inmate as

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December 2, 2009

THE COURT: Mr. Lundt, you may proceed.

MR. LUNDT: Thank you, your Honor.

MS. HAMILTON: Pamela Strothkamp is the first witness.

PAMELA STROTHKAMP-DAPRON

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MS. HAMILTON:

Q. State your name for record?

A. Pamela K. Strothkamp-Dapron.

Q. And just for the record at the time we prepared our amended motion your last name was Strothkamp?

A. Strothkamp.

Q. And your last name is Dapron now. I take it that you got married in the mean time?

A. Yes, I did. I got married this year.

Q. All right. What is your occupation?

A. I'm a special education teacher.

THE COURT: Pull the microphone toward you.

A. Sure.

Q. (By Ms. Hamilton) How long have you been a special education teacher?

A. This is my nineteenth year.

1 Q. Where do you presently work?

2 A. I work for the Gasconade County R-1 school
3 district in Herman, Missouri.

4 Q. How long have you worked there?

5 A. I just started this fall.

6 Q. Okay. And before you worked there, where did
7 you work?

8 A. I worked -- my last teaching position was at
9 St. Louis Community College and I taught English for
10 two years.

11 I also worked at Epsworth City School for
12 Epsworth Family Services. We had a city school right
13 at Kingshighway. I worked there for six years. I also
14 taught psychology at Central Methodist University for
15 five years. I -- before that I was with St. Louis --
16 St. Louis County Special School District and I worked
17 for them at two different periods of time. One for
18 three years and one for two years, I believe that's the
19 time and then I also worked for Francis Howell School
20 District for a couple of years, Washington School
21 District as a counselor. I was not a teacher, I was a
22 school counselor and Northwest R-1 School District,
23 which is where I met Johnny Johnson. I worked for them
24 two different times, in 1991 was the first year I
25 taught and that was the year I became acquainted with

1 Johnny Johnson and I worked for one year and then I
2 came back a few years later and worked for them.

3 Those are all the districts I worked for.

4 Q. And what's your education background?

5 A. I have a bachelor's degree -- actually dual
6 bachelor's degree from Fontbonne University in
7 elementary education and in special education. I have
8 a master's degree from Southwest Baptist University and
9 I have a -- post-graduate hours earned at Lindenwood
10 College in the area of psychology and counseling.

11 Q. And what's your master's degree in?

12 A. My master's degree is in education --
13 educational psychology.

14 Q. And to be a special education teacher, do you
15 have to have some different education than if you just
16 teach at a regular school?

17 A. Absolutely, which is why I earned a dual
18 degree from Fontbonne University, I wanted to have the
19 regular education exposure but I also wanted the
20 special education and there was an additional -- I
21 don't know the exact hours, but 24 to 32 hours, that
22 were just special ed and special education course work
23 that was not required of regular educators.

24 Q. And how is it different teaching in a special
25 education school as taught in a regular school?

1 A. well, I've taught with a variety of settings
2 and with a variety of means of special education, I've
3 taught self-contained special education classes that
4 are within a regular school setting. I have taught
5 resource, which is itinerate of special education
6 services in a regular school, I have taught classes
7 within a class in regular schools, and then I've also
8 taught in self-contained buildings where students are
9 so severe that they can not be managed or taught, their
10 needs cannot be met in a regular school setting because
11 they're emotionally disturbed or violent, the safe
12 schools act for certain reasons they cannot be housed
13 inside their home school district so I work in those
14 types of school settings as well.

15 Q. When did you meet Johnny Johnson?

16 A. I met Johnny Johnson in the first year that I
17 ever taught which was the 1991, 1992 school year but I
18 didn't start at the beginning of the school year, I
19 didn't start until late October, maybe the first of
20 November, because I had done my student teaching over
21 the summer with the Frances Howell School District.
22 They have a year-round program as opposed to doing my
23 -- waiting and doing my student teaching in the fall,
24 that way it gave me time to get my teaching
25 certificate.

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IN THE SUPREME COURT OF THE STATE OF MISSOURI

JOHNNY A. JOHNSON,)
)
Appellant,)
)
vs.) Appeal No. SC91787
)
STATE OF MISSOURI,)
)
Respondent.)

=====

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION NUMBER THREE
Honorable Mark D. Seigel
Volume III

JOHNNY A. JOHNSON,)
)
Movant,)
vs.) Cause No: 2107CC-001303
)
STATE OF MISSOURI,)
)
Respondent.)

TRANSCRIPT ON APPEAL
November 30, 2009
December 1-2, 2009
July 23, 2010

=====

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1 THE COURT: The question is when did you first
2 meet Johnny Johnson.

3 A. 1991, 1992.

4 Q. (By Ms. Hamilton) Did you meet him at the
5 beginning of the school year?

6 A. No, I did not.

7 Q. Why not?

8 A. I was not in the classroom at that time, I was
9 not certified to teach. I had just finished my student
10 teaching.

11 Q. And so you just testified you came in around
12 November?

13 A. Yes.

14 Q. How many children were in Johnny's classroom?

15 A. There were about 12 students, 10 to 12.

16 Q. And other than Johnny do you remember any
17 other kids in that classroom?

18 A. Yes, I do.

19 Q. And how many do you remember?

20 A. I remember all of them.

21 Q. And why do think you remember all of them?

22 A. Well, number one, it was the first class I
23 ever taught, but I remember all my students that I've
24 had over the 19 years. I just have that kind of
25 memory, I guess.

1 Q. Now, when you first met Johnny, did you
2 participate in any testing or did you do an IEP for
3 Johnny?

4 A. Well, yes. It's -- ultimately, you have to
5 write an IEP for every student that was in that class.

6 Q. What goes into an IEP?

7 A. Well, there is a section of the IEP called the
8 present level of performance and that is where you take
9 background history, and you also take their current
10 academic functioning. You look at prior testing.
11 Things have changed over the course of twenty years but
12 those are the basic things that are in every IEP as
13 well as you establish instructional goals for them and
14 at that time you have to task analyze your goals. You
15 didn't just write goals, you were supposed to have
16 objectives under each goal. So we would establish
17 those.

18 we would establish how much time they would
19 spend in a special education setting as opposed to how
20 much time they would be in a regular education setting.
21 The stages of delivery as to how are you going to
22 provide your services covered in an IEP.

23 That's basically it.

24 Q. Are you certified as a special education
25 teacher?

1 A. Yes, I am.

2 Q. What does certification mean to a special
3 education teacher?

4 A. Well, the certification has really changed.
5 The first year that I graduated from college was the
6 first year the state of Missouri started requiring
7 extra performance testing, things like that and extra
8 course work. To now maintain your certificate you have
9 to hold a master's degree, but that can be earned
10 later. So they have difficult levels of your
11 certificate that you have to work towards; you have to
12 have so much experience, take testing and/or earn
13 degrees and I fulfilled all those requirements over the
14 years and I have had a professional certificate that's
15 life time, which used to be grants before I graduated.
16 They just had a lifetime certificate, but that's all
17 changed.

18 Q. How much time did you spend with the Johnny
19 Johnson?

20 A. Well, I spent everyday that he attended
21 basically at school so from mid October until the end
22 of May, beginning of June of that school year I spent
23 with Johnny Johnson.

24 Q. Now, prior to teaching Johnny Johnson, did you
25 do any research in auditory processing disorder?

1 A. Yes, I did.

2 Q. Why did you do that?

3 A. Because of an injury that my son had
4 sustained.

5 Q. And what kind of injury was that?

6 A. Well, he had a head injury and it involved
7 some auditory nerves and before that injury he had been
8 identified as gifted and was being put into a gifted
9 program. After that injury we started realizing there
10 was something different about him and it was being
11 pointed out to me. I started researching so I could
12 understand what was going on with my son to help him.

13 Q. And how many years have you researched
14 auditory processing?

15 A. Well, I began with him in 1987 when my son was
16 injured so I started and it was almost immediate when
17 he returned back to school after his injury that I
18 started getting complaints about -- or at least
19 notified that he had a problem.

20 So I started then but it wasn't truly
21 researching where you structured for about a year so I
22 started in about 1988 when I started attending
23 Fontbonne College.

24 Q. And how long did you research this disorder?

25 A. Through his whole life and academic career and

1 throughout most of mine. I haven't been the last two
2 or three, maybe five years, because my son is now of
3 maturity and doesn't really need my help any more and I
4 have other students with other needs and, you know, you
5 evolve but I would say -- what was that -- from '88, my
6 son graduated in the year 2000, about twelve years I
7 spent actively researching those types of learning
8 disabilities and disorders.

9 Q. Could you explain to the Court what an
10 auditory processing disorder is based on your
11 experience with your research and your son?

12 MR. WALDEMER: Judge, I'm going to object to
13 the lack of foundation. It's not been shown that she's
14 qualified to diagnose an auditory processing disorder.

15 THE COURT: Sustained.

16 Q. (By Ms. Hamilton) Well, we talked about when
17 you had Johnny. When you had Johnny, did you have,
18 from your personal experience, have cause to believe
19 that he had an auditory processing disorder and bring
20 that to the attention of the school?

21 MR. WALDEMER: Judge, again I'm going to
22 object for lack of foundation. There is nothing to
23 show that at the time she had Johnny Johnson in any way
24 qualified her to diagnose an auditory processing
25 disorder.

1 MS. HAMILTON: Your Honor, I understand that
2 this is just based on facts, facts that she brought to
3 the school's attention and the facts of what she
4 thought back then and when he was in the sixth grade
5 and what she did.

6 MR. WALDEMER: Judge, that's not the question.
7 The question that's being asked is how she believed or
8 if what her opinion is of auditory processing disorder
9 and just because she has done research on it, and it
10 doesn't mean in a court of law that you're qualified as
11 an expert to testify to that conclusion or opinion.

12 THE COURT: I'll sustain as to the form. If
13 you want to change the form of the question, I'll
14 consider it.

15 THE WITNESS: I can speak to his
16 educational --

17 THE COURT: Just a minute.

18 Q. (By Ms. Hamilton) All right. At the time
19 that you had Johnny Johnson, I want you to explain to
20 the Court the behavior that he was exhibiting that
21 caused you concern.

22 A. Okay. Besides writing IEP's, we do diagnostic
23 summaries of students and that's where you do
24 three-year resolve problems and -- and doing that we do
25 diagnosis of educational implications and educational

1 diagnosis. There's only a couple of diagnosis --

2 MR. WALDEMER: Let me object. At this point I
3 don't believe that's responsive. She was asked what
4 she observed.

5 THE COURT: Sustained.

6 MR. WALDEMER: And I object to her testifying
7 to other hearsay. She's not been qualified as an
8 expert. She can't base any of her testimony upon other
9 people's information.

10 THE COURT: Sustained.

11 Q. (By Ms. Hamilton) What did you observe of
12 Johnny Johnson that caused you concern?

13 A. An inability to attend to what was being
14 spoken, a lack of understanding of language. He
15 appeared to be language impaired and as a normal part
16 of my duties I made recommendations for testing.

17 Q. And in Johnny's case what recommendations did
18 you make?

19 A. I requested that he have a full school
20 evaluation including, but not limited to, his academic
21 level of functioning, cognitive level of functioning,
22 speech and language to determine if he was truly indeed
23 language impaired, to see if he had auditory processing
24 difficulties.

25 Q. Is that auditory processing difficulties that

1 you talked about, is that part of special education
2 things that you do as a special education teacher in
3 the normal course of being a teacher?

4 A. Well, yes. He had some dyslexia, so that -- I
5 mean we could start naming autism. It takes a doctor
6 to diagnose a child with autism but there are
7 educational diagnoses of children with autistic
8 functional disorder and we are able to -- yes, give
9 those diagnosis. That's what we do, we're specialist
10 in education.

11 Q. Is auditory processing an educational type
12 disorder?

13 A. It is a disorder that is implied and it would
14 sit under the umbrella of going into language
15 impairment and -- and oral expression -- now they call
16 them oral expression disorders, yes.

17 Q. And so you did those testings normally at the
18 time you had Johnny?

19 A. It would have been considered part of the
20 normal -- not everybody -- cause it's individualized.
21 So you have meetings and you determine what are the
22 teachers saying in the regular classrooms or what will
23 the special education teachers say are problems being
24 expressed that are different from the way in which
25 students or the other students and -- and then after

1 you get that back then you get special educators go
2 into the classroom and talk to the teacher and explain
3 to them things they could do that could maybe -- not
4 require full services, full testing, but what can we do
5 to help. So maybe it's just a matter of their lagging
6 or they're a little bit behind or, you know, it's just
7 a weak area, so you then spend about 30 days doing that
8 collecting data to see if any sort of intervention
9 would help and if that doesn't happen then you meet
10 together as a team then you decide what does it look
11 like. You know, it's just an educated guess. You take
12 the hypothesis, we think these are the things that are
13 affecting this child's ability to learn in the
14 classroom the way everybody else learns. And so then
15 you set up a formula for what kind of testing are we
16 going to do.

17 You almost always, unless you have a
18 background level of testing situations where you have
19 an IQ score, you always will get new IQ data on the
20 child unless it's happened over and over and over and
21 it always stays the same, then you keep it that way,
22 you don't have to retest, but many start testing in all
23 the other areas that show concern and you have
24 standardized scores and you look at those standardized
25 scores and compare to their IQ and then that's where

1 you are able to determine if there's a disability in a
2 certain area or something and then you can come back
3 with an educational diagnosis.

4 Q. In your experience, does -- who usually does
5 that -- determines that; is that by a disability
6 service by the education or from a doctor?

7 MR. WALDEMER: Judge, I'm going to object to
8 the relevance of who usually does.

9 THE COURT: Sustained.

10 Q. (By Ms. Hamilton) In Johnny's case, you had a
11 lot of time, correct me if I'm wrong, to observe him?

12 A. Yes.

13 Q. And what did you observe, here again, that
14 caused you concern about Johnny's ability to learn?

15 A. Well, he had a lot of concerns. Number one,
16 he didn't seem to -- he didn't fit in with the other
17 students in many ways. I had a variety of students in
18 that class. I had one behavior disordered but all the
19 other ones were learning disabled. Now, he had already
20 been diagnosed with learning disabled but even within
21 that population, it was a self contained classroom for
22 learning disabled students, but he was distinctly
23 different even from that population of students in how
24 much he lagged behind and he was already two years
25 older than everybody in the classroom so he was

1 chronologically older than the peers in his classroom.

2 MR. WALDEMER: Judge, let me object to the
3 non-responsive answer to the question that asked for
4 observations. It's also narrative.

5 THE COURT: It's been asked and answered.
6 Overruled.

7 Q. (By Ms. Hamilton) Other than at school, did
8 you have an opportunity to see -- try to talk with
9 Johnny's mother about his disabilities?

10 A. Yes. I had plenty of -- I had many
11 opportunities and many conversations -- many
12 conversations with her and many more attempts to speak
13 with her.

14 Q. When you say attempts, what do you mean?

15 A. Telephone calls were always my first line of
16 contacting the parent if I felt I needed to and then I
17 also did home visits, still do home visits, I go to
18 their homes when necessary.

19 Q. Did you go to Johnny's home?

20 A. Yes, I did.

21 Q. And why did you do that?

22 A. Well, I had some concerns and I had set up in
23 advance that I could go to their home and meet the
24 mother because she couldn't, for whatever reason, she
25 never made it to school so I thought then the school

1 will come to the home and I went to her home.

2 Q. Did you ever plan activities for the students
3 in Johnny's class that were like on weekends?

4 A. Yes, I did.

5 Q. What kind of activities were those?

6 A. Well, we had -- we had a skating party one
7 time. At the time I lived in Creve Coeur and there was
8 a real large field close to where I lived and so I had
9 one party where we had outdoor activities like playing
10 baseball and I can't remember, but we did a few things
11 like that. We had the skating party. I know I had a
12 time where I took them to the mall to the movies and we
13 went and saw a movie together and we all went out to
14 eat one time. So I did some socialization type things
15 because the school -- there was a lot of impoverishment
16 in my classroom represented and they didn't get to do a
17 lot of things that regular kids get to do.

18 Q. Did Johnny ever participate in any of the
19 activities?

20 A. He did not attend one.

21 Q. Did you try to make special effort to get him
22 to come?

23 A. Yes, I did.

24 Q. What did you do?

25 A. There was another parent that drove some of

1 the students to several of the events so they had like
2 a routine. Mrs. Adkins, Adam Adkins' mother and Adam
3 was one of Johnny's only friends in the classroom, but
4 his mother would try to pick Johnny up on a couple of
5 occasions and I had worked out with Mrs. Lorenz, who
6 was real good friends with Mrs. Adkins, and that was
7 Tony Lorenz's mother would take the boys back home and
8 they would always work out trying to get Johnny
9 involved because everybody recognized --

10 MR. WALDEMER: Judge, object to everybody
11 recognized.

12 THE COURT: Sustained.

13 Q. (By Ms. Hamilton) What did you recognize?

14 A. What I recognized and what those two mothers
15 and I had discussed were --

16 MR. WALDEMER: Same objection.

17 THE COURT: Sustained.

18 Q. (By Ms. Hamilton) What did you recognize.

19 A. What I recognized was that Johnny didn't have
20 anybody to bring him to those types of affairs or to
21 see to it that he --

22 MR. WALDEMER: Judge, object, that's calling
23 for speculation again.

24 THE COURT: Sustained.

25 Q. (By Ms. Hamilton) How would you describe

1 Johnny's behavior, I mean his personality in your
2 class?

3 A. Well, he sat in -- the classroom had four rows
4 in it and he was in the second row from the right and
5 he was the fourth seat back and there was only one
6 other seat behind him, that was how many chairs were in
7 the room and what was your question?

8 Q. How would you describe Johnny's personality in
9 dealing with him?

10 A. He was very reticent. He didn't talk a lot.
11 You had to seek him out and make sure he was with you.
12 You know, well, that's part of checking for
13 understanding and with it, are students with you,
14 you're talking, you're teaching and you have to check
15 on everybody continuously because they can be looking
16 at you and nodding but they may not be really with you.

17 Q. So when you said you had to seek Johnny out,
18 exactly what does that mean?

19 A. I had to call on him and ask him questions to
20 see, was he attending, did he understand what I just
21 said because he, he many times had the appearance that
22 he didn't get what was going on around him. Everybody
23 else seemed to be getting it but not him and so I would
24 call on him and have to que him in, you know, earth to
25 Johnny, type stuff.

1 Q. How old was Johnny when he was in your
2 classroom?

3 A. He was thirteen, I believe, and the other
4 students were like eleven. He had been retained two
5 times before, kindergarten and first grade so he was
6 like thirteen when he was my student.

7 Q. Was Johnny put in your classroom at the time
8 he tried to commit suicide?

9 A. Yes, he was.

10 Q. How did you learn about that?

11 MR. WALDEMER: Judge, I'm going to object to
12 the hearsay. If she personally observed it, otherwise
13 it would be hearsay.

14 THE COURT: Well, it may be. I'll let her
15 answer the question as to how she learned about it. I
16 know it is hearsay. Go ahead.

17 A. Well, I think it was both the mother and I
18 communicated with the hospital. The hospital called.
19 It's standard practice. I've had many students that
20 have been in the psych ward. That's the first thing
21 they do is contact the school besides the family. They
22 have got a family history but they contact the school
23 to find out about what we observed, you know, what was
24 going on in this child's life in the classroom and also
25 it is required when they're in the psych ward for any

1 extended period of time they have to be provided with
2 educational services because they are under IEP and by
3 federal law you have to provide those services no
4 matter where they are, if they are in a hospital, if
5 they -- if they have 225 minutes a week to special
6 education services, it has to be -- it's required that
7 they get those services while they're -- wherever they
8 are housed. So they contact us to find out what do we
9 do with this child, what are they doing in the
10 classroom, what are they working on.

11 Q. What is an IEP case manager?

12 A. Well, it's the person that writes the IEP,
13 manages all the testing of the students, make sure that
14 it complies with the federal laws and guidelines,
15 communicate with the household, with the guardian or
16 the parents, everything that -- it's our responsibility
17 to make sure they understand the services being
18 provided their child, that they understand the
19 diagnosis of the child, that they understand why we
20 come up with a diagnosis, that they understand what
21 we're going to do to help that child with what
22 diagnosis and how to help their child grow into a
23 responsible adult. It's called transition planning.
24 That's part of the IEP. We have to prepare that child
25 for successful adulthood.

1 Q. Were you ever an IEP manager for Johnny?

2 A. Yes, I was his IEP case manager.

3 Q. Is that why the hospital contacted you?

4 A. Yes, that's why they contacted me.

5 Q. And what did they need from you?

6 A. They needed to know what he was --- what his
7 levels were in school, his academic level of
8 functioning. They also inquired about what I had
9 observed about him emotionally and just general
10 behavior, observations that I had of Johnny prior to
11 his attempted suicide.

12 Q. Now, how was Johnny treated by other students
13 that you observed?

14 A. He was ridiculed.

15 Q. When you say ridiculed, what do you mean?

16 A. They made fun of him. It was a regular thing
17 in my classroom. That's all part of social skills and
18 that population of students, even the regular
19 population of students, can be very cruel with one
20 another when they find someone has problems, but, well,
21 they made fun of him for several reasons.

22 Q. What reasons?

23 A. Number one, he was older and, you know, the
24 dynamics, the group dynamics that are involved when you
25 have students -- all the other students but Johnny, I'm

1 going to isolate him out, the self esteem issues were
2 there when you're in a special ed classroom in your
3 building, your school building, so when you find one
4 amongst you or three or four amongst you, any of them,
5 if they find somebody they can perceive as being weaker
6 then they, you know, they will pick on them sometimes
7 and so it's a constant job as a special educator to
8 make sure that that doesn't go on or to minimize it as
9 much as possible and Johnny was just one of a couple of
10 students that were like targeted because they were even
11 more different in their behaviors and in their
12 mannerisms and their appearance. He was dirty. He was
13 a dirty little boy and he smelled and students made fun
14 of him because he was dirty and because he smelled and
15 because he appeared to be kind of, in their minds,
16 stupid.

17 Q. Now, when you say he smelled, what do you
18 mean?

19 A. well, number one, he was a couple years older,
20 so when students start reaching adolescence, certain
21 age, their armpits start smelling and it usually reeks
22 really strong because they are younger and it can be
23 very vile. He had that going on and like I said he was
24 dirty, his clothes were dirty. He had urinated on
25 himself sometimes and had not bothered to change his

1 clothes and they weren't wet but they were dry, you
2 could tell, and he also, at times, would have an even
3 funkier odor to him and he did. I'm going to be honest
4 with you, he missed more than the average school days,
5 and even worry about him and I would -- would be
6 relieved it was one day I could breathe in my room, you
7 know. That's just being honest.

8 Q. Did you ever come to believe that Johnny had
9 been sexually abused?

10 MR. WALDEMER: Well, Judge, let me object
11 unless there is a foundation for that.

12 THE COURT: Sustained.

13 Q. (By Ms. Hamilton) Okay. You said he smelled.
14 What other things did he smell like?

15 A. Dank, like somebody that had been involved in
16 some form of sexual act and had not cleaned up after or
17 --

18 MR. WALDEMER: Can I interject an objection as
19 to foundation as to her expertise in this area.

20 THE COURT: Sustained.

21 Q. (By Ms. Hamilton) Did you ever try to talk to
22 Johnny's mother or find a way for Johnny -- about his
23 appearance at school.

24 A. Yes, I did.

25 Q. And what happened when you tried to talk to

1 his mom about it?

2 A. well, you know, she never took anything or
3 that she didn't take very seriously. She just didn't
4 take it too serious. Boys will be boys, they're dirty,
5 they're hard to control. She was overwhelmed with
6 parenting. She had a lot of problems. I can remember
7 her telling me about her problems. I don't remember
8 what they were.

9 MR. WALDEMER: I object to the hearsay, what
10 this person may have told her.

11 THE COURT: Sustained.

12 Q. (By Ms. Hamilton) I'd like you to open Volume
13 1.

14 MS. HAMILTON: For the record, has Volume 1
15 been admitted into evidence?

16 MR. LUNDT: I don't think it has.

17 THE COURT: Actually it has.

18 MS. HAMILTON: Oh, it has.

19 Q. (By Ms. Hamilton) I'd like you to look at
20 Volume 1.

21 THE COURT: Hold on. Which one are you
22 talking about? The entire volume has not been admitted
23 into evidence.

24 The St. Louis County Special School District
25 records have been admitted into evidence and the

1 psychiatric evaluation of Johnny by Dr. Rabun has been
2 admitted into evidence, according to what I have.

3 MS. HAMILTON: I think that's the -- the
4 majority of the records.

5 Q. (By Ms. Hamilton) Have you seen these records
6 before?

7 A. Yes, I have.

8 Q. And when did you first see them?

9 A. About two or three years ago when I was first
10 contacted by your office.

11 Q. Okay. Are you familiar with these records?

12 A. Yes, I am.

13 Q. And what are they?

14 A. Well, they're not complete but they are some
15 of his IEP's and some of his evaluation, reevaluation
16 reports.

17 Q. When you say they're not complete, what do you
18 mean?

19 A. Well, there's some years missing.

20 Q. What years are missing?

21 A. Well, I noticed that the Northwest R-1 School
22 District, there are no records from them and that is
23 when I worked with Johnny.

24 Q. Okay. But you are familiar with all the
25 records that are in there?

1 A. Yes.

2 Q. And are the IEP's there that you would have
3 been working from when you had Johnny?

4 A. No, those are not in there. Now -- there are
5 -- we keep a complete record of a child from the time
6 they start receiving services so since I was his
7 teacher, any of this testing from the school district
8 the former IEP's would have been in his chart and
9 provided to me to read and have access to so that I
10 could make suggestions based on prior history and
11 performance and testing.

12 It's a continual evaluation, until the time
13 they're discharged from receiving special education
14 services, it's on a continuum of services and it's a
15 continual process of reassessing what had been done
16 before, what had been tested before, seeing is it
17 working, you know, did we draw the correct conclusions
18 because it's our responsibility to educate them at the
19 very best that we can.

20 Q. Well, looking at volume 1, I want you to --
21 with this very first record, I guess it's on page one,
22 could you tell the Court what that is?

23 A. I'm way into it. I'm sorry.

24 MS. HAMILTON: We'll, I admit to the Court
25 that we were not familiar with special school records.

1 Some of them are completely out of order. Then we
2 learned they were not only out of order, but they are
3 not in order. I guess the way you'd look at them, if
4 you were a teacher when we put this volume together we
5 learned they are completely out of order.

6 I need Ms. Strothkamp to show me the order
7 because I'm still not that familiar with them. So --

8 THE COURT: Let me make a suggestion just so
9 we are all clear here. Why don't you use a page number
10 as it appears in Volume 1 when she's referring to a
11 document.

12 MS. HAMILTON: Because they are not in order.

13 Q. (By Ms. Hamilton) Would you look at the
14 records that show Johnny in kindergarten that way we
15 can go in chronological order for the record.

16 MR. WALDEMER: Are we going to go through
17 records she reviewed prior to or during the time Johnny
18 Johnson was in her class?

19 MS. HAMILTON: Yes.

20 MR. WALDEMER: Or are we just going through
21 records that are part of the special school district
22 records?

23 I'm unclear what Ms. Hamilton has offered the
24 Court. If it's something that she reviewed prior to
25 the end of the school year 1992 while she had him as a

1 student, I certainly have no objection because I didn't
2 have objection to those records. If these were just
3 records that she reviewed after that time period when
4 he was no longer her student or she reviewed for the
5 first time three years ago when she was contacted by
6 them, then I have an objection.

7 MS. HAMILTON: Your Honor, these are records
8 she reviewed at the time.

9 THE COURT: Hold it. Let's clarify this. She
10 can testify to records that she reviewed at the time
11 she had Johnny Johnson.

12 MS. HAMILTON: Right and she just testified
13 she would have had to look at all of these to make
14 sure.

15 THE COURT: Let's not dwell on all the records
16 though.

17 MS. HAMILTON: Your Honor, I'm dwelling on the
18 records leading up to her and the ones she had to
19 review when she prepared her IEP.

20 THE COURT: When you say records leading up to
21 her when she had Johnny, it should be only those
22 records she actually reviewed when she had Johnny.

23 MS. HAMILTON: Maybe I should ask her.

24 Q. (By Ms. Hamilton) In these kindergarten
25 records and the records from kindergarten to sixth

1 grade, did you have to review them at the time?

2 A. Yes.

3 Q. And why did you review them at the time?

4 A. We do it on all of our students, that's
5 standard procedure. That's standard. There's files
6 and sometimes there's files or three or four files like
7 this thick that we have to read through every time
8 we're doing an IEP or a reevaluation summary on them.
9 It's just what you have to do and that's why special ed
10 teachers don't move around is because you learn your
11 students and you don't want to have to go through the
12 process again, but, yes, up until the time -- I had him
13 in sixth grade. I had access to and it was in his file
14 in our school in the file cabinet in my classroom
15 because I always kept a teacher's set as well in my
16 room in a locked file. Every diagnostic summary that
17 he had and every IEP and that's not the only thing that
18 we keep in our files, in those special education files,
19 we have to keep records of all their testing, district
20 testing from the time they entered school, all the
21 district required tests are -- the scores are kept in
22 there, letters, letters between the home and the
23 special education teacher are kept in there, a log of
24 every telephone call we ever made to the home is kept
25 in that file.

1 These are federal guidelines. That's what we
2 have to do. We are inundated with paperwork because
3 everything we do has to be documented with these kids
4 and that's the standard special education file we keep
5 on these kids. We're the IEP case manager. It's not
6 only the IEP that goes in that file. We are the case
7 manager and IEP is individualized educational program
8 plan and it involves all of that and that was what was
9 all of those types of things were in his file up
10 through grade six and then I created anything for grade
11 six that would have been kept.

12 Q. And was that stuff you created for the grade
13 six based on your review of all the other grades
14 leading up to grade six?

15 A. I had to review to get an idea of who this
16 child was, how he learned, what worked in the past,
17 what didn't work in the past, what had been tried, what
18 were teacher observations back then, what were some of
19 the things that were observed back then that we're
20 still saying now in spite of all things that we've been
21 doing, all the things we've been trying, what are the
22 teachers still saying today that they were saying back
23 in kindergarten and we haven't figured out, haven't
24 found a way to address it. That's why you have to read
25 through the files, you have to look at what were some

1 of the things that we did that we're seeing
2 improvements, you know. Let's focus on those things
3 and see what part of the brain works. What are some of
4 the cognitive structures that work in those areas
5 showing strength in the -- structural objectives that
6 we're utilizing and the way we are planning on teaching
7 them.

8 what are the things that maybe are overlapped,
9 overlapping type skills so that we can look at those
10 weak areas that -- the things that don't seem to be
11 working but we're still complaining about them saying
12 he's not doing this very well, that maybe there's some
13 overlapped skill strategies that we can implement so
14 that the child can then progress. That's why you have
15 to reread and read and then you also have to go through
16 the new textbooks. You know, what are the current
17 studies? You go to your journals. What are the
18 studies saying that we can do with the -- because
19 learning disabilities have only been around for thirty
20 years, well, forty now, and so it's a whole new concept
21 to work with these kids and there's a reason why data
22 is driven, we have to have data driven instruction.

23 Q. So, you reviewed it?

24 A. I reviewed it.

25 Q. Okay. Tell me what was important for you as

1 his IEP case manager in his kindergarten matters that
2 assisted you in trying to prepare his IEP's?

3 A. I have to find the kindergarten one. Right
4 now I'm at the fourth grade level one. So just bare
5 with me for a moment. Well, there was one thing that
6 was obvious in kindergarten students that he had very
7 early on that was still -- he had unusual and I
8 couldn't tell if it was like spacial, perceptual type
9 problems, coordination, coordination of fine motor
10 skills and gross motor skills, eye-hand coordination
11 type things and those are all soft signs in the
12 classroom of some type of neurological problems, you
13 know, something that you would say, maybe you need to
14 take your child to see a neurologist. We're noticing
15 that over so many years of his teaching it's not
16 increasing and is still there and, you know, it's no
17 longer a developmental lag and it was considered not to
18 be just a developmental lag in his history so that if
19 we still see it being expressed, you know, you need to
20 consider taking your child to see a doctor or take your
21 child to see a neurologist and I know that was one of
22 the things that I would have tried to suggest to his
23 mother was that he needed to see somebody about some of
24 those problems, coordination problems and because what
25 we can see on the outside, when they have fine motor,

1 gross motor coordination problems, that usually isn't
2 the only thing going on. You know, there are other
3 things that the brain does, multitasks. Every cell in
4 your brain, there's like a multitasker and so when you
5 see things like that then we know academically it can
6 be expressed in other ways as well. So --

7 Q. And you saw --

8 MR. LUNDT: What page?

9 Q. (By Ms. Hamilton) What page were you on?

10 A. Well, that was an addendum to the IEP report
11 and that was on August 13, 1984, and that's page 86,
12 that was an addendum, which means an IEP was written,
13 it was thought to be of concern and it was felt that
14 they needed to be documented and so they documented it
15 and put it in as an addendum to the IEP.

16 Q. For the record, so it's clear, since I don't
17 really know, once the order does the IEP first come
18 first or how do you start? When I was looking at these
19 records --

20 MR. WALDEMER: Judge, let me object to the
21 form of the question.

22 MS. HAMILTON: Okay.

23 MR. WALDEMER: It's leading and I also
24 interject, were you referring to page 86 of Exhibit 1?

25 THE WITNESS: Well, it looks -- there's two

1 separate numbers. One is typed and one is handwritten.
2 I'm going by the handwritten, far to the left.

3 MR. WALDEMER: Go by the typed one, because
4 that's what we are looking at.

5 MR. LUNDT: Is -- that would be 89.

6 THE WITNESS: I'm sorry. 89.

7 MR. WALDEMER: 89, ma'am?

8 THE WITNESS: Yes.

9 MR. WALDEMER: Okay. And that's -- and we're
10 talking about August 13, 1984 addendum? Is that -- is
11 what we are talking about?

12 THE WITNESS: Yes.

13 MR. WALDEMER: Okay. Thank you.

14 THE WITNESS: You're welcome.

15 A. Okay. And then right behind that on page 91,
16 is kindergarten IEP, and it was his initial IEP, if you
17 notice that in the upper right-hand corner on that
18 page, it says initial, which means, that was his very
19 first IEP ever written and that is done after testing
20 has been done and identified as being handicapped,
21 educationally handicapped?

22 Q. (By Ms. Hamilton) And is there anything in
23 that IEP that tells you that he needed the services
24 that you have just testified about?

25 A. Oh, yes. I'll find the service summary page.

1 IEPs have changed over the years. Let's see. This is
2 a very old one. These were handwritten back then so it
3 takes a while.

4 It looks like at that time he was going to
5 participate in the regular school program in his
6 classroom most of the time and it looks like they were
7 only going to do only support services in the resource
8 room for thirty to forty-five minutes per day so that
9 would have been a hundred and fifty to two-hundred
10 twenty-five minutes per week, is what they would have
11 done.

12 Back then they did not put the percentage.
13 That would be approximately 87% of his full class time,
14 that he would be 87% with the regular population and
15 13% basically with students, other handicapped students
16 one-on-one depending what their delivery service was
17 for him.

18 And what they saw he needed help in, they
19 write differently now, in the area of reading
20 readiness, which would have been basically phonics,
21 those basic reading skills today, math and writing and
22 it says to refer to see the present level.

23 Q. Does it matter if -- can a child be disabled
24 and have an average IQ?

25 MR. WALDEMER: Object unless we are talking

1 about Johnny Johnson.

2 MS. HAMILTON: I'm talking about Johnny
3 Johnson.

4 MR. WALDEMER: I'm just objecting to the form
5 of your question.

6 MS. HAMILTON: why?

7 THE COURT: Sustained. Let's keep it to
8 Johnny Johnson.

9 Q. (By Ms. Hamilton) When looking at these
10 IEP's, do you have any test scores?

11 A. Yes, there is always test scores and -- yes,
12 there are test scores.

13 Q. What were Johnny Johnson's test scores?

14 A. Well, Johnny Johnson's IQ scores all fell in
15 the low average range, which -- in the low average
16 range for him, which would then qualify him to be able
17 to be diagnosed learning disabled. You have to have at
18 least average intelligence to be diagnosed as learning
19 disabled otherwise you'd be mentally retarded. I'm not
20 certified in that area, but I know anything under a
21 certain amount is mental retardation but to be learning
22 disabled you have to have at least average intelligence
23 or you can't be qualified as learning disabled.

24 Q. why is that?

25 A. We have to be considered average intelligence

1 and then what happens is, for whatever reasons, the
2 wiring in your brain isn't right or something like that
3 and your academic achievement scores, which is
4 standardized, just as IQ scores are standardized, and
5 they do that so they can -- it's like them taking
6 something and measuring it as apples to apples and so
7 they take the standardized scores from the achievement
8 tests and if -- now the difference in point value, they
9 go by standard deviations because these are
10 standardized scores. So if your two standard
11 deviations from the norm then --

12 THE COURT: Let me interrupt. Excuse me. I
13 don't care about any of that.

14 THE WITNESS: Scores --

15 THE COURT: Just a minute. I don't care about
16 any of that. I don't care why. I want to know, let's
17 limit it to Johnny Johnson. We are not going to talk
18 about everybody here.

19 MS. HAMILTON: She was talking about Johnny
20 Johnson.

21 THE COURT: I don't think so. Let's talk
22 about Johnny Johnson. She said he's below the average,
23 below the average range. Let's go on.

24 MS. HAMILTON: Okay.

25 Q. (By Ms. Hamilton) What was his exact test

1 scores?

2 A. At this time his scores, he had a full scale
3 IQ score of 82 and that's low average. Verbal IQ 80.
4 His performance IQ was 87, full-scale IQ score was 82,
5 that was done on the wechler Intelligence Scale for
6 children, that's -- I'm sorry, that's a WISCr, verbal
7 IQ was 80, performance IQ was 87, full scale IQ 82.

8 That's deemed as average intelligence, low
9 average.

10 MR. WALDEMER: And the date of that was,
11 ma'am?

12 THE WITNESS: This test was given -- well, the
13 psychological report was done on May 11th of 1984.
14 It's on page 101.

15 MR. WALDEMER: We are talking about 1984?

16 THE WITNESS: Yes.

17 MR. WALDEMER: Okay. Thank you.

18 Q. (By Ms. Hamilton) Was Johnny given an IEP
19 every year or did you have them every year?

20 A. No. These -- this testing is done every three
21 years. Every three years it is required that we do a
22 reevaluation of the students. Now, this was his
23 initial evaluation, the one done in kindergarten. So
24 it was the first one and then it's required by law
25 every three years we retest them to see how, you know

1 -- what's the picture like, but the IEP is written
2 every year. That's an annual thing that we write.

3 Q. So three years from 1984, in 1987, did you see
4 Johnny's test scores in 1987, that's three years from
5 that?

6 A. Right. Yes. It would be at page 49 through
7 51.

8 Q. And what were Johnny's test scores by the time
9 you get to 1987?

10 A. Full scale IQ score was 84, verbal IQ was 86,
11 performance IQ was 85. They had used the WISC scales
12 again. They don't show if it was other measures. At
13 that time it was WISCr. I don't think the WISC 3 had
14 come out yet and they don't show that so --

15 Q. Did you review that report at the time you had
16 Johnny?

17 A. Yes, I did.

18 Q. How did you use this report in preparing your
19 IEP?

20 A. Well, I would have to read more than just
21 looking at the scores. IQ scores only give you one
22 measure at one time in their lives -- you know, it's
23 one setting. So since it's stable, they're not going
24 to look at it as being a pretty good measure as to what
25 his aptitude was but what was also looked at were his

1 academic scores, because they did academic testing on
2 him, which they did through the Woodcock Johnson
3 Psychoeducational Battery, which is on page 53, and I
4 would look at those standardized scores in comparison
5 to his overall functioning and seen how -- what were
6 the areas of weakness and you look at subtests on them
7 because you get the standardized scores, which give you
8 an overall picture, you have to look at those isolated
9 subtest scores because Johnny, like all other students
10 that have these kind of problems, the scores are
11 splintered so you do an analysis of those scores so you
12 can figure out how am I going to teach this child.

