

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 # 423



23131287

STATE OF FLORIDA,

Plaintiff,

versus

BRANDON LEE BRADLEY

Defendant,

ORIGINAL

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BREVARD CO. FL.

2014 JUL 25 A 11:44

SCOTT ELLIS

VOLUME VIII 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

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THOMAS BROWN, ESQ.,
and
JAMES MCMASTER, ESQ.,
Assistant State Attorneys
State Attorney's Office
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Building D.
Viera, Florida 32940

Appearing for
Plaintiff

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and
MARK LANNING, ESQ.,
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Public Defender's Office
2725 Judge Fran Jamieson Way
Building E
Viera, Florida 32940

Appearing for
Defendant

Brandon Lee Bradley, Defendant, present

* * * * *

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* * * * *

1 MR. MOORE: I'd like to approach the witness
2 with these documents.

3 BY MR. MOORE:

4 Q Based upon what you can see through that
5 package, what indicates that those were the vials of blood
6 you drew from Mr. Bradley?

7 A Well, they have my handwriting and my initials
8 on each of the vials.

9 Q And how many vials of blood did you draw from
10 Mr. Bradley?

11 A Five.

12 Q Do you see your initials and the date and time
13 and Mr. Bradley's name on all five of those? If it would
14 help to cut open the package and take them out, then you
15 can go ahead and do that.

16 A I can see through the package.

17 Q Okay. So, do you see --

18 A I see my initials and his name on each one of
19 the vials.

20 MR. MOORE: I'd like to approach the witness
21 with Defense Exhibit D. I've shown the state.

22 BY MR. MOORE:

23 Q Ask you if you see any identifying information
24 on that which you associate with the vials of blood that
25 were drawn from Mr. Bradley? Specifically at the top you

1 see your signature?

2 A Yes, it has where I've printed my name and
3 signed my name.

4 Q Okay.

5 A With the date and time.

6 Q All right. And do you see any other
7 information on that form I've shown you that you would
8 associate with the vials of blood you took from
9 Mr. Bradley which you just looked at in the package in
10 front of you?

11 A Well, it has the correct number of vials, the
12 number of vials, which is five, and one cup of urine.

13 Q Did you collect the urine?

14 A I did not.

15 Q And so with respect to the five vials of blood
16 that you did collect, are you saying then that those are
17 the vials you collected in that bag?

18 A Yes.

19 Q And how did you process them? Once you
20 collected them, what did you do with them?

21 A Once I collected them I put them into this --
22 the smaller bag that's inside here, this biohazard bag,
23 and I handed them to the gentleman that came to pick them
24 up.

25 Q And have you seen him here today?

1 A Yes.

2 Q Is he in the courtroom?

3 A Yeah. Yes, he is.

4 Q Would you point out who he is and where he's
5 seated?

6 A He's sitting over to my right in the first row
7 there.

8 Q Okay. Dave McGuinness, is that Mr. McGuinness?

9 A Yes.

10 Q How did you seal those vials of blood?

11 A What are you referring to?

12 Q Well, I mean, you put them in a tube and then
13 how did you keep the contents in the tube?

14 A Well, the tube is vacutained so the needle that
15 I used in reference to the tube, we do not have to open
16 the vial, it's -- one end is a needle and the other end is
17 a vacu, it goes into the vial for a vacutainer seal so the
18 blood is never touched.

19 Q Did you see any markings on those tubes which
20 are different or in addition to the markings that you put
21 on them?

22 A No.

23 Q And those are the tubes of blood you collected
24 from Mr. Bradley on March the 7th, 2012, is that correct?

25 A That's correct.

1 MR. MOORE: No further questions.

2 THE COURT: Cross examination by the State.

3 MR. MCMASTER: No questions.

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

6 THE WITNESS: Thank you.

7 MR. MOORE: I'd ask that Miss DuRousseau stay
8 for now.

9 THE COURT: Okay. He's asking that you be
10 released. I mean that you remain and not be
11 released. I normally let you all work that out.
12 Whatever you all wish to do.

13 (Thereupon, the witness exited the witness
14 stand.)

15 THE COURT: Okay. Other witnesses on behalf of
16 the Defense.

17 MR. MOORE: We would call Dave McGuinness.

18 THE COURT: Okay. Mr. McGuinness, if you'll
19 come forward. Step up before the clerk to be sworn.

20 THEREUPON,

21 DAVID MCGUINNESS,

22 having been first duly sworn, was examined and testified
23 upon his oath as follows:

24 THE COURT: Okay. Sir, please be seated. And
25 I know you've been in the courtroom but if you'll

1 adjust that microphone and do talk into that
2 microphone. Okay. Mr. Moore.

3 MR. MOORE: Thank you.

4 DIRECT EXAMINATION

5 BY MR. MOORE:

6 Q Mr. McGuinness, state your full name.

7 A David J. McGuinness.

8 Q Where are you employed?

9 A Office of the Public Defender.

10 Q What do you do there?

11 A I'm chief investigator.

12 Q And what did you do before you became a chief
13 investigator with the Public Defender's Office?

14 A I spent twenty years between KSC and the Cape
15 side as an investigator and before that I was a police
16 officer in Vero Beach for three years and prior to that a
17 police officer in Shrewsbury, Massachusetts for four
18 years?

19 Q On March the 7th of 2012, were you involved in
20 obtaining and transporting vials of blood and a urine
21 sample taken from Brandon Bradley?

22 A Yes, I was.

23 MR. MOORE: Approaching the witness.

24 THE COURT: Yes, you may.

25

1 BY MR. MOORE:

2 Q Mr. McGuinness, would you look at those and
3 identify them?

4 A The five vials of blood were the vials of blood
5 that Miss DuRousseau extracted from Mr. Bradley on the 7th
6 of March, 2012. The urine specimen is a specimen I
7 obtained from Mr. Bradley. We went into a men's room and
8 left the door ajar so he could have some privacy while he
9 deposited the urine in the cup.

10 Q And so did you -- is there any identifying
11 marks on the vials of blood that would help you associate
12 those vials with the blood taken from Mr. Bradley that you
13 transported?

14 A The markings on the vials of blood or whatever
15 by the date and the time, the client's name, the
16 defendant's name and his identifying number that Miss
17 DuRousseau in a vial biohazard bag and handed them to me.

18 Q And with respect to the vial of urine, are
19 there identifying marks on that or information on that
20 that you could associate from the urine sample taken from
21 Mr. Bradley?

22 A By the date and the time, his name, and to be
23 honest with you, I remember when I collected the man's
24 urine.

25 Q Okay. Have you collected any urine samples

1 since --

2 A No, I have not.

3 Q -- you collected the sample from Mr. Bradley?

4 A No, I have not.

5 Q With respect to the urine sample and the five
6 vials of blood, what did you do with them?

7 A They were secured in a biohazard bag and I
8 transported them to Wuesthoff Reference Lab on Spyglass in
9 Melbourne.

10 Q What happened there?

11 A I turned them over to Susan Adams and obtained
12 a -- you don't want to talk about this yet.

13 Q Well, that document you're holding there, is
14 that a chain of custody form?

15 A Yes, that's correct, it's chain of custody.

16 Q And do you see your signature on that form?

17 A Yes.

18 Q You see it following Miss DuRousseau's
19 signature?

20 A Yes.

21 Q And so at the time that you gave that to Miss
22 DuRousseau, did you note on there the date and the time
23 that you turned them over to her?

24 A She turned them over to me at 15:55 hours on
25 the 7th of March, 2012.

1 Q Does it indicate the date and time you handed
2 them to Miss Adams?

3 A Yes, she indicated on this form that it was on
4 the 7th of March, 2012, at 16:40 hours.

5 MR. MOORE: No further questions.

6 THE COURT: Okay. Cross examination by the
7 State.

8 MR. BROWN: Briefly, Your Honor.

9 CROSS EXAMINATION

10 BY MR. BROWN:

11 Q Mr. McGuinness, was the urine drawn at the same
12 time as the blood?

13 A Within a few minutes.

14 MR. BROWN: Nothing further.

15 THE COURT: Okay. Redirect by the Defense.

16 MR. MOORE: No questions.

17 THE COURT: Okay. Sir, thank you for your
18 testimony, you may step down.

19 THE WITNESS: Thank you, Judge.

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

22 THE COURT: Okay. Other witnesses on behalf of
23 the Defense.

24 MR. MOORE: We call Linda Sullivan.

25 THE COURT: Ma'am, if you'll step up before the

1 clerk to be sworn.

2 THEREUPON,

3 LINDA SULLIVAN,

4 having been first duly sworn, was examined and testified
5 upon her oath as follows:

6 THE COURT: Ma'am, please be seated in the
7 witness chair. Once seated if you'll roll that chair
8 forward. Do talk into that microphone, adjust that
9 microphone to fit you, it does help in recording your
10 testimony, it also aids in everyone hearing your
11 testimony.

12 THE WITNESS: Okay.

13 THE COURT: Thank you.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q Identify yourself, please.

17 A My name's Linda Sullivan.

18 Q Where are you employed?

19 A I work at Wuesthoff Reference Laboratories here
20 in Melbourne, Florida.

21 MR. MOORE: Approaching the witness with
22 Defense Exhibit C that I provided to the State.

23 BY MR. MOORE:

24 Q Get you to identify that.

25 A This is a copy of my curriculum vitae or CV.

1 Q What do you do at Wuesthoff Reference Lab?

2 A I'm supervisor of toxicology and forensic
3 services.

4 Q Have you testified in court before?

5 A Yes?

6 Q In that capacity.

7 A Yes.

8 Q How many times?

9 A Probably at least twenty times.

10 Q What do you do as a supervisor in the
11 toxicology lab at Wuesthoff?

12 A I'm responsible for the day-to-day supervision
13 of the analysts and technical direction of our laboratory
14 and we provide medical examiner testing for approximately
15 a little bit less than fifty percent of the State of
16 Florida and we also provide law enforcement type testing
17 and also preemployment testing.

18 Q Miss Sullivan, what -- do you sometimes do work
19 at the request of the State Attorney's Office?

20 A Yes.

21 Q And sometimes for defense attorneys?

22 A Yes.

23 Q What percentage, respective percentages would
24 you give to the work that's done at the lab, forensic
25 work, for state attorneys and for defense attorneys?

1 A I think by virtue of what we do, we detect
2 drugs and a lot of times for driving under the influence
3 and so forth. So, I'd probably have to say probably at
4 least eighty percent of the time my testimony ultimately
5 is going to help the prosecution.

6 Q Are you currently doing work for or have you
7 recently done forensic work at the lab for the state
8 attorneys for the eighteenth circuit which is Brevard and
9 Seminole Counties?

10 A Yes.

11 Q And I'd ask you to identify that document in
12 front of you now.

13 A It's labeled as Defendant's Exhibit C and again
14 it's a copy of my CV.

15 MR. MOORE: Your Honor, I would --

16 BY MR. MOORE:

17 Q Well, let me ask you about your training. What
18 is your background, your education and training?

19 A I have a Bachelor of Science in clinical
20 laboratory science, I have a certification in forensic
21 toxicology. I also hold a supervisor's license for the
22 State of Florida and six different subspecialties, one of
23 which being chemistry which toxicology falls under that
24 discipline.

25 Q And what education did you receive in college?

1 A I have a Bachelor of Science in laboratory
2 science and again a post graduate work where I got my
3 certification particularly in forensic toxicology.

4 Q How long have you been a toxicologist?

5 A I started in 1986 and I did at that time
6 special chemistry and then in a lot of emergency room
7 direct testing for ERs.

8 Q How long have you been a supervisor as a
9 toxicologist?

10 A Since -- I started supervising analysts in my
11 previous employer as a lead analyst and certifying
12 scientist and then at Wuesthoff I've been in that position
13 since 1996.

14 Q All right. And as far as processing, forensic
15 processing of substances, blood, urine, how many such
16 testing cases, would that be the way to refer to this
17 particular situation --

18 A Yes.

19 Q -- as the Bradley case, or file how you refer
20 to that.

21 A We would probably use the terminology cases.

22 Q Okay. Let's do that, cases. So, how many
23 cases have you been involved in as a toxicologist and as a
24 supervisor?

25 A Our laboratory roughly does anywhere from five

1 thousand to six thousand a year and just adding up the
2 numbers, I've been there since 1996.

3 Q And you brought with you what you call the
4 litigation package referencing the Bradley case, is that
5 right?

6 A Yes, I did.

7 Q Now, what is a litigation package?

8 A Our litigation package is similar to a medical
9 chart that you would have at your physician's office or
10 the hospital, it contains our entire record of items such
11 as chain of custodies, both external requisitions,
12 internal chain of custodies, as well as all the hard copy
13 data that that derive from your instruments, and more
14 importantly it also contains a copy of our final report
15 that gets issued back to the agency that requested it in
16 the first place.

17 Q So, it's all the paperwork that's generated
18 relative to the case, the testing data, the history of
19 where the items were collected and what's done with them?

20 A Yes, and it also would include any type of
21 communication, fax records that we had with anyone
22 pertaining to that case.

23 Q I'm approaching the witness with Defense
24 Exhibit A, I'd ask you to identify this.
25

1 A This is the specimen container. The internal
2 bag, you can see the biohazard label on it was the
3 original bag that contained fives specimens that we
4 received from the Public Defender's Office.

5 Q You see any markings on that which you would
6 associate with the Bradley case?

7 A Yes.

8 Q What do you see?

9 A The specimens are identified with the name
10 Bradley, comma, Brandon, and they also have a date and
11 time of their collection.

12 Q Okay. And so when, what date and what time
13 were they collected by the Wuesthoff Reference Lab?

14 A We did not do the collection.

15 Q What I mean is obtained by you?

16 A Do you want me to say the collection date and
17 time on this?

18 Q Yes, ma'am.

19 A The collection date and time on the tubes
20 themselves were from March 7th of 2012 at 15:55 and we
21 received the specimens in our laboratory, they were
22 delivered to us by Dave McGuinness from the Public
23 Defender's Office and we received them at our laboratory
24 on the same day at approximately 16:40. The individual
25 that received the direct package from David McGuinness was

1 one of my analysts, Susan Adams, and then at that point at
2 16:42 they were placed into a refrigerated storage by our
3 receiving personnel, our computer operator, Kathy Caper.

4 Q What subsequently was done with those specimens
5 and what was your involvement in the processing?

6 A The specimens at that point, one they were put
7 into refrigerated storage, they're basically waiting for
8 them to be taken again to be what we call sessioned and
9 then on March 13th they were opened. The specimens would
10 have been taken out of the bag that you see and my
11 sessioning personnel that did that, she actually
12 documented on here the date that she opened the tubes, the
13 package as well as any other and notations that she marked
14 on here.

15 At that point they're sessioned, we document
16 the number of tubes that we're receiving. We put an
17 identification code on the tubes because in this case we
18 received five blood specimens, three of which were gray
19 top tubes and so we have to give those tubes an
20 individualized identity. So, she would put on those tubes
21 and document 2A, 2B, 2C, 2D and so forth, and we would
22 also document the approximate quantity that we initially
23 received as well as whether it's a gray top or red top or
24 the type of tube we received.

25 We also received a urine container and so she

1 would have documented we received a urine container as
2 well as the approximate volume that we initially receive
3 from that as well.

4 Q What is the objective of forensic drug --
5 forensic toxicology analysis of urine and blood specimens?

6 A Well, toxicology itself is the determination of
7 any type of type of xenobiotic or foreign substances in
8 the specimens. Forensic just means it's for the purpose
9 of the law or some type of administrative purpose and so
10 basically for forensic work we have to use a lot of
11 documentation, chain of custody to document every date and
12 time the personnel that touched the specimen, the volumes
13 we used and so forth.

14 Q Approaching the witness with Defense Exhibit
15 Bravo which is the litigation package. And so the vials
16 of blood, the vials of urine were processed by the lab
17 under your supervision?

18 A Yes.

19 Q And did you have people working with or under
20 your supervision in the toxicological processing of those
21 items?

22 A Yes, all the analysts and lab personnel that
23 perform any of this testing would be considered under my
24 supervision.

25 MR. MOORE: All right. At this time we would

1 move Defense Exhibit A which would be the vials of
2 blood and urine, Defense Exhibit B which would be the
3 litigation package, and Defense Exhibit C, I think
4 it's C, which would be Miss Sullivan's curriculum
5 vitae in evidence.

6 THE COURT: Okay. Response from the Defense.

7 MR. MCMASTER: May I approach, Judge.

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. MCMASTER: Judge, with respect to A, I
12 don't have any problem with the vials and urine
13 samples. B I think is the litigation package.

14 THE COURT: The medical records litigation
15 package.

16 MR. MOORE: Litigation. They're not medical.
17 I mean, it's just the lab notes and the internal
18 administrative record of what was done and basically
19 historically tracks what was done and the testing
20 that was done on those items.

21 MR. MCMASTER: Did I hear correctly this is not
22 the witness who actually did the testing?

23 MR. MOORE: No, she is. She supervised and
24 we're getting to that part of it in a moment about
25 what her involvement was and the ultimate decisions

1 reached about what's in the blood and urine.

2 MR. MCMASTER: As long as she was there and
3 participated in the tests, I don't have any problems
4 with that. The CV we think is hearsay.

5 MR. BROWN: But also I think the litigation
6 package, I think that goes further than what the lab
7 were. She indicated there's communication, there's
8 other types of things in there, I think that's
9 (unintelligible). I think the only relevance is the
10 actual lab results itself.

11 MR. MOORE: I think the State should point
12 specifically to what items, you know, what materials
13 or information --

14 THE COURT: It's a voluminous document.

15 MR. MOORE: It is, it is, but they did a lot of
16 testing and I want to be able to document that they
17 did exactly what she said and show that there is a
18 paper history of that which she's going to be
19 testifying about and so -- I mean, she's here to
20 testify about it and if they have any questions about
21 what's in it and -- I mean, number one, if they're
22 objecting they should state specifically what they're
23 objecting to. Number two, she will testify as to the
24 relevant portions of it. They're all relevant
25 portions but, you know, she will testify about the

1 testing that's reflected in there.

2 MR. BROWN: We're not challenging that accuracy
3 of the (unintelligible), it's the accuracy of the
4 results and the results is the only thing that's
5 relevant. Communications, directions, e-mails --

6 THE COURT: You have to go through it and tell
7 me -- I have to locate each document and tell me
8 what's relevant and what's not. You want to do that?
9 Do you want to look at it? It's right there.

10 MR. MCMASTER: I can't look at the
11 correspondence, Judge, I don't want to look at the
12 that.

13 THE COURT: If you want to grab it and look
14 through it.

15 MR. MOORE: For the record, I provided that
16 litigation package to the State, they have all of it.
17 I did that several months ago.

18 MR. MCMASTER: I think the package is
19 (unintelligible).

20 MR. BROWN: What's the relevance of this? The
21 bill is what the bill is.

22 MR. MOORE: We can take that out, that's fine.

23 MR. BROWN: It's kind of the problem we have.
24 We're not challenging the testing itself and the
25 results, I think everything with the actual report --

1 THE COURT: With all due respect, I can't do
2 that without going through the exhibit. You want to
3 take out the bill?

4 MR. MOORE: Sure. I mean, I just threw that on
5 top because it came with the litigation pack but the
6 litigation package is the alligator question and
7 she's already testified about what it is and it
8 reflects what was done to the specimens.

9 MR. BROWN: I think lab notes and that type of
10 material is not relevant. We're not challenging the
11 accuracy of the lab, we --

12 THE COURT: Well, they can -- if they want the
13 lab notes to show that it's accurate, and I know
14 you're not challenging the accuracy, but they're
15 still entitled to it if they like it. If you want
16 the bill out, I'll take the bill out.

17 MR. BROWN: Okay.

18 THE COURT: Any other correspondence you want
19 out?

20 MR. BROWN: Judge, if maybe the witness could
21 advise the Court because there's e-mails in here
22 which I don't think are relevant, e-mails to
23 Mr. Moore.

24 THE COURT: The only way we're going to be able
25 to do this is to take a break and go through that if

1 that's what you want to do because otherwise I
2 can't -- you're asking me to make that -- there's two
3 hundred documents there, I can't do it.

4 MR. BROWN: The trouble is we didn't realize
5 they were going to try to put in the entire lab
6 package.

7 THE COURT: I would have to -- we would have to
8 go through and determine what's relevant and what's
9 not.

10 MR. BROWN: The witness may be able to
11 shortchange it, it may be that the --

12 MR. MOORE: We can ask that e-mail and
13 correspondence be removed. Let me tell you what I
14 did. I had -- she has a duplicate copy, when she got
15 here today I asked her to look through it and tell me
16 whether that's the litigation package that was
17 originally mailed to us. She confirmed that it is
18 and that is the litigation package that she's been
19 referring to and so if there is correspondence in
20 there, then we can ask her to take it out and then
21 just leave in the whatever reflects the work that was
22 done on the --

23 MR. BROWN: The actual lab work?

24 MR. MOORE: Yeah.

25 MR. BROWN: She can just remove --

1 THE COURT: Do you want here to do that now
2 while the jury is sitting here?

3 MR. MOORE: We can do it later. I mean, if we
4 can admit subject to the understanding that
5 correspondence will be removed. If the State's
6 willing to agree to that, we'll do that.

7 MR. BROWN: We're good with that.

8 THE COURT: Okay. C is the CV, they objected
9 as hearsay.

10 MR. MOORE: Well, she -- we can go through and
11 have her state everything that she's done, this would
12 shortchange.

13 MR. MCMASTER: Qualifications (unintelligible).

14 THE COURT: I mean, typically a CV is hearsay.

15 MR. MOORE: You know what, I won't insist on
16 the CV.

17 THE COURT: Okay. All right. Then we can --
18 you can step back.

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

21 THE COURT: Okay. Defense's Exhibit A will be
22 received as Defense Exhibit 1. Defense Exhibit B is
23 going to be received but Miss Sullivan, we're going
24 to ask you -- we're not going to do it at this time,
25 but before we technically receive that into evidence,

1 I'm going to ask you, there seems to be some
2 correspondence, e-mail correspondence, things of that
3 nature, we're going to ask you -- and there's a bill
4 in there or statements rendered. So, we're going to
5 ask you to take all the correspondence and other
6 items out other than things that are relevant to
7 laboratory testing. And you don't have to do that
8 now, we're going to do that during the next break so
9 we don't have to break at this time. And then that's
10 going to be received as -- once you do that, that's
11 going to be received as Defense Exhibit Number 2.
12 And the Court sustained the State's objection as to
13 C.

14 (Thereupon, Defense Exhibit Number 1 was marked
15 and received in evidence.)

