

No. 18-1259

IN THE
Supreme Court of the United States

BRETT JONES,
Petitioner,

v.

MISSISSIPPI,
Respondent.

**On Writ of Certiorari
to the Mississippi Court of Appeals**

JOINT APPENDIX

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June 5, 2020 * Counsels of Record

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CERTIORARI GRANTED MARCH 9, 2020

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CIRCUIT COURT OF LEE COUNTY,
MISSISSIPPI

—————
No. CR04-833
CFN 2543
—————

STATE OF MISSISSIPPI,

v.

BRETT A JONES.
—————

DOCKET ENTRIES

DATE	ORDERS, JUDGMENTS ETC.	BK/PG
10/19/2004	INDICTMENT FILED	
10/19/2004	Capias Issued (jail)	
10/25/2004	CAPIAS RETURNED AND EXECUTED ON 10-21-2004	
11/04/2004	ARRAIGNED PLEA OF NOT GUILTY NO BOND	254 213
11/04/2004	ORDER APPOINTING ATTORNEY	254 214
11/05/2004	Motion to Transfer Jurisdiction to Youth Court or to Order a Transfer Study	
11/05/2004	MOTION FOR DISCOVERY	

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11/05/2004	Motion for Funds to Hire Investigator	
11/05/2004	Motion for Bond Setting	
1/21/2005	MOTION FOR CONTINUANCE	
1/21/2005	MOTION FOR PSYCHIATRIC EXAMINATION	
1/21/2005	NOTICE OF MOTION	
1/24/2005	Subpoenas issued for hearing on January 28, 05 to Tony Carleton, Tim Erickson & Linda Beekler & handed LSO	
1/24/2005	Motion In Limine to Exclude Evidence of prior convictions & other bad acts	
1/24/2005	Motion In Limine on Admissibility of Photographs of Victim	
1/24/2005	Motion for funds to retain expert in DNA testing	
1/24/2005	Motion for funds to retain expert in fingerprints	

DATE	ORDERS, JUDGMENTS ETC.	BK/PG
1/24/2005	MOTION FOR FUNDS TO RETAIN EXPERT IN FORENSIC PATHOLOGY	
1/28/2005	Order Granting Motion for Continuance	256 338
1/28/2005	Order Overruling Motion for Bond Setting	256 339
1/28/2005	Order Overruling Motion to Transfer	256 340
1/28/2005	Order for Psychiatric Examination	256 341
1/28/2005	Order Granting Motion for funds for Investigator (\$1000)	256 344
1/31/2005	Subpoenas for Hearing returned and executed on Tony Carelton Tim Erickson, & Linda Beekler on 1-28-05	
2/01/2005	MOTION IN LIMINE TO EXCLUDE EVIDENCE OF GOTH AFFILIATION	
2/02/2005	ORDER TO PAY \$1000 FOR INVESTIGATOR	256 372
3/01/2005	ORDER FOR PSYCHIATRIC EXAMINATION	257 390

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3/01/2005	ORDER FOR CONTINU- ANCE	257 392
3/01/2005	ORDER DENYING BOND	257 393
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4/18/2005	CAMERA COVERAGE NO- TICE	
4/20/2005	DEFENDANT'S MOTION TO SURPRESS STATE- MENT	
5/03/2005	MOTION TO PAY WIT- NESS EXPENSE	
5/03/2005	ORDER TO PAY WITNESS EXPENSE	260 436
5/19/2005	COURT'S JURY INSTRUC- TION	
5/20/2005	Question From Jury	
5/20/2005	JURY VERDICT OF GUILTY OF MURDER AS CHARGED	
5/20/2005	C.R., MARY M. FERGU- SON'S ESTIMATE (\$2400.00)	

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5/20/2005	JUDGMENT OF GUILTY OF MURDER AS CHARGED, SENTENCED TO LIFE	261 298
5/20/2005	EXHIBITS LOCKED IN VAULT	
5/26/2005	MOTION FOR JUDGMENT OF ACQUITTAL JNOV OR IN THE ALTERNATIVE FOR A NEW TRIAL	
5/26/2005	ORDER DENYING MOTION FOR JUDGMENT OF ACQUITTAL NOTWITHSTANDING THE VERDICT OR A NEW TRIAL	251 421
5/27/2005	NOTICE OF APPEAL	
5/31/2005	CLERK'S ESTIMATE	
5/31/2005	NOTIFICATION OF APPEAL	
5/31/2005	COPY OF NOTICE OF APPEAL AND NOTIFICATION OF APPEAL MAILED M. FERGUSON, BRETT JONES & HANDED ROWLAND GEDDIE & DAVID DANIELS	

DATE	ORDERS, JUDGMENTS ETC.	BK/PG
5/31/2005	COPY OF NOTICE OF APPEAL, NOTIFICATION OF APPEAL & CERTIFIED COPIES OF ORDERS, CRIMINAL DISPOSITION & DOCKET MAILED SUPREME COURT	
6/21/2005	\$2941.00 RECEIVED FROM LEE COUNTY ON APPEAL COSTS	
6/21/2005	\$100 MAILED SUPREME COURT	
6/21/2005	M. M. FERGUSON NOTIFIED MONEY RECEIVED ON APPEAL	
6/30/2005	MOTION TO PAY WITNESS EXPENSE	
6/30/2005	ORDER TO PAY WITNESS EXPENSE	262 466
7/05/2005	TRANSCRIPT (3 VOLUMES), 1 COPY OF TRANSCRIPT & 1 ELEC DISK FILED BY MARY M. FERGUSON	
7/05/2005	LETTER TO ATTORNEY ADVISING TRANSCRIPT HAS BEEN FILED	

DATE	ORDERS, JUDGMENTS ETC.	BK/PG
7/05/2005	\$916.80 CHECK WRITTEN & HANDED MARY M. FERGUSON	
7/18/2005	S.C., WILL BRISTOW, ROWLAND GEDDIE & DAVID DANIELS NOTIFIED APPEAL RECORD READY FOR EXAM	
7/19/2005	DESIGNATION OF RECORD	
7/19/2005	CERTIFICATE OF COM- PLIANCE	
7/19/2005	\$14.00 CHECK WRITTEN TO MAP FOR COPYING AUDIO CASSETTES	
8/11/2005	CLERK'S PAPER (1 VOLUME), TRANSCRIPT (3 VOLUMES), 1 ELEC DISK & 1 ENVELOPE WITH EXHIBITS MAILED SUPREME COURT	
8/11/2005	\$7.35 POSTAGE TAKEN FROM METER	
8/31/2005	\$1499.20 REFUNDED LEE COUNTY ON APPEAL COSTS	

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1/03/2006	Order to pay Will Bristow \$1000.00 for Appeal	269 183
9/21/2006	DECISION FROM SUPREME COURT AFFIRMED	
10/13/2006	MANDATE FROM COURT OF APPEALS- AFFIRMED	
10/16/2006	EXHIBITS RETURNED FROM SUPREME COURT & PLACED IN VAULT	
1/10/2008	LETTER FROM SUPREME COURT OF MISSISSIPPI ADVISING THAT THE PANEL FINDS THATTHE PETITION FOR POST- CONVICTION RELIEF FAILS TO MEET THE STATUATORY REQUIRE- MENTS AND SHOULD BE DISMISSED	
2/11/2008	Supreme Court Order that State shall file a Response to application before 4-7-08	
4/14/2008	SUPREME COURT ORDER GRANTING ADDITIONAL 14 DAYS TO ALLOW STATE TO FILE RE- SPONSE TO MOTION FOR PCR	

DATE	ORDERS, JUDGMENTS ETC.	BK/PG
5/05/2008	Supreme Court Order - Motion for Post Conviction Relief is Granted and Can be filed	
8/04/2008	ORDER GRANTING THE MOTION FOR CLARIFICA- TION; SUMMARY JUDG- MENT IS DENIED AND THE REQUEST FOR POST- CONVICTION RELIEF MOTION IS GRANTED	
11/04/2008	PETITION FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM	
11/04/2008	ORDER FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM	307 277
11/04/2008	WRIT OF HABEAS COR- PUS AD PROSEQUEN- DUM	
11/04/2008	MOTION TO PAY TRAN- SCRIPT EXPENSE	
11/05/2008	ORDER TO PAY TRAN- SCRIPT EXPENSE	307 344A
7/22/2013	DECISION FROM SU- PREME COURT AFFIRM- ING IN PART & REVERS- ING IN PART - SENTENCE	

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	IS VACATED AND THIS CASE IS REMANDED TO LEE CO FOR RESENTENCING	
8/19/2013	ORDER FROM SUPREME COURT - MOTION FOR REHEARING IS DUE ON 8/16/13.	
10/07/2013	MANDATE FROM SUPREME COURT AFFIRMING IN PART AND REVERSING IN PART SENTENCE IS VACATED AND CASE IS RETURNED TO CIRCUIT COURT IN LEE COUNTY FOR RESENTENCING	
3/27/2014	ORDER DENYING SENTENCING HEARING BY A JURY, GRANTING COUNSEL TO RETAIN AN INVESTIGATOR, APPOINTING TH FREELAND IV AS COUNSEL FOR SENTENCING PURPOSES	378 273
3/27/2014	MOTION FOR APPOINTMENT OF COUSEL EXPERT AND INVESTIGATIVE ASSISTANCE AND FOR A JURY HEARING AT SENTENCING	

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5/06/2014	LETTER OF CORRESPONDENCE FROM JUDGE GARDNER	
5/29/2014	ORDER SETTING RESENTENCING ON THURSDAY, 8-21-14 @ 9 A.M. AT THE LEE COUNTY COURTHOUSE	381 366
5/29/2014	COPY OF ORDER MAILED TO THOMAS FREELAND, SYLVIA OWEN, & JOHN WEDDLE	
8/19/2014	ORDER CONTINUING CAUSE FOR RESENTENCING	384 431
9/03/2014	ORDER FOR WRIT OF HABEAS CORPUS AD PROSEQUENDUM WRIT ISSUED AND HANDED SUSAN CARR WINTERS SEPT 5 2014 @ 8:30	385 372
9/03/2014	WRIT RETURNED SHOWING FAXED TO MDOC	
10/21/2014	ORDER SETTING RESENTENCING ON DECEMBER 5, 2014 @ 9:00 A.M. IN LEE CO CIRCUIT COURT	387 50

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10/21/2014	COPY OF ORDER MAILED TO THOMAS H. FREELAND, IV & JOHN WEDDLE	
1/15/2015	ORDER SETTING RESENTENCING ON 2-6-15 @ 9 A.M.	389 205
1/26/2015	MOTION FOR SUBPOENA FOR MEDICAL RECORDS	
1/29/2015	ORDER STATING MEDICAL PERSONNEL ARE AUTHORIZED TO SHARE PRIVILEGED INFO W/ BRETT JONES'S ATTORNEY, T.H. FREELAND, IV & MEDICAL FACILITIES OF MDOC ARE AUTHORIZED TO RELEASE MEDICAL RECORDS TO HIS ATTORNEY.	389 299
1/29/2015	COPY OF ORDER AND MOTION BOTH MAILED TO THOMAS FREELAND & RICHARD BOWEN W/ CORINTH D.A.'S OFFICE	
4/13/2015	ORDER SETTING RESENTENCING ON 4-17-15 AT 9:00 A.M. AT THE LEE COUNTY JUSTICE CENTER	392 64

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4/20/2015	RESENTENCING IN ACCORD WITH THE OPINION AND ORDER OF REMAND FROM MS SUPREME COURT SENTENCED TO LIFE IMPRISONMENT	392 225
5/20/2015	ENTRY OF APPEARANCE (JACOB W. HOWARD)	
5/20/2015	ENTRY OF APPEARANCE (ROBERT B. MCDUFF)	
5/20/2015	NOTICE OF APPEAL	
5/20/2015	DESIGNATION OF THE RECORD	
5/20/2015	CERTIFICATE OF COMPLIANCE / W/EXHIBIT A	
6/17/2015	NOTICE FROM SUPREME COURT ADVISING CASE BEEN ASIGNED TO THE COURT OF APPEALS	

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE
STATE OF MISSISSIPPI

2015-CT-00899-COA

BRETT JONES,

v.

STATE OF MISSISSIPPI.

DOCKET ENTRIES

DATE	PROCEEDINGS
05/20/2015	Notice of Appeal Filed
06/11/2015	Designation of Record received - Hon. Joyce R. Loftin
06/11/2015	Certificate of Compliance received - Trial Court Clerk - Hon. Joyce R. Loftin
06/11/2015	Court Reporter Transcript Due Date issued
06/15/2015	Notice of Assignment to Court of Appeals
08/19/2015	LCC Overdue Letter (Attorney Review)
10/06/2015	LCC Demand Letter
10/14/2015	Record Filed
10/14/2015	Briefing Schedule Notice Letter
10/14/2015	Appearance Form Issued
11/19/2015	Entry of Appearance

DATE	PROCEEDINGS
11/19/2015	Motion # 2015 - 5171 Motion for Extension of Time to File Appellants Brief
11/19/2015	Clerks Notice Issued Motion # 2015 - 5171
12/18/2015	Motion # 2015 - 5616 Motion to Correct an Omission in the Record
12/18/2015	Motion # 2015 - 5617 Second Motion to Extend Time to File Brief of the Appellant
12/18/2015	Clerks Notice Issued Motion # 2015 - 5617
01/07/2016	Motion # 2016 - 98 Third Motion to Extend Time To File Appellants Brief
01/07/2016	Motion # 2016 - 99 Motion to Increase the Page Limit for Appellants Brief
01/07/2016	Clerks Notice Issued Motion # 2016 - 98
01/18/2016	Motion # 2016 - 238 Motion to Extend Time to File Appellants Brief Until After the Record is Complet
01/20/2016	Order Entered Motion # 2016 - 99
01/21/2016	Order Entered Motion # 2016 - 238
02/09/2016	Rule 2 Briefing Notice for Appellant Letter - Robert McDuff
02/09/2016	Recalled Rule 2 Briefing Notice for Appellant Letter - Robert McDuff
03/01/2016	Supplemental Record filed
03/01/2016	Briefing Reissue Notice Letter

DATE	PROCEEDINGS
03/16/2016	Appellant's Brief filed on behalf of Brett Jones
03/16/2016	Record Excerpts filed on behalf of Brett Jones
04/15/2016	Motion # 2016 - 1657 Motion for Enlargement of Time Within Which to File Brief for Appellee
04/15/2016	Clerks Notice Issued Motion # 2016 - 1657
05/18/2016	Motion # 2016 - 2163 Second Motion for Enlargement of Time Which to File Brief for Appellee
05/18/2016	Clerks Notice Issued Motion # 2016 - 2163
06/07/2016	Motion # 2016 - 2469 Third Motion for Enlargement of Time Within Which to File Brief for Appellee
06/07/2016	Clerks Notice Issued Motion # 2016 - 2469
06/17/2016	Appellee's Brief filed on behalf of State of Mississippi
06/21/2016	Appearance Form received - Scott Stuart
07/01/2016	Appellant's Reply Brief filed on behalf of Brett Jones
09/06/2016	Case Submitted without Oral Argument
02/13/2017	Letter - SEE SUPPLEMENTAL CITATION
02/13/2017	Supplemental Citation Received - Atty. Jacob Howard

DATE	PROCEEDINGS
02/28/2017	Order Entered
03/14/2017	Supplemental Appellant's Brief filed on behalf of Brett Jones - COMPLIED - 03/15/17
03/14/2017	Brief Non-Compliance Letter
03/15/2017	Other filed on behalf of Brett Jones - CERTIFICATE OF SERVICE ON THE TRIAL COURT JUDGE
03/15/2017	Other filed on behalf of Brett Jones - CERTIFICATE OF INTERESTED PERSONS
03/28/2017	Supplemental Brief filed on behalf of State of Mississippi
03/29/2017	Supplemental Appellee's Brief filed on behalf of State of Mississippi
04/03/2017	Supplemental Reply Brief filed on behalf of Brett Jones
06/27/2017	Letter - SEE SUPPLEMENTAL CITATION
06/27/2017	Supplemental Citation Received - Atty. Jacob Howard
12/14/2017	DECISION: Affirmed
12/14/2017	Decision Letter Issued
12/19/2017	Motion # 2017 - 5032 Motion for Extension of Time to File Motion for Rehearing
12/19/2017	Clerks Notice Issued Motion # 2017 - 5032

DATE	PROCEEDINGS
01/10/2018	Motion # 2018 - 128 Motion for Rehearing
04/24/2018	Rehearing Denied Motion # 2018 - 128
04/24/2018	Decision Letter Issued
05/03/2018	Motion # 2018 - 1737 Motion for Extension of Time to File Petition for Writ of Certiorari
05/03/2018	Clerks Notice Issued Motion # 2018 - 1737
05/22/2018	Motion # 2018 - 2038 Petition for Certiorari
06/27/2018	Attachment added to motion - 2018-2038 - M.R.A.P. 28k citation to supplemental authorities...
08/02/2018	Order Entered Motion # 2018 - 2038
08/08/2018	Letter Issued by Court - Oral Argument
08/13/2018	Supplemental Certiorari Brief filed on behalf of State of Mississippi
08/13/2018	Supplemental Certiorari Brief filed on behalf of Brett Jones
08/14/2018	Brief Non-Compliance Letter
08/14/2018	Other filed on behalf of Brett Jones - TABLE OF CONTENTS AND TABLE OF AUTHORITIES -COMPLIED
09/26/2018	Case Argued and Submitted on Cert.
11/29/2018	Order Entered - Case Decision
12/20/2018	Mandate Issued
02/22/2019	U.S. Supreme Court Extension Granted

DATE	PROCEEDINGS
04/04/2019	U.S. Supreme Court Documents Received - Certiorari Filed
03/13/2020	Order of U.S. Supreme Court granting certiorari - Hon. Scott S. Harris

IN THE CIRCUIT COURT OF LEE COUNTY,
MISSISSIPPI

Cause No. CR04-833

STATE OF MISSISSIPPI,

Plaintiff,

versus

BRETT JONES,

Defendant.

TRANSCRIPT OF THE PROCEEDINGS HAD AND
DONE IN THE RE-SENTENCING IN THE ABOVE-
STYLED AND NUMBERED CAUSE, BEFORE
THE HONORABLE THOMAS J. GARDNER III,
CIRCUIT JUDGE, FIRST JUDICIAL DISTRICT
OF MISSISSIPPI, IN THE LEE COUNTY COURT-
HOUSE ON THE 6TH DAY OF FEBRUARY, 2015.

APPEARANCES:

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Present and Representing the Defendant:

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BRETT JONES

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[2] THE COURT: The matter today is styled State of Mississippi versus Brett A. Jones. I will go through the history of this. Briefly, Mr. Jones was convicted of murder, sentenced to life, and is back before the Court upon the order of the Supreme Court of the State that this Court consider sentencing him in accord with the dictates of the United States Supreme Court involving *Miller*. I think everyone understands that.

So the purpose of this is, of course, to determine whether or not there are factors that would cause this Court to sentence him in accord with the opinion handed down in the last proceeding there on the post-conviction relief motions, I believe.

So what says the State?

MR. WEDDLE: Your Honor, the State is ready to proceed. However, as far as going forward, the State would rest on the trial transcript, the trial record of this cause, and also the post-conviction relief civil record in this case. I have transcripts of the trial record and also the post-conviction relief transcript, and we would ask that those be copied and made a part of this proceeding. The State would rest on these, but would like to reserve rebuttal, if necessary.

THE COURT: Well, I think all of the [3] proceedings before today must be made a part of the record. Certainly, I tried the case, I was involved in the post-conviction relief motion hearing. And whatever comes out of this will certainly be based on my recollection and reliance on the record up until now. And if the Supreme Court has cause to look at this, I certainly want them to see the same thing I see, so that will be done.

