

IN THE CIRCUIT COURT IN THE
EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY,
FLORIDA

CASE NUMBER: 05-2012-CF-035337-AXXX-XX

Case # 05-2012-CF-035337-AXXX-XX
Document Page # 424

STATE OF FLORIDA,

Plaintiff,



versus

BRANDON LEE BRADLEY

Defendant,

ORIGINAL

FILED IN TVL-01
CLERK OF CIR. CT.
BREVARD CO. FL.
2014 JUL 25 A 11:45
SCOTT ELLIS

VOLUME IX OF XV

TRANSCRIPT OF DIGITAL RECORDED JURY TRIAL,
SPENCER HEARING AND SENTENCING

The transcript of the Digital Recorded
Proceedings taken in the above-styled cause, at the Moore
Justice Center, 2825 Judge Fran Jamieson Way, Viera,
Florida, on the 18th, 19th, 20th, 21st, 26th, 27th, 28th
and 31st day of March, the 1st, 3rd, 4th and 8th day of
April, 2014 (Trial), the 5th day of June, 2014 (Spencer
Hearing), and the 27th day of June, 2014 (Sentencing),
before the Honorable Morgan Reinman.

RYAN REPORTING
REGISTERED PROFESSIONAL REPORTERS

1670 S. FISKE BOULEVARD

A P P E A R A N C E S

1
2 THOMAS BROWN, ESQ.,
3 and
4 JAMES MCMASTER, ESQ.,
5 Assistant State Attorneys
6 State Attorney's Office
7 2725 Judge Fran Jamieson Way
8 Building D.
9 Viera, Florida 32940

Appearing for
Plaintiff

10 J. RANDALL MOORE, ESQ.,
11 MICHAEL PIROLO, ESQ.,
12 and
13 MARK LANNING, ESQ.,
14 Assistant Public Defender
15 Public Defender's Office
16 2725 Judge Fran Jamieson Way
17 Building E
18 Viera, Florida 32940

Appearing for
Defendant

19
20
21
22
23
24
25
Brandon Lee Bradley, Defendant, present

* * * * *

I N D E X

PROCEEDINGS:

March 18, 2014	22
March 19, 2014	275
March 20, 2014	465
March 21, 2014	755
March 26, 2014	990
March 27, 2014	1293
March 28, 2014	1479
March 31, 2014	1570
April 1, 2014	1899
April 3, 2014	2076
April 4, 2014	2475
April 8, 2014	2651
June 5, 2014	2860
June 27, 2014	2876

MOTION TESTIMONY:

PLAINTIFF'S WITNESSES:

ROBERT MARKS: (Proffer)

Direct Examination by Mr. McMaster	24
Cross Examination by Mr. Moore	35

ANDRIA KERCHNER: (Proffer)

Direct Examination by Mr. McMaster	43
Cross Examination by Mr. Moore	51

JEFFREY DIEGUEZ: (Proffer)

Direct Examination by Mr. McMaster	58
Cross Examination by Mr. Moore	66

TRIAL

JURY SWORN:	140
-------------	-----

I N D E X

I N D E X

1		
2	RULE OF SEQUESTRATION:	142
3	OPENING STATEMENT:	
4	By Mr. McMaster	156
5	By Mr. Pirolo	189
6	PLAINTIFF'S WITNESSES:	
7	CHARLES COLON:	
8	Direct Examination by Mr. McMaster	224
9	ROBERT MARKS:	
10	Direct Examination by Mr. McMaster	237
11	JAMES SEATON:	
12	Direct Examination by Mr. McMaster	249
13	Voir Dire Examination by Mr. Moore	253
14	Continued Direct Examination by Mr. McMaster	257
15	AGENT CRAIG CARSON:	
16	Direct Examination by Mr. McMaster	260
17	CHRISTOPHER MONTESANO:	
18	Direct Examination by Mr. Brown	290
19	Cross Examination by Mr. Pirolo	298
20	Redirect Examination by Mr. Brown	302
21	ANDREW JORDAN:	
22	Direct Examination by Mr. Brown	303
23	Cross Examination by Mr. Pirolo	343
24	Redirect Examination by Mr. Brown	348
25	Recross Examination by Mr. Pirolo	349

I N D E X

PLAINTIFF'S WITNESSES:

VANESSA MCNERNEY:

Direct Examination by Mr. Brown	351
Cross Examination by Mr. Pirolo	369
Redirect Examination by Mr. Brown	374

TAMMY BROWN:

Direct Examination by Mr. Brown	376
Cross Examination by Mr. Lanning	383
Redirect Examination by Mr. Brown	384
Recross Examination by Mr. Lanning	384

MOHAMMAD MALIK:

Direct Examination by Mr. Brown	385
Cross Examination by Mr. Pirolo	398

AGENT CRAIG CARSON:

Direct Examination by Mr. McMaster	428
Cross Examination by Mr. Moore	435
Redirect Examination by Mr. McMaster	437

SERGEANT DARRYL OSBORNE:

Direct Examination by Mr. McMaster	438
------------------------------------	-----

MAJOR BRUCE BARNETT:

Direct Examination by Mr. McMaster	446
------------------------------------	-----

AGENT BRIAN STOLL:

Direct Examination by Mr. McMaster	451
Cross Examination by Mr. Moore	454

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

SERGEANT TERRANCE LAUFENBERG:

Direct Examination by Mr. McMaster	455
Continued Direct Examination by Mr. McMaster	477

AGENT FRANCES DUFRESNE:

Direct Examination by Mr. McMaster	481
------------------------------------	-----

CORPORAL BRAD CERVI:

Direct Examination by Mr. McMaster	488
Cross Examination by Mr. Lanning	495
Redirect Examination by Mr. McMaster	499
Recross Examination by Mr. Lanning	501

DEPUTY JAMES TROUP:

Direct Examination by Mr. McMaster	502
Voir Dire Examination by Mr. Moore	523
Continued Direct Examination by Mr. McMaster	532

AGENT DON REYNOLDS:

Direct Examination by Mr. McMaster	551
Cross Examination by Mr. Lanning	567
Redirect Examination by Mr. McMaster	572
Recross Examination by Mr. Lanning	575

JEFFREY DIEGUEZ:

Direct Examination by Mr. McMaster	577
Cross Examination by Mr. Lanning	583
Redirect Examination by Mr. McMaster	643
Recross Examination by Mr. Lanning	644

I N D E X

PLAINTIFF'S WITNESSES:

TRISTA LOWMAN:

Direct Examination by Mr. McMaster	647
Cross Examination by Mr. Pirolo	653

DEPUTY VICTOR VELEZ:

Direct Examination by Mr. McMaster	656
------------------------------------	-----

DETECTIVE GREG GUILLETTE:

Direct Examination by Mr. Brown	662
---------------------------------	-----

ANDRIA KERSCHNER:

Direct Examination by Mr. Brown	676
Cross Examination by Mr. Pirolo	692
Redirect Examination by Mr. Brown	739
Recross Examination by Mr. Pirolo	746

OFFICER DERRICK MIDDENDORF:

Direct Examination by Mr. McMaster	758
------------------------------------	-----

SERGEANT MICHAEL CASEY:

Direct Examination by Mr. McMaster	769
------------------------------------	-----

GERARD WEBER:

Direct Examination by Mr. McMaster	781
------------------------------------	-----

SERGEANT TREVOR SHAFFER:

Direct Examination by Mr. McMaster	793
------------------------------------	-----

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PLAINTIFF'S WITNESSES:

DETECTIVE CHAD COOPER:

Direct Examination by Mr. McMaster	830
Cross Examination by Mr. Lanning	851

SERGEANT JEFF RAU:

Direct Examination by Mr. McMaster	854
Cross Examination by Mr. Moore	862

OFFICER JENNIFER AMNEUS:

Direct Examination by Mr. McMaster	864
------------------------------------	-----

MICHAEL RYLE:

Direct Examination by Mr. McMaster	872
------------------------------------	-----

ANDREA ZIARNO:

Direct Examination by Mr. Brown	890
---------------------------------	-----

CSI LISA CONNORS:

Direct Examination by Mr. McMaster	893
Cross Examination by Mr. Lanning	901
Redirect Examination by Mr. McMaster	903

CSI JENNIFER MILLER:

Direct Examination by Mr. McMaster	905
Cross Examination by Mr. Pirolo	915

I N D E X

I N D E X

PLAINTIFF'S WITNESSES:

CSI STEPHANNIE COOPER:

Direct Examination by Mr. McMaster	916
Cross Examination by Mr. Lanning	977
Redirect Examination by Mr. McMaster	985
Recross Examination by Mr. Lanning	987

AGENT DANIEL OGDEN:

Direct Examination by Mr. McMaster	993
------------------------------------	-----

OFFICER RON STREIFF:

Direct Examination by Mr. McMaster	997
------------------------------------	-----

AMY SIEWERT:

Direct Examination by Mr. McMaster	1024
------------------------------------	------

CST VIRGINIA CASEY:

Direct Examination by Mr. Brown	1053
Cross Examination by Mr. Lanning	1076

SERGEANT BLAKE LANZA:

Direct Examination by Mr. Brown	1081
Cross Examination by Mr. Pirolo	1086
Redirect Examination by Mr. Brown	1086

DEPUTY MICHAEL THOMAS:

Direct Examination by Mr. Brown	1088
Cross Examination by Mr. Moore	1091
Redirect Examination by Mr. Brown	1093
Recross Examination by Mr. Moore	1093

I N D E X

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PLAINTIFF'S WITNESSES:

SAJID QAISER, M.D.:

Direct Examination by Mr. Brown 1102
Cross Examination by Mr. Moore 1129

AGENT WAYNE SIMOCK:

Direct Examination by Mr. Brown 1137
Cross Examination by Mr. Moore 1249
Redirect Examination by Mr. Brown 1279
Recross Examination by Mr. Moore 1285

AMANDA OZBURN: (Proffer)

Direct Examination by Mr. McMaster 1302
Cross Examination by Mr. Pirolo 1315

AMANDA OZBURN:

Direct Examination by Mr. McMaster 1327
Cross Examination by Mr. Pirolo 1332
Redirect Examination by Mr. McMaster 1343
Recross Examination by Mr. Pirolo 1343

CORY CRUMBLEY:

Direct Examination by Mr. Brown 1346

STATE RESTS: 1372

MOTION FOR JUDGMENT OF ACQUITTAL: 1373

DEFENSE WITNESSES:

RAVEN DUROUSSEAU:

Direct Examination by Mr. Moore 1398

I N D E X

I N D E X

DEFENSE WITNESSES:

DAVID MCGUINNESS:

Direct Examination by Mr. Moore	1426
Cross Examination by Mr. Brown	1429

LINDA SULLIVAN:

Direct Examination by Mr. Moore	1430
Cross Examination by Mr. McMaster	1452
Redirect Examination by Mr. Moore	1455
Recross Examination by Mr. McMaster	1457

OFFICER CASSANDRA WORONKA:

Direct Examination by Mr. Lanning	1503
Cross Examination by Mr. Brown	1505
Redirect Examination by Mr. Lanning	1505

DR. SUSAN SKOLLY-DANZIGER:

Direct Examination by Mr. Moore	1509
Cross Examination by Mr. McMaster	1544
Redirect Examination by Mr. Moore	1553

DR. JACQUELYN OLANDER:

Direct Examination by Mr. Moore	1593
Cross Examination by Mr. Brown	1672
Redirect Examination by Mr. Moore	1697

DEFENSE RESTS:	1720
----------------	------

RENEWED MOTION FOR JUDGMENT OF ACQUITTAL:	1720
---	------

I N D E X

I N D E X

1		
2	STATE'S REBUTTAL WITNESSES:	
3	DR. BRUCE GOLDBERGER:	
4	Direct Examination by Mr. McMaster	1721
	Cross Examination by Mr. Moore	1754
5	Redirect Examination by Mr. McMaster	1767
6	DR. PATRICIA ZAPF:	
7	Direct Examination by Mr. Brown	1768
	Cross Examination by Mr. Moore	1797
8	Redirect Examination by Mr. Brown	1839
	Recross Examination by Mr. Moore	1843
9		
10	STATE RESTS:	1852
11	RENEWAL MOTION FOR JUDGMENT OF ACQUITTAL:	1854
12		
13	CHARGE CONFERENCE:	1857
14	CLOSING ARGUMENTS:	
15	By Mr. Brown	1903
	By Mr. Lanning	1955
16	By Ms. McMaster	1973
17	JURY CHARGE:	1998
18	VERDICT:	2070
19	JURY POLLED:	2072
20	PENALTY PHASE:	
21	OPENING STATEMENT:	
22	By Mr. Brown	2286
	By Mr. Moore	2295
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PLAINTIFF'S WITNESSES:

CHARLES COLON:

Direct Examination by Mr. McMaster 2303

GARY SHREWSBURY:

Direct Examination by Mr. McMaster 2308

Cross Examination by Mr. Pirolo 2315

OFFICER WILLIAM GLEASON:

Direct Examination by Mr. McMaster 2319

Voir Dire Examination by Mr. Pirolo 2324

JEREMY PILL:

Direct Examination by Mr. Brown 2325

STATE RESTS: 2328

MOTION FOR JUDGMENT OF ACQUITTAL: 2328

DEFENSE WITNESSES:

CASEY GREEN:

Direct Examination by Mr. Moore 2331

JULIE MARTIN:

Direct Examination by Mr. Moore 2338

I N D E X

I N D E X

DEFENSE WITNESSES:

DR. JOSEPH WU:

Direct Examination by Mr. Moore	2347
Cross Examination by Mr. McMaster	2431
Redirect Examination by Mr. Moore	2466

DR. JACQUELYN OLANDER:

Direct Examination by Mr. Moore	2487
Cross Examination by Mr. Brown	2499
Redirect Examination by Mr. Moore	2535
Recross Examination by Mr. Brown	2554
Further Redirect Examination by Mr. Moore	2556

CARRIE ELLISON:

Direct Examination by Mr. Moore	2566
Cross Examination by Mr. McMaster	2578
Redirect Examination by Mr. Moore	2580

LAWRENCE KEITH NELSON:

Direct Examination by Mr. Moore	2582
Cross Examination by Mr. Brown	2592
Redirect Examination by Mr. Moore	2593

ANTHONY NELSON:

Direct Examination by Mr. Moore	2594
---------------------------------	------

RONALD MCANDREW: (Proffer)

Direct Examination by Mr. Moore	2637
---------------------------------	------

DEFENSE RESTS:

2708

CHARGE CONFERENCE:

2658

I N D E X

I N D E X

1		
2	CLOSING ARGUMENTS:	
3	By Mr. McMaster	2708
4	By Mr. Moore	2751
5	JURY CHARGE:	2793
6	QUESTIONS:	2834
7		2839
8		2842
9	VERDICT:	2848
10	JURY POLLED:	2849
11	SPENCER HEARING:	2860
12	PLAINTIFF'S WITNESSES:	
13	BERNIE BOLTE:	
14	Direct Examination by Mr. McMaster	2868
15	BERRY BOLTE:	
16	Direct Examination by Mr. McMaster	2870
17	STEVEN PILL:	
18	Direct Examination by Mr. McMaster	2871
19		
20	SENTENCING HEARING:	2876
21		
22		
23		
24		
25		

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1	1	A	232
2	2	B	232
3	3	C	232
4	4	D	234
5	5	E	234
6	6	F	236
7	7	FZ	257
8	8	DX	258
9	9	H	292
10	10	J	306
11	11	AL	307
12	12	DD	313
13	13	DE	313
14	14	K	322
15	15	L	322
16	16	M	322
17	17	N	322
18	18	O	322
19	19	P	326
20	20	Q	326
21	21	R	326
22	22	S	326
23	23	T	326
24	24	U	326
25	25	AF	339
26	26	AG	339
27	27	AH	339
28	28	Z	368
29	29	AA	368
30	30	AB	368
31	31	I	392
32	32	V	393
33	33	AI	396
34	34	AJ	396
35	35	AK	396
36	36	GA	435
37	37	AN	458
38	38	AO	458

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
39	Photograph	AP	458
40	Photograph	AQ	458
41	Aerial Diagram	G	507
42	DVD	AT	531
43	DVD	AU	531
44	Photograph	FI	532
45	Phone Record	BJ	558
46	Diagram	AX	562
47	Photograph	AW	672
48	DISC	GB	672
49	Driver's License Photo	AM	785
50	Photograph	AY	788
51	Photograph	AZ	788
52	Photograph	BA	788
53	Photograph	BB	788
54	Photograph	BC	788
55	Photograph	BD	788
56	Photograph	BE	788
57	Photograph	BF	788
58	Photograph	BG	788
59	Photograph	BH	788
60	DVD	BL	841
61	DVD	BK	883
62	Medical Records	FG	893
63	Diagram	BZ	897
64	Diagram	BM	907
65	Photograph	BN	909
66	Photograph	BO	909
67	Photograph	BP	909
68	Photograph	BQ	909
69	Photograph	BR	909
70	Photograph	BS	909
71	Photograph	BT	909
72	Photograph	BU	909
73	Photograph	BV	909
74	Photograph	BW	909
75	Photograph	BX	909
76	Photograph	BY	909

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
77	Photograph	CC	922
78	Photograph	CD	922
79	Photograph	CE	922
80	Photograph	CF	922
81	Photograph	CG	922
82	Photograph	CH	922
83	Photograph	CI	922
84	Photograph	CJ	922
85	Photograph	CK	922
86	Photograph	CL	922
87	Photograph	CM	922
88	Photograph	CN	922
89	Photograph	CO	922
90	Photograph	CP	922
91	Photograph	CQ	922
92	Photograph	CR	922
93	Photograph	CS	922
94	Photograph	DC	938
95	Photograph	DF	938
96	Photograph	DG	938
97	Photograph	DH	938
98	Photograph	DI	938
99	Photograph	DJ	938
100	Photograph	DK	938
101	Photograph	DL	938
102	Photograph	DM	938
103	Photograph	DN	938
104	Photograph	DO	938
105	Photograph	DP	938
106	Photograph	DR	938
107	Photograph	DS	938
108	Photograph	DT	938
109	Photograph	DU	938
110	Photograph	DV	938
111	Photograph	DW	938
112	Photograph	DY	938

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
113	Photograph	DZ	938
114	Photograph	EA	938
115	Photograph	EB	938
116	Photograph	EC	938
117	Room Key	FE	948
118	Room Key Sleeve	GC	952
119	Cartridge	EE	958
120	Cartridge	EG	958
121	Magazine	EH	958
122	Cartridges	EI	958
123	Cartridge	EJ	958
124	Firearm	ED	964
125	Ammunition Box w/ Cartridges	EN	966
126	Fingerprint Cards	GD	970
127	Fingerprint Cards	GE	970
128	Cell Phone	BI	1023
129	Magazine	EF	1029
130	Fired Bullet	CT	1033
131	Fired Bullet	FA	1035
132	Fired Bullet	FC	1037
133	Fired Bullet	FH	1038
134	Fired Bullet Jacket	EL	1039
135	Jacket Fragment	FB	1043
136	Jacket Fragment	CU	1045
137	Piece of Lead	EM	1048
138	Fired Cartridge Case	EK	1050
139	Fired Cartridge Case	CV	1050
140	Fired Cartridge Case	CW	1050
141	Fired Cartridge Case	CX	1050
142	Fired Cartridge Case	CY	1050
143	Fired Cartridge Case	CZ	1050
144	Fired Cartridge Case	DA	1050
145	Fired Cartridge Case	DB	1050
146	Fingerprint Exemplars	GF	1063
147	Fingerprint Images	GI	1065
148	Fingerprint Images	GH	1065

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
149	Chart	GG	1067
150	Photograph	FJ	1110
151	Swab	FK	1110
152	Swab	FL	1110
153	Fingernail Clippings	FM	1110
154	Fingernail Clippings	FN	1110
155	Photograph	FO	1110
156	Photograph	FP	1110
157	Photograph	FQ	1110
158	Photograph	FR	1110
159	Photograph	FS	1110
160	Photograph	FT	1110
161	Photograph	FU	1110
162	Photograph	FV	1110
163	Photograph	FW	1110
164	Photograph	FX	1110
165	DVD	GJ	1149
166	Buccal Swab	CA	1353
167	Buccal Swab	CB	1353
168	DNA Card	FD	1353
169	Swab	EU	1354
170	Swab	EW	1354
171	Swab	ET	1357
172	Swab	EV	1357
173	Swab	EX	1357
174	Swab	EY	1357
175	Swab	EZ	1357
176	Swab	EO	1358
177	Swab	EP	1358
178	Swab	ES	1361
179	Swab	ER	1365
180	Swab	EQ	1366
181	Certified Conviction	GK	1851
182	Certified Conviction	GL	1851
183	Certified Conviction	GM	1851
184	Certified Judgment	GN	2305

I N D E X

I N D E X

PLAINTIFF'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
185	Certified Judgment	GP	2305
186	Certified Judgment	GO	2305
187	Photograph	GQ	2323

DEFENDANT'S EXHIBITS:

NUMBER	DESCRIPTION	MARKED FOR ID	RECEIVED
1	Vials of Blood	A	1444
2	Litigation Package	B	1477
3	DVD	I	2360
4	Power-point Presentation	J	2373
5	Photograph	F	2691
6	Photograph	G	2691
7	Photograph	H	2691

* * * * *

1 A In those police reports were narrative
2 statements, an extensive over a hundred pages of the
3 chronology of the events that occurred. I reviewed his,
4 excuse me a minute, medical records from his incarceration
5 at Seminole County Jail. I reviewed the records, and I
6 probably will mispronounce the name, is it Wuesthoff
7 Hospital?

8 Q Exactly, right.

9 A Okay. I also reviewed the report from Dr.
10 Skolly-Danziger when I created this report. Let me see.
11 I'm just checking my notes here. I believe those are the
12 primary ones I reviewed.

13 Q Okay. Did you consider reports from Dr. Joseph
14 Wu or Dr. Mark Erpst?

15 A Okay. Those I obtained after this report was
16 generated, but since the report was generated I reviewed
17 records from Dr. Wu which was an MRI and a PET scan,
18 P-E-T, and then from a Dr. Erpst who reviewed -- did a
19 blind study of the MRI and an updated report from
20 Dr. Skolly-Danziger and a video of the actual shooting, I
21 reviewed that since then.

22 Q Did you rely on -- is that a comprehensive list
23 that you think you included everything?

24 A As best I can recall.

25 Q And you actually interviewed Mr. Bradley?

1 A Yes, I saw him on two occasions.

2 Q And were you assisted in your interview with
3 Mr. Bradley?

4 A On the first one I had a resident with me,
5 Dr. Spicer, who came to fulfill part of her post doctoral
6 experience in order to obtaining in neuropsychology, she
7 was there and assisted me on the first one and I did the
8 seconds one all by myself.

9 Q How many -- how much time have you spent
10 talking to Mr. Bradley including the testing done? Well
11 break it down into this. Two meeting with him, part of
12 that was an interview?

13 A Correct.

14 Q A portion of your meeting with him and other
15 parts were devoted to testing, giving actual tests. So,
16 can you break that down?

17 A I spent approximately six hours with
18 Mr. Bradley, approximately half of it was obtaining
19 information, what we call the interview stage, and the
20 second half was for testing.

21 Q Did you -- in reviewing his records at the
22 Seminole, the Polk Correctional Institute, did you note
23 whether he was on psychotropic medication?

24 A Yes, not initially but definitely by the time I
25 saw him at the second evaluation date.

1 Q Do you recall what those were?

2 A Primarily Risperidon which is an antipsychotic
3 medication.

4 Q And Doxepin?

5 A Yes, that's another one that's used to assist
6 people who are having difficulties controlling there
7 psychosis and require additional medication.

8 Q You work in the criminal justice system, you
9 work in the courts frequently and you have done
10 evaluations of -- in criminal cases before, have you not?

11 A Yes, on multiple occasions both hired by the --
12 requested by the defense but also almost as frequently by
13 the state in a court order.

14 Q Those would be the state attorneys, the
15 prosecuting offices?

16 A Yes, sir.

17 Q As far as the ability of an inmate at a jail
18 such as Mr. Bradley was when you saw him to obtain those
19 psychotropic medications, that would require a
20 prescription written by a medical doctor, a psychiatrist?

21 A Correct. Correct. Although, regular doctors
22 can prescribe some of the medications all though for more
23 complicated they generally refer to a psychiatrist, and
24 also a physician's assistant can prescribe medication but
25 again usually it's at the request of a psychiatrist,

1 they're the one who direct and control the care of a
2 patient.

3 Q Did you tell Mr. Bradley what the reason for
4 your evaluation was?

5 A Yes.

6 Q And why you were there to evaluate him?

7 A Yes, and also I explained the
8 non-confidentiality of this evaluation because people when
9 they see a doctor, particularly a psychologist, assume
10 confidentiality exists and in most cases it does but not
11 this one.

12 Q What did you tell Mr. Bradley was the reason
13 that you were evaluating him?

14 A For the first time I saw him in March I was
15 evaluating him at the request of his attorney to assist
16 with his legal case, and at the second time I went to see
17 him in November I explained to him the purpose was to
18 assess his understanding, ability to understand knowingly
19 and voluntarily provide a statement to the police.