16 THE COURT: Okay. Mr. Moore.

17 MR. MOORE: Thank you.

18 BY MR. MOORE:

19 Q Okay. And -- so, to what degree as a
20 supervisor processing the urine and the blood samples, to
21 what degree did you process, do the analysis of those
22 items, what degree as a supervisor and what degree did you
23 have hands on and how did your supervision and your
24 testing arrive at the end results which we're going to get
25 to in a minute?

1 A For the most part, I would be present during
2 the testing. Typically in any toxicology laboratory you
3 have the analysts that do the testing and then you have
4 the person that's reviewing it, the certifying scientist
5 is going to be a separate individual. We do that to keep
6 the integrity of the work. I would have reviewed this
7 entire -- as far as the -- pertaining to the actual
8 testing instrument data, I had to review it all and make
9 sure everything was accurate, QC was satisfied, the chain
10 of custodies were complete and that the testing was
11 completed as was requested. At that point I issue the
12 final report and I am the certifying official that
13 actually signs the report.

14 Q And so how many, how many people are actually
15 involved in this process of analyzing the urine and blood
16 samples?

17 A I have ten different licensed analysts that
18 work for me, it depends upon the case. If it's a negative
19 case and if it's only a urine, there may be only one
20 individual that's actually as analyst performing that
21 testing. When it's a comprehensive urine drug screen and
22 a comprehensive blood drug screen, there might be multiple
23 analysts that would do different benches in order to
24 obtain the entire result.

25 Q To what degree do you supervise? In other

1 words, what are your supervision responsibilities? What
2 do you actually do when you have number of people working
3 under your supervision to produce the results that you
4 got?

5 A Well, we have certain procedures for every
6 single thing we do and protocols. Those are signed off by
7 myself as well as our medical director. I make sure that
8 all testing is performed to those protocols and then also
9 assure that all of the analysts under my supervision are
10 also competent to perform those tasks as well. And also
11 all of our analysts are licensed also for the State of
12 Florida to perform this type of testing.

13 Q What do you do to assure yourself that the
14 protocol has been followed?

15 A Well, we have -- I'm actually looking at the
16 quality control. I'm looking at the data that's coming
17 off the instrument. I'm also looking at the entire chain
18 of custody to make sure all of the data looks acceptable.
19 We have QC that's also run with all of our specimens along
20 with calibrations if there's any quantitative type work
21 and all of those calibrators, control materials are held
22 to a very high scrutiny, they have to fall within certain
23 characteristics of each of those in order for them to be
24 considered qualified to be reported.

25 Q All right. And you're satisfied as a

1 supervisor that the analysis that was done in this case
2 and all the analyses were done according to protocol and
3 you certified the results as being accurate?

4 A Yes.

5 Q Okay. Now, as to the blood screening and the
6 urine screening, would it be fair to say that you are
7 prepared to testify to and limited to testifying as to the
8 identity of any substances found in the blood and urine
9 and the quantities?

10 A Yes.

11 Q Is there any further opinion that you can give
12 about the analyses with respect to those samples?

13 A I think it would be hard for me to just make a
14 blatant determination but depending upon the question I
15 would certainly let the Court know whether I have an
16 opinion on such.

17 Q And you have testified in the past as an expert
18 in your field?

19 A Yes.

20 Q All right. As to the blood, describe what was
21 done with respect to the blood samples in this case.

22 A The blood drug screen that we did is what we
23 considered a comprehensive blood drug screen. So, we're
24 not only looking for illicit substances such as cocaine,
25 marijuana or Ecstasy, drugs such as that, we're also

1 looking for any type of therapeutic type drugs or
2 antipsychotic, antidepressants and so forth. So, it is
3 quite an extensive screen that we undergo.

4 We utilize different instrumentation and
5 methodologies in order to provide that comprehensive
6 screen and so we use various instrumentation such as GC
7 mass specs or gas chromatograph, mass spectrometers, liquid
8 chromatography, mass spectrometers as well as some
9 immunoassay panels and so it provides a very, very
10 comprehensive screen and we did that both for the blood
11 and the urine.

12 Q Do you use all of those various analysis tools
13 that you mentioned a number of them, did you use utilize
14 all of those in this case?

15 A Yes, we utilize them for screening and then
16 once we find out -- it's basically like an unknown to us,
17 and once we find out what's there, which is what we would
18 consider a qualitative screen, we have to then tell you
19 how much is there and so then we do a much more definitive
20 type assay for quantitative analysis and we generally use
21 the gas chromatograph, mass spectrometers or the LC/MS's
22 for that.

23 Q And these are forensic let's say lab tools, my
24 term, you can probably find another one, that are industry
25 wide accepted?

1 A Yes.

2 Q And you rely on them in all testing you do?

3 A Correct.

4 Q So, with respect to the blood assay, what did
5 you determine, what was the end result of your testing.

6 A We found the presence of Alprazolam in the
7 blood along with cannabinoids.

8 Q And did you find -- with respect to either or
9 both of those, did you do quantitative testing?

10 A Yes.

11 Q What did you learn?

12 A We found the Alprazolam to be present at about
13 a .063 milligrams per liter, and then we found
14 cannabinoids and at that point we not only look at the
15 parent TCH but we also look for two different metabolites,
16 the alpha-hydroxy as well as the carboxy TCH and all three
17 of them were positive.

18 Q Did you find any other substances in the blood?

19 A No.

20 Q Are you able to with respect to the
21 benzodiazepines and the Alprazolam identify the drugs that
22 would have been the carriers of those?

23 A The benzodiazepine that we found in the blood
24 is Alprazolam, a more common term that you might recognize
25 would be Xanax.

1 Q And the quantities that you found?

2 A Yes, for the Alprazolam it was .063 milligram
3 per liter.

4 Q And one further categorization is the
5 therapeutic range, right?

6 A Yes.

7 Q And where would that be relative to the
8 therapeutic range which is recognized for Alprazolam?

9 A Again, we put on the report a therapeutic
10 particular range but there is higher therapeutic ranges
11 that depending on your physician what it's being
12 prescribed for and where he wants you to be, but on our
13 report we actually have a therapeutic range typically on
14 the lower end which goes anywhere from .01 to .05
15 milligrams per liter.

16 Q And What you found is a .063?

17 A Correct.

18 Q Which would be a little higher than the ranges
19 you have included in your report?

20 A Yes.

21 Q And so -- so, you testified about all the
22 testing that was done on the blood at this point?

23 A Yes.

24 Q With respect to the urine, what was done with
25 that specimen and what was the, what was the analysis

1 result?

2 A We did similar type testing that we would do on
3 the blood. We did various methodologies to do the
4 qualitative to determine what was actually in the
5 specimens and then we do a confirmation type procedure in
6 the urine to basically identify the drugs that we're
7 finding on the screen.

8 Q What drugs, if any, did you identify in the
9 urine specimen?

10 A We found hydrocodone in the urine, we found
11 cannabinoids, and we also found cocaine metabolite as well
12 as alpha-hydroxy Alprazolam which is the main ordinary
13 metabolite for Alprazolam.

14 Q With respect to the cannabinoids, what would be
15 the source of that type of drug?

16 A Marijuana.

17 Q With respect to the opiates, what would be the
18 source of that finding?

19 A Well, we specifically actually found the type
20 of opiate that was there that was hydrocodone in this
21 specimen.

22 Q Any therapeutic ranges which apply to those
23 other than the cannabinoids?

24 A No, we generally -- especially for opiates, we
25 don't generally provide necessarily a therapeutic range

1 because there's such a broad range and especially in this
2 case we were finding it in the urine only so we wouldn't
3 be putting ranges.

4 Q With respect to those samples that we're
5 talking about that you have just identified, was any
6 further testing done on those? With respect to those
7 samples right there?

8 A As far as for this litigation package, no.

9 Q Yes. Thank you.

10 MR. MOORE: No further questions.

11 THE COURT: Cross examination by the State.

12 CROSS EXAMINATION

13 BY MR. MCMASTER:

14 Q Miss Sullivan, so that I'm clear about this,
15 the blood testing you did disclosed two different
16 substances, the benzodiazepines and the cannabinoids?

17 A Correct.

18 Q THC?

19 A Yes.

20 Q So, marijuana and Xanax I think you said was
21 the most common?

22 A Yes.

23 Q You indicated that -- on your report you put
24 down the therapeutic range at .01 up to a .05 but they
25 actually can go higher for therapeutic range?

1 A There is another therapeutic range, I believe
2 it goes up to .075?

3 Q .075? And that would be above what the level
4 was that was discovered in Mr. Bradley's blood?

5 A Yeah, and again under a physician's advice they
6 would be prescribing that.

7 Q Yes, ma'am.

8 Now, when you checked the urine, the urine test
9 confirmed the Xanax and the marijuana as I understand it?

10 A Yes.

11 Q And then you found some additional drugs in the
12 urine that were not in the blood?

13 A Correct.

14 Q How do you account for that?

15 A In the urine it provides us a longer window of
16 detection. So, something you may have taken say like on a
17 Friday night, after you take that drug, thirty to sixty
18 minutes later it's going to be absorbed, especially if
19 it's oral, and it's going to be present in your blood
20 sample, but depending on the drug and it's half-life, two
21 to four days later out from that it will no longer be
22 present in your blood buy you'll still be excreting it
23 into urine. It's very common and that's why one of the
24 reasons we use urine because it gives us a larger window
25 of detection.

1 Q But it also expands the period of time in which
2 the person could have taken the drugs?

3 A Correct.

4 Q So, for example, with respect to the additional
5 drugs that were detected in the urine which I believe you
6 put down as a cocaine metabolite?

7 A Yes.

8 Q Can you tell when it was that Mr. Bradley
9 ingested the cocaine that shows up in his urine but does
10 not show up in his blood?

11 A No, I cannot.

12 Q Any time window whatsoever?

13 A Generally we say with cocaine it can be
14 anywhere from two to four days out, but there are
15 instances if somebody is a chronic user that it might be
16 detected further out than the four days.

17 Q And with respect to the opiates, did I hear you
18 say that that was another form of cannabinoid?

19 A For the opiates, no, sir.

20 Q What was the opiate that was discovered?

21 A We found hydrocodone in the urine?

22 Q Hydrocodone?

23 A Hydrocodone.

24 Q Okay. Hydrocodone?

25 A Yes.

1 Q All right. And that did not show up in the
2 blood test?

3 A No, it did not.

4 Q And can you tell us anything about when it was
5 that that hydrocodone was ingested by Mr. Bradley with
6 respect to when the blood was drawn and tested?

7 A No.

8 Q Could have been -- do you have any idea what
9 the half-life is that particular drug?

10 A Half-life is typically about eight hours,
11 that's -- of course, the half-life's for individuals do
12 vary but we generally say it's about eight hours, but
13 again, we don't know what the peak level was and if you
14 don't have that information it's hard to especially look
15 at something like that just in the urine.

16 Q So, you can't narrow it down for us to say that
17 any of those drugs had been taken within twenty-four hours
18 of the test or within twenty-four hours of the test?

19 A I don't have an opinion on that, no.

20 MR. MCMASTER: No further questions.

21 REDIRECT EXAMINATION

22 BY MR. MOORE:

23 Q What is a half-life?

24 A A half-life of a drug is the amount of time a
25 substance takes to be metabolized out of your system,

1 particularly out of the blood. So, if I say to you that
2 the half-life for a drug is say two hours and if we knew
3 what the peak level of the drug is and I'll just say let's
4 use an example, let's say it was ten, ten milligrams per
5 liter or something like that, and if the half-life is two
6 hours, every two hours that drug level's going to half.
7 So, if its peak was ten milligrams and the half-life is
8 two hours, two hours later it's going to be five. Two
9 hours after that it's going to be 2.5.

10 Q And so what you can say is that a substance
11 which is detected in the blood, or perhaps there's a
12 discrepancy between blood and urine, would be because of
13 substances in the blood are filtered out more quickly and
14 passed through the system more quickly than in the urine?

15 A They are out of the bloodstream faster than
16 they are out of the urine.

17 Q Now, is that your area of expertise, how
18 quickly the body metabolizes in particular the blood and
19 the urine?

20 A I mean, I can certainly testify about
21 particular drugs and half-lives and so forth.

22 MR. MOORE: No further questions.

23 THE COURT: Okay. Recross by the State.
24
25

RE CROSS EXAMINATION

1
2 BY MR. MCMASTER:

3 Q Do the drugs in the urine have any effect on
4 the individual?

5 MR. MOORE: Your Honor, could we approach on
6 this?

7 THE COURT: Yes, you may. Bench conference.

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

10 MR. MOORE: That goes beyond the scope. I
11 didn't get into effects and that's part of my
12 objection. The other is she's not qualified to give
13 that opinion. She's testified about all she can say
14 is when I first did my direct is what the substance
15 is and the quantity of it and that's -- and I said is
16 there anything else and she limited her expertise to
17 those areas. So, number one, it's beyond the scope
18 because I merely asked about half-lives, I didn't go
19 into effects. And number two, she's not qualified to
20 give that opinion.

21 THE COURT: Response from the State.

22 MR. MCMASTER: I don't know whether she's
23 qualified or not. She's a forensic toxicologist and
24 knows all about these particular drugs. You would
25 think that she would be able to answer the question.

1 MR. MOORE: She's an analyst, she's not a
2 toxicologist.

3 THE COURT: I'm going to sustain the objection.

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

6 MR. MCMASTER: No further questions, Judge.

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

9 THE WITNESS: Thank you.

10 MR. MOORE: The witness can be excused and Ms.
11 DuRousseau can be excused.

12 (Thereupon, the witness exited the witness
13 stand.)

14 THE COURT: Okay. Did she need to go through
15 that and take out the corresponding stuff?

16 MR. MOORE: Let me grab her.

17 THE COURT: Okay. Those exhibits can go with
18 the clerk. And ma'am, we're going to have you go
19 through that exhibit and take out any correspondence.
20 So, if you could do that outside. And I'll go ahead
21 and release the B, it's going to be State's -- I mean
22 Defense Exhibit Number 2. I'm going to give that to
23 you for the time being, if you'll do that. And then
24 before -- then if you'll wait and give that to the
25 one of the defense attorneys and then we can review

1 it. Okay. Thank you, ma'am.

2 Okay. Other witnesses on behalf of the
3 Defense.

4 MR. MOORE: Can we approach?

5 THE COURT: Yes, you may.

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

8 THE COURT: Where's your witness coordinator?

9 MR. MOORE: Me. I'm doing the best I can here.
10 The next one is Susan Skolly-Danziger and like all of
11 our witnesses who are experts, they have busy
12 practices. She can't be here today, she can be here
13 tomorrow morning at 8:30 and we're waiting --

14 THE COURT: We don't need her at 8:30 because
15 I'm going to do that argument. Can she be here a
16 little later?

17 MR. MOORE: Yes, ma'am, she can be, whenever
18 the Court wants her there.

19 THE COURT: She can be here tomorrow?

20 MR. MOORE: She can be here all day tomorrow.

21 THE COURT: But she can't be here today?

22 MR. MOORE: No, ma'am.

23 THE COURT: That's your next witness?

24 MR. MOORE: Yes it is. And then on Monday it
25 will be Dr. Olander because she can't make it

1 tomorrow.

2 THE COURT: You only have one witness tomorrow?

3 MR. MOORE: Yes, ma'am. Oh, well, one expert,
4 the one that I'm in charge of.

5 THE COURT: Okay.

6 MR. MOORE: She's my -- I'm her keeper.

7 THE COURT: So, you're going to call other
8 witnesses tomorrow.

9 MR. PIROLO: We have Miss Kerchner in the
10 morning, possibly Deputy Cook depending on the
11 Court's ruling and I believe we have all the
12 witnesses after that.

13 MR. LANNING: Two Palm Bay officers.

14 THE COURT: Try to get in as many as we can so
15 we can utilize the day.

16 MR. BROWN: We're going to have an objection to
17 the Palm Bay officers as well. So, we're going to
18 need to address that in the morning.

19 THE COURT: What time should I -- I mean, I
20 have the -- well, we should have it sorted out by
21 9:00 if we start at 8:30. Oaky.

22 MR. PIROLO: Do you want the officers here at
23 8:30 as well?

24 THE COURT: I told them to come at 9:00. I
25 told the one officer to come at 9:00.

1 MR. BROWN: It may be better for the jury at
2 9:30.

3 THE COURT: What?

4 MR. BROWN: 9:30 there for the jury you think?

5 MR. LANNING: You think the argument --

6 THE COURT: I don't think it's going to take
7 more than a half hour.

8 MR. BROWN: No, but we're also going to be
9 challenging the Palm Bay officers. From the material
10 that was given to us what they're going to testify to
11 I don't believe is relevant.

12 THE COURT: I'll have 9:00. I'd rather -- by
13 the time they get up here it's 9:15 so.

14 MR. LANNING: I don't know, they've pretty good
15 about getting them right up.

16 MR. MOORE: So, Dr. Skolly here by 10:00?

17 THE COURT: Yes.

18 MR. MOORE: 10:00 o'clock. All right. Will
19 do.

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

22 THE COURT: Okay. Okay. Ladies and gentlemen
23 of the jury, that concludes the court proceedings for
24 today. We have some witnesses coming in but they're
25 scheduled for a different day. Some of them are

1 experts so they have scheduling issues. So, we are
2 going to recess for today.

3 We have some matters that we need to address in
4 the morning that we can't address tonight because
5 there's some other issues that we have to address.
6 So, we're going to have you come in at 9:00 o'clock
7 tomorrow instead of 8:30 and we're going to be here
8 at 8:30 starting with those other issues. So, you
9 are going to be in recess for today until 9:00
10 o'clock tomorrow.

11 During this recess you must continue to abide
12 by your rules governing your service as a juror. Do
13 not discuss this case among yourselves or with anyone
14 else or allow anyone to discuss it in your presence.
15 Do not speak to the lawyers, parties or the witnesses
16 about anything. You must avoid reading newspaper
17 headlines and/or articles relating to this trial or
18 its participants. Avoid seeing or hearing
19 television, radio or Internet comments about this
20 trial. Do not conduct any research yourself. Okay.
21 We'll see you back here at 9:00 a.m. tomorrow
22 morning. Thank you.

23 (Thereupon, the jury was escorted out of the
24 courtroom by the court deputy and the proceedings were had
25 as follows:)

1 THE COURT: Okay. Please be seated. I have a
2 copy of Miss Kerchner's previous testimony. I guess
3 they just did the whole thing because it was easier
4 for them to do that. So, I'll give a copy of the DVD
5 to both the State and a copy to the Defense so you
6 can review that with regard to the issue that we're
7 going to address at 8:30 in the morning.

8 I want to address the Brett Cook issue with
9 regard to the prior inconsistent statement of Miss
10 Kerchner. We want to do that at 8:30.

11 Now, I heard that there may be some objections
12 to the Palm Bay police officers, can we do those
13 tonight? Can we do those at this time?

14 MR. BROWN: Yes.

15 THE COURT: Okay. Then, Mr. Brown, if you'd
16 like to go forward on that.

17 MR. BROWN: Judge, if I can provide to the
18 Court, and I assume Mr. Lanning has his supplemental
19 witness list March, 24th, listing Officer Woronka and
20 Officer Riordan.

21 MR. LANNING: Yes.

22 MR. BROWN: Judge, if I could provide that to
23 the Court and attached to it is the narrative by
24 Officer Woronka which it's fairly short to give the
25 Court an idea of what...

1 THE COURT: Okay.

2 MR. BROWN: Judge, our position --

3 MR. LANNING: That narrative goes into a third
4 page. I don't know if you have it.

5 MR. BROWN: Yes. Judge, our position on this
6 is --

7 THE COURT: And which police officer is that?
8 Is that both?

9 MR. LANNING: Yeah, Officer Riordan was the
10 supervisor.

11 THE COURT: Officer?

12 MR. LANNING: Riordan was the supervisor of
13 Officer Woronka.

14 THE COURT: And it's Woronka?

15 MR. LANNING: I think that's --

16 MR. BROWN: Yes, Woronka, W-O-R-O-N-K-A.

17 THE COURT: Okay.

18 MR. BROWN: Judge, obviously the Court's had a
19 chance to review it. So, they're going into an
20 incidents that occurred on April 16th, 2012, with
21 Mr. Dieguez and what he did and possible drug use
22 that he did on that day. Our position is it's not
23 relevant. Prior acts and prior drug use of a witness
24 come into play for two circumstances. One, at the
25 time of the observation of what they're testifying to

1 and drug use at the time they're testifying as far as
2 their ability to recall. The Defense went into both
3 of those with him and that's been covered. It is
4 improper to go into drug use for other time periods
5 as if it's a prior bad act to try to attack the
6 person's credibility and that's all this is.

7 As far as any attempted suicide or anything
8 like that, again, that's prior bad act, it's
9 certainly not relevant. It's nothing but character
10 assanation. So, our position is it's not relevant
11 and it should not come in. It's simply not
12 admissible evidence.

13 THE COURT: Okay. Mr. Lanning.

14 MR. LANNING: Judge, Mr. Dieguez testified that
15 April 16th of 2012 he was giving a statement to the
16 Palm Bay detectives. He also testified that the
17 reason he couldn't recall the details of the
18 interview was that he had been stabbed was in the
19 hospital under sedation. I mean, he had the gall to
20 come into court and commit perjury. And this is
21 not -- you know, yeah, it's a fact that he was using
22 drugs that night. And another thing that goes
23 towards that is he was on probation at the time and
24 his probation orders say you shall not use illegal
25 substances. He was injecting cocaine that night. Of

1 course it's relevant.

2 THE COURT: Okay. Let me just get the times
3 straight. What was the date that he gave the
4 interview with the --

5 MR. LANNING: April 16th, 2012.

6 THE COURT: And that was the date that he was
7 admitted --

8 MR. LANNING: To Palm Bay Hospital.

9 THE COURT: -- and alleged to overdose due to
10 cocaine use.

11 MR. LANNING: Yes, ma'am.

12 THE COURT: Okay. Go ahead.

13 MR. LANNING: So, it's relevant toward
14 impeaching his testimony in court. I didn't know he
15 was going to pop out with, well, the reason I didn't
16 remember was that day I had been stabbed and robbed.
17 So, it impeaches that. It goes toward his
18 violation -- possible violation of his probation and
19 another reason to lie. And it goes toward -- under
20 96.08 it goes toward subsection 1, 2, 4 and 5.

21 THE COURT: How would his violation of
22 probation be relevant in these proceedings other than
23 bad character evidence?

24 MR. LANNING: He's got motivation to lie, to
25 curry favor with the State, curry favor with the law

1 enforcement officers, to not go to jail, not go to
2 prison.