Now, I will not give it any – I think we'll just have to make the record up after we transcribe – or reproduce and so forth.

MR. FREELAND: Your Honor, first a preliminary matter. I've got sitting at the counsel table Wallace Lester. He's not a member of the Bar. He's an investigator this Court authorized me to hire. He's going to help me shuttle witnesses in and out of the courtroom, and I'd like to ask the Court's permission for him to sit beside me behind the bar – inside the bar.

THE COURT: That's fine.

MR. FREELAND: And I don't know, I haven't heard mention of the rule. I've got a bunch of witnesses in the courtroom.

THE COURT: Well, if you wish to invoke the rule, we will do that.

MR. FREELAND: I think it would be best.

THE COURT: Sir?

[4] MR. FREELAND: I think it would be best to invoke the rule, yes, Your Honor.

THE COURT: Those who will testify, let me ask you to step outside the courtroom and – I tell you where I think it might be well to put them. About the only thing that I could think of, the court staff is right back here down the hall. There is a room there with a table and chairs around it, and that would probably be the –

MR. WEDDLE: Your Honor, right back here we have our potential witnesses, if needed, right back here behind the courtroom. Is that okay to leave them there?

THE COURT: That's fine. And we can put these across the way in that back room there. The clerk will take them around there.

MR. FREELAND: I'm going to send Mr. Lester back so he'll know where to go get them.

And, Your Honor, I have a brief opening – I have an opening statement I would like to make. I want to alert the Court's attention to aspects of the Mississippi Supreme Court *Miller* case and things that are in the transcript that was just offered. I know the Court tried the case, but I'd like to give some page references to specific things that I think relate to what will be going on today.

THE COURT: All right, sir.

[5] MR. FREELAND: First, I'd like to start by talking about what *Miller* tells us about how juvenile sentencing should work in light of the factors that *Miller* based its holding on.

The Mississippi Supreme Court quoted *Miller* extensively in the Brett Jones opinion. One of the key quotes, I'm just – I'd like to read to the Court, it's on Page 3 at paragraph 5 of the opinion. This is the *Miller* court as quoted by Mississippi Supreme Court, majority opinion.

Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him.

I'm coming out of the quote for a moment. The family and home events that surrounded Brett Jones

are going to be the key to our presentation at this hearing.

Go back to the quote. *And from which he cannot usually extricate himself, no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser [6] offense if not for incompetencies associated with youth – for instance, his inability to deal with police officers and prosecutors or his incapacity to assist his own attorneys.*

And finally, this mandatory punishment disregards the possibility of rehabilitation, even when the circumstances suggest it. That's from Miller.

There is another quote from *Miller*. It noted that in the *Roper* case and the *Graham* case, which are two prior cases about sentencing juveniles, it noted that those cases relied on three significant gaps between juveniles and adults.

First, children have a lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.

I just want to note here that Miller in *Miller versus Alabama* was 15, just as Brett Jones was at the time of the murder in this case.

Second, children are more vulnerable to negative influences and outside pressures, including from family and – I just read that. I'm sorry.

Our decision rested not only on common sense – on what any parent knows – but on science and social science as well. We cited [7] studies showing that

only a relatively small proportion of adolescents who engage in illegal activity developed entrenched patterns of behavior.

And in Graham we noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds – for instance, in the parts of the brain that involved in behavior control. We reasoned that those findings – of transient rashness, proclivity to risk, and inability to assess consequences – both lessened the child’s moral culpability and enhance the prospect that, as years go by and neurological development occurs, his deficiencies will be reformed.

And I’d like to ask the Court to listen to the evidence today and listen to whether Brett Jones’s behavior that day or his circumstances before both show juvenile mind, a mind that’s not fully formed and not responding like an adult, and whether they show a chaotic family situation, in which he was trapped, that – I mean, just as a parent, I know that the worst thing that a child could experience is a life where you wake up one day to the next not knowing what’s going to happen, what the rules are.

Brett Jones, the proof will show, had a bipolar mother and an abusive stepfather. He [8] and his brother and his mother were physically abused by the stepfather. His mother was bipolar and would disappear when they were as young as toddlers, just disappear and go off with truck drivers.

Roper and Graham emphasized that the distinctive attributes of youth diminished penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes. Because the heart of the retribution rationale relates to

an offender's blameworthiness, the case for retribution is not as strong with a minor as with an adult. Nor can deterrence do the work in this context because, quote, the same characteristics that render juveniles less capable than adults – their immaturity, reckless, and impetuosity – make them less likely to consider potential punishment. And that's Miller quoting the Graham case.

And in this case, *Miller* – in *Miller*, Miller's stepfather physically abused him. His alcoholic and drug-addicted mother neglected him. He had been in and out of foster care as a result, and he tried to kill himself four times, the first time when he was in kindergarten.

The way this case echoes the facts in *Miller* is, I think, going to be somewhat surprising to the Court. And the fact that [9] Miller's past criminal history was limited, that's also here.

Both – we have got two different ways of looking at it. We have got Brett's past history, which is a limited criminal history, and his history after he's been in the prison system when he was at Walnut Grove for juveniles. We'll hear a unit – we'll hear a witness, who was in charge of his unit, who will be able to talk about the way he stabilized and improved when he went down to Walnut Grove, how getting him out of the chaos in which he had been living his whole life changed him.

They then went on to say they're not going to decide in *Miller* whether life without parole was never acceptable under the Eighth Amendment. Of course, we will raise at the end of the hearing and we raise today an issue that the Mississippi Supreme Court hasn't accepted and the U.S. Supreme Court says

is open, that you can never sentence a juvenile, somebody that committed a crime as a juvenile, to life without parole. That decision – that hasn't been held yet, but we do want to preserve that issue.

THE COURT: Mr. Freeland?

MR. FREELAND: Yes, Your Honor.

THE COURT: I understand exactly what you're saying, but that's not what happened in this case. Now, you understand and I understand [10] and I hope the Supreme Court understands that, in accord with the statute, and they said as much, I sentenced him to life. Because of the existence of the probation and parole law, the provision in there that, in effect, deprives him of any consideration until he is 65 years of age and having served 15 years, then he can be considered for parole.

MR. FREELAND: Actually, that was where I was headed next, Your Honor. Under the parole –

THE COURT: And it's kind of a different thing. I don't know why the Supreme Court didn't make it simple by saying, you know, as to, you know, juvenile defendants, you can't do that. That's what the Supreme Court said.

MR. FREELAND: Well, what – I was about to talk about the statutory scheme which addresses directly what the Court is talking about. 47-7-3(1) is the parole statute that, to an extent, has been in place since I started practicing law in 1981 that's been modified. Rather than rewrite the statute, they tagged a provision on at the end. If you start reading the statute, you read that everyone sentenced in Mississippi is eligible – it says, *Every prisoner who has been convicted of any offense against the State of Mississippi,*

and is confined in the execution of a judgment of such [11] conviction in the Mississippi Department of Corrections for a definite term of over a year, after he has served a quarter of his sentence, or, if it's 30 years or more, or, if a term of natural life of such prisoner, has served not less than ten years of such sentence, may be released on parole as hereinafter provided.

That's right there in the statute today. But provision (a) to that statute says that – forecloses release until the conditional release that the judge mentioned at 65.

In *Parker versus State*, the Mississippi Supreme Court absolutely clearly held that provision (h) requiring no parole under provision Subsection (1) is unconstitutional, it violates *Miller* unless there is a hearing, like the one we're having today, and that the conditional release at 65 provided elsewhere in the statute doesn't solve the problem with *Miller*.

So what that left the Court with the options of doing, *Parker* says, this Court today has two options: It can impose life imprisonment, period, which is my understanding of what the Court did the previous time, or it can impose life imprisonment – this is the quote what the Court said the order should say if it's the second alternative: *Life imprisonment with eligibility for parole [12] notwithstanding the provisions of Mississippi Code Section 47-7-3(1)*. In other words, he's eligible for parole as if that statute wasn't passed, I think, in 1994.

And I want to back up briefly to *Miller* before I talk about – more directly about this case. The *Miller* case makes it clear that the *Miller* Court expected parole ineligibility to be the rare case in juvenile sentencing. They make it absolutely clear, to the point of I believe

the *Miller* Court would expect this Court to presume, unless it hears some reason not to, that parole eligibility should be the case for a juvenile who's subject to a life sentence. Mississippi Supreme Court hasn't said either way about that, but it's pretty clear from *Miller* that that's what the U.S. Supreme Court expected would happen.

Now I want to talk to a couple of things I saw in the transcript that are pertinent today. There are some things in the post-conviction transcript that aren't evidence, but statements. And I wanted to clarify one of them because the trial transcript differs a little bit from the post-conviction transcript.

There are statements in the post-conviction transcript that suggest that the evidence was that Brett Jones had stabbed his grandfather as much as 20 times. Dr. Hayne testified [13] specifically about this in the trial transcript. And you probably don't hear defense lawyers talking about Dr. Hayne and relying on him very often in this court anymore, but I'm going to today.

Dr. Hayne said – was asked by the prosecution on direct, *Doctor, of the wounds that you described for the jury and pointed out on the photographs and diagrams, how many would you describe as stab wounds?*

He says, *There are a total of eight stab wounds. And some of them were superficial; one of them was fatal.* That's on Page 249 of Dr. Hayne's testimony.

And Mr. Daniels, the district attorney, relied on that testimony in opening statement, and on Page 61 of the transcript says the same thing.

Now I want to talk about some things that people saw about Brett Jones the day. A person that was in

the neighborhood was called Frisco, last name Ruffner, had seen him that day earlier, and he talked about the way Brett said he was going to go get clothes and school supplies because he was getting ready to start school. And this was in the morning and asked how things were. And Mr. Ruffner said that he was going to get school clothes and he seemed fine. That's on Page 186.

[14] And then after the incident, Frisco testified *It was just like he changed into something, into another person. And after that happened, I saw him and was kind of – I was so hysterical, I didn't know what to say and how to say it. It was so surprising, he said. It was surprising for me when I saw him, at 187.*

He then later said, Question, and this is on 184: *When you say he was walking toward you, I mean, you say he was trembling, upset, and scared. Was he kind of just in a zone, to use a phrase?*

Answer: *Like a zombie or something. Like he didn't know what – he just didn't know. I don't know.*

I want to refer to a statement that Brett made in his examination on Page 286. He said, *After I realized I couldn't save him and he was gone, I knew that nobody was going to help me, and I was scared. I knew I had done something wrong in my eyes, and I didn't know what else to do.*

Now I want to talk about one other part of the incident that I think is relevant. His reaction after that is not the reaction of an adult or somebody with any maturity. He decides immediately – every witness that talked about talking to him after the incident said he was trying to go to the Wal-Mart in Tupelo. A guy [15] named Turner that he tried to get a ride from at the convenience store just before he was arrested

said he wanted a ride to the Tupelo Wal-Mart and that that's what he was looking for. Several other people that ran into him at the convenience store said the same thing.

And what Brett said in his testimony was he decided to go to this Wal-Mart Tupelo because his grandmother was working there. He was trying to get to his grandmother. That's absolutely uncontradicted that that's what he was trying to do when he was leaving the scene where the crime happened.

This isn't a mature person's reaction. This is a child's reaction. And it's absolutely uncontradicted in the record.

Now I want to talk a little bit about things that were not in the prior trial because they don't relate to culpability, but they do relate to explanation.

Brett grew up – his mother is bipolar, as I said. There is a history of mental illness on both sides of his family, his father and his mother's side. His father was essentially completely absent. His mother would disappear, hitchhiking with truck drivers just out of the blue. She ended up marrying a stepfather who took them all over the south, who Brett had to deal with for the better part of a decade, who [16] was physically abusive. So he had this combination of the abusive stepdad and the mother who would disappear on him through his childhood. That's what he was raised with.

He was on drugs, prescription drugs, for mental conditions in Florida and abruptly was taken off them and sent to Mississippi to live with his grandmother and grandfather. And the reason he was sent to Mississippi to live with his grandmother and grandfather was the threats and fights with the stepfather had

reached such a level that they decided he better go to school in Mississippi.

Brett told a relative that he was going to – if the guy beat him again, he wasn't going to take it. He was going to call DHS, that he wasn't going to take this anymore. And they decided it was time to get him out of the house and get him to Florida.

When he got sent up here, he was abruptly taken off the medications he had been on for mental health conditions, just like that, which is not how – not with medical advice, not with medical care. He was taken off the drugs. And he came up here off the drugs, hearing voices, in a mental fog. He's got a history of – I mean, he was under suicide watch the whole time he was here in Lee County and when he went to Walnut Grove because of the things he was doing, [17] like cutting himself on his wrists.

He had a girlfriend who testified in the trial, but one of the things you didn't hear about in the trial is she was encouraging him, *If you love me, you'll cut yourself*. It was as bad a situation as you can imagine a child being raised in.

And you'll hear testimony from an individual that works at Walnut Grove who will talk – who was virtually a father and his wife virtually a mother for Brett while they were down there, who is coming up here to talk about the way Brett improved at Walnut Grove. And when he got the stability and when he got supportive people around him like the man who will be testifying, he changed. He did not – was not the person that arrived there under suicide watch after he had been at Walnut Grove for some time.

You will hear that years ago he was in one fight at Parchman? No, at Walnut Grove, but other than that,

he's not got really a disciplinary – he's not got a substantial disciplinary record in the prison.

So one of the considerations in *Miller*, you're in an unusual position because *Miller* says we have got – we can't assume that this juvenile won't change because of the nature of juveniles. We can't assume that rehabilitation [18] isn't going to be a factor here, even though because it was such a heinous crime. You've got an advantage over somebody looking right at the end of the trial what kind of sentence because you've got a history of nine years in which he has behaved – the crime was an anomaly, but the chaos was an anomaly. Well, now that he's out of the chaos, he's not been – you know, he's behaved in a prison system for nine years.

So those are the kinds of factors this Court is going to hear about that I believe should drive its decision about sentencing in this case.

Unless the Court has any questions, that's my opening statement.

THE COURT: Mr. Freeland?

MR. FREELAND: Yes, Your Honor.

THE COURT: There is something about this that may or may not be dealt with in the course of whatever evidence you're going to put on, but it is my recollection that this event, the killing event, followed in the day when it was discovered by the grandfather, the deceased, that the girlfriend, as you call her, who had come from Florida to join him, to be with him, when the grandfather, Mr. Jones, discovered that, there was some confrontation about that and –

MR. FREELAND: That was the girlfriend's [19] testimony. One of the neighbors did see the girlfriend,

so, I mean, I guess – and she was there when the police picked them up. So that’s the testimony in the trial. But, yes, Your Honor, the girlfriend testified – well, no one was there when – but Brett when whatever happened with his grandfather happened.

THE COURT: She was outside the house.

MR. FREELAND: She was outside the house. She had seen his grandfather confront Brett earlier in the day, in the morning, in the bedroom when he found the girlfriend, but other than that – I think all the – what the testimony that happened was, she saw the grandfather confront Brett about it and that she had to be got out of there.

The neighbor saw her in the yard, and she talked to Brett after and saw him after, as did the neighbors, the grandfather was killed. So, in a sense, the evidence is uncontradicted that he brought her up here from Florida. I can’t even – I cannot recall whether during Brett’s cross-examination or direct examination he was asked about bringing her up here. But that’s the evidence in the record that I – and I’ve read it this week, so it’s pretty fresh in my mind.

THE COURT: All right, sir. You may call your first witness.

[20] MR. FREELAND: Call Madge Jones.

THE COURT: Tell me again who this is.

MR. FREELAND: Madge Jones. It’s Brett’s grandmother.

LAWANDA MADGE JONES,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

Q. State your name, please, ma'am.

A. Lawanda Madge Jones.

Q. And where do you live?

A. Shannon.

Q. How long have you lived there?

A. Since '72.

Q. All right. So you were living there on August 9th, 2004?

A. Yes.

Q. Okay. And what's your relationship to Brett Jones?

A. He is my grandson.

Q. And your son is his father?

A. Yes.

Q. And what's his birthday? When was he born?

A. July.

Q. Of?

A. Brett was born in '87.

Q. I'll clarify that later, Your Honor. It's not the right year, but . . . And in 2004, how old was Brett, [21] at the time of this?

A. He was 14, and he had a birthday.

Q. Just before it?

A. Just before it.

Q. Okay. And where was Brett living in August of 2004?

A. He had come to my house for a school year.

Q. And where had he been living before then?

A. In Florida.

Q. And why did he come to your house? Why was he moved to your house?

A. I don't know exactly. Sometimes he came.

Q. So –

A. He had been there two other times for a school year when it was convenient for his mother or he wanted to come. We always –

Q. And he was taking medication before he came to live with you?

A. He was.

Q. And what changed about that when he came to live with you?

A. His mother had decided to take him off of it.

Q. What kind of medication was this?

A. I think it was something that they were giving teenagers that were hyperactive, and it was something to keep him calmed down.

Q. And was he also –

A. And it was supposed to be gradually taken off. She realized later she had done the wrong thing just [22] stopping it, from hearing things on TV about it.

Q. And was he also taking medication for depression?

A. Yes, he was.

- Q. And was he taken off that also?
- A. He was.
- Q. Just as abruptly?
- A. Yes.
- Q. Now, who was he living with in Florida?
- A. With Enette, his mother, and his stepfather, Dan.
- Q. And what was his relationship with Dan?
- A. It was as bad as it can get.
- Q. In what way?
- A. Controlling. Two young boys drove him to violence.
- Q. Against whom? Against who? Who was he violent toward?
- A. Brett and Marty. Mostly Brett. He was older, easier to hurt and beat.
- Q. Okay. And did that have anything to do with his move from Florida to your house?
- A. Yes, it had a great deal to do with it.
- Q. Explain that, please.
- A. Brett told me that he decided he was just not going to take any more of those beatings. The particular one he was talking about is when he was bent over at age 14 and beaten with a belt, buckle and all.
- Q. And what did he say he was going to do about the [23] beatings?

A. He said, *I realized I didn't have to take any more beatings, and I'm not going to, like that. I'm going to get the child welfare involved.*

Q. Okay. And talk about his relationship with his mother, Enette. And is that – just for the court reporter, I believe Enette may be spelled E-N –

MR. LESTER: It's E-N –

MR. FREELAND: It's normally –

MR. LESTER: It's E-N-E-T-T-E.

MR. FREELAND: Yeah, it's E-N-E-T-T, not A-N-E-T-T.

BY MR. FREELAND:

Q. But anyway, talk to us about his relationship with his mother and the care his mother took of him.

A. Well, he loved his mother. She loves him, but she has some emotional problems and has since I have known her, which was quite awhile before Brett was born. But when she was not in this emotional breakdown, drink whiskey state, she was a good mother.

Q. And how often were there the emotional breakdown and whiskey states? How much of the time was that going on?

A. From once a week to once a month.

Q. Okay. And to what extent would she leave him alone?

A. Leave him alone?

Q. Um-hmm. Abandon him.

A. A good bit. His father, Tony, worked at night, [24] and she left him often. I have gotten calls from

the apartment building where they lived – I’ve never mentioned this to a soul before in my life – that he was screaming all night long.

Q. So when you say his father, Tony, so this would have been before the marriage to the stepfather? She was doing this even as early as when your son was living –

A. When he was five weeks old.

Q. Five weeks old?

A. I got him from – yes, when he was five weeks old and before then.

Q. So you had to – when you say *I got him*, tell me what you’re talking about.

A. Go up there and get him. One night Bertis wouldn’t let me go, middle of the night, worried all night. And the lady that called called me about three times. He was screaming in his room.