20 Q Did it help you to interview Mr. Bradley twice?

21 A Of course, I often when I do neuropsychological
22 evaluations break it up into two taste. First of all, the
23 completion of a neuro-psychologic evaluation takes many
24 hours, I get tired and I know that if I'm tired and I'm
25 not doing most of the work, I know that the individual I'm

1 testing is probably even more tired than I am. So, I
2 don't like to have fatigue become what I call an
3 extraneous variable, a factor that could influence the
4 outcome. So, I prefer to break it down.

5 Q Did you notice a change in his mental status
6 between a first interview and a second interview?

7 A Yes, I did, during the first interview when I
8 saw him he reported experiencing auditory hallucinations
9 and his presentation was consistent with that. He
10 appeared to be at times internally distracted, that's a
11 way of saying that he was responding to internal stimuli
12 whereas at the second interview I did not observe that.

13 Q And was there -- between the first and the
14 second interview, was there an indication that he began
15 the medication that you just described between the first
16 and the second interview?

17 A Yes, and he reported at the time I was
18 evaluating that he wasn't hearing voices.

19 Q Do you believe you could give a thorough
20 competent evaluation in situations like -- a case like
21 this, a death penalty case, without a face-to-face
22 interview with the patient?

23 A It would be very difficult to provide an
24 opinion in this situation given the severity of this legal
25 case without having a face-to-face interview. I know that

1 people review records and I've done that and sometimes
2 I've been asked to do that but my confidence in my opinion
3 is significantly lower compared to my confidence in
4 providing an opinion when I have the opportunity to be
5 face-to-face with the individual.

6 Q Now, of course, there's always a potential in a
7 case, a criminal case, in particular a death penalty case,
8 for malingering or deception. Now, would you explain to
9 the jury what malingering means and how you address that
10 in your testing.

11 A Okay. In the field of neuropsychology it is
12 critical for us to have confidence that when I'm
13 administering these tests that people are first of all
14 reporting what they truly believe or perceive because
15 there's a difference between perception and reality and --
16 so, it's critical for me to have confidence that they're
17 providing information they truly believe, and secondly
18 that actually trying to complete these tasks with positive
19 motivation and effort. We call that faking bad or
20 malingering. When somebody purposely tries to do poorly
21 on tests in order to manipulate the outcome of the
22 evaluation, that's known as malingering. As
23 neuropsychologists we are at the very top in understanding
24 and assessing malingering because it is most critical to
25 our field, again both in malingering cognitive data,

1 that's the completion of these tests, as well as self
2 reported data, what they tell us about, the historical
3 background, their perceptions and understanding. So, when
4 I complete a test particularly for forensic purposes I
5 make sure that I administer sufficient measures of effort
6 and motivation so that I would have confidence in my
7 findings, without it this is useless.

8 Q So, on the issue of malingering or deception,
9 does it help also to judge the person's body language,
10 attentiveness to the task, whether the person is giving a
11 full effort in your opinion, is that part of the
12 assessment as to malingering?

13 A Yes, it's important to ensure that behavioral
14 observations are consistent with the test results.

15 Q Describe one of the tests at the Paul House if
16 I'm pronouncing that right.

17 A Yes, you are.

18 Q Deception test, would you describe that to the
19 jury and what the results were?

20 A I find the Paul House Deception test is -- it's
21 called the scales, PDS, I found that to be a particularly
22 relevant test to administer particularly in regards to
23 areas of competence. The Paul House deception scale is a
24 measure of dissimulation which is a fancy way of saying
25 lying. It has also measures of positive motivation, in

1 other words, is a person who's completing this trying to
2 positively manipulate the outcome. So, in other words, by
3 lying or exaggeration. This is related to self reported
4 data.

5 Q Was the Advanced Clinical Solutions another
6 test?

7 A Yes, it is, it has a number of subtests that
8 assesses the cognitive aspect of testing, whether or not a
9 person was putting forth, you know, positive motivation
10 and effort on paper, what we call paper and pencil tests.

11 Q And was that administered to Mr. Bradley?

12 A Yes, the three subtests were.

13 Q And what were the results of those two tests?

14 A The results of these tests did not give any
15 indication that he was purposely lying or dissimilating or
16 trying to manipulate the outcome of the self reported data
17 and there was no indication that he was trying to fake bad
18 on the test.

19 Q You also gave some standardized tests related
20 to the Miranda issue, did you not?

21 A Yes, I did and one of them actually had a test
22 of malingering he passed that as well.

23 Q Okay. Was that the SAMA?

24 A Yes, it was one of the subtests of the
25 standardized administration of Miranda.

1 Q Let's talk about the Miranda testing at this
2 point and then we'll take some of the other tests you did.
3 The standardized assessment of Miranda abilities, what is
4 that? Can you describe that to the jury and then what
5 scores you got from Mr. Bradley that test?

6 A It's a series of subtests that examines a
7 person's understanding of the vocabulary, in other words,
8 the words included in the Miranda rights, his
9 comprehension on understanding of the Miranda rights, it
10 also measures a persons misperceptions or distortions in
11 understanding of the Miranda rights, and it also measures
12 a person's level of acquiescing, in other words, how
13 likely would that person acquiesce to a strong authority
14 figure in their responses, as well as the specific details
15 of the events surrounding the waiving of the Miranda
16 rights.

17 Q Now, he scored at the first percentile on one
18 of that test, did he not?

19 A Yes, he scored at the -- well, it depends upon
20 how we frame it. He scored at ninety-ninth percentile in
21 regards to his tendency to acquiesce.

22 Q Now, when we're talking about percentile,
23 describe to the jury what that means, what information you
24 get from that analysis of -- if you rank them according to
25 a percentile score.

1 A The way I describe this to my patients and all
2 the way from here up to here, if I have a hundred people
3 in my office, only -- if somebody scored at the
4 ninety-nine percentile for something good like an IQ test,
5 I would tell this individual that if I asked everybody to
6 leave to this room except for those who did as well as you
7 did, how many people would be left and if somebody scored
8 in the ninety-ninth percentile there would only be one
9 other person left in the room. Kids can get it this.
10 That's how well they did. But if this is a test that
11 measures weaknesses it would have the opposite, in other
12 words, of the hundred ninety-nine people would do better
13 than you would have done on this test.

14 Q Okay. And what -- so, what was the components
15 as to which he did a first percentile score?

16 A Out of a hundred people he would be almost at
17 the very bottom, there would be only be one person who did
18 worse than he did.

19 Q So, overall with respect to the standardized
20 assessment of -- standardized assessment of Miranda
21 abilities, what was the overall performance on that test?

22 A He did extremely -- he has extremely high -- I
23 know, we're switching back and forth. His tendency to
24 acquiesce is extremely high, he would be somebody who
25 would be very easily manipulated. He's a passive

1 dependent individual and be very easily manipulated by
2 others.

3 Q Okay. On the other tests, the -- did you
4 derive any further information from the SAMA you just
5 discussed?

6 A Well, part of the problem is that Mr. Bradley
7 reported having no memory of the time in which he
8 reportedly freely, voluntarily, knowingly waived his
9 Miranda rights. So, that aspect of the test I could not
10 administer because he has absolutely no memory. However,
11 not having that one piece in no way influenced the other
12 aspects of the subtests that were administered.

13 Q In your experience and training, have you found
14 that people who consume drugs around the time of an event
15 like Xanax, benzodiazepines, for example, that that
16 affects their memory?

17 A Oh, absolutely.

18 Q In what way?

19 A Let's talk about marijuana. I taught every
20 grade level and when I was teaching at college, at
21 Valencia, when we got to the section about drugs, as a
22 teacher, as a professor, marijuana clearly interferes with
23 the ability to learn and store new memories, it is not the
24 innocuous drug particularly for younger brains, teenagers
25 in twenties. It's not the innocent drug when it comes to

1 memory and learning because it clearly influences the
2 forming of new memories without a doubt, that's been very
3 well documented. It also has been found to lower IQs in
4 research.

5 Q How about the ingestion of large quantities of
6 Xanax, is there any literature or through your training
7 and experience or exposure to the literature that suggests
8 that that would cause an event to be erased from someone's
9 memory?

10 A It doesn't cause an event to be erased, those
11 memories were never there.

12 Q So, if Mr. Bradley consumed a large quantity of
13 drugs including Xanax preceding the waiver of the Miranda,
14 the giving of a statement, would that be consistent with
15 the effects of the Xanax on Mr. Bradley that he couldn't
16 remember?

17 A Yes. Again, it has to do with the totality --
18 the total amount of drugs ingested over a period of time.

19 Q Would you describe the Grisso testing that you
20 did?

21 A That is an older instrument that was published
22 back in the late nineties whereas the SAMA was published
23 in the I think it was 2012, that is a simpler measure of
24 Miranda rights. What it does is it focuses more on
25 knowledge of vocabulary, knowledge of comprehension, it

1 doesn't really assess the person's ability to apply that
2 information to their specific legal circumstances, it's
3 more a measure of simple memory. In the classroom we used
4 to call these tests are students able to regurgitate the
5 data rather than apply it specifically, but that, that was
6 a good instrument for the time.

7 Q What was Mr. Bradley's performance on that
8 test? What did you learn from that test and how did that
9 apply to your opinion?

10 A Okay. On that test he demonstrated fairly
11 normal ability in most areas except his ability to apply
12 that knowledge, that was significantly lower. So, in
13 other words, he could regurgitate the information but he
14 had a difficult time actually applying that information.

15 Q Was that after you gave the Paul House test
16 which indicated that he was not malingering?

17 A Oh, yes, yes, I do the malingering test at the
18 beginning.

19 Q Did you consider other test results? Did you
20 administer and consider other test results?

21 A Well, as I'm doing these evaluations I
22 appreciate the findings of other test results that I
23 administered earlier.

24 Q All right. One of those was the Delis-Kaplan,
25 would that be correct?

1 A Yes.

2 Q And what was nature of that test and what was
3 the purpose of it?

4 A The Delis-Kaplan is a measure of our frontal
5 lobe or executive skills functioning. Now, in
6 neuropsychological testing particularly when there's
7 concerns about the possibility of brain damage, this is a
8 critical measure. The frontal lobe or the prefrontal lobe
9 of the brain is what distinguishes from other animals that
10 exist on this planet. Our frontal lobe or prefrontal lobe
11 houses those unique quality of human functioning and human
12 behavior, it incorporates our higher level thinking and
13 reasoning, particularly abstract reasoning, but more than
14 anything else it houses our self control and self
15 regulation, self knowledge and self awareness.

16 If I'm comparing the brain to a computer,
17 another way of understanding the executive system, is you
18 can have a fine Pentium processor like ones that exist
19 today, and I'm not at all have much technical knowledge,
20 but what the prefrontal lobe is, it's our operating
21 system. So, in other words, if you have, I know they
22 don't call them this any more, but like a dual core
23 processor and you're trying to run it on one of the first
24 windows, what is, Windows '98, you may have some abilities
25 there but your ability to tap in and effectively utilize

1 is it prevented because your operating system cannot
2 handle it.

3 Q Is the orbital frontal cortex part of that
4 frontal lobe.

5 A Oh, yes, it is. In fact, the orbital frontal
6 cortex holds the pathway between the frontal lobe or the
7 prefrontal lobe of the brain which regulates, it helps us
8 control and self control and the emotional component of
9 the brain. It's the pathway. So, if there's a
10 disconnection there, there's an organic disconnection
11 between our ability to control, manage and inhibit our
12 emotions.

13 Q Now, there are various components of that test,
14 correct?

15 A Yes, there are.

16 Q And were the performance of Mr. Bradley on
17 various components which were sufficiently low to be
18 suggestive of further testing on the issue of whether he
19 may have brain damage?

20 A Oh, absolutely. In fact, on a couple of the
21 scores it was below the first percentile, it was extremely
22 low.

23 Q Then another test was the Weschler Adult
24 Intelligence Scale 4, is that what --

25 A Yes, it's the most recent adult IQ test which

1 is considered the gold standard in regards to testing
2 peoples intellectual functioning.

3 Q And were there components of that test which
4 also if scored sufficiently low would suggest brain
5 damage?

6 A Right, a couple of the areas you'd look for
7 would be his processing speed as well as what is called
8 working memory because that's part of the executive
9 system, and also the similarity test which has to do with
10 abstract reasoning which requires that prefrontal lobe.

11 Q And he scored in the second percentile for
12 processing speed, do you recall?

13 A I'm just reviewing.

14 Q Yes, ma'am, refresh your memory if you need to
15 and if you would point out the components of which the
16 scores were significantly low.

17 A On the measure processing speed there were two
18 tests that are combined to produce an index score, he
19 performed at the second percentile and --

20 Q Any other score components where he scored low
21 on the Wechsler?

22 A His attention executive component was at the
23 fourth percentile.

24 Q Verbal comprehension?

25 A That was fifth percentile. Again, those all

1 fall within the impaired raining.

2 Q Full scale IQ under the Wechsler test?

3 A It was at the second percentile.

4 Q You also considered his Department of
5 Correction, his prison records, did you not?

6 A Yes, I did.

7 Q And in one of those it was indicated that back
8 in about 2007, correct me if I'm wrong, 2008 perhaps, an I
9 request of 96 on what's called the Beta Test?

10 A Yes, I think it was administered in 2010.

11 Q How would you -- which is the preferred test,
12 the Wechsler test or the Beta test and what's the
13 difference between the two?

14 A Significantly different. The Beta test
15 actually first was created in 1917 by I think it was
16 Robert Urkeys, a psychologist for the military, this as
17 you can recall around World War I when the draft was
18 implemented and there were a number of individuals coming
19 into the military. Back in those days there were highly
20 intelligent people who were not really literate because
21 that was society. So, the military had to come up with a
22 quick way of finding out peoples intellectual functions in
23 order to place them in the best place where they would be
24 useful for the military. So, they came up with the Alpha
25 test, these were tests for people who were literate and

1 they were a large group test and then the Beta test were
2 people who were not literate but -- and these were called
3 nonverbal. A non --

4 Q Nonverbal did you say?

5 A Right, nonverbal. In other words, you would
6 not need to read or read very well in order to complete
7 this test. An example of a problem that is considered
8 nonverbal would be you would have a puzzle with three
9 pieces kind of in a box and one missing and then you would
10 have a visual picture, maybe they could be all balls, and
11 this is a very simplistic one, then you would have
12 responses to choose, you could have a square, a triangle,
13 a rectangle in a ball and you have to identify what was
14 the missing piece. So, that would be a nonverbal way of
15 assessing a person's intellectual functioning without
16 needing language or the ability to read.

17 Now, after World War I the military no longer
18 used those instruments whereas I think it was in the
19 thirties in that another group of doctors got together and
20 said let's take this Beta and try to develop it and use it
21 for servarium purposes. So, the Beta III came to exist
22 back in the thirties and it is a group test that is mainly
23 based upon nonverbal subtests. It's a quick screen, it's
24 not time limited, excuse me, and it can be done in a large
25 setting like this. So, it does not -- it does not assess

1 executive skills which is critical in this situation, it
2 doesn't assess language, and it really doesn't assess
3 processing speed which is again critical in this
4 situation, it only really assesses the nonverbal aspects
5 of functioning.

6 Q How would you explain the difference over a
7 five year period, 2008 under the Beta test which the
8 prison gave which is the short fairly quick test a score
9 of 96 and the results you got on the Wechsler test of some
10 five years later?

11 A What's interesting is the closest test that I
12 administer would be part of the IQ test called matrix
13 reasoning, it is a nonverbal test that is not timed, that
14 was the highest score that Mr. Bradley obtained, it was at
15 the twenty-fifth percentile which is considered below
16 average. So, that isn't significantly different than the
17 Beta test but again that's one isolated part of the brain,
18 it doesn't take into account the comprehensive measure of
19 the brain. It is not timed and it doesn't include again
20 the executive skills, the processing speed which a full
21 blown IQ request test would utilize.

22 I'll give you another way of looking at the
23 Beta test. As a school psychologist we are at times asked
24 to do IQ measures when I was in the school system to
25 determine a child's placement into a gifted program or

1 whether or not he had a learning disability. The Beta
2 test is not accepted by the State of Florida as a means to
3 evaluate a person's cognitive abilities, it's not accepted
4 as a test to measure whether or not a person previously
5 would be called mentally retarded now is called
6 intellectually disabled. So, it's not qualified by the
7 opinion for those purposes.

8 Q Of course an IQ, an accurate picture of IQ
9 would be important for you in this assessment, would it
10 not?

11 A Oh, of course.

12 Q Because one of the aspects is whether it's a
13 knowing and intelligent waiver and the statement was a
14 knowing and intelligently given?

15 A Yes.

16 Q Voluntarily given?

17 A Correct.

18 Q Now, would drug use, drug abuse, chronic drug
19 use, drug abuse be -- and brain damage, would those
20 possibly explain the difference in the IQ performance
21 scores between the Beta test and the Wechsler?

22 A Yes, and of course again looking at the results
23 of the neuro-cognitive imaging test, the MRI and PET
24 scores, that's -- and related to processing speed and
25 executive skills functioning, that was not assessed in the

1 same way as it was on the IQ test and I don't think
2 there's any measures of executive functioning.

3 Q Did you take -- did you recommend as a result
4 of the testing you've been describing that Mr. Bradley
5 have neuro-imaging testing done?

6 A Yes, I did, I referred that to you I think the
7 exact day after I saw him.

8 Q And did you consider those test results that
9 came back from the tests that were given, the
10 neuro-imaging tests, in your opinion?

11 A Yes.

12 Q Did you rely on those results?

13 A Yes.

14 Q And what were the results made known to you and
15 what did you -- how did they affect your opinion?

16 A Are you talking about my test results or the
17 neuro-imaging?

18 Q The neuro-imaging tests you were made aware of.

19 A I had already provided an opinion before I got
20 that based upon my own data and the records I reviewed,
21 but having -- given the additional information it
22 completely supported my initial opinions.

23 Q You had some information, did you not, of head
24 injury in Mr. Bradley?

25 A Yes, he consistently reported to me that he had

1 had one very serious head injury and the other two that
2 could have easily resulted in a head injury.

3 Q Was this -- the results from the PET scan and
4 the MRI, did they -- what affect did they have on your
5 consideration of whether he had actually experienced head
6 injuries in the past?

7 A It added additional corroborative data to
8 support my opinions, it was very clean, very clear, very
9 consistent.

10 Q And was your recommendation of the
11 neuro-imaging testing done to help corroborate or confirm
12 what you suspected through your testing?

13 A Yes, I sought additional information and it was
14 obtained and it created more validity to my opinions.

15 Q Did you -- you also considered -- you viewed
16 the DVD of the interrogation?

17 A Yes.

18 Q Now, there was a portion preceding when the
19 interrogation actually begins?

20 A Quite a long time.

21 Q Quite a long time. And during which
22 Mr. Bradley is doing what?

23 A Falling off the chair and sleeping.

24 Q And that's before the police walk into the room
25 and begin to question him?

1 A Yes.

2 Q And what period of time is that, do you recall?

3 A I think the actual video began around 12:45.

4 Q P.m.?

5 A And then it lasted for hours.

6 Q That's like 12:45 on March the 6th?

7 A Yes.

8 Q And can you tell whether Mr. Bradley is
9 sleeping or passed out or -- and if so what would inform
10 that opinion?

11 A Well, he initially was put on a chair but some
12 time later he fell off the chair and you can hear snoring
13 and them mumbling, you can hear people coming in trying to
14 arouse him without being successful.

15 Q Was that what you observed?

16 A Yes.

17 Q And officer come in to try to wake him up?

18 A Yes.

19 Q And how did that -- how successful was that
20 effort?

21 A He wasn't. He wasn't -- he mumbled and he
22 wasn't able to get him more alert very successfully and it
23 wasn't until the actual time the two officers came in that
24 you heard more than just mumbling or a few sentences or
25 words.

1 Q Okay. And were -- would perceptual distortions
2 be something that you would consider if you observed them
3 Mr. Bradley in informing to help you reach the opinion of
4 whether his statement and waiver of Miranda were
5 voluntarily?

6 A Yes, he reported significant history of
7 psychotic experiences, also he was very paranoid when I
8 saw him on March, the first time. He was actually -- when
9 he was explaining his beliefs, his distorted beliefs, he
10 actually was concerned about my well-being and shared with
11 me the importance of not taking an oath because an oath --
12 if I took an oath it would make me vulnerable to being
13 taken over by the dark side so to speak.

14 Q What I'm asking would be the perceptions of
15 the -- that Mr. Bradley expressed during the interview of
16 being shoot, fear of being shot?

17 A Yes, it would be quite relevant because it
18 would integrate his personal experiences, personal history
19 with his psychosis.

20 Q And would that also influence your decision
21 about whether he was knowingly and intelligently and
22 voluntarily able to waive Miranda and give a statement?

23 A Yes, all of the pieces would be important.

24 Q Were there other points where Mr. Bradley
25 expressed that concern about being shot which would lend

1 to your opinion about -- or influence your opinion about
2 whether he was experiencing perceptual distortions?

3 A Yes, and both times I saw him in March and then
4 later in November he described a belief that he was going
5 to have a very short life, that he had personally
6 experienced five deaths within a very brief time, I think
7 beginning at age fifteen with the death of his grandmother
8 and then his cousins and close friends who had all been
9 shot, one was accidentally blown up, and a belief system
10 that he would experience the same outcome. Also, he
11 described about a week before his legal circumstances
12 occurred of having a hit placed on him and that somebody
13 was trying to kill him.

14 Q Well, specifically, I mean, you viewed the DVD
15 of his statement?

16 A Yes.

17 Q The focus here is trying to figure out if he's
18 in touch with reality or not, perceptual distortions, as
19 it relates to his ability to waive Miranda and give a
20 voluntary statement, that's your focus?

21 A Yes.

22 Q Okay. During the DVD, reviewing of the DVD of
23 the actual shooting, were there -- was there any evidence
24 there that would form your opinion about whether he was
25 undergoing perceptual distortions?

1 MR. BROWN: Judge, I'm going to object at this
2 point, wish to approach.

3 THE COURT: Yes, you may. My screen's down,
4 you're going to have to put us on bench conference.

5 (Thereupon, a benchside conference was had out
6 of the hearing of the jury as follows:)

7 THE COURT: My screen's been up, that's the
8 first time it's been down all morning.

9 MR. BROWN: I'm going to object as to any
10 testimony of her interpretation of the shooting, what
11 psychoses he may have been undergoing at the time of
12 the shooting is not A, relevant, B not admissible.

13 MR. MOORE: It's relevant if it's something she
14 reasonably relied on in giving her ultimate opinion
15 about Miranda and perceptual distortions which is
16 what she's being offered for and whether it's
17 admissible or not the fact, the fact that the DVD is
18 in evidence and -- so, that takes care of that.
19 However, under 90.704, an expert can rely on --
20 reasonably rely on matters even if they're not
21 admissible but in fact that DVD is in evidence and
22 it's consistent with Mr. Bradley saying to the police
23 I thought she was going to shoot me, it's consistent
24 with Andria Kerchner's testimony where she attributes
25 that very comment to Mr. Bradley and so it's just

1 further basis for her to reasonably rely on in giving
2 her opinion about whether Mr. Bradley was able to
3 voluntarily waive Miranda and give a statement.

4 MR. BROWN: Judge, it's simply a gateway now
5 (unintelligible) which is why we objected to this in
6 the beginning that the diminished capacity defense,
7 they're simply trying to back strap it in. The issue
8 that her testimony at this stage of the trial is
9 whether or not his statement was freely and
10 voluntarily given, whether he's having a psychoses
11 come three hours earlier is not relevant, it's
12 pushing the fence that doesn't exist. Diminished
13 capacity evidence is not admissibility, it would be
14 confusing to the jury and it goes contrary to the
15 purpose counsel argued that she's here to testify as
16 to the voluntariness of his statement. Therefore,
17 any opinion she has of psychoses he was suffering at
18 the time of the shooting is inadmissible.

19 MR. MOORE: If it is something upon which she
20 would rely and she's prepared to say that and if it's
21 part of her overall opinion as it relates to the
22 narrow scope that we're offering it, then she should
23 be permitted to offer that. The jury has been
24 instructed on diminished capacity.

25 MR. BROWN: Experts are not --

1 THE COURT: I'm going to sustain the objection,
2 you need to narrow the scope of that question. I
3 took it as her giving that opinion as of that time,
4 didn't take it as her using that to rely on. I don't
5 know if that's what you were getting but I'm going to
6 sustain the objection.

7 MR. MOORE: Well, I would like to proffer that.
8 Here's what I intend to do, ask her if she relied
9 upon what she heard in the DVD not only of the
10 interrogation but of the shooting and if that is part
11 and parcel of what she lied upon in giving this
12 ultimate opinion about voluntariness then she should
13 be -- you know, that's a predicate.

14 THE COURT: That's a different question.
15 Actually, that question is different than what she
16 was about to answer.

17 MR. MOORE: I'll ask that question.

18 THE COURT: Okay.

19 (Thereupon, the benchside conference was
20 concluded and the proceedings were had as follows:)

21 THE COURT: We can go back to jury trial. I'm
22 sorry, I don't have a screen up, you all need to fix
23 my screen. Thank you. Go ahead.