3 THE COURT: And you want to get this in as a
4 prior inconsistent statement?

5 MR. LANNING: Prior inconsistent statement
6 and as well as evidence that tends to show a defect
7 of capacity, ability, opportunity in the witness to
8 observe, remember or recount the matters about which
9 the witness testified, proof by other witnesses that
10 material facts are not as testified to by the
11 witness, and inconsistent statement.

12 THE COURT: Okay. Anything further by the
13 State?

14 MR. BROWN: Judge, the relevance is what he
15 heard on March 6th, 2012. That's what his testimony
16 is to. That's the relevance. That's the timeframe
17 you look at as to drug use. We're talking here over
18 a month later. It's not relevant to what he heard or
19 observed at the time he heard or observed it which is
20 the March 6th incident. Or you can have relevance of
21 drug use comes in if it's affecting their ability to
22 testify in court.

23 So, you got two timeframes to look at. This is
24 over a month later. The date of this police
25 interview, that's not relevant because that's just

1 simply the day he's talked to the police, that's not
2 the day he observed or heard what it was he testified
3 to to seeing or observing in this case, the hearing.
4 It's what he heard on March 6th. What he did on
5 April 16th has no relevance.

6 Certainly any, you know -- the fact that
7 someone's on probation, that fact alone comes in, not
8 potential action he went to do, as far as the
9 probation, it's not potential acts that he may have
10 been out there violating probation. There was no
11 active violation of probation at the time. You know,
12 that's just a red herring to try to get any prior bad
13 act of any witness, State witness who happens to be
14 serving probation by that relevance. Every time you
15 speed, everything they do that might violate
16 probation would suddenly become relevant over the
17 entire two year timeframe and my position is I don't
18 think there's any case law that supports that.

19 THE COURT: Okay. What about -- I'm not
20 concerned about the violation of probation, but what
21 about credibility -- or what about going towards his
22 credibility?

23 MR. BROWN: That he used drugs on --

24 THE COURT: No, that he testified that he was
25 there in the hospital because he was stabbed and

1 robbed and that may not be -- and the Defense's
2 argument is that's not the true reason why he was in
3 the hospital. Now, I don't know if that's truthful
4 or not truthful, I'm just saying that that's there
5 argument.

6 MR. BROWN: Judge, first our argument would be
7 it's extrinsic evidence, it's not collateral.
8 Therefore, collateral -- it has to be a collateral
9 matter, extrinsic evidence is not admissible. So, at
10 a certain point you don't get a chance to bring in
11 extrinsic evidence of every statement, it has to be
12 material. The reason why he's in the hospital isn't
13 material because that was simply coming up as to
14 whether or not he remembered his statement with the
15 police and his position was I don't even remember
16 talking to them because I was in the hospital.

17 Now, if he doesn't remember that conversation,
18 maybe he's wrong what he's in for. This occurred at
19 6:48 in the morning. They certainly haven't
20 established that when he was not hospital when the
21 police talked to him it's because of something that
22 occurred at 6:48, for all we know at this point there
23 may have been a stabbing later, that he got stabbed
24 later in the day.

25 THE COURT: My concern is that I don't recall

1 the Defense asking Mr. Dieguez isn't it true that the
2 real reason why you were in the hospital was because
3 you were OD'ing on cocaine.

4 MR. LANNING: The fact is we didn't know. That
5 was -- it was actually something he pops out with
6 that was nonresponsive to the question. After court
7 broke that day I said to myself there's no way that's
8 true and asked our investigators to see if they could
9 find out why he was at the hospital and they called
10 and he's form 53ed. He went directly from there to
11 Circles of Care according to Officer Woronka's
12 report. He was taken to the hospital because of a
13 suicide attempt.

14 THE COURT: Are you trying to get in his
15 statement that he was injecting cocaine and trying to
16 commit suicide or are you trying to get in that the
17 reason he was in the hospital is for a cocaine
18 overdose?

19 MR. LANNING: Well --

20 THE COURT: Because one is a prior inconsistent
21 statement and then the other one is -- one would be
22 an act. I mean a fact or an alleged.

23 MR. LANNING: Right.

24 THE COURT: Because there's two different
25 criteria to get those in.

1 MR. LANNING: He didn't say anything to the
2 officers about having been stabbed or robbed. Okay.
3 That's prior inconsistent because it's a material
4 omission. And that he was -- that he wasn't there --
5 also that he told them he had been injecting cocaine
6 and it was a suicide attempt. He slashed his wrists.
7 He told them he didn't want to wake up, he's tried of
8 life because he's in a lot of pain and wants to die.
9 He's not at the hospital because he got stabbed and
10 robbed. I mean, he committed perjury in court in a
11 capital murder.

12 THE COURT: Okay. That goes to credibility and
13 I didn't hear anybody ask him isn't it true you were
14 in the hospital because of an overdose for cocaine.

15 MR. LANNING: Because -- because we didn't know
16 until that day, or it wasn't until we asked the
17 investigator, you know, find out because I know he's
18 lying. He comes out up of the blue with this he's in
19 the hospital because of in court. That's the first
20 time and it wasn't even responsive.

21 THE COURT: You know, he gave a proffer and he
22 told that during the proffer as well.

23 MR. LANNING: Well, it's the same day.

24 THE COURT: You're saying that you -- because
25 apparently that statement was out there, where did

1 you get that statement? I assumed -- or did you look
2 at that statement that day or did you have that
3 statement in discovery?

4 MR. LANNING: Are you talking about the police
5 interview?

6 THE COURT: Yes.

7 MR. LANNING: The police interview we've had in
8 discovery. They didn't address during the police
9 interview why he's at the hospital.

10 THE COURT: But the statement that I just read
11 that Mr. Brown provided to me, when did you
12 receive -- when did you get that information?

13 MR. LANNING: The day after his testimony.

14 THE COURT: Okay. What about the Defense's
15 response to it's extrinsic evidence and therefore not
16 relevant?

17 MR. LANNING: Judge, it's not extrinsic, it
18 shows a defect of capacity of the witness to observe,
19 remember, recount matters about which the witness
20 testified. You know, it was his explanation as to
21 why he couldn't remember certain matters during his
22 interview. So, it's not extrinsic, it's simple.

23 THE COURT: Well, I mean, I think you may be
24 able -- you can't get into his statement unless you
25 question him about it first. So, you would have to

1 call him to the stand and ask him the exact
2 statement. You could get in about the -- that he was
3 really in the hospital for an alleged overdose of
4 cocaine. That you may be able to get in. I don't
5 know if your investigator's going to be able to get
6 it in but you may be able to get that in. Because
7 that goes to his credibility and his ability to
8 testify truthfully.

9 MR. LANNING: Well, Officer Woronka could
10 testify as to that.

11 THE COURT: But he can't say what he said
12 unless you give him an opportunity to be -- because
13 it's hearsay and it won't come in unless there's a
14 prior inconsistent statement.

15 MR. LANNING: So, we need to get Mr. Dieguez up
16 here prior to the officers.

17 THE COURT: That may be what you need to do, I
18 can't say that, but that may be what needs to be
19 done. But at this time I'm going to sustain the
20 objection as to the statement and I'm going to
21 overrule the objection as to the reason why he was in
22 the hospital.

23 Is there any questions or concerns, anyone want
24 me -- any clarification with regard to my ruling? I
25 don't want your officer to come in here and say that

1 he had been shooting up cocaine the night before
2 trying to commit suicide. Your officer can say that
3 he -- if he had direct involvement and he is the
4 appropriate person could say he was in the hospital
5 because of an alleged overdose of cocaine.

6 MR. LANNING: The officer can say --

7 THE COURT: If he has that information. Is he
8 the one -- did he transport him to the -- I mean, did
9 he take him to the hospital? Did he --

10 MR. LANNING: He got that information from
11 Mr. Dieguez, or she got that information from Mr.
12 Dieguez, filled out a form 52.

13 THE COURT: Okay. She form 52'd him?

14 MR. LANNING: Yes.

15 THE COURT: Well, then she could say that I --
16 based on what he told me I form 52'd him.

17 MR. LANNING: And that he did not --

18 THE COURT: She can't say what it is. She
19 can't say what it is.

20 MR. LANNING: And that he did not -- she can
21 say that he attempted to overdose, attempted suicide.

22 THE COURT: It's not the attempted suicide,
23 it's not the attempted suicide that attacks his
24 credibility, it's the use of cocaine.

25 MR. LANNING: All right. That he used cocaine

1 so she form 52'd which is Baker Act.

2 THE COURT: You say it was an alleged overdose
3 of cocaine.

4 MR. LANNING: Right, and that he did not --
5 there was no indication that he had been stabbed or
6 robbed.

7 THE COURT: She can say she doesn't know he's
8 been robbed but she can say she saw no stab wounds on
9 him.

10 MR. LANNING: She can what?

11 THE COURT: She can visually say I saw no stab
12 wounds on him.

13 MR. LANNING: Okay.

14 THE COURT: She doesn't -- robbing -- the
15 robbing would be -- she can say she didn't take a
16 report for a stabbing or a robbing. She can testify
17 as to what she did.

18 MR. LANNING: Right. Okay.

19 MR. BROWN: We still object because it's all
20 based on a hearsay statement and that would be like
21 us calling an officer and saying did you talk to
22 victim Y. Yes, I did. Without telling us what
23 victim Y did, what did you do.

24 THE COURT: Well, we do that all the time.
25 That's trials. You don't say what they said, you

1 just said what did you do as a result of talking to
2 him.

3 MR. BROWN: Yeah, but as a result of what
4 you're told you turned around and say I went over and
5 arrested person X for robbery, that is not
6 permissible.

7 THE COURT: Well, the issue is not -- the issue
8 is credibility, that he lied. It's not that he
9 really -- did the issue is not that he tried to
10 commit suicide by use of injecting cocaine, that
11 would be truth of the matter, the issue is that he
12 said he went to -- he testified in court that he went
13 to the hospital because he was stabbed and robbed.

14 MR. BROWN: A month and a half after the
15 incident and your question was why do you not
16 remember your police interview and that's his
17 explanation for not remembering the police interview.
18 That's the only basis and that was his response to
19 the question.

20 THE COURT: They can attack the credit --
21 because you want them to believe the truth of what
22 Mr. Dieguez is saying so they can attack his
23 credibility as that he's untruthful. So, as long as
24 we keep it to those clarifications. If they want
25 more, they'll have to do something different.

1 Okay. Other issues? I have a couple of other
2 issues.

3 MR. MOORE: I have -- Miss Sullivan took out
4 the correspondence, this is what she left me.

5 THE COURT: That's one of them.

6 MR. MOORE: In is a new Defense Exhibit B. So,
7 if I may give this to the clerk.

8 THE COURT: Which is the new Defense Exhibit B?

9 MR. MOORE: The one without the correspondence.
10 This is the correspondence with a B on it.

11 THE COURT: Okay. Does the State want to go
12 through that?

13 MR. BROWN: We're good.

14 THE COURT: Okay. If we could -- is there
15 going to be --

16 MR. MOORE: That has the correspondence in it,
17 that does not.

18 THE COURT: Okay. She's going to mark -- it's
19 going to come in -- the records without the
20 correspondence will be Number 2 and the other one,
21 the remaining is just going to be B. It didn't come
22 in.

23 (Thereupon, Defendant's Exhibit Number 2 was
24 marked and received in evidence.)

25 MR. MOORE: And also, that takes -- the package

1 with the correspondence it has a number sequence and
2 so there should be an instruction that there were
3 it's that were not for the jury's consideration that
4 were removed and they should not draw any inferences
5 the fact that (unintelligible).

6 THE COURT: I mean, I told them I was going to
7 remove some things so.

8 MR. MOORE: All right. That's fine.

9 THE COURT: Okay. I don't think they'll have
10 that expectation with all due respect.

11 Okay. Psychotropic medications. Mr. Moore, I
12 assume you haven't had a chance to follow up on that?

13 MR. MOORE: I have not.

14 THE COURT: Okay. If you could follow up on
15 that before tomorrow so we can address that at 8:30
16 too.

17 MR. MOORE: Okay. I will.

18 THE COURT: Okay. Anything else we need to
19 address before we recess?

20 MR. BROWN: No, Your Honor.

21 MR. MOORE: No, Your Honor.

22 THE COURT: Okay. Court will be in recess
23 until -- for us until 8:30, the jury will be back at
24 9:00. Okay. Thank you.

25 (Thereupon, court was in recess for the day,

1 3/27/2014. Thereafter, court was reconvened on 3/28/2014
2 and the proceedings were had as follows:)

3 THE COURT: Okay. We can bring in Mr. Bradley.

4 (Thereupon, the defendant was escorted into the
5 courtroom by the court deputy.)

6 THE COURT: Okay. Unless I hear something
7 else, we'll go ahead and address the issue with regard
8 to Brett Cook testifying. Are we ready to address
9 that?

10 MR. PIROLO: Judge, we contacted the deputies
11 yesterday evening and notified them that we do not
12 need Miss Kerchner.

13 THE COURT: Okay.

14 MR. PIROLO: To not transport her per our
15 request. I don't believe that we need Deputy Cook as
16 well.

17 THE COURT: Deputy Cook is not going to be a
18 witness?

19 MR. PIROLO: Right.

20 THE COURT: Okay. So, that's no longer an
21 issue.

22 MR. PIROLO: That's no longer an issue.

23 THE COURT: Okay.

24 MR. PIROLO: Office Woronka from Palm Bay
25 Police Department I believe was told to be here at

1 9:00 to testify at 9:00. She should be here at about
2 ten til.

3 THE COURT: Okay.

4 MR. PIROLO: Mr. -- that's Mr. Lanning's
5 witness. Mr. Lanning is back at the office right now
6 taking care of something in the case.

7 THE COURT: Okay. Mr. Brown.

8 MR. BROWN: Judge, I have case law on the
9 issue, I did want to readdress the testimony of
10 Officer Woronka. I know it's Mr. Lanning's witness
11 so I don't know if you want me to proceed with my
12 argument or wait until he gets here.

13 MR. PIROLO: Judge, I would ask at least we
14 wait until Mr. Lanning's here. The officer's going
15 to get here at about ten til and we're going to at
16 least want to proffer her testimony. So, if we can
17 at least wait.

18 THE COURT: Okay. I haven't requested a
19 proffer at this time. I mean, I want to hear -- I'll
20 give them an opportunity to argue.

21 MR. BROWN: Judge, can I present my case law
22 now without arguing?

23 THE COURT: You can present it so I can review
24 it.

25 MR. BROWN: Yes.

1 THE COURT: And then we'll wait to argue until
2 Mr. Lanning gets here.

3 MR. PIROLO: If I can review a copy as well.

4 THE COURT: And then we were going to talk
5 about the psychotropic medications.

6 MR. BROWN: Judge, I spoke to Mr. Moore
7 yesterday, he indicated he received a fax, I forget
8 who he said it from, but listing two drugs, one of
9 which we looked up yesterday, it is a psychotropic
10 medication. So, we agree with giving the
11 instruction.

12 THE COURT: Okay.

13 MR. MOORE: We also (unintelligible) 9:00
14 o'clock scheduling and we're trying to do our best
15 predicting so we get our experts here, our witnesses
16 here without having a delay. So, it would be the
17 appropriate time to talk about what our best
18 prediction is.

19 THE COURT: We can do that now.

20 MR. MOORE: Very good. This is what we've come
21 up with. For today we'll be doing the testimony of
22 Dr. Skolly and we're not sure about the police
23 officers, 911 tape, but that is a potential for the
24 agenda this morning.

25 This afternoon since I haven't had a chance to

1 talk to Dr. Goldberger or Dr. Zapf, the two experts
2 for the State, I spoke to Mr. Brown about making them
3 available for deposition this afternoon and he said
4 he's willing to do that. So, that's what we're
5 hoping to do this afternoon.

6 On Monday we discussed, Mr. Brown and I, having
7 Dr. Olander here, the neuropsychologist, she's
8 available, she can be here Monday morning and then we
9 would rest the guilt phase and the State would
10 present its rebuttal witnesses in the afternoon and
11 the jury -- what Mr. Brown and I were contemplating
12 is on Tuesday the jury would be instructed and sent
13 out.

14 MR. BROWN: Closing argument.

15 THE COURT: Pardon me?

16 MR. BROWN: Closing arguments.

17 MR. MOORE: Yeah, closing arguments and
18 instructions to the jury and send them out.

19 Wednesday --

20 THE COURT: You're talking -- tell me when,
21 Tuesday?

22 MR. MOORE: Yes, ma'am, Tuesday.

23 THE COURT: Tuesday morning?

24 MR. MOORE: Hopefully.

25 MR. BROWN: Well, arguments and then

1 instructions so we'll get them out sometime Tuesday,
2 probably early Tuesday afternoon.

3 MR. MOORE: Wednesday, assuming we have a
4 penalty phase, then Mr. Bradley in the afternoon will
5 be evaluated by Dr. Zapf because that's the first
6 time she's available according to Mr. Brown.

7 Thursday we get to the penalty phase, then we
8 have a list of witnesses, including two experts and
9 several people who are not experts. On Thursday
10 Dr. Zapf is -- then the State would have Dr. Zapf
11 testify but she's unavailable Friday and will be
12 available Monday, and then -- she'll be a rebuttal
13 witness if they call her. The remaining time after
14 that on Monday do closings, instruct the jury and
15 (unintelligible).

16 THE COURT: Okay.

17 MR. BROWN: Judge, the only caveat to that is
18 the e-mail we've gotten back from Dr. Zapf indicated
19 when she would be gone and it was unclear whether
20 that Monday, which is the 7th, people say til then.
21 We sent her a backup e-mail, we haven't found out yet
22 whether that means she's back ready to go on the 7th
23 she's 0 coming back on the 7th. So, it's possible
24 she may not be available until the 8thate.

25 THE COURT: But I heard she's available

1 Thursday. So, aren't we hoping to get her Thursday?

2 MR. MOORE: That would be to evaluate Mr.
3 Bradley.

4 MR. BROWN: Wednesday -- because we spoke to
5 Mr. Moore and his position was, which we understood,
6 is that he did not want his client evaluated for the
7 mental state until there's a first degree verdict.
8 So, we're thinking Tuesday we're going to get the
9 case to the jury. We didn't want to set it up for in
10 Tuesday in or even Wednesday morning in case they
11 carry over, we felt Wednesday afternoon would give us
12 enough leeway that we would expect to have a verdict
13 by then.

14 THE COURT: So, Wednesday afternoon would be
15 the evaluation?

16 MR. BROWN: Yes.

17 THE COURT: Then could she testify Thursday or
18 is that when --

19 MR. BROWN: Well, if that's the case --

20 MR. MOORE: It's going to (unintelligible).

21 MR. BROWN: So, Defense case would conclude
22 Thursday, I assume probably Friday.

23 THE COURT: I see what you're saying.

24 MR. BROWN: She's back ready to go Monday but I
25 don't know, she may not be back.

1 THE COURT: You don't know if it's Monday or
2 Tuesday.

3 MR. BROWN: Right.

4 THE COURT: Okay. Okay. So, you're
5 anticipating no court this afternoon?

6 MR. MOORE: Right.

7 THE COURT: You can do the depositions.

8 MR. MOORE: That's the plan. Then we would
9 rest, yeah. I mean, that's what we have scheduled is
10 the depos.

11 MR. BROWN: And again, we have sent messages
12 and I talked to Mr. Moore about 5:30 yesterday
13 afternoon, of course, we have the working e-mail
14 addresses of the two witnesses. So, we're calling
15 and sending an e-mail to each of them.

16 THE COURT: And trying to get that set up.

17 MR. BROWN: Right. So, if that works, we can
18 get both of those done this afternoon and they're
19 both going to be available Monday morning as well if
20 everything works out or if it doesn't work out this
21 afternoon.

22 THE COURT: Okay.

23 MR. MOORE: I'm expecting the witness to show
24 up, can I step out?

25 THE COURT: Yes, you may.

1 MR. BROWN: Judge, one other matter I do want
2 to cover. We may be asking likely she's going to be
3 here our Dr. Zapf to sit in observing Dr. Olander's
4 testimony who is the Defense expert. So, that's our
5 request.

6 THE COURT: Does the -- response from the
7 Defense.

8 MR. MOORE: Well, we'd object to that. I mean,
9 we have a report from her that I haven't had a chance
10 to do a deposition and I wouldn't be able to a
11 deposition after she sits in through the testimony.
12 So, I'd ask the Court to reserve ruling until I can
13 get some case law.

14 THE COURT: Okay. And I don't know if you know
15 she's available or not, right?

16 MR. BROWN: Well, she's available this coming
17 Monday, that's when we're planning on putting her on.
18 It's the following Monday that obviously we would --
19 we're expecting how long this case would take. So,
20 that's why we knew she had that time off, we weren't
21 concerned about it, didn't think it was going to be
22 an issue. She travels between Tampa and New York and
23 that's the issue is travel, so.

24 THE COURT: Okay. If you're going to make that
25 request, I'll address that at the time but, you know,

1 give them notice that you're going to address that so
2 everyone can get their case law together.

3 MR. BROWN: Okay.

4 THE COURT: Okay. So, they'll need to get that
5 together.

6 MR. BROWN: Yes Your Honor.

7 THE COURT: Okay. Mr. Moore, you can step out.

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

10 THE COURT: Mr. Lanning, Mr. Brown gave the
11 Court some cases with regard to the issue regarding
12 the deputy. How do you say it, Woronka?

13 MR. BROWN: Woronka.

14 THE COURT: Woronka's testimony.

15 MR. LANNING: Right.

16 THE COURT: And when you're ready, I'd like it
17 address that issue.

18 MR. LANNING: Yes.

19 (Thereupon, a pause was taken in the
20 proceedings.)

21 THE COURT: Okay. Mr. Brown.

22 MR. BROWN: Judge, I presented three cases to
23 the Court for my argument, but the testimony that
24 Defense wants to impeach of Mr. Dieguez's testimony
25 is his answer in cross examination, it was not

1 something that was covered on direct so there's no
2 opening the door, but his answer as to why -- his
3 explanation of why he did not remember his police
4 interview that was six weeks after the shooting and
5 his reason was he was in the hospital under heavy
6 sedation and he was in the hospital because according
7 to him he was stabbed and robbed. So, they're not
8 impeaching where he was at because he was in the
9 hospital, the explanation part is simply why he's in
10 the hospital and our argument is that that clearly is
11 a collateral matter and should not be allowed to have
12 extrinsic evidence to prove up that basis.