Q. And when you would go up there, who would be at the house?

A. Her sometimes. Different places all the time.

Q. So sometimes she –

A. I’ve gotten him out of trailer houses, wherever she was living at the moment.

Q. And was there an incident where he and Marty escaped from a house, a trailer house?

A. Yes, they – Enette and the friend she lived with lived at Plantersville, a trailer park. Brett was really little, but Marty could walk.

Q. Okay.

[25] A. The old trailer had a sloping window on it and a bunk or something, and he kicked and got out of that to get away from the fight the other woman and Enette was in. Enette is terribly emotional, and it shows up in a bad way when she has had whiskey. There was a terrible fight. The cops were involved. Everybody went to the hospital – they took the baby to the hospital. Welfare let me pick him up there. He was not very old. They had a tube on top of a scale, and they dropped that baby in there and cut him and scraped him all up and down to weigh him, the nurse did. You know, you hurt my baby, you hurting me. And anyway, we brought him home. Went over and got Tony out of jail. At that time she was fighting with Tony.

Q. All right.

A. The other time we got him, he had gone to get help when they – he was older and out of the old trailer. It was in the wintertime, a few days after Christmas, and they was barefoot, he and Marty, and went to get help of some sort. A friend of my husband's ended up with them and Enette, all barefoot in another area the next morning, when we were called to come and get them, my husband and I.

Q. And was there a time when she was living with other people and she was – was there a time when she was living with two women?

A. One woman at a time.

Q. Okay. All right. And what was – what relationship did she expect Brett to have with the women she was living with?

[26] A. They had to call these women *Dad*.

Q. When you say *they*, who do you mean?

A. Brett and Marty.

Q. When did that occur?

A. Marty was talking well, so he might have been three and Brett five. Or four and six. They were just little boys sitting on a bed like a one-year-old playing with their Hot Wheels, and one of them said *she*, Brett did, and Marty hit his hand and said, *You've got to say he about her*. And little things like that that we ignored, couldn't do anything about it.

Q. And how long have you known Enette?

A. More than a year, I guess, before Brett was born.

Q. Okay.

A. Or a year and a half.

Q. And the –

A. I knew his grandmother. I knew her first.

Q. And I want you to describe for the Court – I mean, you've sort of talked about it in specific terms, specific incidents, the mental health issues you observed with Enette over the years, what you saw about her mental problems with mental health.

A. It seems there was often like a rage against life itself. She just couldn't handle anything. It went from getting ahold of her mother's wheelchair and shaking it until her mother was afraid for her own life and called me. And just give up and run off, hitch a ride with a truck driver to different cities.

[27] Q. This is when she had children in her house that she was doing that? Was she doing that when she had children in her house?

A. Oh, yes.

Q. How often?

A. Well, I would say four times that I can remember some details of it.

Q. Okay. And who would be with the children when this occurred?

A. At one time Tony and me had them.

Q. Okay. Did she ever leave them by themselves?

A. I wouldn't know that.

Q. Okay.

A. I was always called to get them or she would bring them to me.

Q. Okay.

A. Or have somebody to. Brett doesn't know this stuff, and I'm so sorry for him to have to know it. But his mother has had some emotional, mental health problems since she was 15 years old.

Q. In August of 2004, where were you working?

A. Don't hear well, sir.

Q. In August of 2004, were you working at Wal-Mart?

A. Yes.

Q. The Wal-Mart on – where was the Wal-Mart you worked?

A. It's on West Main.

Q. In Tupelo?

A. Tupelo.

[28] Q. Okay. So somebody coming to find you during work hours would come to the West Main Wal-Mart in Tupelo?

A. That's right.

MR. FREELAND: Court indulge me for a moment?

THE COURT: Yes, sir.

(BRIEF PAUSE.)

MR. FREELAND: No further questions.

THE COURT: Cross-examination?

MR. BOWEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. BOWEN:

Q. Ms. Jones, I'm Richard Bowen. I'm assistant district attorney. I would like to ask you a few questions, please, ma'am, along the lines of what you have just testified about. First of all, now, you've told us that in August of 2009 when your husband was killed by Brett that he had been up here a couple of times during the summer prior to that, during the summer months; is that correct? Did I understand you correctly?

A. No, that's not correct. He came to stay during his kindergarten year. His mother lived closer around then, not in Florida.

Q. All right.

A. He stayed with his dad and me, and we sent him to kindergarten. The other time he was in the seventh grade. He was – he came up here from Florida that time.

Q. All right. Do you know how long that he and his [29] mother had been living in Florida when this happened in 2004?

A. No, I can't remember right off. I might get the date wrong or remember when she went.

Q. All right. But you believe that when he was in the seventh grade he was up here one time?

A. He stayed the school year, seventh grade, with us.

Q. Okay. Have I got the names right? Enette's new husband in Florida was Dan; is that correct?

A. Dan, I think, is his first name.

Q. What's his last name?

A. I don't know.

Q. Okay. Did you ever visit them in Florida?

A. No.

Q. So what you know about the relationship or the family in Florida is what was told to you by Brett?

A. Yes. The beatings down there and his mother told me.

Q. All right. So you just have what his mother and Brett told you about that; is that correct?

A. Yes. I was not in Florida watching him being beat.

Q. All right. Well, you never saw him beat at all, did you?

A. No.

Q. Okay. Were you aware that he had some disciplinary action taken against him by the juvenile authorities in Florida, talking about Brett?

[30] A. Only that his mother told me.

Q. Once again, you don't know anything about what happened in Florida except what you were told by Brett or by his mother, Enette?

A. That's right.

Q. But you take it from that that he didn't have a very stable home environment in Florida?

A. That's right.

Q. But you and your husband provided him a stable home environment while he was here, did you not?

A. Yes.

Q. And how long was he here when this happened in August of 2004?

A. I picked him up in Florida, June, middle of June maybe, June 15th. We may have gotten back around June 15th. I'm not sure.

Q. So he had been living with y'all less than two months when this occurred; is that correct?

A. Say that again, please, sir.

Q. Brett had been living with you and Bertis less than two months when Bertis was killed?

A. He was actually with us very much less than two months. He stayed a great deal with his cousins around on Enette's side of the family, Pontotoc and Tupelo.

Q. Now, did you know that when he had this problem with his stepfather in Florida, it was Brett who was required to undergo a management – or anger management?

A. I'm sorry?

Q. Do you know that when he was in Florida, based [31] on what he and Enette told you, that Brett had been required to undergo anger management as part of the disposition of his juvenile problem?

A. Yes. And I understand that it was early, near when he came up here.

Q. Now, when did you first meet his girlfriend, Michelle Austin, Brett's girlfriend, that he brought up here?

A. That thing that came up here, I never met her at all.

Q. You never saw her before this happened?

A. No, I did not. I only saw her – they shut us up in adjoining rooms for the trial, and I assume that was her.

Q. You did not know that Brett had been having her in your house?

A. No. My husband knew. I believe he knew, but he was a secretive person.

Q. You did not know that Brett had arranged to have Michelle Austin brought up here from Florida, that he, in fact, arranged her coming here?

A. No, I did not know that.

Q. So I guess it's no use to ask you how he was able to accomplish that, a 15-year-old boy getting another 15-year-old girl up here from Florida with obviously

limited means of support. He must have been pretty resourceful to be able to do that. Would you agree?

A. He was pretty resourceful. That is true. And he had people to help him.

[32] Q. Would you describe Brett in 2004 as a relatively smart kid?

A. Smart kid?

Q. Yes. Did he have reasonable – in fact, didn't he have above-average intelligence?

A. Yes. He was talking – he said a word when he was three weeks old, answered a question when he was five weeks old.

Q. So he didn't suffer from any kind of mental disability or diminished mental capacity?

A. Children who were born almost genius or whatever that – it is not a blessing; it is an affliction.

Q. You're not saying he was a genius, are you, or are you? Is he a genius?

A. Borders on it. Other things that can cause emotional problems.

Q. Do you know what his IQ is?

A. No, I don't.

Q. But you do know that he is above-average intelligence?

A. Yes, I have forgotten the IQ. The whole family – his family is like that.

Q. All right.

A. So many of the family.

Q. Did Bertis ever discuss with you Brett's discipline problems either in Florida or when he began living with y'all?

A. (Nodded head negatively.) No. Like I say, Brett wasn't here very much, but there was never a problem [33] ever.

Q. In fact, there was never any problem that you were aware of between Brett and Bertis, your husband, was there?

A. That's right.

MR. BOWEN: Court indulge me a minute?

THE COURT: Yes, sir.

MR. BOWEN: No further questions, Your Honor.

MR. FREELAND: No redirect, Your Honor.

THE COURT: Ms. Jones, you may step down. Do you want her to go back to the –

MR. FREELAND: I don't anticipate recalling her, Your Honor. She can sit in the courtroom.

THE COURT: All right. You may have a seat in the courtroom if you wish.

MR. FREELAND: Call Marty Jones.

MARTY JONES,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

Q. State your name, please.

A. My name is William Martin Jones.

Q. And what's your relationship to Brett Jones?

A. His younger brother.

Q. And what's y'all's age difference?

A. About two years.

Q. And you grew up with him before he was 15?

[34] A. Yes, sir.

Q. Okay. Where were you living in the summer of 2004?

A. We were living in Jupiter, Florida, in the West Palm Beach area.

Q. And who was at the household?

A. My brother, myself, my ex-step dad, Dan Alcock, and my mom.

Q. And describe your and Brett's relationship with Dan Alcock.

A. Strained, fear, and stress.

Q. Why fear?

A. He was very mentally and physically stressful, like abusive emotionally, things like that.

Q. How long had y'all been living with him?

A. Since I was six. So up to that point, it had probably been about six or seven years.

Q. And, of course, Brett, except for when he would come up and visit family in Mississippi, he would be living in that household?

A. He had moved – the year before he was living with us in 2004, he had stayed in Mississippi a year, and then he moved back with us.

Q. So he spent the school year, 2003 and '04, in Jupiter?

A. Yeah.

Q. And then came back up here in 2004?

A. Yes, sir.

Q. Why did he come back up here?

[35] A. It's because of my stepdad and all the incidents that happened down there between him and the moving and stress.

Q. All right. And you said something about physical abusiveness. Talk about what you mean.

A. I'd say overreactions for kids. Instead of a stern talking, he would get in your face and poke at your chest, poke you in the face, grab you by the arms, grab you by the neck, sling you around and have you sit down, things like that.

Q. Would it hurt you?

A. Yeah, he left marks quite a few times.

Q. How long did this go on?

A. Probably started about the time I was about nine or ten. We had all been living with him about a year when we realized he was that way.

Q. And was he that way toward your mother?

A. Yes. Arguments all the time, screaming, yelling, throwing, breaking things.

Q. And would he – did he take measure to keep y'all from escaping this?

A. Yes. A scenario back in 2001 or '2 when we lived in Nashville, Tennessee, and when my mom got in an altercation in their bedroom, and I remember my

mom – I believe he threw her down on the bed, and she was screaming for my brother and I to run. And by the time we could make it just from one end of the living room to the other to the door, he had already made it down the hallway, grabbed both of us into the corner, and [36] dead-bolted the door and told us to sit on the couch. And, I mean, you know, we obeyed, of course.

Q. Okay. And did your mother have issues with mental health or has she had?

A. Yes, sir. High anxiety, heavy depression, bipolarism.

Q. What do you mean by bipolarism?

A. Heavily depressed one moment, you know, and the next anxious all the time. It would just kind of fluctuate depending on how the day went.

Q. So would that change traumatically from moment to moment?

A. Yeah. One thing said she could be in a fine mood and have one thing said and her whole world crash down, you know. And that – of course, she would try to not let it affect us; but, I mean, that affected her, so it affected us.

Q. How often would this go on?

A. Every day maybe.

Q. Would she disappear on you?

A. She wouldn't – I mean, her and my stepdad would get in arguments, and she would, like, leave and walk down to the neighbor's house or walk down the road in order to get away from him. But as kids, she wouldn't leave us alone.

Q. Okay. And Brett had some mental health issues when he was down in Florida, did he not?

A. Yes, sir. Brought on, I believe, by my stepdad maybe.

[37] Q. And was he on medication for it?

A. Before he moved up in 2004, yes.

Q. And do you know the names of the medications?

A. No, sir.

Q. And you stayed down there when he moved up here, did you not?

A. Yes, sir.

Q. There has been – it's been asked whether he was taken to – required to do anger management when he was in Florida. Do you know anything about that?

A. I'm not sure.

Q. What about your stepfather? Did he have any consequences for his behavior or the way he treated y'all?

A. I believe maybe in '99 or 2000 they had split, my mom and my stepdad, and he was supposed to go to anger management classes. And that was the stipulation to them getting back together, and he never did. And then after all that happened with my brother, I believe there was some talk he was supposed to go to anger management classes, but I'm not sure if he ever did or not.

Q. Okay. When did they – they split in '99. Where were y'all living when they split?

A. We were taking care of Pontotoc Park, and they got into it. And we ended up staying with my Aunt Sharon for a little while, but that was still in Pontotoc.

Q. And your Aunt Sharon would have been in Pontotoc, Mississippi?

A. Yes, sir.

Q. And you said it was stipulated. What do you [38] mean by that?

A. What do you mean?

Q. I just – were they in court?

A. Oh, no, sir. Or not that I'm aware of. I believe it was kind of a personal agreement between them.

Q. Okay. All right. Did you know that Brett's girlfriend had come up here to Mississippi?

A. I heard some mention of it, but us being that young –

Q. You just heard about it?

A. Yeah, it was in a way of *I wish I could see her*. Like, *I wish she could just be up here*, you know.

Q. But you don't know what happened or how?

A. No, sir.

Q. Were you aware of Brett cutting himself?

A. Yes, sir.

Q. Tell me about that.

A. The first time that I physically saw it happen was my brother and Michelle had gotten into an argument in a way that she basically was beating him down, screaming at him, calling him all sorts of worthless, and she basically worded it like –

Q. You heard this?

A. Yes.

Q. Okay.

A. Had worded it like, *If you love me, you'll do this*, you know, *or you don't love me* type of thing, kind of egging it on.

Q. This being what?

[39] A. Like, *You wouldn't cut yourself*. My brother had had a steak knife. You know, *I would bleed for you* type of thing, and she basically put – slapped and beat him down and told him to do it and so he did. But I believe he had started cutting himself a little bit before that. I believe that had something to do with it.

Q. All right. And when was this?

A. Between 2003 and 2004.

Q. So in the school year before he came up to Mississippi?

A. Yeah.

Q. Okay. How long had he been around this girl?

A. Within just that year he was living here and moved down there for a year.

Q. All right.

MR. FREELAND: Court indulge me for a moment?

(BRIEF PAUSE.)

MR. FREELAND: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. WEDDLE: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. WEDDLE:

Q. Mr. Jones, my name is John Weddle. I'm one of the assistant district attorneys here. I want to ask you a few questions about your testimony. All the things that you testified about, the issues with your stepfather, with your mother, with Brett cutting himself, having these [40] issues with his girlfriend, being on medication, all those things occurred in either Tennessee or Florida; is that correct?

A. No, sir. The parts with my stepdad, his abuse, all that started when I was six living here in Mississippi.

Q. In Mississippi?

A. And we moved.

Q. I see. But what you described at all times was when you and Brett were in the home with Dan and your mother, correct?

A. Yes, sir.

Q. Okay. None of the behaviors that you describe occurred at your grandparents' home?

A. I wouldn't know. I wasn't living with them.

Q. Right. I mean, you can't testify about anything you didn't see. But you don't know of anything, any issues like that going on at your grandparents' house; is that correct?

A. Not me personally.

Q. Okay. Personal knowledge?

A. Yeah.

Q. Okay. When you described Dan's behavior, you said that he was mentally and emotionally abusive, and you used the word *like physically abusive*. And the way you described his behavior was that he would poke and grab and sling around.

A. Yeah.

Q. Is that basically what you testified to?

[41] A. Yes.

Q. So there was some physical things going on. Did he ever hit you or Brett or did you ever see him hit Brett with a closed fist or anything like that?

A. Not as younger children, no, sir.

Q. Any time?

A. The incident down in Florida, he grabbed him by the throat, but not a closed fist, no.

Q. Okay. So the grabbing and the slinging around and those sorts of things, that pretty much was the normal type of *like physical abuse* that you're describing here today?

A. Yes, sir. Not beatings, per se.

Q. Okay. Did you ever witness Brett getting hit with a belt while you were present at any time?

A. Yes, sir.

Q. And do you ever recall Dan hitting him with the buckle end of a belt?

A. Yes, sir.

Q. How many times did that occur that you recall?

A. I believe it was once or twice.

Q. Okay.

A. That I saw.

Q. Is that what led to the altercation between Brett and Dan that caused the move from Florida to Mississippi?

A. I'm not sure. I came in either after it happened, because he had already been home for a little while, and I came out of my room during the argument, [42] so

Q. Okay. You said that you witnessed part of the incident that kind of led to Brett moving from Florida to Mississippi. You said something about Dan having his hand around Brett's neck or throat; is that right?

A. Yes.

Q. You saw that?

A. Yes, sir.

Q. And is that what led to Brett somehow retaliating?

A. I believe so.

Q. What did he do? What did Brett do when that happened?

A. After he had grabbed him, I'm not sure whether it was before or after because it was a long time ago, but I know he had grabbed him and gotten in his face like I described. And my brother, I believe in his own defensive way, swung on him one time, missed, but swung on him or caught him in the ear.

Q. Okay. So he swung at him and hit him, and so that's what kind of caused or led to all this talk about maybe Brett should come and live with grandparents that summer and following school year, correct?

A. At that point that wasn't discussed between my stepdad and my mom in moving at all up to that point that I was aware of.

Q. Okay. But did it eventually lead to that, if you're aware?

A. Yes.

[43] Q. Okay.

A. Yes, sir.

Q. You described a pattern here of behavior with your stepfather and your mother involving you and your brother Brett. How many times, how often did anybody get called out to the residence? Did police ever get called out to the residence that you recall?

A. Other than that specific incident –

THE COURT: Let me ask you to speak up. I'm having a little difficulty.

A. Sorry, sir. Other than that specific incident we were just talking about, I don't believe so.

BY MR. WEDDLE:

Q. Okay. So other than when you say Dan put his hand on Brett in a way around his throat and Brett swung at him and hit him, this would be in 2004, I'm assuming?

A. Yes, sir.

Q. Other than that, you don't recall the police ever being called out to the house?

A. Not that I recollect.

Q. Any other agency? Do you recall any agency, whether it's law enforcement, human services, anything like that, do you ever recall – I know you were

young, but do you recall anybody ever coming to the house other than that one time that we just discussed?

A. No, sir.

Q. You state, after a question from Mr. Freeland, that your mother had mental illness issues and was bipolar.

[44] A. Yes, sir.

Q. Now, where do you get this information? Is this something that your mother has told you, other members of your family has told you, or is this some medical diagnosis that you're aware of?

A. It's a medical diagnosis that she was given.

Q. Okay. How are you aware of that?

A. I've seen the papers.

Q. I see. You also testified that your brother, Brett, was on medication. Did you – you don't know what type of medication, but you knew he was on medication?

A. Yes, sir. From what I would gather, it would have been antidepressants maybe or – I honestly have no idea.

Q. You don't know about that?

A. No, sir.

Q. Did you ever witness any times when Brett was at home in Florida with you and the rest of the family, did you witness any times when Brett might have been on his medication and off his medication and could you tell the difference?

A. Yes, sir, I could. I believe when he was on it it was almost like a lifeless zombie type of state. I mean,

very calm, but very gray area, like maybe thought-wise wasn't really happy, wasn't really sad, just was there.

Q. Okay. And when he was off of it, how did he behave?

A. I suppose a little more erratic, like [45] emotions –

THE COURT: I'm sorry. Tell me what.