13 Q. Are the subtest scores what these records are?

14 A. Yes, they are subtest scores.

15 Q. What was Johnny's subtest scores?

16 A. Well, like on the IQ scores, there were ten
17 subtests that he was given, information similarity,
18 arithmetic, vocabulary, comprehension, picture
19 completion, picture arrangement, block design, object
20 assembly, coding. There's a scatter in those numbers.

21 Q. What does scatter mean?

22 A. Well, it means they are not all the same
23 number, which, if it's only off by a point or two, well
24 then okay, that just shows strengths and weaknesses,
25 but when you have mostly sevens and eights, but then

1 you have one of them show up as a three or a two, then
2 you know that's a domain that is obviously a weak area,
3 very weak and so I need to look at those areas and
4 think of how can I help that child to gain those skills
5 so that he can be successful in the classroom.

6 Q. What was Johnny's weakness?

7 A. Well, he had --

8 MR. WALDEMER: Judge, can I interrupt for a
9 moment for my own clarity. We're still talking 1987,
10 right?

11 MS. HAMILTON: Right.

12 MR. WALDEMER: I wanted to make sure.

13 A. Yes.

14 Q. (By Hamilton) What was Johnny's weaknesses?

15 A. Well, he had -- picture arrangements was the
16 lowest, that was a two and that's where they have to
17 take -- it's a whole picture, but it's like a puzzle.

18 THE COURT: Ma'am, I don't care what it
19 involves, the question was: What were his scores on
20 the subtests.

21 A. I already gave the scores.

22 Q. (By Ms. Hamilton) Okay. Now, I want you to
23 move ahead three more years or what year would you have
24 given an IEP, written his IEP?

25 A. I would have written his IEP in 1991 and 1992.

1 It's just depending on when it came due. You do it on
2 an annual date so whatever, you know, if it had been in
3 March the year before and if it had been due in March
4 of the year I had him and that's when I would have
5 written it.

6 If it had come due in December, then I would
7 have written it in December so whatever month it came
8 due in is when I would have written his IEP.

9 Q. Now, when you look through those records, do
10 you find your IEP?

11 A. No, mine is not in here.

12 Q. Do you recall what you wrote in his IEP?

13 A. I remember a lot of things I put in his IEP, I
14 don't recall every word I wrote in his IEP, but I do
15 recall concerns and things that I had about him that
16 would have been mentioned in the IEP, yes.

17 Q. What concerns were those?

18 A. Well, I had concerns with written expression,
19 I had concerns with reading, I had concerns with social
20 skills involving pragmatics. I had concerns about him
21 on math, he was behind in math. He was an over -- you
22 know, all -- almost every area in academics I was
23 concerned about him but those would have been -- then I
24 was concerned about perceptual skills and that involves
25 sensory perception as well as coordination type things.

1 Q. You said before pragmatics. What do you mean
2 by your concerns about pragmatics?

3 A. That's like a combination between language and
4 social skills and it's kind of knowing what to say, how
5 to respond to people, how to respond to your
6 environment, physical spacing in between people when
7 you are communicating. There are all kinds of things
8 involved in social pragmatics that involved language
9 and it involved social skills.

10 Q. What was in Johnny's behavior that made you
11 have concerns?

12 A. Well, in laymen's terms, I would say he was
13 very socially awkward. He didn't -- he -- if he was
14 trying to get your attention, he would walk up to
15 somebody, just stand there and smile at them with a
16 goofy expression on his face.

17 THE COURT: I'm sorry. I didn't hear that.

18 THE WITNESS: It was just with a funny
19 expression -- you know, just like not normal standing
20 there with -- I don't want to be cruel, but it was kind
21 of like a dumb grin on his face, like what are you
22 staring at me for, he would be awkward. He didn't seem
23 to know social boundaries. He was kind of out of it.
24 He wasn't with the program. He wasn't with us, he
25 wasn't with --

1 Q. (By Ms. Hamilton) What recommendations did
2 you make in the IEP that you wrote for his, I guess,
3 the next year -- when you did the IEP, what were your
4 recommendation?

5 A. I know his IEP was written in the spring time,
6 I do know that because by the time his IEP was written
7 I already knew that the school was having a reduction
8 in force and so I collaborated with the teachers he
9 would be getting for the following school year because
10 I knew I wouldn't be in the building anymore and I did
11 that with all my students. All my students, I wrote
12 their IEP's after I knew in the reduction in force. I
13 met with their future teachers to make sure that they
14 -- a lot of progress had been made that year with some
15 of those kids and I didn't want them to go backwards,
16 you know, and lose ground in the areas that I thought
17 things were working and I thought --

18 THE COURT: Excuse me, ma'am. The question
19 is: What did you recommend in your IEP for Johnny.

20 A. I recommended for Johnny, that he -- that they
21 do further testing on him for auditory processing
22 disorder, I recommended language that he needed to be
23 tested because his three-year reading evaluation was
24 coming up and I was suggesting that they test him for
25 language impairment, based with that auditory

1 processing disorder because back then that's how they
2 tested it, it was together; that they check him for
3 further reading, and that they look at some of his
4 abstract reasoning skills in math. I was worried about
5 abstract. He had difficulties with inferential
6 language and abstract language, and math is an abstract
7 language, but that falls over into the language
8 impairment as well as the verbal language.

9 Q. What is inferential language?

10 A. Well, that's -- inferential language -- well,
11 that's -- inferential language, it's where you draw
12 conclusions based on all sorts of things with language,
13 not just the literal meaning, but just picking up on
14 cues such as connotation and denotation and tone of
15 voice.

16 You can say: Oh, really, I'm so excited on
17 what's going on, or you can say: Oh, really. Picking
18 up those minor things in the voice, connotation and
19 denotation, some people don't get that and in fact they
20 new text on how you understand what's going on in the
21 world or if you understand what's being spoken to you;
22 comprehension of language.

23 Q. You're saying Johnny didn't get that?

24 A. No, no, Johnny didn't get that.

25 Q. From your testimony you didn't have him the

1 following year?

2 A. No, I didn't have him the following year.

3 Q. And why was that?

4 A. The school district had a reduction in force
5 because of a bond issue and all teachers that were
6 three years or less in the district were given a pink
7 slip and I was a first year teacher. It was just a
8 ploy. They told us that if the bond issue passed in
9 the summer, they would hire us back, which they did,
10 and they offered me a contract, but I had already
11 signed one with the special school district.

12 MS. HAMILTON: I have no further questions.

13 THE COURT: Mr. Waldemer.

14 MS. HAMILTON: Excuse me. I do have one more
15 question.

16 Q. (By Ms. Hamilton) I want to show you this
17 1991, I guess that's '92, I'm showing you Movant's
18 Exhibit 19. This is a school year book from the year,
19 I guess, it's '91/'92, when you taught at that school
20 and I'm showing you page three and I'd like you to tell
21 the court where your picture is located on that page.

22 A. The bottom row in the middle, right in the
23 middle bottom row.

24 Q. And I want to show you -- for the record, who
25 else taught in your classroom when you had Johnny?

1 A. Sharon Hayden. She's in the second row, very
2 last person.

3 Q. Was she there before you?

4 A. Yes, she was.

5 Q. And for the record, how did Johnny get along
6 with Ms. Hayden?

7 A. We'll not well at all. Nobody got along with
8 Ms. Hayden and I'll just speak specifically. He didn't
9 get along with her and I didn't get along with her.
10 She was a very aggressive -- she used volumes of voice
11 to control students. In other words, she liked to
12 scream at them.

13 Q. Now, I'm showing you page forty-five and tell
14 the Court where Johnny is located on that page?

15 A. On the bottom row, second one from the left.

16 Q. Now, you indicated that you had a lot of
17 concerns for Johnny.

18 Did you ever call Child Protective Services?

19 A. Yes, I did.

20 Q. And when did you do that?

21 A. Numerous times. I called -- I called at least
22 three or four times and I had my building principal
23 call one time.

24 Q. And why did you do that?

25 A. I was concerned for his safety and his

1 well-being and I believe it's required by law of the
2 teacher, if she witnesses things.

3 Q. What things did you witness that you felt by
4 that you called Child Protective Custody?

5 A. There's several things that I called about.
6 One thing was his overall dirty appearance, that's
7 neglect. I called about bruises on his body and the
8 position of the bruises on his body.

9 Q. What do you mean by the position of the
10 bruises?

11 A. Obvious handprints, you know, handprints and
12 the position that they were on his body were unusual
13 for normal -- even normal like just -- they were --

14 Q. For the record explain because this is a
15 written record. When you put your hand on your cheeks,
16 explain?

17 A. Well, like with the thumbs right -- like right
18 around here (indicating) and hand/fingers around here.
19 You can tell.

20 Q. When you say around here are you saying around
21 the back of the neck?

22 A. The back of the neck or right around the side
23 and at the throat, that and then there was -- he had
24 some bruises on his back.

25 Q. And how would you get an opportunity to see on

1 his back?

2 A. And on his legs, he had bruises on his legs.

3 Q. How did you see bruises on his back?

4 A. Because I would sometimes, and I did this for
5 more than one student, but I will only speak of Johnny,
6 I had some clothes that I would buy for students at
7 times and I bought clothes for Johnny Johnson, uh-huh.

8 Q. And so, you said -- you said that Johnny
9 Johnson came to school dirty and nasty, but as I look
10 at this picture of Johnny Johnson in this book, he does
11 not appear, just from me, look dirty or nasty?

12 A. No.

13 Q. How would you explain that?

14 A. Well, I had -- he wasn't the only one, there
15 were a couple of other students that I needed to do
16 this for, but picture day would roll around and I knew
17 which ones were -- needed help and I came prepared with
18 combs and brushes, couple of outfits or shirts, you
19 know, so that -- I dressed and combed their hair and
20 made them go in the bathroom. All the girls went in
21 the bathroom. We fixed their hair. It was a big deal.
22 It was like a grooming party. I just turned it into
23 everybody needed help. I knew some of my students
24 didn't need help. That was my way of doing it so I
25 didn't point out, even though I'm sure they knew which

1 ones needed and which ones didn't, that was my way of
2 trying to, you know, universalize the scene.

3 Q. This hair looks like it's been combed. Did
4 you comb his hair?

5 A. I combed his hair, I combed his hair.

6 Q. Prior to trial did anybody from the trial team
7 contact you and ask you about testifying?

8 A. No. I didn't even know this had happened, no,
9 I didn't. I've had personal health issues, some pretty
10 serious ones, during that time period I was in --
11 physically in a crisis and so I didn't even catch it on
12 the news or anything. I didn't know it had happened,
13 no.

14 Q. If you had known that it happened, would you
15 have been ready, willing and available to testify at
16 trial?

17 A. I would have made myself available. It's not
18 something I would have wanted to do but I would have
19 made myself available, absolutely I would have just as
20 I am now. I would have made myself available just -- I
21 would, yes, I would have.

22 MS. HAMILTON: No further questions.

23 THE COURT: Mr. Waldemer.

24 CROSS-EXAMINATION

25 BY MR. WALDEMER:

1 Q. Ma'am, I apologize. Your maiden name is
2 Strothkamp and your married name now is --

3 A. Dapron, D-a-p-r-o-n.

4 Q. D-a-p --

5 A. R-o-n, Dapron.

6 Q. Dapron.

7 A. Uh-huh.

8 Q. Okay. I'll try to stick with that, but --

9 A. That's okay.

10 Q. -- knowing you were Pamela Strothkamp. Now,
11 ma'am, I just want to touch on a couple of things.
12 Your testimony is that you bought him the clothes and
13 dressed him for picture day; is that correct, in that
14 exhibit that -- you just looked at the year book?

15 A. Well, yes.

16 Q. And you started with that school district in
17 early November of 1991?

18 A. Mid October, 1991.

19 Q. Mid October. I thought on direct examination
20 you said late October to early November?

21 A. In mid October they hired me in as substitute
22 because I was not certified. My certification didn't
23 come in until November so I was not considered a full
24 fledged teacher but they could put me in as a sub so
25 somewhere in between the middle of October and that

1 first week in November, I became a teacher.

2 Q. Okay.

3 A. But for a couple of weeks prior, I was a
4 substitute teacher in the classroom. I knew I was
5 going to be the teacher so with the students, I was
6 their teacher, with the district I wasn't.

7 Q. When is picture day in public school?

8 A. In the fall.

9 Q. In the fall?

10 A. Uh-huh.

11 Q. You're going to have to help me with your
12 definition of fall.

13 A. Well, every school is different. You know,
14 there are only like a few companies that go around, you
15 know, they rotate through these schools.

16 Q. I mean, I can only speak of my children, it's
17 in September and in the Northwest School District do
18 you know when it was?

19 A. It could have been October. At Herwin High
20 school this year it was in late October. So
21 somewhere -- it's typically in the month of September,
22 October and the first week of November when pictures
23 are generally taken, but a lot of districts also do it
24 in the spring time. I don't understand that one, but
25 they do.

1 Q. Do you remember today when it was in 1991?

2 A. What I remember is being there for having my
3 picture taken and helping my students get ready because
4 like I said, they really did turn it into about a
5 half-hour grooming party before hand.

6 Q. Ma'am, it's going to be a lot simpler, if you
7 don't understand my questions, you can tell me. If you
8 can answer my questions with a yes or no, please, do
9 so. If I've confused you, please tell me and I'll try
10 to ask the question so it's not confusing.

11 Okay?

12 A. Yes. I'm a teacher, I'm an educator. I can't
13 help the way I communicate.

14 Q. I understand.

15 A. And I'll work hard to fit into the legal
16 system, but I'm an educator.

17 Q. You're an educator and quite clearly you care
18 a great deal about Johnny Johnson?

19 A. I care about all my students.

20 Q. I'm just asking you about Johnny Johnson. Do
21 you care a great deal about him?

22 A. I cared about him then and I worried about him
23 and I worried about what was going to happen to him and
24 I talked to the hospital and communicated that to them.

25 Q. Hold on, ma'am. Do you care about Johnny

1 Johnson?

2 A. Today do I care about him?

3 Q. Yes, right now, do you care about Johnny
4 Johnson?

5 A. I do in a sense, yes, I do.

6 Q. Okay. That wasn't a trick, that's all I was
7 looking for, yes you do or no, you don't?

8 A. I had to think it through.

9 Q. That's fine. As a matter of fact, since you
10 were contacted by his attorneys in this proceeding
11 you've gone to see him in the penitentiary?

12 A. It was almost like to me a knee-jerk response.
13 I went and saw him two or three times, yes, and that
14 was it.

15 Q. Okay. So you did?

16 A. Yes, I did.

17 Q. And between the time that you saw him in the
18 penitentiary and the time you had taught him, had you
19 seen him at all?

20 A. No, no.

21 Q. When you went to see him in the penitentiary,
22 that was in 2007, right?

23 A. I guess.

24 Q. And you went and saw him three times?

25 A. I think that was, you know, a couple of times,

1 two or three times. I was rejected once because I
2 didn't dress right or something.

3 Q. You had forms you had to fill out and things
4 like that?

5 A. Well, I had already filled out the forms but I
6 think it was my hair. I think I didn't have my hair
7 right that day and they sent me away.

8 Q. And you last saw him when he was your student
9 when he was thirteen, right?

10 A. Yes.

11 Q. And when you saw him in the penitentiary in
12 2007, he would have been in his late twenties?

13 A. Yes.

14 Q. So you had not seen him -- if he was 27 in
15 2007 when you saw him, you had not seen him -- I
16 hesitate to do the math with a teacher on the stand.
17 You hadn't seen him for how many years?

18 A. Like fifteen years or something.

19 Q. Okay. Now, in 1991 it was your first year as
20 a teacher, right?

21 A. Yes.

22 Q. You got your certification after you started?

23 A. Yes.

24 Q. You're not a licensed psychologist?

25 A. Oh, no.

1 Q. You're not a school psychologist?

2 A. No, but -- no.

3 Q. You're a special education teacher?

4 A. Yes, I am.

5 Q. And at the time that you were teaching Johnny
6 Johnson, you didn't have your master's yet?

7 A. No, I did not.

8 Q. You had a bachelor's?

9 A. Yes.

10 Q. Okay. When you had him you gave him grades
11 that are part of those records in Movant's Exhibit 1,
12 right?

13 A. Uh-huh.

14 Q. Do you remember what grades you gave him, for
15 instance, in the first semester that you had him?

16 A. I don't remember particular grades.

17 Q. If you don't remember, that's fine. Let me
18 have you do this and I don't know what page it is in
19 their big book, I'm sure Ms. Hamilton will find it
20 while I'm showing this to you, I'm not sure.

21 Does that look like that's his grades from the
22 records here at the top; would have been yours?

23 A. Yes.

24 Q. Okay. And that was, I guess, 1991 and '92?

25 A. Yes.

1 Q. And then down there it's '92 and '93, right,
2 and then '93 and '94 at the bottom?

3 A. Yes.

4 Q. So that looks like it's all three grade years?

5 A. Uh-huh.

6 Q. But you would have had him only in '91 and
7 '92?

8 A. Yes, I would, that's right.

9 Q. And I know your new name, but your old name,
10 Pamela Strothkamp, is on there --

11 A. That's right.

12 Q. -- as his teacher in '91 and '92?

13 A. That's right.

14 Q. Can you tell me which grades you gave him on
15 semester one and semester two there during that school
16 year?

17 A. I gave him his math grade, his science grade,
18 his reading grade, his English grade and his social
19 studies.

20 Q. Okay. And in math in the first semester you
21 gave him a C plus?

22 A. I sure did.

23 Q. And in the second semester he dropped down to
24 a regular C?

25 A. Yes.

1 Q. And in science the first semester he got a B?
2 A. Yes.
3 Q. And the second semester he got a C plus?
4 A. Yes.
5 Q. And reading the first semester you gave him an
6 A?
7 A. I sure did.
8 Q. Second semester he dropped to a B minus?
9 A. Yes.
10 Q. And English looks like a B in the first
11 semester --
12 A. Uh-huh.
13 Q. -- and a C in the second semester?
14 A. That's right.
15 Q. And then social studies -- it was like
16 science, it was a C plus the first semester and a C in
17 the second semester.
18 A. That's right.
19 Q. One other question. You indicated that
20 because you knew you weren't going to be back the next
21 year that you collaborated with his next teacher of the
22 following year. would that be -- now, I'm going to let
23 you pronounce it because you might have known her,
24 Gentia (phonetic) Zang or would that have been one of
25 these other teachers listed?

1 A. No. It was the speech and language therapist
2 that was in the yearbook. I saw -- she's on the same
3 page as me in the yearbook.

4 Q. Do you remember her?

5 A. Terry or Tracey was her first name. Terry I
6 think and the last name started with a G.

7 Q. Let me ask you this: I didn't look at all
8 those pictures?

9 A. Terry Gaffney.

10 Q. Terry Gaffney?

11 A. Uh-huh. They say resource under her name.
12 She was the language resource teacher. That's why I
13 was conferring with her.

14 Q. That would be who you talked to and she would
15 have had the IEP?

16 A. That's who I was hoping or who they assigned
17 it to. I don't know, but that's who I thought it was
18 going to be, yes.

19 Q. Okay. And it wasn't -- I'm going to call it
20 Ms. Zang, you did not talk with her?

21 A. I don't even remember who she was.

22 Q. Okay. In his fifth grade records, did you
23 remember what he got during fifth grade?

24 A. I didn't have him for fifth grade.

25 Q. But you reviewed those records?

1 A. I reviewed those records.

2 Q. Do you recall what he got?

3 A. What do you mean what he got?

4 Q. What kind of grades, letter grades he had?

5 A. I didn't pay much attention to letter grades

6 because those grades are based on special education

7 goals and curriculum. We are talking at third grade

8 level while in fifth grade. It was a third grade

9 science book we worked out of.

10 Q. But I'm asking you if you saw those grades?

11 A. I'm sure I saw them.

12 Q. Okay. Let me show you -- does this appear to

13 be his grade card for the previous year for fifth

14 grade, grades 90, 91?

15 A. And what school was this from?

16 Q. These would all be from Northwest High School?

17 A. Still Northwest?

18 Q. And it looks like he got a B in reading?

19 A. Uh-huh.

20 Q. A B in English, A minus in spelling, A minus

21 in math?

22 A. Correct.

23 Q. A minus in social studies?

24 A. Correct.

25 Q. And B plus in science.

1 A. This is all contained classrooms.

2 Q. Okay. And all of these classrooms that -- I
3 mean you looked at the records. He'd been a, I'm going
4 to use the word client, he'd been a client of special
5 school district since kindergarten?

6 A. That's right.

7 Q. And the special school district is -- is it
8 St. Louis Special School District or St. Louis County
9 affiliated in any way with Northwest Special School
10 District?

11 A. No.

12 Q. But the special school District Model here in
13 the generalized St. Louis area, at least back in the
14 nineties, was considered to be one of the best in the
15 country, right?

16 A. It's debatable, but yes, as a model. It sure
17 is a model that is not copied in any other states, but
18 most districts, including the Rockwood School District,
19 which I was placed in the special district, it really
20 fights against the model because they find it's not as
21 individualized to the community as what they would like
22 to see and so there are a lot of complications with
23 that district.

24 They did set the tone in this area, especially
25 in the fifties and the sixties because no services were

1 provided to children before then.

2 Q. Great. The special school district had him as
3 a client all the way through his eighth grade of
4 school; is that your understanding?

5 A. Who did?

6 Q. The Special School District of St. Louis
7 County or Northwest High School, had him as one of
8 their students all the way through?

9 A. It appeared to, yes, uh-huh.

10 Q. And that would have been '85 through '95, but
11 -- let me ask you this: You didn't have any contact
12 with him after the 1992 school year?

13 A. That's correct.

14 Q. Okay. Let me switch back to another thing you
15 said in direct examination. I'm not sure it was
16 portrayed for the record, but did you put your hands
17 around your neck to show where you thought you saw
18 handprints on him?

19 A. Well, I was sort of -- just showing that he
20 had, you know, you could tell by the position of the
21 hands -- I'm not talking about my hand.

22 Q. I understand.

23 A. You know how when you look at bruises on
24 somebody and you can see how the handprint is on it.

25 Q. Okay. Looking at me as if you are looking at

1 him, if I put hands around my neck so that my thumbs
2 are at the top of my tie and my palms are around my
3 neck -- is that what you indicated to me for the
4 record?

5 A. Right, but your hands would be in reverse
6 order -- like if I were doing it to you.

7 Do you know what I'm --

8 Q. Okay. In other words, if you put your hands,
9 if I'm facing you, and you put your hands around my
10 neck, that's what you told us you saw?

11 A. Yes. I saw it the way -- if you want me to
12 show you.

13 Q. I'm testing you. I'll have Ms. Hamilton come
14 up here. Would I be wrong if I characterized what
15 you're describing as you saw what you believed to be
16 evidence that someone had put their hands around his
17 throat?

18 A. Yes.

19 Q. And that it bruised his throat?

20 A. That it bruised around his neck?

21 Q. Around his neck?

22 A. Uh-huh.

23 Q. Okay. And you called Childrens' services or
24 the hotline?

25 A. Uh-huh.

1 Q. Did you call the police?

2 A. No. Back then we weren't required to. I did
3 talk to the principal about it.

4 Q. You weren't required to?

5 A. I wasn't required.

6 Q. You certainly could have?

7 A. I really didn't know at that time. It was my
8 first year teaching what my position -- you know what
9 I'm saying? I went to the principal.

10 Q. Let me ask you this: How old were you in
11 1991, '92?

12 A. I was an adult.

13 Q. I'll go with that. Okay. I'll go with that.
14 You were over the age of two twenty-one, right?

15 A. Over the age of twenty-one.

16 Q. We'll just leave it to --

17 A. I was in my thirties.

18 Q. You were an adult?

19 A. Uh-huh.

20 Q. And so as an adult what you're describing is,
21 somebody tried to strangle this 13-year old boy?

22 A. Yes.

23 Q. And you knew, that if somebody tried to
24 strangle anyone, but especially a child, that is a
25 crime, correct?

1 A. It's a boy. He has -- you know -- all kinds
2 of people around him. I just made the report, and,
3 yes, yes, sir.

4 Q. So you could have calling the police but you
5 did not?

6 A. No, I didn't.

7 Q. Okay. Now, as a teacher you report it and now
8 I believe it's call hotlined it?

9 A. Yes.

10 Q. And when you hotline something there's a
11 record made of that?

12 A. Yes.

13 Q. And back in 1991 there were records made by
14 the Division of Family Services as to hotline calls?

15 MR. LUNDT: I'm going to object, your Honor.
16 That calls for speculation.

17 THE COURT: Sustained.

18 MR. WALDEMER: All right. I think, your
19 Honor, she said -- she answered yes.

20 THE COURT: Well, you can ask her.

21 Q. (By Mr. Waldemer) As part of being a teacher,
22 you are required to make hotline calls if you saw
23 something regarded as being neglect of a child?

24 A. I know that I was informed by the principal --
25 Tess Schwabo (phonetic) had told me to do that. I know

1 that sometime in the nineties is when they made it a
2 law and I don't think it was actually a law at that
3 time, I don't think it became a law until like 1997
4 that we had to call these types of things in but I did
5 make the phone call because my principal Tess Schwabo
6 (phonetic) told me to.

7 Q. Have you ever seen any records confirming that
8 that call was made either with the school district or
9 with the Missouri Division of Family Services?

10 A. I made a record of it with the school district
11 but I don't know anything beyond what -- I don't know
12 what Division of Family Services did.

13 Q. Okay. You've got all those records provided
14 to you by Movant's counsel and you didn't see anything
15 in there showing that you made any of those hotline
16 calls that you indicated that you did?

17 A. No. I don't even see the IEP's I wrote.

18 Q. And those are just missing from those records?

19 A. I don't have any idea what happened.

20 Q. Now, in looking at the records that you talked
21 about before, you talked about several IQ scores,
22 right?

23 A. Uh-huh.

24 Q. And I think you said he had an 82 in 1984
25 which was low average?

1 A. Yes, that's low average.

2 Q. He had an 84 in 1987, which is still low
3 average?

4 A. Uh-huh.

5 Q. And then did you see the one in 1990, the year
6 before you were there, he had an IQ of 89?

7 A. Yes, I saw that.

8 Q. And that's average?

9 A. That's still average.

10 Q. That's not low average?

11 A. No, that's low average.

12 Q. Okay. Are you aware of his later IQ scores in
13 the upper eighties and nineties --

14 MR. LUNDT: I'm sorry, your Honor. I'm going
15 to object. He's being confusing. We don't know what
16 years he's talking about.

17 THE COURT: Overruled. He can get into the
18 specific years later on. He's asking generally.

19 MR. WALDEMER: If she doesn't know, she
20 doesn't know.

21 Q. (By Mr. Waldemer) Are you aware of any of the
22 later IQ scores being in the upper eighties and
23 nineties?

24 A. I know I've read through all of them and they
25 all were within a range that are pretty standard with

1 some fluctuation, but, yes, I'm aware of that.

2 Q. Now, what is a Special School District
3 Reevaluation Summary?

4 A. It's a -- we're required every three years to
5 test students and then the reevaluation summary is a
6 summary report of what that testing -- what the results
7 were from the testing.

8 Q. Do you have Volume 1 in front of you?

9 A. Yeah. What page are you on?

10 Q. Okay. Let's go to page four, right in the
11 beginning?

12 A. Okay.

13 Q. Okay. Now, that's dated February 27, 1990,
14 correct?

15 A. Yes.

16 Q. Okay. They don't put it at the top --

17 A. No.

18 Q. They make it difficult for us to search for
19 it, right?

20 A. Yes.

21 Q. The first paragraph, it says: This is a
22 routine three-year reevaluation. His original Special
23 School District (SSD) evaluation on May 29th, 1984,
24 resulted in a diagnosis of learning disabled, right?

25 A. Yes.

1 Q. 1984, that's -- we are going back six years
2 before when he was initially diagnosed as learning
3 disabled?

4 A. Yes.

5 Q. And that was in kindergarten?

6 A. Yes.

7 Q. Okay. Now, in their reevaluation summary, you
8 would have had this when you took him on as a student,
9 right?

10 A. Yes, I would have.

11 Q. Okay. And you -- turn to the next page, page
12 five.

13 A. Yes.

14 Q. Down about mid page it says: Behavior.

15 A. Yes.

16 Q. It says: John's ability to follow school
17 rules and get along with his peers and adults is good.
18 John does have trouble in organizing his time and
19 materials and attending to and completing tasks.

20 A. Yes.

21 Q. And you would have had that when you had him
22 as a student?

23 A. Yes, I would have.

24 Q. Okay. Let me ask you to turn over to one more
25 page, down at the bottom it talks about Diagnostic

1 Conference Summary.

2 A. Yes.

3 Q. The first sentence: Based on the results of
4 this evaluation, the diagnostic team finds this student
5 to be learning disabled?

6 A. Yes.

7 Q. So they confirmed his disability when they
8 first diagnosed him in 1984, right?

9 A. Yes.

10 Q. And then it goes on to say: Cognitive
11 assessment revealed overall functioning in the low
12 average range.

13 A. Yes.

14 Q. Okay. So that's the same thing as what you've
15 been saying, he's operating in the low average range,
16 right?

17 A. Yes.

18 Q. Okay. In his previous IEP's, you read every
19 one of those?

20 A. More than likely, knowing me, I did, yes. I
21 do that with my students.

22 Q. In February of -- February 27th of 1990, his
23 IEP says able to get along with both peers and adults?

24 A. Uh-huh.

25 Q. Is that how you found him in 1991?

1 A. Oh, he -- yes. He got along -- he didn't pick
2 fights, he didn't argue. He was compliant, yes.

3 Q. And that was pretty standard all the way back
4 through all of his IEP's, that he gets along with
5 people?

6 A. Yes, and that's an important thing to note on
7 him, yes.

8 Q. Now, in -- in your classrooms he was able to
9 complete his assignments and get the grades which you
10 gave him, correct?

11 A. When you say he was able to complete the
12 assignment --

13 Q. To the level of the grades that you gave him?

14 A. With assistance, he was, yes.

15 Q. And those grades were the ones -- those grades
16 were the ones you gave him in that special class?

17 A. It was a special ed classroom, yes.

18 Q. Now, his later IEP's --

19 A. Yes.

20 Q. -- after you didn't have him, did review those
21 before today?

22 A. I've reviewed all his school records, yes.

23 Q. Okay. But you didn't review any of those
24 before you had him because they weren't there?

25 A. They weren't there, that's right.

1 Q. Now, when he was reported to have stolen from
2 his teachers, you were not one of those teachers he
3 stole from, right?

4 A. That didn't happen while he was --

5 Q. Okay. You mentioned, ma'am, that your son
6 suffers from what you believed or what may have been
7 diagnosed as an auditory processing disorder?

8 A. Yes.

9 Q. And you said he's doing fine now?

10 A. Oh, I wouldn't -- he's grown up. I've quit
11 being -- the strings have been cut.

12 Q. Maybe as a parent, I just thought he was doing
13 fine. You said he doesn't -- I think your words for it
14 -- he's on his own now, he doesn't need you or you --
15 or you're not his caretaker?

16 A. Actually I still help him write every paper he
17 has to for school.

18 Q. But you're not looking over his shoulder all
19 the time?

20 A. We live in separate homes.

21 Q. So he's functioning to a certain level on his
22 own?

23 A. Yes, he is.

24 MR. WALDEMER: Judge, I don't have anything
25 more for this witness.

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THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MS. HAMILTON:

Q. Now, you said on cross that Johnny gets along with everybody, he's compliant. Exactly what do you mean by he was compliant?

A. Well, if you asked him -- you know, if I would say, sit up in your seat, Johnny, because a lot of times when I walk in the room he would be sitting completely slouched down or he would have his head down like this and I would say, sit up Johnny, we are at school now you need to sit up and attend, everybody else around you is sitting up. He would do it, he would not argue with me. He would do it, whereas, you know -- so in writing my IEP it would say he gets -- he follows authority.

So he's not a problem. That's how he gets along with the adults. That's what we are looking for because so many times, you know, with these students they're angry, they're angry in their room so they take it out on the teacher and they're argumentative, they don't want to be there.

MR. WALDEMER: Judge, again, we are not talking about Johnny Johnson.

THE COURT: Sustained.

1 Q. (By Ms. Hamilton) Okay. When you say he was
2 compliant, you were talking about with adults, you're
3 not talking about with other children?

4 A. Right.

5 Q. Okay. And what Dean read to you, he gets
6 along with other children, did you know he got along
7 with other children?

8 A. As far as not fighting, not arguing, he didn't
9 pick on people, he didn't -- he got along with them as
10 far as not being a problem. He wasn't a problem child
11 and I think that's what -- you're looking at the
12 strength there when you're writing that part of the
13 IEP. You have to write some of these students
14 strengths, it's part of the IEP because the IEP focuses
15 so much on weaknesses. You're required to write some
16 of their strengths and sometimes it's a stretch.

17 Q. So when you say Johnny got along with others,
18 you didn't mean that other people didn't pick on him?

19 A. No. I meant he was decent to his fellow
20 classmates. He never started anything.

21 Q. Now, you talked about grades and he got some
22 A's and B's. On what grade level was he getting A's
23 and B's; when he got to be 13 and 14, what grade level
24 was he?

25 A. Well, that class was working -- pretty much

1 the whole class, so the textbooks that I used were
2 third grade level. I had a third grade science book, I
3 had a third grade level English book. Spelling I used
4 a mixed level on that because, you know, that helps
5 with language acquisition and not everybody was on the
6 exact same level. Some of my students -- some of my
7 students were second, third, fourth and some were
8 different but those two areas, those areas, science --
9 social studies as well and the reading books, those
10 were all third grade level.

11 Q. Now, Dean asked you about whether or not you
12 called the police and you started to say you talked to
13 the principal.

14 when you talked to the principal and you said
15 the principal told you what to do, what did he tell you
16 to do about Johnny's abuse that you noticed?

17 MR. WALDEMER: Judge, object to the hearsay.

18 THE COURT: Well, it's hearsay. She's been
19 testifying to it. I'm going to let her do it.
20 Overruled.

21 Q. (By Ms. Hamilton) what did the principal tell
22 you to do?

23 A. Well, the principal told me to make sure that
24 the nurse saw him and that I called the hotline. She
25 also suggested that I call the hotline for his

1 attendance, educational neglect on the part of his
2 parents and from his overall being dirty and things
3 like that so she requested that I just go ahead and
4 talk about it all when I called.

5 Q. Did the school every try to do anything to
6 help Johnny?

7 A. I know that the principal was very concerned
8 and something happened that year, it was an interesting
9 year. It was like watching him close up -- you know,
10 the more -- he started becoming more and more absent.
11 He was confused a lot. He didn't -- I couldn't tell if
12 he was being honest when I would ask him why he was
13 absent. He was always really tired in the mornings.

14 I would ask him: what time did you go to bed
15 last night and I couldn't tell -- there were times I
16 could tell he was lying to me about those things and
17 that caused me -- I was wondering why is he hiding,
18 what is he trying to hide because they weren't things
19 that would get him in trouble so it didn't make sense
20 why, he didn't seem to be forthright with me.

21 MS. HAMILTON: I have no further questions.

22 THE COURT: Any recross-examination?

23 RE-CROSS-EXAMINATION

24 BY MR. WALDEMER:

25 Q. Ma'am, did you ever see any records that the

1 nurse looked at Johnny Johnson for those reports of
2 abuse that you claim you made?

3 A. I don't think I saw the records of it. I know
4 that -- I can remember sending him -- I sent him to the
5 nurse's office, yes.

6 Q. Okay. As far as him being -- not being a
7 problem child, we are talking about at the age of
8 thirteen, right?

9 A. Right.

10 Q. You don't know what he was at 24?

11 A. That's correct.

12 Q. And I'm not going to tell you, but do you know
13 any of the facts of what he did on July 26, 2002?

14 A. I don't know all the facts, no, obviously.

15 Q. Sounds pretty horrible, doesn't it?

16 A. Yes, it does.

17 Q. And it doesn't sound like the kid you knew in
18 1991 and 1992, does it, the kid you just described as
19 not being a problem child?

20 A. You're asking right now of somebody --

21 Q. I'm just asking you -- I'm afraid you don't
22 understand my question.

23 It doesn't sound to you like the child you
24 knew in 1991 who would do such horrible things in 2002?

25 A. It's an unfortunate thing that my experience

1 has brought me that I've had several criminals,
2 murderers in my classroom now -- more than once now and
3 I -- that I recognize things are going on in their
4 environment and asked for help and it didn't happen and
5 I wonder, what we did, what we could have done more,
6 that could have rescued this child and kept him from
7 becoming what he became. That scares me and it scares
8 me that it is something that is repeated over and over
9 and over in a very short period of time because of the
10 type of children that I work with.

11 Q. And you say that without having seen Johnny
12 Johnson, or as you testified fifteen years between when
13 you taught him and when you saw him in the
14 penitentiary?

15 A. I read his Potosi records from school and I
16 saw a couple of things that astounded me. I also know
17 when I talked to the hospital where Johnny Johnson was
18 at, he never came back that school year after he tried
19 to commit suicide. He was in the psych ward and I know
20 and --

21 Q. You looked at a lot of records in this, didn't
22 you, before you testified?

23 A. No. I remember that. I have an unbelievable
24 recall with my students, no. I can tell you the name
25 of students in the classroom.

1 Q. Let me ask you this then: He wasn't in Potosi
2 School District until he was in ninth grade?

3 A. Right.

4 Q. You didn't have him after sixth grade?

5 A. Which you've already asked me under oath.

6 Q. No, you apparently didn't understand my
7 question. I was talking about what you knew in 1991
8 and '92, since then you've read all these records?

9 A. I said I had, yes.

10 Q. And you looked at records beyond when you had
11 him?

12 A. Yes, I did, to see what happened.

13 Q. That was my question. Apparently you didn't
14 get that part.

15 MR. WALDEMER: No further questions.

16 THE COURT: Any redirect?

17 MS. HAMILTON: No.

18 THE COURT: You may step down. We'll take
19 about a fifteen-minute break here.

20 (Proceedings stood in temporary recess.)

21 MR. LUNDT: Your Honor, we are going to call
22 Vito Bono to the stand.

23 VITO BONO

24 being produced and sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. LUNDT:

2 Q. Okay. Sir, can you state your name for the
3 record.

4 A. Vito Bono.

5 Q. And how are you employed?

6 A. I'm employed as a social worker at Center
7 Point Hospital currently.

8 Q. Where is Center Point Hospital?

9 A. St. Charles.

10 Q. And how long have you been a social worker?

11 A. Oh, it's been over thirty years.

12 Q. And have you always worked in a hospital
13 setting?

14 A. Other than secondary jobs, yes, I've always
15 been in a hospital working on psychiatric units.

16 Q. Psychiatric units?

17 A. Yes.

18 Q. Back in 1995 were you working at St. John's
19 Mercy?

20 A. Yes, I was.

21 Q. And if I can have you grab that volume in
22 front of you and go to page 1269.

23 THE COURT: What volume is that?

24 MR. LUNDT: I'm sorry. That is volume 5, your
25 Honor.

1 THE COURT: Okay. Okay.

2 Q. (By Mr. Lundt) Before I get into that, can
3 you give me an idea of educational -- educational
4 background?

5 A. I have a bachelor's and master's degree in
6 social work from St. Louis University and I have a
7 license to practice clinical social work in the State
8 of Missouri.

9 Q. Okay. And you said you've been doing this for
10 thirty years?

11 A. A little over thirty years, yes.

12 Q. And during that time I assume that you've
13 worked with a number of people with a number of
14 different mental disorders?