13 I cite for the Court first the Lawson v. State,
14 651 So.2d 713. It is a Second District case, 1995.
15 Judge, this is the case where the state on cross
16 examination when it questioned the defendant, that's
17 laid out on the bottom -- on page 2, the bottom of
18 the first column and second column, and ultimately,
19 you know, was he involved in the relationship, he
20 testified that the victim and another witness were
21 involved in a relationship, all sorts of things, but
22 the state then called the victim and Lawson's ex-wife
23 as rebuttal witnesses, both denied they were involved
24 in a relationship and they went on with further
25 testimony.

1 The court lays down at the bottom of that
2 column, headnote 4 and headnote 5, reading from
3 headnote 5 on page 2, the test of relevancy and
4 materiality is whether the cross examining party
5 could have for any purpose other than impeachment
6 introduced evidence on the subject in it's
7 case-in-chief. If the evidence is relevant to
8 independently prove a material fact or issue or if it
9 goes to discredit a witness by pointing out bias,
10 corruption or lack of competency, it will be allowed.
11 Here the prosecution's use of the rebuttal and
12 surrebuttal testimony on clearly collateral conduct
13 does not pass either of those tests. And the
14 paragraph before they say a witness' answer during
15 cross examination to a nonmaterial collateral matter
16 is conclusive and cannot be impeached by normal means
17 of impeachment, including contradictory testimony by
18 another witness. The test is whether the proposed
19 testimony can be admitted into evidence for any
20 purpose independent of the contradiction, not simply
21 to contradict. Two types of evidence pass this test:
22 One, facts relevant to prove a particular issue, and
23 two, facts which discredit a witness by pointing out
24 the witness' bias, corruption, lack of competency and
25 that standard's repeated throughout all the cases I

1 could find on this issue.

2 The other two cases I've cited just a little
3 different fact patterns. Griffin v. State, 827 So.2d
4 1098, First District, 2002. This one the appellant
5 sought to impeach the victim's testimony given during
6 cross examination prior to the mistrial wherein she
7 denied threatening one of the co-defendants at a
8 liquor store. In this one there were multiple
9 defendants charge, apparently some defendants
10 obtained a mistrial, this one had to proceed still
11 charged with principal theory and questioned the
12 victim as to whether she had threatened, I think it
13 was a she, whether she threatened one of the other
14 co-defendants at a liquor store after and the court
15 applying the standard found that the proffered
16 testimony was only offered for the sole purpose of
17 contradicting the victim's testimony, it wasn't
18 relevant to prove an independent fact or issue, nor
19 would it discredit a witness by establishing bias,
20 corruption or lack of competency. Those are the
21 keys.

22 Clearly in this case, Judge, it's not relevant
23 to prove an independent fact issue. It is not a fact
24 or issue that they would be able to put in on their
25 case-in-chief. Why he was at the hospital is not

1 relevant to anything and it doesn't -- it does not
2 establish bias, corruption or lack of competency.
3 Ehrhardt in his words that were used, contradiction
4 for contradiction sake and that's the essence of what
5 this is. It's simply we got a contradiction we think
6 and now we want to present extrinsic evidence of
7 that, but it doesn't meet the test and it's clearly
8 collateral.

9 The third case is the Dupont case, 556 So.2d
10 457, a 1990. This one was during the trial there's a
11 confrontation between the defendants in an elevator
12 and a witness in the case. On cross examination the
13 defendant denied verbally threatening the victim in
14 the elevator as they departed the courthouse after
15 the trial recessed. The state presents rebuttal
16 testimony to prove the elevator verbal threat took
17 place. The court reversed the conviction again going
18 through what happened, they lay down the same tests
19 as we talked about in the other cases, they say the
20 elevator verbal threat which happened several months
21 after the fist fight was irrelevant and failed to
22 meet the test.

23 Judge, here we're talking six weeks after the
24 incident. Why he's in the hospital has nothing to do
25 with the shooting, motive, intent, premeditation, the

1 robbery of the hotel. It's clearly collateral to
2 that. It doesn't establish -- we would not be able
3 to get it in in their case-in-chief that fact that he
4 was in the hospital for a different reason. It's
5 clearly not relevant to anything under the sun and it
6 doesn't establish bias or lack of competency. All it
7 does is contradiction for contradiction sake which is
8 a collateral matter under the case law. We ask that
9 the Court not allow the evidence to come in.

10 THE COURT: Okay. Response from the Defense.

11 MR. LANNING: The key witness in a capital
12 murder case comes in and perjures himself to a jury
13 and says I was in the hospital, when that's all he
14 had to say, I was in the hospital under sedation. He
15 opens the door nonresponsive to the question I had
16 been robbed and stabbed. So, I believe the door was
17 opened, it was nonresponsive and it goes to
18 corruption and lack of competency because it was a
19 material fact, you don't remember your police
20 interview. He is a key witness to a conversation
21 that he purports to have had that is a premeditation
22 witness. The -- and he flat out lied and the State
23 wants to hide that fact and it goes to corruption or
24 lack of competency. Either Mr. Dieguez is just a
25 bald faced liar or he's incompetent and the jury

1 should get to make that call and under -- you know,
2 if that doesn't fit, Davis versus Alaska, the
3 evidentiary rules when it's a matter of due process
4 should be set aside to allow the evidence.

5 He was a critical witness, he lied, he lied, he
6 lied and the jury should know it and we didn't open
7 the door, he spurted it out in a nonresponsive manner
8 and his rights under the 6th, 8th, 14th amendments to
9 the US Constitution and all the articles of the
10 Florida Constitution should allow this evidence.

11 THE COURT: Mr. Brown, if you'll address that
12 about it would discredit a witness by establishing
13 lack of competency.

14 MR. BROWN: Judge, the lack of -- competency
15 goes to that at the time either testifying, it's like
16 drug use, testifying in court or at the time of the
17 event. They're talking about something six weeks
18 later. He's in the hospital under sedation and drug
19 use in between whether it's voluntary or, obviously
20 in a hospital voluntary or involuntary, drug use -- a
21 witness' drug use is never admissible for impeachment
22 unless it's drug use at the time of the observation
23 or at the time he testified.

24 THE COURT: What about at the time of the
25 interview?

1 MR. BROWN: The interview is six weeks later,
2 and he's already testified and acknowledged the he
3 did not recall the interview, the Defense played the
4 portion of the interview to him and he suggests now
5 that I've heard my voice, that is my voice on there,
6 I did say those things they impeached him on and
7 that -- I didn't object to that, that clearly is
8 appropriate relevant material and they were cross
9 examining him with his interview versus what his
10 trial testimony was. Here all they're trying to do
11 now is further impeach him and basically impeach the
12 impeachment of why he was in the hospital. Why he
13 was in the hospital has no relevance to anything.

14 He's already acknowledged he doesn't remember
15 the interview because of sedation, we're not
16 challenging that, the only thing is why was he in the
17 hospital and, you know, the argument of, well, it's a
18 critical witness, we ought to be able to contradict
19 him with everything, that's not what the case law is
20 and the Griffin case, which is why I brought it in,
21 it was the victim denying a threat to a co-defendant
22 and the defense wanted to bring up evidence of that
23 and if threatening a co-defendant that's going to
24 trial and started with that co-defendant apparently
25 in the trial, if that doesn't meet the test of bias

1 or corruption when you're threatening in closing
2 argument, how does the witness' reason for being in
3 the hospital rise to that level. It's not his
4 competency at the of observation and during the
5 event, nor is it his competency at the time he
6 testified. The fact that he may at some point in
7 between before or after been incompetent is not
8 relevant, the key facts are time of the observation,
9 time of his testimony to the jury.

10 THE COURT: Okay. I'm going to take a break
11 and then -- because I heard the jury just came up.
12 If you need a restroom break go ahead and do that and
13 I'll be back in about five minutes and then I'll make
14 this ruling and then we'll start the case. Okay.
15 Court will be in recess for just a few moments.
16 Thank you.

17 (Thereupon, a short recess was taken in the
18 proceedings.)

19 THE COURT: Okay. The State's objection is
20 overruled. Now, Mr. Language, you need to instruct
21 your witness. Okay.

22 MR. LANNING: We need Mr. Bradley.

23 THE COURT: Okay. Bring Mr. Bradley out. I'll
24 repeat that when Mr. Bradley comes out.

25 MR. BROWN: Judge, we have one additional

1 request on a separate matter.

2 THE COURT: Okay.

3 (Thereupon, the defendant was escorted into the
4 courtroom by the court deputy.)

5 THE COURT: Okay. The State's objection is
6 overruled. Mr. Lanning, you need to instruct your
7 witness -- yesterday we talked about overdose with
8 regard to cocaine but your witness can testify that
9 he was there for an alleged overdoes offer overdose,
10 can't use cocaine.

11 MR. LANNING: All right. Is that it?

12 THE COURT: Yes. But I think Mr. Brown said he
13 had another issue.

14 MR. BROWN: Judge, we're requesting when
15 Dr. Skolly testifies, and obviously I assume her
16 testimony is going to be the effect of the drugs the
17 defendant had in his system, the affect it would have
18 on the person, and I understand Defense counsel in
19 opening statement the argument is that's going to the
20 voluntariness of his statement, my concern is the
21 bleed over effect because it's clear voluntary
22 intoxication is not a defense to any charged crime.
23 So, we would ask that the Court, we be asking this as
24 part of the final instructions as well, but that the
25 Court instruct the jury reading them 3.6(d) which is

1 voluntary intoxication resulting from the use of
2 alcohol or controlled substances is not a defense to
3 a claim, evidence of defendant's voluntary
4 intoxication may not be taken into consideration to
5 show that he lacked a specific intent to commit a
6 crime. The person was voluntary intoxicated if he or
7 she knowingly consumed the substance that he or she
8 knew or should have known could cause intoxication.
9 That's -- we're concerned a bleed over effect, it's a
10 tricky area and just like my impeachment, the jury
11 ought to know what they can and especially cannot
12 consider that evidence for.

13 THE COURT: Okay. Response from the Defense.

14 MR. MOORE: I think that would be appropriate
15 but I also I'd ask the Court to read the instruction
16 that I think is 3.9, rules for deliberation. The one
17 that deals with the defendant's statements says the
18 jury is to determine if a statement by the defendant
19 (unintelligible) and the jury is to determine whether
20 the statement's voluntary. So, that should be read
21 as well at that time. That focuses on the purpose of
22 which that testimony was offered.

23 THE COURT: Okay. With all due respect, I want
24 the State to copy down what they want me to say and I
25 want the Defense to print what they want me to say

1 and then we'll compare the two. And you want me to
2 do this before Skolly testifies or after Skolly
3 testifies?

4 MR. BROWN: Judge, I would think it would be
5 appropriate before.

6 THE COURT: When is Skolly going to testify?

7 MR. MOORE: After Officer Woronka?

8 THE COURT: Okay. So, let's do that now. If
9 you'll struck the jury to go ahead and use the
10 restroom because they're probably going to be here
11 all -- we're probably not going to take a break for
12 two hours. I mean, because 3.6(d) is four paragraphs
13 long so I don't know if you want all of it.

14 MR. BROWN: No, it's the first paragraph, the
15 remaining paragraphs are offenses occurring before
16 October 1st, 1999.

17 THE COURT: So, you just want voluntary
18 intoxication resulting from the use of?

19 MR. BROWN: At this point I guess just
20 controlled substances?

21 THE COURT: A controlled substance is not a
22 defense to a crime. Evidence of defendant's
23 voluntary intoxication may not be taken into
24 consideration to show that he lacked the specific
25 intent to commit any crime. A person is voluntarily

1 intoxicated if he or she knowingly consumed a
2 substance that he or she knew or should have known
3 could have caused intoxication.

4 MR. BROWN: Yes.

5 THE COURT: And then what are you -- I can do
6 that without you giving me some instructions.
7 What --

8 MR. MOORE: 3.9 Bravo and it's entitled
9 defendant's statements.

10 THE COURT: Okay. 3.9(d) did you say?

11 MR. MOORE: Bravo, B.

12 THE COURT: B. Oh, I wrote down B. 3.9(b).
13 Okay. You want that whole instruction.

14 MR. MOORE: Yes, ma'am.

15 THE COURT: Okay.

16 MR. BROWN: I don't think we would mind if
17 there's a little segment here this is what it does go
18 to and then do that.

19 MR. MOORE: Well, I don't think we need to add
20 to what's a standard instruction.

21 THE COURT: All right. Let me read this over
22 real quick. All right. After the one witness and
23 before Dr. Skolly I'll read those statements. You
24 just have to warn me when Dr. Skolly's the next
25 witness. I assume it's the second witness of the

1 morning?

2 MR. PIROLO: Yes, Your Honor.

3 THE COURT: Okay. Then I'll take that into --
4 I mean, I'll take that that's the order and I'll read
5 it before that witness.

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

8 THE COURT: Okay. Is State ready to proceed?

9 MR. BROWN: Yes, Your Honor.

10 THE COURT: Is the Defense ready to proceed?

11 MR. MOORE: Yes.

12 THE COURT: Can we adjust the podium a little
13 bit more so it's not facing me. Facing them.
14 Actually I like it where it was, I just want it
15 turned more that way because otherwise they tripped
16 over that one thing one time. Mr. Lanning I think.

17 MR. MOORE: Well, we're so crowded over here
18 that it's better that way.

19 THE COURT: Okay. I'm okay with that, just
20 don't trip over that one thing. I can't remember who
21 almost tripped over it. I think it was Mr. Lanning.

22 MR. MCMASTER: It was Mr. Brown.

23 THE COURT: Oh, it was Mr. Brown. As long as
24 we don't have any accidents. It won't look good for
25 anybody. Okay. And the Defense is ready?

1 MR. MOORE: We're ready.

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

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

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

8 THE JURY PANEL: Good morning.

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

12 THE JURY PANEL: No.

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

16 THE JURY PANEL: No.

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

19 THE JURY PANEL: No.

20 THE COURT: Has anyone conducted any research
21 or been 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. Ladies and gentlemen,
4 Brandon Lee Bradley currently is being administered
5 psychotropic medication under medical supervision for
6 a mental or emotional condition. Psychotropic
7 medication is any drug or compound affecting the mind
8 or behavior, intellectual functions, perception, mood
9 or emotion and includes antipsychotic,
10 antidepressant, anti-manic and an anti-anxiety drugs.

11 Okay. Who would be the next witness on behalf
12 of the Defense?

13 MR. LANNING: Officer Cassandra Woronka.

14 THE COURT: Ma'am, if you'll come forward.
15 Step up before the clerk to be sworn.

16 THEREUPON,

17 OFFICER CASSANDRA WORONKA,
18 having been first duly sworn, was examined and testified
19 upon her oath as follows:

20 THE COURT: Okay. Ma'am, if you'll be seated
21 in the witness chair. Once seated if you'll scoot
22 that chair forward. Do talk into that microphone.

23 THE WITNESS: Yes, ma'am.

24 THE COURT: It helps us hear you and also aids
25 in recording your testimony.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Mr. Lanning.

3 DIRECT EXAMINATION

4 BY MR. LANNING:

5 Q Good morning. Officer, would you your state
6 your name and your occupation?

7 A Officer Woronka, W-O-R-O-N-K-A, with the Palm
8 Bay Police Department.

9 Q And it's Cassandra?

10 A Yes.

11 Q And how long have you been with the Palm Bay
12 Police Department?

13 A Twelve years.

14 Q And currently are you in the patrol division?

15 A Yes.

16 Q In April of 2012 were you also in the patrol
17 division?

18 A Yes.

19 Q On April 16th of 2012, did you have occasion to
20 be dispatched to a residence concerning Jeffrey Dieguez?

21 A Yes.

22 Q And what was the nature of the dispatch?

23 A A report of an overdose.

24 Q And when you responded to the residence, did
25 you come into contact with Jeffrey Dieguez?

1 A Yes.

2 Q And you spoke with him?

3 A Yes.

4 Q Did Mr. Dieguez at any point indicate that he
5 had been robbed?

6 A No.

7 Q Did he at any point indicate that he had been
8 stabbed?

9 A No.

10 Q Did he indicate that he had been having
11 problems with his family and his landlord?

12 A Yes.

13 Q And that he didn't want to live?

14 A Yes.

15 Q Did you see any evidence or indications that he
16 had been stabbed or robbed?

17 A No.

18 Q As a result of your conversation with
19 Mr. Dieguez as well as other information that you
20 received, what did you do in your capacity as a law
21 enforcement officer?

22 A Due to statements that were made, he was placed
23 under a form 52 which is a Baker Act.

24 Q What is a Baker Act?

25 A If a person is unable to determine for himself

1 or herself their safety, law enforcement has the authority
2 to place that individual under a Baker Act and seek
3 psychiatric care.

4 Q And he was taken to Palm Bay Hospital?

5 A Yes.

6 MR. LANNING: May I have a moment?

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

9 MR. LANNING: Nothing further.

10 THE COURT: Okay. Cross examination by the
11 State.

12 MR. BROWN: Briefly, Your Honor.

13 CROSS EXAMINATION

14 BY MR. BROWN:

15 Q Officer Woronka, did Mr. Dieguez indicate to
16 you that he was in a lot of pain and that's why he wanted
17 to die?

18 A Yes.

19 MR. BROWN: Nothing further.

20 THE COURT: Anything else by the State? I mean
21 by the Defense?

22 REDIRECT EXAMINATION

23 BY MR. LANNING:

24 Q he didn't want an ambulance, did he?

25 A I don't recall if he requested one or not.

1 Q Would looking at your report refresh your
2 recollection?

3 A It may.

4 Q Why don't you take a look at your report and
5 see if he even wanted an ambulance?

6 A It doesn't state that he requested one.

7 Q In your report don't you indicate that he
8 didn't want an ambulance because he was concerned about
9 the neighbors?

10 MR. BROWN: Judge, can we approach?

11 THE COURT: Yes, you may. Bench conference.

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

14 MR. BROWN: Judge, I think what Mr. Lanning is
15 trying today is using the dispatch records
16 (unintelligible) ambulance. She's not
17 (unintelligible). Her report doesn't included that.
18 That's narrative number one, this is the full Palm
19 Bay report, so.

20 MR. LANNING: Okay. I see what you're saying.

21 MR. BROWN: So, I'd ask that the question be
22 withdrawn.

23 THE COURT: She's probably going to say no.
24 Okay.

25 MR. LANNING: I'll withdraw the question.

1 THE COURT: Okay.

2 (Thereupon, the benchside conference was
3 concluded and the proceedings were has as follows:)

4 MR. LANNING: I'll withdraw that question.

5 BY MR. LANNING:

6 Q Now, he said he was in a loft pain, that's
7 immediately preceded by he's tired of his life?

8 A Yes.

9 Q And he wanted to die.

10 A Yes.

11 MR. LANNING: Thank you.

12 THE COURT: Okay. Recross by the State.

13 MR. BROWN: No, Your Honor.

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

16 THE WITNESS: Thank you.

17 (Thereupon, the witness exited the witness
18 stand.)

19 THE COURT: Okay. Ladies and gentlemen of the
20 jury, before the next witness there's two
21 instructions that I would like to read to you. These
22 are instructions of the Court.

23 Voluntary intoxication resulting from the use
24 of a controlled substance is not a defense to a
25 crime. Evidence of a defendant's voluntary

1 intoxication may not be taken into consideration to
2 show that he lacked the specific intent to commit any
3 crime. A person is voluntarily intoxicated if he or
4 she knowingly consumed a substance that he or she
5 knew or should have known could cause intoxication.

6 Defendant's statement. A statement claimed to
7 be made by the defendant outside of court has been
8 placed before. You such a statement should always be
9 considered with caution and be weighed with great
10 care to make sure it was freely and voluntarily made.
11 Therefore, you must determine from the evidence that
12 the defendant's alleged statement was knowingly,
13 voluntarily and freely made. In making this
14 determination you should consider the total
15 circumstances, including but not limited to:

16 One, whether when the defendant made the
17 statement he had been threatened in order to get him
18 to make it and,

19 Two, whether anyone had promised him anything
20 to get him to make it.

21 If you conclude that the defendant's out of
22 court statement was not freely and voluntarily made,
23 you should disregard it.

24 Okay. Next witness on behalf of the Defense.

25 MR. MOORE: Dr. Susan Skolly-Danziger.

1 THE COURT: Ma'am, if you'll step up to the
2 clerk to be sworn.

3 THEREUPON,

4 DR. SUSAN SKOLLY-DANZIGER,
5 having been first duly sworn was examined and testified
6 upon her oath as follows:

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

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Okay. Mr. Moore.

15 DIRECT EXAMINATION

16 BY MR. MOORE:

17 Q Good morning, Dr. Danziger.

18 A Thank you. Good morning.

19 Q Skolly-Danziger? Dr. Skolly, refer to you as
20 that?

21 A Dr. Skolly's fine.

22 Q Yes, ma'am. State your name, please?

23 A My name is Dr. Susan Skolly-Danziger, you can
24 call me Dr. Skolly.

25 Q And where do you -- what is the nature of your

1 practice?

2 A Currently I'm the direct of a hospital
3 pharmacy.

4 Q And what -- what is the nature of the degree
5 that you hold as a doctor?

6 A I have a doctorate in pharmacy, I have a
7 Master's in forensic toxicology and a Master's in forensic
8 drug chemistry and I have a BS in pharmacy as well.

9 Q And you're a practicing clinical toxicologist?

10 A That's true. I'm also Boarded by the American
11 Board of Applied Toxicology and I have had that Board
12 since 1996.

13 Q Is that the diplomat?

14 A The diplomat of the American Board of Applied
15 Toxicology.

16 Q And what other formal education have you had?
17 What are other degrees do you hold?

18 A As far as formal training?

19 Q Yes, ma'am.

20 A I've had a residency training at Northwestern
21 Memorial Hospital in Chicago, I did that right out of
22 college. I had training -- and that's in order to receive
23 my diplomat status in toxicology and I did that at the
24 University of Miami and that allowed me to be credentialed
25 for a Board which allowed me to be a clinical

1 toxicologist. Again, I took that Board in 1996 and I have
2 to be credentialed every five years. So, I did that in
3 2010 and that's -- the next one's coming up in 2015.

4 Q Any other national state licenses that you hold
5 in your field?

6 A I'm currently a registered pharmacist in the
7 State of Florida and the State of Illinois and those are
8 current. I'm also a consultant pharmacist which allows me
9 to be a director of a pharmacy.

10 Q Have you had any forensic training?

11 A Yes, I have two degrees in forensics which are
12 both Masters degrees in forensic toxicology and forensic
13 drug chemistry.

14 Q How does the study of forensic chemistry,
15 forensic toxicology, how's that distinguishable just from
16 the study of toxicology?