A. Emotions. I mean, you could tell he had emotions at that point. You could see happy, sad, things like that.

BY MR. WEDDLE:

Q. So when he was off the medication, you would be able to recognize his emotions?

A. Yes.

Q. Whereas when he was on his medication, not so much?

A. Yes.

Q. Okay. How aggressive was Brett during this time? I know that he swung and hit his stepfather, you described that, in reaction to what his stepfather did to him. Did you ever witness Brett acting in any type of aggressive manner other than on that occasion?

A. No, sir, not that I recall.

MR. FREELAND: Marty, it's really natural to talk to the guy that's asking you questions, but the judge needs to hear it.

THE WITNESS: Oh, sorry.

MR. FREELAND: And speak up a little bit.

MR. WEDDLE: Your Honor, if you want me to get this way, it might help a little bit.

THE COURT: He's turned around talking away from me, and he's got a soft voice.

THE WITNESS: I'll talk to you, sir.

THE COURT: Turn the volume – turn the [46] volume up a little.

A. But, no, sir, I didn't see him being violent in any other way.

BY MR. WEDDLE:

Q. Okay. I believe you described just a few moments ago that sometimes when he was off of his medication, not only could you recognize his emotions, but you used the word *erratic*. Do you recall that?

A. Yes.

Q. What do you mean by that?

A. I guess the fluctuation. Maybe erratic wasn't the proper word to use. But you could tell the fluctuation between emotion, you know, happy, sad, anger, you know, things like that.

Q. Okay. So maybe not erratic, but you could just tell the difference?

A. Yes.

Q. Okay. Now, when Brett went up to Mississippi to be with his grandparents, you didn't go?

A. I went for about a week and a half.

Q. And you came back to Florida?

A. Yes, sir.

Q. I think we can all agree that Brett came to Mississippi because of this – well, because of a pattern of behavior, but chiefly because of this incident between himself and Dan.

A. I suppose so.

Q. Okay. It happened after that anyway?

A. Yes.

[47] Q. But he went up to go to school in Mississippi; you did not, correct?

A. No, sir.

Q. Okay. You were in the same environment down in Florida with your stepfather and your mother that Brett was?

A. Yes, sir.

Q. Have you had any issues – have you had any legal issues, any crimes charged against you?

A. No, sir.

Q. Okay. How old are you now?

A. I'm 23.

Q. And you don't have a criminal record at all?

A. Currently paying off one, but not any more than a PI, I guess, equivalent.

Q. Yeah, no felonies or anything like that?

A. No, sir.

Q. No crimes of violence or anything like that?

A. No, sir.

Q. And would you describe your experience in the home with Dan and your mother the same as Brett's experience?

A. No.

Q. Okay. How is it different?

A. He was more aggressive towards my brother honestly because my mom kept me a little further away.

Q. Did Brett get in trouble a lot at home?

A. Not any more than I did.

Q. Okay. Well, what did he get in trouble for?

[48] A. Staying out later than necessary or, I don't know, just talking back, I guess, like any older male would do.

Q. Okay. The situation you described in Florida appears to be a fairly bad situation between Dan and your mother and between you two siblings and Dan and your mother. Is that fair to say?

A. Yes.

Q. Is it also fair to say that Brett, because he was able to go live with his grandparents in Mississippi, was offered somewhat of an escape from that environment? Is that fair to say?

A. I would suppose so. I can't really dictate how it was up here versus how it was down there.

Q. You don't know how it was up here?

A. I - yeah, that's right. I really can't say for certain how things were. I mean, I would hear from them over the phone and, you know, not every detail is going to be told.

Q. Okay. Do you – I think you were asked a question about some anger management. Did you know that Brett had to go to some type of anger management after this incident that you described between him and Dan?

A. No, sir.

Q. Did you hear about it?

A. I may have, but –

Q. But you don't know anything about it?

A. – I don't recall about it. No, sir, not that I can remember from that.

[49] MR. WEDDLE: No further questions, Your Honor.

THE COURT: Redirect?

MR. FREELAND: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. FREELAND:

Q. Now, in the incident where Brett took a swing in self-defense, Dan had his hands on Brett's throat?

A. He had grabbed him by the collar or the throat, yeah.

Q. Okay. Were there other instances where he grabbed him by the throat?

A. I believe a few years before he had moved up here and then moved back.

Q. And when he would do stuff like that, would it leave marks?

A. Yeah, bruises. You could see where fingernails might have come across skin, things like that.

Q. To what extent with you did that go on, too?

A. A lot of shoving into wall, getting in my face, poking, like, in the chest, in the face was one that I remember very vividly, and constantly poking you in the face when he was mad.

Q. And as often as true, it was more of a confrontation with the older child?

A. Yes, sir.

Q. Describe that.

A. I guess the disciplinary action –

MR. WEDDLE: Your Honor, I know that there [50] is a lot of leeway here, but I believe this has already been asked and answered. This is improper redirect.

MR. FREELAND: Your Honor, it was dealt with somewhat in cross, and I was trying to expound.

THE COURT: All right. Answer the question.

A. Can you repeat the question? Could you repeat it?

BY MR. FREELAND:

Q. There was more of a confrontation toward the older, and I asked you to explain that, describe that.

A. Oh, yes, sir. It was – I believe it was more that Brett, being older, was aware of my stepdad not being his real father, thus kind of talking back to him a little more, you know, or questioning things a little more. And it wasn't so much of purposely talking back, it would be questioning what he did or going at my mom, questioning it, and that would come back from my stepdad hearing about it, which would come back on us if my mom was at work. And most of the times, since he was older and, I guess, aware of possible

consequences, Dan took a lot more out on him because Brett and my mom would keep me a little sheltered out of the way. But if he caught both of us, you know, we would both be getting yelled at in the same way.

Q. And what kind of – to what extent would being hit with a belt buckle leave marks?

[51] A. I know a few times it broke skin on me, so – because he didn't do it in a disciplinary way so much as a punishment, like a punishing way.

Q. Okay. And there was mention of depression with Brett. Can you expand on that?

A. Just fits of being sad, you know, worry and anxiety to him, and he wouldn't operate the same, like not as much motivation for things.

Q. How often would that be true?

A. Very often, probably daily.

Q. Okay.

A. At least once a week.

MR. FREELAND: No further questions, Your Honor.

THE COURT: Okay. Mr. Jones, did any of this ever result in the necessity or was there any medical treatment ever rendered to either of you?

THE WITNESS: To my brother, so far as I'm aware, he was seeing a psychiatrist and then the medication. But any time before that –

THE COURT: But other than – I'm talking about the physical injury kind of thing.

THE WITNESS: No, not broken bones or anything like that.

THE COURT: And apparently DHS or the welfare department or whatever they call it down there became involved at the time of this incident where Dan grabbed him by the collar and [52] he swung at him and the anger management thing came about as a result of that; is that correct? I'm just trying to –

THE WITNESS: I wasn't aware of it. They kept things like that from me. I was 12.

THE COURT: All right. Anything further?

MR. FREELAND: No, Your Honor.

MR. WEDDLE: No, Your Honor.

MR. FREELAND: May this witness be discharged, Your Honor?

THE COURT: You may have a seat in the courtroom if you wish.

MR. FREELAND: Your Honor, I would like a break please, Your Honor.

THE COURT: That's fine. Let's take a short recess and come back.

(BRIEF RECESS.)

THE COURT: All right. Who will you have next?

MR. FREELAND: Call Enette Wigginton, Your Honor.

THE COURT: Tell me who this is.

MR. FREELAND: Enette Wigginton, and I'll get her to spell it. This is Brett's mother.

ENETTE WIGGINTON,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

[53] Q. State your name, please.

A. Enette Wigginton.

Q. Could you spell Enette and Wigginton for the court reporter, please?

A. E-N-E-T-T-E. Wigginton is W-I-G-G-I-N-T-O-N.

Q. All right. And what's your relationship to Brett Jones?

THE COURT: Excuse me just a moment. Counsel, if you don't mind, if you'll come right here. This is a very important thing, and I want to know what you have to say about this.

THE WITNESS: Yes, sir.

THE COURT: So speak up so I hear what you have to say.

THE WITNESS: Can I turn just a little bit this way?

THE COURT: That would be better.

MR. FREELAND: And that's why I've moved over here so you'll be talking to the judge as much as you're talking to me.

BY MR. FREELAND:

Q. What's your relationship to Brett Jones?

A. I'm his mother.

Q. And what year was he born?

A. 1989.

Q. What's his birthday?

A. July 17th.

Q. So in August of 2004 he had just had, about a couple of weeks earlier, his 15th birthday?

[54] A. Correct.

Q. And you have two sons?

A. I do.

Q. Who is your other son?

A. William Martin Jones.

Q. Where was Brett born?

A. In Tupelo, Mississippi.

Q. And what's his father's name?

A. Anthony Martin Jones.

Q. People call him Tony?

A. People call him T.J.

Q. How long was Tony in the house with Brett when Brett was growing up?

A. Marty was ten months old when Tony and I separated the last time. We had separated several times before then, so a little over two, maybe two and a half years old.

Q. So he was about two and a half, at the oldest –

A. Yes.

Q. – when his father and you separated finally?

A. Yes.

Q. And describe what kind of father Tony was.

A. Tony has a drinking problem. That was what destroyed our marriage. He would disappear for days

on end. He was violent towards me. He knocked teeth out of my face. He broke my nose several times. It was not a very good relationship. And Brett was so little when he left, that I just – I couldn't let my children grow up in that violent household with him.

[55] Q. And how much was Tony around for Brett after that?

A. Not much. He would see him maybe one or two weekends a month maybe. A lot of time he would call and tell them that he was coming to get them and then never show up, and they would stand and wait for him all weekend, or he would take them to their grandmother's and dump them off and go out partying for the weekend. And I would go to pick them up Sunday and, you know, Madge would be mad at me because the kids got dumped on her, and I wouldn't even have been aware of it.

Q. So did there come a time when Tony virtually didn't have a relationship with the children?

A. Yes. When he went to jail for felony DUI and went to Parchman for several years, he had no relationship with his children.

Q. So he was – his drinking problem reached a point that he went to Parchman for a felony –

A. Yes.

Q. – DUI? When was that?

A. In around 1999, 2000.

Q. Where were y'all living at that time?

A. At that time we were caretakers at the city park in Pontotoc, Mississippi.

Q. What is city park?

A. It's Howard Stafford Park. It had a 44-acre lake, a 66-acre park with campgrounds, ball fields, bathrooms. We lived on the property in a small one-bedroom wooden cabin and were responsible for opening, [56] closing the gates, cleaning the park, emptying the garbage cans, renting the campers, that type of thing.

Q. When you say we, who are you talking about?

A. My husband at the time was Daniel Alcock. He was actually the person that was in charge of the park.

Q. And the sons, your two sons also?

A. Yeah, he was in charge of them –

Q. No, no. Well, I mean in addition to Dan and you.

A. Yeah, it was Dan, myself, and my two boys all lived in a one-bedroom –

Q. When did you marry Dan?

A. In 1998, I believe.

Q. So when – in August of 2004, he had been living with your sons for about six years?

A. Six to seven years, yes.

Q. And that would be from the time Brett was nine or so?

A. Yes, elementary school.

Q. Okay. And are you on disability now?

A. Yes, I am.

Q. What's the nature of your disability?

A. I have several mental disorders.

Q. What are they?

A. I have panic anxiety disorder, insomnia, posttraumatic stress disorder, bipolar, and manic depressive.

Q. What is manic depressive?

A. I have moments of absolute panic. Manic is what [57] I call it, where I don't think straight, I make snap judgments, not always the best kind. And on the other end of the spectrum, I become so depressed and despondent that I can't even get out of bed.

Q. How long will these phases of being depressed at that level operate?

A. Anywhere from a couple of days to months.

Q. And you've had a problem with depression a long time?

A. Since I was in my early teens, I started having problems.

Q. And how long – you described a sort of anxious manic phase. How long would they last?

A. Sometimes I still have panic attacks several times a day when my throat closes up and I can't swallow. I'll get just that – startled that something is horribly wrong, that I need to just run do something immediately and just a panic. I don't think straightly. I – it's a very horrible disorder to have, that you just – things make you anxious and nervous to the point to where you can literally think you're having a heart attack. And I have went to the hospital several times in an ambulance thinking I was having a heart attack when it was panic disorder.

Q. So it turns out that it was both panic disorder and the manic phase and not a heart condition at all?

A. Exactly.

Q. How often has that happened to you?

A. That has happened to me three different times [58] that I've went to the hospital in an ambulance. That was around early 2000, all through 2000. I think the last one was probably about four years ago.

Q. Have you had issues relating to suicide?

A. Yes, I have. I almost successfully attempted suicide five and a half years ago by ingesting foxglove and stopping my heart. I woke up in intensive care and then voluntarily checked myself into a place for a week for help.

Q. Now, I know things change over time, but to what extent have your mental health issues been a life issue for you or how far back do they go?

A. I started cutting myself when I was a teenager, probably 11 or 12. My parents fought horribly. They split up. I was overweight, unpopular, so the depression started in my early teens and continued on. I went through phases of bulimia. I went through phases of anorexia. I've had the panic attacks on and off horribly. I've had periods where I cried for days and days at a time where I could not – I would wake up crying, go to sleep crying, cry all – constantly. It's very horrible to deal with sometimes, just for myself to deal with.

Q. You said cutting yourself. What do you mean?

A. Taking razorblades and cutting myself to make myself bleed so I would not feel the panic and the hurt that was inside of my head and the problems. I could focus on physical pain that I was causing to lessen the pain I was feeling from the other things that were in my head.

[59] Q. This goes back to when you were a teenager, what you were just describing?

A. Yes, sir.

Q. And you said something in your answer about your parents fighting and described what I – you may not have said it, but it sounded like chaos in the home you grew up in.

A. Every day when my mother made it – my father came home from work around 4:00 and my mother came in around 6:30, and they would start arguing as soon as she came in the door about money problems and everything else. And I heard on a daily basis how if they didn't have children, they would have been so much better off. And they – it was an every single day thing they would make me answer the phone and tell – lie to creditors and tell them they weren't home and things. But it was chaos, and it was every day of my life.

Q. All right. Now, you married about – I believe you said in '99 you married Dan, and y'all were living in Pontotoc. But you didn't stay in Pontotoc, did you?

A. No, sir. We were at the park for about a year and a half. Then we moved to a house in Pontotoc. Then we moved to a house in Tupelo. I believe the children were swapped out of schools four times just that year. And he got hired on to Albertson's and moved to Nashville, so we got transferred up there. Then we got transferred to another area south of Nashville, so that was another school swap. We were there two months. The children had just started school, and he told me that we were having to [60] move to Florida. He was transferred.

So pulled the children out of school, took them down, got them in school there. And then it wasn't even a week later we had to pull them out of school again and take them over to Jupiter Beach area. And it was constant moving. I don't think they actually spent one entire school year at the same school.

Q. I lost count. How many moves did you just describe?

A. Oh, dear lord. Let's see. One, two, three, four, five, six, seven, eight. Eight just between '99 and 2004. There were eight different moves, actually nine different moves.

Q. Nine different moves in five – four or five years?

A. Yes, sir.

Q. Describe Dan's relationship with Brett.

A. Dan hated Brett because he looks like his father. He was jealous of both of my children. Unbeknownst to me, when they were younger and I would leave him with them to go grocery shop or whatever, he would cuss them, tell them – call them son-of-a-bitches, little motherfuckers, tell them how sorry their father was, how sorry they were, they were never going to be anything.

Q. How did you learn this was going on?

A. A couple of years later, Brett finally got brave enough to tell and begged me to not let them – make them stay with Dan anymore because he was mean to them. And he [61] had threatened them, and they were afraid to tell me.

Q. What kind of threats?

A. That he would hurt me if they told.

Q. Oh, I want to – before I go further into the relationship with Dan, I want to make sure I straighten something out. You said you're on disability. Is that Social Security disability?

A. Yes, sir.

Q. Okay. Now, back to Dan. The conflict between Dan and the son – was it more focused on one or the other of the sons?

A. It was more focused on Brett because Brett looks like his father and Marty looks like me. So he felt that – I felt that he hated Brett more because Brett reminded him of Tony Jones.

Q. That's something you observed?

A. Yes.

Q. Okay. And did it get physical?

A. He spanked them. He used to lock them up in their room when I would leave to go to the store, or I worked for a little while for the Census in 2000. And he would lock them up in their bedrooms and lock them in while I was gone so he wouldn't have to deal with it while he went and watched pornography and pleased himself.

Q. When you say *spanked them*, were you talking about ordinary physical discipline or something else?

A. He spanked them for small infractions, small things, it seemed like. He would spank them with a belt. He would spank them with a paddle. I've seen him spank [62] them with a switch.

Q. And did he treat them roughly with his hands, too?

A. He has – I've seen him grab them and shake them and have them and just yelling at their face, yelling and screaming in their face.

Q. At what age was he doing that, start doing that?

A. Probably Brett was nine, eight, seven.

Q. And was he doing it some to Marty also?

A. It started with Marty a little later.

Q. Okay.

A. Brett was always the bravest of the two, so he got in the most trouble.

Q. Okay. And to what extent did this change over the time that Dan was living with Brett in the house? Was it about the same or did it get worse or –

A. It got worse the older the children got. And after I realized how he was acting towards them, it caused a lot more arguments between him and I, which then he would turn around and try to punish the children when he was mad at me by taking things away from them, promising them things, and then at the last minute taking that away from them, just being hateful. They were not allowed to have friends over. If their friends would call, he would hang up on them. He did the same with my family. He was just a hateful, very hateful person, and I was stuck. I had no way to get out or get my children out.

Q. And then there was an incident when Brett struck back at Dan, wasn't there?

[63] A. Yes.

Q. What – were you there? Did you witness it?

A. Yes, I was. Brett had just got off restriction for being – coming in late, and we had allowed him to go to a party with Michelle Austin, his girlfriend at the time, and her family, which was a little further up the coast. He was supposed to be home at a certain time, and he did not make it home on time. He did not call. It was probably 45 minutes late when he got in, and Dan went absolutely crazy and was screaming at Brett and yelling and yanking his belt off, telling him he was going to beat his ass. And Brett said, *No, you're not going to hit me ever again* and went to punch him. And Dan turned his head, so it just barely grazed him.

But the – and the screaming and hollering, Dan went outside. Marty was screaming; he was present. The police were called, and they arrested Brett for domestic abuse because he didn't have, you know, any marks on him from where Dan had grabbed him by the throat, and I had had to push Dan off of him.

Q. So when he took a swing, Dan was marked on his ear or something?

A. It split his ear just a little place right there, and ears bleed horribly. It wasn't even – I mean, a Band-Aid –

Q. So that's why when the police arrived, they –

A. The police arrived. Since he was bleeding from the ear, they arrested Brett for domestic violence.

Q. And that was all treated as a juvenile offense, [64] was it not?

A. Yes. It was a first-time offense.

Q. Did Brett have any other legal issues before August of 2004 other than that?

A. No.

Q. Okay.

A. He was a good student.

Q. And so that was when a decision was made to send him to his grandparents?

A. Dan told me that I had no choice, that he was going to kick the three of us out if Brett did not go to live with his father or somewhere else.

Q. Okay. And why did you not send Marty?

A. I actually did send Marty up there to visit. Marty stayed, I think, two weeks and then he came home. Marty was quiet. He didn't ever challenge Dan much. He kind of kept his head down, and it was like he had – Dan had something really personal against Brett, and I believe it was because Brett looks like his dad.

MR. FREELAND: Court indulge me for a moment?

(BRIEF PAUSE.)

BY MR. FREELAND:

Q. And Dan had a Ping-Pong paddle used for discipline, didn't he?

A. Yes, he did. He had a Ping-Pong –

Q. What was written on it?

A. *The Punisher*, I think.

Q. And would he call – what would he call – what [65] names would he call Brett and Marty? Would he call them by their name?