15 A. Yes, many disorders, yes.

16 Q. Okay. Including psychotic disorders and mood
17 disorders?

18 A. Yes, both.

19 Q. All right. Now, in 1995, it looks like June
20 of 1995, you met a seventeen-year-old by the name of
21 Johnny Johnson?

22 A. Yes.

23 Q. Okay. And you did -- is this a psycho-social
24 assessment of him on page 1269 to 71?

25 A. Yes.

1 Q. And what was actually your duty here in there?

2 A. In this case Mr. Johnson had been brought to
3 the emergency room and I was asked to come and do an
4 evaluation to determine to see if he needed any
5 services at the time.

6 Q. And at that time -- okay. And at that time he
7 was brought to the emergency room because of suicidal
8 ideation, I assume?

9 A. Yes.

10 Q. On page 1270 under psychiatric history, you
11 indicated that that was his fourth psychiatric
12 admission?

13 A. Yes. If I recall this is what was told to me,
14 I believe, it was his grandmother who brought him, if I
15 remember the -- from what her statement was, yes.

16 Q. And you met with the -- both Johnny and his
17 grandmother or did you just meet with Johnny?

18 A. From what I wrote, I met with both of them.

19 Q. Okay. And do you have any independent
20 recollection of Johnny or his mother at this point?

21 A. No. Unfortunately, it was too long ago and at
22 that time I was doing too many of these. I don't have
23 any recollection of this at all.

24 Q. Okay. So you would have had -- about that
25 time would you have been -- how many -- how many kids

1 would you see in a day or psychiatric patients?

2 A. Well, it would depend. At that time I was --
3 I was the supervisor of the unit including a variety of
4 concerts who responded to these cases in the emergency
5 room and in the hospital itself and in an area where we
6 took people by appointments. So I could do as many as
7 two a day, sometimes less, sometimes more. The average
8 worker did three or four a day but since I was
9 supervising, I didn't do as many. I could do a dozen a
10 week or so.

11 Q. Okay. And so basically your memory of this
12 case can only be refreshed by the document in front of
13 you; is that right?

14 A. Yes.

15 Q. And it was created at or near the time the
16 information was given to you?

17 A. This portion here (indicating) was dictated
18 after I did the assessment and it was -- I believe, if
19 I recall correctly, the next day I would receive it and
20 I would sign it, but the written part was done during
21 the assessment.

22 Q. Okay. And you went over his chemical use,
23 chemical dependency on 1270?

24 MR. WALDEMER: Judge, at this time I'm going
25 to object and perhaps I misunderstood Mr. Bono, the

1 document is in evidence, I did not object to it being
2 admitted into evidence, but at this time it's my
3 understanding from Mr. Bono he doesn't remember any of
4 this and doesn't remember Johnny Johnson so his
5 recollection isn't refreshed. He doesn't remember but
6 he recognizes the document. I'm not sure why he's here
7 to testify, if he doesn't recall this.

8 MR. LUNDT: Let me ask him what he does
9 recall.

10 Q. (By Mr. Lundt) From reading this record, what
11 do you recall about Johnny Johnson?

12 A. I recall that he was a young man who was in
13 emotional distress at the time, needed to be admitted
14 for his own safety and for treatment.

15 Q. And under impressions and recommendations it
16 says it's very -- he does appear to come from a rather
17 dysfunctional family?

18 A. Yes. From the history I gathered, it was
19 quite a dysfunctional family, yes.

20 Q. And additionally you said, historically this
21 family has not been active in keeping involved in his
22 treatment and aftercare?

23 A. Yes. He had previous hospitalizations and
24 from the statements of his grandmother, he was not
25 compliant with either continuing out-patient visits or

1 taking medication.

2 Q. Okay. Do you recall anything else about
3 Johnny Johnson at this point?

4 A. Unfortunately, no. I recognize my signature
5 on this dictated psycho/social and my handwriting in
6 the handwritten assessment but I just don't recall the
7 young man.

8 MR. LUNDT: Thank you.

9 THE COURT: Mr. Waldemer.

10 MR. WALDEMER: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. WALDEMER:

13 Q. You do have that right in front of you, don't
14 you, Mr. Bono?

15 A. Yes, I do.

16 Q. And that is a document that -- I've looked at
17 it. It's starts on 1269 and your signature is on 1271?

18 A. Yes.

19 Q. And -- but you don't -- you'd never seen him
20 before this (indicating)?

21 A. No, I did not.

22 Q. Okay. And have you ever seen him after?

23 A. No.

24 Q. Okay. So you wouldn't recognize him if he
25 walked in the room?

1 A. No, I wouldn't.

2 Q. Okay. You worked with a doctor in this
3 instance?

4 A. When we did these type of assessments, after
5 the assessments we would consult with a physician, a
6 psychiatrist.

7 Q. If you could go back just a couple of pages to
8 page 1210.

9 A. Okay.

10 Q. And do you recognize that as a document in the
11 records prepared by, I think it was on 12/12, Arthur
12 Smith, M.D.?

13 A. Yes.

14 Q. And did you know Dr. Smith?

15 A. Yes.

16 Q. Would he have been Mr. Johnson's attending
17 physician?

18 A. For this admission, yes.

19 Q. On page 1210 it indicates that Johnson was
20 17 years old at the time?

21 A. Yes.

22 Q. And the last sentence -- identifying date --
23 patient threatening to harm himself or the sister's
24 boyfriend if he was not brought to the hospital?

25 MR. LUNDT: Your Honor, I object. This is not

1 within the memory of this particular individual.

2 MR. WALDEMER: I'm asking him if he sees that
3 there and I have a follow-up question.

4 THE COURT: You can answer that question.

5 Q. (By Mr. Waldemer) Do you see that sentence?

6 A. I see the sentence.

7 Q. Okay. Was that your understanding at the time
8 of the reason for him being admitted to the hospital at
9 the time, he was threatening himself or to hurt this
10 other person, if they didn't take him to the hospital?

11 A. Only on the first part that he was threatening
12 to hurt himself.

13 Q. Okay. So you didn't know what Dr. Smith had
14 put in there?

15 A. That was not part of my information that I
16 received, that he was wishing to harm anyone else.

17 Q. Okay. Down in the hospital course, you see
18 where Dr. Smith wrote, it says: Patient refused
19 initial out-patient care and also recanted the above
20 threats?

21 A. Where was that?

22 Q. Just down in second sentence in hospital care
23 -- I'm sorry, hospital course.

24 A. I see that, yes.

25 Q. And did he recant the threat to harm himself

1 to you?

2 A. No.

3 Q. After -- did you offer him out-patient care?

4 A. No.

5 Q. Dr. Smith goes on: Once he was on the unit we
6 discovered that patient's ex-girlfriend was also on the
7 adolescent unit?

8 A. I have no recollection.

9 Q. That's not part of your report either, is it?

10 A. No, it isn't.

11 Q. Do you see next page on 1211 the third
12 paragraph where Dr. Smith wrote: He consistently,
13 during the latter days of his hospitalization, voiced
14 that he did not feel suicidal or like harming the
15 girlfriend's boyfriend?

16 A. I see that.

17 Q. Okay. Did you have anything to do with him
18 other than your initial assessment when he came in?

19 A. No. At the time I was not working on the unit
20 I was only in the intake assessment.

21 Q. Did you know that his ex-girlfriend was also
22 on the adolescent unit?

23 A. I did not.

24 Q. Is that something you learned after you talked
25 to him?

1 A. Apparently. I didn't know at the time.

2 Q. Okay. But you didn't know?

3 A. No.

4 Q. Okay. Can I get you to turn to page 1272 and

5 about half way down the page there is a line that looks

6 like the end of one of the nurse's notes.

7 A. Okay.

8 Q. Do you see that?

9 A. I'm not sure which line you're referring to.

10 Q. There is a line as if somebody wrote --

11 somebody drew the line.

12 A. I see, yes, yes.

13 Q. Okay. And below that line, I can't read that

14 signature, the nurse wrote: Fellow female peer

15 reported that patient followed her on the outside,

16 spoke with patient and he admits to past relationship

17 with her and calling the female's house last PM and

18 talking with the parents. States: I just knew she was

19 in the hospital, I didn't know where.

20 Do you see that?

21 A. I see that.

22 Q. Was that information which he provided to you

23 in your initial assessment of him?

24 A. No.

25 Q. When he was brought to you I think he

1 indicated that he had threatened to take an overdose of
2 aspirin?

3 A. I'd have to look back at the assessment.

4 Q. You don't remember that?

5 A. I remember that he was suicidal. The details
6 I'd have to go back and look at the assessment.

7 Q. Okay. Do you recall if he indicated to you
8 that he'd been sexually abused?

9 A. No.

10 Q. Do you recall if he indicated to you that he'd
11 been physically abused?

12 A. He indicated that in his current situation he
13 was being emotionally and somewhat physically abused by
14 a -- I think his sister's boyfriend. I think that's
15 right.

16 Q. Did he mention that the boyfriend had pushed
17 him around --

18 A. Yes.

19 Q. But that he was emotional -- emotionally and
20 verbally abusing him?

21 A. Yes.

22 Q. He made no mention of any nightmares or
23 flashbacks of traumas?

24 A. No.

25 Q. He made no mention of using LSD that you

1 recall?

2 A. I'd have to look at the chemical dependency
3 section, but I don't recall it.

4 Q. Okay. If he said that I was using LSD, you
5 would have marked that down too?

6 A. Yes. These assessments we'd indicate any type
7 of abuse regardless of how long it would have been.

8 Q. You talked to him, do you recall talking to
9 him about religion?

10 A. No.

11 Q. He never mentioned cocaine or methamphetamine
12 use, if you recall, sir?

13 A. No.

14 Q. You would have written that down if he had?

15 A. Again, I'd have to look back. I'm not sure
16 what I wrote down. I believe I wrote something about
17 chemical use, but I don't recall unless I looked.

18 Q. It would be in the record?

19 A. Yes.

20 Q. Okay. Good. If he reported to you that he'd
21 been huffing any substances, gasoline, butane, or
22 anything like that, you certainly would have written
23 that in there?

24 A. Yes, I would have.

25 MR. WALDEMER: Thank you.

1 THE COURT: Any redirect?

2 MR. LUNDT: Yes, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. LUNDT:

5 Q. In fact, on 1270, he told you about using
6 alcohol and marijuana?

7 A. On 1270? Yes, alcohol and marijuana.

8 Q. And on 1272, again, at top of the page, he
9 apparently told this nurse -- she states that he said:
10 He's suicidal everyday of my life. Cut arms
11 approximately one week ago and burned right arm --
12 something -- a cigarette two weeks ago. Reports
13 appetite loss, insomnia and mood swings for the past
14 couple of months?

15 A. I see that.

16 Q. And would he have told you about that; would
17 you have noted burns on --

18 A. If I recall there was an incident he had come
19 to the emergency room perhaps a couple weeks before
20 that for a laceration and stated it was an accident,
21 but then during the assessment I had with him he
22 admitted that he -- admitted that it was purposeful.

23 Q. Okay. And then he talks about the many past
24 suicide attempts and his history of sexual abuse by the
25 older boys in the neighborhood when he was younger?

1 A. I see that. I don't recall in my assessment
2 any sexual abuse. If I could look back, I don't recall
3 him mentioning or him mentioning where he was sexually
4 abused.

5 Q. And then going -- the State directed you to
6 1210 and this is the report by Dr. Smith?

7 A. Okay.

8 Q. Do you see in that -- middle of that page,
9 drug urine screen was negative?

10 A. Yes.

11 Q. Would you have known that at that time?

12 A. No. The laboratory results usually aren't
13 available during the assessment, the results come
14 afterwards, usually after the admission.

15 MR. LUNDT: I don't have anything further.

16 THE COURT: Anything else, Mr. Waldemer?

17 MR. WALDEMER: One real quick.

18 RE-CROSS-EXAMINATION

19 BY MR. WALDEMER:

20 Q. One real quick question so we have the
21 complete page.

22 Going back to 1272.

23 A. Okay.

24 Q. Mr. Lundt stopped reading here (indicating).
25 He denies homicidal ideation, is that what that says?

1 A. Yes.

2 Q. And then the nurse indicated that the patient
3 laughed and fidgeted during the interview and made a
4 joke each time he was asked a question?

5 A. Uh-huh.

6 MR. WALDEMER: Nothing further.

7 THE COURT: Anything else?

8 MR. LUNDT: Nothing further.

9 THE COURT: Thank you. You may step down,
10 sir.

11 MS. HAMILTON: Your Honor, I'd like to offer
12 into evidence Movant's Exhibit 1, the whole thing.
13 Volume 1, I think.

14 THE COURT: That would be volume 1?

15 MS. HAMILTON: Yes.

16 Part of that is already in evidence.

17 Mr. Waldemer.

18 MR. WALDEMER: Judge, I have the special
19 school district records in without any objection. I do
20 not have any of the rest of it in, other than -- I
21 thought that the Dr. Rabun's evaluation may have been
22 admitted.

23 THE COURT: It has.

24 MR. WALDEMER: I'm not sure if anything in the
25 Northwest High School records or the Potosi records

1 that have been referred to are admitted.

2 THE COURT: They have not been admitted.

3 MR. WALDEMER: I don't know that they've been
4 referred to in testimony, that's why I believe they
5 have. I certainly, based upon the foundation, and I
6 just want to object to their admission on a
7 foundational basis, but I don't know if they have been
8 referred to by any witnesses.

9 THE COURT: I'll admit them assuming that they
10 are going to be used at some point.

11 MR. LUNDT: Thank you, your Honor.

12 MS. HAMILTON: I'd also ask the Court to admit
13 Movant's Exhibit 19.

14 THE COURT: Exhibit 19.

15 MR. WALDEMER: No objection to that.

16 THE COURT: All right. That will be admitted.

17 (A discussion was held off the record. The
18 noon recess was taken. The Court reconvened at 1:30
19 p.m. and proceedings continued.)

20 THE COURT: Mr. Lundt.

21 MR. LUNDT: Thank you, your Honor. I call Dr.
22 Brooke Kraushaar to the stand.

23 DR. BROOKE KRAUSHAAR
24 having been duly sworn, was examined and testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. LUNDT:

3 Q. Dr. Kraushaar, could you state your name for
4 the record.

5 A. Brooke Kraushaar.

6 Q. And where do you currently work?

7 A. St. Louis Behavioral Medicine Institute.

8 Q. Okay. I'm going to show you Movant's
9 Exhibit 20. Is that your CV in this case?

10 A. Yes, it is.

11 Q. Okay. And you provided me with this just
12 recently; isn't that correct?

13 A. Yes.

14 Q. Okay.

15 MR. LUNDT: Your Honor, at this time we move
16 the admission of Movant's Exhibit 20.

17 THE COURT: Any objection?

18 MR. WALDEMER: No objection, Judge.

19 THE COURT: It will be admitted.

20 Q. (By Mr. Lundt) Dr. Kraushaar, can you
21 describe your educational background, please?

22 A. I have a master's degree in forensic
23 psychology from John J. College of Criminal Justice; I
24 have a master's degree in clinical psychology and a
25 doctorate in clinical psychology.

1 Q. Okay. And your doctorate was from what
2 school?

3 A. The University of Denver.

4 Q. And when did you receive that?

5 A. In 2005.

6 Q. Okay. And you are licensed in Missouri; is
7 that correct?

8 A. Yes, I am.

9 Q. And you have a number of professional
10 affiliations and certifications just to name a few?

11 A. Yes, yes.

12 Q. Okay. And you are currently with the
13 St. Louis Behavioral Medicine Institute?

14 A. Yes.

15 Q. And how long have you been with them?

16 A. About two and a half years.

17 Q. And prior to that where did you work?

18 A. I lived in Arkansas. I worked in a private
19 practice called Northwest Arkansas Behavioral Therapy
20 Clinic.

21 Q. And that was from 2003 to 2009?

22 A. Yes.

23 Q. And before that you were at the Yale
24 University School of Medicine?

25 A. Yes.

1 Q. And that was from 2002 to 2003?

2 A. Yes.

3 Q. And what did you do there?

4 A. That was my clinical internship which is part
5 of my degree requirement. I worked in a in-patient
6 psychiatric hospital as well as a day program for
7 chronically and seriously mentally ill adults.

8 Q. And prior to working at Yale, you worked with
9 a mental health corporation in Denver?

10 A. Yes. That was a community mental health
11 center. It was a practicum as part of my graduate
12 program.

13 Q. Okay. And basically you did different things
14 when you were at Yale from 2002 to 2003; a number of
15 different psychotherapy projects?

16 A. Yes. I worked in a day hospital and an
17 in-patient hospital and a psychology clinic.

18 Q. And you've been involved in research; is that
19 correct?

20 A. It's been a while, but, yes, I've done
21 research in the past.

22 Q. Okay. With New York University Medical Center
23 in '05 and '06?

24 A. Yes. I used to work at Bellevue Hospital.

25 Q. And at the National Developmental Research

1 Institute in New York?

2 A. Yes.

3 Q. In '06?

4 A. Yes.

5 Q. And you've also published papers?

6 A. Yeah, I've co-authored a few papers.

7 Q. Okay. One entitled: The Behavioral Therapist
8 Assessing Clinician Activity in Behavior Therapy?

9 A. Yes. That was a my dissertation.

10 Q. Okay. And that was in 2007?

11 A. Yes. The manuscript was published in 2007. I
12 wrote it long before that.

13 Q. And you published in the Journal of American
14 Academy in Psychiatry and Law?

15 A. Yes.

16 Q. And that was published in 2001?

17 A. Yes, I believe so.

18 Q. That paper?

19 A. Yes.

20 Q. And also you published a paper with the
21 Adolescent Psychiatry Clinics of North America?

22 A. Yes, I believe that was 1996.

23 Q. Okay.

24 A. I think.

25 Q. Right. And you've done a number of

1 presentations; is that correct?

2 A. Yes.

3 Q. Involving things like obsessive compulsive
4 disorder, malingering, borderline personality disorder;
5 is that right?

6 A. Yes.

7 Q. And a number of other disorders?

8 A. Yes.

9 Q. You presented that?

10 A. Yes.

11 Q. Okay. When did you get involved in the
12 practice of forensic psychology?

13 A. Well, I went to graduate school for it in the
14 mid nineties so I worked on it in the mid nineties.
15 During part of my training I worked at Bellevue
16 Hospital as well as a federal prison and then after I
17 finished my master's degree I worked in a related
18 field, not exactly forensic psychology. While I was in
19 grad school working on my doctorate, I did some
20 forensic evaluations, but did not really start to
21 practice forensic psychology until two and a half years
22 ago when I joined the Behavioral Medicine Institute.

23 Q. When you joined the St. Louis Behavioral
24 Medicine Institute you joined to be one of the forensic
25 psychologist there?

1 A. Yes, I did.

2 Q. And in the forensics capacity how many
3 evaluations do you think you have been involved in?

4 A. Twenty to thirty.

5 Q. And have you testified in court before?

6 A. Yes.

7 Q. And how many times?

8 A. Two.

9 Q. And have you been found to be an expert in the
10 field of psychology?

11 A. Yes.

12 Q. In your capacity as a forensic psychologist,
13 obviously, you haven't testified in every case?

14 A. No, that's correct.

15 Q. Why would you not be asked to testify?

16 MR. WALDEMER: Let me object to the
17 speculation as to that. If an attorney decides not to
18 have her testify --

19 THE COURT: Sustained.

20 Q. (By Mr. Lundt) Okay. Attorneys have decided
21 not to have you in every case?

22 A. That is correct.

23 Q. Sometimes they don't like what you have to
24 say?

25 A. That is correct.

1 Q. Have you ever been asked to evaluate someone
2 for the prosecution?

3 A. Yes, I have.

4 Q. Okay. And how many times?

5 A. In the criminal domains once. In a civil case
6 probably five times.

7 Q. Okay. You've been asked to evaluate somebody
8 forensically for plaintiff?

9 A. Yes, yes.

10 Q. And did that involve personal injury?

11 A. Yes.

12 Q. All right. If you can take the volume in
13 front of you, which is Volume 13, Movant's Exhibit 13,
14 and go to page 3492, actually 3493; is that correct?

15 A. Yes.

16 Q. Is that your evaluation?

17 A. Yes.

18 Q. Now, we contacted you in 2007, I believe, in
19 this case, correct?

20 A. Yes, myself and my colleague at the time Dr.
21 Rob Gordon.

22 Q. Okay. And Dr. Gordon was in charge of the
23 Behavioral Medicine Institute, Forensics Division at
24 that time?

25 A. Yes. I was the director of the forensic

1 evaluations division at that time.

2 Q. And he has since moved on to Texas?

3 A. Yes. He's in Fort Hood actually.

4 Q. What did we ask you to -- to do on Johnny
5 Johnson's case?

6 A. Dr. Gordon explained it to me that this was an
7 evaluation to examine the validity of Mr. Johnson's
8 Miranda waiver.

9 Q. And we didn't ask you to do anything else in
10 this case, correct?

11 A. No.

12 Q. Can you give me an idea of what records we
13 provided you?

14 A. Mr. Johnson's school records, some of his
15 psychiatric records, the police report from St. Louis
16 County, Mr. Johnson's statements, a review of a
17 competency to proceed evaluation, also a report
18 regarding the mental state at the time of the offense.

19 I was provided with a summary from a public
20 defender regarding Mr. Johnson's daily events, some
21 neuropsychological testing results from Dr. Craig
22 Beaver, I believe, and I think that's everything.

23 Q. Okay. And you actually did the evaluation and
24 testing of Johnny Johnson; is that correct?

25 A. Yes, I did the testing.

1 Q. And tell me when you went to evaluate him and
2 how much time you spent with him?

3 A. Let's see, it was back in June of '07. I
4 spent probably five hours with him over the course of
5 two days because I wasn't able to finish everything in
6 one day. I administered a brief intelligence test
7 called the WASI. I administered a test assessing
8 mental and emotional functioning particularly related
9 to psychological disorders. It's a test for people
10 with a lower IQ called the Emotional Problems Scale and
11 then I also just gave him a standard test of
12 intellectual functioning and the Grisso instrument
13 assessing appreciation and understanding of Miranda
14 warning.

15 Q. Now, since we did not ask you to do a
16 competency or responsibility evaluation, you chose the
17 particular instrument just for competency to waive his
18 Miranda rights; is that correct?

19 A. Yes, to examine his mental capacities to make
20 a valid waiver.

21 Q. All right. And the first thing that you did
22 with Johnny, would it be correct to say, you did inform
23 him, get an informed consent from him?

24 A. I did. It's important to explain though that
25 it's more -- explain to him the nature of the

1 evaluation. It's more informed of us since --

2 Q. Okay.

3 A. -- you are my client, you give me consent to
4 evaluate the defendant. The defendant himself does not
5 have to give consent.

6 Does that make sense?

7 Q. Okay.

8 A. But, yes, I did explain it him; I went through
9 the usual admonishments, explained to him the purpose
10 of the evaluation, and what his choices were.

11 Q. And you told him that this would be presented
12 in court?

13 A. Yes.

14 Q. Okay. Tell me about the WRAT-3 and what it
15 does?

16 A. The WRAT-3 is a test of cognitive functioning,
17 just like the basic academic skills, just like the kind
18 of skills that people might acquire in school, the
19 ability to read, spell and do basic math problems.

20 Q. Okay. Is this to -- is this just to get an
21 overall idea of his intellectual functioning at the
22 time?

23 A. Yes. It gives you the sense of the level of
24 functioning and sometimes a grade level equivalent.

25 Q. Okay. And on page 3494 you give an idea of

1 how he did on that?

2 A. Yes.

3 Q. Would you explain that to us?

4 A. Well, with respect to reading his performance
5 was in the 21st percentile, which means that compared
6 to other people his age, his reading skills are in the
7 bottom 21%, that's basically 79% of adults can read
8 better than Mr. Johnson.

9 Q. Okay. Then you gave him the EPS or at least
10 that's the one listed that you describe here?

11 A. Yes, the Emotional Problems Scale.

12 Q. And what is that test designed to do?

13 A. It's a personality assessment instrument that
14 is used for people who have cognitive deficit and
15 probably can't comprehend the MMPI, which is a more
16 commonly used personality assessment instrument.

17 These tests are for people with a low IQ with
18 poorer reading skills.

19 Q. Did you choose that based on the records that
20 we provided you from his school?

21 A. I chose that based on the fact that, according
22 to my evaluation and evaluation of other psychologists
23 who examined Mr. Johnson, that he did have some
24 cognitive deficits and also based on the school records
25 and also based on the fact that my supervisor, Dr.

1 Gordon, wanted me to administer that test.

2 Q. Okay. Now, you talked about: His profile on
3 the EPS was valid yet augmented.

4 would you explain that?

5 A. What it means is that Mr. Johnson had a
6 tendency to respond to the questions in a consistent
7 manner which meant he was paying attention but he had a
8 tendency to overstate his symptoms. We see this in
9 people who sometimes have concerns that their symptoms
10 may not be taken seriously but it's a valid profile, he
11 was just strongly stating to the extent to which his
12 symptoms bothered him.

13 Q. Does the word augmented mean that he was lying
14 to you?

15 A. No.

16 Q. Why not?

17 A. Because the validity indicators on the test
18 show that he was responding in a truthful fashion.

19 Q. And on that EPS, Johnny endorsed a variety of
20 symptoms?

21 A. Yes.

22 Q. What were those?

23 A. He endorsed symptoms consistent with a thought
24 disorder including auditory hallucinations, he endorsed
25 symptoms of anxiety, panic-type symptoms, low mood, low

1 self-esteem.

2 Q. Okay. Along with that at one point Johnny
3 became agitated during this --

4 A. Yes.

5 Q. -- process. Can you tell us about that?

6 A. Well, during a psychological evaluation such
7 as this, you know, the person is being examined, they
8 are being scrutinized, there is a certain amount of
9 defensiveness that is expected in a circumstance like
10 this.

11 Q. Did you see that in Johnny?

12 A. Yes and at one point one of the examiners
13 looked at him in a way that he perceived as threatening
14 in his paranoia emerged and he became anxious and
15 frightened and was concerned that the examiners were
16 angry with him and had some sort of hostile intent
17 towards him.

18 Q. In your professional opinion, did that anxiety
19 that Johnny displayed have to do with the situation or
20 his underlying mental condition or both?

21 A. Both.

22 Q. They did?

23 A. Yes.

24 Q. And it says in here that: His outbursts
25 appeared genuine and not as an attempt to feign

1 emotional distress.

2 A. Yes.

3 Q. So you thought it was a true reaction to what
4 was going on?

5 A. Yes.

6 Q. Okay. And what was the next test that you
7 gave Johnny?

8 A. Let's see, I think I gave him a WASI, which is
9 a Wechsler Abbreviated Intelligence Scale just to
10 assess his IQ and then I gave him the Wechsler Memory
11 Scale to assess his memory abilities.

12 Q. Okay. Now, let's talk about the WASI first.
13 Was that one valid?

14 A. Yes.

15 Q. And what did it show.

16 A. It showed that his cognitive abilities were in
17 the average range.

18 Q. Okay. And is that based on your opinion or is
19 that based on the test?

20 A. It's based on his scores that he earned on the
21 test.

22 Q. Okay. And did you attribute part of the
23 problem there to his learning disorders?

24 A. Yes or cognitive deficits that have been
25 present for a long time.

1 Q. And you described another test that you did?

2 A. The Wechsler Memory Scale.

3 Q. The Memory Scale?

4 A. Yes.

5 Q. Okay. Where is that reported in your report?

6 A. It's on page 3494 in the second to the last
7 paragraph.

8 Q. Okay. All right. And was that one valid?

9 A. Yes.

10 Q. Okay. And what did that show?

11 A. It just showed that his memory was extremely
12 poor, that his memory is worse than 93% to 97% of
13 adults his age.

14 Q. Okay. And how is that particular test
15 administered?

16 A. It's a standardized test, which means that
17 it's always administered in the same format with the
18 same direction, the subtests are always given in the
19 same order and that test looks at the ability to retain
20 information, remember details from a story, remember
21 faces, things like that.

22 Q. Okay. And then you went to the -- the
23 instrument designed to measure understanding of
24 Miranda?

25 A. Yes.

1 Q. Okay. Can you talk about those individual
2 instruments.

3 A. Well, there are four instruments and they
4 examine different skills. The first three instruments,
5 the one having to do with being able to comprehend
6 rights, recognize rights and an understanding of
7 Miranda vocabulary, are more a measure of being able to
8 know what that Miranda waiver means.

9 The last test, the function of rights in
10 interrogation, that's more a test about making an
11 intelligent decision regarding his rights.

12 Q. Okay. Now, first you discussed with him each
13 Miranda right?

14 A. Yes.

15 Q. Okay. And how did you do that?

16 A. I showed him statements that are consistent
17 with what is often seen in a Miranda waiver and I asked
18 him to paraphrase each statement.

19 Q. Okay. Did you read those statements to him or
20 did you expect him to read them himself?

21 A. I read them to him and I showed them to him.

22 Q. Okay. And so when you asked him -- did you
23 ask him what does this mean or --

24 A. Yes, how can you explain this yes, what does
25 this mean.

1 Q. How did he do on that?

2 A. He did okay. So his performance on that
3 portion was commensurate with adult offenders of his
4 age and IQ.

5 Q. Okay. Then -- Okay. After you discussed each
6 Miranda right, what did you go into next?

7 A. Then I went into the comprehension of the
8 Miranda Rights, the recognition portion of the test.

9 Q. What is that designed to do?

10 A. What that test is about is there are several
11 statements that are written that are consistent with
12 what you might see in the Miranda Waiver and then
13 underneath those statements are other statements that
14 the person must decide if the other statement means
15 something the same or something different than the
16 original statement and this is a test to -- for people
17 whose verbal skills aren't that strong.

18 For instance, for people who aren't -- to
19 paraphrase it, think they can recognize differences.
20 It draws on a different cognitive ability.

21 Q. Okay. And before I forget, these instruments
22 that you are using to hone in on understanding of the
23 Miranda Rights, are these instruments that you created?

24 A. No.

25 Q. Who created these?

1 A. Tom Grisso.

2 Q. And are these generally accepted in the
3 psychological community as a valid indicator of whether
4 someone understands these rights?

5 A. They're commonly used and when the instruments
6 are used properly, they are part of an evaluation that
7 would determine whether or not somebody had the ability
8 to make a valid waiver, but the instruments by
9 themselves do not indicate validity or invalidity of
10 the waiver.

11 Q. So you need to take all these tests that you
12 did administer and your training into account in order
13 to come up with a determination --

14 A. Yes.

15 Q. -- of whether he understood, in your
16 professional opinion?

17 A. Yes. You're looking at the totality, the
18 circumstances are many, there are some variables, not
19 just instruments themselves.

20 Q. Okay. Now, next did you talk about the next
21 test of the Miranda vocabulary?

22 A. Yes.

23 Q. Okay. Tell us about that?

24 A. The Miranda vocabulary section just asks the
25 person to define words that might be seen on a Miranda

1 waiver. Words like consult, attorney, appoint, things
2 like that.

3 Q. Okay. How did he do on this section?

4 A. He had more difficulty with it. He had a hard
5 time describing what the words meant. Some of the
6 words he didn't know at all and his performance was
7 pretty low compared to other adult offenders of his age
8 and IQ.

9 Q. And on 3495 here you say he's in the 5th
10 percentile?

11 A. It means that 95% of other adult offenders
12 understand this vocabulary better than he does.

13 Q. And then the last test involved the
14 functioning of the words?

15 A. The function of the rights.

16 Q. Function of the rights. Okay, tell us about
17 that.

18 A. The function of the rights looks at the
19 subject's ability to reason and make decisions about
20 what a Miranda waiver might look like across a
21 different variety of settings. So instead of being
22 able to know and define certain terms, in this portion,
23 the person is having to reason and so it's -- it's a
24 test of a series of things, yes and you ask the subject
25 different questions about the vignettes to assess their

1 understanding of what an interrogation is; do they
2 understand they have a right to counsel, do they
3 understand the right to silence.

4 Q. How did he do on that?

5 A. Overall on this portion of the test he did
6 poorly. Again, he was two standard deviations below
7 the mean. I think on the right to silence portion,
8 again, he was in the bottom 5%.

9 Q. And you talked to him about right to counsel
10 as well?

11 A. Yes, I did.

12 Q. And also in the bottom 5% there?

13 A. Yes, or two standard deviations below the
14 mean, yes.

15 Q. And you -- you gave an example about his
16 understanding or lack thereof, in your report here in
17 the third paragraph.

18 A. Yes.

19 Q. Would you explain that?

20 A. This was on the right to silence portion and
21 based on the responses that he provided, he didn't seem
22 to understand that his right to silence was irrevocable
23 regarding the police, irrevocable regarding the judge
24 and it was a right he could exercise at any time
25 without penalty.

1 Q. So -- so when you talked to him about the
2 right not to talk, for example, you say he responded to
3 you?

4 A. Yes.

5 Q. Okay. And what did he respond there?

6 A. Well, when I asked him what would happen if a
7 suspect didn't want to talk to the police, but the
8 police told him that he had to talk, Mr. Johnson
9 responded, he'd better talk or else they're going to do
10 something to him.

11 Q. Okay. What did that type of response indicate
12 to you?

13 A. It indicated that he didn't understand that he
14 didn't have to talk and there was no penalty for
15 choosing not to talk.

16 He thought that there would be some sort of
17 retaliation or consequence for not talking.

18 Q. And you noted in the fourth paragraph that Mr.
19 Johnson's deficiencies in understanding were noted
20 elsewhere?

21 A. Yes.

22 Q. How was that?

23 A. In reviewing some of the reports, I think
24 these were presentence evaluations -- or pretrial
25 evaluations and in a competency to proceed evaluation,

1 I believe, Doctors Becker and English noted in their
2 report that Mr. Johnson was somewhat confounded by the
3 roles of various individuals and court proceedings
4 stating how the prosecuting attorney was trying to help
5 him out and how he could speak out in court any time he
6 wanted.

7 Q. And based on your evaluation, did you find --
8 how did you find Johnny in terms of his capacity to
9 waive his Miranda rights in this case?

10 A. Well, in looking at his history of mental
11 illness and other evaluations that had also been done
12 and my evaluation, it seemed that he had cognitive
13 deficits and although he had the capacity to know
14 certain basic information about these rights, he was
15 unable to reason and make intelligent decisions about
16 the implications of waiving or not waiving these
17 rights.

18 Q. So, in your -- so in your bottom line, as a
19 psychologist trained in this field, do you have an
20 opinion, based on a reasonable degree of psychological
21 certainty, that he was unable to waive his rights at
22 the time?

23 A. It's my opinion that he did not have the
24 capacity to provide a valid waiver. The instruments
25 that I administered only told me about Mr. Johnson's

1 ability at the time of the evaluation, okay, but if he
2 doesn't understand this material at the time of the
3 evaluation, after he'd already had numerous contacts
4 with his attorney, already had been through a trial,
5 already had contact with other inmates that know more
6 than him about the legal system, by the time of the
7 evaluation, he still didn't understand these things and
8 it's reasonable to infer that he didn't comprehend
9 these things at the time of his statement.

10 Q. So he could not intelligently waive?

11 A. Correct.

12 MR. LUNDT: Thank you. I have nothing
13 further.

14 THE COURT: Mr. Waldemer.

15 MR. WALDEMER: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. WALDEMER:

18 Q. Good afternoon, Doctor. You said he has low
19 to average IQ, correct?

20 A. Yes.

21 Q. And that's been pretty standard throughout all
22 the evaluations dating back to when he was a young
23 child?

24 A. Yes.

25 Q. Does he have the ability to learn?

1 A. I didn't evaluate his ability to learn.
2 Q. So he could have an ability to learn?
3 A. He may. That would be a question for a school
4 psychologist.
5 Q. He was 27 years old when you evaluated him?
6 A. I believe so.
7 Q. Now, you evaluated him back in June of 2007;
8 is that right?
9 A. Yes.
10 Q. And at that time how long had you been with
11 St. Louis Behavioral Medicine Institute?
12 A. About two weeks.
13 Q. About two weeks?
14 A. Yes.
15 Q. Would I be safe in saying this was your first
16 forensic evaluation for them?
17 A. For them, yes.
18 Q. Okay. And this was a forensic evaluation?
19 A. Yes.
20 Q. And that's an evaluation that's going to be
21 used potentially in a court proceeding?
22 A. Yes.
23 Q. Are you board-certified by anyone in forensic
24 psychology?
25 A. No.

1 Q. You've testified two times before?

2 A. This is the second time.

3 Q. Oh, this is the second time. The other time
4 was in --

5 A. Audrain County.

6 Q. And was that also one of these capacity to
7 make a valid waiver of Miranda?

8 A. Yes, it was.

9 Q. And your conclusion in that case was that the
10 defendant did not understand that either?

11 A. Yes.

12 Q. Now, I assume that this was a paid job for St.
13 Louis Behavioral Health?

14 A. Yes.

15 Q. Can you explain to me what financial
16 arrangement was made for your assessment?

17 A. I don't recall. That was something that was
18 handled by the director, Robert Gordon. I was working
19 under him following, his instructions, reporting this
20 evaluation. I don't know what the arrangements were.

21 Q. So you are paid your regular salary for your
22 time?

23 A. I don't work on a salary. When it's forensic
24 work, I work by the hour. I don't remember how many
25 hours I worked on this.

1 Q. What are you paid an hour?

2 A. To do -- now or then?

3 Q. Then.

4 A. I think it was a hundred and fifty dollars an
5 hour.

6 Q. Okay. It's gone up by now?

7 A. A little.

8 Q. Okay. I was just hoping it wouldn't have gone
9 up by now.

10 Okay. You went to Potosi to interview him?

11 A. Okay. Yes.

12 Q. And that hourly payment, were you given any
13 additional money for travel expenses, lodging or
14 anything like that?

15 A. No.

16 Q. When you went to see him it was in June of
17 2007. would I be correct in that that was five years
18 after he murdered Casey Williamson?

19 A. Yes, just about, yes.

20 Q. He murdered her on July 26, 2002, and you
21 evaluated him in early June 2007?

22 A. Yes.

23 Q. So one month short of five years?

24 A. Yes.

25 Q. And when evaluated him he'd been in Potosi for

1 about two years after being found guilty of murdering
2 Casey?

3 A. Yes.

4 Q. And he'd been on death row for a couple of
5 years?

6 A. Yes.

7 Q. When you went to see him in the end of June,
8 had you ever been to Potosi before?

9 A. No, I had not.

10 Q. Beside you and Dr. Gordon who went along?

11 A. I went alone the first day and, I believe, Dr.
12 Gordon accompanied me the second time.

13 Q. Did anybody from the Public Defender's Office
14 go with you on your initial visit?

15 A. No.

16 Q. You went and introduced yourself to him?

17 A. Yes.

18 Q. You said you evaluated him over two days.

19 A. Yes.

20 Q. Were those consecutive days or separate days?

21 A. Consecutive.

22 Q. Now, you were hired to decide whether his
23 Miranda waiver was valid in your opinion, correct?

24 A. Whether he had the ability to make a valid
25 Miranda.

1 Q. Okay. You were not hired to decide whether he
2 told the police the truth in either one of his
3 confessions?

4 A. Correct.

5 Q. Did you listen to his confessions?

6 A. Yes, I did.

7 Q. You listened to the tape?

8 A. Yes.

9 Q. Now, did he know you were coming to visit him
10 when you came down; had you made arrangements to get
11 into the penitentiary before that?

12 A. Yes, I had made arrangements to get in.

13 Q. When you introduced yourself to him, did you
14 tell him you were there and you'd been hired by his
15 attorneys?

16 A. Yes.

17 Q. And did you tell him what your examination was
18 going to be all about?

19 A. Yes.

20 Q. What did you tell him?

21 A. That this was an evaluation to determine his
22 understanding of Miranda rights and that he could
23 choose to be interviewed, he could choose not to; he
24 could choose not to respond to any questions, he could
25 choose not to answer if he decided not to answer.