17 A Well, the forensics mean according to the law
18 so it's based on more the courtroom study and the study of
19 the analytics which is really the study of I would say
20 more lab oriented toxicology more than what's called
21 clinical toxicology which is more people oriented, you
22 know, how to treat people who are in a hospital situation,
23 that's how the two really I differentiate.

24 Q What professional affiliations and activities
25 have you had associated with the toxicology field?

1 A I'm on the -- I'm what's called a DBAT, a
2 diplomat of the American Board of Applied Toxicology, I'm
3 on several committees. I'm on a planning committee for
4 the next meeting that's coming up in October. That's
5 really the one that I'm affiliated with and involved in.

6 Q Have you given presentations to professional
7 groups in the field of toxicology?

8 A Yes, I have.

9 Q Could you give a number, approximately, of
10 those presentations?

11 A I probably given thirty talks or so.

12 Q And have you written for publications?

13 A Yes, I have.

14 Q Involving research?

15 A I would say yes, in research and I have a
16 chapter in a textbook in environmental and occupational
17 work related toxicology.

18 Q As a clinical pharmacologist for what, would
19 that be Promise Hospital of Florida?

20 A Correct.

21 Q Do you consult with doctors and psychiatrists
22 and provide them with your opinions about -- which they
23 would then use in dispensing and treating -- dispensing
24 controlled substances to their clients?

25 A Yes, I do.

1 Q What is a controlled substance?

2 A A controlled substance is one that is regulated
3 by the federal government because of its inherent risk to
4 people who use it, risk of abuse and because sometimes
5 it's -- there's no potential medical use for the drug, or
6 limited medical use for the drug.

7 Q Okay. You are a toxicologist which required
8 speciality training to get your Ph.D of at least four
9 years?

10 A I have my Pharm D which I went to school
11 probably nine years to get and then on top of it the two
12 Masters degrees.

13 Q Didn't mean to shortchange you.

14 And what is the field of toxicology?

15 A Toxicology is the study of poison which can be
16 manmade and some can be biologically derived and some can
17 be as you all know animal derived. So, it's various
18 substances which are really what we call xenobiotics or
19 foreign substances or poisons.

20 Q As a toxicologist, are you able to express an
21 opinion in general regarding the adverse effects of these
22 substances on the human body?

23 A Yes.

24 Q And are you able to express opinions to a
25 degree of medical science or scientific certainty rather

1 on the adverse effects on cognitive function?

2 A Reasonable scientific certainty.

3 Q Reasonable scientific certainty.

4 And what do you understand to be the meaning of
5 cognitive functioning?

6 A Impaired thinking, a reduction in the clarity
7 of thinking, impaired decision making, just basically a
8 foggy mindset in general.

9 Q And if you have sufficient data, sufficient
10 information, would you be able to give an opinion to a
11 degree of scientific certainty as to the adverse effects
12 of controlled substances in retrospect, that is looking
13 back at a person's history?

14 A Yes, again reasonable scientific certainty.

15 Q That's not absolute certainty, it's just an
16 informed guess, or not a guess, but an informed opinion?

17 A Yes.

18 Q On the effects of drugs on a person's -- the
19 way that the body metabolize the substances and the way
20 the mind -- the effects on the mind of the substances?

21 A Yes.

22 Q And are there recognized -- you have studied
23 and learned recognized effects on the human body and the
24 human mind of certain controlled substances, do you know
25 what they are that's established in the literature?

1 A Yes, that's correct.

2 Q And would those substances with which you're
3 familiar with the recognized effects, would they include
4 Xanax?

5 A Yes.

6 Q Would they include marijuana?

7 A Yes.

8 Q Hydrocodone?

9 A Correct, yes.

10 Q Cocaine?

11 A Yes.

12 Q All right. And what variables would affect
13 your determination of the effects of the drugs on the
14 human body and the human mind?

15 A Would be -- the dose is important, the way
16 southbound metabolizes the drug, you know, how much --
17 toxicology's a quantitative science so how much is
18 important and the, you know, the actions of the person
19 that would indicate, you know, to what extent they are
20 affected.

21 Q Okay. And what information -- if you want to
22 give a completely thoroughly informed opinion about the
23 effects of drugs on a person's body metabolism or on their
24 cognitive abilities, what information would you want to
25 give an informed opinion?

1 A Well, ideally we want to know how much somebody
2 takes but in essence if we can't find out that, then one
3 would prefer to get a blood level because that
4 approximates how much of a drug is in the brain. We don't
5 take brain samples so we get blood samples.

6 Q Would you want also a history of the ingestion
7 of drugs from a specific subject?

8 A Right, that would be a history.

9 Q And you -- can a toxicologist such as yourself
10 as a expert reasonably rely on this information in giving
11 an opinion about the way these substances affect the body
12 and the mind?

13 A Yes.

14 Q To a degree of, you know, reasonable scientific
15 certainty?

16 A Reasonably in addition to the way somebody
17 acts.

18 Q Are you familiar with, from your training and
19 experience, the long term effects of specific poisons or
20 controlled substances on a developing mind?

21 A Yes.

22 Q Human mind.

23 How about specifically marijuana, long term use
24 of marijuana and the documented effects of that on a
25 developing human brain?

1 A Yes, I am.

2 Q Okay. And with respect to marijuana use, long
3 term use, what is your knowledge of the effects of that on
4 the -- on a developing brain?

5 A Marijuana does affect what's called
6 neurotransmitters which are the chemical messengers in the
7 brain and does effect the cells in the brain which are
8 called neurons and the development of tissues in the brain
9 and the earlier that individuals use marijuana, the more
10 effects that this does have.

11 What the literature does say and it sometimes
12 it's hard to sect out exactly what the specific effects of
13 marijuana have because people tend to use other drugs and
14 some of the literature sometimes it's hard to figure out
15 what the difference that IQ makes someone's, you know,
16 their basic makeup and how to separate that from the
17 effects of marijuana, but what the literature does suggest
18 is that the younger somebody takes it, if you're under the
19 age of seventeen or eighteen, it does have a much more
20 prominent effect on the brain and men more so than women
21 because men mature a little bit later than women so
22 therefore the effects of marijuana would be more
23 pronounced in men. So, marijuana effects -- if I'm
24 allowed to go on.

25 Q Yes, ma'am.

1 A Marijuana affects certain activities, it
2 affects what's called executive function and this function
3 influences our behavior as far as organization, our
4 planning, impulse, memory.

5 Q Impulse how?

6 A Making choices, risk taking behavior.

7 MR. MCMASTER: Objection, Judge, this testimony
8 only going to the voluntariness of the statement,
9 she's getting far afield from that.

10 MR. MOORE: I'm trying -- can we approach?

11 THE COURT: Yes, you may.

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

14 MR. MOORE: All of the -- oh, go ahead,
15 Mr. McMaster. You have an objection or have you
16 stated it?

17 MR. MCMASTER: My objection is that this is
18 totally irrelevant as to the issue that they're
19 framing it. She is talking about impulse control
20 being affected, is solely going to some sort of
21 diminished capacity.

22 MR. MOORE: No, the jury has an obligation to
23 determine the voluntariness of statement and they can
24 consider all factors related to that including the
25 defendant's impairment, any effects of the drugs that

1 he's taken has had on his decision making ability and
2 waiving Miranda and giving a voluntary statement. I
3 mean, all of those things go to the voluntariness of
4 the statement. They may -- you know, the Court's
5 already instructed the jury they cannot consider
6 these things as to specific intent, however, they're
7 still left with having to determine voluntariness of
8 the statement of Mr. Bradley. So, I mean, this all
9 goes to that. The State's already had its limiting
10 instruction.

11 MR. LANNING: It also goes to self-defense.

12 MR. MOORE: 90.6 is it not, the perceptions of
13 the defendant, all the circumstances known to the
14 defendant, the reasonable -- whether the defendant
15 acted reasonably under the circumstances in using
16 lethal force and as the situation was perceived by
17 the defendant, the jury still has to determine
18 whether his reactions under his circumstances and
19 these are all parts of the circumstances of his life
20 and his circumstances in acting and shooting Deputy
21 Pill.

22 THE COURT: Mr. Brown, did you have some case
23 law?

24 MR. BROWN: Yes, I would cite the Court to
25 Spencer v. state, 842 So.2d 52, 2003 Florida Supreme

1 Court case. I have a copy for Defense. Judge,
2 specifically on page 11, headnotes 9, 10 and 11, this
3 is a case that's a post-conviction motion. If the
4 Court would read that paragraph.

5 I want to point out that when this case was
6 tried voluntarily intoxication was still a defense.
7 That's where they talk about that. But even when
8 they're presenting voluntary intoxication as a
9 defense, the court says in this case would not have
10 been admissible during the guilt phase because
11 (unintelligible) and that's in effect what they're
12 doing here.

13 THE COURT: What I heard was her starting to
14 testify with regard to impulse control and wouldn't
15 impulse control come in to whether he -- I mean at
16 the time he gave Miranda whether it was voluntarily
17 or not if you have an issue with impulse control?

18 MR. BROWN: No, impulse control is something
19 separate, that's -- you're going back to capacity,
20 someone's inability to control their impulses.

21 THE COURT: Yeah, but impulse would be I'm
22 going to go ahead and talk to the police without time
23 to reflect on how that may affect him later.

24 MR. MOORE: This also ties in with Dr.
25 Olander's testimony. She did specific testing of a

1 number of things but one them is the ability to
2 comprehend Miranda and recognize his rights and
3 assert his rights and she has, she has an opinion
4 about that. So, I mean, it goes to Mr. Bradley's
5 perception of Miranda, his understanding of it, his
6 ability to take that information and process it in a
7 way it would be useful to him. It's just not
8 presumed just because it's read to him and he waives
9 Miranda that that's the end of it. I mean, that's
10 why we're doing this and so all of this goes to
11 voluntariness. The Spencer case just deals with a
12 diminished type -- capacity type defense and it
13 doesn't go to the voluntariness of a confession which
14 is what we're talking about here which is clearly --
15 under the instruction it's clearly something for the
16 jury to determine.

17 THE COURT: I'm going to overrule the
18 objection. Okay. Thank you.

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

21 BY MR. MOORE:

22 Q Dr. Danziger, you were talking about the
23 effects of -- long term effects of marijuana on a
24 developing human male brain.

25 A Yes, that's correct.

1 Q Would you continue? We interrupted you.

2 A Okay. I was talking about areas of brain that
3 are affected by marijuana and there's certain areas. One
4 is called -- I'll give you a couple technical names but
5 I'll explain it. The prefrontal cortex and as you can
6 guess it's in the front of the brain but that's an area
7 that affects what I was saying memory, impulse control,
8 behavior, this executive planning which as you can see
9 people who are executives need to organize, they need to
10 plan, they need to make decisions and that individuals who
11 have been using marijuana, again the younger they are the
12 more affected they are, have difficulty with these issues
13 as they grow older.

14 There's been some very interesting studies, if
15 I'm allowed to talk about it, and one in particular was a
16 study that was done with about a thousand individuals that
17 tracked the same group of people from the age of thirteen
18 on to the age of thirty-eight and looking at different
19 tests of IQ, of psychomotor efficiency and tasks and then
20 tracked those who used marijuana light use, heavy use and
21 some who didn't use at all, you know, to the age of
22 thirty-eight. And so it's the same group of people. And
23 the unique thing about this is the individuals were their
24 own control. So, the control for the IQ was controlled
25 within the group. And the greatest thing about the study

1 was that these individuals were tracked for such a long
2 period of time and it was found that the heaviest users
3 did lose IQ points and did have trouble with issues
4 including memory and decision making and problems of that
5 nature. So, there are several studies, I think that's one
6 of the best with this large group of people, but again the
7 earlier somebody uses marijuana the more profound the
8 effects are on this executive function.

9 Q Now, would the orbital frontal part of the
10 brain be part of the frontal part that you described as
11 being involved impulse control?

12 A Impulse control, that's correct.

13 Q And affected by long term marijuana use based
14 on the research that you're familiar with?

15 A Yes. There's another study too that showed
16 that -- it's a different one, that people playing card
17 games were more likely to bet higher levels -- that were
18 high marijuana users showing that, you know, they were
19 more risk taking in their gambling measures and didn't
20 have the same effect with end consequences than the ones
21 who were higher marijuana users who started earlier on.
22 So, other studies have also shown this too.

23 Q Are you qualified to give an opinion about the
24 effects that those parts of the brain if affected by drug
25 use or anything else, that they -- that -- on a person's

1 ability to let's say understand and process Miranda
2 warnings for example? You're familiar with Miranda
3 warnings?

4 A Yes, I am.

5 Q So, would those areas of the brain if affected
6 by marijuana use or anything else, they be involved in
7 understanding, comprehending and using Miranda
8 information, Miranda rights?

9 A Well, they're involved in understanding, taking
10 information, processing it and making a decision. So, yes
11 they are.

12 Q Decisions like giving up, you know, basic
13 constitutional rights.

14 A Right, because it's relying on past memory and
15 making a decision and giving some type of information,
16 making a decision on again information from the past and
17 then just making an informed decision from that.

18 Q All right. In particular in this case, what
19 information had you received and considered and relied
20 upon in testifying today? Could you list all of the
21 materials that you have that fall into that category?

22 A Okay. I have to rely on my sheet here.

23 Q Would that help refresh your memory?

24 A Okay. Yes.

25 Q Okay.

1 A I looked at -- there were three DVDs that were
2 given to me, the interrogative DVDs.

3 Q Of what?

4 A Of Mr. Bradley being interviewed at the police
5 department. I looked at toxicology records of Mr. Bradley
6 from the Wuesthoff Labs dated April the 13th, 2012. I
7 looked at a portion of the charging affidavit and some
8 narratives. I looked at his medical records from the
9 Seminole County Jail and this was from March the 7th to
10 August the 5th.

11 Q Of what year?

12 A Of 2012. So, they weren't just complete but
13 they were limited from the beginning. I looked at --
14 there was a neuropsychological evaluation that was
15 submitted by Jacquelyn Olander, the Ph.D. I looked
16 at there were MRI findings, Mark Hurst, and I believe MRI
17 finding and also a PET scan, Dr. Wu, and the deposition of
18 Andria Kerchner that was taken on January the 23rd, 2014,
19 and also there was a deposition that was taken by Blake
20 Lanza, an officer, and I believe that was March 28th,
21 2013, and then I did two evaluations of Mr. Brandon
22 Bradley, one was on --

23 Q You're talking about interviews?

24 A Interviews, right. One was November the 7th of
25 2013 the other one is February the 23rd of 2014.

1 Q And the toxicology report?

2 A I prepared two --

3 Q No, what I'm saying is that you received from
4 Wuesthoff Labs, did you reference that?

5 A Yes, I did.

6 Q Okay. And litigation -- what they refer to as
7 a litigation packet?

8 A Yes.

9 Q With all of the notes and all the data that was
10 collected when Wuesthoff did its analysis?

11 A Yes, I did.

12 Q You received and considered all of that?

13 A Yes.

14 Q Would you want to have that in order to
15 consider it in expressing opinions about whether
16 Mr. Bradley ingested drugs and how they would have
17 affected him?

18 A Yes.

19 Q Let me just stop for a second and focus on
20 what -- the limits of your expertise and limits of what
21 you can give opinions about and let me ask you -- let's
22 identify what you are not. You're not a medical doctor?

23 A No.

24 Q You're not a psychologist?

25 A No, I'm not.

1 Q You're not neuropsychologist?

2 A No.

3 Q You're not a mental health expert?

4 A No.

5 Q But your opinions deal -- are focused
6 exclusively on the effects on the body and the brain and
7 cognitive functioning of controlled substances?

8 A Controlled or chemical substances in general.

9 Q Right. Okay. So, that -- that's, you know,
10 you're giving opinions to the best of your ability, that
11 is to a degree of reasonable scientific certainty --

12 A Correct.

13 Q -- on these things? Okay. You can put it
14 better than I can so.

15 All right. So, would the drug history, and
16 specifically talking about Mr. Bradley, the drug -- let
17 me -- before we get to that, let's go through the
18 toxicology report and do that and let me ask you to just
19 refresh your memory about what's in that and specifically
20 on the first page of that on the blood amino assay stream
21 of a specimen of blood that was taken from Mr. Bradley for
22 the presence of benzodiazepines. Now, you're aware
23 that -- or assume that the blood sample was taken from
24 Mr. Bradley approximately twenty-nine hours after the
25 shooting, that's the blood sample we're talking about, and

1 the urine sample as well.

2 A Correct.

3 Q And that is your understanding?

4 A Yes.

5 Q And so what opinion can you give in general,
6 generally, not specifically with respect to Mr. Bradley,
7 but if benzodiazepines appear in the blood that long after
8 a point in time, are there any inferences to be drawn with
9 respect to when those drugs were ingested and the effects
10 that they may have had on a person thirty hours earlier?

11 A Well, if there's drugs in the blood, then you
12 can guess that they were higher if you --

13 MR. MCMASTER: Objection, Your Honor.

14 BY MR. MOORE:

15 Q Well, can you give an opinion --

16 MR. BROWN: May we approach?

17 THE COURT: Okay. Bench conference.

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

20 MR. BROWN: Judge, the objection is there's no
21 relevance to the effect it had on him thirty hours
22 earlier, that is --

23 MR. MOORE: All right. I got the wrong point.

24 THE COURT: I'll sustain the objection.

25 (Thereupon, the benchside conference was

1 concluded and the proceedings were had as follows:)

2 BY MR. MOORE:

3 Q Let's look at a different point in time and
4 that would be at the point in time when the Miranda rights
5 in the DVD that you observed, that point in time which
6 would have been approximately twenty hours. You follow
7 me?

8 A Correct.

9 Q Okay. And so can -- well, first of all, what's
10 a benzodiazepine, what is that -- what drug would it
11 contained in?

12 A It's a sedative depressant drug that, it's a
13 drug that is like Valium that has an effect -- there's
14 several effects, but drowsiness, possibly dizziness. It's
15 used often for anxiety or panic disorder and --

16 Q Like in Xanax?

17 A Yes, Xanax.

18 Q And also there's another indication of that
19 presence in the blood on -- in the finding of Alprazolam,
20 did you note that as well?

21 A Alprazolam is Xanax.

22 Q And the amount is .063 milligrams per liters
23 and where would that be with respect to a reasonable
24 diagnostic range or therapeutic range rather?

25 A That's a reasonable diagnostic range for a

1 person who would be taking maybe -- if that were drawn
2 maybe an hour and hour after taking, you know, anywhere
3 from let's say three to six milligrams of the drug.

4 Q How about twenty hours later?

5 A Well, twenty hours later -- one can do somewhat
6 of a back extrapolation because the drug is -- I don't
7 want to get technical but it's what we call first order
8 elimination so that what this means is that this drug is
9 eliminated from the blood, that every what's called
10 half-life, and that's the time it takes to remove one half
11 of the drug, you can work backward. So, if it's at .063
12 nanogram per ml, if you go back one half-life, then you
13 multiple that by two and so you can somewhat come up to a
14 level where it would be at a certain point twenty hours
15 later because of the drug's kinetics and it's a rough
16 estimate because you don't know the exact metabolic fate
17 of the drug, you don't -- that's essential, it's
18 eliminated in that manner, that the drug reduces by one
19 half by its half-life, it's half-life is eleven hours so
20 that you can make some assessments based on that
21 information.

22 Q Can you, and I think you said you can assume
23 that if twenty hours after an event that level -- that
24 quantity is there that it would have been what? How work
25 you characterize it to the degree that it would greater

1 twenty hours earlier?

2 A It would be greater. I did make a rough
3 assessment indicating that the level was two hundred and
4 sixteen nanogram per ml, you know, which is high.

5 Q Would it have a more profound affect?

6 A Yeah, which is a profound affect.

7 Q And then the cannabinoid panel that you
8 considered, what were the findings in the toxicology
9 report and what inferences can be drawn, in general, with
10 the levels of the cannabinoids found an extrapolating
11 back, if you can, to twenty hours earlier at the time of
12 Miranda?

13 A Okay. When people smoke marijuana there's
14 active components that can be in the blood and the active
15 component that most people are familiar with is THC,
16 tetrahydrocannabinol, and that's -- when that's in the
17 brain, then most, you know, people will be the effects of
18 marijuana, the high, you know, basically and the issues
19 that induce the effects on memory, the executive function,
20 problems with balance and the rest of the effects that we
21 get from marijuana.

22 There's also a couple of other active
23 metabolites as we call them which is another eleven
24 hydroxy THC which is also an active drug and when it gets
25 into the brain it give an effect too. There's an inactive

1 metabolite and that's what's also -- it's usually seen in
2 the urine and that's kind the fingerprint of cocaine but
3 it doesn't -- when that's in the brain it doesn't cause
4 these effects in the brain of problems with memory, of
5 problems with balance, you know, the typical -- it doesn't
6 cause the high that we're aware of.

7 Now, let me relate this to the blood panel that
8 we see that was noted in the toxicology findings to give
9 you some reference here. There was a THC blood level of
10 5.4 nanogram per ml. There was this eleven hydroxy which
11 is active drug. So, that produces activity in the brain,
12 in the blood and we approximate what's in the blood gets
13 in the brain of a 2.1. Okay. I know those numbers don't
14 really mean anything to you and I'll explain what they
15 mean. And then there's the inactive metabolite which is
16 this carboxy THC and it was one hundred and fifty-two.
17 So, the question is what do these mean.

18 Well, generally there's -- let me explain.
19 There's two states that have enacted had legalized
20 marijuana and the two states that have enacted these
21 legalized marijuana laws say that if you have a blood
22 level of THC of five nanogram per ml, you're automatically
23 considered impaired. So, let me give reference to that.
24 Okay. So, Mr. Bradley had a THC level of 5.4. So, that
25 gives you some reference here.

1 Q Okay. So, if this is a blood draw twenty-two
2 hours after the interrogation when Miranda was read, do
3 you have an opinion to a degree of medical or scientific
4 certainty of what the effect would be of this blood level
5 we see let's say at the cannabinoid level, THC level, at
6 the time of the blood draw? Because that's when the
7 picture is taken so to speak of what the level was at that
8 point, but if you can go twenty-two hours earlier when
9 Miranda was read, are you able to extrapolate or give an
10 opinion to a degree of scientific certainty of where that
11 level would have been twenty-two hours earlier of THC?

12 A I can tell you this, there's no good
13 pharmacological equation that can give you an exact number
14 how high the THC was, how high this eleven hydroxy THC
15 was, but what I can tell you it was certainly higher than
16 it was 1.2 days later and that's a given.