24 BY MR. MOORE:

25 Q Doctor, did you in viewing all the information

1 that you considered and reaching your opinion about the
2 voluntariness of the statement and waiver of Miranda, did
3 you also consider and rely on what you heard in the DVD of
4 the actual shooting?

5 A It helped corroborate and support my findings.
6 When I, when I complete an evaluation --

7 MR. BROWN: Judge, I'm going to object.

8 BY MR. MOORE:

9 Q Did you rely --

10 THE COURT: He's asking the next question.

11 BY MR. MOORE:

12 Q Did you rely on that information?

13 A Yes.

14 Q Okay. And so what was it that you heard that
15 you relied on? What did you hear in the DVD that you
16 relied on?

17 MR. BROWN: Again, I'm going to object, ask to
18 approach.

19 THE COURT: Okay. I need a bench conference,
20 please.

21 (Thereupon, a benchside conference was had out
22 of the hearing of the jury as follows:)

23 MR. BROWN: Judge, he cannot use an expert as a
24 gateway to try to get in based on -- what she relied
25 upon as to get in something that's inadmissible.

1 THE COURT: What I heard is what you relied
2 upon and all she's going to do is repeat a statement
3 that he said in the DVD and that's already in
4 evidence. She wasn't going to give her opinion on
5 that statement.

6 MR. BROWN: I'm concerned because she takes
7 ever question and runs with it. She's already said
8 what she heard and relied upon. So, I would object
9 to now --

10 THE COURT: He's allowed to say what statement
11 did you rely on. I mean. So, I'm going to overrule
12 the objection at this point.

13 (Thereupon, the benchside conference was
14 concluded and the proceedings were had as follows:)

15 THE COURT: Okay. We can go to jury trial,
16 please. Go ahead.

17 BY MR. MOORE:

18 Q Okay. Doctor, Focusing on the DVD of the
19 shooting, what did you hear, what statement did you hear
20 in that DVD which you relied on in forming your opinion
21 about the voluntariness of the giving -- of Mr. Bradley
22 giving a statement to the police?

23 A His statements were consistent with the
24 presence of paranoia.

25 Q What statement did you hear?

1 MR. BROWN: Objection.

2 THE COURT: Okay. Overruled.

3 THE WITNESS: The statements were questions
4 asking the police officer --

5 BY MR. MOORE:

6 Q Okay.

7 A -- by Mr. Bradley are you going to shoot me,
8 are you going -- why are you going to shoot me.

9 Q How many times did you hear that?

10 A Multiple. Multiple times.

11 Q Did you consider the deposition testimony which
12 you were provided of Andria Kerchner on that issue?

13 A Yes, it was part of the materials I reviewed in
14 formulating my decisions.

15 Q Did you rely upon that deposition of Andria
16 Kerchner in reaching your opinion?

17 A Yes, it was a piece.

18 Q Was there an aspect of a statement that Miss
19 Kerchner attributed to Mr. Bradley during the time leading
20 up to the shooting?

21 A She spoke about irrational behaviors.

22 Q A statement that he made.

23 A Oh. I'm trying to think. I don't know if I
24 can recall it verbatim but it was related to about being
25 shot for this.

1 Q And assume for purposes of this question about
2 your opinion that when Andria Kerchner testified she also
3 said Mr. Bradley asked just before the shooting if he was
4 going to be shot, assume that as well.

5 A Yes.

6 Q How does that affect your opinion?

7 A Again, it supports the opinion that this was a
8 man who was suffering from paranoia consistent with a
9 psychotic experience.

10 MR. BROWN: Objection. May we approach?

11 THE COURT: Yes, you may. You need to go bench
12 conference, please.

13 (Thereupon, a benchside conference was had out
14 of the hearing of the jury as follows:)

15 MR. BROWN: Judge, I'm going object as to her
16 giving an opinion at this time of what he was
17 informing at the time of the shooting, it's not
18 admissible, it's diminished capacity and there's no
19 diminished capacity defense in this case and it's
20 not -- and it's clear evidence (unintelligible) and
21 evidence of it is simply not admissible.

22 THE COURT: I didn't hear that as the question.
23 I didn't hear that as what he was asking.

24 MR. BROWN: Well, that's what she's now said
25 twice. I'd ask the Court to instruct the jury to

1 disregard it.

2 THE COURT: I didn't hear that as the answer, I
3 heard it she relied on some things in giving her
4 answers as to whether the statement was knowingly and
5 she's been very -- the response has been very narrow
6 as to what he responded, he didn't connect that up to
7 the shooting.

8 MR. BROWN: She did, she said it now twice that
9 he was suffering from paranoia at the time of the
10 shooting.

11 THE COURT: She said he was suffering from -- I
12 didn't hear at the time of the shooting, I heard he
13 was suffering from paranoia.

14 MR. MOORE: I'll refocus it, you know, that's
15 where I've been trying to keep the focus on the
16 opinion as it relates to the time of the -- of
17 Mr. Bradley's statement to the police.

18 MR. BROWN: Judge, I would ask the Court to
19 instruct the witness to limit her opinions to the
20 interview and instruct the jury to disregard any
21 opinion about what he was suffering at the time of
22 the shooting.

23 THE COURT: That request is denied. Okay.
24 Thank you.

25 (Thereupon, the benchside conference was

1 concluded and the proceedings were had as follows:)

2 THE COURT: Okay. If we could go jury trial,
3 please. Yes, sir.

4 BY MR. MOORE:

5 Q Did you -- did you also consider Mr. Bradley's
6 drug history?

7 A Yes.

8 Q In reaching -- now, we're focusing on
9 Mr. Bradley's ability to give a voluntary, knowingly
10 intelligent statement to the police and waive Miranda,
11 that's what we're focusing on. In connection with that,
12 in reaching an opinion about that, did you rely upon his
13 drug history.

14 A I relied upon many aspects of his history
15 including his drug history?

16 Q Okay. As it relates to the drug history as it
17 relates to Mr. Bradley's ability to give a voluntary
18 statement, did you see -- did you collect evidence from --
19 did he give you a history of drug use and drug abuse?

20 A Yes.

21 Q Did it fit any profile of, whether it's drug
22 addiction or use, did it fit any profile?

23 A It fit the profile of having a substance
24 dependence disorder.

25 Q In fact, that was one of your conclusions, a

1 poly substance abuse disorder.

2 A Yes.

3 Q And was that confirmed by -- in any of the
4 records that you reviewed?

5 A Yes.

6 Q Did you see in your review of the Department of
7 Corrections records and also the information that was
8 collected at the Brevard County Jail and the Polk County
9 Correctional Institute, Polk County -- Seminole County
10 Correctional Institute as well as the 2008 records from
11 Wuesthoff Hospital related to the automobile accident
12 which confirmed the history of drug abuse and drug
13 dependence?

14 A Yes, they were all consistent.

15 Q Well, what did you see? What did you read?
16 You relied on those, did you not?

17 A Yes.

18 Q So, what did you read that you relied on in
19 those records?

20 A In the accident that occurred in 2008, the
21 motor vehicle accident, he had ingested -- drugs were
22 found in his tests, and he reported a significant history
23 dating back to I believe age twelve beginning with
24 marijuana and then following marijuana Ecstasy, a number
25 of other drugs that he had used consistently, and even

1 more so following his motor vehicle accident he increased
2 significantly particularly after he was released from DOC
3 up to the time of his arrest he had ingested multiple
4 drugs, multiple quantities.

5 Q Are there parts of the brain implicated that
6 perhaps showed up in the MRI or the PET scan which are
7 involved in drug dependency or proneness to drug
8 addiction?

9 A Yes. In fact, the areas of the brain that were
10 damaged all have been found to be related to addiction
11 issues. It's that pathway between self control in which
12 we can override our instinctive urges, that was
13 disconnected and that has been associated with addiction
14 and addiction problems.

15 Q What part of the brain are you talking about?

16 A I'm talking about the pathway, in other words,
17 the freeway system of the brain between the prefrontal
18 lobe and the limbic lobe which is related to issues of
19 motivation, drive and emotion, that was the area that's
20 damaged.

21 Q When say it was damaged, how do you reach that
22 conclusion?

23 A That was consistent with the results of my
24 neuropsych testing and also consistent with the MRI and
25 the PET scans completed.

1 Q Do people who have mental health issues self
2 medicate?

3 A Very frequently.

4 Q Now, in those same records that we just
5 mentioned, the Department of Corrections records, the
6 Brevard County Jail, Seminole County Jail, Wuesthoff, was
7 there a portion of those records in which information was
8 entered as to whether Mr. Bradley ever had mental health
9 issues?

10 A He denied it at that time.

11 Q Okay. And so what would be an explanation for
12 that if somebody has mental health issues in being
13 interviewed at the jail, either jail, or the Department of
14 Corrections or Wuesthoff Hospital when he's in the
15 emergency room being treated for an automobile accident,
16 what would be reasons why that information would be in
17 there if he in fact had some mental health issues?

18 MR. BROWN: Judge, I'm going to object.

19 THE COURT: Okay. Bench conference. If you
20 could go to bench conference, please.

21 (Thereupon, a benchside conference was had out
22 of the hearing of the jury as follows:)

23 MR. BROWN: Judge, this question is calling for
24 hearsay information as to reasons why a person may or
25 may not have mental health history. I mean, she

1 doesn't know --

2 THE COURT: My concern is that you're getting
3 way off the issue about -- when you're talking about
4 why he denied it in the Department of Corrections.

5 MR. MOORE: It's the basis of the next witness
6 that Dr. Zapf, you know, she picked all this stuff
7 apart and -- as if somehow this doctor is misstating
8 facts or should have picked up on this and how it's
9 inconsistent with mental -- she's going to bring it
10 up. She's going to get into it. So, if my doctor
11 can't get into it then their doctor can't get into
12 it. I mean, that's the whole thrust of her report is
13 picking and nitpicking every factual finding of this
14 doctor and saying, well, she just go far enough, she
15 didn't look far enough and, you know, all this stuff
16 suggests that he's lying and malingering and so I'm
17 preempting what I expect is going to be Dr. Sapf's
18 testimony.

19 THE COURT: They've objected so if I sustain it
20 I assume you're not going there with her testimony.

21 MR. BROWN: Well, I'm objecting because the
22 question calls for hearsay, what are reasons why a
23 person would not report this. That's not -- she
24 doesn't know why he did or did not report it. She
25 can't speculate on what a regular person would or

1 would not do at the time. That fact that he didn't
2 report it, that's it.

3 MR. MOORE: She's a mental health expert and
4 she evaluates people, that's what she does
5 forensically and --

6 THE COURT: Okay. Is the State going to get
7 into that with their expert? Because if they are I'm
8 going to allow it, if there not I'm going to sustain
9 it.

10 MR. BROWN: Well, overall, I mean, personally I
11 think the objection I made all along is this is
12 penalty phase stuff.

13 THE COURT: We've addressed that. They've been
14 really careful about couching it with regard to the
15 voluntariness of the statement. I can understand
16 your objection, but I think I've addressed all those
17 issues. So, I'm still back to my question. Is
18 that --

19 MR. BROWN: Judge, we're intending to getting
20 into it but I don't think she's allowed to -- she
21 ought to be allowed to simply give a laundry list of
22 possible explanations about why a person would deny.

23 THE COURT: She's a mental health expert, I'm
24 assuming that she has some basis for that and that
25 would be subject to cross examination.

1 MR. BROWN: But it's not explanations she has
2 from him, it's just a generic explanations of why a
3 generic person would deny.

4 THE COURT: I think that's fair. Okay. So,
5 overruled.

6 (Thereupon, the benchside conference was
7 concluded and the proceedings were had as follows:)

8 THE COURT: If we could go to jury trial,
9 please. Go ahead, Mr. Moore.

10 BY MR. MOORE:

11 Q Okay. You evaluated Mr. Bradley and you have a
12 profile of Mr. Bradley based upon a number of things, your
13 neuropsych testing, your face-to-face evaluations,
14 everything you considered, in looking at -- and among
15 which you considered would be the records from -- that I
16 just referred to a moment ago from the Brevard County
17 Jail, the Seminole County Jail, the Department of
18 Corrections, Wuesthoff records, Wuesthoff Hospital, why if
19 Mr. Bradley was experiencing mental health issues would
20 they not be reflected in those information sheets as that
21 relates to Mr. Bradley?

22 A I asked him that question and his response was
23 consistent with what I have hypothesized would be. As an
24 old school teacher I spent sixteen years in the public
25 school system, I was a guidance counselor --

1 MR. BROWN: I'm going to object, Your Honor,
2 that the witness isn't answering the question.

3 THE COURT: I'll sustain the objection.

4 BY MR. MOORE:

5 Q You asked Mr. Bradley?

6 A Yes, he said he was ashamed and embarrassed
7 about it and he didn't want people to think that he was
8 crazy.

9 Q He has a high school education?

10 A Yes.

11 Q What is the ability of a high school graduate
12 to self diagnosis mental health abilities compared to
13 yours let's say?

14 A In a -- a high school graduate could know that
15 they have problems that they depress per se or sad and not
16 in all cases because sometimes people come from such
17 dysfunction families that they don't know that they've
18 been depressed all their life because that's their only
19 frame of reference. People if they're experiencing
20 auditory hallucination probably have some understanding
21 that this is abnormal but again being able to correctly
22 diagnosis what it is would be limited.

23 Q Self diagnosis?

24 A Correct.

25 Q Would other factors be involved in the way the

1 questions are asked or who's asking the questions?

2 A Of course, and it also related to a person's
3 self esteem. If people have no positive self esteem they
4 can -- and they perceive mental illness as a flaw, many
5 people still do these days, acknowledging it would be
6 another means in which their self esteem is lowered. So,
7 somebody with very low self esteem who's depressed would
8 be much less likely to acknowledge another significant
9 defective part of their being compared to somebody with
10 higher self esteem.

11 Q In the Wuesthoff records, 2008, where
12 Mr. Bradley was there because of an automobile accident.

13 A Correct.

14 Q Was there any indication that he was undergoing
15 a psychiatric or psychological evaluation at that time, if
16 that information was collected?

17 A No, just a cognitive sense.

18 Q Was there an indication whether he was in pain
19 at the time?

20 A Yes.

21 Q Was there an indication of whether he was under
22 the influence of drugs at the time?

23 A Yes.

24 Q And when information like that is gathered at a
25 jail or prison and you reviewed those records, any

1 indication that Mr. Bradley was undergoing a psychological
2 evaluation at that time?

3 A No, it appeared to be a screening.

4 Q Would there be in your opinion in your
5 experience in that setting perhaps a concern maybe
6 specifically in Mr. Bradley's case of not wanting to
7 appear to be weak and vulnerable because of the
8 (unintelligible)?

9 A Yes.

10 Q As a reason why if there's a mental problem he
11 might not admit to it?

12 A Correct.

13 Q Now, Mr. Bradley indicated auditory
14 hallucination?

15 A Correct.

16 Q He didn't use those terms, did he?

17 A No.

18 Q It's not like he said I'm having auditory
19 hallucinations, that didn't come out of his mouth, did it?

20 A No, that was my --

21 Q How did he relate that to you?

22 A He was hearing voices.

23 Q At what points in his life?

24 A Dating back to when he was in school.

25 MR. BROWN: Judge, I'm going to object at this

1 points and ask to approach.

2 THE COURT: Bench conference, please.

3 (Thereupon, a benchside conference was had out
4 of the hearing of the jury as follows:)

5 MR. BROWN: Judge, I'm going to object, this is
6 not relevant towards the issue of Miranda.

7 MR. MOORE: I'll make it relevant.

8 MR. BROWN: The voluntariness of his statement.

9 MR. MOORE: I'll make it relevant.

10 THE COURT: Okay. I'm going allow them some
11 leeway based on the instructions that I've given the
12 jury and I have to believe that the jury can follow
13 those instructions. So, I'll overrule the objection.

14 (Thereupon, the benchside conference was
15 concluded and the proceedings were had as follows:)

16 THE COURT: Okay. If we could go jury trial,
17 please.

18 BY MR. MOORE:

19 Q Now, we're focusing on the basis of your
20 opinion of the voluntariness of his statement and what
21 informed that decision, what you relied on, and so part of
22 that was Mr. Bradley's history that you collected from
23 him?

24 A Correct.

25 Q And part of that was his report of having heard

1 voices at points in his life?

2 A Correct.

3 Q Would that have included when he was like when,
4 school, when did he report that?

5 A His ability to explain his past history of
6 having these auditory hallucination going back to his
7 childhood is relevant and would add consistency to his
8 present situation of having them as a child even though he
9 did not report it and even though it wasn't identified.

10 Q Well, if it's not in any of his school -- you
11 got records from Cobb County, Georgia.

12 A Yes.

13 Q The school system of Brevard County?

14 A Yes.

15 Q And you didn't see any indication of that in
16 either of those, right?

17 A No, and I wouldn't expect to.

18 Q Why's that?

19 A Again, sixteen years in the school system, a
20 guidance counselor, school psychologist, if a child is
21 sent to me and I make notes about it --

22 MR. BROWN: I'm going object again at this
23 point.

24 THE COURT: Overruled.

25 THE WITNESS: I would have a cumulative file

1 but those don't go in the permanent records. In
2 fact, when you have a psychiatric disorder, as a
3 school employee that's not my role, we're not trained
4 as psychologists or psychiatrists, we would refer
5 that information to the parent and expect them to get
6 the appropriate help.

7 BY MR. MOORE:

8 Q Would you expect those type of records to be
9 kept in either the Cobb County school system or Brevard
10 County school system from the standpoint of an expert, a
11 neuropsychologist, and somebody with sixteen years as a
12 counselor in school systems?

13 A Teacher and school psychologist. No, because
14 what they keep is they keep transcript information. If
15 the child is in special education they would have their
16 IEPs and if there is any evaluations conducted you would
17 be very lucky to get those. Mainly nowadays when I
18 request school records I either get a series of IEP
19 meetings and something like a high school transcript. We
20 don't get those records.

21 Q Okay. Now, part of your determination of the
22 voluntariness, the act of the statement and the waiver of
23 Miranda and you made a determination of the susceptibility
24 to be -- to acquiescing, that is to submit to an authority
25 figure?

1 A Correct.

2 Q And was your -- was your opinion on that which
3 is part of the voluntariness issue that you're asked to
4 testify about the, did that include any aspects of
5 Mr. Bradley's history that helped you inform that decision
6 on the voluntariness, the willingness to acquiesce?

7 A Yes, that -- the evaluation for Miranda rights
8 is a retrospective study so yes.

9 Q Well, in particular, child abuse, is that
10 something that informed your decision, that you relied on
11 in reaching the opinion that his statement was voluntary
12 or not?

13 A Yes.

14 Q In what way did that inform your decision?

15 A It helped me understand the adult person
16 because our early childhood experiences provide the basic
17 framework of our functioning as an adult because that's
18 the way the brain is designed, it's designed to work
19 efficiently so that we don't have to reinvent the wheel
20 each time we experience. So, we have those automatic
21 programs that we run that are formed throughout our
22 childhood.

23 Q And what particular information did you have
24 that you relied on on the issue of voluntariness?

25 MR. BROWN: Judge, I'm going object at this

1 point.

2 THE COURT: Overruled. Based on the Court's
3 prior rulings, overruled.

4 BY MR. MOORE:

5 Q As it relates to child abuse that you relied
6 on.

7 A His developmental history of being an abused
8 child would impact his functioning as an adult.

9 Q Did you -- did he go -- he did give you
10 particulars about that?

11 A He reported getting whippings and beatings by
12 his stepfather. He reported trying to talk to his mother
13 about it and wasn't able to have success so he turned much
14 more toward his friends and other family members,
15 particularly his grandmother, and that's why her death was
16 so impactful to him to try to find a means to replace the
17 in nurturing that we expect to get from our parents.

18 Q From a chronological standpoint, you know, the
19 part that you relied on, did that time when he was getting
20 the beatings and whippings, did that correspond with the
21 start of the twelve -- at twelve of drug use that you
22 described earlier?

23 A Yes, it's the formative ages in which this
24 happened and going into middle school where it would be
25 consistent those experiences of beginning auditory

1 hallucinations, the beginning of using drugs for self
2 medication commonly occurs in a child who's had that
3 background.

4 Q Okay. And now what is your opinion based upon
5 all of this information that you've considered as to
6 Mr. Brandon's -- Mr. Bradley's ability to knowingly,
7 intelligently voluntarily give a statement and waive
8 Miranda rights?

9 A Based upon the data I obtained I found he was
10 significantly impaired at the time he reportedly waived
11 his rights such that his ability to know what he was
12 doing, his ability to voluntarily do it and his
13 intelligence in making that decision were all
14 significantly impaired.

15 Q And was part of that impairment based upon all
16 you observed and considered and relied upon due to the
17 ingestion of some sort of substance?

18 A Yes.

19 Q In your opinion?

20 A Absolutely.

21 MR. MOORE: No further questions at this time.

22 THE COURT: Okay. It would be appropriate for
23 us to take a break for the morning. We're going to
24 take a fifteen minute break. It's 10:30, we're going
25 to be back here at 10:45. During this break as the

1 jury you must continue to abide by your rules
2 governing your service as a juror. All right. Court
3 will be in recess for fifteen minutes.

4 (Thereupon, the jury was escorted out of the
5 courtroom by the court deputy and the proceedings were had
6 as follows:)

7 THE COURT: Okay. Please be seated.

8 Dr. Olander, you can take a break as well and we'll
9 be in recess for fifteen minutes as well. So, we'll
10 be back here at a quarter til.

11 THE WITNESS: Thank you, Your Honor.

12 (Thereupon, a short recess was taken in the
13 proceedings.)

14 THE COURT: Okay. We can bring out Mr.

15 Bradley.

16 (Thereupon, the defendant was escorted into the
17 courtroom by the court deputy.)

18 THE COURT: Okay. We can bring in the jury.

19 (Thereupon, the jury was escorted into the
20 courtroom by the court deputy and the proceedings were had
21 as follows:)

22 THE COURT: Please be seated. Okay. Cross
23 examination on behalf of the State.

24 MR. BROWN: Yes, Your Honor.
25

CROSS EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. BROWN:

Q Dr. Olander, good morning.

A Good morning.

Q Let me cover with you to start with a little bit about the defendant's educational history. These are some of the records that you reviewed both his Georgia school records as well as his Brevard County school records, correct?

A Correct.

Q And he did graduate from Eau Gallie High School in 2007, correct?

A Correct.

Q He had a GPA, state GPA of 2.6, a district GPA of 2.7?

A At what time, at graduation?

Q Yes.

A Just referring to my notes. Yes.

Q And in fact, his high school GPA grade by grade from ninth to tenth to eleventh up to twelfth kept increasing every year, correct?

A I don't recall.

Q Is it in your notes a 2.4 in ninth grade, 2.59 in tenth, 2.63 GPA in eleventh grade?

A Yes, I'm reviewing my records, in my report I

1 stated that.

2 Q Okay. So, he was increasing and obviously
3 ended up with a 2.6, he twelfth grade GPA was the highest.

4 A If it's rounded off it's pretty comparable, his
5 eleventh grade was 2.63.

6 Q He was seventeen when he graduated, correct?

7 A I believe so.

8 Q Which would lead one to believe that he never
9 had to repeat any grade?

10 A Correct, he didn't report repeating a grade.

11 Q Okay. And a 2.6 state GPA, 2.7 district GPA,
12 that is a C plus average, correct?

13 A It's a C average, it's an average grade.

14 Q C is a two?

15 A Correct.

16 Q A B is a three?

17 A Correct.

18 Q And an A is a four?

19 A Correct.

20 Q A D would be a one.

21 A Correct.

22 Q And F is a zero?

23 A Correct.

24 Q And the school records didn't indicate he was
25 ever -- that he ever received any special educational

1 services, correct?

2 A Correct.

3 Q He was never flagged for his requiring any
4 additional educational support, correct?

5 A Correct.

6 Q And those are things you would expect to see in
7 the records if that were the case, correct?

8 A In most cases, yes.

9 Q And there is nothing that you reviewed to
10 indicate that he ever received any special educational
11 services?

12 A Correct.

13 Q And you acknowledge you reviewed the Department
14 of Correction records, correct?

15 A Correct.

16 Q And you talked about earlier he received an IQ
17 of 96 when they did their IQ test, correct?

18 A Yes, on the screening instrument.

19 Q And that would be consistent with his high
20 school performance, right?

21 A Yes.

22 Q 96 is THE average range, right?

23 A Correct.

24 Q And his high school performance average range?

25 A Correct.

1 Q Did you ever give the defendant what's known as
2 the SIRS, S-I-R-S, test?

3 A No, I did not.

4 Q Okay. How about the TOMM, the T-O-M-M test?

5 A No, that's -- I did not administer that
6 malingering test.

7 Q Okay. And you talked about the importance
8 of -- in coming to your conclusion about the accuracy of
9 the information the defendant gives you, correct?