A. No. He called them the little bastards, little motherfuckers, little assholes, little pricks.

Q. Did he ever call them by their name?

A. Rarely.

Q. Okay. Once Brett was in prison, would Brett write you?

A. Yes, he did.

Q. What happened to those letters while Dan was around?

A. A lot of them I didn't even get because Dan would get the mail before me, and he would hide them from me and I wouldn't even know I was getting letters. He did the same thing to the letters that Tony wrote to Brett and Marty when he was in jail. And we never knew that he was even trying to contact his sons until I found a letter that had been torn up and thrown in behind the pickup truck seat. And that's when I found out that Tony had been trying to reach his sons, and Dan was keeping it hidden from all of us.

MR. FREELAND: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. BOWEN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BOWEN:

Q. Ms. Wigginton, I'm Richard Bowen. I'm assistant district attorney, and I'd like to ask you a few questions [66] in light of this testimony you've made. When did you first meet Dan, and what was Dan's last name?

A. His last name was Alcock.

Q. Alcock.

A. And I met him in 1998. I was working at the Texaco station on Eason, and he worked at the Stanley plant and would come in on his breaks, and that's how I met him.

Q. And you eventually married him?

A. Yes, sir.

Q. When did y'all get married? In '99, did you say?

A. '99, yes, sir.

Q. So how long had you known him before you married him?

A. Probably about six months.

Q. Okay.

A. I had injured myself and had lost my ability to earn money, and he convinced me to marry him so he could support me and the children.

Q. How long were y'all married before you divorced?

A. Thirteen years.

Q. Thirteen years? Well, I'm going to ask you, and I will, Ms. Wigginton, if he was the monster – and I don't much know of any other way to describe what you have described someone, is that he is a virtual monster the way he treated you and the children, why did you marry him in the first place?

A. Because he didn't start out acting like a [67] monster. He started out being wonderful to my boys, taking them out to play video games and pizzas and treating me wonderful. After we got married, things started changing. He started cutting off all ties to my family. He cut off all ties to my children's cousins and their family. He tried to cut us – keep us off – I was

not allowed to work. I did not have any way to work. He would not watch my children if I found a job.

So I had nowhere to go. Both of my parents were deceased in the '80s, and I had no family. I had no friends. I had nowhere to go.

Q. And are you telling us it took you 13 years to finally divorce him after all of this abuse that you have described?

A. We didn't like each other very much, but we did try to stay together in order to make sure that the children had a home and had clothes and had food.

Q. Why would you care about making a home for your children if it was the home that you have just described to this Court?

A. Because it was the only home that I had available to me, sir.

Q. Well, did you not attempt to take advantage of other means of help, like protective services?

A. Yes, I did. I went to – stayed at a safe house, and Dan had to go – he joined a church in Pontotoc and went through anger management courses before I would come back to him. I was separated several times from him, and he would change and things would get better. And they [68] would be fine for a while, and then it would start all over again.

Q. Now, you stated that it was Dan that insisted that Brett go live with his grandparents; is that correct?

A. His father, yes. He wanted him out of his house.

Q. Or his father. Well, why is it if all of this abuse of these children is going on, it has to be Dan who insists that Brett get out of this situation and not you?

A. Because Tony had been locked up and unable to take care of his children during that time. He had just got out of prison, and Brett found out he was there and wanted to go live with his father. This was before then. He went and lived a year with his father and then came back to Florida with me. It wasn't working well. Then all of this conflict started. It got escalated because the boys would not take his crap anymore from him. They started standing up to Dan.

Q. Well, put Tony, Brett's father, aside about his situation. Why did you, if all of this abuse is going on, not get just Brett, but also Marty, too, why didn't you try to get them to the grandparents or somewhere else? Why did you let this go on if, in fact, this was all going on?

A. Because I had no way to do it. I was without any means of money. I had no vehicle. I had no way to travel. He had us living in Tennessee, which is away from Madge and them. He had us living in Florida. If there is – if you have no way to leave and you are so cowed [69] down that you can't even do anything to help because you're afraid, it's amazing the difference the choices that you make when you have no choices.

Q. Well, we're not talking about choices for you. You were talking about choices for your children. But are you sure that that – all of this abuse you're talking about is what was responsible for the split-up between you and Dan? You had your problems too.

A. That was part of it. That was part of it.

Q. Well, you had your problems too, did you not?

A. Absolutely.

Q. In fact, wasn't the real breakup of your marriage based more upon your infidelity than it was any abuse that Dan inflicted on anyone?

A. I was never unfaithful to Dan the entire time we were married.

Q. Okay. How –

A. He was the one that was cheating on me.

Q. Okay.

A. And he just – he said he no longer wanted to be with us, and I was so ready for him to go.

Q. But you're saying – you're telling this Court that before that, that there was no alternative place for Brett to live, like his grandparents'?

A. Not until he was told to leave. His father could not support him. His father would not support himself, much less a child.

Q. Well, didn't Bertis Jones and his wife, Madge, didn't they quite willingly and readily take Brett in when [70] he finally came up here?

A. Yes, he came up and spent a year with his father, went to school in Shannon for the school year. At the summer when we came up to visit, he asked if he could come back to Florida with us, and we let him move back to Florida with us.

Q. And, in fact, wasn't he provided a stable home environment here? There was nothing like what you described the situation in Florida.

A. Well, if you want to call a stable situation a house where his father was drunk most of the time and was showing – you know, Brett was subject to his father being intoxicated a lot and the end fighting that

goes on at the Jones house and the disapproval of the things that went on there.

Q. Well, you're not saying that Mr. Bertis Jones, who was killed here, was a drunk all the time, are you?

A. No, sir. To my knowledge, he never drank.

Q. In fact, he provided a very stable and much needed home environment for Brett for the last month or month and a half before Mr. Jones was killed. You would agree with that, wouldn't you?

A. No, I do not, because I understand that he had a very bad case of dementia. He was crying. His wife was begging him to go get help. He refused to go get mental help. He sat on his front porch with a shotgun watching the people across the street get surveyed because he thought they were going to steal his stuff. If I had known this condition that Bertis Jones was in, I would [71] never have sent either of my children up here.

Q. Ms. Wigginton –

A. I would have found somewhere else to go.

Q. Ms. Wigginton, what you have just stated and described, you didn't see any of that, did you?

A. No, I did not.

Q. You don't have any personal knowledge of it whatsoever?

A. Just what I have been told by the principals that were involved.

Q. What you have been told. Now, have you talked to Michael Jones?

A. We don't speak. We never have.

Q. And his wife, Pat?

A. Since they got married back in the '80s, I've never spoke to more than probably five words to either one of them.

Q. Would it surprise you that they have a very different version of what Mr. Bertis Jones, what his behavior was, in fact, what his attitude and his treatment of Brett, in fact, everyone he dealt with was?

A. I would absolutely agree that Michael and Pat Jones have a very different view of the entire world.

Q. Let me ask you about Brett. He is – or was a young man of above-average intelligence, was he not?

A. He still is.

Q. Was he in gifted classes?

A. Yes, he was.

Q. Where was he in gifted classes?

[72] A. Pontotoc.

Q. How about in Florida or Tennessee?

A. He chose to not get into the gifted program because his words were, he would rather be a small fish in a big pond than a big fish in a small pond. He wanted to go to regular school and have regular friends. I let him choose.

Q. So he was of above-average ability as far as –

A. Both of my boys are, yes.

Q. And, in fact, was in gifted classes. And if he wasn't in gifted class, it was by his choice.

A. He was in gifted class –

Q. Excuse me, ma'am. I'll try not to interrupt you, and I'd appreciate if you wouldn't interrupt me. But if he was not in a gifted class, it was of his own choosing. He could have been if he wanted to; is that correct?

A. Yes. The school gave him the choice in Florida.

Q. How long in 2004, August 2004, to your knowledge, had he known or had a boyfriend/girlfriend relationship with Michelle Austin?

A. He had met her the previous summer. When he moved up the summer of 2003, they were friends. They started dating each other around that fall.

Q. They were both 14 and 15 years old; is that correct?

A. Yes, they were both within a few months of each other.

Q. And she –

[73] A. I think she was actually a couple of months older than him.

Q. And she also lived in Jupiter, Florida; is that right?

A. Yes.

Q. Now, when were you aware that after Brett came to Lee County to live with Mr. Bertis Jones and his wife, Madge, that Austin – that Ms. Austin had also arrived here?

A. After my son was arrested.

Q. Do you know how she got here?

A. From what I understand, her father gave her mother her child support, which she gave straight to her. Then she went and told a woman that her mother

was beating her and causing her to have miscarriages. And this lady helped her provide her – buy a bus ticket and put her on a bus and sent her up here.

The police in Florida came to my house after her mother filed a missing person's report, and I told them to check Madge Jones' house because that's probably where she was headed.

Q. And you said that because you knew she would be coming here?

A. I did not know where the girl – I knew she was missing and that her and my son were having a romance, and that's where I assumed. I never knew she was actually here until after she was arrested and they released her identity.

Q. But in any event, someone helped her make [74] arrangements to get here in Lee County and, in fact, was with Brett at the time he killed his grandfather. Isn't that true?

A. I have no personal knowledge of that.

Q. Well, you have a lot of knowledge about other things, but you don't have any knowledge of that?

A. I don't know who helped Michelle get up here. I don't know what happened after she was up here. I was in Florida. I have no knowledge of how she got up here, what happened when she got up here. All I know is that she was here.

Q. Did Brett have any trouble in school?

A. Which school are you referring to?

Q. Well, any one school that he went to. How many different schools did he go to?

A. Many. He went to several.

Q. Did he have any disciplinary problems in school?

A. I believe that he had a little bit of a problem in Shannon school the year that he was there because of – well, he's white, and Shannon is a very nonwhite school, I guess is the best way to put it. And he had a little bit of problem with that, with kids bullying him. And I think he actually struck back once, and that ended the bullying. And I believe, to my knowledge, that was the only problems that he had in school and that was not when he was living with me. That was when he was living with Madge and his father.

Q. But when he was living with you or that you otherwise had knowledge, never did any school personnel, [75] teachers, counselors, anything, call you and say, *Ms. Alcock, Wigginton, or whatever, that, look, Brett has got some emotional problems here. He's got some disciplinary problems here. He's got some adjustment problems that need to be addressed.* That never occurred, did it?

A. Not until the last year that he was in school in Jupiter, Florida, when he was sneaking out to meet Michelle and skipping school to meet Michelle. Up until that time, he was on the honor roll most of the time. His teachers all loved him. He was an excellent student.

Q. In fact – in fact, he did not seek or neither did anyone else and he did not need any kind of psychological or other assessment or treatment in this time?

A. After the problems that we had with him sneaking out and Michelle and the arrest with the domestic assault in Florida, he was sent to a juvenile mediation program that the State of Florida has for

first-time juvenile offenders. In that class he was required to go to anger management and also to go speak to a social worker.

At the time, he told the social worker that he was having hallucinations and hearing voices and seeing things. So they told me that I had to find a psychiatrist that would see him. There were five psychiatrists within a 100-mile range of where we lived in South Florida that dealt with juveniles. Three of them were doing clinical studies, and two of them were so full that they did not accept any more patients.

[76] I found a psychologist down in Jupiter, Florida, Dr. Fiester – Fiester, I believe, was his name, Alan Fiester, and he agreed to see Brett. After Brett went to several visits with him, he told me that other than Brett having conflicts with his stepfather, that he did not think that Brett needed serious help.

Q. All right. There was no need of any kind of psychological treatment at that point?

A. They put him – I took him to a hospital in Palm Beach, the major mental hospital there, and they did an assessment. They thought that he should be on an antipsychotic and an antidepressant, and they put him on these.

Then I went to try to find a psychiatrist who was the only one who could prescribe those type of drugs to my son. And his regular physician refilled it once, but told me I would have to find a psychiatrist that would re-prescribe it. At that time, Brett ran away from home, went off of his medications, stayed gone for ten days, went cold turkey off of it. And when he came back, that's when all the bad stuff blew up, and he had to be sent here.

Q. Were you part of the juvenile proceedings or whatever they call them in Florida that – when he struck his father?

A. His stepfather?

Q. Stepfather.

A. Yes, I take him to the appointments with him. I would take him to meet with the psychologist. We went to [77] several different anger management groups for juveniles to try to find a group that he felt comfortable in.

Q. That's what I was going to ask you. Was there any other treatment prescribed or ordered by the Court there or agency or whatever, other than anger management classes?

A. That he needed to go to a psychiatrist, that type of thing, have an evaluation done, which we had done.

Q. But was any treatment ever prescribed other than anger management classes?

A. Just for him to take the medications, the antipsychotics and antidepressants.

Q. All right. Now, you've described earlier the injury that was caused to his stepfather as a graze. But then you told us his ear was actually split; isn't that correct?

A. It was split about this much right on the edge where he clipped him and it split. And the ambulance – an ambulance came. They checked him out and put a Band-Aid on it and said it bled – that the ears and head bleed a lot. And it was healed within a couple of days. It was not a serious injury of any kind.

Q. Well, it was a blow sufficient to cause a splitting of the ear, was it not?

A. Well, Dan had just pulled a belt and was threatening to beat the shit out of my son, so he was –

Q. He never struck him, though, and the officers found no evidence that he inflicted –

A. Except for the red marks on Brett's throat, and [78] they did not charge Dan because –

Q. They didn't see it. You said earlier they didn't even see any red marks. Isn't that what you said earlier, that they didn't see any red marks and his stepfather –

A. He had marks on his throat.

Q. Excuse me. And his stepfather had a split ear, and that's the reason they charged Brett with domestic violence?

A. They didn't examine Brett. All they did was examine Dan, who had a towel up to his face, and had some blood on him. And Dan was screaming that he had hit him, and the police took Brett. Brett didn't even get a chance to give his side of the story.

Q. All right. So you're saying the officers there didn't do their job? Is that what you're saying?

A. Absolutely.

Q. Okay. But, in any event, they didn't see any marks on Brett. They did see a split ear on his stepfather, and he was charged with domestic violence. Now, that's what happened, isn't it?

A. If that's what's on the paperwork that they have, then that's what happened, sir.

MR. BOWEN: No further questions, Your Honor.

THE COURT: Redirect?

MR. FREELAND: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. FREELAND:

[79] Q. I want to make sure I understand. You took him to a mental health facility, and they prescribed an antipsychotic drug and an antidepressant?

A. Yes.

Q. And previously he had been prescribed drugs for hyperactivity, had he not?

A. They had given him some type to calm him down.

Q. That's earlier?

A. Yes.

Q. So he was on drugs that were calming him down?

A. Yes. He had migraines, and that was part of it.

Q. And what was he on for migraines?

A. I don't remember the name of it. It was a liquid stuff that he said it made him feel like his head was wrapped in gauze, but he had to have two doses of it a day.

Q. So he was on a drug to calm him down. He was on something –

A. For migraines.

Q. – for migraines that made his head feel like it was wrapped in gauze. He was on an antipsychotic medication and an antidepressant medication. And he came to Mississippi with none of those, and he had just been off of them for days?

A. Yes.

Q. And when he came to Mississippi, he came up here in mid June?

A. Yes.

Q. And he stayed in Pontotoc?

[80] A. With my cousin, Sharon's family. That's always been like his other mother.

Q. So he wasn't with Madge and Bertis Jones initially; he was in Pontotoc?

A. He stayed at Sharon's for weeks. He has a cousin that's his age that he played video games and stayed with, and that's –

Q. And then he was going to go to school?

A. I was sending money. I had sent money down there for them to buy him school clothes that day.

Q. And so when did he move over from Pontotoc to the Jones residence in Lee County?

A. It wasn't – it had to have been around the end of July.

Q. So a matter of days before this?

A. He wasn't – yeah, it was just, I mean, like, a week, if even that long, because he had spent his birthday and everything over at my cousin's with all his cousins his age.

Q. And I want to make sure I understand the timing on your divorce with your – with Brett's stepfather. Y'all got married in '99.

A. That's right.

Q. And you separated before the divorce, did you not?

A. Yes, we did.

Q. Well before the divorce.

A. Actually we separated a year before the divorce.

Q. A year. And you –

[81] A. Actually a little bit longer.

Q. – separated about the time of your younger son's, Marty's 18th birthday, didn't you?

A. He left two months before Marty's 18th birthday.

Q. And when was that?

A. That would have been September 23rd, so it was in July of 2009, I guess.

Q. Okay. So y'all were together about ten years, not 13 years?

A. On paper we were together about – the attorney said we were together 13 years on paper, but we were separated a lot of that time, especially –

Q. And you were finally –

A. – during the last part.

Q. – finally separated in the tenth year?

A. Yes.

Q. Okay.

MR. FREELAND: No further questions, Your Honor.

THE COURT: All right. You may step down. You may have a seat in the courtroom if you wish.

MR. FREELAND: She can be discharged, Your Honor.

Sharon Frost, Your Honor. And just for the Court's information, I've got Sharon Frost and then the witness that came up from South Mississippi, and then I've got to have a conference with my client about testifying. I [82] anticipate he will, but I need to talk to him.

THE COURT: Very well.

SHARON FROST,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

- Q. State your name, please.
- A. Sharon Bledsoe Frost.
- Q. Where do you live?
- A. Batesville, Mississippi.
- Q. And where are you from originally?
- A. Tupelo.
- Q. Okay. Are you – have you lived in Pontotoc?
- A. I've lived in Pontotoc.
- Q. Okay. And so you would have – Brett Jones would have been in – around you in Pontotoc?
- A. Yes.
- Q. Okay. When did you live in Pontotoc?
- A. I lived in Pontotoc off and on for – I mean, my children went to school there.
- Q. And do you have a child that Brett was close to?
- A. Yes, my son Jacob.

Q. Okay. How old is he? I mean, when was he born?

A. He was born in '88.

Q. So he is roughly a year older than Brett?

A. Yeah.

Q. What's your relationship to Brett Jones?

A. I'm his cousin. His mother and I are first [83] cousins, but he's always called me Aunt Sharon.

Q. Okay. So you're –

A. His second cousin.

Q. Okay. So you're a first cousin to Brett's mom?

A. Right.

Q. Okay. So you've known him all his life?

A. Yes, I was there when he was born.

Q. All right. And how much have you been around him over the course of his life?

A. All of his life, you know, until he went to prison.

Q. All right. What's your mother's name? What was your mother's name?

A. Helen Bledsoe.

Q. And she would have been around him a lot also?

A. Oh, yeah. I mean, that's his mamaw, too, as far as he was concerned.

Q. You call her Mamaw?

A. Yeah.

Q. Could you describe the household that Brett grew up in?

A. I mean, it was – you know, it was not the best situation. I mean, he – I mean, his mother took care of him as best she could, but, I mean, a lot of times they had to make ends meet by whatever means possible. They lived in some not great places, you know, and a lot of times they would end up living with us for a time when they didn't have a place to live.

Q. What was the – what was it like when Enette was [84] married to Tony Jones?

A. That was on and off. I mean, he was – you know, they fought and they would make up and break up. And, I mean, they both loved Brett, but, I mean, they – and they loved each other to a degree, and they also hated each other. I mean, they had a –

Q. What kind of problems did that all present for a child growing up in the household?

A. I mean, he – you know, they never knew some days what the next day was going to be like.

Q. Were there mental health issues in the family that you knew of?

A. You know, there is issues.

Q. Like what?

A. Yeah. Like, you know, depression and, I mean, things you just worry about and just get depressed about.

Q. Were the kids left alone as small children?

A. Not to my knowledge, they were never left alone. They were always with someone.

Q. Okay. And what – did you know Brett's stepfather?

A. Yes.

Q. And describe the home when he was married to Enette.

A. It was very traumatic for the children. I mean, his favorite thing to call them was little motherfuckers.

Q. Did you witness this?

A. Yes.

Q. Describe – you say it was traumatic. Describe [85] what you saw and what you heard.

A. I –

Q. And when I say *heard*, I don't mean from other people. I mean –

A. Right, myself.

Q. – heard him say –

A. Yeah. Well, there was many times. I mean, you know, make a little bit of noise, and he was calling them, you know, bastards and – like I said, the favorite word was *You little motherfuckers get out of here*.