17 Q Higher?

18 A Yes.

19 Q Okay. Are you able to give an opinion to a
20 degree of scientific certainty of what effects would be
21 manifested on a person's cognitive processing of that
22 level of THC at the time the blood was drawn and then back
23 twenty-two hours earlier?

24 A I can infer and this is from what's known about
25 THC and all the data that the levels, the per se levels

1 taken from the research that the THC of five nanogram per
2 ml is considered impairment in other states and even in
3 some states any amount of THC is considered direct
4 impairment. There's been various studies. So, taking
5 that data that that's impairment, you know, a level of
6 five. And again, that's 1.2 days later so we have to
7 figure that if you extrapolate back, that level was higher
8 than the 5.2 so he's impaired by that logic.

9 Q So, the level twenty-two hours later would be
10 what's considered to be assumed impairment and illegal in
11 the two states that you mentioned?

12 A Yes.

13 Q And that's all by itself, that's THC all by
14 itself?

15 A That's THC.

16 Q And the other drugs that are found, and now
17 talking about the opiate panel, in the urine drug screen,
18 now would you talk about -- address the drugs that were
19 found there -- again, this is twenty-two hours after
20 Mr. Bradley was interrogated and had Miranda rights read
21 to him, that the drugs that were found with the
22 benzodiazepines, opiates, cocaine metabolite, cannabinoids
23 and can you give an opinion to a degree of scientific
24 certainty of what effects there will be on the ability --
25 on cognitive abilities of that mixture of drugs?

1 A With urine there's no relationship between
2 urine levels and blood levels so I can't make that
3 connection, but what I can tell you about it, and I can
4 take each separately, is that if there's hydrocodone in
5 the urine what that means is that Mr. Bradley was exposed
6 or he took a certain amount of hydrocodone within a three
7 day period.

8 Q Would that be like --

9 A And that's Lortab.

10 Q Lortab is like cough syrup?

11 A Yes.

12 Q With codeine, that sort of thing?

13 A Yeah. Well, whatever form it was, in history
14 he says it's cough syrup so I'm assuming that that's what
15 it was, but that's the information that I can glean from a
16 urine test. It doesn't tell you how much, it just tells
17 you it's there and it tells you within a certain period of
18 time it was taken.

19 Q Let me ask you that also just so we put it in
20 perspective. What period of time would there be
21 detectable benzodiazepines in the urine? I mean, how far
22 back would a person have to have ingested that for it to
23 be detectable, how recently I should say?

24 A With Xanax anywhere between, you know, three to
25 five days but we already know Xanax is in the blood so

1 that, you know, he has it in him, you know, right at that
2 time.

3 Q And THC?

4 A Yeah.

5 Q How about cocaine and opiates and how long does
6 is that -- is it detectable in the urine?

7 A Cocaine is detectable in the urine, when you
8 see it in the urine it indicates that somebody's been
9 exposed it, they've either usually smoke it within a three
10 day period.

11 Q Okay. And so given that you're being asked to
12 express an opinion about the effects on the cognitive
13 abilities of Mr. Bradley at the time that Miranda was
14 waived, would you also want to consider his specific drug
15 history?

16 A Yes.

17 Q And did you obtain that?

18 A Yes, I did.

19 Q And relating back to his drug history as, you
20 know, as far as -- and as much as you can rely on that,
21 what did you learn of that and how did that affect your
22 opinion?

23 A I learned about, you know, how long he had been
24 using it.

25 Q It being? Using what?

1 A I learned about how long he had been using
2 drugs from, you know, from a point in time and I used
3 about -- I learned about how much he uses from day-to-day
4 and his patterns and what I wanted to find out was
5 information about something called tolerance, how much he
6 needed in order to get high and his access to drugs
7 because that's an important determinate in whether people
8 feel the effects of drugs or not is, you know, how much
9 they use, how long they've been using because it's
10 possible that people if they've been using a long time
11 with some drugs don't feel the effects of it. So, that
12 was important to glean from that history.

13 Q When did history begin of marijuana use?

14 A He started using marijuana at the age of
15 twelve.

16 Q And is there -- are you able to give an opinion
17 about whether a person is addicted to a drug? You
18 recognize that some people may be addicted to drugs and
19 that's kind of a basic question.

20 A Yeah, I can recognize an addiction pattern, you
21 know, through the history, yes.

22 Q And would you say that Mr. Bradley fits a
23 pattern of a drug addiction?

24 A I noted patterns of drug addiction.

25 Q To any particular drugs in Mr. Bradley?

1 A Mr. Bradley has continuously used marijuana for
2 a long time and has never tried to stop on his own and
3 it's certainly interfered with his life time pursuits and,
4 you know, at this point his health. So, you know, that's
5 really the definition of addiction, it's interference in
6 issues of either work or health, you know, social issues
7 and that's really what addiction is, people seek and go
8 out of their way to get a drug.

9 Q Also other aspects of the history that you
10 gained from Mr. Bradley, were -- was his history confirmed
11 by or at least consistent with the toxicology report that
12 you considered?

13 A Yes, it was.

14 Q Okay. And in particular the two week period
15 preceding the shooting, what history did you gain and how
16 does that relate to your opinion about the effect on his
17 cognitive functioning at the time of the waiver of
18 Miranda?

19 A I know that he was using drugs or at least --
20 by reports that I read and his own admission he was using
21 drugs consistently during the two week period prior to the
22 events that occurred.

23 Q What drugs and in what quantity?

24 A He said that he was using blunts which are
25 marijuana that are rolled into tobacco or cigars which are

1 much higher than regular joints, using about ten of those
2 a day. He said that he had -- he started back using Xanax
3 and he hadn't been using those in a long time so that was
4 that was something new again for him and had started
5 using, you know, several of those a day, in the last
6 particular day probably eight to ten, you know, before the
7 event. He said he was using a drug called monkeys which
8 are amphetamine like substances and he had used about ten
9 of those although he said he really didn't get an effect
10 from those and that was the night before the shooting had
11 occurred.

12 Q So, if they were weak pills, assuming they even
13 were monkeys, then because of the weakness would be a
14 reason why they may not show up in the toxicology screen?

15 A That's very possible. And then he said that he
16 was using hallucinogenic mushrooms, about two to three of
17 those on the morning of the shooting or, you know, early
18 in the morning and he said that he had, you know, what's
19 called dysphoria, a bad effect from it, and he didn't
20 really like the feel of it. And then he said he had used
21 cocaine, powder cocaine, several lines of it.

22 Q Now, would that be also confirmed by -- that
23 drug consumption by any other materials that you
24 considered in this case besides the toxicology report like
25 the -- your consideration of the statement by Andria

1 Kerchner?

2 A Yes, she corroborated it, she said the same
3 thing, that he really didn't use cocaine except that one
4 time and that's -- when I took the history of Mr. Bradley
5 that's what he said, he didn't use very much cocaine, it
6 was just this time. He said that he didn't use the Xanax,
7 he just started using it with Miss Kerchner at this
8 particular time that he had -- this was a drug that he had
9 used with he was younger but he didn't start using it
10 again until he met up with Miss Kerchner again.

11 Q Now, going back to a point in time on March the
12 6th starting about 2:00 a.m. or in that timeframe, was
13 there a point in time when Mr. Bradley and Miss Kerchner's
14 drug consumption increased and what affect would that have
15 had on Mr. Bradley continuing up until he was interrogated
16 by the police some sixteen hours later?

17 A He said he just kept using until he passed out.

18 Q Using?

19 A Drugs, he said he used Xanax until he passed
20 out which was at about 3:00 to 4:00 in the morning and
21 then used the mushrooms about at that time so everything
22 just --

23 Q Cocaine?

24 A Cocaine. So, things just came to a head.

25 Q Hydrocodone which would be the --

1 A The hydrocodone, right.

2 Q -- cough syrup with codeine in it?

3 A Right.

4 Q Did he indicate an amount of that that he had
5 taken?

6 A He said two to four ounces of hydrocodone which
7 would have been about thirty milligrams or so.

8 Q So, given the amount of drugs that he consumed
9 and the combination of them and the blood toxicology
10 report and urine toxicology report some twenty-nine hours
11 after -- or some twenty-two hours I should say after the
12 marijuana -- after the interrogation, would you say that
13 the amount of drugs that were consumed would have had a
14 peak effect on Mr. Bradley before he was actually arrested
15 and taken into custody? In other words, the time that he
16 gave his Miranda rights, considering all the drugs he took
17 and his drug history, would you say that he would have
18 been more influenced in terms of his cognitive functioning
19 at a point in time before he was arrested?

20 A Yes, I would.

21 Q And after he started taking this increased
22 amount of drugs at 2:00 a.m.?

23 A I mean, you're asking me a question when the
24 drugs would have peak? About at that point.

25 Q Okay.

1 A I would say probably early in the morning,
2 early in the morning maybe between, you know, 3:00, some
3 time -- you know, from what the history is probably
4 peaking I would say maybe, maybe 5:00, 6:00 a.m. would
5 have been a peak time.

6 Q And then from then on it would have been, you
7 know, assuming from the time the drug use was stopped, was
8 there ever a time that that was stopped other than when he
9 was arrested?

10 A He said that he stopped using about 4:00 a.m.

11 Q And so it would have been on a decline actually
12 as reflected in the toxicology, you know, finding in the
13 blood and urine from that point until the drug and urine
14 samples were taken twenty some hours later?

15 A Yeah. Urine is funny, urine can sometimes
16 increase because drugs accumulate in the urine so it would
17 be hard to tell, but the peak drug blood levels would
18 probably have occurred sometime between that point.

19 Q Okay. And so if Mr. Bradley was in custody at
20 about between 11:00a.m. and noon on March the 6th, then it
21 would be a reasonable inference that all that he consumed
22 and all that effect took place before that when we went
23 into police custody?

24 A Yes.

25 Q Are you able to give, if you can then you will,

1 but if you can't you won't, are you able to give an
2 opinion to a degree of scientific certainty of the effects
3 of this mixture of drugs and given Mr. Bradley's history
4 of drug use and the effects on his cognitive functioning
5 at the time that he was interrogated by the police? What
6 is your -- what is the best opinion that you can give, the
7 most accurate opinion that you can give at that point in
8 time of the effects of drugs on Mr. Bradley?

9 A I can give an opinion based on my reviewing the
10 DVDs and --

11 Q With everything else?

12 A Yeah, with everything that I've seen. He
13 couldn't sit up in a chair, he was clearly intoxicated, he
14 was mumbling, he was sleepy, he was -- he appeared to be
15 very confused. So, certainly he was under the influence
16 of -- I can't tell you which drug was predominant but
17 certainly a depressive drug which could have been the, you
18 know, predominating effect, Alprazolam, could have been
19 the marijuana, but depressant drugs.

20 MR. MOORE: I don't have any further questions
21 at this time.

22 THE COURT: Okay. Cross examination by the
23 State.

24
25

CROSS EXAMINATION

1
2 BY MR. MCMASTER:

3 Q Good morning, Dr. Skolly.

4 A Good morning.

5 Q Let's talk about your professional association
6 as a forensic toxicologist. You got your doctorate of
7 pharmacy degree back in 1993, is that correct?

8 A Yes, I did.

9 Q And you were employed and practiced in the area
10 of pharmacology during that period forward, 1993 until
11 today, is that correct?

12 A Yes, I was a director of a poison center.

13 Q And it wasn't until December of 2008 you got
14 your Masters in forensic toxicology, is that correct?

15 A That's correct.

16 Q Is that the first time you received any type of
17 degree in forensic toxicology?

18 A A type of degree in forensic, correct.

19 Q And then you also testified you subsequently
20 got a Masters degree in drug chemistry in December of
21 2012?

22 A That's correct.

23 Q What clinical experience have you had in
24 forensic toxicology over your entire career span?

25 A I was a director of initially the Miami Poison

1 Center and then I worked at the Cardinal Glenn Poison
2 Center and then I was the director of the Penn State
3 Poison Center. So, I've been involved in working with
4 toxicology in those aspects. And then also it was in 1996
5 that I received my diplomat of the American Board of
6 Applied Toxicology. So, I am involved in clinical. But
7 the difference between clinical and forensic, forensic
8 means, as you might guess, according to the, according to
9 the law but still the area's in toxicology. So, working
10 with patients who are overdosed and still interpreting
11 data.

12 Q Do you have a doctorate degree in forensic
13 toxicology?

14 A No, I don't.

15 Q Are you Board certified in forensic toxicology?

16 A No, I'm not.

17 Q Have you testified in courts as an expert in
18 forensic toxicology in the past?

19 A Yes.

20 Q How many occasions?

21 A I would say probably twelve.

22 Q Twelve?

23 A Probably about twelve.

24 Q And do you have experience interviewing
25 individuals regarding their past and current drug use?

1 A Yes.

2 Q What type of experience did you have when you
3 did that?

4 A I've been doing it for a long time, as a
5 pharmacist one has interview experience and gets that in
6 the very basic training in school of drug interview
7 skills, that's taught as a basic course.

8 Q Okay. Let's talk the results of your
9 examination. You reviewed various materials to come to
10 your conclusion, you interviewed the defendant a couple of
11 times and reviewed the lab report that the Wuesthoff
12 people prepared, is that correct?

13 A Yes.

14 Q And including the history that you took from
15 Mr. Bradley himself and the information you got from the
16 deposition of Miss Kerchner, it's clear to you that the
17 ingestion of all of these different drugs that Mr. Bradley
18 talked about was a voluntary ingestion of the drugs, isn't
19 that correct?

20 A Yes, that's true.

21 Q He wasn't prescribed any of these drugs by
22 anybody and he wasn't taking them according to any type of
23 medicinal instruction?

24 A No.

25 Q Purely recreational drugs?

1 A That's true.

2 Q Now, you indicated that -- I mad the statement
3 I believe that what's in the blood is pretty much equal to
4 what's in the brain. So, the drugs that are detected in
5 the blood least are having an effect on the brain, is that
6 correct?

7 A True.

8 Q And you say it's different with the urine?

9 A That's true.

10 Q That the drugs detected in the urine only
11 really gave you an idea as to what drugs a defendant or a
12 particular person may have taken in a particular period of
13 time prior to the administration of the test?

14 A That's true.

15 Q So, with respect to drugs that we know that
16 were affecting Mr. Bradley at least as of March 7th at the
17 time that the test were administered to him were THC and
18 the Xanax, those were still in his blood?

19 A Yes.

20 Q All of the other ones that were mentioned were
21 strictly in the urine?

22 A That's true.

23 Q No way of telling for sure whether he in fact
24 had taken those say two days prior to the date he was
25 interviewed on March 6th or March 6th itself in the

1 morning hours of 2:00 to 4:00 a.m. I think when he told
2 you he stopped taking the drugs?

3 A To be absolutely sure one would have to get a
4 blood test.

5 Q And closer in time to when the actual interview
6 took place?

7 A That's correct.

8 Q Now, you did tell Mr. Moore that you formed
9 various opinions about the drug usage and its effect on
10 Mr. Bradley's ability to voluntarily waive his Miranda
11 rights, is that correct?

12 A No, I didn't specifically say to waive his
13 Miranda rights but the actions involved in making those
14 decisions.

15 Q All right. So, you believe that he was
16 impaired in making the decision to waive his Miranda
17 rights?

18 A That's correct.

19 Q You did, of course, see on the DVD that he was
20 read his Miranda rights?

21 A I did see that.

22 Q Each one individually by Detective Simock?

23 A I saw that.

24 Q And that he in fact affirmatively indicated
25 that he understood what the rights were?

1 A He said that.

2 Q And he also signed the Miranda form that the
3 detective had been reading from, I think he initialed it
4 right on camera, isn't that correct?

5 A I saw that he signed something, I don't know
6 exactly what he did.

7 Q As I understand it with respect to the
8 marijuana that was determined to be in his blood at the
9 time of the testing, the level was a 5.4.

10 A That's 5.4 in the blood, that's correct, and
11 that's THC.

12 Q And that's slightly over the presumptive level
13 in a couple of different states that have levels of THC
14 for impaired driving?

15 A That's -- yeah, that's correct.

16 Q You're not suggesting to the ladies and
17 gentlemen of the jury that someone who's slightly over the
18 cutoff level for impaired driving is incapable of waiving
19 Miranda rights, are you?

20 A But that was taken a time later, that was taken
21 20.5 hours later.

22 Q Okay. You're saying somebody who had even
23 little higher level of marijuana in their system is
24 incapable of waiving their Miranda rights?

25 A I can't tell you exactly how high it is and

1 then that he was also impaired by the combination of other
2 drugs, and clearly he was impaired looking at that video,
3 he fell off the chair three times.

4 Q Fell off the chair three times?

5 A Yes.

6 Q You did see him get off of the chair and walk
7 around and do demonstrations and go sit back down again,
8 didn't you.

9 A And that I clearly saw him fall three times.

10 Q Are you talking about falling off at the end of
11 interview where he's sitting in the room lone and wants to
12 sit on the floor rather than the chair?

13 A No, that was at the end he slide forward and
14 fell on the floor.

15 Q Now, in your report you indicate that it is not
16 possible to perform bad calculations to interpret an exact
17 drug level as the elimination rate of Alprazolam is not
18 known, is that correct?

19 A No, not Alprazolam, the THC.

20 Q Do you have your report in front of you?

21 A Did I say Alprazolam? Alprazolam is first
22 kinetics. So, I mean, you can make an approximation on
23 Alprazolam.

24 Q You did in fact make an approximation?

25 A I did.

1 Q You used a half --

2 A Which report is that?

3 Q This is the --

4 A The second one?

5 Q The first one.

6 A The first one you can make an approximation
7 because I used first order, first order pharmacokinetics
8 and based on the half-life of eleven hours.

9 Q I see that you did that, I was curious about
10 why you did it once you made the statement that it is not
11 possible to perform bad calculations to interpret an exact
12 drug level as the elimination rate of Alprazolam is not
13 known?

14 A It is known. That might have been an error.

15 Q Page 11.

16 MR. MOORE: What's the date of that report,
17 please?

18 MR. MCMASTER: It is the December 4th, 2013,
19 page 11. It's under the paragraph numbered number
20 two approximately halfway down.

21 THE WITNESS: Maybe it's the exact -- maybe
22 exact but an approximate. The word exact. I used --
23 I used the half-life of eleven hours which is in the
24 package insert. So, maybe the exact means -- when I
25 put it this way, we can't be absolutely sure that

1 it's eleven but we do know that it's somewhere near
2 probably eleven to fifteen. So, that's a good guess
3 or estimate.

4 BY MR. MCMASTER:

5 Q You also came to the opinion that Mr. Bradley
6 was under the influence of codeine?

7 A I reevaluated that and I saw that he was not,
8 it was more likely going to be hydrocodone.

9 Q So, paragraph three in your initial report is
10 in error?

11 A That's -- that's probably the most
12 reasonably -- it seems reasonable that if he had it in the
13 urine he would have been under the influence and based on
14 the circumstances with his -- with the history that was
15 taken, with the information known and not -- and
16 hydrocodone having a very short half-life of about two to
17 three hours and not being able to get a blood level,
18 that's a reasonable explanation.

19 Q There was no codeine in Mr. Bradley's blood
20 sample, was there?

21 A No, but even if it were codeine it still has a
22 short half-life. We do know it was hydrocodone that he
23 took.

24 Q You also came to the conclusion that
25 Mr. Bradley was under the influence of promethazine?

1 A He didn't take promethazine because what he
2 ended up taking was hydrocodone, the Lortabs. So, no,
3 that --

4 Q That statement is also in error?

5 A That's correct, after I reviewed it it was
6 hydrocodone.

7 Q The Masters degree that you got in forensic
8 toxicology, that was at the University of Florida College
9 of Veterinary Medicine?

10 A That was through the college of veterinary
11 medicine, that's correct.

12 Q And the Masters you got in drug chemistry in
13 December of 2012, that was at the University of Florida
14 College of Pharmacy?

15 A That's correct.

16 Q Did you know Dr. Bruce Goldberger while you
17 were present at the University of Florida?

18 A I do know him, yes.

19 MR. MCMASTER: No further questions.

20 THE COURT: Okay. Redirect by the Defense.

21 REDIRECT EXAMINATION

22 BY MR. MOORE:

23 Q You were asked by Mr. Master, well, he made
24 reference to materials that you considered, you also
25 considered the results of a PET scan imaging and an MRI

1 imaging in your opinion, did you now?

2 A Yes, I did.

3 Q Did they inform your opinion in any way the
4 findings from the MRI and the PET scan?

5 A No, they didn't.

6 Q So, they didn't have an effect one way or the
7 other on your opinion you've given today?

8 A Correct.

9 Q Are you aware of studies that have been done of
10 drugs or -- these drugs in particular that we've been
11 discussing on people who have the impairment in the
12 orbital frontal cortex of the brain?

13 A Yes.

14 Q Okay. And -- I mean -- so, what would the
15 effects be of these drugs on a person with impairment in
16 that part of the brain?

17 First of all, the orbital frontal as you said
18 earlier has to do with impulse control among other things?

19 A Right. I can tell you a simple answer for that
20 and that's when I was doing researching at Shire Drugs we
21 studied medications for that and it's a condition that
22 everybody is probably aware of ADHD, attention deficit
23 hyperactivity disorder is an impairment in that area of
24 the brain. So, impulse control.

25 Q Impulsive decisions?

1 A Right, attention, hyperactivity in some people
2 but mostly, you know, poor decision making and poor
3 executive function and that's, you know, where many people
4 are treated for this.

5 Q Now, you spoke to Mr. Bradley more than once?
6 How many times did you meet with Mr. Bradley?

7 A I met with him twice.

8 Q Okay. And as you gathered information, was it
9 for purposes of clarifying to make sure that you had the
10 most accurate profile of Mr. Bradley?

11 A Right, yeah, there was, there was information
12 that I gathered the first time and then after reading Miss
13 Kerchner's review, there were things that didn't make
14 sense and then after reading the medical review there were
15 things that didn't make sense and I needed clarification.

16 MR. MOORE: Could we approach?

17 THE COURT: Yes, you may.

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

20 MR. MOORE: The DVD that she viewed includes
21 parts -- the earlier part where Mr. Bradley is up and
22 down before the interview actually starts and that's
23 the part where he falls out of the chair a couple of
24 times and the jury didn't see that. So, the problem
25 is the State will then point out to the jury that you

1 can only see him falling off the chair at one time
2 when in fact she has actually seen that in a DVD.
3 So, my request is that, you know, we have some sort
4 of a stipulation on the fact that what she saw was
5 included in the parts that were edited out or the
6 State not be allowed to make -- you know, the damage
7 is done, even if they don't say that the jury's going
8 to look at the DVD and say wait a minute, he only
9 fell off the chair once when in fact the part that
10 she viewed has him falling off the chair, you know, a
11 couple of other times. So, I would ask that if she
12 that -- I be able to go into the parts just, you
13 know, she viewed a longer version which showed him
14 sleeping and it would have been in that portion that
15 she viewed him falling.