1 Q. So you told him that you were there, Doctor,
2 to determine whether or not he understood Miranda?

3 A. That that was like -- the purpose of the
4 evaluation.

5 Q. Okay. I just want to make sure I heard
6 correctly.

7 Now, did he indicate to you that he understood
8 what you were there for?

9 A. He had difficulty showing that he understood
10 what I was there for.

11 Q. Did you give him any kind of written form or
12 anything concerning why you were there and explaining
13 why you were there in order for him to waive the
14 confidentiality?

15 A. Yes, I did.

16 Q. And did you include that with your notes?

17 A. I believe so. I don't know how we skipped
18 that. It should have been included.

19 Q. Okay. Do you see it within the volume of
20 what's been given to me?

21 A. I don't see it. I don't see it.

22 Q. Do you have a copy of it with you?

23 A. Let me see. I'm sure I probably do.

24 Q. Doctor, let's do this. We've been at this a
25 while. I'll take you at your word that you gave him a

1 written form?

2 A. Yes, I did.

3 Q. Did he sign that form?

4 A. Yes, he did.

5 Q. And then you went ahead and proceeded with
6 your evaluation?

7 A. I asked him to explain in his own words what
8 his understanding was, why I was there.

9 Q. Okay. When you go to see a criminal
10 defendant, would you agree with me that the criminal
11 defendant quite often can have goals, let's call them
12 secondary goals?

13 A. Yes, I agree.

14 Q. Okay. Whenever you interview a criminal
15 defendant, you should suspect malingering in the
16 beginning according to DSM, right?

17 A. It's something I should be aware of and
18 thinking about.

19 Q. Because your opinion is based on what he says
20 to you during your interview, right?

21 A. Some of it yes.

22 Q. It's based on how he acts in the interview?

23 A. Somewhat, yes.

24 Q. And based on the testing that you do?

25 A. Yes.

1 Q. Now, in order for your testing to be accurate
2 he has to try hard on the testing?

3 A. Yes.

4 Q. And if he doesn't put forth his best effort
5 that testing may be skewed in some way?

6 A. Yes.

7 Q. Okay. Now, his IQ test was pretty much
8 standard with what he had in the past?

9 A. Yes.

10 Q. He had some as high as 91, one that was as
11 high as 93.

12 Do you recall those?

13 A. I believe so, yes, and one as low as 70.

14 Q. And those would put him at average?

15 A. Yes, but those are also outliers.

16 Q. Okay. Now, the one that was down to 70, that
17 was the one done in 2003 by Doctors English and Becker?

18 A. I don't recall exactly.

19 Q. Well, we have had testimony about this. For
20 purposes of my question, Doctor, let's assume that it
21 was Becker and English who did that in 2003?

22 A. Okay.

23 Q. Okay. And that would have been after he was
24 charged with murdering Casey Williamson?

25 A. Yes.

1 Q. And that's when he would have been in prison?

2 A. Yes.

3 Q. So an IQ test where he comes up with a full
4 scale of 70 versus an IQ test when he comes up with a
5 full scale of 93.

6 would you consider that 70 invalid?

7 A. It could pass depending on if they did any
8 validity testing to see whether or not Mr. Johnson is
9 putting forth his best effort that day or if there are
10 other circumstances that resulted in such a low score.

11 Q. Do you recall them indicating in the report
12 that they did validity testing?

13 A. I don't believe that they did.

14 Q. I mean do you recall?

15 A. I mean, I recall reading their tests. I don't
16 recall if they did anything like the TOMM or the REY or
17 --

18 Q. Did you do any validity testing?

19 A. I did not. Can I explain why?

20 Q. If he wants to ask you about it, sure. It's
21 my turn.

22 would you consider that 70 based on other
23 scores to be a malingered score?

24 A. Not necessarily. I would need to know more
25 about the circumstances and why he earned that before

1 I'd call it malingered.

2 Q. Now, if, during your interview of a defendant
3 or Johnny Johnson in particular, if he's dishonest with
4 you, does it affect your findings?

5 A. Yes. If someone is being dishonest, yes.

6 Q. I mean if he is untruthful, for instance, when
7 he says in response to one of your questions, I don't
8 know, does that affect your findings?

9 A. I'm not sure I understand what you're asking.

10 Q. Okay. Let me try that again.

11 If you ask him a question, Johnny, what does
12 the word attorney mean and he says to you, I don't know
13 -- Okay?

14 A. Yes.

15 Q. -- and that's not true, he does know what an
16 attorney is but he lied to you and says he doesn't,
17 does that affect your findings if he lies to you on any
18 questions when he says: I don't know?

19 A. Yes, that would affect the findings.

20 Q. I mean, in your career you've had defendants
21 lie to you before, right?

22 A. Yes.

23 Q. Okay. And when you met him do you know what
24 medications he was on?

25 A. I'd have to go back to my notes. I believe he

1 was taking Imipramine and Zyprexa -- let's see -- he
2 was taking Imipramine and Paxil and Zyprexa -- oh, I'm
3 sorry, Geodon and Propanolol -- Imipramine, Propanolol
4 and Geodon.

5 Q. Okay. So some antipsychotic medication and
6 some mood stabilizing medication?

7 A. Propanolol is a betablocker. It's for
8 anxiety.

9 Q. And Paxil is for --

10 A. It's an anxiety -- it's typically used -- it's
11 an SSRI, but it's used for anxiety.

12 Q. Okay. I called them mood stabilizers.

13 A. Oh, no, that isn't accurate.

14 Q. Okay. So it's mood stabilizers and the others
15 are antipsychotics?

16 A. No, none of them are mood stabilizers.

17 Q. Okay. So antianxiety medication is not a mood
18 stabilizer?

19 A. No.

20 Q. Okay. So it's an antianxiety?

21 A. Yes.

22 Q. That's not mood?

23 A. It's not in a mood stabilizing class of
24 medication. I'm not a medical doctor but I know the
25 meds.

1 Q. I understand. I'm just -- medication like
2 he's on, is it your experience that that can affect his
3 test scores?

4 A. If it's working, it can affect scores and if
5 it's not working, it can affect scores.

6 Q. Can you tell me, Doctor, when you went and
7 explained it to him, I'm here to see if you understood
8 Miranda, is there any reason somebody who is on death
9 row would want to do well on your tests?

10 A. Yes. Most -- most people are motivated to
11 portray themselves in a certain way on these kinds of
12 evaluations.

13 Q. Most people aren't on death row, right?

14 A. No, but some of them are.

15 Q. If he does really, really well on your tests,
16 is that going to get him a new trial?

17 A. Probably not.

18 Q. If he does really, really well on your tests,
19 it's going to show you he understood his rights,
20 Miranda rights?

21 A. Yes.

22 Q. Can you think of why he would want to do well
23 on any of your tests?

24 MR. LUNDT: Objection, calls for speculation.

25 MR. WALDEMER: I'll withdraw it, Judge.

1 THE COURT: Thank you.

2 Q. (By Mr. Waldemer) Now, you were aware when
3 you went in there he had been tested by Dr. Beaver a
4 couple of months before?

5 A. Yes.

6 Q. And Dr. Beaver basically found that he was a
7 full scale 88, just a little bit higher than yours?

8 A. Yes.

9 Q. And there is a variability with tests but it's
10 -- as long as it is within -- within about how much of
11 a range would they consider that? In other words, Dr.
12 Beaver brought him in at 88, you brought him in at 85,
13 those are acceptable of being valid tests, right?

14 A. Yes, those aren't significantly --
15 significantly different scores.

16 Q. Were you aware that he had been evaluated
17 initially when he got to the penitentiary, after being
18 convicted, by a licensed psychologist in the
19 penitentiary?

20 A. Who was that?

21 Q. Let me show you what -- do you have Volume 9
22 up there -- probably not.

23 A. No.

24 Q. I'm showing you Movant's Exhibit 9, pages 2543
25 to 2547.

1 A. Okay.

2 Q. Have you seen that psychological evaluation
3 that's contained in his penitentiary records before
4 today?

5 A. No.

6 Q. And it appears to be on page 2547 completed by
7 someone named Kimberly weitl, w-e-i-t-l, licensed
8 clinical psychologist?

9 A. Yes.

10 Q. But you haven't seen that one before today?

11 A. No.

12 Q. Did you come up with, based upon your testing,
13 a reading grade level that you thought Johnny Johnson
14 could read at a certain grade level?

15 A. Yeah. I reported the scores as per the terms
16 of percentiles. So his reading grade level would be, I
17 guess, based on my memory, yes, from my evaluation. I
18 don't believe I reported he's exact reading grade
19 level.

20 Q. Okay. Well, let me ask you to look at page
21 2546, at the bottom where Ms. weitl talks about his
22 WRAT-3 scores.

23 Doctor, you see where Ms. weitl said that he
24 is a -- functioning at the post high school level in
25 his reading abilities and sixth grade in his spelling?

1 A. Yes.

2 Q. Would that comport with what your guess, based
3 on the figures that you have that those were his levels
4 of reading and spelling?

5 A. Those were not consistent.

6 Q. Yours were higher or lower?

7 A. Lower.

8 Q. Would that be an indication that he suddenly
9 got dumber in the last two years or -- let me ask it
10 this way: Could that be a lack of effort on your
11 tests?

12 A. It could have been but based on some testing
13 that has been done four months before I saw him, there
14 was no reason to think that Mr. Johnson was not putting
15 forth adequate effort on the tests that he had been
16 given.

17 Q. When you say four months before, was that the
18 testing of Dr. Beaver?

19 A. Yes.

20 Q. Dr. Beaver was somebody else who was hired by
21 his attorneys for competency testing?

22 A. Yes.

23 Q. And, again, why would he want to do really
24 good on Dr. Beaver's tests?

25 MR. LUNDT: Objection, calls for speculation.

1 THE COURT: Sustained.

2 Q. (By Mr. Waldemer) Did you review his prison
3 record to see if he was able to read and write?

4 A. Those were not provided.

5 Q. Let me hand you two exhibits that were
6 admitted yesterday and ask you to look at them quickly
7 and then I'm going to ask you a couple of questions
8 about them.

9 A. Okay.

10 Q. You've never seen those before, right?

11 A. No.

12 Q. Okay. Do those letters appear to be letters
13 written by Johnny Johnson to the penitentiary
14 authorities?

15 A. I don't know his handwriting.

16 Q. Are they signed by someone named Johnny
17 Johnson?

18 A. Yes.

19 Q. I'll submit to you those were admitted as part
20 of his records from the penitentiary.

21 A. Okay.

22 Q. In your brief reading of those records would
23 you agree that they are clear and organized?

24 A. I don't know how clear they are, there is some
25 dumb punctuation.

1 Q. I didn't ask you about punctuation. Is the
2 message clear as to what he wants in those letters?

3 A. Yes.

4 Q. I mean, he basically is saying in very clear,
5 succinct words, I want to be in protective custody,
6 right?

7 A. But you can be of low IQ and ask for the same
8 things.

9 Q. Can you be of low IQ and be able to
10 communicate in that manner?

11 A. Do you know if somebody helped him with this?

12 Q. That's not my question, Doctor. If you don't
13 understand my question, I'll be happy to help you and
14 to repeat it. Just tell me.

15 Can someone with a low IQ be that clear in the
16 letter as to what they are asking for?

17 A. I don't know.

18 Q. I can accept that. Okay.

19 Now, you said you didn't do any validity
20 testing?

21 A. Correct.

22 Q. You did note in that report that you read of
23 Drs. Becker and Dr. English, that they found some
24 malingering, correct, if you recall, ma'am?

25 A. I don't recall them saying malingering. I'd

1 have to go back and see that.

2 Q. There should be two of those reports in that
3 folder.

4 A. Yes. Okay. So, malingering along with like
5 five other AXIS-I diagnoses.

6 Q. Okay. But there has been malingering before
7 found by some other doctors that you're aware of?

8 A. What are you referring to?

9 Q. Were you aware at the time you tested Johnny
10 Johnson in June of 2007, that previous evaluators had
11 believed that he was malingering?

12 A. I don't know that that's an accurate
13 characterization, that they believed that he was
14 malingering. This is one diagnosis among many that
15 acknowledges the psychosis and his history of learning
16 disorder.

17 Q. Would you agree with me that they diagnosed
18 him as malingering?

19 A. Well, the way you're saying it makes it sound
20 like that's the only diagnosis.

21 Q. There are plenty of diagnoses there. Is one
22 of those diagnoses malingering?

23 A. Yes.

24 Q. Okay.

25 A. But partial malingering.

1 Q. Okay. And do you recall in their report that
2 they felt that he had done an MMPI where he was over
3 reporting his problems and attempting exaggeration of
4 his mental issues?

5 A. Yes.

6 Q. You didn't give him an MMPI, correct?

7 A. I did not.

8 Q. You gave him the EPS?

9 A. Yes.

10 Q. And you said that was a valid instrument?

11 A. I said it was an instrument that I was
12 instructed to give him.

13 Q. But you said in your report that he was
14 exaggerating some of his symptoms?

15 A. Yes, there was exaggeration, yes.

16 Q. Okay. It's kind of like the SIRS test that
17 Dr. English gave him where he was exaggerating some of
18 his symptoms back in 2003.

19 Do you recall that in that report -- I'm
20 sorry, in the 2004 report?

21 A. Uh-huh.

22 Q. Okay.

23 A. But in the 2007 report all of his SIRS scores
24 were in -- in a different range.

25 Q. In Dr. Beaver's testimony?

1 A. Yes.

2 Q. Okay. Now, you didn't give any validity
3 testing of any kind on the dates that you saw him?

4 A. No.

5 Q. You just took him at his word that he skewed
6 the test up?

7 A. Well, the validity testing had already been
8 done recently. My findings were similar to a recent
9 evaluation.

10 Q. You just took his word for it that he was
11 being honest with you during your examination?

12 A. His performance was commensurate with other
13 evaluations that had been done recently so I --

14 Q. Other evaluations done by other experts hired
15 by his defense attorneys?

16 A. Yes.

17 Q. Now, other than the documents that you
18 received from the public defenders and their
19 investigators, did you get any other information or
20 have any other sources of information about the facts
21 of this case?

22 A. No.

23 Q. You've never talked to any witnesses in this
24 case?

25 A. No.

1 Q. Never seen any physical evidence in the case?

2 A. No.

3 Q. You didn't read any of the depositions?

4 A. I think -- no, not any depositions.

5 Q. Did you read the trial transcript?

6 A. Yes.

7 Q. The entire transcript?

8 A. No. I was given, I think, some portion of the
9 trial transcript.

10 Q. Maybe motion to suppress?

11 A. Oh, yeah, maybe that's what it was. Sorry, it
12 was two and a half years ago.

13 Q. Now, did you review the Miranda forms that
14 were used in this case?

15 A. Yes.

16 Q. Are you aware that the St. Louis County
17 Department of Police Warning and Waiver form has been
18 determined to be of a 5th grade reading level?

19 A. I was not aware of that.

20 Q. When you evaluated that form or reviewed it,
21 did you review it in terms of what the reading level
22 was in your opinion?

23 A. I --

24 Q. Did you have opinion as to what reading level
25 was required for the St. Louis County Police

1 Department's warning and waiver?

2 A. No, I didn't know anything about that.

3 Q. You say you read him his rights and showed him
4 his rights in writing?

5 A. Yes.

6 Q. Did you use the same form that St. Louis
7 County uses?

8 A. Virtually the same, they are based on the
9 Miranda warnings from St. Louis County.

10 Q. They are based on St. Louis County's?

11 A. Based on the Miranda warnings that are used in
12 St. Louis County. That's the warnings that were used
13 to develop the instrument.

14 Q. Now, you took notes during your interview with
15 him?

16 A. Yes.

17 Q. I was given ten pages of notes and they appear
18 to be -- yours is good handwriting and Dr. Gordon's is
19 in not so good handwriting.

20 would that be right?

21 A. I guess.

22 Q. In those notes, would I be correct that some
23 of those notes are your interview of Johnny Johnson and
24 some of those notes are your notes from reviewing the
25 information given to you by defense counsel?

1 A. Yes.

2 Q. Just talking about the notes of what you
3 talked to him about in your interview with him, were
4 those about three pages long?

5 A. Yes.

6 Q. Okay. No where in those notes did you discuss
7 what he had done in this case?

8 A. That's not the question I was hired to answer.

9 Q. So the answer is no?

10 A. No, I did not.

11 Q. And none of those notes were about how he
12 killed her?

13 A. No.

14 Q. He indicated to you that he read books all the
15 time?

16 A. Yes.

17 Q. Did you ask him what kind?

18 A. No. Reading books is different from
19 understanding them though.

20 Q. That wasn't my question.

21 A. Okay.

22 Q. Did you ask what kind of books he read?

23 A. I think he said he enjoyed reading the Bible.
24 Let's see -- I can't remember.

25 Q. But you think it was the Bible?

1 A. I can't remember. Let me go over this. Maybe
2 he was interested in religion. I can't remember. I
3 don't remember.

4 Q. Okay. Do you know if it was the wicken
5 religion?

6 A. Is that in my notes? I don't remember that.
7 Are you referring to something in my notes?

8 Q. I couldn't read in your notes what it was
9 about, what books he was reading. That's why I'm
10 asking you.

11 A. Quite honestly, I don't remember what our
12 discussion was regarding books.

13 Q. Okay. But you think it might have been the
14 Bible, but you don't know for sure?

15 A. I don't recall.

16 Q. Okay. Now, you used the Grisso test. Was
17 this the first time you ever used the Grisso test
18 before?

19 A. Yes, it was.

20 Q. And what training had you been given to
21 administer the test before you gave it to Johnny
22 Johnson?

23 A. I had read the manual and familiarized myself
24 with the foot booklet that's used as part of the
25 administration and practiced it so I was comfortable

1 with using it.

2 Q. And in your instructions on the test -- strike
3 that.

4 In your introduction to him when you first met
5 him, you told him you were there to talk to him about
6 his understanding of his Miranda rights, correct?

7 A. Basically.

8 Q. If he knows that the purpose of your test is
9 to find out if he understands his Miranda rights, given
10 his situation of being on death row, doesn't that make
11 the entire test invalid?

12 A. Why would that make the test invalid?

13 Q. Well, if he knows that if he understood his
14 Miranda rights, these two damning confessions of his
15 guilt would stand as good evidence and he wouldn't get
16 a new trial.

17 A. Okay. The instruments themselves, by
18 themselves, do not determine alone whether or not a
19 person understood their rights. You look at a whole
20 bunch of things. This is one aspect.

21 Q. Well, one of those aspects was you felt he did
22 poorly on the last two parts of the Grisso test?

23 A. Yes.

24 Q. And you felt that he didn't understand his
25 rights in part based upon how poorly he did on those

1 last two parts?

2 A. Yeah, and because of his cognitive deficits.

3 Q. Okay. Well, my -- my question to you then,
4 Doctor, is: If he knows that if he does really bad on
5 those two parts, does he think it's going to help him
6 get a new trial?

7 MR. LUNDT: Your Honor, I'm going to object.
8 This is -- calls for speculation and it's been asked
9 and answered a couple of times.

10 THE COURT: Well, overruled.

11 Q. (By Mr. Waldemer) Do you understand my
12 question?

13 A. I didn't ask him if he thought that how he was
14 going to do was going to help his case in some way.

15 Q. Wouldn't you think that would be part of his
16 thought process though?

17 A. It could have been.

18 MR. LUNDT: Objection, calls for speculation.

19 THE COURT: Overruled.

20 Q. (By Mr. Waldemer) If he doesn't give you full
21 effort on that Grisso test at any time are the results
22 invalid of the Grisso test?

23 A. It depends because there are four different
24 instruments and you look at the performance across all
25 four and --

1 Q. Okay. Well, let's talk about it. The first
2 one is comprehension?

3 A. Yes.

4 Q. And you asked him -- you have the right to
5 remain silent, what does that mean and he tells you in
6 his own words what that means?

7 A. Yes.

8 Q. And you give him a 0, a 1 or a 2?

9 A. Yes.

10 Q. And on those four rights he got six out of
11 eight according to your scoring?

12 A. Yes.

13 Q. Then the next one is also comprehension but
14 that's a true false test?

15 A. It's recognition, does this statement mean the
16 same or different as this Miranda statement.

17 Q. And he basically says, yes or no, right?

18 A. Yes.

19 Q. Okay. He had 11 out of 12?

20 A. Yes.

21 Q. Did pretty darn well?

22 A. Yes.

23 Q. Only missed one?

24 A. Yes.

25 Q. The next one though, that's the one where he

1 has to define six words?

2 A. Yes.

3 Q. Six words used in the Miranda?

4 A. Yes.

5 Q. And in that one you didn't feel he did very
6 well?

7 A. He had more difficulty with that.

8 Q. And, again, when he says to you, there's a lot
9 of instances, it appears quite a bit, he says I don't
10 know, correct?

11 A. Yes.

12 Q. I don't have an answer?

13 A. I would try to prompt him to say more, but,
14 yes, he usually couldn't come up with anything else.

15 Q. Can you test or do you know if it's that he
16 can't come up with it or that he just doesn't want to?

17 A. Well, based on his cognitive skills, it
18 wouldn't be out of the realm of possibility for him to
19 have difficulty coming up with the word to describe
20 what something means.

21 Q. Did he not give you full effort, would that be
22 another possibility?

23 A. If that were the case, yes.

24 Q. If he's lying to you, that's another
25 possibility?

1 A. If he were lying, yes.

2 Q. And then the last test was the function of his
3 rights and you thought he did very, very poorly?

4 A. Yes.

5 Q. Is there any way to tell if he's answering
6 your questions wrong on purpose?

7 A. Well, there's no specific validity portion on
8 this part of the test, but this part of the test isn't
9 looking at something different than the first three
10 tests are looking at.

11 Q. If he's giving you deliberate wrong answers,
12 can you tell?

13 A. Well, if his answers are completely
14 inconsistent with what he's told me before, I would
15 question him about that --

16 Q. Okay.

17 A. -- and challenge him. I can't see inside
18 somebody's head to know if they're for sure feigning
19 something.

20 Q. Okay. You're not a mind reader?

21 A. No, no.

22 Q. Now, as I understand it, there are three
23 things involved in doing one of these things. They
24 want you to obtain background, the clinician should
25 obtain background about the defendant's -- his history?

1 A. Yes.

2 Q. And in this case that was provided to you by
3 his attorneys, their investigators and the materials
4 that you read, right?

5 A. Yes and I also asked Mr. Johnson about his
6 background.

7 Q. Okay. And then the second part of the
8 clinician's job in this kind of evaluation is to
9 evaluate his intellectual functioning?

10 A. Yes.

11 Q. And that was all the testing that you did?

12 A. Yes.

13 Q. And then the last item is to give a detailed
14 description of the interrogation, right?

15 A. Well, yes, circumstances surrounding the
16 interrogation.

17 Q. -- the interrogation. That's basically what
18 Grisso says you do to do this entire evaluation?

19 A. Yes, it's not just a description of the
20 interrogation, it's circumstances before, after and
21 during.

22 Q. Okay. And, we'll get to that interrogation
23 part, but an individual's exposure to Miranda, in other
24 words, their history of receiving Miranda rights, would
25 that be something which would be important in doing the

1 background?

2 A. It's an assumption that it is important but in
3 Grisso's development of the instrument, what he found
4 was that defendants who had had previous exposure to
5 Miranda, that didn't necessarily predict their
6 understanding the warnings?

7 Q. Did you look into how many times he'd been
8 given Miranda in the past?

9 A. No.

10 Q. Do you think it would be useful in determining
11 his background and knowledge of Miranda to know what
12 exposure he's had with Miranda?

13 A. It could be helpful.

14 Q. Did you know that in 1997 when he committed a
15 burglary and stealing, it was prosecuted in case number
16 97CR-7336, that he was given a written Miranda form and
17 he made a written confession?

18 A. No.

19 Q. would that have been important to evaluate the
20 circumstances of that to know if he could validly waive
21 his Miranda?

22 A. It's helpful that we'll keep in mind that
23 we're looking at his capacity at the time of his
24 evaluation.

25 Q. And you're really, though, arguing that if he

1 couldn't do it in 2007 when you saw him, he couldn't
2 have validly waived his Miranda in 2002, five years
3 earlier when he confessed to the police, right?

4 A. That you could infer that he has difficulty
5 five years after the fact based on his exposure, that's
6 reasonable that he would have difficulty making a valid
7 waiver at the time.

8 Q. Well, if he did a valid waiver in 1997 when he
9 was arrested for burglary and stealing in Kirkwood,
10 five years before, would that have any influence on
11 that valid waiver in 2002?

12 A. It could have. It depends on the extent with
13 which the psychosis was bothering him.

14 Q. Do you have any information that he was
15 suffering with psychosis in 1997?

16 A. Other than mental health history and history
17 of hospitalizations.

18 Q. You didn't look at the circumstances
19 surrounding the 1997 confession that he made in
20 writing?

21 A. It was not provided.

22 Q. He had an attorney when he plead guilty to
23 those two felonies.

24 Do you know if his attorney explained his
25 Miranda rights to him?

1 MR. LUNDT: Your Honor, I object. This calls
2 for speculation. She testified she does not have
3 access to that information.

4 THE COURT: He asked her if she knows. She
5 can answer that.

6 Q. (By Mr. Waldemer) You said you didn't,
7 correct?

8 A. No, I didn't.

9 Q. About three months later in January of 1997 he
10 did another burglary and stole some video games, a
11 stereo and a guitar and that was prosecuted in
12 97CR-2528. Are you aware of that one?

13 A. No.

14 Q. Are you aware that he made a written
15 confession and received written Miranda in that case?

16 A. No.

17 Q. Are you aware of what he discussed with his
18 attorney before he plead guilty to that charge, he in
19 effect was waiving his Miranda and giving a statement
20 in that case?

21 A. No.

22 Q. Okay. I can keep going through these, but let
23 me do this. He committed nine previous crimes that are
24 established in public records prior to murdering Casey
25 Williamson. Okay.

1 The first of my questions: will you accept
2 that?

3 A. Yes.

4 Q. In each of those nine incidents he was given
5 Miranda warnings. Okay?

6 A. Yes.

7 Q. In six of those he waived his Miranda rights
8 and confessed?

9 A. Okay.

10 Q. And in three of those he invoked his Miranda
11 rights and refused to make a statement.

12 okay?

13 A. Okay.

14 Q. All right. Now, my question is: Doesn't that
15 indicate to you that at least three times out of nine
16 he understood his rights and decided not to make a
17 statement?

18 A. He could have.

19 MR. LUNDT: Your Honor, I'm going to object to
20 the speculation here, calls for speculation here. She
21 has no knowledge of these.

22 THE COURT: Yes, but she's also here talking
23 about -- she's making certain conclusions about the
24 validity and his voracity in responding to tests that
25 she gave him and I think it's appropriate.

1 Overruled.

2 Q. (By Mr. Waldemer) Okay. Would you agree with
3 me that those nine prior confessions and
4 non-confessions, those nine prior crimes where he
5 confessed six out of nine times, at least gives him
6 additional familiarity with what his Miranda rights
7 are?

8 A. I don't know that I can agree with that. When
9 Grisso was studying this and developing these
10 instruments, one of the things that came up was that
11 peoples' prior experience with the criminal justice
12 system, with Miranda, did not necessarily contribute to
13 them understanding these warnings and, in fact, that
14 the comparison group that understood the ones the best
15 were people who had never had any involvement with the
16 criminal justice system at all.

17 Previous experience was not --

18 Q. My question, Doctor, was: Could it be?

19 A. It could.

20 Q. Exposure to his Miranda rights on multiple
21 times, can give him familiarity with it, can't it?

22 A. It could.

23 Q. Okay. Now, you had not received any of those
24 records though from the defense attorneys?

25 A. No.

1 Q. And so you didn't consider that in rendering
2 your opinion?

3 A. No.

4 Q. And I'm assuming by your answers to that that
5 doesn't taint your opinion at all?

6 A. No.

7 Q. Did you review the probation and parole
8 records?

9 A. Those were not provided.

10 Q. Were you aware that he was on state probation
11 at the time he murdered Casey Williamson?

12 A. Yes.

13 Q. Are you aware that the probation officer met
14 with him on June 5th, 2002, more than a month before he
15 murdered Casey Williamson, concerning a violation of
16 his probation and at that time she gave him his rights?

17 Are you aware of that?

18 A. I don't believe I knew that he was given his
19 rights at that time.

20 Q. Are you aware the probation officers give all
21 of their probation officers -- probationers their
22 rights before they talk to them about violations?

23 A. Actually I did not know that.

24 Q. Well, let's assume for my questioning that she
25 did it, as the records would show. The fact that he

1 refused to make a statement about his violations on
2 June 5th of 2002, six weeks before he murdered Casey
3 Williamson, does that indicate that he understood he
4 had a right not to make a statement?

5 A. I didn't ask him the reason why he chose to
6 invoke that right, so I can't know.

7 Q. You just know that he invoked that right?

8 A. Yes.

9 Q. Okay. Three days after he killed Casey
10 Williamson, that same probation officer talked to him
11 and gave him his rights again.

12 Did you know that?

13 A. Yes.

14 Q. And did you know that she said he invoked his
15 rights again?

16 A. Okay.

17 Q. Did you know that?

18 A. No.

19 Q. Does that indicate that he knew his rights?

20 A. I wasn't there, I can't say.

21 Q. You can just say he did invoke his rights if
22 he refused to make a statement, right?

23 A. He did.

24 Q. Now, during that same conversation, his
25 probation officer asked him if he confessed and he

1 said, yes, and she asked him, did they violate your
2 rights when you made your confession and he said, no.

3 Did you know that?

4 A. No, but I don't -- it was my understanding
5 that this evaluation was not about whether the police
6 had violated his rights, it was about whether
7 Mr. Johnson understood his rights.

8 Q. If he indicated that he didn't violate his
9 rights, doesn't that show a little understanding of
10 what his rights are if he says, no, they didn't violate
11 my rights?

12 A. That's assuming that he understood the rights.

13 Q. Okay. Now, you didn't review any of those
14 probation reports before rendering your opinion, right?

15 A. No.

16 Q. Did you -- you met with him in prison twice?

17 A. Yes.

18 Q. Did you review his prison records?

19 A. Those were not provided.

20 Q. You're not aware while in prison since 2003,
21 he's had over 25 conduct violations?

22 A. What does that have to do with -- if these
23 took place after my evaluation?

24 Q. Did you know from 2003 to 2007, he had over 25
25 conduct violations?

1 A. Okay.

2 Q. Were you aware of that?

3 A. No.

4 Q. Are you aware that when an individual, a
5 prisoner, an inmate, has a conduct violation in prison,
6 they give him his rights?

7 A. Yes.

8 Q. You were aware of that?

9 A. Yes.

10 Q. And in his 25 violations, seventeen times he
11 asserted his right to refuse to make a statement.
12 Do you know that?

13 A. I did not.

14 Q. The other eight times he made a statement.
15 Do you know that?

16 A. No.

17 Q. Does that indicate to you, Doctor, that he
18 understands his rights whether he should make a
19 statement or not?

20 A. It just indicates he invoked them.

21 Q. It doesn't indicate to you that he understood
22 them at that time?

23 A. I can't know if he understood them at that
24 time. I wasn't there.

25 Q. Well, if he invokes his rights, is he just

1 guessing what the right thing to do is?

2 A. It's hard to say. There are circumstances
3 that go into making a decision. I don't know if he
4 knew his rights or not. What you're telling me is
5 there are times that he chose to exercise them and at
6 times he didn't.

7 Q. Okay. And this was all background that you
8 didn't get before you rendered your opinion?

9 A. Yes.

10 Q. Now, the third thing that you were supposed to
11 do was get a good feeling or description of the
12 interrogation, correct?

13 A. The circumstances around it.

14 Q. And you received a summary of the case from
15 the public defenders?

16 A. Yes.

17 Q. Did you interview any of the four detectives
18 who interviewed him on July 26th?

19 A. No.

20 Q. So you don't know whether what the public
21 defenders gave you was accurate as far as what the
22 police officers recall?

23 A. I just have the summaries that were provided.

24 Q. And relied on those summaries?

25 A. And the transcript.

1 Q. And the transcripts of the trial or the
2 transcript of the motion to suppress or --

3 A. No. The transcript of his interview with the
4 police.

5 Q. Did you review the transcript of the trial?

6 A. No.

7 Q. Did you review the transcript of the motion to
8 suppress?

9 A. I believe so, yes.

10 Q. You didn't interview or talk to any of the
11 detectives who interviewed him?

12 A. No.

13 Q. Now, your notes reflect that he told you three
14 things; that he told the police he was hearing voices;
15 is that right?

16 A. That he says he said that at the time of the
17 evaluation.

18 Q. Okay. That's what he told you, in other
19 words, that's in your notes?

20 A. Yes, yes.

21 Q. And then he told you in your notes that he had
22 asked for a lawyer, correct?

23 A. Yes.

24 Q. Are you aware that you're the first person in
25 all of these documents that he's ever told that he

1 asked the police for a lawyer?

2 A. No.

3 Q. He's never told anybody but you that he asked
4 for a lawyer. Do you know that?

5 A. Well, no, but that's part of like -- mean I
6 didn't talk about that in my report because I didn't
7 think it was that significant.

8 Q. Okay. Well, let me ask you this: If he told
9 the police that's what he told you, I want a lawyer,
10 doesn't that show an understanding of his right to a
11 lawyer?

12 A. Yes. I guess at that time I don't recall if I
13 -- yes, it's possible to infer that.

14 Q. Okay. Now, he also told you that he was
15 afraid that the police would hurt him. Is that in your
16 notes?

17 A. Yes.

18 Q. Are you aware that that's the first time he's
19 ever told anyone that he was afraid that the police
20 might mistreat him?

21 A. No.

22 Q. Now, the fact that he told you in 2007, that
23 he asked for a lawyer and he was afraid he was going to
24 be mistreated and he's never told anybody else that,
25 does that indicate to you that he might be lying to

1 you?

2 A. It may have and he has a really poor memory
3 based on other whims, so his self report that he asked
4 for a lawyer that was after the fact, might not be
5 consistent with what's in the transcript that I have
6 but who knows what he said -- what he asked for before
7 there was anything recorded.

8 Q. But the fact that he's never told anybody else
9 that he asked for a lawyer or he was afraid they were
10 going to hurt him, none of the psychologists, none of
11 the psychiatrists, not his lawyer, not anyone, doesn't
12 that indicate to you that he was just making it up for
13 you on June 20, 2007?

14 MR. LUNDT: I object to the question, calling
15 for speculation here.

16 THE COURT: Overruled.

17 Q. (By Mr. Waldemer) Doesn't that indicate to
18 you that if he'd never told anyone that?

19 A. Did anybody else ask him that question?

20 Q. Don't you think his lawyers would ask that
21 question?

22 A. I don't know. I wasn't there.

23 MR. LUNDT: Objection, calls for speculation.

24 THE COURT: Overruled.

25 Q. (By Mr. Waldemer) Doctor, suffice it to say,

1 did you believe that he was being honest with you and
2 gave good effort during your examination on 2007 to
3 reach your conclusion, right?

4 A. Yes.

5 Q. But if he lied to you and he knew exactly why
6 you were there and he did poorly on purpose in order to
7 have you reach your conclusion that he didn't
8 understand his Miranda rights, isn't that also
9 possible?

10 A. It's possible but he would have had to work
11 really hard though to fake the whole evaluation and
12 have it match previous evaluations.

13 Q. On the intelligence test?

14 A. And the memory test.

15 Q. How about the Grisso?

16 A. He'd never been given that before.

17 Q. But he knew in advance that it was being given
18 to him to decide whether or not he understood Miranda,
19 right?

20 A. Yes.

21 Q. And don't you think he has a real goal of
22 getting his confessions thrown out?

23 A. Well, he specifically stated to me, I don't
24 care if they kill me, so I don't know if his motivation
25 was as strong as you're suggesting.

1 Q. Okay.

2 MR. WALDEMER: Nothing further.

3 THE COURT: Redirect?

4 MR. LUNDT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. LUNDT:

7 Q. The individual tests that you gave him had
8 validity testing within them, right?

9 A. I'm sorry, which testing?

10 Q. The individual tests, like the IQ test, it had
11 a validity test within it, correct?

12 A. No, no. Compared to the previous tests, and
13 yes, compared to the previous tests, there was a lot of
14 consistency and there was no reason to think that Mr.
15 Johnson was being dishonest in his approach.

16 Q. So you determine that, based on your expertise
17 and training, that he was -- he'd given you a valid
18 effort on this test?

19 A. Yes.

20 Q. Okay. And why didn't you do individual
21 validity tests like the TOMM, I think you said?

22 A. Because Dr. Beaver had evaluated Mr. Johnson,
23 I believe, four months previously and administered the
24 test of memory, malingering and a couple of other
25 memory tests that assess for dishonest responding

1 including a test that assesses the feigning of
2 psychiatric symptoms and Mr. Johnson's performance was
3 normal on all of those. There was no indication of
4 exaggeration or feigning found on any of those validity
5 instruments. I didn't see any need to repeat them.

6 Q. Okay. Anytime you go into a penitentiary
7 you're looking for evidence that someone is malingering
8 or lying to you?

9 A. It's something I'm aware of and thinking
10 about.

11 Q. Okay. And so you were looking for it when you
12 evaluated Johnny; correct?

13 A. Yes.

14 Q. Does poor -- does his poor memory indicate
15 lying?

16 A. Not necessarily. If somebody has a poor
17 memory, they might give different accounts due to the
18 fact that they don't recall and not because they're
19 deliberately trying to lie.

20 Q. The State showed you two exhibits of written
21 -- handwritten notes from Johnny Johnson --

22 A. Yes.

23 Q. -- purportedly. Do you know if he had help
24 writing those? Do you know the circumstances around
25 those written exhibits?

1 A. I don't know. In the written tests that I
2 gave Mr. Johnson his handwriting here is different so I
3 don't know.

4 Q. So you don't know what the circumstances
5 around these two State's exhibits were?

6 A. No.

7 Q. In your opinion is Johnny Johnson
8 sophisticated enough to be able to pull off lying on
9 all of those tests with you?

10 A. Well -- and make it match a previous
11 evaluation from four months before, no, I don't think
12 he's sophisticated enough to do that.

13 Q. And as you said before, studies have shown
14 that prior exposure to Miranda rights doesn't have an
15 effect on whether somebody understands them?

16 A. Not necessarily, no.

17 Q. Given Johnny's cognitive abilities, is that
18 the basis for your opinion?

19 A. That's the primary basis, yes, and his mental
20 illness.

21 MR. LUNDT: Nothing further.

22 THE COURT: Any recross?

23 MR. WALDEMER: No recross.

24 THE COURT: Mr. Lundt.

25 MR. LUNDT: We call Catherine Luebbering.

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CATHERINE LUEBBERING

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HAMILTON:

Q. State your name for record.

A. Katherine Luebbering.

Q. And where are you currently employed?

A. Grace Kelley Neighborhood Health Centers.

Q. And what do you do there?

A. I'm a social work case manager.

Q. What does that mean?

A. I work in the Children's Development Center.

I provide social work case management services to children and parents who are living at poverty level or below. So I provide resources to the families we serve.

I attend school meetings, advocate for services, special education services for the children that we serve.

Q. What is your educational background?

A. I have a bachelor's in human development and family studies from the University of Missouri at Columbia in 1994, I have a bachelor's degree in social work from Columbia College in Columbia in 1997, and I

1 have a master's degree in social work from St. Louis
2 University in 2000.

3 Q. And what's your practicum experience?

4 A. As an undergraduate I did a practicum with
5 Visiting Nurses' Association as a medical social
6 worker. In my graduate experience I was a case worker
7 for the -- excuse me -- Father Tolten Catholic
8 Community Services and then I also did two semesters at
9 the International Institute of Medical Social Work Case
10 Management.