Q. How old were they when he was doing this?

A. From the time that they were together. I mean, they were little. They were kids, you know, that didn't need to be hearing that.

Q. I mean, how long did that go on?

A. For – I mean, they – forever. I mean, until they moved away, and I'm sure it continued after.

Q. Did you ever see physical confrontations between him and the children or him and Enette?

A. Oh, yeah, him and Enette had – you know, they would fight. I mean, not, I don't guess, come to blows, but, you know, screaming matches.

Q. Okay. And were you around Brett when he came up from Florida in 2004?

A. He stayed with me for a couple of weeks before he went back to his grandmother's.

Q. And how was he during that time he was with you?

A. He was fine. I mean, we had all the kids there, and they played and, you know, they wandered in the woods.

[86] Q. So he was a 14-year-old, just turned 15?

A. He did.

Q. And still playing, still a kid?

A. Oh, yeah, they explored. They found what they thought were panther tracks in our backyard. I mean, we just – they had fun.

MR. FREELAND: Will the Court indulge me for a moment?

(BRIEF PAUSE.)

BY MR. FREELAND:

Q. To what extent, when Brett had a normal environment like you presented to him, was he behaving differently than when he would otherwise?

A. Oh, yeah. I mean, he was always a good kid, I mean –

Q. When he was around in your house?

A. Yeah, yeah. I mean, he did. He minded me. I mean, they all had to.

Q. Okay.

A. For fear they could get in trouble.

MR. FREELAND: No further questions.

MR. WEDDLE: Would the Court indulge me?

(BRIEF PAUSE.)

MR. WEDDLE: No questions, Your Honor.

THE COURT: All right. You may be excused. You may have a seat in the courtroom if you wish.

MR. FREELAND: Call Jerome Benton. He's going to get him, Your Honor. Your Honor, I [87] told my investigator that I'm not going to call Tony Jones, so I'm going to tell him he can come sit in the courtroom if he wishes.

THE COURT: That's fine.

MR. FREELAND: So this will be my last witness other than Brett Jones.

JEROME BENTON,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

Q. State your name, please.

A. Jerome Benton.

Q. And what's your business or profession?

A. I'm fire and safety manager at the prison in Walnut Grove, Mississippi.

Q. What kind of facility is Walnut Grove?

A. It's a men's correctional facility.

- Q. It's a what?
- A. Man, men's correctional facility.
- Q. Is it a juvenile unit?
- A. It was. It now has changed to a man, adults.
- Q. And when did it change?
- A. About a year ago.
- Q. About a year. And do you know an individual named Brett Jones?
- A. Yes, sir.
- Q. And how do you know him?
- A. I know him because he worked for me when he was [88] incarcerated there at Walnut Grove.
- Q. So when it was a juvenile unit, he was an inmate there?
- A. Yes, sir.
- Q. And the whole time he was an inmate as a juvenile, he would have been in Walnut Grove?
- A. Yes, sir.
- Q. So did he come up to Walnut Grove in 2004 or soon after the incident we're here about?
- A. I'm thinking so, yes, sir.
- Q. Or 2005 possibly?
- A. Um-hmm.
- Q. Okay. When did you meet him?
- A. I met him about 2006, I say.
- Q. All right. How did you come to meet him?

A. I – I was the shift captain, and I got promoted to a unit manager.

Q. What is a unit manager?

A. Unit manager is a person that keeps over a unit, one unit, that serves a unit, that takes care, overseer over it.

Q. All right. And so you met him because you were promoted to unit manager?

A. Yes, sir.

Q. How did you happen to meet him?

A. Well, he kept on bugging me, asking me could he work for me. And I told him, *Go on and get out of my face*, you know.

Q. Okay. Was it like a joking relationship?

[89] A. It was a joking relationship, and he was a character. He was a real nice kid. And I put him off for a while, and then finally I hired him.

Q. And you say he was a nice kid. Could you explain?

A. Well, he got along with everybody. He was enjoyable. He was talkable. You know, we didn't have no trouble out of him or nothing.

Q. Was that consistent the whole time you knew him at Walnut Grove?

A. That was consistent, very consistent.

Q. And how much were you around him during this time down there?

A. Just about every day I worked.

Q. And were – juveniles down there, what age would they be moved out of Walnut Grove?

A. At 21.

Q. Twenty-one. So he came there at 15. You met him about 16.

A. Yes, sir.

Q. And were around him daily until he was 21?

A. Till he left there.

Q. All right. And you say he wanted a job with you. What would the job have consisted of?

A. My job was sanitation. He wanted to help clean up and wax floors and stuff like that.

Q. And did he?

A. Mop them and clean up.

Q. And did he?

[90] A. Yes, sir.

Q. What kind of employee was he?

A. He was a very good employee. Every time I looked up, he was standing there waiting on a job to do.

Q. And did he do them?

A. He did them very well.

Q. What did he call you?

A. Sir?

Q. What did he call you?

A. He called me Pops.

Q. He called you Pops?

A. Yes, sir.

Q. Does he still?

A. He still do.

Q. Okay. Describe your relationship with him as – describe your relationship. I'm not going to tell you what kind. I just want to hear what you say.

A. Okay. My relationship with him was – well, it was just like he was almost like my son. He asked questions. When he needed something, he came to me. He was enjoyable, talkable. We talked about things, life, the Bible, just all around kid.

Q. Did he seem knowledgeable about the Bible?

A. Yes, sir.

Q. And talk about his work relationship with you.

A. Well, work relationship, whatever I needed him to do, he was there to do it.

Q. How did he relate to the other inmates?

A. He got along with them real fine. I don't think [91] he had trouble with nobody.

Q. Explain more about that.

A. Well, he talked to them, got along with them. They acted like they were brothers and stuff. You know, just an all-around kid as far as –

Q. And he had been there how long when you came to know him? About a year?

A. About a year.

Q. And to what extent was the way you described consistently how he was from that year forward?

A. Beg your pardon?

Q. Is this how he was the whole time you knew him?

A. Yes, sir. Yes, sir.

Q. Okay. Were you aware of any discipline issues?

A. No, I wasn't.

Q. All right. Would you have been if there had been?

A. Oh, yes, sir, I would have.

Q. Okay. As unit manager – okay. I understand you were essentially supervising him as an employee. As unit manager, did you have other dealings with him?

A. As a unit manager?

Q. Um-hmm.

A. As far as, you know, if he had a problem, a personal problem or something, he would come in and sit down and we would talk about it. That was most of the –

Q. Were you aware of his school progress?

A. Yes, sir.

Q. And tell me about that.

[92] A. He got his GED there at the prison, as far as I can tell you that.

Q. And so he got it on schedule, his GED?

A. Yes, sir.

Q. Is that what they have to offer to complete high school at Walnut Grove?

A. GED. And he was talking about getting – taking some college courses there, but I don't know whether he got into them. But at the time, they were

trying to get him situated where they could get college courses, and he was going to enroll in them.

Q. Okay. So they were working on getting them, and he may not have had them available, but he wanted to.

A. Yes, sir.

Q. All right. Anything to add else about your relationship with him or his behavior?

A. Brett was a – like I said, a good kid, you know. He tried to do what was the right thing, you know, and I think he did do the right thing. He got along with everybody. He did – he got along with the other employees that I worked with. They got him to do things. Like, the warden got him to paint some garbage cans for him because he was a good artist and stuff like that. And they talked with him. Anywhere he went to, they got along with him. All employees there got along with him real fine.

Q. Was that a usual behavior out of the inmates?

A. Yes, sir.

Q. Or was it unusual? Was he unusually behaved?

[93] A. He was behaved real good.

Q. Okay.

MR. FREELAND: Court indulge me for a moment?

(BRIEF PAUSE.)

BY MR. FREELAND:

Q. To what extent was he an exceptional inmate as far as behavior goes and ability to get along?

A. Real smart.

Q. You've had some health issues recently?

A. Yes, sir.

Q. And only just now felt strong enough to come up here to testify?

A. Yes, sir.

MR. FREELAND: No further questions, Your Honor.

THE COURT: Cross-examination?

MR. BOWEN: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. BOWEN:

Q. Mr. Benton, I'm Richard Bowen. I'm an assistant district attorney. I want to ask you just a few questions. Before I do, though, how are you feeling right now?

A. I feel pretty good.

Q. All right. Because earlier it was indicated to us you might have suffered a light stroke or something; is that correct?

A. Yes, sir.

[94] Q. Have you had any of those recently, other episodes?

A. Yes, sir, I've had some.

Q. Could I ask you how many and how often?

A. Well, I've had – this is the second stroke I've had, and I had a heart attack.

Q. When was this, Mr. Benton?

A. It's been five years ago.

Q. All right. But recently, besides this morning, have you had any episodes?

A. No, sir.

Q. All right. As a result – but have you had – is this a result of – do you know what it's a result of? High blood pressure or –

A. High blood pressure and diabetes.

Q. Diabetes.

A. Diabetes.

Q. Does this condition affect your memory in any way, Mr. Benton?

A. No, sir.

Q. All right. Everything you are testifying to now you're sure of, that your recollection is good?

A. Yes, sir.

Q. All right. Now, I'm a little confused. You're fire and safety director or manager?

A. Now I moved up to fire and safety manager recently.

Q. All right. Is that pretty much – are you in charge of maintenance and things like that?

[95] A. Fire and safety and maintenance and health and stuff like that.

Q. You made the statement that Brett, as far as you knew about him, was a good kid. Do you know what he was convicted of?

A. No, sir, not – not then when I met him, no, sir.

Q. Did you ever talk to him – did he ever talk to you about what he did?

A. No, sir. No, sir.

Q. He never expressed to you any kind of remorse or tried to explain to you what got him where he was?

A. Yes, he did.

Q. All right. He was – did he tell you that he was responsible for that?

A. No.

Q. He did not express to you that he killed, in fact, was convicted of murdering someone and was responsible for that, accepted responsibility for that?

A. That's right.

Q. He did?

A. Well, he kind of said he had an accident, you know, and did something that he regretted he done.

Q. He said it was an accident. Is that what he told you? Is that what he told you?

A. Well, he said he regretted something he done.

Q. All right. Now, Mr. Freeland asked you a question about two or three times to try to clarify this, but did you tell us that his behavior, which you said was [96] good when you knew him, was usual for the inmates that you had contact with? Did I understand you right, that you don't really have a lot of problems with the inmates you had contact with, do you?

A. I have some. Some, yes. We have inmates that behave real bad, yes.

Q. But not many. And his was usual behavior. Isn't that what you said?

A. Yes.

Q. All right. You didn't have any out-of-the-way problems with him is what you're saying?

A. No, sir.

Q. All right. Now, Mr. Freeland has also told the Court in opening statement that he had some disciplinary or had a disciplinary action lodged against him, and you said you weren't aware of that?

A. I wasn't aware of it.

Q. All right. So you wouldn't have been aware if he had had discipline problems with other personnel at the facility, would you?

A. No, sir, not – no, I wouldn't.

Q. Okay. You also told us that he seemed to be normal, intelligent, and levelheaded; is that right?

A. Yes, sir.

Q. Okay. You wouldn't say, then, that – well, what would you say? How would you describe him? Would you say that Brett is mature, was mature at the time you knew him, which was about 16 – 15 or 16 years old?

A. I would say he was a 15 or 16-year-old kid, you [97] know, smart boy. I would say just a normal 15, 16-year-old kid.

Q. But you wouldn't call immature, acting like a 10 or 12-year-old or something like that, would you? Would you say he was responsible, he was always there, ready to work?

A. Yes, sir. Right, um-hmm.

Q. So he was mature for his age?

A. Mature, that's right.

Q. All right. He wasn't given to any kind of rash actions. I mean, he didn't do anything outrageous on the job or anything that made you call him down or anything like that, did he?

A. He would do stuff to make people laugh and stuff. But as far as anything to get on him, no, never have.

Q. He never acted rashly or didn't – with any extraordinary or outrageous behavior. You didn't see anything like that?

A. Well, every now and then he might get out of hand, but it was just being a kid, you know.

Q. He didn't act depressed, did he?

A. No.

Q. You said he liked to make people laugh?

A. Right, um-hmm.

Q. Is that right? So he wasn't moody or didn't act like to you he was suffering from any kind of mental problems or anything, did he?

A. No, sir.

[98] MR. BOWEN: No further questions, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. FREELAND:

Q. There are some issues with gang violence at Walnut Grove or were when it was a juvenile facility, was there not?

A. That's right.

MR. BOWEN: Your Honor, I'm going to object to this. It's improper –

THE COURT: Hold on just a minute. Speak up, Counsel.

MR. FREELAND: I asked if there were some issues with violence and juvenile violence at Walnut Grove when it was a juvenile institution. And the reason I'm asking is, the comparison and in the discussion about how Brett's behavior compared to other inmates. And I'm trying – just laying a predicate for where I was going with that.

MR. BOWEN: And, Your Honor, my objection is it is improper redirect. Nothing was touched on direct examination about this, and I didn't touch on anything on cross-examination.

MR. FREELAND: Comparing him to other inmates certainly came up on cross, Your Honor.

THE COURT: The objection will be overruled. You may answer the question.

[99] BY MR. FREELAND:

Q. Do you remember the question or should I –

A. Ask the question, sir.

Q. When Walnut Grove was a juvenile facility, there were issues with violence and gang violence in there with inmates that were juveniles in the facility, was there not?

A. That's right, it was.

Q. And to what extent was Brett a part of that or participant in that?

A. He didn't participate in none of that.

MR. FREELAND: All right. No further questions, Your Honor. May this witness –

THE COURT: All right. Mr. Benton, you'll be excused. You'll be free to go or stay in the courtroom if you wish. But I understand you drove a good way to get here, so if you want to go home, do that. All right. Thank you.

MR. FREELAND: Your Honor, I've got one remaining witness, and it's my client. And I do need to speak to him briefly about it.

THE COURT: Well, it's appropriate at noon to take a recess and have lunch and so forth, so let's do that. Now, we'll talk about this in a minute, about handling him during the recess.

MR. FREELAND: Well, I do need about ten minutes with him to do the consultation any lawyer needs to do with a client.

THE COURT: You will be – you'll have [100] access to him. Let's get underway at 1:30. All right. We'll be in recess.

MR. FREELAND: Thank you, Your Honor.

(LUNCH RECESS.)

THE COURT: Mr. Freeland.

MR. FREELAND: Yes, Your Honor.

THE COURT: You may call your next witness.

MR. FREELAND: Brett Jones.

BRETT JONES,

having been called as a witness by the Defendant, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. FREELAND:

Q. State your name, please.

A. Brett Alexander Jones.

Q. And what's your age?

A. Twenty-five.

Q. When were you born?

A. July 17th, 1989.

Q. And in August of 2004, what was your age?

A. I was 15.

Q. And how long had you been 15?

A. About a month, almost a month.

Q. And prior to August of 2004 where had you lived?

A. A number of places. We had stayed in Mississippi for a while when my family still lived in like Pontotoc. Every now and then I would spend a summer or school year with my grandmother or my dad in Shannon after he got out of jail. We moved to Tennessee at one point [101] and down to Florida. There was a time when my mom and my stepdad had an altercation. We lived in Alabama for a short period.

Q. Had an altercation. What do you mean?

A. They were living at the city park. We were the caretakers there in Pontotoc. And my stepdad – something took place between my mom and my stepdad. And me and my little brother got back from school, and he was at the front door waving a little .22 pistol around they've had forever. And they – my mom had called the police to get them to – for us to move. My

mom's first cousin, Sharon, and her husband came and helped us move out of the house real quick, and we went to go stay with my mom's brother in Alabama. It was only maybe four months or so.

Q. Where were you in school when you spent this time in Alabama?

A. It was where he was staying. I want to say it was – might have been Saraland or somewhere around that area. I'm not really sure what the name of the town was.

Q. What grade were you in? Do you remember?

A. Fifth maybe. Fifth or sixth.

Q. So prior to the fifth grade, you pretty much were in school in Mississippi?

A. Yes, sir.

Q. In the Lee County and the Pontotoc area?

A. Yes, sir.

Q. Anywhere else?

A. Pontotoc, Shannon, Tupelo. That was about it.

Q. So you had been in three different schools prior [102] to about the fifth grade?

A. Three or four. I think two of them was in the same town.

Q. And then after that y'all moved to – y'all were in Pontotoc. What happened after the – you lived in Alabama?

A. We came back – we came back to – seems like we came back to Pontotoc for a little while, stayed with my mom's cousin, and then we moved up to Tennessee. My stepdad was with Albertson's, and it

pulled out of Mississippi. So he was basically following his job around, and we stayed outside Nashville for a little while. Might have been maybe a year.

Q. And then what happened?

A. He either got a different position or he might have got a different job with the same company. I'm not really sure. But we moved down to Florida and – well, we went to Columbia, Tennessee, first, and then we moved down to Florida. It was where my mom was from before we were born, so we stayed down there until the school year began. But I came back to Mississippi for that first school year.

Q. What grade was that?

A. It was seventh grade. It was my second – it would have been my second time because we moved around so much that the school lost all my records, and I had to repeat the seventh grade. So –

Q. How old were you in the seventh grade the second time?

A. Thirteen maybe. Thirteen.

[103] Q. And then where did you go to the eighth grade?

A. Jupiter and Independence. Independence Middle School in Jupiter, Florida.

Q. And then you came back up here and were about to do the ninth grade?

A. Yes, sir.

Q. In August of 2004?

A. Yes, sir.

Q. And do you remember living in a household when your father and mother were married?

A. Man, they got divorced – I don't even know what year it was. It was like '91 or '92. I would have been way too young to remember.

Q. So you don't really remember living in the household with your father?

A. Not at all. My mom, she had some girlfriends growing up, but my dad and her split up when my little brother was born.

Q. Okay. And how long after that did your mother marry your stepfather, Dan?

A. It was in '98 or '99.

Q. Okay. Describe your relationship with Dan.

A. It was tense. It wasn't so bad at first. I want to say, you know, he did what most people would kind of be expected to do if they are taking in two kids that aren't theirs, but then he kind of just started getting really abusive.

I tried really, you know, to bond with him on a lot of levels, but he didn't really like me at all. I [104] don't know what it was with him and my dad, but I kind of had a rebellious streak when it came with him. It wasn't bad, but it was – I just didn't like the way that he disrespected my dad all the time, so I kind of – you know, I had a way of just, you know, *You're not my father*, you know.

And me and him just – I don't know. We didn't really bond. Him and my little brother was okay, but mostly it was kind of a – it was okay in public kind of deal, but at home it was terrible. Me and my little brother,

man, we were terrorized half the time just living there.

Q. Terrorized why?

A. Man, it went anywhere from just him coming home from work in a bad mood and taking it out on the whole family to, you know, if one of us did anything wrong, said something wrong that he didn't like, you know, it was just like completely just – all his anger would come out on the kids, you know. And, like, if my mom would try to stop it, she would get cursed out. He would grab us and choke us around, like rough-handle us and stuff, spank us or –

Q. You say choke you. Tell me about that.

A. It was not often that he did it, but there was quite a few times when he would actually – you know, if one of us would talk back, mostly it was me, he would actually reach out and grab us by the throat or slam us up against the wall by our neck or something or grab us up by the front of our shirt. But that was one thing that he [105] really liked to do. I don't know. He would grab us around the throat really quick. Sometimes we had bruises and stuff.