10 A Correct.

11 Q And if he gives you bad information, that would
12 lead to a bad opinion, correct?

13 A Yes.

14 Q So, the reliability of his information is key
15 and crucial to the reliability of your opinion?

16 A Of course.

17 Q And you indicated that he told you he had three
18 instances where he suffered head injuries?

19 A Yes, that -- where his head was hit and a loss
20 of consciousness on at least one.

21 Q One of those he claimed when he was at the age
22 of fifteen?

23 A Let me review my records. Yes.

24 Q And that's when he claimed he was fell off the
25 monkey bars, landed on his head and lost consciousness?

1 A Yes.

2 Q Now, when somebody tells you they had a
3 situation like that, would it be normal to try to look for
4 confirmation of that?

5 A It would be normal to look for information to
6 support the possibility of a head injury.

7 Q Okay. You would try to look for corroboration
8 for the fact that he suffered that incident at the age of
9 fifteen, right?

10 A If he reported that he went to a hospital, yes,
11 but there are many cases in which people fall and lose
12 consciousness that they don't go to the hospital. So, I
13 wait to obtain a totality of information before I provide
14 an opinion.

15 Q So, he told you he fell off monkey bars, landed
16 on his head, lost consciousness, correct?

17 A Yes.

18 Q And there are no corroboration of that through
19 any medical records, school records or any records at all?

20 A No, I did not get any medical records related
21 to that specific event.

22 Q And he also indicated to you at the age of
23 nineteen in juvenile camp he was hit on the head with a
24 lock that was slung by another participant?

25 A Yes.

1 Q And for that instance any corroboration through
2 any medical records?

3 A No.

4 Q Through any Department of Correction records?

5 A No.

6 Q Any corroboration through Department of
7 Correction medical records at all?

8 A No.

9 Q So, both of those instances you have zero
10 corroboration independently from the defendant?

11 A Other than his presentation in testing was
12 consistent and his presentation on cognitive imaging were
13 consistent with the presence of a head injury.

14 Q Let's go to the one instance where there was
15 actual medical records and that was the car crash he
16 indicate occurring at the age of seventeen?

17 A Yes.

18 Q Now, in your interview he told you he was a
19 passenger?

20 A Yes.

21 Q He was not wearing his seatbelt?

22 A I have to look at that but he was a passenger,
23 yes.

24 Q That the other car did a u-run, he t-boned the
25 car at sixty miles an hour.

1 A He didn't, the car was --

2 Q Well, the car was t-boned.

3 A Right.

4 Q He indicated to you that he hit his head on the
5 windshield and he lost consciousness?

6 A Yes.

7 Q You had a chance to review the medical records,
8 correct?

9 A Yes.

10 Q And those are the records from Wuesthoff
11 Hospital?

12 A Yes.

13 Q And he appeared for treatment two days after
14 the crash?

15 A Correct.

16 Q And when he appeared for treatment he indicated
17 he was suffering neck, back and knee pain?

18 A Correct.

19 Q And that he had a cut over his left eye?

20 A Yes.

21 Q And didn't he tell them that he said the cut
22 was from hitting the airbag?

23 A Yes.

24 Q He said he told them he was dazed but never
25 lost any consciousness?

1 A No, he said there was a possible loss of
2 consciousness.

3 Q Did he tell them he was only dazed?

4 A If I can, I can get the actual records out.

5 Q Sure. If it would help you, it's on page 2 of
6 your report.

7 A Right, on my report, but these are the medical
8 records. I was checking on the medical records and it
9 says here on page 1 that possible loss of consciousness
10 per witness at time of accident.

11 Q Okay. He didn't report that, that was per
12 another witness, correct, he said he was dazed?

13 A My understanding is he reported that that's
14 what it suggests in the medical records, that was a
15 possible. Based on his description this was recorded by
16 the medical person who was recording these records.

17 Q He also indicated he was wearing a seatbelt,
18 correct, to the hospital?

19 A Yes, a restrained passenger with airbag.

20 Q Which again is contrary, he told you he was not
21 wearing a seatbelt?

22 A Yes.

23 Q They diagnosed him with neck sprain, knee
24 sprain?

25 A Yes.

1 Q They released him with a muscle relax -- they
2 give him a muscle relaxer and antiinflammatory?

3 A Yes.

4 Q And they released him?

5 A Yes.

6 Q Do you recall in his interview when he talked
7 to the police about it as well, about the crash, having a
8 car crash?

9 A Yes.

10 Q And he told them he spent a week in the
11 hospital.

12 A I don't recall, I'd have to go back and look at
13 that part.

14 Q Do you recall if he indicated to them he almost
15 went through the windshield?

16 A Yes.

17 Q Now, he denied to Wuesthoff, to the medical
18 officials there that he's appearing for treatment, any
19 psychiatric history or history of mental problems,
20 correct?

21 A Yes.

22 Q He told you his head hit the windshield, right?

23 A Yes.

24 Q Yet he told at the time appearing for treatment
25 two days after that it was simply the airbag?

1 A Yes.

2 Q He told you he wasn't seat-belted?

3 A Yes.

4 Q And he told the hospital officials that he was
5 seat-belted?

6 A Yes.

7 Q Did your testing pick up this discrepancy or
8 differences, your testing for malingering pick up that he
9 was telling you an exaggeration or greater differences
10 than when he reported for medical treatment?

11 A That is -- malingering is one possible
12 interpretation of the event, an alternative hypothesis
13 would be his inconsistency was related to not having
14 adequate memories stored. That's why I requested neuro
15 cognitive imaging to provide information about the
16 presence of a head injury, that inconsistency, because
17 when people do not -- are unable to form memories, they
18 can tend to confabulate, that means provide details which
19 aren't accurate, but it's not based upon malingering, it's
20 not based upon trying to manipulate the outcome, it's
21 based upon not having that information stored and that an
22 unconscious level the brain provides information to
23 complete that.

24 Q So, he's not malingering he's just to you
25 giving you greater examples of his injury, not being

1 restrained and increasing the effect on him, but you don't
2 find that he's not malingering or exaggerating to you?

3 A I examined both possible hypotheses and the
4 data was more consistent with my opinion. You mentioned
5 the SIRS, I did not administer that because in my training
6 it has too many false positives. So, they no longer
7 recommend it according to the Forensic Board of
8 Psychology. The other test, the TOMM, a fine instrument
9 but I administered other instruments which are equally.
10 So, I have confidence that he was not malingering or
11 providing false information, he was providing information
12 based upon his perception.

13 Q You would agree that the information he gave
14 you is certainly if not a lie an exaggeration of what he
15 reported to the hospital two days after the crash?

16 A I would interpret it inconsistent.

17 Q And inconsistently in that it increased his
18 symptoms and the damage that he suffered, correct?

19 A It was -- my -- he reported to me was more
20 impactful than what he reported to the hospital.

21 Q Hospital he said I hit the airbag, you he said
22 I hit the windshield?

23 A Correct.

24 Q Do you see that as he's increasing what
25 happened to him in the crash?

1 A Yes.

2 Q Hospital he said I'm wearing my seatbelt, you
3 he said I'm not wearing the seatbelt, you see that again
4 he's increasing it?

5 A Yes, that's a possibility, yes.

6 Q It's not a possibility, isn't he increasing?

7 A It is an increase in the severity of the
8 injury.

9 Q It's not backed up by the medical records what
10 he's telling you?

11 A No.

12 Q Yet you don't see that a malingering?

13 A No, he reported that when those events happened
14 he was involved -- he had drugs in his system and it was
15 more consistent with having an impaired ability to store
16 information and confabulation versus cognitive malicious
17 attempt to malingering.

18 Q This is a crash he didn't see the need to seek
19 medical treatment until two days after the crash?

20 A When he described that when he was coming off
21 his drugs he started feeling the pain, they wanted to take
22 him at the scene but he refused, he did not have insurance
23 and he refused to go.

24 Q Let's go to the psychological history. You
25 talked a little bit about the defendant claimed starting

1 at the age of twelve or thirteen, that's when he indicated
2 at that age is when he first heard voices?

3 A Correct.

4 Q But he didn't report that, that was never
5 reported to anybody, the first document patient had
6 reported it is in September of 2012 in the jail facility,
7 correct?

8 A Correct.

9 Q And you reviewed the school records?

10 A Yes.

11 Q There's no note of referral in there?

12 A No, I wouldn't expect see it but no, there were
13 not.

14 Q You wouldn't expect to see even any comments?

15 A Absolutely no, they don't keep that
16 documentation.

17 Q So, how many school records have you reviewed?

18 A Hundreds.

19 Q And you've never seen a school record where --
20 I accept that they're not going to have the psychological
21 examination in there, but no note of referral, no comments
22 that this was observed?

23 A Never in the standardized means that that they
24 complete the recordkeeping for school systems, no.

25 Q So you've never seen it in any records you've

1 ever received from a school system any comment from a
2 teacher that she observed this unusual behavior?

3 A Not in a standardized means that they collect
4 and maintain school records today, no, they did not have
5 it. Now, if I went to an individual school, a guidance
6 counselor might have some notations of that but again
7 that's not part of the responsibility of a school system.
8 In fact, those diagnoses are medical diagnoses, we are not
9 allowed as school employees to provide medical diagnoses.

10 Q I'm not talking about the psychological exam
11 but comments and that would be contained within school
12 records, correct?

13 A I've -- I've never seen any, I would suspect
14 that maybe a guidance counselor might have in her own
15 personal notes some mention of that if that happened
16 within the school but I've never seen them in a
17 standardized way that's maintained on a standardized
18 transcript.

19 Q In your years of practice and your evaluations
20 that have been done and all the school records that have
21 been provided to you, you have never seen in those records
22 anything such as a comment from a teacher or anybody else
23 concerning unusual behavior?

24 A In the school psychological records, for
25 example, if a child is being diagnosed --

1 Q So, you have seen that in school records?

2 MR. MOORE: Your Honor, I object unless this
3 witness is allowed to finish answer the question.

4 MR. BROWN: It was a yes or no, has she ever
5 seen it.

6 THE COURT: Okay. For purposes of that
7 question, if you can answer yes or no.

8 THE WITNESS: Okay. In a standardized
9 transcript, no.

10 BY MR. BROWN:

11 Q Have you seen it?

12 A I have seen comments in special education
13 records regarding concerns about emotional behavior
14 functioning, if you're talking about emotional problems in
15 special education records, yes, but not in a standardized
16 transcript from a school setting.

17 Q You indicated when the defendant went to
18 Wuesthoff that was February 3rd, 2008?

19 A Yes.

20 Q He denied with them having any psychiatric
21 history or any mental health concerns?

22 A Yes.

23 Q And you would expect that is something when
24 somebody comes one of the issues the hospital is going to
25 look at, right?

1 A Screen, yes.

2 Q And there's no indication from the records that
3 they observed any concern?

4 A No.

5 Q And he denied any history?

6 A Correct.

7 Q And when he went to the Department of
8 Corrections, their screening was also done, correct?

9 A Correct.

10 Q And the screening did not produce any
11 indication or concern of any mental health issue?

12 A Correct.

13 Q And he denied having any history of any
14 psychiatric problem or mental health concerns, correct?

15 A Correct.

16 Q And when he was arrested on this case he was --
17 the jail records from March 7th, 2012, they did a
18 screening of him coming into the jail, correct?

19 A Correct.

20 Q And he denied to the jail having any history of
21 mental health problems?

22 A Correct.

23 Q He denied any history of mental health
24 treatment.

25 A Correct.

1 Q Denied any family psychiatric history?

2 A Correct.

3 Q Denied any head injury history?

4 A It was in the DOC reports and there was some
5 inconsistency, at times -- initially he did not report it
6 but later on in the records it was documented.

7 Q Did he -- the jail records when they brought
8 him in on March 7th indicate he was lucid?

9 A I believe so, yes.

10 Q Coherent?

11 A Yes.

12 Q Did not display any systems of mental health
13 problems?

14 A No, not then.

15 Q They did not? That's correct, that's what they
16 indicated, he did not display any symptoms of mental
17 health problems?

18 A Correct.

19 Q And then he was transferred to the John B. Polk
20 Correctional Facility?

21 A Yes.

22 Q And they did the admission of him in March of
23 2012 as well, correct?

24 A Correct.

25 Q And he denied with them any history of

1 psychiatric problem or mental health concern?

2 A Correct.

3 Q And they also did a mental status exam on him?

4 A Correct.

5 Q March 13th?

6 A Correct.

7 Q 2012, right?

8 A Correct.

9 Q And that was found to be unremarkable?

10 A Correct.

11 Q The first time -- concerning his report of
12 hearing voices, the first time there is ever any
13 documented history of him claiming about this was not
14 until September 11th, 2012, correct?

15 A Yes, that's consistent with my notes.

16 Q Now, concerning the Miranda tests that you
17 gave, you used the term knowingly, voluntarily and freely,
18 correct?

19 A I'm sorry, I didn't hear that.

20 Q Freely? What terms do you use concerning --
21 what are you looking at for a person's waiver of Miranda?

22 A Intelligently, knowingly and voluntarily.

23 Q Let's look at knowingly. How do you define
24 knowingly?

25 A Does he have a sense of awareness of what he is

1 doing.

2 Q Which would incorporate then a sense of
3 awareness of to what those rights are?

4 A Yes.

5 Q And that he might incriminate himself or
6 possibly incriminate others, correct?

7 A Yes.

8 Q And that's one of the factors you look at is
9 his awareness of incriminating himself or incriminating
10 others?

11 A Yes.

12 Q How about voluntary, how do you define that?

13 A Freely without any coercion.

14 Q Which would be threats?

15 A Correct.

16 Q Officers threatening him, physical threats,
17 verbal threats, right?

18 A All of the above.

19 Q Actual physical abuse from the officers?

20 A Correct.

21 Q And intelligent, how would you define that?

22 A Logical -- with logic and reasoning.

23 Q And when you say with logic and reasoning, what
24 do you mean by that?

25 A Intelligence is a -- represents a person's

1 ability to apply thinking skills in the decision making
2 process logically.

3 Q Do you use a different test than somebody just
4 saying it wouldn't be logical to confess to the police,
5 that's not what you mean, correct?

6 A No.

7 Q So, it's simply evaluating his situation and
8 making a fair decision on whether he wants to speak to the
9 police, right?

10 A Yes.

11 Q Now, you talked about in this -- these tests
12 that you give, the Grisso test and there also was the SAMA
13 test concerning Miranda, correct?

14 A Correct.

15 Q And the SAMA, S-A-M-A, it's the Rogers
16 Standardized Assessment Mirandized I think?

17 A Abilities, yes.

18 Q Abilities. SAMA for short?

19 A Yes.

20 Q So, if I use the term SAMA just so we
21 understand which test we're talking about.

22 A Correct.

23 Q And when you testified on direct concerning the
24 percentile where he scored, you indicated one portion of
25 the test he scored in the one percentile and the

1 ninety-ninth percentile?

2 A It depends upon how the question is asked. In
3 other words, his performance on the measure of
4 acquiescence, in other words, how much did he demonstrate,
5 how much did he show on this test, his performance was at
6 the ninety-ninth percentile. So, he demonstrated lots of
7 acquiescence which is -- and so that means that this
8 characteristic tendency of his was extremely high?

9 Q But the standard that you're using percentile,
10 it's compared to other adult offenders, correct?

11 A Yes, other adult, right.

12 Q So, it's not the general population.

13 A Correct, it's the population of people who are
14 likely to experience having to give up or asked to give up
15 the Miranda rights.

16 Q Adult offenders, people that have already been
17 in the system?

18 A Yes.

19 Q So, you're measuring his willingness to give a
20 statement versus other criminals?

21 A That's the -- right, you compare it to the
22 norming population in which the test was normed on.

23 Q Comparing the population is other criminals.

24 A Yes.

25 Q Not the typical average law abiding person in

1 the community?

2 A Correct.

3 Q And this is acquiescence to law enforcement, is
4 that what you're measuring?

5 A Somebody in authority.

6 Q Which obviously for Miranda is only going to be
7 law enforcement, correct?

8 A Correct.

9 Q There's going to be nobody else in authority
10 who's going to give Miranda warnings and then an
11 interrogation and police interview unless there's police
12 officers, correct?

13 A Correct.

14 Q So, you're comparing his measure of
15 acquiescence to authority versus other criminals?

16 A Correct.

17 Q Now, on the SAMA test, we'll talk about that
18 first, you indicated that there was a large -- there was a
19 portion of it that he simply claimed no memory.

20 A One of the subtests, yes.

21 Q And that's what he was scoring in the impaired
22 range?

23 A I didn't score it because he doesn't have any
24 memory of it so I couldn't measure it.

25 Q Okay. And then on the Grisso test, that's when

1 you scored the acquiescence to authority, correct?

2 A No that was on the SAMA.

3 Q The SAMA test. Okay.

4 The Grisso test has four sections, correct?

5 A Correct.

6 Q Comprehension of Miranda rights, comprehension
7 of Miranda rights, recognition of those rights, correct?

8 A Correct.

9 Q Third section would be comprehension of Miranda
10 vocabulary?

11 A Correct.

12 Q The fourth section would be function or rights
13 in interrogation?

14 A Correct.

15 Q Okay. And function or rights in interrogation,
16 what is meant by that.

17 A It means -- in this -- this is measured by
18 having a (unintelligible) kind of a brief story in which
19 Mr. Bradley was asked about how the person might be
20 feeling when they're being questioned by police. So, it
21 relates to a hypothetical setting in which officers are
22 asking questions to an individual.

23 Q And in that particular section of the function
24 of rights interrogation he was normal, right?

25 A Right.

1 Q In the normal range?

2 A Right.

3 Q Comprehension of Miranda vocabulary, normal
4 range?

5 A Correct.

6 Q The comprehension of Miranda rights
7 recognition?

8 A Let me see. He had difficulties on that test.

9 Q Okay. But he did have you indicated an ability
10 to repeat various statements?

11 A Yes.

12 Q What do you mean by that?

13 A It means that what does this word mean and he
14 could define it, the ability to recognize that right, in
15 an example provided he had difficulties doing that. So,
16 in other words, he could define the word but when he had
17 to apply it he had difficulties in a hypothetical
18 situation.

19 Q He knew what the words meant?

20 A Yes.

21 Q And his function of rights in interrogation was
22 normal. So, he knows what the words means and his
23 function is normal?

24 A Yes.

25 Q Now, you indicated where he scored the worst

1 which you brought up on direction examination was his
2 acquiescence to authority?

3 A Yes.

4 Q In other words, if somebody in authority --
5 sorry.

6 A Um-hmm.

7 Q Okay?

8 A I'm fine.

9 Q Somebody in authority tells him to do
10 something, compared to other criminals east in the portion
11 that is most likely going to obey that request, right?

12 A In a standardized setting in which he is in
13 touch with reality the answer's yes.

14 Q You reviewed the video of the shooting, the
15 murder of Deputy Pill, correct?

16 A Yes.

17 Q You would agree that Deputy Pill is telling him
18 to step out of the car?

19 A Correct.

20 Q And she told him that numerous times?

21 A Correct.

22 Q And he did not acquiesce to that person, Deputy
23 Pill, in her requests, did he?

24 A He asked her if she was going to shoot him.

25 Q She made numerous requests for him to get out

1 of that correct, right?

2 A Correct.

3 Q Did he ever get out of the vehicle?

4 A No.

5 MR. BROWN: Your Honor, may I have a moment?

6 THE COURT: Yes, you may.

7 (Thereupon, a pause was taken in the
8 proceedings.)

9 MR. BROWN: Judge, I have no further questions.

10 THE COURT: Okay. Redirect on behalf of the
11 Defense.

12 REDIRECT EXAMINATION

13 BY MR. MOORE:

14 Q In reviewing the Wuesthoff records of the
15 automobile accident in 2008 and comparing that with the
16 version that reflected in the Wuesthoff records of how the
17 accident occurred with what Mr. Bradley told the police,
18 with what he told you, is it clear in the Wuesthoff
19 records who the reporter actually is? Did you get that --
20 do you see in the records which would be page 1 where as
21 you just indicated the car t-boned another car, patient
22 relates hit face on airbag, cut eyebrow, possible loss of
23 consciousness per witnesses at the time of the accident.
24 So, is it clear here that that actually -- that
25 information is actually coming from Mr. Bradley?

1 A No, it's not completely clear.

2 Q Okay. And at that time he -- according to the
3 records there, he was reporting to the hospital this
4 accident when he had cocaine and Xanax and marijuana in
5 his system and was in pain and was there for treatment of
6 the pain?

7 A Correct.

8 Q Right?

9 And so would the inconsistency be explained by
10 those kinds of factors which -- I mean, as far as what's
11 in the records it's really not clear who the information
12 is being gathered from?

13 A That's correct.

14 Q And in the version that -- the recitation to
15 the police in the DVD where he said -- when he was
16 questioned by the police, I believe he said he went
17 through the windshield and was almost killed and spent a
18 week in the hospital, but he didn't tell you that part,
19 did he?

20 A No.

21 Q That he went through the windshield and was
22 almost killed and spent a week in the hospital?

23 A No.

24 Q So, that would be a less severe version than
25 what he actually told the police?

1 A What he told me was less severe, absolutely.

2 Q Did you get an impression at any time when he's
3 related his history of his head injuries that he was
4 confabulating or trying to fake bad or trying to increase
5 the severity of what happened to him?

6 A No, I did not get any indication of that.

7 Q And your face-to-face interview, is it or is it
8 not helpful in that fashion, essential actually in your
9 determination of whether what he's seeing at least his
10 best effort to give you a truthful answer?

11 A Absolutely. I mean, we communicate both with
12 words which are verbal and body language which is
13 nonverbal and there was no indication that he was
14 attempting to embellish, exaggerate his experiences.

15 Q We talked about reasons why in what you would
16 call a screening setting at a jail or a prison or hospital
17 for that matter where medical treatment is being sought
18 about reasons why an individual in communicating with
19 whoever the screener is would not acknowledge mental
20 health issues, talking about that, and do you know -- are
21 you aware of the qualifications of the individuals in
22 these settings to gather that type of information and to
23 obtain an accurate picture of the person's mental health
24 history?

25 A I've reviewed many jail records, medical jail

1 records and it's not uncommon to find people report normal
2 mental status exam, for people to deny having mental
3 illness and, you know, a few months later they're sent off
4 to the state hospital.

5 Q Do you know how -- in what depth and for what
6 length of time the interviewer in a jail setting or prison
7 setting gathering that information actually spends
8 gathering that information?

9 A I don't have any specific.

10 Q Do you know what terms are used, in other
11 words, how the question is put to the interviewee,
12 Mr. Bradley in this case, as to the mental health history?

13 A The form that they use that the records
14 documented is just a simple statement have you ever
15 received treatment, that's what I commonly find, it's just
16 yes, no, yes, no, yes, no answers.

17 Q And there's a whole lot of questions on those
18 formats, are there not?

19 A Correct.

20 Q Is just -- I mean, is there a full section with
21 in-depth questioning about mental health history?

22 A Very -- I don't see much of that at all.

23 Q Did you see the specific documents that were
24 that were generated by the jail and by the Department of
25 Corrections as to the questions that were asked Mr.

1 Bradley?

2 A Yes, and they were just basic forms that's
3 commonly used.

4 Q What kind of questions were asked?

5 A Have you ever been treated for or have a
6 history of psychiatric hospitalizations, have you ever
7 received treatment for mental health issues.

8 Q The fact that a person's never been treated or
9 hospitalize, does that mean mental health issues don't
10 exist?

11 A No, it doesn't mean they don't exist.

12 Q Is it also a cultural, is there a cultural
13 component to answering questions in the negative about
14 mental health problems?

15 A Yes, and I also find that people who tend to
16 come from low socio economic settings more often deny
17 because of the sense of stigma attached to it.

18 Q Is there an education component as well in the
19 way a person would answer questions about mental health h
20 history?

21 A Absolutely, because they're more likely to have
22 insurance so they can seek services.

23 Q And what would be the level of sophistication
24 of somebody with let's say a high school education which
25 Mr. Bradley had about mental health issues?

1 A It varies depending upon the family, if the
2 family has insurance, if the family is educated, if the
3 high school diploma is just a stepping stone on to higher
4 education, they're more likely -- you're more likely to be
5 able to find supportive documentation.

6 Q When you're talking -- now we're moving to
7 Miranda. When we're talking about the knowing,
8 intelligent, voluntariness aspect and focusing on
9 voluntariness, how would you relate what you learned of
10 Mr. Bradley's history of abuse with the voluntariness
11 component of the giving of the statement, the waiving of
12 Miranda?

13 A Mr. Bradley is a passive dependent individual
14 who came from a dysfunctional family, abusive, and he's
15 somebody who --

16 Q By his stepfather at least?

17 A Yes, and reject -- mother nonsupportive. This
18 is a person who turns to others by support because of his
19 organically based personality, the way his personality
20 exists. People are born with a dependent or independent
21 personality, both types can be healthy, both types can be
22 unhealthy. The basic difference is a dependent person
23 prefers to have other people meet their needs. An
24 independent person prefers to meet the needs themselves.
25 Dependent people who are healthy tend to be the popular

1 kids in school because they develop social skills, they
2 develop the ability to connect with others. So, that's a
3 healthy one. However, a dependent person who's raised in
4 a dysfunctional home, and I saw that all the time when I
5 was in the school system, is much more vulnerable to have
6 negative outcomes because their primary source to go to
7 does not provide it.

8 Q During the interview, the portion where the
9 police are agents are talking to Mr. Bradley there is a
10 moment when the police walk in to the interview room and
11 they, quote, help him off the floor and into the chair, do
12 you recall that and observing this?