11 Q. What is your employment experience?

12 A. From 1998, I'll start there, I -- with -- I
13 served as a child care provider for the Crisis Nursery
14 here in St. Louis. That was part time while I was
15 attending school and then I took a job with Central
16 Baptist Family Services in 1998. I was with them for
17 two years doing intensive in-home services, providing
18 services to families who were at risk of having a child
19 removed because there were allegations of abuse and
20 neglect. I was with them for just over two years when
21 I took the job with the State of Missouri Public
22 Defender's System as a mitigation specialist. That was
23 in 2000 -- November of 2000 and I was there until
24 October of 2008 when I took my current position.

25 Q. Now, in your position at the Public Defender's

1 were you assigned to work with Johnny Johnson's case?

2 A. Yes, I was.

3 Q. And what did you do on that case?

4 A. Well, I was a mitigation specialist, I did a
5 social history as requested by the attorneys. So in
6 developing the social history, I gathered records,
7 interviewed family members, gathered numerous records,
8 reviewed those records, used the information that I
9 learned from reviewing the records to interview family
10 members, to interview teachers, health care providers.

11 Q. And in your job as a public defender, in the
12 normal course of a mitigation specialist, do you
13 develop a timeline?

14 A. Yes.

15 Q. Turning to -- that's Movant's Exhibit 12.
16 Turn to page 3391 through 3420?

17 A. 3391?

18 Q. Yes.

19 THE COURT: I'm sorry. What volume?

20 MS. HAMILTON: Volume 12, Exhibit 12.

21 THE COURT: Thank you.

22 Q. (By Ms. Hamilton) I'd like you to look at
23 that and tell me what that is?

24 A. This is the time line that I developed when
25 working on Johnny Johnson's case.

1 Q. Now, on working on Johnny's case, did you look
2 for school teachers and other people to evaluate a
3 detailed social history?

4 A. Yes.

5 Q. And why did you do that?

6 A. Well, I was provided information by Johnny
7 himself and then also by family members, and I need to
8 confirm information provided to me by Johnny and also
9 by family members.

10 Q. And why did you need to verify what Johnny
11 told you?

12 A. Well, he's one -- he is one source of
13 information and in conducting a social history I need
14 multiple sources of information and I need to hear, for
15 example, if he told me something about school, I want
16 to hear about that experience from whoever the school
17 provider was or the teacher was so I go to the source.

18 Q. I'm going to show you Movant's Exhibit 22 and
19 this is a -- tell the court what it is?

20 A. This is the grid that I created. It's
21 entitled: School Information, Johnny Johnson, with his
22 date of birth and it's a grid of -- showing what
23 schools he attended in what year, where the school was
24 located, who his teachers were and where Johnny was
25 living at the time.

1 MR. WALDEMER: I'd like the record to reflect
2 that Robert got that out of his notes.

3 Q. (By Ms. Hamilton) What was the purpose of
4 this grid?

5 A. Well, this helped to summarize a lot of
6 information from his school records, which were many,
7 they were voluminous and it listed on -- it lists all
8 the teachers so it helped me to identify some of the
9 individuals I might want to interview. It also
10 illustrates that Johnny was -- that he moved around
11 throughout his childhood. He was not living in a
12 stable home, in one place. He moved around sometimes
13 from year to year.

14 Q. Now, this list -- do you have ages he is and
15 what school he's in?

16 A. Yes, I do.

17 Q. Now, where on that list do you see Ms.
18 Strothkamp?

19 A. When Johnny is 13 years old and he's in sixth
20 grade, in '92 he was attending High Ridge Middle School
21 in High Ridge?

22 Q. Did you attempt to find Ms. Strothkamp?

23 A. Yes.

24 Q. What did you do to find her?

25 A. As I recall, I used a search features on the

1 West Law Service that we used in the Public Defender
2 system and I found several listings for Pamela
3 Strothkamp.

4 Q. Was she hard to find?

5 A. No. She was listed several times so I was
6 able to see that there were different addresses for her
7 and as I recall I sent a letter to Ms. Strothkamp and
8 she responded to my letter.

9 Q. I'm handing you Movant's Exhibit 21. Look at
10 that and tell me what that is?

11 A. This is the record grid that I created to keep
12 track of all the records that I obtained, when I sent
13 out my requests, when they were received and who the
14 records were for.

15 Q. Turn to the last page of that grid?

16 A. Okay.

17 Q. I think it's the last entry of the grid. What
18 did you do to try to find Pamela Strothkamp's IEP? How
19 did you know it was missing from the records?

20 MR. WALDEMER: I'm sorry. What was the
21 question?

22 MS. HAMILTON: I wanted to know how she knew
23 Ms. Strothkamp wrote an IEP from just looking at the
24 records -- well, how did you find out Ms. Strothkamp's
25 IEP was missing from the record?

1 MR. WALDEMER: Judge, let me object to the
2 hearsay at this point. If she learned it from someone
3 else, it's based on hearsay. I think we already have
4 Ms. Strothkamp's testimony that the record was not
5 within there and I haven't objected to the record
6 coming in, but anything Ms. Strothkamp would tell her,
7 I think it's hearsay.

8 THE COURT: Sustained.

9 MS. HAMILTON: That's fine.

10 Q. (By Ms. Hamilton) I just want to know, did it
11 take a lot of effort to find her on your part?

12 A. No.

13 Q. Now, did you talk to Johnny about Ms.
14 Strothkamp?

15 A. Yes.

16 Q. And what did he tell you about her?

17 MR. WALDEMER: Objection, hearsay.

18 THE COURT: Sustained.

19 Q. (By Ms. Hamilton) I want to show you this
20 year book and did you get this year book?

21 A. Yes.

22 Q. Why did you get this year book?

23 A. When I'm conducting a social history, I like
24 to be able to provide my client with visuals. When I'm
25 talking about them, about their school experiences and

1 I want them to be able to point out teachers they had,
2 fellow students, friends and so I found that having a
3 year book is very helpful in that regard.

4 Q. Did you show this year book to Johnny?

5 A. I did.

6 Q. And was it helpful to you to identify
7 information that Johnny had told you?

8 A. Yes.

9 Q. Did you show this year book to Johnny on more
10 than one occasion?

11 A. Yes.

12 Q. And for the record where is Ms. Strothkamp,
13 what page is she on?

14 A. Page three.

15 Q. And --

16 A. She's on the bottom row.

17 Q. See if you can find Johnny Johnson. And do
18 you see Johnny Johnson in that same book?

19 A. Yes.

20 Q. Did you show that to Johnny Johnson?

21 A. Yes.

22 Q. And did he recognize Ms. Strothkamp in that
23 book?

24 MR. WALDEMER: Object to the hearsay.

25 THE COURT: Sustained.

1 Q. (By Ms. Hamilton) At any rate, you showed it
2 to Johnny and it was instrumental in helping you talk
3 to him about issues in this case?

4 A. Yes.

5 MS. HAMILTON: I have no other questions.

6 THE COURT: Mr. Waldemer?

7 MR. WALDEMER: I have no questions.

8 THE COURT: You may step down, ma'am. Thank
9 you.

10 LISA MCCULLOCH

11 having been duly sworn, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. HAMILTON:

15 Q. State your name for the record.

16 A. Lisa McCulloch.

17 Q. What is present occupation?

18 A. I'm a registered professional counselor.

19 Q. And what is your educational background?

20 A. I have a bachelor's degree in psychology and a
21 master's degree in counseling.

22 Q. How long have you been a counselor?

23 A. I've been licensed for nine years. I've
24 carried out counseling type duties, maybe for fifteen
25 years.

1 Q. Did you work with the Missouri Public
2 Defenders?

3 A. Yes.

4 Q. And how long did you work for them?

5 A. I worked for the system for nine years.

6 Q. And what were your duties there?

7 A. I initially worked in the juvenile system for
8 four years and then the capital litigation department
9 for five years and my duties there were to investigate
10 the social history, background of defendants that were
11 referred to me through the attorneys.

12 Q. Did you know Johnny Johnson?

13 A. Yes.

14 Q. Do you recall when you were appointed to
15 represent Johnny?

16 A. I know it was 2003.

17 Q. At the time you were investigating Johnny
18 Johnson's case, did you do a social history for him?

19 A. Yes.

20 Q. And at the time you were working on Johnny's
21 case, were you working on other cases?

22 A. Yes.

23 Q. Do you recall how many other cases you were
24 working on during the same time period?

25 A. I was working on six other cases.

1 Q. When you investigate witnesses among all these
2 cases, how did you keep track of the witnesses that you
3 interviewed?

4 A. I created a grid where I kept track of -- one
5 column was their name and another column would be
6 contact information and the third column would be my
7 status as far as if I've gotten ahold of them or if
8 I've interviewed them and how many times. I tried to
9 keep track of it in the electronic case management
10 file.

11 Q. Did you make an attempt to interview Johnny's
12 special education teacher?

13 A. Yes.

14 Q. Why?

15 A. I wanted to learn what their observations were
16 of him at the time that he was in their class.

17 Q. Now, from your observation, did you learn that
18 Pamela Strothkamp was his sixth grade teacher?

19 A. Yes.

20 Q. From your investigation of Johnny's records,
21 did you know that Johnny was in Ms. Strothkamp's class
22 when he was first tried to commit suicide?

23 A. Yes.

24 Q. And at the time did you think it was -- at the
25 time did you believe it was important to interview Ms.

1 Strothkamp?

2 A. Yes.

3 Q. Why?

4 A. I -- I thought she might be able to shed some
5 light on what was going on with Johnny at the time; if
6 she noticed any peculiar behaviors or moods or just
7 overall functioning in the classroom.

8 Q. I want you to look at Volume 12, Movant's
9 Exhibit 12, page 3306, 3306.

10 A. Okay.

11 Q. Do you recognize that?

12 A. Yes.

13 Q. What is it?

14 A. This was the contact grid that I created as I
15 was working on Johnny's case to help keep track of who
16 I talked to and who I still needed to talk to.

17 Q. Now, specifically, what page does your grid
18 start on?

19 A. Starts on 3301

20 Q. And it goes through what page?

21 A. 3309.

22 Q. Okay. I want you to look at specifically
23 3306.

24 A. Okay.

25 Q. Now, on that page do you have some information

1 about Pamela Strothkamp?

2 A. Yes.

3 Q. And what is that?

4 A. That she's a sixth grade teacher at North
5 Jefferson Middle School; that I left two messages at --
6 that I left messages at two different listings for
7 Strothkamp and then Johnny said, don't call her.

8 Q. Did Johnny say why he didn't want you to call
9 her?

10 MR. WALDEMER: Objection, hearsay.

11 THE COURT: Sustained.

12 Q. (By Ms. Hamilton) Now, when you got this list
13 did you know for sure the two listings for Strothkamp
14 was Pamela Strothkamp that you were looking for?

15 A. No.

16 Q. Did you ever hear anything back from her?

17 A. No.

18 Q. Did you make any further -- did you do any
19 further investigation when you didn't hear from her?

20 A. No, I didn't.

21 Q. Did -- within your office do you have any
22 other investigators that can help you when you can't
23 find somebody?

24 A. Yes.

25 Q. Who is that?

1 A. Tony Koons is a litigation investigator.

2 Q. And what does he do for the office?

3 A. He usually locates people that are hard to
4 find.

5 Q. Now, did you ask Tony Koons to help you find
6 Ms. Strothkamp?

7 A. No, I didn't.

8 Q. Why not?

9 A. I don't know. I never made a request.

10 Q. Is that because you decided you didn't want to
11 talk to Ms. Strothkamp or you just --

12 MR. WALDEMER: Judge, she just indicated that
13 she doesn't know. I think the question is both leading
14 and suggestive and calls for speculation.

15 THE COURT: It's been asked and answered
16 unless she wants to change her answer.

17 Q. (By Ms. Hamilton) why didn't you ask Tony to
18 help you?

19 A. It never occurred to me to ask Tony.

20 MS. HAMILTON: I have no further questions.

21 THE COURT: Mr. Waldemer.

22 MR. WALDEMER: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. WALDEMER:

25 Q. Ms. McCulloch, on the grids that counsel just

1 showed you, I counted 66 witnesses that you attempted
2 to contact.

3 would that be fair; or you probably haven't
4 counted them?

5 A. Right, right, that sounds fair.

6 Q. That sounds fair?

7 A. Yes.

8 Q. All the people you did contact you made
9 written or I should say electronic memorandum to the
10 case file?

11 A. I tried.

12 Q. And at trial, do you recall that the eighth
13 grade teacher that you had interviewed Linda White
14 testified?

15 A. Correct.

16 Q. And his seventh grade teacher Susan Betts
17 testified?

18 A. Yes.

19 Q. And his kindergarten teacher, Shirley
20 McCullough testified?

21 A. Yes.

22 Q. A principal at North Jefferson Middle School,
23 Mr. Reeves testified?

24 A. Yes.

25 Q. Another counselor from Northwest Middle

1 School, Karen Gilbert testified?

2 A. Yes.

3 Q. And those were all people that you had
4 interviewed and turned in a memorandum to your
5 attorneys?

6 A. Correct.

7 Q. In addition to that, do you recall if you
8 interviewed a minister, Jim Strube?

9 A. Yes.

10 Q. He was not called as a witness but you
11 provided several memorandum to the file or the
12 attorneys?

13 A. Correct.

14 Q. You interviewed numerous relatives of Johnny
15 Johnson?

16 A. Yes.

17 Q. You interviewed Jingjia Hu who is his special
18 ed teacher during his seventh and eighth grade?

19 A. Correct.

20 Q. And filed a memorandum?

21 A. Yes.

22 Q. You interviewed David Staat, S-t-a-a-t, eighth
23 grade special ed teacher at North Jefferson Middle
24 School?

25 A. Yes.

1 Q. You also interviewed at least one of his
2 classmates Mike Murphy?

3 A. Yes.

4 Q. He'd been in the sixth, seventh and eighth
5 grade with the defendant?

6 A. Yes.

7 Q. You interviewed Barbara Johnson, the
8 defendant's first grade teacher?

9 A. I believe so.

10 Q. And provided a memorandum?

11 A. I don't recall the name on here but maybe if I
12 look at the contact. Ms. Johnson you're saying?

13 Q. Barb Johnson.

14 A. Okay. Yes.

15 Q. You interviewed her and provided your
16 attorneys with a memorandum?

17 A. Yes.

18 Q. And lastly do you recall interviewing Laura
19 Knies, K-n-i-e-s, Valley Park Elementary Resource
20 teacher that Mr. Johnson had in the first grade?

21 A. Yes.

22 Q. You provided memorandum to all of those people
23 to your attorneys?

24 A. As far as I can remember.

25 Q. Okay.

1 MR. WALDEMER: I don't have anything further.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION

4 BY MS. HAMILTON:

5 Q. In the case of Ms. Strothkamp, did you provide
6 the trial attorneys with a memorandum?

7 MR. WALDEMER: Judge, I'm going to object.
8 This is beyond the scope of cross. I didn't ask any
9 questions about Ms. Strothkamp.

10 MS. HAMILTON: But you asked about the
11 memorandum she provided. I'm asking about that.

12 THE COURT: Overruled. She can answer.

13 Q. (By Ms. Hamilton) Did you provide trial
14 counsel some type of memorandum that you were not going
15 to continue looking for Ms. Strothkamp?

16 A. No, I don't believe so.

17 MS. HAMILTON: No further questions.

18 THE COURT: Anything else?

19 MR. WALDEMER: No, sir.

20 THE COURT: You may step down. Thank you.

21 MR. LUNDT: Your Honor, just to make sure, we
22 are done with the witnesses today. I want to make sure
23 that I have offered into evidence all of the records
24 and I believe -- did we offer -- offer Department of
25 Mental Health Records, Volume 4; Department of Mental

1 Health Records, Volume 4?

2 MR. WALDEMER: Department of Corrections
3 Mental Health Records?

4 MR. LUNDT: I'm not sure.

5 THE COURT: St. Louis Psychiatric
6 Rehabilitation Center records, all admitted -- I'm
7 sorry, that's not 4 -- Yes, they have been admitted.

8 MR. LUNDT: Okay. Volume 5, I offered the
9 entire volume, St. John's --

10 THE COURT: They've been admitted already.

11 MR. WALDEMER: I have all of 6 in too.

12 THE COURT: I'm sorry.

13 MR. WALDEMER: I have all of 6.

14 MR. LUNDT: I have all of 6, 7 and 8 in and 9
15 as well.

16 THE COURT: Volume 6 is in, Volume 7 is in,
17 Volume 8 is in. Did you say 9?

18 MR. LUNDT: Yes.

19 THE COURT: All of 9 is in.

20 MR. LUNDT: Okay. At this time I will make
21 sure that I'm offering in Volume 10, the Missouri
22 Department of Probation and Parole records.

23 THE COURT: They're admitted.

24 MR. LUNDT: Okay. And then make sure --

25 MR. WALDEMER: Is that all you were offering

1 out of 10?

2 MR. LUNDT: At this point, yes, those are the
3 records in there. I don't think we ever had any
4 discussion on the pharmacy records yet.

5 I show that in Volume 11. We felt the Court
6 ordered the psychological evaluation in and the
7 defendant's evaluations in --

8 THE COURT: -- and the CV of Dr. Stewart.

9 MR. LUNDT: Okay.

10 THE COURT: Nothing in 12 is in.

11 MR. LUNDT: Your Honor, at this time I would
12 offer into evidence the evaluations by doctor --
13 evaluation and notes by Dr. Kraushaar and that is drawn
14 in here most of it is volume 13, 3492 through 3507.

15 THE COURT: Any objection to that?

16 MR. WALDEMER: Where we talking about?

17 THE COURT: Volume 13, pages 3492 to 3507.

18 MR. WALDEMER: 3493 through 3507?

19 THE COURT: 3492 through -- through 3507.

20 MR. WALDEMER: Judge, the letter of Dr. Gordon
21 was never referred to at any time during the testimony.

22 MR. LUNDT: Okay. Then we'll withdraw that.

23 MR. WALDEMER: The psychological evaluation, I
24 don't have objection to it. The notes I have objection
25 to because not all of those notes were identified at

1 any time, as to which ones were Dr. Gordon's, Dr.
2 Kraushaar's. Dr. Gordon did not testify. I think any
3 admission of his notes would be improper because there
4 was no opportunity to cross-examine him and Dr.
5 Kraushaar never indicated which notes were hers and
6 which were his. I mentioned that one was better
7 handwriting than the other, but I didn't get any
8 response.

9 MR. LUNDT: Your Honor, on direct she said
10 those were all her notes.

11 THE COURT: Well, how can they all be her
12 notes?

13 MR. LUNDT: What's that?

14 THE COURT: How can they all be her notes.
15 I'm not going to admit the notes.

16 MR. LUNDT: Okay. So you are admitting 3493
17 through 3496?

18 THE COURT: That's right.

19 MR. LUNDT: Those are all the ones that I move
20 to admit at this time and as far as those records that
21 are previously admitted, I would offer them as
22 substantive evidence in this case also.

23 THE COURT: What records were previously
24 admitted?

25 MR. LUNDT: All the volumes that you have.

1 THE COURT: That have already been admitted
2 into evidence?

3 MR. LUNDT: Yes.

4 THE COURT: I'm not sure what you mean. As I
5 recall Mr. Waldemer had no objection to the foundation
6 -- them being admitted based upon foundation. I don't
7 know if there are any other objections.

8 MR. WALDEMER: There are a lot of records
9 which were referred to by witnesses and as they
10 referred to their impressions of those records, I don't
11 have an objection even if I have disagreement of their
12 impressions but there are also a large number of
13 records which were not referred to by those witnesses
14 and I think the records that were not touched upon by
15 those witnesses, they are not necessarily admissible
16 even though I don't have any objection to their
17 foundation or their admission. So what we are asking
18 is that each and every one be admitted as is
19 testimonial, if that's what Mr. Lundt means by
20 substantive evidence. I do object to that when a
21 record was not testified to or used in testimony, I
22 don't think it's admissible just because he has a
23 business record affidavit attached to it.

24 THE COURT: I agree with that.

25 MR. LUNDT: Your Honor, I believe there is

1 testimony that at least Dr. Stewart based his opinion
2 on each and every one of the records in the volumes.

3 THE COURT: I don't think that was the
4 testimony of Dr. Stewart. I will say we spent two days
5 with Dr. Stewart going over in a very detailed fashion
6 the records that he did rely on apparently. So to the
7 extent that they were used by any witness in this case,
8 I'll admit them. If there are records in there that
9 weren't used, I'm not going to admit those, I don't
10 know what's in them.

11 MR. LUNDT: Your Honor, can we contact the
12 Court later on for the date for Dr. Beaver's testimony?
13 I don't think we can actually make a date for that at
14 this time.

15 THE COURT: I understand. Yes. Let's do
16 that. I'd like to contact -- Let's go off the record.

17 (A discussion was held off the record. Court
18 was adjourned for the day.)

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July 23, 2010

THE COURT: We are here in the matter of State of Missouri -- excuse me -- Johnny Johnson versus State of Missouri, Cause Number 07CC-001303.

Let the record reflect counsel for the State is Mr. Dean Waldemer. Counsel for defendant is Mr. Lundt and Ms. Hamilton both present and let's see --

EVIDENCE ON BEHALF OF THE MOVANT

CRAIG W. BEAVER

being produced and sworn, testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. LOYCE HAMILTON:

Q. Dr. Beaver, what is your occupation?

A. I'm a licensed psychologist.

Q. And what is -- what do you specialize in?

A. Clinical and neuropsychology and forensic psychology.

Q. Doctor, what's the difference between psychology and neuropsychology?

A. Neuropsychology is a specialized field, a subfield of psychology that looks at brain behavior relationship. Much of my additional training and post Ph.D. was in better understanding how neurological conditions where impairments in the neurological system

1 affect behavior and functioning.

2 Q. And what is your educational background?

3 A. I have an undergraduate degree from the
4 University of Oregon in psychology. I have a master's
5 and a Ph.D. in clinical psychology from Miami
6 University of Ohio, which is an APA approved clinical
7 training program for clinical psychology.

8 I completed a clinical internship at the Fort
9 Miley VA Medical Center in coordination with the UC San
10 Francisco Medical School. That training emphasized
11 neuropsychology primarily and to a lesser extent that
12 treatment primarily with PTSD and drug alcohol issues.

13 I also completed four years of additional
14 supervised training under Dr. Lloyd Cripe, who at that
15 time was head of neuropsychological services for the
16 armed services with the Western United States based out
17 of Fort Madigan in Washington.

18 Q. Have you done any internships?

19 A. Yes, as I mentioned before I did an internship
20 in the VA in San Francisco. I also did the
21 post-doctoral with Dr. Cripe in clinical
22 neuropsychology.

23 I've also done some additional post-doctoral
24 training on a smaller scale in forensic psychology with
25 Dr. David Shapiro and also Dr. Ellen Hypreksha

1 (phonetic).

2 Q. And what is your work experience?

3 A. When I -- first of all, as undergraduate, I
4 worked at summers running a halfway house for
5 adolescent boys. I was the director and assistant
6 director of that program providing supervision, some
7 counseling, interacting with families.

8 Also while attending my undergraduate years, I
9 worked in the addiction behavioral management clinic at
10 University of Oregon, seeing patients for addiction
11 issues primarily in the areas of cigarette smoking and
12 alcohol and then during my graduate school years,
13 beside teaching, I also worked on the Rollman's
14 Psychiatric Institute in Cincinnati, which is an acute
15 -- the regional acute psychiatric facility in the
16 Cincinnati area where you saw primarily acute psychotic
17 individuals.

18 After completing my education, I then moved
19 back to Idaho, where I was originally from, and I was
20 first hired by Saint Alphonsus Regional Medical Center
21 in Boise, Idaho and I was hired to develop and start a
22 psychological and neuropsychological consultation
23 service. They are the regional trauma center for the
24 area and also have the regional psychiatric in-patient
25 unit so I worked in that area and had a sole private

1 practice.

2 Also while I was employed at Saint Alphonsus
3 Regional Center I was also employed by the Nelson
4 Institute which was a out-patient drug alcohol
5 treatment program partly funded by the state. I was
6 their consulting psychologist and neuropsychologist for
7 that program for several years.

8 I then eventually was, after about four or
9 five years, hired by the other hospital in the area,
10 St. Luke's Regional Medical Center and Idaho Elks
11 Rehabilitation Hospital to start a brain injury, spinal
12 cord rehabilitation treatment unit. I then helped them
13 establish both in-patient and an out-patient neurorehab
14 care center and -- which was ultimately one of the
15 first accredited programs of its kind in the
16 intermountain west. I did that for over twenty years
17 and, in fact, this December I just retired from that
18 position. During that time I also maintained a private
19 practice while doing a variety of activities. Most of
20 those activities, about two-thirds of my activities are
21 treating and evaluating patients both psychological --
22 for both psychological and neuropsychological issues.

23 I've been a consultant for the Department of
24 welfare, both rehab and a number of agencies in that
25 capacity. The other third or forty percent of my

1 program has been forensic, pretty well divided between
2 criminal and civil activities.

3 Q. Do you have an area of expertise that you
4 mainly focus on in your private practice?

5 A. I would say that my practice really focuses on
6 two key areas. One is clinical neuropsychology, the
7 evaluation and treatment, consultation with patients
8 that have or are suspected of having neurological
9 problems or difficulties. The other area would be
10 forensic psychology.

11 Q. Do you hold any licenses?

12 A. Well, besides being licensed in Idaho,
13 Washington and Oregon as a psychologists, I also hold a
14 diplomat status in the area of the clinical
15 neuropsychology by the American Board of
16 Neuropsychology, which is the credentialing board
17 recognized by the American Psychological Association.

18 Q. Do you hold any certifications?

19 A. Yes. I'm certified in the area of clinical
20 neuropsychology.

21 Q. What do you have to do to become certified?

22 A. Well, first of all, you cannot apply for board
23 certification until you're between two and four years
24 post-Ph.D. You have to have a core set of classes and
25 training in addition to the standard training that you

1 would get as a clinical psychologist. For example, I
2 took courses in neuroanatomy, neurophysiology,
3 neuropathology, neuropsychometric testing, things of
4 that nature, which would be out of the normal for most
5 psychologists. I also took courses in pharmacology and
6 if your educational credentials are accepted you submit
7 work samples. Those are reviewed. If the work samples
8 are accepted, you sit for a written exam. If you pass
9 the written exams then you come back and do two oral
10 exams.

11 Q. And when did you -- when were you certified?

12 A. 1982.

13 Q. Okay. Do you serve on any professional
14 boards?

15 A. Yes. I serve on a number of professional
16 boards. First of all, I am on the review board for the
17 American Board of Professional Psychology and Clinical
18 Neuropsychology. I review and consult on the work
19 samples new applicants supply.

20 Also, I'm a member of the Idaho Supreme Court
21 Domestic Violence Council where we establish the
22 guidelines and requirements for court appointed
23 evaluators that do domestic violence evaluations.

24 I also oversee the credentialing of those
25 individuals; what kind of continuing education they

1 receive; also deal with disciplinary complaints that
2 may arise within that group.

3 I'm also a member of the Idaho Bar Association
4 on their Character and Fitness Committee. We
5 oversee -- I'm one of the only non-attorneys on the bar
6 commission. We oversee, you know, new applicants that
7 have had drug or alcohol problems or mental health
8 issues, things of that nature.

9 I also participate in disciplinary actions
10 against attorneys for problems and difficulties, things
11 of that nature. I've done that for the past nine years
12 or so.

13 I'm also on the Advisory Board for the
14 Epilepsy League of Idaho where I help consult training
15 programs, educational programs, related to the Saint
16 Lukes Regional Medical Center in our area as an
17 epilepsy evaluation and surgery program. I consult on
18 that and advise them as well.

19 In addition to that, I'm on the Board of
20 Directors of a non-profit development agency that
21 provides support services to disabled adults that are
22 trying to live independently in the community.

23 Q. What professional boards have you served on in
24 the past that you have not mentioned here today?

25 A. In the past I was chair of the licensing board

1 for psychologists for nine years appointed by the
2 governor where you oversaw new applicants for
3 licensure, dealt with disciplinary issues that arose,
4 you know, looked at legislation that was relevant for
5 psychology as a profession.

6 Also I was president, vice president and
7 treasurer of the Idaho Psychological Association, which
8 is our state professional association. I did that for
9 many years.

10 I've also served on a number of different
11 committees at the request of various governors in the
12 state of Idaho and at the request of the legislature.

13 I've served on, probably four or five
14 different committees dealing with drugs and alcohol
15 issues. For example, I help set standards for
16 professional evaluators that present to the Court,
17 educational training guidelines for those individuals,
18 help review the assignment of state appointed contracts
19 for drug and alcohol treatment and things of that
20 nature.

21 I've also been appointed to committees that
22 look at legislation and changes in the Medicare
23 programs to support Medicare patients, to support brain
24 injury patients and other developmentally disabled
25 adults.

1 In addition to that I've also been an active
2 board member of the Guardian ad Litem Group and for
3 Family Advocacy Group, as it's called. We provide
4 guardian ad litem for children in various kinds of
5 proceedings and disputes.

6 I also was on the board for many years with
7 the WCA, the -- formerly the YMCA and they are one of
8 the primary agencies providing services for domestic
9 violence, care and treatment for battered women, things
10 of that nature.

11 Q. Are you a member of any professional
12 societies?

13 A. Yes. I'm a member of the American
14 Psychological Association, within that I'm a member of
15 several divisions, I think the most important are the
16 law/health division and the neuropsychology division
17 and I'm also a member of the International
18 Neuropsychological Society. I'm also a member at the
19 National Academy for Psychologists. I'm also a member
20 of the National Head Injury Foundation and a member of
21 the National Epilepsy Foundation as well.

22 Q. Now, you indicated that you are a member of
23 International Neuropsychology Society.

24 what is that?

25 A. It's probably the primary research

1 professional organization for people in the area of
2 neuropsychology. They have members in countries --
3 pretty much all of the developed countries where we
4 meet and review, you know, latest research, look at
5 policy regarding neuropsychology, things of that
6 nature.

7 Q. Have you been a author of any professional
8 publications?

9 A. Yes, not a lot though. I've authored a couple
10 of articles relating to addiction issues primarily in
11 cigarette smoking. I've also been published on issues
12 relating to disability with the Social Security
13 Administration. I've written a training manual for
14 health and welfare in the State of Idaho dealing with
15 brain injuries, those kinds of things.

16 Q. Have you conducted any professional workshops?

17 A. Yes. I've done a number of -- given a number
18 of workshops and given a number of invited addresses.
19 I would say the majority of those have dealt with brain
20 injury, its treatment, diagnosis and things of that
21 nature.

22 I've talked and lectured about chemical
23 dependency issues and how chemical dependency effects
24 the brain functioning, things of that nature.

25 I've given a number of different forensic

1 seminars dealing with issues of competency, mental
2 health in the law, neuropsychology in the law, the use
3 and misuse of various psychological tests; have given
4 those seminars to both attorneys, trial attorneys and
5 judicial groups, correctional administration groups,
6 things of that nature.

7 Most recently I gave a presentation at a
8 National Conference relating to malingering issues and
9 evaluations. That was in New Orleans this last year.

10 Q. Now, you indicated, you just testified that
11 you gave workshops in the misuse of testing.

12 what does that mean?

13 A. Well, I've given a couple of lectures relating
14 to that or workshops. I presented that at the Judicial
15 Conference on the use and misuse of psychological
16 tests; how they can be inappropriately used in a
17 forensic setting; what are more appropriate ways to be
18 used.

19 I also presented about the limitations of the
20 MMPI to the Florida Public Defenders at their annual
21 conference a while back. I gave lectures on the uses
22 of psychological tests in family law to the National
23 Matrimonial Law Group.

24 I also have done lectures on the use and
25 misuse of psychological tests particularly relating to

1 malingering issues at the National Psychometrists
2 annual conference, which was in New Orleans this past
3 November.

4 Q. Have you obtained any honors in the area of
5 psychology?

6 A. Well, besides having a diplomat status, this
7 past year, 2009, I was recipient of the Idaho Bar
8 Association Service Award for the contributions I've
9 made to the Idaho Bar Association in mental health
10 legal issues in Idaho.

11 In the past I've also been recognized by
12 social work organizations and some other groups like
13 that.

14 Q. Do you have hospital privileges?

15 A. Yes. I have hospital privileges in all of the
16 hospitals that are in the Boise area, Saint Alphonsus
17 Regional Medical Center, Saint Luke's Regional Medical
18 Center, Intermountain Hospital and Idaho Elks
19 Rehabilitation Hospital.

20 Q. Have you been qualified as a neuropsychologist
21 and/or forensic expert in courts?

22 A. Yes. I've been qualified to provide
23 testimony -- in probably all of the judicial districts
24 in Idaho.

25 I've also been qualified to provide expert

1 testimony in probably close to twenty states in the
2 United States and multiple federal jurisdictions as
3 well.

4 Also -- I've also been qualified to present in
5 military court as well.

6 Q. In what federal jurisdiction have you been
7 qualified as an expert?

8 A. Well, in federal jurisdictions, I don't know
9 the districts all that well. Obviously in area nine,
10 which is the area that I believe encompasses Idaho,
11 Oregon, Washington, California, in ten and in nine, I
12 think but I'm not sure what district Florida is in but
13 probably half dozen altogether.

14 Q. In those cases did you testify for the defense
15 or prosecutor?

16 A. Well, first of all, you know, about half of
17 the time I've testified in other states, it's been
18 related to civil matters, not criminal matters.

19 As far as criminal matters are concerned,
20 about 75% of the time I'm retained by the defense and
21 about 25% of the time I'm retained by the prosecution.
22 I would say in death penalty cases it's probably more
23 like 90 to 95% retained by the defense and occasionally
24 by the prosecution, usually as a consultant rather than
25 an evaluator.

1 Q. About how many have you consulted for the
2 prosecution?

3 A. Well, I couldn't tell you an absolute number
4 of times. I think in death penalty cases probably six,
5 eight times over the last few years, but again the
6 majority was for the defense in death penalty.

7 MS. HAMILTON: May I approach the witness?

8 THE COURT: You may.

9 Q. (By Ms. Hamilton) I'm handing you Movant's
10 Exhibit 25.

11 THE COURT: You don't have an exhibit list or
12 not?

13 MR. LUNDT: Your Honor, I didn't make a new
14 one.

15 THE COURT: That's okay. I just wondered.

16 Q. (By Ms. Hamilton) Do you recognize this?

17 A. Yes. This is a copy of my current curriculum
18 vitae.

19 MS. HAMILTON: For the record we have a
20 curriculum vitae in the volumes but this is the updated
21 version since we have been working on this case.

22 THE COURT: Very well.

23 Q. (By Ms. Hamilton) And you gave this to me
24 when?

25 A. I think I gave it to you yesterday.

1 Q. Okay.

2 MS. HAMILTON: I'd like to have Movant's
3 Exhibit 25 admitted into evidence.

4 THE COURT: Any objection?

5 MR. WALDEMER: No, your Honor.

6 THE COURT: It will be admitted.

7 Q. (By Ms. Hamilton) I think you touched on this
8 a little bit earlier, but how is a neuropsychologist
9 different from a psychologist?

10 A. Well, in addition to having the doctoral level
11 of training as a clinical psychologist in the usual
12 things, psychopathology, psychological anxiety
13 diagnosis and treatment, things of that nature, I also
14 have additional course work and additional training in
15 dealing primarily with neuroleptical and other related
16 conditions. I've had additional course work, for
17 example, in neuroanatomy, neuro geology, pharmacology,
18 things of that nature. I have done additional training
19 and supervision in dealing with those patients so I
20 have about four to five years of additional supervised
21 training in this area in addition to the usual training
22 that most psychologists would have.

23 Q. Now, I want to talk about your area of
24 expertise as it relates to Johnny Johnson.

25 what training and experience do you have in

1 evaluating patients with organic brain disorders?

2 A. Well, first of all, my training in clinical
3 neuropsychology is focused very specifically on that
4 issue, both learning to evaluate, to diagnose and to
5 treat patients that have or are suspected of having an
6 organic brain disorder.

7 I also, obviously, I have both developed and
8 ran a brain injury rehab program for over twenty years
9 where brain injury and other neurological conditions
10 that effect brain functioning was the primary diagnosis
11 of those patients.

12 I've given multiple workshops and invited
13 addresses related to this topic and it is probably the
14 majority area of my practice.

15 Q. What is your experience in treating patients
16 with severe mental illness?

17 A. Well, my first real exposure for severe mental
18 illness really came about in my training at Miami
19 University, particularly when I was at Rollmans
20 Psychiatric Institute several months since they at that
21 time were the regional area for acute psychiatric
22 emergencies. So I worked very closely with several of
23 the psychiatrists or psychologists there evaluating and
24 treating patients that were relatively acute and had
25 very severe psychiatric disorders. Also while at the

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IN THE SUPREME COURT OF THE STATE OF MISSOURI

JOHNNY A. JOHNSON,)
)
Appellant,)
)
vs.) Appeal No. SC91787
)
STATE OF MISSOURI,)
)
Respondent.)

=====

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS
TWENTY-FIRST JUDICIAL CIRCUIT, DIVISION NUMBER THREE
Honorable Mark D. Seigel
Volume IV

JOHNNY A. JOHNSON,)
)
Movant,)
)
vs.) Cause No: 2107CC-001303
)
STATE OF MISSOURI,)
)
Respondent.)

TRANSCRIPT ON APPEAL
November 30, 2009
December 1-2, 2009
July 23, 2010

=====

For Movant:
Mr. Robert Lundt and Ms. Loyce Hamilton
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Reported by:
Nancy A. Hazelwood, CCR #0214
Official Court Reporter, Division 3
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1 VA Medical Center and again at Saint Alphonsus Regional
2 Medical Treatment Center in my role as a consultant in
3 psychology and neuropsychology, I frequently was asked
4 to evaluate and help consult regarding treatment with
5 patients that have both severe psychiatric disorders
6 and/or generally have complex problems and
7 difficulties.

8 I also have been involved with training
9 individuals related to this. I've done several
10 conferences or workshops to train family physicians in
11 dealing with psychiatric patients, particularly as
12 relates to competency and treatment.

13 I've done training with paramedics about how
14 to deal with psychiatric patients, and recently I
15 helped develop the psychiatry residency program at the
16 VA Medical Center in Boise and work in coordination
17 with the University of Washington Medical School and so
18 I teach a neuropsychiatry residency program on various
19 topics.

20 Q. What experience have you had treating patients
21 that are drug and alcohol dependent?

22 A. Well, first of all I had some exposure to drug
23 and alcohol issues as an undergraduate working in the
24 behavioral addictions clinic at the University of
25 Oregon, although it tended to be more related to

1 cigarette smoking and alcohol rather than drugs at that
2 time.

3 When I did my internship in San Francisco I
4 was a consultant on an in-patient drug/alcohol floor.
5 Dr. Marion Bar at the time was the medical director in
6 that particular program that was showcased nationally
7 in the VA system for some of the innovations and
8 treatment and I was actively involved with that.

9 Also when I first returned to Boise, I worked
10 for the out-patient program at Nelson Institute which
11 provided drug and alcohol treatment and even after I
12 left working for the Nelson Institute I continued to be
13 involved with various committees related to drug and
14 alcohol issues, and I think finally, many times in my
15 work, particularly now in the forensic criminal arena,
16 drug and alcohol issues are often, if not almost always
17 involved with these individuals.

18 Q. What experience have you had treating patients
19 with PTSD?

20 A. When I was at the VA Medical Center in the
21 early eighties, that was around the time that PTSD had
22 been more firmly established as a diagnosis and in the
23 late seventies, of course, was when VA Medical Centers
24 really started paying attention to the PTSD that
25 Vietnam veterans were experiencing so I was involved in

1 providing treatment to those veterans in the early
2 eighties. Probably also, I will say, along the way,
3 because I deal with patients and families there's been
4 traumatic injury, like a motor vehicle accident, a
5 death in the family, things of that nature, those
6 issues come up pretty regularly with patients and
7 families that deal with that, but probably most
8 recently the program that I was involved with was
9 identified as the Center of Excellence through the
10 Veterans' Administration for providing treatment to
11 complex cases for returning Iraq veterans. Often we
12 saw people that had dual diagnoses where they had both
13 PTSD and mild TBI problems and I was involved in their
14 care and treatment and worked closely with the
15 Veterans' Outreach Center in Boise in that area of care
16 and treatment as well.