Q. So it would leave marks when he would choke you?

A. Yeah, a lot of times. We would have like yellow bruises and stuff.

Q. How old were you when that was going on?

A. I want to say they got married when I was about eight maybe, so I was probably about ten or maybe 11 when it started getting that bad.

Q. And how long did that continue?

A. Well up until after I got – moved here to Mississippi.

Q. So that went the whole time from when you were roughly nine or ten until you came to Mississippi. That was what was going on?

A. Yeah. There was at one point where my mom was so worried about the way that my stepdad was treating me in particular, that I went and spent an entire school year with my dad when he first got out of jail.

Q. Where was that?

A. Here in Shannon. We were staying down in Sebring, Florida, something like that.

Q. And to what extent has there been mental health issues in your mother, with your mother in the past?

A. My mom, she's always been kind of an easily depressed person. I hate saying it, knowing she's over there, but, you know, she's always had like self-esteem issues and stuff growing up. And I know that there was [106] quite a few times when she would – she would seek out like friendships that she could talk about things at the house, like with my stepdad, and I know she was really close with a couple of her cousins, Sharon and Susan.

But as far as helping us, my stepdad would keep her in, like, this mind frame where she was afraid to really talk about it with anybody. And she would stay really depressed, and she would drink sometimes. She wasn't a drunk, but, I mean, there would be times when she would have to drink to get away from things.

And she – sometimes she would gash herself with, like, knives and stuff. Me and my little brother would

notice it, you know, but, like – when we were that young, we would kind of just try not to talk about it a lot because she was real moody about everything.

Q. When she was depressed, was she functioning?

A. Looking back, I would say to the best of her ability, but, I mean, there were things that she could have really – if she could have just got a little bit of help or something maybe. She would get to where she would kind of get disconnected. She would maybe try to play some games or sleep a lot to try to get away from – I don't know. She would kind of get to where she would almost act like she had a headache all the time, kind of like trying to figure out how to handle the situation, especially when my stepdad was around. Like you could see how she would get really timid about things. And when she had time to herself, she would – you know, she would start drinking.

[107] Q. Did there come a time when you got treated? There was something said about drugs to calm you down. I've also heard referred to as hyperactive, that you were treated for that or given drugs for that?

A. I think I had – I had ADHD really bad. I guess that's a form of hyperactive disorder.

Q. And were you given drugs for that?

A. I was given drugs for depression, hyperactive disorder, some kind of psychosis that – I don't know.

Q. When you say *psychosis*, what was that about? Why were you given drugs for psychosis?

A. There was at one point where I was probably – it was after I was on the antidepressants and stuff, but it got to the point to where I really – I don't know. I was having waking dreams or something. I can't

really explain it, but I was – things were – my version of reality was kind of getting distorted. It wasn't kind of a hallucinating thing, but it was just I was getting to where I couldn't really tell a difference between being awake and asleep.

And my mom took me to a – some kind of hospital to see – get seen about, but they said my insurance wouldn't cover it, that I was – Dr. Fiester, he was a psychiatrist I was prescribed to, and I went to see him and he put me on something. I'm not really sure what it was called, but it was supposed to be for antipsychotics, to keep hallucinations and dreams and all that down.

Q. Were you hearing voices?

A. Yeah, at some point I was.

[108] Q. Tell me about that.

A. It would almost be like standing in the middle of a loud hallway. It wasn't like somebody talking to me, like, you know, it wasn't anything like that. It was like I would be in a room and I would have, like, an anxiety attack to where I would start shaking real bad or, like, I could feel my heart rate going up. And I would be shaking from the chest, but, like, it would just – I would hear a lot of people talking at one time, you know, like everybody was being way too loud. And, I mean, just things such – you know, like that. It wasn't really just – I tried to explain it to the doctors. It wasn't really anything hard core, but he kind of was – he took it to another level.

Q. Now, if I understood you correctly, you had a period when you were on medication for ADHD, and then later they added medication for depression, and

later still they added medication for antipsychotic medication; is that right?

A. Yes, sir.

Q. Did I understand that correctly?

A. Yes, sir.

Q. Over how long a period are we talking about here? From, say, start with the ADHD medication.

A. I believe I was on that – I think I started taking that when I was, like, 12, maybe 13. I might have just turned 13.

Q. Couple three years?

A. About a couple of years, two years maybe, and [109] then they put me on Zoloft.

Q. What's that?

A. It's an antidepressant. And I think I was – I might have been on Paxil. I'm not really sure. I think that's what it was called.

Q. Both Zoloft and Paxil?

A. Yeah, they had me on two – they had me on two antidepressants.

Q. At the same time or one after the other?

A. No, it was at the same time.

Q. How long?

A. About a year maybe.

Q. And then they put you on antipsychotic medication?

A. Yeah, this was – I think that was whenever – I think everything that took place with me getting placed on that was probably January of 2004. So I

might have been on that about three months, because I came here to Mississippi with my grandparents.

Q. And when you came to Mississippi, no more drugs?

A. Unh-unh.

Q. Just cold turkey?

A. I couldn't – I didn't want to bring any of it with me. I didn't like how that stuff made me feel. Like, I was getting lightheaded and stuff. And my mom, she basically just said, *I'm not going to make you take this anymore*, because I kind of turned into withdrawing a little bit.

Q. Did you have medical advice about going off [110] these drugs or just go off them?

A. As far as I know, I just quit taking them. I mean, I was kind of young at the time. I wasn't paying attention to any type of medical advice. I just know that they were making me feel really like dragged down all the time. I couldn't feel anything, like –

Q. And you came up here to Mississippi soon after that?

A. (Nodded head affirmatively.)

Q. You need to say it out loud for the court reporter.

A. Yes, sir.

Q. And your cousin testified about you being in Pontotoc. Describe that and how it was different than being in Jupiter, Florida, in your stepfather's house.

A. I would say that there was – it's almost like – I don't know if you know the saying, like a bolder off your shoulders or not. But when I was in Florida

around my stepdad and in that household it was – I mean, you are walking on eggshells, you know. You feel like walking through the living room when my stepdad was home was almost like dodging bullets. And, you know, just going from being scared to even say something that you might think would be funny while he is watching TV to going to an environment where, you know, we are just kids playing around.

My Aunt Sharon – well, she’s my cousin, but we call her Aunt, her son and her daughter, you know, we was able to just be kids and be young and play and joke [111] around, play video games. And, like, people would come home from work, and it was just normal, you know. There was no yelling at each other.

If there was issues, people would just sit down at the table and talk about it. And, like, it was completely stress free compared to what I was going through in Florida.

Q. When you – before you came up here, you had a big argument with your stepfather, didn’t you?

A. Quite a few of them.

Q. Well, there was one where it came to blows, didn’t it?

A. Yes, sir.

Q. And who attacked first in that one?

A. My stepdad.

Q. Tell me what happened.

A. I had got permission to go to a family reunion with my girlfriend at the time. Her family kind of liked me, and we were playing with the ideas back and forth that she – you know, she was – everybody was worried she was going to get pregnant. And I think

there was at one point to where her mom really just wanted me to be a part of the family.

We were supposed to be back by, like, 10:00, and I think we got – man, it couldn't have been later than 20 minutes. Like, it was about 10:20, I walked in the door. My door was off the hinges, and my – like, he had went through my room. Like, nowadays I know it as a shakedown from being, you know, locked down. But, like, he went [112] through everything in my room and told me I wasn't going to have any privacy, I wasn't going to have a door on the hinges anymore, yelling in my face, like, *You're never going to see that slut again* and all this stuff.

My mom got up and tried to get him to calm down, and he put his hands on her and pushed her off, you know. And it kind of just – I had been taking his abuse my whole life, you know, basically my whole life I can remember, and him pushing my mom and being abusive to all of us. I just – you know, don't put your hands on my mom. I don't care what you do. You know, you can hit me, you could slap me, you could do whatever. Don't touch my mom.

And I – somebody made a comment, it might have been my mother, about, *Look, we're just going to send him to Mississippi to go be with his dad. Y'all just calm down.*

And, you know, he was just *F his dad, you look just like your dad. You ain't nothing but just like your dad,* you know –

Q. Who said that?

A. My stepdad. You know, that was his main defense. His offense was attacking my father, you know. And, like, he tried to tell me to bend over so he could spank

me. He started taking his belt off. And I was like, *No, you're not going to touch me, man. It's over with. I'm not going through this anymore.*

And he put his hand on my neck, like his favorite thing trying to make me bend over the chair so he [113] could spank me. And I just – I swung at him. I was trying to hit him in the mouth, but I missed and hit him in the ear, and it – I think it ripped his cartilage a little bit right there. It wasn't really hard, but it cut his skin right there.

Q. And that's what led to the police getting called?

A. Yes, sir.

Q. All right. And you coming – and you ended up coming to Mississippi?

A. Yes, sir.

Q. And after you had been up here a little better than a month, you went to your grandparents' house?

A. Yes, sir.

Q. What did you do to get your girlfriend up here? Did you get her up here or did someone – what happened?

A. Supposedly she was pregnant. I don't know the whole story behind it, but I know that –

Q. So you just know what you've heard about that?

A. Well, I talked to her directly on the phone a few times, and I – I heard them talking about it earlier.

Q. So you just know what she said to you?

A. Yeah. Well, she had bought some pregnancy tests and stuff, and I was talking to her on the phone when all this was going on. It was the middle of the

night. Her mom had found a pregnancy test in the garbage can and she was pregnant. And the story goes that Michelle told me her mom went in there. Her mom was abusing her too. That's what made me and her connect so much.

[114] But I just know that it was a bad situation down there, and she was talking to me about coming here to Mississippi. And I told her I would try to help her figure something out. But before I even had a chance to figure something out, she called me back the next day while I was at Frisco's house next door and said that her friend Lauren – Lauren Johnson was another one of the girls we hung out with – bought her some tickets under the name Nickie Johnson to get her here to Mississippi.

Q. So you were told that somebody else had bought her a ticket. Did you send any money or do anything to get her a ticket to come up here?

A. I wouldn't have had any means to do so.

Q. Okay.

A. It was news to me when she came.

Q. Now, during this period in your life, were you cutting yourself?

A. I still got scars on my wrist, man, from all those times.

Q. When was that going on?

A. Man, I believe I probably first started doing the cutting, I might have been 11 or 12.

Q. And with what?

A. Knives, razorblades. Well, my stepdad used to keep a lot of box cutters around the house because of

his job he did. He kept box cutters, so I had one of those.

Q. To what extent did you know about your mother having a problem with this?

A. Just seen it from time to time, but I didn't –

[115] Q. That continued into adulthood for her?

A. I believe, from what I've heard, she still every now and then has issues with that.

Q. But while you were around you witnessed it?

A. Yeah, while I was around.

Q. Okay. Was anything – did this cutting play any part in your relationship with Michelle?

A. There was times when she would – she would have me really depressed and distraught as far as a teenager can get in their first romance. She had these – this tendency to try to make me prove that I was in love with her, prove love to her, and all this stuff. And, like, I think she did it because she knew that I would get all upset about things. But, yeah, there was times when I would cut myself, you know. It was one of those, man, you know, screw it, if I can't do anything right, you don't love me, my family is crap, so screw it kind of things, you know.

Q. You came up here to Mississippi and had a good experience in Pontotoc and then went to live with your grandparents to get ready for school.

A. Yes, sir.

Q. And the day you killed your grandfather, you were supposed to go get school clothes that day, weren't you?

A. Yes, sir.

Q. You got to say out loud.

A. Yes, sir.

Q. And were you looking forward to that?

[116] A. Yeah, of course.

Q. And Michelle had gotten here by that time.

A. Yes, sir.

Q. And when did your grandfather learn that Michelle was up here?

A. I would – I would assume maybe two days. I know that he had seen her in the house a number of days before that incident, and he knew that she was there.

Q. How do you know that?

A. Well, I mean, I was – I was told later on by my mother that my grandfather had talked out loud to my grandmother or somebody about it. But there was at one point two days before the incident where Michelle was in the car with my cousin, Josh, and me and one of his friends named Tyler. When she got out of the car, he – he assumed she was Mexican. He thought she was Mexican. He called her Little Mexican Chick, but he knew that she was there. He just kind of – I don't know. He was one of those kind of grandfathers that just didn't have anything to say about anything.

Q. Now, you regret killing your grandfather?

A. Yeah, of course, man.

Q. Talk about that.

A. I don't want to diminish my father, but, you know, my dad wasn't really allowed in my life in my younger years. My grandfather was my dad in my eyes

and my cousin Josh's eyes, too. He was the stable one. You know, even my grandmother would get upset. If we needed anything, he would take us to Dollar General, you know, [117] all the time. All the grandkids would go to Dollar General and get little dollar toys and stuff. I mean, I loved my grandfather to death, man. I – yeah, I regret it, man.

Q. And when the incident happened, after you had stabbed your grandfather, what did you do?

A. Well, I called – the first thing I did was I tried to call 911 and –

Q. And then what?

A. I was supposed to be waiting on an ambulance. Nothing but cop cars pulled up at the neighbor's house. And they got out of the car, they had guns drawn and everything, and I started panicking. I already had anxiety issues, panic issues at that time, and I was 15. And I just started freaking out.

Q. Where did you go?

A. Well, I was trying to get to where my grandmother worked in Tupelo. I tried my hardest to get out there.

Q. So you're trying to go to your grandmother's?

A. Yes, sir. Man, I didn't want her to come home to that.

Q. All right. So you – after – okay. You were arrested, and you were held in Lee County. Then after the trial, where did you go?

A. After the trial?

Q. Yeah.

A. I didn't even get to go back to the jail. I went directly to MDOC.

[118] Q. And then went – from MDOC where did you go?

A. To Walnut Grove.

Q. And tell me what your experience in Walnut Grove was like.

A. My first week there I tried to kill myself. They put me on suicide watch. I kind of just felt like it was the end of the world. It was mainly because I really – it wasn't that I wanted to come home. I just wanted my family to know that it wasn't what, you know, the officers had souped it all up to be. So I don't know. I just kind of felt like things – it wasn't really any use to continuing on. But after I sat on suicide watch a few months and I started seeing a psych doctor down there for a little while, they put me back in general population, and I started eventually learning how to cope.

Q. Was it – how did it compare stability wise to where you had lived earlier?

A. You mean –

Q. Being in Walnut Grove versus being in your stepfather's house.

A. Oh, man, it was better being in prison.

Q. All right. And how did that – what's your discipline record like in prison?

A. Man, I don't have a discipline record. I really try to stay out of trouble. There was one time in – I believe it was 2007, there was a riot in the zone and a lot of inmates was involved. And I got wrote up for being – it wasn't really a fight, but it was written up

like it was a fight in the middle of the day room, and [119] that's the only thing on my record as far as –

Q. And that was at Walnut Grove?

A. Yes, sir.

Q. So when I said in opening it was at Parchman, I was mistaken?

A. Yes, sir.

Q. Okay. Have you had any discipline incidents involving particularly violence since then?

A. No, sir. I've been written up for a cussword, but no violence.

Q. Okay. And after Walnut Grove, where have you been incarcerated?

A. I was in Greenwood until they closed it down. There was a guy that had got killed there, so they closed that down and I went to Parchman State Penitentiary. I stayed in Parchman, and they transferred me to Marshall County in Holly Springs, and I stayed there for a couple of years until I was brought here on court order.

MR. FREELAND: Court indulge me for a moment?

(BRIEF PAUSE.)

MR. FREELAND: No further questions, Your Honor.

MR. WEDDLE: No cross-examination, Your Honor.

THE COURT: All right. You may go back to counsel table.

MR. FREELAND: We rest at this time, Your Honor.

[120] THE COURT: Mr. Weddle?

MR. WEDDLE: No rebuttal, Your Honor. The State finally rests.

THE COURT: Very well. I will welcome your comments, if you have anything you want to tell me.

MR. WEDDLE: Your Honor, before we do that, if it pleases the Court, I've got a couple of folks back here that we were going to use as rebuttal if necessary and did not. Will they be allowed to come into the courtroom?

THE COURT: Sure.

(BRIEF PAUSE.)

MR. WEDDLE: Thank you, Your Honor.

THE COURT: Counsel, if you want to make any statements, I'll listen.

MR. FREELAND: Your Honor, I want to remind you that *Parker* says you have two choices here today: Life – an order that imposes life imprisonment, which is my belief what the Court did the first time, or an order that imposes life imprisonment with eligibility for parole, notwithstanding the precept or present provisions of Mississippi Code Section 47-7-3(1). Those are the two options, and that's literally all the Court has asked this Court to do on remand.

But this Court is informed by that decision by the factors enumerated in *Miller* that the [121] Mississippi Supreme Court has, as it had to, adopted, that you need to look at, first, there is the virtual presumption in *Miller* that life without parole will be an unusual sentence for juveniles such as Brett Jones. You've got to start with that, that the Court's expectation, as this plays out, is it's not the usual sentence.

In other words, when this Court ruled before, it wasn't just the usual sentence, it was the sentence. *Miller* changes that for juveniles.

And then you've got to look at immaturity, impetuosity, failure to appreciate risks and consequences, and the fact that he's in a family environment from which he cannot extricate himself. No matter how dysfunctional, he is trapped in it.

And you've got another bit of evidence that when he wasn't facing that, he behaved differently. When he was in Pontotoc, it's not just when he was in jail, when he was in Pontotoc with the cousin that's old enough that he called her Aunt, it was a different situation for him.

When he was in Walnut Grove and he had the couple that the Court saw both of them in the courtroom that he called Mom and Pop, you heard from Pop, he was – there was not the kind of [122] chaos and there was not the kind of behavior from him.

Add to this immaturity as an issue and an underdeveloped sense of responsibility issue and that he is more vulnerable to negative influences and can't extract himself from these situations. I'm virtually quoting *Miller*. Transient rashness, proclivity to risk, inability to assess consequences.

The Court has heard the testimony that this – Brett Jones, when he was a 14-year-old child, had been under medication for ADHD for years, had been under medication, more than one, for depression for years, and then for the nine months preceding, roughly, had been under antipsychotics and had been hearing voices.

He's got – he had a history of cutting himself. That's certainly connected to the household where he was raised. He was raised in a household where not just the problems presented by his stepfather we have talked about, any parent would know that the worst thing you can do to a child in raising them is to raise them in an environment where they don't know what's happening next, where they don't have a consistent pattern or consistent rules.

I can't imagine how having a parent who shifted between depression and the manic phase, which apparently was his mother and, [123] unfortunately, was manifested with panic attacks that were so severe she went to the hospital thinking she was having a heart attack, that this kind of rollercoaster was how these children lived growing up. A rollercoaster where instead of being really treated medically, you had parents that were treating themselves with alcohol and dealing with the alcohol, the father so severely that he went to Parchman for felony DUI.

And, I mean, I hate to be so blunt with them sitting here, but that's the environment in which this child was raised.

It's not – I'm not standing here to argue justification or self-defense. I've done everything today I could to accept the jury verdict as it is. But the question is, it's essentially, are there mitigating circumstances that show that life with the possibility of parole is the appropriate sentence here. But it's even more profound consideration than that because of what the Supreme Court said about their expectation that a life without parole sentence, even in horrific crimes, because that's what they were facing with *Miller* and its companion case for Arkansas, even with horrific

crimes, they expect the life without parole sentence to be extremely unusual.

So what this Court has heard today and in [124] the prior trial transcript is an account of a brutal murder, but a record with this defendant, Brett Jones, that basically shows that to be an anomaly. The prosecutors may get up and argue that when he gets choked, taking a swing at his stepfather is somehow comparable. It's not. Getting written up when there is a general prison altercation, but otherwise, for just short of ten years in the State penitentiary, having a clean prison record and establishing the kind of bond that this Court saw with the prison official that this man worked with every day while Brett was in Walnut Grove, that day was a horrible anomaly in Brett's life, that he has clearly stated today.