13 A I watched that component on multiple occasions.

14 Q Why did you do that?

15 A Because I wanted to make sure that I had the
16 opportunity to carefully evaluate his presentation at the
17 time he waived his Miranda rights.

18 Q The component where he's put in the chair and
19 the way he's put in the chair and how he reacts and how
20 that relates to the voluntariness?

21 A He is literally picked up and placed on the
22 chair and as he was slowly aroused there was a real -- his
23 facial -- his nonverbal sign was one of fear.

24 Q And would you -- would you describe him
25 actually sitting in the chair or was -- did it appear

1 force was used as it relates to the issue of
2 voluntariness?

3 A He did not voluntarily get on the chair by
4 himself, he was literally picked up off the floor and
5 placed in the chair.

6 Q Now, when asked about the corroboration of head
7 injuries, when you ask for corroboration, did you -- what
8 was more important to you or what was important to you in
9 determining the validity of the history of head injuries,
10 there's a couple of components, one is the internal
11 consistency would you say of the versions that you had?

12 A Yes.

13 Q And how about the corroboration through the
14 neuro-imaging?

15 A Yes.

16 Q What would be of greater importance to you?

17 A When I formulate an opinion I take into account
18 the person who's in front of me who I observed over a
19 period of time, I take into account my test results
20 including validity and reliability and in this situation I
21 had the opportunity to have the neuro-imaging. So, based
22 upon the consistency, which is really important of the
23 objective data, as well as his reported statement, it was
24 very clean in the sense that they all were very
25 consistent.

1 Q Is there a term for that?

2 A It all --

3 Q Goodness of fit.

4 A Okay. What I was going to say was when you do
5 these evaluations when you utilize the scientific methods
6 you come up various alternative hypotheses as possible
7 findings and you use what is called the goodness of fit
8 model. In other words, by putting all the data together
9 does it support this hypothesis or this hypothesis or
10 this. Okay. So, it's kind of a goodness of fit, what
11 fits the data best and in Mr. Bradley's case the data best
12 fit the presence of a head injury associated with a lack
13 of -- a disruption in the controlled processes, a
14 disruption in his processing speed, a disruption in his
15 self awareness all related to that executive prefrontal
16 lobe.

17 Q And a disruption in his ability to process
18 information, what he observes?

19 A Absolutely.

20 Q Would you say -- what was more important -- let
21 me ask this. Was it important for you to
22 determine whether the automobile accident in 2008 was the
23 source of the head injury?

24 A The most important thing was the presence of a
25 head injury.

1 Q And you determined that through your
2 neuropsych, neuropsychological testing as confirmed by the
3 MRI and the PET scan?

4 A Correct.

5 Q As it relates to the date you've been asked to
6 testify about which is March the 6th of 2012?

7 A Correct.

8 Q And so for your purposes in coming to a
9 conclusion that there was a head injury, that the
10 automobile accident was -- or others of the incidents were
11 the source of that head injury and that at the time when
12 Miranda was waived and the statement given it had an
13 effect on Mr. Bradley, were you satisfied in your review
14 of all the information that that was the case?

15 A Yes, and particularly the results of the neuro
16 cognitive imaging found abnormality that is consistently
17 found with people who have a traumatic brain injury and
18 people who suffer from schizophrenia.

19 Q What is the age of the onset of schizophrenia?

20 A You can have childhood schizophrenia, you can
21 also have schizophrenia at any point in life if you've had
22 a head injury. There's actual cases where a baby is born
23 and it experiences a hypoxic event or a lack of oxygen and
24 then twenty years later they develop paranoid
25 schizophrenia and no family history of it. So, brain

1 injury can exacerbate or cause the development of a
2 psychotic disorder.

3 Q If in taking the -- you told Mr. Bradley that
4 you were there to evaluate the Miranda issue or how did
5 you put that to Mr. Bradley?

6 A Well, the second one I explained to look at his
7 competency as it pertains to the Miranda rights.

8 Q And would you, would you expect if there were
9 malingering -- well, first, that would show up on the Paul
10 House test, would it not?

11 A Yes.

12 Q And wouldn't you expect his zeros, goose eggs
13 all the way across the board in the standard Miranda test
14 you gave if he was truly trying to fail it?

15 A Yes, I wouldn't expect him to come up in the
16 normal range on a lot of these tests.

17 Q And he did come up with --

18 A Yes, absolutely.

19 Q -- some but not all?

20 A And again it was consistent with my test to
21 determine whether or not he was providing information
22 based upon his perceptions.

23 Q Now, you indicated acquiescence most likely --
24 person's most likely to acquiesce in a standard setting if
25 in touch with reality?

1 A Yes.

2 Q At the time eight hours earlier at the
3 shooting, did you have any indication that Mr. Bradley was
4 not in touch with reality as it relates to your finding of
5 voluntariness?

6 A He was suffering from --

7 MR. BROWN: Judge, I'm going to object at this
8 point.

9 THE COURT: Okay. Let's have a bench
10 conference.

11 (Thereupon, a benchside conference was had out
12 of the hearing of the jury as follows:)

13 THE COURT: Go ahead and put your objection on
14 the record, Mr. Brown.

15 MR. BROWN: Object because this is going for
16 inadmissible evidence.

17 MR. MOORE: Mr. Brown on cross asked
18 specifically if the defendant was not acquiescing at
19 the time he was told by Deputy Pill to get out of
20 car, I'm revisiting that. They specifically went
21 into it and I'm now asking, you know, what the
22 circumstances were and why she has reason to believe
23 at that time that he may not have been -- he may have
24 been out of touch with reality which is what she said
25 is a component of acquiescence. She said in order to

1 acquiesce you've got to be in touch with reality and
2 I'm about to point out the reasons for it why at the
3 time that Mr. Brown eluded to at the time he was
4 confronted by Deputy Pill he was not in touch with
5 reality.

6 THE COURT: Mr. Brown, your response.

7 MR. BROWN: Judge, they're trying to go into
8 diminished capacity. They brought up the -- on
9 direct they brought up that she reviewed the video,
10 they brought up that she --

11 THE COURT: I couldn't hear you.

12 MR. BROWN: They brought up the shooting video
13 that she relied upon that she even went to far as to
14 say that he was paranoid and then she says he was in
15 a situation where he acquiesced to authority. So, my
16 simple question was she reviewed the video, she saw
17 that he didn't get out of the truck and he did not
18 acquiesce to authority and the request from Deputy
19 Pill to get out of the truck. It's not calling for
20 her opinion of the diminished capacity, that's
21 clearly where the Defenses is trying to go with this
22 and I objected to them going into the video at all
23 and Court overruled my objection. So, I think I'm
24 allowed to at least put on a few questions in an area
25 they they've covered.

1 MR. MOORE: I'm foreclosing --

2 THE COURT: You can't -- you asked about her --
3 you asked that question in reference to acquiescing
4 about authority with regard to the statement, now
5 you're going into a collateral matter with regard
6 to -- because he said isn't it true he didn't
7 acquiesce in that situation and then you're going to
8 go into a collateral matter why he didn't acquiesce
9 in that situation, I mean in the shooting situation.
10 So, I'm going to grant the objection.

11 MR. MOORE: Your Honor, he went into, he
12 specifically asked the question he didn't acquiesce
13 at that time and she said on cross examination as
14 well that in order to acquiesce you have to be in
15 touch with reality, but she said -- she needs to be
16 able to say that at that time he wasn't in touch with
17 reality because they opened the door on that.

18 THE COURT: You can go back into the
19 voluntariness of the statement but you can't go into
20 the acquiescence -- that he acquiesced at the time of
21 the shooting to the demands of Deputy Pill.

22 (Thereupon, the benchside conference was
23 concluded and the proceedings were had as follows:)

24 BY MR. MOORE:

25 Q The point in time where we're focusing here is

1 eight hours, seven, eight hours after the shooting,
2 correct?

3 A At the Miranda, yes.

4 Q At Miranda. And that's after Bradley you
5 observed was either sleeping or passed out?

6 A Correct.

7 Q That entire time?

8 And you indicated that he did not acquiesce
9 because he -- for a number of reasons, your opinion, and
10 you indicated that a person in order to acquiesce has to
11 be in touch with reality?

12 A Yes, and in regards to being in a cage like
13 setting where the only possibility would be to -- sort of
14 like in the Stockholm Syndrome when somebody is kidnapped
15 it's a coping mechanism for survival is to go along, to
16 follow the commands.

17 Q Is there a drug influence in the voluntariness
18 component?

19 A Oh, absolutely, because a common symptom with
20 the ingestion of drugs is sluggishness, a lack of
21 awareness, drowsiness.

22 Q So, the greater the impairment, the less likely
23 a person is to voluntarily give a statement?

24 A And knowingly. I mean, he was asked a question
25 and he responded in an accurate manner.

1 Q So, for that eight hour period of time given
2 what you know about his history the drugs in his system
3 then, would his ability to acquiesce be greater or less
4 eight hours earlier?

5 MR. BROWN: Judge, I'm going to object.

6 MR. MOORE: Revisiting what the State went into
7 on cross examination.

8 THE COURT: Based on the ruling I just gave,
9 I'll sustain the objection.

10 BY MR. MOORE:

11 Q Did it pier over that eight hour period of time
12 preceding the interrogation that Mr. Bradley was -- the
13 drugs in his system were wearing off? Did you get that
14 impression from when you observed eight hours earlier
15 while he was sleeping and falling out of the chair as you
16 put it until the police officers walked into the room that
17 the drug effects were decreasing?

18 A So, seven or eight hours earlier.

19 Q When you first started watching the DVD until
20 the time the police walked into the interrogation room,
21 did you get an impression of the drug component as it
22 relates to voluntariness whether he was coming down, going
23 up in terms of being high?

24 A He appeared impaired in both situations. I
25 would defer to the drug expert to answer that particular

1 question.

2 Q And we're talking about this acquiescence
3 standard is people who are adult offenders who are more
4 likely to know their rights, would that be correct? Is
5 that a correct assessment from your point of view as
6 somebody with experience dealing with SAMA and the Grisso
7 tests?

8 A Yes.

9 Q You compared -- since that the basis of
10 comparison is other adult offenders, would you say
11 categorically that adult offenders are more likely to --
12 or less likely to acquiesce because they know their rights
13 and they've been through the system?

14 A That would be a logical assumption.

15 Q I mean, is that --

16 A Yes, that's my opinion.

17 Q Is that what you know through your experience
18 and training?

19 A Yes.

20 Q About the background --

21 A Yes.

22 Q -- and the validity of these tests?

23 A Yes.

24 Q You indicated that on the SAMA that Mr. -- the
25 Miranda test Mr. Bradley was able to recognize his rights

1 but he had difficulty applying them?

2 A Correct.

3 Q And how does that, how does that apply to the
4 voluntariness of the statement and the waiver?

5 A It means that again when he's not -- it's
6 somewhat like apples and oranges because when I evaluated
7 him he was coherent logical, but what I observed on the
8 tape was not a coherent individual. So --

9 Q At what point?

10 A Well, throughout the whole period that I
11 watched and viewed on that whole interrogation tape, this
12 was a man who was confused, he had problems with his
13 coordination, he could not call his motions, this man was
14 impaired throughout that whole tape.

15 Q How about his ability to speak?

16 A He mumbled, I had a very difficult time
17 speaking to him, he required frequent repetitions and it
18 was often as if he would say a few words and then the
19 officer would say okay, this is what you mean and he would
20 mumble yes. It was almost like they were kind of helping
21 him complete his statements by reformulating is this what
22 you meant or is this what you were saying. So, he
23 basically directed and guided his response. And again
24 when they asked him questions like how long have you been
25 in a relationship, I'm paraphrasing, how long have you

1 been in a relationship with this woman, he mumbled
2 something about age twelve. Well, he actually met her, he
3 hasn't been a relationship with her since the age of
4 twelve.

5 Q What was Mr. Bradley's demeanor like, his
6 ability to communicate on the first meeting, your first
7 meeting with him at the Polk County Correctional
8 Institute?

9 A His presentation overall was consistent with
10 somebody who is experiencing psychotic events, psychotic
11 experiences, he was fearful, he was paranoid.

12 Q How did that compare to what you observed in
13 the DVD and his demeanor and his ability to communicate?

14 A He was better than what was -- he was -- when I
15 saw him first he was better able to communicate, he wasn't
16 as impaired compared to his presentation on those DVDs, he
17 was very impaired.

18 Q And then final time that you met with
19 Mr. Bradley at the Polk County Correctional Institute, was
20 that -- did I understand you correctly, that was at a
21 point in time when he had begun to take the psychotropic
22 medication?

23 A Yes, he was --

24 Q And what was his demeanor like on that occasion
25 compared to the interview with the police and your first

1 interview with him?

2 A It was significantly different, I didn't see
3 the elements or characteristics or symptoms of paranoia,
4 he was -- his mental status was much more stable.

5 Q Did you see signs of responding to internal
6 stimulus, stimuli?

7 A Not the second time, the first time, yes.

8 Q What does that mean responding to internal
9 stimuli?

10 A You could tell he was distracted, he was, he
11 was responding to information not from me and nothing that
12 I observed in that setting.

13 MR. MOORE: No further questions.

14 THE COURT: Okay. Recross by the State.

15 MR. BROWN: No, Your Honor.

16 THE COURT: Okay. Ma'am, thank you for your
17 testimony, you're free to step down.

18 THE WITNESS: Thank you, Your Honor.

19 (Thereupon, the witness exited the witness
20 stand.)

21 THE COURT: Okay. We're going to go ahead and
22 take the lunch break. If you could get back here at
23 1:15. We'll be at lunch until 1:15. Report to the
24 jury assembly room at 1:15. During this lunch you
25 must continue to abide by your rules governing your

1 service as a juror. Specifically do not discuss this
2 case among yourselves or with anyone else or allow
3 anyone to discuss it in your presence. Do not speak
4 to the lawyers or the parties or the witnesses about
5 anything. You must avoid reading newspaper headlines
6 and/or articles relating to this trial or its
7 participants. Avoid seeing or hearing television,
8 radio or Internet comments about this trial and do
9 not conduct any research yourself regarding any
10 matters concerning this case. Okay. Court will be
11 in recess until 1:15. Thank you.

12 (Thereupon, the jury was escorted out of the
13 courtroom by the court deputy and the proceedings were had
14 as follows:)

15 THE COURT: Okay. Please be seated. Any
16 matters that we need to address before we recess for
17 lunch as well?

18 MR. MOORE: No.

19 MR. BROWN: No.

20 THE COURT: Okay. Court will be in recess
21 until 1:15. Thank you.

22 (Thereupon, a lunch recess was taken in the
23 proceedings.)

24 THE COURT: Please be seated. Okay. We can
25 bring out Mr. Bradley.

1 (Thereupon, the defendant was escorted into the
2 courtroom by the court deputy.)

3 THE COURT: Okay. I do have the standard jury
4 instruction for 3.9(b), defendant's statement, and
5 they have added the word on the new one knowingly.
6 Just so you know, it says knowingly voluntarily and
7 freely made. So, we need to make sure that when we
8 get the jury instructions, which I assume we're going
9 to do later today, that we have this one current.
10 This is current through March 1st, 2013. I mean
11 2014. I don't know when it was amended but
12 apparently it was amended to add the word knowingly.
13 Okay. I can give you all a copy if you want.

14 MR. MOORE: Well, unless I put it in my
15 scrapbook.

16 THE COURT: Doesn't happen.

17 MR. MOORE: Memories of all of this.

18 THE COURT: Well, I made -- there's two copies,
19 we made two copies, a copy for each side. I was
20 going to say give it to Mr. Pirolo.

21 I mean, I'm assuming we're going to work on
22 jury instructions at the end of today?

23 MR. BROWN: That would be the plan.

24 THE COURT: Okay. That was my plan. Okay.
25 Anything we need discuss before we bring the jury

1 into the courtroom? Okay. We're ready.

2 (Thereupon, the jury was escorted into the
3 courtroom by the court deputy and the proceedings were had
4 as follows:)

5 THE COURT: Please be seated. Good afternoon,
6 ladies and gentlemen of the jury.

7 THE JURY PANEL: Good afternoon.

8 THE COURT: Has anyone read or been exposed to
9 reading newspaper headlines and/or articles relating
10 to this trial or its participants?

11 THE JURY PANEL: No.

12 THE COURT: Has anyone seen or heard
13 television, radio or Internet comments about this
14 trial?

15 THE JURY PANEL: No.

16 THE COURT: Have you read news -- any news
17 headlines or articles relating to this trial or its
18 participants?

19 THE JURY PANEL: No.

20 THE COURT: Has anyone conducted or been
21 exposed to any research regarding any matters
22 concerning this case?

23 THE JURY PANEL: No.

24 THE COURT: And have you discussed this case
25 among yourselves or with anyone else or allowed

1 anyone to discuss it in your presence?

2 THE JURY PANEL: No.

3 THE COURT: Okay. Other witnesses on behalf of
4 the Defense?

5 MR. MOORE: The Defense would rest.

6 THE COURT: Okay. Thank you.

7 MR. MOORE: Your Honor, can we approach?

8 THE COURT: Yes, you may.

9 (Thereupon, a benchside conference was had out
10 of the hearing of the jury as follows:)

11 MR. MOORE: It may be more appropriate at the
12 end of rebuttal but I'll make it now, the motion --
13 renewed motion for judgment of acquittal directed
14 verdict on the grounds previously stated.

15 THE COURT: Okay. Based on the Court's -- I'll
16 deny the State's -- I mean the Defense's motion for
17 judgment of acquittal and then you can readdress it
18 after the rebuttal if you wish to do so. Okay.
19 Thank you.

20 (Thereupon, the benchside conference was
21 concluded and the proceedings were had as follows:)

22 THE COURT: Okay. Rebuttal witnesses on behalf
23 of the State.

24 MR. MCMASTER: State calls Dr. Bruce
25 Goldberger.

1 THE COURT: Sir, if you'll come forward, step
2 up before the clerk to be sworn.

3 THEREUPON,

4 DR. BRUCE GOLDBERGER,
5 having been first duly sworn, was examined and testified
6 upon his oath as follows:

7 THE COURT: Okay. Sir, if you'll please be
8 seated in the witness chair. Once seated if you'll
9 scoot chair forward. Do adjust that microphone to
10 fit you. Do talk into that microphone, it helps
11 everyone hear your testimony, it also aids in
12 recording your testimony.

13 THE WITNESS: Okay.

14 THE COURT: Okay. Mr. McMaster.

15 MR. MCMASTER: Thank you, Judge.

16 DIRECT EXAMINATION

17 BY MR. MCMASTER:

18 Q Good afternoon, sir.

19 A Good afternoon.

20 Q If you would, please state your name for the
21 record and spell your last name?

22 A My name is Bruce A. Goldberger,
23 G-O-L-D-B-E-R-G-E-R.

24 Q Dr. Goldberger, I'm going to ask you a series
25 of questions, if you would direct your responses to the

1 ladies and gentlemen of the jury and let's start by
2 telling them your occupation.

3 A I'm a forensic toxicologist at the University
4 of Florida, I'm in the position of chief of forensic
5 medicine and director of forensic toxicology.

6 Q Dr. Goldberger, were you retained by the State
7 of Florida, the State Attorney's Office here in Brevard
8 County for the purpose of reviewing the toxicology records
9 regarding a laboratory testing done by Wuesthoff Reference
10 Lab regarding the defendant, Brandon Bradley?

11 A Yes.

12 Q And also were you requested to review the
13 evaluations done by Dr. Susan Skolly-Danziger regarding
14 how drugs that had been reflected in the Wuesthoff
15 Reference Lab may have affected the defendant's ability to
16 knowingly, voluntarily and intelligently waive his Miranda
17 rights?

18 A Yes.

19 Q What's the difference between a forensic
20 toxicologist and an applied or clinical toxicologist?

21 A It's relatively clear, forensic toxicologist is
22 a toxicologist who obviously is practicing toxicology but
23 for the purpose of its application to law, like for
24 litigation like today whereas a clinical toxicologist or
25 an applied toxicologist doesn't necessarily have the

1 credential or the experience or even education to
2 understand why it is so important to speak and to opine in
3 certain ways.

4 Q I take it the terminology between the medical
5 use of wording in the applied and clinical toxicology
6 forum is different than perhaps in the forensic toxicology
7 forum where you're involved in legal concepts?

8 A Absolutely. My degree is in forensic
9 toxicology and I've been practicing forensic toxicology
10 for more than thirty years and there's specific training,
11 there's a specific understanding of the law as well that's
12 necessary to work in the field of forensic toxicology
13 particularly at the level where one is expressing opinions
14 with a certain degree of certainty. The typical clinical
15 toxicologist or applied toxicologist doesn't have that
16 background.

17 Q Let's discuss, if we can, your qualifications
18 to give an expert opinion as to forensic toxicology as a
19 forensic toxicologist and let's start with your education.

20 A I have a BA degree in zoology from Drew
21 University, it's a small school in New Jersey, but more
22 importantly I have a Masters degree and a doctoral degree
23 in forensic toxicology from the University Maryland School
24 of Medicine in Baltimore.

25 Q Let's talk about when you got your first your

1 BA degree in zoology.

2 A That was in -- I have to refer to my curriculum
3 vitae. That was in May of 1982. It was a while ago.

4 Q And how about your Masters degree in forensic
5 toxicology?

6 A I entered the field in forensic -- entered the
7 field of forensic toxicology in 1982, I got my Masters
8 degree in August of 1985, a few years later.

9 Q And you got doctorate in forensic toxicology
10 also?

11 A Yes, in January of 1993.

12 Q And you've been practicing as a forensic
13 toxicologist since 1982 then when you first got into the
14 field.

15 A Yes, sir, of course at different levels because
16 I started in 1982 as a chemist, for example, on the bench
17 learning all the methodologies and the techniques
18 necessary to conduct a forensic toxicology analysis and
19 then moved to interpretation of those findings which takes
20 many years to learn and gain that necessary skill.

21 Q Let's talk about your work history and
22 experience. I believe you started out you said in
23 forensic toxicology in 1982, where was that at?

24 A Well, that's when I started as a student in
25 training so I was at the University of Maryland training

1 from 1982 to 1992 and during that timeframe I had several
2 positions. One was working in a clinical toxicology lab
3 as well as working in a forensic toxicology lab. And then
4 later on after I got my Masters degree I became the
5 assistant toxicologist for the State of Maryland Office of
6 the Chief Medical Examiner.

7 Q And that really get you into the field of
8 forensic toxicology where you were starting to combine
9 your research with the legal concepts?

10 A Yes, sir.

11 Q Did you become -- or how long did you stay at
12 the Chief Medical Examiner's Office in Baltimore?

13 A I think I resigned a year or two before I got
14 my doctoral degree. I was working full time for the State
15 of Maryland and there was just no way I could do that and
16 also do my research and complete my studies on time. So,
17 I withdrew from my position with the State of Maryland for
18 a year and a half or two while I finished my doctoral
19 degree.

20 Q Once you finished your doctoral, where did you
21 go?

22 A I came to Florida within the year. So, I
23 started Florida in October of 1994.

24 Q And where was that?

25 A Well, I use the term Florida, University of

1 Florida.

2 Q When you say Florida I know what you mean but
3 some of us live in the overall state, not just at the
4 university.

5 A So, I came to University of Florida in
6 Gainesville in October of '94 and I've been there ever
7 since.

8 Q And what positions have you held and what
9 experience have you gained at the University of Florida?

10 A So, initially I started off as an assistant
11 professor and then over the years I was promoted to an
12 associate professor and then to a professor and then more
13 recently I've been promoted to division chief of the
14 forensic medicine division and the department of pathology
15 and I'm director of UF health forensic medicine but I
16 still supervise the work done in the forensic toxicology
17 lab. So, I'm still tied to the laboratory that conducts
18 analyses.

19 Q So, when it comes to forensic toxicology at the
20 University of Florida, you're the top guy?

21 A I am.

22 Q Can you tell us a little bit about what
23 certifications you hold in the field of forensic
24 toxicology?

25 A I've been Board certified for about twenty

1 years. I'm currently certified by the American Board of
2 Toxicology, that is the only certification body in this
3 country that certifies forensic toxicologists.

4 Q And how about the -- are you familiar with the
5 American Board of Applied Toxicology?

6 A No, I'm not familiar with that Board, they
7 don't -- they may be a certification program but they're
8 not a certification program for forensics toxicologists.
9 There use to be two, now there's only one and that would
10 be the American Board of Forensic Toxicology.

11 Q Any other certifications? What does it mean to
12 be Board certified in forensic toxicology and how do you
13 go getting it?

14 A Well, Board certification in forensic
15 toxicology is just like being Board certified in dentistry
16 or pediatrics or radiology, it's an additional credential
17 to ensure to your clientele that you have the necessary
18 education, necessary training and experience to be a good
19 practitioner in that field. So, in forensics or forensic
20 science there's a movement currently that will require
21 that all scientists who work in this arena be certified by
22 a certification body. We don't have that quite yet but in
23 forensic toxicology there's about four hundred individuals
24 certified around the country.

25 Q And you are one of those?

1 A Yes, I'm actually president of the
2 certification body.

3 Q So, you would be the head guy of the committee
4 that would make the determination as to whether someone'
5 qualified to become a Board certified member?