17 Q. You said TBI. Tell the Court what that stands
18 for.

19 A. Traumatic brain injury.

20 Q. Are you familiar with Johnny Johnson?

21 A. Yes.

22 Q. And how are you familiar with him?

23 A. Well, I was first asked to consult on Johnny
24 Johnson's case by your offices in -- sometime in 2006,
25 and at that time you began sending me a large volume of

1 records related to Johnny Johnson. I then, over a
2 period of time, reviewed quite a large volume of
3 records, multiple medical records related to Johnny,
4 academic records and academic testing that he centered
5 on, psychiatric records from over the years, legal
6 records from various situations, summarized interviews
7 from some of the mitigation people involved in Johnny
8 Johnson's case. So I was able to have a lot of that
9 information before I met Johnny Johnson.

10 I then evaluated him for the first time in
11 February 25th, 2007, out in, I believe, Potosi
12 Correctional Facility and interviewed him and began
13 conducting neuropsychological testing at that point.

14 I then returned again in April of '07 and did
15 additional interviewing and testing with him at that
16 time. In addition to that, I also had contact with a
17 number of other individuals related to Johnny. I
18 interviewed his paternal grandmother, Sophia Johnson.
19 I interviewed Nancy Quinn, and his paternal aunt. I
20 also interviewed Bob Johnson, his brother. I
21 interviewed his mother, Connie Kemp, on two different
22 occasions. I interviewed his step-father, Greg Kemp.
23 I also interviewed his brother, Eric Johnson.

24 In addition to that, I also interviewed Pamela
25 Strothkamp, who was his sixth grade teacher and also

1 Carol Brown, who was his seventh grade -- I have
2 forgotten the grade, years ago.

3 Q. When you decide -- when you are getting ready
4 to do a forensic examination, what does that look like?

5 A. Well, first of all, you like to have as many
6 records as you can have because the records give you a
7 broader understanding of the individual. Those are
8 going to be important not only in better understanding
9 the person's history, but also in evaluating the
10 voracity of their claims or presentation.

11 So to begin with, particularly in Johnny
12 Johnson's case, as I think I mentioned earlier, I was
13 able to review quite a large volume of records related
14 to him.

15 The second thing is that I wanted to make
16 sure, that not only have an opportunity to interview
17 him about how he was doing, about his history,
18 understanding him a little bit more, but I also find
19 that it is important to interview other individuals
20 about the person as well. It gives you a much broader
21 perspective. Again, it also provides you with some
22 collateral comparison of information about things. So
23 I was able, as I mentioned, to interview a few of a
24 number of others.

25 I also then tried to design a

1 neuropsychometric test battery that would look at
2 specifically some of the issues of concern with Johnny
3 Johnson and in that regard, given that the State's
4 involved, i.e., that it's a death penalty case, any
5 time you start looking at cognitive functioning, you
6 really need to look closely at effort and motivation in
7 that kind of testing.

8 So in the case with Johnny Johnson, I made
9 sure to pick a number of different measures that look
10 at effort, motivation and malingering in the cognitive
11 testing.

12 For example, he was given multiple measures to
13 kind of look at that both what we call internal
14 measures and separate tests just designed for that.

15 The second thing is that you try to pick a set
16 of tests that will evaluate appropriately all the major
17 areas of cognitive functioning, motor, speed and
18 dexterity, attention and concentration, communication
19 and language skills, perceptual skills, memory and
20 learning abilities, problem solving skills. So you try
21 to select tests that will adequately evaluate each of
22 those primary areas and you try to select tests that
23 are well normed, well validated and well accepted
24 within the professional community and so you want to
25 make sure you're covering all of those areas.

1 In regard to the more psychological and
2 psychiatric issues, besides interviewing, you always
3 try to also administer some kind of testing to look at
4 the voracity of their psychiatric complaints.

5 In this case, I also administered the SIRS to
6 Johnny Johnson as well to look at those issues.

7 Q. Actually what is the SIRS?

8 A. Structured interview tests. I would say
9 considered -- it's considered the gold standard for
10 assessing malingering and feigning psychiatric
11 symptoms.

12 Q. And -- just for the record, what tests did you
13 give?

14 A. In this case, Johnny Johnson was administered
15 the Weschler Adult Intelligence Scale, Third Edition.
16 He was also administered the Rey 15-Item Memory Test.
17 The Test of Memory Malingering, referred to as the
18 TOMM. The SIRS. The Grooved Pegboard Test. The
19 Controlled Oral Word Fluency Test. The Wechsler Test
20 of Adult Reading. The Rey Complex Figure Test. The
21 Rey Auditory Verbal Learning Test. The Wechsler Memory
22 Scales, Third Edition, Abbreviated form. The Stroop
23 Test. The Trail-Making Test. The Consonant Trigrams
24 Test. The Categories Test and the Wisconsin Card
25 Sorting Test.

1 MS. HAMILTON: And for the record those tests
2 that he just mentioned can be found in volume 15 -- I'm
3 sorry -- volume 13.

4 THE COURT: Thank you.

5 MS. HAMILTON: Page 3508 to 3629.

6 THE COURT: Thank you.

7 Q. (By Ms. Hamilton) Now, after giving Johnny
8 all these tests, starting with the Weschler, what did
9 you learn from the tests about Johnny?

10 A. Well, first of all, as an overall picture I
11 felt that Johnny Johnson's overall performance across
12 multiple measures and given the context of the records
13 that I have reviewed, showed clear evidence of organic
14 syndrome and he had significant difficulties in many
15 different areas of thinking abilities consistent with
16 that. Overall from an intellectual perspective, he
17 fell broadly in the low average range of abilities
18 consistent with the multiple prior IQ testing that he's
19 had in the past.

20 You know, Mr. Johnson was tested beginning in
21 1984 when he was in school because he showed a lot of
22 developmental delays and cognitive and academic
23 difficulties in school. He was then retested a series
24 of times while in school and consistently fell in
25 generally the same range. Particularly weak in the

1 language areas, falls in the middle to the low average
2 of verbal and intellectual abilities and then in more
3 performance tasks he falls in the upper end of low
4 average with his overall IQ falling in the mid
5 eighties.

6 Also consistent in the testing in both I did
7 and has been done by others particularly in the school
8 systems, is that he had difficulties with significant
9 academic delays. He also had significant delays in
10 motor development coordination, attentional problems
11 and auditory processing problems. That was also
12 observed in my testing.

13 Q. Were there any red flags from your prospective
14 in Johnny's school records?

15 A. Yes. There were a number of things when you
16 look at his records that would make you concerned that
17 he has limitations in his cognitive abilities and may
18 have organic brain syndrome.

19 First of all, he was identified very early on
20 in school as having significant problems even though,
21 for example, he'd gone to Head Start, which usually
22 gives people that maybe didn't have the best enriched
23 environment, a little bit of a head start, so to speak,
24 for starting school. Even with that, they still had
25 him repeat kindergarten and first grade because he

1 wasn't able to learn and participate fully.

2 They identified him as having significant
3 learning disabilities at that time along with other
4 developmental delays.

5 This continued throughout the course of his
6 education. Johnny was in self-contained special
7 education classes throughout his grade school years,
8 which, again, reflects the fact that he had a lot of
9 difficulties as he moved into junior high or middle
10 school, he continued to perform very poorly and outside
11 of the structure of that self-contained classroom, if
12 you look at his academic performance, he essentially
13 failed most things.

14 In terms of his educational or academic
15 history, there are many red flags to indicate severe
16 problems there.

17 In addition to that, there is also some
18 important history when you look at his family history.
19 His brother Eric had also been diagnosed with
20 difficulty with learning disabilities. He's been
21 referred to, at least in some of his psychiatric
22 admissions, that he is mentally retarded in addition to
23 having schizophrenia disorder.

24 His father, Bob, was described as slow by
25 other family members, all of which would suggest,

1 again, along with the educational history, that there
2 is potential issues of concern there.

3 If you go through history, Johnny Johnson was
4 described as having at least three minor head injuries
5 when he was little, I think at age two, three and four,
6 that both his mother described, a couple of those were
7 documented by him getting stitches at the Meacham
8 Clinic.

9 Also Johnny, of course, in his own description
10 describes several other head-injury type events in late
11 adolescence to early adulthood where they were
12 basically from altercations all of which, again, raises
13 the risk that there could be a problem there.

14 The other issues looked at is that when he has been
15 in psychiatric care facilities, they've also identified
16 him as having either dyslexia, learning difficulties,
17 ADHD so that's also been recognized.

18 There are a couple of references to him having
19 low intelligence in some of the records. Again, there
20 is a lot of information in the record that would raise
21 many red flags that, in fact, he is at high risk or
22 likely does have organic-type problems given that
23 history.

24 Q. For the record, we sent you -- actually I
25 think it's fifteen volumes because volume 6 had 6 and

1 6a so even though it says fourteen volumes, it's
2 fifteen because 6 has two volumes. Did you review all
3 those records?

4 A. I think I've read everything. There is a huge
5 amount of information in this case.

6 Q. Did you have an opportunity to review his
7 grades from elementary school to high school and how
8 they were different and what opinion did you have about
9 that?

10 A. Well, first of all, I did review his academic
11 performance throughout his schooling. I think, as I
12 mentioned earlier, he tended to do better if he was in
13 a highly structured setting, like the self-contained
14 classrooms. By the time he hit middle school, he
15 failed most of his classes in that setting.

16 Q. When you say middle school, what schools are
17 you talking about?

18 A. You know, I think that it was North Jefferson
19 Middle School and, I think, there may have been another
20 high school as well, but that's the one I remember most
21 clearly.

22 MS. HAMILTON: For the record, your Honor, the
23 middle school records are in volume 1, 219 to 283.

24 THE COURT: Thank you.

25 Q. (By Ms. Hamilton) In reviewing those records,

1 did you come -- and your testing, did you come to any
2 conclusion as it pertains to auditory processing
3 disorder?

4 A. Yes. He appears, if you look at the testing
5 across time in academic records as well as in my
6 testing of him, he shows a very substantial auditory
7 processing deficit.

8 Q. Would you explain what that means to the
9 Court.

10 A. Yes. It means even though a person can hear
11 information, use of language, their brain's ability to
12 process that information very quickly or effectively is
13 impaired so they actually will hear, for example, what
14 people are saying or communicating to them but because
15 they're slower in processing that information or less
16 effective, they often miss a lot of that information
17 creating difficulties.

18 so like in school, for example, these kids
19 often have a lot of difficulty in school because they
20 hear what's being said but because they don't process
21 it very well, they miss a lot of key parts so they
22 don't do very well because they're not getting a lot of
23 parts of the information.

24 Also kids tend to find it very frustrating
25 because if you were to sit down with the person say

1 one-on-one and more slowly explain something to them,
2 they often can then get it or understand but in a group
3 setting like in a classroom where there's less of that
4 one-on-one then that's the situation when they miss the
5 most information, and so that tends to be very
6 frustrating for them.

7 Q. In your review of the records, did you find --
8 were you concerned about Johnny's birth records?

9 A. Well, in his birth records, the only two
10 things that came up, which do raise a concern, but
11 don't stand by themselves, is that his mother had
12 gestational diabetes during the pregnancy, which places
13 Johnny at higher risk for having some complications and
14 he apparently had some type of endocrine dysfunction
15 the first few days after his birth and had to be
16 brought back to the hospital, but that appeared to
17 resolve itself.

18 So there is enough of that information that,
19 yes, you need to look closer at this young man. I
20 think that the larger issue is that the amount of
21 difficulty that he had when he entered the school
22 system, to me that's probably a big red flag.

23 Q. What kind of concerns did you have when you
24 reviewed Johnny's medical and psychiatric records?

25 A. I think, again, as we talked about before,

1 there is mention of at least three mild head injuries
2 when he was young, you know, that each individual head
3 injury that is described when he was young, even by
4 himself, probably you wouldn't get too concerned about
5 it, but head injuries are cumulative and they do have a
6 cumulative affect so that if you have a series of them,
7 that raises your level of concern.

8 Now, Johnny also talks about several head
9 injuries as he is in late adolescence, early adulthood
10 as well and, assuming that that is correct, that again
11 continues to add to that accumulation of difficulties
12 that I think he experiences.

13 It's a series of relatively mild head
14 injuries, if you have enough of them, you can have the
15 same impact as a major head injury. An example of that
16 is what we're seeing going on right now in the NFL in
17 terms of them redoing the guidelines for mild
18 concussions on the field because so many players,
19 retired players have been found to have the earlier-age
20 onset of dementia and they think it is related to
21 accumulated head injuries. Probably the most damaged
22 player is Steve Young for the 49ers that had a series
23 of seven minor head injuries that ultimately he retired
24 early out of his contract because he could no longer
25 learn to master the plays. So it is an accumulated

1 affect so that this was also a concern.

2 Q. For the record, can you tell the Court some of
3 the head injuries that Johnny had that caused you
4 concern?

5 A. Well, the first one that is talked about when
6 he was age two and fell off a bunkbed and hit the
7 nightstand and had several stitches.

8 The next time was in '81 when he fell down
9 some concrete steps and appeared dazed afterwards. The
10 next one is perhaps the largest event, if you will,
11 when he was a little kid, is -- is that apparently his
12 mother was carrying him down the stairs and dropped him
13 and he fell and hit the stairs and then the stove and
14 required a number of stitches. That was when he was
15 around seven or eight and was treated at Meacham Clinic
16 for that.

17 Later on Johnny reports being kicked in the
18 head to the point he was having some bleeding out of
19 one of his ears. He describes being in a fight where
20 they hit him with boards on the head and knocked him
21 out. He describes another fight at age nineteen when
22 he was knocked out.

23 Q. Now, did you review Johnny's hospital
24 admissions?

25 A. Yes.

1 Q. And about how many did he have, Doctor?

2 A. Well, you know, he has at least ten. You
3 know, there is a number of -- I mean, you know, Johnny
4 Johnson, as you are probably aware, in earlier
5 adolescence, has been in and out of some type of
6 psychiatric mental health care and treatment or drug
7 alcohol care and treatment since he was like thirteen
8 or fourteen years old.

9 MS. HAMILTON: May I approach the witness?

10 THE COURT: You may.

11 Q. (By Ms. Hamilton) I'm handing the witness
12 Movant's Exhibit 24.

13 Do you recognize this list?

14 A. Yes. This is the list that you have prepared
15 at my request outlining some of his various hospital
16 admissions or admissions into psychiatric treatment
17 programs.

18 Q. Did you take that -- were those records
19 included in the volumes of records, this is a separate
20 list, in the volume of records that you reviewed?

21 A. Yes.

22 Q. That's where that came from?

23 A. Yes.

24 Q. For the record would you tell the Court, all
25 the admissions on this list, 24?

1 A. Well, the first psychiatric admission that
2 we're aware of was in 1992 at St. John's. He was 14 at
3 the time. He had cut his wrists. He came in on
4 April 23rd. He was diagnosed as having depression,
5 attention deficit disorder with dyslexia, his labs were
6 within normal limits, discharged 05/2/92, placed on
7 Tofranil at the time, which is an anti-depressant
8 medication.

9 His next hospitalization was in May 10th of
10 '92 at St. John's. He -- several days after being
11 discharged before, he overdosed on the Imipramine and
12 Trofanil he had been given. Apparently he was
13 reporting that his mother's boyfriend, who had been
14 physically abusive to him, he moved back into the home.
15 He complained about having nightmares about that abuse
16 and then overdosed and he was diagnosed as having major
17 depression and learning disorder and was discharged on
18 anti-depressant medication.

19 The next admission is in November 19, '93,
20 again, to St. John's, you know, threatening suicide at
21 that time, but on the unit he did okay. He was given a
22 discharge diagnosis of major depression, recurrent with
23 learning disabilities, and discharged about six days
24 later.

25 The next instant really isn't a hospital

1 admission. He was seen at St. John's Emergency Room
2 for cuts on his wrist. I think that they were -- they
3 were -- the question certainly was whether or not he
4 had done that intentionally because unfortunately
5 Johnny has quite a history of cutting on himself and
6 doing self-mutilation behaviors, but he had claimed it
7 was an accident and he was treated and released.

8 The next psychiatric hospital admission is on
9 June 5th, 9 o'clock at St. Mary's, again suicide
10 threats, doing a lot of self-mutilation. He was
11 burning himself with cigarettes, cutting himself. He
12 was diagnosed with having major depression, recurrent,
13 as well as borderline personality disorder. He was
14 placed on anti-depression medications.

15 He was hospitalized again at Southeast
16 Missouri Mental Health Center on June 18th of '96. He
17 was cutting his wrists again at this time. He was also
18 reporting that he was having auditory hallucinations.
19 He was using a fair amount of drugs before that and had
20 recently been using marijuana. He was kept for about
21 eight days and given a discharge diagnosis of major
22 depression and psychotic disorder, not otherwise
23 specified as well as polysubstance dependency.

24 He then was admitted again to the Metro
25 St. Louis Psychiatric Center on October 13th of '96.

1 He was described as having had a violent reaction to
2 that stimulant medication that he was abusing. He was
3 complaining of flashbacks about both abuse and about a
4 cult that he said he had gotten involved with. He was
5 treated and discharged about two weeks later and given
6 a diagnosis of psychotic -- psycho-stimulant
7 dependency, polysubstance abuse and personality
8 disorder with both anti-social and borderline features.

9 He then was admitted to the Community
10 Treatment Program, COMTREA, C-o-m-t-r-e-a, treated by
11 Dr. Carrera. That program started on 10/30/96. He was
12 described as restless, having insomnia, flashbacks of
13 being molested in the past and abused, had been using
14 drugs. Dr. Carrera described him as having
15 post-traumatic stress disorder, polysubstance abuse and
16 borderline antisocial personality features.

17 He was hospitalized again on November 7th, of
18 '96 at the Metropolitan St. Louis Psychiatric Center
19 making suicidal threats, agitated particularly when
20 they tried to restrict him in some way. They noted
21 that he was discharged a week later. They noted a
22 diagnosis of polysubstance dependency, probably was
23 malingering some of the psychiatric symptoms, again
24 antisocial personality diagnosis.

25 Health and welfare did an admissions screening

1 of him. It's not really clear from the record whether
2 he was ultimately placed into a psychiatric care
3 facility at that time. I couldn't really tell from the
4 record, but on March of 1997 he was -- underwent an
5 admissions screening by Health and Welfare. He was
6 cutting on his wrists from a broken window. He denied
7 that he was depressed. They thought he showed evidence
8 of polysubstance dependency, probable malingering,
9 antisocial behavior, low IQ at that time.

10 He then was admitted into the Deaconess
11 Behavioral Institute in September of '98. He was
12 brought there by the police where they found him
13 intoxicated and were going to arrest him apparently.
14 He was described as suicidal. He complained that he
15 had been drinking excessively in recent times to try to
16 deal with auditory hallucinations that he was
17 experiencing and he was admitted in their program and I
18 couldn't really tell from this record when he was
19 discharged from that program.

20 He then was admitted into the St. Louis
21 Psychiatric Center on October 17th of '01. He was sent
22 there from the Justice Center so I'm assuming that he
23 was probably in jail at the time or in the process of
24 being put into jail. He was reporting auditory
25 hallucinations, described as having auditory

1 hallucinations with increased stress. Those
2 hallucinations were described as being very critical
3 that would lead to further depression. It also showed
4 evidence of mild paranoid thinking. They thought that
5 -- they described him as having schizoaffective
6 disorder, polysubstance dependency, learning disorder.
7 He was placed on a number of medications including
8 Zyprexa, Paxil and Trazodone. Then, of course, most of
9 the time that he has been incarcerated and certainly
10 since he's been incarcerated since 2002, he's been
11 involved in mental health clinics in a correctional
12 setting and is continued on multiple antipsychotics and
13 antidepressant medications.

14 Q. When you reviewed all the hospital admissions,
15 what does that mean to you regarding your diagnosis?

16 A. Well, I think that Johnny Johnson has many
17 different problems. I think that, first of all, he
18 does have neurocognitive limitations, whether you label
19 them significant learning disabilities, dyslexia,
20 attention deficit disorder, organic brain syndrome, he
21 has a lot of neurocognitive deficit limitations.

22 Secondly, he has significant psychiatric
23 problems. He has recurring problems with depression
24 and a lot of suicidal thoughts and gestures. He has
25 psychotic symptoms at times, primarily auditory

1 hallucinations. Some indication of mild paranoia. He
2 also has significant and has had significant
3 polysubstance dependency issues as well, which
4 typically has exacerbated those psychiatric problems as
5 well as cognitive difficulties.

6 I also think he has characterological issues
7 as well. He's been diagnosed as having a personality
8 disorder with both anti-social and borderline
9 personality traits.

10 MS. HAMILTON: Before you go on, I'd like to
11 move Movant's Exhibit 24 into evidence.

12 MR. WALDEMER: I mean, Judge, I don't know if
13 I have an objection or not. It's clearly an exhibit
14 prepared for trial and testimony. I think the records
15 speak for themselves and if it aides the Court, I'm
16 certainly not going to object to it, but I don't know
17 on what basis when an attorney has created a
18 demonstrative exhibit that it is admissible.

19 THE COURT: Well, you're probably right. I'm
20 going to admit it.

21 Q. (By Ms. Hamilton) Did you review Johnny's
22 alcohol and drug abuse records?

23 A. Yes.

24 Q. And what did you learn from those?

25 A. That Johnny, historically, has had significant

1 substance abuse and dependency issues. This is
2 primarily, I will say, if you had to pick one
3 substance, it would probably be alcohol. He started
4 drinking at a pretty young age it appears based upon
5 what's talked about in the record, which varies from
6 report to report and in talking with Johnny himself, he
7 had some significant alcohol abuse problems throughout
8 most of his life.

9 He also, of course, has been involved with
10 other drugs, you know, in particular, you know, IV
11 methamphetamine, cocaine, LSD. He's engaged in
12 huffing, like huffing butane, gasoline, for example,
13 all of which is pretty destructive.

14 Q. Were you surprised with somebody with Johnny's
15 psychiatric problems, that he would be involved in drug
16 use?

17 A. Well, it isn't just his psychiatric history
18 that's at issue with him with respect to his drug use.
19 I mean, first of all, we know that some people are much
20 more at risk for having significant chemical dependency
21 problems than others. One of the things that we know
22 that puts you at risk, for example, if there is a
23 family history of significant chemical dependency or
24 substance abuse, your chances of having a problem with
25 that are significantly higher. If you have significant

1 psychiatric problems, your risk is significantly
2 higher, particularly, we are finding and this has been
3 more recent things with returning veterans from Iraq --

4 MR. WALDEMER: Judge, I'm going to object to
5 this as being not responsive and also narrative. I
6 think the question was specifically about Johnny
7 Johnson.

8 THE COURT: Sustained.

9 A. The post-traumatic stress that Johnny Johnson
10 experiences also increases his risks significantly.
11 Additionally, individuals such as Johnny Johnson that
12 have significant cognitive limitations are also at
13 higher risk for chemical dependency and finally,
14 individuals that grew up in abusive and/or unstable
15 family situations, also are at higher risk. Johnny has
16 all of those risks factors. So, the likelihood of him
17 having chemical dependency issues is extremely high and
18 the likelihood of him being able to successfully
19 overcome chemical dependency issues is extremely low
20 because of all those factors as well.

21 Q. (By Ms. Hamilton) How does the drug abuse
22 affect Johnny's brain?

23 A. Unfortunately, you know, it adds injury to
24 insult. We know from a neurodevelopmental perspective
25 that using any toxic substances, whether it's alcohol,

1 huffing, crystal meth, what have you, affects the brain
2 development. Our brains continue to develop until late
3 twenties to early thirties and the research is clear
4 that that skews development and I think that's the case
5 with Johnny Johnson.

6 You know, Johnny Johnson already had in a
7 sense a bad brain as evidenced by his significant
8 deficits in school academics done early on and the
9 developmental delays we saw with him, add alcohol and
10 drugs, that just exacerbates those problems and also
11 interferes with his brain developing normally.

12 Q. I know that you gave Johnny an IQ test. What
13 was Johnny's IQ?

14 A. You know, on my testing Johnny's verbal IQ was
15 85, his performance IQ was 94 and his full scale IQ was
16 88.

17 Q. Is that consistent over time?

18 A. You know, that is actually generally pretty
19 consistent with how he's tested in the past with the
20 exception of one testing that was done in November of
21 '03 in which he scored lower on everything, but if you
22 looked across the testing from 1984 to the present, he
23 has typically been in the 80's for verbal and
24 intellectual abilities and 50 for standard and upper
25 80's to low 90's for performance and intellectual

1 functioning, falling typically in the mid to upper
2 range of the 80's for overall IQ.

3 Q. With all the tests that you did for
4 malingering, did Johnny fail any of those tests?

5 A. No. He was given the test of memory and
6 malingering, the TOMM, and he performed within normal
7 limits. He was also given the Rey 15-item memory test
8 and performed within normal limits.

9 The Bolter Validity Index was calculated on
10 the category test and was within normal limits and
11 reliable digit span test was done and he performed
12 within normal limits.

13 so all four of those motivational, malingering
14 measures as they relate to cognition, were within
15 normal limits.

16 Q. Is an IQ a good indicator of whether or not a
17 person has an organic brain syndrome?

18 A. Actually IQ isn't a very good indicator of
19 that. The reason is is that IQ scores tend to average
20 skills over a lot of different areas and come to a
21 central number. So it's not particularly very
22 sensitive to organicity. There's actually been a lot
23 of discussion in the literature about that, that's why
24 you need to go back to do additional measures to look
25 more at those issues in order to make that

1 determination.

2 Q. Does any one test -- can you rely on any one
3 test to determine if a person has organic brain
4 syndrome?

5 A. No. The research is quite clear, there is no
6 one single test that you can give for organicity, no
7 neuropsychiatric testing. You have to look at a
8 constellation of tests in order to make a
9 determination.

10 Q. why?

11 A. well, first of all, people have tried to
12 develop a single test that would determine that and
13 they largely failed. Secondly, if you look at the
14 research on both fixed and variable or flexible test
15 batteries, you find that as long as you're making sure
16 that you've covered the primary areas of cognitive
17 functions with reliable tests, you really need that
18 that constellation of all the different areas of
19 functioning, looking at how the individual does before
20 you can make that determination.

21 You also have to have history on the
22 individual in order to make that determination. You
23 can't just make that determination with a test.

24 Q. During your evaluation of Johnny was his
25 intention consistent with prior evaluations?

1 A. Yes. Johnny does poorly in intentional tasks
2 and the more difficult the intentional task, the more
3 problems that he has and he has particular difficulty
4 if the primary input of the information is auditory and
5 he does very poorly, very consistent with the earlier
6 concerns of him having auditory processing deficit.

7 Q. During your evaluation of Johnny, were his
8 language skills consistent with prior evaluations?

9 A. Yes. He consistently falls in the low average
10 range to the lower end of low average for his general
11 language and communication ability.

12 Q. During your evaluation of Johnny were his
13 memory and learning skills consistent with prior
14 evaluations?

15 A. He hasn't had a lot of prior memory testing
16 but what prior memory testing that has been done was
17 consistent as well as more recent memory testing that
18 was done by Dr. -- starts with a K, Kraushaar. I have
19 a difficult time with names. Johnny doesn't do well in
20 memory and learning. It isn't that he can't learn and
21 retain information, it's difficult for him. He misses
22 a lot of detail, he mixes up a lot of details, it is a
23 problem for him.

24 Q. Were any of Johnny's test results consistent
25 with organic brain syndrome?

1 A. Yes. I think the constellation of his
2 symptoms and history, along with the test results, are
3 strongly indicative of that.

4 Q. You indicated earlier that Johnny, based on
5 school records, he had a lot of problems in school.
6 Did you identify any of those problems present in him
7 today?

8 A. Yes.

9 Q. Which ones?

10 A. Well, first of all, he has low average IQ that
11 we talked about. He, you know, earlier on was, you
12 know, identified as having motor development delay and,
13 again, on my testing performed poorly on fine motor
14 tasks. He also was consistently identified as weak on
15 auditory based activities, again, performed poorly for
16 me on those activities.

17 You know, I didn't do much in the way of
18 academic testing of him except for the reading test,
19 which was low, again, consistent with the prior
20 testing.

21 Q. Would you say Johnny's problems are affected
22 by his psychiatric difficulties?

23 A. Well, yes, in that there is an interaction
24 between his limited thinking skills and abilities and
25 his psychiatric problems.

1 Q. How is he affected; how does this happen?

2 A. Well, what you see is that if patients have
3 both psychiatric difficulties and more cognitive or
4 organic problems, it's not just simply an added affect,
5 it actually is more synergistic than that. If you have
6 ongoing psychiatric difficulties, for example, you
7 know, you have to try to find a way to problem solve,
8 get your medications, you know, follow through with
9 things, stuff like that. You have a lot of cognitive
10 difficulties you're not going to be very good at that.
11 So you have fewer resources to cope and manage your
12 psychiatric symptoms if you have limited cognitive
13 abilities and the reverse is also true. People with
14 cognitive limitations, if they have the right kind of
15 support, can often accomplish a number of things and be
16 very successful for themselves within that context, but
17 if they're constantly being distracted or affected by,
18 you know, mood swings, auditory hallucinations, what
19 have you, it takes much less to overwhelm these
20 individuals so, again, unfortunately, the combination
21 of those two areas of difficulties can be quite
22 devastating when they're combined like they are in
23 Johnny Johnson's case.

24 Q. In your opinion does Johnny Johnson have a
25 psychotic disorder?

1 A. Yes, I believe he does have a psychotic
2 disorder.

3 Q. And how does that manifest itself?

4 A. Well, in a number of different ways. One is
5 that Johnny has recurring major depression. You see
6 that throughout his history. He also at times
7 experiences and actually, I think this is pretty
8 steady, auditory hallucinations, that is usually
9 critical of him, which adds to that level of
10 depression. Occasionally you get what I would call
11 identity preference, where he thinks like, for example,
12 both times I saw him he told me that sometimes it would
13 be better if he was just executed because he believes
14 that because he has special powers that that will
15 create some positive changes in the world, just odd
16 things like that.

17 I mean, I think that consistently he has shown
18 symptoms that we would associate with psychotic
19 disorder as well as the depression. Of course, it's
20 further complicated in Johnny's case because I believe
21 he also has post-traumatic stress disorder from both
22 being sexually abused several times when he was younger
23 as well as suffering a significant amount of physical
24 abuse particularly by one of his mother's boyfriends, I
25 think his name was Mickey, and some of his other life

1 experiences that also makes it more difficult for him
2 because I think that he experiences intrusive thoughts
3 or flashbacks about that that further exacerbates his
4 other conditions and then, of course, although he's now
5 been incarcerated for a number of years, so one would
6 assume he isn't abusing substances. You know, his
7 chemical dependencies have also exacerbated those
8 psychiatric problems for him as well.

9 Q. Were Johnny's psychotic symptoms, in your
10 opinion, primarily the result of his drug and alcohol
11 abuse?

12 A. I think his drug and alcohol abuse can
13 exacerbate his psychotic symptoms, but, no, I don't
14 think that they are the predominate cause and the
15 reason that I believe that, is, first of all, there is
16 a strong family history of psychiatric disorder. His
17 brother, there is a grandfather, his sister, there is
18 clear evidence, if you go through some of the family
19 lineage, significant psychiatric problems, so he's at
20 something like ten to twenty times greater risk for
21 having significant psychotic difficulties than the
22 average person because of that history.

23 Secondly, if you look at his history, while
24 certainly there have been times where his substance
25 abuse has contributed to the intensity of his

1 psychiatric symptoms, he also has had psychiatric
2 symptoms when, as best as we can tell, in the tox
3 screening, he either has been clean on tox screening or
4 he's had predominately just marijuana, which typically
5 does not induce psychosis.

6 Also, you know, he's been incarcerated since
7 2002, in this current period of time, and throughout
8 the course of his incarceration, except for when he has
9 refused medicine, they have continued to keep him on
10 multiple psychiatric medications, both antipsychotic
11 medications and mood stabilizing medications and
12 antidepressant medications. He's regularly been on, if
13 you look back through the records, the correction
14 records, at least through 2007, that's the most recent
15 set that I have, he's pretty much always been on those
16 types of medications since he's been in there.

17 Q. Did you find -- you said Johnny had
18 flashbacks. Did you find that in the records or was
19 that something Johnny told you?

20 A. Both. One, it's talked about in some of his
21 prior psychiatric hospitalizations, also his -- he
22 talks about having those flashbacks and it's also
23 mentioned by family members.

24 Q. Can you explain to the Court how Johnny's PTSD
25 manifests in Johnny?

1 A. Well, primarily what you see with Johnny in
2 his PTSD is a couple of things. One, he does have
3 occasional intrusive thoughts or recollections, if you
4 will, about the abuse that he had. One that, in
5 particular, that comes up a lot, is the drowning
6 incident with one of mom's boyfriends, Mickey.

7 Also, he talks some about the sexual abuse
8 occasionally. So he has those kinds of intrusive
9 memories or flashbacks to those experiences.

10 So that's one thing. Another thing is that
11 some of his -- I don't know that I would label it
12 paranoid, I think that's too strong of a word, if
13 you're around him, for example, in the couple of days
14 that I say him, he's very sensitive to you touching him
15 at all, even accidentally or getting behind him at all,
16 he reacts pretty strongly to that and I think that's
17 also related to some of the abuse also that he's
18 experienced over the years. Those are the two most
19 concrete examples I can provide you.

20 Q. Do you believe Johnny has multiple psychiatric
21 issues?

22 THE COURT: I'm sorry. I didn't hear that.

23 Q. (By Ms. Hamilton) -- multiple psychiatric
24 issues?

25 A. Yes. I think, as we have talked, I think he

1 has problems with depression, problems with psychotic
2 disorders, problems with PTSD, as well as having
3 significant neurocognitive limitations and
4 characterological issues.

5 Q. How does having a dysfunctional family add to
6 his psychiatric conditions?

7 A. Well, in addition to having that combination
8 of things that I've talked about before in Johnny's
9 case, again, you know, I have patients and treated
10 patients, that if they have good stability and family
11 support in their home environment and in their
12 community, can go on and do a lot of things, whether it
13 is, you know, dealing effectively with chemical
14 dependency problems that they have, getting on the
15 right medications for their psychiatric disorder and
16 staying on those medicines, structured and finish
17 schooling and find a job that's appropriate for your
18 skills and abilities, unfortunately, none of that ever
19 happened with Johnny.

20 In interviewing his mother, other family
21 members, and also Johnny and then this is also to some
22 extent, this is also found in the ADAPT records, the
23 community agency that worked with him, you know,
24 Johnny, first of all, historically, has been
25 noncompliant with his medications when he's not in a

1 psychiatric setting. You know, his mom pretty much
2 turned it over to him to take his medicines. Well, my
3 experience with adolescents, that's not a very good
4 idea.

5 The family moved frequently. I think he was
6 in seven or eight different schools growing up, for
7 example. Mom had several different boyfriends that
8 moved in and out of the house, many of whom were not
9 kind to Johnny. So, again, you know, Johnny lived with
10 mom, lived with grandparents, lived on the streets,
11 lived with friends so, you know, there is a lot of
12 instability in his family of origin and given the
13 difficulties that Johnny has, that is about the worst
14 scenario you could think of because he is somebody that
15 needs a lot of structure, a lot of support, a lot of
16 intervention, if he's going to have a chance to
17 stabilize and overcome some of his difficulties.

18 Q. Did you ever find any place in the records
19 where Johnny lived a stable life?

20 A. No. In fact, Johnny's never even lived a
21 stable life. Other than living on the streets by
22 himself, which I don't really consider that being truly
23 independent, typically he lived with family, a
24 girlfriend, things of that nature.

25 Q. Do you believe Johnny is capable of managing

1 his medications -- do you believe Johnny is capable of
2 being medication compliant?

3 A. No. By himself out in the community, no.

4 Q. why?

5 A. You know, for many reasons. One, he doesn't
6 like to take his medication when he is out in the
7 community, he complains about the side effects.
8 Secondly, he is very disorganized and doesn't have a
9 good understanding about getting resources that he will
10 need to do to stay on medication and has a very chaotic
11 and somewhat unstable lifestyle which would ultimately
12 be difficult for him to reliably take medications.

13 Q. On the night of the crime, or the night before
14 the crime, the record indicates that Johnny had been
15 doing drugs, it's not clear what he was doing, but
16 doing some kind of drugs and marijuana.

17 would that impact Johnny's abilities or
18 exacerbate his mental difficulties?

19 A. Any time he engaged in any substance abuse,
20 it's going to make his psychiatric difficulties worse
21 and also affect his cognitive abilities.

22 Q. But it wouldn't change that he still had those
23 ability -- cognitive disabilities?

24 A. No, it just makes them worse.

25 Q. Can Johnny easily manage his or control his

1 drug and alcohol use?

2 A. Out in the community, I don't believe so.

3 Q. Why?

4 A. I don't believe that, given both his
5 psychiatric problems, his risk factors, chemical
6 dependency and his cognitive limitations, I don't think
7 he has the personal resources to effectively deal with
8 abstinence and not using out in the community.

9 Q. What kind of side effects -- you mentioned
10 earlier he has side effects he has, what kind of side
11 effects would Johnny be getting from the medication
12 that he's on?

13 A. You know, he's had problems with feeling very
14 sleepy --

15 MR. WALDEMER: Judge, let me object to this,
16 just the vagueness of the question. We've talked about
17 twenty years of records. I'm not sure what time we are
18 talking about.

19 THE COURT: Are we talking about presently?

20 MS. HAMILTON: Not the present, no.

21 Q. (Ms. Hamilton) Just prior to this crime,
22 during the time Johnny, according to the records, was
23 medication compliant, do you know what medications he
24 was on based on the record?

25 A. Well, first of all, it's my understanding from

1 reviewing interview notes and then the ADAPT records,
2 from the social work person that was meeting with him
3 periodically, that, while he had been compliant for a
4 short period of time leading up to the events, that he
5 had stopped taking his medication in the weeks before
6 this event took place, but otherwise, he reports that
7 when he was out in the community and taking his
8 medicine, that the medicine would make him feel sleepy
9 and tired at times and he didn't like that.

10 Q. Is that a normal side effect of the medication
11 that he was taking?

12 A. The type of antipsychotic medications and
13 antidepressant medications he was receiving, yes, it
14 can make your feel slow, tired.

15 Q. Why would -- or did you learn, maybe you
16 didn't, a person, if they have medication, you go from
17 street drugs and if you have psychiatric medications?

18 A. Well, first of all, there has been quite a bit
19 of research looking at this and patients that, if their
20 significant psychiatric difficulties are low levels of
21 community support, are very high risk for using street
22 drugs as an alternative to regular drugs. One, there
23 is easily a part of their environment, means people
24 that they are around are using, secondly, that makes
25 them in some ways more convenient and easier to obtain,

1 but, thirdly, is that a lot of times those
2 individuals -- and Johnny Johnson is a perfect example
3 of this, you know, other than when he's been
4 incarcerated or hospitalized and not being resistant
5 with taking his medicine, so from that prospective, he
6 has little understanding of if he were to stabilize
7 himself out in the community, my estimation is he would
8 feel significantly better. That's never happened for
9 Johnny. So, he gets, for example, I believe that he
10 does have ongoing auditory hallucinations where he has
11 those voices that are critical of him.

12 well, you know, if you get high enough or
13 drunk enough, you don't pay as much attention to them.
14 So it's a way to avoid dealing with some of those
15 symptoms, via street drugs.

16 Another thing that you see with people that
17 have significant psychiatric disorders on the street is
18 that you don't want to be or look crazy when you're on
19 the street, that puts you at risk for other problems
20 but on the street, things are more acceptable, if
21 you're high than if people think you are crazy. That
22 also plays into it for people like Johnny.