And I want to remind this Court, he said in his testimony he regretted it in the trial nine years ago or eight years – nine – roughly nine years ago. He has expressed that same regret today in more detailed terms and expressed it in terms of his relationship with his grandfather and how much that has made him regret what he did to his family, to divide his family the way he has.

This is a – this case, the evidence in mitigation, I don't know any other thing to call it, points in one direction, that given that life without parole should be unusual for someone that was barely 15, this case calls for [125] a sentence for life with the availability of parole. And that's what this Court should impose in the order as a result of this hearing. Thank you, Your Honor.

MR. WEDDLE: May I from here, Your Honor?

THE COURT: Yes, sir.

MR. WEDDLE: May it please the Court, I'd like to first address the language that's being used coming out of *Miller*. I don't think it's fair to say that there is a virtual presumption in *Miller* that it is a rare occasion that life imprisonment should be handed down to a juvenile without the possibility of parole. *Miller* does state that, given these circumstances that they had in *Miller*, that sentencing juveniles to life in prison without the possibility of parole will be uncommon.

But I'd like to remind the Court that in *Miller* you had a case where it was a capital case, and that truly was a sentence of life without parole. Whereas here, I think the Court has to consider somewhat our unique situation, where even though MDOC and the statutes may not call it parole, there is a possibility of conditional release at the age of 65, I believe, under the current law, which is the way his sentence would have operated had it still been around today and not set aside by the Supreme Court.

[126] With that being said, I'd like to turn my attention a little bit to these factors under *Miller* that the Court must consider in this case. Chronological age: Of course, we wouldn't be here but for the fact that at the time of this crime Mr. Jones was 15 years of age, which made him a juvenile at the time. And the Court recognizes in *Miller* that with a child that age, the Court needs to consider things such as immaturity, impetuosity, and the failure to appreciate risks and consequences.

I would point out that all the witnesses that testified today that knew anything about Mr. Jones stated that he was a young man of above average intelligence. Some even testified that he was on a higher scale than that.

The gentleman from MDOC that testified that was with Mr. Jones in Walnut Grove testified that he was mature and that he did not see Mr. Jones suffer from any depression or moodiness.

Family and home environment was concentrated on heavily in this hearing. The *Miller* case recognizes the situation where a person such as Mr. Jones cannot extricate himself from the family and home environment no matter how he tries or no matter how he tries to escape that situation. But, Your Honor, in this case he did escape that situation.

[127] There is a lot of talk about Daniel Alcock today. And even the word *terrorism* was used to describe his behavior toward these kids. And with that being said, Your Honor, I understand that that might have been the case, but Mr. Jones had a way to get out of that, and he did get out of that. And Daniel Alcock is not the victim in this case. For some reason, Mr. Jones chose to turn his wrath toward his grandfather in this case and brutally murdered him, as he was convicted at trial in this case.

The circumstances, other than that, that the Court is to look at is the participation and the conduct. It appears that Mr. Jones acted alone in the murder of his grandparent, in the murder of Bertis.

The family and peer pressures: There was some talk about a girlfriend being involved, but there is no talk of her putting him up to this in any way. There is nothing in the record of the post-conviction relief that indicates, as I read it – and the Court is certainly more familiar with this than I am. But there is nothing that indicates with respect to his communication with his attorneys that he was incapacitated in some way to

assist his attorneys in the case as they tried the case in this matter.

It's common to see in crimes against a [128] person such as this and other crimes against a person, defendants who come out of very unfortunate family situations. This Court sees that all the time. And dysfunctional family life is something this Court sees quite often. It seems to go hand in hand.

However, in this case, as I stated earlier, Brett was offered an escape from that life by his grandparents, one of which he brutally murdered. And Brett Jones himself even says that his grandfather, the victim in this case, was more of a father to him than his real father and certainly more of a father to him than his stepfather.

The State would urge the Court to sentence Jones to life imprisonment, as opposed to life imprisonment with the eligibility of parole. And we're asking the Court to take into consideration the fact that even if it imposes the life imprisonment sentence, under current law there is still the possibility of release before his natural life called the conditional release at age 65.

This case is not, in the State's opinion, what *Miller* and *Parker* anticipate. This is not a situation where you've got a juvenile who can't escape his situation and is so desperate because he can't escape his situation that he commits some violent act or murderous act to get [129] out of it That's not what happened in this case.

What happened in this case was, is he was provided an escape from that dysfunctional family situation to a grandfather and a grandmother who he testifies himself provided stability. And for some unknown

reason, other than what's in the record regarding some rage about a girlfriend and a phone bill, murdered his grandfather brutally, stabbed him, killed him, tried to hide the body, tried to hide the pool of blood by pulling a car over it, pulling a rug over it, those sorts of things. This is a brutal murder. It deserves life imprisonment, and that's what the State urges the Court to give.

MR. FREELAND: Briefly, Your Honor. I want to start with what the Court actually said in *Miller* about how common this should be, because it's a little stronger than I was stating it, and it's certainly stronger than opposing counsel stated it.

They said, quote, *But given all we have said in Roper and Graham and this decision about children's diminished capacity and heightened capacity for change, we think appropriate occasions for sentencing juveniles to the harshest possible penalty will be uncommon. That is especially so because of the great [130] difficulty we noted in Roper and Graham of distinguishing at this early age between the, quote, juvenile offender whose crime reflects unfortunate yet transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption.*

They're looking for irreparable corruption as being the sort of thing that would cause this Court to invoke life without parole. And they are looking at whether there was a transient immaturity that might have produced this.

The Court has heard about Brett Jones' behavior in the years after as he matured and as he has just entered adulthood. And the Court has heard testimony about what happened before and after the crime. There is nothing in this record that would

support a finding that the offense reflects irreparable corruption.

Miller involved a horrible murder; this case involves a horrible murder. That alone doesn't answer the question. It also doesn't answer the question that Brett had an escape hatch. That left him with having been put on a range of psychoactive drugs and being like running into a brick wall taken off them. That leaves him with having been raised in the household he was raised in, with the problems from that household. You heard the talk about multiple generations of cutting, of fights.

[131] This is not the kind of case that reflects irreparable corruption. This is the case that shows that transient immaturity was quite likely involved here. And it is – it is not the kind of case that should lead to an uncommon life sentence without parole.

And I want to talk briefly about the statute involving conditional release at 65. *Parker* holds absolutely clearly that that statute is unconstitutional as applied to controlled sentence for a juvenile. It is absolutely clear. The Court has not said to impose a sentence, that *Miller* is satisfied by that sentence. It said the exact opposite. Your options are the one life sentence, and he may be subject to the 65 release or not, if this Court imposed life without parole. But that's life without parole. That's not an escape hatch for *Miller*, and the Court is absolutely – its as clear a holding as you can get.

And the other option is life with eligibility for parole as it existed in the 1980s when I started practicing law, when this Court was – well, not first on the bench, but close. And, you know, its an era that I'm sure the Court remembers just as I do. That's the era

that this – these opinions from Justice Randolph in – I believe in the *Parker* case, certainly in the *Jones* case, has said we must [132] follow. So that's my argument.

And at this point I would like to make a motion, and I know the Court's likely ruling, that it would violate Brett Jones' right under the 8th and 14th Amendment, the 8th Amendment, prohibition against cruel and unusual punishment, and 14th Amendment, due process, to impose on him a life sentence without parole in any circumstances where the crime was committed while he was a juvenile.

And I understand that the Mississippi Supreme Court has not accepted that argument and the *Miller* Court has left it open, but it's an argument that certainly the Supreme Court is going to visit. And I'm making it as seriously as I can make an argument right now.

THE COURT: All right. Gentlemen, I think that there are a lot of things I need to think about to write an opinion in this case.

I'm going to return the defendant to the custody of the Department of Corrections.

In any event, whatever the sentence might be coming out of this, if it is what the defense is urging on me, then procedures are going to have to be followed, so he's going to have to be in the custody of the Department of Corrections for them to make the determination as to whether or not he is to be released, if that is the outcome.

[133] MR. FREELAND: Of course, Your Honor. I mean, under the most generous reading of the statute, he's not hit the ten-year parole eligibility. So, I mean,

it's back to the Department of Corrections regardless of what this Court rules today or in the future.

THE COURT: You're absolutely correct. I can recall a time, I suppose, when I started practicing law when a life sentence didn't mean – as in this case, it would mean roughly 50 years that he would have to serve before he would be eligible for consideration. And in those days when I first became conscious of such thing, a murder – life sentence for murder might well mean ten, 12, 15 years and parole. So – but that's not why we're here.

I will return him to the custody of the Department of Corrections. I will enter an order in this case, along with an opinion about my findings in this case. Anything further?

MR. WEDDLE: No, Your Honor.

MR. FREELAND: No, Your Honor. Thank you.

THE COURT: We'll be in recess.

(END OF PROCEEDING.)

[134] (THE FOLLOWING PROCEEDINGS WERE TAKEN ON APRIL 17, 2015, IN THE LEE COUNTY COURTHOUSE WITH THE HONORABLE JOHN D. WEDDLE REPRESENTING THE STATE OF MISSISSIPPI AND HONORABLE JOYCE FREELAND REPRESENTING THE DEFENDANT.)

THE COURT: This is a continuation of the cause State of Mississippi versus Brett, B-R-E-T-T, A. Jones, CR04-833.

Before I render an opinion, is there anything further by the State or the defendant?

MR. WEDDLE: Your Honor, from the State, just very briefly. I won't rehash the facts of this case. I

think the Court is very familiar and recalls the brutality of this murder and the efforts made by the defendant, Brett Jones, to cover up what he did immediately following this. I think the Court is well aware of those facts.

I would just state simply that based on the testimony that was given at the hearing in this cause that there are not – there is not enough mitigation under *Miller* to sentence Mr. Jones to anything but life in prison. We're asking the Court to sentence Mr. Jones to life in prison and not to sentence him to life with the possibility of parole.

I would remind the Court that under the case law, that if the Court does sentence him to life with the possibility of parole, he would be eligible for parole immediately since it would [135] revert back to that ten-year eligibility for parole under the old law. So we're urging the Court to sentence Mr. Jones to life in prison, and that's what the State is requesting.

THE COURT: Ms. Freeland?

MS. FREELAND: Your Honor, for the record, I'm Joyce Freeland appearing here in place of my husband, with the Freeland Law Firm. I can't quite be as eloquent or as intense as he would be about the situation, but I think its clear that there is controlling precedent in the case. The *Miller versus Alabama* makes it appropriate here, regardless of how people view the original crime. It's appropriate here for the sentence to be life with the possibility of parole.

The weight of the mitigating circumstances should be handled by the parole board. I think that the statement that this means he is immediately eligible for parole may overstate the consequences of what *Miller versus Alabama* requires here.

I appreciate your allowing me to appear in place of my husband. And I think you had mentioned that you might want to hear from Mr. Jones himself?

THE COURT: I will.

MS. FREELAND: Would you like for him to stand here?

THE COURT: Not at this juncture. Let [136] me – I'm going to read into the record a long dissertation about the facts and circumstances in this case, as much as anything to demonstrate that I have considered each and every factor that is identifiable in the *Miller* case and its progeny and those decisions which followed. When I've done that, then we will proceed with the imposition of sentence, and I'll call on you then.

MS. FREELAND: Thank you, Your Honor.

THE COURT: Anything further?

This cause is before the Court for resentencing in accord with the dictates of *Miller versus Alabama*.

At an earlier time, the Court conducted a hearing and heard evidence offered by the defendant, Brett Jones, and the State of Mississippi bearing on those factors to be considered by the Court as identified by *Miller*. The ultimate question is whether or not, in consideration of those factors, the statutory sentence of life imprisonment, and by application of the parole provisions of the Code, is without parole and whether or not relief is appropriate to the facts and circumstances in this case.

This Court is of the opinion that the Court, and not a jury, is the sentencing authority required to consider and apply the [137] *Miller* factors. Section 97-3-21 of the Mississippi Code provides no authority for a jury

to participate in the fixing of the penalty on conviction of murder.

The Court is cognizant of the fact that children are generally different; that consideration of the *Miller* factors and others relevant to the child's culpability might well counsel against irrevocably sentencing a minor to life in prison. All such factors must be considered on a case-by-case basis.

Miller requires that the sentencing authority consider both mitigating and the aggravating circumstances.

And I would note that these are not really terms used in the *Miller* opinion, but I think they are an easy way for us to identify those considerations.

This Court can hypothesize many scenarios that would warrant and be just to impose a sentence which would allow the defendant to be eligible for consideration for parole, notwithstanding the parole law considerations.

The obvious defense raised by the defendant was self-defense; that he acted to protect himself from what he believed to be an imminent threat to his person likely to result in serious injury or death. He testified in detail concerning the circumstances of the killing.

[138] The jury was properly instructed concerning the elements of the crime of murder, the burden of proof being on the State, and the necessity of the State proving each element beyond a reasonable doubt.

In addition, the jury was instructed concerning the lesser-included offense of manslaughter and the distinction between murder and manslaughter and the requirement that the jury was to find the defendant

not guilty unless the State had proved each element of the charge beyond a reasonable doubt, including the obligation of the State to prove beyond a reasonable doubt that the defendant did not act in self-defense.

On considering the facts as they determined them to be beyond a reasonable doubt, the jury returned a verdict of guilty of murder, thereby rejecting the defense of self-defense and manslaughter, a lesser-included offense. The jury plainly had as possible verdicts in the case, the verdict of not guilty, manslaughter, or murder.

The defendant, Brett Jones, was at the time 15 years of age at the time that he stabbed his grandfather to death. A fair consideration of the evidence indicates that the killing of Mr. Bert Jones was particularly brutal.

During the course of the murder, the [139] defendant stabbed the victim eight times and was forced to resort to a second knife when the first knife broke while used in the act. The victim appears to have died outside the house, leaving a great amount of blood on the ground.

The defendant attempted to conceal his act by placing the body of the dead or dying Bert Jones in an enclosed part of the garage and attempting to wash away the blood on the ground with a water hose.

He and his female companion then left the scene of the murder and were apprehended by authorities later in Nettleton, approximately 20 miles or so away.

There is no evidence that indicates that anyone other than the defendant participated in the killing of Bert Jones. Likewise, there is no evidence that the defendant acted under the pressure of any family or

peer and no evidence of mistreatment or threat by Bert Jones, except the self-defense claim asserted and rejected by the jury.

As noted before, the defendant was 15 years of age at the time of the killing. At the sentencing hearing recently conducted, it was revealed that the female companion was a minor who had come from Florida in order to be with the defendant, and that they, the defendant and the minor female, concealed her presence by her [140] remaining in an outbuilding near the home of the victim.

The killing apparently came about soon after Mr. Bert Jones found the girl in his home in the company of the defendant. The evidence presented at the sentencing hearing indicates that their relationship was intimate and that at some time before the incident she thought she was pregnant. That suspicion proved to be untrue, but demonstrates that the defendant had reached some degree of maturity in at least one area.

The defendant grew up in a troubled circumstance. His mother was gone frequently for extended periods. She had divorced the defendant's father and was living in Florida with her then husband and the defendant and his younger brother. The conditions in that home are unremarkable except for the apparent unsettled lifestyle and an incident in which the defendant and his stepfather had a confrontation resulting from defendant's failure to return home at the time set by the stepfather. The authorities were called, and the defendant was removed and required to enter a program of anger management.

There is no evidence of brutal or inescapable home circumstances. In fact, the reason the defendant was in the home with Bert [141] Jones was to provide him

with a home away from the circumstances existing in Florida.

In conclusion, the Court, having considered each of the *Miller* factors, finds that the defendant, Brett Jones, does not qualify as a minor convicted and sentenced to life imprisonment without possibility of parole consideration and entitled to be sentenced in such manner as to make him eligible for parole consideration.

I shall stop here and allow you, Counsel and Mr. Jones, to make any statement you wish. You may go to the podium. All right, sir.

THE DEFENDANT: I really don't – I wasn't prepared to make any type of statement here. The only thing that I could really think to say is I'm not the same person I was when I was 15. There is a lot of – there is a lot of people who would say there is two sides to every story. I'm not trying to argue either side. I got found guilty.

I grew up in a troubled situation. I was put in prison. That's a pretty big punishment, especially one to grow up with. Despite it all and despite what might happen to me today in this courtroom, I've become a pretty decent person in life. And I've pretty much taken every avenue that I could possibly take in prison to rehabilitate myself.

[142] I don't believe that there is an officer in any prison or jail prison that could ever have anything negative to say about me as far as the person I am today as compared to who I was when I was 15.

This hearing, to my knowledge, was to see whether I was worthy to be given parole, any chance of freedom one day. Minors do have the ability to change their

mentality as they get older. This isn't to retry the case of whether I'm guilty or not guilty. The jury did find me guilty.

But all I can do is throw myself at the mercy of the Court and in front of the Holy Spirit, that I'm a completely different person today. I've done everything to show that. I don't get in trouble. I completely – I took anger management in prison. I've taken trades, got my GED, stayed in touch with my family.

They would like to see me have a chance. My little brother is about to have a baby. I would like – this isn't my – this isn't my environment.

If you decide to send me back without the possibility of parole, I will still do exactly what I've been doing for ten years. But all I can do is ask you with some type of honor, like, please give me just one chance to show the world, man, like, I can be somebody. I've done [143] everything I could over the past ten years to be somebody where I was at, given my limitations.

I will be a law-abiding citizen. There is nothing about me that's a negative person at all any more. I have no vices with anybody. I have no vices, period, besides just wanting to try to be somebody in the world. I want to have a family like everybody else.

I can't change what was already done. I can just try to show what I – you know, I have become – I've become a grown man. I'm almost 26 years old. And thank you for – thank you for taking me into consideration, Judge Gardner. You've been with me for a long, long time, and I really appreciate it, sir.

THE COURT: All right, sir. Thank you. Counsel, do you have anything further?

MS. FREELAND: No, Your Honor.

THE COURT: It is the sentence of this Court that the defendant, Brett Jones, serve a term of life imprisonment in the custody of the Mississippi Department of Corrections.

Mr. Jones is committed to the custody of the sheriff of Lee County to await transportation to a facility designated by the Department of Corrections. He will be in the custody of the sheriff to await transportation.

Ms. Freeland, you may – if you want to talk to him or visit with the family, that’s [144] fine. We can arrange that. All right?

MS. FREELAND: Should we arrange for that in a separate room, Your Honor?

THE COURT: I’m sorry?

MS. FREELAND: Should we arrange for that in a separate room, Your Honor?

THE COURT: Will – if you will, take care of that circumstance.

We’ll make arrangements.

(END OF PROCEEDING.)

[145] STATE OF MISSISSIPPI
COUNTY OF LEE

COURT REPORTER’S CERTIFICATE

I, Melanie S. Owen, Official Court Reporter for the First Judicial District of Mississippi, do hereby certify that to the best of my skill and ability, I have reported the proceedings had and done in the Re-Sentencing Hearings of STATE OF MISSISSIPPI VERSUS BRETT JONES, being Cause No. 04-833 on the docket of the Circuit Court of the First Judicial District of Lee County, Mississippi, and that the above and foregoing

pages contain a true, full and correct transcript of said proceedings.

This is to further certify that I have this date filed the original and one copy of said transcript, along with an electronic CD of said transcript in PDF language, for inclusion in the record on appeal, with the Clerk of the Circuit Court of Lee, Mississippi, and have notified the attorneys of record, the Circuit Clerk, and the Supreme Court Clerk of my actions herein.

I do further certify that my certificate annexed hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 10th day of August, 2015.

/s/ Melanie S. Owen
Melanie S. Owen, RPR, CCR #1262
Official Court Reporter
300 Bass Lane
Pontotoc, Mississippi 38863

COURT REPORTER'S FEE:

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