6 A I don't make -- necessarily make those final
7 decisions, the American Board of Forensic Toxicology has a
8 Board of Directors and it has committees that work on
9 behalf of the Board. I do sit on the credentials
10 committee as president of the Board but it's -- it runs
11 like our government runs, we have votes and we have all
12 business process that needs to be taken care of.

13 Q You're not Zoro the Universe or emporor, you
14 just are part of that process.

15 A These right, majority rules.

16 Q Do you have any other certifications that you
17 hold, doctor?

18 A I'm also licensed by the State of Florida as a
19 clinical laboratory director, I've had that license for
20 about twenty years. So, that gives me the ability to work
21 in a clinical laboratory like a clinical toxicology
22 laboratory and supervisor or conduct analyses and consult
23 on these cases involving living individuals. The majority
24 of my work is directing a post mortem toxicology lab. So,
25 that's working on decedents or dead people.

1 Q Any other certifications?

2 A I use to have one other but I discontinued that
3 because there was no reason to continue to pay the Board
4 for that certification.

5 Q Fair enough.

6 How about honors and awards?

7 A I've received multiple honors or awards over my
8 career. I won't go through them for the sake of time, but
9 early on I was honored by the American Academy of Forensic
10 Sciences Toxicology section for my early work as a
11 scientist conducting research in forensic toxicology.
12 Later on I received a similar award from the American
13 Association of Clinical Chemistry and then later on I've
14 received a number of awards for my more senior work in the
15 field of forensic toxicology. And then even more recently
16 I was given an award of recognition by the Florida
17 Association of Medical Examiners for some of my work not
18 related to toxicology but related to medical legal
19 investigations.

20 Q And what are your professional memberships?

21 A I have a bunch. Again, I'm not going to go
22 through them all, but I'm a member or actually fellow of
23 the American Academy of Forensic Sciences and I'm a past
24 president of that group. I was president about six years
25 ago. That's a largest forensic science professional

1 organization in the world currently with over seven
2 thousand members. Of course, you know, I'm president of
3 the American Board of Forensic Toxicology currently. I'm
4 secretary of the Society of Forensic Toxicologists, a
5 group that represents over a thousand forensic
6 toxicologist, and recently selected as treasure of an
7 organization that certifies certification bodies. So,
8 it's kind of a higher level group called the Forensic
9 Specialties Accreditation Board, I'm the treasure of that
10 group right now.

11 Q Looking quickly at your resume, your CV, it
12 appears that you are member or former member of
13 approximately seventeen different memberships?

14 A That's probably close.

15 Q And all pretty much related to forensic
16 toxicology?

17 A Yes, directly or indirectly.

18 Q Have you lectured or published articles on
19 the -- in the area of forensic toxicology?

20 A Yes. In terms of my lectures, I lecture at the
21 University of Florida as well as lecture around the
22 country as well as internationally. I'm going to Scotland
23 next week to give a lecture at the University of Scotland
24 in Glasgow and -- so, I'm probably lecturing half a dozen
25 to a dozen times per year in different forums, public

1 forums.

2 In terms of writing, I'm co-editor of two
3 books. I'm working on two additional books currently.
4 One will be submitted to the publisher in a few months and
5 the other is delayed but will be done eventually. And
6 then papers in the peer review literature, primarily in
7 the forensic science literature about seventy to eighty
8 papers. So, these are peer reviewed papers involving
9 various aspects of forensic toxicology or forensic
10 pathology or medical legal death investigation and
11 actually some other areas too that don't directly link me
12 to forensic toxicology.

13 Q Have you testified in courts of law
14 regarding -- as an expert in forensic toxicology?

15 A Yes, as a state employee and as a state
16 toxicologist I'm called often to court sometimes once or
17 twice a month so I've testified a lot, over two hundred
18 and fifty times.

19 Q How about in depositions?

20 A In depositions I think it's about five hundred
21 and seventy times. And then grand jury I believe four or
22 five times.

23 Q All right. I take it you have been accepted by
24 all of those courts that you have testified in as an
25 expert in the field of forensic toxicology?

1 A Yes, every time.

2 Q And have you given your opinions within a
3 reasonable degree of medical certainty with respect to
4 either the findings or conclusions that you made.

5 A Typically I would say toxicological certainty.

6 Q Toxicological certainty?

7 A Yes.

8 Q Let's talk a little bit first about the
9 Wuesthoff Reference Lab testing that was done of blood and
10 urine drawn from Mr. Bradley on March 7th of 2012, did you
11 receive the Wuesthoff lab report?

12 A Yes, I have a copy of the lab report as well as
13 all the supporting documentation.

14 Q That was my question. Did you also get the
15 supporting documentation for the report itself?

16 A Yes, I did.

17 Q And are you qualified to review the supporting
18 documentation in order to make a determination as to
19 whether or not the lab results were correct?

20 A Yes.

21 Q And what is your opinion with respect to the
22 Wuesthoff Reference Lab results?

23 A That these results are accurate and reliable.

24 Q Are they as detailed as you would find in your
25 own laboratory at the University of Florida?

1 A Our analytical approaches or methodologies are
2 different but the conclusions would be similar.

3 Q Essentially the same getting? To the same
4 point, different route?

5 A Yes.

6 Q And with respect to the findings that the
7 Wuesthoff lab made, they did find two drugs in
8 Mr. Bradley's blood, is that correct?

9 A There were actually four substances but
10 technically two drugs, marijuana or THC and then its
11 metabolites and then Alprazolam or Xanax.

12 Q So, essentially pot and Xanax was found in his
13 blood samples?

14 A Yes, sir.

15 Q Now, there was also a urine sample that was
16 submitted and tested and the results on that were a little
17 bit different, is that correct?

18 A That's right, it did confirm the presence of
19 marijuana in the defendant's system as well as the Xanax
20 or benzodiazepine in his system but there was one
21 additional drug which was hydrocodone. Actually, I think
22 there's two additional drugs, there's the cocaine
23 metabolite as well as the hydrocodone in his urine.

24 Q Can you explain the difference between finding
25 only two drugs in the blood sample and finding evidence of

1 four separate drugs in the urine sample?

2 A So, when one conducts a toxicological analysis,
3 the best scenario would be to have blood and urine from an
4 individual collected at the same time. What's in the
5 blood is applicable to impairment or intoxication. So,
6 what's in the blood is affecting the brain and could
7 potentially affect the individual in terms of their normal
8 faculties like could they walk or could they speak, is
9 their cognition affected or not and this is in contrast to
10 a urine sample. A urine sample is simply a byproduct,
11 it's as you know a waste product from our body that we all
12 produce and we have no control over the production of it,
13 of course. So, what he do find often is what's in the
14 blood may be different than what's in the urine but you do
15 like to see correlation. What's even more important
16 though is what's in the urine doesn't mean that it's going
17 to be found in the blood and the person would be affected
18 by it. So, although there were metabolites of drugs found
19 in the urine by no means could that be used to extrapolate
20 back and say this person was impaired by X and Y for
21 example because a lot of drugs persist in the urine for a
22 long time. Marijuana, for example, traces could be found
23 in someone's urine for up to a month if they're a chronic
24 user.

25 Q How long would they stay in the blood after

1 ingestion of the marijuana?

2 A Typically if someone is let's just say an
3 infrequent user using once or twice a week maybe, the THC
4 which is the psychoactive substance and its metabolites
5 persist for a short period of time, but if someone's a
6 chronic repeated user, it could persist in the blood for
7 days potentially even at levels that look to be at
8 concentrations that one would assume would impair someone.

9 Q Let's turn then to the conclusions or opinions
10 reached by Dr. Skolly-Danziger. Have you had an
11 opportunity to review the report that she prepared from I
12 think it was December 4th of 2013?

13 A Yes.

14 Q You also had the opportunity to review the
15 addendum to that report that she prepared on March 25th,
16 2014?

17 A Yes, I've reviewed both reports.

18 Q Now, you've told the jury that you sit on the
19 Board -- you said you're the president of the Board for
20 the issuance of Board certification?

21 A Yes, sir, I'm the president of the Board.

22 Q And did you at my request review the curriculum
23 vitae, the resume of Dr. Susan Skolly-Danziger to review
24 her educational and work history?

25 A Yes.

1 MR. MOORE: Your Honor, can we approach,
2 please?

3 THE COURT: Yes, you may.

4 (Thereupon, a benchside conference was had out
5 of the hearing of the jury as follows:)

6 MR. MOORE: Your Honor, I only have one copy of
7 this case but let me cite it and then state the
8 relevant language and then give it to the Court.
9 It's Cavan, C-A-V-A-N, versus State 9 So.3d 50, it's
10 a Florida Fifth District Court of Appeal case from
11 2009 and it seems like they're going to -- State's
12 going to have this witness testify -- comment on the
13 qualifications of Dr. Skolly which according to Cavan
14 the State cannot do and that would be cited on the
15 language that's on page 4 of 5 of this printed
16 opinion, but it's only about three or four pages long
17 but this concerns pediatric experts in a shaken baby
18 death case and the court says -- and they doctors are
19 very critical of -- the state doctors were very
20 critical to the defense expert and the court
21 condemned that and said that an expert may not
22 comment on the credibility of other witnesses. Its
23 improper to impeach an expert witness by eliciting
24 from another expert what he thinks of that expert but
25 what can -- and there's more but just hit the

1 highlights. Questions can seek to elicit opinions of
2 the witness critical of the validity of the opinions
3 of the opposing expert, those are improper. An
4 expert may properly explain his opinion on an issue
5 in controversy outlining the claimed deficiencies in
6 the opponent's methodologies so long as the expert
7 does not attack the opposing expert's ability,
8 credibility, reputation or competence. It's not
9 improper for -- to pose a question in a way that
10 causes one expert to delineate the factors used in
11 forming the opposing expert's opinion and then did
12 the same as his own opinion and compare them.

13 So, if we're going after -- which is what it
14 seems like, and here's the case like, Your Honor,
15 going after the qualifications of Dr. Skolly through
16 this witness, then Cavan says that's improper.

17 THE COURT: Response from the State.

18 MR. MCMASTER: I haven't seen the case but I
19 think it's proper for this witness to testify that
20 Miss Skolly-Danziger would not qualify for Board
21 certification as a forensic toxicologist.

22 MR. MOORE: That goes to her qualifications
23 which no matter how you package it that's the same
24 thrust of, you know, it's the same argument, it's the
25 same as they're going after the qualifications or

1 credibility of the witness and Cavan says you cannot
2 do that. He can disagree with her opinion but he
3 cannot attack her qualifications and especially by
4 saying she's not Board certified because --

5 MR. MCMASTER: She testified she wasn't Board
6 certified.

7 MR. MOORE: Okay. Well, then you don't need to
8 go into that if that's what they're going after but I
9 think to go beyond that and I'd ask that they --
10 State comply with the Cavan case.

11 THE COURT: It's my general understanding, I
12 mean, that's that you can't attack the credibility of
13 another witness. So, I'm going to sustain the
14 objection. Do you want to keep this case?

15 MR. MOORE: Court can have it.

16 THE COURT: Okay. Thank you.

17 (Thereupon, the benchside conference was
18 concluded and the proceedings were had as follows:)

19 BY MR. MCMASTER:

20 Q Let's discuss Miss Danziger's findings and
21 conclusions in the reports that she did submit to you,
22 doctor. First of all, in the December 4th, 2013, report,
23 did she make several opinions wherein she concluded that
24 the defendant, Brandon Bradley, was under the influence of
25 certain drugs as of the, as of the time that he was read

1 his Miranda rights and purportedly waived those and gave a
2 voluntary statement?

3 A Yes.

4 Q She concluded in the report that the defendant
5 was under the influence of first cannabis, secondly
6 Alprazolam or Xanax, three codeine and four promethazine,
7 is that correct?

8 A Yes.

9 Q Based on your review of her findings and the
10 Wuesthoff lab reports, did you find any evidence to
11 support her findings with respect to those four?

12 A There's only evidence to support the ingestion
13 or use of marijuana and Alprazolam. The toxicological
14 findings were negative for the presence of codeine and
15 promethazine. So, really there was no basis for that
16 opinion involving those four drugs in total.

17 Q Let's discuss the two that the lab reports did
18 support, the one regarding the cannabis, there was a
19 positive lab result for the THC in the system in the
20 blood, is that correct?

21 A Yes.

22 Q And confirmed in the urine so we know that for
23 some period of time Mr. Bradley had been using pot?

24 A Yes.

25 Q Now, what information did Miss Danziger report

1 about the defendant's long term use of this substance?

2 A She reported that the defendant had been using
3 the cannabis since age twelve and his use was chronic and
4 continuous as well as the use of the cannabis was repeated
5 every day.

6 Q And does an individual who -- assuming that
7 those facts are correct, does an individual who has this
8 long term chronic use of marijuana build up a tolerance to
9 it?

10 A Yes, THC is not unlike any other drug that the
11 repeated use an exposure to it would result in
12 pharmacologic tolerance. So, that means the actual
13 psychotropic effects on the brain would diminish over time
14 while the drug is used repeatedly.

15 Q And given the levels that were disclosed by the
16 Wuesthoff lab, is there any way to sort of back
17 extrapolate from the time when the blood sample was taken
18 on the afternoon hours of March 7th of 2012 back to the
19 evening hours of approximately 7:30 p.m. of March 6th at
20 the time that the Miranda was administered to Mr. Bradley?

21 A No, it's impossible to extrapolate or estimate
22 back to -- say to the time of the waiving of Miranda
23 rights based on a single blood test for so many different
24 reasons. One main reason is the half-life of the drug and
25 that's a measure of how fast it's metabolized over time.

1 The half-life is the time it takes to metabolize a drug
2 from one concentration to half of its concentration. We
3 don't know the defendant's metabolic rate for either one
4 of those drugs.

5 There was some attempt to extrapolate the
6 Alprazolam. The half-life for Alprazolam is somewhere
7 between six hours and twenty-six hours with an average of
8 about eleven. So, you can't extrapolate. You can
9 extrapolate drugs with simple kinetics like alcohol but
10 you can't extrapolate drugs that have complicated kinetics
11 like Alprazolam or even more difficult the marijuana
12 because of the chronic nature of the defendant's use and
13 the long term nature of the defendant's use of that drug.

14 Q Now, given the fact that we know that there was
15 marijuana in Mr. Bradley's system as of March 7th at 3:30
16 in the afternoon when the blood sample was taken, is there
17 any way to determine at this point whether he was -- or
18 how much he was under the influence of any marijuana at
19 the time that the Miranda warnings were given?

20 A No, it's not possible, it's too distant. To do
21 it one would need to have a blood sample that's collected
22 at the time which is --

23 Q At the time the Miranda warns were given?

24 A Yeah, but in addition there needs to be
25 sophisticated measures of ones impairment like what the

1 police officers conduct on the roadside or in a station
2 which would be a measure of both physical impairment,
3 physiological impairment and mental impairment. So, just
4 taking a blood sample, getting it tested and going
5 backwards in time, there's really no easy way or
6 definitive way or accurate way to project or opine that
7 he's impaired based on the blood concentration, it can't
8 be done.

9 Q And with respect to the Xanax or the
10 Alprazolam, I think you indicated also that you could not
11 do the back extrapolation with that?

12 A You cannot in large part because we don't know
13 what his half-life was at that time.

14 Now, there's many different reasons, the only
15 way you can do an extrapolation so you know is if you do
16 repeated blood measures of the drug and then you can
17 actually calculate the time that it goes from one
18 concentration to half of the concentration, but it's also
19 important to know when the blood concentration peaks in
20 the blood and then is on the way down. There's so many
21 factors that we can't quantify here to make it possible to
22 extrapolate backwards.

23 Q So, the attempt by Dr. Danziger to back
24 extrapolate wherein she comes up with Alprazolam or Xanax
25 level of two hundred and fifteen or two hundred and

1 sixteen nanograms per milliliter I believe it was, is that
2 an accepted or valid methodology for trying to go back and
3 find what a person's level would have been twenty hours
4 earlier?

5 A No, in my opinion you cannot do that for the
6 reasons I spoke to already.

7 Q Now, you've indicated that there's a half-life
8 for Alprazolam but it can vary from six hours all the way
9 up to twenty-six hours, is that correct?

10 A Yes, sir.

11 Q And that's varies by the individual, not by the
12 drug?

13 A That's right. So, there's some individuals
14 that are metabolizing really slow and some really fast and
15 then there's people in the middle of course.

16 Q So, without testing the particular individual
17 involved, you can't make any kind of generalization about
18 what the half-life might have been?

19 A That's correct.

20 Q The eleven hour figure that she used for doing
21 the extrapolation is clearly just an average of all of the
22 people together?

23 A It's not quite that but that's what's reported
24 as the most common or accepted half-life but there's a
25 huge range.

1 Q Now, you did have an opportunity to view the
2 actual interview of the defendant, did you not?

3 A I did.

4 Q Now, in Dr. Danziger's report she indicated
5 that Mr. Bradley gave her a history of taking I think up
6 to twenty-four tablets in the hours preceding the
7 interview with the Miranda warnings, is that correct?

8 A That's right, there were two taken earlier in
9 the day and then two allegedly I think after the incident
10 but before the arrest.

11 Q Based on your experience and training, do you
12 have an opinion about what effect that would have had on a
13 defendant assuming that he does not have a long term
14 exposure or tolerance to the drug Xanax but had only been
15 using it in any substantial amount for say two weeks prior
16 to the time when he's in the administration of Miranda
17 warnings?

18 A That's a massive quantity of Alprazolam. Most
19 people for the treatment of anxiety may take one or two
20 milligrams maybe once or twice a day. These Xanax were
21 two milligrams apiece I believe, so two times twelve is
22 twenty-four milligrams and there's allegedly two times
23 where he took these twelve milligrams or twelve doses
24 rather, that's just a massive or unbelievable amount of
25 Xanax allegedly ingested by the defendant. And if it's

1 the case, I would expect him to be flat out in a coma
2 state. Maybe not dead but in a coma state. Xanax alone
3 won't kill, if you mix Xanax with alcohol or some other
4 sedative, it will kill but it's still an unbelievable
5 quantity of drug.

6 Q And did that match up with the observations you
7 were able to make of the defendant's interview that took
8 place from 7:30 on for about a little over an hour on the
9 evening of March 6th, 2012?

10 A No. I mean, he was sleepy which I think we
11 could explain. He wasn't lethargic, he wasn't in a coma
12 state, he could converse. I don't think he was slurring
13 his speech, he was more mumbling rather than slurring, and
14 there were times where he was clear on in terms --
15 actually most of the time I believe he was clear on in
16 terms of the answer to the question. So, there was -- to
17 me I didn't see any confusion or difficulty in answering
18 some simple questions and some more difficult questions.

19 Q Now, the history that the defendant gave to
20 Dr. Danziger over the course of the two different
21 interviews varied from the actual lab results, did they
22 not?

23 A Yes.

24 Q Did he give a history of having taken MDMA or
25 Ecstasy shortly before the Miranda rights were

1 administered?

2 A Yes, there was some reference to I believe it
3 was beanies or beans, it wasn't really clear on that, but
4 there was no Ecstasy in the defendant's blood and urine
5 and there were no other stimulants that are related to
6 Ecstasy that were available at that time. So, there's no
7 methamphetamine, there's no metholone, there's nothing --
8 actually there was no cocaine even in the blood. So,
9 there's no confirmation of that statement given by the
10 defendant to Dr. Danziger.

11 Q In fact, the chemical testing disputed the
12 defendant's account?

13 A That's right.

14 Q How about the magic mushrooms, the psychedelic
15 mushrooms the he claimed to have ingested shortly before
16 all of this took place and he was given his Miranda
17 rights, any evidence of that in the lab report?

18 A There's no evidence but typically laboratories
19 don't screen for the hallucinogenic chemical that's found
20 in a mushroom, it's called psilocybin. So, the negative
21 result is negative because presumably it wasn't tested
22 for.

23 Q So, we don't know one way or another with that
24 one?

25 A Not with the mushroom, no.

1 Q How about Codeine?

2 A There was no evidence of Codeine and if he had
3 ingested Codeine within two, three, four days of this
4 incident, his urine would be positive for sure.

5 Q And how about the Promethazine, that's the
6 active ingredient in cough syrup I think that they talked
7 about?

8 A That's right, or Phenergan, you may have heard
9 it as Phenergan. No, there's no evidence of Phenergan or
10 Promethazine in the blood and/or the urine.

11 Q Now, there was a finding in the urine I believe
12 it was about Codeine, is that correct?

13 A No.

14 Q Not Codeine, Cocaine, Cocaine metabolite?

15 A Yes, sir.

16 Q Would you explain that to the jury?

17 A When an individual consumes Cocaine it's
18 metabolized, the common term would be Cocaine metabolite,
19 the more technical term would be Benzoylcegonine, that's a
20 chemical, it's a chemical term you're not comfortable with
21 so it's okay to call it Cocaine metabolite and that's what
22 was found in the urine, but there's no evidence of recent
23 cocaine use in the blood.

24 I wouldn't expect to find parent cocaine in the
25 blood because time has gone too long since the incident,

1 but if he was using cocaine on a repeated or chronic basis
2 you would still likely find the metabolite. There was no
3 metabolite. So, we do have evidence in the end of recent
4 cocaine use but not enough evidence to support that he was
5 impaired by it.

6 Q How about the hydrocodone?

7 A Hydrocodone was in the urine. You probably
8 know hydrocodone as a drug called Lortab or Lorcet, it's
9 an opioid drug, it's used to treat pain. In the urine,
10 not in the blood. So, again there's no evidence --
11 sufficient evidence to say that the gentleman was impaired
12 by the hydrocodone at the time of the incident.

13 Q Did the defendant even give a history of
14 ingesting any hydrocodone that you're aware of?

15 A No.

16 Q So, he's got some drugs in his system that he
17 didn't mention, he's got at least one drug in his system
18 that he didn't mention and several drugs that he said he
19 took that do not show up?

20 A That's correct.

21 Q Now, given the history of taking the drugs at
22 the last time at approximately 4:00 a.m. on the morning of
23 March 6th of 2012 and conducting -- and the agents
24 conducting the interview at 7:30 p.m. on March 6th of
25 2012, do you have any opinion about whether the effect of

1 any drugs in his system would have been decreasing or
2 diminishing in effect at that time?

3 A If there was any effect it would be decreasing
4 at the time of the, at the time of the interview and then
5 of course at the time of the blood draw which was hours
6 later.

7 Q Now, can you -- based on the information that
8 was available to you and the Wuesthoff lab reports and
9 available to Dr. Danziger as well as the information that
10 she related that she obtained from the defendant directly
11 in the history from him during the interviews, can you or
12 anyone else say with any kind of toxicological -- a degree
13 of toxicological certainty whether at 7:30 p.m,
14 approximately 7:30 p.m. on March 6th of 2012 the defendant
15 was under the influence of drugs such that he could not
16 knowingly, voluntarily and intelligently waive his Miranda
17 rights?

18 A No, and you can use this blood test done hours
19 later to establish that, it's not possible.

20 Q You did view the interview that the defendant
21 gave to the agents, did you not?

22 A I did.

23 Q And you've seen people under the influence of
24 drugs including the drugs we were talking about today
25 here, pot, Xanax and Hydrocodone?

1 A Yes.

2 Q And was the defendant in the interview able to
3 answer the questions relevantly?

4 MR. MOORE: Objection.

5 BY MR. MCMASTER:

6 Q In your opinion.

7 THE COURT: Okay. Bench conference.

8 (Thereupon, a benchside conference was had out
9 of the hearing of the jury as follows:)

10 MR. MOORE: It calls for a legal conclusion.
11 The relevance is not within the parameters of his
12 expertise, he's a toxicologist, he's not a mental
13 health expert, he's not a psychologist and even a
14 psychologist couldn't answer a question phrased that
15 way. Relevance is a legal determination.

16 THE COURT: Response from the State.

17 MR. MCMASTER: (Unintelligible), I guess I'll
18 use a different word.

19 THE COURT: It could be a legal conclusion.
20 So, I'll sustain the objection.

21 (Thereupon, the benchside conference was
22 concluded and the proceedings were had as follows:)

23 BY MR. MOORE:

24 Q Let's not use a term that we use in the legal
25 courts all the time, let's talk about was the defendant

1 able to answer questions logically and cogently?

2 MR. MOORE: Same objection, Your Honor, it's
3 beyond the --

4 THE COURT: Let's have a bench conference.

5 (Thereupon, a benchside conference was had out
6 of the hearing of the jury as follows:)

7 THE COURT: What was the -- logically and what
8 was the second word?

9 MR. MCMASTER: Cogently.

10 MR. MOORE: You know, this is -- this is not
11 something that toxicologist can answer. It's not
12 even something a -- maybe a psychologist could but
13 not -- you know, we're talking about pure speculation
14 in the field outside far afield from this
15 gentleman's -- who is highly qualified as a
16 toxicologist but to answer that's beyond his training
17 and expertise.