23 Q. Based on all your testing and your review of
24 the records, did you come to some opinion within a
25 reasonable degree of neuropsychological certainty about

1 Johnny's organicity?

2 THE COURT: About what?

3 MS. HAMILTON: Organicity.

4 A. Yes.

5 Q. (By Ms. Hamilton) What is that?

6 A. I think that Johnny Johnson does have an
7 organic brain syndrome combined with significant
8 psychiatric disorders and those are permanent
9 conditions for him. So they're present now, or as of
10 the last time I saw him in '07 and I believe that they
11 were also present in July of '02 when these events took
12 place.

13 Q. How would his organicity in your opinion
14 impact him on the day of the crime?

15 A. It would affect his ability to think, to
16 problem solve, to act rationally, to deal with stress,
17 to make appropriate decisions.

18 MS. HAMILTON: I have no further questions.

19 (Proceedings stood in temporary recess.)

20 THE COURT: Doctor, if you can take the
21 witness stand please. Mr. Waldemer.

22 MR. WALDEMER: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. WALDEMER:

25 Q. Good morning, Doctor, or at least it's still

1 morning for now. Couple of questions. First of all,
2 when you were initially hired in this case, you said it
3 was back sometime in 2006?

4 A. Yes.

5 Q. Okay. I have letters being sent to you that
6 were provided to me from defense counsel from
7 December 2006 and then February 2007.

8 Do you believe you were retained prior to the
9 December or do you know?

10 A. You know, I actually don't remember exactly,
11 but I just know sometime in 2006. It could have been
12 December but I'm not certain.

13 Q. Okay. And as I understand you received 16 --
14 MS. HAMILTON: Fifteen or sixteen.

15 Q. (By Mr. Waldemer) Okay. You received 15 or
16 16 volumes of materials from the defense attorneys?

17 A. Something like that, yeah.

18 Q. And you reviewed that information at what
19 point in this entire process, was it before our after
20 you went to see Johnny Johnson or was it before and
21 after or do you recall?

22 A. I recall that I looked through the majority of
23 it before I first saw him in February of '07. I may
24 not have reviewed everything, but I think I got through
25 the majority of it and then I obviously continued to

1 look at material after I saw him as well also I went
2 back through to look for specific things in the record,
3 things of that nature.

4 Q. Okay. And the other information that you had
5 in this case, in order to render your opinion, was
6 interviews that you did of several witnesses that I
7 believe you talked about on direct?

8 A. Yes.

9 Q. And then the testing that you did at Potosi
10 Correctional Center?

11 A. Yes and the records.

12 Q. The records that we talked about that were in
13 those 16 volumes?

14 A. Yes.

15 Q. My question is: Other than what we just
16 talked about, have you reviewed any other materials?

17 A. No, I don't think so. I think that pretty
18 much sums it up.

19 Q. Okay. And you talked on direct examination
20 about the difference between a psychological evaluation
21 or examination and a forensic examination?

22 A. Yes, there was some discussion about that.

23 Q. And just in my laymen's point of view a
24 forensic examination means it's going to be an
25 examination that's going to end up being in court,

1 being an issue in court; is that correct?

2 A. Yes.

3 Q. Okay. I've looked at the CV that I was handed
4 this morning. Are you a board certified forensic
5 examiner?

6 A. They don't have that distinction in Idaho, so,
7 no, I'm not.

8 Q. Are you a certified forensic examiner by any
9 agency either in Idaho or anywhere else?

10 A. No.

11 Q. You have testified you said in numerous
12 criminal cases. Do you know how many?

13 A. I don't know a number, no.

14 Q. Okay. Now, I think in Idaho I've been told
15 that you have provided case log; is that correct?

16 A. Yes.

17 Q. Do you have an up-to-date case log?

18 A. Yes.

19 Q. Do you have one with you?

20 A. I do.

21 Q. Okay.

22 A. If you can get a copy of that.

23 MR. WALDEMER: Do you care if I have this
24 marked?

25 MS. HAMILTON: I don't remember --

1 MR. WALDEMER: Can you give me a copy?

2 Q. (By Mr. Waldemer) I'm not going to mark this
3 case log. I believe you provided counsel this last
4 night at seven o'clock?

5 A. Well, yesterday sometime when I came in.

6 Q. She said 7 o'clock. I wasn't going to hold
7 you to that date.

8 Now, in these case logs, this is required by
9 this State of Idaho?

10 A. Federal Court.

11 Q. In Federal Court?

12 A. The state of Idaho doesn't require that but
13 Federal Court does.

14 Q. Federal Court does. Okay. I didn't know. I
15 just know that I've seen one before and those case
16 logs, it shows basically the name of the case, who
17 referred it and what kind of case it was, basically?

18 A. Yes.

19 Q. And in reviewing some of the older ones that
20 I've seen, it appeared that prior -- let's say, to
21 2006, I'm going to say about two-thirds of your cases
22 were civil cases and about a third was criminal; would
23 that be correct?

24 A. Yeah, that probably sounds right.

25 Q. But in the last four years now, and I haven't

1 looked at the most recent one that I got just now,
2 would I be correct in saying the number of criminal
3 cases has increased as far as percentages between
4 criminal and civil?

5 A. You know, I think it varies from year to year.
6 I would say probably in 2010, that's not going to be
7 the case but I do think -- I'm sure the criminal stuff
8 has gone up a little bit, but I would say this kind of
9 varies from year to year. This year I think it
10 probably won't be -- that won't be the case but it
11 could have been in '09. I'm not sure.

12 Q. Okay. Now, as I understand from your direct,
13 and please correct me if I'm wrong, when you've
14 testified out of the state of Idaho, in your home
15 state, in each of those you testified on behalf of the
16 defendant; is that correct?

17 A. In all but one, yes.

18 Q. And in that one criminal case you testified
19 for the prosecution or who did you testify for?

20 A. Well, actually there is two. One was out of
21 Deyakma (phonetic) for the U. S. Attorney's Office and
22 the other one was for the prosecutor in King County.

23 Q. King County --

24 A. -- in Seattle, Washington.

25 Q. That one I recognize. Now, on your death

1 penalty cases, did I understand you to say that every
2 time you've testified, actually come into court to
3 testify, that every time you've testified it's been for
4 the defendant; is that correct?

5 A. All except for two occasions, yes.

6 Q. Those two you just previously mentioned?

7 A. No, no, those two weren't deaths penalty
8 cases. Those were other matters, one was an assault
9 and the other one was a question of competency in a
10 federal fraud scheme, but in two death penalty cases,
11 the two times I've testified for the prosecution, one
12 was a case and it's older than 2000, in Salmon, Idaho
13 on an issue on competency to proceed, which I thought
14 the gentleman was competent and I testified for the
15 prosecution and then another case, which was federal,
16 it was a federal appeal case on a death penalty in
17 front of Judge Windemill. I actually had an odd
18 position of both the State and the defense each had
19 their own set of experts about this particular
20 gentleman and his level of impairment and Judge
21 Windemill actually -- actually retained me as a third
22 evaluator in that case and I testified at his request.

23 Q. Okay. Now, I assume that there was a
24 financial arrangement for your participation in this
25 case; is that correct?

1 A. Yes, I'm always paid for my time.

2 Q. Can you tell me what the breakdown of your
3 costs would have been in this case. For instance, I
4 assume you were initially retained and sent all these
5 materials. Was there a cost for reviewing those
6 materials or a retainer cost?

7 A. Sure. I usually don't get a retainer before I
8 do a case. Obviously I have an agreement I will be
9 paid for my time. It varies from place to place in
10 terms of the contract that you have. You know, I get
11 paid anywhere from \$250 an hour to \$300 an hour for
12 reviewing records, consultation, evaluations, things of
13 that nature and usually that's \$400 an hour when I
14 testify in court.

15 Q. I don't mean to be redundant, what was your
16 fee arrangement in this case?

17 A. You know, I don't remember if this is one
18 because it's the Public Defender's Office, if we're
19 doing it at 250 or the 300 dollar rate for my
20 consultation, review and evaluation time. I'm not
21 certain but it's in that range.

22 Q. Two hundred fifty to three hundred?

23 A. Yeah, in that range.

24 Q. And that two hundred fifty to three hundred is
25 for consultation, record review, would that include the

1 testing that you would do on the subject?

2 A. Yes.

3 Q. Everything except your testimony today?

4 A. Yes.

5 Q. And your testimony today you said was --

6 A. Four hundred an hour.

7 Q. And that's whether it is the public defender
8 or not?

9 A. Usually.

10 Q. Okay. I assume that your travel was paid for
11 each time you've come to Missouri for this case?

12 A. Yes, they paid for my ticket.

13 Q. Do they send you a ticket or is that something
14 you bill them for it?

15 A. I think they use an agency and you contact the
16 agency and the agency books and pays for the ticket. I
17 think that's how it works.

18 Q. Now, it's my understanding on this case so far
19 this would have been your fourth trip to Missouri;
20 would that be correct?

21 A. It is. I was hoping to make it only three,
22 but that didn't work out.

23 Q. Okay. And each time you came in they pay for
24 your travel?

25 A. Yes.

1 Q. And they paid for your lodging?

2 A. Yes.

3 Q. And two of your trips were to Potosi?

4 A. Yes.

5 Q. And two of your trips here in St. Louis were
6 for testimony?

7 A. Well, actually both times I went to Potosi.
8 You know, I came into St. Louis that's when I
9 interviewed family members, you know, things like that
10 besides driving out to Potosi.

11 Q. Okay. But each time there was a trip to
12 Potosi in addition to the other interviews you did?

13 A. Yes.

14 Q. The times that you came in when you went to
15 Potosi where did you stay? Here in St. Louis?

16 A. You know, I think they had me at the Drury Inn
17 at Union Station is where I usually stay.

18 Q. Is that where you are staying for this trip
19 too?

20 A. Yes.

21 Q. And the other trip when you didn't get to
22 testify?

23 A. Yes.

24 Q. It's my understanding you came into town,
25 waited a couple of days to testify but because of your

1 schedule and the length of Dr. Stewart's testimony, you
2 didn't testify; is that correct?

3 A. That would be a fair assessment.

4 Q. Each time you were here you consulted with the
5 attorneys?

6 A. Yes.

7 Q. And were you -- were you charging them for the
8 time that you consulted with them?

9 A. Yes.

10 Q. And during the time you were here for --
11 waiting for Dr. Stewart's testimony, you did consult
12 with them?

13 A. Yes and reviewed records while I was waiting.

14 Q. Can you tell me, is this the first time you've
15 worked for the Missouri Public Defender or have you
16 worked in Missouri before?

17 A. No, this is the first time.

18 Q. How much to this date, before this trip, have
19 you been paid on this case?

20 A. You know, I'm not sure of the exact amount, I
21 think it's around \$20,000, in that ballpark, I think.

22 Q. And that wouldn't include the time that we are
23 here today, correct?

24 A. Correct.

25 Q. Nor the time that you were here yesterday

1 forever how long?

2 A. Correct.

3 Q. In -- so you think the total up until this
4 morning is about \$20,000?

5 A. Yeah, I think that's -- in that ballpark.

6 Q. When you were first contacted, whether it was
7 December 2006 or whenever in 2006, that was about four
8 and a half years after Casey Williamson was murdered;
9 is that right?

10 A. That's my understanding, yes.

11 Q. Okay. And the first time you would have seen
12 him would have been in 2007, which would have been a
13 little more than two years after he was convicted or
14 found guilty of killing Casey Williamson?

15 A. Yes.

16 Q. And almost three years after he was given the
17 death penalty by Judge Seigel?

18 A. Yes.

19 Q. And you -- I'm assuming since you had not been
20 retained by the Public Defender before, and I probably
21 shouldn't assume or I'm going to get myself in trouble,
22 but had you ever been in Potosi?

23 A. I never have, read about it though.

24 Q. I wanted to, but I'm not going to. When you
25 went to Potosi for the first time, can you tell me how

1 you got there and who you went with?

2 A. I think that Robert drove me out there, I
3 think, but --

4 Q. Okay. Was anyone else with you when you went
5 down there?

6 A. You know, I think that one time I went out
7 there it was just him driving me and the other time,
8 you know, I'm not remembering very clearly, it may have
9 been that other -- other members of the defense team
10 went also, but I don't have a very good recollection of
11 it.

12 Q. Okay. Mr. Lundt and Ms. Luebbering possibly
13 when you went in February?

14 A. What's her first name?

15 Q. Kathy.

16 A. You know, I think that she may well have went
17 one of those times.

18 Q. And were they present when you conducted your
19 evaluation on either time?

20 A. No. The, you know, the first time, I believe,
21 it may have been the second time, they introduced me to
22 Johnny, but they didn't stay for the evaluation or the
23 interview.

24 Q. Okay. Now, did you audio or videotape any of
25 your interactions or interviews with Johnny Johnson?

1 A. No.

2 Q. It's my understanding that when you went down
3 there in February of 2007, the first time, that you
4 signed in and you met from about 9:15 to 1:50 in the
5 institution; is that right?

6 A. I honestly don't remember the time.

7 Q. I'm looking at the piece of paper that you
8 signed in --

9 A. -- okay.

10 Q. So you know what that means, that's
11 approximately what you recall; is that correct?

12 A. Sure.

13 Q. Okay. At the time that you went to see him
14 and first met him and were introduced, did it appear to
15 you that he was expecting your visit that day?

16 A. Yes.

17 Q. Was it explained either by you or by his
18 attorneys in your presence to him that you'd been hired
19 by them?

20 A. Yes.

21 Q. And was it explained to him by either you or
22 his attorneys in your presence that you were hired to
23 evaluate him concerning whether or not he could get a
24 new trial?

25 A. I certainly didn't explain it to him that way.

1 I don't know what the attorneys said to him before my
2 visit.

3 Q. So that wouldn't have occurred in your
4 presence?

5 A. No.

6 Q. Tell me what you explained to him about your
7 interview of him?

8 A. That I had been asked to complete an
9 evaluation of him. I told him that I had a special
10 area in both forensic and neuropsychology and I wanted
11 to both talk to him about his history and I wanted to
12 do some testing with him.

13 Q. You were aware at that time from reviewing the
14 materials that this had not been the first time he was
15 evaluated?

16 A. Correct.

17 Q. He'd been evaluated prior to this time on a
18 forensic level by Dr. John Rabun, Dr. Byran English,
19 Dr. Steven Becker and Dr. Delaney Dean; was that your
20 understanding?

21 A. Yes, that's my understanding.

22 Q. And did you tell him that you would reach your
23 opinion based upon this testing and his answers to your
24 questions?

25 A. I don't think I explained it to him that way,

1 no.

2 Q. Did you give him any kind of warnings or
3 waivers of his rights in giving him your explanation as
4 to why you were there?

5 A. Yes, I did tell him that depending upon
6 decisions made by he and his defense team that any
7 information that he tells me or completes, could come
8 before the Court and that my role was not to provide
9 treatment for him but to do this evaluation as it
10 relates to his court case.

11 I also gave him the fairly standard
12 instructions that it was important for him to try as
13 hard as possible on all the measures or the value of
14 what information I obtained, could be questionable.

15 Q. Did you give him these warnings or disclaimers
16 that you just mentioned, did you give that orally or
17 did you do that in writing?

18 A. Orally.

19 Q. Did he appear to you that he understood your
20 warnings on the limitations of the confidentiality on
21 the evaluation?

22 A. Well, I think generally, I mean, I think a
23 concrete understanding of that.

24 Q. Did he ask you any questions?

25 A. No.

1 Q. And at that time -- was that when Mr. Lundt
2 and the investigator leave the room or was there
3 further conversation before the examination began?

4 A. They weren't present when I gave him those
5 instructions.

6 Q. Okay. That was after they left the room?

7 A. Yes.

8 Q. Okay. Tell me how the interview then went.
9 Did you immediately begin testing or did you talk to
10 him or do you recall what you did the first time in
11 February?

12 A. I can't really tell you how the whole sequence
13 went. I would just tell you as a general rule, I
14 usually spend the initial time interviewing with them
15 and developing some rapport, and then I will often do
16 the testing and then break it up with more interaction
17 and interviewing once I feel I have good rapport with
18 him.

19 Q. And it's my understanding that you were going
20 to come back the following day to talk to him and test
21 him some more?

22 A. Yes.

23 Q. And that he refused to see you that following
24 day?

25 A. Yes. He had other activities planned.

1 Q. And did you stay the night in Potosi that
2 night or did you come back to St. Louis or what did you
3 do?

4 A. You know, I think that -- well, my best
5 recollection is that I think that I went back and tried
6 to catch an earlier flight back home out of St. Louis.

7 Q. That following day when he refused to see you?

8 A. Correct.

9 Q. I guess my questions was: You saw him on the
10 24th?

11 A. Yes.

12 Q. And you talked to him and tested him a bit?

13 A. Yes.

14 Q. And then when you come back on the morning of
15 the 25th, he didn't want to see you?

16 A. Yes.

17 Q. Where did you stay that night in between?

18 A. In between, I stayed in St. Louis.

19 Q. So you came back from Potosi and had to take
20 that beautiful trip back down Highway 21?

21 A. Yes.

22 Q. Now, you went back a second time then a couple
23 of months later in April?

24 A. Yes.

25 Q. And how did the interview go that time as far

1 as who was present? Were you introduced again or how
2 did that happen?

3 A. You know, I honestly don't remember if they
4 introduced me again since I met him before, I don't
5 know. I mean, I may have, I just don't remember that
6 but they certainly weren't in the room when I started
7 interviewing and doing the testing.

8 Q. Now, the second interview, did you audio or
9 videotape your interaction with him at that time?

10 A. No.

11 Q. Did you write a report summarizing either of
12 these interviews you did with him during your testing?

13 A. No.

14 Q. Have you made a written report on one of these
15 forensic examinations before in your career?

16 A. You mean other than this one?

17 Q. Yes.

18 A. Yes.

19 Q. And did you not write a report in this case
20 because you weren't requested to do so by defense
21 counsel?

22 A. I wasn't requested to do a report.

23 Q. A report would cost extra?

24 A. Yes. I would charge for the time in writing
25 the report.

1 Q. Have you read any of the statutes of the State
2 of Missouri concerning the defenses of mental disease
3 or defect and what is required?

4 A. Yes, I think they did provide me with a
5 statute and I reviewed them.

6 Q. Were you aware that in order to put forth a
7 Chapter 552 defense that the mental health examiner is
8 required to present a written report to the Court?

9 A. Didn't know that.

10 Q. In any event, you didn't do that?

11 A. Correct.

12 Q. Okay. So the specific findings of your
13 examination would be in the testing that you did, and
14 the conversations you had with defense counsel?

15 A. Do you mean my conclusions?

16 Q. Yes.

17 A. Yeah, I guess so. I mean, I didn't write a
18 report. I discussed my findings and opinions with the
19 defense counsel and also obviously here today.

20 Q. Did you discuss those findings and opinions
21 with anyone else other than defense counsel?

22 A. Yes, I did have a discussion several times
23 with Dr. Stewart.

24 Q. And when was the last time you would have
25 talked to Dr. Stewart?

1 A. The day he got to spend two days in court here
2 with you and the defense team.

3 Q. After his examination by me you have consulted
4 with Dr. Stewart?

5 A. No, I haven't. I haven't talked to him since
6 you did your cross-examination, no.

7 Q. So after he was here Mr. Lundt gave direct
8 examination for two days and I crossed him for a brief,
9 very brief time, you had a conversation with him; is
10 that right?

11 A. Well, again, I haven't talk to Dr. Stewart
12 since he was on the stand.

13 Q. Okay. I guess, did you talk to him after he
14 left here?

15 A. No.

16 Q. But did you talk to him before he was on the
17 stand?

18 A. Yes.

19 Q. Okay. That was my question, I apologize if it
20 wasn't clear.

21 Now, you had read every other written report
22 of examination done on Johnny Johnson prior to going to
23 see him in February of 2007?

24 A. As far as I know, I have, yes.

25 Q. Okay. And all those other doctors wrote

1 reports pursuant to the statute as required?

2 A. That -- probably so, I guess, if that's the
3 requirement.

4 Q. When you reviewed their reports, did you know
5 that they had all the same documents that you did in
6 preparing for your report other than your testimony?

7 A. You know, certainly they talked about some of
8 his history and some prior things, but I don't know
9 whether they had the same set of documents that I had.

10 Q. But you didn't compare the list of documents
11 in the front of each one of their reports to the
12 sixteen volumes that you received?

13 A. No.

14 Q. Okay. So they may have or they may not have,
15 you just don't know?

16 A. Correct. They certainly seemed to have the
17 general history I had of him. I don't know if they had
18 the same set of data.

19 Q. Each one of those doctors, would you agree,
20 saw him closer in time to the commission of the crime
21 on July 26th, 2002 than you did?

22 A. Yes.

23 Q. Rabun filed his report seven months before the
24 murder?

25 A. Yes.

1 Q. And Delaney Dean saw him for the first time
2 eight months after the murder?

3 A. Well, I'm sure you're correct. I'm not
4 remembering the exact date, but, yes that sounds
5 reasonable.

6 Q. Okay. If her report listed an initial
7 interview on March 10th, 2003, that's eight months
8 after the murder in July of 2002?

9 A. Yeah. You know, maybe I'm not thinking of the
10 right ones, you know, for Becker and English.
11 Dr. Rabun, you know, the 12/01, I know which one you're
12 talking about, of course, the first Becker and English
13 the first one was on November of '03.

14 Q. I'm talking about the dates that he saw him?

15 A. I'm sorry. I was looking at the reports.

16 Q. Dr. English and Becker saw him first in
17 September of '03, about 14 months after the murder.
18 Their report was done in November.

19 would you agree with that?

20 A. Yes, that sounds reasonable.

21 Q. I guess, the point I'm getting at, they saw
22 Johnny Johnson prior to him being found guilty of
23 killing Casey Williamson?

24 A. Yes, I think that's correct.

25 Q. They saw him before he was sentenced to death?

1 A. Yes.

2 Q. You saw him four and a half years after he had
3 killed Casey and after he'd been on death row for some
4 period of time?

5 A. Yes.

6 Q. Okay. From the direct or direct examination,
7 I'm assuming and you tell me, you do not disagree with
8 the fact that Johnny Johnson killed Casey Williamson?

9 A. No.

10 Q. You do not disagree with the fact he took her
11 from her home on Benton in Valley Park, took her to the
12 glass factory and beat her to death?

13 A. First of all, I did not spend a long time
14 talking to Johnny about the events that took place. I
15 have no reason to dispute the decision of the jury that
16 he was guilty and that he had committed this murder.

17 Q. As a matter of fact, Johnny basically told you
18 when you talked to him he didn't really remember?

19 A. He said a lot of that, yes.

20 Q. Now, psychology and neuropsychology, would you
21 agree with me that it's not an exact science?

22 A. well, actually I kind of do. Neuropsychology
23 is pretty much in fact against a lot of other sciences,
24 particularly in medicine.

25 Q. well, there is no blood test you can give

1 Johnny Johnson to say that he has brain damage?

2 A. No, there is not.

3 Q. Okay. But can look at a lot of things and say
4 he has brain damage based on your testing and the
5 records that you testified about?

6 A. Yes.

7 Q. Okay. But you can't necessarily say that this
8 is the one exact cause of his brain damage?

9 A. Well, correct. In this case because I think
10 there is multiple causes.

11 Q. And you listed a couple of head injuries as a
12 child in his records, some head injuries that he told
13 you about, and a lot of his drug abuse. I believe you
14 referred to it as a constellation of things; is that
15 correct?

16 A. Yes. I think he had some genetic
17 predisposition issues and some -- either prenatal or
18 perinatal insults. That's why we saw the problems in
19 the school system.

20 Q. Now, in order for you to reach an accurate
21 diagnosis, one of the things you have to rely on are
22 his statements to you?

23 A. Yes, that's part of the equation.

24 Q. And in order to rely on the testing, you have
25 to rely on him to put forth his best effort?

1 A. Correct.

2 Q. If he doesn't put forth his best effort, the
3 results may not be reliable?

4 A. Correct, they can be skewed.

5 Q. And if he's dishonest with you, that can also
6 affect the accuracy of your diagnosis?

7 A. Yes.

8 Q. Now, in talking to him about the incident, you
9 were relying upon what he was able to recall from what
10 happened four years before you met him, right?

11 A. well, I don't mean to be indirect, but if I
12 obviously --

13 Q. If I have confused you with my question, you
14 won't be the first to tell me that.

15 A. Okay. well, the only thing that I think --
16 that certainly I asked him about what had happened and
17 then probably read my notes, which doesn't tell you
18 very much, but that was clearly not the only thing I
19 was relying upon trying to get some understanding of
20 what had happened. That's one of the reasons why I
21 read the investigative records and their interviews
22 with various people as well as listening to Johnny's
23 statements to the police.

24 Q. Okay. I mean, you've had in your career,
25 you've had defendants lie to you before?

1 A. Yes.

2 Q. I mean, when you do a forensic evaluation of
3 any defendant in a criminal situation, much less
4 somebody on death row, you're trained to always look
5 for malingering?

6 A. Yes.

7 Q. That's always an issue, they have great --
8 what do they call it, a great motivation of secondary
9 gain?

10 A. Yes.

11 Q. You listed on direct examination that you gave
12 him a number of tests on both the 24th of February and
13 then again in April of '07.

14 Did you give him testing both times you were
15 there or just the first time?

16 A. He was tested both times I was there.

17 Q. And you may not recall off the top of your
18 head which tests were given on which date, do you
19 recall?

20 A. I don't remember.

21 Q. When you test somebody, in this case, when you
22 tested Johnny Johnson, was he under any restraints,
23 handcuffs, leg shackles or anything?

24 A. I don't know, I can't recall if his legs were
25 but his hands were free. That's one of the requests

1 that we made, we were in that small conference room
2 with a table.

3 Q. Now, the first time you tested him and you met
4 him, he told you that he had not slept very well the
5 night before?

6 A. Correct.

7 Q. And exhaustion or lack of sleep can affect
8 someone's testing abilities?

9 A. It can.

10 Q. There is no real way to gauge whether it did
11 or not?

12 A. well, I think that in his case, because of the
13 consistency in his performances across time, I can't
14 say that not sleeping well had no impact on his
15 performance, but it didn't appear to be a significant
16 factor to skew the testing.

17 Q. Now, he was on certain medications when you
18 tested him?

19 A. Yes.

20 Q. Psychotropic medication?

21 A. Yes.

22 Q. Antipsychotic medication?

23 A. Yes.

24 Q. I believe you mentioned mood stabilizers?

25 A. Yes.

1 Q. Do you recall what specific medications he was
2 on when you tested him?

3 A. Yes, just a second. I have it written here
4 some place.

5 well, first of all, as you probably know in
6 reading my notes, you know, Johnny was not very good at
7 telling me what he was on.

8 I know in looking through the correctional
9 records that in looking at the medication issues around
10 this time, he was on several different things. He'd
11 been on clonidine, which is a betablocker type
12 medication. Imipramine, which is an antidepressant
13 medication, Tofranil, which is a -- kind of an atypical
14 antipsychotic, Artane, that's for secondary
15 Parkinsonian-type effects. He may or may not have been
16 on Geodon at that time, I'm not sure, which is another
17 antipsychotic.

18 Q. Was he on Paxil at the time?

19 A. I didn't see any signs that he was but he
20 could have been. As best I can tell in the record I
21 thought he was on Imipramine and Tofranil.

22 Q. Could be either one?

23 A. Yes.

24 Q. And being on medications can lower test
25 scores, can it not?

1 A. Yes.

2 Q. Especially powerful medications such as you
3 just described he was on?

4 A. Yes, it can.

5 Q. In your experience when someone is on death
6 row and is being evaluated in a post-conviction action,
7 does it benefit them in any way to do really well on
8 your tests?

9 A. Well, it benefits them to try hard because if
10 the data isn't valid then it's a worthless exercise.

11 Q. I mean, if he comes across as very intelligent
12 on your intelligence tests, does that help him get a
13 new trial?

14 A. That alone would probably not be all that
15 helpful.

16 Q. When a person is in prison can they get
17 benefits while in prison by claiming mental illness or
18 symptoms of mental illness?

19 A. They can end up on a different unit, for
20 example, that would be the primary thing.

21 Q. Do you know if he was either in the infirmary
22 or housed in the protective custody or special mental
23 health unit when you evaluated him in 2007?

24 A. You know, I'm not sure about that.

25 Q. Would you be surprised if he was?

1 A. No, I wouldn't be surprised at all.

2 THE COURT: Mr. Waldemer, we are going to
3 break for lunch now because I have an appointment.
4 We'll resume at 1:30 sharp.

5 (A luncheon recess was taken. Proceedings
6 continued as follows:)

7 THE COURT: Mr. Waldemer.

8 MR. WALDEMER: Thank you, Judge.

9 Q. (By Mr. Waldemer) Dr. Beaver, before we broke
10 for lunch, I was starting to ask you about testing that
11 you did in February and April of 2007; is that correct?

12 A. Yes.

13 Q. You did testing both days?

14 A. Yes.

15 Q. I think we established earlier which specific
16 tests you gave on which date?

17 A. Correct.

18 Q. Okay. Then I won't worry about the order that
19 I ask about them.

20 A. Correct.

21 Q. You did some intelligence testing, as I
22 recall?

23 A. Yes.

24 Q. And you gave him the WAIS III?

25 A. Yes.

1 Q. That's a test that you gave to him yourself as
2 opposed to somebody else administering the test?

3 A. Yes.

4 Q. And my understanding, correct me if I'm wrong,
5 the WAIS is an oral examination?

6 A. Well, parts of it are oral and some of it is
7 doing things with his hands.

8 Q. Okay. The performance part is acting with his
9 hands; correct?

10 A. Yes.

11 Q. And the other is all verbal, you asking him
12 questions and him responding?

13 A. Yes.

14 Q. Okay. Now, before you began your testing, you
15 reviewed his school records; is that correct?

16 A. Yes.

17 Q. And you were aware before that he had been
18 diagnosed with a specific learning disorder?

19 A. Yes.

20 Q. And part of his learning disorder diagnosis
21 indicated that he would have trouble processing oral or
22 verbal instructions; is that correct?

23 A. Yes.

24 Q. And was that reflected in your testing of him?

25 A. Yes.

1 Q. He would do better if you were giving him a
2 written test in processing written information?

3 A. No, not necessarily processing written
4 information. Things that were more visual/spacial that
5 didn't necessarily involve motor, but, like, for
6 example, he did well on the Matrix Reasoning Subtest,
7 which is the pattern recognition test that doesn't
8 require motor or any auditory or verbal output.

9 Q. Okay. And on your testing I think you said in
10 direct that he had verbal IQ score of 85, his
11 performance was higher at 94, which gave him a full
12 scale of 88; is that correct?

13 A. Yes.

14 Q. Now, that's not in the mentally retarded
15 range, it's above that, correct?

16 A. Yes, it's in the low average range.

17 Q. The 94 on the performance would actually be in
18 the normal range or the average range?

19 A. Yes.

20 Q. In balancing him out he's average, low
21 average, correct?

22 A. Yes, on those scores.

23 Q. He did especially low in the verbal
24 comprehension index and the perceptual organizational
25 index where he was average or above average; is that

1 correct?

2 A. Well, yes. He was only above average in that
3 perceptual organizational index endeavor.

4 Q. And the verbal comprehension index he was in
5 the normal range or average range?

6 A. He was in the low average, yes.

7 Q. He did poorly in a couple of areas and I want
8 to ask you about working memory index and processing
9 speed index were two areas he did poorly.

10 A. Yes.

11 Q. Now, you indicated in your testing materials
12 that there is something called confidence intervals.
13 Can you explain to us what a confidence interval is?

14 A. Well, a confidence interval is -- is that if
15 you take in the accounting for measurement here, a
16 score, let's say a score of a hundred then you would
17 say that 95% of the time they're going to fall between
18 95 and 105. That would be reflective of a confidence
19 interval.

20 Q. And if the confidence interval were below that
21 projected score, what does that mean?

22 A. Well, it depends a lot on where the rest of
23 the testing falls and how it comes together as to what
24 that would actually mean.

25 Q. Now, those two areas I just mentioned, the

1 working memory index and the processing speed index,
2 those were the two areas where you had the lowest
3 confidence in him?

4 A. Well, no. Every score has the same
5 statistical range where you know that 95% of the scores
6 are going to fall within this range. Those have the
7 lowest score, but the confidence interval is a
8 standardized statistic. It doesn't expand or contract
9 depending upon your score.

10 Q. So as I read those scores on the two tests
11 that he did the worst that I just mentioned?

12 A. Right.

13 Q. The confidence intervals that were listed
14 there, are you saying they were not lower than the
15 other confidence intervals on the other tests?

16 A. The standard interval is the same.

17 Q. Now, the scores he got on these two parts,
18 wouldn't those scores be consistent with the diagnosed
19 learning disorder as well as the previously diagnosed
20 schizoaffective disorder?

21 A. Could be.

22 Q. If schizophrenia or schizoaffective disorder
23 had been accurately diagnosed, wouldn't he show similar
24 scoring on tests as he would if he had organic brain
25 syndrome?

1 A. There are two parts to that. One aspect is,
2 yes. Sustained events in concentration can certainly
3 be impaired with those disorders and that's actually
4 fairly common, but it's also the case that there is a
5 higher percentage of patients that have that disorder
6 diagnosis that have neurological deficits.

7 Q. Did you diagnose him with schizophrenic or
8 schizoaffective disorder?

9 A. well, I actually didn't provide a diagnosis.

10 Q. Now, in taking these tests, I may have asked
11 you this earlier, these antipsychotic medication and
12 psychotropic medication and the mood stabilizers, they
13 would lower these scores, correct?

14 A. Potentially, not always but potentially.

15 Q. Now, you indicated there were earlier scores
16 that gave you confidence in comparing to the scores you
17 had; is that correct?

18 A. Yes.

19 Q. And he'd been tested back when he was twelve
20 years old in the special school district with a full
21 scale of 89.

22 Do you recall that?

23 A. Yeah. He had been tested two times before
24 that as well.

25 Q. well, I was speaking to the one that was in

1 1989 when he was twelve years old, he had a full scale
2 IQ of 89?

3 A. Okay.

4 Q. Okay. Do you agree with that?

5 A. Yeah, that seems reasonable.

6 Q. Okay. And then in '91 at age 14 he had a full
7 scale IQ of 91. Do you agree with that?

8 A. Yes.

9 Q. And so each one of those would be, the 89
10 would be low average range, the 91 low average to
11 average; is that correct?

12 A. Yes.

13 Q. And then in 1996 when he was in Farmington and
14 he was 18 and he had a full scare IQ of 93, which would
15 have been in the average range?

16 A. Oh, yes, that's right. I see that one now,
17 yes.

18 Q. Now, he also was tested by Dr. Becker and Dr.
19 English, in September of 2003 after the murder of Casey
20 Williamson and in that particular WAIS III he had a
21 full scale of 70; is to correct?

22 A. Yes.

23 Q. Now, Dr. Becker and English indicated in their
24 report that they felt that that was the most malingered
25 test based upon his history. Would you agree with

1 their conclusion?

2 A. I wouldn't say malingered, but I think that he
3 is -- that that underestimates his intellectual
4 capability.

5 Q. He did poorer on the test in 2003 than he'd
6 ever done in his life?

7 A. Yes.

8 Q. And he's done better since then?

9 A. Yes.

10 Q. But you wouldn't agree that it was a
11 malingered test?

12 A. Not necessarily, no. You know nor --

13 Q. I'm sorry.

14 A. Unfortunately, I didn't give him any cognitive
15 measures of behavior when they tested him.

16 Q. Now, these cognitive measures, I think you
17 referred to one, the TOMM test?

18 A. Yes.

19 Q. And the other, I believe, was the --

20 A. Rey 15.

21 Q. The one I'm thinking of, Doctor, is the SIRS
22 test?

23 A. Yes.

24 Q. They did give him a structured inventory in
25 2003?

1 A. Yes.

2 Q. And they found in that particular validity
3 test that he was over exaggerating his symptoms?

4 A. Yes, that's what they found.

5 Q. So they did a validity test?

6 A. Yes, but the SIRS doesn't look at cognitive,
7 it looks at psychiatric symptoms.

8 Q. Now, when you got to the Department of
9 Corrections were you aware that they tested his IQ?

10 A. I don't think so. I mean, I know about the
11 tests in '07 and the tests in '03 by English and
12 Becker, no, I'm not aware of that test.

13 Q. So you didn't see the test in March of 2005
14 once he had gotten to the Department of Corrections
15 after being sentenced by this court?

16 A. No, I did not.

17 Q. I have it as being in Volume 9. I'm not sure
18 I can lay my hands on Volume 9. In that test the
19 examiner --

20 MR. WALDEMER: I believe, that's been admitted
21 into evidence on page 2546, Judge, for the record.

22 Q. (By Mr. Waldemer) The examiner found him to
23 be, based upon achievement tests, reading at a high
24 school level?

25 Does that surprise you?

1 A. You know, it -- it doesn't surprise me if it
2 was a word recognition test to look at his reading
3 abilities, that wouldn't surprise me. His
4 comprehension is where his biggest difficulty is going
5 to be.

6 Q. Would you agree with me, based on your testing
7 and the testing that you are aware of, Doctor, that he
8 has the intellectual capability to lie?

9 A. Well, it doesn't take much intellectual
10 capacity to lie, if you choose to.

11 Q. Then that would be a yes then?

12 A. Yes.

13 Q. So, I assume then he'd also have the
14 intellectual capacity to distort if he choose to?

15 A. Yes. The lower IQ and the neutral scope of
16 less effective, that tends to be, yes, he could do
17 that.

18 Q. Then I guess the next question of course, does
19 he have the ability to malingering?

20 A. Sure, anybody can malingering.

21 Q. I want to hand you a couple of exhibits that
22 we have already entered into evidence and I'm not sure
23 if you saw these in the records you reviewed or not,
24 but I'd ask you to look at the two of them, if you
25 could.

1 A. Okay.

2 Q. Do you recall looking at those at any time
3 during your evaluation?

4 A. Not that I remember. I know that I got some
5 of the correspondence that is set out. I don't recall
6 those specific ones though.

7 THE COURT: Could we get exhibit numbers on
8 those?

9 MR. WALDEMER: I'm sorry. Those were State's
10 Exhibits A and B that were admitted during Dr.
11 Stewart's testimony, if I recall.

12 Q. (By Mr. Waldemer) You don't recall ever
13 seeing those letters before?

14 A. Again, I may have seen them within other
15 things, but I don't have a specific recollection of
16 those.

17 Q. So there is probably no sense in me asking you
18 questions about it if you don't remember.

19 okay. Now, in your evaluation of him, I
20 remember you did one test where you -- I think it was
21 the Wisconsin Card Sorting Test?

22 A. Yes.

23 Q. And I think your conclusion was that he
24 performed pretty well on that test?

25 A. Yes, he was within normal limits on that test.

1 Q. What kind of test is that?

2 A. It's an index for reasoning problem solving
3 test.

4 Q. I think your conclusion was his processing
5 speed was slow but that the results he did pretty well.
6 Would that be fair?

7 A. Yes. I think his overall score was within
8 acceptable or what we call normal range.

9 Q. Does that test and your results, does that
10 show an ability on his part to organize?

11 A. You know the Wisconsin is really not --
12 doesn't tap much into that organizational skill. It's
13 more of a problem -- kind of a flexible and problem
14 solving kind of a test. It's more of what we call
15 index reasoning.

16 Q. Would that be similar to abstract reasoning?

17 A. Can be, but not necessarily.

18 Q. So he showed at least average scores in
19 inductive reasoning on that test?

20 A. Well, inductive reasoning, he actually did
21 okay with it. He had some difficulty but he was in --
22 within normal range.

23 Q. One of the things you talked about also, I
24 think, in testing, that I looked at was the Rey Complex
25 Figures Test and you felt he didn't do as well on that

1 drawing diagrams.