16 THE COURT: That the jury didn't see.

17 MR. MCMASTER: That's fine.

18 THE COURT: Okay. Thank you. Thank you for
19 having a bench conference on that.

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

22 BY MR. MOORE:

23 Q Doctor, do you recall the portions in the DVD
24 that you viewed where you observed Mr. Bradley falling off
25 the chair, where would that have been?

1 A Can I go ahead and look at my report?

2 Q Yes, ma'am, if you need to to refresh your
3 memory, of course.

4 A I believe that -- I remember that there were
5 three distinct areas where he fell off the chair, and I
6 remember one was in the very beginning when he was sat
7 down in the chair at about 7:33. Let's see, that was one.
8 I know he went from side to side.

9 Q Side to side?

10 A Side to side, yeah.

11 Q Does that mean what, he just lost his balance?

12 A He lost his balance.

13 Q But not necessarily falling off the chair?

14 A Right.

15 Q Where there portions of the DVD you viewed
16 where he was sleeping?

17 A Right.

18 Q Before the interview began?

19 A Right.

20 Q And so were any of these things that you
21 observed in that portion before the officers actually came
22 in and started interrogating him?

23 A Yes, I saw that.

24 Q And did you notice that during the
25 interrogation part of it when the officers are in the room

1 that when Mr. Bradley was moving around the room whatever
2 he's doing, many parts of that were obscured because there
3 was an officer who was standing in front of the camera?

4 A That's true, I couldn't see any of that.

5 MR. MOORE: No further questions.

6 THE COURT: Okay. Recross by the State.

7 MR. MCMASTER: Nothing on that, Judge.

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

10 THE WITNESS: Thank you, Your Honor.

11 (Thereupon, the witness exited the witness
12 stand.)

13 THE COURT: Okay. Other witnesses by the
14 Defense.

15 MR. MOORE: We need to approach.

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

18 MR. MOORE: We don't have anymore at this time.
19 So, the next step is we ask the court to adjourn so
20 that we can -- I can get the depositions out of the
21 way at least of Dr. Goldberger and possibly Dr. Zapf.

22 THE COURT: Are we set for those?

23 MR. MOORE: For this afternoon.

24 MR. MCMASTER: For Dr. Goldberger, yes, this
25 afternoon.

1 THE COURT: Okay.

2 MR. MOORE: And then tomorrow or Monday rather,
3 I lost tract, Monday we'll start with Dr. Olander
4 first thing.

5 THE COURT: Okay. What time is Dr. Olander
6 scheduled to be here?

7 MR. MOORE: Whenever you want her here she'll
8 be here.

9 THE COURT: Do we want to do 8:30? Can we do
10 8:30.

11 MR. MOORE: I'd like to sleep in frankly.

12 THE COURT: So, what does that mean?

13 MR. MOORE: I'm kidding.

14 THE COURT: Can we do 10:00?

15 MR. LANNING: Besides Olander, did we have
16 anybody (unintelligible).

17 MR. MOORE: Just her.

18 MR. LANNING: We just have her. Are you
19 contemplating closings on Monday or Tuesday?

20 MR. BROWN: Tuesday.

21 THE COURT: You're going to have witnesses
22 scheduled in the afternoon?

23 MR. MOORE: They got to do the rebuttals on
24 Tuesday.

25 MR. BROWN: Yeah, they have the

1 (unintelligible) in the morning.

2 THE COURT: When are we going to do jury
3 instructions?

4 MR. MOORE: Tuesday afternoon.

5 MR. BROWN: Well, obviously we have
6 (unintelligible), probably Monday afternoon.

7 MR. MOORE: Monday afternoon then.

8 MR. BROWN: With closings Tuesday. That's why
9 I don't think even if we were to somehow get down our
10 rebuttal by even the noon hour or early in the
11 afternoon, I don't think there's time to do jury
12 instructions and then do closings.

13 THE COURT: So, you think closings Tuesday
14 morning?

15 MR. BROWN: Tuesday, yes.

16 THE COURT: And go to the jury -- jury
17 instructions and then thereafter, go to the jury.

18 MR. BROWN: Judge, as far as our timeframe for
19 Monday, I'm going to be making a request, obviously I
20 will type it up, but some type of diminished capacity
21 of instruction to the jury because I think the
22 testimony has clearly gotten in that area. I expect
23 based on the Court's ruling and the questioning today
24 that they're going to go into that to some degree
25 with their expert on Monday and clearly diminished

1 capacity is not a defense.

2 MR. MOORE: We are putting all of this, I'm
3 very careful to put all of it in terms of the ability
4 to comprehend and waive Miranda and the voluntariness
5 of that and the voluntariness of the statement. I
6 mean, I've been very careful to put it in those terms
7 and focus it all on those issues.

8 THE COURT: I haven't seen it go behind that so
9 far.

10 MR. BROWN: Well, she's talking about the
11 effect overall it has on the brain and long term
12 usage and disability or impulse control and executive
13 decision making, she's talking in broad terms. I
14 acknowledge Defense counsel turns around and puts it
15 in the context of when he asked her specifically as
16 far as the waiving the Miranda, but she's up there,
17 she's already testified to the long term effect that
18 marijuana has on a person's executive ability,
19 ability to make decisions, to act reasonable, impulse
20 control to make rash decisions, I can bring my notes
21 and give you the exact verbiage that she said but
22 clearly this is the bleed over effect and that was
23 our concern all along and I didn't feel that it was
24 admissible. I understand the Court's ruling and I
25 think the jury should be entitled to be told because

1 there is no dispute that diminished capacity is not a
2 defense.

3 MR. MOORE: Those are all factors that the jury
4 can consider and that's why we offered them and the
5 whole issue of voluntariness of the statement and
6 Miranda.

7 MR. LANNING: And it also goes toward --

8 MR. MOORE: Self-defense.

9 THE JURY PANEL: -- self-defense. In the video
10 you hear Mr. Bradley say why you going to shoot me
11 talking to Deputy Pill. Deputy Pill -- you also see
12 Deputy Pill tug on her weapon a few times, his
13 perception -- he's going to be entitled to a
14 self-defense instruction.

15 THE COURT: All right. Well, I guess wheel
16 address that -- I mean, do you want to address that
17 after we let the jury go or are you ready to address
18 that?

19 MR. MOORE: Well, we talked --

20 THE COURT: Let's let them go and we can
21 readdress it without it being a bench conference.

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

24 THE COURT: Okay. Ladies and gentlemen of the
25 jury, we have some proceedings that we need to

1 conduct outside your presence for the afternoon. So,
2 we are done with you for today, there's no --
3 anything else that we can do in your presence today,
4 we have some other matters that need to be conducted
5 outside the presence of the jury. We will reconvene
6 on Monday. We are moving the case along, we expect
7 the case to come to a conclusion possibly Tuesday
8 just so you know, maybe deliberating Tuesday.

9 I tell you that because once you start
10 deliberating then it's going to be up to you as to
11 how long -- we think you'll start deliberating
12 possibly Tuesday afternoon, how long you want to
13 deliberate. I kind of leave that up to you. If you
14 say Judge, we're done at 5:00, want to come back
15 tomorrow, then we'll come back tomorrow. If you say
16 Judge, you know, we want to stay until we get this
17 done, we're happy to do that, you know, we've been
18 here until quarter to 1:00, I think that's the latest
19 we've been here but we're happy to do that, we will
20 accommodate you and your request, but it will be up
21 to you to decide what you want to do.

22 I tell you that in case you -- you can't really
23 discuss that with each other until that time. So,
24 you might want to -- if you have plans Tuesday night
25 that may be -- you might want to think about that,

1 whether you want to go late or whether you want to
2 go -- it's an individual decision at this moment to
3 make -- you know, if you have plans for Tuesday night
4 to maybe change those or not change those depending
5 on how important they are and then you can discuss it
6 with each other when you can start deliberating, but
7 I'm giving you that heads up that that's our
8 expectation at this time. So -- but we will be
9 recessing for today for the jury. I'm going to ask
10 you to be back here at 9:00 a.m. on Monday morning,
11 report to the jury assembly room.

12 During this break you must continue to abide by
13 your rules governing your service as a juror.
14 Specifically, do not discuss this case among
15 yourselves or with anyone else or allow anyone to
16 discuss it in your presence. Do not speak to the
17 lawyers, the parties or the witnesses about anything.
18 You must avoid reading newspaper headlines and/or
19 articles relating to this trial or its participants.
20 Avoid seeing or hearing television, radio or Internet
21 comments about this case and do not conduct any
22 independent research yourself regarding any matters
23 concerning this case. Okay. For the jury court will
24 be in recess until 9:00 a.m. on Monday morning.
25 Thank you.

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

4 THE COURT: Okay. Please be seated. When we
5 were up at the bench there was some discussions about
6 an instruction regarding diminished capacity, do we
7 want to try to address that.

8 MR. MOORE: Well, may I have a moment?

9 THE COURT: Yes, you may.

10 (Thereupon, a pause was taken in the
11 proceedings.)

12 THE COURT: If you could get closer to the
13 podium because your mic is off.

14 MR. MOORE: May we approach?

15 THE COURT: Yes, you may.

16 (Thereupon, a benchside conference was had out
17 of the hearing of the audience as follows:)

18 MR. MOORE: This is what we're requesting. We
19 would like to have a chance to prepare and have case
20 law. I mean, this is kind of getting to the jury
21 instruction part of it before we're actually there.
22 We need the time to prepare that and be able to
23 address the self-defense aspects, which there's an
24 instruction the jury will get, and also -- well, the
25 voluntariness aspect as well. So, we want to be

1 prepared to address that and we don't feel like we
2 are right now. So, we will be when we get to the
3 jury instruction part of the trial, but at this point
4 we're asking for a chance to prepare to meet this
5 which is just now being brought up in the middle of
6 the trial.

7 THE COURT: Well, we discussed jury
8 instructions may be late or in the afternoon on
9 Monday.

10 MR. BROWN: I'm going to be asking the Court to
11 instruct the jury prior to the next expert witness
12 because I think they've gotten far afield from the
13 law. It's clear diminished capacity in whatever form
14 is not relevant in a guilt phase, period, and there
15 is no diminished capacity defense, it doesn't apply
16 to intent, it doesn't apply to anything.

17 MR. MOORE: It applies -- it does not and we
18 have been very careful, I've been very careful to put
19 it in terms of the context for which we're offering
20 it which is voluntariness of the statement, but it
21 also is part of the circumstances that Mr. Bradley
22 was confronted by and that's a jury determination,
23 Judge. We all know what the facts are here but
24 that's for the jury to decide because they will get
25 that 3. whatever, the justifiable use of deadly force

1 instruction, and it's for the jury to decide whether
2 the response of Mr. Bradley and using deadly force is
3 reasonable in light of the circumstances in which he
4 acted and that's the instruction and it's for the
5 jury to decide what the circumstances are.

6 Now, we have never put this in terms of
7 diminished capacity or offered it as a defense
8 outside the voluntariness instruction, but when the
9 jury gets that instruction on justifiable use of
10 deadly force then they will have -- and it's their
11 obligation to decide if under the circumstances, all
12 of this is part of the circumstances, his actions
13 were justifiable.

14 MR. BROWN: This is the problem and this is why
15 we objected to it through this witness. Diminished
16 capacity is not a defense, the jury cannot consider
17 diminished capacity to whether he had an intent to
18 kill, it is not relevant, it's not a defense. Now
19 they brought it in through this witness and now the
20 Defense is making that argument the jury can consider
21 it. No they can't and they need to be told they
22 can't consider it.

23 THE COURT: I don't have --

24 MR. MOORE: They can consider it for the points
25 of law that they're going to be instructed on which

1 are the two that I've been --

2 THE COURT: Are you objecting, Mr. Moore, to
3 giving the diminished capacity instruction early or
4 are you objecting to give it at all?

5 MR. MOORE: Giving it at all. First of all, I
6 don't have an instruction that I have read that Mr.
7 Brown proposes to give. So, I'd like to see what
8 that instruction is and then I'll have a more
9 specific idea of what my objections are but I'm
10 objecting to the jury being informed about that all
11 together.

12 THE COURT: We're not going to get to sleep in
13 and we'll take this up at 8:30 on Monday morning.

14 MR. LANNING: Darn it.

15 THE COURT: Before the first witness.

16 MR. LANNING: It's Mr. Brown's fault.

17 MR. BROWN: A good compromise is he can sleep
18 in tomorrow.

19 THE COURT: You could.

20 MR. MOORE: No, I can't, there's work to be
21 done.

22 THE COURT: We'll do that at 8:30 on Monday
23 morning. Okay. Thank you.

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

1 THE COURT: Okay. We're going to address the
2 issue of diminished capacity at 8:30 on Monday
3 morning. The jury is suppose to be here at 9:00 a.m.
4 on Monday morning and as close thereto as we can I
5 expect to continue with examination of witnesses.

6 Okay. Any questions or concerns before we
7 recess for the day?

8 MR. BROWN: Judge, we do have confirmation of
9 our doctor that 4/7 is not available, that she's
10 travelling that day and she will be available
11 (unintelligible). So, both of our witnesses are
12 available for the depos this afternoon.

13 MR. MOORE: What time?

14 MR. BROWN: Dr. Zapf is available until 4:00,
15 Dr. Goldberger indicated he was available all
16 afternoon so we'll get with the court reporter and
17 start at 1:00 o'clock, but I just wanted to advise
18 the Court if Defense counsel finishes their --
19 assuming we go forward to the penalty phase, if they
20 finish on that Friday which would be the 4th, we
21 would ask to pick back up then on Tuesday the 8th.

22 THE COURT: Okay.

23 MR. BROWN: They'll be starting on that
24 Thursday. So if they haven't finished on Friday,
25 they carry it over to Monday then there won't be an

1 issue, but if they finish on Friday --

2 THE COURT: You want have your witness until
3 Tuesday.

4 MR. BROWN: Right.

5 THE COURT: Okay. We'll address that. Okay.
6 So, court will be in recess for today, we'll be here
7 at 8:30 on Monday morning. Okay. Thank you.

8 (Thereupon, court was in recess for the day,
9 3/28/2014. Thereafter, court was reconvened on 3/31/2014
10 and the proceedings were had as follows:)

11 THE COURT: We can bring out Mr. Bradley.

12 (Thereupon, the defendant was escorted into the
13 courtroom by the court deputy.)

14 THE COURT: The issue that we were going to
15 address this morning was the State's request for a
16 jury instruction on diminished capacity, is the State
17 ready to proceed on that?

18 MR. BROWN: Yes.

19 THE COURT: Okay. You may do so.

20 MR. BROWN: If I may approach?

21 THE COURT: Yes, you may.

22 MR. MOORE: We agree. I agree with that with
23 the addition of knowingly.

24 THE COURT: You agree with this except for
25 what?

1 MR. MOORE: I agree with that now that the
2 State has added a word which is knowingly. So, if
3 that's (unintelligible).

4 MR. BROWN: I have put it in yet so. Judge, my
5 only issue with that is the jury instruction doesn't
6 include the term knowingly. I know the experts use
7 it, but I went back to -- when I created this I went
8 back to the jury instruction and it says if you
9 conclude the defendant's out of court statement was
10 not freely and voluntarily made, you should disregard
11 it. And in the first paragraph such a statement
12 should always be considered with caution and weighed
13 with great care to make certain it was freely and
14 voluntarily made.

15 THE COURT: You're talking about the jury
16 instruction to the voluntary statement, voluntariness
17 of the statement.

18 MR. BROWN: Yes, and that's why I put that --
19 because the last sentence, the one he's referring to
20 where I put such if such evidence is to be considered
21 by you only for the purpose of determining whether
22 the defendant's interview was freely and voluntarily
23 made.

24 MR. MOORE: And I would add to that that
25 even -- the jury instructions don't always get it

1 right, track the law and (unintelligible) case in
2 hand for that, I didn't know we were going to do all
3 that first thing this morning, but the cases in
4 Florida says it' got to be freely, voluntarily and
5 knowingly given. I mean, that's what the cases hold.
6 So, if the instruction is two out of three words,
7 then the Court be not bound by the instruction, it's
8 bound by the cases and that's how it's determined.
9 That's how it's analyzed by the Florida Supreme
10 Court. Can I hand the Court a case right now, I
11 cannot, but I can have one in about two minutes with
12 research. The instruction should track the law.

13 THE COURT: Response from the State as to
14 adding the word and knowingly.

15 MR. BROWN: Judge, I'll leave it in your
16 discretion. I simply tracked the instruction the way
17 it's written and this is the statement, so.

18 THE COURT: Miss Ashley, are we looking that
19 up? Okay. We should have a case one way or another
20 in just a few moments.

21 I see a -- it says request for compulsory
22 judicial notice.

23 MR. MOORE: Yes, ma'am, I had given a copy of
24 that to Mr. Brown, it asks the Court to take notice
25 of matters which are really ascertainable or cannot

1 be disputed and one fact in paragraph one, the public
2 defender was appointed to represent Mr. Bradley at
3 the initial appearance on March 7th of 2012 which
4 began at about 1:30 p.m. and we were not statutorily
5 authorized to take action on his behalf in the case
6 prior to that date.

7 The second matter in paragraph two is that a
8 court order is necessary to obtain a blood sample
9 from the defendant. So, we're talking about matters
10 which are really ascertainable, can't be disputed,
11 (unintelligible) and it helps the jury to understand
12 the chronology a little bit and put it in
13 perspective.

14 THE COURT: Okay. What do you want me to do
15 with this?

16 MR. MOORE: Well, we would -- I would fashion
17 an instruction to the jury which tracks the language
18 in this request for compulsory notice. We basically
19 would say the jury is instructed that the Public
20 Defender's Office was appointed March the 7th at
21 approximately 1:30 p.m. at initial appearance and did
22 not act in the defendant's behalf before that time
23 and that in order to obtain a blood sample from
24 Mr. Bradley a court order was necessary, the defense
25 attorneys would have to have done and did get a court

1 order to obtain that blood draw.

2 THE COURT: When are you requesting that jury
3 instruction? At the time that I would normally do
4 jury instructions?

5 MR. MOORE: That would be appropriate, sure.

6 THE COURT: Is it -- response from the State.
7 I don't know if you've had an opportunity to review
8 this, I just saw it sitting on my desk.

9 MR. MCMASTER: Judge, I don't know if it's a
10 jury instruction, I think that it's something the
11 Court would advise the jury to take notice of and it
12 would be part of their evidence, I expect that it
13 will come sometime during this case-in-chief.

14 MR. MOORE: I think what the Court's looking
15 for is language we both agree on and whether it's in
16 the form of an instruction or the Court says I've
17 taken notice of this, I don't care as long as we
18 agree on the language in it. I just proposed
19 (unintelligible).

20 THE COURT: I mean, I could say that the Court
21 takes -- for purposes of the record -- I could say to
22 the jury for purposes of the record, the Court takes
23 judicial notice that the Office of the Public
24 Defender was appointed and just read these.

25 MR. MOORE: Sure. Yes.

1 THE COURT: I could do that this morning. I
2 could just say that the court takes judicial notice
3 of.

4 MR. MOORE: And then read.

5 THE COURT: And then read one and two. And
6 then we'll wait on to see if I want to add the word
7 knowingly.

8 Was there any other matters we need to address
9 this morning?

10 MR. MOORE: No, ma'am.

11 MR. MCMASTER: Judge, we had made a request
12 last week to have our expert witness, Dr. Patricia
13 Zapf, to sit in for the testimony of the defense
14 expert, Dr. Olander, we are renewing that request. I
15 do have some case law for the Court.

16 THE COURT: Okay.

17 MR. MCMASTER: May I approach?

18 THE COURT: Yes, you may.

19 MR. MCMASTER: There's a total of four cases,
20 some of them are fairly voluminous but the actual
21 part addressing the issue of sequestration is pretty
22 small.

23 Judge, in the first case, Burns versus State
24 cited at 609 So.2d page 600, it's a Florida 1992
25 opinion. The appropriate or pertinent parts are at

1 headnotes 13 and 14 where they have a discussion on
2 page six regarding this particular evidence. It
3 essentially boils down to the fact that allowing
4 exception to the witness sequestration rule
5 particularly for experts is in the sound discretion
6 of the court.

7 The next case chronologically would be the
8 Hernandez versus State case, it's the third one in
9 the stack, cited at 4 So.3d 642, it's a Florida
10 Supreme Court opinion from 2009 and the pertinent
11 portions there are headnotes 23 and 24, the
12 discussions at page 17 and 17 of the opinion. There
13 the state experts sat through the expert and lay
14 testimony that was presented, this was during the
15 penalty phase, and the court found no problem with
16 that. They did note that there had been a change in
17 the statute about the witness sequestration rule
18 which allowed certain exceptions to the witness
19 sequestration and one of them being a witness which
20 is essential to one of the parties as long as either
21 party presents a basis to the court for the need for
22 the witness to be excluded from the courtroom.

23 In the case of Hilton versus State cited at 117
24 So.3d 742, a Florida Supreme Court opinion from 2013,
25 there a medical examiner was allowed to sit through

1 testimony of the defense experts in part because the
2 state was late in filing their notice of intent to
3 seek the death penalty and because they had been late
4 in filing the notice, they were not allowed to
5 examine the defendant. So, there it was necessary
6 for the medical examiner to sit through the testimony
7 of the defense expert and the court found no problem
8 with that and they did note the change in the
9 statute.

10 And finally there's the Blanco versus Neal
11 case, it's a 2010 West Law decision 30277798. There
12 they don't have headnotes, it was an opinion by the
13 US District Court from the Southern District of
14 Florida and it was an ineffective assistance of
15 counsel claim on the habeas corpus petition and it
16 was claim number two which is pages 8 and 9 of the
17 opinion. There the state expert was allowed listen
18 to the defense expert testimony. That was challenged
19 both on appeal in the state court on a 3.850 which
20 the state court denied and they took it to the
21 federal court and once again the federal court denied
22 it knowing that it is not uncommon for experts to be
23 allowed to listen to the other experts testimony,
24 particularly the situation where the experts are
25 essentially taking -- that they're not fact

1 witnesses, that they're not going to get different
2 facts, they're all basically utilizing the same facts
3 to form their expert opinions and although their
4 opinions may differ they're not being influenced by
5 any factual testimony that's given.