18 THE COURT: Okay. I'll sustain the objection.

19 (Thereupon, the benchside conference was
20 concluded and the proceedings were had as follows:)

21 BY MR. MCMASTER:

22 Q Dr. Goldberger, when Mr. Bradley was asked a
23 question about topic A, did he respond to topic A?

24 MR. MCMASTER: Objection. Same objection as
25 I've stated before.

1 THE COURT: Did he respond to topic?

2 MR. MCMASTER: Topic A.

3 THE COURT: I'm going to overrule that, it's a
4 yes or no.

5 MR. MOORE: I object to the form of the
6 question, it's ambiguous.

7 MR. LANNING: Judge, may we approach?

8 THE COURT: Yes, you may.

9 (Thereupon, a benchside conference was had out
10 of the hearing of the jury as follows:)

11 MR. LANNING: It's for the jury to --

12 MR. MOORE: What does that mean?

13 THE COURT: He just said did he respond.

14 MR. MOORE: If he was asked A did he respond to
15 A.

16 THE COURT: (Unintelligible) to the next
17 question.

18 MR. MOORE: It's ambiguous for one thing, it's
19 irrelevant for another, it's strictly an opinion,
20 it's no more within his, you know, ability to answer
21 than did the defendant seem to be speaking relevantly
22 or -- I mean logically. So, I mean, this is all
23 going at the same -- trying to get the same opinion
24 testimony from this witness who with all due respect
25 he's not qualified to give opinions on this

1 particular subject matter, and besides what does
2 that -- I mean, the question's meaningless so I
3 object to the form of the question as well.

4 THE COURT: Response from the State.

5 MR. MCMASTER: I thought it was a fairly
6 factual question, in the interview asked to testify
7 whether or not the detectives asked him a question
8 about topic A, did he respond to topic A.

9 MR. MOORE: Does that mean topic A? What is
10 topic A? When was topic A ever discussed?

11 THE COURT: You know, he's already testified
12 that he responded -- with all due respect, he's
13 already testified that he responded appropriately to
14 the questions in his testimony but -- I mean, I think
15 technically this objection is sustained.

16 (Thereupon, the benchside conference was
17 concluded and the proceedings were had as follows:)

18 BY MR. MCMASTER:

19 Q During your viewing the interview of
20 Mr. Bradley, did you find any signs of serious impairment
21 by Mr. Bradley?

22 MR. MOORE: Objection, form of the question,
23 what serious impairment means.

24 THE COURT: All right. I'll sustain as to
25 serious impairment.

1 BY MR. MCMASTER:

2 Q Did you find any signs of impairment?

3 A No.

4 MR. MCMASTER: No further questions.

5 THE COURT: Okay. Cross examination by the
6 Defense.

7 CROSS EXAMINATION

8 BY MR. MOORE:

9 Q Dr. Goldberger, good afternoon.

10 A Good afternoon.

11 Q We spoke by phone on Friday?

12 A We did.

13 Q We did your deposition? And -- you have to say
14 it out loud.

15 A Oh, yes.

16 Q It's being recorded so we have to get your
17 answer.

18 As of that date you had not viewed the DVD, is
19 that correct?

20 A That's correct.

21 Q And was the DVD at the point you began to watch
22 it at the point when the police agents came in to the room
23 and woke Mr. Bradley up?

24 A Yes, it was.

25 Q Did you view anything before that?

1 A No, but I know he was sleeping on the floor.

2 Q Sleeping. Was he sleeping or passed out or can
3 you tell from what you saw?

4 A Even though I saw it, I don't think you can
5 tell the difference between sleeping and passed out.

6 Q So -- All right. But before that if
7 Mr. Bradley, as has been testified, seen falling out of
8 his chair a number of times, would that be an indication
9 of impairment, would you think, given the toxicology
10 indication of drugs in the system?

11 A It could be but not necessarily definitive
12 proof.

13 Q You can't say one way or the other?

14 A That's my point.

15 Q And at the time you did actually begin viewing
16 Mr. Bradley when the police got him up off the floor and
17 put him in the chair and began questioning him, at that
18 point in time he would have been coming down with respect
19 to the drugs in his system, whatever effect they may have
20 been having on him would have been diminishing at that
21 point from the point previous to that when the drugs were
22 ingested?

23 A If he was even impaired at that point but
24 yes --

25 Q The effect?

1 A Yes, but if you make the assumption that he was
2 impaired prior to that time then yes, as time passes the
3 effects of the drugs would diminish.

4 Q Now, Promethazine with Codeine, that's found in
5 cough syrup, isn't it?

6 A Yes.

7 Q That's ingested for whatever effect people get
8 from that by drinking it?

9 A You can get high by drinking cough syrup.

10 Q Some people do. You know, you're a
11 toxicologist and you know what people use, what drugs
12 people use?

13 A People have used that before, yes, to get high.

14 Q And so Hydrocodone is also an active ingredient
15 in cough syrup?

16 A It can be.

17 Q And if one were to say pick up some cough syrup
18 that can make you high, has codeine in it, some has
19 hydrocodone in it, some has promethazine in it?

20 A Promethazine.

21 Q Promethazine.

22 A Maybe, maybe not. Hydrocodone is widely
23 available.

24 Q Okay. Do you think somebody who drinks cough
25 syrup for a high is going to be likely to be able to

1 distinguish the active ingredient in it from promethazine
2 to hydrocodone? You think that's something that an
3 average person who drinks cough syrup would necessarily
4 know?

5 A Well, the promethazine is what we refer to as
6 aphenathiazine, it's not a narcotic, it has an
7 antihistamine like effect as well as sedating. I think
8 more appropriately is can they distinguish between codeine
9 and the hydrocodone and probably not although hydrocodone
10 is stronger than codeine.

11 Q So, if an individual as a toxicologist who has
12 seen people impaired, has seen people ingest all kinds of
13 things, if somebody is ingesting, drinking cough syrup for
14 a high, it wouldn't make a difference whether the active
15 ingredient is promethazine or hydrocodone?

16 A It might not.

17 Q Or that person would even know what the
18 difference is?

19 A Well, sophisticated users of drugs do know the
20 difference and I don't know how sophisticated the
21 defendant was at that time so.

22 Q If they read the label I guess it would be on
23 the label, wouldn't it?

24 A If it comes with a label. It might not even
25 come with a label.

1 Q Good point.

2 MDMA, Ecstasy from beans which you indicated
3 there was no indication of that in the blood or urine?

4 A That's right.

5 Q Okay. In your experience as a toxicologist, do
6 people who use regularly as Mr. Bradley has been
7 established to do street level drugs, do you think they
8 always get it right, that is, the drugs that they get they
9 know exactly what they're taking?

10 A Maybe not, but Dr. Danziger's report seemed
11 pretty definitive regarding his use of this stimulant.

12 Q Well -- so, are you presuming then that she
13 absolutely got it right or that perhaps Mr. Bradley was --
14 had it misrepresented to him as to what he was consuming?
15 I mean, can you rule out that possibility?

16 A I can't rule that out but he may have mowed her
17 down as well. So, I'm not really sure if that's the other
18 possibility.

19 Q Now, you indicated that if Mr. Bradley had
20 consumed the amount of Xanax, alprazolam that was claimed
21 that he'd be flat out, what, sleeping, passed out, what
22 would he be?

23 A He clearly would be lethargic and fast asleep
24 because essentially what's reported is ingestion of
25 twenty-four two milligram tablets of Xanax, that's an

1 unbelievable amount. It wouldn't kill him because Xanax
2 doesn't kill alone, only in combination.

3 Q Is there a level -- I'm sorry?

4 A But that as I said is an amazing figure.

5 Q Is there a level of tolerance, a person's
6 tolerance who ingests Xanax regularly, is it affected?

7 A Yes, someone would become tolerant to it but I
8 don't believe the defendant was tolerant and this is one
9 of the opinions that Dr. Danziger switched on before her
10 final report because someone who's tolerant to a
11 benzodiazepine like Xanax, when you withdraw the drug from
12 the body the individual goes through withdrawals which can
13 be fatal and there were no signs or symptoms reported by
14 the jail personnel that he was suffering from withdrawal.
15 So, I don't think there's evidence that he was using the
16 drug chronically, that he had tolerance to it and the jail
17 records show that he didn't go through withdrawal. So,
18 we're somewhere in between. My point is we don't know
19 what the truth is but we can say that the truth was
20 definitively impaired by Xanax, we can't say that.

21 Q We don't know one way or the other? That's
22 what you said, we don't know?

23 A That's my point, but I have no evidence that I
24 can pinpoint that says he was impaired by Xanax or
25 impaired by marijuana.

1 Q Okay. Dr. Goldberger, if Mr. Bradley was
2 observed flat out between noon and when the police woke
3 him up to interrogate him at 7:30 and was -- at least one
4 point a police officer was unable to wake him up, to
5 arouse him, would that be consistent with consuming a
6 large quantity of Xanax?

7 A It might be or it might not.

8 Q That was the part you didn't see? You didn't
9 see that part in the DVD, correct?

10 A No, but I knew that happened.

11 Q Now, when you're talking about back
12 extrapolation you're talking about on the basis of the
13 medical -- basis of the toxicological report alone,
14 correct?

15 A That's right, just taking that number and going
16 backwards.

17 Q But a competent toxicologist in making that
18 retroactive determination is not going to rely just upon
19 the toxicological report, would that be correct?

20 A Yes.

21 Q Right. And so there are other items that a --
22 if a toxicologist like yourself, if you're asked to give a
23 retroactive extrapolation of the influence that a person
24 might have been under in the past, you would want to
25 consider as you pointed out field tests, you know, the

1 type of tests given by a police officer to determine the
2 level of an individual's impairment?

3 A Rights.

4 Q Among other things?

5 A That's right.

6 Q That's one thing. Okay.

7 And also if there were eyewitnesses to the
8 behavior of an individual at any point in time, you would
9 want to have -- you would at least consider that
10 information, would you not, for whatever it's worth?

11 A Eyewitnesses are useful, in this case we have
12 the video, that's even better.

13 Q Right. Sure. And so you -- did you -- how
14 much of that DVD did you view?

15 A I viewed the --

16 Q From the point in time that the police woke up
17 him?

18 A To the time that he exited the room, it was an
19 hour and twenty minutes or thirty minutes, whatever that
20 was.

21 Q Okay. And you indicated that if a blood draw
22 to be from the definitive with respect to the person's --
23 the amount of drugs they have in their system at any point
24 in time, the ideal time is to take the blood at let's say
25 the time Miranda was read, that's the point in time at

1 issue?

2 A That's right but in addition to the blood draw
3 you would want to document the signs and symptoms of
4 impairment.

5 Q Right. Would it also not help to do a
6 face-to-face interview with the individual to get that
7 person's drug history so you can at least determine
8 tolerance and make those sorts of determinations as well?

9 A Those are important but that's something that
10 you do at the jail because if the person has an issue with
11 drug use and tolerance the jail personnel need to know so
12 they can on watch for a withdrawal.

13 Q Okay. So, you have reviewed Dr. Danziger's
14 report or evaluation and all the list of things that she
15 had in which she viewed, what she considered and her
16 opinion?

17 A Yes, I think we in the end had the same
18 material to review except I had her report to review
19 obviously.

20 Q You didn't talk to Mr. Bradley?

21 A Of course not.

22 Q Right. So, you didn't have that?

23 A No.

24 Q And you didn't have a deposition of the
25 co-defendant who was in the car and claims that she heard

1 Mr. Bradley say certain things at a certain point in time?

2 You didn't have that either?

3 A No.

4 Q Now, as far as what can be -- what opinions can
5 be derived from a toxicological report, isn't it true that
6 with respect to THC -- well, at least in your opinion,
7 your opinion is that there can be no inference of
8 impairment of mental faculties merely from the
9 toxicological report let's say of THC?

10 A That's correct, and that includes this type of
11 case, it would also include a DUI.

12 Q Right. So, as, you know, you're familiar with
13 the laws in Florida as it relates to that, that a person
14 can be found guilty of DUI both for the way they act
15 outwardly but also there's a presumption of impairment
16 just from the level of blood -- the level of blood
17 alcohol?

18 A Blood alcohol only so regarding -- right, blood
19 alcohol only, we do have what's referred to as per se
20 presumption of impairment at .08 or higher but regarding
21 drugs in blood we have no presumption.

22 Q But as you have acknowledged, at least what
23 you've acknowledge in your deposition, you are aware that
24 the two states that have legalized recreational use of
25 marijuana, Colorado and Washington, they've presumed

1 levels of impairment from a level of THC of 5.5 nanograms
2 per milliliter, is that correct?

3 A That's correct.

4 Q And actually Mr. Bradley's was higher than
5 that, was it not?

6 A Slightly higher.

7 Q So, had the law enforcement chosen to do so
8 they could have collected a blood sample from Mr. Bradley
9 at the time that he was taken into custody or at the time
10 that he was read his Miranda rights, he was in their
11 custody?

12 A I don't know all the legal requirements but I
13 believe he would still have to consent to that or there
14 had to be a court order from a judge.

15 Q He could have been asked? You know, he could
16 have been asked if he wanted a blood sample, the police
17 officers could have done that?

18 A Sure.

19 Q And they could have performed what you call
20 DREs, field tests?

21 A Drug recognition expert.

22 Q No, that's the wrong terminology, the --

23 A Field sobriety exercise.

24 Q Thank you. Those.

25 A They could. A situation like this it would be

1 unusual that those types of exercises would be, would be
2 conducted on a defendant.

3 Q Okay. Based upon the level of THC in the blood
4 at the time of the blood draw which was actually 4:00
5 clock p.m. on March the 7th, 3:55 p.m., would it be --
6 isn't it correct to say that you cannot, you cannot draw
7 any inference back retroactively to the time of Miranda,
8 correct? You've already said that.

9 A We can't especially with the alleged history of
10 the marijuana use dating back to when he was twelve years
11 old and using many blunts per day, no one can extrapolate
12 back, who knows what his number was at that time.

13 Q Right, but it doesn't refute the contention
14 that he was under the influence of THC or any of the other
15 drugs in his system?

16 A That's right, I never said it would refute it.

17 Q No, it's not inconsistent with that conclusion
18 either, is it?

19 A If you want to draw that conclusion, sure, but
20 the number alone doesn't support impairment, there has to
21 be other facts considered.

22 Q Would brain damage be a factor that a
23 toxicologist would take into consideration, or one would
24 consider in making a determination of the effects of
25 blood -- effects of THC or alprazolam on that brain?

1 A Not unusually, that's generally outside the
2 scope of a forensic toxicologist. As you know I have some
3 medical background as well but no, I don't think it would
4 be appropriate to go that way.

5 Q So, you wouldn't -- even if you had that you
6 wouldn't consider it, that is an MRI or PET scan result?

7 A I would not, no.

8 Q You would describe yourself as -- when it comes
9 to opinions about the effects of controlled substances on
10 behavior, on mental faculties, you would describe yourself
11 as conservative, very conservative?

12 A Yes, because I'm asked many times, consulted by
13 attorneys and highway patrol and officers from around the
14 state regarding the effects of drugs on normal faculties
15 and I would never support the prosecution of an innocent
16 person. So, you have to have the competent toxicology as
17 well as backup information which would include signs and
18 symptoms of impairment, maybe pre-imposed incident
19 observations, there's a lot to put together and without
20 that and I don't think it can be done.

21 Q Especially in a death penalty case, wouldn't
22 you say?

23 A Of course.

24 MR. MOORE: No further questions.

25 THE COURT: Okay. Redirect by the State.

REDIRECT EXAMINATION

1
2 BY MR. MCMASTER:

3 Q Dr. Goldberger, when you have testified in
4 courts over the number of years that you've been
5 testifying, is that all for the state, some for the
6 defense, split, how's that go?

7 A Well, most of time it's for the state but not a
8 hundred percent for the state. So, I'm called from time
9 to time to consult with or to testify for the defense.

10 Q And you were asked by Mr. Moore that you are on
11 conservative side in your testimony, is that correct?

12 A Yes, and I think all forensic scientists and
13 toxicologists should act conservatively, not aggressively
14 and that's how I behave.

15 Q Records don't show it you're not going to
16 testify to it?

17 A That is exactly true.

18 MR. MCMASTER: No further questions.

19 MR. MOORE: No questions.

20 THE COURT: Okay. Sir, thank you for your
21 testimony, you're free to step down.

22 (Thereupon, the witness exited the witness
23 stand.)

24 THE COURT: Okay. Other witnesses on behalf of
25 the State.

1 MR. BROWN: We would call Dr. Patricia Zapf.

2 THE COURT: Ma'am, if you'll step up before the
3 clerk to be sworn.

4 THEREUPON,

5 DR. PATRICIA ZAPF,
6 having been first duly sworn, was examined and testified
7 upon her oath as follows:

8 THE COURT: Please be seated in the witness
9 chair. And once seated if you'll scoot that chair
10 forward. Do adjust that microphone and do talk into
11 that microphone. Okay. Mr. Brown.

12 MR. BROWN: Thank you.

13 DIRECT EXAMINATION

14 BY MR. BROWN:

15 Q Doctor, would you please state your name and
16 spell your last name for the jury?

17 A It's Patricia Zapf, Z as in Zebra A P as in
18 Peter F as in Frank.

19 Q And doctor, how are you employed?

20 A I'm a professor of forensic psychology at John
21 J. College of Criminal Justice in New York City.

22 Q Can you give the jury your educational
23 background?

24 A Yes. I received my Ph.D in clinical forensic
25 psychology in 1999. I am a clinical psychologist who did

1 a specialization in forensic psychology and I have worked
2 only in forensic psychology since 1999.

3 Q And can you give the jury a background of your
4 work history?

5 A Yes. So, I a professor at John J. College of
6 Criminal Justice which is part of the City University of
7 New York, I've been there for twelve years, twelve years.
8 Prior to that I was an assistant professor at the
9 University of Alabama in Tuscaloosa, and prior to that I
10 was a graduate student.

11 Throughout my graduate training I worked for
12 numerous agencies. I'm from Canada originally so I worked
13 for the Correctional Service of Canada in a number of
14 jails and prisons doing intake evaluations and forensic
15 assessments of various offenders. And I have a private
16 practice here in the United States. I've been here since
17 1998 and I've had a private practice since 1999 flying
18 around the country testifying on issues, mainly on
19 competency, criminal competencies.

20 Q And can you tell the jury what organizations or
21 certifications that you hold?

22 A Yes. I belong to a number of organizations.
23 Probably the most prominent organization is the American
24 Psychology Law Society, it's a division of the American
25 Psychological Association. I currently serve as president

1 elect of that society, I become president in August. I
2 also belong to a number of other international
3 organizations, International Association of Forensic
4 Mental Health Services and the American Psychological
5 Association as well.

6 Q And doctor, have you previously testified as an
7 expert in the field of forensic psychology?

8 A I have.

9 Q Can you tell the jury how many times and what
10 locations?

11 A Not too many times, probably about twenty-five
12 times in total, primarily in Alabama but then also in New
13 York, California, Florida. I'm licensed in Alabama, New
14 York and Florida so that's primary three states of
15 practice but I serve as a consultant across the United
16 States so. Can get temporary licenses if necessary to
17 testify in other jurisdictions.

18 MR. MOORE: We're having trouble hearing over
19 here.

20 THE COURT: If you could try to talk -- make
21 sure you talk to the microphone because it really
22 does, especially in that corner they have a
23 microphone and it will help them hear better.

24 THE WITNESS: Yes, ma'am.
25

1 BY MR. BROWN:

2 Q Can you tell the jury have you lectured, have
3 you published in this area?

4 A Yes, I have published extensively, I have -- I
5 don't -- I keep count for my university but I've published
6 I think it's right now about six books and manuals,
7 eighty-five articles and chapters in various peer reviewed
8 publications, and a couple other books in production right
9 now to be published in the next couple of years. And I
10 give lectures all the time, I train both legal
11 professionals and mental health professionals across the
12 country and internationally on conducting best practices
13 forensic evaluations.

14 Q Doctor, have you been retained in this case at
15 this point by the State of Florida to evaluate and go
16 through the report of Dr. Olander in this case?

17 A Yes.

18 Q And has that been for the purpose of whether or
19 not the defendant's statement was freely, voluntarily and
20 intelligently given?

21 A Yes.

22 Q And in order to do that, what have you reviewed
23 prior to court today?

24 A So, I reviewed all of the information that
25 Dr. Olander reviewed, all of the medical history that was

1 available which is the Wuesthoff Hospital records from
2 February 3rd, 2008, the Department of Corrections records,
3 the intake records at the county the jail as well as
4 school records and Dr. Olander's records as well as her
5 raw materials, her testing materials and her raw scores
6 for the various tests. I watched the video of the post
7 arrest interview or the interrogation of Mr. Bradley and I
8 think that kind of captures all the information.

9 Q Have you also reviewed Dr. Olander's written
10 reports --

11 A Yes.

12 Q -- her main report and addendum report?

13 A And Dr. Olander's written report and two -- one
14 addendum and one e-mail about the diagnosis.

15 MR. MOORE: About what?

16 THE WITNESS: About the diagnosis.

17 BY MR. BROWN:

18 Q Now, doctor, in this case at this point you
19 have not interviewed the defendant himself, correct?

20 A Correct.

21 Q And depending upon the jury's verdict in this
22 case, are you set to do that on Wednesday?

23 A Correct.

24 Q Now, going through the records you were able to
25 review the educational history of the defendant?

1 A Yes, I was.

2 Q That he had a high school diploma?

3 A Yes.

4 Q With a 2.6 state GPA, 2.7 district GPA?

5 A Correct.

6 Q The IQ test from the Department of Corrections?

7 A Yes.

8 Q The medical history both reported by him and
9 what's been documented?

10 A Correct.

11 Q And the psychological history of the defendant?

12 A Correct.

13 Q And you heard my cross examination of
14 Dr. Olander, correct?

15 A I did, yes.

16 Q And did I go through that history, complete
17 history with her?

18 A Yes. Yes.

19 Q Now, let me jump ahead rather than going
20 through it with you as well, you indicated you had the
21 opportunity to examine Dr. Olander's, not only her reports
22 but her raw data, can you kind of explain to the jury what
23 is the raw data, what did you have to review?

24 A So, the raw data, any of these tests that we
25 talk about or instruments, psychological tests, basically

1 they're pencil and paper tests and so when I talk about
2 raw data, typically the tests will have, you know, two to
3 ten pages, it depends on how long the test is and what
4 types of things are being tested, but the record form it's
5 called. So, where questions would be asked of the evaluatee
6 and the responses would be written verbatim on the record
7 form. And then also typically most tests also have the
8 scoring right there on the record form. So, you would ask
9 the question, you would write down the defendant's or the
10 evaluatee's responses verbatim and then also score those
11 responses depending on the scale of the instrument.
12 Typically zero, one or two is how most instruments are
13 scored. And so the raw data simply means all of those
14 record forms for the various tests that she administered.

15 Q In addition to that, does her data which she
16 provides include her notes or summary of the interview
17 with the defendant, things that he told her?

18 A Yes, her notes as well as typically we're
19 instructed to write down our observations of the evaluatee
20 in the margins or on the papers at various times when
21 we're -- because you're asking questions but you're also
22 observing their behavior. So, you're wanting to get a
23 sense of, you know, the content that's coming out of their
24 mouth in terms of the responses, but then also the process
25 or the manner by which they are answering your questions,

1 whether they're, you know, attentive, whether they're
2 engaged, whether they're wandering off, whatever the case
3 might be of your observations. So, both observations as
4 well as verbatim responses, scores as well.

5 Q And did the material that you reviewed from Dr.
6 Olander include those types of comments and things of her
7 interaction with the defendant, what she observed of him?

8 A Yes, correct. I believe that Dr. Spicer may
9 have done some of the testing as well so it's unclear who
10 did what on the various protocols but all the raw data is
11 there and I examined that all.

12 Q And in your field, is it common to go back
13 for -- an expert to go back and evaluate a prior doctor's
14 examination, their comments, their input and examine their
15 raw data?

16 A Yes, yes, it's very common, anything that
17 another expert does becomes in essence part of the record
18 and so that would also be something that you would want to
19 review to evaluate as part of your evaluation.

20 Q And is knowing that it's likely to be reviewed
21 by another expert, is that why you're trained to put your
22 observations down of an individual, his reactions, what
23 you observe, things of that as you go through the process
24 when you're doing the testing?

25 A Yeah, in the forensic arena definitely you

1 always are cognizant of the fact that you would have two
2 sides to every case and so you always want to make sure
3 that you're documenting everything so that anyone else
4 coming in to look at it can look at the same information
5 and make, you know, their evaluation based on what you had
6 observed in your notes and your comments, but generally
7 just in psychological practice even if it's not in a
8 forensic realm you still want to be able to make sure that
9 you're writing down your observations. As you know, it's
10 difficult to remember things over time and so writing down
11 your observations is just simply the way we're trained to
12 make sure that we're being accurate and recalling details
13 later on when necessary.

14 Q Doctor, in reviewing the work of Dr. Olander in
15 this case, did you notice anything concerning the issue of
16 malingering, what is malingering and the testing that she
17 did in that regard?