2 would that be correct?

3 A. Yes, his ability to draw diagrams was low.

4 Q. Now, on those particular diagrams, he did fit
5 everything on the page, it's not like he overlapped the
6 page?

7 A. Not, that I recall, no.

8 Q. Doesn't that, if he fits everything on the
9 page, doesn't that indicate that he's able to visually
10 plan whatever he's trying to draw?

11 A. Well, it's a component, but as you already
12 mentioned, his score was low and it took him a very
13 long time to complete it.

14 Q. Did you compare those diagrams that he drew on
15 that Rey test with the diagrams that he drew for the
16 police department to illustrate where he had taken
17 Casey so they could locate her body?

18 A. No.

19 Q. I want to ask you if you recall seeing this
20 any time in your examination?

21 A. I mean, I don't recall seeing them. They may
22 well be in the investigative record. I don't have this
23 specific recollection.

24 Q. Okay. Are those in your records or do you
25 know? They were part of the police reports and they

1 were admitted at trial. If they are, I won't mark
2 them. If they aren't, I'll go ahead and mark them.

3 MR. WALDEMER: Thank you, Mr. Lundt.

4 Mr. Lundt has pointed out that they are in
5 volume 10, pages 2673 and 2674 and I don't recall
6 whether the police reports have been admitted into
7 evidence as of yet or not. For bookkeeping purposes, I
8 don't recall if they were.

9 MR. LUNDT: I don't think the discovery
10 portion has been admitted. I have the first section.

11 MR. WALDEMER: Department of Probation and
12 Parole record.

13 Q. (By Mr. Waldemer) Let me ask you -- at least
14 we know where they are.

15 Looking at these diagrams, do those appear to
16 be consistent with his drawing abilities that you saw
17 on that test?

18 A. Yeah, I guess generally. I stand corrected.
19 Actually on delayed recall, he wasn't able to get the
20 design on one piece of paper. I guess so. I don't
21 really know how to compare, they are kind of like
22 apples and oranges.

23 Q. Okay. Well, now, the first one, both of these
24 diagrams were admitted into evidence at trial.

25 Did you read the trial transcript?

1 A. You know, I may have, but, boy, I don't know
2 that I did. I may have and it -- I don't recall if I
3 read the actual trial transcript. I did read, you
4 know, information. I read transcripts from some of the
5 experts that testified but I don't have a clear
6 recollection of the transcripts in depositions of
7 detectives or something like that, but, again, I may
8 have seen some of it but I don't have a specific
9 recollection.

10 Q. Did you review any of the evidence, either the
11 crime scene photographs or crime scene video, anything
12 like that, that you recall?

13 A. Not the crime scene video photographs but I
14 did have, from what I can tell, a lot of the police
15 investigative records. I mainly looked at their
16 interviews of individuals about those events.

17 Q. Let me suggest to you for purposes of my next
18 couple of questions, the area in which Casey's body was
19 found was a heavily wooded, very rugged area,
20 containing old abandon glass ovens, which were
21 essentially referred to during the trial as silos and
22 the like?

23 A. Yes.

24 Q. And the crime scene video and diagrams, aerial
25 photographs, indicated a very long route into this

1 wooded area to where she was located?

2 A. Okay.

3 Q. Now, with those summaries, would it surprise
4 you to note that the detective who interviewed Johnny
5 Johnson and who took this drawing of the route to get
6 back in there indicated that this was a very accurate
7 drawing and did lead them to the area where her body
8 was eventually discovered?

9 A. Okay.

10 Q. His abilities to draw a map or a diagram of
11 this very heavily wooded and confusing area, doesn't
12 that indicate an ability to draw and to recall specific
13 areas?

14 A. Well, it can. It also depends on how familiar
15 he was. For example, it would make a difference if
16 he'd only been there, say, once or twice versus many
17 times, that would make a difference.

18 Q. It shows an ability to recall that area that
19 he'd been in and at least an ability to point to the
20 police without going there how to find this little
21 girl's body?

22 A. Based on what you told me, yes.

23 Q. Now, I have one other question about the Rey.
24 He did really well on the WAIS on the perceptual
25 organizational index?

1 A. Yes.

2 Q. Because he did well and I think that it was a
3 105 on that test, shouldn't his scores on the Rey have
4 been stronger?

5 A. Well, actually, no, and the reason is there
6 are two things. One, is that a Rey complex figure is
7 what it says, it's a fairly complex figure.

8 Secondly, there's a difference between
9 perceptual and organizational skills and visual
10 memory. So that's another factor. And probably the
11 last thing that affects it is his fine motor control
12 and dexterity was not good, and, in fact, for example,
13 if you look at symbol search and disassemble on the
14 WAIS on the performance diagrams, you see how low those
15 are, that's also a factor, I think. So -- so, one --
16 it's not unusual for those to be more consistent with a
17 normal person, but in this case I think it's an
18 illustration of how there is a lot of difficulties for
19 this gentleman.

20 Q. Could it also be a function of his effort?

21 A. Well, I would -- you know, you always have to
22 consider that.

23 Q. So it's possible?

24 A. Always possible but the fact that he did as
25 well as he did on the various tasks that look at the

1 motivation and cognitive testing, I would weigh against
2 that conclusion.

3 Q. Doesn't he also have a history in his class
4 testing in his school work when things get more
5 difficult for him he quits?

6 A. Probably, that wouldn't surprise me given the
7 learning difficulties he has.

8 Q. Now, you gave him the Grooved Pegboard Test?

9 A. Yes, sir.

10 Q. And that's the more performance oriented test?

11 A. Yes, it's a fine motor test for dexterity.

12 Q. He didn't drop any of the pegs, he handled all
13 25?

14 A. Yes, but he was slow at it.

15 Q. But he handled -- both his hands were very
16 equal in doing it but, as you say, he was slow?

17 A. Yes.

18 Q. Now, his slowness, can that be -- could that
19 be caused by his lack of effort?

20 A. It could be, but again especially in his case
21 with the prior testing done when he was done with
22 occupational therapies, he had problems with fine motor
23 development from the time he was a youngster and when
24 you have that kind of history, you usually find that
25 even as adults, they don't ever catch up.

1 Q. Can it been his effort?

2 A. It's possible, but I don't think that's the
3 case.

4 Q. Could it be his cautiousness?

5 A. I don't really remember him in any testing
6 trying to be overly cautious.

7 Q. Is the fine motor skill in doing a Grooved
8 Pegboard Test, more difficult or less difficult than
9 injecting yourself with an intravenous needle full of
10 methamphetamine?

11 A. I would say that the Grooved Pegboard Test is
12 probably easier.

13 Q. So if he has the ability to inject himself
14 with methamphetamine, he has some pretty good motor
15 skills?

16 A. Well, I've seen some pretty screwed up people
17 that can inject themselves with methamphetamine
18 including people that are spastic or have CP.

19 Q. You didn't see him as spastic or having CP?

20 A. No.

21 Q. But you'll agree with me at least that the
22 speed of taking this test is something that can be
23 manipulated by the testee?

24 A. Yes, it could be.

25 Q. And he didn't do well on any of the timed

1 tests that you gave him?

2 A. Generally, no.

3 Q. Now, you mentioned earlier, I think, a little
4 bit of his distractibility?

5 A. Yes.

6 Q. He would get distracted?

7 A. Yes.

8 Q. That's something that can also be controlled
9 or faked by the test taker, wouldn't you agree?

10 A. Could be.

11 Q. You gave him something called the Stroop test?

12 A. Yes.

13 Q. Did you compare the Stroop test that you gave
14 him in 2007 with the one that Dr. Dean gave him in
15 2004?

16 A. Well, first of all, I never got Dr. Dean's
17 Stroop test data but Dr. Dean indicated in the report
18 that he was below average on the Stroop and he
19 performed poorly on my Stroop.

20 Q. She's still in practice, is she not?

21 A. I don't have any idea.

22 Q. Did you ever request to get her testing
23 instrument to compare it with yours?

24 A. I did request it, I never received it.

25 Q. So you went ahead and completed your

1 evaluation without receiving it?

2 A. Yes.

3 Q. She found that his score was most likely a
4 reflection of his learning disability?

5 A. Yes, I saw that conclusion.

6 Q. She also gave him a Shipley test. Did you
7 give him the Shipley test?

8 A. No. I would never use the Shipley test.

9 Q. She found no -- no psychological impairment or
10 brain damage?

11 A. Well, I thought that was pretty impressive
12 given that the test she gave, I don't know how she
13 could reach that conclusion. I don't know how she
14 could reach that conclusion.

15 Q. And we are talking about the test that you
16 didn't review?

17 A. Well, I have her discussion. I don't know of
18 anybody who can make that kind of a diagnosis based on
19 the limited tests that she administered to him.

20 Q. That wasn't my question. Those were tests
21 that you did not review, correct?

22 A. I reviewed her report results and information
23 but not the actual test.

24 Q. So that's a yes, you did not review those,
25 right?

1 A. Again, I reviewed results, but not the test
2 protocol.

3 Q. Did you give him a MMPI?

4 A. No.

5 Q. Now, Becker and English gave him one and they
6 found that he was exaggerating his symptoms; is that
7 correct?

8 A. Yes, that's what they said.

9 Q. The SIRS test, I think we talked about
10 earlier. Yours you felt was a valid test, that he was
11 not malingering or exaggerating?

12 A. well, I think he sometimes he exaggerates, but
13 I didn't think he was malingering.

14 Q. Now, Becker and English, when they gave him
15 theirs back in 2004 they thought he was feigning
16 symptoms and malingering?

17 A. Yes, that's what they concluded.

18 Q. You never requested that he undergo an MRI?

19 A. You know, I think that we discussed that, but
20 I'm not sure exactly what happened. If you were to do
21 something like that with him, you'd want a 3.0 tensile
22 MRI, probably a PET scan to see what is there.

23 Q. But you didn't do either one?

24 A. No, neither was done.

25 Q. Now, when -- you interviewed him on two

1 occasions and you took notes, correct?

2 A. Yes.

3 Q. And I believe you supplied defense counsel
4 with a copy, which they supplied to me, other than
5 those notes that you took, is there any other recording
6 or record of those interviews between the two of you?

7 A. No, not that I recall.

8 Q. And other than the family members that you
9 said you spoke to on direct examination, did you speak
10 to any other witnesses in this case?

11 A. Yes.

12 Q. Who else did you talk to?

13 A. I talked to Ms. -- let me look. I'm really
14 bad with names. I talked with Pamela Strothkamp and
15 Carol Brown.

16 Q. I believe you mentioned those two on direct
17 examination, correct?

18 A. I believe so.

19 Q. Okay. And Ms. Strothkamp was one of his
20 teachers in the sixth grade?

21 A. Yes.

22 Q. Did you talk to her about the grades she had
23 given him in the sixth grade?

24 A. I don't know if I asked her specifically about
25 his grades or not.

1 Q. Okay. I think we went over that with Ms.
2 Strothkamp and those are already in evidence, I
3 believe.

4 Other than those people, did you talk to
5 anybody else?

6 A. No.

7 Q. Did you talk to his paternal grandmother Lilly
8 Owens who he was living with just prior to the crimes?

9 A. I have tried to contact her several times but
10 was not successful, including just recently.

11 Q. Did you talk to his girlfriend Lisa Mabe who
12 he had been living with?

13 A. I tried to contact her as well and was
14 unsuccessful.

15 Q. The family members that you did talk to that
16 you listed on direct examination, each one of them that
17 you talked to is aware that he'd been found guilty and
18 was sentenced to death at the time you talked to them,
19 right?

20 A. I believe so, yes.

21 Q. And you explained to them who you were and
22 you'd been hired for his post-conviction action, before
23 you talked to them, correct?

24 A. Yes. I don't know that it was explained in
25 exactly those terms, but I think they had a general

1 knowledge of what I was doing.

2 Q. Did you ever talk to Dr. John Rabun prior to
3 completing your evaluation?

4 A. No.

5 Q. Did you ever talk to Dr. English or Dr.
6 Becker?

7 A. No.

8 Q. Dr. Dean?

9 A. No.

10 Q. In your first interview with him, he told you,
11 among other things, that he was reading a number of
12 books; is that correct?

13 A. Yes, he did.

14 Q. Do you remember what books those were?

15 A. I think that he mentioned -- give me a second,
16 I'll find it for you.

17 Q. I can find it, I just can't read it.

18 A. Okay.

19 Q. Can you decipher your writing at the bottom
20 there?

21 A. I think that the book he said he was reading
22 was Hunt Club.

23 Q. And does that say John --

24 A. It does say John, but the author's last name
25 starts with an S.

1 Q. And are you familiar with that book?

2 A. No, not really.

3 Q. Were you familiar with the fact he told Dr.
4 Stewart he was reading books on Egyptian religion when
5 he saw him?

6 A. I don't know what he told Dr. Stewart when he
7 talked to him.

8 Q. I think you talked to him about his
9 hallucinations; is that correct?

10 A. Yes.

11 Q. And he told you that the voices yelled at him
12 about the things he's done in the past?

13 A. Yes.

14 Q. They talked about him being worthless and
15 telling him about things he doesn't want to listen to?

16 A. Yes.

17 Q. And he didn't describe any hallucinations
18 which tell him to do things to you, did he?

19 A. He didn't describe -- that word hallucinations
20 towards me, no.

21 Q. And he didn't describe hallucinations
22 containing a sexual content to them, did he?

23 A. No, not with my discussions with him.

24 Q. The only time, and correct me if I'm wrong,
25 the only time he has ever claimed hallucinations to

1 hurt someone else was when he was telling Dr. Dean that
2 the hallucinations told him to hurt Casey?

3 A. well, one, he didn't mention command
4 hallucinations to hurt other people when I interviewed
5 him. I don't know if he mentioned that to others, I'm
6 not sure. I don't recall seeing that specifically in
7 the record. Most of the command hallucinations that he
8 has talked about historically have been to injure
9 himself.

10 Q. So the answer to my question: Are you aware
11 of any hallucinations ever having commanded him to hurt
12 someone other than Casey, your answer would be no?

13 A. Correct.

14 Q. Any other sexually oriented hallucinations
15 other than the ones who told him to expose himself to
16 Casey?

17 A. Not that I'm aware of.

18 Q. Any other sexually oriented hallucinations
19 other than the one he told Dr. Dean he was told to
20 masturbate in front of her?

21 A. Not that I'm aware of.

22 Q. Now, he talked to you more about the
23 hallucinations and did so in relation to his drug use;
24 is that correct?

25 A. Yes, he talked about those related to drug

1 use.

2 Q. And he said that he doesn't experience
3 hallucinations when he's taking methamphetamines?

4 A. Yes, he did say that.

5 Q. Now, he told Dr. English and Becker in their
6 report that he takes meth to hallucinate.

7 A. Yeah, okay.

8 Q. Would you agree that that is inconsistent?

9 A. Yes, that's inconsistent.

10 Q. Would you agree that he's lying to either Dr.
11 English and Becker or lying to you?

12 A. I think that he just doesn't know he's not
13 communicating very well and is often confused. I'm not
14 sure I attribute him to be a liar because of that
15 contradiction.

16 Q. Is it possible that he's lying?

17 A. Sure, it's possible.

18 Q. Now, you talked to him a lot about his drug
19 and alcohol abuse?

20 A. Yes.

21 Q. And he went through -- he began drinking
22 alcohol and using marijuana and using methamphetamine
23 and using crack cocaine and using heroin, and I believe
24 you mentioned huffing?

25 A. Yes.

1 Q. You talked a little bit on direct examination
2 about he had no community or family support to help him
3 with his substance abuse problems?

4 A. Yes.

5 Q. Is that a correct statement in regards to the
6 assistance he had with those problems and his mental
7 health problems he had between the time he was released
8 from jail in December of 2001 and the end of June of
9 2002?

10 A. In terms of -- I'm sorry, I'm not sure I
11 completely understand the question.

12 Q. Okay. Let me break it down then. From his
13 release from jail in December of 2001, through the last
14 time he saw his ADAPT counselor and his psychologist in
15 the end of June 2002, he was on probation, correct?

16 A. Yes, that's my understanding.

17 Q. He had a probation officer?

18 A. Yes.

19 Q. He had a mental health case worker?

20 A. Yes.

21 Q. He had a psychologist?

22 A. Yes.

23 Q. He had a social worker?

24 A. Okay.

25 Q. And all of those people arranged

1 transportation for him to go to his various meetings
2 with each one of them?

3 A. You know, I assume that they probably do that,
4 I'm not -- I don't know of any reason to doubt that.

5 Q. Well, if his social worker testified during
6 the trial that she made sure he was able to meet her
7 when ever he needed and that she would make sure he got
8 to the doctor and drug store, wouldn't you consider
9 that pretty good community support?

10 A. From a program, yeah, I think that's great.

11 Q. So there was some community support?

12 A. Yeah, it sounds like, yeah.

13 Q. I didn't understand that on cross.

14 Now, what he told you about his drugs, did you
15 compare his statements to you about his drugs with his
16 statements to Drs. Becker and English about his drug
17 usage?

18 A. Well, he's talked about his drug usage, I'm
19 sure you're aware, to many individuals and it's always
20 been variable.

21 Q. But it's generally the same kind of drugs?

22 A. Generally, yes.

23 Q. He's using goes up and down depending on who
24 he's talking to?

25 A. Yes.

1 Q. Is there any doubt in your mind that he has
2 abused drugs?

3 A. No.

4 Q. And that he's taken every one of the drugs
5 he's talked about?

6 A. As best as I can tell, I think, he's been a
7 pretty significant drug abuser.

8 Q. And the drug abuse can be a great cause of
9 brain damage, would you agree?

10 A. Can, yes.

11 Q. Huffing the drugs that he described, gasoline,
12 freon, butane and I think he even talked about Dustoff,
13 those are all tremendous sources of potential brain
14 damage; would you agree?

15 A. Yes.

16 Q. And he endorsed each and every one of those?

17 A. That's my understanding.

18 Q. And he endorsed those -- using those on a
19 regular basis throughout his teens?

20 A. I don't really remember quite the frequency,
21 but I know that he talked about having done that.

22 Q. Some of those hospitalizations that he
23 incurred, a lot of those were related to his drug use?

24 A. Yes, some of them were.

25 Q. And each time he went to those doctors he --

1 or went into those hospitals, he came out with some
2 sort of substance abuse diagnosis?

3 A. I think pretty much every time.

4 Q. Okay. Now, you didn't discuss July 26, 2002,
5 the day Casey was murdered, with him on your first
6 visit; would that be right?

7 A. Yeah, I think that that's correct. You
8 probably know my notes better than I do by this point,
9 but I think it was the second visit that we talked
10 about it.

11 Q. And I did not -- did read your notes, but I
12 couldn't read them all, so I wasn't sure of it. When
13 you saw him in April, again you took notes, I think
14 there were four pages of notes from your meeting with
15 him in April?

16 A. Yes.

17 Q. And you believed -- you believe you did
18 additional tests then but you're not sure what tests
19 you might have given him?

20 A. Correct.

21 Q. I recall in your notes you talked to him about
22 post-traumatic stress disorder, which is labeled PTSD?

23 A. Yes.

24 Q. Now, I saw at the side PTSD in your notes, did
25 you tell him you were not going to talk to him about

1 PTSD?

2 A. No, I wouldn't -- I just don't approach it
3 that way.

4 Q. Okay.

5 A. I know that's what I was going to talk to him
6 about, but that's how I set it out.

7 Q. That's just a -- somewhere for you to organize
8 your thoughts in your notes?

9 A. Keep me on track.

10 Q. Did he tell you at any time that he was
11 experiencing flashbacks of any kind on July 26th, 2002?

12 A. On that specific date? I don't recall him
13 telling me that he was having flashbacks on that
14 specific date.

15 Q. Did he tell you he was reacting at all on that
16 date to any previous traumatic events?

17 A. Not that I can recall.

18 Q. He never told you there was something in this
19 six-year-old little girl that might have caused
20 flashbacks?

21 A. Not that I recall.

22 Q. Now, he had one previous diagnosis of PTSD and
23 that was back when he was in COMTREA?

24 A. Yes, in '96.

25 Q. And he was having flashbacks at that time to

1 what he called animal sacrifices that he'd been
2 involved in?

3 A. Right.

4 Q. That was where he talked about being part of a
5 satanic animal sacrificing and satanic cult and killing
6 goats and dogs and cats while abusing drugs?

7 A. Right. I believe he also talked about the
8 drowning incident with the boyfriend.

9 Q. Now, did he indicate to you as he did with the
10 people at COMTREA, that he enjoyed those flashbacks of
11 drinking the blood of those animals?

12 A. I don't remember that.

13 Q. He didn't tell you that?

14 A. No, I don't believe so.

15 Q. Now, you said he also has flashbacks to
16 previous abuse?

17 A. Yes.

18 Q. Did he indicate to you that some how Casey
19 williamson reminded him of his previous abuse?

20 A. Not that I recall.

21 Q. Now, would you agree with me that a claim of a
22 flashback or nightmare would be one of the easiest
23 claims to make or one of the easiest claims to fake, I
24 should say?

25 A. Could be.

1 Q. I'm mean there is no way of telling whether
2 somebody is telling you the truth about a flashback or
3 nightmare?

4 A. Correct.

5 Q. You have to rely on him telling you that in
6 order to make that diagnosis?

7 A. Yes, you rely on their self-report to make the
8 diagnosis.

9 Q. If he's lying to you, then that diagnosis may
10 be wrong?

11 A. Possible.

12 Q. Now, he told you about the 26th and he wasn't
13 able to really tell you much, but he told you that he'd
14 been fighting with his girlfriend because she was
15 cheating on him.

16 Do you recall that?

17 A. Yes.

18 Q. And that he was doing a lot of
19 methamphetamines and marijuana and he'd been drunk the
20 days leading up to the murder?

21 A. Yes.

22 Q. He told you that that night he was drinking,
23 he shot up and he smoked marijuana, but he doesn't
24 really remember for sure what happened after that?

25 A. Yes, that's what he told me.

1 Q. Now, in your notes, and I don't know if you
2 pulled them out there, but if not, I'll try and give
3 you mine, you wrote, I think it was a quote, I believe
4 I did ST..., but only remember a few things.

5 Do you recall that?

6 A. Let me look. I'm sure it's probably in here.
7 Can I ask you where that is on there?

8 Q. Here's where I found it. It would have been
9 page three, towards the bottom?

10 A. Oh, that -- I believe I did something.

11 Q. Okay. So that's your shorthand of you not
12 understanding what he said?

13 A. Correct.

14 Q. Other than him saying, I believe I did
15 something, did he give you any other detail about what
16 he recalled he had done that day?

17 A. I don't believe so but let me go back to that
18 -- those pages. You know, I don't think that he was
19 really talking about what he'd done that day. As you
20 know, he talks about that evening, talked something
21 about in the days before, but I don't know if that was
22 that specific day you see at the bottom of that one
23 page, but other than that, no.

24 Q. Now, that was certainly different in terms of
25 the detail of the murder of Casey Williamson that he

1 gave Drs. Becker and English and certainly different
2 than details he gave Dr. Delaney Dean; would you agree
3 with that?

4 A. Yes.

5 Q. He gave pretty specific details to them?

6 A. Yes.

7 Q. And they interviewed him three years before
8 you did?

9 A. Yes.

10 Q. And before he'd been found guilty?

11 A. Yes.

12 Q. Okay. Now, he claimed to you that he'd been
13 doing drugs that night. Did you believe him about his
14 drug use the night before the murder?

15 A. You know, do I think it's possible that he'd
16 been doing drugs the night before, sure, I think that's
17 always possible with his given history.

18 I know that the tox screen that came through
19 the next day showed all THC so I'm not certain what he
20 was doing.

21 Q. And you think the tox screen was the following
22 day?

23 A. Well, let me look, I can tell you for certain.
24 It may have been -- maybe it was 48 hours later. I'm
25 not sure, let me look. It was the 29th so that would

1 have been, what, early in the morning, so that would
2 have been about what, 48 hours or so. I'm not sure.

3 Q. Ordinally I won't challenge anybody on their
4 math, but if Casey disappeared from home shortly after
5 6 a.m. on the 26th and that was 6 a.m. on the 29th, a
6 minimum of 72 hours?

7 A. Yes, so it's 72 hours.

8 Q. And he said he'd been doing meth the night
9 before?

10 A. Right. Well, in that case, whatever the count
11 was, it had been in his system.

12 Q. Did you need a drug screen, in your opinion,
13 to believe his drug use or his claim of drug use?

14 A. Well, I think that a drug screen would be
15 pretty helpful with him.

16 Q. Do you need a drug screen in order to believe
17 his drug use in this instance?

18 A. Not always, no.

19 Q. Not always. You reviewed the various
20 statements that he's made since he was convicted to Ms.
21 Hamilton, Mr. Lundt's investigator, did you not?

22 A. Yes.

23 Q. And the various reports from Ms. Luebbering
24 regarding his drug use that night?

25 A. Yes.

1 Q. And his abuse of Paxil?

2 A. Yes.

3 Q. And he told her he enjoyed using Paxil because
4 it had a geek affect on him?

5 A. I don't remember the exact words but I
6 remember him abusing Paxil.

7 Q. As I recall, you don't remember if he was
8 taking Paxil when you saw him?

9 A. Correct.

10 Q. In considering his actions that night, did you
11 ask him any specific questions about the night before
12 or the day that he murdered Casey?

13 A. You know, I asked him some questions but my
14 focus and my evaluation of him was whether or not he
15 had any evidence of organicity and whether or not he
16 had psychiatric issues. That was my primary focus so I
17 had a general discussion with him as you know in the
18 notes but I didn't spend a lot of time focusing on the
19 details around it, no.

20 Q. Now, did you compare what he told Dr. Dean
21 about that night with the police report or with what he
22 told Dr. Byran English and Dr. Becker?

23 A. You know, I have a general concept of that, I
24 certainly reviewed all of those things. Did I spend a
25 lot of time looking at the exact variances in the

1 statements, no.

2 Q. well, maybe I can ask it in a general way
3 without going through each one. If there are variances
4 in the statements, for example, if he told Dr. Dean
5 that he told this young girl when she asked where her
6 father was, if he told her he's at work, I can take you
7 there. Okay. That's one statement to Dr. Dean, and if
8 he told the police, that he asked the girl to go to the
9 glass factory to have some fun there, that it's fun
10 there, clearly those two aren't the same?

11 A. Correct.

12 Q. Clearly he lied to either Dr. Dean or the
13 police?

14 A. Yeah, he might have.

15 Q. So he has an ability to lie when he wants to?

16 A. Oh, I think he can lie, yeah.

17 Q. I mean if -- if he knows her father doesn't
18 work at the glass factory, he's clearly lying to try to
19 get this little girl to go with him?

20 A. Yeah, if that's what he did.

21 Q. You didn't look at any of the crime scene
22 photos, you didn't look at the area where he took her,
23 correct?

24 A. Correct.

25 Q. From your reading of the police report, would

1 you agree with me that it is not an appropriate place
2 for anyone to take a six-year-old little girl?

3 A. Would not seem to be appropriate, no.

4 Q. Did you read about the hallucinations he told
5 Dr. Becker, English and Dean about that he had while he
6 was taking Casey down to the glass factory?

7 A. Yes.

8 Q. Now, we talked about flashbacks and
9 nightmares. Aren't hallucinations, specific
10 hallucinations, one of the easiest symptoms to fake?

11 A. Can be.

12 Q. I mean you have to take his word for it that
13 he's experiencing these?

14 A. Well, when you're talking to him in
15 retrospect, yes.

16 Q. Now, the fact he'd never had a sexual
17 hallucination or claimed to have one before exposing
18 himself to Casey, would that suggest to you that he was
19 malingering that hallucination?

20 A. You know, I just don't think that I have
21 enough information to really answer that because I
22 didn't go through and get an asking history about if
23 he's had those kind of experiences before. There is
24 nothing mentioned in the record.

25 Q. So you'd agree it's certainly possible?

1 A. Possible, yes.

2 Q. The police officers testified under oath that
3 he did not have any hallucinations on the day that he
4 killed Casey?

5 A. That's my understanding.

6 Q. That's not what he's saying now, is it?

7 A. No.

8 Q. For the purposes of the diagnosis you made
9 today, do you have to believe him about his
10 hallucinations that day?

11 A. About that specific day, no, not necessarily.

12 Q. Okay. Now, on that particular day, you've
13 indicated that you haven't gone through the police
14 report or his statements with any specificity; is that
15 correct?

16 A. Correct. I certainly read them but not in the
17 detail that I think you've asked me about earlier.

18 Q. Okay. The specific psychiatric illness or
19 mental disease that you said you believe he has, is
20 that of schizoaffective disorder or is that something
21 else?

22 A. Well, I mean, as you know, he's been given
23 lots of diagnostic labels. I mean, I think that he
24 both has problems with major depression and psychotic
25 problems. Certainly schizoaffective disorder is the

1 best way to combine those two things.

2 My understanding was -- is that, for example,
3 Dr. Stewart I think, said psychotic disorder, NOS and
4 depressive disorder NOS, that would be another way of
5 doing it.

6 I think he has a psychotic disorder, probably
7 parsimoniously, the schizoaffective label is probably
8 as good as any.

9 Q. And that type of mental disease doesn't
10 prevent him from exaggerating?

11 A. No.

12 Q. Doesn't prevent him from lying?

13 A. No.

14 Q. Doesn't prevent him from manipulating a
15 six-year-old little girl?

16 A. No.

17 Q. You read the police report and you saw that he
18 told the police when he was in the pit with her that he
19 exposed himself to her?

20 A. Yes.

21 Q. And then he asked her to expose herself to him
22 or those were not his exact words, but that was the
23 gist?

24 A. Yes.

25 Q. And then she refused and said she was going to

1 call her parents, he then struck her with a rock?

2 A. Something like that, yes.

3 Q. The fact that he hit her only after she said
4 she was going to tell, is that a product of his mental
5 disease?

6 A. Well, I guess I don't think quite in those
7 terms. Do I think that him having a mental disease
8 made some impact on his actions, I would say, yes, but
9 having schizoaffective disorder doesn't cause you to
10 strike little girls with rocks.

11 Q. Especially striking her with a rock right
12 after she said she's going to tell what he did?

13 A. Correct.

14 Q. You read Dr. Dean's report where she said he
15 specifically told her that he knew what he had done was
16 wrong by hitting her in the head?

17 A. Yes.

18 Q. Okay. Did you see in Dr. Dean's testimony
19 where he indicated that after he struck her in the head
20 and she was unconscious but before she died that he
21 masturbated?

22 A. You know, I know I've gone through that at
23 some time, but I don't remember that specifically, no.

24 Q. Now, you do know that he went -- after he
25 watched her die he covered her up?

1 A. Yes, that's my understanding.

2 Q. He concealed her body?

3 A. Yes.

4 Q. Would you agree with me that that was
5 purposeful action on his part to conceal her body?

6 A. Yes.

7 Q. And his mental disease didn't prevent him from
8 doing that?

9 A. No.

10 Q. He then went to the river washing off all
11 Casey's blood. That's a purposeful act, is it not?

12 A. Yes.

13 Q. He lied to the police when they first stopped
14 him?

15 A. Yes, I think he did.

16 Q. That's a purposeful act on his part?

17 A. Yes.

18 Q. Shows he was able to tell a lie when he knows
19 he's in trouble?

20 A. Yes.

21 Q. As a matter of fact, he lied for several hours
22 after the police arrested him.

23 Is that your recollection?

24 A. Yes. I know that he maintained one particular
25 story and ultimately when they took his statement it

1 was a different story, but as you know their
2 interrogation wasn't tape recorded all the way through.

3 Q. And neither was either of your interviews with
4 him, was it?

5 A. No.

6 Q. Their later interview of him was tape
7 recorded, was it not?

8 A. I thought it was more of a statement but I
9 could be mistaken.

10 Q. Did you listen to the statements?

11 A. Yes, I did.

12 Q. Did you listen to the second statement?

13 A. Yes.

14 Q. Did you discuss those statements with him?

15 A. No.

16 Q. Does his mental condition predispose him to be
17 a child murderer.

18 A. well, I don't think it necessarily predisposes
19 him to be a child murderer. That's a fairly rare event
20 and you'd be hard pressed to say that almost any
21 condition could predispose you to that, but I do think
22 they are such psychiatric conditions that impair his
23 ability, which may have contributed to the acts that
24 happened.

25 Q. But he couldn't tell you anything about what

1 happened that day for you to know that played a part?

2 A. Again, that wasn't the focus of my evaluation
3 of him.

4 MR. WALDEMER: I don't have any further
5 questions.

6 THE COURT: Any redirect, Ms. Hamilton?

7 MS. HAMILTON: Just a few.

8 REDIRECT EXAMINATION

9 BY MS. HAMILTON:

10 Q. Does it matter that other doctors saw Johnny
11 closer in time than you did in determining that Johnny
12 had organic brain damage?

13 A. No, because I'm not aware of any intervening
14 event that would have caused him to have the
15 difficulties when I saw him in '07.

16 Q. Do you believe that Johnny's medication that
17 he was taking at Potosi lowered his test scores?

18 A. well, I think I'd be hard pressed to say that
19 it wouldn't have any affect on his test scores, but the
20 fact that his testing was generally consistent with
21 what I expected to see given his test scores when he
22 was in school as a youngster, suggests to me that if
23 there was an impact, it was small.

24 Q. In your opinion, did you need to read the
25 trial transcript to determine if Johnny had organic

1 brain damage?

2 A. No.

3 Q. Why not?

4 A. Because I don't think that that would have
5 provided me with information that would help me reach
6 that conclusion one way or the other.

7 Q. What is the Shipley?

8 A. The Shipley is a self-administered test that
9 gives you an IQ score. It is not used for
10 neuropsychiatric testing.

11 Q. Why?

12 A. Because it has no value in any of the research
13 on the Shipley that it's of use in determining if a
14 person has organicity. It's used as a gross screening
15 device to get a general estimate of IQ.

16 Q. Is it necessary, in your opinion, to do a PET
17 scan or MRI to determine organic brain organicity?

18 A. No, but it can be useful.

19 Q. Well, why isn't it necessary?

20 A. Because you can make the diagnosis without
21 that.

22 Q. Did you, in your opinion, feel you needed to
23 talk to all the previous doctors that gave Johnny
24 testing before you to determine whether or not Johnny
25 had organic brain organicity?

1 A. I don't think the doctors would have provided
2 me much additional information in making the decision
3 about his organicity or his psychiatric problems. It
4 may have helped in terms of -- if I was talking more
5 about his state of mind at the time of the event, but
6 as far as the organicity is concerned and his mental
7 illness, no, I don't think that it would have mattered
8 much especially since I was able to read the report.

9 Q. When you talked about Johnny didn't have any
10 support earlier, were you talking about community
11 support or family support?

12 A. Well, actually it's been both. I mean I think
13 it's great that he finally was involved in the ADAPT
14 program, I think that's great, but, you know, if you
15 look at, particularly in his childhood years and early
16 adolescence, which, unfortunately, are more formative
17 years where some of that is so critical in terms of
18 what happens with these kids. You know, during that
19 time, best as I can tell, he didn't and what is
20 interesting, if you look at how he was at the grade
21 school level, when he was in the self-contained special
22 ed programs, you know, when he had that level of
23 structure and attention, in some ways you can see how
24 he had some potential, but without that or without that
25 kind of intervention, even out -- out in the community,

1 pretty dismal prospects for Johnny Johnson.

2 Q. From your review of records and your testing,
3 do you believe Johnny's organicity was caused by his
4 drug use?

5 A. No, but I think it's exacerbated it.

6 Q. In your opinion, is Johnny smart enough to
7 know what symptoms he needs to portray to show he has
8 PTSD?

9 A. well, I cannot rule that out, but I would be
10 very surprised if, other than talking about flashbacks,
11 he was able to give me other symptoms and has given
12 also other symptoms and other psychiatric
13 hospitalizations, all pretty consistent with PTSD.

14 In addition to that, we know that he did have
15 a number of very traumatic experiences during his
16 growing up years.

17 Q. Does it change your opinion about Johnny's
18 organicity because he told inconsistent stories about
19 what happened the night of the crime?

20 A. No.

21 Q. why not?

22 A. well, I don't think that really has a lot of
23 bearing on it. In fact, if anything, the fact that he
24 couldn't keep his story straight, may be consistent
25 with some of the difficulties that he has.

1 MS. HAMILTON: I don't have any other
2 questions.

3 THE COURT: Any recross?

4 RECROSS-EXAMINATION

5 BY MR. WALDEMER:

6 Q. His potential that you talked about when he
7 was in grade school?

8 A. Yes.

9 Q. His grades clearly began to decline with he
10 self-reports that he begins abusing drugs and alcohol;
11 isn't that correct?

12 A. Yes, and when he's out of the self-contained
13 classroom from that point on, also.

14 Q. And eventually he gets expelled from bringing
15 a weapon to school?

16 A. I believe so.

17 Q. And all those things are while he's beginning
18 to abuse all the illicit substances we've talked about?

19 A. Yes.

20 Q. You can't be sure that this brain organicity
21 to some extent has not been caused by his drug abuse?

22 A. To some extent I think that is likely, in
23 fact, but given the level of difficulty he had in
24 kindergarten, first and second grade, I think he was
25 already on his way.

1 Q. Well, his grades certainly reflected that he
2 was doing pretty well in fifth, sixth and seventh grade
3 until he began using drugs in the eighth grade; do you
4 agree with that?

5 A. I think that those good grades are reflective
6 of a highly structured special education setting that
7 allowed him to do some things.

8 Q. It allowed him to succeed?

9 A. Yes.

10 Q. His prospects in sixth, seventh grade were
11 pretty good until he started using drugs?

12 A. No. I think he was already in trouble because
13 outside of that structured classroom, there wasn't a
14 good support system.

15 Q. Including his own abusing drugs and alcohol?

16 A. Well, his abuse of drugs and alcohol, first of
17 all, certainly did contribute to his downfall, but he
18 also didn't have a family and other resources to deal
19 with the many problems in his life.

20 MR. WALDEMER: Nothing further.

21 THE COURT: Any redirect?

22 MS. HAMILTON: No questions.

23 THE COURT: You may step down, Dr. Beaver.

24 Anything else for today?

25 MS. HAMILTON: No, your Honor.

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MR. LUNDT: No, your Honor.

THE COURT: All right. Why don't you leave me a memorandum.

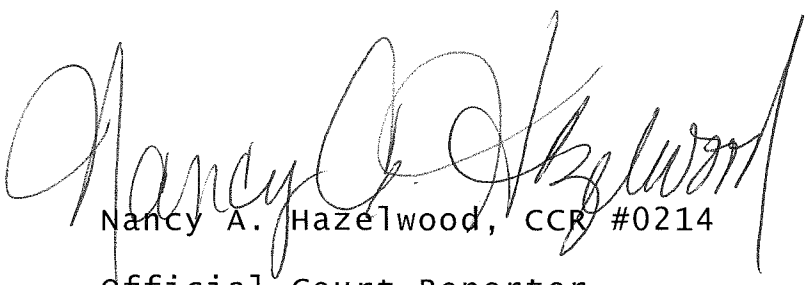
I want something to reflect further evidence was adduced and the matter will be further scheduled in the future.

(Court was adjourned for the day.)

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REPORTER'S CERTIFICATE

I, Nancy A. Hazelwood, a Certified Court Reporter, hereby certify that I was the official court reporter for Division 3 of the Circuit Court of the County of St. Louis, State of Missouri; that on the 30th day of November, 2009, the 1st and 2nd day of December, 2009 and the 23rd day of July, 2010, I was present and reported all the proceedings had in the case of JOHNNY A. JOHNSON, Movant, versus THE STATE OF MISSOURI, Respondent, Cause No. 2107CC-1303; and I further certify that the foregoing pages contain a true and accurate reproduction of the proceedings had on that date.



Nancy A. Hazelwood, CCR #0214
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