6 Here we're not asking for Dr. Zapf to sit
7 through the lay testimony of anybody, she would only
8 be listening to the expert witness, Dr. Olander, who
9 did have an opportunity to conduct an exam of the
10 defendant. In our situation while we have obtained a
11 court order that allows us to conduct an examination
12 by Dr. Zapf of the defendant, the Defense has
13 objected to that until after the guilt phase is
14 completed and before the penalty phase. Our expert
15 has not had an opportunity to examine the defendant
16 directly and she advises us that to being able to
17 listen to the defense expert testimony about her
18 examination of the defendant would be helpful and
19 clarify (unintelligible) as to what the defendant
20 told the defense expert and what (unintelligible) her
21 testimony. We are asking that can Dr. Zapf be
22 allowed in during Dr. Olander's testimony.

23 THE COURT: Response from the Defense.

24 MR. MOORE: Your Honor, in October I disclosed
25 Dr. Olander and Dr. Skolly-Danziger for both guilt

1 and penalty phase witnesses and -- I don't have a
2 case for this problem, but in my discussions, my
3 discussions with Mr. McMaster, I recall taking the
4 position that since we are offering those two experts
5 strictly on the issue of Miranda, that the State
6 could take -- could have their expert evaluate
7 Mr. Bradley on the issue of Miranda but not as to
8 what happened at the time of the shooting until
9 after, until we get to the penalty phase if he's
10 convicted for the murder. So, that has been my
11 position. I have not made him unavailable for an
12 evaluation for that limited purpose. So, the expert
13 has had access for the purpose of evaluating the
14 defendant in the context we're offering his mental
15 health testimony for this phase of the trial is
16 strictly as to the voluntariness of the statement.

17 I would point out that in the cases cited by
18 the State, Hilton and Burns, the states expert -- the
19 State's witnesses were exempted from the rule and in
20 light of the fact that the defendant was prohibited
21 from examining the defendant. Now, I don't claim
22 that Mr. McMaster is misrepresenting anything but
23 here it would be best if we had a paper trail of
24 e-mails which embody our discussions, but that's my
25 recollection of it and it has been my position, in

1 fact, that it would be appropriate for me to make him
2 available for that limited purpose in light of the
3 use we're making of the mental health testimony.

4 So, Hilton is distinguishable, Burns is
5 distinguishable because I submit the State had not
6 been prevented from having their expert evaluate the
7 defendant on that limited purpose. Hernandez -- well
8 neither of those are enlightening, they just say the
9 state -- without saying what the essential showing
10 was, the court found that the state met the burden,
11 what it is the stated to show.

12 So, our position is the State has had access
13 and so -- and they also have had the report and all
14 the information relied upon by Dr. Olander so it is
15 not essential for the State to have -- not essential
16 for the presentation of her testimony for her to sit
17 in during the testimony of Dr. Olander.

18 And also, you know, we're disadvantaged in that
19 although I had a chance to take her deposition I
20 elected not to, but that was at the time before she
21 had sat in and listened to the testimony of
22 Dr. Olander and formed her new opinions which would
23 not be reflected in her report. So, you know,
24 procedurally we're at a bit of a disadvantage. I
25 object to the doctor sitting in, she's had ample

1 opportunity to prepare and the State has not made a
2 showing that her being present in court during the
3 testimony of Dr. Olander is essential to their
4 presentation of their case.

5 And as to the federal case, the Court should
6 not follow that to the extent that it sheds not light
7 on this for it to follow the Florida State law.

8 THE COURT: I'm going to allow the State's
9 witness to sit in during the testimony this morning.

10 Can we talk about scheduling? I know the
11 Defense has the witness for this morning at 9:00, is
12 there any other witnesses other than that for the
13 Defense?

14 MR. MOORE: No. Well, no -- we haven't
15 conducted the decision of -- to the point of
16 addressing whether Mr. Bradley will testify, other
17 than that there are no additional witnesses after
18 Dr. Olander in this phase.

19 THE COURT: Okay. Can we get to the point
20 where we get to the decision of Mr. Bradley
21 testifying or not?

22 MR. MOORE: Yes, we can.

23 THE COURT: Can we do that this morning?

24 MR. MOORE: Sure. Give me a moment.

25 THE COURT: Okay. I think your microphone's

1 been turned off. I haven't received any notice that
2 they can't hear you when you've been speaking up.

3 MR. MOORE: Well, an oversight on my part is I
4 didn't line up a court reporter and -- it would be
5 nice if we had one but if I'm not on the mic and I
6 should be to make sure that the record is complete.

7 THE COURT: You mean not --

8 MR. MOORE: I'd ask them to make sure the
9 microphone is on at this point.

10 THE COURT: Don't you want a minute to confer
11 with him in private?

12 MR. MOORE: I do, what I mean is after we
13 finish conferring.

14 THE COURT: I haven't received any notice that
15 they haven't been able to hear you during your
16 argument so I assume either that mic or that mic's
17 picking up, that's what I'm assuming, otherwise they
18 would have sent me something that said they can't
19 hear you. Can someone just touch that mic to make
20 sure it's off. Yeah, it's definitely off. Okay.
21 I'll give you a moment to confer with Mr. Bradley.

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

24 MR. MOORE: Your Honor, it would be
25 Mr. Bradley's decision not to testify in this trial.

1 THE COURT: Can we can go ahead and turn on the
2 mic at the defense table? Okay. They're telling me
3 they could hear you.

4 MR. MOORE: Could or could not?

5 THE COURT: They could hear you. Okay. Can we
6 go ahead turn on the mic at the defense table? I
7 think I could turn that on. Can you see if it's on
8 now? Okay. I can hear it, it did --

9 MR. PIROLO: You did hear that?

10 THE COURT: Yeah, I heard that. My mic's real
11 sensitive. I have one right here and it's super
12 sensitive and I heard you do that. I couldn't hear
13 that before.

14 Okay. Mr. Bradley, sir, I'm going to address
15 you directly and ask you some questions. Mr. Moore
16 has represented to the Court that it is your
17 intention not to testify. Do you understand that you
18 have a constitutional right to testify in this case
19 if you choose to do so.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And do you understand that you also
22 have a constitutional right to make the decision not
23 to testify if you choose to?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And have you had enough time to

1 discuss this decision with your attorney?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. Do you need any additional
4 time to discuss the decision whether you are to
5 testify with your attorney?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Okay. And is it your decision --
8 and it's my understand, before I do that, it's my
9 understanding that you're currently taking
10 medication, is that correct?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And have you taken your medication
13 today?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: When do you normally take the
16 medication?

17 THE DEFENDANT: At night.

18 THE COURT: Okay. And is the medication, does
19 it affect your ability to think and make decisions?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay. Are you thinking clearly
22 today with regard to this decision?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And do you understand what is
25 happening today?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And has your lawyer or your
3 attorneys in any way pressured you to make the
4 decision not to testify?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: And is it your decision and solely
7 your decision not to testify in this case?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And is that decision your own
10 decision?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Mr. Bradley, are you satisfied with
13 the representation of your attorneys?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. Is there anything you would
16 have -- you want your attorneys to do differently in
17 your case?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: All right. Thank you, sir. And
20 the Court does find that we've had a colloquy with
21 the defendant with regard to his right to testify.

22 Okay. I did read -- I do have some case law
23 here with regard to -- it's a case Garcia versus
24 State, 125 So.3d found at 260. It's a March 6th,
25 2013 case and it was a recent case where the court

1 gave an instruction with regard to freely, knowingly
2 and voluntarily and it says -- it just talks about
3 the statements need to be freely, knowingly and
4 voluntarily. I don't know if you want to look up
5 that case. It says in fact, the trial court -- this
6 is found on page 3. In fact, the trial court
7 subsequently instructed the jury that it must
8 determine from the evidence that the defendant's
9 alleged statement was knowingly, voluntarily and
10 freely made. And this is a Fourth DCA case.
11 Therefore, you must determine from the evidence that
12 the defendant's alleged statement was knowingly,
13 voluntarily and freely made. So, based on that I
14 will grant the Defense's request and add the word
15 knowingly. They talk about freely, knowingly and
16 voluntarily. So, do you want me to add it after
17 freely?

18 MR. MOORE: That's fine.

19 THE COURT: So, we have one witness this
20 morning and then the State's going to rest and does
21 the -- I mean, the Defense is going to rest. Does
22 the State have any witnesses lined up for this
23 afternoon or for after that?

24 MR. MCMASTER: Yes, we do, Judge, we have two
25 experts. One is currently present, the other should

1 be arriving shortly.

2 THE COURT: So, the State -- we talked about --
3 I thought we talked about tomorrow morning but maybe
4 that was in reference to the other witness if we
5 proceed to the next phase.

6 MR. BROWN: Right, for the penalty phase our
7 witness will be unavailable on Monday the 7th I think
8 it is, she'll be ready to go on Tuesday the 8th.

9 THE COURT: Okay. So, the State would be ready
10 to proceed after?

11 MR. BROWN: Yes.

12 THE COURT: Okay. Any other matters that we
13 need to address this morning? It is my intention to
14 bring the jury in to talk to them about what I
15 normally talk to them about with regard to recessing,
16 give the State's instruction, give the judicial
17 notice instruction and then proceed with evidence.

18 MR. LANNING: Sometime today it might be
19 appropriate to start talking about sequestration or
20 possible sequestration.

21 THE COURT: If you want to make that request,
22 you can make that request.

23 MR. LANNING: I don't know if we've made a
24 decision on that. Not at this point.

25 THE COURT: Okay. I haven't -- I mean, I don't

1 intend to address that unless a request is made, then
2 obviously I'll address it but -- I mean, I'm not -- I
3 don't intend to address that unless a request is
4 made.

5 MR. MOORE: Well, we better deal with it I
6 would suggest because if it goes to the jury tomorrow
7 and they run into the evening hour, then there -- the
8 issue is going to come up and it would be best for
9 them not blindsided with that when they go out. The
10 earlier they know that the sooner we get some
11 response from them is what is going to create a
12 problem, if it would prevent them from sitting on the
13 jury. So, I would suggest it be brought up when the
14 Court brings them in this morning, that there is a
15 possibility of that tomorrow.

16 THE COURT: Okay. When you say possibility, I
17 want to hear the issue and it's either going to
18 happen or it's not going to happen. I don't want to
19 talk to the jury in reference to possibilities.

20 MR. MOORE: If they go into the evening hours
21 then we're going to request it. So, I mean, that's a
22 definite as a human being predicting. We are
23 requesting it.

24 THE COURT: Okay. Response from the State.

25 MR. BROWN: Judge, I think it's quite clear

1 that unless both parties agree to waive, which we do
2 but apparently they're not, that they are to be
3 sequestered during deliberations. So, it may be best
4 to advise them that we anticipate they will be
5 deliberating tomorrow and that if they break for the
6 evening out a verdict that they'll be sequestered
7 until they reach a verdict.

8 THE COURT: Okay.

9 MR. BROWN: You know, obviously if they reach a
10 verdict tomorrow afternoon, tomorrow evening, then
11 it's not an issue but it may be safer to advise them
12 that it's a possibility.

13 MR. MOORE: Let's do this, Judge, you know, I'm
14 thinking I think the better approach is that I can
15 agree not to sequester the jury and we don't have to
16 go through this now on reflection. I really haven't
17 given it a lot of thought until just now but as I
18 reflect on it and I talked to cocounsel here, I think
19 it probably best if we not insist on the
20 sequestration, in fact waive it. So, that would be
21 my request at this time. So, we don't need to go
22 over it.

23 THE COURT: Okay. So, the Defense agrees that
24 can be waived. Does the State agree that it can be
25 waived?

1 MR. BROWN: Yes.

2 THE COURT: Okay. Thank you. Are we bringing
3 the jury -- are they up?

4 THE COURT DEPUTY: Yes.

5 THE COURT: Okay. Thank you.

6 MR. PIROLO: Judge, is our mick still on or?
7 No, it's off?

8 THE COURT: It's off.

9 MR. PIROLO: Okay. Thank you.

10 THE COURT: Okay. Any other matters before we
11 bring the jury into the courtroom? State's ready to
12 proceed?

13 MR. BROWN: Yes.

14 THE COURT: Defense is ready to proceed?

15 MR. MOORE: We're ready.

16 THE COURT: Okay. Then we'll bring the jury
17 in.

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

21 THE COURT: Please be seated. Good morning,
22 ladies and gentlemen of the jury.

23 THE JURY PANEL: Good morning.

24 THE COURT: Has anyone read or been exposed to
25 reading newspaper headlines and/or articles relating

1 to this trial or its participants?

2 THE JURY PANEL: No.

3 THE COURT: Has anyone seen or heard
4 television, radio or Internet comments about this
5 trial?

6 THE JURY PANEL: No.

7 THE COURT: Have you read any news headlines or
8 articles relating to this trial or its participants?

9 THE JURY PANEL: No.

10 THE COURT: Has anyone conducted or been
11 exposed to any research regarding any matters
12 concerning this case?

13 THE JURY PANEL: No.

14 THE COURT: And have you discussed this case
15 with among yourselves or with anyone else or allowed
16 anyone to discuss it in your presence?

17 THE JURY PANEL: No.

18 THE COURT: Okay. There's a few things I need
19 to read to you at this time. Evidence of any
20 abnormal mental condition is not a defense to any
21 crime. Evidence of a defendant's abnormal mental
22 condition may not be taken into consideration to show
23 that he lacked the specific intent to commit any
24 crime. Such evidence is to be considered by you only
25 for the purposes of determining the defendant's

1 interview -- only for the purposes of determining
2 whether the defendant's interview was freely,
3 knowingly and voluntarily made.

4 Now, at this time The court is going to take
5 judicial notice that one, the public -- the Office of
6 the Public Defender was appointed by the court to
7 represent the defendant in this matter on March 7th,
8 2012, at approximately 1:30 p.m. and would not be
9 statutorily authorized to take action in the case
10 prior to that point.

11 Number two, an order by the court would be
12 necessary to obtain a blood sample from a defendant.

13 Okay. Who would be the next witness on behalf
14 of the Defense?

15 MR. MOORE: We call Dr. Jacquelyn Olander.
16 Could I have a moment before we proceed?

17 THE COURT: Yes, you may.

18 (Thereupon, a pause was taken in the
19 proceedings.)

20 THE COURT: Ma'am, if you'll come forward.

21 Step up before the clerk to be sworn.

22 THEREUPON,

23 DR. JACQUELYN OLANDER,
24 having been first duly sworn, was examined and testified
25 upon her oath as follows:

1 THE COURT: And if you'll be seated in the
2 witness chair. Once seated, that chair does roll
3 around, if you'll scoot that chair forward. Do
4 adjust that microphone to fit you and do talk into
5 that microphone, it helps everyone hear your
6 testimony and also aids in recording your testimony.

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: Okay. Mr. Moore.

9 MR. MOORE: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 Q Good morning, Dr. Olander.

13 A Good morning.

14 Q Would you identify yourself, please?

15 A My name is Jacquelyn and that's spelled
16 J-A-C-Q-U-E-L-Y-N and my last name is Olander,
17 O-L-A-N-D-E-R.

18 Q All right. What is your profession?

19 A I'm a licensed psychologist in the State of
20 Florida and I also have a speciality in neuropsychology.

21 Q How is the speciality of neuropsychology
22 different from the speciality of psychology?

23 A In many ways it's quite different. To practice
24 as a neuropsychologist you have to complete a doctoral
25 training program in the field of psychology which is the

1 study of human behavior. Then you switch over to the
2 field of medicine and obtain your training in a two year
3 residency in a hospital setting and learn about the brain,
4 neuro anatomy, you go to various brain cutting so you
5 actually see what the various parts look like, you go
6 through a regimented training program at a hospital
7 setting, you're under the department of neurology.

8 The field of in neuropsychology actually began
9 many years ago before there was CT scans and MRIs. What
10 we found in our study of the human brain was that
11 different parts of the brain controls different areas of
12 functioning. So, back in the fifties before there were
13 MRIs, a doctor could clearly identify that this person has
14 a brain tumor but doesn't know where it's located in order
15 today an operation they would turn to us as
16 neuropsychologists because we have the ability through
17 doing paper and pencil tests to find out which areas were
18 preserved and which areas were damaged. So, based upon
19 our findings, the doctor would know where to go in to
20 operate and find the damaged area of the brain.

21 Now, as time passed and we have CT scans, PET
22 scans and other neuro cognitive imaging, what they have
23 found that our field is based on defining the relationship
24 and understanding the relationship between brain
25 functioning and human behavior. So, if a neurologist

1 suspects somebody might be coming down with dementia, that
2 would not show up on a CT scan or an MRI in the early
3 stages, instead they send them to us to start doing these
4 testing because research states that neuropsychological
5 results are the best ways to identify the early stages of
6 dementia.

7 Another area that we use it for is when there
8 is a brain injury. Again MRIs and CT scans and PET scans
9 can identify areas of abnormal abnormality but they don't
10 translate that abnormality into specific human behaviors.
11 So, as a neuropsychologist our special niche is looking at
12 the relationship between brain functioning and, you know,
13 human functioning.

14 Q And as I understand it, one of the ways you do
15 that is through neuropsychological testing?

16 A Absolutely, it is a very critical discipline
17 that requires that rigid training and for a person to
18 administer neuropsychological testing particularly for
19 forensic or legalistic matters it is critical that they
20 have that two year residency on top of everything else to
21 get that specific training because you have to be trained
22 to utilize the scientific method in completing
23 neuropsychological evaluations.

24 Q You belong to the National Association of
25 Neuropsychologists?

1 A Yes, I do, that is one of the governing bodies
2 for the field of in neuropsychologists, psychology, it
3 works very closely with the American Psychological
4 Association.

5 Q It would be -- that's the NAN, National
6 Association of Neuropsychologists. Are there guidelines
7 promulgated by the NAN that establish minimum criteria
8 that a neuropsychologist would need to meet in order to be
9 a practicing psychologist?

10 A Yes, there is a number of what is called
11 position papers developed the National Academy of
12 Neuropsychology that establishes the training and the
13 background necessary in order to administer tests and
14 interpret tests and utilize them particularly in a
15 forensic field.

16 Now, again as I previously testified, the NAN,
17 which is the National Academy of Neuropsychology, works
18 very closely with the American Psychological Association,
19 APA, in establishing the practice of ethical behavior in
20 our field as a licensed psychologist, talks about the
21 boundaries of competence, in other words, what we are
22 qualified to do, and particularly as it pertains to
23 requests from third parties.

24 Q Have you met the criteria established by the
25 NAN to be a practicing neuropsychologist?

1 A Yes, I have.

2 Q Now, as I understood, backing up a little bit,
3 that there are specific tests which you can give and have
4 given which are suggestive of brain damage or brain
5 injury?

6 A Yes, on many, many occasions.

7 Q Not diagnostic of but perhaps would suggest
8 further more testing like what?

9 A Well, I think what you're talking about is are
10 their screening instruments. So, if somebody comes in,
11 instead of give the whole battery of tests which takes
12 hours and hours, you can give various instruments
13 initially to determine whether or not it suggests the
14 presence of brain injury or brain dysfunction.

15 Q Well -- so, suppose you have results in a test
16 or those types of tests which indicate the possibility of
17 brain damage or brain deficit, what type of more
18 confirmatory, more definite diagnostic tools might you
19 recommend?

20 A If I have results based upon the individual's
21 presentation which suggests that there's cognitive damage
22 or brain damage presence and then my testing is consistent
23 with that, but sometimes people who have brain injury can
24 have difficulties recalling dates or very specific details
25 because when the brain is injured it does not form

1 memories very well or if at all.

2 I remember many years ago when that accident
3 with Princess Di and everybody was waiting for I believe
4 it was the one gentleman who survived to wake up so he
5 could tell what was happening, what happened, I told my
6 colleagues that if he was able to do so I would have
7 serious concerns because when somebody has a brain injury
8 we have what's called post traumatic amnesia. So, their
9 ability to remember what happened is greatly impaired.

10 Q What I'm getting at is if you have such a
11 finding and you have such a presentation and test results
12 would suggest there may be a brain injury, would you
13 recommend for example an MRI or a PET scan.

14 A Yes, absolutely, and I pretty long winded, I
15 apologize, but yes that would be the next stage. I would
16 go to see if an MRI or a PET scan could clearly document
17 the presence of brain abnormality.

18 Q Dr. Olander, do you have a practice and if so
19 what does it consist of?

20 A I am in private practice in Winter Park,
21 Florida and initially when I started over fifteen years
22 ago I had approximately fifty percent of my time was
23 therapy and the other fifty percent was evaluations. Now
24 in the last five years I do more evaluations than I do
25 therapy and my evaluations cover a wide variety, criminal

1 situations such as this, I also evaluate people for
2 disability. I'm an old school teacher, guidance
3 counselor, school psychologist, program administer so I
4 evaluate students for the potential of learning
5 disabilities and to obtain accommodations when they enter
6 college for an extended time on exams and other forms of
7 accommodations. So, I do have a wide variety, I have a
8 very eclectic background.

9 Q What sort of professional associations that you
10 belong to, certifications, licensures that you haven't
11 already mentioned?

12 A Yes, I'm licensed in the State of Florida as a
13 psychologist, that's a protected term. I'm also -- I'm
14 certified in the State of Washington where I obtained my
15 Masters, I have a certification as a school psychologist,
16 a guidance counselor and an elementary and secondary
17 teacher. I belong to the American Psychological
18 Association, the National Academy of Neuropsychologists
19 and also another neuropsych body called the International
20 Neuropsychological Society, the INS.

21 Q Have you testified in court before as a
22 neuropsychologist?

23 A I've testified on multiple occasions,
24 approximately a hundred and fifty times in either -- vast
25 majority in court but also in depositions.

1 Q Okay. And were you contacted by my office and
2 asked to do an evaluation with respect to Mr. Bradley?

3 A Yes, I was.

4 Q As it relates to the Miranda issue and the
5 voluntariness of the statement that he gave to the police,
6 what were you asked to evaluate?

7 A I was asked to evaluate Mr. Bradley in regards
8 to his ability to knowingly, voluntarily and intelligently
9 waive his Miranda rights.

10 Q And give a statement?

11 A And provide a statement, yes.

12 Q And what materials have you considered in that
13 evaluation? What have you done -- well, let's just focus
14 on the materials and also if whether or not you have the
15 actually done a face-to-face interview with Mr. Bradley.

16 A There was a number of materials or records I
17 reviewed. I reviewed his school records from Cobb, George
18 as well in Brevard County. I reviewed his records from
19 the Department of Corrections. I reviewed his -- the
20 police reports related to this, his current legal
21 situation.

22
23
24
25 (CONTINUED TO VOLUME IX)