18 A So, in any forensic evaluation you can only
19 take the defendant's words, the information that they
20 offer at face value in terms of, you know, getting input
21 from that individual, everything else needs to be
22 corroborated. So, that's sort of the general rule of
23 thumb for forensic. In any forensic evaluation there
24 are -- there is one issue that always needs to be
25 considered and that's issue of whether someone is

1 malingering. Kind of a fancy term for lying or
2 exaggerating or can be maybe faking mental illness. So,
3 in any evaluation that I conduct because I'm a forensic
4 psychologist I'm always looking for issues of malingering.
5 I'm always evaluating that in every evaluation and then
6 sometimes I'll go on to do further formal testing for
7 malingering.

8 And so in Dr. Olander's evaluation she
9 evaluated for response style which is another way of
10 saying malingering but what response style really looks at
11 is the manner in which someone presents, do they seem like
12 they are presenting in an open and honest manner, are they
13 providing information that appears to be accurate and
14 valid and so the test that we have for looking at
15 someone's response style typically asks questions that
16 would be very common for most members of the population to
17 acknowledge and you're basically trying to get a sense of
18 whether this particular individual is either denying or
19 minimizing or exaggerating on the basis of these responses
20 that are fairly typical. So, are they going to deny doing
21 something that most people in the population would admit
22 to even though it might be something that is, you know, we
23 might be a little bit embarrassed to admit to it. So,
24 that's typically what they look for in terms of response
25 style.

1 Q Doctor, before you go on, was that the Paul
2 House Deception?

3 A Yeah, the Paul House Deception scales is one of
4 those measures that can be used to evaluate an evaluatee's
5 response style.

6 Q Is that the one that Dr. Olander used?

7 A She did, she used that one. And then there's
8 also some instruments have validity scales built in as
9 part of them in essence looking at consistency of
10 responding. You want to make sure when it's like a four
11 hundred and twenty item true, false questionnaire that
12 somebody isn't sitting there going true, true, true, true,
13 false, false, false, false, you know, kind of variable
14 responding, you want to actually try and make sure that
15 they're reading the items, and even if you're not in the
16 room with them there's some scales that are typically
17 built in look at that consistency of responding, are they
18 answering the same question worded slightly differently in
19 the same way throughout the test. So, the validity scales
20 and the Paul House Deception scales are the instruments
21 that Dr. Olander used to help her make a determination
22 about the presentation style of Mr. Bradley in this case.

23 Q Are there any additional tests that you feel
24 there's some areas that were not covered by that type of
25 testing and any additional tests that --

1 A Yeah. So, in forensic evaluation as I said the
2 rule of thumb is to corroborate everything. So, you're
3 always looking for third party information that's going to
4 corroborate what is told to you by the evaluatee. So, in
5 the situation where and evaluatee is claiming to have
6 symptoms of mental disorder or memory impairments or
7 cognitive deficits of some sort, then there are tests that
8 are -- have been developed to specifically assess the
9 degree to which those symptoms are valid. So, it's called
10 symptom validity testing, basically trying to get a sense
11 of whether the symptoms that someone is claiming are valid
12 symptoms.

13 Probably the most common test that's used for
14 the psychiatric symptoms is called the SIRS, that's
15 structured interview of reported symptoms. There are
16 other tests that look at someone's validity of their
17 memory deficits or cognitive impairments, one of those
18 would be the test of memory malingering, the T-O-M-M, the
19 TOMM. So, that's a typical test to use when somebody's
20 claiming to have memory deficits to try and get a sense of
21 whether that's valid. And then the SIRS is a test that's
22 very commonly used to look at symptom validity of
23 psychiatric symptoms.

24 Q And in this particular case given the
25 defendant's claim of lack of memory for certain instances,

1 do you think the TOMM test is something that should have
2 been given?

3 A The TOMM, yes, definitely, there may be others
4 that I would perhaps use instead of the TOMM that just get
5 added in a little more sophisticated way, a little less
6 obvious, a little less face transparent, and then
7 certainly the SIRS for the psychiatric symptomatology,
8 absolutely.

9 Q And what did you see that you feel prompt the
10 need to give the SIRS type of test?

11 A Well, I'm always -- you know, in general in any
12 forensic evaluation I'm looking to corroborate information
13 and so when somebody is saying that they're having
14 psychotic symptoms which, you know, is not very common in
15 the population, two to five percent of individuals in the
16 population maybe have psychotic diagnoses, when somebody
17 is claiming to have a psychotic symptom then that's an
18 area where I will delve more deeply to try and look at
19 what's the history of this, what other symptoms do you
20 have, how does this hang together.

21 Typically it's -- you know, what I would do
22 is -- when I work a case I literally get a bankers box or
23 two of all of their mental health records. So, usually
24 somebody who has psychotic symptoms has a fair -- it's a
25 pretty acute disorder, it's something that occurs over

1 time and there's usually a lot of contacts with mental
2 health. So, I will review all of those records, I'm
3 looking for consistency, I'm looking for the history, when
4 the symptoms started, what -- how they play out, whether
5 they get worse, how they react to medication, all of those
6 types of things.

7 In this case it was -- there's not a lot --
8 there's really no mental health history records. So, we
9 can't look at records for that. So, you've got the self
10 reported of the defendant and so then I would be looking
11 for testing to confirm the validity of what I'm being told
12 by the defendant.

13 Q Now, specifically going to what you were asked
14 in this case to opine towards is whether the defendant
15 waived his Miranda rights in a knowing, intelligent and/or
16 voluntarily manner, did you look at the Miranda type
17 testing and the raw data we spoke of and the testing that
18 Dr. Olander did?

19 A Yes, definitely.

20 Q And the two types of tests, the Grisso test and
21 the SAMA test, are those legitimate type testing?

22 A Yes, there are basically only two I'm going to
23 say instruments which then are comprised of subtests. So,
24 each of these instruments, there's the SAMA, the
25 standardized assessment of Miranda abilities published in

1 2012, relatively recent but done very well. And then
2 there's the Grisso instruments which were published in
3 1998, kind of the gold standard in the field to this point
4 because they've been the only ones that have been, you
5 know, developed by Tom Grisso who is like, you know, sort
6 of the grandfather of forensic psychology, they're very
7 well validated instruments. They've recently been revised
8 but Dr. Olander used the older version of those
9 instruments, which is quite fine, and then the SAMA. So,
10 I've had opportunity -- I'm familiar with all of those
11 instruments and have had opportunity to review her
12 administration and as far as I can see from her
13 observations and information on the profiles, the raw data
14 and then I can see, you know, verbatim what the responses
15 were from the defendant when she was asking questions in
16 her evaluation.

17 Q And in your career have you given and reviewed
18 those tests many, many times?

19 A Yes, actually I was a Beta tester for the SAMA
20 which means one of a few people in the country who was
21 called upon before it was published to test it out, give
22 feedback. My background is in test administration and
23 construction, so.

24 Q And did you see any issues or any problems with
25 the presentation of the test to the defendant in that

1 regard?

2 A No, I don't think so, everything looks quite,
3 you know, fine, the only issue was the fact that the
4 defendant indicated that he didn't have memory for the
5 time that he waived his Miranda rights so the time of the
6 interrogation. So, there's a lot of spaces where, you
7 know, questions would be asked but then it's like no
8 memory, no memory, no memory, a big kind of zero with a
9 line through it throughout the raw data. So, it just
10 means there's nothing there for her to score because he
11 has no memory of that time.

12 Q Okay. And how about the defendant's
13 performance on the Grisso test, how did you -- can you
14 tell the jury how did he perform on that test and what is
15 your take from his performance?

16 A Yeah, there's four sections of that test, one
17 looks at the vocabulary, one looks at his understanding of
18 those words and basically he's given two statements and he
19 needs to make -- say whether they're same or different.
20 And then there's the function of rights of an
21 interrogation where he's asked questions about those
22 rights and what it means and he scores within normal
23 limits, he's not impaired on any of them. Dr. Olander in
24 her report notes that he has some inconsistencies on
25 the -- where you give two statements and they have to say

1 whether they're same or different, but that instrument is,
2 you know, it's zero through twelve is the possible scoring
3 and he scored a nine. So, he, you know, had a couple of
4 errors there but still within normal limits.

5 Q And twelve would be a perfect score?

6 A Yes.

7 Q And in the other areas on that type of testing,
8 the function or rights of interrogation, comprehension of
9 Miranda vocabulary, the others areas he scored --

10 A Within normal limits, yes.

11 Q So, what was your overall interpretation of his
12 performance the Grisso test?

13 A So, he was unimpaired on the Grisso test and
14 that -- my overall interpretation was that he wasn't
15 showing any deficits in terms of his understanding,
16 reasoning, appreciate abilities that kind of come into
17 play when you're talking about like what it means to waive
18 your rights.

19 Q So, now going to the interview itself, you used
20 terms knowing, voluntarily and waiving Miranda?

21 A Yeah.

22 Q Can you kind of give the jury a definition or
23 what you're looking for in each of those three types of
24 categories?

25 A Sure. So, voluntarily is pretty

1 straightforward, it means without coercion. Coercion can
2 be because of some threat that's made or it can be like
3 the promise of some big inducement, we can be coerced by
4 like getting promised something that would make us do
5 something against our will because it would be so great to
6 get whatever that inducement is.

7 You know, when I look at in terms of the
8 voluntariness, there was nothing in the interrogation
9 situation that led me to think that Mr. Bradley was being
10 coerced in any manner. He wasn't -- certainly wasn't
11 being promised any inducements and he wasn't being
12 threatened or, you know, the officers were extremely
13 cordial and just very appropriate with him. So, in my
14 mind there was no concern at all for the voluntariness, it
15 was -- it appeared to be quite voluntary.

16 In terms of the knowingly, when we talk about
17 competence, which is my area of expertise, we kind of talk
18 about different abilities and so the ability that goes
19 with the knowing prong of the Miranda waiver is
20 understanding and that simply means does a person have an
21 accurate understanding of the situation and there was
22 really nothing that I could see from the interrogation
23 that would show any misperceptions or misunderstanding.
24 So, I'm paying close attention to the words that he's
25 using, I'm also looking at his body, you know, his

1 gestures, his nonverbals, all of that, and there's nothing
2 to indicate that he doesn't know what's going on or that
3 he has some misunderstanding of some crucial piece of
4 information.

5 And then the intelligently component I
6 sometimes refer to as fact or as rational understanding.
7 So, taking those facts and then being able to apply them
8 in a rational manner which means being able to weigh
9 information and select information that would be more
10 appropriate to give in certain circumstances versus less
11 appropriate to give. And then also appreciation. So,
12 that's just taking that factual understanding and applying
13 it to your own situation and being able to make a decision
14 about, you know, me here in this situation, am I able to,
15 you know, know what's going to happen to me, do I
16 understand what happens when I waive my rights, do I
17 understand what it means to give the police information in
18 this situation.

19 And then, of course, along with the knowingly,
20 willingly and intelligently comes the totality of the
21 circumstances. So, always have to take into consideration
22 the totality of the circumstance which means
23 characteristics about the defendant, how old the defendant
24 is, what his level of education is, whether he was under
25 the influence of any substances, if so, whether those

1 substances were taken voluntarily, willingly or whether
2 they were like slipped into someone's drink and they were
3 taken without them knowing, whether they've had contact
4 with the criminal justice system, what their history is
5 with that, their interactions with the police officers as
6 well as the situation, you know, was the interrogation
7 room, you know, were there unusual circumstances about
8 that interrogation room or about the interrogation in some
9 way. So, really kind of taking into consideration this
10 whole totality of the circumstances and trying to make a
11 determination about whether this person in this situation
12 was willingly, knowingly and intelligently waiving his
13 rights.

14 Q Okay. And in this particular case you talked
15 about the situation in the interrogation room, did the
16 officer let the defendant get up and move about?

17 A Well, the defendant -- I believe the defendant
18 probably had leg irons on, it looked to me like that, I
19 didn't actually see them, I'm making that assumption, he
20 was handcuffed as well, and also, you know, had been
21 sleeping on the floor just prior.

22 So, there was some testimony earlier about, you
23 know, him being put in a chair by the officers which is
24 accurate, one of the officers like picked him up and put
25 him in the chair because he was, you know, shackled and

1 handcuffed and kind of sleeping or had, you know, been --
2 is in the process of being aroused and so put in the
3 chair.

4 And then they had him do a few demonstrations
5 at various times and they got up and they moved around and
6 so yes, he's free to move in essence. I mean, he's not
7 getting up and doing any big gestures but they have him
8 play out certain, certain situations and where he was in
9 location to other people and in relation to, excuse me,
10 other people and so yes.

11 Q And during that time where the defendant is up
12 moving about, did you either see or hear anything from the
13 officers that in any way at that point threatened the
14 defendant or anything of that nature when he's up and
15 now --

16 A No, no, not at all my, my impressions were that
17 the officers were very cordial, very appropriate with him.

18 Q How about the early part of the interview
19 itself when the Miranda rights were read to the defendant,
20 did you -- did anything occur during that would have any
21 signature in your opinion as to whether or not he
22 voluntarily, freely and knowingly waived his rights?

23 A So, that first part where he waives his rights,
24 it happens right at the beginning of this interrogation
25 and so they put him in the chair and he's, you know, kind

1 of waking up and they kind of say to him like are you okay
2 to talk with us, you know, we have to go through some
3 things and then one of the officers pulls up next to him
4 and takes him through each of his rights and after each of
5 his rights he mumbles, he says um-hmm like indicating an
6 understanding of that right, the officer moves on to the
7 next one to the next one and after each one he kind of
8 gives this um-hmm. It's mostly an um-hmm like a mumble
9 but um-hmm and then the officer asks him if he understands
10 his -- that he's waiving his rights and he says oh, I
11 understand and then they just they carry on. So, I took
12 that to mean that he was, you know, he's had, he's had
13 experience with the criminal justice system before, he's
14 been in an interrogation situation before, I just took all
15 of that to mean that he understood his rights and, you
16 know, was waiving them willingly and moving forward with
17 answering questions.

18 Q Okay. And would that be consistent with his
19 performance on the Grisso test?

20 A Yes. Yeah, absolutely.

21 Q Okay. Then there was a spot at about 7:44,
22 again at 7:57, 8:21 and 8:24 and I'll focus first on the
23 7:44 one where he -- a clarification of his position to
24 the officers in relation to the where the gun, do you
25 recall --

1 A Yeah.

2 Q -- that portion of the interview?

3 A Yeah. Yeah, yeah. So, 7:44 is the time stamp
4 on the video and the video I think starts around 7:36 so
5 like 7:30 at night, 7:36 at night and it's about eight
6 minutes into the interrogation. So, the waiving of the
7 Miranda rights at the beginning takes about two minutes
8 and so it's about eight minutes into his interrogation.
9 So, he's just kind of waived his rights and he's going
10 through and answering questions where he is very clear to
11 clarify for the officers -- the officer's trying to get a
12 sense of how Mr. Bradley came into possession of the gun,
13 like literally to hold the gun in his hand and so the
14 officer's kind of I guess making some assumptions about
15 where, you know, the gun is and how he reached over, how
16 Mr. Bradley reached over for it and Mr. Bradley's very
17 clear to clarify that, I said the gun was over there, I
18 didn't say anything about reaching for it, and he does
19 this a number of times throughout the interview and I'm
20 paying close attention to that because those type of
21 statements give me some indication as to whether he
22 understand what's going on in the circumstance, in the
23 situation and so my impression of those statements are
24 that he has a clear understanding of what's going on and
25 is making attempts to clarify even more for the officers

1 what his position is, what he's -- the information that
2 he's giving.

3 Q And did the defendant throughout the interview
4 on multiple times do that additional clarification with
5 the officers as far as what he was saying?

6 A Yes, yes, number -- numerous times throughout
7 the interview and in fact at one point says no, don't put
8 words in my mouth, sir, like clearly knows -- my
9 impression is that he clearly understand that words make a
10 difference in this situation. So, he's being very careful
11 about the words he's using and he's clarifying and
12 correcting the officers when they're using words that he,
13 you know, he didn't use or when he feels they're putting
14 words in his mouth.

15 Q And do you also look to see if there are any
16 instances where a person would indicate his appreciation
17 of the rights that he has waived?

18 A Yes. So --

19 Q What is meant by that?

20 A Right. So, what I'm looking for when I'm
21 watching those interrogation interviews is I'm basically
22 looking for deficits in understanding, so some situation
23 where they're giving incorrect responses or responses that
24 don't really make sense. I'm also looking for, you know,
25 whether they have an appreciation of what it means to, you

1 know, be talking to the police, to be telling them this
2 information perhaps incriminating yourself. So, I'm
3 paying close attention and so several times throughout the
4 interview he gives indication of his appreciation of the
5 importance of, you know, speaking with the police.

6 At one point he's giving information about the
7 gun and he's very, you know, he's concerned about his baby
8 mama in the interview interrogation but the mother of his
9 child, his co -- the individual who was with him in the
10 vehicle at the time. So, he's giving indication to the
11 police officers that he doesn't want to incriminate her by
12 giving information so he's kind of saying I don't want to
13 get her in trouble. At one point he's talking about well,
14 you know, twenty years, thirty years like, you know,
15 what -- in essence what difference is going to make if I
16 give this one piece of information, we're talking twenty
17 years, thirty years.

18 So, there's a number of instances throughout
19 his statements that he -- that says to me that he has an
20 appreciation of the severity of the situation and of
21 the -- of what it means to be waiving his rights, to be
22 speaking with the, to be speaking wit the officers in this
23 situation. He understands that giving pieces of
24 information could add more time on. He certainly has an
25 understanding of the severity of the situation that he's

1 in with looking at twenty or thirty years, you know, in
2 that post arrest interview.

3 Q So, for instance, when he says about the 8:05
4 mark he doesn't want to get his girlfriend in trouble,
5 what does that show to you -- say to you?

6 A Yeah, that says to me that giving information
7 to the police can be used against him or against her so
8 doesn't --

9 Q Same thing again at 8:06 and 8:08, he indicates
10 he's worried about saying anything against his baby mama?

11 A Yeah, yeah, a number of times throughout the
12 interview he is concerned about incriminating the mother
13 of his child.

14 Q Now, at the eight minute mark is there a
15 discussion where he talks about regarding when, how and
16 where he got the gun and whether that could incriminate
17 himself, do you recall that portion of the interview?

18 A Yes, I do.

19 Q Can you tell the jury what that signifies to
20 you?

21 A So -- yeah. So, there's this discussion that
22 goes on about how he has obtained -- they're trying to get
23 a sense of like how long he's had the gun, where did he
24 obtain the gun and it is my impression that it wasn't
25 actually his gun, that his girlfriend had gotten the gun

1 and so -- or had obtained the gun or it was her gun. So,
2 he's very concerned that in giving information he might be
3 incriminating his baby mama, his words, and so that shows
4 me that he is able to complete those mental gymnastics
5 that are required to know that I'm giving this information
6 but not only could it incriminate me, it could incriminate
7 someone else. So, it shows to me sort of a level of
8 processing that indicates that he's aware of the severity
9 of the situation and understands the risks in giving
10 information.

11 Q Now, there's a spot at approximately 8:18 where
12 he gives the officers an approximate amount of time that's
13 elapsed from the hotel to the shooting of the
14 deputy, approximately twenty minutes?

15 A Right.

16 Q So, he's fairly accurate, what does that say to
17 you? What do you interpret from that.

18 A So, that's another thing that I highlighted in
19 my report because what I'm, as I keep saying, what I'm
20 doing is paying attention to everything he says as well as
21 how he says it and so -- and everything has to be
22 corroborated, right. So, I'm looking for third party
23 information that corroborates everything he's saying.

24 So, at one point they're trying to get a sense
25 of like how much time has passed before this incident at

1 the EconoLodge and when he comes into contact with the
2 officer and so they are asking him this in the
3 interrogation and so he says it's about twenty minutes.
4 So, he's calculated and that is accurate, that is accurate
5 information as confirmed by the police report. So, it
6 says to me that in that moment he has a reasonable
7 perception of time, he understands -- like he has memory
8 for the events that took place and memory for the amount
9 of time that has lapsed between various pieces of the
10 event.

11 Q Doctor, putting everything together, were you
12 able to form an opinion about whether the defendant and
13 his waiving of Miranda was knowing, intelligent and
14 voluntarily.

15 A Yes, I did not see anything that would, that
16 would indicate that it was anything other than
17 voluntarily, knowing and intelligent. I didn't see any
18 indication of impairment of any sort with respect to
19 waiving his Miranda rights.

20 MR. BROWN: Your Honor, may I have one moment?

21 THE COURT: Yes, you may.

22 (Thereupon, a pause was taken if the
23 proceedings.)

24 MR. BROWN: No further questions at this time.

25 THE COURT: What I'm going to do is go ahead

1 and take an afternoon break. It's five minutes after
2 3:00, we'll take a break for ten minutes. Ask you to
3 be back here at 3:15. So, during this break you must
4 continue to abide by your rules governing your
5 service as a juror. We'll be in recess for ten
6 minutes. Ma'am, I'm going to allow you to recess too
7 but recess after the jury leaves.

8 THE WITNESS: Thank you.

9 (Thereupon, the jury was escorted out of the
10 courtroom by the court deputy and the proceedings were had
11 as follows:)

12 THE COURT: Okay. Please be seated. And
13 Dr. Zapf, you can go ahead and be back here at 3:15
14 and we'll put you on the stand and bring the jury in.

15 THE WITNESS: Okay. Thank you.

16 THE COURT: Okay. Court will be in recess
17 until 3:15.

18 (Thereupon, a short recess was taken in the
19 proceedings.)

20 THE COURT: Okay. If we could bring in the
21 jury.

22 (Thereupon, the jury was escorted into the
23 courtroom by the court deputy and the proceedings were had
24 as follows:)

25 THE COURT: Okay. Please be seated.

1 Mr. Moore, cross examination.

2 CROSS EXAMINATION

3 BY MR. MOORE:

4 Q Dr. Zapf, the twenty-five times or so that
5 you've estimated that you have testified as a witness, has
6 that been as a psychologist?

7 A Yes.

8 Q And what would be the breakdown of how many
9 times of those you testified for the government, the
10 state, the federal government?

11 A I don't testify often, I'm not called often by
12 the state. I don't testify -- I do -- I mean, I don't
13 testify a lot because I write clear reports and typically
14 aren't called. I guess maybe fifteen percent of the time.

15 Q For what?

16 A For the -- for the prosecution.

17 Q Fifteen percent for the prosecution. That's
18 federal and state?

19 A Yes.

20 Q And of the items that you reviewed, you
21 mentioned what you did look at and your report didn't
22 indicate that you had actually seen the DVD of the
23 interrogation or had you?

24 A Yes.

25 Q Okay.

1 A I believe on both accounts.

2 Q So, the part that you saw of the interrogation
3 of Mr. Bradley, that began when the police went into the
4 room and woke him up?

5 A Yes.

6 Q Could you tell at that point whether he was
7 sleeping or passed out or don't know one way or the other?

8 A Don't know.

9 Q And when you indicated that they picked him up
10 off the floor, he was literally picked up off the floor,
11 wasn't he?

12 A Yes.

13 Q And would you say thrown in the chair?

14 A No, definitely not, gently placed in the chair.

15 Q Was that when he sort of curled up in a fetal
16 position, is that the part?

17 A Yeah, I saw that Dr. Olander had characterized
18 it that way, I didn't see it that way, I saw them as like
19 picking him up and so his legs are I assume in leg irons
20 and so like they pick him up and put him on the chair, I
21 didn't see any --

22 Q The video pretty much, you know, got it right,
23 it speaks for itself, you can put your -- one can put
24 one's own spin on it I suppose?

25 A Yeah, absolutely.

1 Q All right. So, did you -- you correct me if
2 I'm wrong but you did not consider the deposition
3 testimony of Andria Kerchner?

4 A Correct.

5 Q And the DVD of the actual shooting incident
6 with comments of the defendant which can be heard in the
7 back?

8 A Right, I was to evaluate his waiver of Miranda.

9 Q I understand. The neuro-imaging testing, the
10 MRI and PET scan, you didn't consider those reports as
11 well?

12 A No, I did not.

13 Q Is that something -- in determining an ability
14 to understand and knowingly and intelligently waive
15 Miranda rights we're talking about cognitive functioning?

16 A Yes.

17 Q And would you not want to have that information
18 in making such a determination if there is a positive
19 indication of some sort of brain anomaly?

20 A I'm not going to go into all the problems with
21 the scanning techniques, it's not my area of expertise.
22 No, not typically, that is not information that I would
23 take into consideration, I'm a forensic psychologist.

24 Q So, a neuropsychologist or psychologist, are
25 you saying that they should not rely on that if it's a

1 qualified test if it's done properly?

2 A Well, even neuropsychologists don't do
3 scanning. So, if somebody else --

4 Q No, no, I'm sorry.

5 A Sorry, I'm misunderstanding.

6 Q If you have that data, if you have a report
7 done by a qualified physician who has done an MRI and
8 interpreted it, and also a PET scan and interpreted that,
9 somebody who's qualified to do it and read it, would you
10 want to consider that data in doing a mental evaluation of
11 an individual?

12 A Not typically.

13 Q Would you refuse to consider it?

14 A No.

15 Q If you had it, what would you do with it?

16 A If I have it I would probably seek outside
17 consultation to help me interpret that report and then use
18 that as one piece of data along with all of the rest of
19 data that would be collected as part of that evaluation.

20

21

22

23

24

25

(CONTINUED TO VOLUME X)